

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Oconee County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

DAMETRIOSE MOSS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001132

APPENDIX

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STATE OF SOUTH) IN THE COURT OF GENERAL
CAROLINA) SESSIONS
COUNTY OF OCONEE) INDICTMENT NO: 2011-GS-37-764
2011-GS-37-765,
2012-GS-37-401.

STATE OF SOUTH)
CAROLINA)
PLAINTIFF,) TRANSCRIPT OF RECORD
-vs-) TRIAL - VOLUME I
DAMETROISE MOSS,)
DEFENDANT.)

July 23, 2012
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE; AND A JURY.

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

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1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **
2 (WHEREUPON, THE TRIAL IN THE MATTER OF THE STATE OF
3 SOUTH CAROLINA VERSUS DAMETROISE R. MOSS, DAY ONE
4 WITH ALL PARTIES BEING PRESENT, ON MONDAY JUNE 23,
5 2012, AT APPROXIMATELY 10:18 A.M.)

6 (Whereupon, Plaintiff's Exhibit Number 1, Rights
7 Waiver Dated 5-19-11 Signed By Dametroise Moss, was
8 marked for identification.)

9 THE DEPUTY: The court will come to order. All
10 rise.

11 THE COURT: Please be seated.

12 MR. ROBINSON: Is Mr. Robinson here?

13 THE COURT: All right. Excuse me. Would you bring
14 him in, please.

15 Mr. Moss, Counselor, let me just say this: It was
16 brought to my attention that I needed to speak with you
17 about speaking out in front of the jury. You have the
18 right to do whatever, Constitutionally you're allowed to
19 do what you want to do, but let me forewarn you don't be
20 saying things in front of the jury, okay, sir?

21 THE DEFENDANT: All right.

22 THE COURT: Anything further from you?

23 MR. ROBINSON: Nothing from the Defendant, Your
24 Honor.

25 THE COURT: From the State?

1 **MR. STOUDEMIRE:** Nothing, Your Honor.

2 **THE COURT:** All right. Would you bring the panel
3 back in, please, Madam Clerk?

4 (Whereupon, jury panel enters courtroom at
5 approximately 10:33 a.m.)

6 **THE COURT:** All right. Let's go ahead and get
7 started. Ladies and gentlemen, my name is Lawton
8 McIntosh. I am the Circuit Court Judge. I am the
9 resident Judge out of Anderson County, but I'm also one
10 of the Circuit Court judges here in the 10th Circuit
11 which is Anderson and Oconee. It's my pleasure to be
12 with you here in Oconee County this week for a term of
13 General Sessions court which is criminal court. Before
14 we go further through the qualification process I'll ask
15 our clerk to go through the roll, please, ma'am.

16 (Discussion off the record.) (Jury panel sworn.)

17 (Whereupon, roll call was held off the record.)

18 **THE COURT:** Mr. Stoudemire would you call your
19 case, please, sir.

20 **MR. STOUDEMIRE:** Thank you, Your Honor, may it
21 please the Court? The State calls the case of the State
22 of South Carolina versus Dametroise R. Moss on
23 Indictment Number 2011-GS-37-764 on the charges of
24 murder and possession of a weapon during a violent
25 crime. And our state also calls Dametroise R. Moss on

1 Indictment 2011-37-765 on two counts of firing -- excuse
2 me, discharging a firearm into a dwelling. And lastly,
3 Your Honor, 2012-GS-37-401, State versus Dametroise R.
4 Moss on the charge of attempted murder.

5 THE COURT: Pass those forward.

6 MR. STOUDEMIRE: Yes, sir. (Handing.)

7 THE COURT: All right, and for the record, I know
8 we had a sidebar, but for the record just to confirm
9 that strikes would be ten and five as far as the strikes
10 in general. As far as alternates there would be two and
11 one, and then we will have two alternates; is that
12 correct Mr. Robinson?

13 MR. ROBINSON: That's correct, Your Honor.

14 THE COURT: Mr. Stoudemire?

15 MR. STOUDEMIRE: That's correct, Your Honor.

16 THE COURT: Ladies and gentlemen of the jury panel,
17 we are about to start the trial of the case of the State
18 versus Dametroise R. Moss. He's been indicted for
19 several charges, one being murder; one being possession
20 of a weapon during the commission of a violent crime;
21 two counts of discharging a firearm into a dwelling; and
22 attempted murder.

23 Now, ladies and gentlemen, let me say this before
24 we get started, the fact this gentleman has been
25 indicted, he's been arrested and charged is not evidence

1 of guilt whatsoever. It doesn't raise the inference of
2 guilt and it doesn't raise a presumption of guilt.
3 These are just documents by which the State of South
4 Carolina brings a Defendant such as Mr. Moss before a
5 jury for a determination of his guilt or innocence. The
6 State at all times has the burden of proof in this
7 matter by proof beyond a reasonable doubt.

8 Now before we get started, I'm gonna ask more
9 particularized questions that would be more tailored for
10 this case. I'm going to ask that each of you, if it
11 applies to you, unlike before, I'm gonna ask you to
12 stand up, give me your juror number and give me your
13 response right there, okay, and not have an opportunity
14 to come forward at the end because we need to take this
15 on the record and have it in open court.

16 If you cannot hear me, if you cannot understand me,
17 please indicate it so that I can ask the question in an
18 intelligent fashion so that you do understand what I'm
19 seeking. I also will remind you that you do remain
20 under oath.

21 May I see the attorneys one more time, please? I'm
22 sorry.

23 (Whereupon, a discussion at sidebar occurred off
24 the record.)

25 THE COURT: Ladies and gentlemen, has anyone ever

1 been related by blood or marriage to either Dametroise
2 R. Moss, Quinton Terrence Thomas, Xavier Peeples, Kurt
3 Monahan, Michelle Monahan, or Carole Gibson?

4 Did everyone hear those names? (No response.)

5 All right. If anybody has ever been related by
6 blood or marriage to any of those folks, would you
7 please stand.

8 Has anyone on the jury panel ever had a close
9 personal or social relationship with either Dametroise
10 R. Moss, Quinton Terrence Thomas, Xavier Peeples, Kurt
11 and Michelle Monahan or Carole Gibson? If you had a
12 close personal or social relationship with any of these
13 folks would you please stand.

14 (Whereupon, Juror stood.)

15 That's okay. I've got that. You may be seated.
16 Anyone else?

17 All right. Ladies and gentlemen, the following are
18 a list of possible, and I say possible witnesses that
19 may testify in this case. The list is somewhat lengthy,
20 so if you would listen carefully as I go through it. If
21 you do not get a name, raise your hand, you tell me if
22 you don't get it and I'll repeat the name.

23 The list of potential witnesses are: Sergeant
24 Scott Arnold, Ocone County Sheriff's Office' Billy Joe
25 Baldwin; James Beaudrie. Is that Beaudrie or Beaudrie?

1 MR. STOUDEMIRE: Beaudrie, Your Honor.

2 THE COURT: Beaudrie. Excuse me, Beaudrie.

3 Andrena J. Belton, South Carolina Law Enforcement
4 Division; Andrew Brouhard; Jaclyn Brouhard; Sergeant
5 Kevin Cain, Oconee County Sheriff's Office; Dr. Bill R.
6 Giles, M.D., Oconee Medical Center; Dr. Brian W Dach?
7 Dack?

8 MR. STOUDEMIRE: Dach.

9 THE COURT: Dach, DO, Greenville Hospital System;
10 Amanda Deal, Tim W. Grambow, South Carolina Law
11 Enforcement Division; James W. Green, South Carolina Law
12 Enforcement Division; Sergeant Gentry Hawk, Oconee
13 County Sheriff's Office; Lieutenant Mark Lyles, Oconee
14 County Sheriff's Office; Ashley Mathis; Sergeant Patrick
15 Merck, Oconee County Sheriff's Office; Sergeant Jerry
16 Moss, Oconee County Sheriff's Office; Corbrina Pinson;
17 Captain Greg Reed, Oconee County Sheriff's Office;
18 Master Deputy Phillip Robertson, Oconee County Sheriff's
19 Office; Ronnie Rowland; Ila N. Simmons, South Carolina
20 Law Enforcement Division; Lisa McReynolds Waananen?

21 MR. STOUDEMIRE: Waananen.

22 THE COURT: Waananen?

23 MR. STOUDEMIRE: Yes, sir.

24 THE COURT: South Carolina Law Enforcement
25 Division; Marcus Whitner; Shane Womack; Dr. Brett H.

1 Woodard, M.D., Anderson Area Medical Center; Angela
2 Wright; Donald Wright; Alanna young.

3 Is there anyone who did not receive all of those?
4 (Whereupon, juror raises hand.)

5 THE COURT: Yes, sir? Can you tell me jury number?

6 PROSPECTIVE JUROR: 69.

7 THE COURT: Okay. Which one of those you did not
8 get?

9 PROSPECTIVE JUROR: Mrs. Mathis. Is that Ashley
10 Mathis, her husband Jason?

11 THE COURT: I don't know.

12 MR. STOUDEMIRE: I believe so, yes, sir.

13 PROSPECTIVE JUROR: I know her through him.

14 THE COURT: Okay. And what is the nature of your
15 relationship with them?

16 PROSPECTIVE JUROR: He's just a friend of mine.

17 THE COURT: Okay. I'll ask some questions about
18 that in just one second. First, I want to make sure
19 everyone heard all the names that were read out. Did
20 anyone not hear the names?

21 (Whereupon, juror raises hand.)

22 Okay.

23 PROSPECTIVE JUROR: 103.

24 THE COURT: Okay. Have a seat right now if you
25 don't mind and I'll go over those with you in just one

1 second. But if you did not get all the names, raise
2 your hand.

3 Okay. That being said, here are my questions. Has
4 anyone ever been related by blood or marriage to any of
5 the potential witnesses I've just read out for you? If
6 so, would you please stand.

7 (Whereupon, there was no response.)

8 Has anyone ever had a close personal or social
9 relationship with any of the persons that I've just read
10 out for you, would you please stand. Okay, ma'am,
11 you're number 103?

12 PROSPECTIVE JUROR: 103.

13 THE COURT: You are Ms. McCoy?

14 PROSPECTIVE JUROR: I am.

15 THE COURT: Okay. Which witness?

16 PROSPECTIVE JUROR: Scott Arnold.

17 THE COURT: Scott Arnold. And how do you know Mr.
18 Arnold?

19 PROSPECTIVE JUROR: Neighbor, friend, good friend.

20 THE COURT: How long has he been your neighbor?

21 PROSPECTIVE JUROR: Well, he married his wife and
22 her family and I are old family friends.

23 THE COURT: I'm sorry, I can't hear very well.

24 PROSPECTIVE JUROR: It's been 20 years that I've
25 been friends with that family.

1 THE COURT: Okay. Would the fact that you have
2 that relationship with Mr. Arnold or his family, would
3 that prevent you from being fair and impartial to both
4 this Defendant and to the State of South Carolina?

5 PROSPECTIVE JUROR: Probably not.

6 THE COURT: Ma'am?

7 PROSPECTIVE JUROR: No. No, it wouldn't.

8 THE COURT: And it cannot be probably. Either you
9 can or you can't.

10 PROSPECTIVE JUROR: No, it wouldn't prevent me.

11 THE COURT: Would you be able to listen to the
12 evidence presented in this case and make your decision
13 without bias, based solely on the evidence?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. And questions from the defense?

16 MR. ROBINSON: None from the Defense, Your Honor.

17 THE COURT: From the State?

18 MR. STOUDEMIRE: None, Your Honor.

19 THE COURT: Thank you, ma'am.

20 Okay. What is your jury number, please?

21 PROSPECTIVE JUROR: 119.

22 THE COURT: Is it Pitre?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR: Billy Chiles. We used to go to

1 church together and have Bible study, him and his wife.

2 THE COURT: Okay. And that's Dr. Chiles?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Would the fact that you have gone to
5 church with Dr. Chiles and had Bible study with him,
6 would that make you believe his testimony over somebody
7 else?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: And could you be fair and impartial to
10 the Defendant in this case and to the State and make
11 your decision based only on the evidence presented?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Any questions from either attorneys?

14 MR. ROBINSON: None for the defense, Your Honor.

15 MR. STOUDEMIRE: No, sir.

16 THE COURT: Okay. And let me just for the record,
17 guys, if you have additional Voir Dire just let me know
18 otherwise I'll assume you don't. Okay?

19 MR. STOUDEMIRE: Thank you, Judge.

20 MR. ROBINSON: All right, sir.

21 THE COURT: Yes, ma'am?

22 PROSPECTIVE JUROR: Number 61.

23 THE COURT: Ms. Griffith.

24 PROSPECTIVE JUROR: Officer Mark Lyles is a friend
25 of my husband and I and we worked together.

1 THE COURT: Okay. How long has -- he worked with
2 you?

3 PROSPECTIVE JUROR: Yes. He worked at the same
4 place that we worked and we shared an area.

5 THE COURT: Okay. And you still do that?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Okay. And would that prevent you from
8 being fair and impartial in this case to both the
9 Defendant and the State?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Would you because of that relationship
12 believe his testimony over somebody else's just because
13 of that relationship?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: And you feel like you could be fair and
16 impartial to both sides?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Thank you, ma'am. Anyone else?

19 (There was no response.)

20 All right. Mr. Robinson, would you stand up and
21 introduce yourself and your client, please, sir.

22 MR. ROBINSON: Good morning. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 MR. ROBINSON: Good morning. My name is Scott

1 Robinson, I'm a defense attorney and I represent
2 Dametroise Moss. This is Mr. Ross. Thank you.

3 THE COURT: All right. Mr. Stoudemire, would you
4 stand up and introduce yourself and your officer?

5 MR. STOUDEMIRE: Yes, sir. Good afternoon ladies
6 and gentlemen, my name is Blair Stoudemire. I am one of
7 the assistant prosecutors in the Solicitor's Office here
8 at Oconee County. I work for your elected Solicitor
9 Ms. Chrissy Adams. Seated with me today at the table
10 today and will be throughout the rest of this trip is
11 Sergeant Kevin Cain of the Oconee County Sheriff's
12 Office.

13 THE COURT: All right, thank you, gentlemen.

14 All right. Ladies and gentlemen, has any member of
15 the jury panel ever been represented by any of these
16 attorneys or any members of their respective firms? If
17 so, would you please stand?

18 PROSPECTIVE JUROR: Juror 36.

19 THE COURT: 136. All right, Mr. Smith?

20 PROSPECTIVE JUROR: Mr. Crooks.

21 THE CLERK: 36.

22 THE COURT: 36, I apologize.

23 PROSPECTIVE JUROR: Yes, sir. Mr. Robinson was my
24 attorney in my divorce proceedings back in about 2006.

25 THE COURT: And how long ago has that been?

1 PROSPECTIVE JUROR: 2006.

2 THE COURT: 2006?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Would the fact that Mr. Robinson
5 represented you back in those days prevent you from
6 being fair and impartial to both the State and to this
7 Defendant in this case.

8 PROSPECTIVE JUROR: Yes, it would. He did a fine
9 job.

10 THE COURT: And you want to be excused?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: All right. I'm gonna excuse you from
13 this case. You should call back after 6:00 tonight.

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: I'm gonna excuse you from any further
16 participation. Anyone else?

17 PROSPECTIVE JUROR: Indirectly, but Mr. Stoudemire,
18 his father represented my son early on in a divorce
19 situation but it would effect nothing.

20 THE COURT: It would not?

21 PROSPECTIVE JUROR: No.

22 THE COURT: And what is your juror number, please?

23 PROSPECTIVE JUROR: 28.

24 THE COURT: Ms. Collins?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Thank you, ma'am. Anyone else?

2 (There was no response.)

3 Has anyone on the jury panel ever been related by
4 blood or marriage or have you ever had a close personal
5 or social relationship with any of these attorneys here
6 in the courtroom or any members of their firm? If so,
7 would you please stand?

8 Okay. Would you give me your juror number, please?

9 PROSPECTIVE JUROR: 101.

10 THE COURT: 101? Okay, are you Ms. Morgan?

11 PROSPECTIVE JUROR: McCall.

12 THE COURT: Oh, that's 111, Ms. McCall, excuse me.

13 PROSPECTIVE JUROR: 101. I know Mr. Stoudemire and
14 his family and have since middle school. His dad
15 represented me in past divorce proceedings.

16 THE COURT: And how often do -- do you socialize
17 with Mr. Stoudemire or his family?

18 PROSPECTIVE JUROR: His sister. Yes, quite
19 frequently.

20 THE COURT: Okay. Now, would the fact that you
21 were represented by his father or you have a
22 relationship with one of his family members prevent you
23 from listening to the evidence presented in this case
24 and being fair and impartial to both sides?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Any additional Voir Dire?

2 MR. STOUDEMIRE: No.

3 THE COURT: Thank you, Ms. McCall. You know what,
4 I'm gonna let you go home.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: Okay? All right.

7 Tell me your jury number. Yes, ma'am, what is your
8 juror number?

9 PROSPECTIVE JUROR: 82.

10 THE COURT: 82? Thank you so much for being here
11 today but I'm gonna let you go home. That is
12 Ms. Jordan. Anyone else?

13 (Whereupon, there was no response.)

14 Has any member of the jury panel formed or
15 expressed an opinion about any issue in the case of the
16 State of South Carolina versus Dametroise R. Moss? If
17 so, would you please stand.

18 (Whereupon, there was no response.)

19 THE COURT: Has any member of the jury panel -- is
20 any member of the jury panel aware of any bias or
21 prejudice they may have either towards the State of
22 South Carolina or towards this Defendant, if so, would
23 you please stand.

24 (Whereupon, there was no response.)

25 Is any member of the jury panel a member of the

1 Ocone County grand jury that issued the indictments in
2 this case? If so, would you please stand.

3 (Whereupon, there was no response.)

4 **THE COURT:** Is any member of the jury panel who was
5 a member of or a contributor to any group which has as
6 it's primary concern with the promotion of law
7 enforcement or victims' rights? Examples of those
8 groups would include but not necessarily be limited to
9 MADD, SADD, or CAVE? If any of you are a member of or a
10 contributor to any groups which has as a primary goal of
11 the promotion of law enforcement or victim's rights,
12 would you please stand.

13 (Whereupon, there was no response.)

14 Does any member of the jury panel know of any
15 reason whatsoever why you should not be selected to
16 serve as a juror in this matter with particular emphasis
17 being placed upon your ability to be fair and impartial
18 to both the State of South Carolina and to the Defendant
19 in this matter? If you know of any reason whatsoever
20 why you should not be selected, would you please stand.

21 (Whereupon, there was no response.)

22 **THE COURT:** Is there any member of the jury panel
23 that is related by blood or marriage to any member of
24 law enforcement? If so, would you please stand.

25 Okay. I'm gonna start over here in the white

1 jacket please.

2 PROSPECTIVE JUROR: Juror number 26.

3 THE COURT: Okay, Ms. Evans?

4 PROSPECTIVE JUROR: My husband is a state
5 constable.

6 THE COURT: A state constable?

7 PROSPECTIVE JUROR: A law enforcement officer.

8 THE COURT: And how long has he been a state
9 constable?

10 PROSPECTIVE JUROR: Eighteen years.

11 THE COURT: Okay. Would the fact that your husband
12 is state constable prevent you, if you are selected to
13 serve as a juror, from listening to the evidence
14 presented by making your decision based upon that
15 evidence unaffected by your husband's position as a
16 constable?

17 PROSPECTIVE JUROR: No, Your Honor.

18 THE COURT: So you would be able to do that?

19 PROSPECTIVE JUROR: Yes, sir.

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

21 Yes, sir, in the red.

22 PROSPECTIVE JUROR: Juror number 111.

23 THE COURT: Okay. You're Mr. Moore?

24 THE WITNESS: Right. My son is a law officer in
25 Spartanburg County.

1 THE COURT: Is he a county, city, or a trooper?

2 PROSPECTIVE JUROR: County.

3 THE COURT: County? How long has he been over
4 there?

5 PROSPECTIVE JUROR: Ten years about.

6 THE COURT: Okay. Would the fact that your son is
7 in law enforcement prevent you from being fair and
8 impartial to both the State and to the Defendant in this
9 matter?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Can you listen to the evidence and make
12 your decision based solely on the evidence and the law
13 as I give it to you at the end of this case?

14 PROSPECTIVE JUROR: That's correct.

15 THE COURT: Thank you, sir.

16 Yes, sir. You're 103?

17 PROSPECTIVE JUROR: 103. McCoy. My brother is an
18 Oconee County Sheriff's Deputy.

19 THE COURT: Okay. Would the fact that, Ms. McCoy,
20 that your brother is an Oconee County Sheriff's Office
21 Deputy prevent you from giving everyone involved in this
22 case a fair and impartial trial?

23 PROSPECTIVE JUROR: It would not affect me.

24 THE COURT: Okay. Thank you very much.

25 Okay? Ms. Morgan?

1 PROSPECTIVE JUROR: McCall.

2 THE COURT: McCall. I did that before. Okay, I'll
3 get it right. Okay.

4 PROSPECTIVE JUROR: My cousin is Sergeant Jeremy
5 Chapman of the Oconee County Sheriff's Department in
6 narcotics.

7 THE COURT: Okay. And how close are you with this
8 cousin?

9 PROSPECTIVE JUROR: Pretty close.

10 THE COURT: Okay. Well, would the fact that you
11 have a cousin involved in law enforcement here in this
12 county, would that affect your ability to be fair and
13 impartial as a juror in this case?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Thank you, ma'am.

16 All right, sir.

17 PROSPECTIVE JUROR: 87.

18 THE COURT: Mr. Kilpatrick?

19 PROSPECTIVE JUROR: Uh-huh. I have a nephew that
20 works for the Oconee County Sheriff's Office.

21 THE COURT: For who?

22 PROSPECTIVE JUROR: Oconee County Sheriff's Office.

23 THE COURT: Your nephew does?

24 PROSPECTIVE JUROR: Right.

25 THE COURT: And are you close with your nephew?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Now, would the fact that you have a
3 nephew who is employed in law enforcement here in this
4 county prevent you from listening to the evidence and
5 making your decision based solely on the evidence?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Okay, thank you, Mr. Kilpatrick.

8 Anyone else?

9 (Whereupon, there was no response.)

10 Has any member of the jury panel ever been employed
11 by any state, local, or federal law enforcement
12 authorities? If so, would you please stand.

13 All right, ma'am?

14 PROSPECTIVE JUROR: Number 89.

15 THE COURT: You are Ms. Cruiseberger?

16 PROSPECTIVE JUROR: Cruiseberger, yes.

17 THE COURT: I can butcher some names up here, I'm
18 sorry. Okay. Where were you employed? I worked for
19 the federal government.

20 PROSPECTIVE JUROR: I was National Guard law
21 enforcement.

22 THE COURT: Okay. So you were a sworn officer for
23 the federal government?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Now, are still employed with them?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: How long has it been.

3 PROSPECTIVE JUROR: 25 years.

4 THE COURT: 25 years?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Well, would your former employment with
7 the federal government as a law enforcement officer
8 prevent you from being fair and impartial to both the
9 State and the Defense in this case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Thank you very much. Anyone else?

12 (Whereupon, there was no response.)

13 Has any member of the jury panel heard anything
14 about this case through the news, through the media,
15 through conversations on the Internet or on television
16 prior to today? If you've heard anything about this
17 case prior to today, and the case of State of South
18 Carolina versus Dametroise R. Moss, would you please
19 stand.

20 (Whereupon, there was no response.)

21 THE COURT: Very good. All right, ladies and
22 gentlemen, what we're gonna do, back before I had gray
23 hair and we would select juries in criminal court
24 somebody would reach in who couldn't read or write into
25 the spindle and call you and you would be asked to come

1 forward and the State and Defense would look at you and
2 decide whether or not they wanted you to serve.

3 Now, with the advancement of technology we still
4 follow the same process, but instead of somebody who
5 can't read a computer supposedly randomly draws your
6 names. Now, supposedly what's gonna happen is the Clerk
7 will put the computer to spin so to speak. If your name
8 is called, I ask you to pick up your personal
9 belongings, come forward, and stand between me, face the
10 State and the Defense and they'll make a decision. But
11 bring your personal effects in case you are selected and
12 it will take just one minute.

13 While she's doing that, here are the plans for
14 today. We are going to select a jury which will be 12
15 people and two alternates. Once that jury is selected,
16 they're gonna be sworn, I'm gonna do a couple of things
17 with them, then I'll excuse you for the remainder of the
18 day. We have some pretrial matters we have to deal with
19 and we'll be pretty much through the rest of the
20 afternoon. Then we'll come back and start trial the
21 first thing in the morning.

22 As far as the rest of you, if you're not selected,
23 look on the white sheet. There's a number for you to
24 call in. If you would, call in beginning tonight after
25 6:00 and do so each week until you receive a message

1 from the clerk which says you do not need to call in or
2 report any further.

3 THE CLERK: Ladies and gentlemen, as I call your
4 name and number, if you would please come down front.
5 Well, come down here right in front of me and turn
6 around and face the audience. Paul G. Shotsberger,
7 number 135.

8 (Whereupon, a White male approached.)

9 What says the State?

10 MR. STOUDEMIRE: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. ROBINSON: Please excuse the juror from the
13 trial of the case.

14 THE CLERK: Okay. You are excused from this case,
15 sir.

16 Number 28, Vickie Collins.

17 (Whereupon, a White female approached.)

18 What says the State?

19 MR. STOUDEMIRE: Please present the juror.

20 THE CLERK: What says the Defense?

21 MR. ROBINSON: Excuse the juror from the trial of
22 this case.

23 THE CLERK: Ma'am, you are excused on this case.

24 Number 153, Barbara Terry.

25 (Whereupon, a White female approached.)

1 What says the State?

2 MR. STOUDEMIRE: Please present the juror.

3 THE CLERK: What says the Defense?

4 MR. ROBINSON: Please excuse the juror on this
5 case.

6 THE CLERK: Ma'am, you are excused from this case.
7 Number 99, Arturo Martinez.

8 (Whereupon, a white male approached.)

9 What says the State?

10 MR. STOUDEMIRE: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. ROBINSON: Please seat the juror.

13 THE CLERK: Please have a seat in the jury box.
14 Whoops, up here in the jury box. Thank you.

15 Number 132, Deborah Scott.

16 (Whereupon, a White female approached.)

17 What says the State?

18 MR. STOUDEMIRE: Please excuse Ms. Scott on this
19 case.

20 THE CLERK: Ms. Scott, you're excused from this
21 case.

22 Number 167, Lesa Wike.

23 (Whereupon, a White female approached.)

24 What says the State?

25 MR. STOUDEMIRE: Please present the juror.

1 THE CLERK: What says the Defense?

2 MR. ROBINSON: Please excuse the juror from the
3 trial of this case.

4 THE CLERK: Ma'am, you are excused from this case.
5 Number 86, Johnathon Kelley.

6 (Whereupon, a White male approached.)
7 What says the State?

8 MR. STOUDEMIRE: Please present the juror.

9 THE CLERK: What says the Defense?

10 MR. ROBINSON: Please seat the juror.

11 THE CLERK: Please have a seat in the jury box.
12 Number 9, Terry Bond.

13 (Whereupon, a White male approached.)
14 What says the State?

15 MR. STOUDEMIRE: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. ROBINSON: Please seat this juror.

18 THE CLERK: Please have a seat in the jury box.
19 Number 101, Lana McCall.

20 (Whereupon, a White female approached.)
21 What says the State?

22 MR. STOUDEMIRE: Please present the juror.

23 THE CLERK: What says the Defense?

24 MR. ROBINSON: Please excuse this juror from the
25 trial of this case.

1 THE CLERK: Ma'am, you're excused from this case.
2 Number 46, Shannon Evans.

3 (Whereupon, a White female approached.)

4 What says the State?

5 MR. STOUDEMIRE: Please present the juror.

6 THE CLERK: What says the Defense?

7 MR. ROBINSON: Please excuse the juror from the
8 trial of this case.

9 THE CLERK: You're excused from this case, ma'am.
10 Number 30, Connie Compton.

11 (Whereupon, a White female approached.)

12 What says the State?

13 MR. STOUDEMIRE: Please present the juror.

14 THE CLERK: What says the Defense?

15 MR. ROBINSON: Please excuse this juror from the
16 trial of this case.

17 THE CLERK: You're excused from this case, ma'am.
18 Number 37, Kristopher Davis.

19 (Whereupon, a White male approached.)

20 What say the State?

21 MR. STOUDEMIRE: Please present the juror.

22 THE CLERK: What say the Defense?

23 MR. ROBINSON: Please seat this juror.

24 THE CLERK: Please have a seat in the jury box.
25 Number 171, Elizabeth Winkles.

1 (Whereupon, a White female approached.)

2 What says the State?

3 MR. STOUDEMIRE: Please excuse Ms. Winkles on this
4 case.

5 THE CLERK: Ms. Winkles, you're excused in this
6 case.

7 Number 175, Pamela Wright.

8 (Whereupon, a White female approached.)

9 What says the State?

10 MR. STOUDEMIRE: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. ROBINSON: Please excuse the juror for cause.

13 THE CLERK: You're excused, ma'am.

14 Number 61, Allison Griffin.

15 (Whereupon, a White female approached.)

16 What says the State?

17 MR. STOUDEMIRE: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. ROBINSON: Please excuse this juror for cause.

20 THE CLERK: You're excused, ma'am.

21 Number 111, Charles Morgan.

22 (Whereupon, a White male approached.)

23 What says the State?

24 MR. STOUDEMIRE: Please present the juror.

25 THE CLERK: What says the Defense?

1 MR. ROBINSON: Please excuse the juror from the
2 trial of this case.

3 THE CLERK: You are excused from this case, sir.
4 Number 51, Carrie Fontana.

5 (Whereupon, a White female approached.)

6 What says the State?

7 MR. STOUDEMIRE: Please present the juror.

8 THE COURT: What says the Defense for cause?

9 MR. ROBINSON: Please seat the juror.

10 THE CLERK: Please have a seat in the jury box.
11 Number 98, Loraine Martin.

12 (Whereupon, a White female approached.)

13 What says the State?

14 MR. STOUDEMIRE: Please present the juror.

15 THE CLERK: What says the Defense for cause?

16 MR. ROBINSON: Please seat the juror.

17 THE CLERK: Please have a seat in the jury box.
18 Number 165, Catherine Welborn.

19 (Whereupon, a White female approached.)

20 What says the State?

21 MR. STOUDEMIRE: Please present the juror.

22 THE COURT: What says the Defense for cause?

23 MR. ROBINSON: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box.
25 Number 124, Donna Backman.

1 (Whereupon, a White female approached.)

2 What says the State?

3 MR. STOUDEMIRE: Please present the juror.

4 THE CLERK: What says the Defense for cause?

5 MR. ROBINSON: Please seat the juror.

6 THE CLERK: Please have a seat in the jury box.

7 Number 161, Andrew Wang.

8 (Whereupon, an Asian male approached.)

9 What says the State?

10 MR. STOUDEMIRE: Please excuse Mr. Wang on this
11 case.

12 THE CLERK: You are excused, sir.

13 Number 147, Jerry Stephens.

14 (Whereupon, a White male approached.)

15 What says the State?

16 MR. STOUDEMIRE: Please excuse Mr. Stephens on this.
17 case.

18 THE CLERK: You are excused on this case, sir.

19 Number 105, Arland McMullen.

20 (Whereupon, a White male approached.)

21 What says the State?

22 MR. STOUDEMIRE: Please present the juror.

23 THE COURT: What says the Defense for cause?

24 MR. ROBINSON: Please seat the juror.

25 THE CLERK: Please have a seat in the jury box.

1 Number 17, Edda Cammick.

2 (Whereupon, a White female approached.)

3 What says the State?

4 MR. STOUDEMIRE: Please present the juror.

5 THE CLERK: What says the Defense for cause?

6 MR. ROBINSON: Please seat the juror.

7 THE CLERK: Please have a seat in the jury box.

8 Number 10, James Boone.

9 (Whereupon, a White male approached.)

10 What says the State?

11 MR. STOUDEMIRE: Please excuse Mr. Boone on this
12 case.

13 THE CLERK: You're excused from this case, sir.

14 Number 95, Jacobo Lopez.

15 (Whereupon, a Hispanic male approached.)

16 THE CLERK: What says the State for cause?

17 MR. STOUDEMIRE: Please seat the juror.

18 THE COURT: What says the Defense for cause?

19 MR. ROBINSON: Please seat the juror.

20 THE CLERK: Please have a seat in the jury box.

21 Number 119, Geneva Pitre.

22 (Whereupon, a White female approached.)

23 What says the State?

24 MR. STOUDEMIRE: Please seat the juror.

25 THE CLERK: What says the Defense?

1 MR. ROBINSON: Please seat the juror.

2 THE CLERK: Please have a seat in the jury box and
3 then we're going to do our alternates.

4 Number 122, Rodney Quick.

5 (Whereupon, a Black male approaches.)

6 What says the State?

7 MR. STOUDEMIRE: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. ROBINSON: Please seat the juror.

10 THE CLERK: Please have a seat in the jury box.

11 Okay. This will be alternate number two.

12 Number 159, Thomas Walker.

13 (Whereupon, a Black male approaches.)

14 What says the State?

15 MR. STOUDEMIRE: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. ROBINSON: Please seat the juror.

18 THE CLERK: Please have a seat in the jury box.

19 Okay, thank you.

20 THE COURT: All right. Any motion from the State
21 on the jury selection process?

22 MR. STOUDEMIRE: None, Your Honor.

23 THE COURT: Any motion from the Defense?

24 MR. ROBINSON: None, Your Honor.

25 THE COURT: Very good.

1 All right. Ladies and gentlemen of the jury, what
2 I'm gonna ask that you do before I excuse you for the
3 day, I'm gonna ask that you go back with Mr. Bibb to the
4 jury room. And I want you to select a foreperson who
5 will preside over deliberations. It'll be someone who
6 will be responsible for communicating with the Court any
7 time the jury has any questions or needs that they need
8 to bring to our attention.

9 There is only one stipulation. The two alternates
10 over here have a right to vote, but they cannot serve as
11 the foreperson and it does not have to be unanimous. A
12 simple majority will be sufficient.

13 Now, once you have selected your foreperson, if
14 you'd write their name down and juror number down on a
15 piece of paper that Mr. Bibb will give to you. And
16 whoever you may be, would you then turn around and tally
17 your jury to determine how many people, if any, would
18 like to have pad and pencil or pen so that they can take
19 notes during the course of this trial. And once you
20 make that number, write it down on the bottom of that
21 same sheet, knock on the door, and we'll receive it in
22 evidence and then I'll have a few words for you and then
23 I will excuse you for the day. If you would go back
24 with Mr. Bibb now, please.

25 (Whereupon, the Jury left the courtroom at

1 approximately 12:41 p.m.)

2 THE COURT: Anything from the State at this point?

3 MR. STOUDEMIRE: Your Honor, I think the only issue
4 that I would possibly have, I think you stated you
5 wanted to swear the jury today.

6 THE COURT: No, I'm not swearing in until tomorrow.

7 MR. STOUDEMIRE: Okay. Then I misunderstood, thank
8 you.

9 THE COURT: Mr. Robinson, anything further from the
10 Defense?

11 MR. ROBINSON: No, Your Honor.

12 THE COURT: Okay. My practice is not to swear them
13 until after we get started. Okay. With that being
14 said, let's let you guys step down until we get that
15 back from the jury.

16 (Whereupon, a recess was taken from 12:43 p.m. to
17 12:53 p.m.)

18 THE COURT: Is Mr. Stoudemire here?

19 (Whereupon, the Jury entered the courtroom at
20 approximately 12:54 p.m.)

21 THE COURT: Ma'am, you are juror number 17; is that
22 correct?

23 THE FORELADY: That's correct.

24 THE COURT: You have been selected to be the
25 foreperson?

1 THE FORELADY: Yes, sir.

2 THE COURT: Let me just say this to you. If you
3 would, each time you come in and out of the courtroom as
4 well as the two alternates if you would sit in those
5 seats that way I could keep up with administrative
6 matters during the scope of this trial. The rest of you
7 can sit wherever they would like in the jury box.

8 I have a response that 12 folks would like to have
9 pad and pen; is that correct?

10 THE FORELADY: Uh-huh.

11 THE COURT: I'll tell you a couple things and then
12 I'm gonna excuse you and we'll start back up in the
13 morning. Gentlemen, any reason 9:30 would not be
14 sufficient?

15 MR. ROBINSON: None, Your Honor.

16 MR. STOUDEMIRE: None, Your Honor.

17 THE COURT: About the notes, and I won't remind you
18 about this again tomorrow. It used to be that some
19 judges would not let people have notes at all in the
20 courtroom. They felt like jurors needed to watch the
21 testimony and the proceedings and not be distracted by
22 attempting to take notes. There's been kind of a change
23 of heart on that. With that being said, some people are
24 better note takers than others. At the end of the day
25 when you begin your deliberations somebody's notes may

1 differ from somebody's memory. That does not mean that
2 that note trumps. Okay? Some people are better note
3 takers than others, as I said.

4 Also, when you go through any trial, you may have
5 questions of fact. You will find there's an issue of
6 people's credibility. In other words, which testimony
7 you're gonna believe and which testimony you're not
8 gonna believe is always an issue. If you're busy taking
9 a note, you may miss somebody's reaction they may have
10 to a question or comment or something on the stand and
11 people's demeanor is an important part of making
12 credibility determinations. So I would urge you to be
13 careful when you take your notes to try not to get
14 distracted in your note taking.

15 That being said, your notes each night we're asking
16 that you leave them in your jury room. You can't take
17 them home with you. And we'll pass them back out in the
18 mornings.

19 Also, during the course of this trial there will be
20 breaks, there'll be objections, and you'll hear more
21 about that tomorrow. But you'll be given ample
22 opportunity to speak with one another and the other
23 folks about this case. I'm gonna urge you, and I'm also
24 going to instruct you that it is not proper for you to
25 discuss this case amongst yourselves or with anyone else

1 until after you have reached a verdict in this matter,
2 okay?

3 During breaks or during overnight, do not get on
4 the phone with somebody, do not have direct
5 communications with them. I'm married, have a little
6 girl. I'm sure if I were selected on a jury, I'm sure
7 when I got home my spouse and my little girl would be
8 asking me what it the case was about and what I heard
9 and that kind of thing. Just do not engage those kind
10 of questions. Say I'll talk to you at the end.

11 The reason being we don't want you to come to some
12 type of premature conclusion about what the facts of the
13 case are until you have heard all the testimony and
14 evidence that's going to be presented and until such
15 time as I charge you on the law. I will give you some
16 opening instructions tomorrow. But the substantive law
17 that you will be required to apply to the facts as you
18 find them to be will not be given until the end of the
19 case. So I'm gonna ask and instruct each of you not to
20 have any communications at any time with anyone else
21 during this trial.

22 Also, Chief Justice Jean Toal of the South Carolina
23 Supreme Court has instructed all trial judges to tell
24 jurors that they are not to engage in independent jury
25 research. And it's on the same basis again. If you

1 hear an issue that you think may be important in the
2 case you would like to look up something you heard at
3 trial or you would like to look up individuals involved
4 in the proceedings, me, the Court, any of these
5 attorneys or the Defendant do not do so. We do not want
6 you involved in or getting exposed to facts that are not
7 presented here in the courtroom. The other side will
8 not be available to see those, they can't question them
9 and it may have a tendency to cause you to make a
10 decision based on the wrong information. So if you
11 would refrain from independent research and at the end
12 of this case if you'd like to look things up you are
13 welcome to do so.

14 With that being said, with that admonition, I'm
15 gonna excuse you today. If you'll be back in your jury
16 room no later than 9:25, I anticipate starting right
17 away in the morning. Thank you very much.

18 (Whereupon, the Jury left the courtroom at
19 approximately 1:00 p.m.)

20 THE COURT: Any additions or exceptions from the
21 State?

22 MR. STOUDEMIRE: None, Your Honor.

23 THE COURT: From the Defense?

24 MR. ROBINSON: None, Your Honor.

25 THE COURT: All right. Let's take a recess until

1 2:00 and we'll come back and take care of all pretrial
2 motions at that point.

3 MR. STOUDEMIRE: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 Madam Clerk, I understand there is an issue that's
6 been raised.

7 THE CLERK: Yes, sir. He said he's not going to be
8 able to stay.

9 THE COURT: Yes, sir.

10 PROSPECTIVE JUROR: My father-in-law has a torn
11 quadriceps muscle and he needs my help until school
12 starts. It's not a full-time taking care of him thing,
13 but --

14 THE COURT: Ma'am, you need to stay back.

15 PROSPECTIVE JUROR: That's my wife. It's her dad.

16 THE COURT: What is your juror number?

17 PROSPECTIVE JUROR: 125, sir.

18 THE COURT: You are Mr. Jason Roberts. We had -- I
19 gave you an opportunity to come forward, and the first
20 thing you came up and said that I was convicted of
21 simple possession of marijuana.

22 PROSPECTIVE JUROR: In the State of Georgia.

23 THE COURT: Do not interrupt you me.

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Which would not disqualify you. I also

1 asked if there was any other basis and you said because
2 of my religious beliefs. I cannot pass judgment upon
3 anybody else and I said that's fine and that is
4 certainly your right and I'm gonna allow you to stay
5 here and watch these proceedings. And that's what I'm
6 ordering and that's what you're gonna do. If you don't
7 stay here, then I'm gonna send somebody to pick you up.
8 Now, you said -- you didn't mention anything about
9 having any family member who had an illness or anything
10 like that.

11 PROSPECTIVE JUROR: Okay. Because you were asking
12 about full-time caregivers. I'm not full-time, it's
13 just until my college starts.

14 THE COURT: Just until your college starts?

15 PROSPECTIVE JUROR: On August 12th, sir.

16 THE COURT: Sir?

17 PROSPECTIVE JUROR: On August 12th.

18 THE COURT: Who are you taking care of?

19 PROSPECTIVE JUROR: My father-in-law. Her father.
20 He has a torn quadricept muscle. All four muscles are
21 torn. He's a 50 something-year-old man.

22 THE COURT: I'm a 50 something-year-old man. I've
23 had four knee surgeries. And I understand that's not
24 debilitating. And quite frankly, Mr. Roberts, I think
25 you're up here doing everything you can to get out of

1 doing jury service and I don't find it credible.

2 PROSPECTIVE JUROR: Sir.

3 THE COURT: And I don't --

4 PROSPECTIVE JUROR: May I call him? I will get him
5 to come down here if I have to.

6 THE COURT: No, sir. I'll tell you can bring me,
7 which you should have done by statute, if you have a
8 doctor's statement saying this gentleman is not capable
9 of caring for himself, you bring it back to me today
10 I'll consider that.

11 PROSPECTIVE JUROR: I have to go to North Carolina
12 to get IT and even then it should take --

13 THE COURT: I'll tell you what, I'm not going to
14 debate it with you. That's the option you have.
15 Otherwise I expect you to be here at 2:00. If you want
16 to try to get one this afternoon you can, but if you
17 don't have it I'll expect you here at 9:30 in the
18 morning. Thank you, sir. All right. We're in recess.

19 (Whereupon, a luncheon recess occurred from 1:08
20 p.m. to 2:07 p.m.)

21 THE COURT: All right. Mr. Robinson, there are
22 several pretrial matters that we spoke about last week
23 on the phone, you and Mr. Stoudemire and myself. For
24 the record, there is a motion to dismiss all indictments
25 or in the alternative to disqualify the 10th Circuit

1 Solicitor's Office from prosecuting the indictments.
2 There's also a motion to withdraw as counsel pursuant to
3 Rule 1.18 A 6 of the South Carolina Rules of
4 Professional Conduct.

5 In addition, I was provided by our clerk a letter
6 written by the Defendant asking that Mr. Robinson be --
7 no longer be his attorney in this matter. I would think
8 the proper order that we hear this case would be the
9 defendant's motion first, then we can go forward with
10 the other motions in this matter.

11 Now, with the Defendant making his own motion,
12 procedurally I would think that he needs to argue that
13 motion but I don't know. You tell me, Mr. Robinson. I
14 don't know if I would want him doing that.

15 MR. ROBINSON: May it please the Court?

16 THE COURT: Yes.

17 MR. ROBINSON: Your Honor, I am not sure what the
18 answer to that is.

19 THE COURT: Well, normally I do commend that if my
20 client has a motion to make I have them make the motion
21 they make all written motions as to why their attorney
22 should no longer be on the case.

23 MR. ROBINSON: Yes, sir.

24 THE COURT: Let me ask you this, Mr. Moss. Is it
25 still your desire that I consider your motion to relieve

1 Mr. Robinson as your attorney?

2 THE DEFENDANT: I really haven't spoken with my mom
3 about it and it was something that me and her had
4 discussed. I really haven't gotten in contact with her
5 by the phone, so I don't know how she feels about it
6 now.

7 THE COURT: Well, you know, let me tell you, the
8 indictments in this matter were issued in September of
9 2011. The underlying facts occurred in May 2011. Is
10 that correct, Mr. Stoudemire?

11 MR. STOUDEMIRE: That is, Your Honor.

12 THE COURT: Also, we had a conference call last
13 week. Mr. Stoudemire you said to me, and I'm trying to
14 remember, there was a motion hearing before Judge
15 Macaulay in this case in April of this year?

16 MR. STOUDEMIRE: It was actually Judge Culbertson,
17 Your Honor.

18 THE COURT: Judge Culbertson.

19 MR. STOUDEMIRE: And the last bond hearing that we
20 have down, again going from the Clerk's file, is that we
21 had a bond hearing that Mr. Robinson of course was
22 present at back on April 23rd, 2012. So exactly three
23 months from today's date.

24 THE COURT: Okay. And if I recall, also, during
25 that hearing you represented that Judge Culbertson, or

1 you advised Judge Culbertson that this matter would be
2 on the trial docket for this term of court; is that
3 correct?

4 MR. STOUDEMIRE: That's correct. And, Your Honor,
5 even prior to that, back on March 16, 2012, Mr. Robinson
6 and I had some communications I notified him at that
7 time back in March that we were gonna go ahead and put
8 it on the trial docket in July and just do that out of
9 an abundance of caution because Mr. Robinson has a busy
10 trial schedule so we wanted to make sure that nothing
11 interfered with this.

12 THE COURT: Do you disagree with that Mr. Robinson?

13 MR. ROBINSON: I don't, Your Honor. I do have one
14 preliminary matter before he has an opportunity to make
15 his motion.

16 THE COURT: Say what? Say that again, please?

17 MR. ROBINSON: I have a preliminary matter first
18 before he argues that, his motion.

19 THE COURT: What would that be?

20 MR. ROBINSON: It's on the competency, Your Honor,
21 in terms of I had mentioned previously to Mr. Stoudemire
22 that he had an evaluation, he was cleared. I wanted to
23 put that on the record by Dr. Eula Pate as far as being
24 competent and able to stand trial and to participate
25 himself. I just wanted to put that on the record.

1 THE COURT: Okay. That would be appropriate. Now,
2 as far as that's concerned, I haven't been advised that
3 competency was an issue. I understand that there was an
4 evaluation performed by the Department of Mental Health;
5 isn't that correct?

6 MR. ROBINSON: Yes, Your Honor. It was performed
7 back on March the 24th of 2011 by Dr. Eula Pate.

8 THE COURT: And the result of that is that this
9 gentleman was competent to stand trial?

10 MR. ROBINSON: Yes. I can read it aloud if you
11 would like me to, Your Honor.

12 THE COURT: No. I don't think that's necessary,
13 unless you feel like you need to make it a Court
14 exhibit.

15 MR. ROBINSON: I'd like to make that a Court
16 exhibit, Your Honor, if I can.

17 THE COURT: Okay.

18 MR. ROBINSON: But the doctor did clear him, said
19 he was competent, able to stand trial, able to assist
20 his attorney.

21 THE COURT: All right. I will make that a Court's
22 exhibit. What's the date of that letter, please?

23 MR. ROBINSON: November 14, 2011.

24 (Whereupon, Court's Exhibit Number 1, Letter Dated
25 November 14, 2011 of Competency of Defendant, was

1 marked for identification.)

2 (Whereupon, Court's Exhibit Number 1 was entered
3 into the record.)

4 THE COURT: Okay. Now going back, Mr. Moss, you're
5 not quite sure how you want to proceed with this motion?

6 THE DEFENDANT: That's correct.

7 THE COURT: Okay. Well, I'll give you a chance to
8 speak with Mr. Robinson right quick. I know that he's
9 the person you made the motion with regard to, but my
10 inclination is that at this stage that decision should
11 have been made whether or not you want to proceed.
12 Okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So take two seconds and consider it and
15 I need to go ahead and make a decision on that.

16 MR. ROBINSON: Your Honor, he would like to address
17 the Court.

18 THE COURT: Okay. Go ahead.

19 THE DEFENDANT: May I ask my mother a question?

20 THE COURT: What is your mother -- is your mother
21 here?

22 THE DEFENDANT: (Indicating.)

23 THE COURT: You can speak but you cannot touch each
24 other and you can speak over there in the corner if you
25 would like but you cannot touch him, okay? That's just

1 for safety precautions.

2 (Whereupon, Defendant and mother speak off the
3 record.)

4 THE COURT: Mr. Moss, have you had sufficient time
5 to speak with your mom at this stage?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And would you like to proceed
8 with your motion?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you doing so freely and
11 voluntarily?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay, very good. I'm gonna find
14 Mr. Moss made a knowingly and intelligent waiver of his
15 motion to relieve Mr. Robinson as his attorney of record
16 and he chose to allow him to proceed. Okay? Thank you,
17 sir. Thank you, ma'am.

18 That leads us next to the motion to dismiss all
19 indictments or in the alternative disqualify the 10th
20 Circuit Solicitor's Office from prosecuting the
21 indictments that was filed by Mr. Robinson.

22 MR. ROBINSON: May it please the Court?

23 THE COURT: Uh-huh.

24 MR. ROBINSON: Your Honor, and I alluded to this in
25 our teleconference last week. My motion to dismiss is

1 based on after Mr. Burr was appointed first and myself
2 was appointed in December of 2011 by Judge Macaulay.
3 Sergeant Cain started talking to him, had conferences
4 with him outside my presence. I didn't know about these
5 conferences until later on. I wasn't privy to those
6 conversations. The Solicitor's Office did provide me
7 with the, with the notice and so forth of any documents
8 they received.

9 But, Your Honor, Dametroise, I subpoenaed records
10 from the Detention Center to find out how many times
11 Sergeant Cain had met with him. I imagine, I believe
12 it's been from the waivers that the Solicitor's Office
13 gave me. It looks like it was a large number of times,
14 I don't know the exact number.

15 But, Your Honor, these weren't just meetings where
16 they would just sit around and talk for a couple of
17 minutes and get some information and so forth. My
18 understanding from my client is that one meeting took as
19 long as, as long as it would take for my client to smoke
20 a pack of cigarettes. And the inclination, according to
21 my client, was he would be offered cigarettes, also
22 visits with his family to talk. He would go ahead, sign
23 off on these waivers and they would talk.

24 And the difficulty that I have with that as far as
25 the motion business, I have no idea what they spoke

1 about. And I had no idea -- I had an investigator in
2 this case that was employed. I don't know what they
3 talked about over a period of a month. I know they, I
4 know they talked up until or up through this July, I'm
5 not sure what date that was. But, Your Honor, the
6 difficulty that I have with that in terms of being a
7 defense attorney, and I'm primarily going by the Sixth
8 Amendment right that he would have in this case,
9 Mr. Moss would have to a fair trial. What it does is
10 that he has been deprived, I believe, of the ability to
11 strategize in this case with me to present a defense in
12 this case because I don't know what Mr. Cane or Sergeant
13 Cain knew about what we were planning or what our
14 strategy was or anything like that. That is the issue
15 that I have. I think it's a Sixth Amendment argument in
16 this case is I don't think he's getting a fair trial
17 because of that. Because I understand that, and I did
18 some research on this, as long as they do a waiver, the
19 person comes to them and says, listen, I want to talk to
20 you at that point, if they get a waiver everything is
21 kosher, everything is fine at that point.

22 But the difficulty I have with that is that in this
23 matter with Mr. Moss, I think that the, according to
24 Mr. Moss, the offering of cigarettes, visits and so
25 forth, to him to entice him to do this, it -- I

1 understand the rationale that courts have given in terms
2 of going through the procedure of signing off after you
3 have counsel, post counsel signing off on some sort of a
4 waiver, he approaches the officer and so forth.

5 I don't think this is that kind of case because
6 while that has occurred this has occurred numerous,
7 numerous times, not just one or two times. This is a
8 whole pattern of times. And that has made it very hard
9 for my client, I believe, to get a fair trial in this
10 case.

11 I know the Solicitor's Office is gonna pass up to
12 the Court and Mr. Cain is gonna pass up to the Court
13 something in terms of these waivers that I've received.
14 Waivers where he's saying I want to see you, I want to
15 do this, I waive my right to counsel. But I think the
16 number of these is, it's kind of, it's kind of
17 outrageous the number of times he met with him.

18 THE COURT: Let me ask you this. Under your motion
19 to dismiss or to disqualify, you cite Rule 4.2 which
20 would have to do with the actual attorney communicating
21 representing their client.

22 MR. ROBINSON: I would, yes, sir.

23 THE COURT: And then you cite Rule 5.3 which would
24 be the responsibility of nonlawyer assistance. And
25 those don't really seem to be germane with what we're

1 dealing with what we're dealing with here today, with
2 what you're saying.

3 MR. ROBINSON: I agree with that, Your Honor. This
4 is nothing, I want to make sure I'm clear to the Court,
5 it's nothing on the part of the Tenth Circuit
6 Solicitor's Office, nothing, nothing regarding them, all
7 right?

8 THE COURT: Okay.

9 MR. ROBINSON: But I do think, but I do think that
10 other officers should follow a different protocol. I
11 think officers throughout the State should follow a
12 protocol with that in terms of making sure that there
13 aren't certain things happening, whatever happened.

14 But my big concern in this case is the fact that
15 the enticement to him as far as cigarettes and visits to
16 him, I'm not exactly sure how that's gonna fit in with
17 the actual reasoning behind why officers can go after an
18 attorney is appointed such as myself and start talking
19 to them.

20 And these weren't isolated visits that occurred for
21 10, 15 minutes. These were visits that took place
22 around the Oconee County Detention Center for periods of
23 time. I don't know.

24 THE COURT: And I don't mean to interrupt you, but
25 let me ask you this. In our conference call Friday, if

1 I'm not mistaken, Mr. Stoudemire represented in our
2 phone call that these were instances where Mr. Moss
3 allegedly approached law enforcement, not vice versa,
4 about coming out and saying I want to talk to you. Come
5 talk to me. I mean, is that, in fact, the case?

6 MR. ROBINSON: I think from the information I have
7 from the prosecutor because they complied with Rule 5
8 requirements and so forth, it appears that Mr. Moss
9 initiated these contacts. But on the same side of the
10 coin, I think the enticement for him was cigarettes and
11 visits by his family. That's what the enticement was.
12 I think it can be distinguished because he's getting
13 incentive to communicate with law enforcement. He's
14 given cigarettes and enticement to get him to get -- and
15 it's kind of a situation where he knows that once he
16 initiates a visit from law enforcement, Sergeant Cain,
17 that he's gonna get a cigarette, that he's gonna get
18 maybe a special visit from his family.

19 Those are the reasons why I think there's an issue
20 here as to why it's distinguishable in this sense. And
21 the pattern and the number of visits was just extreme in
22 this case. It wasn't one or two isolated visits, it was
23 a huge number of visits.

24 And because of that, I believe that Mr. Moss has
25 been deprived his Sixth Amendment rights in this case to

1 a fair trial. I think it's one thing one or two times
2 it's something I believe, but more than that, five to
3 ten number of times, there's some issue, there's
4 something going on there, there's something going on for
5 why he's communicating with him. And that's the issue I
6 have in this case. That's the biggest issue I have.
7 One or two times, I wouldn't be talking about this, but
8 the number of times.

9 What really piqued my interest was, we were in a
10 pretrial conference, Mr. Stoudemire was on vacation,
11 with Mr. Wagner, Lindsey Simmons and the officer smiled
12 at me and said are you getting along with your client?
13 It's the first time I had no idea he had been talking to
14 my client and had any idea of what relationship with my
15 client was at that point. That's what got me thinking
16 about this. In looking at the number of times he
17 visited with him, I just don't know what the
18 conversations consisted of.

19 THE COURT: Well, so you are couching your argument
20 in the right to have a fair trial under the Sixth
21 Amendment?

22 MR. ROBINSON: That is correct. That is correct,
23 Your Honor.

24 THE COURT: Do you have any proposition or any
25 authority for the proposition that the number of times

1 of his involvement with law enforcement somehow changes
2 it from being a voluntary situation to one of being
3 coercive? Because that's what I'm hearing you say.

4 MR. ROBINSON: Right. I have, all I have is I have
5 my information from the prosecutor in terms of --

6 THE COURT: No. I'm talking about any legal
7 precedents out there that say after the first two are
8 free but the third starts to be coercive, anything along
9 those lines?

10 MR. ROBINSON: I have nothing about that in this
11 case.

12 THE COURT: How about presenting him with
13 cigarettes and family visits, is there any authority to
14 that that you have?

15 MR. ROBINSON: I have no authority. I have no
16 authority on point on that. I would think that it is
17 kind of a moot question. It just kind of goes into the
18 fact that you have a person who is in jail that has
19 little, he's in a different plane than Mr. Cain.
20 Mr. Cain is in law enforcement and he can offer him
21 cigarettes, family visits because he can do that. Then
22 you have Mr. Moss who is not able to do a lot of these
23 things because of that, so he's a perfect target in this
24 case. I mean, it's a perfect -- that's the biggest
25 issue.

1 Now, Mr. Stoudemire has agreed or stipulated I
2 think, I think there was some talk of this; that
3 anything after attorneys were appointed, that none of
4 the information that Mr. -- Sergeant Cain specifically
5 after in terms of statements, there was a map drawn by
6 him at one point, none of that will be introduced in
7 their Case-in-Chief. That was my understanding.

8 **THE COURT:** Is that correct, Mr. Stoudemire?

9 **MR. STOUDEMIRE:** Judge, what Mr. Robinson and I
10 talked about, and a lot of the statements that he's
11 referring to and the conversations between Sergeant Cain
12 and Mr. Moss that he's referring to, we have no
13 intentions of bringing those up. I'll stipulate that
14 our plan is not to use any of those statements.
15 However, if something occurs throughout the trial or a
16 door is opened during the testimony, I don't want to
17 forego my ability to use those statements if such a
18 situation would arise. So my plan is not to use them.

19 **THE COURT:** So my understanding what you're saying
20 is then is in your Case-in-Chief you don't have any
21 intent to bring up any of these, evidence from these
22 meetings, posts, representation either from Mr. Burr or
23 Mr. Robinson; is that correct?

24 **MR. STOUDEMIRE:** That's correct. Your Honor, the
25 only statements that Mr. Moss gave that we put any

1 weight to at all were ones given on the day of the
2 incident or around that day, which is May 18th, 2011,
3 May 19th, 2011. Everything beyond that was dealt with
4 Mr. Moss sending up what the jail terms as an inmate
5 request to staff, which is simply a little form they
6 write on there what they want and then they say, hey,
7 can you fax this to whomever.

8 THE COURT: Right.

9 MR. STOUDEMIRE: And all the communications were
10 done by the inmate request of staff. We have no
11 intention of bringing any of those up.

12 THE COURT: Let me say this: My inclination is
13 that if Mr. Moss, in fact, was the one who asked to have
14 the meeting, he's the one who met with law enforcement,
15 that he is not in a position at this stage to complain
16 about any information that had been gathered at that
17 point.

18 I am going to keep the matter under advisement and
19 listen to matters further and go forward and rule later
20 if I see something changes my mind. My immediate
21 inclination is it is not in violation.

22 And that brings us to the next motion, Mr. Robinson
23 you have a motion to withdraw as counsel pursuant to
24 Rule 1.18(a) 6 which quite frankly might be a typo. Are
25 you still pursuing that motion?

1 MR. ROBINSON: I'm not. I'm withdrawing that
2 motion.

3 THE COURT: So the motion that was filed July 18th
4 captioned motion to withdraw as counsel is withdrawn; is
5 that correct?

6 MR. ROBINSON: That's withdrawn, yes, sir.

7 THE COURT: Okay. Finally there seems to be some
8 *Jackson v. Denno* issues; is that correct?

9 MR. STOUDEMIRE: Judge we had talked about that in
10 my office and we had talked about that again at lunch
11 regarding some statements made by the Defendant shortly
12 after his arrest. And after discussing that and reading
13 over the statements, I don't think we plan to use those
14 in our Case-in-Chief and, therefore, there is no need
15 for a *Jackson v. Denno* hearing.

16 THE COURT: Do you agree with that?

17 MR. ROBINSON: If he could point out which
18 statements he's not gonna be using in this case?

19 MR. STOUDEMIRE: Absolutely.

20 MR. ROBINSON: Because I was wondering.

21 MR. STOUDEMIRE: Judge, quite honestly since we're
22 not using any of the others, it's pretty much any
23 statement made by Mr. Moss. But --

24 Just a moment, Your Honor.

25 (Whereupon, counsel confer off the record.)

1 MR. ROBINSON: Your Honor, what I spoke to
2 Mr. Stoudemire about was just the statements which ones
3 when he made the statements about, what I was
4 particularly concerned about an interview that happened
5 on 6/1/2011, which was an interview that was not put
6 down in writing and he informed me he was not planning
7 on using that in his Case-in-Chief.

8 THE COURT: That's June 1st, 2011?

9 MR. STOUDEMIRE: That's correct.

10 THE COURT: An oral interview?

11 MR. STOUDEMIRE: Judge, just for the record that is
12 an oral interview. However, just so the Court is clear
13 that was based on an inmate request to staff. It was
14 sent by Mr. Moss on May 25th, 2011. Sergeant Cain was
15 able to respond to that request on June 1st, 2011. He
16 did meet with Mr. Moss, he did do a written rights
17 waiver, had Mr. Moss go through that, initial, sign
18 that. They had an oral conversation. It was not
19 memorialized in a written statement by Mr. Moss.
20 However, Sergeant Cain did do a record of interview
21 which was written and was turned over to Mr. Robinson
22 during the course of discovery.

23 THE COURT: Let me ask you this: After Mr. Burr or
24 Mr. Robinson were assigned to represent Mr. Moss, did
25 they ever have a meeting, interview, whatever term you

1 want to use, interaction between law enforcement and
2 Mr. Moss that was not initiated by the Defendant?

3 MR. STOUDEMIRE: No, sir, they did not. The ones
4 that I think Mr. Robinson has been speaking of is
5 Sergeant Cain had a conversation with him on June 1st,
6 which we just spoke about from an inmate request. On
7 July 12th, which was based upon an inmate request sent
8 July 8th. There was an inmate request sent on November
9 25th, 2011. Sergeant Cain was able to talk with him on
10 November 29th, 2011. And then lastly, Your Honor, on
11 July 7th and July 8th Mr. Moss sent two inmate requests
12 and Sergeant Cain met with him on July 9th. Those are,
13 those are the ones.

14 Now, just so the Court is clear, with regard to
15 inmate requests, we have one, two -- nine other inmate
16 requests that were sent by Mr. Moss to Sergeant Cain to
17 his attention that Sergeant Cain did not respond to. So
18 the majority of inmate requests that Mr. Moss sent he
19 never received any response from Sergeant Cain
20 whatsoever. I don't think it's out of the ordinary that
21 he met with him an extraordinary number of times. I
22 think it was four or five times maximum that they met
23 and discussed anything in this case.

24 But again, Your Honor, all communications that took
25 place between Mr. Moss and Sergeant Cain after Mr. Moss

1 had representation either by Mr. Burr or by
2 Mr. Robinson, every single one of those was initiated by
3 Mr. Moss. And we think the law is pretty clear, the
4 case law I think is pretty clear on if he asserts his
5 right to counsel, then no more conversation can take
6 place. However, at a later date, via that same date or
7 a later date in the future, if he makes a request to
8 speak with law enforcement or thereby does something
9 that waives his right to counsel, I think that Sergeant
10 Cain then has a right to speak with him further on that
11 matter and that's took place in this case.

12 THE COURT: All right. Any other interviews other
13 than with Sergeant Cain with law enforcement and the
14 Defendant?

15 MR. STOUDEMIRE: No, sir.

16 MR. ROBINSON: Not that I -- they've given me
17 everything as far as all the, the statements where he
18 asked for the interviews and the waivers and so forth.
19 They have given me all that in Rule 5 discovery. I
20 would add that Mr. Moss -- I would like to call him
21 because he wanted to testify for the purposes of this
22 hearing only what exactly, what was the initiative as
23 far as why he spoke with Mr. Cain. That's what he would
24 like to do, he's asking to do.

25 THE COURT: What's your position on that?

1 MR. STOUDEMIRE: Judge, I think you've got all the
2 necessary information. I don't know that we need to
3 hear from Mr. Moss.

4 THE COURT: You know what, out of an abundance of
5 caution my feeling is that he, by initiating this
6 contact and signing the waivers he waived his right to
7 have an attorney there regardless of the reason. But
8 out of an abundance of caution I'm gonna let Mr. Moss
9 testify if he would like to on the issue of this alone
10 and no other issue without waiving his right to assert
11 his Fifth Amendment right against self-incrimination
12 subsequently in this trial.

13 Now, with that being said, Mr. Moss would you come
14 around, please, sir.

15 THE COURT: All right.

16 MR. ROBINSON: May it please the Court?

17 DOMETROISE MOSS,

18 having first been duly sworn, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ROBINSON:

22 Q. Mr. Moss, as the Court has instructed you, for the
23 purpose of this hearing only, we're speaking of the
24 conversations initiatives of this conversation and that
25 said nothing else. Do you understand that?

1 A. All right.

2 Q. Mr. Moss you are familiar with Sergeant Cain; is
3 that correct?

4 A. Yes.

5 Q. And how are you familiar with him?

6 A. He was the, he was the one that was on the scene
7 when I got locked up.

8 Q. Make sure you speak up for the Court Reporter.

9 A. He was on the scene when I got locked up.

10 Q. Okay. We're talking here about your request to
11 have him talk to you after the representation of myself
12 and Mr. Burr as your assigned counsel. Let's talk about
13 that, okay, up until today or up until recently. How
14 did you initiate these conversations or interviews with
15 Sergeant Cain?

16 A. Well, first he told me just to write him so I got
17 out of the cell and whenever I needed to get out of the
18 cell because they had me in isolation. So he told me
19 whenever I needed to get out of isolation or needed to
20 speak with him about something or just, just get out of
21 the cell basically for a little while he would take me
22 outside for a little while so I could smoke a cigarette.

23 And we would have a conversation about, sometime we
24 would have them about trial, sometimes we would have a
25 conversation about, just about all kinds of stuff, just

1 like we talked about personal stuff. We talked about
2 how I feel about different situations that was going on.

3 Q. Were these meetings recorded between you and him?

4 A. A couple of them was. Not many was.

5 Q. How do you know they were recorded?

6 A. He would write down something. It was like
7 whatever I was telling him. Sometimes it was in his
8 office and sometimes he would just take me outside and
9 we would talk and he would let me smoke a cigarette.
10 And most of the time we met in his office first and then
11 we would go down outside and he would let me smoke and
12 we would talk and talk some more.

13 Q. Let's stick on this whole issue. Are you sure he
14 recorded things in this case? Why would you think that?

15 A. I'm not really sure. Not like a tape recorder.
16 I'm just saying like the only thing I seen him do was
17 write down some stuff.

18 Q. Taking notes.

19 THE COURT: Just one second. You say you don't
20 think he tape recorded but he took notes; is that
21 correct?

22 THE WITNESS: Yes, sir.

23 BY MR. ROBINSON:

24 Q. You understand these are the same notes the
25 prosecutor gave me in the Rule 5 responses. All right.

1 I've seen those notes.

2 Let's talk about how he got you to talk to him or
3 why you went and talked to him. Now, you had an
4 attorney in this case. Why would you go and talk to
5 him?

6 A. Well, basically because he told me from the jump
7 start he said that if I cooperated with him and if I
8 wasn't lying to him and whatever I did, be honest with
9 him and he would help me in any kind of way he could if
10 it would be possible. So that's why I continued to call
11 him and tell him what was going on. Every time I -- he
12 said every time I remembered something to send him a
13 staff request. He said every time I could think of
14 something else new to write him a staff request.

15 Q. And what would he give you in return for your
16 calling him or initiating this conversation or talks
17 with him, what did you think you were getting in return?

18 A. Well, I knew I was gonna get a cigarette.

19 Q. A what?

20 A. I knew I was gonna get a cigarette, get a smoke.

21 Q. How did you know that?

22 A. Because he bought a pack of cigarettes.

23 Q. He bought you a pack of cigarettes?

24 A. Yes.

25 Q. Okay. Was that the first meeting you had, second

1 meet? What meeting?

2 A. Well, at first he was just bring me regular kind of
3 cigarettes. Then he asked me what kind I smoked and he
4 started buying me Newports. Not Newports but Marlboros.

5 Q. Okay. Did he also talk to you about your family?

6 A. Yes.

7 Q. And what -- did he ever promise you anything
8 regarding your family in return for a visit with him?

9 A. Well, he always -- he told me he would call my
10 people and tell them he would set up a contact visit.

11 Q. Right.

12 A. But he always wrote down the wrong number. I never
13 did get a contact visit.

14 Q. How many times do you believe you met with him?

15 A. I can't remember. A couple. A couple times.

16 Q. The Solicitor has represented that it may have
17 been, there were a lot of times that you communicated or
18 asked to him come and see you when he didn't come and
19 see you. Was that true?

20 A. Say that again.

21 Q. When you would send these letters in he didn't come
22 to see you ever time, did he?

23 A. No. Not unless he had like a question or something
24 that he couldn't figure out, he would come see me, I
25 guess. But, I mean, it was just like I was telling the

1 truth about everything. So basically I thought he was
2 my friend I guess. I know I try to tell him everything
3 to the fullest and tried to tell him everything that
4 happened that was the truth, and I thought that he would
5 work with me. That's why I was telling him the truth
6 about everything.

7 Q. How long did the visits normally -- how long did
8 they normally last?

9 A. Oh, it just depends on how much free time he had.
10 If he had a good little free time he would sit outside
11 and talk to me.

12 Q. Now, did you -- I mentioned this a minute ago. Did
13 you smoke a whole pack of cigarettes talking to him one
14 time?

15 A. Not a whole time. It was a bunch of cigarettes,
16 though.

17 Q. A bunch of cigarettes?

18 A. Yeah, a bunch of cigarettes.

19 Q. Do you have anything else to add to this hearing
20 regarding how Sergeant Cain, how this whole thing came
21 about with you interviewing with Sergeant Cain?

22 Anything else you want to add?

23 A. No. It was just I had got a letter and it had
24 stated that you -- the letter was that you thought I was
25 slow and so I went to -- well, I wrote Mr. Cain and went

1 there and talk to him and he said that you did tell him
2 that you thought that I was slow. And he said that he
3 told you that he didn't think I was slow.

4 Q. Anything else you want to add?

5 A. No, sir.

6 MR. ROBINSON: That's all I have, Your Honor.

7 MR. STOUDEMIRE: None, Your Honor.

8 THE COURT: Thank you, sir. You may step down.

9 (Whereupon, Witness leaves witness stand.)

10 Mr. Robinson, anything further?

11 MR. ROBINSON: Nothing further, Your Honor.

12 THE COURT: All right. Let me ask you a question.

13 At the Detention Center, was he kept at the Detention
14 Center?

15 MR. ROBINSON: Yes, sir.

16 THE COURT: Is there any rule against family
17 visiting in the Detention Center?

18 MR. ROBINSON: I'm not, I'm not familiar that much
19 with family visits.

20 THE COURT: Any rule against inmates having
21 cigarettes at the Detention Center?

22 MR. ROBINSON: I have no independent knowledge of
23 that, Your Honor. I don't know.

24 THE COURT: Any other evidence of alleged coercion?
25 And I assume that you are basing this on some type of

1 coercive nature of the effect of cigarettes on this
2 man's ability to make a decision as to whether or not to
3 exercise his right to counsel?

4 MR. ROBINSON: Your Honor, I wouldn't characterize
5 it as coercion. I would characterize it more as
6 enticement. I think that's more what I would
7 characterize it as.

8 THE COURT: Okay. Let me just say this: I'm gonna
9 find that Mr. Moss has initiated the contact in all
10 events with law enforcement. That there's, there might
11 have been, you know, some representations about visiting
12 with family and provision of cigarettes. But nothing
13 which he didn't have access to already. And I've not
14 heard any evidence that Mr. Moss's will was overcome by
15 the actions of law enforcement to the extent where he
16 could not make a knowing and voluntary waiver of his
17 right to counsel, whether it be enticement or through
18 coercion.

19 And quite frankly I don't think enticement is
20 sufficient to get you across the bar, but to the extent
21 it is, I don't find that there is sufficient evidence
22 showing that Mr. Moss's personal, I mean Mr. Moss's idea
23 overcome -- his decision making process was overcome by
24 the actions of law enforcement. In fact, quite the
25 opposite. The record shows multiple requests to see law

1 enforcement that went unanswered and that he initiated
2 the contact because he wanted to get out of his cell.
3 He also, as he said, thought that if he spoke with this
4 officer and provided him truthful information, that
5 would be in his benefit and he would get benefit from
6 law enforcement in how he's treated in this matter as a
7 result of that. And so I'm gonna deny your motion on
8 those grounds, Mr. Robinson. Anything further?

9 MR. ROBINSON: Nothing further, Your Honor.

10 THE COURT: Okay. So to clarify, I'm not taking it
11 under advisement after his testimony. I'm gonna find
12 that the statements were made freely and voluntarily
13 made with law enforcement, initiated by the Defendant
14 and thus will be subject to being placed into evidence
15 by the State if they desire. There is an agreement that
16 he won't do that, but as far as a motion to suppress it
17 I'm not doing that.

18 Okay. Anything further from the State before we
19 are excused for the day?

20 MR. STOUDEMIRE: Not at this time, Your Honor.

21 THE COURT: From the Defense?

22 MR. ROBINSON: Nothing, Your Honor.

23 THE COURT: Okay. 9:30 in the morning. Any reason
24 why we can't get up and running by that time?

25 MR. STOUDEMIRE: I don't see why not, Judge.

1 THE COURT: Okay. Do you have any other requests
2 or chores or any other matters for me to consider at
3 this stage?

4 MR. ROBINSON: Your Honor, I'm gonna give you some
5 more self-defense and what the State has to do to prove
6 self-defense in this matter, but I'll give those to you
7 tomorrow if I can.

8 THE COURT: All right. That being done we will be
9 in recess until tomorrow at 9:30.

10 Mr. Robinson, Mr. Stoudemire, will you all come
11 here for a second, please?

12 (Whereupon, there was a discussion at sidebar off
13 the record.)

14 MR. STOUDEMIRE: Judge, I think just out of an
15 abundance of caution we're gonna go ahead and do a
16 *Jackson v. Denno*.

17 THE COURT: Okay. For the record it's still Monday
18 the 23rd. We had just broken for the day but
19 Mr. Stoudemire said he had a potential *Jackson v. Denno*
20 and it's my preference to go ahead and get all pretrial
21 matters resolved now instead of waiting until we have
22 the jury back here tomorrow and having to delay the
23 proceedings. So I think out of an abundance of caution
24 you were gonna do one; is that correct?

25 MR. STOUDEMIRE: Yes, sir, that's correct. Just

1 for the record, Judge, this is with regard to an oral
2 statement made by Mr. Moss to Sergeant Cain within some
3 hours after his arrest on May 19th, 2011.

4 THE COURT: Okay. Do you want to call your
5 witness, please?

6 MR. STOUDEMIRE: Yes. Yes, Judge, we would call
7 Sergeant Kevin Cain with the Oconee County Sheriff's
8 Office.,

9 SERGEANT KEVIN CAIN,
10 having first been duly sworn, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. STOUDEMIRE:

14 Q. Sergeant Cain, if you could please give us your
15 name for the record.

16 A. I'm Sergeant Kevin Cain.

17 Q. And is it correct that you are employed here with
18 the Oconee County Sheriff's Office?

19 A. I am.

20 Q. And were you so employed on/or about May 19th,
21 2011?

22 A. I was.

23 Q. And on that date during the course of your
24 investigation did you have occasion to have contact with
25 the Defendant in this case Mr. Dametroise Moss?

1 A. I did.

2 Q. Okay. And was he, in fact, a suspect in an
3 investigation at that time?

4 A. He was.

5 Q. Okay. And did you conduct an interview with
6 Mr. Moss on that day?

7 A. I did.

8 MR. STOUDEMIRE: Okay. Your Honor, may I approach
9 the witness?

10 THE COURT: Yes, sir.

11 MR. STOUDEMIRE: Thank you.

12 BY MR. STOUDEMIRE:

13 Q. Sergeant Cain, I'm gonna show you what's been
14 marked as State's Exhibit Number 1. Can you tell me
15 what that is?

16 A. It's a Miranda form that I had gone over with the
17 Defendant.

18 Q. Okay. And what's, what's the purpose of the
19 Miranda form?

20 A. We just inform the subject of all their rights so
21 we don't violate any of their rights.

22 Q. And that's under Miranda and those, those laws?

23 A. Yes.

24 Q. Okay. What is your procedure with going through
25 and advising a witness or a potential suspect of their

1 rights?

2 A. I'll tell them what this is, that it's their
3 *Miranda* rights, and that I'm gonna go through this with
4 him basically. But what I do is I ask the person to
5 read the very first line out loud for me so I can hear
6 them read that, know that they can read, and then I tell
7 them that, or Mr. Moss, that he can read the rest of the
8 *Miranda* form out loud or to himself. I want to make
9 sure he understands it. If he has any question during
10 the reading or when he's done to ask me and I will
11 answer those questions.

12 Q. Okay. And is there a space with every line for him
13 to initial that he understands that particular portion?

14 A. There is on every line there's a line to be
15 initialed and then a place to sign at the bottom.

16 Q. Okay. Can you go ahead and just read through those
17 lines and let me know whether or not Mr. Moss initialed
18 them, please?

19 A. Okay. The first line is before we ask you any
20 questions you must understand your rights. He initialed
21 that DM.

22 You have the right to remain silent. He initialed
23 that DM.

24 Anything you say can be used against you in court.
25 He initialed that DM.

1 You have the right to talk to a lawyer for advice
2 before we ask you any questions and to have him with you
3 during questioning. He initialed that one DM.

4 If you cannot afford a lawyer, one will be
5 appointed for you before any questions, if you wish. He
6 initialed that one DM.

7 If you decide to answer any questions now without a
8 lawyer present, you will still have the right to stop
9 answering at any time. He initialed that DM.

10 And the last paragraph: I have read this statement
11 of my rights and I understand what my rights are. I am
12 willing to make a statement and answer questions. I
13 understand and know what I am doing. No promises or
14 threats have been made to me and no pressure or coercion
15 of any kind has been used against me. And he signed
16 Dametroise Moss.

17 Q. Okay. And did you sign as a witness to that as
18 well?

19 A. I signed as a witness and Gentry Hawk also signed
20 as a witness.

21 Q. Okay. And what is the date and time on this
22 particular rights waiver form?

23 A. This is just like three minutes after midnight when
24 we finished at 5-19-11.

25 Q. Okay. And where was this rights waiver done?

1 A. It was done at the incident location.

2 Q. Okay. And that's Whittle Trailer Park in Oconee
3 County?

4 A. Yes.

5 Q. And after this rights waiver was done, did you
6 conduct an interview with Mr. Moss?

7 A. Yes, we spoke with him.

8 Q. Okay. And the interview, was it done out at the
9 trailer park or was it done back at the Law Enforcement
10 Center?

11 A. They were done back at the Law Enforcement Center.

12 Q. Okay. And during this interview process was it a
13 short interview process?

14 A. No, it wasn't. It was an all day long process.

15 Q. Okay. So at some point did you all take breaks?

16 A. Oh, yes, yes.

17 Q. Okay. Did Mr. Moss advise you of anything during
18 one or any of these breaks that you took?

19 A. Yes. He had asked if he could go outside and take
20 a break, wanted to use the bathroom, he did want to
21 smoke. Myself and he, we went out and I didn't even say
22 anything to Mr. Moss, I just took him outside, and he
23 informed me, he said I just want to do the right thing
24 and I wanted to go ahead and let you know where the gun
25 was at.

1 Q. Okay. And where did he tell you the gun was?

2 A. It was in his girlfriend's residence that she was
3 renting near the incident location in a speaker box in
4 the living room.

5 Q. Okay. And do you recall his girlfriend's name?

6 A. Ms. Pinson.

7 Q. Pinson?

8 A. Pinson.

9 Q. Would that will be Corbrina Pinson?

10 A. Yes.

11 Q. Okay. Now, during the course of this interview and
12 any conversation outside did you coerce Mr. Moss in any
13 way?

14 A. Absolutely not.

15 Q. Did you promise him or deprive him of any comfort
16 such as going to the bathroom?

17 A. Absolutely not.

18 Q. Okay. The statement that he made to you regarding
19 the location of this particular gun was it done after
20 this *Miranda* rights waiver was done?

21 A. Yes, sir.

22 Q. Okay. And at any time after this waiver was done
23 up until the time that he gave you that particular
24 statement about where the gun was, did he ask for an
25 attorney or ask to stop questioning?

1 A. No, sir.

2 Q. Okay. And to the best of your knowledge, were all
3 statements made by Mr. Moss to you freely and
4 voluntarily given to the best of your knowledge?

5 A. Absolutely.

6 Q. Okay.

7 MR. STOUDEMIRE: That's all the questions I would
8 have. Please answer any Mr. Robinson would have.

9 THE COURT: Mr. Robinson?

10 MR. ROBINSON: Just one question. You have that
11 report in front with you, don't you?

12 THE WITNESS: No, sir. I just have the Miranda
13 form.

14 (Whereupon, counsel confer.)

15 MR. ROBINSON: May I approach please, Your Honor?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. ROBINSON:

19 Q. Officer Cain, is this a copy of your statement that
20 you recorded in your case report? Is that correct?

21 A. Yes, sir.

22 Q. Okay. In looking at this case report which is
23 entitled case report summary, the print date is
24 2-2-2012. Is there any reason why that's different than
25 the date of 5-19-2011?

1 A. No. I mean, if -- that's when it would have been
2 printed. That's not when it was put in the computer.
3 That's when it was printed. I could go in today and
4 print that and it would put today's date on it.

5 Q. Okay. You didn't print it simultaneously, pretty
6 much when the statement was given, did you?

7 A. No. I went in and put it in the computer pretty
8 close to that. I can't tell you exactly the hours, the
9 minutes. But I always try as soon as I can I go in and
10 do my officer notes. But that print date is just when I
11 brought it back up and hit print. I could, like I say,
12 I could do that today and it would have today's date on
13 it.

14 Q. But the statement basically was that he wanted to
15 come clean, he wanted to be up front with you and say
16 that the gun was in, they were in the speakers at his
17 home, correct?

18 A. Yes, sir.

19 MR. ROBINSON: Okay. That's all I have. Thank
20 you.

21 MR. STOUDEMIRE: Your Honor, no follow-up questions
22 at this time. We would move to admit State's Number 1,
23 the rights waiver. We would also move to admit
24 Mr. Moss's oral statement given as a result to the
25 rights waiver regarding the location of the gun.

1 (Whereupon, State's Exhibit Number 1 was entered
2 into the record.)

3 **THE COURT:** All right. Let me ask him questions.
4 Was the Miranda form signed on the scene, is that dated
5 when the interview took place back at the Detention
6 Center?

7 **THE WITNESS:** Yes, sir.

8 **THE COURT:** And you said that this interrogation
9 had taken place pretty much over the course of the day?

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** When did it start?

12 **THE WITNESS:** Just after midnight on the 19th of
13 May. The incident happened on the evening of the 18th
14 into the night. We arrived and it went on into the next
15 day.

16 **THE COURT:** Okay. So when did you begin? You
17 started the interrogation on this gentleman on the 19th
18 after 12 p.m.?

19 **THE WITNESS:** Yes, sir.

20 **THE COURT:** Okay. And according to my notes a
21 minute ago it sounded like he finished this statement at
22 12:03?

23 **THE WITNESS:** No. He hadn't finished his
24 statement, it was the Miranda form.

25 **THE COURT:** The Miranda form.

1 THE WITNESS: I mean, it was several seconds after
2 12 midnight and we went over. It was 12:03 when he
3 finished the Miranda that I read earlier.

4 THE COURT: I got you. And when did he make the
5 actual statement, roughly?

6 THE WITNESS: Later that evening.

7 THE COURT: How much later, do you know?

8 THE WITNESS: Maybe eight-ish, eight, eight-ish
9 p.m.

10 THE COURT: So the next morning?

11 THE WITNESS: No. That day, later that day.

12 THE COURT: Okay. 12 -- make sure I have my p.m.
13 and a.m. correct. On the 19th I have written 12 a.m.
14 that they finished the rights. That would not be right?

15 THE WITNESS: Yeah. It would be 12:03 a.m. on the
16 19th. Sometime after 8 p.m. is when he had written the
17 statement.

18 THE COURT: Okay. So the entire night and the
19 entire next day?

20 THE WITNESS: The morning into the -- yeah. There
21 was another Miranda done that day.

22 THE COURT: Okay. And I guess what I'm asking, was
23 this continuous interrogation or something that stopped
24 and resumed later? Do you know what I'm saying?

25 THE WITNESS: It had stopped and resumed later, but

1 there was another Miranda done, which I don't believe I
2 had done that one. That was done by Greg Reed.

3 THE COURT: How old was the Defendant at the time?

4 THE WITNESS: Excuse me?

5 THE COURT: How old was the Defendant at the time?

6 THE WITNESS: How old was he?

7 THE COURT: Yes, sir.

8 THE WITNESS: Oh, I don't.

9 THE COURT: Was he a minor?

10 THE WITNESS: No. No. No, no. This happened in
11 2011.

12 THE COURT: All right. Any questions based on
13 mine?

14 MR. ROBINSON: I just want to followup on a couple
15 of questions.

16 RE-CROSS EXAMINATION

17 BY MR. ROBINSON:

18 Q. It sounds like from -- it began around midnight and
19 it kept going for 24 hours, is that right, this
20 interrogation?

21 A. No. It --

22 Q. The question is, did he get any sleep during this
23 period of time?

24 A. Yes. He was taken down to the jail.

25 Q. Okay. And how much --

1 A. And everything was done he needed that was supposed
2 to be done. But he was re-Mirandized that afternoon.

3 Q. And how much sleep, if you recall, did he get
4 between --

5 A. Oh, I wouldn't know that.

6 Q. You wouldn't know that, okay.

7 A. I wouldn't know that.

8 Q. Do you know if he was fed during the, when the
9 break occurred when he got sleep, was he fed?

10 A. Oh, yeah. If they're with us when lunch or supper,
11 dinner, whatever you want to call it comes around,
12 they're always fed, yeah.

13 Q. And not once during this whole period of time did
14 he ever ask for an attorney?

15 A. No.

16 Q. Was he cooperative?

17 A. Oh, yeah. He was very cooperative. He was very
18 respectful to me and he always has been.

19 MR. ROBINSON: Thank you. That's all I have, Your
20 Honor.

21 THE COURT: All right. Anything further?

22 MR. STOUDEMIRE: Nothing, Your Honor.

23 THE COURT: Thank you, sir. You may step down.

24 THE WITNESS: Thank you, Judge.

25 THE COURT: Yes, sir, buddy.

1 (Whereupon, Witness leaves witness stand.)

2 Mr. Robinson I'd be glad to hear from you.

3 Anything further?

4 MR. ROBINSON: I have nothing to add, Your Honor.

5 THE COURT: I find by a preponderance of the
6 evidence that the State has proven there was a custodial
7 interrogation but that Defendant made an intelligent
8 waiver of his right to an attorney and it was under the
9 totality of the circumstances voluntary; although the
10 length of the interrogation seemed to be fairly long.
11 Upon further inquiry, it appears that the Defendant
12 stopped and also was given breaks to smoke, breaks to
13 use the restroom and fed. There's no evidence of any
14 coercion, no evidence that defendant's physical
15 condition was such that he would not be able to make a
16 proper determination as to whether or not to exercise
17 his rights; there's been no threat of violence; no
18 promises of leniency, no situations where he had
19 isolation of a minor away from his parents.

20 All that said and done, I'm gonna find that from a
21 preponderance of the evidence the statement will be
22 admissible in trial and that it would be up to the jury
23 to determine whether or not that was voluntarily made
24 beyond a reasonable doubt.

25 Anything further from the State?

1 MR. STOUDEMIRE: Nothing, Your Honor.

2 THE COURT: From the Defense?

3 MR. ROBINSON: Nothing, Your Honor.

4 THE COURT: Thank you very much. All right. We'll
5 be in recess until tomorrow morning at 9:30.

6 (Whereupon, Court adjourned at 4:15 p.m., to resume
7 at 9:00 a.m. on Tuesday, July 24, 2012.)

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9

10 -- THIS ENDS DAY ONE OF MOSS TRIAL --

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3 CERTIFICATE OF REPORTER

4 I, the undersigned Julie A. Ashbrook, Court
5 Reporter for the Thirteenth Judicial Circuit Family
6 Court of the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate, and complete
8 transcript of record to the best of my abilities of all
9 the proceedings and evidence introduced in the hearing
10 and/or trial of the captioned case, relative to appeal,
11 in the Circuit Court for Oconee County, South Carolina,
12 on the 23rd day of July, 2012.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15

16
17 
18 Julie A. Ashbrook
19 Family Court Reporter
20 Thirteenth Judicial Circuit
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STATE OF SOUTH) IN THE COURT OF GENERAL
CAROLINA) SESSIONS
COUNTY OF OCONEE) INDICTMENT NO: 2011-GS-37-764
2011-GS-37-765,
2012-GS-37-401

STATE OF SOUTH)
CAROLINA)
PLAINTIFF,) TRANSCRIPT OF RECORD
-vs-) TRIAL - VOLUME II
DAMETROISE Moss,)
DEFENDANT.)

July 24, 2012
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE; AND A JURY.

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

BLAIR STOUDEMIRE, ESQ.
DEPUTY 10TH CIRCUIT SOLICITOR
ATTORNEY FOR THE STATE

SCOTT ROBINSON, ESQ.
ATTORNEY FOR THE DEFENDANT

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END OF DAY ONE

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Through 1.19,
Group of photos

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State's Ex. #1.19

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State's Ex. #1.11 and 1.13

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State's Ex. #1.6, 1.7 & 1.14

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State's Ex. # 5,
Projectile removed
From Xavier Peeples

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State's Ex. # 6,
Projectile removed from
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State's Ex. # 7,
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EXHIBITS

DEFENDANT'S EXHIBITSI.D.EV.

Defendant's Ex. #1,
Paper bag

8

1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **
2 (WHEREUPON, THE TRIAL IN THE MATTER OF THE STATE OF
3 SOUTH CAROLINA VERSUS DAMETRIOSE R. Moss, DAY TWO
4 WITH ALL PARTIES BEING PRESENT, ON TUESDAY JUNE 24,
5 2012, AT APPROXIMATELY 9:49 A.M.)
6
7 (State's Ex. # 1.1 through 1.19, group of photos,
8 was marked for identification.)
9 (State's Ex. # 2, Pinson-Baldwin Consent to Search
10 dated 5-19-11, was marked for identification.)
11 (State's Ex. # 3, Moss Consent to Search, was
12 marked for identification.)
13 (State's Ex. # 4.1, GSR SLED report, was marked for
14 identification.)
15 (State's Ex. # 4.2 firearms, projectiles, and
16 bullets SLED report, was marked for
17 identification.)
18 (State's Ex. # 5, projectile removed from Xavier
19 Peeples, was marked for identification.)
20 (State's Ex. # 6, projectile removed from Quinton
21 T. Thomas, was marked for identification.)
22 (State's Ex. # 7, blow-up aerial photo, was marked
23 for identification.)
24 (State's Ex. # 8, .38 caliber revolver, was marked
25 for identification.)

1 (State's Ex. # 9, .40 caliber Taurus gun, was
2 marked for identification.)

3 (State's Ex. # 10.1 through 10.19, cartridges/shell
4 casings, was marked for identification.)

5 (State's Ex. # 11.1 through 11.4, projectiles, was
6 marked for identification.)

7 (Defendant's Ex. #1, Paper bag, was marked for
8 identification.)

9 THE COURT: My understanding is there's been some
10 stipulations as to some entry matters; is that correct?

11 MR. STOUDEMIRE: That's my understanding, Your
12 Honor. I think Mr. Robinson and I have reached an
13 agreement on it.

14 MR. ROBINSON: We have, Your Honor. I think just
15 for the sake of speeding the trial along we've
16 stipulated to things as far as chain.

17 THE COURT: Okay. Do you need to spell those out
18 or are you pretty much in agreement to what it is? It's
19 fine with me if you feel like you need to, to just go
20 ahead and put it on the record.

21 MR. STOUDEMIRE: Judge, what we've got is, there
22 were a lot of bullets in this case, a lot of gunfire and
23 what we've got is we've got 19 shell casings that were
24 recovered. We are stipulating as to chain of custody
25 with regard to the recovery of those items, getting them

1 down to SLED and getting them to the expert to do
2 examination so that would knock out chain of custody
3 people and we would only have to call the experts who
4 actually examined the shell casings. Getting them down
5 to SLED and on to the expert, which would be the same
6 expert who examined the shell casings, we would just
7 have to call the expert who examined the bullets.

8 The same thing with the firearms as well. The same
9 expert on all that. The same recovery process. With
10 regard to GSR, gun shot residue, we've got three GSR
11 kits that were taken and sent down to SLED. I think
12 that we are stipulating to the GSR kit actually being
13 taken, bagged into evidence and actually being taken
14 down to SLED.

15 There is one person at SLED who took the GSR and
16 did some preparation work for the expert to be able to
17 examine it and we've stipulated to not call that
18 particular forensic technician that did the preparation
19 work, which is good because she was coming from
20 Fayetteville, North Carolina anyway. That was a long
21 trip for her.

22 So that knocked us out of at least two witnesses
23 that we would have in chain of custody with regard to
24 Sergeant Merck having him to testify, who brought all
25 this evidence up here today. And we've have also knock

1 out at least one SLED person.

2 THE COURT: All right. Mr. Robinson, do you
3 actually agree with that?

4 MR. ROBINSON: I agree. We actually me early, got
5 here early to go through all this information and
6 Mr. Stoudemire and I had agreed to that, correct.

7 THE COURT: All right. Anything further?

8 MR. STOUDEMIRE: Judge, we are gonna have a couple
9 of witnesses to testify today. I've given over those --
10 Mr. Robinson asked for criminal records for people who
11 were going to be called over to testify and turned over
12 those criminal records. We do probably need to run
13 through those records. I just want to make sure ---

14 THE COURT: We're going to do that as the trial
15 progresses.

16 MR. STOUDEMIRE: Yes, sir.

17 THE COURT: I've got a jury that's been sitting out
18 there almost 30 minutes.

19 MR. STOUDEMIRE: Yes, sir, that's fine.

20 THE COURT: I do not want to make them wait any
21 further. Before we bring them up, I'm gonna go in
22 camera here and we'll take it up later. All right. Is
23 there anything further from the State?

24 MR. STOUDEMIRE: Nothing from the State.

25 THE COURT: All right. From the Defense?

1 MR. ROBINSON: Nothing from the Defense, Your
2 Honor.

3 THE COURT: All right. Let's take about a
4 five-minute break so everybody can get ready to go and
5 then we'll come back and start the trial.

6 MR. STOUDEMIRE: Yes, sir.

7 (Whereupon, a recess was taken.)

8 THE COURT: State ready?

9 MR. STOUDEMIRE: The State is, Your Honor.

10 THE COURT: Defense ready to proceed?

11 MR. ROBINSON: Yes, Your Honor.

12 THE COURT: Bring the jury in, please, sir.

13 (Whereupon, the jury was brought in the courtroom
14 at 10:00 a.m.)

15 THE COURT: All right. Ladies and gentlemen, we
16 are about to start the trial of the case of Dametroise
17 R. Moss. Before we get started let me go over a couple
18 of things. Madam Forelady, if at any time any of you or
19 the Jurors need a break, let us know. It's fine with me
20 that you bring drinks in the courtroom with you if you
21 would like to have them. Does everybody have pad and
22 pen that they need that wants them? All right. That
23 being said, Madam Clerk, would you swear the jury,
24 please?

25 (Whereupon, the Jury was sworn.)

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, I don't know if any of you have ever been involved
3 with the criminal justice system before either as a
4 litigant as a witness or whatever. I would suspect,
5 however, that each and every one of you have watched
6 which purports to be criminal trials on the TV or in the
7 movies. Let me quickly dispel you right now that what
8 you are about to engage in is not anything like you see
9 on TV. Trials are often very slow, they're often very
10 deliberate, they're methodical. They're not
11 entertainment. They are a fundamental part of our
12 democracy. And let me tell you this, they are a search
13 for the truth to make sure that justice is done.

14 Now, these attorneys are sworn and they're
15 advocates to their clients. They have an ethical duty
16 to zealously represent their position. At the same
17 time, they are officers of this court. That means that
18 you can expect from them that they will be professional,
19 that they will be competent and they will be ethical and
20 courteous to one another and to this Court during the
21 process of this trial.

22 Now, you just took an oath to try to be, reach a
23 fair and just verdict in this matter. What that simply
24 means is, these attorneys and this Court and all the
25 witnesses and parties and we have a right to expect from

1 you that you will be fair and just and impartial in your
2 dealings in this case. That's what your oath says that
3 you will do.

4 Now, what I'm telling you now is basically
5 introductory instructions. I will charge you on the law
6 that is applicable to this case at the end of this case.
7 As I told you yesterday, you are allowed to take notes.
8 Just because somebody's notes says one thing and
9 somebody's memory says something else doesn't mean
10 somebody's notes trumps somebody's memory. Both are
11 just as good as the other. I caution you be careful not
12 to get caught up in taking notes so that you see or miss
13 somebody's reaction or their demeanor while they're on
14 the stand. That's important in making determinations of
15 their credibility.

16 Now, I'm advised and I anticipate that part of the
17 evidence that you will see in this court today will be
18 firearms or a firearm. I don't know, one or more. Let
19 me tell you before we get started, these firearm or
20 firearms have been disabled. They will be incapable of
21 discharge in this courtroom. And the attorneys and the
22 witnesses have been advised that they are not to point
23 them in any way at any person in any direction
24 regardless. So I don't want you feeling uncomfortable
25 when these firearms are dealt with in this courtroom.

1 Now, in this case there are multiple indictments.
2 The Defendant is charged under Indictment 2011-767 with
3 murder and possession of a weapon during the commission
4 of a violent crime; under Indictment 2012-401, he is
5 charged with attempted murder; under Indictment
6 2011-765, he is charged with two counts of discharging a
7 firearm into a dwelling.

8 Now, an indictment, as I have told you in this
9 case, is not any sense of any manner this defendant's
10 guilt. It does not raise an inference of his guilt. It
11 does not raise any kind of presumption of his guilt. It
12 is simply the mechanism by which the State of South
13 Carolina charges individuals with alleged crimes so that
14 they are brought before a jury, such as yourselves, for
15 a determination as to whether or not they are guilty or
16 innocent.

17 In fact, this Defendant has charged -- has pled not
18 guilty to all three of the indictments. Therefore, the
19 burden is upon the State of South Carolina to prove him
20 guilty beyond a reasonable doubt. At the end of this
21 case you will be called upon to decide whether or not
22 the State has met that burden of proof.

23 Let me give you a quick charge on what reasonable
24 doubt is. I think it will be beneficial to you while
25 you're going through this case. I will charge you on

1 reasonable doubt more fully at the end of this case.
2 But this is a short version. The State has the burden
3 of proving the Defendant guilty beyond a reasonable
4 doubt. Some of you may have served as jurors in civil
5 cases where you were told that it is only necessary to
6 prove a fact that is more likely than not true, such as
7 by the greater weight or the preponderance of the
8 evidence. That is a lesser burden than in a criminal
9 case.

10 In the criminal cases the State's burden must be
11 more powerful than that. Its proof must be for
12 powerful. It is proof beyond a reasonable doubt. Proof
13 beyond a reasonable doubt is proof that leaves you
14 firmly convinced of the Defendant's guilt.

15 Now, ladies and gentlemen, there are very few
16 things in this life that we know with absolute certainty
17 and in criminal cases the law does not require proof
18 that overcomes every possible doubt. At the end of this
19 case and after I charge you on the law, if based upon
20 your consideration of the evidence, if you are firmly
21 convinced that the Defendant is guilty of the crime or
22 crimes that he's charged with, then it will be your duty
23 to find him guilty. On the other hand, if you think
24 that it is a real possibility that the Defendant is not
25 guilty of the crime or crimes he's charged with, it will

1 likewise be your duty to find him not guilty.

2 Now, the purpose of jurors are to determine and
3 find what the facts are in all cases. In the vernacular
4 of the law, you were said to be the sole judges of the
5 facts. That means that if any time during the course of
6 this trial I do something that seems to indicate to you
7 how you are to find facts, I'm gonna you ask and I'm
8 gonna instruct you to disregard that. Our state
9 Constitution does not allow trial judges to have an
10 opinion on the facts in any case, and I can assure you
11 in this case I do not. The determines of what the facts
12 are and what inferences you want to give to those facts
13 are solely up to you the jury.

14 Now, you are to determine what the facts are in
15 this case based on the testimony you hear in this
16 courtroom and the evidence that I allow to be admitted
17 into evidence or the exhibits that I allow to be
18 admitted into evidence. You're not to be influenced by
19 any opinions or comments that you hear when this court
20 is not in session. In other words, what you don't hear
21 from this witness stand right here.

22 Now, once a fact is admitted into evidence, once
23 testimony is admitted into evidence or any exhibits are
24 admitted into evidence, it will be up to you to
25 determine what inferences may properly be drawn from

1 that testimony.

2 Now, the law that makes you the sole judges of the
3 facts makes me the sole judge of the law. What that
4 simply means is at the end of this case when I charge
5 you on the law that you must apply to the facts as you
6 find them to be, you will have to apply the law as I
7 give it to you. You may not like it, you may think it
8 should be something else or you may like to change it;
9 but you would be in violation of your duties as a juror
10 to apply the law any way other than as I charge you the
11 law is at the end of this case. Just like I cannot
12 disagree with you on how you find facts to be, you
13 cannot disagree with me on the law that I give you to
14 apply in this case. If I make a mistake, we have
15 appellate courts that will correct me at a later date
16 and time.

17 Again, I've told you this several times yesterday,
18 but do not at any time begin your deliberations until
19 the end of the case and I tell you in no uncertain terms
20 that it's okay to begin your deliberations. What that
21 means is when we take breaks during this trial, we take
22 lunch breaks or overnight breaks, or we have something
23 where I have to send you out of the courtroom, do not
24 speak to each other about any testimony or any other
25 facet of this case.

1 I certainly advise you to engage in any civil
2 conversations, but not about this case. And not only
3 can you not speak with one another, you can't speak with
4 anyone else about this case until after you have reached
5 a verdict. Again, the reason for that is we don't want
6 you to reach a premature conclusion before you hear all
7 the facts and all the testimony and you've been charged
8 with what the law is that you are to apply in this case.

9 Now, again, you also are not to engage in
10 independent jury research, which means if you hear a
11 issue in this case that you think you would like to
12 learn more about, you don't research it until the case
13 is over with. If you think something that may be
14 helpful, do not research during the course of this
15 trial. Do not look up any of the parties, the witnesses
16 or the court personnel until after the case is over.

17 I know that sounds restrictive, but the whole idea
18 is we want you to make a decision based on what you hear
19 here and according to the law as I give it to you here
20 in this courtroom uninfluenced by any outside factors.

21 Now, ladies and gentlemen, in every single case
22 across this state we have five phases. I tell you these
23 so during the course of this trial you generally know
24 where we are. You have opening statements, you have the
25 presentation of the evidence, you then have closing

1 arguments of the attorneys, you will have the charge on
2 the law by me, and then you will have your
3 deliberations. I will tell you now that the
4 presentation of the evidence is by far the longest
5 aspect of any trial. At least in this case it will be.
6 The others are relatively quick.

7 In just a minute the State is getting ready to make
8 an opening statement. In that statement they will tell
9 you the issues, what the issues are or at least what the
10 State contends the issues are in this case. Let me say
11 this. The Defendant may but is not required to make an
12 opening statement. The burden at all times remains on
13 the State of South Carolina to meet its burden of proof
14 beyond a reasonable doubt.

15 Now, what these attorneys may tell you in the
16 opening statements is not evidence. It is helpful and
17 designed to enlighten you what this case is about and
18 what the issues are in this case, but they're not
19 witnesses, they've not been sworn. So the only
20 evidence, again, that you may consider as evidence is
21 testimony that I allow from the witness stand and
22 exhibits that I allow into evidence.

23 With that being said, ladies and gentlemen, in
24 every single case that I was involved with as an
25 attorney and every case I've been involved in as a

1 Circuit Court Judge, there are objections. These
2 attorneys have an ethical obligation to object to
3 information or evidence that they feel like it's
4 improper or procedures that they feel are improper going
5 on in the courtroom. The fact that an attorney objects
6 on my ruling on that objection to the extent I allow you
7 to stay in here and hear it is not to be considered by
8 you or even spoken about in your deliberations. That is
9 simply the process that we go through.

10 And quite frankly, there may be times when you
11 haven't got your seat warm again when I'm ask you to go
12 back out of the courtroom. Somewhat like cattle being
13 herded in and out of here. Do not take offense to that.
14 That is simply the process that we go through in each
15 and every trial. Again, a trial is slow with a very
16 methodical search for the truth.

17 With that being said, what I'm gonna do is ask you
18 to go back to your jury room right now. I'm gonna ask
19 these attorneys if I stated something that I should not
20 have stated or I neglected to tell them something that I
21 should have. If you would like, Madam Forelady, to get
22 a glass of water or something to bring back in here you
23 are free to. But if you need additional time when I
24 call you back in here, just let us know, and otherwise
25 we'll start with opening statements. Go back to your

1 jury room first.

2 (Whereupon, the Jury left the courtroom at
3 approximately 10:14 a.m.)

4 THE COURT: Any additions or exceptions from the
5 State?

6 MR. STOUDEMIRE: None, Your Honor.

7 THE COURT: From the Defense?

8 MR. ROBINSON: None from the Defense, Your Honor.

9 THE COURT: All right. Are you gentlemen ready to
10 proceed with opening statements?

11 MR. STOUDEMIRE: We are, Your Honor. I did want to
12 advise the Court that when we were speaking about prior
13 criminal records, the first witness I will call is one
14 we would need to discuss briefly on the record. I don't
15 know if you'd prefer to do that now.

16 THE COURT: Go ahead and do it now. Tell me what's
17 the prior criminal record.

18 MR. STOUDEMIRE: Judge, the witness that I'm
19 talking about in particular is Shane Womack. And,
20 again, the NCIC that we ran shows that he has a prior
21 conviction in 2009 for giving false information to a law
22 enforcement officer. It appears that he got stopped on
23 a traffic stop and gave the law enforcement officer a
24 fake name or something at that point. I think that
25 probably is a crime of dishonesty that would call in

1 something that can be brought up.

2 THE COURT: Well, let me stop then. In Rule 609
3 dishonesty is a part of it. You're right. Dishonesty
4 is part of it, you're right. That's something that
5 shall come in regardless.

6 MR. STOUDEMIRE: Right. And I just didn't -- and I
7 wanted to make sure of that. And, also, Judge he does
8 have other charges it looks like out of the State of
9 Virginia. There's no convictions listed on any of those
10 charges on the NCIC. In fact, some of them are listed
11 as being *nolle pros'd*. I just wanted to make sure
12 before we got him up there that we weren't going into
13 any of those charges, we were just going to stick to
14 that one that he's got to ---

15 THE COURT: Mr. Robinson, do you have any evidence
16 of conviction on these other charges?

17 MR. ROBINSON: I don't, Your Honor. I wasn't
18 planning on do anything else.

19 THE COURT: All right, very well. I agree with the
20 State on that. Anything further?

21 MR. STOUDEMIRE: Nothing.

22 THE COURT: Okay. Mr. Robinson, anything further?

23 MR. ROBINSON: Nothing, Your Honor.

24 THE COURT: Okay. Would you bring the jury back
25 in, please.

1 (Whereupon, the Jury entered the courtroom at
2 approximately 10:17 a.m.)

3 THE COURT: Mr. Stoudemire, is the State ready to
4 proceed with opening statements?

5 MR. STOUDEMIRE: We are, Your Honor. May it please
6 the Court?

7 THE COURT: Yes, sir.

8 OPENING STATEMENT FROM THE STATE

9 MR. STOUDEMIRE: Good morning ladies and gentlemen.

10 THE JURY: (All reply good morning.)

11 MR. STOUDEMIRE: Thank you for your patience so
12 far. Sometimes we just have some things getting ready
13 to go that take a little bit of time. This, what I'm
14 showing you now is what is known as Whittles Trailer
15 Park. And for all intents and purposes it is a
16 neighborhood. It is a neighborhood like any other
17 neighborhood that any of you live in. It is made up of
18 families. It's made up of people just trying to make a
19 living and get by, and in some instances, it's made up
20 of people who aren't doing good things.

21 During the course of this trial, you're gonna hear
22 from all those types of people. Now, in particular what
23 we're talking about is events that happened on May 18th,
24 2011. And Whittles Trailer Park, which is between
25 Seneca and Clemson, here in Oconee County on May 18th

1 became, for lack of a better way of putting it, a
2 shooting gallery. And became a shooting gallery because
3 of the acts of Dametroise Moss.

4 And on that day what you are going to hear about is
5 you're going to hear evidence that will show that
6 Dametroise Moss armed himself with a .40 caliber handgun
7 and proceeded to shoot and severely injure Xavier
8 Peeples by hitting him in his rearend in a shot that
9 went up into his abdomen causing severe injuries and
10 that he also shot and killed Quinton Thomas.

11 Now, again, to get this evidence across to you,
12 you're going to hear from families just trying to make a
13 living and some people with a little bit of a criminal
14 past. I just want to be up front about that. This
15 hopefully is not the neighborhood you live in, these are
16 not the events that take place in your daily life. But
17 these are the incidents that happened on November the
18 18, 2011 at Whittles Trailer Park.

19 Now, I'm asking you for certain things. I'm asking
20 for your time, your attention and your common sense. I
21 know that a lot of you have notepads and I like that
22 because that shows that you are ready and you want to be
23 a part of this and you want to take notes and get
24 everything right to make sure everything is correct that
25 you hear from that witness stand.

8 I'm going to be back at the conclusion of this case
9 and I will be talking to you again and we will be
10 putting together that picture. And at the end of it I
11 believe that the State would have shown that that
12 picture creates a complete picture and that picture is
13 that Dametroise Moss is guilty of every single crime
14 that he has been charged with: Murder, attempted
15 murder, possession of a weapon during a violent crime,
16 and firing a weapon into dwellings. Thank you very much
17 and I look forward to being with you in the next couple
18 of days.

25 | OPENING STATEMENT FROM THE DEFENSE

1 MR. ROBINSON: Mr. Stoudemire. Good morning.

2 THE JURY: (All reply good morning.)

3 MR. ROBINSON: My name is Scott Robinson and I'm a
4 defense attorney. And I've practiced in Greenville and
5 the Upstate. And it is my pleasure and honor to
6 represent Mr. Moss as well. This is a case that
7 involves two issues in this matter. The State told you
8 a little bit about their case. Well, our case is a
9 different pictures. You're gonna have an opportunity to
10 listen to the witnesses and we want you to use your
11 common sense and your knowledge. But this is a case of
12 self-defense and defense of others.

13 The Judge will instruct you on the law in terms of
14 self-defense and defense of others at the end of this
15 case, but the evidence in this matter will show that
16 Mr. Moss acted in self-defense at this time and he was
17 defending a friend at this time when this happened in
18 this event. But, again, the case is about self-defense
19 and defense of others, defending someone else that's in
20 danger.

21 At the end of this case we're going to ask you for
22 a verdict of not guilty on the grounds of self-defense
23 and defense of others. And we ask you to look at all
24 the evidence, use your common sense, and if you do so,
25 the verdict will be not guilty. Dametroise Moss is not

1 guilty of murder, Dametroise Moss is not guilty of
2 attempted murder, he's not guilty of the shooting of a
3 firearm into a dwelling. Not guilty. Thank you.

4 THE COURT: Call your first witness, please, sir.

5 MR. STOUDEMIRE: Thank you, Your Honor. The State
6 would call explain Shane Womack.

7 SHANE WOMACK,

8 having first been duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. STOUDEMIRE:

12 Q. Mr. Womack, how are you today?

13 A. Fine. You?

14 Q. Good. Can you go ahead and give us your full name
15 for the record.

16 A. Say again.

17 Q. Can you give me your full name for the record.

18 A. Sure, Shane Womack.

19 Q. Mr. Womack, I know you are kind of soft spoken so
20 please go ahead and pull that microphone down and make
21 sure that all these people here can hear you because
22 they all have to hear everything you have to say.

23 Where do you live?

24 A. [REDACTED] Wayside Circle.

25 Q. Okay. And what city is that located in?

1 A. Seneca.

2 Q. How long have you of lived there?

3 A. About a year.

4 Q. How long have you lived in Oconee County?

5 A. Probably since -- probably about four years.

6 Q. Okay. Do you know the Defendant in this case,
7 Mr. Dametroise Moss?

8 A. Uh-huh.

9 Q. Okay. Do you recognize him here in the courtroom?

10 A. Yeah.

11 Q. Okay. Is that him seated here in the white shirt?

12 A. Yeah.

13 Q. Okay. How long have you known Mr. Moss?

14 A. We went to school together, so since about 2000.

15 Q. Okay. So around 12 years or so?

16 A. Right.

17 Q. Did you know him -- well obviously you did if
18 you've known him 12 years. Y'all knew each other back
19 in May of last year, correct?

20 A. Right.

21 Q. Okay. Did you have occasion to see Mr. Moss on/or
22 about May 18, 2011?

23 A. Yeah.

24 Q. Okay. Where did you see him first that day?

25 A. He came to my house to pick me up.

1 Q. Okay. Is that the same place you are living now or
2 is it a different place?

3 A. It was different. I stayed at an apartment then.

4 Q. Was it also in Seneca?

5 A. Yes.

6 Q. Okay. And when he came to your house to pick you
7 up, why did he come to your house? Did he call you in
8 advance and tell you he was coming?

9 A. Uh-huh.

10 Q. Okay. Why did he tell you he was coming over?

11 A. We usually hang together, so he came to pick me up.

12 Q. Okay. Can you say that one more time for me?

13 A. We usually hang together, we're together all the
14 time so he came to pick me up.

15 Q. So when he came to pick you up, where were you all
16 going?

17 A. His house.

18 Q. Okay. Why were you all going over to his house?

19 A. Just to go over there.

20 Q. Okay. Did he tell you about anything that was
21 going on that day?

22 A. He told me earlier he got in a fight with somebody
23 else, not at his house though. It was earlier in town
24 somewhere.

25 Q. Okay. Did he tell you who he got in a fight with?

1 A. Not at that time.

2 Q. Okay. So you went with Mr. Moss over to his
3 apartment, correct?

4 A. His trailer.

5 Q. Or over to his trailer?

6 A. Uh-huh.

7 Q. And where is his trailer located?

8 A. The trailer park.

9 Q. Is that Whittles Trailer Park?

10 A. Right.

11 Q. Okay. Now I'm gonna show you this big old picture,
12 which is of course kind of blurry, but it is what it is,
13 that's been marked as State's Exhibit Number 7. Does
14 that look like the trailer park where Mr. Moss lives?

15 A. Yeah.

16 Q. Okay. Can you see it clear enough from where you
17 are so you could point out which trailer is his?

18 A. (Shook head.)

19 Q. Okay. Well, let me show you this. Can you see the
20 red dot on here?

21 A. Yeah.

22 Q. Okay. Does that look like the entrance to the
23 trailer park right around here?

24 A. Yeah.

25 Q. Okay. And so when you enter the trailer park, how

1 would you go to Mr. Moss's trailer?

2 A. Come in and go to the right.

3 Q. Okay. So you come in. Would you go down this
4 road?

5 A. Uh-huh.

6 Q. Okay. Like this. And then go to the right?
7 (Indicating.)

8 A. Right there. (Indicating.)

9 Q. Right here? (Indicating.)

10 A. Uh-huh.

11 Q. Okay. And where is his trailer?

12 A. Right there. (Indicating.)

13 Q. In this area or where? (Indicating.)

14 A. Right there. (Indicating.)

15 Q. Right here? (Indicating.)

16 A. Yeah.

17 Q. So it's right here next to 202; is that correct?

18 A. I believe so.

19 Q. Okay. And is that where you went that day?

20 A. Yeah, I went to his house first.

21 Q. Okay. You said you went to his house first.

22 A. Yeah.

23 Q. Okay. How long were you at his house?

24 A. I didn't even go in, so it was probably, probably
25 around 30 seconds I would say.

1 Q. So long enough to get out of the car?

2 A. Uh-huh.

3 Q. Okay. Whose car were you in that day when you rode
4 in the car?

5 A. A different car.

6 Q. Okay. What car was that?

7 A. A Focus.

8 Q. A Ford Focus?

9 A. Uh-huh.

10 Q. What color was it?

11 A. Gray.

12 Q. Gray?

13 A. Uh-huh.

14 Q. Okay. Did it have anything else that
15 individualized it from any other Ford Focus?

16 A. It had rims on it.

17 Q. Rims?

18 A. Uh-huh.

19 Q. Like fairly good sized rims or?

20 A. Like 22.

21 Q. 22? Okay.

22 A. Uh-huh.

23 Q. So after you got there and got out of the car you
24 were there for a few seconds, where did you go then?

25 A. I went to Waffle House because when I got there he

1 told me that somebody was gonna come out there and rob
2 me.

3 Q. Okay. When you say "he" told you that, who told
4 you that?

5 A. When he initially told me that.

6 Q. He told you what now?

7 A. He told me that I was accused of wanting to rob
8 somebody.

9 Q. That you were being accused of wanting to rob
10 someone; is that right?

11 A. He didn't say a name. He told me that Hawk said
12 that.

13 Q. Okay. Do you know Hawk's name, real name?

14 A. I only know him by Hawk. I only met him twice.

15 Q. Okay. So which trailer did you get to?

16 MR. STOUDEMIRE: Your Honor, may I approach? I'm
17 sorry.

18 THE COURT: Yes, sir.

19 BY MR. STOUDEMIRE:

20 Q. If you'll press that little red thing it is gonna
21 create a laser pointer for you. Is there a way you can
22 point on here which house was Hawk's?

23 A. I think it was Hawk and Donald right over there.
24 (Pointing with laser).

25 Q. Okay. So you were at -- well, how far from where

1 you were was the house you went -- was the trailer you
2 went to?

3 A. Probably about a minute or two walk. It was like
4 the same thing.

5 Q. So it's right in this area? So if Moss's trailer
6 is here, is it right in this same area? (Indicating.)

7 A. No. It went to the right.

8 Q. Down this way. (Indicating.)

9 A. Towards this area and down to the right.
10 (Indicating.)

11 Q. Okay. So you went down there. And did you go in
12 that trailer?

13 A. No, I was sitting outside. He was outside and I
14 was outside and we was talking about that.

15 Q. Okay. So you stayed outside?

16 A. Uh-huh.

17 Q. Did Mr. Moss go down there with you?

18 A. No. I walked down there by myself.

19 Q. Okay. How long did you stay down there?

20 A. Probably about five minutes, maybe. No time to
21 talk to Hawk ---

22 Q. Okay.

23 A. --- about the robbery thing.

24 Q. Okay. And after you got done talking with him, did
25 you all settle everything?

1 A. That's when Dametriose came down there and he said
2 if you don't believe what I say we'll ask Woo.

3 Q. Okay. Now, who is Woo?

4 A. The other trailer I went to.

5 Q. Okay. Where is that trailer?

6 A. (Points with laser in the area.)

7 Q. Right here, number [REDACTED]?

8 A. I think so. Somewhere in that area.

9 Q. Okay. And if I were to tell you that Woo's real
10 name was Quinton Thomas, does that sound right to you?

11 A. I didn't know his real name. I didn't ask him
12 about it.

13 Q. You didn't know?

14 A. Huh-uh.

15 Q. Okay. Had you ever met him before?

16 A. That's the first time I saw him that day.

17 Q. Okay. So who went down to Woo's trailer?

18 A. Me and Dametriose because Dametriose came and
19 picked me up in the car. He said if you don't believe
20 what I tell you, we'll go ask Woo. So we went to Woo's
21 trailer.

22 Q. So Dametriose came from his, from his residence ---

23 A. Uh-huh.

24 Q. --- in the car. Was this the same car you rode
25 over there in?

1 A. Uh-huh.

2 Q. Okay. So in his girlfriend's car down here, picked
3 you up. Did he turn around or anything or just backed
4 down?

5 A. Back down there.

6 Q. Okay. So backed down. Did he back down to his
7 house or all the way to the other trailer?

8 A. He backed down, he drove, he drove down the street
9 to Woo's house.

10 Q. Okay. So drove all the way to Woo's trailer?

11 A. Uh-huh.

12 Q. Okay. And did both of you get out of the car then?

13 A. Yeah. I stayed back and he went and knocked on the
14 door.

15 Q. Okay. Dametriose knocked on the door?

16 A. Uh-huh.

17 Q. Could you hear what he said at that point?

18 A. I couldn't hear what he said, but I know it was
19 like an argument because he cancelled those ---

20 Q. What now? Say that one more time now. I'm sorry,
21 I'm having a little trouble understanding you.

22 A. He told them to go first. He didn't know
23 Dametriose. They were saying something to each other
24 and he was backed up. And that's when he went and got
25 another dude in the back and that's when he looked at

1 me. He turned and looked downstairs and turned right
2 around and got a knife and came at me.

3 Q. Okay. Somebody came out of the trailer at you?

4 A. Yes, sir.

5 Q. And that person had a knife?

6 A. Yes, sir.

7 Q. Okay. Did you know that person?

8 A. I didn't know neither one of them.

9 Q. Okay. How big was that guy?

10 A. He wasn't big. He was smaller.

11 Q. A fairly skinny guy?

12 A. Uh-huh.

13 Q. Okay. Was he tall? Short?

14 A. Probably about my height.

15 Q. Okay. And how tall are you?

16 A. 5'7".

17 Q. 5'7"? Okay. So around your height but thinner
18 than you?

19 A. Uh-huh.

20 Q. Okay. So he came out and he had a knife?

21 A. Right.

22 Q. Okay. Did you have any sort of weapon on you?

23 A. No.

24 Q. Okay. No gun, no knife, anything?

25 A. No.

1 Q. Okay. So when he comes out of the trailer, is he
2 running out? How is he coming out of the trailer?

3 A. He was coming -- we weren't running, but he was at
4 a fast pace because I was backing up the whole way going
5 to Hawk down the street.

6 Q. Okay. So the man who came out of the trailer ---

7 A. Uh-huh.

8 Q. --- with a knife and he comes at you. What did you
9 do then?

10 A. I just kept backing up while looking the whole way.

11 Q. Okay. Where did -- where did -- I'll tell you
12 what, pull out that little laser pen and show me where
13 you backpedaled.

14 A. From his house all the way to Hawk right there.

15 Q. Okay. So you started backpedaling from [REDACTED] all the
16 way around that curve back on down this way?

17 (Indicating.)

18 A. Uh-huh.

19 Q. Okay. And what happened then while you all were
20 backpedaling? Was anybody else with you or was it just
21 the two of you all?

22 A. It was him and there was a girl with him.

23 Q. Okay. Did you know her?

24 A. I don't know her. I didn't know.

25 Q. Okay. So you got a guy walking -- is he running at

1 you, walking at you, what?

2 A. He was walking but at a fast pace, though.

3 Q. Okay. So does he have the knife out in front of
4 him?

5 A. No.

6 Q. So he's kind of walking at you like this?

7 (Indicating.)

8 A. Right.

9 Q. Okay. Is this man saying anything?

10 A. No, he wasn't.

11 Q. Okay. And you just keep on backing up?

12 A. Right.

13 Q. Okay. And where do you end, where do you end up
14 when you finished backing up, down here? (Indicating.)

15 A. Right here by the trailer. I went to first where
16 Hawk and Donald was at.

17 Q. Okay. So you go to the trailer and then what
18 happens?

19 A. When we got to the trailer he went in and had a
20 knife and went in and got a gun.

21 Q. Okay. So the man that had a knife went in the
22 trailer and got a gun?

23 A. Uh-huh.

24 Q. Okay. And whose trailer was it that he went into?

25 A. It was Hawk and Donald's trailer.

1 Q. Okay. So there was somebody named Donald there?

2 A. Uh-huh.

3 Q. Do you know Donald's last name?

4 A. I think Wright.

5 Q. Donald Wright?

6 A. Yeah.

7 Q. Okay. And where would Donald Wright live?

8 A. He was in the house and then come outside, but he
9 was in the house when we got there.

10 Q. Okay. So this man went in the house with the knife
11 and came out and had a gun. What type of gun did he
12 have?

13 A. A revolver.

14 Q. A revolver. You're positive it was a revolver?

15 A. Yeah.

16 Q. Okay. And after he came out with the revolver
17 where were you standing at that time?

18 A. I stood in the yard, but when he come met me I went
19 to the side of the trailer and that's when he started
20 shooting at me.

21 Q. Okay. So the guy came out and he shot at you. Did
22 he hit you?

23 A. No.

24 Q. Okay. Do you recall how many -- I know if you're
25 getting shot at I know it can be tough. Do you know how

1 many times he shot at you?

2 A. About four or five times.

3 Q. Okay. And after he shot at you, you didn't get
4 hit, what did you do then?

5 A. After that the shooting was already over with so he
6 walked back.

7 Q. Who is he?

8 A. The one that was shooting at me.

9 Q. The one that was shooting at you?

10 A. Yeah.

11 Q. And you still, you don't know this guy's name?

12 A. No. He walked out in the middle of the street and
13 that's when Dametriose start shooting.

14 Q. Okay. So let me see if I understand this so far.
15 You backed, you backed down the street, the guy is
16 coming at you with a knife somewhat. He goes into the
17 trailer with a knife, comes out with a gun, shoots at
18 you, doesn't hit you and then Dametriose starts
19 shooting?

20 A. After the shooting was over with.

21 Q. Okay. Now how -- if you can estimate for me, how
22 long after the shooting was over with did Dametriose
23 start shooting?

24 A. Maybe within a minute. Five minutes at the most.
25 Somewhere in that area.

1 Q. Somewhere between one and five minutes?

2 A. Uh-huh.

3 Q. Okay. Who was the guy that was shooting at you
4 after he stopped shooting, where was he?

5 A. He already walked back. He was walking back to the
6 trailer where he came from with the knife.

7 Q. Okay. So he's down here somewhere, shoots at you?

8 A. Uh-huh.

9 Q. And then after he shoots at you and doesn't hit you
10 he's like I'm done with you and walks away and then gets
11 shot at?

12 A. Yeah.

13 Q. Okay. The guy that was shooting at you -- let me
14 ask you this. I'm sorry.

15 When you were backing down here, was Mr. Moss with
16 you at that point? (Indicating.)

17 A. No.

18 Q. Okay. Could you see him?

19 A. I couldn't see him.

20 Q. Okay. When you were backing down here, were you
21 facing back towards this way? (Indicating.)

22 A. Yeah.

23 Q. Okay. So anybody coming up the road, is it fair to
24 say that you would have been able to see him?

25 A. Uh-huh.

1 Q. Okay. But you didn't see Mr. Moss?

2 A. No.

3 Q. Okay. So where did Mr. Moss appear?

4 A. On the other side of the trailer.

5 Q. Okay. Can you show me?

6 A. I was on that side; he was on that side.

7 (Pointing.)

8 Q. Okay. So he's somewhere on one side of the trailer
9 shooting?

10 A. On the opposite side.

11 Q. So you don't know how he got there?

12 A. Huh-uh.

13 Q. Did you see him shooting?

14 A. Yeah, I saw him shooting.

15 Q. Okay. How was he standing? I mean was like one
16 arm, two arms?

17 A. It was one.

18 Q. Okay. Did he shoot at you?

19 A. No.

20 Q. Okay. Who did he shoot at?

21 A. He was just shooting in the area.

22 Q. Shooting in the area?

23 A. Yeah. Shooting in the where we was walking at.

24 Q. Okay. So was he shooting at just all around?

25 A. Right.

1 Q. Okay. Do you know how many times he shot?

2 A. No.

3 Q. Okay. A little? A lot?

4 A. I couldn't tell you.

5 Q. Okay. So do you have any idea where Mr. Moss
6 appeared from or how he got to where he was shooting?

7 A. He had -- I don't know how.

8 Q. You don't know?

9 A. (Shook head.)

10 Q. Okay. And after he shot, did he hit anybody when
11 he shot?

12 A. Yeah.

13 Q. Okay. Who did he hit?

14 A. Woo.

15 Q. Okay. Well, let me ask you to back up. The person
16 that was shooting at you, did he hit that person?

17 A. No.

18 Q. Okay. Not that you saw?

19 A. No.

20 Q. Did he hit anybody else?

21 A. Yes, he hit Woo.

22 Q. Okay. He hit Woo.

23 A. Uh-huh.

24 Q. Okay. Well, where was Woo?

25 A. Woo was already down, further down.

1 Q. Okay. Show me where he was.

2 A. He was already further down that way. (Pointing.)

3 Q. Okay. So how do you know he hit him? Did you see
4 Woo fall?

5 A. I saw -- yeah, I saw him do that.

6 Q. And after Woo got shot, did he get back up at any
7 point?

8 A. No, I didn't see Woo get back up.

9 Q. Okay.

10 A. Because after Dametriose started shooting, he
11 walked up a little bit and me and History met up with
12 each other and on the way over there we saw Woo on the
13 ground bleeding.

14 Q. Okay. And when you saw Woo on the ground bleeding,
15 you said you and the guy you eventually met up with --
16 who did you meet up with?

17 A. Dametriose.

18 Q. Okay. So at some point did Mr. Moss stop shooting?

19 A. Say it again.

20 Q. At some point did Mr. Moss stop shooting?

21 A. Yes, he stopped shooting.

22 Q. Okay. And what did he do after he stopped shooting
23 that you saw?

24 A. That's when he walked away.

25 Q. Okay. Where did he start walking towards?

1 A. Back up this way. (Pointing.)

2 Q. Back up towards his house?

3 A. Right.

4 Q. Okay. And you said you saw him right around where
5 Woo had fallen?

6 A. Yeah. Because we met up exactly in that area and I
7 that's when we saw Woo right there and Dametriose tried
8 to pick him up and we said, no, don't pick him up.

9 Q. Okay. So Dametriose got close to him and you told
10 Dametriose not to pick him up?

11 A. Yeah.

12 Q. Okay. Did Dametriose pick him up or touch him?

13 A. No.

14 Q. Not that you saw?

15 A. Right.

16 Q. And how far away were you from Mr. Moss while that
17 was going on?

18 A. Right beside him.

19 Q. Okay. So after you told him not to pick him up,
20 where did Mr. Moss go then?

21 A. To his house.

22 Q. To his house. Did he stay out in front of the
23 house or did he go inside?

24 A. No, he went in. I stayed outside.

25 Q. Okay. Now, you were pretty close to Mr. Moss at

1 that point, correct?

2 A. Right.

3 Q. Were you able to see whether or not he still had a
4 gun?

5 A. When we passed Woo he still had a gun.

6 Q. Okay. He still had a gun at that point?

7 A. Yeah.

8 Q. Were you able to see what that gun looked like?

9 A. It was a silver .40, .40 caliber.

10 Q. A .40 caliber?

11 A. Uh-huh.

12 Q. How do you know it was a .40 caliber?

13 A. I saw it before.

14 Q. You had seen it before?

15 A. Uh-huh.

16 Q. Where had you seen it before?

17 A. With Dametriose.

18 Q. With Dametriose?

19 A. Uh-huh.

20 Q. Okay. How long before this had you seen it?

21 A. Just about every time we're together.

22 Q. Okay. So was this a gun that Dametriose kept on
23 him?

24 A. Uh-huh.

25 Q. Okay. You got to say yes or no.

1 A. Oh, yes, correct.

2 Q. Okay. So after you saw this gun, you said that
3 Mr. Moss went back up towards his house?

4 A. Correct.

5 Q. Okay. Did he still have the gun while he was
6 walking towards his house?

7 A. Yes.

8 Q. Okay. And I believe you said he went in his house?

9 A. Yes.

10 MR. ROBINSON: Your Honor, objection. Asked and
11 answered over and over again.

12 THE COURT: I'll sustain that. Let's move on,
13 please.

14 BY MR. STOUDEMIRE:

15 Q. When Mr. Moss went in his house did he have a gun?

16 A. In the house, yeah.

17 Q. All right. Did he come back out of the house while
18 you were still there?

19 A. Yes.

20 Q. Okay. Did he have the gun with him when he came
21 back out of the house that you ever saw?

22 A. No.

23 Q. Okay. Did you go in the house with him?

24 A. No.

25 Q. To see what, if anything, he did with the gun?

1 A. No.

2 Q. Okay. And after Mr. Moss went in the house and
3 came back out without the gun, what happened then?

4 A. That's when Dom and then came up to the trailer,
5 his house and said we got to talk and waited on the
6 police.

7 Q. Okay. How long before the police arrived?

8 A. Probably around five minutes.

9 Q. Five minutes or so?

10 A. (Nodded head.)

11 Q. Okay. And did you do anything else?

12 A. Just waited on the police.

13 Q. Okay. You just waited on the police to arrive at
14 that point?

15 A. Yeah.

16 Q. Okay. Now, after the police arrived, did you talk
17 to any of the police?

18 A. Yes. They made us take a gun shot residue.

19 Q. Okay. They asked you to take a gun shot residue
20 test?

21 A. They did.

22 Q. Okay. Tell me what they did with that, if you
23 remember?

24 A. What do you mean?

25 Q. Well, with the gunshot residue test, how did they

1 take that from you?

2 A. They did some thing with your hands.

3 Q. Okay. So they swabbed your hand?

4 A. Swabbed the hand, that's right.

5 Q. Did they do both your hands?

6 A. Yes, sir.

7 Q. Just the palms or the backs, too?

8 A. Both sides.

9 Q. And do you recall who did that?

10 A. The police, I believe maybe Officer Huff.

11 Q. Okay. So that was done from you. Did you talk to
12 the officers any more at that point?

13 A. I went to jail.

14 Q. Okay. And did they go ahead and take a statement
15 from you up there?

16 A. Yes, sir.

17 Q. Okay. Now, just a couple more questions. You had
18 known Mr. Moss for 12 years?

19 A. Yes, sir.

20 Q. Did you know Woo at all before that day?

21 A. No, sir.

22 Q. Okay. Did you know the person that had the knife
23 and then the gun before that day?

24 A. No, sir. I only heard about that through the
25 paper.

1 Q. Okay.

2 A. Heard the name through the paper.

3 Q. Okay. But you didn't, you didn't know who that
4 person was, didn't recognize him?

5 A. No, sir.

6 Q. Is the only person you recognized in any of this
7 was Mr. Moss?

8 A. I knew Dametriose and I knew Hawk and Donald.

9 Q. Okay. Did either Hawk or Donald have a gun at any
10 point during this?

11 A. No, sir.

12 Q. Okay. So the only person that you knew that had a
13 gun during any of this was Dametriose?

14 A. As far as I knew, yes.

15 Q. Okay. All right. How many guns total did you see?

16 A. Two.

17 Q. Two. And so we're talking about the revolver and
18 the .40 caliber you said you saw on Dametriose?

19 A. Yeah.

20 Q. Any other guns at all?

21 A. No, sir.

22 MR. STOUDEMIRE: Okay. That's all the questions I
23 would have. Please answer any questions that
24 Mr. Robinson may have for you.

25 THE COURT: Cross-Examination?

1 MR. ROBINSON: May it please the Court?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. ROBINSON:

5 Q. Mr. Womack, so you would admit that when these guys
6 were shooting at you --- you admit that, correct?

7 A. Yes, sir.

8 Q. You also admit they fired point blank within a
9 certain number of feet of you. You admit that too,
10 wouldn't you?

11 A. Yes, sir.

12 Q. And you were lucky enough not to get shot, correct?

13 A. Yes, sir.

14 Q. And you had no -- isn't it true that you actually
15 yelled out for help to Dametriose for him to help you?

16 A. No, sir.

17 Q. You never did. So you just sat there -- and let's
18 just understand this. So you sat there and said shoot
19 me basically. Basically, he shot at you and you said
20 nothing?

21 A. Right.

22 Q. Really? So under oath you don't recall making a
23 different statement than that before, that you were
24 actually yelling for help? You never said that?

25 A. I never said that.

1 Q. But he shot at you three to four times, correct?

2 A. Yes, sir.

3 Q. Right. And you never yelled for help.

4 A. Right.

5 Q. And Dametriose and you were friends, weren't you?

6 A. Right.

7 Q. Dametriose didn't know either of these guys, did
8 he?

9 A. I don't know.

10 Q. And he actually waited for the police to come, too,
11 didn't he?

12 A. Yes, sir.

13 Q. And the knife, the person with the knife, this
14 person with a knife went after you with a knife,
15 correct?

16 A. Yes, sir.

17 Q. And you never yelled for help?

18 A. No, sir.

19 Q. Okay. You were completely silent?

20 A. Yes, sir.

21 Q. Being chased down the street or down this trailer
22 park and never yelled for help?

23 A. Correct.

24 Q. And then this person went and got a gun, correct?

25 A. Yes, sir.

1 Q. And then he started shooting you, correct?

2 A. Yes, sir.

3 Q. And you would agree with me that after he started
4 shooting you, that's when Dametriose opened fire,
5 correct?

6 A. After shooting -- after he started shooting me,
7 that's when he started shooting.

8 Q. Right.

9 A. Yes, sir.

10 Q. So would it be fair to say that he, after you
11 started to get fired at by this guy at least three or
12 four times that he opened fire at that time, correct?

13 A. He started shooting -- he started shooting after
14 Dametriose stopped.

15 Q. And you would admit too that one of the two guys --
16 let me ask you this: When you went to this trailer, you
17 said you didn't go in.

18 A. Uh-huh.

19 Q. This trailer had Xavier Peeples in it, correct?

20 A. Which one is Xavier?

21 Q. There were two guys at this trailer, correct?

22 A. Uh-huh.

23 Q. One guy came out and that's the guy that came out
24 and chased after you, correct?

25 A. Right.

1 Q. The one guy comes to the door, the other guy, he's
2 the one who comes out with a knife and chases after you,
3 right?

4 A. Yes, sir.

5 Q. And he's the one that goes back into another
6 trailer gets a gun and starts shooting at you, correct?

7 A. Yes, sir.

8 Q. Okay. Didn't you feel threatened? Let me rephrase
9 that. You felt threatened, didn't you, by this guy
10 shooting at you?

11 A. Yes, sir.

12 Q. You felt your life was being threatened?

13 A. Right.

14 Q. You were actually too were threatened when the guy
15 went after you with the knife as well, weren't you?

16 A. It was the same dude, yes, sir.

17 Q. And you felt that your life was in danger and you
18 were in imminent danger of harm, didn't you?

19 A. Yes, sir.

20 Q. Okay. And you had nowhere else to go that you
21 couldn't run, you couldn't get away from these people,
22 could you?

23 A. Right.

24 MR. ROBINSON: Beg the Court's indulgence?

25 THE COURT: Yes, sir.

1 BY MR. ROBINSON:

2 Q. Now, when he was -- when you were looking at this
3 guy, when he was pointing that at you in close range you
4 thought your life was over at that point, didn't you?

5 A. Yes, sir.

6 Q. Your whole life kind of went before your eyes,
7 didn't it?

8 A. Yes, sir.

9 Q. Now, right after he shot you, right after he shot
10 at you point blank -- and you're not really sure how
11 many times he shot you, shot at you, are you?

12 A. Four I know.

13 Q. At least four times, correct?

14 A. Yes, sir.

15 Q. And you thought that was it, I'm gonna die pretty
16 much; is that right?

17 A. Right.

18 MR. ROBINSON: That's all, thank you.

19 THE COURT: Redirect?

20 MR. STOUDEMIRE: Just a couple.

21 REDIRECT EXAMINATION

22 BY MR. STOUDEMIRE:

23 Q. After you were shot at, I believe you testified
24 that the person who shot at you started walking away?

25 A. Right.

1 Q. When he started walking away, was he backing away
2 with the gun still pointed at you?

3 A. No. After he stopped shooting at me he walked
4 away.

5 Q. So he walked away. His back was to you?

6 A. Right.

7 Q. The gun was no longer pointed at you?

8 A. Correct. It was not.

9 Q. And when did Mr. Moss start shooting?

10 A. Right -- he started shooting basically after
11 everybody walked away. It was already over with.

12 Q. Okay. So when Mr. Moss started shooting was the
13 person who shot at you facing you?

14 A. No.

15 Q. Was his back to you?

16 A. Right.

17 Q. Was the gun pointed at you when Mr. Moss started
18 shooting?

19 A. No, sir.

20 MR. STOUDEMIRE: Thank you. That's all the
21 questions I have.

22 MR. ROBINSON: I have some recross, Your Honor.

23 THE COURT: Yes, sir.

24 RE CROSS-EXAMINATION

25 BY MR. ROBINSON:

1 Q. But to Mr. Moss's knowledge his friend, which is
2 you ---

3 A. Yes, sir.

4 MR. STOUDEMIRE: Your Honor, I would object to
5 anything Mr. Womack would know about Mr. Moss's
6 knowledge.

7 THE COURT: Rephrase your questions, please, sir.

8 MR. ROBINSON: Yes, sir.

9 BY MR. ROBINSON:

10 Q. But at that point in time -- you're not talking
11 about very much time, are we? We're talking about a
12 couple minutes here pretty much, aren't we?

13 A. About what? Small -- I mean, what you mean?

14 Q. About this incident that happened. We're not
15 talking about a tremendous amount of time. We're
16 talking about a small length of time, aren't we?

17 A. Right.

18 Q. Just a couple minutes or so. And at that time you
19 had been shot at by these folks -- by this guy four
20 times you say.

21 A. Yes, sir.

22 Q. The guy had been chasing after you with a knife.

23 A. Yes, sir.

24 Q. Right?

25 A. Yes, sir.

1 Q. And you were in fear of your life?

2 A. Right.

3 MR. ROBINSON: Thank you. That's all I have, thank
4 you.

5 THE COURT: May this witness be excused?

6 MR. STOUDEMIRE: Yes. I would ask this witness be
7 excused.

8 THE COURT: Any objection?

9 MR. ROBINSON: No objection.

10 THE COURT: All right. Thank you, sir, you may be
11 excused.

12 (Whereupon, the Witness was excused.)

13 THE COURT: Would you call your next witness,
14 please.

15 MR. STOUDEMIRE: Your Honor, the State would next
16 call Donald Wright.

17 (Whereupon, Witness comes forward and the Clerk
18 swears Witness in.)

19 DONALD WRIGHT,

20 Having first been duly sworn, was examined and testified
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. STOUDEMIRE:

24 Q. Good morning, sir.

25 A. Good morning.

1 Q. Can you give us your name for the record, please,
2 sir?

3 A. Donald Wright.

4 Q. And, Mr. Wright, where do you live?

5 A. Whittle Park.

6 Q. Whittle Park. Is that also known as Whittle's
7 Trailer Park?

8 A. Yes, sir.

9 Q. What trailer do you live in?

10 A. [REDACTED].

11 Q. [REDACTED]. Okay. I'm gonna show you again what's been
12 marked as State's Exhibit Number 7. Do you recognize
13 this? Can you see it from where you are? I'm sorry.

14 A. No.

15 Q. Turn it a little bit?

16 A. Yes.

17 Q. How's that?

18 A. Okay.

19 Q. Can you tell me what that is?

20 A. Our trailer park.

21 Q. Okay. And do you see 202 on there? Can you see it
22 from where you are? I know it's hard to see.

23 A. No, not really.

24 Q. I'm gonna show you this real quick, okay? I'm
25 gonna be asking you to point at some things. Right down

1 here. You got a red button on this. Okay? When I ask
2 you to point, we've got a laser pointer with that, okay?

3 A. Okay.

4 Q. Let me bring that a little closer to you so you can
5 see.

6 Now, can you see it okay here?

7 A. Yes, sir.

8 Q. Okay. Do you see your trailer on this?

9 A. Yeah, right there. (Indicating.)

10 Q. Okay. And what's the number on the trailer?

11 A. 202.

12 Q. 202. And is that where you live?

13 A. Yes, sir.

14 Q. Okay. And again, you said this is Whittles Trailer
15 Park?

16 A. Yes, sir.

17 Q. Okay. Does this appear to be a fair and accurate
18 representation of Whittle's Trailer Park and where all
19 the trailers are situated?

20 A. Yes, sir.

21 Q. Okay. Is this a fair and accurate representation
22 of where all the trailers were and the way Whittles
23 Trailer Park looked back in May of 2011?

24 A. Yes, sir.

25 Q. Okay. And in particular the way it looked on/or

1 about May 18th-19th, 2011?

2 A. Yes, sir.

3 MR. STOUDEMIRE: Okay. Your Honor, we would move
4 to admit State's Exhibit Number 7 into evidence.

5 THE COURT: Any objection?

6 MR. ROBINSON: No objections.

7 THE COURT: Admitted without objection.

8 (Whereupon, State's Exhibit Number 7 was entered
9 int evidence.)

10 BY MR. STOUDEMIRE:

11 Q. Now, Mr. Wright, now knowing where your trailer is,
12 can you see it okay?

13 A. Yes, sir.

14 Q. Okay. Go ahead, if you could please, point at your
15 trailer so the jury can see where you are talking about,
16 too.

17 MR. STOUDEMIRE: Can all of you all -- yeah, I know
18 all of you all can't see that.

19 THE WITNESS: Keep it on there?

20 MR. STOUDEMIRE: Judge, would it be permissible for
21 Mr. Wright to come down where he can point at this where
22 everyone on the jury could see with the laser?

23 THE COURT: Sure. Why don't you come on down.

24 BY MR. STOUDEMIRE:

25 Q. Can you point at it from right there and make sure

1 they can all see?

2 A. Use the laser?

3 Q. Yes.

4 A. (Complies.)

5 Q. Okay. So you got your house?

6 A. Yes, sir.

7 Q. Okay. Do you recall May 18, 2011?

8 A. Yes, sir.

9 Q. Okay. Well, let me ask you first, do you work
10 anywhere?

11 A. Yes, sir.

12 Q. Where do you work?

13 A. Applebee's.

14 Q. And how long have you worked there?

15 A. I've worked there going on five months now.

16 Q. Okay. Were you working back in May of 2011?

17 A. No, sir. I was doing a little landscaping with
18 Pablo.

19 Q. Okay. Were you at home a good bit during the day?

20 A. Yes, sir.

21 Q. Okay. Were you home on May 18, 2011?

22 A. Yes, sir.

23 Q. Okay. What were you doing that day?

24 A. I was, we took my little boy and my little niece to
25 the lake. And when we got back I was about to come in

1 the house and then my cousin Marcus asked me to come up
2 to his house.

3 Q. Okay. Your cousin Marcus, what's his name?

4 A. Marcus Whitner.

5 Q. Marcus Whitner. And where does he live?

6 A. I don't know where he lives now, but he's ---

7 Q. Well, where did he live then?

8 A. He lived at [REDACTED] ---

9 Q. Well, I'll tell you what, just show me on the map
10 where he lived.

11 A. It was the one around the curve where the, where
12 the streetlight was. I can't ---

13 Q. Okay. That's the streetlight right there.

14 (Indicating.)

15 A. Okay. Yeah, it's [REDACTED]. That's it right there.

16 (Indicating.)

17 Q. Okay. So he lived at [REDACTED] in Whittle's Trailer
18 Park?

19 A. Yes, sir.

20 Q. Okay. So how far was that from your place?

21 A. Not far at all.

22 Q. Okay. So you can just walk there?

23 A. Yes, sir.

24 Q. And when you went to see your cousin Marcus, would
25 you drive most of the time or would you just walk?

1 A. We was in our black Suburban at that moment and we
2 parked where my brother, Jackie, and A.J.'s mother and
3 dad's house. We parked there and then we walked over
4 there.

5 Q. Okay. Where did you park at? Can you show me on
6 this?

7 A. At [REDACTED] ---

8 Q. Just use that pointer to the best you can.

9 A. Trailer [REDACTED]

10 Q. [REDACTED]?

11 A. Right there. (Indicating.)

12 Q. Okay. So you parked right around there?

13 A. Yes, sir.

14 Q. And walked over to [REDACTED]?

15 A. Yes, sir.

16 Q. Okay. About what time of day was that?

17 A. It was about either one something or two something.
18 It was -- or four. It wasn't nighttime. I know that
19 much. I don't know exactly the time.

20 Q. So sometime in the afternoon?

21 A. Yes, sir.

22 Q. Okay. How long did you stay over at Marcus's
23 place?

24 A. By the -- well, by the time we got on the porch,
25 that's when, that's when Tug was chasing Shane up the

1 road.

2 Q. Okay.

3 A. It wasn't long at all.

4 Q. Okay.

5 A. About five minutes when we stepped on the porch.

6 Q. Let's back up. You said Tug was chasing Shane up
7 your road.

8 A. Yes, sir.

9 Q. Does Tug have -- is Tug a street name?

10 A. To my knowledge, yes.

11 Q. Is that what he's known as around town?

12 A. Yes, sir.

13 Q. Do you know Tug's real name?

14 A. No, sir.

15 Q. Okay. Describe what Tug looked like.

16 A. He was short and he always wore, wore blue jeans
17 and he had a red hat on.

18 Q. Okay. Was he a heavysset guy or skinny or what?

19 A. No, sir. He was kind of slim, slim and short.

20 Q. Okay. So short, short and skinny?

21 A. Yes, sir.

22 Q. Okay. And you said that he was chasing Shane up
23 the road?

24 A. Yes, sir.

25 Q. Show me where, where did you see them first?

1 A. I seen them ---

2 Q. Again, show me with that laser pointer, please.

3 A. They were coming around this curve right here.

4 (Indicating.)

5 Q. Okay.

6 A. Around through there. (Indicating.)

7 Q. Okay. So that main curve where the woods are?

8 A. Yes, sir.

9 Q. Okay. So they're coming around there and where did
10 they end up at?

11 A. They end up at Marcus, at Marcus' front doorstep.

12 Q. Okay. And, again, show me with that laser pointer
13 where Marcus' is?

14 A. [REDACTED] right there. (Indicating.)

15 Q. Okay. So they ended up at that front doorstep
16 right around where that car would be? (Indicating.)

17 A. Yes, sir.

18 Q. Okay. And did you see either of them with any --
19 you said that Tug was chasing him up the street. Do you
20 know why it was going on?

21 A. Earlier that day there was an altercation. Shane,
22 he came to fight Marcus, but Marcus didn't want to fight
23 with him. I don't know really what was going on. And
24 then I told him to quit that because it wasn't necessary
25 because children lived there in the park. And then to

1 my knowledge, they went back up toward where Woo lived
2 at.

3 Q. Time out. Show me where Woo lived.

4 A. (Indicating.) So they tore up ---

5 Q. Here's your place?

6 A. Yes, sir. It's directly across the street from
7 mine.

8 Q. Okay.

9 A. So any one of these.

10 Q. So right around there? (Indicating.)

11 A. Yes, sir.

12 Q. 111?

13 A. Yes, sir, [REDACTED].

14 Q. Okay.

15 A. They tore -- one trailer is tore down right now.

16 Q. Okay. Let me ask you this. Did you know Tug?

17 A. I knew him. I didn't know him know him, but to my
18 knowledge the time we did spend he seemed like a cool
19 person.

20 Q. Okay. But you knew him by sight?

21 A. Yes, sir.

22 Q. The person Woo, Woo sounds like a nickname, too.

23 A. Yes, sir.

24 Q. Did you know Woo's real name?

25 A. Thomas something.

1 Q. Okay.

2 A. I don't -- I don't know his last name. He was
3 really friends with my little brother.

4 Q. Okay. Was Woo a big guy?

5 A. To my knowledge, it looked that way. But, you
6 know, what I'm saying I'm not sure, so...

7 Q. All right. But did you know Woo?

8 A. Yeah. He had told me he just had ---

9 MR. ROBINSON: Objection, Your Honor, hearsay.

10 THE COURT: Sustained.

11 BY MR. STOUDEMIRE:

12 Q. Don't tell me any -- don't tell me anything that
13 anybody told you.

14 A. Oh, okay.

15 Q. Just, did you know him?

16 A. Yes, sir. I know him, yes, sir.

17 Q. How long had he lived there?

18 A. He moved in for about two months. I knew him for
19 two months when he first moved in.

20 Q. A couple of months?

21 A. Yes, sir.

22 Q. Okay. You lived there before then?

23 A. Yes, sir. I've been there going on ten years.

24 Q. So what we've got at this point is we've got Shane
25 being chased by Tug up in this area.

1 A. Yes, sir.

2 Q. And they ended up stopped here in front of
3 Marcus's, correct?

4 A. Yes, sir.

5 Q. Did you see a weapon on either of them?

6 A. Tug had a knife in his hand.

7 Q. Did Shane have a sort of weapon?

8 A. No, sir.

9 Q. Okay. When they got in front of your cousin
10 Marcus's house -- well, when you saw them there, did you
11 see anybody else around?

12 A. No, sir.

13 Q. Okay. And where were you when they got in front of
14 Marcus's house?

15 A. I was on the bottom porch step at [REDACTED] where my
16 cousin Marcus lived at, at the bottom step.

17 Q. Okay. So you had a view of all that?

18 A. Yes, sir.

19 MR. ROBINSON: Objection, Your Honor, leading.

20 THE COURT: Overruled. Go ahead.

21 BY MR. STOUDEMIRE:

22 Q. When they got to your cousin Marcus's what happened
23 then?

24 A. When they, when they got there after Tug chased him
25 with the knife, Tug told me not to grab him and then he

1 went inside Marcus's house and asked Marcus for his gun.

2 Q. Okay. And were you inside or outside?

3 A. I was still outside.

4 Q. Okay. And what happened then?

5 A. And then Tug went there, grabbed his gun, and then
6 he fired three times at Shane, but it looked like it was
7 blank bullets because it did not hit him and they were
8 three feet to each other.

9 Q. Okay.

10 A. And he fired three times and there was not a shot
11 -- it did no shot -- no blood or no nothing or no man
12 fell down.

13 Q. Okay. And after these shots got fired, what
14 happened then?

15 A. After that, then whoever that guy is, he was jammed
16 up by this streetlight. There was a streetlight right
17 there sitting right there in between these two trailers.

18 Q. Okay. Well, let me ask you this, when you say that
19 guy, who are you talking to?

20 A. Right there. (Pointing to Mr. Moss.)

21 MR. STOUDEMIRE: And, Your Honor, I would like the
22 record to reflect the witness identified Mr. Moss.

23 THE COURT: The record will so reflect.

24 BY MR. STOUDEMIRE:

25 Q. Okay. Mr. Moss was right beside a streetlight?

1 A. Yes, sir.

2 Q. Okay. Where were you at that point?

3 A. We were -- I was still on the bottom step, and then
4 I pushed all my family members and everything on the top
5 step to cover them because there was just shots firing
6 everywhere.

7 Q. Okay. When you say there were shots fired
8 everywhere, what do you mean?

9 A. Where the streetlight is right there between the
10 trailers it was like, one getting shot at the front
11 door, bullets.

12 Q. Show me where shots were being fired from.

13 A. Okay. He was standing in that position right there
14 with the streetlight. (Indicating.)

15 Q. Okay.

16 A. And he could fire on anybody standing on the front
17 porch or the back porch and down this way.
18 (Indicating.)

19 Q. And did you see Mr. Moss fire any shots?

20 A. Oh, yes, sir.

21 Q. When he started firing shots, what did you do?

22 A. I covered up everybody that was with me.

23 Q. Okay.

24 A. In other words, I would rather it be me being hit
25 with a bullet than someone else.

1 Q. Did you and your family stay outside or try to get
2 inside?

3 A. We tried to get inside but the door was locked so I
4 just covered everybody up on the porch, thought maybe it
5 would hit me and it won't hurt someone else. You know
6 what I mean?

7 Q. Okay. But you were able to see?

8 A. I seen everything. I seen the whole thing.

9 Q. Okay. Tell me what you saw Mr. Moss do.

10 A. Well, whenever Tug did not hit Shane those three
11 times and he open fired on Tug, he hit him in the butt
12 with one bullet. And then after he hit him in the butt,
13 my cousin Marcus started shooting toward the back door.

14 Q. Who started shooting toward the back door?

15 A. The Defendant, right there.

16 Q. Okay. So Mr. Moss started shooting at the back
17 door of Marcus's trailer?

18 A. Yes, sir. Whoever was trying to come out the back
19 or the front he was opening fire. In other words,
20 shooting at anything that moved.

21 Q. Okay. Where all did Mr. Moss fire at? Did you see
22 him pointing in one direction or the other?

23 A. Yeah. If you stand like this, if you hunt or
24 anything, I used to do hunting and a lot of stuff, it
25 wasn't new to me. But the way he was holding it, he

1 turned this way, that way, and he could turn and shoot
2 at the back, like anybody coming up this way, up the
3 road, he could shoot towards them that way.

4 Q. Okay. And did he shoot that way at all?

5 A. Well, yes, sir, he did. And then when he did, Woo
6 was walking around with a chair. And then when he
7 turned that way and fired, I heard five shots. And then
8 the third one hit Woo and knocked him into my brother
9 Jackie -- well, my sister, Jackie and brother-in-law
10 AJ's mother-in-law's trailer.

11 Q. Okay. Hold on. Slow down a little bit. You said
12 Woo was walking up with a, with a chair?

13 A. Yes, sir.

14 Q. What kind of a chair are we talking about?

15 A. It was a metal brown chair.

16 Q. So like a folding chair or what?

17 A. Yes, sir.

18 Q. Okay. Where did you see him walking up from?

19 A. I was able -- he was coming up this way from the
20 curve, coming around the curve. (Indicating.)

21 Q. Okay. So he was around this curve?

22 A. Yes, sir.

23 Q. Okay. And did you see Woo with anything other than
24 the chair?

25 A. No, sir. That's the only thing he had, like he was

1 trying to protect the bullet from hitting him or his
2 leg. You know what I mean? Like stuff you see on TV.

3 Q. Okay. So he was holding the chair kind of in front
4 of him?

5 A. Yes, sir. In case a bullet would come close, so he
6 could save the bullet with the chair.

7 Q. Okay. And you said that, that Mr. Moss was
8 shooting in which directions again?

9 A. It was like counterclockwise. In other words, in
10 other words, he was standing right there where the
11 streetlight was. He fired on Tug this way.

12 Q. Okay. So he was shooting towards trailer [REDACTED]?

13 A. Yes, sir. That's where the bullet went in
14 Ms. Gibson's trailer.

15 Q. Okay.

16 A. One bullet. And then he was shooting that way and
17 then he shot, shot around back. And then when Woo was
18 walking up the road, when he fired at him, he hit him.
19 He knocked him into the trailer right here. He knocked
20 him into the trailer right there. (Indicating.)

21 Q. Okay. Which trailer?

22 A. [REDACTED]

23 Q. He knocked Woo into [REDACTED]

24 A. Yes, sir.

25 Q. Okay. Did you see Woo get hit?

1 A. Yes, sir. I seen him get hit from the bullet and
2 all that knock him into the trailer. His adrenaline
3 rush made him bounce off. And then he took off running
4 down the street.

5 Q. Okay. Took off running down the street which way?

6 A. Back to his house.

7 Q. Back towards his house?

8 A. Running this way, yeah, around the curve and all.
9 (Indicating.)

10 Q. Okay. And how far did he make it?

11 A. He made it to my, my friend in the trailer park who
12 had been there for a year, Kurt, and then he collapsed.
13 He fell down, then I picked him up and towed him in his
14 house.

15 Q. Okay. So where does your friend Kurt live at?

16 A. He lives around in the curve, it's the brown
17 trailer. This trailer right here. (Indicating.)

18 Q. That's [REDACTED]?

19 A. Yes, sir. He lives right here. (Indicating.)

20 Q. So where did Woo fall?

21 A. Right there. They got a trampoline in the yard
22 where he fell and he fell there. (Indicating.)

23 Q. Okay. And you picked him up and ---

24 A. I Picked him up, dodging bullets. I picked him up
25 trying to get him then to safety. My sister used to be

1 a rescue nurse and I told her he might need CPR or
2 anything to keep him. But you could see a big ole whole
3 in the lung or whatever it was. It was a big ole
4 laceration. I put my hand on it trying to save him, you
5 know what I'm saying, so he wouldn't bleed to death. I
6 applied pressure.

7 And then I told my sister to save him. Because he
8 was a good person. He never did me wrong or nothing.
9 He played basketball, everything with me. You know what
10 I'm saying? In other words, I loved the guy.

11 Q. Okay.

12 A. And he wasn't even in it. He wasn't even involved
13 in that argument. He just had seen his little girl, as
14 a matter of fact. He had just seen his little girl,
15 talked to his little girl.

16 MR. ROBINSON: Objection, Your Honor, non
17 responsive to the question in the case.

18 THE COURT: All right. I sustain that.

19 BY MR. STOUDEMIRE:

20 Q. All right. Let's move on then. After you took Woo
21 back to his trailer and you said he lived at [REDACTED]; is
22 that correct?

23 A. Yes, sir. Yes, sir.

24 Q. Okay. After you got him back there and helped as
25 much as you could, what did you do then?

1 A. Well, by that time I'd gotten my sister and she,
2 she tried to save him all she could. I mean, it took
3 all she had to try to save him. And then I went, I went
4 back out and then to make sure the suspects didn't
5 escape. There was four of us that went out because we
6 blocked their car in they could not leave.

7 Q. Okay. And did you all just wait on law enforcement
8 at that point?

9 A. Yes, sir.

10 Q. Okay.

11 A. We hold them till Malcolm Pedestrian came. He was
12 one of the police officers.

13 Q. Okay.

14 A. Until they came so they could not escape.

15 Q. All right. Backing up a little bit, do you
16 remember when Shane got shot at up here at your cousin's
17 house?

18 A. Uh-huh.

19 Q. How long was it after Shane got shot at before you
20 saw Mr. Moss start shooting?

21 MR. ROBINSON: Your Honor, objection asked and
22 answered.

23 THE COURT: Overruled.

24 BY MR. STOUDEMIRE:

25 Q. You can answer.

1 A. It was like two minutes apart. In other words it
2 looked like the fourth of July going on with all the gun
3 fire going over there. I mean, I remember that clear as
4 day.

5 MR. STOUDEMIRE: Thank you. That's all the
6 questions I would have. Go ahead and have a seat and
7 answer any questions Mr. Robinson may have.

8 THE COURT: Cross-Examination?

9 CROSS-EXAMINATION

10 BY MR. ROBINSON:

11 Q. Mr. Wright, you would agree there were lots of
12 bullets being shot that day; is that correct?

13 A. Yes, sir.

14 Q. And lots of different people were shooting that
15 day; is that correct?

16 A. No, sir.

17 Q. Not just this individual, not just Mr. Moss?

18 A. It was just two.

19 Q. Okay.

20 A. It was Mr. Moss and Tug.

21 Q. Okay. Now, you would agree with me that Mr. Moss
22 only started shooting after Shane was shot at. You
23 would agree with me on that, wouldn't you?

24 A. Not really.

25 Q. So it's un -- so it's typical for you -- you don't

1 agree that -- let's just talk about the timeline here.
2 You would agree they went after Shane with a knife,
3 correct?

4 A. Yes, sir.

5 Q. Then he went in the house and got the gun from Mr.
6 Whitner, from Mr. Marcus Whitner; is that correct?

7 A. Yes, sir.

8 Q. Got his gun, came outside, started shooting at
9 Shane then. It was only after that happened that
10 Mr. Moss started shooting; is that correct?

11 A. Yes, sir.

12 Q. Okay. Now, and when you say that Mr. Thomas was
13 coming towards Marcus with a chair, he was coming with
14 him with a big chair, a small chair or what was it?

15 A. He wasn't coming towards nobody. He was protecting
16 himself walking up the road. It was a little bitty
17 chair. It was a little, bitty metal chair.

18 Q. But you don't know what he was doing, do you?

19 A. Yes, sir, I do. I was out there. I was dodging
20 every bit of it.

21 Q. Now, he lived with Tug; isn't that correct?

22 A. Yes, sir.

23 Q. They both lived together at trailer, I think it was
24 [REDACTED] Whittle Street; is that right?

25 A. Yes, sir.

1 Q. And you actually, you and your friends blocked
2 Mr. Moss and Shane from leaving; isn't that correct?

3 A. Yes, sir. The, the maintenance guy. It wasn't
4 just friends, it was the landlord's maintenance guy.
5 And I play a big role over in the trailer park, sir.

6 Q. All right.

7 A. I make sure no drama nothing come there because
8 kids live there.

9 Q. So you made sure that there was no way that either
10 Mr. Womack, Shane Womack or Mr. Moss could leave. They
11 could not get out of that trailer park; isn't that
12 right?

13 A. Yes, sir. I made sure none of them could leave
14 basically. Two were shot so they weren't going nowhere.

15 Q. Right.

16 A. The one that died was innocent he was not in it at
17 all. The man that was killed, he was innocent. He was
18 not in none of that at all. I mean, I was, I was there.
19 I wasn't involved in any of it, but it was a beef
20 between two people. And the way everybody used to do
21 back in the day because we were all grownups, you fought
22 one-on-one with your hand. This shooting and stuff,
23 there's too many people dying out from that.

24 Q. Okay. Now, I think Mr. Stoudemire asked you about
25 how long after Shane was chased with a knife and Shane

1 was shot at by them. I think you said it was a couple
2 of minutes; is that right?

3 A. Two minutes, sir.

4 Q. Short period of time, correct?

5 A. Yes, sir. It happened so fast.

6 Q. Okay. When you say fast, we are talking about
7 almost instantaneously, aren't we.

8 A. Yes, sir. As soon as I stepped one foot on that
9 bottom step that's all the shooting and chaos started
10 happening.

11 Q. Now, you actually saw Shane get shot at point blank
12 by this person; is that correct?

13 A. Not the man that died.

14 Q. Right.

15 A. It was by the other guy.

16 Q. Point blank he shot at him and he was trying to
17 kill him, wasn't he?

18 A. I have no -- I have no clue of stuff like that, but
19 to my understanding it was something bad going down.
20 See, I don't get involved in the streets because I
21 changed my life to better myself to the good.

22 Q. Right. But you agree with me, when he pointed that
23 gun at him, he wasn't pointing that gun to scare him, he
24 was pointing that gun to scare him?

25 A. Yes, sir. But at first now if Shane had walked up

1 the road with his gun because he had a gun on him. That
2 same gun that is the murder weapon, they came over in
3 the trailer park and had it first.

4 Q. Okay. So Shane had the gun, correct?

5 A. Yes, sir. Because I seen it in his back pocket and
6 my brother is married to his cousin. And I asked him, I
7 said, boy, what are you doing over here? And they said,
8 I got to beat this guy. And I said, you gotta quit
9 that.

10 THE COURT: Redirect?

11 MR. STOUDEMIRE: None, Your Honor.

12 THE COURT: May this witness be excused?

13 MR. STOUDEMIRE: We would ask that he be excused.

14 MR. ROBINSON: Yes, Your Honor.

15 THE COURT: All right. Thank you, sir, you are
16 excused.

17 THE WITNESS: You're welcome.

18 (Whereupon, the Witness was excused.)

19 THE COURT: All right. Madam Forelady, let's go
20 ahead and take a morning break, about a ten-minute
21 break. If you need anything, Mr. Bibb will make sure
22 you're taken care of. We'll come back at 11:30 and
23 resume testimony.

24 (Whereupon, the Jury left the courtroom at
25 approximately 11:20 p.m.)

1 THE COURT: All right. We'll be in recess until
2 11:30.

3 (Whereupon, a short recess was taken.)

4 THE COURT: State ready to proceed?

5 MR. STOUDEMIRE: We are, Your Honor.

6 THE COURT: Defense ready to proceed?

7 MR. ROBINSON: Yes, sir.

8 THE COURT: Please get the jury in, sir.

9 (Whereupon, the Jury entered the courtroom at 11:36
10 a.m.)

11 THE COURT: Mr. Stoudemire would you call your next
12 witness, please, sir.

13 MR. STOUDEMIRE: Yes, Your Honor.. The State would
14 call Carole Gibson.

15 CAROLE GIBSON,
16 having first been duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. STOUDEMIRE:

20 Q. Good morning Mrs. Gibson, how are you?

21 A. I'm all right.

22 Q. Good. I know you are soft-spoken and kind of
23 nervous. Make sure that microphone is down and just
24 speak into it where everybody can hear you.

25 A. Okay.

1 Q. All right. If you could, pleas, ma'am, give me
2 your name or the record.

3 A. Carole Lee Gibson.

4 Q. Thank you Ms. Gibson. And where do you live?

5 A. [REDACTED] Jasmine Lane in Seneca.

6 Q. Okay. [REDACTED] Jasmine Lane in Seneca is that a house
7 or a mobile home?

8 A. A mobile home.

9 Q. Okay. And is that again known sometimes as
10 Whittle's Trailer Park?

11 A. Yes.

12 Q. Okay. Now, I'm gonna show you what has already
13 been admitted as State's Exhibit Number 7. Do you
14 recognize that?

15 A. Yes.

16 Q. Okay. And is that, in fact, Whittle's Trailer Park
17 where you live?

18 A. Yes.

19 Q. Okay. Do you need me to move that?

20 A. I can't see.

21 MR. STOUDEMIRE: I'll tell you what, Judge, can she
22 come down and look at it a little closer?

23 THE COURT: Yes.

24 BY MR. STOUDEMIRE:

25 Q. Come on up and see if you see your place, please.

1 A. Right there. (Indicating.)

2 Q. Okay. And is that [REDACTED]?

3 A. Yeah.

4 Q. Okay. I'll tell you what I'm gonna do. This thing
5 has got a little laser pointer on it. If you would
6 press that red button. Would you be able to see it if
7 you stand right about here?

8 A. Yeah.

9 Q. Okay. Now, if you could press the little red
10 button.

11 A. Right here.

12 Q. That one. If you could point at your residence one
13 more time.

14 A. Right there. (Indicating.)

15 Q. Thank you, ma'am. And how long have you lived at
16 [REDACTED] Jasmine Lane?

17 A. Since about 1997.

18 Q. Okay. So a good long while?

19 A. Yes.

20 Q. Okay. Do you work?

21 A. Yes.

22 Q. Where do you work?

23 A. Clemson Downs in Clemson.

24 Q. And how long have you worked at Clemson Downs?

25 A. About six years.

1 Q. Okay. Like it down there okay?

2 A. Yes, I like it.

3 Q. It's a job?

4 A. It's a job.

5 Q. Were you working -- I'm gonna take you back to May
6 18, 2011. Do you remember that day?

7 A. Yes.

8 Q. Okay. Did you work that day?

9 A. Yes. Can I sit down because of my leg?

10 Q. Yeah, absolutely.

11 (Whereupon, witness resumes stand.)

12 Q. Okay. Now, Ms. Gibson, back on May 18th, 2011.

13 A. Okay.

14 Q. You said you worked that day, correct?

15 A. Yes, I did.

16 Q. Okay. About what time did you get off work that
17 day?

18 A. I get off at 2:15 every day.

19 Q. Okay. And did you go anywhere or run errands or
20 come on home?

21 A. I'm not sure about that, but I was home later on
22 that afternoon.

23 Q. Okay. And when you got home, what did you do?

24 A. I usually look at TV, talk on the phone, whatever.

25 Q. Okay. When you got home on that day, what were you

1 doing?

2 A. I guess later on that afternoon I used to take time
3 to read and I was reading the Bible and I was reading in
4 Hebrews.

5 Q. Okay. Now, how was, how was your trailer sitting?
6 When you go and you were reading your Bible, where were
7 you reading, do you recall?

8 A. I was at the far end of the trailer.

9 Q. Okay. When you say the far end of the trailer,
10 would it be the side closest to Jasmine Lane or the side
11 furthest?

12 A. The back side where the wooded area is.

13 Q. The back side. Where woods are back here?

14 A. Uh-huh. Yeah.

15 Q. Okay. And you say you were reading the Bible back
16 there. Did anything happen while you were doing that?

17 A. Yes. I heard a commotion, and I went to the front
18 of the trailer and I saw two guys at that time across
19 from the trailer where I lived at. They were in the
20 yard and they were arguing.

21 Q. Okay. Now let me, let me stop you there. You said
22 you went to the front of the trailer. That would be the
23 side closest to Jasmine Lane?

24 A. Yes.

25 Q. Okay. And what type of room do you have in that

1 portion of your trailer?

2 A. At that time I was at the living room area and I
3 was looking out the window in the living room area at
4 that time when they was arguing. I don't know what they
5 was arguing about, but they didn't stay there that long
6 at that time.

7 Q. I'm gonna show you -- Your Honor, may I approach
8 the Witness?

9 THE COURT: Yes, sir.

10 BY MR. STOUDEMIRE:

11 Q. I'm gonna show you what's previously been marked at
12 State's Exhibit 1.9. Do you recognize that photograph?

13 A. Yes.

14 Q. Okay.

15 A. That's not where I was at that time.

16 Q. Okay.

17 A. At that moment I wasn't there.

18 Q. Okay. Where were you? Well, tell me what that is.

19 A. That was just like a little exercise room that I
20 had at that time. That's on the far end. That's the
21 room that's on the Jasmine Lane road.

22 Q. That's facing the street?

23 A. The street right there, this room. (Indicating.)

24 Q. Okay. Okay. But that's not where you were
25 reading?

1 A. Not at that time. No, not where I was reading at.

2 Q. Okay. This picture that I showed you of your
3 exercise room then, does that fairly and accurately
4 represent the way it looked back in May of 2011?

5 A. Yes.

6 Q. Okay. And does this photograph appear to be
7 changed or altered in any way to you?

8 A. No.

9 MR. STOUDEMIRE: Okay. Your Honor, we would move
10 to admit State's Exhibit 1.9.

11 THE COURT: Any objection?

12 MR. ROBINSON: No objection.

13 THE COURT: Admitted without objection.

14 (Whereupon, State's Exhibit 1.9 was admitted into
15 evidence.)

16 BY MR. STOUDEMIRE:

17 Q. Now, you said you heard a commotion at the back and
18 you went towards the front. And is that the room you
19 ended up that I just showed you?

20 A. Not at that time.

21 Q. Okay. Where were you then when you started moving
22 towards the front of the trailer, when you saw the
23 people?

24 A. That's when they first started arguing and they
25 left. Then they came back.

1 Q. Okay.

2 A. And that's when I was in that room right there.

3 (Indicating.)

4 Q. Okay. So you heard a commotion, it ended?

5 A. Yes.

6 Q. Okay. After the first commotion ended, what did
7 you do then?

8 A. I went back in the room and I start -- no, after it
9 ended, the first commotion, I said I need to go move my
10 car I said because I feel like something is gonna
11 happen.

12 Q. Okay.

13 A. So I went outside and I moved my car and I went
14 back in the house and I started reading again. And I
15 guess about 30 minutes later that's when I really heard
16 a lot of noise, some girls were screaming. I went back
17 to the front part of the trailer and looked out the
18 window, the living room window, and I saw some girls
19 running down the road screaming. And that's when I went
20 into that room right there. (Indicating.)

21 Q. Okay. Ms. Gibson, I'm gonna let this thing warm up
22 for a minute so we can kind of -- I'm gonna try to put
23 this picture up there so you can point out to us where
24 you were in that front room.

25 Okay. I'm gonna show you this photograph one more

1 time. And is this the room you went to when the second
2 commotion started?

3 A. Yes, that's it.

4 Q. Okay. Describe that photo a little bit for me.
5 What do you see? Let's see, you got a window there,
6 correct?

7 A. Where I was standing at?

8 Q. Where were you standing in that room?

9 A. I was standing on the left side.

10 Q. Okay. And is that a computer monitor right there?

11 A. Yes.

12 Q. Okay. So you were standing on the side closest to
13 the computer monitor?

14 A. Yes, on the left-hand side.

15 Q. And did you look out the window at that point?

16 A. Yes, I did.

17 Q. Okay. What did you see when you looked out the
18 window at that point?

19 A. Well, when I first looked out I saw this guy. He
20 was right there in front of the window almost in the
21 road, had no shirt on. And I saw him, he was just
22 shooting. And first I thought it was firecrackers.
23 Then I saw him, he just kept shooting. And I noticed
24 like a fire like come out and I said, Oh, my goodness
25 they got a gun. And by that time on the right-hand

1 side ---

2 Q. Now, you said the right-hand side. You're looking
3 out so it would have been to your right?

4 A. To my right on the right side when I was looking
5 out. My curtain just jumped back. I said, Oh, God
6 they're shooting in the house. And so at that time I
7 saw another guy standing over there next to the light
8 pole.

9 Q. Okay. I'll tell you what. I'm sorry to make you
10 stand again. If we make you stand too long I'll bring
11 you a chair. But if you could, come on down for me real
12 quick and show me where you saw people standing.

13 (Whereupon, Witness leaves witness stand.)

14 A. Okay. One guy was about right there (Indicating.)

15 Q. Okay. And that's where you saw the first guy
16 shoot?

17 A. First guy.

18 Q. Okay.

19 A. Then the other guy was standing at the light pole
20 right over there. (Indicating.)

21 Q. That's the light pole.

22 A. Okay. He was standing right over there.
23 (Indicating.)

24 Q. Okay.

25 A. He was standing right over there shooting.

1 Q. Okay. And did you know either of these people?

2 A. Never seen them before that day.

3 Q. Okay. Did you get a good look at either of them?

4 A. Well, the guy that was right here, he was a dark
5 skinned complexion, a small frame and I know he didn't
6 have a shirt on.

7 Q. Okay.

8 A. Okay. And this guy right here (indicating), I
9 think he had like a bright colored shirt on and I like
10 to think it was a baseball hat, and I'm not sure white
11 baseball hat.

12 Q. Okay. And was he a white guy? What was he, do you
13 know?

14 A. A black guy, both of them.

15 Q. Okay.

16 A. He was like, the one right here was like a medium
17 brown. He wasn't really light skinned, wasn't dark like
18 medium like type.

19 Q. And were you able to see him shooting at all?

20 A. Yes. I saw him shooting. He was shooting over
21 towards where I live at and the other one was shooting
22 towards him. He was shooting and that's when I noticed
23 the curtain jump back and I looked and I ducked down.
24 After I looked I ducked down and that's when I called
25 9-1-1.

1 Q. Okay. So your curtain in your trailer jumped back?

2 A. Yes.

3 Q. Okay.

4 A. He shot up in my trailer. I got about five bullet
5 holes in my trailer.

6 Q. Okay. And did the person by the light pole was he
7 firing just at your trailer, just in your direction?

8 A. That's what I saw you know the guy was right there
9 when the guy was standing right there in front of my
10 trailer. Be a picket big picture window right there.

11 Q. Once the bullets started flying and you saw your
12 curtain jump back from the bullet in your trailer what
13 did you do?

14 A. I jumped down, i ducked down, and crawled to front
15 room and went in there and called 9-1-1.

16 Q. So anything after that you didn't see?

17 A. Not really, no.

18 Q. Okay. Thank you. Go ahead and have a seat. Thank
19 you. I'm sorry to make you get up again. (Witness
20 resumes stand.)

21 I'm gonna show you two more photographs real
22 quickly, one marked as 1.11. Do you recognize that.

23 A. The bullet hole in my trailer.

24 Q. Is that your trailer?

25 A. Yes.

1 Q. Does that appear to be a fair and accurate
2 representation of what your trailer looked like on the
3 day of this event?

4 A. Yes.

5 Q. Does it appear to be changed or altered in any way?

6 A. No.

7 Q. I want to show you next what's been marked as
8 exhibit 1.13. Do you recognize that?

9 A. Yes, that's the blind they shot it in. I guess
10 that's what went through my monitor, computer monitor.
11 I'm not sure but it blowed it out. It looks like that.
12 That's the way it go.

13 Q. And does that appear to be a fair and accurate
14 representation of what it looked like then?

15 A. Yes.

16 Q. Does it appear to be changed or altered?

17 A. No.

18 MR. STOUDEMIRE: Permission to admit State's 1.11
19 and 1.13 into evidence.

20 THE COURT: Any objection.

21 MR. ROBINSON: No objection, Your Honor.

22 (Whereupon, State's Ex. 1.11 and 1.13 were admitted
23 into evidence.)

24 MR. STOUDEMIRE: Your Honor, permission to publish
25 to the jury.

1 THE COURT: Yes, sir.

2 MR. STOUDEMIRE: Ms. Gibson, those are all the
3 questions I have for you. Please answer any that
4 Mr. Robinson may have.

5 THE COURT: Cross-Examination?

6 CROSS-EXAMINATION

7 BY MR. ROBINSON:

8 Q. The two folks that were arguing that day, did they
9 both have their shirts off or what?

10 A. No. The only one that I saw with the shirt off was
11 the one that I stated that was right in front of the
12 trailer, the small framed guy.

13 Q. And these guys were shooting at each other at that
14 point, right?

15 A. There was a lot of shooting going on, yes.

16 Q. And, uh, the period of time we are talking about it
17 so happened to be a pretty short period of time it took
18 to continue?

19 What did you say now?

20 Was a short period of time kind of insurance taken
21 I couldn't say, pretty quick?

22 A. Yes, it was.

23 MR. ROBINSON: Thank you. That's all I have.

24 THE COURT: May this witness be excused?

25 MR.. STOUDEMIRE: Yes, Your Honor.

1 THE COURT: Thank you, ma'am.

2 (Whereupon, the Witness was excused.)

3 THE COURT: Would you call your next witness,
4 please.

5 MR. STOUDEMIRE: Yes, Your Honor, the State would
6 call Kurt Monahan.

7 KURT MONAHAN,

8 Having first been duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. STOUDEMIRE:

12 Q. Good morning, Mr. Monahan, how are you?

13 A. Good, how are you doing.

14 Q. If you could please give me your name for the
15 record?

16 A. Kurt Daniel Monahan.

17 Q. And Mr. Monahan, where do you reside?

18 A. [REDACTED] Jasmine Lane.

19 Q. Is that in, what's known as Whittle's Trailer Park?

20 A. Yes, it is.

21 Q. Is that in Oconee County?

22 A. Yes, it is.

23 Q. How long have you lived there?

24 A. That trailer has been a year and a half.

25 Q. And were you living in that trailer on or about May

1 18th-19th of this past year?

2 A. Yes, I was.

3 Q. Who did you live there with at that time?

4 A. My wife and kids.

5 Q. How many kids?

6 A. Three.

7 Q. Everybody still living in the same place?

8 A. Yes, sir.

9 Q. Um, where do you work?

10 A. Air Mark in Clemson.

11 Q. Through the university?

12 A. Air Mark. I work at the university, yes.

13 Q. Dining services; is that correct?

14 A. Yes, that is correct.

15 MR. STOUDEMIRE: Your Honor, I would like for him
16 to come down, please.

17 THE COURT: Yes, sir. Would you step around,
18 please.

19 THE WITNESS: Sure.

20 (Whereupon, Witness leaves stand.)

21 BY MR. STOUDEMIRE:

22 Q. Um, if you could please, do you recognize this?

23 A. Yes, I do.

24 Q. Show me where your trailer is on that?

25 A. Right here.

1 Q. [REDACTED]

2 A. [REDACTED].

3 Q. Okay. I take you back to May 18th, 2011. Do you
4 recall that day?

5 A. Yes, I do.

6 Q. Do you recall whether or not you were at work or
7 home that day?

8 A. I was home that day.

9 Q. Okay. Did anything happen out of the ordinary that
10 day while you were at home?

11 A. Yes, there was.

12 Q. Tell me what happened.

13 A. Me and my wife were in the back bedroom of the
14 trailer and we heard what sounded like fire crackers.

15 Q. Okay. Show me the back bedroom would be located
16 would you say?

17 A. And so I got up, my wife got up, my daughter came
18 out of her room. As I opened the door I see one person
19 walking down this way, right past [REDACTED] and I know that
20 because that's my old trailer and he's literally
21 pointing a gun at the trailer.

22 Q. Show me how?

23 A. Just like this walking down the road.

24 Q. Pointing from trailer to door trailer?

25 A. Window to door and window to door.

1 Q. Did you get a good look at that individual?

2 A. Yes.

3 Q. Is he in the courtroom today?

4 A. Yes.

5 Q. Okay, can you point him out to me?

6 A. Points.

7 MR. STOUDEMIRE: Let the record reflect the witness
8 pointed to Mr. Moss.

9 THE COURT: The record so reflects.

10 BY MR. STOUDEMIRE:

11 Q. You saw Mr. Moss walking down the street pointing a
12 gun?

13 A. Yes, sir.

14 Q. Were you able to see anything about the gun or what
15 it looked like?

16 A. Just a smaller gun that's, just a small gun that's
17 all I saw about it.

18 Q. Could you tell whether or not it was a revolver or
19 some other type?

20 A. It was not a revolver.

21 Q. Not a revolver. So when you saw him walking down
22 the street, where did you first see him?

23 A. Come around the corner right here.

24 Q. Was this after you heard the sounds?

25 A. Yes.

1 Q. And how far is that from your trailer?

2 A. I'm gonna say a little farther than that corner
3 back there.

4 Q. Okay. So not terribly far?

5 A. Not terribly far.

6 Q. Did Mr. Moss continue to proceed in your direction
7 or did he stop or?

8 A. No. He kept going past my trailer.

9 Q. Did he continue to keep pointing the gun?

10 A. At that time I had pushed my wife and my daughter
11 down and I got down in the window and I saw him walking
12 past my trailer.

13 Q. Okay. Was that the last time you saw Mr. Moss at
14 that point?

15 A. No. I saw him go into this trailer across the
16 street first he went into a car and then went into the
17 trailer and at that time I stayed down for a minute
18 until I figured it was calm.

19 Q. Okay. Was that the end of anything you saw in this
20 matter?

21 A. I went from [REDACTED] to the trailer where everybody was
22 at and the person was shot.

23 Q. Is that over in this area?

24 A. Right there.

25 Q. Around [REDACTED]

1 A. Around [REDACTED].

2 Q. Okay. Did you go in that trailer?

3 A. Yes, I did.

4 Q. Okay. What did I see -- don't say anything anybody
5 said but what did you see in that trailer?

6 A. I saw a black individual on the bed bleeding and at
7 that time there was a child in the trailer. I had
8 picked the child up and given it to my wife just to get
9 the child out because I didn't think he needed to see
10 this. I had attempted to stop the bleeding until I was
11 told this person was a nurse and they took over and I
12 went back home.

13 Q. Okay. And do you know anything else about any of
14 this?

15 A. Just until when the cops came up I pointed at the
16 individual over there and told them that's the one I saw
17 holding the gun. That's about it.

18 Q. All right. Now, you said you heard some gunshots
19 go off, correct?

20 A. Yes.

21 Q. Did any of these bullets enter your house?

22 A. Yes, they did. There was a stray bullet that went
23 into my boy's room through the ceiling and ripped the
24 shade down into the wall.

25 Q. Was the bullet subsequently recovered from your

1 house at one point?

2 A. Yes, it was.

3 Q. Were you there when that was done?

4 A. Yes.

5 Q. Did you see it done?

6 A. Take out the bullet?

7 Q. Yes.

8 A. Yes.

9 MR. STOUDEMIRE: Just one moment.

10 BY MR. STOUDEMIRE:

11 Q. Where did they take the bullet out of?

12 A. The wall separating my boy's room from the
13 bathroom.

14 Q. Okay. Alright. I'm gonna show you three
15 photographs. First what's been marked as State's
16 Exhibit 1.7. Do you recognize that?

17 A. That's my trailer. That is the hole where the
18 bullet went through.

19 Q. Does that appear to be a fair and accurate
20 representation of the way your trailer looked at that
21 time?

22 A. Yes.

23 Q. Appear altered or changed at that time?

24 A. No.

25 Q. I'll show you 1.6. Do recognize that?

1 A. That is my trailer where the bullet went in.

2 Q. A closer shot?

3 A. Yes.

4 Q. Also appear to be a fair and accurate
5 representation?

6 A. Yes.

7 Q. Lastly I show you State's 1.14. Do you recognize
8 that?

9 A. That's the wall.

10 Q. Is that the wall in your trailer?

11 A. Yes, it is.

12 Q. Is that where the bullet was extracted from?

13 A. Yes, it is.

14 Q. And does that photo appear to be a fair and
15 accurate representation of what was done and the way it
16 looked at the time of this event?

17 A. Yes, it does.

18 Q. Do any of these appear changed or altered?

19 A. No, sir.

20 MR. STOUDEMIRE: Your Honor, we would move State's
21 Exhibits 1.6, 1.7 and 1.14 admitted into evidence.

22 THE COURT: Any objection?

23 MR. ROBINSON: No objection, Your Honor.

24 THE COURT: Admitted without objection.

25 (Whereupon, State's Exhibits 1.6, 1.7 and 1.14 were

1 admitted into the record.)

2 BY MR. STOUDEMIRE:

3 Q. When you heard the shots that you thought were fire
4 crackers did you ever see anybody shoot a weapon?

5 A. No.

6 Q. Did you see anybody with a weapon other than the
7 Defendant Mr. Moss that day?

8 A. No, I did not.

9 Q. That's all the questions I would have. Please
10 answer any that Mr. Robinson might have for you?

11 THE COURT: Cross-Examination?

12 MR. ROBINSON: I have no question, Your Honor.

13 THE COURT: May this witness be excused?

14 MR. STOUDEMIRE: Yes, sir.

15 THE COURT: Thank you, sir. You may be excused.

16 (Whereupon, the Witness was excused.)

17 THE COURT: Would you call your next witness,
18 please?

19 MR. STOUDEMIRE: Thank you. The State would call
20 Mr. James Brouhard or Beaudrie? Not sure.

21 ANDREW BROUHARD,

22 Having first been duly sworn, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. STOUDEMIRE:

1 Q. Good afternoon, how are you?

2 A. Fine. How are you doing?

3 Q. Good. Um, can you give me your name for the
4 record?

5 A. Andrew Brouhard.

6 Q. Where do you live?

7 A. [REDACTED] Jasmine Lane.

8 Q. [REDACTED] Jasmine Lane? Is that in Whittle's Trailer
9 Park?

10 A. Yes.

11 Q. Do you recall -- were you living in Whittle's
12 Trailer Park back on May 18th, 2011?

13 A. Yes.

14 Q. Who lived there with you at that time?

15 A. Me and my wife and my brother-in-law and my buddy
16 Donald.

17 Q. And y'all have had an addition since then, correct?

18 A. I just brought home my baby girl this morning.

19 Q. I know you want to get home to her?

20 A. She's actually waiting out there.

21 Q. We need to be real brief. Do you recall the date
22 May 18th, 2011?

23 A. I believe so.

24 Q. Okay. Do you recall who you were with or what you
25 were doing that day?

1 A. Uh, I was down at, uh, Marcus's house with Donald
2 and my brother-in-law.

3 MR. STOUDEMIRE: Your Honor, I'd ask this witness
4 to please come down as well.

5 THE COURT: Would you step around?

6 (Whereupon, Witness leaves stand.)

7 BY MR. STOUDEMIRE:

8 Q. Okay. If you could, can you point out here on
9 State's Exhibit 7 where your trailer was at the time
10 where you were living?

11 A. Right here.

12 Q. You were living at 205 then?

13 A. Yes.

14 Q. Are you still living there?

15 A. No.

16 Q. Now you live here, but back in May 2011 you lived
17 in [REDACTED] Jasmine Lane?

18 A. Yes.

19 Q. Did you have any other family members that lived in
20 the trailer park at that time outside of your house?

21 A. Yes, my in-laws.

22 Q. Okay. Do they still live in [REDACTED]?

23 A. Yes, sir.

24 Q. You said back on that date you were at Marcus's
25 house; is that correct?

1 A. Correct.

2 Q. Where was Marcus living at that time?

3 A. Right here.

4 Q. At [REDACTED]?

5 A. (Nodded head.)

6 Q. Okay. And were you over at his house during the
7 afternoon?

8 A. Yes, that evening.

9 Q. Who else was there?

10 A. Donald, my brother-in-law, my wife, Marcus, his
11 family, and one of Marcus's friends. I don't recall his
12 name.

13 Q. Okay. Did anything happen while you were over
14 there?

15 A. Yeah. One of Marcus's friends showed up and he was
16 all mad and then like a heavier set guy came over and we
17 were talking by the road and then Marcus's friend
18 started to come out.

19 Q. His friend Tug. Do you know Tug's real name?

20 A. No, I do not. That's all I know him by. I didn't
21 really.

22 Q. So you didn't know him before that day?

23 A. I've seen him over there but I had no friendship
24 with him or anything. Marcus that is but not Tug.

25 Q. Back up just a little bit I want to make sure

1 everybody can see?

2 A. Okay.

3 Q. So you are over here at [REDACTED]?

4 A. Yes.

5 Q. And you said his friend, Marcus's friend Tug came
6 up?

7 A. Yes.

8 Q. Go ahead and have a seat?

9 A. Fine.

10 Q. And when Tug came up, did he do anything?

11 A. He was all mad about something and him and Marcus
12 went in the house.

13 Q. And what happened after -- where were you when they
14 went in the house?

15 A. I was outside on the porch.

16 Q. And after Tug and Marcus went in the house, what
17 happened then?

18 A. When Tug was, Tug come back out and I was, heading
19 back towards in the house, and then my wife was standing
20 up at the door the next thing I know theres shooting
21 going off and everything.

22 Q. And you go ahead you were headed in the house at
23 that point?

24 A. Yes.

25 Q. Where did the shooting take place?

1 A. I believe it started right out front, I believe.

2 Q. Okay. And when the shooting started out front, did
3 you see the shooting or what?

4 A. No. I just heard the shots and started running
5 back in the house.

6 Q. Okay. And after you ran back in the house when the
7 shooting started, what did you do then?

8 A. I tried to exit the rear of the house at the back
9 door.

10 Q. Exit out the back of [REDACTED]

11 A. Yes.

12 Q. Okay. And what happened when you tried to exit out
13 the back of [REDACTED]?

14 A. There's a guy standing there with a gun and he
15 turned and it sounded like he took a couple shots at the
16 back door and my brother-in-law pulled me back in the
17 house.

18 Q. Were you able to see who was standing there
19 shooting at the back door?

20 A. Yes, ver briefly.

21 Q. Do you see that person here today?

22 A. Yes.

23 Q. Okay. Can you point him out for me?

24 A. He's right there.

25 MR. STOUDEMIRE: We would like the record to

1 reflect the witness identified the Defendant Dametroise
2 Moss.

3 THE COURT: So reflects.

4 BY MR. STOUDEMIRE:

5 Q. So you're at the back of the trailer...

6 A. After that we were sitting in the hallway right by
7 the back door.

8 Q. Where was Mr. Moss when he shot at the back of the
9 trailer?

10 A. The back -- the, uh, front, like this front side of
11 the corner of the trailer like back corner.

12 Q. Okay. Let me get you to stand down once more so
13 you can show me with that pointer where you remember him
14 being so I understand. If you could do it from here
15 that'd be great because i know all these people back
16 here need to see as well.

17 A. My hands a little shaky. Right there.

18 Q. Okay so he's off in this area somewhere?

19 A. Uh, he's more right side of the trailer by the
20 back.

21 Q. Okay, and then he shot at the back door?

22 A. Yes. I believe so.

23 Q. The shooting you heard first of the at the front,
24 correct?

25 A. Yes.

1 Q. Any shooting taking place before he shot around
2 here at the back where you were?

3 A. Yeah, they were shootin', you heard gunshots like
4 no other.

5 Q. Okay. You heard gunshots from the front?

6 A. Yes.

7 Q. Were there any gunshots from the back before
8 Mr. Moss shot in?

9 A. I don't know. All I heard was gunshots but I
10 didn't know where they were coming from.

11 Q. Okay. So the only shot that came towards you was
12 from Mr. Moss?

13 A. Yes. And I believe he shot at me and my
14 brother-in-law grabbed me and I turned with the gun.

15 Q. Your brother-in-law grabbed you and pulled you
16 inside?

17 A. Yes.

18 Q. Okay. And then y'all went back. Go ahead and have
19 a seat. (Witness resumes stand.)

20 So after you went back in the trailer your
21 brother-in-law pulled you inside you said y'all went
22 back in the little hall.

23 A. Yeah, in the little hallway there.

24 Q. Okay. And what'd you do then?

25 A. Uh, we got as low to the ground as we could and sat

1 there and waited for the shooting to stop.

2 Q. Okay. And did the shooting stop at some point?

3 A. Yes.

4 Q. Was it just a couple of shots or were there a lot?

5 A. It sounded like there was a lot of shots.

6 Q. But at some point the shooting did stop?

7 A. Yes.

8 Q. And after the shooting stopped what did you do
9 then?

10 A. We waited a brief second, looked outside, nobody
11 was there and ran to my in-law's house closest trailer.

12 Q. Okay and your in-laws live at [REDACTED]; is that correct?

13 A. Yes.

14 Q. You ran straight from [REDACTED] to [REDACTED].

15 A. Yes, sir.

16 Q. Did you go in [REDACTED]?

17 A. Yes, sir, immediately.

18 Q. Did you see anything while you were running to [REDACTED]?

19 A. It looked like a couple guys running down the road
20 when i was running into [REDACTED].

21 Q. Did you recognize either of them?

22 A. Not from the back, no.

23 Q. Fair enough. And is that all you know about this?

24 A. Yes, sir.

25 MR. STOUDEMIRE: Thank you. Those are all the

1 questions I have. Please answer any Mr. Robinson may
2 have.

3 CROSS-EXAMINATION

4 BY MR. ROBINSON:

5 Q. Andrew, you saw, let's go back, do you remember
6 giving a statement to the police at one point, correct?

7 A. Yes, about 3:00 in the morning.

8 Q. And do you recall telling the police in your
9 statement that Shane was being shot at by one of these
10 gentlemen, Tug I think you said; is that correct?

11 A. Yes. I read that in my statement. I'm just saying
12 what's fresh in my mind as I remember now everything was
13 fresh then.

14 Q. Back on that night in May 2011 when you gave this
15 statement it was fresh in your mind that you saw Tug
16 shooting at Shane, right?

17 A. I said, I believe this is what I saw. I know what
18 it says in my statement.

19 MR. ROBINSON: Can I approach please to refresh his
20 memory?

21 THE COURT: Yes, sir.

22 BY MR. ROBINSON:

23 Q. Do you recognize this?

24 A. Yes, that's my statement.

25 Q. Is that the statement you gave?

1 A. Yes.

2 Q. What is the date on that statement?

3 A. 5-19-11.

4 Q. And in that statement what did you say in the first
5 two lines?

6 A. I seen Tug start shooting at the bigger gentleman.

7 Q. Okay. And this was given I believe at 1:05 a.m. in
8 the morning, is that correct?

9 A. Yes.

10 Q. And that's your signature at the bottom?

11 A. Yes.

12 Q. And this all happened in a very short period of
13 time, didn't it?

14 A. Yes.

15 Q. And you heard lots of shots?

16 A. Yes.

17 Q. You can't count how many shots you heard, can you?

18 A. No.

19 MR. ROBINSON: That's all I have. Thank you.

20 THE COURT: Redirect?

21 MR. STOUDEMIRE: Just briefly. Of, Your Honor, may
22 I approach the witness, please.

23 THE COURT: Yes.

24 REDIRECT EXAMINATION

25 BY MR. STOUDEMIRE:

1 Q. Let's just get back to your statement very quickly.
2 In addition to what Mr. Robinson asked you about, can
3 you read starting with that line, just read the
4 remainder of your statement?

5 MR. ROBINSON: Your Honor, I object to this.

6 THE COURT: Just one second. Ms. Forelady, would
7 you take your jury back to the jury room right quick,
8 please, ma'am?

9 (Whereupon, the Jury left the courtroom at
10 approximately 12:15 p.m.)

11 THE COURT: Glad to hear from you, sir.

12 MR. ROBINSON: Your Honor, on Redirect he's going
13 into information that I did not go into. I was trying
14 to refresh his memory as far as what he said in his
15 statement. He wants him to read this whole statement
16 which is what he testified to already. I just asked him
17 to refresh his memory to make sure, because he told me
18 about this before I wanted to make sure I had everything
19 down. He's going beyond this statement to the rest of
20 this statement.

21 THE COURT: Just one second.

22 MR. ROBINSON: Yes, sir.

23 THE COURT: All right. Mr. Stoudemire?

24 MR. STOUDEMIRE: Judge, I don't think I'm asking
25 him to read his whole statement. As Mr. Robinson

1 stated, I'm sorry if i didn't speak loud enough. I
2 asked him to read just a small portion of the statement.
3 I thought since he went into that, then maybe I could as
4 well.

5 **THE COURT:** Just one second. It looks to me
6 Mr. Robinson under Rule 612, writing used to refresh
7 memory, it says if a witness uses a writing to refresh
8 his memory either while testifying or before, if I
9 determine that the necessity and interests of just that
10 they are entitled to have the writing produced and
11 inspected to cross-examine the witnesses on it and
12 introduce portions of is it that relate to the testimony
13 of the witness, so why would that rule not allow him to
14 go into that aspect of that statement you did not bring
15 out in your Cross-Examination?

16 **MR. ROBINSON:** If I can read the rule for one
17 second, Your Honor.

18 **THE COURT:** Yes, sir.

19 **MR. ROBINSON:** Just to respond.

20 Your Honor, my objection, I understand Rule 612 as
21 far as the person cross-examining the individual, which
22 is me, to refresh his memory. I'm not clear that it
23 would on redirect for the prosecution where he's gonna
24 go into more information than I used to refresh his
25 memory. What I was trying to do under Rule 612 was to

1 refresh his memory to make sure, because he said he made
2 a statement about a shooting. I wanted to make sure he
3 -- and he wasn't really sure I think about that and I
4 was just trying to refresh his memory. I think it's a
5 little different but I don't believe he can read the
6 whole statement. And the reason I stopped and made an
7 objection was that I thought Mr. Stoudemire was gonna
8 read the whole statement in total and that's what I had
9 the objection to.

10 THE COURT: All right. I'm gonna overrule your
11 objection. And you said that it was used to refresh
12 memory under 612. Also, I feel like that you probably
13 opened the door to come in as well, so I'm gonna let you
14 get into it as well.

15 My understanding, Mr. Stoudemire, is you are not
16 intending to bring up the entire statement, but just the
17 certain aspects of it; is that correct?

18 MR. STOUDEMIRE: No. Judge, it is, in fact, the
19 only portion I'm wanting him to read is, if I'm looking
20 at the punctuation correctly, it's just the last
21 sentence of the statement.

22 THE COURT: I'll note your objection for the
23 record. Anything further Mr. Robinson?

24 MR. ROBINSON: No, sir, Your Honor.

25 THE COURT: Would you bring the jury in, please.

1 (Whereupon, the Jury entered the courtroom at
2 12:20 p.m.)

3 THE COURT: Mr. Stoudemire?

4 MR. STOUDEMIRE: Thank you.

5 BY MR. STOUDEMIRE:

6 Q. Okay. Sir, if you could, just beginning with the
7 word the, if you could, please, just read that last
8 sentence in your statement, please, sir.

9 A. (Reading): "The gentleman with the black eye or
10 birthmark was shooting at the two Black men running down
11 the road from behind the trailer and tried to shoot at
12 me when I tried to run out the back door."

13 Q. Okay. So the gentleman with the black eye or
14 birthmark, is that the same gentleman you pointed out
15 earlier?

16 A. Yes, sir.

17 MR. STOUDEMIRE: Okay. That's all the questions I
18 would have.

19 MR. ROBINSON: I have one more question.

20 RE CROSS-EXAMINATION

21 BY MR. ROBINSON:

22 Q. But you're not sure who he was shooting at,
23 correct?

24 A. No, sir.

25 MR. ROBINSON: Thank you.

1 THE COURT: May this witness be excused?

2 MR. STOUDEMIRE: Yes, Your Honor.

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

4 (Whereupon, the Witness was excused.)

5 MR. STOUDEMIRE: Your Honor, may we approach?

6 THE COURT: Yes, sir.

7 (Whereupon, bench conference was held off the
8 record.)

9 THE COURT: Madam Forelady, ladies and gentlemen of
10 the jury, in conference with the attorneys in this
11 matter it seems like this would be a good time for us to
12 take a break. We have a few administrative matters
13 before we have a break, so I'm gonna let you take your
14 lunch break now. We ask you to be in your jury room no
15 later than ten minutes after two and we will resume at
16 2:15. Okay. Thank you very much. I remind you not to
17 speak with anyone about this case.

18 (Whereupon, the Jury left the courtroom at
19 approximately 12:25 p.m.)

20 THE COURT: All right. Before we take a lunch
21 break there is a matter in which part of the next
22 witness's record, if any, would be subject to
23 cross-examination under the rule; is that correct?

24 MR. STOUDEMIRE: That's correct, Your Honor.

25 THE COURT: Yes, sir.

1 MR. STOUDEMIRE: Judge, again in looking at this
2 and talking with Ms. Simmons in our office who has
3 spoken with this witness, it appears he has convictions
4 in the State of Georgia for entering an automobile or
5 other motor vehicle with attempt to commit theft or
6 felony back in 2005. It looks like he has two counts
7 for that. I don't know if that counts as one conviction
8 for the purposes of us or two convictions. And his
9 other conviction that I can see would be essentially
10 under our possession of a weapon during a violent crime.
11 I think it says possession of a firearm or a knife
12 during the commission of or attempt to commit certain
13 felonies. And that is from 2008.

14 THE COURT: 2008?

15 MR. STOUDEMIRE: Yes, sir.

16 THE COURT: Mr. Robinson would you agree that those
17 are the charges that Mr. Peeples would be subject to
18 being cross-examined on.

19 MR. ROBINSON: I would, Your Honor. I also would
20 add too when we approached the Court about the length of
21 his records, there's a lot of documents, a lot of them
22 we both had never seen, we both didn't understand,
23 that's why it's so big. They have a dead docket down in
24 Georgia where nothing ever happened to them so it is
25 just two.

1 THE COURT: All right. Now, just bring that to my
2 attention before he starts his testimony, please.

3 MR. ROBINSON: Yes, sir.

4 MR. STOUDEMIRE: Yes, sir.

5 THE COURT: Anything from the State before we
6 recess for lunch?

7 MR. STOUDEMIRE: No, Your Honor.

8 THE COURT: From the Defense?

9 MR. ROBINSON: No, Your Honor.

10 (Whereupon, a lunch recess was had from 12:28 p.m.
11 to 2:20 p.m.)

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1 THE COURT: All right. Mr. Stoudemire, is your
2 next witness someone we have to work out with the
3 logistics getting in the courtroom; is that correct?

4 MR. STOUDEMIRE: That's correct, Your Honor. I
5 think they're working it out now. And it looks like
6 he's up here now. What we're gonna do is go ahead and
7 bring him out, seat him in the courtroom and that way
8 when we call him he can just come around and be sworn.

9 THE COURT: Okay.

10 MR. STOUDEMIRE: So I guess as soon as he gets here
11 we will be ready to go.

12 THE COURT: Okay. Very good.

13 MR. STOUDEMIRE: Judge, he is here.

14 THE COURT: Anything from the State before we
15 resume testimony?

16 MR. STOUDEMIRE: No, Your Honor.

17 THE COURT: From the Defense?

18 MR. ROBINSON: No, Your Honor.

19 THE COURT: Would you bring the jury in, please.

20 (Whereupon, the Jury entered the courtroom at 2:24
21 p.m.)

22 THE COURT: Madam Forelady, ladies and gentlemen of
23 the jury, first I hope you had a nice lunch and had
24 adequate time to have one, but may I ask and I'll poll
25 the jury to make sure that no one has spoken with each

1 other or with anyone else about this case? Very good.

2 Would you call your next witness, please.

3 MR. STOUDEMIRE: Yes, sir. The State would call
4 Xavier Peeples.

5 XAVIER PEEPLES,

6 Having first been duly sworn, was examined and testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. STOUDEMIRE:

10 Q. Mr. Peeples, good afternoon.

11 A. How are you?

12 Q. The first thing I want you to do, if you can
13 please, give me your full name for the court record,
14 please.

15 A. Xavier Peeples.

16 Q. Okay. And how do you spell your last name, please?

17 A. P-e-e-p-l-e-s.

18 Q. Okay, thank you. Now, I know you seem to be pretty
19 soft-spoken. I want to make sure you know speak into
20 that microphone because everything you hear has to be
21 taken down by the court reporter here and all these
22 jurors need to be able to hear what you are saying,
23 okay?

24 Mr. Peeples, I want to ask you first, do you know
25 Dametroise Moss?

1 A. No.

2 Q. Okay. Did you know him -- well, let me take you
3 back. Back on May 18, 2011, where were you living at
4 that time?

5 A. In Seneca.

6 Q. Seneca. And where in Seneca were you living?

7 A. A trailer park.

8 Q. Okay. Was that Whittle's Trailer Park?

9 A. Whittle's Trailer Park, yes, sir.

10 Q. Okay. Were you living with anyone at that time?

11 A. Just me and Woo.

12 Q. Me and Woo. Now, who is Woo?

13 A. My friend, Quinton Thomas.

14 Q. Okay. And where in Whittle's Trailer Park were you
15 living? Do you remember the number?

16 A. No, sir.

17 Q. Okay. I'm gonna show you ---

18 MR. STOUDEMIRE: Judge, can he come down, please?

19 THE COURT: Yes, sir.

20 MR. STOUDEMIRE: Step around here. I'm gonna show
21 you a map of Whittle's Trailer Park and see if looking
22 at it from above if you can figure out where you lived
23 at that time. This is the entrance to the trailer park
24 right there.

25 THE WITNESS: Right like there. (Indicating.)

1 Q. Okay. [REDACTED]?

2 A. (Nodded head.)

3 Q. Go ahead and back up a little bit. Go ahead and
4 have a seat and we'll probably have to end up getting
5 you down again.

6 Now, so back in May 2011 you were living at [REDACTED] in
7 Whittle's Trailer Park. You said -- did you say you
8 were living at that trailer with Quinton Thomas?

9 A. Yes, sir.

10 Q. Okay. Anybody else living in that trailer with you
11 all at that time?

12 A. No, sir.

13 Q. Okay. Now, on May 18th of that year were you at
14 home?

15 A. Yes, sir.

16 Q. Okay. Was Mr. Thomas at home that day?

17 A. He wasn't but he just had got there.

18 Q. Okay. He just had got there?

19 A. (Nodded head.)

20 Q. Okay. And I say Mr. Thomas but you called him Woo;
21 is that correct?

22 A. Yes, sir.

23 Q. That was just his nickname?

24 A. Yes, sir.

25 Q. Did everybody around him call him that?

1 A. Yes, sir.

2 Q. Do you have a nickname?

3 A. Tug.

4 Q. Tug?

5 A. Yes, sir.

6 Q. And people normally call you that instead of
7 Xavier?

8 A. Yes, sir.

9 Q. Now, did y'all -- on May 18th did you all have
10 contact with anybody that day or did you stay inside the
11 trailer all day?

12 A. We stayed inside the trailer all day.

13 Q. Okay. Well, did anybody come to the trailer to see
14 you?

15 A. No one but the dude who shot us.

16 Q. Okay. Tell me what happened. And when you say
17 dude who shot us, who was that?

18 A. Moss.

19 Q. Okay. And who was that, is he in the room?

20 A. He's right there. (Indicating.)

21 Q. Okay. What color shirt is he wearing?

22 A. White.

23 Q. Okay.

24 MR. STOUDEMIRE: Judge, I would like the record to
25 reflect the witness identified Mr. Moss as the person

1 who shot him.

2 THE COURT: The record so reflects.

3 MR. STOUDEMIRE: Thank you.

4 BY MR. STOUDEMIRE:

5 Q. Now, where did you first see Mr. Moss that day?

6 A. He was pulling in.

7 Q. Pulling in, pulling in where?

8 A. In the trailer park.

9 Q. Okay. And when he pulled in the trailer park,
10 where did he go?

11 A. I reckon he was gonna go to old lady's house till
12 Bird stop him.

13 Q. Okay. He went where now?

14 A. I reckon where his old lady stayed right across
15 from us.

16 Q. Okay. His old lady stayed right across from you.
17 Do you recall what number that was?

18 A. I don't know what number it was.

19 Q. But close by you?

20 A. Uh-huh.

21 Q. Okay. So he went there. Did he ever come to the
22 trailer where you were?

23 A. No. He stopped right there in front of the
24 trailer.

25 Q. Okay. Did he ever come to your trailer and knock

1 on the door or anything?

2 A. Yes, he did.

3 Q. Okay. Was anybody with him?

4 A. Big dude, I don't know his name though. Some big
5 dude.

6 Q. Big how? Big tall or big wide?

7 A. Wide, muscular wide.

8 Q. Muscular, okay. Was that dude taller or shorter
9 than you?

10 A. Taller than me.

11 Q. Okay. How much taller?

12 A. By about a couple inches.

13 Q. Okay. So around your height but more muscular?

14 A. (Nodded head.)

15 Q. Okay. Now, when Mr. Moss came to your trailer did
16 he knock on your door or did the other muscular guy
17 knock on it?

18 A. He did.

19 Q. Mr. Moss did?

20 A. Yeah.

21 Q. Okay. Did you answer the door?

22 A. No.

23 Q. Okay. Who answered the door?

24 A. Quinton Thomas.

25 Q. Okay. And where were you when he knocked on the

1 door and Mr. Thomas answered?

2 A. I was sitting on the sofa.

3 Q. Okay. Did he and Mr. Thomas have any sort of
4 conversation that you heard?

5 A. I just heard him asking, screaming where bird was.

6 Q. Okay. And Bird is just a guy, just somebody's
7 nickname?

8 A. Uh-huh.

9 Q. Okay. Was he at your house?

10 A. Nah, he wasn't there.

11 Q. Okay. And what did you do then at that point? You
12 were sitting inside the trailer at that point. What did
13 you do then?

14 A. I told my friend to move out of the way so he let
15 the door go. I opened the door.

16 Q. You told Woo to move out the way?

17 A. (Nodded head.)

18 Q. Okay. So he let the door go and what did you do
19 then?

20 A. I stepped to the door.

21 Q. Okay. And what happened then?

22 A. The muscular dude told me he wanted me to come
23 outside so I went outside.

24 Q. Okay. And what did you all do then?

25 A. We rounded off.

1 Q. When you say we rounded off, what do you mean by
2 that?

3 A. By goofing a fight.

4 Q. Okay. So y'all, so y'all rounded off and everybody
5 had their hands up?

6 A. Uh-huh.

7 Q. Okay. And what happened then?

8 A. I seen how big he was, I thought about it so I
9 pulled the blade.

10 Q. Okay. So when you say pulled a blade, you mean a
11 knife?

12 A. I pocketknife, yeah.

13 Q. Okay. And after you pulled this pocketknife out
14 what happened then? Where were you at that point, were
15 you just out in front of your trailer?

16 A. Yes, sir.

17 Q. Okay. And where did you go then?

18 A. We ended up back in the back of the trailer park.

19 Q. Okay. I'll tell you what, let me ask you to step
20 down one more time for me, please.

21 (Whereupon, Witness leaves stand.)

22 Okay. Now, this red button right here operates the
23 laser pointer, okay? You can see where it lights up.
24 What I want you to do on this is stay back as much as
25 you can. Keep in mind all of them have got to see. And

1 tell me -- so you were out front here, right?

2 A. Uh-huh.

3 Q. And that's when the knife came out. Where -- you
4 said y'all backed down to the back of the trailer park.
5 Show me how it went.

6 A. (Complies.)

7 Q. So y'all backed down the road all that way?

8 A. Uh-huh.

9 Q. And y'all ended up at whose trailer?

10 A. Marcus.

11 Q. And Marcus lives over here; is that correct?

12 A. Uh-huh.

13 Q. At [REDACTED]?

14 A. Uh-huh.

15 Q. Okay. And so while you were -- tell me what you
16 were doing when you said y'all backed down, tell me what
17 were you doing. How were you walking down the street?

18 A. I was chasing the muscular dude down there.

19 Q. Were you having a conversation?

20 A. No, we weren't having a conversation.

21 Q. None?

22 A. None at all.

23 Q. Okay. So y'all got out in front of Marcus
24 Whitner's trailer. What happened then?

25 A. I went inside the trailer.

1 Q. Okay. And why did you go inside Marcus's trailer
2 at that point?

3 A. To get the gun.

4 Q. Okay. And what gun -- go ahead and go have a seat
5 back there. And what gun was this?

6 A. A .38.

7 Q. A .38?

8 A. A .38 revolver.

9 Q. Okay. Now I am going to show you what has
10 previously been marked as State's Exhibit Number 8.

11 THE COURT: Before you do that, ladies and
12 gentlemen of the jury, again, this gun has been
13 disabled.

14 MR. STOUDEMIRE: Yes, sir. Yes, sir.

15 THE COURT: And I'm gonna ask the State and the
16 witness not to point the gun in anybody's direction.

17 MR. STOUDEMIRE: Yes, sir.

18 THE COURT: Go ahead sir.

19 BY MR. STOUDEMIRE:

20 Q. And I'm gonna show you, I'll hold up for you what's
21 marked previously as State's Exhibit 8. Do you
22 recognize this?

23 A. Yes.

24 Q. Okay. What is it?

25 A. A .38 revolver.

1 Q. Okay. Is this the same .38 revolver you got from
2 Marcus's house?

3 A. Uh-huh.

4 Q. Okay. Is that a -- you need to say yes or no,
5 please, sir.

6 A. Yes, sir.

7 Q. Okay. Super. All right. So you got that revolver
8 and went back outside; is that right?

9 A. Yes, sir.

10 Q. Or did you stay inside?

11 A. Yes, sir.

12 Q. What did you do, did stay inside or did you go back
13 outside?

14 A. I went on the porch. I opened the door and we went
15 on the porch.

16 Q. Okay. And by the time you got on the porch with
17 the gun, what happened then?

18 A. I after that I heard a gun fire.

19 Q. Okay. You heard a gun fire at that point?

20 A. Uh-huh.

21 Q. Had you fired that 38 at that point?

22 A. I done seen Woo get hit.

23 Q. Okay. Well, let's back up a little bit. You said
24 you heard gunfire. Was it coming from your right, your
25 left, your front?

1 A. My left.

2 Q. Your left. So you are on the front porch you are
3 hearing it from off to this side; is that right?

4 (Indicating.)

5 A. Yes, sir.

6 Q. Okay. And were you able to see who was shooting
7 from that side?

8 A. Yes, sir.

9 Q. Okay. And who was shooting?

10 A. Moss.

11 Q. Moss. And that's the same Moss that's the
12 Defendant; is that correct?

13 A. Yes, sir.

14 Q. Okay. Can you just stand up where you are. Show
15 me how he was standing and shooting, what you saw.

16 A. (Demonstrating.)

17 Q. Okay. So he had both hands out like this shooting.
18 (Indicating.) Go ahead and have a seat. Thank you.
19 Where was he shooting, what direction?

20 A. Toward Quinton Thomas and the girl they were with.

21 Q. Okay. Where were they at that point?

22 A. Right there on the edge of Marcus's trailer.

23 Q. Okay. So they were in generally the same area as
24 you were?

25 A. No. They was, they was on a whole different side

1 than I was. I was standing on the porch. They were far
2 off to my left.

3 Q. They were off to your left too?

4 A. Uh-huh.

5 Q. And they were off to -- were they directly in front
6 of Mr. Moss or were they off to his left or right
7 somewhere?

8 A. They were right in front of him.

9 Q. Okay. And let me back up a little bit then. I'm
10 gonna ask you a couple questions I forgot to ask this
11 earlier. When you were backing down the road with the
12 muscular guy when you had the knife, was anybody
13 following you at that point?

14 A. Moss.

15 Q. Okay. Did Moss stay in your view the whole time
16 you were going down there?

17 A. No, he broke off.

18 Q. He broke off. So when he broke off, did you keep
19 sight of him or did you just lose sight of him?

20 A. I lose sight.

21 Q. Okay. And after that, when was the next time you
22 saw Moss after you lost sight of him?

23 A. When I came back out the trailer and the gun was
24 firing.

25 Q. Okay. And when you were walking down the street,

1 was Woo walking down the street with you or behind you
2 or anything?

3 A. Moss was behind me and Woo was behind him.

4 Q. Okay. Did -- when y'all were walking down the
5 street, did you see a gun with either Moss or Woo?

6 A. Just Moss.

7 Q. Just Moss. So Moss had a gun while walking down
8 the street that you saw?

9 A. (Nodded head.)

10 Q. Okay. So did Woo have a gun?

11 A. No, sir.

12 Q. Okay. Did Woo ever keep a gun?

13 A. No, sir.

14 Q. Okay. So there were no guns in the house where you
15 lived with Woo?

16 A. No, sir.

17 Q. Okay. So you came out of the trailer, heard
18 gunfire, saw Moss and said Moss was shooting at Woo; is
19 that correct?

20 A. Yes, sir.

21 Q. What happened then that you saw?

22 A. Seen Woo fall.

23 Q. Okay.

24 A. And get up and running.

25 Q. Okay. And what direction did Woo start running in?

1 A. Back towards the trailer.

2 Q. When you say back towards the trailer, whose
3 trailer?

4 A. Ours. The one we were staying in.

5 Q. Okay. And when you saw Woo shot and fall down,
6 what did you do?

7 A. I started shooting.

8 Q. Okay. And who did you shoot at or what did you
9 shoot at?

10 A. I shot at the muscular guy.

11 Q. Okay. And what happened then?

12 A. I tried to run for my life.

13 Q. Okay. In which direction did you run?

14 A. I run past him. I tried to run past him.

15 Q. Okay. And what happened when you tried to run past
16 Moss?

17 A. He was, he was shooting at me.

18 Q. Okay. Did he hit you at all?

19 A. He hit me in the wrist and the neck.

20 Q. Okay. Where on the neck, which side?

21 A. My left side of my neck.

22 Q. Okay. It hit you on the left side of your neck.
23 Was it up high or down low towards the shoulder?

24 A. Right here on my arm on my shoulder on my blade.

25 Q. Okay. Did that, did that bullet go in you?

1 A. No, it scraped me.

2 Q. Scraped you, okay. And did you get shot anywhere
3 else?

4 A. In the wrist and in my butt.

5 Q. In the wrist also? Which wrist?

6 A. My right wrist.

7 Q. Okay. Can you show me?

8 A. (Indicating.)

9 Q. Okay. Show me exactly where.

10 A. (Indicating.)

11 Q. Okay. And do you still have a mark from that?

12 A. Yes, sir.

13 Q. Okay. And you also got shot in?

14 A. My butt.

15 Q. In your butt. Which side?

16 A. The right cheek.

17 Q. Okay. Now, and you got shot. Were you going at
18 Moss at that point?

19 A. Huh-uh.

20 Q. Okay. Yes or no. I'm sorry?

21 A. I'm trying to get away from him. No, sir.

22 Q. Okay. So he was firing at you and you were trying
23 to get away?

24 A. (Nodded head.)

25 Q. Okay. And were you able to get away?

1 A. Yes, sir.

2 Q. Where did you go?

3 A. I jumped in the creek.

4 Q. Jumped in the creek where?

5 A. Right up beside Marcus's house.

6 Q. Okay. I'm sorry, one last time I'm gonna get you
7 to come around and show me where the creek is because I
8 don't see it.

9 (Whereupon, Witness leaves witness stand.)

10 Here you go. Remember that red button. This is
11 Marcus's house so where would the creek be.

12 A. Right there. Over behind the trailer.

13 (Indicating.)

14 Q. So back in these woods?

15 A. Uh-huh.

16 Q. Okay. Why did you run there? Go ahead. Have a
17 seat.

18 A. So he wouldn't kill me.

19 THE COURT: Just one second. Just one second. Go
20 ahead and face the jury when you speak. Go ahead.

21 THE WITNESS: So he wouldn't kill me.

22 BY MR. STOUDEMIRE:

23 Q. Okay. And what did you do when you got to the
24 creek?

25 A. I stayed in. I stayed in the creek for about a

1 couple minutes.

2 Q. All right. And after you stayed in the creek for a
3 couple minutes, what did you do then?

4 A. I came out.

5 Q. And where did you go once you came out?

6 A. I tried to go back to the trailer.

7 Q. And when you say the trailer, which trailer are we
8 talking about?

9 A. The one we were living in.

10 Q. The one you were living in?

11 A. Yes, sir.

12 Q. And is that [REDACTED]

13 A. Yes, sir.

14 Q. Okay. Did you make it there?

15 A. Yes, sir.

16 Q. Okay. Did you still have the gun with you? That
17 revolver that we looked at, did you still have that with
18 you when you made it there?

19 A. Yes, sir.

20 Q. Okay. What did you do with that?

21 A. Dropped it in the front of the step.

22 Q. Okay.

23 MR. STOUDEMIRE: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, sir.

1 BY MR. STOUDEMIRE:

2 Q. Okay. I'm gonna show you two pictures,
3 Mr. Peeples. The first has been marked as State's
4 Exhibit 1.8. Does that look familiar to you?

5 A. Yes, sir.

6 Q. Okay. And what is that a picture of?

7 A. The .38, the gun from this building.

8 Q. Okay. And the building behind, what is that?

9 A. Where we stayed at.

10 Q. Okay. That's the trailer you were staying at?

11 A. Yes, sir.

12 Q. And that's [REDACTED] in Whittle's Trailer Park, correct?

13 A. Yes, sir.

14 Q. Okay. And that on front, is that the gun you were
15 talking about?

16 A. Yes, sir.

17 Q. Does that photograph appear to be a fair and
18 accurate representation of where you threw the gun that
19 night?

20 A. Yes, sir.

21 Q. Okay. Does it appear to be a fair and accurate
22 representation of everything in that photo?

23 A. Yes, sir.

24 Q. Okay. Does it look like it's been changed or
25 altered in any way?

1 A. No, sir.

2 Q. Okay. And I'm also gonna show you State's Exhibit
3 1.12 what's that?

4 A. The same gun.

5 Q. Okay. Is that just a closer up picture?

6 A. Yes, sir.

7 Q. Okay. And does that appear to be a fair and
8 accurate representation of everything in it?

9 A. Yes, sir.

10 Q. Okay. Does it appear like it's been changed or
11 altered?

12 A. No, sir.

13 MR. STOUDEMIRE: Okay. Your Honor, State would
14 move to admit exhibits numbers 1.8 and 1.12.

15 THE COURT: Any objection?

16 MR. ROBINSON: No objection, Your Honor.

17 MR. STOUDEMIRE: Okay. And, Your Honor, we would
18 ask to publish these to the jury.

19 THE COURT: Yes, sir. They are admitted without
20 objection.

21 (Whereupon, State's Exhibits 1.8 and 1.12 are
22 admitted into evidence.)

23 BY MR. STOUDEMIRE:

24 Q. Now, Mr. Peeples, once you got back into your
25 trailer, what did you do then?

1 A. Laid me on my couch on my back.

2 Q. Okay. And were you hurt at that point?

3 A. Yes, sir.

4 Q. Okay. Did you receive any medical attention at
5 that time?

6 A. No, sir.

7 Q. Okay. How long was it before somebody got there to
8 look at your injuries?

9 A. A couple minutes, probably 20-some minutes or
10 something like that.

11 Q. All right. Seemed like a long time?

12 A. Uh-huh.

13 Q. Did anybody else come in the trailer while you were
14 there?

15 A. No, not that I know of.

16 Q. Okay. When you got back to your trailer, you said
17 earlier that Woo was running towards the trailer, did
18 Woo make it back to the trailer?

19 A. I guess so. But I know he was in there when I made
20 it in there.

21 Q. Okay. So he was there when you were there?

22 A. Uh-huh.

23 Q. Okay. How did he look at that point to you?

24 MR. ROBINSON: Objection, Your Honor.

25 THE WITNESS: He try to ---

1 THE COURT: Just a moment. State your objection.

2 MR. ROBINSON: Relevance, Your Honor.

3 THE COURT: Overruled. Go ahead.

4 BY MR. STOUDEMIRE:

5 Q. How did he look to you?

6 A. Trying to catch his breath.

7 Q. Okay. Had he been injured any way that you could
8 see?

9 A. Yeah, he was shot.

10 Q. Okay.

11 MR. STOUDEMIRE: Just one moment.

12 THE COURT: Yes, sir.

13 MR. STOUDEMIRE: Mr. Peeples that's all the
14 questions that I would have for you. Please answer any
15 questions that Mr. Robinson may have.

16 THE COURT: Cross-Examination?

17 MR. ROBINSON: May it please the Court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. ROBINSON:

21 Q. Mr. Peeples, you're a convicted felon, aren't you?

22 A. Yes.

23 Q. You actually were convicted of a possession of a
24 firearm or a knife during the commission of a felony;
25 isn't that correct?

1 A. Yes, sir.

2 Q. Now, prior to coming here today you had an
3 opportunity to meet with the Solicitor's Office, didn't
4 you?

5 A. I don't understand.

6 Q. You had an opportunity to meet with either Lindsey
7 Simmons or David Wagner with the Solicitor's Office; is
8 that correct?

9 A. Yes, sir.

10 Q. They actually went over your testimony with you and
11 prepped you for today, didn't they?

12 A. No, sir.

13 Q. They didn't?

14 A. No, I misunderstood that. Yes, sir.

15 Q. They did do that, correct?

16 A. (Nodded head.)

17 Q. And they're in the courtroom today in the back;
18 isn't that right?

19 A. Yes, sir.

20 Q. Okay. And now you admit that you've lived at [REDACTED]
21 Whittle Street at the time of this incident, correct?

22 A. Yes, sir.

23 Q. You lived there with Quinton Thomas, right?

24 A. Yes, sir.

25 Q. Okay. Now, when the police came to your trailer

1 and searched your trailer, there were drugs in it,
2 weren't there?

3 A. Yes, sir.

4 Q. A lot of drugs?

5 A. Yes, sir.

6 Q. And you were dealing, weren't you?

7 A. Yes, sir.

8 Q. You and Quinton Thomas were dealing drugs, weren't
9 you?

10 A. Yes, sir.

11 Q. Okay. And people would come in and out of that
12 trailer to buy drugs from you and Quinton, wouldn't
13 they?

14 A. Not really.

15 Q. They wouldn't? They were getting it for free?

16 A. No. They weren't coming in the trailer.

17 Q. So you keep the drugs in the trailer, right? You
18 had scales as well, correct?

19 A. Yes, sir.

20 Q. So you and Quinton would have the drugs and the
21 scales and measure the drugs and scales with the scales
22 there and you would sell the drugs at other places,
23 correct?

24 A. Yes, sir.

25 Q. You came in contact with a lot of different people,

1 didn't you?

2 A. Yes, sir.

3 Q. Now, when Dametroise Moss came to the door that
4 day, he wasn't looking for you or Mr. Thomas, was he?

5 A. He couldn't have because we didn't know him.

6 Q. You guys didn't know him. He was looking for
7 another gentleman, correct?

8 A. I'm sorry, I don't understand.

9 Q. He was looking for Bird, right?

10 A. Yeah, Bird. Uh-huh.

11 Q. So when he came to the door and asked for Bird, at
12 some point you got off the couch, you opened the door,
13 got past your friend Quinton, opened the door, and you
14 saw a muscular man out there, and that's when you --
15 that's when there was a fight gonna happen, right?

16 A. Yes, sir.

17 Q. Between you and this guy. Not you and Mr. Moss but
18 between you and the big dude, correct?

19 A. Yes, sir.

20 Q. Okay. And I think at some point you took your
21 shirt off and he took his shirt off, right?

22 A. I don't remember taking my shirt off.

23 Q. You never did that? But you agree with me that you
24 went the length of that trailer park chasing after him
25 with your knife; isn't that correct?

1 A. Yes, sir.

2 Q. And then you went and you got to the bottom of the
3 trailer park and went to Mr. Whitner's home, his trailer
4 was down at the end of the trailer park, correct?

5 A. Yes, sir.

6 Q. And you got a gun, correct? It was a 38, wasn't
7 it? Right?

8 A. Yes, sir.

9 Q. And you were chasing the big dude or the muscular
10 guy and Mr. Moss was following you as you were chasing
11 the muscular guy, and Quinton Thomas was also chasing
12 after you as you were chasing the muscular guy, wasn't
13 he, as we testified to a moment ago?

14 A. Not that I can recollect.

15 Q. So you didn't chase after -- you didn't testify
16 just a few moments ago that you were chasing, that
17 Quinton was also following you as you chased ---

18 A. He was following Moss, he wasn't following me.

19 Q. He was following Moss?

20 A. Yeah, Moss was behind me.

21 Q. Moss was behind you. Now, you were gonna kill this
22 muscular guy, weren't you?

23 A. Not really.

24 Q. Weren't you? So when you got the knife and chased
25 after him with your knife down the trailer park, you

1 weren't gonna do any harm to him?

2 A. Probably was, but I wasn't gonna kill him.

3 Q. You probably were gonna do some damage to him,
4 correct? Maybe cut him a little bit, right, make him
5 pay for whatever he did, right?

6 A. Yes, sir.

7 Q. But you decided to go beyond that and you went and
8 got a gun, the .38, I believe, from Mr. Whitner,
9 correct?

10 A. Yes, sir.

11 Q. And you were going to kill or shoot the big Shane
12 -- or, excuse me, the big dude, correct?

13 A. No, sir.

14 Q. So you got the gun just -- it's your testimony you
15 never shot at this big dude?

16 A. I shot at him, but I ain't shoot at him until I
17 heard gunfire, though.

18 Q. So it's your testimony it was only after the other
19 shots were heard that you decided to fire at this guy.
20 Is that your testimony?

21 A. Yes, sir.

22 Q. Well, why would you do that, though, because it
23 already happened? Why would you shoot afterwards at
24 this guy?

25 A. He was still on the porch, he wouldn't leave. He

1 was standing on the porch when I came out.

2 Q. So you were gonna shoot at him when he was on your
3 porch, is that your testimony?

4 A. No, he wasn't on my porch, he was on Marcus' porch.

5 Q. And you shot him how many times?

6 A. I shot at him two times, about two or three times.

7 Q. Just two or three times, right?

8 A. Uh-huh.

9 Q. And you're saying -- you're testimony then is
10 afterwards, correct? After all this stuff took place
11 you decided well I'm going to shoot the big dude now,
12 right?

13 A. Yes, sir.

14 MR. ROBINSON: One second, Your Honor?

15 THE COURT: Yes, sir.

16 MR. ROBINSON: That's all I have, thank you.

17 THE COURT: Redirect?

18 MR. STOUDEMIRE: None, Your Honor. We would ask
19 that this witness be excused.

20 THE COURT: Okay. Just one second. Ladies and
21 gentlemen of the jury, I'm gonna ask that you step out
22 just a few minutes and then we'll bring you back out in
23 just one minute.

24 (Whereupon, the Jury left the courtroom at
25 approximately 2:50 p.m.)

1 THE COURT: All right. Officer, would you escort
2 him out, sir?

3 You may be excused, Mr. Peeples.

4 (Whereupon, the Witness was excused.)

5 Yes, sir?

6 MR. ROBINSON: I have a motion at this time out of
7 the presence of the jury. It's really for a mistrial
8 because of what he just testified to. The Solicitor's
9 Office remained in the courtroom the entire time and he
10 testified they prepped him before he came up here and
11 talked to them and they have been sitting in the
12 courtroom the entire time listening to the testimony and
13 so forth and they've had an opportunity to meet with him
14 and to gear him. I believe, I'm not saying it, but I
15 think that a mistrial is ---

16 THE COURT: What's the basis of a mistrial, please,
17 sir?

18 MR. ROBINSON: I think there's prejudice on the
19 Defendant's part. He's been prepped to testify a
20 certain way. For instance ---

21 THE COURT: Because the State prepped their
22 witnesses you are entitled to a mistrial?

23 MR. ROBINSON: I think where I'm going with this,
24 Your Honor, is that in the morning when the first
25 witness testified to, it would be Womack, he stated that

1 this guy shot him three times, shot at him three times
2 and then Dametroise Moss shot at him. That's his
3 testimony.

4 THE COURT: I got that.

5 MR. ROBINSON: Now this guy is going well wait a
6 second, after Dametroise Moss fired at this guy that I
7 fired. That's a totally different story than the one we
8 heard a little bit ago.

9 THE COURT: I understand that there's conflicting
10 factual versions of what occurred that day, but why does
11 that give you the basis for a mistrial? I'm not sure
12 what that might be.

13 MR. ROBINSON: My only thing, Your Honor, it just
14 doesn't seem fair to me. It's a prejudice against him
15 because I've never met Mr. Peeples before, I didn't have
16 an opportunity to talk to him at all.

17 THE COURT: Well, nobody prevented you from talking
18 to Mr. Peeples, did they?

19 MR. ROBINSON: No. But I just think that his
20 testimony has changed. I don't know what he was -- I
21 don't see anything in here where he -- I don't know. I
22 just don't -- I just think it's extremely prejudicial
23 when you sit there in the morning, watch this and then
24 talk to the person saying make sure you do such and
25 such. I'm not saying that happened, it just seems odd

1 that he's testifying this way today in court.

2 THE COURT: I'm gonna deny your motion and then
3 subject to your motion renew your motion.

4 Are you ready to call your next witness?

5 MR. STOUDEMIRE: We are, Your Honor. The State
6 would call ---

7 THE COURT: Hold on just one second. Let's bring
8 the jury back in. Would you bring the jury back in,
9 please.

10 (Whereupon, the Jury entered the courtroom at 2:55
11 p.m.)

12 THE COURT: Would you call your next witness,
13 please, sir?

14 MR. STOUDEMIRE: Yes, sir, Your Honor. The State
15 would call Deputy Philip Robertson.

16 THE COURT: Okay, sir.

17 DEPUTY PHILIP ROBERTSON,
18 Having first been duly sworn, was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. STOUDEMIRE:

22 Q. Deputy could you please give us your full name for
23 the record?

24 A. Philip Robertson.

25 Q. Thank you. And Deputy Robinson, what's your job

1 title now?

2 A. Master control Deputy on Charlie shift.

3 Q. Okay. And how long have you been working with the
4 Sheriff's Office?

5 A. October I'll start my 11th year.

6 Q. Okay. And were you employed by the Sheriff's
7 Office back in May of last year?

8 A. I was.

9 Q. Okay. Were -- what patrol were you assigned to at
10 that time?

11 A. The Seneca area.

12 Q. Okay. Were you on duty on or about the evening of
13 May 18th, 2011?

14 A. I was.

15 Q. Okay. And were you on duty on patrol in the Seneca
16 area at that time?

17 A. I was.

18 Q. Okay. Did you receive any calls from dispatch
19 while you were on duty in the Seneca area that day?

20 A. I did.

21 Q. Okay. Where were you dispatched to in particular?

22 A. I got a call from Whittle's Park off old Clemson
23 Highway. It was actually given to me and one of the
24 other officers. We were dispatched over there for a
25 disturbance. While in route I found out there was shots

1 fired, possible injuries. And I met with the other
2 officer over there.

3 Q. Okay. Were you the first officer on the scene?

4 A. I was the second officer on the scene.

5 Q. The second officer.

6 A. We were less than a minute apart.

7 Q. Okay. So you got there right around the same time
8 as the other officer?

9 A. Correct.

10 Q. Okay. When you got on the scene, what did you do?

11 A. When I got on the scene there was a large group of
12 people ran to me started talking, saying, telling me
13 that ---

14 MR. ROBINSON: Objection, Your Honor, hearsay.

15 THE COURT: Sustained.

16 THE WITNESS: I apologize. When I got on the scene
17 my partner was at the upper end of the neighborhood and
18 at that time I was told to go to, I believe the address
19 is [REDACTED], told by my supervisor who was probably the
20 initial officer on the scene and then I went to [REDACTED].

21 BY MR. STOUDEMIRE:

22 Q. Okay. And when you went to [REDACTED], what did you see
23 when you got there?

24 A. When I first got there, there was a large gathering
25 of people up the steps and people going in and out of

1 the doorway. I was told to go inside. There were two
2 people shot inside. I walked up into the area there,
3 into the mobile home and there was a gentleman on the
4 right on the couch and one on the left of the couch both
5 had been shot.

6 Q. Okay. Do you recall what either were wearing at
7 that time?

8 A. Um, the one that was shot in the left side had a
9 shirt raised up to his neck, and I believe he had on
10 jeans, I can't remember. The other one was in his
11 boxers. They had -- he was shot in the upper hip. They
12 had, whatever pants he had on were down on the floor and
13 he had his boxers on down just below his thigh.

14 Q. Okay. By the time you got there do you know
15 whether or not EMS was called to the scene?

16 A. EMS was en route, yes, sir.

17 Q. Okay. But they had not arrived by the time you got
18 there?

19 A. No, sir, they had not.

20 Q. Okay. So upon seeing two people in [REDACTED] shot, what
21 did you do at that point?

22 A. At that time I got on the radio to check to see how
23 far EMS was away. We don't have good radio reception.
24 I had to take a couple steps back to get outside the
25 door. Still had them all in my sight. At that time EMS

1 was actually pulling up and parked right there where I
2 was at or was at the trailer I was at.

3 Q. Okay. When you stepped outside to get reception,
4 did you see anything outside the trailer?

5 A. There was still a large group of people gathered
6 right there just in the whole general area moving
7 around, so...

8 Q. Okay. And inside the trailer when you first got
9 there, you said there were two people that had been
10 shot. Were there ---

11 A. There were additional.

12 Q. Was there anybody else in the trailer?

13 A. Yes, sir, there were. There were additional people
14 in there. There was two with the guy that was shot in
15 the side on the couch there and there was two or three
16 with the other gentlemen that was actually pouring water
17 on him I guess in an attempt to cool him off, I'm not
18 sure.

19 Q. Okay. When EMS got there, what did you do at that
20 point?

21 A. EMS arrived on the scene, started coming up the
22 steps. At that time the gentleman that was laying on
23 the couch who was shot in left side stopped breathing.
24 I got everybody out of the house so EMS could start
25 doing their job. They called a second EMS truck to come

1 in and assist them. I actually did chest compressions
2 on a gentleman who was shot on the left side for a short
3 amount of time.

4 Q. Okay. And then is it fair to say you got everybody
5 out of the way so EMS could do their job?

6 A. EMS could do their job, yes, sir.

7 Q. Okay. And did you go back outside?

8 A. Yes, sir. I walked outside and walked down the
9 steps at that time.

10 Q. And when you got down the steps did you notice
11 anything?

12 A. I did. There was a revolver laying just a couple
13 paces away from the bottom step.

14 Q. Okay. And I'm gonna show you -- I'm gonna show you
15 again what has been marked as State's Exhibit Number 8.
16 Is this the revolver that you saw?

17 A. That appears to be it, yes, sir.

18 Q. Okay. And when you saw that revolver, what did you
19 do at that point?

20 A. At that time we had a constable riding with the
21 other officer. I got the constable to come down there
22 and posted him on the pistol and told him no one was
23 allowed in the general area. And he stayed there until
24 -- and then we contacted an investigator, of course.
25 They had a crime scene tech coming that way. And he

1 stayed with the firearm until it was photographed and
2 collected, to my understanding, or until somebody else
3 relieved him rather, so...

4 Q. Okay. And at that time had any other law
5 enforcement arrived on the scene?

6 A. Yes, sir.

7 Q. Okay. More than one?

8 A. I believe everybody from my shift was coming that
9 way.

10 Q. Okay. And what did you do for the remainder of the
11 time that you were out there that evening?

12 A. Started taking crime scene or started taking notes
13 for the crime scene from what took place at the [REDACTED]. I
14 started taking names of those who arrived on scene as
15 being Deputies and what not. And then I didn't go to
16 the other side where the other officer was, so ---

17 Q. So you stayed on that end?

18 A. I stayed on that end, yes, sir.

19 Q. Okay. And was that the remainder of what you did
20 that evening?

21 A. Yes, sir.

22 Q. Okay. Now, in a short time, did you work the next
23 day as well?

24 A. I did, yes, sir.

25 Q. Okay. And the next day when you worked, did you

1 have occasion to return to the trailer park?

2 A. I did.

3 Q. Okay. Why did you return to the trailer park that
4 next day?

5 A. I was contacted by investigator Reed, wanting me to
6 meet him at the trailer park.

7 Q. Okay. And when you got to the trailer park that
8 day, that would have been May 19th; is that correct?

9 A. Yes, sir.

10 Q. Okay. Where did you go in the trailer park that
11 day?

12 A. It was a trailer up on the right just around the
13 turn. I don't remember the address right off. I
14 actually assisted with some paperwork that will have the
15 correct address on it.

16 Q. Okay. Who did you make contact with at that
17 trailer?

18 A. I believe that it was a female there. I don't
19 recall her name, but her name should be on the paperwork
20 as well or potentially be on part of it.

21 Q. Okay. I'm gonna show you what's been marked as
22 State's Exhibit Number 2 for identification. Can you
23 tell me what that document is?

24 A. This is a consent to search. Something when we go
25 to a residence and, you know, when we gain consent to

1 search we put it on paperwork and there should be a copy
2 that was given with the person who signed it as well
3 giving consent.

4 Q. Okay. And does your name appear anywhere on there?

5 A. It does, mine and Investigator Reed's.

6 Q. Okay. And what is the -- what's the address on
7 that consent to search?

8 A. [REDACTED] Jasmine Lane, Seneca.

9 Q. Okay. And when you were saying a trailer just
10 around the corner from where you were, would that be
11 such a location?

12 A. When the road turns to the right it starts over
13 Jasmine Lane right there, and it would have been...

14 Q. Okay. So, on this, on State's Exhibit Number 7,
15 where would the trailer be about that you were looking?

16 A. It's in the trees. I don't believe you have it
17 marked.

18 Q. Okay. But it's the trailer -- so would it be the
19 trailer right beside 202?

20 A. That's correct.

21 Q. Okay. And who did you make contact with at that
22 residence that day?

23 A. Carlana Pinson is the name on the consent to
24 search.

25 Q. Could that be Corbrina?

1 A. Oh, I'm sorry, Corbrina, yes, sir.

2 Q. And is there another name on there as well?

3 A. Cliff Baldwin, yes, sir.

4 Q. Was he at the residence at that time as well?

5 A. I don't recall, to be honest. I don't recall.

6 Q. Okay. Well, look, look down. Do we see a
7 signature?

8 A. It says search -- well, it said the inventory was
9 made in the presence of Corbrina Pinson and Cliff
10 Baldwin, so it would have made him at the residence.
11 That is in my handwriting as well as Lieutenant Reed and
12 myself.

13 Q. Okay. So did both of them give you and Detective
14 Reed consent to search that residence?

15 A. Both names were listed at the top hand. The
16 signature at the bottom I can't make it out. It looks
17 like a baseball card signature.

18 Q. Okay. And if you could just read the language on
19 that.

20 A. Yes, sir.

21 Q. Tell us what it gives consent to do?

22 A. It says: I, Corbrina Pinson, Cliff Brown, having
23 been informed of my Constitutional right not to have a
24 search made of the premises herein after mentioned
25 without a search warrant and of my right to refuse a

1 consent to search, hereby authorize Lieutenant Reed and
2 Officer Phillip Robertson, Deputy sheriffs of Oconee
3 County, South Carolina to conduct a complete search of
4 my premises located at [REDACTED] Jasmine Lane Seneca, South
5 Carolina.

6 These deputies are authorized to take from my
7 premise any letters, papers or other property which they
8 may desire. Written permission has been given -- this
9 written permission has given by me to the above named
10 sheriffs voluntarily without threats or promises of any
11 kind. And it is signed by both parties to give consent
12 and I'm one of the witnesses on there.

13 Q. Okay. Is Detective Reed the other witness?

14 A. Detective Reed is the other witness, yes, sir.

15 Q. Okay.

16 A. And he is the officer that executed the consent.

17 Q. Okay. And does this appear to be the original of
18 this document?

19 A. Yes, sir.

20 MR. STOUDEMIRE: Okay. And, Your Honor, at this
21 time we would move to have State's Exhibit Number 2
22 admitted into evidence.

23 THE COURT: Any objection?

24 MR. ROBINSON: No objection.

25 THE COURT: It will be admitted without objection.

1 (Whereupon, State's Exhibit Number 2 was admitted
2 into evidence.)

3 BY MR. STOUDEMIRE:

4 Q. Did you find anything in the residence that was
5 retrieved?

6 A. Yes, sir. From the doorway I could see a piece of
7 orange coming from a box. I didn't know what the box
8 was. A small piece of orange from the bottom left side.
9 Investigator Reed walked up to it and stated that this
10 where we're gonna -- this is the area he wanted to
11 check. And we retrieved a pistol. And I don't remember
12 if it was one or two magazines that property receipt or
13 the consent. I don't know the detail explanation on
14 that.

15 Q. Okay. Well, let's see. Let's read on State's
16 Number 2, the Defendant admitted. If you can, please,
17 just read exactly what was retrieved.

18 A. The following item -- the following is an inventory
19 of property taken pursuant to the search: A Taurus .40
20 caliber PT 140 probe with a serial number SCRAL, in
21 uniform 89393 with a mag loaded in speakers in living
22 room of trailer at [REDACTED] Jasmine Lane, Seneca, South
23 Carolina.

24 Q. Okay. And when you say you saw -- I'm gonna show
25 you in part, I guess it's two pieces of State's Exhibit

1 Number 9 that's been marked for identification. Do you
2 recognize this?

3 A. Yes, sir. The orange follower is what I was able
4 to see.

5 Q. Okay. And by followers, is that this orange tab at
6 the top of this?

7 A. Yes, sir. The thing the spring attaches to allow
8 the rounds to slide up the magazine.

9 Q. Okay. And what is this particular item?

10 A. The magazine which holds the rounds for the pistol.

11 Q. Okay. When you -- when you say rounds, we're
12 referring to bullets, correct?

13 A. Holds the bullets, yes, sir.

14 Q. Okay. And I'm also gonna show you the remainder of
15 what's been marked as State's Exhibit Number 8 for
16 identification. Do you recognize this item?

17 A. Yes, sir. I can verify it with the serial number
18 here.

19 MR. STOUDEMIRE: Okay. Your Honor, may I approach?

20 THE COURT: Yes, sir.

21 MR. STOUDEMIRE: Okay. And, again, Your Honor,
22 just for the Court's and Jury's information this item
23 has been rendered inoperable by the Oconee County
24 Sheriff's Office.

25 THE COURT: Okay. So noted.

1 THE WITNESS: That's the serial number that's on
2 the consent to search, yes, sir.

3 BY MR. STOUDEMIRE:

4 Q. Okay. So, after examining this weapon and its
5 Serial Number and based upon the Serial Number contained
6 on the consent to search, is this the actual weapon that
7 was retrieved from [REDACTED] Jasmine Lane in Seneca, South
8 Carolina?

9 A. Yes, sir.

10 Q. Okay. And it was retrieved in your presence,
11 correct?

12 A. Yes, sir.

13 MR. STOUDEMIRE: Okay. Your Honor, at this time we
14 would move to have State's Exhibit's Number 8 admitted
15 into evidence.

16 THE COURT: Any objection?

17 MR. ROBINSON: No objection.

18 THE COURT: Admitted without objection.

19 MR. STOUDEMIRE: Or excuse me, State's Exhibit
20 Number 9, I apologize.

21 THE COURT: Any objection to the magazine?

22 MR. ROBINSON: No objection.

23 THE COURT: Admitted without objection.

24 (Whereupon, State's Exhibit Number 9 was admitted
25 into evidence.)

1 BY MR. STOUDEMIRE:

2 Q. Deputy Robertson, is that your total involvement in
3 this case?

4 A. Yes, sir.

5 Q. And did you have anything else to do with the
6 investigation of this case in any way whatsoever?

7 A. No, sir.

8 MR. STOUDEMIRE: All right. That's all the
9 questions I would have for you, Deputy. If you could
10 please answer any questions Mr. Robinson may have.

11 THE COURT: Cross-Examination?

12 CROSS-EXAMINATION

13 BY MR. ROBINSON:

14 Q. Officer, the owner of the home was Ms. Pinson, is
15 that correct, or Mr. Baldwin?

16 A. The ones that told us they were the owner were the
17 ones that signed the consent to search from my
18 knowledge. That was set up by Investigator Reed. I was
19 just an officer called to help him.

20 Q. That was Mr. Baldwin and Ms. Pinson; is that right?

21 A. Pinson and Baldwin, yes, sir.

22 Q. And they were cooperative, correct?

23 A. Yes, sir.

24 Q. Okay. In terms of the gun that we are speaking of,
25 the gun, it was not loaded, was it?

1 A. I don't recall how the gun was in the box. I know
2 there was a magazine that was separate from the gun.
3 That's the orange part that I saw.

4 Q. And you could not tell whether or not it had been
5 used or not, could you?

6 A. No. I couldn't, no, sir.

7 MR. ROBINSON: That's all I have. Thank you.

8 THE COURT: Any Redirect?

9 MR. STOUDEMIRE: None, Your Honor. We would ask
10 that this witness be excused.

11 THE COURT: Any objection?

12 MR. ROBINSON: No objection, Your Honor.

13 THE WITNESS: Thank you, Judge.

14 THE COURT: You may be excused.

15 (Whereupon, Witness is excused.)

16 Would you call your next witness, please. How long
17 is your next witness?

18 MR. STOUDEMIRE: Your Honor, it should be fairly
19 short. We're checking to see if he's here. It should
20 be fairly short.

21 THE COURT: Your Honor, we would call
22 Dr. Brett Woodard of the Anderson Area Medical Center.

23 THE COURT: Okay.

24 DR. BRETT H. WOODARD,
25 Having first been duly sworn, was examined and testified

1 as follows:

2 DIRECT EXAMINATION

3 BY MR. STOUDEMIRE:

4 Q. Dr. Woodard, if you could, please, give us your
5 name for the record?

6 A. Brett Holten Woodard, W-o-o-d-a-r-d.

7 Q. Thank you. And Dr. Woodard, where are you
8 employed?

9 A. I'm employed at Piedmont Pathology Associates in
10 Anderson, South Carolina.

11 Q. And what is your current position with them?

12 A. I'm a pathologist and I have subspecialty training
13 in forensic pathology doing forensic autopsies for
14 coroners in Oconee, Anderson, Abbeville and Greenwood
15 Counties.

16 Q. Okay. Can you tell me a little bit about your
17 educational background?

18 A. I received a Baccalaureate degree from the
19 University of Pittsburgh, received my medical degree
20 from Tulane University in New Orleans. I did my
21 internship at the Charity Hospital in New Orleans. I
22 did residency training in pathology at Duke University
23 Medical Center in Durham, North Carolina. And I did
24 forensic pathology fellowship training at the North
25 Carolina medical examiner's office. I hold active

1 medical licensees in North Carolina, South Carolina and
2 Georgia.

3 Q. And how long have you worked in the field of
4 pathology, total?

5 A. Since 1980.

6 Q. Okay. And in the field of forensic pathology, part
7 of that?

8 A. Since 1982 when I came to Anderson, South Carolina.

9 Q. Okay. Have you ever been qualified as an expert
10 when you've come to court before?

11 A. Yes, I have.

12 Q. Okay. And in what fields have you been qualified?

13 A. In forensic pathology.

14 Q. Okay. Do you recall the number of times?

15 A. Hundreds of times in State Court and perhaps a
16 dozen times in Federal Courts.

17 MR. STOUDEMIRE: Your Honor, at this time the State
18 would move to have Dr. Woodard qualified as an expert in
19 the field of forensic pathology.

20 THE COURT: Any objection?

21 MR. ROBINSON: No objection, Your Honor.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, normally a witness is limited in their testimony
24 about what they see, heard, smelled and felt, generally
25 your senses. They're not allowed to give their opinion.

1 However, because of someone's experience or education or
2 a combination of the two if they become an expert in the
3 field they are allowed to give their opinion in that
4 field. In this case it's been stipulated that
5 Dr. Woodard is an expert in the field of forensic
6 pathology. He'll be allowed to give his testimony in
7 that field. His testimony it's like any other person's
8 testimony in this case, you can accept it, reject it or
9 do with it anything you feel like is appropriate. All
10 right, sir.

11 MR. STOUDEMIRE: Thank you.

12 BY MR. STOUDEMIRE:

13 Q. Dr. Woodard, in the course of your duties did you
14 have an occasion to perform an autopsy on a Quinton
15 Thomas?

16 A. Yes, sir, on May the 19th of 2011.

17 Q. And do your notes or reports list his date of
18 death?

19 A. His date of death was on May the 18th, 2011.

20 Q. Okay. Does it list where he died at all?

21 A. I know he died in Oconee County, the exact
22 location, I don't have an address location.

23 Q. Okay. That's fine. When you performed the
24 autopsy, you just tell us what injuries you observed to
25 him?

1 A. He had a solitary gunshot wound that entered the
2 left side of his chest about where the seam would be on
3 a man's shirt at the back of the armpit line. It went
4 through his chest. It started out low, it was in the
5 abdomen when it entered, went through the diaphragm, hit
6 the tip or the very lead edge of the heart, put a hole
7 in the art heart and then exited into the soft tissues
8 of the anterior chest breaking a rib when it came in,
9 breaking a rib as it tried to exit.

10 Q. Okay. And were you able to during the course of
11 your autopsy extract -- you said he suffered from a
12 gunshot. Were you able to extract the bullet or
13 projectile?

14 A. Yes. I ejected a partially copper clad led
15 projectile.

16 Q. Okay. And what did you do with it at that point?

17 A. I placed it into an evidentiary tube, labeled it,
18 sealed it, and it went with the other evidence to the
19 Ocone County Sheriff's Department.

20 Q. Okay. And the gunshot that Mr. Thomas suffered, is
21 that what caused his death?

22 A. Yes, it is.

23 Q. Okay. Any question in your mind about that?

24 A. No. It produced, literally just removed the tip of
25 the heart so it opened up one of the chambers of the

1 heart, the right ventricle of the heart so it would no
2 longer push blood into the proper direction, it would
3 just push it out into the area around the heart and the
4 area around the chest.

5 Q. Okay. And you said that the shot entered his body
6 somewhere?

7 A. About where the seam would be on a man's shirt or
8 jacket, what we call the posterior axillary line or the
9 back of the armpit if you were standing at attention
10 with your arms down by your sides and your thumbs on
11 your seams, so like they make you do in the military.
12 It would be behind the arm in that location.

13 It broke the 9th rib, entered the abdomen, entered
14 the chest, and took out the tip of the heart as it
15 passed to the front of the body, hitting two ribs higher
16 on the seventh rib, going upward approximately two and
17 three-eighths of an inch.

18 Q. Okay. And given the nature of this wound, it being
19 a gunshot, were you able to determine a manner of death?

20 A. Yes. The manner of death was homicide.

21 Q. Okay. Now, when you extracted the bullet, y'all
22 don't, your office doesn't do anything to determine
23 caliber or anything like that?

24 A. No. We turn that over to SLED. We look at it and
25 get a feel that if it's a very large caliber like .40

1 caliber or above or a very small caliber like a .22 or
2 .25 caliber bullet, but in the middle range the 380, the
3 9 millimeter, all those have to have specific weights
4 and measurements done with calibrating instruments.

5 Q. But SLED would do that?

6 A. That's correct.

7 Q. Okay. Did Mr. Thomas appear to have any other
8 injuries on him other than that one gunshot wound?

9 A. No, he did not. He had some injuries on his hand.
10 He had a couple scratches on his body that were
11 nonspecific and might be on any of us in a nonspecific
12 way that didn't indicate any kind of close physical
13 contact or interpersonal violence between two
14 individuals.

15 MR. STOUDEMIRE: Thank you, Dr. Woodard, I believe
16 that's all the questions I would have. Please answer
17 any questions Mr. Robinson might have.

18 MR. ROBINSON: I have no questions of the doctor.

19 THE COURT: May he be excused?

20 MR. STOUDEMIRE: We would ask that he be excused.

21 MR. ROBINSON: I have no objection.

22 THE COURT: All right. Thank you, sir. You may be
23 excused.

24 (Whereupon, the Witness was excused.)

25 Madam Forelady, ladies and gentlemen of the jury,

1 this is a good time to take an afternoon break. Let's
2 take about a 15-minute break and come back and resume
3 testimony, okay?

4 (Whereupon, the Jury left the courtroom at
5 approximately 3:23 p.m.)

6 THE COURT: Before we go to break, let's see you
7 guys up here, quickly, please.

8 (Whereupon, off-the-record discussion at sidebar
9 occurred.)

10 THE COURT: We'll be in recess for about 15
11 minutes.

12 (Whereupon, a recess was taken at 3:24 p.m.)

13 THE COURT: Anything from the State before we
14 proceed?

15 MR. STOUDEMIRE: Nothing, Your Honor.

16 THE COURT: From the Defense?

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

18 THE COURT: All right. Bring the jury in.

19 (Whereupon, the Jury entered the courtroom at
20 approximately 3:42 p.m.)

21 THE COURT: Mr. Stoudemire, is the State ready to
22 proceed?

23 MR. STOUDEMIRE: We are, Your Honor.

24 THE COURT: Call your next witness.

25 MR. STOUDEMIRE: Your Honor, we call Sergeant Kevin

1 Cain of the Oconee County Sheriff's Office.

2 KEVIN CAIN,

3 Having first been duly sworn, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. STOUDEMIRE:

7 Q. Sergeant Cain, good afternoon.

8 A. Good afternoon.

9 Q. Could you please for the record give us your full
10 name?

11 A. Kevin Cain, Sergeant Kevin Cain.

12 Q. And where do you work?

13 A. Oconee County Sheriff's Office.

14 Q. How long have you worked for the Sheriff's Office?

15 A. I'm going on eight years.

16 Q. Okay. Were you in law enforcement prior to coming
17 to the Sheriff's Office?

18 A. No, I was not.

19 Q. And what is your current title with the Sheriff's
20 Office?

21 A. I'm predominantly the criminal domestic violence
22 investigator and I also do violent crimes. We take
23 calls. Every so often we're scheduled and I'll take
24 whatever case arises if I am called out on my own.

25 Q. Okay. And tell us a little bit about the training

1 that goes into becoming a law enforcement officer.

2 A. I'm a graduate of the Criminal Justice Academy in
3 Columbia, South Carolina. I've had to complete that to
4 become an officer.

5 Q. Okay. And do you undergo various training and
6 legal updates from time to time as well?

7 A. Yearly legal updates on any changes on the laws and
8 new things that arise.

9 Q. Okay. And you go through those on a regular basis,
10 correct?

11 A. Yes, I do.

12 Q. Okay. And in addition to that do you go through
13 other training?

14 A. I go through advanced homicide training, suicide
15 training, tactical training, I'm a tactical instructor.
16 I've had criminal -- excuse me -- I've had
17 interrogation, I mean, excuse me, I've had interrogation
18 and interview technique training and several of the
19 things along those lines. I could go on a little ways
20 but that pretty much covers the broad.

21 Q. Okay. And during the course of your duties you
22 said y'all would be on call, so to speak, for
23 investigations during certain periods of time?

24 A. Yes, sir.

25 Q. Okay. Were you one of the investigators on call on

1 or about May 18th, 2011?

2 A. I was not the investigator on call, but if we have
3 an incident such as this one all of us are called out, a
4 majority of the investigators in our investigation
5 division are called out for a case like this.

6 Q. Okay. And when you say a case like this, what case
7 are we referring to?

8 A. A homicide investigation, a potential homicide.

9 Q. Okay. Now, I want to, I want to take you to May
10 18, 2011. Were you called out on an investigation that
11 day?

12 A. I was.

13 Q. And where were you called out on, what location?

14 A. Whittle's Trailer Park in Seneca, Oconee County,
15 South Carolina.

16 Q. Okay. And that is in Oconee, correct?

17 A. It is.

18 Q. Okay. And what type of investigation were you
19 called out on that day out there?

20 A. It was a homicide investigation. There had been
21 some shooting with some injuries.

22 Q. Okay. And with homicide does that mean there was a
23 death?

24 A. Yes, there was a death.

25 Q. Okay. And who had died?

1 A. Quinton Thomas, the one they refer to as Woo.

2 Q. Okay. And who had been shot?

3 A. Xavier Peeples and Quinton Thomas had been shot
4 that evening.

5 Q. Okay. And Xavier Peeples is that the individual
6 people refer to as Tug or Tuge?

7 A. It is. Tug, yes.

8 Q. Okay. And you say Quinton Thomas is commonly
9 referred to as Woo?

10 A. He is.

11 Q. Okay. When you arrived out at Whittle's Trailer
12 Park that day, were there other officers already on the
13 scene?

14 A. There were. I live farthest away from that
15 incident location of any of us, so it took me a little
16 longer.

17 Q. Okay. And was the investigation ongoing at that
18 time when you got there?

19 A. It was. There were already officers on the scene.
20 The scene was being secured, making sure everything was
21 safe, that people were safe and that there were already
22 some assignments that had been handed out at that point
23 from our Captain.

24 Q. Okay. When you got there, what did you do?

25 A. When I got there, I pulled in and I parked near [REDACTED]

1 Jasmine Lane and got out of the car, started walking up
2 the road. I was met by Investigator Gentry Hawk who
3 informed me that our Captain wanted us to go ahead and
4 interview or talk to two specific people, so we did.

5 Q. Okay. Who did -- and by [REDACTED], I'll show you on
6 this. See if you can point that on to me on State's
7 Number 7 you are talking about?

8 A. Right here. I was parked right there in the
9 roadway in the curve in front of the wooded area.
10 (Indicating.)

11 Q. Okay. And so [REDACTED] is the one marked with red is
12 [REDACTED]; is that correct?

13 A. Yes, sir.

14 Q. And you parked there in the roadway?

15 A. Yes, sir. Right there on the S curve.

16 Q. Okay. And so at that time you and Sergeant Hawk
17 went to speak with two individuals, correct?

18 A. We did. They had been placed in investigative
19 detention.

20 Q. Okay. And tell me what investigative detention is.

21 A. If we are suspecting someone of being involved in a
22 crime, we place them in investigative detention for our
23 safety and theirs. A lot of times we'll go ahead and
24 put them in a car, leave it on with the air on just to
25 secure them briefly.

1 Q. Okay. And who were the two individuals that were
2 in investigative detention on that day?

3 A. Shane Womack and Dametroise Moss.

4 Q. Okay. And Dametroise Moss would be the same
5 Dametroise Moss that's the Defendant in this case,
6 correct?

7 A. It is. Yes, sir.

8 Q. Okay. And where did you make contact with them?

9 A. Excuse me?

10 Q. Where did you make contact with Mr. Moss and
11 Mr. Womack?

12 A. They were in a -- they were in a patrol car in
13 investigative detention and we had gotten them out of
14 there one at a time.

15 Q. Okay. And when you got Mr. Moss out of the patrol
16 car what did you do?

17 A. Mirandized him. Gentry Hawk went over his *Miranda*
18 rights.

19 Q. I'm gonna show what's been marked as State's
20 Exhibit Number 1. Can you tell me what that document
21 is?

22 A. That is our Miranda form that we use at the Oconee
23 County Sheriff's Office.

24 Q. Okay. And why do you use that type of form?

25 A. Well, they can -- we can put the date, the place

1 that we did the Miranda with them, the time. It's kind
2 of separated in a way where there's a line and they can
3 initial each line that they've read and that there's a
4 place for them to sign at the bottom with a couple
5 witnesses and the time of completion.

6 Q. What's the procedure that you go through when
7 you're doing one of these forms with a witness?

8 A. Okay. What I like to do is I'll ask the person
9 that I'm going over the Miranda with to read the first
10 line out loud and make sure they can read and understand
11 that. I go ahead and tell them if they have any
12 questions to let me know. After they read that first
13 line, I tell them to read the rest of this Miranda.
14 They can read it silent, they can read it out loud, it
15 doesn't matter to me.

16 And then when they get to the end or during reading
17 it they can ask me, you know, anything they want to.
18 But when they're done I'll make sure they did understand
19 it. I ask, you know, you did understand what you read
20 and then I ask them, you know, if they want to sign it
21 and they go ahead and generally initial the side of each
22 line that they read that they've read and understood
23 that line.

24 Q. Okay. And is that the procedure you used when
25 going over Mr. Moss's rights with him?

1 A. Well Gentry Hawk and I went over that. Yes, that's
2 the way it would have been done, yes.

3 Q. Okay. Could you walk us through that form, if you
4 could, please, line by line and tell us whether or not
5 Mr. Moss acknowledged ---

6 A. Okay. "Before we ask you any questions you must
7 understand your rights." And to my left on this page
8 there's a line with DM initialed, which was Dametroise
9 Moss's initials.

10 The next line. "You have the right to remain
11 silent." Again it's initialed DM.

12 "Anything you say can be used against you in
13 court." That would be the next line that is initialed
14 DM.

15 "You have the right to talk to a lawyer for advice
16 before we ask you any questions and to have him with you
17 during questioning." Again, DM has been initialed there
18 on that line beside what I just read to you.

19 "If you cannot afford a lawyer one will be
20 appointed for you before any questioning if you wish."
21 Again that's initialed DM.

22 "If you decide to answer any questions now without
23 a lawyer present you will still have the right to stop
24 answering at any time." Again that's initialed DM.

25 And then here the last paragraph: "As I have read

1 this statement of my rights and I understand what my
2 rights are, I'm willing to make a statement and answer
3 questions. I understand, though, what I am doing. No
4 promises or threats have been made to me or no pressure
5 or coercion of any kind has been used against me."

6 Again, that line has been initialed DM.

7 Right below that Mr. Moss, signed Dametroise Moss
8 two witnesses which would be myself and Gentry Hawk.

9 Q. Okay. And Mr. Moss did his signature on that,
10 correct?

11 A. He did.

12 Q. Okay. What's the date on that document?

13 A. The date is 5-19-11.

14 Q. Okay. And does it give a time when that document
15 was started and when it was completed?

16 A. It was started just a few seconds after midnight.
17 It was completed at three minutes after midnight.

18 Q. Okay. So it took about three minutes to go through
19 it and sign it?

20 A. Yes, sir.

21 Q. Okay. And based on your impressions of Mr. Moss at
22 that time and going through the document, did he appear
23 to understand everything that was going on?

24 A. He did. We made sure he did, yeah.

25 Q. Okay. And this -- is this the original State's

1 Exhibit Number 1?

2 A. It is.

3 MR. STOUDEMIRE: Okay. Your Honor, at this time
4 the State would move to admit State's Exhibit Number 1
5 into evidence.

6 THE COURT: Any objection?

7 MR. ROBINSON: No objection.

8 THE COURT: Admitted without objection.

9 (Whereupon, State's Exhibit was previously admitted
10 into evidence on day one of trial.)

11 BY MR. STOUDEMIRE:

12 Q. Thank you. Now, while you were there with
13 Mr. Moss, did you gather any physical evidence from him
14 at that time as well?

15 A. We did. After the Miranda we did a consent to
16 search with Mr. Moss, went over that with him, and then
17 a gunshot residue kit was performed on Mr. Moss's hands.

18 Q. Okay. I'm gonna show you now what's been marked as
19 State's Exhibit Number 3. Can you tell me what that
20 document is?

21 A. Yes. This is the consent to search dated 5-19-11,
22 done in Whittle's Trailer Park in Seneca.

23 Q. Okay. And who was that consent to search done on?

24 A. Dametroise Moss.

25 Q. Okay. And does it specify what the consent to

1 search is for?

2 A. It's gonna be for a gunshot residue kit.

3 Q. Okay. And it says that on the form?

4 A. It does.

5 Q. Okay. Can you go ahead and read through that form
6 and let us know what that contains?

7 A. Okay. I, Dametroise Moss, having been informed of
8 my Constitutional right not to have a search made of the
9 -- and I've marked out premises and written person --
10 hereinafter mentioned without a search warrant of my
11 right to refuse to consent to such a search hereby
12 authorize Sergeant Cain and Sergeant Hawk Deputy
13 sheriffs of Oconee County, South Carolina to conduct a
14 complete search of my -- again I've marked out premises
15 and put person -- located at -- it's written for a GSR
16 kit below that.

17 These Deputies are authorized by me to take from my
18 premise or premises any letters, papers, which really
19 doesn't apply to this, or other property which they may
20 desire. The written permission is being given by me to
21 the above named Deputy sheriffs voluntarily and without
22 promises or threats of any kind. And Mr. Dametroise
23 Moss has signed that there.

24 Q. Okay. And, again, is there a date on that?

25 A. There is, 5-19-11.

1 Q. Okay. Is there a time on that particular form?

2 A. No there is not, but it was done right then at
3 Whittle's Trailer Park. There's an address.

4 Q. Okay. And that was done in the presence of you as
5 well, correct?

6 A. Yes. My name's at the bottom there.

7 Q. Okay. And is this the original of this document?

8 A. It is.

9 MR. STOUDEMIRE: All right. Your Honor, at this
10 time we would move to have State's Exhibit Number 3
11 admitted into evidence.

12 THE COURT: Any objection.

13 MR. ROBINSON: No objection, Your Honor.

14 THE COURT: Admitted without objection.

15 (Whereupon, State's Exhibit Number 3 was admitted
16 into evidence.)

17 BY MR. STOUDEMIRE:

18 Q. Okay. And after doing that consent to search you
19 did a GSR kit on Mr. Moss, correct?

20 A. That's correct.

21 Q. Okay. Was there one done on Mr. Womack as well?

22 A. There was one done on Mr. Womack.

23 Q. How does one go about doing a GSR kit, if you could
24 explain.

25 A. There's a kit that we get from a company that makes

1 these kits. I have one laying on the floor right there.
2 If you want to hand it to me I'll show you.

3 Q. Is it this one of them?

4 A. It is.

5 MR. STOUDEMIRE: Okay. Your Honor, may I approach?

6 THE COURT: Yes.

7 BY MR. STOUDEMIRE:

8 Q. Go ahead.

9 A. This is a new kit that has not been used and
10 opened. I'll go ahead and open it and show you. If you
11 will open this kit just to see, and there are several
12 things in this kit. I'm just gonna pour it out right
13 here. I don't do this, but...

14 All right. You have a piece of tape to close it
15 back and secure it once you're done with it and you date
16 that, okay? I'll set all these out, which these are,
17 I'm just gonna put it in laymen's terms for you. These
18 are little stickies inside these, and I'll show you
19 that, where I'll dab on these little holders right here
20 are what I just said. They're holders. You'll have one
21 for the left palm, the right palm, the left back of
22 hand, the right back of hand, and you have a control
23 which would be you may raise their britches leg up and
24 you would take these with a solution on them, these
25 Q-tips and you would rub it on that control. But you do

1 two of these for each container, okay? And then you put
2 them back in that container.

3 You also have one if you are able to get a
4 cartridge or casing right there, you know, if it's
5 available you can also swab that with two of the Q-tips.
6 And, again, all of these take two. So, basically, I'll
7 take this, which is a type of 5 percent nitric acid. I
8 pour it all in here. I get these kind of saturated, and
9 I'll take, if I'm doing the left back right here, I go
10 ahead, after I've put gloves on that's provided in the
11 kit, I hold them in my fingers, I'll open in this way,
12 I'll do what I need to do, I stick them in here without
13 ever touching my hands and close it back. I've got it
14 right where I need it. And I go through the whole thing
15 that way, okay?

16 The same on the shell casing and the control which,
17 again, you would raise up a part where try to get a
18 clean area on their body to get a control. These little
19 containers right here, you just pull the top off and
20 that little black pad is very sticky. And you take it,
21 and this is the left palm, so I would go all over the
22 left palm with this, okay? And, again, you have it for
23 the left back, the right back and the right palm.

24 You have a paper, I don't want to go through the
25 whole thing with you. It's collecting officer, what

1 type of incident it was, there were a few things. If
2 you've got a subject's name. If they were right-handed,
3 left-handed, maybe some occupations, hobbies. SLED just
4 likes to have that stuff. Write a brief description of
5 subject's activity between the time of the shooting and
6 the time of the GSR, if you can get that.

7 And, again, if there's a casing, you know, that's
8 readily available that you know goes with that GSR, you
9 know, the person you are doing that on, if you know it
10 right then, you can take that shell casing and there's a
11 circle right here and you'll draw, literally we draw
12 that out. You'll put the center where the firing pin
13 hit. It's off center a little bit. You need to write
14 whether it was a Remington or whatever kind of shell it
15 was. But you close this back up, you seal it, we submit
16 it to our evidence technician and it's taken to SLED.

17 Q. Okay. And those kits were done both for Mr. Moss
18 and for Mr. Womack; is that correct?

19 A. Yes.

20 Q. Okay. Now, you said that you were -- there's a
21 container for you to gather a shell casing if one is
22 available. Where did you make contact with Mr. Moss and
23 Mr. Womack? Where at the trailer park, I should say.

24 A. They were just above where I parked at.

25 Q. Okay. In which direction?

1 A. They were probably around, if I remember correctly,
2 around [REDACTED] to [REDACTED] on up in that area.

3 Q. Were there any shell casings right around them that
4 you could gather at that point?

5 A. No, there was not.

6 Q. Okay. So you didn't -- is it fair to say you
7 didn't gather a shell casing with the GSR kit?

8 A. I didn't. We did not.

9 Q. Okay. But all the other, left-hand, both palm and
10 back, right-hand both palm and back, and a control from
11 another part of the body, all that was gathered and
12 placed in the kit to send off for processing, correct?

13 A. It was.

14 Q. Okay. And that was on Mr. Womack and on Mr. Moss?

15 A. It was. Can I put this back?

16 Q. Absolutely.

17 A. (Whereupon, Witness puts materials back in bag.)

18 Q. Okay. Now, with regard to the victims in this
19 case, Mr. Peeples and Mr. Thomas, were you able to
20 gather gunshot residue kits from either of them?

21 A. Mr. Quinton Thomas a GSR was done on him. I did
22 not do that. That would have been at the medical
23 center. Their hands would be bagged before they leave
24 the scene if possible to protect that.

25 Mr. Xavier Peeples, the other victim, we were not

1 able to get one on him. He had been transported and was
2 in really bad shape, ended up being taken to Greenville
3 Hospital and they basically wouldn't let us see him due
4 to his condition. Didn't get down there until a later
5 date, a few days later, but it's too late. There's a
6 timeline on taking a GSR off of somebody.

7 Q. Okay. So Mr. Thomas's hands were bagged and a GSR
8 kit was performed on him?

9 A. Yes.

10 Q. Okay. And were all of those -- were all three of
11 those GSR kits sent down to SLED for processing?

12 A. They were, yeah.

13 Q. Okay. Now, after you did these things with
14 Mr. Moss and Mr. Womack, did those two individuals
15 remain in investigative detention at the scene?

16 A. They did, yes.

17 Q. Okay. How long did they remain there?

18 A. It wasn't very long. I wasn't on scene for a long
19 time. We ended up, they were transported to the Oconee
20 County Sheriff's Office.

21 Q. Okay. Were you able to determine about what time
22 they were transported to the Sheriff's Office?

23 A. I don't know exactly what time they were
24 transported, maybe one-ish on 11-19, somewhere in there.

25 Q. When we're saying one-ish, somewhere around 1 a.m.?

1 A. Yeah. Yeah, 1 a.m. I'm not sure on that.

2 Q. Okay. So around an hour or so after you first made
3 contact with them?

4 A. Yeah, approximately.

5 Q. Okay. Now, what else did you do on the scene that
6 night out at Whittle's Trailer Park?

7 A. I predominantly dealt with those two individuals,
8 is what I do, and they ended up leaving after that. I
9 walked just for a few minutes around up to the top of
10 the hill to where my Captain was toward where the
11 shooting had taken place and just looked briefly up
12 there and that pretty much was my extent on the scene.

13 Q. Okay. When you walked up -- when you say I walked
14 up to the top of the hill, is that towards [REDACTED]?

15 A. Yeah. I walked up near [REDACTED] and it had been, crime
16 scene tape had been put out around that area up there
17 between -- around the telephone pole and [REDACTED].

18 Q. Okay. I'm gonna show you what's been marked as
19 State's Exhibit 1.16. Can you tell me what that's a
20 photograph of?

21 A. This is gonna be at [REDACTED] and there's a -- this is
22 mobile home and there's a, I call it a tongue sticking
23 out of the front of the trailer one end. And that's
24 where there were a lot of shell casings found in that
25 area between that trailer and a light pole the side of

1 that trailer.

2 Q. Okay.

3 A. And that's what those markings are. That's what
4 our crime tech puts down and they're numbered and put
5 those beside pieces of evidence.

6 Q. All right. And this photograph, does it fairly and
7 accurately depict the [REDACTED] Jasmine Lane the way it
8 appeared when you were on the scene on May 18th and the
9 early morning hours of May 19th?

10 A. It does.

11 Q. Okay. Does it appear to be changed or altered in
12 any way whatsoever?

13 A. No, sir.

14 MR. STOUDEMIRE: Okay. Your Honor, we would move
15 to have State's Exhibit 1.16 into evidence.

16 THE COURT: Any objection?

17 MR. ROBINSON: No objection.

18 THE COURT: Admitted without objection.

19 (Whereupon, State's Exhibit Number 1.16 was
20 admitted into evidence.)

21 MR. STOUDEMIRE: Your Honor, may I publish this?

22 THE COURT: Yes, sir.

23 BY MR. STOUDEMIRE:

24 Q. You said there were a lot of shell casings in that
25 area around [REDACTED]?

1 A. Yes, sir.

2 Q. Okay. I'm going to show you what's previously been
3 marked as State's Exhibit 10.1 through 10.19. Can you
4 go ahead and take a minute and look at those and see if
5 you can identify what those items are.

6 A. On the front of this you'll have, it says evidence,
7 do not tamper. It will have the case number, the date,
8 the person it was collected by, the description of -- it
9 has [REDACTED] Jasmine Lane at each end of the mobile home near
10 crime scene tape which would be one .40 caliber shell
11 casing. And it's sealed off with blue tape.

12 Q. Okay. And is that the way that your office
13 collects evidence to process it and hold it in evidence
14 for testing at SLED?

15 A. It is. The shell casings would be inside the box.

16 Q. Okay. So these are already shells that have been
17 tested and returned to your office?

18 A. Yes.

19 Q. Okay. Can you briefly go through and let me know
20 how many items there are in there?

21 A. I can.

22 Q. And while you're doing that, see if they were
23 gathered from any location other than right around [REDACTED]
24 Jasmine Lane.

25 A. I've got a few right here. One of them will say --

1 one of them saying casing closest to residence, one .40
2 caliber shell casing under description. Casing closest
3 to light pole. And those three are marked that way.
4 All the others are [REDACTED] Jasmine Lane.

5 Q. Okay. And where were these items collected? Were
6 all of them collected on May 19th of 2011?

7 A. They were.

8 Q. Okay. And were all those items collected as a part
9 of the investigation in this case from Whittle's Trailer
10 Park?

11 A. They were.

12 Q. Okay. And were all items collected in accordance
13 with the Sheriff's Office's normal procedures in
14 gathering evidence of this type to safeguard it and make
15 sure it was not damaged?

16 A. Yes, sir.

17 Q. Okay. And were all of these items sent down for
18 SLED for evidence processing at a later date?

19 A. Yes, sir.

20 MR. STOUDEMIRE: Your Honor, at this time the State
21 moves to admit State's Exhibits marked 10.1 through
22 10.19.

23 THE COURT: Any objection?

24 MR. ROBINSON: No objection, Your Honor.

25 THE COURT: Admitted without objection.

1 (Whereupon, State's Exhibits 10.1 through 10.19
2 were admitted into evidence.)

3 BY MR. STOUDEMIRE:

4 Q. Now, Sergeant Cain, during the course of the
5 investigation in this matter, in addition to the victims
6 Mr. Peeples and Mr. Thomas were there any other people
7 that the Sheriff's Office classified as victims in this
8 case with their homes being shot at or into or anything
9 like that?

10 A. Yes, sir. There were [REDACTED] and [REDACTED] had rounds that
11 had went into those residences.

12 Q. Okay. And [REDACTED], I believe, Carole Gibson testified
13 earlier that's where she lives, correct?

14 A. That's right, Carole Gibson.

15 Q. Okay. And the Monahan family lives at [REDACTED]; is that
16 correct?

17 A. Yes, that's correct.

18 Q. Okay. And do you know if the evidence portion of
19 the Sheriff's Department attempted to or was able to
20 gather projectiles from any of those residences?

21 A. Yes, sir. Our evidence technicians did go back out
22 and were able to extract projectiles, one from each
23 residence, and took a computer from [REDACTED] which in the
24 next, in the near future another projectile was taken
25 out of it, which it was sitting inside of [REDACTED].

1 Q. Okay. I'm gonna show you now what's been marked as
2 State's Exhibits 11.1 through 11.4. Can you just look
3 through those and tell me what they are qualified as?

4 A. This is one of the copper coated projectiles found
5 on Jasmine Lane. One of these were on a roadway just a
6 little ways above where my car was parked. Copper
7 coated projectile from left side of hallway to right of
8 bathroom door. And [REDACTED] Jasmine Lane.

9 Q. Okay.

10 A. And a copper coated projectile recovered from
11 Princeton 17-inch color monitor, which is the computer I
12 spoke of that came out of [REDACTED] Jasmine Lane. And then
13 projectile inside bedroom hall, which this one was gonna
14 be the one out of [REDACTED]

15 Q. [REDACTED] Jasmine Lane?

16 A. Yeah.

17 Q. And that would be the Monahans' house?

18 A. Yeah.

19 Q. Okay. And, again, were all these projectiles
20 gathered in accordance with the Sheriff's Department
21 normal procedure for gathering evidence?

22 A. Yes.

23 Q. Okay. And were they all packaged up properly for
24 safekeeping in evidence until they could be transported
25 to SLED for testing?

1 A. Yes.

2 Q. Okay.

3 A. They're all sealed with blue tape.

4 MR. STOUDEMIRE: Okay. And, Your Honor, at this
5 time the State would move to admit items 11.1 through
6 11.4 into evidence.

7 THE COURT: Any objection?

8 MR. ROBINSON: No objection, Your Honor.

9 THE COURT: It will be admitted without objection.

10 (Whereupon, State's Exhibits 11.1 through 11.4 were
11 admitted into evidence.)

12 BY MR. STOUDEMIRE:

13 Q. Next, Sergeant Cain, you said that earlier you were
14 not able to gather GSR from Mr. Peeples because he was
15 being transported for medical treatment; is that
16 correct?

17 A. That's right.

18 Q. Okay. Were you able to go down to the hospital
19 where he was at a later time?

20 A. I did. I went on the 23rd on 5-23-2011.

21 Q. Okay.

22 A. Just a few days after the incident.

23 Q. Okay. And was and Mr. Peeples still at the
24 hospital at that time?

25 A. He was.

1 Q. Okay. Was -- did you gather any evidence while you
2 were down at the hospital?

3 A. Um, we took a statement from him. Neal Brown,
4 Sergeant Neal Brown was with me then and photographed
5 his injuries.

6 Q. Okay.

7 A. And the next day we went back, I don't believe it
8 was ready or we needed some different paperwork. We
9 went back and went to their, I guess you call it narrow
10 little department where they hold things that we're
11 gonna pick up, and we picked up a projectile.

12 Q. Okay. And was that a projectile that had been
13 recovered from?

14 A. From Xavier Peeples, yes.

15 Q. Okay. From his body?

16 A. Yes.

17 Q. Okay. I'm gonna show you what's been marked
18 previously as State's Exhibit Number 5. I know it's in
19 an envelope but can you identify that item for me?

20 A. Plastic cup containing one projectile from Xavier
21 Peeples. And when we did pick these up they packaged
22 these in a round container. And I'm not looking in it
23 but it feels like a plastic container.

24 Q. Okay. And that's been, that's been sealed,
25 correct?

1 A. Yes, it's been sealed.

2 Q. Okay. And was that gathered by you for evidence
3 and safekeeping?

4 A. Yes. It was taken back to the Sheriff's Department
5 and submitted into evidence.

6 Q. Okay. And that was later sent down to SLED for
7 processing?

8 A. Yes, it was.

9 MR. STOUDEMIRE: Okay. Your Honor, we would move
10 to have State's Exhibit Number 5 admitted into evidence.

11 MR. ROBINSON: No objection.

12 THE COURT: Admitted without objection.

13 (Whereupon, State's Exhibit Number 5 was admitted
14 into evidence.)

15 MR. STOUDEMIRE: Thank you.

16 BY MR. STOUDEMIRE:

17 Q. And also, Sergeant Cain, Quinton Thomas was shot as
18 well, correct?

19 A. Yes, he was.

20 Q. Dr. Woodard testified earlier he extracted from
21 Mr. Thomas, correct?

22 A. Yes.

23 Q. Okay. I'm showing you what, I believe, has been
24 marked as State's Exhibit Number 6?

25 A. Yes.

1 Q. State's Exhibit Number 6. Can you identify what
2 that item is?

3 A. It is marked as tube containing projectile from
4 victim's left chest.

5 Q. Okay. And you said they usually put these
6 projectiles in a little tube; is that correct?

7 A. No. At Greenville Hospital they do when I've
8 picked them up there. Now, this is also, this is in a
9 different style tube but it is still in a tube.

10 Q. Okay. Are there any markings on that tube that
11 would indicate who gathered that and when it was
12 gathered?

13 A. This is, it says Quinton T. Thomas, which would
14 have been the victim, outside autopsy, Brett H. Woodard,
15 5-19-11.

16 Q. Okay. And was that the date of this incident?

17 A. It was the day after the incident.

18 Q. A day after the incident. And was this item
19 gathered in accordance with the Sheriff's Department
20 SLED procedures on gathering ballistic evidence?

21 A. It looks like it was, yes.

22 Q. Okay. And would this item have been gathered in
23 connection with this investigation to go down for SLED
24 processing?

25 A. Yes.

1 MR. STOUDEMIRE: Your Honor, at this time we would
2 move to have State's Exhibit Number 6 admitted into
3 evidence.

4 MR. ROBINSON: No objection.

5 THE COURT: Admitted without objection.

6 (Whereupon, State's Exhibit Number 6 was entered
7 into the record.)

8 BY MR. STOUDEMIRE:

9 Q. Okay. Now, going back in time a little bit,
10 Sergeant Cain, back to the evening and early morning
11 hours of May 19th, after you finished talking with
12 Mr. Moss and gathering that GSR that you say was
13 transported to the Oconee County Law Enforcement Center,
14 correct?

15 A. Yes.

16 Q. Okay. And you had already Mirandized him at that
17 point, correct?

18 A. Yes. Just after midnight on the 19th.

19 Q. Okay. While he was at the Law Enforcement Center,
20 did you have occasion again to speak with Mr. Moss?

21 A. Yes.

22 Q. Okay. And was this a quick conversation or
23 lengthy?

24 A. It went a little while. He was, he was booked in
25 right before 5 a.m. on the 19th, the morning of the

1 19th, so...

2 Q. Okay. After he was booked in, did you or the other
3 officers immediately get him out and start talking to
4 him?

5 A. No. It was approximately 1:45 in the afternoon, so
6 he had about eight to nine hours for them to do that
7 which doesn't take a long time, I don't believe. And he
8 would have been detained in a cell at that time so he
9 was able to rest up for the day.

10 Q. Okay. And during the course of the day on May
11 19th, did you and other officers interview Mr. Moss?

12 A. He was gotten back out that afternoon, yes, he was
13 interviewed again.

14 Q. Okay. Was it a continuous interview or were there
15 breaks?

16 A. We gave probably almost a two-hour break again that
17 afternoon. I'm just guesstimating, but it was a good
18 while. If we have somebody out of the jail and it's
19 around dinnertime, we'll get them something to eat and
20 let them, you know, chill out a little while. And we
21 were discussing some things that evening so we had
22 gotten him something to eat and letting him just rest a
23 little while.

24 Q. Now, at this time when y'all were interviewing
25 Mr. Moss and he was in custody, had you recovered a

1 weapon from the scene at all or weapons?

2 A. No. We had recovered one, the revolver that was at
3 ■ that was lying on the ground but the other one had
4 not been recovered.

5 Q. Okay. And when you say the other one, what were --
6 were there some things that led you to believe there was
7 another weapon involved?

8 A. Yeah. Just the investigation led us to believe
9 that finally 19 shell casings that did not come from the
10 revolver we found that we knew there was another weapon
11 involved.

12 Q. Okay. And during the time you spoke to Mr. Moss at
13 any time during that day was he able to give you any
14 insight as to where that weapon might be?

15 A. It was. He spoke with me and advised me where that
16 weapon was located at.

17 Q. Okay. Where did he tell you that weapon was
18 located?

19 A. He said it was at his wife's trailer in Whittle's
20 Park Drive. I believe it was ■, Corbrina Pinson was
21 her name, and it was inside the trailer in the living
22 room at the back of a speaker box.

23 Q. Okay.

24 A. With a clip that went with that gun.

25 Q. Okay. And based on that information he gave you,

1 was your office able to eventually recover anything from
2 [REDACTED] where Ms. Pinson was living?

3 A. Yes. Right after he disclosed that information to
4 myself, Lieutenant Reed, who is Captain Reed now, and
5 the officer you heard from earlier, Master Patrol Deputy
6 Philip Robertson, they met at Whittle's Trailer Park and
7 gained, you know, they did a consent form they spoke of
8 and they went in and they did locate that weapon.

9 Q. Okay. And that was recovered and placed into
10 evidence as well?

11 A. It was.

12 MR. STOUDEMIRE: Your Honor, if I may have just a
13 moment?

14 THE COURT: Yes, sir.

15 MR. STOUDEMIRE: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. STOUDEMIRE: Sergeant Cain, that's all the
18 questions I would have for you. Please answer any
19 Mr. Robinson may have.

20 THE COURT: Cross-Examination?

21 CROSS-EXAMINATION

22 BY MR. ROBINSON:

23 Q. So you would agree that Mr. Moss was cooperative?

24 A. Yes, he -- at first he wasn't, but he ended up
25 being more cooperative toward the end of that day.

1 Q. Now, the -- so the GSR produced no, nothing on
2 Shane Womack, right?

3 A. No, it did not.

4 Q. Okay. But there was a GSR on Mr. Moss, correct?

5 A. Yes, there was.

6 Q. Okay. So when Mr. Womack was being chased by
7 Mr. Peeples, commonly referred to as Tug, he was
8 unarmed, no gun, correct?

9 A. Not that I know of.

10 Q. So he was unarmed being chased by Tug down the
11 trailer park with a gun and a knife before that,
12 correct?

13 A. Say that one more time.

14 Q. You would agree with me that he was unarmed, Shane
15 Womack was unarmed when he was being chased by the
16 trailer park by Tug, Xavier Peeples, there was no GSR on
17 his hands?

18 A. That would mean he didn't shoot a weapon.

19 Q. Right.

20 A. If he didn't have any GSR, not that he was possibly
21 unarmed, but he did not -- it wasn't shown that he fired
22 a weapon through the results of that. Is that what you
23 were asking?

24 Q. Yes.

25 MR. ROBINSON: That's all I have, sir.

1 THE COURT: Any redirect?

2 MR. STOUDEMIRE: No, Your Honor.

3 THE COURT: You may step down, Officer.

4 THE WITNESS: Thank you, Judge.

5 (Whereupon, Witness leaves witness stand.)

6 THE COURT: Mr. Stoudemire, do you have another
7 witness this afternoon?

8 MR. STOUDEMIRE: None for this afternoon, Your
9 Honor. Everybody else I've got scheduled for tomorrow
10 morning.

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, I'm gonna go ahead and we're gonna break today.
13 The other witnesses we have coming in were scheduled to
14 come in tomorrow from out of town, so I'm gonna go ahead
15 and excuse you a few minutes early. Does anybody have
16 any problem being here tomorrow at 9:30?

17 (No response.)

18 Very good. I'm gonna remind you please not to
19 speak with anybody about this case or amongst
20 yourselves. But I'm gonna excuse you for the afternoon.
21 With that. Thank you.

22 (Whereupon, the Jury left the courtroom at
23 approximately 4:31 p.m.)

24 THE COURT: Before we break down this afternoon,
25 anything from the State that I need to take up?

1 MR. STOUDEMIRE: Nothing, Your Honor.

2 THE COURT: From the Defense?

3 MR. ROBINSON: Nothing at this time, Your Honor.

4 THE COURT: You mentioned earlier having some
5 requests to charge, Mr. Robinson.

6 MR. ROBINSON: Yes, Your Honor.

7 THE COURT: Okay. Would you pass those forward?

8 MR. ROBINSON: They're in writing. I wrote them
9 down at lunchtime. I can get them typed up for you and
10 bring them in tomorrow for this case.

11 THE COURT: Okay. Let me ask you guys something.
12 Just food for thought. In going over things with my
13 clerk earlier after lunch break about the charges on the
14 law, I know that you have raised the issues of
15 self-defense and the issue of defense of others as the
16 affirmative defenses that you are raising in this case.
17 And this is just purely based on where we are at this
18 point in trial, and I don't know what the evidence may
19 present later, but is there any suggestion from the part
20 of the defense that there should be a charge on a
21 transferred self-defense?

22 MR. ROBINSON: I think that's ---

23 THE COURT: You don't have to answer. I'm just, if
24 you have an idea, I'm just...

25 MR. ROBINSON: Typically not. I only think in

1 terms of defense of others as self-defense.

2 THE COURT: How it's applicable to that.

3 MR. ROBINSON: Yeah.

4 THE COURT: And that's what -- and this is
5 obviously early and we've got a lot more to go. But my
6 thought was that at least where we are at this juncture,
7 that to the extent it's applicable, the self-defense
8 charge would only be charged as it relates to the
9 defense of others in relation to Mr. Womack, and that's
10 just based on where we are now.

11 MR. ROBINSON: Yes, sir.

12 THE COURT: So the reason I'm saying that is I'm
13 working my law clerk up here, as either of you know, I'm
14 having him work on these charges. So I've got some
15 ideas anyway. What's your thoughts about that, too? We
16 will found one case from '77 that had to do with
17 transferred self-defense, it's not been adopted here. I
18 don't see that really being really applicable.

19 MR. STOUDEMIRE: Judge, I think based on what we've
20 got now I think Mr. Robinson has an argument for defense
21 of others. Anything beyond that I'm not sure why at
22 least at this stage of the game.

23 THE COURT: Right. Well and the reason I say that,
24 if you start looking at defense of others it refers back
25 to self-defense in the charge itself.

1 MR. STOUDEMIRE: Yes, sir.

2 THE COURT: Okay? That being said, just give you
3 some food for thought. I know you don't have anything
4 else to be doing tonight anyway.

5 MR. ROBINSON: I really don't, Your Honor. I was
6 just thinking about what I'm gonna do.

7 THE COURT: Right. Right.

8 MR. ROBINSON: Your Honor, I did mention at the
9 side-bar we had a minute ago about the, about another
10 charge which is the State v. Fuller, which is 297 S.C.
11 440, 377 S.E.2d 328. I can talk slow. Okay, that's
12 regarding the ability of the Defendant to act on
13 appearances.

14 THE COURT: And we looked that up. And that falls
15 under the elements of self-defense and also the elements
16 of defense of others. So tell you what -- well, we'll
17 go over those tomorrow and then I don't know where we'll
18 end up. But it may be we'll end up charging Thursday
19 morning. I don't know. I don't know how much testimony
20 we can get. But I do think that the charge conference
21 needs to be a little bit more than a pro forma charge
22 conference based on there are not just clean cut issues
23 in this case.

24 MR. ROBINSON: Yes, sir.

25 THE COURT: All right gentlemen, I'll see you in

1 the morning. We start at 9:30.

2 (Whereupon, Court adjourned at 4:45 p.m.)

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5 --- THIS ENDS SECOND DAY OF TRIAL ---

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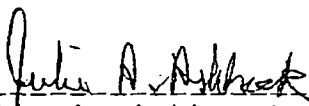
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1 CERTIFICATE OF REPORTER
2

3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Thirteenth Judicial Circuit Family
5 Court of the State of South Carolina, do hereby certify
6 that the foregoing is a true, accurate, and complete
7 transcript of record to the best of my abilities of all
8 the proceedings and evidence introduced in the hearing
9 and/or trial of the captioned case, relative to appeal,
10 in the Circuit Court for Oconee County, South Carolina,
11 on the 24th day of July, 2012.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15

16 
17 _____
18 Julie A. Ashbrook
19 Family Court Reporter
20 Thirteenth Judicial Circuit
21
22
23
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25

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2 STATE OF SOUTH) IN THE COURT OF GENERAL
CAROLINA) SESSIONS
3)
4 COUNTY OF OCONEE) INDICTMENT NO: 2011-GS-37-764
2011-GS-37-765,
2012-GS-37-401
5

6 STATE OF SOUTH)
7 CAROLINA)
8 PLAINTIFF,) TRANSCRIPT OF RECORD
9 -vs-) TRIAL - VOLUME III
10)
DAMETROISE MOSS,)
11 DEFENDANT.)

12 July 25, 2012
13 WALHALLA, SOUTH CAROLINA
14

15 B E F O R E:

16 THE HONORABLE R. LAWTON MCINTOSH, JUDGE; AND A JURY.
17

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

19 BLAIR STOUDEMIRE, ESQ.
DEPUTY 10TH CIRCUIT SOLICITOR
20 ATTORNEY FOR THE STATE

21 SCOTT ROBINSON, ESQ.
ATTORNEY FOR THE DEFENDANT
22

23
24 ROBIN SUE HILD, FCRR, RPR
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POST OFFICE BOX 9
25 WALHALLA, SC 29691

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1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **

2 (WHEREUPON, THE TRIAL IN THE MATTER OF THE STATE OF
3 SOUTH CAROLINA VERSUS DAMETROISE R. MOSS, DAY THREE
4 WITH ALL PARTIES BEING PRESENT, ON WEDNESDAY JUNE
5 25, 2012, AT APPROXIMATELY 9:32 A.M.)

6 THE COURT: Please be seated. (One juror not
7 present.)

8 Good morning, gentlemen.

9 MR. STOUDEMIRE: Good morning.

10 THE COURT: My understanding is that we still have
11 one juror yet to make it so we'll give him a minute.
12 While we're waiting, anything further? Anything from
13 the State I need to deal with before we resume
14 testimony?

15 MR. STOUDEMIRE: No, sir.

16 THE COURT: From the Defense?

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

18 THE COURT: All right. Let's just be at ease for a
19 minute until we get everybody here.

20 MR. ROBINSON: Yes, sir.

21 THE COURT: My understanding everybody is here.
22 Have you got your exhibits marked and ready to go?

23 MR. STOUDEMIRE: I think we've got everything, yes,
24 sir.

25 THE COURT: Mr. Robinson, anything from the

1 Defense?

2 MR. ROBINSON: No, sir, Your Honor, ready to go.

3 THE COURT: Would you bring the jury in?

4 (Whereupon, the Jury entered the courtroom at
5 approximately 9:38 a.m.)

6 THE COURT: Good morning. Madam Forelady, ladies
7 and gentlemen of the jury, we're about to resume
8 testimony in the State's case.

9 Before we do I'm gonna ask each and every one of
10 you if anyone read, heard or spoke with anyone about
11 this case while we were out of session?

12 THE JURY: (No.)

13 THE COURT: I didn't think so.

14 All right. Mr. Stoudemire, would you call your
15 next witness.

16 MR. STOUDEMIRE: The State would call Captain Greg
17 Reed.

18 CAPTAIN GREG REED,

19 having first been duly sworn, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. STOUDEMIRE:

23 Q. Good morning Captain Reed, how are you today?

24 A. I'm doing fine. How about yourself?

25 Q. I'm doing well. Would you please give us your full

1 name for the record?

2 A. Greg Reed, R-e-e-d.

3 Q. Thank you. And Mr. Reed where are you employed?

4 A. Oconee County Sheriff's Office.

5 Q. And what is your current job title or position
6 there?

7 A. I am Captain over investigations and special
8 services.

9 Q. Okay. And did you hold the rank of Captain back in
10 May of 2011?

11 A. No. At that time I was a Lieutenant in charge and
12 supervising Lieutenant in investigations and evidence.

13 Q. Okay. And I want to turn your attention
14 specifically to May 19th, 2011. Were you in that
15 position as a Lieutenant back on that date?

16 A. Yes, I was.

17 Q. Okay. And did you have occasion to be involved in
18 this case involving the shooting out at Whittle's
19 Trailer Park just outside of Seneca?

20 A. Yes, I was.

21 Q. Okay. And of course that's in Oconee County,
22 correct?

23 A. That's correct.

24 Q. Did you have occasion on May 19, 2011, to go to
25 Whittle's Trailer Park, anywhere in there?

1 A. Yes, I did.

2 Q. Okay. And what was the purpose for your visit to
3 the trailer park that day?

4 A. During the interview process Sergeant Cain had
5 talked with the Defendant Moss. He came to me and told
6 me that Moss told him where the firearm that we had been
7 looking for was. He relayed this information to me. At
8 that time I went to Whittle's Trailer Park located in
9 Seneca down there to actually get the evidence or get
10 the firearm from the trailer.

11 Q. Okay. And was there anybody from the trailer park
12 or a specific trailer that met you out there?

13 A. Yes, there was. On the way down there I called
14 Corbrina Pinson who was living there at the time, asked
15 me to meet her. I also spoke with a Cliff Baldwin, who
16 was the trailer park manager, and had both of them meet
17 me there where I could gain entry through a consent to
18 search.

19 MR. STOUDEMIRE: Okay. Your Honor, may I approach?

20 THE COURT: Yes, sir.

21 BY MR. STOUDEMIRE:

22 Q. I'm gonna show you what's previously been admitted
23 as State's Exhibit Number 2. Do you recognize that?

24 A. Yes, I do.

25 Q. Okay. And tell me what that is.

1 A. This is a consent to search form and it's signed by
2 Corbrina Pinson as well as Cliff Baldwin.

3 Q. Now, why did you go through the process of having
4 both those individuals sign when Ms. Pinson was the one
5 that was living at that residence?

6 A. I was informed by the trailer park manager
7 Mr. Baldwin that earlier that day he had actually served
8 eviction papers on her to --

9 MR. ROBINSON: Objection, Your Honor relevance.

10 THE COURT: Sustained.

11 BY MR. STOUDEMIRE:

12 Q. Okay. Don't talk about anything that anyone may
13 have told you.

14 A. Okay. Both of them had rights to the trailer at
15 this time, so I actually had both of them sign to make
16 sure it was gonna be a lawful entry.

17 Q. Okay. So out of an abundance of caution?

18 A. Correct.

19 Q. Okay. But Ms. Pinson was still residing at the
20 residence?

21 A. She still had her personal belongings there
22 although she was staying, I believe, in Anderson County
23 with either an aunt or her mother.

24 Q. Okay. And your information was that Mr. Baldwin
25 was the manager of the trailer park?

1 A. That is correct.

2 Q. Okay. So if she didn't have authority to allow
3 entry Mr. Baldwin did have authority?

4 A. That is correct.

5 Q. Okay. And subsequent to this consent to search,
6 was the weapon you were looking for located and
7 recovered?

8 A. Yes, it was.

9 Q. Okay. Do you remember the street address of this
10 particular trailer?

11 A. I think it was [REDACTED] Jasmine Lane.

12 MR. STOUDEMIRE: Okay. That's all that questions I
13 would have. Please answer any Mr. Robinson may have.

14 THE COURT: Cross-Examination?

15 MR. ROBINSON: I have no questions for officer
16 Reed, Your Honor.

17 THE COURT: May this officer be excused?

18 MR. STOUDEMIRE: Yes, sir, please.

19 THE COURT: Any objections?

20 MR. ROBINSON: No objection, Your Honor.

21 THE COURT: Thank you, sir, you may be excused.
22 (Whereupon, the Witness was excused.)

23 THE COURT: Would you call your next witness,
24 please.

25 MR. STOUDEMIRE: Yes, sir. The State would call

1 Ms. Ila Simmons.

2 ILA SIMMONS,

3 having first been duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STOUDEMIRE:

7 Q. Ms. Simmons, good morning, how are you?

8 A. Good morning, thank you, well.

9 Q. If you could please give me your name for the
10 record.

11 A. My name is Ila Simmons.

12 Q. Thank you. Ms. Simmons, where are you employed?

13 A. At the South Carolina Law Enforcement Division in
14 their Forensics Lab Trace Evidence Department. We're
15 also known as SLED.

16 Q. Okay. What is your current job title there?

17 A. I'm a Forensic Scientist.

18 Q. Okay. Being a forensic scientist, can you tell me
19 a little bit of background into your education and
20 training?

21 A. Yes, sir. I have a Bachelor of Science degree in
22 chemistry. After completing that I came to work at SLED
23 where for the first three years I worked there I worked
24 with a court-qualified SLED certified trace evidence
25 examiner who taught me how to collect and analyze trace

1 evidence. During that time I had to take and complete
2 written and practical examinations. I had to complete
3 them with 100 percent efficiency. After completing that
4 I was then qualified by SLED as a trace evidence
5 examiner.

6 Each year I have to take proficiency tests, which
7 is a test in every subdiscipline of trace evidence to
8 remain qualified as a trace evidence examiner. I also
9 attend numerous seminars and classes around the country.
10 I'm a member of the FBI's gunshot residue symposium
11 where they invite people periodically to analyze gunshot
12 residue from around the world to Quantico to discuss the
13 standards and practice put in place for gunshot residue
14 analysis.

15 Q. And, again, how long have you been at SLED?

16 A. Twelve years.

17 Q. Okay. Have you ever been qualified as an expert in
18 court before?

19 A. Yes, sir, I have.

20 Q. Okay. Was that the State or Federal Court?

21 A. Both the State, Federal and Civil Courts of South
22 Carolina over 250 times.

23 Q. Okay. Your Honor, based on this we would move --
24 I'm sorry. What, what particular field were you
25 qualified as an expert in?

1 A. I've been qualified in both trace evidence and
2 gunshot residue.

3 MR. STOUDEMIRE: Your Honor, at this time we would
4 move to have Ms. Simmons qualified as an expert in,
5 again, both trace evidence and gunshot residue.

6 THE COURT: Any objection?

7 MR. ROBINSON: No objection, Your Honor.

8 THE COURT: Okay. Ladies and gentlemen of the
9 jury, as I told you yesterday most of the time witnesses
10 are limited to what they can testify about as to what
11 they saw, they heard, they smelled or touched and
12 basically their senses; however, because of their
13 education or experience or a combination of those two,
14 they may be qualified as an expert in a particular field
15 and as such they are allowed to give their opinion in
16 that field. In this case this witness, Ms. Simmons, has
17 been stipulated to be an expert in the field of trace
18 evidence examination and gunshot residue. Therefore,
19 she will be allowed to give her opinion in those two
20 fields of expertise. Her testimony is like any other
21 testimony in this case, you can accept it, reject it, or
22 do with it what you think is proper. Thank you.

23 MR. STOUDEMIRE: Thank you, Your Honor. May I
24 approach the witness?

25 THE COURT: Yes, sir.

1 BY MR. STOUDEMIRE:

2 Q. Thank you. Ms. Simmons, I'm gonna show you what's
3 been marked as State's Exhibit Number 4. Do you
4 recognize that document?

5 A. Yes, sir, I do.

6 Q. Okay. Can you tell me what that is?

7 A. This is a written report that we put together after
8 we finish our analysis at SLED. We do this with every
9 case in which an analysis is performed.

10 Q. Okay. And what is the SLED lab number on this
11 particular case?

12 A. It's L 116196.

13 Q. Okay. And under that who are the individuals that
14 are involved in this particular SLED case?

15 A. It's written Quinton Thomas, Xavier Peeples,
16 Dametroise Moss, and Shane Womack.

17 Q. Okay. And with regard to this case, did you
18 receive GSR kits on any of the individuals listed there?

19 A. Yes, sir, I did.

20 Q. Okay. Who did you receive GSR kits on?

21 A. From Quinton Thomas, from Dametroise Moss and from
22 Shane Womack.

23 Q. Okay. Before we go into it, can you tell us
24 briefly what GSR, gunshot residue is?

25 A. Gunshot residue is a mixture of microscopic

1 chemicals that come out of a gun when it's fired. In
2 the old weapon you'll see it come out in a plume of
3 smoke. Well the smoke that you see is the burnt gun
4 powder, but the microscopic chemicals that are in the
5 plume of smoke is the gunshot residue. It can get on
6 anything in close proximity to the gun when the gun is
7 discharged including the person who's holding the gun.

8 Q. Okay. So if a person discharges a gun where would
9 one normally expect to find gunshot residue on them?

10 A. On their hand.

11 Q. Okay. And just the palms of the hands, the backs,
12 where?

13 A. Well, if someone were holding a gun it would depend
14 on how they're holding it. If they were holding it with
15 just one hand, you would expect to find it on the palm
16 of the hand and on the back of that one hand. If
17 someone was holding it with both hands, you would expect
18 to hold it with both hands, you would expect to find it
19 on both palms and on the backs of those hands.

20 Q. Okay. With regard to the palms of the hand and the
21 back of the hands, is there any difference in the type
22 of gunshot residue that would appear on the palm versus
23 the backs of the hands?

24 A. No, sir. Just generally in concentrations. If
25 someone were to just -- if I would shoot a gun and lay

1 it here and someone were to come behind me and pick the
2 gun up, they could get gunshot residue on the palms of
3 their hands from just handling the weapon, but it would
4 be a much smaller amount than if I were to fire the gun
5 and a plume of smoke wrap around my hands.

6 Q. Okay. And what about the back of the hands, would
7 someone get gunshot residue just handling a gun there?

8 A. They should not, not unless they took the gun and
9 rubbed it on the back of their hand for some reason.

10 Q. Okay. How long does gunshot residue stay on a
11 person?

12 A. On a living person gunshot residue has not been
13 found longer than six hours after a shooting incident.
14 So if someone were to shoot a gun at noon, by 6:00 that
15 evening the gunshot residue would be gone. If someone
16 washes their hands, if they begin to sweat, if they have
17 any hand sanitizers or any sort of soap on their hands,
18 it can be washed away. It's very light. It has the
19 consistency of flour, so it can be wiped away easily.
20 Even if somebody could put hands in out of their pockets
21 it could be removed that way. In fact, gunshot residue
22 begins to fall away immediately. Generally on a living
23 person we don't find gunshot residue much past two
24 hours.

25 Q. Okay. Now I want to turn your attention to in your

1 report item 19 which is listed as one GSR kit from
2 Quinton Thomas. Do you see that?

3 A. Yes, sir.

4 Q. Okay. Can you tell me what type of examinations
5 you do on gunshot residue kits, how you determine
6 whether or not that exists?

7 A. Yes, sir. Gunshot residue consists primarily of
8 three metals, lead, barium and antimony. And when we
9 find these in a certain ratio in a round particle, we
10 know that it's consistent with the firing of a gun and
11 only the firing of a gun. The reason the round
12 particles are so important is if you take a glass of
13 water and you throw it in the air and freeze it in mid
14 air, you have little round droplets. Well, when gunshot
15 residue comes out of a gun it's in a molten state, it's
16 like water. As soon as it hits the hands and begins to
17 cool, it's going to form in little round droplets and
18 it's gonna have these chemicals present. And in this
19 particular kit the gunshot residue, we tested for the
20 presence of gunshot residue on the palm of the hand, the
21 right-hand, the back of the right-hand, the palm of the
22 left hand, and the back of the left hand.

23 Q. So everywhere that an individual could be holding a
24 gun either with one hand or two?

25 A. That's correct, yes, sir.

1 Q. Okay. In regard to the GSR kit on Quinton Thomas
2 as the decedent in this case, did you find any gunshot
3 residue on him?

4 A. No, sir.

5 Q. Nothing on the palms or backs of either hands?

6 A. No, sir.

7 Q. Okay. And what does that indicate?

8 A. That within six hours of this person being deceased
9 that they had not fired a weapon or if they had fired a
10 weapon, their hands would have had to have been cleansed
11 in some way because gunshot residue will remain on a
12 decedent's hands just indefinitely because you are no
13 longer sweating, you're not absorbing the chemicals into
14 your body, and you're not making contact with things,
15 you become an inanimate object, so it can stay on there
16 indefinitely.

17 Q. Okay. So if Mr. Thomas's hands would have been
18 bagged shortly after, shortly after he passed away and
19 gunshot residue was gathered directly after that, no way
20 it could have dissipated?

21 A. No, sir, it should not.

22 Q. Okay. I want to turn your attention next to what
23 is listed as item 28 on your report, which is on GSR kit
24 from Dametroise Moss, who is the Defendant in this case.
25 Do you see that?

1 A. Yes, sir.

2 Q. Okay. And did you perform tests on that particular
3 kit as well for the presence of gunshot residue?

4 A. Yes, sir, I did.

5 Q. Okay. What did you perform tests on?

6 A. On the palm and the back of the right-hand, I found
7 round, lead particles, which is a component of gunshot
8 residue. You can find particles which contain lead,
9 barium, and antimony or you can find particles that are
10 one of the three elements. And in this case we found
11 round lead. And on the palm and back of the left hand I
12 found round gunshot residue particles, which is the
13 round particles I was talking about with lead, barium
14 and antimony present that is consistent with the hands
15 being in the vicinity of a firearm when it was
16 discharged.

17 Q. Okay. So finding all that on both hands, palms and
18 backs, what would that indicate?

19 A. It's consistent with someone having fired the
20 weapon or hands being very close to the weapon when it
21 was discharged.

22 Q. So if they were firing the weapon with all that
23 GSR, would it be more consistent with someone holding it
24 with one hand or two hands?

25 A. Two hands.

1 Q. Two hands. Thank you.

2 And you say gunshot residue dissipates normally on
3 a living person how quickly?

4 A. We rarely find it more than two hours after a
5 shooting incident. I mean, we've found it up to six
6 hours.

7 Q. Okay. But two hours, is it fair to say that's more
8 than normal?

9 A. Yes, sir.

10 Q. Okay. And I want to turn your attention lastly to
11 item 29 in your SLED lab report, one GSR kit from Shane
12 Womack. Do you see that item?

13 A. Yes, sir.

14 Q. Okay. And were GSR tests performed on that
15 particular kit from Mr. Womack?

16 A. Yes, they were.

17 Q. Okay. Was any gunshot residue found as a result of
18 your examination on that kit?

19 A. No, sir.

20 Q. Okay. And what, what particular items were
21 examined with Mr. Womack's kit?

22 A. In a standardized kit we always collect a sample
23 from the palm of the right hand, the back of the right
24 hand, the palm of the left hand and the back of the left
25 hand because those are the areas of the hands that are

1 the most consistent with being near the gun when it was
2 discharged.

3 Q. So out of the three GSR kits you had, the only GSR
4 found was on Mr. Moss, correct?

5 A. That's correct.

6 Q. And the report that you have that's listed as a
7 State Exhibit, is this a report that is regularly done
8 during the course of business with what you do at SLED?

9 A. Yes, sir. We prepare it for every item analyzed
10 and prepare a report and send it back to the agency that
11 submitted it to the laboratory.

12 Q. Okay. And is this a fair and accurate
13 representation of that report?

14 A. Yes, sir.

15 Q. Okay. And does it contain all the findings that
16 you made in this particular case and all the work that
17 you did?

18 A. Yes, sir, it does.

19 MR. STOUDEMIRE: Okay. Your Honor, at this time we
20 would move to go ahead and admit State's Exhibit Number
21 4 into evidence.

22 THE COURT: Any objection?

23 MR. ROBINSON: I have an objection to it, Your
24 Honor.

25 THE COURT: Okay. Madam Forelady, would you please

1 take your jury to the jury room, please.

2 (Whereupon, the Jury left the courtroom at
3 approximately 9:58 a.m.)

4 MR. ROBINSON: My objection goes to the writing on
5 this. I'd like it to be redacted some portions at the
6 top of it. That's my big objection for it to come in
7 unedited.

8 THE COURT: Would you point out to Mr. Stoudemire
9 what, in fact, you are referring to, please.

10 MR. STOUDEMIRE: Judge, I think the report lists
11 the dash deceased Quinton Thomas V. Xavier Peeples, S,
12 Dametroise Moss and S, Shane Womack.

13 THE COURT: Let me see it. Thank you, sir.

14 MR. STOUDEMIRE: Yes, sir.

15 THE COURT: What writing? Are you talking about
16 somebody's handwriting or are you talking about some of
17 the printed material?

18 MR. ROBINSON: The printed material.

19 THE COURT: Okay. Where, on page one?

20 MR. ROBINSON: On the top. Yeah, the suspect and t
21 Shane Womack and the victims and so forth, I would like
22 to have that redacted.

23 THE COURT: I'll note your objection. I overrule
24 your objection. There's plenty of evidence in the
25 record that shows all that's the case anyway. Any other

1 objection to the admission of this document?

2 MR. ROBINSON: No, sir, Your Honor.

3 THE COURT: Okay. That's State's Number 4?

4 MR. STOUDEMIRE: Yes, sir, I believe so.

5 THE COURT: Subject to Defendant's objection,
6 State's Exhibit 4 will be in the record as in its
7 current condition.

8 (Whereupon, State's Exhibit Number 4 was admitted
9 into evidence, later changed to 4.1.)

10 MR. STOUDEMIRE: Thank you, Your Honor.

11 THE COURT: Anything further Mr. Robinson?

12 MR. ROBINSON: No, sir.

13 THE COURT: Would you bring the jury back, please.

14 (The Jury entered the courtroom at approximately
15 10:00 a.m.)

16 MR. STOUDEMIRE: Your Honor, that's all the
17 questions I would have for Ms. Simmons. Please answer
18 any Mr. Robinson may have.

19 THE COURT: Cross-Examination?

20 MR. ROBINSON: Thank you, Judge.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. ROBINSON:

24 Q. Good morning ma'am?

25 A. Good morning.

1 Q. Ma'am, I want to go through your report with you
2 for a second. I noted here that there was no testing
3 done on Xavier Peeples; is that correct?

4 A. That's correct.

5 Q. So there was no GSR kit submitted to you for Xavier
6 Peeples, correct?

7 A. That's correct.

8 Q. Turning to item 29.1 through 29.4, it indicates
9 that he was not armed; is that correct? He did not have
10 a weapon, did not have a gun; is that correct?

11 A. Yes, sir, that's most consistent.

12 Q. Okay. Now, turning to item 19.1 through 19.4 of
13 the exhibits, you were specifically asked to test GSR,
14 gunpowder residue, correct? That's what your expertise
15 is in, correct?

16 A. Yes, sir, on the hands of anyone.

17 Q. You can't say whether he had another weapon like a
18 knife, a chair or anything of that nature, can you?

19 A. No, sir, I cannot.

20 MR. ROBINSON: Okay. Thank you. That's all I
21 have.

22 THE COURT: Any redirect?

23 MR. STOUDEMIRE: Just one quick question.

24 REDIRECT EXAMINATION

25 BY MR. STOUDEMIRE:

1 Q. I believe that Mr. Robinson was asking you about
2 items contained in item 29, 29.1 through 29.4. That's
3 the GSR kit on Shane Womack, correct?

4 A. That's correct.

5 Q. And I believe he had asked you that that would
6 indicate that he did not have a gun, correct?

7 A. That's most consistent, yes, sir.

8 Q. Could he have been holding a gun that had not been
9 fired and never fired it?

10 A. Yes. That's a possibility.

11 Q. Would you get the same results if that was the
12 case?

13 A. Yes, sir. If the gun was clean and had not
14 recently been fired, yes, sir.

15 Q. Okay. Thank you.

16 THE COURT: Recross?

17 RECROSS-EXAMINATION

18 BY MR. ROBINSON:

19 Q. But to your knowledge based on your testing of the
20 gunshot residue on Shane Womack he did not have a gun?

21 A. Yes, sir. I did not find gunshot residue.

22 Q. Thank you.

23 THE COURT: May this witness be excused?

24 MR. STOUDEMIRE: Yes, sir.

25 MR. ROBINSON: Yes, sir.

1 THE COURT: Thank you, ma'am. You may be excused.
2 (Whereupon, Witness was excused.)

3 THE COURT: Would you call your next witness,
4 please, sir?

5 MR. STOUDEMIRE: Thank you, Your Honor. The State
6 would call Mr. James Green.

7 THE WITNESS: James Green, G-r-e-e-n.

8 JAMES GREEN,
9 having first been duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. STOUDEMIRE:

13 Q. Mr. Green, good morning. How are you?

14 A. Doing well. How are you?

15 Q. Doing well. Can you give me your full name for the
16 record, please, sir?

17 A. James William Green.

18 Q. Thank you. And, Mr. Green, where are you employed?

19 A. I'm employed by the South Carolina Law Enforcement
20 Division, commonly referred to as SLED.

21 Q. Okay. And what is your current position with SLED?

22 A. I'm a firearms Examiner in the Forensics
23 Laboratory.

24 Q. Okay. And can you tell me a little bit about your
25 background and education and experience?

1 A. I received a bachelors of Arts degree from
2 Charleston Southern University. I also received a
3 Master's of science and criminal justice degree from
4 Charleston Southern University. I've also completed the
5 SLED Forensics Firearms Course of instruction, which is
6 approximately a three, three-and-a-half year apprentice
7 type training studying under court qualified examiner
8 learning how to do my present job.

9 Q. Okay. And have you ever been qualified as an
10 expert in any court before, either State or Federal?

11 A. Yes, sir, in State.

12 Q. In State Court. And how many times have you been
13 qualified?

14 A. Fourteen.

15 Q. Fourteen. And in what field were you qualified as
16 an expert?

17 A. Firearms identification.

18 Q. Okay. And what does the field of firearms
19 identification encompass?

20 A. Basically it's kind of like what you see on TV, the
21 crime shows but real. We attempt to determine if people
22 bringing evidence from a crime scene, fired bullets and
23 cartridge cases, how many potential guns may be present,
24 is there one gun, two guns, three guns. Or if a firearm
25 is submitted, we can actually say these bullets and

1 cartridge cases were fired by this gun, they were not
2 fired by this gun, or we can't tell.

3 MR. STOUDEMIRE: Okay. Thank you.

4 Your Honor, based on his education and experience,
5 we would move to have him qualified as an expert in the
6 field of firearms identification.

7 THE COURT: Okay. Any objection?

8 MR. ROBINSON: I have no objection, Your Honor.

9 THE COURT: All right. Again, ladies and
10 gentlemen, Mr. Green will be stipulated to be an expert
11 in the field of firearms identification. Again, he'll
12 be allowed to give his opinion in that field like the
13 other experts in this case. Again, it's just like any
14 other testimony in this case. You may accept it, you
15 may reject it as you deem proper.

16 MR. STOUDEMIRE: Thank you. Your Honor, may I
17 approach, please?

18 THE COURT: Yes, sir.

19 BY MR. STOUDEMIRE:

20 Q. Mr. Green, I'm gonna show you State's Exhibit
21 Number 4 for identification. Can you tell me what this
22 item is, please?

23 A. State's Exhibit item 4 is the official report I
24 issued to the Oconee County Sheriff's Department in
25 reference to SLED laboratory number L 11-06196.

1 Q. Okay. And is this a report that is normally issued
2 by your department or by you during the course of your
3 business?

4 A. Yes, sir. Any time we render an examination and
5 render conclusions the report is issued to the
6 submitting agency.

7 Q. Okay. This is common of a report that's issued in
8 every case that you examine evidence and find your
9 conclusions?

10 A. Yes, sir.

11 Q. Okay. And in this particular case what's the SLED
12 Lab Number?

13 A. L 11-06196.

14 Q. Okay. And what are the names of the individuals
15 listed with regard to that letter?

16 A. There are four: Quinton Thomas, Xavier Peeples,
17 Dametroise Moss and Shane Womack.

18 Q. Okay, thank you. And I know there were several
19 items you asked in this particular case, is that fair to
20 say?

21 A. Yes, sir.

22 Q. Okay. With regard to -- and we'll just try to go
23 through them as succinctly as we can. With regard to
24 item 1, what was item 1 that you received?

25 A. SLED laboratory item number 1 was one fired bullet.

1 Q. Okay. Now, were you able -- well, let me ask you
2 this first. During the course of your work on this
3 particular case, did you receive any firearms at SLED?

4 A. Yes, sir.

5 Q. Okay. Which firearms did you receive?

6 A. I received two, SLED laboratory item number 30,
7 which was a Taurus pistol, and SLED laboratory item 31,
8 which was an Rohe revolver, R-o-h-e.

9 Q. Okay. And I'm gonna show you first what's been
10 marked as State's Exhibit Number 9 that's been
11 previously admitted. Can you go ahead and look at
12 State's Exhibit Number 9, tell me what that is, and tell
13 me if that was an item that was received by SLED in this
14 case?

15 A. Ladies and gentlemen of the jury, I physically
16 visually inspected this firearm. It is unloaded and is
17 safe to handle. When we get items of evidence at SLED,
18 particularly the Firearms Department, we mark each item
19 with the SLED laboratory case number, the item number,
20 and the initials of the examiner. So if you see me
21 staring at items of evidence, that's what I'm doing, see
22 that the serial number, make and model may match, but
23 I'm looking for my markings making sure this is the
24 barrel of the piece that I examined.

25 Okay. This is the item 30 pistol I received in

1 this case. It's a Taurus, it's made by Taurus, is a
2 model PT 140 Pro Millennium. It's a .40 Smith & Wesson
3 caliber pistol.

4 Q. Oka. And did you receive a magazine along with
5 that?

6 A. Yes, sir, I did.

7 Q. Okay. And the magazine that you received during
8 your examination, does that magazine fit that particular
9 pistol?

10 A. Yes, sir. It fit and functioned during test fire.

11 Q. Okay. So fair to say when you received item 30 and
12 during the course of your examination you fired that
13 pistol and it was in good working order?

14 A. Yes, sir. When I test fired this pistol everything
15 seemed to be working properly.

16 Q. Okay. How many rounds does that particular
17 magazine hold?

18 A. May I refer to my notes really quickly?

19 Q. Absolutely.

20 A. Thank you. While I'm doing this, ladies and
21 gentlemen of the jury, the reason I'm referring to my
22 notes is sometimes magazine springs and magazines wear
23 over time, and even though this has ten on the back of
24 the magazine or the spine indicating that it should hold
25 ten rounds, sometimes if the springs are weak they'll

1 actually hold more, or less if the spring is too tight.
2 But this one held 10.

3 Q. Okay. Now, with the magazine itself holding 10,
4 how many bullets or cartridges could the gun hold at one
5 time with that cartridge in it?

6 A. With this magazine, this pistol is holding 11. Ten
7 in the magazine and one in the chamber.

8 Q. Okay. And that's the maximum number it would hold?

9 A. Yes, sir.

10 Q. At one time?

11 A. Yes, sir.

12 Q. Okay. Now, next I'm going to show you what's been
13 marked and admitted previously as State's Exhibit Number
14 8. Can you look at State's Exhibit Number 8 and see if
15 that is an item that SLED received for examination?

16 A. Once again, ladies and gentlemen of the jury, I
17 visually and physically inspected the firearm it is
18 unloaded. This is the firearm I examined in this case
19 or the item 31 revolver in this case.

20 Q. All right. And when you received that particular
21 revolver was that revolver in working order?

22 A. Yes, sir.

23 Q. Okay. How many rounds does that revolver hold?

24 A. Six, or six chambers inside the cylinder.

25 Q. Okay. And what caliber is that particular

1 revolver?

2 A. It's a .38 special.

3 Q. Okay. Can -- are the bullets between a .40 caliber
4 weapon and a .38 special interchangeable?

5 A. No, sir.

6 Q. Okay. Can the bullets be fired from either weapon
7 in any way whatsoever?

8 A. No, sir.

9 Q. Not safely?

10 A. Not -- well, actually no. .38 is too long to fit
11 in the .40. There are some that are interchangeable.
12 You can actually shoot a 25 and a 40 with enough duct
13 tape. It sounds kind of funny but it can be done. But
14 a .38 special is actually too long to fit in the .40
15 chamber and the .40 is too fat to fit in the .38.

16 Q. So no way to interchange these bullets?

17 A. No, sir.

18 Q. Okay. Thank you. Now I'll go ahead and show you
19 first what has been previously admitted as State's
20 Exhibit Number 6. Do you recognize that?

21 A. Yes, sir. This is the bullet that was submitted as
22 item 23 in this particular SLED Lab number.

23 Q. Okay. And on your, on your SLED report what does
24 it list it as?

25 A. From victim's left chest, Quinton Thomas.

1 Q. Okay. And were you able to perform tests to
2 determine whether that particular bullet was fired from
3 any particular weapon?

4 A. Yes, sir.

5 Q. Okay. How do you go about doing those types of
6 tests?

7 A. The first thing we do when we get evidence is we
8 photograph and catalog as we received. We note any
9 damage, any trace material like blood, body tissue or
10 any of that sort of thing. And then we'll start looking
11 at the physical characteristics, how much it weighs,
12 which helps you determine the caliber, the diameter at
13 the base of the bullet which is actually going to
14 determine the caliber and then soothe for examination.

15 When firearms are made, the tools they use to cut
16 the firearm surfaces, the breech face, the barrel inside
17 of the barrel, the rifling where the bullet touches as
18 going down the barrel, there are tiny microscopic
19 striations or basically scratches left on those working
20 surfaces. Those scratches are what we look for and
21 those scratches are what individualize that particular
22 firearm from the one made immediately before it and the
23 one made immediately after it.

24 Q. Okay.

25 A. When we get a firearm, we'll test it for function.

1 And then we actually have a vertical water tank inside
2 of our building. It's three-feet wide. It's a
3 stainless steel pipe full of water. We shoot the
4 firearm down into the water. And we chose water as a
5 particular medium because it does not add to or detract
6 any markings away from the evidence or, excuse me, the
7 test fires. So we'll shoot the firearm so we know
8 without a shadow of a doubt that those bullets came out
9 of that gun because I shot them or another examiner shot
10 them.

11 We look microscopically and we'll compare all those
12 scratches I spoke of before and we'll see if the
13 markings consistently match each other, excuse me, our
14 test fires each other. And then we'll look at it with
15 evidence items of the same caliber and see if we can
16 make a conclusion.

17 Q. Okay. Were you able to make any conclusions with
18 regard to that particular bullet, which came out of the
19 left chest of Quinton Thomas, were you able to determine
20 what caliber that bullet was?

21 A. Yes, sir. It was a .40 caliber bullet and it was
22 fired by the Taurus pistol.

23 Q. Okay. And did you determine it was fired by this
24 particular Taurus pistol?

25 A. Yes, sir, it was fired by this pistol.

1 Q. Okay. And that was done, fair to say that was done
2 in the way you just described?

3 A. Yes, sir.

4 Q. Okay. I'm gonna show you next -- you may have to
5 open this one, but I'm gonna show you next what's
6 previously been admitted as State's Exhibit 5. Do you
7 need to open that one up?

8 A. Yes, sir.

9 Q. Okay. Have you got a knife or do you need one?

10 A. I do.

11 Q. Okay. If you could, once you get that open please
12 let me know whether or not that's an item you received
13 for testing.

14 A. (Opens State's Exhibit 5.) Yes, sir. This is SLED
15 item number 42, it's one fired bullet.

16 Q. Okay. And could you tell me on your SLED report
17 what item 42 is listed as, please, sir?

18 A. One fired bullet from victim Xavier Peeples.

19 Q. Thank you. And did you -- were you able to perform
20 tests and determine what caliber bullet that was?

21 A. Yes, sir. I did the same thing I spoke of before,
22 as before, weighing, measuring and it came back to be a
23 .40 based on the weight and measurement and it was also
24 fired by the Taurus pistol.

25 Q. Okay. So that was a bullet fired by this

1 particular Taurus pistol?

2 A. Yes, sir.

3 Q. Any question about that?

4 A. No, sir.

5 Q. Okay.

6 A. (Hanging.)

7 Q. Thank you, sir. Next I want you to look at what
8 has previously been marked as State's Exhibits 10.1
9 through 10.19 and admitted it into evidence. Can you
10 look at those and make sure that those and determine
11 whether those were items that were tested by you for
12 this case?

13 A. (Complies.) Yes, sir. State's Exhibits 10.1
14 through 10.19 are all fired .40 caliber cartridge cases
15 of which I have previously examined.

16 Q. And were you able to determine in your report
17 whether they were fired by a particular .40 caliber
18 weapon?

19 A. Yes, sir. They were all fired by the Taurus pistol
20 that was submitted.

21 Q. Okay. Now, how are you able to determine that a
22 cartridge is fired from a particular pistol as opposed
23 to a particular bullet?

24 A. Do you remember I was talking about the tools being
25 used to create the surfaces of the firearm, there's

1 what's called a breech face on the firearm and the
2 cartridge case when the slide closes presses up against
3 the breech face. There's a little hole for the firing
4 pin to move through, we call that the firing pin
5 aperture. When the trigger is pulled -- I'll keep it
6 brief -- the firing pin goes forward and it hits the
7 primer causing the primer pellet to basically explode
8 and send a flash of flame into the cartridge case which
9 is nothing but a container that holds the powder and the
10 bullet. The flame ignites the powder which burns at
11 different rates and creates a gas. When that gas
12 reaches a certain point, it expels the bullet out the
13 front down the barrel towards the intended target.

14 The cartridge case by Newton's equal and opposite
15 reaction, the bullet goes this way, the cartridge case
16 gets slammed backwards against the breech face of the
17 firearm taking on any of those microscopic marks that
18 are left over by the manufacturer.

19 The transfer of the mark is what we look for in our
20 comparison microscope where we do most of our work. I
21 should have said that earlier and I apologize. It's two
22 microscopes connected by an optical bridge which lets us
23 look at two items simultaneous under different various
24 magnifications. So what we'll do is we'll look at the
25 markings left on the cartridge case by firing. We'll

1 look at all the evidence together and see how many
2 firearms we have and then we'll test fire however many
3 firearms we have and compare those two and three or
4 four, however many we have and come to a conclusion.

5 And what I did in this case is I looked at all
6 these cartridge cases together, identified them as
7 having been fired by the same gun. So then I answered
8 the question were they fired by that gun. So I did the
9 test firing I spoke of earlier, retrieved cartridge
10 cases, and compared all them together, and concluded
11 that these cartridge cases were fired by that pistol.

12 Q. Thank you. And, again, is there any way that those
13 cartridge cases from the .40 caliber weapon, could they
14 fit into and be fired by the .38 special?

15 A. No, sir.

16 Q. I believe you said they were too fat to fit in?

17 A. Yes, sir.

18 Q. I'll let you throw those back in the bag and then
19 I've got some other stuff for you to look at real quick.

20 A. (Witness puts State's Exhibit 10 back in bag.)

21 Q. I just want to go through four things one by one.

22 All these are State's Exhibits previously admitted 11.1
23 through 11.4. Beginning with 11.1, can you tell me what
24 that particular item is and was it received by your
25 office for testing?

1 A. State's Exhibit 11.1 is a fired bullet which is
2 SLED Item Number 1. State's Exhibit 11.2 is SLED Item
3 Number 41, and it's a fired bullet. Exhibit 11.3, SLED
4 Item Number 38, is a fired bullet. And State's Exhibit
5 11.4 is SLED Item Number 27, is also a fired bullet.

6 Q. Okay. And with all of these bullets were you able
7 to determine if they were of a particular caliber?

8 A. Yes, sir. They were all nominal .40 caliber, that
9 means approximate .40 caliber, so they can be either
10 .40 Smith & Wesson or .40 S&W caliber and/or ten
11 millimeter auto. The .40 Smith & Wesson caliber
12 cartridge was actually developed from the ten millimeter
13 auto, slightly resizing the cartridge case making it
14 shorter but it's the same width, so they use the same
15 item or bullet. So you can take some .40 caliber
16 bullets and load them in 40's and load them into a ten
17 millimeter.

18 Q. Okay. Were you able to do testing and determine
19 whether any of these bullets were fired from a
20 particular weapon?

21 A. I'll go through them one by one.

22 Q. Sure.

23 A. State's Exhibit 11.1 or SLED Item Number 1, it has
24 so few marks of value and is so damaged microscopically
25 that it was unsuitable for identification with a

1 specific firearm. That means that even if I would have
2 shot it out of that particular firearm myself, I never
3 could have identified it back to it based on the damage
4 sustained on the bullets. However, based on the caliber
5 and the rifling specifications I can say that it was not
6 fired by that revolver, just based on the basic class.

7 State's Exhibit 11.2.

8 Q. Okay. Let me stop you for just one second. If you
9 could, please, just tell me when you tell me what the
10 exhibit is, just tell me how it's listed on your report
11 as well.

12 A. Oh, okay, I'm sorry. State's Exhibit 11.1 is just
13 listed as one fired bullet. Nowhere in the evidence
14 submission form does it say or indicates where that one
15 came from.

16 Q. Thank you.

17 A. State's Exhibit 11.2, which is SLED Item Number 41,
18 was indicated as having come from [REDACTED] Jasmine Lane.

19 Q. Okay, thank you.

20 A. This is also a fired bullet, I don't know if you
21 can see it or not but it's very, very damaged and
22 mangled. This is also unsuitable identification for the
23 specific firearm, but based on caliber it was not fired
24 by that .38 revolver.

25 Q. Now, briefly with that, based on the weight and

1 everything was it consistent at all with a .40 caliber
2 weapon or were you even able to determine that?

3 A. It's a .40 Smith & Wesson and/or 10 millimeter
4 hollow point.

5 Q. Okay.

6 A. All right. State's Exhibit Item 11.3, SLED Item
7 Number 38, was indicated as having come from [REDACTED] Jasmine
8 Lane. This is also a bullet most consistent with .40 or
9 .10 millimeter. And this was also unsuitable for
10 identification. All three of these bullets, State's
11 Exhibits 11.1, 11.2 and 11.3 are total metal jacket
12 bullets. That means the jacket encompasses the entire
13 surface of the bullet and it's a really thin
14 electroplated bullet, electroplated jacket which is not
15 uncommon for it to have the damage like this does where
16 it hits anything and the jacket comes apart and you just
17 have what's left of the core or a little bit of the
18 jacket.

19 State's Exhibit 11.4 -- 38, I'm sorry. State's
20 Exhibit 11.3 came from [REDACTED] Jasmine Lane.

21 Q. Okay.

22 A. State's Exhibit 11.4, Item 27, came from [REDACTED]
23 Jasmine Lane. And this is also a bullet that's most
24 consistent with a .40 and/or .10. This did have a
25 little better markings than the other ones, so I was

1 able to do a microscopic comparison with this bullet and
2 the other bullets, so I identified back to the Taurus
3 and to the test fire with the Taurus pistol. But due to
4 some damage and marks of value which means there's
5 enough to say it could have been but not enough to say
6 it wasn't. The inconclusive answer is I don't know. It
7 could have been fired by that pistol or any of the other
8 pistols made like it.

9 Q. Okay. Now, with regard to the damage on those four
10 items we've just discussed, if I were to say that those
11 bullets were fired into a mobile home and went through a
12 wall or a window, would that be the type of damage you
13 would expect to see from the result of such an action?

14 A. That's not really my area of specialty but --

15 MR. ROBINSON: Your Honor, I'm going to object to
16 this line of questioning.

17 THE COURT: Sustained.

18 MR. STOUDEMIRE: That's fine.

19 BY MR. STOUDEMIRE:

20 Q. Now, outside of the items that we've gone over in
21 this case are there any other items listed on your
22 report that we have not gone over?

23 A. No, sir.

24 Q. Okay. With regard to firing a, firing this .40
25 caliber weapon versus firing this .38 caliber, when you

1 fire the .40 caliber, are cartridges ejected from the
2 that weapon or do they stay in?

3 A. A semiautomatic pistol, normally when it's
4 functioning properly, as this one did, once the bullet
5 goes down the barrel and the cartridge case is pulled
6 back there's an extractor on the slide and the slide
7 moves rear ward with the force of recoil. The extractor
8 grabs the cartridge case and pulls it back with it where
9 it hits an extractor and is expelled from the firearm
10 and it does that for each individual shot.

11 Q. Okay. And what about with the .38 special, the
12 cartridge is ejected from that as well when they're
13 fired?

14 A. As a general rule, if a revolver is working
15 properly they will not be ejected from a revolver when
16 you shoot them. It's an enclosed cylinder so all it
17 does is it just rotates with each pull of the trigger
18 and the cartridge cases stay in the cylinder until you
19 manually extract and open the ejection rod.

20 MR. STOUDEMIRE: Thank you. Your Honor, at this
21 time the State would move to go ahead and admit
22 Mr. Green's report, which is listed as State's Exhibit
23 Number 4 into evidence.

24 THE COURT: Number 4?

25 MR. STOUDEMIRE: Yes, sir.

1 THE COURT: Any objections?

2 MR. ROBINSON: No objection, Your Honor.

3 THE COURT: Will be admitted without objection.

4 (Whereupon, State's Exhibit Number 4 was admitted
5 into evidence, later changed to 4.1.)

6 MR. STOUDEMIRE: Thank you, Your Honor.

7 And, Mr. Green, that's all the questions I have.
8 Please answer any that Mr. Robinson may have.

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION

11 BY MR. ROBINSON:

12 Q. And, Mr. Green, I just wanted to go over a couple
13 of things. So you concluded that the bullets taken or
14 the remains of the bullets taken from [REDACTED] Jasmine Lane
15 and [REDACTED] Jasmine Lane, you just don't know what type of
16 firearm fired those bullets, do you?

17 A. Also, can you speak up a little bit? I'm actually
18 going deaf, so I need to --

19 Q. Oh, you are?

20 A. Yes, sir.

21 Q. My voice is soft anyway, so I'll speak up. Item 41
22 and 38, [REDACTED] Jasmine Lane, which is item 41, you don't
23 know what fired it, that bullet is inconclusive,
24 correct?

25 A. No, sir. Those two bullets, SLED item 38 and 41

1 are actually unsuitable, meaning if he told me there was
2 a gun and there is a gun I wouldn't be able to tell you.

3 Q. You just don't know, correct?

4 A. Correct.

5 Q. Okay. And as far as the .38 special that was
6 found, how many rounds are in a .38 special typically?

7 A. Five or six. That one holds six.

8 Q. And the bullets, after they are fired they are not
9 charged out of it because they are inside of a cylinder;
10 is that correct?

11 A. Yes, sir. They stay inside of a revolver.

12 Q. Okay. Now, the .38 caliber pistol that was
13 recovered on the scene that night, okay, if there's
14 evidence that there was firing of a pistol, was it this
15 pistol, this .38 pistol that did the firing?

16 A. Okay. Hang on. You're referring to the revolver,
17 correct? The .38 special revolver?

18 Q. The .38 revolver, I'm sorry.

19 A. Yes, sir. There's no evidence submitted in this
20 case that I received that is tied back to that revolver.

21 Q. So if something, a revolver was used that night or
22 another gun was used that night, that's not the gun,
23 correct?

24 A. Well nothing I have is of .38 caliber, so there's
25 nothing I could say that would say that it would be that

1 firearm.

2 Q. Right.

3 A. I can say it was not that firearm.

4 Q. Now, the .40 caliber that we're speaking of here,
5 when that discharges the cartridges are all going to go
6 up in the air and to the side; is that correct?

7 A. Based on how they're held, yes, sir. As a general
8 rule, they will come out and back.

9 Q. Okay. And they're generally in the same vicinity,
10 correct?

11 A. Yes, sir. Barring any unforeseen circumstances,
12 people kicking them, gravel, rocks, or whatever they'll
13 generally go in the same area.

14 MR. ROBINSON: Thank you. That's all I have.

15 THE COURT: Redirect?

16 MR. STOUDEMIRE: Just a couple of things.

17 REDIRECT EXAMINATION

18 BY MR. STOUDEMIRE:

19 Q. Turning back real quickly to item 41 and item 38,
20 you have your report still with you, correct?

21 A. Yes, sir.

22 Q. Okay. If I'm reading correctly, it says
23 examination of item 38 revealed it was most consistent
24 with bullet loaded into some .40 S & W and/or ten
25 millimeter auto cartridge; is that correct?

1 A. Yes, sir.

2 Q. Now, what does that mean?

3 A. As I was saying before, the bullets in the .40
4 Smith & Wesson or .40 S & W and ten millimeter auto are
5 often interchangeable because they're the same size. So
6 when we get damaged bullets like this, we can give you,
7 you know, the approximate caliber. If you're looking
8 for a .40 caliber pistol is a .40 Smith & Wesson or a 10
9 millimeter auto since they can be used interchangeably.
10 It's one of those times when bullets can be used in
11 different calibers but it's the same bullet.

12 Q. Okay. So those items came from a .40 caliber
13 weapon, but due to damage we can't determine if it's
14 this particular one?

15 MR. ROBINSON: Your Honor, objection to the form of
16 the question. You know, it's not evidence in this case.
17 He didn't testify about it.

18 THE COURT: Rephrase your question.

19 MR. STOUDEMIRE: I'll rephrase it. Thank you, Your
20 Honor.

21 BY MR. STOUDEMIRE:

22 Q. Based on your examination and your report, did
23 those bullets come from a .38 special?

24 A. No.

25 Q. Could they have potentially come from this .40

1 caliber weapon that you examined?

2 A. Potentially, yes, sir.

3 Q. Okay. And did you receive any other weapons for
4 examination in this case other than those two weapons?

5 A. No, sir.

6 Q. Okay. And that's Item 41 and Item 38, correct?

7 A. Yes, sir.

8 Q. All right. Now, with regard to the .38 special,
9 you said you did not receive any cartridges from that
10 particular weapon, correct?

11 A. Correct.

12 Q. Okay. And you testified earlier that cartridges
13 don't eject from that particular revolver when it's
14 fired, correct?

15 A. Correct.

16 Q. Okay. So is it -- with what you do at SLED, do you
17 normally examine cartridges from a revolver to determine
18 if they were fired from a particular revolver on a
19 regular basis?

20 A. No, sir. The SLED evidence submission guidelines
21 go back with the history of the SLED firearms
22 department. We have yet to have a case where someone at
23 a crime scene or whatever takes a revolver. Shoots it
24 until it's fully unloaded, takes the cartridge cases
25 out, and takes the cartridge cases they fired in another

1 revolver and puts them in place of those. So if we get
2 a revolver from let's say a suicide where law
3 enforcement --

4 MR. ROBINSON: Your Honor, I'm going to object.

5 THE COURT: I sustain the objection. Move forward,
6 please.

7 MR. STOUDEMIRE: Thank you. That's all the
8 questions I have.

9 THE COURT: Recross?

10 MR. ROBINSON: Two questions. Just actually one
11 question on recross in response.

12 RECROSS-EXAMINATION

13 BY MR. ROBINSON:

14 Q. The bullets, Items 40 -- let's see, 41, which is
15 [REDACTED] Jasmine Lane and 38, which is [REDACTED] Jasmine Lane, that
16 could potentially be another gun as well, couldn't it?

17 A. Yes, sir.

18 MR. ROBINSON: Okay, thank you.

19 THE COURT: May this witness be excused?

20 MR. STOUDEMIRE: Yes, Your Honor.

21 THE COURT: Any objection?

22 MR. ROBINSON: No objection, Your Honor.

23 THE COURT: Thank you, sir, you may be excused.

24 (Whereupon, the Witness was excused.)

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

1 would rest.

2 **THE COURT:** Okay. Madam Foreman, ladies and
3 gentlemen of the jury, the State has just advised me
4 they have presented the evidence they intend to present
5 in their case in chief. That means I have some
6 administrative duties I need to take care of at this
7 time. I'm gonna send you back to your jury room. I
8 anticipate you being there for a little while, so make
9 yourself comfortable. If you need anything, Mr. Bibb
10 will make sure you have it, okay?

11 (Whereupon, the Jury left the courtroom at
12 approximately 11:40 a.m.)

13 **THE COURT:** And the first lady who testified will
14 be 4.1 is and Mr. Green is 4.2.

15 **MR. ROBINSON:** No objection from the Defense, Your
16 Honor.)

17 (Whereupon, State's Exhibit Number 4.1 and 4.2 were
18 entered into the record, previously 4.)

19 **THE COURT:** Mr. Robinson, be glad to hear from you.

20 **MR. ROBINSON:** May it please the Court? At this
21 point we would make a motion for a directed verdict of
22 acquittal in this case. This case is a, from our
23 perspective, a self-defense of others case. The State
24 at this stage obviously, they have got to beyond a
25 reasonable doubt, show that they have presented enough

1 that there's not self-defense in this case. I would
2 submit that based on the record that they cannot do
3 that. And I believe that an acquittal is warranted
4 because they are required to disprove self-defense in
5 this case and they have not done that. Because I think
6 it was interesting, the Shane Womack testified he was in
7 fear of his life. It was this bad situation. The guy
8 fired at guns at him three times. The other person that
9 came in yesterday, the tall gentleman, that talked about
10 having the shots fired.

11 And the evidence would indicate my client acted in
12 self-defense, that he was defending his friend who the
13 evidence showed yesterday he knew for ten years in this
14 case. It was just a very bad situation. And everything
15 indicates that instead of running or taking off, he went
16 back to his home, didn't wash himself off like
17 Ms. Simmons talked about earlier, as far as getting rid
18 of gunshot residue. He just sat there for the police to
19 come. But we believe the State cannot disprove that at
20 this point self-defense in this matter.

21 **THE COURT:** Well let me ask you this. Obviously
22 none of these took place at the defendant's household,
23 right?

24 **MR. ROBINSON:** Correct.

25 **THE COURT:** So you would agree with me that the

1 Counselor Doctrine would not apply in this case.

2 MR. ROBINSON: I would agree, Your Honor.

3 THE COURT: So in this case in order for Mr. Moss
4 to have the affirmative defense of self-defense he
5 really is doing that through Mr. Womack's eyes, right?

6 MR. ROBINSON: It's a defense, correct, Your Honor.

7 THE COURT: So it's fair to tie him together, but
8 the jury would have to view Mr. Womack -- well, Mr. Moss
9 view Mr. Womack's position to be in defense of others.

10 MR. ROBINSON: Yeah. That's correct, Your Honor.

11 THE COURT: Now, under both situations, deference
12 of others or self-defense, there is a duty to retrieve,
13 correct, if it can be done so without increasing the
14 danger.

15 MR. ROBINSON: It can be done.

16 THE COURT: Now, would you agree with me that would
17 include the Defendant in this case?

18 MR. ROBINSON: I believe that's the standard, Your
19 Honor. I believe that if you can, if it's something
20 that can be done, he has a duty to retreat. True. But
21 the question as far as whether or not he could retreat.
22 And in that situation, it was an instantaneous kind of
23 situation. That's where the issue comes in. I agree
24 that he did not retreat, but I also would submit that I
25 don't know if he had any choice in the matter.

1 THE COURT: Well and, again, that seems more of a
2 factual issue to me. But it seems to me, if you view
3 the evidence in the light most favorable to the State,
4 which I have to do --

5 MR. ROBINSON: I understand.

6 THE COURT: -- in most circumstances. And the
7 question is, is the evidence capable of more than one
8 inference viewed in the light most favorable now. And
9 in this case you have the undisputed testimony that
10 Mr. Moss did not retreat at any time, including the time
11 when Mr. Womack was being pursued down the street by
12 Mr. Peeples with a knife or thereafter.

13 The innuendo or inference from that was that he
14 also was armed at the time, although there's no direct
15 testimony on that. There's reasonable inference, a
16 brief one, that as he was following Peeples down the
17 road, who was pursuing Mr. Womack, that Mr. Moss had
18 already armed himself with a weapon because the
19 testimony was that thereafter Peeples shot at Womack and
20 them either almost instantaneously or at some
21 five-minute gap. Up to five minutes, if my notes are
22 correct, then Mr. Moss began to open fire on the
23 decedent and Mr. Peeples.

24 And there's testimony that was elicited in this
25 case, and right now I'm going directly through my notes,

1 as to who testified against it. At one point
2 Mr. Peebles had stopped shooting his weapon and had
3 turned and was moving away from Mr. Womack. And at some
4 period there's discrepancy in the testimony, anywhere
5 from almost instantaneously to almost five minutes
6 before the gun started shooting.

7 So in that situation, take it and if you view it in
8 light most favorable to the State, then self-defense
9 would not be available to Mr. Womack and, therefore, not
10 to Mr. Moss. Also, Mr. Moss did not retreat at any
11 time. So it's a question of fact for me to the jury.
12 And that would go to the murder and attempted murder
13 charges.

14 Now, I would like to hear you as to his discharging
15 firearms into a dwelling.

16 MR. ROBINSON: As to those, Your Honor, I think
17 that through the SLED witness, Mr. Green, he said that
18 he can't say whether they're the same bullet. I ask
19 that those be dismissed at this time because he can't
20 say. He had no proof that those were his bullets.

21 THE COURT: All right. I also deny your motion on
22 those grounds. The totality of the circumstances in
23 this case, the testimony from eye witnesses was that
24 they saw this Defendant shooting the guns randomly from
25 door, window to door, window as he was going down the

1 street. So although SLED could not testify with a
2 reasonable degree of scientific certainty that these
3 particular bullet fragments come from this particular .40
4 caliber gun that's in evidence and undisputedly
5 Defendants at this point or apparently Defendant's at
6 this point from the totality of the facts the jury could
7 conclude the bullets could have come from the
8 Defendants.

9 Now, that being said, Mr. Moss, would you please
10 stand. (Complies.) Would you raise your right hand.
11 (Complies.) Do you swear or affirm to tell the truth,
12 the whole truth and nothing but the truth?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, I need you to speak loud enough so
15 I can hear you, okay?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. Now, Mr. Moss, at this point I
18 want to explain to you certain rights that you have. If
19 you do not understand anything I say to you, please let
20 me know, okay?

21 THE DEFENDANT: All right.

22 THE COURT: And at the time you do not understand
23 it, stop me so I could explain to you there, okay?

24 THE DEFENDANT: All right.

25 THE COURT: We pretty much reached that point in

1 trial where the defense has a right to present evidence,
2 which would include your right to testify if you
3 determine that's what you want to do. Now, the Fifth
4 Amendment to the United States Constitution reads as
5 follows and I want to read it to you. That no person
6 shall be compelled in any criminal case to be a witness
7 against himself, okay? Have those rights been explained
8 to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand them?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. I want to go forward and explain
13 them to you again just to be sure.

14 THE DEFENDANT: All right.

15 THE COURT: That what that means, Mr. Moss, is that
16 you cannot be required to testify in this case. You
17 cannot be compelled by the State of South Carolina to
18 testify against yourself. Okay? You do have the right
19 if you so desire to testify in this case. However, no
20 one can force you or make you testify in this matter.
21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, your right to testify or the Fifth
24 Amendment Defendant right against self-incrimination is
25 a personal right that no one can waive for you except

1 for yourself. Your lawyer can't waive it for you, your
2 mother can't waive it for you, no one else can waive it
3 for you. Either you assert that right and say that I do
4 not want to testify or you make a decision that I do
5 want to testify. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And although you have a right to
8 consult with your attorney and anyone else you out there
9 that you feel comfortable consulting with, ultimately
10 the decision of whether or not you will testify will
11 have to be yours and yours alone. Do you understand
12 that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, Mr. Moss, if you decide
15 that you are going to testify you will be subject to the
16 same rules that govern any other witnesses in this case
17 and you may be examined and cross-examined on any
18 matters which would be relevant or any issue that would
19 be relevant in this matter. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Also, if you have any convictions
22 involving dishonesty or false statement or for crimes
23 punishable by imprisonment for more than one year and I
24 determine that the probative value of those prior
25 convictions or pleas is not outweighed by the prejudice

1 to you, then the State may be able to cross-examine you
2 on those prior convictions. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The obvious reason they would do that
5 would be to attack your credibility. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, if you decide that you do want to
8 testify in this case your decision must be made freely,
9 must be made voluntarily, knowingly and intelligently
10 with the knowledge of your Fifth Amendment rights and
11 the consequences of your decision to testify, okay?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: First of all, have you understood what
14 I've gone over with you thus far?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any questions?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you understand that if you choose
19 not to testify today or in this trial, in the
20 instructions to the jury I will instruct them that they
21 cannot and they shall not in their deliberations refer
22 to or mention the fact that you did not testify because
23 at all times the burden remains on the State of South
24 Carolina to prove you guilty beyond a reasonable doubt.
25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, what I'm gonna do is give you some
3 time to speak with your attorney, to speak with your
4 mother if you so desire or anyone else that you feel
5 like would be helpful to you in making this decision.
6 And then I'll call you back and you tell me whether or
7 not you decided to testify or whether or not you decide
8 to invoke your Fifth Amendment right, okay, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. At this stage before I take a
11 break, do you have any questions of me whatsoever?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you have any questions whatsoever of
14 your attorney whatsoever?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay, sir. And we're going to take a
17 few minute break. I'm gonna let you consult with
18 Mr. Robinson. And we'll be in recess for an
19 indeterminate amount of time.

20 (Whereupon, a recess was had from 10:51 a.m. to
21 11:33 a.m.)

22 THE COURT: Please be seated.

23 Mr. McGuffin, would you bring the jury in, please,
24 sir.

25 THE COURT: Tell them to hold off. Mr. Moss, I had

1 a chance to speak with your attorney and the State in
2 chambers, and I know that you had an opportunity to
3 reflect with your attorney and whoever you had. At this
4 point, have you made up your decision as to whether or
5 not you intend to testify in this matter?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And what is your decision?

8 THE DEFENDANT: I'm not gonna testify.

9 THE COURT: You want to exercise your Fifth
10 Amendment right; is that correct? In other words,
11 against self-incrimination and not testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And are you doing so freely and
14 voluntarily?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has anybody, forced, threatened or
17 promised you anything to get you not to testify?

18 THE DEFENDANT: No, sir.

19 THE COURT: And you feel like you've got sufficient
20 time to speak with your attorney or whomever in making
21 that decision?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Thank you very much, sir.
24 Bring the jury in, please.

25 (Whereupon, the Jury entered the courtroom at

1 approximately 11:35 a.m.)

2 THE COURT: Madam Forelady, ladies and gentlemen of
3 the jury, after thorough consultation with everyone
4 involved, we have concluded the testimonial aspect of
5 this case. You remember at the beginning I told you
6 there's five phases. You had opening statement, you had
7 presentation of the evidence, you had charging
8 arguments, close on the law and deliberations. The
9 second phase has now been completed. I'm gonna excuse
10 you for lunch. We're gonna make a decision as to
11 whether I will charge you first or they will go into
12 their closing arguments first and then I will charge
13 you. And I also have to go over the actual law that I'm
14 going to charge you and to make sure that everybody is
15 on board on the law that I'm gonna charge you.

16 That being said, I'm gonna excuse you until 1:00.
17 If you'll be back in your jury room by 1:00 we'll resume
18 this trial at that point, okay? I remind you not to
19 speak with anybody or amongst yourselves during your
20 lunch break. Thank you.

21 (Whereupon, the Jury left the courtroom at
22 approximately 11:37 a.m.)

23 THE COURT: All right. Any additions or exceptions
24 from the State?

25 MR. STOUDEMIRE: Judge, just the one thing. I

1 don't think the defense has rested. I don't know if you
2 wanted to go ahead and take care of that now or after
3 lunch.

4 THE COURT: Okay. And I did jump the gun on that.

5 MR. ROBINSON: After lunch is fine.

6 THE COURT: Okay. Any additions or exceptions from
7 the Defense?

8 MR. ROBINSON: No, sir, Your Honor.

9 THE COURT: Okay, very good. I know that we were
10 discussing the charges briefly in the back and I always
11 want to put it on the record. So if you have those for
12 my able law clerk.

13 (Whereupon, a discussion was had off the record.)

14 THE COURT: Both attorneys have been with me as far
15 as my standard part of my charge, not the substantive
16 law. It has not changed. If you need me to I'll be
17 glad to go over it. There's three phases that I do.
18 Like Judge Hill in Greenville, he will have the duties
19 then the substantive law and then the law on
20 deliberations, okay? He is making some changes and
21 getting copies for you to go through and look at. I've
22 got some, a few changes here and there that I will make
23 and then I will go over with you.

24 CHARGE CONFERENCE:

25 THE COURT: Mr. Stoudemire, have you had a

1 sufficient chance to review the proposed charge?

2 MR. STOUDEMIRE: I have, Your Honor.

3 THE COURT: Mr. Robinson?

4 MR. ROBINSON: I have, Your Honor.

5 THE COURT: Based on our meeting in my chambers,
6 number one that Defense was gonna charge defense of
7 others but not put up any defense in your defense at
8 all, correct?

9 MR. ROBINSON: That is correct. About self-defense
10 and defense of others and the appearances in the charge.

11 THE COURT: All right. Now, under Murray, I have
12 the second page last paragraph beginning with inferred
13 malice, I have taken out that last sentence on the
14 second page and the third page going to the first
15 sentence on the fourth page under *State v. Belcher*. So
16 this is a self-defense case, that inferred malice would
17 not be applicable to this case.

18 Do you agree, Mr. Stoudemire?

19 MR. STOUDEMIRE: I do, Your Honor.

20 THE COURT: Mr. Robinson?

21 MR. ROBINSON: I do, Your Honor.

22 THE COURT: So as it would go, it would be my
23 intention to charge, the Defendant is charged with the
24 murder of Quinton Thomas and go through the charge
25 through on Page 2, malice may be inferred from conduct

1 showing total disregard for human life. Then I would
2 skip over to Page 4 and charge the lesser-included of
3 voluntary manslaughter of Quinton Thomas.

4 Now, my understanding is the State agrees that
5 voluntary manslaughter would be appropriate
6 lesser-included murder charge in this particular case.

7 MR. STOUDEMIRE: That's correct. I think with the
8 facts presented, that would be a question for the jury
9 to decide.

10 THE COURT: Okay. Let me make sure everybody is
11 clear, do you have an objection to me charging the
12 lesser-included?

13 MR. ROBINSON: I do not, Your Honor.

14 THE COURT: And you requested I charge that charge,
15 correct?

16 MR. ROBINSON: I did, Your Honor.

17 THE COURT: Okay. For my proposal to skip to the
18 voluntary manslaughter after stopping on Page 2, after
19 total disregard for human life, any objection from the
20 State?

21 MR. STOUDEMIRE: No, Your Honor.

22 THE COURT: Any objection from Mr. Robinson?

23 MR. ROBINSON: No, sir, Your Honor.

24 THE COURT: Okay. Now, as to the voluntary
25 manslaughter charge, any objection to the charge that's

1 proposed from the State?

2 MR. STOUDEMIRE: None, Your Honor.

3 MR. ROBINSON: No, Your Honor.

4 THE COURT: I would then, after the voluntary
5 manslaughter would insert at this point the possession
6 of a weapon during the commission of a violent crime
7 under 16-23-490 since that's under Indictment
8 2011-GS-37-764 and would only be applicable to that
9 indictment. So I would insert it here above the charge
10 on attempted murder. Any objection from the State?

11 MR. STOUDEMIRE: None.

12 MR. ROBINSON: No, sir, Your Honor.

13 THE COURT: Okay. Next I would go to the charge on
14 attempted murder. And the charge is pretty much
15 straightforward. I would add after the paragraph
16 propose and before the definition of attempt that the
17 jury should require the same definition of express and
18 implied malice that I have previously given them. Any
19 objection that I proposed?

20 MR. STOUDEMIRE: None.

21 THE COURT: Mr. Robinson?

22 MR. ROBINSON: None from the Defense, Your Honor.

23 THE COURT: Then I would go further and define
24 intent. Now, my first blush was I had to do
25 self-defense and defense of others interchangeably. I

1 think if I look further on the defense of others that
2 would sufficiently cover self-defense. And so I would
3 exclude the actual charge on self-defense that would
4 pick up the proposed charge Page 7, 8, 9, 10, 11, 12,
5 and go to Page 13. I know it's not numbered on your
6 sheet, but it's actually numerically on mine done by
7 hand. But I'd go from after the attempted murder
8 charge, I would go to the affirmative defense of others.
9 Are you with me, Mr. Robinson?

10 MR. ROBINSON: I'm understanding, Your Honor. I
11 understand.

12 THE COURT: Okay. I just want to make sure we're
13 all on the same line. I would not charge the law on
14 self-defense. I think it's conclude in the charge of
15 defense of others as proposed. Have you had a chance to
16 look at that?

17 MR. ROBINSON: I have. On the record, Your Honor,
18 I just on the record.

19 THE COURT: Go ahead.

20 MR. ROBINSON: I understand the Court's reasoning
21 behind this obviously. You see when we, when I did my
22 opening statement it was self-defense and defense of
23 others and I don't want to -- I'm concerned that the
24 jury is gonna think there is no more self-defense, just
25 defense of others. I don't know, I think I may lose

1 that affirmative defense if I don't object to a separate
2 charge for self-defense. I understand the Court's
3 reasoning in the terms of whether the Defendant has
4 self-defense.

5 THE COURT: Well, the law is that I charge the law
6 given on the testimony and evidence presented during
7 trial. Do you agree?

8 MR. ROBINSON: I do, Your Honor.

9 THE COURT: And in this case, regardless of whether
10 it was said in opening statement, I'm not aware of any
11 evidence, viewed in light most favorable to Mr. Moss,
12 where he would be entitled to a self-defense charge. Do
13 you disagree with me?

14 MR. ROBINSON: I don't disagree because I think he
15 was trying to protect his friend which is going to be
16 defense of others.

17 THE COURT: Right.

18 MR. ROBINSON: And I think the point --

19 THE COURT: I understand you don't want to lose
20 credibility to the jury and I understand that and I
21 think we could address that separately. But the defense
22 of others charge as proposed, it certainly says that
23 under the law of self-defense the Defendant may take
24 another's life in defense of others and it goes further
25 to show that the person being defended had the right to

1 self-defense it must be shown to the person being
2 defended, et cetera, et cetera.

3 MR. ROBINSON: Correct. I agree I think that
4 covers --

5 THE COURT: It seems to me I could say to the jury
6 in my charge to coming anywhere close to foul in the
7 facts that the Defendant has raised affirmative defenses
8 of self-defense and defense of others. Actually, ladies
9 and gentleman, those are intertwined into one defense
10 and that is defense of others because in order for there
11 to be defense of others there must be the right, the
12 person had intended to have defense, self-defense
13 available to them. So this is the law on self-defense
14 to others, something along those lines. Any objections
15 to my proposal?

16 MR. STOUDEMIRE: And, Judge, my only objection, of
17 course, is what we discussed in chambers.

18 THE COURT: Well, let's put it on the record.
19 That's why we're doing it here.

20 MR. STOUDEMIRE: Yes, sir. And I just want to say
21 that the State would object to that on three bases.
22 One, I think the evidence shows that Mr. Moss followed
23 the situation on down the street throughout. And I
24 think that with regard to the duty to retreat, he never
25 attempted to retreat.

1 THE COURT: You are arguing about me making the
2 charge of defense of others at all, right?

3 MR. STOUDEMIRE: Right.

4 THE COURT: Okay. And I'm going to give you time
5 to do that. I'm going to charge it.

6 MR. STOUDEMIRE: I understand.

7 THE COURT: Okay? And subject to your objection, I
8 want you to put it on the record, but as to my proposal
9 that I tell the jury that they raised an affirmative
10 defenses as a self-defense and defense of others in this
11 case. Those are really intertwined defenses of defense
12 of others including self-defense because if the defense
13 of others is applicable to the person being defended had
14 the right to self-defense. Any problem with me making
15 that type of charge to the jury?

16 MR. STOUDEMIRE: No, Your Honor. I think that --

17 THE COURT: Subject to your objection on the charge
18 being given to them at all.

19 MR. STOUDEMIRE: Yes, Your Honor, I think that's
20 appropriate.

21 THE COURT: You bring up your complaints about me
22 charging that to the juror. Number one, that is what,
23 please, sir?

24 MR. STOUDEMIRE: That Mr. Moss followed the
25 situation on down the street. Number two, that I think

1 one of the elements with regard to all of this with
2 self-defense and defense of others, he has to be without
3 fault bringing on the difficulty. And I think that the
4 evidence showing they went to the trailer that
5 Mr. Thomas was at and Mr. Peeples' was at, I think that
6 is bringing on the difficulty.

7 And, number three, that Mr. Moss's prior record
8 being that he does not have the right under the law
9 based on his prior record to even possess a firearm and
10 he clearly did based on the evidence in this case, and
11 we would object on those bases.

12 THE COURT: And the last one you cited to me in my
13 chambers was State v. Burns, I believe?

14 MR. STOUDEMIRE: Yes, sir, we discussed that.

15 THE COURT: A case out of Anderson with Judge Hall.
16 It was a murder case, and somebody who did not have a
17 right to possess a firearm was raising the defense of
18 accident in court in that case. The way I read it was
19 that the fact that he may not have had the right to
20 possess a firearm did not mean he had the right to
21 self-defense, so it seems the whole opposite of what you
22 are trying to argue.

23 MR. STOUDEMIRE: Yes, Your Honor.

24 THE COURT: So I deny your motion on that.

25 The other, as to the duty of the Defendant to

1 retreat, in this case, and obviously when affirmative
2 defenses are raised and my analysis would be the same as
3 for the directed verdict against your case but on the
4 other side.

5 Now, I have to view the facts in the light most
6 favorable to the Defendant and determine whether or not
7 the evidence is capable of more than one inference and
8 if it is, it is for the jury to make a determination.
9 And my understanding of the facts in this case,
10 especially in light most favorable to Mr. Moss, is that
11 there was some type of altercation between Mr. Moss and
12 some unknown person. It never was said but the
13 inference was it was one of the victims in this case but
14 that was never brought out.

15 And he went by to get Mr. Womack, his buddy, to
16 come by his house. Womack says he was going to hang
17 out, maybe he was there to get someone to help him out.
18 So it's capable to draw maybe more than one inference in
19 that regard. And Mr. Moss went to Mr. Thomas's house
20 and Mr. Peeples' house and was looking for a man named
21 Bird. And then some type of undisclosed, it appeared to
22 be, argument took place between Thomas and Moss and then
23 the events occurred where Mr. Peeples allegedly came
24 out, pushed Mr. Womack down the road using a knife.

25 Mr. Womack, during that period of time, either in

1 the car or out there by the car had not done anything.
2 He retreated. Then Mr. Peeples armed himself and
3 allegedly shot at Mr. Womack. That testimony differs as
4 to whether or not at that point Mr. Peeples stopped, was
5 walking back to the house or that he almost
6 instantaneously received fire from Mr. Moss.

7 So all that said and done, looking at what Mr. Moss
8 reviewed as with regard to Mr. Womack, in the defense of
9 others, I think the evidence is subject to more than one
10 inference. And so it would be a jury question for me so
11 I deny your motion. Obviously you are protected on the
12 record I believe, so is Mr. Robinson.

13 As to the proposed charges, I'm gonna let both
14 folks -- I can't read your charges, Mr. Robinson. I
15 just don't understand what they say.

16 MR. ROBINSON: It's all right, Your Honor. I can't
17 read --

18 THE COURT: If you want to read it out to me, I'm
19 glad to consider it but right now it's included in
20 defense of others.

21 MR. ROBINSON: It is. I wanted to make the Court
22 aware that the Court has conclude on Page 15 of its
23 charges what I had been thinking about when I spoke at
24 sidebar yesterday, so I think that's satisfied, Your
25 Honor. All my requests are satisfied in that charge.

1 THE COURT: On the State's charge, on the State v.
2 Foust (phonetic), I'm denying that. Under State v.
3 Mouzon, you have a copy of that, as worded it needs to
4 be typed up. I don't mind looking at that charge if it
5 needs of it, but the grammar of it right now is just not
6 correct. It seems to have typographical errors.

7 MR. ROBINSON: They've given me copies, Your Honor.

8 THE COURT: I'm sorry?

9 MR. ROBINSON: They've given me copies.

10 THE COURT: What is your position with regards to
11 the proposed charge on the State versus Mouzon?

12 MR. ROBINSON: I think it's, I don't think the
13 wording is very good is really my big thing with it. I
14 don't really think it's necessary. I think you covered
15 the charge in your, in your charge that you have given
16 in these pages so I don't think it's necessary. In
17 fact, I think it kind of waters down a little bit the
18 definition of malice in the charge that the Court is
19 gonna give as well. That's my position.

20 THE COURT: Mr. Stoudemire?

21 MR. STOUDEMIRE: Judge, I think when I was reading
22 through your charge, I didn't really have an issue. I
23 think the point that I was trying to get across with
24 that with Mouzon I think was essentially included in
25 your charged.

1 THE COURT: All right. I'm gonna then not charge
2 your proposed charge under State v. Mouzon. If you
3 would like, you can make both these proposed charges for
4 Court exhibit for further review if I'm incorrect. I
5 think it is included in my general charge, though.

6 MR. STOUDEMIRE: I believe it is, Your Honor.

7 THE COURT: Okay, very good. So I'm gonna have my
8 charge in the verdict form. From the State, any option
9 to the proposed verdict form as done?

10 MR. STOUDEMIRE: None, Your Honor.

11 THE COURT: Mr. Robinson?

12 MR. ROBINSON: No, sir, Your Honor.

13 THE COURT: All right. With that being said, we'll
14 be in recess until 1:00 during which time you all can
15 consider whether or not you want me to charge on the law
16 and you close afterward or whether or not you want to
17 close and then me charge.

18 MR. ROBINSON: Your Honor, I've already made a
19 decision on that.

20 THE COURT: Okay.

21 MR. ROBINSON: I would like the traditional way of
22 doing it. I want to argue because I get the last
23 argument in this case and then charge.

24 THE COURT: And from a procedure standpoint that
25 would be, you'll have to open fully on the facts and the

1 law and Mr. Robinson gets the last argument in this case
2 because you didn't put up any evidence.

3 MR. STOUDEMIRE: That's my understanding.

4 THE COURT: Did you put up any exhibits at all?

5 MR. ROBINSON: I didn't. I actually had exhibits
6 marked for identification only, just based on if the
7 testimony arose.

8 THE COURT: That's right. And do you agree to
9 that?

10 MR. STOUDEMIRE: I do.

11 THE COURT: So you guys will close, the State will
12 close, Mr. Robinson, you will close and then I'll charge
13 on the law. Okay. We're in recess until 2:00.

14 MR. STOUDEMIRE: Thank you, Your Honor.

15 MR. ROBINSON: Your Honor, two is great for me
16 because I think it will give myself.

17 THE COURT: Mr. Wagner, do you want to do a plea at
18 two or one or do it now?

19 MR. WAGNER: Judge, they're bringing them at 1:00.
20 That's about the time I gave SCDC.

21 THE COURT: I want everybody to get a break and
22 come back at two.

23 MR. WAGNER: When the jury goes out do you mind if
24 I bring a few other jail people over.

25 THE COURT: Yes, sir.

1 MR. STOUDEMIRE: What time with us?

2 THE COURT: We're gonna do a quick plea at 2:00,
3 okay, so y'all can be 2:10, 2:15.

4 MR. STOUDEMIRE: Okay. So we'll just be in recess
5 until 2, 2:15?

6 THE COURT: Yeah.

7 MR. STOUDEMIRE: Okay.

8 (Whereupon, a luncheon recess occurred from 12:02
9 p.m. to 1:27 p.m.)

10 THE COURT: State ready to proceed?

11 MR. STOUDEMIRE: We are, Your Honor.

12 THE COURT: Defense ready to proceed?

13 MR. ROBINSON: The Defense is ready, Your Honor.

14 THE COURT: Okay. Could you bring the jury in,
15 please.

16 (Whereupon, the Jury entered the courtroom at
17 approximately 1:30 p.m.)

18 THE COURT: All right. Madam Forelady, ladies and
19 gentlemen of the jury, did you speak or did anyone speak
20 with you about this matter during the lunch break?

21 THE FORELADY: No.

22 THE COURT: I didn't think so. Okay, very well.
23 We will go into the third phase which will be the
24 closing arguments in this matter.

25 Mr. Stoudemire, is the State ready to proceed?

1 MR. STOUDEMIRE: Your Honor, I believe that
2 Mr. Robinson has one thing to do prior to us closing.

3 THE COURT: Okay, sir.

4 MR. ROBINSON: Your Honor, the Defense rests.

5 THE COURT: Okay. We cleared that up. That's
6 fine. Now, is the State ready to proceed?

7 MR. STOUDEMIRE: We are.

8 THE COURT: Mr. Robinson, are you ready to proceed?

9 MR. ROBINSON: The Defense is ready.

10 THE COURT: Mr. Stoudemire?

11 MR. STOUDEMIRE: Thank you, Your Honor. May it
12 please the Court?

13 THE COURT: Yes, sir.

14 MR. STOUDEMIRE: Good afternoon ladies and
15 gentlemen, this is, as the Judge stated, the third phase
16 of the trial which is closing arguments. Now, being as
17 I represent the State I have certain obligations that I
18 have to do. Everything that has to be proven to you in
19 this case has to be proven beyond a reasonable doubt
20 which is the highest form of proof in our justice
21 system. It is way beyond a preponderance of the
22 evidence, which is in civil court which is just a little
23 more than 50 percent.

24 If you recall, the Judge told you at the beginning
25 of the case that reasonable doubt does not mean beyond

1 all doubt. I believe he will instruct you again on
2 reasonable doubt in more detail, and please take your
3 instructions from him on that. But I do have the burden
4 of reasonable doubt to prove the case beyond a
5 reasonable doubt and I take that burden very, very
6 seriously.

7 Now, there are certain things the judge will also
8 charge you on with regard to the law. I believe that
9 the Judge will charge you first on the law of murder,
10 murder being the intentional killing of another with
11 malice aforethought. He will also charge you with a
12 lesser-included offense of murder which is voluntary
13 manslaughter, which is a little bit different than
14 murder. There is a killing, but instead of malice
15 aforethought you have a killing that occurred during a
16 sudden heat of passion. And the Judge will instruct you
17 exactly what that means.

18 He will also instruct you, I believe, on something
19 called defense of others, which is kind of like
20 self-defense. In this particular case defense of others
21 means that for Mr. Moss to be found not guilty on that
22 basis you would have to consider Mr. Moss looking at the
23 situation through the eyes of Shane Womack, and you
24 remember Shane Womack was the first witness that
25 testified.

1 Now, Shane Womack would have to essentially be
2 engaged in self-defense himself. Now, there are certain
3 elements to self-defense. He would have to be, one,
4 without fault in bringing on the difficulty. Two,
5 Mr. Womack had to believe that he was in imminent danger
6 of losing his life or serious bodily harm. Three, that
7 an ordinary man of ordinary firmness and courage would
8 have fired, essentially fired the fatal blow to save
9 himself in the same situation. And, number four, that
10 Mr. Womack would have had no other means of avoiding the
11 danger. And the Judge will instruct you on that, and
12 that is something you must consider in this case.

13 Also, Mr. Moss is charged with possession of a
14 weapon during a violent crime with regard to the murder
15 charge. Now, possession of a weapon during a violent
16 crime to me is pretty self-evident. The evidence in
17 this case you will have to consider whether or not he
18 possessed such a weapon. If you were to find him guilty
19 of murder or voluntary manslaughter, the Judge will
20 instruct you on the specific definition on what a deadly
21 weapon is.

22 Also, Mr. Moss is charged with attempted murder
23 with attempting to murder Mr. Xavier Peeples. Attempted
24 murder is basically trying to kill someone with malice
25 aforethought. It is exactly like it sounds. And

1 lastly, Mr. Moss is charged with two counts of firing
2 into a dwelling.

3 Now, firing into a dwelling means three things.
4 One, Mr. Moss must have unlawfully discharged a firearm;
5 number two, a firearm; and number three, that when he
6 discharged that firearm unlawfully that it went into a
7 dwelling which is regularly occupied by a person or
8 persons. That is the law that I believe that you will
9 be charged on. And, please, pay close attention to the
10 Judge during the charge on the law as to what he gives
11 you on the charge on the law is the only law that you
12 can consider back in your jury room.

13 Now, with regard to the facts in this case. I told
14 you at the beginning that you were going to hear from a
15 lot of different people in the trailer park that lived
16 there. Some are good, some have families, some don't.
17 Some engaged in activities that they shouldn't be
18 engaging in. There's no question about it.

19 And I also told you that while they may not have
20 the entire story of everything that happened back on
21 November 19th, 2011, they have a piece of the puzzle.
22 And the piece of the puzzle they have, some of them may
23 differ, but keep in mind we all view things from
24 different perspectives. If I'm sitting here looking at
25 something and someone is in the back of the room looking

1 at the same thing they have a different perspective on
2 what happened, they may see things differently. It
3 doesn't mean someone is not telling the truth, it's just
4 different perspectives. And you as the jury, as the
5 sole trier of the facts in this case, have to figure out
6 whether or not those stories and those pieces of this
7 puzzle put together to form a picture.

8 So with a little bit of your patience let's go
9 through things.

10 First with regard to Shane Womack. Mr. Womack was
11 the first witness we heard from. He testified that he
12 knew the Defendant, he knew him for approximately a
13 dozen years, certainly well prior to that day, was
14 friends with him, and he also knew that Mr. Moss carried
15 a .40 caliber pistol. He had seen the pistol on him
16 before, knew he carried it most of the time.

17 He was taken to the trailer park that day not on
18 his own but Mr. Moss came and picked him up, if you
19 remember, and took him to that trailer park. And
20 evidently there was some sort of accusation that someone
21 was in a beef with somebody and Mr. Womack was evidently
22 the one that went over there to help Mr. Moss clear that
23 up. So they go to Mr. Moss's house, they get out,
24 Mr. Womack walks down to another trailer, Mr. Moss comes
25 picks him up, goes behind this trailer, goes down and

1 they go to [REDACTED]. And if you'll remember on our map, we
2 end up with Mr. Moss and Mr. Womack over here at [REDACTED].

3 Now, once we get there what happens? Mr. Moss, not
4 Mr. Womack, Mr. Moss goes up to the door, knocks on it,
5 Mr. Womack says down at the bottom of the steps he hears
6 some kind of an argument going on, can't hear exactly
7 what's going on, but according to Mr. Womack the next
8 thing that happens is Xavier Peeples, who's also known
9 as Tug, comes out of [REDACTED] to confront him. And according
10 to Mr. Womack he has a knife.

11 Now, Mr. Womack tells us he's not armed and
12 Mr. Peeples is armed. Now, let's remember our
13 appearances. Mr. Womack, while he is not the tallest of
14 men, he's also not the slightest of build. And
15 Mr. Peeples, while not the tallest of men is of slight
16 build.

17 So they have a confrontation. And they may or may
18 not have, as Mr. Peeples said, rounded off like they are
19 going to fight but there was a confrontation between the
20 two of them. And according to Mr. Womack he starts to
21 retreat. And he starts backing up with Mrs. Peeples
22 with the knife all the way down Jasmine Lane and they
23 end up right around here, 220, in front of Marcus
24 Whitner's house. And that's what pretty much everybody
25 you heard from testified to. And that's where they

1 ended up. That's where things get interesting because
2 we've got an altercation. We've got one person with a
3 knife, we've got one person without a knife. Well, the
4 person with the knife goes in the trailer. He comes out
5 of the trailer -- Mr. Womack while he's in the trail,
6 keep in mind, Mr. Womack's testimony is he stayed there,
7 he didn't leave, he didn't run away or call for help.
8 According to his own testimony, he stayed there.

9 Mr. Peeples comes out with a gun. Again,
10 Mr. Womack testified I saw him come out with a gun, he
11 got fired at. Mr. Womack testified he didn't know
12 exactly how many times, but he got fired at several
13 times. Again, he didn't cry out for help, he didn't run
14 away. But he got fired at and he was extremely
15 fortunate and didn't get hit with a single solitary
16 thing that day.

17 And after that, according to Mr. Womack,
18 Mr. Peeples starts to walk away. And at this point
19 Mr. Peeples is the only person that's fired a weapon.
20 And, again, he starts to walk away. Now, this is what I
21 think is very important. According to Mr. Womack, one
22 to five minutes goes by before anything else happens.
23 (Solicitor waits.)

24 That's approximately one minute. That is the
25 minimum amount of time that Mr. Womack said it took

1 before anybody to act. The minimum, not the maximum.
2 And then somewhere between one and five minutes he tells
3 you that Mr. Moss in this area, right around this light
4 pole, opens fire. And according to Mr. Womack he said
5 later, he didn't see the gun right that morning, but
6 later walking he recognized it as the .40 caliber pistol
7 that Mr. Moss normally carries with him.

8 And keep in mind Mr. Womack is here, he hasn't
9 moved, he hasn't run away. Mr. Peeples, according to
10 Mr. Womack, is walking up the road. And his testimony
11 was and, again, when Mr. Peeples got shot his back was
12 to Mr. Womack. He wasn't pointing the gun. His back
13 was to Mr. Womack, the gun was pointed in another
14 direction.

15 And during all this where is Quinton Thomas?
16 Quinton Thomas is up in this area and he is not involved
17 in any altercation in any way whatsoever. Mr. Womack
18 never had a weapon, he never got involved in the
19 altercation, he wasn't there.

20 So, again, let's put ourselves in Mr. Womack's
21 shoes. We have an altercation with someone. We do
22 retreat back here. Are we in fear of our life or
23 serious bodily harm? I would submit to you that when
24 you are being fired on, you are. But I would also
25 submit to you that when that ceases and someone walks

1 away from you that that situation subsides.

2 And ladies and gentlemen, that is when Mr. Moss
3 opened fire. And if you recall the testimony in this
4 case, he didn't open fire once, he didn't open fire
5 twice. There are 19 rounds that were fired from the .40
6 caliber weapon in Mr. Moss's hand, 19. And they weren't
7 just right here where Mr. Moss was standing or where he
8 got in the confrontation with Mr. Peeples. No. We had
9 bullets that went into [REDACTED]. We had a bullet that went
10 into [REDACTED]. We had three bullets which struck Mr. Peeples
11 at various points of his body, and we had another bullet
12 that hit Mr. Thomas somewhere in this area of the
13 trailer park that caused him to fall that ended up being
14 the fatal shot that ended his life.

15 Now, again, let's go back to what Mr. Womack said.
16 How did Mr. Moss get to this position? Mr. Womack
17 really doesn't know. He said that Mr. Moss was
18 following him for some period of time, and then he
19 veered off, didn't see him again. And the next thing
20 you know he's up here. I would submit to you that
21 Mr. Moss had this weapon, he went somewhere in this area
22 back in the woods and took up a position here. He took
23 up a firing position not to defend anyone.

24 Now, certain questions that I would submit to you
25 as well. Mr. Peeples has a knife. Mr. Womack has

1 nothing, but Mr. Moss had a gun. If he sees Mr. Peeples
2 with a knife and he has a gun, why not just end the
3 situation before it gets worse? Why not just yell out
4 something in the neighborhood of Hey, I got a gun. Stop
5 or I'll shoot. Could have ended all that right there.
6 Didn't do it.

7 Now, next who testified was Donald Wright. And if
8 you remember Mr. Wright, Mr. Wright has lived in the
9 trailer park for a good number of years, works at
10 Applebee's, doesn't cause any problems with anybody,
11 described himself as the peacemaker out there. If a
12 situation arose, he was the one that wanted to stop it.
13 He knew that there were kids out there and he wanted to
14 make sure that all of them were safe.

15 So where was he on that day back in May of last
16 year? Well, he was at [REDACTED] at his cousin's Marcus
17 Whitner's house which, of course, is where everything in
18 this case happened. And what did he say? He saw
19 Mr. Womack coming down the street and said that Tug had
20 a knife. And, again, Tug is Xavier Peeples. And Tug
21 had a knife. And what happened then? Tug goes in the
22 house, he comes out with a gun, he fires at Shane, Shane
23 is not hit. And what does Mr. Wright say at that point?
24 Mr. Wright says at that point that approximately two
25 minutes went by. Now, to be honest I could stand here

1 and I could wait two minutes to speak again, but I think
2 you get the idea of how long two minutes is.

3 But two minutes go by and then Mr. Moss starts
4 shooting and only then. And where does he put Mr. Moss?
5 He puts Mr. Moss in the same place Mr. Womack did, near
6 this streetlight firing. And how does he say Mr. Moss
7 is firing? Well, he doesn't say Mr. Moss is coming off
8 the hip like a six shooter in the old west. He said Mr.
9 Moss took up a firing stance like this. He stood there
10 and did this and he described it.

11 And if you remember Ms. Simmons from SLED when she
12 was describing gunshot residue, she pretty much backs
13 that up, GSR was found on the palms of his hands and on
14 the back of his hands, which is indicative of someone
15 firing a gun using both of his hands, which is exactly
16 how Mr. Wright described it. And how did he describe
17 the shots? Mr. Wright said the shots were going off
18 like it was the 4th of July; that there were shots all
19 over the place. Fired in several directions. Not just
20 here where Shane was, not just here where Mr. Peoples
21 had been hired at him, but fired in several directions.
22 If you are defending your friend, why are you firing up
23 the road?

24 Mr. Wright saw Quinton Thomas get hit, and
25 Mr. Thomas went by his nickname Woo. He saw Woo get

1 hit. Where does he say he saw him get hit? He says he
2 saw him get somewhere in the neighborhood of [REDACTED] here
3 yet knocked against it and then get up and start trying
4 to run home. And sadly Mr. Thomas never made it home,
5 not on his own. Mr. Wright had to come down the street,
6 pick him up and take him back to his house where he
7 sadly later died from that gunshot wound fired by
8 Mr. Moss.

9 Remember Mr. Wright said that he tried to help him
10 as much as he could. He applied pressure. He had
11 either his sister or relative that was a nurse, got her
12 down there. They did everything they could to help out
13 Mr. Thomas until EMS arrived and took over, and
14 unfortunately by then it was too late.

15 Now, again, what else did he say about Mr. Thomas?
16 He wasn't involved in any of this. What did he have?
17 Did he have a gun? Did he have a knife? No. He had a
18 folding chair that he was holding up like a shield in
19 front of himself in the vain hope that that could stop a
20 bullet. That's all he had. He wasn't armed with a
21 chair. This isn't the WWE where somebody comes off the
22 top rim holding a folding chair. This is real life,
23 ladies and gentlemen. This isn't make believe.

24 Carole Gibson. Ms. Gibson lives here at [REDACTED]. She
25 was at home that day from work. She was in her back

1 bedroom reading her Bible, heard a commotion. Came up,
2 thought this can't be good. Went outside and moved her
3 car. Went back to reading her Bible. An hour later she
4 hears another commotion. Well, like anybody else with
5 some level of curiosity she goes to the window and looks
6 out. It, frankly, it was extremely fortunate for
7 Ms. Gibson that she looked out the left side of her
8 window than her right side of her window, because you
9 will have the photographs with you back in the jury room
10 that show where the gunshot went in on her window. It
11 went in on the right side. If she had been on the right
12 side, she wouldn't have been up here talking to us today
13 I submit to you.

14 And what did she say? She saw somebody firing out
15 here and then she saw somebody else firing from around
16 that light pole. Now, she didn't know Mr. Moss, she
17 didn't know Mr. Peeples. She didn't know any of these
18 people at all. And I would submit to you that's because
19 Ms. Gibson is a good, honest person. She goes to work
20 every day. She comes home and she doesn't cause any
21 problems for anyone or get involved in any of this type
22 of drama. All she was up here telling us is what she
23 saw that night. And what she saw was a man up there
24 shooting and one of his shots hit her house right there
25 and another one went in a different portion and hit her

1 computer. And, ladies and gentlemen, I would submit to
2 you that the position she put the person firing is the
3 same position that other people put Mr. Moss firing
4 from.

5 Now, Mr. Brouhard was a quick witness. If you
6 remember right he's the one whose wife just had a baby
7 the day before and this was without a doubt the last
8 place he wanted to be on earth. I'm sure he rather
9 would have been home with his child. But he came up
10 here to tell us what he knew, and what he knew was that
11 he also was at [REDACTED] that day and was sitting there
12 minding his own business and then he sees again
13 Mr. Womack coming up the street, Mr. Peeples coming up
14 the street. And when Mr. Peeples goes in the house to
15 get the gun, he comes out, according to Mr. Brouhard, he
16 fires and at that point Brouhard gets in the house to
17 get away from him.

18 Now, this is what I think is important to
19 Mr. Brouhard. Mr. Brouhard tries to get away from the
20 situation completely by exiting out this back door at
21 [REDACTED]. And what happens to Mr. Brouhard when he tries to
22 exit that back door? He gets shot at. And I asked him
23 if he recognized who he shot at him, was he in the
24 courtroom today? What did Mr. Brouhard do? He pointed
25 right over there to Mr. Moss. Now, Mr. Moss is

1 defending his friend Mr. Womack up here. Mr. Womack is
2 up here in front, not in back. He's not running out the
3 back. Mr. Peeples is still in front, he's not running
4 out the back either. Why are we firing at the back?

5 And then Mr. Brouhard honestly didn't see a whole
6 lot else at that point. Certainly understandable, he
7 got down, took cover, and waited for everything to end.
8 And then he ran as quick as he could to his in-laws
9 house who lived right here at [REDACTED].

10 Then Mr. Monahan. You remember Monahan and his
11 family lived clear down here at [REDACTED]. Now, he was home
12 that day, his kids were home that day. Everybody is
13 minding their business. He's in the broom, and he hears
14 what his wife said sounded like firecrackers to her. He
15 went and checked on it. And what does he see? He sees
16 a man running by who looked like he had been shot. And
17 then what does he see at that point? He sees a man,
18 Mr. Moss. He sees Mr. Moss walking up the street with a
19 gun pointing it from window to door, from window to
20 door, making sure that nobody is coming out.

21 Ladies and gentlemen, I would submit to you that if
22 you are defending your friend, then your friend who's
23 behind you, you've already shot Mr. Peeples, you've
24 already killed Mr. Thomas who had nothing to do with
25 this, why are you walking up the street pointing at

1 people?

2 Now, Mr. Monahan also testified that he had to
3 retrieve a bullet or law enforcement had to retrieve a
4 bullet from his house that entered this end of the house
5 just above a window and traveled in there that law
6 enforcement had to get in there to retrieve it. And
7 I'll get to that as in a few minutes as well. But
8 remember, ladies and gentlemen, others testified that
9 Mr. Moss was shooting in this direction and this
10 direction and on down in this direction towards
11 Mr. Monahan's house as well.

12 Lastly, ladies and gentlemen, with regard to the
13 people that were on the scene that day we come to
14 Mr. Peeples. Now, Mr. Peeples obviously was intimately
15 involved with this entire situation. And you saw him,
16 he is not a big guy, he's a skinny guy. I wish I was
17 skinnier. But he lived right down here with Mr. Thomas
18 at [REDACTED] at that time. And he was home that day. And
19 according to him they didn't have any plans to go
20 anywhere. And Mr. Moss knocked on the door and he said
21 he heard an argument between Mr. Moss and Mr. Thomas and
22 he didn't hear what it was about, but what he did hear,
23 what he testified that he did hear was Mr. Womack
24 calling him out.

25 So he went outside. He didn't know Mr. Womack, but

1 he went ahead and told his friend to move out of the
2 way, told them to move out of the way and he went
3 outside. And as he testified, they went outside to
4 round off. Well, he got outside, rounded off and all of
5 a sudden it was basically to him pretty much akin to me
6 fighting Mohamed Ali and his crowd. We've got a skinny
7 guy and we've got Mr. Womack who's, again, around the
8 same height, but much more muscular.

9 Then Mr. Peeples testified at that point I knew I
10 couldn't handle him on my own, so I pulled out the
11 knife. And he pulled out the knife and then he started
12 to back down the street. And, again, Mr. Peeples said
13 there was no conversation. Mr. Womack said there was no
14 conversation either. So they're just backing down the
15 street here. Mr. Peeples has the knife, Mr. Womack does
16 not have the knife.

17 And they get down here to Marcus Whitner. And Mr.
18 Peeples knows Marcus Whitner. There's people on the
19 porch at Mr. Whitner's house. And what does Mr. Peeples
20 do? According to his testimony he goes inside [REDACTED]. And
21 he goes inside and he gets a gun. Now, what he says
22 happened, and again he was directly involved, what he
23 says happened is he came outside with a gun. And
24 Mr. Robinson asked him why he came outside with the gun
25 and his answer for that would be, well, Womack wouldn't

1 leave. So he comes outside with the gun, and according
2 to Mr. Peeples the only time he fires that gun is after
3 he already sees Mr. Moss opening fire.

4 Now, no gun has been discharged at this point.
5 Mr. Moss all of a sudden appears here. And you remember
6 Mr. Peeples also said that coming up here, they weren't
7 being followed by anybody, and Mr. Moss was behind him
8 for some period of time and he veered off and Mr. Thomas
9 was way behind Mr. Moss. Again, not involved. I asked
10 Mr. Peeples did Mr. Thomas have a weapon? No, he did
11 not have a gun.

12 Mr. Moss starts firing. According to Mr. Peeples
13 he fires, fires a couple shots after that. He fires
14 them at Mr. Womack. And I would submit that he probably
15 didn't know where the shots were coming from. He fires
16 the shots and then he takes off running, according to
17 him. And he takes off running in this direction. And
18 he gets hit three times. He gets hit right here in the
19 left neck, he gets hit here in the right wrist and he
20 gets hit in the right buttocks, which is a shot that
21 caused a great deal of physical damage to him.

22 Now, I would submit to you that if Mr. Peeples was
23 actively engaged in shooting at someone and not running
24 away, he probably wouldn't have been hit in the
25 rear-end. I would also submit to you that it's logical

1 that if he were essentially firing this way over his
2 shoulder just to get somebody off of him then he could
3 have got hit in the ribs. He got hit three times.
4 Three. And Mr. Thomas got hit, according to
5 Mr. Peeples, before he ever got shot at. Now, that's
6 key ladies and gentlemen. Again, if Mr. Moss is
7 defending his friend Mr. Womack, why are you firing at
8 Mr. Thomas who's down the street who's not involved? If
9 you're gonna fire at somebody, you're gonna fire on the
10 guy with the knife first. You're not gonna fire at the
11 guy with the folding chair in front. That's not a
12 threat. He's not involved.

13 And, ladies and gentlemen, after all this went on,
14 law enforcement came out and to their credit I think
15 they got on the scene pretty quick. Law enforcement
16 went out there assessed injuries as best that they
17 could, EMS got on the scene, they immediately had to
18 take Mr. Peeples off. They took life saving measures of
19 Mr. Thomas that were of no avail unfortunately. And
20 then subsequently Sergeant Cain testified, they talked
21 with Mr. Moss, they took gunshot residue from him, they
22 read him his rights and put him into custody.

23 Later on you heard Sergeant Cain testify that
24 during the course of the time while he was in custody
25 that day Mr. Moss decided to come clean and say I'll

1 tell you where that .40 is. I'm just gonna tell you.
2 And based on what he told them, then Lieutenant now,
3 Captain, Greg Reed and Phillip Robertson went to the
4 home of Mr. Moss's wife, Corbrina Pinson, got a consent
5 to search from her, got a consent to search from the
6 trailer park manager and they went in and they recovered
7 a .40 caliber Taurus.

8 Ladies and gentlemen, I would submit to you that's
9 the same .40 caliber Taurus that Mr. Moss carried with
10 him all the time, the same .40 caliber that he had that
11 day and it's the same .40 caliber that he hid in his
12 wife's house right there in that speaker.

13 Again, ladies and gentlemen, if you are defending
14 someone, you think they are in danger and you are
15 defending their life, why do you have a gun?

16 Now, very briefly. We heard from two SLED experts
17 that testified. We've got bullets that went into the
18 home. SLED cannot under the best of circumstances be
19 able to match those bullets to this gun. Why? True to
20 form, they're too damaged. However, you will have the
21 report back in the room with you. You can read the
22 report. Those bullets that came from [REDACTED] and [REDACTED] are
23 most consistent with a .40 caliber or .10 millimeter
24 firearm. They could not have been fired by a .38
25 special. That was the only weapon that Mr. Peebles had.

1 The only weapon that Mr. Moss had was a .40 caliber
2 weapon. I would submit to you the only weapon in this
3 case the shots could have come from is the one that
4 Mr. Moss had that he fired 19 times.

5 Now, let's talk about the weapon that Mr. Moss had.
6 We heard from the expert who is the closest thing we've
7 got in South Carolina to CSI. And what he did is
8 examine that gun, he examined all 19 cartridge cases and
9 concluded that all 19 of those shots came from that gun
10 that was found in Mr. Moss's house.

11 Now, all 19 of those, as Sergeant Cain testified,
12 were found in this general area, right around [REDACTED], right
13 around that light pole. I would submit to you -- well,
14 let me say this. Remember when Mr. Green testified
15 about the magazine that went into that gun. How many
16 rounds did that magazine hold? It held ten. That gun
17 holds a maximum, a maximum of 11 rounds.

18 Now, there's no way that a gun can fire 19 rounds
19 when it only holds 11 without one thing taking place and
20 that's called reloading. So defense of others, he felt
21 it necessary to not only have a gun but evidently to
22 have at least eight spare bullets or another clip that
23 simply wasn't recovered in this case. And I would
24 submit to you that either of those is entirely possible.
25 But he had to reload that gun ladies and gentlemen. He

1 had to. There's no other way for 19 rounds to be fired.
2 The .38 special only holds six.

3 And again, with regard to gunshot residue I think
4 that it's obvious that Mr. Thomas did not have a gun
5 that day. There was no gunshot residue on his hands in
6 any way whatsoever. There was no gunshot residue on
7 Mr. Womack's hands. The only person that they were able
8 to get a kit from that had gunshot residue was
9 Dametroise Moss. And there's no question that he fired
10 that gun. Stood there like this and he fired it. He
11 fired at Mr. Thomas and he fired at the house and he
12 fired at Mr. Thomas and hit him and killed him and he
13 fired at another house and he fired at Mr. Peeples and
14 hit him three times. It was all through here.

15 (Demonstrating.) Look at the map. That's the way the
16 shots go. They go in a fan.

17 Ladies and gentlemen, let's take just a minute and
18 put these puzzle pieces together that we have.

19 Everybody that testified in this case that saw Tug
20 outside said that Tug had a knife. Xavier Peeples
21 himself said he had a knife. There's no question that
22 he had a knife. Everyone that saw Quinton Thomas or
23 Woo, as he was called, said that woo didn't have a gun.
24 Nobody puts a gun in Woo's hands. Woo was not involved
25 in this and he's dead.

1 Everyone, everyone who saw Mr. Moss shooting puts
2 him in the same place. Every single one. Close to that
3 street light. At least two witnesses put Mr. Moss in a
4 shooter stance, not somebody who's firing off the hip,
5 not my friend is getting shot I better do something
6 quick, but no, a shooter stance. Everybody that's there
7 puts Mr. Moss not just in one direction, not just that
8 one person but in multiple directions and hitting
9 multiple people.

10 Ladies and gentlemen, I would submit to you that
11 even though some of these people say different things,
12 some of them give us different pieces of the puzzle that
13 is simply a matter of different perspectives. You get a
14 different perspective if you are Ms. Gibson looking out
15 the window than if you're somebody standing on the porch
16 of [REDACTED] right in the middle of things. Different
17 perspectives if you are Mr. Monahan down here in [REDACTED]
18 than if you Xavier Peeples right here in the middle.
19 Different perspectives.

20 I would submit to you that while you must consider
21 defense of others in this particular case, it does not
22 fit. It does not fit the facts or the particular
23 circumstances in this case. I would ask you to look at
24 all the evidence and at the end of the day when you
25 consider all the evidence, where Mr. Moss was, where he

1 fired, whom he hit three times, whom he killed, where he
2 shot into two different residences, I will submit to you
3 that Mr. Moss is guilty of murder, he is guilty of
4 attempted murder, he is guilty of having a weapon during
5 a violent crime, he is guilty of firing into both those
6 residences, ladies and gentlemen. There is no
7 reasonable doubt in this case. Mr. Moss is simply
8 guilty on all charges. Thank you.

9 THE COURT: Mr. Robinson?

10 MR. ROBINSON: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. ROBINSON: I, first of all, want to thank you
13 for listening to the testimony in this case and
14 listening to us two lawyers talk back and forth at you.
15 But I want to correct some things that the prosecutor
16 talked about. Y'all had a chance to take notes and
17 write things down. You won't be able to take those back
18 to the jury room but you had a good memory probably. If
19 Mr. Stoudemire is correct, his witnesses, that would be
20 Ms. Gibson, Mr. Monahan, they stated that the shooting,
21 it was instantaneous, it wasn't a thing where he has to
22 sit there for a minute or five minutes. It was
23 instantaneous. I just want to clear that up because
24 it's very disconcerting when his main, two of his
25 witnesses, Gibson and Monahan both testified to that.

1 Secondly, look at the location of where these
2 shells were, all these shells from the .40 caliber.
3 They weren't all over the place. They're in one
4 specific section. Now, the SLED officer, Officer Green
5 testified that a .40 caliber gun, you even had the
6 opportunity to look at that, a .40 caliber gun
7 discharges shells. That's what it does. And all those
8 shells are all in the same area.

9 The prosecutor is wanting you to think that while
10 those 19 shells mean that he was shooting 19 times all
11 over the place and all of a sudden this big mad panic is
12 shooting at houses, is shooting all over the place and
13 so forth. It's an interesting idea but doesn't match
14 what most probably happened which was his friend was in
15 danger, this guy chased after him with a knife and a
16 gun, shot point blank several times at him. What he
17 did, most probably, what the evidence may show and you
18 can infer is that he shot to protect his friend and then
19 shot up in the air and then all the charges all land in
20 the same area because no one else, no one else was shot
21 in this. No one else was shot.

22 So it would make sense most probably, logically,
23 that the shots were done in the air to warn to get rid
24 of these people to stay away from his friend to stop the
25 knives and the guns and so forth.

1 Now, if these two individuals, Mr. Thomas and
2 Mr. Peeples were just sitting at home watching a game
3 and chilling out and so forth, that would be one thing.
4 But they weren't. They were doing drugs. They had lots
5 of drugs at their residence at [REDACTED] Whittle Street. They
6 had scales and so forth. They were doing a drug
7 operation out of their trailer. That's what they were
8 doing. According to Mr. Peeples it appeared that they
9 had a lot of drugs there but they went out in dealings
10 and so forth outside.

11 But I want to reiterate, no one knows in this case
12 how much time had elapsed between the time Mr. Womack
13 was shot at by Mr. Peeples and when Mr. Moss reacted and
14 defended his friends and himself. No one knows that.
15 There was no person in here from SLED, no one that could
16 say how long that was, no one.

17 The only person, as I said before, and I don't mean
18 to repeat it but it's an important point, the two
19 witnesses, Monahan and Gibson both said it was
20 instantaneous.

21 And as far as these two, I think Mr. Stoudemire is
22 trying to paint Mr. Thomas as being completely not at
23 fault in this case. Because just think about this.
24 Because the actions are very telling if you listen to
25 the witnesses. Their drug house, they get knocks on the

1 door. Mr. Moss knocks on the door looking for a guy
2 named Bird. His friend, Mr. Womack, is at the bottom of
3 the stairs. And what happens? Mr. Moss talks to
4 Mr. Thomas and then all of a sudden Mr. Peeples flies
5 through the door with his knife and starts chasing
6 Mr. Womack with his knife, he says his blade. He said
7 he was gonna do some injury didn't say kill, he said he
8 was gonna do some damage to him pretty much with his
9 blade. Starts chasing him down the street. Mr. Moss
10 sees that. What does he do? He follows him to make
11 sure his friend is gonna be okay, to protect his friend.

12 Mr. Thomas at the same time is doing the same exact
13 thing. He's following, too. And he's got a chair. No
14 shooting has taken place at this point. He's following
15 down with a chair. Because the SLED person,
16 Ms. Simmons, testified she could not say that he didn't
17 have a weapon. She could say that he didn't have a gun,
18 but she couldn't say he didn't have a knife or any other
19 sort of weapon. She couldn't say that.

20 So they are being chased down there by Mr. Peeples
21 and Mr. Thomas. Then Mr. Peeples goes in the house of
22 Mr. Whitner and pulls out a gun. And he shoots
23 Mr. Womack at Mr. Womack point blank range three to four
24 times. Only at that point when his friend was
25 threatened, only at that point did Mr. Moss protect his

1 friend. Only at that point.

2 Because, you see, and the Judge is gonna charge
3 this, Mr. Moss, anyone defending themselves or defending
4 someone else can act on appearances. If it appears that
5 a friend is in danger, is going to be killed or suffer
6 serious bodily injury, you can defend that person.

7 But let's think about his actions after the fact
8 that are very illuminating. Think about what he did
9 afterwards. He didn't run. He didn't hide. He just
10 stayed there for the police to arrive. Ms. Simmons
11 testified a moment ago that people, you have a six-hour
12 window. That people can either wipe their hands off,
13 take a shower, so forth. He never did that. He sat
14 there and waited for the police with his GSR on his
15 hands, sat there waiting for the police. Then he told
16 the police where the gun was.

17 Is that the conduct of a guilty person? Is that
18 the conduct of a person who is not defending his friend
19 and his friend's life?

20 Let me take this down for one second so I can move
21 around a little bit.

22 But let's for a second, though, Mr. Moss has a
23 right to act on appearances. So looking through his
24 eyes at that point, think about it. Think about it.
25 This is not something that took hours and there was tons

1 of time and so forth. You had a madman pretty much
2 jumping out of the house, Mr. Peeples, jumping out of
3 the house with a knife running after your friend that
4 you have known for 10 or 15 years or a number of years
5 since you were a kid, chasing after him down the road,
6 you are watching your friend, you're chasing after your
7 friend making sure this guy doesn't stab him to death or
8 stab him and do harm to him.

9 And then you see Mr. Thomas coming in the same way
10 doing the same exact thing. You're kind of saying to
11 yourself, what were they doing? What were they hiding?
12 They got a drug house. Why would they not want these
13 guys to get away? Because they didn't want to have
14 people, Thomas and Peeples didn't want to have people to
15 know about this little house they had. But think about
16 what Mr. Moss, what it appeared to him. His friend was
17 being threatened with a knife first. You know,
18 Mr. Peoples didn't go after him just to fool with him,
19 just to have a little fun with him. He went after him
20 to injure him, to hurt him.

21 Why did he have to go into the house and get a gun?
22 Why did he have to do that? He was gonna do something
23 to get rid of this guy in a hurry. He had bad aim but
24 it doesn't matter. On appearances he thought that his
25 friend was gonna be killed.

1 In the beginning of this case in my opening
2 statement I asked you or I told you about the concepts
3 that would be important in this case that it's
4 self-defense, defense of others. The other concepts
5 that you need to realize or you need to think about too
6 is appearance. The Judge will charge you in a few
7 moments about appearance and that he can act or a person
8 can act on appearance in self-defense.

9 When you look at this case, the Judge is gonna
10 charge you in a second about reasonable doubt and what
11 reasonable doubt is. And he's gonna tell you that
12 reasonable doubt is such a thing. But the Solicitor was
13 very kind in saying it is the highest standard in this
14 case. But the State has to prove to you beyond a
15 reasonable doubt that Mr. Moss committed this murder,
16 attempted murder on Mr. Peeples, shot up these
17 residences like that; although there are no bullets that
18 match this. But you have to look at this case in terms
19 of reasonable doubt and the burden is completely on the
20 State.

21 Mr. Moss is innocent of these charges. He was in
22 the wrong place at the wrong time defending a friend and
23 trying to help his friend.

24 I ask you in this case to return a verdict of not
25 guilty in this case. Thank you.

1 THE COURT: Madam Forelady, we've been going at it
2 for about an hour. I will give, and I want you to poll
3 your jury if you would, and I'll give you the option of
4 either standing up and moving about or give you a quick
5 break. I anticipate my charge will be around 25 minutes
6 more or less. So whatever your jury wants to do, just
7 poll them and see what they want to do.

8 THE FORELADY: Keep going.

9 THE COURT: Keep going? Hard workers. Well, why
10 don't you stand up right quick and then I will give my
11 charge.

12 If at any point you don't hear me or understand
13 what I'm saying, raise your hand so I can try to make
14 sure that you do hear and understand me. My charge is
15 gonna be in three different distinct parts. The first
16 part will be the general rules that define and control
17 your duties as jurors. The second part will be the
18 substantive law that you must apply in this case i.e.,
19 what the State must make out to prove its case against
20 this Defendant. And the third part will be some
21 considerations about your deliberations. Then
22 Ms. Forelady I'll come around go over the verdict form
23 with you to make sure you understand what it is required
24 for filling it out correctly, okay?

25 Now, that being said, if you recall at the

1 beginning of this case, I told you that you were the
2 finders of the facts and that still remains the case in
3 this matter. It is your duty to find the facts are all
4 of the evidence presented here in this courtroom and you
5 must apply the law as I give it to you now to those
6 facts as you find them to be. You must follow the law
7 as I give it to you. You must not be concerned with
8 what you wish the law was and what you think it should
9 be.

10 If I am incorrect in the law as I give it to you,
11 there are higher courts than this court that will
12 correct my error of law but it is not up to you to do
13 that. Also, you must not be influenced by any personal
14 likes or dislikes, sympathy or prejudice for one side or
15 the other in this case. Your duty is simply to find the
16 facts from the testimony and the evidence presented here
17 in the courtroom and from no other place. In fact, in
18 your oath you took an oath to do just that.

19 Now, in following these instructions, you must
20 follow everything I tell you to do. You can't pick out
21 the ones that you think that you like and follow those
22 and apply those and disregard some instructions you may
23 not like. They are all equally important. And again,
24 if I've done anything during the course of this trial
25 that indicates to you that I have a feeling one way or

1 the other I ask you to disregard that. I can assure you
2 I do not have a feeling one way or the other about how
3 the facts should be in this case and our Constitution
4 does not allow me or any other trial judge to have a
5 feeling or an opinion on the facts. You and you alone
6 are the judges of the facts. And you determine what the
7 facts are by evaluating and weighing the evidence that
8 you heard during this trial.

9 Now, there's no way that I can give you a scale in
10 a literal sense for you to stack the evidence on. It is
11 inherently a mental process that you evaluate and weigh
12 the evidence using your good common sense and sound
13 judgment that you brought here into the courtroom with
14 you.

15 Now, what is evidence and what is not evidence? I
16 think I told you at the beginning of this case but again
17 to reiterate, the sworn testimony here in this courtroom
18 is evidence. It doesn't matter whether it came on
19 direct examination or Cross-Examination. If it's from
20 this stand over here, direct or cross, it is evidence.
21 Also, the exhibits that I have allowed into evidence is
22 evidence. That is the only part of this case that you
23 may consider evidence.

24 Now, what is not evidence? The arguments and
25 statements by these fine lawyers is not evidence. They

1 are not witnesses. They have not been sworn. What they
2 told you in their opening statements, in their closing
3 statements or other times during this trial is designed
4 to try to teach you or to guide you through what the
5 issues are in this case but it is not sworn testimony,
6 it is not evidence.

7 Any questions they may have raised during the case,
8 any objections they may have lodged in this case is not
9 evidence. I remind you that a lawyer has an obligation
10 in each and every case to object any time he or she
11 feels like the rules of evidence or some other procedure
12 is not correctly being followed. The fact that an
13 attorney may have objected and to the extent I let you
14 stay in here and listen to my ruling on that objection,
15 shall not be considered by you or even discussed by you
16 in your deliberations. That is simply part of the
17 process.

18 Now finally, ladies and gentlemen, anything that
19 you may have heard or seen when you were not in this
20 courtroom when the trial was taking place is not
21 evidence and you shall not consider that.

22 That being said, South Carolina recognizes two
23 types of evidence. We have direct evidence and we have
24 circumstantial evidence. Direct evidence is pretty much
25 what it sounds like. It is testimony of a person who

1 asserts or claims to have actual knowledge of a fact
2 such as an eyewitness. Circumstantial evidence is a
3 little more difficult, but is this. It is indirect
4 evidence. It is circumstantial evidence of proof of a
5 chain of facts and circumstances from which you can
6 infer that another fact exists, although that fact has
7 not been proven directly. I can tell by your eyes
8 you're not quite sure what that means so let me give you
9 an example.

10 If you were to go to bed at night in the wintertime
11 and you had a layer of virgin snow in your front yard,
12 you would wake up in the morning and there were tracks
13 in your yard, you may reasonably infer that someone or
14 some thing walked through your yard at night when you
15 were sleeping although you did not actually see that
16 person walk through your yard. That is circumstantial
17 evidence.

18 Now, in South Carolina the law makes absolutely no
19 distinction between the value or the weight that you,
20 the jury, give to circumstantial evidence or direct
21 evidence. You are entitled to consider either type.
22 There is not a greater degree of certainty required for
23 circumstantial evidence to be considered by you.
24 However, you may not consider the inference from
25 circumstantial evidence that would lead to mere

1 speculation or conjecture. They must lead to some
2 reasonable certainty. After weighing all the evidence,
3 whether direct or circumstantial if you deem it to be,
4 if you are not convinced of the guilt of this Defendant
5 beyond a reasonable doubt, it will be your duty to find
6 him not guilty to the charge or charges that he is
7 charged with.

8 Now, in making your determination of what the facts
9 are in this case it is essential that you determine the
10 credibility of the evidence, the credibility of the
11 witnesses. In doing this you must decide which
12 testimony that you are going to believe and which
13 testimony that you are not going to believe. You have a
14 right to disbelieve all or any part of any witness's
15 testimony. You may believe all of any witness's
16 testimony.

17 In making the determination of witness credibility
18 you may take into account a number of factors but you're
19 not required to take into account these factors. These
20 are just ideas for you to consider. Was the witness
21 able to hear or see or know about what that witness
22 testified? How well was the witness able to describe
23 and recall the things about which they testified? What
24 was the witness's manner while on the witness stand? In
25 other words, what was their demeanor? Was there some

1 reason that a witness would want to give testimony that
2 would help or hurt one side or the other or did they
3 have a bias or prejudice towards any issue or towards
4 any party or any matter involved in this lawsuit?

5 You may ask yourselves how reasonable was the
6 witness's testimony considered in light of all the
7 evidence and testimony considered, and you may ask
8 yourselves was that witness's testimony contradicted by
9 what that witness had said or done at another time or by
10 any other testimony or any other evidence that has been
11 emitted in this case.

12 Now, ladies and gentlemen, those are just some but
13 certainly not all the factors that you, the jury, may
14 consider in making this determination of witness
15 credibility. And, again, you do not check your good
16 common sense and logic at the door when you become a
17 juror and you shouldn't do so now. So in your
18 deliberations those things in your day-to-day lives that
19 you find to be indicative of truthfulness or indicative
20 of lack of truthfulness should be considered by you in
21 making this determination of witness credibility.

22 One thing that you do not do, however, is to add up
23 the number of witnesses or exhibits that were submitted
24 to one side or the other to determine witness
25 credibility. It doesn't matter to you whether it comes

1 from the State or the defense's side. It doesn't matter
2 if it comes from direct or cross. Again, your sole
3 interest in this case is to find the truth from the
4 evidence presented during this trial.

5 Now, during the trial you heard from several folks
6 who I qualified and it was stipulated to were considered
7 experts. Experts, again, are people who by their
8 education or experience are entitled to give their
9 opinion about the field of their expertise or in the
10 field of their expertise. Just because they've been
11 stipulated to be an expert in this field doesn't mean
12 that you have to accept it. Their testimony is no
13 different than any other testimony in this case. You
14 may accept it, you may reject it, or you may do with it
15 what you think is proper based on the evidence and
16 testimony in this case that you choose to believe. You
17 may also in doing that consider the basis that they give
18 for their opinion as well as their common experience and
19 their education.

20 Now, in this case there are multiple indictments,
21 and I'm gonna go over those with you in a second. Now
22 let me remind you that these documents here or these
23 indictments are simply the charging mechanism by which
24 the State of South Carolina brings a Defendant such as
25 Mr. Moss to trial for a determination of his guilt or

1 innocence. The fact that he was arrested and charged
2 and indicted does not raise any inference of his guilt,
3 it does not raise any presumption of his guilt.

4 Also, ladies and gentlemen, each indictment is a
5 separate charging document. In other words, ladies and
6 gentlemen, you must decide each indictment on its own.
7 I will go over that, Madam Forelady, with you in a
8 minute when I go over the verdict with you.

9 Just remember this, a Defendant may be convicted or
10 acquitted on any indictment. He may be convicted on all
11 indictments or acquitted on all indictments. Each
12 indictment stands on its own merit based on the facts
13 and circumstances in this case and the law as I give it
14 to you. You will have to make a separate indication as
15 to each indictment.

16 Now, the indictments. The first Indictment under
17 2011-764 has two charges. The charge is murder and it
18 is possession of a weapon during the commission of a
19 violent crime and that is with regard to the death of
20 Quinton Thomas.

21 The second Indictment is number 2012-401 and that
22 is attempted murder. It is the attempted murder of --
23 excuse me -- Xavier Peeples.

24 And finally, ladies and gentlemen, you have
25 Indictment 2011-765 which are two counts of allegedly

1 discharging firearms into a dwelling.

2 Now, in this case as to all these indictments the
3 Defendant has pled not guilty. What that simply means
4 is that puts the burden on the State of South Carolina
5 to prove the Defendant guilty as to each charge. I'll
6 tell you that in South Carolina a person charged with
7 committing a criminal offense is never required to proof
8 himself or herself innocent. It is an important rule of
9 law no matter how serious the crime may be that a person
10 will always be presumed innocent unless guilty has been
11 proven satisfying you of their proof beyond a reasonable
12 doubt. This presumption of innocence does not end when
13 you begin your deliberations but it accompanies this
14 Defendant throughout your deliberations until you have
15 reached a verdict of guilt satisfying you of guilt
16 beyond a reasonable doubt.

17 Now, it has been said in the law that the
18 presumption of innocence is like a robe of righteousness
19 that is placed upon the shoulders of the Defendant where
20 it remains until it has been stripped by the
21 presentation of evidence satisfying you of his guilt
22 beyond a reasonable doubt.

23 The presumption of innocence is not a mere legal
24 theory, it's not just a legal phrase, but it is a
25 substantial right that every Defendant is entitled to

1 unless you, the jury, are satisfied of their guilt by
2 proof of their guilt beyond a reasonable doubt.

3 So that leads me to what is a reasonable doubt? I
4 gave you a quick rendition of reasonable doubt at the
5 beginning of this case. This is not much more involved
6 but it is a little more so. Reasonable doubt is defined
7 as this. It is the kind of doubt that would cause a
8 reasonable, sincere, honest and conscientious person to
9 hesitate to act in an important matter in their own
10 affairs. Proof beyond a reasonable doubt is proof that
11 leaves you firmly convinced of the Defendant's guilt.
12 There are very few things in this world that we know
13 with absolute certainty. In criminal cases the law does
14 not require proof that overcomes every possible doubt.

15 If, based upon your consideration of the evidence,
16 you are firmly convinced the Defendant is guilty of the
17 crime or crimes for which he is charged it will be your
18 duty to find him guilty. If on the other hand if there
19 is a real possibility the Defendant is not guilty to the
20 crime or crimes charged, you must give the Defendant the
21 benefit of the doubt and find him not guilty. A
22 reasonable doubt may arise from the evidence or from the
23 lack of the evidence.

24 Now, I'll further instruct you that a Defendant is
25 entitled to every reasonable doubt that may arise in the

1 case. What that simply means is this. If upon any
2 issue of fact essential to a conviction and a verdict of
3 guilty, if you have a reasonable doubt how that issue
4 should be resolved it will be your duty to resolve that
5 doubt in favor of the Defendant.

6 Ladies and gentlemen, in order to establish the
7 requisite criminal liability, criminal intent is
8 required. In other words, the State must also prove
9 criminal intent beyond a reasonable doubt. For example,
10 the mental state required to be proven by the State for
11 a particular crime might be purpose, it might be intent
12 or knowledge, recklessness or criminal negligence.
13 Criminal intent must be proven by the State beyond a
14 reasonable doubt as I just told you.

15 Criminal intent is always a matter that must be
16 determined by the jury from the surrounding
17 circumstances shown to have existed. Now, there is no
18 way to prove intent to a mathematical certainty.
19 There's no way for medical science to dissect a person's
20 brain to decide what they had in mind at the time of the
21 acts so that the laws says intent may be inferred from
22 the circumstances shown to have existed. And that is
23 how you make a determination of whether or not the
24 element requiring intent was present.

25 It is not necessary to establish intent by direct

1 or positive evidence but it may be established by
2 inference in the same way as any other fact by taking
3 into consideration the acts of the parties and all the
4 facts and circumstances in each case.

5 Ladies and gentlemen, criminal intent is a mental
6 state, it is a conscious wrong doing. It is up to you to
7 determine what the Defendant intended to do based on the
8 circumstances shown to have existed. Criminal intent
9 may arise from an action or a failure to act. It may
10 arise from negligence, recklessness or an indifference
11 to duty or to consequences as considered by law to be
12 equivalent to criminal intent.

13 Now finally, ladies and gentlemen, as to the first
14 part of my charge, the Defendant in this case did not
15 testify. I charge you and instruct you that you shall
16 not consider whatsoever the Defendant's failure to
17 testify in this case. It is a right protected by the
18 Fifth Amendment to the United States Constitution and it
19 would be error on the part of the jury to even discuss
20 or mention the fact that he did not testify. At all
21 times during this case the burden is on the State of
22 South Carolina to prove his guilt by proof beyond a
23 reasonable doubt.

24 Now, ladies and gentlemen, that ends the first part
25 of my charge and it is somewhat the longer part of it.

1 I'm gonna give you another break because I know I can
2 put you to sleep and I know it's not much interesting
3 stuff. But take a quick minute and stand up and then
4 I'll go back with the substantive law and give some
5 ideas about your actual deliberations.

6 Okay. Ladies and gentlemen, this will be the
7 second phase of my charge and if you will recall this
8 has to do with substantive law is in this case. In
9 other words, what the State has to prove in order to
10 make out his case against the Defendant. The first is
11 the law of murder. The Defendant is charged with murder
12 of Quinton Thomas. The State must prove beyond a
13 reasonable doubt that the Defendant killed another
14 person with malice aforethought. Malice is hatred, ill
15 will, or hostility towards another person. It is the
16 intentional doing of a wrongful act without just cause
17 or excuse and with an intent to inflict an injury or
18 under circumstances that the law will infer an evil
19 intent.

20 Malice aforethought does not require that malice
21 exists for any particular time but before the act is
22 committed. But malice must exist in the mind of the
23 Defendant just before and at the time the act is
24 committed. Therefore, there must be a combination of
25 the previous evil intent and the act. Malice

1 aforethought may be express or inferred. The terms
2 express and inferred do not mean different kinds of
3 malice but merely the manner in which malice may be
4 shown to exist. That is by either direct evidence or by
5 inference from the facts and circumstances which are
6 proven.

7 Express malice is shown when a person speaks words
8 which express hatred or ill will or another person
9 prepared beforehand to do the act later accomplished.
10 For example, laying in wait for a person or any other
11 acts of preparation going to show that the deed was
12 within the Defendant's mind would be express malice.
13 Malice may be inferred from conduct showing a total
14 disregard for human life.

15 Now in this case, ladies and gentlemen, if you find
16 that the State has failed to prove beyond a reasonable
17 doubt that the Defendant committed murder you may
18 consider whether the State has proved beyond a
19 reasonable doubt whether the Defendant committed the
20 lesser-included offense of voluntary manslaughter of
21 Quinton Thomas. To prove voluntary manslaughter the
22 State must prove beyond a reasonable doubt that the
23 Defendant took the life of another in the sudden heat of
24 passion based on sufficient legal provocation. Both
25 heat of passion and sufficient legal provocation must be

1 present at the time of the killing to constitute
2 voluntary manslaughter.

3 Sudden heat of passion may for a time affect a
4 person's self-control and temporarily disturb a person's
5 reason. The sudden heat of passion must be the type
6 that would make an ordinary person unable to coolly
7 reflect on his actions and would reduce an
8 uncontrollable impulse to do violence. Sufficient legal
9 provocation must be the type that would make a person of
10 ordinary reason and caution to become enraged and lose
11 control temporarily. The provocation needed for
12 voluntary manslaughter must come from some act of or
13 related to the victim.

14 Now, ladies and gentlemen, words alone no matter
15 how vulgar or insulting is not enough for legal
16 provocation. Where death is caused by use of a deadly
17 weapon, words must be accompanied by some overt,
18 threatening act recognized -- let me do that again.
19 Where death is caused by the use of a deadly weapon, the
20 words must be accompanied by some overt, threatening act
21 which could have produced the heat of passion.

22 The exercise of a legal right no matter how
23 offensive it is to another is never sufficient legal
24 provocation for voluntary manslaughter. If the heat of
25 passion had cooled or if there was enough time between

1 the provocation, if any, and the passion for a
2 reasonable person to cool the killing would not be
3 voluntary manslaughter. In deciding whether a
4 reasonable person would have had enough time to cool
5 off, you should consider all the circumstances
6 surrounding the killing. You may consider the nature of
7 the provocation, if any, the Defendant's mental state
8 and physical state and the circumstances and
9 relationships between the parties.

10 Also, ladies and gentlemen, as to Indictment Number
11 2011-GS-37-764, the Defendant has been charged with
12 possession of a weapon during the commission of a
13 violent crime. Madam Forelady, I'll go over that with
14 you. That only applies to that particular indictment,
15 not to any of the other indictments in this matter. But
16 the Defendant is charged with possession of a weapon
17 during the commission of or an attempt to commit a
18 violent crime. The State must prove beyond a reasonable
19 doubt that the Defendant was in possession of a firearm
20 or visibly displayed what appeared to be a firearm
21 during the commission of a violent crime. A firearm
22 means any machine gun, automatic rifle, revolver,
23 pistol, or any weapon which is designed to or may be
24 readily converted to expel a projectile.

25 In order to find a Defendant guilty of possession

1 of a weapon during the commission of a violent crime you
2 must first find the Defendant guilty of either
3 committing a violent crime or attempting to commit a
4 violent crime. In this case either murder or voluntary
5 manslaughter. I will charge you, ladies and gentlemen,
6 that murder and voluntary manslaughter are violent
7 crimes.

8 Now further, ladies and gentlemen, you may only
9 consider the charge of a possession of a weapon during
10 the commission of a violent crime if you find the
11 Defendant guilty of murder or voluntary manslaughter of
12 Quinton Thomas under Indictment Number 2011-GS-37-764.

13 Also, ladies and gentlemen, the Defendant has been
14 charged with the attempted murder of Xavier Peeples.
15 The State must prove beyond a reasonable doubt that the
16 Defendant possessed the intent to kill and attempted to
17 kill another person with malice aforethought either
18 express and implied. You should apply the same
19 definition of malice aforethought and the same standards
20 for express and implied malice that I previously gave to
21 you in making that determination.

22 As far as the definition for attempt under an
23 attempted murder, an attempt is an effort to accomplish
24 a crime which does not succeed. An attempt includes a
25 specific intent to do a particular criminal act along

1 with an act falling short of the act intended. The
2 State must show more than a fair preparation and intent.
3 There must be some overt act intending to commit the
4 crime. Intent means intending the result which actually
5 occurs not accidentally or involuntarily. Intent may be
6 shown by acts and conduct of the Defendant and other
7 circumstances from which you may naturally and
8 reasonably infer intent.

9 Now, in this case the Defendant has asserted,
10 ladies and gentlemen, two separate defenses to the
11 charges against him. Those defenses are self-defense
12 and defense of others. Actually, ladies and gentlemen,
13 I charge you that these charges are not separate and
14 distinct sentences but are two legal concepts which are
15 contained within the legal defense known as defense of
16 others.

17 Under the law of self-defense the Defendant may
18 take another's life in the defense of others, the right
19 to intervene and to protect another person is subject to
20 the same rights and limitations as to the right of
21 self-defense. In other words, ladies and gentlemen, the
22 person being protected had to be able to exercise
23 self-defense before the Defendant can raise the defense
24 of others.

25 The Defendant may take the life of a person who

1 assaults the life of a friend or a relative or bystander
2 if that friend, relative or bystander would have had the
3 same right of self-defense. To show that a person being
4 defended had the right to self defense, it must first be
5 shown that the person being defended and the Defendant
6 were both without fault in bringing on the difficulty.
7 If the conduct of the person defending or the Defendant
8 was reasonably calculated to and did provoke a deadly
9 assault, the person would be at fault for bringing on
10 the difficulty and would not have the right of
11 self-defense. Therefore, the Defendant would not have
12 the right to use deadly force in defending that person.

13 The defense of another person is excusable if the
14 Defendant had reasonable grounds to believe and in good
15 faith did believe that the person being defended was in
16 imminent danger of death or serious bodily harm from the
17 victim. In deciding whether the Defendant actually
18 believed the person actually was or in imminent danger
19 of death or serious bodily injury, you should consider
20 all the facts and circumstances surrounding the crime,
21 including the physical condition and the physical
22 characteristics of the parties. The Defendant does not
23 have to show the person the Defendant defended was
24 actually in danger. It is enough the Defendant believes
25 the person was in eminent danger. The Defendant has the

1 right to act on appearances even though the Defendant's
2 beliefs may have been mistaken.

3 The Defendant must show that under the
4 circumstances as they appear to the Defendant, the
5 Defendant believed the person defended was in danger and
6 that a reasonable prudent person of ordinary firmness
7 and courage would have had the same belief under the
8 same circumstances.

9 Ladies and gentlemen, it is for you the jury to
10 decide whether the Defendant's fear of imminent danger
11 or death or serious bodily injury to the person defended
12 was reasonable and would have been felt by an ordinary
13 person in the same situation. The Defendant does not
14 have to wait until the victim gets the drop on the
15 person defended. The Defendant has the right to act on
16 the law of self-preservation to prevent the victim from
17 getting the drop from the person being defended.

18 In order to be entitled to defend another person
19 defended, you must have had no other probable way to
20 avoid the danger of death or serious bodily injury other
21 than to act as they did under the particular
22 circumstance. That is called the duty to retreat.

23 Ladies and gentlemen, there is a final charge
24 against the Defendant of discharging a firearm into a
25 dwelling. The Defendant is charge with two counts of

1 discharging a firearm at or into a dwelling. The State
2 must prove beyond a reasonable doubt that the Defendant
3 discharged or caused to be discharged unlawfully
4 firearms at or into a dwelling other building or
5 structure or enclosure regularly occupied by persons.

6 Madam Forelady, ladies and gentlemen of the jury,
7 that is the substantive law in this case. Finally that
8 leads me to ideas about your deliberations. Let me
9 point out to you that both sides of this case have
10 picked you out because they felt like you could be fair
11 and impartial to both the State and to the Defendant in
12 this matter. In fact, you said when you took your oath
13 you could do just that. That means that you don't serve
14 as jurors to be partisans or advocates for one side or
15 the other. You are judges of the facts and that's all
16 that you're here to do. Your duty is to try to see that
17 justice is done from the facts and evidence presented in
18 this case.

19 Now, in your deliberations I'm gonna ask that you
20 bring your experiences in life, your good common sense
21 and your sense of logic and reason to the facts as you
22 find them to be and to the law as I charge it to you in
23 reaching your conclusion in this case.

24 Now, in preparing my charges I looked up the
25 definition of deliberations and this is how it's

1 defined: Deliberation is defined as a careful
2 consideration weighing up with a view to a decision.

3 Now, regardless of what any of you may think about
4 our judicial system or our jury system, I will submit to
5 you that the genius of our system is that it allows 12
6 men and women such as yourselves to come in here from
7 different walks of life, from different life
8 experiences, from different backgrounds to sit here and
9 listen to the evidence and pay attention to the law as I
10 give it to you and to go back into the jury room and to
11 carefully, calmly and courteously discuss the evidence
12 and hopefully reach a unanimous verdict. Again, you are
13 not partisans, you're not advocates for one side or the
14 other. You're judges of the facts. Your sole interest
15 is to find the truth of this matter.

16 Now, when you go back into your jury room and begin
17 your deliberations, I'm gonna ask that each of you
18 listen to your fellow jurors, that you talk through all
19 of the evidence carefully, thoroughly; that you discuss
20 everyone's points of view. And remember if you're doing
21 something deliberately you should not be in a big hurry
22 and you should not be in a big hurry today.

23 I'll tell you that it's the State's and it's this
24 defendant's only day in court and it's a very important
25 case to both the State and the Defendant. In order for

1 your verdict to stand it must be unanimous. With that
2 being said, each of you must decide this case for
3 yourself but you should only do that after each of you
4 have impartially considered the evidence in this case.
5 You've also listened to your other jurors', you've
6 listened to their points of view, you've listened to
7 their viewpoints, and you rationalized out the evidence
8 and come to a conclusion.

9 Don't be afraid to change your mind if you feel
10 like discussion truly warrants you changing your opinion
11 as to what the facts are. With that being said, do not
12 come to a unanimous decision solely because your fellow
13 jurors think that's the thing you ought to do. You
14 first must make your own decision and then that's when
15 you will be able to participant fully in the
16 deliberations with your other jurors.

17 Now, Madam Forelady, if at any time you need
18 anything or have any questions, I'm gonna ask that you
19 follow the same procedure that you have done throughout
20 this case and that is to write it down, sign your name,
21 knock on the door, the bailiff will bring it to me and
22 we'll receive it here in the courtroom and we'll respond
23 accordingly, okay?

24 I'm gonna come around and go over this verdict form
25 with you. I'm gonna excuse the jury back to the jury

1 room including the two alternates. I'm gonna check with
2 the two attorneys whether or not I misstated the law or
3 I neglected to tell you something I should have. Do not
4 begin your deliberations.

5 Once we have cleared the way to bring the evidence
6 back to you, I'll bring the alternates back out. You
7 are not free unfortunately to engage in the
8 deliberations. Then we'll send word and the verdict
9 form back in to you saying now is the time to start.
10 Let me show you this verdict form, okay?

11 Let me go over this with you and show you. You
12 will see a different indictment number, okay? Until you
13 see the indictment number change, it does over here, it
14 does over here, you are still the only person to sign
15 the document, okay?

16 Your first option is that we, the jury, under
17 2011-764 unanimously find the Defendant Dametroise Moss
18 is one not guilty of murder or guilty of murder. If you
19 find that he is not guilty of murder you may consider
20 whether or not you think he's guilty of voluntary
21 manslaughter. In that will event you either find him
22 not guilty of voluntary manslaughter or guilty of
23 voluntary manslaughter. On the other hand, if you find
24 that he's guilty of murder, don't consider voluntary
25 manslaughter because it's a lesser include charge of

1 murder.

2 But you go to Number 3 over here and it tells you
3 if you find he's guilty of voluntary manslaughter or
4 murder you may consider the charge of possession of a
5 weapon during the commission of a violent crime. Then
6 you decide which option would apply, okay?

7 Now, going back, whatever option you do apply, if
8 you would just check it. You don't have to initial it,
9 just check it. And then move on to the next option.

10 After you consider the first indictment then move
11 to the second indictment and that is under
12 2012-GS-37-401 we, the jury, unanimously find the
13 Defendant Dametroise R. Moss is not guilty of attempted
14 murder or guilty of attempted murder. Again you don't
15 consider the weapon charge for anything but the first
16 indictment. Not the attempted murder charge, okay?

17 After you make your decision there, you will next
18 go to indictment 2011-GS-37-765 and you have two counts.
19 You have count one and count two, and that is not guilty
20 of discharging a firearm into a dwelling or guilty of
21 count one discharging firearms into a dwelling, the same
22 thing for count two, okay? Once you do that, sign your
23 name, knock on the door and we'll receive your verdict
24 back in the room, okay?

25 Now, I'll go back up there. I'll allow you to go

1 back to your jury room. Don't begin your deliberations.

2 THE FORELADY: Thank you.

3 (Whereupon, the Jury left the courtroom at
4 approximately 3:00 p.m.)

5 THE COURT: All right. Any additions or exceptions
6 from the State?

7 MR. STOUDEMIRE: None, Your Honor.

8 THE COURT: From the Defense?

9 MR. ROBINSON: None, Your Honor.

10 THE COURT: All right. Would you guys go over the
11 evidence in this case? I'm gonna bring the alternates
12 back in. And then once y'all get that done, we can send
13 them back with the instructions for them to begin
14 deliberations.

15 Let me say this before you do that. I want to
16 thank both the attorneys for being so prepared. It
17 makes life easier for me as a judge, not that that's a
18 consideration, but both men were very prepared,
19 presented your cases well, you did what you were
20 supposed to do as lawyers and I thank you for that.
21 With that being said, I've taken care of that and we'll
22 be in recess.

23 (Discussion off the record.)

24 (Jury started their deliberations approximately
25 3:05 p.m.)

1 (Whereupon, Court's Ex. #3, Jury question number
2 one, was marked for identification.)

3 (Whereupon, Court's Exhibit Number 3 was admitted
4 into the record.)

5 (The following occurred without the presence of the
6 Defendant.)

7 THE COURT: Gentlemen, we have a question from the
8 jury, the foreperson. The question is this: "May we
9 see any written statements available from the time of
10 the arrest? Signed, Foreperson."

11 I had this marked my Court's Exhibit Number 3. My
12 memory of the evidence presented did not include written
13 statements. Was there any written statements?

14 MR. STOUDEMIRE: There were no written statements
15 admitted into evidence, Your Honor.

16 THE COURT: Is that correct?

17 MR. ROBINSON: That's correct, Your Honor.

18 THE COURT: It would be my thought then to tell the
19 Jury they may only consider the evidence that's been
20 presented in this courtroom by exhibits or testimony,
21 and that there were no written statements admitted into
22 evidence and therefore they cannot consider any written
23 statements. Any objection to that proposed charge?

24 MR. STOUDEMIRE: No, Your Honor.

25 MR. ROBINSON: None, Your Honor.

1 THE COURT: I'm sorry. Let me do that again.
2 Mr. Moss, I apologize. I didn't realize you weren't in
3 the courtroom.

4 The question from the jury forelady is: May we see
5 written statements available from the time of your
6 arrest? I had a conference with your attorney and the
7 State. Confirmed that there were no written statements
8 entered into evidence, so I'll tell the Jury they have
9 to limit their deliberations to testimony in the
10 courtroom, exhibits admitted into evidence. There were
11 no written statements admitted into evidence and
12 therefore they can't consider those and that would be my
13 charge to the jury, okay? I'll give you a minute to
14 talk to your attorney if you need to.

15 THE DEFENDANT: Thank you.

16 THE COURT: Would you bring them in, please.

17 (The Jury entered the courtroom at approximately
18 4:04 p.m.)

19 THE COURT: Madam Forelady, I have a request from
20 the jury, it purports to have your signature to it which
21 states: May we see any written statements available
22 from the time of the arrest? Is that the request from
23 the Jury?

24 THE FORELADY: Yes, sir.

25 THE COURT: Okay. Let me tell you this. If you

1 will recall when I was going over with you earlier in my
2 charge what is and what is not evidence? All right.
3 The evidence in this case, the only evidence you may
4 consider is the testimony from the stand, whether it be
5 Cross or Direct, and any exhibits that I've allowed into
6 evidence. That's the only evidence in this case.

7 I've conferred with both the State and the Defense
8 and there is no written statements that have been
9 admitted into evidence and therefore that is not
10 evidence that you may consider in this case. Does that
11 answer your question?

12 THE FORELADY: Yes, sir.

13 THE COURT: Okay. I'm gonna ask you to go back to
14 your jury room. Do not resume your deliberations yet
15 until I confer with these attorneys in case I stated
16 something incorrectly. I will send word back shortly as
17 to whether or not you are to resume, okay?

18 THE FORELADY: Yes, sir.

19 (Whereupon, the Jury left the courtroom at
20 approximately 4:06 p.m.)

21 THE COURT: Any additions or exceptions from the
22 State?

23 MR. STOUDEMIRE: None, Your Honor.

24 THE COURT: From the Defense?

25 MR. ROBINSON: None, Your Honor.

1 THE COURT: All right. We'll be back in recess.
2 Thank you and don't go too far.

3 (Whereupon, Jury continued their deliberations at
4 approximately 4:07 p.m. while the Court considered other
5 matters.)

6 (Whereupon, a recess was taken in this case.)

7 (Whereupon, there was another question from the
8 Jury at approximately 4:45 p.m.)

9 (Whereupon, Court's Ex. # 4, second jury question,
10 was marked for identification.)

11 (Whereupon, Court's Ex. #4 was admitted into the
12 record.)

13 THE COURT: All right. I have a question from the
14 Jury. It says: "May we have the written definition for
15 voluntary manslaughter? Signed, the Foreperson."

16 My procedure when I have requests for charges is
17 simply to recharge them on that particular issue and ask
18 them if that resolves the question. I don't like to
19 send charges back because pretty soon they start
20 deliberations with the law. Any objection to that,
21 Mr. Stoudemire?

22 MR. STOUDEMIRE: None, Your Honor.

23 THE COURT: Mr. --

24 MR. ROBINSON: Mr. Robinson.

25 THE COURT: Mr. Robinson.

1 MR. ROBINSON: No, sir.

2 THE COURT: Long day. Is that okay with the
3 Defense?

4 MR. ROBINSON: That's fine.

5 THE COURT: Would you bring the Jury in, please,
6 Mr. Maddox?

7 (Whereupon, the Jury entered the courtroom at
8 approximately 5:15 p.m.)

9 THE COURT: Madam Forelady, I received what appears
10 to be another request from the jury that says: "May we
11 have the written definition for voluntary manslaughter?"
12 Is that the request from the jury?

13 THE FORELADY: Yes, sir.

14 THE COURT: Let me tell you my normal procedure
15 that I do. I'm certainly glad to recharge you on that,
16 and I'll go slow so you can understand me. I'm somewhat
17 loathe to send my charges back to the jury because in my
18 experience jurors start debating on what the law is and
19 what is not as opposed to the main facts. So let me do
20 this, let me recharge you on the charge of manslaughter.
21 I'll go very slow. I'll let you go back to the jury
22 room, see if that answers what your question is about it
23 and if that's not suitable we'll go forward from there,
24 okay?

25 THE FORELADY: Yes, sir.

1 THE COURT: And, again, if you don't hear or
2 understand me, let me know.

3 This is the charge on voluntary manslaughter. If
4 you find that the State has failed to prove beyond a
5 reasonable doubt that the Defendant committed murder you
6 may consider whether the State has proved beyond a
7 reasonable doubt that the Defendant committed voluntary
8 manslaughter of Quinton Thomas. To prove voluntary
9 manslaughter the State must prove beyond a reasonable
10 doubt that the Defendant took the life of another person
11 in the sudden heat of passion, based on sufficient legal
12 provocation. Both heat of passion and sufficient legal
13 provocation must be present at the time of the killing
14 to constitute voluntary manslaughter.

15 Sudden heat of passion may for a time affect a
16 person's self-control and temporarily disturb a person's
17 reason. A sudden heat of passion must be the type that
18 would make an ordinary person unable to coolly reflect
19 on his actions and would produce an uncontrollable
20 impulse to do violence.

21 Sufficient legal provocation must be the type that
22 would make a person of ordinary reason and caution to
23 become enraged and to lose control temporarily. The
24 provocation needed for voluntary manslaughter must come
25 from some act of or related to the victim. Words alone,

1 however vulgar or insulting, are not enough to be legal
2 provocation. Where death is caused by the use of a
3 deadly weapon, the words must be accompanied by some
4 overt act, threatening act, which could have produced
5 the heat of passion. The exercise of a legal right, no
6 matter how offensive it is to another, is never
7 sufficient legal provocation for voluntary manslaughter.

8 If the heat of passion had cooled, or if there was
9 enough time between the provocation, if any, and the
10 killing for the passion for the heat of passion to cool
11 the killing would not be voluntary manslaughter. To
12 consider whether or not the person had enough time to
13 cool off you must consider all the circumstances
14 surrounding the killing. You may consider the nature of
15 the provocation, if any, the Defendant's mental and
16 physical state and the circumstances and the
17 relationships between the parties.

18 Now, Madam Forelady, that's the charge on voluntary
19 manslaughter. Do you want to poll your jury to see if
20 that responds to want question that's been presented by
21 your jury? (Jury confers in jury box.)

22 THE FORELADY: Thank you.

23 THE COURT: It does?

24 THE FORELADY: (Nodded head.)

25 THE COURT: Okay. And let me just tell you this.

1 Do you feel like you are making progress back there?

2 THE FORELADY: Yes, sir.

3 THE COURT: Okay. I normally have the jury when we
4 have an afternoon charge go to 6:00 or 6:30. If anybody
5 has any other problems with that let me know. If you
6 need to leave earlier we can start tomorrow. If you
7 need longer, we can do that as well. Anyway, keep that
8 in mind. And I'll send someone back later and do a
9 little query on what you all want to do, okay?

10 Don't start or resume your deliberations until I've
11 had a chance to talk with these attorneys, okay, and
12 I'll send word back when you can do so. Thank you very
13 much.

14 (Whereupon, the Jury left the courtroom at
15 approximately 5:20 p.m.)

16 THE COURT: Any additions or exceptions to my
17 charge or other comments to the jury?

18 MR. STOUDEMIRE: None from the State.

19 THE COURT: Defense?

20 MR. ROBINSON: No, Your Honor.

21 THE COURT: We'll be in recess until further
22 notice.

23 (The jury continued their deliberations from 5:20
24 p.m. until 5:54 p.m., at which time they reached a
25 verdict.)

1 Counsel, it's my understanding that we do have a
2 verdict.

3 And let me say this. Everybody has been well
4 mannered and well behaved but it is my standard
5 prefatory language in all cases, criminal cases
6 regardless of the verdict, let's not have any outbursts
7 in the courtroom regardless of what the verdict has to
8 say.

9 THE COURT: Madam Forelady, my understanding is the
10 Jury has reached a verdict.

11 THE FORELADY: Yes, sir.

12 THE COURT: As to all indictments?

13 THE FORELADY: Yes, sir.

14 THE COURT: Is it a unanimous verdict as to all
15 indictments?

16 THE FORELADY: Yes, sir.

17 THE COURT: Would you pass it to the bailiff,
18 please, ma'am.

19 Would you publish the verdict, Madam Clerk?

20 THE CLERK: State of South Carolina versus
21 Dametroise Moss. We, the Jury, under Indictment Number
22 2011-GS-37-764 unanimously find that the Defendant is
23 not guilty of murder.

24 We the jury unanimously find that the Defendant
25 Dametroise R. Moss is not guilty of voluntary

1 manslaughter.

2 We, the jury, under Indictment Number
3 2012-GS-37-401 unanimously find that the Defendant
4 Dametroise R. Moss is not guilty of attempted murder.
5 We, the jury, under Indictment Number 2011-GS-37-765
6 unanimously find that the Defendant Dametroise R. Moss
7 is guilty of count one, discharging firearms into a
8 dwelling.

9 We, the jury, under Indictment Number
10 2011-GS-37-765 unanimously find that the Defendant
11 Dametroise R. Moss is guilty of count 2, discharging
12 firearms into a dwelling.

13 Ladies and gentlemen of the jury, if this was your
14 verdict and is still your verdict please signify by
15 raising your right hand.

16 Let the record reflect that all 12 raised their
17 hand.

18 THE COURT: Very good. Ladies and gentlemen of the
19 jury, the Court is never concerned with a jury's
20 verdict. It's not concerned with it now. I am
21 concerned that the process is followed and that the jury
22 stays engaged during the course of the trial and you
23 have done exactly that. Thank you for your service to
24 the State of South Carolina and Oconee County.

25 And I tell everyone in all cases that if there is

1 not an outlet for people to bring their disputes to a
2 forum such as our courts and the decision to be made by
3 a jury by their own peers, then the only other outlet
4 you have is to take it to the streets and we see
5 examples of that in our news every day. So we
6 appreciate you taking time away from your jobs and your
7 families and doing service to your County and your
8 state. The good thing is you don't have to come back
9 again this week and the better thing is you can't be
10 called again for another three years.

11 But I'm gonna excuse you now. You're gonna get a
12 letter in the mail, is that right, with your check? And
13 if anyone needs a statement before that for your
14 employer just let us know. But before you leave I'd
15 like to step back. Madam Forelady, I've got some
16 paperwork for you to sign. And I'd like to speak with
17 you all in a confidential setting, if I may. If you
18 would all go back now, please.

19 (Whereupon, the Jury left the courtroom at
20 approximately 6:00 p.m.)

21 **THE COURT:** Let me say this. If there are any
22 victims regardless of the charge and regardless of the
23 verdict if they would like to speak I'll be happy to
24 hear them.

25 And I will be back in just a minute to sentence

1 you, Mr. Moss, on the charges you were found guilty on.
2 So if you will stand at ease for a moment. I'll be
3 right back.

4 If you would be ready with his criminal record,
5 please.

6 (Whereupon, a short recess was had from 6:07 p.m.
7 to 6:08 p.m.)

8 THE COURT: First, are there any victims or
9 victims' family in this case that would like to speak?

10 VICTIM'S ADVOCATE: Yes, sir.

11 THE COURT: If you would come around.

12 MR. MOORE: Good afternoon.

13 THE COURT: Good afternoon. Would you mind stating
14 your name for the record, please, sir.

15 MR. MOORE: Yes. My name is Harold Moore. I'm the
16 uncle of Quinton Thomas.

17 THE COURT: Okay, sir.

18 MR. MOORE: I've also been in law enforcement 36
19 years. There's a lot of things I could say. I'll try
20 to be nice. A person is deceased. Okay? An unarmed
21 man. And it sounds like this gentlemen over here might
22 be the local football star, okay? Out of all the years
23 I've been in law enforcement and all the cases that I've
24 sat in I've never seen anything like it. In other
25 words, it's almost like Quinton shot himself.

1 THE COURT: Almost like what?

2 MR. MOORE: He shot himself. Okay? I don't know
3 how the prosecution can present all of the evidence, all
4 the witnesses. The Defense presents no witnesses, no
5 evidence, and you come back with a not guilty verdict.
6 It's just not, it's not rational. I know that God has
7 the last say so in everything and I'm gonna trust that
8 his will, you know, be done. I'm gonna leave it at
9 that. But I just don't see it.

10 THE COURT: Thank you, sir, for speaking to us.
11 Yes, ma'am, would you state your name.

12 MS. DARDEN: Yes, sir. Vivian Darden. I'm
13 Quinton's grandmother.

14 THE COURT: Your who?

15 MS. DARDEN: I'm Quinton's grandmother.

16 THE COURT: Okay. I'm sorry. I did not catch it.

17 MS. DARDEN: And I would like to show you this
18 program of Quinton.

19 THE COURT: Okay. Yes, ma'am.

20 MS. DARDEN: So you can get that and I would like
21 for the jurors to look at it as well.

22 THE COURT: Okay. Go right ahead.

23 MS. DARDEN: And, Your Honor, I raised Quinton. I
24 taught him right. Quinton didn't start trouble with no
25 one. He ran around with the wrong crowd but Quinton did

1 not shoot himself. This young man took it upon himself
2 to take his life. I do not understand, but God has the
3 last say.

4 THE COURT: Thank you, ma'am for speaking. Is
5 there anything else who would like to speak from a
6 victim's perspective?

7 (Whereupon, there was no response.)

8 Mr. Stoudemire give me the range on discharging a
9 firearm into a dwelling, please, sir.

10 MR. STOUDEMIRE: Yes, sir. My understanding, Your
11 Honor, in reading it just before the jury came back it
12 is zero to ten years and/or a fine of up to \$10,000.

13 THE COURT: Zero to ten years?

14 MR. STOUDEMIRE: Yes, sir.

15 THE COURT: Do you agree with that Mr. Robinson?

16 MR. ROBINSON: I'd like to check the statute before
17 I agree to that.

18 THE COURT: Okay. Would you like to do that before
19 I sentence him?

20 MR. ROBINSON: Yes, sir.

21 THE COURT: Under 16-23-440 (A) is a fine of not
22 more than \$1,000 or imprisonment not more than ten years
23 or both.

24 MR. ROBINSON: I agree, Your Honor.

25 THE COURT: Okay. What is his prior record?

1 MR. STOUDEMIRE: I'm just gonna read them as they
2 appear. 2009, assault, assault of a high and aggravated
3 nature, 2007, driving charge, driving under suspension
4 second offense; 2008 he's got some vehicle charges and
5 also unlawful carrying of a weapon; 2008 he's got
6 another driving under suspension charge, Habitual
7 Offender more than first in 2008 as well. Another
8 driving under suspension at that same time.

9 Back in 2008, Your Honor, resisting arrest, another
10 driving charge in 2008, resisting arrest from 2009.
11 Receiving stolen goods, 2009. Another driving charge in
12 2009. Your Honor, the assault of a high and aggravated
13 nature evidently he received a suspended sentence on
14 that. When he was convicted he evidently got that
15 probation violated at least partially in 2010.

16 THE COURT: Is there any probation matters in this
17 case?

18 MR. STOUDEMIRE: Your Honor, in speaking with
19 Ms. Newton earlier I think there are some probation
20 matters in this case. She wanted me to inform the Court
21 that and ask if it's possible to deal with those
22 tomorrow morning.

23 THE COURT: Certainly. Would you pass that record
24 up here to me, please, sir.

25 MR. STOUDEMIRE: Yes, sir. (Handing.)

1 THE COURT: Mr. Robinson would you and your client
2 come around, sir? How many days has he been in jail?

3 MR. ROBINSON: He says a year and two months, Your
4 Honor.

5 THE COURT: Speak up, please.

6 MR. ROBINSON: A year and two months.

7 THE COURT: A year and two months. That's 365 --

8 MR. ROBINSON: About 425 approximately.

9 THE COURT: 425. Do you agree Mr. Stoudemire, 425
10 days?

11 MR. STOUDEMIRE: I would, Your Honor. One more
12 thing, Your Honor. My victim's advocate did inform me,
13 wanted me to inform the Court with regard to firing into
14 a dwelling Ms. Gibson's computer was damaged. She has
15 sent in information as to the restitution on that. I
16 don't have those figures with me now but we can possibly
17 take that up when we deal with probationary matters.

18 THE COURT: All right. First, do you have anybody
19 you would like to speak on your behalf? I think this is
20 his mother over here; is that correct?

21 THE DEFENDANT: It is.

22 THE COURT: Okay. What is your name, please,
23 ma'am?

24 MOTHER OF DEFENDANT: Theresa Moss.

25 THE COURT: Ms. Moss, glad to hear from you.

1 **MOTHER OF DEFENDANT:** I'm Theresa Moss, I'm
2 Dametroise's mother and I just wanted to speak on his
3 behalf. I just want to thank the jury for the verdict
4 today and just in lieu of that I hope that he has
5 learned a valuable lesson from this experience. And
6 just for the family, I know that the family is hurting
7 and I apologize. I feel their pain, also. I mean it's
8 a loss either way on everybody's side and I feel the
9 family's loss and I apologize and I hope that we can all
10 heal and move on.

11 And I hope that Dametroise can one day soon become
12 an asset to our community instead of carrying guns and
13 doing unlawful things. So I'm hoping that this is gonna
14 be a huge lesson for him and not only for him but for
15 others also.

16 **THE COURT:** Thank you, ma'am.

17 Mr. Robinson, I'd be glad to hear from you.

18 **MR. ROBINSON:** May it please the Court, Your Honor.
19 I've had the opportunity to be representing Dametroise
20 since December of last year. He's always been a very
21 good client. He's always expressed remorse. He's
22 always told me that when he gets out of this if he gets
23 out he would like to teach other kids the dangers of
24 guns, having guns, weapons and so forth. It's just not
25 the life.

1 I mean a lot of kids these days are exposed to a
2 lot of videos, MTV, VH-1 and things like that and they
3 see these guys carrying guns. It's not the life. It's
4 not the way to go. And Dametroise has learned a big
5 lesson, it was a horrible lesson. He's remorseful, very
6 contrite for this. He knows he -- you know he can't
7 express the words. And he would like to talk in a
8 second, Your Honor, as well when the Court sees fit.

9 THE COURT: All right. Mr. Moss be glad to hear
10 from you.

11 THE DEFENDANT: Yes. Your Honor, I just wanted to
12 apologize to the family and tell them how --

13 THE COURT: I need you to speak up louder.

14 THE DEFENDANT: I want to apologize to the family
15 and I am sorry for what happened. If I could, I would
16 take it back, everything that happened. I'm just, just
17 sorry.

18 THE COURT: How much is the restitution?

19 MR. STOUDEMIRE: Your Honor, I would say -- I don't
20 have the exact figure. I would say it's less than \$500.

21 THE COURT: I'm gonna put to be determined.

22 Mr. Robinson, anything further?

23 MR. ROBINSON: I have nothing further, Your Honor.

24 THE COURT: Mr. Moss, you have a lengthy record
25 with the facts and circumstances of this case are

1 egregious. You're real lucky that you didn't kill more
2 than just one person in this case. That being said,
3 under Indictment 2011-765 the sentence is ten years.
4 I'll give you credit for 425 days. Under Indictment
5 2011-765 the sentence is ten years suspended on five
6 years, probation for five years and that will be
7 consecutive to the ten-year sentence. It's my intention
8 that you serve 15 years in jail, that you come out with
9 five years probation. You'll have probation -- I mean
10 restitution when you get out to the victims of the
11 shooting, the dwelling that you shot the computer,
12 whatever it is, probation shall be tolled while you are
13 incarcerated. I'm giving you 425 days' credit on both.
14 Good luck to you.

15 **MR. ROBINSON:** Thank you, Your Honor.

16 **THE COURT:** We are in recess.

17 Mr. Stoudemire, would you pass this back to the
18 Defendant.

19 **MR. STOUDEMIRE:** Yes, sir.

20 (Whereupon, court concluded at 6:25 p.m.)

21

22

23 -- THIS ENDS THIRD DAY OF TRIAL --

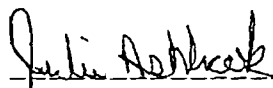
24 -- THIS ENDS REQUEST TRANSCRIPT --

25

1 CERTIFICATE OF REPORTER

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Thirteenth Judicial Circuit Family
5 Court of the State of South Carolina, do hereby certify
6 that the foregoing is a true, accurate, and complete
7 transcript of record to the best of my abilities of all
8 the proceedings and evidence introduced in the hearing
9 and/or trial of the captioned case, relative to appeal,
10 in the Circuit Court for Oconee County, South Carolina,
11 on the 25th day of July, 2012.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16

17 
18 Julie A. Ashbrook
19 Family Court Reporter
20 Thirteenth Judicial Circuit
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of OCONEE COUNTY)DAWETRISE R MOSS #326883)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013.CP.37.00207

APPLICATION FOR

POST-CONVICTION RELIEF

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2013 MAR 14 A 10:32INSTRUCTIONS - 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 ALLENDALE CORR. INST., POST OFFICE BOX 1151,
FAIRFAX, SC 29827
2. Name and location of Court which imposed sentence OCONEE COUNTY COURT
OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-37-00765
 - (b) 2011-GS-37-00765

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 5/18/2011 10 YEARS
- (b) 5/18/2011 5 YEARS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) TRIAL COUNSEL FAILED TO APPEAL AFTER I ASKED HIM TWO.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) FEDERAL AND STATE LAW VIOLATIONS
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) RESERVED FOR AMENDMENT
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) * SEE ATTACHMENT *
- (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 "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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) SEE PARAGRAPH 10
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. SCOTT D. ROBINSON P.O. Box 10042 FEDERAL STATION
GREENVILLE, SC 29603
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

VACATION OF THE CONVICTION AND SENTENCE
CONVICTION

20. Are you now under sentence from any other court that you have not challenged?

NO

FILED OCOONE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 MAR 14 A 10:33

STATE OF SOUTH CAROLINA)

2013-CP-31-00207

VERIFICATION

County of Allendale)

I, DAMETRIOSE A. MOSS, 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.

Dametriose A. Moss

SWORN to and subscribed before me this 28th day of February.

Virginia Brubbs (L.S.)
 Notary Public

My Commission Expires: 12-12-22

2013.CP.37.00201

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 MAR 14 A 10:30

I, DAMETRIOSE R MOSS, 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.

Dametriose R Moss

Applicant

SWORN or affirmed to and subscribed before me this

28th day of February, 2013.

Virginia Grubbs

Notary Public

My Commission Expires: 12-12-22

2013.CP.37.00287
ATTACHMENT TO PCR APPLICATION

FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2013 MAR 14 AM 10:33

GROUND ONE

FEDERAL AND STATE LAW VIOLATIONS

A) THE CONVICTION AND SENTENCE IS IN VIOLATION
OF THE U.S. CONSTITUTION, SC. CONSTITUTION, STATE LAW, AND
RULES OF THE COURT.

GROUND TWO

INEFFECTIVE ASSISTANCE OF COUNSEL

B) TRIAL COUNSEL WAS INEFFECTIVE IN TRIAL, AND
BECAUSE OF HIS ERROR, THE APPLICANT HAS BEEN SUBSTANTIALLY
PREJUDICE, AND IF NOT FOR SUCH ERROR, THE OUTCOME WOULD
HAVE BEEN DIFFERENT.

AMENDMENT RESERVED

SEE RULE 71.1.SCRCTV. P.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
Dametriosse Moss,	)	C.A. No. 2013-CP-37-207
S.C.D.C. No. 326883	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed March 14, 2013, 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 Clerk of Court for Oconee County. The Applicant was indicted at the September 2011 term of the Court of General Sessions for Oconee County for murder and possession of a weapon during a violent crime (2011-GS-37-764), two counts of discharging a firearm into a dwelling (2011-GS-37-765), and attempted murder (2012-GS-37-401). The Applicant was represented by Scott D. Robinson, Esq. On July 25, 2012, Applicant proceeded to trial. He was found guilty of both charges of discharging a firearm into a dwelling, and not guilty of the other charges. The Honorable R. Lawton McIntosh sentenced Applicant to two consecutive sentences of ten (10) years imprisonment, the second of which was to be suspended upon service of five (5) years to five (5) years probation. As a consequence of his convictions, Applicant's probation was revoked in full for prior offenses (2009-GS-04-2141, 2010-

GS-04-1410, -1412, and 2007-GS-04-3646). Applicant did not appeal his sentences or convictions.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), and the transcript from Applicant's trial hearing. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel,
2. Federal and State Law Violations, in that;
 - a. "The conviction and sentence is in violation of the U.S. constitution, SC constitution, state law, and rules of the court."

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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.

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 cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States 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." Section 17-27-50 of the Code of Laws of South Carolina (1976). 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.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file

amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

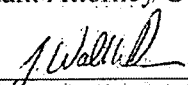
WHEREFORE, having made its Return, the Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel, federal and state law violations, and the allegations made in amendments submitted by the Applicant.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

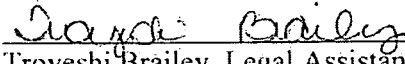
July 2nd, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH CIRCUIT
COUNTY OF OCONEE	)	
	)	
	)	2013-CP-37-207
	)	
DANETRIOSE MOSS	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT 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 **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Hugh W. Welborn
P.O. Box 173
Anderson, SC 29622

DATED this 2th day of July, 2014


 Troyeshi Brailey, Legal Assistant
 For Respondent

State of South Carolina

County of Oconee

In the Court of Common Pleas

Dametriosse Moss,

Applicant,

-vs-

State of South Carolina,

Respondent.

)
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)
)

2013-CP-37-207

July 28, 2014

Transcript of Record

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Hugh Welborn, Esquire
Attorney for the Applicant

John W. Whitmire, Esquire
Attorney for the State

Renee H. Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
A-1	<i>No exhibits were presented during the hearing</i>		
A-2			
A-3			

1 July 28, 2014

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 4:48 p.m.)

5 MR. WHITMIRE: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. WHITMIRE: Your Honor, the last case of the
8 day is Dametriose Moss v. State of South Carolina, 2013-
9 CP-37-207. Your Honor, this case comes in a little bit
10 different posture than I typically see. Mr. Moss was
11 indicted for murder, possession of a weapon during a
12 violent crime, two counts of discharging into a dwelling
13 and attempted murder. His case was taken to trial. He
14 was represented by Mr. Robinson. He was tried before the
15 Honorable Judge McIntosh.

16 Mr. Moss was acquitted of murder and attempted
17 murder and possession of a weapon. He, however, was
18 convicted on the firing into a dwelling on both counts.
19 Judge McIntosh sentenced him to fifteen years
20 imprisonment, ten years on one count, a second count to
21 run to consecutive, ten years suspended to a service of
22 five, probation of five. So he'll have five years
23 probation. Your Honor, like I said, this is unusual in
24 the fact that it was a murder case originally. And due
25 to Mr. Robinson's representation, he'll be parole

1 eligible in two years.

2 He has, as I stated, two allegations before this
3 Court, one of them which, Your Honor, is failure to
4 object and make a directed verdict new motion for the
5 inconsistent verdicts. The other motion -- allegedly
6 inconsistent verdicts. The other motion is failure to
7 file an appeal.

8 At this time, I turn matters over to Mr. Welborn.

9 THE COURT: All right.

10 Mr. Welborn?

11 MR. WELBORN: Yes, sir.

12 THE COURT: Yes, sir.

13 MR. WELBORN: Your Honor, if you'll bear with
14 me for just a moment.

15 Your Honor, there is an allegation of ineffective
16 assistance of counsel that says the conviction and
17 sentence was in violation of the U.S. Constitution, South
18 Carolina Constitution, state law and rules of court.

19 Now, if it please the Court, a moment ago as in
20 literally about three seconds ago, Mr. Moss handed me
21 something that he had typed. I don't think I've seen it
22 before. It's labeled motion to amend application for
23 post-conviction relief. I think we talked over the phone
24 the other day about ---

25 THE APPLICANT: It's newly discovered evidence.

1 MR. WELBORN: --- all the things that were
2 alleged including failure to file an appeal, inconsistent
3 verdict, and the other things that are in his actual
4 original application. I will hand this to opposing
5 counsel. I don't have a copy. I don't know what all it
6 exactly says, but I just got it about a minute ago.

7 THE COURT: Okay. If y'all want to take a few
8 minutes and read it, we'll do that right now.

9 MR. WHITMIRE: Thank you, Judge.

10 THE COURT: Okay. There's no hurry. Nobody
11 wants to go home.

12 (WHEREUPON, court stood at ease.)

13 MR. WELBORN: Your Honor, my client -- my
14 client -- opposing counsel consents to this amendment.

15 THE COURT: Okay.

16 MR. WHITMIRE: Your Honor, I just ask for a
17 copy and for Mr. Welborn to reference it in the record.

18 THE COURT: Okay.

19 MR. WELBORN: If someone could make a copy. I
20 hate to ask you to do that.

21 THE CLERK: Do I need to make one now?

22 MR. WELBORN: If you could.

23 THE COURT: Could you make one for me as well?
24 At least two. Thank you, ma'am.

25 (WHEREUPON, court stood at ease.)

1 MR. WELBORN: Your Honor, if it please the
2 Court, we're ready to proceed if the Court's ready.

3 THE COURT: All right. We're ready.

4 MR. WELBORN: May I call my first witness?

5 THE COURT: Yes, sir.

6 MR. WELBORN: I call Mr. Moss.

7 (WHEREUPON, the witness was duly sworn.)

8 THE COURT: All right. Mr. Moss, you
9 comfortable?

10 THE APPLICANT: Yes, sir.

11 THE COURT: All right. Your witness.

12 MR. WELBORN: May it please the Court.

13 **DAMETRIOSE R. MOSS,**

14 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

15 **DIRECT EXAMINATION**

16 BY MR. WELBORN:

17 Q. All right. I want to pronounce your name correctly.
18 I know your name is Moss. Is your first named pronounced
19 -- is it Dametrioise, sir?

20 A. Dametrioise Moss.

21 Q. Dametrioise. I'll call you Mr. Moss.

22 All right. Mr. Moss, you at some point had a trial.
23 It's now been some time back. You were indicted in 2011
24 and you were charged with murder, possession of a weapon
25 during a violent crime, two counts of discharging a

1 firearm into a dwelling, attempted murder.

2 And you had a couple of days of trial. Mr. Robinson
3 represented you. And you were found guilty of both
4 charges of discharging a firearm into a dwelling; on
5 everything else, you were found not guilty. Did I state
6 that correctly?

7 A. Yeah, I think so.

8 Q. And you got two consecutive sentences of ten years
9 imprisonment ---

10 A. That's what I supposed to have, but they got it all
11 screwed up in the computer where I'm at.

12 Q. Okay. But that's what is supposed to be?

13 A. That's what it's supposed to be.

14 Q. Yeah, two consecutive ten-year sentences. And the
15 second is to be suspended upon service of five ---

16 A. Ten concurrent. It's supposed to be concurrent,
17 both of them ran together.

18 Q. Okay. Well, I'm quoting from what I've received
19 from the Attorney General. You have a copy of what's
20 called a return that says it's consecutive. Are you now
21 saying that that's an issue as well, that they got it all
22 wrong; it's supposed to be concurrent?

23 A. It was supposed to have been -- the two shooting
24 into a dwelling was supposed to be ran together for one
25 fifteen.

- 1 Q. All right. You would agree that whatever the
2 transcript says is what it should be; is that correct?
- 3 A. (No verbal response)
- 4 Q. If the trial transcript says what I just said ---
- 5 A. Did it say fifteen? I didn't hear you say fifteen.
6 I thought you said twenty.
- 7 Q. No. You've got two consecutive sentences of ten.
8 In other words, twenty. But one of the tens -- the
9 second ten is to be suspended on the service of five
10 years.
- 11 A. Okay. Yes, sir. Yes, sir.
- 12 Q. So is that correct?
- 13 A. Yes, sir. I didn't understand you.
- 14 Q. I did too. And I'm sorry I'm going so fast I
15 misquoted you. All right. You've alleged in here that
16 the -- first of all, on your application that it was
17 ineffective assistance of counsel, and you didn't really
18 explain it. So I'm going to give you a chance right now
19 to tell the Court. I'm going to go into a lot of detail
20 in a few minutes about other things. But tell the Court
21 how Mr. Robinson was ineffective, and then we'll go
22 through some of these other things you've listed. Go
23 ahead.
- 24 A. Well, first of all, Your Honor, my court-appointed
25 attorney don't have my best interest at hand because I

1 got a call from him on July 25th, 2014, said that -- at
2 Allendale -- he called me and told me that he don't know
3 why I'm going back to court. And he said that ---

4 THE COURT: Okay. Hold on one second. You're
5 talking about Mr. Welborn?

6 THE APPLICANT: Yes, sir.

7 THE COURT: Okay. Okay. Well, let me kind of
8 -- are you asking -- what are you trying to tell me?

9 THE APPLICANT: Well, I'm trying to tell you
10 that Mr. Welborn don't have me -- I don't even know what
11 he plan on doing today because the only thing I came to
12 do was to present the motion.

13 THE COURT: Uh-huh (affirmative).

14 THE APPLICANT: The motion to get my case
15 vacated.

16 THE COURT: This motion?

17 THE APPLICANT: Yes, sir.

18 THE COURT: And we're going to go forward on
19 this.

20 THE APPLICANT: Okay.

21 THE COURT: Okay. Which is what he asked the
22 Court to do.

23 THE APPLICANT: Yeah, he's telling me how that
24 Scott -- that's what I was getting to. Yeah.

25 THE COURT: Okay. So we're going with this?

1 THE APPLICANT: Yes, sir. Yes, sir.

2 THE COURT: This is what he requested?

3 THE APPLICANT: Yeah, he's asking me how did
4 Scott -- yeah, I was getting there too.

5 THE COURT: Okay. Well, let's deal with that
6 then. Okay?

7 THE APPLICANT: Okay.

8 THE WITNESS: Well, he was ineffective because
9 it wasn't general sessions court term when they took me
10 to trial. That's how he was ineffective.

11 THE COURT: It wasn't a general sessions term?

12 THE APPLICANT: No, sir. It was the court of
13 pleas.

14 THE COURT: Okay.

15 Go ahead. Mr. Welborn, I'm not going to question
16 him. That's your job. So I'm going to let you do it.
17 Okay?

18 MR. WELBORN: All right.

19 Q. Now, you're saying it wasn't a general sessions
20 term. Are you telling the Court there was sort of a
21 special day made for you at some point by a circuit court
22 judge?

23 A. Say that again.

24 Q. I'll slow down. Are you telling the Court that
25 there was a special day when a circuit court judge did

1 this and it wasn't any other cases?

2 A. Yeah, they took me in during common pleas. It was
3 supposed to have been general sessions.

4 Q. All right. Well, you were sentenced though and
5 tried by a circuit court judge who would have
6 jurisdiction over both of those arms, the common pleas
7 and general sessions. Do you understand that, Mr. Moss?

8 A. Yeah. But the law strictly says it can be no day
9 unless the justice -- I mean, the -- unless the ...

10 Q. Well, let me help you. Are you looking at your
11 motion to amend this? Is that what you're looking at,
12 Mr. Moss? I'll hand that to you if you want me to.

13 A. Amend it? Yes, sir, I want to amend it.

14 Q. Yes, sir. I want you to ---

15 MR. WELBORN: May I approach the witness?

16 THE COURT: You may.

17 Q. I want you to tell the Court then about these
18 amendments that we've just agreed to hear ---

19 A. Okay.

20 Q. --- that somehow prejudiced you in this manner.
21 I'll be glad to hear from you.

22 A. Okay. It was unlawfully empaneled by a grand jury
23 because it's outside the statute of § 14-5-750, section
24 2. Because it only -- it states that -- well, y'all know
25 what it states.

1 Q. Well, tell the Court the particulars of why it's
2 outside of that section.

3 A. Because I was sentenced in 2011 on the 6th. And it
4 was supposed to have been through -- the sentence was on
5 May -- I've got to find it. Okay. It say, "The Court of
6 Common Pleas for the County shall be at Walhalla at
7 eleven eight on the third Monday in February, the fourth
8 Monday in May, and the third Monday in September. And I
9 was on the first Monday in September on the 6th. So,
10 therefore -- and it states that it's invalid. It should
11 be invalid because it don't go under a true bill. It
12 would be an illegal true bill.

13 Q. Okay. Well, in addition to that, what else in there
14 do you want to tell the Court?

15 A. What else in here?

16 Q. Yes, sir. In your motion that we've all agreed to
17 hear?

18 A. Okay. That's what the whole motion is about.

19 Q. That's everything on that particular motion?

20 A. Yes, sir. Well, I mean, it's little bit more in
21 there, but ...

22 Q. Well, is there anything else you want the Court to
23 hear. Now, the Court's got a copy of that motion and
24 your case and everything else. My question to you, Mr.
25 Moss, is in addition to what you just testified to, is

1 there anything else you want to tell the Court about that
2 motion that you think he's got to hear this?

3 A. Okay. This is what I had down. I had -- I had,
4 "The assistant solicitor unlawfully empaneled a grand
5 jury. If you would review page two, you would not see
6 the month of September in this section. The Legislature
7 was very on the month in the Court of General Sessions.
8 You will not September in 4-15 -- I mean, § 14-5-750 in
9 Section 2 within the Court of General Sessions. But you
10 will find September in the Court of Common Pleas. It is
11 obvious that the assistant solicitor empaneled a grand
12 jury in the Court of Common Pleas."

13 Q. Got you. Is there anything else, or can I have that
14 back?

15 A. Oh, you can have that back. "The Court of Common
16 Pleas is vested with no authority to take any action on
17 matters pertaining to return of the true bill criminal
18 indictments. The Court is made up of the Court of Common
19 Pleas which hears civil actions and the Court of General
20 Sessions which hears criminal cases."

21 Q. Now, let me ask you this, Mr. Moss. And you may
22 have just given me the answer. But you've written in
23 your application that your -- you know, there were
24 federal and state law violations and that the conviction
25 and sentence was in violation of the U.S. Constitution,

1 the South Carolina Constitution, state law and the rules
2 of court. Is what you just told the Court -- is that
3 what you're trying to say?

4 A. Yes, sir.

5 Q. Okay. I want to make sure we're clear on that.

6 Now, let's move on to some other things. You said that
7 you asked your lawyer to file an appeal or in the
8 alternative he didn't even tell you about the right to an
9 appeal. So which is it? And tell the Court about it.

10 A. Well, he said -- he sent me a letter saying that he
11 didn't think I needed an appeal because he didn't think I
12 had nothing to appeal on. Scott Robinson said that.

13 Q. Now, you understand -- and again, just for the
14 Court's knowledge -- that you had a whole lot of not-
15 guilties and just two guilty ---

16 A. That has nothing to do with this case, though.

17 Q. Okay. So you still want an appeal?

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

19 Q. Well, let me ask you this now. If the Court says,
20 you know, Mr. Moss is still entitled and deserves to
21 appeal this ---

22 A. It's no need for an appeal because it's stated right
23 here in that motion that I put in there that it should be
24 vacated, the sentence should be vacated, because it
25 violated my due process.

1 Q. I understand. And I got that. I think the Court
2 understands it. Here's my question.

3 A. I'm not even -- I'm not even here on the appeal now
4 because -- a belated appeal or none of that because
5 that's -- I was took out of it, so I don't even want to
6 go through that no more. That's -- I was ---

7 Q. Well, let me address it for you, Mr. Moss. I want
8 to make sure we get everything you want on the record.
9 Assuming that you are not successful on what you said a
10 little while ago in your amended complaint and Mr.
11 Robinson didn't appeal, didn't tell you about an appeal,
12 and the Court says I'm going to grant you an appeal
13 starting right now, would you like for that to happen?

14 A. No, sir.

15 Q. Now, did you understand everything I just said?

16 A. Yes, sir.

17 Q. I said that if he doesn't rule in your favor on this
18 other stuff, would you like to have an appeal. You just
19 said, no; is that correct?

20 A. That's right.

21 Q. You don't want an appeal no matter what at this
22 point?

23 A. No, sir, not right now.

24 Q. Not right now?

25 A. No, sir.

1 THE COURT: Now, make sure you understand you
2 don't get an appeal sometime later.

3 THE APPLICANT: Okay. That's fine.

4 THE COURT: You do not want an appeal?

5 THE APPLICANT: No, sir.

6 THE COURT: Okay. All right.

7 Go ahead.

8 Q. Now, we talked about this the other day. And so
9 you're giving that up right now permanently. Is that
10 your position, Mr. Moss?

11 A. Yes, sir.

12 Q. Thank you.

13 Now, Mr. Moss, the next thing you've alleged, and
14 I've amended on your behalf, was there was an
15 inconsistent verdict. In other words, you were found --
16 in talking to you the other day, you were found guilty of
17 shooting into -- firing into a dwelling, but you weren't
18 found guilty of having a firearm ---

19 A. I was acquitted of that.

20 Q. --- during the commission of a violent crime. And
21 that bothered you ---

22 A. Yes, sir.

23 Q. --- because you think that it should have been --
24 you can't be guilty of what you were found guilty of and
25 yet have a charge that would be found not guilty having a

1 weapon. So what do you want the Court to do about that?

2 A. Vacate the sentence.

3 Q. You want the sentence vacated?

4 A. Yes, sir, because when I shot into the dwellings,
5 that was the same time when the murder case happened. It
6 was all simultaneously.

7 Q. So on that -- on the discharging a firearm into a
8 dwelling, you want a new trial on that. Is that what
9 you're telling the Court?

10 A. No, sir.

11 Q. Well, if he vacates the sentence, you have to get a
12 new trial. That's your whole remedy. Is that what you
13 want?

14 A. And that -- I mean -- I got the maximum already, so
15 I mean ...

16 Q. Well, if you got the maximum already, if he vacated
17 the sentence and gave you a new trial, you'd have to
18 agree you couldn't come out a whole lot worse if you got
19 the maximum again, would you?

20 A. That's correct.

21 Q. So would you like to have the Court rule on that?
22 Would you like to have another trial?

23 A. No, sir.

24 Q. That's my question.

25 A. No, sir.

1 Q. What do you want the Court to do though for you, Mr.
2 Moss?

3 A. I want him to vacate the whole sentence today. I
4 want the whole sentence to be throwed out today.

5 Q. Okay. And why?

6 A. And why? Because I think it was -- it was -- like I
7 said before, it was ---

8 Q. It was what, sir?

9 A. It was not -- it wasn't even general sessions court.
10 It was the Court of Common Pleas.

11 Q. I got you. So it was a jurisdictional thing?

12 A. That's right. Yes, sir.

13 Q. Okay. Now, so I'm clear and the Judge is clear, you
14 said there was an inconsistent verdict -- that's my
15 wording -- when they didn't find you guilty of a weapon
16 during a violent crime?

17 A. Yes, sir. Yes, sir.

18 Q. Are you giving up that argument? Are you saying I'm
19 giving that argument up, or do you want the Court to rule
20 on that?

21 A. Can I ask you a ...

22 THE APPLICANT: I'm sorry. Your Honor, can I
23 ask him a question because I don't understand.

24 Q. I want you to explain whatever you want him to hear.
25 I'll be glad to explain it.

1 A. Can I ask you -- I'm just saying, are you working
2 with me or against me right now because I don't
3 understand. I don't know which one you're doing right
4 now. I'm confused.

5 THE COURT: All he's doing is just asking you
6 questions.

7 THE APPLICANT: Okay. Because I don't know
8 much about the law. You know what I'm saying? I just
9 know what I got to do.

10 THE COURT: That's why he's rephrasing it so
11 many different ways to make sure you understand it.

12 THE APPLICANT: Okay.

13 THE COURT: He's not working -- he is working
14 for you. He wants to make sure you understand the
15 question.

16 THE APPLICANT: Okay. Got you.

17 THE COURT: So ask him again, Mr. Welborn.

18 THE APPLICANT: Okay.

19 Q. I'm not good sometimes, Mr. Moss, with these
20 questions.

21 A. Yeah. Because I'm just confused because of the
22 conversation that we had, me and you had on the phone.

23 Q. Yes, sir.

24 A. You tell me that I didn't have a reason to come to
25 court. So that's why I didn't know if you was working

1 with me or against me. And you told me you didn't want
2 me to come to court. So I didn't know -- that's why I'm
3 asking. That's why.

4 Q. Yeah. We talked the other day on the phone a little
5 bit.

6 A. Yeah. I didn't know who that was talking to me.

7 Q. You hung up on me.

8 A. I didn't know who that was. That could have been
9 Bugs Bunny for all I know. I don't know who that was I
10 was talking to. I never met you. I don't -- you know
11 what I'm saying? I don't know who -- that could have
12 been anybody.

13 Q. But even though up I set that call up, you weren't
14 sure it was me?

15 A. I didn't know who that was. Anybody could call me
16 and said that.

17 Q. Now, did your mom tell you that she came to my
18 office and I talked with her?

19 A. Uh-huh (affirmative).

20 Q. For quite a length about this as well?

21 A. Uh-huh (affirmative). But I never met you.

22 Q. Okay. Well, now you have.

23 A. Yes, sir. Nice to meet you.

24 Q. Good to meet you. So let's get back to where we
25 were. What do you want the Court to do and why?

1 A. I just want him to look at the amendment that I put
2 in and see that the ...

3 Q. And you're no longer wanting to file the appeal,
4 just so I understand and the Court understands; is that
5 correct, sir?

6 A. That's correct.

7 Q. And as for the fact that you told me that this
8 verdict was somehow inconsistent -- that's my language
9 ---

10 A. Yes, sir.

11 Q. --- you're not wanting to pursue that either; is
12 that correct?

13 A. No, sir. Should I?

14 Q. That's your choice, Mr. Moss. I want this Court to
15 hear whatever you've told me to tell the Court.

16 A. I mean, that was my first thing I wanted to do. But
17 then -- until I found the new evidence. But that was
18 what I wanted to do at first. I wanted to come back on
19 inconsistent verdicts.

20 Q. You do?

21 A. I did at first, but then I found this.

22 Q. But don't now?

23 A. I mean, we could raise that issue too.

24 Q. So you do want to come back on inconsistent verdict.

25 You want the Court to rule on that? Is that your ---

1 A. I mean, I would want a rule on everything today if I
2 could.

3 Q. Now, again, Mr. Moss, I'm a little hard at
4 communicating with people at times, and I apologize for
5 that. I'm not real good at it. You help me. What do
6 you not understand about what I've asked you. I want you
7 to be clear with what you want the Court to do. I'm just
8 going to shut up and let you tell the Court. What do you
9 want the Court to do?

10 A. I mean, the only thing I just -- I mean, I wanted to
11 come back on inconsistent verdicts, I mean. But then you
12 told me that I didn't have no case on that. So now I'm
13 totally -- I was just totally lost because you told me I
14 didn't have a case on that. So you said I shouldn't come
15 back on that. That's what you told me. I mean, so ...

16 Q. Well, let me clarify this for the record, Mr. Moss.

17 A. Okay.

18 Q. I had a conversation with you, and you hung up on
19 me.

20 A. You said -- you said -- you said ---

21 THE COURT: Wait a minute. Wait a minute. Let
22 him tell me, then you get to respond. Okay?

23 THE APPLICANT: Okay.

24 Q. So Mr. Moss, what I'm trying to tell you today, sir,
25 is this is your day in Court.

1 A. Yes, sir.

2 Q. And I have given you the best advice that I have
3 with my knowledge of the law. Been doing this for
4 twenty-eight years.

5 A. Okay.

6 Q. But you might have a whole lot more knowledge than
7 I've ever dreamed of having. That's why I want you to
8 tell the Court right now what you want to do about this
9 where you said I said, "You don't have a case." So I'm
10 saying, forget what I said. What do you want? Do you
11 want to go forward on an inconsistent verdict, yes or no?

12 A. Yes, sir.

13 Q. Very good. Thank you. Now, is there anything else,
14 Mr. Moss, that I have not brought up? And I've gone over
15 everything you've told me, and I went to my various
16 notes, including our conversation of recent date. And is
17 there anything else you want to tell the Court about why
18 you deserve to have another trial or have this vacated,
19 as you call it?

20 A. No, sir.

21 Q. Anything at all? Anything at all? Just go ahead
22 and tell the Court. Anything else?

23 A. No, sir.

24 Q. Thank you. Answer anything opposing counsel may
25 have.

1 MR. WHITMIRE: Three or four questions, Your
2 Honor.

3 THE COURT: All right.

4 MR. WHITMIRE: May it please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. WHITMIRE:

8 Q. This offense occurred on May 18th, 2011?

9 A. Yes, sir.

10 Q. You were arrested twenty or thirty minutes or really
11 soon after the shooting?

12 A. Yes, sir.

13 Q. So you knew the State was wanting to prosecute you
14 for, I believe it's the death of Woo and the shooting of
15 Tuck?

16 A. No, sir. They told me they was going to take me
17 down and do statements, see what happened. But they
18 didn't saying nothing about -- because I told them it was
19 self-defense. I mean, they didn't -- I didn't know they
20 was going to lock me up, no, sir, if that's what you're
21 asking.

22 Q. But you knew -- well, by the time you were indicted
23 in September of 2011, did you know what they were trying
24 to prove you did?

25 A. Yes, sir.

1 Q. So you were aware?

2 A. Yes, sir.

3 Q. By the time of trial in July 2012, you had a full
4 understanding of the all the State's evidence. You met
5 with your attorney?

6 A. No, sir. I met with him maybe once, twice before
7 the trial. That's why I had put in for disbarment and
8 all of that because I hadn't see him. I hadn't talked to
9 him. I was trying to figure out what was going on. He
10 came to me like a week before ---

11 Q. When did you get notice the State was intending to
12 try your case in July of 2012?

13 A. Do what, now?

14 Q. When did you get notice that the State was intending
15 to try your case July 2012?

16 A. Probably within a week or two. And I was just --
17 they just did it suddenly.

18 MR. WHITMIRE: No further questions, Your
19 Honor.

20 THE COURT: All right. Anything on redirect?

21 MR. WELBORN: No, Your Honor.

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

23 Thank you, sir.

24 All right.

25 MR. WHITMIRE: At this time, Your Honor, the

1 State would ask for directed verdict. Both issues he's
2 raising today are without merit regarding the
3 inconsistent verdict. The State v. Alexander is on
4 point, 303 S.C. 377 1991. The State would argue it's not
5 an inconsistent verdict, but the law on it is clear and
6 not in dispute.

7 Regarding indictments and empaneling documents, Your
8 Honor, it is a frivolous allegation often reiterated
9 through the Department of Corrections. In that statute,
10 the next number statute I'll cite in court states
11 specifically a chief administrative judge can empanel a
12 grand jury at will. He was certainly aware about the
13 charges he was facing. A year and a half had went by.
14 And as a result of his attorney's representation, he's
15 not spending the rest of his life in prison.

16 THE COURT: All right. Mr. Welborn, anything
17 in response to his motion for a directed verdict?

18 MR. WELBORN: Your Honor, my client would just
19 say that he's stated his case the best that he could.
20 He's still contends, even as opposing counsel is
21 speaking, that he wants to see whether this was empaneled
22 and this wasn't some conspiracy where he was kind of
23 railroaded. My words, not his. And I don't think we
24 have that information. But I think we can take judicial
25 notice of certain things that happen in courthouses. I

1 would ask the Court to rule.

2 THE COURT: All right. Mr. Moss, when you were
3 -- when this case was called for trial, it was called for
4 general sessions. Okay? And that's something that can
5 be done. Oftentimes in my own things when we don't have
6 things to do in common pleas and we've got things to do
7 in general sessions, we'll switch a session. Sometimes
8 during the week of common pleas, if I run out, I'll take
9 pleas and get the authority of the court to do general
10 sessions pleas that same week. Okay?

11 One second. The other thing as far as the
12 inconsistent verdict argument, as a matter of law, the
13 verdicts can come back this way. And so as a result, I
14 am granted -- excuse me -- granting the motion for
15 directed verdict.

16 And Mr. Whitmire, if you wouldn't mind drawing up
17 that order.

18 MR. WHITMIRE: Thank you, Your Honor. I will
19 certainly do that.

20 THE COURT: Thank you.

21 MR. WHITMIRE: This concludes our post-
22 conviction relief for Oconee for the day.

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

24 MR. WHITMIRE: Thank you, Judge.

25 (WHEREUPON, the hearing ended at approximately 5:18

1 p.m.)

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Oconee County, South Carolina,
9 on the 28th day of July 2014.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 June 26, 2015

15

16 S/ *Renee H. Tollison*

17 Circuit Court Reporter