

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

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S.C. Supreme Court

TONY PAUL MEDFORD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000818

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ALICIA OLIVE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Tony Paul Medford,) 2011-GS-42-1821
7 Defendant.) January 9 - 10, 2012
8) Spartanburg, South Carolina
9

10 B E F O R E :
11 HONORABLE J. DERHAM COLE, JUDGE
12

13
14 A P P E A R A N C E S :
15 MICHAEL DAVID MORIN, ESQUIRE
16 Attorney for the State
17 MATTHEW SHEALY, ESQUIRE
18 CLAY T. ALLEN, ESQUIRE
19 Attorneys for the Defendant
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 (Proceedings January 9, 2012)

2 (Preinterrogation waiver form marked State's Exhibit
3 No. 1 for Identification; photograph marked State's Exhibit
4 No. 2 for Identification; photograph marked State's Exhibit
5 No. 3 for Identification; fired bullet marked State's
6 Exhibit No. 4 for Identification; magazine and bullets
7 marked State's Exhibit No. 5 for Identification; Arminius
8 .22 revolver marked State's Exhibit No. 6 for
9 Identification; Snape butane lighter marked State's Exhibit
10 No. 7 for Identification; small flashlight marked State's
11 Exhibit No. 8 for Identification; four unfired .45 caliber
12 bullets marked State's Exhibit No. 9 for Identification;
13 shoe marked State's Exhibit No. 10 for Identification; cell
14 phone marked State's Exhibit No. 11 for Identification.)

15 THE COURT: All right. This is Tony Paul Medford.

16 MR. SHEALY: It is, Your Honor.

17 THE COURT: And the defense has got a motion for a
18 dismissal pursuant to 16-11-450?

19 MR. SHEALY: We do, Your Honor.

20 THE COURT: Okay.

21 MR. SHEALY: Your Honor, it would be our contention
22 that my client while in a place he had a right to be was
23 attacked, so he had no duty to retreat. He had the right
24 to stand his ground and meet force with force, including
25 deadly force, pursuant to 16-11-440(c), and therefore he

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 should be immune from prosecution.

2 THE COURT: You disagree, Mr. Morin?

3 MR. MORIN: Yes, sir.

4 THE COURT: Okay. Call your first witness.

5 MR. SHEALY: Your Honor, we'd call Mr. Medford, Tony
6 Paul Medford, to the stand.

7 TONY PAUL MEDFORD, having been
8 first duly sworn, testified as follows:

9 (Whereupon, the witness came to the witness stand in a
10 wheelchair.)

11 THE COURT: Just back into that space right there
12 between you and the court reporter and you can testify from
13 that point. That's good. You can just speak up so
14 everybody can hear.

15 I just wanted her to be able to see him.

16 DIRECT EXAMINATION BY MR. SHEALY

17 Q Can you please identify yourself?

18 A Tony Paul Medford.

19 Q Okay. How old are you?

20 A Thirty-four.

21 Q And where do you currently reside?

22 A Spartanburg.

23 Q In Spartanburg.

24 A Yes, sir.

25 Q Mr. Medford, do you recall the events of January the

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 11th of 2011?

2 A Yes, sir.

3 Q And do you know a Rick Hayes?

4 A Yes, sir.

5 Q You do. All right. Well, why don't you tell us about
6 January 11th of 2011. Did you have occasion to be with a
7 fellow by the name of Danny Crisp?

8 A Yes, sir.

9 Q Okay. And tell us about that. How did you end up
10 with Mr. Crisp?

11 A He'd called me and wanted to come and pick me up to
12 go. He'd -- Danny had called me and wanted to come and
13 pick me up to take me to Rick's to give Rick some tools
14 back.

15 Q Okay. So you had some tools of Mr. Hayes?

16 A Yes, sir.

17 Q Do you have any idea as to what those tools were?

18 A No, sir.

19 Q Okay. You did at the time?

20 A Uh-huh.

21 Q Okay. They were contained -- how were they packaged?

22 A They was in a book bag.

23 Q There were in a bag. So you had his bag.

24 A Yes, sir.

25 Q Okay. So Mr. Crisp eventually came and picked you up?

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 A Yes, sir.
- 2 Q And then what happened?
- 3 A Me and Mr. Crisp went to Rick's house and pulled in
- 4 his garage, and Mr. Crisp gave him the bag.
- 5 Q All right. When you say that you pulled into his
- 6 garage, how did you pull in.
- 7 A We backed in.
- 8 Q You backed into his garage.
- 9 A Yes, sir.
- 10 Q All right. Do you have any mode of transportation --
- 11 A No, sir.
- 12 Q -- other than other people driving you around?
- 13 A No, sir.
- 14 Q And why is that?
- 15 A Because I'm paralyzed from the chest down.
- 16 Q Okay. And how long have you been paralyzed?
- 17 A Since 2001.
- 18 Q All right. So you've testified that Mr. Crisp gave
- 19 Mr. Hayes his bag back, is that correct?
- 20 A Yes, sir.
- 21 Q Okay. And then what happened?
- 22 A Then Mr. Hayes asked for a ride, and Danny said he'd
- 23 give him a ride. So he got in the back seat behind us.
- 24 Q A ride where?
- 25 A To Tonya's house.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 Q And do you know who Tonya is?
- 2 A Yes, sir.
- 3 Q All right. who?
- 4 A She's just this girl that Rick knowed who lived not
- 5 too far from his house.
- 6 Q All right. And do you have any idea as to why Rick
- 7 wanted to ride to Tonya's house?
- 8 A Go get some pills.
- 9 Q Get some pills.
- 10 A Yes, sir.
- 11 Q What was he going to do? what kind of pills?
- 12 A Pills that you make meth with. Pseudoephedrine pills.
- 13 Q All right. And was that -- did you have any
- 14 connection to those pills?
- 15 A No, sir.
- 16 Q You had nothing to do with Tonya?
- 17 A No, sir.
- 18 Q All right. Now, you've testified that he got into the
- 19 car. where in the car did he get?
- 20 A He got in right behind me.
- 21 Q He got in behind you. Okay. what kind of car were
- 22 you in?
- 23 A It was a Jeep Cherokee.
- 24 Q Jeep Cherokee. Can you describe the orientation of
- 25 the seats? How do the seats --

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 A The driver's seat, the console, passenger seat, and
2 then the back seats.
- 3 Q Okay. So the back seat is a bench seat?
- 4 A Yes, sir.
- 5 Q And was there any -- was there anything in the back
6 seat that you're aware of?
- 7 A No, sir.
- 8 Q Okay. So that he would have been able to slide
9 throughout the back seat.
- 10 A Yes, sir.
- 11 Q All right. Okay. So when Danny agreed to take Crisp
12 to Tonya's house --
- 13 A Yes, sir.
- 14 Q -- then what happened?
- 15 A We got going down the road, and Rick was talking about
16 his tools, thought that I had took his tools, and I didn't.
17 And he said that -- something about his old lady --
18 somebody sleeping with his old lady -- and that I knew
19 something about it.
- 20 Q Okay. Who's his old lady?
- 21 A Nicki.
- 22 Q And when you say old lady, you mean his girlfriend or
23 his wife?
- 24 A His wife.
- 25 Q His wife.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 A Yes, sir.
- 2 Q Okay. And he had reason to believe for some reason
- 3 that -- or he believed that --
- 4 A Believed that I knowed something about it and I hadn't
- 5 told him, and he was mad about that and was questioning me
- 6 about it.
- 7 Q Was he angry about anything else?
- 8 A He's angry about his clip to his pistol.
- 9 Q Okay. Why was he angry about that?
- 10 A Because the day before -- a couple of days before -- I
- 11 had his -- I had his gun and I had his clip. And I gave
- 12 his gun and his clip back to his wife, Nicki, and they
- 13 didn't give it to him.
- 14 Q Okay. When you say they --
- 15 A They gave him the gun -- Quinton and Nicki. They gave
- 16 him the gun but not the clip. He had another clip that was
- 17 in his truck, and then the one that was in the gun. But
- 18 they didn't give him the one that was in the gun.
- 19 Q All right. So, Mr. Medford, he was upset about his
- 20 tools. You testified too that he was upset about his gun
- 21 and that you may know who was --
- 22 A His old lady --
- 23 Q His girlfriend or his wife. And, now, was he angry
- 24 about any -- was he angry about anything else?
- 25 A No, sir.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 Q No. Okay. He wasn't angry about anything that
2 Quinton had promised or not promised?

3 A He was talking to me about, something about, Quinton
4 had made a deal with me about some dope that I had paid
5 for. And he said Quinton ought not be making promises that
6 he couldn't keep.

7 Q Now, was he in particular angry about that, or was he
8 more angry about his girl or his wife?

9 A He was more angry about his wife than about his clip
10 and his tools.

11 Q Okay.

12 A He thought I -- I had took them -- took it and not
13 gave it back to him until the day before that morning.

14 Q Okay. Mr. Medford, where is Tonya's house in relation
15 to Rick's house?

16 A It's probably about two miles away.

17 Q Okay. Is it a straight shot, or do you have to take a
18 right or a left?

19 A You have got to take a left out of Rick's driveway, go
20 down to the stop sign and then take a right and go up about
21 a mile and then her place is on the left. Tonya's place is
22 on the left.

23 Q Do you have any idea as to what those streets are
24 called?

25 A Blanchard Road is the one that Rick lived off of. And

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 the one Tonya lived off of is Carolina Country Club Road.

2 Q Okay. So you go down to the stop sign on Blanchard,
3 take a right onto Carolina.

4 A Carolina Country Club.

5 Q Is that right?

6 A Yes, sir.

7 Q All right. So you're going down the road, and he's
8 angry with you. What happened when you get to Tonya's
9 house?

10 A He goes in for a few minutes, and then he comes
11 straight back out. I'm talking about Rick. Then when Rick
12 comes back out he gets back in the car, and then he's even
13 madder than he was before.

14 Q Okay. And what's he angry about at this point?

15 A Still about his old lady.

16 Q All right. So he's really upset about his -- about
17 his girlfriend or his wife.

18 A His wife.

19 Q And not so much about Quinton making promises.

20 A No, sir.

21 Q All right. So he gets -- where does he get back in
22 the car?

23 A Right in the back seat behind me again.

24 Q Okay. So he gets in the same place he got out?

25 A Yes, sir.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 Q All right. And, Mr. Medford, whenever -- y'all left
2 at that point?

3 A Yes, sir.

4 Q All right. And what happened then?

5 A We went down Country Club Road, and he was talking.
6 And when we turned on Blanchard Road he said same thing
7 about his old lady -- his wife or whatever. And when we
8 turned on Blanchard Road he -- Rick started talking about
9 when I got back to the barn I'd have stuff coming outta my
10 nose. And then he said, "Well, you're about to have stuff
11 coming outta your nose."

12 Q Okay. And you took that as a threat?

13 A Yes, sir.

14 Q Why would you take that as a threat?

15 A Well, because I didn't know what he was talking about,
16 for one. And he was talking about his wife, you know, I
17 knowed something about that too. So I didn't have no clue
18 what he was talking about.

19 Q Okay. Well, just because you didn't know what he was
20 talking about you thought he was threatening you, or was it
21 his tone or what did he say?

22 A Yeah. It was his tone and his -- his composure was
23 much worse when he came out of Tonya's.

24 Q Okay. All right. And what did you do at that point?

25 A I just told him I didn't know what he's talking about.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 And then he said, "well, you're about to have stuff coming
2 out the end of ya nose." And I turned around and looked at
3 him. I was like, "Man, what are you talking about?" And
4 he started talking about doing God's work for Him, and he
5 said something about that. And then I said what are ya
6 talking about, doing God's work for Him? And then he said
7 -- you know, he said you know who's been sleeping with my
8 old lady and you ain't told me. And he said, "You fixing
9 to have stuff coming out the end of ya nose." And I turned
10 around and looked at him. When I did, he was pointing the
11 gun at me. And so I just ducked, pulled my gun out and
12 shot it.

13 Q All right. So you fired one time?

14 A One time, yes, sir.

15 Q Why did you only fire one time?

16 A Because when I fired one time he dropped his gun.
17 Danny stopped the Jeep, and he was getting out of it.

18 Q Okay.

19 A So he dropped his gun, so I reached in the back seat
20 and grabbed his gun.

21 Q All right. And all of this happened more or less the
22 same time?

23 A Yes, sir.

24 Q So it was kinda bang, bang, bang.

25 A Yes, sir.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 Q Now, this gun, what kind of gun did you have?
- 2 A I had a .22 revolver.
- 3 Q All right. And why did you have that weapon?
- 4 A Because when I got shot in 2001 and paralyzed I didn't
- 5 know the guy that had shot me. You know, two of them got
- 6 -- you know, they never put them in jail. So I always
- 7 carried a gun.
- 8 Q So you carried a gun since 2001.
- 9 A Yes, sir.
- 10 Q All right. And how long have you known Rick Hayes?
- 11 A About 15 years.
- 12 Q Has he ever been any relation to you?
- 13 A My baby's mama is his cousin.
- 14 Q Okay. And had you ever had any particular issues with
- 15 him?
- 16 A No, sir.
- 17 Q No. Now, you've testified as to these tools that he
- 18 had. Are you aware of Mr. Hayes' occupation?
- 19 A He didn't work.
- 20 Q He didn't work but --
- 21 A He had a shop that had a bunch of tools in them, but
- 22 these was tools for -- I think they had something to do
- 23 with them making meth.
- 24 Q Okay. So you're -- so he manufactured meth.
- 25 A Yes, sir.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 Q That's one of the ways he made money?
- 2 A Yes, sir.
- 3 Q Okay. And you had been with him the past few days off
- 4 and on, correct?
- 5 A Yes, sir.
- 6 Q And was he using meth at the time?
- 7 A He'd been using it the whole time. We both had.
- 8 Q So whenever y'all were in the Jeep both of you were
- 9 intoxicated.
- 10 A No.
- 11 Q You weren't both intoxicated.
- 12 A He was; I wasn't.
- 13 Q You were not.
- 14 A I had went to sleep that morning and then slept and
- 15 hadn't did any that day.
- 16 Q Okay. And so is your -- you felt clear-headed?
- 17 A Yes, sir.
- 18 Q On the -- on January the 11th.
- 19 A Yes, sir.
- 20 Q And what kind of pistol did he have?
- 21 A He had a .45 Ruger.
- 22 Q Okay. And what kind of -- what color was it?
- 23 A Silver.
- 24 Q Once Mr. Rick Hayes got out of the car, what happened
- 25 immediately thereafter?

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 A Danny pulled off.
- 2 Q Okay. And, obviously, you're in a wheelchair. You
- 3 had no other transportation.
- 4 A No, sir.
- 5 Q And what happened to the weapons?
- 6 A Danny told me to throw them out.
- 7 Q Okay. And where did Danny drive you right after that?
- 8 A He drove around. He was just driving around. He went
- 9 and called this other dude and met him, but he was driving
- 10 around waiting -- waiting to see where he needed to meet
- 11 him at.
- 12 Q Okay. So you disposed of weapons at Danny's request?
- 13 A Yes, sir.
- 14 Q And he -- did he drive to a Tony Williams' house?
- 15 A Yes, sir.
- 16 Q And what happened at Mr. Williams' house?
- 17 A They was some blood on the back seat.
- 18 Q Okay.
- 19 A And they cleaned it up.
- 20 Q They cleaned it up. It wasn't your idea to clean it
- 21 up?
- 22 A No.
- 23 Q All right. Mr. Medford, why didn't you call the
- 24 police?
- 25 A Because Danny didn't want me to call the police.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 Q Okay.
- 2 A And I thought that maybe he just got shot in the arm.
- 3 Q Why did you think he'd just got shot in the arm?
- 4 A Because they's this some blood, a little bit of blood,
- 5 back there.
- 6 Q Okay.
- 7 A And he'd got outta the car, and he dropped his gun.
- 8 Q Okay. So you thought that he would make it back to
- 9 his house?
- 10 A Yes, sir.
- 11 Q Was it all that far from where you were?
- 12 A No, sir. It was just right down the road.
- 13 MR. SHEALY: If you will, bear with me, Your Honor.
- 14 (Pause.)
- 15 Q Mr. Medford, you had been invited into that car,
- 16 correct?
- 17 A Yes, sir.
- 18 Q So you had a right to be in that car?
- 19 A Yes, sir.
- 20 Q Were you ever told to get outta that car?
- 21 A No, sir.
- 22 Q Did you have any right to tell anybody to get out of
- 23 the car?
- 24 A No, sir.
- 25 Q All right. If you will, answer any questions the

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

1 state has for you.

2 CROSS-EXAMINATION

3 BY MR. MORIN

4 Q You stated Chris drove you to Rick's house, is that
5 correct?

6 A Yes, sir.

7 Q And when you were there Rick asked for a ride to
8 Tommy's.

9 A Yes, sir.

10 Q And Mr. Crisp agreed, sure, let's go.

11 A Yes, sir.

12 Q To those, right?

13 A Not like that, but yeah.

14 Q All right. So he got in the car, and he drove to
15 Tonya's, is that right?

16 A Yes, sir.

17 Q Now, it's snowing, and the roads are all icy. So I
18 imagine it took a little while to get there. It wasn't
19 like it was in the middle of the day, is that correct? I
20 mean, like it would be --

21 A Right.

22 Q -- in the summer. It took longer, right?

23 A Yeah.

24 Q Blanchard Road's like a one-and-a-half-lane road, and
25 it's all covered with snow.

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

1 A Well, yeah. The Jeep too.

2 Q Right. I know he had the Jeep, but it's still got to
3 be -- because there's a couple of turns on that road that
4 you could end up in a ditch, don't you think?

5 A Not past -- not coming from Rick's house down that
6 way, no.

7 Q Okay. You went all the way to Tonya's house, and Rick
8 was the only one that got out.

9 A Yes, sir.

10 Q And he was in Tonya's house for a while, and he came
11 back and got in the car, and you started driving back to
12 Rick's house.

13 A Yes, sir.

14 Q And you turned left onto Blanchard, and you're going
15 down Blanchard. And that's when you said this gun fight
16 occurred, is that right?

17 A Yes, sir.

18 Q When you fired the shot was the vehicle going, or not
19 moving?

20 A We's going about ten miles an hour.

21 Q Okay. So the vehicle's going down the road, and
22 that's when you shot him.

23 A Yes, sir.

24 Q And did the vehicle come to a stop at some point?

25 A As soon as I shot Danny stopped.

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

1 Q Okay. And Rick gets out, and then y'all drive on.

2 A Yes, sir.

3 Q And Danny -- Danny never said anything to him, did he?

4 A No, sir.

5 Q And it was Danny's car, right?

6 A Yes, sir.

7 Q Now, you say that you had used meth but you were sober
8 then.

9 A Right. I had done been asleep and hadn't used none
10 that day.

11 Q Okay. And did you -- after you did the shooting and
12 you drove off, did you use meth any more after that?

13 A Yes, sir.

14 Q When?

15 A Later that morning and for the next day or two.

16 Q Okay.

17 MR. MORIN: If I may have just a moment, Your Honor.

18 (Pause.)

19 Q Going back to -- you're sitting in the front passenger
20 and Rick is sitting where?

21 A Behind me, but he had slid over into the middle.

22 Q Okay.

23 A Right when we turned on Blanchard Road.

24 Q And other than this nose comment -- that's what
25 concerned you, is that correct?

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

1 A Na. He'd been talking about his old lady, his wife.

2 Q Sure. But, I mean, him talking about his old lady is
3 just him being mad about his old lady. You're concerned
4 about the part where he thinks you know something, right?

5 A Right.

6 Q And he said that something's going to happen when you
7 get back to the barn, is that right?

8 A That's what he said at first, but then he said it was
9 about to happen now, is you about to have stuff coming
10 outta your nose now.

11 Q All right.

12 MR. MORIN: That's all the questions I have, Your
13 Honor.

14 MR. SHEALY: Your Honor, I have nothing further.

15 THE COURT: Okay. You can resume your seat with Mr.
16 Shealy.

17 THE WITNESS: Thank you, Your Honor.

18 MR. SHEALY: Your Honor, I have no other witnesses.

19 THE COURT: Mr. Morin.

20 MR. MORIN: Your Honor, I don't have any witnesses. I
21 have an argument.

22 THE COURT: Let me hear your argument before you
23 decide if you have any witnesses or not.

24 MR. MORIN: All right. Your Honor, 16-11-440 says --
25 goes on and talks about use of bodily -- great -- deadly

1 force against a person, No. 1, "Against whom a deadly force
2 is used is in the process of unlawfully and forcefully
3 entering or has unlawfully and forcefully entered," -- and
4 in this case -- "unoccupied vehicle, or if he removes or is
5 attempting to remove another person against his will from
6 the occupied vehicle."

7 None of those things happened. The only testimony
8 before the Court is they agreed to go to Tonya's house.
9 They drove over there. He got in willingly. Danny agreed
10 to let him come into the car. They got there. He went
11 into a house. He came back out, got back in the car they
12 had driven there. They drive him back down the road.

13 His own testimony is, is we're driving down the road,
14 not forcefully and unlawfully entering. There's no stop or
15 anything. He turns and shoots him.

16 Now, on those facts perhaps he can make an argument
17 that it's a self-defense case. However, for it to be a
18 castle-doctrine case he has to show that he -- that the
19 victim was unlawfully and forcibly either attempting to
20 enter or entered the vehicle.

21 His entire testimony is it was agreed that he was
22 going to come with him. He never said one time Rick forced
23 his way in, Rick threatened us to get his way into the car.
24 Nothing. That whole -- the whole -- it's basically two
25 people riding down the road who get in an argument and then

1 gunfight comes up.

2 The point of the castle doctrine is, is if I'm driving
3 my car and someone tries to enter forcibly, then I have to
4 defend myself from these attackers.

5 That's not what we have here. We have three people
6 willingly getting in a car and driving down the road. And
7 as I stated, it's not like Mr. Hayes, Rick Hayes, the
8 victim in this case, was trying to enter it. He -- they
9 were actually in the car going down the road.

10 So in order for him to get the -- the protection under
11 the castle doctrine he's got to have some evidence that the
12 person -- he was in the process of unlawfully or forcefully
13 entering the vehicle, and there's no testimony whatsoever
14 to that. None. And that's why we would say at this point
15 his motion should be denied.

16 THE COURT: Okay.

17 MR. SHEALY: Your Honor, he's arguing a different part
18 of the statute from what we based our --

19 THE COURT: I know.

20 MR. SHEALY: Our claim on.

21 THE COURT: He's arguing the presumption part of the
22 statute as opposed to subsection (c).

23 MR. SHEALY: C, yes, Your Honor.

24 It'd be our position that we presented testimony as to
25 each and every element there -- a person not engaged in

1 unlawful activity. He was attacked in another place where
2 he had the right to be. He has no duty to retreat and has
3 the right to stand his ground. Your Honor, obviously,
4 that's what my client did.

5 And meet force with force, including deadly force, and
6 reasonably believes it is necessary to prevent death or
7 great bodily injury.

8 Your Honor, he testified that the gun was being
9 pointed at him in conjunction with a number of threats that
10 things were going to be coming out of his nose. I just
11 think somebody pointing a gun at me would probably be
12 sufficient cause for me to believe that they were going to
13 use that gun, Your Honor, or to prevent the commission of a
14 violent crime. Again, attempted murder, would be that
15 violent crime.

16 Judge, it would be our position that we've presented
17 plenty of evidence upon which you can -- and it's
18 uncontroverted evidence, Your Honor.

19 There have been no -- no argument that the gun wasn't
20 pointed at him. It was uncontroverted that my client was
21 in fear for his life.

22 It's -- would be our position that we've shown that by
23 more than a preponderance of the evidence, Your Honor, that
24 subsection (c) would apply and therefore sub -- 16-11-450
25 would -- a person -- quote, a person who uses deadly force

1 as permitted by the provisions of this article, in this
2 case 16-11-440(c), would justify using deadly force and is
3 immune from criminal prosecution, Judge. So, and unless I
4 suppose a person against whom that force is used is a law
5 enforcement. That doesn't obviously apply here.

6 So, Your Honor, it'd be our position that we've shown
7 -- we've presented all of the evidence that we have that he
8 was acting pursuant to the statute in 16-11-440(c).

9 MR. MORIN: With regard to subsection (c), I
10 apologize, Your Honor, but the testimony there is this
11 whole excursion from Rick Hayes' house to Tonya's house and
12 back was for the purpose of obtaining something to make
13 meth, which is what they were going back there to do, which
14 would put him outside the unlawful -- committing unlawful
15 activity. And to that end, Your Honor, the defendant says
16 that there was a firearm that was displayed. However, he
17 also admits that he somehow disposed of that weapon.

18 I believe that -- and I don't believe the
19 legislature's intent was if you -- if two people get in an
20 argument in a vehicle and one ends up dead he can say,
21 well, he pulled a gun on me and I got rid of the gun and
22 therefore I'm immune.

23 They've committed unlawful activity, going to get
24 these drugs to make more meth. That's what his testimony
25 is.

1 And as far as the -- as far as -- make sure I've got
2 this straight in my mind, Your Honor -- I understand you
3 have the right to be there but this -- what we're talking
4 about here is -- is one person saying that the person I
5 killed pulled a gun on me but that I got rid of.

6 And I believe that creates a factual situation on the
7 self-defense, not under an immunity situation where there
8 is no evidence other than his own testimony as to what --
9 that's what happened.

10 THE COURT: Well, is that what you're telling me, that
11 the only evidence in this case is what the defendant has
12 testified to?

13 MR. MORIN: There was -- obviously, there was the
14 driver of the vehicle, Your Honor, Mr. Crisp. But he never
15 sees this -- this gun prior to the alleged shooting by his
16 own testimony.

17 The statement that he gave was I didn't know what
18 happened and then -- then I saw this gun. Of course --

19 THE COURT: Well, what gun? The defendant's testified
20 there were two.

21 MR. MORIN: Right. The defendant testifies there were
22 two guns.

23 THE COURT: I know. What gun is Mr. Crisp referring
24 to? You said Mr. Crisp said he never saw that gun.

25 MR. MORIN: He -- when -- when the -- when the shots

1 are fired -- when a shot is fired he throws -- he -- he
2 doesn't see a gun. He stops the car.

3 But, I mean, I don't want to argue facts that aren't
4 before you, but my point is --

5 THE COURT: Well, here's my point.

6 You -- you argued earlier that you thought that the
7 defendant had to show that the person against whom the
8 deadly force was used -- in this case Mr. Hayes -- was in
9 the process of unlawfully and forcefully entering the
10 vehicle or attempting to remove somebody therefrom.

11 MR. MORIN: Yes, sir.

12 THE COURT: But that -- that gives rise to a
13 presumption. So they might not have proved a presumption,
14 but they only have to prove by a preponderance --

15 MR. MORIN: I understand.

16 THE COURT: -- in order to be entitled to a dismissal
17 under subsection (c).

18 So my question to you is do you have evidence to
19 present to dispute the evidence they have presented in
20 support of their motion to dismiss pursuant to subsection
21 (c).

22 MR. MORIN: Yes, sir.

23 THE COURT: Okay. You need to present it.

24 MR. MORIN: If I may have a moment, Your Honor.

25 (Pause.)

1 MR. MORIN: Your Honor, part of the evidence that I
2 would have to that is a statement that Mr. Medford gave the
3 day after this happened.

4 THE COURT: All right.

5 MR. MORIN: And I'll -- I know he's got a Jackson vs.
6 Denno hearing as well.

7 THE COURT: So we need to have that first? Apparently
8 we needed to have that first --

9 MR. MORIN: Yes, sir.

10 THE COURT: -- unlike what y'all told me earlier.

11 MR. MORIN: Yes, sir.

12 THE COURT: Okay. We'll have the Jackson vs. Denno
13 hearing first, or at least now.

14 Let me ask you this. Do you have any other witnesses
15 you intend to call?

16 MR. MORIN: As a matter of fact, I may call Danny
17 Crisp. However, he's represented by Steve Sumner who I am
18 going to be sending an e-mail. He said he'd be over here
19 shortly.

20 Mr. Crisp is charged with accessory after the fact.
21 He is represented by Steve Sumner. And I'm going to have
22 him because I believe his attorney needs to be present if
23 he's going to testify.

24 THE COURT: Well, I understand, but I thought that's
25 why we were having this hearing this afternoon.

Allen Wood (In-camera)
Direct examination by Mr. Morin

1 MR. MORIN: Yes, sir.

2 with regard to the Jackson vs. Denno hearing, Your
3 Honor, we'd call Allen Wood.

4 ALLEN WOOD, having been first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. MORIN

7 Q Would you state your name for the Court, please?

8 A Allen Wood.

9 Q Mr. Wood, did you have an occasion to come in contact
10 with Tony Medford?

11 A Yes, I did.

12 Q Do you recall when that was?

13 A About this time last year exactly.

14 Q All right. And where did you come in contact with
15 him?

16 A Spartanburg County Sheriff's Office.

17 Q Did you know how he got to the sheriff's office?

18 A I believe he was brought there by a friend of his,
19 Mike Crisp.

20 Q Okay. And did you meet with him there at the
21 sheriff's office?

22 A Yes, I did.

23 Q What was the first thing that you did when you met
24 with him?

25 A I brought them upstairs to our -- what we call the

Allen Wood (In-camera)
Direct examination by Mr. Morin

1 detective division, went into an interview room and
2 Mirandized him.

3 Q Now, I'm going to show you what's been marked as
4 State's Exhibit No. 1 for this hearing and ask if you can
5 tell me what this document is.

6 A This is a standard form for the sheriff's office,
7 preinterrogation waiver form. It consists of a Miranda,
8 basically permission for me to speak to the defendant here
9 in this case, which was Tony Medford.

10 I had signed it, that I read it to him. I had signed
11 it -- notarized it also -- but I had Mr. Medford sign it,
12 that I read it to him, and had Mike Crisp, his friend,
13 witness it also.

14 Q Okay. Now, during the course of reading these Miranda
15 rights to Mr. Medford did you have any -- did he have any
16 trouble understanding what you were telling him?

17 A No, sir.

18 MR. SHEALY: No objection.

19 MR. MORIN: For purposes of this hearing, Your Honor.

20 (Preinterrogation form marked State's Suppression
21 Exhibit No. 1.)

22 Q Now, after you -- well, you read him his rights. And
23 did he understand them as far as you could tell?

24 A Yes.

25 Q And he signed them.

Allen Wood (In-camera)
Direct examination by Mr. Morin

1 A Yes, he did.

2 Q You notarized it.

3 A Yes, sir.

4 Q And that document is also witnessed by a Mr. --

5 A Mike Crisp.

6 Q Okay. And after you -- after you -- was he ever
7 placed under arrest there in your office?

8 A No, sir, no, sir, not at all.

9 Q Was he afforded any drinks or cigarettes? Did he ever
10 ask for anything that you recall?

11 A Actually, the meeting didn't last that long. It was
12 fairly brief. I'd say under an hour.

13 Q Okay. And he didn't ask for any --

14 A He never asked for any kind of break or refreshments
15 or --

16 Q Did you tell him why you were speaking with him?

17 A Yes, I did.

18 Let me go back. Meeting with them down in the lobby is
19 about a 90-yard walk between the lobby and my office, and
20 plus we had to go up an elevator.

21 He explained that Mr. Crisp had accompanied him for
22 moral support and that Mr. Crisp was encouraging him to do
23 the right thing, quote, unquote.

24 Once we got into the interview room basically, you
25 know, it was understood by all parties why we were here. He

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

1 knew I was wanting to talk to him, and he was presenting
2 himself to talk to me.

3 when I explained to him tell me what happened between
4 you and Rick Hayes, he just starts his rendition of it at
5 that time.

6 Q Okay. Now, of course on this document it says that --
7 it lists why you were speaking with him, is that correct?

8 A Yes. That's part of the form you fill out.

9 Q Okay. And you were -- you were part of the
10 investigation team that was working on the assault on Mr.
11 Hayes at that time?

12 A Yes, sir.

13 Q Please answer any questions that Mr. Shealy may have
14 for you.

15 CROSS-EXAMINATION

16 BY MR. SHEALY

17 Q Officer -- Officer Wood -- is it Detective Wood?

18 A Yes, sir.

19 Q Okay. So detective.

20 A Sergeant/detective, yes, either way.

21 Q All right. Sergeant Wood, do you know -- or at the
22 time on, I guess, January the 12th did you know Danny
23 Crisp?

24 A I -- I knew of them. I had previously met Danny, I
25 think -- was it the night before? I'm getting the days

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

1 mixed up there. The incident happened late at night I
2 think on the 10th.

3 Q On the 11th.

4 A The 11th. It was the -- the following night we met
5 them. We actually pulled them over and took him to the
6 office to speak with him.

7 Q Okay. And do you know of any relationship between
8 Danny Crisp and Mike Crisp?

9 A I think they are brothers.

10 Q They're brothers. Was Danny Crisp at the police
11 station at the same time as Mr. Medford?

12 A I want to think he was. I would have to look at my
13 notes. I'm not a hundred percent sure.

14 Q All right. So they were at the -- you think they were
15 at the same -- at the police station at the same time.

16 A I think so, yes, sir.

17 Q All right. And Danny at that point was a suspect in
18 this crime, this alleged crime?

19 A Define suspect.

20 Q Well, you thought he had something to do with it.

21 A He was there.

22 Q He was there. Right. So you thought he had something
23 to do with it.

24 A He was there.

25 Q Okay.

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

1 A He was the driver of the vehicle.

2 Q All right. Did you think it was strange to have the
3 brother of the suspect sit with the other suspect?

4 A Mike is in the pastoral sense kind of a preacher. He
5 preaches.

6 The -- it was the defendant's choice to have Mike
7 present there as moral support. He wanted Michael there.
8 That was fine with me. At that time we were just going to
9 ask him about his part in this and basically what happened.

10 Q Okay. And are you aware of Mike making any assurances
11 to my client?

12 A No. Mike actually didn't say that much.

13 Q Okay. And the conversation you had with Mr. Medford,
14 was he easy to understand or hard to understand?

15 A It was difficult to understand actually until I asked
16 him to speak up.

17 Q Okay. Why -- why was it difficult to understand?

18 A That's just the way he was as I understood it.

19 Q Okay. Was he using -- was he vague, street jargon and
20 slang?

21 A Yes, sir.

22 Q All right. And then you told him -- well, then you
23 understood that vague street-jargon slang based on your
24 background in narcotics, correct?

25 A Well, I -- I wanted him to clarify in more detail what

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

1 exactly he was -- he was articulating or trying to
2 articulate in his conversation with me.

3 You know, it -- to try to sit here and say it was
4 jargon, what he did say, you know, it's kinda like that, you
5 know, mumbling sort of so speaking. And then he would pop
6 off, "I had to do what I had to do." You know, clarify
7 that. Be a little bit more detailed.

8 Then that's when he started elaborating on talking
9 about stuff coming out of his nose and things such as that,
10 and then the flash of chrome which --

11 Q Okay. So you have a background in narcotic
12 enforcement?

13 A Yes, sir.

14 Q Okay. Are you trained in determining whether someone
15 looks as though they're in -- they're intoxicated or not?

16 A I've seen intoxicated people several times.

17 Q How long did you say you'd worked for the sheriff's
18 department?

19 A In Spartanburg 28 years.

20 Q Okay. So you've seen a whole lot of intoxicated
21 people.

22 A Yes, sir.

23 Q Because there are a lot of them out there, right?

24 A Yes, sir.

25 Q Okay. All right. Officer, you're sure that he signed

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

1 that piece of paper the day that you spoke with him?

2 A Yes, sir.

3 Q Okay. I'm going to hand you what's State's Exhibit 1
4 for this motion hearing.

5 Now, is it standard procedure to have as you read each
6 of those rights off, have the defendant initial it?

7 A No, sir, not standard. Some people do it; some people
8 don't. I do it sometimes if I feel like the person might
9 be a little bit apprehensive about the understanding of it.
10 You go through one at a time.

11 Actually, Mr. Medford stopped me at one point and told
12 me he knew his rights already. I explained to him I still
13 have to read them to you.

14 Q And he didn't appear to be intoxicated at all to you?

15 A No, sir. Lethargic a little bit. You know, not
16 knowing the guy beforehand, you know, he was upright. He
17 never dozed off. He never -- never insinuated to me that
18 he was under the influence of anything that would cause him
19 to be sleepy or hyperactive or anything like that. Much --
20 a lot like he is today, just kinda even toned.

21 Q Okay.

22 A A lot easier to understand today.

23 Q And how quickly -- well, how quickly after this was he
24 arrested, do you know?

25 A Oh, I don't recall. I'm sure there was some down time

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

1 there conferring with the solicitor's office about the
2 proper charge and everything.

3 Q You testified that you pulled him -- pulled Danny --
4 I'm sorry. I get stuck in pronouns sometimes. You pulled
5 Danny over the night before you talked with Mr. Medford.

6 A It wasn't -- when I say night, it was darkness before
7 the day.

8 Q Sure.

9 A My time's kinda running in and out. It might have
10 been after 12:00 and on the same date.

11 Q Okay. So it may -- it was early morning maybe. All
12 right. And then where did you interview him at that time?

13 A Danny?

14 Q Yeah.

15 A He was taken back to the office, and I believe
16 Investigator Foster interviewed him there at the office.

17 Q Okay. Are you aware of anybody sitting in on that
18 interview?

19 A I don't recall.

20 MR. SHEALY: Your Honor, if you'll bear with me.

21 (Pause.)

22 Q Did Mr. Crisp -- Mr. Mike Crisp leave your interview
23 with Mr. Medford at all that you can recall?

24 A I don't recall me and Paul ever being by ourself. If
25 he left the interview room, I don't recall me being in

Michael Daniel Crisp, Jr. (In-camera)
Direct examination by Mr. Morin

1 there when he left. It would have been to use the bathroom
2 or such, or we might --

3 Q Okay. So when Investigator -- I guess you said
4 Investigator Foster interviewed Danny. You don't know if
5 Mike sat in on that interview or not.

6 A Danny wasn't with us when we all went down to the
7 sheriff's office that night.

8 MR. SHEALY: I have nothing further of this witness.

9 MR. MORIN: That's all I have of this witness, Your
10 Honor.

11 THE COURT: You may step down.

12 MR. MORIN: The state would call Mike Crisp.

13 MICHAEL DANIEL CRISP, JR.,
14 having been first duly sworn testified as follows:

15 DIRECT EXAMINATION BY MR. MORIN

16 Q Would you state your name for the Court, please?

17 A Michael Daniel Crisp, Jr.

18 Q Mr. Crisp, do you know Tony Paul Medford?

19 A Yes, sir.

20 Q How long have you known him?

21 A Since I was ten years old.

22 Q And how old are you now?

23 A Thirty-six.

24 Q Okay. And are you in any way related to Mr. Medford?

25 A No blood relation.

Michael Daniel Crisp, Jr. (In-camera)
Direct examination by Mr. Morin

- 1 Q Okay. Now, Danny Crisp. Are you related to him?
- 2 A Yes.
- 3 Q How are you related to him?
- 4 A We share the same mother.
- 5 Q Okay. So he's your brother.
- 6 A Correct.
- 7 Q Okay. On January 12th of last year did you see Mr.
- 8 Medford and Danny Crisp?
- 9 A Yes.
- 10 Q Tell me how you came in contact with Danny and Mr.
- 11 Medford.
- 12 A My brother, Danny, called me.
- 13 Q Uh-huh.
- 14 A Said he needed to speak with me --
- 15 Q Uh-huh.
- 16 A -- face to face. I met him. He said he had some
- 17 troubles and that he and Paul both had some troubles and
- 18 that Paul was at his house and I needed to go speak with
- 19 him.
- 20 Q Okay. And did you?
- 21 A I did.
- 22 Q Did you go alone, or did Danny go with you?
- 23 A He rode in my Jeep with me there. I spoke to Paul by
- 24 myself.
- 25 Q Okay. Where did you go from -- did you leave Danny's

Michael Daniel Crisp, Jr. (In-camera)
Direct examination by Mr. Morin

1 house at any point?

2 A When we left we went to the sheriff's office.

3 Q All right. Let's talk about who we is. Who is we
4 that went from Danny's house to the sheriff's office?

5 A Myself, my brother Danny, Paul, and a female friend of
6 mine.

7 Q Okay. Who -- did you tell Paul he had to come with
8 you, or did Paul ask that you give him a ride?

9 A I did not tell him he had to come with me.

10 Q Okay. And when you got to the sheriff's office did
11 you stay with Danny or did you go with Paul? What happened
12 then?

13 A We went upstairs to the meeting room.

14 Q Who is we?

15 A Myself, Paul and Mr. Wood.

16 Q Okay. Do you remember if Mr. Wood read Paul his
17 rights?

18 A I do not remember.

19 Q I'm going to show you what's been marked as State's
20 Exhibit No. 1. Okay. And on this -- and ask if you
21 recognize that, on the line that says witness.

22 A Yes, sir. That's my handwriting.

23 Q Is that your handwriting?

24 A Yes, sir.

25 Q Is that your signature?

Michael Daniel Crisp, Jr. (In-camera)
Direct examination by Mr. Morin

- 1 A It is.
- 2 Q And how about down here on this witness?
- 3 A Correct. That's mine.
- 4 Q All right. But you can't remember if the rights were
- 5 read or not, is that right?
- 6 A I signed that paper.
- 7 Q Okay. Now, up until that point when you went upstairs
- 8 with Mr. Wood and Mr. Medford did you know what the trouble
- 9 was that they were in?
- 10 A No, sir.
- 11 Q When was the first time you heard about what trouble
- 12 they were in?
- 13 A As Mr. Wood and Paul proceeded to talk.
- 14 Q You were there in the room with him.
- 15 A Yes, sir.
- 16 Q Was there any time you left the room?
- 17 A I did.
- 18 Q Where did you go when you left the room?
- 19 A A few doors down to where my brother was being
- 20 interviewed.
- 21 Q Your brother Danny.
- 22 A Yes, sir.
- 23 Q Now, you've known Mr. Medford for 25 years. Is that
- 24 about fair to say -- 10 to 20 -- 26 years.
- 25 A Yes, sir.

Michael Daniel Crisp, Jr. (In-camera)
Direct examination by Mr. Morin

1 Q Did he have any trouble understanding what was going
2 on? You've known him for a long time, right?

3 A Yes, sir, I've known him for a long time?

4 Q You've seen him when he was under the influence of
5 stuff, and when he wasn't.

6 A Correct.

7 Q Did he understand what he was doing that day?

8 A The day that I took him to the sheriff's office?

9 Q Yes.

10 A He was under the influence.

11 Q I understand that. Did he understand what he was
12 doing? You were talking to him, right?

13 A Correct, I was talking to him.

14 Q And he was giving you responses that were appropriate
15 for what you were asking him, wasn't he?

16 A The conversation I had with him was brief.

17 Q Right.

18 A It was --

19 Q But, I mean --

20 A "I understand you have some troubles."

21 Q Right.

22 A "The right thing to do is to go downtown, and do you
23 want a ride downtown." He said yes.

24 Q Okay.

25 A It was that brief.

Michael Daniel Crisp, Jr. (In-camera)
Direct examination by Mr. Morin

1 Q I understand.

2 A I didn't allow -- I didn't allow him to talk in my
3 vehicle because I didn't want to be an accessory to
4 anything.

5 Q I understand. So it was just you got some trouble and
6 do you want me to take you, and you took him.

7 A Correct.

8 Q Now, while you were down there with -- with Detective
9 Wood and Mr. Medford was there anything said between the
10 two of them that you thought was inappropriate? Did Mr.
11 Wood at any time deny a request he had? Was Mr. Medford
12 allowed to speak on his own behalf? How did that work, do
13 you remember?

14 A It was pretty cosher.

15 Q Did you -- was he offered anything to drink?

16 A I think I received a bottle of water and he smoked a
17 couple of cigarettes.

18 Q Mr. Medford did?

19 A Yes, sir.

20 Q Okay. Nothing was said about him smoking in there?
21 He was allowed to smoke?

22 A Correct.

23 Q After this meeting occurred where did you go next?
24 Did you -- when you left the sheriff's department.

25 A We -- myself and Paul -- followed a deputy sheriff to

Michael Daniel Crisp, Jr. (In-camera)
Direct examination by Mr. Morin

1 California Avenue.

2 Q The jail?

3 A Yes, sir.

4 Q So you and Paul were in your vehicle that you brought
5 him there by yourselves from the sheriff's office to
6 California Avenue, the jail, is that right?

7 A I can't remember if my female friend was with us or if
8 she stayed there, but he and I, Paul and I, were in my
9 vehicle.

10 Q Okay.

11 A Following deputy sheriff to California Avenue.

12 Q How did -- how did Paul get into your car at Danny's?

13 A With my help.

14 Q And at the sheriff's department how did he get in the
15 car?

16 A With my help.

17 Q Did anybody else help that you recall?

18 A Seems like the officer proceeded to help, but with his
19 condition positioning him into a car, it's better if one
20 person does it.

21 Q Okay.

22 A If it's available.

23 Q Please answer any questions Mr. Shealy may have.

24

25

Michael Daniel Crisp, Jr. (In-camera)
Cross-examination by Mr. Shealy

1 CROSS-EXAMINATION

2 BY MR. SHEALY

3 Q All right. Mr. Crisp, you had testified that Paul was
4 under the influence. And you stated that pretty poorly.

5 A Yes, sir.

6 Q Because he was pretty messed up in your opinion?

7 A I would say so.

8 Q You would say so. All right. And where did you say
9 that you picked him up?

10 A At my brother's house, at Danny's.

11 Q At Danny's house. Where did Danny call you from?

12 A From a phone, cellular phone.

13 Q From a cell phone. Where was he at that moment?

14 A You know, I can't remember exactly where I picked him
15 up or where I met him at.

16 Q So he wasn't at the house.

17 A No, sir.

18 Q All right. So y'all had to -- so Paul was at the
19 house by himself. Y'all went and picked him up from there?

20 A Correct.

21 Q All right. I understand you told -- you didn't tell
22 him he had to go with you. But how would he have left
23 otherwise? Because he can't drive. How would he have left
24 Danny's house otherwise?

25 A The same way he goes anywhere else. He calls

Michael Daniel Crisp, Jr. (In-camera)
Redirect examination by Mr. Morin

1 somebody.

2 Q All right. You don't recall telling him that your
3 lawyer would meet him down at this -- at the police
4 station?

5 A No, sir.

6 Q You didn't tell him that at all?

7 A No, sir. I don't recall that.

8 Q You don't recall telling him that.

9 A Correct.

10 Q Just like you don't recall whether or not Officer Wood
11 gave his Miranda warnings or not.

12 A That's correct.

13 Q I'm going to hand you again State's Exhibit No. 1.
14 You testified that you signed that. Did you date it
15 anywhere? Did you personally date it?

16 A It doesn't appear that I dated it.

17 MR. SHEALY: Your Honor, I have nothing further of
18 this witness.

19 MR. MORIN: Just one question, Your Honor, based on
20 this statement if I may.

21 REDIRECT EXAMINATION

22 BY MR. MORIN

23 Q Mr. Crisp, Mr. Shealy asked you if you dated this.
24 However, you haven't testified that -- you said no. But
25 you have testified that is your signature on both of those

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 witness lines, is that correct?

2 A That's my signature.

3 MR. MORIN: That would be -- that's all the questions
4 I have, Your Honor.

5 THE COURT: All right. You may step down.

6 MR. MORIN: That's the state's showing, the last
7 witness that we have.

8 MR. SHEALY: Your Honor, I would call my client.

9 THE COURT: All right. Mr. Medford, you come back
10 around.

11 TONY PAUL MEDFORD, having been
12 previously duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. SHEALY

14 Q All right. If you'd identify yourself once again.

15 THE COURT: You've been previously sworn. You're
16 still under oath.

17 THE WITNESS: Okay. Yes, sir.

18 Q Okay. Would you identify yourself again, please?

19 A Tony Paul Medford.

20 Q And, Mr. Medford, on -- do you recall January the
21 12th?

22 A A little bit.

23 Q When you talked with the police.

24 A Yes, sir.

25 Q Okay. Now, tell -- you've been here throughout the

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 hearing, correct?
- 2 A Yes, sir.
- 3 Q And you've heard the testimony that's been --
- 4 A Yes, sir.
- 5 Q Mr. Medford, you -- you heard that they picked you up
- 6 at Danny's house. How did you get to Danny's house?
- 7 A Danny.
- 8 Q Danny took you to his house?
- 9 A Yes, sir.
- 10 Q And then what happened next to Danny?
- 11 A He left that morning. I don't know where he went.
- 12 Q Had y'all been using meth at that time?
- 13 A Oh, yeah, yes, sir.
- 14 Q You say that like it was a lot.
- 15 A Yes, sir.
- 16 Q So y'all were pretty intoxicated?
- 17 A Yes, sir.
- 18 Q All right. And you said -- you testified that Danny
- 19 left. Do you know where he went?
- 20 A He didn't say.
- 21 Q who's the next person that you ended up seeing?
- 22 A Mike.
- 23 Q Mike Crisp?
- 24 A Crisp.
- 25 Q Okay. And about what time was that, do you know?

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 A I don't remember what time it was.
- 2 Q Okay. Did Mike talk to you at all?
- 3 A He came in and talked to me.
- 4 Q You just testified that he pushed you to go to the
- 5 police. Is that accurate?
- 6 A Yes, sir.
- 7 Q Exactly how did he push you to go to the police?
- 8 A Asked me was I going to go down there and talk to
- 9 them.
- 10 Q Okay. Did he make any promises?
- 11 A He said he'd stand by me the whole time, and his
- 12 lawyer was going to meet us down there and that if his
- 13 lawyer -- when we got down there his lawyer wasn't there,
- 14 so he said that he'd get me a lawyer if I needed one and
- 15 he'd stand by me the whole time through the whole thing,
- 16 didn't matter how much it cost, five thousand, ten
- 17 thousand, he'd get me a lawyer.
- 18 Q And what's his relationship to you?
- 19 A We're just friends. We were like cousins.
- 20 Q Okay. And why would you trust in him?
- 21 A Because we always said we was cousins. We'd been
- 22 around each other for 25 years.
- 23 Q Okay. And you've heard that he's a preacher. What
- 24 does that mean to you?
- 25 A I don't know about no preacher. He's not a preacher.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 Q Okay. But he's a narcotics counselor?

2 A He's a narcotics counselor, a drug counselor.

3 Q All right. So you went in the car with Danny and Mike
4 and some lady, is that correct?

5 A Yes, sir.

6 Q Okay. And were any assurances made to you on that car
7 ride?

8 A Just what I just said.

9 Q Okay. Once you got to the police station do you
10 recall speaking with the officer, Detective Wood?

11 A Yes, sir, a little bit.

12 Q Do you recall a little bit of talking with him?

13 A Yes, sir.

14 Q All right. Do you recall him giving you your Miranda
15 rights?

16 A No, sir.

17 Q Okay. Now, we talked about this sheet of paper that's
18 been marked State's Exhibit 1. I'm going to hand that to
19 you. I'm going to let you look at it. Do you dispute that
20 that's your signature?

21 A That's my signature, but I didn't sign it there.

22 Q You don't recall signing it at the police station.

23 A No, sir.

24 Q You don't recall signing the preinterrogation.

25 A Never signed nothing. Never gave them a statement,

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

1 written statement. Never signed anything. Never even had
2 a pen.

3 Q All right. why didn't you sign anything?

4 A Because they never offered me nothing and they never
5 read me my rights.

6 Q Okay. And --

7 A They never offered me no lawyer, so I didn't have no
8 reason to sign this. I wouldn't've waived my rights.

9 Q Did they -- was there ever an attempt to get you to
10 write something down?

11 A They was attempt to get me to write a statement.

12 Q Okay. So they wanted you to sign something.

13 A Yes, sir.

14 Q But why did you refuse?

15 A Because Michael told me that I might need to get a
16 lawyer.

17 Q Okay. And do you remember Detective Wood, in fact,
18 telling you that if you didn't sign something --

19 A People would put words in my mouth.

20 Q Yeah. That that would stop people from putting words
21 in your mouth, is that right?

22 A Yes, sir.

23 Q And still you refused to sign that, that voluntary
24 statement.

25 A Yes, sir.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 Q And you were never offered that Miranda rights form?
- 2 A No, sir.
- 3 Q Why did you speak to the police without a lawyer
- 4 present?
- 5 A Because of Mike. He was with me.
- 6 Q Okay. And you thought that Mike was looking out for
- 7 you?
- 8 A Yes, sir.
- 9 Q In retrospect, do you think he was looking out for
- 10 you?
- 11 A Not now.
- 12 Q Okay. Do you think he was looking out for Danny?
- 13 A Possibly.
- 14 Q And you were intoxicated at the time this happened?
- 15 A Very high. On pills too.
- 16 Q All right. So you substituted your -- or his judgment
- 17 for yours.
- 18 A Yes, sir.
- 19 Q What kind of pills were these?
- 20 A Klonopin and Lyrica.
- 21 Q And I had asked you earlier whether or not you recall
- 22 being read your Miranda rights. Were you read your Miranda
- 23 rights?
- 24 A No, sir.
- 25 Q You weren't told those at all.

Tony Paul Medford (In-camera)
Direct examination by Mr. Shealy

- 1 A No, sir.
- 2 Q Okay. Did you stop him from telling you those rights?
- 3 A He never tried.
- 4 Q Okay. So you never said this business about I know
- 5 them, you don't need to go over them.
- 6 A No, sir.
- 7 Q That didn't happen.
- 8 A No, sir.
- 9 Q All right. And we talked about this, the waiver form,
- 10 and you testified that that's your signature, correct?
- 11 A Yes.
- 12 Q So you admit that you signed it.
- 13 A I signed it.
- 14 Q When did you sign it, do you know?
- 15 A In the magistrate-court office.
- 16 Q Why would you have signed it there?
- 17 A Because we had a formal bond hearing the next day --
- 18 me and Danny -- Danny Crisp. We went to -- they wouldn't
- 19 give us a bond that day when we went to jail. The next day
- 20 when we went to jail, I mean, the next day when we went for
- 21 a formal bond hearing they had me sign papers. I remember
- 22 that paper.
- 23 Q Okay. And that's the only time you signed anything?
- 24 That was the only time that you signed anything --
- 25 A Only time I signed anything the whole time.

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

1 Q And why did you sign anything?

2 A Because judge -- I was in there in the magistrate's
3 court, and they was handing me papers to sign.

4 Q Okay. You didn't read those papers?

5 A No. I was still high, and I didn't take the time to
6 read them because it was supposed to be stuff to do with
7 the magistrate's office.

8 Q All right. But you remember not signing anything
9 until that point.

10 A No. I had never signed nothing.

11 Q All right. Thank you, Mr. Medford. If you will,
12 answer anything the state asks you.

13 A Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. MORIN

16 Q Mr. Medford, if I understand your testimony correctly,
17 you do remember all of the drugs you say you were taking.

18 A Yes, sir.

19 Q You do remember Mr. Crisp making -- telling you about
20 he was going to take care of you.

21 A Yes, sir.

22 Q You do remember telling Mr. Wood some things about
23 what happened.

24 A Yes, sir.

25 Q You don't remember getting your Miranda rights.

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

- 1 A I didn't get my Miranda rights.
- 2 Q So you remember not getting them. That's another
- 3 thing that you do remember.
- 4 A Yes.
- 5 Q And if I understand your testimony correctly, the
- 6 magistrate got you to sign a waiver of your Miranda rights.
- 7 A I mean, that's where that paper come in at, was in the
- 8 magistrate's office when that detective there was there,
- 9 and also a solicitor was in there with us at our former
- 10 [sic] bond hearing.
- 11 Q And you do remember that.
- 12 A Yes, sir.
- 13 Q Now, did Mr. Crisp force you into his vehicle?
- 14 A No, sir.
- 15 Q Did he drag you out at the sheriff's office?
- 16 A No, sir.
- 17 Q Did he force you into the sheriff's office?
- 18 A He picked me up and put me in my chair and pushed me
- 19 in there but --
- 20 Q Sir, did you say, hey -- or do you remember -- I don't
- 21 want to go in here?
- 22 A I didn't want to go in there without a lawyer.
- 23 Q I understand. But did you say to Mr. Crisp, "Stop. I
- 24 don't want to go in here." Did you say that?
- 25 A No, sir.

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

1 Q At any point did you tell Mr. Wood I need my lawyer?

2 A Yeah, when I refused to sign the paper. I mean, he
3 knowed that I wanted my lawyer. The only reason I was
4 talking to him, like I said, to begin with was because Mr.
5 Crisp, Mike Crisp, who was with me -- and his lawyer wasn't
6 there.

7 Q You were relying on Mr. Crisp -- that's your own
8 testimony -- to look out for you.

9 A Yes, sir.

10 Q Now, you do remember telling Officer Wood about what
11 happened, or do you remember some of it?

12 A I remember some of it.

13 Q Back during --

14 A I mean, they's a bunch of it that he put, like he
15 said, that I didn't -- if I didn't fill out that paper it
16 would -- people was going to put words in my mouth, so I
17 needed to sign that statement and write something on the
18 statement to keep people from putting words in my mouth.
19 They's a lot of stuff that was in there that I didn't say.

20 Q You had been read your rights before.

21 A No, sir.

22 Q You've never been arrested?

23 A Oh, yeah, before when I been arrested.

24 Q Right. I mean in your life.

25 A Yes, sir.

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

1 Q I don't mean to trick you on that. But you've been
2 arrested before in your life.

3 A Yes, sir.

4 Q And you've heard those Miranda rights before.

5 A Yes, sir.

6 Q How far did you go in school, sir?

7 A The sixth grade.

8 Q Sixth grade.

9 A Really, the fifth grade, and then I went to the sixth
10 grade for about three months and didn't go back, got kicked
11 out.

12 Q Okay. Prior to 2001 when you ended up in this chair,
13 before that, did you have a job?

14 A I was a painter.

15 Q Okay. So you got money. And did you have a bank
16 account or just keep the money in your pocket?

17 A Never had no bank account.

18 Q Okay. Did you have a driver's license?

19 A At one time I did.

20 Q That's what I meant. I mean, because, I don't know,
21 maybe you could have them now. But at one time you did.
22 And certainly I'm asking before you had -- before you were
23 shot. You were shot, isn't that correct --

24 A Yes, sir.

25 Q -- that caused you to be here? I don't mean to

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

1 belabor the fact that you're in a wheelchair, but you had a
2 driver's license at one point, right?

3 A Yes, sir.

4 Q And I think you had your own apartment back in January
5 of 2011, isn't that right?

6 A Me and my brother.

7 Q Okay.

8 A My brother lived with me to help me.

9 Q Were y'all both on a lease, or was he letting you stay
10 with him? How does that work?

11 A It was my apartment, and he was on my lease.

12 Q I see. You were on the lease, and you were letting
13 him stay there because he was helping you.

14 A He was my -- yeah.

15 Q Okay. Now, after you were shot you obviously couldn't
16 do any more painting, is that right?

17 A Right.

18 Q So I assume you got a disability check, is that fair
19 to say?

20 A Yes, sir.

21 Q So you were getting a check every month.

22 A Yes, sir.

23 Q You were taking care of that, or was your brother
24 taking care of your money for you?

25 A I was taking care of it.

Tony Paul Medford (In-camera)
Cross-examination by Mr. Morin

1 Q Okay. And I understand you say you went to the fifth
2 or the sixth grade, but you can read some. You had your
3 driver's license and some other things. Is that fair to
4 say?

5 A Yes, sir.

6 Q Okay. After you left the sheriff's office, Mr. Crisp
7 has testified that he drove you to the jail. Is that
8 correct?

9 A That's correct.

10 Q Did anybody else go with y'all?

11 A No, sir.

12 Q Did you know why you were going to the jail?

13 A No, sir. They had told me something about I was being
14 arrested, and right when I was going out, but nobody read
15 me my rights or told me why.

16 Q Well, that was after you had gotten --

17 A After I --

18 Q After you were leaving the sheriff's office.

19 A After I was leaving the sheriff's office.

20 Q Okay.

21 A I got to -- he, Mr. Crisp, drove me into the -- the
22 gates into the county jail, into the sally port.

23 Q Okay. And after you drove into the gates of the sally
24 port, how did you get out of the car?

25 A He picked me up and put -- sat me in my chair.

Tony Paul Medford (In-camera)
Redirect examination by Mr. Shealy

1 Q Mr. Crisp did?

2 A Yes, sir.

3 Q Okay.

4 MR. MORIN: That's all the questions I have, Your
5 Honor.

6 REDIRECT EXAMINATION

7 BY MR. SHEALY

8 Q Mr. Medford, you testified that he was, Mr. Crisp was,
9 your choice to be with you, correct?

10 A Yes, sir.

11 Q And that you were seemingly intoxicated, correct?

12 A Yes, sir.

13 Q Okay. And you were at the sheriff's office because of
14 inducements given to you by Mr. Crisp in your opinion.

15 A Yes, sir.

16 Q That's why you spoke with the police.

17 A Yes, sir.

18 Q And you testified you weren't read your Miranda
19 rights.

20 A Yes, sir.

21 Q And you spoke to Detective Wood, again, while under
22 the influence of methamphetamine, Klonopin and Lyrica.

23 A Yes, sir.

24 Q And, again, you spoke to Officer Wood under the -- the
25 inducement of Mr. Crisp.

Tony Paul Medford (In-camera)
Redirect examination by Mr. Shealy

1 A Yes, sir.

2 MR. SHEALY: That's all I have.

3 MR. MORIN: I have no further questions, Your Honor.

4 THE COURT: Okay. You may resume your position with
5 your lawyer.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Any reply?

8 MR. MORIN: No, sir.

9 THE COURT: All right. Well, based upon the testimony
10 I've heard I do find that the state has established by the
11 greater weight of the evidence that the statement given by
12 -- or any statement given by Mr. Medford was freely and
13 voluntarily made.

14 These questions are always questions of fact for the
15 fact-finders to determine as based upon the credibility and
16 the veracity of the witnesses.

17 In this case it appears that Mr. Medford has a clear
18 recollection of events that night. They don't coincide
19 with statements made by the state's witnesses and law
20 enforcement, but he appears to have a clear recollection of
21 events. It's not a vague recollection; it's not a fuzzy
22 recollection; it's not a confused recollection.

23 He says that he was not advised of his rights. He
24 said he didn't know what he was doing. He refused to sign
25 the statement. They tried to get him to sign the

1 statement. He says he was intoxicated but he knew
2 everything that was going on and was clear about what had
3 occurred.

4 So the issue is whether or not it's believable or not
5 believable. And in this case of course, as in many cases,
6 it's always difficult to determine the veracity of a
7 witness.

8 But my determination in this case is that the state
9 has established by the greater weight of the evidence that
10 Mr. Medford was not under arrest. He was not in custody.

11 He was voluntarily at the sheriff's department. He
12 spoke with law enforcement. Whether it was based upon the
13 encouragement of Mr. Crisp or not -- Mr. Crisp was not
14 acting as a state agent. And so if Mr. Medford wanted to
15 rely upon Mr. Crisp's opinion and advice, he could
16 certainly do so. That does not make any conduct that he
17 committed involuntary.

18 The testimony of the state revealed that he was given
19 his Miranda warnings and he had previously been arrested
20 and had previously received those warnings. He did sign
21 the preinterrogation waiver form, as did the person that he
22 had there as his witness, Mr. Crisp.

23 And so I find that he was provided his Miranda rights,
24 that he did understand those rights and that he waived
25 those rights in making any statement to law enforcement.

Allen wood (In-camera)
Direct examination by Mr. Morin

1 He may very well have consumed some type of an
2 intoxicating substance. He may very well have been
3 intoxicated to some degree, but I'm not convinced by the
4 greater weight of the evidence -- or I am convinced by the
5 greater weight of the evidence that any degree of
6 intoxication was not such that it would interfere with his
7 ability to make his own choices and exercise his own free
8 will in speaking to law enforcement. So the statement is
9 admissible to the extent that it's relevant.

10 Okay.

11 MR. MORIN: Your Honor, at this point the state would
12 call Allen wood to testify in the -- to testify.

13 THE COURT: All right. You're still under oath.

14 THE WITNESS: Yes, sir.

15 ALLEN WOOD, having been
16 previously duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. MORIN

18 Q Detective Wood, when you spoke to Mr. Medford did he
19 explain to you what happened there that night on Blanchard
20 Road?

21 A Yes, he did.

22 Q All right. And do you have a copy of your report?

23 A Yes, sir.

24 Q Is that the only documentation of a record you made of
25 your conversation with him?

Allen Wood (In-camera)
Direct examination by Mr. Morin

1 A Yes, sir.

2 Q And that is your report.

3 A Yes, sir.

4 Q Okay. Did he tell you about some vague threats? Or
5 tell me what he told you about what Rick was saying.

6 A In my writeup I stated -- I asked him what happened.

7 THE WITNESS: Refer to the defendant here, Your Honor.

8 A "Paul went to explain his invague street jarben --
9 jargon in slang referencing using and making meth for a
10 couple of days that preceded the event and that Rick was
11 talking that made him feel threatened and he did what he
12 had to do."

13 I advised him that if I didn't have any background in
14 narcotic enforcement I wouldn't have any idea what he just
15 said.

16 MR. SHEALY: Your Honor, I'm going to object. He's
17 reading his report. he's got to testify as to what he can
18 remember.

19 THE COURT: well, are you using your report to refresh
20 your recollection?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Do you have a copy of the report?

23 MR. SHEALY: I do, Your Honor.

24 THE COURT: All right. Overrule the objection.

25 A I asked him to quit talking in circles and

Allen Wood (In-camera)
Direct examination by Mr. Morin

1 straight-talk to me. He said he shot him because he felt
2 like he had to because he was saying something about the
3 shit hanging out of his -- out of his nose -- "when we get
4 back to the barn. Paul kept repeating the statement that
5 it would suggest to him that he may get hurt, shot or
6 something."

7 He stated that as they traveled back to the barn where
8 Quinton was waiting for them to get the pills to cook meth
9 coming down Blanchard Road from Carolina Country Club Road
10 that he kept glancing over his shoulder at Rick sitting
11 behind him. He stated that after Rick made the statements
12 about, "Something coming outta my nose," Paul got his gun in
13 the ready position. And when he glanced over his shoulder
14 again he said he thought he saw a flash of chrome off Rick's
15 gun. So Paul said he just reached around and shot back at
16 Rick not knowing if he hit him.

17 At this time he stated that Danny stopped the vehicle
18 and Rick had gotten out.

19 Q The -- did Paul ask you any questions about evidence
20 in this case that you had recovered?

21 A He referenced a gun, like did we find a gun, and I
22 didn't answer the question. And he made the comment that
23 -- that if a gun was found with Rick that he was going to
24 look funny trying to claim that he felt threatened by
25 Rick's statement and seeing the flash of chrome.

Allen Wood (In-camera)
Direct examination by Mr. Morin

1 Q If a gun was found where, or wasn't? I didn't quite
2 understand.

3 A Yeah. He stated that if a gun wasn't found with Rick
4 that he's going to look funny trying to claim that he felt
5 threatened by Rick's statement and seeing a flash of
6 chrome. The second page down at the bottom.

7 Q Yes, sir. When -- does your recollection or your
8 report -- do you recall whether or not Mr. Medford ever
9 said that Rick acted some way? I mean, obviously, you've
10 testified he states he saw a flash of chrome. Other than
11 that do you recall Mr. Medford reporting that Rick was
12 going to commit some violence on him in the vehicle right
13 then?

14 A No, sir. The statement he made earlier in his
15 testimony about looking over his shoulder and seeing a gun
16 pointed at him was the only time he has ever said there was
17 a gun in the sense of I knew it was a gun and there was a
18 gun pointing at me. Before that it was a flash of chrome.

19 Q Okay. And then when you were talking to him, those
20 were the terms he used?

21 A Those were the terms he used.

22 Q So when he testified today about actually having a gun
23 up to his head as he demonstrated, that was the first time
24 that --

25 A Yes, sir.

Allen Wood (In-camera)
Direct examination by Mr. Morin

1 Q -- you knew that he reported that.

2 A Yes, sir.

3 Q Now, he testified that he threw the gun out -- or guns
4 today -- when you spoke to him -- and this was January
5 12th, correct?

6 A Yes, sir.

7 Q This was the day after the shooting or the day after
8 Mr. Hayes' body was found, is that correct?

9 A Yes, sir.

10 Q Did he report to you anything about throwing any guns
11 out?

12 A He's told us he had thrown his weapon out at the
13 bridge on Hwy. 295 right there at Page's Lake or what used
14 to be Page's Lake.

15 He said, "I threw it in the river."

16 I told him, I said, "That's not a river. That's a
17 railroad track."

18 well, "I threw it out right there."

19 Subsequently, we executed a search using -- okay -- I'm
20 sorry -- using -- but we never did find it at that time.

21 Q Did he tell you what kind of gun he says he used?

22 A A .22.

23 Q And that's the one he says he threw out there on 295
24 at the bridge.

25 A Yes, sir.

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

1 Q But when you spoke to him that day he never mentioned
2 having another gun, did he?

3 A No, sir. That was the only gun that was thrown out.

4 Q Okay. Please answer any questions Mr. Shealy may
5 have.

6 CROSS-EXAMINATION

7 BY MR. SHEALY

8 Q All right. Officer Wood, you testified the way that
9 you wrote these things up is the way that you used his
10 terms, I believe is what you testified to, correct?

11 A Yes, sir.

12 Q Then why is it that some things have quotation marks
13 and some things don't?

14 A I don't know. I --

15 Q well, presumably the ones with the quotation marks --

16 A Yes, sir.

17 Q -- are the ones of what he exactly said.

18 A Yes, sir.

19 Q And everything else is just your paraphrasing.

20 A I understand what you're saying, and I'm sorry for the
21 confusion. But basically I just -- I -- afterthought on my
22 part, I guess.

23 Q Okay. Now, you testified about this flash of chrome.
24 Now, are you familiar with other parts of this case?

25 A Yes, sir.

Allen wood (In-camera)
Cross-examination by Mr. Shealy

1 Q Or is this the end of your investigation or the end of
2 your understanding of this case?

3 A I am familiar with other parts of the case. I'm not
4 sure what exactly you're talking about at the time.

5 Q Well, has there ever been any talk about a .45 caliber
6 pistol being thrown out of the car?

7 A Not --

8 MR. MORIN: Objection. Hearsay, Your Honor.

9 He wants to get into another witness and another
10 witness' testimony through this witness. That's what --
11 he's not asking about general specific items that were
12 found and that type of thing. He's asking what another
13 witness told him.

14 THE COURT: Someone other than the defendant?

15 MR. MORIN: That's correct.

16 MR. SHEALY: Your Honor, I'm just asking him if he's
17 aware of -- Your Honor, Mr. Morin has said that this was
18 the only gun thrown out. I think that if Mr. Wood knows
19 about another gun that was thrown out or any other evidence
20 that another gun was thrown that he's opened the door.

21 THE COURT: Well, no. I think the testimony was that
22 this is the only gun that the defendant told this witness
23 that was thrown out, was his weapon. That's what he
24 testified to.

25 MR. SHEALY: Your Honor, it was my understanding that

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

1 Mr. Morin had asked him if this was the only gun that was
2 thrown out. But that was my understanding. If I'm
3 incorrect on that --

4 THE COURT: Well, you may -- you may be correct about
5 that. I'm not certain. But what I'm saying is this
6 witness testified that the defendant said he threw out his
7 weapon. He didn't mention throwing out any other weapons.

8 MR. SHEALY: Thank you, Your Honor.

9 BY MR. SHEALY

10 Q All right. You have testified that Mr. Medford told
11 you he felt threatened.

12 A Yes, sir.

13 Q And those are his words?

14 A In a roundabout way, yes, sir.

15 Q Okay.

16 A Speaking in terms of the stuff coming out of his nose,
17 I didn't know if he meant -- I guess a busted nose, a
18 bloody nose. I'm not sure.

19 Q You don't know what he meant. He just said something
20 about stuff coming out of his nose.

21 Okay. You've got in here that after Rick made the
22 statement -- and then you have in brackets, "Statements
23 about something coming out of my nose." Do you remember if
24 he said Ricky told him that multiple times? Because that's
25 what that indicates.

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

1 A That there was -- the statements I believe I was
2 referencing to the statements Mr. Medford made, the
3 defendant made. Point out to me again where you're talking
4 about.

5 (Pause.)

6 A Okay. Rick made the statements, yes, sir.

7 Q Okay. So he made multiple statements that something
8 was going to be coming out of my client's nose.

9 A I think he repeated that.

10 Q Okay. According to what you've written in your
11 report.

12 A More than once, yes, sir.

13 Q Okay. And that he saw Rick's gun. And at that point
14 Paul said he just reached around and shot back at Rick,
15 correct, not knowing if he hit him?

16 A I think what I wrote is after Rick made those
17 statements -- and what you've referred to the "s" in
18 brackets about more than one -- "something coming out of my
19 nose, Paul's got his gun in a ready position."

20 Q Okay. And at that point Paul apparently glanced over
21 his shoulder again, correct?

22 A Yes, sir.

23 Q That's what he testified to today.

24 A Yes, sir.

25 Q Correct? "At that point he thought he saw the flash

Allen Wood (In-camera)
Cross-examination by Mr. Shealy

- 1 of chrome of Rick's gun," you've written here.
- 2 A Yes, sir.
- 3 Q Okay. which is what he's testified to. Now, maybe he
- 4 said I saw the whole gun now as opposed to a flash of
- 5 chrome. But that's what he told you.
- 6 A He said that he thought he saw the flash of chrome of
- 7 Rick's gun.
- 8 Q And at that point he just reached around and shot back
- 9 at Rick.
- 10 A Yes, sir.
- 11 Q which is what he testified today.
- 12 A Yes, sir.
- 13 Q And then Danny stopped the Jeep.
- 14 A Yes, sir.
- 15 Q And exclaimed, "what the fuck?"
- 16 A Yes, sir.
- 17 Q Correct?
- 18 A I think he said that before he stopped the Jeep or as
- 19 he was stopping the Jeep.
- 20 Q All right. And at that point Rick exited, correct?
- 21 A Yes, sir.
- 22 Q And that's what he testified today.
- 23 A Yes, sir.
- 24 Q To today, correct?
- 25 A Yes, sir.

Allen Wood (In-camera)
Redirect examination by Mr. Morin

1 Q Now, he did -- now, obviously, he testified that he
2 differed, and you hadn't heard of this business about the
3 .45 being thrown out, right?

4 A Yes, sir, and I asked him specifically, you know. He
5 said the only gun thrown out was his .22. That was -- when
6 they came to the bridge he -- because I asked them.
7 Certainly, as an investigator you want the murder weapon.
8 And I asked them, you know, to your gun. And he said he
9 threw his gun out at the bridge on 295.

10 Q Okay. So you asked what happened to your gun.

11 A His gun.

12 Q That was the question.

13 A Well.

14 Q His being --

15 A Yeah.

16 Q Okay.

17 A Guns. I want -- I want all the guns.

18 MR. SHEALY: That's all I have of this witness, Your
19 Honor, at this point.

20 REDIRECT EXAMINATION

21 BY MR. MORIN

22 Q Are you familiar with this area where this occurred?

23 A Yes, sir.

24 Q Blanchard Road.

25 A Yes, sir.

Allen wood (In-camera)
Recross-examination by Mr. Shealy

1 Q And the time that this occurred was daytime or
2 nighttime?

3 A Nighttime.

4 Q Is Blanchard Road a well-lit road?

5 A No, no, sir.

6 Q Is there any kind of light there on that road?

7 A On that particular location, no, sir.

8 Q And Mr. Medford told you that he saw a flash prior to
9 the vehicle coming to a stop.

10 A Yes, sir.

11 MR. MORIN: That's all the questions I have, Your
12 Honor.

13 RECROSS-EXAMINATION

14 BY MR. SHEALY

15 Q You testified this happened at night, correct?

16 A Yes, sir.

17 Q Okay. Do you recall if there were any weather
18 phenomenon happening that night?

19 A It was snowing.

20 Q It was snowing pretty good too, wasn't it?

21 A At that particular point in time, I think it was, but
22 I don't know. I wasn't there.

23 Q So it probably was. There was snow on the ground.

24 A There was a lot the next day.

25 Q All right.

1 MR. SHEALY: That's all I have, Your Honor.

2 THE COURT: Step down.

3 MR. MORIN: May I have just a moment, Your Honor?

4 (Pause.)

5 MR. MORIN: That would be our evidence, Your Honor.

6 THE COURT: All right. Let's take about ten minutes
7 and come back.

8 (Whereupon, a recess was taken.)

9 THE COURT: In a motion to dismiss pursuant to
10 16-11-450 the burden is on the defendant to establish by
11 the greater weight of the evidence his entitlement to a
12 dismissal pursuant to the ground that he seeks to have the
13 matter dismissed as to.

14 In this case he's seeking a dismissal under
15 16-11-440(c), and that subsection requires or provides that
16 a person who is not engaged in an unlawful -- unlawful
17 activity and who is attacked in a place where he has a
18 right to be -- which would include a vehicle -- has no duty
19 to retreat and has a right to stand his ground and meet
20 force with force, including deadly force, if he reasonably
21 believes it to be necessary to prevent death or great
22 bodily injury.

23 In this case considering the evidence and any
24 reasonable inferences that might be derived from it I find
25 that the defendant has failed to establish by the greater

1 weight of the evidence that any conduct, any force used by
2 him, was reasonable or that he entertained a reasonable
3 belief.

4 I think that's a legitimate question of fact. I think
5 that's a fact for the jury to determine in their own
6 discretion.

7 I'm not convinced by the greater weight of the
8 evidence that he did entertain a reasonable belief that it
9 was necessary, because apparently there's some issue about
10 a legitimate question in the case as to whether or not Mr.
11 Hayes did, in fact, have a weapon and whether or not he, in
12 fact, threatened the defendant with it and whether or not
13 the defendant's response to any belief was a reasonable
14 belief.

15 So based upon that analysis I find the defendant's
16 motion to dismiss pursuant to 16-11-450 should be denied.

17 All right. What else?

18 MR. SHEALY: That's all that I have.

19 THE COURT: Okay. All right. We'll begin with jury
20 selection in the morning at 9:30.

21 Could I see y'all before you go?

22 (Bench conference held off the record.)

23 END OF PROCEEDINGS JANUARY 9, 2012

24

25

Jury qualification

1 (Proceedings January 10, 2012)

2 (The following take place in the presence of the jury
3 venire.)

4 THE COURT: Good morning, ladies and gentlemen of the
5 jury panel.

6 We are ready to begin with jury selection in the first
7 case that's going to require some of your participation,
8 and the title of that case is the State vs. Tony Paul
9 Medford.

10 Mr. Medford has been accused by the state through the
11 solicitor with having committed the crime of murder. The
12 state alleges by way of the indictment -- which is that
13 document I referred to. I think at the time of your
14 qualification I told you that any time a person is accused
15 of a crime in this court that person is accused of that
16 crime by way of an indictment.

17 The indictment in this case alleges that Tony Paul
18 Medford did here in Spartanburg County on or about January
19 the 11th of 2011 willfully and with malice aforethought
20 kill Richard Hayes by shooting him with a gun and that he
21 died as a proximate result thereof.

22 Now, as to those allegations and as to the charge set
23 forth in the indictment the defendant has entered a plea of
24 not guilty. A plea of not guilty places upon the state the
25 burden of proving the allegations that they have set forth

Jury qualification

1 in the indictment, the burden of proving each of the
2 essential elements that make up the crime that is alleged
3 against the defendant; and therefore the burden is upon the
4 state to establish the defendant's guilt to the
5 satisfaction of 12 jurors beyond a reasonable doubt before
6 a verdict of guilty could be returned.

7 And so we're going to be selecting 13 of you.
8 There'll be 12 primary jurors, and we'll select one
9 additional juror to serve as an alternate. And by way of
10 your participation you're simply going to be called upon to
11 listen to the testimony, to consider any other evidence
12 that might be introduced during the trial of the case.

13 At the trial's conclusion I will instruct you on the
14 law that's applicable in the case, and then you'll go back
15 to the jury room. You'll begin with your deliberations.
16 And through that process you'll examine all of the
17 evidence, you'll decide the facts from that evidence as you
18 believe them to be. And once you decide those facts you
19 then will apply the law that I will have provided you, and
20 you will determine whether or not the defendant has been
21 proven guilty beyond a reasonable doubt. And if he has,
22 then your verdict would be guilty. And if he has not, then
23 your verdict would be not guilty.

24 Now, before we begin with that jury selection I've got
25 some questions that I'm going to be asking you. The

Jury qualification

1 purpose of the questions is to determine if there's some
2 reason why any one of you jurors should not be selected to
3 participate in the trial of this particular case.

4 And so as these questions are asked should you need to
5 respond to them, I'll ask that you simply please stand, and
6 I'll address those responses with you individually in the
7 event that should become necessary.

8 Now, the first thing I'm going to do is to introduce
9 to you some people, that is those who are involved in the
10 trial of this case. That includes the defendant; that
11 includes the lawyers in the case; that includes any
12 potential witnesses that might be called during the trial
13 of the case.

14 The reason I'm introducing these people to you is
15 because I need to find out if you have any connection with
16 them, are you related to them by blood or marriage, do you
17 have any employment relationship with them, do you have any
18 social relationship with them, do you attend the same
19 church with them or do you know them in some fashion, have
20 you met them anywhere, so do you know them in any way.

21 Then once we determine if you do have a relationship,
22 we'll determine whether or not that relationship would
23 affect your judgment in the case. And you'll inform me of
24 that fact.

25 Now, first of all, as I told you, the defendant, that

Jury qualification

1 is the person who is accused of having committed this
2 particular criminal offense, is Tony Paul Medford. Mr.
3 Medford is seated at the defense table.

4 Mr. Medford, if you will, turn and face the jury panel
5 so that they may see who you are.

6 This is Tony Paul Medford. He's the defendant.

7 (Whereupon, the defendant turned.)

8 THE COURT: Seated at the table with Mr. Medford are
9 Matthew Shealy and Clay Allen. They are both with the
10 circuit public defender's office. They'll be representing
11 Mr. Medford in the trial of this case.

12 (Whereupon, Mr. Shealy and Mr. Allen stood.)

13 THE COURT: Presenting the case on behalf of the state
14 is Michael Morin. He's an assistant circuit solicitor for
15 the Seventh Judicial Circuit.

16 (Whereupon, Mr. Morin stood.)

17 THE COURT: Potential witnesses to be called during
18 the trial include the following. Those that I am listing
19 right now are all employed with the Spartanburg County
20 Sheriff's Department -- the Spartanburg County Sheriff's
21 Department.

22 They include Ritchie Foster, Jason Bryant, Michael
23 Turner, Robert Taylor, David Hogsed, Marilyn Arthur,
24 Brandon Howard, Allen Wood, David Welch, James Rhodes and
25 Ted Saar.

Jury qualification

1 Other potential witnesses include Frank Parris; Wesley
2 Chad Murphy; Tonya Sullivan; Ron Ramsey; Quentin Bruce;
3 Michael Crisp; Danny Crisp; James Bogan with the
4 Spartanburg County EMS; Calvin King with Spartanburg County
5 EMS; Randy Bogan with the Spartanburg County Coroner's
6 Office; Tracy McKinnon and James Green, both employed with
7 the state law enforcement division; Richard Orr, a medical
8 doctor; Christopher Lombardozzi, a medical doctor; and
9 David Wren, a medical doctor.

10 Does any member of the jury panel know any of those
11 people that I've either introduced to you personally or
12 read their name as a potential witness? If you have any
13 connection with any of those persons or any members of
14 their families, I would ask that you please stand so that
15 we can identify what that connection is.

16 All right. I'll start to my right. I'll work to my
17 left if you'll give me your name and your juror number,
18 please, sir.

19 JUROR NO. 101: 101.

20 THE COURT: And your name?

21 JUROR NO. 101: Daniel Osswald.

22 THE COURT: All right. And who is it that you know?

23 JUROR NO. 101: I know Ritchie.

24 THE COURT: Mr. Foster.

25 JUROR NO. 101: Mr. Foster.

Jury qualification

1 THE COURT: And how do you know him?

2 JUROR NO. 101: Friend of the family.

3 THE COURT: And you've known him for a long time?

4 JUROR NO. 101: As long as I can remember.

5 THE COURT: Okay. And you have a good memory?

6 JUROR NO. 101: Yes, sir.

7 THE COURT: And would that have any bearing upon your
8 decision in this case if you were selected as a juror?

9 JUROR NO. 101: Not really.

10 THE COURT: Okay. Thank you. You may be seated.
11 Yes, sir.

12 JUROR NO. 54: No. 54, Brandon Greenway.

13 THE COURT: And who is it that you know?

14 JUROR NO. 54: Ted Saar.

15 THE COURT: And how long have you known him?

16 JUROR NO. 54: Eight years.

17 THE COURT: And how do you know him?

18 JUROR NO. 54: As friends.

19 THE COURT: Would that have any bearing upon your
20 decision in the case?

21 JUROR NO. 54: No, sir.

22 THE COURT: All right. Thank you. Be seated.
23 Yes, ma'am.

24 JUROR NO. 140: 140, Patti Weeks. I know Dr.
25 Lombardozzi and Dr. Wren and Dr. Orr.

Jury qualification

1 THE COURT: And how do you know them?

2 JUROR NO. 140: I work at the hospital.

3 THE COURT: All right. And would that have any
4 bearing upon your decision in this case?

5 JUROR NO. 140: No, sir.

6 THE COURT: Thank you. Be seated.

7 Yes, ma'am.

8 JUROR NO. 160: I'm 160, Laurie Burrell. I know Allen
9 Wood.

10 THE COURT: Did you say 166?

11 JUROR NO. 160: 160 -- 160.

12 THE COURT: 160.

13 JUROR NO. 160: Uh-huh.

14 THE COURT: All right. And how long have you known
15 Mr. Wood?

16 JUROR NO. 160: We went to high school together.

17 THE COURT: And are y'all still friends now, or do you
18 see each other socially or --

19 JUROR NO. 160: We have mutual friends.

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

22 JUROR NO. 160: No, sir.

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

24 Anyone else know any of those persons who've been
25 identified as participants or potential witnesses? If so,

Jury qualification

1 please stand.

2 (No response.)

3 THE COURT: This is a case which arises out of an
4 event which the state alleges occurred back on January the
5 11th of 2011. They allege that it occurred at a location
6 on Blanchard Road, which is a road that runs between the
7 Carolina Country Club Road and the Old Canaan Road.

8 Is there any member of the jury panel that thinks that
9 you might have heard, seen, read or obtained some type of
10 information from any source that relates to this case? Do
11 you think you know something about this case from any
12 source whatsoever? If so, please stand.

13 All right. Tell me your name and your number, please.

14 JUROR NO. 35: I'm 35, and my name is Natalie
15 Digiacomo.

16 THE COURT: All right. And what source do you believe
17 you have received some information?

18 JUROR NO. 35: I honestly don't feel like I have
19 information, but since I've known that I've had jury duty,
20 I'll be honest. People have been curious and trying to
21 figure out what case I would be on. I told them I wanted
22 to know nothing about it but --

23 THE COURT: Okay.

24 JUROR NO. 35: -- this was mentioned only vaguely. I
25 just felt like I should --

Jury qualification

1 THE COURT: Somebody just happen to mention that this
2 case might be coming up?

3 JUROR NO. 35: I think they -- yes. I think they
4 looked on some site.

5 THE COURT: All right. Well, don't -- don't tell me
6 anything about it.

7 JUROR NO. 35: All right.

8 THE COURT: Just respond to my questions.
9 So somebody told you that they had an idea that this
10 case might be coming to court.

11 JUROR NO. 35: Yes.

12 THE COURT: But you didn't do that investigation
13 yourself.

14 JUROR NO. 35: No. And I told them I wanted to hear
15 nothing about it.

16 THE COURT: All right. So you didn't discuss anything
17 about it with that person.

18 JUROR NO. 35: No.

19 THE COURT: Okay. Would that fact in any way affect
20 your ability to be fair and impartial if you were selected
21 as a juror?

22 JUROR NO. 35: I don't feel that it would.

23 THE COURT: Okay. Thank you. You may be seated.
24 Anyone else?

25 (No response.)

Jury qualification

1 THE COURT: Is there anything about the nature of the
2 case or the allegations that have been made by the state
3 against this defendant -- is there anything about the
4 nature of the case that would prevent any juror from being
5 able to be fair and impartial to either side in the case
6 just based upon the nature of it? If so, please stand.

7 (No response.)

8 THE COURT: Has any member of the jury panel or any
9 member of your immediate family -- and I'm going to define
10 an immediate family member as a parent, a spouse, a child
11 or a sibling -- a parent, spouse, child or sibling -- have
12 you or any members or your immediate family ever been the
13 victim of or have you ever been accused of committing any
14 type of violent crime? Been the victim of such or been
15 accused of committing any type of crime that might be
16 described as violent.

17 And included in that definition would be the crimes of
18 murder, manslaughter, assault and battery with intent to
19 kill, aggravated assault and battery, criminal domestic
20 violence of a high and aggravated nature, a burglary, armed
21 robbery, criminal sexual conduct in any degree or any other
22 -- common-law robbery or any other similar type of an
23 offense that you might consider or could be described as a
24 violent crime. I need to know if you or a family member
25 has been the victim of such or you or a family member has

Jury qualification

1 ever been accused of having committed such. If so, please
2 stand.

3 All right. Now, I have -- is everybody standing that
4 needs to respond to that question? All right. I've got
5 five standing.

6 Now, I'm going to ask you to tell me whether it was
7 you, or was it a family member, and were you or that family
8 member a victim or were or that family member accused, and
9 what the nature of the crime was. Don't go into any
10 detail. Just tell me what the nature of the offense was.

11 If you don't feel comfortable responding to the
12 question in front of this audience, feel free to step down
13 here, and I'll discuss it with you here at the bench.

14 I'm going to start to my right, and I'll work to my
15 left. Again, if you'll give me your name and your juror
16 number, and then tell me how the question relates to you.

17 JUROR NO. 198: Connie Hyatt, Juror No. 198. My
18 brother was accused of manslaughter, I think in 1981.

19 THE COURT: And is there anything about that fact or
20 that experience that would affect your judgment in this
21 case?

22 JUROR NO. 198: I don't think so, sir.

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

25 JUROR NO. 35: Natalie Digiacomio, No. 35. I was a

Jury qualification

1 victim of a burglary. My house was broke into.

2 THE COURT: And is there anything about that
3 experience that would affect your judgment in this case?

4 JUROR NO. 35: I don't believe so.

5 THE COURT: Thank you. Be seated.

6 Yes, sir.

7 JUROR NO. 194: 194, Bryan Hinkle. My brother. He's
8 a victim. He was stabbed. And parents had their house
9 broken into.

10 THE COURT: And is there anything about those facts
11 that would affect your judgment in this case?

12 JUROR NO. 194: No.

13 THE COURT: Thank you. Be seated.

14 Yes, ma'am.

15 JUROR NO. 232: Kizzy Rice, Juror No. 232. I was a
16 victim of a burglary.

17 THE COURT: And is there anything about that
18 experience that would affect your judgment in this case?

19 JUROR NO. 232: No, sir.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 150: Juror No. 150. My -- my brother was
23 accused of C.D.V.

24 THE COURT: Is there anything about that that would
25 affect your judgment in this case?

Jury qualification

1 JUROR NO. 150: No.

2 THE COURT: Thank you. Be seated.

3 Let me just start on the front row. I'll work my way
4 back.

5 Yes, ma'am.

6 JUROR NO. 18: Eighteen, Nickey Bryant. I was
7 sexually harassed and all of this in 1985.

8 THE COURT: Say that one more time.

9 JUROR NO. 18: I was sexually harassed.

10 THE COURT: You were?

11 JUROR NO. 18: Yes.

12 THE COURT: And you're Juror 18.

13 JUROR NO. 18: Uh-huh.

14 THE COURT: All right. Would that have any bearing
15 upon your decision in this case?

16 JUROR NO. 18: No, sir.

17 THE COURT: Thank you. Be seated.

18 Yes, ma'am.

19 JUROR NO. 9: I'm Rhonda Barnebee, Juror No. 9. And
20 my brother and my father were arrested years ago, and I
21 can't remember exactly what it was about, but I think was
22 assault.

23 THE COURT: Okay. Would it have any bearing upon your
24 decision in this case?

25 JUROR NO. 9: No, sir.

Jury qualification

1 THE COURT: Thank you. Be seated.

2 Yes, ma'am.

3 JUROR NO. 201: Lisa Nanney, No. 201. I was a victim
4 of assault and battery about 12 years ago.

5 THE COURT: And would that experience have any bearing
6 upon your decision in this case?

7 JUROR NO. 201: No, sir.

8 THE COURT: Anyone else need to respond to that
9 question?

10 (No response.)

11 THE COURT: Yes, ma'am.

12 JUROR NO. 99: I'm sorry. I do have a brother that
13 was accused of sexual crimes.

14 THE COURT: All right. And tell me your name and
15 number, please.

16 JUROR NO. 99: It's 99, Regina Nelson.

17 THE COURT: And your brother was accused?

18 JUROR NO. 99: Uh-huh, and he has served time.

19 THE COURT: Okay. And would that have any bearing
20 upon your decision in this case?

21 JUROR NO. 99: None whatsoever.

22 THE COURT: Thank you. Be seated.

23 Sir?

24 JUROR NO. 194: I also forgot that my house had been
25 robbed and also --

Jury qualification

1 THE COURT: All right. Tell me what your number was
2 again.

3 JUROR NO. 194: 194.

4 THE COURT: Okay. Thank you. Would that have any
5 bearing upon your decision?

6 JUROR NO. 194: No.

7 THE COURT: Thank you.

8 Anybody else?

9 (No response.)

10 THE COURT: All right. Next question is has any
11 member of the jury panel or any members of your immediate
12 family as I've already defined it ever been employed as a
13 law enforcement officer.

14 And that includes anybody employed by a sheriff's
15 department, a city, town or municipal law enforcement
16 agency, the department of corrections, a county detention
17 facility, probation department, parole officer, state law
18 enforcement division, F.B.I., any military or civilian
19 police agency, any type of law enforcement officer. I need
20 to know if you have ever been employed as such or you have
21 an immediate family member as I defined that term for you
22 who is now or has ever been employed as such. If so,
23 please stand.

24 All right. I'm going to start with Juror 99.

25 JUROR NO. 99: My son is the director over

Jury qualification

1 environmental control.

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

3 Yes, sir.

4 JUROR NO. 209: Juror 209, Randy Lawter. It would be
5 here and out of Fort Knox, Kentucky.

6 THE COURT: Thank you. Be seated.

7 Yes, ma'am.

8 JUROR NO. 88: Juror No. 88, Kristin McDowell. My dad
9 worked for the department of corrections.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 85: 85, Nancy McArthur. My daughter works
13 at the Spartanburg County Jail.

14 THE COURT: All right. Thank you, ma'am. Be seated.

15 JUROR NO. 233: 233, Joy Ruebush. My father was a
16 sheriff in Wisconsin in the 60's, and chief of police also.

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

18 Yes, sir.

19 JUROR NO. 101: Juror No. 101, Danny Osswald. My
20 daddy was a police officer, and my father-in-law also a
21 police officer.

22 THE COURT: Where?

23 JUROR NO. 101: Spartanburg City and Pacolet.

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

25 Yes.

Jury qualification

1 JUROR NO. 130: Juror No. 130, Karen Swetland. My
2 sister works for child protection services.

3 THE COURT: And you are 130?

4 JUROR NO. 130: 130.

5 THE COURT: All right. Thank you.

6 Yes, ma'am.

7 JUROR NO. 150: Juror No. 150, Rhonda Young. Although
8 my father is deceased, my mother and father retired from
9 the South Carolina Department of Corrections. And my
10 husband is retired from the Spartanburg County Sheriff's
11 Department.

12 THE COURT: All right. Thank you. Be seated.

13 Yes, ma'am.

14 JUROR NO. 15: Juror No. 14, Rebecca Bevill. My
15 son-in-law is a department of natural resources police
16 officer in the state of Maryland.

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

18 Is any member of the jury panel a member of or do you
19 contribute time or money to any type of organizations that
20 might be characterized as law enforcement support types of
21 organizations or victims advocacy groups or victims rights
22 organizations?

23 And some of those types of organizations would include
24 Mothers Against Drunk Drivers, Citizens Against Violent
25 Crime, the honorary sheriffs' association, the fraternal

Jury qualification

1 order of police or any other similar type -- the troopers
2 association, any other similar type of organization. Do
3 you belong to any of those or do you contribute time or
4 money to any of those types of organizations? If so,
5 please stand.

6 Yes, ma'am.

7 JUROR NO. 9: Juror No. 9, Rhonda Barnebee. I have
8 contributed to the troopers organization in the past.

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

10 Anybody else?

11 JUROR NO. 150: Juror No. 150, Rhonda Young. I've
12 contributed to the troopers association. And does this
13 include the P.B.A., police benevolence society?

14 THE COURT: Let's include that.

15 JUROR NO. 150: My husband and I are --

16 THE COURT: Police benevolence society. Okay. Thank
17 you.

18 Anybody else?

19 JUROR NO. 194: I have in the past contributed money.

20 THE COURT: And you're 194?

21 JUROR NO. 194: Correct.

22 THE COURT: Who did you give it to?

23 JUROR NO. 194: The police association.

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

25 Yes, sir.

Jury qualification

1 JUROR NO. 7: No. 7, Jonathan Bailey. Give to the
2 state troopers and Spartanburg County Sheriff.

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

4 Anybody else?

5 (No response.)

6 THE COURT: All right. I've told you what the
7 allegations are and I've told you who the participants are
8 and I've introduced the lawyers to you and I've introduced
9 the potential witnesses to you.

10 Understanding all of that, does any member of the jury
11 panel know of any reason whatsoever why you could not be
12 fair and impartial if called upon to serve as a juror in
13 this particular case?

14 JUROR NO. 102: 102.

15 THE COURT: 102. All right. And tell me your name,
16 please, sir.

17 JUROR NO. 102: Harold Page.

18 THE COURT: And, Mr. Page, you have a reason why you
19 think --

20 JUROR NO. 102: It's three --

21 THE COURT: Well, you don't have to tell me. I'm just
22 asking you. You have a reason why you think you could not
23 be fair in this case.

24 JUROR NO. 102: I couldn't handle it.

25 THE COURT: Okay.

Jury qualification

1 JUROR NO. 102: On the --

2 THE COURT: That's fine. All right. Just have a
3 seat. Thank you. We're going to excuse you from serving
4 in this case.

5 All right. Anyone else know of any reason why you
6 think you could not be fair?

7 (No response.)

8 THE COURT: All right. Any other questions requested
9 by the state?

10 MR. MORIN: No, sir.

11 THE COURT: By the defendant?

12 MR. SHEALY: None, Your Honor.

13 THE COURT: All right. Now, the way a jury is
14 selected in criminal court is that the clerk's going to
15 prepare a list.

16 Once that list is prepared she'll call -- they're
17 selected randomly by the computer. She'll call your name
18 one at a time. And when your name is called you'll be
19 asked to come forward. And you'll see the two desks where
20 the lawyers are seated. If you'll just come past those
21 desks towards me about two steps, turn and face your fellow
22 jurors.

23 Each side has an opportunity to have you excused from
24 serving in the case or to have you seated for service in
25 the case. If either the state or the defense asks that you

Jury qualification

1 be excused, just go back and have a seat where you are now.
2 If both agree to have you seated for service in the case,
3 you'll be having a seat in that jury box to your right and
4 to my left.

5 So if you'll simply come forward as your name is
6 called you'll be instructed if you've been selected or
7 excused from serving in the case.

8 THE CLERK: Juror 209, Randy Laughter.
9 what say the state?

10 MR. MORIN: Please present Mr. Laughter.

11 THE CLERK: What says the defense?

12 MR. SHEALY: Please excuse this juror.

13 THE CLERK: Juror 9, Rhonda Barnebee.
14 what say the state?

15 MR. MORIN: Please present Ms. Barnebee.

16 THE CLERK: What says the defense?

17 MR. SHEALY: Please excuse this juror.

18 THE CLERK: Juror 90, Ernestine Miller.
19 what say the state?

20 MR. MORIN: Please present Ms. Miller.

21 THE CLERK: What says the defense?

22 MR. SHEALY: Please seat this juror.

23 THE CLERK: Juror 233, Joy Ruebush.
24 what say the state?

25 MR. MORIN: Please present Ms. Ruebush.

Jury qualification

1 THE CLERK: what say the defense?
2 MR. SHEALY: Please present this juror.
3 THE CLERK: Juror 85, Nancy McArthur.
4 what say the state?
5 MR. MORIN: Please present Ms. McArthur.
6 THE CLERK: what say the defense?
7 MR. SHEALY: Please seat this juror.
8 THE CLERK: Juror 77, Anne Kinney.
9 THE COURT: Ms. Kinney, you can go around that way if
10 you'd like.
11 THE CLERK: what say the state?
12 MR. MORIN: Please present Ms. Kinney.
13 THE CLERK: what says the defense?
14 MR. SHEALY: Please seat this juror.
15 THE CLERK: Juror 202, Mark Jamerson.
16 what says the state?
17 MR. MORIN: Please present Mr. Jamerson.
18 THE CLERK: what says the defense?
19 MR. SHEALY: Please seat this juror.
20 THE CLERK: Juror 35, Natalie Digiacomo.
21 what says the state?
22 MR. MORIN: Please present Ms. -- the juror.
23 THE CLERK: what says the defense?
24 MR. MORIN: Please excuse this juror from this case.
25 THE CLERK: Juror 47, Brittney Foster.

Jury qualification

1 What say the state?

2 MR. MORIN: Please present Ms. Foster.

3 THE CLERK: What say the defense?

4 MR. SHEALY: Please present this juror.

5 THE CLERK: Juror 110, Teresa Riddle.

6 What say the state?

7 MR. MORIN: Please present the juror.

8 THE CLERK: What say the defense?

9 MR. SHEALY: Please excuse this juror.

10 THE CLERK: Juror 16, Kenneth Boling.

11 What say the state?

12 MR. MORIN: Please present Mr. Boling.

13 THE CLERK: What say the defense?

14 MR. SHEALY: Please present this juror.

15 THE CLERK: Juror 101, Daniel Osswald.

16 What says the state?

17 MR. MORIN: Please present Mr. Osswald.

18 THE CLERK: What says the defense?

19 MR. SHEALY: Please excuse this juror.

20 THE CLERK: Juror 104, Sheila Parks.

21 What says the state?

22 MR. MORIN: Please present Ms. Parks.

23 THE CLERK: What says the defense?

24 MR. SHEALY: Please excuse this juror.

25 THE CLERK: Juror 127, Rita Strange.

Jury qualification

1 What says the state?
2 MR. MORIN: Please present Ms. Strange.
3 THE CLERK: What say the defense?
4 MR. SHEALY: Please excuse this juror.
5 THE CLERK: Juror 128, Heather String.
6 What say the state?
7 MR. MORIN: Please present Ms. String.
8 THE CLERK: What says the defense?
9 MR. SHEALY: Please present this juror.
10 THE CLERK: Juror 84, John Martin.
11 What say the state?
12 MR. MORIN: Please present Mr. Martin.
13 THE CLERK: What say the defense?
14 MR. SHEALY: Please present this juror.
15 THE CLERK: Juror 201, Lisa Jackson.
16 What say the state?
17 MR. MORIN: Please present Ms. Jackson.
18 THE CLERK: What say the defense?
19 MR. SHEALY: Please seat this juror.
20 THE CLERK: Juror 166, Shirley Compton.
21 What say the state?
22 MR. MORIN: Please present Ms. Compton.
23 THE CLERK: What say the defense?
24 MR. SHEALY: Please excuse this juror.
25 THE CLERK: Juror 232, Kizzy Rice.

Jury qualification

1 What say the state?
2 MR. MORIN: Please present Ms. Rice.
3 THE CLERK: What say the defense?
4 MR. SHEALY: Please seat this juror.
5 THE CLERK: Juror 165, Linda Ann Cheeks.
6 What say the state?
7 MR. MORIN: Please excuse Ms. Cheeks from service in
8 this case.
9 THE CLERK: Juror 237, Blake Smith.
10 What say the state?
11 MR. MORIN: Please present Mr. Smith.
12 THE CLERK: What say the defense?
13 MR. SHEALY: Please present the juror.
14 THE CLERK: And the alternate. Juror 133, Larry
15 Tomlin.
16 What say the state?
17 MR. MORIN: Please excuse Mr. Tomlin from service in
18 this case.
19 THE CLERK: Juror 80, Stacey Lewis.
20 What say the state?
21 MR. MORIN: Please present Ms. Lewis.
22 THE CLERK: What say the defense?
23 MR. SHEALY: Please excuse this juror.
24 THE CLERK: Juror 194, Bryan Hinkle.
25 What say the state?

Jury qualification

1 MR. MORIN: Please present Mr. Hinkle.

2 THE CLERK: What say the defense?

3 MR. SHEALY: Please excuse this juror.

4 THE CLERK: Juror 162, Dawn Caldwell.

5 What say the state?

6 MR. MORIN: Please present Ms. Caldwell.

7 THE CLERK: What say the defense?

8 MR. SHEALY: Please seat this juror.

9 THE CLERK: Jury selection is complete.

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

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Are there any matters that need to be
17 addressed regarding jury selection by the state?

18 MR. MORIN: No, sir.

19 THE COURT: By the defendant?

20 MR. SHEALY: None, Your Honor.

21 (Whereupon, the remaining jurors were excused.)

22 THE COURT: Are there any matters that need to be
23 addressed before the jury is sworn?

24 MR. MORIN: None from the state.

25 MR. SHEALY: None from the defense, Your Honor.

1 THE COURT: Okay. Let's take about ten minutes before
2 we start.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Bring the jury in, and ask Mr.
5 Smith, Blake Smith, to take the foreperson's seat.

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

8 THE COURT: All right. Ladies and gentlemen, we are
9 ready to begin with the trial of the case for which each of
10 you have been selected.

11 And, Mr. Smith, I'm going to ask you to serve as the
12 foreperson of the jury. As the foreperson you're going to
13 have three specific duties that none of the other jurors
14 will have.

15 First, you'll be asked to serve as the spokesperson
16 for the jury. And so if during the trial something arises
17 and it needs to be brought to my attention -- you or one of
18 your fellow jurors has some difficulty or problem or
19 question -- it'll be you who will let me know of that fact
20 either directly or through the bailiff.

21 Secondly, you'll be called upon to preside over jury
22 deliberations when the time does come for those
23 deliberations at the trial's conclusion.

24 You will preside over that process simply to ensure
25 that those deliberations are carried out in some orderly

1 fashion.

2 And, thirdly, you'll actually write the verdict or the
3 decision of the jury. You'll do that on a verdict form
4 that I'll provide you at the trial's conclusion on which
5 you will indicate the jury's unanimous decision as to that
6 verdict.

7 The foreperson has those specific duties that I've
8 just indicated. That does not mean however that he is any
9 more important than any of you other jurors, because the
10 decision of a jury is the unanimous consensus opinion of
11 all 12 jurors, and so each of you will have an equal say
12 and an equal vote in what the ultimate decision will be in
13 the case.

14 Someone simply has to be delegated those
15 responsibilities that I have just indicated, and I have
16 delegated those to Mr. Smith in appointing him as the
17 foreperson. But all of you jurors are equally important so
18 far as the ultimate decision is concerned, because, as I've
19 stated, the verdict has to be unanimous. All of you must
20 be in agreement.

21 Mr. Caldwell, you've been selected as an alternate
22 juror, and the function of an alternate juror is to take
23 the place of one of the original 12 if during the trial one
24 of these original 12 cannot continue to serve for some
25 reason. And so if one is called away and unable to

Jury sworn

1 continue, then it would be you who would take that person's
2 place. In that event you would become the 12th juror. And
3 if that occurs, then you would participate throughout the
4 trial, and that would include in the jury deliberations at
5 the trial's conclusion.

6 If however when the time does come for jury
7 deliberations the original 12 are able to participate your
8 service ends. You don't participate any further because
9 the verdict of the jury is the decision of 12. No more
10 than 12 are permitted to engage in that deliberation
11 process. But it is important that you pay just as careful
12 attention as we ask of all of the jurors in the case
13 because it does occur from time to time for one reason or
14 another an original may not be able to continue. In that
15 event you become the 12th.

16 So we of course appreciate your participation as an
17 alternate juror, just as we appreciate the participation of
18 each juror who has been selected for service in this case.

19 You may swear the panel.

20 (Whereupon, the jury was duly sworn.)

21 THE COURT: As you know, you have been selected to
22 decide the verdict in the case of the State vs. Tony Paul
23 Medford. As you also know, Mr. Medford has been accused by
24 the prosecutor through the indictment of having committed
25 the crime of murder.

1 The state alleges that back on or about January the
2 11th of 2011 the defendant, Mr. Medford, did with malice
3 aforethought kill Richard Hayes by shooting him with a gun
4 and he died as a proximate result thereof.

5 Those are allegations that are set forth in the
6 indictment. The indictment will be in the jury room,
7 because the indictment will serve as the verdict form.

8 So it is going to be on the back of this indictment,
9 Mr. Foreman, that you'll indicate the jury's unanimous
10 decision. But other serving as the verdict form the
11 indictment serves no purpose so far as you jurors are
12 concerned. It is not proof of anything; it does not
13 establish anything. It is not evidence of anything. It
14 simply will serve as the verdict form.

15 The state has the burden, as I've told you, of proving
16 the allegations set forth in the indictment, of proving all
17 of the essential elements of the crime of murder. The
18 state has the burden of proving the defendant's guilt
19 beyond a reasonable doubt.

20 As to the allegations and as to the charge the
21 defendant has entered a plea of not guilty. And, as I told
22 you, that plea of not guilty places upon the state the
23 burden of proving his commission of that crime beyond a
24 reasonable doubt.

25 The burden is never upon a defendant or a person

1 accused of a crime to prove that they are not guilty or to
2 prove that they are innocent, because in some cases that
3 might not be possible.

4 The burden is always upon the state because they've
5 made the accusation -- they brought the charge -- to prove
6 the defendant's guilt beyond a reasonable doubt.

7 And, in fact, every person who is accused of a crime
8 is presumed to be innocent of the charge. That presumption
9 of innocence remains with every defendant, as it does with
10 this defendant, from the time that he is placed under
11 arrest and throughout the course of the criminal process
12 and even throughout the course of the actual trial in the
13 case.

14 That presumption of innocent will be with Mr. Medford
15 even as you go back at this trial's conclusion to begin
16 with your deliberations in the case.

17 That presumption of innocence will be with him in that
18 jury room, and it'll be with him forever unless you 12
19 jurors determine that he's no longer entitled to that
20 presumption of innocence.

21 In other words, after you have carefully considered
22 all of the evidence in the case and after you have made
23 your determination as to what you believe to be the true
24 facts that relate to this case and after you decide those
25 facts you apply the law that I will have provided you, if

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

7 Now, the way the trial will proceed is that in a
8 moment the lawyers are going to address you in what are
9 called opening statements.

10 There are two occasions in the trial of a case where
11 lawyers are permitted to address the jury directly, and
12 that is at the beginning of the trial before any evidence
13 has been introduced and then again at the conclusion of the
14 trial after all of the evidence has been received.

15 But understand that the evidence upon which you will
16 base your decision comes between the opening and the
17 closing statements of the lawyers. Their statements to you
18 are not evidence in the case, and that's because the
19 lawyers don't know anything about this case of their own
20 personal knowledge or perception like witnesses will
21 testify to.

22 The lawyers aren't going to take the witness stand and
23 testify under oath and be subjected to direct and
24 cross-examination like witnesses will be, and so what the
25 lawyers tell you in those statements is not to be

1 considered by you as any evidence upon which you will base
2 your determination of fact and your ultimate decision. But
3 you should listen to what the lawyers have to say because
4 the statements do serve a purpose.

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

10 The closing statements afford the lawyers an
11 opportunity to discuss with you the evidence that you have
12 seen and heard during the trial of this case. And through
13 that discussion each will have an opportunity to try and
14 persuade you or to convince you that that evidence does or
15 does not support a particular decision.

16 But it's in between the opening and the closing
17 statements that we actually receive the evidence upon which
18 you will base your decision.

19 The state has the burden of proof, so they will go
20 forward first in their presentation of evidence. Once
21 they've concluded a defendant has the same opportunity to
22 testify and present evidence, but understand that a
23 defendant has no burden in the case, because, as I've told
24 you, it might not be possible for a person to prove that
25 they are not guilty or to prove that they are innocent, and

1 so a defendant in a criminal trial has no burden of proof
2 in the case.

3 A defendant doesn't have to testify, doesn't have to
4 call any witness, doesn't have to produce any evidence.
5 And where a defendant does not testify or does not call any
6 witnesses or does not produce any evidence, that's not a
7 circumstantial fact that you may consider in any way
8 whatsoever in your determination as to whether or not his
9 guilt has been proven beyond a reasonable doubt.

10 You have to base your decision upon the evidence
11 presented during the trial. But, as I say, a defendant is
12 allowed the opportunity to present evidence if he or she
13 wishes to do so.

14 So after the evidence has been received and after you
15 hear the final summations of the lawyers, I will then
16 instruct you fully on the law as it relates to the criminal
17 law generally and as it relates to this particular crime
18 specifically.

19 After you receive that instruction you'll go back and
20 begin with your deliberations, and through that process
21 you're simply going to be called upon through the exercise
22 of good judgment and common sense conscientiously applied
23 to the testimony and the evidence in the case to decide
24 what you believe to be the truth facts as they relate to
25 these allegations.

1 Once you decide those facts you will then apply the
2 law that I will have provided you, and you will determine
3 whether or not the defendant's guilt has been proven beyond
4 a reasonable doubt. If it has, then your verdict is
5 guilty. If it has not, then your verdict is not guilty.

6 So all that we're going to ask for you to do is to pay
7 careful attention throughout the course of the trial. Give
8 every witness the same degree of attention as they testify,
9 because one of your prerogatives in the case is to assess
10 and evaluate the credibility of a witness and that witness'
11 testimony.

12 And in making that assessment you are entitled to
13 believe everything that a witness testified to. You may
14 choose to believe none of it. You may believe some portion
15 of a witness' testimony and reject some other portion of
16 that same witness' testimony. You may believe one witness
17 as opposed to several, or several as opposed to one.

18 But whatever your good judgment and common sense tells
19 you is the most credible testimony is the testimony you
20 should accept, and you should reject any testimony that you
21 find not be credible or believable.

22 But in order for you to be in a proper position to
23 evaluate a witness' credibility it's important that you
24 give those witnesses and each witness the same degree of
25 attention as they testify so that when you go back to begin

Opening statements

1 with your deliberations at the trial's conclusion you'll be
2 in a proper position to be able to assess that witness'
3 testimony in light of not just that witness' testimony but
4 in light of all of the testimony and all of the evidence
5 received during the trial.

6 And, of course, it's important that you keep an open
7 mind throughout the course of the trial. And that simply
8 means that you are not to begin making up your minds or
9 formulating your opinions as to what you think the ultimate
10 decision in this case ought to be until all of the evidence
11 has been presented, until you have heard the final
12 summations of the lawyers, until I have instructed you on
13 the law and until you have been asked to begin with your
14 deliberations in the case, because that is the process that
15 has been designed for you 12 jurors to arrive at a fair and
16 impartial decision in the case.

17 So I do want to thank you in advance for your
18 participation, as well as for your careful attention. I
19 would ask that you please give the lawyers your attention
20 now as they give you their opening statements.

21 Mr. Morin.

22 MR. MORIN: On January 11th of last year the weather
23 outside was a lot different than it is right now, because
24 if you remember we had a heavy snow storm and it was very
25 cold out.

Opening statements

1 On January 11th, 2011, Frank Parris was on his way
2 home from work driving down Blanchard Road. Blanchard Road
3 is a narrow cut-through road almost between Carolina
4 Country Club and Canaan Road.

5 As he came down the road he saw a man lying in a
6 ditch, and he stopped. And as you'll hear, that man's name
7 was Richard Allen Hayes. Mr. Hayes was lying on his back
8 in the snow. He had a severe frostbite and an injury to
9 his head. You'll hear from Mr. Parris and the EMS that
10 were there.

11 During the course of the case of having him evaluated
12 it was found that Mr. Hayes had a .22 caliber bullet that
13 had entered through his left eye that was in his head. He
14 passed away on January the 18th from that injury. The
15 state's contention is the man that fired that .22 caliber
16 gun is Tony Medford.

17 Back to what this case is about, the judge has told
18 you, the judge has told you about burden of proof. I want
19 you to have some idea of where this case is going from the
20 facts and evidence. I'll let the witnesses speak, and then
21 I'll talk to you again about the facts. That's what this
22 case is about.

23 It's about Richard Allen Hayes being shot in the face
24 and left by the side of the road on Blanchard Road on
25 January 11th. In fact, we're now probably 12 or 14 hours

Opening statements

1 from the first anniversary of that shooting. Thank you.

2 THE WITNESS: Mr. Shealy.

3 MR. SHEALY: Thank you, Your Honor.

4 My name is Matthew Shealy. I'm with the public
5 defender's office. I represent Paul Medford. I suppose
6 that that technically is what the case is about.

7 I think the evidence will show that Mr. Medford did
8 ultimately shoot Mr. Hayes. That's not enough. The state
9 has to prove beyond a reasonable doubt that Mr. Medford
10 didn't act in self-defense.

11 Self-defense has been much in the news recently.
12 You've heard from the sheriff about how everybody should
13 have a gun. We've heard -- there was a shooting down in --
14 on Connecticut Avenue not that long ago. And you've heard
15 a good bit about the castle doctrine and when you are
16 entitled to act in self-defense.

17 I expect the evidence to show that Richard Hayes had a
18 gun. Richard Hayes pointed that gun at Paul Medford, and
19 Paul Medford got lucky enough to pull his gun out first and
20 to shoot him first before Richard Hayes was able to shoot
21 at him.

22 If a man points a gun at you, you have a right to
23 shoot them. And it's a terrible thing that a man is dead,
24 and he's right. It's in another 14 or so hours, it'll be
25 the anniversary of that event.

Opening statements

1 It's a terrible thing, and I wish it hadn't happened.
2 My client wishes that it hadn't happened, because he knew
3 Mr. Hayes 15 years. They were close friends.

4 There was an argument in a Jeep. My client obviously
5 wasn't driving. He was in the passenger seat, and there
6 was another person who was driving. His name is Danny
7 Crisp. And Mr. Hayes was in the back seat, and he had a
8 .45 caliber pistol slid open, and he pointed it at Mr.
9 Medford, and Mr. Medford shot him first.

10 That's what I expect the evidence to show. There's
11 nobody else who can testify as to what happened in that car
12 except for my client and Danny Crisp.

13 And, ladies and gentlemen, they have to prove beyond a
14 reasonable doubt that it didn't happen the way my client
15 says it happened. They have to prove that beyond a
16 reasonable doubt.

17 And if they can't present any evidence to controvert
18 what my client says happened in that car, then you are
19 required by the oath you just took to find him not guilty.
20 You're required to do that.

21 And, now, I understand, again, that a man's dead and
22 y'all are sitting in judgment in a murder case. Whenever
23 it was announced and y'all were out in the pool I saw some
24 of you had some visible reactions to that, and I think you
25 need to honor that over lunch and have your oh, God, oh,

Opening statements

1 God, oh, God, because y'all don't want to be here. I
2 understand that.

3 But once you get past that you're going to have to
4 listen to these -- these witnesses, and you're going to
5 have to listen to it dispassionately. You're going to have
6 to put yourself in that moment, but you can't get
7 completely wrapped up in the fact that a man is dead and
8 that you feel somebody has to suffer for it. You can't get
9 wrapped up in that, otherwise you're not doing what you
10 swore to do.

11 Okay. It's a terrible thing that you do here today
12 and possibly into tomorrow, but I expect at the end of it
13 as hard as it's going to be for you -- and I know it's
14 going to be hard for you -- they're not going to be able to
15 prove beyond a reasonable doubt that Paul Medford didn't
16 act in self-defense. I think at the end of it you're going
17 to think he did.

18 That's not the standard. The standard isn't whether
19 you think he did or you think he didn't. It's whether you
20 have a reasonable doubt as to whether he did or not.

21 All right. So I'm asking again that you respect the
22 oath that you've taken, that you listen to the witnesses to
23 the extent that you're capable, listen to what each person
24 has to say and what they have personal knowledge of, what
25 they actually know, because if you listen to that, ladies

Frank Parris
Direct examination by Mr. Morin

1 and gentlemen, you simply can't find my client guilty. You
2 can't do that based on my reading of what the evidence is
3 going to show. Thank you very much.

4 THE COURT: Mr. Morin.

5 MR. MORIN: The state would call Frank Parris.

6 FRANK PARRIS, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. MORIN

9 Q Sir, can you state your name for the jury, please?

10 A Frank Parris.

11 Q Mr. Parris, where do you work?

12 A I work for Dunbar Construction Company.

13 Q How long have you been there?

14 A About 35 years.

15 Q Okay. Where do you -- where do you live now?

16 A I live there on Stewart Road, which is right off of
17 Carolina Country Club Road.

18 Q And you were living there at that time last year.

19 A Yes, sir.

20 Q Mr. Parris, on January 11th of 2010, did you go to
21 work that day?

22 A Yes, sir. It was a Tuesday morning. It had snowed
23 Sunday night and all day Monday. And so Tuesday morning I
24 got up and decided I'd try to make it to the office.

25 Q Now, when you leave out of Stewart on a normal day --

Frank Parris
Direct examination by Mr. Morin

1 did you go to work yesterday?

2 A Yes, sir.

3 Q And which way did you go to work yesterday?

4 A I always go back down and turn and go on Blanchard
5 Road which cuts through between Blanchard and Carolina
6 Country Club back to Southport Road, which our office is
7 right on Southport Road.

8 Q Okay. Now, on January the 11th of last year, is that
9 the path that you took?

10 A No, sir. It was snowing, and, well, the roads were
11 iced up and everything. So I decided to take the main
12 roads to the office, which if I come out of Stewart Road
13 and turn back to the right I go up and hit Cedar Springs on
14 Hwy. 56 right there just below the Deaf and Blind School.
15 And followed it on out to hit 295 and went down 295 to our
16 office.

17 Q About what time did you go to work that day?

18 A I got there probably about 7:30 or a quarter till
19 8:00. It was getting daylight then.

20 Q Okay. How long did you stay there at work?

21 A I was there about an hour.

22 Q And what happened? Why did you only be there an hour?

23 A Well, like, you know, everything was still snowed in
24 and all of that. There wasn't nothing going on, so I
25 decided they wasn't no use me to sit there and drink a

Frank Parris
Direct examination by Mr. Morin

1 whole pot of coffee. So I decided I'd just, you know, go
2 back to the house.

3 Q All right. Now, when you leave out of your office on
4 Southport and you're going back to your house, which path
5 do you take then?

6 A Well, like I said, the sun had done started coming up
7 and the roads were, you know, clearing up, so I decided to
8 cut back through the country, which is my normal route to
9 the house, and which I come through a little old
10 neighborhood, and then I hit Blanchard Road, and then
11 Blanchard back to Carolina Country Club.

12 Q Okay. Now, you've been taking that path for about how
13 long?

14 A As long as I can remember, you know.

15 Q All right. And Blanchard Road, can you give me a
16 little description of what it's like?

17 A Blanchard Road is a little old 2-lane road, just
18 twisted and narrow road, with a -- probably a dozen or so
19 houses on it. And that's about it. The rest of it is just
20 wooded area and all.

21 Q All right. Now, as you're traveling down Blanchard
22 Road did anything come to your attention that you recall?

23 A Well, I come up around and I passed the -- oh, there's
24 half a dozen houses right there in one little old section.
25 I passed it and come on up around the curve and everything.

Frank Parris
Direct examination by Mr. Morin

1 I was starting back down the back side of it, and I
2 noticed there was a shoe laying in the road. I mean, it was
3 just -- and I couldn't believe that somebody out there had
4 done lost a shoe in the snow.

5 So I slowed down and kept on up. And probably another
6 hundred yards I seen something laying on the side of the
7 road. So I stopped and got out.

8 And I found the man laying there on the side of the
9 road. He was just thrashing around, mumbling, groaning and
10 all of that. Tried to, you know, figure out who he was or,
11 you know, what was wrong with him. And I could see, you
12 know, he'd been laying out in the snow because he'd been wet
13 and cold and everything.

14 And just so happened we'd moved some furniture a week
15 or so -- I had a couple of them big furniture quilts in my
16 truck. So I got them out, and I covered him up and wrapped
17 him up in it to try to get him warm and still couldn't get
18 no response.

19 I called 9-1-1 and told them, you know, where I was at
20 and what it was and everything. And basically from there on
21 I sat there and waited on the ambulance.

22 Q Okay. So you were there when the ambulance arrived?

23 A Yes, sir.

24 Q Blanchard Road, that's here in Spartanburg County?

25 A Yes, sir.

Frank Parris
Direct examination by Mr. Morin

- 1 Q Did you move the man?
- 2 A No, sir.
- 3 Q Do you have any first-responder training, sir?
- 4 A Yes, sir. I've been with the fire service for 25
- 5 years. I've been a first responder with them for the last
- 6 20 years.
- 7 Q Now, did you take any -- you were there with the man.
- 8 Let's talk about that, for instance.
- 9 A That's all right.
- 10 Q You stayed with this man.
- 11 A Yes, sir.
- 12 Q And did he say anything?
- 13 A No, sir. When I got there he was laying on his back.
- 14 The whole left side of his face was swelled up. I mean,
- 15 you know, looking at him, and, you know, looked like
- 16 somebody had just beat him up and throwed him out on the
- 17 side of the road.
- 18 Q Okay. Had you ever seen that man before?
- 19 A No, sir.
- 20 Q All right. Now, when EMS got there, you stayed there
- 21 with EMS?
- 22 A Yes, sir, yeah. I helped them. You know, we got him
- 23 on the backboard and got him on the stretcher and got him
- 24 in the ambulance.
- 25 Q You helped them get him in the ambulance.

Frank Parris
Direct examination by Mr. Morin

1 A Yes, sir.

2 Q Now, when you arrived did anybody else drive down that
3 road?

4 A No, sir.

5 Q And the ambulance arrived. Did it come from Canaan
6 Road like you did or did it come from --

7 A Country Club Road side, yes, sir.

8 Q Okay. Now, you've also testified that there was a
9 shoe.

10 A Yes, sir.

11 Q Did you stay right there with the man, or did you ever
12 walk off up the road?

13 A Well, after we got him loaded up in the ambulance and
14 everything I was talking to the EMS driver and showed him,
15 you know, where I'd found his shoe and everything. That's
16 when we walked back up there where the shoe was.

17 Q All right. Why did you walk back up just --

18 A I mean, just curious to see, you know, to see if we
19 seen anything or anybody else, you know, because the shoe
20 was, you know, just laying out in the middle of the road.
21 And looking at it you could see where they was blood on one
22 side of the road, and looked like he'd went to the other
23 side of the road and then back and forth. And we was just,
24 you know, just curious was anybody else up there or where
25 they had a fight or, you know.

Frank Parris
Direct examination by Mr. Morin

1 Q Okay.

2 A Just making sure we didn't, you know, forget something
3 or somebody else that was there.

4 Q Now, you got up there to where the shoe was.

5 A Yes, sir.

6 Q Do you remember if you saw anything else besides the
7 shoe?

8 A They was some car keys and something, some kind of
9 remote or something. Other than that, that's all I can
10 remember right off the -- you know.

11 Q Okay. Now, you did see the initial EMS worker
12 treating him.

13 A Yes, sir.

14 Q Is that right?

15 A Yes, sir.

16 Q And did you see anything there that stands out in your
17 mind that you saw him do?

18 A Yeah, I mean other than --

19 Q Him.

20 A Other than, you know, they cut his clothes, got the
21 wet clothes off of him and everything and trying to get him
22 warm. I mean, I think they see, you know, if he had any
23 kind of identification or anything, because I didn't move
24 him. I mean, he was laying on his back when -- you know, I
25 just kept -- covered him up and wrapped some quilts up

Frank Parris

Direct examination by Mr. Morin

1 under him and tried to get him out of the snow as much as I
2 could.

3 Q Okay.

4 A Because that's first responder. You know, if you
5 don't know what's wrong with somebody you don't move or do
6 nothing to them until you figure it out.

7 Q Right. Now, you were there when the EMS left.

8 A Yes, sir.

9 Q Were you there when law enforcement arrived?

10 A Yes, sir. After we had found the shoe and the car
11 keys -- and I did think they was some ammunition laying up
12 there. I don't remember, you know, exactly what it was.
13 He asked me could I stay there till the county got there
14 because, you know, with all the blood and everything, you
15 know, so I sat there and waited until the county officer
16 got there, yes, sir.

17 Q Okay. So the EMS left.

18 A Yes, sir.

19 Q And you were there on the side of the road by
20 yourself.

21 A Yes, sir.

22 Q And did anybody come down the road?

23 A No, sir, not the whole time I was there.

24 Q EMS leave by Canaan Road or Carolina Country Club?

25 A Carolina Country Club. They backed out of it.

Frank Parris
Direct examination by Mr. Morin

- 1 Q And of course the shoe you're talking about -- and
2 these other items -- you saw that as you were coming from
3 Blanchard.
- 4 A Yeah.
- 5 Q You actually sort of passed over.
- 6 A I passed over them.
- 7 Q But nobody after that passed over them.
- 8 A No, sir, no, no, sir.
- 9 Q Okay. And when law enforcement got there did you tell
10 them what --
- 11 A I told -- told him -- I showed him where I had found
12 the young man that was laying there in the snow. And then
13 I pointed it out. And I didn't even -- from there on I
14 didn't even go past right there where my truck was setting.
- 15 Q Okay.
- 16 A The county officer, he's the one that walked up there
17 and --
- 18 Q So you had walked up there with EMS.
- 19 A Uh-huh.
- 20 Q You didn't touch anything up there.
- 21 A No, sir, no, sir.
- 22 Q And you walked back to where the ambulance was.
- 23 A Yes, sir.
- 24 Q Stayed there until law enforcement --
- 25 A Yes, sir.

Frank Parris
Direct examination by Mr. Morin

1 Q And then you told them what you had seen.

2 A Yes, sir.

3 Q I'm going to show you what's been marked for
4 identification as State's Exhibit No. 3 and ask if this --
5 if you can recognize that.

6 A I mean, I recognize the shoe and then --

7 Q Uh-huh.

8 A -- you know, that little bit right there. The rest of
9 it --

10 Q Is this -- is this -- is this an accurate reflection
11 of what you saw out on Blanchard Road?

12 A Yes, sir.

13 Q Now, when you saw him -- this photograph has some
14 yellow markers on it. It didn't have that, did it?

15 A No, sir, no.

16 Q But is that -- can you tell if that's going towards
17 Blanchard or towards Carolina Country Club?

18 A That is going to -- going towards Carolina Country
19 Club.

20 Q All right.

21 A Because I passed over the shoe as I was going back out
22 towards Carolina Country Club.

23 Q All right. And there's a truck on down in the turn.

24 A Yes, sir. That was the first -- I think he was the
25 first county officer on the scene.

Frank Parris
Direct examination by Mr. Morin

1 Q Is that about where --

2 A Uh-huh.

3 Q -- the person was?

4 A Yeah, because he didn't -- after I was right up above
5 that he didn't come no further than where we'd found the
6 man laying up there on the side of the road.

7 MR. MORIN: Your Honor, I move State's Exhibit No. 3
8 into evidence.

9 MR. SHEALY: No objection.

10 THE COURT: It's admitted.

11 (Photograph marked State's Exhibit No. 3.)

12 Q All right. And you say that you got there -- you had
13 left work around 9:00, is that right?

14 A Yeah.

15 Q And about how long were -- do you know about how long
16 you were out there from the time you found the man and --

17 A Well, time the EMS got there and all of that it was
18 getting right around 12:00 o'clock or something like that,
19 by the time the county officers got there and everything.
20 I got finally just -- you know, they all got there and
21 everything. So I left then to go home and get warm.

22 Q Okay. Now, while you were out there and you were near
23 the man and you walked down near the shoe and came back did
24 you ever see a gun of any kind?

25 A No, sir.

Frank Parris
Direct examination by Mr. Morin

1 Q Are you familiar with guns?

2 A Yes, sir.

3 Q Were you careful to look on both sides of the road as
4 you were looking for -- to see if anybody else was injured?

5 A Well, I mean, we didn't -- you know, after we seen all
6 of the blood here and here and everything, we pretty much
7 just -- right there in the road, but, no, I never did see.

8 Q Okay. Now, when you say you could tell back and
9 forth, how was the snow?

10 A I mean, it was --

11 Q I mean, was the snowing indicating where somebody had
12 been?

13 A No. I mean, they was blood trails from -- from right
14 there where I found the shoe.

15 Q Uh-huh.

16 A Looked like somebody had wallowed and everything
17 because there was blood all over there. And it come down
18 and crossed over the road, and it was another spot looked
19 like, you know, with a bunch of blood, and wallowing out in
20 the snow. You could just tell where somebody had been.
21 Looked like they'd been wallowing around in the snow and
22 everything.

23 Q And of course wallowing around in the snow means --

24 A It was all crumpled up and pushed up and, you know,
25 pushed back and everything.

Frank Parris
Cross-examination by Mr. Shealy

1 Q Right. All right. Please answer any questions Mr.
2 Shealy may have.

3 A Yes, sir.

4 MR. SHEALY: Thank you.

5 CROSS-EXAMINATION

6 BY MR. SHEALY

7 Q Mr. Parris, I understand it's been a year since this
8 happened, right?

9 A Yes, sir.

10 Q Did they show you your written statement?

11 A Yeah -- no. I have not seen it.

12 Q I'll read it then.

13 A Okay.

14 Q Well, do you remember writing a statement for them?

15 A Yes, sir.

16 Q All right. And that statement would be an accurate
17 reflection of what all you saw and all of that.

18 A Yes, sir.

19 Q And you had no reason to tell a story.

20 A No, sir.

21 Q I'm going to hand you a copy of your written
22 statement --

23 A Okay.

24 Q -- if you don't mind. I'll give you a second to look
25 it over.

Frank Parris
Cross-examination by Mr. Shealy

1 (Pause.)

2 A Okay.

3 Q You testified that you found some -- you may have
4 found some ammunition around the shoes.

5 A Well, I mean it's -- yeah. That's what I said. You
6 know, it said with some bullets.

7 Q But whenever you saw the EMS folks dealing with Mr.
8 Hayes, you didn't see anything else that stood out?

9 A Except there was a clip for a -- a gun or something
10 was in his pocket. I did think -- you know, they did find
11 a clip.

12 Q So they found a clip --

13 A Yeah.

14 Q -- for a gun.

15 A Did not find a gun, just a -- just the magazine part.

16 Q Right. As well as bullets apparently close to the
17 shoe, right?

18 A Yeah.

19 Q Apparently. All right. And you're not an
20 investigator, right?

21 A No, sir.

22 Q You're just a concerned citizen who saw somebody.

23 A Yeah.

24 Q So you're not -- you're not trained in hunting things
25 up like they are, right?

Calvin King
Direct examination by Mr. Morin

1 A No.

2 Q Police or anything.

3 A Uh-uh.

4 Q And you were looking to do that that day, right?

5 A No, sir.

6 Q You said you were just motivated by some --

7 A Yeah, I mean, we just -- you know, where the shoe was,
8 because we seen all the blood and everything.

9 Q And about -- you said this was about 9:00 o'clock when
10 you got there.

11 A Something like that, yes, sir.

12 Q All right. And I guess you didn't leave until
13 somewhere around 12:00.

14 A Uh-huh.

15 MR. SHEALY: I have nothing further of this witness.

16 MR. MORIN: I have no further questions. Ask that
17 this witness be excused.

18 THE COURT: He may be.

19 (Whereupon, the witness was excused.)

20 MR. MORIN: The state would call Calvin King.

21 CALVIN KING, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. MORIN

24 Q Mr. King, can you state your name for the jury,
25 please?

Calvin King
Direct examination by Mr. Morin

1 A My name is Calvin King.

2 Q Where do you work, sir?

3 A I'm a senior paramedic at Spartanburg EMS.

4 Q How long have you been there?

5 A A little over 15 years when this happened.

6 Q And were you working on January the 11th, 2011?

7 A Yes, sir.

8 Q Did you have an occasion to go to Blanchard Road?

9 A That we did.

10 Q Okay. Can you tell me what you saw when you first got
11 to Blanchard Road and how you arrived there?

12 A Well, we -- we got the call initially to check a man
13 down and -- and the initial address they gave us was at the
14 intersection of Blanchard Road and Carolina Country Club
15 Road, which would have been the nearest intersection from
16 where it was at.

17 When we got to the intersection there we had to call
18 back to our dispatcher and see if it was actually on
19 Carolina Country Club Road or Blanchard Road, and they said
20 it was on Blanchard Road.

21 So we went up Blanchard Road and -- well, Mr. Parris,
22 the one that just testified, he was there to flag us down
23 and showed us, you know, where the patient was laying in the
24 snow.

25 Q Was it a long distance down the Carolina Country Club

Calvin King
Direct examination by Mr. Morin

1 Road? You said -- I think you just said it was closer to
2 that intersection.

3 A Well, it was on Blanchard Road off Carolina Country
4 Club Road.

5 Q Right. Carolina Country Club. About how far did you
6 go before you saw Mr. Parris and the man?

7 A It wasn't -- it wasn't far off Carolina Country Club
8 Road. At that -- at that point with the weather and all it
9 was, it seemed like it was a long ways, but, you know --

10 Q All right. Well, what do you remember about the
11 weather?

12 A Well, the road -- the road was nasty with ice and --
13 well, where snow had melted and refroze and all of that at
14 that point. So the road was bad.

15 Q Okay. So when you got to the scene there and got out
16 with Mr. Parris, what did he show you or what did you see?

17 A Well, the -- what we seen there was -- well, my
18 partner and myself.

19 Mr. Parris had covered the patient, you know, the
20 gentleman up there in the ditch. He was laying in the ditch
21 with some obvious trauma to the left side of his head, a lot
22 of swelling, and had some noticeable frostbite to his hands
23 and all of this.

24 And once we got the -- got him off of the -- when we
25 rolled him off of the -- went to roll him onto our long

Calvin King
Direct examination by Mr. Morin

1 spinal board to immobilize him -- at this time we didn't
2 know whether we's dealing -- whether they's dealing with
3 trauma and hypothermia at this point.

4 He was very cold to the touch. He still had good
5 respirations and all of that. I mean, he was breathing good
6 on his own. But his clothes and all was actually froze to
7 the snow and ice where he'd been laying at. And from
8 looking at his hands and the -- he was missing one shoe, and
9 that's the one that was up in the middle of the road up
10 there.

11 And while I was initiating treatment and everything
12 after we got him into the unit trying to warm him, I was
13 getting all the frozen wet clothes and everything off of
14 him.

15 My partner did walk up to where the shoe and all was up
16 there. At this point we didn't whether he'd been hit by a
17 car or somebody had beat him or what, because we was just
18 trying to figure out the mechanism of injury.

19 And, well, he come back, and I was still trying to get
20 all of the wet clothes and everything off of him and -- and
21 he told -- he said that, you know, up there where the shoe
22 was --

23 MR. SHEALY: Objection, Your Honor.

24 Q Let's not say what he said.

25 A Oh, okay.

Calvin King
Direct examination by Mr. Morin

1 Q You can say you saw him do it, but let's not tell what
2 he said.

3 A well, he walked up there, and he come back and was
4 helping me.

5 Q Okay. Now, did you look for any identification on
6 him?

7 A We looked briefly at that. You know, at that time we
8 were more concerned about the patient care than trying to
9 find out who he was.

10 Q Certainly. Did you find anything in his pockets that
11 you recall?

12 A When we removed the clothing and everything my partner
13 did find an ammunition clip.

14 Q You saw him pull it out of his pants?

15 A I didn't -- I didn't see it when he took it out of his
16 pants, but he had it.

17 Q Okay. And that's when you were doing the clothes.

18 A Yeah, removing all of the clothes and everything from
19 him, which is part of the treatment for the hypothermia.

20 Q All right. Let's talk about the hypothermia. Did --
21 could you tell? Did you do a body temperature or something
22 to that effect?

23 A We did do a -- check his temperature tympanic, which
24 is in the ear.

25 Q Uh-huh.

Calvin King
Direct examination by Mr. Morin

1 A And at that point his temperature the best I can
2 recall was around 80 degrees.

3 Q Eighty.

4 A It should -- it should be in my report, and I think
5 you have a copy of that.

6 Q But you -- as best you can remember he was in the 80s.

7 A Yes, sir.

8 Q So that was one of the main concerns you had, is
9 temperature at that point.

10 A That would be a concern.

11 Q All right. Now, the frostbite on his hands that you
12 talked about, have you had experience with frostbite before
13 on your job?

14 A Yes, sir.

15 Q Can you tell me what that's like?

16 A Frostbite is, normally speaking, depending on the
17 degree of the frostbite and the patient, an alert patient,
18 it could be very painful or it could get to the point to
19 where there's no pain.

20 The -- the degree of frostbite, you know, that depends
21 a lot on the -- the pain. The frostbite is something that
22 can be dangerous in itself.

23 Q Well, tell me what you observed the condition of the
24 hands, because you said he had --

25 A Across his knuckles, and which he had some abrasions

Calvin King
Direct examination by Mr. Morin

1 too where he looked like he'd been crawling.

2 The one foot -- well, his hands, he had frostbite
3 primarily to the -- to the fingers and knuckle area. Then
4 the one foot that didn't have a shoe on it had some
5 noticeable frostbite to it, and some to his knees where it
6 looked like he'd been crawling. Also, some abrasions and
7 all there too.

8 Q All right. Do you know the clip -- do you know what
9 y'all did with it?

10 A Honestly, I'm not -- I don't know what happened to it
11 at that point.

12 Q Okay. How long were y'all out at the scene with him,
13 about, approximately?

14 A Our time should be on -- on my report.

15 Q Okay.

16 A But I'm guessing it was probably somewhere around 10
17 or 15 minutes.

18 Q All right. Now, while you were treating him was he
19 able or did he speak, or was he conscious? What was his --

20 A He -- he would -- as I say, his left eye and all was
21 all swollen shut. His right eye, he would open his right
22 eye and -- and with his eye he would follow movements, you
23 know, as we was moving in sight there.

24 And we could ask him questions and he would seem like
25 he'd want to respond, but he couldn't. All we could hear

Calvin King
Direct examination by Mr. Morin

1 was more words that was -- you know, you couldn't really
2 understand or anything.

3 Q Okay. Now, when you left there and went to
4 Spartanburg Regional -- is that where you went? I'm sorry.

5 A Yes, we did transport him to Spartanburg Regional
6 Trauma Center.

7 Q Did you go back to Country -- Carolina Country Club or
8 down the other way?

9 A We went -- I'm going to say we went back up Carolina
10 Country Club Road. I was in the back of the unit.

11 Q Okay.

12 A And everything I had going on I -- that was the way we
13 went in. I'm sure that's the way we went back out.

14 Q All right. Did you -- about how long did it take you
15 to get from there to Spartanburg Regional?

16 A With the road conditions and all I'm going to say
17 probably 15 minutes or so, give or take a few. All -- all
18 of our time should be in our report.

19 Q I'm just trying to get some idea. It took a little
20 longer than it would have usually because of the roads. Is
21 that fair to say?

22 A That's correct.

23 Q Please answer any questions Mr. Shealy has.

24

25

Calvin King
Cross-examination by Mr. Shealy

1 CROSS-EXAMINATION

2 BY MR. SHEALY

3 Q Mr. King, you testified that y'all apparently did find
4 a clip of ammunition.

5 A What's --

6 Q You said you found a clip of ammunition.

7 A Yes, sir.

8 Q Do you have any idea what kind of ammunition that was?

9 A I never even really paid it any attention.

10 Q Y'all didn't look at it. Well, I'm sure y'all had
11 other things to do, right?

12 Now, you also testified that Mr. Hayes was missing a
13 shoe. Did it match the shoe that was up the road a ways, or
14 did you notice?

15 A I didn't -- I didn't pay it -- I didn't really pay
16 that much attention.

17 Q Okay. So you don't know if that was his shoe or not.

18 A No.

19 Q But he was, in fact, missing a shoe --

20 A That he was.

21 Q -- when you were treating him.

22 MR. SHEALY: That's all I have.

23 MR. MORIN: I have no further questions. I ask that
24 this witness be excused, Your Honor.

25 THE COURT: He may be.

James Rhodes
Direct examination by Mr. Morin

1 (Whereupon, the witness was excused.)

2 MR. MORIN: Your Honor, at this time the state would
3 call James Rhodes.

4 JAMES RHODES, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. MORIN

7 Q Sir, would you state your name for the jury, please?

8 A James Rhodes.

9 Q Where do you work, sir?

10 A Spartanburg County Sheriff's Office.

11 Q How long have you been there?

12 A Almost 14 years.

13 Q Were you working on January the 11th of 2011?

14 A Yes, sir.

15 Q Did you have the occasion to go to Blanchard Road?

16 A Yes, sir.

17 Q Is Blanchard Road here -- which county is Blanchard
18 Road in?

19 A Blanchard Road is in Spartanburg County.

20 Q And when you got there, can you tell the jury what you
21 observed when you first arrived?

22 A When I first arrived I came in from Carolina Country
23 Club as well and went up Blanchard. Started up the hill
24 and went over the hill, and I met Mr. Parris, the
25 complainant.

James Rhodes
Direct examination by Mr. Morin

1 Q All right. When you got there and met Mr. Parris was
2 there anybody else out there?

3 A No, sir.

4 Q Okay. What was the condition of the road and weather
5 at that point when you arrived?

6 A Extremely icy. It was real bad.

7 Q Okay. And what did you see there in the road or by
8 the road? Can you tell the jury basically what you did as
9 you arrived there?

10 A When I arrived at -- it was a man-down call. When I
11 arrived I spoke with Mr. Parris. He began to point out
12 what he had found, and I realized that we might have some
13 type of crime scene. I began to observe to try to figure
14 out how big the crime scene was and how much I needed to
15 cordon off to secure it.

16 Q All right. And so you -- you participated in
17 cordoning off the -- cordoning off the --

18 A I would be the first officer on the scene, yes, sir.
19 I would try to basically see how wide it is or how much
20 area needs to be secured and then would actually secure it
21 to make sure there's nobody comes in or out that doesn't
22 need to be there.

23 Q Okay. Sir, I'm going to show you what's been marked
24 as State's Exhibit No. 2 and ask if this is an accurate
25 reflection of what you saw out on Blanchard Road.

James Rhodes
Direct examination by Mr. Morin

1 A Yes, sir, it is.

2 Q Okay. Now, and I noticed in this photograph there's a
3 truck way down there with some yellow tape in front of it.

4 A Uh-huh.

5 Q Is that your truck?

6 A No, sir. I believe that's looking back up Blanchard.
7 That truck is actually one of the ID officers that
8 responded.

9 Q Okay.

10 MR. MORIN: Move State's Exhibit No. 2 into evidence,
11 Your Honor.

12 MR. SHEALY: No objection.

13 THE COURT: It's admitted.

14 (Photograph marked State's Exhibit No. 2.)

15 Q Okay. I'm going to show you what's been marked as
16 State's Exhibit No. 3 and ask if -- do you see? Is that
17 yellow tape in there, is that some of the tape that you put
18 up?

19 A Yes. I assisted in putting up that tape.

20 Q Okay. Now, you stopped there where Mr. Parris was, is
21 that correct?

22 A Yes, sir.

23 Q Do you remember what Mr. Parris -- if his vehicle was
24 there or what -- what it was like there?

25 A Yes. His vehicle was, I believe, a white work truck

James Rhodes
Direct examination by Mr. Morin

1 pulled on the side of the road.

2 Q All right. Now, and the photographs show it, but on
3 either side of this road is there any houses or anything in
4 this area that you cordoned off?

5 A No, sir, no houses.

6 Q Okay. So what did you do? You got there, and you
7 spoke to Mr. Parris, and you decided where to block off the
8 road.

9 A Yes, sir. I observed what he was telling me, what was
10 there about the blood trail.

11 Q Did you see the blood trail?

12 A Yes, sir.

13 Q About how long was it?

14 A I -- I would estimate approximately a hundred yards.

15 Q Okay. And describe the trail that you saw.

16 A When I met him, I met him where he found the gentleman
17 that was the man down.

18 Q Uh-huh.

19 A The unidentified male. I met him there, and then I
20 could follow the blood trail back up to the shoe that he
21 had told me about.

22 Q Okay. Did you see the shoe?

23 A Yes, sir.

24 Q Anything else you recall seeing there besides the
25 shoe?

James Rhodes
Direct examination by Mr. Morin

1 A There were some other items there. I don't know as I
2 can name them right now. We don't move them or anything.

3 Q You didn't move them.

4 A No.

5 Q You stayed there until -- and you said that ID was
6 there.

7 A Yes.

8 Q And so once you got there and blocked off both ends of
9 the road, that was it. Nobody else came in or out of the
10 road.

11 A No, sir.

12 Q Now, how long did you stay there?

13 A It was quite some time. I secured the scene until I
14 was finally relieved. It was -- it was quite a few hours.

15 Q All right. And during that time did you have an
16 occasion to go up and down that road?

17 A Yes. I was in the scene to help secure it. So I
18 would have to make sure because of the icy conditions,
19 because we couldn't get a lot of officers there, when ID
20 came to work if anybody came up on the other side of the
21 road I would stop them, as well as if they came on the
22 bottom side. I would -- I would stop them from coming in
23 that yellow tape.

24 Q Okay. And did you have the occasion to search the
25 area for anything in particular?

James Rhodes
Cross-examination by Mr. Shealy

1 A I wasn't -- wasn't there to search for anything. I
2 just viewed it as I walked up and down.

3 Q Okay. And ID. When you say ID, do you recall which
4 officers that was that arrived there?

5 A Yes. I believe it was Deputy Brandon Howard and
6 Sergeant Hogsed.

7 Q Okay. Did any other detectives come out there?

8 A Yes. I do remember Detective Ritchie Foster came out
9 later.

10 Q Okay. And then when you left Sergeant Hogsed and/or
11 Sergeant -- or Officer Howard was there.

12 A Yes.

13 Q And of course when you got there the man that was down
14 wasn't there.

15 A No. He'd already been transported.

16 Q Do you remember where -- where you came from to begin?

17 A Enoree.

18 Q You were in Enoree at the time.

19 A Yes. Took me quite some time to get there because of
20 the bad road conditions.

21 Q Please answer any questions Mr. Shealy has.

22 CROSS-EXAMINATION

23 BY MR. SHEALY

24 Q Officer Rhodes, essentially it was your job to secure
25 the crime scene?

James Rhodes
Cross-examination by Mr. Shealy

1 A When you're the first officer on the scene, yes, sir,
2 I would secure the crime scene.

3 Q Okay. And once they got up that, I guess, yellow tape
4 it was your job to keep people from crossing the yellow
5 tape, right?

6 A Yes, sir.

7 Q In fact, did you have any occasion to stop anybody
8 from crossing that yellow tape?

9 A Several. We had several cars come in from the
10 Carolina Country Club Road. None got out. They would turn
11 and go around once we motioned them back. I believe I had
12 some walkers, maybe some neighbors or folks from Blanchard
13 Road, come up on the Blanchard Road side.

14 Q Okay. So it's a job. I mean, you've got to be pretty
15 vigilant for people coming towards the --

16 A Yes.

17 Q -- line, because otherwise they might contaminate the
18 crime scene, right?

19 A Yes, sir.

20 Q Okay. So you weren't there to search anything you've
21 testified to.

22 A No, sir.

23 Q You're just there to make sure nobody gets past you,
24 right?

25 A Yes, yes, sir.

Allen Wood
Direct examination by Mr. Morin

1 Q You did what you're supposed to, right?

2 A Yes, sir.

3 Q All right.

4 MR. SHEALY: That's all I have of this witness.

5 MR. MORIN: That's all I have, Your Honor. I'd ask
6 that he be excused.

7 THE COURT: You may step down.

8 (Whereupon, the witness was excused.)

9 MR. MORIN: Your Honor, may I approach?

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

12 MR. MORIN: Your Honor, the state would call Allen
13 Wood.

14 ALLEN WOOD, having been first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. MORIN

17 Q Will you state your name for the jury, please?

18 A Allen Wood.

19 Q Mr. Wood, where do you work?

20 A Spartanburg County Sheriff's Office.

21 Q How long have you worked there?

22 A A little more than 28 years.

23 Q During your 28 years there what has your duties
24 involved, entailed?

25 A I started off in narcotics and worked in narcotics and

Allen Wood
Direct examination by Mr. Morin

1 narcotics intelligence for about 12 -- 12 years.

2 Then I moved to the detective division. I worked
3 burglaries and white collar for a couple of years.

4 I moved into assault and homicide, and homicide and
5 violent crime division where currently I'm sergeant of
6 violent crimes and homicides, robberies and such as that.

7 Q On January 11th, 2011, did you investigate something
8 that happened on Blanchard Road?

9 A Yes.

10 Q All right. And when you became involved in it, what
11 type of investigation was it?

12 A At the time we just had a man down, injuries to his
13 head, didn't know exactly what happened to him.

14 Q Did you go to Blanchard Road at any point?

15 A No, sir, not at that point, no, sir.

16 Q Now, you were involved in the investigation of what
17 may have happened, is that correct?

18 A Yes, sir.

19 Q And during the investigation did you have the occasion
20 to speak to Mr. Medford?

21 A Yes, sir.

22 Q Is that the defendant?

23 A That's that man right there in the wheelchair.

24 Q All right. Where did you come in contact with Mr.
25 Medford?

Allen Wood
Direct examination by Mr. Morin

1 A It was a couple of days, a day and a half, into the
2 investigation once we determined the victim -- who he was.
3 We just basically start finding people closest to him --
4 friends, family and things like that. And that's where we
5 came up with the name Paul Medford, and a couple of others.

6 Q Sir, I'm going to show you what's been marked as
7 State's Exhibit No. 1 and ask if you can tell me what this
8 is.

9 A This is a form our office uses. We generate this
10 form. It's called a preinterrogation waiver form.
11 Basically, it consists of your Miranda warnings, the old
12 adage, "You have the right to remain silent," and such.
13 Basically, it solicits your permission to speak to you
14 without the benefit of a lawyer or anything else. I have
15 them sign it. I make sure they understand it and go from
16 there.

17 Q All right. Now, you had contact with Mr. Medford, is
18 that right?

19 A Yes, sir.

20 Q And did you -- can you tell me what day? Does that
21 indicate what day you had contact with him?

22 A January the 12th, 2011.

23 Q And does it indicate why you were talking to him?

24 A The assault on Rick Hayes.

25 Q Okay. Where did this conversation between you and Mr.

Allen Wood
Direct examination by Mr. Morin

1 Medford take place?

2 A Spartanburg County Sheriff's Office in the detective
3 division in an interview room.

4 Q And where did -- how did -- do you know how Mr.
5 Medford arrived at the sheriff's office?

6 A He was brought there by what was described as a
7 cousin, but actually it was an old friend who was
8 introduced to me.

9 I met them both down in the lobby. We proceeded
10 upstairs into the interview room where we completed this
11 form before we began any -- any kind of conversation.

12 Q Okay. And this other person who was with him, is he
13 law enforcement?

14 A No. His name was Mike Crisp.

15 Q Okay.

16 A It was a friend. He was described as a cousin, but he
17 actually was no blood relationship. Just friends.

18 Q Was he present when you read him these rights?

19 A Yes, he was.

20 Q Did he sign this statement?

21 A Yes, he did.

22 Q Are you a notary, sir?

23 A Yes, I am.

24 Q Did you notarize this statement that -- this document
25 that's State's Exhibit No. 1?

Allen Wood
Direct examination by Mr. Morin

1 A Yes, sir.

2 Q Does it have your signature on it?

3 A Yes, it does.

4 MR. MORIN: Move State's Exhibit No. 1 into evidence,
5 Your Honor.

6 MR. SHEALY: Subject to my previous objection, Your
7 Honor, in the motion hearing.

8 THE COURT: It's admitted.

9 (Preinterrogation waiver form marked State's Exhibit
10 No. 1.)

11 Q After you went through Mr. Medford's rights did you
12 read the document as it is?

13 A Yes, sir.

14 Q Did Mr. Medford seem to understand it?

15 A Yes, sir. He entered E.E. I actually -- actually --
16 actually interrupted me one time and said I know my rights,
17 you know. And I told him, I said, well, I still have to
18 read them to you.

19 Q Did you ask him about January 11th, that day?

20 A Yes, sir.

21 Q Or the day that you interviewed him. This is January
22 12th, is that correct?

23 A Yes, sir.

24 Q Did he tell you anything about where he was or what he
25 was doing on January 11th?

Allen Wood

Direct examination by Mr. Morin

1 A Yes, sir.

2 Q Tell me about that.

3 MR. SHEALY: Your Honor, I have an objection from what
4 we covered earlier. May we approach?

5 THE COURT: Okay.

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

8 Q Now, Detective Wood, when you spoke with him did you
9 -- was there any recordings made of the conversation?

10 A No, sir.

11 Q Was there any record you made of what he stated?

12 A I did a writeup after our conversation.

13 Q Do you recall what your conversation entailed?

14 A Yes, sir.

15 Q All right. Can you tell us what Mr. Medford told you
16 about the events of January 11th, that evening?

17 A He told me he shot Ricky Hayes.

18 Q All right. Let's back up.

19 When you first sat down and spoke to him you told him
20 that you were there about an assault on Mr. Hayes.

21 A Yes, sir.

22 Q Is that the first thing he said?

23 A No, sir.

24 Q Tell us about how the conversation was.

25 A Well, we basically started off describing the events

Allen Wood
Direct examination by Mr. Morin

1 of the evening.

2 There were three or four guys got together behind the
3 residence of Ricky Hayes on Blanchard Road. There was a
4 barn back there. The purpose of gathering was to cook
5 methamphetamine. Okay. So as things proceeded they run out
6 of ingredients. One of the ingredients that you need is
7 Sudafed.

8 There was a girl that lives close by who had purchased
9 some for the purpose of them making methamphetamine. Her
10 name is Tonya Sullivan.

11 The purpose of the trip was to go to Tonya's house
12 about two miles away to get the Sudafed. Once they got the
13 Sudafed they proceeded back to Blanchard Road to the
14 residence of Mr. Hayes.

15 They were on Blanchard Road a short distance from Mr.
16 Hayes' driveway where the defendant in this case started
17 describing to me about some conversations between him and
18 the defendant -- him and the victim.

19 The victim was sitting directly behind him in a Jeep
20 Cherokee. So the defendant was in the front passenger seat.
21 The victim was in the rear passenger-seat side of the
22 vehicle.

23 The discussion was such that the defendant wanted me to
24 believe that there was some insinuation of a threat of
25 bodily harm by Mr. Hayes on the defendant. And in reaction

Allen Wood
Direct examination by Mr. Morin

1 to that he shoots him.

2 The driver of the vehicle yells out an expletive,
3 doesn't know what's going on. All he hears is this pop
4 inside of the vehicle. He stops. The victim gets out of
5 the vehicle or falls from the vehicle out, or he exits the
6 vehicle. And then they proceed on.

7 He tells me that he proceeded up Blanchard Road
8 crossing over Old Canaan through -- I think it's called
9 Summerhill or some area of the little neighborhood there --
10 over to 295 where Hwy. 295 comes by what's -- what used to
11 be Old Page's Lake, an old fishing lake right there on the
12 back side of Arkwright.

13 There they took a left. You would have come to a
14 concrete bridge. The defendant told me he threw his gun
15 that he used to shoot Rick Hayes out the window into the
16 river.

17 When I explained to him that's not a river, it's a
18 railroad track you cross over there, he said, well, I threw
19 it out over the -- threw it out of the car. Okay. So we go
20 from there.

21 Q Did he tell you what kind of gun he had?

22 A .22.

23 Q Now, is there anything else that you recall him saying
24 that would have made him want to fire into the back seat?

25 A In describing the conversation that he was having with

Allen Wood
Direct examination by Mr. Morin

1 the deceased, the deceased was saying something about stuff
2 coming out of his nose. I think basically he -- he said it
3 first, and then this victim added to it like stuff going to
4 be coming outta your nose when we get back to the barn, so.

5 For whatever reason this stirs up paranoia, delusion
6 perhaps. They got into it. He -- looking back over his
7 shoulder -- he describes looking back over his shoulder a
8 couple of times, and he gets his gun in a ready position --
9 his gun in a ready position.

10 He looks back over his shoulder. He says he saw a
11 flash of chrome. Seeing that flash of chrome he felt like
12 -- his gun was out. So he -- he shoots. And then the rest
13 is what I described previously.

14 Q Now, during the conversation you had with him did he
15 tell you anything else about this flash of chrome or what
16 it was, what he thought it was or --

17 A Previously, he had described the deceased as having a
18 chrome .45 or a nickel-plated or stainless steel, a shinier
19 gun than his. His was what we call a blue-steel gun. It
20 was a dark color. He described him as seeing that gun
21 previously, actually having it in his own possession
22 previously. But now I believe that the deceased had it in
23 his possession.

24 Q I'm sorry. You described that the victim had a
25 chrome-plated .45.

Allen Wood
Direct examination by Mr. Morin

1 A Yes, sir.

2 Q And during the conversation did anything come up about
3 that from you or from him?

4 A Well, there was -- there was no chrome .45 that we
5 found that we could establish that was gotten rid of by
6 them. They went to the trouble of getting rid of his gun
7 but not the deceased's gun. There was no mention of it.

8 He elaborated on -- he asked me did we find a gun on
9 the deceased, and I told -- I didn't answer the question. I
10 just said, well, we can't go into what we found out there.
11 He said, well, I'm going to look pretty stupid if I'm going
12 to claim self-defense and there's no gun. And I agreed.

13 Q Of course he identified Mr. Hayes as the person that
14 he shot, is that correct?

15 A Yes, he did.

16 Q Shot or shot at or --

17 A Shot. Reached over his shoulder and shot.

18 Q Did he say what Mr. Hayes did after that?

19 A The vehicle was stopped and Mr. Hayes exited the
20 vehicle.

21 Q The vehicle was in motion when he shot.

22 A Yes, sir.

23 MR. MORIN: If I may have a moment, Your Honor.

24 (Pause.)

25 Q Did he say who was driving the vehicle?

Allen Wood
Cross-examination by Mr. Shealy

1 A who was in the vehicle?

2 Q who was -- he wasn't driving, was he?

3 A No. A guy named Danny Crisp was driving the vehicle.

4 Q Okay.

5 MR. MORIN: Just a moment, Your Honor.

6 (Pause.)

7 Q Please answer any questions Mr. Shealy may have for
8 you.

9 CROSS-EXAMINATION

10 BY MR. SHEALY

11 Q Sergeant Wood, you testified that you have a writeup
12 in this case.

13 A A writeup, yes, sir.

14 Q Okay. And that writeup you wrote prudently after
15 having spoken with my client?

16 A Probably much later that day, if not portions of it
17 the next day.

18 Q Okay. So it would have been close in time.

19 A Yes, sir.

20 Q It would have been closer in time than that.

21 A Yes, sir.

22 Q Right. Okay. And whenever you write these writeups,
23 why do you write them?

24 A Basically, you know, for here we are a year later, to
25 be able to reflect back on them.

Allen Wood
Cross-examination by Mr. Shealy

- 1 Q Okay.
- 2 A And to document what -- what happened.
- 3 Q And to help you remember what was actually said,
- 4 right?
- 5 A Yes, sir.
- 6 Q Now, I'm confused because you've testified that he --
- 7 that Mr. Medford told you three or four guys got together.
- 8 A Well, there was a group of them at the barn.
- 9 Q At a barn.
- 10 A Yes, sir.
- 11 Q And then they ran out of Sudafed, and then they went
- 12 to go to Tonya's house.
- 13 A Yes, sir.
- 14 Q Is that what you testified to?
- 15 A Yes, sir.
- 16 Q All right. Why is that not in your report?
- 17 A I don't know. It's -- it was just part of the general
- 18 knowledge of what was going on. Is it not in the report?
- 19 Q It's -- if it is, I'm not seeing it.
- 20 A Okay.
- 21 Q And I was surprised. Now, this business about where
- 22 you did this, it was in an interview room?
- 23 A Yes, sir.
- 24 Q In the detective division.
- 25 A Yes, sir.

Allen Wood
Cross-examination by Mr. Shealy

1 Q All right. And in that interview room did you not
2 have any way of recording these statements?

3 A I didn't at that time, no, sir.

4 Q Okay. So y'all don't have any kind of tape-recording
5 device?

6 A I didn't have any access to that at that time.

7 Q You didn't have any access.

8 A I did not, no, sir.

9 Q Would you be surprised if I told you in this
10 particular case someone else had been tape-recorded?

11 A Could be.

12 Q That interview.

13 A Could be. But, like I said, I didn't at that time
14 have -- have access to it.

15 Q Would it surprise you that the city police always
16 video-tape their statements?

17 A Yes, sir.

18 Q All right. But y'all --

19 A Some agencies do; some agencies don't; some detectives
20 do; some detectives don't. It's whatever you've got at
21 hand when you're ready to go.

22 Q Why don't y'all do that?

23 A It's a matter of just having the equipment at hand
24 when you're ready to -- when you're ready to do the
25 interview.

Allen Wood
Cross-examination by Mr. Shealy

1 Q Because you tried to get Mr. Medford to write a
2 written statement, didn't you?

3 A I asked him if he would give me a written statement.

4 Q Okay. And then you'd like to get his statement down
5 in writing, I believe is what you said.

6 A Yes, sir.

7 Q And that you needed to do that to, quote, to avoid
8 people putting words in his mouth.

9 A Yes, sir. He could tell his story and have it in
10 writing.

11 Q Okay. Well, who else but you would be putting words
12 in his mouth?

13 A You know, Mike was in the room. Somebody else could
14 be giving their rendition of what happened. It was his
15 opportunity to put in writing his side of the story.

16 Q And in order to protect his side of the story y'all
17 could have tape-recorded it like y'all did for other
18 witnesses.

19 A Again, I wasn't -- I didn't have access at that time.

20 Q Y'all could have video-recorded it. I mean, y'all are
21 a big agency, right? Y'all have funds to buy these things.

22 A I don't know if we've ever video-taped an interview.

23 Q Okay. So the city can do it, but you don't think
24 y'all can.

25 A We -- we haven't. We haven't.

Allen Wood
Cross-examination by Mr. Shealy

- 1 Q And is there a reason y'all haven't?
- 2 A Just find it necessary, or not.
- 3 Q Now, you've testified that he told you he had thrown
- 4 his pistol out on the bridge over 295, right?
- 5 A Yes, sir.
- 6 Q Did y'all have occasion to go look for it?
- 7 A Yes, sir.
- 8 Q All right. Did you find it?
- 9 A We eventually found it. It was sometime later.
- 10 Q It was sometime later.
- 11 A When we went out there to search for it snow was still
- 12 on the ground. We were concentrating our search over the
- 13 bridge down on the line with the bank and the railroad
- 14 track area where -- what's below the bridge.
- 15 Q Okay. And at that time y'all didn't find it.
- 16 A No, sir.
- 17 Q And ultimately later somebody else.
- 18 A Ultimately, later it was found actually up on the
- 19 roadway away from where we were searching for it.
- 20 Q Okay. Did y'all have occasion to look for that .45
- 21 caliber pistol?
- 22 A Yes, sir.
- 23 Q All right. And did y'all go down and look further
- 24 down on the road, and look?
- 25 A On 295?

Allen Wood
Cross-examination by Mr. Shealy

1 Q On 295.

2 A We went all up and down 295 looking, you know, for
3 anything and everything. If he threw the .22 out here, you
4 know, who's to say -- he never did admit to throwing the
5 .45 or even having a .45. So there was never any mention
6 of that.

7 Q So you didn't -- through the portion of your
8 investigation there was never any mention of a .45 caliber
9 pistol?

10 A Well, he told us about the .22. We found the .22.

11 Q Well, I'm asking in the course of your investigation
12 there was no mention of that.

13 A Of?

14 Q Of a .45 caliber pistol.

15 A Yes, sir, sure.

16 Q You testified that this barn that these three or four
17 guys met at was on Rick Hayes' property.

18 A I believe it's back behind his house.

19 Q Okay. And they were cooking meth out back there?

20 A That's my understanding, yes, sir.

21 Q All right. Do you have -- you've testified as to your
22 background in narcotics.

23 A Yes, sir.

24 Q You said you had a 12-year --

25 A Yes, sir.

Allen Wood
Cross-examination by Mr. Shealy

1 Q -- stint in narcotics. Now, in your training and your
2 experience with meth cooks is it your understanding they
3 just carry ammunition around with them, or do they usually
4 have a gun with them too?

5 A Do you want me to go into testimony that I wasn't
6 privileged to? Yeah. Sometimes when people are involved
7 in the drug activities -- paranoia, delusion, hallucination
8 or whatever -- they feel like they need to have a gun or
9 insinuate that they have a gun. But even if you're amongst
10 so-called friends it's just part of the --

11 Q And I'm just asking you your training and experience
12 as a narcotics officer.

13 A Yes, sir.

14 Q You dealt with a lot of narcotics, people who make
15 drugs.

16 A Yes, sir.

17 Q People who make drugs usually have guns.

18 A Not -- not necessarily. Sometimes, a lot of times,
19 not all the time, no, sir.

20 Q Because it's -- well, it's a dangerous business, you
21 know, because it's illegal.

22 A Sometimes --

23 Q And it's a cash business.

24 A It's usually a cash business.

25 Q Nobody writing checks for methamphetamine.

Allen Wood
Cross-examination by Mr. Shealy

1 A No, sir, no, sir.

2 Q So you carry around that protection or what you think
3 is protection.

4 A Sometimes. Sometimes you do, yes, sir.

5 Q And let me just make sure I understand what you said
6 Mr. Medford told you, that there were some statements, some
7 threats or what Mr. Medford took as threats, that things
8 would be coming out of his nose.

9 A Yes, sir.

10 Q He then I suppose put his hand on his gun and got it
11 in a ready position, whatever that means, correct?

12 A Yes, sir.

13 Q He then looked over his shoulder and saw what he
14 thought was Rick's gun.

15 A Yes, sir.

16 Q Pulled his gun, ducked down and shot all at the same
17 time.

18 A The movement he described to me was very simply
19 holding the gun like this, having his gun in the front
20 seat, looks back, and just like that.

21 (Whereupon, the witness demonstrated.)

22 Q And that he didn't know if he had hit him.

23 A Well, I think he probably thought he did because there
24 was the falling out of the vehicle onto the roadway, and
25 then they proceeded after that. It wasn't like the guy

Allen Wood
Cross-examination by Mr. Shealy

1 just was trying to fight or anything.

2 Q I'm going to hand you your writeup, what you've
3 written right here, right there, if you'll read that bit.

4 A "Flash of chrome, the gun. So Paul said he just
5 reached around and shot back at Rick not knowing" -- I'm
6 sorry -- "if he hit him."

7 Q Okay. So he didn't know if he hit him or not.

8 A Okay. Yes, sir.

9 Q Right? And Blanchard Road is where Rick lived.

10 A Yes, sir.

11 Q Right?

12 A Yes, sir.

13 Q Do you know where along Blanchard Road Rick lived?

14 A I could take you to it. I'm not sure of the exact
15 house number.

16 Q Okay. But, in any event, they were on Blanchard Road.
17 That's where Rick lived.

18 A Yes, sir.

19 Q And there's no indication that either my client --
20 well, from what my client told you that he even knew he'd
21 hit him.

22 A Yes, sir.

23 Q That Rick had just gotten out.

24 A Yes, sir.

25 Q Now, you've testified also that there was another

Allen Wood
Cross-examination by Mr. Shealy

1 person in that car. What was his name?

2 A Danny Crisp.

3 Q Danny Crisp. And what was he doing in that car?

4 A He was driving.

5 Q He was the driver.

6 A He was in his vehicle, I believe, yes, sir.

7 Q Did you have any reason to speak with Mr. Crisp?

8 A Yes, sir.

9 Q Okay. So you interviewed Mr. Crisp at one time.

10 A We had a brief conversation on the side of the road
11 the night before we spoke to Mr. -- to the defendant in
12 this case.

13 We had stopped Crisp over in the Duncan area because we
14 had identified him as a -- as a party to this. So we wanted
15 to get his side of the story.

16 So when we stopped him there was a conversation on the
17 side of the road. Myself and Investigator Foster, I
18 believe, took him down to our office where Mr. Foster,
19 Detective Foster, interviewed him. I had a limited
20 conversation with him.

21 Q All right. Getting back to this statement, Officer
22 Wood, that my client allegedly gave you, you testified that
23 the witness who was sitting with Mr. Medford was Mike
24 Crisp, right?

25 A Yes, sir.

Allen Wood
Cross-examination by Mr. Shealy

1 Q And he is Danny Crisp's brother.

2 A I think I've learned since then that he's their half
3 brother.

4 Q All right. So you didn't know that Mike Crisp was
5 related to Danny Crisp.

6 A I knew there was some blood, but I didn't know it was
7 that close.

8 Q So you knew that there was some relation.

9 A Yes, sir.

10 Q All right. Did you think it strange that the other
11 suspect's brother was going to sit in with the suspect and
12 witness the Miranda warnings?

13 A Mike Crisp came down with the defendant in this case
14 representing himself, by his quote, as moral support,
15 encouraging others that they needed to do the right thing,
16 so to speak, to tell what happened.

17 I previously used the term pastoral or in a pastor
18 sense or a preacher, but basically it was moral guidance, so
19 to speak.

20 Q But you didn't think there was any problem having --

21 A Again, I didn't know the closeness --

22 Q of the relation.

23 A -- of the blood relationship between Danny and -- nor
24 was it really clear exactly who was responsible for
25 everything until he admitted to shooting him.

Allen Wood
Cross-examination by Mr. Shealy

1 Q And just a couple of other questions. Whenever you
2 questioned Mr. Medford was he in a wheelchair?

3 A Yes, sir.

4 Q Okay. He's been in the wheelchair for as long as -- I
5 guess as long as you've known him, at least in relation to
6 this case.

7 A Yes, sir.

8 Q Or have you known him previously?

9 A I just knew of him but I --

10 Q But in relation to this case at least he told you that
11 he'd been in that wheelchair, correct?

12 A Yes, sir.

13 Q And I just want to make sure that you're completely
14 clear that in the discussion that you had with Mr. Medford
15 about the actual shooting in the car, Paul told you that he
16 thought he saw a flash of chrome of Rick's gun, correct?

17 A I'm not sure exactly how I wrote it up in my writeup,
18 but a flash of chrome. And that's when he decided to
19 shoot.

20 Q I'll show you your writing.

21 A Okay. I just want to make a hundred percent sure.

22 Q I understand; I understand. We don't want to...

23 A He said he thought he saw a flash of chrome of Rick's
24 gun, yes, sir.

25 Q A gun that he knew Rick Hayes happened to carry.

Allen Wood
Cross-examination by Mr. Shealy

1 A Yes, sir, that he knew he had, had possession of, or
2 had ownership of.

3 Q Now, at the end of all of this once you arrested my
4 client and arrested Mr. Crisp and arrested everybody, all
5 of the arrests, did y'all execute a search warrant on that
6 barn?

7 A I wasn't part of that.

8 Q Okay. So y'all had what sounds like pretty good
9 intelligence that there was a meth-making operation back at
10 that barn. Y'all didn't look into that?

11 A Well, when you say y'all, I wasn't part of that.

12 Q You didn't. Okay. To your knowledge was that ever
13 done?

14 A We -- I know we went there. I can't -- I can't recall
15 correctly -- can't recall correctly.

16 Q Were any the various other people involved in this
17 that the names that came up as the other three or four guys
18 who were there? Did y'all look at them for any meth
19 charges, any meth-making charges?

20 A I didn't. I know we relayed the intelligence to the
21 narcotic division. I spoke directly with one narcotic
22 officers -- I think his name was Steve Cooper -- about what
23 was going on. And I think perhaps more of the solicitation
24 of information more than anything.

25 Q Okay.

Allen Wood
Redirect examination by Mr. Morin

1 A But I don't know of any meth charges. Again, I
2 wouldn't have been part of that.

3 Q Okay. And you -- you worked narcotics for a while, 12
4 years, I believe you said.

5 A Yes, sir.

6 Q Did the police know that Rick Hayes was making meth
7 out back of that barn?

8 A I don't know what intelligence the narcotic division
9 had about Rick Hayes.

10 Q You don't know that.

11 MR. SHEALY: I think that's all I have of this
12 witness, Your Honor.

13 MR. MORIN: I have a few, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MORIN

16 Q Detective Wood, Mr. Shealy asked you about your
17 experiences being involved with narcotics investigations
18 and firearms, is that correct?

19 A Yes, sir.

20 Q Now, along those lines in your experience with people
21 involved with these types of drugs that were found, what is
22 the value of a firearm to someone that's involved in that
23 kind of activity?

24 A It's -- everything has value like jewelry, like cash.
25 It might as well be cash. It's something tradeable, you

Allen Wood
Redirect examination by Mr. Morin

1 know, sellable. It's something with a lot of value.

2 Q Now, Mr. Shealy asked you about Michael Crisp's
3 presence and his witnessing the statement. Do you recall
4 who requested Mr. Crisp be present during your
5 conversation?

6 A The defendant did. He wanted him there.

7 Q Now, with regard to the 295 search, Mr. Shealy asked
8 you if you'd gone up and down the road searching for the
9 firearm, and you stated that you looked around the bridge
10 and down under the bridge. To your knowledge did you look
11 anywhere else on 295 for any distance?

12 A I did not.

13 Q Now, you testified that you knew where Rick's house
14 off of Blanchard was. You didn't know the exact number.
15 Are you familiar with Blanchard Road?

16 A Yes, I am.

17 Q Does Blanchard Road have a lot of street lights on it?

18 A No. It's barely two lanes if at all. Very dark. And
19 then you have a cluster of houses, maybe 10 or 12 houses on
20 a road that the road probably is a mile and a half long.

21 Q One final question. Mr. Shealy asked you about a
22 search warrant of Rick's house.

23 Now, during the course of the investigation I think
24 you've testified that there was some meth going on at Rick's
25 house, is that correct?

Allen Wood
Recross-examination by Mr. Shealy

1 A Yes, sir.

2 Q During the course of this investigation however Rick
3 was in the hospital.

4 A Yes, sir.

5 Q And the other gentlemen that were mentioned, did any
6 of them live with Rick to your knowledge?

7 A Not to my knowledge, no, sir.

8 Q Thank you, sir.

9 RECROSS-EXAMINATION

10 BY MR. SHEALY

11 Q You said to your knowledge nobody lived at that --
12 nobody else lived there, right?

13 A To my knowledge, yes, sir.

14 Q And you testified it was dark down that road.

15 A Yes, sir. It's very dark down there.

16 Q You've also testified it was a pretty good snow,
17 correct?

18 A Yes, sir.

19 Q Okay. Snow reflects light, doesn't it?

20 A If there's light to be reflected, yes, sir.

21 Q Have you ever heard the term snow blind?

22 A Yes, sir.

23 Q That's when you look at snow and then you can't see
24 anything else, right?

25 A Yes, sir.

Allen Wood
Recross-examination by Mr. Shealy

1 Q Okay. So the ambient light there would have been
2 amplified by that snow, correct?

3 A It was in the middle of the night. There was no snow
4 blindness or ambient light.

5 Q Well, you don't know when it was, do you?

6 A Well, I was told it was at night.

7 Q But I understand you were told it was at night. But
8 you don't know exactly when at night, right?

9 A To the minute, no, sir, but at night.

10 Q Now, Mr. Morin asked you about the having cause --
11 going up and down the road. I just asked if you'd gone
12 down 295. You were the one who testified that you went up
13 and down that road, right? And so to what extent did you,
14 in fact, go up and down 295?

15 A You have 295 on its -- where this bridge is on the end
16 closest to 221 there's a sidle side street that cuts
17 through Arkwright. It comes out a hundred yards from the
18 bridge, and then on the other side of the bridge heading
19 back towards, say, Camp Croft, or Cedar Springs you have
20 the road they exited out onto or entered from onto 295
21 turning left coming to the bridge.

22 Q When you say they, who do you mean?

23 A Well, the defendant and Mr. Crisp, Danny Crisp.

24 So we're being told by the defendant, "I threw the gun
25 out in the river right there at the bridge." Well, the

Allen Wood
Recross-examination by Mr. Shealy

1 bridge isn't over any river. It's a railroad track. So
2 we're concentrating our efforts -- the bridge -- you know,
3 below the bridge. We're using canine dogs that can smell
4 supposedly ammunition or that kind of thing.

5 Snow is still on the ground. You know, we did the best
6 we could.

7 Q And you've also already testified that there was some
8 -- throughout the course of your investigation you
9 mentioned a .45 caliber weapon. You testified to that
10 previously, correct?

11 A Well, I didn't see the .45. The defendant here in
12 this case didn't see a .45. He saw a flash of chrome of
13 what he thought was the gun, but there's no discussion --
14 didn't tell me he threw the .45 out, didn't tell me picked
15 up the .45 and saw it. He didn't tell me anything about
16 the .45 other than he saw -- thought he saw a flash of
17 chrome of what he thought was a .45 and threw his gun away.

18 Q But you previously testified that throughout y'all's
19 investigation there was mention of a .45 caliber pistol and
20 y'all looked for it on 295, correct? And that's what you
21 testified to.

22 A No. We didn't look for a .45 on 295. We looked for
23 anything that could be construed as evidence on Blanchard
24 Road. And then in the deceased's pocket was a clip, a
25 magazine, but no gun.

Dr. Chris Lombardozzi
Direct examination by Mr. Morin

1 Q All right. Thank you, Sergeant.

2 MR. MORIN: That's all the questions I have.

3 THE COURT: You can step down.

4 DR. CHRIS LOMBARDOZZI, having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. MORIN

7 Q Sir, can you state your name for the jury, please?

8 A My name is Chris Lombardozzi.

9 Q Where do you work, sir?

10 A I work at Spartanburg Regional Hospital.

11 Q And how are you employed there?

12 A I'm an emergency medicine physician.

13 Q How long have you been an emergency medicine
14 physician?

15 A I've been a physician now for 13 years in emergency
16 medicine.

17 Q Okay. And have you always worked at Spartanburg
18 Regional?

19 A I have not.

20 Q Okay. Can you tell us a little bit about your
21 education, sir?

22 A I graduated from Columbia University in New York City
23 in 1989 with a B.A. degree; Rush Medical College in Chicago
24 in 1994 with a medical degree; 1999, I completed a 5-year
25 residency in emergency medicine and pediatrics and have

Dr. Chris Lombardozzi
Direct examination by Mr. Morin

1 been a board certified emergency medicine physician ever
2 since.

3 Q Okay.

4 MR. MORIN: Your Honor, we move that Dr. Lombardozzi
5 be admitted as an expert in emergency medical treatment.

6 MR. SHEALY: I have no objection.

7 THE COURT: All right. He is so qualified.

8 Q Dr. Lombardozzi, did you have an occasion to treat
9 Rick -- were you working at the Spartanburg Regional
10 Medical Center on January the 11th of 2011?

11 A I was.

12 Q Did you have the occasion to treat a patient by the
13 name of Richard Hayes?

14 A I did.

15 Q Can you tell me the condition that you began treating
16 him when he first came to you?

17 A To the best of my recollection -- it's been about a
18 year or so -- he was brought to the emergency department
19 extremely cold -- I believe his core temperature was about
20 86 degrees -- with obvious signs of frostbite on his
21 extremities, hands, and barely breathing. It appeared that
22 he had some trauma to his face. He was barely conscious
23 and in extreme distress.

24 Q Okay. What were some of the things that you did in
25 order to attempt treat?

Dr. Chris Lombardozzi
Direct examination by Mr. Morin

1 A The first thing we do in all emergency care is to
2 evaluate someone's ability to breathe, and in his case he
3 was barely breathing. So we had to place a tube into his
4 trachea and breathe for him.

5 After assuring that he still had a heartbeat and that
6 he was still pumping some blood, then we went ahead and
7 started looking at the rest of his body. And at that point
8 the first thing that was apparent was his head. He had
9 massive trauma to the face, and in particular the eye. And
10 then we started to do a variety of tests while we continued
11 to resuscitate him.

12 Q Were you able to discover the cause of the trauma to
13 his head?

14 A Yes. At one point we did a CAT scan of his brain, and
15 we saw what looked like a bullet in the back of his brain
16 with a significant amount of damage to the brain.

17 Q Okay. Do you have any experience of any -- tell me
18 about the frostbite. Is that typical for something you'd
19 see around here?

20 A I can't remember that particular day, but I think it
21 was a fairly cold time for South Carolina. And initially
22 we thought perhaps that he had fallen, been hit, perhaps
23 struck by a vehicle. We really had no idea. And had been
24 down for an extended period of time when the paramedics
25 picked him up. And in the evaluation later discovered what

Dr. Chris Lombardozzi
Cross-examination by Mr. Shealy

1 the probable cause was.

2 Q Sure. But as far as the frostbite, would you say it
3 was mild, severe?

4 A Severe.

5 Q Severe. In your expertise can you tell us about how
6 long he would have had to have been exposed to have that
7 kind of severity?

8 A I can't tell you specifically. I can tell you that
9 it's probably at least a few hours. Obviously, it depends
10 on exposure, depends on wind speed, depends on the actual
11 temperature outside, depends on whether or not he was wet
12 or dry, things like that.

13 Q I see. Please answer any questions that Mr. Shealy
14 may have.

15 CROSS-EXAMINATION

16 BY MR. SHEALY

17 Q Thank you, Dr. Lombardozzi. Did I say that right?

18 A Close enough.

19 Q Lombardozzi. I guess you get that a lot.

20 A I do.

21 Q All right. Doctor, well, you testified your are
22 employed as an emergency medical physician.

23 A That's correct.

24 Q Whenever people come in what's the first -- after you
25 have gotten them stabilized, what do you do then?

Dr. Chris Lombardozzi
Cross-examination by Mr. Shealy

1 A well, it depends on what's wrong with them.

2 Q Okay. Do you try to ascertain as to whether they are
3 under the influence of anything?

4 A Again, depending on the problem, but, sure, that might
5 be part of the regular workup.

6 Q Okay. And do you recall ordering any drug tests for
7 Mr. Hayes?

8 A I don't recall, but as part of our standard co-trauma
9 process that would be included.

10 Q Be included. Well, I'm going to hand you up some
11 medical records. I'm going to hand you up four pages, but
12 the page I'm most interested in is page No. 4 if you'd just
13 look those over.

14 A Uh-huh.

15 Q Okay. Does that suggest to you that Mr. Hayes was
16 apparently under the influence of anything?

17 A He had a positive drug screen for amphetamines.

18 Q Okay. And why would you need to know that as an
19 emergency care physician?

20 A It may impact his care depending on what else may be
21 going on. For instance, if a patient had a narcotic
22 overdose as part of their problem, I believe we have an
23 antidote for that. We could give them something called
24 Narcan and turn it around. But this may also influence
25 their behavior in terms of what -- what they may do later

Dr. Chris Lombardozzi
Cross-examination by Mr. Shealy

1 on, so.

2 Q Do you have any idea as to why you would have ordered
3 that in this particular case?

4 A It's part of our standard trauma protocol.

5 Q That's just --

6 A Yes.

7 Q -- because you want to make sure you know what they --
8 what they may have had.

9 A Correct.

10 Q I know that you -- how much time did you spend with
11 Mr. Hayes?

12 A I don't recall.

13 Q Did you have cause to examine the wound at all?

14 A I'm sorry?

15 Q Did you have cause to examine the wound?

16 A His face?

17 Q Right.

18 A Sure.

19 Q And did it appear that -- about how -- well, did you
20 notice any stippling or anything around where the -- where
21 the bullet entered?

22 A Honestly, it was very difficult initially. We really
23 thought it was more of a blunt trauma to the face. And had
24 we not had a CAT scan I don't know that we would have known
25 that there was a bullet in his head.

Dr. Chris Lombardozzi
Cross-examination by Mr. Shealy

1 Q Thank you, sir.

2 MR. SHEALY: That's all that I have for this witness,
3 Your Honor.

4 MR. MORIN: That's all I have of the witness. I ask
5 that he be excused, Your Honor.

6 THE COURT: You may step down and be excused. Thank
7 you.

8 (Whereupon, the witness was excused.)

9 MR. MORIN: May I approach, Your Honor?

10 THE COURT: Yes.

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

13 THE COURT: Ladies and gentlemen, we're going to break
14 for lunch.

15 Let me caution you before you go that you're not
16 permitted to talk about the case during the trial. The
17 only time you can talk about it is during your
18 deliberations, and that's not -- that time has not yet
19 come.

20 So do not discuss the case during the lunch break.
21 Don't discuss it when you come back. Don't conduct any
22 research, don't do your own investigation into any issue
23 that relates to the case.

24 Also, don't permit yourselves to be exposed to any
25 type of media coverage that might relate to the case. You

David Brandon Howard
Direct examination by Mr. Morin

1 have to base your decision upon what you see and hear
2 during the trial. You are not to be influenced by any
3 outside or extraneous information. So not discussions, no
4 media exposure, no investigation, no research.

5 Do have a good lunch. Please report back to your jury
6 room at 2:15, at 2:15 this afternoon.

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

9 THE COURT: Court is in recess until 2:15.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Are we ready for the jury?

12 MR. MORIN: The state is ready, Your Honor.

13 MR. SHEALY: Yes, Your Honor.

14 THE COURT: Bring them in.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: Good afternoon. As you know, when we
18 recessed for lunch the state was in the midst of their
19 presentation of evidence. So we'll continue with that
20 presentation.

21 MR. MORIN: The state calls Brandon Howard.

22 DAVID BRANDON HOWARD, having
23 been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. MORIN

25 Q Sir, would you state your name for the jury, please?

David Brandon Howard
Direct examination by Mr. Morin

- 1 A I'm David Brandon Howard.
- 2 Q And you work for the sheriff's department?
- 3 A I do. I work for the Spartanburg County Sheriff's
- 4 Office Crime Scene Unit.
- 5 Q How long have you been with the crime scene unit?
- 6 A About a year and a half.
- 7 Q So January 11th of 2011 you were with the crime scene
- 8 unit?
- 9 A I was.
- 10 Q Did you have the occasion to go to Blanchard Road?
- 11 A I did.
- 12 Q And tell us why you went there.
- 13 A I was dispatched there in regards to a man being found
- 14 down by Deputy Rhodes.
- 15 Q Okay. And what did you find when you got there?
- 16 A When I arrived on the scene Deputy Rhodes was parked
- 17 at the opposite end of where I was. My vehicle was stopped
- 18 prior to some items of evidence. There was an assortment
- 19 of items laying in the roadway in the snow that was later
- 20 collected by Deputy Hogsed as evidence.
- 21 Q Okay. Now, when you got onto Blanchard Road did you
- 22 come from the Carolina Country Club end or the other end?
- 23 A I came from the other end.
- 24 Q Canaan Road.
- 25 A Yes, sir.

David Brandon Howard
Direct examination by Mr. Morin

1 Q I'm going to show you what's been marked and entered
2 as State's Exhibit No. 3. Can you tell me what this is a
3 photograph of?

4 A That is a photograph of items that were collected as
5 evidence.

6 Q Okay. And these placards, they're numbered out there.

7 A Correct.

8 Q Did you put those down?

9 A I began putting down some of those. Sergeant Hogsed
10 completed the placards as it went on through the scene.

11 Q Okay. So you sort of pulled up on this. Whose -- do
12 you know who this is down here?

13 A That is Deputy Rhodes.

14 Q Okay. And you pulled up facing where he's coming
15 from.

16 A Correct. I would be on the end where the placards
17 were.

18 Q Okay. Now, you helped or you did put the placards
19 down with Deputy Hogsed.

20 A Yes. I assisted Sergeant Hogsed.

21 Q And/but the items that were collected there that are
22 marked, that was done by Deputy Hogsed, is that correct?

23 A Yes, sir.

24 Q Now, while you were out there was the road blocked off
25 on both ends?

David Brandon Howard
Direct examination by Mr. Morin

1 A It was.

2 Q How was it blocked off?

3 A Deputy Rhodes had sealed both ends behind our vehicles
4 with crime scene tape.

5 Q Okay. Now, did you look for anything specifically
6 while you were out there?

7 A We did. Of course items that were collected for
8 evidence. We looked for anything out of place. But we
9 also did a canvass of the area for a firearm that may have
10 possibly been involved.

11 Q Okay. What did you do? Tell me -- tell the jury how
12 it is you went and looked and what the conditions were
13 there.

14 A The conditions, it was very snowy. Back in January we
15 had a couple of days of snow, and there was some ice on the
16 ground. We walked the edge of the road and the wood line
17 up and down Blanchard Road to the Carolina Country Club
18 area looking for any items of evidence.

19 Q And specifically looking for firearms.

20 A Correct.

21 Q Do you remember if there was a specific caliber you
22 were looking for?

23 A It was a .45 caliber. We found four unfired .45
24 rounds laying in the roadway. That's the type of weapon we
25 were looking for.

David Brandon Howard
Cross-examination by Mr. Shealy

1 Q Okay. And did you find anything?

2 A We found nothing.

3 Q Now, I'm going to show you what's been marked as
4 State's Exhibit No. 4 for Identification. Before I show it
5 to you, did you have an occasion to attend an autopsy?

6 A I did.

7 Q Okay. And was it for Mr. Hayes?

8 A It was.

9 Q All right. And while you were at the autopsy did you
10 collect anything?

11 A I did. I collected a fired projectile bullet from Dr.
12 Wren, which he extracted from the victim.

13 Q I'm going to ask you to look at this envelope and open
14 it and see if you can identify the item inside.

15 A This is the fired bullet which I collected from Dr.
16 Wren.

17 Q Thank you. Please answer any questions Mr. Shealy may
18 have for you.

19 CROSS-EXAMINATION

20 BY MR. SHEALY

21 Q Officer Howard, you testified you had been in the
22 crime scene unit for about a year and a half?

23 A Yes, sir.

24 Q So that would mean you'd been on that unit for about
25 half a year whenever you --

David Brandon Howard
Cross-examination by Mr. Shealy

- 1 A That's correct.
- 2 Q Whenever this occurred.
- 3 A Right.
- 4 Q Let me ask. At that point you were with Sergeant
- 5 Hogsed, right?
- 6 A Correct.
- 7 Q He was training you.
- 8 A Well, per our policy, any time we have a major crime
- 9 we have -- leads, all teams. And he happens to be a lead.
- 10 Q Sure, sure. I understand.
- 11 Now, you testified that you found a number of items,
- 12 correct?
- 13 A Yes, sir.
- 14 Q Were they close to the shoe or were they far away from
- 15 the shoe?
- 16 A Oh, the -- if I recall correctly, the majority of the
- 17 physical items were close to the shoe.
- 18 Q So they were round about the shoe. And you testified
- 19 that you found four unfired bullets, right?
- 20 A Yes. I believe that's correct.
- 21 Q Those were .45 caliber apparently.
- 22 A Yes, sir. Sergeant Hogsed could testify a little
- 23 better, but I believe that's correct.
- 24 Q And that's why you were looking for a .45 caliber
- 25 firearm.

David Brandon Howard
Cross-examination by Mr. Shealy

1 A We were looking for a firearm, particularly a .45.

2 Q Okay. So you -- you would have been happy with any
3 gun, but you were looking in particular for a .45 because
4 that's what --

5 A Well, part of our investigation is we had heard that
6 the victim may have possibly been shot. So we were looking
7 for any firearm.

8 Q Right. And you didn't find any firearm at all.

9 A No, we did not.

10 Q Whether it be a .22, .38. 45. Nothing.

11 A No. Not at that time, we did not.

12 Q And you testified you didn't collect anything.

13 A No, not from Blanchard Road, I did not.

14 Q All right. You just helped put out the placards.

15 A Correct.

16 Q Okay. And did you take those two pictures?

17 A Which two?

18 Q I'll show them to you.

19 A Yes. That is Blanchard Road. I photographed the
20 scene.

21 Q So you were the one who took those pictures. All
22 right.

23 MR. SHEALY: That's all that I have for Officer
24 Howard. Thank you.

25 MR. MORIN: No further questions of this officer.

Marilyn Arthur
Direct examination by Mr. Morin

1 THE COURT: You may step down.

2 MR. MORIN: I ask for him to be excused.

3 THE COURT: You may be.

4 (Whereupon, the witness was excused.)

5 MR. MORIN: The state calls Marilyn Arthur.

6 MARILYN ARTHUR, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. MORIN

9 Q Ma'am, would you state your name for the jury?

10 A Marilyn Arthur.

11 Q And where do you work, ma'am?

12 A I work for the Spartanburg County Sheriff's Office
13 with the crime scene unit.

14 Q Did you have the occasion on January the 11th, 2011,
15 to go to Spartanburg Regional Medical Center?

16 A Yes, sir.

17 Q While you were there did you collect anything that's
18 here that you recall?

19 A Yes, sir.

20 Q What did you collect?

21 A I collected clothing from the victim and a .45 caliber
22 rifle [sic].

23 Q Okay. I'm going to show you what's been marked as
24 State's Exhibit No. 5 and see if you can identify what's in
25 there, what you say you recovered.

Marilyn Arthur
Cross-examination by Mr. Shealy

1 A That's the .45 magazine.

2 Q Uh-huh.

3 A And there are the six rounds.

4 Q Okay. And do you recall who -- where these came from?

5 A It came from one of the EMS personnel.

6 Q Okay. You can put that back in the bag.

7 MR. MORIN: Your Honor, we move State's Exhibit No. 5
8 into evidence.

9 MR. SHEALY: No objection, Your Honor.

10 THE COURT: It's admitted.

11 (Magazine and bullets marked State's Exhibit No. 5.)

12 Q Please answer any questions Mr. Shealy may have for
13 you.

14 CROSS-EXAMINATION

15 BY MR. SHEALY

16 Q Officer Arthur, just briefly. You counted the rounds
17 out just now. Is that the way that they came to you out of
18 the magazine, or were they in the magazine?

19 A They were in the magazine.

20 Q Okay. So you ejected them from the magazine --

21 A Yes, sir.

22 Q -- because you don't want to keep them in there.

23 A Yes, sir.

24 Q You had to count them, right? And do you have any
25 idea as to how many rounds that magazine would generally

David Welch
Direct examination by Mr. Morin

1 carry?

2 A No, sir.

3 Q Is that just because you don't know what kind of clip
4 it is, or why don't you know how many?

5 A Guns have different kind of magazines, and they carry
6 different amount of bullets.

7 Q Okay.

8 A It just depends brand. And if you want to add an
9 extra clip to it, it's different.

10 Q Okay. Thank you, ma'am.

11 MR. SHEALY: I have nothing further of this witness.

12 MR. MORIN: I have no further questions of the
13 witness, Your Honor.

14 THE COURT: You may step down.

15 MR. MORIN: I ask that she be excused.

16 THE COURT: She may be.

17 (Whereupon, the witness was excused.)

18 MR. MORIN: The state calls Deputy Welch.

19 DAVID WELCH, having been first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. MORIN

22 Q Sir, would you state your name for the jury, please?

23 A David Welch.

24 Q And where do you work, sir?

25 A Spartanburg County Sheriff's Office.

David Welch
Direct examination by Mr. Morin

1 Q How long have you been there?

2 A Over 13 years.

3 Q On January -- were you working there in January and
4 February of 2011?

5 A Yes, sir.

6 Q Sir, I'm going to show you what's been marked as
7 State's Exhibit No. 6 for Identification. Sir, can you
8 tell me what this box is and then confirm by opening and
9 tell what's inside?

10 A It says it is an Arminius .22 revolver, Serial No.
11 99802 with eight -- well, eight .22 bullets. Yes, sir.

12 Q Do you know where this firearm came from, sir?

13 A We received a call of a neighborhood watch that said
14 there's a gun laying on the side of the road on Southport
15 Road in the vicinity of South Avenue and Canaan Church
16 Road.

17 Q Is there a bridge near there?

18 A Yes, sir. It's a railroad bridge that actually goes
19 underneath Southport Road.

20 Q Okay. And when -- tell me how you got to where this
21 -- this gun was. Where were you and how did you get there?

22 A I patrol the Cedar Springs area, so I had from Cedar
23 Springs to towards the city on Southport Road. If you're
24 familiar with the -- the old fish ponds out there, you pass
25 that. As you're coming up you've got the Canaan Church

David Welch
Direct examination by Mr. Morin

1 Road on your left. Then you come to the railroad bridge.
2 And just past that railroad bridge before you get to South
3 Avenue on the guardrail portion of the bridge, it was out
4 there on the side of the road on the right side.

5 Q Okay. Just a moment.

6 (Pause.)

7 Q Now, you say this is on Southport. Does that have a
8 number? Does that highway have a number?

9 A 295.

10 Q 295. All right. Are you familiar with Blanchard
11 Road, sir?

12 A Yes, sir.

13 Q If I went to where this gun was and I wanted to go to
14 Carolina Country Club Road using Blanchard, how would I go?

15 A If you continued up Blanchard towards the Carolina
16 Country Club, you'd take a left -- a left on Carolina
17 Country Club and then a quick right. I think it's Sherling
18 [sic]. And at the end of Sherling it butts into Canaan
19 Church Road and that directly onto Southport Road.

20 Q And that's approximately -- I think when you turn onto
21 Southport or 295 that bridge is right there.

22 A Right.

23 Q And that's where you found this firearm?

24 A Yes, sir.

25 Q And the bullets. Now, when you found it were the

David Welch
Cross-examination by Mr. Shealy

1 bullets inside the gun?

2 A Yes, sir.

3 Q And if I may. All right. If I may, inside here is a
4 baggie of bullets, is that right?

5 A Yes, sir.

6 Q Now, were these in the gun when you recovered it?

7 A Yes, sir.

8 Q And I note that there are seven live rounds, is that
9 correct?

10 A Correct.

11 Q And what's that?

12 A One spent round.

13 Q Okay.

14 MR. MORIN: Your Honor, we move State's Exhibit No. 6
15 into evidence.

16 MR. SHEALY: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (Arminius .22 revolver marked State's Exhibit No. 6.)

19 Q Please answer any questions that Mr. Shealy may have
20 for you.

21 CROSS-EXAMINATION

22 BY MR. SHEALY

23 Q Officer Welch, you testified that a call came in. Do
24 you remember what day it was?

25 A I believe it was February 3rd, I believe.

David Welch
Cross-examination by Mr. Shealy

1 Q February 3rd.

2 A Right.

3 Q That's my understanding, February 3rd. About what
4 time of day?

5 A I believe the call came in about eight after 4:00. So
6 roughly between 4:00 and 4:30. I think I got there almost
7 4:30 in the afternoon.

8 Q You've nailed it on the head. Eight after 4:00 was
9 exactly right.

10 All right. Now, you testified as to where you found
11 this. It was off the bridge. It was on -- near a railroad
12 track.

13 A Right. It wasn't -- it's a good 50-feet drop, but it
14 was at the guardrail portion of the bridge.

15 Q It was at the guardrail portion of the bridge.

16 A Right. You've got a concrete bridge, the concrete
17 abutment, and then the guardrail extends past that part.

18 Q Okay. So it did make it off of the bridge, I guess is
19 what you're saying.

20 A Correct.

21 Q It didn't get down into the railroad area.

22 A Negative.

23 Q Now, I want to -- this was reported by a neighborhood
24 watch?

25 A Right.

David Welch
Cross-examination by Mr. Shealy

- 1 Q So you weren't investigating this particular crime.
- 2 A No.
- 3 Q It just happened to come in.
- 4 A Correct.
- 5 Q I guess almost a month later.
- 6 A Right.
- 7 Q So there's nothing tying this .22 caliber pistol to
- 8 this particular defendant.
- 9 A I have no idea. I wasn't investigating the case. I
- 10 recovered a pistol.
- 11 Q So you aren't testifying as to the ownership or
- 12 anything, right?
- 13 A Correct.
- 14 Q What were the weather conditions like?
- 15 A I know it was chilly. It wasn't raining if that's
- 16 what you're asking.
- 17 Q All right. So it wasn't raining or snowing or
- 18 anything like that.
- 19 A Right.
- 20 Q All right. Thank you, Officer. That's all I've got.
- 21 MR. MORIN: No further questions.
- 22 THE COURT: You may step down.
- 23 MR. MORIN: We'd ask this witness be excused.
- 24 THE COURT: He may be.
- 25 (Whereupon, the witness was excused.)

David Hogsed
Direct examination by Mr. Morin

1 MR. MORIN: At this time the state would call David
2 Hogsed.

3 DAVID HOGSED, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. MORIN

6 Q Officer Hogsed, will you state your name for the jury,
7 sir?

8 A David Hogsed.

9 Q And you work for the sheriff's department.

10 A I do. Night shift supervisor with the crime scene
11 unit.

12 Q How long have you been with the crime scene unit, sir?

13 A With the sheriff's office crime scene unit since 2005,
14 with the City of Spartanburg's crime scene unit, I started
15 in 1999.

16 Q Okay. Did you have the occasion to go to Blanchard
17 Road on January the 11th as part of your duties?

18 A Yes. I was called at home by Investigator Howard and
19 was informed of what, the incident type, and responded from
20 my residence to Blanchard Road.

21 Q And when you got to Blanchard Road what were the
22 initial things that you saw there?

23 A I came in from Blanchard Road from Carolina Country
24 Club in. As I approached the scene the end that I was on
25 had been cordoned off with crime scene tape. The far end

David Hogsed
Direct examination by Mr. Morin

1 had been cordoned off with crime scene tape. Deputy
2 Howard's vehicle was on the far end. Deputy Rhodes'
3 vehicle was on the end that I was on. And Deputy Howard
4 had already started photographing the crime scene and also
5 laying out numbered placards at items that he felt were
6 items of evidence.

7 Q Okay. Do you have a list with you of things that you
8 recovered?

9 A I do.

10 Q All right. I'm going to show you what's been marked
11 as State's Identifications No. 7 and ask if you can look at
12 that and check inside and tell me what that is.

13 A This is actually what we marked as Item No. 3, which
14 is a Snape butane lighter. Excuse me if I may put on a
15 pair of gloves.

16 (Pause.)

17 A And what I mean by Snape is actually the manufacturer
18 name.

19 Q Okay.

20 A Found in the roadway.

21 Q Did you mark it as a placard?

22 A We did.

23 Q Do you know which placard it was?

24 A It'd be Item No. 3.

25 Q Okay.

David Hogsed
Direct examination by Mr. Morin

1 MR. MORIN: Move State's No. 7 into evidence.

2 MR. SHEALY: No objection.

3 THE COURT: It's admitted.

4 (Snake butane lighter marked State's Exhibit No. 7.)

5 Q Now, you say this was a lighter.

6 A Yes.

7 Q Can you tell us? Because it didn't look like the kind
8 of lighter that I typically see at Wal-Mart.

9 A Well, this is a butane lighter. This is not like a
10 Bic cigarette lighter where you light it and you see the
11 yellowish-orangish flame. With a butane lighter you don't
12 even see the flame. What you do see is a bluish glow
13 color. And they're actually a little bit hotter than a Bic
14 cigarette lighter because they're using butane instead of
15 lighter fluid.

16 Q And now I'm going to show you State's Exhibit No. 8.

17 A Which is our -- our evidence item No. 2. And what we
18 do is under evidence envelopes you'll see an inventory
19 number, which is No. 2. That will correspond with the
20 numbered placard that was at the crime scene. They
21 correspond. And this is a small flashlight.

22 Q This was also found at the scene in the road?

23 A Yes. I approached from the Carolina Country Club end,
24 and I was walking up. On both sides of the road you see
25 where the snow and ice was disturbed, a red substance in

David Hogsed
Direct examination by Mr. Morin

1 several areas, which we believed to be blood. But as you
2 got closer up to where -- the far end from where I was
3 parked there was a cluster of items, about eight or nine
4 items, that was in sort of a cluster, on the left side of
5 the roadway walking from Carolina Country Club back towards
6 that cluster of items.

7 MR. MORIN: Your Honor, I'd ask that the witness be
8 allowed to step down so that he can show on his picture
9 what he's talking about.

10 THE COURT: He may.

11 (Whereupon, the witness left the stand.)

12 Q This is State's Exhibit No. 3. If you will, look at
13 it and tell them what it is and then --

14 MR. SHEALY: Your Honor, if I may move over there so I
15 can see.

16 THE WITNESS: Do you want me to move?

17 MR. SHEALY: Well, they're going to have to see.

18 A This photograph was actually taken -- and you'll have
19 to excuse me. I don't know what the street name is on the
20 other end. Carolina Country Club Road is down on this end.
21 This is actually my patrol vehicle, my truck that I use at
22 work.

23 So I'm walking this way just as you see Deputy Rhodes
24 doing. And this is the cluster of items that I'm referring
25 to. And as you see, you see all the numbered placards.

David Hogsted
Direct examination by Mr. Morin

1 That's what we place out for photography work, collection so
2 that we can then later on if need be in court be able to
3 determine what was there and what items that we collected.

4 As you see, there's a cluster of items here and then in
5 this area here. And then as you go out the number of
6 placards start to fan out as we're working. We actually
7 worked this crime scene from here back towards Carolina
8 Country Club Road, and the reason being from here back this
9 way we didn't really find anything of what we deemed to be
10 of evidentiary value. From here down we did.

11 And when I arrived Mr. Hayes had already been
12 transported to the hospital, but it was pointed out to me
13 where he was found prior to being transported. And it was
14 found closer to the Carolina Country Club side.

15 Q And, for instance, now, on here you've already
16 testified No. 3 --

17 A Is the butane lighter.

18 Q -- is the butane lighter. So it'd be No. 3 there. It
19 just isn't exactly what it is you're doing, is that
20 correct?

21 A Can I get my notes?

22 Q Yes, please.

23 A And Item No. 1 is sort of hard to see. Sometimes
24 that's the way the placard is laid. And numerous, numerous
25 photographs were taken of these. Item No. 1, the Faded

David Hogsed
Direct examination by Mr. Morin

1 Glory shoe; two is a small flashlight; three, butane
2 lighter; Item No. 4 -- that's going to be it right there.
3 You just can't see the number. It's four unfired .45
4 caliber cartridges and bullets.

5 Five is a black colored cable tie. Six in the front is
6 a J.B.C. stereo remote; and seven is a Samsung cell phone;
7 and eight -- of course when you start getting into eight and
8 so forth, is actually what we believe to be blood. We
9 swabbed it using a sterile cotton swab. And it was actually
10 tested later back at the office and it did come back as
11 positive, as a positive reaction for blood.

12 Sixteen in the photo is a plastic and opened McDonald's
13 like toy bag that comes out of a happy meal. And in most of
14 what you'll see here once you get away from this cluster
15 here is where we put down what we believed to be blood. And
16 then we went back and swabbed those as -- for blood.

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

18 Q Now, you testified that this small flashlight was No.
19 2, is that correct?

20 A That's correct.

21 MR. MORIN: Your Honor, I move this State's No. 8 into
22 evidence.

23 MR. SHEALY: No objection.

24 THE COURT: It's admitted.

25 (Small flashlight marked State's Exhibit No. 8.)

David Hogsed
Direct examination by Mr. Morin

1 Q This is State's Exhibit No. 9 if you you'll testify if
2 you recognize and know what that is.

3 A State's Exhibit No. 9 is our item of evidence No. 4,
4 which is four unfired .45 caliber bullets. Actually, you
5 can see it's actually made by two different companies or
6 two different brands. These are Winchesters and these are
7 PMC's.

8 Q And these were found just lying loose on the ground
9 together or --

10 A That's correct. Together sort of in a cluster.

11 Q Okay.

12 MR. MORIN: Move State's No. 9.

13 MR. SHEALY: No objection.

14 THE COURT: They're admitted.

15 (Four unfired .45 caliber bullets marked State's
16 Exhibit No. 9.)

17 Q This is -- I'm now showing you what's been marked for
18 identification as State's Exhibit No. 10 if you can tell me
19 about that item.

20 A Our evidence Item No. 1 is a Faded Glory slip-on type
21 shoe.

22 Q This was found in Blanchard Road?

23 A Yes, found in Blanchard Road.

24 MR. MORIN: Move State's No. 10 into evidence.

25 MR. SHEALY: No objection.

David Hogsed
Direct examination by Mr. Morin

1 THE COURT: It's admitted.

2 (Shoe marked State's Exhibit No. 10.)

3 Q Now, Officer Hogsed, when you went there and collected
4 these items were you looking -- did you look for any
5 firearms out there?

6 A Yes.

7 Q Tell us about how you did that.

8 A We had -- we had learned during the investigation
9 while we were working the crime scene investigators were
10 actually out speaking with people and so forth. And
11 actually it was determined once Mr. Hayes arrived at the
12 hospital that he'd actually been shot in the face, plus the
13 fact that we had four unfired .45 caliber bullets.

14 Once all of the photography work was done and these
15 items of evidence were collected we then started searching
16 the wooded area for any types of firearms that may be out
17 there.

18 Q All right. Now, the testimony has been that that day
19 the weather was not that good.

20 A No. It was extremely cold, icy, had snowed. So we
21 were -- Mother Nature was not our best friend that day.

22 Q I understand. But, now, tell me about the condition
23 of the snow.

24 A Well, in the wooded area the condition of the snow had
25 not been disturbed. I don't recall even seeing where any

David Hogsed
Direct examination by Mr. Morin

1 animals had crossed. You've all seen snow. You know that
2 in snow, especially when ice comes in and lays on top of
3 it, if you step on it you're going to leave an impression
4 in that snow.

5 when we found out that panned out that was one of the
6 things that we looked for, was impressions in the snow
7 within the woods. If a firearm had been dropped, thrown,
8 whatever it -- with the weight of that firearm it would --
9 it would have left an impression in the snow. We did not
10 see that.

11 Q Now, is that the only time you looked for the firearm
12 there on the scene?

13 A No. I actually went back the next day and panned out
14 further and then waited by myself and then waited until all
15 of the snow and ice had cleared and went back again.

16 Q And --

17 A Did not find any firearms on -- off Blanchard Road.
18 And I literally searched from Carolina Country Club Road
19 probably 75 or a hundred yards past where we found
20 everything.

21 Q Okay. Now, did you have the occasion to go to 295 and
22 look for a firearm?

23 A Yes, I did.

24 Q Now, when I say you went to look for a firearm, I'm
25 not asking you specifically what firearm. But you went to

David Hogsed
Cross-examination by Mr. Shealy

1 look for one, is that correct?

2 A Yes.

3 Q And do you recall about when that was?

4 A I actually went to 295 probably the next day as well
5 to look for that firearm.

6 Q well, did you find any firearm?

7 A No, I never found any firearms whatsoever in neither
8 location.

9 Q Okay. Did you see a .22 or a .45 out there by itself?

10 A No, I did not.

11 MR. MORIN: Could I have a moment?

12 (Pause.)

13 Q Please answer any questions Mr. Shealy may have.

14 CROSS-EXAMINATION

15 BY MR. SHEALY

16 Q Investigator Hogsed, that butane lighter -- you
17 testified it's different from most other kinds of lighters.
18 Does it -- is its flame normally higher as well?

19 A I -- I don't know. I don't know that much. I
20 don't -- I have a butane lighter, but I don't pay that much
21 attention to how high the flame goes.

22 Q Okay. You testified that it is hotter than just a
23 regular one.

24 A Yes.

25 Q You testified that there was a fair bit of blood it

David Hogsed
Cross-examination by Mr. Shealy

1 sounded like just from the testimony.

2 A Well, the numerous areas where -- where blood was
3 located, I mean, blood was not like pooled up in areas, but
4 it was in several different locations.

5 It was obvious from looking at the crime scene that Mr.
6 Hayes had stumbled from one side of the road to the other
7 and had fallen, because we had what we thought to be blood
8 on both sides of the road, as well as the middle of the
9 roadway.

10 Q Right. And you could tell that because there was
11 blood here and blood there and blood all over.

12 A Blood there, and the snow being disturbed, yes.

13 Q And there was still a lot of blood, I mean, where this
14 happened.

15 A You could say that.

16 Q All right. Did you on January the 13th have occasion
17 to execute a search warrant?

18 A Yes, on a red vehicle.

19 Q On a red Jeep Cherokee.

20 A I did.

21 Q Does that sound right? All right. Do you have any
22 idea as to why you would have been executing a search
23 warrant on that red Jeep Cherokee out of where this
24 allegedly happened?

25 A Yes. Allegedly, the incident started within the

David Hogsed
Cross-examination by Mr. Shealy

1 vehicle, and this was the vehicle.

2 Q Okay. So this was -- it's your understanding that
3 this was the crime scene where the shooting occurred.

4 A Yeah. The actual shooting, it's my understanding --
5 of course I worked the crime scene. It was my
6 understanding from reading the affidavit and search warrant
7 that the actual shooting occurred within this vehicle.

8 Q And how much blood did you find in that vehicle?

9 A There was a minute amount, a very small drop, of blood
10 on the passenger side, right-rear passenger side, entry and
11 door panel.

12 Q There was just a little bit of blood --

13 A Yes.

14 Q -- on the inside of this, of this Jeep.

15 A Yes.

16 Q Okay. Do you have any idea as to who this Jeep
17 Cherokee belonged to?

18 A No, I do not.

19 Q You don't know. Even after having read the affidavit
20 and search warrant and all of that?

21 A I read it, but I don't recall who it belonged to.

22 Q You've also testified that you went to 295, that
23 bridge, looking for -- were you looking for particular
24 firearms, or were you not looking for particular firearms?

25 A We -- we knew -- or let me rephrase that. We had .45

David Hogsed
Cross-examination by Mr. Shealy

1 caliber rounds, and from the investigations we -- we knew
2 that Mr. Hayes had been shot with a small caliber firearm.
3 So we were basically looking for any and all firearms. If
4 any firearms had been found by me or any member of the
5 Spartanburg County Sheriff's Office, I would say they would
6 have been collected and placed into evidence.

7 Q And from your investigation was Mr. Hayes known to
8 carry a .45 caliber pistol?

9 A I have no idea. I never --

10 Q You don't know.

11 A I never speak with any of the witnesses or -- or any
12 of the --

13 Q But he did have a fair bit of ammunition on him there.

14 A If he had them on him, I have no idea.

15 Q You don't know about that either, although you
16 testified that you collected four unfired .45 caliber
17 bullets, right?

18 A Those were off the ground on Blanchard Road.

19 Q Near the shoe.

20 A Yes, near the shoe and the cluster of --

21 Q And that was in the midst of all of the blood.

22 A There was blood in that area, that's correct.

23 Q Now, you testified that you went up and down. How --
24 how much of 295 did you search on?

25 A Probably from Canaan Church to South Avenue right

David Hogsed
Cross-examination by Mr. Shealy

1 around the bridge area.

2 Q So right -- just that bridge area?

3 A Yes.

4 Q Did you search the bridge? Did you search underneath
5 the bridge?

6 A It was more or less the embankment and underneath down
7 the embankments. Both sides are embankments.

8 Q Right. So you -- you didn't look so much at the
9 guardrail.

10 A No. I can't say that I did. I'm sure I walked past
11 it, but, I mean, I'm not going to sit here and say I
12 specifically looked in that area.

13 Q Right. All right. Do you have any idea how much snow
14 was actually on the ground or how long it was snowing for?

15 A I -- I don't recall.

16 Q You don't know that. Thank you. I wasn't sure that
17 you would. I wanted to ask the question.

18 MR. SHEALY: That's all that I have for Mr. Hogsed.

19 MR. MORIN: I don't have any further questions.

20 THE COURT: You may step down.

21 MR. MORIN: Thank you, Your Honor.

22 Your Honor, may I approach?

23 (Bench conference held of the record in the presence of
24 the jury but out of the hearing of the jury.)

25 MR. MORIN: Your Honor, can Officer Hogsed be excused?

Dr. John David Wren
Direct examination by Mr. Morin

1 THE COURT: He may be.

2 MR. MORIN: Thank you, sir.

3 (Whereupon, the witness was excused.)

4 THE COURT: We're going to take a short break. I'll
5 ask you to please go to your jury room. Don't talk about
6 the case. I'll bring you back as soon as the next witness
7 arrives.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: We'll be in recess for ten minutes.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Bring the jury, please.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. Mr. Morin.

16 MR. MORIN: Your Honor, the state calls David Wren.

17 DR. JOHN DAVID WREN, having
18 been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. MORIN

20 Q Good afternoon. Sir, can you state your name for the
21 jury, please?

22 A John David Wren.

23 Q And where do you work, Doctor, Mr. -- Mr. Wren -- Dr.
24 Wren?

25 A I'm a pathologist with Carolinas Medical Group. I'm

Dr. John David Wren
Direct examination by Mr. Morin

1 the -- I'm stationed at Spartanburg Regional Medical Center
2 where I'm the laboratory medical director and the
3 laboratory medical director at the Spartanburg Hospital for
4 Restorative Care as a pathologist.

5 Q And how long have you been a pathologist?

6 A Started my residency February the 1st, 1979. I
7 finished all of the requirements of seven years of training
8 in three years and ten months. I came to work in
9 Spartanburg on October the 18th, 1982.

10 Q During that time have you been qualified as an expert
11 in forensic pathologist?

12 A Yes, in multiple counties in the state.

13 MR. MORIN: Move Dr. Wren as an expert in forensic
14 pathology, Your Honor.

15 MR. SHEALY: No objection.

16 THE COURT: He is so qualified.

17 Q Dr. Wren, did you have an occasion to perform an
18 autopsy on a Richard Allen Hayes?

19 A Yes, I did an autopsy on an individual identified as
20 Richard Allen Hayes in the Spartanburg Regional Medical
21 Center Autopsy Room on January the 19th, 2011, beginning
22 that autopsy at 5:05 p.m.

23 Q And you -- when you began that are you aware of the
24 date of death in this case?

25 A Date of death?

Dr. John David Wren
Direct examination by Mr. Morin

1 Q Yes, sir, if you know.

2 A Well, I assumed he had been pronounced brain dead and
3 expired either that night or the -- or during the day.

4 Q Thank you. Thank you, sir.

5 Tell me about your findings as to his cause of death of
6 Mr. Hayes.

7 A Well, he had -- he'd been in the hospital, and I don't
8 remember the exact length of time, but he'd been in the
9 hospital and eventually succumbed to complications from a
10 gunshot wound to the inferior orbit of the eye that passed
11 -- it had started -- essentially completely healed, but the
12 bullet passed through the bone and the inferior orbit of
13 the left eye.

14 It went through the maxillary sinus, which is one of
15 the sinuses. That are five different sinuses in the skull.
16 It went through the maxillary sinus, and it entered into the
17 cranial vault where the brain is in the posterior aspect of
18 the sinus where there was a bullet wound track through there
19 that communicated with a healing defect in the skin. It
20 caused hemorrhage and destruction of the tissue of the left
21 temporal lobe of the brain, attempted exit more posteriorly
22 in the skull.

23 There were fragments of lead scattered throughout the
24 tracks that were visible on CAT scan. A portion of a bullet
25 was retrieved from the posterior middle sinus. There are

Dr. John David Wren
Direct examination by Mr. Morin

1 three -- I mean fossa. Fossa means depression. There are
2 three of them on each side of the brain. Of course the
3 middle one is in the middle.

4 And the -- that trauma caused him to have multiple
5 medical problems eventually beside the brain injury and the
6 -- the complications from the brain injury and that -- he
7 had what's called adult respiratory distress syndrome.

8 Oftentimes when people have severe trauma, whether it
9 be abdominal trauma or chest trauma or head trauma, they can
10 develop what's called adult respiratory distress syndrome
11 with accompanying pneumonia. And eventually he died from
12 that essentially, but it was a result of the gunshot wound
13 to the head and the debilitations from that.

14 Q Doctor, this has been marked as State's Exhibit No. 4
15 for Identification. It's opened. If you could, look at
16 that.

17 A Still sealed. It's still sealed.

18 Q Yes, sir.

19 A This is a blood tube that has a label with Richard
20 Hayes, and there's demographic data.

21 It's also labeled FA11017, which stands for forensic
22 autopsy No. 17. It's dated 1/19/11. Signed by me with
23 additional information -- head.

24 And it consists of -- of a fragment of a small caliber
25 lead bullet that's got a few visible lands and grooves. And

Dr. John David Wren
Direct examination by Mr. Morin

1 I can see some scratch marks on the base. But I don't have
2 a magnifying glass. I usually label those. If it's only
3 one I label them with the last number of the autopsy number,
4 in this case seven. And I put a Delta on it indicating that
5 -- it's easier to put a Delta, which is a Greek letter,
6 rather than a "D".

7 And it measured .22 inches in diameter at the base.
8 And overall dimensions were 28 hundredths by 28 hundredths
9 by 32 hundredths, inches in overall dimensions. It's pretty
10 distorted. But, nevertheless, it's the bullet I removed.

11 Q Thank you.

12 MR. MORIN: Your Honor, at this time we'd move State's
13 Exhibit No. 4 into evidence.

14 MR. SHEALY: No objection.

15 THE COURT: It's admitted.

16 (Fired bullet marked State's Exhibit No. 4.)

17 Q Doctor, I need to ask you a few questions about the
18 injury in this case.

19 There's been testimony that the victim, Mr. Hayes, in
20 this case exited the vehicle and apparently evidence would
21 indicate that he staggered for some 50 or 60 yards before
22 falling.

23 Now, with this kind of head trauma can you tell us if
24 that's reasonable or within a reasonably medical --
25 reasonable degree of medical certainty that that could or

Dr. John David Wren
Direct examination by Mr. Morin

1 could not have happened?

2 A That could happen simply because this bullet passed
3 through the temporal lobe where there's ancillary functions
4 being carried on but none of them are immediately life
5 threatening.

6 The major problem one would have would be eventually
7 from the bleeding and the trauma taking place, but although
8 functions of the body that have to do with movement are in
9 the parietal lobe of the brain, which is above the temporal
10 lobe, and it didn't hit anything there. So there would be
11 no interference with any of the voluntary movements of the
12 body.

13 On top of that the nerve fibers that lead to and from
14 the body taking nerve impulses to -- for the voluntary
15 movements, as well as the nerve impulses from sensory,
16 passed through what's called the internal capsule that's
17 also away from the temporal lobe.

18 So it's essentially -- he'd only gotten severe trauma
19 from a small caliber bullet, and that usually does not
20 immediately cause loss of consciousness. It can, but it
21 usually -- but it often doesn't. So it's entirely possible
22 that he could have done that.

23 Q Okay. And a person with this type of injury if they
24 receive immediate or fairly immediate treatment, would it
25 necessarily result in death, or can you say?

Dr. John David Wren
Direct examination by Mr. Morin

1 A It's really -- it's really hard to say because one can
2 only use their common sense knowing that there are some
3 people that live to be -- I noticed today in the paper --
4 110 years old. There are others that die at 25. So we're
5 not all the same type of organism. Some people respond to
6 trauma a lot better than others.

7 It's possible that he could have lived. It's possible
8 he could have had very little problems from that other than
9 something like Ms. Giffords had from getting shot in the
10 head. She had much more severe trauma than he did and
11 survived, it's our understanding.

12 So if he'd gotten immediate attention and they could
13 have relieved the swelling in the brain and hadn't had the
14 frostbite and other trauma from being in the cold, then he
15 probably would have survived.

16 Q Now, and also I'm asking -- there's been a question
17 regarding stippling in this case. And can you tell the
18 jury what stippling would be for the --

19 A Stippling is a term used that looks like little dots
20 on the skin if a bullet is -- if the barrel of the gun is
21 within a certain distance. We describe gunshot wounds as
22 distant, intermediate range and intermediate to close
23 range, and then contact.

24 If one is shot with a gun as the burning powder and the
25 soot comes out of the barrel following the bullet, if the

Dr. John David Wren
Direct examination by Mr. Morin

1 barrel is close enough to the body or if it's up against the
2 tissues and it's tight, meaning that there's very little
3 room for the -- those tissues to -- for that gas to come
4 out, then it goes into the tissues and it tears the skin
5 away and leaves a gapping wound.

6 If it's loose contact, meaning that you only see the
7 imprint of the barrel and the -- and the burning powder
8 within the wound, if there's enough expressed, then it'll
9 leave a little round hole.

10 As one moves back from the body those particles begin
11 to disburse just like a shotgun blast does with pellets, and
12 it expands as it goes out. And eventually one reaches a
13 point where it doesn't reach the body.

14 Now, those burning powder particles will cause
15 tattooing or stippling, and soot will cause soot deposition.
16 So we look for that if there's an unobstructed path from the
17 skin.

18 And then anything past that, which in most handguns
19 it's 8 to 10 inches from there on -- on further one sees no
20 indication of how far away. So those are all called
21 distant. And it's as far as the bullet will travel can be
22 any of those distances.

23 Q Just to come back around to where we were, the cause
24 of death of Mr. Hayes is --

25 A I attributed the cause of death to cardiorespiratory

Dr. John David Wren
Cross-examination by Mr. Shealy

1 insufficiency secondary to pneumonia/ARDS, which is adult
2 respiratory distress syndromes and traumatic brain injury
3 secondary to a gunshot wound to the head.

4 Q Please answer any questions Mr. Shealy may have.

5 MR. SHEALY: Thank you.

6 CROSS-EXAMINATION

7 BY MR. SHEALY

8 Q Dr. Wren, just a few questions.

9 So you characterize this as a distant gunshot wound,
10 because I didn't see anything about stippling in your
11 report.

12 A I didn't -- I don't recall anything about stippling,
13 but obviously I think he survived -- I don't recall
14 exactly -- but at least -- I think it was at least a week.

15 It would have been gone anyway more than likely since
16 his wound had almost completely healed. And actually one
17 could not see the -- the hole where the bullet went in. It
18 had re-epithelialized and started to heal itself except when
19 we reflect the skin back and put a probe through the -- the
20 hole in the skull. Then one could see the tip of that probe
21 in the middle of that abraded area that was
22 re-epithelializing, meaning the skin was growing back over
23 it.

24 Q Okay. And you've also testified that the functions of
25 movement because of where they are in the brain --

Dr. John David Wren
Cross-examination by Mr. Shealy

1 A Pardon?

2 Q The functions of movement -- or movement -- that
3 wasn't affected by this gunshot.

4 A No.

5 Q Correct?

6 A Right.

7 Q And that's -- is that both voluntary and involuntary,
8 or just voluntary?

9 A Both.

10 Q Both. And you testified that this particular bullet
11 apparently shed some fragments.

12 A Yes.

13 Q Okay. And that it attempted to exit.

14 A When it passed through the bone, it passed through two
15 pieces of bone, one in the front of the sinus itself,
16 right, and the bone is pretty thick around the orbit. It
17 passed through there and started fragmenting, coming apart.
18 And it left scattered particles that one can see on the CAT
19 scan.

20 Now, I remember that because small caliber bullets can
21 -- for some reason they bounce around a lot in the head or
22 in tissues. So the smaller the caliber, the more
23 information we need to try to find that thing.

24 So before I did the autopsy I went down to the
25 radiology and reviewed the CAT scans that had been done on

Dr. John David Wren
Cross-examination by Mr. Shealy

1 that. And one could see particles, little tiny lead
2 particles, that were too small to recover.

3 In fact, this -- this piece is only about that size, 28
4 hundredths or a third of an inch in maximum, a little over a
5 quarter of an inch in maximum diameter. And when it's in
6 tissue, and particularly in bone, it's extremely difficult
7 to find.

8 So as it passed through the first one it started
9 fragmenting. As it passed through the back part of that
10 sinus into the cranial vault it fragmented a little bit
11 more. And then as it hit the back part of that fossa --
12 it's called -- it distorted it even more. So I had to find
13 out exactly where it was to try to recover it.

14 And anybody that's ever been in an autopsy has known
15 I've had terrible problems finding some that's in bone and
16 so forth. So I did go, and it was fragmented a good bit.
17 But it is intact at the base.

18 Q Thank you, Dr. Wren.

19 Now, as for questions Mr. Morin asked you about whether
20 with immediate attention you thought he would have survived
21 or not, and you started out by pointing out it was difficult
22 to say. And then you went on to say that probably would
23 have survived.

24 Now, is it -- which one is it? Is it -- would he have?
25 Do you think that he would have survived otherwise had he

Jason Bryant
Direct examination by Mr. Morin

1 gotten immediate attention?

2 A I said it was more likely he would have.

3 Q More likely. So immediate attention would have made
4 the likelihood of survival better.

5 A Yeah. That's pretty --

6 Q Okay. Right. And that's what I thought, but I just
7 wanted to make sure I understood what you were saying.

8 Thank you, Doctor.

9 MR. MORIN: I have no further questions.

10 THE COURT: You may step down.

11 MR. MORIN: I ask that Dr. Wren be excused.

12 THE COURT: He may be.

13 (Whereupon, the witness was excused.)

14 MR. MORIN: The state would call Jason Bryant.

15 JASON BRYANT, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. MORIN

18 Q Sir, would you state your name for the jury, please?

19 A Yes. I'm Jason Bryant.

20 Q And where do you work, sir?

21 A Spartanburg County Sheriff's Office.

22 Q How long have you been there?

23 A Since 1996.

24 Q And what are your duties there now?

25 A I'm a violent crimes investigator for the sheriff's

Jason Bryant
Direct examination by Mr. Morin

1 office.

2 Q How long --

3 THE COURT: Just a minute.

4 Mr. Bryant, let me remind you that microphone that
5 you've got behind you is the one that we need for you to
6 use.

7 THE WITNESS: Excuse me.

8 Q How long have you been on the violent crimes?

9 A Since 2004.

10 Q Were you working on January the 11th of 2011?

11 A I was.

12 Q Did you have occasion to go to Bryant Road --
13 Blanchard Road?

14 A Blanchard Road, yes, sir.

15 Q And when you got out there, can you tell me what the
16 weather conditions were?

17 A Snowy and icy.

18 Q Okay. And while you were out there did you collect
19 any evidence yourself?

20 A If I can refer to my notes, please, for just one
21 second.

22 (Pause.)

23 A Yes, sir. I collected a cell phone.

24 Q All right. I'm going to show you what's been marked
25 as State's Exhibit No. 11 and see if you can tell me what

Jason Bryant
Direct examination by Mr. Morin

1 this is.

2 A The cell phone that I recovered.

3 Q All right. Now, you took this item from the scene?

4 A That's correct.

5 Q On Blanchard Road.

6 A That's correct.

7 Q Can you tell us why you took that item but all the
8 other items were done by ID?

9 A We still hadn't identified the victim yet.

10 Q All right. And what did you -- how did you -- or,
11 first of all, did you identify the victim with the phone?

12 A With the information that was provided in the phone.

13 Q All right. Tell us exactly what you did there.

14 A Basically, I reviewed the information in the phone
15 such as contacts and everything such as that, and then
16 through a records system.

17 Q All right. And then through that you were able to
18 determine who the victim was.

19 A The victim -- through the victim's phone, yes, sir,
20 correct.

21 Q Richard Hayes.

22 A Correct.

23 MR. MORIN: Your Honor, I move State's Exhibit No. 11
24 into evidence.

25 MR. SHEALY: Your Honor, I'm going to object. I don't

Jason Bryant
Direct examination by Mr. Morin

1 really understand how he knows that.

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

4 Q Officer Bryant, let me back up for a second on the
5 phone.

6 You get the phone and turn it on, is that right?

7 A Correct.

8 Q And from there you ascertain the number.

9 A Correct. The individual's phone numbers and contact
10 information.

11 Q All right. And can you take us through how you got
12 from that information that was on there to Mr. Hayes? What
13 did you do?

14 A Well, once the phone was powered on there was certain
15 information inside, the contact information, such as -- and
16 without powering it on I can't exactly tell you. A lot of
17 times it'll have mine-info. It's hard. It goes on a cell
18 phone that'll give the cell phone number or anything such
19 as that. And you can review certain call histories or
20 anything such as that to ascertain information in regards
21 to the identity of an individual.

22 Q All right. And that is the phone that you recovered
23 from there in -- on the road.

24 A That's correct.

25 MR. MORIN: And that's the one that we're moving to

Jason Bryant
Direct examination by Mr. Morin

1 have in evidence.

2 MR. SHEALY: No objection.

3 THE COURT: It's admitted.

4 (Cell phone marked State's Exhibit No. 11.)

5 Q All right. Now, you were out there that day that Mr.
6 Hayes was taken from Blanchard Road.

7 A Correct.

8 Q And obviously you collected that phone. While you
9 were there on the scene did you do anything else on
10 Blanchard Road?

11 A Sure. We did a survey of that scene for various
12 evidentiary items and anything such as that.

13 Q All right. Did you look for anything specific, or
14 were you just in general looking?

15 A Well, in general looking for any and every thing that
16 was left behind or anything such as that pertaining to the
17 incident.

18 Q Okay. And when you did that did you -- where did you
19 walk? I mean, the photographs we have, the road was icy
20 and sort of narrow. Then there's a lot of snow, and
21 there's trees. What did you do specifically as far as
22 looking around out there?

23 A We walked up and down the roads searching everything
24 that we possibly could.

25 Q Okay. Did you go to any other locations to look for

Jason Bryant
Cross-examination by Mr. Shealy

1 any evidence?

2 A I know that dog teams and everything such as that were
3 sent to I believe around the 295 area.

4 Q But did you go there?

5 A No, sir, not to the 295 area.

6 Q Okay. So Blanchard Road is where you were.

7 A Correct.

8 Q You didn't find anything that hasn't -- did you find a
9 firearm anywhere out there?

10 A No, sir, not at all.

11 Q Please answer any questions Mr. Shealy has of you.

12 CROSS-EXAMINATION

13 BY MR. SHEALY

14 Q Investigator Bryant, you testified that you had cause
15 to recover --

16 A I'm sorry, sir. I didn't hear you.

17 Q You had cause to recover that phone, right?

18 A Absolutely.

19 Q All right. And in that phone it just came up with the
20 phone number, you think?

21 A No, sir. There's all kind of information that you can
22 derive from text messages or anything such as that,
23 information that people had sent to or anything such as
24 that.

25 Q All right. And later on did you have -- are any part

Jason Bryant
Cross-examination by Mr. Shealy

1 with Investigator Foster, or do y'all work together or --

2 A We work in the same division, that's correct.

3 Q All right. And did the two of you have occasion to
4 interview -- well, were y'all at the police station on
5 January the 12th, 2011?

6 A Was I at the sheriff's office on the 12th?

7 Q At the sheriff's office, yes, sir.

8 A Sure.

9 Q You were. Okay. And did you have occasion to
10 interview a Danny Crisp that day?

11 A Yes, I did.

12 Q You did. Okay. I'm not asking you what he told you,
13 because he testified to that. Okay. But you did interview
14 him, correct?

15 A Correct.

16 Q In fact, you interviewed him twice, didn't you?

17 A Let me refer to my notes just one second.

18 (Pause.)

19 A I believe we did, that's correct.

20 Q Okay. So you talked to him twice.

21 A Uh-huh.

22 Q Once without any recording equipment, correct?

23 A I don't -- I don't have any of the statements or
24 anything in front of me. I don't recall how he --

25 Q You don't know if it was -- all right.

Jason Bryant
Cross-examination by Mr. Shealy

1 A Without seeing the statements or anything such as
2 that, I don't want to testify to anything that I can't
3 recall it.

4 Q Sure. Do you have your writeup?

5 A I do, but it does not state how he provided the first
6 voluntary statement or during the course of the interview.
7 I know he provided an audio statement of the second
8 interview, but I do not recall in regards to the first.

9 Q All right. So as to the second interview then y'all
10 -- y'all recorded that?

11 A Yes, sir.

12 Q Y'all made an audio recording of that.

13 A Yes, sir.

14 Q Now, why did you do that?

15 A That's how he felt comfortable and wanted to do it.

16 Q Okay. So if y'all want to, y'all can record
17 statements.

18 A Basically, I leave it up to the individual that's
19 providing a statement. I offer a lot of times to, sir,
20 there's a couple of different ways we can do this. You can
21 write your own statement or we can audio-tape it as far as
22 that goes. It's whatever they feel comfortable doing and
23 how they want to do it.

24 Q Okay. But you do have that technology.

25 A Sure.

Jason Bryant
Redirect examination by Mr. Morin

1 Q All right. And if you want it, it's there.

2 A If they want it, it's there.

3 Q Right. Okay. If they want it, it's there.

4 A Correct.

5 Q But it's in the building.

6 A Correct.

7 Q And y'all have plenty. There's not a shortage of tape
8 recorders there, is there?

9 A No.

10 Q No. Now, if you want to can you video-record a
11 statement?

12 A I don't have a video recorder in our interview room or
13 anything such as that. But I'm sure if they felt
14 comfortable doing that and wanted to do that we'd make
15 arrangements and get that equipment there.

16 Q Sure. Because y'all are the sheriff's office. Y'all
17 can get a camera if you need it presumably.

18 A But it hasn't got that bad yet.

19 Q All right. Thank you, Officer Bryant.

20 REDIRECT EXAMINATION

21 BY MR. MORIN

22 Q Just so I'm clear, Officer Bryant. The manner in
23 which to record a statement of a suspect when you're doing
24 it is you leave it up to the defendant to decide how he
25 wants to be recorded.

Jason Bryant
Redirect examination by Mr. Morin

1 A It's however he feels comfortable giving his
2 statement.

3 Q You said you've interviewed a lot of defendants.

4 A Absolutely.

5 Q Have you interviewed defendants before and they
6 basically say I don't want to write anything down because
7 it'll make it official?

8 A Sure.

9 Q Even though they're telling you what happened, what
10 you're saying is if it's not recorded it didn't happen.

11 A Absolutely.

12 Q But yet, once again, your position as an investigator
13 is that you give the defendant the option.

14 A However they feel comfortable in providing that
15 information.

16 Q Right. Thank you, sir.

17 MR. SHEALY: I have nothing further.

18 THE COURT: You may step down.

19 MR. MORIN: I ask that he be excused, Your Honor.

20 THE COURT: He may be.

21 (Whereupon, the witness was excused.)

22 MR. MORIN: Approach just a moment, Your Honor.

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

25 MR. MORIN: The state would call James Green.

James Green
Direct examination by Mr. Morin

1 JAMES GREEN, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. MORIN

4 Q Sir, will you state your name for the record, please?

5 A James Green, G-R-E-E-N.

6 Q Where do you work, sir?

7 A I'm employed by the South Carolina Law Enforcement
8 Division, commonly referred to as SLED.

9 Q And what are your duties there at SLED?

10 A I'm a forensic scientist in the firearms department
11 for the forensic services laboratory.

12 Q And how long have you been employed there?

13 A Approximately six and a half years.

14 Q Can you tell us a little bit about your educational
15 background that led you to that?

16 A In 1996 I received a bachelor of arts degree from
17 Charleston Southern University. In 2001 I received a
18 master's of science in criminal justice from Charleston
19 Southern University.

20 And I've also completed a SLED firearms and toolmarks
21 course of instruction, which is approximately a 3-and-a-half
22 year -- 3-year roughly -- course of instruction studying
23 under court-qualified firearms examiners by watching them do
24 their case work, working cases and doing microscopic
25 comparisons.

James Green
Direct examination by Mr. Morin

1 Q And you've been qualified as an expert in making these
2 comparisons and firearms and firearm -- for the lack of a
3 layman's term -- bullets.

4 A Yes, sir, I have.

5 MR. MORIN: We'd offer Officer Green as an expert in
6 firearms examination.

7 MR. SHEALY: No objection.

8 THE COURT: He is so qualified.

9 Q Officer Green, I'm going to show you what's been
10 marked as State's Identification -- or has been entered as
11 State's Exhibit 4 and ask you if you can tell me about
12 what's the item in that envelope.

13 A This is a fired bullet which is in a heat-sealed
14 zip-lock bag with a SLED laboratory number of L-11966, and
15 that's Item 2, personal item.

16 Q Did you examine that bullet?

17 A Yes, sir, I did.

18 Q Can you tell us when you examined it?

19 A It would have been in February of 2011 right around
20 the time I sealed it, which is February 15th, 2011.

21 Q And when you say you examined this bullet, can you
22 tell us the process you went through?

23 A Yes, sir. The first thing I do when I get any case is
24 I take a photograph of the evidence that's received, the
25 packaging, the conditions as it's received. I notate that

James Green
Direct examination by Mr. Morin

1 on my -- on the firearms work sheets.

2 we'll then weigh the bullet. I measure the bullet and
3 try to determine if we can determine an approximate caliber
4 of the projectile.

5 And then we'll look at it to see the rifling on it, if
6 there's any. And rifling is lands and grooves. It's
7 basically raised and depressed areas inside of a barrel of a
8 rifled firearm and part -- excuse me -- imparts a spin on
9 projectile as it goes down the barrel.

10 And basically that's like when you watch football you
11 see a quarterback throw a spiral. It's nice and tight, and
12 it goes where it wants to. Doesn't go all over the place.
13 That's the same affect rifling has on a bullet. And it
14 keeps the bullet traveling in a stable trajectory as it goes
15 down towards its intended target.

16 As the bullet passes through the rifling tiny
17 imperfections, microscopic scratches -- we call them
18 striations -- are imparted on the surface of the bullet that
19 touches the barrel. Those striations are placed in the
20 barrel as part of the manufacturing process.

21 The manufacturers do not intend for them to be there.
22 They're just a result of the raffling or transforming or
23 removal of metal which lets us differentiate a bullet fired
24 from gun A versus a bullet fired from gun B based on those
25 tiny microscopic striations.

James Green
Direct examination by Mr. Morin

1 Q Now, in this particular instance were you able to find
2 those indicators on this bullet?

3 A I was able to determine the -- what we call the
4 general rifling characteristics, the number of lands and
5 grooves and the direction of twist. However, there's a
6 bunch of damage on the bullet. So I said it may or may not
7 be suitable for identification, meaning I may be able -- if
8 you gave me the gun and said this is the gun, I might be
9 able to do something with it, or I may just be able to say
10 it's inconclusive.

11 We have four conclusions in the firearms department.
12 The first one is positive the -- this bullet was fired by
13 this gun.

14 The second would be negative, this bullet was not fired
15 by the gun.

16 Then we have an inconclusive, which is kind of a gray
17 area between the two. There's enough markings on the bullet
18 possibly, just the number of lands and grooves and the width
19 of those rifling impressions, for us to say it may have been
20 the gun but there's not enough for us to say it was the gun.

21 Or conversely, there's enough to say, yeah, it could
22 have been but we can't tell. Inconclusive really. I don't
23 know.

24 And then there's an unsuitable for identification,
25 which means it's just a little tiny piece. There's no

James Green
Direct examination by Mr. Morin

1 markings, or the markings are so few and such poor quality
2 that they would not be able to be used for identification.

3 Q All right. Now, on this one do -- well, let me ask
4 you this. Let me show you what's been marked as State's
5 Exhibit No. 6.

6 A State's Exhibit 6 is an Arminius Model HW 3 .22 long
7 rifle caliber revolver that I examined. It bears my lab
8 number, SLED lab number, the item number, and my initials
9 on it. And this was submitted in a separate case, which
10 was cross-referenced or asked to be compared to the bullet
11 in this case.

12 Q And did you do that?

13 A Yes, sir.

14 Q And you gave the jury the range that you could be in.
15 Where did this bullet and firearm fall?

16 A It fell in the inconclusive. There are some
17 similarities in the number of lands and grooves and the
18 direction of twist, but basically it fell apart after that.
19 There wasn't enough quantity or quality of markings to make
20 a positive or negative conclusion.

21 Q But the firearm was a .22 caliber.

22 A Yes, sir.

23 Q And can you say whether or not the bullet is .22
24 caliber?

25 A The bullet is a nominal .22 Rimfire caliber. Nominal

James Green
Cross-examination by Mr. Shealy

1 just means approximately.

2 Q Please answer any questions Mr. Shealy may have.

3 CROSS-EXAMINATION

4 BY MR. SHEALY

5 Q Agent Green, you testified that this bullet is a
6 nominal .22 Rimfire caliber.

7 A Yes, sir.

8 Q All right. How many different kinds of .22 Rimfire
9 caliber bullets are there?

10 A There are three. There's .22 short, .22 long and .22
11 long-rifle.

12 Q Okay. And you've got a number on your report of
13 various manufacturers of .22 caliber firearms. About how
14 many of those are there?

15 A Hang on a second for me.

16 (Pause.)

17 A There are I think about 30.

18 Q Okay. So there are 30 manufacturers of .22 caliber
19 firearms that you -- at least that you've listed.

20 A Yes, sir.

21 Q In fact, there may be even more.

22 A Right. I should have explained this earlier. I'm
23 sorry. When -- a case where you just have one bullet and
24 no gun, we do what's called a G.R.C. exam, which is a
25 general rifling characteristics exam. It's where we get

James Green
Cross-examination by Mr. Shealy

1 the number of lands and grooves and direction of twist.

2 Then we go through and we measure the land impressions and
3 the groove impressions.

4 We put those into a data base provided to us by the
5 F.B.I., the federal bureau of investigation. Then we'll put
6 in the measurements and all the criteria, and it'll give us
7 a list of possible firearms in a specific caliber or
8 calibers that could have fired that particular --

9 Q Okay. So these -- this is the group that the computer
10 spat out.

11 A Yes, sir. When I put in the measurements for this
12 particular bullet, that's the list it came up with.

13 Q Okay. And then you took this particular bullet and
14 compared it to, I suppose, a bullet fired from that
15 particular pistol.

16 A Yes. When we get firearms we examine them and make
17 sure they're safe to handle. I for one don't want to shoot
18 a gun that's going to blow up in my hand. So we'll test it
19 for safety, and then we'll shoot it into a water tank, a
20 2-story water tank we have in the SLED laboratory. Shoot
21 it down into the water. The water does not add to or take
22 away any markings on the bullets.

23 And then we'll compare those test specimens from the
24 firearm that we fire ourselves. We know since we got it.
25 We look at those microscopically and then compare them

James Green
Cross-examination by Mr. Shealy

- 1 against any fired specimens that are submitted.
- 2 Q Okay. And then ultimately you -- your decision is
- 3 that this was an inconclusive match.
- 4 A Right.
- 5 Q But you don't -- it wasn't a match I guess if it was
- 6 inclusive.
- 7 A Correct. It could have been fired by that firearm.
- 8 Q Right.
- 9 A But it could not have been.
- 10 Q Okay. And you say that with similar rifling
- 11 specifications it could have been any -- any firearm with
- 12 similar rifling.
- 13 A Yes, sir.
- 14 Q And about how many different kinds of pistols do you
- 15 think that would count? Would that encompass all of those
- 16 30?
- 17 A Yes, sir. All of the -- the firearms on the G.R.C.
- 18 list I provided fall into the category of those same
- 19 dimensions.
- 20 Q That general rifling.
- 21 A Specifications, yes, sir.
- 22 Q And .22 caliber pistols or rifles are a fairly common
- 23 item, correct?
- 24 A There are quite a few of them made, yes, sir.
- 25 Q And there are a lot of them out there.

James Green
Redirect examination by Mr. Morin

1 A Yes, sir.

2 Q Can you tell whether this actually came from a pistol
3 or a rifle?

4 A No, sir. Without having a firearm itself and matching
5 a bullet back to it I can't tell if it came from a revolver
6 or a pistol or firearm or rifle.

7 Q All right. So you just -- you can't testify as to
8 whether this is the right pistol or not, right?

9 A Correct.

10 Q In fact, you can't even testify as to whether that
11 bullet was fired from a pistol.

12 A Correct.

13 MR. SHEALY: That's all that I have for this witness.
14 Thank you.

15 REDIRECT EXAMINATION

16 BY MR. MORIN

17 Q Mr. Shealy asked you about the list of various
18 manufacturers who could have manufactured the firearm. You
19 testified that you did it into a database and it came back
20 with at least 25 manufacturers, is that correct?

21 A Thirty, yes, sir.

22 Q Thirty. I'm sorry. Is this --

23 A Arminius?

24 Q Yes. Is that one of the ones?

25 A Yes, sir. Arminius was on the list.

1 MR. MORIN: That's all the questions I have.

2 MR. SHEALY: I have nothing further for this witness.

3 THE COURT: You may step down.

4 MR. MORIN: I ask that this witness be excused, Your
5 Honor.

6 THE COURT: He may be.

7 (Whereupon, the witness was excused.)

8 MR. MORIN: Your Honor, at this time the state's going
9 to rest.

10 THE COURT: All right. Ladies and gentlemen, that is
11 all of the testimony or evidence to be offered by the
12 state, at least in their case in chief.

13 Before we can go further I've got a couple of legal
14 matters I have to address with the lawyers. It should take
15 only a few moments. I'll bring you back to continue.

16 So please go to your jury room, but don't talk about
17 the case.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Any matters to address before we go
21 further?

22 MR. SHEALY: Yes, Your Honor. I have a motion for a
23 directed verdict.

24 THE COURT: Okay.

25 MR. SHEALY: Your Honor, it would be our position that

1 the state has failed to produce any evidence disproving
2 self-defense. In fact, the only cause of evidence that
3 they've produced go to self-defense.

4 Your Honor, the only -- it's uncontroverted, Judge,
5 that my client and Danny Crisp and Richard Hayes were in
6 the back -- or were in a vehicle. It's uncontroverted that
7 Richard Hayes pulled a pistol. It's uncontroverted that my
8 client pulled his gun and fired and shot Mr. Hayes. It's
9 uncontroverted that Mr. Hayes was making threats.

10 There's simply no evidence from which you can find --
11 that a reasonable jury could conclude that my client didn't
12 act in self-defense, Judge.

13 Your Honor, they haven't proven even that they found
14 the proper murder weapon either. Judge, so the fact that
15 they didn't find a .45 caliber pistol doesn't disprove
16 self-defense. If that's all that they have, then, Judge,
17 then I'd submit to you that they've failed to carry their
18 burden.

19 Your Honor, we further argue, and we renew our
20 objections, that he's actually immune from prosecution
21 because, again, Judge, he was in a place he had a right to
22 be, and he was acting lawfully, acting in self-defense.

23 Your Honor, the state has failed to prove their case,
24 failed to carry their burden on both of those grounds.

25 Your Honor, we reasonably believe those necessary to

1 prevent bodily injury.

2 Again, that's the only testimony we have. We don't
3 have any testimony that controverts what my client told the
4 police officers. There's nothing there. They haven't
5 disproved it, and they have to disprove it.

6 They have to present some kind of evidence, and they
7 haven't. All they've presented are some police officers
8 who did some investigation, who collected a whole bunch of
9 stuff. And I think it's weird they didn't find a .45
10 caliber weapon.

11 But that's it. And that's not sufficient. That's not
12 sufficient to carry their burden to disprove self-defense.
13 That's not sufficient to carry their burden or to suggest
14 that my client was not acting out of reasonable fear for
15 his life, Judge.

16 So we would -- we also argue that the state has failed
17 to prove malice in this particular case. I mean,
18 obviously, if you completely discount what my client has
19 said, then you don't even know how Mr. Hayes died. You
20 don't know who shot Mr. Hayes, because he's the only one
21 who's testified or who has been through Sergeant Wood --
22 he's the only one who's given any direct evidence.

23 So, Judge, we would ask for a directed verdict on
24 those three grounds, as well as my prior motions and
25 objections. Thank you.

1 THE COURT: Mr. Morin.

2 MR. MORIN: Your Honor, the testimony in this case has
3 -- the defendant admitted that he shot the defendant. And
4 he says that the defendant had a weapon, and he said that
5 he knew prior that he had a .45. And there is evidence
6 that the defendant had a clip and some bullets. We don't
7 deny it.

8 However, the defense would be that because a person
9 admits shooting someone and claims that there's a gun and
10 claims -- this is part of the statement -- that the alleged
11 firearm is on the possession of the victim, and that if
12 it's not on the victim I'm going to look pretty stupid
13 arguing self-defense.

14 And law enforcement go to where he directs to look for
15 the gun that he says exists, and it's not there, yet the
16 other items are there. And there's no evidence that
17 anybody came and took it. They secured the scene.

18 The defense's position would be that any time someone
19 admits shooting someone else with no other witness that
20 they can claim that there was a firearm that's now gone or
21 disposed of.

22 I understand that I have the burden of disproving. I
23 believe it's a jury question as to the facts that we
24 presented as to whether or not the defendant is entitled to
25 be found not guilty by self-defense.

1 I think that's the main issue in the case, and that is
2 the defendant says in his statement, "I shot him because I
3 saw a flash of chrome like a gun. The gun is with the
4 victim." The gun's not with the victim.

5 And our position is there's no evidence that there
6 ever was a gun other than his testimony, other than part of
7 his statement where he says I saw a gun.

8 MR. SHEALY: Your Honor --

9 MR. MORIN: So we'd oppose -- we believe that it's a
10 question of fact for the jury.

11 MR. SHEALY: Your Honor, Mr. Morin's position then
12 shifts the burden to us. We have to prove now that my
13 client acted in self-defense and that there was, in fact, a
14 gun. We have to prove. We have to find the gun. We have
15 to give it to the police. We have to prove now that
16 there's a gun.

17 Judge, that's incorrect. They have to disprove it.
18 They -- it will be our position that they have to present
19 some kind of evidence that my client didn't act in
20 self-defense. They failed to do that.

21 THE COURT: Well, I understand it, but let me ask you
22 this. Was there any explanation in the record of this case
23 as to the disappearance of a .45 caliber rifle?

24 MR. SHEALY: I don't believe there was any -- well,
25 Your Honor, again, there's -- there was a -- my client

1 saying that I don't know -- well, Sergeant Wood saying my
2 client said that I don't know what happened to it, or what
3 I said, you know, we're going to look funny if it's not on
4 -- if they didn't find the gun. I think that's all there
5 was.

6 But, Your Honor, it's not my client's car, it's not
7 his Jeep.

8 Further, Your Honor, they -- we don't have to produce
9 evidence. We just don't have to produce any evidence.

10 THE COURT: Oh, I understand you don't have to produce
11 any evidence.

12 MR. SHEALY: And they haven't produced any evidence to
13 suggest that my client didn't act in self-defense, Your
14 Honor.

15 They haven't proven that they found any guns that
16 relate to this case. And that would be what we argue to
17 the jury, that this .22 that they found a month later in
18 the area of where -- of 295 -- that doesn't prove that this
19 -- that that's the weapon that my client allegedly used in
20 this particular case.

21 THE COURT: Well, clearly, the veracity of the
22 statement provided by the defendant is a question for the
23 jury. The jury doesn't have to accept it as being truthful
24 if the evidence in the case and the circumstances
25 surrounding the event convince them otherwise.

1 In this case the defendant has given a statement that
2 he did shoot the decedent but that he was acting in
3 self-defense. But as Mr. Morin says, if we just accept the
4 defendant's statement as being truthful, then there would
5 be many cases that you -- a jury would never get to decide
6 whether or not it's murder or it's some other offense or
7 it's -- as alleged in this case, or it's self-defense.

8 The question of the defendant's veracity so far as
9 that statement being provided is for the jury to determine.
10 In this case he said that the decedent had a .45 caliber
11 pistol which he used to threaten him with and in response
12 he fired his weapon.

13 But there's no corroborating evidence of that fact.
14 There's no .45 caliber pistol found. There's no pistol
15 found at all on the decedent or anywhere else that fits the
16 description of that which the defendant gave to law
17 enforcement.

18 Now, while I recognize that the defendant doesn't have
19 to prove the existence of a .45, he doesn't have to find a
20 .45, he doesn't have to introduce a .45, he doesn't have to
21 establish corroborative evidence of a .45, his statement is
22 his statement; nevertheless, I think the facts and
23 circumstances that have been established by the evidence in
24 the case make that a question for the jury as to whether or
25 not the decedent in this case did, in fact, have a weapon

1 that he used to threaten the defendant with. And that
2 makes it a jury question.

3 The credibility and the believability and the veracity
4 of statements made by witnesses or by the defendant in this
5 case are always questions for the jury to determine. They
6 don't have to accept a statement or a witness' testimony as
7 being truthful just because it's been provided and there's
8 no -- no contradictory statement or no contradictory
9 testimony.

10 They can also determine the inherent probability of
11 the truthfulness of a statement based upon the
12 circumstances established by the evidence, or the lack of
13 evidence for that matter, as to a particular point.

14 So I think the credibility and the believability of
15 the defendant's statement is for the jury to determine, and
16 that being an issue of fact I find that your motion for a
17 directed verdict should be denied.

18 MR. SHEALY: Thank you, Your Honor.

19 THE COURT: All right. Any other motions?

20 MR. SHEALY: Your Honor, I would have a motion to
21 settle my client's record.

22 THE COURT: Okay. Does the state intend to -- if the
23 defendant takes the witness stand and testifies does the
24 state intend to offer any evidence of prior convictions or
25 prior bad acts that might be admissible for the purpose of

1 impeachment or otherwise?

2 MR. MORIN: No, sir.

3 THE COURT: Okay.

4 MR. SHEALY: Your Honor, if I may consult with my
5 client.

6 THE COURT: All right.

7 (Pause.)

8 MR. SHEALY: Your Honor, I discussed with my client.
9 My advice is that he not testify. I believe that's the
10 route that he's going, Judge, if you would inquire of him.

11 THE COURT: All right. Mr. Medford, Mr. Shealy's told
12 me that you and he have discussed your right to testify or
13 not testify in the trial of this case. Is that true?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand that you have an
16 absolute right to remain silent, which just means that
17 nobody can make you take the witness stand and testify?
18 Nobody can require that you make a statement or answer any
19 questions that relate to the charge that's been brought
20 against you.

21 You have an absolute right to remain silent and to
22 rest upon the state's burden to satisfy this jury's
23 determination of your guilt beyond a reasonable doubt. And
24 the state has that burden of proof. You don't have the
25 burden of proving anything. So you don't have to testify

1 if you wish not to.

2 Do you understand you have the right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: At the same time, do you also understand
5 that if you do wish to testify -- in other words, if you
6 wish to provide this jury with any additional evidence in
7 your case, now is the only opportunity that you will have
8 to do so.

9 In other words, you can't wait until after the jury
10 reaches a decision and then you change your mind about your
11 decision as to whether or not you would or would not
12 testify.

13 Have you had an opportunity to talk with Mr. Shealy
14 about the advantages and disadvantages of testifying, as
15 well as not testifying?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And has he explained to you that if you
18 choose to take the witness stand and testify you've got to
19 answer all of the questions that are asked of you, not by
20 just your lawyer but by the prosecutor, even if the
21 responses to those questions might tend to prove you guilty
22 of the crime they claim you committed?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you also understand that if you choose
25 not to take testify that I will instruct the jury they

1 can't hold that against you, they can't consider that in
2 any way in their determination as to whether or not your
3 guilt has been proven beyond a reasonable doubt?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And have you had time to reflect upon your
6 decision as to whether or not you will testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And Mr. Shealy says that he's made a
9 recommendation to you and that his recommendation is that
10 you not testify.

11 Do you understand that while he may have an opinion
12 and he may make a recommendation that the decision has to
13 be yours? You can arrive at your decision based upon any
14 considerations that you feel are appropriate and relevant,
15 but Mr. Shealy can't make that decision for you. Only you
16 can make that decision because you're the person that has
17 to live with the consequence of that decision.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And so have you had time to reflect upon
20 that decision?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And have you reached a decision?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And what is your decision?

25 THE DEFENDANT: I'm not going to testify.

1 THE COURT: And is that a decision that you reached of
2 your own free will and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has anybody pressured you into coming to
5 that decision?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you had time to think about it?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you made that decision on your own?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And are you satisfied with it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any other witnesses you'd like
14 for Mr. Shealy to call on your behalf?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you have any other evidence you want
17 him to introduce?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. I'm going to bring the jury
20 back. We'll recess for the day, and we'll conclude with
21 argument and instruction in the argument.

22 All right. Bring the jury, please.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: All right. Ladies and gentlemen, as you

1 know, the state has rested in their presentation.

2 Mr. Shealy, does the defendant wish to present any
3 additional evidence?

4 MR. SHEALY: No, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, that is
6 all of the testimony and evidence to be offered in the
7 trial of this case. Therefore, what remains to be done are
8 the lawyers' final summations, after which I'll instruct
9 you on the law, and then you can begin with your
10 deliberations.

11 Now, it's late in the day, and that's going to take a
12 little while to accomplish, so we're not going to keep you
13 here this evening to do that. We will recess for the
14 afternoon. We will resume in the morning with the final
15 summations, my instruction on the law and then your
16 deliberations.

17 So keep in mind the caution that I've already
18 previously given you prior to excusing you for lunch, and
19 that is during the overnight recess you're not to discuss
20 anything about this case with any person whatsoever in any
21 manner whatsoever. You're not to allow yourselves to be
22 exposed to any type of media coverage -- television, radio
23 or newspapers -- that might relate to the case.

24 You're not to conduct any research or do your own
25 investigation into any issue that might have arisen. As

1 I've already told you, you have to base your decision
2 solely upon what's been presented during the trial. You
3 can't supplement your knowledge by conducting outside
4 resources.

5 So with that in mind, have a good evening. Please
6 report directly to your jury room at 9:30 in the morning --
7 9:30 in the morning. Have a good evening.

8 (The following takes place outside the presence of the
9 jury.)

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

12 Let me see the lawyers in chambers for the charge
13 conference.

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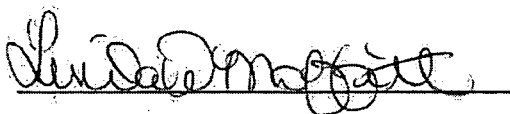
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th and 10th days of January 2012.

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

November 10, 2014

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

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

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Tony Paul Medford,) 2011-GS-42-1821
6 Defendant.) January 9, 2012
7) Spartanburg, South Carolina
8
9

10 B E F O R E :
11

12 HONORABLE J. DERHAM COLE, JUDGE
13

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

16 MICHAEL DAVID MORIN, ESQUIRE
Attorney for the State

17 MATTHEW SHEALY, ESQUIRE
18 CLAY T. ALLEN, ESQUIRE
Attorneys for the Defendant
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

INDEX

Guilty plea -- page 3.

No sworn testimony; no exhibits introduced.

1 THE COURT: Mr. Shealy, does your client wish to
2 change his plea?

3 MR. SHEALY: Yes, he does, Your Honor.

4 THE COURT: What does he wish to do?

5 MR. SHEALY: Your Honor, he would like to enter a plea
6 to guilty under Alford, under North Carolina vs. Alford.

7 THE COURT: Okay. He's pleading guilty to voluntary
8 manslaughter?

9 MR. SHEALY: Yes, Your Honor.

10 THE COURT: All right. Mr. Medford, as you know,
11 presently you're charged with the crime of murder.

12 Your lawyer has indicated that you're intending to
13 withdraw your plea of not guilty to the crime of murder and
14 to enter a plea of guilty to the lesser included offense of
15 voluntary manslaughter. Is that what you wish to do?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that if you enter that
18 plea of guilty to voluntary manslaughter that you could
19 receive a sentence of up to 30 years in jail?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And I understand that you and your lawyer
22 and the solicitor have entered into some negotiations which
23 would result in the imposition of a sentence of 15 years if
24 I accept your plea of guilty to voluntary manslaughter. Is
25 that true?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, do you understand that if you enter a
3 plea of guilty that you'll be giving up your right to
4 remain silent, that you'll be giving up your right to have
5 this jury that you helped select determine whether or not
6 you are guilty of anything the state claims you've
7 committed?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, understanding that you -- of course
10 you've enjoyed your right to confront the witnesses against
11 you. You know what the evidence is that the state has
12 presented. But in order to plead guilty you will have to
13 give up your right to remain silent and you'll have to give
14 up your right to have this jury make that determination as
15 to your guilt. Is that what you want to do?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And have you had plenty of time to talk to
18 your lawyers about that decision?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And have they explained to you that the
21 crime of voluntary manslaughter is classified as a violent
22 offense?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you understand the significance of
25 that classification?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And have they explained to you that the
3 crime of voluntary manslaughter is also classified as a
4 most serious offense under the law?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you understand the significance of
7 that classification?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And did they explain to you the fact that
10 the sentence imposed for the crime of voluntary
11 manslaughter is also a no-parole sentence under the law?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you understand the significance of
14 that classification?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And understanding that do you still wish
17 to enter your plea of guilty to voluntary manslaughter?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has anybody forced you into that decision?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anybody pressured you into it?

22 THE DEFENDANT: No, sir.

23 THE COURT: Has anybody coerced you into that
24 decision?

25 THE DEFENDANT: No, sir.

1 THE COURT: Is that a decision that you've reached of
2 your own free will and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You've had plenty of time to reflect upon
5 it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You've had plenty of time to seek advice
8 from your lawyers, as well as your family members?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you're satisfied with your decision to
11 plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. I will accept the plea.
14 Anything else you need to tell me?

15 MR. MORIN: No, sir.

16 THE COURT: The -- you discussed your negotiations,
17 Mr. Morin, with the family --

18 MR. MORIN: Yes, sir.

19 THE COURT: -- of Mr. Hayes?

20 MR. MORIN: Yes, sir, I have.

21 THE COURT: And they're in agreement with this
22 decision?

23 MR. MORIN: Yes, sir.

24 THE COURT: All right. Mr. Shealy, anything you or
25 Mr. Medford wish to tell me?

1 MR. SHEALY: Your Honor, I just wanted to say that
2 this is Tony Medford.

3 And, Your Honor, as you've seen, he's in a wheelchair.
4 He's had, I believe, 20 major surgeries since -- since he
5 was placed in that wheelchair. He's undergone at least
6 five since he's been in the jail, Judge. So obviously he's
7 in fairly bad health.

8 Judge, he'd ask that you take the recommend -- or take
9 the negotiations that we've -- that Mr. Morin and I have
10 discussed.

11 THE COURT: All right. Mr. Medford, anything you want
12 to add to what your lawyer has told me?

13 THE DEFENDANT: I'm sorry to the family. I feel for
14 his mama, his sisters, his parents, his grandma and his
15 daughters, and I wish he could be brought back. And I just
16 want to apologize to them.

17 THE COURT: Well, let me ask you this too, Mr.
18 Medford.

19 Is it your belief that if your case was submitted to
20 the jury for their determination that there's a significant
21 likelihood they'd find you guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you don't want to take that risk. Is
24 that a fair statement?

25 THE DEFENDANT: Right. Yes, sir.

1 THE COURT: You'd rather accept the offer that the
2 state has made than take the risk of having a jury find you
3 guilty of murder?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you believe that decision to be a
6 sound and reasonable decision that you've made?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Anything else anybody needs to tell
9 me?

10 MR. MORIN: Nothing from the state.

11 THE COURT: All right. On Indictment 2011-1821,
12 Sentence of the Court is you, Tony Paul Medford, having
13 pled guilty to the crime of voluntary manslaughter, the
14 Sentence of the Court is you be confined to the South
15 Carolina Department of Corrections for a period of 15
16 years.

17 The defendant is to be given credit for any time he's
18 entitled to pursuant to 24-13-40.

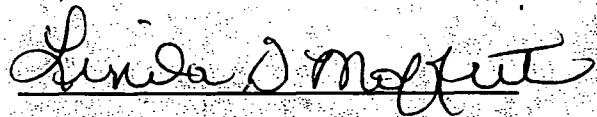
19 END OF REQUESTED TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 11th day of January 2012.

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

March 26, 2013

A handwritten signature in cursive script that reads "Linda D. Moffitt". The signature is written in dark ink and is positioned above the printed name and title.

Linda D. Moffitt
Circuit Court Reporter

WITNESSES

Spartanburg County Sheriff

DOCKET NO. **11-GS-42-1821**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 MAR 29 AM 9:54

M. HOPE BLACKLEY

1. SENTENCE MADE

2. REPORT ENDED

3. CARD FILED

4. INDEXED

ARREST WARRANT NUMBER

M-752101

5. ASSESSMENT

FINE CARD MADE

6. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Tony Paul Medford

THE STATE

V

Foreperson of Grand Jury

DATE: MAR 25 2011

VERDICT

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

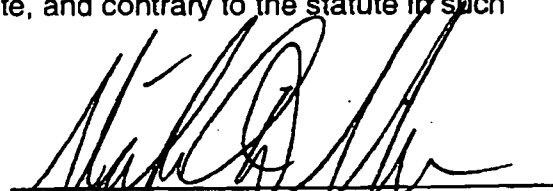
At a Court of General Sessions, convened on MAR 25 2011, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

That Tony Paul Medford, did in Spartanburg County on or about January 11, 2011, feloniously, willfully, and with malice aforethought, kill Richard A. Hayes, by shooting him with a gun, and he died as a proximate result thereof, all in violation of §16-3-0010, 0020, *The South Carolina Code of Laws*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

COUNTY OF SPARTANBURG

STATE

VS:

Tony Paul Medford

AKA:

Race: WHITE

Sex: M

Age: 34

DOB: (

SS#:

Address:

City, State, Zip: S-

DL#:

SID#:

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

TO: Manslaughter / Voluntary manslaughter

INDICTMENT/CASE#: 2011GS4201821

A/W#: M752101

Date of Offense: 1/19/2011

S.C. Code § 16-03-0010,

CDR Code #: 0116

ALFORD
SENTENCE SHEET☒ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0050

of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEYS: Michael D. Morin SC Bar# 65094 Tony Medford SC Bar# 161205 Matthew Z. Huff SC Bar# 77724
MORIN, MICHAEL D Defendant Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk: Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: Sentence Date: 1/11/12

STATE OF SOUTH CAROLINA)

County of Spartanburg)

IN THE COURT OF COMMON PLEAS

Tony Paul Medford)

Full name and prison number (if any) of Applicant)

m752101

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention ~~_____~~

~~_____~~ Lee Correctional Institution INF 220

2. Name and location of Court which imposed sentence Nowinski Hwy Bishopville SC 29010
Spartanburg City
Circuit Court

3. Name(s) of co-defendant(s) (if any) Danny Ray Crisp

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) warrant # M752101 Indictment # 2011G54201821

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CLERK OF COURT
2012-08-18 AM 11:00
M. T. B. 11-11-12

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 11 Jan 2012, Voluntary Manslaughter 15 yrs / 85%
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- No
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) I have been in the infirmary and have had no access to legal assistance until now,

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CLERK OF COURT
2012 OCT -8 AM 11:00
M. HOPE BLANCHETT

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Violations of both U.S. and State Constitutions (Due Process + Equal Protection)
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) No Expert Testimony / Improper Adversarial Skills
- (b) Vindictive Prosecution not Following through w/ Motion
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

FILED
CLERK OF COURT
202 OCT -8 AM 11:01
J. MICHAEL ALLEY

- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- iii. _____

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CLERK OF COURT
2012 OCT -8 AM 11:01
M. HOPE SLADLEY

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR Remedy is appropriate
 (b) PCR Remedy is appropriate
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? yes (half way through trial / plea agreement)
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Matthew Sheally } Public Defenders of
Clay Allen } Spartanburg Cty., S.C.

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Matthew Sheally Bond hearing & Trial

ii. Clay Allen Trial & Sentencing

iii. _____

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 CLERK OF COURT
 2012 OCT -8 AM 10:01
 14. HOPE BLANK

19. State clearly the relief you seek in filing this application:

To have my sentence and conviction vacated
and my case remanded for new trial and to have
all charges dismissed and or to lesser included offense.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Columbia, S.C.)

VERIFICATION

I, Tony Paul Medford, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tony Medford

SWORN to and subscribed before me this 31st
 day of August, 2012.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 12/8/2014

FILED
 CLERK OF COURT
 2012 OCT -8 AM 11:01
 M. HOPE CLARKE

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Tony Paul Medford, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Tony Medford
Applicant

SWORN or affirmed to and subscribed before me this

3rd day of August, 2012.

[Signature]
Notary Public

My Commission Expires: 10/8/2017

FILED
CLERK OF COURT
2012 OCT -8 AM 11:01
M. HOPE BLANCHLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Tony Paul Medford, #349218,	)	2012-CP-42-4240
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 8, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the March 2011 term of the Spartanburg County Grand Jury for murder (2011-GS-42-1821). Applicant was represented by Matthew Shealy, Esquire and Clay T. Allen, Esquire. On January 9, 2012, the Applicant pled guilty under Alford¹ to voluntary manslaughter. Applicant was sentenced by the Honorable J. Derham Cole for a period of fifteen (15) years for voluntary manslaughter. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to retain expert,
 - b. Counsel provided improper adversarial skills.
2. Violations of both US and State Constitutions (Due Process and Equal Protection), in that:
 - a. "vindictive prosecution no following through with motion."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's final allegation claims violations of the United States and South Carolina Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-

Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegation of ineffective assistance of counsel.

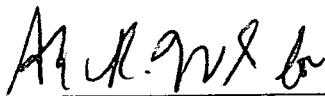
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Oct. 2, 2013

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Tony Paul Medford,

)
)

2012-CP-42-4240

Applicant,

)
)

v.

)
)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

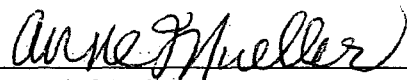
)
)

Respondent.

)
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Christopher D. Brough, Esquire
The Brough Law Firm
175 Magnolia Street, Suite 202
Spartanburg, South Carolina 29306


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 2nd day of October, 2013.

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 TONY PAUL MEDFORD,)
 5 Applicant,)
 6 vs.)
 7 THE STATE OF SOUTH CAROLINA,)
 8 RESPONDENT.)

TRANSCRIPT
 OF
 RECORD
 2012-CP-42-4240

9
 10 January 13th, 2015
 11 Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.

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

17 CHRISTOPHER D. BROUGH
 18 ESQ.
 Attorney for the Applicant

19 SUZANNE H. WHITE
 20 ASSISTANT ATTORNEY GENERAL
 Attorney for the Respondent

21
 22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

1	<u>I N D E X O F W I T N E S S E S</u>	
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P R O C E E D I N G S

1
2
3 THE COURT: Is the State ready -- is the Applicant
4 ready to proceed?

5 MR. BROUGH: Yes, Your Honor.

6 THE COURT: State ready to proceed?

7 MS. WHITE: Yes, Your Honor.

8 THE COURT: This is Tony Paul Medford, 2012-4240. It's
9 before the Court on an application for post-conviction
10 relief.

11 On January 9th, 2012, the Applicant pled guilty under
12 Alford to voluntary, voluntary manslaughter. He was
13 sentenced by Judge Cole to a period of 15 years. The
14 sentence and the conviction were not appealed. That's on
15 Indictment 2011-GS-42-1821.

16 He alleges ineffective assistance of counsel in that
17 counsel failed to retain an expert, provided in part --
18 improper adversarial skills, and violations of both the U.S.
19 and State Constitutions, due process, and equal protection,
20 and vindictive prosecution, no following through with
21 motion.

22 All right. The Applicant is represented by Mr. Brough.
23 The State is represented by Ms. white, and the Applicant was
24 represented by Matthew Shealy and Clay Aiken -- Allen at the
25 time of trial.

1 You may proceed.

2 MR. BROUGH: Thank you, Your Honor.

3 THE COURT: You welcome.

4 MR. BROUGH: Applicant calls Tony Medford to the stand.

5 THE COURT: He can---

6 MR. BROUGH: You want him to testify from here?

7 THE COURT: Yes, that's easier.

8 Sir, raise your right-hand to be sworn.

9 TONY PAUL MEDFORD, being first duly
10 sworn, testified as follows:

11 THE COURT: You may proceed.

12 Please state your full for the record spelling your
13 last name for the court reporter.

14 THE WITNESS: Tony Paul Medford. M-E-D-F-O-R-D.

15 THE COURT: You may proceed.

16 MR. BROUGH: Thank you, Your Honor.

17 THE COURT: You welcome.

18 DIRECT EXAMINATION

19 BY MR. BROUGH:

20 Q Mr. Medford, were you represented at trial by Matthew
21 Shealy?

22 A Yes, sir.

23 Q Okay. And the -- your original charge was what, sir?

24 A Murder.

25 Q Okay. And ultimately you pled to the charge under

Tony Paul Medford - Direct examination
by Mr. Brough

1 North Carolina versus Alford.

2 Is that, is that what you pled to, voluntary
3 manslaughter?

4 A Yes, sir.

5 Q Okay. Now, you've pled after you had a jury selected?

6 A Yes, sir.

7 Q Okay. And, and so you had proceeded with a trial in
8 the case?

9 A Yes, sir.

10 Q Okay. Tell me what you think that Mr. Shealy did that
11 was not proper in representing you.

12 A Well, when he first started off, it -- I never didn't
13 see him but I think three times before I even went to trial.
14 I had five major surgeries in about a week and a half of a
15 two week span right after I had gotten locked up in the
16 county. Five major surgeries which the fourth one I about
17 died on.

18 Matthew Shealy came up to the hospital and I had asked
19 Matthew Shealy for -- to try to get me a bond because the
20 hospital was saying they wasn't gonna send me back to the
21 county jail because I was in such bad shape, and Matthew
22 Shealy told me, he said, listen, he said this -- just wait
23 till you get back over to the jail and I'll take you in
24 front of a judge and get you a bond. And I was like, man, I
25 said listen. I said I'm here in really bad shape about to

Tony Paul Medford - Direct examination
by Mr. Brough

1 did, done about died in the fourth surgery, I said I, I need
2 to go in front of the judge right now.

3 THE COURT: I need to hear things that are relevant to
4 ineffective assistance of counsel---

5 THE WITNESS: And what we---

6 THE COURT: ---and bond is not germane---

7 Q why don't you---

8 THE COURT: ---to that issue.

9 Q why don't you skip past the bond hearing. Talk to me
10 about the ultimate disposition of the trial.

11 Now, Matthew Shealy was representing you and apparently
12 it looks like he made a Stand Your Ground motion?

13 A Yes, sir.

14 Q Okay. And, and you testified during that motion
15 hearing, correct?

16 A Yes, sir.

17 Q Okay. And, and your testimony was essentially that you
18 were in a place you were allowed to be and you weren't doing
19 anything improper?

20 A Yes, sir.

21 Q And then the victim in the case, Rick Hayes, pulled a
22 gun on you while he was seated behind you in the vehicle,
23 correct?

24 A Yes, sir.

25 Q Was that hearing -- was that motion granted on those

Tony Paul Medford - Direct examination
by Mr. Brough

1 Stand Your Ground or was it denied?

2 A It was denied.

3 Q Okay. After the pretrial motions your case went in
4 front of the jury.

5 Did Mr. Shealy call you to testify?

6 A No, sir. He asked me or I think the judge asked me
7 would -- did I want to testify and I said yes, I was gonna
8 testify, and Matthew Shealy told me no, you don't need to
9 testify. You -- we have won this case. You do not need to
10 testify.

11 I said Mr. Shealy, I want to testify. I need to
12 testify, and he said listen, he said the State has failing
13 to prove you guilty of murder because you have not committed
14 a murder.

15 Q Okay.

16 A And so you don't need to testify, and so I did not
17 testify for that reason.

18 Q Okay. Now, in, in your case, on the murder case, there
19 was actually -- you had claimed that the victim pulled a gun
20 on you, correct?

21 A Yes, sir.

22 Q And I believe it was your testimony, in the pretrial
23 motion, that you had taken that gun from him after you shot
24 him with a .22?

25 A Yes, sir.

Tony Paul Medford - Direct examination
by Mr. Brough

1 Q Okay. And, ultimately, the testimony at trial showed
2 that they did find the victim, correct?

3 A Yes, sir.

4 Q And that he -- they also found .45 caliber round near
5 his shoe --

6 A Yes, sir.

7 Q -- where the body was found?

8 Now, and I guess he didn't die right away. He went to
9 the hospital first.

10 Is that correct?

11 A Yes, sir, they also found a .45 -- a clip for a .45
12 gun.

13 Q Okay.

14 A Magazine clip for a .45 pistol in his pocket that had,
15 I think, nine rounds of ammunition in it.

16 Q Okay. Was one of the people on the State's witnesses
17 list a Danny Crisp?

18 A Yes, sir, it was.

19 Q Okay. Who is that?

20 A He, he was my friend. We called ourselves cousins, but
21 we're not really cousins. He was just a friend, long time
22 friend.

23 Q Okay. Did he testify in your trial?

24 A No, sir.

25 Q Okay. Now, you indicated that the incident took place

Tony Paul Medford - Direct examination
by Mr. Brough

1 in a vehicle, correct?

2 A Yes, sir.

3 Q Tell me who was in the vehicle and where everybody was
4 seated.

5 A It -- Danny was driving the vehicle. I was in the
6 passenger side of the front seat and Rick had got in the
7 Jeep at the beginning right behind me --

8 Q Okay.

9 A -- in the back seat.

10 Q Okay. Okay. And, to your knowledge, was there any --
11 did Mr. Crisp ever give a statement?

12 A Yes, he did.

13 Q Okay. And, in that statement, did he indicate anything
14 that would help you?

15 A He said in his statement that, after he heard the
16 gunshot, he stopped the vehicle and I reached into the back
17 seat and grabbed Rick's gun and pulled it into the front
18 seat and said man, he just pulled his gun on me.

19 Q All right. And he was never called at trial?

20 A No, sir.

21 Q Okay. So essentially, at trial, the, the jury never
22 heard about what happened to the .45?

23 A No, sir.

24 Q Okay.

25 A It was never even brought up.

Tony Paul Medford - Direct examination
by Mr. Brough

1 Q Do you think that if the jury had heard that the victim
2 in the case had -- not only had been found with the .45
3 rounds and a clip, but that y'all had the gun and you could
4 explain where the gun went, that the result of your case
5 would of been different, sir?

6 A Yes, sir, I do.

7 Q Now, ultimately, you did plead.
8 Okay?

9 A Yes, sir.

10 Q And you did receive the, the -- a deal when you pled?

11 A Yes, sir.

12 Q Okay. Tell me why you entered the plea that you did
13 under North Carolina versus Alford.

14 A Because Mr. Shealy had came and told me, after the
15 first day of the trial, that, you know, he said don't take
16 the stand and we've won and so we rested and then they
17 called recess until the next day. And then so the next
18 morning we's waiting -- they got me over here, we was
19 waiting for the jury to come in, and Mr., Mr. Shealy come in
20 there and told me said listen, said they've offered you a
21 deal.

22 This is after, you know, he's come in and told me said,
23 hey, man, you should of took the stand yesterday, that that
24 would of been better for you because Danny didn't take the
25 stand. He had -- also had told me that if Danny didn't take

Tony Paul Medford - Direct examination
by Mr. Brough

1 the stand, that we was gonna call Danny to the stand to show
2 that they was two guns involved in this case, and the next
3 morning, when he come over there, was telling me about this
4 plea deal, he said that we couldn't take, we couldn't call
5 Danny to the stand now because Danny was subpoenaed by the
6 State.

7 And so my only option was to either take this plea deal
8 that they was offering me or go back in front of the jury,
9 and if I got found guilty, that Judge Cole had said that I
10 was gonna -- he was gonna give me life in prison, that he
11 did not care about my medical condition or anything that I
12 had going on, that if I did not take this plea deal, that he
13 would give me the maximum for this if I was found guilty and
14 I said I'm not taking no plea deal.

15 I came to trial. I'm gonna have a verdict from the
16 jury. Before Judge Cole could give me a life in prison,
17 that jury would of had to convict me. You told me we won
18 yesterday. Now you're telling me I should of took the
19 stand. Now you're telling me that we can't call Danny and
20 we should of called Danny, but we couldn't because of the
21 State had him subpoenaed, which I don't know nothing about
22 the law. I don't have but a fifth grade education. I had
23 been stuck over there in the county jail in a room in
24 medical by myself for about seven months straight.

25 Q Well let's not get into much into your medical

Tony Paul Medford - Direct examination
by Mr. Brough

1 condition. I understand that you have a lot of medical
2 conditions---

3 A What I'm saying---

4 Q But it's not---

5 A I didn't know nothing about the law---

6 Q Right.

7 A ---you know and I had nobody to talk to because I was
8 over there in the county like that, and my only -- the only
9 way of communicating through with Matthew Shealy was having
10 my mother call him. When my mother come on and visit and
11 come to see me, I'd spend my visit talking to her about
12 Matthew Shealy and him not coming to see me and I had---

13 Q Now, you, you do agree that you indicated that you
14 didn't wish to testify and your testimony here today is that
15 was because Matthew Shealy told you you should not testify.

16 Is that correct?

17 A Yes, sir.

18 Q Okay. All right. Okay. Is there anything else that
19 we haven't gone over that you feel like was done improperly
20 in your case?

21 A After Matthew Shealy, he didn't come just one time. He
22 left and came back like I think three more times with this
23 plea deal telling me listen, man, you've -- you need to take
24 this deal, and I kept telling him I'm not taking no deal.
25 No, I'm not taking no deal and he scared me.

Tony Paul Medford - Direct examination
by Mr. Brough

1 I, I -- I'm be straight up honest with you when -- he
2 scared me even everyone keep coming back over there telling
3 me take this deal. If you don't take this deal you going to
4 prison for life. I'm telling you you're going to spend the
5 rest of your life in prison when you -- and then he told me
6 that listen, if you take this plea deal, it's 15 years. You
7 done been locked up for a year. You won't have to do but
8 ten more years and the SCDC is gonna have to take special
9 care of you because of your medical condition.

10 And I just like to know -- Clay Allen also sat in on my
11 trial, and he was also came back with Matthew Shealy over
12 there telling me to take the plea deal. So I had two
13 people, two lawyers telling me listen, you better take this
14 deal, you know, because of what had gotten messed up the day
15 before.

16 Q Okay. But your contention is, is that had your lawyer
17 put in the evidence of Danny Crisp about the .45 being taken
18 from him, and had of called you to the stand to testify in
19 accordance with the way you testified during the pretrial
20 hearing in front of the jury---

21 A Yes, sir.

22 Q ---that you would of been acquitted.

23 Is that, is that---

24 A Yes, sir.

25 Q ---a fair statement?

Tony Paul Medford - Direct examination
by Mr. Brough

1 A Yes, sir.

2 Q Okay. All right. Please answer any of Ms. White's
3 questions.

4 Okay?

5 A (Witness nods affirmatively.)

6 THE COURT: Any questions for the witness?

7 MS. WHITE: Just briefly.

8 CROSS-EXAMINATION.

9 BY MS. WHITE:

10 Q Mr. Medford, you testified that your attorney -- you
11 acknowledged he made a Stand Your Ground motion and
12 testified at that, correct?

13 A Yes, ma'am.

14 Q And then there was also a motion about your statement
15 and whether or not it was voluntary.

16 You testified at that as well, is that right?

17 A I remember testifying on the Stand Your Ground.

18 Q Okay. If the record reflects you also testified for
19 what the Court calls a Jackson v. Denno hearing about
20 whether or not your statement to Officer Wood was
21 voluntary---

22 A About them not reading me my rights?

23 Q Yes.

24 A Yes, ma'am.

25 Q Okay. So you agree that you, that you did testify

Tony Paul Medford - Cross-examination
by Ms. White

1 about whether or not you were read your rights, and if you
2 were understanding what was happening when you gave your
3 statement?

4 A Yes, ma'am, and I was not read my rights --

5 Q Okay.

6 A -- and I didn't understand what was going on when I was
7 interrogated and I went and turned myself in on this charge.

8 Q But the Court heard your testimony, Mr. Crisp, who was
9 the brother of Danny Crisp, and Officer Wood's testimony,
10 but ruled that your statement was voluntary, is that right?

11 A Yes, ma'am, but when, when Mr. Crisp that was in the
12 interview room with me, they put -- the State called him to
13 the stand where Matthew Shealy had been saying the whole
14 time I was locked up that we was gonna call Mike Crisp to
15 the stand and get Mike Crisp to testify for us saying that
16 they had not read me my rights because Mike had come to seen
17 me at the jail and we had talked about that, that --

18 remember when -- I said Mike, remember when I was there. I
19 did not get read my rights, and I did not sign anything,
20 that they slipped the paper in on me when I got to Court --
21 I mean when I got to the jailhouse because they had me sign
22 all kind of papers, and, like I said, I got a fifth grade
23 education and I didn't read nothing and I just signed them.

24 And that's how they got my signature on it, but they
25 don't have -- didn't have my initials beside each right that

Tony Paul Medford - Cross-examination
by Ms. White

1 they was read me---

2 Q Who did---

3 A ---which was suppose to have been done too.

4 Q You would -- but you testified to that---

5 A I---

6 Q ---and that was presented at Court?

7 A I did, but when they asked -- when they called Mr. Mike
8 Crisp to the stand and asked him about it, he didn't say no
9 and he didn't say yeah. He said I can not recall and they
10 asked him again and he said I can not recall.

11 Q Okay. So his testimony was not helpful for you
12 ultimately you don't believe?

13 A And they -- the judge ruled that it, that it wasn't --
14 that -- I -- he ruled it whatever. It didn't go in my
15 favor.

16 Q Okay. Now, in regards to Danny Crisp and what he could
17 of testified to.

18 Even with his statement, he testified, or he stated in
19 his statement, he didn't see the victim pull the gun on you,
20 correct?

21 A That's what his statement says.

22 Q Okay. Now, your, your testimony here today is that he
23 could of supported the fact that there was a .45 with the
24 victim, but he didn't actually see him pull the gun on you
25 before he was shot, is that right?

Tony Paul Medford - Cross-examination
by Ms. White

1 A Yeah, I --.

2 Q That's what his statement says is what I'm asking you.

3 A That's what, what my, what the lawyer here had told me
4 what the statement says.

5 Q Okay. All right. And, in fact, you had testified at
6 one point or talked about getting rid of both of the guns
7 and the .22 was ultimately found, but there was no -- the
8 .45 was never found, the actual gun, right?

9 A A .22 was found, but they could not say that that was
10 positively the .22 gun that was used in the---

11 Q Okay.

12 A ---whatever this, you know, that -- in their thing.
13 when the forensics got up there, the forensics said that
14 yes, that was a .22 pistol, but it was supposedly found by a
15 neighborhood watch, somebody that was supposedly walking
16 down the road kicking trash and kicked it, found it, called
17 the police, but they didn't have them in Court, and they was
18 not there to say that yeah, that was the gun and that they
19 also did not testify -- state that, when the forensics got
20 up there and testified, he said that the bullet that came
21 from the guy could -- he could not positively identify that
22 bullet coming from that gun, that it could of came from, I
23 think, nine or ten different other guns.

24 Q Okay. You ultimately went through the entire procedure
25 essentially of a trial until there was a discussion of

Tony Paul Medford - Cross-examination
by Ms. White

1 whether or not you wanted to testify, and the judge asked
2 you and, in fact, told you even though Mr. Shealy had
3 advised against it, it was completely within your rights to
4 testify and you told him that you had decided not to.

5 Is that right?

6 A Yes, ma'am.

7 Q Okay.

8 A But, again, like I said, I don't know nothing about the
9 law. I only have a fifth grade education. I had been over
10 there in that county jail in a room by myself for all the
11 months with nobody to talk to with Mr. Shealy not coming and
12 talking to me, and when he did come and talk to me, it was
13 just briefly, you know, and if he's got any notes to -- from
14 our, our meetings or anything, you know, that could be shown
15 right now, maybe that would be good, and---

16 Q Now---

17 A ---he didn't know anything about my medical condition.

18 Q Let me, let me ask you about the plea.

19 You pled to an offer of 15 years for voluntary
20 manslaughter. You were facing a minimum of 30 if you were
21 convicted of murder.

22 Is that right?

23 A That's what they said, yes, ma'am.

24 Q Okay. So you pled ultimately to the 15 years because
25 of the risk and the possibility that you could receive a

Tony Paul Medford - Cross-examination
by Ms. White

1 life sentence for murder.

2 Is that right?

3 A That's what Matthew Shealy told me to do.

4 Q But you, you pled and when the judge asked you if you
5 were doing that freely and voluntarily you told him you
6 were?

7 A I did and---

8 Q Okay.

9 A ---at the same time maintaining my innocence on
10 committing a murder.

11 Q Right.

12 A Because if I was gonna commit a murder, why would I let
13 somebody get in the, the back of the car in the back seat
14 behind me?

15 Q But you did acknowledge that you thought the State's
16 evidence was sufficient that you could of possibly been
17 convicted?

18 A That's Matthew, like I said, Matthew Shealy kept coming
19 over there and scared me and had Clay Allen also come back
20 with him because I kept telling them no, I'm not taking no
21 deal.

22 Q So when the---

23 A Go back and tell them I'm not gonna take this deal.

24 Q When you told---

25 A And he went back and tell -- and he supposedly tell him

Tony Paul Medford - Cross-examination
by Ms. White

1 and then he come back and tell me again that he went -- I
2 told him no, he went back and then he came back with Clay
3 Allen, and then so Clay Allen and Matthew Shealy's telling
4 me hey, take this deal.

5 Q Mr. Medford---

6 A You need to take this deal.

7 Q ---when you, when you pled guilty and the Court said is
8 anybody forced you into that decision, is anybody pressured
9 you, is there anybody coerced you into that, you said no,
10 sir to each of those.

11 A Well --.

12 Q If you, if you felt so adamant about not taking the
13 deal, why is that when you did not speak up?

14 why didn't you speak up then?

15 A Cause Matthew Shealy told me if I did say anything like
16 that then the deal would not be accepted.

17 Q Okay. And you wanted them to accept the deal because
18 you didn't want to receive 30 to life.

19 Is that right?

20 A No, but I did not want to take the deal, ma'am, but---

21 Q Obviously---

22 A ---I was---

23 Q ---you wanted to be acquitted, but---

24 A I was, I was scared only after they come over there
25 and, and kept telling me, you know, take this deal, take

Tony Paul Medford - Cross-examination
by Ms. White

1 this deal, and only after we had -- I had not testified in
2 my own defense and it's -- this was a case where a man
3 pulled a pistol on me sitting in the back seat behind me.
4 When he pulled a pistol on me sitting in a back seat behind
5 me, I turned around and seen it pointed at my head, then I
6 grabbed my gun and shot.

7 Q Okay.

8 A Not meaning---

9 Q Thank you.

10 A ---to kill the man.

11 Q And thank you.

12 That's all the questions I have for Mr. Medford at this
13 time.

14 THE COURT: Any redirect?

15 MR. BROUGH: No, Your Honor, like to---

16 THE COURT: Any further witnesses?

17 MR. BROUGH: Yes, we call Danny Crisp.

18 Your Honor, he was, for the Court's information, he was
19 charged in this case as well. I don't think it---

20 THE COURT: what purpose is he being offered?

21 MR. BROUGH: I have not gone through his rights with
22 him, but---

23 THE COURT: I'm sorry?

24 MR. BROUGH: I said I have not informed him of his --
25 any of his rights. I don't know if---

1 THE COURT: My question is for what purpose are you
2 calling him?

3 MR. BROUGH: I'm calling him---

4 THE COURT: What can he testify to?

5 MR. BROUGH: ---because he was the driver of the car.

6 THE COURT: How does that go to ineffective assistance
7 of counsel?

8 MR. BROUGH: Well, because he wasn't called by his,
9 by -- at the trial at all.

10 THE COURT: How would you of been able to do that at
11 trial if he was represented?

12 How were you gonna get him to implicate himself?

13 MR. BROUGH: Well, if it -- in the event that he took
14 the Fifth Amendment or, or any such things, I think he would
15 be considered unavailable under the hearsay rules at that
16 point, Judge, and if he was unavailable, then any statement
17 that he gave, because he made himself unavailable, is
18 potentially admissible by calling the person who took the
19 statement.

20 THE COURT: I don't think that would of flown --

21 MR. BROUGH: Well---

22 THE COURT: -- because the State has the right to
23 cross-examine him and he has the right to take the Fifth
24 Amendment. You can't force him to inculcate himself and
25 there's no guarantee his lawyer was gonna let him testify.

1 MR. BROUGH: Well---

2 THE COURT: So, I'm -- if you call him, I'm gonna
3 advise him of his right against self-incrimination and I'm
4 gonna get his lawyer over here cause I'm not gonna have him
5 incriminate himself under oath where he could still be
6 charged or have---

7 MR. BROUGH: All right.

8 THE COURT: ---adverse consequences.

9 MR. BROUGH: He's been convicted of misprision of a
10 felony.

11 THE COURT: It doesn't matter. He could still be
12 charged with something else. They're no Statute of
13 Limitations in South Carolina on any offense.

14 MR. BROUGH: Okay. Well, I guess we'll call him and
15 see what he says.

16 THE COURT: Who is his lawyer?

17 MS. WHITE: I believe Steve Sumner, Your Honor, out of
18 Greenville.

19 THE COURT: Steve Sumner?

20 MS. WHITE: Yes, ma'am, who represented him for the,
21 the charge. And, Your Honor, I don't know if it will help,
22 but I do have a copy of his indictment and plea sheet from
23 that misprision of a felony if you'd like for me to email it
24 to you or---

25 THE COURT: It's not necessary.

1 MS. WHITE: Okay.

2 THE COURT: I, I guess I'm at a loss as to what---

3 MR. BROUGH: Your Honor, if we could put in his
4 statement.

5 THE COURT: ---ineffective assistance that this meets.

6 MR. BROUGH: Well, I mean clearly he gives a statement
7 and I'd like to cross him on it.

8 THE COURT: That's not my question. My question is a
9 very direct one and I need a direct answer.

10 To what element ineffective assistance would his
11 testimony fall within?

12 MR. BROUGH: The failure to call a witness whose
13 testimony could have shown that there was another gun
14 involved and could of supported his theory of self-defense.

15 THE COURT: But that testimony would have been
16 inculcated this witness, correct?

17 So how are you gonna guarantee -- why would he get on
18 the stand and testify against himself when he could be
19 charged with an additional offense?

20 I've never seen it happen.

21 MR. BROUGH: Well---

22 THE COURT: Sir, if you would raise your right-hand for
23 me.

24 DANNY CRISP, being first duly
25 sworn, testified as follows:

Danny Crisp - Examination
by the Court

1 THE COURT: Will you take your seat, sir, and tell us
2 your full name for the record?

3 THE WITNESS: Danny Ray Crisp.

4 THE COURT: Is your middle name Ray, R-A-Y?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Sir, I need to advise you against your
7 right against self-incrimination. You have a Constitutional
8 right to remain silent. There's nothing that, in the rules
9 or in the Constitution, that require you to provide
10 testimony that it's adverse to your interest. In other
11 words, that would make you guilty of a crime and I need to
12 advise you of that.

13 And are you represented by Mr. Sumner?

14 THE WITNESS: I was, yes, ma'am.

15 THE COURT: Okay. And have you -- did you consult with
16 him and let him know that you had been subpoenaed for
17 today's hearing?

18 THE WITNESS: I didn't even know that I was subpoenaed.

19 THE COURT: Okay. So they just transported you from
20 the Department of Corrections?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Do you wish to consult with him before
23 testifying?

24 THE WITNESS: No, ma'am.

25 THE COURT: Okay. Do you understand your rights as

Danny Crisp - Examination
by the Court

1 I've explained them to you?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Okay. Do you understand that anything you
4 say in this courtroom is under oath?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: You understand that it could subject to --
7 you to additional criminal charges for which you could be
8 prosecuted?

9 THE WITNESS: I mean yes, ma'am.

10 THE COURT: I didn't hear you.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Okay. You may proceed.

13 MR. BROUGH: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. BROUGH:

16 Q Mr. Crisp, do you know Mr. Medford, sir?

17 A Yes. Yes, sir.

18 Q And how do you know him?

19 A His mother married my uncle some years back.

20 Q Okay. I'm gonna direct your attention to January of
21 2011.

22 Were you with Mr. Medford on the incident in which he's
23 charged with?

24 A Yes, sir. Yes, sir.

25 Q Okay. And, and were you driving the vehicle then, sir?

Danny Crisp - Direct examination
by Mr. Brough

1 A Yes, sir.

2 Q If you could, sir, tell me what happened inside the
3 vehicle which led to these charges?

4 A I gave Mr. -- I gave Paul Medford a ride to Rick Hayes
5 house.

6 THE COURT: To whose house, sir?

7 THE WITNESS: Rick Hayes.

8 Could you spell his last name please?

9 THE WITNESS: H-A-Y-E-S.

10 THE COURT: Oh, Hayes.

11 Okay. And, sir, if you could, speak into the
12 microphone or if you could just speak up a little bit more
13 for me please.

14 THE WITNESS: We was at Rick Hayes and Rick Hayes
15 wanted to go to this female's house named Tonya.

16 Q Okay.

17 A When -- at first I told him no and there was two other
18 guys there at the house too in the garage. It made a total
19 of five of us, me, Paul. We was in, in my Jeep. Rick,
20 Quenton Bruce, and Chad Murphy, Murray or something. They
21 was arguing after I told Rick that I wouldn't take him up to
22 Tonya's house.

23 So after a few minutes of them arguing, I agreed to
24 take Rick up to Tonya's house.

25 Q Okay. And who went with you?

Danny Crisp - Direct examination
by Mr. Brough

- 1 A Me, Paul Medford, and Rick.
- 2 Q Okay. And, and were you driving?
- 3 A I was.
- 4 Q Okay. And where was everybody seated?
- 5 A Paul was sitting in the passenger seat and Rick was in,
- 6 in the seat behind me.
- 7 Q Okay. So Mr. Medford was in the front passenger seat
- 8 then?
- 9 A Yes.
- 10 Q Okay. And what happened at that point, sir?
- 11 A We was driving up the road and on -- we went to Tonya's
- 12 and Rick went in, got something, whatever, and on the way
- 13 back Rick and Paul started arguing, and next thing I know I
- 14 hear a gunshot, and I stopped the vehicle. Rick got out and
- 15 we left and all I can remember him saying is why you
- 16 shooting a gun in my car or something to that effect, and
- 17 Paul says he pulled a gun on me, and, and I told Paul, Paul
- 18 he was full of, full of mess.
- 19 Q Did you see any other guns?
- 20 A I did. I seen -- he -- Paul had pulled a .45 out of
- 21 the back floorboard of my vehicle.
- 22 Q Is that the other -- the gun you thought he was
- 23 referring to?
- 24 A Yes, sir.
- 25 Q And, at that time, he told you that he had the gun

Danny Crisp - Direct examination
by Mr. Brough

1 pulled on him that he'd recovered?

2 A Yes, sir.

3 Q Okay. You know what caliber it was?

4 A It was a .45.

5 Q All right. Thank you, sir. Please answer any of Ms.
6 White's questions.

7 THE COURT: You may proceed.

8 MS. WHITE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. WHITE:

11 Q Mr. Crisp, you gave a statement to police, is that
12 right?

13 A To who?

14 Q To the police.

15 A No, I didn't give a statement to the police. I gave a
16 statement to the solicitor.

17 Q Okay. Do you recall giving a statement on January
18 12th, 2011, at 12:12AM?

19 A I don't recall that.

20 MS. WHITE: Okay. If I may approach, Your Honor?

21 THE COURT: Yes.

22 Q I just want to show you this.

23 Does this look familiar to you?

24 A Yeah, that's---

25 Q Okay. So it's possible that you did give a statement

Danny Crisp - Cross-examination
by Ms. White

1 to police?

2 A Yeah. Yes. Yes, ma'am, that's my, my handwriting.

3 Q And this is your handwriting?

4 A (Witness nods affirmatively.)

5 Q And then you were interviewed by police as well later
6 in that day?

7 Do you recall that?

8 A I reckon.

9 Q Okay.

10 A I mean --.

11 Q So if there's a transcript of the, of an interview that
12 had been reported with you and police---

13 A If my, if my signature is on it then it happened.

14 Q Okay.

15 A I mean --.

16 Q And your testimony is that you heard the gunshot.

17 You never saw the victim pull the gun on Mr. Medford,
18 did you?

19 A No, I was driving.

20 Q Okay.

21 A But when I, when I stopped and he got out the gun was
22 in the, in the floorboard and it had to come from somewhere.
23 I don't carry a gun.

24 Q And you said, when he got out, you -- the victim,
25 Mr. Hayes?

Danny Crisp - Cross-examination
by Ms. White

1 A Yes, ma'am.

2 Q Okay. And you said the gun was in the floorboard.

3 Was it possible that that was the .22 that Medford had
4 had?

5 A No, cause Paul Medford still has the gun in his hand.

6 Q Okay. And you're aware that Mr. Medford had testified
7 that you drove around and he threw the guns out at your
8 instruction?

9 Is that right?

10 A I was scared. Yes, I did tell him to throw both guns
11 out, yes, ma'am.

12 Q Okay. But, but the .45 was never found.

13 You're aware of that?

14 A I told my attorney that Paul Medford knew where he
15 threw the guns out and Mr. Medford told his attorney he
16 knows where the gun's at and the police were reluctant to go
17 get them.

18 Q Okay. All right. But ultimately you don't know if he
19 had pulled the gun first on Mr. Medford or not, do you,
20 other than what you've been told?

21 A My understanding is that if, if a gun is in its holster
22 or wherever you're carrying it, it don't come out unless you
23 pulled it and the gun was in the floorboard when he got out
24 of my vehicle.

25 Q After he had been shot?

Danny Crisp - Cross-examination
by Ms. White

1 A After he had been shot.

2 Q Okay. Thank you.

3 That's all I have, Your Honor.

4 THE COURT: Any redirect?

5 MR. BROUGH: No, Your Honor. Ask this witness be
6 excused.

7 THE COURT: Any objection?

8 MS. WHITE: No objection, Your Honor.

9 THE COURT: Sir, you're excused.

10 MR. BROUGH: That would be the Applicant's showing,
11 Your Honor.

12 THE COURT: Okay. We're gonna take a brief recess
13 before we take counsel's testimony for a restroom break.

14 (WHEREUPON, a short recess was taken at this time.)

15 THE COURT: State ready to proceed?

16 MS. WHITE: Yes, Your Honor.

17 THE COURT: You may call your witness.

18 MS. WHITE: Thank you.

19 We'd call Matthew Shealy to the stand.

20 THE COURT: Sir, if you'll come to the stand and be
21 sworn.

22 MATTHEW SHEALY, being first duly
23 sworn, testified as follows:

24 THE COURT: If you would take your seat, sir, and state
25 your full name for the record spelling your last name for

Matthew Shealy - Direct examination
by Ms. White

1 the court reporter.

2 THE WITNESS: Matthew William Shealy. That's
3 S-H-E-A-L-Y.

4 THE COURT: Thank you.

5 You may proceed.

6 MS. WHITE: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 DIRECT EXAMINATION

9 BY MS. WHITE:

10 Q Mr. Shealy, do you recall representing Mr. Medford on
11 these charges?

12 A I do.

13 Q And when you spoke as an initial fact of Clay Allen
14 assisting with that and Clay Allen is the chief public
15 defender.

16 Is that right?

17 A Correct.

18 Q So he was assisting you with the, with the charge or
19 with the---

20 A With just the trial.

21 Q With just the trial.

22 A He was a second pair of eyes.

23 Q And do you recall how long you represented Mr. Medford
24 before the trial?

25 A It you'll bear with me.

Matthew Shealy - Direct examination
by Ms. White

1 (Pause.)

2 A It looks like right at a year.

3 Q Okay.

4 A I believe I was appointed -- well, I received the file
5 January of 2011.

6 Q And that is in your capacity of working at the Public
7 Defender's Office?

8 A Yes, ma'am.

9 Q Okay. And do you recall having the chance to meet with
10 Mr. Medford and discuss this case?

11 A Yes, ma'am.

12 Q Okay. He has testified that he saw you maybe three
13 times prior to, prior to -- excuse me -- prior to trial.

14 Do you recall how many times or does that sound
15 accurate or---

16 A It doesn't sound accurate. I don't recall exactly how
17 many times I met with him. I believe it was twice in the
18 hospital. He was -- spent a good bit of time there.

19 Officer Pucey was the detention officer. I'd take
20 Donald Stepp, who works with our office. We spoke about the
21 charges. Then I was concerned that he didn't really
22 understand them fully because of the medication and, and
23 then I met with him several times at the detention facility
24 in the -- we have a medical area and ultimately he was just
25 placed in medical because he couldn't really -- well, they

Matthew Shealy - Direct examination
by Ms. White

1 said he couldn't really function in a pod.

2 I also saw him several times when he was on rotation.

3 I believe it was in Pod 3. It was either Pod 3 or Pod 6.

4 I'm pretty sure it's three.

5 Q And in your discussions with him, what was the defense
6 offered?

7 was it always a self-defense?

8 A Yes, ma'am.

9 Q Okay. The testimony that was presented at trial and
10 that, that you've heard some of today, is that consistent
11 with what Mr. Medford told you during your meeting?

12 A Mr. Medford, yes, and it was more or less. At times we
13 got into some odd reasons why Mr. Hayes maybe wanted to do
14 him harm, but ultimately yeah, that was more or less
15 consistent with what he had told me.

16 Q Okay. And, in fact, the testimony presented during the
17 immunity and the, I guess, the -- mainly the immunity
18 pretrial, was that there was some things that Mr. -- that
19 the victim was upset about involving maybe his wife or some
20 drugs or money.

21 Is that right?

22 A It was, I believe at the immunity, it was primarily
23 that there was somebody messing around with Tonya.

24 THE COURT: I'm sorry.

25 Please repeat your answer.

Matthew Shealy - Direct examination
by Ms. White

1 THE WITNESS: That, that there was some -- Mr. Hayes
2 was married. I believe his wife was allegedly fooling
3 around on him, and Mr. Hayes thought that Mr. Medford knew
4 who was doing it or it may of even been Mr. Medford himself
5 or that was Mr. Hayes contention.

6 Q Okay. And that was the only ill will, I guess, or, or
7 situation that you were aware of from night?

8 A Well, at times, in my, my discussions with him he would
9 tell me about some kind of, of drug operation, that there
10 were some heavy hitters who had moved in, talked with
11 Mr. Hayes. It was never a fully formed explanation of what
12 happened and that was one of the reasons I was concerned
13 about calling him in front of the jury is it, it just -- it
14 was -- it was ephemeral. I didn't understand it and so I
15 was concerned that he may start going into things that were,
16 were odd, quite frankly.

17 Q In regards to his testimony, you said that you were
18 concerned about that.

19 Did you -- you talked with him prior to trial about
20 whether or not he would testify?

21 A I did. I did and also about his tendency to, to
22 sometimes not answer the question asked.

23 Q Okay. And, obviously, on the record and, and you said
24 it was your recommendation probably that he should not
25 testify?

Matthew Shealy - Direct examination
by Ms. White

1 A It was.

2 Q Did he ever tell you absolutely I want to testify?

3 A No, ma'am.

4 Q Okay. And you were present when he told the Court that
5 he had decided, of his own will, not to testify?

6 A Yes, ma'am.

7 Q Okay. In regards to the plea offer -- well, let me go
8 back actually to Mr. Crisp.

9 You didn't call Mr. Crisp as a witness?

10 A Did not.

11 Q Okay. To your, I guess, understanding or, or your
12 experience, did you think Mr. Crisp would be helpful?

13 A On balance, no.

14 Q And can you explain that?

15 A Sure.

16 He would of testified, I assume, he would of testified
17 consistently that there was a gun in the floorboards. He
18 couldn't testify as to the firing -- who fired what, who
19 pulled what gun, that sort of thing.

20 He also couldn't -- it was my understanding from
21 speaking with the solicitor, who told me that he had also a
22 deal with Mr. Crisp for testimony, it wasn't much of a deal,
23 it was one of those plea to the accessory, but we'll tell
24 the judge you helped us a great deal, that sort of thing,
25 that he would also testify that the arguing that was going

Matthew Shealy - Direct examination
by Ms. White

1 on, one, was over stuff due and, two, was -- didn't rise to
2 the level of a fight. It didn't rise -- it was bickering
3 was what the word that was used for me or to me, and since
4 it was -- it didn't explain why somebody would pull a gun
5 and fire.

6 On balance, in my opinion, there was also the fact that
7 I would lose final argument. We had already had
8 Mr. Medford's statement read into the, into the record. It
9 was in evidence. It gave us an uncontroverted version of
10 events. They called no other witnesses who could gain say
11 that position. We had gotten out the fact that there were
12 .45 caliber bullets found on Mr. Hayes. There was a clip, I
13 believe, also found with Mr. Hayes.

14 I had gotten out that, in fact, drug dealers and
15 everyone agreed, except for Mr. Hayes family, outside of
16 Court, that Mr. Hayes was, in fact, manufacturing
17 methamphetamine, and that they do often either carry guns.
18 We also, I believe, elicited testimony, and I couldn't find
19 it in my flipping through today, about that guns are often
20 used in the drug trade as cash essentially, that -- the fact
21 that it disappeared, we would of argued in closing, is not
22 that surprising particularly in this area where there was
23 clearly a fair bit of methamphetamine manufacturing going
24 on.

25 So we had -- I just didn't think that either

Matthew Shealy - Direct examination
by Ms. White

1 Mr. Medford or Mr. Crisp, what they added was sufficient to
2 give up that final argument, one, and, two, the -- there may
3 of been some conflicting statements given. I just didn't
4 think that that was valuable or valuable enough to give up
5 final argument because, again, the fact or the large part of
6 the facts here weren't, weren't in contention.

7 Everybody knows he was in a vehicle. He was shot in a
8 vehicle. Everybody accepted all of that. The only question
9 was who shot who first or who shot whom, and whether
10 Mr. Medford did it in self-defense. The only eye witness
11 testimony or only eye witness evidence we had was Mr.
12 Medford's statement, and if I got that jury last, I thought
13 I could pound that home pretty solidly, quite frankly.

14 Q Okay. And you, you got to the point in the trial where
15 you rested.

16 What was the progression of how it turned into a plea
17 at that point?

18 A They had always been at voluntary. Mr. Medford's
19 position was always well, I'll plead to ten. He was at ten.
20 He would be willing to entertain a plea.

21 Well, they said no to that, and then they came down to
22 25, and then they came down to 20 prior to trial, and that
23 was, again, too much. It didn't make sense given the
24 strength we believed of our case, and then, right before
25 summation, they brought us a 15 year offer. And, quite

Matthew Shealy - Direct examination
by Ms. White

1 frankly, I always -- we had had a case similar to this, a
2 Stand Your Ground case that my boss had tried I want to say
3 a month or two prior to this, and, in that case, where a
4 person was ejecting what appeared to be an actual
5 trespasser. He was an invited guest who turned into a
6 trespasser. The client was convicted and received a
7 sentence, I believe, of 13 years. It may of been 14 or 12.
8 It was in that range.

9 So I thought 15 was a fair offer at that point. I
10 brought it to Mr. Medford. He kept telling me that he would
11 leave it in God's hands. I don't know exactly what that
12 means and he would talk around it. He was not adamant, but
13 he wasn't going to take that offer otherwise it would of
14 been fine. We were gonna go ahead and try the case or
15 finish the case. We had already tried it.

16 I had -- there was no reason not to close it up if he
17 just absolutely wanted to have it closed up. But he kept
18 saying he was going to leave it in God's hands, and we
19 talked a little while, and ultimately he decided to, so I
20 could figure out what that meant, and he decided that he
21 wanted to take the 15. That's what he did.

22 Q Okay. And in regards to -- one second -- are you going
23 back and forth with him three times and bringing Clay Allen
24 and, and forcefully coercing him into taking the plea?

25 A I don't -- Clay probably came back with me, I mean,

Matthew Shealy - Direct examination
by Ms. White

1 cause he was part of the -- I mean we were both trying the
2 case together. I don't recall going back and forth three
3 times. I mean -- and I can't -- I don't recall twisting his
4 arm. I'm not really sizable enough to twist anybody's arm.

5 Q And, in fact, at the plea, if he had changed his mind
6 or said he wanted to not plead, he didn't want to proceed
7 with trial, would you have stood down the plea?

8 A Sure. I mean, like I say, all we had to do was close,
9 and, if he was convicted, do sentencing. I mean it---

10 Q Did---

11 A All the, all the fighting was done.

12 Q Did---

13 A The serious fighting was done.

14 Q Did you have any concerns that he was not pleading
15 freely and voluntarily at the time once he pled to the 15
16 year deal?

17 A No, ma'am, I mean he wasn't happy that he was pleading
18 under Alford. I mean he wasn't happy that, that that's the
19 choice that it came down to, but he didn't, at any point,
20 suggest to me that he didn't want to or, again, all we
21 had -- I had a closing ready and we would of done it.

22 Q Okay. Thank you.

23 That's all I have.

24 THE COURT: Any questions?

25 MR. BROUGH: Yes, Your Honor.

Matthew Shealy - Cross-examination
by Mr. Brough

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MR. BROUGH:

4 Q Mr. Shealy, when he kept saying he wanted to leave it
5 in God's hands, you said you tried to figure out what that
6 meant, is that right?

7 A Yep.

8 Q Did you ever tell him that God wasn't there to save
9 him, but you were?

10 A No, sir.

11 Q Did you ever tell him that God wasn't there?

12 A No, sir. No, sir, I told him a story about God sending
13 a car and a boat and a helicopter. It's an old story that
14 my pastor use to tell me, and I told him well, you know,
15 that may be what happened here is that they sent the car of
16 25, the boat of 20, and this is the helicopter of 15, and
17 that may be what God's saying.

18 Q Now, you, you said it was a self-defense case from the
19 start.

20 A Yes.

21 Q Okay. In the statement that you're talking about that
22 was read into evidence, Mr. Medford didn't actually give a
23 written statement, did he?

24 A No. No, it's a recorded statement.

25 Q Well, it wasn't exactly a recorded statement, was it?

Matthew Shealy - Cross-examination
by Mr. Brough

1 It was just an oral statement where the detective took
2 some, I guess, some notes down from it.

3 wouldn't that be more accurate?

4 A That very well could be.

5 Q Okay. So in doing that, it's not his statement
6 verbatim.

7 It's the officer's recollection of his statement?

8 A That's -- yes, sir.

9 Q Okay. And typically in a case the officer is a State's
10 witness, correct?

11 A Correct.

12 Q And they're going to try to help the State's case,
13 correct?

14 A well, ordinarily you would believe that. But, again, I
15 thought that it helped us sufficiently. So that may
16 buttress his credibility. I mean the fact that I think it
17 was sufficiently self-defense and that would of been part of
18 my closing.

19 Q Do you remember Allen wood testifying that Mr. Medford
20 said if he claims self-defense and couldn't find a gun he'd
21 look pretty silly?

22 A I remember him saying that.

23 Q Okay. In this case we had an explanation for the gun,
24 correct?

25 A we did.

Matthew Shealy - Cross-examination
by Mr. Brough

1 Q But that wasn't put into evidence?

2 A Well, I believe that Mr. Wood may of mentioned that,
3 and I can't remember exactly, but I believe he said
4 something along the lines of that there had been some
5 questions to whether it'd been throwed out.

6 Q But you couldn't show what happened to the gun?

7 A I could not, no. We went and looked for it, but
8 couldn't find it.

9 Q But you didn't call Mr. Medford to testify?

10 A I did not.

11 Q And you had already heard Mr. Medford's testimony. I
12 believe you said that part of your reason that you didn't
13 call him to testify is you were afraid that he would go off
14 on some sort of tangent or not answer the questions
15 properly, but you had previously, during that trial, already
16 called him to the stand during the Stand Your Ground motion,
17 correct?

18 A I had.

19 Q Okay. And, and would you agree with me that his
20 testimony was on point and he didn't get sidetracked?

21 A In that particular -- yes, there I thought it was, as
22 reading back on it, it was surprisingly---

23 Q Helpful?

24 A It was.

25 Q And so his testimony probably would of been helpful to

Matthew Shealy - Cross-examination
by Mr. Brough

1 his defense then if he were called in front of the jury as
2 well?

3 A well, I don't know that that's true because, again,
4 they -- I think the -- we would of gotten into other areas.
5 So -- and, again, maybe I should of called him, but, in my
6 opinion, I would of preferred to have last argument. He
7 agreed with me that he was concerned about -- I mean
8 ultimately, in our conversations, that he does sometimes
9 have the tendency of answering questions that aren't asked.
10 So --.

11 Q Now, you would of rested your case, correct --

12 A Yes, sir.

13 Q -- before he pled?

14 Did you have any sort of discussion or charging
15 conference with the trial judge?

16 A We had not at that point.

17 Q So you weren't aware, at that point, whether or not the
18 judge was even going to issue a self-defense instruction
19 given the limited proof that existed of self-defense without
20 calling the defendant to the stand?

21 A In my conversations with Judge Cole in the back, as you
22 can see, he did call us back, at no point did he suggest
23 that he would not charge self-defense.

24 Q Did he ever suggest he was going to?

25 A I believe that he was. I can tell you that, from our

Matthew Shealy - Cross-examination
by Mr. Brough

1 conversations, I believed he was going to charge
2 self-defense.

3 Q Now, the, the right to last argument gives you the last
4 say so, but wouldn't you agree with me that the testimony of
5 people like Mr. Medford and Mr. Crisp that were actually
6 there would actually be much more helpful to a jury than
7 just hearing you last?

8 A I don't agree with that necessarily particularly given
9 I don't believe that Mr. Medford's testimony would of added
10 sufficient to what had already been put into the record, and
11 as I've already testified, that I believe Mr. Crisp's
12 testimony would not have been an -- allowed good and there
13 would of been issues with his representation, whether he
14 would of actually testified at all.

15 MR. BROUGH: No further questions.

16 THE COURT: Any redirect?

17 MS. WHITE: No, Your Honor.

18 THE COURT: Sir, you may step down.

19 THE WITNESS: Thank you, ma'am.

20 THE COURT: You're welcome.

21 Anything further from the State?

22 MS. WHITE: Nothing further from the State.

23 THE COURT: Any rebuttal testimony from the Applicant?

24 MR. BROUGH: No, Your Honor.

25 THE COURT: Any argument?

1 MR. BROUGH: Your Honor, we, we'd ask the Court to
2 consider granting a new trial for Mr. Medford. The case
3 ultimately went through the entire trial process before it
4 ultimately pled out.

5 Your Honor, it would be our position that, in arguing
6 the self-defense case, that defense counsel was ineffective
7 by not presenting the actual testimony and relying on an
8 investigator to summarize his statement as to self-defense.
9 Clearly Mr. Medford had testified that there was another
10 gun, that he was acting in self-defense. I think he
11 testified during the pretrial motion hearings. I don't
12 think his testimony would of hurt him.

13 Additionally, Mr. Crisp's testimony I think also shed
14 some light on, on the case, and that there was, in fact,
15 another gun that was found, and while he can't say he saw
16 that other gun pulled, he did indicate that he saw it on the
17 floorboard, and that if the person was holding a gun, that
18 it would not have been at him.

19 So I think there's a strong argument that there was a
20 gun that was pulled on Mr. Medford and I think that, if
21 that testimony was presented, the result of the case would
22 of been different.

23 THE COURT: Anything from the State?

24 MS. WHITE: Your Honor, we would just rest on the
25 record. We think that the record is clear that he

1 ultimately pled freely and voluntarily knowing his options
2 of potentially receiving 30 to life, and we would ask that
3 the application be denied.

4 THE COURT: Considering the applicable standard
5 pursuant to the Strickland case, it is the Applicant's
6 burden to establish that his counsel was ineffective. In
7 other words, that his performance fell below professional,
8 professional norms.

9 Counsel's performance is presumed to have been
10 adequate, and the Applicant must prove that -- not only that
11 the performance fell below professional norms, but that he
12 suffered some prejudice as a result, and that prejudice is
13 defined as performance that would undermine the Court's
14 confidence in the jury's verdict.

15 The Court finds the testimony of Mr. Shealy credible.
16 The Court does not find the testimony of the Applicant
17 credible.

18 Viewing this record in its entirety, Mr. Shealy was a
19 zealous advocate for his client even in filing a Stand Your
20 Ground motion even though it was not successful. It is very
21 clear, from the record in this case, that he pursued the
22 only applicable defense to the Applicant. That being
23 self-defense.

24 I do not -- they're certain matters of strategy. That
25 being preservation of last argument. That is a valid

1 articulated strategy.

2 In addition to that, not calling his client as a
3 witness where he made the estimate or the assessment rather,
4 not estimate, where he made the assessment that his client
5 would not be a particularly compelling witness such to give
6 up first argument. That's also a valid strategic decision.

7 And why would he call his client and make him subject
8 to cross-examination when, in his estimation as he
9 articulated from the stand, that he really did not have a
10 very clear cut articulated version of what happened?

11 And why wouldn't you have the officer put his exact
12 words contemporaneously as recorded into the record?

13 Doesn't subject his client to cross-examination, and
14 that was a valid strategic move, quite smart on his part
15 especially where he was able to elicit, through other means,
16 all of the items that he claimed would exculpate his client
17 and prove his theory of self-defense. That being the shells
18 found within the victim's vicinity.

19 Let me get that list right quick.

20 The clip, the casings, that he had manufactured meth,
21 that gun's are often used as cash in the methamphetamine
22 trade. And I agree also that it was a valid strategic
23 decision not to call Mr. Crisp and that is -- was not worth
24 giving up last argument.

25 I listened carefully, very carefully to the testimony

1 of Mr. Crisp. The only thing Mr. Crisp can corroborate is
2 that a gunshot took place in his car. He can corroborate
3 that he saw a gun on the floorboard, but that's not in
4 contention. There's no dispute that they found the casings,
5 they found a clip in the presence or vicinity of this
6 particular victim.

7 The rest of his testimony would of been inadmissible.
8 It would of been self-serving and bolstering. There would
9 of been no exception to the hearsay rule that it would of
10 allowed him to say what the defendant said to him.

11 But even more importantly, and more germane to the
12 issue, he didn't see -- he says I didn't see what happened.
13 I heard a gunshot in my car. I wasn't too particularly
14 pleased about it and he could testify, however, that he told
15 the Applicant that he was full of mess. That certainly
16 wouldn't have helped him because that implies that I don't
17 believe what you just told me within the context of what he
18 testified to.

19 So I think it was a valid strategic decision. It's not
20 for the Court to second guess. Hindsight is always 20/20.
21 And in light of how the case was developing, I think that
22 these were valid strategic arguments.

23 Now, having made those observations, when you look at
24 the breadth of the record, where there was pretty much
25 confirmed by this record that there was a close contact

1 wound to the back of the victim's head, logistically, really
2 I don't understand -- it makes the whole defense implausible
3 and it makes his -- physically and anatomically there's no
4 way you can turn around and shoot somebody in the back of
5 the head where his testimony is that this gentleman had a
6 gun to the back of his head.

7 The record indicates that a bullet lodged into the eye
8 of the victim and that he was thrown out of the car and left
9 to die. Yeah, through the eye and I -- logistically it's
10 not possible. It just -- you can't react that quickly. If
11 somebody has a gun and they're gonna shoot, they're not
12 gonna give you enough time to turn around and shoot them
13 first. It's just -- in a car, it's just not --
14 logistically, it's just not possible.

15 But even if it were possible, I don't know that it
16 would be particularly believable, and I don't know that it
17 really would of amounted to -- Mr. Crisp could not of
18 corroborated that. The only thing he could corroborate is
19 that he had a gun -- heard a gunshot and your client's
20 version, the Applicant's version of what happened came into
21 the record through the testimony of the officer, and it was
22 pretty much verbatim as to what he testified here today.

23 So I can't discern any prejudice to him and it appears
24 that he, based on the transcript of the plea, was very
25 clearly advised that the Court stood ready to go forward

1 with the trial and to conclude the trial. I find
2 Mr. Shealy's testimony credible, that he has his closing
3 argument ready to do, and that if his client didn't want to
4 plead guilty, that he could of gone forward with the plea.
5 I do not find credible his testimony that he was coerced in
6 some way, that they beat him down into taking a plea.

7 The record just doesn't -- the contemporaneous record
8 of the plea just doesn't bear that out and the only viable
9 defense he had was self-defense, and that was, at best, an
10 80/20 call as to whether that was going to prevail with the
11 jury because the average juror has an inordinate amount of
12 common sense, and unlike lawyers, they don't look at it the
13 way we look at it. They would of been trying to figure out
14 how in the world that could of happened in a car in that
15 limited amount of space, how you have that much time to turn
16 around and shoot somebody in the eye where it lodges in the
17 back of their head.

18 Logistically, it's just not -- I don't -- but from the
19 breadth of the record, I'm not convinced that it would of
20 turned out any differently, and there's no indication his
21 plea was other than -- anything other than free and
22 voluntary and that he entered into it freely and
23 voluntarily, free from duress, and I do not find credible
24 that he didn't testify because his lawyer forced him or
25 coerced him not to do it. And even if that were the case,

1 when the judge asked him, questioned him about it, he could
2 of very easily said I really want to testify, but my
3 lawyer's telling me it's not a good idea cause that's what
4 defendants do, and then we have an additional colloquy to
5 tell them, irregardless of that, it's ultimately your
6 decision and it's your decision alone. And a part of that
7 colloquy is you can talk with anybody you want to, but
8 ultimately it's your decision as to whether you testify or
9 not.

10 So I do not find any of that persuasive nor do I find
11 that it met his burden of proof, and the motion or the
12 application is denied.

13 The -- Ms. White will provide the Court with a proposed
14 order in 20 days. That will be sent to Mr. Brough as well
15 and, after that, the Court will finalize an order, which
16 will be sent to all parties, and, of course, will advise him
17 of his right to appeal any decision of this Court within the
18 appropriate timeframe.

19 Thank you very much.

20 MR. MEDFORD: Can I say something?

21 THE COURT: No, sir, you may not. The Court has ruled.

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* *

24

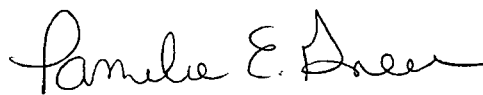
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 13th day of January, 2015.

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

May 12th, 2015

A handwritten signature in cursive script that reads "Pamela E. Green". The signature is written in dark ink and is positioned above a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Tony Paul Medford, #349218,

2012-CP-42-4240

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:

Hon. Deadra L. Jefferson
Christopher D. Brough, Esquire
Suzanne H. White, Esquire
Matthew W. Shealy, Esquire
Clay T. Allen, Esquire

Date of Hearing:
Court Reporter:

January 13, 2015
Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 8, 2012. The Respondent made its Return on or about October 2, 2013. An evidentiary hearing into the matter was convened on January 13, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Christopher D. Brough, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Danny Crisp also testified on Applicant's behalf. Matthew W. Shealy, Esquire, (Counsel) also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial and plea transcripts.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the March 2011 term of the Spartanburg County Grand Jury for Murder¹ (2011-GS-42-1821). The Applicant was represented by Matthew Shealy, Esquire. Mr. Shealy was assisted in trial by Clay T. Allen, Esquire. After beginning pre-trial motions, on January 9, 2012, the Applicant pled guilty under Alford² to Voluntary Manslaughter for a negotiated term of fifteen (15) years' imprisonment.³ The Applicant was sentenced by the Honorable J. Derham Cole to a period of incarceration for fifteen (15) years for Voluntary Manslaughter. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to retain expert,
 - b. Counsel provided improper adversarial skills.
2. Violations of both US and State Constitutions (Due Process and Equal Protection), in that;
 - a. "vindictive prosecution no following through with motion."

¹"A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life." . . . For purposes of this section, "life" or "life imprisonment" means until death of the offender without the possibility of parole." S.C. CODE ANN. § 16-3-20 (2011); "No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section." Id.

² North Carolina v. Alford, 400 U.S. 25 (1970).

³ "A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years." S.C. CODE ANN. § 16-3-50 (2011).

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

Summary of the Testimony

The Applicant testified that he was originally indicted for Murder and proceeded to trial on that charge. However, Applicant testified that after the State rested its case and prior to presenting a defense, he pled guilty to the lesser-included offense of Voluntary Manslaughter pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). The Applicant testified he met with Counsel only three (3) times prior to trial. The Applicant testified that he had five major surgeries following his arrest on this charge and was in the hospital often prior to trial.⁴ The Applicant acknowledged that Counsel made a "stand your ground" motion in regards to the Applicant's right to protect himself and assert self defense.⁵ The court held a pre-trial hearing at which the Applicant testified, but the court denied the Applicant's motion. The Applicant testified that he wanted to testify at trial, but Counsel advised him against testifying advising him that "we won the case" and "we won, this isn't Murder." The Applicant acknowledged that the trial court advised him of his right to testify and admitted that it was his choice whether to testify or not, but claimed that if his attorney had allowed him to testify, he would have been acquitted.

⁴ The Applicant testified that he suffers from severe health problems and had numerous major surgeries while incarcerated. The Applicant testified that Counsel visited the hospital in the attempts to secure the Applicant a bond, however the issue of the Applicant's bond is not germane to the collateral review of his conviction and sentence.

⁵ See S.C. CODE ANN. § 16-11-440(C) (2011).

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The Applicant testified that the victim, Richard Allen Hayes, was using methamphetamine and was making threatening statements before pointing a gun at the Applicant. The Applicant's testimony was that he took the victim's gun and shot the victim in self-defense. The Applicant testified that law enforcement found forty-five (.45) caliber rounds near the shoe of the victim's body and a clip for a forty-five (.45) caliber pistol in the pocket of his friend and cousin, Danny Crisp.⁶ The Applicant testified that he was paralyzed from the waist down at the time of the shooting and could not get away since he was riding in the car with Danny Crisp and the victim.

The Applicant testified that Danny Crisp, driver of the vehicle at the time the victim was shot, was listed as a State's witness, but did not testify. The Applicant testified that Crisp was driving, while Applicant was in the front passenger seat and the victim was in the back seat of the vehicle behind the Applicant. The Applicant alleged that the victim reached into the back seat and pulled a gun on the Applicant. He further testified that had the .45 caliber gun been "brought out," his trial would have been different. The Applicant alleged that Crisp knew that the victim was acting threatening and had a gun, had arranged a plea deal in exchange for his testimony, and could have testified to those facts on behalf of the Applicant.

The Applicant admitted that he testified during both his "stand your ground" and Jackson v. Denno hearings. The Applicant additionally testified that he grabbed the victim's gun not intending to kill him and stated "why would I murder someone seated behind me?"

The Applicant testified that if he did not take the plea deal, his attorneys and the presiding judge "scared" him that he would receive life in prison without possibility of parole.

⁶ The record reveals that the victim suffered wounds from a twenty-two (.22) caliber pistol (Tr. 219:8-220:19) and law enforcement discovered a clip and magazine in the victim's pocket (Tr. 179:11-25). Law enforcement found four (4) unfired, forty-five (.45) caliber rounds by the victim's shoe (Tr. 192:11-193:6). The record further reflects that all bullets, clips, magazines, and gun paraphernalia were introduced into evidence.

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The Applicant further testified that he suffered from medical conditions and received care from the South Carolina Department of Corrections, but there was an issue with the way his time was calculated. The Applicant testified that he communicated with his attorney through his mother about his attorney failing to visit him while he was incarcerated.

Danny Ray Crisp, the Applicant's co-defendant, testified on the Applicant's behalf.⁷ Crisp testified that he has known the Applicant for years because the Applicant's mother married Crisp's uncle. Crisp testified that he was with the Applicant on the night of the shooting and had given the Applicant a ride to the victim's home. Crisp further testified that there were a total of five (5) guys altogether. Crisp testified that the Applicant and victim asked him to take them to Tonya's house, which he declined at first, instigating an argument, but then agreed to take Rick to Tonya's house. On the way back from Tonya's house, Rick and the Applicant argued while the Applicant sat in the front passenger seat. The next thing, Crisp testified, he heard a gunshot and stopped the vehicle, he and the Applicant alighted from the vehicle, and Crisp implored them not to shoot in his car and told the Applicant he was "full of mess." Crisp testified that he then saw a .45 caliber gun on the floor in the backseat with the victim, which he said was the gun pulled on him. Crisp clarified that he heard but did not witness the shooting and that he saw the gun on the back floorboard when the victim got out of the car. At that time, Crisp testified, the Applicant still had a gun in his hand. Crisp finally testified that he gave a statement to the police and the Solicitor on January 12, 2011 and 12:12 AM. He testified he provided a handwritten

⁷ Danny Crisp was represented by Steve Sumner, Esquire. Prior to Crisp's testimony, this Court questioned him as to whether he had received a subpoena issued by the State to testify regarding the Applicant's trial. This Court further inquired as to whether Crisp wished to call his attorney to be present during his testimony at the evidentiary hearing, which he declined. This Court further advised that any statements he may make on the stand while under oath may be used by the State against him to seek additional penalties for any crimes he may have committed in the past or into the future. The Court finally advised Crisp that he should offer his testimony only if he was not compelled to testify in violation of his right against self-incrimination. Crisp declined to consult with his attorney, indicated that he understood the Court's instruction, and told the Court he wished to testify.

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statement to the police and that he and the Applicant drove around to drop the guns but that the police were reluctant to go find them.

Counsel testified that he received the case in January 2011 prior to proceeding to trial in January 2012 and that he was assisted by Clay T. Allen, Esquire. Counsel testified that he could not specifically state how many times he met with the Applicant, but did believe that it was more than three (3) times. Counsel specifically remembered visiting the Applicant twice in the hospital with the investigator and "spending a good bit of time there." Counsel recalled meeting with the Applicant several times in the medical area of the detention center and several times in either Pod 3 or 6. Counsel testified that at that time, when the Applicant was in the hospital, they discussed his charges but that he was concerned that the Applicant did not fully understand him because of all the medications he was on.

Counsel testified that the Applicant's defense was always self-defense and that they sought immunity under the "stand your ground" statute. He testified that the victim was shot through the eye, suffering a close contact wound to the back of the brain, and the bullet was lodged into the back of his brain, the Applicant's self-defense argument was improbable and perhaps even impossible. Counsel testified that the jury would use their "common sense" and he projected that the Applicant's self-defense argument at best would have "80/20" odds of success. Counsel testified that the victim accused the Applicant of "messing" with his wife, Tonya that she was "fooling" around on him, that the Applicant was cuckolded, and the Applicant knew by whom.

Counsel testified that he and Applicant thoroughly explained and discussed the Applicant's right to testify at trial, but Counsel advised against it because of his concern as to how the testimony would be perceived. Counsel testified that overall, Applicant's testimony at

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the pre-trial hearing was consistent, but somewhat rambling and the Applicant tended not to answer the question asked. Counsel opined that the Applicant never "fully formed" an explanation of what happened, thus Counsel was concerned about calling him as a witness. Counsel testified that he felt the Applicant tended to answer questions that were not asked, which would be a major concern, especially during the State's cross-examination. Counsel testified that ultimately it was the Applicant's decision not to testify at trial. Furthermore, Counsel testified that the Applicant's statement regarding the victim pulling a gun and pointing it at Applicant was in the record and did not explain why someone pulled a gun or identify the shooter.

Additionally, the evidence and testimony showed that law enforcement found .45 caliber bullets and a clip—which he argued belonged to the victim—near the victim's body. Counsel testified that the background of the altercation was that the parties were involved in a methamphetamine manufacturing enterprise and that they used guns as "cash" in the drug trade. Counsel and the Applicant discussed Crisp testifying consistently about the gun on the floorboard in exchange for a plea deal. Counsel testified that Crisp's testimony could have confirmed that the victim did have a gun, but he could not testify if the victim was pointing the gun at the Applicant or who fired the gun. Counsel testified that a large portion of the facts were "not in contention," including the identity of the victim's assailant, and that the only issue was "who shot whom first," which would determine whether the Applicant could assert self-defense. Counsel testified that another issue with the Applicant's self-defense argument was regarding whether the victim had a gun and the corresponding fact that the Applicant and Crisp disposed of both guns following the shooting. However, the only gun that was recovered was the Applicant's gun, a .22 caliber pistol.

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Counsel testified that he would have lost final argument if they presented any testimony and he believed that when looking at the benefits, especially considering that he was able to get the Applicant's statement of events into evidence, final argument outweighed the risks of having Applicant or Crisp testify. Counsel further opined that the Applicant's statement, as recorded by police, helped the Applicant's self-defense argument without necessitating the Applicant's testimony at trial. Counsel testified that the Applicant's statement was an uncontroverted version of the events, that the State could present no other version, and that the State would call no rebuttal witnesses. Counsel further explained that the State introduced the .45 caliber shells, clip, casings, methamphetamine, and guns into evidence, which bolstered the defense's argument. The rest of the Applicant's testimony, Counsel opined, was self-serving, bolstering, hearsay not subject to an exception, and generally inadmissible. Other statements, Counsel opined, were not valuable enough to give up last argument. Counsel finally testified that after charge conference, he believed the judge would charge the jury on self-defense.

Counsel testified that the Applicant was willing to entertain a plea and was always in a posture to negotiate, but the State originally offered a plea to voluntary manslaughter for twenty-five (25) to thirty (30) years, and the Applicant consistently refused to plead to any negotiated sentence longer than ten (10) years. Counsel testified that right before closing arguments, the State made the fifteen (15) year offer, which the Applicant accepted. Counsel testified that he had attempted to get the State to lower its initial offer to twenty-five (25) years, then again to twenty (20) years, and then finally to fifteen (15) years. Counsel felt the fifteen (15) year offer was fair at that point, but that the Applicant was "vague" and "not adamant" about accepting the offer, stating repeatedly that he would "leave [it] in God's hands." Finally, the Applicant testified, the Applicant decided to take the fifteen (15) year offer.

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Counsel testified that he was fully prepared to present his closing arguments had the Applicant chosen to not accept the plea and was willing to finish the trial. He clarified that he already had his closing done at the time the Applicant accepted the plea and that he was dedicated to being a "zealous advocate" for his client, which was also a basis for his strategic decision to advise the Applicant not to testify at trial in order to preserve last argument. Counsel further testified that the Applicant's plea was free and voluntary and denies any "coercion" on his part of the Applicant or "twisting his arm." Counsel testified that all serious fighting and advocacy was done. He further testified that the Applicant was not "happy" that his case came down to a guilty plea, but that he rests on the record and transcript of the Applicant's trial and plea. Counsel finally opined that the Applicant was not prejudiced by not utilizing Crisp's testimony because it did not add anything to the record. Counsel affirmed that the Applicant could have told the judge he wanted to testify during his guilty plea.

Ineffective Assistance of Counsel

In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at

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2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

The Applicant alleges he received ineffective assistance of counsel. This Court finds the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations. This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant and discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's version of the facts, the penalty ranges associated with the charged offenses, and the Applicant's defenses he could present at trial. The record reflects that Counsel effectively explained the charges and their

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associated penalty ranges, and the consequences of pleading guilty. The record is completely devoid of any evidence that Counsel forced the Applicant to waive his right to testify on his own behalf and plead guilty. The record is also devoid of any evidence that Counsel failed to visit the Applicant, return his communications, deny the Applicant's request to call witnesses during his case-in-chief, fully argue all motions on the Applicant's behalf, and zealously advocate on his client's behalf. The record further reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Deficient Adversarial Skills

In his Application and at the evidentiary hearing, the Applicant argued that Counsel's adversarial skills were deficient.⁸ Additionally, the Applicant alleges Counsel was inefficient for failing to call Crisp as a witness at trial and failure to allow the Applicant to testify on his behalf.

⁸ In his Application, the Applicant alleged Counsel was inefficient for failing to call an expert witness on his behalf; however, at the evidentiary hearing, the Applicant failed to articulate his argument. Therefore, this assertion of error

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In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” Strickland, 466 U.S. at 689, 104 S. Ct. at 2065. There is a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance and the “defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” Id.

Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 778–79 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. U.S., 564 F.2d 1071 (4th Cir. 1977)). See Stokes, 308 S.C. at 548, 419 S.E.2d at 778–79 (finding counsel’s decision not to call witnesses reasonable where their testimony would have been of no value to the case and witnesses were not credible); Abney v. State, 408 S.C. 41, 51, 757 S.E.2d 544, 549 (Ct. App. 2014) (“While trial counsel should consult with his client, the final decision on strategy belongs to counsel.”); More v. State, 399 S.C. 641, 723 S.E.2d 871, 873 (2012) (citing Florida v. Nixon, 543 U.S. 175, 187, 125 S. Ct. 551 (2004) (“Attorneys have a duty to consult with their clients regarding ‘important decisions,’ including questions of overarching ‘defense strategy.’ . . . This does not require

is deemed abandoned and dismissed. Nevertheless, the Applicant was not prejudiced by Counsel’s failure to call an expert witness to testify about the victim’s injuries at trial. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812 (2005) (citing McLaughlin v. State, 352 S.C. 476, 483–84, 575 S.E.2d 844–45 (2003)) (finding defense counsel’s

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counsel to obtain the defendant's consent on every strategic decision, but certain decisions regarding the waiver of basic trial rights [to plead guilty, waive a jury, testify on his own behalf, or take an appeal] cannot be made for the defendant by surrogate").

This Court finds that Counsel's testimony was credible, while finding that the Applicant's testimony was not credible. This Court finds Counsel articulated a strategic basis for his decision not to call any witnesses at trial and preserve last argument. Further, Counsel's concerns with the Applicant's disjointed and muddled testimony were valid, especially considering Counsel's credible testimony that the Applicant's testimony still did not explain why the offense occurred; the State already introduced evidence at trial that corroborated the Applicant's uncontroverted version of events; Counsel achieved his objective of introducing the Applicant's statement and any further testimony would have been moot and most likely detrimental; all the evidence the Applicant and Counsel intended on presenting was already entered into the record. This Court finds Counsel's strategy to allow the Applicant's statement in through the officer effective and most likely inured to the Applicant's benefit, considering the State effectively introduced testimony regarding the bullets, clip, methamphetamine use, and methamphetamine manufacturing business without the Applicant's testimony.⁹ Additionally, this Court finds Counsel's reasons for not calling Crisp to be reasonable, when Crisp could only testify that he heard, but did not see, a gunshot and saw a gun on the backseat floorboard and his statement was generally uncontroverted.

This Court finds most compelling Counsel's argument that preserving last argument was more valuable than risking the consequences of presenting his client and Crisp's testimony to the jury. Further, the Applicant presented no evidence at the hearing that Counsel made decisions on

decision not to call an expert witness to rebut the State's expert witness was legitimate strategic decision and any resulting prejudice to the Applicant would be merely speculative).

fundamental trial strategies without his consent. Therefore, this assertion of error is without merit.

Although the Applicant testified on his behalf and presented testimony from Crisp, this Court finds that the testimony failed to establish that the Applicant suffered any prejudice from Counsel's decision not to present either witness. Further, this Court finds the Applicant's testimony that he did not testify at his trial because he was not allowed by Counsel is not credible. The Applicant failed to meet his burden of establishing that the testimony would have affected the outcome of his trial.

Finally, this Court finds no evidence that Counsel forced or coerced the Applicant into waiving his right to testify and pleading guilty. Counsel presented the only applicable defense to the charge and was a zealous advocate on the Applicant's behalf. However, as Counsel testified, the Applicant chose to accept the State's plea offer following the close of their case. The contemporaneous record of the trial and plea transcripts indicates that the court fully advised the Applicant of his constitutional rights (Tr. 254:8-258:4). The Applicant thereafter waived his right to testify of his own free will and accord and free from pressure (Tr. 256:22-257:15). The next morning, the Applicant pled guilty to the lesser-included offense of Voluntary Manslaughter pursuant to the negotiated twelve (12) year plea. The contemporaneous record indicates his plea was entered into freely and voluntarily. The Applicant affirmed that he intended to plead guilty under Alford (Tr. 5:16-18; 6:10-12). The Applicant affirmed that he was pleading of his own free will and accord and his plea was free of force, pressure, coercion (Tr. 5:19-6:3). The Applicant told the court that he had plenty of time to discuss his decision with his lawyer (Tr. 4:17-19; 6:4-9). Further, the Applicant presented no credible testimony or evidence to the contrary. Therefore, this claim is denied and dismissed.

⁹ See note 6, *supra*.

Constitutional Violations

In his Application, the Applicant alleges violations of his constitutional rights based upon vindictive prosecution. However, the Applicant failed to present any argument supporting his claim at the evidentiary hearing. Therefore, this ground is deemed abandoned and dismissed. Nevertheless, the Applicant's vindictive prosecution claim is procedurally barred. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. CODE ANN. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993).

Applicable South Carolina jurisprudence on vindictive prosecution provides:

It is a due process violation to punish a person for exercising a protected statutory or constitutional right. United States v. Goodwin, 457 U.S. 368, 372, 102 S. Ct. 2485, 2488, 73 L.Ed.2d 74 (1982) . . . In a criminal prosecution, however, punishment of the offender is recognized as a proper motivation for a sentencing trial judge or a prosecutor. Goodwin, 457 U.S. at 372-73, 102 S. Ct. at 2488-89. As stated in Goodwin, "[t]he presence of a punitive motivation, therefore, does not provide an adequate basis for distinguishing governmental action that is fully justified as a legitimate response to perceived criminal conduct from governmental action that is an impermissible response to noncriminal, protected activity." Id. at 373, 102 S. Ct. at 2488. For this reason, the United States Supreme Court has fashioned certain rules as a protection against vindictive action in response to a criminal defendant's exercise of a statutory or constitutional right.

State v. Fletcher, 322 S.C. 256, 259-60, 471 S.E.2d 702, 704 (Cl. App. 1996).

The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief.

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999).

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A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Furthermore, a freely and understandingly made guilty plea generally constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. See Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (a plea of guilty constitutes a waiver of non-jurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981). This Court finds that the Applicant failed to present any evidence or testimony to support his claim that his constitutional rights were violated. Furthermore, the Applicant pled guilty and therefore waived any claims of violations of constitutional rights prior to his plea.

Involuntary Guilty Plea

The Applicant alleges that Counsel coerced him into pleading guilty by scaring him with the threat of life imprisonment without possibility of parole. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant

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would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360.

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(1984)). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). "Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat." Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

Moreover,

a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors indicate that the Defendant had notice of the charges to which he chose to plead guilty.

State v. Smalls, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005).

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This Court finds that the Applicant failed to meet his burden of proof as to this claim. This Court finds the transcript of the trial and guilty plea to be most compelling. Upon Counsel's motion, the court published his client's record for impeachment purposes; thoroughly advised the Applicant of his constitutional rights; advised the Applicant of his right to testify on his own behalf; ensured the Applicant understood his rights; ensured the Applicant had an opportunity to discuss the advantages and disadvantages of testifying with Counsel; and that he had time to reflect upon his decision (Tr. 253:20-256:7). Further, the Applicant affirmed that while Counsel recommended the Applicant not testify, Counsel cannot make the decision for him and that he had to make his decision based upon any considerations that he felt appropriate and relevant (Tr. 256:8-21). The Applicant thereafter waived his right to testify of his own free will and accord and free from pressure (Tr. 256:22-257:15). Moreover, the Applicant affirmed that he had enough time to think about his decision, was satisfied with his decision, had no further evidence to introduce on his behalf, and wished to call no witnesses on his behalf (Tr. 257:7-18). Therefore, this Court finds that the Applicant freely, voluntarily, knowingly, and intelligently waived his right to testify on his own behalf and present his defense at trial.

The morning after the Applicant waived his right to testify, he changed his plea to guilty under Alford with a negotiated sentence of fifteen (15) years to the lesser included offense of Voluntary Manslaughter (Tr. 3:5-4:1). At that point in the proceedings, the State had presented its evidence; the Applicant's case was being presented to the jury for deliberation; and, after hearing the evidence against him, the Applicant determined there was a significant likelihood that the jury would find him guilty of Murder, which risk he felt comfortable avoiding (Tr. 19:8:7). The Applicant understood that the possible penalty was up to thirty (30) years imprisonment (Tr. 17-20); that he was waiving his constitutional rights, including his right to

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testify and confront witnesses against him (Tr. 4:2-16); and understood that Voluntary Manslaughter is classified as a violent offense, most serious offense, and no-parole sentence, and understood the significance of those classifications (Tr. 4:20-5:15). The Applicant affirmed that he intended to plead guilty under Alford (Tr. 5:16-18; 6:10-12). The Applicant affirmed that he was pleading of his own free will and accord and his plea was free of force, pressure, coercion (Tr. 5:19-6:3). The Applicant told the court that he had plenty of time to discuss his decision with his lawyers (Tr. 4:17-19; 6:4-9). Thereafter, the sentencing court accepted the Applicant's plea and sentenced him in accordance with the negotiated plea agreement.

Therefore, this Court finds that the Applicant failed to meet his burden of proving that his plea was involuntary.

Prejudice

At the hearing, the Applicant made the blanket assertion that if Counsel would have allowed him to testify on his behalf, he would have been acquitted. Thus, the Applicant argued, he was prejudiced. This Court finds the overwhelming evidence of the Applicant's guilt presented by the State at trial negates any claim that Counsel's performance could have reasonably affected the outcome of the Applicant's trial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding no reasonable probability the result of trial would have been different had counsel's performance not been deficient where there is overwhelming evidence of guilt); cf. Ford v. State, 343 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

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The Applicant proceeded to trial and received the substantial benefit of hearing all of the State's evidence against him. Thereafter, the State generously extended a negotiated plea agreement, which the Applicant accepted with full knowledge of his probability of success at trial. Additionally, this Court notes that the State had no obligation to re-extend a negotiated guilty plea offer on the eve of jury deliberation, especially after the State had successfully presented its case at trial. Moreover, based on Counsel's credible testimony that the victim was shot at point-blank range in the face, the State's corroborated evidence against the Applicant, and this Court's review of the record, this Court finds that the Applicant's assertion that had he presented his testimony to the jury, he could have been acquitted is without merit. Thus, regardless of the Applicant's complaints against Counsel, this Court can discern no prejudice affecting the Applicant's trial and guilty plea.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed. In his Application, the Applicant alleges that his constitutional rights were infringed based on Counsel's failure to follow through on motions. At the hearing, the Applicant admitted that he testified during both his "stand your ground" and Jackson v. Denno hearings—which the transcript of the proceedings accurately reflects—and failed to present any further argument on this ground. Therefore, this ground is deemed abandoned, denied, and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel,

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Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness. This Court finds that the Applicant failed to meet his burden of proof to support his claims. Therefore, they are denied and dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes

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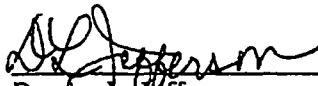
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to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2nd day of April, 2015.


Deandra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

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