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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM MARLBORO COUNTY
COURT OF GENERAL SESSIONS
The Honorable Edward B. Cottingham, Jr., Circuit Court Judge

Opinion No. 5390 (S.C. Ct. App. filed March 16, 2016)
Rehearing Denied May 2, 2016
Supreme Court Case No. 2016-001161; Court of Appeals Case No. 2012-213461

THE STATE

PETITIONER,

v.

TYRONE J. KING,

RESPONDENT.

APPENDIX

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Edward B. Cottingham, *Circuit Judge*

Appeal No. 2012-213461

STATE OF SOUTH CAROLINA,

Respondent,

vs.

TYRONE J. KING,

Appellant.

Record on Appeal

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STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	IN THE COURT OF GENERAL SESSIONS FOR THE FOURTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, VS. TYRONE KING, DEFENDANT.	2012-GS-34-0024;0028;0029;0026 ORDER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL

On Wednesday, October 10th , 2012, the Court heard Defendant Tyrone King's Motion for a New Trial that was filed in the above-styled and numbered cause. Upon consideration of the motion, evidence on file, response, the record and arguments of counsel, the Court finds that the Motion for a New Trial is DENIED on the following grounds:

- Juror Natasha Covington denies being related to the Defendant's Girlfriend, Shakera Liles, also referred to as Defendant's Common Law Wife. Furthermore, Juror Covington denies having any type of relationship with Ms. Liles.
- Both parties were given an opportunity to redact the videos and/or agree to the redacted times when played before the court, following pre-trial motions on August 27th, 2012. The Court then ruled upon admissibility of the video statements on September 10th, before the trial began.
- The Defendant did not object during the trial to the alleged statement given by the State during the closing argument regarding the definition of 'Beyond a Reasonable Doubt.' Furthermore, this Court /Judge provided the charge to the jury upon charging the jury and again when the jury had a question on another matter, the Jury was given the entire Jury Instruction a second time.

It is therefore ORDERED, ADJUDGED and DECREED that Defendants' Motion for New Trial is DENIED.

A CERTIFIED TRUE COPY
William B. Cottingham
CLERK OF COURT
Conway, South Carolina
MARLBORO COUNTY
November 8, 2012

The Honorable Edward B. Cottingham
Fourth Judicial Circuit

CLERK OF COURT
MARLBORO, S.C.

2012 NOV 21 PM 2 15

FILED

STATE OF SOUTH CAROLINA 38-GI42 IN THE COURT OF GENERAL SESSIONS 2

COUNTY OF: Marlboro
STATE VS.
Tyrone J King
AKA:
Race: Black Sex: M Age: 26
DOB: [redacted]986 SS#: [redacted]
Address:
C State,Zip:
DL#: [redacted] SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2012-GS-34-0024
A/W#: M730971
Date of Offense: 11/11/2011
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: MURDER

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted. ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [signature] 7112 _____ 71565
David, Mia SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP: _____
Total: $ _____ plus 20% fee: $ _____ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐
☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
Recipient: _____ May serve W/E begining _____
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: _____

*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	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
3% to County (if paid in installments)		$
TOTAL		$

FILED SEP 13 2012 CLERK OF COURT MARLBORO COUNTY

A CERTIFIED TRUE COPY
CLERK OF COURT
MARLBORO COUNTY

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk of Court during probation.

Clerk of Court/ Deputy Clerk: William S. Sandbank
Court Reporter: Hattie Anderson
Presiding Judge: Gus Cotty
Judge Code: 2041
Sentence Date: 9-13-12

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Marlboro)
STATE VS.)
Tyrone J King)
AKA:)
Race: Black Sex: M Age: 26)
DOB: [redacted]1986 SS#: [redacted])
Address:)
City,State,Zip:)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-34-0026
A/W#: M730973
Date of Offense: 11/11/2011
S.C. Code § : 16-23-0490
CDR Code#: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiation or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Mia David 7112 _____ _____ 77565
David, Mia SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 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: 2012-GS-34-24
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
ayment 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	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
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 begining
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: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 to be paid to Clerk of Court during probation.

Clerk of Court/ Deputy Clerk: William B. Sandlands
Court Reporter: Hollis Sheridan

Presiding Judge: _____
Judge Code: 2091
Sentence Date: 9-13-12

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2012 SEP 13 P 2:08
MARLBORO CLERK OF COURT

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CLERK OF COURT
MARLBORO COUNTY

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS 4

COUNTY OF Marlboro
STATE VS.
Tyrone J King

INDICTMENT/CASE#: 2012-GS-34-0028
A/W#: M730974
Date of Offense: 11/11/2011
S.C. Code § : 16-03-0600(B)(1)
CDR Code #: 3411

AKA:
Race: Black Sex: M Age: 26
DOB: [redacted]1986 SS#: [redacted]
Address:
City,State,Zip:
DL#: [redacted] SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ASSAULT AND BATTERY ~~2ND DEGREE~~ 3rd degree (M/C)

in violation of § 16-03-0600~~(B)(1)~~(C)(1) of the S.C. Code of Laws, bearing CDR Code # ~~2411~~ 3414 (M/C)

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Mia David 8112 _____ 77565
David, Mia SC Bar# Defendant Attorney for Defendant SC Bar#

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. time served
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ REST UTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
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	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(DUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
3% to County (if paid in installments)		$
TOTAL		$

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E begining _____
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: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

I CERTIFY THIS IS A TRUE COPY
William B. Sandbrook, Clerk
MARLBORO COUNTY

Clerk of Court/ Deputy Clerk William B. Sandbrook
Court Reporter: Hollie Gordon
Presiding Judge: _____
Judge Code: 2041
Sentence Date: 9-13-12

FILED
2012 SEP 13 P 2:07
MARLBORO CO. CLERK OF COURT

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF MARLBORO	)	Murder
		§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on January 31, 2012, the Grand Jurors of Marlboro County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Tyrone J King did in Marlboro County, on or about November 11, 2011, willfully, felonio y, and intentionally kill the victim, James Galloway, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about November 11, 2011 in Marlboro County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

CERTIFIED TRUE COPY
CLERK OF COURT
MARLBORO COUNTY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

James Campbell

Marlboro County Sheriff

Law Enforcement Case #: 2011-7239

347

WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
M730971

ARRESTED ON: 2011-11-14

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

1-31-12

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-34-0024

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
January 2012

THE STATE

vs.

Tyrone J King

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

William B. Rogers, Jr., Solicitor

WILLIAM B. ROGERS JR
CLERK OF COURT
MARLBORO COUNTY, S.C.

2012 FEB 1 PM 2 02

FILED

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF MARLBORO	)	Poss. Weapon During the Commission of a Violent Crime

§16-23-0490

At a Court of General Sessions, convened on January 31, 2012, the Grand Jurors of Marlboro County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Tyrone J King did in Marlboro County, on or about November 11, 2011, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission of a violent crime, to wit: murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

CERTIFIED TRUE COPY
William B. Swinbeck
CLERK OF COURT
MARLBORO COUNTY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

James Campbell

Marlboro County Sheriff

Law Enforcement Case #: 2011-7239

347

WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
M730973

ARRESTED ON: 2011-11-14

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

1-31-12

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-34-0026

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
January 2012

THE STATE

vs.

Tyrone J King

INDICTMENT FOR

Poss. Weapon During the Commission of a Violent Crime

§16-23-0490

CDR Code: 0549

William B. Rogers, Jr., Solicitor

WILLIAM B. FUDENBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
2012 FEB -1 PM 2 03
FILED

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF MARLBORO	)	Assault & Battery of a High and Aggravated Nature
		§16-03-0600(B)(1)

At a Court of General Sessions, convened on January 31, 2012, the Grand Jurors of Marlboro County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

CDR: 3411, 16-3-600(B)

That Tyrone J King did in Marlboro, on or about November 11, 2011, unlawfully injure Karen Galloway, the act was accomplished by means likely to produce death or great bodily injury, to wit: did hit the victim about the head area with a gun causing it to discharge while threatening the victims life, in violation of Section 16-3-600(B) of S.C. Code of Laws, 1976, as amended.

CERTIFIED TRUE COPY
CLERK OF COURT
MARLBORO COUNTY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

James Campbell

Marlboro County Sheriff

Law Enforcement Case #: 2011-7239

347

WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
M730974

ARRESTED ON: 2011-11-14

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

1-31-12

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-34-0028

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
January 2012

THE STATE

vs.

Tyrone J King

INDICTMENT FOR

Assault & Battery of a High and Aggravated Nature

§16-03-0600(B)(1)

CDR Code: 3411

WILLIAM B. RUDGERS, JR.
CLERK OF COURT
MARLBORO CO. S.C.

2012 FEB 1 PM 2 02

FILED

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF MARLBORO	)	2012-GS-34-0024
		2012-GS-34-0026
		2012-GS-34-2028

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
TYRONE J. KING	)	
DEFENDANT	)	

August 6, 2012
Bennettsville, South Carolina

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE.

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

MIA B. DAVID, ASSISTANT SOLICITOR
Attorney for the State

TRISTAN M. SHAFFER, ESQUIRE
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

COLLOQUY

MR. SHAFFER: Your Honor, I'm here on behalf of Mr. King. We're asking for a continuance. This is set for trial in the week of the 10th, I believe, of today, and we're asking that it be continued for an extra term so that I can be better prepared for the case.

THE COURT: Where is the Solicitor ---

MS. DAVID: Right here.

THE COURT: --- to give me the factual basis for the trial and can you be ready September the 10th?

MS. DAVID: Oh, absolutely, Your Honor.

THE COURT: What is your position with reference to his motion for continuance?

MS. DAVID: I think his motion for continuance should be denied. They have had sufficient notice that this case was to be tried. In April the Judge ordered that the case be tried within six months, and I told the judge at that time that I would try the case within six months and I set it for September. So this date has been set for certain since April, so.

THE COURT: Counsel, I'm not going to defy the Judge's order if he ordered the trial. And you've got 30 days to get ready, and you've been on the case for how long?

MR. SHAFFER: About ten months, Your Honor. Ten

months. Since December.

THE COURT: I know that you are scheduled that week for two hearings before the Appellate Court, but I'm going to make arrangements to get those transferred and so that you can get ready. And give me the factual basis for the plea -- I mean the trial.

MS. DAVID: This case before us, it is a murder where the defendant entered his neighbor's home and allegedly shot the victim, and that is the case that is to be set for trial. We also made the defendant an offer to run the murder and the armed robbery concurrent for 25 years for which he has rejected.

THE COURT: Well, what's the facts about the armed robbery?

MS. DAVID: Your Honor, I am -- Mary Thomas is working that case. I believe it happened within the jurisdiction of McColl, but I can check with her.

THE COURT: The jurisdiction of what?

MS. DAVID: Of McColl.

THE COURT: And were there any other allegations against him? Is this the case where he ...

MS. DAVID: Yes. I think there is also an assault and battery of a high and aggravated nature against the victim's wife where he pistol whipped her.

THE COURT: Did she receive -- go to the hospital and

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF MARLBORO) 2012-GS-34-0024
2012-GS-34-0026
2012-GS-34-2028

STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
TYRONE J. KING)
DEFENDANT)

September 10-13, 2012
Bennettsville, South Carolina
VOLUME NO. 01 OF 04

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE; and a jury.

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

MIA B. DAVID, ASSISTANT SOLICITOR
Attorney for the State

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR
Attorney for the State

TRISTAN M. SHAFFER, ESQUIRE
Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

your next motion, Mr. Shaffer?

MR. SHAFFER: Your Honor, I will be moving to exclude any evidence of the pending armed robbery charge.

THE COURT: The what?

MR. SHAFFER: The pending armed robbery charge which I believe goes into their Lyle Motion. There is a pending armed robbery charge.

THE COURT: No. I'm got going to let that in.

MS. DAVID: Your Honor, the pending armed robbery is a part of our 404(B) motion this afternoon to allow the prior bad act in as part of either intent, motive, or the common plan or scheme to show that there is a lack of mistake in the defendant going into this home.

THE COURT: Who was the armed robbery against?

MS. DAVID: Aloysius McLaughlin and Melissa Graham. The same two individuals that he says were with him when he committed this murder. The same guy that he robbed two weeks prior, he says was the one that actually shot the victim.

THE COURT: I'm not likely to let that in.

MS. DAVID: Well, will you allow us to present our 404(B) motion first?

THE COURT: I will.

MS. DAVID: Thank you, Your Honor.

THE COURT: We'll do that, but I'm not likely to let

that in. What you know you've got to balance probative value against prejudicial affect, and in this case you've got eye witnesses as I recall from prior hearings. I'll listen to it, but I'll have some further concern about it, okay. What else you got?

MR. SHAFFER: Your Honor, should the defendant testify, we talked about this in the bench, I believe that the ---

THE COURT: Should what?

MR. SHAFFER: Should the defendant testify the State has said that they're not going to try to introduce the juvenile adjudications.

THE COURT: No, I agree with that. I will not permit that. He was not convicted under the juvenile procedure.

MR. SHAFFER: And then ---

THE COURT: Just simply dismiss that without prejudice.

MR. SHAFFER: And I believe that there is also two other charges, the grand larceny and the strong armed robbery. I believe that if he testifies those would likely, under the law, come in. I would ask that they be limited to questioning him as to whether or not he was ever the victim of a felony.

THE COURT: He's not charged with grand larceny.

MR. SHAFFER: This is under a previous charge, Your

Honor. To impeach his credibility, Your Honor. If he decides to testify we would ask that the Court limit it to the questioning of whether or not it was a felony conviction versus whether or not it was armed robbery. I mean strong armed robbery or the ---

THE COURT: He's not charged with robbery in these proceedings, is he?

MR. SHAFFER: Yes, Your Honor. I would just ask that the Court limit it because I believe what they're going to try to establish, and during their 404(B) ---

THE COURT: I thought we've already agreed that those are coming in?

MR. SHAFFER: Yes, Your Honor. I would just like the phrasing of them to be felonies versus strong arm.

THE COURT: No, sir. I'm not going to. If he was charged with armed robbery and had a prior armed robbery I would do that. In this case he's not charged with robbery, and if he's convicted for prior armed robbery I'm going to let it in.

MR. SHAFFER: Your Honor, the State is going to attempt to use to establish his basically 404(B) information. His propensity, Your Honor. The State is going to attempt to use as propensity in order to show some sort of motive which I imagine is substantive later on.

MS. DAVID: I didn't have any intention of using his prior ---

THE COURT: That answers that.

MS. DAVID: --- strong armed robbery conviction in my 404(B).

THE COURT: What do you with this case and you continue to do instead of dealing with this case you're dealing with some appellant issues in cases not involved with this. She's not even going to use that.

MR. SHAFFER: Your Honor, I believe that she's going to end up arguing that based off of my understanding of what their 404(B) issue is.

THE COURT: I just heard her say that. I'll deal with it as it comes up, and if it does you object to it and I'll rule on it.

MR. SHAFFER: Thank you. That's all I have right now.

THE COURT: She said that she's not going to do that. But you can't keep them from presenting their case which is what you're trying to do here. And I understand as a lawyer, but you can't do that. The State of South Carolina is entitled told present their case, and that's what their going to do. I would have some questions about the Lyle issue. I want to hear testimony otherwise before we get into that.

MS. DAVID: Yes, Your Honor.

THE COURT: You are saying, as I understand it, that -- are you going to try to prove that he attempted to rob this individual?

MS. DAVID: Yes, Your Honor.

THE COURT: Attempted to rob him?

MS. DAVID: There is an attempted robbery on Aloysius McLaughlin from November of 2011, and there are two attempted robberies on Anthony Smith and Anthony Campbell.

THE COURT: Well, before we get started at 2:30. I mean this afternoon I want to discuss that with you in chambers. The Lyle issue.

MS. DAVID: Yes, Your Honor. We will be ready.

THE COURT: And see what we can do. I thought I heard you say that you weren't going into robbery in the case?

MS. DAVID: I have no intention of using his 2005 conviction on strong armed robbery for which Tristan was talking about where he had a prior record. And these cases he has not been convicted.

MR. SHAFFER: Your Honor, we can actually have the people here if you would like, and obviously, that's the State intention. I think we can save everyone some time if they just say -- if Mia just proffers the evidence, more or less, and tells us how she believe it fills any

Lyle.

THE COURT: This afternoon let's go in chambers and both of you conflicting each other. Get in chambers here. Let he realize what's going on directly, and we'll get out here and put it on the record.

MS. DAVID: Thank you, Your Honor.

THE COURT: But I have some concerns with a Lyle issue unless you are saying that you've got proof that he tried to rob this identical individual several weeks earlier. But I didn't hear you say they. You said some group of people, didn't you?

MS. DAVID: Yes, Your Honor. I would appreciate it if you would allow us the opportunity to speak with you in chambers and then fully present our motion after lunch.

THE COURT: I want to get that straight, and then we'll get on the record with it. All right. What else's we have?

MR. SHAFFER: Your Honor, that's all.

THE COURT: Now, have you concluded your motions?

MR. SHAFFER: Yes, Your Honor, at this time I have. I don't have any other ones planed, Your Honor.

THE COURT: Now, this afternoon.

MS. DAVID: This afternoon we have two videos with Jackson v. Denno. The first video is 48 minutes. And the second video is 28 minutes, and then we have the 404(B)

motion. I also have one other motion regarding witnesses ---

THE COURT: How about the eight year old child. Should I not find out if he's qualified prior to trial?

MS. DAVID: Your Honor, since then it's been determined that the child is 11 years-old, but if you would like to qualify the child this afternoon we can have him here to do that.

THE COURT: I just want to understand if he knows right and wrong. I would prefer to do that now rather than have to stop tomorrow at trial. How about it, Tristan?

MR. SHAFFER: Yes, Your Honor, I believe that's ---

MS. DAVID: We will have him here.

THE COURT: Just get that done, too, okay?

MS. DAVID: Okay.

THE COURT: Okay. Let's break for lunch and be back at 2:30.

(WHEREUPON, Court was in recess at 12:55 p.m. and reconvened at 3:24 p.m.)

(WHEREUPON, State's Exhibit Nos. ONE THROUGH FIVE were marked for identification for purposes of Jackson v. Denno Hearing only.)

THE COURT: All right. What matter are we going to deal with first? We talking about the child? Tristan,

Q. Young man, tomorrow we're going to call you back and ask that you just tell us the truth. Just tell us what happened up under oath. Are you willing to do that?

A. Yes.

Q. Okay. Well, you may come down now. We'll see you tomorrow, but thank you so much for coming, okay?

A. Okay.

Q. I look forward to seeing you in the morning. Escort him down, please. Bye, bye.

COLLOQUY

THE COURT: All right. What's the next thing you want to deal with?

MS. DAVID: Your Honor, the State would like to proceed with our Jackson v. Denno, and our first witness would be Shawn Feldner.

THE COURT: Okay.

SHAWN FELDNER, after being duly sworn, testified as follows:

THE COURT: All right. Proceed.

DIRECT EXAMINATION

BY MS. DAVID:

Q. Would you please state your full name for the record?

A. Shawn, S-H-A-W-N. Michael, M-I-C-H-A-E-L. Feldner, F-E-L-D-N-E-R.

Q. What's your occupation?

A. I'm an investigator with the Marlboro County Sheriff's Office.
Q. And how long have you been employed there?
A. For the last five years.
Q. And what are your duties?
A. Do typical investigative.
Q. So it's one of your duties to assist in investigations?
A. All of them.
Q. Were you employed in your present capacity on November 11th of 2011?
A. Yes, I was.
Q. And how did you become or did you become involved in the case with Tyrone King?
A. I did.
Q. How did you become involved in that case?
A. I was called out to come and help assist in the investigation with the on-call investigators.
Q. Did you have the opportunity to advise the suspect of his Miranda rights?
A. Yes, ma'am, I did.
Q. At what point was that?
A. My initial arrival was at the scene, and I was briefed by Captain Cheek. I assisted in a few other things there at the scene, and then immediately went to

the Sheriff's Office where Mr. King was in an interview room and been brought there by Deputy Johnson with the Marlboro County Sheriff's Office. It was at that time that I was introduced to Mr. King.

Q. Okay. And at what point did you Mirandise him?

A. If I can just look at the Miranda form. There is a time and a date. Place: Marlboro County Sheriff's Office. Date was November 11th of 2011, and the time was 0454 hours military time which is 4:54 a.m.

Q. Okay. And who was ---

THE COURT: That's in the morning?

THE WITNESS: Yes, sir, that is correct.

THE COURT: All right, sir.

BY MS. DAVID:

Q. Who was present with you?

A. Investigator Brittany and Sargent English.

Q. And did you ask the defendant any questions?

A. I did. There are five questions on our Miranda -- standard Miranda form. I read all five questions to him.

THE COURT: Let's me. Did anybody interrogate him before you started?

THE WITNESS: No, sir.

THE COURT: You said somebody was in the room with him.

THE WITNESS: He was actually taken to the Sheriff's

Office by Deputy Johnson. Prior to Deputy Johnson Deputy Tim Shaw Mirandized him in his patrol car at the scene. It was a verbal Mirandise. It was done at the scene, and then I simply put it on the form, Your Honor. But no one interrogated him. No one questioned him.

THE COURT: No one interrogated from Deputy Shaw's time until you talked to him?

THE WITNESS: That's correct.

THE COURT: All right. Go ahead.

BY MS. DAVID:

Q. You said Brittany English was present with you at that time?

A. Yes, he is a witness on the Miranda form.

Q. Okay?

A. Signature.

Q. And did you ask the defendant any questions?

A. At this time?

Q. Yes.

A. Just asked him if he understood his rights. I then read him the waiver of rights. Which is another paragraph where he waives his rights. And then give him the Miranda statement to sign, and at that time he actually read it himself and then signed it.

Q. Did the defendant appear to be under the influence of alcohol or drugs?

A. No. Just agitated.
Q. Did he appear to be physically or mentally impaired in any way?
A. No.
Q. How long was the defendant questioned? Were any breaks taken?
A. After -- once the interrogation started, no, there were no breaks.
Q. Was he denied access to food? To bathroom? To drink of water?
A. No. He had access. Matter of fact he had a bottle of water that someone had given to him.
Q. Was the defendant under arrest at the time the statement began?
A. No. Never formally arrested. Not by me.
Q. Not by you?
THE COURT: Well, that's not the question. Not by you. How about anyone?
MR. REDMOND: No, sir, not that I'm aware of.
THE COURT: Well, okay. Go ahead.
BY MS. DAVID:
Q. Was his presence compelled in any way?
A. Ma'am?
Q. Was his forced to be there?
A. No, ma'am.

MS. DAVID: Beg the Court's indulgence for one moment.

BY MS. DAVID:

Q. I show you what has previously been marked as State's Exhibit Number Two. Do your recognize that document?

A. Yes, ma'am, I do.

Q. What's is it?

A. This is the original Miranda filled out on that morning.

Q. And what did you do with that form?

A. It was placed in the case file.

Q. Did you present that to the defendant?

A. Yes, we did. We read Items One through Five and waiver. Then read the paragraph which is the waiver of rights. Explained them to him, and then he -- he then in turn read it and signed it.

Q. Will you read each one, One through Five, what was given to the defendant for me?

A. "These are your rights. Before answering any questions you must understand your rights. You have the right to remain silent. That's Number One. Anything you say can and will be used against you in Court. Number Three: You have the right to talk to a lawyer for any advise before we ask you any questions and to have him with you during questioning. Number Four: If you cannot

afford an lawyer the Court will appoint one for you before any questions if you wish. Number Five: If you decide to answer any questions now without a lawyer present you will still have the right to stop answering at any time until you talk to a lawyer."

Q. Did he sign it?

A. Yes, he did.

Q. Is that form in the same condition as it was on November 11th?

A. Yes, it is.

Q. Has it been changed or altered in any way?

A. No.

MS. DAVID: At this time the State would move to have Exhibit Number Two admitted into evidence for purposes of Jackson v. Denno.

MR. SHAFFER: Your Honor.

THE COURT: Sir?

MR. SHAFFER: I think it probably should be a Court's exhibit.

THE COURT: Come forward. The acoustics in this place are terrible.

MR. SHAFFER: Your Honor, I believe -- I apologize. I believe it's properly, not necessarily in evidence, I think she's trying to make it a Court's exhibit.

THE COURT: No, not at this time.

MR. SHAFFER: Okay.

THE COURT: You will use that in the trial of the case.

MS. DAVID: Yes, Your Honor.

MR. SHAFFER: Okay. Is that the Court's exhibit that she's trying ---

THE COURT: No. No. I'm not -- It's go into evidence if I conclude it's proper.

MR. SHAFFER: Okay. Thank you, Your Honor.

THE COURT: No, I don't want it as Court's exhibit.

MR. SHAFFER: All right. I just didn't want it marked in any way.

THE COURT: Have you concluded your examination?

MS. DAVID: Yes, Your Honor, on the form, but we need to have examination for the D.V.D. and play the statement.

THE COURT: Have you gone through the form?

MS. DAVID: Yes, Your Honor.

THE COURT: Okay. Go through everything involving his statement.

MS. DAVID: Would you like him to read the form again?

THE COURT: No, if he's read it, but does this cover his entire statement?

MS. DAVID: Yes, Your Honor.

THE COURT: You want to exam on this?

MR. SHAFFER: Yes, Your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Investigator, tell us a little bit about the condition in the room. Was his handcuffed?

A. Yes, he was handcuffed. He was handcuffed in the front. The room is approximately 10 by 10. There is a single table that sits against the left wall as you enter into the room.

Whoever we're questions always sits on the back side of the table. The two or one or however many people are doing the questioning sits in front of him with their back turned to the door. There is a microphone. It sits above the interrogators/investigators and the defendant. And then there is a camera right above the door in the corner that views the whole room.

MS. JOHNSON LEE: Your Honor, beg the Court's indulgence. I believe there was some confusion. Miss Davis had completed her questioning as to the Miranda Form, but she has not conducted the questioning as to the videotape so that it could be played for the Court.

THE COURT: Let her -- I thought she said she had completed.

MS. JOHNSON LEE: She had completed as to the Miranda

form. There was some confusion, Judge. I apologize.

THE COURT: I'm sorry.

CONTINUED DIRECT EXAMINATION

BY MS. DAVID:

Q. If we could go back and pick up with questioning that would have taken place right after I questioned you about the form. How did the defendant respond as to whether or not he wanted an attorney?

A. He did not want an attorney. Never inquired about an attorney. Never wanted an attorney. Never asked anyone about an attorney. He mentioned two attorneys prior to Miranda just a like we were shooting the breeze on the street corner.

Q. Did he ever change his mind and ask to stop questioning because he wanted an attorney?

A. No, ma'am.

Q. To the best of your knowledge was the defendant's statement freely and voluntarily given?

A. Yes, it was.

Q. I show you what has been -- what is the D.V.D. and its been marked today as Number Five. Is this the original D.V.D?

A. I don't have it.

Q. This is the ---

THE COURT: Was that C.D.V. [sic] played immediately

after he signed the Miranda warning?

THE WITNESS: Actually no, sir. We started to record immediately when myself and Investigator English walked into the room and I advised him that it was being recorded also. We did an investigative technique prior to questioning of the actual case, Your Honor.

THE COURT: So you are not playing the C.D. that you originally took?

THE WITNESS: Yes, sir, this is the original C.D. that we recorded as soon as Investigator English and myself entered the room with Mr. King.

THE COURT: I got you. Go ahead. Proceed.

BY MS. DAVID:

Q. Have you had an opportunity to review the tape in its entirety?

A. Yes.

Q. Was it in the same condition as it was when it was first taken?

A. Yes, it is.

Q. Has it been altered in any way?

A. No, ma'am.

Q. Does it truly and accurately reflect the statement provided by the defendant?

A. Yes, it does.

MS. DAVID: At this time the State would move to

publish this D.V.D, the video of the defendant's first statement to the Court.

THE COURT: Let me ask one or two more questions. In talking to him did he ever exhibit any type of reluctance to talk to you?

THE WITNESS: No, sir.

THE COURT: Did he ever indicate in any way that he wanted to stop that conversation?

THE WITNESS: No, sir.

THE COURT: Did he ever indicate in any way that he wanted an attorney?

THE WITNESS: No, sir. Actually, I'll go back to the last question you just asked me. I actually asked him two different times and maybe more to please not talk about -- he was so willing and wanted to talk about the case prior to Miranda that I had to asked him to stop until he was Mirandised.

THE COURT: In your opinion then his statement was freely and voluntarily given by him?

THE WITNESS: Yes, sir.

THE COURT: You didn't coerce him in any way?

THE WITNESS: No, sir.

THE COURT: Was any promises made to him.

THE WITNESS: There were no promises.

THE COURT: Any hope of reward?

THE WITNESS: No, sir.

THE COURT: Okay. Yes, sir.

MR. SHAFFER: Your Honor, before we actually begin publishing this video ---

THE COURT: If you will come forward where we can hear you. We just can't hear you.

MR. SHAFFER: Your Honor, before we begin publishing I would actually like to cross-examine him. I think there were -- better than playing a 45 minute videotape and then me cross-examining him.

THE COURT: Go ahead. You want to cross-examine him at this time?

MR. SHAFFER: Yes, Your Honor.

MS. JOHNSON LEE: Your Honor, before he begins that we want to make a motion and put it in evidence first.

MS. DAVID: Your Honor, at this time the State moves to introduce the, the D.V.D. marked as Exhibit Number Five into evidence for purposes of Jackson v. Denno.

THE COURT: I accept it for purposes of Jackson v. Denno. Yes.

(WHEREUPON, State's Exhibit No. 5/JvD was admitted into evidence.)

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Investigator, you told Miss David that you were

not -- that the defendant was in no way compelled to be in the room; is that correct?

A. He was not forced or compelled. When I'm saying 'forced' or 'compelled' we're fighting or tussling or something to that extent. He was in the room. He was handcuffed in the front. There were no promises or threats made to him.

Q. Okay. What would have happened if he did not want to be in the room?

A. He would have to have been in the room or we would have taken him to the Detention Center.

Q. Could he have gotten up and walked away?

A. No, sir.

Q. Did he go in there on his own free will. Did he say, "I want to go in this room?"

A. No, he was taken by Deputy Johnson, Marlboro County Sheriff's Office.

Q. In handcuffs? How is that not being compelled?

A. When you say, 'compel' that's why I asked you. There was no -- we didn't have to fight with him to get him in the room or anything. He was there on his, you know, taken voluntarily there, Sheriff's Office, by Deputy Johnson. Very talkative. He was quite -- I guess you say agitated a little bit while we were doing another investigative techniques. But he was in and he was going

to be there in handcuffs.

Q. Okay. Now, you also said that you did not believe that he was intoxicated?

A. No.

Q. You don't believe he had been drinking?

A. Well, I could tell he was drinking. I could smell the alcohol, but I don't think he was intoxicated.

Q. Did you do a Breathalyzer test on him?

A. No, I never done a Breathalyzer.

Q. Did you do any sort of tests to determine his blood alcohol level?

A. Not. Sure didn't.

Q. Did you ask him how much he had to drink?

A. I think he said a quart or half a point.

Q. When did you ask him that?

A. He told me.

Q. What did you mean by you said you were doing an investigative technique? Explain that for me.

A. We were doing a G.S.R. Kit.

Q. Okay.

A. Gunshot residue kit.

Q. But it had nothing to do with questioning?

A. No. No questions.

Q. Okay. Were you present when Deputy Shaw Mirandised him?

A. I was not.
Q. How do you know it occurred?
A. Deputy Shaw immediately told Lieutenant Seales, and it was relayed to me.
Q. Okay. So Deputy Shaw told Seales who told you?
A. That is correct.
Q. Okay. Do you have any other basis for knowing that he was Mirandised?
A. Other than Deputy Shaw's word which I stand behind.
Q. But did he tell you personally?
A. Later he did, but I'm telling you that at the scene it was relayed to me by Lieutenant Seales.
Q. Why did you tell the defendant not to testify or not to answer questions or not to talk?
A. He wasn't Mirandised.
Q. But you said Deputy Shaw Mirandised him?
A. That is correct. See, you have to understand. Deputy Shaw Mirandised him in the vehicle. He's taken from that vehicle to Deputy Johnson into the Sheriff's Office. I get to the scene and there are other things I do at the scene. After I leave the scene I come and I start -- we start doing the G.S.R. kit and so on and so forth. Lieutenant Seales sends a text and let's us know that he's been Mirandised by Deputy Shaw. You know it was somewhere into the interrogation that we had already

started.

Q. Okay?

THE COURT: Wait a minute. You said a while ago that nobody asked him any questions under Shaw's statement?

THE WITNESS: That is correct.

THE COURT: So you Mirandised him. That's not what you're saying, now.

THE WITNESS: No, sir. Shaw never questioned him no one ever questioned him except for me and Investigator English.

THE COURT: Did you Mirandise him before he was questioned by anybody?

THE WITNESS: Yes, sir. He was never questioned by anybody except me and Investigator English. He was Mirandised by Deputy Shaw at the scene and in Deputy Shaw's police car.

THE COURT: Then you Mirandised him again before he made a statement?

THE WITNESS: Yes, that is correct.

THE COURT: Well, go ahead.

BY MR. SHAFFER:

Q. But you also told him not to answer questions before you Mirandised him the second time?

A. That is right.

Q. Why did you tell him that?

A. Because I wanted to put him on Mirandise. This is our standard form that we use in the Sheriff's Office. There is a folder in the interrogation room that has nothing but Mirandised forms. Before we start questioning anybody this is what we do.

Now, it was after I did this that I was informed Deputy Shaw had already Mirandised him in the car. Regardless of if I knew that before or after I still would have done this on paper with his signature.

MR. SHAFFER: No further questions.

THE COURT: Sir?

MR. SHAFFER: No further questions, Your Honor.

THE COURT: Any further direct?

MS. DAVID: Your Honor, at this time we would like to play the video.

THE COURT: At this time do what?

MS. DAVID: We would like to play the video of the Defendant, Tyrone King's, first statement.

THE COURT: You may come down and do so. Thank you. Stay here in case we need to call you back.

THE WITNESS: Yes, sir.

(WHEREUPON, State's Exhibit Five was played in open Court.)

MR. SHAFFER: Your Honor, at this point I move to ---

THE COURT: Stop a minute.

MR. SHAFFER: Your Honor, I'm actually moving to suppress the profanity when he's calling ---

THE COURT: No, sir. Not going to do that.

MR. SHAFFER: Yes, sir, Your Honor. I just wanted to make it clear for the record.

THE COURT: I'm going to let that stay. He chose to use the word. Go ahead.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Your Honor, may I say just ---

THE COURT: Wait a minute. What?

MR. SHAFFER: Just for the record, because I know this isn't being transcribed off the tape, for the record I'm moving to exclude or to the redact the video where he's calling them motherfuckers.

THE COURT: Cannot do that because we don't have the capability. If you redact that word you've got to redact whatever he said. Isn't that true?

MS. JOHNSON LEE: Yes, Your Honor.

THE COURT: I'm not going to do that. Go ahead.

MR. SHAFFER: Your Honor, it's also not relevant.

THE COURT: We just can't redact one word that he chose to use so that we can't even use the video. Not going to do that. Go ahead.

MR. SHAFFER: Your Honor, I also ---

THE COURT: You're on the record. I told you that. What else you want?

MR. SHAFFER: 401, I don't believe it's relevant in this conversation he's having about ---

THE COURT: It's his term. He chose to use it. I'm going to let it in. Go ahead.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: At this point he's talking about his previous murder charge. It's 4:28 on the video. 4:28:58.

THE COURT: I want that redacted; that part. Can you do that without destroying the whole video?

MS. WHITE: We would have to fast forward it through that part.

THE COURT: Pardon me.

MS. WHITE: We will have to fast forward through it, your Honor.

THE COURT: Well, make sure you do it in the right place, but back up a little bit and then fast forward. I don't want to hear anything about that. To the extent possible get to where he talks about allegedly this incident. Go ahead. Let's see where we're going. Go ahead. You be sure that's redacted.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Your Honor, at this point I'm going to move to redact the fact that he had shot a gun and he carries a gun which is about to come up. I don't believe, A, it's relevant, or B, I think it's prior bad act under 404(B).

THE COURT: He said he carried a gun, didn't he?

MR. SHAFFER: Yes, sir, Your Honor. Prior bad act as he has been convicted of other crimes.

THE COURT: Well, there is evidence of carrying a gun in this case. I'm going to let that stay in.

MR. SHAFFER: I also -- the third objection is a 403 objection to that, Your Honor.

THE COURT: No, sir. There is evidence of the gun was used, and it was evidence as I understand it for the jury's consideration. It was his gun. He mentioned his gun. It's appropriate that it stays and will. Go ahead. Your objection is noted for the record.

MR. SHAFFER: Thank you, Your Honor.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Your Honor, objection. He's talking about he had a lawyer on his old charge. He's going to be getting into the old charge that he had the lawyer represented by.

THE COURT: Does he get into the old charge at this

time? Ma'am, y'all have seen it. I haven't.

MS. JOHNSON LEE: I don't recall how much he got into it.

THE COURT: I'll let that part in. Let's see where he goes.

MR. SHAFFER: For clarification that's 404(B) objection, Your Honor.

THE COURT: Okay. We can't redact every kind of word that he decided to use, but I redacted anything that he gets into significantly old charges. Let's go see where it is. Go ahead.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Objection, Your Honor. He's talking about the previous murder. This investigator just asked him what were you charged with in that murder.

THE COURT: Counsel, so that you will know I'll set up a time in the morning for you to get together and review the redacted.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: I want to redact any reference to any prior conduct.

MS. JOHNSON LEE: Yes, sir.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Objection, Your Honor. He's getting into the McColl charges that are pending?

THE COURT: Yes. I want that redacted.

MS. DAVID: Your Honor, can the defense attorney wait until after we have heard the video to actually make an objection because he's saying, 'objection', Your Honor, and you haven't heard anything he said yet.

THE COURT: Well, I'm picking it up, but if we wait until the end we'll have to go back and redo it again. I'd rather do it as we go. Clearly, he's getting ready to get into it. I don't want to do it later.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Objection, Your Honor. He's actually going into a different charge where he got stabbed. He had gotten stabbed during an alleged armed robbery.

THE COURT: Is this one of the times we discussed in chambers?

MS. DAVID: Yes, Your Honor.

THE COURT: I'm leaving that because the individual is coming in, and he's saying he was stabbed 20 times in self-defense. There is a witness coming in saying that's not true; isn't that true?

MR. SHAFFER: Your Honor, I am just preserving my objection for the record.

THE COURT: No, sir. I'm letting that in based on the totality of the evidence that's here.

MR. SHAFFER: Your Honor, briefly before we begin again do you mind if I put it on the record so I don't forget.

THE COURT: Go ahead.

MR. SHAFFER: The objection I want to make are 401, 403 and 404(B) and the fact that it's a collateral issue that is not relevant to this case.

THE COURT: Well, it's not declaratory or secondary issue or simply because the -- state your objection as you did in chambers, Mia.

MS. DAVID: Your Honor, we objected because or we thought that this part was relevant because the defendant is saying in this case that he carried a gun because he was stabbed 20 times whereas we know that the guy that stabbed him said that he did so because the defendant was trying to rob him.

THE COURT: And that's exactly why I'm going to let it in.

MR. SHAFFER: Briefly, Your Honor, for the record to respond to the Solicitor.

THE COURT: Counsel, I told you I'm not going to let the jury hear solely that he was stabbed 22 [sic] times without the truth coming out as to why he was stabbed.

MR. SHAFFER: Your Honor, I'm happy to redact that. I believe that it's not really relevant that he was stabbed in the first place.

THE COURT: Well, he's the one that said it. I'm going to leave it in. You're on the record as to your objection.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: But it would be unfair to let the jury hear him without hearing why.

MR. SHAFFER: Your Honor, that's why I'm actually saying it's not really relevant why he carried a gun.

THE COURT: Well, he thought it was so I'm going to leave it in. Go ahead.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: That particular line that he just said I'd like to reiterate to why the fact that he carried a gun for self-defense is not relevant. He then admits at least two other times in the video that he carries a gun without saying why he carried it. I don't believe why he carried the gun is relevant. Therefore, I don't believe their witness regarding the fact ---

THE COURT: I'm going to let it in. His possession of the gun is a critical part of the State's case, and I'm going to let it in. Go ahead. Your objection is noted

for the record.

MR. SHAFFER: Thank you, Your Honor.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Your Honor, for the last about 30 seconds he's been discussing familiarities with the Marlboro County Sheriff's Office.

THE COURT: He's been discussing what?

MR. SHAFFER: He been discussing different members of the Marlboro County Sheriff's Department and the Marlboro County Jail with some familiarity. I'm moving to suppress that under 404. I mean 404(B).

THE COURT: Why?

MR. SHAFFER: And 401. And it gives the impression that he's familiar with the a jail and the people.

THE COURT: No, I'm not going to do that.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: Not going to do it. You've got to realize that we want -- we don't have the capabilities to stop and start every phrase, and I conclude that's proper. Let's go. I want to redact everything that we can that's proper. We can't start redacting every word cause you don't like it. Go ahead.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Your Honor, at this point, again, he goes into whether or not or there McColl charge.

THE COURT: Does what?

MR. SHAFFER: The McColl Charge. The pending armed robbery. He's asking why are you charging me with robbing a drug dealer.

THE COURT: Are you familiar with that portion?

MS. DAVID: That is what he just said. He said, "How you going to charge me with robbing a drug dealer."

THE COURT: Can't we redact that part?

MS. DAVID: We can try it. We can fast forward past that moment.

THE COURT: Do that. And then tomorrow.

(WHEREUPON, the video continued to be played in open Court.)

THE COURT: One moment. Hold on. What's that?

MR. SHAFFER: Your Honor, the defendant mentioned this is my life. It's over with. This is my life, and I'm objecting to that because of the fact that it actually bring sentencing into the ---

THE COURT: I disagree with that. Overruled it. I note your objection.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: Go ahead.

(WHEREUPON, the video continued to be played in open

Court.)

MR. SHAFFER: Objection.

THE COURT: What's your objection?

MR. SHAFFER: He just stated at 4:46:14 on the video he just stated that -- he said, "Don't take this offensively, but fuck the police."

THE COURT: What?

MR. SHAFFER: He said, "Fuck the police," Your Honor. Which I believe is -- the basis for my objection is 403 and 401. I think it's inflammatory.

THE COURT: No, sir. I disagree. Go ahead. So that you will understand I ruled that anything about his prior conduct that we can redact sufficiently we're going to redact. But there is no way for them to redact efficiently one sentence or one word out of a sentence. They just don't have that capability in Marlboro County.

Now, to the extent that he's talking about prior record I agree with you that's inflammatory and we can redact that. But we can't start redacting one word out of one sentence. Proceed.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Your Honor, if you would back that up if I remember correctly there is something about might have missed at that point. This is right before he goes

out to take a smoke break. I remember him saying, "I'm a criminal" at some point during that, and I'd like that redacted. Same objection, 404(B), 403.

THE COURT: No, I'm not going to. This is his characterization of himself. I'm not going to redact that. Go ahead.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Your Honor, to preserve my objection I would -- that was at 4:46, probably 56 is whenever he said, "I'm a criminal".

THE COURT: Well, you understand that some of his prior record is coming in any way. Based on that alone is sufficient.

MR. SHAFFER: Your Honor, I actually don't believe, unless he testifies right now, none of his prior record is coming in.

THE COURT: I'm going to leave it in. Go ahead.

MR. SHAFFER: Thank you.

(WHEREUPON, the video continued to be played in open Court.)

THE COURT: Stop it.

MR. SHAFFER: Your Honor, at this point he's getting Mirandised. I guess sufficiently the one where, you know, where he signed is 4:55:20 on the time, and I'm moving --

later on I'll move to exclude under Jackson v. Denno the prior conversation, but for right now I'm actually moving to exclude. Under 401 it's not relevant.

THE COURT: What's not relevant?

MR. SHAFFER: What he talked about up until this point is not relevant to what happened.

THE COURT: What's not relevant?

MR. SHAFFER: Basically, everything that has occurred prior to the second Mirandise, and they're going to get in relevant portion ---

THE COURT: You mean prior to this time?

MR. SHAFFER: Yes, Your Honor.

THE COURT: Well, I'm sitting here -- I'll hold that in abeyance. Seems like to me that maybe we can start it from the point on and, but I'll rule on that later. You want to exclude everything up to this point?

MR. SHAFFER: Yes, Your Honor.

THE COURT: Well, we'll talk about it later. Go ahead.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Your Honor, at this point he just mentioned the McColl charge again. I will move to redact that part.

MS. DAVID: Your Honor, he only mentioned the McColl

charge because the defendant is saying Aloysius McLaughlin is the one murdered James Galloway. He's saying, "You mean the same guy you just robbed two weeks ago."

THE COURT: I'm going to leave -- let that stand.

MR. SHAFFER: Your Honor, for the record my objection was 404(B).

THE COURT: I understand.

MR. SHAFFER: 403 and 401, Your Honor.

THE COURT: I think it's appropriate based on the totality of what he's saying. Go ahead.

(WHEREUPON, the video continued to be played in open Court.)

MR. SHAFFER: Your Honor, at approximately 4:08 -- I mean 5:08:25 he said he already had murders on his record, and I move to redact that, 404(B).

THE COURT: What was the specific remark?

MR. SHAFFER: He said, "I've already got murders on my record."

MS. DAVID: Your Honor, he does not have a conviction for murder on his record.

MR. SHAFFER: And he's been charged with murder, Your Honor.

THE COURT: He said -- I'm going to leave it where it is. Go ahead.

(WHEREUPON, the video continued to be played in open

Court.)

MR. SHAFFER: Objection. At that point he's talking about the time he got stabbed. Once again I don't think his stabbing is relevant to this case.

THE COURT: Well, the one who stabbed him he says is the one who did the shooting, did he not?

MR. SHAFFER: No, Your Honor. No, Your Honor. That is someone else.

THE COURT: What you say about that?

MS. DAVID: Your Honor, what's going on right here is Investigator Shawn Feldner has asked the defendant why would he take another man's life. Why would he shoot anybody. He says he pulls up his shirt and said, "You see this because I been stabbed." I think it is relevant to show the defendant's state of mind at the time of him carrying that gun into the house.

MR. SHAFFER: Your Honor, the fact that he got stabbed ---

THE COURT: Strike that.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: Strike that.

(WHEREUPON, the video continued to be played in open Court.)

THE COURT: Okay.

MR. SHAFFER: Your Honor, can we take five minutes so

he can go to the bathroom?

THE COURT: Yes, sir, go ahead. We can take a five minute break.

(WHEREUPON, a short break was taken.)

MR. SHAFFER: I want to know what the current plea offer is so that he will be aware of whether there is a current plea offer or not. It sort of got confused since we talked.

THE COURT: I wasn't going into that. I wasn't going into that unless some officer of -- I wouldn't discuss that.

MS. DAVID: Your Honor, we had a previous offer of --

MS. JOHNSON LEE: There is no offer on the table at this time.

MR. SHAFFER: There is no offer. I just wanted to make sure of that. I've been bouncing back and forth asking for something. I almost forgot what.

THE COURT: Well, any proposal like that would come from you. Not them.

MR. SHAFFER: Would the offer for 25 still be there?

MS. DAVID: No.

THE COURT: I wouldn't put it that way. Is he back yet? Are we ready to resume?

MS. JOHNSON LEE: Still waiting on the defendant to come back from the restroom.

THE COURT: Are we ready to proceed?

MR. SHAFFER: Yes, Your Honor.

MS. JOHNSON LEE: Your Honor, we have a problem because due -- Stuart is standing there. Is there a problem? He's been staring at the family.

THE COURT: I can't tell the defendant where he can sit. Leave that alone.

MS. DAVID: Okay.

THE COURT: All right. Can we proceed?

MS. DAVID: Yes, Your Honor. At this time the State would like to call Jamie Seales to the stand for our second statement done on November the 16th 2011.

JAMIE SEALES, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. DAVID:

Q. Would you please state your full name for the record?

A. Jamie Lynn Seales.

Q. And what's your occupation?

A. I'm an investigator with the Marlboro County Sheriff's Office.

Q. And how long have you been employed with the Sheriff's Office?

A. Since October of 2007.

Q. What's your previous law enforcement experience?

A. I worked the Probation and Parole from 1997 to 2005, and also I was employed with the Marlboro County Sheriff's Office from 2005 to 2006 and I worked for the State Law Enforcement Division almost two years until I came back in October 2007.

Q. Now, will you tell me what are your duties with the Marlboro County Sheriff's Office?

A. I am lieutenant over investigations.

Q. Okay. And were you employed in your present capacity on November 11th of 2011?

A. I was.

Q. And did you become involved in this investigation of the Defendant, Tyrone King?

A. I did.

Q. How did you become involved in this case?

A. I was called by Central Dispatch and by a couple of the deputies. I don't recall which deputy called to tell me what was going on. Met with Sheriff Knight and other investigators to come out to come to the scene.

Q. Did you ever get the opportunity to speak with the defendant?

A. I did. It wasn't the day of the incident, a week later.

Q. Did he request to speak to you voluntarily?

A. He did.

Q. And that was a special request?
A. It was.
Q. Do you recall how that request was made?
A. It was in the form of a written request from the Marlboro County Detention Center.
Q. Okay. I show you what has been marked as Exhibit Number Three for purposes of identification. Do you recognize it?
A. I do.
Q. What is it?
A. It's an Inmate Request Form from the Marlboro County Detention Center.
Q. How did that first come into your possession?
A. It came into -- appears to have came into the Sheriff's Office via fax, and I don't remember how it got in my hands. But, typically, they come in a variety of different ways. They may go in the Sheriff's door or in one of the investigator's door.
Q. Is it still in the same form now as it was when you first saw it?
A. It appears so.
Q. Has it been altered or changed in any way?
A. It does not appear, no.
Q. Will you read it to us? Will you share with us what it says on that form?

A. Yes. At the top it has the fax cover head showing 11/15/2011 at 1445 from (803) 479-5629, Marlboro County Detention Center. It has Marlboro County Sheriff's Office Detention Facility Inmate Request Form. Has a section for name and that name in handwritten script is Tyrone King.

And date in handwritten script is 11/14/11. In handwritten he has the room number, A-5 and it says, "Arresting Agency County." It has a section that says, "General Reason for Request." And there are four choices. None of the choices which are marked, "Inmate Account, Plea, Release, Date of Warrant," and it also says, "Specific information concerning the item checked."

In that section in handwritten script it says, "I need to speak with Jamie Seales about my case. This is very important." Then down further in the paper it says, "Staff Response." It has a line and in handwritten script it says, "Fax." At the bottom below that is a section that says, "Refer to." Of course, nothing is in. Also has a date which nothing is in. And to the right of that it has, "Staff Signature," which appears to be the signature of Earl Hood who is the warden of the Marlboro County Detention Center. Also has printed name. With that section has date, "11/15/11." At the top right hand corner it also has an initial which appears to be E.L.H. which I assume to be Earl Hood with 11/14/11 date beside

it.

Q. And, again, this form hasn't been altered or changed in any way?

A. No, it hasn't.

MS. DAVID: At this time the State would like to introduce into evidence for purposes of Jackson v. Denno what has been marked as Exhibit Number Three?

THE COURT: I will accept it and permit you to introduce it in the trial of the case.

MS. DAVID: Yes, Your Honor.

(WHEREUPON, State's Exhibit No. 3/JvD was admitted into evidence.)

BY MS. DAVID:

Q. Now, Mr. Seales, how did you respond to this inmate request form?

A. Contacted the Marlboro County Detention Center and asked them to bring Mr. King over.

Q. Are you familiar with Miranda warnings, and did you have the opportunity to advise the suspect of his Miranda rights?

A. I did.

Q. How did you advise him?

A. When he came in I came into the interview room, and first off, showed him this form. And I said, "Mr. King, did you write this form?" And he agreed and said that he

did. And I told him that the reason that I was asking was because other inmates in the past have tried to play games with other inmates and send requests for different cases. And he assured me that he wrote this.

And I said, "Well, you've been Mirandised prior to this, but I'm going to give you your Miranda warnings again." And I gave him the Miranda Form and I asked him to read over it. And I asked him, I said, "When you get through if you have any questions let me know." He read over it, signed it, and I told him a couple more times, from what I recall, that he didn't have to talk to us at any time. If he wanted to stop he could.

Q. At this time I show you what has been marked for purposes of Jackson v. Denno as State's Exhibit Number One. Do you recognize it?

A. Yes, I do.

Q. What is it?

A. It is our basic Miranda Form we use at the Sheriff's Office.

Q. That's the form that you presented to the defendant?

A. It is.

Q. Did he place his initials on that form?

A. He placed his initials beside each number, One through Five, and he signed the Waiver of Rights.

Q. And will you tell us what Numbers One through Five

say?

A. Number One says, "You have the right to remain silent. Number Two, Anything you say can and will be used against you in Court. Number Three, You have the right to talk to a lawyer for advice before we ask you any questions and have him with you during questioning. Number Four, if you can't afford a lawyer the Court will appoint one for you before any questions if you wish. Number Five, if you decide to answer any questions without a lawyer present you will still have the right to stop at any time until you talk to a lawyer."

Next is the Waiver of Rights. This says, "I have read this statement of my rights, and understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I'm doing. No promises or threats have been made to me and no pressure or coercion of any kind used against me by anyone.

Q. And the defendant signed this statement?

A. He did.

MS. DAVID: At this time the State would like to introduce Exhibit Number One into evidence for purposes of Jackson v. Denno.

THE COURT: I permit it, and it will be introduced during the trial.

(WHEREUPON, State's Exhibit No. 1/JvD was admitted into evidence.)

BY MS. DAVID:

Q. Now, while you were speaking with the defendant did he appear to understand his rights? Did he have any trouble understanding what was going on?

A. He didn't seem to.

Q. Did he understand English?

A. Appeared so.

Q. Did he appear to be affected by drugs or alcohol in any way?

A. No.

Q. Did he appear to be answering questions rationally? Was he responsive to you?

A. He was.

Q. Did you or anyone in you're presence threaten or coerce the defendant in any way?

A. Absolutely not.

Q. Did he ever ask to stop questioning following the Miranda rights?

A. No, he didn't.

Q. To the best of your knowledge was the defendant's statement freely and voluntarily given?

A. Yes, it was.

Q. Was the statement recorded?

A. Yes, it was.
Q. At this time I'm going to show you what has been marked as the State's Exhibit Number Four for purposes of Jackson v. Denno. Do you recognize it?
A. Yes, I do.
Q. Can you tell me what it is?
A. It is a D.V.R. disk with my handwriting on the outside. It says, "11/16/11 Second Interview Tyrone King." Also has "Seales/Alderman" on the side of it, and the disk actually has my -- the name of the interview, Tyrone King Interview, with my handwriting.
Q. Have you had an opportunity to review this video in its entirety?
A. Yes, I have.
Q. Was it in the same condition as it was when you first saw it or first took it?
A. Yes, it is.
Q. Has it been altered in any way?
A. No, it has not.
Q. Does it accurately reflect the statement that was given to you on November 16th of 2011?
A. Yes, it does.
MS. DAVID: At this time, Your Honor, the State would move to introduce Exhibit Number ---
THE COURT: Prior to introduction, Mr. Shaffer, do

you have any cross-examination?

MR. SHAFFER: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Investigator Seales, have you ever been to a bond hearing?

A. Yes.

Q. What do they generally do at bond hearings in Marlboro County?

A. What happens in want order?

Q. I'll be more specific. Do they normally request attorneys at their bond hearings or request public defenders?

A. At some point in the hearing, yes, sir.

Q. Okay. So there is screening for public defender there?

A. In a bond hearing?

Q. Yeah.

A. Yes. I think they have a form they give them and they fill it out. I think the process starts at that time.

Q. Do you know if Mr. King was ever screened?

A. I have no idea.

Q. Okay. Do you know if he requested an attorney at that time?

A. At that bond hearing?
Q. Yeah?
A. I have no idea.
MR. SHAFFER: No further questions.

COLLOQUY

THE COURT: I will admit the video.
MS. DAVID: Okay.
(WHEREUPON, State's Exhibit No. 4/JvD was admitted into evidence.)
MS. DAVID: Your Honor, at this time we would like to play the video for you, but we need it back from Jamie.
THE COURT: Proceed with the video, please.
(WHEREUPON, State's Exhibit Four was played in open Court.)
MR. SHAFFER: Objection.
THE COURT: What's your objection?
MR. SHAFFER: Just before this point which is 8:44:33 on the November 16th video it -- he begins to talk about he McColl charges. He asks, 'what about my McColl charges'. He's asking this investigator questions.
THE COURT: They didn't go any further into it that I recall.
MR. SHAFFER: They're about to, Your Honor.
THE COURT: Are they going into the McColl charge?
MS. DAVID: Yes, Your Honor. They're about to for

the next four minutes.

THE COURT: Let's strike any mention of the McColl charge.

MR. SHAFFER: I believe that right there, actually, he will be -- the end of the tape will be a perfect time because he says, "I appreciate you being honest with me," and that's almost a natural end of the tape.

THE COURT: Does the McColl charge end the tape any way?

MS. DAVID: Yes, Your Honor. We do not oppose that. We discussed that in chambers.

THE COURT: End it right before he says, 'McColl'.

MS. DAVID: Yes, Your Honor.

THE COURT: Is that what you want?

MR. SHAFFER: Yes, Your Honor.

THE COURT: You're entitled to that.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: Yeah, we discussed that in chambers. Make sure that that's the only change I note in the objection as to that video.

MR. SHAFFER: Yes, Your Honor, that's the only objection.

THE COURT: Okay. And I sustain that. All right. Does that deal with all the videos?

MS. DAVID: Yes, Your Honor.

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF MARLBORO) 2012-GS-34-0024
2012-GS-34-0026
2012-GS-34-2028

STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
TYRONE J. KING)
DEFENDANT)

September 10-13, 2012
Bennettsville, South Carolina
VOLUME NO. 02 OF 04

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE; and a jury.

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

MIA DAVID, ASSISTANT SOLICITOR
Attorney for the State

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR
Attorney for the State

TRISTAN SHAFFER, ESQUIRE
Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

(WHEREUPON, State's Exhibit Nos. 1 THROUGH 40 were marked for identification only.)

COLLOQUY

MR. REDMOND: Before we proceed just a couple of housekeeping matters to help the trial go by a little smoother. There are several exhibits that we have either ruled on -- the Court has ruled on that we need to go ahead and ask the Court to move into evidence at this time. And there are some items that we can stipulate and we can agree to, and I'd like to go ahead and move those into evidence at this time.

THE COURT: Please do.

MR. REDMOND: First, Your Honor, you ruled on State's Exhibits One, Two, Three and Four and Five yesterday; that being the Jackson v. Denno issue regarding ---

THE COURT: And they were without exception.

MR. REDMOND: And those were actually -- we had the Jackson v. Denno hearing, and he objected to it, but the Court ruled that they were admissible. So we would move those into evidence at thi time. That's One -- State's One through Five.

THE COURT: You have any problems with that?

MR. SHAFFER: Pursuant to the redactions for the videotape and the previous objection I've made. I actually made a list of some of the objections with the

specific times just for the record.

THE COURT: Let's talk about one thing at the time.

MR. SHAFFER: All right.

MR. REDMOND: And we understand the redactions. That's just the -- with the Court. With the understanding of the Court's ruling I'm moving those in at this time.

THE COURT: I'm going to let it in. While we're talking most of his objections dealt with the first portion. Have you redacted that?

MR. REDMOND: We have decided not to go for that first portion of the tape.

THE COURT: You understand that?

MR. SHAFFER: Yes, Your Honor.

THE COURT: Then that deals with your objections if they're not going to play it.

MR. SHAFFER: Not all of the objections, Your Honor. There are a few that were after the Miranda.

THE COURT: Which ones are they?

MR. SHAFFER: One you ruled to redact between approximately 15:30 and 15:13:30 and 15:14:03.

THE COURT: And what was that?

MR. SHAFFER: That was in reference to the stabbing.

THE COURT: In reference to what?

MR. SHAFFER: In reference to his previous stabbing. The fact that he got ---

THE COURT: Yes, we redacted that.

MR. SHAFFER: Yes, Your Honor.

THE COURT: Did you redact it?

MR. REDMOND: Which portion? That was the issues about the stabbing?

MS. DAVID: Yes.

MR. REDMOND: That has been redacted.

THE COURT: That has been redacted. Go ahead.

MR. SHAFFER: And I had made two other objections for -- that were not ruled upon -- or that were ruled upon by the Court but were denied. Two that I can think of. I want to preserve ---

THE COURT: What are they, please?

MR. SHAFFER: One was the mention of the prior stabbing, again.

THE COURT: No, they redacted that. Anything to prior stabbing.

MR. SHAFFER: Yes, Your Honor. There was another mention of that that was not redacted because the Court ruled not to redact.

THE COURT: Where was that and what line?

MR. SHAFFER: I think it was at 15:40:50 or approximately 15:40:50.

THE COURT: Can you tell me about that?

MS. DAVID: 15:40:50; that's the -- could the defense

attorney be more specific. Tyra White, who has our times for the video, she said it's not on there.

THE COURT: It's not on there.

MS. DAVID: It is not on our -- the time that we have is 4:55:20 to be redacted.

MR. SHAFFER: Your Honor, there is another reference to the stabbing after the Miranda, and it's at 15:10:50. I believe the Court ruled not to redact it yesterday.

THE COURT: I ruled not to redact that one?

MR. SHAFFER: Yes, Your Honor.

THE COURT: Well, if I ruled on it that's fine.

MR. SHAFFER: Thank you, Your Honor. There is -- and there were a few other ones that you ruled not to redact. I would like to actually make this a Court's Exhibit. This is an e-mail with just for clarification of some of the points I objected to.

THE COURT: As long as it don't relate to the first part. That's not -- that's been redacted.

MR. SHAFFER: Yes, Your Honor.

THE COURT: Not going to have any objections to something that is not in existence.

MR. SHAFFER: Yes, Your Honor. It is related to the second part.

THE COURT: As long as it relates to the second part that's fine.

MR. SHAFFER: Thank you, Your Honor. May I have this marked has a Court's Exhibit?

THE COURT: What other objection did you make?

MR. SHAFFER: I made an objection to a prior murder and kidnapping charge at 15:08 ---

THE COURT: That's been redacted.

MR. SHAFFER: Your Honor, excuse me. It's actually 5:08:09 through 5:08:10.

THE COURT: Prior burglaries have not been redacted?

MR. SHAFFER: That hasn't been redacted, Your Honor.

THE COURT: Why?

MR. SHAFFER: He mentioned that -- I believe he stated on the record that he couldn't -- that Marlboro County was unable to go through line by line and redact every word or every reference to anything in the statement. I believe that was when you had said that yesterday.

THE COURT: Well, this equipment is not the best in the world. They have made every effort to do it. It's not as sophisticated as it should be, but you couldn't redact that part?

MR. REDMOND: Beg the Court's indulgence. That was one that at the time, and I recall that section where the Court ruled that that part could stay in. I can't recall exactly ---

THE COURT: If I ruled that I'm not going to beat a dead horse to death. If I ruled -- did I rule it stays?

MS. JOHNSON LEE: You did.

MS. DAVID: You did.

MR. SHAFFER: You did. That was denied. The reason that I actually wanted to ask was just for clarification purposes as to where I made those objections.

THE COURT: But the McColl stuff is out, you know that?

MR. SHAFFER: Yes, Your Honor. And this is basically so if -- for purposes of ---

THE COURT: I got you. Okay. Put it in.

MR. SHAFFER: Thank you, Your Honor.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification and received into evidence.)

THE COURT: As I told you before it's obvious to me that the video is such of a poor quality that parts of it are simply not discernible. My law clerk and I both listened to it very carefully as have the staff of the Clerk, and we all agreed to that.

And I told you that the lawyers are going to take oral testimony as to what was said and then the jury will have a better position to listen to the testimony. It will be helpful to them in my view. Do you understand that?

MR. SHAFFER: Yes, Your Honor. I just wanted the objection noted for the record.

THE COURT: What's the objection?

MR. SHAFFER: Cumulative and a prior consistent statement.

THE COURT: No, sir. Let's get that straight. I can take testimony on it if you choose to.

MR. SHAFFER: Yes, Your Honor.

THE COURT: You as a good lawyer have to admit that a great part of that deposition is not discernible?

MR. SHAFFER: Yes, Your Honor, that is correct.

THE COURT: Sir?

MR. SHAFFER: That is correct, it's very hard to understand.

THE COURT: Then it is my view that it will enable the jury to hear the testimony from the witnesses who he gave it to such that they can then hear the testimony. I don't think it's cumulative because a lot of testimony couldn't even be heard. Don't you agree with that?

MR. SHAFFER: Yes, Your Honor. I would agree with that.

THE COURT: I conclude it will enable the jury to more properly view and listen to the video, okay?

MR. SHAFFER: Yes, Your Honor. And not to argue your ruling I want to put an additional ground for my objection

to the tape. Essentially, due process, and it's a ---

THE COURT: You got to be clear. That don't tell me nothing.

MR. SHAFFER: Okay, Your Honor. I apologize, Your Honor. Equal protection, Your Honor, and essentially, some of the reasons for not redacting certain parts is that the equipment in Marlboro County is not sufficient to do so. I believe that if you were in another county they would have sufficient means to do so.

THE COURT: Well, in my view we have redacted that portion which could have been possibly objected. In my view a great portion of that video is not discernible. I made that conclusion. My law clerk has made that conclusion. The Clerk and his staff, all of whom have listened to it intently.

MR. SHAFFER: Yes, Your Honor.

THE COURT: I conclude that it will enable the jury after hearing the oral testimony to hear the video. In fairness of justice to the defendant I'm going to permit what he side so they can see that part where it's not discernible.

MR. SHAFFER: Thank you, Your Honor.

MR. REDMOND: And, Your Honor, if I could, and then I want to get back into the stipulation, but because I know there is a record being made on certain issues, and I know

that when equal protection comes up. Lieutenant Seales brought up an excellent point as it relates to the reason the equipment -- is actually current equipment, but it's not designed to allow for redacting and editing it so that nobody can then say that law enforcement had tampered with evidence. So I just wanted to make that clear on the record ---

THE COURT: He agrees with that.

MR. REDMOND: --- just in case there are any issues that come up later on.

THE COURT: You agree with that particular equipment is not able to do that?

MR. SHAFFER: Yes, Your Honor. I don't believe you're -- currently we're incapable of doing it. I believe that other agencies could do it. There are computer programs that allow you ---

THE COURT: Well, we don't have that other agency here. We are in the second day of the trial. We spent most to the time with your objections. I'm ready for the jury.

MR. REDMOND: And, Judge ---

MR. SHAFFER: And, Your Honor, one thing. Can you make all the objections regarding the -- all the rights ---

THE COURT: I'm not going to do it. Objections

relative to the part that's been redacted are not appropriate.

MR. SHAFFER: Yes, Your Honor. Can you make that a final ruling so I don't have to object to it constantly?

THE COURT: No, sir. The objections made are not available because it wasn't shown. You don't understand that?

MR. SHAFFER: Your Honor, I do understand your ruling. What I'm asking for you to make it a final ruling so I don't have to constantly object and beat the dead horse throughout the trial every time one of these issues comes up throughout the trial.

THE COURT: Oh, yes, you can do that. I agree with that.

MR. SHAFFER: Thank you, Your Honor.

MR. REDMOND: And, Judge, just to quickly finish up with the stipulations. There are a couple of other items. First thing we would want ---

THE COURT: I don't want you to make your objections again as to those items, the second part. You've made them and are protected for the record.

MR. SHAFFER: Thank you, Your Honor. I appreciate that.

THE COURT: We don't want to waste another day with objections.

MR. SHAFFER: Yes, sir.

MR. REDMOND: And, Your Honor State's -- for the record, the Defense has agreed and the State would respectfully move into evidence at this time State's Exhibit Numbers 14 through 27. Those are all photographs. The Defense has had a chance to view. Does not have any objection, so we would move these into evidence.

(WHEREUPON, State's Exhibit Nos. 14 THROUGH 27 were admitted into evidence.)

THE COURT: To save time showing them to him each time you introduce them just say "Defense has been shown." You agree with that?

MR. SHAFFER: Yes, Your Honor.

MR. REDMOND: And the last thing is the 911 call. Defense has agreed and we are stipulating to move State's Exhibit Number 40; that being the 911 call from the house that night. Again, that's State's Exhibit Number 40. We would move it into evidence at this time.

THE COURT: All right, sir. That's fine.

(WHEREUPON, State's Exhibit No. 40 was admitted into evidence.)

MR. REDMOND: And that would conclude the stipulations at this time, Your Honor. Unless there is something else the State is ready to proceed.

MR. SHAFFER: Your Honor, I might have one objection.

the Clerk of Court.

MR. SHAFFER: Thank you, Your Honor. I apologize.

OPENING STATEMENT BY MS. DAVID

MS. DAVID: May it please the Court. On November 11th of 2011, 11/11,11, at 2:30 in the morning the Defendant, Tyrone King, entered the home of Mr. James Galloway. At the Galloway home that evening was Mr. James Galloway himself, his wife, Mrs. Karen Galloway, and their first cousin, Mr. Reggie Cousar, along with three of their grandchildren, one of whom happened to be asleep on the couch.

At 2:30 that morning there was a knock on the door. Mr. James Galloway, being the nice man that he was, decided so get up and answer that door. It was his neighbor, Mr. Tyrone King. Because it was his neighbor he allowed him to come into the home while he returned to his bedroom to dress himself and come back out for company. However, Mr. Tyrone King wasn't there to be company.

As Mr. James Galloway walked back out of his room he was shot right there in his home in his face and in the presence of his grandchild at 2:30 in the morning where his wife and grandson only heard him say, "I ain't got nothing." But wait. It didn't stop there. The defendant then runs into the bedroom where Karen Galloway is located and pistol whips her across to top of her head with a gun

causing a stray bullet to go through her bedroom wall and out the roof of her home. But wait. It still doesn't stop there.

After shooting James and pistol whipping Karen the defendant then goes to the other side of the home where he holds Mr. Reggie Cousar at gunpoint; holding him there and keeping him there until he realizes that Mrs. Karen Galloway is now on the phone with 911. Upon making that realization Mr. Tyrone King snatches the phone away from her which causes the phone to hang up, but the 911 operator immediately calls back.

At that point the defendant, Mr. Tyrone King, talks to the 911 operator and says that the bootlegger has been shot. And, yes, let's be clear. I did just say 'bootlegger' meaning someone that sold alcohol from his home without a license, but that does not give another man the right to take his life.

By this point the police have arrived at the scene. They're in front of the home. The defendant looks out and immediately decides to run. A gun in one hand and the phone still in the other hand. He is caught four houses down lying under a truck.

Ladies and gentlemen of the jury, I am Mia David. This is Mary Thomas Johnson Lee and this is Mr. Kernard Redmond, and we are Assistant Solicitors for the State of

South Carolina where we represent the people. You are the jury, and it's your job this week to pay close attention to the facts and evidence that will be presented in this case. You will hear testimony from the three family members that were present in the home when this incident took place.

You will hear multiple stories from the defendant who will tell you, first, there was someone else with him by the name of Aloysius McLaughlin that actually shot the defendant. And then the second story where he comes back and says he was alone and that it was an accident. You will also hear a 011 recording where you will listen to Mrs. Karen Galloway scream horrifically from the fright and terror that's taking place.

MR. SHAFFER: Objection, Your Honor.

THE COURT: What's the objection?

MR. SHAFFER: Passion and prejudice.

THE COURT: She's entitled to make such statement as she thinks her cases is about. What she says is not evidence, and I've explained that to the jury.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: Go ahead.

MS. DAVID: You will hear Mrs. Karen Galloway scream horrifically from the fright and terror that is taking place in her home as her husband has been shot, she has

been pistol whipped, and she has three grandchildren in the home that morning.

MR. SHAFFER: Objection. Same objection.

THE COURT: No, sir. She's entitled to give her position with regard to the case. What she says is not evidence, but she's entitled to tell the jury what she proposes to present.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: And you're entitled to be quiet and let her do it. Proceed.

MR. SHAFFER: Your Honor, may we approach?

THE COURT: No, sir. I'll let the jury step out. Wait a minute. No, sir. Come in here and we'll save some time.

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

THE COURT: Objection overruled. The facts are appropriate for the jury's consideration understanding what the Solicitor says is not fact. It's merely her presentation of what she proposes to present, and she's entitled to do that. Now, I'm going to let you have a complete opening statement for the Defense at the appropriate time also.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: But let her make her position to this jury, now, without objection.

MR. SHAFFER: Yes, sir.

THE COURT: Proceed.

MS. DAVID: At the close of my opening argument or opening statement, again, please, keep in mind this week that it is your job to pay close attention to the facts and evidence that you will be presented with as you whether or not the defendant is guilty of murder of Mr. James Galloway in his home, assault and battery of a high and aggravated nature as his pistol whipped Miss Karen Galloway across the top of her head, pointing and presenting as he held Mr. Reggie Cousar at gunpoint and possession of a weapon during the commission of a violent crime.

It is the State's request that you find the defendant guilty. Thank you.

MR. SHAFFER: Objection, Your Honor. Move to strike the last statement. It's under -- Your Honor, may we approach?

THE COURT: Apparently, counsel, you don't understand that she was entitled to tell this jury what her position is.

MR. SHAFFER: Your Honor.

THE COURT: And what she said in my view was entirely

proper for the jury's consideration. They're the finder of fact. Now, I'm going to let you make an opening statement, and I'm going to give you a wide latitude. Have at it.

MR. SHAFFER: Your Honor, if I may at some point ---

THE COURT: I've just overruled your objection. Proceed.

MR. SHAFFER: Your Honor, I didn't actually put the grounds for the objection on the record. I need to do that.

THE COURT: Make your grounds and go ahead.

MR. SHAFFER: I prefer not to do it in the jury's presence. Would you like to do it later?

THE COURT: No, sir. Make your statement. It's clear to me what she said was appropriate under the circumstances given my charge to the jury that they are the finders of the facts and what she said is not evidence. She's entitled to give her view of the case whether you like it or not.

MR. SHAFFER: Your Honor ---

THE COURT: Counsel, please don't argue with me. Make your statement, now. First time the jury is out I'll let you put it on the record, but I'm not going to delay this jury. Run every time you've got an objection. You've already made five and we haven't started this case

but five minutes. Make your statement.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: Whether or not the jury goes out I'll let him make his objection.

OPENING STATEMENT BY MR. SHAFFER

MR. SHAFFER: Morning, everyone. My name is Tristan Shaffer. I'm an attorney from Lexington and I represent Mr. King. Now, I'm not going to do what Mia did or Miss David did, excuse me, which is talk about the facts of this case in my opening statement. I'm going to tell you about what my job is. That's the Solicitor's job to talk about the facts of the case the way they see it. My job in a way is to make sure everybody follows the rules. To make sure the cops follow the rules. That's what Defense attorneys do.

Strangely, make sure the Court system follows the rules. It's not to make arguments. It's not to convince you of anything. It's just merely to make sure everybody follows the rules. And we make sure that the cops follow the rules. I make sure that the Solicitor follows the rules. Try to make sure the Judge follows the rules, but the one person that I can't make sure follows the rules is the jury. Now, y'all have taken an oath, and that oath is to try this case according to the law as the Judge gives it to you. And that's up to y'all. I can't make y'all

follow those rules.

THE COURT: Mr. Shaffer, I ask that you back up so we can hear you, too. Thank you.

MR. SHAFFER: Apologize, Your Honor.

THE COURT: That's okay. Go ahead.

MR. SHAFFER: Now, I'm going to talk to you also today during my opening -- like I said I'm not really going to talk about the facts right now, and that's because trials strange. Trial are strange and you can expect one thing going into a trial and get something completely different. So I'm not going to speculate about what the jury -- what the State is going to present. I'm going to let the State present it's case and then I'm going to get a chance to actually talk about that a little bit later.

And you will hear my opinion. You will hear my opinion on the facts, but right now you need -- you're going to hear what I think about the actual charges. Now, I'll moving this back if that's possible, Your Honor. The very first thing I'm going to tell y'all about is the primary charge in this case. He's charged with murder. My client is charged with murder. The State alleges that he murdered somebody. They allege that he murdered Mr. Mr. Galloway.

And murder is a term that gets overused in our

culture and our society. I actually saw a bumper sticker probably about two weeks ago that said, "Meat is murder." And you know -- but murder in the outside word the common definition of murder is not what we're here to define. We're here to define whether or not he meets the actual legal definition of murder. And murder is not just any old killing. Murder is the killing of malice aforethought.

The Judge is going to tell you about this later. The definition of murder, according to the South Carolina Legislature, is that murder is the killing of another person with malice aforethought. So you have to have something more than just a killing to make a murder. You have to have malice. Now, the Judge will define malice and the State will try to prove malice to y'all later on.

But it's something more than mere -- merely killing someone. You have to have more than that, and the State has taken on this burden. I actually like calling it a challenge. A challenge to prove something. They have taken on this challenge. They have to prove malice. And they have to prove that to you beyond a reasonable doubt. Or beyond any reasonable doubt. They have to say that -- they have to convince each and every one of you individually and together that he committed a killing of Mr. Galloway with malice aforethought beyond any

reasonable doubt.

Now, you're going to hear a bunch of definitions of reasonable doubt. The U.S. Supreme Court, probably about 150 years ago, said every time lawyers try to define reasonable doubt they make it more confusing. And, really, that's sort of to be expected because lawyers generally make everybody a little bit more confusing to be honest with you. They can take very simple statements like beyond all reasonable doubt and make it something very confusing.

But the way I like to look at it, the way I like to look at beyond a reasonable doubt is this: Is there a doubt in your mind that something happened. Is that doubt reasonable. If it is then that's reasonable doubt, okay. Now, I'm explaining this to y'all as this point because it's the lens. You have to look at all the evidence, and what I mean by that you have to exam each piece of evidence that comes up here, and they're going to have murder charge as well as all the other charges and they're going to have a bunch of different elements.

You're going to have to look at that evidence and say, "Does it fit here." You know, is there evidence beyond a reasonable doubt of this. Is there evidence beyond a reasonable doubt of that. And you're going to have to fill in, basically, every single element with some

piece of evidence. And every single piece of that element you're going to have to say, "Well, they proved that to me beyond any reasonable doubt," and you know, one things that the Judge asks of you and I ask of you os wait until the very end to make any decision. Pay attention, listen to everything, but wait until the end to make a decision. Because like I said trials change. Trials morph. You don't really know what the evidence is going to show until the very end.

You might think from Miss Davis' opening that you know everything about the case. Trust me, you do not know anything about this case. There are many, many more things to talk about. Now, the one thing I would like to talk about which is -- well, what I don't believe they're going to prove. You know the State has to prove the who, what, when, where and why. Basically, that's what they're here to do. That's their job to show you the who, what, when, where and why.

So that y'all can fill that in fill in each of those elements of murder and each of every other offense that they have beyond a reasonable doubt. Now, you know. There's going to be various things y'all are going to have problems with the evidence in this case, but one of the main things, one of the most important questions in this case, and I'm going to sit down after this, but the most

important question in this case is why. And that's why was Mr. Galloway killed. Thank you.

THE COURT: Does that conclude your presentation ---

MR. SHAFFER: Yes, Your Honor.

THE COURT: --- of your opening statement?

MR. SHAFFER: Yes, Your Honor.

THE COURT: Thank you. I am not limiting you in any way to your opening statement, but you understand?

MR. SHAFFER: Yes, Your Honor.

THE COURT: All right.

MR. SHAFFER: Thank you.

THE COURT: You may call your first witness.

MS. JOHNSON LEE: State calls Hosea Lemon.

HOSEA LEMON, after being duly sworn, testified as follows:

CLERK OF COURT: Please be seated and state your full name.

MR. REDMOND: Beg the Court's indulgence just one minute.

THE COURT: Sir?

MR. SHAFFER: Your Honor, I also need to talk with one person. I need to make sure sequestration order.

MR. REDMOND: Exactly. I was just making sure the sequestration order was being enforced.

THE COURT: Make sure your's is, too. I want all the

MS. JOHNSON LEE: No, Your Honor. May this witness be excused?

THE COURT: You may come down, and you are excused. You are released from your subpoena. We thank you.

THE WITNESS: Thank you.

THE COURT: Your next witness.

MS. DAVID: At this time the State would like to call Ms. Karen Galloway.

THE COURT: You may remain in the courtroom if you choose to.

KAREN GALLOWAY, after being duly sworn, testified as follows:

CLERK OF COURT: Be seated right there and state would full name.

THE COURT: Won't you please, ma'am, speak into the microphone so these folks at the far end can hear you. Thank you. Can I get you some water or something?

THE WITNESS: No, sir. Thank you.

THE COURT: Proceed.

DIRECT EXAMINATION

BY MS. DAVID:

Q. Would you please state your full name for the record?

A. Karen Denise Galloway.

Q. And what's your current age?

A. Forty-six.

Q. And where do you live?

A. [redacted]

Q. And who lives there with you?

A. Me and my three kids.

Q. All right. Are you married?

A. I'm a widow.

Q. Okay. Do you remember the date of November 11th 2011?

A. Yes.

Q. And what's significant about that date to you?

A. That's the day my husband was killed.

Q. Will you please explain to use what occurred on that evening?

A. When that evening at approximately about 11:00 or 12:00 I went to bed. We were in the bed and around 2:30, 2:45 there was a knock at the door. And I say, "I'm not going to the door." He said, "I'll go." And so he got up. He cut the hall light on and got up, and I guess he asked who was at the door and he proceeded to open the door. He came back in the room, and I said, "Who is that?" He said it was Tyrone. So I just laid in the bed. I was awoke, but I was just laying there.

And he put his shorts on. He went back out the room, and he said, "Naw, man, I don't have" and I just heard a pop. And I jumps up out the bed, and by the time I jumps

up out of the bed and started he runs in the room on me pointing the gun in my face saying, "Whose in here with you? Whose in here with you?" And I was like -- then he hits me in the top of my head and I sit down on the bed.

When he runs out my room again I goes and get the phone and call 911.

Q. Now, let's back up for a moment. Would it help you to use this diagram?

A. Yes.

Q. This diagram has been marked as Exhibit Number Six? Do you think ---

THE COURT: Counsel, have you seen this diagram?

MR. SHAFFER: Yes, sir, Your Honor. We have stipulated to this.

THE COURT: All right, sir.

BY MS. DAVID:

Q. Is this an accurate depiction of the make up of your home?

A. Yes, it is.

Q. Okay. And this is [redacted] where you live?

A. Yes, ma'am.

Q. I'm going to hand you this ruler. If you would please show us where you were located when the defendant came into your room and where your husband was located?

A. I can. I was right here in this room right here.

Q. You were in the master bedroom?
A. Yes, ma'am.
Q. And where did the defendant come from?
A. From the living room through here. The living room.
Q. And so you see him coming -- you saw him coming into your bedroom what did you do?
A. I was standing getting up out the bed at that point, and he ran in on me.
Q. And then what happened?
A. And that's when he had the gun in his right hand, and he asked me, "Who is in here with me. Who is in here with you." And that's when I said, "Reggie is here," and that's when he hit me in the top of my head.
Q. And how did he it you?
A. With the handle of the gun. And it went off, and the bullet went through the wall.
Q. Okay. And is that young man that hit you with that gun in this courtroom today?
A. Yes, he is.
Q. And what is he wearing?
A. A green shirt and some brown khakis.
Q. Will you please point him out for me?
A. He's right over there.
MS. DAVID: May the record reflect that the witness, Mrs. Karen Galloway, has identified Mr. Tyrone King as the

individual in her home that night that pistol whipped her with the gun.

BY MS. DAVID:

Q. Now, after he hit you across the head with the gun what happened next? Where does he go?

A. He left out my room and goes towards the end of the trailer. Over towards where my cousin, Reggie, was at and my grandchildren was in the other bedroom, too.

Q. And which room are your grandchildren in?

A. In the third bedroom over here.

Q. Okay. And what are you doing at this time? When he leaves out of your bedroom what do you do?

A. I'm on the phone with the 911 operator.

Q. Where is the phone located? Can you show me?

A. On the side of my bed. Right here on the side of my bed.

Q. Right there on the night stand?

A. Yeah, right beside my bed.

Q. Okay. So you get on the phone with 911 and then you talk to them and then what happened?

A. I goes in the living room and I see my husband on the floor.

Q. And that was the first time seeing him there?

A. Yes. And I'm talking with them, and I'm talking to them and he comes back out with Reggie with the gun on

Reggie. And I had the phone in my hand, and he snatched the phone out of my hand and hung up the phone. And the operator called us back, and he speak to the operator at that point, and I'm just on the chair, you know, crying.

Q. Can you remember anything that was said during that time?

A. Only thing I can remember saying that -- well, she called him back. I guess she asked him what happened or what was going on. He was like, "Yeah, yeah, my home boy shot my neighbor. He came for some liquor. He shot my neighbor." At this point he's still standing there with the gun on my cousin.

Q. And then what happened after the 911 call?

A. He's talking to her, and I'm asking him to give me the phone. I said, "Tyrone, give me the phone."

THE COURT: Turn to the microphone for us, please.

THE WITNESS: And he talked to the operator, and at that point, you know, my blinds is open and the police pulls up. And he's like, "No. I'm not about to go to jail. I'm not about to go to jail." I'm asking him to just go out to them and give himself up. And he's like, "No. No. No. So I just said, well, just tell him to leave. Just leave. So he runs to the back door. With the gun and the phone in his hand he runs to the back door.

Q. And then after he leaves what happened? What did you do after the officers arrived?

A. Well, when he leaves out the back door I open the front door and tell them he's out the back door. He's out the back door, and I goes back in the house. And I just fall out on the chair right there, you know. I just couldn't. And then my niece she came up after. They asked her to take me in the other room.

Q. Okay.

MS. DAVID: Beg the Court's indulgence just one moment.

BY MS. DAVID:

Q. Just a few more questions. Would you please tell us your husband's name?

A. James Galloway.

Q. Mr. James Galloway. And would you tell us who shot your husband in the home that evening?

A. Mr. Tyrone King.

Q. And how did you know for sure that that was Mr. Tyrone King? Did you know him?

A. Yes. He's my neighbor.

Q. Okay. For about how many years has he been your neighbor?

A. About 12 or 13 years.

Q. Did he come over to your house frequently or was this

is first time? Had he been there before?
A. No, he been there before.
Q. Okay. At this time no further questions. Would you please answer any questions the Defense counsel may have for you.

CROSS-EXAMINATION

BY MR. SHAFFER:
Q. Mrs. Galloway, very sorry for the lost of your husband. I want to run through, and I know it's a painful night in your life, but I want to run through the sequence of events one more time. So you heard a knock at the door, correct?
A. Yes.
THE COURT: You may approach if you need to.
MR. SHAFFER: Okay. Thank you, Your Honor.
THE COURT: Go ahead.
BY MR. SHAFFER:
Q. Okay. And when you heard the knock at the door did you -- Mr. Galloway got up? James got up, right?
A. Yes.
Q. And he went to the door, right?
A. Yes.
Q. What was he wearing when he went to the door?
A. A tee shirt and his boxers.
Q. All right. And at what point did you hear them

talking?

A. Well, I didn't hear them talking. He came back in the room and put his shorts on. And he came back out the room and he said, "Naw, man, I don't have nothing," and he just shot him.

Q. Okay. And at that point you heard the gunshot?

A. Yes.

Q. So the conversations began afterwards; is that right?

A. Yes. He asked him -- yeah.

Q. Okay. And you're sure it occurred after he got pants on?

A. Yes.

Q. All right. Did you tell the officer that night it occurred before he got pants on?

A. No.

Q. Okay. Do you remember talking to the officers that night? That morning?

A. Yes. They asked me who came to the house, and I told them.

Q. Okay. But you didn't tell them this was before he got pants on?

A. No, I did not.

Q. Okay. All right.

MR. SHAFFER: One second, Your Honor.

BY MR. SHAFFER:

Q. But you didn't actually see who shot him?
A. I didn't see him shoot him, but I know he shot him.
Q. And he came in the room immediately after?
A. Yes, he did.
Q. All right. And your husband sold alcohol?
A. Yes, he was disabled.
Q. Okay. And they characterize him as a bootlegger. He didn't actually make the alcohol, did he?
A. No, he didn't.
Q. He just ---
A. He did that because I was the only one working at the time.
Q. Yes, ma'am. But he just bought the alcohol and then sold it after hours?
A. He what?
Q. He wasn't the bootlegger that had the still in his room?
A. No.
Q. Do you know where he kept the alcohol at?
A. Yes.
Q. Where did he keep it?
A. It was sitting in my bedroom.
Q. Okay. Now, you had said the night of that you don't know why he would have done this; is that correct?
A. Excuse me.

Q. You said that you did not know why he would have done this. Why he would have shot him the night of; is that correct?

A. Yeah. I don't know why he shot him. That's what I want to know.

Q. Yes, ma'am.

MR. SHAFFER: Court's indulgence just a moment. No more questions, Your Honor.

THE COURT: Any further additional questions?

MS. DAVID: No further questions for Miss Galloway. Thank you.

THE COURT: Miss Galloway, you may remain in the courtroom now if you care to.

THE WITNESS: Thank you.

THE COURT: Thank you.

MS. DAVID: Your Honor, may we approach?

THE COURT: Yes.

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

MS. DAVID: Your Honor, at this time the 911 recording has been stipulated to by Defense attorney, and we're going to play it for the jury.

THE COURT: By stipulation, stipulation meaning the attorneys agree that this be played for your

consideration.

MR. REDMOND: Your Honor, if the Court would indulge us. Miss White is rebooting it right now, and that should take just a minute and we can go ahead and play it.

THE COURT: Sir?

MR. REDMOND: It should take just a minute to get the computer rebooted, and as you see the computer has shut itself down for inactivity. She's got it back up. It shouldn't take us but a second to go ahead and play it.

(WHEREUPON, State's Exhibit Number 40 was played for the jury in open Court.)

MS. DAVID: Thank you, Miss White. At this time the State would like to call our next witness, Mr. Reggie Cousar.

THE COURT: Come around, please.

REGGIE COUSAR, after being duly sworn, testified as follows:

CLERK OF COURT: Please be seated and state your full name.

THE WITNESS: My name is Reggie Cousar.

DIRECT EXAMINATION

BY MS. DAVID:

Q. And what's your current age?

A. I'm 46 years-old.

Q. Where do you live?

A. [redacted].

Q. And where were you living on November 11th?

A. [redacted].

Q. You were living at [redacted]. How long had you been staying there?

A. About, approximately, eight months to a year.

Q. Okay. And what's you current relation to this family?

A. First cousins.

Q. You're first cousins with James or Karen?

A. James and Karen Galloway.

Q. Okay. Are you currently married?

A. No.

Q. Do you have any children?

A. No.

Q. Okay. Do you remember the early morning of November 11th 2011?

A. Yes, I do.

Q. And what were you doing at this time when th incident occurred?

A. I was asleep.

Q. You were asleep. And how did you wake up?

A. I heard Karen calling me.

Q. You heard her?

A. I heard her screaming my name.

Q. And then what did you do?
A. I got up, walked around the front room and saw Tyrone King with a gun to her face.
Q. When you walked in the front room you saw?
A. I saw him, Tyrone, point the gun to her face.
Q. And then what happened?
A. Then he turned and pointed it at me.
Q. Where did he point the gun at you?
A. Right here in my chest. In my solar plexus.
Q. And how did you know it was a gun?
A. When I felt it on my chest and saw it.
Q. It was hard?
A. Um hum.
Q. Is the young man that pointed the gun at you in this courtroom today?
A. Yes, he is.
Q. What is he wearing?
A. He's wearing a green striped shirt and black glasses.
Q. Are you able to point to him for me, please?
A. Yes, I am.
Q. Will you?
A. Right there.
MS. DAVID: May the record reflect that the witness, Mr. Reggie Cousar, has identified Mr. Tyrone King as the individual in the home of Mr. James Galloway pointing a

firearm at him on November 11th.

BY MS. DAVID:

Q. Now, we have already mentioned that we have an exhibit here of [redacted]. Is this an accurate depiction of the home?

A. Yes, ma'am, it is.

Q. Can you sort of show us where you were located and how this incident occurred? Will you walk us through it?

A. I was in a room. This room light here.

Q. You're going to have to speak up for us. And if you would please use this ruler to kind so you can be closer to the mic?

A. I was in Bedroom Number Three. When I heard Karen call me I came out of the room. It's right here. Right here. I came out of the bathroom, and I saw Mr. King holding the gun to Karen's face. I was asking him what was going on. What was going on, and he started talking some of his boys did that. One of his boys did it. One of his boys did that.

And I'm asking him what's going on. Still asking him what's going on. Then I hear Karen on the phone talking about, "My husband's been shot. My husband's been shot." Look over there and see James on the floor. I rush to him, and then all of a sudden he runs out the door.

Q. About how long do you think this whole thing?

A. Oh, it was about five minutes.
Q. Five minutes at the most?
A. At the most.
Q. Prior to you coming out of the room did you hear any shots?
A. No, I didn't.
Q. What were you doing?
A. I was sleep.
Q. Okay. Prior to this night did you know Mr. Tyrone King?
A. Yeah.
Q. How did you know him?
A. A neighborhood dude. Hung around the house.
Q. And when you walked out of the room you didn't know?
A. I didn't know what was going on.
MS. DAVID: Beg the Court's indulgence just one moment.
BY MS. DAVID:
Q. Okay. I need you to tell me two things?
A. Sure.
Q. Did yes see anyone else in that house?
A. No.
Q. Please tell me who all was in the house with you?
A. Me, James, Karen and the three kids.
Q. And?

A. Tyrone King.
Q. And what happened? How closely did you all live to the Sheriff's Department?
A. Man, right around the corner.
Q. You would say?
A. I would say a block.
Q. A block?
A. Yeah.
Q. Okay. All right, Mr. Cousar. No further questions at this time. Would you please answer any questions that the Defense attorney may have for you?
A. Sure.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. All right, Reggie, tell me this, sir. You said you woke up from a gunshot, correct?
A. I did not hear the gunshot.
Q. Okay, you did not hear the gunshot. You woke up with her screaming?
A. Yes, I did.
Q. Okay. So you didn't hear the gunshot?
A. No, I didn't.
Q. All right. Did you tell the police you heard the gunshot?
A. No, I didn't.

Q. Okay. Now, did you go through the -- you then, once you woke up, you went into the living room, correct?
A. Yes, sir.
Q. And you said that he was pointing the gun at Karen; is that correct?
A. Yes, sir, he was.
Q. All right. And then he pointed the gun at you, correct?
A. Yes, he did.
Q. Okay. Now, you spoke to the police the morning of, right?
A. Yes, I did.
Q. Now, is it your testimony today that -- did you leave nothing out that you told the police regarding the cain of events that we just talked about?
A. No.
Q. Okay. Were you going to jump on him? Do you remember telling the police that you were about to jump on him?
A. Yeah.
Q. All right. But you didn't testify to that whenever the Solicitor stated?
A. No.
Q. Okay. But your testimony is definitely that he was pointing the gun at Karen?

A. Yes.
Q. Okay. And then he came in your room, and he was point the gun at you?
A. No, he never came in my room. I came outside room.
Q. When you came in the room?
A. Yes.
Q. I apologize. And you're absolutely sure that Karen didn't come in the room while he was pointing the gun at you instead?
A. I'm 100 percent positive.
Q. All right.

MR. SHAFFER: No further questions.

THE COURT: Anything further from the State?

MR. REDMOND: Beg the Court's indulgence.

MS. DAVID: No further questions from the State.

THE COURT: You may come down and remain in the courtroom if you care to.

MS. DAVID: The State would now like to call Mr. Devonte M[redacted] who is currently being sequestered.

MR. SHAFFER: Your Honor, may we approach on this?

THE COURT: Yes, sir.

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

THE COURT:

DEVONTE M[redacted], after being duly sworn, testified as follows:

THE COURT: Good morning, young man.

THE WITNESS: Good morning.

THE COURT: Good to see you again.

CLERK OF COURT: Give us your name, now, please.

THE COURT: Give us your name, please.

THE WITNESS: Devonte M[redacted].

CLERK OF COURT: There you go.

THE COURT: There you go. That's fine, son. Go ahead.

DIRECT EXAMINATION

BY MS. DAVID:

Q. Mr. Devonte, will you tell us how old are you?

A. I'm 11.

Q. You're 11. And when is your birthday?

A. On January 9th.

Q. And do you go to school here?

A. Yes.

Q. Where do you go to school?

A. I go to Bennettsville Middle School.

Q. What grade are you in?

A. The sixth.

Q. What is your teacher's name? Do you know your teacher's name? Are you a little bit nervous today? You

are. Well, you can just talk to me. Let's pretend these people aren't in here. What's your teacher's name? Do your remember November 11th 2011?

A. Yes.

Q. Yes. And what happened on that day?

A. I was on the chair.

Q. You were on the chair. Can you show me on this diagram where you were on the chair? You were laying right there?

A. Yes, ma'am.

Q. And what were you doing there?

A. Sleep.

Q. You were sleeping. And then did you hear anybody come to the house that night?

A. Yes.

Q. Yes. How did you know somebody came to the house? You saw somebody in there?

A. Yes.

Q. Who did you see?

A. Tyrone.

Q. Is he in here today?

A. I don't know.

Q. You don't know. Did you look around? Had you seen Tyrone before this night?

A. Yes.

Q. Where had you scene him at before this night? Had your scene him at your house before?
A. Um hum.
Q. Yeah?
A. Yes.
Q. A lot of times?
A. Yes.
Q. So ---
THE COURT: Talk a little louder for us, please, son.
BY MS. DAVID:
Q. So you knew who Tyrone was ---
THE COURT: You want to put him on the microphone?
BY MS. DAVID:
Q. --- when you saw him?
THE COURT: Why don't you let him sit down and talk in the microphone. You're doing fine, young fellow. Just answer the questions for us.
BY MS. DAVID:
Q. So you knew who Tyrone was when you saw him?
A. Yes.
Q. You did. Okay. What did you see Tyrone do while he was in your house?
A. He asked for some beer or liquor.
Q. He asked for some beer or some liquor. And then what happened?

A. He shot James.
Q. And who is James?
A. My granddaddy.
Q. James is your granddaddy. And how did you see him shoot James.
A. He just shot him.
Q. You saw him with the gun?
A. Yes.
Q. And where did he have that gun? How did you see the gun.
A. In his pants.
Q. You saw it in his pants. Did he pull the gun out?
A. Yes.
Q. How did he pull it out? Can you show us? Stand up and show us?
THE COURT: Stand up and show up how he did it.
THE WITNESS: The front side.
BY MS. DAVID:
Q. Yeah, and then what did he do?
A. He shot him.
Q. He shot him. How did he take it out?
A. Like that.
Q. He took it out and then did what?
A. Pointed the gun and shot him.
Q. He pointed the gun at your grandfather and shot him.

And then what did you hear?

A. A pop.

Q. You heard a pop. And what did you do?

A. I jumped.

Q. You jumped. And then what? Did you run?

A. No.

Q. No. Were you afraid?

A. Yes.

MR. SHAFFER: Your Honor, may we approach just one moment?

THE COURT: Sir?

MR. SHAFFER: May I approach, Your Honor?

THE COURT: Okay. Are you through with your examination?

MR. SHAFFER: I wanted to approach the bench, Your Honor.

THE COURT: Come around.

MR. SHAFFER: Thank you, Your Honor.

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

THE COURT: Let me get on the record. This is a child of tender years. There is a plithary of cases that say when dealing with a child of tender years she is entitled to use leading questions.

MR. SHAFFER: My objection is not leading, Your Honor.

THE COURT: What is it?

MR. SHAFFER: It's something totally different. I'd like to put on the record if you wouldn't mind getting the Court out. It's something totally different from leading. I'm not objecting to leading.

THE COURT: Well, I'm going to let you go to the jury room in just one moment. I'll bring you back. Please go.

(WHEREUPON, the jury panel was excused from the courtroom at 11:45 a.m.)

THE COURT: All right. The jury is outside the courtroom. What is your objection to this Solicitor's testimony?

MR. SHAFFER: Your Honor, my objection is the fact that Ms. David actually pointing the gun and demonstrating what he would have done. The problem with that is: A, it's not accurate according to the child's video which stated the gun was pointed at his stomach. For her to sit there and point the gun up in the air like as if she's pointing it towards someone's head is an inaccurate depiction of his statement.

THE COURT: I do not ---

MS. DAVID: Your Honor this is inaccurate ---

THE COURT: Wait a minute. Wait. I've listened very

asking them to find him guilty.

MR. SHAFFER: Your Honor, Rule 22 of the Rules of Criminal Prccedure also note ---

THE COURT: I note your objcction. We're going forward with the case. Bring the jury back. Her remarks, given the totality of her remarks were appropriately satisfactory during her opening statement. Bring the jury back for me. That is a child of tender year. She's entitled to recognize that.

MR. SHAFFER: For the record I've never objected in any way about the way she's actually handled the witness. I was objecting to her characterization.

THE COURT: That's not true. You did do it.

MR. SHAFFER: Your Honor, to clarify my objection if I misstated, and I'd like to clarify. What I intended to object to is merely her characterization of where the gun was.

THE COURT: Which was wrong. It didn't occur. It didn't happen, and you're -- I reject such a position.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: Bring the jury in.

(WHEREUPON, the jury enters the courtroom at 11:51 a.m.)

BY MS. DAVID:

Q. Young man, relax. You're doing fine.

MR. SHAFFER: Objection, Your Honor.

THE COURT: What is your objection, now?

MR. SHAFFER: May we approach?

THE COURT: What is your objection? You do not understand that this is a child of tender age, and our Courts have tried to recognize that we treat them a little differently in the courtroom as is proper. All she said was, "Young man, relax. You're doing fine. There is nothing wrong with that. Your objection is overruled. You may proceed.

BY MS. DAVID:

Q. Mr. Devonte, I thank you for talking with us today. I just have one more question for you. Did you see anyone else in the house besides Mr. Tyrone King?

A. No.

Q. No.

A. No, ma'am.

Q. No, ma'am, you didn't. And thank you. At this time will you answer any questions the Defense attorney may have for you. His name is Mr. Tristan Shaffer. Thank you?

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Good morning, Devonte. You're a little nervous to be

here; is that right? I understand. I would be nervous as well. Now, do you remember speaking to the officers the morning after or the morning of the shooting? Do you remember speaking with the cops? Do you remember them taking you to a room and sayings that it's videotaped and saying that there is -- to give a statement?

THE COURT: Son, let me question this. I'm afraid you don't understand. Apparently, the next day the officers took another statement from you. Do you remember that? Yes or no.

THE WITNESS: Statement?

THE COURT: Did you talk to them the next day?

THE WITNESS: Yes.

THE COURT: Yes. His answer is yes. Did you talk to them next day?

THE WITNESS: Yes.

THE COURT: The answer is yes. He doesn't even know that a statement is. Talk to him as a child.

MR. SHAFFER: Thank you, Your Honor. I'm sorry.

THE COURT: He has said, yes, he remembers giving a statement the next day.

BY MR. SHAFFER:

Q. Did you see him point the gun?

A. Yes.

Q. Where did he point the gun at?

A. On his stomach.

Q. His stomach. You remember him shooting the gun?

A. Uh-uh. No.

Q. You didn't see the shot. Okay. You weren't watching when he -- you heard the noise?

A. Yes, sir. I heard the noise.

Q. You heard the noise. Were you looking at him when you heard the noise?

A. No.

Q. Okay. And do you remember what James was wearing? What your granddad was wearing?

A. Yes.

Q. What was he wearing?

A. His -- had some shoes, something, but me had pants and shirt.

MR. SHAFFER: That's all the questions I have for you. I think you did a fantastic job.

THE COURT: Thank you. Does that conclude the questions of this young man?

MS. DAVID: Yes, it does. No further questions.

THE COURT: Young man, thank you so much for coming and being with us, okay. We appreciate it very much. Thank you.

MR. SHAFFER: Beg the Court's indulgence just one moment.

as follows:

CLERK OF COURT: Have a seat and state your full name.

THE COURT: Proceed.

DIRECT EXAMINATION

BY MS. DAVID:

Q. Would you please state your full name for the record?

A. Timmy Dwayne Shaw.

Q. And what is your occupation?

A. I'm a Deputy with the Marlboro County Sheriff's Office.

Q. How long have you been employed there?

A. For 12 years.

Q. And what are your duties with the Marlboro County Sheriff's Office?

A. Warrant service, answer 911 calls, respond to different emergencies.

Q. Do you ever assist with investigations?

A. On certain parts of it, yes, ma'am.

Q. Okay. Do your remember the incident from November 11th of 2011 with Mr. Tyrone King?

A. I do.

Q. And how did you become involved in this incident?

A. Actually, I was the responding officer for the 911 call and at that residence. I think the call was

originally dispatched as a burglary in progress, I believe.

Q. And how did you receive that call?

A. Over the radio from 911 Dispatch.

Q. And then what did you do?

A. Went to that location on Oriole Lane.

Q. About how long did it take you to get there?

A. Actually, we were -- the Sheriff's Office is only probably 200-yards away from that location. It was just a couple of -- not even a full minute, probably.

Q. Okay.

A. So it's just across the street.

Q. What did you do when you arrived on the scene or I'll help you out. This has been marked. This diagram has been marked as the State's Exhibit Number Seven. Will you sort of show us where you arrived on the scene?

A. Yes, ma'am.

Q. And what took place?

A. I walked over to the board.

Q. You can step down and speak to us. Defense counsel does not oppose.

MR. SHAFFER: No objection, Your Honor.

THE COURT: You may come around if you care to.

THE WITNESS: Actually, when I responded out to the location of that house we were next to is actually this

house here. It has another driveway right beside it. I pulled into this driveway and pulled my patrol car here. There is another residence here. I was actually in between the two residences.

There was actually some people standing on the front porch of the house. When I got out of my parole car I walked around the front of it. When I got to this corner right here there were people on the front porch saying somebody was still inside. Before I could start towards the front door one of the people on the front porch said he's running for the back door. I stopped. Actually ran to the back of the residence and I could hear someone running inside the residence.

When I got to the back corner the back door was still closed, but when I rounded the back corner before I could get to the back door the back door pulled open and someone run out of it. I yelled to them, "Sheriff's Department. Stop. Get on the ground." They did not. They started running on foot.

THE COURT: You may take the witness stand.

MS. DAVID:

Q. Make yourself comfortable.

A. The subject ran out. I actually pursued him on foot. He jumped this fence. There are actually houses on the side of the street. I did not want him to be able to be

able to clear this side of the fence and run towards the street without me being able to see him. I did not jump the fence. I actually ran around the side of the residence.

When I was still in foot pursuit I come to the corner of the fence. I was running across this yard. I could see someone run past the gap in between these next two homes. When I got to this corner of the residence I stopped because I didn't know where he was at.

I blocked the way to make sure he was not standing at the corner of the residence here closed in the backyard. I actually seen him slide up under this truck. I started shouting to him, "Show me your hands. Show me your hands." I actually could tell he had something in one of his hands.

Q. I was going to ask you that. Upon coming into contact with him did he have anything in his possession?

A. Yes. He had -- actually it was the street lamp, yard light, that was beside of this truck. So I had a shadow from the truck and I couldn't really see what was in his hands. And I continued to yell at him to show me what was in his hands. And he never let go, so I started yelling to put it down. He threw something towards the front of the truck up towards to motor. I slid him out from up under the truck and handcuffed and secured him. Patted

him down for weapons.

Didn't actually find any weapons. Did find a bottle of alcohol that was removed from his pocket. Laid it on the ground, secured him and moved him away from the truck to see what he threw under the truck. And it was actually the top part of a wireless house phone.

Q. At this time I would like to show you what has been marked as State's Exhibit 21 and State's Exhibit 22. Do you recognize those photos?

THE COURT: Have those exhibits been shown to Defense counsel?

MR. SHAFFER: They have been stipulated to.

THE COURT: You've seen them? Go ahead.

THE WITNESS: It's actually going to be the picture of the truck that he was under. The bottle of alcohol was pulled out of his pocket, and the actual top part of the house phone.

BY MS. DAVID:

Q. Do these photos fairly and accurately depict the scene of the arrest were the defendant was lying?

A. Yes, ma'am.

Q. On November 11th?

A. Yes, ma'am, it does.

Q. Has it been altered or charged in any Way?

A. No, ma'am, not that I can tell. No, ma'am.

MS. DAVID: At this time the State would move to publish those photos to the jury and to also have them admitted into evidence.

THE COURT: They are admitted, and you may publish at this time. As I told this jury, it is in evidence and will be with them during their deliberations. But please take a look at it and pass it around, please.

(WHEREUPON, State's Exhibit Nos. 21 and 22 were previously admitted into evidence.)

MS. DAVID: Would you like for me to continue or allow a moment for the jury to view the photos?

THE COURT: Proceed, please.

MS. DAVID: Thank you, Your Honor.

BY MS. DAVID:

Q. At the time of this chase did you see anyone else leave the back door of [redacted]?

A. No, ma'am. When I started around the corner of the actual residence the door was still closed. Only two people ended up in the backyard while I was there was myself and the subject I ended up chasing on foot.

Q. Okay. And do you see that young man in the courtroom?

A. Yes, ma'am, I do.

Q. And what is he wearing?

A. He's wearing a green shirt and glasses.

Q. Are you able to point at him for us?
A. Yes, ma'am.
MS. DAVID: Let the record reflect that Officer Timothy Shaw has identified Mr. Tyrone King as the individual that left [redacted] and was placed under arrest four houses down from that location.
THE COURT: It will so reflect.
BY MS. DAVID:
Q. Will you clarify something for me? The phone that you say you found?
A. Yes, ma'am.
Q. Can you describe how it looked? What do you mean by the top part of the phone?
A. It was actually a cordless phone for inside your home. It wasn't a cell phone for mobile use. It was a house phone. It was actually the portion you talk into and walk around your home with. It was not the bottom part of it.
Q. Now, upon coming into contact with the defendant and making the arrest what was his demeanor like?
A. He really wasn't saying anything. He was out of breath from running. I could smell a little alcohol on him. But other than that like I said he wasn't yelling or screaming.
Q. How did he appear?

A. Like I said he was out of breath. He really wasn't talking. Actually, I also shortly after that I read him his Miranda rights, but like I said he still didn't speak to me or any other anybody else that was standing there in the immediate area.

Q. Was he responsive to you like if you said, "Come here" or "Move there?"

A. Yes, ma'am. Whenever I moved him away from the truck so that we could see what was under it like I said he complied. Yes, ma'am.

Q. He was responsive just didn't say anything?

A. Yes, ma'am.

Q. And you are familiar with Miranda rights?

A. Yes, ma'am.

Q. Did you read him his Miranda rights at that time?

A. Yes, ma'am. I read them to him while we were still in the backyard at the residence.

Q. Do you have a card or anything or did you ---

A. Yes, ma'am, I have a card that I keep with me because I don't -- I didn't remember. I didn't memorize it. I want to make sure I read it off the card word for word.

Q. By any chance do you happen to have that card with you?

A. Yes, ma'am. I always keep it with me.

Q. Will you take it out and read it to us?

A. Yes, ma'am. "Suspect Rights. Miranda Warning. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to an attorney and have him or her present with you while you are being questioned. If you can't afford to hire an attorney one will be appointed to represent you before any questions if you wish.

You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand each of these rights as I have explained them to you? Having these rights in mind do you wish to talk to us now?"

Q. Thank you. Now, what happened after you read him his rights? What did you do next?

A. Well, we were just actually waiting. We called the investigators. I talked to Lieutenant Seales on the phone and advised him what had taken -- the call had got dispatched, and we waited there at the location.

I was actually going to wait until the investigator got that to the scene before removing him from the scene. But some of the family members, we could hear them from where we were standing, and they were very upset. Yelling and screaming, "Tyrone King killed one of our family members."

And I felt for their safety as well as our safety

that we needed to move him. So I recalled Lieutenant Seales and Deputy Johnson and myself took Mr. King to the Sheriff's Department and put him in interrogation room.

Q. Okay. Did you have any further involvement with the case after that?

A. Yes, ma'am. I'm actually the initial reporting officer which means I gathered all the information, put it into an incident report and filed it with the Sheriff's Department and in a computer.

Q. When did you do that incident report?

A. That same morning.

Q. I just have one quick, last question for you. On this particular, I guess, night, early morning, did you see anyone else running?

A. No, ma'am.

Q. Just that one?

A. Yes, ma'am, just the one.

Q. Thank you. No further questions at this time. Please answer any questions Defense attorney may have for you.

THE COURT: Thank you, Ms. David. Mr. Shaffer.

MR. SHAFFER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Good morning, Deputy.

testified as follows:

MR. REDMOND: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. REDMOND:

Q. Please state your name for the record?

A. It's Ricardo Prince.

Q. And by whom are you employed?

A. South Carolina Law Enforcement Division commonly known as S.L.E.D.

Q. And how long have you been so employed?

A. A little bit over four years.

Q. Now, what are your duties with S.L.E.D?

A. I'm a crime scene investigator. My responsibilities include responding to 46 counties and working violent crimes, homicides and property crimes.

Q. Okay. And are y'all referred to in a lot of instances in your work as an assisting agency?

A. Yes, sir.

Q. In other words, you assist local law enforcement in processing crime scenes?

A. Yes, sir.

Q. And in fact did you do that in this case that we're here about today?

A. Yes, sir.

Q. All right. Now, could you describe your training and experience to the ladies and gentlemen of the jury?

A. I'm a certified law enforcement officer for the State of South Carolina. I have been a police for six years. I have six years experience and I have a Bachelor's degree in sociology. I also have a Master's degree in science of criminal justice.

With S.L.E.D. I have went through a two year in house program which also includes basic photography, basic fingerprint, advance palm print and forensic examination of violent crime scenes.

Q. Now, that four years that you been with S.L.E.D. has that been in crime scene -- with crime scene?

A. Yes, sir, I did other things throughout S.L.E.D, but the majority of that is still with crime scene.

Q. Now, let's talk about crime scene and what y'all do. do you respond to a crime scene by yourself or do you operate in what is referred to as in teams?

A. Two man teams.

Q. All right. And I think Special Agent Vickie Hallman was on your team in this particular instance?

A. Yes, sir, she was my partner.

Q. Okay, now, let's talk about crime scene work. About how many crime scenes would you say you've investigated all over the State in your capacity in S.L.E.D?

A. Over 100.
Q. Now, and let's talk about something else procedurally. Do you have what's referred to as a lead senior agent and someone who is assisting?
A. Yes, sir.
Q. And I guess, initially, were you an assisting senior agent?
A. No, sir, I was the lead?
Q. You were lead, and let's talk about that. When you have the two man and sometimes the three man team, I believe, there is one agent that --
COURT REPORTER: I'm sorry.
MR. REDMOND: May it please the Court.
THE COURT: Madam Court Reporter, are you ready again?
COURT REPORTER: Yes, sir.
MR. REDMOND: Thank you, Your Honor.
THE COURT: Proceed.
BY MR. REDMOND:
Q. I think I was talking about lead investigator. Now, out of the 100 crime scenes, and in this case you were lead investigator?
A. Yes, sir.
Q. And out of those 100 crime scenes how many, estimated, would you say you had operated as the lead

investigator?

A. About half of them. About 50.

Q. Okay. And when you, just from a procedural standpoint, talk about crime scene investigation, just in general, briefly tell the ladies and gentlemen of the jury what is that you do when you get to a crime scene?

A. Well, when we get called to the scene the first thing that we do is we have a briefing with the local agency there. They will give us an overview of what occurred. They will walk us through it and just show us the scene. And when we're walking we're looking for evidence. And once we do our general walk through my partner, Vickie Hallman, she will do the photography. We will take all these pictures and just analyze where we are going to start with the crime scene.

And this particular one we walked through there. I got some letters, some number markers and marked the evidence in the house. And we started inside the home, walked all the way through and went outside the home. Did the backyard and then we went three houses down to where the subject was found. And we marked some other items of evidence.

MR. REDMOND: And before I go any further at this point I would ask that Special Agent Prince be qualified as an expert in the field of crime scene

investigation/analysis.

THE COURT: I quality him as an expert in that area. He's been in my courtroom on several occasions and has qualified as an expert.

MR. REDMOND: Thank you, Your Honor.

BY MR. REDMOND:

Q. Now, let me move on a little bit more as it relates to what you do in general. Do you collect evidence?

A. Yes, sir.

Q. And often times when you collect evidence do you take it to the S.L.E.D. lab in Columbia? The forensic laboratory for further analysis?

A. Yes, sir.

Q. Okay. And was that done in this case?

A. Yes, sir.

Q. And I'll get into specifics in just a little while. So let's now direct our attention to the 11th of November of 2011. Were you in fact dispatched to Marlboro County here in Bennettsville, on is outskirts of Bennettsville, to a crime scene?

A. Yes, sir.

Q. Could you explain to the ladies and gentlemen what took place at that time?

A. When I got there I had a briefing with the officer. It was James Campbell. He gave me a brief and pretty much

told me what occurred. Once he pretty much told me what occurred, walked me through the area, we did photography, and like I said we got out markers. We marked evidence, and when I got into the house one of the first things that I observed was a shell casings. It was a shell casings laying on the floor by the front door. We labeled that Marker Number One.

And also it was a puddle of blood. The puddle of blood was from the victim. And what we did was I took two D.N.A. swabs and I took that back to S.L.E.D. Also in the master bedroom I observed where it was a bullet hole in the wall. And I marked that as Marker Number Four.

And in Bedroom Number One I observed a bloody sock laying on the floor and I marked that as Item Number Three. That was the first thing I did. Then we carried on, worked that area and then eventually went outside.

Q. Now, and let me back up for just a minute and ask you. I talked about the date. Was this -- do y'all tend to work 9:00 to 5:00 hours or was this in the overnight hours of the 11th, in the early morning that you record this crime scene?

A. I received this call about 3:30 in the morning, and I was on call. Normally, our hours are 8:00 to 5:00, but when you're on call whenever something happens you're required to respond.

Q. And in fact you did in the overnight hours?
A. Yes, sir.
Q. Okay. Now, so you talked about being inside. Now tell us what occurred once you went outside?
A. When I went outside it was a couple things. From talking with the investigator, James Campbell, he told us that the subject was found at a residence down the street from the victim's home which was [redacted]. And he was up under the truck. I did a diagram of both of these, the inside of the home and the outside of the home.

And I saw -- it was two items collected from this truck which was Markers Number Seven and Number Eight which were a telephone that was identified as belonging to the victim's home. And it was -- Number Eight was the liquor bottle. It was a Burnett Sparkle, one half pint bottle of liquor.

Q. And, now, talking about the liquor bottle. Inside, did you observe in the master bedroom any liquor bottles?
A. Yes, sir, I did. In the closet.
Q. And were those the same type of liquor bottles as the one that was found outside?
A. Same name brand, yes, sir.
Q. Now, let's go back inside for just a moment. Did you observe any bullet holes at any time inside the house?
A. In the master bedroom, yes, sir.

Q. All right. And we'll talk about that more when I have you step down and show you the diagram. But let me just ask you this. Were y'all able to recover the bullet that made the hole?

A. No, sir. We did dowel rod projection that shows that the bullet went from the master bedroom through the wall in the den and kept going through the ceiling out of the roof. And we had an officer from Marlboro County get on the roof and see a physical hole where the bullet kept travelling.

Q. Now, and we talked about what you collected outside. Now, was there anything else outside or was that the conclusion of your role in the case? Was there further action that you took in this matter?

A. We also eventually found a gun. It was a 9-millimeter handgun with extended clip, and it was behind [redacted] which is I believe the subject's home.

Q. Okay. Behind in the wooded area behind the defendant's house; that's where the gun was found?

A. Yes, sir.

Q. Now, was that the end of your role in this?

A. Pretty much. The next day we came back.

Q. Okay. And let me back up. When you say the end of your role, at that particular time once you collected the evidence, and we'll get into that in a little bit more

detail a little later, but was that transported back to Columbia?

A. Yes, sir, it was.

Q. Was that done pursuant to your standard operate procedure?

A. Yes, sir, it was.

Q. In other words was the evidence collected and packaged pursuant to S.L.E.D's standard operating procedure?

A. Yes, sir, it was.

Q. Was it taken to Columbia and deposited with S.L.E.D. at the Forensic Laboratory on Broad River Road pursuant to standard operating procedure?

A. Yes, sir.

Q. All right. Now, was that the last time that you were in Marlboro County regarding this case or did you have to come back?

A. I had to come back.

Q. All right. Tell the ladies and gentlemen of the jury about that?

A. Okay. From the first time I responded the coroner and the doctors, too, at Marlboro Park Hospital we were advised that the bullet that the victim was shot was still inside the victim's head. So when autopsy the doctor there realized that the bullet had went through and

through. Through and through means he was shot in the head and kept going. So we were called back to come back I think by Chief Deputy. So we came back out, and you saw that in the living room there was actually a bullet sticking in the wall. And we had to cut the sheet rock and retrieve that bullet.

Q. Okay. Now, and did you actually retrieve the bullet?

A. Yes, we retrieved the bullet, and we also took two D.N.A. swabs from the bullet.

Q. Okay. Was were those again taken to the State Law Enforcement Division Forensic Laboratory in Columbia for further analysis?

A. Yes, sir.

Q. All right. I did skip something that I forgot, and that's on me. Actually, on the 11th if I'm not mistaken you go to Marlboro Park Hospital?

A. Yes, sir, I did.

Q. Okay. And what was the purpose for your trip to Marlboro Park Hospital?

A. Well, we took pictures of the victim, and also we collected G.S.R. from the victim which is a Gunshot Residue Kit.

MR. REDMOND: If the Court would indulge me. I'd like to show Agent Prince what's been marked as State's Exhibit 34, and if we have a pair of scissors so that he

can open it. And I ask that the record reflect that exhibit is sealed at this time, and we are going to unseal it at this time with this witness.

THE COURT: Record will reflect that it was unsealed in the presence of the Court.

BY MR. REDMOND:

Q. Okay. Now, have you had a chance to look over that exhibit?

A. Yes, sir.

Q. And is that the gunshot residue that was taken from the victim, James Galloway?

A. Yes, sir. My signature is on it on the back.

Q. Now, thank you. And, again, was that taken to S.L.E.D. for further analysis?

A. Yes, sir.

Q. All right. Now, let me ask you about any evidence that you got from Marlboro County. Did Brittany English with the Marlboro County Sheriff's Office give you any items of evidence?

A. Yes, sir.

Q. And among them I show you what's been marked as State's Exhibit 35.

MR. REDMOND: And same stipulations, Your Honor, that it is sealed and we are unsealing it at this time.

MR. SHAFFER: Your Honor, at this moment I object to

the chain.

THE COURT: What is your objection?

MR. REDMOND: I haven't moved it into evidence.

MR. SHAFFER: I'm just preempting what he's about to do. To move it into evidence to talk about it.

MR. REDMOND: Actually, I was not.

MR. SHAFFER: I apologize.

MR. REDMOND: All right.

THE COURT: Your objection is withdrawn; is that correct?

MR. SHAFFER: Yes, sir, Your Honor, until he starts talking about it.

MR. REDMOND: Well, on this he's just a chain. I'll just ask one question.

BY MR. REDMOND:

Q. Is that one of the items that you received from Brittany English from the Marlboro County Sheriff's Office?

A. Yes, sir.

Q. Did you collect that from the defendant?

A. No, I didn't. I got it from Brittany.

Q. Did you test it?

A. No.

Q. Do you have any idea what any of the results from test would have been?

A. No.
Q. Was your role as it relates to that piece of evidence simply being in the chain of custody?
A. Just to pick it up and take it to S.L.E.D.
Q. And in fact did you take it to S.L.E.D. and deposit it in the Evidence Box pursuant to S.L.E.D. standard operating procedure?
A. Yes, sir.
Q. Okay. That's the extent of my questions, now, as it relates to that issue. Thank you. Now, let's move on. So the next thing that you indicated is that you went and you actually recovered the bullet. Did you do a diagram from the scene of both inside and outside of the house?
A. Yes, sir.
Q. Okay. And did you also take pictures?
A. Yes, sir, I did.
Q. All right.

MR. REDMOND: Now, at this point, Your Honor, if the Court would indulge me, I would like to ask and I would ask if you could speak loud since we don't have like microphones. I don't have that problem, but if you can speak loud so that we can all hear you and the court reporter can pick up what you're saying. If I can ask you to step down.

THE COURT: I want you to speak, Mr. Witness, so all

the jurors can hear you clearly, please.

THE WITNESS: Yes, sir.

BY MR. REDMOND:

Q. And I'm actually going to turn my back to the court reporter ---

THE COURT: Counsel, you may come around and join.

MR. REDMOND: --- so that you will be standing facing the court reporter and she can pick you up a little better.

A. Okay.

Q. Now, as it relates to this first diagram could you tell the ladies and gentlemen what is State's Exhibit Number Six which is already in evidence for the record?

A. It's the inside house of [redacted] which is the victim's house. This is the address right here.

Q. And, now, as it relates to certain evidence that was found let me ask you about, if the Court would indulge me. State's Exhibit 28, would you tell the ladies and gentlemen of the jury what that is?

A. This is Marker Number One which is a cartridge case, and this is right here. Time you step into the victim's house it's the first thing I saw lying on the floor.

Q. Okay. Now, thank you.

MR. REDMOND: And, Your Honor, State's Exhibit 28 is not in evidence at this time. I would actually move it

into evidence at this time if there is no objection from the defendant.

THE COURT: Counsel, have you had an opportunity to review Exhibit 28?

MR. SHAFFER: No, Your Honor, but I understand it is, and I have no objection.

THE COURT: Sir?

MR. SHAFFER: I have no objection.

THE COURT: All right. Without objection.

(WHEREUPON, State's Exhibit No. 28 was admitted into evidence.)

BY MR. REDMOND:

Q. State's Exhibit 29, could you tell the ladies and gentlemen what it is and where it was found?

A. This is another cartridge case, Marker Number Two. It was found in the master bedroom right here like under the side of the bed.

Q. Okay. And State's Exhibit 31?

MR. REDMOND: And, Your Honor, before he answers for the record the State would move State's 29 into evidence as well.

MR. SHAFFER: No objection, Your Honor.

THE COURT: Without objection.

(WHEREUPON, State's Exhibit No. 29 was admitted into evidence.)

THE WITNESS: This is the projectile that was recovered from the wall the next day after the 11th follow up, and I put an arrow right here to let me know where I recovered the projectile from.

MR. REDMOND: And State's 31, State would move into evidence at this time.

MR. SHAFFER: No objection.

THE COURT: Again, Mr. Foreman, these matters will be with you in the jury room during your deliberations.

(WHEREUPON, State's Exhibit No. 31 was admitted into evidence.)

BY MR. REDMOND:

Q. Now, let me show you what has been marked as State's Exhibit 38, since we're still dealing with inside the house. Can you tell the ladies and gentlemen what that represents?

A. May I open it and see what it is?

Q. Oh, certainly.

MR. REDMOND: And, Your Honor, it is sealed, and we would ask that the record reflect that it's being unsealed by this witness.

THE COURT: It will.

THE WITNESS: This right here is I23, Item 23, and I believe this came from the other diagram.

Q. Okay?

A. It's part of the phone.
Q. Of the phone, okay.
MR. SHAFFER: Objection, Your Honor.
THE COURT: Sir?
MR. SHAFFER: May we approach real quick?
THE COURT: Yes, come forward.
(WHEREUPON, a bench conference was held off the record in the presence of the jury, but out of the hearing of the jury.)
MR. SHAFFER: Thank you, Your Honor.
THE WITNESS: This was inside.
BY MR. REDMOND:
Q. Okay. All right. Could you explain, and I'll let Mr. Shaffer get himself situated again. Was that exhibit, I think that is State's 38, was that found inside the house?
A. Sorry about that. This was inside the house. Wrote it right here with the corresponding battery cover at the entrance to the kitchen. So it was lying on the floor right here, and we did not put a number on this item right here.
Q. All right.
MR. REDMOND: Your Honor, the State would move State's 38 into evidence at this time.
THE COURT: All right, sir.

(WHEREUPON, State's Exhibit No. 38 was admitted into evidence.)

BY MR. REDMOND:

Q. Is there ---

MR. SHAFFER: No objection.

BY MR. REDMOND:

Q. Now, I think that would conclude inside of the house for right now until we get to your return trip. So let's go to this diagram, State's Exhibit Number Seven. What is State's Exhibit Number Seven?

A. Right here is the victim's home. This is the subject's home. And right here, this truck right here, T1, is where Marlboro County officers found him when they came and arrested him.

Number Seven and Eight: Number Seven is a telephone that has been identified as belonging to the victim's house.

Number Eight is the Burnett half pint liquor bottle that is the same as the liquor that the victims had at his master bedroom closet. And right here behind the subject's home we recovered a 9-millimeter handgun which is Marker Number Nine.

Q. Now, let's go through these exhibits. First, I'm going to show you what has been marked as State's Exhibit 38, and if you could -- and that actually has been

unsealed look like. Could you tell us what that is and if you collected that item?

A. It's the cordless cell phone, Marker Number Seven, and this was identified as coming from the victim's home. And I collected this.

Q. Okay. All right. Cordless cell phone or cordless house phone?

A. Cordless house phone.

MR. REDMOND: And, Your Honor, State move Exhibit 36 in evidence at that time.

THE COURT: All right.

MR. SHAFFER: No objection.

(WHEREUPON, State's Exhibit No. 36 was admitted into evidence.)

BY MR. REDMOND:

Q. Let me show you what's been marked as State's Exhibit 37, and this one is still sealed. I would ask that you unseal it at this time.

MS. JOHNSON LEE: Judge, if I may just put one thing on the record. With the permission of Defense counsel this morning, Madam Court Reporter was going to put the sticker on the phone itself. We opened the back there was fingerprint powder, and that's why that was opened.

THE COURT: All right.

THE WITNESS: This is part of Item Number Seven which

is the battery. The battery from the home phone that we just showed -- that I just showed you guys. This came from the back. It was separate and I collected this also.

Q. So the battery was operated, actually, separated from the actual phone ---

A. Yes, sir.

Q. --- that you found?

A. Yes, sir.

Q. Thank you. And State's Exhibit 39, could you tell the ladies and gentlemen what that is, and again, this item has been sealed and it is being unsealed at this time.

A. It's a Burnett Vodka, half pint. Marker Number Eight. The same bottle that matches what the victim had in his home inside of his closet.

Q. Okay. Now, that wasn't all that you found outside, was it?

A. No.

Q. Let me show you what has been marked as State's Exhibits ---

MR. REDMOND: And, Your Honor, for the record the lock is on the trigger of the gun. It's State's 33. State's 32, 30 and 33, could you tell us what each of those exhibits are and where they were found?

A. Okay. This is the High Point 9-millimeter handgun

that I recover behind the subject's home which is Marker Number Nine, and in it it had an extended magazine clip with six live rounds loaded.

Q. And so all of those were together and they've been separated and made separate exhibits; is that correct?

A. Yes, sir.

Q. Okay. All right. Thank you.

MR. REDMOND: And, Your Honor, I don't remember if I asked specifically that State's 38 and 39 and 37 were moved into evidence, but at this time I would like to, out of an abundance of caution move those ---

THE COURT: I will admit those in evidence.

(WHEREUPON, State's Exhibit Nos. 37 and 39 were admitted into evidence. State's Exhibit No. 38 was previously admitted into evidence)

MR. REDMOND: And along with those the State at this time moves State's 33, State's 30 and State's 32 into evidence.

THE COURT: I will accept them into evidence.

MR. REDMOND: And 32, I think it was in evidence. That's it.

THE COURT: You have had no objection as to those items, Mr. Shaffer?

MR. SHAFFER: No, Your Honor. No objection.

(WHEREUPON, State's Exhibit Nos. 30, 32 and 33 were admitted into evidence.)

BY MR. REDMOND:

Q. All right. Let me show you State's Exhibit Number Six one last time. Did you come back to the scene on the 12th of November 2011.

A. Yes, sir.

Q. And I think you testified earlier about the fact that there was a bullet; that there was a bullet that was found once y'all determined it was a through and through injury. Could you explain where in relation to this diagram that was located?

A. It was right here. Where the arrow is drawn.

Q. Oaky. Again, tell the ladies and gentlemen what procedure did y'all go through to retrieve that bullet?

A. Well, what we did was cut the sheetrock right here. And we even got a tool because it was like embedded into the 2 x 4 type thing. We had to cut some of that to get the projectile out. And we try to get the projectile out, without damaging the projectile because our firearms people will match it up and test it later on.

Q. And, again, it's already in evidence, but is that, State's Exhibit 31, that was found in the location that you described?

A. Yes, sir.

Q. All right. And, lastly, there were some pictures that we talked about that you had, and while you're standing up here get into these pictures with you. And let me do this. Starting with State's Exhibit 14, and what I'd ask you to do to save time, I'm just going to hold it up here where everybody can see. And just describe what each picture represents starting with State's Exhibit 14.

MR. REDMOND: And they are already in evidence for the record, Your Honor.

THE WITNESS: This is in the master bedroom inside the closet. It's bottles of Burnett, like they're stored maybe for individual sale inside the victim's bedroom.

Q. Okay. State's Exhibit 15?

A. I took the bottles out and took photographs of them so I could see what kind of bottles that he had of the same product.

Q. Thank you. State's Exhibit 16?

A. This looks like something, maybe, some kind if gambling slips or something. It didn't really have anything to do with this case. I saw it so I just documented it. That is in the living room.

BY MR. REDMOND:

Q. And, again, these items are in evidence already. State's 17?

A. This is -- okay, this is Item Four. According to the statements when the subject was pistol whipping the wife the gun went out and went through the wall from the master bedroom right here which is labeled Number Four. Also went through the wall right here in the dining room and the projectile kept going out the ceiling. And I've marked it as Number Four.

Q. And this would be what we commonly refer to as a ricochet action as far as the bullet is concerned?

A. Well, actually, it's just a path of travel. I put these dowel rods in here to show you the direction of travel.

Q. Okay. So, basically, it was just the direction of travel?

A. Like somebody shot. It was like it hit a wall and bounced off and went in another direction.

Q. This one went up and ended up out of the roof?

A. Yes.

Q. Understood. Thank you. State's Exhibit Number 18, could you tell the ladies and gentlemen what that represents?

A. It's a part of the bedroom ceiling, master bedroom. It's not a close up. It's just back. You can see Number Four like where the gun went out, this is before the bullet entered the wall right here. Master bedroom, okay.

Q. State's Exhibit Number 19, could you tell us what that represents, and I think it just explained what that is?

A. This is the other side of the family room right here. It went through the wall over to the other side, and I'm showing the direction of travel. And these are dowel rods just sticking these little wood pins in the wood and the bullet just kept going through the ceiling and kept going.

Q. Okay. And while I'm showing them this is that why it would be classified as a ricochet, which in incorrectly stated earlier?

A. Yes.

Q. Again, these items are all in evidence. And, again, State's 20, would you tell the ladies and gentlemen what State's 20 represents?

A. This is where are the handgun was found. This is Marker Number Nine, and I think it goes like this.

Q. Okay.

A. This is subject's home. It's like right behind the fence. I drew -- well, on the other one I drew a little line around showing where the chain link fence were, and this is like right past his backyard in a like bushes right here.

Q. All right. All right. Let's see. Next is State's Exhibit 23. Actually, could you tell us what that

represents?

A. Okay. This is Markers Seven and Eight by the pick up truck where they found the victim. This is the telephone and this is the Burnett liquor bottle.

Q. The victim or the defendant?

A. I mean the subject.

Q. Okay?

A. Defendant.

Q. Okay. Again, what do those represent, again?

A. Represents Marker Seven and Marker Eight.

Q. Cell phone and liquor bottle?

A. Yes.

Q. State's 24, could you tell us what that is?

A. This is a cartridge case that was found in the victim's master bedroom right here beside the bed which is Marker Number Two on the diagram.

Q. Okay. And based on your experience in crime scene analysis would this indicate that a shot was fired inside this bedroom?

A. Yes, sir.

Q. Okay. State's 25?

A. It's the same photograph without the Marker Number Two. That's just a general photograph. We do that before we actually mark an item.just do that to show the original location.

Q. All right. I think we've got a couple more and I'll be done. State's 26, could you tell us what that represents?

A. The first walk in the home right here is general photography. You can see the cartridge case down here on the floor, actually right there.

Q. Okay.

A. And that's right here, Marker Number One.

Q. And before I show, since it's out, I'll ask you about State's 27 as well?

A. Same thing, but it's a mid range phorograph. It a little bit closer. You can see right here.

Q. All right. And I think they're already seen State's 21 and 22, but I do want to ask you a couple of questions regarding State's 21 and State's 22. First State's 22.

A. It's Marker Number Seven, Marker Number Eight. This is the cell phone that is identified as belonging to the victim's home. And this is the Burnett liquor bottle, Marker Number Eight.

Q. And State's 21?

A. This is a general photograph of the same thing, Number Seven, Number Eight, the cordless telephone and the Burnett bottle.

Q. And do you get a better -- a further view so you can get a better view of the size of the truck?

A. Yes.

Q. And, again, they've already seen State's 21. You may take your seat.

MR. REDMOND: Beg the Court's indulgence.

BY MR. REDMOND:

Q. And just out of an abundance of caution did you sign -- I'm going to show you what's been marked as State's Exhibit Number 43 for identification at this point. From that particular copy is that your signature having received the G.S.R. kit on the defendant from Brittany English?

A. Yes, sir.

Q. Okay. Thank you.

MR. REDMOND: Again, beg the Court's indulgence just briefly. That will be all the questions.

BY MR. REDMOND:

Q. Please answer any questions that Mr. Shaffer may have.

THE COURT: It's 1:15. Would you like to have your cross-examination after lunch?

MR. SHAFFER: Yes, sir, Your Honor. I think that would be fine.

THE COURT: Could you be available to us after lunch?

THE WITNESS: Yes, sir.

THE COURT: Okay. Let's adjourn for lunch. It's

parts of the video.

THE COURT: Your agree that under the circumstances that it's proper?

MR. SHAFFER: Yes, Your Honor.

THE COURT: That's fine. All right. Bring the jury. Let's go as far as we can tonight.

MS. DAVID: We'll take the second witness on the second video tomorrow morning.

THE COURT: Bring the jury in. Y'all wait a second.

(WHEREUPON, the jury enters the courtroom at 4:15 p.m.)

THE COURT: All right. The jury is present. You may proceed.

MS. DAVID: At this time the State would like to call Investigator Shawn Feldner to the stand.

SHAWN FELDNER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. DAVID:

Q. Would you please state your full name for the record?

A. Shawn, S-H-A-W-N. Michael, M-I-C-H-A-E-L. Feldner, F-E-L-D-N-E-R.

Q. And what's your occupation?

A. I'm an investigator with the Marlboro County Sheriff's Office.

Q. And how long have you been employed with the Marlboro County Sheriff's Office?
A. For the last five years.
Q. And what are your present duties there?
A. Investigator.
Q. Okay. Were you employed in your present capacity on November 11th of 2011?
A. Yes, ma'am, i was.
Q. And were you involved in this case with the Defendant, Tyrone?
A. Yes, I was.
Q. How did you become involved in this case?
A. I was called out by cell phone a little after 3:00 a.m. on that night or early morning.
Q. And once you received the call what did you do?
A. I responded to Oriole Lane which is located off of Fruit Street. Almost across the street from the Sheriff's Office. I arrived on the scene and Captain Billy Cheeks briefed me of what we had.
Q. Okay. And once he briefed you did you stay on the scene or did you go back to the Office? What happened next?
A. I stayed on the scene briefly. Captain Cheeks informed me that there were some witnesses in the residence. So I helped gather the witnesses up which a

few of them were some kids, and we had to get them dressed. And between myself and Agent English also with the County we transported the witnesses to the Sheriff's Office.

Q. So once you were at the Sheriff's Office did you get a chance to interview or speak with the Defendant, Tyrone King?

A. Yes, ma'am, I did.

Q. Okay. And was this interview recorded?

A. It was. We have an interview room at the Sheriff's Office that's approximately 10 by 10. There is a single desk with a single chair that sits on the back wall and there are two chairs usually where the investigator sit. It's on the front side, in the interrogation room or interview room. There is a camera right over the door when you walk in, and right over the table mounted to the ceiling is a microphone. And I advised him that we were on record and that we were being recorded.

Q. Okay. Now, during this time did you ask the defendant any questions?

A. No, ma'am, not at that time.

Q. Did he say anything to you?

A. Yes. He was very anxious to say something and talk. Sergeant English was in the process of conducting a G.S.R. Kit which is Gunshot Residue Kit.

THE COURT: Talk in the microphone a little bit for me.

THE WITNESS: Yes. I'm sorry, Your Honor.

BY MS. DAVID:

Q. You said he did ask you questions?

A. Yes. Part of the process is -- it's kind of lengthy, and he had some questions in reference to the G.S.R. Kit, and us explained the process to him. He made the comment that he had fired the gun and he made the comment more than once.

Also during that time he referenced Mr. Maylon Padgett, who is a deceased lawyer in Bennettsville. And he also referenced Mr. Ronnie Crow, who is a practicing attorney here in Bennettsville also. Now, he never wished for any representation. He was just inquiring about their whereabouts and how were they. And I explained to him that they were doing good.

He also made some comments and talked about some police officers with the Marlboro County Sheriff's Office and also with the City of Bennettsville. He referenced Marlboro Terry, Charles Lemon and John Valdaliso with the City or was with the City.

And during the process he mentioned something about the early morning hours of wanting to talk about it, and I would immediately stop him and advised him that he would

have the proper time to talk about that. Right now was not the proper time. He was also wanted to smoke a cigarette, and I told him that as soon as we finished the G.S.R. Kit I give my word we would go and he could smoke a cigarette and when we came back in he could talk about what happened and what occurred that night.

Q. Now, during this time was the Defendant speaking with you freely and voluntarily?

A. Yes, he was.

Q. Did he appear to be under the influence of alcohol or drugs?

A. You could smell alcohol, but to me he did not appear to be under the influence. In other words, he knew what he was doing. He didn't have any slurred speech. He was excited and anxious, but as far as being intoxicated I couldn't tell you he was intoxicated.

Q. Did he appear to be physically or mentally impaired in any way?

A. No, ma'am.

Q. Was he denied access to a phone? A bathroom? Food or drink?

A. If he had asked, as he did with the cigarette, we would have obliged. We have a bathroom right across the hallway from the interview room. Matter of fact he had a drink -- he had a bottle of water that he was drinking

when I entered the room so someone had already gotten him a bottle of water.

Q. About how long do you think this interview was?

A. The process of the G.S.R. Kit was about 20 minutes, give or take. I'm not really sure on the time.

Q. And at what point did you read him his Miranda rights?

A. Once the G.S.R. Kit was completed, as I had told him that I would do, we took him out. He smoked a cigarette and we have a small lab, and we were able to turn the exhaust fan on and let him smoke.

And it was at that time that we carried him back into the interview room. Once again I advised him that we were on record, pointed to the camera. And it was at that time that I read him the Miranda Warnings.

Q. Okay. I show you what has been marked as State's Exhibit Number Two. Do you recognize it?

A. Yes, ma'am, I do. This is the standard form that we use at our Sheriff's Office. There is actually a folder inside the interview room that has blanks of our Miranda warnings. At the top I write the case number if I have the case number at the time. And then it says, "Place, Date and Time." Place was Marlboro County Sheriff's Office. Date was November 11th 2011. And the time was 0454 military time which is 4:54 a.m.

Then says, "Your Rights." It says, "Before we ask you any questions you must understand your rights. And there is one, two, three, four and five, and there are five sentences. I read each sentence. The sentences are:

Number One: You have the right to remain silent.

Two: Anything you say can and will be used against you in Court.

Number Three: You have the right to talk to a lawyer before any -- for advice before we ask you any questions and have him with you during questions.

Number Four: If you cannot afford a lawyer the Court will appoint one for you before any questioning if you wish.

Number Five: If you decide to answer questions now without a lawyer present you will still have the right to stop at any time until you talk to a lawyer."

It was at this time that I advised Mr. King that if he was willing to talk to us that he would need to sign here, but before that I would want to read him his waiver of rights.

And there is a paragraph, and on that paragraph it states: "I have read the statement of my rights and understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No

promises or threats have been made to me, and no pressure or coercion of any kind has been made or used against me by anyone."

Q. Now, was this form signed by you?

A. Yes, it was. It was witnessed by me after Mr. King signed the agreement to talk to us, and after I witnessed it I handed it to my partner, Brittany English, and he witnessed it also.

Q. At the time did Mr. King appear to understand his rights?

A. Yes, ma'am.

Q. Did he ---

A. I'm sorry.

Q. Did he understand English?

A. Yes, ma'am.

Q. Okay. Did he appear at this time to be affected by drugs or alcohol in any way?

A. No, ma'am.

Q. How did he respond when asked whether or not he wanted an attorney?

A. When he wanted an attorney he didn't respond. He didn't require or request an attorney. He didn't speak to me about any attorney. Like I said prior he talked about Ronnie Crow and about Mr. Maylon Padgett. He just kind of wanted to know how they had been doing. He never, once I

read the Miranda, asked about the lawyer.

Q. He agreed to talk to you without an lawyer?

A. That's correct.

Q. Did he ever change his mind once questioning began?

A. No, ma'am.

Q. To the best of your knowledge the defendant's statement were freely and voluntarily given?

A. Yes.

Q. Ill now show you what has been marked as State's Exhibit Number Five. Do you recognize it?

A. I do. This is a C.D. that would have been recorded. As far as the entire time our recording machines play this is what it's recorded down on to a C.D.

Q. Have you had the opportunity to review that C.D. in its entirety?

A. I have.

Q. Does it accurately reflect what took place that morning?

A. Yes, ma'am, it does.

MS. DAVID: At this time the State would like to move to have Exhibit Number Five, the D.V.D, moved into evidence.

THE COURT: We'll put it in evidence.

(WHEREUPON, State's Exhibit No. 5 was admitted into evidence.)

BY MS. DAVID:

Q. Now, Mr. Feldner, once the Miranda warnings were given to the defendant did you ask him any questions at that time?

A. It was at that time that I basically asked Mr. King to tell me in his own words what had happened.

Q. And what did he tell you?

A. He said that ---

THE COURT: Let me explain to the jury. There is in evidence and will be played for your consideration the video to which he referred. That video, unfortunately, in certain aspects is of poor quality. And in some instances what was said can't even be heard.

Counsel for the State and the Defendant, for the benefit of the jury, have agreed that we will permit this testimony as to what he said thereafter play the video believing that this will enable you to get the full context of what was said. And counsel for the State and the Defendant have agreed to this procedure. Proceed.

THE WITNESS: Mr. King stated that he lived on Oriole Lane right next to Mr. James Galloway in his statement. Known of him for 12 or 15 years, somewhere in there. And that he had gone to that residence that night to purchase a bottle of liquor. And I think he said a pint of liquor somewhere after that there was gentlemen by the name of

Aloysius that was riding around the neighborhood and that there was a black female driver with him in a black Acura or Honda.

He knew in Aloysius but did not know the female driving. Mr. Aloysius referenced alcohol in their conversation, and the two of them returned to the victim's residence where they go inside. It's at that time that Mr. King states that Aloysius shoots the victim. Mr. King goes over and grabs the gun from Aloysius.

His wife comes out, and of course, is hysterical, and he's tries to calm her down. He admits that he did wave the gun at her or swing the gun at her. And she gets on the telephone and calls someone. He doesn't reference who she calls, but knows that she's talking to someone on the phone. He's asking here at this time, "Please, please don't do this. Don't do this. Just calm down." And then he references her husband laying on the ground.

Then she was hysterical, and he one again, "Please don't do this. Don't do this." At that time he grabs the phone from her. Snatches it out of her hand. And again tries to rationalize with her, "Don't do this. Don't do this." As he's looking out the front door fixing to exit the residence police officer arrives. He sees the police officer and runs towards the back of the residence to the back door where he sees Aloysius again.

He still has the gun, and he says that Aloysius asks him for the gun, so he gives the gun to Aloysius, and they run out the back door. As he exits the back door he sees a police officer. He jumps over the fence and begins to run behind the residence. He says Aloysius keeps running straight behind the residence into the woods where he was apprehended a couple of trailers or residences down underneath a vehicle.

Q. Now, just to be clear this is what Mr. Tyrone King is telling you took place?

A. That is correct.

Q. And will you clarify for the jury who this Aloysius is?

A. Aloysius or Aloysius McLaughlin is from McColl, South Carolina.

Q. Okay.

MS. DAVID: Beg the Court's indulgence for just one moment.

BY MS. DAVID:

Q. One more question. At any point in time did the defendant admitting to hitting Ms. Karen Galloway in the head with the gun?

A. I remember him saying that he swung the gun at her.

Q. Okay.

A. And it may reference that in the video, and it made

reference, but I don't remember him stating he swung the gun at her. He did -- I asked him how much gunshots he heard, and he said he heard one.

Q. Okay?

MS. DAVID: No further questions at this time, Your Honor.

THE COURT: You may examine, Mr. Shaffer.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Investigator Feldner, you said that he was -- he had been drinking but he wasn't under the influence?

A. I smelled alcohol. Yes, sir.

Q. Okay, and regarding what they had said about the gun, swinging the gun, you first described that as waving, correct?

A. Waving, swinging. I think he actually said swinging in the video.

Q. Okay. Do you -- did you take that to mean that he admitted to shooting -- hitting her or not?

A. If I'm not mistaken he does say, 'hit her' in the video. We just have to clarify. You're asking me to remember a long, lengthy video.

Q. I understand, but to them you didn't state that, correct? You didn't state that he necessarily did that?

A. No. He swung it.

Q. Okay.

MR. SHAFFER: Court's indulgence. No further questions, Your Honor.

THE COURT: You have any reply?

MS. DAVID: Nothing further at this time. At this time, Your Honor, the State would move to publish the video to the jury. We will again at Minute 4:54 once his Miranda rights have been read to him which is about 20 minutes into the video. Then we will have that one point where we fast forward to which has been previously ruled upon by you.

THE COURT: You may proceed.

(WHEREUPON, State's Exhibit Number Five was played for the jury in open Court.)

THE COURT: Does that conclude the video?

MS. DAVID: Yes, Your Honor.

THE COURT: All right. With the video having been completed are there any additional questions by the State?

MS. DAVID: No, Your Honor.

THE COURT: Any additional inquire by the Defense?

MR. SHAFFER: Just one or actually a couple.

BY MR. SHAFFER:

Q. Who is Johnson?

A. That he's refers to in the statement?

Q. Yes.

Sheriff's Office in my vehicle.

MR. SHAFFER: No further questions.

THE COURT: All right. Was there any other questions from the State?

MR. REDMOND: Beg the Court's indulgence. I think may there be a few additional questions base on some questions asked in cross.

REDIRECT EXAMINATION

BY MS. DAVID:

Q. Now, while participating in your investigation in this early morning hour did you investigate any other participants? Did you investigate anybody else that morning?

A. No, ma'am, I didn't.

Q. Did you -- you did not?

A. As far as someone participating in the crime?

Q. Well, did you ---

MR. SHAFFER: Your Honor, objection.

THE COURT: What is your objections?

MR. SHAFFER: Outside of the scope of what I asked.

THE COURT: I think it does. Go ahead. These questions are appropriate based on your examination. Go ahead.

BY MS. DAVID:

Q. Did you interview anyone else?

A. Yes, we interviewed some other witnesses in the case. Specifically, after this statement myself and Investigator English are familiar with Aloysius. We immediately contacted him, and he was either brought to the Sheriff's Office or drove to the Sheriff's Office where he was interviewed and gave a statement.

Q. Okay. Thank you.

MS. DAVID: No further questions.

THE COURT: All right.

MR. SHAFFER: None, Your Honor.

THE COURT: This witness, you may come down.

THE WITNESS: Thank you, Your Honor.

COLLOQUY

THE COURT: It's five o'clock. It's a good time to quit. As I understand it -- do you have any other witnesses tonight?

A. Yes, Your Honor. If we could I'd like to call at least ---

THE COURT: Go ahead. That's fine. I didn't realize you had some more tonight, but that's fine. Go ahead.

MS. DAVID: At this time the State would like to call Aloysius McLaughlin.

MR. SHAFFER: Your Honor, I have a matter of law.

THE COURT: Say what?

MR. SHAFFER: Your Honor, I have a matter of law

before this begins.

THE COURT: Let you go to the jury room. I'll be calling you right back.

(WHEREUPON, the jury panel was excused from the courtroom at at 4:58 p.m.)

THE COURT: What's your question of law?

MR. SHAFFER: Your Honor, I believe that I had objected under 404(B), 403 and 401 to any reference by this witness to the pending charges.

MS. DAVID: Your Honor, you previously ruled on this and said you would allow to defendant to reply to ---

MR. SHAFFER: And, Your Honor, that was ruled in chambers, sorry.

THE COURT: We're not -- you didn't call him for any pending charges?

MS. DAVID: No, Your Honor, but he might reply based on a pending charge. I am going to ask him was he with the defendant on this night, and I am going to ask him, you know, were they friends.

THE COURT: You can do that, but don't go into anything further, you understand? About any pending charges. Don't you understand that?

MS. DAVID: Yes, Your Honor.

THE COURT: Let there be no question about it, now. If you do that you're getting into trouble that we don't

need in as much as that video referenced this individual I'm going to let him testify as to whether he was there or not. That's going to end it. Do you understand that?

MS. DAVID: Yes, Your Honor. So he is not to mention that he would not have been with the defendant the night before because the defendant had robbed him two weeks prior.

THE COURT: We went through that. That's got knowledge to do with this case, all right.

MS. DAVID: Yes, Your Honor.

THE COURT: If you do that I'm going to declare a mistrial, now, I tell you one more time. How strong can I be with you, Mia, on this issue?

MR. SHAFFER: I wont.

THE COURT: You tell me what you're going to elicit from him.

MS. DAVID: I am only going to ask him if he was at the scene with Mr. Tyrone King.

THE COURT: You can do that. Now, what's your objection to that, Mr. Shaffer?

MR. SHAFFER: Your Honor, I have no objection to that question.

THE COURT: Sir?

MR. SHAFFER: I have no objection to that question.

THE COURT: I didn't think so. Bring the jury back.

Kernard?

MR. REDMOND: Yes, sir.

THE COURT: I'm warning you both, now.

MR. REDMOND: Yes, sir. I'm fine.

THE COURT: And I tell this witness respond to her question and hers only. No reference to anything that occurred about an alleged robbery the night before that. You're understand that.

THE WITNESS: Yes, sir.

MR. REDMOND: Now, Your Honor, just to be clear, and I know it might be necessary to do a proffer just to be sure, but I do think it is proper, without getting into reasons why that, because that was a reference on the table. Well, actually, there was a reference about this incident. We are not getting into that, but he made a comment that we are all good now or we are cool now referring to the defendant and ---

THE COURT: I'll permit that as long as you don't talk about a robbery the night before.

MR. REDMOND: Absolutely, and that's what we're not getting into.

THE COURT: Okay. If they cool, they cool. That's fine with me. I ---

MR. REDMOND: Judge, we're not alleging -- time out. Let me ---

THE COURT: You're alleging that they're cool.

MR. REDMOND: No, Judge. I want to be clear on this point. I'm not alleging that they're cool. We're saying that we want to be able to ask them at the time of this incident were y'all friends. They were not. He says they were. I don't think the defendant -- that Mr. McLaughlin is going to say they were.

THE COURT: Whatever his answer. He can answer that.

MR. REDMOND: I just want to be clear.

THE COURT: I understand that. I understood that he said they were cool. He may not say they were cool. But we'll see. Bring the jury in. Just leave that question of robbery alone, you understand that, Mr. Witness?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. SHAFFER: Your Honor, before the jury ---

THE COURT: Wait a minute. Hold on. What's wrong now?

MR. SHAFFER: I think the jury is coming in now?

THE COURT: Bring them back. You have something else to say?

MR. SHAFFER: I can do it by approaching, Your Honor.

THE COURT: Come around.

(WHEREUPON, a bench conference was held off the record, but out of the presence of the jury.)

THE COURT: Bring the jury in.

(WHEREUPON, the jury enters the courtroom at 5:03 p.m.)

THE COURT: Call your witness.

MS. DAVID: At this time the State would like to call Aloysius McLaughlin to the stand.

ALOYSIUS MCLAUGHLIN, after being duly sworn, testified as follows:

CLERK OF COURT: Be seated.

DIRECT EXAMINATION

BY MS. DAVID:

Q. Would you please state your full name for the record?

A. Aloysius McLaughlin.

Q. And what is your current age?

A. Twenty-seven.

Q. And where do you live?

A. Clio.

Q. Are you married?

A. Uh uh.

Q. You have any children?

A. Two.

Q. Will you please tell us where you were on the night of November 10th going into the morning of November the 11th?

A. I was in McColl at the Ashland Apartments.

Q. At whose house?
A. Christina Malloy.
Q. And who is she to you?
A. A friend.
Q. Was anybody else with you all?
A. My girlfriend and my sister.
Q. And where else did y'all go after that? What time is this?
A. I was other there around 8:00 to 10:00, 12:00, and we got home around twelve o'clock to my momma's house.
Q. Where your mother live?
A. In McColl.
Q. And what did you do after you got to your mother's house?
A. I went to sleep.
Q. You went to sleep. When did you wake up?
A. When they knocked at the door.
Q. And what did they say to you?
A. They said, "You need to come with us" and I was like, 'for what'. And then they said, "We can't tell you right now. Just come with us."
Q. Where did you go?
A. To the Sheriff's Department.
Q. Did you meet with anybody at the Sheriff's Department?

A. Yeah, if I'm not mistaken English.

THE COURT: You need to talk a little louder so she can hear down there.

THE WITNESS: If I'm not mistaken Brittany English.

THE COURT: Thank you.

BY MS. DAVID:

Q. English?

A. Brittany.

Q. At any point on the night of November 10th or early morning of November 11th were you with the Defendant, Tyrone King?

A. No, ma'am.

Q. During that time on the night of November 10th and early morning of November 11th were you cool or in other words friends with Tyrone King at that time?

A. No, ma'am.

Q. Thank you. At this point the State has no further questions. Please answer any questions that the Defense attorney may have for you.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. You're currently in jail, is that correct?

A. Yes, sir.

Q. Okay. I was stating the obvious. Now, are you being promised anything ---

A. No, sir.
Q. --- to be here?
A. No, sir.
Q. Okay. You haven't been told ---
THE COURT: You need to talk a little bit louder for my court reporter.
BY MR. SHAFFER:
Q. You haven't been told that you would get help in your charges in any way?
A. No, sir.
Q. Why are you currently in jail?
A. Possession with intent to distribute marijuana near a school proximity and conspiracy.
Q. Okay. And do you know how much time you're possibly looking at?
A. No.
Q. Do you know if -- do you think that testifying here today is going to help you out in any way?
A. No, I wasn't told that.
Q. Okay. Do you think it would?
A. No, I don't think that.
Q. Okay.
A. I'm just here to state the facts. I wasn't there and I didn't have knowledge to do with it. That's what I'm here for.

Q. Okay.

MR. SHAFFER: Your Honor, Court's indulgence just one moment. Your Honor, may we approach?

THE COURT: Yes, sir.

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

COLLOQUY

THE COURT: Let you go to your jury room for a moment.

(WHEREUPON, the jury panel was excused from the courtroom at 5:10 p.m.)

THE COURT: All right. The jury is outside of the presence of the Court. Now what?

MR. SHAFFER: Your Honor, I apologize.

THE COURT: Come around the front. What have you got for the record now?

MR. SHAFFER: Your Honor, I apologize. I interrupted the trial because by client believes he had heard Miss David tell Mr. McLaughlin that his charges would be dismissed immediately prior to calling him to the stand. I understand that she's denying it. I didn't hear anything either. If the other attorney who's at the table, but I need to put that on the record.

THE COURT: Have you interrupted on a motion on some

5:13 p.m.)

MR. SHAFFER: We have no further questions of this witness, Your Honor.

THE COURT: All right. You may come down. Call your next witness.

MS. DAVID: At this time the State would like to call Melissa Graham to the stand.

MELISSA GRAHAM, after being duly sworn, testified as follows:

THE COURT: Have a seat, please. I will ask that you please speak into the microphone so those juror way down there can hear you, please. Thank you.

DIRECT EXAMINATION

BY MS. DAVID:

Q. Would you please state your full name for the record?

A. Melissa Wyette Graham.

Q. And how old are you?

A. Twenty-six.

Q. And where do you currently live?

A. [redacted].

Q. Do you remember the night of November 10th 2011? Early morning of 2011?

A. Yes.

THE COURT: Talk a little louder.

THE WITNESS: Yes.

BY MS. DAVID:

Q. And where were you on that night?

A. I was at my friend, Christina, house.

Q. Around what time is this?

A. Well, we were there all day. We were there all day. It was 12:00, about one o'clock. We had left about 1:00 or 2:00 when -- something like that 1:00 or 2:00.

Q. And who was with you?

A. My ex-boyfriend, Aloysius, and his sister, Jazz.

Q. Now, you say ex-boyfriend.

A. Yeah.

Q. When did y'all break up?

A. Well, we on the outskirts now, but I wouldn't say broke up, too. But you know what I'm saying. Trials and tribulations, we got our own personal problems.

Q. So at the time of November 10th ---

A. We were together.

Q. --- until November 11th you were with your boyfriend?

A. Yes, sir.

Q. Aloysius McLaughlin?

A. Yeah.

Q. And you two were at Christina's house. Where dud you go when you left Christina's house?

A. To his mother's house.

Q. And where did you go from there?

A. Just to the Sheriff's Office.

Q. How did you get to the Sheriff's Office? What occurred?

A. They came by to the house that morning about four o'clock and said they needed to talk to us about something that happened that night. So we looking like, 'Oh, Lord, What we done did now' you know what I'm saying. He's talking about he couldn't talk to us right then. He would talk to us when we get down there.

THE COURT: Show down a little bit, please.

THE WITNESS: He said he would talk when we got down there. So when we got down there that's when he told us that he was dealing with a murder with Tyrone King. So we looking like how we going to help this man murder somebody he just robbed us ---

MR. SHAFFER: Objection, Your Honor.

THE COURT: Wait. Don't go. Rephrase your question.

MR. SHAFFER: Your Honor, I move to strike and ---

THE COURT: I'll strike that. Go ahead. Go ahead.

BY MS. DAVID:

Q. So just to clarify you were with your ---

A. Boyfriend's sister.

Q. That whole night?

A. Yes, ma'am.

Q. Did you see the Defendant, Tyrone King, that night?

A. Uh-huh. No.

Q. At that time we have no further questions. Please answer any questions the Defense attorney may have.

MR. SHAFFER: Your Honor, may we approach?

THE COURT: Yes, sir.

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

MR. SHAFFER: I'm going to have you go to the jury room for just a moment.

(WHEREUPON, the jury panel was excused from the courtroom at 5:19 p.m.)

THE COURT: Wait a minute right here. Move over so everybody can hear what Hattie says. Hattie, can you play that back for me exactly he what -- can you play it back? Well, tell me what it says, loudly.

COURT REPORTER: "How we going to help this man murder somebody he just robbed us." And that's all that I got that she said on that. And that's when he stopped her.

THE COURT: I will strike that and tell them not to consider that. Bring the jury back. Don't bring up that. The question is 'were you with him or not'. Do you understand that?

THE WITNESS: Um-hum.

(WHEREUPON, the jury panel enters the courtroom at 5:21 p.m.)

THE COURT: The last utterance made by this witness as to this man is strickened from the record. Not a part of the record. You must not and may not consider that remark in any way whatsoever. It's totally irrelevant to any issue in this case. It's strickened, and is not to be considered. I'm referring to that last part, "This man, etc." Everybody understand that?

MR. REDMOND: Beg the Court's indulgence.

THE COURT: Is that sufficient for your purposes?

MR. SHAFFER: Your Honor, may we approach?

THE COURT: Yes, sir. One more time.

MR. SHAFFER: Thank you.

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

THE COURT: All right. Does that conclude the testimony of this witness?

MS. DAVID: I have two more questions, Your Honor.

THE COURT: All right. You may have your cross-examination in a minute and any motions I'll hear after the jury is gone. Go ahead.

BY MS. DAVID:

Q. On the night of November 10th and early morning of

November 11th were you cool with and/or friends with Mr. Tyrone King?

A. No, ma'am. No, ma'am.

Q. No further questions. Please answer any questions the Defense attorney may have for you.

THE COURT: Yes, sir.

MR. SHAFFER: Just one question.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Were you promised anything to testify here today?

A. No.

Q. Okay. Do you have a pending charge.

A. Yes.

Q. Are you hoping that will -- you get consideration on that pending charge by appearing today?

A. No, I had no thought about it, but ---

Q. Thank you.

THE COURT: All right. You may come down. Is that the last witness for this evening?

MS. DAVID: Yes, Your Honor.

COLLOQUY

THE COURT: Okay. Mr. Foreman, ladies and gentlemen, you have been here very patiently all afternoon, and I note that you've listened with great intent as simply evidence of a good jury doing their duty under their oath,

and we all appreciate it. Let you go now. Be back in the jury room at 9:30. Remember my admonitions. Don't discuss the case. Make no independent inquiry. Let no one discuss it with you. See you in the morning at 9:30.

(WHEREUPON, the jury panel was excused from the courtroom at 5:23 p.m.)

THE COURT: All right. The jury is gone. You had a motion as I understand it? Yes, sir.

MR. SHAFFER: Yes, sir, Your Honor. I would be moving for a mistrial. I believe that the instruction is insufficient to cure the fact that he had a previous armed robbery charge pending.

THE COURT: You talking to the table. Talk to me.

MR. SHAFFER: I apologize, Your Honor. I move for a mistrial. I believe that the instruction that you gave, the curative instruction, was insufficient to cure the prejudice of my client.

THE COURT: Why didn't you give me another instruction you want? I'll give it.

MR. SHAFFER: Your Honor, I don't believe any instruction, quite honestly, would be sufficient.

THE COURT: What is your concern? This witness, young girl, blurted out something that was not unresponsive to the prosecutor's question. You cannot allege in that the prosecutor in any way elicited that

remark. You don't allege that, do you?

MR. SHAFFER: No, Your Honor. I don't allege that they elicited it.

THE COURT: That this witness just blurted it out, and I told the jury to excuse it and to dismiss it and it's not relevant. There is no part in the record, and if you've got an addition instruction to them I'll be glad to do it. But that little statement blurted out by this witnesses is not sufficient to cause a mistrial in this case.

I'm not sure that the jury even heard it, but she said it. And I've instructed the jury, and I respectfully decline to mistrial on something that she said that was not asked for by the Solicitor.

MR. SHAFFER: Thank you, Your Honor. And just for clarification purposes that statement was that he had previously robbed him.

THE COURT: What exactly was the statement? Let's get it on the record.

(WHEREUPON, the court reporter reads into the record.)

MR. REDMOND: Your Honor, I think we can kill some time here.

MR. SHAFFER: Withdraw the second one. I think I can ---

THE COURT: Sir?

MR. SHAFFER: I'm going to withdraw. It's actually in the video, so I can withdraw.

THE COURT: You're going to withdraw the objection?

MR. SHAFFER: Yes, Your Honor. I'm going to withdraw the objection to the robbery because it was in the video. I believe it's already in evidence so I don't really have any grounds for a mistrial at this point. Thank you, Your Honor.

THE COURT: That's solves that problem. All right. Both of you have had a busy day for the State and the Defense, and I congratulate you both on the way the case is moving along. How many more witness does the State -- we've got a video in the morning and that witness. We will deal with it the same way we did with the last one. How many other witnesses you calling?

MS. DAVID: We're expecting to call between seven and eight witnesses tomorrow.

THE COURT: Some of them will be relatively short, will they not?

MS. DAVID: Yes, sir.

THE COURT: Can we agree probably that the State will conclude its testimony by lunch?

MS. DAVID: No, Your Honor.

THE COURT: You will not?

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF MARLBORO	)	2012-GS-34-0024
		2012-GS-34-0026
		2012-GS-34-2028

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
TYRONE J. KING	)	
DEFENDANT	)	

September 10-13, 2012
Bennettsville, South Carolina
VOLUME NO. 03 OF 04

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE; and a jury.

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

MIA DAVID, ASSISTANT SOLICITOR
Attorney for the State

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR
Attorney for the State

TRISTAN SHAFFER, ESQUIRE
Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

Investigator Jamie Seales.

JAMIE SEALES, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. DAVID:

Q. Would you please state your full name for the record?

A. Jamie Glenn Seales.

Q. And what is your occupation?

A. I'm an Investigator with the Marlboro County Sheriff's Office.

Q. And how long have been an investigator there?

A. I've been back with the Sheriff's Office since October 2007.

Q. Do you have any previous law enforcement experience?

A. Yes, I do. I started with Probation and Parole in 1997. I came to the Sheriff's Office in 2005 as an investigator. I then worked with the State Law Enforcement Division, commonly known as S.L.E.D. for about 18 months and then back to the Sheriff's Office.

Q. What are your present duties at the Sheriff's Office?

A. Lieutenant over investigations. I supervise the Investigations Division.

Q. And did you participate in this investigation of Mr. Tyrone King?

A. I did.

Q. And how did you become involved in the investigation?
A. On the date in question I received a phone call from Central Dispatch and some of the responding officers come told me what was going on. At that time I began to call other investigators to respond and called the Sheriff to brief the Sheriff. And started assigning investigators. Started assigning them, and then called State Law Enforcement Division for assistance.
Q. Okay. Do you have an opportunity to interview Mr. Tyrone King?
A. Yes, I did.
Q. And when was this?
A. You have the form. I think it was 11/16 on the form.
Q. That is correct. I show you what has been marked as State's Exhibit Number Three. Do you recognize it?
A. Yes, I do.
Q. Will you tell us what it is?
A. It's an Inmate Request Form for the Marlboro County Detention Center.
Q. And how did it first come into your possession?
A. It appears that it was faxed to the Marlboro County Sheriff's Office on is 11-15-2011 at 1445 which would be 2:45 p.m. And we get those in a variety of ways. I don't know if it was on my door or somebody handed it to me.
Q. Okay. Is it still in the same condition now as it

was then?

A. Yes, it is.

Q. Will you read it to us and tell what is it says.

A. Yes, I will. At the very top there is a fax -- some a facsimile information. Says, "11/14/2011." Says it's faxed from 843-479-5629 from the Marlboro County Detention Center, and it's one page. Has a Marlboro County Sheriff's Office Detention Facility. It has Inmate Request Form. Has some initials to the right of that -- that is appears to be E.L.H, 11/14/11.

It has a space for a name. In handwritten script, Tyrone King. The date in handwritten script is 11/14/11. The unit and room number are A-5. Arresting agency in handwritten script says County. Then has another section that says, "General reason for request," and has four choices. Has inmate account, plea, release date or warrant. None of those are checked.

And then has another section that says, "Specific information concerning the item checked." And in that blank, in handwritten script, it says, "I need to speak to Jamie Seals about my case. This is very important period." Further down there is a section that says, Staff response", and it has fax. At the bottom of the document it has a space, "Referred to and date." That is not filled in. And it has staff signature which appears to be

Earl Hood who is the warden of our detention center. And a date of 11/15/11.

Q. Now, has this form been altered or changed in any way?

A. No, it hasn't.

MS. DAVID: At this time the State would like to move Exhibit Number Three into evidence.

THE COURT: It is so moved.

(WHEREUPON, State's Exhibit No. 3 was previously admitted into evidence.)

BY MS. DAVID:

Q. Now, did you get the opportunity to speak with Mr. Tyrone King after that Inmate Request Form was made to you?

A. Yes, I did.

Q. Okay. I show you what has been marked as State's Exhibit Number One. Do you recognize that?

A. Yes, I do.

Q. Will you tell us what it is?

A. That is Miranda Rights Form that we use in the Sheriff's Office.

Q. Okay. Is it dated? On what date did you actually interview him to get this Miranda Rights Form signed?

A. I went 11/16/11.

Q. And would that have been after his initial arrest?

A. The 17th if I remember correctly. What was the date? I don't know the accident date.

Q. And I apologize for asking you that question. The date of the arrest would be 11/11/11?

A. It would be five days after.

Q. Will you read us what that Miranda Rights Form says?

A. Yes. At the top it says, "Place," and I have in my handwriting M.C.S.O. And it has date, 11/16/11 in my handwriting. And time, it has 8:35. And it says "Your Rights." And it says, "Before we ask you any questions you must understand your rights. And it says.

"Number One, you have the right to remain silent.

Number Two, anything you say can and will be used against you in Court.

Number Three, you have the right to talk to a lawyer before you answer any questions and have him with you during questioning.

Number Four, if you cannot afford a lawyer the Court will appoint one for you before any questioning if you wish.

Number Five, if you decide to answer questions now without a lawyer present you will still have the right to stop answering at any time until you talk to a lawyer first.

And then the next section is Waiver of Rights. It

says, "I have the statement of my rights and I understand what my rights are and am willing to make a statement and answer questions. I do not want a lawyer at this time, but I understand and know what I'm doing. No promises or threats have been made to me. No pressure or coercion of any kind has been used against me in Court or used against my by anyone" -- excuse me.

Q. Did you sign the form?

A. I did.

Q. Did Mr. Tyrone King sign that form?

A. He did.

Q. Thank you. At this time the State would like to move the Miranda Form which is State's Exhibit Number One into evidence?

THE COURT: I so admit it.

(WHEREUPON, State's Exhibit No. 1 was previously admitted into evidence.)

BY MS. DAVID:

Q. Now, Investigator Seales, during this interview you briefly tell us what you and Mr. Tyrone King discussed. Did you ask him any questions?

A. I asked him a few at certain points, but the way it started off was I called over to the Detention Center and had him brought over at he requested. Me and Investigator Alderman talked to him, and the first thing I did was I

showed him the request form cause just as I explained to you that he sent. And I showed it to him and I want him to authenticate that, make sure that was his request. I then told him that the reason I wanted to do that was to protect him because certain inmates play games and fill out Inmate Request Forms, sign the other inmate's name on them. I wanted to make 100 percent certain that he was requesting to talk to me. And he did. He agreed that he did.

And then I told him that I was going to go over the Miranda Form again, I Showed him the Miranda Form and said, "This is the same one that you signed before when the other investigator spoke to you." He told me that he didn't even remember that. He looked over the form. He read it and he signed and agreed he understood it. And then I told him -- I asked him again. I said, "This is your request? And any time you want to stop during this interview you're free to stop."

He then -- he gave us -- this is the summary of what he told me, and you will see it on video. But he told me about 1:00 a.m, somewhere in that neighborhood, we went to the victim's house, and which is the next door neighbor of his. And he said he went over to be buy some liquor. He said that once he got that he went over to the Breeden Street area of Bennettsville.

And he got up with a guy named Broom. He said that Broom let him hold the gun, and I would assume by his word let him keep it for a few minutes. And he was going to go try to sell the gun. He said he was going to carry it over to the victim's house to see if the wanted to buy it; that he went to the victim's house. The victim let him inside and that they were looking at the gun.

And he said -- I think he said later in the interview that he wanted to -- he didn't never want to give anybody a gun with a magazine or he referred to it as a clip. And the clip being the part of the gun that hold the ammunition because he wanted -- he was trying to be safe about it.

So he as he was trying to get the clip out of the gun the gun goes off and shoots the victim. He then said that he got shook up. I don't know exactly the words he used, but he got very upset. He said he yelled, "James. James," And he said that he was -- his intentions were to sell the gun to the victim. He said that he needed some money for groceries cause he had some kids and he stated that -- he did say that I think when he walked in it was dark. You have to watch the video.

He walked into the kitchen. That's when they started -- he attempts to take the clip out of the gun before he let the victim look at the gun. And I asked

him, I said, "How many times do you remember it going off?" And I think he replied once. And he said, "My friend fell." And I said, "Did you hit someone else?" And he said, "Well, I saw my warrants. I'm not going to say the victim's wife is lying." He said, "I may have. I don't remember."

I asked him, "Do you remember running out the house", and he said he didn't. And then I asked him was there anything else that he wanted to add to his statement. He said he didn't. I told him I appreciate his honesty.

Q. At any point during this questions did he ever ask for an attorney?

A. No, he didn't.

Q. Did he appear to be under the influence of drugs or alcohol in any way?

A. No, he didn't.

Q. Was he responsive to you?

A. Yes.

Q. He seem to understand English during the time y'all were talking?

A. Yes.

Q. And it seems that the statement was given to you was given freely and voluntarily?

A. Very much so.

Q. Okay. At this time I would like to show you what has

been marked as State's Exhibit Number Four. Do you recognize it?

A. Yes, I do.

Q. Will you tell us what it is?

A. It is a D.V.R. disk of this interview that I just described to you with my handwritten notes on the outside. Says, "11/16/11. Second Interview of Tyrone King. 8:30 a.m. And has 'Seales/Alderman' who was the second investigator in the room. And it has my handwritten script, 'Tyrone King Interviews'.

Q. Have you had an opportunity to review that video?

A. I have.

Q. Is it in the same condition as it was when you first took it?

A. It is.

MS. DAVID: At this time this exhibit, which has been marked State's Exhibit Number Four, the State would move to have it admitted and published into evidence.

THE COURT: It is introduced into evidence, and you may publish it at t his time.

MS. DAVID: Thank you, Your Honor.

(WHEREUPON, State Exhibit No. 4 was admitted into evidence.)

MS. DAVID: Your Honor, I believe -- may we approach before she publishes it?

THE COURT: Yes, sir.

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

THE COURT: You may cross at this time.

MR. SHAFFER: Thank you, Your Honor. Court's indulgence. I apologize.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Investigator Seales, you're currently a lieutenant?

A. Yes, sir.

Q. Of investigations?

A. Yes, sir.

Q. Does that mean you're in charge of all the investigators right now?

A. That is correct.

Q. Okay. And how long have you been a lieutenant?

A. Since October of 2007.

Q. Okay. And you came from S.L.E.D.?

A. That was where I worked previous to that, crime scenes.

Q. Okay. What's the job of the investigator?

A. To generally take the cases they're assigned, follow up on them, collect evidence, interview witnesses.

Q. And to find out what happened, right?

Q. Okay. I will save the rest of my questions for later, Your Honor.

THE COURT: Sir?

MR. SHAFFER: I'll save the rest of my questions until after the video, Your Honor.

THE COURT: You may do that.

MR. SHAFFER: Thank you.

THE COURT: All right. Let's publish the video.

(WHEREUPON, State's Exhibit Four was played for the jury.)

MR. REDMOND: Your Honor, that's actually the conclusion of the tape. Based on the agreement of the parties the tape had concluded at this time. Ms. David wants to ask additional questions of Officer Seales.

THE COURT: Counsel, you may have your additional examination.

MR. SHAFFER: I believe Ms. David is first and then I was going to respond.

THE COURT: Sir?

MR. SHAFFER: I believe Ms. David is going to ask the question first and then I was going to respond.

THE COURT: Okay. That's fine.

REDIRECT EXAMINATION

BY MS. DAVID:

Q. Investigator Seales, did the Defendant, Tyrone King,

appear to look the same on that day and in the video as he appears today?

A. No, he doesn't.

Q. How does he differ.

A. He's dressed better and his hair is shorter. He has glasses on today. He didn't have any glasses and his hair was a little longer.

Q. So he had longer hair prior to today?

A. He did.

Q. And I have one other question. Was this the first statement that this Defendant, Tyrone King, has made to an investigator?

A. No.

Q. No. This is his second statement?

A. Yes, ma'am.

Q. Thank you.

MS. DAVID: At this time we would like to take care of a few housekeeping --

BY MS. DAVID:

Q. Did you retrieve several items of evidence from S.L.E.D. on March 22nd of 2012?

A. I did.

Q. Specifically, did you retrieve swabs from the trigger of the gun, the magazine from the gun, and the spent bullets among other things?

A. I did.
Q. Okay. And once you retrieved these items what did you do with them?
A. Placed them in the evidence locker at the Marlboro County Sheriff's Office.
MS. DAVID: At this time the State would move to admit Exhibit Numbers 44 and 45 into evidence.
THE COURT: You may do so.
MR. SHAFFER: No objection, Your Honor.
THE COURT: Okay.
(WHEREUPON, State's Exhibit Nos. 44 and 45 were admitted into evidence.)
MS. DAVID: No further questions at this time.
THE COURT: All right. You may examine, Mr. Shaffer.

RECROSS-EXAMINATION

BY MR. SHAFFER:
Q. All right. Investigator Seales, did watching that video refresh you memory a little bit about it?
A. Yes. About the shackling and distance.
Q. And shack -- and he was in a belly chain, right?
A. He was.
Q. And that belly chain, did it appear to be securely fastened?
A. It did.
Q. And with that belly chain he would be able to bring

Q. Okay. Thank you very much.

THE COURT: You may come down and you are excused from your subpoena. Thank you.

THE WITNESS: Thank you, Your Honor.

MS. JOHNSON LEE: Dr. Nicholas Batalis.

NICHOLAS BATALIS, after being duly sworn, testified as follows:

CLERK OF COURT: Please state your name.

THE COURT: Morning.

THE WITNESS: Morning. My name is Nicholas Ike Batalis. That's B-A-T-A-L-I-S.

DIRECT EXAMINATION

BY MS. JOHNSON LEE:

Q. Dr. Batalis, what is your occupation?

A. I'm a forensic pathologist.

Q. Now, as forensic pathologist are you duly licensed physician and surgeon?

A. Yes, I am.

Q. And in what state?

A. I'm licensed to practice medicine in the State of South Carolina.

Q. How long have you been licensed to practice in your profession?

A. I had a full unrestricted license for six or seven years now.

Q. Are you presently engaged in your profession now?
A. Yes, I am.
Q. Where did you receive your training in pathology?
A. My training, after graduating medical school in Indiana, I came down to the Medical University of South Carolina in Charleston to do training in general pathology and after completing four years of general pathology training I then went on to one year specialized training in forensic pathology in Dallas, Texas before coming back to Charleston to work.
Q. What are the duties of a pathologist in South Carolina?
A. So a general pathologist -- pathology refers to the study and diagnosis of disease. So a general pathologist would be looking at tissues to see if there is cancer or not. Hoping to get some blood drawn from you doctor we would help your family doctor interpret those values. So that's kind of the practice of a general pathologist.

Forensic pathology is a specialized area of pathology that really focuses on determining the cause and manner of death through performing autopsies.
Q. You are a forensic pathologist?
A. Yes.
Q. How many autopsies have you performed?
A. I've performed over a thousand autopsies.

Q. And are you currently on the staff of the Medical University of South Carolina?

A. I am.

Q. And is that in Charleston, South Carolina?

A. Yes, it is.

Q. Now, is pathology or autopsies considered a specialized field of medicine?

A. Yes, it is. Pathology is the specialized field of medicine, and forensic pathology is a sub- specialty.

Q. Any I believe that you have described what a forensic pathologist involves?

A. Yes. Predominately performing autopsies to determine the cause and manner of death.

Q. Now, are you a member of any special medical or scientific groups?

A. Yes, I'm a member of several national organizations related to forensic pathology, several national organizations related to forensic pathology, and also some local and State societies in regards to pathology.

Q. What's the American Board of Pathology?

A. The American Board of Pathology is the board that certifies pathologists so that they're the ones that after you complete the training and complete the examination they would be the one to say that you're board certified in your field.

Q. So there are certain requirements before they will certify you a deployment ---
A. Yes.
Q. --- in the American Board of Pathology?
A. Yes. In order to be certified by the Board in general pathology you need to complete four years of training and pass a fairly rigorous examination. For the forensic pathology training you must complete a year of training which is then followed by another fairly rigorous examination.
Q. Did you complete all that training and successfully complete those examinations?
A. Yes, I did.
Q. Have you been granted certification and a diploma by the American Board of Pathology?
A. Yes, I'm Board certified in anatomic pathology, clinical pathology and forensic pathology.
Q. And that certification, that is on a national basis?
A. Yes, it is.
Q. Now, again you said you performed about 1,000 autopsies?
A. Yes. Somewhere over a thousand. I don't have an exact number.
Q. Now, percentage wise, how many of those in excess of 1,000 autopsies were done where the cause of death was a

homicide?

A. Over the years it's about 15 to 20 percent of the caseload are homicides. Doing the math that's at least 150, to 200 homicides in the last few years.

MS. JOHNSON LEE: Your Honor, at this time the State moves that Dr. Nicholas Batalis be declared an expert in the field of forensic pathology.

THE COURT: I so quality him as an expert in that field.

MS. JOHNSON LEE: Thank you, Your Honor.

BY MS. JOHNSON LEE:

Q. Dr. Batalis, did you perform an autopsy on Mr. James Galloway in November of 2011?

A. Yes, I did.

Q. What was the date you performed that particular autopsy?

A. I performed that autopsy on November 12th of 2011.

Q. Now, when you did the autopsy was that the first time you have ever seen Mr. James Galloway?

A. Yes, it was.

Q. Was the autopsy also the last time you ever saw Mr. James Galloway's body?

A. Yes, it was.

Q. Okay, now, where did that autopsy take place at?

A. We performed the autopsy at the Medical University of

South Carolina down in Charleston.

Q. How long did the autopsy last?

A. The autopsy lasted approximately two hours.

Q. Now, please describe for the jury what you did during that autopsy?

A. So what we did for this autopsy is just the standard of what we do in all autopsies. When I first received the body we bring it to our autopsy suite and we get a set of photographs as we receive the body before we have done any manipulation to it. We then document the clothing.

We clean up the body and take another set of photographs with the body unclothed. Then we perform our external exam which is basically looking at the body from head to toe at first looking for identifying features, your hair color, your eye color, tattoos, scars, that sort of thing. And then also any evidence of trauma.

Once we looked at the outside of the body in detail then we move onto the internal exam which involves making surgical type incisions into the body looking at the organs one by one. It's either a natural disease or a trauma which could have affected the person's death.

Q. And please further describe your findings during this autopsy?

A. So the major finding on the autopsy of Mr. Galloway was a gunshot wound of the face. That gunshot wound

entered just below the right eye. Just on the right cheek here. There was -- the bullet then passed through the soft tissue and bones of the face. The upper part of the mouth is a hard pallet.

The upper part of the airway or the larynx, then went through the soft tissues of the next, and there was a gunshot exit wound on the back side of the neck just below and behind the left ear.

Q. Now, how do you tell the difference between an entrance wound and an exit wound?

A. Just through the course of training and experience exit wounds and entrance wounds have characteristic features that can be the wound itself and other things associated with it.

Q. And that gunshot wound is that the cause of the death of Mr. James Galloway?

A. Yes, it is.

Q. Now, did you prepare a diagram as part of your autopsy?

A. Yes, I did.

Q. I show you what's marked for identification as State's Exhibit Number 44. It's a two page document. Do you recognize that?

A. I do. The first paper is a general diagram that I made during the course of the autopsy with a lot of

various notes on it. The second page is a cleaned up versus that just shows the entrance and exit wound where they are located on the body.

Q. Now, is that a diagram from the autopsy conducted on Mr. James Galloway?

A. Yes, it is.

Q. Now, what date did you prepare the diagram?

A. The original diagram was prepared on the date of the autopsy which was November 12th 2011. The cleaned up diagram I believe I made in preparation for the trial which was in the last couple months.

MS. JOHNSON LEE: At this time I would move to have the diagram put in evidence?

THE COURT: Has this been ---

MR. SHAFFER: No objection, Your Honor.

THE COURT: Have you seen it?

MR. SHAFFER: Yes, Your Honor, I have.

THE COURT: Without objection.

(WHEREUPON, State's Exhibit No. 44 was admitted into evidence.)

BY MS. JOHNSON LEE:

Q. Now, I believe you already stated this, but based on your autopsy and within the bounds of medical certainty did you form an expert opinion concerning the cause of death of James Galloway?

A. Yes, I did.
Q. What is your opinion?
A. He died as the result of a gunshot wound to the face.
Q. Okay. Now, you indicated that photographs are taken when the body first come to you; is that correct?
A. Yes.
Q. Okay, now, I'm going to show you what's been marked for identification as State's Exhibit 47?

MS. JOHNSON LEE: And did we stipulate this was in evidence?

MR. SHAFFER: Yeah, I believe we did.

MS. JOHNSON LEE: Okay.

(WHEREUPON, State's Exhibit No. 47 was admitted into evidence.)

BY MS. JOHNSON LEE:
Q. So this is State's Exhibit 47. Is that a photograph taken during the autopsy?
A. Yes, it is.
Q. What does that photograph depict?
A. This is a photograph I took during the autopsy of the gunshot entrance wound. This photograph is fairly close up but it's showing where the wound enters on the right side of the face.

Additionally, surrounding this entrance wound there are little scrapes on the skin. Some little pink marks

around the skin which we refer to as stippling.

MS. JOHNSON LEE: Your Honor, can I have him stand up to point out stippling to the jury?

THE COURT: You may do so.

BY MS. JOHNSON LEE:

Q. Come stand right here please, sir. Now, if you can just hold the photograph up and you can just point out and go down and show the area that you would consider stippling.

A. So again in this photograph is showing a close up view of the right side of the face. You can see right eye, left eye.

THE COURT: I'm going to ask you to speak up a little louder so my court reporter can hear what you say. Please do.

THE WITNESS: Down here in the middle of the picture is the gunshot entrance wound. The red material here, this is where the bullet entered the body. The stippling or abrasion we're referring to are the small pink areas that are surrounding the wound. Basically, these are just little scrapes on the surface of the skin. See back there, but it extended about an inch and a half from the.

Q. Thank you, sir.

THE COURT: Thank you, Doctor.

BY MS. JOHNSON LEE:

Q. Now, what is the significance of stippling?

A. So when we talk about gunshot wounds, other than just saying it's an entrance or exit, sometimes we can also determine the range of fire which is how far the gun was from the body when the wound -- when the gun was fired. And we do that by looking at two things call soot and stippling.

So when you pull a trigger on a gun the bullet, obviously, comes out and then there is other material that comes out with the bullet. One thing that comes out is like a cloud of smoke or soot which is basically burned up gunpowder.

Also coming out are flakes of gunpowder that don't get burned up in that explosion that causes the gun to fire. So these unburned flakes of gunpowder can go and then strike to skin and just like you fall and scrape your knee this would go and scrape the skin. And that's what we call stippling.

So looking at the literature the soot, so that burned up cloud of smoke, that extend out between 6 inches and 12-inches from the gun. So if you're closer than that you would expect to see soot if you're within a foot. If you're further than a foot you would not expect to see that soot on there.

With stippling, we'll see stippling again, it can

start right close to the body and it will extend out to approximately two to four feet from the muzzle of the gun. So depending on the type of gun, the type of ammunition that was used, the stippling would go out to two to four feet away.

In this case we had no soot on the skin. So we would say it was at least six inches to a foot from the body when the gun was fired. We did have some stippling so we know that it is inside of four feet. So the range would be a foot based on our findings in this picture would be somewhere between a foot and four feet.

Q. And when you're referring to the distance is that from the muzzle of the gun to the wound itself?

A. Yes.

Q. Thank you. Now, did you also prepare a written report regarding the autopsy and your findings?

A. I did.

Q. I'm going to show you now what has been marked for identification as State's Exhibit Eight. Is that your report?

A. Yes, it is.

Q. Now, is your signature on your report?

A. Yes, there is an electronic signature that we use.

Q. Okay.

MS. JOHNSON LEE: At this time I would move this

objection that report is in evidence?

THE COURT: Without objection. Next witness.

MS. DAVID: The State would now call John Roberts.

JOHN ROBERTS, after being duly sworn, testified as follows:

CLERK OF COURT: Please be seated and state your full name for me.

THE WITNESS: John Roberts.

DIRECT EXAMINATION

BY MS. DAVID:

Q. And what is your occupation?

A. State Law Enforcement Division more commonly called S.L.E.D.

Q. And how long have you been there?

A. Just over seven and a half years.

Q. And what do you do at S.L.E.D.

A. Work in the Forensic Services Building in the Trace Evidence Department.

Q. Okay. And does that include examination for G.S.R.?

A. Yes, ma'am, it does.

Q. Will you describe what G.S.R. is to us?

A. G.S.R. is residue. It is the collection of particles that are spit out of a gun when it's fired. It comes out of the ejector port of the firearm if it's a semiautomatic firearm where the shell gets kicked out. Or it comes out

of the end of a barrel where the bullet comes out as you shoot the target to the target down range.

Q. What education and training have you had in this area?

A. I have bachelor's of science degree in chemistry from Texas A&M, Corpus Christi. When I got the job at S.L.E.D. seven and some years ago I went through our Gunshot Residue Training Program inhouse. I studied underneath my lieutenant and helped him work his cases and learned how to work the instrumentation, how to receive evidence, how to generate results from the evidence, how to write reports and how to issue reports.

Q. Are you certified by S.L.E.D. in trace and G.S.R. examinations?

A. Yes, ma'am, I am.

Q. How many G.S.R. kits have you examined?

A. It's in the hundreds.

Q. How many times have you been qualified as and expert?

A. Almost 60.

MS. DAVID: At this time, your Honor ---

THE COURT: Is his qualifications admitted as an expert in this field?

MR. SHAFFER: Yes, Your Honor. I have no objection.

THE COURT: Yes, sir.

MR. SHAFFER: I'll stipulate.

THE COURT: He is qualified as an expert having testified in my Court on many occasions as an expert.

MS. DAVID: Thank you, Your Honor.

BY MS. DAVID:

Q. Mr. Roberts, would you explain to us how does G.S.R. get on someone?

A. There are three main ways you can get G.S.R. on your hands. You can shoot a gun. You can be near it when it goes off, or you can handle it. Now, being near it when it goes off is kind of confusing to some people because you think, 'I haven't touched this gun'.

How does it get on me. Well, when it comes out of the gun it comes out in a plume like a cloud. If you have ever seen people take a picture of a gun being shot you see a could and the smoke coming out of it. Mixed in with that cloud of smoke is the gunshot residue we analyze for.

If you're standing next to somebody shooting a gun you can get it on your hands if their in the area where the G.S.R. is. More than likely you will get it on your clothes. If you're shooting the gun your hands are going to be more exposed to gunshot residue because you're shooting the gun.

If you pick up a gun that's been recently fired you can also get gunshot residue on you. If I go to the range and I put 50 rounds in my gun and I set it down and I

don't clean it for a couple of days and I go to pick it up after those couple of days I'm going to get gunshot residue on my hands just from the gun having it on it and being transferred to my hand.

Q. Now, how long does G.S.R. remain on the living human body?

A. On a living person is what we found is that it stays on them about six hours. Six hours is the threshold protocol at S.L.E.D. We found that after six hours all the material that we would find is not in quantities that we would associate with firing a gun, handling a gun or being near it when it goes off. And the reason that it's on there for about six hours is because your body absorbs the material. It just sucks it in.

Q. Now, tell us how long the G.S.R. would stay on the body of someone who has passed away?

A. On a deceased person it stays until it's removed, and that can either be by somebody washing the body or from somebody removing it with a gunshot residue kit.

Q. Would you please explain to us how you actually test for G.S.R.?

A. Well, gunshot residue kits that we give out have two different types of sampling in them. There are particle lifts which are sticky tabs that are labeled for the different areas that we test, and there are swabs that are

just cotton swabs that also have labels for where they're tested.

We test the swabs first, and what we test for are metals that we find in gunshot residue. We look for lead, barium and antimony. Given the result of those swabs we may take the particle lift and test them. And what we're looking for in the particle lift are actual particles of gunshot residue.

There are small round particles that come out of the gun when it's fired and land on things nearby the gun when whenever fired, and that's what I look for on the particle lift.

Q. Does S.L.E.D. distribute kits to law enforcement agencies?

A. Yes, ma'am, we did.

Q. And what do those kits consist of?

A. They consist of the two different types of sampling that I talked about, the particle lift and the swab. It's all contained in an envelope that was sealed when the investigator or whomever needs to takes the gunshot residue kit knows that they need to take one they just open it up and start with the particle lift and follow the directions right on through the swabs.

Q. Now, relative to this case, L11-12-934, did you receive a G.S.R. kit?

A. Let me check real quick here. I actually received two gunshot residue kits in this case.

Q. Okay. And whose were they for?

A. One gunshot residue kit was from Tyrone King, and the second gunshot residue kit was from James Galloway.

Q. And will you briefly tell us what were the results of those kits?

A. On the gunshot residue kit from Tyrone King. And when we report results we have results from four areas. We have results from the right palm, which is the palm of the hand, and then the right back which is the back of the hand. And then the left palm and the left back of the hand.

So when I read these results and I say, "Right palm, right back" you know what I'm talking about. On the right palm I found round lead particles. Round lead particles are a component of gunshot residue. On the back of the right hand the results were inconclusive, and I'll explain inconclusive in just a second. On the left palm and left back I didn't find any gunshot residue.

Now, in this case I was looking at the particle lift which means that I was looking for the actual round particles that we find in gunshot residue. On the right palm round lead particles, a component of gunshot residue. On the right back all I found was one particle, and our

protocol is such that I can't report a single particle. I have to have at least two to report what I have found. So in this case the back of the right hand was inconclusive.

Left palm, left back, no gunshot residue found on anything or two negatives in this case.

Q. So to clarify that what you're saying is that there was gunshot residue on the right palm of the Defendant, Tyrone King?

A. It was round lead, and it is a particle that we find in gunshot residue. Yes, ma'am.

Q. Okay. At this time I show you what has been marked as the State's Exhibit 35. Do you recognize these?

A. They're both State's Exhibits 35. Just one of them.

Q. Just one. Let me check for you to be sure. State's Exhibits 34 and 35.

A. Okay. And I'll go through them in numerical order.

Q. Okay?

A. Just so it's straight in my head. State's Exhibit 34 is my Item 32, and it is a gunshot residue kit from James Galloway. And I recognize it because it's got our lab number on it. It's a unique number given to every individual case or a different number that is given to every single case that comes into the lab. It has the item number that I recognize from my report on it. It also has my initials in blue ink on the back of the

envelope.

State's Exhibit 35 is a gunshot residue kit from Tyrone King. It also my initials on the back. It has our lab identifier on the front. In addition this has the dates that I ran the particle lift written in red on the envelope. So I do recognize both of these pieces of evidence, and yes, I examined both of those pieces of evidence.

Q. And were that still intact when you received them?

A. Yes, ma'am, they were.

Q. At this time I would like to show you what has been marked as State's Exhibit Number Nine. Do you recognize that?

A. Yes, ma'am, I do.

Q. What's is it?

A. This is a copy of the report that I generated listing the results from my Item 31 and my Item 32, State's Exhibits 34 and 35.

Q. Will you briefly tell the Court the results for the Defendant, Tyrone King, as well as the results for Mr. James Galloway?

A. Yes, ma'am. The results for Tyrone King were the right palm round lead particles were found. Round lead particles are one of the components of gunshot residue. The right back are inconclusive. The left palm, no

gunshot residue found -- or was found. The left back, no gunshot residue was found.

My Item 32, a gunshot residue kit from James Galloway, the results for the right palm, the right back, the left palm and the left back are -- the quantities of metals found did not indicate the presence of gunshot residue.

Now, those results are a little different than the gunshot residue kit for Tyrone King. In Mr. Galloway's case what we ran was just the swabs. And with the swabs our results start off with the quantifies of metals, because what we're looking for on the swab is an amount. We're looking for concentration of the metal that are present on the swabs. In this case the quantities of metals found did not indicate the presence of gunshot residue meaning it was negative.

So Mr. Galloway's result were negative for the right palm, the right back, the left palm and the left back.

Q. Has that report been altered or tampered with in any way?

A. No, ma'am.

MS. DAVID: Your Honor, at this time the State would like to move State's Exhibit Number Nine into evidence. And I beg the Court's indulgence for one moment.

THE COURT: Put it into evidence.

THE COURT: Correct.

MS. JOHNSON LEE: Thank you, Your Honor.

MS. DAVID: No further questions at this time. Please answer any questions Defense counsel may have for you.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Mr. Roberts, go back through everything. You said you found lead particles on Mr. King's right hand palm?

A. Yes, sir.

Q. Okay. And the swabs were from his right palm?

A. The particles lift from his right palm.

Q. From the particle. Explain that one more time?

A. All right. Particle lifts are sticky tabs. When you take -- when you take them like if I was going to take a gunshot residue -- the best way to explain how to take a particle lift is by thinking about a bingo marker. You go play bingo, and if you're cheap like me you only buy one or two little sticks with the ink in them.

And when they call out 'B5' you stamp B5. That's what the particle lift works like. It's sticky tape, and you just -- you can have them on the palm, in the back.

Q. Okay. So the one you tested, the particle tabs from the inside of the palm you found round lead particles?

THE WITNESS: Thank you.

MR. REDMOND: Michelle Eichenmiller Applicable will be our next witness, Your Honor.

MICHELLE EICHENMILLER, after being duly sworn, testified as follows:

CLERK OF COURT: Will you please be seated and state your full name for us.

THE WITNESS: My name is Michelle Eichenmiller.

DIRECT EXAMINATION

BY MR. REDMOND:

Q. And, Miss Eichenmiller, are you employed by the State Law Enforcement Division?

A. I am.

Q. And are you employed there as a forensic scientist?

A. I am. I work in the Firearms Department.

Q. All right. And how long have you been employed with S.L.E.D?

A. I started in April of 2006.

Q. Okay, and let me go back a little bit. Post-high school, could you tell the jury -- ladies and gentlemen of the jury your educational background?

A. I have a Bachelor's degree in biology and psychologist, and I have a Master's in science and forensic science.

Q. Okay. And moving further. Within your experience at

S.L.E.D. could you tell the ladies and gentlemen of the jury what certifications, what trainings have you gotten in the field of firearm analysis?

A. In order to become a firearm examiner and be Court qualified you have to go through an in-house training. That program is pretty extensive. It's three to four years at S.L.E.D. I do a lot of reading. I do a lot of studying. I take tests. I also sit along side firearms examiners that work there.

And I learn what they do and how they examine guns. I attend different courses. I go to different meetings and then at the end of it I take a comprehensive exam. After I pass that I do a mock Court, and then I am deemed competent to do casework on my own.

Q. And, indeed, have you been working on your own as an examiner?

A. Yes, I have. I was signed off on in 2010.

Q. Okay. Let me ask you this. In your time as a firearms examiner would it be fair to say that you examined hundreds if not thousands of firearms? And test hundreds and thousands of firearms?

A. Yes, it would.

Q. And have you had the opportunity to testify in Court on findings that's you've reached?

A. I have.

Q. And have you been qualified as an expert?

A. Approximately ten times in the State of South Carolina.

MR. REDMOND: At this time, Your Honor, I would ask that Mrs. Eichenmiller be qualified as an expert in the field of firearms analysis?

THE COURT: So find her qualified. She has testified as an expert previously in my Court. Glad to have you.

MR. REDMOND: Thank you, Your Honor. May it please the Court.

BY MR. REDMOND:

Q. Now, let's, and briefly understanding that we are not experts and will not be at the end of this trial, but just a rudimentary background on it. Could you explain to the jury what it is that you do in firearms analysis. In other words in a case like this what do you do? How do you go about examining the firearm and any other items submitted to you.

A. In firearms identification our primary consideration is attempting to determine if the bullet or cartridge case is fired by the particular gun. And so I would take the evidence. I do a lot of my own testing and I read up on it. And I would test fire the gun and verify that I know it came from that firearm, and I'll compare it to any evidence that was brought to me from the scene.

Q. Okay. And in this case were you given evidence that was brought to the scene? In other words did you have the opportunity to examine a couple of the cartridge cases from the scene?

A. I did.

Q. And also did you have the opportunity to examine a bullet that was retrieved from the wall of the residence in question?

A. I did.

Q. And, finally, did you have the opportunity to test those two items against the gun that was submitted?

A. I did.

Q. Okay. And we'll get to your findings in just a little while. Let me first show you what has been marked as State's Exhibit Number 11. And once you have had a chance to look at that I would just like for you to tell us whether that's an accurate, true copy of the report that you generated in this case.

A. May I refer to my notes?

Q. Oh, yeah, sure.

A. It seems to be an accurate copy.

Q. Okay. Now, in being specific to this case could you tell the ladies and gentlemen of the jury before we get into your conclusions what tests were run in this case.

MR. REDMOND: And before I do that if I may approach

the witness.

BY MR. REDMOND:

Q. With what has been marked ---

THE COURT: You may.

BY MR. REDMOND:

Q. --- as State's Exhibits 28, 29 and 31. And before -- I'm going to back up a minute. Do you recognize those items specifically some of the initials in there as being items that you had tested?

A. I do. Whenever I receive evidence in a case I mark on it with an electric pencil my initials, the lab number and the item number.

Q. Okay. And, of course, I'll let you finish reviewing the evidence and then I'll ask you a few questions.

A. Those are the items that I did.

Q. Okay. Now, and I didn't ask you this just to clarify. What is it that constitutes a match? How is it that you take items such as those casings and those cartridges, and a gun. How is it that you determine that there is a match?

A. I put the test fires on one microscope. I have a microscope. It's basically two separate microscopes that are combined with an optical bridge. Just meaning that it looks like a pair of binoculars, one eye through one side and one eye sees through the other. And we see them next

to each other. I put the standard on one side and the evidence on the other and then I evaluate the impressions that are left by the firearm and attempt to prove that they were fired by the same firearm.

Q. Okay. And I didn't ask you earlier, but were the items that are already in evidence, but were those items along with the gun and magazine were the items that you tested were they processed and presented to you in the standard operating procedure for the handling of evidence with S.L.E.D?

A. They were.

Q. Okay, and if they were not in such -- if they were not appropriately handled would they have been tested?

A. If they weren't submitted properly we would have had to get someone to correct that before I would have examined them.

Q. And did that happen?

A. No, it didn't.

Q. All right. Thank you. Now, with the items that I presented to you and now getting into your report let me show you what has been marked as State's Exhibits 33 and 32. I'm going to actually -- and could you examine those items briefly and determine if those were -- appear to be the items that you tested?

A. They are.

Q. Okay.
A. Like I said when I receive a firearm I mark it in three different places to verify it is the one I've seen, and I mark the magazine as well. They have my initials and lab number on them as well.
Q. Now. Were you able to determine whether or not the bullet -- the bullet and the casings, were you able to determine whether or not they were fired by that gun?
A. I was.
Q. Okay. Now, again, before I get into that I apologize. Let me address one other issue. The magazine, I noticed something in your report that addresses the magazine and whether or not that's the type of magazine that's supposed to go with that gun. Would you explain that particular finding?
A. It's a little long for this firearm. It will work just fine. It test fired with no problem, but it's not designed to go in this firearm, this model.
Q. All right. And thank you. And that's listed in your report.

MR. REDMOND: Which by the way the State's Exhibit Number 11 we would move into evidence at this time; that being the firearms report from Miss Eichenmiller.

MR. SHAFFER: No objection, Your Honor.

MR. REDMOND: Thank you.

THE COURT: What was that?

MR. REDMOND: State's Exhibit Number 11, we are moving State's Exhibit Number 11, the firearms report, into evidence with on Defense objection.

THE COURT: Without objection.

MR. REDMOND: Thank you, Your Honor.

(WHEREUPON, State's Exhibit No. 11 was admitted into evidence.)

MR. REDMOND: Now, let's go to the firearm. Could you tell, and I'll just turn it over to you. Tell the ladies and gentlemen of the jury what your findings were regarding those exhibits before you in relation to them being fired by that weapon.

A. On State's Exhibit I believe 28 and 29, those are the fired cartridge casings, these were fired by this firearm. When I compared them I found enough individual identifying characteristics to say that they were fired by the firearm.

And State's Exhibit 31, exhibited enough individual identify characteristics to say that they were fired by this firearm; that the bullet was fired by this firearm as well.

Q. All right. And for the record State's Exhibit 31 I believe would be the bullet that was recovered from the wall that was determined to be a through and through

this case that will end your duties for the week.

Now, I gave you various admonitions on Monday morning when you started. I want to emphasize them again. Permit no one to talk to you. You must not discuss it with anyone else. Make no independent inquiry on the internet or from any other source. And you must not discuss it even among yourselves until the case is over and I have said to you, Mr. Foreman, "The evidence is in the jury room. You may now begin your deliberations." Until that's said our rules prohibit you under your oath from discussing any part of this case. For the State, any additional inquiry?

MR. REDMOND: Nothing from the State, Your Honor.

THE COURT: From the Defense?

MR. SHAFFER: None, Your Honor.

THE COURT: You are excused to be in your jury room promptly at 2:30. Thank you so much.

(WHEREUPON, the jury panel was excused from the courtroom at 4:57 p.m.)

THE COURT: All right. The jury is out. I'll be glad to hear any motions at this time.

MR. SHAFFER: Your Honor, the first I move to -- for directed verdict on all charges. I'd first like to address the assault and battery of a high and aggravated nature.

THE COURT: Slow down. You're talking a little fast for me.

MR. SHAFFER: I apologize, Your Honor. I first like to -- I'd first like to move for directed verdict of the assault and battery high and aggravated nature.

THE COURT: On what grounds?

MR. SHAFFER: The statute he's charged with statute, Your Honor. The fairly new statute and what he's charged under I imagine is 16-3-600 (B1) Subsection B. And it says the act was accomplished by means likely to produce death or great bodily injury. Great bodily injury is actually defined in that statute, Your Honor. And great bodily injury is by means of bodily injury which causes substantial risk of death or which causes serious, permanent and ---

THE COURT: Let me save you some time. Quote for me Section B of the statute.

MR. SHAFFER: Okay. "A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person and the act is accomplished by means likely to produce death or great bodily injury.

THE COURT: Now, that's your problem. Likely to produce death or great bodily injury. I would conclude that that is for the jury to decide, but if somebody

strikes a lady in the head with a loaded nine millimeter using such force as to cause that weapon to discharge it is likely to cause great bodily harm. So it is a two-fold statute, and I would respectfully deny that.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: The evidence is for the jury to determine that he struck that unfortunate woman in the head with such force that it actually discharged a nine millimeter. And, obviously, if believed that's sufficient for the jury to convict on that count. What's your next one? You want to be heard on that one?

MR. REDMOND: Briefly, for the record, because I know this is being set up for appellate issues, Judge. I would like to bring an example of a case that I handled years ago in Dillon County where a pistol whipping caused a gun to discharge. The gun discharged and actually killed the individual involved. So when you look into that statute as it relates to being likely to cause great bodily injury or death the fact that it was a gun that was used to perform the whipping that would be an additional element that I would ask ---

THE COURT: Not only that but a blow of that magnitude to the skull is likely to cause great bodily injury.

MR. REDMOND: Yes, sir.

THE COURT: But the statute is -- the evidence is there to believe for the jury clearly to come within the purview of Section B.

MR. REDMOND: Yes, sir. So just for the record so it's clear as to why we would oppose that motion.

MR. SHAFFER: Your Honor, I understand the ruling, but I would just like to have one other thing since Mr. Redmond brought it up.

THE COURT: I'm going to charge the lessor offenses for you.

MR. SHAFFER: Thank you, Your Honor. The substantial risk.

THE COURT: Sir?

MR. SHAFFER: I think substantial risk -- he talked about these isolated cases ---

THE COURT: That doesn't concern me. Anybody in their right mind I think would understand that if you took a loaded nine millimeter and struck a woman in the skull with it to the extent that the gun was discharged it's very likely to cause serious bodily harm. I don't think there can be any argument about that.

MR. SHAFFER: Your Honor, I would just like to say that, and I understand your ruling and I'm not trying to argue with you.

THE COURT: I'm going to charge the lessor included

if the jury decides to do that.

MR. SHAFFER: Could I fit it under substantial risk? The reason that I'm making this argument is that I believe under the rules substantial risk.

A, substantial is clear and unambiguous meaning -- or a substantial risk is clear and unambiguous; that it means that there is more than just a possibility that he could have done it.

THE COURT: I don't see that language under Section B.

MR. SHAFFER: It refers to great bodily injury. Great bodily injury is five.

THE COURT: It says, "Likely to occur."

MR. SHAFFER: Yes, Your Honor.

THE COURT: I believe that most folks would think that a blow to the head with nine millimeter is likely to cause serious bodily harm, but I'll leave it to the jury and I'm going to charge two lessor includeds, and they can decide for themselves whether or not it's likely to cause great bodily harm.

MR. SHAFFER: And I would appreciate your charging the lessor included, the assault and battery third degree. One thing that I would like to say is that under the rule of limine any ambiguity in the statute, if it was ambiguous, or likely it is ambiguous that it should be

decided in favor of the defendant. That's all I have to say, Your Honor.

THE COURT: I'm going to charge that. I'll charge the statute as written and approved by the legislature.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: I will charge they can consider the first, and then they may consider the lessor ones.

MR. SHAFFER: And the next thing I was going to argue is directed verdict for the murder charge. I don't believe they have presented sufficient evidence of malice.

THE COURT: What's your position on the murder charge?

MR. SHAFFER: That they have not proved malice or that they have not presented sufficient evidence of malice.

THE COURT: I'll let Mr. Kernard.

MR. REDMOND: May it please the Court. I think as the Court realizes that malice can also be inferred by the circumstances as they were presented. We do have testimony in the record that the defendant entered the residence authority and shortly therefore and ended up pointing the weapon.

There is also evidence from the unfortunate widow in this case who also stated that she heard comments made by the victim prior to him being shot. I think these

circumstances in the light most favorable to the State would allow a jury to infer ---

THE COURT: Well.

MR. REDMOND: --- malice. And, further, we can argue that the use of a weapon would ---

THE COURT: No, sir. Not in this case.

MR. REDMOND: It can't be -- no, it can't be instructed, but we can argue -- I'm not saying we will, but the law is as I understand it sort of like ---

THE COURT: On the first I will not instruct it. Not instruct ---

MR. REDMOND: And we understand that. We understand once the Court ---

THE COURT: Oh, you can argue it all you want to.

MR. REDMOND: Exactly. That's all I'm saying. We can argue if we want to.

THE COURT: No. Given the fact that there is testimony that it was his gun. He entered the place. Little boy said he kill granddaddy. Momma hollered and he struck her. Given the totality of the circumstances if believed there is certainly evidence to subject that it was malice aforethought. Entering the house with a gun in his hand is some evidence of malice. Wouldn't you think, if the jury believes that.

MR. SHAFFER: Thank you, Your Honor. The one thing

that I would say is, and we can go ahead and deal with all the rulings now since he brought it up.

THE COURT: What is that?

MR. SHAFFER: I would object to the Belture Argument even. I think it was -- clear ---

THE COURT: No, sir. I'm not going to charge it, but they're entitled to argument what the facts are.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: And there is testimony that it was his gun. He went in with it, and it's testimony abundantly that that weapon not only killed the unfortunate victim, but was the same weapon that was discharged when he hit the wife. And they can argue what the testimony is about that gun. I'm not going to charge that it's an element -- permissive element for malice under Belture, but that doesn't keep them from arguing it.

MR. SHAFFER: Thank you, Your Honor. I appreciate that. Also I would move for directed verdict on the pointing and presenting charge. I don't believe there was any or there was enough proof that he was pointing and presenting for the purposes of ---

THE COURT: I believe there was some direct testimony. I'll ask. You want to respond to that?

MR. REDMOND: And, Your Honor, I apologize. Could you briefly restate that?

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO) COURT OF GENERAL SESSION
2012-GS-34-0024
2012-GS-34-0026
2012-GS-34-2028

STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
TYRONE J. KING)
DEFENDANT)

September 10-13, 2012
Bennettsville, South Carolina
VOLUME NO. 04 OF 04

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE; and a jury.

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

MIA DAVID, ASSISTANT SOLICITOR
Attorney for the State

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR
Attorney for the State

TRISTAN SHAFFER, ESQUIRE
Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

MS. DAVID: May it please the Court. Good afternoon. At first I want to thank you for your patience this week. I know it's been a long week, and we're all tired. And I'm a bit nervous. I'm not sure if you all know this, but this is actually my first time doing a closing argument. So kind of work with me here. At this point the State has spent the past two days presenting facts and evidence through witness testimony, photos, items collected, and videos to prove to you the Defendant's guilt.

The Judge has now instructed you on the law that is to be apply in this case. He has told you that the Defendant is innocent until proven guilty, and the State has the burden of proving that guilt beyond a reasonable doubt. Now, let's get into beyond a reasonable doubt. First, ask yourself what is reasonable? Reasonable is simply something that the average person would think. It doesn't mean the scientist out at Harvard, and it doesn't mean the man that sits on the corner wearing a helmet. It is just the average person.

That is a feeling that maybe things didn't happened the way we said they happened or the way the Defense said it happened. Beyond is simply going past that point. So we're about to go beyond the doubt of the average person that may think the Defendant is not guilty. And I will have you firmly convinced that the Defendant is guilty of

the crimes charged.

Now, to begin. We have four charges at issue today: Murder, assault and battery of a high and aggravated nature, pointing and present a firearm, and possession of a weapon during the commission of a violent crime.

First, we have pointing and presenting a firearm. This means that the Defendant pointed at another person a loaded or unloaded firearm. So you should ask yourself, what do you know from the facts that were presented this week. One, you know that the Defendant was at the home of [redacted]. How do you know that? Karen saw him in her room. Reggie saw him in the living room. Devonte saw him walk through the door, and the Defendant himself actually places himself in that home twice in both statements, and you heard his voice on that 911 call.

You know that he had a firearm. How do you know that? Karen told you because she saw it in her room as he pistol-whipped her. Reggie told you as he said he felt it in his chest. And, of course, again, in both statements the Defendant himself told you at some point he held that gun or swung that gun. You know he pointed that gun. How do you know that? Because Karen told you after he left her bedroom he went to the other side of the house where he held Reggie at gun point. Reggie told you as he sat right there on that witness stand and said he knew it was

a gun because he felt that cold steel in his chest.

Now, we have two types of evidence. You have direct evidence and you have circumstantial evidence. Direct evidence is testimony of a witness who has actual knowledge of a fact. That's a person that was there. That's somebody that saw the act for themselves. Circumstantial evidence is looking at the facts and circumstances that surround the situation and reach a conclusion from there. In this situation Reggie is direct evidence. He was there. He saw that Defendant put that gun in his chest. He felt the Defendant put that gun in his chest. So now finding the Defendant not guilty of pointing and presenting would simply mean you just don't believe Reggie.

Circumstantial evidence would require that you look at the totality of the circumstances and know that by the way Karen was screaming for Reggie in that phone he was bound to wake up at any moment. And if you look at the demeanor and appearance of Reggie right now we all know that he had to have been under gunpoint that night or else we might have another situation on our hands.

Now, the second charge we have here is possession of a weapon during the commission of a violent crime. The first element that has to be met there is the Defendant must be found guilty of a violent crime. By statute

murder is a violent crime. Involuntary manslaughter is also a violent crime.

Our second element, the weapon must have been used in furtherance of that crime. So let's ask ourselves what do we know about the weapon being used to commit these crimes. We know that our now 11 year old child -- ten year old child, Devonte, told us that he saw the Defendant with the gun right here at his stomach when he came into the room.

We know from our expert forensic pathologist that performed the autopsy report on the victim, Mr. James Galloway, we know that he was shot in the face by a gun on the right side and the bullet came out the left neck.

We know from our Crime Scene Investigator, Ricardo Prince, that this same gun right here was found in the backyard next door to [redacted] which also happens to be the Defendant's backyard.

We know from Michelle Eichenmiller that the casings found in the house, these casings, they were fired from this gun. And we also know from our crime scene investigators that these bullets were located in the wall. Now, on this situation we've already gone beyond a doubt, but I would like to address the fingerprints.

Now Andrena Belton, our fingerprint expert with S.L.E.D. testified that there weren't any fingerprints

that were able to be taken from this gun. And if you look at this gun she explained how it had a ridged surface, and that it was hard to take a print off a ridged surface, but that it was much easier to take a print off a flat surface.

She also explained to you that sometimes in the heat of the moment if you are sweating that you might sweat your fingerprints off. But, now, I'm curious about one thing. This clip doesn't appear to be a ridged surface, but there weren't any fingerprints on it.

Now, the Defendant told us in his second statement that that's how the gun went off. As he was taking the clip out of the gun it accidentally goes off, but here we have no fingerprints. And somehow, if was taking that clip out, he managed to get it back in before he goes into Karen's bedroom because as he hits her across the head with that gun it discharges a bullet.

Our third charge that we want to look at today is assault and battery of a high and aggravated nature. Now, the elements for that crime consist of unlawfully injuring another that causes great bodily injury or it is produced by means likely to produce, and that's our key words, 'likely to produce great bodily injury'. Now, as you listened to the Judge instruct you on the law he also told you that he would include lesser included of an A.B.H.A.N.

which would be assault and battery in the first degree, assault and battery in the second degree, assault and battery in the third degree.

But let me tell you why those don't work. Assault and battery in the third degree is unlawfully injuring or attempting to injure another with the present ability to do so. Ladies and gentlemen, that is simply a slap to somebody's face. A heightened level is assault and battery in the second degree. That is unlawfully injuring or attempting to injure another with the present ability to do so causing moderate bodily injury. Now, moderate bodily injury means treatment to a bodily organ, or function, or skin. That means if someone punches another in the face and leaves a bruised eye then that's treatment to the body or the skin. Ladies and gentlemen, that's not the case here.

MR. SHAFFER: Your Honor, that's actually an incorrect statement.

THE COURT: Sir?

MR. SHAFFER: That's actually an incorrect statement of law. Under the definition of moderate bodily injury that's not moderate bodily injury.

THE COURT: You may give your definition. She's entitled to her interpretations to the jury. The facts are matters for the jury to determine, and you may give

your version and she's entitled to hers. Proceed.

MS. DAVID: Now, we'll get back on track.

MR. SHAFFER: Your Honor.

THE COURT: Yes, sir.

MR. SHAFFER: Clarification to my objection. Actually, it specifically excludes skin in the statute.

THE COURT: You may argue that. Please, let this distinguished young attorney make her opening.

MR. SHAFFER: Yes, Your Honor. Thank you.

THE COURT: Proceed. You may argue what you want to, but she's entitled to do the same thing. Proceed. All of which is for this jury to determine as finders of the facts. Proceed, Ms. David.

MS. DAVID: You heard the Judge. It's for you to determine. Assault and battery of the first degree, it has three separate parts. The first one is unlawfully injuring another by non-consensual touching of the private parts. That's not what we are here for. That's not in this case. The second part: Unlawful injury to another during the act that occurred during the commission of a robbery, burglary, kidnapping, or theft. Now, it doesn't matter what the prosecution thinks was taking place in this case. But the Defendant has not been charged with any of those crimes. That does not apply.

The third part: Offering or attempt to injure

another with the present ability to do so. The act was accomplished by means likely to produce death or great bodily injury or during the commission of a robbery, burglary, or kidnapping. Again, it just certainly doesn't apply. But I will tell you what does apply: Assault and battery of high aggravate nature.

Those elements are lawfully injuring another where great bodily injury results or by means likely to produce great bodily injury. Ladies and gentlemen, this is the gun that Tyrone King used to hit Ms. Karen Galloway. This young lady here. This fragile young lady here across her head.

Now, if this won't likely produce great bodily injury, this piece of steel that I'm holding in my hand, then I don't know what does. And I think that we should all be thankful that the bullet discharged through the wall and out the roof, and not through her body or through another person's body that was located in the home. This is likely to produce great bodily injury.

Now. The Defense attorney might tell you, he mind stand up here and say, 'well, she didn't go to the doctor. She didn't call E.M.S. She didn't have any pictures'. But let me tell you why she didn't have any pictures. Because her husband was face down in the living room.

MR. SHAFFER: Your Honor ---

THE COURT: Please let her make her statement and you may make yours, sir.

MR. SHAFFER: Your Honor, there's also ---

THE COURT: What is your objection to this?

MR. SHAFFER: The facts not in evidence ---

THE COURT: Sir?

MR. SHAFFER: Facts not in evidence. She's going off on stuff that ---

THE COURT: Her last statement was that the deceased was faced down. I'll let the jury determine whether or not that was in evidence. Proceed.

MR. SHAFFER: Thank you, Your Honor.

MS. DAVID: As I told you she did not go to the hospital because her husband was face down on the floor. He had just been shot. Mrs. Karen Galloway here, she has five children. She had three children that were in the home that night. She had just lost her husband. She had just lost the father of her kids. She had just lost the grandfather of her grandchildren. At a moment of weakness she had to exhibit the greatest strength that she could find, and worrying about a hit to the head she had bigger problems that night.

Now. Before we get into the murder I want to cover voluntary intoxication, and I want to be sure you understand that voluntary intoxication is not, not a

defense to a crime in the State of South Carolina. Voluntary intoxication is making a conscious decision to consume drugs or alcohol into your body. Now, the Defense might want you to believe that the Defendant was drunk on that evening, but -- and as the State we do have the bottle. Ricardo Prince recovered this bottle, but I need you to keep in mind it's not a defense.

We also have Officer Shawn Feldner which is the officer that did the first video, and we have Officer Timmy Shaw, which is the arresting officer. We asked them if the Defendant was drunk. They both said he smelled like alcohol, but he didn't appear to be drunk. You saw for yourself in the videos. He's not staggering. He's not using slurred speech. He's not being overly obnoxious. He's not bent over like he's hurt from some sort of drugs or alcohol.

But even if, even if, even if he had consumed drugs or alcohol, you must remember it is not a defense in the State of South Carolina. Because if it were a defense we would not have laws like driving while under the influence. You cannot get drunk and then just go and do whatever it is that you feel like doing. Not happening here.

Now, the fourth crime we have charged here is murder, and this is our most important, most important charge

here. The elements of murder is that the Defendant has killed, taken the life, of another with malice aforethought. Now, again, we're going to do what we've done for the other charges. We're going to look at what we know. First, we know that the Defendant did it, and we know that the Defendant was alone. As the child, Devonte, testified he told you Tyrone was the only person that came through that door that night. He told you he knew Tyrone because he had seen him several times before. He lives in the house next door. That child knew Tyrone.

Now, you might wonder why he didn't point at Tyrone when I asked him to, and there are two possible reasons for that. One, Tyrone looks substantially different today than he did at the time that crime was committed. He looks substantially different today than he probably looked the last time that child saw him. If you noticed in the videos Tyrone had hair like dread locks, and he didn't wear glasses. Maybe that child was looking for someone else. Not that appearance that he sees today.

The second possibility is that you watched that child tremble on the stand as he talked to me. I simply said what's your teacher's name, and his lips started shaking. He got nervous, and he got scared. I had to walk up to him and talk to him, and then it was my fault. It was a mistake on the State's behalf to think that I could stand

in this courtroom and ask an 11-year-child to point a finger at the man he knows to have killed his grandfather. I apologize for that.

Now, how else do we know that it was Mr. Tyrone King and that he was alone? Because the first officer that arrived on the scene, Mr. Timmy Shaw, said that as he approached the front door he decided to go around the side of the house. And he could hear the footsteps running through the back door, and as he rounded that back corner he saw someone bust out of that back door and take off to the right.

Mr. Timmy Shaw testified to you that he only saw one person come out of that back door, and that he only ever chased one person; that no one else came out that door.

It wasn't until -- it wasn't until the interview with Investigator Shawn Feldner that another person is introduced into this incident, and we all know that person wasn't there. It was Mr. Aloysius McLaughlin. He came to Court and he testified and he told you that he wasn't there. As a matter of fact, he told you at the time of the incident they weren't cool. They weren't friends.

Melissa Graham, his girlfriend, came and she sat there, and she testified and she told you Aloysius was with her and they were at his mother's house. As a matter of fact, she said the same thing. They weren't cool.

They weren't friends.

To take it a step further we even had a McColl Police Officer come in and testify, Mr. John Westbay, and he sat there and he told you that he knew Aloysius wasn't there. How did he know Aloysius wasn't there? Because he went to the house and woke him up out of the bed. I said, "Well, how did you know that he was waking up?" He said he had a crease to the face, some sleep in his eye. What he was wearing that he could tell that he had been asleep for a while.

Now, that second element which is kill, took the life of another. We know that James was killed. How do we know? Because the autopsy report listed the cause of death as homicide. That autopsy report will tell you that he died from a gunshot wound to the right face that exited the left neck.

Furthermore, furthermore, our expert from S.L.E.D. with G.S.R, gunshot residue, Mr. John Roberts, did eight tests on two individuals. Four possibilities: The front palms of each hand, the back palms of each hand for victim and Defendant. There were only lead particles indicating gunshot residue on one party, and that was the Defendant Tyrone King's right hand. There was nothing on that victim. And that kind of explains where our second statement comes from.

You see, if you were paying attention you notice that the Defendant is arrested on November 11th of 2011. This incident occurs at 2:30 in the morning. So the Defendant, he sits at the jail all day Friday. Wakes up. Sits at the jail all day Saturday. Wakes up, and he sits at that jail all day Sunday. And, finally, on Monday morning, November 14th, the Defendant makes a special request to speak with Investigator Jamie Seals.

See, now, by this time the Defendant had been sitting there for three days thinking about what had occurred. And the only thing that he could think about was the very first thing they had done was create -- was took -- was Brittany English had took that gunshot residue from his hand when he was first arrested.

He had to get a second statement in that would put him at the house shooting the gun, because they already had the gunshot residue, and he said it was an accident at that point. But we know better. He sat there for three days and then he had an additional two days before Jamie could get there before making that second statement.

Now, we are -- this moves us into our third element for murder which is malice aforethought. Malice aforethought can be defined as ill will or hostility towards another party. It is the intentional doing of a wrongful act without just cause. It is acting with

recklessness or a substantial disregard for the life of another. Now, as we go into this, into malice, malice is sort of like intent. I want you to know that the State does not have to prove motive. We don't have to show you, oh, the Defendant was mad about something from three weeks ago. We don't have to show you, oh, the Defendant had been talking about Mr. Galloway in the neighborhood for the past three weeks. We don't have to do that.

And I also want you to know that malice aforethought does not have a time limit. It is not something that has to have been there three months ago. It's something that can be created right now, within ten seconds. But before I go to these -- now, wait. Let me back up a minute. I told you this was my first time, and I see where I sort of missed something here.

In discussing the malice and showing that we don't have to show the motive we don't have to prove it with absolute certainty. Because it is impossible for us to go back and get into the mind of Tyrone King from November 11th of 2011. We just can't crack his brain open and flip to that page and say, this was the thought he had. We've got it. But before I get too far into that I want to talk a little bit about involuntary manslaughter.

The difference between murder and involuntary manslaughter is malice. It is the intent. For murder you

need intent. For involuntary manslaughter you need an accident, and I'm about to take you ---

MR. SHAFFER: Objection, Your Honor. Invalid statement of the law. Accident is also a defense of involuntary.

THE COURT: Let her continue and you can make your statement to the jury. The jury will understand from my instructions the law with regards to involuntary manslaughter. And if they get confused then I will be glad to charge it again. You may proceed, Ms. David.

MS. DAVID: Now, in order for it to have been an accident, in order for an accident to have occurred we're looking for three thing. It must be unintentional. The Defendant must be acting lawfully and reasonable care must have been used. Now, I am going to work through those three things backwards for you.

First, even if you choose to believe that the Defendant was actually trying to sell that gun reasonable care wasn't being used. The Defendant goes into the home of another man with a loaded semi-automatic gun. The Defendant told you himself on the video that everybody knows you take the clip out of a gun before you sell it to someone. Well, if he knew that, then why didn't he take it out before he entered the home? Cause he just wasn't using reasonable care.

The second one, this is pure inference, but nothing about that night says the Defendant was acting lawfully. Keep in mind it's 2:30 in the morning. It's not 9:00 or 10:00 at night. It's 2:30 in the morning. The Defendant -- the victim was in the bed with his wife. Mr. Reggie Cousar, a grown man, was in his room asleep. Two other grandchildren are in another room over in Bedroom Number Two asleep. And Little Devonte is asleep on the couch.

Now, if he was there to buy alcohol the one selling the alcohol wasn't lawful. But guess what else we know? The one buying the alcohol wasn't lawful either.

MR. SHAFFER: Your Honor, objection. Incorrect statement of law again. I can explain if you let me approach.

THE COURT: No, sir. I'll let you correct what you think it is at the appropriate time. I've instructed the jury on the law, and I will give it to them again if they request it. You may proceed, Ms. David.

MS. DAVID: Thank you, Your Honor. But even if he wasn't there to buy alcohol maybe he was there to sell the gun like he said. But if you recall on that video, on that second video, and if you would like to watch it again we will make it available for you, the Defendant said that he was going to shit someone that night. That sounds real

lawful to me.

Now, I want to get into the intent for the murder and the accident that would make it involuntary manslaughter. And the only way that we are going to be able to do this is by looking at the totality ---

MR. SHAFFER: Objection, Your Honor.

THE COURT: Wait a minute. What?

MR. SHAFFER: Just to preserve my previous objection. The accident to the involuntary ---

THE COURT: Your previous objection. Which one? You've objected already five times. Now, which one you talking about?

MR. SHAFFER: Yes, this is the invalid statement of law. Accident is a defense to involuntary. It's not ---

THE COURT: You may make your corrections at the appropriate time. Now, go ahead, Ms. David.

MS. DAVID: Now, we have to look at the totality of the circumstances and replay that evening in our heads. If I've told you once, I've told you ten times already the Defendant goes to the Galloway home at 2:30 in the morning. He knocks on that door. Mr. James Galloway goes to the door. He allows his neighbor to come inside. He goes back to his bedroom and dresses himself. He comes back out. At that point we have four people involved in the situation. You have Tyrone King that entered the

home. You have the victim, James Galloway. You have Karen who is in the bedroom who knows her husband is in the living room area with Tyrone King. And you have that 11 year old child who was 10 at the time on the couch.

Now, Devonte, who is 10 on the couch, he tells you he saw Tyrone come in there. He saw that gun right here at his stomach. Devonte and Karen both tell you that they heard Mr. Galloway say, "Nah, man, I ain't got nothing." And then, pow. But, now, what we don't know, what we don't know is how Mr. Galloway got shot in the right face and out the left neck.

You see, you have Mr. Tyrone King, and according to Devonte, you have him standing there in the living room holding Mr. James Galloway at gunpoint. He has the gun pointed. Devonte told you that he had the gun pointed at his stomach. As you look at the Miranda Rights forms you'll notice the Defendant is 5'9". The victim is 6'2". There are only two people that would know how an individual 5'9" can get a downward slanted bullet into someone 6'2". Because he's taller than him.

And so we came with two possible theories. You're entitled to come up with more. The way we see it is Tyrone King has the gun here, and when James Galloway realizes he's about to get shot he possibly goes like, "Nah, man, I ain't got nothing." And the bullet goes

here. But it's also possible that he goes, "Nah, man, I ain't got nothing." And turns to run, and the bullet goes here out the left neck and directly into the wall. The problem we have is that Mr. James Galloway isn't here to tell us what happened.

The only person who can tell us what happened is the Defendant, Mr. Tyrone King, who has told us three separate stories already. He says one thing on 911. He says another thing on that first video, and he says something else by that second video.

Now, right now, we need to talk about what's an accident. An accident is you're out playing baseball and you throw a ball and you accidentally hit an unintended individual. An accident is I go to raise my hand and I don't realize somebody's behind me and I accidentally hit them in the face. I'm not sure if you've been watching this courtroom. But yesterday a Mountain Dew can turned over, and somebody accidentally -- it was an accident. And somebody went to catch that Mountain Dew can. That's an accident. But an intentional act, malice aforethought, it only requires that moment.

That was an intentional act. I can tell you I didn't plan to do that last week. I didn't plan to do that yesterday. I created that within the past, oh, I don't know, ten seconds. You saw me move the gun and decide to

go. That was an intentional act. The way the Defendant walked in that house with this gun here. Maybe he didn't plan to shoot him right then. He didn't have to, but when he raised that hand up and went pop that was an intentional act. That was malice, and that was murder.

Now, if you're still not convinced that was murder we'll go further, and we'll look at what happens after the fact. After the fact the Defendant immediately begins to just go, I don't know, causing chaos. He runs into the room where Karen is and he pistol whips her across the head. He holds Reggie at gunpoint. He snatches that phone from 911 and immediately, immediately he begins throwing the phone and hiding his hand.

He tells 911, "Yeah, yeah, they -- somebody they came over there to buy some liquor from the bootlegger." You've been living next door to him for the past 12 years. You've been knowing he's been bootlegging for the past 12 years, but all of a sudden you want to tell authorities. You're hiding your hand.

The next thing that happens, and this is something that, that I kind of like. This is the point where I feel convinced. In the first video, towards the end of video, the Defendant says, "If I would have done it don't you think I would have shot everybody else in the house? Don't you think I would have shot her?" You know some

sort of street reverse psychology, but that's exactly what he does. After he shoots James he take that's loaded gun in the room with Karen. The gun goes off. Bullet in the wall and out the roof. He goes to the other side of the house. Holds Reggie at gunpoint, but Karen is on the phone with 911. They're at Oriole Lane. Their house is about as far as from the Sheriff's Office as we are from Jin Jin right now.

So by the timely he could -- by the time 911 was calling back Timmy Shaw was in that front yard. The Defendant was just unable to complete the crime, but he tried. He said, "If I had done it this is how I would have done it," and I'll be dog gone if he didn't try to do it.

Now, we're at a point right now that I think that you should feel convinced that the Defendant has committed murder beyond a reasonable doubt. And if you don't feel convinced I want to replay the moment. Replay this 911 tape so that you can hear the chaos that was taking place that night. So that you can hear Karen screaming for her life, screaming for Reggie. Listen to it as we play the video.

(WHEREUPON, State's Exhibit Number 40 was played for the jury in open court.)

MS. DAVID: Tyra, you can stop the video. Ladies and

gentlemen of the jury, this wasn't an accident. This was an intentional act, and if it was an accident then why did he continue to run four houses down. As that video stopped you heard them say, "Get the dogs down here. They're looking for him. Something awful has happened." And right now I feel like the State has met it's burden by proving to you beyond a reasonable doubt that the Defendant has committed each and every element of the crimes that have been charged.

And I will simply ask as you deliberate and come back with a verdict that you will find the defendant guilty of murder of Mr. James Galloway right there in his home. Assault and battery of a high and aggravated nature of Mrs. Karen Galloway as he hit that lady across the top of her head with a gun. Pointing and presenting a gun at Mr. Reggie Cousar as he held that gun to the center of his chest. And possession of a weapon, that 9 millimeter semi-automatic gun, while he committed this violent crime.

I ask that you find the Defendant guilty, thank you.

THE COURT: Thank you, Ms. David. Mr. Foreman, we will have one final closing. We will let you go to the jury room for just a moment. I will be calling you back real soon. Please let me know when you are ready to come back. We will have one final closing, and then I'll be giving you the case for your deliberation.

entitled to a fair trial, and we cannot have any statements or outbursts. Please follow my admonitions. All right. Mr. Schaffer, you ready?

MR. SHAFFER: Yes, Your Honor.

THE COURT: Bring the jury in.

(WHEREUPON, the jury panel enters the courtroom at 4:59 p.m.)

THE COURT: Jury is present. You may proceed, Mr. Shaffer.

CLOSING STATEMENT BY MR. SHAFFER

MR. SHAFFER: Thank you, Your Honor. Now, before I begin speaking to you, at my client's request, I am going to play a portion of his statement from the 16th.

(WHEREUPON, a portion of State's Exhibit Number 4 was played for the jury in open court.)

MR. SHAFFER: I apologize, Your Honor. A technical issue. Well, I'm not going to make y'all watch a video with no sound so we'll move past that. Thank you. Court's indulgence for a moment. We're going to -- I apologize. Initially I had not planned to do that, but -- or else if I had planned that I probably would have set it up before now. I apologize for doing that. My client requested that as sort of a last minute addition.

I want to tell y'all a little something. I want to say that I take a lot of pride in my work. I take pride

in what I do because I, like I told you in opening argument, I make sure people follow the rules. That's my goal. Not to the prove anything. Merely to make sure people follow the rules. And I take that job very seriously. You probably saw me objecting quite a bit, and y'all probably got your exercise in at least on Monday going back and forth to the jury room. And the reason I was doing that was to try to make sure that the rules are being followed.

So even when everyone is looking at me like I am wasting time, and even when a bunch of people in the courtroom hate me and can't stand what I'm doing, I try to make sure people follow the rules because I take pride in what I do. Now, when we picked the jury our goal was to find a diverse group of people with one thing in common. And that one thing was that they took pride or they took pride in what they did.

And, of course, you can't tell that someone takes pride in what they do just looking at them. But we tried our best to pick a jury and strike people who we didn't necessarily think took pride in everything that they did. And the reason that we want someone or a jury that takes pride in what they do is because this is a very important matter. It's very rare that you hold the rest of a man's life in your hands.

The decision that you will make today will impact Mr. King's life. And because it's important we get people who take pride in that job. And we want to make sure that we get a verdict that y'all are proud of. Sort of a strange concept, but how do you get a verdict that you are proud of? You took an oath at the beginning to follow the law. Not to decide in passion or prejudice. Follow the law. And we want to make sure that each and every one of y'all are proud that you followed that law.

Now, that gets me back to the question that I didn't really answer which was how do you get a verdict that you're proud of. And the way you do that ---

MS. JOHNSON LEE: Judge, I'm going to object at this point, and I hate doing this but ---

THE COURT: Pardon?

MRS. JOHNSON-LEE: I'm going to object to this, and the only reason that I am doing this is because the jury is to apply the law to the facts in this case whether it is a pride issue or not. Just apply the law to the facts of the case, and I just don't want that law misstated.

MR. SHAFFER: That's just what I asked them to do.

THE COURT: Go ahead.

MR. SHAFFER: We want you to take pride in applying the law to the case, and I believe I stated that, but I want to clarify that. That's exactly what we want you to

do is apply the law to the case. We want you to be proud of that, and how are you proud of that? You're proud of that when the State presents a case that you can be proud of. I want -- I want each of you to think about that. Think about whether the State has presented a case to you that you can be proud of. Now, one way the State can present a case to you that you can be proud of is for them themselves to take pride in their work.

Now, at the beginning of this you know they've -- we're going to go ahead and say this for the record. Tyrone King was in the house. They've proven that beyond a reasonable doubt. They proven that James Galloway died beyond a reasonable doubt. And that is a tragedy, and I sincerely feel for the victim's family. I work with another attorney who does personal injury cases, and I see various tragedies come in the door every day. I see people who lose their family and they're mad and they should be.

For all we know that siren right there is another tragedy, but it doesn't necessarily make it criminal, and ultimately, that's not what this case is about is a tragedy. It's not about a tragedy. It's about whether or not this was murder. Has the State proven that this was murder. Has the Sheriff's Department taken pride in their work. Let's look at some of the other things they've

proven. They've proven that Mr. Galloway was killed with this gun. They've proven that my client was holding this gun. They have proved that my client left the back of the Galloway's home and ended up right here hiding underneath the truck. They've proven that. I think that they have proven that beyond a reasonable doubt.

But lets look at what they haven't proven. They haven't proven why, and if you remember my opening statement, my opening statement was hard to follow. I understand that. This, too, is -- this is my first trial as well, and this is my murder trial at least. I've tried small traffic violations and things like that. I've never tried a murder case, but you have to think if they've taken -- if they've proven why.

Because remember my opening statement, my opening statement said the most important question in all of this is why. And if you remember Mrs. Galloway when she was on the stand she said she had told the police officers that night of that she wanted to know why he would have done this. Why Tyrone King would have came into their house and shot him. She said that is the question that I really want to know is why. Guess what? Sheriff's Department has all utterly failed to prove why.

MS. DAVID: Objection, Your Honor. The State does not have to prove motive.

MR. SHAFFER: I'm not saying that.

THE COURT: I sustain that. The State does not have to prove motive.

MR. SHAFFER: I admit to that.

THE COURT: Go ahead.

MR. SHAFFER: Your Honor, I freely admit that the State does not have to prove motive. Guess what? Colorado, two months ago. Some idiot came into a theater and started shooting up the place. He had no motive. He had no reason to kill any of those people. The State does not need to prove motive. They need to prove malice, and in a case like that Colorado case, motive doesn't matter to prove malice. You can tell there was malice because the man went in there with a -- with several weapons and decided to start firing indiscriminately in a crowd.

That is why the State doesn't need to prove motive all the time because sometimes people do stuff for no apparent reason. I freely admit, but in this case they have failed to answer Mrs. Galloway's question. Have they proven anything about why this happened? Have they even proved how it happened necessarily? Sure, they've given theories. The prosecutor come up here and said, "Well, we think this could have happened this way, or we think this could have happened this way." What Ms. David has to say about it doesn't matter. They haven't proven what

happened or how it happened.

Excuse me one moment. I'm getting a cold and I need to take a drink. Now, Ms. David also said that you would not be able to get into the mind of Tyrone King. I agree with that statement. You will never be able to get into someone else's mind, but you can prove some stuff. Their theories, if they thought that way about how stuff could have happened, why didn't they even attempt to show that?

I'm showing you State's 17, 18, and 19 which are in evidence, okay. These are all in evidence. What does this show? This shows the bullet path. Not of the bullet that killed James Galloway, but this is the bullet path of the other bullet. Why didn't they do one on him? Why didn't they do one on the other bullet? Maybe it was because Ricardo Prince for some reason -- Ricardo Prince was the man from S.L.E.D. For some reason he said he didn't even see the bullet hole in the wall the first time he goes there.

I'm not sure how you miss a bullet hole. There is not a picture of it in evidence. I didn't present any evidence in this case, okay. But I also told you at the beginning of this trial that I don't have to prove anything. The State has to prove it. He said he took over 100 pictures. Why aren't there any more pictures. That's only 10. Could it be because it shows something

the State doesn't want you to see? Could it be that it shows an obvious bullet hole in the wall of the trailer? Could it be that they're not proud that their star witness, their crime scene man, Ricardo Prince, didn't see a bullet hole in a wall of the trailer above blood that was on the floor.

How didn't he see that? Because he didn't do a very good investigation. Because he had talked to Hog Head beforehand. Hog Head is Investigator Campbell. He's the man that came up here. He's lead investigator on this case. He told Ricardo Prince, according to Ricardo Prince, that, "Well, Tyrone had kicked in the door, shot the man and then took off running." You didn't hear anything about him shooting the man -- I mean kicking in the door. Where in the evidence do you hear anyone say that he kicked in the door?

Mrs. Galloway said that he knocked on the door. Nobody said he kicked in the door. The fact that Hog Head said that he kicked in the door is indicative to this entire investigation. This is what the Marlboro County Sheriff's Department thought. They thought, okay, we caught him red handed. He kicked in the door. Case closed. That's Monday at 3:00 a.m. Case closed. We caught him. We don't really need to do stuff. We'll get Ricardo Prince to do whatever he wants to do. Let him go

back. We're not going to request anything more. That's Friday morning. Friday the 11th. They decided this case Friday the 11th.

On Monday the Defendant sent a request. Why did he send down a request on Monday? Probably because it was a weekend for two days. It's pretty hard to request an investigator show up on a weekend, but he requested it. He requested him come out on a Monday. He came out on Wednesday, and that was Investigator Seales who took a second statement from Tyrone King.

That was the second statement that I was trying to play for y'all, and if y'all request y'all can view that statement, but I'm not gone to take up your time with it right now. And I have to say I give a lot of credit to Investigator Seales. He was honest. He was very honest. Took a statement from the man, and at least he was honest. He had lied to him about Mr. Galloway being alive in the first statement. He had also lied to him about actually talking to the Solicitor's Office about it, but he was honest. He said he didn't do any follow up.

What kind of follow up could you have done? Maybe you could have talked to Broom, the man who Tyrone said he got the gun from. I didn't talk to Broom, and I bet you nobody talked to Broom, because if somebody had talked to Broom and Broom had said that it didn't happen or it did

he'd be in here. They never followed up on that story. They never asked him to demonstrate what happened. They never uncuffed him so that he could demonstrate what happened.

He's sitting there on the videotape right here because his cuffs let him go to right here. We don't know if the man was looking at him like that. We don't know that because they never asked. You know what another question they never asked? What position Mr. Galloway was in when he was shot. They never asked that question. You know why? Because they didn't want to know. They didn't care to know because they don't take pride in their work.

You might be thinking, well, what difference would that really make? Well maybe it would have helped us actually have an understanding of how this happened versus relying on, well, we think it happened this way or maybe it happened this way. Theories are not proof. That idea of the Solicitor of how this could have happened isn't proof.

Now, one thing the Solicitor said about the second statement which I thought was interesting she built it up like this was this big ah ha moment. Ah ha, we caught him. He spent two days, three days thinking about how he's going to explain away the gun powder. He admitted to handling a gun in the first statement. How is that a big

ah ha moment?

Another thing she said about the first statement -- I mean the second statement, the one on the 16th, is that Tyrone King was going to "shit someone." He didn't say shit someone. He said, "I was gonna shit Broom. I was going to steal that gun from Broom. I was going to go sell it to James Galloway. I stole the gun from Broom cause he let me hold it. I was gonna go sell it so I could pay for Christmas presents."

He said he was going -- he didn't say he was going to shit someone. Don't let them make you think that that somehow means he was going to go out and rob somebody because that's just not the truth. And there's no evidence to show that. Now, they also mentioned -- well, what we personally think is that he's going to go rob somebody. They didn't say that directly. They said it as we don't think this is applicable in -- one of the statutes is applicable because we don't think he was going to go rob somebody. Or we think he was going to go rob somebody but we don't have any proof of that.

If they thought he was going to go rob somebody, cops thought it, if they have any evidence to say that? Guess what? They would have charged him with robbing somebody. What they did -- what they did was charged him with the highest offenses that they could.

Now, they also mentioned earlier -- well, he was planning, you know he said in his first statement that he didn't want to -- that he would have killed everybody in there. They said, 'Well. He tried." Well, why isn't he charged with attempted murder? Why is he only charged with A.B.H.A.N? Because they don't have any proof of it. They are substituting their personal belief as proof, and that's just not right.

Courts indulgence just a moment. Now, I will let your judge of credibility for yourself. I will let you believe, as the Judge said, a part, a whole of anyone's statement or none at all. Think about that of Hog Head, the lead investigator in this case. Remember James Campbell? I mean, he's Hog Head. Large black man with the dark suit on that came in yesterday. After I had asked about him magically appeared. Lead investigator hadn't been here the entire time. Why? Why wasn't he here the entire time? Why wasn't he at counsel table? Seales said that normally when he's lead investigator he sits at counsel table.

Why wasn't Hog Head here? Because they are not proud of what he had to say. They're not proud that they have a man who's coming up with theories of nothing as their lead investigator. He kicked in the door. He told that to Ricardo Prince. Now, you can either believe Hog Head or

Ricardo Prince. I don't think Ricardo Prince is lying. I may think he's not very observant. He didn't observe the bullet hole in the wall. He somehow missed the exit wound at the back of the man's head. I don't think he's a liar though. I just don't think he was paying very much attention. Probably because he thought case closed. The man kicks in a door. He gets caught two houses down. Case closed. They have him. Why should I really do a full work up like this was going to trial.

Ricardo Prince prepared this, showing State'S Exhibit six, a diagram. He showed this. Listed a whole bunch of stuff, and this is the State's diagram they made so they could show y'all what happened. What's missing from the diagram? What's missing from this diagram is where the body was. They show the bullet that entered the wall that went through his head and entered the wall. It definitely killed him. We're not disputing that. The bullet that they pulled out of the wall killed James Galloway.

Maybe they didn't take the time to measure how far it was from the wall before they took that bullet out. How are we going to know what happened? How are we going to be able to say whether Tyrone King's second statement was true or not. We don't know the position he was in. Yeah, we can believe Mia's theory, or Ms. David's theory, but we don't know the position he was in. Nobody ever asked.

Nobody knows how high the bullet was out of the wall. Nobody knows if he had his head turned. Nobody knows if he was bending down picking something up. Nobody knows if he was sitting Indian style on the floor. And the reason nobody knows is because they didn't take pride in their work. I do. I spent over 181 hours as of Sunday night at 11:30 preparing for this case. Now, this is a Court appointed case which means I got something saying that I need to show up; that I am to represent Mr. King.

I'm not going to get rich off of this case, but I don't mind spending the time on this case because I take pride in what I do. Sheriff's Office did not take pride in what they did. If they had taken pride in what they did then possibly we would have an answer to that question of why. At least a better idea of it, but we don't have that because they didn't take pride in what they did. Because of that you don't have a case that you can be proud of.

You can't render a verdict that you can be proud of, and I have to tell y'all this. The reason that you can't render a verdict that you can be proud of and the reason that they haven't given you a case that you can be proud of is because one does not exist. It doesn't exist in this case. By that I mean this was not a murder. Why is this not a murder? Why do I say that this is a case that

you can find him guilty of murder and be proud of that verdict doesn't exist? Because think about the evidence. These men were neighbors. They were friends. He went over to that house, to his next-door neighbor's house, 200 yards away from the Sheriff's Department. And his next door neighbor died. That wasn't murder. He had no reason to shoot him.

If he had a reason to shoot him, if they thought he had a reason to shoot him, they would have introduced that evidence. Trust me, they would have said first thing, he shot him because of this, or he shot him because of that, but they don't have that.

MS. DAVID: Your Honor, I object again. The State doesn't have to prove motive.

THE COURT: We've said that now, counsel, many times.

MR. SHAFFER: I agree. The State does not have to prove motive.

THE COURT: Well, quit trying to argue motive then. That's the third time you've done it.

MR. SHAFFER: Your Honor, I will say this though. Motive is one way that you can prove malice. You can prove malice by motive.

THE COURT: I can agree with that.

MR. SHAFFER: Thank you, Your Honor. What kind of murderer goes into his neighbor's home, 200 yards away

from the Sheriff's Department, and shoots him and then sticks around long enough to run into the bedroom and then sticks around long enough to call the cops. But then, of course, runs away. I'm not doubting that he ran away. I'm not doubting that he called the cops.

You heard him on the 911 tape. But think about this, Tyrone King was familiar with law enforcement people. You heard him say that in the first statement. What Feldner took from him is that he was familiar with various people in the Marlboro County Sheriff's Department. Heck, his home was 220 yards away. So he -- and he told a lie, and he acted stupid. He ran around the house and acted stupid.

Now, I'm not here to debate with y'all or debate with the State over whether or not Tyrone King acted irresponsibly. But being familiar with Marlboro County Sheriff's Department he also probably had an idea or at least thought he knew what they would do. If Tyrone King walked out of that door and said, "I accidentally shot him. I'm so sorry," you think they would have believed him? You think they would have followed up on that story? They wouldn't have followed up on that story because he told them about it a couple of days later. And guess what they did. They didn't follow up on that story.

So what did he do. He told a lie. He was scared and

he told a lie, and he caused chaos as they said. I believe Ms. David said in her opening he acted crazy, but he was scared. He had been drinking and he had just shot a man. He didn't mean to, but he had just shot a man. So, yeah, he told a lie because they wouldn't believe him.

Now, the State's going to talk about or State talked about the different levels of manslaughter. I mean, no, the different levels of assault. And they went really in depth to it. They charged him with the highest of everything so that y'all could sort of sort it out and figure out what it is. Charged him with murder, the most serious charge available. Charged him with assault and battery of a high and aggravated nature. Assault and battery of a high aggravate nature is something that would cause death or serious bodily injury. Something that is likely to produce -- I'm not going to debate whether or not he hit her with the gun.

He said he was waving it. I apologize. Leave it down. He said that he was swinging the gun. Feldner said he was waiving the gun. He didn't say he was hitting her with the gun. He did. He hit her with the gun. I'm not going to say she's lying. He didn't say she was lying. He's known that lady for 12 years. He isn't going to say she was lying about that. But the question is what injury did they prove or what injury, what likely injury, would

have resulted from hitting someone over the head with a gun. And I'm not going to go back over all the Judge's charges because if y'all have questions about what the Judge said you can ask him.

Now, I'm also going to briefly talk to you about voluntary intoxication. Yeah, he was drunk. Yeah, he had been drinking. That's no defense. I agree with you. That's no defense. I'm not using it as a defense. I'm using it as an explanation. An explanation for how a man fiddling with a gun, fiddling with a gun with a magazine that's not necessarily -- necessarily made for it, fiddling with that, and he was fiddling with it and it went off.

Now, Judge says no defense. Basically, the Judge is saying you have to treat him, even though he was drunk, you have to treat him the same way as if he were sober. I'm not saying it's any excuse. Drunk people and guns don't mix, okay. I'm not using that as a defense. What I'm trying to do is to say, yeah, that did happen that way. It's reasonable that it happened that way.

Now, quite honestly, I'm not 100 percent sure if that magazine goes in correctly or not. They had said something about it, and quite honestly, I didn't catch that. That was the first time on the stand that I had heard anything about it. So I didn't intend to say

anything about the magazine does or does not fit because I really don't know. But what I do know is that there was a chance for them to explain or possibly explain what had happened. And they had a chance to blow a bunch of holes in his story or confirm his story. They didn't take that chance.

Case closed, Friday morning, 11-11-11. By 11/16 the case was closed. Why would they reopen it? Why would they reinvestigate. Were just not gonna believe him. We caught him red handed. Why are we gonna believe him? So for the last 10 months no investigation has been done on his statement to prove or disprove it.

Now, Ms. David also spoke of another one of her ah ha moments was there was no fingerprints on the magazine. He didn't say he pulled out that magazine. He said he was trying to get it out. Trying to get it out by pressing that button. That's how you release the magazine on this gun, pressing that button. I know that because I have, not a High Point. I, like Mrs. Eichenmiller, prefer more quality firearms than this. But most guns generally -- generally that's where the magazine release was.

But there's no fingerprints on it even though this is a smooth surface and this isn't. But he didn't say he pulled out the magazine. He said he was trying to pull it out. He said he was trying to pull it out because you

don't give a loaded gun to somebody. He probably didn't realize there was one in the chamber as well. How do you realize that? Had he pulled that out maybe we wouldn't be here today. Maybe James Galloway would still be alive.

Now, I'm not gonna keep y'all forever because y'all have a lot of talking to do. And the only thing I hope you do is I hope you take pride in what you do. And I hope that you can give a verdict that you can be proud of. Thank you.

CHARGE OF THE COURT

THE COURT: Foreman and ladies and gentlemen of the Jury, let me first thank all of you for your attention here this afternoon to the charge and to summation of counsel from the State and the Defendant. It's just simply an indication of a good jury intent on doing their duties in accordance with their oath. You've had the charge on the law and you've had the summation of counsel and it is now your duty to consider the evidence in this case as finders of the facts. Apply that evidence to the law of this case and thereafter reach the verdict unanimously. Whatever your verdict is as to each of these four indictments must be unanimous. Cannot be a verdict of the majority. Obviously, it would not be one of the minority.

And, Mr. Foreman, I have prepared a form of verdict

agree on what goes in as exhibits, please. For the State, let's go see what goes to the jury. Were there any exceptions or additions to the charge?

MS. DAVID: No, Your Honor.

MR. SHAFFER: No, Your Honor.

(WHEREUPON, State's Exhibit No. 50 was marked for identification and received into evidence.)

(WHEREUPON, Court was in recess at 5:53 p.m.)

JURY QUESTION NUMBER 01

(WHEREUPON, back on the record at 7:22 p.m.)

CLERK OF COURT: Judge Cottingham said by the consent of both the parties they're going to send a written note in to the jury explaining the questions here on first, second and third on assault and battery with high and aggressive nature. Okay.

(WHEREUPON, Court's Exhibit No. 3 was marked for identification and received into evidence.)

(WHEREUPON, Court was in recess at 7:23 p.m.)

JURY QUESTION NUMBER 02

CLERK OF COURT: Both parties agree they're going to send the charges in on involuntary manslaughter and murder.

(WHEREUPON, Court's Exhibit No. 4 was marked for identification and received into evidence.)

(WHEREUPON, Court was in session at 7:55 p.m.)

VERDICT OF THE JURY

THE COURT: Ladies and gentlemen, I want you to listen to me real carefully. I understand we have a verdict. I have no idea what the verdict is. I would understand whatever the verdict is would have significant impact on the family of the deceased, equally on the family of the Defendant. But I want it clear I will permit no outbursts, no statement of any kind by anybody. If that occurs you are going to spend the night in jail. I would not wish to do that, but I demand order and decorum in my courtroom.

And if anybody feels that they can't live with that I would respectfully urge you to leave at this time. Otherwise, you're invited to stay with me and accept whatever the verdict is remembering I will accept no outbursts of any kind. Please be careful. Bring the jury in.

(WHEREUPON, the jury enters the courtroom at 8:00 p.m.)

CLERK OF COURT: Mr. Foreman, have ya'll reached a verdict?

THE COURT: Wait a minute, Bill. Thank you. Mr. Foreman, ladies and gentlemen of the jury, have you reached a unanimous verdict as to all four indictments?

JURY FOREMAN: Yes, sir.

THE COURT: If you have reached a unanimous verdict please so signify by raising your right hand. The jury has so signified. Now, Mr. Clerk, please proceed and hand me the verdicts. Their verdict is duly executed and signed by the Foreman of the Grand Jury. Mr. Clerk, publish the verdict.

CLERK OF COURT: State of South Carolina, County of Marlboro v. Tyrone J. King. As indicted number -- the Indictment Number 2012-GS-34-0024, murder. We the jury unanimously find the Defendant, Tyrone J. King, guilty of murder. Signed, Travis Broddy. 9-13-12.

Indictment Number 2012-GS-34-0028, charge of assault and battery of a high and aggravated nature. We the jury unanimously find the Defendant, Tyrone J. King, guilty of third degree assault and battery. 9-13-12 is the date. Travis Broddy, Foreperson.

Indictment Number 2012-GS-34-0029, pointing and presenting a firearm. We the jury unanimously find the Defendant, Tyrone J. King, guilty of pointing and presenting a firearm. 9-13-12. Travis Broddy, Foreperson.

Indictment Number 2012-GS-34-0026, possession of a weapon during the commission of a violent crime. We the jury unanimously find the Defendant, Tyrone J. King, guilty of possession of a weapon during the commission of

a violent crime. 9-13-12. Travis Broddy, Foreperson.

Is this your verdict, please say by raising your right hand. Thank you.

THE COURT: I'm going to discharge the jury in just a moment prior to sentencing. Chief, would you come forward. I want this jury to hear the record of this defendant, please.

Let me explain to the jury. Ladies and gentlemen, you will hear in just a few moments from Chief Lemon the long and significant prior record of this defendant. And chances are you will read about it in the newspaper in the morning. And you may properly say, "Well, why didn't Judge Cottingham tell us of his prior record." Well, the reason for that is our law, and properly so, is that if you convict somebody you convict him on the evidence of this case and not what he had done previously.

Consequently, that was the reason the law would not have permitted me to let you know of that at that time for your verdict purposes. You certainly are entitled to it now. With reference to your verdict I tell you, and my only comment that I'm gone make, is that the evidence and the law absolutely justified your verdict of murder.

Chief, I want this jury to know of the prior record of this Defendant.

CHIEF LEMON: Yes sir, Your Honor. Please the Court.

Back in May of 2003 this Defendant was charged with assault and battery of a high and aggravated nature. He was also charged with attempted armed robbery. He was also found guilty and was convicted on that back in June of 2005. He was at R&E and he was convicted of assault and battery of a high and aggravated nature. Also he was charged with common law armed robbery and robbery with strong arm robbery and he served eight years on that.

Also, he was charged and sentenced on attempted larcenies, and that would have been in -- looks like in 2001. Looks like he was sentenced on that, Judge. And in the past -- I know Mr. King in the past. The Sheriff's Department agency here in Marlboro County and the Town of McColl we have had some dealings with him on some cases such as assault and battery of a high and aggravated nature.

In the past we had one of the night clubs which is known as the Cotton Club here in Marlboro County, where he and some other codefendants and suspects was involved in a cutting where -- which resulted in Mr. King staying in the hospital for a period of time which was a serious cutting at that time.

MS. JOHNSON LEE: Your Honor, if I may. Also he has pending charges now of kidnapping and armed robbery, and those would be set for trial at some point in the future.

CHIEF LEMON: And those are from the Town of McColl, too.

THE COURT: Well, I wanted the jury to know of this significant prior record, and let this distinguished jury know and understand that we've got a terrible convict off the streets of Marlboro County. And you're entitled to know that. I want to express to you not only my appreciation but the appreciation of the citizens of Marlboro County because by your verdict today you are telling these criminals that the good citizens of Marlboro County are not going to permit this sort of conduct.

You know, there's a thought out there with some of them. Oh, lets go ahead and do what we want to. The jury is not gone convict us. You showed them differently. The people of Marlboro County are in your debt of gratitude, and you have this Court. This case, the evidence was just simply overwhelming as to his guilt on these various charges.

Here's somebody that comes at three o'clock in the morning with a loaded nine millimeter, kills somebody with malice, strikes his wife over the head with force so strong it caused the gun to explode. Thereafter, point a pistol at another. All of which was done in the presence of a 10 year old boy who said, "He killed my granddaddy." Evidence is just absolutely overwhelming.

You as good citizens have done your duty and this Court thanks you for it. You are welcomed to stay for the sentencing, but you may certainly leave at this time with our gratitude and your check for serving will be mailed to you; is that right, Bill?

CLERK OF COURT: Yes, sir.

THE COURT: Thank y'all. You may leave at that time or remain. However you want to do it. As I understand it some of you care to leave. I want this jury -- I want some deputies to escort this jury out for me, please. Thank you. Before they go for one minute. Mr. Shaffer.

MR. SHAFFER: Yes, sir.

THE COURT: The jury has indicated unanimously by raising their right hand that the verdict was unanimous.

MR. SHAFFER: Yes, sir.

THE COURT: The forms also state that they were unanimous. Do you desire the jury poled?

MR. SHAFFER: No, Your Honor. No sir.

THE COURT: No. Okay. Thank you. They may go.

(WHEREUPON, the jury panel was excused from the courtroom at 8:12 p.m.)

SENTENCE OF THE COURT

CHIEF LEMON: All right. Have the Defendant come around, please. All right. For the State is there anything further at this time?

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS	
COUNTY OF MARLBORO)	**2012-GS-34-00024** **2012-GS-34-00026** **2012-GS-34-00028** **2012-GS-34-00029**
STATE OF SOUTH CAROLINA,)) Plaintiff,)) vs.)) TYRONE J. KING,)) Defendant.)	**Transcript of Record** (Motion Hearing) October 10, 2012

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

Mary Johnson Lee, Esquire
Mia B. David, Esquire
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Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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in the courtroom.

All right, sir. Is there any further thing that we need to have in connection with that?

MR. SHAFFER: Your Honor, not in regard to the first issue. I'm not sure if you want me to comment on the issue regarding the video tape if it's allowed in or not.

THE COURT: Well, let me deal -- are we through with this issue?

MR. SHAFFER: Yes, Your Honor.

THE COURT: Well, let me deal with this.

MR. SHAFFER: It's obvious to me that this witness -- juror is in no way related to Shakira. It's obvious to me that when it came -- when even the fact came up that she might be, that no hearing was requested and based on what I'd learned in your statement that you wanted her on the jury, no hearing was necessary. But your allegations were based on information that she was related to this lady. All of the testimony from this juror indicates that that was not true. And I want the State to prepare me an appropriate order as to that issue. Clearly, that is not an issue -- there is no suggestion from any source from any kind that that juror was on that jury improperly.

Now, I'll hear -- what's your next motion?

MR. SHAFFER: Your Honor, the second issue I've raised was regarding the video statement. The video that did get in,

there were several parts that I did include in the -- I included two specific parts I objected to at trial. I had made the objection and at some point the State had told me or it said either on record or in private, and I'm not sure which, that they were unable -- the program specifically did not allow for the redaction of the tape in small amounts. That turns out not to be a hundred percent accurate and I'm not saying that they didn't know it, that they knew this. What I'm saying is that if -- by looking at the program, if you went to the help section of it and typed in redact, it would tell you how to redact it down to a -- one second intervals.

THE COURT: Well, tell me this, since we were told that it -- and I will address that issue that it couldn't be redacted during this short time at the trial, what specific language was on that video by the Defendant that you found objectionable and incidentally some of it was fairly intelligible anyway, it was a terrible audio, but what part was it that you were concerned with?

MR. SHAFFER: Your Honor, there's two parts I actually typed out in the brief. I know that we -- that it was not transcribed at the trial or at least I don't believe it was.

THE COURT: Well, we couldn't -- it couldn't -- it was unintelligible, wasn't it?

MR. SHAFFER: Your Honor, I believe that the standard practice for court administration has told court reporters not

to transcribe audio tapes, not videos. I think that it is irregular for them to actually do that. I know some refuses ---

THE COURT: Well, I need to know what you found objectionable. Whatever was said was said voluntarily by this Defendant. What is it he said that you found improper on that video?

MR. SHAFFER: Your Honor, he references the -- his pending burglary -- I mean, his pending burglary, armed robbery charge in it.

THE COURT: That was elicited voluntarily by him; nobody pursued it.

MR. SHAFFER: Your Honor, I believe that even if it was, that it's prior bad acts evidence, clearly not everything -- any statement is admissible.

THE COURT: So, what else -- what else do you say was -- shouldn't have been heard by the jury.

MR. SHAFFER: He references his, his previous murder charge as well.

THE COURT: I got you. All right, sir. How would the State respond to that, whoever cares to?

MR. REDMOND: Your Honor, if it please the Court, and I'm just looking specifically at what is in the motion at this time. And first, let me deal with what was said on the record that is in the motion by the Defendant in that

recording in that first statement. The kidnapping charge comes up in the context of him pointing the finger at a Lucius McClaughlin (spelled phonetically), I believe was his name. And he -- and in fact, he goes on to say in that same portion at issue that, yeah, I tried robbing him but we on good terms, man, we -- basically, we were there together and he's the one that shot this guy. So, it was in the context of what was taking place at that time, in essence, trying to explain that yeah, I'm charged for robbing him but we back on good terms and yeah, we were in that house together and that's what ended up happening. So, I think it is absolutely ---

THE COURT: He did it in the context of trying to put the blame on that other individual.

MR. REDMOND: Absolutely, Your Honor.

THE COURT: That's my recollection.

MR. REDMOND: That's -- absolutely. And to address the issue concerning the recording system ---

THE COURT: Well, was there any other comment about -- when was the other comment made that he's referring to?

MR. REDMOND: And it's not listed in the motion, I honestly don't know. The only thing that was referenced ---

MR. SHAFFER: I think it's footnoted.

MR. REDMOND: It's footnoted, okay, beg the Court's indulgence.

THE COURT: Mr. Shaffer, my recollection is too that that

comment was made by him at the time he was trying to put the blame on the other individual.

MR. REDMOND: I don't see it.

MR. SHAFFER: We did the ---

THE COURT: Sir?

MR. SHAFFER: --- the comment concerning the armed robbery charge, that is a correct statement that he was -- it was in the context of the -- contained within his, his story that Mr. McClaughlin had actually done the shooting?

THE COURT: Yes.

MR. SHAFFER: Your Honor, may I actually look at my motion real quick and I can reference exactly what ---

MR. REDMOND: I can't find that, the other reference in the footnotes that you're referring to.

THE COURT: That was the comment that you were -- had some concern with. Was there another one on the record -- of course, it's his comment.

MR. REDMOND: Now, let me just preface all this by saying I don't think the allegation is that anything that was not approved by the Court after the Jackson v. Denno hearings -- he's not saying that stuff got in that was not approved by the Court.

MR. SHAFFER: Essentially, it's a renewal of the objection with the extra evidence that it was capable of -- the program was capable of actually ---

THE COURT: Well, I have two thoughts about it. First, I -- that late date in the trial of the case, it would've delayed the case to at least the following week to have that done because Sherriff's Office of Marlboro County don't have that capability. Secondly, it was his utterance, voluntarily made by him and he made the reference in the context of trying to blame somebody else for the shooting. You can -- have to agree to that. Now, what other statement was in that video that you object to?

MR. SHAFFER: The other statement that -- and that statement took place at approximately 5:01:26, if you view the time stamp.

THE COURT: Yes, sir. What ---

MR. SHAFFER: The other statement was actually in response to an Investigator -- Investigator Feldner's question, which was the Investigator stated, well, that is what I'm saying. I mean, if you didn't do it, I mean, why didn't you just go in the front yard to give the gun to the police and say, Hey, man, Lucius just ran out the back door. Mr. King replied, they didn't give me a goddamn chance, man. She's steady screaming about my goddamn -- I already, I already, I already got a murder/kidnapping charge on my record. She didn't see shit, she was in the room. And that's located at 5:08:08 through 5:08:27, as you read the timestamp.

MR. REDMOND: But here's the thing, Your Honor, he was

actually being asked that very appropriate question by the investigator and that was his response.

THE COURT: I understand.

MR. REDMOND: The investigator can't answer the question for him.

THE COURT: I understand. And then try and -- and there's no way, no suggestion that the investigator tried to elicit his former record. He's trying to explain that as a basis as to why he hid the gun; isn't that true?

MR. SHAFFER: Your Honor, I ---

THE COURT: He was trying to use that as an alibi for his own self.

MR. SHAFFER: I still believe that it would be inadmissible under the ---

THE COURT: Well, I want the record to reflect there were two videos and the first video, I didn't even -- there was continuous statements by him and I didn't even permit that to be played.

I conclude in this case that these were his utterances. The first utterance made by him was as he tried to blame a third party for the killing. The second utterance was made by him as an excuse as to why he hid the gun. And they were his utterances not provoked by any question of the State. I conclude that they were harmless in the context that he did it and I certainly would deny a new trial based on that bases.

Mr. Shaffer, as Defense counsel, based on what you had, you did the best job you could. But the evidence in this case as to his guilt was simply overwhelming. His own actions showed it. There was a young boy who saw him kill his granddaddy and then the deceased wife came out when it was going on and he knocked her in the head with a 9 millimeter, all of which was uncontradicted. And there is nothing in these comments or that he made as an excuse, he made them trying to cover up his actions. So, I would deny that, too. And I want an order prepared as to those two issues but bringing up both of his utterances, do you understand?

MR. REDMOND: Yes, sir. Yes, sir, Your Honor.

THE COURT: Both of them were made by him and they were made by him as an excuse; one, as to why somebody else did it; and two as why he tried to hide the gun.

MR. REDMOND: Thank you, Your Honor.

THE COURT: I'll be glad to hear from you further, Mr. Shaffer.

MR. SHAFFER: Your Honor, there is one third issue that I didn't catch at trial. I did not raise the objection immediately and I raise it in my motion for a new trial and it's based off of the Ms. David's description of what reasonable doubt was there in her closing argument. I raise it now basically out of an abundance of caution just because of the fact that I didn't catch it at the time and at the time

I sort of honestly, I didn't object fast enough but I think it was objectionable.

THE COURT: Well, surely, you are familiar with the rule if it's not raised at the time, it don't give the Judge an opportunity to rule on it, it's not now preserved for review.

MR. SHAFFER: Yes, Your Honor.

THE COURT: But I have reviewed my notes, even though you raised the issue which you now find objectionable and my response to you is, first, I don't think its burden shifting if you review it in the context of the whole argument. And secondly, we gave them the full reasonable doubt charge to the jury and then at the jurors' request, I presented to them the full charge again with reasonable doubt and both of those instances are in the record. First, I would say that her language does not suggest what you said. Secondly, I suggest that it was not raised properly at all. And thirdly, the jury had my instructions on two separate occasions as to reasonable doubt.

What other matters do you have, Mr. Shaffer?

MR. SHAFFER: Your Honor, and this is probably my poor recollection of exactly what happened during the deliberation, I was under the impression that they got the charges for the assault and batteries and they got the charges for murder and a involuntary manslaughter. I -- did they receive the full charge?

THE COURT: They got the full charge.

MR. SHAFFER: Okay. Thank you, Your Honor. I did not recall and I apologize.

THE COURT: No, sir. I concluded that it's improper to give a jury a part of the charge. So, I gave them the full charge, made it part of the record and you had a copy of it.

MR. SHAFFER: Yes, Your Honor, and I have no objection to that charge.

THE COURT: All right. That's fine.

All right. Anything further, Mr. Shaffer?

MR. SHAFFER: Your Honor, I actually do recall, I did make one objection to the charge but we discussed that at trial, but I didn't have an objection to the reasonable doubt language.

THE COURT: Okay.

MR. REDMOND: And last thing, Your Honor, we do -- I've been informed that there is a -- it's on the hard drive at the Marlboro County Sherriff's Office, so out of an abundance of caution, I can make this original a part of the Court record and we've marked it as a court's exhibit.

PLAINTIFF'S EXHIBIT NUMBER ONE

MARKED FOR IDENTIFICATION

THE COURT: I want that done. But it's clear and Mr. Shaffer will -- I have -- I don't fault in your bringing the issue up because his client asked him to and he should've done

that but -- as clarification, there's just absolutely no basis for the allegation that she was kin to them and even if it did, no hearing was asked and all sides agreed that she would remain.

Mr. Shaffer, I couldn't have taken her off had I wanted to based on the fact that both you agreed that she ought to stay. I would not have the authority to do that.

MR. REDMOND: Thank you.

THE COURT: Okay. Anything further?

MR. REDMOND: Yes, I've been advised that there was a felony possession charge, I believe that was dismissed during the trial, judicially dismissed that we need the Court's signature on.

THE COURT: Let me have it.

MR. REDMOND: Yes, sir.

THE COURT: The record will reflect that he did not testify, consequently, no prior record of his -- yes, the record will reflect that I dismissed the charge of a felony charge of a possession in as much as he was a juvenile at that time and that was an adjudication and not a conviction and I concluded that the statute did not contemplate a juvenile's conviction as a basis for this charge.

And Mr. Shaffer, I thank you for bringing that Allen case to my attention.

MR. SHAFFER: Thank you, Your Honor.

as in this case, I propose to charge you the law.

After that we'll take a short break and then we will have final summation. I'll be back with you with some concluding remarks, and then I will be giving you the case for your deliberations so that we can conclude this case this afternoon at some point.

CHARGE OF THE COURT

THE COURT: Now, this indictment or these indictments, there being four in number, charge this Defendant with murder, assault and battery of a high and aggravated nature, point and presenting a firearm or presenting a firearm, and possession of a weapon during the commission of a violent crime. I remind you that the fact that this Defendant was arrested and charged and indicted in these cases is not evidence in these cases and cannot been considered by you as evidence of guilt in any way.

These documents raise no presumption against him and are simply the charging papers. As to the indictments I continue to tell you that this Defendant pleads not guilty thereby placing the burden of proof upon the State of South Carolina of proving him guilty, if they can, to your satisfaction.

Now, again, I apologize. As to these four indictments each will be with you in the jury room. And I

have prepared for you a form of verdict which is self explanatory, but I'll go over it with you, Mr. Foreman, before your deliberations. There are four separate charges. You must consider the evidence as to each charge separately. Your final verdict can be the same as to all indictments. It can be different to one indictment and the same as to the others. Remember each indictment and the evidence there upon stands upon itself. So you will deal with the four indictments separately. Let me reiterate. The first indictment is murder, and under our rules of law a lesser included may include involuntary manslaughter. That will be a possible verdict depending on your findings of the fact with regards to murder.

The second charge is assault and battery of a high and aggravated nature. That charge, if the evidence suggests, has lesser-included offenses of assault second and assault third, which are options depending on your view of the facts.

Another charge of pointing and presenting a firearm. And the fourth charge is the possession of a weapon during a violent crime. And so you will be dealing with four separate issues.

Now, this Defendant has pled not guilty to these four indictments, and that places the burden on the State to prove the Defendant guilty beyond a reasonable doubt. A

person charged with committing a criminal offense in the State of South Carolina is never, ever required to prove himself innocent. I charge you that it is an important rule of law that the Defendant in the criminal case, no matter what may be the seriousness of the charges, will be presumed to be innocent of the crime for which the indictment was issued unless his guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial until you have reached a verdict of guilty based on evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence to which I refer is said to be like a robe of righteousness placed upon the shoulders of the Defendant, which remains with him until you, the jury, have stripped that from the Defendant by evidence satisfactory to you as finders of the facts beyond a reasonable doubt.

I charge you that this presumption of innocence is not merely a legal theory. It is not just a legal phrase. It's a substantial right to which every Defendant is entitled unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

I have used a term, 'reasonable doubt'. Let me define it for you at this time. As I have said the State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have had served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true such as by the greater weight of the preponderance of the evidence.

In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this wide world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

If, and I say that advisedly, if based on your consideration of the evidence you are firmly convinced that the Defendant is guilty of the crimes charged you must find him guilty. If on the other hand you think there is a real possibility that the Defendant is not guilty you must give the Defendant the benefit of that doubt and find him not guilty.

Now, during the trial of this case you and I have certain duties to perform. As the trial judge it is my

responsibility to preside over the trial in this case. And I also have the duty to rule on the admissibility of the evidence offered during the trial. You are to consider only the competent evidence before you. If there was any testimony ordered strickened from the record in this case during this trial you must disregard that testimony.

Mr. Foreman, you are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record in this case and any stipulations of counsel. This case must be decided on the law and evidence in this courtroom and from no other source.

I have the additional duty to charge the law applicable to this case. As the presiding judge, I am the sole judge of the law in this case, and it is your duty under your oath to accept the law as I give it to you. You or I might disagree with what the law is or ought to be, but for the purposes of this trial please accept the law as being the correct law.

In every case tried by this Court before a jury the jury becomes the sole and exclusive judge of the facts in this case. I mentioned this as we began on Monday morning, and I want to emphasize to you. A trial judge cannot intimate, state, comment, or make any statements to

a trial jury about the facts in the case. Since you the jury are the sole judges of the facts in this case you are not and must not infer anything from what I have said during the progress of this case to consider what I feel about the facts.

I want to emphasize to you as strongly as I can I am not entitled to a factual opinion between these litigants. I have none. If any word, ruling, mannerism of mine might tend to indicate to any of you how I feel about any factual situation please disregard that. I am not entitled to a factual opinion, and I absolutely have none. You 12 are the finders of the facts in this case. There is nobody in this wide world that can tell you 12 what the facts in this case are. You are to sole judges of the facts in this case.

There were two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eyewitness. It is evidence which immediately establishes the main fact to be proven.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts which the main fact maybe inferred. Circumstantial

evidence is based on inferences and not on personal knowledge or observation.

Now, I charge you as follows: The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in this case. And after weighing all of the evidence if you are not convinced of the guilt of the Defendant beyond a reasonable doubt you must acquit that Defendant.

Now, I want to continue to emphasize to you that you are the finders of the facts and in doing so necessarily you must determine the credibility of the witnesses who have testified in this case. Credibility, Mr. Foreman and ladies and gentlemen of the jury, simply means believability. Credibility simply means believability. It is your duty as jurors to analyze and to evaluate the evidence and to determine which evidence convinces you of it's truth.

In determining the believability of a witness who has testified in this case you may believe, if you choose, one witness against another. You may believe all of a witness' testimony, some or none. You may believe one witness against many or many against one. It's your

decision. Obviously, you do not determine the truth or falsity of a matter by counting up the number of witnesses who testified on one side or the other. You know, judging credibility and believability you bring your common sense to the courthouse. And we all know that when folks tell us things we size them up. We decide for ourselves do we want to believe what they say.

Sometimes, we always say, 'hey, do they know what they're talking about'. Sometimes we say, 'is this witness prejudiced or biased'. We might say to ourselves, 'does this witness want me to believe one thing or another'. These are tools that we usually you, I use, some use. You can think of other tools.

In considering the credibility of a witness you may, if you choose, consider was his or her testimony consistent with the other testimony or did it contain discrepancies. You may, if you choose, say to yourself how did this particular witness come to know about the facts which he or she testified to. I just want to emphasize to you that many witnesses have testified here under oath. And as finders of the facts it is your duty, your job, to judge the credibility and believability with regards to the testimony that they may have given.

Now, during the trial of this case I have qualified several folks as experts. Under our law a particular

person who by training and experience has special knowledge in a field may be qualified as an expert in that field. And during the trial of this case I have qualified several doctors and such others as experts. You may accept or reject in your discretion any part of that testimony based on your experiences. But an expert, based on training and experience, may give their opinion in the field to which they have been qualified.

Now, I want to emphasize again, I previously instructed you, and I emphasize again that the fact that this Defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration of the guilt or innocence of this Defendant. It must not, must not, must not be considered by you. Must not even be discussed in the jury room. That is his constitutional right as it is mine and yours.

The State that the burden of proof. The Defendant doesn't have to prove anything. The burden, I continue to emphasize, is upon the State of South Carolina.

Now, at this point in time, for and with the consent of the State and the Defendant, I have prepared some additional charges for you which I'm going to ask my Law Clerk to read for me because of my throat problem. Please accept this charge as coming from me. These are my preparations, and these are my instructions in the law.

You may proceed.

LAW CLERK: In order to establish criminal liability criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation.

There is no way to prove intent to a mathematical certainty. There is no way that medical science can dissect a person's brain and determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present.

It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed.

Criminal intent can arise from action or a failure to

act. It may arise from negligence, recklessness, or an indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

A statement alleged to have been made by the Defendant has been admitted into evidence in this case. While the Court has determined that the statement is admissible I instruct you that you make the ultimate decision of whether or not the Defendant made the statement. If the Defendant did make the statement you must determine whether the statement was made by the Defendant voluntarily and of his own free will.

This means that the statement was not caused by pressure, force, fear, threats, coercion, or intimidation or by hope of a promise of leniency or a reward of any kind. In determining whether the statement was voluntarily you should consider both the characteristics of the Defendant and the details of the questioning.

Some of the factors that you must consider are the age of the Defendant, the Defendant's education or lack of education, the Defendant's mental ability or capacity, the Defendant's I.Q. or intelligence, the Defendant's background and environment, the place and length of detention, the nature of the questioning and the advice or lack thereof to the Defendant of his constitutional rights including, but not limited to, the right to remain silent;

that any statement could be used against him in a court of law, the right to have a lawyer present; that if he cannot afford a lawyer a lawyer would be appointed to him to represent him without any cost, and that he could stop making a statement at any time.

You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement. The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntarily. If you determine that it was you may give the statement any further consideration that you deem proper. You must decide what weight if any should be given to the alleged statement. If you've determined that the alleged statement was not the freely and voluntary statement of the Defendant you should not consider the statement at all.

During this trial you have heard testimony from a child. Where a witness is a child you must determine, as with any witness, whether that testimony is believable. In deciding believability you may consider not only matters that I have already discussed with you, but you may also consider the age of the child, the child's ability to observe and remember facts, the child's ability to understand and answer questions.

Because young children may not fully understand what

is happening here it is up to you to decide whether the child understood the seriousness of appearing as a witness at this criminal trial. Whether the child understood the questions, whether the child has a good memory and whether the child understands the difference between lying and telling the truth.

In addition, young children may be influenced by the way the questions are asked. It is up to you to decide whether the child understood the questions that were asked to him.

The Defendant is charged with murder. The State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought. Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or an excuse and with an intent to inflict an injury, or under circumstances the law will infer an evil intent.

Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time of that act is committed. Therefore, there must be a combination of the previous evil intent in the act. Malice aforethought may be expressed or inferred. These terms, 'express and

inferred' do not mean different kinds of malice but merely the manner in which malice may be shown to exist; that is either be direct evidence or by inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words, which express hatred, or ill will for another or when the person prepared beforehand to do the act which was later accomplished; for example, lying in wait for a person or any other acts of preparation going to show that a deed was within the Defendant's mind, would be express malice.

Malice may be inferred by conduct showing a total disregard for human life. If you find that the State has failed to prove beyond a reasonable doubt that the Defendant committed murder you may consider whether the State has proved beyond a reasonable doubt that the Defendant committed involuntary manslaughter.

To prove involuntary manslaughter the State must prove beyond a reasonable doubt that the Defendant unintentionally killed the victim without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm, or that the Defendant unintentionally killed the victim without malice while engaged in a lawful activity with reckless disregard for the safety of others.

Unintentional means that the Defendant did not intend

for anyone to killed or seriously injured. Reckless disregard for the safety of others is more than mere negligence or carelessness. Mere negligence or carelessness is the failure to use the care that a person of ordinary reason would use under the same circumstances.

Recklessness is a conscious failure to use ordinary care. Reckless disregard for the safety of others means that you are not interested in the consequences of your acts or the rights and safety of others. If a person who knows or should know that ordinary care requires certain precautions be taken for the safety of others when using a dangerous instrumentality such as a gun or car and that person fails to use those precautions without concern the persons action are consider reckless.

The State must also prove beyond a reasonable doubt that the Defendant's act was the proximate cause of death. Proximate cause is the direct cause. It is the immediate cause. It is the efficient cause. It is that cause without which the Defendant or the victim would not have resulted. There must be a chain of causation from the time of the injury inflicted by the death of the Defendant until the time of the victim's death. Proximate cause does not necessarily mean that it occurred immediately prior to death. There may be more than one proximate cause.

The acts of two or more persons may combine together to be a proximate cause of the death of a person. The Defendant's act may be regard as a proximate cause if it is a contributing cause of the death of the victim. The fact that other causes also contributed to the death of the victim does not relieve the Defendant from responsibility. The Defendant's acts need not be the sole cause of the death, but must be a proximate cause contributing to the death of the victim.

It is not a defense to show that the victim might have recovered had he been treated according to the most approved surgical or medical standards, or as a reasonably prudent doctor would have treated in the case or even by showing that the treatment was negligent. If, however, the death was caused by you wound or the injury that the victim had but was caused by the gross, erroneous, willful, deliberate treatment the Defendant would not be liable.

In other words, negligence on the part of someone else would not relieve the Defendant from liability if the injury was the proximate cause of the victim's death. However, gross negligence or intentional activity on the part of the practitioners would relieve the Defendant of liability. The propriety of the medical procedures is an integral question in determining causation. The violation

of the statute if it is the proximate cause of injury, is evidence of recklessness.

A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and great bodily injury to another person results, or the act is accomplished by means likely to produce death or great bodily injury.

THE COURT: That is to the second indictment. Go ahead.

LAW CLERK: Great bodily injury means bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement, or protractive loss or impairment of the function of the bodily member or organ.

A person commits the offense of assault and battery in the first degree if the person unlawfully injures another person, and the act either involves non-consensual touching of the private parts of an adult either under or above the clothing with lewd and lascivious intent, or occurred during the commission of a robbery, burglary, kidnapping, or theft.

Private part means the genital area or the buttocks of a male or a female, or the breasts of a female. A person may also commit the offense of assault and battery in the first degree if the person unlawfully offers or attempts to injure another person with the present ability

to do so, and the act either is accomplished by means likely to produce death or great bodily injury, or occurred during the commission of a robbery, burglary, kidnapping or theft.

Great bodily injury means bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protractive loss or impairment of the function of a bodily member or organ.

A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers, or attempts to injure a person with the present ability to do so; and either moderate bodily injury to another person results, or moderate bodily injury to another person could have resulted. Or the act involves the non-consensual touching of the private parts of an adult either under or above the clothing.

Moderate bodily injury means physical injury requiring treatment to an organ system of the body other than the skin, muscles and connective tissues of the body except when there is penetration of the skin, muscles and connective tissues that require surgical repair of a complex nature or when treatment of the injuries requires the use of regional or general anesthesia.

Private part means the genital area or buttocks of a

male or female, and the breast of a female. A person commits the offense of assault and battery in the third degree if the person unlawfully injures another person, or offers, or attempts to injure another person with the present ability to do so.

The Defendant is charged with pointing and presenting a firearm. The State must prove beyond a reasonable doubt that the Defendant presented or pointed at another person a loaded or unloaded firearm.

The Defendant is charged with possession of a weapon during the commission of or attempt to commit a violent crime. The State must prove beyond a reasonable doubt that the Defendant was in possession of a firearm or physically displayed what appeared to be a firearm, during the commission of a violent crime. A firearm means any machine gun, automatic rifle, revolver, pistol, or any weapon which will or is designed to or make readily converted to expel a projectile.

In order to find the Defendant guilty of possession of a weapon during the commission of a violent crime you must first time the Defendant guilty of either committing a violent crime or attempting to commit a violent crime. Murder is a violent crime.

The State must prove beyond a reasonable doubt that the weapon further advanced or helped in the commission of

the crime.

The Defendant has raised the defense of accident. An act may be excused on the ground of accident if it is shown that the act is unintentional; that the Defendant was acing lawfully; and that reasonable care was used by the Defendant in the handling of the weapon. For example, if a person is lawfully armed in self-defense, and the gun accidentally discharges the defense of accident would apply.

The burden is on the State to prove beyond a reasonable doubt that this act was not an accident, but was caused by the negligence or carelessness on the part of the Defendant in the handling of a dangerous instrumentality or by unlawful activity by the Defendant.

A person who voluntarily becomes intoxicated is just as responsible for the acts committed while intoxicated as when a person is not intoxicated.

THE COURT: Foreman, please accept those additional readings as coming from me and prepared by me. I have also prepared for you a verdict form as to each indictment, and that verdict form I will explain in detail to you after summation of counsel. Basically, it has as follows: It has a separate page for each indictment. As an example, under indictment for murder, your verdict would be either guilty or not guilty. Or with reference

to voluntary manslaughter either guilty or not guilty. Or not guilty. The verdict form will have the charge and will have the lesser includeds which you will determine as finders of the facts in this case.

I will keep you fully advised of that at the appropriate time. I'm going to let you go to the jury room just a moment, and I'll be calling you back. And I want to thank my law clerk for reading the last part of my instructions of the law. My throat was getting a little bad. Please go to your jury room.

(WHEREUPON, the jury panel was excused from the courtroom at 3:37 p.m.)

THE COURT: With the regards to the State, are there any exceptions or additions to the charge as stated?

MS. JOHNSON LEE: None from the State.

THE COURT: What says the Defendant?

MR. SHAFFER: None. I'd like to preserve my previous arguments.

THE COURT: And that is as to circumstantial evidence?

MR. SHAFFER: Yes, Your Honor. Thank you.

THE COURT: All right, then, the charge will stand as given. Let the jury rest a few minutes to call them back. Then, of course, the Defendant, not choosing to put up any testimony, is entitled to the last argument.

Gmail

Tristan Shaffer< tristan.m.shaffer@gmail.com>

King Redactions

1 message

Tristan Shaffer< tristan.m.shaffer@gmail.com> Tue, Sep 11, 2012 at 12:09 AM
To: Mary Thomas Johnson Lee <mtjlee@solicitor4.com>, "Cottingham, Edward Law Clerk (Trey Jones)" <ecottinghamlc@sccourts.org>, Mia David <MiaDavid@solicitor4.com>, "kernardredmond@solicitor4.com" <Kernardredmond@solicitor4.com>

All,
The following is my recollection of what we are excluding. I have also listed a few of the objects I made. I would ask that the State review the redactions to see if I am correct. All times are based on the video date stamp.

To be Redacted
Previous murder charge 4:28:52 – 4:29:04
Previous murder charge and Mccoll charge 4:32:20 – 4:34:04
Previous murder charge 4:40:44 -- 4:41:14
Mccoll charge 4:41:40 – 4:42:36
Stabbing 5:13:30 – 5:14:03

Not Granted but Objectioned to (This is not an exclusive list)
Mentions a lawyer on another charge 4:31:40 (Rules 404b 403)
Prior Stabbing 4:34:04 -- 4:34:10 (Rule 401)
Statemment "fuck the police" and " I am a criminal" 4:46:06 – 4:47:07 (Rules 404b and 403)
Aloyisious is same as previous charge 4:59:18 -- 4:59:24 and 5:01:13 -- 5:01:25
Prior stabbing 5:10:50 (401)
Prior Murder and Kidnapping Charge 5:08:09 -- 5:08:10

Times where he said he shot a gun or carried a gun
4:30:05
4:36:11
4:44:31
5:06:48
5:10:55

A CERTIFIED
TRUE COPY
William B. Sandusky
CLERK OF COURT
MARLBORO COUNTY

Tristan M. Shaffer

COURT'S EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DRT #
DATE 8-1-13

Clerk's Office
843-479-5613
1-800-603-7179

Family Court Division
843-479-5616
Fax 843-479-5640

William B. Funderburk
Clerk of Court, Marlboro County
Courthouse Square, 105 Main Street
P.O. Drawer 996
Bennettsville, S.C. 29512

Definitions of

Assault and Battery
of a High And Aggravated
Nature

First

Second

Third

COURT'S
EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE
DKT.#
DATE: 9-13-10
PENRAD 800-631-6989

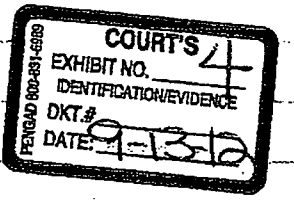
MARLBOROUGH COUNTY COURT SEAL
1785

Clerk's Office
843-479-5613
1-800-603-7179

Family Court Division
843-479-5616
Fax 843-479-5640

William B. Funderburk
Clerk of Court, Marlboro County
Courthouse Square, 105 Main Street
P.O. Drawer 996
Bennettsville, S.C. 29512

Can we have a definition of involuntary manslaughter and murder?



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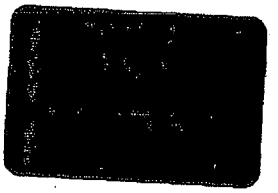
165 Ashley Avenue, Suite 309
PO Box 250908
Charleston, SC 29425



Patient: GALLOWAY, JAMES
Med Rec: GALLJAMES
DOB: 10/11/1962
Male Race: Black
ACCESSION: FA-11-00693
Date Received: 11/12/2011
Date Collected: 11/12/2011

Forensic Autopsy Final Report

This is a true and accurate copy of the original.
MAXINE T. ROBINSON
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES APRIL 29, 2014

Autopsy Information

Date of Death: 11/11/11 **Time:** 3:41 a.m.
Date of Autopsy: 11/12/11 **Time:** 9:00 a.m.
County: Marlboro
Coroner: Timothy E. Brown
Attending Pathologist: Nicholas I. Batalis, MD
Pathologist Assistant: Eowyn Corcrain
Autopsy Technician: Brent Grimball
Prosector(s): Nicholas I. Batalis, MD

(If Injury) How occurred: Shot by somebody
Date of Injury: 11/11/11 **Time:** 2:30 a.m.
Place of Injury: Private residence **At Work:** No

Cause of Death

Gunshot wound of the face

Manner of Death

Homicide

CASE HISTORY

According to the Marlboro County Coroner, Mr. Tim Brown, the decedent is a 49 year-old black male who was shot, possibly during an altercation, at approximately 2:30 a.m. on 11/11/2011. Authorities were notified and the decedent was transferred to Marlboro Park Hospital where death was pronounced at 3:49 a.m.

GROSS DESCRIPTION

EXTERNAL EXAMINATION

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The body is identified by a tag around the left great toe. Photographs are taken. A radiograph of the head and neck is taken.

The body is received nude. A yellow metal ring is around the left fourth finger. Clothing received separately in a plastic bag includes a black belt, previously cut blue jeans, previously cut white underwear, one hundred and forty-seven dollars in cash, two keychains with keys, and a paper with NFL games. All items are retained and submitted to the coroner's office.

The body is that of a normally developed, adult black male, which appears consistent with the stated age of 49 years. When nude, the body measures 74 inches in length and weighs 205 pounds. There is good preservation in the absence of embalming. Rigor mortis is fully fixed and dark lividity is mostly fixed on the posterior surfaces. The body is cool subsequent to refrigeration.

The scalp hair is balding, thin, and black. The decedent has a black-gray beard and mustache. The irides appear brown and there are no petechiae of the bulbar or palpebral surfaces of the conjunctivae. The corneae are cloudy. The ears, nose, and lips are unremarkable. The mouth has natural dentition in fair condition. The neck is without masses or unusual mobility. The chest and back are normally developed. The abdomen is flat. The extremities are symmetric. The external genitalia are those of an uncircumcised adult male.

IDENTIFYING MARKS AND SCARS

A 4 inch diagonal scar is on the right side of the abdomen. A 3 inch linear scar is on the right elbow. Nonspecific scars up to ¾ inch are on the trunk and extremities. A 2 inch, hypopigmented patch is on the left foot. Spotty areas of hypopigmentation up to ½ inch are on the trunk and extremities.

EVIDENCE OF TREATMENT

EKG pads are on the trunk. An endotracheal tube extends into the mouth and is secured with a strap around the neck. A pacemaker is implanted in the left side of the chest with the leads appropriately attached in the heart.

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EVIDENCE OF INJURY

GUNSHOT WOUND OF THE FACE: A gunshot entrance wound is on the right side of the face, centered 1 ½ inches right of midline and 5 ½ inches below the top of the head. The circular entrance wound is 3/16 inch in diameter and has a circumferential marginal abrasion measuring up to 3/16 inch from the 12 – 7 o'clock positions. There is an area of probable stippling in a 1 ½ x 1 ½ inch distribution centered on the gunshot entrance wound. No soot is identified.

After perforating the skin and subcutaneous tissues of the right side of the face, the bullet sequentially perforates the facial bones, the hard palate, the upper left side of the larynx, the deep soft tissues and vasculature of the upper left side of the neck (carotid artery appears intact), and exits the skin of the left side of the neck (no projectile recovered).

An irregular, 3/8 x ¼ inch gunshot exit wound is centered on the left side of the neck, 7 inches below the top of the head 2 inches inferior and 2 inches posterior to the inferior attachment of the left external ear.

The pathway is from front to back, right to left, and slightly downward.

OTHER INJURIES:

A ¼ inch abrasion is on the brown between the eyes.

EVIDENCE SUBMITTED

The following items are collected, sealed within appropriately labeled containers, and submitted to Mr. Danny Gainer of the Marlboro County Coroner's Office:

- Clothing and personal effects
- Right and left fingernail clippings
- Pulled scalp hair
- Blood spot

INTERNAL EXAMINATION

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BODY CAVITIES: The thoracic and abdominal organs are in their normal anatomic positions. The body cavities contain no abnormal collections of fluid. There are some focal anterior peritoneal adhesions and bilateral pleural adhesions.

HEAD: The brain weighs 1300 grams. The scalp, subscalpular area, and skull are unremarkable. The dura and dural sinuses are unremarkable. There are no epidural, subdural or subarachnoid hemorrhages. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical, with an unremarkable gyral pattern. The cranial nerves and blood vessels are unremarkable. Sections through the cerebral hemispheres, brainstem, and cerebellum are unremarkable. There are no hemorrhages within the deep white matter or the basal ganglia. The cerebral ventricles contain no blood. The spinal cord as viewed from the cranial cavity is unremarkable.

NECK: See "EVIDENCE OF INJURY." The hyoid bone and laryngeal cartilages are intact. The lumen of the larynx is not obstructed. The lingual mucosa is intact and there is no hemorrhage within the underlying musculature.

CARDIOVASCULAR SYSTEM: The heart weighs 450 grams. The intimal surface of the abdominal aorta has mild fatty streaks. The aorta and its major branches and the great veins are normally distributed and unremarkable. The pulmonary arteries contain no thromboemboli. The pericardium, epicardium, and endocardium are smooth, glistening, and unremarkable. There are no thrombi in the atria or ventricles. Atherosclerotic plaque narrows the right coronary artery by 50% and the left circumflex artery by 30%. Additionally, there is a nearly occlusive brown thrombus within the left circumflex. The atrial and ventricular septa are intact. The aortic valve contains some calcifications; the other valves are unremarkable. The myocardium is dark red-brown and firm. The posterior aspect of the left ventricular free wall is thinned and white in color. Additionally, a white, glossy lesion up to 1 cm is in the lateral aspect of the left ventricle.

RESPIRATORY SYSTEM: The right and left lungs weigh 520 and 570 grams, respectively. The upper airway is not obstructed. The laryngeal mucosa is smooth and unremarkable, without petechiae. The pleural surfaces are smooth and glistening. The major bronchi are unremarkable. Sectioning of the lungs discloses a dark red-blue, moderately congested parenchyma with increased pulmonary edema.

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HEPATOBILIARY SYSTEM: The liver weighs 1960 grams. The liver is covered by a smooth, glistening capsule which covers a nodular, cirrhotic, hepatic parenchyma. The parenchyma is dark red-brown, firm and moderately congested. The gallbladder is not identified.

GASTROINTESTINAL SYSTEM: The esophageal mucosa is gray, smooth, and unremarkable. The stomach contains approximately 250 ml of partially digested food. There are no tablets or capsules. The gastric mucosa has normal rugal folds, and there are no ulcers. The small and large intestines are unremarkable. The appendix is present. The pancreas is unremarkable externally and upon sectioning.

GENITOURINARY SYSTEM: The right and left kidneys weigh 190 grams each. The capsules of both kidneys strip with ease to reveal granular and slightly lobulated surfaces. The cortices are pale and are of normal thickness, with well-demarcated corticomedullary junctions. A 1 cm simple cyst is in the right kidney. The calyces, pelves, and ureters are unremarkable. The urinary bladder contains approximately 10 ml of clear yellow urine. The mucosa is gray, smooth, and unremarkable. The prostate gland is unremarkable both externally and upon sectioning.

LYMPHORETICULAR SYSTEM: The spleen weighs 410 grams. The spleen is covered by a smooth, blue-gray, intact capsule with green-brown discoloration and an apparent fibrinous plaque. The parenchyma is dark red. The cervical, hilar, and peritoneal lymph nodes are not enlarged.

ENDOCRINE SYSTEM: The pituitary, thyroid, and adrenal glands are unremarkable externally and upon sectioning.

MUSCULOSKELETAL SYSTEM: The clavicles, ribs, sternum, pelvis, and vertebral column have no fractures. The diaphragm is intact.

NIB:saw
11/13/11
12/12/11

Nicholas Batalis, M.D./ MTR

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Forensic Autopsy Final Report

CASE SUMMARY

A complete autopsy was performed on the body of James Galloway at the Medical University of South Carolina Autopsy Suite on 11/12/2011. The postmortem examination began at 9:00 a.m. The prosector was Dr. Nicholas I. Batalis. The autopsy technician was Mr. Brent Grimball. The autopsy was authorized by the Marlboro County Coroner, Mr. Timothy E. Brown.

Samples of peripheral blood were sent to NMS Laboratory for toxicology testing. Results are only positive for atropine, caffeine, and theobromine. Results were reviewed by William Brewer, Forensic Toxicologist.

In light of the history provided and the autopsy findings, it is my opinion that the decedent died as the result of a gunshot wound of the face. Furthermore, the manner of death is best deemed homicide.

FINAL DIAGNOSIS

1. Gunshot wound of the face
   a. Entrance: Right side of the face
   b. Range: Intermediate (1 ½ x 1 ½ inch area of stippling surrounding the entrance wound)
   c. Injuries: Perforation of skin and subcutaneous tissues, facial bones, palate, and soft tissues and vasculature of the neck
   d. Exit: Left side of the neck
   e. Pathway: Front to back, right to left, and slightly downward

2. History that the decedent was shot by somebody

CERTIFICATION

I certify that I personally conducted the diagnostic evaluation of the above specimen(s) and have

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Forensic Autopsy Final Report

rendered the above diagnosis(es).

Nicholas Batalis, M.D.
(Electronically signed by)
Verified: 12/13/2011 01:27
NB /MTR

MUSC Health
MEDICAL UNIVERSITY of SOUTH CAROLINA

Medical and Forensic
Autopsy Section
Pathology and
Laboratory Medicine
171 Ashley Avenue
Suite 309 MSC 908
Charleston SC 29425-9080
Medical 843 792 3556
Forensic 843 792 3500
Fax 843 792 3537
www.muschealth.com

FORENSIC AUTOPSY PRELIMINARY REPORT

Date: November 14, 2011

To: Timothy E. Brown
Marlboro County Coroner

Fax Number: 843-454-9326

RE: James Galloway

Number of pages (including fax cover sheet **2**

From: Maxine T. Robinson
Forensic Operations Coordinator
MUSC, Forensic Autopsy Section
Department of Pathology & Laboratory Medicine
Rm. 281 Main Hospital

The documents accompanying this facsimile contain **CONFIDENTIAL** information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or an employee responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, distribution or copying of this communication is strictly prohibited. If you received this communication in error, please notify Maxine immediately at 843-792-3500. Thank you.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

MARK A. KEEL
Chief

James Campbell
Marlboro County Sheriff's Department
P.O. Box 577
Bennettsville, SC 29512

LATENT PRINTS
June 22, 2012
SLED LAB: L11-12934
Your Case No: 2011007239
Incident Date: 11/11/2011
[V-Deceased] James Galloway
[S] Tyrone King

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 3 One cartridge case collected from Marker 1.

RESULTS:

No fingerprint evidence was developed.

Item: 4 One cartridge case collected from Marker 2.

RESULTS:

No fingerprint evidence was developed.

Item: 7 One liquor bottle "Burnett's" half full collected from 422 Oriole Ln in the backyard Marker 8 on side of Chevy truck.

RESULTS:

NO VALUE for identification

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Item: 8 One grey cordless phone collected from 422 Oriole Ln on side of Chevy truck Marker 7.

RESULTS:

NO VALUE for identification

Item: 9 One cordless phone battery collected from 422 Oriole Ln under the Chevy truck.

RESULTS:

NO VALUE for identification

Item: 10 One .9mm Highpoint handgun with a magazine Marker 9 located in woods behind 414 Oriole LN, SN P1473630.

RESULTS:

No fingerprint evidence was developed.

Item: 11 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 12 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 13 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 14 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 15 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 16 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 23 One cordless phone back collected from the floor of victim's home in the entrance to the kitchen.

RESULTS:

NO VALUE for identification

Andrena Belton
Andrena J. Belton
Forensic Scientist

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2012-GS-34-0024, 0026, 0028

The State, Respondent,

v.

Tyrone J. King, Appellant.

NOTICE OF APPEAL

Tyrone J. King appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Edward B. Cottingham on September 13, 2012. This appeal is taken from the order of the Honorable Edward B. Cottingham, dated November 12, 2012, which denied appellant's motion for a new trial. Appellant received written notice of entry of this order on November 15, 2012.

November 15, 2012

Tristan Shaffer
1928 Barnwell Street
Columbia, South Carolina 29201
(803) 771-0042
Attorney for Appellant

Other Counsel of Record:
Mia David
Assistant Solicitor
Post Office Box 616
Bennettsville, South Carolina 29512
(843) 479-6519
Attorney for Respondent

RECEIVED
NOV 19 2012
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2012-GS-34-0024, 0026, 0028

The State, Respondent,

v.

Tyrone J. King, Appellant.

Certificate of Service

The undersigned attorney hereby certifies that on November 15, 2012 the notice of appeal was served in the above referenced case upon the Attorney for the State, Mia David, via mail, at P.O. Box 616 Bennettsville, South Carolina 29512

Tristan Shaffer
1928 Barnwell Street
Columbia, South Carolina 29201
(803) 771-0042
Attorney for Appellant

RECEIVED
NOV 19 2012
SC Court of Appeals

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	IN THE COURT OF GENERAL SESSIONS FOR THE FOURTH JUDICIAL CIRCUIT Indictments: 2012-GS-34-024; 2012-GS-34-025; 2012-GS-34-026; 2012-GS-34-028; 2012-GS-34-029
STATE OF SOUTH CAROLINA, vs. TYRONE KING, Defendant.	DEFENDANT'S MOTION FOR A NEW TRIAL

Defendant, Tyrone King, through his attorney, Tristan M. Shaffer, respectfully requests this Court grant him a new trial. Defendant avers that he is entitled to a new trial based on the objections raised during trial and the following additional grounds.

I. Juror Covington's intentional failure to disclose information concerning her relationship with Defendant's common law wife, Shakera Liles.

Relevant Facts

The jury for Defendants trial was selected on September 10, 2012. Natasha Covington was part of the pool of potential jurors. At that time, Defendant common law wife[1], Shakera Liles, was listed as a potential witness for Defendant. Prior to picking the jury, the Court asked the jury pool if any person knew Shakera Liles – there was no response from any potential juror. Natasha Covington was picked as a Juror for Defendant's case.

FILED
SEP 20 2013
CLERK OF COURT
A CERTIFIED TRUE COPY
CLERK OF COURT
MARLBORO COUNTY

[1] During the trial Defendant's Counsel mistakenly referred to Ms. Lyles as defendant's girlfriend.

After court on September 11, 2012, Mr. Shaffer was speaking to Ms. Liles on the telephone. Ms. Liles informed Counsel that one of her cousins, Juror Covington, was on the jury panel. Ms. Liles informed Mr. Shaffer that she and Ms. Liles had a history of animosity.

On September 12, 2012, while in chambers, Mr. Shaffer notified the Court and Mr. Redmond of the potential problem with the Juror Covington[2]. The Court found that it was not necessary to excuse Juror Covington or question her on the record. Mr. Shaffer failed to address this issue on the record.

Argument

"The trial court must grant a motion for a new trial based on a juror's failure to disclose information requested during voir dire 'when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges'" *State v. Miller*, 398 S.C. 47, 50, 727 S.E.2d 32, 34 (Ct. App. 2012) (*citing State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001).

Prior to picking the jury, the Court asked all potential jurors if they were related to Ms. Liles either by blood or marriage. Juror Covington did not respond to that question. Clearly she intentionally concealed[3] this information.

Knowing that Juror Covington was Ms. Liles cousin would have been material factor in deciding how to use his jury strikes. *See Miller*, 398 S.C. at 50, 727 S.E.2d at 24 ("Material means of such a nature that knowledge of the item would affect a person's decision-making ..." *Miller*, 398 S.C. at 50, 727 S.E.2d at 24) (*quoting Black's Law Dictionary* 1066 (9th ed. 2009)).

[2] At the time Counsel raised this objection he did not remember Juror Covington's name.

[3] Should this Court deem that a hearing is necessary for this factor, Defendant would request a hearing and additional investigative funds to look into this matter.

Shakera Liles is Defendant's common law wife and the mother of his two children. Knowing that Juror Covington was related to Ms. Liles certainly would have been material in deciding how to use his strikes. Additionally, had Mr. Shaffer known about the relationship he would have consulted with Ms. Liles[4] prior to deciding how to use Defendant's peremptory strikes. Moreover, Defendant was aware that he was not liked by several member of Ms. Liles family and would not have wanted any unknown relative of Ms. Liles on the jury.

Therefore, Defendant is entitled to a new trial based on Juror Covington's intentional concealment of her relationship with Shakera Liles.

II. The State's incorrect assertions concerning their ability to redact Defendant's video statement.

Relevant Facts

On the morning of the shooting, Defendant gave a video statement to the police. The video was taken using the Liberty Police Interview Recorder[5]. In that statement Defendant alleged that Aloysius McLaughlin[6] was the shooter. During the video, Defendant makes numerous references to past and pending charges; including the following:

> "**Investigator**: Well, that's what I am saying. I mean if you didn't do it, I mean why didn't you just go out in the front yard, give the gun to the police and say hey, man, Aloysius just ran out the back door?
>
> **King**: They didn't give me a god damn chance. Man she steady screaming about my god damn – I already got -- I already got – I already got a murder

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[4] Ms. Liles was in the courthouse during jury selection.

[5] See Attachment A. Available at http://www.libertyrecording.com/LIR_main.htm (last viewed 9/24/12).

[6] McLaughlin is an alleged victim in Defendant's pending armed robbery and kidnapping charge.

kidnapping charge on my record. She didn't see shit – she was in a room." Located at 5:08:08 – 5:08:27[7]

And

"**Investigator**: Who is that?

King: Aloysius, Same dude that I robbed, me and him got back on good terms.

Investigator: Aloysius

King: From McColl, that one - same dude that signed a warrant on me back in February. Me and him back on good terms." Located at 5:01:12 – 5:01:26[8]

During a pretrial hearing, Defendant moved for numerous sections of the video to be redacted pursuant to Rules 401, 403, 404(b), Defendant's constitutional right to due process, and Defendant's constitutional right to equal protection.

The Court suggested that Marlboro County was ill-equipped or otherwise unable to redact the shorter sections of video. The State informed the Court that Liberty Police Interview Recorder System is specifically designed where the files cannot be redacted.

The Court ruled that several sections should not be played for the jury including a section between approximately 5:13:30 and 5:14:03. Prior to trial the Court made all rulings concerning the videos final rulings for the record.

[7] All times given in this motion correspond to the date stamp on the video.

During trial, the State decided to begin the video when Miranda warnings were read at approximately 4:45:30. The jury watched the entire video from approximately 4:45:30 until 5:13:30 and then 5:14:03. The video was watched on a large screen TV that received a signal from a laptop computer which was using the Liberty Interview Player program. The above transcribed portions of the video were heard[9] by the jury while the video was played.

After the trial had concluded, Mr. Shaffer researched whether the Liberty Police Interview Recording System truly did not allow for redactions. Mr. Shaffer began by calling the Liberty Recording help line. In less than 3 Minutes, a representative of Liberty Recording told Mr. Shaffer how the *free* downloadable Liberty Interview Player allows the user to redact portions of the video in one-second intervals. This feature is also easily discoverable in the help section of the program by merely searching the term "redact." *See* Attachment B.

Defendant is entitled to a new trial based on the incorrect assertions from the State concerning their ability to redact the video. The State argued that it was unable to redact the video because the program was specifically designed to prevent redaction. Clearly, this was incorrect. Therefore, Defendant asserts that he is entitled to a new trial based on the objections made at trial concerning the redaction of the video.

III. Burden-shifting instructions given by the Solicitor during closing arguments.

During State's closing argument, Assistant solicitor Mia David argued an incorrect statement of what reasonable doubt is. Essentially[10], she stated that "reasonable" means what a normal person would think, and that since the jury is full of normal people if the jurors do not

---

[8] Should the State object to this transcription of these sections, Defendant request that the move for an official transcription of these sections be made by a certified court reporter.

[9] During trial, Mr. Shaffer conceded that several parts of the video were unclear. However, Mr. Shaffer submits that Defendant's statements between 5:01:12 – 5:01:26 as well as 5:08:08 5:08:27 are audible.

[10] At this time Defendant does not have a transcript of the trial.

think Defendant is not guilty they should find him not guilty. However if the jury thinks Defendant is guilty then they should find him guilty.

Defendant avers that the description of reasonable doubt used by the Solicitor was confusing and burden-shifting. This argument left the jury open to convict Defendant even if they thought or merely suspected he was guilty. *See State v. Liberte*, 336 S.C. 648, 521 S.E.2d 744 (Ct. App, 1999).

CONCLUSION

Based on the Foregoing arguments and the arguments issues raised during trial, Defendant respectfully request this Court grant him a new trial

RESPECTFULLY SUBMITTED,

Tristan Michael Shaffer
Attorney for Defendant

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ATTACHMENT A

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All solutions are developed, marketed and sold by High Criteria Inc

Liberty Police Interview Recorder

Digital Audio / Video Police Interview Recorder

The Liberty Police Interview Recorder is a simple, easy to use recording system that captures interview and interrogation audio, video and notes for police, law enforcement services and other government agencies.

The program uses standard VHS-like Start, Stop and Record buttons. The recorded material is saved into a single file on the recording system hard-drive. Optionally, the file may be automatically and simultaneously recorded to a secure file server and saved onto a CD/DVD. The recordings can later be transcribed or provided to other agencies in a universal playback format.

The recorded notes serve as "bookmarks" or cue points into the recording file. The notes may later be searched to find and identify recordings files. They also eliminate the need to fast-forward or rewind through large recording files.

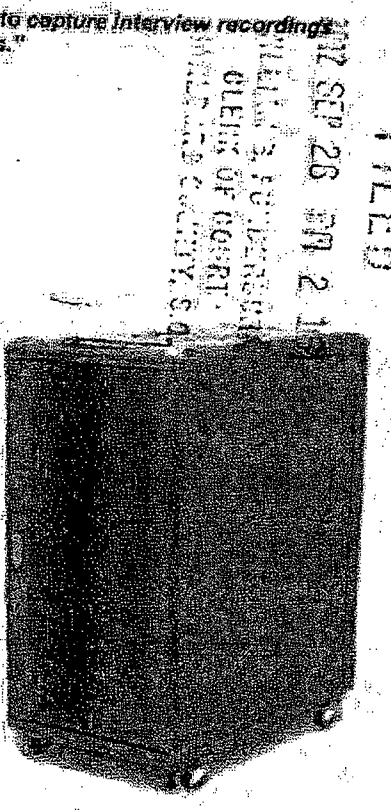
Application Related Links

Download Liberty Interview Player (available at no-cost)
Download Liberty Interview Player for Mac 10.6 or later
Specification Sheet for Liberty Interview Recorder
(right click and select "Save Target As" to download and save spec. sheet)
DVR-DVD and Audio File Conversion Program
Liberty Feature Details and Knowledge Base

"The Liberty Police Interview Recorder allows police and other agencies to capture interview recordings and document interviews and interrogations."

Just some of the features and benefits of the Liberty Police Interview Recorder include:

- Real-time audio and video display for concurrent monitoring.
- Dual Camera Recording captures dual video feeds from the same interview room. Follow this link for futher information on the dual recording capability of the LIR system.
- Configuration options include recording multiple interview rooms onto a single PC saving money and space on PC hardware.
- Recordings saved into universal formats such as .pdf and .wmv for distribution to other agencies, eliminating the need for the download of proprietary playback programs.
- Custom watermark plus time and date stamp imbedded onto every recording frame.
- Remote monitor capabilities through a standard LAN network.
- Optional remote "start-recording" facility with either a hardware switch, or through a remote control program.
- Recording LED that may be installed into the interview room to confirm that recording is active.
- Optional "case information" prompt so that each interview is documented with a consistent set of information.
- Instantaneous playback cueing; no more delay while waiting for fast-forward or rewind functions.
- Playback program specifically designed for transcription including foot-pedal support.
- Automatic Gain Control and Noise Reduction facilities for the clearest possible audio playback.
- Mute button provides continuous video recording with muted audio.
- Recordings saved in a digital format that may be copied onto any standard Windows supported media including external hard-drives, memory sticks and LIR systems are available that support



CD/DVDs.
- Optional ability to automatically save the recording files to a central file server.
- Search facility matches on any text entered into the associated file notes.
- Eliminate bulky tapes and one-off DVDs that are difficult to copy, save and manage over extended periods of time.
- No more lost DVDs or broken VHS tapes.
- Non-proprietary, open source compression formats.
- Configurable frame rates and video resolutions.
- Industry standard off-the-shelf Windows PC components that may be serviced by any IT professional.
- Optional touch-screen support with over-size push-button controls for all recording functions.

multiple recording rooms on one PC as well as multi-PC configurations supporting numerous rooms. An example of a rack configuration for multiple PCs is shown above.

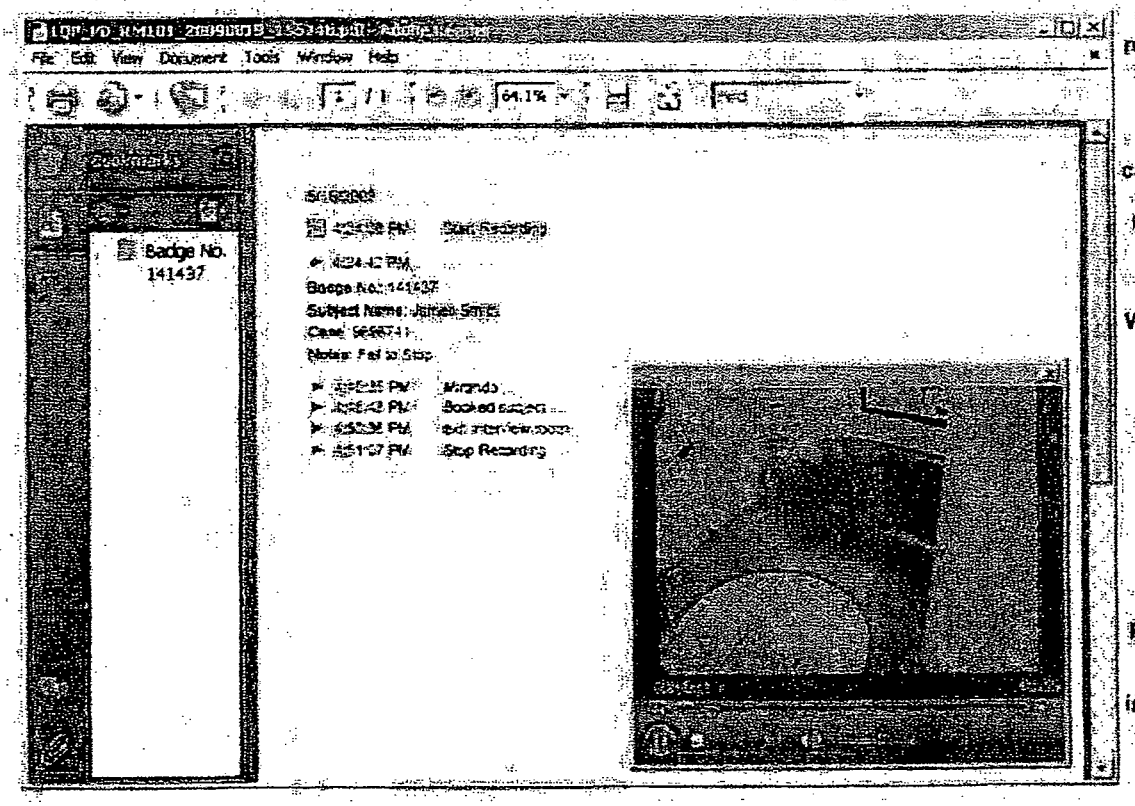
Supports Implementations of All Sizes and Complexities

The Liberty system provides the ideal recording solution for both large and small police organizations. The system has been selected and implemented in large police organizations with over 1,000 badged officers supporting civil populations of over 1 million people. Alternatively, the system has also been selected by smaller police organizations with only a single interview / interrogation room.

In the case of a large police organization, the Liberty Interview System can be supplied with a browser interface facility that links the user to a database of the recording files. The browser interface provides search and retrieve facilities that in turn provides the force with quick access to all of their recording files through a central web interface.

For smaller police organizations, the recorder may be installed onto a single computer to record a single interview room. In such a case, a local search and retrieval program may be used to find files and a database is not generally required.

Save Audio / Video Recordings into standard PDF Files with Cue Points and Annotations



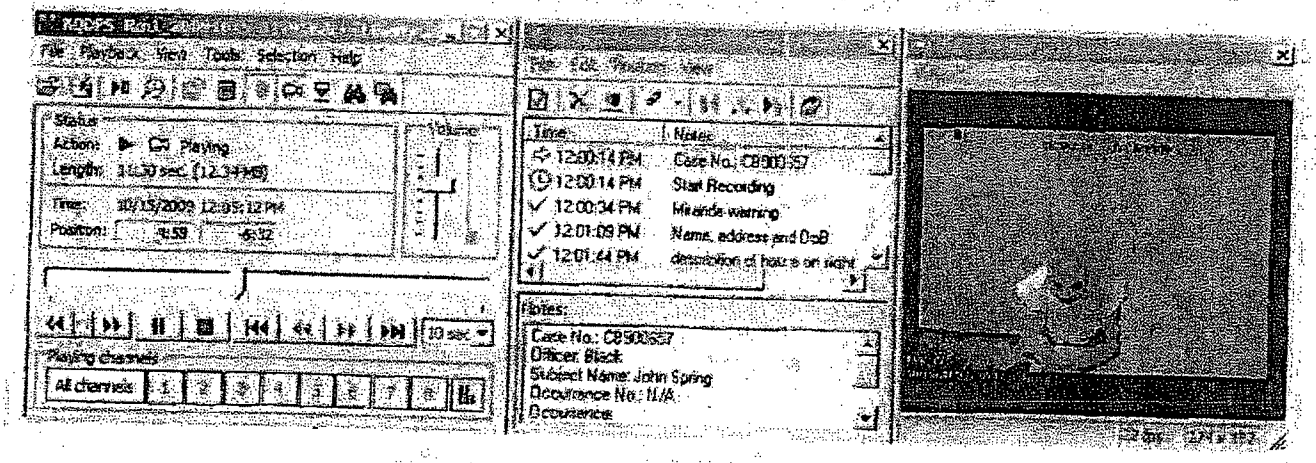
Audio / Video recordings may be saved into standard .pdf documents. Annotations can provide cue points into the recordings and playback is facilitated through Windows Media Player. A proprietary playback program is not required.

Bookmarks provide multiple cue points to where the operator may instantaneously jump the audio / video playback.

The Liberty Interview Recorder integrates with the Liberty Evidence Management System and the Post Recording Manager for a complete and secure file management system.

The Liberty Interview Player

The Liberty Interview Player provides playback facilities for your captured audio files. The Liberty Interview Player is available as a no cost download from the link below. The Player lets you select and listen to individual channels in a recording or a mix of several or all of the channels. The Player runs on any PC with Windows 98 or later that has standard audio capabilities. An optional foot pedal for controlling playback is available, please contact High Criteria for details.



Download the Liberty Interview Player Program

The Liberty Player is a no-cost program that may be downloaded from the following link: Liberty Interview Player V2.5 for the Microsoft install file (4.68MB).

After you have downloaded and installed the Liberty Player, you may wish to review the Knowledge Base to review how to configure and use the program.

Liberty Interview Player for Mac OS 10.6 and Later

The Liberty Interview Player for Mac OS 10.6 or later provides audio playback facilities for your Liberty Interview recording files on a Mac OS 10.6 or later computer. The Liberty Interview Player is available as a no cost download from the link below. An optional foot pedal for controlling playback is available, please contact High Criteria for details.

The Liberty Interview Player for Mac is a no-cost program that may be downloaded from the following link: Liberty Police Interview Player for Mac.

2DCR Conversion Program

The 2DCR Conversion Program allows users to convert standard DVR-DVDs, mp3 files and wav files into standard .dcr format files. As the files are converted, the user can add standard case information into the meta-data fields for the file. Adding this meta-data allows the file to be searched, just like other files created by the Liberty Recording system.

Further details can be found on this webpage for the 2DCR Conversion Program.

Contact High Criteria for more Information

The Liberty Interview Recorder is available through dealers located across the United States and directly from High Criteria Inc. Please contact High Criteria at 905-886-7771 for further details.

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ATTACHMENT B

Using Redaction

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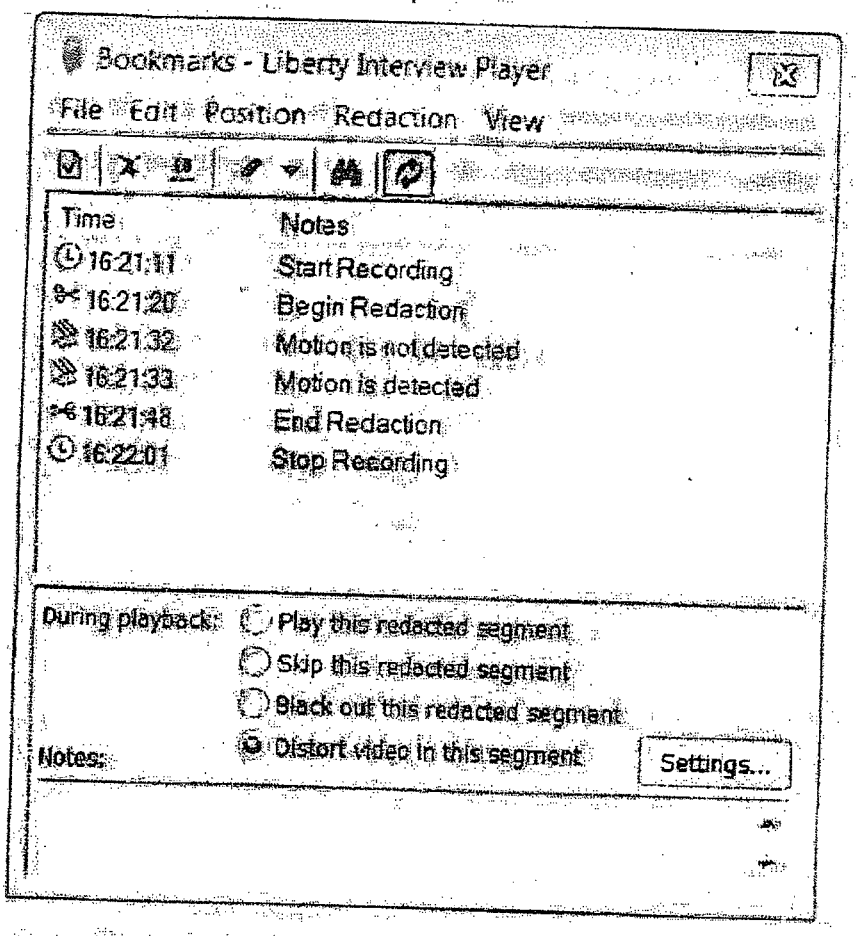
Liberty Interview Player allows you to use the redaction feature so that redacted segments can be played, skipped over or blacked out during playback. Redacted segments can also be distorted. For example, you may want to exclude a particular comment made by a witness during an interview or distort the video so that the person being recorded cannot be visually recognized when playing back the interview in a room. You can also choose similar options for handling redacted segments in a file when the file is exported.

A redacted segment appears in the Bookmarks window with "Begin Redaction" and "End Redaction" bookmarks, as shown below.



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CLERK OF COURT
HAMILTON COUNTY, OHIO

You can set the default behavior of new redacted segments as a configuration option.

Creating a Redacted Segment

To create a redacted segment:

1. Use the Selection Panel to select the segment of the recording you want to redact.
2. From the Redaction menu on the Bookmarks window, click New Redaction.
3. In the During playback section, choose the behavior of the redacted segment when the file is being played back.
4. Optionally, you can add comments in the Notes field.

Distorting a Redacted Segment

When you create a redacted segment, choose "Distort video in this segment" as the playback option.

By default, the entire frame is distorted. To adjust the region being distorted, you can take the following steps:

1. If the Video Preview window is not displayed, from the View menu, click Video Window to open it.
2. In the Bookmarks window, select the "Begin Redaction" bookmark for the distorted segment.
3. Start to play the file.
4. Click the Settings button which will cause playback to pause.
5. In the Video Preview window, click and hold your mouse down, and then drag your mouse to adjust the area to be distorted. Alternatively, you can use the drop-down lists in the "Region" section to adjust the settings and monitor the

mk://@MSITStore:C:\Program%20Files...

corresponding area in the Video Preview window.
6. Optionally, you can click the **Start Distortion Test** button to display the area being distorted. You can then adjust the region being distorted using your mouse or the drop-down lists.
7. Once you are finished, click **OK** to continue playback.

Deleting a Redacted Segment

To delete a redacted segment:

1. Select either the "Begin Redaction" or "End Redaction" bookmark for the segment.
2. From the Redaction menu, click **Delete**.

This doesn't remove any data from the file. It simply changes a segment so that it is no longer redacted.

Repositioning a Redacted Segment

To reposition a redacted segment:

1. Use the Selection Panel to highlight the new starting and/or ending points.
2. Click either the "Begin Redaction" or "End Redaction" bookmark for the redacted segment you want to reposition.
3. From the Redaction menu, click **Reposition**.

Selecting Part of the Recording Based on a Redacted Segment

1. To select the part of a recording that corresponds to a redacted segment, click either the "Begin Redaction" or "End Redaction" bookmark for the redacted segment.
2. From the Redaction menu, click **Set Selection**. In the main window, the slider will reflect the corresponding redacted segment.

Exporting Files with Redacted Segments

When you export a file that contains redacted segments, you can choose to include them all, skip them all, black them all out, or use an individual setting for each redacted segment. You have the option to retain distorted segments.

Playing Files with Redacted Segments

When playing back files that contain redacted segments, the default behavior is to use the individual setting for a redacted segment to determine whether it will be played, skipped, or blacked out. In some cases you may want to override this behavior, for example, to play, skip, or black out all redacted segments during playback.

To change the behavior for redacted segments, from the Redaction menu, click **Playback** and then choose one of the menu items.

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WILLIAM E. RUNNEBOHM
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF MARLBORO	FOR THE FOURTH JUDICIAL CIRCUIT
	Indictments: 2012-GS-34-024; 2012-GS-34-025; 2012-GS-34-026; 2012-GS-34-028; 2012-GS-34-029
STATE OF SOUTH CAROLINA,	CERTIFICATE OF SERVICE AND FILING FOR DEFENDANT'S MOTION FOR A NEW TRIAL
vs.	
TYRONE KING,	
Defendant.	

I, Tristan Shaffer, hereby certify that on September 24, 2012, Defendant's Motion for a New Trial was served upon the Attorney for the State, Mia David, via e-mail and via U.S. Mail by addressing it to P.O. Box 616 Bennettsville, South Carolina 29512.

I further certify that on Monday September 24, 2012, Defendant's motion for a new trial was timely filed pursuant to SCRCrimP Rule 29 and SCACR Rule 263(a) by deposing the document in the U.S. Mail in conformity with SCACR Rule 262 by addressing it to Marlboro County Clerk of Court, P.O. Drawer 996, Bennettsville, SC 29512-0996.

RESPECTFULLY SUBMITTED,

Tristan Michael Shaffer
Attorney for Defendant

September 24, 2012

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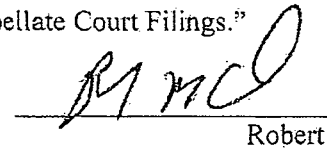
Clerk of Court
M.C., S.C.

A CERTIFIED TRUE COPY
William B. Rushbrook
CLERK OF COURT
MARLBORO COUNTY

Attorney Certificate

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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Certificate of Service

I hereby certify that I served the foregoing paper by first-class mail, proper postage prepaid, this 13th day of June, 2014 on the following parties:

Hon. Alan M. Wilson
c/o Alphonso Simon, Jr., Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Brandon Hall
Administrative Specialist

Subscribed to and sworn before me this 13th day of June, 2014.

Notary Public
My commission expires: October 24, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
The Honorable Edward B. Cottingham, Jr., Circuit Court Judge
Appeal Case No. 2012-213461

THE STATE

RESPONDENT,

V.

TYRONE J. KING,

APPELLANT

SUPPLEMENTAL RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

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Solicitor and I anticipate taking Wednesday afternoon. And we have got both Mr. Crow and Mr. Jennings back in the back. They needed to talk with you just briefly.

THE COURT: They can talk to me back there.

MR. REDMOND: Yes, we can do that.

THE COURT: Are we through here?

MR. REDMOND: I don't think that we have anything else for the record.

THE COURT: Here's what I want y'all to do. Can y'all go through the redaction portion now and let's get that resolved while I talk to them?

MS. JOHNSON LEE: Yes, sir, we can.

THE COURT: Do that. I would suggest that y'all consider redacting the whole first part, but I'll leave that to y'all's discretion. It seems to me that the meet of that video goes where he says -- with the second interrogation, but I leave that to y'all. But I want y'all to agree as to what's going in subject to his exceptions.

MS. JOHNSON LEE: Yes, sir, Your Honor.

END OF TRANSCRIPT OF RECORD

bullet that actually killed the victim. So, again, State's Exhibit 31, the bullet, was that fired by this gun?

A. Yes, it was.

Q. All of those items before you were they fired by the gun?

A. They were.

Q. And does that gun appear to be in good working order based on your determination?

A. It appears to be in the same condition as when I saw it.

Q. And I misphrased that. When you examined the gun did it appear to be in proper working order?

A. It was.

Q. Thank you. I have no further questions. Please answer any questions that the Defense may have.

CROSS-EXAMINATION

BY MR. SHAFFER:

Q. Mrs. Eichenmiller, at S.L.E.D. as a firearms examiner what all types of test do you run?

A. As a firearms examiner we do any test that could be related to a firearm or a tool mark. Firearms identification is just a specialized tool mark identification. So if we were to receive bolt cutters and wire we can compare those and attempt to see those bolt

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Edward B. Cottingham, *Circuit Judge*

Appeal No. 2012-213461

STATE OF SOUTH CAROLINA,

Respondent,

vs.

TYRONE J. KING,

Appellant.

Final Opening Brief of Appellant Tyrone J. King

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STATEMENT OF THE ISSUES ON APPEAL

1. In this murder case involving the defense of accident, did the circuit court err in excluding some but not all references to Defendant-Appellant's prior charges of murder, kidnapping, and armed robbery?

2. Did the circuit court—which had admitted the bad-conduct references above on the belief that the State could not redact them—err in denying Mr. King's motion for new trial once it became clear that the State could redact precise portions of the videotaped interrogations?

3. Did the circuit court err in denying a mistrial after a witness referenced the Defendant-Appellant's charge for armed robbery only few transcript pages after the circuit court had told the solicitor in self-described "strong" terms that any questioning about the armed robbery would result in a mistrial?

STATEMENT OF THE CASE

This direct criminal appeal arises from the Marlboro County Circuit Court of General Sessions. On January 31, 2012, a grand jury returned three indictments against Defendant-Appellant Tyrone J. King arising out of the events of November 11, 2011: (a) one for murder of James Galloway, in violation of S.C. Code §§ 16-03-10 and -0020; (b) one for possession of a weapon during the commission of a violent crime (murder) in violation of S.C. Code § 16-23-490; and (c) one for assault and battery of a high and aggravated nature against Karen Galloway, in violation of S.C. Code § 16-3-600(B). [R. pp. 5-10].[1]

The circuit court held a jury trial on all the indictments on September 10-13, 2012 at which Mr. King raised the defense of accident. [R. pp. 14, 328:2-17]. The jury convicted Mr. King of murder, possession of a weapon during the commission of a violent crime, and assault and battery in the third degree, and the circuit court sentenced Mr. King that same day pursuant to those verdicts. [R. pp. 2-4]. Mr. King was sentenced to life for the murder, a consecutive five years for the possession charge, and to time served for the assault and battery in the third degree. [*Id.*].

On Monday, September 24, 2012, Mr. King made a motion for a new trial. [R. p. 359].

Mr. King received the order denying the motion on November 15, 2012 and served his notice of appeal the same day. [R. p. 344].

[1] Although Mr. King was also indicted and tried on a pointing-and-presenting charge arising from the same transaction, he did not include that conviction in his notice of appeal. [R. p. 344]. References to it in this appeal are by way of background only.

STATEMENT OF FACTS

I. The Circuit Court Denied Mr. King's Motion to Continue.

On August 6, 2012, the circuit court (Judge Cottingham, presiding) held a hearing on Mr. King's motion for continuance from the September 10 term of court. [R. p. 12:2-6]. Although the indictments were only approximately seven months old, the circuit court denied the continuance. [R. p. 11]. To ensure that defense counsel would be ready for trial within thirty days, the circuit court announced that it would have this Court reschedule two appellate arguments involving defense counsel. [R. p. 13:2-5].

II. The Circuit Court Granted in Part but Denied in Part Mr. King's *Motion in Limine* to Exclude Evidence of Prior Alleged Bad Acts.

After jury selection, the circuit court held a hearing to decide which portions of Mr. King's two videotaped police interrogations to play into evidence at trial.

In his first interrogation, which took place a few hours after the incidents giving rise to his indictments, Mr. King said that he had gone across the street to Mr. Galloway's house with a man named Aloysius McLaughlin. [State's Ex. 5 at 05:01:13-27].[2] At that time, Mr. King was facing charges of kidnapping and armed robbery against Mr. McLaughlin in the Town of McColl from a few weeks beforehand. In response to law enforcement's disbelief that they would have been together given that prior conduct, Mr. King advised that the two had made up. [*Id.* at 05:01:15-17]. Mr. King also claimed to law enforcement that Mr.

[2] Pursuant to guidelines from State Court Administration, the court reporter did not prepare a transcript of the audio of the exhibits. The time references here for Exhibit 4 and 5 refer to the timestamp appearing at the bottom left of the video.

McLaughlin suddenly and unexpectedly killed Mr. Galloway and that Mr. King then ran away out of fear. [*Id.* at 04:59:30-40; 05:00:45-01:07].

In his second interrogation, held a few days later, Mr. King admitted that he went over to Mr. Galloway's house alone to buy some liquor from him. [State's Ex. 4 at 08:37:50]. Mr. King showed Mr. Galloway a gun, which Mr. King wanted to sell to Mr. Galloway. [*Id.* at 08:38:30-45]. Mr. King said the gun accidentally went off as Mr. Galloway was examining it. [*Id.* at 08:41:30-40].

During the hearing, the circuit court believed that the State could not redact individual sentences or words from the videos. [R. p. 40:16-20 ("THE COURT: Cannot [redact a word] because we don't have the capability. If you redact that word you've got to redact whatever he said. Isn't that true? MS. JOHNSON LEE: Yes, Your Honor. THE COURT: I'm not going to do that. Go ahead.")]. Thus the circuit court believed that the only way to avoid playing certain portions was a manual "fast forward" past them, thereby preventing precise redaction. *See* [R. p. 41:11-24; 49:11-16 ("THE COURT: ... So that you will understand I ruled that anything about his prior conduct that we can redact sufficiently we're going to redact. But there is no way for them to redact efficiently one sentence or one word out of a sentence. They just don't have that capability in Marlboro County.")].

Given the circuit court's belief that the State could not perform precise redactions, it made disparate rulings on references to prior alleged criminal conduct in the videos.

A. References to a Prior Murder Charge That Did Not Result in a Conviction.

In his first interrogation, Mr. King referenced a murder charge against him from 2004. *E.g.* [State Ex. 5 at 04:32:33-36]. The circuit court ruled that three portions of the

video referencing that murder charge could not be shown to the jury and had to be fast-forwarded. [R. p. 330]. Indeed the circuit court was emphatic about the importance of keeping out the references to the prior murder charge:

> MR. SHAFFER: At this point he's talking about his previous murder charge. It's 4:28 on the video. 4:28:58.
>
> THE COURT: I want that redacted; that part. Can you do that without destroying the whole video?
>
> ...
>
> MS. WHITE: We will have to fast forward through it, your Honor.
>
> THE COURT: Well, make sure you do it in the right place, but back up a little bit and then fast forward. I don't want to hear anything about that. To the extent possible get to where he talks about allegedly this incident. Go ahead. Let's see where we're going. Go ahead. You be sure that's redacted.

[R. p. 41:9-23.]

> MR. SHAFFER: Objection, Your Honor. He's talking about the previous murder. This investigator just asked him what were you charged with in that murder.
>
> ...
>
> THE COURT: I want to redact any reference to any prior conduct.

[R. p. 43:14-22]

Despite having ruled that three prior references to Mr. King's murder charge could not be admitted, the circuit court decided to permit the State to play the following portion of the video admitted as State's Exhibit 5:

> INVESTIGATOR: Well, that's what I am saying. I mean if you didn't do it, I mean why didn't you just go out in the front yard, give the gun to the police and say hey, man, Aloysius just ran out the back door?

> MR. KING: They didn't give me a [expletive] chance. Man she steady screaming about my god damn – I already got – I already got – I already got a murder kidnapping charge on my record. She didn't see [expletive] – she was in a room.

[State's Ex. 5 at 5:08:08-27].[3] The circuit court offered no specific explanation for why this particular reference was admissible when the prior references were not:

> MR. SHAFFER: Your Honor, at approximately 4:08 – I mean 5:08:25 he said he already had murders on his record, and I move to redact that, 404(B).
>
> THE COURT: What was the specific remark?
>
> MR. SHAFFER: He said, "I've already got murders on my record."
>
> MS. DAVID: Your Honor, he does not have a conviction for murder on his record.
>
> MR. SHAFFER: And he's been charged with murder, Your Honor.
>
> THE COURT: He said – I'm going to leave it where it is. Go ahead.

[R. p. 52:13-24].

B. References to the "McColl" Pending Kidnapping and Robbery Charges

As with the murder references, the circuit court made conflicting rulings regarding references to the McColl kidnapping and robbery charges contained in the video admitted as State's Exhibit 5. On one hand, it excluded two references to the charges. [R. p. 330; 44:1-3 ("MR. SHAFFER: Objection, Your Honor. He's getting into the McColl charges that are pending? THE COURT: Yes. I want that redacted."); Trial Tr. 48:10-13 ("THE COURT: Can't we redact that part [about the McColl charges]? MS. DAVID: We can try it. We can fast forward past that moment. THE COURT: Do that...")]. Likewise, with respect to the

[3] Because the court reporter has not prepared an official transcript of the video, the quotation above represents defense counsel's own transcription of it.

video admitted as State's Exhibit 4, the circuit court ruled inadmissible references to the McColl charges. [R. p. 66:2-3 ("THE COURT: Let's strike any mention of the McColl charge."); 66:12 ("THE COURT: End it right before he says, 'McColl.'")].

The circuit court did, however, permit two references to the McColl robbery and kidnapping charges in the video admitted as State's Exhibit 5. One reference, at 5:08:08-27, was already quoted in the previous subsection. The other reference was as follows:

> INVESTIGATOR: Who is that?
>
> MR. KING: Aloysius, Same dude that I robbed, me and him got back on good terms.
>
> INVESTIGATOR: Aloysius
>
> MR. KING: From McColl, that one – same dude that signed a warrant on me back in February. Me and him back on good terms.

[State's Ex. 5 at 5:01:12 – 5:01:26].[4] The circuit court offered only a cursory explanation for its decision to permit this particular reference to the McColl charges: "I think it's appropriate based on the totality of what he's saying. Go ahead." [R. p. 52:9-10].

III. The Circuit Court Made Its Evidentiary Rulings Final.

On the morning of trial, the circuit court expressed some discomfort with its decision to permit the reference to the murder and kidnapping charges in State's Exhibit 5, though not sufficient discomfort to revisit the issue again:

> MR. SHAFFER: I made an objection to a prior murder and kidnapping charge at 15:08 –
>
> THE COURT: That's been redacted.

[4] Counsel has prepared this quotation because no official transcript exists.

> MR. SHAFFER: Your Honor, excuse me. It's actually 5:08:09 through 5:08:10.
>
> THE COURT: Prior burglaries [sic] have not been redacted?
>
> MR. SHAFFER: That hasn't been redacted, Your Honor.
>
> THE COURT: Why?
>
> MR. SHAFFER: He mentioned that – I believe he stated on the record that he couldn't – that Marlboro County was unable to go through line by line and redact every word or every reference to anything in the statement. I believe that was when you had said that yesterday.
>
> THE COURT: Well, this equipment is not the best in the world. They have made every effort to do it. It's not as sophisticated as it should be, but you couldn't redact that part?
>
> MR. REDMOND: Beg the Court's indulgence. That was one that at the time, and I recall that section where the Court ruled that that part could stay in. I can't recall exactly –
>
> THE COURT: If I ruled that I'm not going to beat a dead horse to death. If I ruled – did I rule it stays?
>
> MS. JOHNSON LEE: You did.

[R. pp. 72:4-76:4]. Although Mr. King noted that other law enforcement agencies did have the capability to make more precise redactions than rudimentary fast-forwarding, the circuit court wanted the trial to proceed right away regardless. [R. p. 76:17-20 ("THE COURT: Well, we don't have that other agency here. We are in the second day of the trial. We spent most [of] the time with your objections. I'm ready for the jury.")]. To avoid any other delays associated with Mr. King's evidentiary objections to State's Exhibit 5, the circuit court made its rulings on the *motion in limine* final for the purposes of appellate review. [R. p. 77:19-21 ("I don't want you to make your objections again as to those items [in R. p. 330]. You've made them and are protected for the record.... We don't want to waste another day with objections.")].

IV. The Court Conducted a Jury Trial.

The circuit court held a three-day jury trial on the indictments. A summary of the proceedings follows, presented in the light most favorable to the verdicts:

A. The State Offered No Motive for the Murder of Mr. King's Longtime Neighbor Only Yards Away from the Sheriff's Office.

1. Ms. Galloway's Testimony

Ms. Karen Galloway, the wife of the decedent, testified that in the early morning hours of November 11, 2011, her husband got up to answer a knock on the door. [R. pp. 91:7-92:6]. Perhaps because Mr. Galloway sold liquor from his home after hours, [R. p. 166:5-6], no one appeared surprised at the knocking on the door at that hour. Mr. Galloway came back to the bedroom shortly after answering the door, told his wife that "Tyrone" was there, and went back out of the bedroom after putting on some shorts. [R. p. 92]. Later, she heard her husband say "Naw, man I don't have" and then heard a "pop." [R. p. 92:24-25].

Ms. Galloway jumped out of bed, and Mr. King then came into her room. [R. p. 93:1-2]. Mr. King asked her who was in the house with her, to which she responded her cousin Reggie Cousar, and then Mr. King hit her on the top of the head with a gun handle before running out of the room. [R. p. 94:10-16]. The gun accidentally discharged when she was hit on the head, firing a shot into the wall. [R. p. 94:15-16].

While Mr. King was out of the room, Ms. Galloway called 911 after finding her husband dead. [R. p. 95:11-13]. When Mr. King returned, he took the phone from her hand and hung it up. [R. p. 96:1-2]. When the 911 operator called back, Mr. King answered it and said that he and "someone" had come there to buy some liquor and that that person had

shot the victim. [State's Ex. 40].[5] Eventually Mr. King ran out the back door. [R. p. 96:23-25].

Ms. Galloway was able to identify Mr. King because he had been her neighbor for "12 or 13 years" and had come into her home on other occasions. [R. pp. 97:22-98:2]. Ms. Galloway testified that she had no idea why Mr. King would have wanted to kill her husband. [R. p. 101:4-5 ("Yeah. I don't know why he shot him. That's what I want to know.")].

2. Devonte M.'s Testimony

Devonte M., a minor, testified that he had spent the night with his grandfather the night of November 10th. [R. p. 110:14-15; 111:2-12; 113:2-3]. Mr. M. had been sleeping in a chair when he heard Mr. King come in and ask his grandfather for alcohol. [R. pp. 11:5-112:23]. Mr. M. testified that he saw Mr. King pull a pistol out of his pants and point it toward Mr. Galloway's stomach. [R. p. 113:23-24]. At some point after Mr. Moore had looked away, he heard the gun go off. [R. p. 119:7-9 ("Q. You heard the noise. Were you looking at him when you heard the noise? A. No.")].

For a witness to an alleged murder, Mr. M.'s testimony is notable for what it omitted. He made no claim that Mr. King appeared angry, that Mr. King and Mr. Galloway had had any sort of argument, that they struggled, or that Mr. Galloway even appeared frightened. Mr. M. likewise offered no testimony about whether Mr. King did or did not discuss Mr. Galloway purchasing the pistol. He was not asked, and did not offer, any explanation as to how Mr. Galloway came to be shot in the face, [R. p. 335], even though Mr. Moore had last seen the gun pointed at Mr. Galloway's stomach.

[5] As with the video interrogation, no official transcript exists.

Although Mr. M. said that Mr. King was a frequent visitor at the Galloway home, Mr. M. was unable to locate Mr. King in the courtroom. [R. p. 111:17-112:7].

3. Reggie Cousar

The Galloways' cousin Reggie Cousar also testified at trial. [R. p. 103:7-9]. He had been living at their home for several months before November 11th. [R. p. 103:4-6]. He woke up when Ms. Galloway cried out for her, walked to the front room, and saw Mr. King pointing a gun at her before Mr. King turned to point it at him. [R. pp. 103:22-104:7]. Within five minutes of him having woken up, he saw Mr. King run away. [R. pp. 105:25-106:1]. According to him, no one else had been there that night but him, the Galloways, three children, and Mr. King. [R. pp. 106:23-107:1]. He also testified that the Galloway's home was only "a block" away from the Marlboro County Sherriff's Office. [R. p. 107:6].

4. Deputy Timothy Shaw

About a minute after the 911 call, Deputy Timothy Shaw arrived at the Galloway home, from the Sheriff's Station about 200 yards away. [R. pp. 120:5-121:10]. When he approached the home, he saw someone running out the back. Deputy Shaw then chased and apprehended that person, who was Mr. King. [R. pp. 121:24-124:6]. At the time of his arrest, Mr. King had a bottle of alcohol in his pocket. [R. p. 124:15-16].

B. The Jury Heard the References to Murder, Kidnaping, and Robbery Charges Through State's Exhibit 5.

At trial, the jury watched the videotaped interrogation admitted as State's Exhibit 5, including the references to Mr. King's prior murder, kidnapping, and armed robbery charges at 5:01:12-26 and 5:08:08-27, quoted earlier. [R. p. 291:13-14].[6]

C. The Circuit Court Instructed the State that any Reference to the Armed Robbery Charge Would Result in a Mistrial.

None of the first nine witnesses who testified believed that anyone other than Mr. King had come into the house the morning of November 11th. *See, e.g.*, [R. pp. 106:23-107:1]. Nonetheless, to rebut the suggestion that Mr. King made in his videotaped interrogation that Mr. McLaughlin had been present and shot Mr. Galloway, the State called Mr. McLaughlin to testify. He said that he had not been with Mr. King at all on the night in question. [R. pp. 178:22-180:21]. Indeed, Mr. McLaughlin said that he would not have been with Mr. King at all that night because they had not been "cool" at that time. [R. p. 180:13-16].

The questioning about why Mr. McLaughlin would not have been with Mr. King on November 11 was elliptical due to the circuit court's specific admonition to the solicitor and witness just before Mr. McLaughlin's testimony. The circuit court emphatically indicated that any reference to Mr. King having allegedly robbed Mr. McLaughlin—one of the McColl charges—would result in an immediate mistrial:

> THE COURT: We're not – you didn't call [Mr. McLaughlin] for any pending charges?

[6] The State later played State's Exhibit 4, in which Mr. King had told the police that the gun had accidentally discharged. [R. p. 204:9].

MS. DAVID: No, Your Honor, but he might reply based on a pending charge. I am going to ask him was he with the defendant on this night, and I am going to ask him, you know, were they friends.

THE COURT: You can do that, but don't go into anything further, you understand? About any pending charges. Don't you understand that?

MS. DAVID: Yes, Your Honor.

THE COURT: Let there be no question about it, now. If you do that you're getting into trouble that we don't need in as much as that video referenced this individual I'm going to let him testify as to whether he was there or not. That's going to end it. Do you understand that?

MS. DAVID: Yes, Your Honor. So he is not to mention that he would not have been with the defendant the night before because the defendant had robbed him two weeks prior.

THE COURT: We went through that. That's got knowledge [sic – probably "nothing"] to do with this case, all right.

MS. DAVID: Yes, Your Honor.

THE COURT: If you do that I'm going to declare a mistrial, now, I tell you one more time. How strong can I be with you, Mia, on this issue? ... You tell me what you're going to elicit from him.

MS. DAVID: I am only going to ask him if he was at the scene with Mr. Tyrone King....

THE COURT: I'm warning you both, now... And I tell this witness respond to her question and hers only. No reference to anything that occurred about an alleged robbery the night before that. You[] understand that?

THE WITNESS: Yes, sir.

MR. REDMOND: Now, Your Honor, just to be clear, and I know it might be necessary to do a proffer just to be sure, but I do think it is proper, without getting into reasons why that, because that was a reference on the table. Well, actually, there was a reference about this incident. We are not getting into that, but he made a comment that we are all good now or we are cool now referring to the defendant and –

> THE COURT: I'll permit that as long as you don't talk about a robbery the night before.
>
> MR. REDMOND: Absolutely, and that's what we're not getting into.
>
> ...
>
> THE COURT: Whatever his answer. He can answer that.
>
> MR. REDMOND: I just want to be clear.
>
> THE COURT: I understand that. I understood that he said they were cool. He may not say they were cool. But we'll see. Bring the jury in. Just leave that question of robbery alone, you understand that, Mr. Witness?
>
> THE WITNESS: Yes, sir.
>
> THE COURT: All right.

[R. pp. 174:14-178:15].

D. The Circuit Court Denied Mr. King a Mistrial After Melissa Graham Referenced the Armed Robbery Charge.

Immediately following Mr. McLaughlin, the State called his then-girlfriend to confirm that Mr. McLaughlin had been with her and thus could not have been at Mr. Galloway's house with Mr. King. [R. p. 185:4-9]. She testified that when the Sheriff's Department came by that morning to talk to them in connection with the murder investigation, she was surprised because "how we going to help this man murder somebody [when] he just robbed us?" [R. p. 186:14-15].

The circuit court instructed the jury that the reference to the robbery as "totally irrelevant to any issue in this case" and was thus "not to be considered." [R. p. 187:3-9]. Although Mr. King moved for a mistrial on the grounds that the curative instruction was insufficient to overcome the prejudice from the statement, [R. p. 189:14-17], the circuit court refused to order a mistrial because the reference had been nonresponsive to the solicitor's

question. [R. p. 190:12-14 ("I respectfully decline to mistrial on something that she said that was not asked for by the Solicitor.")]. After the circuit court had already denied the motion, trial counsel later said that he would withdraw the motion for mistrial on the grounds that the witness's remarks duplicated what had already been played in State's Exhibit 5. [R. p. 191].

E. The Jury Received Their Final Instructions.

The circuit court provided the jury with their final instructions. It included instructions for murder, the lesser-included offense of involuntary manslaughter, and the defense of accident. [R. pp. 321:11-325:2; 328:2-17]. It also included instructions for assault and battery of a high and aggravated nature; together with the lesser-included offenses of assault and battery first, second, and third degrees. [R. pp. 325:10-327:5]. And the circuit court instructed the jury on the charge of possessing a firearm during the possession of a violent crime. [R. pp. 327:10-328:1]. Although the circuit court had admitted bad-acts evidence, it did not provide the jury with a bad-acts instruction to limit their use of the evidence.

F. The Jury Returned Its Verdicts After Asking to Be Recharged on the Lesser-Included Offenses of Murder and of Assault of a High and Aggravated Nature.

After about an hour-and-a-half of deliberations, the jury requested to be re-charged on the different degrees of assault. [R. p. 331]. The circuit court did so. [R. p. 289:11-15]. Approximately thirty minutes later, they asked to be recharged on the difference between murder and involuntary manslaughter [R. p. 332]. The circuit court likewise obliged. [R. p. 289:20-22].

The jury returned mixed verdicts. It convicted Mr. King on the charge of murder; assault and battery only in the third degree; and possession of a weapon during the commission of a violent crime.[7] [R. pp. 291:7-292:3].

G. The Circuit Court Sentenced Mr. King.

The circuit court accepted the jury verdicts and sentenced Mr. King to life imprisonment for the murder, to a consecutive five years for the pointing and presenting, and to time served for the assault and battery in the third degree. [R. pp. 2-4].

V. The Circuit Court Denied Mr. King's Motion for New Trial.

Mr. King filed a post-trial motion that, as is relevant to this appeal, argued that he should be retried because—contrary to the parties' understanding at the *motion-in-limine* hearing—the Marlboro County Sheriff's Office actually had the capability to redact videotaped interrogations in one-second intervals. [R. pp. 348-50; 352-58]. Thus the circuit court could have excluded the references to Mr. King's prior murder, kidnapping, and armed robbery charges, without impacting the other portions it found admissible. [*Id.*].

At the motion hearing, the State did not dispute that the software's instruction manuals showed that one-second redactions were possible. *See* [R. 298:24-305:16].

The circuit court nonetheless orally indicated that it was going to deny the motion for the following reasons:

- Accomplishing the redactions "would've delayed the case to at least the following week." [R. p. 303:1-5].

[7] The jury also convicted him on the charge of pointing a firearm. Mr. King did not include that conviction in his notice of appeal.

- Mr. King voluntarily made the references while trying to explain away his actions [R. p. 304:19-23].
- The evidence was harmless. [*Id.*]

The circuit court's written ruling, however, made no reference to those previously offered reasons. Instead the circuit court ruled that the motion should be denied for the following reason: "Both parties were given an opportunity to redact the videos and/or agree to the redacted times when played before the court, following pre-trial motions on August 27, 2012. The Court then ruled upon the admissibility of the video statements on September 10th, before the trial began." [R. p. 1].

ARGUMENT

I. The Trial Court Erred in Admitting Highly Prejudicial Bad Acts Evidence.

South Carolina has long required trial courts to subject bad-acts evidence to "rigid scrutiny" and to give the defendant "the benefit of the doubt" as to its inadmissibility, *State v. Lyle*, 125 S.C. 406, 417 (1923) (citation omitted). To obtain a retrial over an evidentiary issue, Mr. King need only show a prejudicial abuse of discretion. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Whitner*, 399 S.C. 547, 557 (2012) (quotation omitted). An error is prejudicial unless this Court can conclude, "beyond a reasonable doubt," that it did not contribute to the verdict below. *State v. Black*, 400 S.C. 10, 27 (2012).

The circuit court below failed to undertake the required bad-acts analysis before permitting the State to play Exhibit 5's unredacted references to Mr. King's prior murder, kidnapping, and armed robbery charges. Its decision to admit the evidence rested on the erroneous assumption that the Sheriff's Department lacked the ability to redact the videotape. That highly prejudicial bad-acts evidence cannot qualify as harmless error. And the post-hoc reasons that the circuit court gave in denying the motion for new trial likewise cannot avoid the need for a retrial.

A. The Circuit Court Did Not Undertake the Required Lyle *Analysis.*

Before a circuit court can possibly admit any bad acts evidence, it must make several findings: (1) that the bad act, if true, is relevant to the case; (2) that either a conviction or "clear and convincing proof" establishes that the defendant committed the act; (3) that the bad act has non-propensity value; and (4) the danger of unfair prejudice from the evidence

does not substantially outweigh the non-propensity purpose of the bad act. *State v. Clasby*, 385 S.C. 148, 154-56 (2009) (citations omitted); *State v. Fletcher*, 379 S.C. 17, 23 (2008) (citations omitted); *State v. Pagan*, 369 S.C. 201 (2006) (citations omitted). The circuit court here erred at each step.

1. The Bad Acts Had No Relevance to This Case.

The bad-acts evidence below was not relevant to the charges here. "To be admissible, the bad act must logically relate to the crime with which the defendant has been charged." *Pagan*, 369 S.C. at 211. The reference to Mr. King's prior charges for murder, kidnapping, and/or robbery, however, had no relevance in establishing that Mr. King killed Mr. Galloway with malice. First, Mr. King is constitutionally presumed innocent of any crime unless and until he is convicted. *State v. Gilchrist*, 342 S.C. 369, 372 (2000) ("[A]n indictment is not evidence of the crime charged." (citation omitted)). Accordingly his previous criminal charges had absolutely no bearing on Mr. King's state of mind on November 11. Second, even had he committed the crimes alleged, those crimes would still have no logical relevance to this case. Indeed the circuit court specifically recognized as much when it struck as "totally irrelevant to any issue in this case" Ms. Graham's testimonial reference to the armed robbery charge. [R. p. 187:6-7].[8]

[8] The State cannot argue that the fact that Mr. King had been charged with robbing Mr. McLaughlin made it less likely that the two of them would have gone together to Mr. Galloway's house. At trial, Mr. King's defense was one of accident—not identity. The jury only heard about Mr. King's original version of events, in which Mr. McLaughlin was the alleged shooter, because the State chose to place that version in front of the jury.

The circuit court should have found that the reference to the armed robbery in State's Exhibit 5, as well as the reference to the prior murder and kidnapping charges, failed the threshold bad-acts inquiry.

2. The Circuit Court Made No Findings that the Bad Acts Ever Occurred.

Whether or not any of the bad acts were relevant, the circuit court still erred in admitting them because "clear and convincing evidence" did not establish their occurrence. *Clasby*, 385 S.C. at 155. As for the murder charge, Mr. King was never tried much less convicted of murder, except in this case. [R. pp. 292-94]. Indeed, during the *Lyle* hearing, the State specifically advised the circuit court of that fact. [R. p. 52]. And while he had been charged with kidnapping and robbery, he had not been convicted for it. [R. pp. 292-94]. Even though well-settled law, therefore, required the circuit court to obtain clear and convincing evidence of those prior acts as a precondition to admitting them into evidence, the circuit court failed to do so.

3. The Bad Acts Had No Non-Propensity Purpose.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE. Thus the State may not introduce allegations of prior criminality to show that the defendant is a bad person or has committed violent crimes in the past and is thus a violent person. *See State v. Benton*, 338 S.C. 151, 156 (2000) (improper to admit bad-acts evidence "to show the accused is a bad person or he acted in conformity with his prior convictions"). Here, where Mr. King was on trial for crimes of violence, the jury was implicitly invited to convict Mr. King for his criminal past. Indeed because the circuit court did not give the jury a limiting instruction as to non-propensity uses for the bad acts evidence, the jury could have made

that forbidden inference while remaining faithful to the jury instructions. *Cf. Green v. State*, 338 S.C. 428, 434 (2000) ("The jury, despite limiting instructions, can hardly avoid drawing the inference that the past conviction suggests some probability that defendant committed the similar offense for which he is currently charged. Limiting instructions alone do not make an erroneous admission of prior conviction evidence harmless." (quotation omitted)).

4. The Bad Acts Were Too Prejudicial to Be Admitted.

All bad acts pose a risk of unfair prejudice to a defendant, as a matter of law. *Lyle*, 125 S.C. at 416. But references to a prior murder and other violent crimes were especially prejudicial where, as here, Mr. King was on trial for murder. When a defendant is on trial for the same type of erroneously admitted bad act, "the danger of prejudice is enhanced." *State v. Gore*, 283 S.C. 118, 121 (1984). The Supreme Court has gone so far as to hold that similar bad-acts to the charge on trial can "strip [the defendant] of the presumption of innocence." *Lyle*, 125 S.C. at 416 ("Proof that a defendant has been guilty of another crime equally heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty of the crime charged. Its effect is to predispose the mind of the juror to believe the prisoner guilty...."). *See also State v. Colf*, 337 S.C. 622, 628 (2000) (holding that circuit court erred under Rule 609(b), SCRE, in permitting prosecution to impeach the defendant with similar convictions to the charge, explaining that "evidence of any similar offense should be admitted only rarely" because the more similar the crimes to the charge on trial, the more the prejudicial effect to the defendant (quotation omitted)).[9]

[9] The rule that similar crimes ought not be admitted is an ancient one in the common law. *See Hampden's Trial*, 9 How. St. Tr. 1053, 1103 (K.B. 1684) ("[A] person was indicted of

The circuit court recognized the inherently prejudicial nature of Mr. King's alleged prior criminal conduct. On multiple occasions, the circuit court emphatically ruled that portions of Exhibit 5 that referenced those bad acts had to be redacted. *E.g.* [R. pp. 41:9-23 ("THE COURT: I want that redacted; that part [at 4:28 regarding the prior murder].... You be sure that's redacted.").[10] Indeed the morning of trial, the circuit court seemed surprised to find out that it had not ordered redacted every reference to the prior murder and kidnapping. *See* [R. p. 72:4-73:2 ("MR. SHAFFER: I made an objection to a prior murder and kidnapping charge at 15:08 -- THE COURT: That's been redacted.... Prior burglaries [sic] have not been redacted?... Why?"). Further the circuit court warned the solicitor right before the testimony of Mr. McLaughlin—the alleged victim of the prior robbery—that the witness was "not to mention that ... the defendant had robbed him two weeks prior....If you do that, I'm going to declare a mistrial...." [R. p. 175:5-12].

Despite recognizing the prejudicial nature of the two portions of Exhibit 5 at issue, the circuit court reluctantly felt compelled to admit them because it believed that the Marlboro County Sheriff's Department lacked the technical capabilities to redact small portions of the video. *See, e.g.*, [R. p. 72:18-21 ("THE COURT: Well, this equipment is not the best

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forgery, [but] we would not let them give evidence of any other forgeries, but that for which he was indicted.").

[10] *See also* [R. p. 43:14-22 ("MR. SHAFFER: Objection, Your Honor. He's talking about the previous murder.... THE COURT: I want to redact any reference to any prior conduct."); 44:1-3 ("MR. SHAFFER: Objection, Your Honor. He's getting into the McColl charges that are pending[.] THE COURT: Yes. I want that redacted."); 48:1-13 ("MR. SHAFFER: Your Honor, at this point, again, he goes into... [t]he McColl Charge. The pending armed robbery.... THE COURT: Can't we redact that part? MS. DAVID: We can try it.... THE COURT: Do that....")].

in the world. They have made every effort to do it. It's not as sophisticated as it should be, but you couldn't redact that part [about the prior murder and kidnapping]?")].

The circuit court was, however, misinformed about the redaction capabilities that the Marlboro County Sheriff's Office had; the court could have kept out the prejudicial evidence on a word-by-word or line-by-line basis. [R. p. 350]. Given the numerous other references to the prior murder, kidnapping, and armed robbery charges that the circuit court ruled did have to be excised, *see* [R. p. 330], it is obvious that the circuit court would have excised the references at 5:01:12 – 5:01:26 and 5:08:08-27 of State's Exhibit 5 if it had known that the State had had the ability to do so.

Even the circuit court recognized the unfair prejudice of the bad-acts evidence. Yet it admitted the evidence anyway. This Court should find that it abused its discretion.

B. The Bad Acts Evidence Cannot Qualify as Harmless Error.

Where, as here, a defendant has shown that the circuit court erred in admitting evidence against him at trial, a reversal is required unless the State can prove that the error is harmless beyond a reasonable doubt. *Black*, 400 S.C. at 27. An error can only qualify as harmless if his guilt was "conclusively proven by competent evidence, such that no other rational conclusion could be reached." *State v. Brooks*, 341 S.C. 57, 63 (2000) (quotation omitted). The State cannot sustain its heavy burden here.

First, as shown above in Argument Section I(A)(4), the fact that the jury in this murder case heard that Mr. King already had a murder on his record makes this case especially inappropriate to invoke harmless error; the similarity of the bad acts to the charge under

consideration is inherently prejudicial. *See Gore*, 283 S.C. at 121 (declining to find harmless error for erroneous admission of similar bad act); *Brooks*, 341 S.C. 62-63 (same).

Second, the violent nature of the erroneously admitted bad acts prejudiced Mr. King in his ability to defend against the *mens rea* of his murder charge. The jury obviously struggled with the issue of malice; they asked to be re-charged on the difference between murder and involuntary manslaughter. [R. p. 332]. Their struggle is understandable. The State offered absolutely no motive as to why Mr. King would have wanted to kill his neighbor of "12 or 13 years," [R. p. 97:24], a mere "200-yards away" from the Sheriff's Department, [R. p. 121:9], with multiple other people in the home who could identify Mr. King, *see* [R. p. 97:16-21; 103:2-104:5; 112:19-20]. While proof of motive may not be a legal requirement, a lack of motive can suggest a lack of malice. *See State v. Powell*, 202 S.C. 432, 436 (1943) (ordering judgment of acquittal, in part, because the defendant and victim "were friends and no motive for murder appears in the record"). Further, by acquitting Mr. King of assault and battery of a high and aggravated nature toward Ms. Galloway and convicting him instead of only assault and battery in the third degree, the jury necessarily accepted that the pistol was subject to accidental discharge. *See* S.C. Code § 16-3-600(B)(1)(b) (requiring for assault and battery of a high and aggravated nature that "the act [be] accomplished by means likely to produce death or great bodily injury."). Had the jury not heard about the bad-acts evidence, the jury may have decided to find the shot that resulted in death an accident, too. *Cf.* [R. p. 240:16-20 ("THE COURT: ... Anybody in their right mind I think would understand that if you took a loaded nine millimeter and struck a woman in the skull with it to the extent that the gun was discharged it's very likely to cause serious bodily harm.")].

Third, with respect to the robbery charge in particular, and as already mentioned above, the circuit court warned the solicitor that any reference to it during Mr. McLaughlin's testimony would result in a mistrial. [R. p. 175:5-12]. Inadmissible evidence that even the circuit court believed would unfairly prejudice the jury's verdict should not constitute harmless error.

Fourth, because Mr. King suffered prejudice to his ability to defend against the charge of murder, he necessarily suffered prejudice to his ability to defend against the charge of possessing a weapon during the commission of a violent crime. An acquittal on the murder charge would necessitate an acquittal of the possession charge. *See* S.C. Code § 16-23-10(3); *State v. Taylor*, 356 S.C. 227, 235 (2003) (vacating conviction for possession of a weapon during a violent crime after vacating conviction for murder).

II. The Circuit Court Should Have Granted Mr. King's Motion for New Trial.

This Court should reverse the circuit court's denial of Mr. King's motion for new trial as an abuse of discretion, *State v. Simmons*, 279 S.C. 165, 166 (1983). Neither the circuit court's written reasoning nor its oral reasoning authorized the denial of the motion.

As for the circuit court's written reasoning—that the circuit court previously ruled on portions of State's Exhibit 5 that were disputed at a pre-trial hearing, [R. p. 1]—it cannot justify the denial as a matter of law. The circuit court below expressed no desire to revisit any prior ruling, even when later dissatisfied with it or when circumstances had changed. *See, e.g.*, [R. pp. 72:9-73:2 ("THE COURT: Prior burglaries [sic] have not been redacted....? Why? ... [Y]ou couldn't redact that part? MR. REDMOND: ... [T]he Court ruled that that part could stay in.... THE COURT: If I ruled that I'm not going to beat a

dead horse to death...."); 77:19-21 (ordering defense counsel not to renew pretrial objections to State's Exhibit 5 at trial, when the circuit court would have heard the other testimony in the case)]. To the extent that the written rationale adheres to that view that whatever was decided previously cannot be revisited, the circuit court committed an error of law; motions for new trial exist precisely so courts can correct incorrect rulings and thereby avoid injustice.

As for the circuit court's oral reasoning, it does not justify affirmance, either. As a preliminary matter, by providing specific direction to counsel as to the content of the written order but signing an order that included different reasons, the circuit court apparently rejected its own oral reasoning. *Compare* [R. p. 3053:1-11 (directing contents of order)], *with* [R. p. 1]. The written ruling should control. *See Rhoad v. State*, 372 S.C. 100, 108 n.3 (Ct. App. 2007) ("Judges are not bound by oral rulings and are free to issue written orders in conflict with prior oral rulings. Until an order is written and entered, the judge is free to change his mind and amend prior rulings." (citations omitted)).

Even if the oral reasons were relevant here on appeal, they are not persuasive. Insofar as the circuit court said that a one-week continuance would have been required for the Sheriff's Department to make the redactions, [R. p. 303:1-5], no evidence supports that finding. The redaction capabilities are built into the recording software that the Sheriff's Department had, as shown by the software instruction manual. [R. pp. 352-58]. Furthermore because Mr. King had previously asked for a continuance but was denied it; he obviously would not have objected to a one-week continuance if necessary to keep out unfairly prejudicial bad-acts evidence—especially given that the case was only ten-months old at the time of trial.

Next, the fact that Mr. King made the references himself during his interrogation was also no basis to deny a new trial. The prohibition against bad-acts can exclude admissions of a party opponent. *See State v. Tuffour*, 364 S.C. 497, 504 (Ct. App. 2005) (Kittredge, J., joined by Hearn, C.J. and Williams, J.) ("The appellate courts of this state have unwaveringly adhered to the rule of exclusion of prior bad act evidence to show criminal propensity or that the defendant is a bad person unworthy of the presumption of innocence. It bears reminder that *Lyle* and Rule 404(b) set forth a rule of exclusion, not inclusion."), *vacated as moot by* 371 S.C. 511 (2007). Indeed at the *motion-in-limine* hearing, the circuit court invoked the rule of exclusion to keep out multiple references to Mr. King's prior charges of murder, kidnapping, and armed robbery. [R. p. 330].

Finally, insofar as the circuit court once thought the evidence harmless, Mr. King has shown otherwise, in Section I(B), above.

III. The Trial Court Should Have Granted Mr. King's Motion for a Mistrial.

The circuit court abused its discretion in finding that a curative instruction obviated the need for a mistrial after Ms. Graham referenced Mr. King's pending armed robbery charge. Although the State may argue that the issue has not been sufficiently preserved for appeal, this Court should reject that argument.

A. The Court Was Wrong to Have Denied the Motion.

The Supreme Court has long recognized that it is "impossible" to know "[w]hat effect incompetent testimony may have on the minds of jurors, even after instructions to disregard [the] same." *State v. Singleton*, 167 S.C. 543, 549 (1932). Accordingly, in exercising their discretion on motions for a mistrial, circuit courts must consider "[t]he character of the testimony, the circumstances under which offered, the nature of the case, other testimony

in the case, and perhaps other matters, should be considered." *Id.* (*quoted with approval in State v. Thompson*, 276 S.C. 616, 621 (1981) (quotation omitted))

Here the circuit court failed to conduct the required analysis regarding Ms. Graham's reference to Mr. King's robbery charge. The circuit court considered only the second factor, the circumstances giving rise to the testimony. The circuit court found the testimony nonresponsive to the solicitor's question. [R. p. 190:12-14 ("I respectfully decline to mistrial on something that she said that was not asked for by the Solicitor.")]. Insofar as the circuit court thought that a witness injecting nonresponsive and inadmissible evidence into a trial cannot justify a mistrial, the circuit court erred as a matter of law. *See Haynes v. Graham*, 192 S.C. 382, 387 (1939) (finding error in denying motion for mistrial after a plaintiff's witness made an unsolicited reference to the defendant's insurance policy). The circuit court also failed to consider, however, the solicitor's apparent failure to instruct Ms. Graham to avoid reference to the armed robbery charge that had been subject to a ruling *in limine*.

Had the circuit court considered the other *Singleton* factors, it would have found that they uniformly and strongly weigh in favor of a mistrial.

As for the character of the testimony (factor one), the circuit court had just spent four pages of transcript before the testimony of the previous witness, Mr. McLaughlin, stressing the importance of any reference to the McColl robbery from either the solicitor or from him. *E.g.* [R. pp. 174:14-178:15]. Indeed the circuit court warned that the mention of the robbery would be so prejudicial as to require a mistrial. [R. p. 174:4-13 ("MS. DAVID: Yes, Your Honor. So he is not to mention that he would not have been with the defendant the night before because the defendant had robbed him two weeks prior....THE COURT:

If you do that I'm going to declare a mistrial, now, I tell you one more time. How strong can I be with you, Mia, on this issue?")].

As for the nature of the case (factor three), Mr. King faced potential—and ultimately received—life imprisonment. While a mistrial would have subjected the State to additional time and expense, that inconvenience pales in comparison to the burden on Mr. King if the jury's verdict potentially rested in any way upon the unquestionably inadmissible evidence.

As for the other testimony in the case (factor four), Ms. Graham's reference to the armed robbery reinforced the reference in State's Exhibit 5 at 5:01:12 – 5:01:26. As shown previously, that prior reference was itself inadmissible and was erroneously admitted on the assumption that the State could not redact it away.

Finally, as for the catch-all factor, the circuit court should have considered that the State should not have called Ms. Graham as a witness in the first place. Because Mr. King's trial defense did not even suggest that Mr. McLaughlin had been the shooter, the State had no need to try to establish that fact via Ms. Graham. Any doubts as to the need for a mistrial over this unneeded witness' testimony should be resolved against the State.

B. The Motion Remains Preserved for Appellate Review.

While the State will likely argue that trial counsel's eventual decision to withdraw the motion for mistrial means that the issue is not preserved for appeal, *see* [R. p. 191], this Court should not accept that argument.

First, trial counsel below stated that he was withdrawing the motion only after the circuit court had already denied it on the grounds that the improper testimony was "not sufficient to cause a mistrial in this case." [R. p. 190:8-14].[11] Error preservation only requires an objection and an actual ruling below. *See Eubank v. Eubank*, 347 S.C. 367, 374 n.2 (Ct. App. 2001) ("The 'raised to and ruled on' rule of error preservation requires only a ruling, not necessarily a favorable one." (citation omitted)). An erroneous ruling, therefore, actually exists in this record for appellate review.

Second, insisting upon any better error preservation would not advance any of the policies underlying the objection-and-ruling requirement. The circuit court was alerted to the insufficiency of the curative instruction, so it had the chance to avoid error. *Cf. Roche v. S.C. Alcoholic Beverage Control Comm.*, 263 S.C. 451, 455 (1975) ("[T]he purpose of appeal under our procedure is to determine if the lower court did something that it should not have done, or omitted doing something it should have done. Accordingly, a trial judge will not be reversed for failing to act on a matter that was not submitted to him." (quotation omitted)). Relatedly, because the circuit court below provided its reasons for why it was exercising its discretion to decline to order a mistrial, no concern exists about this Court deciding questions in the first instance, rather than reviewing reasoning of the lower courts. And because defense counsel actually raised the issue to the circuit court below, no gamesmanship considerations exist. *Cf. State v. Ballew*, 83 S.C. 82, 87 (1909) ("The defendants, with full knowledge of the misconduct of the jury, having chosen not to complain to the

[11] Trial counsel apparently misunderstood that further references to the robbery could merit a mistrial, despite Mr. King's earlier (and overruled) objection to the reference in State's Exhibit 5.

Court, but rather to take the risk of a verdict in their favor, could not afterwards, because the verdict was against them, have a new trial on this ground.").

Third, because Ms. Graham referenced evidence that the judge had already ordered never shared with the jury and because that evidence, as shown above, was so prejudicial as to prevent Mr. King from receiving a fair trial, the judge should have granted the mistrial even without the need for a formal motion. Our Supreme Court requires trial judges to ensure the fairness of the proceedings before them. *Gore*, 257 S.C. at 334 ("On the shoulders of the judge rests the responsibility to see that both defendants and the State have a fair trial."); *Shearer v. De Shon*, 240 S.C. 472, 484 (1962) ("One of the highest duties of a trial Judge is to see that a fair and impartial trial is had....").[12] Thus South Carolina's error-preservation rules give way in the face of "clear prejudice" resulting from a trial judge refusing to act on his or her own, resulting in a "flagrant" abuse of discretion. *Toyota of Florence v. Lunch*, 314 S.C. 257, 263 (1994) (citation omitted). That exception encompasses the failure of the circuit court here to grant the mistrial that it has "strong[ly]" cautioned would result if there was any reference to the robbery—as there ultimately was. [R. p. 175:12-13].

[12] *See also State v. Shelton*, 270 S.C. 577, 580 (1978) ("A trial judge has the inherent power to preserve order in his court and to see that justice is not obstructed by any person or persons."); *State v. Holland*, 261 S.C. 488, 495 (1973) ("It is the duty of the trial judge to assure himself that each and every prospective juror is unbiased, fair, and impartial."); *State v. Tillman*, 255 S.C. 528, 533 (1971) ("If there is a reasonable likelihood that prejudicial publicity prior to trial will prevent a fair trial, it becomes the duty of the judge to continue the case until the threat abates."); *Elletson v. Dixie Home Stores*, 231 S.C. 565, 576 (1957) ("The Court may of its own motion call a witness and examine same even out of order.").

CONCLUSION

In light of the circuit court's erroneous admission of evidence and its failure to grant the required mistrial, Mr. King respectfully requests that this Court vacate his convictions for murder and for possession of a weapon during a violent crime and remand for retrial on those indictments.[13]

Respectfully submitted this 13th day of June, 2014.

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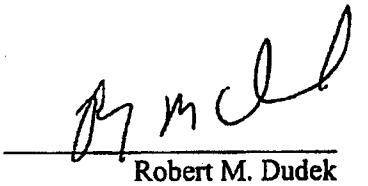
[13] After conferring with counsel and reviewing a copy of this brief, Mr. King has directed his counsel to abandon any direct appeal for his conviction of assault in the third degree.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing paper this 13th day of June, 2014 on the following parties:

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Subscribed to and sworn before me this 13th day of June, 2014.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
The Honorable Edward B. Cottingham, Jr., Circuit Court Judge
Appeal Case No. 2012-213461

THE STATE

RESPONDENT,

V.

TYRONE J. KING,

APPELLANT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

1. In this murder case involving the defense of accident, did the circuit court err in excluding some but not all references to Defendant-Appellant's prior charges of murder, kidnapping, and armed robbery?

2. Did the circuit court—which had admitted the bad-conduct references above on the belief that the State could not redact them—err in denying Mr. King's motion for new trial once it became clear that the State could redact precise portions of the videotaped interrogations?

3. Did the circuit court err in denying a mistrial after a witness referenced the Defendant-Appellant's charge for armed robbery only few transcript pages after the circuit court had told the solicitor in self-described "strong" terms that any questioning about the armed robbery would result in a mistrial?

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court abused its discretion in not requiring the State to redact two comments made by Appellant during an interview with law enforcement under Rule 404(b), SCRE, when the argument raised on appeal was not preserved for appellate review, the admission of the two comments was harmless, the comment regarding a prior armed robbery was admissible under Rule 404(b), and the comment regarding an alleged murder and kidnapping charge was not evidence of a prior bad act?

2. Whether the trial court abused its discretion in denying Appellant's motion for a mistrial when a proper curative instruction was given, the argument raised on appeal in regards to the mistrial motion was not presented to the trial court, and Appellant failed to show that he was harmed by the denial of the motion for a mistrial?

3. Whether the trial court abused its discretion in denying Appellant's motion for a new trial?

STATEMENT OF THE CASE

On September 10-13, 2012, Appellant Tyrone J. King ("King") was tried by a jury for the murder of James Galloway, assault and battery of a high and aggravated nature of Karen Galloway, pointing and presenting a firearm, and possession of a weapon during the commission of a violent crime. Appellant was tried in the Marlboro County Court of General Sessions before the Honorable Edward B. Cottingham, Circuit Court Judge. Tristan Shaffer, Esquire, and Assistant Public Defender Richard Jones, Esquire, represented Appellant. The State was represented by Deputy Solicitor Kernard Redmond, Esquire, and Assistant Solicitors Mia B. David, Esquire and Mary Thomas Johnson-Lee, Esquire, all of the Solicitor's Office for the Fourth Judicial Circuit.

On September 13, 2012, King was convicted of Murder, Third Degree Assault and Battery, Pointing and Presenting a Firearm, and Possession of a Weapon during the Commission of a Violent Crime. (R. p. 291-92). He was sentenced to life imprisonment for the murder conviction, thirty days suspended on time served for the assault and battery in the third degree conviction, five years confinement for the possession of a firearm during the commission of a violent crime conviction, and five years confinement for the pointing and presenting a firearm conviction. (R. pp. 2-4). The latter two sentences are consecutive to the life sentence for the murder conviction and to each other. (R. pp. 2-4). King subsequently filed a Motion for a New Trial. (Motion, R. pp. 346-358). A hearing on the motion was heard on October 10, 2012. (R. pp. 296-308). The trial court denied the motion on the record. (R. pp. 298, 303-05, 306-

08). Before this Court is Appellant's direct appeal of his convictions for Murder and Possession of a Firearm during the Commission of a Violent Crime, as well as an appeal of the denial of the motion for a new trial. King requests this Court reverse his convictions and order a new trial. The State respectfully requests this Court deny Appellant's appeal and affirm his convictions.

STATEMENT OF FACTS

On the early morning of November 11, 2011, Appellant Tyrone King shot and killed the victim, James Galloway. King shot Mr. Galloway in the right side of his face. (See R. p. 215). The forensic pathologist testified that Mr. Galloway died as a result of a gunshot wound to the face. (R. p. 215).

King knocks on the victims' door early that morning

Karen Galloway, the murder victim's wife and the victim of the third degree assault and battery, testified that at around 2:30-2:45 on November 11, there was a knock at their door. (R. p. 92). Mrs. Galloway testified that her husband answered the door. (R. p. 92). Mr. Galloway came back to their bedroom and informed Mrs. Galloway that it was Appellant at the door. Mrs. Galloway testified that her husband put his shorts on, went back out the room. She then heard Mr. Galloway go back into the other room, "and he said, 'Naw, man, I don't have'. . ." (R. p. 92, l 24). Mrs. Galloway then heard a pop. (R. p. 92).

Devonte M. testified that he heard someone come to the house on the early morning of November 11. (R. p. 111). He saw King that morning. (R. p. 111). Devonte testified that King asked for some beer or liquor. (R. p. 112). Then Devonte saw King shoot Mr. Galloway. (R. p. 113). Devonte indicated that King's gun was initially in his pants; King pulled the gun out and shot Mr. Galloway. (R. p. 113). After hearing the pop from the gun, Devonte jumped but did not run. (R. p. 114). Devonte later stated that he saw King point the gun at Mr. Galloway, but he did not remember see him fire the shot. (R. p. 119).

Devonte noted that he heard the shot, but he was not looking at Mr. Galloway when the shot was fired. (R. p. 119).

King charges into Mrs. Galloway's bedroom

Mrs. Galloway testified that after she heard the pop, she jumped out of her bed. (R. p. 92-3). By the time she was out of the bed, King started running into her bedroom with the gun in his right hand, pointing the gun in her face and asking her who was in the house with her. (R. pp. 93, 94). Mrs. Galloway stated that King then hit her in the top of her head with the gun, and she sat down. (R. p. 93). Mrs. Galloway testified that King hit her with the handle of the gun, and the gun fired a bullet through the wall. (R. p. 94). After King hit her, he walked out of her bedroom and out towards the front room. (R. p. 95). She then got to her telephone and called 911. (R. p. 95). While on the phone, she walked into the living room and saw where Mr. Galloway was on the floor. (R. p. 95).

Reggie Cousar, the Galloways' first cousin who was living with them at the time, testified that on November 11, he was awoken when he heard Mrs. Galloway screaming his name.[1] (R. p. 103). When he walked around from his bedroom to the front room, he saw King pointing a gun to Mrs. Galloway's face. (R. pp. 104, 108). Cousar saw King point the gun at her face.[2] (R. p. 104; see R. p. 108). Cousar indicated that he asked King what was going on, and King started talking about one of his boys did it. (R. p. 105). Then King turned and pointed the gun at Cousar in his chest. (R. p. 104). Cousar noted that he knew it

[1]Cousar had not heard the gunshot. (R. pp. 106, 107).
[2]Cousar also noted that he knew King because King was from the neighborhood, and King hung around the house. (R. p. 106).

was a gun from the way it felt on his chest, and from the fact that he saw it. (R. p. 104). Cousar then heard Mrs. Galloway on the phone talking about her husband being shot. (R. p. 105). When Cousar saw Mr. Galloway on the floor, he rushed to him, and King ran out the door. (R. p. 105).

Mrs. Galloway testified that King snatched the phone out of her hand and hung up the phone. (R. p. 96). When the 911 operator called back, King spoke with her. (R. p. 96). Mrs. Galloway recalled hearing King tell the 911 operator that his friend shot his neighbor. (R. p. 96). Mrs. Galloway asked King for the phone, and she recalled he said that he was not about to go to jail. (R. p. 96). Mrs. Galloway indicated that she asked him to just go outside and surrender, but King declined. (R. p. 96). After some further back and forth, King ran out the back door with the gun and phone in hand. (R. p. 96).

King runs away from the house

Mrs. Galloway testified that King ran out the back door. (R. p. 97). As he did so, she opened the front door and told the officers that King ran out the back door. (R. p. 97).

Deputy Shaw of the Marlboro County Sheriff's Office testified that as he walked towards the front porch of the residence, one of the people on the porch stated that the subject was running from the back door. (R. p. 122). Shaw indicated that he could hear someone running inside the residence. Shaw headed towards the back of the residence. (R. p. 122). As he got to the back corner, but before he could get to the back door, he saw the back door open and someone run out of it. (R. p. 122). Deputy Shaw engaged in a foot chase. (R.

pp. 122-23). He saw King slide up underneath a truck. Shaw testified that he started shouting to him to show Shaw his hands. Shaw noted that he could tell the subject had something in one of his hands. Eventually, King threw something towards the front of the truck and slid out from under the truck. (R. p. 123). The item was later identified as a telephone from the Galloways' residence. (R. p. 126). In securing King, Deputy Shaw found a bottle of alcohol, but no weapon on King. (R. p. 124).

Shaw noted that he saw no one else exit the Galloway residence. (R. p. 125).

Police investigation

Law enforcement recovered a telephone that was identified as belonging to the victims' house and a liquor bottle near the truck where King was apprehended. (R. p. 136). It was also noted that the liquor bottle was of the same type found in the victim's closet in the master bedroom. (R. p. 136). Law enforcement also found a bullet hole in the master bedroom, which led to the den and to the roof of the residence. (R. pp. 136-37). A nine millimeter handgun with an extended clip was found in the wooded area behind King's residence. (R. p. 137). A projectile was also recovered from the living room of the victims' residence. (R. pp. 138-39, 145, 151). Also, two cartridge casings were found, one in the living room and one in the master bedroom. (R. pp. 155, 156).

Two statements were taken from King. In the first, he claimed that Aloysius McLaughlin was with him that night. (R. p. 168; State's Exhibit Five). He further claimed that they went to the Galloway house to purchase some

alcohol, and McLaughlin shot Mr. Galloway. (R. p. 168; State's Exhibit Five). King then noted that Mrs. Galloway came out of her bedroom hysterical, and he tried to calm her down. (R. p. 168; State's Exhibit Five). He noted that he swung the gun at her. (R. p. 168; State's Exhibit Five). King also claimed that Aloysius ran out the door with the gun, and King ran behind the residence. (R. p. 169).

In his second statement to law enforcement, King claimed that he had obtained the gun from a guy named Broom. (R. p. 200; State's Exhibit Four). King asserted that he was going to try to sell the gun, and he took it to Mr. Galloway's house to see if he wanted to buy it. (R. p. 200; State's Exhibit Four). King claimed that as he was attempting to take the clip out of the gun, it fired and struck Mr. Galloway. (R. p. 200; State's Exhibit Four). He also stated that he would not assert that Mrs. Galloway was lying if she said King struck her with the gun. (R. p. 201; State's Exhibit Four).

The forensic pathologist was able to determine that the shot that killed the victim was fired between six inches and four feet away from the entry wound in the victim's face. (R. pp. 215-18).

Round lead particles were found in King's right palm. (R. p. 226, 228-29). The two cartridge casings recovered from the scene, along with the projectile recovered from the wall in the living room, were all fired from the gun found in King's back yard. (R. pp. 233-36; Supp. R. 2).

Mr. McLaughlin and his girlfriend at the time of the incident, Melissa Graham, both testified that they were not with King on the night before or the early morning of the shooting. (R. pp. 178-81, 183-88).

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN NOT REQUIRING THAT TWO COMMENTS MADE BY APPELLANT DURING HIS INTERVIEWS WITH LAW ENFORCEMENT BE REDACTED. THE ARGUMENT RAISED HERE WAS NOT RAISED AT TRIAL, AND IS THUS NOT PRESERVED FOR APPELLATE REVIEW; ANY ERROR IN ADMITTING THE TWO COMMENTS WERE HARMLESS; THE COMMENT ABOUT APPELLANT ROBBING MR. MCLAUGHLIN AT AN EARLIER TIME WAS ADMISSIBLE UNDER RULE 404(B), AND THE COMMENT ABOUT AN ALLEGED PRIOR MURDER/KIDNAPPING CHARGE DID NOT CONSTITUTE EVIDENCE OF A PRIOR BAD ACT.

Appellant contends the trial court erred in not requiring the State to redact two statements made by Appellant during his first interview with law enforcement. First, he contends the court erred in allowing the jury to hear a statement made King in which explains that he had robbed Aloysius McLaughlin and McLaughlin had signed a warrant on him in February of that year. Second, King contends the court erred in not requiring the State to redact a response by King in which he asserts that he had a prior murder and kidnapping charge on his record. This Court should affirm Appellant's convictions. The arguments raised are not preserved for appellate review. Further, any error the court may have made in not redacting these two statements were harmless as there was overwhelming evidence of guilt. The comment regarding the pending robbery charge was not improperly admitted. Finally, the statement regarding the alleged murder and kidnapping charge was not submitted as a prior bad act, and was not inadmissible under Rule 404(b).

Relevant Facts and Argument

Pre-trial discussion regarding the first statement

The first interrogation, State's Exhibit 5, was of an interview done with King on the morning of the shooting on November 11. After Investigator Feldner testified about the voluntariness of the statement, it was played in open court. While the first interview was playing, King made several objections through counsel. Initially, King requested that profanity that he used during the interview be redacted. (R. p. 40). Those requests were denied by the trial court, which indicated that it did not have the capability to do so. (R. p. 40). King further objected on relevancy grounds, to which the trial court again denied the request because it was the language King chose to use during the interview. (R. pp. 40-41).

King objected to a discussion about his previous murder charge in the interview being mentioned:

> MR. SHAFFER: At this point he's talking about his previous murder charge. It's 4:28 on the video. 4:28:58.
>
> THE COURT: I want that redacted; that part. Can you do that without destroying the whole video?
>
> MS. WHITE: We would have to fast forward it through that part.
>
> THE COURT: Pardon me.
>
> MS. WHITE: We will have to fast forward through it, your Honor.
>
> THE COURT: Well, make sure you do it in the right place, but back up a little bit and then fast forward. I don't want to hear anything about that. To the extent possible get to where he talks about allegedly this incident. Go ahead. Let's see where we're going. Go ahead. You be sure that's redacted.

(R. p. 41, ll 9-23).

Next, King moved to redact a part of the interview where he admitted that he had shot a gun and that he carries a gun with him. (R. p. 42). Specifically, King contended those statements were not relevant, it was a prior bad act, and it was inadmissible under Rule 403. (R. p. 42). The trial court noted the objection for the record, but ultimately found the statement was admissible: "No, sir. There is evidence of the gun was used, and it was evidence as I understand it for the jury's consideration. It was his gun. He mentioned his gun. It's appropriate that it stays and will." (R. p. 42, ll 13-16).

King then moved to redact a discussion about a lawyer he had on a prior charge. (R. pp. 42-43). After the trial court indicated that it was inclined to let that part of the interrogation into evidence, King noted that his objection was under Rule 404(b). (R. p. 43). The trial court then noted that it wanted anything that gets into significantly old charges redacted, as well as any reference to prior conduct. (R. p. 43).

King next objected to a portion of the interview where he was discussing charges he had pending from an incident in McColl. (R. p. 44). The trial court agreed that should be redacted. (R. p. 44). Next, King objected to a portion of the video where he discussed being stabbed during an alleged armed robbery. (R. p. 44). The trial court noted that they had discussed this particular segment in chambers, and indicated that it would not require that part of the interrogation be redacted. "I'm leaving that because the individual is coming in, and he's saying he was stabbed 20 times in self-defense. There is a witness coming in

saying that's not true; isn't that true?" (R. p. 44, ll 20-3). The trial court further noted that it was letting the information in based on the totality of the evidence that was there. (R. p. 45).

At that point, King contended "The objection I want to make are 401, 403 and 404(B) and the fact that it's a collateral issue that is not relevant to this case." (R. p. 45, ll 7-9). In response, the State argued, "we thought that this part was relevant because the defendant is saying in this case that he carried a gun because he was stabbed 20 times whereas we know that the guy that stabbed him said that he did so because the defendant was trying to rob him." (R. p. 45, ll 13-18). The trial court ruled that was why it was going to let the information into evidence. The trial court further explained that it was not going to allow Appellant to claim that he was stabbed twenty-two times without the truth coming out as to why he was stabbed. (R. p. 45).

King next objected to a reference of him carrying a gun for self-defense, contending that it was irrelevant. (R. p. 46). The trial court stated that it was going to allow that statement to be played. (R. p. 46).

King next moved to suppress a discussion in which he indicated that he was familiar with members of the Marlboro County Sheriff's Office and the Marlboro County Jail. (R. p. 47). He specifically moved to suppress those statements under Rule 404(b) and Rule 401. (R. p. 47). The trial court denied the motion. (R. p. 47).

King next objected to discussion about his pending charges relating to an incident in McColl. (R. p. 48). The trial court agreed and ordered that the

statement made by King regarding how he was going to be charged for robbing a drug dealer be redacted. (R. p. 48). King next objected to a statement he made about this being his life. That objection was overruled. (R. p. 48). Similarly, an objection to a statement King made about the police around 4:46:14 on the video was overruled. (R. p. 49). Also, the trial court denied an objection based on Rule 404(b) and Rule 403 to the inclusion of a statement where King referred to himself as a criminal. (R. p. 50).

After a brief discussion about whether everything before the second time King was Mirandized was admissible, King objected to another mention of the charges in McColl. (R. p. 51). The State responded by noting that the only reason it was mentioned was because King was saying that Aloysius McLaughlin was the one that murdered James Galloway. (R. p. 52). The investigator was confirming that he was talking about the same person. (R. p. 52). The trial court indicated that he was going to allow that statement to stay in the video. (R. p. 52). At that point, King noted that his objection was under Rules 404(b), 403, and 401. (R. p. 52). The trial court responded that it thought it was appropriate based on the totality of what King was saying. (R. p. 52).

Next, King requested that a statement at around 5:08:25 be redacted.

> MR. SHAFFER: Your Honor, at approximately 4:08 – I mean 5:08:25 he said he already had murders on his record, and I move to redact that, 404(B).
>
> THE COURT: What was the specific remark?
>
> MR. SHAFFER: He said, "I've already got murders on my record."
>
> MS. DAVID: Your Honor, he does not have a conviction for murder on his record.

MR. SHAFFER: And he's been charged with murder, Your Honor.

THE COURT: He said -- I'm going to leave it where it is. Go ahead.

(R. p. 52, ll 13-24).

King then objected to the inclusion of a discussion in which he talked about when he was stabbed. (R. p. 53). The trial court ordered that discussion be redacted. (R. p. 53).

Discussion regarding second statement pre-trial

After Investigator Seales testified about the voluntariness of the statement given by King on November 16, 2011, the video of that statement was shown in open court. (R. pp. 55-65). King objected to a portion of the video as follows:

MR. SHAFFER: Objection.

THE COURT: What's your objection?

MR. SHAFFER: Just before this point which is 8:44:33 on the November 16th video it -- he begins to talk about he[sic] McColl charges. He asks, 'what about my McColl charges'. He's asking this investigator questions.

THE COURT: They didn't go any further into it that I recall.

MR. SHAFFER: They're about to, Your Honor.

THE COURT: Are they going into the McColl charge?

MS. DAVID: Yes, Your Honor. They're about to for the next four minutes.

THE COURT: Let's strike any mention of the McColl charge.

MR. SHAFFER: I believe that right there, actually, he will be -- the end of the tape will be a perfect time because he says, "I appreciate you being honest with me," and that's almost a natural end of the tape.

THE COURT: Does the McColl charge end the tape any way?

MS. DAVID: Yes, Your Honor. We do not oppose that. We discussed that in chambers.

THE COURT: End it right before he says, 'McColl'.

MS. DAVID: Yes, Your Honor.

THE COURT: Is that what you want?

MR. SHAFFER: Yes, Your Honor.

THE COURT: You're entitled to that.

MR. SHAFFER: Thank you, Your Honor.

THE COURT: Yeah, we discussed that in chambers. Make sure that that's the only change I note in the objection as to that video.

MR. SHAFFER: Yes, Your Honor, that's the only objection.

THE COURT: Okay. And I sustain that. All right.

(R. p. 65, l 15 – R. p. 66, l 23).

After the trial court ruled that both statements were freely and voluntarily given, and after some discussion regarding scheduling, the trial court requested that the parties meet to discuss the redactions. (Supp. R. 1).

Overnight, King sent an email outlining the video timestamps of the redactions to be made along with the timestamps of the redactions he requested, but which were not granted by the trial court. (Court's Exhibit 1, R. p. 330). Specifically, King noted the following:

To be Redacted

Previous murder charge 4:28:52 - 4:29:04
Previous murder charge and Mccoll charge 4:32:20 - 4:34:04
Previous murder charge 4:40:44 -- 4:41 : 14
Mccoll charge 4:41:40 - 4:42:36

Stabbing 5:13:30-5:14:03

Not Granted but Obiectioned[sic] to (This is not an exclusive list)
Mentions a lawyer on another charge 4:31 :40 (Rules 404b 403)
Prior Stabbing 4:34:04 - 4:34: 1 0 (Rule 401)
Statemment[sic] "fuck the police" and " I am a criminal" 4:46:06 - 4:47:07 (Rules 404b and 403)
Aloyisious[sic] is same as previous charge 4:59:18 - 4:59:24 and 5:01:13 - 5:01:25
Prior stabbing 5:10:50 (401)
Prior Murder and Kidnapping Charge 5:08:09 - 5:08:10

Times where he said he shot a gun or carried a gun
4:30:05
4:36:11
4:44:31
5:06:48
5:10:55

(Court's Exhibit 1, R. p. 330).

The next day, prior to the start of trial, the State moved into evidence the two videos as State's Exhibits Four and Five. (R. p. 68). King noted that pursuant to the redactions for the videotape and the previous objection, he had no further problems with the tapes being admitted. (R. pp. 68-69). After that, the parties and the trial court went through a discussion of what was being redacted and what was not being redacted from the two videos.

> MR. SHAFFER: And I had made two other objections for that were not ruled upon -- or that were ruled upon by the Court but were denied. Two that I can think of. I want to preserve - - -
>
> THE COURT: What are they, please?
>
> MR. SHAFFER: One was the mention of the prior stabbing, again.
>
> THE COURT: No, they redacted that. Anything to prior stabbing.
>
> MR. SHAFFER: Yes, Your Honor. There was another mention of that that was not redacted because the Court ruled not to redact.

THE COURT: Where was that and what line?

MR. SHAFFER: I think it was at 15:40:50 or approximately 15:40:50.

THE COURT: Can you tell me about that?

MS. DAVID: 15:40:50; that's the -- could the defense attorney be more specific. Tyra White, who has our times for the video, she said it's not on there.

THE COURT: It's not on there.

MS. DAVID: It is not on our – the time that we have is 4:55:20 to be redacted.

MR. SHAFFER: Your Honor, there is another reference to the stabbing after the Miranda, and it's at 15:10:50. I believe the Court ruled not to redact it yesterday.

THE COURT: I ruled not to redact that one?
MR. SHAFFER: Yes, Your Honor.

THE COURT: Well, if I ruled on it that's fine.

MR. SHAFFER: Thank you, Your Honor. There is – and there were a few other ones that you ruled not to redact. I would like to actually make this a Court's Exhibit. 15 This is an e-mail with just for clarification of some of the points I objected to.

(R. p. 70, l 18 – 71, l 16).

Further, King noted that he objected to a prior murder and kidnapping charge at 15:08. (R. p. 72). Initially, King noted that he believed the trial court had mentioned that the sheriff's office could not go through line by line and redact every reference to anything in the statement. (R. p. 72). The trial court noted that the equipment that the sheriff's office had was not the as sophisticated as it could be. (R. p. 72). In response, the solicitor noted that the trial court had ruled that the statement during the interview was admissible and not to be

redacted. (R. p. 72). Both parties agreed that the trial court had ruled the statement did not need to be redacted. (R. p. 73).

After some discussion about the quality of the videos, King objected to the proposed approach regarding the testimony because they would be cumulative and a prior consistent statement. (R. pp. 73-74). Further, counsel raised a due process and equal protection objection against the admission of the videos. Specifically, he contended that some of the reasons for not redacting certain parts were that the equipment in Marlboro County was not sufficient to do so. The trial court noted most of the video was not discernable. (R. p. 75).

After some discussion, both the State and King agreed that the equipment the Sheriff's Office had was current, and that it was not designed to allow for redacting and editing. (R. pp. 75-76). King then noted that he believed other agencies could make those redactions. (R. p. 76). After further discussion, King requested that his objections to the statements in the video be made final so that he would not have to object to each one when the video was played for the jury. (R. p. 77). The trial court informed counsel that he was protected for the record. (R. p. 77).

State's Exhibit Five, the video of the November 11, 2011 statement, was played for the jury after Investigator Feldner testified. (R. p. 171). State's Exhibit Four, the video of the November 16, 2011 statement, was published to the jury after Investigator Seales' testimony. (R. p. 204).

Standard of Review

"In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion." State v. Scott, 405 S.C. 489, 497, 748 S.E.2d 236, 241 (Ct. App. 2013) (citing State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Whitner, 399 S.C. at 557, 732 S.E.2d at 866 (citation omitted).

Evidence of other crimes is generally admissible when it is necessary to establish a material fact or element of the crime charged. State v. Byers, 277 S.C. 176, 178, 284 S.E.2d 360, 361 (1981); State v. Cheatham, 349 S.C. 101, 108, 561 S.E.2d 618, 622 (Ct. App. 2002).

> Evidence of prior bad acts is admissible when it tends to establish (1) motive; (2) intent; (3) absence of mistake; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other; and (5) the identity of the person charged with commission of the present crime.

State v. Sweat, 362 S.C. 117, 123, 606 S.E.2d 508, 511-12 (Ct. App. 2004) (citing State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923); see Rule 404(b), S.C. R. EVID. "[T]he 'bad act' must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing." State v. Beck, 342 S.C. 129, 135, 536 S.E.2d 679, 682-83 (2000). If the prior bad act evidence is

"logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime." State v. Nix, 288 S.C. 492, 497, 343 S.E.2d 627, 630-631 (Ct. App. 1986)). "If there is any evidence to support the admission of the bad act evidence, the trial judge's ruling will not be disturbed on appeal." Sweat, 362 S.C. at 128, 606 S.E.2d at 514.

> Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case.

State v. Fletcher, 379 S.C. 17, 23-24, 664 S.E.2d 480, 483 (2008)(internal citations omitted).

1. King's argument that the trial court failed to properly assess the admissibility of the alleged prior bad acts evidence is not preserved for appellate review. King never requested the trial court undertake a full analysis under Rule 404(b) that he complains was not done.

Respondent submits that much of King's argument regarding the admission of certain comments King made during his first interview (State's Exhibit Five) is not preserved for appellate review. While King did make a general objection under Rule 404(b), SCRE, he did not specifically request that the trial court assess whether the State was proving those prior bad acts with clear and convincing evidence. King further did not request the trial court engage in an on the record prejudice analysis as required by Rule 403, SCRE. Thus, to the extent Petitioner contends that the trial court improperly admitted the evidence because it did not undertake the required analysis, his argument is not

preserved for appellate review. See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (stating an objection should be sufficiently specific to bring the exact error to the trial court's attention); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (S.C. Ct. App. 2003); see State v. Perez, 334 S.C. 563, 565-66, 514 S.E.2d 754, 755 (1999) (issue not raised and ruled upon by trial court is procedurally barred and not preserved for appeal); see also State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995) (party cannot argue one ground below and then another on appeal); see State v. Smith, 391 S.C. 353, 365, 705 S.E.2d 491, 497 (Ct. App. 2011) (concluding appellant did not preserve for review arguments that trial court conducted an improper analysis under Rule 403, SCRE, where the arguments were never presented to the trial judge).

Furthermore, if this Court finds the trial court erred in not conducting an on-the-record analysis of balance of the probative value against the prejudicial effect regarding the admission of the two comments by King, Respondent submits the appropriate remedy under state law at this time would be for a remand for such an analysis to be conducted. State v. Spears, 403 S.C. 247, 259, 742 S.E.2d 878, 884 (Ct. App. 2013) (remanding case for on-the-record analysis under Rule 403 when objection made pursuant to Rule 404(b), and no analysis was in the record from the initial trial).

2. Any error in allowing the statements into evidence was harmless; the comments had little to no bearing on the verdicts, and there was overwhelming evidence of guilt supporting the convictions.

Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176,

399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Thus, an insubstantial error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

There was overwhelming evidence establishing King murdered Mr. Galloway absent the comments at issue. Three eyewitnesses identified King as being in the house with the firearm used in the shooting. Karen Galloway testified that she heard King argue with her husband before she heard the shot that killed him. Immediately afterwards, King ran into Karen Galloway's bedroom and pointed the firearm at her. Devonte, the Galloways' grandson, testified that he saw King point the gun at his grandfather immediately before the shooting occurred. Further, immediately after law enforcement arrived, King ran away from the scene. Flight from prosecution is admissible as guilt. State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension). The weapon used in the shooting at the victims' house was found behind King's residence. (R. pp. 149-50, 233-35). As to the murder charge, King admitted to being in the residence when the shooting occurred. He initially misled law enforcement about being the one who actually shot the victim. Instead, he accused Aloysius McLaughlin of being the one who shot the victim.

The State presented the testimony of Mr. McLaughlin and his girlfriend to disprove King's initial account that they were together on the night of the shooting. (R. pp. 178-81, 183-88). Further, in his second statement, King later admitted that he was the one who shot Mr. Galloway. (State's Exhibit Four).

Malice could be inferred from several different facts. First, Mrs. Galloway's testimony regarding hearing the discussion between her husband and King prior to the shooting indicated some ill will on the part of King. (See R. p. 92). Second, Devonte's testimony that he saw King point the gun at Mr. Galloway indicated there was no accident. (R. p. 113). Malice could also have been inferred from the fact that King killed the victim with a firearm. See State v. Belcher, 385 S.C. 597, 612 n. 9, 685 S.E.2d 802, 810 n. 9 (2009)(noting that State can argue malice can be inferred from use of a deadly weapon even though jury may not be charged with inference of malice from use of deadly weapon).

Also, there was overwhelming evidence King was in possession of a firearm during the commission of the murder. Again, three eyewitnesses saw King with the gun in the victims' house that early morning. Devonte saw it in King's hand just prior to the shooting. (R. p. 113). Mrs. Galloway saw it right after the shooting was over when King attacked her. (R. p. 94). Mr. Cousar saw the gun when King pointed it at him shortly after he attacked Mrs. Galloway. (R. p. 104). King also admitted to having the gun in his possession during the shooting in his second statement to law enforcement. (State's Exhibit Four).

There is nothing in the record to support a finding that the two comments made by King that are at issue in this appeal played any role in his convictions. None of the facts relating to those alleged acts were presented by the State. Thus, there were no details for the jury to consider to see if King's acts in this case were similar to those in the other alleged acts. Further, the State did not reference the comments at any other point in time during the trial. The only other mention was made by Ms. Graham, and the trial court immediately instructed struck the comment by Ms. Graham from the record, and he later instructed the jury to not consider what she had said in regards to her prior encounter with King. (See R. pp. 183-88). In all, there was overwhelming evidence of guilt. Thus, his convictions for the murder of Mr. Galloway and for possession of a firearm during the commission of a violent crime should be affirmed.[3]

3. The trial court did not err in not requiring the comments regarding the prior robbery of Aloysius McLaughlin from the interview video; it was admissible under Rule 404(b).

Appellant contends the trial court erred in not requiring the State to redact a statement made by King in which he admits that he had robbed McLaughlin at some point in time before the shooting.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE. "It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or

[3] Respondent would note that King has waived his challenges to the convictions for pointing and presenting a firearm and for the assault and battery in the third degree. See IBOA at pp. 23, n. 7; 39, n. 13).

intent." Rule 404(b), SCRE. "As a threshold matter, the trial court must determine whether the proffered evidence is relevant as required under Rule 401, SCRE." State v. Cope, 405 S.C. 317, 337, 748 S.E.2d 194, 204 (2013)(citing Clasby, 385 S.C. at 154, 682 S.E.2d at 895). "If the trial court finds the evidence is relevant, it must then determine whether the bad act evidence fits within an exception in Rule 404(b)." Id.

This court has held if "an on-the-record Rule 403 analysis is required, [we] will not reverse the conviction if the trial judge's comments concerning the matter indicate he was cognizant of the evidentiary rule when admitting the evidence of [a defendant's] prior bad acts." State v. King, 349 S.C. 142, 156, 561 S.E.2d 640, 647 (Ct.App.2002). In King, this court determined the trial court's ruling was "a compressed Rule 403/404(b) analysis" with "some indicia of his consideration of whether admission of the testimony was fair to King (i.e., more probative than prejudicial)." Id. at 157, 561 S.E.2d at 647.

King's comment regarding the prior robbery was clearly relevant, especially given the context in which the comment was made. During the interview, King claimed that he was riding with McLaughlin that night, and that McLaughlin was with him when he went to the Galloway home. (State's Exhibit Four). He further indicated that he and McLaughlin went to the Galloway home to purchase some liquor. (State's Exhibit Four). King further alleged that McLaughlin was the one who shot Mr. Galloway. (R. p. 168, State's Exhibit Four). King further claimed in the interview that after McLaughlin shot the victim, he took the gun from McLaughlin, which would have been just prior to Mrs.

Galloway seeing King with the gun. (R. p. 168, State's Exhibit Four). In explaining who he is referring to, King states that McLaughlin was the guy he robbed and who had signed out a warrant on him. (State's Exhibit 4, at 5:01:12 – 5:01:26).

The comment was relevant as to the identity of the shooter in this case. In his first statement to law enforcement, King had indicated that McLaughlin was the one who shot the victim. The mention of his prior robbery of McLaughlin both undermined King's contention that the two would have been friends at the time of the shooting, and it further corroborated McLaughlin's later testimony that the two were not friends at the time of the shooting. "Corroborative testimony is testimony which tends to strengthen, confirm, or make more certain the testimony of another witness. Evidence is admissible to corroborate the testimony of a previous witness, and whether it in fact corroborates the witness' testimony is a question for the jury." State v. Stroman, 281 S.C. 508, 510, 316 S.E.2d 395, 397 (1984) (internal citations omitted). Since the two were not friends at the time of the shooting, it was less likely that McLaughlin was at the scene when the shooting occurred, and it was unlikely he was the shooter.

Furthermore, Respondent submits it was shown by clear and convincing evidence. The comment by King that he had previously robbed Mr. McLaughlin was an unsolicited admission of guilt on King's part. The question asked by the investigator did not prompt King to make the admission.

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, S.C. R. EVID. "Unfair

prejudice means an undue tendency to suggest a decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998). "When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case." State v. Lyles, 379 S.C. 328, 336-37, 665 S.E.2d 201, 206 (Ct. App. 2008). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in 'exceptional circumstances.'" State v. Hamilton, 344 S.C. 344, 357, 543 S.E.2d 586, 593 (Ct. App. 2001).

The State submits the probative value of the admission of the comment by King that he had previously robbed Mr. McLaughlin was not substantially outweighed by any prejudice that may have resulted from the presentation of the comment. Again, the mention of the comment was very brief. The State did not emphasize the comment or the prior robbery throughout the rest of the trial. No details of the robbery were presented to the jury. In all, the mention of the robbery was not highly prejudicial to King. As already noted, it was probative to explaining why Mr. McLaughlin, who was treated as a person of interest early in the investigation, was not involved in the shooting. Thus, Respondent submits the trial court did not abuse its discretion in not requiring the State redact the comment from State's Exhibit Five. As a result, King's convictions should be affirmed.

4. The statement made by King regarding a prior murder and kidnapping charge did not constitute evidence of a prior bad act.

Contrary to King's assertions, his comment regarding having a prior murder and kidnapping charge did not constitute evidence of a prior bad act. The State never presented any testimony or evidence that King killed anyone prior to this murder. Nor did the State present any testimony or evidence that anyone was ever kidnapped by King prior to this incident. In fact, the State acknowledged during the argument regarding this comment that King had never been charged with murder or kidnapping before the incident involved in this case. (R. p. 52). King also never acknowledged in the two interviews that he ever killed anyone before he murdered Mr. Galloway, or that he had kidnapped anyone prior to the incident for which he was tried. King's comment that he had pending murder and kidnapping charges was not evidence that some prior bad act occurred. It was only evidence that he thought he was charged with a prior crime. As such, Respondent submits the comment does not fall under the purview of Rule 404(b) as it was not evidence of a prior bad act. As a result, King is not entitled to relief upon this claim. In light of the fact that Rule 404(b) does not apply to this comment, and in light of the fact that any error in admitting the comment was harmless, Respondent submits this claim should be denied, and King's convictions for the murder of Mr. Galloway and for possession of a weapon during the commission of a violent crime should be affirmed.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING KING'S REQUEST FOR A MISTRIAL AFTER MELISSA GRAHAM MENTIONED KING HAD ROBBED HER AND ALOYSIUS MCLAUGHLIN PRIOR TO THE MURDER; THIS ISSUE WAS NOT PRESERVED FOR APPELLATE REVIEW AND WAS WAIVED BY KING AT TRIAL; KING RECEIVED AN ADEQUATE CURATIVE INSTRUCTION, AND KING FAILED TO SHOW A MISTRIAL WAS WARRANTED.

During King's trial, the State presented two witnesses, Aloysius McLaughlin and Melissa Graham, to discount earlier testimony that reflected that King had advised law enforcement that Aloysius McLaughlin was present in the Galloway home, and that McLaughlin was the one who shot the victim. Prior to McLaughlin's testimony, King objected to the any reference by McLaughlin to pending charges that King had. (R. p. 174). In response, the State noted that it did not intend to ask any questions about the pending charges; instead, it intended to ask McLaughlin if he was with King on the night of the shooting and if McLaughlin was friends with King. (R. p. 174). The trial court strongly warned the State to not go beyond those limited questions. (R. pp. 174-75). The State further noted that McLaughlin "is not to mention that he would not have been with the defendant the night before because the defendant had robbed him two weeks prior." (R. p. 175, ll 4-7). The trial court further noted that if information about the prior robbery was made by the State, it would declare a mistrial. (R. p. 175). Based on those representations, King indicated that he would have no objection to the questions to be asked by the State. (R. p. 175).

Mr. McLaughlin testified that he was with his girlfriend and sister on the evening before the shooting. (R. pp. 178-79). He further testified that he was not with King on the night of November 10 or on the morning of November 11). (R.

p. 180). Finally, McLaughlin testified that he was not friends with King at that time. (R. p. 180).

Melissa Graham, McLaughlin's girlfriend, testified that she and McLaughlin were with his sister all day on November 10. (R. pp. 183-84). She then indicated that after they left his sister's house, they went to McLaughlin's mother's house. (R. p. 184). After that, Graham noted that she and McLaughlin then went to the Sheriff's Office.

> They came by to the house that morning about four o'clock and said they needed to talk to us about something that happened that night. So we looking like, 'Oh, Lord, What we done did now' you know what I'm saying. He's talking about he couldn't talk to us right then. He would talk to us when we get down there.
> ...
> He said he would talk when we got down there. So when we got down there that's when he told us that he was dealing with a murder with Tyrone King. So we looking like how we going to help this man murder somebody he just robbed us ---
>
> MR. SHAFFER: Objection, Your Honor.
>
> THE COURT: Wait. Don't go. Rephrase your question.
>
> MR. SHAFFER: Your Honor, I move to strike and ---
>
> THE COURT: I'll strike that. Go ahead. Go ahead.

(R. p. 185, ll 4-9, 11-19). Graham then confirmed that she did not see King that night. (R. pp. 185-86).

After the jury was excused for a moment, the trial court had the court reporter read back the transcript of what Graham stated. (R. p. 186). The trial court then stated that it would strike the statement regarding the robbery, and that it would tell the jury to not consider that. (R. p. 186).

When the jury returned, the trial court gave the following instruction:

> The last utterance made by this witness as to this man is strickened from the record. Not a part of the record. You must not and may not consider that remark in any way whatsoever. It's totally irrelevant to any issue in this case. It's strickened, and is not to be considered. I'm referring to that last part, "This man, etc." Everybody understand that?

(R. p. 187, ll 3-9). Graham went on to confirm that she was not friends with King on November 10 and 11. (R. pp. 187-88).

After cross examining Graham and after the jury was dismissed, King moved for a mistrial. Specifically, he contended "the instruction is insufficient to cure the fact that he had a previous armed robbery charge pending." (R. p. 189, ll 10-12). When asked for a proposed curative instruction, King contended that he did not believe any instruction would be sufficient. (R. p. 189). Ultimately, the trial court declined to grant the motion for a mistrial:

> That this witness just blurted it out, and I told the jury to excuse it and to dismiss it and it's not relevant. There is no part in the record, and if you've got an addition instruction to them I'll be glad to do it. But that little statement blurted out by this witnesses is not sufficient to cause a mistrial in this case.
>
> I'm not sure that the jury even heard it, but she said it. And I've instructed the jury, and I respectfully decline to mistrial on something that she said that was not asked for by the Solicitor.

(R. p. 190, ll 4-14).

After the trial court denied the motion, counsel attempted to clarify the motion by noting that the statement at issue was that King had previously robbed him. (R. p. 190). After the court reporter read into the record, King withdrew the motion.

> MR. SHAFFER: Withdraw the second one. I think I can —
>
> THE COURT: Sir?

> MR. SHAFFER: I'm going to withdraw. It's actually in the video, so I can withdraw.
>
> THE COURT: You're going to withdraw the objection?
>
> MR. SHAFFER: Yes, Your Honor. I'm going to withdraw the objection to the robbery because it was in the video. I believe it's already in evidence so I don't really have any grounds for a mistrial at this point. Thank you, Your Honor.
>
> THE COURT: That's solves that problem. . .

(R. p. 190, l 25 – R. p. 191, l 10).

Standard of Review

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997); State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct.App.1999). Appellate courts have favored the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988). "It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial." State v. Key, 256 S.C. 90, 94, 180 S.E.2d 888, 890 (1971). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." Patterson, 337 S.C. at 227, 522 S.E.2d at 851; see also State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989); State v. Kirby, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977) ("The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes.").

"[A] mistrial should not be ordered in every case in which incompetent evidence is improperly admitted." State v. White, 371 S.C. 439, 444, 639 S.E.2d 160, 162 (Ct.App.2006)(citing State v. Johnson, 334 S.C. 78, 89, 512 S.E.2d 795, 801 (1999) and Patterson, 337 S.C. at 227, 522 S.E.2d at 851). "[T]he trial judge should exhaust other methods to cure possible prejudice before aborting a trial. In order to receive a mistrial, the defendant must show error and resulting prejudice." State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (internal citation omitted).

Argument

1. The trial court did not abuse its discretion in denying the motion for a mistrial. A proper curative instruction was given, and a mistrial was not warranted.

The trial court did not err in denying Appellant's request for a mistrial. First, any prejudice created by the comment made by Ms. Graham was resolved by the trial court's curative instruction. It is well known "[a] curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission." State v. Goldsmith, 301 S.C. 463, 467, 392 S.E.2d 787, 789 (1990) (quoting State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 130 (Ct.App.2005)); see State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989); State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976); State v. Harris, 382 S.C. 107, 119, 674 S.E.2d 532, 538-39 (Ct.App.2009). Here, the trial court strongly instructed the jury to disregard Ms. Graham's comment about King. Under South Carolina law, jurors are presumed to follow the trial judge's instructions. State v. Dunlap, 346 S.C. 312, 550 S.E.2d

889 (Ct.App.2001), affirmed as modified on writ of cert., 353 S.C. 539, 579 S.E.2d 318 (2003) quoting Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265, 267 n. 1 (1999) ("A jury is presumed to [have followed the trial judge's] instructions."). In light of the curative instructions that were given by the trial court, Respondent submits the trial court did not abuse its discretion in denying the motion for a mistrial.

2. The argument raised by King on appeal is not preserved for appellate review. It was not raised to the trial court, and the general motion for a mistrial raised by King at trial was withdrawn.

King's argument that the trial court failed to assess the proper factors in resolving to deny his motion for a mistrial is not preserved for appellate review. First, King never contended the trial court should have considered the factors outlined in State v. Thompson, 276 S.C. 616, 621 (1981) in deciding whether to grant or deny the motion. All King argued was that he did not believe that the curative instruction was sufficient to cure the harm created by the comment made by Ms. Graham. (R. pp. 189-90). Since the argument King raises now was not presented to the trial court, it is not preserved for appellate review. See Johnson, 363 S.C. at 58, 609 S.E.2d at 523 (stating an objection should be sufficiently specific to bring the exact error to the trial court's attention); Adams, 354 S.C. at 380, 580 S.E.2d at 795; see also Perez, 334 S.C. at 565-66, 514 S.E.2d at 755 (issue not raised and ruled upon by trial court is procedurally barred and not preserved for appeal); Tucker, 319 S.C. at 428, 462 S.E.2d at 265 (party cannot argue one ground below and then another on appeal).

Furthermore, King waived his argument for the mistrial motion by withdrawing the motion at trial. The record reflects that he clearly withdrew his motion, and the trial court accepted the withdrawal as a resolution to the argument. Thus, this claim is not preserved for appellate review, and it should therefore be dismissed.

3. The denial of the mistrial motion should be affirmed because the comment made by Ms. Graham was harmless.

Respondent submits that the denial of the mistrial motion should be affirmed because the admission of the comment made by Ms. Graham was ultimately harmless. Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Adams, 354 S.C. 361, 380-81, 580 S.E.2d 785, 795 (Ct. App. 2003); see also State v. Curry, 370 S.C. 674, 636 S.E.2d 649 (Ct.App.2006)(error is harmless when it could not have reasonably affected the result of the trial). An error is not reversible unless it is material and prejudicial to the substantial rights of the appellant. State v. Lee-Grigg, 374 S.C. 388, 414-15, 649 S.E.2d 41. 55 (Ct.App.2007). No definite rule of law governs finding an error harmless; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Lee-Grigg, supra; see also State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002)(in determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict).

As already noted in section two of Argument I, there was overwhelming evidence that tended to prove the King's guilt, which was wholly independent of any speculative knowledge of the prior robbery of Mr. McLaughlin and Ms.

Graham. As such, Respondent submits that Appellant is unable to prove prejudice, and that as a result, any error is harmless. Thus, the trial court did not abuse its discretion in denying the motion for a mistrial based upon Ms. Graham's comment. Therefore, Respondent submits that this claim should be denied, and that this Court should affirm the findings of the lower court.

III. THE TRIAL COURT DID NOT ERR IN DENYING KING'S MOTION FOR A NEW TRIAL.

As already noted, King was convicted and sentenced on September 13, 2012. (R. pp. 2-4, 290-92). On September 24, 2012, King served and filed his motion for a new trial. (Motion, R. pp. 346-59). In the Motion, King raised two arguments. First, he contended that one of the jurors failed to disclose information regarding her relationship with King's common law wife. Second, he contended the State was incorrect in its assertions that they would be unable to redact specific statements in the interrogation videos. Third, he contended that in the State's closing argument, the solicitor's argument regarding reasonable doubt was confusing and burden shifting.

In respect to the second argument, King asserted that the software for viewing the interrogation video would allow a user to redact portions of the video in one-second intervals. Thus, King argued the State's assertion that certain redactions could not be made was not true. King further noted that two statements in particular should have been redacted:

> Investigator: Well, that's what I am saying. I mean if you didn't do it, I mean why didn't you just go out in the front yard, give the gun to the police and say hey, man, Aloysius just ran out the back door?
>
> King: They didn't give me a god damn chance. Man she steady screaming . about my god damn I already got — I already got — I already got a murder kidnapping charge on my record. She didn't see shit - she was in a room.' Located at 5:08:08 - 5:08:27
>
> ...
>
> Investigator: Who is that?
>
> King: Aloysius, Same dude that I robbed, me and him got back on good terms.

> Investigator: Aloysius
>
> King: From McColl, that one - same dude that signed a warrant on me back in February. Me and him back on good terms." Located at 5:01:12 - 5:01:26

(R. pp. 348-49).

A hearing on the motion was held before the Honorable Edward B. Cottingham, Circuit Court Judge on October 10, 2012. (R. pp. 296-329). King was present and was represented by Tristan M. Shaffer, Esquire. Id. The State was represented by Deputy Solicitor Kernard E. Redmond and Assistant Solicitors Mary Johnson Lee and Mia B. David. Id.

At the hearing, in regards to the second issue, King argued that contrary to assertions made during discussions regarding the State's capability of redacting portions of the interview video, it was possible for redactions to the video to be made. (R. pp. 298-99). King specifically identified the references he made to the pending armed robbery charge as the language that should have been redacted. (R. pp. 299-300).

In response to the motion, the State argued that in regards to the first statement, King made the reference to his armed robbery charge in the context of explaining that at one point, he was not on good terms with the person that King was alleging was in the house with him when the shooting occurred.[4] (R. pp. 300-01). The court noted that it also recalled the reference to the charge by King was made in that context. (R. pp. 301).

[4] This statement was actually the second listed in the Motion.

King further contended that his motion was essentially a renewal of the objection he made during the Jackson v. Denno hearing with extra evidence to support his contention that the program was capable of making the redactions. (R. pp. 302).

In response, the trial court stated:

> Well, I have two thoughts about it. First, I that late date in the trial of the case, it would've delayed the case to at least the following week to have that done because Sherriff's Office of Marlboro County don't have that capability. Secondly, it was his utterance, voluntarily made by him and he made the reference in the context of trying to blame somebody else for the shooting. You can -- have to agree to that.

(R. p. 303, ll 1-8). The court asked for further argument on the other statement in the motion. During that discussion, the State contended that the statement was not the result of any question from the investigator, and the information was voluntarily offered by King. (R. p. 304). King contended that it would still be inadmissible.

The trial court denied the motion in regards to the second issue.

> Well, I want the record to reflect there were two videos and the first video, I didn't even -- there was continuous statements by him and I didn't even permit that to be played.
>
> I conclude in this case that these were his utterances. The first utterance made by him was as he tried to blame a third party for the killing. The second utterance was made by him as an excuse as to why he hid the gun. And they were his utterances not provoked by any question of the State. I conclude that they were harmless in the context that he did it and I certainly would deny a new trial based on that bases.
>
> Mr. Shaffer, as Defense counsel, based on what you had, you did the best job you could. But the evidence in this case as to his guilt was simply overwhelming. His own actions showed it. There was a young boy who saw him kill his granddaddy and then

> the deceased wife came out when it was going on and he knocked her in the head with a 9 millimeter, all of which was uncontradicted. And there is nothing in these comments or that he made as an excuse, he made them trying to cover up his actions. So, I would deny that, too. And I want an order prepared as to those two issues but bringing up both of his utterances, do you understand?
>
> MR. REDMOND: Yes, sir. Yes, sir, Your Honor.
>
> THE COURT: Both of them were made by him and they were made by him as an excuse; one, as to why somebody else did it; and two as why he tried to hide the gun.

(R. p. 304, l 15 – p. 305, l 15).

In the Order Denying Defendant's Motion for a New Trial, the trial court ruled on this issue as follows:

> On Wednesday, October 10th, 2012, the Court heard Defendant Tyrone King's Motion for a New Trial that was filed in the above-styled and numbered cause. Upon consideration of the motion, evidence on file, response, the record and arguments of counsel, the Court finds that the Motion for a New Trial is DENIED on the following grounds:
>
> . . .
>
> • Both parties were given an opportunity to redact the videos and/or agree to the redacted times when played before the court, following pre-trial motions on August 27th, 2012. The Court then ruled upon admissibility of the video statements on September 10th, before the trial began.

(R. p. 1).

Standard of Review

"A trial judge has the discretion to grant or deny a motion for a new trial, and his decision will not be reversed absent a clear abuse of discretion." State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007) (citing State v. Simmons, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983)).

Here, the trial court did not abuse its discretion in denying the motion for a new trial. This motion was essentially a continuation of the argument of the admission of the two comments King made about alleged prior bad acts. As already discussed in above in Argument I, the trial court did not abuse its discretion in the admission of those comments.

To the extent King contends that the written order improperly denied the motion for a mistrial, Respondent submits that King's contention is without merit. First, the written Order simply states that the trial court denied the motion for a new trial on that issue. While the trial court does mention that the parties were given an opportunity to redact the videos and that it ruled upon the admissibility of the interviews on September 10, it does not provide any specific reasoning as to why the motion was denied. Respondent submits that the trial court's denial was not based upon the trial court's determination that it could not revisit issues already decided, as suggested by Appellant. To the contrary, the written Order reflects that the trial court had not been provided with a sufficient reason to overturn its prior ruling, which was proper as outlined in Argument I.

To the extent King asserts the ruling made by the trial court at the hearing was improper, Respondent disagrees. The trial court noted that the comments at issue were admitted in light of the context in which they were made, and that there was no question the comments were voluntarily made by Appellant. Further, the trial court also noted that admission of the two comments was harmless. Respondent submits that the trial court's determination that the two comments were harmless is supported by the record. Further, the trial court's

determination that they were admissible because of the context in which they were made is also supported by the record as outlined above in Argument I. Thus, Respondent submits the denial of the motion for a new trial was not the result of an abuse of discretion by the trial court. This claim should be denied, and King's convictions should be affirmed.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court deny Appellant's appeal and affirm his convictions in the murder of James Galloway, assault and battery of the third degree, pointing and presenting a firearm, and possession of a weapon during the commission of a violent crime.

Respectfully submitted,

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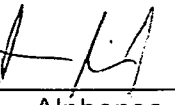
By: 
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July 3, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
The Honorable Edward B. Cottingham, Jr., Circuit Court Judge
Appeal Case No. 2012-213461

THE STATE

RESPONDENT,

vs.

TYRONE J. KING,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007) (requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 3rd day of July, 2014.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
The Honorable Edward B. Cottingham, Jr., Circuit Court Judge
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THE STATE

RESPONDENT,

vs.

TYRONE J. KING,

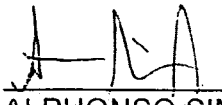
APPELLANT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Howard W. Anderson, III, Esq., Law Office of Howard W. Anderson, III, LLC, P.O. Box 851, Clemson, South Carolina 29633-0851 and to Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of July, 2014.



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Edward B. Cottingham, *Circuit Judge*

Appeal No. 2012-213461

STATE OF SOUTH CAROLINA,

Respondent,

vs.

TYRONE J. KING,

Appellant.

Final Reply Brief of Appellant Tyrone J. King

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ARGUMENT IN REPLY

I. The Circuit Court's Conflicting Evidentiary Rulings on Highly Inflammatory Bad Acts Constitute an Abuse of Discretion.

In his Opening Brief, Mr. King established that the circuit court excluded most, but not all, of the references to Mr. King's prior murder, kidnapping, and armed robbery charges in State's Exhibit 5. The circuit court only admitted the remaining references because it thought—erroneously, as the motion for new trial would show—that the State lacked the technological capability to redact all the references. Nothing in the State's Response Brief changes the fact that the Rules of Evidence prohibited the introduction of any reference to those prior charges, that Mr. King preserved the error for review, and that the error cannot qualify as harmless. Furthermore, contrary to the State's claim, no remand is needed for the circuit court to weigh the Rule 403, SCRE factors.

A. Mr. King Preserved His Argument for Review.

While the State looks to waiver to salvage erroneous evidentiary rulings below, the State's attempt fails. The State concedes that Mr. King timely objected under Rule 404(b), SCRE. Because "trial judges are presumed to know the law," *State v. Ray*, 310 S.C. 431, 437 (1993), Mr. King was not required to say anything more than to cite to Rule 404(b), SCRE, to require the trial judge to apply settled South Carolina law on it. *Cf.* Rule 18(b), SCRCrimP ("No argument shall be made on objections to admissibility of evidence or conduct of trial unless specifically requested by the court."). The circuit court failed to do so, as shown below. Furthermore, because Rule 404(b), SCRE, sets up a default rule of "exclusion, not inclusion," the State bears the burden of demonstrating that evidence falls within an exception. *State v. Tuffour*, 364 S.C. 497, 504 (Ct. App. 2005) (Kittredge, J.,

joined by Hearn, C.J. and Williams, J.), *vacated as moot by* 371 S.C. 511 (2007). Accordingly the blame lays squarely on the State for defects in the procedural and substantive requirements for the evidence's admission under Rule 404(b), SCRE.

B. Lyle *and Its Progeny Prohibit the Bad Acts Evidence.*

In his Opening Brief, Mr. King established, and the State does not dispute, that *State v. Lyle*, 125 S.C. 406 (1923), and its progeny set up an intentionally high hurdle against the admission of bad-acts evidence. The circuit court can only admit the evidence if the evidence (1) is relevant, (2) is supported with a conviction or clear and convincing evidence, (3) has non-propensity value, and (4) the danger of unfair prejudice from the evidence does not substantially outweigh the non-propensity purpose of the bad act. *State v. Clasby*, 385 S.C. 148, 154-56 (2009) (citations omitted); *State v. Fletcher*, 379 S.C. 17, 23 (2008) (citations omitted); *State v. Pagan*, 369 S.C. 201 (2006) (citations omitted). Mr. King identified errors at each step of the required analysis with respect to the McColl robbery and kidnapping charge and to the factually erroneous reference to a prior murder charge. Nothing in the State's Response justifies affirmance.

1. The McColl Robbery and Kidnapping Charges

As Mr. King explained in his Opening Brief, the murder defense below was one of accident, not mistaken identity. It is, therefore, a red herring for the State to argue here that it somehow needed the jury to hear that Mr. King was charged with robbing Aloysius McLaughlin to disprove that potential alibi. Because Mr. King was not contesting identity, the references to the McColl charges were not actually relevant to any issue joined at trial and instead impermissibly left the jury free to draw upon the bad acts for propensity purposes. *See State v. Benton*, 338 S.C. 151, 156 (2000) (holding it improper to admit bad-

acts evidence "to show the accused is a bad person or he acted in conformity with his prior convictions"). Indeed the circuit court itself recognized as much—striking Ms. Graham's testimonial reference to the McColl charges as "totally irrelevant to any issue in this case." [Trial Tr. 311:6-7].

To whatever extent the alleged McColl robbery of Mr. McLaughlin could have had some minimal relevance to proving an issue that was not contested, the danger of unfair prejudice far outweighed any probative value of the pending charges. That is why, in his Opening Brief, Mr. King noted that the trial judge promised a mistrial if anyone referenced the McColl charge in testimony at trial and that South Carolina law presumes all bad acts prejudicial. *See* [R. p. 175:5-12 (ordering Mr. McLaughlin "not to mention that ... the defendant had robbed him two weeks prior....If you do that, I'm going to declare a mistrial....")]; *Lyle*, 125 S.C. at 416. The State's Response fails to address either point.

Rather than addressing Mr. King's arguments head on about the unfair prejudice of the reference to the McColl charges, the State argues that balance of prejudice to probative value tips in its favor because the State did not highlight the McColl charges for the jury during the rest of the trial. [Opp. at Argument I(3)]. But the State is hoist by its own petard: The fact that the State did not emphasize the McColl charges conclusively establishes how little probative value that they had for anything in the case. Because the charges were not important but had an obvious danger of prejudice to Mr. King, the circuit court should have excluded all references to the McColl charges—not just some of them.

As for the requirement that the State come forth with clear and convincing evidence of the bad acts, Mr. King notes that the State seeks to have it both ways with respect to the robbery. The State's theory at trial was that Mr. King was lying throughout State's Exhibit

5, yet here it asks this Court to rely upon that exact same evidence for its truth. As for the McColl kidnapping referenced in Exhibit 5, *see* [R. pp. 293:23 – 294:2 (describing McColl charges)], the State's Response concedes that it cannot meet any burden of proof, heightened or otherwise. *See* [Opp. at Argument I(4) ("Nor did the State present any testimony or evidence that anyone was ever kidnapped by King prior to this incident.")].

2. The Prior Murder Charge

Mr. King's Opening Brief and the State's Response agree that the reference to a prior murder in Exhibit 5 cannot satisfy any of the four parts of Rule 404(b), SCRE. [Opp. at Argument I(4)]. Mr. King, however, parts ways with the State in two regards.

First, our Supreme Court has gone so far as to hold that trial counsel is constitutionally deficient for failing to object on bad-acts grounds to evidence that the defendant "was previously jailed on [other] charges." *Geter v. State*, 305 S.C. 365, 367 (1991). Insofar as the State suggests a reference to a prior murder charge on Mr. King's "record," [State's Exhibit 5 at 5:08:26], is somehow not a prior bad act for the purpose of Rule 404(b), SCRE, [Opp. at Argument I(4)], that claim necessarily fails.

Second, insofar as the State seeks to avoid reversal because it told the circuit court that Mr. King had not ever been charged with murder, the State misses the point. After admitting State's Exhibit 5 into evidence, the State never told the jury that Mr. King did not in fact have a murder charge on his record. The unrebutted (and inadmissible) evidence for the jury was that Mr. King—then actually on trial for murder—had a prior murder on his record, when he really did not.

C. The Erroneous Evidence Cannot Qualify as Harmless.

As Mr. King established in his Opening Brief, our Supreme Court sets a high bar for harmless error: "[T]he court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." *State v. Black*, 400 S.C. 10, 27 (2012) (quotation omitted).

Reasonable doubt exists here; harmless error is not applicable. *Even with* the erroneously admitted evidence, the jury struggled with whether the State had met its burden. Thus the circuit court had to recharge them on the difference between manslaughter and murder, a fact that the State's Response makes absolutely no effort to explain away. [R. p. 332]. Nor does the Response dispute that where, as here, the State can proffer no motive for the murder of a longtime neighbor, the State faces an uphill battle in establishing malice. *See State v. Powell*, 202 S.C. 432, 436 (1943) (ordering judgment of acquittal, in part, because the defendant and victim "were friends and no motive for murder appears in the record"). The jury's struggle would have been all the more difficult—and thus an acquittal may have resulted—had the erroneous evidence been withheld, as it should have been. *See generally State v. Gore*, 283 S.C. 118, 121 (1984) (noting "enhanced" danger of prejudice when bad acts are similar to the crime at issue); *Lyle*, 125 S.C. at 416 ("Proof that a defendant has been guilty of another crime equally heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty of the crime charged. Its effect is to predispose the mind of the juror to believe the prisoner guilty....").

Most of the State's arguments in support of harmlessness are legally irrelevant. Because the defense was accident, it does not matter that eyewitnesses put Mr. King in the house; identity was not at issue. Likewise the fact that Mr. King brought a gun with him to the

house is a red herring: He was trying to sell the gun to Mr. Galloway, [State's Ex. 4 at 08:38:30-45]. As for Devonte, while he may have seen a pointing of the gun at one time, he testified that he was not looking when the gun went off. [R. p. 119:7-9 ("Q. You heard the noise. Were you looking at him when you heard the noise? A. No.")]. As the jury was deciding what happened after Devonte looked way—accident or malice—the erroneously admitted evidence was a thumb on the scale.

In general, courts should be reluctant to invoke harmless error regarding evidentiary rulings. *United States v. Cerro*, 775 F.2d 908, 915-16 (7th Cir. 1985) ("The lay mind evaluates evidence differently from the legal mind.... This is a reason to be wary about invoking the doctrine of harmless error with regard to evidentiary rulings in jury cases." (citation omitted)). And here in particular, given how close the evidence of malice aforethought was, this Court should hold that the State has not met its burden to prove the harmlessness of the evidentiary errors beyond a reasonable doubt.

D. A Remand for an On-the-Record Analysis Under 403 Is a Waste of Time.

This Court should reject the State's suggestion that it would be appropriate to remand to the circuit court for an on-the-record balancing of the Rule 403, SCRE, factors. The State's proposal would be a complete waste of time. It would be an abuse of discretion, as a matter of law, for the circuit court to find the evidence admissible under the circumstances; this is not a case where circuit judges have latitude to either admit or exclude the evidence. Accordingly, no remand is required. *Cf. Allord v. Barnhart*, 455 F.3d 818, 821 (7th Cir. 2006) (holding that an appellate court need not remand for a factual determination "when a contrary determination [on remand] would have to be set aside as incredible").

II. Because the Circuit Court Only Admitted the Bad-Acts Evidence on the Mistaken Assumption that Redacting the Video Was Impossible, It Should Have Granted a New Trial Once Mr. King Showed that Redactions Were Possible.

In his Opening Brief, Mr. King showed that "the circuit court would have excised the references at 5:01-12 – 5:01:26 and 5:08:08-27 of State's Exhibit 5 if it had known that the State had had the ability to do so." [Open. Br. at 23]. The State does not contend otherwise, conceding the point. *See* [Opp. at Argument III].[1] Thus the State is left in the impossible position of arguing that the circuit court did not err in denying a new trial that would have allowed the circuit court to make the evidentiary rulings that it actually wanted to make.

As even the State concedes, the order denying the motion for new trial "does not provide any specific reasoning as to why the motion was denied." [Opp. at Argument III]. The cryptic statement that the order provides to justify the denial—that the "Court ... ruled upon the admissibility of the video statements ... before the trial began," [Order denying Motion for New Trial]—makes no sense. The State speculates that the order meant that the circuit court did not see a change in circumstances to warrant a different ruling—without addressing the fact that the circuit court learned that the State could make the precise redactions that the circuit court previously thought impossible. The more likely interpretation of the circuit court's written order is that, as it made clear throughout the trial, it would never revisit its prior rulings no matter how incorrect they appeared in hindsight, *see* [R. p. 73:1-2 ("THE COURT: If I ruled that [the evidence is admissible,] I'm not going to beat a dead horse to death.")]. That failure to exercise discretion is reversible error.

[1] That concession necessarily undermines all the State's arguments in support of the admission of the bad acts evidence.

As for the circuit court's oral reasoning, the State's Response does not dispute what Mr. King established in his Opening Brief: Because a written order controls over an oral one, *Rhoad v. State*, 372 S.C. 100, 108 n.3 (Ct. App. 2007), the circuit court's oral reasoning is irrelevant here. Furthermore, the State offers no argument to support the circuit court's erroneous statement that redaction would have taken a week, a claim that Mr. King disproved in his Opening Brief. Nor does the State defend the circuit court's incorrect suggestion that admissions of a party opponent trump the plain language of Rule 404(b), SCRE. As for harmless error, Mr. King has shown above how the errors in admitted the evidence were not harmless.

If this Court finds, on Issue One, that the circuit court was within its discretion to admit the excerpts of State's Exhibit 5 at issue, this Court should hold that the circuit court should have granted Mr. King a new trial for it to make the rulings that it truly wanted. The law should not tolerate imprisoning a man for the rest of his life on the basis of evidence that the judge wanted excluded in the first instance.

III. The Circuit Court Erred When It Failed to Follow Through with Its Promise to Declare a Mistrial If a Witness Revealed Mr. King's Pending Armed Robbery Charge.

In his Opening Brief, Mr. King established that Ms. Graham, in her direct examination, told the jury that Mr. King had robbed her and her boyfriend. That testimony violated the circuit court's "strong" and repeated promises to the solicitor that any "reference to anything that occurred about an alleged robbery" would result in a mistrial. [R. p. 174:14-

300:15]. Yet the circuit court failed to follow through on its promise for a mistrial, choosing instead to strike the testimony as "totally irrelevant" to the case. [R. p. 187:6-7].[2]

While the State argues that the curative instruction sufficed because juries are generally presumed to follow their instructions, that argument cannot work here. "[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored." *Bruton v. United States*, 391 U.S. 123, 135-36 (1968) (citations omitted). *Cf. Green v. State*, 338 S.C. 428, 434 (2000) ("The jury, despite limiting instructions, can hardly avoid drawing the inference that the past conviction suggests some probability that defendant committed the similar offense for which he is currently charged. Limiting instructions alone do not make an erroneous admission of prior conviction evidence harmless." (quotation omitted)). This case, involving serious criminal charges including murder, falls within the exception to the general rule that juries are presumed to follow their instructions. Here the jury had already (and illegally) heard of multiple instances of serious prior bad acts—including the erroneous reference to a prior murder. The only proper remedy under the circumstances was the one that the circuit court promised that it would take but ultimately did not: declaring a mistrial.

To the extent that the State argues that the error in not declaring a mistrial was harmless, Mr. King incorporates by reference his arguments set forth in Section I(C) above concerning the closeness of the evidence here.

---

[2] The State does not argue that Ms. Graham's testimony should have been allowed. Nor could it. If Ms. Graham's reference to the robbery was improper, so, too, were the references in State's Exhibit 5.

Finally, as for the State's error-preservation arguments, they fail. First, the State cites no case law to support its claim that—after the circuit court has already pronounced its ruling on an objection—that trial counsel can withdraw the motion. Second, the State does not dispute that this Court can reverse even without an objection below where the trial judge has engaged in a "flagrant" abuse of discretion. *Toyota of Florence v. Lunch*, 314 S.C. 257, 263 (1994) (citation omitted). If it is not a flagrant abuse of discretion for a trial judge to fail to declare a mistrial after he has spent four pages of transcript telling counsel that that is exactly what he would do, it is difficult to imagine what could qualify. Finally, the State also concedes, by not disputing, that requiring better error preservation here would not advance any of the policy reasons for the error-preservation rule. When the reasons for the rule do not apply, the rule should not apply.

CONCLUSION

In light of the circuit court's erroneous admission of evidence and its failure to grant the required mistrial, Mr. King respectfully requests that this Court vacate his convictions for murder and for possession of a weapon during a violent crime.

Respectfully submitted this 13th day of June, 2014,

TYRONE J. KING

By: _____
Robert M. Dudek

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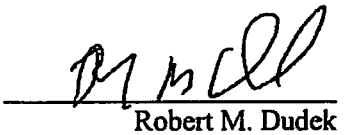
The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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I hereby certify that I served the foregoing paper this 13th day of June, 2014 on the following parties:

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Robert M. Dudek

Subscribed to and sworn before me this 13th day of June, 2014.

Notary Public
My commission expires: October 24, 2021.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Tyrone J. King, Appellant.

Appellate Case No. 2012-213461

Appeal From Marlboro County
Edward B. Cottingham, Circuit Court Judge

Opinion No. 5390
Heard January 6, 2015 – Filed March 16, 2016

REMANDED

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Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Alphonso Simon Jr., all of Columbia; and Solicitor William B. Rogers Jr., of Bennettsville, for Respondent.

MCDONALD, J.: Tyrone J. King appeals his convictions for murder, possession of a weapon during the commission of a violent crime, and assault and battery in

the third degree. King argues the circuit court erred in admitting prior bad acts evidence, denying his motion for a mistrial, and denying his motion for a new trial. We remand.

FACTS/PROCEDURAL BACKGROUND

On November 11, 2011, King allegedly shot and killed James Galloway (Victim) in Victim's Marlboro County home. Thereafter, King purportedly hit Karen Galloway (Wife) on the head with the handle of his gun and pointed his gun at both Wife and Reggie Cousar (Cousin). After some further scuffling, King ran out the back door of the residence. Following a foot chase, King was arrested.

During the course of the investigation, law enforcement recovered the Galloways' cordless telephone near the pick-up truck where King was apprehended, a bottle of liquor from King's pocket, and a nine-millimeter handgun with an extended clip from the wooded area behind King's residence. Law enforcement found a cartridge casing and bullet hole in the Galloways' master bedroom and recovered a cartridge casing and projectile from the living room. As a result, Marlboro County deputies conducted two videotaped interrogations of King.

In the first interrogation, which took place on November 11, 2011, King stated he went to the Galloways' home with Aloysius McLaughlin to buy alcohol. At this time, King was facing charges for kidnapping and armed robbery against McLaughlin in the Town of McColl (McColl Charges). However, King stated that he and McLaughlin were back on "good terms" and that McLaughlin shot and killed Victim. King further explained that after the shooting, he tried to calm Wife, and that he "waived" or "swung" the gun at her. King claimed he then gave the gun back to McLaughlin and ran from the Galloways' home in fear.

During the second interrogation, which took place on November 16, 2011, King claimed that he obtained the gun from an individual named "Broom." King explained that he went to the Galloway home to sell the gun, and while he was attempting to remove the clip, the gun fired and Victim was shot.

On January 31, 2012, the Marlboro County Grand Jury returned four indictments against King for (1) murder, (2) possession of a weapon during the commission of a violent crime, (3) assault and battery of a high and aggravated nature, and (4) pointing and presenting a firearm.

The Honorable Edward B. Cottingham called the case for a jury trial on September 10, 2012. Following jury selection, King made several pretrial motions, including

a motion to "exclude any evidence of the pending armed robbery charge." The State indicated the pending charge was part of its Rule 404(b), SCRE,[1] motion "to allow the prior bad act in" under the "intent, motive, or the common plan or scheme [exceptions] to show that there [was] a lack of mistake in the defendant going into [the Galloways'] home." The State clarified that the prior armed robbery was against McLaughlin and Melissa Graham, "[t]he same two individuals that [King] says were with him when he committed this murder." The circuit court stated, "I'm not likely to let that in," but agreed to allow the State to present its evidence before making a ruling. The circuit court then explained:

> [Y]ou know [I've] got to balance probative value against prejudicial [e]ffect, and in this case you've got eye witnesses as I recall from prior hearings. I'll listen to it, but [I] have some further concern about it.
>
> . . . .
>
> But I have some concerns with a Lyle[2] issue unless you are saying that you've got proof that [King] tried to rob this identical individual several weeks earlier. But I didn't hear you say [that]. You said some group of people, didn't you?
>
> . . . .
>
> I want to get that straight [in chambers], and then we'll get on the record with it.

King then moved to exclude or redact several portions of the interrogation videos, which were later introduced as State's Exhibits 4 and 5.

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[1] Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.").

[2] *State v. Lyle*, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923) (explaining the permissible uses of evidence of prior bad acts).

First, King moved to exclude or redact the portions of State's Exhibit 5, in which he referred to law enforcement as "motherfu**ers" and said "[f]u** the police,"[3] arguing relevance and prejudice under Rules 401 and 403, SCRE.[4] The circuit court denied the motion, stating "It's his term. He chose to use it. I'm going to let it in." As to the redaction of the videotapes, the circuit court explained that the State "[c]annot do that because we don't have the capability. If you redact that word[,] you've got to redact whatever he said." The State informed the circuit court that the only way to redact portions of the videos would be to "fast forward through it."

King next moved to exclude or redact the portion of State's Exhibit 5 in which he discussed a "prior murder charge," arguing Rule 404(b)'s "prior bad acts" provision prohibited this discussion. The circuit court granted the motion, stating "I want that redacted . . . . make sure you [fast forward] in the right place . . . I don't want to hear anything about that." Subsequently, King moved to exclude or redact another portion of the video in which he again discussed a "prior murder charge," arguing it was inadmissible under Rules 403 and 404(b). The circuit court granted this motion, stating "I want to redact any reference to any prior conduct." However, the circuit court declined to "exclude or redact" the following portion of State's Exhibit 5:

> Investigator: I mean if you didn't do it, why didn't you just go out in the front yard, give the gun to the police and say hey man, Aloysius just ran out of the back door?
>
> King: They did not give me a godd**n chance. Man she steady screaming about my godd**n—I already got—I already got a murder kidnapping charge on my record. She didn't see s**t—she was in [another] room. . . .

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[3] This issue was not appealed.

[4] *See* Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.").

Defense counsel again argued that this "prior bad acts" evidence was inadmissible under Rule 404(b). Although the State informed the court that King "does not have a conviction for murder on his record," the circuit court stated, "I'm going to leave it where it is."

Thereafter, King moved pursuant to Rule 404(b) to exclude or redact the portion of State's Exhibits 4 and 5 in which he discussed the McColl Charges. The circuit court denied the motion as to State's Exhibit 5 but granted the motion as to State's Exhibit 4. In the first reference, King stated, "I already got a murder kidnapping charge on my record," as quoted above,[5] and the second reference arose during the following exchange:

> Investigator: Who is that?
>
> King: Aloysius, [the] same dude that I robbed. Me and him got back on good terms.
>
> Investigator: Aloysius?
>
> King: From McColl, that one—same dude that signed a warrant on me back in February. Me and him back on good terms.

The circuit court ruled, "I think it's appropriate based on the totality of what he's saying."

King next moved to exclude or redact the portion of the video in which he admitted "he had shot a gun" and that "he carries a gun," arguing relevance, prior bad acts, and prejudice under Rules 401, 403, and 404(b).[6] The circuit court denied the motion, stating "there is evidence of carrying a gun in this case. I'm going to let that stay in. . . . His possession of the gun is a critical part of the State's case, and I'm going to let it in." King also moved to exclude or redact the portion of the video in which King discusses "a lawyer on his old charge." The circuit court ruled, "I'll let that part in. Let's see where he goes." Subsequently, the circuit court denied King's motion to exclude or redact the portion of State's Exhibit 5 in which King refers to himself as a criminal. The circuit court explained that "[t]his is his

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[5] *See supra* p. 4.

[6] These issues were not appealed.

characterization of himself. I'm not going to redact that. . . . Well, you understand that some of his prior record is coming in . . . that alone is sufficient." Although defense counsel explained that "unless he testifies . . . none of his prior record is coming in," the circuit court stated, "I'm going to leave it in."

Additionally, King moved to exclude or redact the portion of the video in which he discusses his own stabbing during an alleged armed robbery, again arguing relevance, prior bad acts, and prejudice under Rules 401, 403, and 404(b).[7] In response, the State argued that this portion of the tape was relevant because "[King] is saying . . . that he carried a gun because he was stabbed 20 times whereas we know that the guy that stabbed him said he did so because [King] was trying to rob him." The circuit court noted that the parties discussed this particular segment in chambers and denied the motion, stating "I'm leaving that because the individual is coming in, and [King is] saying he was stabbed 20 times in self-defense. [However,] [t]here is a witness coming in [to testify] that's not true. . . . I'm letting that in based on the totality of the evidence that's here." The circuit court concluded its ruling with, "I'm not going to let the jury hear solely that he was stabbed [twenty] times without the truth coming out as to why he was stabbed." Subsequently, the circuit court ordered stricken the portion of the video in which King pulled up his shirt and said, "You see this because I been stabbed."

Lastly, King moved to exclude or redact the portion of the video in which he discussed "different members of the Marlboro County Sheriff's Department and the Marlboro County Jail with some familiarity," arguing lack of relevance and prior bad acts under Rules 401 and 404(b).[8] The circuit court denied the motion, explaining Marlboro County does not have the "capabilities to stop and start every phrase . . . . I want to redact everything that we can that's proper. We can't start redacting every word [be]cause you don't like it."

On the morning of trial, the State moved to admit the interrogation videos into evidence as State's Exhibits 4 and 5. Defense counsel noted the videos were admitted "[p]ursuant to the redactions" and "the previous objection I've made." Defense counsel reiterated that he wanted to preserve the following two objections, both of which were denied by the circuit court: (1) the reference to the prior stabbing, and (2) any mentioning of the prior murder and kidnapping charges. Regarding the prior stabbing, the parties discussed the following:

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[7] This issue was not appealed.

[8] This issue was not appealed.

> The Court: No, they redacted . . . [a]nything [referring] to [the] prior stabbing.
>
> [Defense Counsel]: Yes, Your Honor. There was another mention of [the prior stabbing] that was not redacted because the Court ruled not to redact [it].
>
> The Court: Where was that and what line?
>
> [Defense Counsel]: I think it was at 15:40:50
>
> . . . .
>
> [State]: [T]he time that we have [to be redacted] is 4:55:20 . . .
>
> [Defense Counsel]: Your Honor, there is another reference to the stabbing after the Miranda,[9] and it's at 15:10:50. I believe the Court ruled not to redact it yesterday.
>
> The Court: I ruled not to redact that one?
>
> [Defense Counsel]: Yes, Your Honor.
>
> The Court: Well, if I ruled on it that's fine.

Likewise, the parties discussed the reference to the prior murder and kidnapping charges:

> [Defense Counsel]: I made an objection to a prior murder and kidnapping charge at [5:08:09 through 5:08:10.]
>
> . . . .
>
> [Defense Counsel]: That hasn't been redacted, Your Honor.
>
> The Court: Why?

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[9] *Miranda v. Arizona*, 384 U.S. 436 (1966).

> [Defense Counsel]: He mentioned that -- I believe he stated on the record that he couldn't -- that Marlboro County [is] unable to go through line by line and redact every word or every reference to anything in the statement. . . .
>
> The Court: [T]his equipment is not the best in the world. They have made every effort to do it. It's not as sophisticated as it should be, but you couldn't redact that part?
>
> [State]: . . . . That was one that at the time, and I recall that section where the Court ruled that that part could stay in. . . .
>
> The Court: If I ruled that I'm not going to beat a dead horse to death. If I ruled -- did I rule it stays?
>
> [State]: You did.

Thereafter, defense counsel again objected to the admission of the interrogation videos, explaining that "some of the reasons for not redacting certain parts is that the [video] equipment in Marlboro County is not sufficient to do so. I believe that if you were in another county[,] they would have sufficient means to do so."

The State indicated that Marlboro County has "current equipment," but the equipment is "not designed to allow for redacting and editing it so that nobody can then say that law enforcement had tampered with evidence." Defense counsel noted that other law enforcement agencies have the capability to make more precise redactions than rudimentary fast-forwarding. The circuit court responded, "Well, we don't have that other agency here. We are in the second day of the trial. We spent most [of] the time with your objections. I'm ready for the jury." To avoid any other delays associated with King's evidentiary objections to State's Exhibit 5, the circuit court finalized its rulings on admission of the video for the purposes of appellate review: "I don't want you to make your objections again as to those items. . . .You've made them and [they] are protected for the record."

The State called Wife as its first witness. She testified that in the early morning hours of November 11, 2011, her husband got up to answer a knock on the door. He returned to the bedroom, told his wife that King was at the door, and again left their bedroom. Wife testified that she heard Victim say, "Naw, man, I don't have,"

and then she heard a "pop." King then entered the Galloways' bedroom, pointed a gun in Wife's face, and hit her on the top of the head with the handle of the gun, causing the gun to discharge a bullet into the wall.

When King left the Galloways' bedroom, Wife called 911 and walked into the living room where she found her husband dead on the floor. King then walked into the living room with a gun to Cousin's head, took the telephone from Wife's hands, and hung it up. When the 911 operator called back, King answered and said,"[M]y home boy shot my neighbor. He came for some liquor. He shot my neighbor." King then ran out the back door "[w]ith the gun and the phone in his hand."

The State next called Cousin, who testified that he was living with the Galloways at the time of the shooting. He awoke to Wife "screaming" his name and found her in the living room where King had "a gun to her face." Cousin did not hear any shots because he was sleeping. According to Cousin, King "turned and pointed" the gun at his chest, said that "[o]ne of his boys did it," and ran out the door.

Thereafter, the State called Deputy Timmy Shaw of the Marlboro County Sheriff's Department (MCSD). When Shaw approached the Galloway home, he saw someone running out of the back door. He then pursued King on foot and subsequently apprehended him. After securing King, Shaw patted him down for weapons. Although he "[d]idn't actually find any weapons," he "[d]id find a [one-half pint] bottle of [Burnett Sparkle]" in King's pocket.[10] Shaw also found "the top part of a wireless [home] phone" underneath the pick-up truck where King was hiding. Shaw then read King his *Miranda* rights. Thereafter, Shaw "took [King] to [MCSD] and put him in [an] interrogation room."

Subsequently, the State called Investigator Shawn Felder of MCSD. Felder testified he conducted a recorded interview of King on the night of the incident. Felder further testified that although he could smell alcohol on King's breath, he did not conduct a breathalyzer test because King "did not appear to be under the influence." Once King's gunshot residue kit was complete, Felder read King his *Miranda* warnings. King did not request a lawyer and agreed to speak to Felder without representation. Due to the "poor quality" of the video, the circuit court allowed Felder to testify "as to what [King] said" before playing the video for the jury to "enable [them] to get the full context."

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[10] The record reflects that this is the same type of liquor that Victim sold from his home.

The State next called Aloysius McLaughlin to testify. The circuit court indicated that the State could ask McLaughlin if he was with King on the night of the incident and if they were friends. However, the circuit court strongly cautioned that any reference to the McColl Charges would result in a mistrial. McLaughlin testified that, on the night of Victim's murder, he was with his sister and his former girlfriend, Melissa Graham. He explained that he was not with King that night because they were not "cool" at the time.

Immediately thereafter, the State called Graham to confirm that she was with McLaughlin on the night of the incident. She testified that MCSD requested that she and McLaughlin go down to the station to talk about the murder investigation. Graham then testified: "[H]ow we going to help this man murder somebody [when] he just robbed us[?]" Defense counsel immediately objected, and the circuit court ordered stricken "[t]he last utterance made by this witness." The circuit court stated that Graham's reference to the robbery was "totally irrelevant to any issue in this case," and instructed the jury, "You must not and may not consider that remark in any way whatsoever."

Thereafter, King moved for a mistrial on the ground that the curative instruction "was insufficient to cure the prejudice [to] my client. . . . I don't believe any instruction, quite honestly, would be sufficient." The circuit court responded, "I've instructed the jury, and I respectfully decline to mistrial on something that [Graham] said that was not asked for by the Solicitor." Defense counsel subsequently withdrew the motion, noting Graham's remarks duplicated what was stated in State's Exhibit 5.

The State then called Investigator Jamie Seales of MCSD, who testified that he conducted a second recorded interview of King on November 16, 2011. Seales further testified that he reviewed the *Miranda* form with King and that King signed the form. Seales explained that he told King, "This is the same one that you signed before when the other investigator spoke to you." Seales testified that King replied, "[I don't] even remember that." Seales then explained King's summarization of the events of November 11, 2011. Thereafter, the second interrogation video was admitted into evidence as State's Exhibit 4.

Following the close of the State's case, King moved for a directed verdict as to all four indictments, which the circuit court denied. The circuit court charged the jury on murder; involuntary manslaughter; the defense of accident; assault and battery of a high and aggravated nature; assault and battery in the first, second, and third degrees; possession of a firearm during the commission of a violent crime; and

pointing and presenting a firearm. The jury found King guilty of murder, assault and battery in the third degree, pointing and presenting a firearm,[11] and possession of a weapon during the commission of a violent crime. The circuit court sentenced King to life in prison on the murder conviction; five years imprisonment on the possession conviction, to run consecutively with the previous sentence; and thirty days imprisonment, suspended on time served, on the conviction for assault and battery in the third degree.

On September 24, 2012, King moved for a new trial, arguing that, contrary to the parties' understanding at the pretrial motions hearing, MCSD did have the capability to redact videotaped interrogations in one-second intervals. At an October 10, 2012 hearing, defense counsel argued that the circuit court could have excluded the references to King's prior murder, kidnapping, and armed robbery charges without impacting the other portions it found admissible because the software's instruction manuals showed that one-second redactions were possible. Nevertheless, the circuit court denied the motion from the bench for the following reasons: (1) accomplishing the redactions "would've delayed the case to at least the following week"; (2) King voluntarily made the references while trying to explain away his actions; and (3) the evidence was harmless.

The circuit court formalized its denial of the motion for a new trial by order dated November 8, 2012, and filed on November 12, 2012. The written order made no reference to the reasons offered at the October 10, 2012 hearing. Instead, the circuit court stated that "[b]oth parties were given an opportunity to redact the videos and/or agree to the redacted times when played before the court, following [pretrial] motions on August 27th, 2012. The Court then ruled upon admissibility of the video statements on September 10th, before the trial began."

ISSUES

I. Did the circuit court err in failing to conduct an on-the-record Rule 404(b) analysis when it excluded some, but not all, references to King's prior bad acts?

II. Did the circuit court err in denying King's motion for a mistrial?

III. Did the circuit court err in denying King's motion for a new trial?

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[11] King did not appeal his conviction for pointing and presenting, and the record on appeal does not include King's sentence on this charge.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Williams*, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010) (quoting *State v. Wilson*, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001)). Thus, an appellate court "is bound by the [circuit] court's factual findings unless they are clearly erroneous." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) (quoting *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001)); *see also State v. Dunlap*, 346 S.C. 312, 324, 550 S.E.2d 889, 896 (Ct. App. 2001) ("The admission of evidence concerning past convictions for impeachment purposes remains within the trial judge's discretion, provided the judge conducts the analysis mandated by the evidence rules and case law."). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Black*, 400 S.C. at 16, 732 S.E.2d at 884 (quoting *State v. Jennings*, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011)). "To warrant reversal, an error must result in prejudice to the appealing party." *Id.* at 16–17, 732 S.E.2d at 884.

ANALYSIS

I. Bad Acts Evidence

King argues the circuit court erred in failing to conduct the required Rule 404(b) analysis prior to admitting prior bad acts evidence. We agree.

A. Preservation

Initially, we address whether King's argument regarding prior bad acts evidence is properly preserved for appellate review. The State asserts:

> [M]uch of King's argument regarding the admission of certain comments King made during his first interview (State's Exhibit [5]) is not preserved for appellate review . . . [because] he did not specifically request that the [circuit] court assess whether the State was proving those prior bad acts with clear and convincing evidence. King further did not request [that] the [circuit] court engage in an on the record prejudice analysis as required by Rule 403, SCRE.

On reply, King argues that he was not required to do anything more than object under Rule 404(b) and that "the State bears the burden of demonstrating that [the bad acts] evidence falls within an exception."

In *State v. Martucci*, this court concluded that because "Martucci did not argue at trial that the State failed to show the prior bad acts by clear and convincing evidence," the issue could not be considered on appeal. 380 S.C. 232, 256–57, 669 S.E.2d 598, 611 (Ct. App. 2008); *see also State v. Luckabaugh*, 327 S.C. 495, 499, 489 S.E.2d 657, 659 (Ct. App.1997) (concluding that the issue was not preserved because the defendant failed to object to the testimony as less than clear and convincing); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). A party must state "the specific ground of objection, if the specific ground was not apparent from the context." Rule 103(a)(1), SCRE. However, "[a] party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). "The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it [could] be reasonably understood by the trial [court]." *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996).

The record reveals that the parties discussed the State's 404(b) motion in chambers, and defense counsel moved on several occasions to exclude or redact portions of State's Exhibits 4 and 5, arguing inadmissibility under Rules 401, 403, and 404(b). Moreover, the circuit court specifically stated, after the multiple objections, "I don't want you to make your objections again as to those items. You've made them and are protected for the record."

Still, to the extent the circuit court conducted an improper Rule 404(b) analysis, it was King's duty to raise those arguments to the circuit court. *See State v. Smith*, 391 S.C. 353, 365, 705 S.E.2d 491, 497 (Ct. App. 2011) (explaining that it is the defendant's duty to raise arguments regarding an improper Rule 404(b) or Rule 403 analysis to the trial judge), *rev'd on other grounds*, 406 S.C. 215, 750 S.E.2d 612 (2013). However, unlike the defendant in *Smith*, King is not arguing that the circuit court conducted an improper Rule 404(b) or Rule 403 analysis. Instead, King contends that the circuit court failed to conduct any analysis *at all*. As King's argument was sufficiently specific, apparent from the context, and clear, we find it preserved for appellate review.

B. Merits

"The process of analyzing [prior] bad act evidence begins with Rule 401, SCRE." *State v. Wallace*, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009); *see also* Rule 401, SCRE (defining "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). If the circuit court determines the prior bad acts evidence is relevant, it "must then determine whether the bad act evidence fits within an exception of Rule 404(b)." *Wallace*, 384 S.C. at 433, 683 S.E.2d at 277.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE. Such evidence "may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." *Id.*

> To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing. Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant.

State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006) (citations omitted).

"Once bad act evidence is found admissible under Rule 404(b), the [circuit] court must then conduct the prejudice analysis required by Rule 403, SCRE." *State v. Wallace*, 384 S.C. at 435, 683 S.E.2d at 278 (footnote omitted); *see also* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ."). "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." *State v. Stokes*, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009) (quoting *State v. Dickerson*, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000)). "Finally, the determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case." *Id.* at 404–05, 673 S.E.2d 441.

Here, although the circuit court initially failed to analyze the relevance of the prior bad acts evidence, it subsequently recognized that the McColl Charges were "totally irrelevant to any issue in this case" when it ordered stricken Graham's testimony about the McColl Charges. Moreover, despite the fact that the State informed the court that King "does not have a conviction for murder on his record," the circuit court failed to analyze the relevance of the reference to a "prior murder charge," and stated, "I'm going to leave it where it is."

While we acknowledge that the circuit court is given broad discretion in ruling on questions concerning the relevancy of evidence,[12] the circuit court here provided no indication that it properly considered Rules 401, 403, or 404(b). Even if these prior bad acts fell within a 404(b) exception, the circuit court failed to determine whether the prior bad act evidence was clear and convincing, and failed to conduct an on-the-record Rule 403 balancing test. *See State v. Spears*, 403 S.C. 247, 254, 742 S.E.2d 878, 881 (Ct. App. 2013) ("find[ing] the [circuit] court erred by failing to conduct an on-the-record Rule 403 balancing test."), *cert. denied* (Sept. 11, 2014).

Generally, the proper remedy for failing to conduct such an analysis is to remand this issue to the circuit court to conduct the necessary analysis. *See, e.g., State v. Colf*, 337 S.C. 622, 629, 525 S.E.2d 246, 249 (2000) (concluding that when the circuit court failed to include an on-the-record Rule 609 balancing test, the appellate court "should have remanded the question to the trial court" rather than conduct the balancing test, reasoning that "[i]t is difficult, if not impossible, for an appellate court to balance the interests at stake when the record does not contain the specific facts and circumstances necessary to a decision"); *State v. Howard*, 384 S.C. 212, 223, 682 S.E.2d 42, 48 (Ct. App. 2009) (finding the circuit court erred in failing to conduct a proper Rule 609(b) balancing test because it "provided no analysis of the prejudicial impact of admitting [the defendant's] prior convictions," and remanding for an on-the-record balancing test).

In *State v. Spears*, this court "decline[d] to conduct a de novo Rule 403 balancing test" and remanded the issue to the circuit court because it failed to perform a Rule 403 balancing test in admitting evidence of a prior conviction at trial. 403 S.C. 247, 258–59, 742 S.E.2d 878, 883 (Ct. App. 2013). Noting the potential prejudice

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[12] *See State v. Aleksey*, 343 S.C. 20, 35, 538 S.E.2d 248, 256 (2000) ("The [circuit] judge is given broad discretion in ruling on questions concerning the relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion.").

to the defendant in that case, the court stated "the jury could have determined Spears was guilty on an improper basis by relying on the . . . testimony as propensity evidence." *Id.* at 258, 742 S.E.2d at 884. The court was "unable to say that the admission of the prior bad act testimony was harmless error" and found it "appropriate to remand for an on-the-record Rule 403 balancing test." *Id.* at 259, 742 S.E.2d at 884.

Here, we find the circuit court erred in failing to conduct a Rule 404(b) analysis before admitting prior bad acts evidence regarding King's "prior murder charge" and the McColl Charges. Thus, we remand to allow the circuit court the opportunity to conduct the necessary analyses.

II. Motion for a Mistrial

King argues the circuit court erred in denying his motion for a mistrial when a witness for the State referenced King's prior charge for armed robbery shortly after the circuit court cautioned that any reference to the McColl Charges would result in a mistrial.

Initially, we question whether King's argument is properly preserved for appellate review, as King withdrew his motion regarding Graham's testimony about the robbery, stating, "I believe it's already in evidence so I don't really have any grounds for a mistrial at this point." King argues that this issue is preserved because he did not withdraw the motion until after the circuit court denied it on the ground that the improper testimony was "not sufficient to cause a mistrial in this case." However, where an objection is expressly withdrawn, it cannot be raised on appeal. *See Rosamond Enter., Inc. v. McGranahan*, 278 S.C. 512, 513, 299 S.E.2d 337, 338 (1983) (per curiam) ("Any objection to that testimony cannot be raised for the first time on review, nor can it be heard on appeal when it is not properly raised by an exception.").

Moreover, King argues on appeal that the circuit court erred in failing to consider the factors for granting a mistrial as outlined in *State v. Thompson*, 276 S.C. 616, 621, 281 S.E.2d 216, 219 (1981) ("Among the factors to be considered are the character of the testimony, the circumstances under which it was offered, the nature of the case, the other testimony in the case, and perhaps other matters."). A review of the record reveals that King did not make this argument before the circuit court. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

He instead argued that the circuit court's curative instruction was insufficient to cure the harm created by Graham's testimony. *See State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (explaining that a party "may not argue one ground below and another on appeal"). Accordingly, we find King's argument as to the denial of his motion for a mistrial unpreserved.

III. Motion for a New Trial

King argues the circuit court erred in denying his motion for a new trial when it became clear that the State could have redacted precise portions of the videotaped interrogations. Because the circuit court failed to conduct an on-the-record balancing test, we find it would be premature for us to rule upon whether the court erred in denying King's motion for a new trial. Based upon our precedents, as well as a thorough review of the record, we find the proper remedy is to remand with instructions for the circuit court to conduct an on-the-record balancing test to determine whether King would be prejudiced by the introduction of certain prior bad acts evidence. *See, e.g.*, *Colf*, 337 S.C. at 629, 525 S.E.2d at 249; *State v. Spears*, 403 S.C. at 258–59, 742 S.E.2d at 883–84; *State v. Howard*, 384 S.C. at 223, 682 S.E.2d at 48.

If, upon remand, the circuit court determines the probative value of the prior murder and kidnapping charge, or the McColl Charges, is substantially outweighed by the danger of unfair prejudice to King, then the court should order a new trial. If, on the other hand, the circuit court finds the probative value of the evidence in question is not substantially outweighed by the danger of unfair prejudice, then the conviction shall be affirmed subject to the right of appellate review.

CONCLUSION

We hold the circuit court's denial of King's motion for a mistrial is not preserved for appellate review. With respect to the evidentiary issues raised in King's motion to exclude or redact prior bad acts evidence and in King's motion for a new trial, we remand this matter to the circuit court so that it may conduct the necessary on-the-record balancing tests. Accordingly, this matter is

REMANDED.

WILLIAMS, J., concurs.

GEATHERS, J., dissenting: I would affirm King's conviction because the non-*Lyle*[13] evidence of King's guilt was overwhelming. Victim's grandson saw King point the gun at Victim immediately prior to the gun's discharge. After shooting Victim, King pistol-whipped Wife, pointed the gun at Cousin's chest, and hung up the telephone Wife was using to speak to a 911 operator. When the 911 operator called back, King told the operator one of his homeboys shot Victim. When King learned police had arrived at the home, he fled the home and attempted to hide from police. King initially told police that McLaughlin shot Victim; only in his second statement to police did he allege that he shot Victim by accident.

Therefore, any possible error in admitting the Lyle evidence was harmless beyond a reasonable doubt. *See State v. Gillian*, 373 S.C. 601, 609–10, 646 S.E.2d 872, 876 (2007) (finding that the admission of the specifics of the defendant's prior bad act in violation of Rule 403, SCRE, was harmless because the defendant's guilt was proven by other competent evidence "such that no other rational conclusion can be reached"); *State v. Keenon*, 356 S.C. 457, 459, 590 S.E.2d 34, 35 (2003) (holding the trial court erred in allowing the State to present evidence of multiple prior convictions "without first weighing the prejudicial effect against the probative value" but finding the error harmless "because of the overwhelming evidence of petitioner's guilt"); *State v. Brooks*, 341 S.C. 57, 62–63, 533 S.E.2d 325, 328 (2000) (holding whether the improper introduction of prior bad acts is harmless requires the appellate court to review "the other evidence admitted at trial to determine whether the defendant's 'guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached'" (quoting *State v. Parker*, 315 S.C. 230, 234, 433 S.E.2d 831, 833 (1993))); *State v. Adams*, 354 S.C. 361, 381, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A]n insubstantial error not affecting the result of the trial is harmless where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.'" (quoting *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)), *cert. denied*, (2004); *id.* (concluding even if the admission of evidence of an initial burglary of the victim's house violated *Lyle*, it did not affect the evidence that supported the defendant's guilt in the subsequent burglary).

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[13] *See State v. Lyle*, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923) (holding evidence of the defendant's other crimes or wrongs is generally not admissible to prove his propensity to commit the charged offense, but may be admissible to show motive, identity, common scheme or plan, absence of mistake or accident, or intent).

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
The Honorable Edward B. Cottingham, Jr., Circuit Court Judge
Appeal Case No. 2012-213461
Opinion No. 5390 (Filed March 16, 2016)

THE STATE

RESPONDENT,

V.

TYRONE J. KING,

APPELLANT.

PETITION FOR REHEARING

Comes now Respondent, above named, by and through the Attorney General of South Carolina, and pursuant to Rule 221(a), SCACR, hereby respectfully petitions this Court to rehear this matter.

1. Respondent respectfully submits the majority opinion overlooks the overwhelming evidence of Appellant's guilt in finding this case should be remanded to the circuit court. In State v. Spears, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013), this Court remanded the case for further analysis when the trial court failed to conduct an on-the-record Rule 403 analysis in assessing the admissibility of prior bad acts testimony. In remanding the case in Spears, this Court noted the potential prejudice to Spears from the introduction of the evidence at issue. Id. at 258, 742 S.E.2d at 884. Further, this Court noted that

based upon the record before it, it was unable to say that the admission of the prior bad act testimony was harmless error. Id. at 258, 742 S.E.2d at 884.

This case is clearly distinguishable from Spears because it is clear from the record in this case that any error in admitting the prior bad act evidence at issue was harmless. The majority opinion in this case did not assess whether the admission of the evidence at issue could be harmless error. As accurately pointed out by the dissent, remand is unnecessary in this case because there was overwhelming evidence of Appellant's guilt outside of the evidence in dispute.

Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Thus, an insubstantial error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see also State v. Broadnax, 414 S.C. 468, 478, 779 S.E.2d 789, 794 (2015), reh'g granted (Sept. 8, 2015).

There was overwhelming evidence establishing King murdered Mr. Galloway absent the comments at issue. Three eyewitnesses identified King as being in the house with the firearm used in the shooting. Karen Galloway testified that she heard King argue with her husband before she heard the shot

that killed him. (R. p. 92-3). She noted that her husband identified Appellant as he person who was at their door. (R. p. 92). Immediately afterwards, King ran into Karen Galloway's bedroom and pointed the firearm at her. (R. p. 94). She identified Appellant in court as her assailant. (R. pp. 94-5). She also identified Appellant as the person who pointed the gun at Reggie Cousar and as the person who shot the victim. (R. pp. 95-7).

Reggie Cousar, the cousin, also testified that he saw Appellant point the gun at Karen Galloway. (R. pp. 104, 108). He further testified Appellant then pointed the gun at Cousar. (R. p. 104). Cousar identified Appellant in court. (R. p. 104). Devonte, the Galloways' grandson, testified that he saw King point the gun at his grandfather immediately before the shooting occurred. (R. p. 113). He also testified Appellant shot and killed the victim. (R. pp. 113-14).

Further, immediately after law enforcement arrived, King ran away from the scene. Flight from prosecution is admissible as guilt. State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension). The weapon used in the shooting at the victims' house was found behind King's residence. (R. pp. 149-50, 233-35). As to the murder charge, King admitted to being in the residence when the shooting occurred. He initially misled law enforcement about being the one who actually shot the victim. Instead, he accused Aloysius McLaughlin of being the one who shot the victim. The State presented the testimony of Mr. McLaughlin and his girlfriend to disprove King's

initial account that they were together on the night of the shooting. (R. pp. 178-81, 183-88). Further, in his second statement, King later admitted that he was the one who shot Mr. Galloway. (State's Exhibit Four).

Law enforcement recovered a telephone that was identified as belonging to the victims' house and a liquor bottle near the truck where King was apprehended. (R. p. 136). It was also noted that the liquor bottle was of the same type found in the victim's closet in the master bedroom. (R. p. 136). Law enforcement also found a bullet hole in the master bedroom, which led to the den and to the roof of the residence. (R. pp. 136-37). A nine millimeter handgun with an extended clip was found in the wooded area behind King's residence. (R. p. 137). A projectile was also recovered from the living room of the victims' residence. (R. pp. 138-39, 145, 151). Also, two cartridge casings were found, one in the living room and one in the master bedroom. (R. pp. 155, 156). Round lead particles were found in King's right palm. (R. p. 226, 228-29). The two cartridge casings recovered from the scene, along with the projectile recovered from the wall in the living room, were all fired from the gun found in King's back yard. (R. pp. 233-36; Supp. R. 2).

Malice could be inferred from several different facts. First, Mrs. Galloway's testimony regarding hearing the discussion between her husband and King prior to the shooting indicated some ill will on the part of King. (See R. p. 92). Second, Devonte's testimony that he saw King point the gun at Mr. Galloway indicated there was no accident. (R. p. 113). Malice could also have been inferred from the fact that King killed the victim with a firearm. See State v.

Belcher, 385 S.C. 597, 612 n. 9, 685 S.E.2d 802, 810 n. 9 (2009)(noting that State can argue malice can be inferred from use of a deadly weapon even though jury may not be charged with inference of malice from use of deadly weapon).

Also, there was overwhelming evidence King was in possession of a firearm during the commission of the murder. Again, three eyewitnesses saw King with the gun in the victims' house that early morning. Devonte saw it in King's hand just prior to the shooting. (R. p. 113). Mrs. Galloway saw it right after the shooting was over when King attacked her. (R. p. 94). Mr. Cousar saw the gun when King pointed it at him shortly after he attacked Mrs. Galloway. (R. p. 104). King also admitted to having the gun in his possession during the shooting in his second statement to law enforcement. (State's Exhibit Four).

There is nothing in the record to support a finding that the two comments made by King that are at issue in this appeal played any role in his convictions. None of the facts relating to those alleged acts were presented by the State. Thus, there were no details for the jury to consider to see if King's acts in this case were similar to those in the other alleged acts. Further, the State did not reference the comments at any other point in time during the trial. The only other mention was made by Ms. Graham, and the trial court immediately instructed struck the comment by Ms. Graham from the record, and he later instructed the jury to not consider what she had said in regards to her prior encounter with King. (See R. pp. 183-88). In all, there was overwhelming evidence of guilt. Thus, his

convictions for the murder of Mr. Galloway and for possession of a firearm during the commission of a violent crime should be affirmed.

2. Respondent respectfully submits this Court overlooks or misapprehends Respondent's preservation argument in finding Appellant's contention that the trial court did not conduct an analysis under Rule 404(b) or Rule 403 at all is preserved for appellate review. The record clearly demonstrates the trial court was never asked to consider whether the admission of the McColl charges or the alleged murder charge under Rule 404(b), required an on the record, Rule 403 balancing test. Likewise, defense counsel never objected on the record to the trial court's failure to conduct a Rule 403 balancing test. As a result, the trial court obviously never ruled on such a question on the record.

Because the record reflects that the argument which is now the basis for the remand was never advanced at trial or ruled upon by the trial court, the issue is not preserved. See Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review."); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding an appellant must present both his issues and arguments to the lower court and obtain a ruling before presenting the issues and arguments on appeal); State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) (concluding appellate courts will generally not address an argument unless it was first raised to and ruled upon by the trial court).

3. Respondent respectfully submits this Court overlooked Appellant's abandonment of his appeal to his third degree assault and battery conviction. In the opinion, this Court notes Appellant appeals from the assault and battery in the third degree conviction. However, as reflected in footnote thirteen of Appellant's Final Brief, the challenge to that particular conviction was abandoned at Appellant's request.

Respectfully submitted,

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March 31, 2016

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
The Honorable Edward B. Cottingham, Jr., Circuit Court Judge
Appeal Case No. 2012-213461
Opinion No. 5390 (Filed March 16, 2016)

THE STATE

RESPONDENT,

V.

TYRONE J. KING,

APPELLANT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Petition for Rehearing on the Appellant by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorneys of record, Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, South Carolina 29201, and to Howard W. Anderson, III, Esq., Law Office of Howard W. Anderson, III, LLC, 176 E. Main Street, P.O. Box 661, Pendleton, South Carolina 29670.

I further certify that all parties required by Rule to be served have been served.

This 31st day of March, 2016.

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ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

The State, Respondent,

v.

Tyrone J. King, Appellant.

Appellate Case No. 2012-213461

ORDER

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

J.

J.

I would grant the petition for rehearing.

J.

Columbia, South Carolina

FILED

May 2, 2016

cc:
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Howard Walton Anderson, III, Esquire
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The Honorable Edward B. Cottingham

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM MARLBORO COUNTY
COURT OF GENERAL SESSIONS
The Honorable Edward B. Cottingham, Jr., Circuit Court Judge

Opinion No. 5390 (S.C. Ct. App. filed March 16, 2016)
Rehearing Denied May 2, 2016
Supreme Court Case No. 2016-001161; Court of Appeals Case No. 2012-213461

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., hereby certify that a true copy of the redacted Appendix to the Petition for Writ of Certiorari has been served upon opposing counsel by depositing two (2) copies in the United States mail, postage prepaid, to the following:

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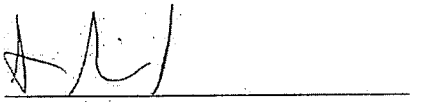
This 13th day of June, 2016.



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