

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Williamsburg County

Steven H. John, Circuit Court Judge

RECEIVED

AUG 12 2016

SC SUPREME COURT

ANTWINE MATTHEWS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000048

APPENDIX

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VOLUME ONE

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF WILLIAMSBURG) COURT OF GENERAL SESSIONS
 No. 09 GS 45 090

3

4 STATE OF SOUTH CAROLINA)
 5)
 6 versus) TRANSCRIPT OF RECORD
 7)
 8 ANTWINE LAMAR MATTHEWS)
 Defendant)

9 Kingstree, South Carolina
 10 May 12-14, 2010

11 B E F O R E :

12 HONORABLE CLIFTON NEWMAN, Judge, and a Jury

13

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

15 For the State: K. BARR, Esq.
 16 Solicitor

17 For the Defendant: C. BARR, Esq.

18

19 Reporter: MARGARET SULLIVAN

20

21

22 HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 23 P. O. Box 86
 Ladson, S. C. 29456

24

25 (NOTE: The balance of the trial transcript will be
 prepared by Margaret Sullivan.

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1 (The within matter came before the Court on May
2 12, 2010)

3 THE COURT: Ladies and gentlemen of the jury, thank
4 you for your patience.

5 (Brief pause)

6 Ladies and gentlemen, the State of South Carolina
7 is calling for trial the case of the State versus . .

8 SOLICITOR: Antwine Matthews.

9 THE COURT: . . Antwine Matthews under Indictment
10 2009 GS 45 090 which has been returned by the Grand
11 Jury, charging Mr. Matthews with various criminal of-
12 fenses.

13 Mr. Matthews has pled not guilty to the charges,
14 and he cannot be found guilty of these charges unless
15 the State presents evidence which convinces each and
16 every juror who is selected to serve in the trial of
17 this case of his guilt beyond a reasonable doubt.

18 Mr. Matthews is represented by Charles Barr.
19 Mr. Matthews, will you please stand and face the jury
20 panel? (Defendant standing) You may be seated.

21 Is there any member of the jury panel who is re-
22 lated by blood or connected by marriage to the Defendant,
23 Mr. Antwine Matthews? If so, please stand.

24 If you are related by blood or connected by marriage
25 to Mr. Matthews, or if you know Mr. Matthews, please

1 stand.

2 (No response from jurors)

3 No one is standing.

4 The State is represented in this case by Ms.
5 Kimberly Barr of the Solicitor's Office. If you would
6 stand? Also, by Mr. Harvin. (Counsel standing)

7 Also seated at prosecution's table are Mr. Ervin
8 Cooper and who else?

9 SOLICITOR BARR: We have Investigator Kimberly
10 Lail.

11 THE COURT: I'm going to call a list of people
12 who may or may not testify in this case. Please stand
13 as your names are called if you are present.

14 Lieutenant Jeffrey Scott, Sheriff's Office; John
15 Roberts, James W. Green with SLED; and Investigator
16 Wayne McFadden, Sheriff's Office; Deputy Steve Ouzts of
17 the Sheriff's Office; Investigator Willie Brown, Sher-
18 iff's Office; Seth Scott of the Sheriff's Office.

19 Margaret Hannah, Max Herbert the Third, Charles
20 Bishop, Karen Segars, Marvin Segars the Third, Keith
21 Clair, Sandra Cook, (two names which were not audible
22 on tape), Deputy Dawkins, Sheriff's Office.

23 If you are related to, associated with, or if you
24 know any of those folks, please stand.

25 (No response)

1 The Defendant is represented by Charles Barr. If
2 you know Ms. Barr or Mr. Barr, please stand.

3 No one stands.

4 (No response)

5 If you or any member of your family has ever been
6 the victim of a violent crime, such as robbery, murder,
7 burglary, please stand.

8 (Juror standing)

9 THE COURT: Yes, sir.

10 JUROR: A robbery.

11 THE COURT: Sir, would that fact affect your abil-
12 ity to be fair and impartial as a juror if you were se-
13 lected for the trial of this case?

14 JUROR: No, sir.

15 THE COURT: This incident occurred on or about --
16 these alleged offenses occurred on or about December
17 31, 2008, What area of the County?

18 SOLICITOR BARR: Sandridge Road.

19 THE COURT: Sandridge Road -- if you know anything
20 about this case or if you've heard anything about this
21 case, please stand.

22 (No response)

23 If you know of any other reason you should not be
24 selected as a juror in this case, or any other reason why
25 you cannot give both the State and the Defendant a

1 fair and impartial trial, please stand.

2 (No response)

3 No one is standing.

4 Any additional voir dire questions?

5 SOLICITOR BARR: None from the State.

6 MR. BARR: None from the Defense.

7 THE COURT: All right, give us a jury.

8 CLERK: Ladies and gentlemen, as I call your name,

9 would you please come forward and stand here and turn

10 around and await further instructions.

11 (Whereupon, a jury was seated or excused as fol-

12 lows:

13 Juror Number 17, Tabitha Brown - excused by the

14 State.

15 Juror Number 60, Marla Dukes - seated.

16 Juror Number 97, Claudella Lewis - excused by the

17 State.

18 Juror Number 189, Jennifer White - seated.

19 Juror Number 67, Allen Floyd - excused by the De-

20 fense.

21 Juror Number 62, Linda Bolton - seated.

22 Juror Number 143, Delores Porcher - seated.

23 Juror Number 127, Erin Moore - seated.

24 Juror Number 19, Sylvia Watson - seated.

25 Juror Number 18, Somalia Brown - seated.

1 Juror Number 12, Clifton (inaudible) - seated.

2 Juror Number 33, Laseem Cooper - excused by the
3 State.

4 Juror Number 100, Christy Lentz - seated.

5 Juror Number 168, Johnny Sevalis - seated.

6 Juror Number 131, (name inaudible), excused by the
7 State.

8 Juror Number 60, Anthony Wilson - excused by the
9 Defense.

10 Juror Number 164, Tanya Scott - seated.

11 Juror Number 103, William Mann - seated.)

12 THE COURT: Are there any matters of law with re-
13 gard to selection of the jury?

14 SOLICITOR: None on behalf of the State, Your
15 Honor.

16 MR. BARR: Nothing from the Defense.

17 THE COURT: Ladies and gentlemen, you have been
18 selected as the jury in the matter of the State versus
19 Antwine Matthews. At this time, I'm going to have
20 you go to your jury room so that I can take up any mat-
21 ters of law there might be.

22 After you have been shown your jury room, I am
23 going to release you to go to lunch. Please return to
24 the jury room at two thirty. Do not come into the
25 Courtroom but come back to the jury room.

1 We will then bring you back into the Courtroom
2 and you will hear the opening statements by the at-
3 torneys from the State and from the Defendant, Mr.
4 Matthews, after which we will begin the trial of this
5 case.

6 Please do not discuss the case with anyone while
7 you are away from the Courtroom or allow anyone to dis-
8 cuss it with you. We'll see you back at two thirty.

9 Thank you.

10 (Whereupon, the selected jury panel was excused
11 from the Courtroom.)

12 (Jurors not selected for the trial of this case
13 were excused by the Court.)

14 THE COURT: Regarding the number of strikes in this
15 case, I haven't found anything definitively addressing
16 the number of strikes for attempted armed robbery.

17 The statute involved is 13 7 110, and it addresses
18 the crime of murder, manslaughter, burglary, arson, armed
19 robbery, grand larceny, and so on, but not attempted
20 armed robbery.

21 (Portion not audible on tape)

22 There is one case that dates back to 1979 where
23 the strikes for armed robbery were only five, and then
24 I guess the statute was amended subsequently to make
25 armed robbery ten.

1 SOLICITOR: Judge, I think we have used five for
2 an attempted armed robbery. I don't think we've ever
3 used ten.

4 THE COURT: All right.

5 MR. BARR: Your Honor, the Defendant is on a surety
6 bond, and there is an outstanding bench warrant for him.
7 He was arrested on a bench warrant on Monday, and he
8 tells me that he was in Court. I think the bench war-
9 rant was issued on the 15th of March.

10 THE COURT: Issued in March?

11 MR. BARR: I think the 15th of March.

12 THE COURT: So he's in custody?

13 MR. BARR: He is in custody, yes, sir.

14 SOLICITOR: Judge, I wasn't aware he was in custody,
15 but if he is in custody that's all that would matter.

16 THE COURT: All right.

17 (Whereupon, the Court stood in recess as to this
18 matter until 2:30 P.M.)

19 THE COURT: Please bring in the jury if they're
20 ready.

21 (Jury returned to Courtroom)

22 THE COURT: Please swear our jury.

23 (Whereupon, the jury was sworn for the trial of
24 this case.)

25 THE COURT: Ladies and gentlemen, you were just

1 requested to raise your right hands, and you were asked
2 to well and truly try the case between the State and
3 Antwine Matthews and to render a true verdict, according
4 to the law and the evidence, so help you, God.

5 That means that you are the jury on this case, and
6 you are to listen to the evidence in the case and decide
7 whether the Defendant is guilty or not guilty from the
8 evidence that is presented.

9 Many people do not have a chance to come into the
10 Court and see a trial, so their opinions as to what
11 occurs in Court may come from what they see on TV or in
12 movies, or read in books.

13 Now, in most of those instances, a trial is always
14 with high action and dramatic circumstances. You will
15 soon see that this trial is not like you would see on
16 TV or in a movie or read in a book. This trial is not
17 for the purpose of entertainment.

18 It is a fundamental part of democracy, a search for
19 the truth, and to make sure that justice is done here
20 in behalf of the Defendant and in behalf of the State,
21 and in that connection the search for the truth is some-
22 times a slow and arduous process. It will not be a
23 quick process like you see on TV or in the movies.

24 The attorneys will now appear before you, Ms.
25 Barr from the Solicitor's Office for the State, and

1 Mr. Barr for the Defendant. They are advocates for
2 their respective parties, but they are officers of the
3 Court. They are sworn to uphold the sanctity and integ-
4 rity of the process in the search for the truth.

5 They will appear before you with their opening re-
6 marks and you can expect from them ethical conduct in
7 their representation of their clients.

8 Finally, I want you to remember that you have
9 taken an oath to try this case and reach a fair and a
10 just verdict. In order to do that, you too will be
11 expected to be professional and ethical in your duty.

12 Now, in this case, the State charges the Defendant
13 with committing the criminal offenses and the details
14 will be outlined or explained to you in these opening
15 remarks by counsel.

16 Now, the Defendant has entered his plea of not
17 guilty, and he is presumed to be not guilty and he can-
18 not be found guilty unless and until all twelve jurors
19 are convinced beyond a reasonable doubt of his guilt;
20 from the evidence that is presented against him by the
21 State in this trial.

22 You will listen to the evidence that is presented
23 by the State and decide the facts of the case. Then to
24 those facts, you will apply the law as I will charge it
25 to you at the end of the case which apply to this case,

1 and reach your verdict. You must accept the law as I
2 give it to you as being the correct law.

3 You must first determine the facts of the case,
4 and to those facts as you find them, you will apply the
5 law that I give to you.

6 You must listen closely to the evidence that is
7 presented, and you should not begin to reach any decis-
8 ion as to a verdict in this case until you have heard
9 all of the evidence and the law that I will instruct
10 to you.

11 Now, you are not to discuss the case with each
12 other or with anyone else, and you must not allow any-
13 one to discuss it with you or in your presence. If
14 anyone attempts to discuss the case with you, you must
15 tell them you cannot discuss it. If they persist in
16 trying to discuss it with you, try to obtain their name
17 or description and advise the bailiff upon your return
18 to your jury room.

19 Please give your attention to the attorneys for
20 the parties as they make their opening remarks to you.
21 Remember that what the attorneys tell you is not evidence.
22 The evidence will come from the witness stand and from
23 any exhibits that are entered into evidence.

24 Ms. Barr?

25 SOLICITOR: Thank you, Your Honor. May it please

1 the Court? Mr. Barr.

2 THE COURT: Yes, maam.

3 SOLICITOR: Ladies and gentlemen of the jury, good
4 afternoon.

5 Let me thank you all for being here this afternoon,
6 and when I thank you I do it sincerely. Obviously, we
7 understand that you all didn't volunteer to be here,
8 and I'm sure that of all the places you would want to
9 be today that being here in Court serving on a jury in
10 a criminal case is probably the last place you would
11 want to be.

12 But I believe that our system of government and
13 our criminal justice system are the best in the world,
14 and it is that way because we have people who are will-
15 ing to serve.

16 Now, I'm not going to keep you all waiting, and I
17 just want to take this opportunity to kind of let you
18 all know why you are here.

19 When I was waiting to give my opening statement to
20 you, Judge Newman said something that had meaning for
21 me. He said that criminal cases are not like televis-
22 ion. Obviously, television is for entertainment value.

23 When he made that comment I thought about it, and
24 one of the biggest problems I think in terms of some of
25 our young folks today comes from television.

1 They see things on television, see crimes being
2 committed, and television kind of stylizes that and it
3 does not show how crime affects our community. It does
4 not show the possible sentencing for criminal behavior.

5 What we have in this case and what I think the
6 evidence is going to show in this case is that we have
7 three young men who thought it was a good idea to go
8 and get some free money.

9 I think once you hear some of the testimony in the
10 case that you will learn about the young men who go
11 into store run by Mr. Cooper here in Williamsburg County,
12 sort of a small corner store.

13 They went in there with the intent to rob him, and
14 Mr. Cooper is going to get up on the stand and he's
15 going to tell you that but for the grace of God Mr.
16 Cooper would not be here. He is a very lucky man.

17 He's going to tell you that he was fired at, and
18 after he was fired at he grabbed his gun and he starts
19 firing at the individuals attempting to rob him.

20 We have photographs that we will show you in the
21 case, and we will show you that one of the people who
22 got hit that night was this Defendant, Antwine Matthews,
23 who was in the store.

24 And you will also hear testimony that when he was
25 shot the last thing he wanted to do was to go get help.

1 He doesn't want anybody to know what he did, but
2 he was obviously injured, very seriously. He was taken
3 to the emergency room and received care.

4 Now, in the indictment the Defendant has been
5 charged with attempted armed robbery. He has been
6 charged with assault with intent to kill for the firing
7 of the weapon at Mr. Cooper. He has been charged with
8 possession of a firearm, or having a gun, and also he's
9 been charged with criminal conspiracy, for conspiring
10 with the other two young men to rob Mr. Cooper.

11 You will hear from a number of people who will
12 provide testimony. In addition, you will see photo-
13 graphs of the scene.

14 After you have heard all of that, I will have another
15 opportunity to address you in what are called closing
16 arguments.

17 From everything you have heard and everything you
18 have seen I'm going to be asking you at that time to
19 find and to return a guilty against this Defendant.

20 After closing arguments, the Court will instruct
21 you in the law that you are to apply to the facts as
22 you find them to be.

23 Then you will retire to your jury room to deliber-
24 ate upon your verdict.

25

1 I thank you all for your time and most especially
2 for your attention.

3 THE COURT: Mr. Barr?

4 MR. BARR: Thank you. May it please the Court?

5 THE COURT: Yes, sir.

6 MR. BARR: Ladies and gentlemen, let me just take
7 this opportunity -- well, first, I would like to asso-
8 ciate myself with the remarks that were made by our
9 Trial Judge in his preliminary remarks when he spoke
10 to you initially about what this process is all about.
11 He also instructed you on your responsibilities
12 as jurors in this criminal case, and as I was listen-
13 ing to his remarks, like Ms. Barr, one thing that stood
14 out to me was the remark he made about the oath that we
15 all take.

16 That is exactly right. I recall like it was yes-
17 terday when I went up to Columbia and I was sworn in as
18 a lawyer and I took an oath.

19 I took an oath to defend people, whether or not
20 they were charged with charges that were popular or un-
21 popular.

22 One of the reasons why we go through that process
23 is that persons charged with criminal offenses a lot of
24 times they don't know how to deal with that popularity.
25 First of all, in our criminal justice system/^{it} refers to

1 them as Defendants, and in this case this young man --
2 you will learn a whole lot more about him as the trial
3 goes on, but his name is Antwine Matthews. He's the
4 person referred to as the Defendant.

5 Of course, let me just say that just as the indict-
6 ment describes him, which is the charging paper in the
7 case, there is no significance to be attached to the
8 name people are referred to as; that is, the designa-
9 tion of being the Defendant.

10 The fact is that he is in fact the Defendant, and
11 any time, ladies and gentlemen, that you find yourself
12 in General Sessions Court as a Defendant, you probably
13 would be very aware of that.

14 With respect to the oath that I took and my respon-
15 sibility as a defense lawyer, my job is to defend my
16 client to the extent that that defense is effectively
17 within the framework of the law of the State of South
18 Carolina, and to the law of the United States as well.

19 Now, what does all that mean? That means that
20 first of all with respect to your responsibilities and
21 duties as jurors, we didn't just pick you twelve or
22 thirteen out of a hat. We scrutinized you very care-
23 fully because your role is, as we all know -- we put
24 twelve people in a box to sit there and hear facts in a
25 case, take the law as His Honor gives it to you, and

1 apply the law he gives to you to the facts as you find
2 them to be.

3 Then you are to deliberate and reach your verdict,
4 at the end of the case. You all must agree on the facts,
5 that they either occurred or did not occur. No question
6 about it.

7 You also must take the law as it is given to you,
8 and that sometimes becomes a problem. You know, I have
9 seen over the years that a lot of times we get people
10 who for whatever reason, religious reasons or social rea-
11 sons, or whatever, they have their own ideas about how
12 things ought to be done, and irrespective of what the
13 law says, when it comes to making a decision they make
14 the decision based on their independent idea about what
15 should be done, and that is not how it is supposed to
16 be done in this process.

17 It is not how it is supposed to be done in this
18 process, and one of the important reasons, ladies and
19 gentlemen of the jury, as Ms. Barr indicated to you, is
20 that this is a serious matter.

21 Antwine Matthews is charged with assault with in-
22 tent to kill, and he is also charged with criminal con-
23 spiracy and possession of a weapon during a violent
24 crime, and attempted armed robbery.

25 I say to you -- I say to you that His Honor will

1 instruct you at the appropriate time with regard to as-
2 sault, and each of those offenses are composed of what
3 we call elements.

4 If you take the offense of possession of a weapon
5 during a violent crime, there are elements that you can
6 break down into their component parts of the offense.

7 The possession of a weapon requires that proof that
8 convinces the jury that he had committed a violent
9 crime.

10 So there are elements as to each one and I use
11 that one -- as to each of these offenses in order to
12 find the Defendant guilty you must find that the prose-
13 cution has proven all of the elements that make up that
14 particular crime.

15 The law also requires that in order to find some-
16 body guilty, you have to find they are guilty beyond a
17 reasonable doubt. That's the law.

18 The Defendant is presumed to be innocent unless
19 you find that they are guilty beyond a reasonable
20 doubt. Matthews is presumed to be innocent as he sits
21 there right now. He is presumed innocent right now.

22 Now, you may ask why that is? Well, I submit to
23 you that people a lot smarter than I am, a long time
24 ago, decided that principle of law and placed it into
25 effect.

 It has been in effect from that time until today.

1 It is an important principle of law, that the
2 Defendant is presumed innocent until you find him guilty
3 beyond a reasonable doubt, and that means that he doesn't
4 have to prove anything at all.

5 I'm not going to go into any proof at this par-
6 ticular time, but I will tell you this much, that it
7 is not up to Mr. Matthews to prove -- it is not Mr.
8 Matthews' responsibility to prove anyway. It is the
9 prosecution's responsibility to prove his guilt, and I'll
10 tell you one other thing.

11 Mark my words -- remember this. It is very inter-
12 esting that in this case when it came to the issue of
13 Mr. Matthews being hurt, we don't deny that he was
14 hurt. She's absolutely right. He almost died. The
15 alleged victim. The alleged victim.

16 Ladies and gentlemen, make no mistake about it.
17 Every person who gets on that witness stand -- His Honor
18 will tell you that you are entitled to judge their cre-
19 dibility. Credibility is nothing more than believabil-
20 ity.

21 When a witness takes the witness stand, you don't
22 have to just take what they say. You have to evaluate
23 it and decide whether or not that testimony is worthy
24 of your belief.

25 That is something you have to decide as to every

1 witness. How much is their testimony worth? Do you
2 believe any of it or a part of it or none of it, and
3 that is solely left to you.

4 You have to judge the credibility and the believa-
5 bility of each witness who takes the witness stand, and
6 I submit several will take the witness stand and they
7 may not all tell you the truth.

8 This man, Antwine Matthews, right now is presumed
9 innocent. I trust and I know that based on the oath
10 you took that each and every one of you will listen to
11 the evidence, and then after you are given the law
12 by His Honor, you will be asked to determine your ver-
13 dict. That is, in your collective minds, the minds of
14 all twelve of you, you will have to decide whether or
15 not this prosecution has convinced you all of the guilt
16 of the Defendant beyond a reasonable doubt, or not.

17 I submit to you that when you do that, you will
18 have faithfully discharged your duty under your oath
19 you took as jurors.

20 I'm sure you understand the importance of our hav-
21 ing qualified jurors to be in a position to determine the
22 facts in this case, apply the law and determine your
23 verdict.

24 I hope that this experience of being a juror will
25 be one that is beneficial to you, and I'm sure at the

1 end of the day you will have faithfully discharged that
2 duty.

3 Thank you.

4 THE COURT: Call your first witness.

5 SOLICITOR: Call Mr. Cooper.

6 ERVIN LAVERN COOPER, being
7 duly sworn, testified as follows:

8 CLERK: Please state your name for the record.

9 WITNESS: Ervin Lavern Cooper.

10 CLERK: Please speak into the microphone and speak
11 up so everyone can hear you.

12 DIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Tell us your name again.

15 A. Ervin Lavern Cooper.

16 Q. All right, and tell me where you live?

17 A. (Inaudible)

18 Q. Is that here in Williamsburg County?

19 A. Yes.

20 Q. I don't know. Maybe it's me, but I'm having a
21 little problem hearing you.

22 Can you speak up nice and loud? Is the microphone
23 on?

24 How long have you lived in Williamsburg County?

25 A. All my life.

MR. COOPER ON DIRECT

1 Q. All right, and if you were a woman I wouldn't ask
2 you this, but how old are you?

3 A. Sixty-two.

4 Q. You're sixty-two years old?

5 A. Yes.

6 Q. Okay, and what do you do here? What do you do for
7 a living?

8 A. Right now I'm retired.

9 Q. You're retired right now?

10 A. Yes, maam.

11 Q. Do you run a store?

12 A. Yeah, but I don't run it any more.

13 Q. You don't run it any more?

14 A. No.

15 Q. How long did you run the store?

16 A. Probably about seventeen years.

17 Q. What kind of store was it?

18 A. Convenience.

19 Q. It was a convenience store?

20 A. Yeah.

21 Q. What was the name of the store?

22 A. E. L. Cooper Store.

23 Q. E. L. Cooper Store?

24 A. Yes, maam.

25 Q. What kind of things did you sell in the store?

MR. COOPER ON DIRECT

1 A. Well, . .

2 Q. Alcohol or candy or milk -- things like that?

3 A. Yeah.

4 Q. Okay. You say you operated the store for seven-
5 teen years?

6 A. Yeah.

7 Q. What is the store location? What is the street
8 address?

9 A. It's (inaudible).

10 Q. Two seventy-six?

11 A. Yeah.

12 Q. All right. Now, sir, I need to take you back to the
13 night of December the 30th of 2008, leading up to the
14 morning of December 31st, 2008, leading up to New
15 Years. Do you remember that night?

16 A. That's right.

17 Q. Were you working in the store that night?

18 A. Yeah, I was.

19 Q. And was there anybody else working with you?

20 A. No, I was by myself.

21 Q. You were by yourself?

22 A. Yeah.

23 Q. All right. Now, during this time, did you have any
24 weapons inside the store?

25 A. Yeah, I did.

MR. COOPER ON DIRECT

1 Q. All right. Now, tell me what happened on that
2 night?

3 A. It was . .

4 Q. Speak up for me.

5 A. I always keep the chain on, and someone come toward
6 the door and I let him in.

7 Q. You say some persons came toward the door?

8 A. One.

9 Q. One person came toward the door?

10 A. He come to the door, right.

11 Q. All right. How did that person get there, if you
12 know?

13 A. He had a ride and then I let him in, and I went
14 back behind the counter. He said that he want some
15 candy, and two more guys came in.

16 Q. Okay. Can you tell me what race the first person
17 was who asked for the candy?

18 A. . .

19 Q. A black person or white person?

20 A. Black.

21 Q. Okay, a black guy?

22 A. Yeah.

23 Q. Older guy, young guy or middle aged?

24 A. Well, they all, you know, sorta young.

25 Q. Sort of young?

MR. COOPER ON DIRECT

1 A. Yes.

2 Q. Okay. The first guy came in and asked you for some
3 candy, and you said two more guys came in after him?

4 A. Yeah, come in behind him.

5 Q. All right. What time was that?

6 A. I think it was a little after midnight.

7 Q. A little after midnight?

8 A. Yeah.

9 Q. So after midnight would be New Years Eve?

10 A. I think so.

11 Q. Now, you said that -- tell me about the three
12 guys. Did they appear to be together, or did they appear
13 to have come separately?

14 A. Well, one come to the door and I let him in, and af-
15 ter I let him in the other two come in. When I went to
16 walk away the other two come in.

17 Q. Did you see how they got there?

18 A. Well, I saw a car on the outside running, but I
19 didn't pay attention. The only thing I know, the car
20 was white. The car outside was a white car.

21 Q. Okay, and that's important. When you looked out,
22 you say you saw a white car?

23 A. A white car.

24 Q. And you noticed the car was running?

25 A. Yeah, the car was running.

1 Q. Now, when the car was running -- were the three of
2 them inside the door when you saw the car running?

3 A. No, I heard it running.

4 Q. You heard the car?

5 A. Yeah.

6 Q. Where was it in relation to your store? Where
7 was it parked at?

8 A. To the side.

9 Q. Okay. Now, you indicated to me the first person
10 came in and wanted candy, and then two young men fol-
11 lowed in him. Right?

12 A. Yeah.

13 Q. How much time went by between the first person who
14 came in and the two others who came in?

15 A. I'd say a minute or two minutes.

16 Q. A minute or two?

17 A. Yeah.

18 Q. All right. Now, had you seen any of the three men
19 who were in your store that night?

20 A. No. The person who came in and want candy and
21 then the other two come in, and I pick up the candy,
22 and I ask the others what they want, and that's when --
23 and I think I ask which one the candy for, and that's
24 when I heard things go strange.

25 Q. All right. What do you mean by that?

MR. COOPER ON DIRECT

1 A. I turn around after I pick up the candy and I heard
2 the gunshot and something go by my ear.

3 Q. Say that again, sir.

4 A. I hear the gun and something go by my ear, you
5 know, and I turn around and . .

6 Q. You heard the gunshot?

7 A. Yeah.

8 Q. When you first heard the gunshot, how many people
9 were in your store?

10 A. Them three.

11 Q. All right, go on. You heard the gunshot and then
12 what happened?

13 A. So after I heard the gunshot I turn around and they
14 were standing there and there was a gun.

15 Q. Okay.

16 A. When I looked up, they were standing there with a
17 gun. When I rise up -- after I look around and see the
18 gun, I fall down, and when I rise up . .

19 Q. You said you fell down?

20 A. Yes.

21 Q. Why did you fall down?

22 A. I looking down and I didn't see no gun until after
23 I heard it fire. I look up and see the gun but I didn't
24 see nobody had no gun before that.

25 Q. Are you not sure who did the shooting?

A. '32.

MR. COOPER ON DIRECT

1 A. No.

2 Q. Did the force of the gunshot make you fall down,
3 or did you fall down on purpose or what?

4 Why did you fall down?

5 A. Because they had a gun and they could have kill me
6 right then, so I fall to make like I'm hit.

7 Q. To pretend like you had been hit?

8 A. Yeah.

9 Q. All right. Now, did you have your weapon with you
10 that day?

11 A. Yes.

12 Q. You had it in the store?

13 A. It was behind the counter.

14 Q. Behind the counter where you were?

15 A. Yeah.

16 Q. All right, sir. Did you reach for your weapon?

17 A. Yeah.

18 Q. What type of gun was it?

19 A. A thirty-eight.

20 Q. A thirty-eight revolver?

21 A. Yeah.

22 Q. All right, and when you reach for your gun what did
23 you do?

24 A. I guess that's when I start shooting.

25 Q. So you got up with your gun and you started to

MR. COOPER ON DIRECT

1 shoot?

2 A. Yes.

3 Q. What did the three individuals do?

4 A. Oh, they go running to the door and when they get
5 on the other side to get in the car I shot through the
6 window. I shot in the car.

7 Q. Okay.

8 A. Four times I shot in the car, and they take off in
9 the car.

10 Q. Okay. What kind of car did you see them take off
11 in?

12 A. I wasn't too sure but it seem like a Ford. I ain't
13 sure what kind of car.

14 Q. Was it the same white car you saw earlier?

15 A. Yeah, the same white car.

16 Q. If I could get you to come down from the witness
17 stand for me, sir?

18 A. (Leaving stand)

19 Q. Stand right there and face the jury.

20 Let me show you what's been marked as State's Ex-
21 hibit 1. Do you recognize what is depicted in this
22 particular photograph?

23 A. Yes.

24 Q. What is it in that picture?

25 A. My store.

MR. COOPER ON DIRECT

1 Q. That's your store?

2 A. Yes.

3 Q. There's no microphone in front of you so make
4 sure to keep your voice up loud and clear. Everyone
5 has to hear you. Okay?

6 What about number 2. What is that picture of?

7 A. Another one of my store.

8 Q. Another angle of your store?

9 A. Yeah.

10 Q. What about number 3?

11 A. My store.

12 SOLICITOR: Your Honor, the State would move State's
13 Exhibits 1, 2 and 3 into evidence.

14 MR. BARR: Without objection.

15 THE COURT: Admitted.

16 (Photographs admitted in evidence without objec-
17 tion as State's Exhibits 1, 2, 3.)

18 BY SOLICITOR:

19 Q. Now, let's start off at this end and kind of work
20 our way down. Okay?

21 Can you tell us where the three men came in your
22 store on this picture? How they entered the store?

23 A. . .

24 Q. Keep your voice up for the Court Reporter. Okay?

25 A. Through the front.

MR. COOPER ON DIRECT

1 Q. Okay, let me point where you pointed. They came in
2 through the front here?

3 A. Yes.

4 Q. Showing you State's Exhibit 2, is this a front
5 view of your store?

6 A. Yeah.

7 Q. Is this another angle or view of your store?

8 A. It is. It's still the front.

9 Q. Still the front?

10 A. Yes.

11 Q. Okay, on this particular photograph, State's Ex-
12 hibit Number 3, point in this picture to where you
13 first saw the white vehicle.

14 A. Okay. The vehicle is parked over here.

15 Q. Parked this way?

16 A. Yeah. Parked sideways.

17 Q. On the front or side of the store?

18 A. On the side like.

19 Q. Okay. What happened, Mr. Cooper, after you fired
20 the shots?

21 A. (Inaudible)

22 Q. Have a seat, sir.

23 A. What happened after you started firing?

24 A. Well, they get in the car and they take off.

25 Q. They took off?

MR. COOPER ON DIRECT

1 A. Yeah.

2 Q. Okay. What did you then do after they got in the
3 car and took off?

4 A. I called . .

5 Q. You . .

6 A. . . and it took a while for somebody to come out
7 there.

8 Q. You called nine one one?

9 A. That's right.

10 Q. Did you call right after they left the store?

11 A. Yeah.

12 Q. All right. Now, sir, at the time that you called
13 nine one one, did you know whether or not you had actu-
14 ally hit anybody when you were shooting back?

15 A. I wasn't sure.

16 Q. All right. So when the police came out, did you
17 tell them what happened to you?

18 A. Yes.

19 Q. All right, and did you give them your gun or show
20 them your gun?

21 A. Yeah, I showed them and they already have my gun.

22 Q. So you turned over your gun to the police that
23 night?

24 A. I did.

25 Q. All right, and did they also take some gunshot residue

1 from your hand?

2 A. That's right.

3 Q. Did you cooperate with the police?

4 A. That's right.

5 Q. I'm going to hand you what's been marked for iden-
6 tification purposes as State's Exhibit Number 4. Does
7 this look like the car that you saw outside your store
8 that night?

9 A. As best I can recognize, that was that car. It
10 was a car just like that.

11 Q. Now, sir, you have been in this Courtroom all day
12 today. Is that correct?

13 A. That's right.

14 Q. All right. Do you recall a person by the name of
15 Jeffrey Dawkins being in Court earlier today, a taller
16 guy who came up before the Judge earlier?

17 A. I don't know.

18 Q. You don't remember a Jeffrey Dawkins, a fellow they
19 had locked up in the back?

20 A. No, I don't think I do.

21 Q. Let me ask you this. The young man who came in
22 asking for candy that night, the night they pulled a gun
23 on you, did you see that person in Court here?

24 A. No, I haven't seen him.

25 Q. The one who came in and asked you for the candy?

1 A. The one who asked me for the candy, I haven't seen
2 him.

3 Q. Is he in the Courtroom now?

4 A. I haven't seen him.

5 Q. Okay. Now, sir, you are not telling this jury
6 that you know which one of these three young men shot?
7 You don't know which one shot?

8 A. I don't know.

9 Q. And you have never said you know for sure which one
10 shot?

11 A. No, I haven't.

12 Q. Did you know this Defendant? This young man, did
13 you know him?

14 A. Yes, I'd seen him before.

15 Q. Okay. Did you know him to come in your store be-
16 fore?

17 A. No, this was the first time I seen him come in
18 there.

19 Q. You have seen him in Court before? Is that what
20 you meant when you said you had seen him before?

21 A. That's right.

22 Q. You had seen him here in Court?

23 A. Yeah.

24 Q. All right. I think that's all the questions I
25 have for you, Mr. Cooper. Please answer any questions

MR. COOPER ON DIRECT

1 that the Defense has for you.

2 CROSS EXAMINATION

3 BY MR. BARR:

4 Q. You said you had seen him in Court, but had you
5 ever seen him in your store before December 31st of
6 2008?

7 A. I saw him that night.

8 Q. You saw him that night?

9 A. Uh huh. He was in the store.

10 Q. When did he come in?

11 A. Right behind the first guy what come in the store
12 that night.

13 Q. The first guy who had come in and asked you for
14 candy?

15 A. For some candy.

16 Q. The first guy who asked you for candy?

17 A. Uh huh.

18 Q. And then you saw Mr. Matthews come in?

19 A. Yeah, him right there.

20 Q. Mr. Cooper, prior to your seeing him in Court, I
21 want you to tell the ladies and gentlemen of the jury,
22 based on your recollection, do you remember seeing this
23 young man come in your store on the night of December
24 31st?

25 A. Yes, I do.

MR. COOPER ON CROSS

1 Q. And what kind of clothing did he have on?

2 A. The only thing I can remember, he had on some kind
3 of flowerdy shirt and that's all I remember.

4 I don't remember too much about what they had on.

5 Q. But you do remember seeing him come in your store
6 that night?

7 A. Yes.

8 Q. All right. Now, did you see him with a gun?

9 A. Just like I said, I don't know if he was the one
10 with a gun or not.

11 Q. The only thing you heard was the gun fire?

12 A. Yeah.

13 Q. Now, I notice that you indicated that the young man
14 came in and asked you for the candy, who was Mr. Dawkins,
15 . .

16 A. Uh huh.

17 Q. . . and you knew him?

18 A. I don't know him.

19 Q. How do you know his name was Dawkins?

20 A. . .

21 Q. How do you know his name was Dawkins, sir?

22 A. When I come down here.

23 Q. You came to a bond hearing?

24 A. Yeah.

25 Q. And that's when you found out his name was Dawkins?

MR. COOPER ON CROSS:

1 A. Yeah, because I didn't know none of them.

2 Q. So the man that came in and asked you for the
3 candy, you learned his name was Dawkins?

4 A. Yes, sir.

5 Q. And when he asked you for the candy, what did he do?

6 A. Counted out eighteen cents.

7 Q. When he counted out eighteen cents for the candy,
8 you didn't plan to give him any more than eighteen cents
9 worth of candy, did you?

10 A. That's right.

11 Q. That's all you were going to give him, eighteen
12 cents worth?

13 A. Yeah.

14 Q. Did he say anything else?

15 A. That's all he asked for.

16 Q. Did he say anything else?

17 A. No.

18 Q. Did any one of the young men who came in the store
19 demand anything from you?

20 A. Matter of fact, they didn't talk and I didn't talk
21 to them.

22 Q. They didn't talk?

23 A. That's right.

24 Q. Now, they didn't ask you for anything?

25 A. No.

MR. COOPER ON CROSS

1 Q. They didn't demand anything?

2 A. No.

3 Q. Now, you said that you heard a gunshot, a gunshot?

4 A. That's right.

5 Q. While your back was turned?

6 A. Yeah.

7 Q. And you said it was one gunshot?

8 A. That's all I hear.

9 Q. Now, the gunshot that you heard, did the gunshot
10 come from inside the store or outside the store?

11 A. It was inside the store.

12 Q. Now, you saw no gun?

13 A. I didn't saw no gun.

14 Q. My question is, the gun that you heard, did you
15 hear it -- did the gun fire come from inside the store
16 or outside the store?

17 A. Inside the store.

18 Q. Tell me how you know.

19 A. . .

20 Q. Tell me how you know the person who shot the gun
21 was inside the store?

22 A. They came in the door and nobody was out there.

23 They was inside.

24 Q. Well, how do you know? Had you been outside to see
25 whether anybody else was out there?

1 A. No, I did not.

2 Q. Now, the truth of the matter is you saw neither
3 one of the young men who came in the store with a gun,
4 but you heard a gunshot and you presume that it came
5 from inside the store. Is that correct?

6 A. That's right.

7 Q. And whoever shot the gun, you don't know where that
8 person was, do you?

9 A. No, I don't.

10 Q. All right. Now, You said that you thought you
11 heard a bullet, is that correct, go by your ear?

12 A. That's right.

13 Q. But you didn't see a gunfire, so -- had you ever
14 had a bullet go by your ear before?

15 A. No.

16 Q. If you never had a bullet go by your ear, would
17 it be fair to say that with respect to whatever it was
18 you heard go by your ear, you don't know whether it was
19 a bullet or not, do you?

20 A. I saw and heard it at the same time.

21 Q. You saw the bullet itself?

22 A. And I felt something go by my ear is what I'm say-
23 ing, and I heard the gunshot.

24 Q. You saw something go by your ear?

25 A. Yes, that's right.

MR. COOPER ON CROSS

1 Q. Did you feel something touch you?

2 A. That's right.

3 Q. You felt something touch you?

4 A. That's correct.

5 Q. But you don't know what it was?

6 A. I don't know what it was.

7 Q. You say you heard a gun fire and whatever it was
8 went by your ear, you don't know whether or not it was
9 from a gun, do you?

10 A. . .

11 Q. You want me to ask you again?

12 A. Yes.

13 Q. Whatever it was you heard go by your ear, you
14 don't know whether it came from a gunshot, do you?

15 A. No, I'm not sure about that.

16 Q. Now, during the time that the person you said was
17 Antwine Matthews, you say you went to the bond hearing
18 and you saw him come into Court then?

19 A. That's correct.

20 Q. What, if anything, did Antwine Matthews do or say
21 to you when he was in your store?

22 A. Matter of fact, I didn't talk to him and he didn't
23 talk to me.

24 Q. Didn't say anything, didn't do anything?

25 A. . .

MR. COOPER ON CROSS

1 Q. But it is your testimony that when you came up with
2 your gun, the thirty-eight, . .

3 A. Right.

4 Q. . . they were running out the store?

5 A. That's right.

6 Q. Now, I think . .

7 A. All three of them ran out?

8 A. After I shot.

9 Q. You indicated you shot one time in the air, is
10 that right?

11 A. I never said I shot in the air. I said I shot
12 through the window.

13 Q. You said you shot up one time, didn't you?

14 A. I said I come up shooting.

15 Q. Oh, you came up shooting?

16 A. Yeah. I come up shooting and shot through the
17 window.

18 Q. You gave this young lady right here a statement
19 on the 31st of December. Do you remember that, on the
20 31st of December of 2008?

21 A. Yeah, I remember.

22 Q. Do you remember telling her on that day what tran-
23 spired at your store?

24 A. That's right.

25 Q. Did you tell her -- did you tell her that when I

MR. COOPER ON CROSS

1 fell, I guess that's when I figured out I wasn't hit?
2 That's when I reached under the counter and got a gun.
3 I shot up and one of them broke through the door.

4 Do you have a recollection of telling her there?

5 A. No, sir.

6 Q. You don't remember telling her that?

7 A. No.

8 Q. And the other one ran behind him, the other one.

9 Now, you don't deny that on the 31st of December, 2008,
10 you didn't tell this young lady about any three people
11 being in the store, did you?

12 A. . .

13 Q. You said two . . .

14 A. I said three in the store.

15 Q. I shot up. One of them broke for the door, and
16 the other one ran behind him. So . .

17 SOLICITOR: I'm going to object to counsel testi-
18 fying. If he wants to ask him a question, that's fine,
19 but for him to offer the statement is not proper.

20 MR. BARR: I'm asking for his recollection of what
21 he told them.

22 THE COURT: Ask another question.

23 BY MR. BARR:

24 Q. If I showed you a statement, could you identify
25 it for me? The statment you gave to the officer. If I

1 showed it to you, could you identify it?

2 A. Yes.

3 Q. Well, let me get it for you then.

4 (Brief pause in proceeding)

5 That is your statement, is it not?

6 A. Yes.

7 Q. All right. Now, if you would, let's look at page
8 three, line twelve, and tell me whether or not those
9 were your words.

10 A. . .

11 Q. Did you say anything about three people running
12 out of the store in that statement?

13 A. Yeah, I said three of them ran out the store.

14 I said . .

15 Q. I'm talking about in the statement that you gave
16 on the night that this occurred. Did not you say two?

17 A. No, I said three fellows been in the store and ran
18 out.

19 Q. Do you remember talking to this lady that night?

20 A. Yeah.

21 Q. Well, let me ask you this then. Did not you also
22 tell her that when you turned around they looked kind of
23 funny? They looked kind of funny standing there?

24 A. Yeah.

25 Q. Standing there.

MR. COOPER ON CROSS

1 A. Yeah.

2 Q. Staring at you?

3 A. Yeah.

4 Q. You don't deny that as they were staring at you,
5 you had your pistol then?

6 A. No, I didn't.

7 Q. You didn't?

8 A. No.

9 Q. How long did you observe them staring at you?

10 A. I guess about a minute.

11 Q. So you stood there and they stared at you for a
12 minute?

13 A. . .

14 Q. (Brief pause) They stared at you for a minute?

15 A. I don't know exactly how long it was.

16 Q. Now, . .

17 A. But then I heard a shot.

18 Q. Yes, sir. Didn't the young men who came in your
19 store start running out of your store before you started
20 shooting?

21 A. They ran out after I shot.

22 Q. Take a look at line twelve of your statement.

23 SOLICITOR: What page are you on?

24 MR. BARR: Line twelve, page three.

25 Q. Didn't you tell this lady, this lady right there,

1 that you shot up one time, and they ran out; that all
2 you could do was go to your window and you shot at them
3 through your window?

4 A. That's correct.

5 Q. Now, when you were there behind the counter, you
6 said that you fell?

7 A. Yeah.

8 Q. Were you kind of scared then?

9 A. I wasn't sure -- I didn't know what was going on.
10 I hadn't seen no gun, and that's when I fall. I heard
11 a shot and that was it. If somebody got a gun in their
12 hand, standing there with a gun, . .

13 Q. You said you didn't see a gun?

14 A. I was behind the counter when they shot.

15 Q. No question about it, Mr. Cooper, that you went to
16 your window and looked out the window, and you saw the
17 young men run and get in that car and try to get away,
18 and you laid out two more bullets at them?

19 A. I was standing there and the car was parked right
20 by the window.

21 Q. And you shot at them?

22 A. I shot through the window at the car.

23 Q. When they were trying to get away?

24 A. Yeah.

25 Q. Now, they were running from you? They were

MR. COOPER ON CROSS

1 running from you and you shot at them.

2 Were you shooting to scare them or were you shooting
3 to kill them?

4 A. If I was trying to kill them, I could have killed
5 them. All I was trying to do was keep them from hurting
6 me, and trying to teach them a lesson.

7 Q. What kind of lesson were you trying to teach them?

8 A. Not to do that to nobody else.

9 Q. The best lesson you could teach them when you were
10 shooting at them with a thirty-eight is to kill them?

11 A. They were trying to kill me.

12 Q. They didn't?

13 A. No.

14 Q. You didn't see a gun and you aren't sure who fired
15 the gun, but you said you heard gun fire?

16 A. Yes, but I don't know who shot.

17 Q. If you don't know which one fired, then you can't
18 say someone tried to kill you. In fact, to your know-
19 ledge, you don't know anybody shot at you; they came in
20 your store and demanded nothing from you; they put the
21 eighteen cents on the counter, and you tried to kill
22 them as they were leaving?

23 A. . .

24 SOLICITOR: Objection. Is there a question in
25 there somewhere?

MR. COOPER ON CROSS

1 THE COURT: That is argument, Mr. Barr.

2 (Brief pause in the proceeding)

3 BY MR. BARR:

4 Q. You said you -- that's all right. I have no fur-
5 ther questions.

6 THE COURT: Any Redirect?

7 SOLICITOR: Yes, sir.

8 REDIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Mr. Cooper, let me ask you something, and I don't
11 mean to be insensitive in asking you, but do you have
12 any problem reading?

13 A. Yes, maam.

14 Q. You do have some problems?

15 A. Right.

16 Q. Okay, do you wear glasses?

17 A. No, I don't.

18 Q. I noticed you were sort of squinting when you were
19 looking at the pictures. You don't wear glasses?

20 A. No.

21 Q. Okay. If I were to give you a copy of your state-
22 ment, could you read any portions of it?

23 A. Yes, maam.

24 Q. Okay. Let me have you look t a portion of it. Can
25 you read anything that's on that paper?

MR. COOPER ON REDIRECT

1 A. No.

2 Q. All right. When you talked to the police that
3 night, how many people did you tell the police were in
4 the store that night?

5 A. I told them three.

6 Q. Three. Now, you called the police that night?

7 A. That's right.

8 Q. You were asked about whether anybody demanded any-
9 thing, and you have talked about the candy. Do you re-
10 member what kind of candy it was?

11 A. Three cent candy.

12 Q. Okay, but what kind was it? Do you remember what
13 color the wrappers were or anything like that?

14 A. I think Tootsie Rolls or three penny candy.

15 Q. What happened to the candy when you went to get it
16 out of the jar and hand it to the young man?

17 A. Matter of fact, they left. You know, after they
18 shot, I still had the candy there.

19 Q. Now, you said that the Defendant was the second
20 person to come in, is that right?

21 A. . .

22 Q. He came in behind the one who asked for the candy?

23 A. Yeah.

24 Q. This fellow here came in behind the one who asked
25 you for candy?

MR. COOPER ON REDIRECT

1 A. Yeah, that was him. That was him.

2 Q. Okay. Did anybody seem to know you?

3 A. . .

4 Q. Did they ever call you by name?

5 A. One of them called me by name who came in the
6 store. The one who asked for candy.

7 Q. He called you by name?

8 A. Yeah.

9 Q. What did he call you? Mr. Cooper, Ervin, or what?

10 A. Mr. Ervin.

11 Q. All right. Was that the person called Dawkins?

12 A. That's correct.

13 Q. Was there anything that was unusual about this
14 armed robbery or attempted armed robbery . .

15 MR. BARR: Objection, Your Honor.

16 THE COURT: What is the ground for your objection?

17 MR. BARR: Your Honor, I think, first of all, that
18 she has gone beyond cross examination.

19 THE COURT: You are saying you believe this is im-
20 proper?

21 SOLICITOR: Judge, I'll rephrase the question. I'll
22 withdraw the question and ask another question.

23 THE COURT: All right.

24 BY SOLICITOR:

25 Q. Mr. Cooper, you said when they came in, the first

MR. COOPER ON REDIRECT

1 one who asked you for the candy, he called you by your
2 name?

3 A. That's right.

4 Q. Okay, and you testified on cross examination they
5 never demanded any money. Mr. Barr asked you did they
6 take anything from you or demand any money from you.

7 A. No.

8 Q. Okay. Was there anything that was unusual about
9 that?

10 A. . .

11 MR. BARR: Your Honor, objection. She's leading
12 the witness.

13 SOLICITOR: Your Honor, it's nothing that suggests
14 an answer. He can either say yes or no.

15 THE COURT: Ask your question again.

16 BY SOLICITOR:

17 Q. Sir, you said that when they came in somebody called
18 you by name and asked for candy, but they never demanded
19 money or anything like that.

20 Was that unusual for an attempted robbery or armed
21 robbery or anything like that?

22 A. . .

23 MR. BARR: Objection. There is no foundation for
24 this, whether he has ever experienced an attempted
25 armed robbery or -- and she's asking him to give an

1 opinion regarding something that there is no indication
2 that he has ever experienced.

3 THE COURT: Objection sustained.

4 SOLICITOR: That's all the questions I would have
5 for Mr. Cooper.

6 THE COURT: Any Recross?

7 MR. BARR: Nothing.

8 THE COURT: Then you can step down.

9 (Witness excused from stand)

10 THE COURT: We'll take this opportunity to take a
11 little break. Do not discuss the case among yourselves,
12 and we'll call you back in shortly.

13 (Jury excused from Courtroom)(Brief recess)

14 THE COURT: You may bring in the jury.

15 (Jury returned to Courtroom)

16 THE COURT: Call your next witness.

17 SOLICITOR: Jeffrey Dawkins.

18 JEFFREY DAWKINS, being duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR:

22 Q. Mr. Dawkins, state your full name.

23 A. Jeffrey Dawkins.

24 Q. I can't hear you, so make sure you speak up nice
25 and clear. State your name again.

MR. DAWKINS ON DIRECT

1 A. Jeffrey Dawkins.

2 REPORTER: I can't hear him. Would you check the
3 microphone, please?

4 (Brief pause in the proceeding)

5 Q. Mr. Dawkins, where do you live?

6 A. Red Road.

7 Q. How old are you?

8 A. Twenty-one.

9 Q. All right. Did you graduate high school?

10 A. No.

11 Q. What is the highest grade you completed in high
12 school?

13 A. Tenth.

14 Q. Mr. Dawkins, do you know Mr. Matthews?

15 A. . .

16 Q. Do you know Antwine Matthews?

17 A. Yes.

18 Q. He's the man seated over there by Mr. Barr?

19 A. Yes.

20 Q. How long have you known him?

21 A. I used to work with him.

22 Q. You used to work with him?

23 A. Yes.

24 Q. All right. How long have you known him?

25 A. About a year.

MR. DAWKINS ON DIRECT

- 1 Q. You say you've known him about a year?
- 2 A. Yes.
- 3 Q. Okay. Where are you from? Are you from Williamsburg
- 4 County?
- 5 A. Yes, maam.
- 6 Q. And is Mr. Matthews also from Williamsburg County?
- 7 A. Yes, maam.
- 8 Q. Do you know Melvin Severs?
- 9 A. Yes.
- 10 Q. Speak up for me. How long have you known Mr.
- 11 Segars?
- 12 A. Oh, not long.
- 13 Q. Who helped you in the armed robbery, Mr. Segars or
- 14 Mr. Matthews?
- 15 A. Mr. Matthews.
- 16 Q. What about the gentleman behind you, Mr. Cooper?
- 17 Do you know him?
- 18 A. Yes.
- 19 Q. How is it that you know him?
- 20 A. I used to shop with him.
- 21 Q. You used to do what?
- 22 A. Shop with him.
- 23 Q. You shoppered with him?
- 24 A. Yes.
- 25 Q. All right, and have you known him for years?

MR. DAWKINS ON DIRECT

1 Mr. Cooper -- you have known him for years?

2 A. Yes.

3 Q. Are you familiar with the convenience store he used
4 to run?

5 A. Yes, maam.

6 MR. BARR: Your Honor, may we approach the bench?

7 THE COURT: Certainly.

8 (Conference at the bench between counsel and the Court
9 off the record)

10 BY SOLICITOR:

11 Q. Mr. Dawkins, prior to New Years Eve of 2008, had
12 you been in Mr. Cooper's store?

13 A. Yes, maam.

14 Q. About how many times?

15 A. A few times.

16 Q. Do you know him by name?

17 A. Ervin.

18 Q. You know him as Ervin?

19 A. Yes.

20 Q. Is that what you called him?

21 A. Yes.

22 Q. Now, . . .

23 THE COURT: Approach again, please.

24 (Conference at the bench between counsel and the Court
25 off the record)

MR. DAWKINS ON DIRECT

1 THE COURT: Mr. Cooper, have a seat over there.

2 BY SOLICITOR:

3 Q. Sir, back prior to New Years Eve of 2008, how
4 would you describe your relationship with Mr. Matthews?

5 A. I would say we had worked together.

6 Q. Were you all friends?

7 A. Yes, maam.

8 Q. Did he have a vehicle?

9 A. Yes, maam.

10 Q. What kind of vehicle did he have?

11 A. A Crown Victoria.

12 Q. What color was it?

13 A. White, I think.

14 Q. How many times had you been in that vehicle be-
15 fore New Year's Eve of 2008?

16 A. Two times.

17 Q. Okay, and I'm going to hand you what has been
18 marked for identification purposes as State's Exhibit
19 Number 8.

20 Do you recognize the vehicle that is depicted in
21 that photograph?

22 A. Yes, maam.

23 Q. Whose vehicle is that?

24 A. Antwine's vehicle.

25 Q. Antwine's vehicle?

MR. DAWKINS ON DIRECT

1 A. Yes, maam.

2 Q. All right. Now, I'm going to take you back to
3 the afternoon of December 30th. Were you with Mr.
4 Matthews on that day?

5 A. Yes, maam.

6 Q. Had you all been to visit with anybody that day?

7 A. Yes, maam.

8 Q. A young lady by the name of Kim or Kimberly
9 Hannah?

10 A. I know her by Kim.

11 Q. Kim?

12 A. Yes, maam.

13 Q. Do you all see Kim that day?

14 A. Yes, maam.

15 Q. Where did you see her at? Where did you all go?

16 A. Her house.

17 Q. You went to her house?

18 A. Yes.

19 Q. Where does she live?

20 A. (Inaudible) in Lake City.

21 Q. And did you all stay at her house or did you all
22 leave and come back here?

23 A. We came back here and came back to her house.

24 Q. Now, you testified about we came back. Who was
25 with you that day?

MR. DAWKINS ON DIRECT

1 A. The three of us.

2 Q. Who are the three of you?

3 A. Me and Twine and Melvin.

4 Q. When you say Twine, who are you talking about?

5 A. Antwine.

6 Q. Antwine Matthews?

7 A. Yes, maam.

8 Q. The young man that is seated by Mr. Barr?

9 A. Yes, maam.

10 Q. And you said Melvin?

11 A. Yes, maam.

12 Q. What is Melvin's last name?

13 A. Segars.

14 Q. Mr. Segars was in the car as well?

15 A. Yes, maam.

16 Q. Okay. All right. So you and Melvin went to Lake
17 City with Antwine and picked up Kim?

18 A. Yes, maam.

19 Q. In whose vehicle were you riding?

20 A. Antwine.

21 Q. Antwine. Okay. Who was driving Antwine's ve-
22 hicle?

23 A. He was.

24 Q. And is that the vehicle you talked about in this
25 particular photograph, State's Exhibit Number 4?

MR. DAWKINS ON DIRECT

1 A. Yes, maam.

2 Q. So he drove to Lake City and you got Kim and you
3 all came back to Kingstree?

4 A. Yes, maam.

5 Q. Give me some idea of what your activities were?
6 What were the three of you or the four of you doing
7 that day?

8 A. Just chilling.

9 Q. Okay, and tell me what means. What do you mean
10 by that?

11 A. Getting high and hanging . .

12 Q. You say you were getting high. What were you all
13 using?

14 A. Marijuana.

15 Q. Who all was smoking marijuana?

16 A. Me and Antwine and Melvin.

17 Q. Okay. Did you all have money?

18 A. Yes, maam.

19 Q. Okay. You all buy marijuana from somebody or did
20 somebody come there -- did one of you all have it al-
21 ready?

22 A. . .

23 MR. BARR: I'm going to have to object at this
24 time on the grounds of relevance.

25 This is not related to the alleged offense the

MR. DAWKINS ON DIRECT

1 Defendant is being tried for. It is a separate mat-
2 ter regarding use of marijuana. I can't quite see the
3 relevance of that.

4 THE COURT: The objection is sustained. Ask
5 another question.

6 BY SOLICITOR:

7 Q. At some point during that day, did you all run
8 out of marijuana?

9 A. At the end of the day.

10 Q. Okay. Now, you went into -- did you go into Mr.
11 Cooper's store that night leading up to the morning
12 hours of New Year's Eve, 2008?

13 A. Yes, maam.

14 Q. Now, let me ask you some questions about your-
15 self. Are you presently on probation for burglary?
16 Is that right?

17 A. Yes, maam.

18 Q. You broke into somebody's house or broke into
19 some place, and you are on probation. You have been on
20 probation for how long?

21 A. About three months, four months. I forget.

22 Q. And earlier today you came before this Court and
23 you entered a guilty plea?

24 A. Yes, maam.

25 Q. In this case, is that right?

MR. DAWKINS ON DIRECT

1 A. Yes, maam.

2 Q. And you pled guilty to attempted armed robbery?

3 A. Yes, maam.

4 Q. And do you recall that Judge Newman asked you some
5 questions regarding your involvement in this case?

6 A. Yes, maam.

7 Q. Tell me about what time was it when you got to Mr.
8 Cooper's store?

9 A. I don't know.

10 Q. Was it day time or night time?

11 A. Night time.

12 Q. And was it real late?

13 A. I would say it was after ten.

14 Q. Okay. Who was with you when you went to the store?

15 A. Me and Twine and Vinny -- I mean Melvin.

16 Q. You call Melvin Vinny?

17 A. Yes, maam.

18 Q. And you called Antwine Twine?

19 A. Yes, maam.

20 Q. Where was the girl from Lake City, Kim?

21 A. At home.

22 Q. You all had taken her back?

23 A. Yes, maam.

24 Q. Did she play any part in the crime that you were
25 charged with?

MR. DAWKINS ON DIRECT

1 A. No.

2 Q. All right. Why did you go in Mr. Cooper's store
3 that night?

4 A. To buy something.

5 Q. Okay, what were you going to buy?

6 A. Snacks.

7 Q. What else?

8 A. That's it.

9 Q. You were just going to buy snacks?

10 A. Yes, maam.

11 Q. Antwine was with you?

12 A. Yes, maam.

13 Q. And what about Mr. Segars?

14 A. He went in there too.

15 Q. Did you all plan to do anything illegal to Mr.
16 Cooper?

17 A. . .

18 MR. BARR: Objection, Your Honor.

19 SOLICITOR: Let me rephrase that question, Judge,
20 if I may.

21 THE COURT: All right.

22 BY SOLICITOR:

23 Q. Was there a discussion or a plan between you and
24 Mr. Segars and/or Mr. Matthews about doing something il-
25 legal in connection with Mr. Cooper that night?

MR. DAWKINS ON DIRECT

1 A. Yes, maam.

2 Q. Tell me about that. What was the discussion?

3 A. When we ran out of marijuana, Melvin said we need
4 to get some money to get some marijuana, and Melvin
5 said he knew where we could get some money, and I said,
6 -- I was like, where at, and he said a grocery store,
7 and we went there.

8 Q. Okay. So you indicated you all ran out of mari-
9 juana?

10 A. Yes, maam.

11 Q. And you all wanted to buy some more. Is that
12 right?

13 A. Yes, maam.

14 Q. All right, and Melvin said that he knew where he
15 can go and get some money?

16 A. Yes, maam.

17 Q. So that was the plan when you went to Mr.
18 Cooper's Store?

19 A. I guess it was.

20 Q. Well, I mean, tell me now. I need to be clear
21 because this is important.

22 You said you went to go get money. Was the plan
23 to go and ask him to borrow some money, or was the plan
24 to rob him?

25 A. I guess to rob him.

MR. DAWKINS ON DIRECT

1 Q. You said you guess, and that's -- I say again,
2 this is important.

3 You say you guess, but was that the plan or wasn't
4 it?

5 A. Yes, maam.

6 Q. Tell me what happened when you got to the store.

7 A. We went in the store and I asked him for something.

8 Q. You asked who?

9 A. Ervin.

10 Q. When you went in the store, did somebody have a
11 gun?

12 A. Yes, maam.

13 Q. Who had the gun?

14 A. Melvin.

15 Q. How do you know he had the gun?

16 A. He took it out of the car.

17 Q. Okay. Where was he when he took the gun out of
18 the car?

19 A. In front of me.

20 Q. Say that again.

21 A. When he got out of the car he was ahead of me.

22 Q. Did you see Mr. Segars with the gun inside the
23 vehicle before you got to Mr. Cooper's store, or was
24 he outside the vehicle when you saw the gun?

25 A. Outside.

MR. DAWKINS ON DIRECT

1 Q. Did you -- do you recall hearing a conversation
2 between Mr. Matthews and Mr. Segars regarding the plan?

3 A. No, maam.

4 Q. Tell me what happened when you got in the store.

5 A. We got out of the car and went in the store, and
6 I asked him for something and when he turned around to
7 get it -- I can't remember what I asked him for, but I
8 asked him for something.

9 Then he turned to get it, and when he came back up
10 we ran out of the store.

11 Q. Okay. Where were you? Were you closer to him or
12 closer to the front door?

13 A. The door.

14 Q. Where was Mr. Segars?

15 A. Behind the counter inside.

16 Q. Let me ask you, who went in first?

17 A. Melvin.

18 Q. And who went in after Melvin?

19 A. I did.

20 Q. Where was Mr. Matthews?

21 A. Behind me.

22 Q. Inside the store?

23 A. Yes, maam.

24 Q. And what happened when Mr. Cooper came back up?
25 What happened next?

MR. DAWKINS ON DIRECT

1 A. I guess he fired at us.

2 Q. And then what happened?

3 A. We ran out the store.

4 Q. Okay. Then what happened?

5 A. Melvin ran to the car and I ran.

6 Q. Did you know whether or not Mr. Matthews was hit?

7 A. No, maam.

8 Q. You didn't know that that night?

9 A. No.

10 Q. Who got in the vehicle?

11 A. Melvin and Antwine.

12 Q. When you all went to the store, who was driving

13 the white Crown Victor?

14 A. Antwine.

15 Q. You left the store after the victim started shoot-

16 ing, and who was driving the Crown Victoria?

17 A. Antwine, I guess.

18 Q. When the decision was made to rob Mr. Cooper,

19 where was Antwine?

20 A. I think he was in the car at the time.

21 Q. Sir?

22 A. I think he was in the car at the time.

23 Q. Do you recall giving a statement to law enforce-

24 ment that night?

25 A. I think I did.

MR. DAWKINS ON DIRECT

1 Q. Okay, and did you talk to Investigator Lail here,
2 seated behind me?

3 A. I think I did.

4 Q. Okay, and have you had a chance to review your
5 statement since that night?

6 A. Yes.

7 Q. When you gave her the statement and you say we
8 planned to rob Mr. Cooper, when you say we, who were
9 you referring to?

10 A. Me and Antwine and Melvin.

11 Q. And who else?

12 A. That's all.

13 Q. When you came here earlier and you testified be-
14 fore the Judge and you pled guilty to attempted armed
15 robbery, do you remember the Judge asked you what did
16 you all do?

17 A. Yes, maam.

18 Q. And do you remember him asking you who planned the
19 robbery?

20 A. Yes, maam.

21 Q. And when you responded to him, who did you tell
22 him planned the robbery of Mr. Cooper that night?

23 A. All three of us.

24 Q. And when you say all three of you, that is your-
25 self and who else?

MR. DAWKINS ON DIRECT

1 A. Melvin and Antwine.

2 Q. If you all didn't have a vehicle that night, how
3 could you have gotten to Mr. Cooper's store?

4 A. We couldn't. It wouldn't never happen.

5 Q. It wouldn't have happened if you hadn't had a ve-
6 hicle or had access to a vehicle?

7 A. No, maam.

8 Q. Did Mr. Matthews agree to provide transportation
9 that night?

10 A. Yes, maam.

11 Q. Mr. Dawkins, I'm going to hand you what has been
12 marked as State's Exhibits 5 and 6. Do you recognize
13 what is depicted in Number 5?

14 A. Yes, maam. That's the store.

15 Q. Whose store?

16 A. Ervin's.

17 Q. Mr. Cooper's store?

18 A. Yes, maam.

19 Q. Is that the inside of the store?

20 A. Yes, maam.

21 Q. And State's Exhibit Number 6?

22 A. Yes, maam.

23 Q. What is that?

24 A. The store.

25 Q. Tell the jury what that picture shows inside the

MR. DAWKINS ON DIRECT

1 store.

2 A. . .

3 Q. Is there a door depicted?

4 A. Yes, maam.

5 Q. Is that the door you all came in?

6 A. Yes, maam.

7 Q. All right.

8 SOLICITOR: Judge, I would move to introduce
9 State's Exhibits 5 and 6.

10 MR. BARR: No objection.

11 THE COURT: State's 5 and 6 admitted.

12 (Photographs of store admitted as State's Exhibits
13 5 and 6 in evidence without objection.

14 BY SOLICITOR:

15 Q. Mr. Dawkins, please step down for a moment.

16 A. (Leaving witness stand)

17 Q. I call your attention to what has been admitted
18 as State's Exhibit 5. You indicated that is the in-
19 side of Mr. Cooper's store?

20 A. Yes, maam.

21 Q. Which part is the counter of the store?

22 A. (Gesturing)

23 Q. Okay, and Number 6 -- is the counter shown in
24 that picture?

25 A. No, maam.

MR. DAWKINS ON DIRECT

1 Q. Is the door shown in that picture?

2 A. Yes, maam.

3 Q. The door you all came in?

4 A. Yes.

5 SOLICITOR: Judge, we would ask to publish 5 and 6
6 to the jury.

7 THE COURT: You may publish.

8 (Photographs shown to the jury)

9 BY SOLICITOR:

10 Q. Mr. Dawkins, who asked Mr. Cooper for the candy?

11 A. Me.

12 Q. Did you ever get the candy?

13 A. No, maam.

14 Q. Where did you end up going that night?

15 A. Maam?

16 Q. Where did you end up going that night after Mr.
17 Cooper fired his gun?

18 A. I went home.

19 Q. Did you ever see Antwine Matthews again?

20 A. No.

21 Q. When did you come to learn that he had been shot?

22 A. When someone came to my house.

23 Q. Did you ever have a conversation with him after
24 that night after the attempted robbery of Mr. Cooper's
25 store?

MR. DAWKINS ON DIRECT

1 A. No, maam.

2 Q. Now, I have a couple more questions about the plan.
3 When you talked about the planning of it, you indicated
4 that all three of you were involved in the planning?

5 A. Yes, maam.

6 Q. What was to be Mr. Matthews' role in the robbery?
7 What was he supposed to do?

8 A. Drive.

9 Q. He was to provide the transportation?

10 A. Yes, maam.

11 Q. Was he aware you all were going in to try to rob
12 Mr. Cooper?

13 A. Yes, maam.

14 Q. Thank you. Please answer any questions that Mr.
15 Barr might have for you.

16 A. Yes, maam.

17 THE COURT: Cross examine.

18 CROSS EXAMINATION

19 BY MR. BARR:

20 Q. So Mr. Matthews' role in this plan to rob Mr.
21 Cooper was to provide transportation?

22 A. . .

23 Q. Is that correct? That's what you just said.

24 A. Yes.

25 Q. So with respect to whatever you claim now that

MR. MATTHEWS ON CROSS

1 Mr. Matthews did in furtherance of the plan, you claim
2 now that his role was just to provide transportation?

3 A. Yes.

4 Q. All right, and in the plan you and Vinny could not
5 have gotten to Mr. Ervin's store without that trans-
6 portation provided by Mr. Matthews?

7 A. Right.

8 Q. Now, with respect to this transportation, you've
9 indicated earlier that -- and this is in response to a
10 question Ms. Barr asked you -- that you were going to
11 Mr. Cooper's store to buy snacks?

12 A. Right.

13 Q. Now, how were you going to get to Mr. Cooper's
14 store to buy the snacks?

15 A. We would have had a ride.

16 Q. How were you going to get there?

17 A. We wasn't alone.

18 Q. You what now?

19 A. We wasn't alone.

20 Q. But how were you going to get there?

21 A. In Antwine's vehicle.

22 Q. With Mr. Matthews?

23 A. Right.

24 Q. So when you testified earlier, right here in this
25 Courtroom today that you were going to Mr. Cooper's

MR. DAWKINS ON CROSS

1 store to buy snacks, the plan was and you thought you
2 would get there by way of going with
3 Mr. Matthews in his vehicle?

4 A. Yes.

5 Q. All right. Now, you also said initially in your
6 testimony that you never heard Mr. Matthews and Mr.
7 Segars discussing robbing Mr. Cooper?

8 A. . .

9 Q. Did you not say that in this Courtroom?

10 A. Yes, sir.

11 Q. Well, then tell me, was it the truth? Was it the
12 truth when you said it?

13 A. Yes, sir.

14 Q. Now, inasmuch as you never heard Mr. Matthews and
15 Mr. Segars discussing a plan to do a robbery of Mr.
16 Cooper, if those plans were made they must have been
17 made outside of your presence?

18 A. . .

19 Q. Would you not agree?

20 A. Yes, sir.

21 Q. Now, with respect to the plans, you did give a
22 statement to Officer Lail on December 31, 2008, did you
23 not?

24 A. Yes, sir.

25 Q. Do you recall giving that statement?

MR. DAWKINS ON CROSS

1 A. Yes, sir.

2 Q. There has been testimony about the statement you
3 gave to Officer Lail.

4 Let me get the statement. All right. You now
5 have the statement.

6 Did you say anything on page one about Mr.
7 Matthews having a conversation with anybody about a
8 plan to rob Mr. Cooper?

9 A. No, sir.

10 Q. Look at page two.

11 A. Yes, sir.

12 Q. Did you say anything on page two about Mr.
13 Matthews having knowledge of a plan to rob Mr. Cooper?

14 A. No.

15 Q. Now, if you look at page three, is there anything
16 on page three regarding Mr. Matthews having any know-
17 ledge of any plan to rob Mr. Cooper?

18 A. No, sir.

19 Q. All right, sir. Turn to page four.

20 Now, is there anything on page four about Mr.
21 Matthews having knowledge of any plan to rob Mr.
22 Cooper's store?

23 A. No.

24 Q. Sir?

25 A. No.

MR. DAWKINS ON CROSS

1 Q. Now take a look at page five. Isn't it true that
2 the very first time that any plan or any mention of any
3 plan to rob Mr. Cooper -- what did you tell Ms. Lail
4 about that plan, according to your statement?

5 A. Melvin. Vinny.

6 Q. And what did Melvin say to you?

7 A. . .

8 Q. Did he say he was going to take care of that busi-
9 ness?

10 A. Yes.

11 Q. And what business did he say he was going to take
12 care of?

13 A. . .

14 Q. Did he say to rob Mr. Cooper?

15 A. Yes.

16 Q. And that's what you told Officer Lail?

17 A. Yes, sir.

18 Q. Now, with respect to riding with Mr. Matthews,
19 you had been riding with Mr. Matthews all day long,
20 hadn't you?

21 A. Yes, sir.

22 Q. Do you have a car of your own?

23 A. No, sir.

24 Q. In fact, Mr. Matthews took you to visit your pro-
25 bation officer, didn't he?

MR. DAWKINS ON CROSS

1 A. I don't remember.

2 Q. Is your probation officer Mr. Smith?

3 A. Yes, sir.

4 Q. Look at page four and line three -- line twenty-
5 three.

6 Did not you tell Officer Lail that Twine -- that
7 Antwine Matthews had come to your house and he carried
8 you -- he came to take you to do what?

9 A. . .

10 Q. Did you tell her he came to take you to visit your
11 probation officer?

12 A. Yes, sir.

13 Q. That's what you told her?

14 A. Yes.

15 Q. Were you lying when you told her that or were you
16 telling the truth?

17 A. . .

18 Q. You know the difference between the truth and a
19 lie, don't you?

20 A. Yes, sir.

21 Q. Were you lying or were you telling her the truth?

22 A. Telling the truth.

23 Q. Now, did you lie -- take a look at your statement
24 on page seven, line two. Did you not tell Officer Lail
25 that a decision was made to rob Mr. Cooper and who made

MR. DAWKINS ON CROSS

1 that decision?

2 A. Vinny.

3 Q. Vinny?

4 A. Yes.

5 Q. And that is the second time you said in your
6 statement that Vinny was the person, and in fact you
7 told her he was the one that dreamed up the whole plan,
8 didn't you?

9 A. Yes.

10 Q. Now, the first time you saw Vinny that day, did
11 he have a gun on him?

12 A. I didn't see it.

13 Q. Well, didn't you tell Officer Lail on page seven,
14 line six, that Vinny had a gun?

15 A. . . .

16 Q. You were asked whether or not he had a gun, and
17 you told her yes?

18 A. Yes.

19 Q. And that was the truth, wasn't it?

20 A. Yes, sir.

21 Q. And you live in the (inaudible)?

22 A. Yes.

23 Q. And how far do you live from Mr. Cooper's store?

24 A. I'm not sure.

25 Q. Would you say a couple of blocks or a mile, or

MR. DAWKINS ON CROSS

1 how far?

2 A. A couple of blocks.

3 Q. A couple of blocks, and you knew Mr. Cooper?

4 A. Yes, sir.

5 Q. Now, let's look at the car business. You said

6 that Mr. Matthews went in the store behind you and

7 Vinny. Is that correct?

8 A. Yes.

9 Q. Who was the first person to run out of the store?

10 A. Antwine.

11 Q. Antwine?

12 A. Yes.

13 Q. And he ran and got in the vehicle?

14 A. . . .

15 Q. Now, you indicated in response to a question Ms.

16 Barr asked you -- you said you guess that when the car

17 left the store that Antwine was driving.

18 Was that to suggest that you really don't know who

19 was driving the car when it left the store?

20 A. I don't know who was driving the car.

21 Q. Sir?

22 A. Yes, sir.

23 Q. You don't know who was driving the car?

24 A. No, I don't. No.

25 Q. Did you see him driving?

MR. DAWKINS ON CROSS

1 A. No, sir.

2 Q. Did you run on home?

3 A. I was at the car.

4 Q. So here you are and you came to the car, but the
5 car wasn't fast enough to take you away from the scene,
6 so you started running on foot behind or in front of
7 the car?

8 A. I was behind the car.

9 Q. But you said in response to a question that you
10 guess Antwine was driving the car?

11 A. Yes.

12 Q. Have you talked with Vinny at all since this in-
13 cident occurred?

14 A. I saw him earlier today.

15 Q. Did you talk to him earlier today?

16 A. A little earlier today.

17 Q. So you know today who was driving that car away,
18 and you don't deny that Antwine got shot and was al-
19 most killed?

20 A. . .

21 Q. Wasn't he?

22 A. Yes, sir.

23 Q. And you're telling us that he drove that car?

24 A. No, sir. I don't know.

25 Q. All right. Nowhere in this statement which you've

MR. DAWKINS ON CROSS

1 just read did you tell Ms. Lail that Antwine Matthews
2 planned or even knew about any plan to rob Mr. Cooper,
3 did you?

4 A. . .

5 Q. I'm talking about the statement on the 31st when
6 you talked to Ms. Lail.

7 A. . .

8 Q. Sir?

9 A. . .

10 Q. Well, you remember what happened in the Courtroom
11 today when you came in and pled guilty to armed rob-
12 bery, don't you?

13 A. Yes.

14 Q. How much time have you got?

15 A. None yet.

16 Q. You didn't get any time? I see. When you came in
17 here the deal was to plead to armed robbery and to tes-
18 tify against this man here?

19 A. . .

20 Q. You did make a deal, didn't you, sir?

21 A. . .

22 Q. Sir?

23 A. . .

24 Q. That deal was to plead guilty to armed robbery,
25 wasn't it?

MR. DAWKINS ON CROSS

1 A. Yes, sir.

2 Q. You had to testify first? Wasn't that a part of
3 the deal?

4 A. Yes, sir.

5 Q. Now, is it your understanding of this deal that
6 if you don't testify you might just get disappointed
7 with the time you get?

8 A. . .

9 Q. Isn't that your understanding of the deal?

10 A. I don't know that.

11 MR. BARR: Could I have a minute?

12 (Brief pause in the proceeding)

13 BY MR. BARR:

14 Q. Now, you said you made a deal with the prosecution,
15 and when I say the prosecution I'm talking about this
16 table right here.

17 This is who you made the deal with, isn't that
18 correct?

19 A. . .

20 Q. Speak up. Is this table with whom you made the
21 deal?

22 A. Yes, sir.

23 Q. All right. Now, your friend there, do you know
24 whether he's made a deal?

25 A. I don't know.

MR. DAWKINS ON CROSS

1 Q. You don't know?

2 A. No, sir.

3 Q. Now, isn't it true that a part of your deal is
4 that you won't get quite as much time in the peniten-
5 tiary?

6 A. I guess so.

7 Q. Sir?

8 A. Yes, sir.

9 Q. You don't want to do any more time than you have
10 to, do you?

11 A. . .

12 Q. Sir?

13 A. . .

14 Q. You want to do the less time as you can, don't
15 you, sir?

16 A. Yes, sir.

17 Q. The less that you can?

18 A. Sure.

19 Q. Now, you don't deny that to the extent that you
20 perform well on this deal you are expecting less time
21 to do, aren't you?

22 A. . .

23 Q. Sir?

24 A. I don't know.

25 Q. Now, you are a criminal?

MR. DAWKINS ON CROSS

1 A. . .

2 Q. Sir?

3 A. Yes, sir.

4 Q. You're a burglar, aren't you?

5 A. . .

6 Q. That means you break into peoples' houses?

7 A. I'm not no burglary, no.

8 Q. But you did plead guilty to it?

9 A. Yes, sir.

10 Q. And that makes you a burglar?

11 A. . .

12 Q. But you're not a liar, are you?

13 A. . . (No response)

14 Q. Even if it means no time or less time? Whether
15 you get no time or less time doesn't even effect what
16 you say when you put your hand on that Bible on that
17 witness stand, does it?

18 A. . .

19 Q. I don't have anything further.

20 THE COURT: Any Redirect?

21 SOLICITOR: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. Mr. Dawkins, I need to ask you this so that we can
25 be clear. Can you read?

MR. DAWKINS ON REDIRECT

1 A. Yes.

2 Q. The statement Mr. Barr showed you during his ques-
3 tions, do you still have that statement up there with
4 you?

5 A. Yes, maam.

6 Q. How many pages do you have up there?

7 A. Five.

8 Q. All right. Let me just give you my copy of it
9 then. Does this appear to be a copy of the statement
10 you gave to law enforcement back on December 31st?

11 A. Yes.

12 Q. Of 2008?

13 A. Yes, maam.

14 Q. Look at the first page, if you will, for me. What
15 is the date of that statement?

16 A. Thirty-first.

17 Q. What month and what year?

18 A. December of 2008.

19 Q. The 31st of December, 2008, and at what time?

20 A. Three ten.

21 Q. A.M. or P.M.?

22 A. A.M.

23 Q. Okay, so three ten A.M., and we've heard testimony
24 this incident happened a little after midnight. So this
25 was three hours later?

MR. DAWKINS ON REDIRECT

1 A. Yes, maam.

2 Q. Okay. Now, three hours later you gave a statement
3 to law enforcement regarding your involvement in this
4 case. Is that right?

5 A. Yes, maam.

6 Q. All right, and other than coming to Court and see-
7 ing me in Court, have you known me? Have you known me
8 before?

9 A. Just coming to Court and today.

10 Q. Is that the only connection that you have had with
11 me?

12 A. Yes, maam.

13 Q. Was I there in the room with you when you gave
14 that statement to law enforcement?

15 A. No, maam.

16 Q. Did I offer you anything three hours after this
17 crime was committed when you gave that statement?

18 A. No.

19 Q. And when you gave that statement, how did you get
20 along with Mr. Matthews?

21 A. . .

22 Q. Were you all good friends? Had you had any beef
23 with him? How did you get along with him when you gave
24 that statement?

25 A. We chilled.

1 Q. Sir?

2 A. Chilled.

3 Q. That was somebody you chilled with?

4 A. Yes, maam.

5 Q. Did you have any bad feelings toward him when you
6 gave the statement?

7 A. No, maam.

8 Q. Sir?

9 A. No, maam.

10 Q. All right, and when you gave that statement to law
11 enforcement three hours later, you obviously felt you
12 had been involved with him in planning this robbery?

13 A. Me and Vinny and Antwine.

14 Q. You and Vinny and Antwine?

15 A. Yes, maam.

16 Q. Now, Mr. Barr asked you about page one of that
17 statement. He asked you if you mentioned anything about
18 the planning of the robbery on page one, and you said
19 you did not. Is that right?

20 A. Yes, maam.

21 Q. On page one -- what are you talking about there on
22 page one?

23 A. . . .

24 Q. Are you just giving your personal information?

25 A. Yes, maam.

MR. DAWKINS ON REDIRECT

1 Q. Your birth date?

2 A. Yes, maam.

3 Q. Your address? Right?

4 A. Yes, maam.

5 Q. And on page two, did you mention anything or not
6 about -- what do you talk about on page two?

7 A. . .

8 Q. Are they giving you your Miranda Warnings on page
9 two?

10 A. Yes, maam.

11 Q. What's on page three?

12 A. . .

13 Q. Are you still getting your Miranda Warnings on
14 page three?

15 A. Yes, maam.

16 Q. And Mr. Barr asked you about page four and he
17 directed you to line 23. Is that when you all are kind
18 of getting into the facts of the case?

19 A. Yes, maam.

20 Q. Okay. Now, turn with me to page seven of your
21 statement. I would call your attention to lines ten
22 through 16 of the statement.

23 A. Yes, maam.

24 Q. Right before that does Investigator Lail ask you
25 about the planning of this crime?

MR. DAWKINS ON REDIRECT

1 A. . .

2 Q. On line nine, does she ask you about that?

3 A. Yes.

4 Q. Tell me what you told her, starting then on line
5 ten.

6 A. . .

7 Q. Can you read that?

8 A. Yes, maam. It was . .

9 Q. Now, I need you to speak up for me. Please start
10 again.

11 A. (Witness reading from statement in an inaudible
12 voice)

13 Q. Okay, let me -- you indicated that you told Inves-
14 tigator Lail, he was like, I know where we can get a
15 little bit of change; just follow my lead.

16 Who were you talking about when you said he knew
17 where we could get some change?

18 A. Melvin.

19 Q. Okay. He said, we can go rob and that's it?

20 A. Yes, maam.

21 Q. Did you tell Investigator Lail he was like, Twine,
22 you drive the car; you ain't got nothing else to do.
23 Is that what you told her?

24 A. Yes, maam.

25 Q. Did you also say, let me handle this . .

MR. DAWKINS ON REDIRECT

1 MR. BARR: Your Honor, I would object to this method
2 of Redirect. Of course, I asked the witness about the
3 statement, but what the Prosecutor is doing now is to
4 simply have the witness repeat what he said on that
5 particular occasion.

6 I asked the witness about the statement by way of
7 impeachment. He is now reading what . .

8 SOLICITOR: Judge, he opened the door when he asked
9 him about the statement in order to give the jury the
10 impression that the witness never said anything about
11 Twine, and that is . .

12 MR. BARR: Your Honor, I object to the Solicitor
13 testifying. She is testifying as well as making an im-
14 proper argument.

15 THE COURT: I'm going to allow it.

16 BY SOLICITOR:

17 Q. When you gave your statement that night, did you
18 tell law enforcement that Mr. Antwine Matthews was in-
19 volved in the planning and that he drove the car?

20 A. Yes, maam.

21 Q. Now, also, you mentioned that you have a nickname?

22 A. Yes, maam.

23 Q. What is your nickname?

24 A. Powder.

25 Q. All right. So we've got Powder, Twine and Vinny?

MR. DAWKINS ON REDIRECT

1 A. Yes, maam.

2 Q. You mentioned that the Defendant lived in -- did
3 you tell me Hollywood?

4 A. Yes, maam.

5 Q. Who does he live there with?

6 A. A friend, as far as I know.

7 Q. Does he have a nickname too?

8 A. Yes, maam.

9 Q. What is his nickname?

10 A. (Inaudible).

11 Q. Do you know his real name?

12 A. Yes.

13 Q. What is . . .

14 MR. BARR: Your Honor, I object. We've gone way
15 behind Cross Examination, going into everybody's nick-
16 names and this is somebody that is a whole new party.

17 SOLICITOR: Judge, he asked him on Cross Examina-
18 tion where the Defendant lived. I'm just following up
19 on that, where he lived and who he lived with. That's
20 all.

21 MR. BARR: I didn't ask anything about nicknames.
22 This is the first time we've heard all this.

23 THE COURT: Objection is sustained.

24 BY SOLICITOR:

25 Q. Now, Mr. Barr asked you whether or not you had ever

1 talked with Vinny, and you indicated -- I think he said
2 with Melvin Segars, and you said you talked with him
3 when you all were back there. Is that right, or did I
4 misunderstand?

5 A. Where?

6 Q. In the back.

7 A. In the back?

8 Q. Yes, sir. Or any point in time?

9 A. . . .

10 Q. Did you ever talk to Melvin Segars after this hap-
11 pened?

12 A. No.

13 Q. You all were in jail?

14 A. That's right.

15 Q. Now, did you ever talk with Antwine Matthews to-
16 day about this case?

17 A. No.

18 Q. Sir, you were asked about whether or not you got
19 any time? You remember Mr. Barr asked you that ques-
20 tion?

21 A. Yes.

22 Q. You have pled guilty, is that correct?

23 A. Yes, maam.

24 Q. You haven't been sentenced yet, is that correct?

25 A. Yes, maam.

MR. DAWKINS ON REDIRECT

1 Q. Now, what is your understanding regarding the
2 State making any recommendation in this case?

3 A. . .

4 Q. Was there a conversation about the number of years
5 that are recommended?

6 A. Ten.

7 Q. Ten years?

8 A. Yes, maam.

9 Q. That was the recommendation that you understood,
10 ten years?

11 A. That's right.

12 Q. So it's not like you are getting ready to go home,
13 is it?

14 A. No.

15 Q. And you were asked about as you are testifying
16 here today whether you have any ill will or have had
17 any misunderstanding with Mr. Matthews?

18 A. No, maam.

19 Q. Do you want to help him or hurt him today?

20 A. No.

21 Q. That's all the questions I have for you.

22 THE COURT: Mr. Barr?

23 MR. BARR: I don't have any further questions.

24 THE COURT: You can step down.

25 (Witness excused from stand)

1 THE COURT: Please approach.

2 (Conference at the bench between counsel and the
3 Court off the record)

4 THE COURT: All right.

5 SOLICITOR: Judge, if I could put up one brief
6 witness before we recess today?

7 THE COURT: All right.

8 SOLICITOR: Your Honor, the State would call Seth
9 Scott.

10 SETH SCOTT, being duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Please state your name.

15 A. Seth Scott.

16 Q. All right, and you have a uniform on. Can you
17 kind of tell the jury a little bit about yourself, where
18 you work and what you do?

19 A. My name is Seth Scott, and I've been employed by
20 the Williamsburg County Sheriff's Office since 2006.
21 I'm a road deputy.

22 Q. I'm sorry.

23 A. I'm a road deputy.

24 Q. Tell me what that means.

25 A. I patrol and answer calls, complaints.

MR. SCOTT ON DIRECT

1 Q. Are you a certified police officer?

2 A. Yes, maam.

3 Q. All right, and currently are you working night
4 duty?

5 A. Yes, maam.

6 Q. What about back on the night of December 30th,
7 2008, leading up to the morning of the 31st? Were you
8 working night duty then?

9 A. Yes, maam.

10 Q. And back on that date did you see the Defendant,
11 Antwine Matthews?

12 A. Yes, maam.

13 Q. Tell us where it was that you saw him.

14 A. I saw him when I pulled into

15 . It's the first trailer on the left as you turn
16 down.

17 When I arrived at the scene, he was with another
18 subject, and his friend came to me and told me he had
19 been shot.

20 Q. All right. When you say his friend, do you know
21 who that person was?

22 A. At that time I didn't get his name. I concentrated
23 on -- I was more concerned on getting him help with his
24 injuries and stuff like that.

25 Q. I see. When his friend said he had been shot, did

MR. SCOTT ON DIRECT

1 you see or did it appear that he had been shot?

2 A. Yes, he did have a puncture wound that appeared
3 to look like a gunshot wound on his abdomen.

4 Q. Okay. Was he inside the house or outside the
5 house when you arrived there?

6 A. To my recollection, he was on the steps or coming
7 through the door when I got to him. I asked him if he
8 wanted to get treatment for his injuries, but he said
9 he wanted to wait for EMS to arrive.

10 Q. Okay. All right. Do you know who made the call
11 about the fact that he had been shot?

12 A. That I wouldn't know.

13 Q. Okay. Now, was he in custody that night?

14 A. No, maam.

15 Q. All right. So you came to him and you observed
16 that he had been shot and he told you he had been shot.

17 What, if anything, did you say to him?

18 A. I asked him who shot him, and he said he didn't
19 know. I also observed him -- there was a strong odor
20 of marijuana coming from his person, and I asked him
21 where it happened. He said he didn't know.

22 Q. Wait one minute. You asked him who shot him,
23 and he said what?

24 A. He didn't know.

25 Q. You asked him where it had happened and he said

MR. SCOTT ON DIRECT

1 what?

2 A. He said he didn't know.

3 Q. Did he appear to have understood your questions
4 to him?

5 A. Yes, maam. I asked him several times.

6 Q. Okay. Was EMS out on the scene that night?

7 A. They arrived. Yes, maam.

8 Q. Who got there first, you or EMS?

9 A. Me.

10 Q. Now, when you were asking him questions and he
11 said he did not know, did it appear that he was in some
12 sort of shock or he didn't understand you, or was he
13 having problems communicating?

14 A. . .

15 MR. BARR: Objection, Your Honor. The witness has
16 no qualified medical training to give that kind of an
17 opinion.

18 THE COURT: That objection is sustained.

19 SOLICITOR: I'm not asking for a medical opinion,
20 just what he saw.

21 THE COURT: You may say what you saw.

22 A. Yes, from my opinion he seemed to understand what
23 I was saying. I was asking him and his friend at the
24 same time because I was trying to find out what his
25 situation was.

MR. SCOTT ON DIRECT

1 Q. Okay. What kind of demeanor or state of mind was
2 the friend in? I mean, that's a pretty jarring event.

3 A. He was in good shape.

4 Q. Do you know what time it was that you got out to
5 the house?

6 A. I don't recall right now. I don't recall what
7 the exact time was.

8 Q. Do you know whether -- either you do or you don't
9 -- do you know whether it was before midnight or after
10 midnight?

11 A. I wouldn't know right off the top of my head.

12 Q. That's all the questions I have.

13 THE COURT: Cross examine.

14 MR. BARR: Just a few questions.

15 CROSS EXAMINATION

16 BY MR. BARR:

17 Q. You found out that he had been shot?

18 A. Yes, sir.

19 Q. Of course, shooting a man is -- unless in self
20 defense, that is still illegal in Williamsburg County,
21 isn't it?

22 A. Sir? Yes, sir.

23 Q. I mean, unless it was an accident or something
24 like that.

25 Did you go further in the course of your

MR. SCOTT ON CROSS

1 investigation to inquire and discover how he had gotten
2 shot?

3 A. Like I said, while I was trying to stop the
4 bleeding, I was asking him where he got shot and how
5 he got shot, and his statement was that he didn't know
6 how or where. I was asking him and his friend.

7 Q. So you haven't done any follow-up?

8 A. No.

9 Q. You are not familiar with any of the facts of the
10 case?

11 A. Not other than what I was told.

12 Q. When you found out he was shot, you didn't take
13 it upon yourself to find out how the man got shot?

14 A. No, it was turned over to somebody else. The in-
15 vestigators.

16 Q. Investigators?

17 A. Yes.

18 Q. But you didn't do anything else?

19 A. I assisted the investigator in taking photographs
20 after he had gotten to the house, but there was another
21 location. I'm not sure of the location, but there
22 was a third person.

23 Q. Do you know -- you didn't get a chance to meet
24 anybody else?

25 A. If I'm not mistaken -- I'm not certain but I don't

MR. SCOTT ON CROSS

1 believe the person was at home, but I remember there
2 was another young man.

3 Q. All right. You don't have a recollection of hav-
4 ing ever seen Mr. Ervin Cooper?

5 A. No, sir.

6 Q. Thank you.

7 THE COURT: Redirect?

8 SOLICITOR: No further questions.

9 THE COURT: All right, you may step down.

10 (Witness excused from stand)

11 THE COURT: All right, ladies and gentlemen, we
12 are going to recess for the day. I would ask that you
13 return at ten tomorrow morning and go to your jury room
14 when you get to the Courthouse.

15 See you tomorrow morning, and please do not discuss
16 the case or allow anyone to discuss it with you.

17 (Jury rexcused for the evening recess)

18 THE COURT: Anything to take up at this time?

19 SOLICITOR: Not from the State?

20 MR. BARR: No, sir.

21 THE COURT: Then I'll see you tomorrow morning.

22 (Whereupon, the Court stood in recess until May 13,
23 2010, when the case continued)

24 THE COURT: Good morning. Bring in the jury,
25 please.

1 (Jury returned to Courtroom)

2 THE COURT: Call your next witness, please.

3 SOLICITOR: May it please the Court, we'd call
4 Kimberly Hannah.

5 KIMBERLY HANNAH, being duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR:

9 Q. Maam, can I get you to state your name for me?

10 A. Kimberly Hannah.

11 Q. And, Ms. Hannah, were you subpoenaed to testify in
12 this case?

13 A. Yes, I was.

14 Q. Okay, and how old are you?

15 A. Eighteen.

16 Q. And you live in Lake City?

17 A. That's correct.

18 Q. And who do you live in Lake City with?

19 A. My mother.

20 Q. All right. Ms. Hannah, do you know the Defendant,
21 Antwine Matthews?

22 A. I do.

23 Q. Tell the jurors how you know him.

24 A. I've known him for (inaudible).

25 Q. How long have you known him?

MS. HANNAH ON DIRECT

- 1 A. About three years.
- 2 Q. Okay. Ms. Hannah, let me take you back, if I can,
- 3 to the afternoon of December 30th, 2008. Do you remem-
- 4 ber that day?
- 5 A. Yes, I do.
- 6 Q. Were you out of school during that time?
- 7 A. Yes, I was.
- 8 Q. Why were you out of school?
- 9 A. We were on spring break -- I mean, Christmas
- 10 break then.
- 11 Q. All right. Now, on that day did you see Mr.
- 12 Matthews?
- 13 A. I did.
- 14 Q. Now, how is it you came to see him the first time
- 15 that day?
- 16 A. He came to my house.
- 17 Q. Were you expecting him?
- 18 A. Yes, I was.
- 19 Q. And how did he know to come to your house? Had
- 20 you had a conversation about that?
- 21 A. Yes, we did.
- 22 Q. How did that conversation come about?
- 23 A. He called me and asked what I was doing, and asked
- 24 if he could come over and I said okay.
- 25 Q. Okay. Now, when he came to your house, do you

MS. HANNAH ON DIRECT

- 1 know about what time it was?
- 2 A. It was about four.
- 3 Q. Okay, and where was your mother?
- 4 A. She was at work.
- 5 Q. When he came to your house, was he alone?
- 6 A. No, he was not.
- 7 Q. Who was he with?
- 8 A. He was with Powder and Vinny.
- 9 Q. Powder and Vinny?
- 10 A. That's correct.
- 11 Q. Did you know their real names?
- 12 A. No, I did not.
- 13 Q. All right, and how did he get to your house?
- 14 A. He drove his car.
- 15 Q. And prior to December 30, 2008, had you ever seen
- 16 his car before?
- 17 A. Yes, I had.
- 18 Q. What kind of car was it?
- 19 A. It was a white Cadillac.
- 20 Q. Cadillac? Okay. Would you recognize it if you
- 21 saw a picture of it?
- 22 A. I think so.
- 23 Q. Kimberly, I'm going to show you what has been
- 24 marked as State's Exhibit for identification Numbers 7
- 25 through 17. Do you recognize what is depicted in those

MS. HANNAH ON DIRECT

1 photographs?

2 A. I recognize the car.

3 Q. The Defendant's vehicle?

4 A. Yes.

5 Q. Is that the car you saw that morning?

6 A. Yes.

7 SOLICITOR: Judge, we would move State's Exhibits
8 7 through 17 in evidence at this time.

9 THE COURT: Mr. Barr?

10 MR. BARR: No objection.

11 THE COURT: Admitted.

12 (Photographs of car entered in evidence without
13 objection as State's Exhibits 7 through 17)

14 BY SOLICITOR:

15 Q. Ms. Hannah, what happened when Antwine and the
16 others came to your house on December 30, 2008?

17 A. I got in the car and went with them from Lake
18 City to Kingstree.

19 Q. When you got in the car and went from Lake City
20 to Kingstree, who was in the car?

21 A. Powder and Vinny.

22 Q. What about Antwine?

23 A. He was driving.

24 Q. All right, and where did you go?

25 A. We went to a house.

MS. HANNAH ON DIRECT

1 Q. Had you ever been to that house before?

2 A. No, I had not. It was a trailer.

3 Q. All right. When you came to the house, were the
4 same three individuals with you?

5 A. Yes.

6 Q. And why did you all go to the house that day?

7 A. They wanted to go there to chill out and have some
8 fun.

9 Q. Okay. Were you using drugs that day?

10 A. No, I was not.

11 Q. Was anyone else using drugs that day?

12 A. Not as I know of.

13 Q. Now, how many bedrooms were in the trailer?

14 A. One, as I know of.

15 Q. Did you go in that bedroom?

16 A. Yes, I did.

17 Q. And did you and Antwine have intercourse at that
18 time?

19 A. Yes, we did.

20 Q. Okay. Tell me what happened while you were in the
21 bedroom? Did you notice anything unusual?

22 A. I noticed a gun on the nightstand right by the
23 bed.

24 Q. All right, and can you kind of describe the gun?

25 A. Not really. It was black.

MS. HANNAH ON DIRECT

1 Q. Do you know anything about guns?

2 A. No, I don't.

3 Q. You have any idea what kind of caliber it was or
4 anything like that?

5 A. No, I don't.

6 Q. Now, when you first noticed that gun, where was
7 Twine?

8 A. In the bedroom.

9 Q. Okay. How long did you all stay at the house?

10 A. Probably about three hours.

11 Q. Now, where did you all go when you left the house?

12 A. We drove and went to my house.

13 Q. Did you make any stops along the way?

14 A. Yes, we stopped at McDonald's.

15 Q. Now, tell me about the drive back from Kingstree
16 to your house in Lake City?

17 A. I noticed the gun again in the car, and I asked
18 Twine about it.

19 Q. You said you noticed -- was it the same gun you
20 saw in the house?

21 A. Yes, it was.

22 Q. On the night stand in the bedroom?

23 A. Yes.

24 Q. Where was the gun?

25 A. It was originally in Twine's lap and then he

MS. HANNAH ON DIRECT

1 grabbed it.

2 Q. When you say he, who are you talking about?

3 A. Twine.

4 Q. The gun was in Twine's lap?

5 A. Yes.

6 Q. Okay. You said it was originally in his lap and
7 then what happened?

8 A. Then right before we came to McDonald's he grabbed
9 the gun and put it down somewhere.

10 Q. All right. Now, was he still driving when you
11 went back to Lake City?

12 A. Yes, he was.

13 Q. Who was in the front passenger seat?

14 A. Powder.

15 Q. All right, and where were you in the car?

16 A. I was behind Powder.

17 Q. Where was Vinny?

18 A. He was beside me in the back seat.

19 Q. All right. Did you notice any items of clothing
20 in the back seat?

21 A. No, I didn't.

22 Q. Was anybody wearing a baseball cap during that day?

23 A. Yes, Twine was wearing a baseball cap.

24 Q. Did you notice any boxes or any kind of containers
25 in the vehicle?

MS. HANNAH ON DIRECT

1 A. I noticed some boxes when we first got to the
2 house.

3 Q. When you first got to the mobile home?

4 A. Yes.

5 Q. What kind of box?

6 A. It was a white square box.

7 Q. What was inside the box?

8 A. A CV scanner.

9 Q. Let me have you step down off the witness stand
10 for a minute.

11 A. (leaving witness stand)

12 Q. Stand right here. I'm going to show you what has
13 been admitted as State's Exhibit 17. Is that Twine's
14 vehicle?

15 A. Yes, it is.

16 Q. I'm going to show you what's been admitted as
17 State's Exhibit 16. Is that the rear of Twine's ve-
18 hicle?

19 A. That's the rear of the vehicle.

20 Q. Now, you said it was a Cadillac, but it appears to
21 be a Crown Victoria.

22 A. I thought it was a Cadillac.

23 Q. Showing you Number 15, does that appear to be in-
24 side the vehicle?

25 A. Yes.

MS. HANNAH ON DIRECT

1 Q. A side view of the vehicle?

2 A. Yes.

3 Q. Now, as far as that hole there in the vehicle,
4 was that there when you saw them earlier that day?

5 A. No.

6 Q. Okay. I'm going to show you what's been admitted
7 as State's 12. Does that appear to be the interior
8 of the vehicle?

9 A. Yes.

10 Q. All right, and using the pointer -- you can press
11 down on there -- show these jurors where Twine was in-
12 side the vehicle?

13 A. Right here.

14 Q. In the driver's seat?

15 A. That's right.

16 Q. And where was Powder?

17 A. Powder was here.

18 Q. Do you see a cap in there that looks like the cap
19 that Twine was wearing that day?

20 A. Yes, I do.

21 Q. Where is it?

22 A. Right here.

23 Q. Let me show you what's been admitted as State's
24 Number 9. Is that also the interior of the vehicle?

25 A. Yes.

MS. HANNAH ON DIRECT

1 Q. Let me give you this. Show us where you first saw
2 the gun in the vehicle.

3 A. Here.

4 Q. And did you see who actually took the gun from
5 the mobile home in Kingstree and put it in the car?

6 A. No, I didn't. I didn't even know there was a gun
7 in the car.

8 Q. Show me again where you saw the gun?

9 A. Right there.

10 Q. Now, there appears to be shattered glass inside
11 that photograph. Was there any shattered glass at the
12 time you were in the vehicle?

13 A. No.

14 Q. Tell us what that is. Tell us about what has been
15 admitted as Number 6. What do you see in the car?

16 A. This is the box with the scanner.

17 Q. Show the jurors where you were in the back seat of
18 the vehicle.

19 A. Here.

20 Q. Behind the front passenger?

21 A. Yes.

22 Q. Is this a closer shot?

23 A. Yes.

24 Q. Have a seat back up there.

25 A. (Returning to witness stand)

MS. HANNAH ON DIRECT

1 Q. Now, when you returned to your home in Lake City,
2 did you have any more contact with Antwine that day?

3 A. No.

4 Q. When did you find out -- well, let me back up be-
5 fore I ask you that.

6 Tell us what happened after they left the house.
7 Did you notice anything unusual about the house after
8 they left?

9 A. My wallet was missing.

10 Q. Do you know who took your wallet?

11 A. No, I don't.

12 Q. Was it there before Twine, Powder and Vinny came
13 to pick you up?

14 A. Yes.

15 Q. All right. Now, and I don't mean to pry too much,
16 but you indicated you had sexual intercourse with Twine
17 that day.

18 Did you have a boyfriend/girlfriend kind of rela-
19 tionship with him where you all spoke every day or did
20 you all just have sort of like an open relationship?

21 A. It was more like an open relationship.

22 Q. When did you find out that Antwine and Vinny and
23 Powder were wanted for questioning in an armed robbery?

24 A. I was at school that day.

25 Q. And when was that?

MS. HANNAH ON DIRECT

1 A. It was my birthday.

2 Q. And when was your birthday?

3 A. . . .

4 Q. So you would have gone back to school?

5 A. Yes.

6 Q. All right.

7 A. And one of the sheriffs or police officers came
8 and asked me did I know Antwine. I didn't know him by
9 that name, but he said do you know Twine, and I said,
10 yes, I do.

11 And he was telling me that a pill bottle . .

12 MR. BARR: Objection, Your Honor.

13 THE COURT: Sustained.

14 SOLICITOR: Your Honor, we would offer this not for
15 the truth of the matter asserted.

16 I'm just offering it to explain why she was ques-
17 tioned. We would submit it is not hearsay. I'm not
18 offering it as a statement by law enforcement for the
19 truth of the matter asserted.

20 THE COURT: Again?

21 SOLICITOR: I'm not asking it for the truth of the
22 matter asserted. I'm not asking whether law enforce-
23 ment actually found the pill bottle, but I'm simply
24 asking it to explain why she was being questioned.

25 THE COURT: Approach, please.

MS. HANNAH ON DIRECT

1 (Conference at the bench between counsel and the
2 Court off the record)

3 BY SOLICITOR:

4 Q. All right, Kimberly. You said you had a conver-
5 sation with law enforcement back on January 6 of '09?

6 A. Yes.

7 Q. All right, and did you make any statements to law
8 enforcement about your mom's pill bottle?

9 A. Yes, I did.

10 Q. Did you have a conversation with her about your mom's
11 pill bottle?

12 A. Yes.

13 Q. Did you explain to law enforcement what, if any-
14 thing, you knew about Antwine, Vinny and Powder?

15 A. Yes, I did.

16 Q. Did you tell her about being with those three in-
17 dividuals back on December 30, 2008?

18 A. Yes, I did.

19 Q. Now, when you were questioned on January 6th, were
20 you aware that Mr. Matthews had been shot and was in
21 the hospital?

22 A. No, I wasn't.

23 Q. And you certainly are not here to offer any testi-
24 mony regarding the attempted armed robbery or anything
25 like that?

MS. HANNAH ON DIRECT

1 A. No, I am not.

2 Q. At any point in time during the course of that day
3 when you were with Twine, Vinny and Powder, did you
4 ever see the gun in anybody else's possession other
5 than his?

6 A. No, I did not.

7 Q. Did you ever see anybody else with the gun, other
8 than him?

9 A. No.

10 Q. How many guns did you see that day?

11 A. One.

12 SOLICITOR: Beg the Court's indulgence, Your Honor.

13 THE COURT: Okay.

14 (Brief pause in the proceeding)

15 BY SOLICITOR:

16 Q. Ms. Hannah, please answer any questions Mr. Barr
17 might have for you.

18 THE COURT: Mr. Barr.

19 CROSS EXAMINATION

20 BY MR. BARR:

21 Q. Maam, your last name is what now?

22 A. Hannah.

23 Q. Pardon me?

24 A. Hannah.

25 Q. Hannah, and you were initially contacted by the

MS. HANNAH ON CROSS

1 law enforcement officer for Williamsburg County. Do
2 you know the name of the person who contacted you?

3 A. No, I didn't.

4 Q. Was it a male or female?

5 A. Female.

6 Q. Female?

7 A. That's right.

8 Q. And at the time that she contacted you, she intro-
9 duced herself as being from the Williamsburg County
10 Sheriff's Department?

11 A. That's right.

12 Q. And did she ask you to give her a statement?

13 A. No, she asked me questions.

14 Q. But you did give her a statement?

15 A. That's correct.

16 Q. Do you have a copy of your statement?

17 A. No, sir.

18 Q. Was it recorded?

19 A. Yes, it was.

20 Q. And after she recorded your statement, did you
21 tell her during the course of the statement that you
22 knew about this incident?

23 A. Yes, I did.

24 (Brief pause in proceeding)

25 BY MR. BARR:

MS. HANNAH ON CROSS

1 Q. I have a matter to take up.

2 (Whereupon, the jury was excused from the Court-
3 room)

4 THE COURT: All right.

5 MR. BARR: Your Honor, in January of 2009 we served
6 and filed a Rule Five motion for discovery, that we
7 be provided with the substance of any and all oral
8 statements that the State intended to be used as evi-
9 dence at the trial against this Defendant.

10 We asked that we be provided with the substance
11 of any statement, oral, written or recorded by any
12 State's witnesses.

13 Your Honor, this young lady has testified that she
14 provided the chief prosecuting witness with a recorded
15 statement, and we would submit that not having been
16 provided with the oral statement or any subsequent one
17 by the prosecutor that we have now been surprised by
18 the prosecutor.

19 The rules have been violated, and unless the prose-
20 cution can show some reason for not complying with the
21 rules, then we would move for a mistrial.

22 SOLICITOR: Your Honor, let me just say for the
23 record that Ms. Lail will testify that the statement of
24 Ms. Hannah was not recorded. She maintains she never
25 got a recorded statement from Ms. Hannah.

1 In addition, after a supplemental request, I in-
2 cluded a supplemental report of Investigator Lail which
3 indicated that she spoke with the young lady and it in-
4 dicates everything the young lady tells her when she
5 spoke with her at the Lake City High School.

6 In that statement, the young lady tells her that
7 she received a phone call from Defendant Matthews, ask-
8 ing permission to come to her house; that he came to
9 her house with these other two young men; and the other
10 events that she has testified to today.

11 Further, that she had seen the gun on the front
12 floorboard; that she asked what he was doing with a gun
13 but nobody answered her.

14 She stated the only person she saw with the gun
15 was Antwine. She also said she had seen it on the night
16 stand in the bedroom.

17 That was the substance of her statement as she has
18 testified here. Nothing here has been contradictory,
19 Your Honor. Defense counsel has had that supplemental
20 report of Investigator Lail, so there was no surprise.

21 Under the Rules of Criminal Procedure, Rule Five,
22 we are only required to disclose statements of the De-
23 fendant or oral statements of the Defendant that are
24 made to a person known to be a prosecution agent.

25 Kimberly is not a prosecution agent so we are not

1 required to turn over that statement, but we did pro-
2 duce the supplemental report, Your Honor.

3 MR. BARR: Judge, of course, it would be our posi-
4 tion with respect to this young lady who testified --
5 if she testified truthfully, the statement was being
6 recorded, so I am interested in knowing what happened
7 to the original recording, the record, of her state-
8 ment.

9 (Brief pause in the proceeding)

10 (The Court reading rapidly Rule Five, Section Two)

11 THE COURT: The State has indicated they do not
12 have such a statement. If such a statement did in fact
13 exist, the State would be required to produce it to
14 the defense for cross examination purposes.

15 The witness has said her statement was recorded,
16 but the investigator says it was not recorded, accord-
17 ing to the prosecutor.

18 All things being considered, I find no Rule Five
19 violation in this case, so I deny your motion at this
20 time.

21 Let's take about five minutes.

22 (Court took brief recess and the matter was then
23 resumed)

24 THE COURT: All right, please bring the jury.

25 (Jury returned to Courtroom)

MS. HANNAH ON CROSS

1 (Witness resumed witness stand)

2 THE COURT: You may continue.

3 CROSS EXAMINATION CONTINUED

4 BY MR. BARR:

5 Q. Ms. Hannah, we were talking about the law enforce-
6 ment officer that came over to school and spoke with
7 you, and I believe you said at one point that you had
8 thought your statement was recorded?

9 A. I didn't mean to say that.

10 Q. You didn't mean to say that?

11 A. No.

12 Q. And why did you think you were being recorded?

13 A. I saw a tape recorder.

14 Q. But you don't know whether it was on or off?

15 A. No.

16 Q. So you don't know whether or not your statement
17 was being recorded?

18 A. That's right.

19 Q. But you eventually got with Antwine Matthews on
20 this day, and you said he came to your house?

21 A. Yes, sir.

22 Q. And he told you he was coming over?

23 A. That's right.

24 Q. Did he tell you he was coming to pick you up?

25 A. No.

MS. HANNAH ON CROSS

1 Q. He did not say he was coming to pick you up?

2 A. No.

3 Q. What did you think he was coming over to your house
4 for?

5 A. Coming to see me.

6 Q. And when he got there, the plan had changed?

7 A. Yes.

8 Q. And you decided to go with him?

9 A. That's right.

10 Q. Was anybody at your house when you left?

11 A. No.

12 Q. So you left home -- approximately what time was
13 that?

14 A. Four o'clock.

15 Q. Four in the afternoon?

16 A. That's right.

17 Q. When you left home, did you leave a note for your
18 mother?

19 A. No, I did not.

20 Q. So you left home and got in the car with these
21 three young men?

22 A. That's right.

23 Q. You didn't tell anybody where you were going?

24 A. No, I did not.

25 Q. But you went -- did you know where you were going

MS. HANNAH ON CROSS

1 before you got there?

2 A. No, I did not.

3 Q. Did you know where you were going after you got
4 there -- this house you were in?

5 A. No, I didn't know whose house it was.

6 Q. Now, the house that you went to, you didn't know
7 who lived there?

8 A. No.

9 Q. You really don't know who lives at that house?

10 A. No, I do not.

11 Q. You didn't tell Ms. Lail that you went to Vinny's
12 brother's house?

13 A. I told her it may have been Vinny's brother's
14 house.

15 Q. So you did know whose house you went to?

16 A. No.

17 Q. You told her it was Vinny's brother's house?

18 A. May have been.

19 Q. Oh. You know who Vinny is?

20 A. Yes, I know who he is.

21 Q. And you know who his brother is?

22 A. No.

23 Q. You met him when you went to his house?

24 A. No.

25 Q. But you and Mr. Matthews went in the bedroom and

MS. HANNAH ON CROSS

1 had relations?

2 A. Yes.

3 Q. And you had an open relationship with him?

4 A. Yes.

5 Q. Did you have an open relationship with Vinny?

6 A. No.

7 Q. Did you have an open relationship with Powder?

8 A. No.

9 Q. When you went in the house, in Vinny's brother in
10 law's house, how many people from the vehicle went in
11 the house?

12 A. All of us.

13 Q. So all three of them and you went in?

14 A. Yes.

15 Q. Now, you told Ms. Barr that you went in the bed-
16 room?

17 A. That's right.

18 Q. And you said you saw a gun laying in there?

19 A. That's right.

20 Q. Now, who was the first male that came into that
21 bedroom?

22 A. Twine.

23 Q. Twine?

24 A. That's right.

25 Q. Who was the second male who came in?

MS. HANNAH ON CROSS

1 A. Powder.

2 Q. And who was the third male that came in?

3 A. There wasn't another one.

4 Q. No other male came in?

5 A. No.

6 Q. So Twine came in and Powder came in?

7 A. That's right.

8 Q. And this gun that you saw, you don't know where
9 it came from and you never saw it before, but it was in
10 the bedroom when you got there?

11 A. That's right.

12 Q. And you said you and Twine went in there for sex-
13 ual intercourse?

14 A. That's right.

15 Q. Did you ever see Twine go back in that bedroom?

16 A. No, I did not.

17 Q. Did he take the gun with him off the night stand?

18 A. I don't know.

19 Q. And Powder also came in there?

20 A. Yes.

21 Q. Now, did you have any physical contact with him?

22 A. No.

23 (NOTE: Short portion missing due to changing
24 of tape)

25 Q. Well, did you see Antwine put the gun on the

MS. HANNAH ON CROSS

1 nightstand?

2 A. No.

3 Q. So are we to assume that with respect to what you
4 may have seen or that you said you saw, that the gun
5 was in the room -- it was there when you went in?

6 A. It may have been.

7 Q. As far as you know, it was in there when you left?

8 A. That's correct.

9 Q. You really didn't see the gun in Antwine Matthews'
10 lap, did you?

11 A. That's incorrect.

12 Q. That's incorrect?

13 A. Yes.

14 Q. Did you or did you not see it there?

15 A. Yes, I did.

16 Q. Did you say to Antwine, what are you doing with
17 that gun?

18 A. That's correct.

19 Q. Did you ask him that?

20 A. Yes, sir.

21 Q. And he gave no answer when you asked him that?

22 A. That's correct.

23 Q. Now, you could see this -- you were in the back
24 seat and you saw this box, so tell me how you learned
25 he had the gun and put it on the floor? How did you see

MS. HANNAH ON CROSS

1 that?

2 A. I could see when he put it on the floorboard.

3 Q. You saw him put it on the floorboard?

4 A. Yes.

5 (Brief pause in proceeding)

6 BY MR. BARR:

7 Q. Now, when you spoke with Investigator Lail, she
8 asked . .

9 SOLICITOR: Objection, Your Honor. We're going to
10 object to anything she talked about with Investigator
11 Lail as being hearsay.

12 Q. Investigator Lail asked . .

13 SOLICITOR: Objection.

14 Q. Did you not tell Officer Lail that you asked them
15 what were they doing with a gun?

16 A. Yes.

17 Q. And nobody answered?

18 A. That's right.

19 Q. That's exactly what you told her?

20 A. That's correct.

21 Q. It sounds reasonable to me you would have asked
22 Antwine what he was doing with a gun in his lap, but
23 you didn't ask him that, did you?

24 A. No.

25 Q. And you saw the gun on the floor and that's why

MS. HANNAH ON CROSS

1 -- let's go back. If you had just seen Antwine with
2 the gun in his lap, you would have asked him what he
3 was doing with a gun in his lap. I mean, doesn't that
4 sound reasonable to you?

5 A. Yes.

6 Q. But you didn't ask him that, did you?

7 A. No.

8 Q. And that's because you never saw the gun on his
9 lap but it was after that when you saw the gun on the
10 floor, and that's when you asked them why they had a
11 gun?

12 A. . .

13 THE COURT: That was more than one question. You
14 can answer though if you can.

15 A. Yes.

16 MR. BARR: I'm finished with my questions, Judge.

17 THE COURT: Ms. Barr, any further questions?

18 SOLICITOR: Yes, sir.

19 REDIRECT EXAMINATION BY SOLICITOR:

20 Q. When you saw Investigator Lail at your school,
21 when did you tell her you saw the gun?

22 A. Twice.

23 Q. Did you tell her about seeing it on the floor-
24 board?

25 A. Yes.

MS. HANNAH ON REDIRECT

1 Q. Now, you met me for the first time a couple of
2 weeks ago, is that correct?

3 A. Yes, maam.

4 Q. And did you tell me about what had happened on
5 the 30th of December, 2008?

6 A. Yes, maam.

7 Q. And I understand it may be a little embarrassing,
8 but did you tell me at that time about having sex with
9 Powder?

10 A. Yes.

11 Q. Whose idea was it for you to have sex with Powder?

12 A. Antwine.

13 Q. What did he say?

14 A. Basically bring my home boy off.

15 Q. Basically bring my home boy off?

16 A. Yes.

17 Q. What does that mean?

18 A. That he was a good friend.

19 Q. A good friend?

20 A. Yes, maam.

21 Q. That's all the questions I have.

22 RECROSS EXAMINATION

23 BY MR. BARR:

24 Q. That wasn't the first time you had had sex with
25 Powder, was it?

MS. HANNAH ON RECROSS

1 A. . .

2 SOLICITOR: Objection. Relevance.

3 MR. BARR: She specifically asked her that.

4 SOLICITOR: I was asking her about what happened
5 that day.

6 THE COURT: Overruled.

7 BY MR. BARR:

8 Q. It wasn't the first time you had had sex with him,
9 was it?

10 A. No.

11 Q. Antwine didn't tell you to have sex with him when
12 you had sex with him on other occasions?

13 A. No.

14 Q. You did it because you wanted to do it?

15 A. That's right.

16 Q. Now, you see Ms. Lail back there?

17 A. I do.

18 Q. At some point during the course of this trial, she
19 will be on the witness stand.

20 SOLICITOR: Objection.

21 Q. Here's the question. I'm going to ask her whether
22 you told her you saw Antwine put the gun on the floor.

23 SOLICITOR: Same objection. Counsel can't testi-
24 fy here.

25 MR. BARR: I know that. Here's the question.

MS. HANNAH ON RECROSS

1 Q. I'm asking you, do you want to change what you
2 said earlier?

3 A. No.

4 Q. You don't want to change that?

5 A. No.

6 SOLICITOR: Objection, Your Honor.

7 THE COURT: Ask another question.

8 MR. BARR: Nothing further.

9 THE COURT: Step down, maam.

10 (Witness excused from stand)

11

12

13 NOTE: Margaret Sullivan is going to have to type the
14 balance of this transcript as there was an error with
15 the tapes.

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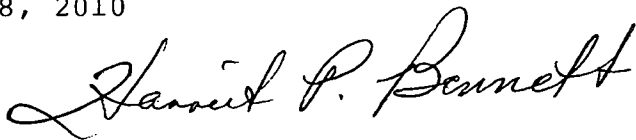
25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Official Court Reporter for
3 South Carolina Court Administration, do hereby certify
4 that the foregoing Volume One of the Transcript in this
5 case was prepared by me to the best of my ability from
6 the records of Margaret Sullivan, having been heard in
7 the Court of General Sessions for Williamsburg County
8 on May 12, 13, 14, 2010.

9 I FURTHER CERTIFY that I am neither of counsel nor
10 kin to any party to this matter, nor do I have any in-
11 terest in the same.

12 September 28, 2010

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State of South Carolina)
)
County of Williamsburg)
)

THE STATE OF SOUTH CAROLINA,
Plaintiffs

vs.

Partial Transcript of Record
09-GS-45-090

Antwine Matthews
Defendant

May 13, 2010

Before the Honorable Clifton Newman and the Honorable
D. Craig Brown, Judges.

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

Ms. Kimberly Barr,
Assistant Solicitor for the State

Mr. Charles D. Barr,
Attorney for Defendant

Margaret T. Sullivan,
Court Reporter

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1 MS. BARR: We would call investigator
2 Wayne McFadden.

3 Investigator Wayne McFadden,
4 Being first duly sworn, testified as follows:

5 Direct Examination by Ms. Barr:

6 Q Mr. McFadden, would you state your name
7 for me?

8 A Investigator Wayne McFadden.

9 Q And I need to make sure you speak up nice
10 and clear for me. Tell the jurors where you work.

11 A I am an investigator with the Williamsburg
12 County Sheriff's office.

13 Q Are you a certified police officer?

14 A I am.

15 Q How long have you been employed with the
16 police office?

17 A Approximately 10 years.

18 Q Investigator McFadden, were you working on
19 the night of December 30th 2008, leading up to the
20 morning of December 31st 2008?

21 A I was. I was the night shift supervisor.

22 Q Okay. Sir, did you respond to a shooting
23 at E.L. Cooper's Store?

24 A I did.

25 Q Where is his store located?

Investigator Wayne McFadden-direct by Barr

1 A The physical address is 276 and Sand Ridge
2 Road here in Kingstree.

3 Q That's located here in Williamsburg
4 County?

5 A That's correct.

6 Q If we're at the courthouse, how far is his
7 property from the courthouse?

8 A Give or take, 3 miles, 4 miles.

9 Q And, sir, who made that call to dispatch
10 concerning the shooting at the store?

11 A Mr. Cooper, the store owner.

12 Q And that's Mr. Cooper back here, is that
13 correct?

14 A Yes, ma'am.

15 Q He made the call?

16 A Yes, ma'am.

17 Q What time did the call come in to 911?

18 A Dispatch time was approximately 12:22.

19 Q 12:22 a.m.

20 A Yes, ma'am.

21 Q And what time did you arrive at the scene?

22 A 12:29.

23 Q Around 7 minutes later?

24 A Yes, ma'am.

25 Q I imagine that seemed forever to some

Investigator Wayne McFadden-direct by Barr

1 other folks. But when you got there, where was
2 Mr. Cooper?

3 A Inside the store.

4 Q And tell me what you observed when you got
5 to the scene.

6 A When I arrived, he was inside the store.
7 He was holding a revolver.

8 Q He was holding a gun when you got there?

9 A That's correct.

10 Q Still had it in his hand?

11 A Yes.

12 Q What was his state of mind like?

13 A Hysterical.

14 Q He was hysterical?

15 A Yes.

16 Q Well as a police officer, when you get
17 there, and somebody is holding a gun, what did you
18 do?

19 A I ordered him to place the handgun on the
20 counter.

21 Q Okay.

22 A And asked him to step back for a second.

23 Q Did he do that?

24 A Yes.

25 Q Did he comply with you?

Investigator Wayne McFadden-direct by Barr

1 A Yes.

2 Q What did he tell you?

3 A He told me that three guys---

4 THE COURT: Sir, you are going to need to
5 speak up if you want everyone to hear what you
6 say.

7 A He told me that three guys came in the
8 store and fired one shot at him. Attempted to rob
9 him.

10 Q He said three guys?

11 A Yes.

12 Q Did he admit to you that he fired in
13 response to them?

14 A Approximately two rounds.

15 Q At some point and time, was the
16 investigation of that incident turned over to
17 Investigator Lail?

18 A Yes, ma'am.

19 Q Now did you become aware that same night
20 concerning this Antwine Matthews being shot?

21 A Yes. While we were still processing the
22 scene at the store, we received an additional call
23 that there was a gunshot victim approximately two
24 miles down the road. Going about the same time we
25 were working the armed robbery complaint.

Investigator Wayne McFadden-direct by Barr

1 Q Now were those the only two incidences
2 involving the shooting in Williamsburg County that
3 night?

4 A Yes, ma'am.

5 Q You all later learned those two incidences
6 were connected.

7 A Yes. While at the store, I sent Deputy
8 Jeff Scott to the gunshot victim location. And he
9 related the name to me was Antwine Matthews.

10 Q Now, sir, did you see Mr. Matthews in the
11 vehicle that night?

12 A No, ma'am. I was given the description of
13 a white Crown Victoria with that name Antwine
14 Matthews.

15 Q Who was the vehicle registered to?

16 A We initially searched Antwine Matthews's
17 name through the DMV data base. And no vehicle
18 came up in his name. And so at that point, we
19 searched for his address. His address came back
20 in the Rock Hill community. Under Rock Hill,
21 South Carolina. And there was a Crown Victoria in
22 the name of Abigale Plowden.

23 Q Abigale Plowden was registered on it?

24 A Yes.

25 Q Who is she to Mr. Matthews?

Investigator Wayne McFadden-direct by Barr

1 A That's his mother.

2 Q Did Mr. Cooper ever get confused about the
3 number of people inside the store?

4 A No, he was certain it was three black
5 males.

6 Cross Examination by Mr. Barr:

7 Q Officer McFadden, you have been with the
8 Williamsburg County Sheriff's Department how long
9 now?

10 A Close to 10 years.

11 Q Close to 10 years?

12 A Yes.

13 Q You gotten good hearings from the
14 Sheriff's Department?

15 A Yes, sir.

16 Q And what is your rank now?

17 A Investigator.

18 Q Investigator. And what was your rank when
19 you started with the Sheriff's Department?

20 A Deputy.

21 Q Deputy?

22 A Yes, sir.

23 Q So you've been promoted.

24 A Yes, sir. Are you talking about
25 rankings---

Investigator Wayne McFadden-cross by Mr. Barr

1 Q No, I am talking about in terms of your
2 performance with the Sheriff's Department?

3 A Yes, sir.

4 Q Now as I understand it, you've had some
5 direct involvement in investigating this incident.
6 I call it an incident that took place at
7 Mr. Cooper's store. You've had direct
8 involvement---

9 A Yes, sir.

10 Q ---in investigating?

11 A Yes, sir.

12 Q Now would it be fair to say that with
13 respect to investigating the shooting as is done
14 by the officers of the Sheriff's Department, you
15 go off and you interview people that you find
16 directly involved and you ask them questions.

17 A That's correct.

18 Q And one of the reasons that you ask
19 questions is, you want to find out what exactly
20 took place, is that right?

21 A Yes, sir.

22 Q Because you might have to make a charge,
23 right?

24 A Yes, sir.

25 Q You might have to arrest somebody.

Investigator Wayne McFadden-cross by Mr. Barr

1 A Yes, sir.

2 Q You took an oath. Incidentally you did
3 took an oath. Do you remember taking an oath?
4 Did you take one?

5 A Yes, sir.

6 Q What did you swear to do?

7 A Uphold the law.

8 Q Uphold the law?

9 A Yes, sir.

10 Q And in the course of your upholding the
11 law in this case, you found a vehicle that you
12 thought had been involved in a shooting. It was
13 involved in a shooting because it had bullet holes
14 in it. Is that right?

15 A I am sorry?

16 Q It had bullet holes. The vehicle had
17 bullet holes in it.

18 A Yes, sir.

19 Q And so in order to find out about these
20 bullet holes, the first thing you wanted to do is
21 you want to find the owner of the vehicle. Right?

22 A Yes, sir.

23 Q And you had to do some calling and some
24 checking as you said. Because you were checking
25 on Antwine's name. And you weren't coming up with

Investigator Wayne McFadden-cross by Mr. Barr

1 anything. So you continued to check, and you
2 found out the vehicle was registered to his mother
3 who lives in Rock Hill.

4 A That's correct.

5 Q And you therefore concluded that Antwine
6 has his mother's vehicle?

7 A That's correct.

8 Q So that issue is solved.

9 A Yes, sir.

10 Q Now you say that when you came up on
11 Mr. Cooper that night, his state of mind, he was
12 hysterical.

13 A Yes, sir.

14 Q Hysterical. But you did talk to him.

15 A Did I talk to him?

16 Q Yes, sir.

17 A Yes, sir.

18 Q And he told you -- do know how long he had
19 been hysterical?

20 A In my asking him to put the revolver on
21 the counter, I just told him to stay in the corner
22 and calm down. Saying I have got to take
23 information from you. I gave him a few minutes to
24 calm down, and that's when I began taking
25 statements from him.

Investigator Wayne McFadden-cross by Mr. Barr

1 Q Do you know how long he had been
2 hysterical? You don't know, do you?

3 A Just guestimate. It took me about---

4 Q No, no, don't guess. Tell me whether you
5 know.

6 A It took me a few minutes.

7 Q Tell me whether you know how long he
8 was---

9 MS. BARR: Judge, I am going to object. I
10 would ask that counsel let him give his response
11 to the question before he interrupts him.

12 THE COURT: Pose the question, and then I
13 will hear your answer.

14 Q Do you know how long he had been
15 hysterical?

16 A It took me a few minutes to calm him down
17 to take a statement from him.

18 MR. BARR: And, Your Honor, I would ask
19 that you direct the witness to be responsive to
20 the questions. The question is, do you know how
21 long he had been hysterical.

22 A I couldn't give you the number. I just
23 tell you it took a few minutes before I could get
24 a statement.

25 Q So you don't know?

Investigator Wayne McFadden-cross by Mr. Barr

1 A I couldn't give you a number.

2 Q Does that mean, "I don't know."

3 MS. BARR: He has answered the question,
4 Judge.

5 MR. BARR: Your Honor, I will move on to
6 something else.

7 Q Let me ask you this much. Now you said
8 that he at least at some point he told you about
9 an attempted armed robbery and somebody fired a
10 shot at him?

11 A Yes, sir.

12 Q Now did he tell you that he saw who fired
13 the shot at him?

14 A He couldn't identify by name.

15 Q He couldn't?

16 A No, sir.

17 Q But he told you he saw somebody shoot at
18 him?

19 A That's what he said.

20 Q Pardon me?

21 A What he advised me was, when the guys came
22 in the store asking for candy, he turned his back
23 and that's when the gunshot went off.

24 Q So he didn't tell you he saw somebody
25 shoot at him?

Investigator Wayne McFadden-cross by Mr. Barr

1 A No, sir.

2 Q Now he was the only one there. And if
3 there was a shot fired, and he didn't see, the
4 only way you could know who fired the shot, would
5 be for somebody else to tell you. You would agree
6 with that.

7 A No, sir.

8 Q How are you going to know who shot? You
9 wasn't there. How are you going to know who did
10 the shooting?

11 A Because he identified Antwine as being one
12 of the individuals inside the store. He couldn't
13 say which one. He just said it was somebody
14 inside the store.

15 Q Now he didn't tell you that somebody did
16 the shooting, did he?

17 A He said that's when the guys came in. And
18 he turned his back, that's when the gunshot went
19 off.

20 Q Listen to my question. He didn't tell you
21 that he saw somebody inside the store did the
22 shooting, did he?

23 A I'll say he said when he turned his back,
24 the gunshot went off.

25 Q Listen to my question, and we won't have a

Investigator Wayne McFadden-cross by Mr. Barr

1 problem. I just want to know whether he told you
2 that he saw somebody shoot at him.

3 A He didn't identify anybody inside the
4 store.

5 Q So now in fact, he didn't tell you that
6 the shots that were fired came from inside the
7 store, did he?

8 A Did he tell me that?

9 Q I said he didn't tell you that.

10 A Yes, sir.

11 Q When did he tell you that?

12 A While I was taking the statement.

13 Q And I know if you took a statement to
14 something like that, you've got it written down
15 somewhere. You wrote it down. Now you wouldn't
16 trust your memory. Where have you got it written?

17 A No, sir. It's not in the report. That's
18 what he told me.

19 Q You mean to tell me something like the man
20 told you who did the shooting, or where the
21 shooting came from and that's not written in the
22 report?

23 A Mr. Barr, once again, he didn't identify
24 any of the three males as being the one shooting.

25 Q The fact of the matter is, he didn't tell

Investigator Wayne McFadden-cross by Mr. Barr

1 you that the shots were fired from inside the
2 store, did he?

3 A Yes, sir, he did.

4 Q Well then show me where you wrote that
5 down, saying that victim said shots came from
6 inside the store. I know that would be important
7 enough to write.

8 A Mr. Barr,---

9 Q Well did you write it?

10 A It's not in the report, sir.

11 Q Well it's not in the report. You
12 obviously said: "This isn't important, I won't
13 even write it down."

14 MS. BARR: Objection, counsel is
15 commenting not asking questions.

16 THE COURT: What is the question?

17 MR. BARR: This is cross examination.

18 THE COURT: What was the question?

19 Q Did you -- so you decided not to write it
20 down.

21 A No, sir. As a matter of fact, I didn't
22 decide to write it down.

23 Q But it's not written.

24 A I asked Mr. Cooper can he identify if the
25 shots came from inside or outside the store. He

Investigator Wayne McFadden-cross by Mr. Barr

1 said he believed it came from one the individuals
2 inside the store.

3 Q Officer McFadden, tell the Ladies and
4 gentlemen of this jury, you are familiar with this
5 case. Whether or not that it is written down
6 anywhere as a part of this investigation that
7 Mr. Cooper said a shoot came from inside the
8 store. Now tell us where that is.

9 MS. BARR: Objection. Asked and answered.

10 THE COURT: He said, no, it is not in the
11 report.

12 A Are you asking me a question?

13 Q I tell you. Well Let me ask you something
14 else. You said you were doing an investigation
15 and you wanted to find out about the shooting,
16 right?

17 A Yes, sir.

18 Q Now you said you took an oath to uphold
19 the law of the State of South Carolina. Which
20 includes Williamsburg County. Is that right?

21 A That's correct.

22 Q Now would you agree with me that if you
23 are doing that, you certainly want to make sure
24 that as an officer of the law that you make sure
25 that you seek justice for the citizens of this

Investigator Wayne McFadden-cross by Mr. Barr

1 county.

2 A Yes, sir.

3 Q And that justice that you are seeking is
4 not just something you dreamed up, but it's
5 according to the law and the books, isn't it?

6 A That's correct.

7 Q Now you found out that Mr. Matthews is
8 accused of being with the fellows or they all were
9 accused of trying to rob Mr. Cooper. Is that
10 right?

11 A Yes, sir.

12 Q And you found out, did you not, that at
13 some point, whoever it was, gave up on the notion
14 of the robbery, and took off running, trying to
15 get away. Did you find that out?

16 A Yes, sir.

17 Q And you also found out that after they
18 took off and ran, trying to get away, Mr. Cooper
19 leveled two shots, shooting the window out of the
20 store. Shooting at them as they were trying to
21 run away.

22 A Yes, sir.

23 Q You found that out?

24 A Yes, sir.

25 Q Now did it occur to you that that's a

Investigator Wayne McFadden-cross by Mr. Barr

1 violation of the law?

2 A Violation of the law?

3 Q Yes, sir. To shoot a man running.

4 A He was in the process of being robbed.

5 Q When they were running, getting in the
6 car, trying to get away, they were in the process
7 of robbing somebody?

8 A Mr. Barr, that man was in the process of
9 defending himself.

10 Q Oh, that's what you concluded?

11 A A shot was fired, and he returned fire.
12 Yes, sir, I conclude that.

13 Q Well did he tell you like he told Ms.
14 Lail, that when he turned around they ran out of
15 the store, jumped in the car trying to get away
16 and he shot out the window, shot the car, and
17 almost killed this man?

18 MS. BARR: Objection, Judge. That's a
19 question that calls -- assumes facts that are not
20 in evidence. That's not what the victim testified
21 to. We would object to that.

22 MR. BARR: Where is State's Exhibit---

23 THE COURT: Objection sustained.

24 Q Now State's Exhibit No. 14 and No. 15.
25 Tell me what you see.

Investigator Wayne McFadden-cross by Mr. Barr

1 A Bullet holes to the front left quarter
2 panel.

3 Q You see what now?

4 A Bullet holes.

5 Q Bullet holes to the front left quarter
6 panel. Is that right?

7 A Yes, sir.

8 Q One of them is kind of big too, isn't it?
9 Now these bullet holes to the front left quarter
10 panel, and you say Mr. Cooper was defending
11 himself. What was he -- did you know he --
12 whether or not he shot these holes in here?

13 A He admitted he shot them.

14 Q And now keep in mind, officer, you said
15 you are sworn to uphold the law. Now did you ask
16 whether or not these young men were doing
17 something that put him in fear of his life at the
18 time he shot these bullet holes in here?

19 A No, sir.

20 Q You didn't ask them that?

21 A He advised me one of them came up and
22 shot two rounds. And then he took off. He shot
23 two or three additional rounds.

24 Q He shot some more rounds? That's when
25 they took off?

Investigator Wayne McFadden-cross by Mr. Barr

1 A Yes, sir.

2 Q Now listen to my question. Has the
3 thought occurred to you that in Williamsburg
4 County, you can't shoot people as they're running
5 away from even an alleged crime? Is that your
6 understanding of the law?

7 A Well he identified that he didn't know
8 which direction anybody went in. He told me one
9 went to the left, and one went to the right. He
10 didn't know. He started shooting.

11 Q You obviously felt that this is all right,
12 because you never arrested him.

13 A No.

14 Q And of course you have an opportunity now
15 to look at this case. And now that you're a lot
16 more familiar with it, you've had an opportunity
17 to look at it a whole lot more clearly now. You
18 hear all this evidence and everything. And you
19 still don't intend to make an arrest, do you?

20 A Uh-uh. (Negative.)

21 Q Sir?

22 A Uh-uh. (Negative.)

23 Q And the reason that you don't intend to
24 make an arrest is because you don't think the law
25 has been violated, is it?

Investigator Wayne McFadden-cross by Mr. Barr

1 A On Mr. Cooper's behalf, yes.

2 Q Because if you thought it had been
3 violated, you would make an arrest, wouldn't you?

4 A I am sorry?

5 Q If you thought it had been violated, even
6 though his store was being broken into, or even
7 though he thought somebody was going to rob him.
8 Well you're not going to do that, are you?

9 A No.

10 Q Now one more thing I want to ask you
11 about. And you said you talked about that he said
12 that he thought that the shot was fired. And then
13 in addition to asking him about thinking that a
14 shot had been fired, you asked him about the
15 attempted robbery. Is that right?

16 A Yes, sir.

17 Q Now tell me what he told you about the
18 attempted robbery?

19 A What did he tell me about the attempted
20 robbery.

21 Q Yes, sir. That's what the question is.
22 What did he tell you about the attempted robbery?

23 A I am not understanding your question.

24 Q You said he asked you about the gun. You
25 asked him the gunshot.

Investigator Wayne McFadden-cross by Mr. Barr

1 A Yes.

2 Q And he told you that he thought somebody
3 had shot at him.

4 A Yes, sir.

5 Q And you also asked him about the
6 attempted armed robbery. Now what I am asking
7 you, and you may or may not have wrote it down.
8 But what did he tell you specifically about the
9 attempted robbery?

10 A I believe I asked in effect if any money
11 or anything was taken from the store. Anything
12 was stolen from the store. It was something to
13 that effect right there.

14 Q Did he tell you something was missing?

15 A He didn't indicate to me. No, sir.

16 Q What if anything else did he tell you
17 about the attempted robbery?

18 A I am thinking after I verified my question
19 to him in regards to that question.

20 Q That's it. Nothing else. He didn't tell
21 you Antwine Matthews attempted to rob him, did he?

22 A He couldn't identify Mr. Matthews by name.

23 Q The question was, did he tell you---

24 A No, sir, he didn't.

25 Q Now and according to you, he didn't tell

Investigator Wayne McFadden-cross by Mr. Barr

1 you that anybody else attempted to rob him. Who
2 did he say attempted to rob him?

3 MS. BARR: Judge, the question has been
4 asked and answered.

5 MR. BARR: Your Honor, this is a different
6 question. I asked him about Antwine Matthews.
7 Now I am asking him about anybody else that was
8 there.

9 THE COURT: Objection is overruled.

10 A The only other thing he relayed was---

11 Q Well now keep in mind, I want to know what
12 he said about the attempted robbery.

13 A At the point the gunshots went out, that's
14 when everybody aborted and ran out the door.

15 Q He said everybody aborted?

16 A Well when the gunshot exchange. That's
17 when everybody left the store.

18 Q So he didn't tell you anything about an
19 attempted robbery.

20 A As far as the exchange the three
21 individuals went.

22 Q So the answer to my question---

23 A No, sir.

24 Q And the reason he didn't tell you is
25 because nothing occurred.

Investigator Wayne McFadden-cross by Mr. Barr

1 MS. BARR: Objection, Your Honor. He
2 can't answer that.

3 MR. BARR: Well I asked him to tell me
4 what it was.

5 THE COURT: Objection sustained.

6 Q Thank you, sir.

7 THE COURT: Anything further from the
8 state?

9 MS. BARR: Not from this witness.

10 THE COURT: Step down. Next witness.

11 MS. BARR: Well would call Lieutenant
12 Jeff Scott.

13 Lieutenant Jeff Scott, being
14 first duly sworn, testified as follows:

15 Direct Examination by Ms. Barr:

16 Q Sir, let me get you to state your full
17 name for the record, please.

18 A Lieutenant Jeff Scott with the
19 Williamsburg County Sheriff's Office.

20 Q And, sir, what do you for the sheriff's
21 office?

22 A Currently I process crime scenes. Collect
23 evidence from scenes, and also do training for our
24 department.

25 Q And how long have you been employed with

Lieutenant Jeff Scott-Direct by Barr

1 the sheriff's office?

2 A Since 1999.

3 Q And you say, sir, that you collect
4 evidence, is that correct?

5 A Yes, ma'am, I do.

6 Q Does that include photographing evidence
7 and the photographing the scene of the crime?

8 A Yes, It does.

9 Q And, sir, were you working back on the
10 night of December 30th 2008, leading up to the
11 morning of the 31st of 2008?

12 A Yes, I received a call of an incident that
13 happened at Sandridge.

14 Q Yes, sir.

15 A Mr. Cooper's store. I responded to the
16 scene. Once I was got there, I was informed of
17 what had happened. And was asked to assist and
18 process collecting evidence at the scene.

19 Q Now, sir, I am going to hand you what has
20 been marked as State's Exhibit Nos. 18 through 38.
21 And it is a lot of pictures. But tell me if you
22 recognize what is depicted in those photographs.
23 And are these photographs you took on that
24 particular night?

25 A You want me to go ahead and explain each

Lieutenant Jeff Scott-Direct by Barr

1 one as I look at them?

2 Q No, sir, just tell me are those
3 photographs that you took?

4 A Yes, ma'am, they are.

5 Q And those are photographs of Mr. Cooper's
6 store?

7 A Yes, they are.

8 Q And they were taken how far after the call
9 came in to 911, about the shooting at his store?
10 Would you say in a matter of hours?

11 A A matter of a little while. Maybe 30
12 minutes.

13 Q That soon after.

14 A Yes, sir.

15 Q And do the photographs accurately depict
16 the condition of his store as you saw it on the
17 night the picture was taken?

18 A Yes, they do.

19 MS. BARR: Your Honor, I would offer
20 State's Exhibit Nos. 18 through 38 into evidence
21 at this time.

22 THE COURT: Any objection?

23 MR. BARR: Your Honor, if she is offering
24 them into evidence, cumulative exhibits, and I
25 believe that is what she is doing. I know there

Lieutenant Jeff Scott-Direct by Barr

1 are some we object to.

2 THE COURT: Show them to Mr. Barr and see
3 what he objects to.

4 MS. BARR: Judge, I showed them to him
5 earlier.

6 MR. BARR: Once they lay a foundation.

7 MS. BARR: And, judge, just to make things
8 go faster, I will show them one by one. If he has
9 an objection to the specific one we will deal with
10 it then.

11 THE COURT Ladies and gentlemen, let's
12 stand and get a good stretch for a moment or two.

13 MS. BARR: Your Honor, it appears the
14 offense has no objection to State's Exhibits 36,
15 33, 32, 31, 30, and 27, 24 and 22, 21, 20, 19, 18,
16 and 26.

17 THE COURT: Is that right, Mr. Barr?

18 MR. BARR: Yes, sir.

19 THE COURT: They are admitted without
20 objection.

21 (Photographs marked State's Exhibit Nos.
22 18-22, 24, 26-27, 30-33 and 36 into evidence.)

23 MS. BARR: Lieutenant Scott, let me get
24 you to step down, please.

25 Q Sir, I am going to call your attention to

Lieutenant Jeff Scott-Direct by Barr

1 what has been admitted as State's Exhibit No. 18.

2 Let me get you to stand over here, please, and I
3 am going to give you the pointer. Tell me what is
4 depicted in that photograph.

5 A This is the front of Mr. Cooper's Store.

6 Q Okay.

7 A A white truck, ford truck, parked to the
8 left. And a black dodge parked right in front of
9 the store. This is the front entrance. The two
10 windows you see are the guard rails. And
11 Sandridge Road runs along this side of the store.

12 Q Do you know who those trucks belong to?

13 A Mr. Cooper.

14 Q Now point to the front door, please.

15 A This is the front door. The two side
16 windows with the bars, and this is the front door
17 that goes in to the steps.

18 Q As you are entering the store, would the
19 counter be on the left or the right?

20 A As you enter the store, the counter is
21 immediately to the right.

22 Q That's a window there.

23 A Yes.

24 Q And calling your attention to State's
25 Exhibit No. 19, is that a closer view of the front

Lieutenant Jeff Scott-Direct by Barr

1 entrance to the business?

2 A Yes, that is correct. The front door and
3 the two side windows are the very front of the
4 establishment.

5 Q And as it relates to this particular
6 exhibit, was there any evidence at the scene that
7 night that Mr. Cooper fired out of one of his
8 windows?

9 A That is correct. There were two bullet
10 holes that were found in this window where the
11 tint is. Coming out of the location.

12 Q Okay. And kind of point to the jurors
13 where those bullet shots are.

14 A Here and here.

15 Q And that is by the counter?

16 A That is near, yes, the counter would be
17 adjacent to the block form right here. And the
18 back part of the counter would be right here where
19 you could walk.

20 Q Yes, sir.

21 A Right in front of that window.

22 Q As it relates to State's Exhibit No. 20,
23 tell us what's depicted in that particular
24 exhibit.

25 A As you walk inside the front door,

Lieutenant Jeff Scott-Direct by Barr

1 directly to the right, this is the counter area.

2 A side window. These are the racks that have like
3 little candy. There is a drink box just behind
4 here where the walkway area is.

5 Q Yes, sir.

6 A And then you have a coke machine and a
7 little snack rack in this area.

8 Q Explain to the jurors what's depicted in
9 State's No. 21.

10 A The same photograph just a little --
11 you've got a little more light to it where you can
12 see it a little bit better.

13 Q Yes, sir.

14 A Window, counter top. And you can see the
15 little candy bars and candy. Little small drink
16 box, snack machine. And a little coke machine.
17 And the walkway area is right behind this counter
18 top area.

19 Q Describe for us No. 22.

20 A This is the left side of the store. When
21 you walk in the door immediately to -- when you go
22 to the left, you will look and there will be a
23 little walkway with these small racks here. And
24 it walks back around the racks and comes back out
25 to the center of the store.

Lieutenant Jeff Scott-Direct by Barr

1 Q Yes, sir. Tell us the significance of
2 State's Exhibit No. 24, if you would, sir.

3 A This is the freezer found in the living
4 quarters area in the back of the store. When you
5 walk through the store itself, you will be in the
6 store area. When you walk through, there's a
7 little -- usually has a chair on the left side.
8 But when you walk into the back, that's the living
9 quarter area. You will have this bedroom. A
10 sleeping area. And this to the right. This is
11 the freezer that's on the back wall to the right
12 side as you walk straight in his living quarters.

13 Q Is there anything significant in that
14 photograph as it relates to a black bag?

15 A Yes. There is a lead metal projectile
16 located just below the black bag on top of the
17 freezer.

18 Q Explain to us what has been admitted as
19 State's Exhibit No. 27.

20 A This right here is the front door. As you
21 see it, this is the window adjacent from it. If
22 you saw the very front view, this would be the
23 window right here.

24 Q All right.

25 A The front door. This is the walkway. I

Lieutenant Jeff Scott-Direct by Barr

1 was telling you about that is right behind the
2 counter. This is the cash register. This is his
3 counter area. It has his bag and stuff. It has
4 his drink box. And you can also see the little
5 candy bar rack on the top. This is right behind
6 the counter area.

7 Q And, sir, explain to us the significance
8 of State's Exhibit No. 30.

9 A These are two pieces of candy that were
10 found right around the little very end of his
11 counter top. This is a little trash bag area. I
12 guess where he puts trash. But there were two
13 pieces of candy found there. And it's right at
14 the very end of his counter.

15 Q Is that little tootsie rolls in there?

16 A Yes, some type of little tootsie roll type
17 candy.

18 Q And tell us the significance of No. 31.

19 A Like I said, as you step in, this is from
20 the front door. The view of the front. As you
21 look all the way down the hallway, this is a
22 chair. This is the door to his living quarters.
23 This is a chair to a little bit to the left side I
24 guess, where he might sit while he is inside the
25 store.

Lieutenant Jeff Scott-Direct by Barr

1 Q Okay.

2 A To the right is where the counter tops and
3 the racks, the little potato chip racks are. He
4 has two drink boxes here. And then to the left he
5 has other little items on another rack to the left
6 side right here.

7 Q Okay. And show us where the coke machine
8 is in that photograph.

9 A Right here. The Pepsi machine is right
10 here near the door entrance. And the coke machine
11 is right beside it.

12 Q You talked about the living quarters.
13 Explain State's 32 for me.

14 A When you go through by that chair in that
15 next room where the door was open to the left
16 side, you will see his living quarters. A bed.
17 It looks like it's set up on like a couch. He's
18 got a little small heater there. And basically
19 that's his -- that's on the left side as you walk
20 in the very back room.

21 Q Now you talked early about a black bag,
22 and what appeared to be a projectile there. Did
23 you photograph that in a closer fashion?

24 A Yes. It was located right up underneath
25 the black bag on top of the freezer.

Lieutenant Jeff Scott-Direct by Barr

1 Q Okay. And that's for the record, State's
2 Exhibit No. 26, is that correct?

3 A Yes, ma'am it is.

4 Q Tell us the significance of State's 36.

5 A This is the front facing of that
6 projectile. And you can see that it has wood
7 grain engraved into it. It also has some green
8 smeared marking to the side of it. It goes with
9 like paint or some type of material of that
10 nature. The back wall in the room where this
11 projectile was located, the facing wall is kind of
12 like particle board, paper mache board that is
13 laminated up against the wall like a filler.

14 Q Now you talked about it appearing to be
15 some kind of greenish color.

16 A Yes.

17 Q And I am going to call your attention to
18 State's Exhibit No. 21. In that particular
19 photograph, can you kind of explain to the jury
20 the color of the walls that are in that
21 photograph?

22 A The walls are green. Kind of a little bit
23 lighter lime green color. It has a little bit of
24 darkness to it. The walls have a green texture to
25 them. Even the back facing wall near the coke

Lieutenant Jeff Scott-Direct by Barr

1 machine.

2 Q Yes, sir.

3 A Has a green texture to it.

4 Q Did you see anything behind the counter to
5 indicate to you that a gun had been fired in that
6 vicinity?

7 A Right here, this small little spot right
8 there.

9 Q Yes, sir.

10 A She took a more close up photo of it.
11 There is an indention into that wall. It comes in
12 at an angle. And what happens is, in other
13 photographs I took, it hits at an angle. Cuts
14 into the side of this coke machine and goes to the
15 back wall.

16 Q Where the victim's---

17 A Living quarters are.

18 Q ---living quarters are. You talked about
19 taking a closer up picture of the hole in the
20 wall. I am going to ask to explain State's
21 Exhibit No. 23.

22 A No. 23, this is the actual back wall. And
23 the adjacent coke machine. Do I need to go on
24 here, or just explain?

25 Q Did you take that photograph that day?

Lieutenant Jeff Scott-Direct by Barr

1 A Yes, I did.

2 Q Does it accurately depict how the scene
3 looked that day?

4 A Yes.

5 MS. BARR: Judge, we would move State's
6 Exhibit No. 23 into evidence at this time.

7 THE COURT: Any objection, Mr. Barr?

8 MR. BARR: Yes, sir.

9 THE COURT: Let me see what you are
10 talking about. It is admitted over objection.

11 MS. BARR: Thank you, Your Honor.

12 MR. BARR: Your Honor, am I going to be
13 allowed to put my objection on the record?

14 THE COURT: Yes, sir.

15 MR. BARR: May I approach the bench?

16 THE COURT: Yes, sir.

17 (Whereupon, the attorneys approach the
18 bench and confer with judge.)

19 (Photograph marked as State's Exhibit No.
20 23 into evidence.)

21 Q Lieutenant Scott, kind of explain to us
22 that particular exhibit.

23 A This is the back portion of the back wall.
24 It has the coke machine. The Pepsi machine. The
25 coke machine. The back wall adjoins the back

Lieutenant Jeff Scott-Direct by Barr

1 facing wall towards the road. You can see the
2 cutting right across here.

3 Q Yes, sir.

4 A And it comes down at an angle. This hole
5 leads all the way through this wall to the back
6 living quarters. It's in the same direction
7 flight path where I found it on top of -- the
8 projectile on top of the freezer.

9 Q The same path?

10 A Yes.

11 Q Tell me if you recognize State's Exhibit
12 No. 35.

13 A Yes, I do.

14 Q And tell us why you photographed that
15 exhibit, and if it accurately depicts the
16 condition of the store that night.

17 A Yes, It does. This is the area of the
18 spot located that the projectile hit the back
19 wall, and it caused a flatting effect, causing the
20 projectile to return.

21 Q Now you talked about the projectile having
22 a greenish color tint to it.

23 A Yes.

24 Q The location where that, not hole that the
25 indentation left in the wall. What color is that

Lieutenant Jeff Scott-Direct by Barr

1 wall?

2 A Green.

3 MS. BARR: Judge, we would move State's
4 Exhibit No. 35 into evidence.

5 MR. BARR: Same objection.

6 THE COURT: I need to see it.

7 MS. BARR: I'm sorry, Judge.

8 THE COURT: Over objection, I am admitting
9 it in to evidence. If you will call out those
10 photos that have been entered.

11 MS. BARR: Your Honor, State's 35, State's
12 34, State's 25, State's 29, and State's 28. And
13 the remaining, Judge, are 37 and 38.

14 THE COURT: Which will be marked for
15 identification purposes.

16 MS. BARR: Yes, sir.

17 Q Lieutenant Scott, I am going to show you
18 what has been admitted over objection as State's
19 Exhibit No. 28. Tell us what that particular
20 exhibit shows.

21 A This exhibit shows the back window right
22 behind the counter portion area.

23 Q Let me publish it. Okay.

24 A As we looked at the photographs before we
25 saw the photograph with the counter area where it

Lieutenant Jeff Scott-Direct by Barr

1 had the little walkway, as to back wall, you can
2 see the front window. You can see the counter to
3 the right. This is the window to the right behind
4 where if somebody was standing at the counter, it
5 would be right behind, or facing out towards
6 Sandridge Road.

7 Q Now tell us, is there what appears to be
8 calendar hung up on the window?

9 A Yes, it is. Right here.

10 Q Is there what appears to be a little hole
11 next to the calendar?

12 A Yes, right here.

13 Q And what's the significance of you
14 photographing that?

15 A This hole is produced from a fired
16 projectile coming from inside out of the store.

17 Q Now calling your attention to what has
18 been admitted as State's Exhibit No. 29, tell us
19 why you photographed that particular exhibit.

20 A This black material you see right below
21 the calendar, that is gunshot powder. There is,
22 see how the separation of the paper distorted and
23 everything. In that same general area, there is a
24 bullet hole.

25 Q And just for the record, that was also

Lieutenant Jeff Scott-Direct by Barr

1 just a close, closer up view of what's on State's
2 Exhibit No. 28?

3 A That's correct. Or the calendar that
4 would be hanging on the wall.

5 Q Now tell us about No. 25. Please, sir.

6 A All right. 25, as I told you before
7 about the living quarters when you saw the bed
8 area to the left of us. Well when you walk
9 through and you turn and look straight to the
10 right, you will see the freezer and another
11 heater. This is a door that I don't think is
12 being used any more. And that's in his living
13 quarters.

14 Q Yes, sir.

15 A And that's a door that is in that area.
16 And then as you come around you see there is a
17 wall that comes right up in here. And it is right
18 across from the freezer area. And this wall is
19 the actual wall that's, you know, as you go in to
20 the store part, the back wall, the front facing
21 this wall.

22 Q You talked about the freezer area and
23 about the projectile.

24 A Yes.

25 Q Is that depicted in this photograph?

Lieutenant Jeff Scott-Direct by Barr

1 A The projectile would be located right
2 here. Here is the black bag.

3 Q Okay.

4 A And the little tool box. It would be
5 right there underneath that black bag.

6 Q Okay. Tell us about State's Exhibit No.
7 34 please, sir.

8 A Remember we showed you the picture of the
9 front facing wall by the coke machine had the
10 green, this is the actual back wall. The back
11 portion of that same wall inside those living
12 quarters. As you can see, you can see a hole has
13 been -- a bullet hole has been protruded out in
14 this direction. They blew out the material. This
15 is some of that paper mache type walling that
16 makes the back wall. You can see that ingraining
17 where it came right through. And this is a direct
18 line to where the projectile landed on top of the
19 freezer. The freezer is directly across from this
20 hole.

21 Q And, sir, tell us about 35.

22 A Inside the store located on the wall, when
23 you saw the window and the little reesie's rack,
24 you had the wall racks right there where he had
25 the candy and stuff. Just below -- in between

Lieutenant Jeff Scott-Direct by Barr

1 those two racks is where the candy was. This was
2 located. And this is an angle indentation into the
3 wall right here. You can see how it kind of digs
4 in and flies back out in this direction. It's
5 deep coming in and shallow coming out.

6 Q Okay.

7 A That's an indication of a hit to the wall.

8 Q Sir, you can take your seat back.

9 (Whereupon, the witness resumes the
10 witness stand.)

11 Q Sir, during the course of your
12 photographing the scene, did you ever find any
13 holes that were consistent with shots being fired
14 from outside of the store to inside of the store?

15 A No. The holes that I found at the store
16 all were located coming inside going either
17 through the wall that I have indicated on the
18 photographs, or either coming from inside of the
19 store going out of the windows that I indicated on
20 those photographs.

21 Q Now were you a part of taking, or taking
22 any evidence from the hands of the victim that
23 night?

24 A I collected a GSR kit that had already
25 been collected later on, yes.

Lieutenant Jeff Scott-Direct by Barr

1 Q A GSR kit. Tell me what GSR means?

2 A Gunshot Residue Kit.

3 Q From Mr. Cooper?

4 A Yes.

5 Q In addition, sir, did you seize his
6 weapon?

7 A Yes, I did.

8 Q Lieutenant Scott, you are going to have to
9 help me with these boxes. Which box is the---

10 A Do you want me to step down and---

11 Q Please, sir.

12 A ---assist you?

13 (Whereupon, the witness steps down from
14 the witness stand.)

15 Q I am going to hand you what has been
16 marked for identification purposes as State's
17 Exhibit 39 for ID. What is in that box?

18 A What's in this, the contents of this box
19 should be one Taurus 38. Two projectiles. And
20 some shell casings. Some live rounds. All
21 located inside this box.

22 Q And these items were seized by you that
23 night?

24 A Yes.

25 Q And they were transferred to where?

Lieutenant Jeff Scott-Direct by Barr

1 A To sled.

2 Q And sled is the State Law Enforcement
3 Division?

4 A That is correct.

5 Q Is there a label on that particular
6 exhibit to let you know that that was in fact
7 taken to sled?

8 A Yes. It has their sealing tape.

9 Q Yes, sir.

10 A On all sides. It actually has my initials
11 when it was initially sent---

12 Q Yes, sir.

13 A ---to sled. They're -- once they do their
14 examination, they reseal it with whoever the
15 examiner is and then for interrogating purposes.

16 Q Yes, sir.

17 A We also put the actual sheet that we got
18 off of our lab system for identification so we can
19 identify it.

20 Q You indicated that you took a GSR kit from
21 Mr. Cooper?

22 A I collected a GSR kit. It was actually
23 collected by one of the investigators. It was
24 turned over to me and I turned it over to sled.

25 Q You sent it to sled for them to analyze,

Lieutenant Jeff Scott-Direct by Barr

1 is that correct?

2 A That's correct.

3 Q Did you take any clothing that was
4 reported belonging to Jeffrey Dawkins?

5 A Yes, I did.

6 Q And you seized that and you also
7 transported that to sled.

8 A Yes, I did.

9 Q Can you step down and help me just a
10 minute?

11 A Yes.

12 (Whereupon, the witness steps down from
13 the witness stand.)

14 Q Is that what's contained in this box?

15 A Yes, it is. They're both -- they are
16 individually packaged in their own packaging.
17 Which would be like paper bags. They would each
18 piece would be individually packaged on its own.
19 And it would be sealed inside this box. This is
20 both Segars and Dawkins. Each piece is
21 individually packaged.

22 Q And when you say Segars, you're talking
23 about Melvin Segars?

24 A Yes.

25 Q And when you say Dawkins, you're talking

Lieutenant Jeff Scott-Direct by Barr

1 about Jeffrey Dawkins?

2 A That's correct.

3 Q And you took those things and you had them
4 transferred to sled for analysis?

5 A That's correct.

6 MS. BARR: Thank you, sir.

7 (Whereupon, the witness resumes the
8 witness stand.)

9 Q And what about anything that relates to
10 this defendant, Antwine Matthews?

11 A There was some clothing and some shorts or
12 jean pants. Jean pants that was collected and
13 sent to sled for analysis.

14 Q Okay. And is that contained in this box?

15 A Yes, it is. It has sled seal tape.

16 Q Yes, sir.

17 A And It has a bar code indicator. And it
18 also has an Item No. 18 and co-signed.

19 Q Whose name is on the particular box?

20 A Matthews. Which would be Mr. Matthews.

21 Q Mr. Matthews, this defendant, is that
22 correct?

23 A That's correct.

24 Q Were you aware that this defendant was
25 shot and hospitalized at McLeod in Florence?

Lieutenant Jeff Scott-Direct by Barr

1 A I was later given information through
2 investigators, who advised me the subject was
3 there at the hospital.

4 Q Okay. Now did you seize any items from
5 the hospital at McLeod's in connection with this
6 case?

7 A Yes, I did.

8 Q Tell me about what you got from the
9 hospital.

10 A I got what was left of the clothing from
11 Mr. Matthews and the projectile.

12 Q And a projectile?

13 A Yes.

14 Q And just kind of explain to the jury when
15 you say projectile, what are talking about.

16 A Already fired. It was a lead, coral or
17 copper jacket portion of the bullet that had
18 already been fired. It's called the projectile.

19 Q And when you got that from the hospital at
20 McLeod, first of all, when did you get it?

21 A It was retrieved on the 2nd day of January
22 of 2009. I signed for it, and received it from
23 George Ray. And it was turned over to a Randall
24 Keith from, their surgical nurse.

25 Q So you took the spent projectile that you

Lieutenant Jeff Scott-Direct by Barr

1 got from McLeod, and you took it to sled as well,
2 for analysis.

3 A Yes.

4 Q And tell me where that is.

5 A That would be located with the firearm.

6 And the box with Mr.---

7 Q Mr. Cooper's---

8 A Yeah.

9 Q ---gun?

10 A All the projectiles and the shell casings
11 and the gun would be located in that container.

12 Q Sir, let me make sure I have got all of
13 the photographs. I think that may be all I have
14 for you. Okay. Lieutenant Scott, I believe that
15 is all the questions I have for you. Please
16 answer any questions the defense counsel may have.

17 THE COURT: Mr. Barr.

18 Cross Examination by Mr. Barr:

19 Q Officer Scott, the projectile, you have
20 made me nervous. The projectile you say you got
21 from Mr. Matthews.

22 A Yes.

23 Q That's the projectile that you got from
24 the hospital.

25 A That's correct.

Lieutenant Scott-cross by Mr. Barr

1 Q And that's -- that was taken out of his
2 body.

3 A Yes, that is correct.

4 Q Now, you know, you've got a lot of
5 photographs. A lot of what you say is -- have you
6 ever, you've interviewed Mr. Cooper?

7 A Not as a -- like formally, no.

8 Q You never talked to him?

9 A I spoke with him that night just a few
10 minutes. But not like a formal interview like you
11 all were talking about.

12 Q Did you take any notes when you
13 interviewed him?

14 A I just asked him specific, you know, where
15 he might have been staying. That's it.

16 Q That's all you asked him?

17 A Yeah, just the location of where he was at
18 inside the store.

19 Q Nothing else.

20 A Well no, I asked him basically where was
21 he located inside the store when the incident
22 happened.

23 Q Uh-huh. (Affirmative.)

24 A And to figure out where his position was.
25 And that was it.

Lieutenant Scott-cross by Mr. Barr

1 Q What I was trying to figure out was, I
2 gather that you didn't have a great deal of
3 conversation with him. Say for instance State's
4 Exhibit No. 6.

5 A Yes, sir.

6 Q What did you say that was?

7 A This is a projectile that was located on
8 top of the freezer.

9 Q That's a spent bullet.

10 A Yes, that's a spent bullet.

11 Q Spent bullet.

12 A Yes.

13 Q And you found it on top of the freezer.

14 A Yes, in the back living quarters.

15 Q And did you -- did you ask Mr. Cooper
16 about how long it had been back there?

17 A No, I didn't ask him any specifics about
18 anything being back there. I talked with him, and
19 asked him about positioning. And looked inside
20 the...

21 Q Did you -- this projectile well you say
22 it's a projectile.

23 A Yes, sir.

24 Q Do you know what caliber weapon it came
25 from?

Lieutenant Scott-cross by Mr. Barr

1 A Unknown caliber. It would have to be
2 examined at sled. And they would have to do that.

3 Q Of course, yet, the caliber of this spent
4 shell could actually be determined, could it not?

5 A It would have to be determined from sled.

6 Q By sled?

7 A Yes.

8 Q I mean they would have the scientific know
9 how.

10 A Yes.

11 Q To be able to tell, first of all, whether
12 or not this is from a spent shell.

13 A All of that would have to go to them, yes.

14 Q First of all, they would have to be able
15 to determine scientifically whether this came from
16 a spent shell.

17 MS. BARR: Judge, I am going to have to
18 object. Obviously that is a question that is best
19 posed to the sled officer. This witness cannot
20 testify to what sled would be able to testify. So
21 I am going to have to object to that line of
22 questioning.

23 MR. BARR: Your Honor, this witness, he
24 has testified extensively. He's actually
25 testified to what this is, so I don't understand

Lieutenant Scott-cross by Mr. Barr

1 the objection.

2 THE COURT: Let me hear the question
3 again.

4 Q I said, scientifically if you wanted to
5 know what the spent shell as you refer to it. If
6 we really wanted to know what to know what it was,
7 we would have to send it to sled.

8 A They would give you the possible weights
9 and stuff like that.

10 Q They would also have to tell you whether
11 or not this is in fact a spent shell.

12 A They would give you an analyzation.

13 Q Yes, sir.

14 A Yes. (Uh-huh.) Affirmative.

15 Q You didn't analyze it, did you?

16 A No. Sled did.

17 Q Sled did. You don't know what it is.

18 A I photographed it.

19 Q Do you know what it is.

20 A It's a projectile.

21 Q And, officer, would you not agree with
22 respect to that question, a more appropriate
23 answer would be appears to be a projectile.
24 Because you don't know. Did you scientifically
25 examine this to determine what it is?

Lieutenant Scott-cross by Mr. Barr

1 A Yes. No, I sent it to sled for that type
2 of examination.

3 Q Right. And the fact of the matter is, you
4 know, me and you don't know what it is. We know
5 what it looks like. But if we wanted to find out
6 what it is, we would have to send it to sled to be
7 analyzed.

8 A Yes, for weights and stuff like that, yes.

9 Q Not only for weight, but for content.

10 A Could be.

11 Q This could be a beat up nickel that I
12 took the hammer and smashed up and bent down, and
13 mold it into what appears to be. And unless you
14 analyze it, you wouldn't know what it was, would
15 you? Scientifically.

16 A Yes, that it was a projectile. But it has
17 to go to sled from there. They will do the
18 analyzation weights.

19 Q Yes. How long was it wherever you found
20 it?

21 A It was there when I got there and took the
22 photographs. And also did the -- Looked at the
23 projectile flight path on the wall. Going
24 through the wall itself and where it landed.

25 Q How long was this, where you found it

Lieutenant Scott-cross by Mr. Barr

1 before you found it?

2 A It was there when I got there. I mean....

3 Q It could have been there 2 days, 3 days?

4 A All I did was, it was there when I got
5 there and when I processed the scene.

6 Q The simple fact of the matter is, and you
7 know the point I am trying to get at. You don't
8 how long this piece of metal, if it is metal. You
9 don't know how long it was on top of the
10 refrigerator, do you?

11 A It was there when I got there. When I
12 photographed it, it was there.

13 Q Would the answer to that be yes?

14 A It was there. When I photographed it, it
15 was there.

16 Q Do you know if I put it there?

17 A No, I mean, I don't know if you put it
18 there. It was there. It was located. It was
19 photographed. It was collected.

20 Q So the fact of the matter is, you
21 certainly don't know whether or not this has any
22 connection with this attempted armed robbery.

23 A It has the same material on it that came
24 off the walls located in the store. And where it
25 was perforated through the back wall, it has that

Lieutenant Scott-cross by Mr. Barr

1 same material embedded into the front facing out.

2 Q Would you not agree, officer, that in
3 terms of the most appropriate answer would be it
4 appears to be. Now if you wanted to know whether
5 or not this material actually came from the wall,
6 you can collect your sample, you can send it to
7 sled. You could have sled analyze it. You could
8 compare it to what you have got here, and you
9 would know whether or not this passed through that
10 wall, wouldn't you?

11 A It has the materials already on it.

12 Q Well you don't know what -- you don't if
13 this is paint or you don't know what it is, do
14 you?

15 A It has the material on it from different
16 flight patterns that it took.

17 Q Does the material on it match the material
18 on the wall?

19 A It has the same color as when I
20 photographed as what was on the wall.

21 Q Same color. But as far as content
22 chemically, that is what it's true character is.
23 You don't know whether that's the same, do you?

24 A Not as far as that, no. It's the same
25 color. It comes from the same direction.

Lieutenant Scott-cross by Mr. Barr

1 Q Same color.

2 A It has the same material that was on the
3 walls.

4 Q You know, my suit is black. My coat is
5 black. My pants are black.

6 A Yes, sir.

7 Q They all appear to be black, but are they
8 from the same piece of fabric?

9 A I don't know.

10 Q You don't know, do you?

11 A No.

12 Q Look alike, but you don't know.

13 A No.

14 Q The trajectory of what you testified, you
15 said that a bullet was fired.

16 A Yes.

17 Q From inside the store.

18 A Yes.

19 Q From somewhere.

20 A Yes.

21 Q Could it have been fired from standing up
22 in the door?

23 A Possibly at the entrance?

24 Q Yes, sir.

25 A Right yeah, right at the entrance. Yes,

Lieutenant Scott-cross by Mr. Barr

1 sir.

2 Q In fact based on what you know in terms of
3 what you know to determine the trajectory, did you
4 call a sled agent out?

5 A No, sir.

6 Q Somebody that's trained to determine the
7 trajectory?

8 A No sled agents were called out.

9 Q You didn't call anyone out?

10 A I didn't. That would be a call from the
11 investigators.

12 Q The investigators would have to do it. Do
13 you know if they did that?

14 A No, sir.

15 Q You just went and kind of eyeballed it?

16 A No.

17 Q Well what else, tell me what other tests
18 you did other than just eyeball it. I mean, It's
19 kind of like a coroner determining the cause of
20 death, isn't it?

21 A I just looked at it.

22 Q You just looked at it.

23 A I looked at the flight pattern as it
24 angled as it hit the wall and come off. And the
25 different places that it hit as it went through

Lieutenant Scott-cross by Mr. Barr

1 and it came off through the back wall and landed
2 on top of the freezer.

3 Q And did you do that? You didn't -- did
4 you use any kind of tools? Or you just eyeballed
5 it, and just looked at it? Tell me what you used.

6 A The photograph. I photographed the
7 different light patterns. That's why the
8 photographs -- that it shows up on the
9 photographs.

10 Q And those flight patterns that you
11 determine, you just kind of looked at it. And it
12 looked like it went that way.

13 A No.

14 Q Well what did you do?

15 A We looked at the angles of it. I
16 photographed it to scale. And photographed as it
17 went to the side of the coke machine. It went
18 down into the wall. I photographed the back wall
19 as it came through. And direct -- adjacent across
20 from it where it landed on top of the freezer.

21 Q Now the hole that you said where it went
22 through the back wall.

23 A Yes.

24 Q Did you get Mr. Cooper and say, "Look
25 Mr. Cooper, how long has this hole."

Lieutenant Scott-cross by Mr. Barr

1 A I didn't speak to him.

2 Q You said, you told me earlier that you
3 didn't talk to him.

4 A I spoke to him and asked him where he was
5 at in the store. That's what I asked where he was
6 standing.

7 Q But the hole on the wall -- the back wall
8 that you just talked about, do you know how long
9 that hole was there?

10 A I didn't ask him about it.

11 Q Well I mean, do you know?

12 A No. I mean it was there. When I got
13 there, and I processed it, and it was there.

14 Q When you got there it was there. And when
15 you left it was there.

16 A That's right.

17 MR. BARR: Thank you, sir. I have nothing
18 further.

19 THE COURT: Redirect?

20 MS. BARR: Just one question, Judge.

21 Redirect Examination by Ms. Barr:

22 Q Lieutenant Scott, you said when you talked
23 to Mr. Cooper and you asked him where he was
24 standing.

25 A Yes.

Lieutenant Jeff Scott-redirect by Barr

1 Q And was he standing near where you
2 photographed the bullet hole?

3 A Yes.

4 MS. BARR: That's all. Judge, may we
5 approach?

6 THE COURT: Anything further, Mr. Barr?

7 MR. BARR: No, sir.

8 (Whereupon, the attorneys approach the
9 bench and confer with judge.)

10 THE COURT: We are going to take a short
11 break. We will not break for lunch. A short
12 break. Please go to the jury room.

13 (Whereupon, the court takes a short
14 break.)

15 THE COURT: You may bring the jury.

16 (Whereupon, the following takes place
17 within the presence of the jury.)

18 MS. BARR: Your Honor, May it Please the
19 Court, our next witness was going to be Mr. Cox,
20 who works at McLeod Hospital in the Security
21 Department. And he is expected to testify as to
22 the Chain of Custody of the bullet from Mr.
23 Matthews to Detective Scott with the Sheriff's
24 Department. In the interim, Judge, defense
25 counsel has agreed to stipulate as to the Chain of

Lieutenant Jeff Scott-redirect by Barr

1 Custody. Therefore, I would not need Mr. Cox to
2 testify. So, judge, we would pose that
3 stipulation be placed if Your Honor will accept
4 that stipulation and that Mr. Cox be released.

5 THE COURT: Is that your agreement,
6 Mr. Barr?

7 MR. BARR: That's the stipulation, judge.

8 THE COURT: Ladies and gentlemen where
9 there is a stipulation, then there is no need to
10 present testimony. And they are entering into
11 stipulation on this Chain of Custody issue. I
12 think any of the witnesses are discharged.

13 MS. BARR: Thank you, Judge. Judge, can
14 we break for lunch?

15 THE COURT: We will break for lunch,
16 Ladies and gentlemen. We will be back at 2:15.
17 2:15 we will see you then.

18 (Whereupon, the court breaks for lunch.)

19 (State's Exhibit Nos. 4, 40, 41, 42
20 marked for id.)

21 MS. BARR: I will put it on the record.

22 (Whereupon, the following takes place
23 outside the presence of the jury.)

24 THE COURT: I am just going to announce to
25 the jury panel Judge Brown is going to take over

Lieutenant Jeff Scott-redirect by Barr

1 presiding. Any objection by the state or the
2 defense?

3 MS. BARR: None from the State, judge.

4 MR. BARR: None from the Defense.

5 MS. BARR: Your Honor, may I just put
6 something briefly on the record?

7 THE COURT: Yes.

8 MS. BARR: Judge, with regard to State's
9 Exhibits Nos. 4, 40, 41, 42, those are without
10 objection from the defense, as I understand it.
11 Three photographs and a Chain of Custody form.

12 THE COURT: Is that right, Mr. Barr?

13 MR. BARR: Yes, sir.

14 THE COURT: They are in.

15 MS. BARR: Thank you, judge.

16 THE COURT: Bring the jury.

17 (Whereupon, the following takes place
18 within the presence of the jury.)

19 THE COURT: Ladies and gentlemen, you have
20 witnessed two judges here presiding this week. I
21 explained it all to the members of the jury panel
22 earlier in the week during the course of the
23 orientation. Judge Brown is going to now take
24 over presiding in this case.

25 THE COURT: Okay. Ms. Barr.

Lieutenant Jeff Scott-redirect by Barr

1 MR. HARVIN: Your Honor, the State calls,
2 Mr. John Roberts.

3 Direct Examination by Mr. Harvin:

4 Q Mr. Roberts, can you please state your
5 full name for the record?

6 A Sure. My name is John Grey Dodd Roberts.

7 Q Where do you work, Mr. Roberts?

8 A I work for the South Carolina Law
9 Enforcement Division more commonly called sled.

10 Q And what is your position there?

11 A I'm a forensic scientist in the trace
12 evidence unit in our forensic services.

13 Q And how long have you been working in that
14 position?

15 A It's been just over 5 years.

16 Q Can you describe for the jury, the duties
17 and responsibilities of your position?

18 A What I do is, I analyze evidence that
19 comes in to our trace evidence department. Trace
20 evidence is the analysis of evidence that you
21 generally cannot see with your naked eye. We use
22 a lot of chemical instrumentation and some
23 microscopes and a lot of Chemistry in our
24 department.

25 I have a Chemistry Degree from

John Roberts-direct by Harvin

1 Texas A. & M. Corpus Christi. I have a Bachelor
2 of Science Degree. When I came up to the South
3 Carolina, I got my job at sled and I went through
4 our in-house training program in gunshot residue.
5 Gunshot residue is what I do most of.

6 After I took that training program, I was
7 given a Mock Court where I was given a case and
8 allowed to analyze that all the way through. And
9 then I was questioned in a jury style manner by my
10 peers, and given clearance to take cases on my
11 own, which I have since then.

12 Q And have you ever testified in court live
13 before?

14 A Yes, sir, I have.

15 Q And have you ever been qualified as an
16 expert witness in court as well?

17 A Yes, sir, 32 times.

18 MR. HARVIN: Your Honor, can Mr. Roberts
19 please be qualified as an expert witness in trace
20 evidence analysis?

21 THE COURT: Mr. Barr, any questions?

22 MR. BARR: No objection, judge.

23 THE COURT: Without objection, I find that
24 Mr. Roberts is qualified as a forensic scientist.
25 Ladies and gentlemen of the jury, let me address

John Roberts-direct by Harvin

1 something to you real quick here. Normally a
2 person cannot give opinion testimony. Normally
3 when a person testifies, they must testify as to
4 what they either saw, heard or sensed by smell or
5 something of that nature. However, there is an
6 exception. When someone is qualified because of
7 education or experience, then they are permitted
8 to give their opinion in certain areas if the
9 court qualifies them that way.

10 This witness has been qualified as an
11 expert as a Forensic Scientist to give opinion
12 testimony in that area. That does not mean that
13 you must accept the opinion. But it is evidence
14 for you to use in any way you see fit, and give
15 the weight and credibility you believe is
16 appropriate.

17 Mr. Harvin.

18 MR. HARVIN: In addition, Your Honor, can
19 he also be qualified as an expert witness in
20 gunshot residue analysis as well?

21 THE COURT: I am sorry. What was that,
22 Mr. Harvin?

23 MR. HARVIN: Can he also be qualified as
24 an expert in gunshot residue analysis as well?

25 THE COURT: Mr. Barr, any objection?

John Roberts-direct by Harvin

1 MR. BARR: No, sir, judge.

2 THE COURT: And also, Ladies and gentlemen
3 of the jury, I also found him qualified as an
4 expert in gunshot residue analysis as well.

5 MR. HARVIN: Thank you, Your Honor.

6 Q Mr. Roberts, on March 10th, 2009, did you
7 receive a list of items from Lieutenant Jeffrey
8 Scott from the Williamsburg County Sheriff's
9 Office?

10 A What was the date?

11 Q I believe March 10th 2009.

12 A That's the day that I issued my report. I
13 received the evidence in this case on the 23rd of
14 January of 2009.

15 Q What were the items that you received?

16 A I received several pieces of evidence.
17 The first piece of evidence was a gunshot residue
18 kit. If you will give me a second, I will read
19 the name off of that gunshot residue kit. Ervin
20 Lavern Cooper was the gunshot residue kit I
21 received. In addition to that, I received a
22 black shirt from Dawkins. Another black shirt
23 from Dawkins. A black shirt from Segars. A
24 white shirt from Segars. Jean shorts from Segars.
25 Jean pants from Dawkins. And jean pants from

John Roberts-direct by Harvin

1 Matthews.

2 Q And when you refer to Dawkins, are you
3 referring to Jeffrey Dawkins?

4 A The name that I have is just Dawkins. I
5 did not have the first name.

6 Q Okay. And did you perform a trace
7 evidence analysis on these items?

8 A I did. I ran the gunshot residue kit
9 according to our protocol. And with the clothing,
10 I took particle lifts and ran those according to
11 our gunshot residue protocol.

12 Q And can you please tell the jury what each
13 item was, and what the analysis found was located
14 on each item?

15 A The first item I got was the gunshot
16 residue kit. The gunshot kit is taken from
17 someone who may have fired a weapon. When you
18 fire a weapon, there are materials that are
19 ejected from that weapon when it's fired,
20 basically in the primary, center part of the
21 bullet. There are chemicals in it that explode
22 and ignite the powder inside the cartridge case.

23 The primer has metals. And those metals
24 are lead, barium and antimony. And that's what I
25 use my instrumentation to look for based on the

John Roberts-direct by Harvin

1 amount of metals that may be found on someone's
2 hands. We can give a positive or negative result
3 for metals that are associated with metals that
4 are consistent with gunshot residue.

5 In this case, the gunshot residue kit was
6 taken. And there are two types of ways, two
7 types of sampling that are done with a gunshot
8 residue kit. First, is a set of particle lifts.
9 Particle lifts are aluminum tabs with sticky tape
10 on them. And they're just dabbed on the palm and
11 back of both hands. You have four samples. One
12 for the right palm. One for right back of the
13 hand. One to the left palm. And one for the left
14 back of the hand. After the particle lifts are
15 taken, the swabs are taken. The swabs are dipped
16 in nitric acid, which dissolves any metals that
17 may be present on the hand. That's important,
18 because the instrument that I use needs to have
19 metal dissolved so I can detect them. Those swabs
20 also correspond to the same areas that the lifts
21 do: right palm, right back, left palm, left back.

22 In this case what I did was run the swabs
23 on my instrument. And if you will give me a
24 second to look here. I found that on the right
25 palm and the left palm of the gunshot residue kit

John Roberts-direct by Harvin

1 from Ervin Lavern Cooper that the quantities of
2 metals found are consistent with gunshot residue.
3 That means that there was an amount of metals of
4 lead, barium and antimony that we find are
5 consistent with residue from a fired weapon. On
6 the right back and the left back, and that's the
7 back of the hand, they were basically negative.

8 Q And did you also analyze a black long
9 sleeved shirt from Dawkins' case?

10 A I did. That was, the black long sleeved
11 shirt from Dawkins was my item 12. Clothing
12 differs from hands. You can't take swabs from
13 clothing. We instead just do the particle lifts.
14 What happens with the particle lifts is they're
15 analyzed under a very powerful microscope. And if
16 you look on the particle lifts the actual
17 particles of gunshot residue. There are round
18 gunshot residue particles that are unique to
19 gunshot residue. They don't come out of anything
20 else.

21 And in this case, on the black long
22 sleeved shirt on Dawkins, I found particles of
23 gunshot residue. My report reads that gunshot
24 residue was found.

25 Q Did you also perform an analysis on a

John Roberts-direct by Harvin

1 white short sleeved tee shirt from Segars?

2 A Yes, sir, I did. In that case, my results
3 were inconclusive.

4 Q Now what does inconclusive mean?

5 A Inconclusive means that I found something
6 but not enough to call positive. In this case I
7 found one particle. One particle is not enough
8 for us to call a positive. In this case, I just
9 found one. So my report went out as inconclusive.

10 Q And also you analyzed one pair of blue
11 jeans from Matthews as well?

12 A Yes, sir, that's correct. Also in this
13 case the results were inconclusive. I found a
14 particle. Just one. Not enough for me to call a
15 positive. Something was there, so I can't call a
16 negative. So it's inconclusive.

17 Q Okay. So just to be clear, you found
18 gunshot residue on the hands of Ervin Cooper. And
19 on the sleeves of a shirt worn by someone that you
20 referred to as Dawkins, is that correct?

21 A What I found was metals consistent with
22 gunshot residue on Mr. Cooper's hands. And I
23 found gunshot residue on a black long sleeved
24 shirt from Dawkins.

25 Q And you found one particle. One or more

John Roberts-direct by Harvin

1 particles on the short sleeved tee shirt of
2 someone you stated as being Segars. And the other
3 individual's blue jeans who you have stated as
4 being Matthews.

5 A On the white short sleeved shirt from
6 Segars it was inconclusive. I just found one.
7 And on the blue jeans from Matthews it was also
8 inconclusive. I just found one particle.

9 Q Does inconclusive mean that that
10 individual did not fire a weapon or was not around
11 a weapon being fired?

12 A It's the particle that we associate the
13 gunshot residue was there. However, it was only
14 one particle, so I can't draw any conclusions as
15 to what was happening. I just know that a
16 particle that we associate gunshot residue was
17 found on the clothing.

18 Q No, Mr. Roberts, what would cause a
19 situation where an individual would have only one
20 particle of gunshot residue on their clothing or
21 on their person?

22 MR. BARR: Objection. It's calling on the
23 witness to speculate, Your Honor. This is not in
24 his area of expertise.

25 MR. HARVIN: I think it is in his area of

John Roberts-direct by Harvin

1 expertise.

2 THE COURT: Hold on just a minute,
3 Mr. Harvin. Restate your question.

4 MR. HARVIN: The question was, what would
5 cause one particle of gun residue powder on an
6 individual's clothing as opposed to more than one
7 particle?

8 MR. BARR: In addition, judge, no
9 foundation.

10 MR. HARVIN: Your Honor,---

11 THE COURT: Objection sustained.

12 MR. HARVIN: ---I will withdraw the
13 question.

14 Q Mr. Roberts, are you familiar with how,
15 scratch that.

16 MR. HARVIN: No further questions of
17 Mr. Roberts. Please answer any questions that
18 defense counsel may pose.

19 Cross Examination by Mr. Barr:

20 Q Dr. Roberts, with respect to this case, I
21 don't think you were provided with any samples of
22 paint to analyze.

23 A No, sir, I was not.

24 Q I show you now what has been offered into
25 evidence as State's Exhibit No. 36. And it was

John Roberts-cross by Mr. Barr

1 offered as a fragment of a bullet. With possibly
2 fragments of paint coming from a wall.

3 Can you tell the Ladies and gentlemen of
4 this jury, in order to determine whether or not
5 the fragments of paint on this object matched any
6 particular wall, would it be fair to say that you
7 have to analyze a sample of a fragment from the --
8 what's said to be a bullet fragment and compare it
9 to the standard from the wall?

10 A When doing a comparison, what we would
11 have to have is a piece of the questioned item.

12 Q A piece of the wall.

13 A A piece of the questioned off the bullet.
14 And then we would compare it to a known standard
15 that was taken from where you thought the bullet
16 has passed through.

17 Q Precisely. Which means the known standard
18 would be a piece of the wall where the bullet had
19 ultimately passed through. And compared it to the
20 unknown standard which is contained on this item?
21 Or unknown whatever it might be. As contained.
22 And you compare the two.

23 A With respect to this case, it would have
24 to be a piece of the paint off of the projectile.
25 And then a piece of the paint of what you thought

John Roberts-cross by Mr. Barr

1 the projectile passed through.

2 Q Do you know as an expert in this field, do
3 you know any other way to determine precisely
4 whether or not this particular bullet passed
5 through any particular wall?

6 A I'm not an expert in trajectory or
7 ballistics or anything like that.

8 Q An expert in trajectory. I see. You're
9 not an expert in trajectory. Now of course in
10 order to determine whether or not the paint
11 fragments on this projectile came from a
12 particular wall, that would not require an expert
13 in trajectory, would it, if you were provided a
14 sample?

15 A No, sir.

16 Q Now of course with respect to determining
17 the bullet path, in a situation where a bullet had
18 passed through several rooms in order to determine
19 that path, you wouldn't need an expert in
20 trajectory.

21 A Yes, sir. But to determine the paint, all
22 I would need is the paint off of that questioned
23 item. And the standard off of the area where---

24 Q The known item.

25 A Yes, sir. A known where that trajectory

John Roberts-cross by Mr. Barr

1 passed through.

2 Q Now you weren't provided with any of those
3 in this case, were you?

4 A No, sir, I was not.

5 Q Now with respect to the other items that
6 were given to you, the sample taken from the palm
7 and the back of the hand right and left from
8 Mr. Cooper, in all likelihood you conclusively or
9 you found it probably did fire a firearm.

10 A That's what I found was consistent with
11 somebody shooting a firearm.

12 MR. BARR: All right. Thank you, sir.

13 THE COURT: Mr. Harvin, any redirect?

14 MR. HARVIN: No further questions, Your
15 Honor. Your Honor, we would also ask the court to
16 allow Mr. Roberts to be excused from his duties of
17 the court.

18 THE COURT: Any objections, Mr. Barr?

19 MR. BARR: No objection.

20 THE COURT: Thank you. Mr. Roberts, you
21 are excused from this case. I'm sorry, Ms. Barr.

22 MS. BARR: Your Honor, at this time we
23 would call James Green.

24 James Green, being first
25 duly sworn, testified as follows:

John Roberts-cross by Mr. Barr

1 MS. BARR: May It Please the Court.

2 THE COURT: Yes, ma'am.

3 Direct Examination by Ms. Barr:

4 Q Sir, can I get you to introduce yourself
5 the ladies and gentlemen of the jury?

6 A My name is James Green. G-R-E-E-N.

7 Q Now tell us where you are employed.

8 A I'm employed by the South Carolina Law
9 Enforcement Division also known as sled. In the
10 Firearm's Department, forensic's laboratory.

11 Q And how long have you been employed with
12 sled?

13 A Five years next month.

14 Q Kind of tell us what you do in firearm's
15 laboratory.

16 A I examine firearms and firearm related
17 evidence. Tool marks and tool mark related
18 evidence. We do shot distance determination for
19 explosion. Serial number restoration.

20 Q And, sir, would you give us a little
21 information about your educational background?
22 Any degrees that you might hold?

23 A I received a Bachelor of Arts from
24 Charleston Southern University. I received in
25 1996. In 2001, I received a Bachelor's of Science

James Green-direct by Barr

1 in Criminal Justice also from Charleston
2 University. And I've also completed the Sled
3 firearm's and tool mark instruction. Which is a
4 3-year approximate in-house course of intensive
5 instruction involving thousands of microscopic
6 comparisons. We study them under six qualified
7 firearm examiners.

8 Q Now, sir, in connection with your duties
9 with sled, have you ever testified in a criminal
10 case before?

11 A Yes, ma'am.

12 Q And have you ever been qualified as an
13 expert witness?

14 A Yes, ma'am.

15 Q In what field?

16 A Firearm's identification.

17 MS. BARR: Your Honor, at this time we
18 would tender Mr. Green as an expert in the field
19 of firearm identification.

20 THE COURT: Any objection?

21 MR. BARR: No objection.

22 THE COURT: Ladies and gentlemen of the
23 jury, once again the State had deposed Mr. Green
24 as an expert. The same charge I gave you a minute
25 ago with regards to an expert testimony in this

James Green-direct by Barr

1 case situation as well.

2 MS. BARR: Thank you. Judge, may I
3 approach the witness?

4 Q Mr. Green, you have with you what has been
5 marked for identification purposes as State's
6 Exhibit No. 39. Tell the jury if you recognize
7 that particular exhibit.

8 A Yes, ma'am. This is a cardboard box with
9 the Sled Lab No. L 09-01-048 container number A.
10 And it is sealed at this time with the evidence
11 tape from sled as well my initials and the date I
12 sealed it.

13 Q Okay. And it's concerning what particular
14 case? Are there any defendant's names listed in
15 connection with this case?

16 A Yes, ma'am. From Williamsburg County.
17 It's the subjects, Jeffrey Dawkins and Antwine
18 Matthews and Melvin Segars.

19 Q What's contained in that particular
20 exhibit?

21 A Let me open it up and see.

22 Q And while you are doing that, let me just
23 ask you, you mentioned that the exhibit contains a
24 seal that has your initials on it. What is the
25 significance of the seal and your initials?

James Green-direct by Barr

1 A The sealing process with my initials, the
2 evidence tape, my initials are also on the tape.
3 If someone were to have opened the box the
4 evidence tape seal would be broken. And you would
5 be able see that the seal is not continuous.

6 Q Is there anything that would suggest that
7 seal has been broken?

8 A No, ma'am.

9 Q And you are opening it up for us now?

10 A Yes, ma'am, I am.

11 Q Let me get that from you.

12 A The first thing I am opening up, I am
13 looking at, is a fired bullet, which is a mark as
14 being Sled laboratory item No. 4. It's a heat
15 sealed ziploc bag.

16 Q Let's take them one by one. The first one
17 you have is a fired bullet?

18 A Yes, ma'am.

19 Q And can you tell us where this fired
20 bullet came from?

21 A When I received it, it was packaged inside
22 of this closed screw on top plastic jar. I
23 indicated as being from Antwine Matthews.

24 Q What else is contained in that box? Do
25 you have in your hand a firearm now?

James Green-direct by Barr

1 A Yes, ma'am.

2 Q Have you pulled the safety?

3 A I am making sure it is unloaded and safe.

4 Q Thank you, sir.

5 A What I have here is Item 2.

6 Q All right.

7 A Sled Item 2.

8 Q And what is Sled item No. 2.

9 A It's a Taurus model P-38 special caliber
10 revolver.

11 Q And according to your report and your
12 record, what is item, supposedly belong -- who
13 does it belong to?

14 A Hold on one second. Actually my report
15 does not state whom it belongs to.

16 Q What else do you have in the box, sir?

17 A I have items 7 through 9, which are three
18 fired 38 special cartridge cases. Item 10 which
19 is three unfired 38 caliber cartridges. Sled Item
20 3 which is a fired red bullet core. A fired
21 bullet lead core. And items 5 and 6, which are
22 also two fired 38 special caliber cartridge cases.

23 Q Now, sir, all the items that are contained
24 in that particular box, those were items that were
25 submitted by Lieutenant Jeffrey Scott to the

James Green-direct by Barr

1 Williamsburg County Sheriff's Office to sled?

2 A Yes, ma'am.

3 Q And are they in the same condition as they
4 were when they left sled and were returned to the
5 Sheriff's Department?

6 A Yes, ma'am, as far as I could tell. None
7 of the seals have been broken.

8 MS. BARR: Your Honor, we would move I
9 believe it's State's Exhibit No. 39 into evidence
10 at this time.

11 THE COURT: Mr. Barr, without objection?

12 MR. BARR: Yes, sir.

13 THE COURT: Thank you. State's Exhibit
14 No. 39 is in evidence.

15 Q In connection with Item No. 2, which is
16 the 38 special caliber revolver, tell me what
17 analysis you performed on that particular weapon,
18 and what the result of your analysis was.

19 A When we receive a weapon, the first thing
20 we do is, we take pictures of it. When we receive
21 any evidence we take pictures of the evidence as
22 received and the conditions received to document.
23 And then we fill out the appropriate work sheets.
24 And in the case of this revolver, I tested it to
25 make sure it was safe. Prior to that, I look for

James Green-direct by Barr

1 any type of trace material, you know, any kind of
2 fibers that may have been on there. I did not
3 find any. I filled out the departmental
4 worksheets and then test fired the weapon. I
5 obtained samples that I may use to compare against
6 the unknowns of what was submitted.

7 Q Okay. What was the result of your
8 analysis on that weapon?

9 A I am going to start with the fired
10 cartridge cases first.

11 Q Yes, sir.

12 A Sled has a evidence submission policy that
13 states that if someone tells us that they removed
14 items from another item, we don't have to examine.
15 Just doing stuff we know. Through a conversation
16 with Lieutenant Jeffrey Scott of the Williamsburg
17 County Sheriff's Office, he told me there were
18 cartridge cases that were removed from this
19 revolver.

20 Q So which would have been the ones that you
21 were informed were removed from the revolver?

22 A Items 5 and 6. And items 7, 8 and 9. So
23 I did not do a microscopic comparison on those
24 versus the test specimens I agreed while test
25 firing this revolver.

James Green-direct by Barr

1 Q So those would be the ones that Lieutenant
2 Jeff Scott said he removed from that particular
3 weapon?

4 A That's correct.

5 Q Let me keep those separate. No analysis
6 done on those, is that correct?

7 A Correct.

8 Q Tell us about the remaining item.

9 A Item 10, which are just unfired
10 cartridges. Which were submitted with the other
11 evidence. The only analysis I did other than
12 taking pictures and documenting that I received
13 the evidence, was to say that they are correct
14 caliber for use of the Item 2 revolver. Or other
15 firearms that also came with the 38 special
16 cartridges.

17 Q So these were unfired bullets that were
18 consistent with the caliber that was used in the
19 38 special.

20 A Caliber, yes, ma'am.

21 Q Tell us about these items of evidence.

22 A Sled Item 3 is a fired lead bullet. It's
23 just a lead bullet. It is damaged. It's one that
24 I cannot reliably determine the caliber. I do
25 know that it is a lead core. It has no markings

James Green-direct by Barr

1 of value on it for us to make any identification
2 other than to say it is a fired lead core bullet.

3 Q Let me ask you about that. I am going to
4 hand you what has been admitted previously as
5 State's Exhibit No. 36. Is that a photograph, or
6 does it appear to be a photograph of a lead core
7 that you referenced in your testimony just now?

8 A They are similar.

9 Q Okay.

10 A I can't say if it is the same or not. It
11 is a damaged. That looks like a piece of lead or
12 something. That is a fired lead bullet that was
13 submitted.

14 Q Now you indicated that this particular
15 lead core that contained a bullet at some point?

16 A At some point, yes.

17 Q Prior to the weapon being fired?

18 A Yes, ma'am. There were two types of
19 ammunition.

20 Q Yes, sir.

21 A A jacket ammunition and plain lead. The
22 plain lead would be just a regular lead bullet. A
23 jacket bullet is usually a lead core. Sometimes
24 steel or other metals. A lead core that is
25 surrounded by a jacket. Either totally,

James Green-direct by Barr

1 impartially, half or whatever. Sometimes when
2 that core was fired both of the complete bullets
3 fired from whatever weapon it was, something
4 happened. The jacket has been removed leaving
5 only the core.

6 Q When you say something happened, does that
7 explain your finding and in terms of this being
8 inconclusive?

9 A Well the jacket, whatever happened to it,
10 would have had the markings of value on it. That
11 was actually not inconclusive there for
12 identification. No marks on it other than
13 something to let me know it is lead core.

14 Q What would have caused a lead core like
15 this, and I need you to be clear about this. This
16 is a portion of a bullet that was fired by some
17 firearm. Do we know that?

18 A Yes, ma'am.

19 Q No question about this. This came out of
20 a gun?

21 A That did.

22 Q And it was part of a bullet.

23 A Yes, ma'am.

24 Q And you indicated that it was so damaged
25 that you couldn't perform an analysis and tell you

James Green-direct by Barr

1 what caliber weapon fired it.

2 A Correct.

3 Q What would cause that type of result?

4 What would cause this bullet, lead core to look
5 like this?

6 A Striking something harder than the bullet
7 itself.

8 Q Like a wall?

9 A Depending on the wall. Striking something
10 that would deform the bullet causing the jacket to
11 be removed, ripped off, torn off, whatever the
12 case may be. Leaving it looking like it did as
13 opposed to a normal shape of a lead core.

14 Q Now because of the deformity, you cannot
15 tell the jury with certainty, what gun this came
16 from.

17 A Correct, or what the caliber was.

18 Q Now tell us about the remaining exhibit
19 that you have there.

20 A Item 4 was a fired bullet. And based on
21 its overall observable characteristics, it's most
22 consistent with bullets loaded into 38 special, or
23 357 caliber cartridge.

24 Q What you are talking about now, and you
25 said it is Item No. 4?

James Green-direct by Barr

1 A Yes, ma'am.

2 Q And is that the bullet that is indicated
3 that was taken from Antwine Matthews?

4 A Yes, ma'am.

5 Q And your testimony is, that is consistent
6 with a bullet that would have been fired from
7 either a 357 or a 38 special?

8 A Yes, ma'am.

9 Q And you performed an analysis on the 38
10 special that was submitted to you, is that
11 correct?

12 A Yes, ma'am.

13 MS. BARR: Mr. Green, thank you so much.
14 I think that's all the questions I have.

15 THE COURT: Mr. Barr.

16 MR. BARR: Yes, sir. Just a few more
17 questions.

18 Cross Examination by Mr. Barr:

19 Q Officer Green. Doctor Green, right?

20 A No, sir. I am not a doctor.

21 Q In other words, end of the day, you are
22 pretty much sure this 38 caliber is what shot at
23 Antwine Matthews?

24 A No, sir.

25 Q You not sure about that?

James Green-cross by Mr. Barr

1 A No, sir.

2 Q Another 38. It could have been another
3 38.

4 A The general riffling characteristics found
5 in this firearm.

6 Q Yes, sir.

7 A Let me back up on the rifling
8 characteristics real quick. A class
9 characteristic found in a firearm is when a fire
10 manufacturer is designing firearms. And they say
11 okay, we're going to make a 38 special. We're
12 going to get the five lands and grooves with the
13 right hand twist, which is what is found on
14 firearm.

15 Q Now let me ask you something. Now I'm
16 assuming that's where the bullet spins around in
17 the barrel of the gun and gets the marking of the
18 gun and you are able to identify it.

19 A Yes, sir.

20 Q Did you examine the trajectory that came
21 from the bullet -- the bullet that came from
22 Antwine Matthews' body?

23 A No, sir, I did not do the trajectory.

24 Q Not the trajectory. Just the projectile.

25 A Yes, sir. I did look at the bullet.

James Green-cross by Mr. Barr

1 Q And was it a custom 38?

2 A It came from a 38 or a 357.

3 Q 38 or---

4 A With the rifling characteristics.

5 Q Now you were not given any other 38's in
6 connection with this particular incident other
7 than the one that came from Mr. Cooper. This one
8 right here.

9 A Okay. If that's how it came from. That's
10 the only firearm I received in this case.

11 Q It's a pretty good looking gun, too. And
12 you don't know anything about -- well that's all.
13 I have no further questions, judge. Thank you.

14 THE COURT: Ms. Barr, any redirect?

15 MS. BARR: No, Your Honor, we would ask
16 that the witness be excused. Judge, can I get
17 some help?

18 THE COURT: Any objection to him being
19 excused, Mr. Barr?

20 MR. BARR: no, sir.

21 THE COURT: Agent Green, you are excused.

22 MS. BARR: Judge, may we approach?

23 THE COURT: Yes, ma'am.

24 (Whereupon, the attorneys approach the
25 bench and confer with judge.)

James Green-cross by Mr. Barr

1 MS. BARR: We would call Investigator
2 Pamela Lail, at this time.

3 Investigator Pamela Lail,
4 being first duly sworn, testified as follows:

5 Direct Examination by Ms. Barr:

6 Q Good afternoon, Investigator Lail.

7 A Good afternoon.

8 Q Sort of introduce yourself to the Ladies
9 and gentlemen of the jury. Kind of tell us where
10 you work, what you do, and that sort of thing.

11 A Pamela Lail. And I am investigator with
12 the Williamsburg County Sheriff's Office.

13 Q And you are a certified police officer?

14 A Yes, I am.

15 Q How long have you been employed as a
16 police officer?

17 A I have been in the law enforcement field
18 since early 90's. I have been with this
19 department approximately 3 years.

20 Q And I don't know if it's that I'm getting
21 older, but I need you to make sure you keep your
22 voice up, because I can barely hear you. Okay.

23 A Okay.

24 Q Give us an idea what you do day to day as
25 an investigator with the sheriff's office.

Investigator Lail-direct by Barr

1 A We have an investigative unit that
2 responds to anything from assaults, to a homicide,
3 to a burglary. Any type of what is called
4 criminal nature.

5 Q Okay. And were you working on the night
6 of December 30th of 08, leading up to that morning
7 of the 31st? Or were you on call that day?

8 A I was on call.

9 Q Did you receive a request to come out
10 concerning a shooting that happened at Mr.
11 Cooper's store?

12 A Yes, I did.

13 Q And do you know about what time it was
14 that you got the call?

15 A It was approximately 12:20. Between
16 12:20 a.m. and 12:30 a.m.

17 Q And did you see Mr. Cooper that night?

18 A I did.

19 Q Kind of give us an ideal of what his state
20 of mind would have been when you saw him, where
21 you saw him at, and did you speak with him, and
22 get a statement from him?

23 A I did get a statement from him. It was
24 approximately 3:15, 3:20 that morning. And he was
25 very nervous, very upset. Visibly upset when I

Investigator Lail-direct by Barr

1 interviewed him.

2 Q Now you indicated that you got a statement
3 from him. And I will talk to you about that in a
4 minute. Was he cooperative with law enforcement?

5 A He was very cooperative.

6 Q There has been testimony regarding a GSR
7 kit that was taken as relates to him. Was he --
8 did he agree to give a -- to cooperate with the
9 taking of evidence concerning whether or not---

10 A Yes, ma'am.

11 Q ---he had fired a gun? And we talked
12 about, Agent Green did, about a 38 special that he
13 performed an analysis on. Was that the gun that
14 belonged to Mr. Cooper?

15 A To my knowledge, that's correct.

16 Q And he voluntarily turned it over as far
17 as you know.

18 A As far as I know, yes, ma'am.

19 Q Now Mr. Cooper was asked when he testified
20 as to whether or not he could read and write. Do
21 you know whether or not he could read or write?

22 A To my knowledge he cannot read. He
23 verbally told me that he cannot read very well.
24 As a matter of fact, I even offered him to give
25 him my reading glasses, but he said, no. Even

Investigator Lail-direct by Barr

1 then as we progressed to talk, he advised me he
2 could not read.

3 Q Now he was also asked as to whether or not
4 you misunderstood something he said about the
5 number of people in the store that night. Was
6 there any confusion on your part about a number of
7 people---

8 A No, ma'am. From the time that our
9 interview began, he advised me there were three
10 individuals.

11 Q He never waived from that?

12 A No, ma'am.

13 Q Now you took a statement from him.

14 A That's correct.

15 Q Did you talk with anyone else other than
16 Mr. Cooper?

17 A Yes, ma'am.

18 Q Who else did you speak with? Don't
19 necessarily tell me what they said, just tell me
20 who else you spoke with.

21 A The first individual I spoke with was a
22 resident of area.

23 Q And what's the significance of that
24 particular address?

25 A When I originally got the call to come

Investigator Lail-direct by Barr

1 out, I was advised there that were two -- what
2 initially began as two separate incidences, and
3 then they realized the two went together. But one
4 was there was an armed robbery on Sand Ridge Road
5 at the Cooper's Store. And then approximately at
6 the same time, a call came out that a shot victim
7 was in the area of the Holy Woods.

8 Q And that's .

9 A .

10 Q And when you talk about a person being
11 shot, are you talking about Antwine Matthews?

12 A He was later identified as Antwine
13 Matthews.

14 Q And he was at ?

15 A That's correct.

16 Q Now you said you spoke to who at that
17 residence?

18 A I spoke with a Charles Bishop, Jr.

19 Q Do you know whether he lived at that
20 residence?

21 A He did.

22 Q He gave you a recorded statement?

23 A That's correct.

24 Q Now, Investigator Lail, did you attempt to
25 subpoena Mr. Bishop to be here to testify in

Investigator Lail-direct by Barr

1 connection with this case and this trial?

2 A Yes, ma'am. As a matter of fact, I made
3 contact at . The house has
4 been abandoned. I made contact with two of the
5 neighbors. They identified themselves as
6 relatives. They were not familiar with his
7 whereabouts. And I spoke with one of the
8 co-defendant's aunts, who was also somewhat
9 related to him or connected to him somehow. And
10 she did not know his whereabouts.

11 Q So you were not able to find Mr. Charles
12 Bishop and have him testify in this case.

13 A That is correct.

14 Q Who else did you speak with about this
15 case?

16 A That particular night?

17 Q Yes, ma'am.

18 A Okay. I spoke with, my first interview
19 was with Mr. Bishop. Charles Allen Bishop, Jr.
20 My second interview was with Jeffrey Laron
21 Dawkins.

22 Q Is Mr. Dawkins the person that is referred
23 to as, "Powder?"

24 A That is correct.

25 Q Who else did you speak with?

Investigator Lail-direct by Barr

1 A After that I spoke with, myself along
2 Investigator Brown, spoke with Melvin Lee Segars,
3 III.

4 Q And that person is who has been referred
5 to as Vinny?

6 A That's correct.

7 Q Now was there ever any attempt to get any
8 GSR, any gunshot residue from the hands of Antwine
9 Matthews?

10 A No, ma'am.

11 Q Tell us why not.

12 A Immediately upon Officer Scott, Seth Scott
13 arriving at , he received a call.
14 Antwine has arrived at -- the victim has turned
15 out to be Mr. Matthews. He was bleeding
16 profusely. 9-1-1 or EMS was en route. And they
17 immediately transported him to Williamsburg ER and
18 from there directly to McLeod. So we weren't able
19 to gain access to him, you know, because of the
20 threatening injuries.

21 Q So at that point and time the primary
22 concern would have been getting him medical
23 attention as opposed to testing his gun -- or his
24 hands for gunshot residue.

25 A Yes, ma'am.

Investigator Lail-direct by Barr

1 Q And at that time when EMS got the -- or
2 the 9-1-1 got the call regarding his shooting, who
3 did that call come from? Did it come from
4 Mr. Matthews?

5 A The call that---

6 Q Reporting that he had been shot, yes.

7 A No, it come from Mr. Bishop. Charles
8 Bishop. Along with, they had made contact with an
9 aunt who lives across from Holy Woods. And my
10 understanding is that she come over to attempt to
11 render aid. But the initial call to dispatch was
12 from I think, Mr. Charles Bishop.

13 Q So do your records reflect that
14 Mr. Antwine Matthews ever called 9-1-1 to report
15 that he had been shot that night?

16 A No, ma'am. I was advised by Mr. Bishop
17 that----

18 MR. BARR: Objection to hearsay, Your
19 Honor.

20 Q Don't tell me what Mr. Bishop said. Do
21 you have any records from a 9-1-1 call coming in
22 from Antwine Matthews saying, "Oh my God, I have
23 been shot?"

24 A No, ma'am.

25 Q What time did you speak with Mr. Bishop

Investigator Lail-direct by Barr

1 that night?

2 A At approximately 12:20. In the vicinity
3 of 12:20 and 12:30 a.m.

4 Q All right. Who else did you speak with?

5 A I think that was it for that particular
6 night.

7 Q Now given the fact that Mr. Matthews was
8 shot and had to have medical treatment, did you
9 take any precautions in terms of making sure that
10 he was not released from whatever hospital he
11 ended up once he was treated by the hospital?

12 A Yes, ma'am.

13 Q Tell us about that.

14 A En route from my residence to Kingstree,
15 to the call, in fact what the hospital he was
16 being transported to, once I found out that his
17 final destination would be McLeod, I called there
18 and spoke to security, and which is the procedure
19 that they ask law enforcement to go through. And
20 once I did that, they advised me of this
21 submitting name. And that they would notify us of
22 upon his release.

23 Q His admitting name, and they agreed to let
24 you know once the hospital releases?

25 A That correct.

Investigator Lail-direct by Barr

1 Q And that's McLeod Hospital, correct?

2 A That's correct.

3 Q And did they in fact do that, notify you
4 when he was being released from the hospital?

5 A Yes, ma'am.

6 Q Now did you ever go to ?

7 A I did.

8 Q And is that where you spoke with -- first
9 spoke with Mr. Bishop?

10 A No, ma'am. Officer Scott transported
11 Mr. Bishop to the Sheriff's Office, and I met with
12 him that night.

13 Q After your -- after you spoke with Mr.
14 Dawkins, Mr. Segars, and the victim in the case,
15 what type of vehicle were you looking for?

16 A They advised me of a White Crown Vic., if
17 I am not mistaken.

18 Q Okay.

19 A Crown Victoria.

20 Q Now did you at some point conduct an
21 interview with a young lady by the name of
22 Kimberly Hannah?

23 A Yes, I did.

24 Q When did you speak with her?

25 A That was on or about 1/6 of 09.

Investigator Lail-direct by Barr

1 Q January 6th 2009?

2 A That's correct.

3 Q So where did you speak with her at?

4 A At the Lake City High School. After I had
5 spoken with her mother. Actually I tracked her
6 mother down prior to realizing who she was.

7 Q And was she cooperative with you?

8 A Of, absolutely.

9 Q Now you heard her testify here in court
10 this morning, did you not?

11 A I did.

12 Q When she described this mobile home, did
13 she give you a description that day?

14 A She did.

15 Q And were you able to find out specifically
16 where she was talking about?

17 A Yes, ma'am.

18 Q Where was that?

19 A It was determined that it was
20 .

21 Q Okay. Is that the same place that
22 Mr. Matthews would have been taken from that night
23 after his gunshot was reported?

24 A That's correct.

25 Q Now when you spoke with Ms. Hannah, she

Investigator Lail-direct by Barr

1 mentioned earlier about her statement being
2 recorded. Was it in fact recorded?

3 A No, ma'am, it wasn't.

4 Q And you're sure about that?

5 A I am positive.

6 Q Do you know how it is that she could have
7 been mistaken about whether it was recorded or
8 not?

9 A Well when she testified this morning that
10 there was actually a tape recorder there, it very
11 well may have been. I know that I had -- we had
12 technical problems with our recorders. They have
13 since been replaced with the Sheriff's Department.

14 Q Okay.

15 A And that was an incident that recording
16 actually was not recorded. But I tend to take
17 notes. So my statements, while I'm taking them,
18 anyway, regardless of whether it's taped or not.

19 Q Did you take notes of your interview of
20 Kimberly Hannah back on January 6th 2009?

21 A Yes, ma'am, I did.

22 Q And did you summarize what she told you in
23 your incident report, your supplemental report?

24 A Yes, ma'am.

25 Q You wrote that out in your report?

Investigator Lail-direct by Barr

1 A Yes, ma'am.

2 Q And did you provide that to the defense?

3 A I did. I provided it to the solicitor's
4 office, and then they, you in turn, your office
5 provides it out.

6 Q In terms of her statement, did she say
7 anything about seeing a gun that day?

8 A She did.

9 Q Who did she say she saw had a gun?

10 A She, well I can read what I have in my
11 supplemental. And this is what I put and what she
12 told me. Kimberly Hannah stated that she got into
13 the car with them. And this is after -- she's
14 referring to them as Antonio Matthews, the three
15 individuals.

16 Q Antonio or Antwine?

17 A Antwine, I am sorry. And Jeffrey Dawkins
18 and Mr. Segars had come up to the residence. But
19 she had gotten in to the car there at her
20 residence in Lake City. She stated that she got
21 into the car with them, and they drove to
22 Kingstree. Kimberly Hannah stated that they went
23 to Benny's brother's house. She stated she didn't
24 know where the house was located, but she
25 described the house. Stated that when she had

Investigator Lail-direct by Barr

1 gotten into the car in Lake City, she saw a black
2 and gray gun in the front floorboard between the
3 driver and passengers's seat.

4 Hannah stated that she asked what they
5 were doing with the gun, but no one answered her.
6 She stated that the only person that she saw with
7 a gun was Antwine. And as I say, after she and
8 Antwine Matthews were in the bedroom, the gun was
9 on the night stand near the bed.

10 Q So her testimony regarding seeing the gun
11 on the night stand table, and inside the vehicle
12 in possession of Mr. Matthews, that's something
13 you heard for the first time today, isn't it?

14 A No, ma'am.

15 Q That was over a year ago.

16 A That was January 6th of 2009.

17 Q Now have you ever been able to locate the
18 actual gun that Ms. Hannah talks about seeing in
19 the vehicle, or on the night stand?

20 A No, ma'am.

21 Q Did you have Lieutenant Scott take
22 scenes -- take photographs of the scene where the
23 crime happened?

24 A That was done prior to my arrival in
25 Williamsburg County that night.

Investigator Lail-direct by Barr

1 Q And he would have, as part of his job,
2 collected certain evidence in this case and so
3 forth, in connection with the case?

4 A That's correct.

5 Q Now, ma'am, as a result of your
6 investigation, you filed criminal charges against
7 three individuals?

8 A That's correct.

9 Q And those three individuals were who?

10 A Antwine Lamar Matthews, Melvin L. Segars
11 and Jeffrey Laron Dawkins.

12 Q Now much has been made out of the fact
13 that Mr. Cooper has not been charged with any
14 crime.

15 A No.

16 Q Why not?

17 A Because he was protecting himself.

18 Q Did he have a right to do that?

19 A Yes, ma'am.

20 MS. BARR: Investigator Lail, I believe
21 that's all the questions I have.

22 THE COURT: Mr. Barr.

23 Cross Examination by Mr. Barr:

24 Q Investigator Lail, I'm a little,
25 protecting himself. Is that -- was that what I

Investigator Lail-direct by Barr

1 just heard you say? Protecting himself?

2 A That's correct.

3 Q And what was he protecting himself from,
4 as the young men were fleeing from the scene in
5 the vehicle, and he shot the vehicle and shot one
6 of them in the vehicle? What was he protecting
7 himself from?

8 MS. BARR: Judge, I object to the compound
9 nature.

10 MR. BARR: Judge, I'll rephrase the
11 question.

12 THE COURT: Thank you, Mr. Barr.

13 Q Now you said he was protecting himself.

14 A That's correct.

15 Q And that's what -- was that a decision
16 that was made by you, or just who made that
17 decision?

18 A I think it's a totality of what took place
19 that night, what was told to me from the victim.

20 Q You did take a statement from Mr. Cooper?

21 A Yes, sir.

22 Q Take it out, please, ma'am.

23 MS. BARR: Judge, I've got a copy. I'll
24 just hand it to her if Your Honor please.

25 THE COURT: Mr. Barr, you can speak in a

Investigator Lail-cross by Mr. Barr

1 minute if you want to.

2 Q Now if you would please ma'am, take a look
3 at page 3. Starting with line 4, and tell me
4 whether or not this is what Mr. Cooper told you:
5 "I shot him through the window twice at the car.
6 And both ran out. When I looked around to see who
7 had the gun, they were standing there looking at
8 me kind of funny. Something said, you better
9 fall. The gun was right there, but I never saw
10 their gun. I fell. I guess I figured I was hit.
11 That's when I reached under the counter, got the
12 gun. Shot up. And one of them broke for the
13 door. And one ran behind him.

14 The only thing I could do was look through
15 the window, and shot twice through the window.
16 The front window. The car was parked outside the
17 door."

18 Q Now I am trying to figure out---

19 MS. BARR: Judge, is that a question?

20 MR. BARR: Let me rephrase it, Ms. Barr.

21 Q Now as an officer, how long have you been
22 with the Sheriff's Department?

23 A Three years, sir.

24 Q Now did you conclude from that statement
25 that these young men were running, trying to get

Investigator Lail-cross by Mr. Barr

1 away?

2 A I didn't.

3 Q You didn't conclude that?

4 A No, let me finish my answer. I didn't
5 make a conclusion the same way that you are making
6 a conclusion. That is not how the victim stated
7 it that night.

8 Q Well now I just read verbatim from what he
9 told you.

10 MS. BARR: Objection, that's not the
11 testimony.

12 THE COURT: Hold on a minute, please.
13 What is your objection, Ms. Barr?

14 MS. BARR: Judge, he can't testify as to
15 what's in there. I mean, he's testifying. He
16 can't do that. He can't ask her through the
17 questions.

18 MR. BARR: Judge, she didn't object. I
19 just read it verbatim from the piece of paper.

20 THE COURT: You can ask her questions
21 about the statement based upon what was read to
22 her.

23 Q What I just read to you, was I reading it
24 verbatim from what -- from the paper?

25 A You were reading it word for word, yes,

Investigator Lail-cross by Mr. Barr

1 sir.

2 Q Word for word as you wrote it down.

3 A Well as it was typed out. But the
4 emphasis is different when you are actually
5 speaking it.

6 Q Oh, the inferences were different.

7 A That is correct.

8 Q Well have you got the tape?

9 A I do.

10 Q You want to play the tape and see how
11 different?

12 A That's fine.

13 Q Well let me ask you this much. I am not
14 going to waste the court's time. But you don't
15 deny with respect to recording what he told you,
16 you recorded exactly what he told you.

17 A That is correct.

18 Q And that is why you all gave us this
19 statement. If you didn't have faith in it, you
20 wouldn't have given it to me, would you?

21 A Sure. That is correct.

22 Q Now you're not suggesting that I some way
23 changed the words that were written on this piece
24 of paper, do you? Are you?

25 A No, I'm not saying that it was spoken

Investigator Lail-cross by Mr. Barr

1 differently from the way it was presented.

2 Q Spoken differently. Well in terms of how
3 it was spoken, spoken differently. Did he tell
4 you that he shot at them after they were running?

5 Did he tell you that he shot at them after they
6 were running? However it was spoken, did he tell
7 you that?

8 A He said he continued to shoot once he come
9 up. When he come up with the gun, he started
10 shooting.

11 Q Well he said he shot up one time. That's
12 what he said.

13 A Well there again, you have to listen to
14 how he said it. He shot up from behind. Not shot
15 up to the ceiling. He shot up from behind the
16 counter with the gun in his hand, and started
17 shooting.

18 Q When did he tell you all this? It's not
19 written in here. What I just read.

20 A I shot up. And one of them broke for the
21 door, and the other one ran behind him.

22 Q Now did you conclude from that, that he
23 was running towards the door? Running out of the
24 place?

25 A They started running out, when he started

Investigator Lail-cross by Mr. Barr

1 shooting out. Shooting back at them.

2 Q Wait a minute now. Now he continued to
3 shoot. He shot out through his window, and shot
4 them in the vehicle after they got out?

5 A Sir, I can't determine his level of fear.
6 Did he fear that they were going to turn around
7 and shoot again? I can't answer that.

8 Q So that's your explanation.

9 A Yes.

10 Q And he was protecting himself then in the
11 event, even though they were running and he was
12 shooting, in the event they decided to turn around
13 and come back and face some more shooting that
14 they were running from.

15 A That's what he felt he needed to do to
16 protect himself; yes, sir.

17 Q Now he didn't give you an explanation.
18 That's one you came up with, right?

19 A That's correct.

20 Q Well tell me this much, let's talk about
21 the statement that you took from Ms. Hannah.

22 A Okay.

23 Q Now you told Ms. Barr a few minutes ago
24 that Ms. Hannah told you that she saw Antwine
25 Matthews with the gun. Or with a gun. Did she

Investigator Lail-cross by Mr. Barr

1 tell you that?

2 A Well she told me that the gun was in the
3 vehicle when she got in the vehicle. And said it
4 was on the night stand when she and Antwine went
5 into the bedroom.

6 Q I see. So now, of course you were sitting
7 here in the courtroom today.

8 A I was.

9 Q And she told us that when she saw the gun,
10 the gun was on the night stand in the room. Did
11 you hear that?

12 A I did hear her say that. That was part of
13 her testimony, yes, sir.

14 Q Well did you hear her say anything about
15 seeing a gun in the car when they came to Lake
16 City?

17 A I do recall. I don't remember verbatim
18 what she said this morning, but that there was a
19 gun in the car.

20 Q Well so now you were here this morning in
21 courtroom. But you don't recall whether you heard
22 her say that or not.

23 A No, I said that I did hear her speak about
24 that, but I don't know verbatim word for word,
25 what she said. I mean, I didn't write it down.

Investigator Lail-cross by Mr. Barr

1 No, sir. I can only testify as to what she told
2 me that day.

3 Q But you did write down what she told you
4 that day.

5 A That's correct.

6 Q That she saw a gun on the floorboard in
7 the car, when the three men came to Lake City.

8 A That's correct. Leaving Lake City en
9 route back to Kingstree.

10 Q Now if I am not mistaken, you haven't
11 found the gun yet, have you?

12 A That's correct.

13 Q Now I know you were concerned about
14 finding that gun. If one existed, you wanted to
15 find it, did you not?

16 A Repeat the question, sir.

17 Q I said I know you were concerned about
18 finding the gun.

19 A Sure.

20 Q The weapon that supposedly somebody shot
21 at Mr. Cooper with. That's the one you said you
22 thought you were looking for?

23 A That's correct.

24 Q Now you didn't ask her, "Do you know how
25 this gun got in to the seat of vehicle?" You

Investigator Lail-cross by Mr. Barr

1 didn't ask her that, did you?

2 A No, I did not. She never claimed
3 possession of the gun at all. She said that when
4 she got into the vehicle,---

5 Q Speaking of possession, that's the word
6 she used when she was in court today. Which is
7 really a legal word. It's legal terminology.
8 You know that.

9 MS. BARR: Judge, you know, judge at some
10 point, he's testifying. Ask questions.

11 THE COURT: I'll rephrase the questions.

12 Q You've heard that word before, haven't
13 you?

14 A Absolutely, yes, sir.

15 Q And you do know, or would you agree that
16 possession can be constructive as well as actual?

17 A That's correct.

18 Q And she saw Antwine with the gun. That's
19 what she said.

20 A That's what she testified to this morning.

21 Q Yeah, but now notice that, if you would,
22 tell me where in her statement, if anyplace, did
23 she ever tell you, or do you have it in your
24 statement that she said that she saw a gun in
25 Antwine Matthews lap?

Investigator Lail-cross by Mr. Barr

1 A She never said that to me.

2 Q She didn't say that to you, did she?

3 A I do not have that in my supplemental.

4 And she did not -- the first time I heard that was
5 this morning.

6 Q And did she ever tell you that she ever
7 saw Antwine Matthews with a gun in his hand? Or
8 with his hand on the gun?

9 A The only thing is what I have already
10 read, that it was under the console.

11 Q Well the question is, did she tell you
12 that she ever saw Antwine Matthews' hand on the
13 gun?

14 A No.

15 Q And of course when she said that he had
16 the gun, you didn't ask her for any more details
17 to "Look to tell me where did he have the gun.
18 Did he have it in his right hand or his left."
19 You didn't ask her any of that, did you?

20 A She never said that it was on his person.
21 She said it was in the console of the car.

22 Q Console of the car.

23 A In the floorboard in between the seats.

24 Q I see.

25 A So I had no reason to ask her that.

Investigator Lail-cross by Mr. Barr

1 Q Were you surprised when she saw it in his
2 lap?

3 A It's common for witnesses, victims or
4 defendants to recall something later that they
5 didn't recall at that time or vice versa. So no,
6 I wasn't surprised.

7 Q And you don't think that now you're
8 making an excuse for her?

9 A No, sir. I have no reason to. I mean it
10 is what it is. I can't help what she testified to
11 this morning. I can only say what information she
12 gave me.

13 Q I see. Incidentally, were you surprised
14 when you heard her say today that she didn't know
15 whose house she went to with the three young men?

16 A She didn't know the guy's names and
17 relative of Segars. I don't know think she did
18 know. She just knew it as Vinny's -- I don't know
19 if she referred to it as Vinny's brother or, if I
20 am not mistaken, Vinny's brother's house.

21 Q Vinny's brother's house.

22 A She didn't know him---

23 Q You don't think she knew him?

24 A ---by name.

25 Q But you knew who you are talking about,

Investigator Lail-cross by Mr. Barr

1 don't you?

2 A I do.

3 Q That's Spanky.

4 A That was his nickname. Charles Bishop,
5 Jr.

6 Q Vinny's brother's house.

7 A That's correct.

8 Q Now speaking of Vinny's brother's house
9 that you say that Mr. Matthews was taken from
10 after he was shot, that's the same house, isn't
11 it?

12 A That's correct.

13 Q That's Vinny's brother's house. That's
14 where Vinney lives.

15 A Yes.

16 Q Now I know that you have checked around
17 and investigated and made some kind of
18 determination as to where Mr. Matthews lives. He
19 doesn't live at Vinny's house, does he?

20 A No, sir.

21 Q Now Ms. Barr asked you about recording
22 something that was mentioned by Ms. Hannah. And I
23 am not sure. Did you have a tape recorder with
24 you when you interviewed Ms. Hannah?

25 A I honestly do not recall. She said this

Investigator Lail-cross by Mr. Barr

1 morning she recalled seeing a tape recorder. I do
2 know that we are having technical difficulties
3 with our recorders. They have since been
4 replaced, so I can't dispute what she said. I can
5 say that I do not have a recorder.

6 Q Now, Officer Lail, when you interviewed
7 Mr. Segars, you got the tape recorder, right?

8 A It was the location.

9 Q Did you have a tape recorder?

10 A I did.

11 Q When you interviewed Mr. Dawkins, did you
12 have a tape recorder?

13 A I had the office tape recorder at the
14 office.

15 Q You had the tape recorder?

16 A I did.

17 Q And when you interviewed the gentleman
18 that you said you went up and tried to serve a
19 subpoena and couldn't find him. When you
20 interviewed him, did you have a tape recorder?

21 A At the office with the off the road, not
22 the portable recorder.

23 Q So now y'all just can't afford a good tape
24 recorder.

25 A That one was not working well at that

Investigator Lail-cross by Mr. Barr

1 time. All I can say is---

2 Q Which one?

3 A The one -- the portable recorder that I
4 had. There is no tape recorded statement.

5 Q So then so you now recall that you had one
6 with you, but it just wasn't working, huh?

7 A I didn't say that. I said if she said
8 that, I can't dispute it because I can't recall
9 it. I can say that if it's not with this package
10 then it's detailed in the supplemental. And there
11 is no recorded statement.

12 Q Did you ever ask Ms. Hannah whether the
13 gun that she claimed that she saw in the middle of
14 the seat on the floor, was the same one that she
15 saw at Vinny's brother's house?

16 A I didn't ask her that directly. But
17 she---

18 Q How did you ask her?

19 A I don't recall. I can read what I wrote.

20 Q Well do you have a recollection today of
21 having asked her that?

22 A She -- in the conversation, she was
23 referring to the same gun that was in the car as
24 the one on the night stand.

25 Q Now when did she make reference -- did you

Investigator Lail-cross by Mr. Barr

1 ever ask her whether or not it was the same gun?

2 A No, I did not.

3 Q So then if you never asked her, she never
4 had an opportunity to express an answer to you
5 concerning whether or not she thought it was the
6 same gun.

7 A Like I said, her implied answer or
8 statement to me, is that it was the same gun. But
9 did I ask her that question, no, I did not.

10 Q You didn't ask her?

11 A No.

12 Q Now you probably wished now you had asked
13 her, right?

14 A No, sir.

15 Q Well, I don't get that implication from
16 it.

17 A Well in talking to her, she was referring
18 to the gun in the car. They go directly to
19 Kingstree. There were no stops. And then they
20 went in to the bedroom with the gun on the night
21 stand.

22 Q Did you ask her, did you see who took the
23 gun out of the car, since you say that implied
24 that it was the same gun? Did you ask her, this
25 gun that I've implied that got from the car to the

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Investigator Lail-cross by Mr. Barr

1 night stand, who implied it over there? Did you
2 ask her that?

3 A No, I did not.

4 Q If it was in the car, it certainly didn't
5 walk from the night stand, did it?

6 A No.

7 Q If it was the same gun.

8 A Yes, sir.

9 Q You took a statement from Vinney. Melvin
10 Segars on the 31st.

11 A I did.

12 Q Ma'am?

13 A I did.

14 Q Did you record it?

15 A I did.

16 Q Now you took another statement from him
17 later on, did you not?

18 A On the same date.

19 Q It was later on. The same day. Later on
20 that same day.

21 A It was within a few minutes of the first
22 statement. I mean we are right in the same
23 time frame, yes, sir.

24 Q Same time frame.

25 A Two statements.

Investigator Lail-cross by Mr. Barr

1 Q And of course, because he was a suspect,
2 you mirandized him.

3 A That's correct.

4 Q Was there anybody else present when you
5 took the first statement?

6 A Mr. Barr, can I refer to my statement?

7 Q Now tell me something. You haven't
8 seen -- have you seen Vinny today? Melvin Segars?

9 A I saw him this morning. Yes, sir.

10 Q This morning?

11 A Briefly.

12 Q You haven't seen him this afternoon?

13 A No, sir.

14 Q But now you do expect him to testify in
15 this case, don't you?

16 A I have no idea.

17 Q You don't---

18 A No, sir.

19 Q You have no ideal whether he's going to
20 testify or not?

21 A No, sir, I do not.

22 Q You don't. You honestly don't.

23 A No, sir, I don't. And that's totally left
24 up to Ms. Barr, and I don't know.

25 Q Well take a look at his statement that you

Investigator Lail-cross by Mr. Barr

1 took on the 31st.

2 MS. BARR: Judge, can I get some clarity
3 as to which statement counsel is....

4 THE COURT: The 31st.

5 MS. BARR: There were two on the 31st.

6 Q The first one. Now in that statement that
7 you took from him on the 31st, the first
8 statement.

9 A Okay.

10 Q You never told him in that statement that
11 one of the other young men had told him, or told
12 you that he did the shooting, didn't he?

13 A Normally we wouldn't do that, no.

14 Q Well you don't think you would normally do
15 that?

16 A No. We asked him what took place. This
17 one took place at 3:49 a.m.

18 Q Well what time did the second statement
19 take place?

20 A 4:20 a.m.

21 Q 4:20 a.m.? While I'm looking for it, take
22 a look at the first statement, and tell me whether
23 or not you recorded in that statement anywhere
24 where Melvin Segars told you that Mr. Matthews had
25 a gun, or either shot at Mr. Cooper. Tell me

Investigator Lail-cross by Mr. Barr

1 whether that's in there anywhere that you recall.

2 A In the first statement?

3 Q Yes, ma'am.

4 THE COURT: Mr. Barr.

5 MR. BARR: Yes, sir.

6 THE COURT: Ms. Barr, can you all come up
7 here for a minute, please.

8 (Whereupon, the judge confers with
9 attorneys at the bench.)

10 THE COURT: Ladies and gentlemen of the
11 jury, I know that you all have been sitting for
12 awhile. I'm going to give you about a 10 or 15
13 minute break. If you all will step in the jury
14 room for a few minutes. Please do not discuss the
15 case.

16 (Whereupon, the following takes place
17 outside the presence of the jury.)

18 THE COURT: Hearsay issue. This situation
19 is forcing Mr. Segars to testify when he has got
20 the right not to testify.

21 MR. BARR: Well, Your Honor, I am cross
22 examining. The witness is regarding what she
23 recorded. She has testified extensively regarding
24 what she recorded as far as, particularly as far
25 as Ms. Hannah. And my understanding, I am

Investigator Lail-cross by Mr. Barr

1 questioning her regarding a statement that was
2 made to her.

3 THE COURT: It's still hearsay if it is a
4 statement made to her. We're just going down the
5 road. That's going to prolong hearsay, when what
6 you are asking her what he told her about this
7 night.

8 MR. BARR: Well, Judge, I think, well now
9 I can make it more restrictive. Now I can do
10 that.

11 MS. BARR: And, Your Honor, I'll just
12 state for the record, I don't have any objections
13 to the statements coming in. Mr. Segars has
14 competent counsel. So if he has any concerns
15 about his 5th Amendment privileges, he has an
16 attorney. A private attorney, who can represents
17 him. Now he is not at, he's obviously not in the
18 courtroom. But if that issue comes up in
19 connection with forcing him to testify, I think
20 that is something we have to address in terms of
21 statements that he made. But then I would don't
22 have any problem.

23 THE COURT: Okay. Let's stand at ease for
24 about 10 minutes.

25 (Whereupon, the court takes a short

Investigator Lail-cross by Mr. Barr

1 recess.)

2 THE COURT: You may bring the jury.

3 (Whereupon, the following takes place
4 within the presence of the jury.)

5 THE COURT: Ms. Porcher, if you will have
6 a seat in the second seat in the front. I will
7 explain to you in just a minute. If you will sit
8 right there for me.

9 Ms. Porcher, I have asked you to sit
10 there, because I have decided to appoint you as
11 the foreperson of this jury. That seat although
12 it's not having an inscription or a tag on it,
13 that is typically where the foreperson sits. The
14 job responsibilities as a foreperson is to, is
15 really the spokesperson for the jury. You are in
16 charge of course with filling out the verdict
17 form, if that time -- when that time comes, okay.
18 Preside over the deliberations. Thank you.
19 Mr. Barr, I believe you were in cross examination.

20 MR. BARR: Ms. Lail, I have no further
21 questions.

22 THE COURT: Thank you, Mr. Barr. Any
23 redirect, Ms. Barr?

24 MS. BARR: Yes, Your Honor. Just a few
25 questions.

Investigator Lail-cross by Mr. Barr

1 Redirect Examination by Ms. Barr:

2 Q Investigator Lail, where did you interview
3 Melvin Segars at?

4 A At the Williamsburg County Sheriff's
5 Office.

6 Q What about Jeffrey Dawkins?

7 A The sheriff's office.

8 Q What about Mr. Charles Bishop?

9 A At the sheriff's office.

10 Q And those interviews were recorded on
11 audio tape?

12 A That is correct.

13 Q They were later transcribed by a Court
14 Reporter?

15 A That's correct.

16 Q Would they have been provided to the
17 defense counsel as far as you know?

18 A Yes, ma'am.

19 Q Now you were asked on cross examination
20 wherein Melvin Segars, Vinny Segars' first
21 statement, if he ever mentioned anything about a
22 gun. And you said -- did you ever answer that
23 question?

24 A I did not answer. I was reviewing my
25 statement at that time.

Investigator Lail-redirect by Barr

1 Q And is there any mention in there about a
2 gun during the first statement?

3 A Well I understand the first statement.
4 Mr. Segars advised us that it was an untrue
5 statement. And he gave us a supplemental
6 statement.

7 MR. BARR: Objection to hearsay.

8 THE COURT: Ms. Barr, what do you have to
9 say?

10 MS. BARR: Judge, we take the position
11 that counsel opened the door for it, when counsel
12 started asking this witness about statements that
13 Melvin Segars gave. We take the position he
14 opened the door.

15 MR. BARR: Your Honor, I have not asked
16 the witness of any other question. But in fact,
17 the question has been withdrawn. The information
18 has never been -- the witness never answered the
19 question.

20 THE COURT: I'm going to overrule the
21 objection. I think the door was opened. You
22 asked the question while she didn't respond, that
23 door was opened. I am going to allow Ms. Barr.

24 Q Investigator Lail, did Mr. Segars deny
25 initially any involvement in this case? Ma'am?

Investigator Lail-redirect by Barr

1 A Yes, ma'am, he did.

2 Q You mentioned a second statement.

3 A Yes, ma'am.

4 Q After he gave a second statement, did he
5 say anything about a gun?

6 MR. BARR: Judge objection.

7 A Yes, ma'am.

8 THE COURT: Hold on. State the question
9 again, Ms. Barr.

10 Q When he gave the second statement to you,
11 did he say anything to you about a gun?

12 MR. BARR: Your Honor.

13 THE COURT: Yes, sir.

14 MR. BARR: May we approach the bench?

15 THE COURT: Yes, sir.

16 (Whereupon, the attorneys and judge confer
17 at the bench.

18 THE COURT: I am going to allow it,
19 Ms. Barr.

20 MS. BARR: Thank you, Your Honor.

21 THE COURT: Mr. Barr, your objections are
22 noted in the record.

23 Q Investigator Lail, did Mr. Vinny Melvin --
24 Vinney Segars give you a second statement about a
25 gun?

Investigator Lail-redirect by Barr

1 A Yes, ma'am, he did.

2 Q In connection with this case?

3 A That's correct.

4 Q Who did he say fired the gun?

5 MS. BARR: Judge, objection. Now she---

6 THE COURT: Sustained.

7 Q Investigator Lail, let me just ask you
8 this. The case that's -- the charges that you
9 brought against Mr. Segars, his criminal case is
10 still pending?

11 A That's correct.

12 Q Let me ask you just for clarification as
13 it relates to the statement that was given to you
14 by Kim Hannah. Now you indicated that when she
15 gave you the statement, she did not tell you that
16 the gun was on the defendant's lap. Was that your
17 testimony?

18 A That is correct.

19 Q Now do I understand from your testimony,
20 are you saying that she never mentioned that the
21 defendant had a gun, or you don't remember her
22 saying it was in his lap?

23 A No, she never mentioned that it was in his
24 lap, on his person.

25 Q Did she say she saw him with a gun though?

Investigator Lail-redirect by Barr

1 A She said that it was in his vehicle. And
2 she referred to it as, she actually called him,
3 "Twine's gun."

4 Q And who did she say was the only person
5 she saw with a gun?

6 A Antwine.

7 Q And I just want to be clear about that.
8 She said that he had a gun, and that it was in the
9 console or the floorboard in between---

10 A In the floorboard in between the seats and
11 the console. In the built up part of the car.

12 Q And did you ever ask her whether or not,
13 when she says that he was the only person that had
14 a gun, whether she saw it come out of his pants
15 pocket, out of his lap, or where? Did you ever
16 ask her that specific question?

17 A I don't recall asking her that, no, ma'am.

18 Q Now you talked about the statement on
19 cross examination of the victim, Mr. Cooper. I am
20 going to hand you what's been marked for
21 identification purposes as State's Exhibit No. 43.
22 Do you recognize that?

23 A Yes, I do.

24 Q What is it?

25 A It is a taped statement where I wrote

Investigator Lail-redirect by Barr

1 Mr. Ervin Cooper. And the date where I took a
2 statement 12/31/09.

3 Q Is that the audio recording of the
4 statement that you got from Mr. Cooper the night
5 this incident happened?

6 A Yes.

7 MS. BARR: Judge, we would move State's
8 Exhibit No. 43 into evidence at this time.

9 THE COURT: Mr. Barr.

10 MR. BARR: Objection, judge. Purely
11 hearsay.

12 MS. BARR: Judge, he doesn't want the jury
13 to hear it.

14 THE COURT: Hold on a minute. Objection
15 sustained.

16 MS. BARR: Judge, that is all the
17 questions I have. Thank you, Investigator Lail.

18 THE COURT: Step down please. Hold on a
19 minute. Go ahead, Mr. Barr. I'm sorry. I didn't
20 think you had any more questions.

21 Recross Examination by Mr. Barr:

22 Q The gun that Ms. Hannah told you that she
23 saw in the middle of the floor on the floorboard,
24 when the car came to Lake City, did she ever
25 indicate to you that Mr. Matthews was closer to

Investigator Lail-recross by Mr. Barr

1 that gun other than to just simply drive the
2 automobile?

3 MS. BARR: Judge, objection. That's been
4 asked and answered.

5 THE COURT: I will allow it. Go ahead,
6 finish the question.

7 A She never said those words to me. No,
8 sir.

9 MR. BARR: Thank you, ma'am.

10 THE COURT: You may step down.

11 MS. BARR: Your Honor, the State rests.

12 THE COURT: Ladies and gentlemen of the
13 jury, that is the State's case. I am going to ask
14 you to step to the jury room. There is a matter
15 of law that needs to be addressed, so if you would
16 step to your jury room, I would appreciate it.
17 Thank you.

18 (Whereupon, the following takes place
19 outside the presence of the jury.)

20 THE COURT: Mr. Barr.

21 MR. BARR: The defense would move for a
22 directed verdict of not guilty on the offense of
23 assault with intent to kill. Your Honor, we would
24 submit with respect to the element of assault, it
25 would require that a victim be placed in fear and

1 apprehension of an immediate battery or otherwise,
2 immediate bodily harm.

3 The testimony in this case is undisputed
4 that if a gun was fired, and of course the victim
5 does not know who fired a gun, in fact he did --
6 he didn't see a gun. I believe there was
7 testimony from one of the witnesses that perhaps a
8 co-defendant fired a gun. But I don't know that
9 there has been any direct testimony either
10 forensic or otherwise, to connect that firing to a
11 gunshot that Mr. Copper actually claimed that he
12 heard other than to say of course to the extent
13 that he had his back turned, and did not observe
14 the gun being fired if it was in fact fired.

15 Now clearly if he wasn't aware of it, I'd
16 have a difficult time seeing how he could -- how
17 he could have claimed that this action was an
18 assault. The intent to kill element, of course,
19 assuming, Your Honor, that what he heard was a
20 bullet, and I think there is some evidence that
21 perhaps the jury could conclude that it actually
22 was. But quite frankly listening to him testify,
23 I don't think that he could actually identify it
24 as a bullet. And if there was no bullet, then
25 perhaps no deadly weapon; whereby, there are any

1 presumptions that could be made.

2 The issue of a possession of a weapon.
3 during a violent crime, Your Honor, we would
4 clearly submit in order for this particular count
5 of the indictment to go to the jury, the court
6 would have to find that there is some evidence of
7 possession. And evidence of the commission of a
8 violent crime. Your Honor, and I know this issue
9 is going to be probably strenuously argued in this
10 case. We would submit that no violent crime
11 occurred.

12 The offense of attempted armed robbery,
13 Your Honor, irrespective of what the witnesses
14 testified to that was discussed or supposedly
15 discussed prior to the time the young men went to
16 the store, at that time, assuming those
17 discussions occurred, if in fact they did occur.
18 Then it's an issue of the state of their minds.
19 And the mens rea portion of what would otherwise
20 be a criminal offense with no actus reus.

21 We would perhaps assume that well if there
22 was a shot fired that that would be the initial
23 act of the commission of a burglary. But, Your
24 Honor, if I remember, I asked the witness very
25 clearly what if anything effort was made by

1 anybody to cause him to depart from my goods by
2 means of any force. And I think his response was
3 that somebody put 18 cents on the counter. And
4 that the candy that he was -- and that they were
5 purchasing they never got.

6 The criminal conspiracy, Judge, I suppose
7 depending upon who the jury believes, there might
8 be some evidence in the record that at least there
9 was some testimony that there was some kind of
10 agreement to rob Mr. Cooper. So we would concede
11 that count of the indictment as far as relates to
12 a directed verdict.

13 THE COURT: Ms. Barr, I will hear your
14 response to Mr. Barr's directed verdict motion on
15 the assault with intent to kill, and possession of
16 a weapon during a violent crime and attempted
17 armed robbery.

18 MS. BARR: Yes, sir. May it Please the
19 Court, Judge, Your Honor, the offense counsel
20 concedes that there is a sufficient evidence to go
21 forward with regard to the count of criminal
22 conspiracy. And I think you have to concede that
23 the law says that acts are committed in
24 furtherance of the conspiracy, makes all of the
25 co-conspirators reliable for those acts.

1 Judge, when we get to this stage in the
2 trial, of course, Your Honor is aware it's not the
3 weight to be assigned to evidence, it's the
4 existence of that evidence. And, of course, it
5 has to be -- the evidence has to be viewed in the
6 light most favorable to the nonmoving party. The
7 party in this case would be obviously the State.
8 Judge, the evidence in the case from the
9 defendant's own friend is that he along with
10 another person, Mr. Segars, conspired to go rob
11 Mr. Cooper; that they were all getting high that
12 day. Ran out of drugs, ran out of money. And
13 they needed to get more money to get more drugs.
14 I believe that was his testimony.

15 He also testified that Melvin Segars told
16 Antwine: "You ain't got nothing else to do. Come
17 on and go with us." And what was also interesting
18 about the testimony of Mr. Dawkins, he said, "Well
19 Twine agreed to provide the transportation." If
20 he didn't provide the transportation, we couldn't
21 have committed the crimes.

22 Obviously, if you viewed that evidence,
23 the defendant was aware there was a gun. He was
24 aware there was a plan to go rob the victim in the
25 case. And he provided the transportation. Under
270

1 the theory of the hands of one is the hands of
2 all, that makes him liable. Judge, we take the
3 position that the attempted armed robbery was
4 completed once they walked into the store, and
5 they fired the gun at the victim.

6 And, Judge, it matters not who actually
7 fired the gun. I don't know of a situation where
8 somebody shoots a gun in the direction of
9 somebody's head and it's not considered assault
10 and battery intent to kill. The intent to kill
11 comes in at the firing of a deadly weapon in a
12 space that's reasonably located in the vital organ
13 of the victim. The vital organ here is that it
14 was shot in the direction of his head. The victim
15 talks about feeling the heat of the bullet go past
16 him.

17 There is testimony that there was a spent
18 projectile in his store. And so, Judge, we would
19 submit that there is clearly enough evidence at
20 least to have the judge to consider, or the jury
21 to consider whether there was an assault with
22 intent to kill. Further, whether there was an
23 attempted armed robbery. Given that they came
24 into the store with an armed -- with a firearm and
25 with the intent to rob the victim.

1 THE COURT: Thank you, Ms. Barr.

2 MS. BARR: Judge, we would respectfully
3 request that the motion be denied.

4 THE COURT: We will take about 10 minutes.

5 MS. BARR: Yes, sir.

6 (Whereupon, the court takes a short
7 recess.)

8 THE COURT: Back on the record. Mr. Barr,
9 in listening to your motion for a directed verdict
10 as it relates to assault with intent to kill and
11 possession of a weapon during a violent crime and
12 attempted armed robbery, as you well know, the
13 directed verdict, grounds for such a motion is
14 directed -- were given direction on that with
15 regards to a directed verdict under Rule 19(a)
16 Rules of Criminal Procedure which states: "Courts
17 to direct a verdict in the defendant's favor on
18 any offense charged in the indictment after the
19 evidence on either side is closed, if there is a
20 failure of competent evidence tending to prove the
21 charge in the indictment, in ruling on the motion,
22 the trial judge shall consider only the existence
23 or nonexistence of the evidence and not its
24 weight.

25 The testimony taken over the last couple

1 of days I believe, has been both direct and
2 circumstantial evidence as to the charges in the
3 indictment on the assault with intent to kill, on
4 possession of a weapon during a violent crime, and
5 attempted armed robbery. The evidence is to be
6 looked at in the light most favorable to the
7 nonmoving party which is the State here. I
8 believe that based upon the evidence that's
9 presented and your concession with whether or not
10 the hand of one hand of all -- you conceded in the
11 criminal conspiracy. With the other three charges
12 in the indictment, I believe that there has been
13 both direct and circumstantial evidence for which
14 a jury could find your client guilty of these
15 charges, and I would therefore respectfully deny
16 your motion for a directed verdict.

17 MR. BARR: Thank you, judge.

18 THE COURT: Mr. Barr.

19 MR. BARR: Your Honor, I would ask the
20 court to advise Mr. Matthews concerning his rights
21 to take the witness stand or not take the witness
22 stand.

23 THE COURT: Mr. Matthews, would you please
24 stand.

25 (Whereupon, the defendant is sworn.)

1 THE COURT: Mr. Matthews, at this time, I
2 am going to explain to you certain rights that you
3 have. Okay. If you do not understand anything I
4 say, please let me know. If you want me to
5 explain anything in more detail, please let me
6 know. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: We have now reached the stage
9 of the trial where you may present your defense.
10 You have the right to claim the protections given
11 to you by the 5th Amendment of the United States
12 Constitution. This Amendment states in part that:
13 "No person shall be compelled in any criminal case
14 to be a witness against himself." This means that
15 you cannot be required to testify in this case.
16 You have the right to testify in your own behalf.
17 However, no one can make you testify. This is a
18 personal right and no one can waive this right
19 except you.

20 If you decide to testify, you will be
21 subject to the same rules that govern other
22 witnesses. And you may be examined and cross
23 examined on any relevant issues in this case.

24 In addition, if you have any convictions
25 involving dishonesty or false statements or for

1 crimes punishable by imprisonment for more than
2 one year and this court determines that the
3 probative value of admitting this evidence
4 outweighs its prejudicial effect to you, the
5 Solicitor, Ms. Barr and Mr. Harvin, will be able
6 to introduce your record to attack your
7 credibility. If you decide to testify, this
8 decision on your part must be freely, voluntarily
9 and intelligently made with knowledge of the
10 protections given to you by the 5th Amendment and
11 the consequences of your decision to testify.

12 If you decide not to testify, I will
13 instruct the jurors they cannot give the fact that
14 you did not testify any consideration whatsoever.
15 And there is to be absolutely no prejudice to you,
16 because you did not testify. It's left entirely
17 up to you whether or not you testify. You may
18 talk with your Attorney, Mr. Barr, your family and
19 friends or anyone else. But the final decision is
20 left entirely up to you. Do you understand what I
21 have explained to you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions
24 about what I explained to you?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you discussed with your
2 lawyer whether you should or should not testify?

3 THE DEFENDANT: He already advised me of
4 all my rights, but I have not made that decision
5 yet.

6 THE COURT: I am sorry, you have not made
7 the decision?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you wish to talk to
10 Mr. Barr any further?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Please do so. Mr. Barr.

13 (Whereupon, the defendant confers with
14 attorney.)

15 THE COURT: Mr. Barr.

16 THE DEFENDANT: Judge, my lawyer is going
17 to announce when I make that decision.

18 MR. BARR: Judge, the defendant will not
19 take the witness stand.

20 THE COURT: And that is your decision and
21 your decision alone?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Thank you. You may have a
24 seat.

25 MR. BARR: Thank you.

1 THE COURT: You may bring the jury.

2 (Whereupon, the following takes place
3 within the presence of the jury.)

4 THE COURT: Mr. Barr, do you have any
5 other witnesses that you intend to call?

6 MR. BARR: No, sir.

7 THE COURT: The defense rests, Your Honor.

8 THE COURT: Ma'am Forelady, and Ladies and
9 gentlemen, you have heard all of the evidence that
10 you are going to hear in this case. It is now
11 approximately 5:20 p.m. They are some additional
12 matters of law that we need to handle here in
13 court. Therefore we are going to let you all go
14 for the evening, and I am going to ask you to be
15 back in the jury room at 10:00 a.m. tomorrow
16 morning to complete this case tomorrow.

17 Please do not discuss this case. The
18 case is not over. You are not allowed to discuss
19 this case with any one. So please be back in your
20 jury room at 10:00 o'clock in the morning. Thank
21 you.

22 (Whereupon, the jury is dismissed.)

23 (Whereupon, the following takes place
24 outside the presence of the jury.)

25 THE COURT: What about charges?

1 MS. BARR: Judge, I am on possession of a
2 weapon during a violent crime. I think I am about
3 done, judge. Judge, I am ready.

4 THE COURT: Mr. Barr.

5 MR. BARR: Judge, is the burden of proof
6 in there?

7 THE COURT: Yes, sir.

8 MR. BARR: It is?

9 THE COURT: Yes, sir.

10 MR. BARR: How about criminal intent?

11 THE COURT: Mere presence is also there,
12 so I not going to separately give that.

13 MR. BARR: Criminal intent is the last
14 page?

15 THE COURT: Is the last page of the hand
16 of one. The last paragraph.

17 MR. BARR: I see it.

18 MS. BARR: Judge, my understanding, you
19 are not going to give the mere presence charge?

20 THE COURT: Mere presence is part of the
21 hand of one charge. I am not going to separately
22 give the mere presence charge, because it is
23 clearly within the hand of one charge.

24 MS. BARR: Your Honor, as it relates to
25 the jury instruction on intent. And I am not

1 sure what page number it's on. But it is
2 concerning the -- it's the second page of the hand
3 of one, hand of all charge.

4 THE COURT: Yes, ma'am.

5 MS. BARR: It says, "Intent is also a
6 necessary element. Or there must be a common
7 design or intent to commit a crime, and the crime
8 must have been committed pursuant thereto.

9 The second sentence says, "Intent means
10 intending the result which actually occurred, not
11 accidentally or involuntary." And, judge, I just
12 wanted to kind of state my objection for that on
13 the record. That at least in my mind seems to
14 conflict with the notion of co-conspirators. And
15 the acts done in furtherance of the conspiracy.
16 And under the hands of one hand of all. I believe
17 under the charge for hand of one, hand of all, it
18 talks about how a person can go in and have a plan
19 with a co-defendant to commit one act. And if
20 that's a plan, then the co-defendant can commit a
21 separate act in furtherance of that conspiracy.
22 And the person who is not committing a separate
23 act; i.e. a murder, there may not be intent in
24 that person's heart or mind to commit a murder,
25 but if his co-defendant does it, or his

1 co-conspirator does it, then he is liable under
2 the hand of one, hand of all.

3 And, Judge, we would request that as it
4 relates to conspiracy that the court also will
5 charge that where criminal conspiracy has been
6 formed, each member thereof is liable for and is
7 bound by the acts and declarations of all members
8 of the conspiracy that are done in furtherance of
9 the common scheme.

10 THE COURT: Where is that coming from?

11 MS. BARR: Judge, this is out of Ervin's
12 South Carolina Request to Charge, Criminal
13 Request.

14 THE COURT: Have you got a case cite?

15 MS. BARR: No, sir, Judge. I don't have a
16 case now.

17 THE COURT: Are you reading in the record
18 the criminal conspiracy charge?

19 MS. BARR: Yes, sir. Also, in that same
20 manner requesting a charge that the extent of any
21 defendant's participation in a conspiracy is not
22 determinative of his guilt or innocence. A
23 defendant may be convicted as a conspirator even
24 though he may have played only a minor part in the
25 conspiracy.

1 MR. BARR: Judge, for the record, while
2 you are thinking, I have pulled all of the
3 additional requests that have been made by the
4 Solicitor. I think the charge on the hands of one
5 and hands of all, adequately covers along with the
6 conspiracy charge the issue that has been raised
7 by the Solicitor for the record.

8 THE COURT: Ms. Barr, your objection is
9 noted. I think the charge that I have prepared
10 here adequately covers those issues. And your
11 objection is noted for the record.

12 MS. BARR: Your Honor, may I also request
13 on additional instruction?

14 THE COURT: Yes, ma'am.

15 MS. BARR: I don't believe that there is
16 an instruction purposed as relates to attempt.

17 THE COURT: To attempt?

18 MS. BARR: Yes. And, Judge, I would
19 purpose that under Ervin's Request of Charge,
20 defines an Intent as an act done in partial
21 execution of a design to commit a crime. There
22 must be an intent that was actually committed,
23 and an act shall be committed and an act not in
24 full execution but in pursuance of the intent.

25 THE COURT: Mr. Barr. I'm sorry, go

1 ahead.

2 MS. BARR: It further goes on to say to
3 bring the law in to action, it is necessary that
4 some act be done in pursuant in intent
5 immediately and directly tending to the commission
6 of a crime, an act which should the crime be
7 perpetrated, would constitute part and parcel of
8 the transaction, but which does right its
9 accomplishment of the original intent because it
10 was prevented or voluntarily abandoned.

11 THE COURT: Your objection is noted. I
12 think it is covered within the charge of attempted
13 armed robbery. The second paragraph. I think it
14 is covered there. But your objection is noted,
15 Ms. Barr. Thank you.

16 MS. BARR: Yes, sir.

17 THE COURT: Any other request of charge,
18 Mr. Barr?

19 MR. BARR: No, sir.

20 THE COURT: Ms. Barr, other than those
21 that have already been stated?

22 MS. BARR: No, sir, judge.

23 THE COURT: Thank you. We will see you in
24 the morning at 10:00 o'clock.

25

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the above captioned case, relative to appeal, in General Sessions Court, on May 11th-13th 2010, Williamsburg County, Kingstree, South Carolina.

I do further that I am neither kin, counsel nor interest to any party hereto.

12/22/10 Margaret T. Sullivan
DATE COURT REPORTER

My Commission expires: 10-03-11

VOLUME THREE

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF WILLIAMSBURG) COURT OF GENERAL SESSIONS
 3
 4 STATE OF SOUTH CAROLINA)
 5 versus) TRANSCRIPT OF RECORD
 6 (Partial)
 7 ANTWINE LAMAR MATTHEWS)
 8 Defendant)

9

10

11

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1 (The matter was resumed on May 14, 2010)

2 THE COURT: Bring in the jury, please.

3 (Jury returned to Courtroom)

4 THE COURT: How are you doing this morning, sir?

5 JUROR: Fine, sir.

6 THE COURT: Would you please come up here and sit
7 by Madam Forelady?

8 Good morning, ladies and gentlemen of the jury,
9 I hope you all had a good night, a restful night of
10 sleep.

11 As I told you yesterday, you have now heard all
12 of the evidence you're going to hear, and what we're
13 going to do now is have the closing arguments of Ms.
14 Barr from the Solicitor's Office in behalf of the State,
15 followed by closing argument from Mr. Barr in behalf
16 of the Defendant.

17 Once those are completed, I will tell you the law
18 which applies to this case.

19 I would ask that you give your full attention to
20 Ms. Barr at this time. Thank you. Then to Mr. Barr.

21 Ms. Barr?

22 SOLICITOR: Thank you. May it please the Court?

23 THE COURT: Yes, maam.

24 SOLICITOR: Mr. Barr, Madam Forelady and ladies
25 and gentlemen of the jury, good morning.

1 I'd like to make some preliminary comments first
2 before I begin my closing argument. First of all, to
3 thank you all for being here with us.

4 I have made it a practice in the past to look at
5 jurors in the Courtroom during the course of a trial,
6 and I have looked at this jury during the course of this
7 case. I know you have been paying very close attention
8 and listening closely. I appreciate that. You have
9 paid close attention to the witnesses as they have tes-
10 tified.

11 I'm sure that the Defense Counsel appreciates that
12 as well.

13 Now, the thing that is most important right now
14 is that I get to go first with my closing argument, and
15 to be honest with you if I had a choice I would prob-
16 ably rather go last, because Mr. Barr gets an opportun-
17 ity to listen to me and then come back after me and
18 tell you all every reason why you should disregard
19 every thing I've said.

20 I will want to come back again, but I can't do
21 that, and that's fine.

22 Please understand that I have the greatest respect
23 for Mr. Barr even though during the course of the trial
24 he and I have represented our respective side. That is
25 the nature of an adversarial proceeding. He and I have

1 gone up against each other many times in this Courtroom
2 and I say again that I have the utmost respect for him.

3 But as you probably suspect, I don't agree with
4 him in this case. He's wrong on this case. He is
5 wrong and his client is guilty.

6 Let me tell you why. This case isn't complicated
7 at all. It is important though, very important.

8 This young man and two of his friends create a
9 plan where they would go into the store of Mr. Cooper
10 at the end of the year, 2008, so they can get more
11 money, to rob him, and that's it. That's it. It's not
12 complicated.

13 What they did not count on was that Mr. Cooper was
14 not going to just be an average victim. He was not just
15 going to lay down and let them come in, shoot at him,
16 and rob him.

17 They did not count on that, and now let me tell
18 you about the charges.

19 There are four charges that you have to consider
20 in this case, assault with intent to kill; attempted
21 armed robbery; possession of a weapon during a violent
22 crime; and criminal conspiracy.

23 Let's kind of go through and talk about each one
24 of them.

25 Criminal conspiracy happens when two or more people

1 get together and they plan to do something illegal, or
2 they plan to do something that is legal but by illegal
3 means.

4 Okay, so we have to show you that two or more
5 people got together and conspired to do something, and
6 we all know armed robbery is illegal.

7 We would submit to you when the three of these in-
8 dividuals, whoever came up with the idea -- whether
9 the Defendant came up with the idea or Powder came up
10 with the idea or whether Vinny came up with the idea,
11 once they all agreed the crime of criminal conspiracy I
12 submit to you had already been committed.

13 Once they got into that vehicle and Antwine
14 Matthews said, oh, I'm down for this; I'm going to ride
15 you over there; I'll be the driver -- once he agreed to
16 do that, and one of them had a weapon, and they went
17 into that store with the intent to rob this man, the
18 crime of attempted armed robbery was committed.

19 Now, when they went in with this weapon, that is
20 possession of a weapon during a violent crime. That had
21 been committed.

22 So they went in there with a plan to rob this man,
23 and, remember, Mr. Dawkins knew him --it wasn't enough
24 that they went in there with a plan to rob this man, and
25 this is the part that has kept me up at night -- first

1 of all they went in there and they never tried to dis-
2 guise their appearance at all. Why do you go in a con-
3 venience store with a gun, three people now, and you
4 don't try to hide your appearance, you are not expect-
5 ing there to be any live witnesses.

6 They didn't go in there and say, all right, Mr.
7 Cooper, hold your hands up; we're going to rob you.
8 They didn't go in there and show a gun and say, all
9 right, give me all your cash.

10 They went in there long enough to tell him, I want
11 some candy, and as soon as he turned his back they
12 pulled the gun and fired at him. They went in there
13 and it makes you wonder whether they went in there with
14 the intent to kill him to begin with.

15 Now, we are relying on the testimony of Jeffrey
16 Dawkins to prove the crimes of conspiracy and attempted
17 armed robbery. Sure. We make no bones about that.

18 You see, the State has to rely on his testimony be-
19 cause he was there. You see, I wasn't there that night
20 when this happened. I wasn't there with them when they
21 were going around all day drinking or smoking or what-
22 ever they were doing. I wasn't in the car with them
23 when they were talking about robbing this man.

24 Mr. Barr is going to get up here and I promise
25 you that he's going to get up here and say, ladies

1 and gentlemen of the jury, you can't believe Jeffrey
2 Dawkins. Jeffrey Dawkins cut a deal in this case, and
3 he's going to testify to anything they want him to
4 say.

5 You can't believe him because he's a convicted
6 felon. He's a burglar.

7 Here is the reason why that argument fails, be-
8 cause I didn't pick Jeffrey Dawkins to be a witness in
9 this case. I didn't pick him. (Next sentence was in-
10 audible)

11 Antwine Matthews knew that Jeff Dawkins, his
12 friend, his home boy -- he knew he was there and he
13 knew he had gone in somebody's face and taken something
14 that didn't belong to him. He's on probation for a
15 burglary.

16 He knew that. Antwine Matthews didn't go to some-
17 one from his local church and say, hey, I want to go
18 rob Mr. Cooper and I need to get me somebody to help
19 me. Does anybody in this church want to come and help
20 me do that? Come on, folks. I need more money for drugs.

21 He didn't go looking for those kind of people. He
22 didn't go looking for them. He took the bad guy with
23 him because he knew that his friend was capable of com-
24 mitting a crime like this line.

25 You can't have your cake and eat it too, Mr.

1 Matthews. He can't tell you, hey, you can't believe
2 Mr. Matthews because he's a burglar, but at the same
3 time I chose Jeffrey Dawkins to help me with the crime
4 because he's a burglar.

5 Now, when Mr. Dawkins was first questioned by law
6 enforcement regarding his case, it was within, I guess,
7 three or four hours after the crime had been committed.
8 You remember Jeff Dawkins did not go back, he said, with
9 Mr. Matthews after Mr. Cooper started shooting back.

10 He hauled tail and went off some place else, so
11 he didn't go back with them. He didn't have a chance
12 to talk with them after that shooting to decide this
13 is what I'm going to say and this is what you're going
14 to say.

15 He didn't have the opportunity to do that. He was
16 apprehended within three or four hours after it hap-
17 pened, and within three to four hours after this shoot-
18 ing happened who was he saying was with him? He was
19 saying it was his friends. His home boys. Twine --
20 and that person is Mr. Antwine Matthews. Vinny.

21 And I remember very clearly when he testified here
22 in front of you.

23 I said, sir, um, if you are truthful in your tes-
24 timony, would you want to help your friends or would you
25 want to hurt them, and he told me, I wouldn't want to

1 hurt them. He didn't make that stuff up. He wasn't
2 making this up to hurt them.

3 Now, Defense Counsel can get up here and argue all
4 day long that he cut a deal with the State, but let me
5 tell you folks that there is a lot of things I can do
6 in a trial, but one thing I cannot do is I cannot sen-
7 tence somebody.

8 I'm sure some of you all were in here during the
9 week when people charged with violating probation came
10 up here and the Judge gave them time or not. The Judge
11 does that. I don't sentence anyone for anything. I
12 don't have the power to do that. I have never in my
13 life sentenced a person to jail.

14 So whatever the Judge sentences Mr. Dawkins to for
15 his crimes, he can get twenty years, and that's the
16 same thing as it relates to the Codefendant, Mr. Vinny
17 Segars.

18 Mr. Segars, just like Mr. Matthews, has a lawyer,
19 and Mr. Segars, just like Mr. Matthews, has a right to
20 plead not guilty.

21 At some point, Mr. Segars will come into this
22 Courtroom and he will have to account for his actions.

23 Now, I will be the first to admit that Mr.
24 Matthews is a handsome young man. He's well dressed, has
25 good manners, and I'm sure he has a good momma.

1 But this is a Courtroom, and when you are in a
2 trial you put on your best front. It is easy to
3 make him appear be something he's not.

4 But he wasn't sitting next to his momma that night.
5 He didn't have on a nice shirt and a nice tie. If he
6 had been, we wouldn't be here.

7 So don't be fooled by appearances. Sometimes what
8 we see is not always what we get.

9 The reality is, folks, that we serve an awesome
10 God. He's the same God that allows people to sit in
11 this Courtroom and testify in this case and he spared
12 Mr. Cooper's life that night. He's the same God that
13 allowed this young man in the emergency room to have
14 his life spared.

15 It is absolutely amazing that we are not dealing
16 with someone dying that night. That is only by the grace
17 of God. God forgives us all of our sins.

18 But there is a price to has to be paid to society
19 under man's law for criminal behavior. Mr. Matthews
20 has got to pay that price, folks.

21 I'm not asking you to judge him. That's not your
22 place. That is nobody's place, nobody's place to judge,
23 but he has to pay for criminal behavior.

24 That is why you are here so that you can judge his
25 conduct. Now, just to be clear, somebody could come up

1 to me and say, Ms. Barr, who fired the gun at Mr.
2 Cooper? That's a good question. I don't know the
3 answer because I wasn't there.

4 Mr. Cooper isn't sure who fired the gun. He just
5 knows it was fired at him, and it occurred while the
6 three young men were there in his store.

7 Now, let's look at some of the testimony. The
8 testimony of Ms. Hannah kind of suggests that Antwine
9 Matthews was the one carrying the gun.

10 You know that the Defense is going to make a big
11 deal about what all she said and the fact that she may
12 not like Mr. Matthews any more. He may even come up
13 and argue that you shouldn't believe her because she's
14 mad at Twine.

15 Here's the problem with that argument. When
16 Kimberly was first questioned by law enforcement in the
17 week after this all happened -- remember, now, she said
18 law enforcement came to talk to her. They came to her
19 school and they questioned her about her momma's pill
20 bottle. She didn't even know there was a shooting.

21 She didn't even know that Mr. Matthews was in the
22 hospital. She didn't even know Mr. Cooper had been
23 robbed. She didn't know why they were coming to ask
24 her about a pill bottle.

25 As the conversation developed, Investigator Lail

1 asked her how in the world did your momma's pill bottle
2 end up on the floor, and she just told them about what
3 she had done that day.

4 Now, no matter what you may think of her in terms
5 of what she did that day, you cannot deny that she is
6 truthful. Folks, she had told me she had sex with two
7 guys that day. I didn't ask her about it from the stand
8 because I didn't think it was relevant, but when Mr.
9 Barr asked her about it she admitted it.

10 Now, what woman would admit having sex with two
11 men in the same room within minutes of each other and
12 lie about a gun? That makes no sense.

13 She had no reason to lie about the gun. She told
14 them the only person she saw with a gun that day was
15 Twine.

16 I would submit to you that if Kimberly wanted to
17 hurt Antwine, she -- if she was so mad and the break-up
18 was so bad that she wanted to hurt him, she could have
19 found a lot more ways to do it. She could have come up
20 here and said, well, yes, Ms. Barr, I saw him with the
21 gun; saw him putting it on the nightstand, and he was
22 bragging about it. But she didn't do that.

23 She didn't have to add anything to her statement.
24 She could have said, well, yeah, I saw him take it from
25 the nightstand table and I saw him walk outside with it,

1 with it on his hip.

2 She said she didn't know how the gun got from the
3 bedroom to the car. She could have come in here and
4 said, well, when I was sitting in the backseat of the
5 car I heard them talking about they were going to rob Mr.
6 Cooper.

7 If she wanted to lie to hurt him, if she had really
8 wanted to hurt him, she could have done it.

9 When she asked them, what are you all going to do
10 with that gun, nobody answered her. Guess what? If she
11 wanted to hurt Antwine Matthews, she could have done
12 that. She could have said that he had told her they
13 were going to use it to do a robbery that night, but she
14 didn't say any of that.

15 All of the testimony that you have dealing with
16 the conspiracy, the attempted armed robbery, the
17 assault with intent to kill, the weapons charge, they
18 have all been corroborated by other evidence in the
19 case.

20 This is a photograph of Mr. Cooper's store. This
21 is his truck and this is his business. This is the window
22 and where the counter is.

23 Remember Mr. Cooper's testimony about where was
24 that vehicle parked. He testified right outside, and
25 do you remember me showing you this picture of the--

1 of the vehicle when he said how the vehicle was facing
2 that way?

3 Now, when you look at some of the questions Mr.
4 Barr asked him, you would think that once Mr. Cooper
5 was fired at he came out the front door, and ran down
6 the street, chasing these people behind them.

7 I'll tell you what, I wouldn't blame him one bit,
8 but he had no idea whether these people were coming
9 back, and some people want him locked
10 up for protecting himself and his business.

11 Come on. Are you seeing this?

12 You want to know whether or not they intended to
13 kill him? They're charged with assault with intent to
14 kill. Did they mean to kill him? Stop right there.
15 Did they intend to kill him really?

16 Ladies and gentlemen, listen to what the Judge tells
17 you the law is. There is no question as to what their
18 intent was.

19 If you look inside that car in this photograph you
20 will be reminded about some testimony by Kimberly Hannah
21 and where she saw the gun. This was before she ever
22 saw this picture. She told Investigator Lail on January
23 6th of 2009 that she saw a gun on the floorboard and
24 it was between the driver and the passenger.

25 Who was driving that car when she saw that gun?

1 The Defendant was. Who was sitting beside him in
2 the passenger seat? His good friend and buddy, Jeffrey
3 Dawkins.

4 Mr. Barr kept on asking her if she saw the gun.
5 Folks, if she's seated right here, you see that opening
6 there? You can see the little hole.

7 The seats are open between the seats, and you can
8 clearly see through there.

9 Now, the Judge is going to tell you about the
10 legal principle called the hand of one is the hand of all.
11 The law simply says that when a crime is committed by
12 two or more people who are acting together, the hand of
13 one participant in a crime is the hand of all.

14 Two people can be charged with murder if there is
15 only one gun involved. If two people are together and
16 get together to commit a crime, they are all guilty.

17 If one person puts their hand on a gun and all of
18 these people are acting together, they are all guilty.
19 It doesn't matter who fired the shot.

20 When you begin to deliberate, the question of who
21 actually tried to kill him doesn't matter at all. When
22 they all went in the store that night and attempted to
23 rob this man, if one of them had a gun, they are all
24 responsible for the crime.

25 There is something that is inherently dangerous

1 about planning to go into somebody's store with a wea-
2 pon. That is why the law says if you plan it and you
3 get out there and try to carry it out, whatever happens
4 after that point, everybody is guilty of that. That's
5 exactly the way the law should be.

6 When someone came up with the idea, he had the op-
7 portunity to say, no, man, I'm not going to be part of
8 that. If you all want to do it, you're not getting in
9 my car to go there.

10 He could have done that, but there is for some
11 people something that is powerful about having a gun.
12 I get that in some people it makes them feel like a big
13 person, and if it is just one person maybe common
14 sense will prevail. But if you've got two or more peo-
15 ple, and they kind of pull together, they might feel they
16 can do anything.

17 They might feel they are invincible, but they are
18 not invincible. He is not invincible. He's guilty,
19 and you know what happens when someone goes in to try
20 and commit an armed robbery, to get some money? They
21 get convicted.

22 He's a young man. He's got a lot of life left to
23 live, but it is time to give him a very important les-
24 son. For every action, there is a reaction. For every
25 act, there is a consequence.

1 I don't want you all to feel sorry for anybody.
2 Nobody in this Courtroom wants you to feel sorry for
3 anybody. Nobody in this Courtroom wants you to be mad
4 at anybody.

5 We want you to do what is right and what is just
6 in this case. That's all we can ask for. That's all
7 as a prosecutor I can ask for; all the Defense Counsel
8 can ask for.

9 We want you to do what is right, what is just, in
10 returning a guilty verdict against this Defendant on
11 everything he is charged with.

12 I implore you all -- I implore you all to do that.
13 Thank you.

14 THE COURT: Mr. Barr.

15 MR. BARR: Thank you, Judge. Ladies and gentlemen,
16 good morning.

17 I will go back for a moment to Judge Newman's pre-
18 liminary instructions, and if you think back he talked
19 about Courtroom drama, and Ms. Barr is absolutely right.
20 We are colleagues, we practice law together, but now
21 I tell you that I would really have to give some seri-
22 ous thought as to whether or not she was almost talking
23 about another case.

24 As a defense lawyer, I want to call your attention
25 right now to just a couple of things relating to the

1 law. Ms. Barr spent a whole lot of time telling you
2 what the definition of armed robbery is, possession of
3 a weapon during a violent crime, conspiracy, and even
4 assault with intent to kill.

5 But, ladies and gentlemen, I tell you that the
6 cardinal principle of the judicial system that we are
7 dealing with now, and why we are here today -- I can
8 give you one word -- reasonableness.

9 His Honor is going to give you the law that per-
10 tains to this case. Irrespective of what Ms. Barr has
11 said. If you remember, when I first came before you, I
12 suggested this -- I stood up and a lot of times when we
13 take on responsibility, we assume that responsibility
14 with an objective. A lot of times that is based on
15 what we think and in some instances what the law ought
16 to be, but that is just not the case.

17 The law in South Carolina is very clear, and I
18 guarantee His Honor is going to give it to you in a
19 very clear and succinct way.

20 Now, some of you may have wondered, well, why does
21 Mr. Barr picking on Mr. Cooper? Let me tell you some-
22 thing. I have known Mr. Cooper all my life, and I am
23 not picking on him.

24 All I want to do is, first of all, give you a good
25 impression of how things work. What am I talking about?

1 You remember the police officers that got on this
2 stand? Even Ms. Barr just a few minutes ago said, well,
3 Mr. Cooper was defending himself.

4 Now, ladies and gentlemen, I would want a good
5 part of it to turn on reasonableness; that is, what the
6 reasonable man would do as an innocent victim in a
7 situation.

8 In this instance, with respect to the two shots
9 that were fired, one of them almost killed Mr. Matthews
10 and it probably shouldn't have been fired.

11 I don't care what anybody says, and I don't care
12 how many police officers get up here on the witness
13 stand and keep insisting -- what is the truth? The
14 simple fact of the matter is you can't shoot a person
15 when they're running from you. It is unreasonable to
16 do it, and there is nothing that anybody has presented
17 in this Courtroom today -- any officer telling you you can
18 isn't telling the truth.

19 You don't have to be a lawyer to know that. You
20 cannot use excessive deadly force to protect property.

21 As I said, I've got nothing against Mr. Cooper
22 whatsoever, but I would want the police to admit that
23 this young man probably should not have been shot.

24 Mr. Cooper himself said, look, when I saw Mr.
25 Matthews -- he identified him as the last man who came

1 in the store, and forgive me if being young is a reason
2 now to be convicted of criminal conduct.

3 The Solicitor says, now, look at Mr. Matthews to-
4 day. He's sitting over there with his momma, has a nice
5 tie on, a nice shirt, but back in December he wasn't
6 quite that way.

7 He was promiscuous, with a woman having sex --
8 Lord, have mercy. But for the grace of God, he is
9 alive.

10 This young man isn't the only one who has ever
11 smoked marijuana. Ms. Barr asked yesterday of her wit-
12 ness and the young man said, yeah, I smoked marijuana. I was
13 I was young and didn't know any better.

14 He didn't always have a tie and shirt on. I did
15 not myself always have this suit and this tie on. I guar-
16 antee you if you look back at your experiences, ladies
17 and gentlemen, you have been in a bad place at one time
18 or another yourselves.

19 The simple fact of the matter is that we try every
20 day to be better than we were yesterday. We don't con-
21 tinuously do things that we know are wrong, but we try
22 to do better.

23 I don't hold it against Mr. Matthews for being a
24 young person and growing just like any other person has
25 to grow, even when it comes to the company that you

1 may keep.

2 We have got to learn that. We've got to learn
3 that.

4 Now, as I said, Ms. Barr spent a whole lot of
5 time telling you why you should find Mr. Matthews
6 guilty, most of which had nothing to do with what has
7 been charged in this case.

8 His Honor is going to instruct you as to the law.
9 One of the first things he's going to tell you is that
10 the reason that we are here today is because we are in-
11 volved in the prosecution of a criminal case, and, guess
12 what, one of the things Ms. Barr should have said but
13 said nothing about it is that right now with respect to
14 this young man that is why we are here. We are not here
15 for any other reason.

16 As he is being tried, he is presumed innocent, and
17 the presumption of innocence is a substantive rule of
18 our law.

19 If you want to go about deciding this case, then
20 you need to remember, and His Honor is going to in-
21 struct you, that, believe it or not, the Defendant is
22 presumed innocent.

23 Ladies and gentlemen, that presumption of innocence
24 goes with him throughout the case of the trial. His
25 Honor is going to instruct you that even until you get

1 in that jury room and you are in your collective de-
2 liberation it is only when the twelve of you agree that
3 this young man is guilty because the prosecution has
4 proven his guilt beyond a reasonable doubt -- beyond a
5 reasonable doubt -- that he can be found guilty by you.

6 Now, His Honor is going to instruct you what a
7 reasonable doubt is. That is a doubt that would cause
8 a reasonable person to hesitate to act.

9 In other words, if at the end of the day with
10 everything you have heard and everything you have seen
11 you believe that there is a reasonable doubt, a real
12 possibility, that this young man is not guilty and was
13 merely present at the scene of the crime, he cannot be
14 convicted of that.

15 If at the end of the day you believe it is possi-
16 ble the Defendant is not guilty, His Honor will instruct
17 you that you cannot bring in a guilty verdict, and even
18 if there is only an issue as to that the issue has to
19 be resolved in favor of the Defendant and you have to
20 find him not guilty. You have to find him not guilty.

21 Now, let's look at the evidence because that is
22 what it's all about. He is presumed innocent and he
23 doesn't even have to be here today. The burden of proof
24 is on this table right here to prove his guilt and to
25 prove it beyond a reasonable doubt.

1 The issue here is whether the prosecution has
2 under our judicial system proved the Defendant to be
3 guilty beyond a reasonable doubt.

4 Let's look at the testimony. Now, if you remember
5 it, one of the things that I mentioned to you at the
6 very beginning in opening statement is credibility, or
7 believability.

8 Any time a person takes the witness stand, any
9 time, they put into issue their credibility, their be-
10 lievability. His Honor is going to tell you that, and
11 that as jurors you all are the judges of the facts.

12 You are entitled to make all decisions regarding
13 factual matters. You can believe one witness over
14 another, you can believe none of what a witness says,
15 or all of what a witness says. That is entirely up to
16 you.

17 But, ladies and gentlemen, I don't care what Ms.
18 Kimberly Barr tells you, when you put a witness on this
19 witness stand, you can expect that person may tell the
20 truth or they may lie.

21 But she says, well, look, we didn't have anybody
22 else. Mr. Dawkins chose to take the witness stand.
23 He sat right there and told you, I'm sitting here tes-
24 tifying, but I haven't been sentenced. I haven't been
25 sentenced.

1 Well, why do you think he hasn't been sentenced?

2 I asked him, why have you not been sentenced? You're
3 walking a tight-rope, aren't you?

4 Now, if you don't say what they want you to say,
5 you know the maximum will come down on your head, don't
6 you?

7 Why do you think he was pleading guilty? Well,
8 guess what, if his testimony ain't what it ought to be
9 he might get a reward for it and it might not be what
10 he'll want it to be.

11 Now, I submit to you that I asked that young man,
12 Jeffrey Dawkins -- ladies and gentlemen, you recall
13 this the way you want to recall it, but I said, look,
14 did you ever hear any discussions between you and Vinny
15 concerning robbing this store? In fact, he said we were
16 going to the store to get snacks.

17 The same candy you will see in the exhibit that
18 was introduced by the prosecution. However, it
19 didn't turn out that way, when Vinny decided to do
20 something else.

21 Now, he turned right around when Ms. Barr asked
22 him, who else -- and notice this about the car. See,
23 whatever Mr. Segars did, we're still going to prose-
24 cute Mr. Segars for that. If they're going to prosecute
25 him, why don't they have him sitting up here?

1 If Mr. Matthews had told Mr. Segars that I'm going
2 to drive the car for you to do the robbery, tell me one
3 person in this Courtroom who said or one witness who
4 came up here to tell us that Mr. Segars told Mr.
5 Matthews anything.

6 Now, if Ms. Barr wanted you to believe that, she
7 could have brought Mr. Segars in here to tell you that.
8 Why is he not in here? He ain't here for the same rea-
9 son because he's not going to say it.

10 If you don't want to influence his testimony, then
11 is he going to plead guilty? Then let him plead guilty
12 and let him go to prison.

13 Do you think they would want him to testify about
14 what I want him to say? I don't think so.

15 Now, ladies and gentlemen, Ms. Barr has told you
16 that Mr. Barr is going to come up here and he's going
17 to call Mr. McFadden a robber and a thief, and exactly
18 that's what I'm going to call him, a robber and a thief,
19 a burglar. That's what he is.

20 Now, His Honor is going to tell you that you can
21 consider the fact that he was convicted of burglary as
22 you consider his credibility.

23 Other than his testimony, I want to know what in
24 the world the prosecution has brought into this Court-
25 room to convince you that that man is guilty of what he

1 is charged with. Other than his testimony.

2 Are you willing to convict Mr. Matthews based on
3 the testimony of a robber? When he contradicted him-
4 self fifty times on the witness stand?

5 When I asked him what he wanted to say, he said what
6 he thought I wanted him to say, but when Ms. Barr had
7 him on the witness stand he said what he thought Ms.
8 Barr wanted him to say.

9 That's the situation he was in. If you look at
10 even what Mr. Cooper said, Mr. Cooper said, well, when
11 I thought the shot was fired, I went down and I came up
12 and I shot at them, and one broke for the door and the
13 other one broke for the door.

14 Now, what else -- what else could Mr. Matthews
15 have done?

16 Did Mr. Cooper just automatically assume because
17 they were all young men that somehow they were acting
18 together, intending to rob him?

19 That is a terrible assumption. Just because he
20 walked up or came in at the same time and you start
21 shooting?

22 I could have walked up then. Would I automatically
23 have been associated with them and he somehow suggest I
24 am part of some conspiracy to rob him?

25 According to the only testimony we have on the

1 record, Mr. Mahaffey never said one word to Mr. Matthews
2 about planning to commit a robbery. Not one word.

3 His Honor will instruct you that the hand of one
4 is the hand of all, and I want you to listen to him,
5 because if you listen to Ms. Barr you will think it is
6 some kind of automatic thing under the law.

7 His Honor will tell you the law, and one of the
8 things he will tell you is that if two or more people are
9 acting together, assisting each other, in the commission
10 of an unlawful act, that the act of one is the act of
11 all.

12 Prior knowledge -- prior knowledge that a crime is
13 going to be committed. So even if a person is present
14 when a crime is committed, it is not sufficient for a
15 conviction without knowledge, without assisting in
16 the crime. His Honor is going to tell you that.

17 He's going to tell you that when I asked -- I
18 asked Officer McFadden yesterday -- I said, look, what
19 have you charged him with? Attempted armed robbery.

20 You say that somebody fired the gun. Now, ladies
21 and gentlemen, you know, Ms. Hannah -- Ms. Barr would
22 have you believe that somehow Ms. Hannah doesn't have
23 an ax to grind here.

24 She said, well, Ms. Hannah is a believable person.
25 When I asked her whether or not she had sex with Mr.

1 McFadden, she immediately said that's correct to me.
2 Well, I also asked her whether she had sex with the
3 third man, and she said no.

4 Now, I asked her -- and I asked Ms. Lail. She got
5 on the witness stand, and she claimed that she saw the
6 gun in Mr. Matthews' lap.

7 I asked Ms. Lail, did Ms. Hannah ever tell you she
8 saw the gun in Mr. Matthews' lap? No. Never said
9 that.

10 According to Ms. Hannah, the first time she saw
11 the gun was on the nightstand at Vinny's brother's
12 house.

13 She said when she went in the room it was on the
14 nightstand. Then somehow Mr. Matthews -- did he have a
15 gun when he took off his clothes to have sex with you?
16 No, I never saw him with no gun.

17 Now, notice that when she said it was in the car,
18 she said the only person she saw with the gun was Mr.
19 Matthews.

20 But then on cross examination she had to admit she
21 saw the gun on the floor of the vehicle and that Mr.
22 Matthews wasn't any closer to that gun than anybody else
23 was.

24 Moreover, why is Mr. Matthews going to go to Mr.
25 Segars' brother's house to get a gun? It sounds to

1 me as if anybody got the gun it was Mr. Segars that
2 got the gun from his brother's house.

3 No testimony that Mr. Matthews had his hands near
4 the gun.

5 Now, for whatever reason -- I guess relationships
6 go bad -- and she admitted as much. That the relation-
7 ship had gone bad and she said some things that don't
8 seem worth correcting, because Ms. Lail said, well, no,
9 she never -- and notice when she told us she never said
10 anything from the witness stand about seeing the gun on
11 the floor of the car, but in her statement that's what
12 she told Ms. Lail; that the gun was on the floor.

13 So how does the gun get out of the car, from the
14 floor of the car, when they came from Lake City where
15 it was on the nightstand by the bed in the bedroom, but
16 nobody saw Mr. Matthews have a gun except for her. You
17 know, I tell you, that is just unbelievable.

18 Ladies and gentlemen, again, it's one of those
19 kinds of things that as jurors you have to decide on
20 the truth in the case.

21 Ladies and gentlemen, if you don't believe and you
22 have not been persuaded, as I said earlier, the Judge
23 will instruct you that you have to find the Defendant
24 not guilty.

25 Don't forget it is not armed robbery, but it is

1 attempted armed robbery -- attempted armed robbery.

2 Now, I don't want you to ignore everything else
3 the Judge will say to you, but there are a couple of
4 things that are crucial for you to understand in this
5 case.

6 An attempt is an effort to accomplish a crime
7 which is not completed. It is not completed.

8 Now, in order to prove attempted armed robbery,
9 the State must show beyond a reasonable doubt that the
10 Defendant attempted to carry away the property with an
11 intent to permanently deprive the owner of it.

12 Now, are you telling me what anybody in this case
13 tried to carry away from there? This is what the law
14 says is required in this case, with the hand of one,
15 hand of all -- whatever. This is what is required to
16 be proven to you beyond a reasonable doubt.

17 Mere presence at the scene is not sufficient to
18 prove someone guilty of a crime. If the Defendant is
19 present where a crime is being committed, the mere
20 association with the person who commits the crime does
21 not make the Defendant responsible, and it does not
22 make him an aider or abettor to the person committing
23 the crime.

24 That's the law. I have done my best here to defend
25 my client, and that is what His Honor is going to tell

1 you.

2 Ladies and gentlemen, I want you to think about
3 it. That's the law in South Carolina. That's the law.
4 That's the law.

5 Now, this young man is presumed innocent even
6 right now. If this case were to end right now, he
7 would be not guilty.

8 I have a charge, and, ladies and gentlemen, my
9 responsibility is to defend my client to the best of my
10 ability from any charge. So if it appeared to you
11 that I was picking on somebody or something like that
12 in doing my job, please do not hold that against my
13 client.

14 My client is paying me to do what I'm doing here
15 today, and I take my job very seriously. I take it very
16 seriously.

17 As you discharge your responsibility in the case,
18 I ask that you take your job seriously as well after
19 His Honor gives you the law.

20 If you discharge your responsibility and take your
21 oath very seriously -- your oath requires that you
22 arrive at a verdict that speaks the truth. That you
23 find what the facts are in the case and apply the law as
24 His Honor gives it to you in reaching your decision.
25 In order to find the Defendant guilty, you must find

1 him guilty of the charges beyond a reasonable doubt,
2 but, Your Honor, when you consider the evidence and the
3 law as His Honor gives it to you that you will come
4 back with a verdict that speaks the truth. Ladies and
5 gentlemen, the evidence is just not there, and I ask
6 that you find Mr. Matthews not guilty.

7 Thank you.

8 THE COURT: Would you approach?

9 (Conference at the bench between counsel and the
10 Court off the record)

11 THE COURT: Madam Forelady and members of the jury,
12 you have heard the testimony and evidence, as well as
13 the closing arguments of the State and the Defense
14 Counsel.

15 I will now explain to you the law that applies in
16 this case.

17 Under the Constitution of South Carolina, you are
18 the finders of the facts. I do not have the right to
19 pass upon the facts or to express any opinion that I
20 might have as to them.

21 This is a matter solely for you, the jury, to
22 determine as jurors. It is your duty to determine the
23 effect, the value, the weight, the truth of the evi-
24 dence presented during this trial.

25 You are also the sole judges of the credibility;

1 that is, the believability of the witnesses who have
2 testified in this case.

3 In passing upon their credibility, you may take
4 into account, into consideration, anything, such as the
5 demeanor or manner of testifying, whether the witness
6 had reason to be biased or prejudiced, whether a wit-
7 ness' testimony was corroborated or whether the testi-
8 mony was contradicted on the other hand.

9 You may believe a small portion of a witness' tes-
10 timony and disregard the larger or vice versa.

11 You may believe one witness against many, or many
12 against one. All of these things you will consider,
13 keeping in mind that you should give the Defendant the
14 benefit of any reasonable doubt.

15 It becomes your duty as jurors to analyze and to
16 evaluate the evidence and determine which evidence con-
17 vinces you of its truth.

18 There are two types of evidence which are gener-
19 ally presented during a trial, direct evidence and
20 circumstantial evidence.

21 Direct evidence is the testimony of a person who
22 claims to have actual knowledge of a fact, such as an
23 eye-witness. This is evidence which immediately es-
24 tablishes the main facts to be proved.

25 Circumstantial evidence is proof of a chain of

1 facts and circumstances indicating the existence of a
2 fact. Evidence which immediately establishes collateral
3 facts from which the main fact may be inferred.

4 Circumstantial evidence is based on inference and
5 not on personal knowledge or observation.

6 Now, the law makes absolutely no distinction be-
7 tween the weight or value to be given to direct and
8 circumstantial evidence. Nor is a greater degree of
9 certainty required for circumstantial evidence than
10 of direct evidence.

11 You need to weigh all of the evidence in the case,
12 and, after weighing all the evidence, if you are not
13 convinced of the guilt of the Defendant beyond a rea-
14 sonable doubt, you must find the Defendant not guilty.

15 The rules of evidence ordinarily do not permit
16 witnesses to testify to opinion or conclusion, but
17 the exception to this rule is if the witness is called
18 an expert witness.

19 A witness who by education and experience has be-
20 come an expert in some science, profession or calling
21 may state an opinion as to a relevant and material mat-
22 ter in which the witness claims to be an expert, and
23 may also state the reason for the opinion.

24 You should consider any expert opinion received in
25 this case like any other evidence, and give it the

1 weight you think that it deserves.

2 If you decide the opinion of an expert witness is
3 not based on sufficient education and experience, or
4 if you conclude the reasons given for the opinion are
5 not sound, or that the opinion is outweighed by other
6 evidence, you may disregard the opinion entirely.

7 An expert witness' testimony is to be given no
8 greater weight than that of other witnesses, simply be-
9 cause the witness is an expert.

10 Further, you are not required to accept an expert's
11 opinion, even though it is not contradicted.

12 I instruct you and emphasize that the fact that
13 the Defendant did not testify is not a factor to be
14 considered by you in any way in your deliberations as
15 to the question of guilt or innocence of the Defendant.
16 It is not to be considered by you in any manner whatso-
17 ever.

18 A Defendant has a constitutional right to remain
19 silent. The assertion of this right must not be con-
20 sidered by you in any way.

21 I repeat, under your oath as jurors, you are to
22 draw no conclusion whatsoever from the fact that the
23 Defendant in this case did not testify.

24 The fact that this Defendant has not testified
25 should not even be discussed in the jury room.

1 The burden of proof, as I have stated, is upon the
2 State, and the Defendant is not required to prove his
3 innocence.

4 The burden of proof remains on the State to prove
5 guilt beyond a reasonable doubt.

6 Now, you've heard testimony in here and I must
7 instruct you that a person who has a past criminal re-
8 cord is competent to testify during a trial. The past
9 record does not affect the ability of that witness to
10 testify.

11 The past record may only be considered by you, if
12 at all, in determining the witnesses' credibility. Re-
13 member that you are the sole judges of the facts in the
14 case and of the believability of each and all of the
15 witnesses.

16 As the Trial Judge, it was my responsibility to
17 preside over the trial of this case. I also have the
18 duty to rule on the admissibility of the evidence dur-
19 ing the trial.

20 You must consider only the testimony which has
21 been presented from this witness stand, together with
22 any exhibits which have been made a part of the record
23 in this case.

24 I have the additional duty to charge you as to
25 the law that applies. As Presiding Judge, I am the

1 sole judge of the law in this case. It is your duty as
2 jurors to accept and apply the law exactly as I now
3 state it to you, and then reach your verdict.

4 Finally, I charge you that you should not be con-
5 cerned with what you think the law ought to be or what
6 I charge you the law is.

7 The fact that the Defendant was arrested, charged
8 and indicted in this case is not evidence in this case,
9 and it cannot be considered by you as evidence of
10 guilt in the case, nor can it be given any presumption
11 of guilt.

12 This indictment is simply the formal, written in-
13 strument which contains the charges made against the
14 Defendant. The indictment is the formal document by
15 which the case is brought into Court.

16 The Defendant has pled not guilty to the indict-
17 ment, and that places the burden on the State to prove
18 the Defendant guilty. A person charged with committing
19 a criminal offense in South Carolina is never required
20 to prove himself innocent.

21 I charge you that it is an important rule of law
22 that the Defendant in a criminal trial, no matter what
23 the seriousness of the charge may be, will always be
24 presumed innocent of the crimes for which the indictment
25 is issued until guilt has been proven by evidence that

1 convinces you of that guilt beyond a reasonable doubt.

2 This presumption of innocence does not end when you
3 begin your deliberations, but it accompanies the Defen-
4 dant throughout the trial and until you reach a verdict
5 of guilt from evidence which satisfies you of that
6 guilt beyond a reasonable doubt.

7 The presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the Defen-
9 dant, and it remains with the Defendant until it is
10 stripped from the Defendant by evidence satisfying you
11 of the Defendant's guilt beyond a reasonable doubt.

12 The presumption of innocence is not a mere theory.
13 It is not just a legal phrase, but it is a substantial
14 right to which every Defendant is entitled unless you,
15 the jury, is satisfied from the evidence of his guilt
16 beyond a reasonable doubt.

17 The State must prove the Defendant guilty beyond a
18 reasonable doubt, so what is a reasonable doubt in the
19 law?

20 A reasonable doubt is a doubt which makes an hon-
21 est, sincere, conscientious juror in a search for the
22 truth hesitate to act.

23 Proof beyond a reasonable doubt must therefore be
24 proof of such a convincing character that a reasonable
25 person would not hesitate to rely and act upon it in the

1 most important of his or her own affairs.

2 Proof beyond a reasonable doubt also can be de-
3 scribed as proof that leaves you firmly convinced of
4 the Defendant's guilt.

5 Now, there are very few things in this world that
6 we know with absolutely certainty. In a criminal case,
7 the law does not require proof that overcomes every pos-
8 sible doubt.

9 If based on your consideration of the evidence, you
10 are firmly convinced that the Defendant is guilty of the
11 crime charged, you must find him guilty. If, again,
12 on the other hand, you think there is a real possibility
13 that he is not guilty, you must give him the benefit
14 of the doubt and find him not guilty.

15 Now, when a crime is committed by two or more peo-
16 ple who are acting together in committing a crime, the
17 act of one is the act of all.

18 A person who joins with another to commit a crime
19 or an unlawful act is equally responsible for everything
20 done by the other person which happens as a probable or
21 a natural consequence of the act done in carrying out
22 the common plan and purpose.

23 Two people can be guilty of killing another person
24 when only one person had a gun, only one bullet, and
25 only one fired the shot causing the death. If two or

1 more people are together, acting together, assisting
2 each other in committing the crime, the act of one is
3 the act of all, or, as is sometimes said, the hand of
4 one is the hand of all.

5 Prior knowledge that a crime is going to be com-
6 mitted without action is not sufficient to make a per-
7 son guilty of that crime. Mere knowledge that another
8 person is going to commit a crime, even if the Defendant
9 is present when the crime is committed, is not suffi-
10 cient to convict the Defendant as a principal.

11 Guilt by a principal is shown by actual or construc-
12 tive presence at the scene as a result of prior planning.
13 Therefore, a finding of a prior arranged plan or com-
14 mon scheme is necessary for a finding of guilt as a
15 principal.

16 The State must prove beyond a reasonable doubt by
17 competent evidence the theory that the hand of one is
18 the hand of all.

19 A principal in a crime is one who either actually
20 committed the crime or that was present, aiding, abet-
21 ting or assisting in committing the crime.

22 When a person in the presence of and with the as-
23 sistance of another commits an act, the act is done by
24 both. Where two or more, acting with a common plan or
25 intent, are present at the scene of a crime, it does not

1 matter who actually commits the crime. The hand of one
2 is the hand of all.

3 Presence at the commission of a crime means when a
4 person is sufficiently near to aid and abet or assist in
5 the commission of the crime.

6 However, mere presence at the scene of a crime is
7 not sufficient to convict one as a principal on the
8 theory of aiding and abetting.

9 Intent is also a necessary element. There must
10 have been a common design or intent to commit the crime
11 and the crime must have been committed pursuant thereto
12 with the person aiding and abetting by some overt act.

13 Intent means intending the result which actually
14 occurred, not accidentally or ⁱⁿvoluntarily.

15 Intent may be shown by acts or conduct of a Defen-
16 dant and other circumstances from which you may natur-
17 ally and reasonably infer intent, and the State must
18 prove these elements beyond a reasonable doubt.

19 The indictment in this case alleges four different
20 charges against the Defendant. The charges are assault
21 with intent to kill, attempted armed robbery, possession
22 of a weapon during a violent crime, and criminal conspir-
23 acy.

24 These charges are separate and distinct offenses.
25 You must decide each charge based on the evidence and

1 the law applicable to it, uninfluenced by your decision
2 as to any other charge.

3 The Defendant may be convicted or acquitted on any
4 or all of these offenses charged, and you must find a
5 verdict of guilty or not guilty on each charge.

6 Count one is assault with intent to kill. The De-
7 fendant is charged with assault with intent to kill.

8 In order to prove assault with intent to kill, the
9 State must prove beyond a reasonable doubt that the
10 Defendant, with malice aforethought, unlawfully attempted
11 or offered to commit a violent injury on another person
12 and had the present ability to complete the intended in-
13 jury.

14 An assault is an intentional creation of a reason-
15 able fear of immediate bodily harm. It is not necessary
16 that the attempted injury or harm take place.

17 For example, if I walk up to you and when we are
18 within arms reach I draw back to hit you. That is an
19 assault.

20 Malice is hatred or ill will or hostility toward
21 another person, the intentional doing of an act without
22 cause ~~or~~ excuse, and with intent to inflict an injury or
23 under circumstances which infer an intent.

24 Malice aforethought does not require that malice
25 exist for any particular time before the act is committed.

1 The malice must exist in the mind of a Defendant just
2 before or at the time an act is committed.

3 Therefore, there must be a combination of a previous
4 evil intent and the act. Malice aforethought may be
5 express or inferred. These terms, express and inferred,
6 do not mean different kinds of malice, but merely the
7 manner in which the malice may be shown to exist; that is,
8 by direct evidence or by inference from the facts and
9 circumstances which are proven.

10 Express malice is shown when a person speaks words
11 which express hatred or ill will toward another, or when
12 a person prepares beforehand to do the act that is later
13 accomplished.

14 For example, lying in wait for a person, or any
15 other act of preparation going to show evil within the
16 Defendant's mind would be express malice. Malice may be
17 inferred from conduct showing a total disregard for a
18 criminal act.

19 Inferred malice may also arise when the deed is
20 done with a deadly weapon. A deadly weapon is any in-
21 strument or substance which is likely to cause death or
22 great bodily harm.

23 Whether an instrument has been used as a deadly
24 weapon depends on the facts and circumstances of each
25 case.

1 Attempted armed robbery. The Defendant is also
2 charged with this offense.

3 Armed robbery is the taking and carrying away of
4 the personal property or goods of another, without that
5 person's consent and while armed with a deadly weapon.

6 An attempt is an effort to accomplish a crime which
7 does not succeed. An attempt includes a specific in-
8 tent to do a particular criminal act, along with an
9 act falling short of the act intended.

10 The State must show more than mere preparation in
11 the attempt. There must be some overt act committed
12 in the effort to commit a crime.

13 Intent means intending the result which actually
14 occurred, not accidentally or involuntarily. Intent may
15 be shown by acts or conduct of the Defendant and other
16 circumstances from which you may reasonably infer the
17 intent.

18 To prove attempted armed robbery, the State must
19 show beyond a reasonable doubt that the Defendant at-
20 tempted to carry away the property with the intent to
21 permanently deprive the owner of the property and to con-
22 vert the property to the Defendant's own use.

23 The attempted taking and carrying away of the prop-
24 erty must have been done while the Defendant was armed
25 with a deadly weapon.

1 The following are examples of instruments which may
2 be deadly weapons: A shotgun; a rifle; a knife. A gun
3 may be a deadly weapon even if it was not operated.

4 If facts are proved beyond a reasonable doubt suf-
5 ficient to create an inference of malice to your satis-
6 faction, this inference would be simply an evidentiary
7 fact to be considered by you in your deliberations along
8 with other evidence in the case, and you may give it
9 what weight you decide it should have.

10 A specific intent to kill is not an element of as-
11 sault with intent to kill, for there must be a general
12 intent to commit serious bodily injury.

13 Intent means intending the result which actually
14 occurs, not accidentally or involuntarily.

15 Intent may be shown by acts and conduct of a Defen-
16 dant under circumstances from which you may reasonably
17 infer intent.

18 Evidence of the character of the assault, the char-
19 acter of the instrument used, the manner in which it was
20 used to accomplish the result, and the resulting wound
21 or injury may be considered in determining the intent
22 with which the assault was committed.

23 Intent may also be inferred when the Defendant
24 voluntarily and wilfully commits an act, the natural
25 tendency of which is to destroy another's life.

1 The Defendant is also charged with possession of a
2 weapon during the commission of or attempt to commit a
3 violent crime.

4 The State must prove beyond a reasonable doubt the
5 Defendant was in possession of a firearm or visibly dis-
6 played that which appeared to be a firearm during the
7 commission of a violent crime.

8 A firearm means a machine gun, automatic rifle,
9 revolver pistol or anything which will, is designed to,
10 or may be used to expell a projectile.

11 In order to find the Defendant guilty of posses-
12 sion of a weapon during the commission of a violent
13 crime, you must first find the Defendant guilty of com-
14 mitting a violent crime or attempting to commit a vio-
15 lent crime. Armed robbery is a violent crime.

16 The Defendant is also charged with conspiracy. The
17 State must prove beyond a reasonable doubt that the De-
18 fendant combined with one or more persons for the pur-
19 pose of committing an unlawful act or of committing a
20 lawful act by unlawful means.

21 There must be a mutual understanding or agreement,
22 a common plan. Mere passing knowledge of or consent to
23 the criminal conduct of another is not enough to make a
24 person a conspirator.

25 There must be guilty knowledge and participation.

1 Similarly, the mere fact that a Defendant may have asso-
2 ciated with another person or met with another person
3 and discussed common aims and interest does not neces-
4 sarily establish approval as a co-conspirator, nor that
5 a Defendant was involved in a conspiracy.

6 On the other hand, it is not necessary that the
7 agreement be a formal one or that it be in writing that
8 the persons are discussing a common scheme or plan, or
9 that the agreement be stated in words.

10 For there to be a criminal conspiracy, there must
11 be a combined mutual understanding. A wilful or inten-
12 tional act by two or more persons in a common plan is
13 sufficient.

14 No overt acts need be shown with regards to a con-
15 spiracy. (Portion off tape)

16 Now, as I have said, it is your duty to determine
17 the facts from the testimony and evidence presented, and
18 to apply the law as I have just given it to you to those
19 facts, and then to determine your verdicts which speak
20 the truth in this case.

21 I have told you the standards you have to apply
22 on the charge of assault with intent to kill, attempted
23 armed robbery, possession of a weapon during the commis-
24 sion of a violent crime, and criminal conspiracy.

25 I will give you a copy of these instructions in a

1 moment in written form, and during your deliberations
2 you may refer to these instructions as you may need.
3 to do to guide your decision making. You must consider
4 the instructions as a whole. Please return these in-
5 structions to the Court at the time your verdict is
6 rendered.

7 You have heard the evidence and now you've heard
8 the law. Whatever your verdict as to each charge, Madam
9 Forelady, you would indicate by checking not guilty or
10 guilty on the verdict form. There is no significance to
11 the order in which I give you these possible verdicts.
12 Simply, one must be stated followed by the other. You
13 would then sign the verdict form.

14 I have prepared a verdict form as to each charge.
15 Assault with intent to kill, attempted armed robbery,
16 possession of a weapon during a violent crime, and crim-
17 inal conspiracy.

18 You will see on the forms the lines with the forms
19 of verdict which you must check once a verdict has been
20 reached.

21 Remember that although the Foreperson or Forelady
22 is the only juror who signs the verdict form, it is not
23 hers alone. The verdict has to be a unanimous verdict
24 as to each charge.

25 Madam Forelady, you are not authorized to sign or

1 -- to write or to sign that verdict until all of you
2 have agreed as to what the verdict should be.

3 Now, ladies and gentlemen, I am going to send you
4 to your jury room but do not begin to discuss the case
5 until you have received a copy of this jury charge and
6 the verdict form, as well as the evidence, the exhibits.

7 Once you receive these things, that will be your
8 signal to begin your deliberations. Once you begin to
9 deliberate, you will continue until you have reached a
10 verdict, at which time you will knock on the door and
11 advise the bailiff. We will then bring you out and
12 receive your verdict.

13 (Jury excused from Courtroom)

14 THE COURT: Anything from the State?

15 SOLICITOR: Nothing, Your Honor, other than as
16 previously noted.

17 THE COURT: Mr. Barr?

18 MR. BARR: No, thank you.

19 (Whereupon, the jury was instructed to commence
20 deliberations at 11:40 A.M.)

21 (The Court stood in recess until 1:57 P.M. when
22 the matter continued.)

23 (Two jury notes marked as Court's Exhibits 1
24 and 2)

25 THE COURT: I've shown you the jury notes and

1 (portion not audible on tape).

2 MR. BARR: Judge, the questions -- the first ques-
3 tion is regarding a group and it raises an issue of
4 fact. While I would not oppose -- of course, they've
5 got the charge so if you give them a recharge I don't
6 know it would be any different. They have the charge in
7 there with them.

8 So I would be, you know, in favor of -- the Defense's
9 position would be that they need to take another look
10 at the charge, as opposed to the Court addressing speci-
11 fically the question raised, because the question raised
12 -- the question itself suggests something.

13 That concerns me, and it would seem to me that if
14 you address the question directly, it is to some degree
15 inferring that there was a conspiracy or that there was
16 a group and he was in the group.

17 That is my thinking on it.

18 THE COURT: Ms. Barr?

19 MS. BARR: Your Honor, as regarding the first ques-
20 tion regarding the weapons charge, we have no objection
21 to the proposed instruction.

22 It addresses the jury's question but not in a way
23 that touches on the facts because they decide the facts
24 and they will have the law with regard to the charge.

25 As concerns the second question, we would propose

1 that the law be given again as to the hand of one, hand
2 of all. That appears to be their question.

3 THE COURT: I think the law I have given to them
4 is sufficient as to the hand of one, hand of all, but I
5 would not be opposed to re-reading that charge to them.

6 (Portion not audible on tape)

7 THE COURT: Beginning with question two, which was
8 if the hand of one law would apply to all charges or
9 just to assault with intent to kill, I do believe that
10 the hand of one charge which was defined for the jury
11 applies to assault with intent to kill, attempted armed
12 robbery and possession of a weapon during the commission
13 of a violent crime.

14 However, I do not think that you can convict this
15 young man of criminal conspiracy under that theory.

16 MR. BARR: I would agree, Your Honor.

17 THE COURT: Bring the jury.

18 (Jury returned to Courtroom)

19 THE COURT: Madam Forelady and ladies and gentlemen
20 of the jury, I have received the questions that you have
21 for the Court. At this time I'm not going to read them
22 as they are already part of the evidence in this case.

23 I am going to discuss some matters with you rela-
24 tive to the charges in this case and your questions.

25 Under possession, one can be convicted of possession

1 of a firearm based upon actual or constructive posses-
2 sion, physical or constructive possession. Knowledge
3 of the presence of a firearm is sufficient to support a
4 conviction for possession of a firearm.

5 To prove constructive possession of a firearm, the
6 State must show that the Defendant had dominion and
7 control or the right to exercise dominion and control
8 over the firearm.

9 Constructive possession of a firearm may be proved
10 by direct or circumstantial evidence. That addresses
11 the question number one.

12 To specifically address question number two, the
13 hand of one law, what I am going to do is simply to re-
14 read that particular charge to you.

15 If a crime is committed by two or more people
16 who are acting together in committing a crime, the act
17 of one is the act of all.

18 A person who joins with another to commit an un-
19 lawful act is equally responsible for everything done
20 by the other person which happens as a probable or a
21 natural consequence of the act done in the common plan
22 or purpose.

23 For example, two people can be guilty of killing
24 another person when only one of the two had a gun, only
25 one bullet, and only one of the two fired the shot that

1 caused the death.

2 If two or more people are together, acting to-
3 gether, assisting each other in committing the crime,
4 that act of one is the act of all, or, as is sometimes
5 said, the hand of one is the hand of all.

6 Prior knowledge that a crime is going to be com-
7 mitted is not sufficient to make a person guilty of
8 that crime.

9 Mere knowledge that another person is going to com-
10 mit a crime, even if the Defendant was present when the
11 crime was committed, is not suff-
12 cient to convict the Defendant as a principal.

13 Guilt by a principal is shown by actual or construc-
14 tive presence at the scene as a result of prior plan-
15 ning or arrangement.

16 Therefore, a finding of a prior arranged plan or
17 common scheme is necessary for a finding of guilt as a
18 principal.

19 The State must prove beyond a reasonable doubt by
20 competent evidence the theory that the hand of one is
21 the hand of all.

22 A principal in a crime is one who actually commits
23 the crime or who was present, aiding, abetting or assist-
24 ing in committing the crime.

25 When a person does an act in the presence of or

1 with the assistance of another person, the act is done
2 by both. Where two or more are acting with a common
3 plan or intent are present at the commission of a crime,
4 it does not matter who actually commits the crime. The
5 hand of one is the hand of all. All are guilty.

6 Presence at the commission of a crime means when
7 a person is sufficiently near to aid, abet or assist in
8 the commission of the crime.

9 However, mere presence at the scene of a crime is
10 not sufficient to convict one as a principal on the
11 theory of aiding and abetting.

12 Intent is also a necessary element. There must
13 have been a common design or intent to commit the crime
14 and the crime must have been committed pursuant thereto
15 with the person aiding and abetting in some overt act.

16 Intent means intending the result which actually
17 occurred, not accidentally or involuntarily.

18 Intent may be shown by acts or conduct of a De-
19 fendant and other circumstances from which you may naturally
20 and reasonably infer intent, and the State must prove
21 these elements beyond a reasonable doubt.

22 All right, I'm going to send you back to your jury
23 room to resume your deliberations at this time.

24 (Jury excused from Courtroom at 2:25 P.M.)

25 THE COURT: Anything further from the State?

1 SOLICITOR: No, sir, Your Honor.

2 THE COURT: From the Defense?

3 MR. BARR: No, sir.

4 THE COURT: Then we'll stand at ease.

5 (Court stood in recess as to this matter until

6 3:02 P.M.)

7 THE COURT: Thank you. Take your seats.

8 It's my understanding that we have a verdict. I
9 want to remind you that whatever the verdict is, you
10 must control your emotions. If you do not feel that you
11 can control your emotions, now is the time for you to
12 leave.

13 Bring in the jury.

14 (Jury returned to Courtroom)

15 CLERK: Madam Forelady, have you reached a verdict
16 in this case?

17 FORELADY: Yes, we have.

18 CLERK: Give it to me. Thank you.

19 (Verdict form exhibited to the Court)

20 THE COURT: All right.

21 CLERK: Will the Defendant please stand? (Defen-
22 dant standing with his attorney)

23 The State versus Antwine Matthews. We, the jury,
24 unanimously find the Defendant, Antwine Matthews, as to
25 number one, assault with intent to kill, not guilty;

1 as to number two, attempted armed robbery, guilty; as
2 to number three, possession of a weapon during the com-
3 mission of a crime, not guilty; as to criminal conspir-
4 acy, guilty.

5 If these be your verdicts, so say you all. Please
6 let it be known by raising your right hands.

7 (Jurors raising their right hands)

8 Thank you.

9 THE COURT: Any request to poll this jury?

10 MR. BARR: No.

11 THE COURT: Would counsel approach?

12 (Conference at the bench between counsel and the
13 Court)

14 THE COURT: Ladies and gentlemen of the jury, we
15 thank you for your service in this case.

16 (Jurors excused by the Court)

17 THE COURT: Mr. Barr.

18 MR. BARR: For the record, I would move for judg-
19 ment in arrest of verdict of not guilty as to attempted
20 armed robbery and conspiracy.

21 Of course, our position would be that the jury's
22 verdict as to those two offenses are not supported by
23 the evidence, and those two verdict would be against the
24 overwhelming weight of the evidence.

25 THE COURT: Ms. Barr, anything from you?

1 SOLICITOR: No, sir, except that we believe the
2 jury made its decision after careful consideration of
3 the evidence. We believe all the evidence in the record
4 would support the verdict of the jury as to attempted
5 armed robbery and conspiracy.

6 We believe that there was evidence to support a
7 guilty verdict as to all counts but the jury has made
8 its decision.

9 THE COURT: All right. I would deny the motion.
10 The jury made its determination after carefully consider-
11 ing the evidence and the law.

12 Anything further?

13 MR. BARR: No, sir.

14 THE COURT: Let's go forward with sentencing.

15 (Brief pause in the proceeding)

16 MR. BARR: May it please the Court, Judge. Antwine
17 has just turned twenty years old. He is a high school
18 graduate and has lived here in Kingstree all of his
19 life.

20 He's here today with his mother and his father.
21 His mother actually works in Rock Hill. His father works
22 here as a brick mason.

23 Antwine has family ties here who have been here
24 all of his life.

25 Judge, you heard the facts of the case, and, of

1 course, we didn't have a whole lot of testimony regard-
2 ing the injury he suffered in this particular case.
3 That information probably was not relevant here, but he
4 stayed in the hospital for a little over two weeks, I
5 believe. It was a life threatening situation at first
6 and it took a lot of time for him to recuperate.

7 I mention that to you because this young man is
8 not a mature twenty-five or thirty year old man, and
9 he didn't use very much discretion in choosing his
10 friends or whatever.

11 There is no question that marijuana was involved
12 that day, and, unfortunately, he got into a situation
13 that wasn't -- and I'm not attempting to lay all the
14 blame on the other people there.

15 But you heard the testimony, and I would ask you,
16 Judge, to take into consideration, first of all, that
17 he certainly has suffered for it and will continue to
18 do so for a long time. His actions almost cost him his
19 life. Judge, we would ask that you take all of that
20 into consideration with respect to any sentence that you
21 issue to this young man.

22 I don't know if he wants to say anything to you or
23 not.

24 DEFENDANT: I'm just sorry for everything that
25 happened. I've learned my lesson from the mistakes I

1 made. I feel like since I got out of the hospital that
2 I have to change my life, and I will. When I do get
3 back home, I won't make the same mistakes again.

4 THE COURT: Do either of you want to say anything?

5 (Father of Defendant not speaking. Mother of De-
6 fendant speaking to the Court.)

7 MOTHER: I just want to say that he is working
8 every day. Since he has healed, he has worked every
9 day, and he has also been receiving some mentoring.

10 He's been going to church every Sunday. Our min-
11 ister -- he has changed his life and he has been in
12 church every Sunday. He just needed to get in a posi-
13 tive direction, and he has made some changes.

14 (Other persons speaking in behalf of the Defendant)

15 THE COURT: Anything further?

16 MR. BARR: No, sir.

17 THE COURT: Anything from the State?

18 SOLICITOR: (Inaudible)

19 THE COURT: All right.

20 SOLICITOR: Of course, in the back of my mind is
21 whether he was the one who actually fired the shot. In
22 this case, we don't know, but, Judge, from the facts
23 and testimony of Mr. Dawkins we believe he should be
24 given a substantial sentence.

25 THE COURT: All right.

1 Mr. Matthews, by the grace of God, you are here
2 with us. By the grace of God, Mr. Cooper is with us as
3 well.

4 On Indictment 09 GS 45 90, as to attempted armed
5 robbery, the sentence of the Court is that you be in
6 the custody of the Department of Corrections for a per-
7 iod of fifteen years. For the criminal conspiracy
8 charge, you be confined in the Department of Corrections
9 for a period of five years. That sentence is to be
10 consecutive.

11 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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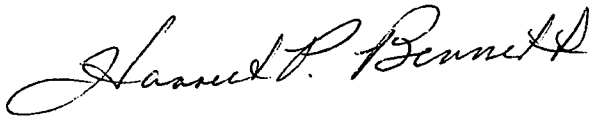
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CERTIFICATE

1
2 I, HARRIET P. BENNETT, Official Court Reporter for
3 South Carolina Court Administration, do hereby certify
4 that the foregoing Volume Two Transcript in this matter
5 was transcribed from the records of Margaret Sullivan,
6 having been heard in the Court of General Sessions for
7 Williamsburg County on May ~~13~~ 14, 2010.

8 FURTHER, I certify that I am neither of kin nor
9 counsel to any party to this action, nor do I have any
10 interest in the same.

11 October 27, 2010

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

Clifton Newman, Circuit Court Judge

And D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWINE LAMAR MATTHEWS,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

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<i>State v. Reid</i> , 393 S.C. 325, 713 S.E.2d 274 (2011).....	5, 6

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in finding evidence of an overt act in furtherance of the attempted armed robbery?

STATEMENT OF THE CASE

On May 11, 2009, Appellant was indicted by the Williamsburg County Grand Jury for the offenses of assault with intent to kill, attempted armed robbery, possession of a weapon during the commission of a violent crime, and criminal conspiracy. On May 12, 2010, Appellant was called to trial before the Honorable Clifton Newman and a jury. R. 1. Appellant was represented by Charles Barr and the State was represented by Kimberly Barr.

Appellant was found guilty of attempted armed robbery and conspiracy, but acquitted of the other charges. R. 338, l. 23 – R. 339, l. 4. Appellant was sentenced to fifteen years for attempted armed robbery and five years for criminal conspiracy. R. 343, ll. 4-10. This appeal follows.

ARGUMENT

The trial court erred in finding that the State presented evidence of an overt act in furtherance of the attempted armed robbery.

Relevant Facts

In the early morning hours of December 31, 2008, a black male walked into Ervin Cooper's store in Williamsburg County. R. 29, ll. 16-20. Two other individuals entered the store after the first man. R. 29, ll. 13-15. The first man put \$0.18 on the counter and asked for a few pieces of \$0.06 candy. When Mr. Cooper turned around to get the candy, he claims to have heard and felt a gunshot going past his ear. R. 32, ll. 1-24. Mr. Cooper immediately dived below the counter and came up with a .38 caliber revolver, and Mr. Cooper began shooting at the three men in the store. R. 33, l. 4 – R. 34, l. 9. He chased the three men out of the store, and fired shots at them as they drove away. That night Appellant reported a gunshot wound. R. 139, ll. 21-25. Appellant was arrested and charged with assault with intent to kill, attempted armed robbery, possession of a weapon during the commission of a violent crime, and criminal conspiracy.

At trial, Appellant moved for a directed verdict arguing there was no evidence that the men made any attempt to steal anything. R. 268, l. 12 – R. 269, l. 5. The trial court denied Appellant's motion. R. 272, l. 8 – R. 273, l. 16. This appeal follows.

Discussion

"To prove attempt, the State must prove that the defendant had the specific intent to commit the underlying offense, along with some overt act, beyond mere preparation in furtherance of the intent." *State v. Reid*, 393 S.C. 325, 713 S.E.2d 274 (2011) (citing *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001)). In *Nesbitt*, this Court

concluded that there was sufficient evidence from which the jury could find that an attempted armed robbery had occurred when the perpetrators planned on robbing a store and then approached the store wearing masks and brandishing a gun.

However, *Nesbitt* is inapposite to Appellant's case. The men who entered Mr. Cooper's store were not masked. The men merely entered the store, but never took any step to steal anything. When the facts are viewed in the light most favorable to the State, the men walked into the store and shot at Mr. Cooper and then ran away. While there certainly is some evidence that the shooter was guilty of assault with intent to kill, which Appellant was acquitted of, there is no evidence that Appellant took an overt step outside of mere planning. Outside of the \$0.18 worth of candy, which was paid for, there is no evidence that the men demanded anything. Without a demand for money or taking some overt step to disguise their identity, there is no evidence that the men took any steps beyond mere preparation. See *Nesbitt*, 346 S.C. at 234, 550 S.E.2d at 868 (considering the man was "masking his appearance"); see also, *Reid*, 393 S.C. 325, 713 S.E.2d 274 (noting the defendant chose to meet in a "clandestine" place).

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant him a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of December, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

Clifton Newman, Circuit Court Judge

And D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWINE LAMAR MATTHEWS,

APPELLANT

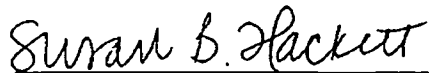
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antwine Lamar Matthews states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on May 12-14, 2010, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Antwine Lamar Matthews.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of December, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 2nd, 2011

Susan B. Hackett
Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Williamsburg County
Clifton Newman, Circuit Court Judge
And D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWINE LAMAR MATTHEWS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a true copy of the Final Anders Brief of Appellant and Record on Appeal have been served on Antwine Lamar Matthews, #340876 at Lee Correctional Institution, this 2nd day of December, 2011.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of December, 2011.

[Signature] (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013.

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

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

The State, Respondent,

v.

Antwine Lamar Matthews, Appellant.

Appellate Case No. 2010-161726

Appeal From Williamsburg County
Clifton Newman, Circuit Court Judge
And D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2012-UP-508
Submitted August 1, 2012 – Filed September 5, 2012

APPEAL DISMISSED

Appellate Defender Tristan M. Shaffer and Appellate
Defender Susan B. Hackett, both of Columbia; and
Antwine Lamar Matthews, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, all of Columbia; and
Solicitor Ernest A. Finney, III, of Sumter, for
Respondent.

PER CURIAM: Dismissed¹ after consideration of appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



RECEIVED

SEP 24 2012

close

ATTORNEY GENERAL'S
OFFICE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERKV. CLAIRE ALLEN
DEPUTY CLERKPOST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 21, 2012

The Honorable Carolyn F. Williams
125 W Main St
Kingstree SC 29556-3343REMITTITURRe: The State v. Matthews, Antwine
Lower Court Case No. 2009GS4500000
Appellate Case No. 2010-161726

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Susan Barber Hackett
Salley W. Elliott

FORM 5

13 CP45 006

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF WILLIAMSBURG)

Antwine Matthews, #340876,)

Full name and prison number (if any) of Applicant.)

v.)

A CERTIFIED TRUE COPY

APPLICATION FOR

State of South Carolina

Sharon W. Staggers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

POST-CONVICTION RELIEF

FILED
 3 JAN -8 PM 12:45
 SHARON W. STAGGERS
 CLERK OF COURT
 KINGSTREE, S.C.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010
2. Name and location of Court which imposed sentence Williamsburg County Court of General Sessions, 125 W. Main Street, Kingstree, SC 29566
3. Name(s) of co-defendant(s) (if any) Jeffrey Dawkins, Melvin Segars
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-45-090: Attempted Armed Robbery, Criminal Conspiracy
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) May 14, 2010: 15 years, 5 years consecutive
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 5, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpub. Op. No. 2012-UP-508
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective assistance of trial counsel.
 - (b) Ineffective assistance of appellate counsel.
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) Failure to prepare and investigate.
 - (b) Failure to make contemporaneous objections.
 - (c) Failure to raise all meritorious issues on appeal.
12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 - (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

such (e) if known, citations of any written opinions or orders entered pursuant to each disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR is the proper forum.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications _____ with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Charles D. Barr, 319 W. Main Street, Kingstree, SC 29566

ii. Tristan Shaffer, 1928 Barnwell Street, Columbia, SC 29201

iii. Susan B. Hackett, Office of Appellate Defense, PO Box 11589, Columbia, SC

29211

(b) the proceedings at which each such attorney represented you:

i. Trial and sentencing.

ii. Direct appeal.

iii. Direct appeal.

19. State clearly the relief you seek in filing this application:

A new trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA

County of Lee

VERIFICATION

I, Antwine Matthews, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Antwine Matthews

SWORN to and subscribed before me this 14th
day of Dec, 2012

Mammet Wilson (L.S.)
Notary Public

My Commission Expires: 3/8/2020

FILED
13 JAN -8 PM 12:45
SHARON W. STAGGERS
CLERK OF COURT
KINGSTREE, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Antwine Matthews, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Antwine Matthews

Applicant

SWORN or affirmed to and subscribed before me this
14 day of Dec, 2012

Maurice Wilson

Notary Public

My Commission Expires: 3/8/2020

FILED
 13 JAN -8 PM 12:45
 SHARON W. STAGGERS
 CLERK OF COURT
 KINGSTREE, S.C.

STATE OF SOUTH CAROLINA)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

Antwine Matthews, #340876,)
 Applicant,)

2013-CP-45-006

v.)

State of South Carolina,)
Respondent.)

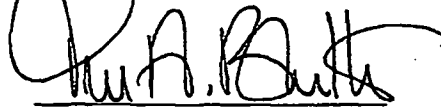
**AMENDMENT TO APPLICATION
 FOR POST CONVICTION RELIEF**

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on January 8, 2013, Applicant would amend his original Application by adding the following specific allegations to his original claims of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel for failure to have Applicant present at his preliminary hearing and for failure to make a viable argument for dismissal.
2. Ineffective assistance of trial counsel for failure to properly prepare and investigate prior to trial.
3. Ineffective assistance of trial counsel for failure to properly advise Applicant regarding the State's case, available defenses and likely prison sentence before rejecting the ten year plea offer.
4. Ineffective assistance of trial counsel for failure to object to a switch in the presiding judge during the course of trial. See Transcript p. 196.
5. Ineffective assistance of trial counsel for the handling of the cross-examination of Investigator Lail regarding the statements obtained from Melvin Segars, which resulted in the trial court overruling a hearsay objection on the grounds that trial counsel opened the door to the line of objectionable testimony on redirect.
6. Ineffective assistance of trial counsel for failure to properly cross-examine Jeffrey Dawkins and Kim Hannah. Specifically, as to Jeffrey Dawkins, ineffective assistance of counsel for opening the door to the reading of his statement on redirect. Transcript p. 93.

7. Ineffective assistance of trial and/or appellate counsel for failure to address the missing portion of the testimony of Kim Hannah in the transcript and issue with the tape recordings. Transcript pp. 126, 132.
8. Ineffective assistance of trial counsel for failure to move to suppress the forensic evidence recovered from the crime scene and/or object to the testimony of Deputy Scott that exceeded the scope of a lay witness.
9. Ineffective assistance of trial counsel to argue more fully for a directed verdict on the attempted armed robbery charge.
10. Ineffective assistance of trial counsel for failure to object to the State's closing argument due to vouching/bolstering the credibility of a witness and attempting to invoke the passions and prejudice of the jury. Transcript pp. 293-5.
11. Ineffective assistance of trial counsel for failure to request a charge on lesser included offenses.
12. Ineffective assistance of trial counsel for failure object to the jury charge. Transcript pp. 326-9. Ineffective assistance of trial and/or appellate counsel for failure to address the missing portion of the court's charge form the transcript. Transcript p. 331.
13. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal, including but not limited to the following:
 - a. Objection to Jeffrey Dawkin's reading his statement. Transcript pp. 93.
 - b. Motion for mistrial due to Brady violation. Transcript p. 119.
 - c. Objection to the line of questioning regarding Melvin Segar's statement. Transcript p. 261.
 - d. Motion for a new trial. Transcript p. 339.
14. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

Respectfully submitted,



Tricia A. Blanchette
 Attorney for Applicant
 Post Office Box 12725
 Columbia, South Carolina 29211

June 12, 2015
 Columbia, SC

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2013-CP-45-6

Antwine Matthews, #340876,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief filed January 8, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true billed indicted at the May 2009 term of the Williamsburg County Grand Jury for Assault with Intent to Kill, Attempted Armed Robbery, Possession of a Weapon during a Violent Crime, and Criminal Conspiracy (2009-GS-45-90). Charles D. Barr, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable D. Craig Brown. Applicant was found guilty of Attempted Armed Robbery and Criminal Conspiracy, and on May 14, 2010, Applicant was sentenced to fifteen years for Attempted Armed Robbery and to a consecutive term of five years for Criminal Conspiracy.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Tristan Shaffer, Esquire and Susan Hackett, Esquire. The South Carolina Court of Appeals

dismissed the appeal. *State v. Matthews*, Op. No. 2012-UP-508 (Ct. App. filed September 5, 2012). The Remittitur was issued on September 24, 2012.

Attached herewith and incorporated herein by reference are the records of the Williamsburg County Clerk of Court regarding the subject convictions, records from the South Carolina Department of Corrections, appellate records, and if available, the transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. "Failure to prepare and investigate."
 - b. "Failure to make contemporaneous objections."
2. Ineffective assistance of appellate counsel
 - a. "Failure to raise all meritorious issues on appeal."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); *Butler*, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the

Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Griffin v. Aiken*, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.* The Respondent submits that the Applicant cannot satisfy either requirement of the *Strickland v. Washington* test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

_____, 20____.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

2013-CP-45-006

ANTWINE MATTHEWS, #340876,

Applicant,

vs.

AFFIDAVIT OF SERVICE BY MAIL

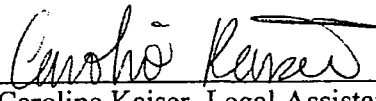
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

E. Lloyd Willcox, Esquire
Willcox Buyck & Williams, PA
PO Box 1909
Florence, SC 29503

DATED this 17st day of June, 2013.


Caroline Kaiser, Legal Assistant
For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Williamsburg	)	Case No. 2013-CP-45-00006
	)	
Antwine Matthews,	)	
	)	
Plaintiff,	)	
	)	
--vs--	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 16, 2015
Sumter, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

Tricia Blanchette, Esquire
Attorney for the Plaintiff

Daniel Gourley, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E X

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1 JULY 16, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The State appeared through counsel of
5 record. The hearing began at 11:24 a.m.)

6 THE COURT: All right. Mr. Attorney General?

7 MR. GOURLEY: Thank you, Your Honor.

8 THE COURT: Call your case.

9 MR. GOURLEY: This is *Antwine Matthews v. the State of*
10 *South Carolina*, Docket Number 2013-CP-45-006. He's presently
11 confined in the South Carolina Department of Corrections
12 pursuant to orders of commitment of the Williamsburg County
13 Clerk of Court.

14 He was true-bill indicted at the May of 2009 term of the
15 Williamsburg County Grand Jury for assault with intent to
16 kill, attempted armed robbery, possession of a weapon during a
17 violent crime, and criminal conspiracy. Mr. Barr represented
18 him.

19 The applicant proceeded to a jury trial before the
20 Honorable Clifton Newman and D. Craig Brown. The applicant
21 was found guilty of attempted armed robbery and criminal
22 conspiracy on May 15th, 2010. He was sentenced to a fifteen-
23 year term of imprisonment for attempted armed robbery and to a
24 consecutive term of five years for criminal conspiracy.

25 A timely notice of appeal was filed on applicant's behalf

1 and an appeal was perfected by Mr. Shaffer and Susan Hackett.
2 The South Carolina Court of Appeals dismissed the appeal of
3 *State v. Matthews*. Your Honor, a remittitur was issued on
4 September 24th, 2012. He subsequently filed a timely
5 application for PCR on October 12th, 2011.

6 That's not right, Your Honor. I apologize. But alleging
7 that it was ineffective assistance of counsel and ineffective
8 assistance of appellate counsel. The State made its return on
9 June 17th, 2013.

10 Your Honor, Ms. Blanchette filed an amended application
11 on June 12th, 2015, alleging thirteen additional claims and,
12 Your Honor, again, he's here represented by Ms. Blanchette.

13 THE COURT: All right. Ms. Blanchette, are you ready to
14 proceed?

15 MS. BLANCHETTE: Yes, Your Honor. Thank you.

16 THE COURT: All right. Call your first witness, please.

17 MS. BLANCHETTE: Your Honor, if it may please the Court,
18 I just have a couple of matters I'd like to address before
19 calling my first witness.

20 THE COURT: Yes, ma'am.

21 MS. BLANCHETTE: The first is I have discussed with the
22 assistant attorney general that we have a verbal amendment to
23 issue number 12 on our filed amendment, and that is that we
24 would like to add ineffective assistance of counsel for
25 failure to object to the Court's response to the jury's

1 questions and to the recharge. And that is on issue number
2 12.

3 THE COURT: Okay. Well, let me hear from the State
4 first.

5 MR. GOURLEY: Your Honor, Ms. Blanchette did send me an
6 email a couple weeks ago regarding this issue and so I don't
7 have any objection to her amendment.

8 THE COURT: Okay. It's certainly amended. I'm not
9 really sure we're amending 12 because it doesn't seem those
10 two to be the same thing, but I'm going to allow the
11 amendment. It just seems like it's not really an addition to
12 12. It would be one all separate on its own because it seems
13 to be a completely separate issue not actually related to
14 number 12. But be that as it may, I'm going to allow it.

15 MS. BLANCHETTE: That's perfectly fine, Your Honor, if it
16 stands as a separate issue. There's also two matters in this
17 case. Judge Newman issued a discovery order on October 1st of
18 2014.

19 THE COURT: All right. Well, let me -- let's find that,
20 please.

21 MS. BLANCHETTE: Okay.

22 THE COURT: Hold on a second. I don't seem to have a
23 copy of that. Do you have a copy of it, please, ma'am?

24 MS. BLANCHETTE: Unfortunately, Your Honor, I was just
25 discussing this with the attorney general. We've had some

1 issues with one of the items on there. So I believe I may
2 have left it on my desk because I was making phone calls as
3 late as yesterday on it. So it appears that my copy -- I mean
4 I can look through my file a little more thoroughly.

5 What I was going to inform the Court is that Mr. Gourley
6 and myself back on June 30th went to the Williamsburg County
7 Clerk of Court's office to review the exhibits. We had been
8 told they had been pulled and they actually as of even
9 yesterday have still been unable to locate those. So just to
10 -- kind of as a housekeeping matter, that was one of the
11 discovery items that the Court had ordered that we be allowed
12 to review the exhibits and those were not capable of being
13 provided.

14 And then also Kimberly Barr, the assistant solicitor that
15 handled this case -- I had the opportunity to request a
16 complete copy of her file and she provided an email response
17 indicating that she did not have any audio or video recordings
18 to provide, and I just wanted to put that on the record as
19 well. And I've provided Mr. Gourley that information.

20 So just to clean up all of the items that were on the
21 order, I wanted to address the two that we were unable to get.

22 THE COURT: Okay. You've told me about it. Are you
23 requesting any kind of relief --

24 MS. BLANCHETTE: I am not, Your Honor.

25 THE COURT: -- from this Court?

1 MS. BLANCHETTE: I just wanted to make sure that that was
2 clear on the record since there was a standing order for
3 discovery on those items.

4 THE COURT: All right. So you're not asking for the
5 matter to be continued to investigate the matter further?
6 You're not raising it as an issue in any way?

7 MS. BLANCHETTE: No, Your Honor. I just wanted it to be
8 on the record.

9 THE COURT: All right. Well, as far as information is
10 fine, but I find you've made no request of the Court of any
11 kind regarding that information. Therefore, there will be no
12 ruling on it. Thank you.

13 MS. BLANCHETTE: Thank you, Your Honor. And one final
14 matter, just briefly. This is to expedite the case. There
15 are two exhibits that I actually -- one I pulled from the
16 South Carolina Judicial Department's calendar portion of their
17 website, along with the public index search, and then the
18 second is a copy of the criminal jury instructions that are
19 provided on the South Carolina Supreme Court's website. Those
20 are exhibits that we would like to provide for the Court to
21 review in conjunction with a couple of the issues that we
22 would be raising.

23 At this time, I would like to move those in as
24 Applicant's Number 1 and 8. As I do not have testimony to
25 offer to the specific exhibits, I think they would essentially

1 qualify as something that you could take judicial notice of
2 since they are readily available on the Internet, but I do
3 want them to be part of the record in this case.

4 THE COURT: Any objection from the State?

5 MR. GOURLEY: No, Your Honor.

6 THE COURT: All right. They are -- can be marked as
7 Applicant's 1 and 8 then.

8 MS. BLANCHETTE: And, Your Honor, Applicant's -- just to
9 make a clear record, Applicant's Number 1 is the information
10 from the judicial calendar and the public index search, and
11 Number 8 is portions of the criminal jury instructions.

12 THE COURT: Okay.

13 (WHEREUPON, Applicant's Exhibit Number 1, judicial
14 calendar printout, and Applicant's Exhibit Number 8,
15 criminal jury instructions, were admitted into evidence.)

16 MS. BLANCHETTE: And would Your Honor appreciate a copy?

17 THE COURT: Yes, ma'am.

18 MS. BLANCHETTE: Okay. May I approach, Your Honor?

19 THE COURT: Please.

20 MS. BLANCHETTE: Okay.

21 THE COURT: Thank you, ma'am.

22 MS. BLANCHETTE: Thank you. And now, Your Honor, I'm
23 prepared to call my first witness, Mr. Antwine Matthews.

24 THE COURT: All right. Please come around to be sworn,
25 sir. Come right up here, sir, all the way around and up

ANTWINE MATTHEWS - DIRECT BY MS. BLANCHETTE

1 there. Could you stop right there, please, sir? As best you
2 can, raise your right hand. Do you solemnly swear or affirm
3 to tell the truth, the whole truth, and nothing but the truth,
4 so help you God?

5 THE APPLICANT: I do.

6 THE COURT: All right. Have a seat and get situated.
7 And turn and face towards -- like you're facing towards your
8 attorney. Scoot up to the microphone a little bit so we can
9 make sure we hear you.

10 THE APPLICANT: All right.

11 THE COURT: All right. Now, state your full name.

12 THE APPLICANT: Antwine Lamar Matthews Jr.

13 MS. BLANCHETTE: And, Your Honor, may I approach him with
14 his case documents?

15 THE COURT: Yes, ma'am.

16 MS. BLANCHETTE: Okay. And I'm not familiar with the
17 procedure. Is he allowed to be released at all to flip
18 through these more easily or his cuffs stay on as they are?

19 THE COURT: No, ma'am. He'll stay as he is.

20 MS. BLANCHETTE: Okay. And --

21 THE COURT: You can -- you can assist him if necessary.

22 MS. BLANCHETTE: Thank you, Your Honor. That's actually
23 what I was going to ask.

24 ANTWINE MATTHEWS, being first
25 duly sworn, testified as follows:

ANTWINE MATTHEWS - DIRECT BY MS. BLANCHETTE

DIRECT EXAMINATION

1
2 BY MS. BLANCHETTE:

3 Q: Mr. Matthews, you've heard the assistant attorney general
4 put into the record the procedural history of your case; is
5 that correct?

6 A: Yes, ma'am.

7 Q: Okay. And we're here about an incident that took place
8 on December 31st of 2008?

9 A: Yes, ma'am.

10 Q: Okay. And who did you retain to assist you with the
11 charges stemming from that incident in 2008?

12 A: Charles Barr.

13 Q: And did you have co-defendants in this case?

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

15 Q: Who were your co-defendants?

16 A: Jeffrey Dawkins and Melvin Segars.

17 Q: Did either of your co-defendants testify at your trial?

18 A: Yes, ma'am. One of them did.

19 Q: Okay. And which one did?

20 A: Jeffrey Dawkins.

21 Q: Okay. And you heard the State list the four charges that
22 they went to trial on. Were you actually found not guilty of
23 two of those charges?

24 A: Yes, I was.

25 Q: And which charges were you found not guilty of?

ANTWINE MATTHEWS - DIRECT BY MS. BLANCHETTE

1 A: Attempted -- attempted -- intent to kill and I was found
2 not guilty of the weapons charge.

3 Q: Okay. And you were found guilty of assault with intent
4 to kill and attempted -- I'm sorry. Attempted armed robbery
5 and conspiracy. And what sentence did you receive?

6 A: Fifteen years violent for the armed robbery and five
7 years nonviolent for the criminal conspiracy.

8 Q: And you heard the State say that you had a direct appeal.
9 Do you recall who handled that for you?

10 A: It was two -- it was two attorneys. It was Tristan
11 Shaffer first and then I think he got replaced by Susan B.
12 Hackett.

13 Q: Okay. And do you recall what kind of brief Mr. Shaffer
14 filed on your behalf -- what the name of that brief was?

15 A: An Anders brief.

16 Q: And as a result of that, did the Court tell you that you
17 could file your own brief?

18 A: Yes, they did.

19 Q: Okay. And did you attempt on your best efforts to submit
20 your own brief?

21 A: Yes, I did.

22 Q: Okay. And that's part of the record that the Court has
23 in front of him today; is that correct?

24 A: Yes, ma'am.

25 Q: Okay. And your case was ultimately dismissed in

ANTWINE MATTHEWS - DIRECT BY MS. BLANCHETTE

1 September of 2012?

2 A: Yes, ma'am.

3 Q: Then you filed in January 2013 the PCR application we're
4 here for today. And what is the relief that you are asking
5 Judge John to give you today?

6 A: I'm asking Judge John to give me a new trial.

7 Q: And you and I have talked about the fact -- what that
8 means. A new trial means a lot more than it sounds like.
9 You're asking him to set aside your convictions and put you
10 back in the place you were prior to conviction. Do you
11 understand that?

12 A: Yes, ma'am.

13 Q: And you realize that you face your original charges all
14 over again with absolutely no guarantee of less time?

15 A: Yes, ma'am.

16 Q: Okay. And knowing that, do you still want to go forward
17 today?

18 A: Yes, ma'am, I do.

19 Q: Okay. Mr. Matthews, can you see me okay over this
20 monitor or is it a little tricky?

21 A: It's -- I can see you.

22 Q: Okay. Now let me go through -- I'm going to go through
23 the issues that you worked with me to amend your case. I'm
24 going to go through them as we have them listed in the
25 amendment. I'm going to ask you some questions about each of

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1 those.

2 A: Okay.

3 Q: Okay? And so that you can follow along with where we're

4 at, I'm going to let you know which issue we're talking about.

5 Okay?

6 A: Okay.

7 Q: Now, the first issue is ineffective assistance of trial

8 counsel for failure to have you present at your preliminary

9 hearing and for failing to make a viable argument for

10 dismissal. Were you present at your preliminary hearing?

11 A: No, ma'am, I wasn't.

12 Q: Were you out on bond or did you remain in the county

13 detention center following your arrest?

14 A: I got out on bond.

15 Q: Okay. And how quickly did you retain Mr. Barr? Would he

16 have been your attorney at the time of the preliminary

17 hearing?

18 A: Yes, ma'am, he would.

19 Q: Okay. And did he talk with you about having a

20 preliminary hearing and the purposes of a preliminary hearing?

21 A: No, ma'am, he didn't.

22 Q: Okay. And as part of your case, did we obtain a

23 discovery order from Judge Newman that allowed us to get a

24 complete copy of Mr. Barr's file?

25 A: Yes, ma'am.

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1 Q: And once we got that, did I provide you with
2 approximately 800 pages that Mr. Barr had given us?

3 A: Yes, ma'am, you did.

4 MS. BLANCHETTE: Your Honor, may I approach the witness?

5 THE COURT: Yes, ma'am.

6 BY MS. BLANCHETTE:

7 Q: Mr. Matthews, I'm going to show you what has been marked
8 for identification as Applicant's Number 2. Can you identify
9 what that appears to be for the record?

10 A: The preliminary hearing.

11 Q: And is that one of the documents that you received when I
12 gave you a copy of Mr. Barr's file?

13 A: Yes, ma'am, it is.

14 MS. BLANCHETTE: Your Honor, at this time I would move
15 this preliminary hearing transcript in as Applicant's Number
16 2.

17 THE COURT: Any objection?

18 MR. GOURLEY: No, Your Honor.

19 THE COURT: It's in evidence.

20 (WHEREUPON, Applicant's Exhibit Number 2, transcript of
21 preliminary hearing, was admitted into evidence.)

22 MS. BLANCHETTE: Your Honor, what you like a copy?

23 THE COURT: Please, ma'am.

24 MS. BLANCHETTE: Okay. What you like me to ask that each
25 time or just provide it?

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1 THE COURT: Just hand it to me.

2 MS. BLANCHETTE: Okay.

3 BY MS. BLANCHETTE:

4 Q: Mr. Matthews, if you could, look there at what's been
5 marked as Applicant's Number 2 and admitted. I have a couple
6 questions for you about it. You've had a chance to read
7 through it and review it; is that correct?

8 A: Yes, ma'am.

9 Q: Okay. And on page 1, there your attorney is asking for a
10 preliminary hearing and he waives your presence. Had you
11 discussed that with him and asked him to have a preliminary
12 without you present?

13 A: No, ma'am, I didn't.

14 Q: Then a discussion takes place from pages 1 through 4
15 about how the judge has arrest warrants for your co-defendant,
16 but he doesn't have anything on you. And Mr. Barr agrees to
17 go forward with unsigned warrants. Was that a decision that
18 you were a part of?

19 A: No, ma'am.

20 Q: Now, if you could, flip all the way back to page 26 of
21 that preliminary hearing transcript.

22 A: Okay.

23 Q: And there it appears that a Mr. Floyd is making an
24 argument for your co-defendant Segars, and his argument
25 reflects that nothing was taken, this isn't an armed robbery,

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1 but you all could be charged with an attempted armed robbery.

2 Did your attorney make a separate argument or does it appear
3 that he just merely joined in the argument?

4 A: He joined in.

5 Q: And what were you ultimately charged with in this case?

6 A: Attempted armed robbery.

7 Q: So there he's joining in with an attorney that's
8 conceding that you all could be charged with an attempted
9 armed robbery; is that correct?

10 A: Yes, ma'am.

11 Q: Okay. And was that an argument that you had discussed
12 with him making on your behalf and joining in?

13 A: No, I didn't.

14 Q: What would you have wanted? You've reviewed -- you've
15 reviewed the entire preliminary hearing transcript. What
16 would you have wanted him to do differently on your behalf?

17 A: I would want to be present at my preliminary hearing to
18 start with and not ask for -- not coincide with Mr. Floyd in
19 asking for an attempted armed robbery, but definitely a lesser
20 charge than that.

21 Q: Okay. And would you have wanted him to make his own
22 argument for the dismissal of your charges?

23 A: Yes, I would. Yes, ma'am.

24 Q: Okay. Mr. Matthews, is there anything else regarding the
25 preliminary hearing that you would like to tell the Court

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1 today?

2 A: No, ma'am.

3 Q: All right. The next issue that we -- that you have
4 alleged is ineffective assistance of counsel -- trial counsel
5 for failing to properly prepare and investigate prior to
6 trial. Approximately how many times do you remember meeting
7 with him?

8 A: Maybe about four times.

9 Q: Now, I've already asked you and you answered that you
10 received a copy of Mr. Barr's file as part of the discovery in
11 this PCR case. Did you receive a copy of the discovery he was
12 given by the solicitor prior to your trial?

13 A: No, ma'am. I never got it.

14 Q: When did you first get it?

15 A: When -- when Judge Newman filed the court order and you
16 gave it to me.

17 Q: And had you previously tried to get that from Mr. Barr?

18 A: Yes, ma'am, I did.

19 Q: And did he respond to your request?

20 A: No, ma'am.

21 Q: Now, do you know if he hired an investigator to assist in
22 preparing for your trial?

23 A: No, ma'am, he didn't.

24 Q: Now, I know you said he didn't give you a copy of the
25 discovery to review yourself. Did he give you any summaries

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1 of what the State was alleging or what the discovery was
2 showing?

3 A: He would just kind of, like, discuss what's going on with
4 the case at the time. We never went over discovery. I never
5 knew what the discovery was at the time and he would just tell
6 me, like, they are trying to offer us ten years and that they
7 think that I'm the shooter. He would just go over little
8 facts about the case with me.

9 Q: And when you said that it was your understanding from him
10 -- when you say they thought --

11 A: Uh-huh.

12 Q: -- you were the shooter, who is the "they"?

13 A: The solicitor, meaning the State.

14 Q: Okay. And did he tell you where that was being based
15 from?

16 A: No, ma'am. He never did.

17 Q: Okay. Now, you mentioned a ten-year plea offer, which
18 kind of segues into the very next issue. That you're alleging
19 that he failed to properly advise you regarding the State's
20 cases, available defenses, and prison sentence before
21 rejecting a ten-year plea offer. So there was a ten-year plea
22 offer on the table?

23 A: Yes, ma'am, there was.

24 Q: And when did that come into play in your case?

25 A: It came in when we first started. It came in and it also

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1 came into play, like, during the second day of my trial. And
2 he pulled me in the back and told me that you can still take
3 the ten-year plea deal if you want to. And I asked him what
4 did he think about it, what was his opinion, and he said that
5 during all his years of law work he doesn't see the judge
6 giving me any more than fifteen years; So it's worth a five-
7 year gamble.

8 Q: Okay. Let's first talk about the ten-year plea offer
9 that was on the table prior to trial. What was his specific
10 advice regarding that before you went to trial?

11 A: He was basically saying he was ready to go to trial. He
12 felt real optimistic about everything and he felt very strong
13 about the case.

14 Q: Okay. And then you explained what he told you during
15 trial. Do you recall if one of the witnesses -- and we're
16 going to talk about Kim Hanna. Had she testified when the
17 plea offer came in during the course of the trial?

18 A: No, ma'am, she didn't.

19 Q: And we'll talk about her a little bit more later, but I
20 just wanted to ask you this question at this point. Would it
21 have mattered if you would have known what -- that she was
22 going to testify and what she would have testified to?

23 A: Yes, it would.

24 Q: And how would that have affected your decision regarding
25 the ten-year plea offer that was given during the course of

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1 the trial?

2 A: It would have changed my judgment. I would have
3 considered taking the ten-year deal seeing that she was going
4 to get on the stand and testify on me also.

5 Q: And why did it matter that she testified? What was it
6 about her testimony that would have persuaded you to
7 potentially take a ten-year plea offer?

8 A: It would have mattered because she was placing a gun with
9 me and that would have painted a picture to the jury that I
10 had a gun and just kind of showed them that that would have
11 linked me to the crime or whatever.

12 Q: And you're asking the Court to review her entire
13 testimony, but it was damaging to you? That was your
14 perception of it?

15 A: Yes, it was. Yes, ma'am.

16 Q: Okay. And had your attorney given you any notice that
17 she was going to be testifying and the substance of her
18 testimony?

19 A: No. Not before she went up, no, ma'am.

20 Q: Okay. Now going back to the plea offer itself that came
21 in during the course of the trial, the next thing I'm going to
22 be talking about is the judges' switch off during your trial.

23 A: Uh-huh.

24 Q: Did the plea offer come in before or after Judge Brown
25 became the main presiding judge in your case?

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- 1 A: It came in before Judge Brown became the judge.
- 2 Q: And was it your understanding that the advice counsel was
- 3 giving you was based upon his experience with Judge Newman?
- 4 A: Yes, ma'am. That's what I was under the perception of.
- 5 Q: And did he tell you anything about his experience with
- 6 Judge Brown?
- 7 A: No, ma'am, he didn't.
- 8 Q: Okay. Now, just one little catch that I want to go over
- 9 with you is today you're asking for a new trial; is that
- 10 correct?
- 11 A: Yes, ma'am.
- 12 Q: But at the same time you're alleging that your attorney
- 13 was ineffective when he advised you to reject the plea offers;
- 14 is that correct?
- 15 A: Yes, ma'am.
- 16 Q: But you're not asking this Court to simply let you go
- 17 back and do a plea offer or give you a time cut. You're
- 18 willing to accept a new trial; is that correct?
- 19 A: Yes, ma'am.
- 20 Q: Okay. Now let's talk a little bit more about the
- 21 allegation you've made about the judges switching off. Do you
- 22 have your transcript there in front of you?
- 23 A: Yes, I do.
- 24 Q: Okay. Could you turn to page 196, please?
- 25 A: Okay. I got it.

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1 Q: Okay. And there on line 19, it appears that Judge Newman
2 is speaking because he's talking about Judge Brown. Does he
3 inform everyone that Judge Brown would be taking over at that
4 point?

5 A: Yes, he does.

6 Q: Now, let's go back to when you walked in the courtroom.
7 Did you originally notice that there were two judges on the
8 bench or what did you see? Take us back to that day.

9 A: When I walked back in from turning down the plea deal, I
10 did see another judge sitting up there beside him, but I
11 wasn't never under the impression that they would switch
12 judges.

13 Q: Okay. And at this point in your trial, Judge Newman is
14 informing everyone that Judge Brown is going to take over; is
15 that correct?

16 A: Yes, that's correct.

17 Q: And is that what you recall happening?

18 A: Yes, ma'am.

19 Q: From that point forward, was Judge Brown the judge that
20 was presiding over your case?

21 A: Yes, he was.

22 Q: When that happened, did your attorney enter any type of
23 objection or make any argument on your behalf?

24 A: No, he didn't.

25 Q: Now, a number of issues that we'll talk about in detail

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1 throughout the course of this hearing occurred after Judge
2 Brown took over; is that correct?

3 A: Yes, ma'am.

4 Q: And there were some issues involving Melvin Segars'
5 statement, a co-defendant that didn't testify. Who was the
6 judge that ruled on those issues?

7 A: It was Judge Brown.

8 Q: Okay. And there was a directed verdict motion made and
9 your attorney made an argument for that. Who was the judge
10 that ruled on the directed verdict motion?

11 A: Judge Brown also.

12 Q: Now, the jury -- after they had been charged -- well,
13 obviously the jury charge -- who was that given by?

14 A: Judge Brown.

15 Q: And then after they were charged, they had a series of
16 questions and they came back in and he responded to the
17 questions. Who was the judge that you saw handling that?

18 A: Judge Brown.

19 Q: And then there was a motion made for a new trial on your
20 behalf. Who was the judge that you saw presiding over that?

21 A: Judge Brown.

22 Q: And finally, who was the judge that handed down your
23 sentence?

24 A: Judge Brown.

25 Q: Now, if you knew that Judge Brown was going to be the one

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1 handling -- essentially midtrial taking over your case and
2 sentencing you, would that have factored into your decision
3 about going forward with the trial?

4 A: Yes, ma'am, it would.

5 Q: Now, since this issue came up in your transcript and you
6 and I discussed it, are you aware of the fact that I looked up
7 and obtained some information regarding Judge Brown's
8 assignments and Judge Newman's assignments and cases that were
9 handled by Judge Brown; is that correct?

10 A: Yes, ma'am.

11 Q: Were you aware prior to preparing for your PCR that Judge
12 Brown had been newly elected in 2010?

13 A: No, I wasn't.

14 Q: And --

15 MS. BLANCHETTE: Your Honor, may I approach the witness?

16 THE COURT: Yes, ma'am.

17 BY MS. BLANCHETTE:

18 Q: Were you aware prior to reviewing the printouts that I
19 gave you from the South Carolina Supreme Court's website that
20 Judge Brown didn't have any assignments in March or April of
21 2010?

22 A: No, ma'am.

23 Q: And were you aware that actually the week that you were
24 in trial, 5/10 of 2010, he does not have an assignment on his
25 calendar?

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1 A: No, ma'am.

2 Q: Now, you've also had a chance to review Judge Newman's
3 assignment for that same time, and what does it say for him on
4 5/10 of 2010?

5 A: General Sessions, Williamsburg, sitting with D. Brown.

6 Q: But under Judge Brown, there's no assignment; is that
7 correct?

8 A: No, ma'am.

9 Q: And then we also looked into -- to try to see if Judge
10 Brown had handled any cases. We were able to find some
11 records of some pleas that he did on May 12th of 2010 is what
12 the public index reflects. Would that have been in the middle
13 of your trial?

14 A: Yes, ma'am.

15 Q: Okay. Now, at any point did your attorney when you were
16 deciding to reject the plea offer and go forward with trial
17 tell you that a judge who most likely had not presided over
18 any -- any trials at that point would be handling your case?

19 A: No, he didn't.

20 Q: Is that something you would have wanted to know?

21 A: Yes, ma'am, it was.

22 Q: And why, Mr. Matthews?

23 A: It would have mattered being a newer judge and I would
24 have knew that my lawyer didn't have too much experience with
25 him. I probably would have known that he would have gave me a

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1 harsher sentence than Newman would have.

2 Q: Okay. And he was giving you advice he said based on his
3 thirty years of experience, but did he as far as you know have
4 any experience with Judge Brown?

5 A: No, ma'am.

6 Q: Okay. Now, we actually had the opportunity to address
7 this issue with Judge Newman. Do you remember your discovery
8 hearing back in September of 2014?

9 A: Yes, ma'am.

10 MS. BLANCHETTE: Your Honor, may I approach the witness?

11 THE COURT: Yes, ma'am.

12 BY MS. BLANCHETTE:

13 Q: And following that hearing, you requested and I obtained
14 a copy of the transcript; is that correct, Mr. Matthews?

15 A: Yes, ma'am, it is.

16 Q: Okay. Can you identify that document for the record,
17 please?

18 A: Transcript of record of the preliminary hearing from
19 2014.

20 Q: Okay. And you said preliminary hearing. Who was
21 actually the judge on that hearing there?

22 A: Judge Newman.

23 Q: Okay. And you've had a chance to read through that. Is
24 that the transcript from the motion hearing that we had in
25 front of Judge Newman on your PCR?

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1 A: Yes, it was.

2 MS. BLANCHETTE: Your Honor, at this time I would move
3 this in as Applicant's Number 3.

4 THE COURT: Any objections?

5 MR. GOURLEY: No, Your Honor.

6 THE COURT: All right.

7 (WHEREUPON, Applicant's Exhibit Number 3, transcript of
8 motion hearing, was admitted into evidence.)

9 BY MS. BLANCHETTE:

10 Q: And, Mr. Matthews, if you could, flip for me -- I'll give
11 you the cite real quick. If you could, look at page 6.

12 A: Okay.

13 Q: Beginning at line 9.

14 A: All right.

15 Q: Mr. Gourley and I had concluded essentially our arguments
16 on the discovery motion and there Judge Newman explains that
17 he had been presiding over your case with Judge Brown and he
18 was asking you if it was okay with you if he then heard your
19 discovery motion because to him that presented a potential
20 conflict?

21 A: Yes.

22 Q: Do you recall him asking you about that?

23 A: Yes, I do.

24 Q: And is what he's saying here on lines 9 through 20 your
25 recollection that it was -- that you thought it was Judge

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1 Newman essentially presiding over your case?

2 A: Yes, ma'am.

3 Q: Okay. And then, if you could, flip to page 7.

4 A: Okay.

5 Q: And on lines 9 through 11, he responds to me. I actually
6 had told the judge that I'd never read a transcript like that
7 before and I assumed it was happening because Judge Brown was
8 a newer judge and that Judge Newman was probably sitting with
9 him.

10 A: Uh-huh.

11 Q: And what did judge Newman respond to me? Do you
12 remember? He said it -- he said it pretty pointedly, didn't
13 he, in the courtroom?

14 A: Yes. He said he was sitting with me; I wasn't sitting
15 with him.

16 Q: And I responded back because I had essentially been
17 reprimanded that he was sitting with you to Judge Newman; is
18 that correct?

19 A: Yes, ma'am.

20 Q: So even at your motion hearing, it came -- how did it
21 come off from Judge Newman, who was the lead judge in your
22 case?

23 A: That he was the lead judge.

24 Q: But was he the one that ruled on all the issues we just
25 mentioned and actually sentenced you?

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1 A: No, he wasn't.

2 Q: Okay. And is that a matter that you would have wanted
3 either your trial attorney or your appellate attorney to raise
4 before today?

5 A: Yes, ma'am.

6 Q: Okay. Mr. Matthews, is there anything else regarding how
7 there were two judges presiding and then the judges switched
8 -- is there anything else regarding that that you would like
9 to tell the Court today?

10 A: No, ma'am.

11 Q: Okay.

12 THE COURT: Just so I'm clear, Ms. Blanchette --

13 MS. BLANCHETTE: Yes, sir.

14 THE COURT: And it just comes from your last statement.
15 You were saying that the issue was not raised by trial counsel
16 at the time of the trial and it was not raised by appellate
17 counsel in the appeal?

18 MS. BLANCHETTE: That is correct.

19 THE COURT: Either way? All right. Thank you, ma'am.

20 MS. BLANCHETTE: And I'll follow up with that, Your
21 Honor, just to make sure I'm really clear.

22 BY MS. BLANCHETTE:

23 Q: Mr. Matthews, has this been the first opportunity that
24 you've had to raise your concerns with that issue?

25 A: Yes, ma'am, it is.

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1 Q: Okay. Now, I've mentioned Melvin Segars. You have
2 alleged that your attorney was ineffective for his handling of
3 the cross-examination of Investigator Lail?

4 A: Yes.

5 Q: Regarding the statements obtained from Melvin Segars
6 which resulted in the trial court overruling a hearsay
7 objection on the grounds that trial counsel opened the door to
8 the line of -- of objectionable testimony on direct. Let's
9 break that down a little bit. Did Melvin Segars testify at
10 your trial?

11 A: No, ma'am, he didn't.

12 Q: Now, as part of the discovery or as a part of the file
13 that you received from me that Mr. Barr provided, did you see
14 transcripts of statements obtained from Melvin Segars?

15 A: Yes, I did.

16 Q: Okay. And had you seen those statements prior to your
17 trial?

18 A: No, ma'am, I didn't.

19 MS. BLANCHETTE: Your Honor, may I approach the witness?

20 THE COURT: Yes, ma'am.

21 BY MS. BLANCHETTE:

22 Q: And, Mr. Matthews, I'll give you these one at a time.
23 I'm going to show you what's been pre-marked as Applicant's
24 Number 4.

25 MS. BLANCHETTE: Your Honor, if I could just beg the

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1 Court's indulgence one moment?

2 THE COURT: Yes, ma'am. Go ahead.

3 BY MS. BLANCHETTE:

4 Q: And, Mr. Matthews, can you identify this please for the
5 record?

6 A: It's Melvin Segars' statement from Investigator Lail.

7 Q: Okay. And what is the start time at the beginning of
8 that statement? The date and the start time?

9 A: December 31st, 2008, 3:49 a.m.

10 MS. BLANCHETTE: Your Honor, at this time I would move in
11 the transcript of the statement of Melvin Segars that was
12 contained in defense attorney's file as Applicant's Number 4.

13 THE COURT: Any objection?

14 MR. GOURLEY: No, Your Honor.

15 THE COURT: All right. It's in.

16 (WHEREUPON, Applicant's Exhibit Number 4, transcript of
17 statement of Melvin Segars, was admitted into evidence.)

18 BY MS. BLANCHETTE:

19 Q: And, Mr. Matthews, can you identify what has been pre-
20 marked and I've handed to you -- it's been pre-marked as
21 Applicant's Number 5. What is that?

22 A: It's another statement from Melvin Segars.

23 Q: And what's the start time at the top of that statement?

24 A: 4:20 a.m.

25 MS. BLANCHETTE: Your Honor, at this time I would move

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1 Applicant's Number 5, which is the second statement of Melvin
2 Segars that was contained in defense counsel's file.

3 MR. GOURLEY: No objection, Your Honor.

4 THE COURT: All right. It's in evidence.

5 (WHEREUPON, Applicant's Exhibit Number 5, statement of
6 Melvin Segars, was admitted into evidence.)

7 BY MS. BLANCHETTE:

8 Q: Mr. Matthews, I'm going to ask you about these statements
9 because you said your attorney hadn't reviewed them with you;
10 is that correct?

11 A: Yes, ma'am.

12 Q: Okay. So essentially I'm going to be asking you what
13 would you have wanted him to review with you and, to save time
14 and effort, if it's not objectionable I'll take you through
15 these statements. First, if you could, look at pages 14
16 through 15 of the first statement, Applicant's Number 4.

17 A: Okay. I have it.

18 Q: Okay. And on pages 14 through 15, is it reflected there
19 that law enforcement is telling him that you, Mr. Matthews,
20 had made comments to EMS and that your stories aren't matching
21 up?

22 A: Yes, it is.

23 Q: Did you make any statements in this case?

24 A: No, ma'am, I didn't.

25 Q: Did you make any statements to EMS?

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- 1 A: No, ma'am, I didn't.
- 2 Q: Now, also on 14 through 15, is it reflected there that
- 3 law enforcement tells him that you're not going to make it,
- 4 that you are going to die?
- 5 A: Yes, ma'am.
- 6 Q: Were you aware that Melvin Segars had been given that
- 7 information before he gave a statement to law enforcement?
- 8 A: No, ma'am, I wasn't.
- 9 Q: And let me just go back -- and I apologize because, you
- 10 know, I have seen these documents so many times. Up to this
- 11 point, had he given any incriminating or damaging information
- 12 about you to law enforcement?
- 13 A: No, he didn't.
- 14 Q: In the first 14 pages of his statement?
- 15 A: No, he didn't.
- 16 Q: Okay. Now, if you could, look at pages 15 through 16.
- 17 Did they tell him that three people's stories are lining up
- 18 and who are those three people?
- 19 A: They're saying the victim's -- the victim's story, my
- 20 story, and Jeffrey Dawkins' story is lining up.
- 21 Q: And again, did you ever give a story?
- 22 A: No, ma'am, I didn't.
- 23 Q: So as far as you know, were the three of your stories
- 24 lining up?
- 25 A: No, ma'am.

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1 Q: There essentially wasn't a story to line up; is that
2 right?

3 A: No. Because I never gave a statement.

4 Q: Okay. If you could, look at pages 15 through 16. They
5 recount there to him what you have said. Did you say that?

6 A: No, ma'am.

7 Q: If you could, flip to page 17, lines 17 and 18. What
8 does Segars say?

9 A: He says my boy is in the hospital about to die. You know
10 what I'm saying?

11 Q: And you know Segars; is that correct?

12 A: Yes, ma'am.

13 Q: Does it appear from his response that he's believing what
14 they're telling him about you?

15 A: Yes, it does appear he's believing it.

16 Q: And then if you flip through 18 and 19, do they continue
17 to tell him, reiterate what his co-defendants, which would be
18 including you, have said?

19 A: Yes, ma'am.

20 Q: And ultimately do they tell him that you have said that
21 he was the shooter?

22 A: Yes, ma'am.

23 Q: Did you ever say that?

24 A: No, ma'am.

25 Q: And then if you just look at the end, this interview ends

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1 at 4:13 a.m.; is that correct?

2 A: Yes, ma'am.

3 Q: Now, flip over to the next exhibit, Applicant's Number 5.

4 What time does that start?

5 A: It starts at 4:58.

6 Q: And you can do the -- at what time? I'm sorry.

7 A: 4:20 a.m. I'm sorry.

8 Q: Okay. And can you do that math? Approximately how many

9 minutes later would that be?

10 A: That's about -- about thirty minutes later.

11 Q: Okay. Is it just a couple minutes later?

12 A: No.

13 Q: Okay. If one ended at 4:13 and one starts at 4:20, it's

14 just a couple minutes later; is that correct?

15 A: Yes, ma'am.

16 Q: Okay. And I won't ask anymore math questions. Now, the

17 second statement. Had you ever reviewed it or gone over it

18 with Mr. Barr?

19 A: No. We never did.

20 Q: Did you know the substance of that statement until you'd

21 just recently gotten this file?

22 A: No, ma'am, I didn't. I just found out.

23 Q: And what in that statement would you have pointed out to

24 Mr. Barr? Specifically, if you look at page 3, what happens

25 in this statement?

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1 A: Page 3, he's telling the investigator that I was the
2 shooter.

3 Q: Okay. So he starts finally telling a story in this case;
4 is that right?

5 A: Yes, ma'am.

6 Q: And on page 5, does he tell him that your co-defendant
7 Dawkins asked for candy? And then if you go through page 5,
8 page 6, page 7, he reiterates that you were the shooter?

9 A: Yes, ma'am.

10 Q: And then on page 7, what -- what additional damaging
11 information does he offer about you having a gun?

12 A: He was saying that I showed him a gun. I was the first
13 one to show him a gun.

14 Q: Okay. And does he say you had that gun for several
15 weeks?

16 A: Yes, he does.

17 Q: Okay. Now, prior to your trial and the issue of Melvin
18 Segars' statements coming up at trial, were you aware that he
19 had originally not told anything to law enforcement, the
20 information they had given him about you, and then that he --
21 that he gives statements placing you as the shooter? Were you
22 aware of that evolution that took place during his
23 interrogation?

24 A: No, ma'am.

25 Q: Is that something you would have wanted to discuss with

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1 Mr. Barr prior to your trial?

2 A: Yes, ma'am, it was.

3 Q: Now, his statements actually come up at trial, and let's
4 look at how they come up at trial. If you could, turn to your
5 transcript and look at page 230, please, beginning on line 1.
6 And there on direct does Kimberly Barr, the solicitor, just
7 simply ask Investigator Lail if she talked with Melvin Segars,
8 also known as I believe Vinny?

9 A: Yes.

10 Q: And that's all the questions she asked? Is that what it
11 -- what appears from the transcript?

12 A: Yes, ma'am.

13 Q: Okay. Then, if you could, turn to the cross-examination
14 done by your attorney, Mr. Barr, on page 254.

15 A: Okay.

16 Q: There does he begin asking Investigator Lail about the
17 two statements she obtained from Melvin Segars?

18 A: Yes, he did.

19 Q: Then on page 255, does he ask Investigator Lail if she
20 knows if Melvin Segars is going to testify or not?

21 A: Yes.

22 Q: Did you know if Melvin Segars was going to testify or
23 not?

24 A: He told me -- he told me that his lawyer wasn't going to
25 allow him to testify. Mr. Barr told me that Melvin Segars'

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1 lawyer wasn't going to allow you to testify at my trial.

2 Q: When you all discussed that, did you know about the
3 statements that Melvin Segars had given?

4 A: No. I never knew about it.

5 Q: Is that something that you think you should have known
6 about when you were discussing whether or not Segars would
7 testify?

8 A: Yes, ma'am.

9 Q: Okay. Now, if you could, look specifically at page 256,
10 beginning at line 10 through line 17. He asked did you tell
11 Mr. Segars at any point that one of the other men -- young men
12 are saying that he did the shooting, and what does she respond
13 there on line 13?

14 A: She says normally we wouldn't do that, no.

15 Q: Does he ask her any further questions about that or
16 specifically ask her about the statements that we just went
17 over?

18 A: He didn't ask her any more questions about it. He moved
19 on to the second statement.

20 Q: Did you want -- now that you've seen the statements --

21 A: Yeah.

22 Q: What would you have wanted him to do differently?

23 A: To go into the first -- go into the first statement more
24 because I mean she kind of led him and lied to him and twisted
25 all kind of stories up. I would definitely want him to go

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1 into the first statement to show the jury that -- how she
2 manipulated a suspect.

3 Q: Okay. Now, he doesn't go into it more about what do you
4 typically tell people, did you say this, but then he does on
5 page 257. He says in the first statement. Do you see that at
6 the very beginning --

7 A: I see it.

8 Q: -- of page 257?

9 A: I see it.

10 Q: And the State objects and I would just summarize if
11 that's okay with the Court. On pages 257 through 259, there's
12 a long discussion about whether or not these statements of Mr.
13 Segars can be admitted at your trial. Have you had a chance
14 to review that and look over that?

15 A: Yes, I did.

16 Q: And it's discussed that Segars has counsel and he can
17 testify if needed. And does the State ultimately say there
18 that they don't have a problem with the statements coming in?

19 A: They say -- they say they don't have any objections.

20 Q: Okay. Now, on page 259, line 20, the discussion going
21 back and forth has happened and your attorney is allowed to
22 resume his cross-examination, and what does he say at that
23 point?

24 A: He says he has no further questions.

25 Q: So your attorney never went into the statements; is that

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1 correct?

2 A: That's correct.

3 Q: And he never addressed any of these issues that you
4 brought up today with Investigator Lail?

5 A: No, he didn't.

6 Q: Now, if you could, turn to page 260 through 261. The
7 State on redirect goes into the first statement; is that
8 correct?

9 A: Yes, ma'am.

10 Q: And they essentially get testimony from Investigator Lail
11 that the first statement was untrue?

12 A: Yes, ma'am.

13 Q: And your attorney objects based upon hearsay. And do you
14 recall on page 261, if you need to look at it, lines 20
15 through 21, what the judge ruled as far as that being hearsay?

16 A: He says he thinks the door was opened. You asked the
17 question why she didn't respond. The door -- that door was
18 opened. So he's going to allow it.

19 Q: So essentially he's saying that your attorney had opened
20 the door and so he's going to allow them to ask her questions
21 about these statements?

22 A: Yes.

23 Q: He opened the door, but did he ever ask the questions
24 that you would have wanted him to ask if he would have
25 reviewed the statements with you?

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- 1 A: No, he didn't.
- 2 Q: Okay. And you're not an attorney; right, Mr. Matthews?
- 3 A: No, ma'am.
- 4 Q: Did you understand what was going on?
- 5 A: No, ma'am. I just -- I just thought my lawyer had my
- 6 best interest. That's all.
- 7 Q: Okay. So you didn't know to say, Mr. Barr, I want you to
- 8 ask more questions about this?
- 9 A: No, ma'am.
- 10 Q: And did you sit down with him and was it a strategy to
- 11 try to go into the statements and you knew that could open the
- 12 door? Were you aware of any of that?
- 13 A: No. I never seen the statements; so I couldn't tell him
- 14 to go into it because I never seen any of it.
- 15 Q: Okay. Is there anything else regarding Melvin Segars'
- 16 statements, how that was handled with you pre-trial and how it
- 17 came out at trial, that you'd like to tell the Court about
- 18 today?
- 19 A: Basically, I just think that if -- if he would have gone
- 20 into the first statement more in front of the jurors, it would
- 21 have just showed them, like, how twisted, and the investigator
- 22 sat on the stand and just kind of just lied under oath or
- 23 whatever.
- 24 Q: So there's further cross-examination that you would have
- 25 wanted him to conduct on your behalf?

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1 A: Yes, ma'am. Definitely.

2 Q: Okay. The next issue that you have raised in your
3 amendment is that your attorney was ineffective for failing to
4 cross-examine two additional witnesses, Jeffrey Dawkins and
5 Kim Hanna.

6 A: Okay.

7 Q: And then there's another issue there as saying that your
8 attorney was ineffective for opening the door to the reading
9 of Jeffrey Dawkins' statement. Let's first talk about Jeffrey
10 Dawkins. He was your co-defendant; is that correct?

11 A: Yes, ma'am.

12 Q: Okay. Now, throughout the course of his testimony
13 that'll be properly reflected in the transcript before the
14 Court, did he use the term "we" a lot?

15 A: Yes, he did.

16 Q: Okay. And what did it seem like to you -- as you're
17 sitting there and hearing it and saw the State's questions,
18 what was the purpose in doing that?

19 A: To kind of tie us together.

20 Q: Okay. Did your attorney ever ask him any questions about
21 was he being coached or told to use the term "we"? Did he
22 ever bring that up on cross-examination?

23 A: Yes, he did.

24 Q: He did? Did he do that in the manner in which you would
25 have wanted him to do or are you alleging today he should have

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1 gone further into that issue?

2 A: I think he should have gone further into it.

3 Q: Okay. And how so, Mr. Matthews?

4 A: I just think he should have, like, acknowledged the fact

5 that Mr. Dawkins was on the stand because he was accepting a

6 plea deal promised to him by the State and that's the only

7 reason why he was up there. And if he wouldn't have gave the

8 statement that the State wanted him to give, then the plea

9 deal was off the table.

10 Q: Was it your understanding that essentially his job was to

11 implicate you in this case?

12 A: No, ma'am.

13 Q: I mean -- I'm sorry. Mr. Dawkins when I say "him".

14 A: Mr. Dawkins?

15 Q: The purpose of him being there was to implicate you and

16 to help get you convicted?

17 A: Yes, ma'am.

18 Q: Okay. And you would have wanted your attorney to explore

19 that more on cross-examination?

20 A: Yes, ma'am, I would.

21 Q: Now, if you could, turn to page 92 through 93, and please

22 tell me if I'm ever going too fast for you here. Okay?

23 A: Okay. I got it.

24 Q: There on redirect, the State is asking Mr. Dawkins about

25 the specifics of his statement and your attorney objects. And

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1 on page 93, line 8, does the solicitor again argue that your
2 attorney had opened the door to that?

3 A: Yes, she does.

4 Q: Okay. And what does the judge rule on line 15?

5 A: He says he's going to allow it.

6 Q: So as a result of your attorney's cross-examination, Mr.
7 Dawkins is essentially allowed to read his statements to the
8 jury; is that correct?

9 A: Yes, ma'am.

10 Q: Is that something that you discussed with your attorney,
11 the strategy and cross-examination that could potentially open
12 the door to him being allowed to read his statements to the
13 jury?

14 A: No, ma'am. We never discussed it.

15 Q: Okay. Did you all even go over Mr. Dawkins' statements?

16 A: No, we didn't.

17 Q: Okay. So you weren't aware of the content that he was
18 allowed to testify to on redirect?

19 A: No, ma'am.

20 Q: Okay. Now, we've mentioned Kim Hanna. If you could,
21 turn to pages 115 through 120 of your transcript.

22 A: Okay.

23 Q: Mr. Barr makes a Brady argument. And to be fair to what
24 the transcript reflects, it appears that his argument is based
25 primarily on the fact that there could have been a recording

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1 of an interview with Kim Hanna and he doesn't have the
2 recording?

3 A: Yes.

4 Q: And he's making a Brady argument there. Now, you had
5 said earlier that you didn't even know she was going to
6 testify; is that right?

7 A: Yes, ma'am.

8 Q: And if you could, look back at the preliminary hearing.

9 MS. BLANCHETTE: Your Honor, may I approach the witness?

10 THE COURT: Yes, ma'am.

11 BY MS. BLANCHETTE:

12 Q: That has been previously admitted as Applicant's Number
13 2. And if you could, look at page 9 through 10 of that, and I
14 can flip that for you. During the preliminary hearing on
15 pages 9 through 10 -- I'm sorry. It's actually 8 through 10.
16 Again, I apologize. Bottom of 9 through 10. Does
17 Investigator Lail recount meeting with Ms. Hanna and her
18 mother and what was discussed?

19 A: Yes, she does.

20 Q: So that information would have been known to Mr. Barr as
21 soon as the preliminary hearing?

22 A: Yes.

23 Q: And if you had attended the preliminary hearing, you
24 would have heard that as well?

25 A: Yes, ma'am.

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1 Q: If he would have talked to you about the preliminary
2 hearing, you would have known that as well; is that right?

3 A: Yes, ma'am.

4 Q: Okay. So that information regarding Kim Hanna and
5 essentially what she testifies to at your trial is given at
6 your preliminary hearing?

7 A: Yes, it is.

8 Q: So he had notice of that?

9 A: Yes, ma'am.

10 Q: Did you have notice of it?

11 A: No, I didn't.

12 Q: Now, Mr. Matthews, I'm going to show you an exhibit that
13 has been pre-marked for identification as Applicant's Number
14 6. Is this one of the documents that was contained in the
15 file that you received as part of discovery from Mr. Barr?

16 A: Yes, it was.

17 Q: And what does -- it's a really bad copy, but what does it
18 appear to say that it is at the top there?

19 A: It says the incidental -- incident report supplemental.

20 Q: Okay. And this is a one -- two -- three-page report; is
21 that correct?

22 A: Yes, ma'am.

23 MS. BLANCHETTE: Your Honor, at this time I would move
24 the three-page supplemental incident report in as Applicant's
25 Number 6.

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1 THE COURT: Any objection?

2 MR. GOURLEY: No, Your Honor.

3 THE COURT: It's in evidence.

4 (WHEREUPON, Applicant's Exhibit Number 6, supplemental
5 incident report, was admitted into evidence.)

6 BY MS. BLANCHETTE:

7 Q: And this incident report that we have a copy of -- this
8 came from Mr. Barr's file; is that right?

9 A: Yes, ma'am.

10 Q: Okay. And if you could, turn to page 2. At the very
11 bottom of page 2, it has an entry of 1/6 of '09?

12 A: Yes.

13 Q: And what information is contained in there? Who are they
14 reporting that they spoke with?

15 A: With Kim Hanna's mother.

16 Q: Okay. And does that essentially in this incident report
17 give the information that she testified to at trial?

18 A: Yes, it does.

19 Q: Had you seen this incident report prior to trial?

20 A: No, ma'am.

21 Q: Is this something you would have wanted to review with
22 your attorney and why?

23 A: I would because that's -- that's another person that's
24 testifying against me going to trial and linking me to the
25 charge, and I didn't have any prior knowledge that she was

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1 even in my case, period.

2 Q: And not only did Kim Hanna testify, but on pages 234
3 through 236 and 248 to 253, Investigator Lail was able to
4 recount her interviews with Kim Hanna and what Kim Hanna told
5 her?

6 A: Yes, ma'am.

7 Q: So Kim Hanna and Investigator Lail testified to the
8 information that Kim Hanna gave that was damaging to you; is
9 that correct?

10 A: Yes, ma'am, it is.

11 Q: Now, also regarding Kim Hanna but just kind of your
12 transcript as a whole, once you got a copy of the record on
13 appeal, did you notice something odd about the actual
14 transcript itself?

15 A: Yes. It's a lot of -- it's a lot of parts where it says
16 it's not typed out on the transcript because I guess the court
17 -- the court reporter just didn't type it out because she says
18 ran out of tape or something like that.

19 Q: And you're alleging specifically regarding Kim Hanna's
20 testimony that your attorneys, being both trial and appellate
21 counsel, were ineffective for not raising this issue that
22 portions of her testimony was missing. If you could, look at
23 page 126, line 23. Is that what you're referring to there,
24 Mr. Matthews?

25 A: Yes, ma'am.

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1 Q: And then again look at page 132, line 13.

2 A: Yes, ma'am.

3 Q: And what does it say on 132, line 13?

4 A: Margaret Sullivan is going to have to type the balance of
5 this transcript as there was an error with the tapes.

6 Q: Before you received your record on appeal and honestly
7 before you reviewed it with me, did -- did you ever get to
8 address this problem with anyone?

9 A: No, I didn't.

10 Q: Okay. Were you aware that, if there's an issue with a
11 transcript, there is a certain number of days that either the
12 requester of the transcript or the attorney has to essentially
13 question the court reporter about it?

14 A: No, I didn't.

15 Q: Okay. Did you know there's a certain number -- there's a
16 certain time period that they're required to retain the tapes
17 and, if no objections or questions are raised, they can
18 destroy those tapes?

19 A: No, ma'am, I didn't.

20 Q: Okay. And specifically during Ms. Hanna's testimony
21 we've been talking about, there's a part of it that just isn't
22 in your transcript; is that correct?

23 A: Yes, ma'am.

24 Q: And what is it that you would have wanted Mr. Barr or
25 your appellate attorney to do about that?

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1 A: I wanted them to raise it on appeal and put it in the
2 brief.

3 Q: Okay. Would you have wanted them to address it with the
4 court reporter and/or the Court if necessary?

5 A: Yes, ma'am, I would.

6 Q: Okay. Mr. Matthews, you've also alleged that your
7 attorney was ineffective when he failed to move to suppress
8 the forensic evidence recovered from the crime scene and/or
9 object to the testimony of Deputy Scott that exceeded -- sorry
10 -- exceeded the scope of a lay witness. You have worked
11 extensively on your own on this argument; is that correct?

12 A: Yes, ma'am.

13 Q: Okay. And essentially what you have told to me is you
14 have a major concern that there was no forensic link to tie
15 the evidence found at the scene to this crime?

16 A: Yes, ma'am.

17 Q: Could you explain what you mean by that, what it is that
18 you want the Court to understand about that?

19 A: Basically, like, someone got on the stand that was said
20 to be an expert that he can tell how long a bullet has been
21 placed there and how long -- like, how long it's been there,
22 but he doesn't have the experience in that field to do it. So
23 he can't tell us if that bullet has been there twenty-four
24 hours ago or one year ago.

25 Q: Okay. And your attorney did -- and we'll get into it --

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1 did cross-examination on this issue, but you wanted him to
2 move to suppress the evidence; is that correct?

3 A: Yes, ma'am, I did.

4 Q: Okay. Now, you have reviewed your transcript
5 extensively, and on page 32, 69, and 167 through 169, the
6 victim, Deputy Scott, and Dawkins all testified, and you asked
7 that I specifically cite to that testimony. What is the
8 problem with that testimony there as far as the three of them?
9 Does it connect to the evidence or does it fail to connect to
10 the evidence?

11 A: It fails to connect.

12 Q: Okay. And why? Why are you submitting that to the Court
13 that that testimony fails to connect the forensic evidence to
14 this crime?

15 A: Because he -- the victim is saying that someone shot at
16 him, but a gun never was recovered, a bullet was never
17 recovered, and you've got -- you've got someone getting on the
18 stand saying that they're an expert and they're saying that
19 someone fired this gun at the crime scene.

20 Q: And your attorney -- he did question Lieutenant Scott on
21 pages 187 through 193 --

22 A: Yes.

23 Q: -- about the evidence and about issues of trajectory?

24 A: Yes.

25 Q: But did he ever object to Agent Scott testifying about

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1 trajectory?

2 A: No, he didn't.

3 Q: And what are you alleging that he should have done
4 regarding Agent Scott's testimony?

5 A: I think he should have just objected not to have him up
6 there testifying as an expert because you have all the jurors
7 thinking that you have an expert up there on the stand and he
8 should have just objected to Lieutenant Scott being a lay
9 witness.

10 Q: And did the State moved to introduce -- or sorry --
11 qualify him as an expert in trajectory?

12 A: Yes, they did.

13 Q: I'm sorry. That wasn't a very good question. Let me re-
14 -ask the question. Agent Roberts -- I'm sorry. I've got the
15 wrong person. He was actually qualified in trace evidence and
16 GSR by the State, but if you could look at page 208, line 6,
17 what did he tell your attorney?

18 A: He says -- you said 208, line 6?

19 Q: Uh-huh. Let me make sure I got that right.

20 A: Okay. He says I'm not an expert in trajectory or
21 ballistics or anything like that.

22 Q: So there your attorney had been trying to cross-examine
23 him and ask him about the trajectory, and he essentially says
24 I'm not an expert in that area?

25 A: Yes, he does.

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1 Q: What is your take away from that? What did -- what does
2 it appear your attorney was trying to do with questioning him
3 that you are saying is an error?

4 A: He's trying to -- he's trying to ask him -- get him to
5 answer questions that he doesn't know the answer to.

6 Q: Okay. And was anyone who was qualified in trajectory
7 presented in this case?

8 A: No, there wasn't.

9 Q: And you're alleging today that your attorney should have
10 moved to suppress the evidence?

11 A: Yes, ma'am.

12 Q: On that basis and the other bases that you've explained?

13 A: Yes, ma'am.

14 Q: And I already said, Mr. Matthews, you've worked hard on
15 this issue yourself.

16 A: I did.

17 Q: So I've tried to ask you decent questions, but is there
18 anything else you'd like to tell the Court about the forensic
19 evidence and your attorney's failure to move to suppress it or
20 make proper arguments about it?

21 A: No, ma'am.

22 Q: Okay. Now, we've already mentioned that Judge Brown
23 presided over the directed verdict argument, and you're
24 alleging today that your attorney was ineffective with his
25 argument on directed verdict regarding the attempted armed

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1 robbery charge. The Court has as part of the record before
2 him a copy of the Anders brief that was filed on your behalf.
3 Have you had a chance to review that Anders brief?

4 A: Yes, ma'am, I did.

5 Q: And there, your attorney -- even though it's an Anders
6 brief, he makes a more extensive argument than Mr. Barr made
7 at trial; is that correct?

8 A: Yes, ma'am.

9 Q: And Mr. Barr's argument is on page 268, line 12, if you
10 need to look at that, Mr. Matthews.

11 A: Okay.

12 Q: And there, he makes his argument for directed verdict on
13 attempted armed robbery. Now, at two points in the
14 transcript, page 30 and page 170, two different witnesses
15 testified that \$.18 was put on the counter?

16 A: Yes, ma'am.

17 Q: Why does that testimony matter to you and how would you
18 have wanted your attorney to argue that?

19 A: I would want him to basically just get the offense of
20 attempted armed robbery dismissed because \$.18 being placed on
21 the counter and you have a victim saying that nothing was ever
22 demanded and nothing was ever taken. I don't think that that
23 falls up under being attempted armed robbery.

24 Q: And when you said you have the victim saying nothing was
25 ever demanded or ever taken, could you turn to page 55 of the

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1 transcript?

2 A: Okay.

3 Q: And if you look at lines 4 through 10?

4 A: Okay.

5 Q: The State asks the victim, Mr. Cooper, that he had

6 testified on cross that nothing was ever demanded and they

7 didn't take anything from you or demand any money from you,

8 and he says no. And then they ask him was there anything

9 unusual about that, and what does your attorney object?

10 A: That she's leading the witness.

11 Q: Okay. So your attorney objects and essentially that line

12 of questioning is stopped. Is that -- is that what the

13 transcript reflects?

14 A: Yes, ma'am.

15 Q: Did you want to know the answer to the question whether

16 he thought that was unusual?

17 A: Yes, I did.

18 Q: Did you think that information would have been helpful to

19 you?

20 A: Yes, ma'am.

21 Q: And who is the one that shut down that line of

22 questioning?

23 A: Mr. Barr.

24 Q: Okay. Now, as far as the documents that we received from

25 Mr. Barr pursuant to the discovery order, do you recall seeing

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1 a copy of Mr. Cooper's transcript of his conversation with law
2 enforcement?

3 A: Yes, ma'am.

4 Q: And Mr. --

5 MS. BLANCHETTE: Your Honor, I'm sorry. May I approach
6 the witness?

7 THE COURT: Yes, ma'am.

8 MS. BLANCHETTE: Okay. Thank you.

9 BY MS. BLANCHETTE:

10 Q: Can you identify what I've handed you that's been pre-
11 marked as Applicant's Number 7?

12 A: Ervin Cooper's statement by Investigator Lail.

13 Q: Okay. And that's a statement that you have reviewed and
14 received as part of Mr. Barr's file?

15 A: Yes, ma'am.

16 MS. BLANCHETTE: Your Honor, at this time I would move
17 this in as Applicant's Number 7.

18 THE COURT: Any objection?

19 MR. GOURLEY: No, Your Honor.

20 (WHEREUPON, Applicant' Exhibit Number 7, transcript of
21 Cooper statement, was admitted into evidence.)

22 BY MS. BLANCHETTE:

23 Q: Mr. Matthews, since receiving a copy of the file, have
24 you had a chance to review Mr. Cooper's statement?

25 A: No, ma'am.

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- 1 Q: Have you read over that statement there?
- 2 A: Yes, I did.
- 3 Q: Okay. Is that something you reviewed with your attorney
- 4 prior to trial?
- 5 A: No, ma'am.
- 6 Q: And you've read through this statement. Does he actually
- 7 answer that question of was it unusual that no demands were
- 8 made?
- 9 A: Yes, he does.
- 10 Q: Okay. And what does the statement -- essentially, what
- 11 are his answers in the statement?
- 12 A: He's basically saying when guys come to rob or whatever,
- 13 they ask for something and they point a gun and they demand --
- 14 they demand what they want, money or whatever.
- 15 Q: And what does he say he would have done if he would have
- 16 known it was a stick-up?
- 17 A: He said he just would have gave it up.
- 18 Q: Okay. And does he also recount how your co-defendant
- 19 asked for candy and was counting out \$.18 on the counter?
- 20 A: Yes, ma'am.
- 21 Q: When the shot took place?
- 22 A: Yes, ma'am.
- 23 Q: Is that information you would have wanted your attorney
- 24 to elicit or it appeared that the State was trying to elicit
- 25 during your trial?

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1 A: Yeah. I would have wanted my attorney to, but I don't
2 think he went deep -- deep in with it during the questioning,
3 but he objected to it.

4 Q: And then he cut the State off from going there too; is
5 that correct?

6 A: Yes, ma'am.

7 Q: Okay. Why is that information you would have wanted the
8 jury and the judge, who decided your directed verdict, to
9 know?

10 A: Because you've got both parties saying it wasn't a
11 robbery. The victim is saying that no one demanded anything.
12 He doesn't feel like it was a robbery. And during robberies
13 things usually get demanded, asked for, people point guns and
14 ask for what they want, and none of that happened in this
15 case, period.

16 Q: Okay. And you're not a lawyer so you don't know about
17 overt acts and the case law and all that kind of stuff; is
18 that correct?

19 A: Yes, ma'am. That's correct.

20 Q: Okay. You can just point out what you think is wrong?

21 A: Okay.

22 Q: Okay. So I don't have any further questions for you on
23 that. Is there anything else you'd like to tell the Court?

24 A: No, ma'am.

25 Q: Okay. The next issue you've raised is regarding the

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1 State's closing argument. That your attorney was ineffective
2 for failing to make objections to vouching and bolstering the
3 credibility of a witness, specifically Kim Hanna, and also
4 when the State attempted to invoke the passions and prejudice
5 of the jury. Could you turn to page 292 through 293?

6 A: Okay.

7 Q: And beginning on line 23 at the bottom of 292, does the
8 solicitor go into an argument that begins with the fact that
9 you are a handsome young man?

10 A: Yes, ma'am.

11 Q: And then through 293, does she talk about what an awesome
12 God we all serve and about God's grace and mercy?

13 A: Yes, ma'am.

14 Q: You were sitting in the courtroom and you've had a chance
15 to read that. How did that come across to you?

16 A: That she just -- kind of like she's being very prejudiced
17 by just bringing in religion into it making it seem like the
18 State's side is just more kind of like God-fearing and just
19 like nobody has a reason to lie and they're just trying to tie
20 God into everything.

21 Q: Okay. And when you were hearing it, is it something that
22 you wanted your attorney to object to?

23 A: Yes, ma'am.

24 Q: And did he do that on your behalf?

25 A: No, he didn't.

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1 Q: Then if you could, turn to page 294. She's responding to
2 your attorney's arguments about Kim Hanna -- or essentially
3 saying what your attorney is going to argue about Kim Hanna,
4 and does she ultimately say on page 294 that, you know, Kim
5 Hanna can be trusted and here's the reasons why?

6 A: Yes, she does.

7 Q: Okay. And when you heard that, was that something you
8 would have wanted your attorney to object to?

9 A: Yes, ma'am.

10 Q: And why? Why did that seem objectionable to you?

11 A: Because you can't give her any more credibility than you
12 give anybody else. You can't make her seem like she wouldn't
13 tell -- have a reason to lie. Like, what gives her more
14 credibility than anybody else?

15 Q: Okay. Now also at the close of your case when the
16 charges were made, you're alleging today that your attorney
17 was ineffective for not requesting a charge on a lesser
18 included offense?

19 A: Yes, ma'am.

20 Q: What charge did you want him to request?

21 A: Strong-armed robbery.

22 Q: Did you all discuss the likelihood of the judge giving
23 that, if he should request it, anything of that nature?

24 A: No. We never did.

25 Q: Okay. I mean did you even know kind of when your trial

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1 began that Judge Brown would be the one deciding what got
2 charged and doing the charge?

3 A: No, I wasn't.

4 Q: Okay. And just because I mentioned that, I'm going to
5 have to jump back a little bit just to the judge issue for a
6 minute. Do you know if Judge Brown and Judge Newman were both
7 in the courtroom the entire time up to the point that Judge
8 Brown took over or were there any points where you can't
9 recall if Judge Brown was in the courtroom?

10 A: I don't -- I don't think at the beginning. I can't
11 recall him when the jurors were selected, but during -- like,
12 during the course of the trial, he was sitting up there, but
13 he wasn't doing any talking.

14 Q: Okay. And until he took over, were you really even
15 concerned with him being there?

16 A: No. I just thought he was just trying to learn how to be
17 a judge.

18 Q: Okay. And you -- who did you think was in charge of your
19 trial?

20 A: Judge Newman.

21 Q: And who did you think would be in charge of it the entire
22 time?

23 A: Judge Newman.

24 Q: Okay. Now, the final issue regarding trial counsel --
25 and issues because we amended today with a separate issue.

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1 The first part is that your attorney was ineffective for
2 failing to object to the jury charge itself, and that your
3 attorney was ineffective for failing to address the missing
4 portions of the jury charge. Now, I'm going to ask your
5 attorney a little bit more about the jury charge since he's an
6 attorney and that's something that he's familiar with, but I'm
7 just going to ask you about what you heard, what you see in
8 the transcript, and what you think is wrong. Okay?

9 A: Okay.

10 Q: Could you turn to page 325 for me? On line 6 of 325,
11 Judge Brown begins giving an assault with intent to kill
12 instruction. Do you see that?

13 A: Yes, I see it.

14 Q: And if you read through page 326, he continues to talk
15 about assault with intent to kill. Do you see that?

16 A: Yes, I see it.

17 Q: And let me preface this by saying have you had a chance
18 to review the standard jury instructions that are given by the
19 Supreme Court that we've already admitted as Applicant's
20 Number 8? Have you read through those?

21 A: Yes.

22 Q: At SCDC?

23 A: Yes, ma'am, I did.

24 Q: Okay. Now, if you could, look at page 327. What -- on
25 line 1, what charge is he talking about there?

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- 1 A: He's talking about attempted armed robbery.
- 2 Q: Could you flip to page 328?
- 3 A: Yes, ma'am.
- 4 Q: At the top, he gives instructions about examples of
- 5 instruments that can be considered deadly weapons, but then he
- 6 starts talking about malice and a specific intent to kill.
- 7 You've read through this. Does it appear to you that he then
- 8 switches back to the assault with intent to kill instruction?
- 9 A: Yes, ma'am, he does.
- 10 Q: And I've had you read over this a bunch of times with me?
- 11 A: Yes.
- 12 Q: Does it make sense to you what the judge was saying?
- 13 A: No, it doesn't. It just seems like he switched the
- 14 charges up.
- 15 Q: And did your attorney ever object or enter any what we
- 16 call exceptions to say, Your Honor, I think you just confused
- 17 the jury and confused your charge somehow?
- 18 A: No, ma'am, he doesn't.
- 19 Q: And the attempted armed robbery is one of the charges
- 20 that you were found guilty of; is that correct?
- 21 A: Yes, ma'am.
- 22 Q: And while giving the attempted armed robbery charge, it
- 23 appears he goes back into the assault with intent to kill
- 24 charge?
- 25 A: Yes, he does.

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1 Q: Now also, if you could, look at page 331 of the
2 transcript. There on line 15, it indicates that there is a
3 portion off tape. So there's a portion of the jury
4 instruction that's just missing?

5 A: Yes, ma'am.

6 THE COURT: What page is that?

7 MS. BLANCHETTE: And I'm sorry. This gets confusing here
8 because the page at the top is 330, at the bottom it's 331.

9 THE COURT: Okay.

10 MS. BLANCHETTE: So at the -- it's the -- the page number
11 at the top is 330.

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

13 MS. BLANCHETTE: Line 15.

14 BY MS. BLANCHETTE:

15 Q: Does it reflect that there's a portion of your jury
16 instructions off the tape?

17 A: Yes, ma'am.

18 Q: Okay. And was that issue ever raised by your attorneys
19 prior to today?

20 A: No, ma'am.

21 Q: Now, I want you to look specifically at two more charges.
22 The possession of a weapon during the commission of an attempt
23 to commit a violent crime -- on page 329, lines 1 through 15,
24 is that charge, and I've provided you a standard charge. And
25 in there, there is language that says the State must prove

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1 beyond a reasonable doubt that the weapon further advanced or
2 helped in the commission of the crime. Does the transcript
3 reflect that Judge Brown stated that to the jury?

4 A: Yes, ma'am.

5 Q: Is that sentence that I just gave you that's in the
6 standard charge -- did he tell the jury that sentence?

7 A: No, ma'am.

8 Q: In your opinion, would that sentence have mattered in
9 your case?

10 A: Yes, ma'am.

11 Q: Why?

12 A: Because I was found guilty of that charge.

13 Q: Okay. And was there a question in your case of who had
14 the gun?

15 A: Yes, ma'am.

16 Q: Okay. Now, if you could, turn to page 329 and look at
17 line 16. There Judge Brown starts with the conspiracy charge?

18 A: Yes.

19 Q: And that goes through page 330. We already mentioned
20 that's where it says a portion off tape, but based upon the
21 standard instruction, there's also a large portion of that
22 instruction missing. Is that your understanding?

23 A: Yes, ma'am.

24 Q: And it may just be well that it was cut off the tape, but
25 it still -- there's no record that the jury was given the

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1 complete instruction; is that correct?

2 A: Yes, ma'am.

3 Q: Now, I'm not going to ask you the specifics of this, but
4 you remember and it's reflected on page 332 that the jury came
5 back with two questions?

6 A: Yes, ma'am.

7 Q: And the judge actually goes to say what those are on the
8 record, but that part is also not transcribed?

9 A: Yes, ma'am.

10 Q: You have reviewed -- and I'll ask your attorney about his
11 responses and how that was handled. What would you have
12 wanted your attorney to do differently about the jury's
13 questions?

14 A: I would have wanted him to -- about the jury's questions,
15 I would have wanted him -- to my understanding, the judge
16 asked him -- the judge asked him did he want them to
17 reinstruct the jury --

18 Q: Uh-huh.

19 A: -- and he could have said no right then, but he said --
20 he allowed it and I wouldn't have wanted him to allow it.

21 Q: And it's a little hard to follow because there's multiple
22 sections in here where the transcript just isn't there?

23 A: Yes.

24 Q: It's been omitted. But you would have wanted him to
25 agree to the judge recharging the jury in the way that he did?

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1 A: No, ma'am.

2 Q: And on pages 337 through 338, did he mention that he had
3 any exceptions or objections to how the jury's questions were
4 answered and how they were recharged?

5 A: No, ma'am.

6 Q: And then after they got recharged, the transcript
7 reflects and do you remember it took them about thirty minutes
8 and they came back with a verdict?

9 A: Yes, ma'am.

10 Q: Okay. So clearly they had questions, he recharged them,
11 and then they were able to get a verdict pretty quickly?

12 A: Yes.

13 Q: Okay. Now, Mr. Matthews, I have done my best to
14 effectively take you through the trial transcript and your
15 representation with Mr. Barr.

16 A: Yes, ma'am.

17 Q: You know, this case was a number of years ago. You've
18 been preparing for your PCR for a number of years.

19 A: Yes.

20 Q: Is there anything else that you would like to tell the
21 Court in support of your allegations regarding the ineffective
22 assistance rendered by Mr. Barr?

23 A: We covered it. I just -- I just know that if I could see
24 my motion of discovery and see how they came about to indict
25 me on the charges and how they found out about everything

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1 previous to me going to trial, I would have went about the
2 whole situation differently. There's a lot of things that we
3 didn't go over that we should have went over, and if I would
4 have seen all this stuff, certain things that they had, I
5 would have made different decisions.

6 Q: Okay. And I think you've addressed the different
7 decisions you would have made; is that correct?

8 A: Yes, ma'am.

9 Q: Okay. Now, you've also alleged that your appellate
10 attorney was ineffective for filing an Anders brief and not
11 raising meritorious issues on your behalf?

12 A: Yes, ma'am.

13 Q: Once again, you're not an attorney, so I'll just read
14 these off and if you would like to say yes or no that that is
15 an issue you're saying he should've raised.

16 A: Okay.

17 Q: Okay. Are you alleging that he should have raised your
18 attorney's objection to Jeffrey Dawkins reading his statement
19 in the transcript on page 93?

20 A: Yes, ma'am.

21 Q: Okay. Are you alleging that he should have raised your
22 attorney's motion regarding the Brady violation?

23 A: Yes, ma'am.

24 Q: Are you alleging that he should have addressed your
25 attorney's objection to the line of questioning regarding

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1 Melvin Segars' statements?

2 A: Yes, ma'am.

3 Q: Okay. And are you alleging that he should have raised
4 the motion for a new trial and Mr. Barr's argument regarding
5 the charges that you were found not guilty on and whether the
6 elements -- the not guilty verdict showed that the elements
7 weren't satisfied on the other charges?

8 A: Yes, ma'am.

9 Q: And as we have brought up multiple times, are you also
10 alleging that your appellate defender failed to address how
11 portions of your transcript are missing?

12 A: Yes, ma'am.

13 MS. BLANCHETTE: Your Honor, if I could just beg the
14 Court's indulgence one moment?

15 THE COURT: Yes, ma'am.

16 MS. BLANCHETTE: Your Honor, I have no further questions
17 of this witness.

18 THE COURT: All right. Do you anticipate your cross-
19 examination to be of some length?

20 MR. GOURLEY: I mean, Judge, I'm pretty quick, but I'll

21 --

22 THE COURT: I know you're pretty quick. I mean a half
23 hour? An hour?

24 MR. GOURLEY: Yes, sir. I'd say a half hour at best.

25 THE COURT: I hate to limit you.

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1 MR. GOURLEY: Yes, sir.

2 THE COURT: And I don't want to. I don't think that's
3 proper; so we're going to break --

4 MR. GOURLEY: Yes, sir.

5 THE COURT: -- right now. All right?

6 MR. GOURLEY: Thank you, Judge.

7 THE COURT: We will come back at -- we'll come back at --
8 let's see. Let's come back at 1:55.

9 MR. GOURLEY: Thank you, Judge.

10 THE COURT: 1:55. All right?

11 MS. BLANCHETTE: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (WHEREUPON, there was a break in the proceedings from
14 12:39 p.m. until 2:01 p.m.).

15 THE COURT: All right. Yes, sir, if you want to resume,
16 take -- take the stand again, please, sir. Just, obviously,
17 remember you remain under oath. Go ahead, sir.

18 MR. GOURLEY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. GOURLEY:

21 Q: Mr. Matthews, during your direct examination with Ms.
22 Blanchette, you mentioned that you were dissatisfied with your
23 attorney; right?

24 A: Yes, sir.

25 Q: And I think you listed kind of a laundry list of reasons

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1 and correct me if I'm wrong, but you said you didn't receive
2 discovery; right?

3 A: Yes, sir.

4 Q: You only met with him about four times?

5 A: Yes, sir.

6 Q: You weren't present at the prelim; so you were
7 dissatisfied with the fact that he didn't notify you of the
8 prelim?

9 A: Yes, sir.

10 Q: And just basically didn't meet with you and investigate
11 the case enough; right?

12 A: Yes, sir.

13 Q: Okay. Well, why didn't you fire Mr. Barr?

14 A: I mean I basically was -- I hired Mr. Barr knowing that
15 he was -- he was a good attorney at the time. I was young. I
16 didn't know too much about the law at the time like that. I
17 didn't know too much about -- I didn't know what a motion of
18 discovery was. I didn't know what a preliminary hearing was.
19 So I mean I was unaware of all that. I just started
20 discovering what a lot of this stuff was I mean.

21 Q: Well, Mr. Barr represented you on a lot of charges,
22 didn't he? Marion County charges and things like that too?

23 A: That was after he was hired -- before -- he was hired for
24 that before we even went to trial for that other stuff.

25 Q: Okay. But he -- but he did represent you on other

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1 charges. So this wasn't your first brush up with the law
2 though; right?
3 A: No, sir.
4 Q: Did he provide you all that material on those Marion
5 County charges?
6 A: No, sir.
7 Q: He didn't?
8 A: No, sir.
9 Q: So you just went in the trial without any of this
10 material and with all these grievances with Mr. Barr?
11 A: He told me he was going to take care of everything.
12 Q: Okay. But you didn't feel comfortable with him?
13 A: During that time right there, I had him then. I mean
14 what choice did I have?
15 Q: Well, I guess my question is you knew about all these
16 issues that you had with your attorney prior to your trial;
17 correct?
18 A: No, sir.
19 Q: You didn't know about the fact that you didn't have
20 discovery? You didn't realize that?
21 A: I didn't know what a motion of discovery was.
22 Q: Well, you apparently realized about the prelim; right?
23 A: The preliminary hearing?
24 Q: Yes.
25 A: During which case?

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1 Q: Well, during this case. We're not talking about the
2 Marion County charges anymore.

3 A: Okay.

4 Q: During this case, you realized that you weren't present
5 at the preliminary hearing; correct?

6 A: Yes. I realized that.

7 Q: So that was a grievance that you had?

8 A: Yes, sir.

9 Q: Okay. And you obviously had an issue with it that you're
10 raising here today. Did you address that issue with Mr. Barr
11 prior to?

12 A: Prior to what?

13 Q: Prior to your trial?

14 A: No, sir.

15 Q: Okay. Why not?

16 A: I mean Mr. Barr never advised me of -- later on, he came
17 -- he came alone and I heard the preliminary hearing being
18 brought up at the trial, but I didn't know anything about the
19 preliminary hearing. I can't -- I can't bring it up to him if
20 I was never advised of the preliminary hearing.

21 Q: Okay. I guess I just -- I have trouble understanding why
22 you had so many grievances with Mr. Barr yet you kept him on
23 as an attorney. Can you explain that?

24 A: I didn't -- I didn't have grievances with Mr. Barr until
25 after I got my time and I started seeing the process that he

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1 went about it was all wrong. I mean during that time, like I
2 told you, I wasn't too familiar with things and the way steps
3 have to be taken.

4 Q: Okay. Now, you stated that you wanted -- or I guess your
5 first issue is the preliminary hearing issue where you weren't
6 present and you felt he didn't argue it properly; right?

7 A: Yes, sir.

8 Q: What -- what would you have liked him to argue for you at
9 your preliminary hearing?

10 A: To get the charges dismissed.

11 Q: To get the charges dismissed? So he just didn't argue to
12 get the charges dismissed at all? You've read it?

13 A: Yes.

14 Q: Didn't he argue for your charges to be dismissed?

15 A: Show me where he said that at.

16 Q: He adopted the other attorney's argument against an
17 attempted armed robbery; right?

18 A: He agreed with it.

19 Q: He agreed with it? Okay.

20 A: He agreed that it shouldn't be an armed robbery, but it
21 should be an attempted armed robbery.

22 Q: Okay. Okay. Well, what -- what do you feel -- so you
23 feel like he should have argued against all those charges;
24 right?

25 A: Yes. I should.

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1 Q: Okay. And now your indictments were true-billed; right?

2 A: Can you break that down to me?

3 Q: Your indictments -- on the face of your indictments they

4 were true-billed?

5 A: Can you explain what true-billed means?

6 Q: Basically, they were presented to the grand jury and

7 indicted. The grand jury indicted you.

8 A: After the preliminary hearing; right?

9 Q: Yes. Right?

10 A: Yes.

11 Q: Okay. So the grand jury found that there was enough

12 evidence to indict you?

13 A: After -- yes. After the preliminary hearing, yes.

14 Q: Okay. Now, your second issue is that he didn't properly

15 prepare and investigate your case, and I think we've kind of

16 sort of hit on it, but what -- what do you feel like he should

17 have investigated?

18 A: I feel like -- okay. I feel like -- I'm eighteen years

19 old at the time. I get out on bond. I'm not in jail to get

20 my motion of discovery like so many other people are. I feel

21 like I should have been sat down and we should have went

22 through this motion of discovery altogether at the same time.

23 I should have been told that this person said this, this

24 person said that. The investigator misled this person to say

25 this right here. I just -- I would have came about the

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1 situation in a whole different manner not being in the blind
2 about it and just being under the impression that everything's
3 going to be taken care of, and that a person is going to
4 handle it to the best of their ability, but I wasn't aware of
5 any of this stuff.

6 Q: Okay. And had you been aware of all that, what would you
7 have done?

8 A: Had I been aware of it, I would have seen that I had a
9 lot against me -- going against me more than what I thought
10 was. I would have taken that ten-year plea into
11 consideration.

12 Q: Okay. So you would have gotten in front of the Court
13 under oath and told the judge you were guilty of these
14 charges?

15 A: No, sir. I just would have just -- I -- I'm not saying
16 that I was guilty of the charges.

17 Q: Well, in order to accept the State's ten-year plea offer,
18 you would have had to admit your guilt. So you can't have it
19 both ways.

20 A: You're right. I mean I'm just saying I wouldn't have
21 told the State that I was guilty of the charges, but I mean
22 sometimes you've got to just take the best offer available on
23 the table whether you're guilty or not because either way you
24 look at it, your back is against the wall and, like you see,
25 all these people going against me.

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- 1 Q: Right.
- 2 A: Making testimonies against me.
- 3 Q: So you would have lied to the plea judge to get the ten-
- 4 year plea offer?
- 5 A: I would have told the plea judge that I'm not -- I don't
- 6 feel like I'm guilty of all these charges. I would have -- I
- 7 would have told the plea judge exactly how I felt, but I would
- 8 have also told him that I feel like if I go to trial I'll get
- 9 found -- I'll get found guilty because of other people
- 10 bringing testimonies on me.
- 11 Q: Okay. And those other people were your co-defendants;
- 12 right?
- 13 A: Not all of them, but one of them was. Yes, sir.
- 14 Q: And you were shot; right?
- 15 A: Yes, I was.
- 16 Q: Who shot you?
- 17 A: Mr. Cooper.
- 18 Q: Mr. Cooper shot you?
- 19 A: Yeah.
- 20 Q: And how did -- why did he shoot you?
- 21 A: Being on the crime scene.
- 22 Q: So you were there at the time that this attempted armed
- 23 robbery took place by your co-defendants?
- 24 A: I had to have been there to get shot.
- 25 Q: Okay. So you were there?

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- 1 A: Yes, sir.
- 2 Q: Okay. And what was your role in being there?
- 3 A: All I did was drive a car.
- 4 Q: Okay. So you were the driver of the car and I think the
- 5 State alleged that you owned, like, a white -- what was it? A
- 6 white Dodge Charger or something?
- 7 A: Crown Victoria.
- 8 Q: Crown Victoria. Okay. So you were the driver of the
- 9 vehicle; right?
- 10 A: Yes.
- 11 Q: Okay. And I guess that what we just kind of talked about
- 12 parlayed into your issue number three; right? Had you known
- 13 all of this, you would have accepted the ten-year plea offer;
- 14 correct?
- 15 A: Yes, sir.
- 16 Q: Okay. Now, regarding Melvin Segars's testimony on issue
- 17 number five, you wanted your attorney to kind of I guess
- 18 further explore Mr. Segars' two varying statements; right?
- 19 A: Right.
- 20 Q: I guess you wanted to maybe -- well; what would you have
- 21 wanted him to do? Let me ask you that and not put words in
- 22 your mouth.
- 23 A: As far as Mr. Segars' statements?
- 24 Q: Yeah.
- 25 A: I would have liked to have been enlightened about Mr.

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1 Segars' statement about knowing Investigator Lail stepped out
2 of boundaries and telling the man that I ever gave them a
3 statement, which I never gave them a statement. They can't
4 show you that I ever gave them any type of statement, verbally
5 or orally, and I would have just liked to have known that she
6 told him that I gave him a statement and lied to him in order
7 to get him to say what she wanted him to say.

8 Q: Okay.

9 A: As you see, they took a deliberation.

10 Q: So you wanted to point out the fact that Investigator
11 Lail -- Lail -- however you say her name -- kind of lied to
12 Mr. Segars to get him to talk?

13 A: To get him to say the statement that she wanted him to
14 say.

15 Q: Okay. And by doing that, you wanted your counsel to
16 introduce those two statements to impeach Investigator Lail?

17 A: And in the first statement, I feel like why -- why bring
18 a statement up if you're not going to go into it and present
19 to the jury what was said. The jury still doesn't know what
20 Mr. Segars said to this day.

21 Q: Right. And I think you talked about it on direct. Mr.
22 Barr kind of brought it up and then stopped; right?

23 A: Right.

24 Q: He didn't bring it up again. And then on redirect, the
25 solicitor brought it up and said -- you know, brought up the

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1 first statement; correct? And the judge allowed her to kind
2 of --

3 A: Go into the second statement.

4 Q: -- go into the second statement to a certain extent what
5 -- specifically asking about whether or not Mr. Segars placed
6 a gun with you; right?

7 A: Right.

8 Q: Okay. But she tried to get into the second statement as
9 well and Mr. Barr -- and the judge sustained Mr. Barr's
10 objections to the second statement; right?

11 A: Uh-huh.

12 Q: Okay.

13 MR. GOURLEY: And I apologize, Your Honor. I'm kind of
14 getting a little confused myself.

15 BY MR. GOURLEY:

16 Q: But Mr. Segars' first statement --

17 A: Yes.

18 Q: He said you didn't have a gun; right?

19 A: Right.

20 Q: And then Mr. Segars' second statement, he said you had a
21 gun;

22 A: Right.

23 Q: Okay. So the fact that Mr. Segars stated that you didn't
24 have a gun in the first statement and that was introduced in
25 front of the jury, that kind of helps you; right?

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1 A: It wasn't -- in the -- in the -- the first statement
2 wasn't introduced in front of the jury.

3 Q: Well, he -- Ms. Barr over Mr. Barr's objection was
4 allowed to ask Investigator Lail whether or not Mr. Segars put
5 a gun with you; correct?

6 A: Correct.

7 Q: Due to Mr. Barr opening the door to that; right?

8 A: Due to him opening the door, she was allowed to say that?

9 Q: Yeah.

10 A: Yes.

11 Q: Okay. But she was not allowed to bring up the fact that
12 Mr. Segars in the second Statement put you with a gun; right?

13 A: If I'm correct, I think she did bring that -- if I'm
14 correct, I think she did bring that up.

15 Q: Okay.

16 A: I think she did go into the second statement. She just
17 didn't go into the first statement.

18 Q: All right.

19 MR. GOURLEY: I beg the Court's indulgence, Your Honor.
20 I'm sorry.

21 THE COURT: Yes, sir.

22 BY MR. GOURLEY:

23 Q: Let's turn to page 262, line 23, please. And it goes on
24 to page 263 through line 6.

25 A: Okay. I have it.

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1 Q: Okay. And I'll let you read it for yourself real
2 quickly.

3 (WHEREUPON, there was a pause in the proceedings.)

4 BY MR. GOURLEY:

5 A: Okay.

6 Q: All right. And is that Ms. Barr asking Investigator Lail
7 about Mr. Segars' second statement? Right?

8 A: Ms. Barr asked him.

9 Q: Ms. Barr?

10 A: Yeah.

11 Q: Okay. And Ms. Barr specifically asked whether Mr. Segars
12 gave a second statement about a gun and she asked who did he
13 say fired this gun, and Mr. Barr -- even though it says Ms.
14 Barr, I'm assuming it's Mr. Barr said objection and the judge
15 sustained that objection. So Ms. Barr was never able to
16 elicit that Mr. Segars told Investigator Lail that you had a
17 gun; right?

18 A: In so many ways, she still did because you could still
19 get the point. Even though he objected and sustained it --

20 Q: Uh-huh.

21 A: But if you see where she kept going on about Kimberly
22 Hanna's testimony, how it correlates with his, it's basically
23 self-explanatory to the jury to catch on to that.

24 Q: Yeah. Because Kim put you with a gun; right?

25 A: And she also -- and she compared him to Mr. Segars'

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1 statement even though that she never got to say that out of
2 her mouth.

3 Q: Okay. Well, we were just talking about Kim. So --

4 MR. GOURLEY: I beg the Court's indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 BY MR. GOURLEY:

7 Q: Okay. So in allegation number six, you say that your
8 counsel failed to properly cross-examine Jeffrey Dawkins and
9 Kim Hanna. And then you go on to say that, as to Jeffrey
10 Dawkins, ineffective assistance of counsel for opening the
11 door to reading his statement. Now, Mr. Dawkins testified at
12 trial; right?

13 A: Yes, he did.

14 Q: He testified against you. And your counsel had the
15 opportunity to cross-examine him; right?

16 A: Yes.

17 Q: Okay. And basically, Mr. Dawkins put you with the group
18 and again, as you just previously stated, he accused you of
19 being the driver; right?

20 A: Correct.

21 Q: And then he also put Melvin Segars and Kim Hanna with
22 y'all at various points in that day too; right?

23 A: During his testimony?

24 Q: Yeah. He said y'all were riding around with Melvin
25 Segars and Kim Hanna smoking marijuana and getting high? It's

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1 on page 63.

2 A: Of the transcript?

3 Q: Yeah.

4 A: Okay. I see it.

5 Q: Okay. So he put all three of y'all kind of together;
6 correct?

7 A: Yeah, he did.

8 Q: All right. And what did you want your attorney to do
9 regarding cross-examination of Dawkins?

10 A: With Jeffrey, basically you got -- you got to -- you got
11 someone on the stand that's probably -- he's already got a
12 deal worked out with the solicitor --

13 Q: Okay.

14 A: -- for ten years in exchange for his testimony. So
15 meaning if he doesn't give the testimony on the behalf that
16 they want to hear that the deal is off the table.

17 Q: Have you got any evidence of the deal?

18 A: Any evidence of the deal?

19 Q: Uh-huh.

20 A: I mean it was pretty much -- I think in the transcript
21 somewhere they say it where he's -- the State has a ten -- a
22 ten-year deal for him.

23 Q: Okay.

24 A: For him to -- that's where the plea deal comes in at.

25 Q: Page 85. So on cross-examination, Mr. Barr actually

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- 1 elicits the fact that Mr. Dawkins had a deal; right?
- 2 A: Exactly.
- 3 Q: So that was brought out in front of the jury; right?
- 4 A: Yes.
- 5 Q: Okay. So the jury could obviously weigh Mr. Dawkins'
- 6 credibility because, as you're stating here today, Mr. Dawkins
- 7 was testifying with the understanding that he had a deal with
- 8 the prosecution; right?
- 9 A: Right.
- 10 Q: Okay. Now, regarding Kim Hanna, what did you want your
- 11 trial counsel to do with Kim Hanna?
- 12 A: I didn't -- I wasn't even aware of Kim Hanna being in my
- 13 case, period.
- 14 Q: Okay.
- 15 A: When I walked out there -- when I walked out the back
- 16 room and seen her sitting out there, it surprised me myself.
- 17 Q: Okay. And had you known about Kim Hanna, I think you
- 18 stated you would have pled guilty at that point?
- 19 A: It's a lot that would have -- it's a lot that would have
- 20 changed things because you got -- you got people that's --
- 21 that I don't even know about that's placing me beside a gun
- 22 and I mean, like, just showing them that you're putting this
- 23 individual beside a gun --
- 24 Q: Uh--huh.
- 25 A: -- that's going to -- that's going to prejudice you off

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1 the top.

2 Q: Okay. Did you know about Mr. Dawkins going to testify?

3 A: I knew about Mr. Dawkins going to testify, yeah.

4 Q: Okay. And did you know about all the other witnesses
5 that were going to testify ahead?

6 A: No, I didn't. It was just kind of -- just find the
7 things out as they go along.

8 Q: Okay. Now, this forensic evidence issue that you brought
9 up, you're saying that counsel should have moved to suppress
10 the bullet that was found in Mr. Cooper's convenience store?

11 A: Exactly.

12 Q: Okay. And on what basis? He should have just got a
13 forensic expert to discuss --

14 A: I just feel like why let someone -- why let someone be
15 introduced as an expert in this field if they're not.

16 Q: Okay.

17 A: So you're giving us your opinion. That's like you
18 testifying as an expert and you're not an expert in forensics.

19 Q: Okay. And then you said your counsel should have more
20 fully argued for directed verdict. What do you feel like your
21 attorney should have argued in addition to what he argued
22 already?

23 A: In as far as what he argued already?

24 Q: Uh-huh. What more should he have argued?

25 A: I think -- I think if that bullet would have got

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1 suppressed right there on the scene, then it would have -- it
2 would have dismissed the other charge.

3 Q: Well, what about the fact that Mr. Cooper said that he
4 was shot at?

5 A: Mr. Cooper said -- Mr. Cooper said he was shot at, but
6 Mr. Cooper also testified that he didn't see a gun and he also
7 didn't -- he didn't see anybody demand anything or point a
8 weapon at him or anything like that. And you can't -- you
9 can't say how long that bullet was in that wall right there.

10 Q: Okay. But he said that he had something graze by his
11 head and heard a shot; right? I don't think there's any
12 disputing that a shot was fired in the convenience store. Are
13 you disputing that?

14 A: Disputing that a shot was fired?

15 Q: Yeah.

16 A: Well, we don't -- I mean we don't know if a shot was
17 fired or not.

18 Q: Okay. All right. So what happened then at the
19 convenience store, Mr. Matthews? You said you were the
20 driver. You were there. You ended up getting shot. What
21 took place?

22 A: I took -- I took -- I took Jeffrey -- I was on the way to
23 drop Jeffrey off at home. I took him by the store. He wanted
24 to stop to go get something out the store, candy or whatever
25 like that.

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- 1 Q: Yeah.
- 2 A: And I mean we all walked inside the store together, but a
3 deliberate act just took place.
- 4 Q: What's a deliberate act?
- 5 A: A deliberate act. He just -- the man dropped down -- I
6 mean I don't -- I walked inside the store. I don't really
7 know what happened inside. I don't know what all took place.
- 8 Q: Yeah.
- 9 A: I was just -- I was standing there, whatever like that,
10 and I mean I just seen a man got up and start shooting.
- 11 Q: Okay. So y'all walk in the store, Cooper hits the floor,
12 pops back up and starts shooting?
- 13 A: I came in -- at first -- I came inside the store last. I
14 was driving.
- 15 Q: Okay.
- 16 A: We was in the store for a long time.
- 17 Q: Yeah.
- 18 A: When I came in, I didn't see -- I didn't even see Mr.
19 Cooper. Mr. Cooper just started shooting. I ran. I ended up
20 getting shot.
- 21 Q: Okay. So your two co-defendants were inside the store at
22 first?
- 23 A: Yes, sir.
- 24 Q: For how long a time?
- 25 A: Maybe about -- approximately maybe about from three to

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- 1 four minutes.
- 2 Q: Three to four minutes? And then you came in following
- 3 them being in the store for three to four minutes?
- 4 A: Yes.
- 5 Q: And then as you entered into the store, what was taking
- 6 place?
- 7 A: They were just standing right there and then Mr. Cooper
- 8 just started firing.
- 9 Q: Did you see any -- did they have any guns?
- 10 A: I didn't see a gun.
- 11 Q: You didn't see any guns?
- 12 A: I didn't see a gun.
- 13 Q: Did you have any guns prior to them entering the store?
- 14 Did you see that with any guns that day?
- 15 A: I didn't see anybody with a gun.
- 16 Q: You didn't see anybody with a gun? What about earlier
- 17 that day?
- 18 A: Earlier that day?
- 19 Q: Yeah.
- 20 A: I wasn't around. I wasn't around any weapons.
- 21 Q: Okay. Well, were you with them that day?
- 22 A: During certain parts of the day.
- 23 Q: Okay.
- 24 A: I seen -- I wasn't around them all that day long, but I
- 25 mean we all -- I'm not -- I'm not -- I took a girl over there

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1 to do what we -- I've been chilling with the girl or whatever
2 like that and I mean a lot of guys hang out at this house. A
3 lot of guys hang out at this one particular house right here.
4 Q: Right. Who was that girl? Kim Hanna?
5 A: Yeah.
6 Q: Okay. So you took her to this house and I think it was
7 alleged that she had some sexual relations with Powder; right?
8 A: Correct.
9 Q: And Powder is who?
10 A: My co-defendant.
11 Q: Who was that? Melvin Segars or Jeffrey Dawkins?
12 A: Powder is Jeffrey Dawkins.
13 Q: Okay. So during those various times that you were with
14 your co-defendants, did you see a weapon?
15 A: Did I see a weapon with any of them?
16 Q: Yeah.
17 A: I didn't know anybody have a weapon. I mean Kimberly
18 Hanna just -- Kimberly Hanna says she seen a weapon, but I
19 mean Kimberly Hanna and I was on bad terms. Kimberly Hanna
20 just was over there having intercourse with everybody.
21 Q: Right.
22 A: So I mean you could come in the courtroom and say
23 anything.
24 Q: Okay. I gotcha. So you walk in the convenience store.
25 Jeffrey Dawkins and Melvin Segars are both in there; right?

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- 1 A: Correct.
- 2 Q: And as you walk in, what happens?
- 3 A: As I walk in, I don't see -- I don't see Mr. Cooper. I
4 don't see Mr. Cooper. I'm guessing this is the part where
5 he's laying down or whatever.
- 6 Q: Yeah.
- 7 A: And I mean when I ran -- I mean I guess when he came up
8 shooting or whatever, he's testifying that he seen three
9 people.
- 10 Q: Yeah.
- 11 A: But I mean he started shooting and I'm just trying to get
12 away for my life. I mean if I had a weapon, why wouldn't I
13 fire back --
- 14 Q: Right.
- 15 A: -- when I got somebody firing at me.
- 16 Q: Right. Okay. And then at that point you were shot?
- 17 A: Exactly.
- 18 Q: Okay. And did you get in the car and flee or how --
19 where -- how did you end up at the trailer? Right? You were
20 found at the trailer?
- 21 A: I got in the -- I got in the car and drove. I got in the
22 car and drove off.
- 23 Q: Did you go with your co-defendants?
- 24 A: No. Actually, one of my co-defendants -- I didn't -- I
25 didn't see one of my co-defendants. I just seen one of them.

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1 Q: Okay.

2 A: He -- one of them -- one of them got inside the car with
3 me and I got to the hospital or whatever.

4 Q: Okay.

5 A: I had to get me some help.

6 Q: So you -- but you didn't go straight to the hospital.

7 You went somewhere else. Where did you go?

8 A: Where did I go?

9 Q: Yeah.

10 A: I went to call the police. I went -- I went where I knew
11 a phone was at.

12 Q: Okay. And one of the police officers found you where?

13 A: Where he found me?

14 Q: Yeah.

15 A: I was in -- I was in -- I was inside the house.

16 Q: Inside whose house?

17 A: It was Charles Bishop's house, the other -- the other guy
18 in the case.

19 Q: Okay. So you were at Charles Bishop's house, shot. You
20 got shot at the convenience store. You were with your co-
21 defendant. Which co-defendant got in the car with you?

22 A: Melvin Segars.

23 Q: Melvin Segars got in the car with you and y'all drove to
24 Charles Bishop's house; right?

25 A: Correct.

ANTWINE MATTHEWS - CROSS BY MR. GOURLEY

1 Q: Why didn't you just go straight to the hospital if you
2 were shot?

3 A: I mean, like -- like, we don't -- and Kingstree is not --
4 it's not like a big hospital out there. Like, you're talking
5 about a little small city, a little small town or whatever
6 like that.

7 Q: Right.

8 A: And I really needed, like -- I really needed immediate
9 help.

10 Q: Okay.

11 A: I really needed immediate help at the time or whatever
12 like that. So I mean I wanted an ambulance to come and some
13 medical people to come check me out.

14 Q: Is Charles Bishop a medical person? Has he got any
15 medical experience?

16 A: He's not a medical person, but I mean, like, he can -- he
17 could get me -- he could get me where I needed to be at. I
18 mean because Mr. Segars didn't want to take me to a hospital.
19 He was, like -- he said I just want to go home, you know. He
20 said I'll go ahead and call the police for you to come pick
21 you up.

22 Q: Why didn't y'all call the police?

23 A: We did call the police.

24 Q: Okay.

25 A: We called 9-1-1.

ANTWINE MATTHEWS - CROSS BY MR. GOURLEY

1 Q: Why didn't you tell Officer Scott that Mr. Cooper shot
2 you?

3 A: They really didn't -- they -- they just kept asking me
4 what happened. I just kept telling them just please just get
5 me some help. I mean I want to -- I just want to get some
6 help right now. My life on the line and I was in a lot of
7 pain. I passed out. I just wanted to get some help at the
8 time. I didn't feel like that was the time to be asking and
9 answering questions.

10 Q: Okay. So Mr. Scott never asked you who shot you or what
11 happened or how you ended up with a gunshot wound?

12 A: I don't -- I don't even remember a Mr. Scott.

13 Q: Okay.

14 A: I just remember --

15 Q: In shock?

16 A: Yeah. I passed out. I passed out and I was on the
17 ground. When I woke up, I was in the back of an ambulance.

18 Q: Okay. And who was Mr. Bishop again? I'm sorry.

19 A: He was a resident. He stayed at the house that -- that I
20 dialed 9-1-1 from.

21 Q: Okay. And where were you shot?

22 A: On my left side.

23 Q: Okay. How far is Mr. Bishop's house from the convenience
24 store?

25 A: Probably about -- probably less than five minutes.

ANTWINE MATTHEWS - CROSS BY MR. GOURLEY

1 Q: Okay. And did you ever see Jeffrey Dawkins again that
2 night?

3 A: Never did.

4 Q: And what happened to Melvin Segars?

5 A: Later on, I mean -- like I'm -- like I said, I'm just
6 finding out from reading this motion or whatever they went to
7 go interview him because he's -- because Mr. Bishop told them
8 that he was in it -- that he came over there in the car with
9 me when they dropped me off. So he was at his aunt's house
10 and they went to pick him up or whatever and ask him for
11 questioning.

12 Q: Okay. And you stated you wanted your trial counsel to
13 request -- I guess issue number 11 is you're alleging your
14 trial counsel was ineffective for failing to request a charge
15 for a lesser included offense?

16 A: Correct.

17 Q: You stated you wanted strong-armed robbery?

18 A: Correct.

19 Q: Okay. And why is -- why is that? Why do you feel like
20 you were entitled to a lesser included offense of strong-armed
21 robbery?

22 A: I feel like -- I mean I feel like I didn't conspire to
23 anything. For one thing, I didn't conspire to anything
24 because I didn't know anything about --

25 Q: Right.

ANTWINE MATTHEWS - CROSS BY MR. GOURLEY

1 A: -- a robbery going to take place or whatever that's being
2 discussed or whatever. And I just don't -- I just don't see
3 any merits where, like, a gun was pointed or anything was
4 demanded from anybody. I don't see any of that.

5 Q: Okay. But you were there; right?

6 A: Was I there?

7 Q: You were there at the convenience store --

8 A: I was there.

9 Q: -- when all this went down?

10 A: I was there.

11 Q: Okay. But you just didn't have any knowledge of the
12 intent of Mr. Segars and I guess Mr. Dawkins throughout all
13 this?

14 A: Believe it or not, I was just dropping some guys off. I
15 was dropping them back off at home. It was getting late. It
16 was time for me to go home. I was just dropping everybody
17 back off at home. Made a little stop at the store on the way
18 back home before I dropped -- before I dropped them back off.

19 Q: Okay. And then in issue number 12, you made a point to
20 talk about the judge's charge regarding the possession of a
21 weapon during a crime of violence; right?

22 A: Correct.

23 Q: You didn't like the language of that I guess. You
24 weren't convicted of this charge though, were you?

25 A: The weapons charge?

ANTWINE MATTHEWS - CROSS BY MR. GOURLEY

1 Q: Yeah.

2 A: I wasn't convicted of the weapons charge. I was
3 convicted of the attempted armed robbery charge though.

4 Q: Okay. Now, your issue number 13 with appellate counsel.
5 As Ms. Blanchette pointed out, you had the opportunity to file
6 your pro se brief in response to the Anders; right?

7 A: Correct.

8 Q: What issues did you raise in your pro se brief? Do you
9 recall?

10 A: It was so long ago, I got to -- I'd have to look at it.

11 Q: Okay. Go ahead. Take your time, please.

12 A: I don't -- I don't think I have a copy of it up here --
13 of my pro se brief.

14 (WHEREUPON, there was a pause in the proceedings as
15 counsel conferred.)

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

17 THE COURT: Yes, sir.

18 BY MR. GOURLEY:

19 Q: Mr. Matthews, I'm going to show you this and see if this
20 is what you submitted in response to your brief -- for your
21 brief. Does that look familiar?

22 A: Yes.

23 Q: Okay. And in that, what did you raise in response to the
24 courts asking you to file something?

25 A: I raised prosecutorial misconduct. I also raised that

ANTWINE MATTHEWS - CROSS BY MR. GOURLEY

1 the DAS offices coached witnesses for a deal that were
2 favorable to the State's defense.

3 Q: Okay. Is that about it?

4 A: Yes.

5 Q: Okay. Thank you, Mr. Matthews. Mr. Matthews, you stated
6 on number 13(a) objection to Jeffrey Dawkins reading his
7 statement. What do you mean by that?

8 A: Objection to Jeffrey Dawkins reading his statement?

9 Q: Yeah. He didn't read his statement during the course of
10 trial out loud to the jury, did he?

11 A: I'd have to check it. What page -- what page are you on?

12 Q: Let me see here. I think you cited page 93.

13 A: He didn't -- yeah, he didn't read his statement, but he
14 -- she basically, like, repeated everything that happened.
15 She had him repeat it. She walked him -- basically walked him
16 through it.

17 Q: Okay. But it wasn't just a full-blown let me sit there
18 and read this piece of paper out loud to the jury. It was in
19 response to the questions. He was able to refresh his
20 recollection of what he stated; right?

21 A: Right.

22 Q: Okay. And I think that was because your attorney, Mr.
23 Barr, was trying to impeach Mr. Dawkins; right? And show he
24 wasn't credible, that he was a liar, and he had a plea deal,
25 you know. He was just turning against you to kind of point

ANTWINE MATTHEWS - CROSS BY MR. GOURLEY

- 1 the finger at somebody else; right? You were the scapegoat?
- 2 A: I wouldn't say that.
- 3 Q: Okay. Well, what would you say? What was he doing then?
- 4 A: About -- about when he was doing what?
- 5 Q: Well, what was the point of Jeffrey Dawkins testifying?
- 6 A: Jeffrey Dawkins testifying was just -- Jeffrey Dawkins
- 7 testifying was to get -- to get him to tell everybody that I
- 8 was with him in the -- in the commission of conspiring to do
- 9 this crime.
- 10 Q: Okay. Now, you also said a motion for a mistrial due to
- 11 a Brady violation. What Brady violation occurred?
- 12 A: Kimberly Hanna and the issue with the tape, if I'm not --
- 13 yep. Kimberly Hanna -- she brought up something about she was
- 14 being recorded and we didn't receive anything. We didn't
- 15 receive any tapes prior to going to trial.
- 16 Q: Okay.
- 17 A: We never heard any tapes.
- 18 Q: You never heard any tapes?
- 19 A: No. Not of her being recorded.
- 20 Q: Well, you weren't aware at all of Ms. Hanna; right?
- 21 A: Right.
- 22 Q: So you wouldn't have been aware that she was even going
- 23 to testify or you wouldn't have known about any recordings
- 24 anyway; right?
- 25 A: I wasn't aware of her before going to trial, but after

ANTWINE MATTHEWS - CROSS BY MR. GOURLEY

1 the fact now I mean that's -- that's a Brady violation.

2 Q: Okay. Do you have the tapes here today?

3 A: No, sir, I don't.

4 Q: Okay.

5 MR. GOURLEY: I beg the Court's indulgence, Your Honor.

6 BY MR. GOURLEY:

7 Q: Mr. Matthews, after the trial was over, you had got the
8 opportunity to address the Court prior to sentencing; right?

9 A: Correct.

10 Q: Okay. And during that time, on page 341, you told the
11 judge that you were sorry for everything that happened;
12 correct?

13 A: Correct.

14 Q: And that you had learned from your mistakes; right?

15 A: Correct.

16 Q: And that you won't make the same mistakes again?

17 A: That meaning hanging with the wrong company, hanging with
18 the wrong crowd. That's what I mean by mistakes.

19 Q: Okay. So when you apologized, it was just simply because
20 you were just with the wrong people?

21 A: I'm --

22 Q: You apologized for being with the wrong people?

23 A: I was apologizing for every -- because everything didn't
24 have to go down like that. I almost lost my life in the
25 process.

ANTWINE MATTHEWS - CROSS BY MR. GOURLEY

1 Q: Okay.

2 A: And I feel like I was just -- I was hanging with the
3 wrong crowd and also I mean I just wanted to show the judge
4 that I was very remorseful for everything that took place
5 because that's not -- I don't -- I don't -- I don't indulge in
6 activities like that.

7 Q: Well, you have a prior record though; right? You have
8 multiple charges?

9 A: A prior record? Coming up, I didn't have a prior record.

10 Q: You had Marion County charges; right?

11 A: Not -- we're talking about prior to this right here.
12 Prior to this trial right here, I don't have a prior record
13 coming into this trial right here.

14 Q: All right. Well, we'll get into that with your attorney
15 then. But again, it's you apologizing for I guess being with
16 the wrong crowd; right?

17 A: Correct. Yes.

18 Q: Okay.

19 MR. GOURLEY: I beg the Court's indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 MR. GOURLEY: Your Honor, I don't have any other
22 questions.

23 THE COURT: Anything further with this witness, ma'am?

24 MS. BLANCHETTE: Briefly, Your Honor.

25 THE COURT: All right.

ANTWINE MATTHEWS - REDIRECT BY MS. BLANCHETTE

REDIRECT EXAMINATION

1
2 BY MS. BLANCHETTE:

3 Q: You were asked by the State why you didn't fire your
4 attorney. Leading up to your trial, did you have the
5 discovery and the preliminary hearing to be asking him
6 questions and to know whether you should be satisfied with
7 what he was doing on your behalf?

8 A: No, ma'am, I didn't.

9 Q: Okay. And if you would have known those things and seen
10 this information, would you have considered hiring another
11 attorney if Mr. Barr wasn't doing what you needed him to do?

12 A: Yes, I would.

13 Q: Okay. Now, having received and reviewed his file and the
14 discovery and you also got a copy of the SLED file that you've
15 reviewed, did you have the knowledge that you needed at the
16 time to turn down the plea offers?

17 A: No, I didn't.

18 Q: Now, you were asked some questions about when your co-
19 defendant Segars' statement -- the issue came up at trial. If
20 you could, look for me at page 260, please.

21 A: Okay.

22 Q: And if you could, look at line 19.

23 A: Okay.

24 Q: And there the State is -- I'm sorry. Well, I believe it
25 is Mrs. Barr because she says now you're asked on cross-

ANTWINE MATTHEWS - REDIRECT BY MS. BLANCHETTE

1 examination; so this is her redirect. And she asks about
2 Segars -- if he ever mentioned anything about a gun. And then
3 she goes on to ask if that statement -- well, the investigator
4 responds that that statement wasn't true -- was untrue. When
5 you were saying on cross that it's inferred that he says you
6 had a gun, was that part of what you were referring to?

7 A: Yes, ma'am.

8 Q: Okay. So from the questioning, it was kind of common
9 sense to you that they were alluding to the fact that you had
10 -- that he had said that you had a gun?

11 A: Yes, ma'am.

12 Q: Okay. On page 71 during your other co-defendant Dawkins'
13 testimony -- I'm going to give you a minute to just read
14 briefly over that page. There he's being asked about his
15 statement and what he said at the plea, and the State is being
16 very clear that they want him to define who the "we" is. And
17 who does he define that as?

18 A: Me -- he defines it as me and Melvin.

19 Q: Okay. And so the State was really pressing him to make
20 sure it was clear that you were part of the "we" that planned
21 all of this?

22 A: Yes, ma'am.

23 Q: And are you alleging today that your attorney should have
24 asked him questions if he felt like the State was pressuring
25 him to say that?

ANTWINE MATTHEWS - REDIRECT BY MS. BLANCHETTE

1 A: Yes, I do.

2 Q: Okay. Mr. Matthews, a number of the issues that the
3 State asked you about that we raised -- we talked about how
4 there was this judge switch, and a number of the questions
5 that the State asked you on cross were about things that
6 occurred after Judge Brown took over; is that correct?

7 A: Yes, ma'am.

8 Q: And a number of your allegations deal with rulings that
9 were made and interactions that your attorney had with Judge
10 Brown; is that right?

11 A: Yes, ma'am.

12 Q: And was it your understanding that he was the one
13 presiding at that time?

14 MR. GOURLEY: Your Honor, I'm going to object to this
15 outside of the scope of cross-examination. I asked nothing
16 about Judge Brown during my cross.

17 THE COURT: I'll allow this one question. Go ahead.

18 BY MS. BLANCHETTE:

19 A: Can you repeat the question?

20 Q: Yes. A number of the allegations that you've made the
21 State asked you about a cross-examination?

22 A: Yeah.

23 Q: Who was the judge that was -- appeared to be presiding
24 over all those matters to you?

25 A: Judge Brown.

ANTWINE MATTHEWS - REDIRECT BY MS. BLANCHETTE

1 Q: Okay. And did it appear that Judge Newman was still
2 presiding over your case?

3 A: No, it wasn't.

4 Q: Okay. And why did it appear that way to you?

5 A: Because he had already left.

6 Q: Okay. And one final question regarding the appellate
7 issues that you're saying your appellate attorney was
8 ineffective for. Mr. Gourley was asking you about some of the
9 substance of those. Those -- you're saying that your
10 appellate attorney was ineffective -- and correct me if I'm
11 wrong -- because Mr. Barr made arguments on your behalf and
12 then your appellate attorney failed to raise those; is that
13 correct?

14 A: Yes, ma'am.

15 Q: So you wanted the arguments that Mr. Barr made, such as
16 the Brady violation, objections to hearsay, and Mr. Dawkins
17 being allowed to read the statement, that came from what Mr.
18 Barr was arguing; is that right?

19 A: Yes, ma'am.

20 MS. BLANCHETTE: Your Honor, I have no further questions.

21 THE COURT: Anything else?

22 MR. GOURLEY: Just one question, judge.

23 THE COURT: All right.

24 RE CROSS EXAMINATION

25 BY MR. GOURLEY:

ANTWINE MATTHEWS - RECROSS BY MR. GOURLEY

1 Q: Mr. Matthews, so based off of the questions that Ms.
2 Blanchette just asked you, you're conceding that Mr. Barr made
3 the proper arguments to preserve the issues for appellate
4 review?

5 A: But -- no, that was for -- because my appellate -- my
6 appellate defender didn't raise those issues also. She didn't
7 -- she didn't take that into her -- into her brief also.

8 Q: Okay. But they -- they were argued with -- Mr. Barr
9 argued them though; right?

10 A: Yes, he did.

11 Q: And your appellate attorney just didn't raise them?

12 A: She didn't, no.

13 Q: Okay. Thank you. No further questions.

14 THE COURT: You may step down, sir.

15 THE APPLICANT: All right.

16 THE COURT: Next witness, ma'am?

17 MS. BLANCHETTE: Your Honor, I would call Charles David
18 Barr to the stand.

19 THE COURT: All right. Mr. Barr, come on up and be
20 sworn, sir. Can you raise your right hand, please, sir? Do
21 you solemnly swear or affirm to tell the truth, the whole
22 truth, and nothing but the truth, so help you God?

23 THE WITNESS: Yes, sir.

24 THE COURT: Very good. Have a seat and get situated,
25 please, sir, and then state your full name for the record.

CHARLES BARR - DIRECT BY MS. BLANCHETTE

1 THE WITNESS: Charles David Barr.

2 THE COURT: Go ahead, ma'am.

3 CHARLES BARR, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. BLANCHETTE:

7 Q: Mr. Barr, what is your profession?

8 A: I'm an attorney.

9 Q: And how long have you been practicing law in the state of
10 South Carolina?

11 A: Thirty-five years.

12 Q: And what has been -- is your practice all criminal?
13 Civil? What is your practice made up of?

14 A: Criminal and civil.

15 Q: Okay. And where do you -- what areas of the state do you
16 primarily practice in?

17 A: Charleston County, Horry County, Georgetown County,
18 Sumter County, Clarendon County, Williamsburg County, Marion
19 County, primarily.

20 Q: And where is your --

21 A: Richland County.

22 Q: -- office located? I'm sorry.

23 A: In Kingstree.

24 Q: Okay. So this case being out of Kingstree, that's
25 essentially a local case for you; is that correct?

CHARLES BARR - DIRECT BY MS. BLANCHETTE

1 A: Essentially, yes.

2 Q: Okay. And do you remember having the opportunity to
3 represent Mr. Antwine Matthews on these charges stemming from
4 the incident on December 31st, 2008?

5 A: Yes, ma'am.

6 Q: Okay. And I'm just going to jump in to each of the
7 issues that we've raised and I have a couple of questions for
8 you.

9 A: All right.

10 Q: Do you recall attending a preliminary hearing in this
11 case?

12 A: Yes, ma'am.

13 Q: Mr. Matthews has alleged that you failed to advise him
14 about that preliminary hearing. What is the reason that he
15 was not there in attendance at the preliminary hearing?

16 A: There is -- I looked at the transcript. There is a
17 discussion in the transcript of the preliminary hearing. If I
18 remember correctly, I was in the courtroom and the judge was
19 about to hold a preliminary hearing for his co-defendants, and
20 I'm not sure -- I'm not sure where Mr. -- Mr. Matthews was.

21 His mother I believe actually retained me and she -- she
22 retained me I believe on something like on the 15th or 16th of
23 January of 2009, and this preliminary hearing was on the 22nd.
24 Rather than -- rather than -- that was only, like, maybe five
25 or six days later. I didn't want to miss the benefit of

CHARLES BARR - DIRECT BY MS. BLANCHETTE

1 having a preliminary hearing for Mr. Matthews; so I asked the
2 judge.

3 Apparently, Mr. Matthews had requested a preliminary
4 hearing. I had requested one, but our requests had not yet
5 been processed. So rather than allowing him to be indicted
6 before we had a preliminary hearing, I waived his presence and
7 proceeded with the preliminary hearing.

8 Q: And I assume that's the same reasoning as to why you went
9 forward with unsigned warrants, you know, the judge
10 essentially not being prepared?

11 A: Pardon me? I'm sorry.

12 Q: That's essentially -- would that be the same answer as to
13 why the judge didn't have signed warrants or a case file is
14 because you simply were in the courtroom and joined in on his
15 co-defendants' preliminary hearing?

16 A: The warrants -- I had -- his mother faxed me the warrants
17 --

18 Q: Okay.

19 A: -- on the 16th I believe, and that's when I requested the
20 preliminary hearing. But if I'm not mistaken, I think I may
21 have told the judge that I had copies of the warrants and --
22 and I -- I did not want to -- I went on and waived his
23 presence and we went on with the preliminary hearing.

24 Q: And you joined in -- I can give you a copy of the
25 transcript if you'd like, but you joined in the argument of

CHARLES BARR - DIRECT BY MS. BLANCHETTE

1 Attorney Floyd, who was representing Melvin Segars. Had you
2 prepared your own argument or what was your --

3 A: My argument wouldn't have been a whole lot different from
4 Sam's argument. It was pretty much the same thing.
5 Irrespective of what -- what the outcome of the preliminary
6 hearing would have been, the reality is is they were all going
7 to be indicted and I mean I knew that. Even if -- even if the
8 jury -- even if the -- even if the judge found no probable
9 cause, they were going to be indicted.

10 It's a serious case and they -- the people that were on
11 the other side were pretty prominent people in Williamsburg
12 County and they were going to be indicted. So it was just a
13 matter of taking advantage of what we could find out by way of
14 discovery about -- about his -- his case.

15 Q: And you said it was a serious case. Did you use an
16 investigator to help you --

17 A: No, ma'am.

18 Q: -- put together this case?

19 A: I did not.

20 Q: Okay. You've heard at length Mr. Matthews testifying
21 about not going over discovery with you. Do you have a
22 specific recollection of going over the discovery?

23 A: Yes, ma'am, I do. The -- the day that -- the day that we
24 had the preliminary hearing, I went straight back to my office
25 and I notified Mr. Matthews that the preliminary hearing --

CHARLES BARR - DIRECT BY MS. BLANCHETTE

1 that I needed to see him so we could discuss his case. I
2 wanted to discuss what happened at the preliminary hearing
3 with him.

4 About four or five days later, they paid for the
5 transcript of the preliminary hearing. I paid the court
6 reporter. We sat down and went through what was said at the
7 preliminary hearing. The -- I'm sorry. I've gotten ahead of
8 myself. What was your question again now?

9 Q: My question was did you go over the discovery materials
10 with him?

11 A: Yes, ma'am.

12 Q: Okay. And did you provide --

13 A: When we -- when we -- when we got the -- when I got --
14 when I got the discovery from Kim Barr, I notified Mr.
15 Matthews the same day. I sent him a letter and told him that
16 -- now, usually -- usually when the discovery material comes
17 in, my secretaries usually send it out directly to -- to the
18 clients. That's -- that's the same thing -- and I checked.
19 That's the same thing we did with the Marion County case.

20 But in this case, I noticed that they didn't send him a
21 copy, but I had sent Mr. Matthews a letter the same day and --
22 and had him come into the office and we talked about the
23 discovery, the statements, who would be saying what, and what
24 the evidence was against him, and Mr. Matthews knew exactly
25 what we expected to come out at trial and who we expected it

CHARLES BARR - DIRECT BY MS. BLANCHETTE

1 to come from.

2 Q: Turning to plea offers, do you remember what plea offers
3 were given in this case and when they came in?

4 A: I don't specifically remember what the plea offers were.
5 I assure you if -- I had no great desire -- I don't ever have
6 a great desire to try cases when the cases can be settled on a
7 -- on a -- on a -- on a reasonable basis. I'm not sure what
8 Kimberly had offered Mr. Matthews, but the decision was made
9 to go ahead on and roll the dice, and that's what we did.

10 Q: And did you offer him that advice to go ahead and roll
11 the dice in the case or what would your advice have been in
12 rejecting a plea offer?

13 A: I don't -- I don't specifically remember telling him that
14 you ought to accept the plea because I don't -- most times
15 unless it's -- unless it's a situation where I'm comfortable
16 based on the evidence or based on how we anticipate the
17 evidence is going to go, unless it's a situation where I'm
18 fairly comfortable that the defendant is going to get
19 convicted, then in those cases I will recommend to somebody,
20 well, look, here's what you'd better do because you're going
21 to get convicted.

22 In this case, Mr. Matthews could have easily -- he could
23 have easily gotten out of it. Probably it turned out one way
24 and it probably should have gone another way, but that's --
25 that's -- that's all part of trying cases.

CHARLES BARR - DIRECT BY MS. BLANCHETTE

1 Q: Do you remember a plea offer coming in through the course
2 of the trial?

3 A: No, ma'am, I sure -- you know, we -- I know that in terms
4 of the way things usually go, a lot of times depending upon
5 how a case is going and who is saying what and who is doing
6 what, there are plea offers that are made, but I don't
7 specifically have an independent recollection of what the plea
8 offer was. I'm sure there was one.

9 Q: Okay.

10 A: She always makes a plea offer, but I don't remember
11 exactly what it was that we turned down.

12 Q: Okay. Is one of the factors that you're considering when
13 you're talking to a client about a plea offer who the trial
14 judge may be? Is that a factor --

15 A: Yes, ma'am.

16 Q: -- that you consider?

17 A: Always.

18 Q: And why?

19 A: Well, because I've -- I've tried enough cases that I know
20 the style of most of the judges. Judge Newman and I -- Judge
21 Newman was a solicitor before he became a judge for fifteen --
22 sixteen years. We tried a lot of cases together. I had tried
23 cases with Judge Brown. Judge Brown is actually from
24 Hemingway, South Carolina.

25 And I felt like either -- either Judge Brown or Judge

CHARLES BARR - DIRECT BY MS. BLANCHETTE

1 Newman -- and in this case they were both there. I felt like
2 he would -- he would get a good -- he would -- he would get a
3 good shot in terms of the judge's ruling on evidence.

4 Now, I did not -- and the thing about this case, if
5 anything, in terms of Judge Brown, I think Judge Brown tried a
6 good case. I was surprised that he ran -- he ran his five
7 years consecutive, but that was the only thing about that case
8 that surprised me about Judge Brown and, of course, he -- he
9 -- he has -- that was his prerogative and that's what he chose
10 to do.

11 Q: Now, when you said you tried cases with Judge Brown, that
12 was when he was not a judge; is that correct?

13 A: He was -- he was -- he was in private practice.

14 Q: Okay. Had you ever appeared in front of Judge Brown
15 before?

16 A: No, ma'am. He was -- he was -- Judge Brown was -- he had
17 just been appointed and he was sitting with -- he and Judge
18 Newman were sitting together.

19 Q: Okay. And did you know -- you have thirty years of
20 experience?

21 A: Yes, ma'am.

22 Q: You're a much better student to understand this than I
23 am. Was that something you typically run into is seeing two
24 judges?

25 A: Yes, ma'am. You see it all the time.

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1 Q: Okay. And do you know how jurisdiction is conferred in
2 those matters? Do they both have jurisdiction? Do they both
3 have to be in the courtroom? What's your familiarity with
4 that process?

5 A: I do not know. When Judge Toal assigned two judges to
6 try a case, usually, especially with a new judge, it happens
7 all the time where you've got the one judge sitting with
8 another judge and, quite frankly, this is the first time that
9 I've ever known it to be an issue in a case, but I have seen
10 it any number of times.

11 Q: And let me ask you this. I know that you've seen it and
12 you say that when Judge Toal told them, but do you have any
13 proof that that's what was done? The Judge Toal had ordered
14 this?

15 A: I don't have any proof, but I know Judge Newman and Judge
16 Brown are not going to come to Kingstree and sit down and
17 represent themselves as something that they have not been
18 appointed to do.

19 Q: Okay. And Judge Newman -- and if you want to argue the
20 transcript, I can give you the cite, but he begins by
21 explaining to the jury and the people in the courtroom what's
22 going on.

23 A: Yes, ma'am.

24 Q: But then on page 196, he says that Judge Brown is going
25 to be taking over?

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1 A: Yes, ma'am. And he did.

2 Q: And at any point then did Judge Newman -- did he
3 consistently stay in the courtroom or can you recall if they
4 were both there?

5 A: I can't remember.

6 Q: Okay.

7 A: I can't remember whether -- you know, I can't remember
8 whether Judge -- I do remember it seemed like he went out to
9 his office once -- at least once, but as far as whether he
10 stayed in the courtroom the entire -- during the entire trial,
11 I just don't remember.

12 Q: Okay.

13 A: I know Judge Brown did, but I mean I don't remember
14 whether Judge Newman stayed there the entire time.

15 Q: And prior to him passing away, did you practice law with
16 your brother?

17 A: My brother and I had separate practices.

18 Q: Okay. You had separate practices?

19 A: We shared office space.

20 Q: Oh, but you shared office space?

21 A: Yes, ma'am.

22 Q: So were you familiar with the cases that he was handling
23 and things like that when he was in --

24 A: No, ma'am.

25 Q: -- court?

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1 A: He had handled his own cases and I did mine.

2 MS. BLANCHETTE: Your Honor, may I approach the witness?

3 THE COURT: Absolutely.

4 MS. BLANCHETTE: Okay.

5 BY MS. BLANCHETTE:

6 Q: I'm going to show you what's been marked as Applicant's
7 Number 1. It's a public index search --

8 A: Uh-huh.

9 Q: -- for a David Barr that was represented by Verdell Barr,
10 and is Verdell Barr your brother?

11 A: Vernell is -- was my brother.

12 Q: Was your brother. I'm sorry. And it shows here that the
13 disposition was on 5/12 of 2010 in front of Judge Brown.

14 A: Uh-huh.

15 Q: Now, that would have fallen during the course of Mr.
16 Matthews' trial. Were you aware of any pleas that Judge Brown
17 was taking?

18 A: No, ma'am.

19 Q: Okay. And then there's another public index record for a
20 Evelyn Mitchell that also says it was a guilty plea on 5/12 of
21 2010 in front of Judge Brown. So you weren't aware of him
22 conducting those two guilty pleas during the course --

23 A: I have never sat -- this was my first time involved in a
24 case that Judge Brown presided over.

25 Q: Okay. But do you recall him leaving to go do guilty

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1 pleas? I mean would that have --

2 A: Who? Judge Brown?

3 Q: -- jogged your memory at all?

4 A: Judge Brown?

5 Q: Yes.

6 A: No, ma'am. He never left the courtroom.

7 Q: Okay. And you weren't aware of your brother appearing in
8 front of him during the course of Mr. Matthews' case?

9 A: I wouldn't -- wouldn't have been aware of that. No,
10 ma'am.

11 Q: Okay. Now, I introduced a copy of a motion for discovery
12 that we had in front of Judge Newman and he kindly corrected
13 me on the record that Judge Brown was sitting with him.

14 A: All right.

15 Q: But would you agree that the transcript says that Judge
16 Brown takes over at page 196?

17 A: I'm not sure what -- I didn't even take a look at that,
18 but I mean he -- he presided.

19 Q: Okay. And you're saying when you advised Mr. Matthews,
20 it was on the fact that either Judge Brown or Judge Newman
21 could be sentencing him? Did you ever tell him which one?

22 A: If I did -- if I had done a plea, it would have been a
23 negotiated plea.

24 Q: Okay. So -- but you don't know if this -- the offer that
25 Mr. Matthews was referring to that came in in the course of

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1 trial -- you don't remember anything about that?

2 A: I honestly don't. If it -- if it had been an offer, as a
3 general rule unless it's -- now, Judge Newman will -- will not
4 -- will not -- will generally not take a negotiated plea.
5 He's probably the only Circuit Court judge I know in this area
6 that routinely will not take a negotiated plea and sentence.
7 Most of the other judges do. I mean there's nothing wrong
8 with it. It's legal, but if I'm going to do a guilty plea,
9 most times I'm -- I'm -- I will do it as a negotiated plea as
10 opposed to just a blanket -- I mean unless it's -- you know,
11 unless it's some compelling reason why -- why it can't be done
12 that way.

13 Q: And you would affirm that you had absolutely no
14 experience with Judge Brown in his capacity as a judge? Your
15 experience with him was from prior; is that correct?

16 A: It was. I'd never -- I'd never had a case -- tried a
17 case with -- with Judge Brown.

18 Q: Okay.

19 MS. BLANCHETTE: If I could just beg the Court's
20 indulgence one moment.

21 THE COURT: Yes, ma'am.

22 BY MS. BLANCHETTE:

23 Q: Now, I know you said -- and correct me if I'm wrong. I'm
24 just trying to summarize what you said, but this is
25 essentially common practice in your thirty years to see a more

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1 experienced judge sitting with a new judge?

2 A: Yes, ma'am.

3 Q: But just because something is common practice doesn't
4 mean that jurisdiction has been properly conferred and it's
5 not something you should object to; is that correct?

6 A: When you say that jurisdiction has been conferred, I
7 think the indictment does that, insofar as in General Sessions
8 court and, of course, in this case, as in any case where a
9 Circuit Court judge is assigned to preside, I don't -- I don't
10 think it's a jurisdictional issue. I really don't. As far as
11 who the judge might be, I don't think -- I think the -- I
12 think the indictment is probably jurisdictional process and --
13 and the case moves on from there.

14 I didn't see an issue with -- with the -- with the
15 procedure that took place in this trial, and therefore I saw
16 no reason to object to either -- to the way that Judge Newman,
17 who was the most experienced -- more experienced judge, I had
18 no reason in my opinion to object to -- to that procedure as
19 it -- as it was done in this case.

20 Q: And I hate to belabor a point, but just a follow-up to
21 one thing you said.

22 A: Yes, ma'am.

23 MS. BLANCHETTE: Your Honor, may I approach the witness?

24 THE COURT: Yes, ma'am.

25 BY MS. BLANCHETTE:

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1 Q: I have provided with the Court as Applicant's Number 1 a
2 copy of Judge Brown's calendar from 2010 and if you see here
3 on the week of May 10, 2010, does he have an assignment?
4 A: According to this document that you gave me?
5 Q: Uh-huh.
6 A: I don't see anything on here.
7 Q: Okay. So from the calendar that is maintained by the
8 South Carolina Supreme Court, it doesn't appear that he has an
9 assignment on his calendar?
10 A: It doesn't. I don't know what this is, but whatever it
11 is, I don't see anything here --
12 Q: Okay.
13 A: -- about Judge Brown's name.
14 Q: And to be fair because I don't want to be asking trick
15 questions, I'll show you Judge Newman's calendar.
16 A: Uh-huh.
17 Q: And what does it say there on Judge Newman's calendar?
18 A: For May 10th?
19 Q: Uh-huh.
20 A: It says General Sessions, Williamsburg, sitting with D.
21 Brown.
22 Q: Okay.
23 A: That's Craig D. Brown I guess.
24 Q: Okay. Now, let me ask you a couple of questions about
25 Mr. Segars' statement. You've heard us talking about that

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1 through the course of this afternoon. Do you specifically
2 recall going over Mr. Segars' two statements with Mr. Matthews
3 prior to his trial?

4 A: No, I don't. I really don't.

5 Q: Did you -- do you specifically recall going over them
6 yourself and the decision you made as to whether or not to
7 call him as a witness at trial?

8 A: Segars -- I didn't intend to call him as a witness. And
9 his lawyer did not -- did not have a deal -- a plea agreement
10 with -- with the prosecution. And the only -- the only
11 eyewitness in this case would have -- would have been the
12 young man that testified, the other co-defendant. I can't --
13 I can't remember his name.

14 Q: Mr. Dawkins?

15 A: Dawkins. He was -- he would have been the only -- he was
16 the only eyewitness. And -- and -- and -- and Segars, but
17 Segars was not going to testify.

18 Q: Okay. Now, during your cross-examination of Investigator
19 Lail, you begin asking her -- and this was on page 254, if you
20 have a transcript in front of you. You begin asking her about
21 the two statements she obtained from Mr. Segars.

22 A: Uh-huh.

23 Q: You asked her if she knows if he's going to testify. And
24 then you begin asking her about the first statement, and this
25 is on page 257.

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1 A: All right.

2 Q: The State objects, but then they essentially retract
3 their objection and say they don't have a problem with Mr.
4 Segars testifying. And on page 259 at line 20, you're allowed
5 to resume. So I take that to mean you can pick up where you
6 left off, and you said you had no further questions. Do you
7 recall why you didn't go into the statements at that point?

8 A: Investigator Lail -- or Lail sometimes it's pronounced.

9 Q: And I am probably pronouncing it wrong.

10 A: She's the best prosecuting officer in Williamsburg County
11 from the standpoint of trials, and I don't -- if I could even
12 get around most times having to be -- having to deal with her,
13 I will because she'll hurt you. She does a good job. She's
14 thorough. And she -- she has graces with juries. She's --
15 she appears as a credible witness.

16 I didn't -- I didn't -- of course, as I said, my
17 understanding was from Mr. Segars' lawyer that he wouldn't --
18 he would not help them against us. So other than trying to
19 get the maximum amount of what -- what we could get on our --
20 on our defense, I don't -- you know, I didn't -- I didn't want
21 to mess around with that too much because, again, he was -- he
22 was the only person that I know of could tell exactly what
23 happened. And in this case, exactly what happened -- I mean I
24 can tell you if you want to know.

25 Q: Well, no. I'm asking about Mr. Segars' statement.

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1 A: Okay.

2 Q: Let me put my question to you this way. When you were
3 allowed to resume cross-examination --

4 A: Yes, ma'am.

5 Q: -- you were clearly trying to ask her about the specifics
6 of the statement.

7 A: Uh-huh.

8 Q: You said do you typically tell what one co-defendant has
9 said and she said no.

10 A: Uh-huh.

11 Q: And you had a statement sitting right there that she had
12 done it.

13 A: Uh-huh.

14 Q: You know, she's this great witness. You could have
15 impeached her right there with Melvin Segars' statement. You
16 essentially got the green light from the State and from the
17 judge.

18 A: And --

19 Q: So why did you retract at that point?

20 A: Because I didn't want -- I didn't want Kimberly to go
21 back and make another deal with -- with Segars' lawyer for his
22 testimony. And I felt like the best thing to do was to leave
23 that alone.

24 Q: And unfortunately, the judge ruled, even though you said,
25 you know, you agreed with his ruling, that you had opened the

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1 door then and the State got to ask some questions about
2 Segars' statements?

3 A: Well, I don't -- you know, the judge ruled that I'd
4 opened the door. He did that twice. I don't necessarily
5 agree with that because I mean as far as Lail was concerned,
6 he did the same thing with -- with -- with the other witness
7 and I objected and I don't agree. I don't necessarily agree
8 that the door was opened and I -- and I think that -- that's
9 in the record.

10 Q: And the other one you're referring to was when Dawkins --

11 A: Dawkins. Yes, ma'am.

12 Q: You argued essentially he was allowed to read his
13 statement?

14 A: I told -- you know, as far as I was concerned -- and I
15 thought Dawkins was very -- I thought he was successfully
16 impeached. In other words, he -- Dawkins -- as far as what he
17 -- what he admitted, he -- we -- the hands of one is the hands
18 of all of them coming and, you know, everybody knew that.

19 And in as much as Mr. Matthews had decided to go to
20 trial, in terms of the conspiracy or in terms of aiding and
21 abetting, I thought that Dawkins had pretty well discredited
22 the State's theory because he -- he -- he admitted that he'd
23 never heard any conversation between Segars and Mr. Matthews
24 regarding an intent to come in and stick the man up.

25 So I mean I don't -- you know, I don't -- I don't think

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1 the door was opened. When Lail -- I did withdraw the question
2 that was put to Officer Lail, but the judge took the position
3 that, well, the cat's out of the -- out of the bag and he
4 ruled otherwise. But in any case, you know, I don't think we
5 were hurt by that.

6 Q: Okay. Now, you mentioned the hand of one/hand of all was
7 pretty well covered, but here the jury was never even charged
8 on hand of one/hand of all. Do you remember that? After they
9 had jury questions?

10 A: I know that they were going to be charged on that.

11 Q: And then they were recharged on it following the jury
12 questions?

13 A: I don't -- I don't remember the specifics of being
14 recharged or -- you know.

15 Q: Okay. And there's portions of that transcript missing;
16 so I was really hoping to ask about your memory on that. But
17 he was -- I mean Antwine Matthews was ultimately found not
18 guilty on the assault with intent to kill?

19 A: And that's the only thing he should've been found guilty
20 on.

21 Q: So do you think the jury actually understood the hand of
22 one/hand of all theory and charge in this case if they found
23 him not guilty on the AWIK and guilty of the attempted armed
24 robbery?

25 A: Well, you know, as far as I'm concerned, the jury -- the