

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Brooks P. Goldsmith, Circuit Court Judge

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SC SUPREME COURT

OCTAVIA MIDDLETON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001080

APPENDIX

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- 1 **A** That's correct.
- 2 **Q** And what were the chances of it matching another
3 individual in the universe?
- 4 **A** The frequency of seeing the profile in the Caucasian
5 population was 1 in 18 trillion and in the
6 African-American population 1 in 71 trillion, which
7 means the chance of walking outside and picking
8 somebody off the sidewalk and then having the profile
9 that I've got from the evidence having that same
10 profile is 1 in 18 trillion or 1 in 71 trillion.
- 11 **Q** And can you reach any conclusion based on the
12 statistics there?
- 13 **A** A lot of labs will report that as identity of the
14 individual that's such a high frequency. Yes.
- 15 **Q** So that would be Octavia Middleton's blood on the
16 shorts?
- 17 **A** In my opinion he left that stain on those shorts.
18 Correct.
- 19 **Q** Moving down to the left hand nail scrapings and right
20 hand nail scrapings that were taken from the victim,
21 did you ever get a known sample from the victim to
22 compare?
- 23 **A** I did not.
- 24 **Q** And the nail scrapings, what did you identify?
- 25 **A** The nail scrapings were 11 and 12-AC. And my report

1 is that the profile developed from 11 and 12-AC are
2 from the same unknown male individual and do not
3 match any standards submitted in this case.

4 Q So, to be clear, it doesn't match Octavia Middleton
5 or Teran Scott?

6 A That's correct.

7 Q Or any of the other two victims in the case?

8 A Any of the other two standards submitted in this
9 case.

10 Q When a person's nail scrapings are taken, would you
11 expect to find a victim's standard there?

12 A Yes. That is the predominant profile that you will
13 find. If you were to scrape somebody's fingernails
14 and run that through DNA, you will find that
15 individual's DNA. The reason we -- the reason that
16 is a probative piece of evidence sometimes is
17 sometimes you'll find another person's DNA there as
18 well. But primarily you're going to find the person
19 whose fingernail that belonged to, their DNA profile.

20 Q And as far as this, since you only found one
21 profile --

22 MR. HISKER: Objection.

23 MS. CAMPBELL: To what?

24 THE COURT: What's the objection?

25 MR. HISKER: It's speculative. They didn't have

1 a standard. They didn't have a standard to compare
2 it to. So to say --

3 **THE COURT:** Rephrase your question.

4 **Q** Based on your experience, if you only find one
5 profile from fingernail scrapings, what conclusion do
6 you make?

7 **A** It's most likely the person who you've collected the
8 fingernail scrapings from.

9 **Q** The next item was a swab from one of the bedroom
10 floors. And you've already testified. But were you
11 able to come to any conclusion regarding that?

12 **A** That was 13-AC. It was too weak to interpret.

13 **Q** You also got 14-AC, a swab from the front door?

14 **A** That's correct.

15 **Q** And what were you able to develop from that when you
16 tested it?

17 **A** No DNA profile was developed from that item.

18 **Q** And is that an unusual finding, that you just don't
19 find any DNA?

20 **A** No. Again, there's not enough DNA probably on that
21 swab.

22 **Q** The last one, you mentioned that you got a cigarette
23 butt from Teran Scott to compare with?

24 **A** That's correct.

25 **Q** Was that an unusual way to collect someone's saliva?

1 A No. Cigarette butts usually yield very good DNA
2 profiles.

3 Q And the swabs from the beer cans, when you compared
4 that, the cigarette butt from Teran Scott to the beer
5 can, what were your conclusions?

6 A That the DNA profile developed from item 63-TC which
7 was the beer can matched the cigarette butt from
8 Teran Scott.

9 Q Let me find the beer can. And just so we can be
10 clear, I show you State's Exhibit 168. The swabs are
11 actually what you compared, but those would be the
12 swabs from that?

13 A That's correct. That's correct.

14 Q And those matched whom?

15 A I beg your pardon?

16 Q They matched whom?

17 A I have difficulty reading this item number. That's
18 what I was looking at. The beer can, 63-TC, matched
19 the cigarette butt from Teran Scott.

20 Q What was the likelihood of it matching anyone else?

21 A The frequency of seeing that profile that I developed
22 from 63-TC in the Caucasian population is
23 approximately 1 in 8.7 quintillion; and in the
24 African-American population, approximately 1 in 350
25 quadrillion.

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1 Q And in your expert opinion, whose DNA was that that
2 was the swabs from the beer can?

3 A Again, that DNA from the cigarette butt from Teran
4 Scott is the same as 63-TC. So he would be the one
5 who left the stain on 63-TC which is the beer can.

6 Q Thank you. Please answer any questions from the
7 defense.

8 CROSS EXAMINATION

9 BY MR. HISKER

10 Q Good afternoon, Dr. Amick.

11 A Good afternoon.

12 Q When you talk about touch DNA, you're actually
13 talking about skin cells being left on an item?

14 A That's correct.

15 Q So the more you touch an item, the more the chances
16 are you are leaving those skin cells with DNA?

17 A That's possible.

18 Q You'd agree that an item like a steering wheel in a
19 car would be a good item to test for DNA?

20 A You can get a DNA profile from a steering wheel in a
21 car, yes.

22 Q And it's not only bodily fluids, but also hairs leave
23 DNA profiles as well?

24 A Well, you can get a DNA profile from a hair.

25 Correct. We use -- the technique we use, it has to

- 1 have a root on that hair. But, yes, you can get a
2 DNA profile from a hair.
- 3 Q So it's not hair cuttings. It actually has to have a
4 follicle. It has to be pulled hair?
- 5 A That's correct.
- 6 Q About the nail scrapings, without having a sample to
7 compare it to, there is no way you can tell this jury
8 that that's for certain the victim's DNA. It could
9 be a third party's DNA, correct?
- 10 A That's correct. It's an unknown male.
- 11 Q And that's why you write it just that way in your
12 report?
- 13 A That's correct.
- 14 Q Were there any other items of DNA submitted to you
15 other than what's listed in your report?
- 16 A There is -- I guess I'll make the distinction.
17 What's collected and submitted to the evidence room
18 may not be what I take into custody. So what I take
19 into custody generally is what I put on my report.
- 20 Q Right. So these are the only items that were sent to
21 you for testing?
- 22 A That I picked up. Correct.
- 23 Q Thank you. No further questions.

24 REDIRECT EXAMINATION

25 BY MS. CAMPBELL

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1 Q Just one question. As far as nail scrapings from a
2 person, in your experience, do you find the victim's
3 DNA as well as perhaps someone else's?

4 A That's correct.

5 Q Thank you.

6 THE COURT: Anything further?

7 MR. HISKER: No, Your Honor.

8 THE COURT: You may come down. Thank you. May
9 the witness be released? Without objection. Next
10 witness.

11 MR. GOLDBERG: The State calls Investigator
12 Faust.

13 STEVEN S. FAUST, after being duly sworn,
14 testifies as follows:

15 THE CLERK: Thank you. Please have a seat in
16 the witness stand and state your full name for the
17 record.

18 WITNESS: Steven Scott Faust.

19 DIRECT EXAMINATION

20 BY MR. GOLDBERG

21 Q Investigator, where are you employed?

22 A The Richland County Sheriff's Department.

23 Q And your duties with the Sheriff's Department?

24 A I am currently an investigator with the Richland
25 County Sheriff's Department. At the time of the

1 incident I was an investigator in armed robbery. And
2 that particular week I was on-call homicide
3 investigator.

4 Q What does that mean?

5 A During -- not only do we work during the day, but
6 there are periods of time where we are required to be
7 on call for things that happen in the evening, the
8 late hours to handle when we're not on day shift.
9 This particular week, not only was I on call but I
10 was on call for homicide. This particular week, if
11 any homicide took place, myself and another
12 investigator usually start off being called out to
13 the scene, and at that point in time we begin an
14 investigation and are assigned the homicide.

15 Q Were you eventually notified of a potential homicide
16 on August 8th, 2005 at Faraway Drive?

17 A I was. I was called through my Nextel phone by
18 Sergeant Ewing.

19 Q When you arrived at the scene, what did you do?

20 A When I initially got to the scene, I reported to
21 Sergeant Ewing and was informed that we were going to
22 be getting a search warrant. In the meantime, while
23 we're waiting for the paperwork to be produced and
24 signed by a judge, I began to do my own efforts of
25 rounding up witnesses, going out. The Reserves is a

Steven S. Faust - Direct by Mr. Goldberg

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1 large apartment complex. And when I arrived there
2 were a large amount of people. Obviously a lot of
3 people were curious with the numerous cops out there.
4 And in doing so, I located several witnesses.

5 Q Did you observe a green truck in the area?

6 A I did. When you're coming down The Reserves, there's
7 just one way in, and two cars can come up and down
8 the ramp. Well, as I was coming down, I noticed the
9 ramp that happened to be -- or excuse me -- noticed a
10 pick-up truck that was off of the ramp. I thought it
11 was somewhat unusual; but, you know, at the time
12 there was -- as the report was coming out, there was
13 no mention of a pick-up truck initially being
14 involved on the initial 911 calls.

15 Once I got down on the scene and was informed
16 that there was two witnesses that needed to be talked
17 to quickly, that they had some important information,
18 I would quickly learn that the individuals leaving
19 the scene were leaving in a pick-up truck that had
20 gotten stuck up on the ramp.

21 Immediately, when I learned of that, I grabbed a
22 deputy and sent a deputy up there to sit on the car,
23 and then at which time I went up and actually sat
24 with the car, too, to figure out what we were going
25 to do or what the significance of this vehicle was.

1 Q Did you ultimately have anyone notified from the lab
2 about this truck?

3 A We would. I could see in plain view, after I'd
4 learned of some of the victims' names, I could see in
5 plain view some of their belongings in the vehicle.
6 Obviously it appeared that the persons who took those
7 items from our victims had had them in this vehicle.
8 So at that time we notified lab units who are
9 specialized in processing vehicles to come and handle
10 that situation. None of us, none of the deputies
11 sitting on the car nor myself, the investigator,
12 responding to the scene processed that vehicle.

13 Q Did you ultimately find out where that truck came
14 from, who it belonged to?

15 A I did. We had the vehicle tag run and in doing so
16 learned that the owner of the vehicle's name was
17 Terry Roundtree. And through that I would learn that
18 he reported the vehicle stolen after he loaned it to
19 an individual by the name of Tasha Harrington.

20 Q And ultimately you got a search warrant for the
21 truck. Is that right?

22 A Yes.

23 Q And you gave that to the lab for them to execute
24 their search?

25 A That's correct.

1 Q Did you have an opportunity to show a photo line-up
2 to Eliana Garcia?

3 A I did.

4 Q Was she able to pick anyone out of that line-up?

5 A She was not.

6 Q And you also showed a photo line-up to Anita
7 Thompson. Is that correct?

8 A Yes.

9 Q Was she able to identify anyone?

10 A No.

11 Q At some point later did you participate in the arrest
12 of a Teran Scott?

13 A I was.

14 Q You were present at that time?

15 A I was. I was actually on a team of several officers
16 who after we received a tip to his location went and
17 participated in the actual arrest and processing.

18 Q And when he was arrested, was he searched for safety?

19 A He was.

20 Q What if anything did you discover?

21 A I was one of the ones that patted him down, found a
22 black dew rag on top of Mr. Scott's head. I also
23 found two Winchester 12-gauge red shotgun shells in
24 Scott's right rear pocket, two car keys from Scott's
25 left front pocket, a red lighter from Scott's right

1 front pocket were the items that I located and took
2 possession of and placed into evidence.

3 Q Once he was arrested where was he taken?

4 A To the Richland County Sheriff's Department.

5 Q And a statement was obtained from him at that time?

6 A That's correct.

7 Q And you witnessed that?

8 A I did.

9 Q After this statement was completed, what if anything
10 did you notice about Mr. Scott and what he was doing?
11 Was he offered a cigarette at some point later?

12 A He -- well, I wouldn't offer him one. But Mr. Scott
13 asked several times if he could smoke a cigarette. I
14 don't specifically recall if he had one on his
15 possession or if one was supplied for him. But it
16 was not something we would offer to him. It would be
17 something that he would request usually numerous
18 times. After the statement was taken, it was decided
19 or a cigarette was located and he was allowed to
20 smoke outside the rear of the office.

21 Q Of the Sheriff's Department?

22 A Of the Sheriff's Department.

23 Q And what happened during the course of this event?

24 A After he finished smoking the cigarette, typically
25 your average person will say, where can I throw this

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1 cigarette? We have a trashcan at the back of our
2 office. I assume when he was done with the cigarette
3 he just flicked it. And I kind of noticed it
4 because, you know, we obviously have a trashcan. And
5 after he flicked it, he was taken back inside. I
6 stayed outside and collected the cigarette. I had
7 eye contact on it the whole time. And at that point
8 in time I sealed it and placed it into evidence.

9 Q Is this something that you had planned to do ahead of
10 time from the moment he was given a cigarette?

11 A No.

12 Q It just kind of came to you to pick it up?

13 A It did. Normally again your average person would
14 say, I'm going to -- you know, where can I throw this
15 thing away? Typically when you're at a police
16 department with police officers, you're not going to
17 litter. And he littered, and I decided to collect
18 the cigarette for evidentiary value.

19 Q Okay. I believe at some point later the next day, on
20 the 11th, were you dispatched over to Carnegie
21 Street?

22 A Well, I wasn't necessarily dispatched, but I was --
23 the following morning when I came into work, we had
24 obtained information that this is where Mr. Middleton
25 stayed. And I initially rode by that morning to get

1 a description of the house to put on a search
2 warrant. Part of the search warrant process is you
3 have to specify which house you're going to, to
4 include numbers, you know, describe the house
5 basically so anybody on this reading the search
6 warrant would know where to go. I then came in, and
7 we had a search warrant drawn up and signed by a
8 judge for that particular residence.

9 Q And ultimately, was there anyone else at the scene
10 when you encountered Mr. Middleton, any other --
11 anyone other than law enforcement?

12 A Mr. Middleton?

13 Q At the Carnegie Street location.

14 A When I went by that morning or that afternoon?

15 Q That afternoon.

16 A Yes.

17 Q Who?

18 A Mr. Harry Dukes would be located once we executed the
19 search warrant.

20 Q And was that the end of your involvement in the case?

21 A That specific day, no. There were a lot of things
22 that happened after that.

23 Q Was Mr. Middleton then arrested at that time?

24 A That -- yes. He was arrested.

25 Q And Mr. Dukes as well?

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1 A Yes.

2 Q Thank you, sir.

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. HISKER

6 Q Hello, Investigator Faust.

7 A How you doing?

8 Q Fine. How are you? Mr. Teran Scott was arrested at

9 [REDACTED]. Is that correct, sir?

10 A That's correct.

11 Q And that's also the place where the stolen truck from
12 The Reserves was found also?

13 A That particular -- in that area. I can't say it was
14 located outside of the residence that we went to.
15 But, yes, that particular area.

16 Q And that was a relevant fact. You considered that
17 when going to pick up Mr. Scott, that the vehicle was
18 found there also?

19 A The vehicle, I would have to look at the dates. But
20 when we went to -- the day we went to arrest Teran
21 Scott, there was a specific tip that came in that was
22 very credible. The truck had very little to do with
23 it.

24 Q Isn't it true you put in your report that the tip
25 seemed very credible to include that the truck was

1 recovered earlier this morning at [REDACTED]?

2 A That would be fair to say, yeah. But the tip came in
3 and it put -- the truck being recovered lent
4 credibility to the tip.

5 Q Right. Where is [REDACTED] in relationship to
6 Carnegie Street?

7 A [REDACTED] is Fairfield and I-20. It's a little bit
8 further inbound on Fairfield Drive. Carnegie Street
9 is up off of inbound Two Notch Road. So it's a
10 little distance.

11 Q It's a little distance?

12 A Yeah. It's not something that one would walk.

13 Q And Octavia Middleton was not at the [REDACTED]
14 [REDACTED]?

15 A That particular day, no. When we arrested Teran
16 Scott, if that's what you're alluding to; no, he was
17 not.

18 Q Thank you. No further questions.

19 THE COURT: Mr. Goldberg.

20 REDIRECT EXAMINATION

21 BY MR. GOLDBERG

22 Q Investigator, there were shotgun shells recovered at
23 the Carnegie Street location. Is that correct?

24 MR. HISKER: Objection, Your Honor. That's not
25 the scope of my cross.

1 **MR. GOLDBERG:** He had asked about Carnegie
2 Street.

3 **THE COURT:** Sir?

4 **MR. GOLDBERG:** He asked about Carnegie Street.

5 **THE COURT:** Go ahead.

6 **Q** Is that correct?

7 **A** That is correct. We did locate numerous shotgun
8 shells at the Carnegie Street address.

9 **Q** And how would you describe the shells that were found
10 at Carnegie Street in comparison with the ones --

11 **MR. HISKER:** Objection. This is going far
12 beyond the scope of my cross.

13 **THE COURT:** Overruled. Go ahead.

14 **Q** How would you describe the shells that were found at
15 Carnegie Street in comparison to the ones found on
16 Mr. Scott?

17 **A** Similar. The same. They were the same.

18 **Q** The same caliber?

19 **A** The same caliber, same color.

20 **Q** Thank you.

21 RECROSS EXAMINATION

22 **BY MR. HISKER**

23 **Q** In your experience as a law enforcement officer, the
24 red 12-gauge Remington shotgun shell is probably
25 about the most common shotgun shell on the market,

1 isn't it?

2 **A** I am not an avid hunter. But I have seen red shotgun
3 shells in the past.

4 **Q** Throughout many, many cases?

5 **A** I've seen several colors. But, I mean, red is a
6 common color.

7 **Q** And Remington is a very common manufacturer?

8 **A** I've heard it numerous times. But again, my
9 expertise is not in shotguns.

10 **Q** And 12-gauge shotguns, also probably the most common
11 caliber of shotgun?

12 **A** I don't think I'm an expert to answer that. But I've
13 heard of it. Yes, sir.

14 **Q** Thank you.

15 **THE COURT:** You may come down, sir. Thank you
16 very much. May the witness be excused? Without
17 objection. Next witness.

18 **MS. CAMPBELL:** May it please the Court. The
19 State calls.

20 **SAMUEL C. REIGHLEY, JR.,** after being duly sworn,
21 testifies as follows:

22 **THE CLERK:** Thank you. Please have a seat in
23 the witness stand and state your full name for the
24 record.

25 **WITNESS:** Samuel Camillus Reighley, Jr.,

1 R-E-I-G-H-L-E-Y.

2 DIRECT EXAMINATION

3 BY MS. CAMPBELL

4 Q Agent Reighley, where are you employed?

5 A I am currently employed with the South Carolina Law
6 Enforcement Division which is commonly referred to as
7 SLED.

8 Q And what do to your current duties include?

9 A My current duties is I am a lieutenant or supervisor
10 with the counter terrorism unit with The Fusion
11 Center.

12 Q Back in 2005 where were you as assigned?

13 A In 2005 I was assigned to the forensic unit,
14 specifically with the toxicology unit, which my
15 responsibilities were to test various body fluids
16 such as blood, alcohol, also tissues, brain tissue,
17 liver tissue, the things like that for the presence
18 of drugs and alcohol, and also to testify on effects
19 of those drugs and alcohol on an individual.

20 Q I want to turn your attention -- tell the jury a
21 little bit about your education and your training in
22 the field of toxicology?

23 A My educational background is I have a Bachelor of
24 Science degree in biology from Western Carolina
25 University. Before coming to SLED I worked as an

1 environmental toxicologist for about six and a half
2 years. I started SLED in 1998. While there went
3 through their training program for forensic
4 toxicology where I went through the training program
5 for the different disciplines within toxicology such
6 as blood alcohol analysis, drug screening, drug
7 confirmations; also went through various types of
8 training on the interpretation of those results as
9 far as the effects on an individual.

10 Along with that during the training programs,
11 approximately one year in length, during that process
12 we have to take a variety of tests in order to prove
13 our competence within the field, and also once we're
14 certified through SLED as a chief toxicologist to
15 perform case work, we also went through a yearly
16 competency program taking competency tests to show
17 that we're proficient in the field.

18 **Q** And have you been qualified before as an expert in
19 the area of toxicology?

20 **A** Yes, I have; approximately 30 to 35 times.

21 **MS. CAMPBELL:** Your Honor, at this time we'd
22 offer him as an expert in forensic toxicology.

23 **MR. HISKER:** No objection.

24 **THE COURT:** Without objection.

25 **Q** Did the Coroner's Office provide with you a sample of

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1 urine labeled James Greene?

2 A Yes, they did.

3 Q And would that have been taken at the autopsy?

4 A That would be my assumption.

5 Q And what if any testing did you do on that?

6 A The sample I received, it was a urine sample labeled
7 James Greene which is 805-196 which is a tracking
8 number through the agency that sent it to us. On
9 this particular sample I did an alcohol analysis on
10 the urine along with a panel of drug screens which
11 consisted of an amphetamine, methamphetamine screen,
12 barbiturates screen, Benzodiazepines, cannabinoids,
13 cocaine and/or cocaine metabolites and opiates.

14 Q So basically you screen for some prescription drugs
15 as well as marijuana, cocaine, things of that nature?

16 A That's correct.

17 Q Including other illegal drugs?

18 A That's correct.

19 Q And what was the result when you tested his blood for
20 the presence of any type of alcohol?

21 A Well, for the urine sample, it was negative for the
22 presence of alcohol within that urine sample.

23 Q And even though the autopsy is performed almost a
24 full day later, does it still indicate, is that still
25 a valid reading as to what his alcohol level would

1 have been at the time of his death?

2 A That would give an indication of what it was at the
3 time of his death, yes.

4 Q So the passage of time between the actual collection,
5 say, at the autopsy and the time of death would not
6 matter?

7 A Not when it's collected, put into a sterile container
8 and refrigerated and brought to us. It would not
9 have an effect on it. That's right.

10 Q And when you received this sample, it was in proper
11 condition?

12 A Yes, it was.

13 Q You also tested for the presence of all the drugs
14 we've talked about. Is that correct?

15 A That's correct.

16 Q And did you come up with any results?

17 A For the drug panels that I ran, all of them came back
18 as negative screens for the presence of those
19 particular drug classes.

20 Q So in your expert opinion, at the time of his death
21 he was negative for drugs and negative for alcohol?

22 A Based on the testing I did, he was negative for the
23 alcohol and drug panels, yes.

24 Q The coroner's Office also submitted some brain, liver
25 and kidney samples. Did you do any testing on those?

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1 **A** No, I did not perform any testing on those particular
2 samples.

3 **Q** And is that because you'd already done the urine?

4 **A** That's correct.

5 **Q** Thank you, sir.

6 **MR. HISKER:** No questions.

7 **THE COURT:** You may come down, sir. Thank you
8 very much. Witness be excused without objection.

9 **MS. CAMPBELL:** The State calls Lieutenant
10 Powell.

11 JOSEPH D. POWELL, after being duly sworn,
12 testifies as follows:

13 **THE CLERK:** Thank you. Please have a seat in
14 the witness stand and state your full name for the
15 record.

16 **WITNESS:** Thank you very much. My name is
17 Joseph D. Powell, P-O-W-E-L-L.

18 DIRECT EXAMINATION

19 **BY MS. CAMPBELL**

20 **Q** Where are you employed, sir?

21 **A** I am currently employed at the South Carolina Law
22 Enforcement Division commonly known as SLED.

23 **Q** What do you do there?

24 **A** I am the supervisor of what's called the trace
25 evidence section where I am responsible for seven

1 other analysts who are involved in the analysis of
2 things such as explosives, fibers, paints,
3 accelerants which is like gasoline and diesel fuel,
4 bullet hole analysis, other types of analysis which
5 may not have the exact forensic application.

6 Q Can you tell this jury a little bit about your
7 education and your training in the field of trace
8 evidence?

9 A Yes, ma'am. I originally received my degree in
10 chemistry from the University of Southern
11 Mississippi. After completing my degree I came to
12 South Carolina and began an in-house training program
13 in both areas of drug analysis and trace evidence.
14 After completing my training I took on a case load
15 where I was responsible for various counties around
16 the state. After about five years SLED decided to
17 break up the trace, I mean the drug department, into
18 both drugs and trace evidence, and I chose to go with
19 the trace evidence department. I've been in trace
20 evidence now for going on 25 years.

21 Q And you've been qualified before on numerous
22 occasions as an expert in that area?

23 A Yes, ma'am. That is correct.

24 **MS. CAMPBELL:** Your Honor, at this time we'd
25 offer him as an expert in trace evidence.

1 MR. HISKER: Stipulate to his qualifications.

2 Q What is a gunshot residue kit?

3 A A gunshot residue kit is a kit that is used to
4 collect the smoke or the residue. When you discharge
5 a weapon, it is primarily composed of two major
6 parts. Number one is a flattened piece of aluminum
7 with a sticky adhesive on the surface. And its
8 purpose as I'm diagramming is to pick up any
9 particles of smoke that's on the surface of your
10 skin. Once it is collected it's placed inside of a
11 container so it will be protected and no
12 contamination can occur.

13 Then we follow up with cotton swabs. These are
14 normal cotton swabs you go out to the grocery store
15 and buy. We wet them with a wet acid solution and
16 actually wipe over the area of the hands. So we pick
17 up any residue materials that may be found within the
18 pours, creases. Anything that was not picked up by
19 the first kit will be picked up by the swabs. We
20 then take these and we actually run four areas, the
21 right palm, right back; left palm and left back.

22 Once these samples have been taken they're
23 packaged in a white envelope. They're sealed. And
24 then if I collect them, I take them to the
25 laboratory. Or if someone else collects them, they

1 will submit them to our laboratory for examination.

2 Q In this case, turning your attention to case number
3 L-05-11558, did you receive a gunshot residue kit
4 which was performed on James Greene?

5 A Yes, ma'am, I did.

6 Q And before I go any further, in order to -- how does
7 gunshot residue end up on a person's hand typically?

8 A When you discharge a weapon, once that hammer hits
9 the back of the cartridge case, it strikes the back
10 of the cartridge case causing a small explosion.
11 What happens is there are some shock sensitive
12 chemicals that are on the inside of that cartridge.
13 The hammer striking will cause those shock sensitive
14 chemicals to ignite.

15 That in turn will go through a little small
16 hole, it's little chambers contained within, and it
17 will set the gunpowder on fire. These two in
18 combination will cause so much pressure that the
19 bullet will now come apart so that the front or what
20 we call the bullet will now separate from the back,
21 the cartridge case, and go towards a target.

22 The smoke and soot and materials that will come
23 out of that weapon, not the gunpowder but just the
24 other, the blue/gray material, what you would smell
25 when you shoot a weapon, will get deposited on your

1 hands. And we call that gunshot residue.

2 Q And does the gunshot residue once it gets deposited
3 on your hand or it could be your arm or other places.
4 Is that correct?

5 A Any place that's around that weapon, when it comes
6 out, it will envelope the object holding it. The
7 hands, the clothing. If you're standing in front of
8 it, you will receive the material coming out from the
9 end of the barrel. So it comes -- anyone near that
10 weapon will be contaminated with this material.

11 Q And the closer your hand is to the end of the barrel
12 the more likely it is you may collected something on
13 your hands?

14 A Oh, yes. The majority of the material will come out
15 the end of the barrel. So if you're in front of the
16 weapon, the closer you are to that weapon, the higher
17 the amounts you will get on your hands.

18 Q And so, say, if you're using a shotgun of some sort,
19 the longer the barrel, the less likely you're going
20 to get anything?

21 A Not necessarily true. With a shotgun, what we call a
22 long gun, even though the material coming out the end
23 of the barrel is further away, you still have a large
24 amount that would come out of this weapon because
25 it's such a large gun. So the cloud itself is bigger

1 and will envelope back upon you also.

2 Q Okay. And once it's deposited, say, on your skin,
3 the gunshot residue, say, if it's on your hand or
4 your palm, is it going to stay there forever?

5 A Depends. If someone is alive, the heart is beating,
6 the material is now very time sensitive. Every beat
7 of your heart will cause a small amount of absorption
8 through the skin or to be removed with no activity.
9 Or if you go wash your hands or wipe down your hands,
10 it's gone; it can be removed. If, however, you're
11 deceased, your heart has stopped beating, the
12 material will be retained on your hands until someone
13 physically removes it. So there is no time limit on
14 that.

15 Q And if as in this case the sample was collected off
16 the victim that night at the crime scene, it would be
17 a reliable test?

18 A Yes, ma'am.

19 Q Now, is there a certain time period after which
20 according to you all's protocol that you don't even
21 do a gunshot residue kit?

22 A For someone who is alive, our time limit is six
23 hours. We have found in testing on ourselves and
24 running different sized weapons, shooting them and
25 then working in a laboratory that after six hours

1 there is no residue on the hands from any weapon we
2 were able to shoot in that period of time. But if
3 somebody is deceased, again that material is retained
4 until somebody physically removes it.

5 Q And in an investigation, say, if a defendant is not
6 apprehended for a day, two days, or three days, would
7 there be any reason to do a gunshot residue test on
8 them two or three days later?

9 A No, ma'am. In trying to reference back to a shooting
10 that's three days old, there would be no reason at
11 all because there would be nothing on the hands.
12 Even --

13 Q And, in fact, anything past six hours at the time of
14 the shooting, you wouldn't expect to find anything?
15 You wouldn't find anything?

16 A No, ma'am. If you did find something, it's not
17 related to that shooting. It's related to something
18 else. It has nothing to do with that particular
19 shooting.

20 Q In the gunshot residue kit that you got from the
21 victim in the case, James Greene, what were your
22 findings?

23 A I found metals consistent with gunshot residue on the
24 back of the left hand. And I got metals that may be
25 associated with gunshot residue on the left palm.

1 What I'm saying is that the levels of the left hand,
2 the palm and back, are high enough to indicate the
3 presence of gunshot residue.

4 Q And, say, if someone is sitting on a couch and
5 someone has got a shotgun up to their chest, how
6 would they end up -- how could they get this gunshot
7 on the one hand and not the other?

8 A Well, with a shotgun, it's going to make a very large
9 blast area. If your hand is anywhere in that blast
10 area, you are going to get material on it. Your
11 other hand to not have anything means it's out of the
12 way of the cloud which means it may be down in the
13 couch or it's down away from this blast area so it's
14 not contaminated.

15 Q And your findings as far as in this case would be
16 consistent with someone in a defensive mode?

17 A Well, in this case I did not have extremely high
18 levels like someone had their hands up trying to
19 block a shot. I found fairly good levels on the left
20 hand, nothing on the right hand. If this person had
21 a weapon and had fired it, this would be like a very
22 good positive for someone who fired a weapon, or he
23 got contaminated by being shot at and it got on the
24 left hand.

25 Q So it is consistent with having been shot at and

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1 gotten on the left hand?

2 A Yes, ma'am. There is no problem with that at all.

3 Q Thank you.

4 CROSS EXAMINATION

5 BY MR. HISKEE

6 Q Good afternoon, Investigator Powell.

7 A Good afternoon, sir.

8 Q How are you?

9 A Just fine.

10 Q You described a shotgun as being a pretty powerful
11 weapon. Would you agree?

12 A Oh, yes, sir. Compared to a pistol or a rifle, the
13 damage that a shotgun will do is a considerable
14 greater amount.

15 Q And it also, when a shotgun fires, it puts out an
16 excessive amount of powder and gunshot residue?

17 A Yes, sir. If I could show the cloud. A .22 would
18 put out a little small cloud like this, where a
19 shotgun would be something that could be measured
20 across in maybe two and a half feet by, depending
21 upon how far out, maybe 10 to 12 feet out, projecting
22 the material out.

23 Q All right, sir. So about 12 feet from the 1 shotgun?

24 A Yes, sir. It can be projected that far out.

25 Q And that powder that comes out, it shoots out of here

1 with the blast. 'But it also comes out around the
2 trigger area and around the firing mechanism?

3 A Yes, sir. A small amount can come out of those areas
4 because extremely high pressure is created by a
5 weapon. And so any place that has a place for gas to
6 escape will have the material escaping out.

7 Q But the bulk of it comes out of the end of the barrel
8 with the blast?

9 A Yes, sir.

10 Q And that cloud, if that cloud is not blocked, it can
11 go 12 feet. It can go quite some distance and land
12 on everything it touches?

13 A Yes. It will project itself out, and then as it
14 stops, it will then fall down to the ground. So that
15 will be the process that would occur. Now, what can
16 vary that will be wind. Air currents will move it
17 some. But again, it will project a good piece and
18 then it will fall onto the ground.

19 Q Right. Generally when you're looking for a shooter
20 though, you're testing their hand to see where it
21 came from the trigger, correct?

22 A Well, not just from the trigger. In most cases the
23 end of the barrel will wrap around the weapon itself.
24 But the hands are the closest object to the weapon.
25 So that is what we focus on primarily. If, however,

1 someone has washed their hands, then we will focus on
2 the sleeves to see if we can find any materials on
3 the clothing.

4 Q All right. And the reason why you have the timing on
5 the hands with a living person is because their skin
6 is actually consuming the material. Is that correct?

7 A The skin is being absorbed by the body. It's also
8 being lost if they're active by, anything they pick
9 up is being removed. If they wash their hands, if
10 they're crying, if they're sweating, all that will
11 help remove the material.

12 Q And so, you know, if you know that someone has washed
13 their hands, then you'd go and you'd check their
14 sleeves and their clothing?

15 A Yes, sir. That is correct.

16 Q Because you'd expect some of that cloud of metal and
17 material to be on their clothing as well?

18 A Yes. If you're shooting at somebody, a lot of the
19 material will get on the clothing. If you're
20 shooting at someone, there will be some that will
21 come back on the sleeves, onto the clothing.

22 Q There are circumstances where more gunpowder will
23 come back towards the shooter?

24 A Let me define terms a little bit better. Gunshot
25 residue is what we're talking about coming back. The

1 gunpowder is going to be the particles which are
2 projected out of the weapon. They go straight out of
3 the weapon. They don't come around. But, yes.
4 Depending upon conditions, the size weapon, other
5 factors can dictate how much can come back around
6 onto the person.

7 Q And one of these conditions also would be if there
8 were pressure put on the end of this weapon. If this
9 was a contact, if there was something pressed against
10 this, that would cause more powder to go back this
11 way?

12 A In the case of a gun, if it came back in appreciable
13 amounts, it's actually going to explode or tear up
14 the weapon. What happens normally with a shotgun
15 when you do a contact is it actually forces whatever
16 is holding it to be destroyed. If it's a human body,
17 when you push the weapon into it and pull the
18 trigger, the body itself is actually torn by the
19 pressure of the gasses so that it actually causes
20 destruction of the body. It's a tremendous amount of
21 pressure and it's got to go somewhere.

22 Q Right. But I'm going to call it a blockage for lack
23 of your education. But this blockage in front of the
24 shotgun causes some of that material to come
25 backwards as well?

1 **A** You may have a little bit more come out the trigger
2 in other areas, but you will not have an appreciable
3 amount, because if you do, it actually will begin to
4 tear the metal and cause an explosion.

5 **Q** But having something in front of the end of the
6 barrel prevents it from going out and may actually
7 send it back. Just like wind or anything else would
8 send it back, an object in front of the barrel may
9 push the cloud back towards the shooter as well?

10 **A** It can. If there's not a hard contact where it's
11 absorbed but let's say it's near it, when the cloud
12 hits, it can bounce off that object and then begin to
13 come back as it rolls backwards.

14 **Q** And just as you said earlier, if you had washed, if
15 you'd known someone had washed their hands and you
16 you'd checked clothing at that point, it's sort of
17 the same situation. You'd agree that if it had been
18 several days and that material would have absorbed,
19 you would have still wanted to test clothing,
20 correct?

21 **A** Depends. To test clothing on someone after several
22 days, we have to have a direct link to the event,
23 that they were at that event, that the clothing had
24 not been washed, anything else. Because the problem
25 with clothing is that it doesn't come off the

1 clothing until the clothing has been laundered.
2 However, if the clothing has been laundered at any
3 point, it's clean; there is nothing on it. We don't
4 know a lot of times with clothing when the material
5 on the clothing got there.

6 In this state people shoot weapons and a lot of
7 times they do not clean the garments they wear. They
8 have a jacket or something; they'll put it back in
9 the closet and leave it there until the next time
10 they wear it. And because of it, we really ask that
11 we know that someone saw the person with that garment
12 on, that it hasn't been laundered to that point.
13 Then we would sit down here and do some testing on
14 it.

15 Q So if you had information that a particular garment
16 was worn at a crime scene, you would want to test
17 that?

18 A If other tests failed because of time or other
19 reasons, there would be reasons to make that test
20 request, yes.

21 Q And whether or not it had been laundered or not, that
22 would just have to be a judgment call, correct?

23 A Yes. It would have to be based upon the conditions
24 and the factors we were looking at.

25 Q There was no clothing tested in this case, was there?

1 A No, sir. Not to my record. The only thing I
2 received in this case was a gunshot residue kit.

3 Q Thank you. I have no further questions.

4 MS. CAMPBELL: Just a couple.

5 REDIRECT EXAMINATION

6 BY MS. CAMPBELL

7 Q He wanted to talk to you about a slightly close to a
8 contact wound. When it's a contact wound, the cloud
9 goes into the body and destroys like you've
10 mentioned, right?

11 A Oh, yes. The body acts as a large trap, and it will
12 actually capture debris coming out which
13 unfortunately is what causes the damage. There's so
14 much energy going into the body, it just captures all
15 of the debris and material and it captures it. It
16 traps it. It doesn't go anywhere.

17 Q And that's with a contact wound?

18 A That's with a contact wound.

19 Q Thank you, sir.

20 MR. HISKER: Just very briefly.

21 THE COURT: Sure.

22 REXCROSS EXAMINATION

23 BY MR. HISKER

24 Q Also with a contact, if it's not escaping, such as a
25 through-and-through, you'd also expect some of that

1 to come back out of the wound. That pressure would
2 send blood and material out of the wound?

3 A Depending upon the weapon, what you're stating is
4 true. Normally what we find with people who have a
5 contact shot, and we use suicides for example, people
6 who do a hard contact with a suicide, we run about
7 50/50 we'll have a negative and others we will have
8 materials. Usually when we find materials it's
9 because there has been enough escape from the ejector
10 port, the cylinder gap, the trigger to contaminate
11 the hands.

12 Sometimes we've gotten materials flashed back,
13 such as blood or things like that, and that would be
14 consistent what you're describing. Again, it all
15 depends upon on where the weapon is at on the body,
16 how the body reacts to it when the gun is discharged.

17 Q Right. But with a powerful weapon such as this, you
18 would expect some blood and residue to come back out
19 of that wound?

20 A I don't know if I'd say I would expect it. I would
21 not be surprised if it came back out. But again, I
22 cannot predict that it will, for I have seen so many
23 cases in my career where contact wound with a
24 shotgun, no, it did not come back out of the wound.
25 The wound just was a large gaping area on the body.

1 And what we've found on the hands usually was from on
2 the palms where someone handled the weapon and that
3 was all.

4 Q Thank you.

5 THE COURT: All right, sir. You may come down.
6 Thank you very much. May this witness be excused?
7 Without objection. Approach the bench a minute,
8 counsel.

9 (Whereupon, a bench conference is had)

10 THE COURT: All right, ladies and gentlemen.
11 We're just trying to work out a schedule. We're
12 going to take a short afternoon break now. Ms. 88,
13 do you have the same problem you did yesterday?

14 JUROR: No, I do not.

15 THE COURT: Okay. Well, anybody else that has a
16 5:00 deadline, if you'll let me know, the bailiff
17 know. We may run a little past 5 today. I'm trying
18 to just keep it moving, make sure we have witnesses
19 to testify and looking to tomorrow, that sort of
20 thing. So, all right. Let's take about ten-minute
21 break. And don't discuss the case among yourselves
22 while you're in the jury room. I'll call you in just
23 a few minutes.

24 (Jury out 3:23 p.m.)

25 THE COURT: All right. We'll stand at ease ten

1 minutes.

2 (Whereupon, a break is taken)

3 (WHEREUPON, State's Exhibit No. 183 is marked
4 for identification.)

5 **THE COURT:** The State ready for the jury?

6 **MS. CAMPBELL:** The State is ready.

7 **THE COURT:** Defense ready?

8 **MR. HISKER:** The defense is ready.

9 **THE COURT:** Bring the jury, please.

10 (Jury in at 3:42 p.m.)

11 **THE BAILIFF:** Your Honor, the jury is present.

12 **THE COURT:** Solicitor, call your next witness.

13 **MS. CAMPBELL:** May it please the Court. The
14 State calls David Collins.

15 DAVID J. COLLINS, after being duly sworn,
16 testifies as follows:

17 **THE CLERK:** Thank you. Please have seat in the
18 witness stand and state your fail name for the
19 record.

20 **WITNESS:** David Jeffrey Collins.

21 DIRECT EXAMINATION

22 **BY MS. CAMPBELL**

23 **Q** Investigator Collins, where are you employed?

24 **A** I'm employed by the Richland County Sheriff's
25 Department.

1 Q What do you do there, sir?

2 A I am a firearms examiner in the forensic services
3 laboratory, forensic science laboratory.

4 Q Tell this jury a little bit about your education and
5 your training in that field?

6 A I started in the field of forensic firearms
7 examination in 1990 when I became employed by the
8 State Law Enforcement Division commonly known as
9 SLED. Through SLED I received training in that area
10 which consisted of what is essentially an on-the-job
11 training program that lasts for approximately two and
12 a half years. After completion of that course at
13 SLED I was certified by SLED as a firearms and tool
14 marks examiner and began working cases on by own.

15 In addition to that training I have received
16 continuing education and training in my field through
17 our professional association which is known as AFTE
18 or the Association of Firearms and Tool Marks
19 Examiners. I've also he received training in
20 firearms repair or armorer's courses from various
21 firearms manufacturers. And I've also attended and
22 successfully completed gunshot residue and distance
23 determination testing and training.

24 In addition to that I've testified as an expert
25 in firearms examination or firearms identification in

1 the state courts of South Carolina in excess of 200
2 times. I've also qualified as an expert in those
3 fields in the military courts and also in the state
4 courts of Georgia and North Carolina and in the
5 federal court system.

6 **MS. CAMPBELL:** Your Honor, at this time we'd
7 offer him as an expert.

8 **MR. HISKER:** No objection.

9 **THE COURT:** Without objection.

10 **Q** Investigator, did you perform certain examinations
11 involving the case where the victim was James Greene;
12 the defendants were Teran Scott, Octavia Middleton
13 and Harry Dukes?

14 **A** I did.

15 **Q** And what, if any, items were provided to you for
16 purposes of you doing a comparison?

17 **A** I received one Maverick or Mossberg model 88
18 pump-action 12-gauge with serial number MV54324K. I
19 also received one shotgun shell wad and 20 lead shot
20 pellets that were indicated as being recovered from
21 the victim at autopsy, one fired shotgun shell wad
22 and 92 lead shot pellets that were from an envelope
23 that was labeled "hole in floor". In addition to
24 those items I examined two fired 12-gauge shotgun
25 shells both of which were Winchester brand, and they

1 were in envelopes labeled, one of them was from end
2 of couch and the other was from left -- or I assumed
3 to be left rear. It says "L.R. rear wheel GMC
4 pick-up".

5 Q I want to show you what's been marked as State's
6 Exhibit 176. Is this the shotgun that you actually
7 examined, sir?

8 A Yes, it is. You can see here on the side of the
9 shotgun in silver ink I have written the case number,
10 my item number and my initials on the side of the
11 gun. And that confirms that this is the shotgun that
12 I examined.

13 Q And we added those handcuffs. What does that do?

14 A These handcuffs prevent the firearm from being closed
15 and thus being able to be fired.

16 Q So I don't shoot myself?

17 A That's correct.

18 Q You mentioned that you also received some wadding and
19 shotgun -- shot pellets did you say they were?

20 A That's correct.

21 Q I show you State's Exhibit 130. Do you recognize
22 that?

23 A Yes. This is the shotgun wad and pellets that I
24 indicated that were from the envelope labeled "hole
25 in floor". These packages bear my markings I placed

1 on them in the laboratory as well.

2 Q I show you what's been marked for I.D. State's
3 Exhibit 183 and first ask if you recognize that?

4 COURT REPORTER: I'm sorry. What was the number
5 again?

6 MS. CAMPBELL: 183.

7 A Yes. This is the wadding and the pellets that I
8 examined that are indicated as being recovered from
9 the victim at autopsy. And these also bear my
10 markings I placed on them in the laboratory.

11 MS. CAMPBELL: Your Honor, at this time we'd
12 offer 183 into evidence.

13 MR. HISKER: No objection.

14 THE COURT: Without objection.

15 (WHEREUPON, State's Exhibit No. 183 is admitted
16 into evidence.)

17 Q And then finally two items were State's Exhibit 144
18 and State's Exhibit 133. Do you recognize those?

19 A Yes. These are the two fired 12-gauge shotgun shells
20 that I examined. They also bear my markings.

21 Q Tell this jury what if any examinations you were able
22 to perform on these items?

23 A The first thing that we do when we receive any type
24 of evidence or firearms related evidence in the
25 laboratory is we will take notes as to its condition

1 and its appearance. In the case of a shotgun, we'll
2 take notes about its size, the barrel length in
3 particular, the number of shells that it will hold,
4 what type of action it is, the make, model, caliber,
5 serial number. And then we'll test fire that gun in
6 order to determine two things: One, whether or not
7 it works; and, two, to provide us with test standards
8 that we know came from that gun for microscopic
9 comparison with any other items that might need such
10 work.

11 In the case of the wads and pellets, similarly
12 I'm also taking notes as to their condition and their
13 dimensions. This is important when you're looking at
14 projectiles as it enables you to determine what gauge
15 or caliber of firearm they could have come from. In
16 the case of wads you'll examine them for any markings
17 that might indicate what brand they might be. In the
18 case of pellets you'll measure them and weigh them to
19 determine what size they are.

20 The shotgun shells, similarly you're going to
21 take notes about them. Then you're also going to
22 examine them microscopically for the presence of any
23 kind of markings that might have been left on them by
24 the gun that fired them.

25 What we can do in the laboratory is compare

1 either two evidence shotgun shells with each other
2 microscopically or compare a test shotgun shell that
3 we have fired from a gun with an evidence shotgun
4 shell and look for matching marks that were left by
5 the firearm on those items.

6 When a firearm is manufactured, there are
7 various machining processes that are employed that
8 cut away metal and form this part or that part, and
9 those processes will leave behind on those surfaces
10 microscopic defects. The location and pattern of
11 those defects is unique to each particular firearm.

12 When a shotgun shell is fired in a shotgun,
13 there are great pressures involved inside that
14 portion of the gun that force the shotgun shell
15 against what is known as the breach face or the
16 bullet face of a shotgun. That bullet face has
17 microscopic defects on it that may be impressed on
18 the surface of that shotgun in a way that's unique to
19 that particular gun. These markings, I like to make
20 the comparison, these markings can be as unique to a
21 firearm as a fingerprint is to a person.

22 Other parts of the shotgun that may leave
23 markings would be the firing pin, the ejector, the
24 extractor, other things like that that come into
25 contact with the shotgun shell during the course of

1 being fired in the gun.

2 In this particular case, after taking the notes
3 that I needed to take, I first looked at the shotgun
4 and test fired the shotgun and was able to determine
5 that it did fire properly. I then looked at the
6 fired shotgun shell wads and pellets. One set was
7 from the victim. One set was indicated was coming
8 from the hole or the floor.

9 Examination of the wads revealed that they were
10 both, in both instances Winchester brand wads based
11 on markings that were present in manufacturing
12 features that were found on the wads. I was able to
13 determine that they were consistent with being
14 Winchester Double A wads. This is a common type of
15 wad found in Winchester ammunition. They were also
16 consistent with being 12-gauge wads based on their
17 dimensions.

18 Looking at the pellets in both cases, I was able
19 to measure and weigh the pellets to determine what
20 size of shotgun it was consistent with being. And
21 those pellets were all consistent with No. 8
22 birdshot.

23 Looking at the wads, I also look at the wads
24 sometimes to try to determine if there's any markings
25 that would have been left on them by the gun that can

1 be identified back to it. It's rare with shotgun
2 wads to be able to find such markings because usually
3 the wads are not made of a material that captures
4 those marks very well. And the barrel of a shotgun
5 is smooth and doesn't have a whole great number of
6 defects that would potentially mark a wad. But it is
7 possible, especially with plastic wads such as these,
8 to sometimes find them. But in this case I was
9 unable to find any markings that I could use to match
10 them to any gun.

11 Looking at the shotgun shells however I was able
12 to, after taking the notes about them,
13 microscopically compare them with test shotgun shells
14 that I fired in the shotgun in question and was able
15 to determine that those shotgun shells, both of the
16 evidence shotgun shells, were indeed fired by this
17 shotgun.

18 Q So, in other words, as far as the wads and the
19 pellets go, is it consistent or not consistent with
20 this brand ammunition?

21 A The wadding that I found in both instances, the
22 wadding from the victim and the wadding from the hole
23 in the floor is Winchester brand wadding. Both of
24 the shotgun shells that were submitted are Winchester
25 brand shotgun shells. So it's possible they could

1 have originated from those shotgun shells.

2 Q And as far as State's No. 133, is there any question
3 as to whether or not that gun shot that?

4 A No. That shotgun shell was fired by this gun.

5 Q As far as State's Exhibit No. 144 found in the green
6 GMC, is there any question that that shotgun shell
7 was fired by that?

8 A No. None at all. That shotgun shell was also fired
9 by this firearm.

10 Q I notice there is some writing on the side of this
11 shotgun shell. What does that say?

12 A The writing on this shotgun shell says Universal.
13 And that is a marking we find on some shotgun shells
14 that are manufactured and marketed by Winchester, and
15 they are typically sold in large boxes of ammunition.
16 This type of ammunition is typically used for
17 anything from Clay shooting or target shooting to
18 small game birds such as doves and quail.

19 Q I'm going to show you what's been marked as State's
20 Exhibit 172. What kind of ammunition is that?

21 A Just looking at the outside of the box, it says
22 Winchester. And it also says Universal on this box.
23 This would be the type of box I would expect this
24 type of ammunition to have been sold in.

25 Q State's Exhibit 173?

1 A Just visually looking at these items, these are also
2 Winchester brand shells. They also have the exact
3 same Universal marking on the side, and it also has
4 the No. 8 on them, just as the evidence does, No. 8,
5 which indicates the size of shot they were loaded
6 with which is the same size of shot as I detected in
7 the case.

8 Q I'm sorry. This is State's I.D.

9 A State's I.D. 174. This again is Winchester brand
10 shells marked Universal and No. 8. It has several of
11 them in this bag.

12 Q And just for the record, when I handed you State's
13 Exhibit No. 173 which has the No. 8, it was the same?

14 A Yes. This has the No. 8, as do the rounds in this
15 box. The rounds, the shotgun shells in this large
16 box, the side of that box has No. 7 1/2 which would
17 be a different sized shot.

18 Q But in this one, are all the rounds in this box?

19 A No. There are some missing from that box.

20 Q There has been some questions about blowback and
21 things of that nature. When a shotgun is fired, say,
22 with a contact wound, what's going to happen as it
23 exits the barrel or whatever you call it?

24 A The first thing that happens of course is both the
25 pellets and the wadding and a significant amount of

David J. Collins - Direct by Ms. Campbell

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1 gunshot residue material are going to exit the muzzle
2 of the firearm. The further that that muzzle is from
3 whatever item is being shot at the wider the pattern
4 of the pellets and the gunshot residue is going to
5 become.

6 In the case of a very close range or actually a
7 contact to close range situation, a shotgun shell
8 will fire the pellets, and often the wadding itself
9 will penetrate the body behind the pellets. The
10 gunshot residue material, that cloud of material
11 that's been discussed, will either be forced into the
12 body and stay there, or some of it may surround the
13 area around the end of the gun or flow back.
14 However, that is not predictable. In a very close
15 contact situation, a fairly significant amount of
16 that material I would expect to actually pass into
17 the body.

18 Q So is there necessarily going to be a huge spray of
19 blood back three feet?

20 A That is not predictable. No, I would not say that.
21 It may happen in some cases, but I wouldn't say that
22 it's something that could be predicted would happen
23 in every case.

24 Q And even if the gunshot, blood, everything sprays
25 back, if you get rid of the clothes and take a bath,

1 there is not going to be any evidence of it?

2 A I would not expect to find anything.

3 Q Thank you. Please answer any questions of defense
4 counsel.

5 CROSS EXAMINATION

6 BY MR. HISKER

7 Q Good afternoon.

8 A Good afternoon.

9 Q There is no question that these shotgun shells were
10 fired by that weapon, correct?

11 A None at all.

12 Q But there is absolutely no way that you could say
13 that this particular shell came out of one of those
14 boxes?

15 A No, there's not.

16 Q There's no serial numbers on these. This is just
17 what's stamped on every Winchester 12-gauge shotgun
18 shell?

19 A Not on every Winchester shotgun shell, but all the
20 Winchester shotgun shells in that Universal line of
21 ammunition I would expect to be marked in a way
22 similar to that. Yes, sir.

23 Q I mean, there are many brands of shotgun shells that
24 you're familiar with?

25 A Oh, yes. There is many.

1 Q You'd agree that Winchester is probably one of the
2 most popular, well-known names of ammunition?

3 A Yes. It is what we call sometimes one of the big
4 three: Winchester, Federal and Remington.

5 Q I mean, you could pick that up very box in Wal-Mart
6 today?

7 A Yes.

8 Q And probably that same rifle in Wal-Mart today?

9 A I'm not sure if that shotgun is available in
10 Wal-Mart. But, yes, you could potentially find a
11 shotgun similar to that in a Wal-Mart.

12 Q So this is very common items we're talking about?

13 A I would consider them fairly common, yes.

14 Q But as to that rifle, you'd agree that shotgun, a
15 12-gauge shotgun is a very powerful weapon?

16 A Yes, I would.

17 Q And you would agree that this blowback that we've
18 been talking about is probably more likely with a
19 powerful weapon than it is with a smaller caliber
20 weapon?

21 A If it's going to happen, it would be more likely with
22 such a firearm, yes.

23 Q Because it's producing a lot of pressure and a lot of
24 impact?

25 A It is.

1 Q And if there is no exit wound, if there's no exit
2 wound, there's really nowhere for all that blood and
3 powder to go but back out the wound. Wouldn't you
4 agree?

5 A Some may come out the wound. However, a large
6 portion of the material may be forced back into the
7 body and be absorbed inside the body. And you may or
8 may not, as I said, have that to actually blow back
9 from the wound. The type of clothing or the amount
10 of clothing that a person is wearing may also have an
11 impact on how much comes back because it may also
12 shield it.

13 Q And you say it's unpredictable. But you wouldn't say
14 by any means that it's unlikely?

15 A I wouldn't say that at all. I mean, I have seen
16 cases where with a firearm such as this in a close
17 contact wound situation, yes, you did have some
18 blowback. I've also seen cases just with a firearm
19 just as this is and also a close contact wound that
20 you did not have any blowback. It is not
21 predictable.

22 Q Right. But with a powerful weapon like this, I mean,
23 it could even be substantial blowback of blood?

24 A If it happens, it could, yes.

25 Q Okay. Thank you.

REDIRECT EXAMINATION

BY MS. CAMPBELL

Q He asked you about just the ammunition. And there was no testing you could do on those boxes of ammunition other than like you just now said what they are?

A Anything that I would have done with that ammunition would have been simply to determine if they were the same brand and type as what was used in the crime.

Q Thank you.

THE COURT: Thank you very much, sir. You may come down. The witness will be excused. Mr. Broome, take the rest of them down.

THE BAILIFF: All right. Thank you.

MR. GOLDBERG: The State calls Jessica Richardson.

JESSICA Y. RICHARDSON, after being duly sworn, testifies as follows:

THE CLERK: Thank you. Please have seat in the witness stand and state your full name for the record.

THE WITNESS: My name is Desa Yvette Richardson.

DIRECT EXAMINATION

BY MR. GOLDBERG

Q Ms. Richardson, how you doing?

- 1 A Good.
- 2 Q Where do you live, ma'am?
- 3 A [REDACTED].
- 4 Q And back in August of 2005, were you living there
- 5 then also?
- 6 A Yes.
- 7 Q You said [REDACTED]?
- 8 A Mm-hmm (affirmative).
- 9 Q Is that an apartment complex?
- 10 A Apartment [REDACTED].
- 11 Q What apartment complex is that?
- 12 A Willow Run Apartments.
- 13 Q Do you know a man named Teran Scott?
- 14 A Yes.
- 15 Q And at some point back in 2005, did you ever see him
- 16 with a gun?
- 17 A Yes.
- 18 Q Where was that?
- 19 A It was at Apartment [REDACTED] [REDACTED].
- 20 Q [REDACTED]?
- 21 A Right. [REDACTED]. The same apartment complex, different
- 22 apartment.
- 23 Q Whose apartment was that?
- 24 A Antoinette Sutton's.
- 25 Q Can you tell us how you came to see Mr. Scott in

Jessica Y. Richardson - Direct by Mr. Goldberg

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1 possession of a gun?

2 A Well, me and Antoinette was at a neighbor's house
3 immediately across the hall, directly across the hall
4 from her. When we came back over to Antoinette's
5 apartment, there was some kind of an altercation
6 going on between the neighbor and Quita and I. And
7 that's when I seen Teran go under the couch and pull
8 a gun up and take it kind of up like this, like he
9 was fixing to go across the hall to Crystal's
10 apartment.

11 Q What did the gun look like?

12 A It was a long shotgun.

13 Q And around the same time, did Mr. Scott ever ask you
14 to move a truck?

15 A Yes. It was like that night before.

16 Q What did that truck look like?

17 A It was green and silver.

18 Q Is it possible that it was blue and silver?

19 A It could have been.

20 Q Okay. Do you remember giving a statement to
21 Investigator Ewing from the Sheriff's Department
22 about all this?

23 A Yes.

24 Q A written statement? If I showed you that, would
25 that help refresh your memory?

1 A Yes.

2 Q Okay.

3 A It's been about two years.

4 Q Yeah, it's been about two years. Look down at the
5 bottom and then the top of the second page.

6 A Yes. This is my statement.

7 Q Do you remember what color the truck was now?

8 A Yeah. It was blue.

9 Q Blue and silver?

10 A Blue and silver.

11 Q Where did you move the truck?

12 A From building 14 to building 18.

13 Q At Alcott Drive?

14 A Right. Willow Run Apartments.

15 Q Thank you.

16 THE COURT: Questions? Ma'am, just hold on.

17 Just one more.

18 CROSS EXAMINATION

19 BY MR. HISKER

20 Q Good afternoon.

21 A Hey.

22 Q Do you think that's the rifle you saw?

23 A I'm almost certain that's the one I saw.

24 Q But it looked just like this?

25 A Yes. I'm certain of that. Because we stayed there

1 the whole day trying to figure out what to do with
2 it.

3 Q And the only person you ever saw with that rifle was
4 Teran Scott?

5 A Exactly.

6 Q And you never saw --

7 A No.

8 Q -- Mr. Octavia Middleton?

9 A No. I don't even know that young man, period. It's
10 my first time ever seeing him.

11 Q And he was never at that house?

12 A No. Never.

13 Q Thank you.

14 THE COURT: All right. You can go now.

15 THE BAILIFF: Wait just a minute.

16 THE COURT: She can go.

17 THE BAILIFF: Oh. All right.

18 THE COURT: Witness.

19 MS. CAMPBELL: The State would call Lieutenant
20 Ewing.

21 JOHN EWING, after being duly sworn, testifies as
22 follows:

23 THE CLERK: Thank you. Please have a seat in
24 the witness stand and state your full name for the
25 record.

1 **WITNESS:** My name is John Ewing.

2 DIRECT EXAMINATION

3 **BY MS. CAMPBELL**

4 **Q** Chief Ewing, where are you currently employed?

5 **A** I'm currently the Chief of Police in Bishopville,
6 South Carolina.

7 **Q** And how long have you been in that position?

8 **A** I was sworn in as Chief of Police in Bishopville on
9 June the 3rd of this year.

10 **Q** And prior to working or moving to Bishopville, where
11 were you employed?

12 **A** I was employed with the Richland County Sheriff's
13 Department.

14 **Q** And what did you do with them, sir?

15 **A** I was a supervisor in the investigative division of
16 the Sheriff's Department.

17 **Q** What was your rank at the Sheriff's Department?

18 **A** I was a sergeant.

19 **Q** I want to turn your attention back to August the 8th
20 of 2005. Did you receive a phone -- or were you the
21 homicide supervisor that night?

22 **A** I was the supervisor working on the evening shift.
23 And when you're working evening shift as the
24 supervisor, you're also considered to be the homicide
25 supervisor. So if a homicide happens while I'm on

John Ewing - Direct by Ms. Campbell

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1 evening shift, I would go out to the scene and
2 determine whether or not the primary and the
3 secondary investigators are on call to assist with
4 the investigation.

5 Q That evening did you receive a phone call?

6 A I did. I received the call from Deputy Chief Wilson
7 who was my supervisor informing me that someone had
8 been shot on Faraway Drive.

9 Q And as a result of that phone call, what did you do?

10 A I responded to Faraway Drive, some apartments, The
11 Reserves Apartments on Faraway Drive.

12 Q Approximately what time did you get there that night?

13 A I arrived there at approximately 2105 hours which
14 would be 9:05 hours.

15 Q Were other officers already at the scene when you got
16 there?

17 A There were several officers on the scene. There was
18 an investigator, Investigator Matt Ellis, and several
19 individuals walking around in the parking lot.

20 Q Once you got to the scene, were you able to tell
21 whether or not it had been secured?

22 A Once I arrived at the scene, crime scene tape, one of
23 the first things I want to notice is crime scene tape
24 up to keep anybody out from possibly contaminating
25 the scene. Once I arrived crime scene tape had been

1 set up by an officer.

2 Q As you pulled in the parking lot, did you notice
3 anything?

4 A As I was pulling in The Reserves, there's one way in
5 and one way out. It's actually on a hill. And as I
6 was pulling in I noticed a pick-up truck on the side
7 of the road on the left and I thought in my mind at
8 the time, I said I wonder what this truck is doing
9 here. Could it be a suspect truck or a witness
10 truck? But I wasn't really sure. So I responded on
11 to the apartment building where the incident location
12 actually was.

13 Q Once you got to the apartment building, did you get
14 briefed about what the situation was?

15 A Yes, ma'am, I did.

16 Q Did you make any observations of the exterior of the
17 building?

18 A I noticed that there had been a window knocked out
19 from an upstairs apartment which was actually the
20 incident location in this case. And underneath I saw
21 where the window had been kicked out, and I believe
22 there was a shoe laying around some bushes where it's
23 obvious that someone had jumped out of the window.

24 Q Were you made aware that EMS had already responded to
25 the scene and officially --

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1 **A** Investigator Ellis, I asked Investigator Ellis if we
2 actually had a person that was deceased in this, and
3 I was informed that EMS had arrived at the scene and
4 that the victim was pronounced deceased.

5 **Q** Were you informed of whether or not there were any
6 witnesses there at the scene at the time?

7 **A** Yes. There were some witnesses out in the parking
8 lot at that time. That's when I in turn contacted
9 Investigator Scott Faust and asked him to come assist
10 me with the investigation. There was also
11 Investigator Gilbert Gallegos that was involved with
12 the investigation.

13 **Q** Did you make contact with an Eliana Garcia?

14 **A** I did. Yes, ma'am.

15 **Q** And what about a Walter Graves?

16 **A** I met both of them.

17 **Q** And did you actually interview one of them there at
18 the scene?

19 **A** I interviewed, did a verbal interview with Eliana
20 Garcia. When I arrived I was briefed about her
21 condition, and I interviewed her there.

22 **Q** Did you notice anything about her physical condition?

23 **A** I noticed, one of the first things I noticed about
24 Ms. Garcia of course is that she was upset and
25 shaking, but she also had what appeared a knot

1 forming on her forehead.

2 Q And without saying what she said, did she basically
3 relate to you what she knew about the events that had
4 taken place?

5 A Yes, she did.

6 Q And at that point, after interviewing Ms. Garcia, how
7 many suspects were you looking for?

8 A After interviewing Ms. Garcia we determined there
9 were three suspects in the murder.

10 Q Prior to entering the apartment to have it processed,
11 did you take any steps about securing a search
12 warrant?

13 A I did. Once I arrived up the steps, there was an
14 officer there. I asked him if anyone else was inside
15 the apartment. He told me there was not. The door
16 was cracked just a little bit. I looked in. I saw
17 the victim on the floor. I then said, I asked the
18 officer to shut the door, make sure nobody goes
19 inside regardless of rank and that we were going to
20 secure a search warrant for the residence.

21 Q Did you also get a consent to search from Ms. Garcia
22 to search her place?

23 A Yes, I did.

24 Q And did you do that?

25 A Yes, ma'am.

John Ewing - Direct by Ms. Campbell

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1 Q Did you also call an investigator Gonzalez?

2 A I did.

3 Q And why was that?

4 A I was wanting to make sure since this was a murder
5 and Ms. Garcia spoke, she did speak English, but I
6 was wanting to make sure she was understanding
7 everything I was saying because she was a little bit
8 broken English. And it was such an important case
9 that I wanted to make sure she understood everything
10 that I was saying and asking of her.

11 Q And later that night did you interview her with his
12 help at headquarters?

13 A Yes. We arrived at the Sheriff's Department, 5623
14 Two Notch Road. At that point I got a written
15 statement from Ms. Garcia.

16 Q Prior to leaving the scene, did you make any efforts
17 about securing the truck?

18 A Yes. As I was departing the scene, I noticed the
19 truck. I saw Coroner Watts walking up. He had a
20 young individual with him. And I spoke with that
21 individual. And based upon some facts that were
22 given to me, I asked the officer at the scene to
23 secure that truck and make sure that no one went to
24 that truck because it was possibly involved with the
25 homicide.

1 Q Once you were back at headquarters you mentioned you
2 took a statement from Eliana Garcia?

3 A That is correct.

4 Q Did you also make contact with a victim named Walter
5 Huggins?

6 A I did. Yes, ma'am.

7 Q And did you in fact take a statement from him that
8 night?

9 A Yes, ma'am.

10 Q Were there other victims being interviewed by other
11 people in the department at the same time?

12 A Yes. We had several witnesses. Investigator Faust
13 was interviewing some of the witnesses, and
14 Investigator Gilbert Gallegos was also interviewing
15 some of the witnesses, all of them at headquarters.

16 Q That evening did you receive certain information from
17 a Jessica Raines?

18 A Yes, we did.

19 Q And was that information about a possible car, a
20 truck that was possibly involved?

21 A Yes, ma'am, it was.

22 Q And were you able to get the tag number that night?

23 A Let me look in my notes. I know she gave us the tag
24 number. Just give me one second where I can give you
25 the exact tag number. [REDACTED] [REDACTED]

John Ewing - Direct by Ms. Campbell

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- 1 Q The green car that you secured and actually had towed
2 to headquarters that was found at the scene, who was
3 its owner?
- 4 A The owner of that vehicle was a Mr. Terry Roundtree.
- 5 Q Had that vehicle been reported stolen?
- 6 A It was reported as a breach of trust, I believe is
7 what it was actually reported as.
- 8 Q Were you able to determine who actually owned the
9 car, [REDACTED], the blue and silver truck?
- 10 A Yes, ma'am. It belonged to a William Rickenbaker of
11 Columbia.
- 12 Q And what was the status of that truck?
- 13 A That was actually stolen from his residence on Pruitt
14 Street.
- 15 Q Prior to this occurring?
- 16 A That is correct. Yes, ma'am.
- 17 Q After interviewing the victim and doing all that, did
18 you prior to leaving for the morning call the desk
19 sergeant about the truck?
- 20 A After conducting all the interviews for the night,
21 and it was really, really late at night, I wanted to
22 make sure that the vehicle that was stolen from the
23 City with the tag of [REDACTED], there was an extra
24 notation placed in the NCIC to tell an officer if
25 they came across that vehicle that this vehicle was

1 possibly involved with a homicide and to hold it and
2 make sure that Richland County would be able to
3 process the vehicle.

4 Q The next day what if any attempts did you make to
5 follow up on some of the vehicle information as well
6 as some of the witnesses?

7 A I tried to make contact with Mr. Rickenbaker, and
8 also I asked Investigator Gallegos to try to locate
9 Mr. Roundtree for the breach of trust vehicle.

10 Q That evening did you go back by the incident
11 location?

12 A I went back -- let me review my notes, please. We're
13 talking about several things and I'm kind of
14 confused. What day are we actually on now?

15 Q This would be at 1900 hours on the 9th.

16 A Okay. Hold on, please. You said the 9th. I
17 apologize.

18 Q Mm-hmm (affirmative).

19 A Okay. I see it. On the 9th I did at around 1900
20 hours respond back to the crime scene. We had
21 finished -- well, the lab had finished processing
22 everything inside the crime scene. And there was
23 blood in there still. No one had cleaned it up. And
24 it was brought to my attention that the door may not
25 have been secured. And our concern was that a child

John Ewing - Direct by Ms. Campbell

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1 may run into the crime scene being curious, or even
2 adults, and they may get blood on them or something
3 before it was actually cleaned up. So I went back to
4 the crime scene, and I was going to secure the door.

5 Q Once you were there did you run into another witness
6 in the case?

7 A I did. I ran into -- while I was there, a Mr. Jones
8 kept coming in and out of the apartment. I believe
9 it was [REDACTED]. And I wanted to talk
10 with Mr. Jones. So I asked him his name, and he gave
11 me his name. His name was Mr. Jones.

12 Q And did he give you some information about the case
13 and his involvement?

14 A He did.

15 Q After securing the scene and that, was that all you
16 did for that day in talking to Mr. Jones?

17 A That concluded the ...

18 Q The next morning when you arrived at work around
19 8 a.m., were you given information that the truck,
20 the blue and silver truck had been recovered on
21 Alcott Avenue?

22 A Yes, ma'am. I was advised by my Captain that the
23 stolen vehicle that I had the notation placed in the
24 NCIC had been recovered at [REDACTED].

25 Q That morning around 10:00 did you make contact with a

1 Frank Hughey?

2 A I did.

3 Q And without saying what he said, you can't say that,
4 did he give you some information about the case?

5 A He did.

6 Q Based on that information, without saying what was
7 said, did you follow up with Investigator Paul Mead
8 with the City of Columbia?

9 A I did. After speaking with Frank Hughey I contacted
10 Investigator Paul Mead who works with the City of
11 Columbia.

12 Q At this point had you developed any suspects in the
13 case?

14 A I did.

15 Q Who were the suspects?

16 A Octavia Middleton and Teran Scott.

17 Q What if anything did you do to follow up on making
18 contact with Teran Scott that day?

19 A After speaking with Investigator Mead I developed a
20 plan to try to locate Octavia Middleton and Teran
21 Scott. And we set out -- the officers and I set out
22 to locate both of them.

23 Q And at that point had you ever heard the name Harry
24 Dukes?

25 A No. I had not ever heard that name.

John Ewing - Direct by Ms. Campbell

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1 Q Around 7:30 that evening did you receive some
2 information -- and you can't say what it was -- about
3 the whereabouts of Teran Scott?

4 A I did.

5 Q Did you follow up on that?

6 A Yes, I did.

7 Q Tell the jury what you did?

8 A I responded along with several officers to [REDACTED]
9 [REDACTED], Apartment number [REDACTED] And I knocked on the
10 door. A ms. Jessica Richardson opened the door at
11 which time we observed Mr. Teran Scott inside the
12 apartment.

13 MS. CAMPBELL: And, Your Honor, may I approach?

14 THE COURT: Sure.

15 (Whereupon, a bench conference is had)

16 Q Without saying what it was, during the course of your
17 investigation you also found that Mr. Teran Scott had
18 an outstanding warrant?

19 A That is correct.

20 Q So when you made contact with him at Alcott Drive in
21 that evening of the 10th?

22 A Yes.

23 Q Did you place him under arrest?

24 A Teran Scott was placed under arrest, yes.

25 Q While you were there at Alcott Drive, did you

1 interview Jessica Richardson?

2 A Yes, ma'am, I did.

3 Q And was Mr. Scott actually transported back to
4 headquarters?

5 A He was.

6 Q After interviewing Ms. Richardson, did you then
7 return to headquarters?

8 A Yes, I did.

9 Q And at that point what was your plan?

10 A I wanted to interview Mr. Scott, Teran Scott.

11 Q Prior to interviewing him did you advise him of his
12 rights?

13 A I did.

14 Q And did he choose to speak to you at that time?

15 A Yes, he did.

16 Q And did he give you a statement about the events of
17 August the 8th?

18 A Yes, he did.

19 Q You can't say what was said, but you after getting
20 that information, did he then take you to an area of
21 town?

22 A Yes, he did.

23 Q Did he also provide you with some information --

24 MR. HISKER: Objection. Can we approach?

25 (Whereupon, a bench conference is had)

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1 Q After speaking to Teran Scott, did you then look in
2 new places for Octavia Middleton?

3 A Yes, I did.

4 Q And where were you looking now?

5 A I discovered that he was staying at [REDACTED]
6 Street here in Columbia.

7 Q That evening did you take a second statement from Mr.
8 Scott?

9 A I did.

10 Q And what time of day was that?

11 A Actually that would have been earlier in the morning
12 on August the 11th, 2005, at 5:51 in the morning. We
13 had a late night that night.

14 Q At 5:51 or 12:51?

15 A You're absolutely correct. 12:51. 12:51.

16 Q And did you form a plan to make contact with Octavia
17 Middleton the next day?

18 A Yes, ma'am, I did.

19 Q What was that?

20 A I decided based upon the information that I received
21 through my investigation to go ahead and secure a
22 search warrant for the Carnegie Street address where
23 Mr. Octavia Middleton was living and also arrest
24 warrant for his arrest in the murder.

25 Q And the Carnegie Street address, who actually lived

1 at that address with him?

2 A I believe it was his sister, but I'm not 100 percent
3 sure.

4 Q If you'll refer to your notes?

5 A Okay. It was his sister.

6 Q Okay. The next morning did you get any warrants?

7 A I did. Approximately 12:41 in the morning I secured
8 a search warrant. Correction. I'm sorry. At 10:36
9 I went by Judge Newsome's office and I got a search
10 warrant and arrest warrants for the house and an
11 arrest warrant for Mr. Middleton.

12 Q And had you done anything about securing arrest
13 warrants for the murder, armed robbery, ABHAN,
14 assault with intent to kill charges at that point?

15 A At that point is when those warrants were signed, at
16 10:36.

17 Q And who did you get those warrants for?

18 A Octavia Middleton and Teran Scott.

19 Q And those warrants and a search warrant had to be
20 signed by a judge?

21 A That is correct.

22 Q And that was done in this case?

23 A That was.

24 Q Were you able to execute that search warrant?

25 A Yes, ma'am.

1 Q What time did you actually arrive at the house on
2 Carnegie Street?

3 A We arrived at the house, myself and several officers,
4 at 12:24 in the morning.

5 Q And once you made entry, were you able to determine
6 whether or not Octavia Middleton was there?

7 A Octavia Middleton was there. I spoke with him. He
8 admitted to me his name and he requested to smoke a
9 cigarette.

10 Q So what did you allow him to do?

11 A At that time he wanted to smoke a cigarette. So he
12 was going to sit on his couch, the arm of his couch.
13 So I walked on over there, but before I let him sit
14 on the couch I wanted to make sure that there were no
15 weapons in or around the couch. So I looked under
16 the couch and there was a box of shotgun shells
17 underneath the couch. At that point I brought it to
18 the other officer's attention. Since it was not a
19 gun that could harm us, any of us at that time, I
20 went ahead and let Mr. Scott sit there and smoke his
21 cigarette. I said Scott. I meant to say Octavia
22 Middleton.

23 Q Middleton. Was it a box of shotgun shells or just
24 some that were loose?

25 A Let me review my notes, please. Shotgun shells

1 underneath the couch. It wasn't a box of them.

2 Shotgun shells.

3 Q I show you State's Exhibit 171. Without saying what
4 was said on the trip back, did you then get back to
5 headquarters with Mr. Middleton?

6 A Yes, ma'am, I did.

7 Q Did you actually transport him?

8 A I did.

9 Q And at this point had you or anyone asked him any
10 questions yet about this case?

11 A No, I was not.

12 Q And why was that?

13 A Because I wanted to wait until we got in a more
14 controlled environment, the Sheriff's Department,
15 before we asked any questions pertaining to the case.

16 Q And prior to asking questions to a defendant in a
17 case, do you advise them of certain rights?

18 A Yes. When their freedom, when they're not free to
19 leave, you advise them of their rights, the Miranda
20 warnings, which was done in this case.

21 Q I want to show you what's been marked as State's
22 Exhibit 1 pre-trial. I show you this item. Do you
23 recognize that?

24 A Yes, ma'am. This is a Richland County Sheriff's
25 Department interrogation form. This form will have

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1 my handwriting the top. I filled in Octavia
2 Middleton's name, the place, RCSO; the officer which
3 was myself, sergeant J. E. Ewing. And the date, I
4 have 8-11-05, and the time is 12:41 hours. And what
5 this form actually is, it's a written down version of
6 your advice of rights. And also at the bottom of it
7 there is a waiver of your rights.

8 THE COURT: Counsel, let me see you a minute.
9 Did somebody send a note?

10 THE BAILIFF: Yes, sir.

11 THE COURT: Excuse me for a minute. Excused for
12 a minute. Go ahead. Let me talk something over with
13 the lawyers.

14 (Whereupon, a bench conference is had)

15 THE COURT: All right, Ms. Campbell. All right,
16 counsel. Make your motion, please.

17 MR. HISKER: Yes, sir, Judge. I'd like to just
18 renew my objection and ask Your Honor to allow it to
19 continue so I don't have to continue objecting.

20 THE COURT: Yes, sir. The objection is
21 overruled, and I'll allow your objection to be a
22 continuous objection. You need not make it
23 throughout the testimony. Continue, Ms. Campbell.
24 Q Thank you. You indicated that you had Mr. Middleton
25 back at headquarters. Is that correct?

1 A Yes, ma'am. That's correct.

2 Q And where did you start advising -- where was he when
3 you started advising him of his rights?

4 A He was in Sergeant Scott McDonald's office.

5 Q Who all was in there?

6 A When he was advised of his rights, it was myself and
7 my deputy chief, David Wilson at the time.

8 Q And tell this jury exactly how you went through his
9 rights back on August the 11th. This is the 11th,
10 right?

11 A That is correct. Yes, ma'am.

12 Q 2005?

13 A Since we have it in written form, I like to turn it
14 around like this where I'm actually looking at it
15 upside down. And I'll put it in front of the person
16 that I'm reading it to so they can read along with
17 me. And I will look at it and I'll check my check
18 marks which are right side up to me, but if you're
19 looking at it like you're reading it, they're going
20 to be upside down. And the reason I put check marks
21 beside each of these lines just so I'll know I
22 covered that line. I want to make sure I covered it.

23 So I start out and I say: "Before I ask you any
24 questions you must understand your rights. You have
25 the right to remain silent. Anything you say can be

1 used against you in court. You have the right to
2 talk to a lawyer for advice before we ask you any
3 questions and to have a lawyer you with you before
4 any questions. If you cannot afford a lawyer one
5 will be appointed for you before any questions if you
6 wish. If you decide to answer questions now without
7 a lawyer present, you still have the right to stop
8 answering at any time. You also have the right to
9 stop answering at any time until you talk to a
10 lawyer."

11 After I get through with those, I asked Mr.
12 Middleton, I said: "Did you understand those?" He
13 said he did. I then skip down to the section where
14 it says: "Waiver of rights." And it has a check
15 mark there also. And this is what I read. "I have
16 read this statement of my rights. I understand what
17 my rights are. I am willing to talk and answer
18 questions. I understand and know what I am doing.
19 No promises have been made to me. No pressure or
20 coercion of any kind have been used against me."

21 I always, every time I do this I'll underline
22 generally pressure and coercion because some people
23 may not understand what that is. And I underline I
24 it and say: "Do you understand what that is?" And
25 I'll explain this is -- I usually use the same thing.

1 "I'm not standing over you beating you up, hitting
2 you with a phone book making you talk to me. That's
3 what I'm talking about." And he said that he
4 understood that.

5 After he stated that he understood both the
6 waiver of the rights and his advice of rights I asked
7 him to please sign his name in the correct spot on
8 the form, which he did. David Wilson, my supervisor
9 at the time, then signed it as a witness, and I also
10 signed it at the bottom as a witness.

11 **MS. CAMPBELL:** Your Honor, at this time we'd
12 offer State's Exhibit No. 1 into evidence.

13 **THE COURT:** Over the defendant's objection.

14 **MS. CAMPBELL:** Thank you.

15 (WHEREUPON, State's Exhibit No. 1 is admitted
16 into evidence.)

17 **Q** So the writing at the top of this is whose writing?

18 **A** That's my writing.

19 **Q** And basically the information at the top is what?

20 **A** It's fill-in-the-blank information basically.

21 **Q** You went through each and every one of these rights
22 with Mr. Middleton?

23 **A** Yes, ma'am.

24 **Q** Did you promise him anything to get him to talk to
25 you?

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- 1 A Oh, no, ma'am.
- 2 Q Did you pressure him in any way?
- 3 A No, ma'am.
- 4 Q Did you mistreat him?
- 5 A No, ma'am. I ask actually asked him when we got
- 6 there if he needed go to the restroom or get anything
- 7 to drink. So, no, ma'am.
- 8 Q Did you in any way force him to talk to you?
- 9 A No. Absolutely not.
- 10 Q After you had advised him of his rights and he
- 11 indicated he understood them by signing that piece of
- 12 paper and responding to you, did you initiate a
- 13 conversation with him?
- 14 A I did.
- 15 Q And at first you are reducing it to writing, or at
- 16 first you were trust trying to figure out --
- 17 A First you just try to talk with them and see if
- 18 they're going to tell you the facts of the case.
- 19 Q At some point during your talking to him, did another
- 20 investigator enter the room?
- 21 A Yes. Sergeant David Linfert did.
- 22 Q Prior to Sergeant Linfert entering the room, what if
- 23 anything did Octavia tell you about Apartment [REDACTED]?
- 24 A Octavia -- I was talking with Octavia and he said
- 25 that he had been there before to Apartment [REDACTED] on an

1 earlier occasion.

2 Q At The Reserves?

3 A That is correct. But he had not been there. He said
4 at that time that he had not been there the night of
5 the shooting.

6 Q After Sergeant Linfert entered the room, did
7 Octavia's story begin to change?

8 A Yes. When Sergeant Linfert entered in, Octavia's
9 story went from being there one time to being there
10 several times at Apartment [REDACTED].

11 Q At some point during your conversation did Sergeant
12 Linfert get some information about a jersey that had
13 been recovered from the scene?

14 A That's correct.

15 Q From a search warrant? I apologize.

16 A A search warrant. That's correct.

17 Q From the search warrant at Carnegie Street?

18 A That is correct.

19 Q And after being informed that this had been found,
20 when was Octavia's response?

21 A It was believed that the jersey had some blood on it.
22 So I asked Octavia: "How did you get the blood on
23 your shirt?" He says, "Well, you will not find blood
24 on my shirt." And that's what was his response was
25 about the shirt.

1 Q Did you then follow up on asking him about other
2 items that were found in the search warrant?

3 A I asked him about the shotgun shells that were found
4 at his residence.

5 Q And what did he indicate about how those shotgun
6 shells got in his residence?

7 A He stated that they were Teran Scott's and he had
8 brought them over.

9 Q And as far as his involvement in the robbery and the
10 shooting, initially what was he telling you?

11 A Initially he was saying he was not involved.

12 Q During the course of talking to him, did he become
13 aware that you had spoken to Teran?

14 A I'm not familiar -- I cannot recall if I told him
15 that we'd talked to Teran or not.

16 Q Was Teran already in custody?

17 A Yes. He was.

18 Q And that's public information?

19 A Yes.

20 Q When you arrested Octavia Middleton over there on
21 Carnegie Street, were there any other people there at
22 the time?

23 A There was.

24 Q And who was that?

25 A Harry Dukes was present at Octavia Middleton's

1 residence.

2 Q And at the time that you took Octavia Middleton into
3 custody, did you also bring Harry Dukes down to
4 headquarters?

5 A Another investigator took possession of Harry Dukes
6 and brought him to headquarters.

7 Q And as you were talking --

8 MR. HISKER: Object to the leading, Your Honor.

9 Q I'll rephrase. Who was interviewing Harry Dukes?

10 A Investigator Travis Holdorf.

11 Q After this initial conversation which was an oral
12 conversation?

13 A With Mr. Middleton?

14 Q Mr. Middleton.

15 A It was oral.

16 Q Did he decide to invoke any of his rights?

17 A Yes. He decided that he would rather have an
18 attorney present.

19 MR. HISKER: Objection, Your Honor. I have a
20 matter of law.

21 THE COURT: Approach the bench.

22 (Whereupon, a bench conference is had)

23 THE COURT: Let me take this up with the lawyers
24 on the record, ladies and gentlemen. Just go to your
25 jury room for a minute. Let me see if can I straight

1 end it out.

2 (Jury out at 4:40 p.m.)

3 **THE COURT:** All right, Mr. Hisker.

4 **MR. HISKER:** Your Honor, my objection was
5 because --

6 **THE COURT:** Is.

7 **MR. HISKER:** -- is because this witness in the
8 questioning elicited the response that Mr. Middleton
9 invoked his right to counsel. And I move for a
10 mistrial on that basis because this jury could never
11 be told that Mr. Middleton invoked his right to
12 counsel. I believe we're entitled to a mistrial on
13 that basis. It's certainly a comment on his right to
14 remain silent which can never be made in a trial.

15 **THE COURT:** Ms. Campbell.

16 **MS. CAMPBELL:** In all the cases that I've looked
17 at, Your Honor, where they reinitiate, basically they
18 talk about how the testimony was that the person
19 invoked and than they reinitiate the things, and
20 that's how it's admissible.

21 As far as this, I feel like I was set up because
22 if I had had any idea, we would have done this ahead
23 of time. But because he reinitiates it, basically
24 it's as if the invocation never happened. And had I
25 realized he wanted me to dance around this issue, I

1 would have been glad to. But there was never any
2 mention that we aren't going to mention this in front
3 of jury. And because he does reinitiate, it's a
4 different situation.

5 **MR. HISKER:** I would have anticipated it had I
6 known the question. I assumed that it wouldn't be
7 brought up.

8 **THE COURT:** Show me that the fact that he says,
9 "I wish I had counsel" violates Fifth Amendment.

10 **MR. HISKER:** I can't at this time, but I know
11 there is case law out there. I've seen cases, I've
12 seen cases, mistrial granted as soon as it was said
13 in a very similar situation.

14 **THE COURT:** Well, I've also issued curative
15 instructions in cases where the right to remain
16 silent has been breached or at least referred to in
17 testimony.

18 **MR. HISKER:** Here it's a direct comment that Mr.
19 Middleton did not want any more questioning, he
20 wanted to see an attorney. And the prejudice from
21 that statement has tainted this jury already. And I
22 don't believe a curative instruction can fix that
23 problem.

24 **THE COURT:** All right. Show me --

25 **MR. HISKER:** It certainly was not set up. I was

1 wondering how we were going to move around it.

2 **THE COURT:** Well, I'm not suggesting it was set
3 up. I mean, the question is more basic than that.
4 And that is, is it a Doyle violation? Is it --

5 **MR. HISKER:** Sir?

6 **THE COURT:** I'm asking you to show me why that
7 one statement violates his right to remain silent or
8 his right to counsel. Explain it to me.

9 **MR. HISKER:** The jury can never --

10 **THE COURT:** They heard it.

11 **MR. HISKER:** They heard it. They can't un-hear
12 it.

13 **THE COURT:** What's the violation? What's the
14 violation?

15 **MR. HISKER:** It's a violation of his Fifth
16 Amendment right to remain silent. And the fact that
17 he is going to be -- I mean, you're going to
18 instruct --

19 **THE COURT:** He's exercising his right.

20 **MR. HISKER:** That's correct. But you are also
21 going to tell this jury that they can't consider
22 that. And you tell --

23 **THE COURT:** No. I didn't say I would. I said
24 that's one way to cure it if you feel it's prejudiced
25 your client.

1 **MR. HISKER:** It has prejudiced him.

2 **THE COURT:** You're going to have to show me more
3 than that.

4 **MR. HISKER:** Judge, I don't know how I can.
5 That's my position, that once that --

6 **THE COURT:** You've got to show me some case law
7 that says if the jury finds out he's invoked his
8 right to counsel that that is grounds for a mistrial.

9 **MR. HISKER:** Do we want to break for the day? I
10 will get all the case law on it that I can. I don't
11 have it on me now. But I would have never
12 anticipated this.

13 **MS. CAMPBELL:** I just don't know, Judge, how
14 else you get this issue in front of the jury.

15 **MR. HISKER:** It could have been as simple as
16 saying at some point, did you leave the room and then
17 an hour or so later you received a request that Mr.
18 Middleton wanted to talk to you again? That's what I
19 would have anticipated.

20 **THE COURT:** What does that statement say?

21 **MR. HISKER:** Sir?

22 **THE COURT:** What does that statement say?

23 **MR. HISKER:** That says at some point this
24 investigator left the room.

25 **THE COURT:** No. I'm not talking about -- I'm

1 talking about the statement that he gave --

2 MS. CAMPBELL: The first three lines are --

3 THE COURT: -- doesn't he say, you gave up your
4 right -- you said you wanted the right -- whatever
5 the language is, that you gave up your -- you said
6 you wanted counsel. Now you want to talk to me.
7 Isn't that what it says?

8 MS. CAMPBELL: Yes, sir.

9 (Document handed to the Court)

10 MR. HISKER: It does.

11 THE COURT: So how do we --

12 MR. HISKER: On that basis, I amend my objection
13 to object to that line for that basis also, that that
14 would need to be redacted from that statement because
15 it, too, references his --

16 THE COURT: "When you were talking the first
17 time you mentioned to me you wanted to stop talking
18 and talk to an attorney." I mean, this has already
19 been -- I've already admitted this.

20 MR. HISKER: The jury hasn't seen it yet.

21 THE COURT: They haven't.

22 MR. HISKER: And at this point I amend my motion
23 to include that line because that should be redacted
24 because that's a comment on his right to remain
25 silent.

1 **MS. CAMPBELL:** But if he's never objected to
2 that before, how am I supposed to know he's going to
3 object to it? When you said this is a statement
4 that's coming in, he didn't move to have that
5 redacted.

6 **THE COURT:** Well, I'm not sure this officer
7 didn't testify the same way at the pre-trial hearing.
8 I don't recall.

9 **MS. CAMPBELL:** He did.

10 **THE COURT:** I don't know if he made this same
11 statement at the pre-trial hearing.

12 **MS. CAMPBELL:** But, Your Honor, for all intents
13 and purposes, it's the same statement as the first
14 line of his statement.

15 **THE COURT:** My question is --

16 **MS. CAMPBELL:** Yes, sir.

17 **THE COURT:** -- did this witness testify in the
18 pre-trial hearing to which there was no objection
19 that he said he wanted an attorney?

20 **MS. CAMPBELL:** Yes, sir.

21 **MR. HISKER:** He did.

22 **THE COURT:** That's what I thought. Why is that
23 not a waiver of your objection?

24 **MR. HISKER:** Because now it's in front of the
25 jury. That's the problem. The jury cannot hear that

1 my client requested an attorney. I believe it's as
2 affirmative a rule as there is.

3 *THE COURT:* All right.

4 *MS. CAMPBELL:* But he has made no objection to
5 it coming in in the statement. There's no different
6 language.

7 *MR. HISKER:* Well, if the jury didn't see it
8 now, and if I missed that before, well, that's why
9 I'm clearing it up now.

10 *MS. CAMPBELL:* But I assumed since you don't
11 object it to that there's no objection to it.

12 *MR. HISKER:* I objected to the entire statement.
13 I was overruled on other grounds. But now that --

14 *MS. CAMPBELL:* Well, then you objected to
15 several parts of all these other statements, too.

16 *THE COURT:* All right. I'll give you the
17 opportunity to produce whatever law you can, Mr.
18 Hisker. I don't want to rule on a mistrial motion at
19 this point, but I'll let you argue it first thing in
20 the morning. I'll give you the evening hours to
21 discuss it. Although I think --

22 *MR. HISKER:* Thank you, Your Honor.

23 *THE COURT:* -- the -- well, the jury will think
24 what the jury will think. All right. We'll adjourn
25 for the day. I'll give about until 9:00 in the

1 morning to show me some law that says what you say it
2 says.

3 **MR. HISKER:** Thank you, Judge.

4 **THE COURT:** All right. Bring the jury.

5 (Jury in at 4:48 p.m.)

6 **THE BAILIFF:** Your Honor, the jury is present.

7 **THE COURT:** All right. Thank you very much.

8 Ladies and Gentlemen of the Jury, there's a matter of
9 law that I said I need to take up with the attorneys.
10 And it appears to me that it's going to take a little
11 bit longer to discuss this matter with them than I
12 had anticipated. And I think probably I don't want
13 to keep you here to the point that you run into every
14 bit of traffic in Richland County.

15 So I think the most efficient use of our time at
16 this point would be to go ahead and dismiss you for
17 the day, ask you to be back in the jury room at 9:30
18 in the morning at which time we'll continue the
19 trial. In the meantime I will get this straightened
20 out with the attorneys and we'll be ready to roll at
21 9:30 in the morning. Thank you very much. Again,
22 don't discuss the case among yourselves when you
23 return to the jury room or with anyone else over the
24 evening hours.

25 (Jury out at 4:50 p.m.)

1 THE COURT: I'll see you at 9:00 in the morning.
2 The jury is to be back here at 9:30. Be prepared to
3 argue your motion at --

4 MR. HISKER: Yes, sir.

5 THE COURT: -- 9:00.

6 (WHEREUPON, State's Exhibit No. 184 is marked
7 for identification.)

8 (Whereupon, the proceedings are concluded for
9 the day, to be reconvened tomorrow morning)

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1 Thursday, August 30, 2007

2 **THE COURT:** Mr. Hisker, as to your mistrial
3 motion, do you have anything further to offer the
4 Court?

5 **MR. HISKER:** Yes, sir. I would argue that under
6 State v. Edmond the Supreme Court held that it was
7 improper for the State to refer or to comment upon a
8 defendant's exercise of their Constitutional right.
9 Such comments may not be made either directly or
10 indirectly. In particular, the State may neither
11 comment upon nor present evidence at trial of
12 defendant's decision to exercise his right to remain
13 silent or to be represented by an attorney.

14 I believe we have a clear situation in this case
15 where a question was asked: Did the defendant
16 request an attorney? The answer was: Yes, he
17 requested an attorney. Upon that statement, I
18 believe it then becomes a question of prejudice.

19 The Edmond case discusses five factors that the
20 appellate court is going to look at to determine
21 whether or not the error was harmless. And I would
22 suggest that those are similar factors that this
23 Court should consider when ruling on prejudice.

24 The appellate court is going to look for all
25 five of these factors to be present. It states that:

1 "Such an error will not be deemed prejudicial when
2 the record shows the reference to the defendant's
3 right to silence or to an attorney was a single
4 reference" -- which I agree it's either a single or a
5 double depending on if you count the question and the
6 answer -- "was not repeated or alluded to" -- and I
7 believe they're not going to do that. "The third is
8 that the prosecutor did not tie the defendant's
9 exercise of his right directly to his exculpatory
10 story.

11 And in this case whether or not he presents an
12 exculpatory story I do not know at this point. But
13 even if he does not, I submit that this will destroy
14 any reasonable doubt argument that he has regarding
15 the truth of his statement. If we intend to attack
16 this confession as being a false confession, the fact
17 that he requested a lawyer at first gives the jury
18 the inference that he's guilty and he wants a lawyer
19 and then later on he just changes his mind and
20 decides to confess. And that's the prejudice in this
21 case.

22 The fifth factor is that the evidence of guilt
23 was overwhelming. And I submit in this case there is
24 no physical evidence that ties Mr. Middleton to the
25 scene. There is no eye witnesses at the scene that

1 identify him. There are no forensic -- there is no
2 forensic linking Mr. Middleton to this scene. The
3 only evidence in this case that's going to put Mr.
4 Middleton there are his confession and the testimony
5 of a co-defendant.

6 The testimony of the co-defendant, it's going to
7 be biased at best. The only issue that we're going
8 to have in this case is whether or not this is a
9 false confession. And if the jury takes the
10 inference that he was guilty and he asked for a
11 lawyer because he was guilty, then that argument is
12 completely destroyed. And on that basis I'd move for
13 a mistrial.

14 **THE COURT:** All right. The State's position.

15 **MR. GOLDBERG:** Your Honor, initially the State
16 would argue that this issue was taken up during the
17 Denno hearing. It was specifically addressed. The
18 statements, both written statements, there were
19 issues of redactions that came up. Also the
20 testimony by Investigator Ewing that is on the
21 record. They raised this objection. It came out
22 during the hearing. In fact, there was a discussion
23 where Mr. Hisker even wondered aloud what would
24 happen had the attorney answered the phone. So I
25 know that the issue came out. It was discussed.

1 There was no objection at that point as to whether it
2 would have been improper to comment on that during
3 the course of the trial in front of the jury.

4 Additionally, Your Honor, we would argue that
5 this issue goes towards the voluntariness of the
6 statement. The State is required to prove to the
7 jury that the statement was made voluntarily. This
8 would indicate that they were talking. He was
9 advised of his rights. He waived his rights.

10 They then talked. He stopped talking. He
11 invoked. He decided to go down -- or they put him in
12 the holding cell. He wasn't talking. Then he
13 voluntarily reinitiated contact with the police and
14 wanted to talk to them again. And we would argue
15 that this just lays the foundation of him
16 reinitiating the conversation and voluntarily
17 speaking with the Sheriff's Department about what had
18 taken place.

19 Additionally, in the Edmond case that Mr. Hisker
20 handed up, the reasoning there I believe for the
21 problem comes from the prosecutor inferring to the
22 jury that the defendant was guilty simply for
23 exercising his rights. We would argue that --

24 **THE COURT:** That was in closing argument.

25 **MR. GOLDBERG:** Yes, sir.

1 **THE COURT:** Argument.

2 **MR. GOLDBERG:** Yes, sir. But the basis for this
3 objection is one, is the same in that it gives off
4 some kind of an inference that by asking for an
5 attorney and asking for his right to remain silent be
6 exercised that the State has improperly offered that
7 to provide some sort of evidence that he is hiding
8 something or possibly guilty of the charge.

9 And we would argue that that's negated once he
10 then reinitiates the conversation. It's clear that
11 he's not trying to hide anything and we're not trying
12 to offer it for that purpose. We're trying to offer
13 it for the purpose that it was voluntarily made and
14 was reinitiated and he wanted to speak to them again.
15 I guess what I'm trying to say is that there was no
16 prejudice as a result of his argument. There was no
17 prejudice as a result of what Investigator Ewing
18 said.

19 Finally, we would just ask that in lieu of a
20 mistrial that you provide some kind of a curative
21 instruction, that that would be more of an
22 appropriate resolution to this issue.

23 **THE COURT:** All right. I have reviewed the
24 Edmond case. I've also reviewed several cases from
25 other jurisdictions, including the United States

1 Supreme Court on basically Doyle issues. And I find
2 this as a single reference at this point in the trial
3 not to be sufficient grounds to grant a mistrial.

4 The Edmond case again was a PCR case, not that
5 that has a lot to do with it, but it's differentiated
6 in that context. And in Edmond the solicitor in
7 closing argument made improper references to the
8 defendant's right to remain silent by saying that --
9 argued that then the very next day after his arrest
10 petitioner invoked his right to counsel, smartly
11 enough. Which certainly has an implication there
12 that he may have been guilty. But smartly enough
13 invoked his right to counsel to remain silent, which
14 I think is completely different from this case.

15 Officer Ewing just said in testimony that he
16 invoked his right to remain silent. The solicitor
17 didn't say anything about it. Or he invoked his
18 right to counsel. And it stopped right there. In
19 order to avoid any further -- so I must respectfully
20 deny your motion for mistrial.

21 And as additional sustaining grounds, if there
22 are such things, there is a two-prong test in United
23 States v. Rosenthal when it's dealing with the impact
24 of the statement in terms of the content; that is,
25 the indirect reference to the failure to remain

1 silent. "The Court must assess the impact of the
2 statement in terms of the context in which it was
3 made. The comment is deemed to refer to a
4 defendant's silence if either the prosecutor's
5 manifest intention to refer to the defendant's
6 silence", which I don't find in this case, "and that
7 the remark was of such a character that the jury
8 would naturally and necessarily take it to be a
9 comment on the defendant's silence."

10 Jurors watch TV. Jurors are acquainted with
11 the -- they hear it frequently about; that is, the
12 Miranda rights, that he has a right to counsel. They
13 know has a right to counsel. And the fact that he
14 exercised his right to counsel in this context, in
15 the context of this trial, I don't feel would be
16 sufficiently prejudicial to grant a mistrial.

17 Now, the officer need not repeat it when he
18 retakes the stand. And if defense counsel wishes, I
19 will do two things. I'll give a curative instruction
20 just telling them he has a right to do that. It's
21 not any inference of guilt and it cannot be any
22 inference of guilt under our Constitution. And,
23 secondly, if you wish to redact, since I know now
24 about the next reference to his right to remain
25 silent or his right to counsel, if you were to move

1 to redact that statement from the written statement,
2 I will grant that.

3 MR. HISKER: Yes, Your Honor. I do make those
4 motions. It's my understanding that that statement
5 has already been redacted from that.

6 THE COURT: That sentence or that line --

7 MR. HISKER: Yes, sir.

8 THE COURT: -- of questioning. And as long as
9 Officer Ewing is aware of the fact that that will not
10 be part of his testimony, then I think we're ready
11 for the jury unless you have something else to bring
12 before the Court.

13 MR. HISKER: I also -- I just wanted to clarify
14 on the record, the second statement mentions the car
15 breaking. I believe Your Honor covered --

16 THE COURT: That was McDaniels' statement.

17 MR. HISKER: McDaniels' statement covers an
18 incident where Mr. Middleton confesses to breaking
19 into a car, stealing the shotgun. It's my
20 understanding Your Honor already covered the 404
21 argument in 403. I just wanted to make sure that I'm
22 objecting to that line as well since that's another
23 crime.

24 THE COURT: Yes, sir. I assume that there would
25 be an objection. And on Tuesday when I ruled on the

1 404(b) motions concerning the statements, I pointed
2 that out, that Mr. Middleton admitted to breaking
3 into an automobile somewhere and taking a shotgun.
4 And I felt that that was admissible because it's
5 logically relevant to this case. It's the gun that
6 was used in this case. He admits it was the gun that
7 was used in this case. So it's inexorably
8 intertwined with the alleged crime in this case.

9 I found that that could be evidence of a common
10 scheme or plan or intent under either of the
11 exceptions to 404(b), and that the 403 analysis
12 yielded, in my opinion, the probative value far
13 exceeded the prejudicial value of that statement. Is
14 the State ready to proceed?

15 **MS. CAMPBELL:** The State is ready, Your Honor.
16 I'm having him review both the redacted statements.
17 I've given him an opportunity to review both of the
18 redacted statements.

19 **MR. HISKER:** And I'm satisfied with the
20 redactions.

21 **THE COURT:** All right. Thank you. Bring the
22 jury, please.

23 **MS. CAMPBELL:** Do you want him to be on the
24 stand?

25 **THE COURT:** Well, he can re-take the stand.

1 Sure.

2 (Jury in at 9:48 a.m.)

3 **THE BAILIFF:** The jury is all present, Your
4 Honor.

5 **THE COURT:** Thank you. Good morning, ladies and
6 gentlemen. Do I need to call maintenance? I mean,
7 it's August and everybody walks in putting their
8 jackets on. You see, I've got this wool dress on, so
9 it doesn't bother me. But anyway, I hope you're
10 comfortable. We're ready now to continue with the
11 trial. And, Ms. Campbell, you may continue your
12 examination.

13 Q Chief Ewing, at that point did you then --

14 **THE COURT:** Yes, sir.

15 Q -- take the defendant anywhere?

16 **MR. HISKER:** Curative instruction.

17 **THE COURT:** Oh. All right. Let me do that.
18 I'll do it at this time. Ladies and gentlemen,
19 counsel just reminded me, when we broke yesterday
20 there was a question posed to the officer about his
21 interview with the defendant, and at that time the
22 defendant told Officer Ewing that he wished to have
23 counsel present or he wished to have a lawyer.

24 That is his Constitutional right. It's part of
25 the Miranda warnings. It's part of the body of our

1 law that anybody has the right to stop questioning
2 whenever they choose and ask to have an attorney
3 present. That is no -- and I instruct you, this is
4 an important point of law, that is no evidence of
5 anything. You're not to infer anything from that.

6 The man was simply exercising his Constitutional
7 rights. It doesn't have anything to do with guilt or
8 innocence. It's not to be inferred anything to do
9 with guilt or innocence. It is solely the fact that
10 he is exercising his Constitutional right which he
11 has a perfect right to do.

12 So I do -- when they asked -- I wanted to
13 explain that to you. That's why we broke yesterday
14 because I had to discuss that with the attorneys.
15 And please just take it in the way that I have
16 explained it to you. And we'll continue with the
17 trial. Now.

18 **MS. CAMPBELL:** May it please the Court?

19 **THE COURT:** Yes, ma'am.

20 **Q** At that point, chief Ewing, where did you take the
21 defendant?

22 **A** At that point I took Octavia Middleton to our holding
23 cell which is at the Richland County Sheriff's
24 Department.

25 **Q** And is that located in the actual building of the

- 1 Richland County Sheriff's Department?
- 2 A It is. It's -- we have investigations. There is a
3 hallway. So it's on the other side of the hallway
4 actually out of investigations.
- 5 Q And was anyone else in that holding tank with him?
- 6 A No, ma'am.
- 7 Q At that point, what did you do?
- 8 A I assisted with the interview of Harry Dukes. His
9 nickname is Boo. I assisted with that interview.
- 10 Q And where had you first come in contact with Harry
11 Dukes?
- 12 A It was in a sergeant's office, Sergeant Tommy Marrow.
13 Investigator Travis Holdorf had Harry Dukes and was
14 fixing to conduct the interview with Mr. Dukes.
- 15 Q Let me be more specific. That day when did you first
16 come in contact with Harry Dukes?
- 17 A That day he was at Octavia Middleton's house when
18 Octavia got arrested.
- 19 Q And did you participate in the interviewing of Harry
20 Dukes?
- 21 A I did.
- 22 Q And what is Harry Dukes' nickname?
- 23 A It's Boo.
- 24 Q And what is Octavia Middleton's nickname?
- 25 A Tank.

1 Q Tank?

2 A Tank.

3 Q As you were finishing up the interview with Harry
4 Dukes, what happened?

5 A As I was exiting the office of interviewing with
6 Harry Dukes, Investigator Eric Barnes informed me
7 that Octavia Middleton wished to speak with me.

8 Q And did you make contact with Octavia Middleton
9 again?

10 A Yes, ma'am, I did.

11 Q And where did you go to make contact with him?

12 A I went back to the holding cell.

13 Q And remember to be careful about what you say. But
14 what conversation took place with him then?

15 A He indicated that he wished to speak with me in
16 private.

17 Q And what happened then?

18 A At that point I took him to Captain Stan Smith's
19 office for an interview.

20 Q What happened next?

21 A When I was going to Captain Stan Smith's office, I
22 asked Investigator Brian Godfrey who was around
23 Captain Smith's office to step in Captain Smith's
24 office with me where we could conduct an interview of
25 Octavia Middleton.

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1 Q Did in fact Octavia Middleton talk to you about the
2 events that occurred on August the 8th of 2005?

3 A Yes, ma'am, he did.

4 Q And how did that occur? Tell the jury.

5 A Once we got in the office I explained to Investigator
6 Godfrey that Octavia Middleton wished to talk to me
7 about, you know, a shooting case. And I looked at
8 Octavia and he started talking. He started telling
9 what he was -- the events that occurred that night.

10 Q Did you have an opportunity to reduce that to
11 writing?

12 A Yes, ma'am.

13 Q And tell the jury; first, did he verbally tell you
14 what happened and then you reduced it to writing?
15 How would that occur?

16 A When I -- when everybody conducts interviews, first
17 talk with the individuals to find out exactly what
18 they're going to say and what their side of the story
19 is. And then after you get their side of the story
20 you'll put it on paper form. At the Richland County
21 Sheriff's Office we type the statement for the
22 individual. We will ask the question. The defendant
23 will answer the question. And we'll write what they
24 said in the answer section of the questioning.
25 That's how this incident -- that's what happened in

1 this incident.

2 Q And I show you State's Exhibit No. 2 and first ask,
3 do you recognize that?

4 A This is the statement that I took from Octavia
5 Middleton on the 11th of August, 2005.

6 Q And that's the statement that you took from him after
7 advising him of his rights and he said he wanted to
8 talk to you?

9 A That's correct.

10 **MS. CAMPBELL:** Your Honor, at this time we'd
11 offer State's Exhibit 2 into evidence.

12 **THE COURT:** Subject to the defendant's
13 objection.

14 **MS. CAMPBELL:** Thank you.

15 (WHEREUPON, State's Exhibit No. 2 is admitted
16 into evidence.)

17 Q Can you please relate to the jury the information
18 that Octavia Middleton gave you back on August 11th
19 of 2005?

20 A Yes. First of all, it's fill-in-the-blank forms. At
21 the top I put the date and the time. And actually
22 Captain Stan Smith's name is in that paragraph. The
23 reason his name is in there, I was actually using
24 Captain Stan Smith's computer and he had his name
25 saved on his template and I didn't notice it and I

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1 didn't take his name out and put my name on there.
2 However, Captain Smith was not present during the
3 interview. It was myself and Investigator Godfrey.

4 But there is also a paragraph where it starts
5 out with the advice of rights. And the advice of
6 rights section is on here, as I have discussed with
7 you earlier.

8 Then it jumps down to where Q, that's where I
9 ask the question. So it's going to be Q. When I say
10 question or Q when I'm reading this to you, that's
11 what I'm talking about. It's me asking the
12 questions. R is where Octavia Middleton responded.
13 Would you like me to publish this?

14 Q Thank you.

15 A Okay.

16 Question: "Did you stop Investigator Eric E.
17 Barnes here at RCSO to request to speak to me after
18 our first conversation?"

19 Response: "Yes."

20 Question: "Do you now wish to tell me what took
21 place on August the 8th, 2005, while at Faraway Drive
22 address?"

23 Answer: "Yes."

24 Question: "Tell me what happened."

25 Response: "That day me and Boo were picked up

1 by one of Teran's home girls. She was driving a
2 silver and blue truck. She came and picked us up at
3 my sister's house. We met Teran at a house on
4 Leesburg Road. We all got together and went to
5 Williston, South Carolina. We were with a couple of
6 people. I was switching in and out of trucks, the
7 silver and blue truck and then the green truck that
8 we left at the scene.

9 "When we left Williston, it was around 9:30 p.m,
10 and we got back to Columbia. We really went to
11 Williston to sell one of the trucks. When we got
12 back to Columbia, me, Boo and Teran were in a truck
13 that we left at the scene. We were talking about how
14 we needed some money. Teran said, 'What's up with
15 licking The Reserves?' I said, 'We can do that.'.

16 "He asked me where I'd put the gun and stuff and
17 I told him that it was at my house. We went to my
18 sister's house and got the gun and stuff. We then
19 went to The Reserves Apartments. Boo was driving.
20 Me and Teran got out of the car and went upstairs.
21 When we were going up the steps, there was a guy in
22 front of us. I told Teran to hold up a minute
23 because I had to take a piss. I went to the back of
24 the hallway and took a piss in the corner.

25 "When I turned around I started walking to the

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1 house, and the door was already wide open. There
2 were three people in the house. There were two males
3 and one female. One of the younger males was
4 bleeding somewhere from around his head. He was
5 already injured. He had blood on the counter. There
6 was a female standing there by the door. There was
7 an old dude, the one that got killed, was lying on
8 the floor in front of the couch on his stomach.

9 "I then heard Teran demanding money from the
10 older dude. I then told the female to take her
11 clothes off. She was Mexican. I told her to take
12 her clothes off because I did not want to go in her
13 pockets. I was just going to take her clothes. I
14 heard the man tell Teran, 'You got my wallet. The
15 money is in the machines.' Teran then said, 'This
16 ain't all of it. Give it to me or I'm going to kill
17 you.' After Teran said that, the dude on the floor
18 must have grabbed the gun because Teran started
19 kicking him and telling him to let go of the gun.

20 I then went over to assist Teran to get the gun
21 back. Let me correct that. "I then went over there
22 to assist Teran to get the gun out of Teran's hand.
23 I hit the dude three times with the gun to get the
24 gun away. I hit him in the back of his head and his
25 ribs.

1 "While this was going on, this was when the
2 Mexican lady ran it of the house. I went behind her
3 but I did not see which way she went. I ran
4 downstairs and before I got out I heard a gunshot. I
5 then ran out the building but I did not see the
6 woman. I then ran back upstairs and I saw that both
7 top apartment doors were open. I then went back to
8 the one we were robbing, we were going to rob, and I
9 went to the dude that was on the floor.

10 "I hit him a couple of times telling him to give
11 me the keys. He did not respond. After he did not
12 respond a few times, I ran through the house to make
13 sure that Teran was not back there getting money out
14 of the machines. When I did not find Teran I ran out
15 of the building with nothing in my hands.

16 "When I got outside I saw Boo and Teran in the
17 truck by the apartment by the pool. They looked like
18 they were about to go. They then saw me and they
19 turned to get me. They started backing up and when
20 they were take backing up we got stuck. The truck
21 got stuck and we just got out and ran. We all split
22 up.

23 "I met up with Boo on Decker Boulevard by the
24 Subway and he called one of his girls to come pick us
25 up. She actually picked us up on Two Notch Road. I

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1 don't know her name but she drives a white car. We
2 called from a friend's house of mine. I don't know
3 the girl's name, but if you turn right off of
4 Shakespeare Road you go past the lake and it's the
5 first road past the lake. Her house is about five or
6 six up on the left. It's a brick house with a lot of
7 trees. They have a white Crown Vic or orangish Chevy
8 Caprice.

9 "I did not see Teran again you until sometime
10 the next morning. Me and Boo went over to Leesburg
11 Road to where Teran stays sometimes. The reason I
12 went up there is because Teran was sending threats.
13 A girl that I know by the name of Searock called me,
14 and I was told that he was saying that he was going
15 to get me locked up and that he was going to have
16 someone kill me from jail. He was telling people
17 that I shot the guy.

18 "Once I got to Leesburg Road Teran denied
19 threatening me. So at this point is when I realized
20 that the guy was dead and it was not just an armed
21 robbery. Teran actually had a newspaper and he
22 showed me the paper. At that point the guy's house
23 we were at, Dogman, entered the room, and I was like,
24 'Man, you got to be playing.' Teran was like, "No,
25 man. The man is dead.' Dogman said, 'Yeah, yeah.

1 The man is dead.'.

2 I then asked Teran, 'Where did you shoot him
3 at?' And Teran said, 'I shot him in the leg.' I
4 then said, 'How did you shoot him in the leg and he's
5 dead?' I then told him, 'Man, I don't have nothing
6 to do with a murder charge.' I told him that he was
7 on his own with that murder charge. That is when me
8 and Boo left. We went back to my sister's house, and
9 that's the last time I heard from Teran."

10 Question: "Where is the address on Leesburg Road?

11 Answer: "I think it is off of Trotter Road.

12 Question: "What does Dogman look like?"

13 Response: "He has brown skin. He has a neat
14 afro. He dresses in light clothes all the time. He
15 is around 200 pounds, about and around
16 five-foot-eight. He is in his early or
17 mid-thirties."

18 Question: "Why did the two of you pick that
19 apartment to rob?

20 Answer: "Because it was an illegal gambling
21 house, we knew they would not report that we just
22 robbed them.

23 Question: "How did you know about this place?"

24 Response: "I had been there before. It was
25 about two weeks to a month ago."

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1 Question: "Did you shoot the man inside the
2 apartment?"

3 Response: "No."

4 Question: "Besides the man that got shot, did
5 you hit anyone else?"

6 Response: "No."

7 Question: "Were you wearing anything over your
8 face?"

9 Response: "I had a little black scarf covering
10 my mouth and mouth."

11 Question: "Did you know that Teran was going to
12 shoot the man?"

13 Response: "No, sir."

14 Question: "Did Boo know that you and Teran were
15 about to rob the place?"

16 Response: "I can't say yes or no about that
17 one. We talked about it in his presence. I don't
18 know if he heard us or not."

19 Question: "Do you know where the gun is now?"

20 Response: "Not exactly. I was just told that
21 the gun is in the woods by The Reserves, but I was
22 only told that it was seen in a truck that picked him
23 up."

24 Question: "Do you know who picked him up?"

25 Response: "I think his baby's mama."

1 Question: "Do you know her name?"

2 Response: "No."

3 Question: "After the shooting did Teran ever go
4 back to your sister's house?"

5 Response: "No."

6 Question: "How many times prior had you gambled
7 at the apartment?"

8 Response: "I've played there two times before."

9 Question: "What were you wearing the night of
10 the shooting?"

11 Response: "I had on black shoes, white shorts
12 and a red shirt. I also had on some gray jogging
13 pants."

14 Question: "What type of red shirt?"

15 Response: "I think it was a plain red shirt."

16 Question: "Is it possible that you had on a red
17 and white jersey?"

18 Response: "It's possible. I was just so high
19 and drunk."

20 Question: "What is Boo's real name?"

21 Response: "Harry Dukes."

22 Question: "What was Boo wearing?"

23 Response: "I can't remember."

24 Question: "What was Teran wearing?"

25 Response: "I think he had on a pair of my

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1 Dickie pants. I think they were brown."

2 Question: "Do you have anything else to add?"

3 Response: "I am innocent of murder. I did not
4 murder anyone. I did not pull the trigger. I did
5 not kill nobody."

6 That concludes the statement.

7 Q In that statement he refers to they said they were
8 going to do a licking at The Reserves. What does
9 that mean?

10 A That's a common term for robbing someone.

11 Q And they referred to a man named Dogman. Were you
12 able to identify who Dogman was?

13 A Dogman is Frank Hughey.

14 Q And did you or some of the investigators ever make
15 contact with Frank Hughey?

16 A Yes. I did.

17 Q And in fact had you already spoken to him prior to
18 picking up Teran Scott or Octavia Middleton?

19 A Yes, I had.

20 Q I want to turn your attention to August the 12th of
21 2005. Did you receive a call from the desk sergeant?

22 A Yes, I did.

23 Q And did you get some information about the gun? You
24 can't say what you got. But did you get some
25 information?

1 A Yes.

2 Q As a result of that call where did you go?

3 A Went to [REDACTED], apartment number [REDACTED].

4 Q And is that the same apartment complex where you had

5 arrested Teran Scott two days prior?

6 A That is the same apartment complex.

7 Q Once you got to there, who did you make contact with?

8 A It was myself and Captain Stan Smith. And we knocked

9 on the door of [REDACTED] and no one came to the door.

10 Q What did you do then?

11 A At that point we went back to [REDACTED] where Teran Scott

12 had been arrested and spoke to Jessica Richardson.

13 Q And that's the young woman that testified I believe

14 yesterday?

15 A Yes, she did. Correct. Yes.

16 Q And did you speak to Jessica Richardson about the

17 gun?

18 A Yes.

19 Q And what did you ask her?

20 A I asked her if she knew where the gun was, and she

21 stated she --

22 Q You can't say what she said.

23 A Oh. That's correct.

24 Q I'm sorry.

25 A I did ask her if she knew where the gun was.

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- 1 Q You can't say what it was. But did she give you some
2 information?
- 3 A Yes, she did.
- 4 Q Did anyone else show up at Jessica Richardson's
5 apartment while you were there?
- 6 A Yes.
- 7 Q And who was that?
- 8 A Frank Hughey or Dogman.
- 9 Q Dogman?
- 10 A Mm-hmm (affirmative). They are both the same.
- 11 Q And while you were there, what happened as far as the
12 gun went?
- 13 A While we were there Frank Hughey entered the
14 apartment carrying the shotgun.
- 15 Q And what is Frank Hughey's relationship to either
16 Octavia Middleton or Teran Scott?
- 17 A He is related -- my understanding is he is related to
18 Teran Scott.
- 19 Q And did he actually hand the gun over to Captain
20 Smith while you were there?
- 21 A Yes, he did. It was wrapped in a sheet and he gave
22 it to Captain Smith.
- 23 Q I'm going to show you state's Exhibit 176. Is this
24 the gun that was turned over to you that day by Frank
25 Hughey?

- 1 **A** That's it. Yes, ma'am.
- 2 **Q** Were you also able to confirm that day that the
3 truck, the silver and gray truck was stolen from a
4 Mr. Rickenbaker?
- 5 **A** One second. I believe the truck belonged to someone
6 else. Hold on a minute. I know we have two trucks
7 involved and I can't remember. Yes. Yes. Yes.
8 That one truck did belong to Mr. Rickenbacker.
- 9 **Q** I want to turn your attention to August the 15th of
10 '05. Did you make contact with a Kenyon Graham?
- 11 **A** Yes, ma'am, I did.
- 12 **Q** And were you able to confirm that the shotgun had
13 been stolen from him?
- 14 **A** Yes.
- 15 **Q** That day also did you make contact with Frank Hughey
16 again?
- 17 **A** I did.
- 18 **Q** You can't say what he said. But did you get a
19 statement from him?
- 20 **A** Yes, ma'am, I did.
- 21 **Q** Did you attempt to corroborate some of the things
22 that Octavia said had happened as far as places they
23 went, say, Leesburg Road and all that?
- 24 **A** That's correct. Yes.
- 25 **Q** And were you able to corroborate any of that?

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1 **A** Leesburg Road -- I found out who lived at Leesburg
2 Road.

3 **Q** And who lived there?

4 **A** That's Frank Hughey, Dogman. I attempted to find the
5 address that he explained that they went to and a
6 female picked them up and drove to off of Shakespeare
7 Road. We were unable to locate that residence.

8 **Q** During the course of your investigation I believe
9 that there was a cellphone that was recovered from
10 the bed of one of the trucks?

11 **A** That is correct.

12 **Q** And did you meet with Investigator Trish Collins and
13 get some phone numbers off that --

14 **A** Yes, ma'am, I did.

15 **Q** -- phone? And I'm going to show you. The phone
16 records are in evidence. Is this a copy of the phone
17 records that you all received in reference to that
18 phone?

19 **A** Yes, ma'am.

20 **Q** And did you actually do some research as far as who
21 had -- what phone calls had been placed?

22 **A** Yes. First of all, I determined who --

23 **MR. HISKER:** Objection. There is no basis for
24 any -- he has no basis for this knowledge.

25 **THE COURT:** Lay some foundation.

1 Q How did you go about tracking down what phone numbers
2 were on those phone records?

3 A Two ways first of all. First of all, we went on the
4 phone and got some phone numbers off the phone.

5 Q Off the phone itself?

6 A Did a search warrant. Investigator Faust had a
7 subpoena sent to get the phone records for the phone.
8 Then when they came in I started reviewing the phone
9 records. And I went from the incident time. I said,
10 okay, when was the last time this phone was used by
11 the victim that it belonged to? And then at that
12 point I went from there and I started calling the
13 numbers that had been called on the phone.

14 Q And whose phone was it actually?

15 MR. HISKER: Objection.

16 THE COURT: What's the objection?

17 MR. HISKER: It's going to be hearsay as to who
18 those phone numbers are.

19 MS. CAMPBELL: It's a public record that he
20 researched.

21 THE COURT: Overruled. Go ahead.

22 MS. CAMPBELL: Thank you.

23 Q Whose phone was it actually?

24 A It was actually Walter Huggins', his son's cellphone.

25 Q And as far as taking it from the time forward that

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1 you did the research, what phone calls were placed?

2 A Do you want me to read them off to you?

3 Q Mm-hmm (affirmative).

4 A All right. At 2057 hours a Constantine Brown was
5 called. She lives at [REDACTED]. At 2058,
6 2059, 2101 and 2109 Frank Hughey was called. That's
7 Dogman. At 2111 Tony Craft was called. At 2113
8 Frank Hughey was called again, Dogman. At 2117 Blue
9 Ribbon Taxi Cab Service was called. At 2125, 2126
10 and 14 seconds and 2126 36 seconds Frank Hughey was
11 called again, Dogman. And the final call was at 2127
12 hours, and it was Blue Ribbon Taxi Cab again.

13 Q And were you able to figure out that there were three
14 different people, I think individuals you mentioned?
15 Of course you've already testified what Frank
16 Hughey's relationship was?

17 A That's right.

18 Q Do you know what the relationship was with the other
19 two people?

20 A Let me -- if you could give me one second, I'll
21 review my notes.

22 Q Yes, sir. The Craft individual, I'm not sure of the
23 relationship with him. I believe I do know the
24 relationship with the female that he called, the
25 first call, Constantine Brown. If you'll give me one

1 second.

2 **MR. HISKER:** Judge, I'd ask my objection to
3 continue through this line.

4 **THE COURT:** Yes, sir. I am considering it as
5 continuing.

6 **A** I'm ready.

7 **Q** Okay.

8 **A** Constantine Brown lives at [REDACTED], and
9 she knows Frank Hughey, Dogman. And that's where
10 that phone call was placed to.

11 **Q** And did you actually make contact with her?

12 **A** I did.

13 **Q** You were the chief investigating officer in this
14 case?

15 **A** I was the supervising officer in the case, yes.

16 **Q** And as far as Octavia Middleton, in regard to him,
17 was there any evidence that he ever was the driver of
18 the car that night?

19 **A** No. We did not have any evidence of that.

20 **Q** Finally, who all was charged with this murder, armed
21 robbery --

22 **MR. HISKER:** Objection.

23 **THE COURT:** Sustained.

24 **Q** You mentioned earlier that you took a statement from
25 Harry Dukes?

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1 **A** That's correct.

2 **Q** Was he charged with this crime?

3 **A** Yes, he was.

4 **Q** When you went to arrest Teran Scott, did you observe
5 him being patted down as he was being arrested?

6 **A** Yes.

7 **Q** And I show you State's Exhibit No. 184. Do you
8 recognize those?

9 **A** They are two shotgun shells. I do recognize them.
10 They were pulled out of Teran Scott's pockets the
11 night he was arrested.

12 **MS. CAMPBELL:** Your Honor, at this time we'd
13 offer 184 into evidence.

14 **MR. HISKER:** No objection.

15 **THE COURT:** Without objection.

16 (WHEREUPON, State's Exhibit No. 184 is admitted
17 into evidence.)

18 **Q** And these are the shell casings?

19 **A** That's correct.

20 **Q** When you were interviewing Octavia Middleton, did you
21 notice anything about his arms?

22 **A** I'm sorry. I couldn't hear the question.

23 **Q** When you were interviewing Octavia Middleton, did you
24 notice anything about his arms?

25 **A** Yeah. He had some scratches on his arms.

1 **MR. HISKER:** Subject to my previous objection.

2 **THE COURT:** Subject to the defendant's previous
3 objection.

4 **COURT REPORTER:** I need the numbers, please.

5 **Q** I'm going to show you State's Exhibits 56 through 59.
6 Do you recognize those photos?

7 **A** When I saw the scratches on Octavia Middleton's arms,
8 I requested a lab unit to come take photographs of
9 the scratches. And that's what these pictures are.
10 These are how they appeared that day, the scratches.
11 Photographs were taken.

12 **Q** And that would be August the 11th, the date that you
13 actually took him into custody?

14 **A** Yes, ma'am. That's correct.

15 **MS. CAMPBELL:** Your Honor, at this time we'd
16 offer them I believe subject --

17 **THE COURT:** They're admitted subject to the
18 defendant's previous objection.

19 (WHEREUPON, State's Exhibit No. 56 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 57 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 58 is admitted
24 into evidence.)
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1 (WHEREUPON, State's Exhibit No. 59 is admitted
2 into evidence.)

3 MS. CAMPBELL: Permission to publish?

4 THE COURT: Yes, ma'am.

5 MS. CAMPBELL: Thank you.

6 Q Beg the Court's indulgence. Finally, were you aware
7 that other investigators interviewed Octavia later
8 that day, too?

9 A Yes. Yes, ma'am.

10 Q Thank you. Please answer any questions of the
11 defense.

12 THE COURT: Cross examination.

13 MR. HISKER: May it please the Court.

14 CROSS EXAMINATION

15 BY MR. HISKER

16 Q Good morning.

17 A Good morning.

18 Q When you first met with Mr. Teran Scott, he denied
19 his name, didn't he?

20 A Yes, he did.

21 Q And you described him as extremely angry and violent?

22 A He was extremely upset.

23 Q And you also described Mr. Teran Scott as cussing and
24 yelling?

25 A That would be accurate.

- 1 Q Teran Scott spit in Deputy Baker's face?
- 2 A That's correct.
- 3 Q And when you put him in the patrol car Teran Scott
- 4 kicked out the window?
- 5 A That would be correct.
- 6 Q And you actually found those shotgun shells in his
- 7 pocket?
- 8 A I didn't find them, but they were found in his
- 9 pocket. Yes, sir.
- 10 Q On his person at that time?
- 11 A That's correct.
- 12 Q You'd agree that Teran Scott is probably best
- 13 described as a dark-skinned male?
- 14 A No, I wouldn't agree with that.
- 15 Q You wouldn't describe him as a light-skinned male,
- 16 would you?
- 17 A To be honest with you, I haven't seen him in two
- 18 years. So I couldn't answer that question.
- 19 Q When you sat down with Mr. Middleton, you gave him
- 20 some details about the case, didn't you?
- 21 A I asked about the case. I asked about the shooting
- 22 of the case.
- 23 Q But in the course of an interrogation it's a common
- 24 practice to give a suspect some details?
- 25 A Most of the time during an interview you do not want

1 to give the suspect the details because they will
2 come out. If they're telling the truth, I don't want
3 to give them the details about the crime. I want
4 them to give it to me. That way it can be in full
5 detail.

6 Q But you did give him some details in this case? . .

7 A No, I did not.

8 Q You didn't ask him about the shotgun shells found?

9 A He was sitting there and I asked him about shotgun
10 shells found at his residence. That's right.

11 Q But during the course of the interrogation another
12 officer also comes in the room, and you asked him
13 about a jersey found at the house?

14 A That is correct.

15 Q And you also told Mr. Middleton there was blood found
16 on that jersey, didn't you?

17 A I did. At the time we believed there was blood on
18 the jersey. That's correct.

19 Q So the jersey in your inspection did not appear to be
20 laundered?

21 A I've never even seen the jersey. I was at
22 headquarters with Mr. Middleton. And I had officers
23 at the scene. So I did not see it.

24 Q But it was your information that there was something
25 on the jersey?

- 1 A That's correct.
- 2 Q But that turned out not to be blood?
- 3 A That's what I was informed of.
- 4 Q But those are details that you gave Mr. Middleton?
- 5 A I asked him about a jersey at his house, yes; if
- 6 that's what you're asking me.
- 7 Q You asked him about the gambling house, too, didn't
- 8 you?
- 9 A To get to the point, yes. I believe I probably did.
- 10 Q So you do provide some details about the incident
- 11 when you're interrogating a suspect?
- 12 A Well, if you don't, if you don't start off and you
- 13 don't tell them any idea of what we're questioning
- 14 them about, they won't have any idea. I'm pretty
- 15 sure I said it's about a shooting at the The Reserves
- 16 Apartments.
- 17 Q But you agree that you do provide some details to
- 18 suspects when you're interviewing them?
- 19 A To start it out, yes. You do not give the suspect
- 20 details of what type of weapon was used, things such
- 21 as that.
- 22 Q Now, on this statement that you took from Mr.
- 23 Middleton, you testified on direct that there is this
- 24 advice of rights at the top of that form?
- 25 A That's correct.

1 Q And that's just a sham for this, isn't it?

2 A What do you mean?

3 Q For this purpose. Because Mr. Middleton never saw
4 that advice of rights form when he gave that
5 statement, did he?

6 A I -- he signed it, and I gave him a chance to read
7 over the form when he signed it.

8 Q But you interviewed him at length before he ever saw
9 that printout. Is that correct?

10 A That would be correct.

11 Q So you sit down and interrogate a suspect before any
12 of that is even typed up in the computer?

13 A That's correct.

14 Q And you agree when you sat down with Mr. Middleton in
15 Captain Smith's office you never read him any of
16 those rights?

17 A Well, his rights were read beforehand.

18 Q Approximately an hour and a half earlier?

19 A No.

20 Q When you sat down with him this time, you never
21 advised him of his rights?

22 A First of all, it wasn't an hour and a half. It was
23 probably 45 minutes. Okay? And, secondly, when we
24 sat down for the second interview, no, I did not go
25 back and advise him of his rights.

1 Q You did not. And you didn't ask him about anything
2 that had happened to him while he was sitting alone
3 in that D cell, did you?

4 A When he was sitting in the D cell I never talked to
5 him.

6 Q So once you put him in that D cell you have no idea
7 what happened to Mr. Middleton?

8 A That would be correct.

9 Q You didn't ask him what changed his mind about why he
10 all of a sudden wants to talk to you?

11 A No, I did not ask him why he wanted to talk.

12 Q You have no way of knowing whether other
13 investigators interrogated Mr. Middleton, correct?

14 A If -- if that happened, it would be highly unlikely
15 since I was the case officer on the case.

16 Q It's true that any officer could enter that room,
17 correct?

18 A That is correct.

19 Q Just like Officer Barnes did, correct?

20 A Well, it's not a room. It's a holding cell where the
21 door is kept locked. And if you want to get
22 attention of somebody that's walking by there, you
23 either have to knock on the door, kick on the door or
24 yell, and then that officer will come there.

25 Q The question, sir, was: Any officer could open that

- 1 door from the outside and go in, correct?
- 2 A That's correct. That is correct.
- 3 Q And that what Officer Barnes did, correct?
- 4 A Officer Barnes opened the door I'm assuming and
- 5 talked with Octavia.
- 6 Q And Investigator Barnes didn't have to get your prior
- 7 approval before opening that door, did he?
- 8 A No, he did not.
- 9 Q Even though you're the chief investigating officer?
- 10 A That's correct.
- 11 Q And you'd agree there were many officers working on
- 12 this case?
- 13 A There were many officers assists.
- 14 Q And you can't keep track of all these officers, can
- 15 you?
- 16 A No, I cannot.
- 17 Q So you have no way to tell this jury that another
- 18 investigator did not go in that room?
- 19 A I have no way of saying that, but that's highly
- 20 unlikely.
- 21 Q You say it's highly unlikely?
- 22 A That's right.
- 23 Q But you have no way to say that it didn't occur?
- 24 A That's correct.
- 25 Q And Mr. Barnes went in that room without your

1 pre-approval, correct?

2 A That's correct.

3 Q So any other officer out of the 20 or so working on
4 this very case could have went in that room?

5 A Could have.

6 Q And there is no way for you determine the likelihood
7 of that, is there?

8 A No, there's not.

9 Q You don't have any way to determine whether or not
10 any other investigators gave him more details, do
11 you?

12 A No, I do not.

13 Q And you don't -- it's possible that any investigator
14 could have told him about the details of this crime?

15 A It's possible.

16 Q It's possible?

17 A But once again, I'm going to say it's extremely
18 highly unlikely. I would not go to someone else's
19 prisoner and start questioning them about a case that
20 they really have no idea about what has really
21 occurred. You're asking me if it's possible. It's
22 possible. But I'm telling you it's highly unlikely.
23 It's almost unethical.

24 Q You agree that officers occasionally will step in and
25 help out on a case?

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- 1 A I do agree with that.
- 2 Q Without prior approval of the investigating officer,
3 correct?
- 4 A Somewhat, yes. It's possible.
- 5 Q Officers are involved investigations all the time.
6 They could have just as easily attempted to interview
7 Mr. Middleton?
- 8 A They could have, but they would have known no facts
9 of the case like I know them and Investigator Faust
10 knew them. Therefore, why would you interview
11 someone that you have no knowledge of the case about?
- 12 Q Well, Mr. Lindler (sic) came in the interview while
13 you were interviewing him. When you were
14 interviewing Mr. Dukes, you had several investigators
15 coming in and out of that interrogation, correct?
- 16 A That would be correct.
- 17 Q So it's pretty safe to say that the information is
18 shared among officers?
- 19 A That --
- 20 Q Right?
- 21 A That would be correct.
- 22 Q So they would know the information?
- 23 A They wouldn't know the details of the crime as the
24 two officers that are working the case know it.
- 25 Q You have no way to tell this jury -- let me go back.

1 The advice of rights form, after you interrogated him
2 at length and you present this form to him with the
3 advice of rights on top that talks about coercion,
4 you don't have any way to tell this jury that some
5 other officer didn't coerce him in the meantime?

6 A When he was in D cell he was in D cell by himself. I
7 was in an interview. So I don't know what was going
8 on.

9 Q So you have no idea whether anybody else contacted
10 him?

11 A That's correct.

12 Q When you were interrogating Mr. Middleton he never
13 told that you Dukes knew about the robbery, correct?

14 A Can I review, refer to my notes? When I asked him if
15 Boo or Harry Dukes knew about the robbery that was
16 going to take place, he said, "I can't say yes or no.
17 They were talking about it in front of him." That's
18 what he said.

19 Q But he did not want to say that he knew what was
20 going on?

21 A That's correct.

22 Q And when you were interviewing Mr. Middleton, it was
23 clear that Mr. Middleton knew where the gambling
24 house was, correct?

25 A That's correct.

1 Q And he told you he had been there several times?

2 A That is correct.

3 Q And there is no question. He knew exactly where it
4 was?

5 A He said he had been there.

6 Q When you retrieved the gun, you actually met with
7 Mr. Hughey before he brought in the gun, didn't you?

8 A Yes.

9 Q And you gave him some gloves so that he wouldn't put
10 fingerprints on that gun?

11 A Captain Smith gave him some gloves where he wouldn't
12 put fingerprints on it.

13 Q And then he went out of your sight and retrieved the
14 gun and brought it back?

15 A That's correct.

16 Q And that's not the normal way of collecting evidence,
17 is it?

18 A Normally you would like to be present when the
19 evidence is collected. However, some people are
20 hesitant about relinquishing evidence such as that to
21 the police because they may not trust the police or
22 be afraid what we would do, possibly charge them for
23 a crime for having it in their apartment. So the
24 answer to your question is, normally we would like to
25 be there but in this case we weren't.

- 1 Q In your investigation you didn't find any blood
2 evidence whatsoever at Mr. Middleton's residence, did
3 you?
- 4 A No, we did not.
- 5 Q You didn't find any gun powder residue on any of Mr.
6 Middleton's clothing or other items?
- 7 A That's correct.
- 8 Q At his residence?
- 9 A That's true.
- 10 Q And the blood that you did find on the shorts,
11 through your investigation you've learned that that
12 was Mr. Middleton's blood?
- 13 A No. I don't know that. No, I do not know that.
- 14 Q But you do realize, you do remember that those were
15 found in the laundry room?
- 16 A No. I was not there when the search was conducted.
- 17 Q You were not?
- 18 A I was there merely -- when we got Octavia, Octavia
19 and I left after he smoked his cigarette.
- 20 Q But you're the chief investigating officer on this
21 case?
- 22 A That's correct.
- 23 Q And you reviewed all the details in the file?
- 24 A I reviewed most of them. Yes.
- 25 Q So you would agree that the other items were not in

1 the laundry room. Only the shorts were in the
2 laundry room?

3 A Once again, I'm not going to say that because I'm not
4 sure where they were located. So, I was interviewing
5 Mr. Middleton. I don't know where they were located.
6 I had my primary investigator that was in charge do
7 that.

8 Q In your experience blood is kind of a difficult thing
9 to get out of clothing, isn't it?

10 A I don't know.

11 Q You don't know that?

12 A No, I do not know that.

13 Q Nevertheless, no blood evidence in that house?

14 A That's correct.

15 Q Thank you. I have no further questions.

16 REDIRECT EXAMINATION

17 *BY MS. CAMPBELL*

18 Q No blood evidence found in Teran Scott's house
19 either, was there?

20 A No, there was not.

21 Q No blood evidence found in Harry Dukes' house?

22 A No.

23 Q He asked you about the D cell. Describe to this
24 jury, what is the D cell and what's its purpose?

25 A The D cell is a holding cell. It is -- and I can

1 explain it to you. Investigations at the Richland
2 County Sheriff's Department is a rather large room.
3 You can go out one of the doors and you have a
4 hallway right here. D cell is made of steel pretty
5 much and it's a locked door. Normally you can only
6 lock it from the outside. And that's where we would
7 detain people, hold them waiting on transport,
8 transportation or what have you. If we need to
9 finish paperwork, we would have them there while we
10 are finishing paperwork where they are in a secure
11 environment, where they cannot harm themselves, get
12 out and possibly harm someone else.

13 Q And is it normal for various investigators just to
14 wander into the D cell and interrogate other people's
15 defendants?

16 A No. That's highly, highly improper. And as I said,
17 I wouldn't want someone doing that because they know
18 nothing about the case. You want the -- the people
19 that need to interview the defendants or the suspects
20 in the case are the case officers. They know
21 everything about the case at this point. Therefore,
22 I wouldn't go up to a -- an investigator walking
23 around headquarters wouldn't say, well, let me go
24 talk to this guy about a murder and see if he
25 committed a murder. That's improper. That's not

1 done like that. The only people that would talk to
2 them would be those in charge of the investigation.

3 Q And who was in charge of this investigation?

4 A Myself, Investigator Faust were the two lead
5 investigators.

6 Q And who was your supervisor that you would have kept
7 informed about the details of the case?

8 A Captain Stan Smith.

9 Q He mentioned that Eric Barnes went in there and
10 talked to him, didn't he?

11 A He said that, yes.

12 Q And when Mr. Barnes made contact with him, did he
13 question him in any way about the facts?

14 A No, he did not.

15 Q And, in fact, what did he do?

16 A Eric Barnes came to me and says, "An individual in D
17 cell wants to speak with you."

18 Q And if anyone did make contact with the defendant
19 while he was in the D cell, would they report that to
20 you?

21 A Yes.

22 Q Did anyone other than Eric Barnes report any contact
23 with this defendant?

24 A Eric Barnes was the only one that made contact with
25 Octavia Middleton.

- 1 Q He asked you about having gone to the gambling house
2 before. Is that correct?
- 3 A That's correct.
- 4 Q And at one point did Octavia Middleton in his
5 statement mention to you that he was so high and
6 drunk he wasn't quite sure about things?
- 7 A Yes, he did.
- 8 Q Is it unusual -- let me put it this way. In your
9 experience, how long have you been in investigations?
10 As a police officer, how long have you been in
11 investigations?
- 12 A As A police officer, over 13 years.
- 13 Q And in your experience as a police officer, is it
14 unusual for a person to commit a shooting or a murder
15 and not get blood on them?
- 16 A It's -- it's not unusual. It could happen.
- 17 Q And is it unusual, even if they did get blood and/or
18 gunshot residue on them, to get rid of the clothes if
19 they think they need to?
- 20 A That happens a lot.
- 21 Q What you're telling this jury was, Octavia Middleton,
22 did he want to talk to you?
- 23 A He requested to speak with me.
- 24 Q Did he want you to understand his version?
- 25 A Yes, he did.

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1 Q And what was the main focus of what he was telling
2 you?

3 A It was the events of the shooting and the robbery,
4 the murder.

5 Q And who did he want to distance himself from?

6 A Teran Scott.

7 Q How many people did Octavia Middleton tell you went
8 inside that apartment that day?

9 A Two people.

10 Q And who were those two people?

11 A Octavia Middleton and Teran Scott.

12 Q Thank you.

13 MR. HISKER: Just very briefly, Judge.

14 THE COURT: Yes, sir.

15 RE CROSS EXAMINATION

16 BY MR. HISKER

17 Q You say it's unlikely that another investigator would
18 get involved in an interrogation, correct?

19 A That is correct.

20 Q But you'd agree there are a number of interrogation
21 tactics that officers use?

22 A Okay. I would agree with that.

23 Q And sometimes you could even tell a suspect that
24 you've got evidence that really doesn't exist,
25 correct?

1 A You could say that.

2 Q And there are times when you switch officers, switch
3 interrogators to give different perspectives and
4 different information?

5 A You could do that, but I'm telling you that was not
6 done in this case.

7 Q You say it was not done in this case. But you've
8 also said you have no way of knowing that, correct?

9 A That is correct. But as I testified to, if someone
10 else would have stepped and tried to talk with
11 Octavia Middleton, then they would have brought that
12 to my attention. That didn't happen.

13 Q It's also -- investigators sometimes will tell a
14 suspect that they need to cooperate because a
15 co-defendant is pointing at them, correct?

16 A That's been done before, yes.

17 Q And they've told that person, if you don't cooperate
18 with us, we're going to believe your co-defendant,
19 correct?

20 A Somewhat.

21 Q That's a tactic?

22 A Somewhat. That's correct.

23 Q No further questions.

24 THE COURT: Thank you very much, sir. You may
25 come down. May this witness be excused? Without

1 objection. Next witness.

2 MS. CAMPBELL: The State calls Sergeant Barnes.

3 ERIC BARNES, after being duly sworn, testifies
4 as follows:

5 THE CLERK: Thank you. Please have a seat in
6 the witness stand and state your full name for the
7 record.

8 WITNESS: Eric Barnes.

9 DIRECT EXAMINATION

10 BY MS. CAMPBELL

11 Q Sergeant Barnes, where are you employed?

12 A The Richland County Sheriff's Office.

13 Q And what do you do there, sir?

14 A I'm a sergeant in investigations.

15 Q And how long have you been in law enforcement?

16 A This month will be 20 years.

17 Q I'm going to turn your attention back to August the
18 8th of 2005. Were you in any way involved as an
19 investigator other than what takes place that day in
20 this case?

21 A No.

22 Q Did you have any knowledge of the facts of the case?

23 A No. Other than the fact that a shooting had occurred
24 and a killing had occurred. I had my own
25 responsibilities at the Sheriff's Office at that time

1 that did not have to do with that murder or shooting.

2 Q Were you aware who the primary officers were in the
3 case?

4 A I was.

5 Q On that day did something catch your attention that
6 made you make contact with Octavia Middleton while he
7 was in the D cell?

8 A Yes. I heard a beating on the D cell door.

9 Q Where were you when you heard it?

10 A I don't recall specifically where I was. My cubicle
11 is right by the hallway that the D cell runs
12 perpendicular off of. But I was right in that area.

13 Q But you were walking past the D cell at that point?

14 A It's hard to walk past that D cell because it's down
15 like a perpendicular hallway that's like a
16 cul-de-sac. It runs into a couple of offices. So
17 it's not a hallway that you would pass by. But I was
18 not walking past there. I was summoned to the door
19 by the beating on the door.

20 Q And when you heard the beating on the door, why would
21 you go -- did you know who was in there?

22 A I did not.

23 Q Why did you go down there?

24 A Because the person -- usually, several reasons why
25 they'd beat open door. Either they need something.

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1 Sometimes they need little things like toilet paper
2 or something like that. Sometimes they want to talk
3 to the investigator that put them in the D cell.
4 There's all sorts of reasons why they call us down
5 there. Sometimes they want to just rant and rave.
6 But we have civilian employees within the Sheriff's
7 Office and adjacent to that hallway. So we try to
8 check on them, check on the prisoners to make sure
9 everything is copesetic, everything is okay and try
10 to calm them down if they are getting out of hand.
11 But there are various reasons why --

12 Q And once you --

13 A -- they would call us.

14 Q -- went down there to check on who was making the
15 beating, who did you make contact with?

16 A The prisoner that was in there I later found out was
17 Octavia Middleton. And he said he wanted to talk to
18 the arresting officer.

19 Q And this is Octavia Middleton?

20 A That is correct.

21 Q And when you made contact with him, tell this jury
22 what conversations took place and what information
23 you gained?

24 A I don't recall the specifics of the conversation
25 other than the fact that I was trying to ascertain

1 what he wanted. He said he wanted to speak with the
2 arresting officer. And based on the description that
3 he gave me, and I asked him if this was in reference
4 to, you know, what crime; in other words, was it a
5 shooting, killing situation, and he said it was. And
6 his description of the officer that put him in the D
7 cell, I quickly realized it was Sergeant Ewing.
8 Q And you knew which case Sergeant Ewing was working
9 on, just not the details of it?
10 A Correct.
11 Q And at that point did you then try to question
12 Octavia Middleton?
13 A No, ma'am.
14 Q What did you do?
15 A I went and found Sergeant Ewing and said his prisoner
16 needed to see him.
17 Q And at that point did you have anything more to do
18 with Octavia Middleton?
19 A No, ma'am.
20 Q During the time when you were face-to-face with
21 Octavia Middleton checking on him, did you give him
22 any details of this crime?
23 A No, ma'am.
24 Q Did you know any to give him?
25 A I didn't have any. No, ma'am.

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1 Q While you were down there, did anyone else make
2 contact with Octavia Middleton?

3 MR. HISKER: Objection.

4 THE COURT: To his knowledge. Sustained. I
5 mean overruled.

6 MS. CAMPBELL: Thank you.

7 Q While you were there in the D cell face-to-face with
8 Octavia Middleton, did you observe anyone else trying
9 to make contact with him or tell him anything?

10 A I don't recall anything like that.

11 Q Thank you.

12 THE COURT: Cross examination.

13 CROSS EXAMINATION

14 BY MR. HISKER

15 Q Good morning, Investigator Barnes.

16 A Good morning.

17 Q You don't have a direct view of the D cell from your
18 office, do you?

19 A That is correct.

20 Q And when you're sitting there doing your work on
21 other cases, you just heard the loud banging?

22 A That is correct.

23 Q And, I mean, it was loud enough to go all the way
24 down to the hall and into your office?

25 A That is correct.

1 Q Was he yelling or anything else?

2 A I don't recall that.

3 Q But you say that he was at least --

4 A It was enough to get my attention to come down there
5 to check on him.

6 Q And he wanted to get your attention. And, again,
7 there is no way you can confirm that nobody went in
8 that D cell?

9 A That is correct.

10 Q You didn't need any special permission to get in that
11 room, did you?

12 A No. I didn't need any special permission to go into
13 the room, but I don't recall going into the room. I
14 recall talking to him through the plexiglass window.
15 I don't recall actually going into the room. But,
16 no, I didn't need any permission to do that.

17 Q And any officer can get into that room from the
18 outside?

19 A That is correct. Any officer could. I think I'd
20 have to echo some things that were already said on
21 the stand. We kind of look at our department as kind
22 of a professional -- I mean, we're pretty
23 professional. And --

24 Q But --

25 A I want to answer your question.

Eric Barnes - Cross by Mr. Hisker

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1 Q The question is --

2 MS. CAMPBELL: Objection, Your Honor. He has a
3 right to answer.

4 MR. HISKER: He doesn't --

5 THE COURT: Let him answer the question.

6 A Okay. And in a professional type of department, you
7 have an environment that is an underlying nod, if you
8 will, that certain things are done and certain things
9 aren't done. If we had an open situation where
10 everybody could go in and question everybody's
11 suspects or everybody's defendants or everybody's
12 victims, nothing would get done at the Sheriff's
13 Office. And our reputations would be on the line.
14 And we would have chaos in the streets because we
15 wouldn't be able to prosecute anything because
16 defense lawyers such as yourself --

17 MR. HISKER: I object to that.

18 THE COURT: Yeah. Object. Sergeant Barnes.

19 THE WITNESS: Yes, sir.

20 THE COURT: Answer the questions directly,
21 please.

22 THE WITNESS: Yes, sir. Yes, sir.

23 Q My question to you was, there is no way that you can
24 say that somebody did not go in that room?

25 A That is correct.

1 Q And a further question is that there's no question
2 that investigators do from time to time switch out of
3 an interrogation, correct, and help out in other
4 cases?

5 A That is correct.

6 Q So an investigator can -- if an investigator is
7 working on this case, you didn't have the
8 information, correct?

9 A That is correct.

10 Q But another investigator that was working on this
11 case very easily could have walked into that room?

12 A True.

13 Q Thank you. No further questions.

14 THE COURT: Anything further?

15 MS. CAMPBELL: No, sir.

16 THE COURT: All right. You may come down, sir.
17 Thank you very much.

18 WITNESS: Thank you.

19 THE COURT: May this witness be excused?
20 Without objection.

21 MS. CAMPBELL: The State would call Chief
22 Wilson.

23 DAVID WILSON, after being duly sworn, testifies
24 as follows:

25 THE CLERK: Thank you. Please have a seat in

1 the witness stand and state your full name for the
2 record.

3 **THE WITNESS:** I'm David Wilson.

4 **DIRECT EXAMINATION**

5 **BY MS. CAMPBELL**

6 **Q** Chief Wilson, where are you employed?

7 **A** At the Richland County Sheriff's Department.

8 **Q** What do you do there, sir?

9 **A** I'm a deputy chief over investigations, labs,
10 narcotics.

11 **Q** How long have you been in law enforcement?

12 **A** Twenty-nine years.

13 **Q** I want to turn your attention back to August the 11th
14 of 2005. Do you recall being present when an advice
15 of rights was done with Octavia Middleton?

16 **A** I do.

17 **Q** And I'm going to show you what's been marked as
18 State's Exhibit No. 1 and ask, number one, do you
19 recognize that?

20 **A** I do.

21 **Q** And is there a signature, actually one of your
22 signatures affixed as a witness on that case?

23 **A** Yes. That's correct.

24 **Q** Tell the jury how you became involved and what your
25 participation was, as limited it was?

1 A It was very limited in my participation in this case.
2 Sergeant Ewing at the time, now Chief Ewing, asked me
3 to witness the advice of rights of Mr. Middleton.

4 Q And did you do that?

5 A I did.

6 Q And were you present when the advice of rights were
7 read?

8 A Yes, sir. Yes, ma'am. I'm sorry.

9 Q And while you were present, did he go through each
10 and every one of those rights and go through it with
11 Octavia Middleton?

12 A He did. He checked them off, did little check boxes
13 as he went.

14 Q Is there also a part of that paper that talks about
15 the waiver of rights?

16 A The bottom part. Yes, ma'am.

17 Q And did he also go through the waiver of rights with
18 the defendant?

19 A He did.

20 Q And did the defendant acknowledge that he understood
21 his rights and wished to waive them in any way on
22 that piece of paper?

23 A Yes, he did.

24 Q And how did he do that?

25 A He -- both verbally and he signed it.

1 Q And then you would have affixed your signature
2 indicating he had signed that?

3 A That is correct.

4 Q And is that what happened in this case?

5 A That is correct.

6 Q And while you were present -- and that's all you were
7 present for. Is that correct?

8 A That is correct.

9 Q And for the record, did you at any time after that go
10 and get Octavia Middleton and give him details of
11 this case?

12 A No, ma'am.

13 Q Did you make any contact with him?

14 A I don't recall ever seeing him again.

15 Q And other than Sergeant Barnes and Investigator
16 Ewing, are you aware of anyone else that actually
17 interviewed him?

18 A No, ma'am.

19 Q And you're head of the department?

20 A That's right.

21 Q Thank you.

22 THE COURT: Anything further?

23 MR. HISKER: No questions, Your Honor.

24 THE COURT: All right. You may come down,
25 Chief. Thank you very much. May the witness be

1 excused? Without objection. Next witness.

2 **MS. CAMPBELL:** May I approach?

3 **THE COURT:** Yes.

4 (Whereupon, a bench conference is had)

5 **THE COURT:** All right, ladies and gentlemen.

6 Let's take the morning break. We've got a little --
7 a witness is on the way sort of thing. So they
8 should be here in just a few minnows. So let's take
9 a short break. Again, don't discuss the case among
10 yourselves while you're in the jury room. And we'll
11 call you when we're ready. Thank you very much.

12 (Jury out at 10:50 a.m.)

13 **THE COURT:** Solicitor, you said you had
14 something you need to take up with the Court?

15 **MS. CAMPBELL:** I think the only thing we need to
16 take up is Dukes. Basically he's got the same
17 pending charges, and then his prior record we need to
18 clarify. I think the only thing I see that's
19 admissible is a petit larceny.

20 **MR. HISKER:** Dukes?

21 **MS. CAMPBELL:** Yeah. All he has other than that
22 is a P.W.I.D. something.

23 **MR. HISKER:** Proximity?

24 **MS. CAMPBELL:** The courts have held that drugs
25 aren't -- I'll get that case for you. Drugs aren't

1 credible.

2 MR. HISKER: It's a conviction of a crime. 609.

3 THE COURT: Al-amin says --

4 MS. CAMPBELL: I believe State vs. Thomas
5 Bryant.

6 MR. HISKER: This is within proximity of a
7 school. It carries 15 years.

8 THE COURT: Prox?

9 MR. HISKER: Two counts, crack and powder.

10 THE COURT: All right.

11 MS. CAMPBELL: This is State v. Dunlap. I
12 apologize, Your Honor. I'm sorry. Bryant says it,
13 too.

14 MR. HISKER: Judge, you know, my argument is
15 that these deal with a defendant on cross
16 examination. This is not the situation. We have
17 a --

18 THE COURT: It's a witness.

19 MR. HISKER: This is a witness. It's 609. He
20 can be impeached by prior criminal activities.

21 MS. CAMPBELL: I think the rules apply to a
22 defendant and/or to a witness the same way as far as
23 credibility. That has always been my understanding.

24 MR. HISKER: I think that the protections for a
25 defendant have always been historically greater.

1 **THE COURT:** Right. They're greater. All right.
2 I'll look at it. And you said something --

3 **MS. CAMPBELL:** Yeah. The other thing, too; and
4 I just want to let the defendant know that, you know,
5 he met him in prison.

6 **THE COURT:** He what?

7 **MR. HISKER:** That's not admissible.

8 **THE COURT:** He what?

9 **MS. CAMPBELL:** He met him in prison. And I'm
10 going to instruct him not to talk about that.

11 **THE COURT:** Okay.

12 **MS. CAMPBELL:** But if he goes there, I'm just
13 trying to give him a heads up so that we don't have
14 another situation.

15 **THE COURT:** Well, life is fraught with
16 situations. Ten minutes.

17 (WHEREUPON, State's Exhibit No. 4-A is marked
18 for identification.)

19 (Whereupon, a break is taken)

20 **THE COURT:** Yes, sir.

21 **MR. HISKER:** Judge, we have an issue about the
22 letter. Can I hold it?

23 **MS. CAMPBELL:** You have your own copy.

24 **MR. HISKER:** It's my understanding the State is
25 going to put the co-defendant on the stand. He is

1 going to testify about a letter that he received in
2 the mail and he is going to allege that this letter
3 came from my client. There is not going to be any
4 handwriting analysis. There's going to be no expert
5 that this is my client's handwriting. No exemplars
6 were taken. I'd also object to the relevance of this
7 letter.

8 *THE COURT:* Let me see the letter. What is it?
9 (Document handed to the Court)

10 *MS. CAMPBELL:* It's a letter from Octavia
11 Middleton to Harry Dukes.

12 *THE COURT:* All right.

13 *MS. CAMPBELL:* Where he asked him about being
14 loyal, not testifying and stuff, and he talked about
15 the trial.

16 *MR. HISKER:* And I disagree with that
17 characterization.

18 *THE COURT:* Where is the original?

19 *MS. CAMPBELL:* It's coming. His lawyer had left
20 it in the car.

21 *THE COURT:* All right. What's the State's
22 position?

23 *MS. CAMPBELL:* Our is position is once we can
24 lay a foundation, if Harry Dukes can say that he
25 recognizes the handwriting, he has known Octavia

1 Middleton most of his life, once he lays that
2 foundation -- and there is case law, Your Honor, if
3 you want me to get it -- then it comes in. It's
4 talking about the trial and Mr. Dukes being loyal to
5 him and that we're going to come --

6 *THE COURT:* It's not signed by the defendant.

7 *MS. CAMPBELL:* That's his nickname, "Life". One
8 of them. That's how he signs his letters. That goes
9 to the weight, Your Honor. Our position is if Harry
10 Dukes -- and there are cases that say if he can say
11 that he recognizes the handwriting, that he has
12 written him other letters.

13 *THE COURT:* How is he going to do that?

14 *MS. CAMPBELL:* He's written him letters all the
15 time.

16 *THE COURT:* All the time?

17 *MS. CAMPBELL:* Well, I don't know "all the
18 time", Your Honor. He recognizes his handwriting.

19 *MR. HISKER:* He certainly won't be qualified as
20 an expert --

21 *MS. CAMPBELL:* No, sir.

22 *MR. HISKER:* -- to compare handwriting. And I
23 disagree with the statements about being loyal. It
24 talks about he talks to his lawyer. It does talk
25 about -- it talks about a case, but it's not

1 specific. It's unduly prejudicial, and it doesn't
2 really have any probative value at all.

3 *MS. CAMPBELL:* Your Honor, it's extremely
4 probative.

5 *THE COURT:* In what sense?

6 *MS. CAMPBELL:* In the sense that it talks about
7 how we can't find Frank Hughey, which is true, and
8 that's good for his case.

9 *THE COURT:* Frank Hughey is who?

10 *MS. CAMPBELL:* Frank Hughey is K-9. Dogman.

11 *THE COURT:* Dogman is not listed in here.

12 *MS. CAMPBELL:* However, he will identify that he
13 knows who K-9 is. And that's Dogman. And Dogman is
14 Frank Hughey.

15 *THE COURT:* "They still can't find K-9."

16 *MS. CAMPBELL:* "They" is "me".

17 *THE COURT:* Hmm?

18 *MS. CAMPBELL:* That's me. K-9 is on the run.

19 *MR. HISKER:* How do you know that?

20 *THE COURT:* Who is K-9?

21 *MS. CAMPBELL:* K-9, Harry Dukes will testify, is
22 Dogman who is Frank Hughey.

23 *THE COURT:* K-9, Dogman, Frank Hughey.

24 *MS. CAMPBELL:* K-9, you know, Dogman.

25 *THE COURT:* That's the first I heard of that,

1 too.

2 **MR. HISKER:** And what's the significance of not
3 being able to find Frank Hughey? I mean, is he going
4 to testify?

5 **THE COURT:** Well, maybe, maybe, maybe after
6 Dukes testifies, but this is -- I mean, this is
7 pretty far afield. I mean, I understand what you
8 believe it is.

9 **MS. CAMPBELL:** It's talking about this case,
10 Your Honor.

11 **THE COURT:** A, it's prejudicial. The question
12 is whether it's probative.

13 **MS. CAMPBELL:** I hope everything I put in is
14 prejudicial.

15 **THE COURT:** It's extremely prejudicial. Let me
16 say it that way.

17 **MS. CAMPBELL:** But it's also extremely
18 probative.

19 **THE COURT:** Now, the question is, what's the
20 probative value of it? Does that outweigh the
21 prejudicial value of it?

22 **MS. CAMPBELL:** Yes, sir.

23 **THE COURT:** And, plus, you've got all this
24 foundation stuff. It's not addressed to anybody.
25 It's not signed by anybody in this case. It doesn't

1 identify anybody by name. It's an expression of
2 collegiality.

3 MS. CAMPBELL: Your Honor, I can't help it if
4 they don't call each other by name. I mean, --

5 THE COURT: I know it. But how is the jury
6 going to -- what's the --

7 MS. CAMPBELL: "They still can't find K-9, so
8 that's good. Ain't no new evidence that I know of,
9 so everything is good. They are going to hate it
10 when the whole case falls apart right there in their
11 face. Our loyalty for each other is what's going to
12 get us through this. Be willing for them to come
13 into sweeter deals and bullshit talk."

14 THE COURT: I read it. I read it.

15 MS. CAMPBELL: I have the original if you want
16 to look at that.

17 THE COURT: Well, I assume it says the same
18 thing this one says.

19 MR. HISKER: It still doesn't imply -- it still
20 doesn't evidence guilt. It's talking about --

21 THE COURT: Well, if it's not evidence of guilt,
22 then we shouldn't worry about it. We should worry
23 about it if it's some evidence of guilt and if it's
24 prejudicial to his defense. That's why we should
25 worry about it.

1 **MR. HISKER:** Well, we'd have to have some
2 evidence of guilt to even be relevant. It's not
3 relevant for that reason, because you can't --

4 **THE COURT:** Then why --

5 **MS. CAMPBELL:** Then why are you objecting to it?

6 **THE COURT:** What's the indication that he's even
7 talking about this case?

8 **MR. HISKER:** That's what this witness is going
9 to attempt to say, if that's what they're talking
10 about.

11 **THE COURT:** Well, let the witness testify and
12 then I'll rule on it. The witness is going to
13 testify anyway, isn't he?

14 **MR. HISKER:** The witness is going to testify.

15 **THE COURT:** About his knowledge about this case.

16 **MR. HISKER:** Correct.

17 **THE COURT:** About his knowledge of the
18 participants in this case. That may lay enough
19 foundation to get it in. I don't know. The state
20 puts it in at its own risk. You know that. Are you
21 ready for the jury?

22 **MS. CAMPBELL:** Yes, sir.

23 **THE COURT:** Now, what about the 609 issue? Do
24 you want to examine the witness under 609 about
25 previous convictions within ten years?

1 **MR. HISKER:** Yes, sir. And in addition to that,
2 I would suggest not only I have the right to cross
3 examine him about any expectation of a benefit he is
4 going to get from his testimony.

5 **THE COURT:** You certainly do.

6 **MR. HISKER:** These convictions are classified as
7 serious offenses which means they're strikes.

8 **THE COURT:** They are pending, or are they
9 convictions?

10 **MR. HISKER:** They're convictions.

11 **THE COURT:** Okay.

12 **MR. HISKER:** And so those two strikes, he'd be
13 subject to life without parole.

14 **MS. CAMPBELL:** No, he is not. That's a
15 misstatement.

16 **THE COURT:** Well, I don't think you can go into
17 that because you're going to have to lay a lot more
18 foundation. To bring that in front of this jury, you
19 can talk about his convictions because they go to
20 credibility, and you can talk about what he is facing
21 in the way of for these charges, for these charges.
22 But I don't think you can go into enhancements, is
23 what you're talking about, without going back to the
24 whole statutory scheme of enhancements.

25 **MS. CAMPBELL:** What enhancement do you think

1 there is anyway?

2 **MR. HISKER:** These are serious offenses.
3 They're classified as serious.

4 **THE COURT:** I'm not going to allow enhancement.

5 **MS. CAMPBELL:** Just one of them is serious. And
6 you have to have two serious in order to enhance.

7 **THE COURT:** Well, you don't need to educate
8 counsel at this stage.

9 **MS. CAMPBELL:** Sorry.

10 **THE COURT:** All we need to know is can he go
11 into those items if they are convictions.

12 **MS. CAMPBELL:** Specifically, Your Honor, the
13 ones we think would be admissible is in the year 2000
14 he was arrested. He was convicted of petit larceny.

15 **THE COURT:** Okay.

16 **MS. CAMPBELL:** And I think the only other one in
17 dispute, unless you dispute this, is the P.W.I.D. and
18 P.W.I.D. within a half mile of a school.

19 **THE COURT:** That's the only one?

20 **MS. CAMPBELL:** From 2004. Is that correct?

21 **MR. HISKER:** I believe they're both in
22 proximity. Aren't they both proximity charges?

23 **MS. CAMPBELL:** No.

24 **MR. HISKER:** The convictions?

25 **MS. CAMPBELL:** No. He was only convicted of

1 one.

2 **THE COURT:** What was it? Cocaine or crack?

3 **MS. CAMPBELL:** It is --

4 **THE COURT:** Because those are separate offenses.

5 **MS. CAMPBELL:** It looks like it's cocaine.

6 **THE COURT:** Well, then there is probably one
7 possession and one proximity. That's the normal.
8 They go hand-in-hand. P.W.I.D. and prox go
9 hand-in-hand.

10 (Whereupon, counsel confer off the record)

11 **THE COURT:** Look. You all are arguing about
12 something that's not going to be in front of this
13 jury.

14 **MR. HISKER:** I mean, the fact is that he is
15 facing life anyway on the charges that --

16 **THE COURT:** All right. That's all we need. I
17 mean, you can talk about his criminal history. I
18 just don't want you saying that because you have two
19 strikes you are now eligible for life without parole
20 because that brings up the enhancement issue. And
21 that's what I'm ruling you can't do because then
22 you've got to lay the whole statutory scheme in front
23 of the jury as to what creates a strike or what
24 creates a serious offense, a most serious offense and
25 the whole thing about enhancement.

1 **MR. HISKER:** I should be able to ask him about
2 his expectation.

3 **THE COURT:** Sure.

4 **MR. HISKER:** That he could have been looking at
5 life without parole based on his prior record and
6 this.

7 **THE COURT:** What's he charged with in this case?

8 **MR. HISKER:** Murder, armed robbery.

9 **THE COURT:** That's life without parole. Murder
10 is life without parole.

11 **MR. HISKER:** I understand your ruling.

12 **THE COURT:** I mean, how many life without
13 paroles can you get?

14 **MR. HISKER:** I understand your ruling.

15 **THE COURT:** Okay.

16 **MS. CAMPBELL:** Are you ruling that he can get
17 into those, the drug charges?

18 **THE COURT:** The drugs charges, yes.

19 **MS. CAMPBELL:** The drug conversations.

20 **THE COURT:** Not the enhancements. Because
21 they're serious, most serious.

22 **MS. CAMPBELL:** I understand that part. But
23 under the law, isn't it now that we don't get into --
24 drug offenses aren't probative of truthfulness?

25 **THE COURT:** They're his record. They can come

1 in under 609(1)(a).

2 MS. CAMPBELL: And the case law I handed up
3 doesn't apply?

4 THE COURT: I didn't say that.

5 MS. CAMPBELL: Oh.

6 THE COURT: Let's go.

7 MS. CAMPBELL: Well, I just need to know what
8 you're ruling. Are you ruling they're coming in?

9 THE COURT: I'm going to let them in.

10 MS. CAMPBELL: And that's the extent of what
11 you're ruling in?

12 THE COURT: Yeah.

13 MR. HISKER: Judge, I do intend to cross
14 examine --

15 THE COURT: See, these cases talk about (a)(2).
16 We're not talking about (a)(2). We're talking about
17 (a)(1).

18 MR. HISKER: I intend to cross examination the
19 co-defendant about his time in prison with the
20 co-defendant, Teran Scott.

21 THE COURT: Okay.

22 MR. HISKER: It's my understanding if the State
23 intends to get into the fact that he may know my
24 client from prison, I object to that. That's not --

25 MS. CAMPBELL: Wait a minute. I didn't hear

1 you. I'm sorry. What were you trying to do?

2 **MR. HISKER:** If I cross examine the co-defendant
3 on his relationship with Teran Scott in the Allendale
4 prison, that's proper cross examination and it's not
5 opening the door to now the State getting into
6 whether my guy was in prison. I'm not going to
7 suggest, I'm not going to ask any questions that my
8 guy is an upstanding citizen. I'm not going to open
9 that door. But I have a right to question the
10 co-defendant about his time in prison.

11 **MS. CAMPBELL:** No, sir. If he opens that door,
12 then we get to get into the fact that he hung out
13 with Octavia Middleton while he was in prison.

14 **THE COURT:** Who hung out?

15 **MS. CAMPBELL:** Harry Dukes.

16 **MR. HISKER:** That's just a different door,
17 Judge.

18 **THE COURT:** Are they all in the same prison?

19 **MR. HISKER:** No. They weren't all --

20 **MS. CAMPBELL:** Teran Scott was never in prison
21 with Dukes.

22 **MR. HISKER:** Teran Scott and Dukes were in
23 Allendale.

24 **MS. CAMPBELL:** You got proof of that?

25 **MR. HISKER:** It's in the reports somewhere.

1 MS. CAMPBELL: It's in one of your statements.
2 A statement from a witness. It's not a report.

3 MR. HISKER: Is it in Dukes' statement?

4 MS. CAMPBELL: No. It's not in Dukes'
5 statement.

6 MR. GOLDBERG: No.

7 MR. HISKER: Well, I guess I ask that question
8 at my own peril then.

9 MS. CAMPBELL: I don't think he can refer to
10 the --

11 THE COURT: I don't see why not. I mean, I
12 don't see why he can't say that he -- and I don't
13 know what this is all about, whether Dukes talked to
14 Scott while they were in prison or Dukes talked to
15 Scott prior to today. But I think it is -- I think
16 Mr. Hisker is right, that the issue of whether Dukes
17 talked to Middleton or Scott talked to Middleton in
18 the jail, I mean, is this a snitch case? Is that
19 what this is?

20 MS. CAMPBELL: No. I think he's referring to
21 how they met while -- he just wants to bring out the
22 fact that he was in prison with Teran Scott. I think
23 that's what he wants to do.

24 MR. HISKER: On his drug convictions.

25 THE COURT: Well, and you want to bring out the

1 fact that he was in prison with Octavia Middleton.

2 **MS. CAMPBELL:** Yeah. What's fair is fair,
3 Judge.

4 **THE COURT:** Hmm? Fair is fair. But what's the
5 probative value? We're back to the probative value.

6 **MS. CAMPBELL:** For either one of them. I
7 concede that I don't think I should go into it. I
8 just say he shouldn't either.

9 **THE COURT:** Well, I don't know what information
10 he found out. It ought to be pretty evident to this
11 jury that most of these people are in jail after a
12 murder. But make your objection, a timely objection.
13 We'll rule on it. I don't know what he's going to
14 ask.

15 **MS. CAMPBELL:** Well, that's what I'm scared
16 about. Because once the question is out there, I
17 can't un-ask it.

18 **THE COURT:** What do you want to do? Do you want
19 to proffer this fellow's whole testimony?

20 **MS. CAMPBELL:** Or just what question he is going
21 to ask, is all I'm asking. Proffer that.

22 **THE COURT:** We don't even have a witness.

23 **MR. HISKER:** I've given the State sufficient
24 notice that I intend on going into that issue.

25 **THE COURT:** You intend on going into --

1 MS. CAMPBELL: What?

2 THE COURT: Is this --

3 MR. HISKER: The fact that he did time with the
4 third co-defendant.

5 MS. CAMPBELL: At that point then I think it
6 opens the door to the fact he did time with that
7 co-defendant.

8 MR. HISKER: No, it doesn't. It's a totally
9 different issue. My client's character is not an
10 issue. I'm not putting his character at issue. The
11 discussion of a similar subject does not
12 automatically put my --

13 MS. CAMPBELL: How is it probative?

14 THE COURT: Well, I don't know that he has to be
15 probative. You have to be probative.

16 MS. CAMPBELL: I have to be a lot of things.

17 THE COURT: The State has to be probative. His
18 test is relevance. He says it's relevant. I don't
19 know.

20 MS. CAMPBELL: That's fine. Nothing further.

21 THE COURT: Are we ready to proceed?

22 MR. HISKER: Yes, sir.

23 THE COURT: Who is your next witness?

24 MS. CAMPBELL: Dr. Nichols.

25 THE COURT: Get Dr. Nichols in and out.

1 **MS. CAMPBELL:** Yes, sir.

2 **DR. NICHOLS:** Thank you, Your Honor.

3 **THE COURT:** Bring the jury, please.

4 (Jury in at 11:35 a.m.)

5 **THE BAILIFF:** The jury is all present, Your
6 Honor.

7 **THE COURT:** Solicitor, call your next witness.

8 **MS. CAMPBELL:** The State would call Dr. Clay
9 Nichols.

10 **DR. CLAY A. NICHOLS,** after being duly sworn,
11 testifies as follows:

12 **THE CLERK:** Thank you. Please have a seat in
13 the witness stand and state your full name for the
14 record.

15 **WITNESS:** Clay Allen Nichols. N-I-C-H-O-L-S.

16 DIRECT EXAMINATION

17 **BY MS. CAMPBELL:**

18 **Q** Dr. Nichols, where are you employed?

19 **A** I'm a forensic pathologist at Richland Memorial
20 Hospital. I'm also the chief medical examiner for
21 Richland County.

22 **Q** Can you tell this jury a little bit about your
23 education and your training in the field of forensic
24 pathology?

25 **A** I received my Bachelor of Science degree from the

Dr. Clay A. Nichols - Direct by Ms. Campbell

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1 University of Oklahoma in 1981. After that I
2 received my M.D. degree also from Oklahoma in '85. I
3 entered a residency program in anatomic and forensic
4 pathology at MUSC, completing that in 1989. After
5 that I was on faculty for ten years teaching
6 pathology to medical students, general students and
7 residents. I hold an unrestricted license to
8 practice medicine and surgery in the state of South
9 Carolina. I am board certified in both anatomic and
10 forensic pathology.

11 Q Have you been qualified before as an expert in
12 forensic pathology?

13 A Yes, ma'am.

14 Q And approximately how many times?

15 A A couple hundred times.

16 MS. CAMPBELL: Your Honor, at this time we'd
17 offer him as an expert in forensic pathology.

18 THE COURT: Any objection?

19 MR. HISKER: No objection.

20 Q Doctor, you're an expert in forensic pathology. How
21 is that different from like anatomical pathology?

22 A Both perform autopsies in order to determine a
23 person's death. A forensic pathologist has specific
24 training on doing autopsies on people who die
25 suspicious or unnatural deaths.

1 Q I want to turn your attention back to I believe
2 August the 9th of 2005. Did you perform an autopsy
3 on a James Greene?

4 A Yes, I did.

5 Q And were you provided any information prior to doing
6 the autopsy?

7 A Essentially, Mr. Greene was a 73-year-old black male
8 who appeared to have died as a result of a homicidal
9 shotgun blast.

10 Q When you first came in contact with Mr. Greene, what
11 were your observations?

12 A This was the body of a well-developed, well-nourished
13 black male appearing somewhat younger than his stated
14 age of 73 years. He had bilateral prosthetic legs
15 which means he had artificial legs. His other legs
16 were removed below the knee. He was 57 inches
17 without his legs. With the legs he was about 71
18 inches which is about six foot. He had an estimated
19 weight of 180 pounds. And in addition, there was
20 evidence of injury to his body.

21 Q When you initially looked at the body, what areas did
22 you note injury?

23 A The two main areas were the right chest and the left
24 side of the head.

25 Q When doing an autopsy, tell this jury basically,

1 after making your initial assessment and observations
2 externally, what you do in performing an autopsy?

3 A The body is then opened up where all the major
4 cavities are examined, the chest cavities, the
5 pericardial sac where the heart sits, the abdominal
6 cavity, and the head are also examined. The major
7 organ systems are removed. They are examined,
8 dissected down as necessary. And small pieces of
9 those tissues are submitted for microscopic
10 examination. Also at the same time tissues such as
11 urine and blood are also collected for toxicologic
12 evaluation.

13 Q And tell this jury what your findings were as you
14 performed this autopsy?

15 A The pertinent information includes a contact range
16 shotgun wound to the right chest slightly above the
17 nipple which was located 16 inches from the top of
18 the head and 4 inches to the right of mid-line. The
19 wound is circular, measuring 0.5 inch in greatest
20 diameter. There is no distinct abrasion border or
21 scalloping around the edges. Soot is identified on
22 the outer clothing of the deceased.

23 A shotgun blast is found to have entered the
24 body at this site causing extreme excavation of the
25 underlying musculature. The capitating defect

1 measures 8 centimeters in greatest diameter. That's
2 about 3 inches.

3 The underlying ribs, right ribs number 3, 4 and
4 5 are fractured and splintered secondary to the
5 shotgun blast. The blast continues into the right
6 chest cavity, lacerating and shredding the right
7 middle lung lobe and the right lower lung lobe. And
8 the blast continues through the posterior chest,
9 lacerating and splintering in the posterior aspects
10 of ribs 6, 7 and 8. Multiple birdshot pellets are
11 recovered as samples. In addition, gray plastic
12 wadding is also recovered assault. As a result of
13 the blast, the chest cavity contains 800 cc's of red
14 liquid blood and clot.

15 **COURT REPORTER:** I'm sorry. 800 cc's of what?

16 **A** Red liquid blood and clot.

17 **COURT REPORTER:** Thank you.

18 **Q** So that would be blood in the chest cavity?

19 **A** That is correct.

20 **Q** And essentially, you mentioned that this was a
21 contact wound. What does that mean?

22 **A** That means that the barrel of the shotgun was right
23 up against the victim's chest when the trigger was
24 pulled.

25 **Q** And you mentioned there was actually soot on the

1 outer clothing. Is that significant?

2 **A** That indicates that once again the gun was at a
3 significant closeness to the body that when the
4 trigger is pulled soot is deposited on the outer
5 clothing. Everything else enters the wound cavity.

6 **Q** And when this shot was fired, it entered into the
7 chest, how big was the actual entry into the -- on
8 the skin?

9 **A** The defect, the hole on the skin, was half an inch.

10 **Q** A half an inch? And you mentioned something about it
11 expanded to a 3-inch?

12 **A** That's correct.

13 **Q** Explain that to me?

14 **A** Once the pellets enter the skin, the first pellet
15 starts to slow down. All the other pellets behind it
16 went into that first pellet. So even though the
17 pellets come out of the gun as a group and stay as a
18 group, with some slight normal expansion, once the
19 first pellet slows down and everything runs up
20 against it, those pellets now act as billiard balls
21 and go in multiple directions and spread out even
22 greater. And in the distance of approximately a half
23 inch from the surface of the skin to the underlying
24 muscle, it created an approximately 3-inch capitating
25 area.

1 Q And how would you characterize that type of hole in
2 his chest?

3 A It was an excavation. It just blew the muscles
4 apart.

5 Q You mentioned that as it enters that the pellets just
6 spread throughout the chest cavity?

7 A That's correct.

8 Q Let me show you what's been marked as State's Exhibit
9 No. 73. Do you recognize it?

10 A This is an x-ray that's consistent with bird shot
11 from Mr. Greene's right chest.

12 Q You mentioned also that you recovered I believe some
13 wadding as well as some pellets as a sample?

14 A That's correct.

15 Q I'm going to show you what's been marked as State's
16 Exhibit 72. Do you recognize that?

17 A Yes.

18 Q And is that some of the pellets that you recovered as
19 well as the wadding?

20 A That's correct.

21 Q And those items, once you recovered them, they were
22 turned over to Lieutenant Clemons I believe?

23 A Yes.

24 Q You also mentioned that there was some trauma to the
25 head area I believe?

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1 A That's correct.

2 Q And that was actually to the left side of the head?

3 A That's correct.

4 Q And how did you find that trauma? What did you
5 observe?

6 A When we looked at the outside of his head, there was
7 no apparent bruising or laceration. That area of
8 trauma was actually identified during the brain
9 removal, in which case in order to remove the brain
10 an incision is placed in the scalp going from ear to
11 ear over the top and the skin is actually pulled back
12 in the front and in the back exposing the bone of the
13 skull known as the calvaria.

14 Over on the left side of the head there is a
15 muscle there called the temporalis and you can feel
16 that when you clench your jaws and put your fingers
17 up there. That muscle moving up and down, that is
18 your temporalis. That whole muscle was hemorrhagic
19 as a result of blunt trauma.

20 Q When you say hemorrhagic, for me, what does that
21 mean?

22 A It means there was blood in it.

23 Q And what was that consistent with?

24 A A blunt trauma. Some object of unknown pattern.

25 Q Hitting him in the head?

1 **A** That's correct.

2 **Q** And in your expert opinion, you said you didn't
3 really note it on the outside, would that have been
4 close in time or sometime around the time of death?

5 **A** There was no evidence of a repair process or
6 significant inflammation. So everything was
7 contemporaneous with the shooting.

8 **Q** The gunshot wound to his chest, ultimately, how did
9 he die?

10 **A** He died as a result of internal hemorrhage due to the
11 contact range shotgun wound to the chest.

12 **Q** So in laymen's terms, he bled to death?

13 **A** That's correct.

14 **Q** And how long would it have taken him to bleed to
15 death like that?

16 **A** This a rapidly fatal injury, and he would have bled
17 to death within minutes.

18 **Q** Could he have survived, say, if EMS had been there on
19 the scene when it happened?

20 **A** No. He would have bled to death rapidly. This is a
21 catastrophic injury.

22 **Q** I was going to say how did you -- a catastrophic
23 injury?

24 **A** Yes.

25 **Q** And in your expert opinion, was it consistent with a

1 contact wound from a shotgun to the chest?

2 A Yes.

3 Q There has been some question about blowback with a
4 shotgun and a contact wound?

5 A Mm-hmm (affirmative).

6 Q Can you explain to the jury why sometimes there is
7 blowback and sometimes there's not?

8 A First off, blowback is a situation where a solid
9 object gets dunked into an area that's somewhat
10 liquid or somewhat solid. An example that we might
11 be familiar with, when you drop a rock into a pond,
12 you drop the rock in, the splash comes up again,
13 that's blowback. And the same thing can happen in
14 certain situations where if the gun is placed tight
15 up against a victim when the trigger is pulled,
16 blowback could occur. But instead of course water
17 coming up, blood and tissue would come forward.

18 The best example for that would be a hard
19 contact gunshot wound to the head where the brain
20 acts as the pond or the semi solid object. In the
21 case of a lung, air is the predominant thing within
22 the chest cavity. That's not a very good pond for
23 the blowback to occur.

24 Now, the other thing is, when you see blowback
25 you know that it did occur from a close gunshot

1 wound. Just because you don't have blowback, that
2 doesn't mean that you don't have a contact gunshot
3 wound. If it's there, it's there; and if it's not,
4 you can't make an inference as to exactly where the
5 gun was just by looking at the gun.

6 Q And can you say whether or not this gunshot wound
7 would have had blowback?

8 A No.

9 Q Sometimes it happens and sometimes it doesn't?

10 A That's right. But once again, the shotgun wound to
11 the chest would be a very poor location for blowback
12 to occur.

13 Q Thank you, sir.

14 THE COURT: Mr. Hisker.

15 CROSS EXAMINATION

16 BY MR. HISKER

17 Q Good morning. Dr. Nichols.

18 A Good morning. How you doing today?

19 Q Good. How are you?

20 A Fine. Thanks.

21 Q You agree that it's possible with a contact wound to
22 the chest there could be blowback?

23 A Is it possible? Only possible, yes.

24 Q And, in fact, how many cc's of blood did you say was
25 found in the chest cavity?

Dr. Clay A. Nichols - Cross by Mr. Hisker

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1 **A** 800 cc's.

2 **Q** Thank you.

3 **A** You're welcome.

4 **THE COURT:** Anything further?

5 **MS. CAMPBELL:** No, sir. Can he be excused?

6 **THE COURT:** You're free to go, sir. Thank you

7 very much, Doctor. May the witness be excused?

8 Without objection. Yes, sir.

9 **WITNESS:** Okay.

10 **MR. GOLDBERG:** The State calls Sergeant Linfert.

11 DAVID LINFERT, after being duly sworn, testifies

12 as follows:

13 **THE CLERK:** Thank you. Please have a seat in

14 the witness stand and state your full name for the

15 record. And please spell your last name.

16 **WITNESS:** David Linfert.

17 **COURT REPORTER:** Will you spell your last name,

18 please?

19 **WITNESS:** L-I-N-F-E-R-T.

20 DIRECT EXAMINATION

21 **BY MR. GOLDBERG**

22 **Q** Where are you employed, sir?

23 **A** With the Richland County Sheriff's Department.

24 **Q** How long have you been there?

25 **A** Approximately 12 years now.

1 Q And what are your duties with the Sheriff's
2 Department?

3 A I'm currently assigned to the major crimes unit
4 investigations where we investigate assaults,
5 robberies, murders, arson.

6 Q Back in August of 2005, what were your duties with
7 the Department?

8 A I was assigned as a supervisor in the major crimes
9 unit.

10 Q And were you involved with the initial investigation
11 of a homicide at Faraway Drive from August 8th, 2005?

12 A I assisted in some aspect of it, but I was not one of
13 the primary investigators.

14 Q And did you have an opportunity come in contact with
15 the defendant, Octavia Middleton?

16 A Yes, I did.

17 Q What was the nature of that contact?

18 A I believe he was in a room talking with Sergeant
19 Ewing at the time. Investigator Faust called me on
20 my phone, asked me to relay a message to Sergeant
21 Ewing that they had recovered a jersey at the
22 residence of Mr. Middleton and that this jersey they
23 recovered had some kind of staining on the jersey.

24 Q So once you got that information from Faust, what did
25 you do?

David Linfert - Direct by Mr. Goldberg

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- 1 **A** I knocked on the door, told Sergeant Ewing that I had
2 a message from Faust regarding their investigation in
3 a search warrant they were conducting at the
4 residence of Mr. Middleton. I told him that they had
5 recovered the basketball jersey that they were
6 looking for and that there were stains on the jersey.
- 7 **Q** Did you have any other conversation with Mr.
8 Middleton?
- 9 **A** At that time Sergeant Ewing may have asked him about
10 the jersey. They talked about it for a minute. At
11 that time I stated in a question form that those
12 stains wouldn't be blood to Mr. Middleton, and at
13 that time he stated that they would not be blood,
14 those stains aren't blood, or there was no blood on
15 the jersey, something to that effect..
- 16 **Q** Was that the end of your conversation?
- 17 **A** Yes, it was.
- 18 **Q** Did you in any way feed him any details about other
19 evidence or any other factors in the case?
- 20 **A** No, I did not.
- 21 **Q** At any point did you make contact with Mr. Middleton
22 when he was in the D cell?
- 23 **A** No, I did not.
- 24 **Q** Thank you, sir.
- 25 **MR. HISKER:** No questions.

1 **THE COURT:** Thank you very much, sir. You may
2 come down. May this witness be excused?

3 **MR. HISKER:** No objection.

4 **THE COURT:** Without objection. Next witness.

5 **MS. CAMPBELL:** The State calls Harry Dukes.

6 HARRY R. DUKES, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Thank you. Please have a seat in
9 the witness stand. State your full name for the
10 record. State your name, please.

11 **A** Harry Rodriguez Dukes.

12 DIRECT EXAMINATION

13 **BY MS. CAMPBELL**

14 **Q** Okay, Mr. Dukes. You're going to have to speak up
15 for me. Okay?

16 **A** Okay.

17 **Q** Let me push that back down a little bit. Got it?

18 **A** Yes, ma'am.

19 **Q** How old are you?

20 **A** Twenty-five.

21 **Q** And where are you from?

22 **A** I'm from Williston, South Carolina.

23 **Q** Williston?

24 **A** Yes.

25 **Q** How long have you been living in the Columbia area?

Harry R. Dukes - Direct by Ms. Campbell

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- 1 A I had just come home from prison.
- 2 Q You'd just come home from prison?
- 3 A Yes.
- 4 Q And when you moved to Columbia?
- 5 A Yes.
- 6 Q Do you remember when you got out of prison?
- 7 A I got out of prison June the 1st, 2005.
- 8 Q Okay. Do you know somebody named Octavia Middleton?
- 9 A Yes, ma'am.
- 10 Q Do you call him by a nickname?
- 11 A Tank.
- 12 Q Tank?
- 13 A Yes, ma'am.
- 14 Q Do you know him by any other names?
- 15 A No, ma'am.
- 16 Q How do you know Tank?
- 17 A Well, I know Tank because I was trying to get with
- 18 his sister.
- 19 Q You were trying to get with his sister?
- 20 A Yes. She was an old friend of mine from back in
- 21 school.
- 22 Q And what school?
- 23 A Watkins Elementary.
- 24 Q Watkins Elementary?
- 25 A Yes, ma'am.

- 1 Q And where was Watkins Elementary?
- 2 A Watkins Elementary in Columbia.
- 3 Q So while you were in elementary school you lived in
- 4 Columbia?
- 5 A Yes, ma'am.
- 6 Q And then did you end up going back to Williston?
- 7 A Yes, ma'am.
- 8 Q And then after prison you came, you stayed here?
- 9 A Yes, ma'am.
- 10 Q When you got out in June of 2005, who were you
- 11 staying with?
- 12 A I was staying with my mother, Michelle Bradham.
- 13 Q And where does she live?
- 14 A [REDACTED], Columbia, South Carolina.
- 15 Q You mentioned that you wanted to get with Tank's
- 16 sister. How were you going to do that?
- 17 A Well, I was going to go over there through him and
- 18 get with his sister.
- 19 Q What was his sister's name?
- 20 A Miosha Outen.
- 21 COURT REPORTER: I'm sorry. I didn't ...
- 22 A Miosha Outen.
- 23 Q Miosha Outen?
- 24 A Yes.
- 25 Q And where does she live?

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1 A I'm not familiar with the area where she stayed to.
2 Q Where did Tank live that summer?
3 A With his mother.
4 Q And where did his mother live? Do you know?
5 A It's near the mall.
6 Q Near which mall?
7 A Columbiana Mall.
8 Q Columbiana Mall?
9 A Yeah.
10 Q Out in the Irmo area?
11 A No. Near Two Notch.
12 Q The one on Two Notch?
13 A Yeah.
14 Q So that would be Columbia Place?
15 A Columbia Place, yeah.
16 Q And that's where he was staying that summer?
17 A Yes, ma'am.
18 Q How do you know Teran Scott?
19 A Through Octavia Middleton.
20 Q That summer were you working?
21 A Yes, ma'am.
22 Q Where were you working?
23 A I was truck driving for North American with my
24 brother. He was truck driving and I was his partner.
25 He paid me. And I was truck driving with my brother.

1 North American, moving furniture.

2 Q Were you trying to stay out of trouble?

3 A Yes, ma'am. That's why I moved to Columbia from
4 Williston so I --

5 Q Why?

6 A A different atmosphere.

7 Q Were you in Williston when you got in trouble and had
8 to go to prison?

9 A Yes, ma'am.

10 Q What did you get in trouble for?

11 A I got in trouble for selling crack cocaine and powder
12 cocaine.

13 Q I want to turn your attention to August the 8th.
14 Okay?

15 A Yes, ma'am.

16 Q That day what were you doing?

17 A August the 8th I was at Octavia Middleton's sister's
18 house.

19 Q And do you know what part of town that's in?

20 A That's off of Two Notch Road.

21 Q What were you all doing that day?

22 A We was at his house. We was drinking. We was
23 drinking and smoking cigarettes. That's when Teran
24 came and got us in the green truck. We were drinking
25 and smoking cigarettes, and Teran took us to some

1 apartments.

2 Q And who was driving the green truck?

3 A Teran Scott.

4 Q Okay. And he took you to some apartments?

5 A Yes, ma'am.

6 Q And did you know why you were going to the
7 apartments?

8 A No, ma'am.

9 Q And when you got to the apartments what happened?

10 A When we got to the apartments Teran Scott parked in a
11 driveway. And that's when Octavia and Teran Scott
12 got out of the truck and told me just to stay right
13 there, they'd be back. And I seen Teran with a gun.

14 Q Let me stop you for second. You all were in the
15 truck. Who was driving?

16 A Teran Scott.

17 Q And who was in the front seat with him?

18 A Octavia Middleton.

19 Q Where were you?

20 A In the back seat.

21 Q You said that you'd been drinking that day?

22 A Yes, ma'am.

23 Q What were you doing in the back seat while you drove
24 over to the apartments?

25 A I was drinking beer and smoking cigarettes.

- 1 Q Had you ever been in the green truck before?
- 2 A No, ma'am.
- 3 Q Were you listening to anything?
- 4 A Yes.
- 5 Q What were you listening to?
- 6 A Music at a high volume.
- 7 Q And where was the music coming from?
- 8 A The truck.
- 9 Q The radio?
- 10 A Yes, ma'am.
- 11 Q Did you know why you were going over to The Reserves?
- 12 A No, ma'am.
- 13 Q Had you ever been there before?
- 14 A No, ma'am.
- 15 Q Had you ever been over to the gambling apartment?
- 16 A No, ma'am.
- 17 Q When you got in the truck, where did you think you
- 18 were going?
- 19 A We was just riding and drinking and smoking
- 20 cigarettes. I did not know where we were going.
- 21 Q Once you got to The Reserves, you mentioned that two
- 22 people got out of the truck?
- 23 A Yes, ma'am.
- 24 Q Did you get out of the truck?
- 25 A No, ma'am.

1 Q What did you see when saw Teran Scott and Octavia
2 Middleton get out of the truck?
3 A I seen Teran Scott had a gun.
4 Q Was it a handgun or a long gun or what?
5 A It was a long gun.
6 Q I'm going to show you State's Exhibit 176.
7 A Yes, ma'am.
8 Q Does that look familiar?
9 A Yes, ma'am.
10 Q And where did he pull the gun out from when he got
11 out?
12 A From under the driver's seat, truck.
13 Q What did they tell you when they got out of the truck
14 and Teran had the gun?
15 A Stay there, they'll be back.
16 Q What did you think?
17 A Really I was -- I was drunk. I didn't know what was
18 going on. So I'm thinking this might be Teran Scott,
19 his residence or -- I was drunk. I didn't -- I
20 wasn't thinking nothing negative was about to go
21 down. But when I ...
22 Q Was there anybody else in the truck?
23 A No, ma'am.
24 Q What were you doing? Where did they go once they go
25 out of the car?

- 1 **A** They went in through the breezeway to the apartment.
2 And that's when I ain't see them for like 15 to 20
3 minutes.
- 4 **Q** While you were in the car, were you still listening
5 to music?
- 6 **A** Yes, ma'am.
- 7 **Q** Was it still loud?
- 8 **A** Yes, ma'am.
- 9 **Q** Did you hear anything while they were gone?
- 10 **A** No, ma'am.
- 11 **Q** And you said they were gone for 15 or 20 minutes?
- 12 **A** Yes, ma'am.
- 13 **Q** And do you remember what either one of them were
14 wearing that day?
- 15 **A** Teran had on an Atlanta jersey, and Octavia Middleton
16 had on like a blue Polo shirt and shorts.
- 17 **Q** What's the next thing you observed, that you watched?
18 What did you see?
- 19 **A** Well, after the 15 or 20 minutes, Teran then came
20 from out the apartment and was walking fast. That's
21 when I noticed they were walking fast and jumped in
22 the truck. And Teran pulled out.
- 23 **Q** Okay. Who jumped in the truck?
- 24 **A** Teran and Octavia.
- 25 **Q** Who was driving?

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1 A Teran Scott.

2 Q Did you notice anything Teran had on his person, on

3 his body?

4 A No, ma'am.

5 Q Okay. What did you see next? Where was Octavia in

6 the car?

7 A Octavia was on the passenger's side.

8 Q Do you remember what time of day this was?

9 A It was night.

10 Q Okay. Once they got in the car, what did they say?

11 A They didn't say too much of nothing. Teran was

12 pulling wallets out his pocket before he pulled out.

13 Q What did you think at that point?

14 A An alarm went off in my head that something wasn't

15 right.

16 Q What happened next?

17 A That's when Teran was pulling out. He backed the

18 truck up and got stuck on the curb. That's when he

19 got out. And I got out and I looked at the truck,

20 and he was pushing the truck. That's when I seen him

21 going towards the hill downhill, and I seen like a

22 green car. A woman was in a car. And he was trying

23 to reach for the door handle. So the door swung

24 open, and the woman, she backed out real fast. And

25 that's when a big alarm went off and I ran. I ran to

1 Subway and I called my mother and I told my mother to
2 come and get me from Subway.

3 Q Let me back up. When they came out, did they come
4 through the same breezeway?

5 A Yes, ma'am.

6 Q And when they came up to the car, do you know which
7 one had the gun?

8 A I'm not sure. But I -- Teran Scott. Teran Scott had
9 the gun.

10 Q You aren't sure?

11 A Yes.

12 Q What happened to the gun once they got in the car?

13 A I don't know.

14 Q You said the car got stuck on the curb?

15 A Yes, ma'am.

16 Q And then you saw Teran go where?

17 A He went downhill towards the people where the cars
18 was, and there was a green car that he reached for.
19 Then the door swung open.

20 Q Was he able to get into the green car?

21 A No, ma'am.

22 Q Did he have the gun with him at that point?

23 A No, ma'am.

24 Q Do you know who took the gun?

25 A No, ma'am. Because when I ran, I ran from the truck,

- 1 from them, from that whole area.
- 2 Q Did you see what happened to Octavia?
- 3 A No, ma'am.
- 4 Q How far away was the Subway from where you were at
- 5 The Reserves?
- 6 A I would say like a mile.
- 7 Q Once you got there you called your mother?
- 8 A Yes, ma'am.
- 9 Q Did she come pick you up or did your girlfriend?
- 10 A My mother.
- 11 Q Where did you go after that?
- 12 A To my mother's house.
- 13 Q Did you call the police and tell them what happened?
- 14 A No, ma'am.
- 15 Q Let me ask you this. Are you friends with Octavia
- 16 Middleton?
- 17 A Yes. I don't really know Octavia that good. I was
- 18 trying get to know his sister.
- 19 Q Are you friends with Teran Scott?
- 20 A No, ma'am.
- 21 Q When is the next time you saw either Octavia
- 22 Middleton or Teran Scott?
- 23 A I seen Octavia when I came to his sister's house
- 24 Wednesday, and that's when he told me what happened.
- 25 Q And that's the sister's house over there off Two

1 Notch?

2 A Yes.

3 Q What did he tell you had happened?

4 A He told me that Teran shot the guy, that Teran asked

5 the guy where was the money and the man said the

6 money was in the machines and Teran pumped the gun

7 and shot the man. And Teran kicked the man.

8 Q Did Octavia or Tank, did he tell you he saw him do

9 that?

10 A Yes. Yes, ma'am.

11 Q Did Octavia or Tank, did he tell you what he did

12 while he was in there?

13 A No, ma'am.

14 Q At that point did you know about the shooting? Had

15 you heard about it?

16 A Only how I knew is what he told me.

17 Q Did he tell you whether or not the guy had died?

18 A Yes.

19 Q When he told you what had happened, that was on

20 Wednesday?

21 A Yes, ma'am.

22 Q Was anybody else around?

23 A No, ma'am.

24 Q Did you tell anybody about what Octavia told you

25 they'd done?

- 1 A I told the investigator.
- 2 Q Okay. I'll get to that in a minute. Do you remember
- 3 when you got arrested on these charges?
- 4 A Yes, ma'am.
- 5 Q And when was that?
- 6 A That was the 11th.
- 7 Q The 11th?
- 8 A Of August.
- 9 Q And where were you that day when you got arrested?
- 10 A At Octavia's sister's house.
- 11 Q That was probably the day after he had told you what
- 12 they had done?
- 13 A Yes, ma'am.
- 14 Q Or what Teran had done?
- 15 A Yes.
- 16 Q Did he tell you why they'd gone into the poker
- 17 machine stuff?
- 18 A No, ma'am.
- 19 Q But you saw the wallets when they came out?
- 20 A Yes.
- 21 Q Who was going through the wallets when they were in
- 22 the front seat?
- 23 A Teran Scott.
- 24 Q You didn't report it to the police?
- 25 A No, ma'am.

- 1 Q They found you?
- 2 A Yes, ma'am.
- 3 Q And you're still trying to get with his sister?
- 4 A Well, I haven't --
- 5 Q You're still hanging with him?
- 6 A Yeah.
- 7 Q Okay. That day when the police came to Octavia's
- 8 sister's house, what were you all doing?
- 9 A We was -- can you repeat the question?
- 10 Q When the police came and arrested you, do you
- 11 remember that?
- 12 A Okay. Yes.
- 13 Q What were you all doing over at his house that day or
- 14 his sister's house? It wasn't his house, was it?
- 15 A His sister's house. I was rolling up some marijuana
- 16 and I was about to smoke a marijuana blunt. And
- 17 that's when they came. They knocked on the door.
- 18 Q When they came in, did you tell them who you were?
- 19 A Yes.
- 20 Q Did they take you into custody?
- 21 A Yes.
- 22 Q Where did they take you?
- 23 A They took me to -- not the jailhouse -- the
- 24 interrogation.
- 25 Q To the Sheriff's Department?

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1 A Yes. I think that's where it was.

2 Q Once you got to the Sheriff's Department, what
3 happened?

4 A They asked me questions about what happened and told
5 me that Teran wrote a statement implicating me and
6 asked me what happened. And I told him. I gave my
7 statement.

8 Q Did they tell you what to say?

9 A No, ma'am.

10 Q Did they tell you anything other than Teran had given
11 a statement about you?

12 A No, ma'am.

13 Q They didn't give you any details?

14 A No, ma'am.

15 Q Before they asked you any questions, did they advise
16 you of your rights?

17 A Yes, ma'am.

18 Q And I'm going to show you State's Exhibit No. 5. Do
19 you recognize that?

20 A Yes, ma'am.

21 Q Is that your signature in two places?

22 A Yes, ma'am.

23 Q Did you understand what your rights were?

24 A Yes, ma'am.

25 Q After they advised you of your rights, did you waive

1 your rights and agree to talk to them?

2 A Yes, ma'am.

3 Q And then you gave them a statement about what you

4 knew that had happened on August the 8th?

5 A Yes, ma'am.

6 Q Is that pretty much the same stuff as you've just

7 related to them?

8 A Yes, ma'am.

9 Q Do you have any pending charges?

10 A I've got a probation violation.

11 Q Well, more seriously, do you have pending charges in

12 this case?

13 A No, ma'am.

14 Q Aren't you charged with murder?

15 A Yes, ma'am.

16 Q You're charged with five counts of armed robbery?

17 A Yes, ma'am.

18 Q Three counts of aggravated assault?

19 A Yes, ma'am.

20 Q And assault with intent to kill?

21 A Yes, ma'am.

22 Q Did I leave any out? Murder?

23 A Yes, ma'am.

24 Q And those charges -- I won't go through them

25 individually. But like armed robbery can carry ten

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- 1 to thirty years?
- 2 A Yes, ma'am.
- 3 Q How much does murder carry?
- 4 A Life.
- 5 Q Up to life?
- 6 A Yes, ma'am.
- 7 Q Thirty to life?
- 8 A Yes.
- 9 Q And aggravated assault is up to ten years?
- 10 A Yes, ma'am.
- 11 Q Assault with intent to kill, up to ten years?
- 12 A Yes, ma'am.
- 13 Q And you've been convicted before back in 2000 of
- 14 petit larceny?
- 15 A Yes, ma'am.
- 16 Q And then you actually did your time for, I think it's
- 17 possession with intent to distribute crack and
- 18 cocaine within a half mile of a school?
- 19 A Yes, ma'am.
- 20 Q Do you understand why you're charged with these
- 21 charges?
- 22 A Yes, ma'am.
- 23 Q Your lawyer was here earlier?
- 24 A Yes, ma'am.
- 25 Q Has anybody offered you any kind of reward in

1 exchange for your testimony?

2 A No, ma'am.

3 Q Any reduction in charge?

4 A No, ma'am.

5 Q Has anybody offered you anything to testify?

6 A No, ma'am.

7 Q Why are you testifying?

8 A Because of sympathy. I have sympathy for the family
9 in that no one deserved to be killed, murdered, die
10 for anything, you know. And I know if the same thing
11 happened to my family, I would want someone to do the
12 same, 'cause that's a life that have been taken
13 (sic), and you can't replace that. And I have
14 sympathy for the family.

15 MR. HISKER: Your Honor, I would object to this.
16 This is getting excessive.

17 THE COURT: Overruled. Go ahead.

18 Q You can answer.

19 A I have sympathy for the family because no one -- no
20 one -- no one should die, you know.

21 Q Okay.

22 A It's not right, you know.

23 Q I left out, you're also facing burglary first
24 charges, right?

25 A Yes, ma'am.

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1 Q And those carry fifteen to life, right?

2 A Yes, ma'am.

3 Q You've been in jail?

4 A Yes, ma'am.

5 Q Since this? Does Octavia Middleton write you letters

6 while you're in jail?

7 A Yes, ma'am.

8 Q And do you know what his handwriting looks like?

9 MR. HISKER: Objection, Your Honor.

10 A Yes, ma'am.

11 MR. HISKER: He's not qualified to testify about

12 this.

13 THE COURT: Sustained.

14 MS. CAMPBELL: May we approach?

15 THE COURT: Sure.

16 (Whereupon, a bench conference is had)

17 MS. CAMPBELL: I'll rephrase. Thank you.

18 (WHEREUPON, State's Exhibit No. 185 is marked

19 for identification.)

20 Q I'm going to show you what's been marked as State's

21 Exhibit No. 185. Do you recognize this?

22 A Yes, ma'am.

23 Q And who is this letter sent to?

24 A It was sent to me, Harry R. Dukes.

25 Q And do you recognize whose handwriting it is?

1 A Yes, ma'am.

2 Q And whose handwriting is it?

3 A Octavia Middleton's.

4 Q How did he sign this letter?

5 A "Brothers for life 'til the end, Life."

6 Q Has he ever written you're letters that he signs that
7 way?

8 A Yes, ma'am.

9 Q Is there any doubt in your mind this is Octavia
10 Middleton's handwriting?

11 MR. HISKER: Your Honor, I continue to object to
12 this.

13 THE COURT: I understand.

14 Q Is this Octavia Middleton's handwriting?

15 A Yes, ma'am.

16 MS. CAMPBELL: Your Honor, at this time we'd
17 offer State's Exhibit 185 into evidence.

18 MR. HISKER: I object. It's not relevant, 403.

19 THE COURT: Mark it.

20 MS. CAMPBELL: It's 185.

21 THE COURT: For identification.

22 MS. CAMPBELL: 185.

23 THE COURT: For identification at this time.
24 He's identified it.

25 Q Where were you when you received this letter?

- 1 **A** I was in jail.
- 2 **Q** And approximately how long ago did you receive it?
- 3 **A** I would say like a week, a week ago.
- 4 **Q** Okay. And again, for the record, whose handwriting
- 5 is this that you recognize?
- 6 **A** It's Octavia Middleton's handwriting.
- 7 **Q** And does this letter talk about this case?
- 8 **A** Yes, ma'am.
- 9 **MR. HISKER:** Objection, Your Honor.
- 10 **THE COURT:** Sustained.
- 11 **MS. CAMPBELL:** Your Honor, may we approach?
- 12 **THE COURT:** I've ruled on that. I've ruled. I
- 13 sustain his objection.
- 14 **MS. CAMPBELL:** Can I be heard outside the
- 15 presence of the jury?
- 16 **THE COURT:** Sure. That's why I told you to mark
- 17 it for identification. But let's move on.
- 18 **Q** Boo. That's your nickname, is Boo?
- 19 **A** Yes, ma'am.
- 20 **Q** The person that you saw going into The Reserves that
- 21 night that you know as Octavia Middleton or Tank, do
- 22 you see him here in the courtroom?
- 23 **A** Yes, ma'am.
- 24 **Q** Can you point him out for the jury?
- 25 (Witness points)

1 Q What's he wearing?

2 A A white -- white dress shirt.

3 MS. CAMPBELL: Your Honor, may the record
4 reflect he's identified the defendant?

5 THE COURT: The witness identified the
6 defendant.

7 MS. CAMPBELL: Okay. That's all I'd have.

8 THE COURT: Cross examination.

9 MR. HISKER: May it please the Court.

10 CROSS EXAMINATION

11 BY MR. HISKER

12 Q Good morning, Mr. Dukes.

13 A Good morning.

14 Q You testified on direct that you thought you might
15 have been going to Teran's house, didn't you?

16 A Say it again, sir?

17 Q When the prosecutor asked you the question about
18 seeing the gun, you thought you were going to Teran's
19 house?

20 A Yes. That crossed my mind.

21 Q But isn't it true that you told the police that you
22 knew something was wrong when you saw the gun coming
23 out?

24 A No, sir.

25 Q You didn't put in your statement that they went

1 through the breezeway and I was sitting in the back
2 seat nervous because I saw them go in with a gun?

3 A That's when I became nervous.

4 Q So, when you're sitting in that car, you're not
5 sitting there innocently not knowing what's going on,
6 are you?

7 A Sir, I do not know what's going on.

8 Q But you admit you were nervous because you saw the
9 gun, right?

10 A Yeah. I seen it when I seen them walk through the
11 breezeway.

12 Q You didn't think they were going into Teran's
13 residence?

14 A I didn't know. That might have been Teran's
15 residence. I'm not familiar with the area.

16 Q You'd agree though if it was Teran's residence you
17 wouldn't be nervous about him taking his gun into his
18 house?

19 A No.

20 Q But you were nervous?

21 A Yes. Any time you see a man with a gun you're going
22 to be nervous.

23 Q You were nervous because you knew something was going
24 wrong that day?

25 A No, sir.

1 Q Teran Scott was the one driving this green pick-up,
2 wasn't he?

3 A Yes, sir.

4 Q And he just shows up. You had no prior discussion
5 about anything that's going on?

6 A No, sir.

7 Q And Teran drove that vehicle to the apartments,
8 correct?

9 A Yes, sir.

10 Q Teran was the only person you have ever seen handle
11 this black gun?

12 A Yes, sir.

13 Q Teran comes out of the apartments with the gun and
14 all the wallets?

15 A Yes, sir.

16 Q You didn't ever put any of this stuff in your hand,
17 did you?

18 A No, sir.

19 Q But you did run and attempt to get in another
20 vehicle, didn't you?

21 A No, sir.

22 Q You put your hand on some lady's truck, didn't you?

23 A No, sir.

24 Q You didn't do that? You didn't leave your
25 fingerprints on a truck?

- 1 A No, sir.
- 2 Q So you never tried to carjack anybody when you were
- 3 trying to escape?
- 4 A No, sir.
- 5 Q But in fact, you made a statement that Teran Scott
- 6 tried to carjack a woman as he was trying to escape,
- 7 didn't you?
- 8 A Yes.
- 9 Q If you didn't do anything wrong, why did you take off
- 10 running?
- 11 A Because when I seen Teran Scott go down there and he
- 12 was trying to get the woman's car, that was the
- 13 second alarm that went off in my head. I left
- 14 running.
- 15 Q Now, all these details that you know about the inside
- 16 of this case, you claim that Octavia Middleton told
- 17 you those details. Is that correct?
- 18 A Yes.
- 19 Q So that's the only way you know that Teran Scott shot
- 20 the man?
- 21 A Yes, sir.
- 22 Q You don't know that because you weren't in the
- 23 apartment yourself?
- 24 A No, sir.
- 25 Q And you also know that Teran pumped this gun and shot

- 1 him, shot twice?
- 2 A No, sir.
- 3 Q And you know that that guy was kicked?
- 4 A No, sir.
- 5 Q But when Octavia Middleton is telling you these big
6 stories of violence, he doesn't say he does anything,
7 does he?
- 8 A No, sir.
- 9 Q He doesn't take any of the credit for this big,
10 violent assault?
- 11 A No, sir.
- 12 Q And he's talking to one of his friends, right?
- 13 A Yes, sir.
- 14 Q You all are street smart. You all talk about your
15 exploits, don't you?
- 16 A Yes, sir.
- 17 Q But he wasn't bragging at all, was he?
- 18 A He didn't tell me nothing what he did, sir.
- 19 Q But according to you, he told you all the stuff that
20 Teran did?
- 21 A Yes, sir.
- 22 Q And you're not -- you're not just saying that Octavia
23 told you that. Because you knew. You were there?
- 24 A No, sir.
- 25 Q You knew those details. But yet, you testified on

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1 direct in front of this jury that when you saw the
2 shotgun you didn't think anything of it. Isn't that
3 what you said on direct?

4 A No, sir.

5 Q When they got out of the car and you're smoking your
6 cigarettes and drinking your beer, you saw Teran walk
7 out with a gun and you didn't think anything of it
8 because you thought they were going to Teran's
9 residence. Isn't that what you told this jury?

10 A I said that passed my mind.

11 Q Right. But yet, when you're in that interrogation
12 room with the police and you know that they are
13 looking at charging you with a crime, now you're
14 nervous because you know that something is going
15 wrong, right?

16 A No, sir.

17 Q Well, I mean, did you know something was going wrong
18 when you were in the car or didn't you?

19 A Sir, when I seen Octavia get out the car -- not
20 Octavia but Teran Scott -- get out the car with the
21 gun, it passed my mind. I did not know. I was
22 intoxicated.

23 Q So you agree that when you're drinking all this
24 alcohol your memory is a little fuzzy?

25 A Anybody's memory would be a little fuzzy.

- 1 Q Was anybody else drinking with you?
- 2 A We're always drinking stuff.
- 3 Q Oh, okay. Where did you go to prison at?
- 4 A Allendale Correctional Institution.
- 5 Q Allendale. Did you know Teran Scott from Allendale?
- 6 A No, sir.
- 7 Q You were convicted of distribution of crack cocaine
- 8 near a school, weren't you?
- 9 A Yes, sir.
- 10 Q And you were also convicted of larceny, correct?
- 11 A Yes, sir.
- 12 Q So you're no stranger to the world of criminal
- 13 justice, are you?
- 14 A No, sir.
- 15 Q And where did you say you got into all this earlier
- 16 trouble?
- 17 A What I got in?
- 18 Q Where did you live when you got into all this
- 19 trouble?
- 20 A Williston, South Carolina.
- 21 Q So let me get this straight. You told this jury that
- 22 you left the dangerous metropolis of Williston to
- 23 come to Columbia, South Carolina, to get out of
- 24 trouble?
- 25 A My mother is up here. And, yes, to leave the

1 atmosphere so I could start a better life. Because I
2 be having two children.

3 Q And that atmosphere in Williston was so devastating
4 so you came here and immediately starting drinking
5 and smoking blunts?

6 A Yes, I had.

7 Q So that's how you get out of trouble? Is that what
8 you do when you're getting out of trouble? You move
9 to another area and start smoking blunts?

10 A No, sir.

11 Q But that's what you did?

12 A Yes, sir.

13 Q You don't have -- no promises have been made to you
14 in this case, right?

15 A No, sir.

16 Q But you did get charged with murder, right?

17 A Yes, sir.

18 Q And those investigators told you in that
19 interrogation room that Teran Scott was pointing the
20 finger at you, that you were involved, right?

21 A Yes, sir.

22 Q How did that make you feel?

23 A I knew it was a lie, sir.

24 Q You knew that Teran Scott's statement to the police
25 was a lie?

- 1 A Yes. When he said, when he implicated me in his
2 crime.
3 Q So you knew you had to tell the police something,
4 right?
5 A I told them the truth, sir.
6 Q You told them just enough so that they would not
7 charge you with murder, right?
8 A No, sir.
9 Q They charged you with murder anyway, didn't they?
10 A Yes, sir.
11 Q And you know you're looking at thirty to life on that
12 murder?
13 A Thirty to life or life, sir?
14 Q Thirty to life. And you know you're looking at a
15 mandatory of ten years on every armed robbery that
16 you were involved in. Is that correct?
17 A Yes, sir.
18 Q A minimum of ten years?
19 A Yes, sir.
20 Q And could get up to thirty on those?
21 A Yes, sir.
22 Q So just to put it all together, you know you're
23 looking at life?
24 A Yes, sir.
25 Q And you've been to prison before. You don't want to

- 1 go back, do you?
- 2 **A** No, sir.
- 3 **Q** When you were talking to the investigators and they
- 4 told you that Teran Scott was talking about you, you
- 5 were scared, weren't you?
- 6 **A** No, sir.
- 7 **Q** So that doesn't scare you that somebody is
- 8 implicating you in a murder and armed robbery?
- 9 **A** I knew I wasn't -- I knew didn't do no crime, sir.
- 10 So I wasn't scared. I just told the truth.
- 11 **Q** You just told the truth?
- 12 **A** Yes, sir.
- 13 **Q** But you agree that what you told this jury when you
- 14 saw that gun leaving the car is different than what
- 15 you told the police?
- 16 **A** No, sir. I told the same thing, what I said in my
- 17 statement, sir.
- 18 **Q** We'll go back to it again. You told this jury that
- 19 you saw Teran get out with a gun, correct?
- 20 **A** Yes, sir.
- 21 **Q** And you didn't think anything of it because he was
- 22 going to his house, right?
- 23 **A** The thought passed my mind, sir.
- 24 **Q** So you didn't put that anywhere in your police
- 25 statement, did you?

- 1 **A** No, sir.
- 2 **Q** You told them at that time that you knew something
3 was wrong?
- 4 **A** When I seen them go through the breezeway.
- 5 **Q** So you never saw anybody enter the apartment?
- 6 **A** No, sir.
- 7 **Q** You just saw them go into the breezeway?
- 8 **A** Yes, sir.
- 9 **Q** So even if we believe everything you say, you still
10 didn't see Mr. Middleton go into the apartment?
- 11 **A** I didn't see Octavia Middleton or Teran Scott go into
12 any apartment.
- 13 **Q** When you told the police your statement on this date,
14 why did you give the police a statement?
- 15 **A** Because -- I gave the police a statement because what
16 happened. I gave them the statement. He, Teran
17 Scott, implicated me in the crime that I had no
18 knowledge of, I didn't commit.
- 19 **Q** So you gave this statement to the police because
20 somebody was pointing a finger at you and you didn't
21 want to get in trouble for it?
- 22 **A** No, sir. It just the simple fact that a man got
23 killed, sir.
- 24 **Q** But your first thought was because Teran Scott was
25 pointing a finger at you?

1 **A** No.

2 **Q** That's what you said first, wasn't it?

3 **A** Because a man got killed, sir. And that's not --

4 that not right and exact.

5 **Q** You don't expect any benefit in this case. You want

6 to do the whole life?

7 **A** Sir, I look for no benefit, sir.

8 **Q** You don't want a benefit? You're going to testify

9 here today out of the goodness of your heart?

10 **A** That's right, sir.

11 **Q** You're just ready to go back to that prison in

12 Allendale, right?

13 **A** Yes, sir.

14 **Q** I have no further questions.

15 **THE COURT:** Anything further?

16 **MS. CAMPBELL:** No, sir.

17 **THE COURT:** All right, sir. You may come down.

18 Thank you very much.

19 **WITNESS:** You're welcome.

20 **THE COURT:** May this witness be excused?

21 Without objection. Approach the bench, counsel.

22 (Whereupon, a bench conference is had)

23 **THE COURT:** All right, ladies and gentlemen.

24 It's time to take our lunch hour. I say lunch hour.

25 But there is something I've got to do at 1:30 that's

1 going to take 20 to 30 minutes. So I'm going to ask
2 you to be back in the jury room at 2:00 at which time
3 we'll continue the trial. Again, don't discuss the
4 case among yourselves when you return to the jury
5 room or with anyone else over the lunch hour. Have a
6 pleasant lunch. We'll see you at 2:00. Thank you
7 very much.

8 (Jury out at 12:30 p.m.)

9 **THE COURT:** Ms. Campbell, I think you had
10 something you wished to address.

11 **MS. CAMPBELL:** Yes, Your Honor. We were
12 attempting to put in the -- under Rule 901(b),
13 subsection 2 --

14 **THE COURT:** Yes, ma'am.

15 **MS. CAMPBELL:** Your Honor, we did lay a
16 foundation, in my opinion, as to his knowing Octavia
17 Middleton's handwriting. He did identify it, say it
18 was Octavia Middleton's handwriting. And we then
19 went to offer it under that authentication. Sorry.
20 I can't say that word: Authentication. And the
21 Court ruled against us.

22 **THE COURT:** No, I didn't. I only ruled that the
23 statement at that point in time could only -- that
24 you mark it for identification. I mean, the issue of
25 whether it's admissible or not has not been decided

1 by this Court.

2 MS. CAMPBELL: Oh, I'm sorry.

3 THE COURT: I wanted to hear the objections of
4 the defendant to the admission. That's why I asked
5 you to mark it for identification only.

6 MS. CAMPBELL: Oh, okay. I just didn't
7 understand. I apologize.

8 THE COURT: No. You don't need to apologize. I
9 want to hear arguments both ways as to why it should
10 be and why it should not be. So I guess, would you
11 rather do that now or after lunch?

12 MR. HISKER: I can do it now.

13 THE COURT: All right. Let's go.

14 MR. HISKER: First of all, I object to the
15 relevance of it. It's going to be subject to
16 interpretation about what's being said. He has no
17 ability to interpret what's in the mind of somebody
18 else. He is going to have to say that it definitely
19 relates to this case. Otherwise--

20 THE COURT: Well, he says it's a case on
21 August 27th which is pretty specific.

22 MR. HISKER: For trial.

23 THE COURT: Yeah. Well, I mean, there's only
24 one trial going on involving your client on
25 August 27th.

1 **MR. HISKER:** He also testified that at one time
2 that the only nickname that he knew of was Tank. He
3 never mentioned any anything nickname of Life which
4 is another problem.

5 **THE COURT:** Somehow that came out in front of
6 the jury.

7 **MR. HISKER:** And under 403, it's unduly
8 prejudicial.

9 **THE COURT:** 403 is probably the most
10 significant. What's the State's position?

11 **MS. CAMPBELL:** Our position is that although it
12 is prejudicial, I think that the probative value far
13 outweighs the prejudicial.

14 **THE COURT:** What's the probative value? How
15 does it help prove this case?

16 **MS. CAMPBELL:** How does it help these jurors
17 understand? This shows that Octavia Middleton is
18 sitting there talking about how he can't find a
19 witness, how our case is going to fall apart, and
20 then he tells him to be loyal to him and that we're
21 going to come at them with deals, basically not to
22 testify.

23 **THE COURT:** I mean, I can read it. But what
24 does it prove? Is it some sort of admission?

25 **MS. CAMPBELL:** Yes, sir.

1 **THE COURT:** No, it isn't.

2 **MS. CAMPBELL:** It's also an attempt by him to
3 influence the witness not to testify. I think that
4 can go to a --

5 **THE COURT:** All right. I'll consider it over
6 the lunch hour.

7 **MS. CAMPBELL:** Thank you.

8 **THE COURT:** Be back at 2:00.

9 (Whereupon, a lunch break is taken)

10 **THE COURT:** The State ready to proceed?

11 **MS. CAMPBELL:** The State's ready.

12 **THE COURT:** The defense ready to proceed?

13 **MR. HISKER:** No, Your Honor.

14 **THE COURT:** Don't have a client. Other than
15 that?

16 **MR. HISKER:** Other than that, I'm ready.

17 **THE COURT:** Now the State ready to proceed?

18 **MS. CAMPBELL:** Yes, sir.

19 **THE COURT:** Defense ready to proceed?

20 **MR. HISKER:** Yes, Your Honor.

21 **THE COURT:** All right. Mr. Hisker, I'm going to
22 grant your motion to suppress the alleged letter of
23 what's been testified to as the defendant, but for
24 several reasons. One, it is not clear other than the
25 fact the previous witness who may have credibility

1 problems -- I don't know -- says he recognizes this
2 as the handwriting. But further than that, I don't
3 find it probative of much of anything. It's not
4 probative of the charge of murder. It's not
5 probative of the -- it has nothing to do with the
6 armed robbery, has nothing to do with the burglary,
7 has nothing to do with the assault and battery with
8 intent to kill. It has nothing to do with the
9 assault and battery of a high and aggravated nature.

10 Other than the fact he tells -- the author of it
11 tells the recipient of it that he has a trial date of
12 August 27th, it has very little relationship with the
13 case. It is prejudicial. And if the probative value
14 of it is minimal, then the prejudice outweighs it. I
15 sustain your objection under 403 and will not admit
16 the letter.

17 **MR. HISKER:** Thank you, Your Honor.

18 **THE COURT:** Next witness. Bring the jury,
19 please.

20 (Jury in at 2:30 p.m.)

21 **THE BAILIFF:** The jury is all present.

22 **THE COURT:** Call your next witness.

23 **MR. GOLDBERG:** May it please the Court. The
24 State calls Investigator Godfrey.

25 BRIAN GODFREY, after being duly sworn, testifies

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1 as follows:

2 **THE CLERK:** Thank you. Please have a seat in
3 the witness stand and state your full name for the
4 record.

5 **WITNESS:** Brian Godfrey.

6 DIRECT EXAMINATION

7 **BY MR. GOLDBERG**

8 **Q** Where are you employed, sir?

9 **A** The Richland County Sheriff's Department.

10 **Q** And what are your duties with the Sheriff's
11 Department?

12 **A** Currently I am assigned to the narcotics division.

13 **Q** Back in August of 2005, what were your duties with
14 the Department?

15 **A** I was assigned with the special victims unit
16 investigating sexual assaults in child abuse cases.

17 **Q** At some point were you asked to assist in serving a
18 search warrant in regards to a murder on Faraway
19 Drive?

20 **A** Yes, I was.

21 **Q** What was the nature of that?

22 **A** It was at [REDACTED]. I was just one of
23 the investigators that was brought together to search
24 a residence located.

25 **Q** At that particular time what knowledge if any did you

1 have about the underlying incident?

2 A Other than a murder had occurred, nothing.

3 Q What was your next point of involvement with the
4 case?

5 A I was walking through the upstairs investigators'
6 cubicle area and was asked by Ewing to sit in on an
7 interview.

8 Q Would that have been on August the 11th I believe?

9 A I can tell you. Yes, sir.

10 Q Okay. And did Investigator Ewing ask you to sit in
11 on an interview?

12 A Yes, sir.

13 Q Was that of an Octavia Middleton?

14 A That's correct.

15 Q And at that point had you learned anything else about
16 the case?

17 A No, sir.

18 Q What did you do during the interview?

19 A I sat there pretty much and just listened and watched
20 the interview.

21 Q Did you offer any details about the case to Mr.
22 Middleton in any way?

23 A No, sir.

24 Q And at any point did you go down to the D cell and
25 speak to Mr. Middleton when he was in the D cell at

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1 the Sheriff's Department?

2 A No, sir.

3 Q Thank you, sir.

4 THE COURT: Questions?

5 MR. HISKER: No questions, Your Honor.

6 THE COURT: You may come down, sir. Thank you
7 very much.

8 WITNESS: Thank you.

9 MS. CAMPBELL: Sergeant Shawn McDaniels.

10 WALTER S. MCDANIELS, after being duly sworn,
11 testifies as follows:

12 THE CLERK: Thank you. Please have a seat in
13 the witness stand and state your full name for the
14 record.

15 WITNESS: Walter Shawn McDaniels.

16 DIRECT EXAMINATION

17 BY MS. CAMPBELL

18 Q Sergeant McDaniels, where are you employed?

19 A Richland County Sheriff's Department.

20 Q What do you do there, sir?

21 A Currently I'm a sergeant in the criminal
22 investigative division.

23 Q I want to turn your attention back to August of 2005.
24 Were you involved -- first of all, were you involved
25 in any way with the murder that occurred on August

1 the 8th at the --

2 MR. HISKER: Objection, Your Honor. Can we
3 approach?

4 (Whereupon, a bench conference is had)

5 Q Were you one of the investigators involved in
6 investigating the August the 8th, 2005 murder at The
7 Reserves?

8 A No, ma'am.

9 Q I want to turn your attention to August the 11th of
10 2005. Did you receive a phone call from Captain
11 Smith? Don't say what he said.

12 A Yes, I did.

13 Q And as a result of that phone call, did you go to
14 headquarters?

15 A Yes, I did.

16 Q And once at headquarters, who did you make contact
17 with?

18 A Initially I made contact with Captain Standin Smith
19 and then I made contact with Octavia Middleton.

20 Q And at that point were you aware that he had already
21 been interviewed by Sergeant Ewing?

22 A Yes. I was aware of that.

23 Q And were you there just to talk to him about an
24 unrelated matter?

25 A Yes, I was.

Walter S. McDaniels - Direct by Ms. Campbell

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1 Q Who was actually there -- when you first came in
2 contact with Octavia Middleton, where did that take
3 place?

4 A It took place at the Richland County Sheriff's
5 Department at headquarters on Two Notch Road.

6 Q And what office were you all in? Do you remember?

7 A I interviewed him in Captain Smith's office.

8 Q And who else was present?

9 A During my interview Captain Smith was present.

10 Q Prior to talking to him, did you take any steps to
11 ensure that his rights were protected?

12 A Yes, I did.

13 Q I want to show you what's been marked as State's
14 Exhibit No. 3. Do you recognize that?

15 A Yes, I do.

16 Q And what is that?

17 A It is the advice of rights form that I filled out and
18 read to and went over with Octavia Middleton.

19 MS. CAMPBELL: Your Honor, at this time we'd
20 offer the advice of rights into evidence.

21 THE COURT: Subject --

22 MR. HISKER: Subject to my previous objection.

23 THE COURT: Subject to the defendant's previous
24 objection, it's admitted.

25 MS. CAMPBELL: State's Exhibit 3.

1 (WHEREUPON, State's Exhibit No. 3 is admitted
2 into evidence.)

3 Q Can you tell the jury exactly what rights you advised
4 him of? What time of day is this?

5 A This is at 1820 hours which is 6:20 p.m.

6 Q And this on August the 11th?

7 A Yes, ma'am.

8 Q Okay. And what rights did you go over with him
9 initially?

10 A Well, this is a standard template that we use where
11 up top is where the person, the name of the person
12 being advised is listed. In this case it's Octavia
13 Middleton. The place is Richland County Sheriff's
14 Department, and in parentheses it's headquarters.
15 The officer was myself that advised him. At the time
16 I was an investigator in the armed robbery division.
17 Date: August 11th, 2005; time: 1820 hours.

18 The next section, the advice of rights is
19 actually broken down into independent sections. On
20 the side of each section is an actual check box.
21 What I generally do is read each section
22 independently and then wait, ask the individual if he
23 understood what I just read. And then as they
24 acknowledge that verbally, I then check the box next
25 to it, next to that particular section.

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1 When I read Mr. Middleton his rights, I went on
2 to state: "Before we ask you any questions you must
3 understand your rights." I paused. I asked him if
4 he understood that. He stated yes. I then checked
5 the next box. I then stated: "You have the right to
6 remain silent." The same procedure was done.

7 "Anything you say can be used against you in
8 court." Again, the same procedure, waiting for his
9 acknowledgment. And the box was checked.

10 "You have the right to talk to a lawyer for
11 advice before we ask you any questions and to have a
12 lawyer with you during any questioning." I then went
13 on to state: "If you cannot afford a lawyer, one
14 will be appointed for you before any questioning if
15 you wish."

16 I then stated: "If you decide to answer
17 questions now without a lawyer present, you still
18 have the right to stop answering at any time. You
19 also have a right to stop answering at any time until
20 you talk to a lawyer." In that particular section, I
21 then waited for him to respond. Again, the same
22 procedure. When he acknowledged verbally. I checked
23 the box next to it.

24 The last part of this particular advice of
25 rights form is the actual waiver of rights. I then

1 read to him: "I have read this statement of my
2 rights and understand what my rights are. I am
3 willing to talk and answer questions. I understand
4 and know what I am doing. No promises have been made
5 to me, and no pressure or coercion of any kind has
6 been used against me."

7 The same procedure was done. I waited for him
8 to acknowledge verbally. He stated that he
9 understood that. I checked the box. And he signed
10 in two places on this particular form, and so did I.

11 Q Did you promise him anything to make him talk to you?

12 A No, ma'am.

13 Q Did you threaten him in any way?

14 A No, I did not.

15 Q Did he appear to understand when you went through the
16 rights?

17 A Yes, he did.

18 Q In your opinion, was he talking to you voluntarily?

19 A Yes, he was.

20 Q Once you had advised him of his rights, did you then
21 start talking to him about some things; and during
22 the course of that, did he give you some information
23 about the August the 8th murders?

24 A Yes, he did.

25 Q And I'm going to show you what's been marked as

1 State's Exhibit 4-A. Does this contain what he told
2 you about the August the 8th ...

3 A Yes, ma'am.

4 MR. HISKER: I ask that my objection continue
5 throughout this line.

6 THE COURT: Yes, sir. Subject to the
7 defendant's objection, the statement is admitted.

8 MS. CAMPBELL: Thank you. That would be State's
9 Exhibit 4-A.

10 (WHEREUPON, State's Exhibit No. 4-A is admitted
11 into evidence.)

12 Q This is an actual copy with the parts pertaining to
13 what he told you. After advising him of his rights,
14 what if any information did he give you about the
15 August the 8th murder case?

16 A I asked him: "Is the shotgun the same shotgun that
17 was used on August 8th, 2005?" He answered by
18 stating: "Yes." I then asked him: "Where did you
19 get the shotgun from?" He answered by stating: "A
20 hotel on Garners Ferry on Forest Drive. I can't
21 remember where. It had a bunch of shotgun shells in
22 the trunk. I broke the back small window on the
23 driver's side. I hit the trunk button by the
24 driver's door. The shotgun was in the trunk and a
25 bunch of boxes with shells. There was a 12-gauge. I

1 think it was a Remington because those are the only
2 type of bullets that he had for them. It was nice,
3 black and real long. It held three shots. You had
4 to press a button on the back before you cocked it."

5 I then asked him: "Are the shells that were in
6 your house the same shells that came out of the
7 trunk?" He stated: "All the shells came from out of
8 the trunk. I never bought any for it."

9 I then asked him: "Is this statement the whole
10 truth?" And he responded by stating: "Yes."

11 Q And after he had given you the whole, including these
12 parts, the statement, did he acknowledge that this
13 was his statement in any way?

14 A Yes, he did. He signed in two places on each sheet.

15 Q And was he given the opportunity to review the
16 statement prior to signing it and acknowledging it?

17 A Yes, he was.

18 Q Thank you. That's all I'd have.

19 THE COURT: Any questions?

20 CROSS EXAMINATION

21 BY MR. HISKER

22 Q Good afternoon, Investigator McDaniels.

23 A Good afternoon, sir.

24 Q Was this the first time you had met Mr. Middleton?

25 A Yes, it was.

Walter S. McDaniels - Cross by Mr. Hisker

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1 Q So you have no idea how he was treated prior to your
2 arrival?

3 A No, I do not.

4 Q Thank you. No further questions.

5 THE COURT: Anything further?

6 MS. CAMPBELL: No, sir.

7 THE COURT: You may come down, sir.

8 WITNESS: Thank you.

9 THE COURT: May the witness be excused? Without
10 objection. Next witness.

11 MS. CAMPBELL: The State would call Captain
12 Smith.

13 JAMES S. SMITH, after being duly sworn,
14 testifies as follows:

15 THE CLERK: Thank you. Please have a seat in
16 the witness stand and state your full name for the
17 record.

18 WITNESS: James Standin Smith.

19 DIRECT EXAMINATION

20 BY MS. CAMPBELL

21 Q Captain Smith, where are you employed?

22 A The Richland County Sheriff's Department.

23 Q What do you do there?

24 A I'm in the criminal investigative division. I hold
25 the rank of Captain. I am pretty much over all the

1 major violent crimes, particularly murders and armed
2 robberies.

3 Q I want to turn your attention to the investigation
4 involving the murder at The Reserves. Were you
5 basically supervising that investigation?

6 A I was the overall supervisor, yes.

7 Q And who were the primary investigators in that case?

8 A We have a system in place where we have a major crime
9 sergeant we'll call. Usually it's the person working
10 evenings that actually responds to the murder scenes.
11 And he makes the determination at that time whether
12 to call out a team. In this particular instance, it
13 was Sergeant Ewing, and the team that was on call was
14 Faust and Gallegos at the time. So, actually three
15 people may be involved early on, and then others get
16 involved in it as needed.

17 Q Did you actually take an active role in some of the
18 investigation in this case?

19 A I did.

20 Q And is that unusual?

21 A No. I seem to have a role in most every homicide
22 that we have to some degree, sometimes more than
23 others.

24 Q Your first direct involvement in this case was on
25 August the 10th of 2005?

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1 A It was.

2 Q And I believe it was at 20 hours which is what?

3 A 8:00. 8 p.m.

4 Q 8:00. And what did you do that evening?

5 A I was involved in the actual arrest of one of the
6 defendants in the case, Teran Scott, at a location
7 over at the Willow Run Apartments, [REDACTED]. We had
8 received a tip that he was there at that time. By
9 that time we had learned that he was involved by
10 virtue of a tip in this crime or these crimes.

11 Q And you were there when he was actually arrested?

12 A Yes..

13 Q And you were there when they actually recovered the
14 shotgun shells from his pocket?

15 A Yes. I watched I believe it was actually one of the
16 K-9 officers that actually removed the shotgun shells
17 from his pocket.

18 Q Once he was placed under arrest though, did you
19 actually participate in his initial statement?

20 A To a limited degree. We talked to him a little bit,
21 and I actually had left it in the hands of Sergeant
22 Ewing and Faust. And I was actually on my way home
23 when I received word of some of the results of that
24 initial interview.

25 Q The next day, on August the 11th, did you make

1 contact with Teran Scott again?

2 A Yes. We wanted to talk to Mr. Scott in more detail.
3 Myself and one of my other sergeants, Sergeant
4 Linfert who testified here earlier today, actually
5 went to the Alvin S. Glenn Detention Center and
6 picked him up that morning around 10:00, took him
7 back to the Richland County Sheriff's Department to
8 interview him further.

9 Q What did you do next in this case?

10 A A team of detectives were involved in a search
11 warrant at the residence that had been pointed out to
12 us where Mr. Middleton would be located. It was at
13 his residence. I did not actually participate in
14 that. I think was still tied up with Mr. Scott.

15 Q The search warrant you're talking about is at what
16 address?

17 A [REDACTED], I believe it is, Carnegie Street.

18 Q Are you sure about that?

19 A I don't have the numbers. I just --

20 Q [REDACTED] sound right?

21 A [REDACTED] That could be it. Yes, ma'am. At any rate, a
22 team of detectives went to that location while I was
23 still at headquarters with Mr. Scott. At one point
24 in time I was informed -- we knew that there was a
25 third individual that had been named in this case,

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1 but we did not have him fully identified at that
2 time. All we had was his nickname, Boo. I was
3 informed that it was another individual at the
4 residence besides Octavia Middleton. We believed
5 that that indeed was going to be the individual known
6 as Boo. I was asked to bring Mr. Scott to that
7 location. Myself and chief Deputy Wilson who
8 testified here earlier today actually drove Mr. Scott
9 to that location. And Boo was positively identified
10 as Harry Dukes.

11 Q At that point, prior to the search warrant at
12 Carnegie Street, had the arrest warrants for Teran
13 Scott and Octavia Middleton already been obtained?

14 A Yes, ma'am.

15 Q What was your next involvement?

16 A I basically was involved to some limited degree of
17 interviewing Mr. Dukes back at headquarters. He was
18 providing a statement to Investigator Holdorf and to
19 Sergeant Ewing, and I was involved in that to a
20 limited degree.

21 Q Later that evening did you participate in I guess
22 you'd call it the second interview of Mr. Middleton?

23 A I did.

24 Q And who --

25 A I joined -- Sergeant McDaniels was involved in an

1 interview with him, and I participated in that
2 interview.

3 Q And during the course of that, as Sergeant McDaniels
4 just testified, he gave information about this murder
5 and the shotgun used?

6 A Yes.

7 Q At that point, when he was describing the shotgun,
8 had it been recovered?

9 A No. The shotgun would not be recovered, I believe it
10 was the following morning. However, he did provide
11 information about the origin of the shotgun which we
12 were then able to confirm I believe the following
13 morning.

14 Q And how did you confirm what he had told you about
15 where he'd stolen the shotgun?

16 A Based on the location that he said he'd gotten it
17 from, we surmised that it could be within the city
18 limits of Columbia. There wasn't a report that we
19 could match up to the Sheriff's Department report.
20 We were unable -- I was --

21 MR. HISKER: Objection.

22 THE COURT: Sustained. Rephrase your question.

23 Q Were you able to confirm that the shotgun had been
24 stolen from a car --

25 A Yes..

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- 1 Q -- as he said?
- 2 A Yes.
- 3 Q The next day did you go out with Investigator Ewing?
- 4 A Yes, ma'am.
- 5 Q To Willow Run?
- 6 A Yes, ma'am, I did. Went back to Willow Run, this
7 time to a different apartment.
- 8 Q Is Willow Run located?
- 9 A It's -- if you're familiar with Fairfield Road as it
10 approaches I-20, Highway 321, the Flying J Truck Stop
11 is there. A lot of people are familiar with that.
12 Willow Run would be to the left just before you get
13 to the Flying J truck stop.
- 14 Q On what road?
- 15 A It would be off of Fairfield Road. It's Alcott Drive
16 that actually runs right off of 321 and Fairfield
17 Road.
- 18 Q So when you say Willow Run, that's the same thing as
19 [REDACTED]?
- 20 A That's right. Willow Run is just the name of the
21 apartment. I think there's two or three apartments
22 within Alcott Drive, and Willow Run is one of those
23 three.
- 24 Q And who did you initially try to make contact with
25 there?

1 A We actually tried to make contact with a female
2 individual who supposedly lived at [REDACTED] that we were
3 directed to. And we were unable to get an answer at
4 that particular apartment. But we received some
5 information there as to that person's employment,
6 where the person was a nurse. And that rang a
7 familiar bell to us and took us back to Apartment [REDACTED]
8 where we'd originally arrested Scott. Because one of
9 those individuals was indeed in the medical field.

10 Q And what was that person's name?

11 A Jessica Richardson.

12 Q When you made contact with Jessica Richardson -- you
13 can't say what she said -- but what did you all ask
14 her about?

15 A We advised her that we there to try to locate this
16 shotgun, that we'd received some information. And as
17 a result of her efforts and information, another
18 individual came to that location.

19 Q Who was that?

20 A It's Frank Hughey.

21 Q Does he have a nickname?

22 A Dogman. Mr. Hughey had already been involved in this
23 investigation to some degree. We were very familiar
24 with him as far as an information source. We were
25 able to obtain the shotgun through his efforts at

1 that point.

2 Q And was the shotgun turned over to you actually that
3 day?

4 A Yes, ma'am. It was brought to me wrapped in a sheet.
5 I had actually given Mr. Hughey a pair of rubber
6 gloves to retrieve the shotgun. Whenever we deal
7 with people that are coming forward with information,
8 there's concern on their part about either being
9 scared, being in trouble. At that point in time we
10 wanted the shotgun, and we weren't after anybody that
11 may have had knowledge of it or had possession of it.
12 We wanted the shotgun that was involved in this
13 homicide. And it was a delicate situation in that
14 Mr. Hughey, it was made known to us that that person
15 did not want to have contact with law enforcement.
16 He indicated that he could make that happen for us,
17 get that shotgun. So we allowed him to retrieve it.

18 Q Frank Hughey or Dogman, did you personally make any
19 attempts to try to find him prior to this trial?

20 A We made some concerted efforts to find him prior to
21 this trial.

22 Q What is his status?

23 A He is wanted actually by a couple of different
24 agencies. And by virtue of that status, he has not
25 been wanting to come to the trial this week.

1 Q One of the victims in the case was Walter Graves. I
2 believe he's a 15-year-old in one of the apartments?

3 A Yes, ma'am. I believe that he was the young lady's
4 roommate I believe who testified that was beaten in
5 incident.

6 Q And were efforts made to try to find him?

7 A Yes, ma'am. I understand he is out of state.
8 Basically he's frightened, doesn't want to be
9 involved in this process.

10 MR. HISKER: Your Honor, I object to that and
11 move to strike that.

12 THE COURT: Strike that. Sustained. Strike it
13 from the record.

14 MS. CAMPBELL: Your Honor, may we approach?

15 (Whereupon, a bench conference is had)

16 Q As far as Teran Scott and Octavia Middleton, who is
17 the taller of the two?

18 A Octavia Middleton I believe is five-ten. Teran Scott
19 is five-nine.

20 Q And when you see the two in person, who appears to be
21 taller?

22 A Octavia is thinner. Definitely his appearance is
23 he's taller.

24 MR. HISKER: Objection to clarification. He
25 just said what their heights were. He doesn't need

1 to make a judgment call who looks taller.

2 *THE COURT:* All right. Go ahead.

3 Q Who is the heavier set of the two?

4 A Scott.

5 Q Thank you. The name of Carlos Brown has come up I
6 think on one of the shotgun shells?

7 A Yes, ma'am.

8 Q Do you know who that was?

9 A I believe that is going to be an individual that was
10 in Jessica Richardson's apartment the night that
11 Teran Scott was arrested. We spoke to another
12 individual there that night that was kind of hanging
13 around with this group. And I believe that's going
14 to be Carlos Brown.

15 Q As far as nicknames in this case, what is Middleton's
16 nickname?

17 A Tank.

18 *MR. HISKER:* Objection.

19 *THE COURT:* If he knows. How does he know.

20 Q Did Middleton give any information about what his
21 nickname was?

22 A Yes, ma'am. Through the investigation and from him
23 directly, we knew his nickname is Tank, to be Tank.

24 Q And as far as Harry Dukes, what's his nickname?

25 A Boo.

1 Q During the course of -- you supervised this
2 investigation, correct?

3 A Yes, ma'am.

4 Q During the course of our investigation, was there any
5 information that Middleton drove that green vehicle?

6 A No, ma'am. All the statements either indicated it
7 was Scott or Harry Dukes or both that drove it.

8 Q There's been some questions about someone possibly
9 providing details to Octavia Middleton prior to him
10 giving his statement. Explain to the jury what the
11 procedure is at your Department?

12 A Well, we even go to efforts to have hold back
13 information in cases. And that's why, for instance,
14 when you read something in the media about a homicide
15 or violent crime that maybe the weapon might not be
16 described or the caliber. Because when you get
17 somebody that's confessing to a crime, you want it to
18 be real. You want the facts to be real and accurate
19 with what you know to be the case and not having been
20 influenced by any other means.

21 The suggestion that somebody would have fed
22 somebody information in order for them to recite it,
23 regurgitate it in a subsequent conviction, you know,
24 first of all, we wouldn't do that. Second of all,
25 it's ridiculous.

1 And in this particular case Octavia Middleton
2 was able to provide significant and specific details
3 in his statement, some of which we wouldn't even have
4 had on our own investigation. An example of that
5 would be the trip to Williston, South Carolina, that
6 was mentioned in his statement. That's something we
7 didn't know about.

8 Q And, in fact, would another investigator go and just
9 randomly talk to some suspect in the D cell?

10 A No, ma'am. You know, nothing is absolute. But we
11 have rules of conduct that we abide by that we're
12 very sensitive about, internally and externally. We
13 have a very large case load. And one of my
14 detectives would not endeavor to involve himself in
15 another detective's case just to butt in. It
16 wouldn't happen.

17 **MR. HISKER:** Objection to what another
18 investigator would do.

19 **THE COURT:** Well, sir, you've raised the issue.
20 So I'm going to let him testify.

21 A First of all, it doesn't happen for reasons of
22 protocol, what we normally do. Second of all, my
23 detectives are too busy with their own cases to be
24 involving themselves in other detectives' cases.

25 We also have that protocol with other agencies

1 that comes up sometimes as a point of friction. If,
2 for instance, the Columbia Police Department arrests
3 an individual and we have an interest in talking with
4 him, we're not just going to go down to the Alvin S.
5 Glenn Detention Center and pull him out and talk to
6 him.

7 We're going to make a courtesy call first.
8 We're going to find out who that detective at the
9 Columbia Police Department is and we're going to talk
10 to him before we go retrieve that inmate and try to
11 interview him. It's just rules of protocol that we
12 go by.

13 Q You also as supervisor in this case are familiar with
14 some shotgun shells that were recovered from the
15 Carnegie Street --

16 A Yes.

17 Q -- where Octavia Middleton was arrested?

18 A Yes, ma'am.

19 Q And the brand on those was I believe ...?

20 A It's Winchester.

21 Q And it's got a sub --

22 A Well, it's measured by the size of the shot. And
23 most of them I believe were 8's which is like a .00
24 or a birdshot. It's a smaller pellet. I believe
25 there may have been some 7 1/2's as well which

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1 obviously is close in size to an 8. It would be used
2 for Skeet shooting, as it was testified to, or bird
3 hunting.

4 Q Does Winchester make any other size shot?

5 A Yes. Most people are familiar with shotgun shells.
6 Some folks may not be. But you can have a range from
7 double aught buck which is a larger sized pellet
8 which would be what you'd use in deer hunting or
9 larger animals that runs the gamut all the way up to
10 a 9 type which is a very small pellet.

11 So it's in reverse order from small to large.
12 But actually the larger pellets are the double aught.
13 Double aught would be again for deer hunting. Like a
14 4 would be used for distance shooting, likes duck,
15 that kind of thing. So it increases. But it
16 diminishes the size of the pellet.

17 Q Finally, for the record, did you go to the D cell and
18 feed Octavia Middleton?

19 A No, ma'am.

20 Q And the person -- you participated in the interview
21 of Octavia Middleton -- is he here in the courtroom?

22 A Yes. He is sitting next to Mr. Hisker in the white
23 shirt at defense table.

24 MS. CAMPBELL: Thank you. May the record
25 reflect the witness identified --

1 **THE COURT:** The witness will so reflect he
2 identified the defendant. Mr. Hisker, cross
3 examination.

4 CROSS EXAMINATION

5 **BY MR. HISKER**

6 **Q** Good afternoon, Captain Smith.
7 **A** Good afternoon, Mr. Hisker.
8 **Q** You were present when Teran Scott was arrested?
9 **A** I was.
10 **Q** Isn't it true that he provided a bogus name?
11 **A** Initially he did. Yes, sir.
12 **Q** And Teran Scott spit in an officer's face?
13 **A** He did.
14 **Q** And you described him as combative, unruly and loud?
15 **A** That's verbatim from my follow-up. Yes, sir.
16 **Q** And you agree he kicked out the window of the patrol
17 car?
18 **A** I watched him do it. Yes, sir.
19 **Q** You also participated in Dukes' interrogation, too,
20 didn't you?
21 **A** To a limited degree.
22 **Q** To a limited degree?
23 **A** Yes, sir.
24 **Q** And he provided statements that in your report you
25 characterized as ridiculous nature?

1 A And if I might be allowed to explain that?

2 Q Sure.

3 A They were ridiculous in nature by virtue of the fact
4 that he was minimizing his involvement in it. He was
5 admitting to being present but he was saying, you
6 know, they got out of the truck with the shotgun but
7 basically I didn't know they were getting ready to
8 rob somebody. That's what I was referring to in
9 that. He was minimizing his involvement in it, which
10 is a common thing in these interviews. So in
11 describing it, it would not be fair to describe that
12 in any other way other than that specific
13 minimization on his part.

14 Q So he wasn't --

15 A His entire statement wasn't ridiculous. His
16 assertion that he didn't know what was going on in my
17 opinion, and that's what my follow-up references is
18 ridiculous.

19 Q He minimized his own criminal role, and that's what
20 you found to be ridiculous?

21 A The fact that he said he didn't realize what they
22 were doing when they got out with a shotgun; yes,
23 sir.

24 Q So he wasn't doing his good citizen duty that day
25 with the police?

1 **A** I'm not sure I'd characterize it that way. He was
2 not wanting to tell on himself at that point in time.
3 However, he was fully defining involvement of Teran
4 Scott and Octavia Middleton at that time.

5 **Q** He certainly wasn't providing full information out
6 the goodness out of his heart that day?

7 **A** No, sir. He was under arrest at that time. He was
8 being charged with this crime.

9 **Q** No further questions. Thank you.

10 **THE COURT:** Anything further?

11 REDIRECT EXAMINATION

12 **BY MS. CAMPBELL**

13 **Q** So it's not uncommon for someone to either change
14 their role of what they did in a crime or try to
15 minimize it?

16 **A** Not at all. I've had plenty of homicide cases I have
17 worked where the person actually admitted to pulling
18 the trigger, you know, but they explained it in such
19 a way where it minimized in their minds and the way
20 they try to present it as being quite as bad. But
21 they still pulled the trigger.

22 **Q** Thank you.

23 **THE COURT:** Anything further? Thank you, sir.
24 You may come down. The witness may be excused if
25 necessary. Call your next witness.

1 **MS. CAMPBELL:** The State would rest.

2 **THE COURT:** All right. Approach the bench.

3 (Whereupon, a bench conference is had)

4 **THE COURT:** All right, ladies and gentlemen.

5 That's all the evidence the State is going to
6 present. There are a couple of legal matters I need
7 to take up with the attorneys before we continue with
8 the trial. So it will be -- it's a good time for an
9 afternoon break. I know you haven't -- you get in
10 here and then you've got to get up and leave. But we
11 had -- and I apologize for the delay in restarting.
12 The 1:30 crowd was -- we were pretty busy. Let's
13 just put it that way. So just retire to the jury
14 room for a few minutes. Let me take up the legal
15 matters with the attorneys and then we'll continue
16 with the trial.

17 (Jury out at 3:05 p.m.)

18 **THE COURT:** Any motions?

19 **MR. HISKER:** Yes, Your Honor. At this time the
20 defense makes a motion for a directed verdict. Based
21 on the evidence taken in the light most favorable to
22 the State, no reasonable jury could find the
23 defendant guilty of the indictments.

24 Particularly I'd point out the armed robbery as
25 to the victim of Randy Wigfall. I believe the

1 testimony was that he threw some money out the door.
2 He did not recover that money. However, I believe
3 that that testimony is lacking on the element of a
4 taking. And for that basis I believe that the motion
5 should be granted as to that charge.

6 **THE COURT:** All right. Just hold on one minute.
7 Let's just deal with that. Wigfall said he passed
8 several hundred dollars out the door to Gordon. That
9 was his own testimony.

10 **MR. HISKER:** Yes, sir.

11 **MS. CAMPBELL:** I think he said that he passed
12 the money out and he never saw the money again. The
13 money was gone.

14 **THE COURT:** Oh. There's no question about that.

15 **MS. CAMPBELL:** Yeah.

16 **THE COURT:** That's all he said though.

17 **MS. CAMPBELL:** Yes, sir. I think that's all he
18 could say. But, yes, Your Honor.

19 **THE COURT:** You're right. That's all he could
20 say, because he was in the bathroom.

21 **MS. CAMPBELL:** And I believe he also said that
22 he did it so that if they got the money, they would
23 would, leave which ultimately happened.

24 **THE COURT:** He said he gave it to Gordon though.
25 I'm pretty sure he said he gave it to Gordon.

1 **MS. CAMPBELL:** Towards Gordon. I think he threw
2 it out. And then it was gone when he came out and he
3 never saw the money again.

4 **THE COURT:** I wrote it down, "passed it out to
5 Gordon" and said, if I give them the money they'll
6 leave, or something to that effect.

7 **MS. CAMPBELL:** Yes, sir.

8 **THE COURT:** Is there any evidence this
9 defendant -- or what is the evidence this defendant
10 took Wigfall's money?

11 **MS. CAMPBELL:** The evidence is that they took
12 everybody's wallets and money and left the property.
13 This defendant or his co-defendant, one of the two,
14 took the money. It's gone. There was no testimony
15 from Gordon that he took the money.

16 **THE COURT:** No. He certainly didn't.

17 **MS. CAMPBELL:** And he didn't --

18 **THE COURT:** I mean, I wouldn't expect him to
19 testify he took the money.

20 **MS. CAMPBELL:** He was naked, wasn't he?

21 **THE COURT:** They made him strip. I didn't know
22 what that meant. He threw his wallet on the floor,
23 and they took all of his credit cards and \$52 on
24 Jerry Gordon.

25 **MS. CAMPBELL:** I think it goes to weight and

1 not -- as far as this issue, it's a jury issue.

2 **THE COURT:** Well, the question, Mr. Hisker, is
3 there any evidence?

4 **MR. HISKER:** There is not any evidence of the
5 taking. He blindly passes money out the door, was my
6 recollection of the testimony. He has no idea who
7 picked it up and carried it away. Nor does anyone
8 else.

9 **MS. CAMPBELL:** I think circumstantially, Your
10 Honor, you can infer that the people that took
11 everybody else's money took his, too. I don't think
12 that's a leap.

13 **THE COURT:** Well, I think probably, Mr. Hisker,
14 the fact that the robbers, one of which had been
15 identified as your client, came in and demanded
16 money, Mr. Wigfall produced the money and the money
17 disappeared, I think it may be circumstantial but
18 it's probably something. But I think there is enough
19 evidence there to let that issue go to the jury. So
20 I deny your motion on Randy Wigfall. Anything else?

21 **MR. HISKER:** I'd make a directed verdict motion
22 as to the other indictments as well.

23 **THE COURT:** Any other specific --

24 **MR. HISKER:** No, Your Honor.

25 **THE COURT:** Okay. All right. Well, I think

1 there's sufficient evidence there to send this matter
2 to the jury. Certainly some issues are stronger than
3 others, but there's evidence to support each of the
4 other indictments, and I respectfully deny your
5 motion.

6 Now, does your -- let me ask Mr. Middleton if
7 you'll just -- let me advise him of his rights. If
8 you'll stand, please. I'm going to advise you of
9 your rights in this case. Anything I ask you you do
10 not understand, I want you to ask me. I'm going to
11 give you an opportunity to talk with your lawyer
12 about these matters, and then I'm going to ask you if
13 you wish to testify in this case. Do you understand?

14 **MR. MIDDLETON:** Yes, sir.

15 **THE COURT:** All right. We have reached the
16 stage of the trial where you may present your
17 defense. And as I say, you have the right to testify
18 and you have the right not to testify. The
19 Constitution of the United States provides that no
20 person shall be compelled in any criminal case to be
21 a witness against himself. This provision of
22 Constitutional law -- and that's also -- there is
23 also a similar counterpart in the Constitution of the
24 state of South Carolina. This provision of
25 Constitutional law means you cannot be compelled or

1 required to testify in this case. This is a right
2 and a privilege which the law extends to you. This
3 is a personal privilege. No one can waive this right
4 except you. You have the right not to testify, but
5 you also have the right to testify.

6 The Court will grant you such time as you need
7 to consult with your attorney before you make this
8 decision. If you elect not to testify, your failure
9 to testify cannot be used by the State as any
10 inference of guilt in this case, and your failure to
11 testify cannot even be considered by the jury in its
12 deliberations.

13 If you do elect to testify and waive the
14 privilege extended to you by the Fifth Amendment to
15 the Constitution of the United States, I advise you
16 now that you will then assume the role of a witness
17 in this case as any other witness. You will waive or
18 give up your Constitutional privilege against
19 self-incrimination.

20 This means if you voluntarily take the witness
21 stand and testify, you will then subject yourself to
22 the same rules that govern other witnesses in this
23 case and you will be examined -- you may be examined
24 and cross examined on any relevant issue in the case
25 and may be impeached; that is, questioned about your

1 record, anything like that, to the same extent as any
2 other witness in this case; all of which are subject,
3 however, to the rules of evidence and the courts of
4 the state of South Carolina.

5 I further advise you if you elect to take the
6 witness stand and testify, this decision on your part
7 must be freely, voluntarily, intelligently and with
8 knowledge of the protections given to you by the
9 Fifth Amendment to the Constitution of the United
10 States, and with the knowledge of the consequences of
11 your election to testify.

12 Do you wish to consult further with your lawyer
13 on this matter?

14 **MR. MIDDLETON:** Yes, sir.

15 **THE COURT:** All right. Do you understand what I
16 have explained to you?

17 **MR. MIDDLETON:** Yes, sir.

18 **THE COURT:** Do you have any questions about what
19 I explained to you?

20 **MR. MIDDLETON:** No, sir.

21 **THE COURT:** All right. I'll give you an
22 opportunity -- we'll take about a ten-minute break
23 and I'll give you the opportunity to talk it over
24 with your lawyer, after which I'm going to ask you if
25 you wish to testify. Okay?

1 **MR. MIDDLETON:** Yes, sir.

2 **MR. HISKER:** Thank you, Your Honor.

3 **THE COURT:** Thank you.

4 **MR. HISKER:** Can we approach briefly?

5 **THE COURT:** Sure.

6 (Whereupon, a bench conference is had)

7 **THE COURT:** All right. Let's see if you can do
8 that out of -- I don't think you need the Court to do
9 that.

10 **MR. HISKER:** No, sir, Your Honor.

11 **THE COURT:** We'll stand at ease ten minutes.

12 (Whereupon, a break is taken)

13 **MR. HISKER:** The defense is prepared to rest on
14 the record at this time.

15 **THE COURT:** On the record. Mr. Hisker, you're
16 telling me your client chooses not to prepare a
17 defense at this time?

18 **MR. HISKER:** He does.

19 **THE COURT:** Do you wish to announce that in
20 front of the jury, or do you just want to do it? I
21 said do you want me to do it or do you want to do it,
22 as far as the jury when we bring the jury in?

23 **MR. HISKER:** We can bring the jury in and the
24 defense will rest.

25 **THE COURT:** Are you going to announce it, or do

1 you want me to announce it? A simple question. You
2 can announce it.

3 **MR. HISKER:** I can announce it.

4 **THE COURT:** All right. Fine. It's your case.
5 Bring the jury.

6 **MR. HISKER:** I didn't know why you were asking
7 me.

8 **THE COURT:** Well, some lawyers prefer to
9 announce it themselves. Some would just as soon as
10 the Court do it.

11 **MR. HISKER:** Great.

12 (Jury in at 3:40 p.m.)

13 **THE BAILIFF:** The jury is all present, Your
14 Honor.

15 **THE COURT:** Thank you very much. Excuse me for
16 just a minute, ladies and gentlemen.

17 (Pause)

18 **THE COURT:** I'm just trying to check the
19 schedule, ladies and gentlemen.

20 (Pause)

21 **THE COURT:** All right, Mr. Hisker.

22 **MR. HISKER:** Your Honor, at this time the
23 defense rests.

24 **THE COURT:** Thank you very much. All right,
25 ladies and gentlemen. The defense has also rested.

1 That means there'll be no more evidence to be
2 presented to you in this trial. The remaining
3 portion of the trial will consist of the final
4 arguments of counsel and my charge to you on the law
5 of the state of South Carolina as it applies to this
6 case.

7 Now, because we have I think 12 indictments in
8 this case, the arguments or summations by counsel may
9 be somewhat lengthy, not perhaps not -- I mean, not
10 extraordinarily lengthy, but just there are a lot of
11 matters that they need to cover, as do I in my final
12 charge to you on the law of the case or on the law of
13 the state of South Carolina as it applies to this
14 case.

15 And it's further quarter 'til 4 right now.
16 We're going to have to be here tomorrow anyway. So I
17 think the most efficient use of our time is to go
18 ahead and allow these lawyers to prepare their final
19 arguments to you. I'll prepare my final charge after
20 you leave this afternoon, and we'll be ready to begin
21 first thing in the morning.

22 That's why I was trying to check on the
23 schedule. Let's reconvene tomorrow morning at 9:30,
24 at which time we'll conclude this case. Thank you
25 very much. Have a pleasant evening. And again, do

1 not discuss the case among yourselves or with anyone
2 else over the evening hours. We'll see you at 9:30
3 in the morning. Thank you very much.

4 (Jury out at 3:45 p.m.)

5 **THE COURT:** Counsel, we've got a bond setting
6 that apparently is somewhat high profile. There's
7 media interest in it set for 9:00 in the morning with
8 Mr. Ross. I'm not aware of what it is. But that
9 will -- we'll be using the courtroom starting at 9.
10 And if we bring the jury back at 9:30, I'm not going
11 to have much time for a charge conference. So if you
12 can tell me now, do you have any requests for charge?

13 I will tell you that I've pretty well done a
14 proposed charge which is just a standard charge with
15 the addition of the elements of the charged
16 indictments. And I don't have anything that's out of
17 the ordinary in the proposed charges. I'll be glad
18 to consider anything you wish for me to consider.

19 **MS. CAMPBELL:** Yes, sir.

20 **THE COURT:** From the State.

21 **MS. CAMPBELL:** Yes, sir. I have several I'd
22 like to hand up. And, Your Honor, --

23 **THE COURT:** The State is familiar with my
24 general charge.

25 **MS. CAMPBELL:** Yeah. But can I get a copy?

1 **THE COURT:** Yes, ma'am.

2 **MS. CAMPBELL:** The two specifically out of
3 Anderson's charge book, the felony murder rule as
4 well as to the hand of one, hand of all. And then I
5 can't remember if when you do your malice charge --

6 **THE COURT:** Let me give you my felony murder.
7 Let me see what yours is.

8 **MS. CAMPBELL:** It may be the same thing.

9 **THE COURT:** It's not out of Anderson. It's
10 almost identical. I cite State v. Bailey and State
11 v. Norris, the same case citation.

12 **MS. CAMPBELL:** As mine? State v. Avery?

13 **THE COURT:** Norris. I'm talking about felony
14 murder.

15 **MS. CAMPBELL:** I handed up like four felony
16 murders.

17 **THE COURT:** Well, I only read it. That was the
18 first one I read. That's the only one I planned to
19 give them.

20 **MS. CAMPBELL:** It may be the same one.

21 **THE COURT:** It's the same one. You cited
22 Norris.

23 **MS. CAMPBELL:** It must be a good one then.
24 Sorry. And hand of one, hand of all.

25 **THE COURT:** You know, you really don't need to

1 be talking with me about these things. You need to
2 be talking with Ms. Kolb.

3 MS. CAMPBELL: I'll be glad to. Here. I'll
4 pull them out.

5 THE COURT: I will tell you -- well, two people,
6 one bullet is in my --

7 MS. CAMPBELL: Is in your language?

8 THE COURT: Yes.

9 MS. CAMPBELL: Okay.

10 THE COURT: Two people, one bullet.

11 MS. CAMPBELL: This is the one I was looking at,
12 State v. Gilbert.

13 THE COURT: Gilbert?

14 MS. CAMPBELL: The old hand of one, hand of all.

15 THE COURT: Do I already have that?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: I'm looking for it.

18 MS. CAMPBELL: And then the involuntary
19 intoxication. That's it. That's good.

20 THE COURT: Where is voluntary intoxication in
21 the record?

22 MS. CAMPBELL: In his statement that was
23 admitted he says he was drunk and high.

24 THE COURT: Okay. I just remember the last
25 witness saying that.

1 *MS. CAMPBELL:* The last witness was drunk and
2 high, too.

3 *THE COURT:* All right. Anything else?

4 *MS. CAMPBELL:* I've got Furman, Vaughn and
5 South.

6 *THE COURT:* You've got what?

7 *MS. CAMPBELL:* State v. Robert South.

8 *THE COURT:* What's the issue?

9 *MS. CAMPBELL:* The intoxication.

10 *THE COURT:* Oh, intoxication.

11 *MS. CAMPBELL:* And then as far as malice.

12 *THE COURT:* In murder?

13 *MS. CAMPBELL:* Yes, sir.

14 *THE COURT:* Do you want my murder charge?

15 *MS. CAMPBELL:* Yes, sir.

16 *THE COURT:* Are you going to put it on a board?

17 *MS. CAMPBELL:* I could. I like the board.

18 *MR. HISKER:* Could I get a copy?

19 *THE COURT:* We're going to give you a full set.

20 *MR. HISKER:* I can get a full set?

21 *THE COURT:* Yes.

22 *MR. HISKER:* Right offhand I can just think of
23 mere presence, mere association.

24 *THE COURT:* Mere presence. What do you say
25 about mere presence?

1 MS. CAMPBELL: I think mere presence is fine.

2 THE COURT: Okay. And what was the other one?

3 MR. HISKER: Mere association. I think it's all
4 sort of --

5 THE COURT: It's all the same thing.

6 MR. HISKER: It's all the same. But I would
7 like some time tonight to do some research on the
8 accomplice liability issues.

9 MS. CAMPBELL: I'll give you the hand of one,
10 hand of all.

11 THE COURT: I'm going to give you a full set.

12 MR. HISKER: Yes, sir. Please.

13 THE COURT: We'll give them to you by 4:00.
14 Yes, ma'am. Just give us a few minutes and we'll
15 give you the full set. Okay?

16 MS. CAMPBELL: That's fine.

17 THE COURT: And from the State, the alleged
18 weapons used by either of the co-defendants are a
19 shotgun, a chair. Anything else? Was there
20 testimony as to --

21 MS. CAMPBELL: He beat him with the shotgun,
22 too, but that's the shotgun.

23 THE COURT: I know that. But any other weapon;
24 i.e., a fist?

25 MS. CAMPBELL: Fist and kicking.

1 **THE COURT:** That a fist can be used.

2 **MS. CAMPBELL:** And they kicked, too. Kicking.

3 **THE COURT:** I mean, there's testimony to support

4 that?

5 **MR. HISKER:** There is testimony.

6 **MS. CAMPBELL:** To support all that.

7 **THE COURT:** Fists.

8 **MS. CAMPBELL:** Firsts and kicking.

9 **MR. HISKER:** Fists and kicking.

10 **THE COURT:** All right. Just give us a few

11 minutes. We'll through the magic of modern

12 technology --

13 **MS. CAMPBELL:** Have you seen this?

14 **THE COURT:** The new one?

15 **MS. CAMPBELL:** Yeah.

16 **THE COURT:** I don't have enough money to buy it.

17 **MR. HISKER:** It's on my list.

18 **MS. CAMPBELL:** We'll buy you one.

19 **MR. HISKER:** Me, too?

20 **THE COURT:** I just don't think I ought to always

21 go around quoting Judge Anderson.

22 **MS. CAMPBELL:** That's true.

23 **THE COURT:** All right. Mr. Hisker, you don't

24 need your client here for this, do you?

25 **MR. HISKER:** No, sir, I don't.

1 **THE COURT:** All right. He can go. Go catch the
2 bus.

3 (Whereupon, the proceedings are concluded for
4 the day, to be reconvened tomorrow morning)

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1 Friday, August 31, 2007

2 *THE COURT:* All right, counsel. Anything before
3 we bring the jury?

4 *MR. HISKER:* No, Your Honor.

5 *MS. CAMPBELL:* No, sir.

6 *THE COURT:* From the State?

7 *MS. CAMPBELL:* No, sir.

8 *THE COURT:* All right. Bring the jury, please.

9 (Jury in at 10:08 a.m.)

10 *THE BAILIFF:* The jury is all present, Your
11 Honor.

12 *THE COURT:* Thank you very much. Good morning,
13 ladies and gentlemen. Now we're ready to conclude
14 this trial with the final arguments of counsel and my
15 charge to you on the law of the state as it applies
16 to this case. Solicitor, you may proceed.

17 *MS. CAMPBELL:* May it please the Court?

18 *THE COURT:* Yes, ma'am.

19 *MS. CAMPBELL:* Good morning. On behalf of the
20 state of South Carolina and on behalf of the Greene
21 family, his daughter, his wife who will be here in a
22 second, some of his other relatives, I want to thank
23 you for your service, because none of you chose to be
24 here.

25 It's often said that jury service is the highest

1 duty can one render, the most important duty one can
2 render to one's own country in times of peace and
3 while many of our fellow citizens are fighting a war
4 in another place, I think over the last several days
5 you have come to understand how important your
6 service is.

7 Because, ladies and gentlemen, after you hear
8 from me, then you're going to hear from Mr. Risher.
9 And I'm not going to have an opportunity to respond.
10 The judge is going to tell you what the law is and
11 then are you going to have to go back and determine
12 who the two participants were that so brutally and
13 hatefully and maliciously killed Mr. Greene, beat up
14 and robbed those other people back on August the 8th
15 of 2005.

16 Now, I'm going to talk a little bit about the
17 law first and then some about the facts. And if I
18 misquote anything, it's not intentional, be it the
19 law or the facts. You take the law as the judge
20 gives it to you because he is the sole finder of the
21 law.

22 There are roles in our courtroom. The role of
23 the prosecutor: To put forth all the admissible,
24 relevant evidence that can come before you that meets
25 that test of admissibility. The defense role is

1 obvious: To defend his client. The judge's role is
2 to determine what he thinks is admissible and can
3 come forward and to ultimately instruct you on the
4 law that you have to apply to the facts as you find
5 them.

6 And, ladies and gentlemen, there is no dispute;
7 in this courtroom the most important role is yours.
8 Each of you individually and then once you go back to
9 that courtroom (sic) collectively. Because you must
10 determine who the two or three participants, the two
11 inside and the one outside, were.

12 And this is Octavia Middleton's day in court.
13 Harry Dukes, his day in court is another day. Teran
14 Scott, he has his day in court. We are here about
15 Octavia Middleton. So if anyone misquotes what the
16 law should be, you take it as that judge gives it to
17 you. And if anyone misstates the facts, you remember
18 it, because that is your sole job. You remember the
19 testimony, the credible testimony.

20 Now, you have heard all the testimony you're
21 going to be able to consider in this case. You must
22 base your verdict on the physical evidence that's
23 been put in and the testimony. That's the evidence.
24 You have heard many questions in this case. You
25 don't base your verdict on questions, innuendo,

1 conjecture or speculation on whoever's part or just
2 on a fishing expedition. The credible testimony is
3 what you must base your verdict on. And the judge
4 will instruct you about that.

5 And I want to take this time. I want to
6 apologize if I have done anything over the last
7 several days to offend anyone. At times my
8 questioning has been sloppy or inartful. At times my
9 presentation of the evidence has been sloppy. In my
10 haste sometimes to try to get it before you I do
11 phrase questions correctly. And that is my fault.
12 But please don't hold that against Mr. Huggins or Mr.
13 Greene and his family or any of the other victims in
14 this case. I did not mean to offend anyone in any
15 way. If I've done so, I want to apologize on behalf
16 of the State, the citizens of this county.

17 And A criminal case is somewhat unique. The
18 defendant has a right to confront each and every
19 witness before you. You have heard references to
20 reports. You have heard references to reports made
21 by the pathologist, reports that were rendered by the
22 police, statements. The defendants' statements can
23 come in before you, but no one else's statements can.
24 You heard reference to a statement by Harry Dukes.
25 You may wonder why that is not before you. It's not

1 admissible under our laws.

2 You have before you though the live testimony.
3 Again, he has the right to confront each and every
4 witness against him. So they have to come before you
5 and testify. So you notice there are no video
6 depositions or anything like that. In criminal
7 court, they understand it's important. And he has
8 that right to confront his witnesses. And we have
9 complied with that.

10 You have also heard reference to some other,
11 say, police officers at a scene or something, another
12 investigator that may have been involved in part of
13 the investigation. We cannot bring forth every
14 single person who may have had some involvement in
15 this case to say the same thing over and over and
16 over. It's called cumulative.

17 We can only bring forth before you people who
18 have something to add or to dispel. Like people that
19 have any kind of contact with Octavia Middleton the
20 day he was taken into custody, you heard from all
21 those people. And that's the reason you may have
22 heard reference to other people, other people, maybe
23 a search warrant or something. Simply, if they have
24 nothing different to add, then you will not see them.

25 Now, in criminal cases the burden of proof is on

1 the state of South Carolina to prove that defendant's
2 guilt beyond a reasonable doubt. And that is exactly
3 as it should be. The burden rests here for us to
4 present credible evidence that overcomes reasonable
5 doubt. And I submit, ladies and gentlemen, in this
6 case, perhaps more than any other, we welcome that
7 burden. Because I submit in this case with these
8 facts and this evidence, the evidence is overwhelming
9 of Octavia Middleton, Tank Middleton's, guilt.

10 Now, what is proof beyond a reasonable doubt?
11 And the courts have considered that over the years.
12 The easiest way to define it is it's that type of
13 truth which makes a reasonable man hesitate to act.
14 But they have gone a little bit further in their
15 explanation in order to aid you. And the Judge will
16 charge you on reasonable doubt.

17 He will charge you, and the defense discussed in
18 his opening, there are different levels of doubt.
19 And proof beyond a reasonable doubt is not proof
20 beyond every single doubt. Because each one of us in
21 our own way may doubt something, be it reasonable or
22 not.

23 But what is proof beyond a reasonable doubt?
24 Proof beyond a reasonable doubt is proof that leaves
25 you firmly convinced of the defendant's guilt. And I

1 think that sums it up well. If you are firmly
2 convinced of the defendant's guilt, then that is
3 proof beyond a reasonable doubt. It goes on. There
4 are very few things in this world that we know with
5 absolute certainty. And in criminal cases the law
6 does not require proof that overcomes every possible
7 doubt.

8 If based on your consideration of the evidence
9 you are firmly convinced that the defendant is guilty
10 of the crime charged, you must find him guilty. If,
11 on the other hand, you think that there is a real
12 possibility he was not involved, you must give him
13 the benefit of the doubt and find him not guilty.
14 It's proof that leaves you firmly convinced. Again,
15 there are very few things in this world that we know
16 with absolute certainty. And in criminal cases the
17 law does not require proof that overcomes every
18 possible doubt.

19 That's just a guide for you to use when you all
20 go back in the jury room and start deliberating.
21 It's what is a reasonable doubt. Mr. Hisker in his
22 opening talked a lot about reasonable doubt. And,
23 ladies and gentlemen, this is the definition that's
24 in the books.

25 Now, the charges. And as you have heard, there

1 are 12 indictments in this case. That doesn't mean
2 that there were 12 separate crimes. All of these
3 arose out of the same crime because we can only bring
4 forth before you evidence of this crime before you
5 that you are trying in this case.

6 What is the first charge I want to talk about?
7 Murder. There is one count of murder, one
8 indictment. It's the murder of Mr. Greene. And I
9 don't think anyone is going to get up here and argue
10 that Mr. Greene wasn't murdered. But very simply,
11 ladies and gentlemen, I need to go through the
12 elements just to make sure they are covered.

13 Murder, to be the most heinous crime in the
14 books, it's got the shortest definition. What is
15 murder? It is the killing of a person with malice
16 aforethought, either express or inferred. And when
17 it talks about express or inferred, the judge will
18 tell you those aren't two kinds of malice that are
19 different in nature. It's merely the way that we can
20 perceive it.

21 Express malice is if I walk up to someone and I
22 look them in the eye and I pull out my gun and I say,
23 "I'm going to kill you" and then shoot them, that's
24 express. The words. Lying in wait can be express
25 malice. Things of that nature.

1 But the law recognizes that inherently in most
2 cases where there is a murder -- and listen carefully
3 to the judge, too. We don't have to prove motive.
4 There doesn't have to be any premeditation. And I'll
5 talk a little bit about malice when it comes.

6 But inferred malice, the judge will tell you
7 look at the actions surrounding the act itself,
8 because it's still murder. If I walk up, look at
9 another person and you don't say a word and shoot
10 them dead, even though I didn't say, "I'm going to
11 kill you", it's still murder. And that's very simply
12 the way to look at it.

13 Now, what is malice aforethought? And it's been
14 defined over and over. And the judge may have a
15 little bit different definition, but take it as he
16 gives it to you. Malice. In its popular sense
17 malice conveys the meaning of hatred or ill will or
18 hostility. Although I submit in this case, ladies
19 and gentlemen, if this isn't malicious?

20 And the easiest way for me to define malice is
21 to use the word "malicious" because malice is the
22 base of that. It's simply an evil thing to do.
23 Malice is a term importing wickedness and excluding
24 just cause or excuse. It's an unlawful act without
25 just cause or excuse. It's something that springs

1 from wickedness, from depravity, from a heart devoid
2 of social duty and fatally bent upon mischief.

3 The judge will also charge you that the use of a
4 deadly weapon alone infers malice. And I submit,
5 ladies and gentlemen, in this case no one is going to
6 get up here and argue that what went on in that
7 apartment isn't malicious. This case wrecks of
8 malice. But that is what malice does. But whatever,
9 in murder, we must prove malice. I submit, ladies
10 and gentlemen, this case, that is not an issue.

11 Also on the charge I'll get to in a minute of
12 assault with intent to kill. Again, when he shot at
13 Mr. Huggins and it went into the floor, was he acting
14 with malice? Just because he misses doesn't mean he
15 didn't have the malice.

16 Finally, we don't even have to prove that there
17 was some hateful relationship between Mr. Greene.
18 Although I submit, ladies and gentlemen, going into
19 an apartment and killing a man simply because he
20 couldn't produce the money, he couldn't even get up
21 off the couch, that's malice.

22 Malice does not necessarily impart actual ill
23 will towards the individual injured but signifies
24 rather a general malignant recklessness for the lives
25 or safety of others or a condition of the mind which

1 shows a heart regardless of social duty and fatally
2 bent on mischief.

3 And remember Eliana Garcia? Do you think this
4 is fake? Whatever the word was. He showed her. It
5 doesn't get any more malicious than this crime. Very
6 simply, the judge will instruct you on the law and
7 you'll listen to it. But that's some parameters as
8 far as what malice means.

9 And again, malice may be inferred when it's done
10 with a deadly weapon. And nobody is going to argue
11 that that shotgun point blank range to his chest was
12 not a deadly weapon. He had no chance of living.

13 Burglary in the first degree, there are two
14 counts. And the reason for that, ladies and
15 gentlemen, is simply, there was a break-in in two
16 different apartments. It doesn't matter who did the
17 initial break-in. The two of them are acting
18 together. And I'll get back to hand of one, hand of
19 all.

20 But basically, you remember, they forced their
21 way in, tricked their way in, used Karl Jones to gain
22 entry. And listen to the judge. We don't have to
23 prove that they break in the door. All we have to
24 prove is they entered with the intent to commit a
25 crime therein.

1 Burglary in the first degree: If he enters a
2 dwelling without consent and with intent to commit a
3 crime in the dwelling. And that's important. So
4 they have to enter with intent to commit a crime
5 therein. And I submit, ladies and gentlemen, it's
6 been -- and even Octavia Middleton, they were there
7 to do a lick. There is no question they were there.
8 They picked the house because they thought they could
9 get away with it because there was an illegal
10 gambling house and who was going to report it? So
11 what if they killed people? They ended up killing
12 one of them. But that's part of the sport.

13 When effecting the entry, while in the dwelling,
14 he or another participant in the crime is armed with
15 a deadly weapon or displays what appears to be a
16 knife, pistol, revolver, shotgun, that's basically
17 the ones that apply here. Or in the nighttime, but
18 that doesn't really apply.

19 So basically burglary, unlawful entry into the
20 dwelling of another, and an apartment building is a
21 dwelling, while armed with a deadly weapon or
22 displaying what appears to be a deadly weapon. And,
23 ladies and gentlemen, when Mr. Greene lay there dead,
24 I don't think this is any dispute that there was a
25 deadly weapon. You've got the wadding that was found

1 in the carpet and in Mr. Greene. There is no dispute
2 somebody was armed. Those are two counts or that.

3 Now, you have five counts of armed robbery, the
4 victims in the case that they took stuff from.
5 Mr. Gordon, you remember, he slipped his money under
6 the thing and never saw it again. And it doesn't
7 have to be actually from the actual person or place,
8 person or their presence.

9 Basically, the easiest way to describe armed
10 robbery is to talk about what's a lesser-included,
11 although there are no lesser-included's before you in
12 this case. Very simply, larceny is a lesser-included
13 of robbery. Larceny, very simply put, is stealing,
14 stealing from another person. If I have my books in
15 a locker at school and I leave my locker unlocked and
16 somebody comes along and takes them while I'm gone,
17 then that's a larceny.

18 What elevates it to a robbery is, say, I have my
19 books with me or on my desk and I am sitting at the
20 table and somebody comes along and says, "I'll hit
21 you if you don't give me your books", then it becomes
22 a robbery. Very simply, stealing accompanied with
23 taking from the presence of another by means of force
24 or intimidation.

25 What then elevates it to armed robbery is very

1 simply when you use a weapon. The law recognizes
2 inherently whenever a weapon is used to commit a
3 crime that bad things happen, like in this case. The
4 law recognizes that. And that's why it's elevated to
5 another level when you use a weapon such as a
6 12-gauge shotgun.

7 Very simply, those are the things. Listen to
8 the judge. It doesn't matter if they take one cent
9 or a million dollars. It's armed robbery. If you
10 take any goods, be it a wallet, an I.D., it doesn't
11 even have to be money, it's armed robbery. And the
12 judge will instruct you on that. And there were five
13 different victims that are listed on the indictments,
14 and you should have those with you.

15 Also charged in this case are three counts of
16 assault and battery of a high and aggravated nature.
17 And again, the victims' names were listed. And you
18 remember who all was beaten up.

19 Assault and battery of a high and aggravated
20 nature is an unlawful act of violent physical injury
21 to the person of another accompanied by circumstances
22 of aggravation. Serious bodily injury, a difference
23 in the sexes, the use of a deadly weapon, a great
24 disparity between the ages and physical conditions,
25 the intent to commit a felony, the purposeful

1 infliction of shame and disgrace or indecent
2 liberties with a female. We don't have to prove all
3 of them. Any one of those or any other aggravating
4 circumstance that you choose to find is sufficient.
5 We just have to prove one of them.

6 And in this case, ladies and gentlemen, I don't
7 think anybody is going to get up here and argue that
8 these weren't aggravated assaults on those three
9 people. Now, Mr. Huggins is the victim of one of
10 these. Remember? They were beating him? His head
11 started bleeding. He was across the room while one
12 was beating him up. The other one was over with Mr.
13 Greene.

14 He also has one count of assault and battery
15 with intent to kill because one of the two
16 participants, maybe not the one that was actually
17 beating him up but actually the other one according
18 to Mr. Huggins shot at him. That is a separate
19 offense even though a different person may have done
20 it. Again, the hand of one is the hand of all.

21 And very simply, Ladies and Gentlemen, assault
22 with intent to kill is an unlawful attempt or
23 offering -- again, just because he's getting misses,
24 he doesn't get a free ride on that -- to commit a
25 violent injury upon the person of another with malice

1 aforethought and with the present ability to complete
2 the attempted injury.

3 The testimony in this case from Mr. Huggins and
4 others is that he shot at him. There were two shots
5 in there. And how do we know we had two shots? We
6 get wadding out of Mr. Greene's body at the autopsy
7 and then the one across the room that was in the
8 carpet.

9 So that's the assault with intent to kill. And
10 it's somewhat confusing because you may wonder why
11 Mr. Huggins has an assault and battery of a high and
12 aggravated nature and an assault with intent to kill.
13 But they were two separate and distinct crimes. And
14 again, both are charged and both are responsible.

15 Now, in every case there are different kinds of
16 evidence, what's called circumstantial evidence and
17 direct evidence. And what's the difference? The
18 judge will tell you you don't have to rely on one
19 more than another. Each are good. What is direct
20 evidence? It's eye witness testimony. You've heard
21 from the victims in this case, the ones that came
22 forward. Eye witness testimony. What you hear,
23 sense through your senses, what you feel, what you
24 see, what you smell, that's direct testimony,
25 typically an eye witness.

1 What is circumstantial evidence? Circumstantial
2 evidence is basically proof of a chain of
3 circumstances that point to the existence of a fact.
4 Circumstantial evidence in this case, Teran Scott's
5 DNA -- DNA is circumstantial evidence -- was found in
6 the beer can that fell out of the car at the scene.
7 That is circumstantial evidence that ties Teran
8 Scott.

9 What ties Octavia Middleton to Teran Scott is
10 also circumstantial evidence as far as that part.
11 Direct evidence is his confession. Circumstantial
12 evidence is the two of them being tied together.

13 And in this case, ladies and gentlemen, you
14 don't have to rely on one or the other. Sometimes
15 that's true. Sometimes you'll only have a piece of
16 circumstantial evidence you can rely on. And
17 sometimes you'll only have, say, one eye witness you
18 can rely on.

19 In this case you have much more, because the
20 direct testimony and circumstantial evidence
21 corroborate each other. So you can take both. You
22 don't have to exclude one to use the other. You take
23 them both together and look at the case as a whole.
24 Because in this case it is very important, you have
25 to take all of the pieces and put them together and

1 then look at his statement which then makes sense.
2 And I'll get to that in a minute.

3 In every case, too, the State has to prove
4 criminal intent. And how do you do that? The judge
5 will tell you there's no way we can like dissect a
6 person's brain and figure out to a mathematical
7 certainty what he was thinking at the time. So
8 criminal intent is a mental state, a conscious
9 wrongdoing.

10 It's up to you to determine what the defendant
11 intended to do based on the circumstances that were
12 shown to have existed. Criminal intent can arise
13 from action or failure to act. It may arise from
14 negligence, recklessness or an indifference to duty
15 or to consequences that is considered by the law to
16 be the equivalent of criminal intent.

17 And very simply, ladies and gentlemen, there is
18 no question that they were acting as criminals.
19 That's all it is. Were their actions criminal from
20 the get-go? That's criminal intent.

21 Also in this case there was evidence that the
22 statement was given, the statement for you to
23 consider. And the judge will tell you that before
24 you can consider that, you must make a determination
25 that he gave that statement voluntarily.

1 And inherent in that and very important in that
2 is not only did this defendant understand -- and
3 that's why I asked those questions: Was he
4 threatened, was he promised anything, did he
5 understand what was going on, nobody was beating him
6 or anything of that nature, because we need -- and
7 it's important, because you need make sure his rights
8 were protected. And I submit, ladies and gentlemen,
9 in this case the police did everything by the book.

10 Voluntary statement. Did the defendant make a
11 statement? Was the defendant warned of his
12 Constitutional rights? And that's why you heard
13 about from two different officers that at two
14 different times he was given his rights. That is to
15 make sure he understands his rights and that he is
16 willing to talk. Because his rights per the
17 Constitution should be protected; and in this case,
18 ladies and gentlemen, they were.

19 Did the defendant knowingly and intelligently
20 waive his Constitutional rights, and was the
21 statement given voluntarily? In this case, ladies
22 and gentlemen, there is absolutely no evidence that
23 the police did anything but act appropriately. But
24 it is important you give him his rights and it's
25 important he understand them. And in this case this

1 defendant was given his rights on two different
2 occasions.

3 Those are some of the facts you can consider,
4 along with his age, the circumstances surrounding
5 wherever the statement was given. Was he being
6 intimidated by a bunch of people hanging over him or
7 anything like that? In this case it was Sergeant
8 Ewing. There were basically two officers sitting
9 there as Mr. Middleton wanted to give his version,
10 what he wanted to admit to him.

11 Shawn McDaniels, Captain Smith and Shawn
12 McDaniels, again talking. That's what you hear.
13 Basically Mr. Middleton was taken into custody around
14 12:30, 12, 1:00 that afternoon. He was giving his
15 statements during the course of the afternoon and
16 actually ended up talking to the officers the second
17 time around 6:00 that night I believe. So was the
18 interrogation too long? No. He wasn't kept there
19 until 2 or 3 in the morning. Things of that nature
20 are things you can consider in determining whether or
21 not Octavia Middleton gave a voluntary statement.

22 Now, also in this case you heard from some
23 witnesses which were qualified as experts. And very
24 simply, ladies and gentlemen, the law recognizes that
25 in certain situations if a person has had training or

1 education in a certain field, they can come before
2 you with their opinion. I couldn't come before you
3 and give an opinion because I'm not an expert. But
4 you heard from the pathologist, from the DNA people,
5 from the crime scene investigators and everything.
6 They're able to render opinions.

7 Now, you consider their evidence the same or
8 their testimony the same way you do anything else.
9 You judge their credibility. Do they have a basis
10 for their knowledge? Was it reasonable, what they
11 told you? Things of that nature. But you judge the
12 credibility. And I'll get to credibility in a
13 minute. But it's very important. But that's why
14 those people were able to come before you and give an
15 opinion about something.

16 Now, you've heard from the very beginning this
17 case is what we call a hand of one, hand of all.
18 Because as I think you have come to learn perhaps
19 over the last several days, this was a very violent,
20 chaotic scene. Things were happening. People were
21 scared for their lives and should have been.

22 Certain people observed different things that
23 are in different parts of the house. Certain people
24 observed different things from different viewpoints.
25 And I submit, ladies and gentlemen, the defense may

1 get before you and argue that because one is
2 considered to be a light-skinned male versus a
3 dark-skinned male, that you can't believe them. I
4 submit, ladies and gentlemen, that's what makes them
5 credible. They have related to you the events as
6 they could perceive them that day. If every one of
7 those people got up here and gave you the exact same
8 description and the exact same terminology, then
9 you'd be able to worry.

10 This is real life. It shouldn't happen to
11 anybody, but this is real life. And that's what
12 makes them credible. Mr. Huggins, what do they have
13 to gain or lose by trying to make something up?
14 They're lucky to have survived, but they don't have a
15 beef against this man. They came before you
16 honestly, each one of them. I couldn't get a good
17 look at his face, because they were telling them not
18 to, because they understand they don't want anybody
19 to recognize them. They came before you and gave
20 their credible testimony.

21 Hand of one is the hand of all. The law
22 recognizes that when two people ban together to
23 perform certain acts that both should be held
24 accountable. And I'll talk about the felony murder
25 rule in just a second.

1 If a crime is committed by two or more persons
2 who are acting together in the commission of an
3 offense -- in this case it started out just
4 committing a burglary, then they went to the robbery
5 and then they went to the beatings and then they went
6 to the assault with intent to kill and the murder --
7 the act of one is the act of both or all.

8 Octavia Middleton in his statement, while he is
9 trying to distance himself as far as he can get from
10 the murder, he admits they went there for the purpose
11 of robbery. He admits that he had been carrying the
12 gun at that point, although Teran Scott comes up with
13 it afterwards. Two people can be guilty of killing
14 another or murder when only one of the two had a
15 pistol and only one bullet.

16 If both are together, acting together, assisting
17 each other in the commission of the offense, the law
18 says that under those circumstances the act of one is
19 the act of all; and as it is sometimes said, the hand
20 of one is the hand of all.

21 One illustration. I plan with my buddy to go in
22 and do an armed robbery. My role is to stand outside
23 the door and be lookout. My buddy goes in. I
24 specifically tell him, "do not shoot anybody while
25 you're in that store." He goes in. He shoots and

1 kills the clerk. It doesn't matter. I am guilty.
2 Because under the hand of one is the hand of all,
3 once we choose to commit offenses, we are then
4 responsible for whatever happens during the
5 commission of those offenses. And that's the theory,
6 and the judge will give it to you, and listen
7 carefully when he instructs you on that.

8 Under the felony murder rule, it's slightly
9 different verbiage but the same principle. And the
10 judge will instruct you on this. He will tell you
11 when two or more combine together to commit a robbery
12 and during the robbery a homicide is committed as a
13 natural and probable consequence, because, ladies and
14 gentlemen, when people start pulling out guns and
15 they get anxious and they're drunk and they're high,
16 bad things happen. And the law recognizes that.

17 All present and participating in the robbery are
18 as guilty of the killing as the one committing the
19 homicide. If a person intentionally kills another
20 during the commission of a felony, malice may be
21 inferred. So it's another way you get malice.

22 And there is no doubt in this case that the
23 person who was holding the gun, you think it's fake?
24 And then he turns around and puts it to his chest and
25 executes him and shoots at Mr. Huggins, this wasn't

1 an accident. Those are all theories of law that you
2 can consider.

3 Finally I want to touch on one more thing. Then
4 I want to talk about credibility briefly. Voluntary
5 intoxication. The defendant put in his statement,
6 and there has been testimony from Mr. Dukes, that
7 they're all just, you know, drinking and having a
8 good time that day, maybe getting high, whatever. In
9 fact, I think Octavia Middleton says he was drunk and
10 high. He doesn't remember specifics.

11 Voluntary intoxication is never an excuse or a
12 defense to a crime. A person who voluntarily renders
13 himself intoxicated is no less responsible for his
14 acts while in such condition. If A person
15 voluntarily drinks intoxicating liquors or takes
16 drugs and becomes intoxicated and if while in that
17 condition commits an act which would be a crime if it
18 had been committed by a sober person, the fact of
19 drunkenness or intoxication would not relieve the
20 intoxicated person from that responsibility.

21 So if a person chooses to get high and to go out
22 and commit a crime, it doesn't matter. He is not
23 given a free pass because he chose to get high. And
24 that's simply the law.

25 The final thing I want to talk to you about is

1 credibility. In every case it's what it boils down
2 to, what's believable and what's not. The defense
3 will get up here and tell you you can't believe Harry
4 Dukes. And I submit, ladies and gentlemen, the judge
5 will tell you you can believe all of the witnesses,
6 none of the witnesses, part of a witness's testimony.
7 You can say, did they try to minimize their role in
8 this act? He is charged with this.

9 You can believe one witness against many; many
10 against one. You can consider their demeanor. Were
11 they forthright? Were they hesitant? You can
12 consider whether or not they have a bias or
13 prejudice, something to gain or to lose. The judge
14 will give you a number of factors other than what
15 I've even told you.

16 But very simply, ladies and gentlemen, you must
17 determine what's credible. Because there are a lot
18 of statements. And Harry Dukes came forward and
19 testified. And he didn't have to. We can't make
20 him. And you can consider his testimony. But what
21 Harry Dukes does do is he corroborates what Octavia
22 Middleton says about who went in there. Because in
23 this case, ladies and gentlemen, Octavia Middleton --
24 and I'll get back to his statement -- gives statement
25 in which if you look at it, and I'll go through it in

1 a minute; all he's trying to do is to get away from
2 the murders, the robberies. He always tries to act
3 like he was just there. But mere presence at a crime
4 doesn't make a person guilty.

5 But I want to go back to in a minute what the
6 witnesses said because they are credible they are
7 believable. They don't have anything to gain or to
8 lose. The defense may get up here and say you can't
9 believe anybody in a poker machine house. And I
10 submit, ladies and gentlemen, they shouldn't have
11 been going in the poker machine house, but that
12 doesn't mean they deserved to be robbed and beaten
13 and killed. James Greene was 73 years old, a mason.
14 He was playing pinocle with his friends. And he
15 deserved to die? Credibility.

16 In every case you listen to the opening argument
17 from the defense and you try to anticipate what the
18 defense will be. And Mr. Hisker in his opening took
19 a lot of time explaining the different levels of
20 proof we have in our law, that there is preponderance
21 of the evidence, there is clear and convincing, and
22 there is reasonable doubt, that those are the levels.

23 And let me be clear. Reasonable doubt is the
24 highest level of proof we have, as it should be.
25 Because the State should be held to the standard in

1 this case and in every case to prove the defendant's
2 guilt beyond a reasonable doubt, to leave you firmly
3 convinced of his guilt.

4 But as I listened to his opening, his defense is
5 reasonable doubt. Wrong man? Because one thing
6 that's become clear throughout this whole case is the
7 names Teran Scott and Octavia Middleton go
8 hand-in-hand. Harry Dukes they found out about
9 later. But Teran Scott and Octavia Middleton, those
10 names.

11 And he may get up here and try to say, well, you
12 know, you heard Teran Scott's name more than you
13 heard Octavia Middleton's.. Not true. Did they each
14 have different roles afterwards as to who was hiding
15 the gun and who wasn't? Did they each have different
16 roles as to where one was hiding and the other one
17 was hiding when they got arrested? Yes. We are here
18 today for Octavia Middleton.

19 The defense will get up here and talk about how
20 none of these people could identify anyone. And,
21 ladies and gentlemen, that is true. They made sure.
22 They had stuff halfway over their faces. They told
23 them not to look at them or they were going to die.

24 Those people, the ones that did survive, did
25 what they had to survive. And at that point their

1 main focus wasn't I'd better get a good look at his
2 face so I can testify against him two years down the
3 road. They did what they had to. I submit that's
4 what makes them credible. They couldn't identify
5 anyone because they didn't get a good look at
6 anybody's face. When they were stripping naked at
7 gunpoint, they didn't look at their face. Because if
8 they looked at their face, they might have been dead
9 and we'd be here today on more than one murder.

10 He is going to argue that there is no DNA at the
11 scene. And I submit, ladies and gentlemen, you heard
12 from Bill Mann. He swabbed the blood at the scene.
13 Whose blood was it? Mr. Huggins' all over that one
14 wall? At best, Octavia Middleton got scratched. At
15 best, it might have gotten on his clothes, a small
16 drop, which I'll get back to in a minute.

17 Mr. Greene bled out. His blood that they took
18 swabs from, that was his life's blood that was there
19 at the scene. So, no, they didn't leave DNA evidence
20 at the scene. He is going to say you can't convict
21 them because there is no DNA.

22 Well, ladies and gentlemen, if that's the case,
23 if we had DNA in every case, then we'd have
24 100 percent conviction rate, 100 percent solving
25 rate. It's not realistic. This isn't CSI. We don't

1 find a grain of sand down the street and solve a
2 crime. This is real life. They took the swabs, but
3 the blood at the scene was consistent with the two
4 people that were bleeding at the scene.

5 He is going to say, well, they didn't swab the
6 steering wheel. Well, the testimony unequivocally in
7 this case is that the person who was last driving the
8 car wasn't Octavia Middleton. No one said it was
9 Octavia Middleton driving the car that night.

10 So if he did swab the steering wheel, you'd get
11 Teran Scott again. And we've got Teran Scott's DNA
12 at the scene on the beer can. And I'm sure he'll
13 come up with other things we should have had DNA on.

14 Trish Collins, swabs from the blue and silver
15 truck. Well, ladies and gentlemen, that doesn't tie
16 him to the scene. We did collect clothing. We don't
17 have any blood on the clothing other than Octavia
18 Middleton's blood on his shorts which is consistent
19 with him having worn those shortly around the time he
20 may have gotten those scratches on his arms.

21 You know what's interesting? Do you remember
22 when they asked him about the shirt? They thought
23 they had found a shirt with some blood on it that he
24 had? He was adamant. "You won't find blood on my
25 shirt." And you'd better bet he wouldn't. Because

1 any blood he had on his clothing was long gone. He
2 had three days. Do you think he kept that on there?
3 They'd even hidden the gun in the woods. It's got
4 grass on it. Do you think they weren't careful about
5 that? Three days. There is not going to be any
6 blood for a person who plans and knows how to do
7 robberies. That's telling though. I mean, "You
8 aren't going to find any blood on my shirt." And he
9 was right.

10 The defense will argue there are no fingerprints
11 at the scene. Again, he's right. Do you remember
12 how the experts talked to you about how things were
13 moving fast, sweating, things of that nature, smudges
14 and things of that nature? What do we find? We have
15 to find a bunch of fingerprints back on the poker
16 machines. Of course no one testified they ever
17 touched the poker machines. They belonged to other
18 people, as they should, those are people playing
19 poker machines.

20 You don't get like a fingerprint off of a wallet
21 because it's not a real good surface. If you're
22 shuffling through it, even if it's a great surface,
23 if you're sweating, all of these things.

24 You heard a lot about blowback. And listen to
25 Dr. Nichols. He is the expert. He told you it's not

1 real conducive. Even if it was, those clothes are
2 long gone. Do you think he didn't have a bath in
3 three days? There is no blowback to find three days
4 later.

5 He's also going to get up here and say, well,
6 obviously it's not Octavia because he said he had
7 been there two times before. You're supposed to
8 believe that part of his statement. And if he had
9 been there two times before, why would he ask
10 directions?

11 Well, I submit, ladies and gentlemen, when
12 you're drunk and high and you're going to what's a
13 fairly generic apartment complex, you may not
14 remember exactly which door. He knew which floor.
15 He knew which building. But he may have been
16 confused about which door. I submit that leads to
17 credibility if you couple his condition with the fact
18 that he knew which floor to go to. He's asking Karl
19 Jones who is front of his own apartment which happens
20 to be across the hall. I submit that's not a
21 negative. That shows he knew where to go, just like
22 he said.

23 Don't let the defense talk about what we don't
24 have in an attempt to draw your eyes and to focus
25 your attention away from what we do have, which is

1 overwhelming. We have the defendant's own
2 admissions, although minimalistic, putting he and
3 Teran Scott as the only two people in that apartment
4 that day. And that is totally corroborated by every
5 witness, by every piece of evidence in this case, by
6 the DNA and by everything else. All the evidence
7 points to Teran Scott and Octavia Middleton as being
8 the only two people in those apartments.

9 There's an old joke about a lawyer and a
10 preacher walking down the street. And it had rained
11 the night before. There's a puddle next to the
12 sidewalk. Underneath it it's mud, but you can see
13 into the water. And in the middle of the puddle
14 there's a silver dollar. And the preacher looks down
15 and he goes, "Look. There is a silver dollar." And
16 the lawyer picks up the stick and churns up the
17 water. And the silt and the mud covers the silver
18 dollar. And he looks back at the preacher and he
19 says, "What silver dollar?"

20 Ladies and gentlemen, I want to take this
21 opportunity to talk about the facts in this case, the
22 cold hard facts about what happened back when those
23 people were assaulted and killed and robbed.

24 Who did you hear from as far as witnesses at the
25 scene? You've heard from Karl Jones, Walter Graves,

1 Eliana Garcia, Jerry Gordon, Randy Wigfall, Regina
2 Pinckney and Anita Thompson. All these people except
3 for Mr. Jones were in the apartment at the time. Or
4 Eliana was across the hall in her apartment and then
5 gets dragged into it because I guess they didn't want
6 to leave any witness untouched.

7 What do these people tell you as far as their
8 testimony? And sometimes it feels like we've been
9 here so long it's kind of hard to remember. Karl
10 Jones, what did he tell you? And you remember this
11 again. I had Mr. Goldberg write this up for me, so
12 he'd better have gotten it right. You remember it as
13 you recall the testimony. Okay?

14 Karl Jones. He sees two black males going
15 upstairs towards his apartment. The gunman has a
16 shirt covering part of his face. He is the shorter
17 of the two men. There's a pump shotgun pointed at
18 him demanding to know where the gambling house was.
19 You remember at first he said he didn't want to tell
20 them? But when he thought he might die for it, he
21 was telling them.

22 What did he do? He knocks on the door of the
23 gambling house. It's across the hall from his
24 apartment which he shares with Eliana, the
25 15-year-old and another woman. He took off down the

1 stairs once it's opened because he is going to
2 downstairs and he eventually was able to call 911.
3 Not disputed.

4 The other guy, not the one with the gun at that
5 point, taller, light-skinned, maybe a red and white
6 jersey. That's what he recalls. Okay? In the
7 limited time that he has got a gun pointed at him and
8 he's forced to go knock on a door and then he's able
9 to get away, that's what he knows.

10 And is that corroborated by the next witness
11 you've heard from? Walter Huggins. Mr. Huggins as
12 you recall is the man that had made contact with Karl
13 Jones earlier. Remember? Randy Wigfall. They
14 talked about the VCR and buying a VCR. So when Mr.
15 Wigfall sees who is at the door, he just immediately
16 turns around and tells Mr. Huggins, "It's for you."
17 So Walter Huggins is walking up towards the door when
18 it slams open and he's attacked. Those are the
19 facts.

20 Mr. Greene was the best friend he ever had. A
21 knock on the door. It was pushed open before he got
22 there by a tall black male holding a long shotgun.
23 He described him as dark-skinned. That was his
24 perception. Okay? And before he knows it: Get
25 down, give me your money, where is Randy?

1 The shorter guy hits him in the head with this
2 metal chair. He falls to the ground. So his
3 perception in the instant it takes to open that door,
4 for the man to grab the chair, pick it up and slam
5 it, that's his perception of what he saw. Did he
6 perceive it was a dark-skinned male, a light-skinned
7 male? That's what he perceived it, was it was a
8 dark-skinned, tall male with the gun. The shorter
9 guy is the one hitting him.

10 But what's important here is at this point
11 there's one with a gun and there's another one
12 hitting him. They are there acting together and they
13 aren't being nice. Already it's violent. And you
14 saw the blood at the scene. You saw where
15 Mr. Huggins was bleeding.

16 He fell to the ground. He's bleeding from the
17 top of his head. He's on the ground now. He is not
18 looking up. Remember? Don't look at me. This is
19 the same man that's going back and forth between he
20 and Eliana, beating them, doing these things to them.

21 The tall guy points the gun at Greene. He may
22 have had something over his face. Is that consistent
23 with Octavia? Is it consistent with Teran? It
24 doesn't matter. Because at this point we've already
25 established both of them are there acting together.

1 There is no dispute any more. And I submit at this
2 point the hand of one is the hand of all is
3 established. But there's more.

4 The tall guy pointed it at Randy, may have had
5 something covering his face. Randy usually sits on
6 the sofa. And isn't it amazing that Octavia
7 Middleton who has been there two times before, which
8 they want you to believe that part, just happens to
9 know who is supposed to be sitting on that couch?
10 They say the words, Randy, Ojetta. And he just
11 happened to be there before?

12 Beats Randy. They start immediately beating
13 him. He is sitting there. He has got his cane next
14 to him. He can't get up. He's got prosthetic legs.
15 And they are beating him, demanding money. Give me
16 the money, give me the money. All they can say,
17 Huggins is yelling, he doesn't have any money.
18 That's when he gets fired at. That shuts you up.
19 I'll take you out. Malice? It misses.

20 The shorter guy walks back after placing people
21 from the front room. He is the collector at that
22 point, the shorter of the two. And remember who
23 Harry Dukes says has the wallet in his possession?
24 He is going to say that shows that Octavia
25 participates? I say that shows Octavia is the

1 shooter.

2 They made Eliana strip. The shorter guy wasn't
3 that much shorter. Hard to get a look because they
4 told them not to look at them. It's chaotic. That's
5 how he described it. And can you imagine? Eliana,
6 she had to have an interpreter because she was
7 nervous. She was across the hall minding her own
8 business. She has done nothing. She hears noise.
9 She goes to the door and literally sticks her head
10 out, at which point the light-skinned, tall black
11 male grabs her and throws her on the apartment floor.

12 He had a long black gun, white and red shirt,
13 beating her. You think it's fake? "Look at this."
14 I'm sorry. "You think this is fake, bitch?"
15 Demanding money, beat Graves shoots James Greene.
16 "Do you think this is fake? I'll show you I guess."
17 Malicious?

18 The other guy had on a mask. Come on. Let's
19 go. You killed him. The shorter one picks up the
20 wallets. Saw or heard at least two gunshots, thought
21 she was going to be killed. She then while they are
22 distracted is able to get away and run across the
23 hall.

24 And what happens across the hall? She gets
25 there. She dives into a closet and hides. Jay-Jay,

1 the 15-year-old, is asleep in the bed. So what
2 happens then? At least one of them or maybe two of
3 them -- and again it doesn't matter because they've
4 already set the process of this whole thing under the
5 hand of one, hand of all -- comes over and beats him
6 for a while. It's the aggravated assault on Walter
7 Graves.

8 Jerry Gordon, he is in the bedroom playing the
9 machines, heard a noise, motioned in the front room.
10 A gunman -- and this is what the point is. At
11 different points different people have this gun. Not
12 that the people on the ground that are fearing for
13 their lives care which one has it. Throw your money
14 on the floor. It was a black male about six feet.
15 He had his face covered. He thought it might be a
16 ski mask. Led him into the bathroom, made him strip.

17 What's the reason for that? It's not only about
18 robbing people. It's about control. Let me
19 humiliate you. Because they don't make everybody
20 strip to make sure they can get away. They just
21 randomly pick people. This is sport to Octavia
22 Middleton. This is his form of entertainment when he
23 is high and drunk.

24 He heard the shotgun blast in the other room
25 while in the bathroom. He didn't get a good look at

1 the clothes because the gun was pointed right at him.
2 Heard another noise, a second voice in the front
3 room. Randy handles the money at night. Ojetta
4 works during the day. Randy is usually sitting on
5 the right side where Mr. Greene was.

6 He jumped out the window. He thought his life
7 was going to be over. He was so scared, and you saw
8 him, he jumped out of the window. That's how bad
9 things were in that apartment. He and another guy.
10 We don't know who that was.

11 Randy Wigfall ran the place, saw Karl Jones just
12 sort of walk away before he came inside. He never
13 saw the actual suspects because they wait a second
14 while Mr. Jones runs away before they smash in the
15 door or push the door. Give me your damn money.
16 Where is Randy? Where is Ojetta? Heard several
17 gunshots from the guy in the closet, sounded like
18 shotgun blasts. He usually sits on the couch with
19 money in hand. No one else let's people inside
20 besides him. Remember, they kept the door locked.
21 Tried to give the money to Gordon from the closet.
22 He threw it out there. The money is gone. That's
23 the armed robbery on him, because it just has to be
24 from his person or presence.

25 I bet they were happy when they looked down and

1 saw a pile of money on the floor. When he left the
2 door to Eliana's door was wide open. He could see
3 her inside crying. Regina Pinckney. And I'm not
4 going through everything all these witnesses to. You
5 all remember that. I just want to highlight a few
6 things. Come on, Tike. That's what she thought he
7 said. Tike. Whose nickname is Tank? Could it sound
8 like Tike? That's direct evidence.

9 The police are coming. Come on, Tike. The
10 police are coming. Come on, Tank, the police are
11 coming? Knock on the door, commotion, thought they
12 might be getting robbed. Where is Ojetta? Where is
13 Randy? Get on the floor is what she heard from the
14 front room. She is in the back. She hides in the
15 closet. She hears two gunshots. She could hear the
16 metal hitting someone. They were beating those
17 people so badly with those chairs that she could tell
18 it was metal hitting someone.

19 Never saw the suspect. She went over. She had
20 to step over clothes to get out of the front door.
21 Those were Eliana's clothes on the floor. You've got
22 all the photographs, and I'm not going back over
23 that. Had to talk to 911 because they couldn't under
24 Eliana. She was frightened for her life, with good
25 reason.

1 Finally Anita Thompson. Gunman was a slender
2 black male with a long black gun. Heard people being
3 beat in the front room, took a peek, saw a man being
4 hit with chairs, heard gunshots. They got her. She
5 gave up her jewelry, her money. She didn't get a
6 good look at the gun because it was directly pointed
7 at her. Remember, she's the one that even testified
8 at first she thought there were three people in the
9 front, she thought. But she knew it was two at
10 least. That makes her credible.

11 Did not get a good look. Scared, terrified.
12 Saw blood on the body in the living room. That is
13 just a summary.

14 And again, if I misstated anything; you remember
15 it as you heard it. But that is basically what you
16 hear from the scene. And when you go back over it
17 like that, it starts to make sense. Because at
18 different points the gun is in different rooms. At
19 different points. Were they both there together,
20 ladies and gentlemen? It doesn't get any better than
21 this hand of one, hand of all case.

22 And the defense will get up here and say you
23 can't say exactly for sure which one did what at what
24 moment. The law recognizes that crime scenes like
25 that happen. And under that, the law recognizes that

1 we you don't have to prove that Octavia Middleton
2 was, although I submit in this case, he was the
3 shooter. We don't even have to prove that. And
4 listen to the judge as he gives you the law.

5 And you also heard from a number of officers at
6 the scene. Basically what did they tell you? A
7 deputy there came, talked about the crime scene was
8 secured and everything, how he put up the red tape to
9 make sure that happened. When he got there there was
10 nobody in the apartment any more because I guess they
11 all wanted to get out.

12 Deputy Scott comes there. He is the one that
13 actually located the blue and silver truck which was
14 found over on Alcott Street in that apartment complex
15 where Teran Scott was ultimately arrested. So that
16 ties that to Teran Scott.

17 Investigator Matt Ellis participated in the
18 investigation. Scott Faust. Sergeant John Ewing.
19 He was the lead investigator in this case other than
20 Stan Smith. What did he do? He did his work. They
21 are looking at everybody. They're tracking down the
22 cars. Remember? Jessica Raines at the scene got a
23 license plate for the blue and silver truck. They're
24 tracing down all that. That truck has been stolen
25 along with the green truck that has been stolen, all

1 those things.

2 He follows the leads, because, ladies and
3 gentlemen, very simply, most cases don't have any
4 leads. He follows the leads. This case is about
5 good police work, really good, thorough police work.
6 And he did his job. He makes contact with Frank
7 Hughey. He then does what he's supposed to do to
8 corroborate it.

9 After that they go and get Teran Scott. They
10 take a statement from him. He's still doing his job.
11 They do everything by the book, too. They get search
12 warrants like they should. They advise them of their
13 rights like they should. This isn't sloppy police
14 work. This is by the book. He talks to Octavia.
15 And I'll get back to Octavia's statement in a minute.
16 He reduces it to writing. He allows him to correct
17 anything he wants. He and Captain Smith recover the
18 gun.

19 You heard from Chief Deputy Dave Wilson. He was
20 there for the advice of rights. That's why you heard
21 from him. Sergeant Dave Linfert, he was there for
22 part of the initial oral statement. Sergeant Eric
23 Barnes, you heard from him because he is the person
24 that went down when Octavia was banging on the door
25 and wanted to talk to Investigator Sergeant Ewing.

1 Investigator Brian Godfrey witnessed the
2 statement that was ultimately signed and written.
3 And I'll get back to that in a minute. Sergeant
4 Shawn McDaniels, he did his job. He is talking to
5 him about an unrelated matter that doesn't have to do
6 with this case. During the course of that though
7 there are references to the gun and the cars used in
8 this case. That is why those statements are
9 redacted. And you have copies because the other part
10 doesn't apply to this case. But you're allowed to
11 hear what he had to say about how he got that
12 shotgun, how he stole it.

13 Captain Stan Smith, he talked about how his
14 Department operates, what he did in the case. He
15 told you who is the taller of the two, because that's
16 the one constant thing of all those witnesses. The
17 taller of the two did the shooting. One said he was
18 light skinned and one said he was dark skinned. Was
19 Walter Huggins' impression from across the room as
20 his blood is flowing into his eyes somewhat skewed?
21 The shorter of the two was collecting the wallets.
22 Who had the wallets when they came out?

23 When you look at this case in the big picture,
24 it just all makes sense. Confusing at first glance;
25 corroborating each other. Those are the police

1 officers you heard from. And I submit, ladies and
2 gentlemen, this is a case about credibility.

3 You also heard from some forensic people. Trish
4 Collins went and processed the scene -- I mean, I'm
5 sorry. She processed the two trucks, the truck at
6 the scene and then back at headquarters, the other
7 truck also. It was done by the book. She collected
8 the evidence.

9 What's significant? There are two shots in that
10 apartment. We recover one shell casing in the
11 apartment over near the couch. The second shell
12 casing is never found in the apartment. It must have
13 gotten caught up in the clothing. Because where does
14 it end up? In the back of the green pick-up which
15 ends up stuck near the scene. Because when shells
16 eject, they don't automatically go like this. They
17 may get caught in the clothing. He may have picked
18 it up. Who knows? But it ends up we know in the bed
19 of the green pick-up where those two people are
20 trying to escape.

21 You also heard from Trish Collins, too, about
22 when she went on a search warrant. There are many
23 different kinds, and I am not here to say that having
24 ammunition such as this is illegal. It is not.
25 There is a lot of ammunition like that. It's sold at

1 Wal-Mart.

2 But when you consider Octavia Middleton, Teran
3 Scott when he is arrested, too, in his pocket,
4 Octavia Middleton when he is arrested, it's under the
5 living room sofa. It's in the kitchen drawer. Was
6 he using it for hunting dove? And all of them 8's
7 except for the one box of 7 1/2's which ultimately
8 Octavia talks about. And it's corroborated that
9 those items were stolen from the trunk of a car prior
10 to this event.

11 Does it all add up? Is it all perfectly
12 corroborated? Does it all point to the two people
13 that went inside? Unequivocally, no one else, not
14 one ounce of evidence pointing to anyone else, even
15 Octavia Middleton.

16 And think about it. He didn't know he left DNA
17 at the scene. He might watch TV, too. So he is
18 thinking for three days before he's arrested. And he
19 has come up with a story. He knows he might have to
20 put himself in there, but he just thinks, oh, well,
21 I'll just deny, deny, deny, deny involvement in the
22 actual violent, brutal shooting.

23 Harry Dukes nicknamed Boo. Octavia Middleton
24 nicknamed Tank. Let's talk about Harry Dukes. He
25 came forward. He was advised of his rights that

1 night and he gave a statement. And in that statement
2 he says he was in the back seat drunk. And that
3 seems to be a common theme here. And the music was
4 loud and he didn't know what was really going on.
5 Then he saw Teran Scott. And we aren't saying that
6 he saw Octavia Middleton. We aren't trying to make
7 this better or worse. He saw Teran Scott pull the
8 gun out of the front seat and they went into the
9 breezeway.

10 Now, in his statement, the one inconsistency was
11 he said at that point he was nervous and before that
12 he told you he thought he might have been just been
13 living there or something. I submit, ladies and
14 gentlemen, and Captain Smith told you, it is not
15 unusual for anyone to minimize their role.

16 Did Boo know what was going on? Well, he had to
17 at least have an inkling. And that's why he's
18 charged. Because that's an inference you can make
19 from the circumstances surrounding what even he says
20 in his own statement. Was his role as the lookout?
21 Or was he just staying in the car because he didn't
22 want to go in? He is there, present, aiding and
23 abetting. Because afterwards he doesn't run to the
24 police.

25 What he told you was what he saw. He said Teran

1 Scott had the gun coming in. Teran Scott had the gun
2 going out. I submit that makes him credible. He's
3 not trying to frame Octavia Middleton. That's what
4 makes him credible as far as who went in and who went
5 out. And it's totally corroborated by every piece of
6 evidence in this case.

7 Does he try to minimize his knowledge? But that
8 doesn't mean you can't consider everything else he
9 said. And he did choose to come forward to testify.
10 We can't make him. He wasn't given any promises. He
11 had no deal. Where is the bias? Where is the
12 prejudice? Did he do it out of the goodness of his
13 heart? Maybe two years later he at least has
14 remorse. I don't know.

15 Statements. Then I'll sit down. You have heard
16 at length about how they were advised of their
17 rights. And again, the reason for that is obvious.
18 It's important that Mr. Middleton's rights are
19 respected and that he did. He was advised of his
20 rights. You'll have this back there. They went
21 through every one of them. They asked him if he
22 understood it. He went through it and explained what
23 pressure and coercion mean, things of that nature.
24 And Octavia Middleton signed off on it.

25 Now, the defense is going to get up here and

1 say, well, you can't trust this because there is no
2 video or audio of this. There is a handwritten
3 statement that he can review. No, there's no video,
4 no audio. This is the way the Sheriff's Department
5 does it.

6 He's going to say, well, you can't say. You
7 have the sworn testimony of officers. Would they put
8 their reputation, their way of making a living at
9 risk just to frame Octavia Middleton? You've heard
10 reference about, well, we don't know who went in the
11 D cell. Well, there are only really three people
12 that had the details. And even Captain Smith told
13 you some of the details in Octavia Middleton's
14 statement the first time he went over them is from
15 Octavia Middleton.

16 That's what makes it credible. It doesn't have
17 to be a video or an audio. It should be written. He
18 should be given the opportunity. There is no dispute
19 those are his signatures. Was he advised of his
20 rights? Yes.

21 And what did he say initially? Sergeant Ewing
22 testifies when he initially talks to him: "I want to
23 talk to you about the shooting that occurred on
24 Faraway Drive three days ago." And he gave him that
25 information. Octavia Middleton: Been there one

1 time. Linfert comes in the room. Been there many
2 times. When confronted; well, we just found the
3 jersey at your house and it looks like it may have
4 blood on it. "You won't find blood on my shirt." He
5 knew that. And he was right. That shirt is long
6 gone.

7 What about the shell casings at your residence?
8 Immediately, already pointing the finger at Teran
9 Scott: Scott came over and brought the shells. He
10 was not involved in the shooting.

11 He's then put in the D cell. And some 45
12 minutes later or so he's banging on the door to get
13 Sergeant Barnes' attention. That's what the
14 testimony was. And he says, I want to talk. He
15 wants to get his story out there, his version.

16 Because at that point what does he know? The
17 day before Teran Scott has been arrested. He's in
18 custody. Carlos Brown whose fingerprint is on one of
19 the boxes of ammunition -- do you think he's not
20 friends with both of them -- was there when Teran
21 Scott was arrested. Do you think that information
22 would get back to Octavia Middleton?

23 He knows that while at his residence they found
24 all these shotgun shells. He knows Harry Dukes was
25 also taken into custody. So this is his version of

1 what happened. And again, that was just a redaction
2 just because it wasn't pertinent.

3 "Q Did you stop Eric Barnes here in Richland
4 County and request to speak with me after your
5 first conversation?

6 "A Yes.

7 "Q Do you now wish to tell me what took place
8 on August 8th while at Faraway Drive?

9 "A Yes.

10 "Q Tell me what happened?"

11 He goes into detail. They went down to
12 Williston, South Carolina. We were switching in and
13 out of two trucks. So he knows about the two trucks,
14 the blue and gray and the green one. Does that make
15 him credible? Yes.

16 "We left Williston. It was around 9:30 p.m."

17 Now, remember, he is drunk, all that. He
18 doesn't know the exact time of day. Just because he
19 gets the time of day wrong doesn't mean -- and maybe
20 he did that intentionally like he did some of the
21 other stuff.

22 "When we got to Columbia, me Boo and Teran were
23 in the truck left at the scene. We were talking
24 about how we needed some money. Teran said, "What's
25 up with licking The Reserves?" Again, Teran's idea;

1 distancing himself. "He asked me where I'd put the
2 gun and stuff. I told him it was at my house. We
3 went to my sister's house and got the gun and stuff.
4 We went to The Reserves Apartments. Boo was
5 driving." He puts Boo driving. For whatever reason.
6 Mixing it up?

7 "Me and Teran got out of the car and we went up
8 the steps. We went up the steps because there was a
9 guy in front of us. I told Teran to hold up and wait
10 a minute because I had to take a piss. I went to the
11 back of the hallway and took a piss in the corner.
12 When I turned around and started walking to the
13 house, the door was already wide open."

14 What is that doing? He didn't do the burglary.
15 The door was already open. He is just wandering
16 around going to the bathroom in hallways. While they
17 are there to do a robbery, his testimony is, I didn't
18 do that burglary because I was down the hall taking a
19 leak.

20 "There were three people in the house, two males
21 and one female. One of the young males was bleeding
22 from somewhere around his head. He was already
23 injured."

24 Again, he's not the one that beat him. He is
25 not even in there when he gets beat. And notice

1 whenever any kind of violent things happen, such as
2 Eliana; I want to go back, when that happens, he's
3 not even there or he was down the hall taking a piss.
4 That's his story.

5 "There was a female standing by the door. There
6 was an old dude. The one that got killed was lying
7 on the floor in front of the couch. I then heard
8 Teran demanding money from the old man."

9 He gets Teran.

10 "I then told the female to take her clothes off.
11 She was Mexican."

12 And I thought about this last night. Why does
13 he want to admit to that part? But remember when
14 Eliana testified about how after they made her take
15 her clothes off and she is standing there crying
16 thinking she is going to die, the one guy, the one
17 with the gun, turns around and laughs at her? Get
18 that, bitch. Humiliates her, is making gun of her.
19 He's robbed her. He's made her strip naked and then
20 he's ridiculing her.

21 Well, guess what? He's proud of that. That
22 speaks volumes about Octavia Middleton. He wanted to
23 take credit for that. He humiliated that Hispanic.
24 He wanted everyone to know he did that. That speaks
25 volumes.

1 "I didn't want to go into her pockets." Again
2 just saying I didn't even want to touch her. She is
3 beneath me. This robbery was about pain, death,
4 humiliation. I didn't even want to touch her.

5 "I heard the man tell Teran, 'you got my wallet.
6 The money is in the machines. This ain't all give
7 but it to me or I'm going to kill you.'" After Teran
8 said that, the dude on the floor must have grabbed
9 the gun because Teran started kicking him and telling
10 him to let the gun go. I then went over to assist
11 Teran."

12 He is now a missionary to get the gun out of
13 Teran's hands.

14 "I hit the dude three times to get the gun away
15 from him."

16 Because obviously he knows somebody is going to
17 put him there hitting the dude. So all he is trying
18 to do is to help his friend, big, mean -- and his
19 friend, big, mean Teran who he chooses to associate
20 with. All he's trying to do is help Teran get the
21 gun back. I guess so no one will get hurt?

22 "I hit him in the back of his head and his ribs.
23 While this was going on, that's when a Mexican lady
24 ran out of her house. I went behind her but I didn't
25 see which way she went."

1 So he's not even going to admit he did the
2 second burglary or he went in there and beat the
3 15-year-old, distancing himself from that. Then he
4 says:

5 "While this is going on" -- wait a minute -- "I
6 ran downstairs, and before I got out I heard a
7 gunshot." So according to him, he is not even there
8 when the gunshots happen. Because again, he ain't
9 taking no murder rap.

10 Every single witness in this case says that both
11 of them were present when the gun was fired. One of
12 them is going back and forth hitting Huggins and
13 Eliana, and Eliana was an eye witness to James
14 Greenè's execution. And was she credible? What does
15 she have to gain or lose?

16 "I then ran back upstairs and saw the apartment
17 door was open."

18 Amazing. He just went back up.

19 "I hit him a couple of times telling him to give
20 me the keys. He did not respond."

21 Why would he say that? Because he's proud of
22 that. There is no dispute somebody was hitting James
23 Greene after he lies on the floor dead in a pool of
24 blood, his own blood. And he's proud of that.

25 "He did not respond. I ran into the house to

1 make sure Teran was not in the back getting the
2 money. Then after I ran, I ran out of the building
3 with nothing in my hands."

4 He didn't do a robbery. He didn't do it. They
5 started --

6 "They were in the car. Boo and Teran were
7 already in the truck. They started backing up. We
8 got stuck. The truck got stuck and we just ran. We
9 all split up. I met up with Boo."

10 Did he know where Boo went later? Did Boo tell
11 him? They get back together the next day or the day
12 after. Then he gives all these details that don't
13 matter. He talks about Dogman, Frank Hughey, who is
14 currently wanted and on the run. He witnessed that
15 conversation. Frank Hughey witnessed that
16 conversation, Frank Hughey who contacted the police.
17 It all corroborates each other.

18 "Q Why would you pick that apartment to rob?"

19 "A Because it was an illegal gambling house and I
20 knew they wouldn't report it."

21 Calculating? Premeditated? Violent?
22 Senseless?

23 The next page: "I didn't know he was going to
24 shoot him."

25 At some point he talks about how he couldn't

1 remember something because he was so drunk and so
2 high. This was his entertainment on Monday night.

3 He gives a second statement. And again, you
4 heard from Sergeant Shawn McDaniels. He advises him
5 of his rights, as he should. He is talking to him
6 about an unrelated matter, makes reference back to
7 the gun -- and you'll have the statement; I'm not
8 going to go through it -- about where he found the
9 gun. And, you know, somebody else's car where he
10 stole it.

11 Overwhelming evidence. Three people
12 participated in this crime. Harry Dukes never went
13 inside. I submit, ladies and gentlemen, from this
14 voluntary statement Octavia Middleton wanted to give
15 a statement, and the last words weren't, I didn't do
16 no murder, I didn't do no murder. He knows, or he
17 thinks, he can't get around being inside. So then he
18 has to come up with this story to get around what he
19 thinks will get him around being a participant.

20 And he's counting on the fact: Why are these
21 people going to come forward anyway? Aren't they
22 just bunch of a bums? They're in an illegal poker
23 house when he happened to get the Masons playing
24 pinocle. And Ms. Thompson and Ms. Pinckney, should
25 they have been there? No. But are they violent?

1 They came forward and they told you what happened,
2 and they are credible.

3 I submit, ladies and gentlemen, Octavia
4 Middleton and Teran Scott went to that apartment to
5 do a robbery. And it wasn't that things got out of
6 hand. James Greene couldn't get up. And you know
7 the ultimate thing? They take their wallets. They
8 take their jewelry. They take their money. They
9 beat the people. They make them strip. People are
10 jumping out of the window.

11 But one of them -- I guess he thinks it's
12 funny -- takes this (holding walking cane). The one
13 that had the shotgun shell because it's found in the
14 same place, in the bed of the green pick-up truck,
15 they just shot and killed a 73-year-old man with
16 prosthetic legs, I guess this was funny.

17 This is malice. All we ask is that you hold him
18 responsible for those vicious and heinous crimes. He
19 made choices; he must be held responsible. Thank
20 you.

21 **MR. HISKER:** Your Honor, may I approach?

22 **THE COURT:** Sure.

23 (Whereupon, a bench conference is had)

24 **THE COURT:** Anybody need a break? A short
25 break. All right. Let's take a short break.

1 Obviously there will be -- the defense counsel has
2 their opportunity to argue and then I will finish
3 with the charge on the law. So let's take our break
4 now. But there won't be a break between his final
5 summation and my charge to you on the law. Okay?
6 All right. Go to the jury room. Don't discuss the
7 case among yourselves while you're in the jury room.

8 (Jury out at 11:28 a.m.)

9 *THE COURT:* All right. We'll take ten minutes.

10 *MR. HISKER:* Judge, I think all my notes are
11 right here.

12 *THE COURT:* You can take your notes. I don't
13 care if you take your notes. I can't prevent from
14 you taking your notes. Take your notes if you wish
15 if we're going to take a break. I just thought you
16 needed a bathroom break, in which case ...

17 (Whereupon, a break is taken)

18 *MR. HISKER:* Thank you, Judge.

19 *THE COURT:* I'm accommodating the jury.

20 *MR. HISKER:* I was afraid if they saw me dancing
21 around they'd be really uncomfortable.

22 *THE COURT:* Ready for the jury? Mr. Hisker, are
23 you ready for the jury?

24 *MR. HISKER:* The defense is ready.

25 *THE COURT:* Bring the jury, please.

1 (Jury in at 11:44 a.m.)

2 **THE BAILIFF:** The jury is all present, Your
3 Honor.

4 **THE COURT:** Thank you. Mr. Hisker.

5 **MR. HISKER:** May it please the Court?

6 **THE COURT:** Yes, sir.

7 **MR. HISKER:** Solicitors. Ladies and gentlemen
8 of the jury, good morning. This will be the last
9 time I stand before you in the course of this trial.
10 It has been a long trial; it has been a complicated
11 trial. I want to commend you on your attention.
12 Everyone paid great attention to all the evidence,
13 the questioning. I want to thank you for your
14 service.

15 I have the honor and the privilege of
16 representing Octavia Middleton. Octavia Middleton is
17 a citizen just like any one of us. He has a
18 Constitutional right to have an attorney vigorously
19 challenge every bit of evidence that is against him.
20 It is my honor to help him defend that right. It is
21 my pleasure to defend his freedom.

22 Some things that the State has said about my
23 particular methods of cross examination I want to
24 talk to you about. There's a lot of lawyer jokes,
25 ladies and gentlemen. The fact of the matter is, is

1 this system, the defense and the jury system are what
2 protects citizens' freedoms. It's not an attorney
3 joke.

4 Defense attorneys are vilified. You heard
5 Investigator Barnes almost started on a tirade about
6 defense attorneys. Ms. Campbell stands up and says
7 that I am going to attack these witnesses because
8 they were in an illegal gambling house. You all were
9 here for the entire week. I cross examined every one
10 of those victims except for a few I had no questions.

11 Did I one time attack those witnesses because
12 they were in an illegal gambling house? Those
13 victims did not deserve what happened to them one
14 bit. That was a terrifying event. There's no
15 question in my mind what they said was the truth.
16 I'd point out inconsistencies, but I'd also point out
17 that they are very terrified. They were nervous.
18 They don't exactly what they saw.

19 And you can tell that from the testimony. You
20 can tell that from Ms. Anita Thompson. She testified
21 that she thought three men came into the apartment.
22 All of them had guns. I'm not saying she is lying.
23 I didn't attack her on that. But when you're in a
24 situation where somebody comes at you with a gun,
25 people seem to look taller than what they really are

1 when they're holding up that. People exaggerate when
2 they're under that type of stress.

3 So, yes; their eye witness accounts may be a
4 little inaccurate. Does that in any way say that
5 what they said on the witness stand was not true? I
6 never suggested that. The fact of the matter is,
7 none of those witnesses identified Octavia Middleton
8 as being present in that room.

9 It's a tragic case. I feel -- when I hear the
10 witnesses' pain, I feel it, too. The State went
11 through with Investigator Stan Smith -- and he is the
12 chief of major crimes in Richland County -- about the
13 height of these individuals. Octavia Middleton is
14 five-ten. Teran Scott is five-nine. Well, who is
15 the tallest? Who looks the tallest?

16 We're talking an inch, ladies and gentlemen. Do
17 you think any of those witnesses under those
18 circumstances were able to differentiate between the
19 taller person? How do we know what they were
20 focusing on? Maybe they thought somebody looked
21 taller because they were bigger, because they were
22 more heavy set. Remember when we were in grade
23 school when you wanted to see how you were taller
24 than? How did you do it? You stood
25 shoulder-to-shoulder, back-to-back. You ran your

1 hand across your head just to see whether you were
2 slightly taller.

3 I submit to you the State points out those
4 details. When they do that, it shows the faith they
5 have in their case. It shows they know their
6 weaknesses. And that's why they make a big deal out
7 of things like that.

8 What's the one thing that is consistent with
9 what most of the witnesses say about the person with
10 the gun? He was dark skinned. Mr. Middleton is a
11 light-skinned male. I think everybody agrees with
12 that.

13 Something else that defense attorneys often get
14 accused of is attacking the police and saying that
15 they didn't do a good job, saying they didn't do this
16 or attacking their methods. Ladies and gentlemen,
17 these are my police officers, too. They do an
18 honorable job. They do the best they can. I never
19 once called any of those officers liars. They do the
20 best they can with the cards they are dealt. I
21 depend on those officers to protect me, too, and I
22 believe they do a good job. They are honorable
23 officers. And the prosecutors are honorable, too.
24 They can't change the circumstances of their case.

25 His Honor will tell you that you're the sole

1 judges of the credibility of these witnesses and you
2 judge whether they have any bias or prejudice. I
3 submit to you one of the things that you can consider
4 is, how do they answer the questions? Are they
5 forthcoming?

6 These officers, even though I will tell you they
7 are honorable, they are truthful; deep down in their
8 hearts they work for the government. They're an arm
9 of the state. And you saw how they serve as
10 advocates, how they are biased. When the prosecutor
11 asks a question, every answer the officer gives ends
12 in a period. When I got up to ask a question, every
13 question ended in but. They always wanted to look at
14 you and explain and throw in something that they
15 thought hurt my case. They never wanted to just
16 admit the things that hurt.

17 I submit that you can consider that because
18 they're biased. And they want you to believe that
19 they have these great policies and procedures, nobody
20 interviews. But when you listen to all the
21 testimony, you know that these investigators do
22 switch in and out of the investigating room.

23 They use trick tactics. They might tell a
24 suspect we found bullets at a certain scene in order
25 to trick them into believing they did when in fact

1 they didn't. They may tell somebody your
2 co-defendant has given a full confession saying that
3 you did all this when in fact they didn't.

4 Ladies and gentlemen, we don't ask you to leave
5 your common sense at the door. It's called an
6 interrogation. If by any means did I ask any of
7 these officers questions that you felt disrespected
8 these officers, I ask you don't take that out against
9 Mr. Middleton.

10 And I ask you to remember Investigator Eric
11 Barnes. Eric Barnes works on a lot of these cases.
12 But was he forthcoming with me? Did he resist my
13 questioning? I asked a yes or no question. Instead,
14 he turned to you and starts giving elaborate
15 explanation which ends in a tirade on defense
16 attorneys. What's he want you to believe? The
17 strength of his case or that somehow I'm going to get
18 my guy off on a technicality?

19 I'm going to go over some of the facts. Octavia
20 Middleton was arrested at his sister's apartment. He
21 peacefully goes with the police officers. There's
22 been no testimony that he gave them any resistance.
23 There has been no testimony he denied his identity.
24 He gets to the police station. He signs a waiver.
25 He is going to cooperate freely with the officers.

1 No problems whatsoever.

2 I ask you, ladies and gentlemen, let's use your
3 common sense. Compare Octavia Middleton's behavior
4 at arrest to Teran Scott's behavior. Teran Scott
5 spit in the investigator's face. He denied who he
6 was. He attempted to escape. He kicked out the
7 window of the police car. The investigators
8 described him as combative and violent. He cussed at
9 them.

10 Ladies and gentlemen, that's the conduct of a
11 guilty man. Is there any doubt in your mind that
12 Teran Scott is the shooter in this case? Regardless
13 of whoever was standing beside him in that apartment,
14 is there any doubt in your mind that he is the
15 dark-skinned male who was the shooter in that case?

16 I mean, look at the State's evidence. They have
17 got the burden of proof. They put the witnesses on
18 the stand. Their witness, Dukes, testified that
19 Teran has the gun in the car. Teran is driving.
20 Teran gets out with a gun. Teran comes back with a
21 gun and all the wallets. It's their witness. But
22 yet they want you to somehow -- now they're going to
23 tell you that Octavia Middleton is the shooter.
24 Well, they want you to believe this gun was just
25 tossed around in all this chaos. Again, that theory

1 shows you the witnesses and their case.

2 Not only that; the victims there, Walter Huggins
3 says the man, dark-skinned man comes in the door, has
4 the gun, dark-skinned man shoots Mr. Greene,
5 dark-skinned man points the gun at me and
6 dark-skinned man shoots at me. He never says that
7 gun changes hands. Nobody ever saw any gun changing
8 hands. There might be inconsistencies about whether
9 one was taller than another, but the overwhelming
10 facts of this case is that gun never changed hands.
11 Teran Scott had it the entire time. He's got the
12 violence to do it. He's the one with that gun. He's
13 the one that stashes it, and his uncle has to go and
14 retrieve it.

15 The State will submit that Octavia Middleton is
16 the shooter. That shows you the strength of their
17 case. I imagine you're wondering, how can you judge
18 this case when somebody confesses? Can you fathom
19 any reason why somebody would confess to something
20 they didn't do? Do you think Octavia Middleton
21 understands the theory of hand of one is hand of all?
22 This young male that is basically on the street, he
23 is going to understand that? Have you heard that
24 he's got some great legal education that he
25 understands these theories of accomplice liability?

1 I submit to you that he tells them whatever they
2 want to hear as long as he doesn't admit any murder
3 or even have anything to do with the murder. It's
4 his only concern. I don't want to get convicted of
5 the murder. He doesn't know that if they don't put
6 the gun in his hand, which they've alleged that they
7 believe he had, they also have a fall back position
8 which is the hand of one is the hand of all. He
9 doesn't know that. He doesn't know that theory. And
10 I'm going to get to that, too. It's not as easy as
11 the State wants you to believe.

12 Again, Octavia Middleton was peaceful and calm
13 when he gets to that interrogation room. He signs a
14 waiver. He wants to cooperate with the officers.

15 **MS. CAMPBELL:** Objection, Your Honor. May we
16 approach?

17 (Whereupon, a bench conference is had)

18 **MR. HISKER:** When Mr. Middleton is there he's
19 calm. He is confident that there is no evidence that
20 links to him. And Ms. Campbell says that that
21 somehow implies that he destroyed the evidence.
22 You've got the clothing. You've got everything they
23 collected at the house. You've got everything they
24 collected at the scene.

25 Take a look at it. Does it look like it was

1 bleached? Does it look like it was even laundered?
2 Is there any evidence at all that any evidence was
3 destroyed? This stuff was found on the floor except
4 for the shorts that were found in the laundry room.
5 The investigator told you that. The shorts were
6 found in the laundry room. The only thing on those
7 shorts is Octavia Middleton's blood.

8 The State presents that as if he's gotten
9 scraped in this melee and that's somehow evidence of
10 his guilty. Again, consider that. Look at the
11 photographs. Do those scratches look recent? Do
12 they look even consistent with what went on in this
13 apartment? They look like they're old scratches.

14 The State presented the testimony of Dr. Clay
15 Nichols, forensics examiner. He could have told you
16 if those scratches were recent. He could have told
17 you if those scratches were a result of defensive
18 wounds. There is no telling what those scratches
19 mean, but the State is going to send them to you
20 because they submit that those are going to show he's
21 guilty of him being there. It's a melee.

22 You didn't hear any witnesses that said that
23 they scratched him. You didn't hear any witnesses
24 say they even came close to any of the people there.
25 You didn't hear any witnesses say there was anybody

1 wearing shorts. But yet you've got a pair of shorts
2 in there with blood on them because somehow that's
3 going to add to this overwhelming mountain of
4 evidence. But the time it's done you will see there
5 is not an overwhelming mountain of evidence.

6 What changes in the 45 minutes that goes by that
7 Octavia Middleton is nice and calm and all of a
8 sudden he's frantically banging on the door so loud
9 that Investigator Barnes hears him all the way down
10 the hall? What changes from this confident, very
11 secure Octavia Middleton that now he's adamant that
12 he has to talk to the police?

13 Now, when Investigator Ewing first testified, he
14 testified on direct they don't give details. They
15 don't give details to suspects. You all heard that.
16 He didn't give any exceptions to that. And as far as
17 on his direct testimony, they basically sit down with
18 the suspect and ask him: Where were you on the night
19 of August 8th, 2005? And then they just left it
20 open-ended and the suspect tells all the information.
21 Is that what an interrogation sounds like to you?

22 Then on cross examination Ewing does admit,
23 yeah, we gave him some details. We told him about
24 the shotgun shells. Another officer actually comes
25 in the room to say, ask him about the jersey. We've

1 got blood on the jersey. Now they have to admit
2 details. There's no way around those details because
3 they're in all the reports. So first it's no details
4 and now it's some details and then it got to be the
5 point where: Well, we have to give him some details
6 so he knows what we're talking about. We have to
7 talk about the scene. We have to talk about what we
8 find. How do you know what was talked about and what
9 wasn't talked about?

10 Then Investigator Ewing goes to see Dukes. The
11 State put Dukes on the stand. And what's one of the
12 things he says? That the investigator told me that a
13 co-defendant had blamed me for all of this. They
14 told Dukes that. But yet they don't want you to
15 believe that there is any possibility they told Mr.
16 Middleton that.

17 Just consider that. Consider sitting in a room
18 in the Sheriff's Department. You know you're
19 associated with these individuals. He's arrested
20 with Mr. Dukes who had just gotten out of prison who
21 is dating his sister. He's got to know there are
22 shotgun shells in the apartment. He thinks there is
23 this overwhelming evidence against him. And he
24 panics.

25 At some point I submit that he tells these

1 investigators whatever they want to hear because he
2 does not want to get a murder charge. They told him
3 there was blood on his clothing. He was confident
4 that there was not any blood on his clothing. Again,
5 look at all the clothing they found. Does any of it
6 look like it was laundered? I mean, just the fact
7 that they said it looked like it had something on it
8 shows that it was dirty. The investigators thought
9 it was blood. They tested it, and it was not.

10 Ewing admitted to their interrogation tactics.
11 You know: Good cop; bad cop. They switch evidence.
12 They say that they've got something they really
13 don't. You try to trick people into saying
14 something. And they're allowed to do that, ladies
15 and gentlemen. But they do it.

16 My questions to these officers was just quite
17 simply: They have no way of knowing who was in that
18 room. And at first with Investigator Faust, I mean,
19 I asked him the question the first time. He said,
20 yeah, anybody could have walked in there. You could
21 open it from the outside. Anybody who was
22 investigating this case could go in there.

23 So Ms. Campbell seemed to make you think that
24 only three investigators knew the details. But you
25 heard from more than three investigators in this

1 case. There are many investigators working on this
2 case, collecting evidence, doing interrogations. Any
3 one of those investigators at any given time could
4 have walked in that room. Investigator Faust said,
5 yes, it's very common for them go help out with an
6 interrogation or help out on another case.

7 But as the State realizes that that fact, that
8 that possibility is hurting their case, now all the
9 investigators are saying, oh, no, we have policies
10 and procedures. We don't do that. We don't allow
11 that.

12 What are the policies and procedures? The door
13 is not locked. Anybody can walk in. They don't
14 surveil it. Nobody sits outside of that room.
15 Nobody has to get clearance from the chief
16 investigating officer. Anybody could have walked in
17 that room. And who knows? Who knows? The State
18 wants you to think that that's completely impossible.

19 I ask you: What happened to this calm and
20 collected and confident Octavia Middleton in that 45
21 minutes that caused him to start banging on that
22 door?

23 The State has the burden of proving the
24 statement made by the defendant is both voluntary and
25 true. Just because somebody makes a statement

1 doesn't make it true. You make that determination,
2 ladies and gentlemen. This jury and this jury alone
3 will determine whether or not Octavia Middleton's
4 statement is the truth.

5 **MS. CAMPBELL:** Objection, Your Honor. I think
6 he's misstating the law there.

7 **THE COURT:** All right. Just confine your
8 argument to the facts and law in this case.

9 **MR. HISKER:** When Investigator Ewing goes and
10 gets Octavia Middleton out of the D holding cell, he
11 doesn't even ask him why, you know, what made him
12 change his mind? Why is he talking? Why does he
13 want to talk about this case now?

14 He doesn't issue him his rights again. He tells
15 you on direct that he does not read him his rights
16 again, does not go into any of those facts about
17 whether he was coerced, whether he was promised
18 anything. The investigator didn't ask him that again
19 when he got him out of that room.

20 Now, the State wants to show you on that
21 confession -- and you've got it blown up and
22 everywhere -- that there is a paragraph on this
23 preprinted form that says, were you coerced or
24 anything. Ladies and gentlemen, that was printed
25 after the interrogation. The investigator

1 interrogates and then types it up and then hands it
2 to him to sign. It's too late then to ask him if he
3 was coerced or if he was promised anything.

4 Why is that on that form? Why is that paragraph
5 there? And I submit it's there to just mislead you,
6 to make you believe that it's voluntary, like that .
7 somehow was read to him before he gave this glaring
8 confession. It was not. He was presented a piece of
9 paper which he signed after signing his life away.
10 And there is no way that Mr. Middleton knew about the
11 hand of one is the hand of all. He didn't know what
12 he was admitting to.

13 There's a couple of things that the State said I
14 would ask you about that they're correct. Why didn't
15 they videotape these interrogations? If they've got
16 the burden of proving they're voluntary, how
17 difficult would it be? I mean, you've got video
18 cameras on cellphones these days.

19 These investigators could just as easily have
20 them sit in front of a camera the whole entire time.
21 There'd be no question then whatsoever, no question
22 at all what was said, what details were given. I
23 wouldn't even be here because we wouldn't be
24 attacking all the details and whether anybody entered
25 the room and whether they read him their rights.

1 Ladies and gentlemen, you all consider that.
2 You all consider what they could have done to have
3 met their burden. Why don't they take the statement
4 in his own handwriting? Why doesn't he write the
5 statement? Can there be any misinterpretation there?
6 Could maybe the investigator put some of his own
7 subconscious details into that statement just to hand
8 over to him to sign?

9 I'm not going to say that he is going to lie,
10 put words in his mouth. I'm not going there. I
11 didn't say that. But you all know when you know
12 details about something and you're writing something
13 down, sometimes those details just go in. It's just
14 like reading a letter that you wrote and trying to
15 find your spelling errors. They just don't pop right
16 out to you because you're reading it pretty much from
17 your memory.

18 Is it possible that Investigator Ewing could
19 have put some of his own personal knowledge into that
20 statement? He is the one that typed it. Nobody said
21 Octavia Middleton sat at a computer and typed up that
22 statement. He sat in the interrogation room for six
23 hours. Well, not six hours at this point. But he
24 had been there for well over an hour and he's handed
25 a sheet of paper and he signs it.

1 If they really wanted to prove that statement
2 was voluntary and uncoerced, they would have better
3 procedures then to prove that.

4 The State put chief investigator Captain Smith,
5 Stan Smith on the stand. And he's the head of all
6 the investigators. Of all the lead investigators
7 that take the statements, he is the top of major
8 crimes. Captain Smith was asked about this statement
9 and whether or not any details -- and of course he
10 wants to believe that this is impossible. It's his
11 department. No, no. Officers could ever get in
12 there and give these suspects details. Of course.

13 He still can't tell you that it didn't happen.
14 He still can't tell you that it's not possible. But
15 what's Captain Smith tell you? He tells you that
16 Octavia Middleton gave details that only the
17 perpetrator would know. And what's the one thing he
18 says, ladies and gentlemen? Remember. That they
19 made a trip to Williston. Out of all the details
20 that only the perpetrator would know, they made a
21 trip to Williston. Is that even remotely related to
22 this case? Which, incidentally, is the place where
23 Harry Dukes, another one of the State's witnesses,
24 was convicted for distribution of drugs near a
25 school. Two counts. He'd just got out of prison for

1 it.

2 Ms. Campbell argued in her closing that Octavia
3 has got the time wrong in his statement, and she
4 suggests that maybe he's just wrong about that or
5 maybe he's lying about that. Well, the State wants
6 you to believe all the details that help them. But
7 anything that doesn't make sense, oh, that was just
8 -- throw that out; that doesn't make any sense. Is
9 that credible?

10 The State put Mr. Dukes on the stand. This
11 convicted drug dealer just got out of prison before
12 moving to Columbia to get out of trouble. I mean,
13 isn't that ironic? Where is Williston? He's going
14 to come to Columbia around the Two Notch area and try
15 to avoid crime but yet he's riding around smoking
16 blunts? He doesn't want to admit all that.

17 Ladies and gentlemen, I know he gets up there
18 and tells the heartfelt story. We all heard it. But
19 if you believe he is getting up there out of the
20 goodness of his heart, well, then I can stop now. He
21 has got to want some benefit to get up there and say
22 anything at all.

23 He didn't even tell as incriminating of a story
24 on himself as he told the police two years ago. He
25 minimized it even more than he did then. He has to

1 want some benefit. He wants to protect himself. He
2 wants a deal. Sure. They made no promises to him.
3 Do you think in that man's mind that if he doesn't do
4 a good job that he is not going to get some benefit?
5 That's what these guys do. They say whatever they
6 need to say to get a break. Just like Octavia
7 Middleton was willing to say whatever he had to say
8 to get a break.

9 Well, even Mr. Dukes, if there is any honor, he
10 doesn't hurt Octavia Middleton that much in his
11 testimony. He still puts most of the blame on Teran
12 Scott. Teran Scott is the one with the gun. Teran
13 Scott is the one that does it all.

14 He's not going to stand up there and say, oh,
15 yeah, I went in with them. He'll put the blame on
16 somebody else, but he's not putting the full blame on
17 them either. This is his girlfriend's brother
18 remember. It's his friend, too.

19 This is the State's witness. They put Mr. Dukes
20 on the stand and they want you to believe his story.
21 They let him testify that he's here out of the
22 goodness of his heart. But when he talked with the
23 police, when he talked with the police, he said, he's
24 sitting in that car, he sees Teran get out with a gun
25 and he knows right then something is wrong.

1 Investigator Stan Smith had in his report
2 obvious minimization. He called Mr. Dukes' statement
3 ridiculous. Those were the chief investigator's
4 words. Now the State wants this ridiculous, obvious
5 minimizing statement to come to the jury. They're
6 going to sell their case to you based on this
7 ridiculous statement. That's their chief
8 investigator's words.

9 But then when he gets on the stand doing his
10 good deed of the day because he wants the wrongdoer
11 punished, now he is going to tell you that he didn't
12 even think something was wrong when they got out with
13 the gun. He thought they were going to Teran's
14 residence to store his hunting rifle, is sort of the
15 implication he gives you. That's what he wants to
16 tell you now. This is what the State is trying to
17 sell you, ladies and gentlemen. It's ridiculous.

18 Almost everything that Harry Dukes did say, he
19 still pointed at Teran Scott. Maybe he protected
20 Octavia a little bit because he knew that Octavia had
21 already taken the rap for him. He did just get out
22 of prison. He told you he was looking at life on
23 this. They're friends. He dates Octavia's sister.

24 I'm sure that neither of these individuals knew
25 that they could get charged with murder under the

1 hand of one is the hand of all.

2 I've already told you about some of just general
3 weaknesses in the State's case and some of the things
4 that I ask you to question when you consider what the
5 State wants you to judge guilt beyond a reasonable
6 doubt on. The scratches, again, Dr. Clay Nichols was
7 up on that stand. He could have easily told you
8 whether those scratches were even relevant to this
9 case. But yet you've got it.

10 You've got the shorts with Octavia's blood on
11 it. No testimony of any scratching being done. We
12 know they've tested the skin under fingernails. None
13 of it points, none of it points to Octavia. There is
14 no physical evidence in this case at all, ladies and
15 gentlemen. It's the perfect murder. There is
16 nothing.

17 Investigator Bill Mann, remember he did a
18 thorough investigation, too, very thorough. He finds
19 four shell casings in the tote bag, the Duckhead tote
20 bag in the vehicle at the murder scene. He finds
21 hairs on them, ladies and gentlemen, hairs that they
22 could have gotten DNA. They didn't even test them.
23 There is no testing of those hairs. It would have
24 given the State clear DNA.

25 When you judge whether the State has met their

1 burden, you can consider what they did not do. Is
2 that meeting their burden of proof beyond a
3 reasonable doubt? I submit to you that is a
4 reasonable doubt, the fact that they failed to look
5 at evidence that would have given clear evidence of
6 who was involved. They had hairs. There's been no
7 testimony those hairs weren't good enough for
8 testing. They had four hairs supposed to have been
9 submitted for DNA. They never got tested. There's
10 no evidence of what happened with those hairs.

11 The State went through great lengths to talk
12 with you about fingerprints and how fingerprints are
13 so impossible to get. I can tell you, ladies and
14 gentlemen, if they'd have had a good fingerprint in
15 this case, it would have been the best evidence on
16 earth. They'd have marched it in here with
17 spotlights.

18 Yet all these surfaces and all the cars, none of
19 anything they got did not point to Mr. Middleton.
20 They've got fingerprints of Dukes touching another
21 car, but they have no fingerprints as to Mr.
22 Middleton. And it's convenient that it's just
23 impossible to get fingerprints.

24 But yet let's look at that. When they go to get
25 the rifle, what do the experienced investigators do?

1 They give gloves to Frank Hughey because they don't
2 want to put his fingerprints on the gun. They're
3 awfully concerned about fingerprints there. Where
4 does Frank Hughey go to get this gun? He goes to get
5 it from a place where Teran Scott put it.
6 Fingerprints are just impossible to get.

7 The State made a big difference in the one-inch
8 of height difference. I ask you to consider that.
9 Consider whether these witnesses really knew who was
10 the taller suspect. Because Octavia Middleton
11 happens to be one inch taller than Teran Scott, that
12 somehow makes him in the scene and now he is the
13 shooter.

14 Despite the fact of all of the overwhelming
15 evidence you have to the contrary, that Teran Scott
16 has got the gun, he's a very violent individual, he
17 kicks out the window, spits at the police, denies his
18 name. Now the State wants you to believe now because
19 Octavia Middleton is this much taller than Teran
20 Scott in a few of the witnesses' statements that he
21 is the shooter. I ask you to consider that.

22 It's clear that all the witnesses said for the
23 most part the person with the gun was dark skinned.
24 The State doesn't mention a lot of that in their
25 closing.

1 The forensics in this case, these investigators
2 did a tremendous job. They searched everything high
3 and low. They didn't just search. They didn't just
4 swab the steering wheel of this car. Trisha Collins
5 testified that they swabbed everything. She took
6 many swabs. Other investigators took many swabs.
7 None of that evidence pointed to Octavia Middleton.

8 Do you think they might have swiped the doors of
9 these vehicles, the knobs, the radio? There is
10 nothing. Again, it's the perfect murder, Ladies and
11 Gentlemen. There is no evidence whatsoever to
12 Octavia Middleton.

13 They don't check the hairs that they've got on
14 the shell casings at the murder scene. As soon as
15 there was any mention of this blowback phenomenon or
16 anything of that nature, because the State knows I'm
17 looking for gunshot residue, Joe Powell testified
18 that a big weapon like that puts out about a 12-foot
19 field, a cloud of powder.

20 Now, the State wants you to believe that every
21 bit of that powder was absorbed in the wound and none
22 of it came out and it's practically impossible. Joe
23 Powell, he is a firearms expert. He testified to you
24 that's a very big gun. If any gun was going to throw
25 powder out of a wound like this, if any gun was going

1 to throw blowback, that's it, ladies and gentlemen.
2 There is going to be something coming out of that
3 barrel. It would have been somewhere.

4 Again, look at all the clothing. Has anybody
5 ever told you that clothing was washed, any evidence
6 of that whatsoever? If Octavia Middleton was in that
7 apartment or holding that gun nevertheless, there
8 would have been something on it. There would have
9 been some gunshot residue and there would have been
10 some blood.

11 Joe Powell testified that it ejects 12 feet, a
12 12-foot cloud. That's a lot of material. The State
13 argued in their closing that he destroyed it. Three
14 days have gone by; he destroyed that evidence. He
15 washed his clothes.

16 Again, I ask you: Take a look at it. If he
17 washed them, he didn't even get his own blood out of
18 his shorts. Let me guess. That's the only item that
19 he didn't wash, which incidentally is found in the
20 washing machine.

21 And it is his blood. It's got no relation.
22 It's none of the victims' blood. There's no tie to
23 the scene whatsoever. There's no question that there
24 was no physical evidence to this scene that links
25 Octavia Middleton.

1 The State has persisted on stating that Octavia
2 Middleton was the shooter of that gun. Why is that?
3 With the hand of one, hand of all theory, they don't
4 even have to put him anywhere near it. All they've
5 got to do is say that he was there. He was there,
6 ladies and gentlemen. He was there and he's guilty
7 of murder. Because they know that His Honor is going
8 to tell you that that's not the law. It's more than
9 that. It's more convenient for them to put the gun
10 in his hand than it is to go with the hand of one,
11 hand of all because it's not that simple of a theory.

12 The State is going to argue the hand of one is
13 the hand of all. It's their alternative theory. If
14 he didn't pull the gun, he was there, he was guilty.
15 His Honor is going to tell you that it's complicated.
16 It deals with whether or not the action is a
17 reasonable and a foreseeable result, whether or not
18 it's a natural probable consequence of what they
19 intended to do.

20 The State would have to prove to you that
21 Octavia Middleton, or whoever was there for that
22 matter, knew that this was going to happen or should
23 have foreseen it was going to happen.

24 **MS. CAMPBELL:** Objection, Your Honor. That's a
25 misstatement of the law.

1 **THE COURT:** All right.

2 **MR. HISKER:** If I misstate anything --

3 **THE COURT:** Sustained. Go ahead.

4 **MR. HISKER:** -- His Honor will clarify that law.
5 You will hear that it must be the natural probable
6 cause.

7 Remember Mr. Goldberg's opening statement he
8 told about him being in a hotel and using these
9 poppers? And, ladies and gentlemen, this is not a
10 school trip. This is a case where the government is
11 seeking to punish one of your citizens, one of our
12 citizens.

13 **MS. CAMPBELL:** Objection, Your Honor. May we
14 approach?

15 **THE COURT:** Just continue.

16 (Whereupon, a bench conference is had)

17 **MR. HISKER:** Mr. Goldberg was guilty of making a
18 mess and using those poppers. There's no question
19 about that. He was guilty. But was there any way
20 that he was supposed to expect that one of his
21 friends in the process of him making this mess was
22 going to rip some metal object off of a wall and
23 start destroying the ceiling?

24 Take those facts and consider them with the law
25 that His Honor will give. Mr. Goldberg would not be

1 convicted of the more serious offense in this court
2 of law. He made a little mess. He is guilty of
3 that, sure. But he didn't know anybody was going to
4 do all that. There's no way possible way anybody
5 would assume that.

6 His Honor will also tell that you mere presence
7 at the scene of a crime is not enough. Mere
8 association with the people that are involved is not
9 enough.

10 Now, I'm sure you assume this. I'm a lawyer.
11 I'm going to tell you about technicalities. There is
12 one technicality you have to consider. The State has
13 charged Octavia Middleton with one count of burglary
14 in the first degree on the residence of Randy
15 Wigfall.

16 Did you hear any evidence whatsoever that this
17 is a dwelling? His Honor is going to tell you that a
18 dwelling is where a person ordinarily sleeps. You
19 heard no evidence of that. He rented it as a
20 gambling establishment. The bedrooms had poker
21 machines in them.

22 No one can be convicted of burglary in the first
23 degree for the entering of that building. It's not a
24 dwelling. The jury can recall the testimony. If you
25 have any questions, you can ask to re-hear it. Randy

1 Wigfall never tells you he lives there. He doesn't
2 live there. He runs it as a gambling establishment.
3 There is only one verdict on that charge, and it's
4 not guilty. It's not a dwelling. His Honor will
5 tell you that a person has to ordinarily sleep there.
6 Nobody sleeps there. It's a business.

7 Again, if I misstated anything, I've been up
8 here a long time, it's a complex set of facts. His
9 Honor will give you an accurate and detailed charge
10 on the law. You take that law as he gives it to you.
11 If I have said anything, it was unintentional. If I
12 have misstated any of the facts as you believe them
13 to be, go with what you believe them to be. If I
14 misstate anything, please don't hold it against Mr.
15 Middleton. It has been a long closing argument.

16 But after you review all this evidence and you
17 look at all of the items that I have pointed out to
18 you, I am firmly convinced that you will find Octavia
19 Middleton not guilty of all the charges, including
20 the burglary in the first degree. Thank you.

21 **THE COURT:** All right, ladies and gentlemen.
22 You've now heard all the evidence in this case, all
23 the arguments in this case from both the State and
24 the defendant, and I'll explain to you the law as it
25 applies to this case.

1 I'll remind you again that under our
2 Constitution and code of laws only the jury can make
3 findings of fact in this case. I am not permitted to
4 indicate to you how I may feel about the facts. If I
5 have done or said anything in this case which would
6 indicate to you that I have an opinion concerning the
7 facts of the case, you should disregard that. This
8 jury must independently weigh the evidence presented
9 at this trial and render a verdict based solely on
10 that evidence.

11 The same Constitution and laws which designate
12 and make you the finders of facts in this case also
13 make me the instructor of the law. If you have some
14 idea as to what law is or what the law ought to be
15 that does not agree with what I now tell you the law
16 is, you are obligated under your oath to abandon this
17 perception on your part and accept and apply the law
18 precisely as I now state it to you.

19 I remind you again, the fact that the defendant
20 was arrested, charged and indicted in this case is
21 not evidence in this case. It cannot be considered
22 by you as evidence of guilt in this case, nor does it
23 create any presumption or inference of guilt. These
24 documents are simply the formal written instruments
25 which contain the charges against the defendant.

1 They are the formal documents by which the case is
2 brought into court. You will have these indictments
3 with you in the jury room when you retire.

4 Now, the defendant has pled not guilty to each
5 of these indictments. That plea puts the burden on
6 the State to prove the defendant guilty as to each
7 indictment. A person charged with committing a
8 criminal offense in South Carolina is never required
9 to prove himself or herself innocent. And I charge
10 you that it is an important rule of law, that the
11 defendant in a criminal trial, no matter what the
12 seriousness of the charges may be, will always be
13 presumed to be innocent of the crime for which the
14 indictment was issued unless guilt has been proven by
15 evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 This presumption of innocence does not end when
18 you begin your deliberations, but it accompanies the
19 defendant throughout the trial until you reach a
20 verdict of guilt based on evidence satisfying you of
21 that guilt beyond a reasonable doubt.

22 The presumption of innocence it has been said is
23 like a robe of righteousness placed about the
24 shoulders of the defendant which remains with the
25 defendant until it's been stripped from the defendant

1 by evidence satisfying you of that guilt beyond a
2 reasonable doubt.

3 The presumption of innocence in other words is
4 not a mere legal theory. It is not just a legal
5 phrase. It is a substantial right to which every
6 defendant is entitled unless you, the jury, are
7 convinced and satisfied from the evidence of the
8 defendant's guilt beyond a reasonable doubt.

9 Well, what's a reasonable doubt? A reasonable
10 doubt is the kind of doubt that would cause a
11 reasonable person to hesitate. Let me repeat that.
12 A reasonable doubt is a reasonable -- a doubt which
13 would cause a reasonable person to hesitate to act.

14 The State has the burden of proving the
15 defendant guilty beyond a reasonable doubt. Some of
16 you may have served as jurors in civil cases where
17 you were told it's only necessary to prove that a
18 fact is more likely true than not true, such as by
19 the greater weight or preponderance of the evidence.
20 In criminal cases, however, the State's proof must be
21 more powerful than that. It must be beyond a
22 reasonable doubt.

23 Proof beyond a reasonable doubt is proof that
24 leaves you firmly convinced of the defendant's guilt.
25 Now, there are very few things in this world we know

1 with absolute certainty. In criminal cases the law
2 does not require proof that overcomes every possible
3 doubt. If based on your consideration of the
4 evidence are you firmly convinced that the defendant
5 is guilty of the crime charged, you must find the
6 defendant guilty. If on the other hand you feel
7 there is a real possibility that the defendant is not
8 guilty, you must give the defendant the benefit of
9 the doubt and find him not guilty.

10 Now, there two types of evidence which are
11 generally presented during a trial. One is called
12 direct evidence. The other is called circumstantial
13 evidence. Direct evidence is the testimony of a
14 person who claims to have actual knowledge of a fact,
15 such as an eye witness. It's evidence which
16 immediately establishes the main fact to be proved.

17 Circumstantial evidence on the other hand is
18 proof of a chain of facts and circumstances
19 indicating the existence of a fact. It's evidence
20 which immediately establishes collateral facts from
21 which the main fact may be inferred. Circumstantial
22 evidence is based on inference, in other words, and
23 not on personal knowledge or observation. But the
24 law makes absolutely no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence, nor is a greater degree of
2 certainty required of circumstantial evidence than of
3 direct evidence.

4 After weighing all of the evidence in the case,
5 if you are not convinced of the guilt of the
6 defendant beyond a reasonable doubt, you must find
7 the defendant not guilty.

8 Now, necessarily, you must determine the
9 credibility of the witnesses who have testified.
10 Credibility simply means believability. It becomes
11 your duty as jurors to analyze and evaluate the
12 evidence and determine which evidence convinces you
13 of its truth. In determining the believability of a
14 witness who has testified, you may believe one
15 witness or several witnesses in this case or several
16 witnesses over one witness.

17 You may believe a part of the testimony of a
18 witness and reject the remaining testimony of the
19 same witness. You may believe the testimony of a
20 witness in its entirety or reject the testimony of
21 that witness in its entirety. You may consider
22 whether any witness has exhibited to you any interest
23 or bias or prejudice or any other motive in this
24 case. You may consider the appearance and manner of
25 the witness while on the witness stand.

1 Now, the fact that a person who has a past
2 criminal record, those people are competent to
3 testify at trials. A past record does not affect the
4 ability of the witness to testify. Past record may
5 only be considered by you, if at all, in determining
6 the witness's believability. Remember you are the
7 sole judges of the facts in the case and the
8 believability of any one of the witnesses in this
9 case.

10 Now, normally a person cannot give -- a lay
11 person as we say cannot give opinion testimony.
12 That's not permitted under our laws. But in certain
13 cases where people are qualified as some sort of an
14 expert -- we've had several in this case -- that's an
15 exception to the rule that a person cannot give
16 opinion testimony.

17 If a person is qualified by education or
18 experience, they are permitted to give their opinion
19 in certain areas as the Court qualifies them to do.
20 And that has been done in this case.

21 Now, a statement, you'll have the statement with
22 you; or statements, is alleged to have been made by
23 the defendant. That's been admitted into evidence in
24 this case. I determined that it is admissible.

25 While the Court has determined that the

1 statement is admissible, I instruct you that you make
2 the ultimate decision of whether or not the defendant
3 actually made the statement; and if the defendant did
4 make the statement, you must determine whether the
5 statement was made voluntarily and of his own free
6 will.

7 This means the statement was not caused by
8 pressure or fear or force or threats or coercion or
9 intimidation or by hope or promise of leniency or
10 reward of any kind.

11 In determining whether the statement was
12 voluntary you should consider both the
13 characteristics of the defendant as you know them,
14 have heard them, and the details of the questioning.
15 Some factors that you may consider are the age of the
16 defendant, the education of the defendant, the mental
17 ability or capacity of the defendant, the defendant's
18 IQ or intelligence, although there's been no
19 testimony about that in this case.

20 The length and place of detention, the nature of
21 the questioning, the advice or lack thereof to the
22 defendant of his Constitutional rights, including but
23 not limited to the right to remain silent, that any
24 statement could be used against him in a court of
25 law, the right to have an attorney present, that if

1 he could not afford an attorney, an attorney would be
2 appointed to represent him without any cost, and that
3 he could stop making a statement at any time.

4 You must carefully consider all of the
5 surrounding circumstances before you give any weight
6 to the alleged statement. The State has the burden
7 of proving beyond a reasonable doubt that the alleged
8 statement was voluntary. If you determine it was,
9 you may give the statement any further consideration
10 you deem proper.

11 You must decide what weight, if any, should be
12 given to the alleged statement. If you determine the
13 alleged statement was not the free and voluntary
14 statement of the defendant, you should not consider
15 the statement at all.

16 Now, in order to establish criminal liability,
17 criminal intent is required. For example, the mental
18 state required to be proven by the State for some
19 particular crime might be a purpose or a direct
20 intent or knowledge of certain facts or recklessness.
21 Criminal intent must be proven by the State beyond a
22 reasonable doubt, as any other factor in the case.

23 Criminal intent is always a matter that must be
24 determined by the jury from the circumstances
25 surrounding the situation. There is no way to prove

1 intent to some mathematical certainty. There is no
2 way medical science can dissect a person's brain and
3 determine what the person had in mind. So the law
4 says criminal intent may be inferred from the
5 circumstances shown to have existed at the time and
6 place. This is how you make a determination of
7 whether or not the element requiring intent was
8 present.

9 It's not necessary to establish intent by direct
10 positive evidence, but intent may be established by
11 inference in the same way as any other factor, by
12 taking into consideration the acts of the parties and
13 all the facts and circumstances of the case.
14 Criminal intent, in other words, is a mental state, a
15 conscious wrongdoing. It's up to you to determine
16 what the defendant intended to do based on the
17 circumstances shown to have existed.

18 Criminal intent can arise from action or a
19 failure to act. It may arise from negligence or
20 recklessness or an indifference to duty or to
21 consequences that are considered by the law to be the
22 equivalent of criminal intent.

23 Now, mere presence at the scene of a crime is
24 not sufficient to prove someone guilty of that crime.
25 A defendant's presence where a crime is being

1 committed or mere association with a person who
2 commits a crime does not make a defendant an
3 accomplice or an aider or abettor of the person
4 committing the crime. The burden is on the State to
5 prove every element of the crime charged. If you
6 find after reviewing all the evidence that the
7 defendant (sic) has proved that the defendant was
8 only present at the scene of the crime and that they
9 have not proved beyond a reasonable doubt any other
10 participation in the crime, then you must find the
11 defendant not guilty. The law is that proof at the
12 scene of a crime is not sufficient to find someone
13 guilty.

14 Now, it has been discussed with you the theory
15 of the hand of one is the hand of all. If a crime is
16 committed by two or more people who are acting
17 together in committing a crime, the act of one is the
18 act of all. A person who joins with another to
19 commit an unlawful act is criminally responsible for
20 everything that is done by the other person which
21 happens to be a probable or natural consequence of
22 the acts done in carrying out the common plan and
23 purpose.

24 For example, two people can be guilty of killing
25 another person when only one of the two had a gun,

1 there was only one bullet, and only one of the two
2 fired the shot that caused the death. If two or more
3 people are together, acting together, assisting each
4 other in committing the offense, the act of one is
5 the act of all, or it is sometimes called the hand of
6 one is the hand of all.

7 Now, prior knowledge that a crime is going to be
8 committed without more is not sufficient to make a
9 person guilty of that crime. Mere knowledge that
10 another person is going to commit a crime even if the
11 defendant is present when the crime is committed is
12 not sufficient to convict the defendant as a
13 principal.

14 Guilt as a principal is shown by actual or
15 constructive presence at the scene as a result of a
16 prior arrangement. Therefore, the finding of a prior
17 arranged plan or a common scheme is necessary for a
18 finding of guilt as a principal. The State must
19 prove beyond a reasonable doubt by competent evidence
20 the theory of the hand of one is the hand of all.

21 A principle in a crime is one who either
22 actually commits the crime or who is present aiding,
23 abetting or assisting in committing the crime. When
24 a person does an act in the presence of and with the
25 assistance of another, the act is done by both.

1 Where two or more acting with a common plan or
2 intent are present at the commission of a crime, it
3 does not matter who actually commits the crime. All
4 are guilty. The hand of one as I said is the hand of
5 all. Present at the commission of a crime means to
6 be sufficiently near to aid and abet and assist in
7 the commission of the crime. Again though, mere
8 presence at the scene of a crime is not sufficient to
9 convict one as a principal on the theory of aiding
10 and abetting.

11 Intent is also a necessary element in this case.
12 There must have been a common design or intent to
13 commit the crime, and the crime must have been
14 committed pursuant thereto with the person aiding and
15 abetting in some overt act.

16 Intent means intending the result which actually
17 occurs, not accidentally or involuntarily. Intent
18 may be shown by acts and conduct of the defendant and
19 other circumstances from which you may naturally and
20 reasonably infer intent. The State again must prove
21 these elements beyond a reasonable doubt.

22 Now, as you know, the indictments in this case
23 allege several offenses against the defendant. They
24 are the murder of James Greene, the burglary in the
25 first degree of [REDACTED], Apartment [REDACTED],

1 burglary in the first degree of the apartment or the
2 dwelling of Eliana Garcia, assault with intent to
3 kill Walter Huggins, assault and battery of a high
4 and aggravated nature of Eliana Garcia, assault and
5 battery of a high and aggravated nature of Walter
6 Graves, assault and battery of a high and aggravated
7 nature of Walter Huggins, the armed robbery of Walter
8 Huggins, the armed robbery of Randy Wigfall, the
9 armed robbery of Jerry Gordon, the armed robbery of
10 Eliana Garcia, and the armed robbery of Anita
11 Thompson.

12 As I just pointed out, each indictment charges a
13 separate and distinct offense. You must decide each
14 indictment separately on the evidence and the law
15 applicable to it uninfluenced by your decision as to
16 any of the other indictments. The defendant may be
17 convicted or acquitted on any or all of the offenses
18 charged. You will be asked to write a separate
19 verdict of guilty or not guilty for each indictment.

20 Well, let's define these charges. First the
21 defendant is charged with murder. The State must
22 prove beyond a reasonable doubt that the defendant
23 killed another person with malice aforethought.
24 Malice is hatred, ill will or hostility towards
25 another person. It is the intentional doing of a

1 wrongful act without just cause or excuse and with an
2 intent to inflict an injury or under circumstances
3 that the law would infer an evil intent.

4 Malice aforethought does not require that malice
5 exist for any particular time before the act is
6 committed, but malice must exist in the mind of the
7 defendant just before and at the time the act is
8 committed. Therefore, there must be a combination of
9 the previous evil intent and the act.

10 Malice does not necessarily impart ill will
11 towards the person injured but signifies rather a
12 general malignant recklessness of the lives and
13 safety of others or a condition of mind which shows a
14 heart regardless of social duty and fatally bent on
15 mischief.

16 Malice aforethought may be expressed or
17 inferred. These terms, express and inferred, do not
18 mean different types of malice but merely the manner
19 in which malice may be shown to exist; that is,
20 either by direct evidence or by inference from the
21 facts and circumstances which are proved.

22 Express malice is shown when a person speaks
23 words which express hatred or ill will for another or
24 when the person prepared beforehand to do the act
25 which was later accomplished. For example, lying in

1 wait for a person or any other act of preparation
2 going to show that the deed was within the
3 defendant's mind would be expressed malice.

4 However, malice may be inferred from conduct
5 showing a total disregard for human life. Inferred
6 malice they also arise when the deed is done with a
7 deadly weapon. A deadly weapon is any article,
8 instrument or substance which is likely to cause
9 death or great bodily harm. Whether an instrument
10 has been used as a deadly weapon depends on the facts
11 of each case and circumstances of each case. And
12 certainly the following are examples of instruments
13 which may be used as a deadly weapon. They are a
14 pistol or shotgun, rifle or dagger or a knife.

15 Now, if one intentionally kills another during
16 the commission of a felony, and I will tell you that
17 murder and armed robbery and burglary in the first
18 degree are felonies, the inference of malice may
19 arise. If facts are proved beyond a reasonable doubt
20 sufficient to raise an inference of malice to your
21 satisfaction, this inference would simply be an
22 evidentiary fact to be taken into consideration by
23 you along with all the other evidence in the case,
24 and you may give it the weight that you decide it
25 should receive.

1 When two or more persons combine together to
2 commit a robbery and during the robbery a homicide is
3 committed as a natural and probable consequence, all
4 present and participating in the robbery are as
5 guilty of the killing as the one committing the
6 homicide.

7 The defendant is also charged with assault with
8 intent to kill. In order to prove assault with
9 intent to kill, the State must prove beyond a
10 reasonable doubt the defendant again with malice
11 aforethought unlawfully attempted or offered to
12 commit a violent injury upon another person and had
13 the present ability to complete the attempted injury.

14 An assault is the intentional creation of
15 reasonable fear of immediate bodily harm. It's not
16 necessary that the attempted injury or harm actually
17 take place. Malice again is hatred, ill will or
18 hostility towards another person. It's the
19 intentional doing of a wrongful act without just
20 cause or excuse and with an intent to inflict an
21 injury under such circumstances that the law will
22 infer as reasonable -- infer as an evil intent.

23 Malice may be inferred from the conduct showing
24 a total disregard for human life. Inferred malice
25 may also arise when the deed is done with a deadly

1 weapon. A deadly weapon again is any article or
2 substance likely to cause death or great bodily harm.

3 Whether an instrument has been used as a deadly
4 weapon depends on the facts and circumstances of each
5 case. And in this case perhaps a hand or a fist is
6 not normally considered a deadly weapon. However,
7 under some circumstances, depending on the manner of
8 its use and the wounds inflicted and other relevant
9 facts, a hand or a fist could be considered a deadly
10 weapon. But it's for you to decide in this case
11 beyond a reasonable doubt whether or not a hand or a
12 fist was a deadly weapon.

13 You should consider also whether kicking a
14 victim in the same manner as you would consider
15 whether a fist has been used is a deadly weapon. And
16 even ordinary objects such as a chair may become
17 deadly weapons when the facts show they have been
18 used to inflict serious bodily harm or death.

19 If facts are proved beyond a reasonable doubt to
20 you sufficient to raise an inference of malice to
21 your satisfaction, this inference would simply be
22 another evidentiary fact to be considered by you
23 along with other evidence in the case, and you may
24 give it such weight as you decide it should receive.

25 Now, a specific intent to kill, this is again

1 under the charge of assault with intent to kill. A
2 specific intent to kill is not an element of assault
3 with intent to kill, but there must be a general
4 intent to commit serious bodily harm or injury.
5 Intent means intending the result which actually
6 occurs, not accidentally or involuntarily.

7 Evidence of the character of the assault, the
8 character of the instrument used, the manner in which
9 it was used, the purpose to be accomplished and the
10 wounds or resulting injuries may be considered in
11 determining the intent with which the assault was
12 committed. That's an assault with intent to kill.

13 Assault and battery of a high and aggravated
14 nature is an unlawful act of violent injury to the
15 person of another accompanied by circumstances of
16 aggravation. An assault occurs when a person
17 unlawfully attempts or offers to commit a violent
18 injury upon another person and has the present
19 ability to complete the attempted injury.

20 An assault is the intentional creation of
21 reasonable fear of immediate bodily harm. It's not
22 necessary that the attempted injury or harm actually
23 take place. For example, if I walk up to you and we
24 are within arm's reach and I draw back to hit you,
25 that's considered an assault. The battery is the

1 unlawful touching of another person by a person who
2 has committed that assault.

3 An unlawful touching can be caused by a part of
4 the accused's body or by any object that the accused
5 puts in motion. A battery is the completion of the
6 assault by using or applying force to another person,
7 however slight, in a rude, angry or resentful manner
8 without legal justification of doing so. Using my
9 earlier example, if I carry through the assault by
10 hitting you, that is the battery.

11 The State must also prove -- and again this is
12 assault and battery of a high and aggravated
13 nature -- aggravation or aggravating circumstances.
14 Those circumstances include the use of a deadly
15 weapon. Intent to commit a felony, infliction of
16 serious bodily injury or a difference in the genders
17 of the parties or the taking of indecent liberties or
18 familiarities with a female through the use of force
19 or the purposeful infliction of shame and disagrees
20 and the resistance of lawful authorities. These are
21 examples of circumstances of aggravation.

22 The defendant is also charged with several
23 counts of armed robbery. In order to prove this
24 offense the State must first prove beyond a
25 reasonable doubt that the defendant took personal

1 property from the person or presence of another
2 person.

3 Property is in the presence of a person if it's
4 within that person's reach, inspection or observation
5 or control so that the person could, if not overcome
6 by violence or prevented by fear, keep possession of
7 that property. The State must also prove beyond a
8 reasonable doubt that the defendant carried away the
9 property intending to permanently deprive the owner
10 or owners of the property and keep the property for
11 the defendant's own use.

12 The slightest removal of the property or
13 possession of the property even for an instant by the
14 defendant is sufficient to show a taking and carrying
15 away of the property. The taking and carrying away
16 of the property must have been done with violence or
17 by putting the owner of the property in fear of
18 violence.

19 And finally, the State must prove beyond a
20 reasonable doubt that the defendant was armed with a
21 deadly weapon during the robbery. A deadly weapon is
22 any article again or substance which is likely to
23 cause death or great bodily harm.

24 The defendant is also charged with first degree
25 burglary. The State must prove beyond a reasonable

1 doubt that the defendant entered a dwelling without
2 consent. A dwelling is any building or portion of a
3 building in which a person ordinarily sleeps. A
4 building constructed as a dwelling that has never
5 been occupied cannot be considered a dwelling for
6 purposes of burglary, but a building is a dwelling
7 even if the residents are temporarily absent from the
8 building.

9 In order to prove that the defendant entered the
10 dwelling the State does not have to show the
11 defendant's entire body entering the dwelling. The
12 smallest entry is sufficient. It may be any part of
13 a body, such as a hand or a foot or even an
14 instrument such as a hook or other instrument.

15 In addition, the State does not have prove that
16 force was used to gain entry. If a person enters a
17 building by using deception or artifice or trick or
18 misrepresentation to get consent to enter, that is an
19 entry without consent.

20 Next the State must prove beyond a reasonable
21 doubt the defendant intended to commit a crime,
22 either a felony or misdemeanor at the time of the
23 entry. The mere entry into a dwelling without
24 consent is not burglary. If the intent to commit a
25 crime is formed after the entry, it's not burglary.

1 On the other hand, if the defendant intended to
2 commit a crime at the time of the entry, it is a
3 burglary even if the intent was abandoned after that
4 entry. Intent again may be shown by acts and conduct
5 of the defendant and any other circumstances from
6 which you may naturally and reasonably infer intent.

7 And finally, the State must prove beyond a
8 reasonable doubt that the defendant entered and
9 remained in the dwelling in the nighttime. Nighttime
10 obviously is a period between sunset and sunrise
11 during which there is not enough daylight to
12 recognize a person's face except by artificial light
13 or moonlight.

14 Now, I charge you that voluntary intoxication is
15 never an excuse or a defense to a crime. A person
16 who voluntarily renders himself or herself
17 intoxicated is no less responsible for his acts while
18 in such condition.

19 If a person voluntarily drinks intoxicating
20 liquors and becomes intoxicated and if while in that
21 condition commits an act which would be a crime if it
22 had been committed by a sober person, the fact of
23 drunkenness would not relieve an intoxicated person
24 from responsibility.

25 Now, ladies and gentlemen, I instruct you and

1 emphasize this point, it's a very important part of
2 our law, the fact that the defendant did not testify
3 in this case is not a factor to be considered by you
4 in any way in your deliberation and in your
5 consideration of the question of guilt or innocence
6 of the defendant. It must not be considered by you
7 in any manner whatsoever.

8 A defendant, as I told you earlier, has the
9 Constitutional right to remain silent, and the
10 assertion of this right must not be considered by you
11 in your deliberations.

12 I repeat, under your oath you are to draw no
13 conclusion whatsoever from the fact that the
14 defendant in this case did not testify. The fact
15 that this defendant did not testify should not even
16 be discussed in the jury room.

17 The burden of proof, as I have stated throughout
18 these instructions, is on the State. The defendant
19 is not required to prove himself innocent. The
20 burden of proof remains on the State to prove guilt
21 beyond a reasonable doubt.

22 Now, Mr. Foreperson, there are obviously two
23 verdicts which can be reached as to each of these
24 indictments. On the back or what we call the face of
25 each indictment, the bottom left-hand corner, is a

1 block for your verdict. You are to -- one, when the
2 jury has reached a verdict as to each indictment, if
3 you will fill in the words either guilty or not
4 guilty, not guilty or guilty; it doesn't matter the
5 manner in which I say them, date it and sign your
6 name and knock on the jury room door, we will receive
7 your verdict.

8 Your verdict must represent the considered
9 judgment of each juror. In order to return a verdict
10 as to each indictment, it's necessary that each juror
11 agree. Your verdict must be unanimous. It's your
12 duty as jurors to consult with one another to
13 deliberate with a view to reaching an agreement if
14 you can do so without violence to your individual
15 judgments. Each of you must decide the case for
16 himself or herself, but do so only after an impartial
17 consideration of this evidence in the case with your
18 fellow jurors.

19 In the course of your deliberations do not
20 hesitate to re-examine your own views and to change
21 your opinion if convinced it's erroneous. But do not
22 surrender your honest conviction as to the weight or
23 effect of the evidence solely because of the opinion
24 of your fellow jurors or for the sole purpose of
25 returning a verdict. Remember at all times that you

1 are not partisans favoring one party over the other.
2 You are judges, judges of the facts in this case.
3 Your sole interest is to seek the truth from the
4 evidence in the case.

5 Now I'm going ask you to retire to the jury
6 room. And I believe your lunches are here. You
7 certainly can begin your deliberations while you eat
8 your lunch or after you eat your lunch. It's up to
9 you. But do not begin your deliberations until the
10 bailiffs have brought all the evidence to you.

11 I say that with one caveat. We'll bring the
12 shotgun to you, but we're not going to bring the
13 shells to you at the same time. We want all of you
14 to come out of this trial. We'll send the shells to
15 you separately but take the gun out. But the laws
16 and security and everything else does not allow me to
17 send a gun with ammunition into the jury room. I
18 never have and I never will. So, that's the only
19 caveat.

20 But I am going to ask you to wait and begin your
21 deliberations until the evidence has been brought to
22 you. And, Mr. Foreman, after these have been brought
23 to you, you may want to sort of get started on your
24 lunch while the bailiffs are bringing that evidence
25 in. It's up to you. We will be here awaiting your

1 decision. You may now retire to the jury room.

2 (Jury out at 1:10 p.m.)

3 *THE COURT:* Exceptions to the charge?

4 *MS. CAMPBELL:* Yes, sir, Your Honor. When you
5 went through the indictments, when you get to the
6 part where you talk about multiple indictments and
7 their verdict, you read each indictment except the
8 murder.

9 *THE COURT:* No, I didn't. I read murder first.

10 *MR. HISKER:* The murder of James Greene.

11 *THE COURT:* Sir?

12 *MR. HISKER:* It was the first one.

13 *THE COURT:* The first one I read.

14 *MS. CAMPBELL:* Then I missed it. I'm sorry.

15 *THE COURT:* I said it. Right on top.

16 *MS. CAMPBELL:* As to your burglary first degree
17 instruction, --

18 *THE COURT:* Yeah.

19 *MS. CAMPBELL:* -- you said the aggravating
20 circumstance was nighttime. That's not what we
21 allege in our indictments. And the ones we allege in
22 our indictments you didn't read.

23 *THE COURT:* All right. Use of a deadly weapon.

24 *MS. CAMPBELL:* It would be armed with a deadly
25 weapon or caused physical injury to a person who is

1 not a participant in the crime or use or to threaten
2 the use of a dangerous instrument, displays what
3 appears to be a knife or shotgun.

4 **THE COURT:** I'll correct it. When did this take
5 place anyway? What time of day was it?

6 **MS. CAMPBELL:** It was right around dusk.

7 **MR. HISKER:** I believe 9.

8 **MS. CAMPBELL:** 8:30.

9 **THE COURT:** Any objection? Anything from the
10 defense?

11 **MR. HISKER:** Just one. On page 14.

12 **THE COURT:** Well, you probably knew I skipped
13 over some stuff because it's repetitive.

14 **MR. HISKER:** It's only 14 on mine.

15 **THE COURT:** What is it?

16 **MR. HISKER:** On the mere presence.

17 **THE COURT:** Yep.

18 **MR. HISKER:** You switched out the defendant for
19 the State. And it says that the defendant -- you
20 read if the defendant has proved that the defendant
21 was only present at the scene of a crime.

22 **THE COURT:** Wait a minute.

23 **MR. HISKER:** Can I approach? It might be
24 different on mine.

25 **MS. CAMPBELL:** It says the State has proved.

1 **THE COURT:** I read defendant?

2 **MR. HISKER:** Yes, sir.

3 **THE COURT:** Do you think that's significant
4 enough to bring them back?

5 **MR. HISKER:** Are we going to bring them back for
6 the others?

7 **THE COURT:** Yeah. I mean, I have to read mere
8 presence if you want me to.

9 **MR. HISKER:** If we're going to bring them back
10 for the burglary, I would ask you also --

11 **MS. CAMPBELL:** I would object to him re-reading
12 the whole phrase.

13 **THE COURT:** Mere presence.

14 **MS. CAMPBELL:** I would just say that he's trying
15 to put emphasis on that.

16 **THE COURT:** Well, I think it's so insignificant,
17 I don't really think they need to be recharged on
18 that issue.

19 **MR. HISKER:** I just ask for a recharge. If we
20 recharge them on anything, we just recharge them on
21 the two paragraphs of mere presence because the way
22 it was read, it constitutes a burden shifting.

23 **THE COURT:** Well, I don't think -- I mean, how
24 is it burden shifting if I say: "If you find after
25 reviewing all the evidence that the defendant has

1 proved that the defendant was only present at the
2 scene of a crime", and they have not, I don't see it
3 as burden shifting. I mean, it's -- he could have
4 proved it, too, but didn't.

5 **MR. HISKER:** I agree, Judge. But whenever I
6 hear the words "defendant has proved", I mean, to me
7 that signifies it, just for the record.

8 **THE COURT:** All right.

9 **MS. CAMPBELL:** Your Honor, I don't care if you
10 just send them a note back that the aggravating
11 circumstances are these possible. Or I just left
12 these off in addition to what I read to you.

13 **MR. HISKER:** I wouldn't agree with that, Judge.

14 **THE COURT:** I'm just going to do it from the
15 indictment.

16 **MS. CAMPBELL:** Okay.

17 **THE COURT:** As a matter of fact, I'm just going
18 to read the indictments. Bring the jury back. Tell
19 them I have one other thing I want to ask them. Tell
20 them. Ask them.

21 (Jury in at 1:14 p.m.)

22 **THE BAILIFF:** The jury is all present.

23 **THE COURT:** All right. Ladies and gentlemen,
24 when I adjourned and asked you to retire to the jury
25 room to consider your verdict, I always ask the

1 lawyers if there's something that I've misstated or
2 they think I've misstated or maybe something -- it's
3 a rather lengthy charge, and sometimes I read one
4 word backwards or something. And they always catch
5 me on it. So, I want to clarify just a couple of
6 things.

7 Back to my instruction about the mere presence
8 at the scene of a crime. I want to restate it
9 correctly. The burden is on the State, as I said, to
10 prove every element of the crime charged. If you
11 find after reviewing all the evidence that the State
12 has proved that the defendant was only present at the
13 scene of a crime and that they have not proved beyond
14 a reasonable doubt any other participation in the
15 crime, then you must find the defendant not guilty.
16 The law is that proof of (sic) at the scene of a
17 crime is not sufficient to find someone guilty.

18 I sort of read it incorrectly the first time.

19 And as to the charge of burglary in the first
20 degree, I read that the only circumstances under
21 which you could find burglary, or one of the
22 circumstances under which you could find burglary in
23 the first degree if you found that the State proved
24 it beyond a reasonable doubt was that the defendant
25 entered the dwelling during the hours of darkness.

1 I want to read to you what the indictments
2 actually say that the defendant entered. And again,
3 this is to both apartments. Entered without consent
4 and with the intent to commit a crime therein, that
5 the defendant entered during the hours of darkness
6 and while affecting entry or while in the dwelling or
7 immediate flight therefrom the defendant or other
8 participant in the crime was armed with a deadly
9 weapon or caused physical injury to any person who is
10 not a participant in the crime or used or threatened
11 use of a dangerous instrument or displays what
12 appears to be a knife, pistol, rifle, shotgun,
13 machine gun or other firearm.

14 In other words, I don't think I included the
15 entire language of the indictment on burglary in the
16 first degree when I first described the elements of
17 the crime of burglary in the first degree.

18 So with those two additional supplements to the
19 charge, you're now free to return to the jury room.
20 And is your lunch here?

21 **FOREPERSON:** Yes.

22 **THE COURT:** Go ahead. And if you will tell me
23 you will not -- well, I think the two alternates are
24 going to have to wait outside. Just, Billy, have the
25 alternates sit in the hall. Make sure they get fed

1 though. You're dismissed to return to the jury room.

2 *MS. CAMPBELL:* Your Honor, may we approach?

3 *THE COURT:* Well, hold on. Yes. Hold it. Have
4 a seat.

5 (Whereupon, a bench conference is had)

6 *THE COURT:* All right.

7 *MS. CAMPBELL:* Thank you.

8 *THE COURT:* And/or entered the hours of darkness
9 and/or did the other things, had the deadly weapon.
10 Thank you.

11 (Jury out at 1:18 p.m.)

12 *THE COURT:* All right. Let's gather the
13 evidence.

14 (Pause)

15 (Whereupon, the jury begins deliberating at
16 1:43 p.m.)

17 *THE COURT:* All right, counsel. The bailiffs
18 have informed the Court the jury has reached a
19 verdict. Are you ready to receive the verdict?

20 *MS. CAMPBELL:* The State's ready.

21 *THE COURT:* Defense ready?

22 *MR. HISKER:* Yes, sir.

23 *THE COURT:* Bring the jury, please.

24 (Jury in at 3:20 p.m.)

25 *THE BAILIFF:* The jury is all present, Your

1 Honor.

2 **THE COURT:** All right. Thank you very much.
3 Mr. Foreman, has the verdict -- I'm sorry. Has the
4 jury reached a verdict?

5 **FOREPERSON:** Yes, sir.

6 **THE COURT:** Would you hand it to the bailiff,
7 please, or hand them to the bailiff, please.

8 (Foreman complies)

9 **THE COURT:** All right. Madam Clerk, will you
10 publish the verdicts, please?

11 **THE CLERK:** Yes, sir. Indictment number
12 2005-GS-40-8121, the State of South Carolina vs.
13 Octavia Middleton, indictment for murder: We, the
14 jury, unanimously find the defendant guilty.

15 Indictment number 2005-GS-40-7940, the State of
16 South Carolina vs. Octavia Middleton, indictment for
17 assault with intent to kill; we, the jury,
18 unanimously find the defendant guilty.

19 Indictment number 2005-GS-40-7884, the State of
20 South Carolina vs. Octavia Middleton, indictment for
21 assault and battery of a high and aggravated nature;
22 we, the jury, unanimously find the defendant guilty.

23 Indictment number 2005-GS-40-7941, the State of
24 South Carolina vs. Octavia Middleton, indictment for
25 assault and battery of a high and aggravated nature;

1 we, the jury, unanimously find the defendant
2 guilty.

3 Indictment number 2005-GS-40-7938, the State of
4 South Carolina vs. Octavia Middleton, indictment for
5 assault and battery of a high and aggravated nature;
6 we, the jury, unanimously find the defendant guilty.

7 Indictment number 2005-GS-40-7931, the State of
8 South Carolina vs. Octavia Middleton, indictment for
9 armed robbery; we, the jury, unanimously find the
10 defendant guilty.

11 Indictment number 2005-GS-40-7891, the State of
12 South Carolina vs. Octavia Middleton, indictment for
13 armed robbery; we, the jury, unanimously find the
14 defendant guilty.

15 Indictment number 2005-GS-40-7885, the State of
16 South Carolina vs. Octavia Middleton, indictment for
17 armed robbery; we, the jury, unanimously find the
18 defendant guilty.

19 Indictment number 2005-GS-40-7892, the State of
20 South Carolina vs. Octavia Middleton, indictment for
21 armed robbery; we, the jury, unanimously find the
22 defendant guilty.

23 Indictment number 2005-GS-40-7939, the State of
24 South Carolina vs. Octavia Middleton, indictment for
25 armed robbery; we, the jury, unanimously find the

1 defendant guilty.

2 Indictment number 2005-GS-40-7894, the State of
3 South Carolina vs. Octavia Middleton, indictment for
4 burglary in the first degree; we, the jury,
5 unanimously find the defendant guilty.

6 Indictment number 2005-GS-40-7942, the State of
7 South Carolina vs. Octavia Middleton, indictment for
8 burglary in the first degree; we, the jury,
9 unanimously find the defendant guilty.

10 Mr. Foreman, was this your verdicts and the
11 verdicts of the entire jury on all indictments?

12 **FOREPERSON:** Yes, ma'am.

13 **THE CLERK:** Thank you.

14 **THE COURT:** Any desire to poll the jury?

15 **MR. HISKER:** Yes, Your Honor.

16 **THE COURT:** Poll the jury, please, ma'am.

17 **THE CLERK:** Yes, sir. Ladies and Gentlemen of
18 the jury panel, as I call your number, please answer
19 yes or no to both questions as I call your number.
20 Number 100, was this your verdict?

21 **JUROR:** Yes.

22 **THE CLERK:** Is it still your verdict?

23 **JUROR:** Yes.

24 **THE CLERK:** Number 46, was this your verdict?

25 **JUROR:** Yes.

1 THE CLERK: Is it still your verdict?
2 JUROR: Yes.
3 THE CLERK: Number 34, was this your verdict?
4 JUROR: Yes.
5 THE CLERK: Is it still your verdict?
6 JUROR: Yes.
7 THE CLERK: Number 64, was this your verdict?
8 JUROR: Yes.
9 THE CLERK: Is it still your verdict?
10 JUROR: Yes.
11 THE CLERK: Number 84, was this your verdict?
12 JUROR: Yes.
13 THE CLERK: Is it still your verdict?
14 JUROR: Yes.
15 THE CLERK: Number 88, was this your verdict?
16 JUROR: Yes.
17 THE CLERK: Is it still your verdict?
18 JUROR: Yes.
19 THE CLERK: Number 145, was this your verdict?
20 JUROR: Yes.
21 THE CLERK: Is it still your verdict?
22 JUROR: Yes.
23 THE CLERK: Number 205, was this your verdict?
24 JUROR: Yes.
25 THE CLERK: Is it still your verdicts?

1 *JUROR:* Yes.

2 *THE CLERK:* Number 48, was this your verdicts?

3 *JUROR:* Yes.

4 *THE CLERK:* Is it still your verdict?

5 *JUROR:* Yes.

6 *THE CLERK:* Number 128, was this your verdict?

7 *JUROR:* Yes.

8 *THE CLERK:* Is it still your verdict?

9 *JUROR:* Yes.

10 *THE CLERK:* Number 119, was this your verdict?

11 *JUROR:* Yes.

12 *THE CLERK:* Is it still your verdicts?

13 *JUROR:* Yes.

14 *THE COURT:* Number 117, was this your verdict?

15 *JUROR:* Yes.

16 *THE CLERK:* Is it still your verdict?

17 *JUROR:* Yes.

18 *THE CLERK:* The jury has been polled, Your
19 Honor.

20 *THE COURT:* All right. Thank you very much.

21 All right, ladies and gentlemen. Thank you very much
22 for your service in this matter. It's been a long
23 week. I don't think you anticipated this when you
24 came to the courthouse Monday morning. But this was
25 an essential part of our judicial system, as you can

1 understand.

2 On behalf of not only myself but the litigants
3 in this case and more importantly the citizens of
4 Richland County, I want to thank you for your service
5 this week. I often if not always tell jurors this
6 system can do without me. This system can do without
7 these lawyers. It cannot do without you.

8 You're such an essential part of the judicial
9 system not only in this county but this state and
10 this nation that the system would just grind to a
11 screeching halt if it weren't for citizens who are
12 willing to come and help us resolve these matters in
13 the manner in which you have done.

14 I've noticed all week that you've been
15 conscientious, attentive, and you've put up with me.
16 And that takes some doing. But you've done it and
17 you've done it marvelously well. I don't know
18 whether you ate all the doughnuts or not. But if
19 there are any left over my clerk would like to have
20 them. She doesn't get paid for another two weeks and
21 she would like to have whatever is left over.

22 But, seriously, I do want to thank you for your
23 service. Let me say this. The remaining portion of
24 this matter, this trial, will consist of the
25 sentencing of the defendant. Now, we're not quite

1 like Law and Order. We just don't have the resources
2 to put these things off. We've got another case
3 starting Tuesday morning. Or not Monday morning but
4 Tuesday morning. So we have to go ahead and do our
5 sentencing immediately and move on to the next case.

6 So I plan to do that upon your adjournment here.
7 I will tell you that you are welcome to sit and watch
8 that proceeding. It's going to take a few minutes
9 to get the paperwork done before we actually go
10 through the sentencing procedure. That will take
11 about ten or fifteen minutes. And then the
12 sentencing procedure won't take more than 10 or 15
13 minutes.

14 What I am going to suggest you to do if you wish
15 to do so is go back to your jury room, turn in your
16 jury badges, and you can return and sit in the
17 audience if you wish to do so. You don't have to.
18 You're free to go. I don't want to hold you beyond
19 the time that you've spent here already.

20 Madam Clerk has any work excuses, things of that
21 nature that you might need. She also tells me that
22 she doesn't have your checks though. She said the
23 checks are in the mail. But we apologize for the
24 size of those checks. But anyway, that's the way it
25 is.

1 So again, let me thank you on my behalf and on
2 behalf of all the courtroom personnel. You are now
3 excused. You don't have to serve on jury duty again
4 this year. As a matter of fact, you have an
5 exemption for the next two years if you wish to
6 exercise that exemption. But I wish all of you well.
7 And again thank you. Good luck to all of you.

8 (Whereupon, the jury is excused at 3:28 p.m.)

9 **THE COURT:** All right. We'll stand at ease.
10 I'm sorry. Do you want to go ahead and make your
11 motions now?

12 **MR. HISKER:** Yes, Your Honor.

13 **THE COURT:** That's fine. I was going do it when
14 we got back. That's fine. Go ahead. Any motions to
15 be made at this time?

16 **MR. HISKER:** Yes, Your Honor. At this time the
17 defense makes a motion for a new trial. I
18 reinstate all my existing motions and objections.
19 Based on the sufficiency of the evidence, no
20 reasonable jury could have found the defendant
21 guilty.

22 Most specifically, I would point to the burglary
23 first. There was no evidence that this was a
24 dwelling. This is on the residence of Randy Wigfall.
25 This was an apartment that was operated solely as a

1 poker establishment. No one lived there. And that
2 was the testimony, Your Honor.

3 **THE COURT:** All right. Well, I think the jury
4 was certainly within their province based on the
5 evidence as presented to them to find the defendant
6 guilty of all charges. And I respectfully deny your
7 motions. So just be prepared for sentencing in about
8 ten minutes, as soon as the paperwork is done and the
9 clerk dismisses the jury.

10 **MR. HISKER:** I mean, I'm interested in talking
11 to the jurors if they want to talk with me.

12 **THE COURT:** Well, if some of them come back in,
13 I'll tell them. We'll stand at ease.

14 (Whereupon, a break is taken)

15 **THE COURT:** All right, Solicitor.

16 **MS. CAMPBELL:** May it please the Court, Your
17 Honor. Standing next to me are the victims in the
18 case. I'll have them speak or address you in a
19 minute. Your Honor, one of the victims, his wife
20 actually asked me to hand up -- and I showed it to
21 the defense attorney -- a picture of her husband
22 prior to his death. With the Court's permission I
23 would approach.

24 **THE COURT:** Yes, ma'am.

25 (Document handed to the Court)

1 **MS. CAMPBELL:** He was a retired police officer
2 from the New York area.

3 Your Honor, I'm going to address the defendant's
4 prior record. Starting back in 1998, he was
5 convicted of use of a vehicle without owner's
6 permission; in 1998, grand larceny; in 1998,
7 possession of a stolen vehicle; in 1998, failure to
8 stop for a blue light and failure to stop on police
9 command. He did do an active sentence at that point.
10 He was revoked on a YOA probation in 1999. 2001, it
11 was a non-conviction. 2002, he was convicted of
12 possession of marijuana, breaking into motor vehicle,
13 loitering, strong armed robbery.

14 **THE COURT:** In what year?

15 **MS. CAMPBELL:** 2002. He also had a parole
16 revocation in 2002. He received an active sentence
17 in 2003 on all those charges I just mentioned. He
18 had gotten out of prison approximately three or four
19 months prior to committing these offenses.

20 You also heard testimony Monday from a
21 Christopher Thompson who was the victim of a shooting
22 at the Greystone Boulevard WVOC station where he was
23 going to work one morning when Octavia Middleton and
24 his co-defendant, Teran Scott, Mr. Middleton actually
25 pulled the gun out in that case and shot him. There

1 was a confession in that case that you're aware of.
2 He also has other pending charges for a home
3 invasion.

4 **THE COURT:** You say there is a confession in the
5 Christopher Thompson case?

6 **MS. CAMPBELL:** Yes, sir. Mr. Thompson survived.
7 He was in intensive care for a week or two. He did
8 lose much use of his arm.

9 **THE COURT:** That case has not come to trial yet?

10 **MS. CAMPBELL:** No, sir.

11 **THE COURT:** All right.

12 **MS. CAMPBELL:** Your Honor, as far as victims, if
13 this is the appropriate time?

14 **THE COURT:** Yes, ma'am.

15 **MS. CAMPBELL:** I believe that Mrs. Greene, the
16 defendant's (sic) wife, I think she has written a
17 letter, and she has asked Mr. Goldberg just to read
18 that to you. She wrote it back when this -- shortly
19 after this happened.

20 **THE COURT:** Yes, ma'am.

21 **MR. GOLDBERG:** May it please the Court, Your
22 Honor.

23 "Dear Judge:

24 May I tell you a little something about this
25 great man I married? He was born on [REDACTED]

1 [REDACTED] [REDACTED], killed on August the 8th of 2005. He
2 attended public school number 27 and Boys High School
3 in Brooklyn, New York. Jimmy moved to Denmark, South
4 Carolina, where he attended Voorhees High and junior
5 college. In 1952 he entered the United States Army.
6 In 1959 he joined the New York Housing Police. In
7 1960 he chartered and was first made of so many
8 different lodges. He retired from the New York City
9 Housing Authority and relocated to Columbia, South
10 Carolina. This man was a great leader.

11 "A friend came to my house on August the 8th at
12 9:50 p.m. and told me that my husband was shot. My
13 first reaction was it can't be true. That bombshell
14 opened a wound in my heart that is still healing.

15 "My husband moved down south in 1993 to better
16 his life and then he began to have symptoms of
17 diabetes. He lost both of his legs. My Jimmy did
18 not need legs to keep going. He always said he would
19 walk again, and he did. On the morning he was killed
20 he went to the doctor to be fitted for new legs. And
21 he was so proud of them. He wanted to get him a new
22 pair of brown shoes. In spite of his challenges, he
23 always was an active man.

24 "In the year 2003 we both lost our mothers to
25 cancer. In 2004 the doctor told me that I had

1 cancer. I did not know how I would deal with this.
2 I didn't know how I would make it. I was so
3 depressed and I did want to live. The bills were
4 coming from everywhere but this great man told me not
5 to worry and that everything would work out all
6 right.

7 "Here is a man in a wheelchair who cooked,
8 cleaned and did everything to make me feel that I was
9 the most beautiful person in the world. His loss was
10 devastating. I never got a chance to say goodbye.
11 Jimmy was more than a husband. He was my friend.
12 And now I have to face a special loneliness.

13 "Those are just a few of the thousands of
14 tragedies that strike families throughout the world.
15 Every day the most grieving person will tell you that
16 when death takes your child, husband, wife, parents
17 or a friend, your natural reaction is dreadful. It
18 can't be true.

19 "I want to know: Does death mean the end of me
20 seeing Jimmy, or is there hope that we will see our
21 loved ones again? Is there real hope? Right now I
22 have questions.

23 "If you are grieving over the loss of a loved
24 one, is it normal to grieve this way? How can I live
25 with my of grief? What can others do to help me

1 cope? How can I help others who are grieving?

2 "When you lose your spouse, there's another kind
3 of trauma, especially if both led an active life.
4 When my husband suddenly died from a shotgun wound, I
5 was in a state of shock. The first week I was in a
6 state of emotional numbness. I couldn't eat or
7 sleep. I went back to smoking and having feelings of
8 not wanting to live any more.

9 "At the end of October I will be moving back
10 home. Jimmy took care of everything. This great man
11 with no legs fought a good fight and he loved people.
12 He was a leader, a teacher, a father to some, a
13 husband to one, a brother to many, and a friend to
14 all.

15 "Those punks have no idea what they have done to
16 so many people. And I will ask the Lord every day to
17 let me be here when those animals go to trial. I ask
18 myself: What could I have done to prevent my husband
19 from going out that night? He was happy. These
20 questions have to be cleared up so that they will not
21 put a strain on me.

22 "And did I weep? Of course I did. Especially
23 when I read the thousands of sympathy cards that I
24 received. They helped me face the rest of my day,
25 but nothing could help when I was asked repeatedly

1 how I was doing. Obviously I was miserable.

2 "Do you know who I miss the most? Me. I miss
3 the way I look, the way I used to act. I forgot how
4 to laugh. All I do is cry. And my best friend is
5 popping pills in a house full of loneliness. What
6 still hurts me is when I remember that my husband who
7 loved so much is not here to enjoy it with me.

8 "I'm not afraid to seek help because I know it
9 pleases me to tell others how I can live with my
10 grief. Is it normal to experience feelings of guilt
11 and anger? I was so worried about being a good
12 example to others. I recall that I did not permit
13 myself to have normal feelings. I eventually learned
14 that trying to be a pillar of strength for others was
15 not helping me. I began analyzing by situation and
16 said cry if you have to cry. Just get it out of your
17 system.

18 "I feel myself grieving also for those three
19 boys' parents. If my husband had died after a long
20 illness, I might have a better understanding. I now
21 know that talking can be a helpful release. My
22 husband was a true companion and lover, a friend who
23 will listen patiently, sympathetically and can bring
24 a measure of relief.

25 "Shedding tears of grief appears to be a

1 necessary part of the healing process. At one time I
2 felt embarrassed about crying when I turned to the
3 news and saw what others have lost. Those people
4 have no home to go to and they've lost loved ones.

5 "When I go to the supermarket shopping, it
6 sometimes brings tears to my eyes, especially when I
7 reach for my husband's favorite items. I know that I
8 should not prolong anger, that it's dangerous, but
9 right now I want those animals to stay in jail for
10 the rest of their life. All they were is
11 cold-blooded killers.

12 "There is a big difference between expressing
13 your feelings and dumping on another. And I ask you:
14 How can you mend a broken heart? Your Honor, I was
15 married to a deity. My husband was not an ordinary
16 man like everyone else. He was special. He rose to
17 achieve greatness and now he has risen above us all
18 to the home of the greatest God.

19 "My Jimmy, powerful man, was a loving husband,
20 father and a great friend. His teaching went to the
21 heart of men and women, especially to me, his
22 children, grandchildren and great grandchildren.
23 Some may have not known him well but others knew him
24 as a Godly man.

25 "He does not need arms or legs to be wonderful.

1 He had a heart that spoke fondness to everyone:
2 Devoted, intelligent, energetic, towering, youthful
3 and willing to teach yet willing to learn. He was
4 amazing and funny, a husband now gone to be by the
5 greatest one of all.

6 "Your Honor, I'm sorry that I wrote such a long
7 letter, but those three animals took everything from
8 me and my children. And I love him so much. Please
9 don't have mercy on them. Those three animals don't
10 understand a house is not a home when there's only
11 one of us there.

12 "I am going to a psychiatrist twice a month. I
13 have lost so much. I am tired because it hurts so
14 badly.

15 "When I found out that Harry Dukes' birthday is
16 [REDACTED], my husband's birthday is
17 [REDACTED], I will never forget it. Those
18 three don't understand, when they do time, their
19 family also will do time.

20 "Sincerely yours: Mrs. Lillian Greene."

21 **MS. CAMPBELL:** May it please the Court, Your
22 Honor. This is pastor Duane Greene. He is
23 Mr. Greene's son.

24 **MR. GREENE:** You know, when you see that
25 picture, you see my father. And if you're looking at

1 me, you see my father. I never knew at 49 years of
2 age I would be the leader of my family that fast.
3 The day before my father died I would call him up for
4 guidance before preaching and I would ask him some
5 information because he was sort of like a theologian
6 in my life. He studied a lot of history. He studied
7 a lot of things for years and studied the word of
8 God.

9 And I remember our last conversation, and it was
10 a blessing. But as I was going up to New York to
11 bury my father, I thought about not having the chance
12 to say I love you for the last time. So, he didn't
13 get to see a grandbaby that was born three months ago
14 from my 22-year-old daughter, but he did get to see
15 two of his grandbabies from my 28-year-old son, and
16 two other grandbabies he did get a chance to see.

17 We've been truly blessed just having him in our
18 life. But to go that quick, it was just too soon.
19 After coming through having both of his legs taken
20 from him, I can remember being at his bedside praying
21 him through it, carrying him to the doctors and
22 helping him when he was screaming at night before his
23 legs was amputated.

24 But I could never imagine somebody beating my
25 dad or anything of that nature. That I just couldn't

1 understand, not a kind man like him, not a man that's
2 loving, not a man that has trained his children how
3 to take care of others and enjoy life. And I don't
4 want to say much more than he was a blessed man. I'm
5 sorry that he's gone. I'm sorry that it happened.

6 *THE COURT:* Thank you, Reverend.

7 *MS. CAMPBELL:* This is his daughter.

8 *THE COURT:* I need your name.

9 *MS. STIVENDER:* Gina Marie Stivender.

10 *THE COURT:* Yes, ma'am.

11 *MS. STIVENDER:* I'm going to try. I don't think
12 I can. I just wish you would have known my dad. He
13 was a great man. I was there for him. I took care
14 of him when they cut off his legs. I helped him
15 through all that. He got stronger. He was
16 determined just to walk again. He was so proud of
17 his legs and that he was able to walk. He would be
18 around the house in his wheelchair, and when he'd get
19 ready to go out, the kids would always get the legs
20 for him. That was his only thing that he wasn't able
21 to drive and get around. He'd just wait on somebody
22 just to take him somewhere. That's all he ever
23 wanted to do, was just to get out and go somewhere.

24 My dad was really a great man. And just to hear
25 how he spent the end of his life, just all the

1 beatings, that was just senseless. He couldn't
2 defend himself. Why be so brutal to him? And I'm
3 sorry. I can't say anything else.

4 *MS. CAMPBELL:* Your Honor, I believe Captain
5 Smith would like to address the Court.

6 *THE COURT:* Yes, Captain.

7 *CAPTAIN SMITH:* If it please the Court, Your
8 Honor. Your Honor knows I've been in front of you in
9 a number of murder trials and I've never come before
10 you and asked you what I'm getting ready to ask you
11 for.

12 I want to say a little something about this case
13 first of all. It was not enough that whether this
14 defendant shot and killed Mr. Greene or not. That's
15 not even disputed as far as him going and then
16 kicking or hitting Mr. Greene after he had, as Dr.
17 Nichols testified to, a catastrophic wound. So it's
18 not as if the wound, they didn't know how devastating
19 it was. Then to go and beat the man, that speaks
20 volumes about what happened in that apartment that
21 day.

22 Not to mention, Your Honor does know about the
23 Christopher Thompson case and how devastating his
24 injuries were. And with this amount of ammunition,
25 it leads us to wonder as investigators how many more

1 bodies would have been mutilated or how many people
2 would have been killed had we not been able to put
3 this crime spree down when we did.

4 Based on the totality of the facts involved in
5 not just this case but the other case as well, I
6 would ask Your Honor to sentence this defendant to
7 the maximum sentence.

8 **THE COURT:** Thank you, Captain.

9 **MS. CAMPBELL:** I think that the facts speak for
10 themselves, Your Honor. We feel like that this is a
11 case that actually deserves a maximum sentence.
12 That's all we would ask. That's all from the State.

13 **THE COURT:** Mr. Hisker.

14 **MR. HISKER:** May it please the Court?

15 **THE COURT:** Yes, sir.

16 **MR. HISKER:** Your Honor, this is a tragic case.
17 And my heart goes out to all these victims. I'd like
18 for Your Honor to consider the fact that Mr.
19 Middleton did not choose a trial strategy to vilify
20 any of these victims or dishonor any of these
21 victims. He chose his trial strategy to attack the
22 State's case without further victimizing these
23 people.

24 He's 26 years old. He has four children. His
25 mother has been in court with him every day. Mr.

1 Middleton grew up on the streets, Judge. He grew up
2 without a father. He's a product of this
3 environment. I'd ask Your Honor to consider his age
4 and the fact that whatever you give him he's going to
5 do day-for-day. The minimum sentence is thirty. If
6 you were to even give him the minimum, he would be
7 over 55 years old before he got out. I just ask Your
8 Honor to consider that.

9 I'd also like you to consider some of the facts
10 that we do know about since Christopher Thompson's
11 case is the confession that Mr. Middleton wrote about
12 the Christopher Thompson case was that it was an
13 accident. I think the facts suggested that the
14 shooting of Christopher Thompson was an accident.

15 If all the confessions are deemed to be true,
16 Mr. Middleton admitted to attempting an armed robbery
17 and that gun going off. No robbery was effectuated
18 after that. So it would seem to me that that
19 shooting at that time was an accident. The facts of
20 this case I believe are overwhelming that Teran Scott
21 was shooting that weapon.

22 At least we know that Teran Scott had the
23 weapon, carried it in, had it throughout. Your Honor
24 heard the testimony. And I submit that that shows
25 that by far Mr. Teran Scott was the most vicious in

1 this case. Mr. Middleton for the most part was
2 cooperative with the authorities, and I'd ask Your
3 Honor to consider that with his age and the fact that
4 he's not going to be eligible for any type of early
5 release. Thank you, Your Honor.

6 **THE COURT:** Mr. Middleton.

7 **MR. MIDDLETON:** Yes, sir.

8 **THE COURT:** Do you have anything you wish to
9 say?

10 **MR. MIDDLETON:** Yes, sir.

11 **THE COURT:** Now is the time.

12 **MR. MIDDLETON:** Well, like they stated, I can't
13 begin to understand the pain that the victims are
14 going through, the family victims as well. And I can
15 understand their anger as in how they wish for me to
16 have the maximum sentence. And I just want to give
17 my sympathy to the family.

18 And I just say that I also believe that nobody
19 should have to go through such pain as the wife
20 strived in her letter. And I do mourn and feel sorry
21 for the way she -- what she's going through as well
22 as their son and their daughter. And I just wanted
23 to let the Court know -- know that. That's all I
24 have to say.

25 **THE COURT:** Anything further --

1 *MS. CAMPBELL:* No, sir.

2 *THE COURT:* -- from the State? All right.

3 (Pause)

4 *THE COURT:* All right, Mr. Middleton.

5 *MR. MIDDLETON:* Yes, sir.

6 *THE COURT:* There's not much I can say about
7 this. I mean, these are vicious crimes. It may have
8 been somewhat of a challenge or a lark. I don't know
9 why people do what they do. It might have seemed
10 like an easy thing to just walk in and rob a bunch of
11 older guys sitting around playing pinocle, get some
12 money.

13 But I have to remember that Mr. Greene would be
14 alive today if you hadn't provided the weapon for him
15 to be killed with. Whether you actually pulled the
16 trigger or not, I don't know. Only you and your
17 co-defendant know who pulled the trigger. But you
18 have the -- you provided the instrument of death,
19 whether you pulled the trigger or not. And you were
20 there. And somebody beat these men in the head with
21 a chair. Somebody kicked these people. Somebody
22 treated them like cur dogs.

23 I believe that there always should be some hope
24 for you; despite what you've done, despite how all
25 these other people feel, that you be given some, some

1 consideration for your cooperation with this and the
2 other Christopher Thompson case. You've done bad
3 things. Christopher Thompson could very easily be a
4 murder case, too. I'm sure you're aware of that.

5 **JUROR:** Yes, sir.

6 **THE COURT:** Accident or no, you provided the
7 gun. In that case it's my understanding that you
8 actually pulled the trigger, accidentally or not. So
9 there are a lot of things that I have to consider in
10 coming to this conclusion of sentence, not the least
11 of which is the impact on you and your family.
12 Nevertheless, that's my responsibility and I will do
13 so.

14 All right, sir. On your assault with intent to
15 kill and your three assault and battery of a high and
16 aggravated nature cases, the sentence of the Court is
17 you be committed to the State Department of
18 Corrections for a period of ten years.

19 On your armed robbery cases which carry a
20 penalty of from ten to thirty years, on all five of
21 those cases, the sentence of the Court is you be
22 committed to the State Department of Corrections for
23 a period of thirty years.

24 On your two burglary first degree cases and the
25 murder case, those carry a potential sentence of from

1 fifteen years to life in prison on the burglary first
2 charges and from thirty years which is the mandatory
3 minimum on murder from thirty years to life in
4 prison; the sentence on all three of those cases is
5 that you be committed to the State Department of
6 Corrections for a period of fifty years. All
7 sentences to run concurrent. You're given credit for
8 time served. Good luck to you, sir.

9 (Whereupon, the proceedings are concluded)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 27th, 28th, 29th, 30th and 31st days of August, 2007.

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

January 22, 2008

Jenny H. Williams

Jenny H. Williams, Court Reporter

WITNESSES

(S) John Ewing, RCSD

ARREST WARRANT NUMBER

1973524

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: SEP 14 2005

VERDICT

Guilty

Foreperson of Petit Jury

Date: 31 AUG 07

DOCKET NO. 2005-GS-40-7884

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

THE STATE

vs.

OCTAVIA MIDDLETON

Indictment for

**ASSAULT AND BATTERY
OF A HIGH AND
AGGRAVATED NATURE**

SC Code: 17-25-30 C/L

CDR Code: 0013

Class MIS/UNC

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment for to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
J. W. M. G. S.
C.C.C. P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, commit an assault and battery upon the victim, Eliana Garcia, constituting an unlawful act of violent injury to the person of the said victim, accompanied by circumstances of aggravation, to wit: the use of a deadly weapon and/or the infliction of serious bodily injury and/or the intent to commit a felony and/or a difference in sexes and/or the purposeful infliction of shame and disgrace. All in violation of the S.C. Code of Laws 17-25-30.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
 WARREN B. GIESE, SOLICITOR

FILED
 SEP 15 2005
 CLERK OF COURT
 RICHLAND COUNTY
 SOUTH CAROLINA

WITNESSES

(S) John Ewing, RCSD

ARREST WARRANT NUMBER

1973509

ACTION OF GRAND JURY

TRUE BILL

Sandra Pherigo
Foreperson of Grand Jury

Date: SEP 14 2005

VERDICT

Guilty

Foreperson of Petit Jury

Date: 31 Aug 07

DOCKET NO. *SPW 8-15-2007* 2005 GS-40-7885

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS
SEPTEMBER TERM 2005
42

THE STATE
vs.

OCTAVIA MIDDLETON

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Deputy W. M. G. S.
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, commit robbery by feloniously taking from the person or presence of Jerry Gordon by means of force or intimidation goods or monies of Jerry Gordon, such goods or monies described as wallet and/or U. S. Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
WARREN B. GIESE, SOLICITOR

WITNESSES

(S) John Ewing, RCSD

ARREST WARRANT NUMBER

1973514

ACTION OF GRAND JURY

TRUE BILL

Sandra Phengjo
Foreperson of Grand Jury
Date: SEP 14 2005

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 31 AUG 05

DOCKET NO. 2005-GS-40-7891

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

THE STATE

vs.

OCTAVIA MIDDLETON

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own name and plead
guilty to the within indictment.

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 14 2006
CLERK P.B.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, commit robbery by feloniously taking from the person or presence of Anita Thompson by means of force or intimidation goods or monies of Anita Thompson, such goods or monies described as wallet and/or U.S. Currency and/or jewelry with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
 WARREN B. GIESE, SOLICITOR

WITNESSES

(S) John Ewing, RCSD

ARREST WARRANT NUMBER

1973512

ACTION OF GRAND JURY

TRUE BILL

Sandra Pherrigo
Foreperson of Grand Jury
Date: SEP 14 2005

Guilty

Foreperson of Petit Jury
Date: 31 AUG 07

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JUL 14 2005
C.C.C. P.S.G.S.
RICHLAND COUNTY
SOUTH CAROLINA

DOCKET NO. 2005-GS-40-7892

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

THE STATE

vs.

OCTAVIA MIDDLETON

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, commit robbery by feloniously taking from the person or presence of Randy Wigfall by means of force or intimidation goods or monies of Randy Wigfall, such goods or monies described as U.S. Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
WARREN B. GIESE, SOLICITOR

WITNESSES

(S) John Ewing, RCSD

ARREST WARRANT NUMBER

1973508

ACTION OF GRAND JURY

TRUE BILL

Sandra P. Hering
Foreperson of Grand Jury
Date: SEP 14 2005

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 31 AUG 07

DOCKET NO. 2005-GS-40-7931

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS
SEPTEMBER TERM 2005

42

THE STATE
vs.

OCTAVIA MIDDLETON

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ORIGINAL FILED
2005 SEP 14 11:30 AM
C.C.C. P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, commit robbery by feloniously taking from the person or presence of Eliana Garcia by means of force or intimidation goods or monies of Eliana Garcia, such goods or monies described as wallets and/or U.S. Currency and/or jewelry with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

WITNESSES

(S) John Ewing, RCSD

ARREST WARRANT NUMBER

1973530

ACTION OF GRAND JURY

TRUE BILL

Sandra P. Herigo

Foreperson of Grand Jury

Date: SEP 14 2005

VERDICT

Guilty

Foreperson of Petit Jury

Date: 31 AUG 07

DOCKET NO. 2005-GS-40-7938

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

THE STATE

vs.

OCTAVIA MIDDLETON

Indictment for

**ASSAULT AND BATTERY
OF A HIGH AND
AGGRAVATED NATURE**

SC Code: 17-25-30 C/L

CDR Code: 0013

Class MIS/UNC

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jesse H. Williams
CLERK C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, commit an assault and battery upon the victim, Walter Huggins, constituting an unlawful act of violent injury to the person of the said victim, accompanied by circumstances of aggravation, to wit: the use of a deadly weapon and/or the infliction of serious bodily injury and/or the intent to commit a felony and/or the purposeful infliction of shame and disgrace. All in violation of the S.C. Code of Laws 17-25-30.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
 WARREN B. GIESE, SOLICITOR

RECEIVED
 SEP 15 2005
 CLERK OF COURT
 RICHLAND COUNTY
 SOUTH CAROLINA

WITNESSES

(S) John Ewing, RCSD

ARREST WARRANT NUMBER

1973517

ACTION OF GRAND JURY

TRUE BILL

Sandra P. Herigs
Foreperson of Grand Jury
Date: SEP 14 2007

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 31 AUG 07

DOCKET NO. 2005-GS-40-7939

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

**THE STATE
vs.**

OCTAVIA MIDDLETON

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment.

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jesse M. Middle
C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

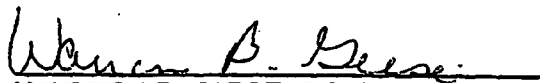
INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, commit robbery by feloniously taking from the person or presence of Walter Huggins by means of force or intimidation goods or monies of Walter Huggins, such goods or monies described as wallet and/or U.S. Currency and/or car keys and/or cell phone with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 WARREN B. GIESE, SOLICITOR

WITNESSES

(S) John Ewing, RCSD

ARREST WARRANT NUMBER

1973521

ACTION OF GRAND JURY

TRUE BILL

Landra Pherris
Foreperson of Grand Jury
Date: SEP 14 2005

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 31 AUG 07

DOCKET NO. 2005-GS-40-7940

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

**THE STATE
vs.**

OCTAVIA MIDDLETON

Indictment for

**ASSAULT WITH
INTENT TO KILL**

SC Code: 17-25-30

CDR Code: 768

Class MIS-UNC

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment of

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
SEP 14 2005
C.C.C. P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

ASSAULT WITH INTENT TO KILL

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, with malice aforethought commit an assault with intent to kill upon one Walter Huggins. All in violation of Section 17-25-30 C/L, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

(S) John Ewing, RCSD

1973526

TRUE BILL

Foreperson of Grand Jury

Date: SEP 14 2005

Guilty

Foreperson of Petit Jury

Date: 31 AUG 07

42

OCTAVIA MIDDLETON

Indictment for
ASSAULT AND BATTERY
OF A HIGH AND
AGGRAVATED NATURE
SC Code: 17-25-30 C/L
CDR Code: 0013
Class MIS/UNC

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead
guilty to the within indictment.

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
 JUNE 27, 1973
 J. C. C. R. & G. S.
 RICHMOND COUNTY
 SOUTH CAROLINA

INDICTMENT

On September 14, 2005, the Grand

AVATED NATURE

AVATED NATURE

or about August 8, 2005,
constituting an unlawful
by circumstances of
infliction of serious bodily
infliction of shame and

ute in such case made and

Mease
SE, SOLICITOR

~~SECRET~~

WITNESSES

(S) John Ewing, Jr., RCSD

ARREST WARRANT NUMBER

1973506

ACTION OF GRAND JURY

Sandra Pherigo
Foreperson of Grand Jury

Date: SEP 1 2 2005 SEP 14 2005

VERDICT

Guilty

Foreperson of Petit Jury

Date: 31 Aug 07

DOCKET NO. 2005-GS-40-7942

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

THE STATE

vs.

OCTAVIA MIDDLETON

Indictment for

**BURGLARY/(AFTER 6/20/85)
1ST DEGREE**

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

After being fully advised to my legal rights, I hereby voluntarily present myself to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment as to

Defendant

Witness:

C.C.C. PLS. AND G.S.

NOTIFIED TRUE COPY OF ORIGINAL FILES
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, willfully and unlawfully enter the dwelling of Eliana Garcia, without consent and with the intent to commit a crime therein and the defendant entered during the hours of darkness and/or when, in effecting entry or while in the dwelling or in immediate flight therefrom defendant or another participant in the crime was armed with a deadly weapon or caused physical injury to any person who is not a participant in the crime or used or threatened use of a dangerous instrument or displays what appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm. All in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

SPW
8-15-
2007

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
 Warren B. Giese, SOLICITOR

WITNESSES

(S) John Ewing, RCSD

ARREST WARRANT NUMBER

1915453

ACTION OF GRAND JURY

TRUE BILL

Sandra Phung
Foreperson of Grand Jury

Date: SEP 14 2005

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 31 AUG 07

DOCKET NO. 2005-GS-40-8121

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

THE STATE

vs.

OCTAVIA MIDDLETON

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

MURDER

That OCTAVIA MIDDLETON did in Richland County on or about August 8, 2005, feloniously, willfully and with malice aforethought, kill one James Green by means of a shot from a shotgun and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,

Janette W. McBride
C.C.C.P.&G.S.

RICHLAND COUNTY
SOUTH CAROLINA

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.AKA: Octavia Middleton
Race: B Sex: M Age:
DOB: SS#:
Address:
City, State, Zip:
DL# SID# INDICTMENT/CASE#:
05 - GS - 40 - 7884AW#: 1973524
Date of Offense: August 8, 2005
S.C. Code §: 17-25-30 C/L
CDR Code #: 0 / 0 / 1 / 3
☐ CASE RESTORED
☐ SENTENCE SHEET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Assault and Battery of a High and Aggravated Nature
in violation of § 17-25-30 C/L of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 1 / 3
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
\$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Barbara A. Scott, PF
Clerk of Court/Deputy ClerkCourt Reporter: J. Williams

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____

\$ _____ paid to Public Defender Fund

Other: [Signature]

C.C.C.P. & G.S.

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2 / 1 / 1 / 2 / 6Sentence Date: 8-31-07

944

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.Octavia MiddletonAKA: _____
Race: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#

05 - GS - 40 - 7285AW#: 1973509Date of Offense: August 8, 2006S.C. Code §: 16-11-330(A)CDR Code #: 0 / 1 / 3 / 9☐ CASE RESTORED
☐ SENTENCE SHEET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed Robberyin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 3 / 9☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
\$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient:

*Fine: \$ _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ _____

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____

\$ _____

Other: _____

CERTIFIED TRUE COPY

ORIGINAL FILED

paid by Public Defender and

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 211-21-6Sentence Date: 8-31-07

Barbara G. Scott, Clerk of Court, Deputy Clerk

Court Reporter: J. Williams

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

945

COUNTY OF

Richland

STATE

VS.

Octavia Middlebn

AKA:

Race: B

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#

- GS -

05 - 40 - 7891

AW#:

1973514

Date of Offense:

August 8, 2005

S.C. Code §:

16-11-330(A)

CDR Code #:

0 / 1 / 3 / 9

☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 3 / 9

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ \$17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott / PF

Clerk of Court/ Deputy Clerk

Court Reporter:

J. Williams

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

CERTIFIED TRUE COPY
OF ORIGINAL FILED,

G.C.G.P.&G.S.

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.
Octavia Middleton
AKA: _____
Race: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____

INDICTMENT/CASE#:
05 - GS - 40 - 7892
AWW#: 1973512
Date of Offense: August 8, 2005
S.C. Code §: 16-11-330(A)
CDR Code #: 0 / 1 / 3 / 9
☐ CASE RESTORED
SENTENCE SHEET
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 01139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:


Solicitor

Defendant


Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and/or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ **plus 20% fee:** \$ _____

Payment Terms:☐ set by SCDPPPS

Recipient:

*Fine:		\$
\$14-1-206 (Assessments 107.5%)		\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
TOTAL	100	\$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

beginning COPY
CERTIFIED TRUE
paid to Public Defender Fund

Other: OF ORIGINAL FILED

Signature: _____
Date: 11/17/86

COPIES

C.C.C. # 48-57
JULY 1960

RICHLAND COUNTY

☐ Appointed PD or appointed to the Probation Unit. \$35.13
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichland

VS.

Octavia Middleton

AKA:

Race: BSex: M

Age: _____

DOB: _____

SS#: _____

Address: _____

City, State, Zip _____

DL# _____

SID# _____

INDICTMENT/CASE#

05- GS - 40 - 7931AW#: 1973508Date of Offense: August 8, 2005S.C. Code §: 16-11-330(A)CDR Code #: 0 / 1 / 3 / 9☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed Robberyin violation of § 16-11-330(A)of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 3 / 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____

\$ _____

Other: _____

CERTIFIED TRUE COPY

OF ORIGINAL FILED

J. J. Williams

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]Judge Code: 2 / 1 / 1 / 2 / 6Sentence Date: 8-31-07Court Reporter: [Signature]

Clerk of Court/Deputy Clerk

948

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

Octavia Middleton
 AKA: _____
 Race: B Sex: M Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip _____
 DL# _____ SID# _____

INDICTMENT/CASE#:
05 - GS - 40 - 7938

A/W#: 1973530
 Date of Offense: August 8, 2005
 S.C. Code #: 17-25-30 C/L
 CDR Code #: 0 / 0 / 1 / 3

☐ CASE RESTORED
 SENTENCE SHEET
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault and Battery of A High And Aggravated Naturein violation of § 17-25-30 C/L of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 1 / 3

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
 \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years
 and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
 are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP _____

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

CERTIFIED TRUE COPY

OF ORIGINAL FILED,

James H. Williams

C.C.C.P.&G.S.

☐ Appointed PD or appointed AND COURT \$35.13 TP

Requires \$500 be paid to Clerk of Court.

PRESIDING JUDGE

Judge Code: 2 / 1 / 2 / 6Sentence Date: 8-31-07Court Reporter: J. Williams

Clerk of Court, Deputy Clerk

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.Octavia MiddlebnAKA: _____
Race: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____INDICTMENT/CASE#:
05 - GS - 40 - 7939AW#: 1973517
Date of Offense: August 8, 2005
S.C. Code §: 16-11-330(A)
CDR Code #: 0 / 1 / 3 / 9
☐ CASE RESTORED
SENTENCE SHEET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed RobberyIn violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 3 / 9☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Karl C. Ha
Solicitor

Defendant

[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
\$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

PTUP _____

days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ CERTIFIED TRUE COPY\$ OF ORIGINAL FILEDOther: Grandfathered

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2 / 1 / 1 / 2 / 6Sentence Date: 8-31-07

Recipient: _____

*Fine: _____ \$
\$14-1-206 (Assessments 107.5%) _____ \$
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$
\$56-5-2995 (DUI Assessment) \$12 \$
\$35.13 (Public Def/Prob) \$500 \$
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$
\$50-21-114(BUI Breath Test Fee) \$50 \$
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$
TOTAL \$

TOTAL

Barbara A. Scott
Clerk of Court/ Deputy ClerkCourt Reporter: [Signature]

950

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Richland

STATE

VS.

Detavia Middleton

AKA:

Race: B

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

05

GS - 40 - 7940

A/W#:

1973521

Date of Offense:

August 2, 2005

S.C. Code §:

17-25-30

CDR Code #:

716181

☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Assault with intent to Kill

in violation of § 17-25-30 of the S.C. Code of Laws, bearing CDR Code # 716181

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45 w/minor 1st or Lewd ActThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

K. Scott Jr.
Solicitor

Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in installments of \$ _____ monthly

pmts. of \$ _____

\$ _____ paid to Public Defender Fund

Other: _____

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2111216

8-31-07

Barbara A. Scott, PE
Clerk of Court/Deputy Clerk

Court Reporter:

J. Williams

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichland

VS.

Octavia Middleton

AKA:

Race: BSex: M

Age: _____

DOB: _____

SS#: _____

Address: _____

City, State, Zip _____

DL# _____

SID# _____

INDICTMENT/CASE#

05- GS - 407941

A/W#:

1973526

Date of Offense:

August 8, 2005

S.C. Code §:

17-25-30 CL

CDR Code #:

0 / 0 / 1 / 3☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault and Battery of a High and Aggravated Naturein violation of § 17-25-30 CLof the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 1 / 3☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP _____

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____

Other: _____

CERTIFIED TRUE COPY

OF ORIGINAL FILED,

[Signature]

C.C.C.P.&G.S.

RICHLAND COUNTY

☐ Appointed PD or appointed other counsel \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2 / 1 / 1 / 2 / 6Sentence Date: 8-31-07Barbara A. Scott, P.F.
Clerk of Court/Deputy ClerkCourt Reporter: [Signature]

952

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland

VS.

Octavia Middleton

AKA:

Race: BSex: M

Age: _____

DOB: _____

SS#: _____

Address: _____

City, State, Zip _____

DL# _____

SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#
05 - GS - 40 - 7942A/W#: 1973506Date of Offense: August 8, 2005S.C. Code §: 16-11-311CDR Code #: 0 / 7 / 9 /☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary 1st Degreein violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0 / 7 / 9 /☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 50 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

\$14-1-206 (Assessments 107.5%) _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 _____

\$56-5-2995 (DUI Assessment) \$12 _____

\$35.13 (Public Def/Prob) \$500 _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 _____

\$50-21-114(BUI Breath Test Fee) \$50 _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea _____

3% to County (if paid in installments) _____

TOTAL _____

Barbara A. Scott PF

Clerk of Court/Deputy Clerk

Court Reporter: J. Williams

PTUP _____

days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____

\$ _____ CERTIFIED TRUE COPY

Other: _____

OF ORIGINAL FILED

Janette W. McBride

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or approved other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]Judge Code: 2 / 1 / 2 / 6Sentence Date: 8-31-07

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.Octavia MiddletonAKA: _____
Race: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____INDICTMENT/CASE#: 05 - GS - 40 - 2121
A/W#: 1915453
Date of Offense: August 8, 2005
S.C. Code §: 16-3-10
CDR Code #: 0 / 1 / 1 / 1 / 6☐ CASE RESTORED
☐ SENTENCE SHEET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murderin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 1 / 1 / 6
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kyle Conrad
Solicitor

Defendant

[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 50 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
\$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP _____

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

CERTIFIED TRUE COPY
OF ORIGINAL FILED[Signature]
C.C.C.P.&G.S.

RICHLAND COUNTY

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE _____

Judge Code: 2 / 1 / 2 / CSentence Date: 8.31.07Court Reporter: [Signature]

Clerk of Court/Deputy Clerk

STATE OF SOUTH CAROLINA

County of RichlandOctavia Middleton #253919

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF2010 JUL 23 PM 12:49
FILED
RICHLAND COUNTY
CLERK OF COURT
JANETTE W. MCBRIDE
S.C.C.P. & G.S.**INSTRUCTIONS — READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the 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 applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Richland County General Session
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 05-GS-40-7894, 7931, 7892, 7942, 7891, 7939, 7940, 7884, 7941, 7938, 7885.
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 08-31-07, 30 yrs. arm robb. 5 counts, 50 burglary 2 counts
 - (b) 10 yrs ABHAN 3 counts, 10 yrs AWIK, 50 yrs murder, sentences
 - (c) concurrent.

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes _____

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. May 27, 2010

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Affirmed pursuant to Rule 220 (b), SCACR in the following

ii. authorities: State v. Beckham, 513 S.E.2d 606, State v.

Hicks 499 S.E.2d 209, McGee v. Bruce Hosp. Sys., 468 S.E.2d 633

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A _____
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Violation of U.S. Constitution

(c) Prosecutor Misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Petition of review will follow

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?
No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Direct Appeal
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. South Carolina Court Of Appeal
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Conviction Affirmed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. May 27, 2010
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Affirmed pursuant to Rule 220 (b), SCACR in the following authorities: State v. Beckham
- ii. 513 S.E.2d 606, State v. Hicks 499 S.E.2d 209, McGee v. Bruce Hosp. Sys., 468 S.E.2d 633
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) N/A
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Steven Hisker Richland County (trial counsel)
Joseph L. Savitz, III Appellate Defence Office
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial Counsel
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

Vacate this conviction and remand for a new trial

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Octavia Middleton #253919, 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.

Octavia Middleton

SWORN to and subscribed before me this

20

day of

July2010

Debra Sims
Notary Public

(L.S.)

My Commission Expires:

11-4-2015

FILED
RICHLAND COUNTY
2010 JUL 23 PM 12:49
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Octavia Middleton #253919, 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 therefor.

Octavia Middleton
Applicant

SWORN or affirmed to and subscribed before me this

20 day of July, 2010

Debra Sims
Notary Public

My Commission Expires

11-4-2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
MIDDLETON Octavia -	)	2010CP4004866
# 00253919,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 23, 2010, 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 Richland County Clerk of Court. The Applicant was represented by Steven Hisker, Esquire. On August 31, 2007, the Applicant was convicted following a jury trial and was sentenced by The Honorable G. Thomas Cooper, Jr.. The Applicant was indicted and/or convicted of the following: Burglary/(After 6/20/85) 1st Degree (2 counts), Armed Robbery (5 counts) and ABHAN (2 counts) - (2005-GS-40-7894;7931;7942).

<u>Offender Type</u>	Adult-straight Sentence

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2010CP4004866&CourtType=G&CaseType=Civil&CourtAgency=40002>

State's Return - (2010CP4004866) - Applicant: MIDDLETON Octavia
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<u>Offense</u>	Murder
<u>Sentence Start Date</u>	08/12/2005
<u>Sentence Length</u>	50 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	09/04/2007
<u>Committing County</u>	Richland
<u>Location</u>	Lee
<u>Projected Release Date</u>	07/31/2055
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

2

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence:

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00253919&youth=N&type=F>

PER CURIAM: Octavia Middleton appeals his convictions of assault with intent to kill, three counts of assault and battery of a high and aggravated nature, five counts of armed robbery, two counts of first-degree burglary, and murder, for which he received an aggregate fifty-year sentence. Middleton argues the trial court erred in admitting photographs of scratches on his arms and in failing to direct a verdict in his favor. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the admission of photographs: State v. Beckham, 334 S.C. 302, 310-11, 513 S.E.2d 606, 610 (1999) (affirming the admission of photographs of defendant's scratched back and arms as relevant and probative evidence when defendant's accomplice testified defendant fled the murder scene by running through a wooded area).

2. As to the directed verdict motion: State v. Hicks, 330 S.C. 207, 217, 499 S.E.2d 209, 214 (1998) (holding preservation requires the objection to be contemporaneous); McGee v. Bruce Hosp. Sys., 321 S.C. 340, 347, 468 S.E.2d 633, 637 (1996) (finding an issue cannot be raised for the first time in a new trial motion).

AFFIRMED.

State v. Middleton, Octavia, Op. No. 2010-UP-294 (S.C. Ct. App. filed May 27, 2010) (Remittitur date June 14, 2010).

RESPONDENT'S STATEMENT OF FACTS

During the early evening hours of August 8, 2005, appellant and Teran Scott forced their way into two local apartments, robbed and brutalized several victims, and robbed, shot and killed James Greene. Applicant has admitted his participation in "brutaliz[ing]" the victims in this case during an authorized entry into the two apartments. (BOA, p. 4). He denies only the murder, specifically he denies pulling the trigger. Id. (See also Tr. p. 609, line 16 - p. 617, line 6).

The testimony at trial showed that Applicant, with Scott, decided to rob a gambling house in a local apartment complex because they did not think such a robbery would be reported. (Tr. p. 614, lines 18-22). Because access to the apartment was restricted, (Tr. p. 326, lines 20-24), the two used a resident from across the hall, Karl Jones, to gain entry. (Tr. p. 324, lines 1-10; p. 610, lines 3-22). One of the men held a shotgun on Mr. Jones and Mr. Jones knocked on the door. After Mr. Jones saw the two had "barged in" he ran to another apartment and asked a neighbor to call 911. (Tr. p. 258, line 5 - p. 263, line 23). Thereafter, Applicant and Scott brutalized and terrorized several victims, and shot and killed Mr. Greene. (Tr. p. 270, line 3 - p. 275, line 10 (Walter Huggins); p. 290, line 11 - p. 298, line 25 (Eliana Garcia and her boyfriend's son); p. 311, line 4 - p. 313, line 7 (Jerry Gordon); Tr. p. 324, line 23 - p. 326, line 4 (Randy Wigfall); p. 334, line 1 - p. 338, line 24 (Regina Pinckney); p. 402, line 11 - p. 406, line 25). (See also Tr. p. 610, line 25 - p. 612, line 15).

Walter Higgins, present in the gambling house, testified that two assailants barged into the apartment, hitting him in the head with a chair. Then, one of the men began beating the murder victim, Mr. Greene, demanding money and cursing. Mr. Greene was shot in the chest. Mr. Higgins was shot at, but escaped injury. (Tr. p. 271, line 8 - p. 274, line 25). The pathologist testified that Mr. Greene's body showed a gunshot wound to the right chest and blunt trauma to the left side of the head indicating repeated hitting. (Tr. p. 676, lines 23-24; p. 681, lines 6- p. 682, line 1). The gunshot wound to the chest was the fatal wound. (Tr. p. 682, lines 8-13). The pathologist described the wound as a "contact wound" that indicated "the barrel of the shotgun was right up against the victim's chest when the trigger was pulled." (Tr. p. 677, line 15

- p. 679, line 5). The pathologist described the chest injury as "catastrophic" and opined that death would have followed within minutes. (Tr. p. 682, lines 14-17).

Eliana Garcia lived in the apartment across the hall from the gambling house. She testified that when she heard the noise from the other apartment, she opened her door. She was pulled out, hit, and fell into the other apartment, was repeatedly hit thereafter, and that one of the assailants took her wallet. She testified the "tall one" had a rifle, and "[t]hey began hitting everyone." (Tr. p. 290, line 11 - p. 295, line 3). She was instructed to strip and was told she would be killed. (Tr. p. 296, lines 6-23). She hit the gun away from her and ran to her apartment, and locked the door. She was followed. The "tall one" broke the door in and hit her boyfriend's son, who also lived in the apartment, demanding the phone and money. He hit the boy with a rifle. (Tr. p. 297, line 1 - p. 298, line 25). Capt. James Smith testified that Applicant is taller than Scott. (Tr. p. 746, line 16 - p. 747, line 4).

Jerry Gordon testified that he was in the back playing a poker machine when he heard the "chaos start," and heard a gun shot. One of the assailants came into the back and demanded money from him. He took him to the bathroom and made Mr. Gordon strip. The assailant looked through Mr. Gordon's pants for money. (Tr. p. 311, line 4 - p. 312, line 7). The assailant took Mr. Gordon's ID cards, credit cards and money. (Tr. p. 313, lines 9-23). Randy Wigfall testified that he hid in a closet in the same bathroom Mr. Gordon was later forced into. Mr. Wigfall heard the gunshots and the demands for money. He slid "several hundred dollars to" Mr. Gordon in hopes of appeasing the assailants so that they would leave. (Tr. p. 324, line 7 - p. 326, line 4).

Regina Pinkney, who was playing one of the machines as Mr. Gordon had been, testified that she heard the assailants burst in and begin yelling for the house managers, Ojetta and Randy, and robbing everyone. She testified she heard "a lot of commotion" from the front of the apartment. She hid in a closet, but could hear people getting hit and gunshots. (Tr. p. 334, line 1- p. 336, line 17). When she came out of the back she saw blood around the apartment and "[c]hairs overturned." In her words, "[i]t was just a mess." (Tr. p. 337, line 12-25).

Anita Thompson was also in the apartment that night, in a back room playing a poker machine. She heard the noise from the front, then one of the assailants came into the room she was in, held a gun to her face, and demanded money. He took her purse, jewelry, keys and cigarettes. (Tr. p. 402, line 11 - p. 403, line 12). She crawled to the hallway and saw the assailants beating a man while the man said, "I don't have no money. I gave you all I got. And they kept calling him Randy." (Tr. p. 404, lines 10-15). As she tried to leave, she passed the apartment across the hall. She heard noises that to her sounded as if "[s]omebody was over there like torturing those people, just all kind of curse words and give me this and just, you know, all kind of stuff." (Tr. p. 405, line 22 - p. 406, line 4). As she tried to leave the complex, she saw the assailants get in a green truck and follow her. She eventually escaped and obtained a ride out of the complex from a nearby driver. (Tr. p. 406, lines 5-25).

The first responding officer testified, in describing the scene, that the murder victim was laying on the floor, there were copious amounts of blood in the apartment, "chairs knocked over" and the apartment was in "disarray." (Tr. p. 244, lines 21-25). Another officer testified that the door to Eliana Garcia's apartment was damaged, forced open and "split at the deadbolt areas,"

and that Ms. Garcia "had some red marks on her forehead" and "her left eye area was red and swollen." (Tr. p. 248, lines 5-14).

As above noted, Applicant gave a statement three days later admitting to everything except pulling the trigger. (BOA, p. 4). Applicant also indicated in his confession that Harry Dukes, aka "Boo," accompanied Applicant and Scott to the apartment. (Tr. p. 609, line 25 - p. 610, line 19; p. 616, lines 20-21). Mr. Dukes testified at trial and confirmed he was with Applicant and Scott at the apartment complex, but essentially denied prior knowledge or involvement beforehand. (Tr. p. 693, line 10 - p. 694, line 25). Applicant also indicated in his statement that the group went to see Frank "Dogman" Hughey after the crime. (Tr. p. 613, line 18 - p. 614, line 17; p. 617, lines 11-16). Mr. Hughey, along with Jessica Richardson, who is related to Teran Scott, assisted in the recovery of the weapon. (Tr. p. 619, line 1 - p. 620, line 1). Applicant, in another statement to police, identified the recovered gun as the gun used in the August 8, 2005 crimes. (Tr. p. 734, line 20 - p. 736, line 17). The gun recovered also matched a fired shell recovered near the murder victim's body in the apartment. (Tr. p. 368, line 20 - p. 369, line 5; p. 543, line 5 - p. 550, line 19).

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files (if any). The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an

amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of 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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. 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.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Ashley R. Batson, Esquire regarding when the hearing should be set.³

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

February 8, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MIDDLETON Octavia -
00253919,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010CP4004866

CERTIFICATE OF SERVICE

19. I am an employee of the Respondent in the above-captioned action.
20. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
21. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Ashley R. Batson
Post Office Box 11457
Columbia, SC 29205

DATED February 8, 2011.


Jean R. Indriago
Legal Assistant

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF COMMON PLEAS
 3) No. 2014 CP 40 04866
 4 OCTAVIA MIDDLETON)
 5 Petitioner)
 6 versus) TRANSCRIPT OF RECORD
 7)
 8 STATE OF SOUTH CAROLINA)
 9
 10 Columbia, South Carolina
 11 January 10, 2012

12 B E F O R E :

13 HONORABLE J. ERNEST KINARD, JR., Judge
 14

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

16 For the Petitioner: ROBERT FITZSIMONS, Esq.

17 For the State: BRIAN T. PETRANO, Esq.
 18 Assistant Attorney
 General

19 Reporter Present: DAPHNE HELMS
 20
 21

22 HARRIET P. BENNETT
 23 Reporter, S.C. Court Administration
 46 Regency Oaks Drive
 24 Summerville, S.C. 29485
 25

I N D E X

	Direct-Redirect	Cross-Recross
1		
2		
3	Octavia Middleton	
4	By Mr. Fitzsimons	5
5	By Mr. Petrano	15
6	Steven Hisker	
7	By Mr. Fitzsimons	18
8	By Mr. Petrano	23
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EXHIBITS

1

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NO EXHIBITS WERE PROFFERED OR MARKED

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1 (The within matter came before the Court for hearing
2 on January 10, 2012)

3 THE COURT: All right, please be seated.
4 Call your case.

5 MR. PETRANO: Thank you, Your Honor. May it please
6 the Court?

7 This is Mr. Octavia Middleton. It is Case Number
8 2010 CP 40 4866, a PCR commenced on July 23rd of 2010, from
9 a jury trial before Judge Cooper on August 31st of 2007.

10 Basically, he has three counts of ABHAN, two counts of
11 burglary in the first degree, five counts of armed robbery,
12 one count of assault with intent to kill, and one count of
13 murder.

14 Ultimately he was sentenced to fifty years. Fifty for
15 the murder, fifty for the first degree burglaries, and ev-
16 erything else to run concurrent.

17 Your Honor, there was an appeal that was before the
18 South Carolina Court of Appeals which issued Opinion Number
19 201028694.

20 He was represented by Mr. Steven Hisker. He is here
21 present in the Courtroom, and I will turn it over to coun-
22 sel for Mr. Middleton, Mr. Robert Fitzsimons.

23 THE COURT: All right.

24 MR. FITZSIMONS: Your Honor, at this time we would call
25 Mr. Middleton to the stand.

1 THE COURT: All right. Mr. Middleton.

2 MR. FITZSIMONS: Your Honor, Mr. Middleton would not
3 swear on the Bible.

4 THE COURT: All right. Mr. Middleton, you affirm that
5 you are going to tell us the truth.

6 MR. MIDDLETON: Yes, sir, I affirm that I will tell
7 the truth.

8 THE COURT: All right, take the stand.

9 OCTAVIA MIDDLETON, having made affirm-
10 ation, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FITZSIMONS:

13 Q. You are Octavia Middleton?

14 A. Yes, sir.

15 Q. And you are incarcerated, is that correct?

16 A. Yes, sir.

17 Q. And is Mr. Petrano correct in reciting that you went
18 to trial approximately three years ago? August three . .

19 A. Yes, sir. No. No, it was in 2007.

20 Q. In 2007?

21 A. Yes.

22 Q. How old are you, Mr. Middleton?

23 A. I'm thirty-one.

24 Q. And you were in your twenties when this trial took
25 place, is that correct?

MR. MIDDLETON ON DIRECT

1 A. Yes, sir.

2 Q. Mr. Middleton, have you had an opportunity to reflect
3 on and investigate this case considerably?

4 A. Yes, sir.

5 Q. Have you had a copy of the transcript that you could
6 refer to on a regular basis?

7 A. Yes, sir.

8 Q. Mr. Middleton, you have heard Mr. Petrano indicate that
9 you did go to trial?

10 A. Yes, sir.

11 Q. Is that correct? You were represented by Mr. Hisker?

12 A. Yes, sir.

13 Q. And, Mr. Middleton, did you testify at your trial?

14 A. Not in the actual trial but I testified in an in-camera
15 hearing.

16 Q. Was that Jackson v. Deno?

17 A. Yes, sir.

18 Q. A Jackson v. Deno hearing?

19 A. Yes, sir.

20 Q. And were there several issues with regard to your Mi-
21 randa Rights and your statement? Voluntariness of it?

22 A. Yes, sir.

23 Q. Would you tell us what those issues were?

24 A. Yes, sir. It was a statement that was let in over the
25 objections of my counsel.

MR. MIDDLETON ON DIRECT

1 Q. All right.

2 A. The statement was admitted over objection of my coun-
3 sel, and my argument is to the effect that there were sev-
4 eral prongs that have to be considered to get me to make a
5 statement, and as my research goes on I found out that --
6 from the transcript that the investigator did not put me in
7 the proper position to take the statement, and I did not --
8 according to (inaudible) versus Arizona.

9 Q. Are you talking about the law enforcement personnel?

10 A. Yes.

11 Q. And you are referring to the whole interrogation situa-
12 tion?

13 A. Yes, sir.

14 Q. And did Judge Cooper rule on that particular issue?

15 A. Yes, sir, he did.

16 Q. And when he ruled on that issue, did -- was that ever
17 reserved for appeal purposes? Was that issue preserved . .

18 A. No, it was not. Are you talking about my appeal coun-
19 sel?

20 Q. Yes.

21 A. It was not and he did not -- he went along with it, . .

22 Q. Okay, go on.

23 A. . . as they went along with it.

24 Q. You are talking about that part of your application
25 for post conviction relief?

MR. MIDDLETON ON DIRECT

1 A. And another issue was my voluntariness -- the volun-
2 tariness of the statement. Then there was the revocation
3 of my right to counsel. There is no mention as to the
4 statement of the revocation, or the waiver of the right to
5 counsel.

6 THE COURT: Waiver of your right to what?

7 WITNESS: Of my right to counsel.

8 A. That was -- in other words, no waiver of my rights.
9 (Portion inaudible)

10 BY MR. FITZSIMONS:

11 Q. Let me stop you right there. Did not in fact Judge
12 Cooper say in his ruling that there were statements that
13 were made that were not correct?

14 A. Yes. That was the position that was held. When my
15 statement was printed out, there was a portion printed that
16 said my rights that was -- that said my rights should have
17 been printed up that said I understood my rights and that I
18 had waived it on my own. On the printout that I could see.

19 See, I had already spoken to them before I start to
20 sign it and my rights were read then but I had spoke to
21 them already before my rights was read. The investigators
22 did not state it initially before, and then I asked them
23 to speak to counsel but they said by then I had already --
24 they said I waived my rights, and they said I had at trial,
25 but that was after I had spoken to them.

MR. MIDDLETON ON DIRECT

1 This was printed out and given to me, and I said they
2 have changed the thing. I had no rights that were given to
3 me at first.

4 Q. And all of that was dealt with in the Jackson v Deno
5 hearing, and also something concerning redacting the state-
6 ments that were given?

7 A. There were three different statements. ^{written} A/ statement
8 and then a re-statement of what was said in the beginning.
9 At first there was a mix-up on how the statement had been
10 worded and then (Portion not audible).

11 THE COURT: Tell me what your position is. I mean,
12 I can't follow what he's talking about.

13 I know he's not a legal scholar . .

14 MR. MIDDLETON: It's just that . .

15 THE COURT: I know nothing about it. I have a tre-
16 mendous transcript here.

17 MR. MIDDLETON: Yes, sir.

18 THE COURT: He is speaking and I can't tackle this
19 whole thing.

20 If you'll tell me what his position is then maybe I
21 can follow what he's talking about there.

22 MR. FITZSIMONS: Yes, sir. If the Court will look at
23 page 119, 118, where Judge Cooper ruled, and the objections
24 begin on -- I apologize, Judge -- the objections began on
25 page 114.

1 So Judge Cooper . . .

2 THE COURT: So Judge Cooper had a Jackson v. Deno
3 hearing?

4 MR. FITZSIMONS: Yes, sir.

5 THE COURT: And he testified?

6 MR. FITZSIMONS: Yes, sir, that's correct.

7 THE COURT: And Judge Cooper ruled that the statement
8 could come in?

9 MR. FITZSIMONS: Your Honor, actually there were three
10 statements. There was one oral statement and two written
11 statements, and as Mr. Middleton points out there was con-
12 siderable dispute between the documentation of those state-
13 ments and testimony both by Mr. Middleton and by the investi-
14 gating officer with what had actually took place.

15 THE COURT: So Judge Cooper took all of that in and he
16 then ruled?

17 MR. FITZSMONS: He did. Yes, sir.

18 THE COURT: So what is his position?

19 MR. FITZSIMONS: His position is, Your Honor, that
20 Judge Cooper's ruling was in error, and that . .

21 THE COURT: Is that a PCR matter or a direct appeal
22 matter?

23 MR. FITZSIMONS: Your Honor, I believe his direct ap-
24 peal ignored the record so I think it is for PCR.

25 MR PETRANO: I didn't see that in the application,

MR. MIDDLETON ON DIRECT

1 Your Honor.

2 THE COURT: If he is complaining about appellate coun-
3 sel we need to reschedule the hearing. I mean, I need to
4 know what we're doing. I'm not -- if you go forward -- you
5 can't go forward if that is his position.

6 MR. FITZSIMONS: We would go forward without appellate
7 counsel but we would ask that the record reflect he takes
8 the position that that issue should have been raised on his
9 direct appeal, if I am making myself clear.

10 THE COURT: I only know what your position is from
11 what you tell me. All right.

12 MR. FITZSIMONS: Thank you, Your Honor.

13 We would go forward with his issues as regards trial
14 counsel and . . .

15 THE COURT: Just the one position?

16 MR. FITZSIMONS: Yes, sir, Your Honor.

17 THE COURT: All right, I've got that.

18 BY MR. FITZSIMONS:

19 Q. Now, Mr. Middleton, with regard to trial counsel, do
20 you believe there were issues that were not adequately ad-
21 dressed during the course of your trial?

22 A. Yes, sir.

23 Q. Okay, and would one of those issues be regarding gun-
24 shot residue?

25 A. Yes, sir.

MR. MIDDLETON ON DIRECT

1 Q. Okay, and did your counsel present any expert testi-
2 mony or direct evidence on the issue of blow-back or gunshot
3 residue?

4 A. No, sir.

5 Q. In fact, did he present any direct testimony at all?

6 A. No.

7 Q. Did he cross-examine any people who did testify as to
8 that?

9 A. Yes, sir.

10 Q. And tell the Judge about the block-back issue, very
11 quickly? Why is that an issue?

12 A. Well, first of all, from the transcript from the trial
13 my lawyer addressed the issue of blow-back with expert wit-
14 nesses from the State and basically there was statements of
15 the witnesses that were not true, and it got to a point that
16 they explained blow-back to the jury and what they explained
17 to the jury wasn't supported by the evidence that was in my
18 discovery.

19 Q. And would blow-back as they explained it have placed
20 you at the scene of the crime, blow-back on your body?

21 A. Yes, sir.

22 Q. And your lawyer did not introduce any direct evidence
23 on that issue?

24 A. No.

25 Q. Now, were there also inconsistent statements made

MR. MIDDLETON ON DIRECT

1 by your CoDefendant against you?

2 A. Yes, sir.

3 Q. And that would be specifically Perry Dukes?

4 A. Yes.

5 Q. Mr. Dukes testified at the trial, is that correct?

6 A. Yes.

7 Q. And had Mr. Dukes given other inconsistent statements
8 with regard to your participation in the case?

9 A. Yes, it was evidence that was in my discovery that --
10 there were witnesses who had evidence that his statements
11 was not true, in the statements made. There was a different
12 story than he gave.

13 Q. And did your counsel introduce that evidence?

14 A. No.

15 Q. Were there other things that your counsel did that he
16 should not have done or that he should have done that he
17 didn't that you would like to bring to the Court's atten-
18 tion?

19 A. Um, let's see. (Brief pause)

20 Q. Mr. Middleton, while you are checking over that, are
21 there -- were there photographs that were introduced over
22 your objection?

23 A. Yes, sir.

24 Q. And you believe that Mr. Hisker should have argued
25 against that? That he sufficiently argued that?

MR. MIDDLETON ON DIRECT

1 A. Yes, sir.

2 Q. You believe he should have argued against those being
3 introduced?

4 A. Yes, sir. I attempted to -- I spoke to him about it
5 and the investigator who . .

6 Q. Yes, sir.

7 Q. I asked him to issue an objection, and I believe he
8 could have spoke against those and the way and where they
9 came from.

10 I didn't know that issue was ever going to be presented,
11 and to the point that they were not a part of this crime.

12 Q. Okay.

13 A. It wasn't a part of it.

14 Q. And did you believe that the photographs as described
15 went to place you at the scene of the crime?

16 A. Yes, I did.

17 Q. In the description of the underlying scope of the
18 crime scene do you believe nobody sufficiently explained them?

19 A. Yes.

20 Q. But the photographs did not actually depict that?

21 A. They did not.

22 THE COURT: I just want to make sure I'm following
23 along correctly.

24 Are you saying you weren't there at all?

25 WITNESS: I wasn't there at all? I'm saying they are

MR. MIDDLETON ON DIRECT

1 wrong in what they said.

2 CROSS EXAMINATION

3 BY MR PETRANO:

4 Q. Are you saying that you were not involved in this crime
5 at all?

6 A. . .

7 Q. Or you were not involved to the level that the State
8 said you were involved?

9 A. I'm arguing that I don't believe the evidence that the
10 State presented has me at the scene of the crime. They did
11 not put me at the scene.

12 Q. What did you tell your attorney?

13 A. I told him that the investigator was -- that the in-
14 vestigator came to me and didn't tell me my rights then, and
15 he kept interrogating me.

16 Q. And is that what you explained to Judge Cooper?

17 A. Yes.

18 Q. All right, and what else did you tell your attorney?

19 A. I told him that the investigators and my CoDefendant
20 (inaudible).

21 Q. Did you all discuss whether you would testify and bas-
22 ically tell your side of the story at your trial?

23 A. Yes.

24 Q. And tell us about those discussions?

25 15

MR. MIDDLETON ON CROSS

1 A. We went over that I had the right to take the stand,
2 and he advised me of that, and he recommended that I not
3 take the stand.

4 Q. And what happened then?

5 A. As it turned out I made the final decision not to take
6 the stand, but it was not the right decision in my opinion
7 though.

8 Q. Is one of your claims here today that that wasn't cor-
9 rect and that you should have taken the stand to explain
10 about the blow-back and the other things you have told us
11 about?

12 A. I believe that I should have took the stand, and I
13 could have cleared up some of the questions. You know, I
14 believe that would have helped me.

15 I believe the words I said to the Judge should have
16 been heard by the jury, but because of what my counsel said
17 I did not do it.

18 Q. What would you have wanted them to hear?

19 A. What really happened that wasn't in the transcript and
20 how some of the things that were said were not true. The
21 thing about my interrogation. I was not really sure about
22 that until afterward.

23 I said I wanted to take the stand but with what my at-
24 torney said I went along and didn't testify.

25 Q. Are you saying the blow-back testimony should not have

MR. MIDDLETON ON CROSS

1 come in in the trial?

2 A. Yes, I am saying that and I should have took the stand
3 to explain that and the other things that came in. I be-
4 lieve my attorney should have had an expert witness testify.
5 The testimony would have been made clear, and in my opinion
6 my attorney didn't do what he should have done as far as a
7 Witness on that. (Portion inaudible)

8 Q. Is it your claim that you should have taken the stand
9 to prove that point or that he should have called an expert
10 witness to testify to that?

11 A. My claim is that he should have brought in an expert --
12 I did not know how he would go about it, but he knew and he
13 should have used that strategy to prove my case. I think
14 his strategy was wrong in my case.

15 Q. And was that an issue on the appeal?

16 A. It was.

17 Q. And as far as the CoDefendant and his statement, what
18 was your point about that?

19 A. I only know what he said and what it shows in the
20 transcript. I can't quite remember everything that was in-
21 troduced in the trial, but I know he didn't tell the truth
22 and I remember that.

23 Q. Your CoDefendant didn't tell the truth is what you say?

24 That is . . .

25 A. That's what I know.

1 MR. PETRANO: Nothing further. Thank you.

2 MR. FITZSIMONS: No Redirect.

3 THE COURT: You may step down.

4 (Witness excused from stand)

5 THE COURT: Call your next witness.

6 MR. FITZSIMONS: We would call Steven Hisker to the
7 stand.

8 THE COURT: Are you going to tell us the truth?

9 WITNESS: Yes, sir, Judge.

10 STEVEN HISKER, having been sworn, tes-
11 tified as follows:

12 DIRECT EXAMINATION

13 BY MR. FITZSIMONS:

14 Q. Mr. Hisker, did you represent Mr. Middleton at the
15 trial?

16 A. I did.

17 Q. Did you represent him on his appeal?

18 A. I did not.

19 Q. Did you consult with his appellate attorney in any
20 way?

21 A. I did not, no.

22 Q. And do you know anything about his appeal?

23 A. I do not. I did not read the Opinion.

24 Q. Clearly, the entire record of the trial was before
25 appellate counsel?

MR. HISKER ON DIRECT

1 A. Yes.

2 Q. Have you seen the transcript of the record?

3 A. Not that I recall.

4 Q. And with regard to Mr. Middleton's issues that he has
5 raised today, especially the failure to call an expert on
6 the blow-back, failure to call an expert to refute the tes-
7 timony of Mr. Dukes, do you have a reason for not doing so?

8 A. Well, I didn't call any experts for several reasons.
9 The first reason is that I would have lost the closing argu-
10 ment if I had presented evidence.

11 Second of all, the State's experts told me what I wanted
12 to know. My expert wouldn't have offered anything addition-
13 ally other than it would have cost me my closing argument.

14 Q. And with regard to the testimony of Perry Dukes, did
15 you do anything to impeach Mr. Dukes or contradict his tes-
16 timony?

17 A. I did. I cross examined him thoroughly. I cross exam-
18 ined him about his potential exposure, his hopefulness that
19 he would get a reduced sentence by his testimony.

20 I don't recall the issue of an inconsistent statement,
21 and I can't recall exactly what that was about, but I do
22 think that wasn't an issue anyway.

23 The issue was whether Mr. Middleton committed the mur-
24 der or was culpable in the murder. The fact that he was
25 there really wasn't an issue at trial.

MR. HISKER ON DIRECT

1 Q. It was a circumstantial evidence case?

2 A. There was a tremendous amount of circumstantial evi-
3 dence but there was a great amount of direct evidence.

4 Q. What was some of the direct evidence?

5 A. Well, I believe there was a lady that was in the other
6 apartment that -- I think there was an identification made
7 that Mr. Middleton was the one who held her in the other
8 room.

9 Q. And when the case went to the Court of Appeals, the
10 Court of Appeals said that some of the issues were not pre-
11 served for appeal?

12 A. That's right.

13 Q. And was there anything to prevent you preserving those
14 issues for appeal?

15 A. I could have but I chose not to.

16 Q. Tell us how that came about?

17 A. Well, there was a charge of burglary, first degree,
18 and the State had clearly -- the . .

19 Q. Explain to the Judge how it came about that you chose
20 not to preserve the issue for appeal? That was the ques-
21 tion.

22 A. The particular apartment that was entered was solely
23 used as a gambling house originally. He was also charged
24 with murder, burglary, armed robbery -- that was the least
25 of our worries. At the end of the day, we discussed that

MR. HISKER ON DIRECT

1 and if I had brought that up they would have amended it and
2 would have convicted him instead of burglary, second degree.
3 So what I decided to do was just to argue that the State
4 had to prove all the charges beyond a reasonable doubt.

5 I wasn't as worried about that issue and neither was
6 he worried about that offense either. We were trying to
7 show there was reasonable doubt as to the murder.

8 Q. Was there another eye-witness that placed Mr. Middleton
9 there?

10 A. To be honest, I don't think so but I may be mistaken
11 about that. There was the attorney-client privilege and Mr.
12 Middleton was present.. He and I plainly discussed whether
13 he was present.

14 The issue was the murder, and that was my focus. He
15 and I sat down and that was what he and I decided to do. A
16 focus was on whether or not he was guilty of murder, and it
17 was my position that he was not guilty of the murder but
18 he was -- that Mr. Middleton was merely present and that
19 Scott was the one with the firearm. That was my argument.

20 Q. And Mr. Middleton said . .

21 A. The witness did not identify Mr. Middleton. She said --
22 she did not name or identify Mr. Middleton.

23 She said there was two people, a short one and a tall
24 one.

25 THE COURT: Say that again.

MR. HISKER ON DIRECT

1 WITNESS: She said there were two people there, one
2 short and one tall, and the Codefendant named Mr. Middleton
3 as the second person.

4 BY MR. FITZSIMONS:

5 Q. And there was some question it was Mr. Middleton based
6 on what she said?

7 A. Yes. The Solicitor took the position that Mr. Middle-
8 ton shot this weapon, but I think I did a good job in
9 deflecting that.

10 I think Mr. Middleton got convicted as a presence and
11 the hand of one is the hand of all.

12 Q. The hand of one is the hand of all?

13 A. Yes.

14 Q. And did you raise or did the State bring up the hand of
15 all issue somewhere in the course of the trial?

16 A. I believe the State did, and it would shock me if they
17 didn't. I don't have the transcript to confirm that.

18 Q. Did you ask the Court or did you receive a charge on
19 mere presence?

20 A. I believe I did, and I think I received mere presence
21 and mere association.

22 Q. And did you ask the Court for that or did the Court
23 make that decision?

24 A. I can't remember specifically.

25 MR. FITZSIMONS: Beg the Court's indulgence.

MR. HISKER ON DIRECT

1 (Brief pause in the proceeding)

2 MR. FITZSIMONS: That's all the questions I have.

3 CROSS EXAMINATION

4 BY MR. PETRANO:

5 Q. Let me hand you the transcript, and if you would turn
6 to page 129.

7 A. . .

8 Q. Would line 14 refresh your memory?

9 A. . .

10 Q. Is there mention of hand of one is the hand of all?

11 A. I haven't read it.

12 THE COURT: You can read from this. It's up here..

13 (Brief pause in proceeding)

14 A. I'm trying to put it back into context.

15 Q. Aren't you trying to elicit from the State's witness
16 -- isn't this dealing with the firing of the gun?

17 A. I believe so.

18 Q. Aren't you trying to limit some of the State's testi-
19 mony by saying Mr. Middleton was not the shooter?

20 A. Yes.

21 Q. And you explained that your strategy was the State has
22 to prove its case beyond a reasonable doubt.

23 A. Yes.

24 Q. As far as direct evidence, you referenced that there
25 was no ID but the witness said one was tall?

MR. HISKER ON DIRECT

1 A. Yes, one short and one tall.

2 Q. Do you think that made it clear there were only two?

3 A. From that part of the record, yes.

4 Q. That's pretty much all I've got here, Mr. Hisker.

5 I'd like to ask you some other things just for the re-
6 cord.

7 A. Sure.

8 Q. What sort of law do you practice? Civil, criminal?

9 A. Almost solely criminal.

10 Q. Was this your first murder trial?

11 A. No, it was not.

12 Q. Did you meet with your client?

13 A. I spent a long time with my client.

14 Q. Did you go over the charges with him?

15 A. Yes.

16 Q. And did you go over all of the discovery?

17 A. Every last page.

18 Q. Did you discuss with him what your strategy would be?

19 A. We had numerous in-depth conversations about strategy.

20 Q. Did you have any concerns that he didn't understand?

21 A. Not at all.

22 Q. Were there any offers by the State?

23 A. Fifty-five years.

24 Q. Ultimately, sir, the application suggests that he felt
25 you were ineffective, or as his attorney you were essentially

MR. HISKER ON CROSS

1 incompetent.

2 Do you have anything you want to add in addition to
3 what I have asked you concerning that?

4 A. I have several things. I spent a lot of time with
5 Mr. Middleton and I wish him the best. I wish we could
6 have gotten a better result.

7 We knew going into it that our backs were against the
8 wall. It was a very difficult trial. I did everything I
9 could.

10 I felt there was a reasonable doubt, and I did every-
11 thing I could. I feel bad for Mr. Middleton but there was
12 really nothing else I could have done.

13 Q. Your strategy was to just let the State know that you
14 were holding them to their burden . .

15 A. I hoped the jury would do that, but the bottom line
16 was that I knew he possibly could be found guilty of murder.
17 I did the best I could as defense counsel.

18 Q. Thank you, sir.

19 MR. FITZSIMONS: Nothing further.

20 THE COURT: Step down.

21 (Witness excused from stand)

22 THE COURT: Do you have anything further you want to
23 say?

24 MR. FITZSIMONS: Yes, sir, Your Honor. That is our
25 case, and . .

1 THE COURT: Now is your time to do that, say anything . .

2 MR. FITZSIMONS: Whether or not Mr. Middleton would
3 have been found guilty of one or all of the charges, I think
4 Mr. Hisker's strategic decision was not effective.

5 Briefly, Your Honor, I would submit further that the
6 appellate brief, which is a part of the record, shows that,
7 and, as such, a failure to appeal some other issues.

8 Mr. Middleton raised those questions, and I would sub-
9 mit that his testimony showed ineffective assistance of
10 counsel both at the trial level and the appellate level.

11 THE COURT: All right.

12 MR. PETRANO: Very briefly, Your Honor, as far as de-
13 fense counsel I think that the record is satisfactory on
14 that, as well as of appellate counsel.

15 Obviously, appellate counsel does not have to raise
16 every non-frivolous argument, and these -- I'm not saying
17 these are non-frivolous. They don't have to raise frivolous
18 arguments.

19 But they can also pick and choose what they think are
20 the strongest points.

21 On the Jackson-Deno matter, the Judge made a proper
22 finding, and he makes it very clear he felt there was no
23 violation and that that was not a problem here.

24 As far as the evidence that was established at the
25 trial, Judge, I think the State met its burden to establish

1 guilt beyond a reasonable doubt.

2 As to the matter about one of the burglaries not being
3 a first degree burglary, I will admit there is not a lot
4 there to show that there was guilt as to that, but Mr. Hisker
5 explained a perfectly valid strategy as to that.

6 In retrospect, it was a long shot but that doesn't
7 change the analysis even if it doesn't work out. Frankly,
8 I thought that argument was actually pretty good, as to his
9 reasons behind that.

10 And, finally, if one was to presume that was sufficient
11 performance, the reliance upon the reasonable doubt strat-
12 egy, there was no prejudice as the sentence he is serving
13 is below what the sentence could be for murder and first de-
14 gree burglary. He is not prejudiced in that sense.

15 Counsel tried to explain that there was privileged in-
16 formation he had, and he could not put him up there so he
17 would be prejudiced.

18 THE COURT: I can't rule on this today because of a
19 couple of things.

20 So you can prepare an Order, but I have to consider
21 his concern about putting up an expert and his reliance that
22 an expert would have testified different than the one the
23 State put up.

24 He mentioned he could have put up an expert in his tes-
25 timony. I haven't read the cross examination or about the

1 impeachment by the defense.

2 So I can't rule at this time, and as far as Judge Cooper
3 and his ruling he must have taken pretty good notes because
4 he goes into some detail as to why he allowed the three
5 statements.

6 So I don't think an appeal on that would do anything
7 for Mr. Middleton, but . .

8 MR. FITZSIMONS: If I may approach?

9 THE COURT: Yes.

10 MR. FITZSIMONS: I'm sorry but there are some things I
11 need to discuss.

12 THE COURT: If it won't take too long -- you can re-
13 ply, Mr. Fitzsimons. You don't need to address anything
14 I've already ruled on, although I might be wrong.

15 MR. FITZSIMONS: Thank you, sir.

16 MR. PETRANO: Thank you, sir.

17 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

18

19 (Nothing further was put on the record as to this case)

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2 CERTIFICATE

3 I, HARRIET P. BENNETT, Court Reporter for South Carolina
4 Court Administration, hereby certify that the foregoing
5 Transcript was produced from the records of Daphne Helms to
6 the best of my ability, having been heard in the Court of
Common Pleas for Richland County on January 10, 2012.

7 FURTHER, I certify that I am neither of kin nor coun-
8 sel to any party to this action, nor do I have any interest
9 in the same.

10 July 10, 2015

11 *Harriet P. Bennett*
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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

) IN THE COURT OF COMMON PLEAS

) 2010CP4004866

) Middleton, Octavia, #253919,)

) Applicant,)

) v.)

) State of South Carolina,)

) Respondent.)

) ORDER OF DISMISSAL)

JEANETTE W. McBRIDE
C. C. P. & G. S.

2012 FEB 23 AM 11:42

RICHLAND COUNTY
FILED**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 23, 2010. The Respondent made its Return on February 17, 2011. An evidentiary hearing into the matter was convened on January 10, 2012 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Robert C. Fitzsimons, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Steven Hisker, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the records from the Applicant's direct appeal, and the Applicant's records from the South Carolina Department of Corrections.