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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2015-000980

The State, ...Respondent,

v.

Tavarious Settles, ...Appellant.

RECORD ON APPEAL
VOLUME 1 of 2

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INDEX

Trial Transcript, dated March 30-31, 2015, and April 1-2, 2015 5

Opening Statement by Mr. Brown 22

Opening Statement by Mr. Tinsley 24

Witness Jill Boland
Direct Examination by Mr. Brown 27
Cross-Examination by Mr. Tinsley 29

Witness Markece Moore
Direct Examination by Mr. Brown 30
Cross-Examination by Mr. Tinsley 43
Redirect Examination by Mr. Brown 59

Witness Michael Patton
Direct Examination by Mr. Brown 65
Cross-Examination by Mr. Tinsley 77
Redirect Examination by Mr. Brown 82

Witness Bryson Jefferson
Direct Examination by Ms. White 85
Cross-Examination by Mr. Tinsley 93

Witness Jerry Turner
Direct Examination by Ms. White 98
Cross-Examination by Mr. Tinsley 103
Redirect Examination by Ms. White 128
Recross- Examination by Mr. Tinsley 130
Redirect Examination by Ms. White 135

Witness John Dill, Jr.
Direct Examination by Ms. White 136
Cross-Examination by Mr. Tinsley 140

Witness Ray Pope
Direct Examination by Ms. White 142

Witness Sonny Cox
Direct Examination by Mr. Brown 147
Cross-Examination by Mr. Tinsley 150

Jackson v. Denno Examination 151

Witness Joe Collins
Direct Examination by Ms. White 152
Cross-Examination by Mr. Tinsley 158

Witness Tavarious Settles
Direct Examination by Mr. Tinsley 161
Cross-Examination by Ms. White 164

Witness Joe Collins
Direct Examination by Ms. White 173
Cross-Examination by Mr. Tinsley 195
Redirect Examination by Ms. White 204
Recross-Examination by Mr. Tinsley 206

Witness Kenya Griffin
Direct Examination by Ms. White 208
Cross-Examination by Mr. Tinsley 215

Witness Whitney Berry, SLED
Direct Examination by Mr. Brown 215
Cross-Examination by Mr. Tinsley 225

Witness Michelle Eichenmiller, SLED
Direct Examination by Mr. Brown 228
Cross-Examination by Mr. Tinsley 237

Witness Yvette Castro
Direct Examination by Ms. White 239
Cross-Examination by Mr. Tinsley 243

Witness Dr. Brett Woodard
Direct Examination by Mr. Brown 245
Cross-Examination by Mr. Tinsley 257
Redirect Examination by Mr. Brown 260

Witness Brenda Settles
Direct Examination by Mr. Tinsley 265
Cross-Examination by Ms. White 275

Witness Shay Higgins
Direct Examination by Mr. Tinsley 276

Witness Jaqueline Calhoun
Direct Examination by Mr. Tinsley 279

Cross-Examination by Ms. White 288

Witness Suzanne Alvarez
Direct Examination by Mr. Tinsley 290

Witness Germaine Adams
Direct Examination by Mr. Tinsley 291
Cross-Examination by Ms. White 294

Witness Tavarious Settles
Direct Examination by Mr. Tinsley 296
Cross-Examination by Mr. Brown 315

Closing Argument of Ms. White 332

Closing Argument of Mr. Tinsley 335

Closing Argument of Ms. White 343

Charge of the Court 356

Verdict of the Jury 383

Sentence of the Court 411

Certificate of Reporter 413

Motion to Reconsider Sentence, filed April 8, 2015 414

Order Denying Motion for Reconsideration of Sentence Imposed, dated April 21, 2015 416

Motion for Funding a Mitigation Specialist/Investigator and Psychologist or Psychiatrist, filed March 17, 2015 418

Motion to Cap Sentence at Thirty (30) Years Maximum On the Charge of Murder, filed March 17, 2015 419

Court's Exhibit No. 4 (Defense Motions) 422

Court's Exhibit No. 5 (Jury Note) 462

Court's Exhibit No. 6 (Jury Note) 463

State's Exhibit No. 4 (Photograph) 464

State's Exhibit No. 33 (Adult Waiver of Rights) 466

State's Exhibit No. 35 (Photograph) 467

Indictment 2013-GS-24-1538, dated September 27, 2013 469

Indictment 2013-GS-24-1539, dated September 27, 2013 471

Sentence Sheets 473

Notice of Appeal, dated April 29, 2015 475

State's Motion for Reduction of Sentence for "Substantial Assistance" Pursuant to S.C. Code Section 17-25-65, filed September 18, 2015 476

Order for Sentence Reduction, filed September 18, 2015 478

September 18, 205 Guilty Plea Transcript of Tavarious Settles 480

Certificate of Counsel 503

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #1 (9-1-1 call CD) & #34 (Statement)

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
PLAINTIFF,)
)
) 2013-GS-24-1538
-VS-) 2013-GS-24-1539
) TRANSCRIPT OF RECORD
TAVARIOUS D. SETTLES,)
)
DEFENDANT.)
_____)

MARCH 30-31, 2015
APRIL 1-2, 2015
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR. , JUDGE; AND A JURY

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CIRCUIT COURT REPORTER

INDEX

WITNESS	PAGE NO.
Opening Statement by Mr. Brown	51
Opening Statement by Mr. Tinsley	53
TRIAL TESTIMONY-WITNESS	
Jill Boland,	
Direct Examination by Mr. Brown	56
Cross-Examination by Mr. Tinsley	58
Markece Moore,	
Direct Examination by Mr. Brown	59
Cross-Examination by Mr. Tinsley	72
Redirect Examination by Mr. Brown	88
Michael Patton,	
Direct Examination by Mr. Brown	94
Cross-Examination by Mr. Tinsley	106
Redirect Examination by Mr. Brown	111
Bryson Jefferson,	
Direct Examination by Mr. Brown	114
Cross-Examination by Mr. Tinsley	122
Jerry Turner,	
Direct Examination by Ms. White	130
Cross-Examination by Mr. Tinsley	135
Redirect Examination by Ms. White	160
Recross-Examination by Mr. Tinsley	162
Redirect Examination by Ms. White	167

John Dill,

Direct Examination by Mr. Brown.....168

Cross-Examination by Mr. Tinsley.....177

Ray Pope,

Direct Examination by Ms. White.....179

Rodney Free,

Direct Examination by Mr. Brown.....184

Cross-Examination by Mr. Tinsley.....187

Sonny Cox,

Direct Examination by Mr. Brown.....188

Cross-Examination by Mr. Tinsley.....191

James Sanders,

Direct Examination by Mr. Brown.....192

Jackson vs. Denno Hearing

Joe Collins,

Direct Examination.....197

Cross-Examination.....201

Tavarious Settles,

Direct Examination by Mr. Tinsley.....204

Joe Collins,

Direct Examination by Ms. White.....216

Cross-Examination by Mr. Tinsley.....

Redirect Examination by Ms. White.....247

Recross-Examination by Mr. Tinsley.....249

Kenya Griffin,

Direct Examination by Ms. White.....252

Cross-Examination by Mr. Tinsley.....259

Whitney Berry, SLED

Direct Examination by Mr. Brown.....259

Cross-Examination by Mr. Tinsley.....269

Michelle Eichenmiller, SLED

Direct Examination by Mr. Brown.....272

Cross-Examination by Mr. Tinsley.....281

Yvette Castro,

Direct Examination by Mr. Brown.....283

Cross-Examination by Mr. Tinsley.....288

Dr. Brett Woodard,

Direct Examination by Mr. Brown.....301

Cross-Examination by Mr. Tinsley.....314

Redirect Examination by Mr. Brown.....316

Brenda Settles,

Direct Examination by Mr. Tinsley.....321

Cross-Examination by Ms. White.....331

Shay Higgins,

Direct Examination by Mr. Tinsley.....332

Jaqueline Calhoun,

Direct Examination by Mr. Tinsley.....335

Cross-Examination by Ms. White.....344

Steve Jones,

Direct Examination by Mr. Tinsley.....346

Cross-Examination by Ms. White.....360

Redirect Examination by Mr. Tinsley.....368

Suzanne Alvarez,

Direct Examination by Mr. Tinsley.....376

Germaine Adams,

Direct Examination by Mr. Tinsley.....377

Cross-Examination by Ms. White.....380

Tavarious Settles,

Direct Examination by Mr. Tinsley.....382

Cross-Examination by Mr. Brown.....401

Closing Argument of Mr. White.....418

Closing Argument of Mr. Tinsley.....421

Closing Argument by Mr. White.....429

Charge of the Court.....442

Verdict of the Jury.....469

Sentence of the Court.....497

Certificate of Reporter.....499

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
C-1	Affidavit of Amy Stephens	39	
C-2	Affidavit of Doris Yarborough	39	
C-3	Chain of Custody		
C-4	Defense Motions		
C-5	Jury Note	464	
C-6	Jury Note	467	
C-7	Jury Note	468	
S-1	9-1-1 call CD		58
S-2	Diagram on board		
S-3	Photo	128	182
S-4	Photo	128	182
S-5	Photo	128	
S-6	Photo	128	
S-7	Photo	128	
S-8	Photo	128	
S-9	Photo	128	
S-10	Photo	128	
S-11	Photo	128	
S-12	Photo	128	
S-13	Photo	128	
S-14	Photo	128	
S-15	Photo	128	
S-16	Photo	128	
S-17	Photo	128	
S-18	Photo	128	
S-19	Photo	306	
S-20	Photo	306	
S-21	Photo	306	
S-22	Photo	306	
S-23	Photo	306	
S-24	Photo	306	

S-25	Photo		306
S-26	Photo		306
S-27	Photo		306
S-28	Photo		306
S-29	Photo		306
S-30	Photo		306
S-31	Photo		306
S-32	Photo		306
S-33	Waiver of Rights		197
S-34	Statement		199
S-35	Photo		236
S-36	Shell casings	251	
S-37	GSR	251	280
S-38	Bullets	251	276
D-1	Photograph		136
D-2	Photograph		139
D-3	Photograph		142
D-4	Photograph		143
D-5	Photograph		144
D-6	Photograph		145
D-7	Photograph		149
D-8	Photograph		153
D-9	Photograph		153
D-10	Photograph		162

TRIAL DAY 1-03/30/15

THE COURT: At this point, Solicitor, if you'll call the first case up.

MS. WHITE: Thank you, Your Honor. This is *the State of South Carolina vs. Tavarious Dequan Settles*, indictment numbers 2013-GS-24-1538 for murder, and 2013-GS-24-1539 for possession of a weapon during the commission of a violent crime.

THE COURT: Thank you very much. Ladies and gentlemen, we're now about to begin the process of selecting the jury in the case of the *State of South Carolina vs. Tavarious Settles*. I'll tell you at the outset, ladies and gentlemen, that an indictment is nothing more than a piece of paper. It's a method by which charges are brought into this court and the allegations in the indictment are exactly that. They're simply allegations. In this case, ladies and gentlemen, Mr. Settles has pled not guilty to these charges and that plea will put the burden of proof on the State of South Carolina to prove each and every element in the indictments beyond a reasonable doubt. Now again, ladies and gentlemen, the State in this case alleged in indictment 1538 that Mr. Settles did in Greenwood County, on or about May the 30th of 2013, willfully, feloniously and with malice aforethought kill one Prudencio Chiquin Sis by means of shooting and that the said Prudencio Sis did die in

Greenwood County as a proximate result therein on or about May the 30th of 2013 in violation of the laws of this state and against the peace and dignity of this state. The other indictment in this case, indictment 1539, alleges that Mr. Settles did in Greenwood County on or about May 30th, 2013 possess a firearm or visibly display what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, mainly murder, in violation of the laws of this state and against the peace and dignity of this state.

Now, this case, ladies and gentlemen, the State of South Carolina is being represented by Elizabeth White. Ms. White, if you'd care to introduce yourself and the other solicitors. Solicitor Stumbo, are you chief --

MR. STUMBO: Judge, I'll introduce --

THE COURT: Okay. Very good. Solicitor Stumbo, you may proceed, sir.

MR. STUMBO: Thank you, Your Honor. My name is David Stumbo. I am the Solicitor for Greenwood County and the other counties in the Eighth Circuit which are Laurens, Abbeville, and Newberry. My office prosecutes all the General Sessions or the felony level criminal cases in all those counties. The attorneys that are going to be prosecuting this case are Senior Assistant Solicitor Elizabeth White sitting to my right, and also Deputy

Solicitor Yates Brown. They will be the two that will be presenting this case.

And also, you probably see Investigator Courtney Smith who is with our office. The young African-American gentleman who was sitting up here earlier. He's an investigator with our office.

THE COURT: Thank you, Solicitor.

MR. STUMBO: Yes, sir.

THE COURT: In this case Mr. Settles is being represented by Robert Tinsley. Mr. Tinsley, if you'd care to introduce yourself and the other members of your staff at counsel table.

MR. TINSLEY: Thank you so much, Your Honor. And if it please the court, stand up, please. This is Tavarious Settles, the Defendant in this case who stands accused of these charges. And next to him is Steve Jones, Investigator, and behind him is Cooper Tinsley, also an investigator. And on the end is Jamison Tinsley, attorney assisting in the case. Thank you so much.

THE COURT: Thank you, Mr. Tinsley. Ladies and gentlemen, I now have certain questions that I need to ask you which are specific to this case, and we're going to use the same routine as before. If a question applies to you, I'm going to ask that you stand up and give me the answer. First of all, is there any member of the jury panel who is

could, be back, again, at 2:15. Just go straight to the jury room here. Wear those juror buttons back so that when you come in the front door it'll help the Bailiff to get you on -- or the security people to get you on up here at little bit more quickly. Okay? So have a great lunch break and I will see you at 2:15. Thank you very much and you are excused.

(Whereupon, the jury exited the courtroom at 12:28 p.m.)

THE COURT: The jury is out. Let's take five minutes for ourselves, and then, Mr. Tinsley, we'll address whatever issues you want to put on the record pretrial. We're at ease for a few minutes.

(Whereupon, a brief recess was taken.)

THE COURT: Mr. Tinsley, you had a few motions I think you wanted to put on the record real quick?

MR. TINSLEY: Yes, sir, Your Honor. The first motion really is kind of a joint motion. A motion for funding for a mitigation specialist or an investigator or psychologist or psychiatrist. It could very well apply to Josh Nasrollahi's case, if he's willing to join me with that. And he probably would benefit more from it than I will. But I make that motion, and I ask you just to keep it open at this point.

THE COURT: Very good. I will -- and again, this is

just for purposes -- I think in our discussions on Friday pretrial, this is really more for purposes of, as you say, mitigation as opposed to any concerns regarding competency or --

MR. TINSLEY: I don't see any at all, Your Honor.

THE COURT: Very good. And just so the record is clear, Mr. Nasrollahi, he is representing Mr. Settles on some Abbeville charges. Those charges are somewhat, shall we say, similar to these allegations. And I'm more than happy to keep that matter open and take a look at that if -- or address that should need arise.

If you were to go ahead and have a mitigation specialist funded at this point in time, Mr. Tinsley, would you -- I mean, I've got no problem with going ahead and authorizing that. Do you already have someone in mind?

MR. TINSLEY: I do, Your Honor, but it would be more, I think, Josh's decision. I'm retained in this case.

THE COURT: Right.

MR. TINSLEY: He's appointed.

THE COURT: Right.

MR. TINSLEY: He is a more likely subject to make such a motion. But for the purposes of the record, and obviously my client has been in jail ever since the charge, he's virtually destitute. His family has done the best they can. But it would apply with mine, but more so to his.

THE COURT: All right. I'm just going to keep an open mind and keep all my options open with regard to that request on this case.

MR. TINSLEY: I think that's perfect. The second is a motion to compel discovery compliance. I had to get an order for records or -- of course, that's ongoing for any other discovery that should come up.

THE COURT: Certainly. I think that I took care of that last week. The State had wanted a specific order authorizing disclosure of any criminal histories that the witnesses for the State may have. And I think you have provided that, correct, Ms. White?

MS. WHITE: Yes, sir. And also, just for the record, Mr. Tinsley, last Friday I gave him my notebook and folder minus my personal notes and he went through the whole thing, so...

THE COURT: All right. And I'm sure that you have provided that to him well in advance --

MS. WHITE: Yes, sir.

THE COURT: -- from today -- or from Friday, rather.

MR. TINSLEY: Then the big motion is a motion to cap a sentence in this case based upon *Miller vs. Alabama* and a South Carolina case, *Aiken vs. Byars.* You have a copy of which, which is kind of ongoing also, Your Honor, I think. But it is the current trend, at least.

And the other motion was just question the jury, and I think you told me, but I want to put it on the record, I thought that you felt that it was unnecessary. So I would ask you to renew admonishments to have the panel to not watch any TV about this or any radio or any newspapers until later in the week until trial is over.

THE COURT: You are correct. You brought up the motion to sequester in chambers on Friday and I was a little concerned at the logistics of that, obviously the cost of that. And clearly this is a non-capital case, so I indicated to you in chambers on Friday that I would be inclined to deny your motion to sequester the jury. But I will admonish them about any radio, TV, newspapers, media of any kind, et cetera. I don't see any media present at this particular point in time and I don't know if any will be joining us. But obviously this will be an ongoing responsibility of the jury to stay away from any possible media coverage of this and I'll explain that to them.

The motion to cap the sentence, I think that obviously that motion would only be appropriate should Mr. Settles, in fact, be convicted. So in light of his presumption of innocence and the fact that that's -- that motion may not even come up, I'm not going to address that at this point in time. But we can --

MR. TINSLEY: I think that's very timely. And, Your

Honor, the other thing I had mentioned today in the chambers was everybody stay away from Abbeville one hundred percent, and I think everybody's pretty clear on that. I think you ruled in my favor on that.

THE COURT: Correct. I don't see -- unless the State has some theory as to how the two are related. Mr. Brown?

MR. BROWN: Judge, I did notice on his witness list there is a witness by the name of Ms. Williams. In her statement she does allude to another type of firearm, and I would -- her statement is not really clear, but that could bring into Abbeville, a type of firearm. I just want to let the Court be aware of that.

THE COURT: And that is juror -- I mean, juror. That is witness who?

MR. BROWN: The last name, I think, is Quenisha Williams.

THE COURT: Number six on his witness list. Let's do it this way. If -- Mr. Tinsley, if you end up calling Ms. Williams, before you call Ms. Williams just give me a heads up and we can address in more detail if, in fact, you do call her. Okay?

MR. TINSLEY: And we'll do it, too, of course. Stay away from anything like that.

THE COURT: Sure. But I want to address the possibility beforehand if Ms. Williams is called -

MR. TINSLEY: Oh, yeah.

THE COURT: -- about what would and would not open that door. I had not seen her statement. I don't know anything about what she's told the police, and I obviously don't know what she's going to testify to. So if you call her, just give me a heads up before you call her. I'll let the jury go out and we can discuss the statement that she gave to the police as well as her testimony and we'll handle it like that.

MR. TINSLEY: Very good, Your Honor. I'll certainly bring that to your attention.

THE COURT: Aside from that, then obviously we're staying away from the Abbeville charges. As far away as we can.

MR. TINSLEY: Absolutely, Your Honor. Thank you so much. And that basically covers it.

MS. WHITE: Judge, we had just a few --

THE COURT: Sure.

MS. WHITE: -- quick matters. First of all, I'm assuming -- Mr. Settles gave a statement, so ordinarily we'd have a *Jackson v. Denno*. Don't know if Mr. Tinsley wants to proceed with a *Jackson v. Denno* or waive that. I think the statement kind of cuts both ways.

THE COURT: Was there any objection to the statement or is there any concern that he was not read his Miranda rights

or that force was applied?

MR. TINSLEY: There may be an objection towards the statement should the State try to enter it.

THE COURT: In terms of the order that you're going to call your witnesses in, Ms. White, will that be one of the first ones, second one, third one?

MS. WHITE: No, sir. That would be later on tomorrow.

THE COURT: Okay. Let's handle that this way. I hear you haven't made a firm decision on whether you're going to contest the statement, Mr. Tinsley, so just let me know -- after further reflection tonight, just let me know tomorrow morning whether a *Jackson v. Denno* hearing would be necessary. And were you intending to allude to the statement in your opening, Mr. Brown?

MR. BROWN: I'm staying away from as much specific facts in the case. I'll just go over overall generalization what happened.

THE COURT: All right. In that case, Mr. Brown, just stay away from that until such time as we've had a chance to do a *Jackson v. Brown* if we were going to address it, or if we are going to address a *Jackson v. Denno*.

MS. WHITE: Also, Your Honor, there is a note in some of the police file about a phone call they received from someone in Florida who said a guy who was living next to him said he had done something bad in Greenwood. The State

THE COURT: Yes, sir.

OPENING STATEMENT

BY MR. BROWN: Prudencio Chiquin Sis. When you hear that name, that's the name of young man that came to the states as a young boy. He was a young man who worked here in Greenwood County as a young man, and it's the name of a man that was ultimately murdered here in Greenwood County back on May 30th, 2013. His life was cut short and it was due to an act -- senseless act of violence. And the person who took his life is sitting there at the table. Tavarious Dequan Settles.

Back on May 30th, 2013, Prudencio was leaving his girlfriend's house on Taggart Street around 9:00 or a little bit after. Leaving Taggart Street. He was going to go over to his New Haven apartment. So he was cutting through -- there's a little wooded area cutting through down Franklin Street. Once he was doing this, Settles, along with Markece Moore, Michael Patton, and another guy in the car by the name of Bryson Jefferson, were in Patton's car and a couple of them decided they were wanting to go hit a lick. Hit a lick means they were going to go rob somebody. They go down New Market, take a left on Millwee, take a look up Franklin Street and here comes their guy, Prudencio. Settles, Moore hop out of the car and start going up Franklin to intercept Prudencio. Some words are said and ultimately Prudencio is

shot multiple times and is left there on the street dying. Moore runs off. Settles runs off. 911 is called from a witness there on the street.

Ladies and gentlemen, that's a brief overview of the facts. There's not a whole lot of facts in there, but that's a brief overview of them. The State has the burden of proof to prove to you all beyond a reasonable doubt that Mr. Settles did commit the act of murder, and also that he was in possession of a weapon during the commission of a violent crime. We welcome that rule. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of Mr. Settles' guilt. Firmly convinced of his guilt. It's not beyond all doubt, it's not beyond every doubt, and it's not beyond any doubt, but it's firmly convinced of his guilt. So what is murder? Murder is the killing of any person with malice aforethought. So you might be wondering what's malice. Folks, malice signifies the general malignant recklessness and disregard for human life or the safety of others. It's the wrongful intent to injure another person. Now, at the end of the trial the judge will give you a broader definition of what malice and also what murder is. Possession of a weapon during the commission of a violent crime sounds just what I've said. Possessing a weapon, gun, knife, something like that, during the commission of a violent crime, which murder is.

Now, ladies and gentlemen, the judge has already said you'll hear several witnesses from this stand. You'll hear them. They'll sit right up here and they'll testify to their knowledge about this case. You'll hear from other folks that evidence might have been collect. You'll hear about that. We ask you to just keep an open mind. Listen to everybody's testimony. Look at the evidence. And at the end of the trial we'll come back before you and ask you to find Mr. Settles guilty of murder and also possessing a weapon in the commission of a crime.

THE COURT: Thank you, Mr. Brown. Mr. Tinsley, you're recognized, sir.

MR. TINSLEY: Thank you so much, Your Honor. May it please the Court.

THE COURT: Yes, sir.

OPENING STATEMENT

BY MR. TINSLEY: Good afternoon, ladies and gentlemen. I don't think you'll have too much trouble hearing me even though I've had a sinus hit me Saturday with the pollen coming up. I got a little cough. I've been doing this a long time, so I'm going to keep my voice up so you can hear me.

First of all, thank you. I want to thank you for your service and your willingness to come here and listen objectively to the evidence as presented from this stand

right here to determine that very question that Mr. Brown has proposed. Now, I have a completely different theory as to what happened on the occasion in question, and that theory has absolutely nothing to do with Mr. Settles committing any murder. And I think there will be several standards as in any criminal case that you'll apply throughout, and that's the standards of one, the presumption of innocence of Mr. Settles. He is presumed innocent. Cloaked in the robe of innocence. Two, the standard that's applied is defined many ways that Mr. Brown referred to as that of reasonable doubt. What's reasonable doubt. I would submit that it was -- in this case that reasonable doubt is doubt that caused you to hesitate to convict Mr. Settles of these very serious charges. Extremely serious. At the time this happened he was -- and I'm not going to beat my case up now. I'm not going to. I'm going to let you hear it as we go along. I'm going to lay it out to you gradually. But at the time Mr. Settles was one month passed his 17th birthday and he had gone to school that day. Attending Greenwood High School. And gone -- was living with his grandmother, Ms. Brenda Settles, who's in the courtroom, on Stanley Avenue, and he was, as I said, attending Greenwood High. He went down to his close kin, Shea Higgins, and was spending the evening with her. And that was his plan was to be there.

Now, one key thing I want you to remember. Mr. Brown has mentioned the three individuals that were allegedly with Mr. Settles. And the question I want you to keep in mind is when and how the fact Mr. Settles got with these guys. He was at his cousin's. Had been there into the evening. And that's where he was and had intended to stay, as she had picked him up from school and that sort of thing. But anyway, when you listen it's going to be kind of interesting that these culprits all want to point the finger at Mr. Settles. They want to point the finger at Mr. Settles. I'm going to be very interested myself in hearing what they have to say, how they to say it, and how they respond to the questions that I have to ask them about what really happened. And that's what we're here for. To find out what really happened. So in response to Mr. Brown, I submit to you that he's jumped the gun. Jumped the gun and solved the case. Told you everything. Well, it doesn't work that way. I submit to you for your thorough, fair, and total consideration that you all are independent minded good people. God fearing people. And you have good judgement that you can apply to what you hear right here. So we're going to go from there. We're going to go from there and see where that leads us. All the while remember to keep an open mind. Mr. Settles is presumed innocent and the standard to be applied is that of reasonable doubt. Thank

you for your consideration.

THE COURT: Thank you, Mr. Tinsley. Mr. Brown, if you'll call your first witness, please sir.

MR. BROWN: We call Jill Boland.

JILL BOLAND, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Ms. Boland, please state your name for the record.

A Jill Boland.

Q Ms. Boland, where do you work?

A Greenwood 911.

Q And what's your duties -- what are your duties there at Greenwood 911?

A I'm the operations manager. Oversee the day-to-day activity, oversee the records.

Q How long have you been with Greenwood 911?

A Almost six years.

Q You said that as part of your day-to-day duties you oversee the records?

A Yes, sir.

Q What kind of records are those?

A CAD reports, case reports, 911 recordings.

Q And with regard to this case, or in general, how are 911 recordings kept?

A We keep them for 90 days. The law states we have to keep them for 60, but we keep them for 90.
Q And on May 30th, 2013, a little after 9:00, was there a 911 call concerning someone being shot on Franklin and Millwee Streets?
A Yes.
Q And kept in the ordinary course of business with Greenwood 911 were you all to pull that call up?
A Yes.
Q Ms. Boland, I want to show you what's been marked for identification purposes as State's ID 1. Take a look at that and tell me what that is.
A That's a recording of the call. The 911 call.
Q Was that a recording of a call from May 30th, 2013?
A It is.
Q And how do you know that's the call?
A I listened to this and my initials are on it.
MR. BROWN: Judge, at this time State moves State's ID as State's Evidence 1.
THE COURT: Any objection, Mr. Tinsley?
MR. TINSLEY: No.
THE COURT: All right. Without objection State's 1 is in evidence.
(Whereupon, State's Exhibit Number 1 was admitted into evidence.)

MR. BROWN: May we have permission to publish to the jury?

THE COURT: You may. And just for your information, ladies and gentlemen, all the exhibits, you'll have an opportunity to have those back with you in the jury room including this recording if you need to hear it again at a later point in time. Okay? So I just wanted to let you know.

MR. BROWN: Beg the Court's indulgence.

THE COURT: Sure.

MR. BROWN: We're having some technical difficulties with this computer.

THE COURT: That's all right.

MR. BROWN: We'll play it on this other one.

(Whereupon, 911 audio was published for the jury.)

MR. BROWN: No further questions for this witness.

THE COURT: Any cross?

CROSS-EXAMINATION

BY MR. TINSLEY:

Q. That wasn't you taking the call, was it, Ms. Boland?

A. No, sir.

Q. That was one of your employees?

A. Yes, sir.

Q. And obviously you didn't see anything happen that

night at the scene or anything associated with the incident, right?

A. No, sir.

MR. TINSLEY: Okay. That's all.

THE COURT: Thank you for coming, Ms. Boland. You may go.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Call your next witness.

MR. BROWN: The State calls Markece Moore.

MARKECE MOORE, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Moore, please state your full name for the record.

A Markece Moore.

Q Markece, how old are you?

A Twenty-two.

Q Do you have any nicknames or anything like that?

A Yes, sir.

Q What's your nickname?

A Lank.

Q Mr. Moore, where did you grow up?

A Grew up in Greenwood, South Carolina.

Q Where in particular?

A Promised Land.
Q Promised Land?
A Yes, sir.
Q Now, back on May 30th, 2013, do you remember that date?
A Yes, sir.
Q Who were you with that day?
A Michael Patton, Tavarious Settles and Bryson Jefferson.
Q Does Tavarious Settles have any other names he goes by?
A Yes, sir. Purp.
Q And is Tavarious Settles here in the courtroom today?
A Yes, sir.
Q What's he wearing?
A A white shirt and tie.
MR. BROWN: Your Honor, let the record reflect that he's identified Tavarious Settles.
THE COURT: The record shall so reflect.
Q Now, Markese, on that day, May 30th, 2013, where were you? Where were you with Michael and Tavarious?
A Before the thing happened I was at my old girlfriend's grandma's house.
Q And where was that located?
A On [redacted].
Q What time of day was this?
A I can't really say, but it was at night.
Q It was at night?

A Yes, sir.

Q And is [redacted], what city is that in?

A Greenwood, South Carolina.

Q Greenwood, South Carolina. Now, you all -- you said [redacted]. After you were at Taggart Street what did you, Tavarious, Michael -- was there anybody else there with you?

A Yes, sir. Before I had went in the house the first time, Bryson Jefferson, he wasn't out there. He was out when I came back out.

Q And what did you all do -- did you all stay there all night or what did you do?

A No, sir. We had left.

Q Left in what?

A Michael Patton's car.

Q What color car was that?

A Like a peach orange color.

Q And who was driving the car?

A Michael Patton.

Q Who was in the car with you?

A It was me, Tavarious Settles, Michael Patton, and Bryson Jefferson.

Q And what did you all get in the car for?

A I was really getting a ride home. That's what I was doing. I was getting a ride to my house. My house right

down the street on New Market.
Q On New Market?
A Yes, sir.
Q Where did you live?
A Right down -- right across the street from Carolina Pride.
Q Now, when you all got in the car what route did you all take?
A We went down Taggart and made a right and then --
Q Right on what?
A On Market Street.
Q And then you did a left on what?
A Like Millwee Street.
Q What -- do you remember anything being said in the car?
A No, sir. I just knew when we turned on Millwee, Michael Patton said, "There you go, Purp." He wasn't saying nothing like -- like he didn't say nothing like there you go to rob him. He just say there you go, Purp.
Q What do you think he meant by that?
A I don't know. I guess we was in the car at the time. I wasn't thinking at the time he was going to rob somebody. I wasn't thinking that.
Q Well, who did he say, there you go, Purp to? Who did he see?
A He pointed at a Mexican guy coming down on Franklin

Street.

Q What happened after you all -- or after Patton pointed out the Mexican coming down -- or the Hispanic coming down Franklin Street?

A Well, me and Settles, we get out of the car. And I had walked and turned off getting ready to go up the hill going to my house.

Q Hold on. You said you got out of the car. Where did you get out of the car?

A On Millwee Street.

Q Mr. Moore, I'm going to show you what's been marked for identification purposes State's ID Number 2. Can you tell me what this looks like? What this is?

A It's Millwee Street, New Market Street, and Taggart Street.

Q Are you familiar with this area?

A Yes, sir.

Q Are these same roads that you were just discussing prior to me showing you this?

A Yes, sir.

Q That's State's ID 2?

A Yes, sir.

MR. BROWN: Judge, I'm going to use this as demonstrative evidence. So if I can ask that he step down.

THE COURT: Sure. You can step down, sir. Be careful

when you step down.

(Whereupon, witness steps down from the witness stand and approaches map.)

MR. BROWN: Mr. Moore, if you'll stand right there.

Q Originally you said you started out at [redacted]?

A Yes, sir.

Q Where is that located on this map?

A Right here.

Q And who owned that house, or who lived in that house?

A My girlfriend's grandmother.

Q And who was all there at that house?

A It was me, Settles, and Michael Patton, and Bryson Jefferson.

Q And then the four of you got in the car. Got in Michael Patton's car; is that right?

A Yes, sir.

Q Where did you all go?

A Went down Taggart. Down right here. Made a right right here.

Q What road is that? To the right on what?

A Onto Market Street.

Q Where are the apartments that you lived in?

A Right here.

Q So you drove past your apartments?

A Yes, sir.
Q And then you took a left on Millwee Avenue?
A Yes, sir. Right here.
Q Where was the Hispanic, Mr. Prudencio Sis? Where was he first seen?
A Right here.
Q Coming down Franklin Street?
A Yes, sir.
Q And where did you and Mr. Settles get out of the car?
A Right here.
Q After you got out of the car where did Patton and Bryson Jefferson go?
A They went to the spot called "the dirt".
Q They just drove on up the road?
A Yes, sir. They just drove on up.
Q Which direction did you and Tavarious Settles go after you got out of the car?
A We went this direction off of Franklin.
Q And where was Mr. Prudencio Sis?
A Right here on Franklin.
Q On Franklin?
A Yes, sir.
Q Was anything said to Mr. Prudencio when you all approached him?
A No, sir. As I was walking up -- turning off going up

the hill, going through a little path right here, I heard Settles say, "Take your pants off."

Q Take your pants off?

A Yes, sir.

Q Settles said that to Prudencio Sis?

A Yes, sir.

Q What else do you remember?

A Then Prudencio tried to grab the gun, but he had his hands up because he didn't know English, but he tried to grab the gun and that's when Settles snapped away.

Q You said a gun?

A Yes, sir.

Q You're saying Tavarious Settles had a gun?

A Yes, sir.

Q What kind of gun was it?

A I'm not really for sure, but I'm guessing a Glock 40.

Q Glock 40?

A Yes, sir.

Q What color was it?

A Black.

Q A black Glock 40?

A Yes, sir.

Q How long had you known Mr. Settles to have that gun?

A Not -- probably -- I'd probably say before this incident even happen.

Q So you knew he had it prior to this?
A Yeah, I knew he had a gun, but I wasn't for sure what kind of gun it was.
Q But he had a gun on this night?
A Yes, sir.
Q And Franklin Street, where you all approached Mr. Prudencio Sis, where's that -- what county, and what state is that in?
A Greenwood, South Carolina.
Q And so, you saw enough where Mr. Sis tried to --
A Yes, sir.
Q -- grab the gun?
A Yes, sir.
Q What happened next?
A When he tried to grab the gun he snapped back --
Q Who snapped back?
A Settles.
Q And then what happened?
A And he fired a couple shots. And when he shot him I took off running.
Q Where did you run?
A I ran up through there where I was. On the way where I was going in the house. You know, right there.
Q Where did Settles go?
A I can't remember, because I ain't never like turn

around.
Q You didn't turn around?
A No, sir.
Q Did you ever look back and see what the Hispanic was doing?
A No, sir. When I run I heard more shots.
Q Did you see where he shot him originally?
A Like where he shot him at the first? Yeah, he shot him in the arm the first time.
Q Do you know which arm, or you just know he shot him?
A I want to say left arm.
Q But you saw the man sitting over there in a white shirt and tie shoot this Hispanic?
A Yes, sir.
Q Did y'all know him?
A No, I ain't know him.
Q Do you know if Settles knew him?
A No, I don't know.
MR. TINSLEY: Objection.
THE COURT: Calls for speculation. Sustained.
Q But he was shot?
A Yes, sir.
Q What did you do after you ran up by your apartment?
A I went in the house. And when I went in there I stopped for a little bit and I just ran out the backdoor.

And it's like -- where this house is like a little path that I can go in their front yard, and I just ran up New Market Street on this side.

Q Ran up New Market Street towards Taggart Street?

A Yes, sir.

Q Did you ever come back in contact with Michael Patton and Bryson Jefferson?

A Yes, sir. They were coming up this street right here.

Q Was there anybody else in the car with them?

A Yes, sir. It was Patton and Jefferson.

Q Do you remember anybody else being in the car?

A Yes, sir. Yes, sir.

Q Who else was in the car then?

A A guy named -- we called Preacher D.

Q How long was he in the car with you before he got out?

A Not too long. When I got in he probably got out like up here on the corner right here.

Q On the corner?

A Yes, sir.

Q And did you ever see Settles again that night?

A Yes, sir.

Q Where did you see him? Did he ever get back in the car with you?

A Yes, sir.

Q Where did he get back in the car with you?

A Right here.
Q On Taggart Street?
A Yes, sir.
Q What happened after you all got back in the car?
A We just roll back up to [redacted] right here.
Q What was said in the car?
A Really wasn't that much talking, because it was just -- I asked him why he do that. And then when we got to that [redacted], that when we all standing right here on Taggart Avenue. Just a little dead end road, and he had burnt his shirt.
Q Who burned his shirt?
A Settles.
Q Settles burned his shirt?
A Yes, sir.
Q Did you see what he did with the gun?
A No, sir. I ain't even see what he did with the gun, 'cause when we got back I just went in the house.
Q But you said you believe it was a Glock 40?
A Yes, sir.
Q What color was it?
A Black.
Q But you saw -- you definitely saw with your own eyes Tavarious Settles shoot the Hispanic?
A Yes, sir.
Q On Franklin Street?

A Yes, sir.
Q Mr. Moore, when you originally -- did you give a statement to the police --
A Yes, sir.
Q -- originally?
A Yes, sir.
Q And at first -- actually, I'm going to let you sit back up on the stand real quick while we --
(Whereupon, witness returns to the witness stand.)
Q Mr. Moore, did you a statement to law enforcement after you were picked up on this case?
A Yes, sir.
Q And initially were you forthright with law enforcement about everything you knew?
A In the beginning?
Q Yes, sir.
A Yes, sir.
Q Now, today in the courtroom what you're telling this jury in the testimony you're giving from the stand, is that the truth of what happened that night?
A Yes, sir.
Q Have you been promised anything for your testimony here today?
A No, sir.
Q Have you been coerced in any way to get you to testify

here today?

A No, sir.

MR. BROWN: Beg the Court's indulgence.

THE COURT: Yes, sir.

Q Just a last few couple of questions. Did anybody else you were with that night, Patton, Jefferson, yourself, did any -- the three of you have a gun?

A No, sir.

Q Who was the only person -- who all had a gun that night?

A Just Settles.

Q And Settles is the one that shot the Hispanic --

A Yes, sir.

Q -- Prudencio Sis?

A Yes, sir.

MR. BROWN: No further questions.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. TINSLEY:

Q How did you know those other two guys didn't have guns?

A I know they didn't.

Q How's that? You search them?

A No, sir. I know they don't own a gun.

Q Oh, you know they don't own a gun?

A Yes, sir.

Q And you're 22-years-old?
A Yes, sir.
Q And how old were you at the time?
A Twenty.
Q You were 20?
A Yes, sir.
Q Were you working?
A Yes, sir.
Q Where?
A Carolina Pride.
Q And you were living on New Market?
A Yes, sir.
Q Well, you all rode right by your apartment, right?
A Yes, sir.
Q Why didn't you just get out and go in?
A Because I didn't want to get -- I didn't want to get out at that time because they said something about a robbery or something on farther down the line and I just really was going to my cousin's house that stay on Matt Lee Street.
Q But since they said they were going to talk about a robbery you wanted to be in on it, right?
A No, sir. Why I want to rob somebody? I got my own money.
Q Well, why didn't you get out?
A Because I was really suppose to been going to my

cousin's house on Matt Lee Street but I changed my mind 'cause Patton said he wasn't going to come back and get me and I just was going to get out of the car. And then that when Patton said, "There you go, Purp."

Q Well, now, you know, it's funny, but you find out that something bad is going to happen but -- and you're going right by your apartment but you don't -- you don't get out.

A Yeah.

Q Okay. Where did you and Patton meet up originally?

A On street -- like on Taggart Street, where he was coming from.

Q And isn't it true that you all started calling Mr. Settles' cell phone?

A No, sir. I never called his cell phone.

Q Anybody else call?

A I don't know. I don't know.

Q You don't know?

A No, sir. I don't.

Q So you got out of the vehicle and had your shirt over your head, correct?

A No, sir. I did not have my shirt over my head.

Q You never had your shirt --

A No, sir.

Q -- over your head?

A No, sir.

Q And when you went up from the -- what's called the cut --
A Yes, sir. That where we came from.
Q Tell us about that.
A What, about the cut?
Q Yeah. Tell us about that.
A That where my baby mama grandmother stay at. That where we came from.
Q Well, isn't it true that you told the police that you were at your grandmother's and didn't have anything to do with this at first?
A That's what I told them. I told them about my -- at my baby mama grandma.
Q Yeah. And that you didn't have anything to do with it, right?
A Yes, sir.
Q So you lied then, right?
A Yeah, that what I told them. I couldn't see myself telling on somebody who I thought was my friend.
Q And then your next story was that you were with your girlfriend, right, overnight?
A Yes, sir.
Q And then again you changed your story that you were standing up on Taggart Avenue when the incident occurred, right?

A Yes, sir.
Q So you told many, many stories to get to this courtroom today and you are charged with murder, right?
A Yes, sir.
Q And you have been in the Greenwood County Jail ever since, correct?
A Yes, sir.
Q Just like Mr. Settles has been, right?
A Yes, sir.
Q Well, how can you possibly see from Millwee to the back of Franklin Street?
A Like when I was standing there I was on a hill right -- it's an open path right down the hill going to my house, and where I'm standing at I can turn around and I can see everything on Franklin Street.
Q Okay. And you left to go to the store and then you call came back to pick Settles up, right?
A I don't remember going to no store. We didn't go to no store. That's not in my statement.
Q That's not in your statement?
A I never said nothing about going to no store.
Q Well, so you were never in a van up there above the location of the tragic incident --
A No, sir.
Q -- is that right?

A No, sir.
Q Let's see if you can show me, looking at this without putting it on there, where your grandmother lives.
A On Taggart. I call my baby mother grandmother my grandmother.
Q Uh-huh. And your girlfriend?
A Where she stay?
Q You live with her?
A No. At the time I stay on New Market. Where she was staying right there at [redacted].
Q She was staying there but you were living on New Market?
A Yes, sir.
Q Who were you living with?
A With my friend. With Bryson Jefferson grandmother.
Q Oh, you were living with Bryson?
A Yes, sir.
Q And how about Michael Patton? Isn't it true that you all were real close friends?
A Yeah, all of us was.
Q Huh?
A All of us was. I ain't meet Michael Patton til '13. I been knowing Settles ever since before '11.
Q Well, Settles came from -- he came from -- he came from good people, and he was in school and doing okay, right?

A I don't know. I don't know how his grades was. I don't know.

Q Well, I didn't ask you how his grades were, but he was doing all right. You ever see him do anything like this before?

A No, sir.

MR. BROWN: Judge --

THE COURT: All right. Hold on.

MR. BROWN: Prior to -- prior to before we came out here -

THE COURT: Yeah, valid point. Mr. Tinsley, be careful.

MR. TINSLEY: I got you. I said "before".

THE COURT: Go ahead, Mr. Tinsley.

MR. TINSLEY: I'll go to a different area, Your Honor.

Q Now, isn't it true -- isn't the real truth that you had the gun?

A No, sir. Never had the gun. Never owned one.

Q Well, you're criminal record doesn't say that.

A My criminal record, it wasn't even an incident report written on what I caught with at school.

Q You got charged with a gun at school.

A I got charged -- I got caught with brass knuckles. It was in the paper.

Q Okay. So you say it's brass knuckles.

A I know it was brass knuckles.
Q Okay. So you have a tendency to carry a weapon; is that right?
A No, sir. At the time, the only reason I carried the brass knuckles was because I had got jumped on a week before, and I had to get staples in my head. That's the only reason I took them to school. It was written up in the paper.
Q You were at school -- well, isn't it also true, Mr. Moore, that you had sold guns before?
A No, sir. I never sold a gun.
Q You haven't?
A No, sir. I've never sold a gun to anybody.
Q Not even Mr. Goode.
A No, sir. Never sold him a gun.
Q Pearl handled?
A Nothing. No, sir.
Q 38?
A Period. Nothing. Never had them.
Q Never had a gun?
A No, sir.
Q Never had a gun of your own or just --
A No, sir. Never had one of my own.
Q Never had a gun of your own?
MR. BROWN: Judge, asked and answered. That's like the

--

THE COURT: Sustained.

Q Let me ask you this, Mr. Moore. According to you, you got out and went down innocently a path. Where was it?

A Talking about off Franklin Street where I saw what happened?

Q Yeah.

A It really ain't no path. It's just a hill. It ain't no path. It ain't no trees around it. And I can see everything that happen on Franklin Street. I can just stand there on top of the hill and watch everything from my apartment.

Q Oh. You didn't have any inclination to stop any of this or --

A No. I ain't -- no. I ain't know really nothing that was about to happen. That's like -- that's like a -- if somebody robbing somebody and you try to get between them he could have shot me.

Q I thought you all were buddies?

A Yeah, we were friends. But I ain't talking about just shoot me just to shoot me. He could have shot me on accident or anything.

Q Oh, accident. Accidently. But, let's see. You were several years older than he was, right?

A Yes, sir. I was 20 years old.

Q You weren't in school?
A No, sir.
Q You claim you were working at --
A Carolina Pride.
Q -- Carolina Pride. What were you doing over there?
A I was working in the kitchen.
Q What did that involve?
A Tying weinies. Making weinies. That was it.
Q So now, when you got out of the car and Mr. Settles went the other way, allegedly, did you --

THE COURT: Mr. Tinsley, I apologize for interrupting, sir, but one of the jurors needs a break, and quite candidly I could use one myself. So we're going to take a brief break.

Ladies and gentlemen of the jury, go ahead and adjourn to the back for a moment. If some of you need to step outside to have a cigarette, feel free. Just let the Bailiff know. He'll get you downstairs. And don't discuss the case yet. I'll let you know when we can -- when you can. Thank you.

If you want to step down, sir, you can. Just don't discuss your testimony with anyone. Okay?

THE WITNESS: Okay.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: We'll be at ease for a few moments.

(Whereupon, the jury exited the courtroom at 3:46 p.m.)

(Whereupon, a recess was held from 3:46 p.m. to 4:00 p.m.)

THE COURT: Let's have the jury out, please.

(Whereupon, the jury entered the courtroom at 4:00 p.m.)

THE COURT: The jury is back and seated. We're still under cross-examination of Mr. Moore. And Mr. Moore, I'll remind you that you're still under oath, sir.

Mr. Tinsley, you may continue.

Q Who is Rashad, Mr. Moore?

A Just somebody I know stay on Taggart Street. Well, he don't say on Taggart. I don't know where he stay at. That's just where he used to be at.

Q And didn't you sell him a gun?

A I never sold anybody no gun.

Q And when you ran through the path towards Taggart Street and then around another path to the apartments, [redacted], who did you meet there?

A I never ran -- I never ran from -- no path take me to Taggart Street. I ran up New Market Street. There ain't no path that can take you to Taggart Street. The only way I ran that way, if I would have ran through the same path. I never ran a path take me to Taggart Street.

Q Isn't it true you and Mr. Moore picked Mr. Settles up at his Aunt Shea's?
A No. I ain't picking him up with no one. Never. I didn't ride with nobody to pick him up. When I came outside they was already out there.
Q Now, aren't you -- let's see. Do you know how old Mr. Patton is?
A He probably, I think, 18, fixing to turn 19.
Q And you're several years old than Mr. Settles, right?
A Yes, sir.
Q And Bryson Jefferson is even younger; is that correct?
A Yes, sir.
Q He's what, approximately?
A Probably 17. Now 17.
Q About 15 at the time?
A No, he was 16.
Q Roughly, right?
A Yeah.
Q And now, when you gave all these varying statements why didn't you just tell the truth in the first place?
A Because I already told you, because I thought he was my friend. And plus, I was scared. I ain't never seen nothing like that, and I thought he was my friend at the time. Anybody do something ain't nobody going to tell on somebody they think are your friend. I been knowing him for a long

time.
Q In fact, you stayed with him?
A I have before.
Q Yeah. He's helped you out, hasn't he?
A Yeah. When I ain't had no where to go I lived with him.
Q Let's get to the bottom line. The truth. You planned the robbery, right?
A I ain't plan nothing.
Q You planned -- you had the gun, right?
A I ain't had no gun.
Q You got out to make the Lank's lick, right?
A No, sir.
Q And you were the one down with it, right?
A No, sir.
Q And these other kids you were just leading down the primrose path, right?
A Well, why everybody say different?
Q Don't everybody say different. Who you talking about?
A Talking about the other two co-defendants.
Q Because the three that were together all afternoon picked him up.
A Nobody did pick him up. I didn't pick him up.
Q You didn't pick him up, but somebody did. He wasn't driving his car, was he?

A I don't know. Like I said, when I came outside they was already outside. I didn't plan nothing.
Q Wasn't your original plan towards the man on the side of the road with a flat tire?
A That's what they said in his statement, Patton. Yeah, Patton and Bryson. Bryson came up to me and said I had a lick.
Q So it was a big mass of various statements; is that right?
A Yeah, you can say that. But I never planned anything. I'm pretty sure if I planned something they would have told you I planned something. I ain't never planned nothing.
Q How do you know what they did tell me or not?
A I heard the statements.
Q I'm talking about -- the only one's that going to talk to me is Mr. Settles. He told me what happened.
A He told you a lie.
Q Why? I didn't tell you what he told me.
A I know what he told you.
Q How do you know that?
A I saw it in the paper. Everything he told evidently he told the same thing.
Q Well, I don't really know exactly what you're talking about. But the truth of the matter is you had the lick, you had the plan, you had the gun, and you robbed and shot a

Guatemalan man.

A Never shot anybody.

Q Except for the Guatemalan man, right?

A Never shot anybody in my life.

Q Never?

A Never.

Q Never shot anybody?

A Never.

Q Well, isn't it funny that you're running around with these younger guys. You didn't have any friends your age?

A All of us grew up with each other. In the same area.

Q Where were you born?

A I was born in Greenwood, South Carolina. We all went to school together and got --

Q You were ahead of them in school, right?

A Yes, sir. When I was in the eighth grade he was in probably 6th or 7th. We get out of school together and played in the same neighborhood.

Q Did you fail some grades?

A Third grade.

Q What was the neighborhood?

A Where I stayed then?

Q Yeah.

A Back when I failed third grade? I stayed in Greenwood Mill Village.

Q Well, who did you live with then?
A My mother and my father.
Q Well, what happened to that setup?
A The broke up when I turned like 18. They were together 14 years.
Q And what happened to you?
A Then, I guess, I got older and then moved out. I can't get along with my father, and that was it.
Q If he broke up with your mother, why didn't you stay with your mother?
A Because my mother took off. She left my father and went to Greenville.
Q And you didn't want to go with her to Greenville?
A No, sir. Because I didn't feel right.
Q But you could -- you could have stayed with your father, right?
A I couldn't stay with either one of them.
Q Were you living on the street for a while?
A No. I stayed with my baby mother and her grandma. They let me stay with them.
Q I see. I see. The bottom line in this case, this was Link's plan. That's you, right, Link?
A It's Lank.
Q Spell that for me.
A L-a-n-k.

Q Lank. And it was -- it wasn't Settles that committed the crimes, it was Lank.

THE COURT: Redirect.

MR. BROWN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. BROWN:

Q Markece.

A Yes, sir.

Q Mr. Tinsley asked you several -- several times about your statement kind of changing from now than what it was from the beginning. And you said you never thought you could tell on somebody you thought was your friend.

A Yes, sir.

Q Why are you telling us -- why are you telling what happened now?

A Because I saw what happened.

Q Is that what happened? Was that true?

A Yes, sir. Everything I told them was true.

Q And the truth is that Settles had the gun?

A Yes, sir.

Q The truth is that you and Settles got out of the car?

A Yes, sir.

Q Truth is that you and Settles approached the Hispanic?

A He approached him, but I turned off.

Q You turned?

A Yeah, I turned off, but we was walking in the same direction.

Q You both went up Franklin Street towards the Hispanic, Prudencio?

A Yeah. I turned off and went on the hill there when I saw it happened.

Q And what happened?

A He shot him.

Q Once? Shot him once?

A Shot him a couple of times.

Q A couple of times?

A But when I ran I heard one shot. I ain't never turned around and see.

Q Mr. Tinsley asked you if you'd ever sold a gun to Rashad. Have you ever sold a gun to Rashad?

A No, sir.

Q Has anybody ever told you they sold a gun to Rashad?

A No, sir. Nobody didn't tell me.

Q Do you know who Rashad is?

A Yes, sir.

Q But you don't know if anybody sold him a gun?

A I'm saying - I'm pretty sure he sold him a gun. I remember he sold him a gun. Because we play cards like on the past week and took all their money playing cards.

Q Who took all their money?

A Me and Patton we been playing cards with the money he had sold the gun with.
Q Who were you playing cards with?
A Me, Settles, and Patton.
Q And who had the money?
A Settles.
Q And he got that money from what?
A Selling a gun.
Q To who?
A Rashad, I guess.
Q So you're telling me -- did anybody tell you they sold a gun to Rashad?
A He ain't say he sold it to him, but I'm pretty sure he did because I remember somebody else saying something about it.
Q Now, going back. They were asking -- Mr. Tinsley was saying that you had something on your record. That you had a gun or something like that, taking it to school.
A Yes, sir.
Q In fact, that wasn't a gun, was it?
A No, sir. I know it wasn't a gun.
Q It was brace knuckles, wasn't it?
A Yes, sir.
Q It was when you were 17 years old, right?
A Yes, sir.

Q When you were enrolled in what school?
A Greenwood High School.
Q Brace knuckles is different from a gun, isn't it?
A Yes, sir.
Q It doesn't fire bullets?
A No, sir.
Q Again, is the person that killed Prudencio Sis in this courtroom today?
A Yes, sir.
Q And where is he?
A Right there.
Q And what's he wearing?
A A white shirt.
Q Has anybody promised you anything for your testimony today?
A No, sir.
Q Have you been coerced to tell what you've told today on the stand?
A No, sir.

MR. BROWN: No further questions.

RECROSS-EXAMINATION

BY MR. TINSLEY:

Q But you want some kind of deal, don't you?
A No, sir.
Q Oh, you want to go to prison?

A The only reason I'm up here telling this because I saw what happened.
Q No. You don't -- you don't want anything like that.
A I'm putting everything on God. Whatever going to happen, going to happen. But I know I'm up here telling the truth.
Q That's the one truth you have told, along with a few of the others, about your earlier lies. You didn't lie to protect Settles. You're lying to protect yourself, right?
A No, sir. I didn't lie.
Q You didn't lie? You admitted you lied three times.
A I'm talking about I didn't lie to protect him or -- I lied to protect him.
Q To protect yourself.
A I didn't like to protect myself.
Q Then why did you lie?
A Because I ain't want to tell on somebody I thought was my friend. Hands down, he shot him. Hands down. I saw him. I'm pretty sure if I shot him, the other two people would have said I shot the man. Why --
Q Wait a minute. Wait a minute. They were the getaway car drivers, right?
A I don't know. That what I'm telling you.
Q Where were they?
A They was in the car.

Q But they weren't right on the scene because they --
A No. He said he was going to the dirt to get a cigarette.
Q Yeah, that's right.
A Yeah.
Q Because they didn't see what happened.
A So how could -- I'll I'm saying is ain't no way -- I didn't shoot nobody. I never had a gun. I never planned nothing with nobody, period.
Q Then why did you get out of the car knowing he had a gun?
A I didn't know he had a gun. I never told him I knew he had a gun in the car.
Q You said earlier he did. And who is Jefferson's grandmother?
A Susan Brown. That who I was living with.
Q Still living with her?
A No. No, sir. I'm in jail.
Q But you were up until you were locked up?
A Yes, sir. That's who I was living with.
Q Not like -- not romantically, right?
A Huh?
Q Were you dating her?
A No.
Q That's what I -

A No.
Q You just stayed there?
A Yes, sir.
Q But, so the fact that you are charged with this murder has nothing to do with your testimony against Mr. Settles today; is that right?
A No, sir.
MR. TINSLEY: Thank you.
THE COURT: Thank you, sir. You can step down. Call your next witness, Mr. Brown, or Ms. White.
MR. BROWN: The State calls Michael Patton.
MICHAEL PATTON, having first been duly sworn, testified as follows.
DIRECT EXAMINATION
BY MR. BROWN:
Q Mr. Patton, please state your full name for the record.
A Michael James Patton.
Q Mr. Patton, how old are you?
A Eighteen.
Q And how far did you go in school?
A To the eleventh grade.
Q To the eleventh grade. Are you in school now?
A No, sir.
Q Are you working now?
A Yes, sir.

Q Where are you working?
A At the clearance side at Ballentine.
Q Ballentine Ford?
A Yes, sir.
Q Now, do you know the man sitting there in the white shirt and blue tie?
A Yes, sir.
Q Who is that?
A Tavarious.
Q Tavarious what?
A Settles.
Q Do you know him by another name? A nickname?
A Purp.
Q How long have you known Mr. Settles?
A I've known him for a while.
Q A while? Mr. Patton, back on May 30th, 2013, do you remember that day?
A Yes, sir.
Q Do you remember where you were that night?
A On Taggart Street.
Q Who were you with on Taggart Street?
A Tavarious Settles, Markece Moore and Bryson Jefferson.
Q Bryson Jefferson. Now, let's go with ages. Who's the oldest out of that group?
A Markece.

Q How old is he?
A Twenty-one, I believe.
Q Now?
A Yes, sir.
Q So back then he was about 19?
A Yes.
Q Eighteen or 19. What about Mr. Settles?
A Me and him are the same age.
Q About the same age? What about Bryson?
A He was younger.
Q Now, even though there's a discrepancy in ages that Mr. Moore is older than you, you and Mr. Settles is about the same age and Bryson is a little bit younger, did you all hang out?
A Yes, sir.
Q Did you all know each other for a while?
A Yes, sir.
Q And on that day -- what was Mr. Moore's nickname?
A Lank.
Q Lank. Did you have a nickname, or did they just call you Mike?
A They just called me Mike.
Q So you got Purp and Lank, right?
A Yes, sir.
Q Now, May 30th, 2013 you said they're on Taggart Street.

What house were you all at on Taggart Street?
A We was at Markece girlfriend's house.
Q And what were you all doing there?
A Everybody was hanging out over there.
Q So the four of you that have already been mentioned?
A Yes, sir.
Q Around 9:00 what did you all decide to go do, and what did you all do?
A Bryson and Black had came up there talking about a lick.
Q Who's Black?
A He's somebody else that was -- somebody else that was there.
Q That was there? They were talking about a lick?
A Talking about it.
Q Who all -- who all was there when you heard that, talking about a lick?
A Me, Markece, Purp, and Bryson.
Q Bryson. What did you all do? Did you all walk anywhere, did you get in the car, or what?
A We all got in the car, except for Black.
Q Except for Black?
A Ye, sir.
Q So who's car did you get in?
A We got in my car.

Q Your car. Now, how are you all going to work out this lick? Would you all just go up there and strong-arm somebody or -- did you know anybody had a gun?

A Yes, sir. We -- well, Dequan was supposed to --

Q All right. Now, who --

A Well, Purp was supposed to --

Q Now, Dequan -- Settles' middle name is Dequan, right?

A Yes, sir.

Q I want to be clear. It's Tavarious Dequan Settles, which is nickname is Purp, right?

A Yes, sir.

Q Now, what was going to happen when you all got in the car?

A When we got in the car?

Q What was the plan?

A To rob somebody.

Q All right. I want to show you what's been marked for ID purposes as State's Number 2. I'll ask that you step down from there.

(Witness steps down from the witness stand and approaches a map.)

Q I've got a map here. Tell me, do you recognize this map, some of these streets?

A Yes, sir.

Q What street is this?

A This is Taggart Street.
Q Taggart Street. And where -- do you see the house you all were at before you got in the car?
A We was at this house right here.
Q And that was Markece's --
A Girlfriend house.
Q -- girlfriend's house. Whose car did you get in?
A My car.
Q Your car. What color car was that?
A It was an orange or goldish Toyota.
Q Where did you go?
A We went down this street.
Q What street is that?
A We went down Taggart Street and made a right on New Market Street and went down.
Q When you got on New Market Street what were you all -- did you all see anybody else out on New Market Street?
A When we got out on New Market Street we seen somebody on the side of the road right there by the Packing Plant entrance, and somebody was helping him get their car fixed.
Q Was he the initial person you all --
A Yeah.
Q -- thought about hit a lick on?
A That was the person Bryson and Black had told us about.
Q And then did you all hit a lick there?

A No, sir. We --
Q Why not?
A Because there was somebody helping him.
Q Two people there?
A Yes, sir.
Q What did you do next?
A We kept going and went on Millwee.
Q Turned left on Millwee?
A Yes, sir.
Q And then what happened?
A And then I seen somebody.
Q Hold on. You said you saw somebody?
A Yes, sir.
Q Who did you see?
A I seen -- I couldn't tell who it was, but I seen somebody walking through a path.
Q Through where?
A Through a path on Franklin. Coming out Franklin Street.
Q Coming out Franklin Street?
A Yes, sir.
Q Could you tell if he was black, white, Hispanic, something?
A I couldn't tell what color he was.
Q But you pointed out somebody coming out of the cut

through there?
A Yes, sir.
Q What happened next?
A I stopped in front of -- I stopped in front of the church and Lank and Purp got out of the car.
Q So Lank and Purp, Purp being Mr. Settles, got out of the car?
A Yes, sir.
Q Did anybody get out of the car -- what did they get out of the car with?
A Lank didn't get out of the car with nothing and Purp got out of the car with a gun.
Q What kind of gun was it?
A A black 40.
Q How did you know -- it was a black 40 what?
A Sir?
Q What kind of gun was it besides a 40 caliber black gun? Do you know what make it was?
A It was a Glock 23.
Q Forty caliber?
A Yes, sir.
Q How did you know he had a Glock 40 on him?
A Because I seen it before.
Q Had he had it before?
A Yes, sir.

Q So you knew from hanging out with him that he had a gun?
A Yes, sir.
Q After they got out of the car what did they do, or could you see anything else?
A After they got out of the car I couldn't see nothing else. Me and Bryson kept going up and turned back on Taggart Street.
Q Where were you all going now?
A We were going to the dirt to get a cigarette.
Q When they got out of the car, Settles and Markece Moore, who -- what was the plan, or who knew what was about to happen?
A The plan was to rob somebody when they got out of the car.
Q Was that the reason why they got out of the car?
A Yes, sir.
Q Then the guy walking down Franklin Street, he was the one going to be targeted to get robbed?
A Yes, sir.
Q As you're driving away did you hear anything?
A When I -- like when I turned and going back, like I'm going to go back on Taggart, I heard some gunshots. And then Preacher D stopped me and told me he heard some gunshots and take him home. So I started letting him in.

And then went to the dirt to get a cigarette.
Q Where's the dirt on this map? Can you tell me?
A The dirt is right here.
Q And the dirt, you got a cigarette there?
A Yeah. And when Bryson come back on the dirt, Markece came running and jumped in the car right there.
Q Markece jumped back in the car with you?
A Yes, sir.
Q What happened next?
A He said -- he said Purp had shot the Mexican and he took off running and heard more gunshots.
Q Did Purp ever get back in the car with you?
A Yes, sir. When we left -- we left -- we left the dirt we kept straight. Stopped at the stop sign and went back over to Tagg, and right about in this area Purp jumped back in the car.
Q So almost getting back to the house you all originated from --
A Yes, sir.
Q -- he jumped back in the car? Did Purp saying anything when he got back in the car?
A He said he shot him.
Q Purp told you he shot him?
A Yes, sir.
Q Who did he say he shot? Black guy, white guy, Hispanic

guy?

A He didn't say. He just said he shot him. He just said -- and he said the reason he shot him because -- because he tried to grab the gun.

Q Tried to grab the gun from Purp?

A Yes, sir.

Q Taggart, New Market, Millwee and Franklin Street, that's all in what city? Is that all here in Greenwood?

A Yes, sir.

Q After Settles got back in the car with you, or which you call him Purp, did you see the gun again?

A Yes. I still seen the gun.

Q Where did he have the gun?

A On his waist.

Q On his waist?

A Yes, sir.

Q When you all got back to the house what happened?

A He put -- he put the gun on the floor of my car and then went and burned a shirt.

Q Where did he burn a shirt?

A In a barrel.

Q Why do you think he did that?

A I don't know why he did it.

Q After he put the gun back in the car what did you all do during this time at [redacted] ?

A We went back in there and stayed in there for a while, and then we left.
Q Who all left?
A Me and -- me and Purp left, because I was taking him home.
Q And where was the gun during this time?
A He picked it back up and it was on him.
Q Put it back in his waistband?
A Yes, sir.
MR. BROWN: You can go back.
(Whereupon, the witness returned to the witness stand.)
Q Mr. Patton, do you know what happened to that gun?
A He sold it to someone.
Q How do you know he sold it to somebody?
A Because he said he sold it to someone.
Q Purp said he sold it to somebody?
A Yes, sir.
Q Is there any doubt in your mind who had that gun that night?
A No, sir.
Q Based on your testimony here today, you admit that you pointed out the Mexican walking down Franklin, right?
A Yes, sir.
Q There's a guy we can hit a lick on?
A Yes, sir.

Q And Settles and Moore got out of the car?
A Yes, sir.
Q And Settles told you he killed the guy?
A Yes.
Q And you've already pointed out Mr. Settles before. Is Mr. Settles the one in the white shirt and blue tie, he told you he killed a Hispanic -- the Mexican --
A Yes, sir.
Q -- or the Guatemalan that night? Mr. Patton, have you been promised anything to give your testimony here today?
A No, sir.
Q Have you been coerced in any fashion to give your testimony here today?
A No, sir.
Q And you take responsibility that you did point out Mr. Prudencio Sis as the one to hit a lick on, right?
A Yes, sir.
MR. BROWN: Beg the Court's indulgence.
THE COURT: Yes, sir.
MR. BROWN: No further questions at this time.
THE COURT: Cross.
MR. TINSLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. TINSLEY:
Q Mr. Patton, where did you first see Mr. Settles that

night?
A We was on Taggart Street.
Q Isn't it true you picked him up at his Aunt Shea's house?
A No.
Q You didn't?
A I didn't pick him up from no one.
Q Hadn't you been calling him that night over at her place to pick him up, or meet him or whatever?
A I called him. I called him that night. But I did not pick him up.
Q What are you charged with?
A The same thing he's charged with.
Q So you basically have testified that you were the driver and you were a participant in this plan; is that right?
A Yes, sir.
Q And that Mr. -- Mr. Moore, Mr. Markece Moore, was several years older than you all?
A Yes, sir.
Q That you were -- you're out of jail now, aren't you?
A Yes, sir.
Q But you were in jail for a good while. How long were you in jail?
A I don't remember the exact time, but I was in over nine

months.

Q You were over in B section?

A I was on B and then I was on G, and back to B.

Q And you were in the same section with Markece Moore, weren't you?

A Yes, sir.

Q And, Mr. Patton, didn't you give some different statements at first to the police than what you're saying here today?

A Yes, sir.

Q What did you -- what did you say at first?

A I said the same thing. I just didn't say everything.

Q Oh, really? Isn't it true that you said at first you didn't have anything to do with it? All you done is given somebody a ride?

A Yes, sir.

Q And then later on you -- when you found out how much trouble you were in and pressured you to change your story to this; is that right?

A To the right story.

Q To the right story. Well, you don't know who killed the Guatemalan, do you? I mean, you didn't see it?

A I did not see it. I'm just going by what the person telling me.

Q You was the driver, right?

A Yeah.
Q Well, what was Bryson doing?
A Bryson was in the car, too.
Q He was with you. So he didn't see it either, did he?
A No, sir.
Q Who spotted the Guatemalan originally?
A I did.
Q You did. And isn't it true that the original lick supposedly wasn't on the Guatemalan but it was on the car on the side of the road with the flat tire; is that right?
A That's right.
Q So you verified that clearly and it was clear to everybody in your car; is that right?
A Yes, sir.
Q So when the Solicitor asked you, you hadn't been made any promises or anything like that, you're certainly hoping your testimony will benefit your sentence; is that correct?
A Actually, my testimony is for the right thing to do.
Q Oh, the right thing to do. So if you got -- if you went to prison for murder that would be okay, too, right?
A I mean, I don't want to, but I'm just trying to do the right thing.
Q Yeah. You didn't do the right thing that night, did you?
A No, I did not.

Q Uh-huh. And earlier in the evening -- I'm trying to establish that originally it was you, Markece and Bryson that were together; is that true?

A It was me, Markece, and Bryson, and Black.

Q Oh, and Black.

A Black was -- Black walked up with Bryson.

Q And then later on it you all --

A Later on it was just us four.

Q But originally it was that four. What happened to Black?

A Black just left.

Q Who is he?

A Somebody that be in the neighborhood.

Q You can't give me his name?

A I don't know his real name.

Q You don't know --

A That's what he go by is Black.

Q Just goes by Black. And he goes by Black, but isn't he the one that came over and did an original lick that didn't work out?

A Yes, sir.

Q But he left after that; is that correct?

A I didn't see him.

Q And then you let Markece and Mr. Settles out and you drove off, correct?

A Yes, sir.
Q And that was the end of your observation, correct?
A Yes, sir.
Q Where did you pick up Markece that night? Just clarify that. Was it at the dirt on Taggart?
A Yes, sir.
MR. TINSLEY: Okay. Thank you.

REDIRECT EXAMINATION

BY MR. BROWN:
Q Just to clarify that. Picked up Markece on Taggart which is the dirt --
A Yes, sir.
Q -- that night after --
A After everything -- after the shooting.
Q After the shooting. So he jumped in the car?
A He jumped in the car in the dirt after the shooting.
Q And then Settles jumped in the car on Taggart?
A On Taggart.
Q After the shooting?
A After the shooting.
Q And before you all even left that house that night you mentioned Black being there, Bryson being there, Markece being there, you being there. Mr. Settles was there, too, wasn't he?
A Yes, sir.

Q Then when you decided to actually go hit a lick Black, he walked on off. He didn't go with you, right?
A Yes, sir.
Q The four of you all got in the car?
A Yes, sir.
Q Only one of you had a gun, right?
A Yes, sir.
Q Who had the gun?
A Purp.
Q And Purp is the one that told you he shot the Hispanic?
A Yes, sir.

MR. BROWN: No further questions.

THE COURT: Thank you, sir. You can step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Call your next witness.

MR. TINSLEY: I had one --

THE COURT: I'm sorry. I'm sorry. I was -- have a seat again, please again. Go ahead, Mr. Tinsley.

(Whereupon, the witness returned to the witness stand.)

RECROSS-EXAMINATION

BY MR. TINSLEY:

Q But isn't it true that you all backed up to pick Mr. Settles up?
A Sir?

Q Isn't it true that you backed up to pick Mr. Settles up?
A And Markece.
Q So it wouldn't be true that Markece was never running away from this scene over to his apartment?
A Could you state that again?
Q Well, it's gotten complicated from the prior witness's testimony. But as far as you know, he didn't just go over to his apartment? But he ran back and got in the car with you, right?
MR. BROWN: Judge, that calls for speculation there.
THE COURT: I'm going to sustain on the form of the question. Why don't you break that up into a couple of parts, Mr. Tinsley.
Q After the shooting.
A After the shooting.
Q What did Markece do?
A Markece ran to my car in the dirt.
MR. TINSLEY: Thank you.
THE COURT: Thank you. You can step down, sir.
(Whereupon, the witness stepped down from the witness stand.)
THE COURT: Call your next witness.
MS. WHITE: The State calls Bryson Jefferson.
BRYSON JEFFERSON, having first been

duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q If you could tell us your name for the record.

A Bryson Jefferson.

Q How old are you, Mr. Jefferson?

A Sixteen.

Q And how old were you back on May 30th, 2013?

A Fourteen, 15.

Q Where do you live now?

A Hallmark.

Q And who lives there with you?

A My mom.

THE COURT: If you could, sir, just -- if you'd maybe lean up a -- lean in a little bit so that we can be sure that everybody can hear you. Go ahead, Ms. White. Sorry.

Q Are you going to school anywhere right now, Bryson?

A Yeah.

Q You are? Where are you going?

A Genesis.

Q Do you have any kids?

A One.

Q Hold old? Boy, girl?

A Girl.

Q How old is she?

A One years old.
Q Do you take care of her a lot?
A (Nonverbal answer.)
Q Do you know -- first of all, do you know somebody by the name of Tavarious Settles?
A Yeah.
Q Is he here today?
A Yeah.
Q Can you point him out for me?
A (Witness points at Defendant.)
Q Are you talking about --
THE COURT: What is he wearing, sir?
THE WITNESS: A white shirt.
Q And kind of a blue or black tie?
A Yeah.
Q How long have you known Mr. Settles?
A A couple of years.
Q And do you know two other guys, Michael Patton and Markece Moore?
A Yeah.
Q Do you remember May 30th, 2013, were you hanging out with those guys?
A Yeah.
Q And where were you all hanging out?
A Taggart Street.

Q And about what time of day was this?
A I can't tell you. I really don't know.
Q Well, was it later in the day, getting towards dark? Was it --
A Yeah, getting dark.
Q Do you know whereabouts on Taggart Street you all were?
A Taggart Street.
Q I'm going to show you what we've marked as State's ID 2.

MS. WHITE: Judge, if I could have the witness step down.

THE COURT: Please.

(Whereupon, the witness stepped down from the witness stand and approached a map.)

Q Since you're not on the microphone make sure you speak up so everybody can hear you. Can you point out on this map where you all were at that day?
A Right there.
Q That's at [redacted]?
A Uh-huh.
Q Did you all ever leave that location?
A Yeah.
Q And who all was with you when you left?
A Me, Mike, Markece and Purp.
Q And Purp? Is that -- is Purp another name for Mr.

Settles?

A Yeah.

Q Who's car did you all get in at [redacted]?

A Mike.

Q When you say Mike, are you talking about Michael Patton?

A Yeah.

Q And where did you all go from [redacted]?

A Taggart Street and we went down New Market and turned on Millwee Street.

Q When you turned on Millwee what happened then?

A They got out right there.

Q Did you -- did anybody say anything -- well, first, when you say they got out who were you talking about?

A Markece and Settles.

Q Markece and Settles?

A Yeah.

Q And did anybody say anything before they got out?

A I don't think. Not that I know of.

Q Did you know if either one of them had a gun when they got out?

A I seen one earlier, but I don't know if he had it on him while he was in the car.

Q Who did you see with a gun earlier?

A Settles.

Q You said Settles?
A Yeah.
Q So they got out of the car. And what happened after that?
A Me and Mike drove off and came down to the dirt to get two cigarettes.
Q And the dirt is where? Down here somewhere? Is that --
A Yeah.
Q -- I guess, maybe 802 Taggart? You went there to get some cigarettes. Is that -- what is the dirt? We keep hearing a lot about it.
A It's a place where they sell cigarettes and cigars.
Q So you got some cigarettes at the dirt, and what happened after that?
A We went back up Taggart Street and went to my brother's house.
Q When you were going back up Taggart Street did you all see Mr. Moore and Mr. Settles again?
A Yeah.
Q Who came up first?
A Moore.
Q And did he come running up, walking up?
A He was walking.
Q Do you remember about where he got in the car?

A We was right there and like he just came walking and got in the car.
Q Can you speak up a little bit?
A He came walking and got in the car.
Q Did he say anything when he got in the car?
A Not until we got up there.
Q Was anybody else in the car with you all besides --
A I can't remember.
THE COURT: Would you ask him just to speak up a tad more, please.
Q Just speak up just a little bit more. You can't remember if anybody else was in the car?
A (Nonverbal response.)
Q Okay. And did Mr. Settles come back up and join you all?
A Yeah, he came back.
Q Do you remember about where you all were when he came back?
A Taggart.
Q Did either one of them say anything about a shooting that had happened?
A Markece was just talking about washing off the leaves. That's it.
Q Markece was talking about that. What about Mr. Settles, what did he have to say?

A Nothing.
Q Did he say anything about burning a shirt?
A Not that I know of. Well, yeah, but I didn't see him burn the shirt.
MS. WHITE: Okay. I'm going to let you go back up there.
(Whereupon, the witness returned to the witness stand.)
Q The gun that you said you'd seen with Settles earlier in the day, do you remember what kind of gun that was?
A No, ma'am.
Q And did he say anything to you about having shot anyone?
A No, ma'am.
Q Do you remember giving a statement to a detective with the Greenwood police?
A Yes, ma'am.
Q And do you remember telling them that Mr. Settles had a black Glock 40?
A I remember it being black, but I don't -- yeah.
Q Do you remember in your statement to the police telling them that Purp said he shot a Mexican?
MR. TINSLEY: Leading.
THE COURT: Hold on one second. Are you referring to the statement at this point in time, Ms. White, or --
MS. WHITE: Yes, sir.

THE COURT: All right. Why don't we handle it the normal way. Show him the statement or, if he has difficulty reading it, you can read it to him. But let's find out what he agrees with and what he doesn't as far the prior statement.

MS. WHITE: It's actually a recording.

THE COURT: Oh, okay. In that case, go ahead. Do it the way you were doing it.

Q Do you remember telling the detective that Purp said he shot the Mexican three to four times?

A Yeah.

Q And do you remember Purp saying that?

A Yeah.

Q Mr. Jefferson, are you nervous here today?

A Yeah.

Q And was Mr. Settles somebody that you considered to be a friend?

A Yeah.

Q Is it hard to get up here and tell on him, for lack of a better word?

A Yeah.

Q Now, do you remember what -- how Mr. Settles had his hair fixed at the time?

A No, ma'am.

Q And you're not charged in connection with this, are

you?
A No, ma'am.
Q Did anybody make you any promises or say we won't charge you if tell us what happened, anything like that?
A No, ma'am.
Q And just kind of in general. We keep saying -- people keep saying we're going to hit a lick. What is a lick?
A Something that -- I can't really explain it. It's -- it's hard to explain.
Q Is it like you're going to rob somebody or --
A Basically, yeah.
Q -- steal from somebody?
A Yeah.
MS. WHITE: Beg the Court's indulgence.
THE COURT: Yes, ma'am.
Q Did you ever see Mr. Moore with a gun that night?
A No, ma'am.
Q Did anyone say that Mr. Moore had shot anyone?
A No, ma'am.
MS. WHITE: Please answer any questions Mr. Tinsley has.
THE COURT: Mr. Tinsley.

CROSS-EXAMINATION

BY MR. TINSLEY:
Q But you are friends with Mr. Patton and --

A Yes, sir.
Q -- Mr. Moore, right?
A Yes, sir.
Q And about this Little Black. If you --
A Black.
Q Little Black. Did you see him that night?
A Yeah.
Q Isn't he the one that kind of got you all started thinking in these terms?
A No.
Q He didn't come up to the car and say we got a lick down here?
A I wasn't around when he said that. He probably did.
Q You weren't?
A I wasn't around.
Q Okay. Did you ride with Mr. Patton the entire evening?
A The entire -- yeah.
Q Not all night, but during this period?
A Yes, sir.
Q Did you pick Mr. Settles up from the cut or did you pick him up from Ms. Shea's?
A I can't remember. All I know is we just went by dirt to get some cigarettes and Markece got in the car. I can't remember where we picked him up from.
Q Before everything.

A Before everything?
Q Yeah.
A We was on Taggart Street.
Q But where was Mr. Settles?
A We was on Taggart Street.
Q Where did you pick him up? Where did Mike pick him up?
A We was all on Taggart Street. That's what I'm trying to tell you.
Q What about his Aunt Shea Higgins' apartment?
A I don't know nothing about that.
Q You weren't in on that. At what point did you get in the car?
A We was on Taggart Street and I ask Mike can he take me home. And that's when I had got in the car. And that's when we drove off and turned off on Millwee Street.
Q And ran into these other guys or whatever?
A What other guys?
Q Mike and --
A I was already in the car with them when we was on Taggart Street.
Q I mean, Markece and --
A He was in the car, too. We was out on Taggart Street.
Q So you don't remember, or you didn't see -- I'm a little confused on this.
A You got me confused, too.

Q Sorry. I don't mean to. Mr. Little Black. Back up a second. You never saw him come up?
A We was walking up the street together, when I come from my brother's house.
Q Okay. Now I got you. We got it straight. That's what I wanted to hear. So you and Mr. Little Black were going up the street together. And what happened next?
A That's when I saw Mike and them over there and I asked him would he take me home and he said yeah, he will.
Q What about Mr. Little Black? What did he --
A He came over there, too. We was chillin over there. But all I know, after about -- when he asked him about something -- I don't know.
Q He just walked off or something?
A Yeah. He just came over there. We both walked over there. But I asked Mike would he take me home. I don't know what he did after that.
Q And you mentioned a lick and a definition of a lick.
A I didn't mention that.
Q It could be anything almost imaginable, like picking a drunk's pocket or something, or scooping some money out of the pot at a poker game or whatever, or a robbery, or beating somebody down; is that right?
A Not beating somebody down. But the other stuff, yeah, pretty much.

Q Okay. I was just trying to get a feel for it myself what it exactly meant. But how you doing in school?
A Good.
Q Good. Back on the right track?
A Trying to get back to my regular school.
Q Good. Good. Staying out of trouble now. And you don't -- you didn't get any charges out of this?
A No, sir.
Q And so, you did discuss your testimony during a series of giving your statements and all that, right?
A Huh? Say that again, please.
Q During the series of giving your statements and things like that --
A Uh-huh.
Q -- you discussed your testimony --
A Yeah.
Q -- prior to coming to court?
A Yeah.
Q One last question. After the shooting, when did Markese get back in the car?
A When we was at the dirt.
MR. TINSLEY: Thank you.
MS. WHITE: No, sir.
THE COURT: Thank you, sir. You can step down.
(Whereupon, the witness steps down from the witness

as a court reporter for the State. So she is simply observing here today. But we are still in the State's case and chief on the *State vs. Tavarious Settles*. And at this point, Solicitor, if you'll call your next witness, please.

MS. WHITE: Thank you, Your Honor. The State calls Jerry Turner.

JERRY TURNER, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q Mr. Turner, if you could tell us your name for the record.

A Jerry Wayne Turner.

Q And where do you live, Mr. Turner?

A [redacted].

Q Who lives there with you?

A My wife, Brenda -- my wife, Brenda Turner.

Q Do you remember the evening, the night of May 30th, 2013?

A Somewhat. Yeah.

Q Do you remember a shooting that happened near your house that night?

A Yes.

Q About -- what were you doing that night?

A I was standing out by my green trash can smoking a

cigarette facing kind of like -- you know, like facing the front door of where the church is over there. And I seen two guys, you know, with their - shirts up. And one tall, one short. About a little shorter than me. The tall one -- well, I couldn't see either one of them's faces but I did -- the tall one had a white t-shirt drooped over his -- like the neck part over his head, and the short guy, he had like short twists.

Q Like little dreadlocks kind of, but --

A Yeah, something like a little -- kind of like Shirley Temple like twists.

Q And the tall guy, his shirt was kind of -- like the neck was kind of around his hairline like that?

A Yeah, the neck was over his head.

Q What did the two guys do?

A Well, when I seen them I didn't know that they seen me or not, but the way I see they acted, I assume they seen me. Because the tall guy did his shoulders, you know, in a manner that I didn't think nobody would be just walking and acting. I said -- oh. I said to myself, I believe they seen me. And the way I seen them act, that wasn't no friendly gesture. I assumed something was up.

Q So the way they were acting was making you uneasy?

A Very uneasy.

Q What did you do next?

A I start backing up hoping -- first I start they seen me. Obviously they must didn't. Then I looked and I seen a guy come like where you come from the apartments behind my house, and I seen the guy walking down the pathway there. So obviously they must didn't see me. Cause I first thought they were coming to me and I'm trying to get back in my house in the backdoor. And I heard them when they say -- you want me to tell you what I heard them say?

Q Yeah. Tell me what you heard him say.

A The exact words?

Q Yes, sir. Exactly what -- begging everybody's pardon, tell them exactly what you heard.

A "We got you now, Mother f-er." And I heard the guy -- don't know who he was. I heard the guy say, "No, no, no, no." And did his hands like that. (GESTURES WITH HANDS) And then I seen the guy put his hands up -- I'm trying to get in my back door. When he said, "No, no, no, no." And then he did his hands like he was going to reach for his pocketbook. I don't know what -- I was trying to get back in the house. And that's when he said, "I got you." And by the time I got my backdoor open I'm backing up like I'm hoping they didn't see me. And I heard pop, pop, and that's when I called 9-1-1. I said, "Somebody done shot him by my house."

Q From where you were could you see which one had the

gun, if it was the taller one or the shorter one?

A From the way -- from the way I'm backing up, cause they like walking side by side like twins. You know, moving together. Way they was walking. It looked to me like the short guy had the gun.

Q And the short guy was the one that was --

A With the twist hair.

Q And I'm just going to get you to point out on the map kind of where you were.

MS. WHITE: Your Honor, if I could have the witness step down.

THE COURT: Please.

(Whereupon, the witness stepped down from the witness stand.)

Q And, Mr. Turner, just remember to speak up because you're not going to have that microphone down here. Is this your house right here? A picture of the front of it?

A Yeah, that's the front right there.

Q Let me get you to turn a little bit so the jury can kind of see. There you go. And your house is situated --

A [redacted].

Q Right here (indicating)?

A Yeah, that's my house.

Q And where -- you said you were standing where when you first noticed the guys?

A I was in back of my -- I was in the back of my house. That's the back right there.
Q So kind of right here maybe (indicating).
A By the back door.
Q And where did you see -- the guy who got shot, where did you see him first?
A As I was backing up? Obviously they must didn't see me, because I thought they had seen me first. So I was backing up. Now, -- can I say it again?
Q Yeah.
A "We got you now, MF." He said, "No, no, no, no." I seen him raise his hand. And I'm trying to get in my back door. And I seen something shining, but both of the guys standing, you know, close together. It appeared to me like the short guy had the gun.
Q And that was kind of in this area right here?
A Where the path is?
Q Yeah.
A Where most people walk in the morning back and forth? That's on up above past where I have my dog's house at. Where the trees at. And the short guy was there -- like I didn't know he come from the apartments or what, but I know that's the way he came.
Q Did you see which way the guys ran off?
A When I looked they was going up through by the

apartments.

Q And when you say the apartments are you talking about these right here (indicating) on New Market Street?

A Yeah. The apartments straight across from the Greenwood Packing Plant.

MS. WHITE: You can sit back up there.

(Whereupon, the witness returns to the witness stand.)

MS. WHITE: Mr. Turner, please answer any questions Mr. Tinsley has for you.

THE COURT: Mr. Tinsley.

CROSS-EXAMINATION

BY MR. TINSLEY:

Q Good morning, Mr Turner, how are you?

A Good morning.

Q Good. I've got some pictures here I want to show you and see if you can identify these areas that the pictures depict. And let's start with this one with the white car. What does that show you? Where is that? If you know.

A Talking about this picture here?

Q Yeah.

A That's my backyard right there.

Q That's your back yard?

A Yeah, that's my backyard.

Q That's your backyard. So where did this happen in relation to this picture?

A That's where the path right there where the guy was walking down.
Q Now, it shows a lot of growth between your backyard and the picture -- and the path back there, right?
A There be some, yeah. Yeah, there's some trees back there.
MR. TINSLEY: Your Honor, I'd ask to publish this picture.
MS. WHITE: Your Honor, it's not marked or in evidence.
THE COURT: Let's go ahead and --
MR. TINSLEY: Enter it as an exhibit.
THE COURT: Any objection to it?
MS. WHITE: No objection.
MR. TINSLEY: Exhibit 1.
THE COURT: That will be Defendant's 1 in evidence.
(Whereupon, Defendant's Exhibit No. 1 was admitted into evidence.)
MR. TINSLEY: Thank you, Solicitor.
Q Now, Mr. Turner, can you see the picture from there or do you need to get down?
A It would be better if I did.
Q Okay. You can come down here where I am.
(Whereupon, the witness stepped down from the witness stand and approached photograph.)
Q We're talking about May the 30th of 2013, and your

house is where in relation to that white car? Which way? Through them bushes?

A Yeah. Well, where my house sit at, yeah, that's where -- from the angle. But that's a church.

Q Well, come on over here to the machine. On May the 30th would it be fair to say that the bushes had filled out and grown pretty well at that time of year, the day before June?

A No thicker than what it is now.

Q About like that?

A Somewhat, because I had a dog pen out there.

Q You had a dog pen?

A Uh-huh. In that corner right there.

Q Right there in that corner.

A Yeah.

Q Where was the body of the deceased?

A When I came back outside now, when I came at the end of the road, it was laying about -- see where the little white thing is right there?

Q Yeah, but -- and that -- that's not -- what's that up to the right. What building is that up to the right?

A That's the church.

Q That's the Masonic Lodge you mentioned?

A That's the Masonic Lodge on back in the hole.

Q Well, I can barely see -- I see the image of your house

through those trees but that's all I can really see.
A That's my backyard. There at that pecan tree.
Q Were they standing there at the time?
A Who?
Q Those trees?
A That pecan tree was.
Q Obviously those trees are fully -- you know, they've been there a while, because they're fully grown, right?
A No. Those trees wasn't there for a while, because I had did some pruning and shearing, and I just kept enough shade like when it was getting hot so my dog wouldn't be in the sun so much.
Q Well, the trees themselves are trees with age; is that correct?
A The tree you're looking at, what you're trying to show me right there?
Q Right.
A Them trees hanging over the road -- out there in the road.
Q That's right. But isn't that a direct path of vision from your backyard to the incident location?
A I don't know if you have a picture of --
Q Yeah, I've got some more pictures here.
A Okay. Now, there go the back of my house.
Q Okay. We'll get to that in a minute. So that shows

your backyard --

A And most of the road, yeah.

Q -- and the road and where the deceased was -- and your house is on up there in the trees; is that right?

A Or further back, yeah.

Q Up through here?

A Uh-huh.

Q All right. Stay right here.

MR. TINSLEY: Mark this as Exhibit 2. Defendant's Exhibit 2. Without objection, Your Honor.

THE COURT: Defendant's 2 is in evidence without objection.

(Whereupon, Defendant's Exhibit No. 2 was admitted into evidence.)

Q Let's look at this picture. Now, we see the back of your house; is that correct?

A Or it's the side.

Q It's the side?

A Uh-huh.

Q Which way is the front, Mr. Turner?

A The front? The front of my house right there on Millwee Street.

Q You can point at it on the picture.

A This like when you come to my driveway right here. You see the little white like a thing you can sit a potted

plant, little white thing right there.
Q Right.
A That's where my backdoor is on up in there.
Q So it's kind of the back, but your house sits at an angle a little bit?
A Yeah. That's my den part. That's my den right here.
Q Okay. Now, that would show -- you've identified earlier that the body was down in here somewhere, across the street though; is that right?
A Well, I didn't -- I didn't know where the body was until I had came back outside.
Q Right. You didn't see the body until you exited your house, correct?
A I was backing up going into my house and I heard the shot, and I called 911 and said somebody was shooting out here.
Q You keep saying you heard the shot. You were in fear. You were kind of scared for yourself, so you -- you were turning into your house, right?
A I was backing. I was backing like this here looking. I was scared they seen me.
Q But when you realized they didn't see you, you went in your house, right?
A Yeah. Because I didn't have my phone in my pocket at the time. I got my telephone and I said somebody shot

somebody out here.

Q What else does this picture show, if any?

A Well, where you're pointing at right now, my dog pen sit over there on the opposite side of those trees. Right here where I rake my leaves and put trash out at. That path -- I don't see the path now. That path what you talking about where everybody walk in the morning time and come down. That's a little bit over here further to the grass. It's not a path right there.

Q Maybe it'll show up in one of these other pictures.

A You just showed the path on that first picture.

Q You want to look at it again? You think maybe one of these others will show it? You want to wait and see?

A No. I seen the path on one of them pictures you had.

Q I'll show it again.

THE COURT: That's Defendant's 1 that you're showing him?

MR. TINSLEY: That's correct, Your Honor. He wanted to identify a path.

Q And that path goes where?

A You can walk to the apartments. That's where the apartments right there. I guess you can go on to Greenwood Packing Plant.

Q Or you can go to the lodge, right?

A Well, you keep straight down the street you can go to

the lodge.
Q It goes further --
A And that's a dead end I can get to the lodge. There's a dead end. There's a fence there, for those other apartments up there.
Q Okay. But nothing happened up there during the incident, right?
A Not as I know of.
MR. TINSLEY: Your Honor, this is Defendant's Exhibit 3.
THE COURT: Any objection?
MS. WHITE: No objection.
THE COURT: Defendant's 3 is in evidence.
(Whereupon, Defendant's Exhibit No. 3 was admitted into evidence.)
Q Now, let's look at this picture, Mr. Turner.
THE COURT: And that's Defendant's 3.
JUROR: You got it upside down.
THE COURT: Flip it.
Q What's that show, Mr. Turner?
A That's the church across in front of my house. On the opposite of it.
Q Opposite side. Does that show where the incident location that you described happened maybe?
A No.

Q It doesn't?
A I was at my green trash can smoking me a cigarette. When I did spot the two guys they were right there on this corner right here.
Q Well, it did show something then. They were right at that corner. Which way did they go?
A They were -- that's why I said I thought they were coming towards me. When they -- where the tall guy did like this here --
Q Yeah.
A -- had the tee shirt on. I said these guys ain't up to no good the way they body language speaking to me, so I'm backing up thinking they done spotted me. See, I must have got -- obviously didn't focus on me enough because they must have spotted the other guy walking down through the path. They say, "We got you now you MFer."
Q So he was on the path?
A I already said he was walking down the path.
Q Well, isn't the path behind your house?
A No. The path --
Q Beside?
A You can see the path when you go out my backdoor. That's where my car.
Q That's what I'm talking about.
A Yes, sir.

Q We're in agreement. Anything else on that picture?
A No. That's all.
Q Okay. That's all.
MR. TINSLEY: I'm giving these three back.
THE COURT: Ms. White. And that's Defendant's 4 that you're showing?
MR. TINSLEY: Defendant's No. 4.
THE COURT: No objection?
MS. WHITE: Without objection.
THE COURT: That is in evidence as well.
(Whereupon, Defendant's Exhibit No. 4 was admitted into evidence.)
Q What's that show, Mr. Turner?
A That's the side of the church.
Q What does it show in relation to this case? Anything?
A No, because they didn't come -- they came from the other way there.
Q Oh, but it does show that?
A Yeah, around the church.
Q They came around the church.
A Uh-huh.
Q Now, where would your house sit in relation to that church?
A Right across the street from the church.
Q Over here?

A This right here, it's facing my driveway.
Q Okay. That's all on that.
THE COURT: I assume that's Defendant's 5, Mr. Tinsley?
MR. TINSLEY: Defendant's Exhibit No. 5 without exception.
THE COURT: Without objection, Defendant's 5 is in evidence.
(Whereupon, Defendant's Exhibit No. 5 was admitted into evidence.)
Q Okay, Mr. Turner. I hate to belabor these points, but Number 5. What's that show? What's that red building over there to the left?
A That's my house.
Q That's what I thought. That's your house. You say the boys were over here.
A No, I didn't say that.
Q Well, did you say it?
A No. I said they were coming -- where the front of the church at, on that corner they were walking down. I ain't said on the side of the church. They came down the way you come from -- like you coming where the guy got the got the clothes store right there?
Q Right.
A When I spotted them they was at the corner.
Q And what time of day was it?

A It was at night.
Q It was nighttime. Anything else on this picture?
A No.
MR. TINSLEY: I'm offering Defendant's Exhibit No. 6 without objection.
THE COURT: Defendant's 6 is in evidence without objection.
(Whereupon, Defendant's Exhibit No. 6 was admitted into evidence.)
Q Mr. Turner, that's your house, right?
A Yeah, that's my house. Uh-huh.
Q And where did your trash can sit?
A That's my vehicle right there. My Trailblazer.
Q Yeah.
A My trash can sitting by the fence left of the driveway. My dog pen sit -- these bushes at right here. Where the tree at over there on the side.
Q Did your dog die or did you lose your dog? What happened to your dog?
A What happened to my dog?
Q Yeah. Is your dog in any of these pictures? You still got it?
A No. The dog I had, Lucky, was a pit bull. On New Year's somebody got looking and snatched him up from me.
Q Stole him from you? Stole your dog.

A Yeah.
Q That made you mad, didn't it? Broke your heart, didn't it?
A Yeah.
Q That was a bad thing to do, wasn't it?
A Yeah.
Q That's some pretty thick bushes you're looking through there a little bit at nighttime. How far is it from your trash can to the incident location about?
A I'm guessing about where I'm standing --
Q To the door?
A The door, about the end of the rows.
Q The end of the wall back there?
A Past the wall.
Q Past the wall?
A Yeah, it'll be -- it's a little bit out of the door.
Q To the end of the road; is that right, about?
A Yeah, about.
Q So you're looking in the dark through the bushes and you see these two guys and you're backing up into your house?
A No. When the guy left the -- when they was at the front of the church --
Q That's when you started backing up to your house?
A When I seen them do like this here, I assumed they seen

me, I started backing up. But I thought they had seen me. I thought, oh-oh, they got me. But they must have spotted the other guy because they went to him. Obviously they didn't see me 'cause they went to the other guy.

Q So you got in your house as fast as you could, didn't you?

A I had got to my backdoor when I heard the shot.

Q You keep saying you heard the shot?

A I heard it.

Q So you didn't see the shot, did you?

A Only thing I seen was something shinny in the guy's hand and the way they were standing close together it looked like the short guy had the gun.

Q But you couldn't say that for sure, could you? Under those circumstances, night, bushes, the distance. It could have been in the tall guy's left hand, right?

A Possible.

Q Anything else on this picture?

MR. TINSLEY: We'll give it to the court reporter. Defendant's Exhibit 7 without objection, Your Honor, is now entered.

THE COURT: No objection, Ms. White?

MS. WHITE: No, sir.

THE COURT: That is in evidence.

(Whereupon, Defendant's Exhibit No. 7 was admitted into

evidence.)

Q What tree is that, Mr. Turner?

A My pecan tree and my clothes line. My clothes line where that pole is you see right there.

Q I see.

A There's a rope wrapped around that tree right there.

Q Is that your dog pen over there in the corner?

A Yeah.

Q So when was your dog -- was he alive at that time, because wouldn't he have been barking and stuff?

A No, somebody had taken him.

Q They had already taken him?

A Uh-huh.

Q So he wasn't alive at the time. So he was kind of your -- not only your buddy, like you said, your best buddy, but he was also kind of your warning and barking and all that; is that right?

A Yeah. Only way he would bark if he knows you. But if he ain't know you he ain't bark at you.

Q Yeah. And that tipped you off that if somebody was up to no good. But he was gone unfortunately?

A Yeah, he was gone.

Q Do you remember approximately when he was stolen, by chance?

A Yeah, it was when all the fireworks was on New Year's.

That night when they were shooting off the fireworks. I wasn't paying attention to it.

Q I see.

A So I assume he was out there with the kind of chain I had on him.

Q So he was probably barking that night but you just didn't hear it because of the fireworks?

A Yeah, I mean, it was some fireworks. You talking about the night when the shooting happened?

Q No. When they stole your dog.

A Oh, no. That night there I didn't hear it, 'cause I know he didn't get off the chain. The kind of chain I had on him.

Q What did they do, take the chain out of the ground?

MS. WHITE: Your Honor, I don't know why we're talking about the dog. Relevance.

MR. TINSLEY: Well, it's tangentially relevant, Your Honor, but I won't go any further with it.

THE COURT: Yeah, I'll let you have -- I'll overrule that if you want to pursue this. Go ahead, Mr. Tinsley, either way.

MR. TINSLEY: I've asked enough about it. I just hate it for Mr. Turner. I'll leave it alone.

Q But anyway, that's the pecan tree. A pretty good shot of the pecan tree, right? That's a big pecan tree.

A That pecan tree does not sit in the way of where my backdoor step at.
Q It doesn't?
A No, it do not.
Q Where does it sit?
A The pecan tree -- like that picture you have of my Trailblazer there, it's more closer to that. And my Trailblazer not in the way of my back door that I couldn't get it up into the yard.
Q And over here?
A Over there, that's across the street over there where those houses at.
Q And where were you in relation to the pecan tree?
A Pecan tree. My Trailblazer sit further up toward the other side of my fence, and my wife's car is on the driver's side. And that's the clothes line. When you go to the clothes line, if you look you can see where my dog house at. There's path is on the other side where you see this up here at? It's on the other side. If you're looking at this picture right here you can see that pecan tree is not in the way of me looking over there.
Q I see. I see. Those other trees were, to some extent anyway.
A You see that right there (indicating)right there?
Q Right.

A That is -- like when you get right there, you get ready to come down the hill and hit the street right there up front --

Q I understand.

A -- you at the end of the road. Now, if you stand there at my backdoor, I'm backing up. You can see there at night, like I told you.

Q That's all.

MS. WHITE: No objection to any of the remaining photographs, Your Honor.

THE COURT: How many do you have there, Mr. Tinsley?

MR. TINSLEY: One is duplicitous, Your Honor, as to the last one. Enter this as Number 8, enter this as Number 9. This is also duplicitous, I believe. These are duplicitous.

THE COURT: So 8 and 9 will be in evidence without objection.

(Whereupon, Defendant's Exhibit Nos. 8 and 9 were admitted into evidence.)

MR. TINSLEY: Thank you so much, Your Honor.

Q Now we're looking at the back of your house; is that right?

A Uh-huh.

THE COURT: That's a yes.

A That might be the side of my house. That's not the back of my house.

Q Well, you tell me. I mean, you live there. I don't. I'm trying to get a little better focus. You tell me what you're looking at?

A That's my carport where a little white thing. Like I telling you, like a monument thing.

Q Right.

A My steps is right there where that white thing you see sitting there. That's my lawnmower sitting up under there. If you're on my backdoor step, and I'm telling you where you see that pole at right there --

Q Right.

A -- if I'm up on my steps, why I can't see over those bushes?

Q I don't know why you can't or not. I'm not saying you can't. I'm just saying it's night.

A I didn't say I see anything - I didn't say I see nobody face or nothing like that. All I say I seen two guys come through there and they demeanor was I thought they had me. But they didn't have me. They got the other guy.

Q Well, you know, that reference you make to that shake - -

A That wasn't no friendly way you do your body.

Q It's funny. I've never seen that. I hope I never do. What is it?

A This here. (INDICATING)

Q Well, I'll get you to describe it back on the stand. Anything else on that one?

THE COURT: Was that Defendant's 9, Mr. Tinsley, that you were --

MR. TINSLEY: That was Defendant's 8. This is 9, Your Honor. I believe I gave you back 7, correct?

Q Now, this may be the best look at the path. Is it?

A Yeah. Yes. But where you're looking where this tree at?

Q Uh-huh.

A That tree -- all the way down. That tree was down here on the fence and I was trying to get the city, make them cut it down, and they finally cut it down. That one the other side of my yard where the tree.

Q Right. Right. Where were they when you first saw them. Does this show it or not?

A That don't show it.

Q It doesn't? What does it show?

A That is the opposite side the street there, over there on the other side of those people coming down Franklin.

Q I got you. I got you. Anything else?

A I can't see all the way up there -- that looks like apartment there. I can't see all the way to the apartment.

Q Go ahead and take -- resume the stand.

(Whereupon, the witness returns to the witness stand.)

MR. TINSLEY: And I'm giving Madam Court Reporter back numbers 8 and 9, Your Honor. And just a few more questions --

THE COURT: Certainly.

MR. TINSLEY: -- Mr. Turner.

Q Did you have your glasses on that night or do you remember?

A No, I ain't have my glasses on.

Q Didn't have them on. And the distance was about out to the rail? You testified, from where we were standing over there.

A Oh, you were asking me a question?

Q Yeah.

A Oh, I didn't -- out that door there, or a little bit out there.

Q Now, you've had cataract surgery, haven't you?

A No. No.

Q You haven't?

A No.

Q But why do you wear the glasses, for cataracts?

A I wear my glasses mostly for something close up on me it got a blur. Mostly for reading. From a distance I can see pretty good, but when it comes close to me it gets blurry.

Q Do you have cataracts?

A Oh, yes.
Q Thank you. And have you had any other kind of surgery?
A I had a -- I had a aneurysm of the brain in '88.
Q Aneurysm of the brain?
A Yes, sir.
Q Well, it obviously hadn't ruined your thinking. But it -- what effects has it caused on you? Put you on disability?
A No, that didn't get me disability.
Q Are you on disability?
A I am now for degenerative disease.
Q Of?
A Degenerative disease of the spine.
Q Oh, I'm sorry, Mr. Turner. But, of course, that aneurysm of the brain didn't help that either. I'm sure it hurt your health substantially; is that right? Did you have surgery?
A Yes, sir. They bored a hole in my skull to relieve the brain -- I mean the clot on the brain.
Q Did they do that in Greenwood or did they do that in Greenville or what?
A Self Regional.
Q They did it here locally?
A Yeah, in 1988.
Q 1988. And you were able to basically overcome that?

A Yes, sir.
Q When did this spinal problem crop up? I hate to ask --
A They -- after two or three MRIs they ran my bones were degenerating.
Q I got a bad back, too. I apologize. I hate to ask you about your health, but it's very relevant to this case, to the accuracies that are required here. So I'm not criticizing you one bit. Do you understand what I'm saying?
A Yes, sir.
Q I'm just trying to get the truth. You talked to my investigator, right?
A Yes, sir.
Q You talked to Madam Clerk -- I mean, Madam Solicitor, haven't you?
A Yes. She didn't ask me these questions.
Q Huh?
A She didn't ask me these questions though.
THE COURT: I didn't understand that.
THE WITNESS: She didn't ask me any questions about my health.
THE COURT: Very good. Yes, sir.
Q Well, everybody asks different questions. I mean, you know, it's -- I guess it's just a function of where you were located on the night in question. See what I'm saying? I mean, like if you had been in the bed asleep in the house it

would be a whole other issue, correct?
A If I would've been sleeping and didn't hear anything it would've been different.
Q That's what I'm talking about.
A Yes, sir.
Q But since you smoked that cigarette you --
A Cigar.
Q Cigar?
A Yeah, I don't smoke cigarettes.
Q Good. I thought you said cigarette. I'm sorry. Well, now, nobody told you what to say, have they?
A No.
Q Certainly none of my people have, and none of --
A No.
Q -- her people have, have they?
A No.
Q Now, when you made the 911 call you didn't say anything about which one was the shooter, right?
A No. I told them somebody had been shot out there and they needed to send somebody on.
Q Well, I just -- one last line of questioning and I'll be through. I'm curious about that tall fellow in the white shirt. Did he wear like a mask?
A I already said he had the -- I already said he had the neck part over his head. It came around over his forehead

where I couldn't see his hair like that. If he had hair or not.

Q Kind of like a mask, or a --

A I wouldn't call it a mask if it's just over your forehead.

Q But it hid the upper half of his head?

A I couldn't see that part.

Q How about the clothing overall of both parties? Could you tell?

A It's been a while now. I think the short man had on shorts.

Q A shirt?

A Shorts. Like shorts you wear.

THE COURT: Short pants.

A The short man had on shorts.

Q And a shirt? He did not have a shirt on his head is what I'm saying?

A No. That's the one I could tell that his hair was twists. Twisted.

Q And he had on a shirt?

A Yeah.

MR. TINSLEY: Beg the Court's indulgence.

Q Lastly, did the deceased come from the back of Franklin Street or from the path?

A Path.

MR. TINSLEY: Thank you, Mr. Turner.

THE COURT: Redirect?

MS. WHITE: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. WHITE:

Q Mr. Turner, if I could get you to step down for just a second.

(Whereupon, the witness stepped down from the witness stand.)

Q I'm going to show you Defendant's Exhibit 3, and I think everybody -- Mr. Tinsley might have been getting confused on who you were saying was where. Who was in front of this church when you first saw them?

A The tall guy and short guy.

Q Was the victim, the guy who got shot, was he ever in front of that church?

A No.

MS. WHITE: That's all the questions I have on that.

(Whereupon, the witness returns to the witness stand.)

Q In all those pictures Mr. Tinsley showed you, those were taken recently, weren't they? That's how it looks today?

A It would have to be recently because I had cleaned out from out there where my dog was. I tried to keep -- after someone had -- since he brought up about the dog, after

someone had stole my other dog. My daughter had brought three little shitzus out there. They was out there, but they wasn't out there at the time he was talking about. He's talking about two years ago.

Q So did it look differently two years ago than it does today?

A Yeah.

Q And from where you were standing on your back porch, or your -- going into your backdoor, you said you were kind of backing up --

A I was backing up.

Q -- to the house. Could you see what you described to us? Could you see two guys approach the third guy?

A I didn't see his face, but I heard what they said. They said, "We got you now, you MF."

Q And, Mr. Turner, did somebody from my office bring you a subpoena to come here today? This gentlemen in the khaki suit right here?

A Yes, he did.

Q You didn't show up volunteering to come tell us what happened?

A No. 'Cause it had been so long I thought it was over with.

MS. WHITE: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

Q And you don't really want to be here today, do you?
A You got that right.
Q And what you're telling the jury, that's what you saw that night?
A Yes, that's what I seen.
MS. WHITE: Thank you, Mr. Turner.
THE WITNESS: Thank you.

RECROSS-EXAMINATION

BY MR. TINSLEY:
Q And that's everything you saw that night; is that correct? But the brushes were thicker back then; is that right? Because you testified you cleared the brushes out?
A Right. And she just told me that the pictures were took recently. And that ain't the way it looked then.
Q How did it look compared to recently?
A Where my dog pen thing was, and you can see right there when somebody fixing to come down the steps of that path. It's like a hill like, but you've got to walk down in order to hit the pavement. From the street there. If you ain't careful you'll fall, 'cause I done fell a couple of times.
Q Well, here's a picture of the trash can.
A That's my trash can.
Q Where were you standing?
A On this side of it. Resting my arms on it.
Q So this really I should enter because it's the best

depiction of where you were standing?

MR. TINSLEY: Any objection?

MS. WHITE: No objection.

THE COURT: That's Defendant's 10 in evidence. And do you want to --

MR. TINSLEY: Without objection.

THE COURT: Without objection. And do you -- ask him that question again if that was the location where he was standing during that night.

Q Can you come down one last time and I'll be through.

(Whereupon, the witness stepped down from the witness stand.)

Q See the trash can?

A Yes, sir. I'm standing on this side right here.

Q Where was the body located?

A When I came back outside --

Q Yeah.

A -- I seen a guy in a truck. Which I didn't know who he was. And he stopped where the body was. I didn't know who he was until he got out of the truck and I see he was the police officer. His body at that time was laying where that pathway like that.

Q He didn't move it, did he?

A No. He didn't move it. It seemed like he checked. I said it's about time the police got here. And I see the

police and I see the ambulance come and more police come.
Q And she asked you a question about being up here voluntarily. But you did your civic duty and you called the police when the incident occurred. So the body was right over here, wasn't it? Right over here?
A No.
Q Where was he?
A He was behind my clothes line.
Q No. I'm talking about beyond that. You tell us where it was.
A That was my dog pen. Dog pen about end out there where the path ran at. Because when I did come back out -- because I wasn't coming back out until after I called in. I seen a truck turn up in there and I didn't know if it the police or what. But I still was peeking because I wasn't coming back out there. But when I did get back out there, when the truck -- I seen where the truck stop there and I see he got out and looked at the body. But the body was laying between the path -- I don't know if you been over there or not or if your investigator where the flowers -- I see the Mexican or whatever it is.
Q Well, this goes right down the path, right? Up through there.
A That part there is bushes, but down at the end of this path is not bushes like what you was talking about.

Q Where you first saw the guys was it bushy?
A No. When I spotted that guy he was almost at the end of the path.
Q Now, I submit to you, Mr. Turner, that the body was lying right over here.
A Well, when I seen the body --
MS. WHITE: Your Honor, I didn't hear a question.
THE COURT: Yeah, Mr. Tinsley, ask him a question. You're not permitted to testify obviously, so if you want to ask him --
Q I asked you, Mr. Turner, was the body in this area?
A I just said when I seen the body it was laying beside the road.
Q Where was the confrontation.
A At the end of the path when he told that guy we got you, MF. We got you now, MF.
Q And what did you tell Mr. Jones about the location of the body?
A Right there where the flowers at. Where you pointing at now is the location. Where you see my dog pen at, the path is right on the opposite side of it.
Q Right. But the first slighting of the two individuals was where again? I'm not quite sure.
A The two guys, when it got like at the high part of the path.

Q Oh, up here? Up here?
A The path a lot higher than when you go down -- come back down on the pavement. The two guys had like this here and say we got you now, MF.
Q So they were up this way going down?
A I didn't say -- I said the guy -- they were still standing there on the road part when they say we got you, MF.
Q Okay. I'm saying before they got down there.
A Before they got down there I thought they seen me and I'm trying to get back in the house.
Q Do you see the man in the picture?
A Who?
Q The man in the picture.
A That my dog pen. How can the man be in the picture if --
Q Look right here, standing there. Do you see the man?
A That a black guy. You talking about the man there or --
Q Do you see the man standing in the picture?
A There's no man standing in there.
Q There's no man in there?
A No.
Q You sure about that?
A There ain't no man standing in that picture.

Q I want you to look again to be sure.
A I'm looking at it. I see the houses. I see my neighbor's BMW -- I mean Volkswagen. Down here at the bottom where I first seen the two guys and the other guy coming down the path. I was looking that way. I wasn't looking back up in the woods.
MR. TINSLEY: That's all, Mr. Turner.

REDIRECT EXAMINATION

BY MS. WHITE:
Q Mr. Turner, I'm asking you again about Defendant's 10 just real briefly. Is this picture -- you weren't standing -- were you standing in exactly this location the entire time?
A When I first spotted them I was standing right here. I can look out -- I can look straight across to that front door of the church where I spotted the guys at. Like I told you, when I see these guys do like this here (indicating), the move didn't look right to me. I started moving back slowly hoping that they don't see me. Obviously they didn't. And then as I'm getting closer to my backdoor they must have spotted the other guy coming down the path and they said we got you now, you MFer. I done made it to my door to get my phone and I called 911.
Q So your view was changing second by second from what's shown exactly in this picture?

A Right. But I'm steady looking hoping they ain't seem me trying to get in my backdoor.

MS. WHITE: Thank you.

THE COURT: Mr. Turner, thank you for coming, sir. You are free to go.

MR. TINSLEY: Thank you, Mr. Turner.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Solicitor, call your next witness, please.

MS. WHITE: The State calls John Dill.

MR. TINSLEY: Your Honor, I will offer a responsive witness to what they -

THE COURT: That's fine. Go ahead. Swear Mr. Dill, please.

JOHN DILL, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q Could you state your name, please.

A John Dill, Jr.

Q Where do you work, Mr. Dill?

A Carolina Pride.

Q And were you working there on May 30th, 2013?

A Yes, ma'am.

Q Do you remember that evening?

A Yeah. We was working and we got off early that night because the trucks -- we got through with our trucks early. It was around 10 after 9:00, close to 9:30. Me and my friend, Kyle, was driving a truck. I was riding with him. We pulled out and made a right on Packer Avenue right there. As we approached there was a white Cadillac, which was our co-worker. We helped him. So we got out. Kyle was helping him change his tire, and it was right near that fire hydrant right there. And up through the woods right there, on the left right there, where the guy was shot up in there or somewhere, they -- it was about probably 20 minutes later we heard some gunshots. So Kyle said, "Darn, that sounds like somebody got shot", because we heard somebody hollering. So about probably roughly five minutes later a guy came out of the woods and approached us and said, "What's up, man", and kept passing us. So another guy come that way, was coming from this way from the woods where the other guy was talking about that just left. But later on, probably about five minutes later, Officer Smith, I think, was -- approached us and asked us something -- he might need a statement. So I told him a few things, gave him a statement and everything, and that was about it.

Q Okay. If I could get you to step down and look at the map. I'm showing you what's been marked for identification as State's Exhibit 2. You said that you all turned right

out of Packer Avenue --
A Yeah.
Q -- onto New Market?
A Uh-huh.
Q Where abouts were you all?
A We was going toward New Haven. There's Millwee. We was about right in here. There's a fire hydrant right there on the right at the corner. Then up in here in is the wooded area where the victim was shot. And then later the guy -- black guy came out of the woods. The one that came out of the woods that had the shorts on, kind of short, and the skinny guy with dreadlocks went that way, and that's when the other guy was coming toward us and said, "What's up, man." That's about all he said. He was coming up towards Packer Avenue towards the Carolina Pride passing. And then he came out of them woods right there and we was on the corner. And that's when the officer approached us and -- coming that way and told us to stay there. He needs to get some information. And we asked us what happened and he said somebody had been shot, or he done something -- told us something that somebody had died. And Kyle said that guy just got shot. He just died. So later I give them my information and Officer Smith, just him, came to my -- called me -- or I called him and told him some information. He met me and I tried to get a lineup and everything and I

really couldn't get a good lineup of who it was. But the guy that came out of the woods, kind of short and stocky with the shorts on, and the other one was a tall skinny guy with dreadlocks.

Q But you couldn't identify -- you didn't get a good enough look at them to identify either one?

A (Shakes head.)

THE COURT: That's a no.

(Whereupon, the witness returns to the witness stand.)

Q And you saw -- were the two guys together when they came out of the woods, or did they come out kind of separate?

A One came out of the woods. The short stocky one that had the shorts on came up towards Carolina Pride, which would have been on his left because he was coming up the sidewalk. The other tall skinny guy with the dreadlocks went to the left, and he passed a car. It was a white Cadillac. We was in a Ford Ranger truck. About a '94. The Cadillac is probably a '91. The white one we helped. But I think the thing was -- they was going to rob us --

MR. TINSLEY: No. No, sir. Your Honor, I object wholeheartedly. I've got a motion on that.

THE COURT: Sustained. Ms. White, go ahead, please.

MS. WHITE: No further questions.

THE COURT: Mr. Tinsley, cross.

(Whereupon, the witness returns to the witness stand.)

THE COURT: We'll go ahead and go back on the record. If we could, let's go ahead and have the jury back out, please.

(Whereupon, the jury entered the courtroom at 10:44 a.m.)

THE COURT: The record should reflect that the jury is back and seated. Ladies and gentlemen of the jury, during the examination of this current witness there were some comments elicited about his concerns that perhaps he was about to be robbed. I'm instructing you ladies and gentlemen to disregard those comments. You should basically purge those from your brain. Essentially those comments were at best speculative and obviously there is to be no prejudice to anyone, certainly not the Defendant because of those comments because obviously they were merely speculative in nature. So I am instructing you to disregard those comments.

At this point, Mr. Tinsley, any cross of Mr. Dill?

CROSS-EXAMINATION

BY MR. TINSLEY:

Q So, Mr. Dill, you say you work at the packing plant?

A Yes, sir.

Q And what's your position?

A I work in the packing cooler on a pallet jack. Work

for Gary Oaks.

Q Who's the director of personnel over there?

A Tom Donovan. You talking about the vice president, Michael Cox.

Q Have you ever known a man by the name of Markece Moore as an employee over there?

A Markece Moore?

Q Yeah.

A Heard of him. There's a lot -- about 900 people at Carolina Pride.

Q But you've never known him as an employee over there?

A Not personally. There's a lot of people there.

Q Maybe you've heard of him in a different way.

MS. WHITE: Your Honor, is that a question?

THE COURT: All right.

Q Have you heard of him in a different way? How do you know you've heard of him? In what context have you heard of him?

A Just talk at Carolina Pride. Just heard his name.

Q Are you sure? Are you sure about that? And you're sure that you never saw my client shoot anyone, did you, or rob anyone? You are sure of that, right?

A I don't even know the client.

Q I'd appreciate a yes or a no.

A No, sir.

MR. TINSLEY: Thank you.

MS. WHITE: No questions.

THE COURT: Thank you. You can step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Call your next witness, Ms. White.

MS. WHITE: Thank you, Your Honor. The State calls Ray Pope.

RAY POPE, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q Officer Pope, if you could tell us your name for the record.

A Senior Master Patrolmen, Ray Pope, Greenwood City Police Department.

Q And how long have you worked for Greenwood City?

A Five years.

Q What are your current duties?

A My current duty is uniform patrol.

Q So you're a master patrolman. Does that mean you have some rank?

A It just means I've been there five years.

Q What were your duties on May 30, 2013?

A I was working in the Greenwood Drug Enforcement Unit,

basically where we just investigate drug crime. I was on patrol -- well, not patrol that night but just riding around in my unmarked vehicle looking for any illegal narcotic activity going on.

Q So you were not on uniform patrol that night?

A No, ma'am.

Q Were you in the area of Millwee and Franklin?

A Yes, ma'am. I was at Millwee and Phoenix when the call came out.

Q Were you the first officer on the scene?

A Yes, ma'am.

Q And just to be clear, Millwee and Franklin we're talking about, that's in Greenwood County?

A Yes, ma'am.

Q So you were the first officer to respond that night. What did you see when you got there?

A I saw the victim lying in the roadway. I then exited my patrol vehicle, walked up to the victim. Saw that he had been shot several times. Checked the victim for a pulse and was unable to find one at that time. I contacted dispatch to get an EMS truck there, and also contacted a supervisor to meet me over there.

Q Once you found that the victim had been deceased and other officers arrived on the scene what was done next?

A After that crime scene tape was put up. We blocked the

area off just so that no one would get in or out, anyone that could tamper with evidence. We allow one EMT to come in and check for vitals. Once they advised that the victim had passed, or was deceased, I spoke with Captain Butler and he then called in the Greenwood City detectives.

Q And just generally speaking, when are the detectives called out to a scene?

A Normally when -- when there's necessary follow-up investigation to be done that uniform patrol cannot do. The detectives have specialized training in that area as far as interviewing witnesses and things such as that.

Q And so, the detectives were notified fairly early in this investigation?

A Yes, ma'am.

Q What about a crime scene technician?

A She was called in as well.

Q Who is the crime scene technician?

A Sergeant Kenya Griffin.

Q I'm going to show you --

MS. WHITE: May I approach the witness, Your Honor?

THE COURT: Please.

Q -- what's been marked for ID as State's Exhibit 3 and 4. Can you identify those for me?

A Yes, ma'am. This is the victim lying in the roadway on Franklin Street. And this is Franklin Street from the

Millwee side basically from the church.

Q Are both of these accurate depictions of what you saw that night?

A Yes, ma'am.

MS. WHITE: Your Honor, State moves to enter Exhibits 3 and 4 into evidence.

THE COURT: Any objection, Mr. Tinsley, or have you --

MR. TINSLEY: No, Your Honor.

THE COURT: Without objection, 3 and 4 will be in evidence.

(Whereupon, State's Exhibit Nos. 3 and 4 were admitted into evidence.)

MS. WHITE: Permission to publish, Your Honor.

THE COURT: Please.

MS. WHITE: May I have the witness step down?

THE COURT: Sure. Step down.

MS. WHITE: Officer, if you could step down.

(Whereupon, the witness stepped down from the witness stand and approached photographs.)

Q I'm going to show you first State's Exhibit 3, and it doesn't show up as well. What view is that again?

A This is from the Millwee Avenue side looking down Franklin toward the path.

Q Is this the victim's body out here?

A Yes, ma'am.

Q And do you happen to know who lives here?
A Mr. Turner lives right here.
MR. TINSLEY: Beg your pardon?
THE COURT: He said Mr. Turner lived right there.
Q And this is State's Exhibit 4. And what is that showing?
A The victim on Franklin Street the night of the shooting.
Q Do you know what this building is right here?
A It appears to be the Masonic Lodge on Franklin.
Q And are these some apartments that back up on New Market?
A Yes, ma'am.
Q Did anybody -- other than checking the victim for a pulse, did you tamper with his body in any way?
A No, ma'am. I did not.
Q Did anyone else other than the EMT check him for vitals?
A No, ma'am.
MS. WHITE: Thank you, Officer. I'll let you sit back up there.
(Whereupon, the witness returned to the witness stand.)
MS. WHITE: Please answer any questions Mr. Tinsley has for you.
THE WITNESS: Yes, ma'am.

DIRECT EXAMINATION

BY MR. BROWN:

Q Coroner Cox, would you please state your full name.

A William Dean Cox. I go by Sonny.

Q And, Coroner Cox, how long have you been the Coroner?

A I'm on my third year of my first term.

Q So you were Coroner May 30th, 2013?

A That's correct.

Q Coroner Cox, where were you before you became Coroner?

A I was at the Greenwood County Sheriff's Office.

Q How long were you there?

A Seven years.

Q And before that?

A Greenwood City Police Department.

Q Now, Coroner Cox, do you remember getting a call or being called out to somebody being shot on May 30th, 2013?

A I do, yes.

Q And where was that located?

A It was actually on Franklin just off of Millwee Avenue.

Q And when did you get that call, do you remember, or what time -- what time of day it was?

A It was in the area of 9:30 p.m., thereabout, 9:40.

Q And what did you do when you got out there?

A I first made contact with Captain Hugh Butler who gave me a brief scenario of what he thought may have happened.

Then I was signing myself into the crime scene, which was very secured. Once I logged in I went to the deceased. I saw a motionless body laying there in the roadway.

Q I want to show you what's been marked State's Evidence Number 4. Take a look at that and tell me what that is.

A That's the deceased that I picked up that night.

Q What was the deceased's name?

A Prudencio Maquin or --

Q Chiquin?

A Yes.

Q Sis?

A Sir?

Q Sis is his last name?

A Yes.

Q After you got out there and saw the victim lying there on the ground what did you do next?

A I spoke with Kenya Griffin who was actually the forensic -- or crime scene technician. Kind of worked hand to hand with her a little bit, obviously based where the injuries were, the best I could. I talked with Rodney Free with EMT. He told me what he had. That there was no vital signs whatsoever. And while I was there the deceased was unresponsive and it was obvious he was passed. When Sergeant Griffin completed her investigation, was taking her photographs, we retrieved the body off the roadway.

Q And you said you kind of looked over the body as well out there on the street. Where were the injuries located?
A It appeared like there was a couple injuries to his chest, and maybe he had turned and got several more shots in the back. It looked to be four or five gunshots, so...
Q After Ms. Griffin got done with her investigation, taking pictures and all, and after you consulted with Rodney Free and law enforcement, you said you collected the body?
A That's correct, sir.
Q And how do you do that?
A We have -- the Coroner's Office, we have our own transportation van that we transport the deceased in. So we got out van, summoned that van, and it responded and we loaded the victim into our van and drove him to the morgue.
Q You put him in a bag?
A Yes, sir. We did.
Q So the morgue here in Greenwood?
A Self Regional. Yes, sir.
Q After you take him to the morgue what do you do after that?
A The security takes over. The morgue area. Does security for the morgue. They have their own security, which they secure and lock that particular vault.
Q In this case did you order an autopsy?
A I did. Yes, sir.

Q And who was that autopsy through?
A AnMed. It's actually Piedmont Pathology, and that's Dr. Brett Woodard. He's a forensic pathologist.
Q When was that autopsy scheduled?
A The next day, May 31st at approximately 10:00, 10:30 a.m.
Q Now, after you dropped Mr. Prudencio Sis' body off at the morgue here at Self Regional did you take his body to Anderson the next day?
A I did not. I was unable to attend that autopsy. I do have other employees of the Coroner's Office who made that transport for us.
Q Who was working with you then, or who was your deputy coroner then?
A That would be Deputy Corner James Sanders that made the transport for me.

MR. BROWN: No further questions.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. TINSLEY:

Q Obviously, Mr. Cox -- good morning, by the way.
A Yes, sir.
Q You didn't have occasion to witness any of this; is that right?
A No, sir. Everything I do is after the fact.

to try and keep moving. So go ahead and adjourn to the back, if you would, for just a little bit and I'm going to have you back out here just as soon as possible. Don't discuss the case yet. I'll let you know when you can. Thank you for your patience.

(Whereupon, the jury exited the courtroom at 11:25 a.m.)

THE COURT: The jury is out. In a bench conference earlier Ms. White indicated to me that her next witness was going to be someone who apparently took a statement from the Defendant in this case. Mr. Tinsley interposed an objection at the bench indicating that he was going to seek to suppress the statement given by the Defendant. So at this point in time we'll move forward with a *Jackson v. Denno* hearing. Ms. White, do you want to call your first witness on this hearing?

MS. WHITE: Yes, sir, Your Honor. The State calls Joe Collins.

THE COURT: If you'll come forward, please, sir, and be sworn.

JACKSON V. DENNO EXAMINATION

JOE COLLINS, having first been duly sworn, testified as follows:

THE COURT: And it goes without saying that the record should reflect that obviously the jury is outside the

courtroom. Go ahead, Ms. White.

DIRECT EXAMINATION

BY MS. WHITE:

Q Detective Collins, how were you employed on May 30th, 2013?

A I was a detective called out to the scene.

Q You were investigating the case we're here on today?

A That is correct.

Q Did -- over the course of your investigation, obviously without getting too much into it, you developed Mr. Settles as a suspect?

A That's correct.

Q And was he arrested?

A He was arrested.

Q Do you recall the date he was arrested on?

A I do not. I'd have to refer back to the incident report.

Q Did you interview him shortly after his arrest?

A Yes, I did.

Q Had he even been booked into the jail before the interview?

A No, he hadn't.

Q Detective Collins --

MS. WHITE: May I approach the witness, Your Honor?

THE COURT: Please.

Q I'm going to hand you what's been marked as State's Exhibit 33. Can you identify that for me?

MR. TINSLEY: For identification only, Your Honor.

THE COURT: Right.

A Yes, I can. It's an adult waiver of rights completed by myself and Mr. Settles.

Q Where were you when you obtained that waiver of rights?

A At the City Detectives Office.

Q Was anybody else in the room with you besides yourself and Mr. Settles?

A No. Just me and Mr. Settles.

Q How long had Mr. Settles been in custody approximately when you obtained that waiver?

A Maybe 30 minutes to an hour, approximately.

Q And how long was your conversation with him?

A Maybe 40 minutes. Thirty to 40 minutes.

Q Did he appear to be under the influence of any drugs or alcohol or anything like that?

A No, he did not.

Q Did he appear to understand your conversation with him?

A Yes, he did.

Q Now, the waiver of rights, is that -- what is that?

A It's advising a suspect in the case of his rights to seek legal counsel basically.

Q And is that -- does that contain the basic Miranda

warnings?
A Yes, it does.
Q And did you go over that with Mr. Settles in the beginning of your conversation with him?
A Yes, I did.
Q And he had been informed of his charges, correct?
A That is correct.
Q Without actually reading down the form, because --
MS. WHITE: Well, Your Honor, the State moves Exhibit 33 into evidence for the purposes of this hearing.
THE COURT: For the purposes of this hearing there's no objection, correct, Mr. Tinsley?
MR. TINSLEY: That's correct.
THE COURT: Very good.
(Whereupon, State's Exhibit No. 33 was admitted into evidence for purposes of *Jackson v. Denno*.)
Q Without reading down the form, because the Judge can obviously read it, that contained the entirety of the rights that you informed him of?
A That is correct. He initialed beside each one stating he understood it.
Q And did he have any questions about any of those rights?
A No, he did not.
Q Did you promise him anything or threaten him in any way

to get him to talk to you?
A I did not.
Q And did he agree to give you a statement?
A Yes, he did.
Q Did you record it from the very beginning or did you turn the recorder on once you -- once you kind of knew what he was going to say?
A I turned the recorder on once -- what we spoke about prior to.
Q Did he change his statement any from the first time he gave it and then when you actually recorded it?
A There might have been a few slight discrepancies, but other than that, no. For the most part it was the same.
Q When you say a few slight discrepancies, he didn't say I'm totally innocent on the statement?
A No, he did not.
Q What was Mr. Settles' demeanor during your conversation with him?
A He seemed very calm, relaxed.
Q And you said you recorded -- you recorded his statement?
A Yes, I did.
MS. WHITE: May I approach the witness, Your Honor?
THE COURT: Please.
Q I'm going to hand you what's been marked as State's

Exhibit 34. Can you identify that for me?

A Yes. This is a copy of the recording that I viewed this morning.

MS. WHITE: State moves Exhibit 34 into evidence for purposes of this hearing.

THE COURT: Without objection for purposes of this hearing it's in evidence.

(Whereupon, State's Exhibit No. 34 was admitted into evidence for purposes of *Jackson v. Denno*.)

MS. WHITE: May I publish, Your Honor?

THE COURT: Sure. How long is it?

MS. WHITE: It is -- I'm not exactly certain. Maybe 13, 15 minutes. Do you want to listen to it in chambers maybe rather than --

THE COURT: On the recording -- you've heard it, Ms. White. On the recording does he repeat the Miranda warnings that he gave to Mr. Settles or is it --

MS. WHITE: He, if I recall, goes over this is your form, you signed it, you initialed it, but he doesn't actually go through each right. But they do go over the form that he signed it and initialed it and all of that.

THE COURT: All right. Mr. Tinsley, for purposes of a *Jackson v. Denno* hearing, we're here for very limited purposes, obviously. Do you believe that I need to listen to the audio before we ask this witness additional questions

or --

MR. TINSLEY: I do, Your Honor, because if it's beyond three and a half minutes we haven't heard anything about it.

THE COURT: All right. Go ahead and play the audio then, Ms. White, please.

(Whereupon, audio recording of Defendant's statement was played.)

MS. WHITE: I had it confused with a different one, Your Honor.

MR. TINSLEY: That was the same.

THE COURT: Any other questions of Officer Collins?

Q Where was this statement taken?

A At the Greenwood City Detectives Office.

Q Just in like a normal office type setting?

A In the interview room.

Q Did Mr. Settles ever ask for an attorney during your conversation with him?

A No, he did not.

Q And did you sign this waiver witnessing that you saw him initial and sign everything?

A I did.

Q And what was the date that the interview took place?

A June 13, 2013.

MS. WHITE: No further questions, Your Honor.

THE COURT: Any questions, Mr. Tinsley, of Mr. Collins?

MR. TINSLEY: Absolutely, Your Honor.

CROSS-EXAMINATION

BY MR. TINSLEY:

Q Sir, you asked -- Mr. Collins, you asked Mr. Settles his age and date of birth; is that correct?

A That's correct.

Q You learned that he was born on 4/18/96?

A That's correct.

Q And this would have made him 17 years of age at the time?

A Yes, sir.

Q Now, did that concern you in any way to offer for Mr. Settles to consult with a relative such as a parent or guardian at that time?

A At the time I was focused on the crime itself.

Q So you didn't consider that. Just the attorney part. And why did you not verbalize the Miranda warnings on the tape when the tape could be a couple of minutes?

A It's just previous practice of training from former supervisors.

Q Well, this was a serious charge for a very young Defendant, correct?

A Yes, sir.

Q And she said earlier, and you were aware of the charges. Well, the way you testified he hadn't been charged

of anything.

A He was advised he was charged with murder?

Q That he was or it might be, or what?

A That he was. He was arrested on warrants just prior to me interviewing him.

Q Isn't it true that you should have provided him with an attorney at that time?

A I offered him an attorney.

Q Or at least a guardian at his tender age.

A He was advised of his Miranda rights and offered an attorney.

Q Did you offer him a phone call?

A Yes, I did.

Q You did?

A Yes.

Q Did he make one?

A No.

Q Didn't even make a phone call? Didn't even want to make a phone call? Didn't even want to call parents. So he was, in fact, in custody?

A That's correct.

Q It wasn't the normal office setting that Ms. White referred to. It was a interview room at the Detectives Office at the Greenwood City Police Department; is that correct?

A That's correct.
Q And the Miranda warnings were never verbalized but they were allegedly initialed before the procurement of the statement; is that correct?
A They were verbalized prior to the audio recording and went over briefly with him before the interview.
MR. TINSLEY: That's all.
THE COURT: Nothing?
MS. WHITE: No, sir.
THE COURT: Very good. You can step down. Thank you, sir. Mr. Tinsley, what's the nature of your objection concerning the statement, just for the record?
MR. TINSLEY: I call Tavarious Settles, please.
THE COURT: You're going to call your client, very good. Come on up, sir.
MR. TINSLEY: For the limited purposes of this hearing. Based on *State vs. Parker,* 381 S.C. 68 871 S.C.2nd 619 Court of Appeals 2008 concerning the voluntaryism - however you pronounce it.
THE COURT: If you're going to offer your client's testimony, let's go ahead and do that, and then I'll hear argument.

TAVARIOUS SETTLES, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TINSLEY:

Q State your name, please.

A Tavarious Dequan Settles.

Q All right. Mr. Settles, lets go back in time, for the limited purposes of this hearing, to what we've just been discussing with Officer Cox, and that was the interview on the day of November the 13 of June -- I mean, June. Excuse me. June 13 of 2013. Do you recall that interview?

A Yes, sir.

Q With Officer Collins there?

A Yes, sir.

Q Anybody else there?

A No, sir.

Q Did he start interviewing you before what we heard today?

A He interviewed me before I was charged.

Q Then he charged you?

A Yeah.

Q And then he got you to give this statement; is that right?

A He got the statement, then he charged me.

Q So it's your position that you had not been charged when you gave the statement. He said you were.

A I wasn't charged.

Q He said you were.

A No, sir.
Q I mean, he said you were, but you say you weren't.
A I wasn't.
Q As far as you knew?
A Yeah.
Q Although that contradicts what Officer Collins says?
A Yes, sir.
Q Be that as it may, did you ever ask to make a phone call?
A Yes, sir.
Q Were you given that privilege?
A They told me I was on phone restriction.
Q You were on phone restriction?
A Yes, sir.
Q Were you -- when did you turn 17?
A April 18th --
Q April 18th?
A -- 2013.
Q So this was within two months of your 17th birthday?
A Yes, sir.
Q And how did you feel being in the interview room at some point, which is beyond debate?
A It was uncomfortable.
Q Charged with murder. The exact point may be debatable, but the point that you were in -- who would you have called

if you could have?

A My grandmother.

Q And what would you have asked her to do?

A Talk to a lawyer.

Q Or would you have asked her to come down or for --

A Yeah, I was going to ask her to come down to the station.

Q Or would you have asked her for her advice or what?

A Sir?

Q Just basically all of the above. Who is your grandmother?

A Brenda Settles.

Q And who are you living with?

A Brenda Settles.

Q What address?

A [redacted] Greenwood, South Carolina.

Q So you're living over on Stanley. Isn't that near Lander?

A Sir?

Q Isn't that near Lander University?

A Yes, sir.

MR. TINSLEY: Brenda Settles, please stand.

(Whereupon, Ms. Settles stands.)

Q Is this the Brenda Settles you're referring to?

A Yes, sir.

MR. TINSLEY: That's all I have.

CROSS-EXAMINATION

BY MS. WHITE:

Q Mr. Settles, you were standing on the corner of Meadow Street and Weldon Avenue when you were taken into custody, right?

A Yes, ma'am.

Q And Officer Jamie Davis put you in handcuffs?

A I don't know the officer's name.

Q But you were put in handcuffs?

A Yes, sir -- yes, ma'am.

Q And you were put into a car and taken to the detention center?

A Yes, ma'am.

Q So you were under arrest?

A But they didn't tell me I was charged. I was arrested.

Q And you heard on the recording Detective Collins tell you you were there talking about a murder?

A Yeah, that was on the recording. I talked with him before the recording.

Q Yeah, but talking about the recording. I may be wrong, but I didn't hear you asking for your grandmother.

A He didn't give me a chance. He asked me -- he asked me about a lawyer. He didn't ask me about a relative.

Q So you weren't asking to make a phone call on that recording, right?
A I was on phone restriction. That's what I was told.
Q And you didn't ask for a lawyer on that recording?
A No, ma'am.
Q And you said you understood your rights?
A Yes, ma'am.
Q And you initialed on that form and signed it saying that you understood your rights?
A Yes, ma'am.

MS. WHITE: No further questions.

MR. TINSLEY: You can step down.

THE COURT: Thank you, sir. You can step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Mr. Tinsley, I'm looking at *Parker* right now. Do you want to expand on the nature of your objections to the statement? Clearly the standard in this case would be by a preponderance of the evidence. That's the State's -

MR. TINSLEY: Totality of the circumstances --

THE COURT: Correct.

MR. TINSLEY: -- argument, Your Honor, being the youth of the accused which is a primary consideration, the status of his education. I believe he was rising to the eleventh grade. The lack of phone call. There was no allegation of

any force or anything like that in this case. Mr. Collins certainly didn't beat him or anything like that, or alleged that he did. Other elements include background, experience, conduct of the accused, age is mentioned again, the length of custody. I think the key here is the lack of the phone call and being told you're on phone restriction, you know.

Also I want to tie in my other motion which is the third motion. The motion that delineates the way youth around his age are to be treated by the legal system. That is the *Alabama* case and the *Aiken vs. Byers* cases. And --

THE COURT: I'm familiar with those cases and I'm familiar with our holding, and I don't know that we're there with regard to a *Jackson v. Denno* hearing. My understanding of those cases is that their limited to the issue of punishment. And the question for *Jackson v. Denno*, or the Court's -- the initial inquiry for the Court under a *Jackson v. Denno* analysis is going to be quite different than in those cases.

MR. TINSLEY: Your Honor, I'm just talking about the status of the law as it unfolds in this area. I think they reflect -- I'm not using them above *Parker*. I'm just buttressing *Parker* with them, and the concepts that they display and put into focus in this matter. And therefore, considering the totality of the circumstances. And that lack of a phone call, a simple phone call to Ms. Brenda

Settles, I would make the motion to suppress this tape as evidence. I intend to call my client to the stand and give the State every chance they want to cross-examine him.

THE COURT: Mr. Brown?

MR. BROWN: Judge, looking at *State vs. Parker* it looks like the Court allowed the State to go forward in *Jackson v. Denno*. It says, "All appeal to trial court's ruling will not be disturbed absent prejudicial abuse and in error of law." This one, in that case the accused -- the Defendant was 16. I think there's a lot -- a lot of other things going into this statement being given and the court allowed that statement to be presented. So I really don't find any kind of similarities between this case and that case. Mr. Settles was 17 in this case where that Defendant was 16. That Defendant spent all night outside in the cold. I think he had been shot and other things, and is not in any way similar to this case. And we do have a waiver of rights form. We do have his statement recorded. And I feel like *State vs. Parker* really does not apply in this case.

MR. TINSLEY: It's not comparison of the cases, Your Honor. It's the law. And the law allows, in all cases, one phone call. Especially for one so young charged so seriously. Denial thereof, under the guise of phone restriction, is a clear violation of his constitutional rights. Now, looking at the -- I guess you have the

proffer, or the Judge has the proffer. Looking at the proffer. Shows 17. Shows murder. Shows an initialing. At the very least the recording should have included this. And further, the denial of contact with at least one outside party much older and wiser than he was a clear violation of his constitutional right.

THE COURT: Well, the Court has had an opportunity to review the law that's involved in this and it's a totality of the circumstances analysis that drives the Court's decision. And again, the Court is limited to -- or the Court is rather controlled by a preponderance of the evidence standard. Did he make a statement at the first inquiry. I don't think there seems to be any dispute he did. Were Miranda rights given. States 33 indicate that they were. The officer has testified that they were. And I don't know that Mr. Settles necessarily took issue with his rights being provided to him by the officer when Mr. Settles testified just a moment ago. Did he knowingly and intelligently waive those rights. You know, the Court has to view a number of factors. Age is certainly one of the factors that the court takes into account. But just reading the law here, background, experience, conduct of accused, length of custody, police misrepresentations, isolation of minor from parents, any threats of violence or promises of leniency, mental capacity. There's been no evidence here

indicating diminished mental capacity. The questioning here, as Mr. Brown correctly points out, or alludes to, is quite different from the questioning in *Parker* where Mr. Parker had been outside in the cold all night. Clearly this tape recording only took a few minutes. He was not isolated for an extended period of time. I do not know and I'm unfamiliar with it, because -- I mean, the Defendant in this case was 17. So he's an adult. And I can take into account the fact that he is 17 under the age prong. But as far as whether the State had a legal obligation to provide a guardian ad litem for him or get his parents up there or his grandma up there, I don't know that that's necessarily something that the State is compelled to do under these circumstances. Long story short, I've taken everything into account and I do find that he knowingly and intelligently waived those rights. It clearly appears to be voluntary. Obviously this is just a threshold determination. The State has the obligation to prove voluntariness beyond a reasonable doubt, and Mr. Tinsley, you'll be entitled to argue that to the jury. If they don't feel that this confession or this statement was voluntarily given, obviously the jury will have to disregard it. That will be my ruling on this issue.

MR. TINSLEY: Your Honor, I would like for the record to reflect my objection to under the misrepresentation

prong, which I think in this case is extremely crucial, and he was misrepresenting -- represented as to his right to make a phone call. And that is the weighing factor that the Court fails to grasp at this point. And I think because he was denied that essential right, which applies in virtually every case, adds a terrorism type situation. Which, of course, is what -- I ask the Court to put the weight on that that it deserves, which is controlling in this case, clearly, and that is -- that is the misrepresentation, you're on phone restriction and you cannot make a phone call.

THE COURT: All right. I appreciate your position on that. Clearly, Mr. Tinsley, there is conflicting evidence on that question. Mr. Settles claims that he was placed on phone restriction by Mr. Collins. That's a peculiar use of that phrase. Mr. Collins said that he was free to make a phone call if he wanted to. So it becomes a credibility question, and I do find that the officer's -- Officer Collins' testimony in that regard is simply more credible than that of Mr. Settles. To the extent that the Defense is hanging their hat on that element or on that consideration the Court would rule on a credibility basis that Mr. Settles was offered the opportunity to make a phone call and declined to do so.

We'll take a view moments for ourselves. Ms. White, if

you want to go ahead and boot that recording back up, we'll move forward. Play that for the jury, and deal with Mr Collins on direct and cross and probably break for lunch at that point I think would be the kind of time-frame we're working on. So about five minutes for ourselves and we'll be right back on the record.

MR. TINSLEY: Your Honor, I did have one more minor matter.

THE COURT: All right. We'll take it up in a minute.

(Whereupon, a brief recess was held.)

THE COURT: We'll go back on the record. Mr. Tinsley, you indicated to me before we took a break that you had just one minor matter?

MR. TINSLEY: No, it's not really as minor as -- minor or major. I'd ask the Court to order a Tom Donovan, director of personnel at Carolina Pride a/k/a the packing plant to come to court. After he reviewed his records he saw that Markece Moore's employment dates there, 12/3 to 12/5/2012 and that was it. And that's responsive to a key witness' lie in the case.

THE COURT: Have you subpoenaed Mr. Donovan?

MR. JAMESON TINSLEY: I subpoenaed him at about 9:30 this morning, Your Honor.

THE COURT: And you're saying he's refusing to come or --

MR. TINSLEY: No. As far as the exact time does he want an order from the Court?

MR. JAMESON TINSLEY: Well, we left it at -- I left it with him this morning that -- you know, he's a busy man. Obviously the vice president there, and I understand. And I said if you can get the records to us maybe the Judge wouldn't make you come. But he said that -- he just checked some quick thing. But to get the actual records they have to go to their storage facility. They'd have to send somebody out there and that could take days. So we didn't know how best to handle the witness.

THE COURT: Okay. Well, I'm hearing that it's been represented that Mr. Moore worked there from December 3rd to December 5th. Is that what you're telling me, Mr. Tinsley, 2012? So he's given you -- he's given you some dates. I don't know about whether it would be necessary to obtain the actual hard copies of the employment records. But since Mr. Donovan is under subpoena, it sounds like we're going to be wrapping up the State's case tomorrow morning, probably after the pathologist testifies or shortly after that. I suggest that you all contact him and say we need you -- we can give you a better estimation sometime tomorrow, but suggest that maybe he come in tomorrow around 2:00 after lunch, 2:15 would be the best time to suggest that he come here.

Let's have the jury --

MR. TINSLEY: We'll just get him in and get him out.

THE COURT: Right. Let's have the jury back.

MR. TINSLEY: And if it's out of order, we'll just move him.

THE COURT: Very good.

MR. TINSLEY: Thank you.

(Whereupon, the jury entered the courtroom.)

THE COURT: The jury is back and seated. Ladies and gentlemen of the jury, thank you for your continued patience. We are still, of course, in the State's case in chief. At this point, Ms. White, if you'll call your next witness, please.

MS. WHITE: The State calls Joe Collins, Your Honor.

THE COURT: Be sworn, please.

JOE COLLINS, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q Please give us your full name for the record.

A Sergeant Joseph Collins, Greenwood City Police Department.

Q And, Sergeant Collins, what are your duties with the police department?

A Detective of investigations.

Q Generally speaking what do the detectives do?
A We're violent crimes. Anything that needs following up on for following an investigation.
Q Were you assigned to the violent crimes task force?
A Yes, I was.
Q And what were your duties back May 30th, 2013?
A I was lead investigator on this case here.
Q And when you say this case, you're talking about a shooting on Franklin --
A Franklin Street. That's correct.
Q Franklin Street. How did you first find out about this case?
A I received a phone call at home from Captain Futch advising there had been a murder on Franklin Street and they needed me to respond to it.
Q And as a detective are you kind of on call whenever something happens?
A Yes.
Q After the phone call -- do you remember about what time the phone call came in?
A Maybe approximately 9:30, 9:45. Somewhere in that time-frame.
Q What did you do after you got the phone call?
A Got dressed and came to the scene.
Q When you got to the scene can you describe what you saw

when you first got there?

A Yes. I located a -- first off, the scene had been secured by Officer Turner. I signed in to the crime scene log and went and viewed the actual crime scene. There were already several investigators there on the scene, I think. Detective Lee Moore, Lieutenant Crisp, and Captain Futch along with Detective Dixon. And upon my arrival I viewed a Hispanic -- younger Hispanic male to be lying gunshot in the roadway on Franklin Street.

Q I am going to hand you a series of photographs. What's been marked for ID as State's 5 through 18. First off, I'm going to hand you 5 through 15.

MS. WHITE: Can I approach the witness, Your Honor?

THE COURT: Please.

Q If you could just glance through those and tell me what that is.

A These are photos of the crime scene, evidence collection and the victim of the crime.

Q And who was collecting evidence that night?

A Sergeant Kenya Griffin.

Q And what's her job with the city?

A She's the crime scene investigator.

MS. WHITE: The State moves Exhibits 5 through 15 into evidence at this time.

THE COURT: Any objection?

MR. TINSLEY: I'd like to see them, Your Honor, if possible.

THE COURT: Sure.

MR. TINSLEY: I'd ask the Court to look at them. I think the totality of them is prejudicial value outweighs the probative value. Pick a few.

MS. WHITE: Your Honor, I've shown all these to Mr Tinsley. I thought we had those issues cleared up, but if we need to put on the record our reasoning for some of those.

MR. TINSLEY: Well, she showed me the pictures.

THE COURT: Hate to ask you to do this, ladies and gentlemen. I need you to go back in there and don't talk about the case. I need to take up an issue on the record real quick. I apologize. Thank you.

(Whereupon, the jury exited the courtroom at 2:20 p.m.)

THE COURT: The jury is out. The photographs in question, State's 5 through 15 are photographs of the decedent at the scene. There are various evidence markers placed about him in some of the photographs. In photographs 11, 12, 13 and 15 are of the decedent's torso and they show location of -- the location of what appears to be bullet wounds, as well as blood on the decedent. And 15 is a photo perhaps of the decedent's right hand. It looks as if perhaps an injury was sustained to his index finger.

Ms. White, what is the State's purpose in seeking to introduce these photographs?

MS. WHITE: Your Honor, with regard to the pictures with the tags in them, those mark a location where a casing was found. So those are necessary to show the jury the location, where those were collected. The shots that I think Mr. Tinsley probably had a problem with of the decedent's body, those show the location of all the injuries that he sustained that night which ties into the State's theory of how he was standing and what he was doing as he was being shot, and will tie into Dr. Woodward's testimony tomorrow.

THE COURT: Mr. Tinsley, is Ms. White correct that essentially your primary objection is with Defendant's 11, 12, 13 and 14 which are the torso shots of Mr. Sis?

MR. TINSLEY: Yes, Your Honor. In general my objection is the prejudicial impact of very similar pictures outweighs its probative value. And I think that's the case you stated. I'm not objecting to the entry of some pictures. I just don't see the need for every picture.

MS. WHITE: Judge, there were 212 pictures in total. We've pared it down to about 30 total, including the autopsy. Each of those is a separate wound, and we made sure that we cut out, to the best we could, close-ups of his face. We attempted to limit any sort of emotional impact as

much as we could when we selected those.

THE COURT: So the photos I have here, these four photos that show the torso, wounds are not duplicative to the extent that you recall?

MS. WHITE: Let me double check, but I do not think so.

THE COURT: Okay. But you did have a lot more photographs that would have had duplicative -

MS. WHITE: And would have shown the victim in a lot more sympathetic state, for lack of a better word.

Your Honor, none of them -- there's one that shows the same wound in his lower back. There are two that show that. But then one of them also shows the wound in his shoulder, and that's the only picture we had of that.

THE COURT: All right.

MR. TINSLEY: Your Honor, in particular, 13 and 14 strike me as showing the same -- I think 14 would show -- I mean, 13 would show everything.

THE COURT: Well, Mr. Tinsley, if the Defense is concerned about the graphic nature -- supposedly graphic nature of these photographs, the Court is aware of the Supreme Court case that came out about a year and a half to two years ago. It involved photographs, and the argument, there were photographs of a young boy, I believe under the age of 10, or at least right around the age of 10 or 12 who had been mauled by a dog, or perhaps mauled by several dogs.

This Court has actually had an opportunity previously to see those photos at a seminar that I went to. And in all candor, the Supreme Court ruled those photos in that dog mauling case, those weren't so shocking as to warrant their exclusion. For the reasons given by the Solicitor, the Court is inclined to overrule your objection and find that the photographs -- the value of the photographs from an evidentiary standpoint clearly outweigh any potential prejudice or shock value, for lack of a better phrase.

MR. TINSLEY: I'm asking you to leave out 7, 9 and -- it was either 13 or 14. I believe it's 14. So I'm not objecting to but 3 out of the 10.

THE COURT: Would you speak specifically to 7, 9 and 13, Ms. White?

MS. WHITE: Your Honor, with regards to number 7, that one actually depicts -- it's farther away and to me less prejudicial than some of the other ones that he's not objecting to. But it depicts all of the evidence tags as you're approaching the victim and the location of those casings. So it shows how the assailant approached the victim. What was the next number?

THE COURT: 9.

MS. WHITE: 9.

MR. TINSLEY: 7, 9, 13, I believe.

THE COURT: 14.

MR. TINSLEY: 14?

THE COURT: That's what you said.

MS. WHITE: 9, again, is a closeup of one of the evidence tags as you're getting closer to the victim showing the location of a shell casing. That one's maybe -- it's hard to tell on a picture, four to five feet away from the victim. 7, 9 --

THE COURT: 14 was, I believe, the one with the jeans which sustained --

MR. TINSLEY: One shows one back wound, one shows two back wounds, and the one showing two catches them both.

MS. WHITE: 14, the closeup of the back wound. If I remember correctly when we were going through the pictures, this is actually the best picture of the back wound that we could find.

THE COURT: Will there be testimony that that's the entry wound?

MS. WHITE: There will be. Yes, sir.

THE COURT: So indications are that at the time that wound was inflicted the decedent had his back to the shooter?

MS. WHITE: Yes, sir.

MR. TINSLEY: Well, what's the distinction between 13 and 14 is my question.

MS. WHITE: 13 is a closer view of the shoulder wound.

MR. TINSLEY: Well, that's my point. I think 14 -- 13 shows both wounds, and 14 shows one. And now we're getting to prejudicial impact outweighing probative value.

THE COURT: Well, it's been represented to me that the Solicitor has multiple -- more photographs that she could have shown. I'm not really hearing you contest that, Mr. Tinsley. I'm assuming that she did provide those photos to you and that those photos that she is electing not to present into evidence have perhaps even greater shock value than these photographs. For the reasons that the State has explained on the record, the Court would find, and for the reasons I've given previously, the Court finds that the photographs shall be admitted.

MR. TINSLEY: Note my exception.

THE COURT: It is so noted. Let's have the jury, please.

(Whereupon, the jury entered the courtroom.)

THE COURT: Ms. White, you may continue, ma'am.

MS. WHITE: Thank you, Your Honor.

Q Detective Collins, before we took a break we were discussing a serious of photographs, State's Exhibits 5 through 15. And what did you say these were of again?

A The evidence from the crime scene, the crime itself and the victim.

MS. WHITE: Your Honor, State moves Exhibits 5 through

15 into evidence at this time.

THE COURT: Subject to the early objection and reservation they are in evidence.

(Whereupon, States Exhibit Nos. 5 through 15 were admitted into evidence.)

MS. WHITE: Permission to publish, Your Honor?

THE COURT: Please.

Q Now, Detective Collins --

MS. WHITE: May I have him step down?

THE COURT: You may.

(Whereupon, the witness steps down from the witness stand and approaches photographs.)

Q Detective Collins, what is this a picture of?

A It's a picture of the victim, Mr. Sis. That is where he was lying when I arrived on the crime scene. Phoenix West on Franklin Street.

Q And this yellow thing to his -- on his right side. Do you know what that is?

A I believe that's a shell casing there.

Q That's a tag marking the location of the casing?

A That's correct.

Q Detective Collins, you're trained in the use of a firearm as a law enforcement officer, correct?

A Yes, ma'am.

Q Can you just kind of briefly describe for the jury what

a shell casing is?

A It's the cartridge that the bullet actually fires from.

Q And would that be from an automatic handgun or semiautomatic?

A That would be from a semiautomatic handgun.

THE COURT: And that last photograph was State's 5?

MS. WHITE: That was State's 5. Yes, sir.

Q Showing you State's 7. And there's a little bit of a glare on it. I can turn that a little bit down. That's a farther away view of the victim?

A That's correct.

Q And are these all evidence tags marking shell casings?

A That's correct.

Q And where -- what direction is this picture being taken from?

A It looks like it's being taken from west to east.

Q So from closer to the church, or from that side of the street looking --

A That's correct.

Q And is the apartments -- are those up here on New Market?

A That's correct. This is adjacent.

Q And what is that?

A That would be the victim to the gunshot wound to the chest area.

Q And is that how he was laying when you all found him, or when you got there?
A That's correct.
Q These are stickers on him. Is that something EMS would have left?
A That's correct.
Q State's 8, this number 4 right here, what is that marking?
A That's another shell casing.
Q So would that -- where would the shot have been fired? What does that indicate to you?
A Possibly to the left of the victim.
MR. TINSLEY: Beg your pardon?
A Closer to him. To the left -- to the left of the victim there.
Q And State's 9, that shows the location of another shell casing?
A That's correct.
Q And these aren't -- the tags aren't necessarily marked in the order that you all think the shots were fired, correct? It's just as you find it?
A That's right.
Q This is State's 10. Can you tell me what -- what, if any, injuries you see on Mr. Sis?
A On his right hand, the tip of his finger, as if he had

a gunshot wound there, and the chest area.

Q The Coroner testified earlier that you all moved him to get some pictures and then he took Mr. Sis to the morgue. Is State's 11 one of the pictures you all took as you were moving him?

A That's correct.

Q And what does that show?

A A gunshot wound to the abdomen.

Q State's 12. Can you tell me what that one shows?

A It's a gunshot wound to the neck area. Chest or neck area.

Q State's 13. What, if anything, do you see in that picture?

A Two gunshot wounds to the back. One in the lower -- one in the right shoulder.

Q And State's 14. What is that a picture of?

A It's a closeup of the gunshot wound to the lower back.

Q And State's 15. Is that a closeup of the injury to his hand?

A That's correct.

Q And all these pictures, were they taken of him as he fell? As he was when you got on the scene?

A As he was when I got on the scene.

MS. WHITE: If you can step back up there.

(Whereupon, the witness returned to the witness stand.)

Q And I'm going to hand you what's been marked State's 16, 17 and 18.

MS. WHITE: Permission to approach the witness, Your Honor?

THE COURT: Please.

Q Can you tell me what those are?

A Photographs of shell casings from the scene.

Q And I'm sorry. I should have had you do this when you were already down. Could you step back down for me, or just stand where you can see.

(Whereupon, the witness stepped down from the witness stand and approached photographs.)

THE COURT: You're seeking their admission at this time, Ms. White. Without objection?

MS. WHITE: I'm sorry. State's Exhibits 16, 17 and 18 into evidence.

THE COURT: No objection on these, right, Mr. Tinsley?

MR. TINSLEY: Correct.

THE COURT: They're in evidence. Go ahead. You may publish.

(Whereupon, State's Exhibit Nos. 16, 17 and 18 were admitted into evidence.)

Q State's 16. Can you point out the shell casings in that picture for us.

A It's just to the left of the number 1 marker here.

Q State's 17. Another shell casing?
A That is.
Q And State's 18.
A Just below a shell casing.
(Whereupon, the witness returned to the witness stand.)
Q And, Detective Collins, can you -- I'm sorry. I'll just hold this up. I hate to make you keep getting up and down. Can you point out on this map about where the victim's body was located?
A Yes. Right here just below this path that comes out on Franklin Street off of Millwee Avenue.
Q And looking at this map, is this a fair and accurate depiction of the roads and the houses in that area?
A Yes, it is.
MS. WHITE: State moves Exhibit 2 into evidence at this time, Your Honor.
THE COURT: Any objection to State's 2?
MR. TINSLEY: No, Your Honor.
THE COURT: Without objection, State's 2 is in evidence.
(Whereupon, State's Exhibit 2 was admitted into evidence.)
Q After you went out to the scene that night what was your next step in investigating the case?
A Doing a canvas of the area, interviewing possible

witnesses who had seen what happened that night.
Q This wasn't a case you were able to solve immediately, was it?
A That's correct.
Q Did -- who did you speak with without telling us what they said? Who all did you speak with that night?
A I spoke with Mr. Turner, Quetta Allan and a few -- few other witnesses that I can't recall at this time.
Q Was Mr. Turner the only one who really had any direct knowledge?
A That's correct.
Q In identifying the victim did you speak with any of his family members?
A I did. I spoke with a girlfriend of his. We had located a wallet of Mr. Sis stating that he lived at a certain address, and once we made contact at that address we verified that his girlfriend actually lived there.
Q And is that how you were able to identify him?
A That's correct.
Q You continued investigating the case, you developed all of these guys as suspects; is that correct?
A That's correct.
Q Then you interviewed all of them at various times?
A I interviewed Mr. Patton and Mr. Settles.
Q Did other people in your office interview the others?

A That's correct.
Q Did you have an occasion to get a statement from Mr. Settles?
A Yes, I did.
Q And was Mr. Settles under arrest when that statement was taken?
A Yes, he was.
Q Do you remember -- kind of tell me how that went. How soon after he was placed under arrest did you interview him?
A Approximately 30 or 40 minutes is the time-frame from the time of his arrest until the time I interviewed him.
Q Where was he taken first after he was placed under arrest?
A To Greenwood City Detectives Office.
Q And where do you all interview people over there?
A We have an interview room designated just for interviewing people.
Q How is the interview room set up?
A It's probably a 10-by-10 room. Small table, two chairs.
Q Nothing distracting in there or --
A Nothing at all.
Q Just blank walls?
A (Nods head.)
Q Can you just say yes or no?

A Yes, blank walls.
Q When you interviewed Mr. Settles -- first of all, did you advise him of his Miranda rights?
A I did.
Q And generally speaking, what are Miranda rights?
A It's advising someone who's in custody their legal rights for counsel.
Q Is this what we always hear on TV, you have the right to remain silent, you have the right to an attorney, et cetera, et cetera?
A That's correct.
MS. WHITE: Permission to approach the witness, Your Honor?
THE COURT: Please.
Q I'm handing you what's been marked as State's Exhibit 33. Can you identify that for me?
A Yes. It's an adult waiver rights form that's completed by myself and Mr. Settles.
Q And did you complete that form in the beginning of your conversation with him?
A I did.
Q Did he appear to understand your conversation with him?
A Yes, he did.
Q Did he appear to be under the influence of any drugs or alcohol, anything like that?

A No, he did not.
Q Did he ask for an attorney or ask to speak to a family member or anything like that?
A No, he did not.
Q What day did you interview Mr. Settles?
A June 13th, 2013.
Q And the form, State's 33 -- is that State's 33?
A That's correct.
Q Did Mr. Settles sign that in your presence?
A Yes, he did.
Q And did you sign it indicating that you'd seen him do that?
A I did.
MS. WHITE: Your Honor, State's Exhibit 33 into evidence at this time.
THE COURT: Subject to the earlier rulings at the hearing and the objections, it is in evidence.
(Whereupon, State's Exhibit No. 33 was admitted into evidence.)
Q Could you just read the items one through six, the rights that he initialed beside.
A "I have the right to remain silent, do not say anything or answer any questions. Anything I say can be used against me. I have the right to talk to a lawyer and have a lawyer here with me now to advise help during questioning. If I

want to have a lawyer with me during questioning but cannot afford to pay a lawyer one will be provided to me at no cost before I'm questioned. If I decide to answer questions now without a lawyer here, I still have the right to stop answering questions whenever I want to. I also have the right to stop answering questions and talk to a lawyer."

Q And you said -- can you read those next two paragraphs for me?

A "I understand my rights as explained by Office Collins. I now state that I do wish to answer questions at this time, that I do not wish to have a lawyer here during questioning. My decision to answer questions now without a lawyer is made freely and is of my own choice. No one has threatened me in any way or promised me any special treatment. It's my decision. I'm signing my name in the space below."

Q And did you make them any threats or promises?

A No, I didn't.

Q Did Mr. Settles agree to give you a statement that day?

A Yes, he did.

MS. WHITE: May I approach the witness, Your Honor?

THE COURT: Please.

Q I'm handing you what's been marked as State's 34. Can you identify that for me?

A Yes. That's a recording of mine and Mr. Settles interview that I viewed this morning.

Q And this is a true and accurate recording?
A That's correct.
MS. WHITE: The State moves Exhibit 34 into evidence, Your Honor.
THE COURT: Subject to the earlier rules and objection, 34 is in evidence and you may publish at your leisure.
MS. WHITE: Thank you, Your Honor.
(Whereupon, State's Exhibit No. 34 was admitted into evidence.)
(Whereupon, audio recording of Defendant's statement was published for the jury.)
Q That's the statement Mr. Settles gave you?
A That's correct.
Q Detective Collins, just a few more questions.
MS. WHITE: May I approach the witness?
THE COURT: Please.
Q I'm handing you what's been marked as State's 35. Can you identify that for me?
A It's Tavarious Settles booking photo at the time of the arrest.
Q Is that what he looked like the day you talked to him?
A Yes, it is.
MS. WHITE: State moves to enter Exhibit 35 into evidence.
THE COURT: Any objection?

MR. TINSLEY: No, Your Honor.

THE COURT: Without objection, it is in evidence.

(Whereupon, State's Exhibit 35 was admitted into evidence.)

Q And what does his hair look like in this picture?

A Twist or plats, I mean,

Q Do you know how tall Mr. Settles is versus Mr. Moore?

A Mr. Settles is approximately five-nine, five-ten. Markece Moore is approximately six, six-one, six-two approximately.

Q So Mr. Settles is the shorter of the two?

A That's correct.

Q And we heard a lot yesterday about Preacher D. Do you know who Preacher D is?

A Yes, I do.

Q What was his name?

A Deonta Cummings.

Q And is Mr. Cummings available to come testify?

A He is not. He has since deceased.

MS. WHITE: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. WHITE: Please answer any questions Mr. Tinsley has for you.

MR. TINSLEY: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. TINSLEY:

Q Officer Collins, you say Deonta Cummings -- maybe I misunderstood you. Did you say he's deceased?

A Yes, he's deceased.

Q What happened to him?

A There was an incident in Independence Way. He took his own life.

Q That was the conclusion. Sorry to hear that. Now, going back to your interview of Mr. Settles and Mr. Patton. Now, isn't it true that Mr. Patton gave you several changed stories?

A That's correct.

Q And isn't it also true that Mr. Settles gave you one story?

A That's correct.

Q Now, obviously you didn't write in on the interrogation of Mr. Settles. You talked to him some first, right?

A That's correct.

Q Well, you must have because there's nothing on the tape about his constitutional rights; isn't that correct?

A During the recording we went over the waiver of rights that we had discussed previously. He was read his Miranda rights before he was ever interviewed and questioned.

Q No. I mean, the Miranda rights weren't on the

recording?
A No. Just the adult waiver rights form with the Miranda rights stating that he understood those that we previously went over.
Q But hadn't he just told you that he had just shortly turned 17?
A That's correct.
Q And don't you take a little more caution with one that young?
A My main focus was to concentrate on solving the crime at this point in time.
Q I see. Were you aware that his mother was up front, Ms. Jackie Calhoun?
A I don't recall.
Q And are you aware that he asked -- and it may not have been to you. That he asked to use the phone to call his grandmother?
A I don't have any knowledge of that.
Q Are you aware that he was denied a phone call and told that he was on phone restriction?
A He was on phone restriction after he was placed into the jail. At that point in time is when he was placed on phone restriction. Not during the interview process or after.
Q But isn't one typically allowed one phone call before

they're questioned or booked or whatever?
A That's my understanding.
Q But as far as you know he never -- he never was allowed or disallowed that phone call?
A I offered him a phone call during the end of our interview and he didn't wish to call anybody at that point in time.
Q Well, it was a little late then, wasn't it?
A He was advised of his rights and to seek counsel prior to that conversation.
Q And had you known that his mother were over on the jail side looking for him to speak with him before he was interrogated would you have honored that request?
A I would have spoke with her. Yes, I would.
Q But nobody informed you of that?
A Nobody did, no.
Q But you can't deny that she was. You just didn't know.
A I do not recall whether she was there or she wasn't.
Q What about this Little Black character? Do you know who I'm talking about?
A I do not.
Q I read one statement that said that he was involved in all this, or proposed one preliminary lick or hit, or whatever you want to call it or whatever, and then took off for Florida. Did you hear about that?

A I did not.
Q You haven't seen the Solicitor's statement on that?
A I've seen the report. But I don't have any firsthand knowledge as far as that.
Q Right, right, right, right, right, right. I don't either. I've just seen through the report themselves. But your hearing is the same as mine on that?
A That's correct.
Q Did you ever interview him in this case?
A Mr. Black?
Q Yeah.
A I'm not even aware of who Mr. Black is and can identify him.
Q But you did hear the name Little Black keep popping up, didn't you? Because I sure did.
A Yeah.
Q And now, let's see. Now, you studied the case file extensively, correct?
A Correct.
Q Who is the only person out of all the alleged perpetrators in this matter who was given one and one statement only to you or any other of your officers?
A Could you state that again? I didn't understand your question.
Q Who is the only suspect of the -- and I'm going to say

four, because I'm including the juvenile Bryson Jefferson. Who is the only one who has given you one consistent statement and that's it?

A On the recording or prior to his -- because they all gave different accounts before coming forth with the truth.

Q Well, you didn't say that about Mr. Settles?

A You asked during the recording. I believe that was the question.

Q Well, wait a minute. You've already said that you talked to him beforehand and he basically told you the same thing.

A There were some discrepancies beforehand.

Q Well, earlier you had testified they were very minor. You told --

A Minor discrepancies in the story.

Q But in terms of taking statements, who is the only one who gave you one consistent statement? Mr. Settles, isn't it?

A I don't think any of them were completely honest throughout the interview in the beginning.

Q So Mr. Settles lied to you when he told you he got out of the car?

A I just took a statement from Mr. Settles. I can tell you what he told me. I wasn't there to witness it.

Q Well, I don't understand. You testified here today

that he gave you one statement. I mean, you didn't need to take any other statements; is that right?

A That's correct. I only took one statement.

Q And how long did you spend with him?

A Approximately 30 to 45 minutes.

Q And then you take the statement and that was it; is that right?

A That's correct.

Q And during the statement he clearly identified Markece Moore as the killer of the decedent Guatemalan, correct?

A That's correct.

Q And you also testified that he came down with Mike; is that right?

A That who came down with Mike?

Q That Mr. Settles was picked up by -- Mr. Settles told you he was picked up by Mike.

A Yes, that's correct, in his statement.

Q In your other statements it's noted that there were changes in stories by everybody but not by Mr. Settles --

MS. WHITE: Your Honor --

Q -- right?

MS. WHITE: -- is he asking a question?

MR. TINSLEY: I'm asking it now.

Q Right?

A There were slight discrepancies in every witness

involved in this incident that's been charged.

Q But the difference is those slight discrepancies were his discrepancies and there were recorded statements from the other three parties, right?

A I don't recall exactly what story Mr. Settles gave in the beginning. I just know that it wasn't consistent with what he gave during the time of the interview. There were some differences in it.

Q Well, you're going to have to tell me what they were.

A I don't recall.

Q You don't recall?

A I just know that the accounts were different from what he originally stated.

Q You don't recall what he told you that was different?

A I do not.

Q You spent a half an hour with him.

A It's been over two years ago.

Q I understand that. But you obviously were satisfied with what you got out of him. His mother was waiting on the other side of the wall.

MR. TINSLEY: May I approach, Your Honor?

THE COURT: Please.

Q Defendant's 10. This is Mr. Turner's backyard. Can you identify that location?

A That's correct. That would be the address of [redacted]

[redacted], Jerry Turner's address.

Q And where would the body have been?

A Somewhere in this general vicinity here (indicating). That picture really doesn't depict an actual representation --

Q I'm going to show you exactly --

A -- of where the body was located.

Q I'm going to show you exactly where the --

MS. WHITE: Your Honor, if he can finish the statement he just made. They were talking over each other.

THE COURT: I think the record caught it and I think the jury heard it. So go ahead, Mr. Tinsley.

Q Would you disagree with me if I showed you the exact location of the body to be right here (indicating)?

A Yeah, I would disagree, because the picture doesn't depict the location of the body. It just shows Mr. Turner's backyard. That's not where the victim was lying.

Q But it goes on through the backyard.

A You can't see that from that picture there.

Q Well, I'm not saying lie -- where he was lying. The line that he was on.

A I would agree that based on Mr. Turner's statement that this is where the incident happened, and based on his statement and the fact of where the body was lying when I arrived on scene.

Q That's pretty -- looking at Defendant's Exhibit Number 6. Can you identify that?

A It looks like the side to back area of Mr. Jerry Turner's yard.

Q And Defendant's Number 9, can you identify that?

A That's a path coming down from the apartments above Mr. Turner, because that's down to Franklin Street.

Q And does that show anything significant in terms of the homicide?

A You -- again, you can't actually see where the body would have been laying, but somewhere probably general in this area here (indicating).

Q And this is Mr. Turner's house?

A Mr. Turner's house would be over here (indicating).

Q So it would be over here (indicating)?

A To the right on Franklin Street across from the church.

Q And the body was laying over here. So it would have been difficult for Mr. Turner to look through Number 8 and see exactly what happened; is that right?

MS. WHITE: Objection, Your Honor. It's calling for speculation. Mr. Turner has already testified.

MR. TINSLEY: I'll restate it. Would it have been difficult at night for a man of his age to see exactly what happened?

MS. WHITE: Your Honor, again, he's calling for

speculation.

THE COURT: I would agree. I would sustain that objection. If you want to ask him --

Q What difficulties existed?

A Given Mr. Turner's statement and what I viewed on the scene, like Mr. Turner said, he had cleaned out that brush area loser to the road there. Obviously this is a photo that was taken some other time where some other growth has grown.

Q Now, Mr. Turner admitted today that he wasn't exactly sure who shot who. Did you hear that?

A I don't recall exactly what Mr. Turner said, but it was something to that effect, I believe.

Q Did he tell you exactly what he trimmed? Did he?

A No, he did not.

Q Because on May the 30th the -- more growth than it would be on, let's say, March. The month we're in now.

A I agree. Things grow in the spring.

MR. TINSLEY: Very good. Thank you.

REDIRECT EXAMINATION

BY MS. WHITE:

Q Detective Collins, we'll start with the point where Mr. Tinsley just left off. He said that Mr. Turner, who sat here today, it could have been the taller one -

MR. TINSLEY: Asked and answered, Your Honor.

THE COURT: Overruled. Redirect. Go ahead.

Q After Mr. Tinsley's cross-examination. Did you hear that testimony?

A What was that? Can you state that again? Sorry.

Q That Mr. Turner stated that it could have been the taller on after being cross-examined?

A I believe Mr. Turner said it possibly could have been.

Q And you spoke to him the night that the murder actually happened, correct?

A That's correct.

Q What did Mr. Turner, if anything, tell you that night about who the shooter was?

A He believed that the shorter of the two suspects there was the shooter.

Q And he told you that -- how long after the murder took place would you say he told you that?

A I would say approximately an hour to an hour and a half after.

Q In all of your interviews with everyone and your review of other peoples' interviews has anyone ever identified Mr. Moore as the shooter, other than Mr. Settles?

A Only Mr. Settles.

Q Did anyone ever state that Mr. Moore had a gun?

A No.

Q Other than Mr. Settles?

A No. That's correct.
Q And Mr. Tinsley was asking you about someone named Black. Is there any indication Black was in the car that night?
A No, there was not.
Q And Mr. Tinsley asked -- were you satisfied that Mr. Settles was telling you the truth?
A Was I satisfied? No, I was not.
MS. WHITE: No further questions, Your Honor.

RECROSS-EXAMINATION

BY MR. TINSLEY:
Q So you don't believe his statement, do you?
A I do not.
Q Then why did you take his statement and enter it in evidence?
A It's part of the case.
Q Part of the case. So I can -- I can attack that any way I want to, right? Correct?
A What's that? Can you --
Q I can challenge that any way I want to, right?
A I don't understand what you're asking.
Q Okay. I'll simplify in laymen's terms. Since you're not satisfied with it, and neither am I, then I can suggest that it is a completely inaccurate statement if I want to? Yes or no?

A You can speculate whatever you want to.
Q I can go beyond speculation and draw my own conclusions, correct?
MS. WHITE: Objection.
THE COURT: There's an objection. Sustained. Ask the witness a question if you would, Mr. Tinsley.
MR. TINSLEY: I asked if I could draw my own conclusions.
THE COURT: I understand. That's not a proper question. And you're entitled to argue any sort of inference to the jury. You're entitled to argue alternative theories to the jury at the conclusion of the case, but not at this point in time. So if you have a question for the Officer, go ahead and ask it, please.
MR. TINSLEY: Forget it.
THE COURT: Anything on redirect?
MS. WHITE: No, sir.
THE COURT: Very good. You can step down. Thank you very much for coming. You're free to go or stay, sir.
(Whereupon, the witness stepped down from the witness stand.)
THE COURT: You have State's 34? I just don't want to start misplacing exhibits.
MS. WHITE: I believe so.
THE COURT: Okay. We do have that accounted for. I've

THE COURT: My clerk tells me that the jury is back. The record should reflect that the Defendant is present with counsel. You have your next witness in the courtroom, Ms. White?

MS. WHITE: Yes, sir.

THE COURT: Let's have the jury, please.

(Whereupon, the jury entered the courtroom at 2:38 a.m.)

THE COURT: The record should reflect that the jury is back and seated. We are, of course, still in the State's case and chief. At this point, Ms. White, if you'll call your next witness, please.

MS. WHITE: Thank you, Your Honor. State calls Kenya Griffin.

KENYA GRIFFIN, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q Say your name for the court reporter.

A Sergeant Kenya Griffin.

Q Sergeant Griffin, you're obviously with the City Police Department. How long have you worked there?

A About 11 and a half years.

Q What are your current duties at the Police Department?

A Right now I'm the crime scene and evidence technician.

Q Do you have any special training with regards to that position?

A I do. I attended the National Forensic Academy at the University of Tennessee.

Q How long of a program is that?

A It's two weeks long.

Q And what kind of training do you get while you're out there?

A You get crime scene photography, evidence collection, crime scene processing.

Q Were you called out on May 30th, 2013 to process a scene on Franklin Street?

A Yes, ma'am, I was.

Q What did you first observe when you got there?

A When I got there the scene was secured by patrol officers. I briefly spoke with Captain Butler, he kind of explained to me -- what they had on the scene, and I observed the victim laying in the roadway.

Q What was the first thing you did after you kind of observed everything?

A I began taking photographs.

Q All the photographs we've seen this morning of the crime scene, did you take all those pictures?

A Yes, ma'am. I did.

Q Did -- after you photographed the scene what did you do

next?

A I then began collecting evidence. I believe Lieutenant Hall or Captain Butler had pointed out some shell casings that they observed when they got on the scene. Once those were photographed they were then collected.

Q I'm going to hand you State's Exhibit 7. Does that accurately reflect the location of the casings when you picked them up?

A Yes, ma'am. It does.

Q When you collect evidence from the scene, in this case casings, what do you do with that?

A Once they're collected they are packed and they are sent to SLED for sometimes latent analysis, DNA analysis, firearms examinations.

Q Before they are taken to SLED how are they maintained in your evidence room?

A They are logged in under the case number that's assigned to that incident. They're sealed in an envelope and they're placed in our evidence room which is secure. Only myself and an alternate custodian has access to that room.

Q And in this case I would assume you were the one that collected the casings?

A That's correct.

Q And were you the one who sealed them into an envelope?

A Yes, ma'am.

MS. WHITE: May I approach the witness, Your Honor?

THE COURT: Please.

Q I'm going to hand you what's been marked for identification as State's Exhibit 36. Can you identify that for me?

A Yes, ma'am. It's the envelope that the casings were sealed in. As you can see, my initials are on the back here where they were sealed.

Q And did you do anything to these casings or change then in any way before you put them in this envelope?

A No, ma'am. I did not.

Q When you're picking up the casings how do you pick them up?

A I'm wearing gloves. Sometimes I'm wearing two pairs of gloves, just to make sure I don't have any of my DNA or contaminate any evidence on the shell casings.

Q Now, after you collected the casings and photographed the scene did you do anything to the victim's body before it was transported?

A I did look at it with Coroner Cox to see if we could find any -- any wounds on his body, and which time I did photograph those wounds.

Q Did you do anything -- did you bag up his hands?

A I did put paper bags on his hands. And that's in order

to protect any -- potential any evidence on his hands, like GSR or DNA. Anything like that.

Q And that was done before he was placed in the body bag?

A That's correct.

Q Now, the next day did you go to -- there was an autopsy performed on the victim?

A That's correct.

Q Did you go to that autopsy?

A Yes, ma'am. I did.

Q Were you present for the autopsy?

A I was.

Q Did you watch it?

A Yes.

Q Did you bring any evidence back from the autopsy?

A I did. Yes, ma'am.

Q What evidence did you bring back?

A There's a GSR kit completed on the victim and there was also some projectiles that were recovered.

Q Tell us generally speaking about a GSR kit. What is GSR?

A It's gunshot residue.

Q And how do you -- how do you do the kit for that?

A The kit contains four little capsule type things that have sticky pads on the end of them and you basically just swab the hands of the victim.

Q Do you swab specific places on the hands?
A The back of their hands, the palms and around the thumb area.
Q Was a GSR test done on the victim at the autopsy?
A It was, yes.
MS. WHITE: May I approach the witness, Your Honor?
THE COURT: Please.
Q I'm going to hand you what's been marked as State's Exhibit 37. Can you identify that for me?
A Yes, ma'am. This is the GSR kit.
Q Are you the one who sealed this up?
A Yes.
Q And are you the one who drove both this and Exhibit 36 down to SLED?
A I am, yes.
Q Now, also at the autopsy was anything else recovered from the victim's body?
A There were two projectiles recovered from the victim's body.
Q And did you seal those up and take those to SLED as well?
A Yes, ma'am. I did.
MS. WHITE: May I approach the witness?
Q I'm handing you what's been marked as State's 38. Could you identify that for me.

A This would be the projectiles.
Q And are you the one who sealed the envelope?
A Yes, ma'am. My initials are on the back.
Q Did you do anything to either the projectiles or the GSR kit, change it in any way before you sealed it up?
A I did not, no.
Q And you also drove the projectiles to SLED?
A I did, yes.
Q Do you remember who you gave everything to at SLED?
A Her name is Courtney. I can't remember the last name. She's the evidence technician down there that accepts evidence.
Q Now, do you remember, Sergeant Griffin, exactly what -- when you submit evidence to SLED do you have to ask for certain tests to be performed?
A Yes, you do.
Q And what tests did you all ask for in this case?
A I believe we asked for latent prints, DNA and firearm analysis.
Q Do you know if anything came back on the latent prints or the DNA?
A I don't believe it did. No, ma'am.
MS. WHITE: Thank you, Sergeant Griffin. Please answer any questions Mr. Tinsley has.
THE COURT: Mr. Tinsley.

CROSS-EXAMINATION

BY MR. TINSLEY:

Q. So you don't have any prints from my client on any of the evidence that was submitted to SLED; is that correct?

A That's correct.

MR. TINSLEY: Thank you so much.

THE COURT: Sergeant, thank you for coming. You are free to go. Call your next witness, please, Mr. Brown.

MR. BROWN: The State calls Whitney Berry.

WHITNEY BERRY, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Good afternoon, Ms. Berry. Would you please state your name for the jury.

A It's Whitney Berry.

Q Ms. Berry, where do you work?

A I work for the South Carolina Law Enforcement Division more commonly referred to as SLED.

Q And how long have you worked for SLED?

A I've worked at SLED for two years.

Q And what's your job at SLED?

A I work in the Trace Evidence Department and I specialize in gunshot residue analysis.

Q And what kind of educational background do you have.

A I have a Bachelor in Science degree in chemistry from the University of South Carolina. I've also taken some outside training from Hook College of Applied Sciences in scanning electron microscopy theory. I've also completed the SLED in-house gunshot residue analysis training program, which is a nine-month program that includes practical and written examinations, working test cases, a bunch of readings about GSR, as well as working under a supervised analyst.

Q And exactly what is GSR?

A GSR is gunshot residue. Gunshot residue is everything that comes out of the end of the gun when it was fired. What we're specifically looking for is the primer residue. The primer is three elemental components that are found in cartridge cases that makes the bullet essentially go out the gun.

Q And, Ms. Berry, have you ever been qualified as an expert in the court of general sessions in the State of South Carolina?

A Yes, I have.

Q How many times?

A Five.

MR. BROWN: Your Honor, at this time I submit -- or offer as an expert in the field of gunshot residue analysis Whitney Berry.

THE COURT: Any objection or voir dire from the Defense?

VOIR DIRE

BY MR. TINSLEY:

Q This is your sixth?

A Yes, sir.

MR. TINSLEY: No objection.

THE COURT: Ladies and gentlemen of the jury, normally when a witness testifies about something that have to testify about something that they observed with one of their five senses, something they saw or heard, et cetera. An exception to this rule exists for individuals who are qualified as experts in some particular field. An expert witness is permitted to give opinion testimony. They're allowed to give their opinion as to certain evidence. Of course, normally a witness cannot do that. The fact that Ms. Berry is able to give an opinion in this area, of course, does not mean that you must accept it. It is simply evidence that you may use as you deem appropriate. So Solicitor, you may continue.

MR. BROWN: Thank you, Your Honor.

Q Ms. Berry, regarding the case we're here in trial about, did you do a gunshot residue analysis on the *State vs. Tavarious Settles*?

A Yes, I did.

Q And more specific, a gunshot residue kit that was retrieved off of Prudencio Sis in this case?
A Yes, that's correct.
Q I'm going to show you what's been marked for State's identification purposes State's 37. Would you take a look at that and see if you recognize it.
A Yes. This is the evidence that I analyzed in this case. I can tell because every piece of evidence that comes into SLED is given a unique lab number, so this case was given the unique lab number of L13-07501. And each item is given a unique item number. And the GSR kit in this particular case was item number 1. As well on the back we put our initials and the date that we opened the package, and our SLED seal is also tamper evidence and we also initial and date that as well, so I know this has also not been tampered with since I sealed it.
Q Now, Ms. Berry, who -- based on -- do you have the internal chain of custody from SLED?
A Yes, sir. I do.
Q Does it indicate who brought that GSR kit down to SLED?
A According to our internal chain of custody, which is basically a business record for SLED and how things get here, Kenya Griffin of the Greenwood Police Department brought the evidence to SLED. It was then logged into the SLED computer system and given a lab number and item number

by an evidence technician. Her name is Courtney Smith. She then put it on a trace evidence shelf in a secure storage area where evidence can sit until it's picked up. It was then given to evidence control technician Pat Crocks who gave it to Lieutenant Jennifer Stoner, who is the lieutenant of the trace evidence department, and she took the evidence upstairs to a different storage location in the trace department where again it was stored under lock and key. The only people who have access to that area would be trace evidence examiners. And from there I went and picked it up and put it in my custody.

Q And, Ms. Berry, once you took it and put it in your custody is this when you performed the analysis?

A Yes.

Q I'm going to ask you --

MR. BROWN: Judge, at this time I'd like to move what's been marked for ID purposes as State's 37 as evidence. State's evidence 37.

THE COURT: Any objection to 37 coming in?

MR. TINSLEY: No objection, Your Honor, subject to the contents -- seeing the contents, of course.

THE COURT: Of course. 37 will be in evidence.

(Whereupon, State's Exhibit No. 37 was admitted into evidence.)

THE WITNESS: Actually, I will need your scissors.

It's heat sealed.

Q What's the purpose of heat sealing a package?

A The heat seal pouch that this gunshot residue kit is in is what it came to SLED in originally. It's from Greenwood City Police. When it comes to SLED we like to repackage everything just so we can separate things out so they go to the correct department. In this case they put it in a manilla envelope, and that manilla envelope was originally sealed and initialed by the evidence custodian who dropped it off, to also indicate that it hadn't been tampered with since she dropped it off.

This is the actual GSR kit they submitted. Again, I have my lab number, my item number, as well as the date it was opened, and then sealed back from where I closed it. And because we have jurors or solicitors who've asked how do you know, when you have these little containers, what it goes to. What would happen if something catastrophic happened and they all got mixed up. When we open these we again put our lab number, item number, initials and date on every individual one of these containers.

Q Now, the individual containers, what's -- you said the GSR kit when it's submitted down to SLED is given a specific item number. In this case it was item number 1.

A Uh-huh (affirmative response.)

Q Now, once you open that up are there more subsections

to item one?
A Yes. Well, GSR kits, what we get -- you can put these up there, are four particle lifts. That's what these are called. And each one is given a sub-item number. So your right palm would be 1.1. Your right back would be 1.2. Your left palm would be 1.3. And your left back would be 1.4. We do it consistently in that manner so that all of our reports are the same. Right palm is always first. Left back is always last. Each one of these containers -- there's a little black dot in the middle. That is carbon sticky tab. That's double-sided tape that is put on an aluminum stub. That is what is used to collect the potential gunshot residue off of a hand. It's sticky. So the lift would be taken off and it would be stamped on the hands. So for the right palm you would do the whole palm of the hand all the way up to the fingers. The back of the hands would include all the fingers and the back of the hands. And then you would repeat the process on the left hand. And that's how you would collect the GSR.
Q And item 1.1, that would be the right palm?
A Item 1.1 specifically would be just the right palm.
Q Item 1.2 --
A Would be the right back.
Q And then so on and so forth?
A Yeah. So there's one sub per area.

Q Now, were you able to have any results off your analysis.

A Yes. Let me refer to my report. For item 1.1, our right palm, we found particles of gunshot residue. Gunshot residue is composed, as I mentioned earlier, of three elemental components. What we're looking for are particles. They're very, very tiny. They're about a micron in size. So if you pull one of your hairs out of your head, then you cut across the diameter of your hair, about 100 of these particles could fit right across the diameter of your hair. They're that small. So what we're looking for is a round or molten particle that contains the three elements of barium, lead, and antimony. And that is what we call gunshot residue. Those round molten components containing those three elements can only come from gunshot residue. They can't come from any other source. So on the right palm multiple particles of gunshot residue were found.

Q These are multiple gunshot residue from the right palm of the victim of this case, Prudencio -

A: Yes.

Q: -- Sis?

A: Yes. That is correct.

Q: Now -- go ahead. So you were able to find gunshot particles on the right hand?

A: Yes, we were.

Q And then item 1.2, right back?
A On the right back of the hand no gunshot residue was found. That can be consistent with an individual not being in the presence of the discharge of the firearm, or it could be consistent with something removing the gunshot residue such as sweat, water, wind, blood. All these different things have the potential to remove gunshot residue. Even normal activities such a wiping your hands on your pants or putting your hands in your pocket. If you think about GSR and -- think about the idea of a flour in your kitchen. And you put both of your hands in some flour and you can see the flour on your hands. Every time you clap your hands a little bit of the flour goes away, right? Every time you rub them on a towel, you wash them, all these can remove the flour. And it's the same with the gunshot residue. It's just as fragile.
Q And item 1.3, the left palm of the hand.
A The left palm was also negative for gunshot residue.
Q And then lastly item 1.4, left back.
A The left back of the hand has particles of gunshot residue that were found.
Q And again, so in conclusion, both areas where there's two spots of gunshot residue found --
A Yes.
Q -- on the victim of this case?

A Yeah.
Q That would be the right palm and also left back?
A Yes, that's correct.
MR. BROWN: No further questions.
THE COURT: Mr. Tinsley.
MR. BROWN: Actually, Judge, let me follow that up.
THE COURT: Sorry. Go ahead Mr. Brown.
MR. BROWN: I want to follow that up.
Q Gunshot residue, in a general sense how close do you need to be, or could you be a shooter of a gun or the person who gets GSR on their hand, what's the general spacing in this?
A For gunshot residue to get on someone who is handling a gun you could pick it up and get it on your hands through transfer. You can also get it on your hands through firing. If you think of an old west movie where they have the revolver and there's a little plume of smoke that comes out when it's fired, that's gunshot residue and it would land on the hands of the shooter. But the majority of the gunshot residue is actually going to follow the path of the projectile or bullet and it's going to come out in kind of a cone shape. So it's going to go up from the top of the barrel and down from the bottom of the barrel in a cone shape. And anything in that cone has the potential to have gunshot residue on it. And it will most likely include the

victim of the gunshot wound.

Q Now, would it make sense if you had gunshot residue on the right palm that you may or may not have it on the right back, as for spacing?

A That is a possibility. By following spacing it is possible that you would only have it on that area.

MR. BROWN: No further questions.

THE COURT: Okay, sir.

MR. TINSLEY: Just a couple.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. TINSLEY:

Q So nothing that you did in this case has any indication that my client did anything, does it?

A No, sir. All I have is a gunshot residue kit taken from the victim.

Q The only other question I have is why did it come from the arson room?

A Oh, on the chain of custody?

Q In the chain of custody.

A Yes, sir. The trace evidence department does many other analysis. One of which is arson. It was in the arson evidence storage room. So that means it was in a locked storage room across the hall where we keep evidence. It's just a large room where we have a bunch of shells and we

keep evidence on it, and that just happens to be how it comes up in the computer as arson evidence storage.

Q Just strikes me as odd that it would be in the arson room instead of the gunshot room.

A We don't actually have a gunshot residue storage room.

Q That's the trace room?

A Yeah, that's just the trace room, so...

Q So I guess I would assume that the trace room was full?

A We actually have very limited storage space in the trace elements department for gunshot residue. We currently have a three year backlog on gunshot residue cases. And if you think about the size of this box and that envelope, and how many cases we might have in a year, two years, three years sitting there. That's a lot of evidence to store. So the majority of our evidence is stored downstairs in the trace evidence intake storage area in evidence control. But occasionally even their shelves get full. And when that happens we bring it upstairs. We have many different places where we can put it, most of which are in the arson evidence storage room. Some have different names, such as the file cabinet name or number, or a shelf name or number. This particular area is a set of two very large shelves, like you would find in almost a workshop. They're the metal kind of shelves where you put boxes on them. And we have probably 32 to 40 boxes full of envelopes for gunshot residue on

these shelves specifically. It's a temperature controlled room. All the evidence again is safe and under lock. These particular items of evidence are pretty much indestructible unless you go out of your way to destroy them. The evidence -- or the analysis I perform on them is nondestructive, meaning these can be reanalyzed essentially as many times as you would want. They can be put on a different instrument and reanalyzed. You can still get a result off of them.

Q You most thoroughly answered my question. Not to shorten you, but I just have one more.

A Yes, sir.

Q And you can have a safe trip back to Columbia as far as I'm concerned. I certainly hope you do. Are you satisfied with the chain of custody as to how it got to you?

A Yes, sir. This is a typical chain of custody in how it would get to me.

MR. TINSLEY: Thank you.

THE COURT: Thank you, ma'am.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: You can -- nothing further with this witness?

MR. BROWN: Nothing further.

THE COURT: Thank you very much, ma'am. You can step down and you are free to go. Thanks for coming in. Call

your next witness, Mr. Brown.

MR. BROWN: I call Michelle Eichenmiller.

MICHELLE EICHENMILLER, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Would you state your full name.

A Michelle Eichenmiller.

Q Ms. Eichenmiller, where are you employed?

A I work for the South Carolina Law Enforcement Division commonly known as SLED. I work in the forensic lab in the firearms department.

Q How long have you been with SLED?

A It'll be nine years this week.

Q And being in the forensic department, specifically firearms, what's your educational background?

A I have a Bachelor's degree in biology and I have a Master of Forensic Science degree.

Q What specialized training do you have?

A In order to be a firearms examiner you don't really need to go to school. You do an apprentice like program. You follow court trained firearms examiners in their day-to-day work, as well as doing reading on your own and then testing. After about three to five years you take a comprehensive test and if you pass then you can do case work

on your own.

Q And have you ever been qualified as an expert in the fields of firearm and tool mark analysis?

A I have.

Q How many times?

A This will be 26.

MR. BROWN: Your Honor, at this time I offer Michelle Eichenmiller as an expert in firearm and tool mark identification and examination.

THE COURT: Any questions, Mr. Tinsley, or any objection?

MR. TINSLEY: No objection, Your Honor.

THE COURT: Again, ladies and gentlemen, like the previous witness, normally a witness cannot testify as to opinions or conclusions. In this case the parties agree that Ms. Eichenmiller is an expert in the field of firearms and tool mark analysis, therefore she can state opinions in this area that you may use as you deem appropriate. Go ahead, Mr. Brown.

MR. BROWN: Thank you, Your Honor.

Q Ms. Eichenmiller, with regard to the case we're here trying this week, did you have the opportunity to examine projectiles recovered during the autopsy of Prudencio Sis?

A I did.

Q Specifically lab number L13-07501?

A Correct.
Q And those item numbers -- I'll actually let you look at them first. It's been marked for State's ID purposes as State's 38. Take a look at that and tell me what that is.
A This is the envelope contains items 5 and 6. It's still sealed with my initials and the date.
Q And 5 and 6 are what?
A Five and 6 are the two fired bullets recovered during autopsy.
Q Did you have the opportunity to examine those two fired bullets?
A I did.
Q And let me have the chain of custody. Can you tell me who brought those two fired projectiles to SLED?
A According to our chain of custody here, Kenya Griffin of the Greenwood Police Department submitted them to our evidence log-in technician, Courtney Smith.
Q And then who got it after Courtney Smith?
A The evidence technicians will put it on a shelf and store it until I go downstairs to pick it up. One of them has to retrieve it and hand it to me. So Dodie Yarborough to get off the shelf in storage and handed it to me.
Q And once you got the package, items 5 and 6, tell me what you did with it.
A When I retrieved it from log-in they'll scan -- I have

my own bar code and each envelope container will have a bar code. So we'll scan where it's going, which is me, and its bar code and then it's in my custody. I'll bring it upstairs. I'll store it in my evidence locker until I'm prepared to work the case. Once I work -- once I'm prepared to work the case I go into my locker, get it out. The seals are intact. I take pictures to document the condition I received it in. As I open it I take additional pictures. And then once I have it all out I take still additional pictures to document what it looked like.

Q And then in this case once you received it out of your storage bin and received it from Dodie Yarborough was the package tampered with in any way that you can tell?

A No, it was sealed.

Q It was sealed.

MR. BROWN: Your Honor, at this time I move -- I believe it's --

THE COURT: 38.

MR. BROWN: -- 38 as State's Evidence 38.

THE COURT: Any objection to State's 38?

MR. TINSLEY: Not at this point, Your Honor.

THE COURT: Without objection, State's 38 is in evidence.

(Whereupon, State's Exhibit No. 38 was admitted into evidence.)

Q Ms. Eichenmiller, can you open up the package and show us what's inside?

A Whenever I receive evidence I'll mark all the packaging. So I've marked the outside of the envelope. I've also marked the two -- the evidence that was received in. And I also marked the evidence. I scribe on it with my initials, the case number and the item number. So these are items five and six from this case.

Q And once you receive it and once you start, I guess, breaking into how it's secured and stored, for generalization, how do you go about doing an analysis on projectiles that are recovered?

A Projectiles that I recover, in the absence of a firearm we can look at the projectile. If there's more than one we use a comparison microscope to microscopically examine them and see if they came from the same firearm. In addition we can look at each bullet. And based on its general rifling characteristics, which are things like the number of lands and grooves, or the diameter of the bullet, or the direction of twist, we can narrow down possible guns that may have fired that projectile.

Q And during -- in this case were you able to do that?

A Yes. I microscopically compared them to each other, and then I was able to come up with a list of firearms that could have fired the bullets.

Q Well, what did you find microscopically with these two projectiles?

A When I microscopically examined them I determined that they were most consistent with 40 S&W and/or 10 millimeter auto. That just means the diameter of the bullet was approximately .40 inches. They had been fired through a polygonally rifled barrel. There are two kinds of rifling, conventional and polygonal. They have six grooves with a right-hand twist.

Q And 40 S&W, what does that 40 mean. In a general sense, if you heard 40 would that be a 40 caliber?

A Correct.

Q What else did you find -- or what else during your microscopic exam of this? Were you able to find anything else about it?

A When I microscopically them to each other looking through a comparison microscope I didn't see enough individual identifying characteristics to say that they came from the same gun, so my results were inconclusively. They could have been the same firearm or they could have been two different firearms.

Q What kind of firearms were you able to come up with, maybe the make or the make and model of a particular firearm that could have fired these bullets?

A We just come up with the manufactures. The

manufacturers that could have fired this firearm were Glock, HK, IMI, Kahr Arms or Vector.

Q Just to wrap up the bullets on this. Under your exam it could have been a 40 -- again, you said it was a 40 caliber, or a 10 millimeter?

A Uh-huh (affirmative response).

Q And it could have been a Glock, HK, IMI, Kahr Arms or Vector?

A Correct.

Q Was this the only analysis you did for this case?

A No. I also received four cartridge cases.

Q I'm going to show you what's been previously marked for ID purposes as State's ID 36. Take a look at that.

A This is the envelope that contains my item number 10 through 13 which I had four cartridge cases. It's still sealed with my initials and the date.

Q Now, what kind of analysis would you do on cartridge cases?

A When we receive cartridge cases very similar to a bullet we'll microscopically examine them using a comparison microscope and see if we can find any individual identifying characteristics that will tell us it was fired by the same firearm.

Q And just step back. When you received these items, the -- what item number were those? Was that last -- the

cartridge cases?

A They're items 10 through 13.

Q And who brought these two SLED?

A According to our chain of custody, Kenya Griffin of Greenwood Police Department submitted them to the log-in department.

Q And when it came time for you to examine who did she give those to, or who did Kenya Griffin submit these to SLED?

A Kenya submitted them to log-in department, Courtney. These cartridge cases were actually submitted twice. So the first time they were given to Courtney. The second time they were given to Amy Stephens in the log-in department. They both put them on shelves and I retrieved them from the log-in department.

Q The firs time these were submitted they were for trying to retrieve latent prints?

A Correct.

Q And then the second time was to identify through your expertise potentially what kind of gun fired this shell?

A Correct.

Q And when you received it, when it came to you, it came through Amy Stephens?

A Yes.

Q And then who got it next?

A Amy put it on the shelf at our intake storage, and then Pat Crocks took it off that shelf and then scanned it to me and I brought it upstairs.

Q And examining -- now, is that the items 10 through 13 the shell casings you examined?

A Yes.

MR. BROWN: Your Honor, at this time I would like to move what's been marked for ID purposes 36 as State's Evidence 36.

THE COURT: Any objection to 36?

MR. TINSLEY: Not at this point, Your Honor, but I'm having a little trouble following the chain of custody. I'd like to --

THE COURT: I'll let you ask -- I'll let you ask her some questions then and we'll reserve admission until a later point.

MR. TINSLEY: Thank you, Judge.

Q Ms. Eichenmiller, when you examined items 10 through 13 what were -- were you able to find any results?

A I did. When I microscopically compared them I concluded that they were all fired by one firearm, and that they may be suitable for identification to that specific firearm.

Q So all four shell casings with that potential bullet, could you tell what caliber -- where there any stamps on

those shell casings?

A Yes. They were 40 S&W caliber.

Q 40 S&W caliber shell casings?

A Correct.

Q And they were all fired from the same gun?

A Right.

Q And there's no way to tell if those bullets that you -- or projectiles, you couldn't match those up specifically with those shell casings?

A No. We don't do any testing for that.

MR. BROWN: Judge, subject to his questioning, if we could move those into evidence.

THE COURT: Certainly. Cross?

CROSS-EXAMINATION

BY MR. TINSLEY:

Q Good afternoon. Just a couple questions. I see your first chain of custody. But on the second chain of custody -- maybe I'm not looking at the right place. I think I am. And I have a little bit of a discrepancy that I want to ask you about. I had -- Now, you said you got a panel?

A Are you referring to the bullets or the cartridge cases?

Q Cartridge cases -- bullet.

THE COURT: Would you mind repeating that. I'm not quite sure I heard you up here, and I don't know that she

did either, Mr. Tinsley.

Q I said clear on the bullets, cartridges.

A And you'd like to know who I got them from?

Q Yeah, at the chain of custody. I want to make sure I've got this clear.

A For my portion of this chain it started on February 6th of 2014. Amy Stephens took it on that day. Pat Crocks took it off the shelf on 2/19 of '14 and scanned it to me. And then I returned it to Pat on 3/26 of 2014.

Q I think I'm clear. No prints. No DNA?

A That's not my department.

MR. TINSLEY: Thank you so much.

THE COURT: The State renews its motion to move State's 36 into evidence, Mr. Brown?

MR. BROWN: Yes, Your Honor. I ask to move State's -- or ID purposes 36 into evidence at this time.

THE COURT: State's 36 will be in evidence. Any additional questions?

MR. BROWN: No, Your Honor.

THE COURT: Thanks for coming. You are free to go.

(Whereupon, the witness steps down from the witness stand.)

THE COURT: Anybody need a -- who's your next witness, Mr. Brown?

MR. BROWN: You can probably take a break.

THE COURT: I'm hearing it's a good time for a quick break. We'll be at ease for about five minutes. Don't talk about the case. I'll let you know when you can. But feel free to refresh yourself in the back. We'll be at ease.

(Whereupon, the jury exited the courtroom at 3:25 p.m.)

THE COURT: We'll go back on the record. Solicitors, do you all have your next witness ready?

MS. WHITE: Yes, sir.

THE COURT: Let's have the jury in, please.

(Whereupon, the jury entered the courtroom at 3:29 p.m.)

THE COURT: We are back on the record and the jury is present. Solicitor, call your next witness, please, Ms. White.

MS. WHITE: Thank you, Your Honor. The State calls Yvette Castro.

YVETTE CASTRO, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q If you could tell us your name for the record.

A It is Yvette Castro.

Q And, Ms. Castro, I know you understand English and speak it very well, but if there's something you don't understand, just let me know. Okay? How did you know --

did you know Prudencio Sis?

A Yes, I do.

Q And how did you know him?

A I was his fiancee.

Q So you all were going to get married?

A Yes.

Q How long -- what did you call Mr. Sis?

A You mean his nickname? Freddie.

Q How long had you known Freddie?

A It was going to be like five years.

Q And how long had you all been dating?

A A year.

Q Had you been with Freddie on May 30th, 2013?

A He was at my house.

Q And where had he been that day?

A He was with me. He was just visiting my house.

Q Had he been to work earlier that day?

A Yes.

Q Where did he work?

A Metal plant.

Q A metal plant?

A Yes.

Q So he went to work and he got off and came to your house?

A Uh-huh (affirmative response.)

Q Where did you live at the time?

A [redacted].

Q Can I get you to step down a minute, Ms. Castro.

(Witness steps down from the witness stand.)

Q I'm showing you State's Exhibit 2. Can you show us on this map where [redacted] is?

A (Witness indicates on map.)

Q Over here?

A Yes, ma'am.

Q So you lived over here. And where did Freddie live?

A He lived over here on New Haven.

Q And is New Haven up here from off the map?

A Uh-huh.

Q What was the route that Freddie would walk when he left your house?

A Here.

THE COURT: And if you could, just ask her to speak up just a little bit, Ms. White, because --

Q Speak up a little bit.

A He just take the short way. Go through the forest to here.

Q So he would cut down Squires Court, through the woods and up Franklin Street?

A Uh-huh.

Q And, I guess, cut across here going up to New Haven?

A To get to New Haven.
Q Thank you, Ms. Castro.
(Whereupon, the witness returned to the witness stand.)
Q Do you remember about what time he left your house that night?
A 9:00.
Q And did he tell you what he was going to go do?
A He just told me that he was going to his house. And his last words was he loved me. That's the only thing I remember.
Q Did you hear anything that night?
A I heard the shots, because I was outside waiting to him to leave and I heard some shots. But I don't thought that was him.
Q So you heard the shots but you didn't think anything of it at that point?
A No. I just go to my bed.
Q What happened next?
A Around 12:00 an officer come to my house and tell me everything about what happened.
Q Did you have to go identify Freddie?
A Not that day. I go -- I think it was like two days after. I went to the Self Regional and I was able to see him.
Q How old was Freddie?

A Twenty-seven. He just turned 27.
Q And how long -- how long had he been here?
A He was here when he was around 12, 13.
Q One last thing, Ms. Castro. I'm going to show you what I've marked for identification as State's 39. What is that?
A Freddie.
MS. WHITE: State moves Exhibit 39 into evidence, Your Honor.
THE COURT: Any -- show it to Mr. Tinsley, if you would. Any objection?
MR. TINSLEY: No objection.
THE COURT: Without objection, State's 39 is in evidence.
Q And is this the same person that you saw at Self when you identified him?
A It was.
MS. WHITE: Permission to publish. Thank you, Ms. Castro.
THE COURT: Mr. Tinsley?

CROSS-EXAMINATION

BY MR. TINSLEY:
Q I'm so sorry for your loss, Ms. Castro. Have you gone on to marry by any chance?
A Can you repeat that?
Q Have you gone on to marry? Are you still single?

A I'm single.
Q Are you an American citizen?
MS. WHITE: Objection, Your Honor.
THE COURT: Sustained. I don't see where that's relevant.
MR. TINSLEY: Can I ask it about the deceased?
MS. WHITE: Same objection, Your Honor, relevance.
MR. TINSLEY: I disagree.
THE COURT: Approach then, please, Mr. Tinsley.
(Whereupon, a side bar was held.)
THE COURT: The objection is sustained.
MR. TINSLEY: May we approach?
THE COURT: Sure.
(Whereupon, a side bar is held.)
THE COURT: Previously ruling stands.
MS. TINSLEY: Well, Ms. Castro, you don't have to answer the last question and God Bless you.
THE COURT: Thank you, ma'am. You may step down.
(Whereupon, the witness stepped down from the witness stand.)
THE COURT: Ms. White, call your next witness, please.
MS. WHITE: Your Honor, I think that's everyone we have for today.
THE COURT: Oh, really. Okay. Scheduling-wise let's huddle over here for a second.

Tavarious Settles. At this point, Mr. Brown, if you'll call your next witness, please.

MR. BROWN: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. BROWN: The State calls Dr. Brett Woodard.

DR. BRETT WOODARD, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Good morning.

A Good morning.

Q Dr. Woodard, please state your full name for the record.

A Brett Hoton Woodard, W-o-o-d-a-r-d.

Q Dr. Woodward, where are you employed?

A I'm employed by Piedmont Pathologist Associates in Anderson, South Carolina.

Q And what is your occupation there?

A I'm a medical doctor, pathologist and forensic pathologist by subspeciality training.

Q And what is your training? Give me your educational background.

A I received my bachelorette degree from the University of Pittsburgh. I received my medical degree from Tulane

University in New Orleans. I did an internship at the Charity Hospital in New Orleans. I did a residency at Duke University Medical Center, and I did fellowship training at the North Carolina Medical Examiner's Office.

Q Now, are you a licensed physician here in South Carolina?

A Yes, I am.

Q And how long have you been licensed to practice in the state?

A Since 1982.

Q And, Dr. Woodard, you said you're a licensed forensic pathologist. What does a forensic pathologist do?

A A forensic pathologist is someone who has taken general training in pathology and then takes special training in the area of forensic pathology which deals with human injury and human disease and how injury and disease can interplay up to the point of death.

Q And, Dr. Woodward, how many autopsies do you think you've done through your career?

A I do approximately 250 autopsies a year. I've done that since 1982.

Q Dr. Woodward, have you ever been qualified as an expert in forensic pathology in the Court of General Sessions in South Carolina before?

A Yes, sir. I have.

Q Do you know how many times roughly?
A Hundreds.
MR. BROWN: Your Honor, at this time I offer Dr. Brett Woodard as an expert in pathology.
THE COURT: Any questions?
MR. TINSLEY: No objection. No questions, Your Honor.
THE COURT: Very good. Again, ladies and gentlemen of the jury, as I mentioned yesterday normally witnesses cannot testify as to opinions or conclusions but an exception does exist for this rule for individuals who are experts in some field, art or science. And in this case Dr. Woodard has been stipulated to be an expert in the field of forensic pathology, therefore he can give opinions in this area. He can also state his basis for those opinions. It does not mean that you have to accept his opinions but it is evidence for you to use as you deem appropriate.
Mr. Brown, you can continue, sir.
Q Dr. Woodard, as it relates to this case, did you perform an autopsy on Prudencio Chiquin Sis?
A Yes, I did.
Q When did you perform that autopsy?
A That autopsy was performed on May 31st, 2013.
Q And where was that autopsy performed?
A It was performed in the morgue facility at the Anderson Area Medical Center.

Q And who brought -- did the Greenwood County Coroner's Office bring Mr. Sis' --
A Yes.
Q -- body to you?
A Yes, they did.
Q And is the Coroner's Office in Greenwood the one that authorizes the autopsy in this case?
A In this particular case, yes.
Q Dr. Woodard, during this autopsy were pictures taken?
A Yes. I either took or caused to have taken pictures of certain things that we saw to preserve those images.
Q Dr. Woodard, do you know who all was present during this autopsy?
A Mr. Charles Boseman was present. He's my morgue assistant. And then Ms. Kelly Chapman was present. She's a pathology assistant that works at Piedmont Pathology. There were representatives from the Greenwood Sheriff's Office and the Coroner's Office.
Q Now, when you do this autopsy what do you -- what's the first thing you do when somebody is brought in to you?
A We examine the body as we receive it. This usually means there's clothing on the body. We examine the clothing to see if there's any defects in the clothing, injuries to the clothing. And we look at the surfaces of the body to look, in case of bleeding injuries, to see which way the

blood had traveled relative to the body itself. And then we remove the clothing to look for any defects that were in the clothing to see if they translated into injuries that were underneath the clothing on the body itself, and then we pursue those injuries to see what exactly they did do to the underlying organs and tissues. We cover any evidence that might be there associated with those injuries.

MR. BROWN: Judge, may I approach, please?

THE COURT: Please.

Q Dr. Woodard, I'm going to show you what's been marked for State's identification purposes State's Exhibit 19 through 32. Take a look at these photos and tell me what those depict.

A These represent the photos that I took or had taken at the time of the autopsy. They show how we received the body, the type of clothing that it had on it at the time the body was received, and they show what we call the entry wound, when the bullet goes into the body, and the exit would where the bullet leaves the body, if the bullet did leave the body, or in the case of one of the wounds it shows where the bullet came right immediately beneath the skin and we recovered it.

Q Dr. Woodard, do those photos clearly and accurately represent Mr. Sis during this autopsy exam?

A Yes.

Q And also the injuries to Mr. Sis?

A Two projectiles were retrieved.

MR. BROWN: Judge, at this time State moves State's 19 and 32 into evidence.

THE COURT: All right. Subject to the earlier objection. Would you show this to Mr. Tinsley quickly though.

(Whereupon, Defense Counsel reviews State's Exhibit Nos. 19 through 32.)

Q Dr. Woodard, how many projectiles were recovered from the body?

A Two.

Q Two.

MR. TINSLEY: Thank you, Your Honor. I misunderstood the first answer.

THE COURT: Very good. Thank you, Mr. Tinsley. 19 through -- sorry, 19 through 32 are in evidence, subject to the earlier objection.

(Whereupon, State's Exhibit Nos. 19 through 32 were admitted into evidence.)

Q Dr. Woodard, going further into your report, and I can actually -- if you would like to step down. You might be able to go through your report and these pictures to --

(Whereupon, the witness stepped down from the witness stand and approached Exhibits.)

Q Dr. Woodard, I'm going to show you what's been marked State's Evidence 19. Dr. Woodard, can you describe what you see in that picture?

A This representation of the -- of the young man as he was clothed and at the time we received him. You can see his shirt. Tee shirt. His hands are covered by paper bags, which is the custom so that police can obtain gunshot residue swabs from the hands, as well as the hands won't be secondarily contaminated so if there was any human contact between the two people. I mean, the person who shoots, the deceased, and another person -- closer personal contact of any kind, it may be displayed on the hands and it won't be lost.

Q I'll show you now what's been marked as State's Evidence 20.

A When rolling the -- we're rolling the body. I've pulled up his overshirt. You see his undershirt. And there is a hole in the back of the undershirt which suggests to us that there's been a gunshot wound in that right lower area of the back.

Q Dr. Woodard, is there another shot or entry wound?

A Yes. There's another entry wound. You can see it next to my hand in the left upper corner of the picture sort of where the two purple hands are. Not where the ruler is there. The upper right shoulder area.

Q Dr. Woodard, I'm going to show you now State's Evidence 21.

A This represents his first finger. The second phalanx of the body. It shows the tip of the finger has had an injury to it. A passing by gunshot wound to that finger. And it shows that the blood is spattering down onto the palm of the hand. We refer to the thumb side of the hand as lateral and the little finger side of the hand as medial by convention, and the blood travels from the thumb side toward the little finger side across the palm.

Q Dr. Woodard, which hand is that? Is that the right or --

A That's his right hand.

Q And based on the injury of that right index finger could you tell which way the bullet would have --

A The bullet would have come from the top side of the hand and it would have been coming from that direction, and the bullet was passing toward the little finger side of the hand.

Q Going towards the body?

A Towards -- going towards the body or --

Q Or wherever.

A Or wherever.

Q I'll show you what's been marked State's Evidence 22.

A This is a gunshot wound to his abdomen. You see

there's a large teardrop and then a torn lesion. That teardrop wound tells us that the bullet has traveled from his right side going down toward his left side. And we took another picture that would show if these two injuries connected they wouldn't be fatal or incapacitated injuries, and obviously the bullet wouldn't be there to be retrieved.

Q Dr. Woodard, this is State's Evidence 23.

A This shows the probe that those two wounds connect one with the other going from his right toward his left in a downward direction.

Q I'll show you what's been marked now State's Evidence 24.

A This is the gunshot wound you saw next to my gloved hand up in his right shoulder area. This is an entry wound into the body.

Q I'll show you State's Evidence 25.

A And this is the exit wound that's associated with that. That's in the left neck right below the collar bone on the left side. And again, you can see that the bullet came out. There's a bruise around the collar. If you remember he had a tee shirt and a shirt on. That supports the tissue as it's lifted by the bullet passing through and produces a bruise.

Q Dr. Woodard, the gunshot wound to the back scapula right shoulder blade and exiting there, what damage did it

do passing through?

A That particular bullet goes into the chest cavity and strikes the first vertebra. The first thoracic vertebra. It produces a bruise on the spinal cord, or a contusion, and it then passes out just missing the subclavian artery in this particular area. A bruise to your spinal cord, while it may not produce permanent damage to the spinal cord, will temporarily cause everything below that location to go numb for a period of time. So if you're standing erect you're going to collapse depending on how you're -- you know, you'll fall in a direction depending on how your last message is to your body before that occurred and got traveled to the muscles. So that wouldn't be fatal. That would be an incapacitating wound, meaning he wouldn't be able to move after that bullet passed through.

Q Dr. Woodard, that bullet did enter his back?

A That's right.

Q I'll show you what's marked State's Evidence 26.

A This shows the probe. If you could lower the picture a little bit. Yeah. You see where the green towel is. I'm holding the probe in his back and it shows how the bullet is coming across it's back up to that location.

Q State's Evidence 27.

A This is a gunshot wound to his right lower back that you saw through the tee shirt before. This is above the

pelvic bone into the muscles in that lower area. And this is going to pass from his right going toward his left and going through the brunt of his body, much like the bullet through the shoulder blade did.

Q State's Evidence 28.

A This shows where we found that bullet. It's right next to where your bone from your pelvis is there in the front, that you can feel it right above that. The bullet was in the soft tissues. And we placed this in a tube that identified it that it was from the soft tissues, so -- on the left side in the front.

Q Dr. Woodard, you did retrieve that bullet?

A I retrieved that projectile. That's correct.

Q I'll show you what's been marked State's Evidence 29.

A This shows a bullet wound to his chest. You see it's above his nipple and off to the right side of his nipple in the edge of his pectoral muscle. And that particular bullet broke some ribs on the way in. Went through the right lung. Hit the heart. Put a large hole in the heart. Went through the heart. Exited the heart. Went through the left lung and ended up in the chest cavity on the left side.

Q I'll show you what's been marked State's Evidence 30.

A This shows the general passage. The path of that particular bullet.

Q State's evidence 31.

A This represents one of the two projectiles that we retrieved; a copper and lead plated projectile. What I would refer to as a large caliber, meaning it's not a 30 or a 20 caliber but it's bigger.

Q State's Evidence 32.

A This represents the other projectile that we retrieved. And I would place those in little tubes with blue caps and identified them as the location where they were retrieved. They would have gone to SLED.

MR. BROWN: Thank you, Dr. Woodard.

(Whereupon, witness returns to the witness stand.)

Q Dr. Woodard, I want to show you what's been marked State's Evidence 38. Take a look at these and tell me if you recognize them.

A Yes. We create a printing label to initially label things and the projectile. These are the tubes that I sent the projectiles in. One was labeled projectile from left hemothorax, which means left blood in the chest. And the other one was labeled left anterior pelvis to refer to that skin site. And these look very similar to the photographs.

Q Dr. Woodard, were these bullets in that form when you retrieved them from the body?

A Yes, they were.

Q Dr. Woodard, based on your results of your autopsy, based on a reasonable degree of medical certainty, do you

have an opinion as to the cause of death in this case?
A Yes. The gunshot wound to his chest which resulted in trauma to his heart and hemorrhage.
Q And you documented it as a hemopneumothorax?
A That's correct.
Q And what does that mean?
A It just means that air and blood were allowed into the chest cavity.
Q Dr. Woodard, when Mr. Sis sustained the gunshot wound to his chest would he still be able to move?
A For one to two seconds, making the assumption that his heart was just beating 60 times per minute. In one or two heartbeats he's going to have lost sufficient enough blood that he will be so lightheaded that he would begin to collapse.
Q And the bullet to his back?
A It would be instantly incapacitating and he would fall under the influence of gravity.

MR. BROWN: No further questions.

THE COURT: Mr. Tinsley, cross?

MR. TINSLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. TINSLEY:

Q And, of course, Dr. Woodard, you have no idea of who placed this injuries upon Mr. Sis, do you?

A I was able to eliminate he himself. Another individual had to do it. I know not who that is.
Q So it wasn't suicide?
A That's right.
Q And that bullet on the finger that we looked at. This one. Can you see it?
A Yes.
Q You've seen it. Do you know if that bullet went in through his back?
A It could have. It could represent the abdominal bullet or the chest bullet, but there's no way to know for sure.
Q So maybe, maybe not?
A That's correct.
Q The other picture I wanted to ask you about was this one, State's 26. Does that tubing show the exit?
A That's showing the exit wound. And it's -- the tubing was placed in the entry wound in his right shoulder blade and passed through that exit wound.
Q Now, could you see a picture showing the entry point?
A Yes. It was showing --
Q Is this it?
A No. That's the chest -- that's the right chest one?
Q Why is that at such an angle?
A Just the relative relationship of the shooter to the body and the body to the shooter's barrel at the time the

gun was discharged.
Q I see. And is that an entry point or an exit point?
A That's an entry point.
THE COURT: Which exhibit was that, Mr. Tinsley?
MR. TINSLEY: Excuse me, Your Honor, 30.
THE COURT: Thank you.
MR. TINSLEY: Bear with me one second, Your Honor. I want to look through the rest of them. I think that's all I have on these pictures. It is. I'll return them to the court reporter. I guess a couple more questions.
Q So you retrieved two projectiles, correct?
A That's correct.
Q So any others would have passed through the decedent's body, correct?
A That's correct.
Q So because the finger shot, whether or not it entered or not, you're not exactly sure --
A It cannot be said to a reasonable degree of medical certainty that that bullet did or didn't hit the body. It's possible.
Q So it's hard to say exactly bullets hit his body?
A Well, that bullet hit his hand, so that's a gunshot wound pattern.
Q Right.
A But that could be the beginning of one of the other

gunshot wound patterns. You don't know 100 percent, no.
Q So therefore, you wouldn't speculate --
A That's correct.
Q -- further on that matter?
A That's correct.
MR. TINSLEY: Beg the Court's indulgence one second.
THE COURT: Yes, sir.
MR. TINSLEY: Thank you, Dr. Woodard.

REDIRECT EXAMINATION

BY MR. BROWN:
Q Dr. Woodward, Mr. Tinsley was asking about the finger of Mr. Sis. The way the finger was shot, would that -- could you suggest by the way the finger was shot that the hand was up in some type of manner?
A Yeah, the hand would have been spread open in some sort of manner with the fingers extended and the bullet would have passed from that side of the body going toward the body, but it could totally have missed the body or it could line up with one of the two wounds to the right anterior portion of the body.
Q Mr. Tinsley was asking about the angles of the entry wounds, one to the chest, one, the exit wound to the clavicle. Those would all have to do with the victim if the victim was turning, correct?
A The victim turned. The victim was beginning to go

closer to the ground, or was bent over. It would change the angle as far as if it was up down relative to the body.

MR. BROWN: No further questions.

MR. TINSLEY: Just one thing.

RECROSS-EXAMINATION

BY MR. TINSLEY:

Q Of course, that shot -- that would, depending what order that shot that immediately would make him slump, so to speak, would determine some of those others? It depends on what order the --

A No. It would really depend on how much he was bent at the waist and if he was turning to his left or was keeping the relative position of the shooter off to his right side.

Q So there's no real way to determine what order that --

A Other than to say what he could do after the shot to his back. It goes through his shoulder blade. And the shot through his chest which goes through his heart. He would instantly fall from the shot in the back that hits the spinal column. He would maybe have a second or two with the bullet that goes through his heart.

Q Although the back shot was not a fatal shot?

A It would not have been a fatal shot.

MR. TINSLEY: Thank you, Dr. Woodard.

THE COURT: Just for clarification. The photo, Mr. Brown, that you showed the doctor of the finger, which

exhibit number is that?

MR. BROWN: Yes, sir, Your Honor. Sorry about that. That's State's Exhibit 21.

THE COURT: Thank you. Doctor, thank you very much for coming. You may go. I appreciate you being here, sir.

(Whereupon, the witness steps down from the witness stand.)

THE COURT: Solicitor, call your next witness, please.

MR. BROWN: The State begs the Court's indulgence.

THE COURT: Yes, sir.

MS. WHITE: The State rests, Your Honor.

THE COURT: Ladies and gentlemen of the jury, I need to take up a few issues of law with the attorneys involved in this case and then we'll continue with the trial. So if you would adjourn for about 10 minutes. Don't talk about the case yet. I'll let you know when you can. But get some coffee and relieve yourself if you need to. Okay? We'll be back on the record shortly.

(Whereupon, the jury exited the courtroom at 9:58 a.m.)

THE COURT: At this point, Mr. Tinsley, I assume that you renew all previous motions and you have additional motions?

MR. TINSLEY: Yes, Your Honor. Exactly as I was going to say. I renew all previous motions at this point. I would move for a directed verdict of not guilty for my

client based upon the fact that no credible witness has identified him as the shooter of anyone. There's a fellow that he said he did it, but his credibility is very much in question. There's no gun in the case. None were ever received. There's -- I think the State has met more than likely the scintilla rule in this case, but applying the reasonable doubt standard, which of course the jury will have to do if they get the case, I don't believe a reasonable juror could determine beyond a reasonable doubt that Mr. Settles killed Mr. Sis. And based upon that and the totality of the circumstances which you've heard in this case and the position that we, of course, think that the State's trying the wrong man, we would make that motion for directive verdict of not guilty.

THE COURT: All right. In a light most favorable to the nonmoving party, in this case the State, the Court finds that there is evidence from which the jury could reasonable conclude beyond a reasonable doubt that Mr. Settles did, in fact, commit the offenses outlined in the indictments. Obviously credibility is an issue for the jury. It is inappropriate for the Court to pass upon those questions or to rule upon those questions, and by the Defendant's statement to the police the State would be entitled to argue, at the very least, a hand of one hand of all theory even if Mr. Settles is not the individual who actually

pulled the trigger, assuming that you are correctly, Mr. Tinsley. With regard to all the previous motions the same ruling stands as made earlier.

Mr. Tinsley, you're ready at this point to proceed with the defense or do you intend to offer a defense?

MR. TINSLEY: Your Honor, I'd like a couple minute break just --

THE COURT: Certainly.

MR. TINSLEY: -- I think the jury is taking one anyway.

THE COURT: Very good. We will take a few minutes for ourselves. My law clerk, I think, did email to everyone last evening the proposed jury instructions. I think he did not -- I think he sent them to your assistant, so hopefully you got them.

MR. BROWN: I got them.

THE COURT: Very good. We'll be at ease for a few moments.

(Whereupon, a recess was held from 10:02 a.m. to 10:22 a.m.)

THE COURT: We'll go back on the record. Mr. Tinsley, you wanted a moment to discuss with your client and your team whether to proceed with a defense. Do you intend to offer a defense?

MR. TINSLEY: Yes, sir. I do, Your Honor.

THE COURT: Very good. Let's have the jury back in

then, please.

(Whereupon, the jury entered the courtroom at 10:22 a.m.)

THE COURT: The record should reflect that the jury is back and seated. We are still continuing with the trial of the *State vs. Mr. Settles*. At this point, Mr. Tinsley, your case, sir.

MR. TINSLEY: Thank you so much, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. TINSLEY: Your Honor, Mr. Settles calls Brenda Settles to the stand.

THE COURT: Ma'am, if you'll come forward and be sworn, please.

BRENDA SETTLES, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TINSLEY:

Q State your name, please.

A Brenda K. Settles.

Q And where do you live, Ms. Settles?

A I'm living at [redacted], Greenwood, South Carolina, 29646.

Q Where did you live on the date of May the 30th, 2013?

A [redacted].

Q And who abided there with you? Who lived there with you?
A Me, my grandson, Tavarious D. Settles.
Q Is this who I'm pointing to?
A Yes, sir.
Q And on that date do you have any particular recollection of what he -- what you did and what he did that you observed him do? Do you recall if he went to school that day?
A Yeah, it was a basically every average every day. Just -- I don't think he went to school on that day. He had been sick with the flu. He had been out, I believe, on this particular day.
Q On May the 30th -- and I'd like to refresh your memory. Do you recall that, in fact, you took him to school that day?
A That morning on May the 30th.
Q Yes.
A On May the 30th. Yeah, I've take him to school several times.
Q Now, I know it's been a long time.
A Yes.
Q And I'm not going to try to put words in your mouth. But when he was living there with you did you provide him with anything like an allowance, or did he have some money

in his pocket, that sort of thing?

A I helped him out when he needed something, or a necessity. He didn't go without anything he needed. He had a cell phone. I kept minutes on his cell phone. He would run out, he would call and I would go to Alltel and put some on. If he needed a little change in his pocket, you know, I helped him out. His mother and his grandmother, you know. He didn't go without.

Q So he had what he needed?

A Yes, sir.

Q And generally -- school was wrapping up, I guess. It was very near the end of the school year. Possibly the last day or very close thereto, May the 30th. You may not recall that, but --

A Uh-huh.

Q But if you do, answer the question. Not -- you don't have --

A I'm not quite sure of that particular day. It's been a long time.

Q But you -- how did he normally get to school?

A He started out riding the bus, and then I would take him -- sometimes I would go pick him up, Tavarious, from school. And he rode the bus transportation, and sometimes I would pick him up and bring him home. But he was riding the bus for a while.

Q And sometimes you would give him a ride?
A Yes, sir.
Q Where did he grow up in the Greenwood area?
A Where did he grow up from a child?
Q As a child, yeah.
A With his mother.
Q Who is?
A Well, he was -- when Tavarious was born he stayed in Greenwood, South Carolina. Down in Burgess Apartment.
Q Did he ever live in the Hodges area?
A Yes, he lived in Hodges with his mother. From there she moved to Hodges, South Carolina, and there he moved with her.
Q And at what point did he come to live with you? How old was he when he came to your residence?
A Tavarious was a teenager. He hadn't lived with me but like maybe a year, year and a half. Not long. He pretty much lived with his mother. But, you know, during that time his mother was moving, going through transition of moving, and he stayed with me just for a partial time, you know. But he mainly lived with his mother the majority of his life.
Q But you say now for about a year, year and a half he lived with you?
A Yeah, somewhere. It wasn't very long. He was just

staying there temporarily, you know.

Q Let's talk about back on May the 30th. There's been some talk about him being taken to the jailhouse.

A Yes, sir.

Q And, in fact, did you ever receive a phone call from him that day?

A No, sir. When he left I never heard from him again, and I was trying to call his phone and it went straight to voice mail. And I never could find out anything about where he was at or where he was. But later on that evening I got a phone call from his brother telling he. He said, grandma, someone say that my brother got locked up for killing a Hispanic. And I said, no, that's not true. He hadn't been long left here, you know. I've seen him earlier. He just left. And he said, well, that's what I heard. From there I was trying to call his phone. It would go straight to voice mail. I heard nothing from no one. I received nothing from no one. I said, well, usually someone would come to my house from the law enforcement and let me know something. But I never seen anything, heard anything. I said, well, I'd get a phone call from him. I waited. No phone call. I said, this must not be true. So there I started trying to get in touch with his mother, and Shay. I called her. I was trying to ask around, because I never could hear from him no more. After he left that day his phone kept going to

voice mail. I said Kiree, that's not true. I said, no, Tavarious just left and he -- that never happened. You know, I was there talking, you know. We were talking about getting his driver's license, you know. He was getting ready to go to the eleventh grade. His teacher had called and talked to him and said, Tavarious, well, you've been promoted. You know, you got all your credits. Because he had went and helped him one Saturday to stack books, you know, because he had been sick and had been missed a few days. So he got his credits and stuff. And he thought he had to go back to the school the next Saturday, but she said no, Tavarious, your grades are up to par and you've got all your credits. You'll be going to the eleventh grade. And from then there was a phone call and I don't know. He left. I said, okay, Tavarious, don't forget to come back, you know. We're going to get your daddy. We're going to try and get your license. He left. And then later on I got the phone call from his brother. He's about 16, 17 now, you know.

Q Well, how old was Tavarious at the time?

A See, it was May, so he was still 17. 16. He didn't turn 17 until April.

Q He turned 17 in April?

A April. So it was May, he was still 16.

Q So he -- you had said something about usually the

policemen come by. Were you having trouble with him with the policemen?

A I mean -- no, not with him. I'm saying, I mean, a child under age. That would be the procedure to let the, you know, the parents --

MS. WHITE: Objection, Your Honor. Lack of personal knowledge and speculating.

MR. TINSLEY: I'm just clearing up her prior answer. I'll let the question --

Q Had the police been coming by for Tavarious on a regular basis?

A Yeah.

Q Had they or not?

A No. No.

Q So you're clear on the question.

A Uh-huh.

Q You can answer that without speculating, right? Correct?

A Right.

Q So you never did get that phone call on --

A No. I was waiting for it and I never got one.

Q Well, what kind of boy was Tavarious when he lived with you?

A Tavarious was a pretty responsible person. He was good hearted, caring and giving and he helped me out a good bit.

He had a good heart for helping, you know, anyone if they needed something or whatever, if he could. And he loved his family. And he was just the type of person -- you know, he wasn't no bad person. Wasn't no outsider. He basically stayed with -- kept him in church when we can, you know. We grew up in church. And so -- but he wasn't no one that I would say was trouble or anything. He was just an average every day person, you know.

Q And you said that day that you were surprised because you had just seen him a little bit earlier.

A Uh-huh.

Q About what time did you last see him that day?

A It might have been, I would say, going about 12:00 or after. I don't know.

Q Well, he had to be after school, so --

A Yeah. It -- well, I can't say for sure.

Q Were you working at the time?

A At the time -- well, I had been out for surgery. I'm not sure at that time if I was. I had been out of work. And it's been a long time.

Q So you're not certain?

A I'm not certain.

Q But it rings a bell that call from a relative later and you said that Tavarious -- you had just seen him somewhat --

A Uh-huh. He had just left, yeah. You know, he was

intended to come right back. That's why I was waiting, you know, for him to get back and he never. So I started to call his phone and it went to voice mail.

Q Is it possible, Brenda, that I've confused you? And I apologize for it if I have.

A Uh-huh.

Q Because there are two dates here.

A Uh-huh.

Q And it's my fault for not laying the proper foundation.

A Okay.

Q The first date is May the 30th. That's the day near the end of school.

A Right.

Q And then there's the date that he got arrested.

A Uh-huh.

Q And that was June the 13th. You've heard that testimony here today.

A Yes.

Q Now, is that what caused your confusion a little bit?

A I think so. Yes.

Q Well, I apologize to you and to the Court, the jury for not laying that foundation better.

A Yes.

Q Because I'm talking about two different days.

A Yes.

Q Does that clear it up a little bit for you?
A Yes.
Q Because, you know, school is out on June the 13th, correct?
A Right.
Q And you're not sure if school is out on May the 30th or not, right?
A No, I'm not sure.
MS. WHITE: You're Honor, I'm going to object to this whole line of questioning on several grounds; leading, asked and answered and relevance, also, to a certain point.
THE COURT: I'm assuming Mr. Tinsley will link this back up. Mr. Tinsley, just be careful how you phrase the question, please, sir.
MR. TINSLEY: Well, I'm about through, Your Honor.
THE COURT: Very good. Yes, sir.
MR. TINSLEY: I just -- really I think I confused the witness. I apologize.
THE COURT: Fair enough. Please proceed.
MR. TINSLEY: That sometimes happens in older cases.
Q: We're past May the 30th. Now June the 13th. And is that -- all I'm going to ask you, is that the day you were talking about when you'd just seen Tavarious and you were waiting on him to come back?
A Yes, sir.

Q So that clarifies the two dates.
A Yes, sir.
MR. TINSLEY: I apologize for confusing you. Answer any questions the Solicitor may have for you.
THE COURT: Ms. White.

CROSS-EXAMINATION

BY MS. WHITE:
Q Just a few questions, Ms. Settles. Do you know where your grandson, Tavarious, was the evening of May 30th? Do you personally know?
A No. He was -- he had left to went to his cousin's house.
Q But he wasn't with you around 9:00 on May 30th?
A Around 9:00. Let me see. He wasn't with me around that time. Not to my recollect.
MS. WHITE: No further questions, Your Honor.
THE COURT: Thank you, ma'am. You can step down. Call your next witness, Mr. Tinsley.
MR. TINSLEY: Defense calls Ms. Shay Higgins to the stand.
THE COURT: Ma'am, if you'll come forward, please.

SHAY HIGGINS, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TINSLEY:

Q State your name, please.
A Maquitta LaShay Higgins.
THE COURT: Would you spell that first name, please, ma'am.
THE WITNESS: M-a-q-u-I-t-t-a.
THE COURT: Thank you, ma'am. Go ahead, please.
MR. TINSLEY: Thank you, Your Honor.
Q And where do you live?
A [redacted], Greenwood, South Carolina.
Q Were you living there on May the 30th of 2013?
A Yes.
Q Do you happen to know Tavarious Settles?
A Yes.
Q And how is that?
A That's my cousin.
Q Is he your cousin or are you his aunt?
A He's my cousin. I'm like an aunt to him because, you know, I don't have any sisters. Me and his mom is first cousins.
Q So I've been calling you Aunt Shay, but you're -- you're a good bit older than he is, right?
A Uh-huh.
Q And over a period of time did he have occasion to come by your place?

A Yeah. He was with me all the time. On a daily basis.
Q You all were together just about every day?
A Yeah.
Q In fact, didn't you pick him up from school on --
A Actually, I picked him up from his grandmother's house after school that day.
Q And where did you all go?
A To my house.
Q And what did you -- what did you all do down there? Just --
A Nothing. It was just a regular day. Watch TV, talk. I was going to cook him something to eat that day. But probably, I'll say, a while after he had been there his phone started ringing constantly.
Q And did you answer it?
A No.
Q Did he answer it?
A Yeah.
Q Could you overhear the conversations?
A Yeah. It was Mike calling him wanting him -- wanting him to come on Taggart Street, pretty much. And he was telling Mike at the time he didn't want to come on Taggart Street right now. That he'll be over there later on. And I guess Mike must have said okay or whatever, hung up the phone. And he must have called back probably about two or

three times after that. And then finally Tavarious just told him come on and pick him up.

Q About what time was that?

A That was after 7:00.

Q So was it -- what hours did he spend at your house that day approximately?

A I picked him up around -- I think around about 5:00.

Q Until?

A Until he left my house at around 7:45, 8:00.

Q And is that the -- did you see him again that day?

A No.

Q And you didn't go with him or anything like that?

A No.

Q So you didn't -- you didn't see what happened. Did you just tell him goodbye and see you later, or what?

A Yeah. Well, when he left I left at the same time he did and I told him I'll see you later. He text me later on that night, I think. Asked me to come pick him up. But I didn't really respond to him because I was busy doing something else my own self at the time.

Q Right. Plus you obviously had your own life and that's what you were doing, right?

A Yeah.

MR. TINSLEY: Thank you.

THE WITNESS: Your welcome.

MR. TINSLEY: Answer any questions the Solicitor might have.

MS. WHITE: No questions, Your Honor.

THE COURT: Thank you, Ms. Higgins. You may step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Call your next witness, please, Mr. Tinsley.

MR. TINSLEY: Yes, Your Honor. I call Ms. Jaqueline Calhoun to the stand.

JAQUELINE CALHOUN, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TINSLEY:

Q State your name, please.

A Jaqueline Vanessa Calhoun.

Q And are you related to the Defendant, Tavarious Settles?

A Yes, sir.

Q And how is that?

A That is my oldest child.

Q He's your oldest child?

A My oldest son.

Q And at the time in question, that being May the 30th,

2013, who was he living with?

A At the time he was -- his grandmother, Brenda Settles, was helping me out and he was staying with her at the time.

Q Now, during his life did he ever live in the Promised Land?

A Promised Land community?

Q Yeah.

A No, sir. We never lived on Promised Land.

Q Where all did you live?

A We lived in Burgess Apartments. We have family in Ninety-Six. While I was still living with my mother we started off staying in Burgess Apartment. My younger days, we stayed in Rain Tree housing subdivision. And after we left Burgess that's when my momma and all of us moved. He was a small baby then, he was maybe one-years-old, and we stayed in Hodges.

Q Excuse me. Do you mean 20 months old?

A Well, yes, sir. Twenty months. And we stayed in Hodges.

Q Moved to Hodges.

A And the family home is still up there now.

Q Oh, it's -- the family originates from Hodges; is that right?

A Actually, we originate from, I guess, by my childhood, Rain Tree subdivision. I grew up in Rain Tree.

Q Well, why did you refer to the family home in Hodges?
A Well, I guess, I'm just saying --
Q There are two sides of every family?
A Well, yeah. Well, my home -- well, I'm just saying my mother's home that she stayed in Hodges, we'll still there. So we consider that our family home.
Q I see what you're saying. And would that be actually your grandmother?
A No. My mother. His grandmother.
Q His grandmother.
A Yes, sir.
Q Who originally started that household? Do you know?
A The one in Hodges?
Q Yeah.
A My mother. His grandmother.
Q And it was located where in the Hodges area?
A It's [redacted].
Q On Cromer Road?
A Yes, sir.
Q Not far from the --
A Not far from Barry's Tire and Grocery.
Q I know where you're talking about.
A Uh-huh.
Q And how long did you live there?
A My mom have had that home up there, just to try to -- I

can't really like give you a correct answer. But I know she's -- we've been up there now, I'm thinking maybe 14, 15 years.

Q And at what point did Tavarious leave Hodges? Move from Hodges? Do you recall?

A Yes, sir. Tavarious moved from Hodges after I went out on my own and I got my own place and I was living on Taggart and Russell Street.

Q I see. And what schools did he attend in Greenwood school district?

A Tavarious attended Hodges Elementary.

Q Hodges Elementary.

A Yes, sir. He went from Hodges Elementary to Northside School, and from there Greenwood High.

Q Greenwood High. And was he a regular student?

A Yes, sir.

Q Was he a decent student?

A Yes, sir.

Q And he -- what about his grades? I'm not asking you to say -- you know, break it down or anything like that.

A Tavarious kept good grades. He's always been a smart, intelligent child. Always.

Q And did he -- did he ever fail a grade or anything?

A He got kept back once because he was short a couple credits and they kept him back and it was his tenth grade.

Q And he couldn't -- he couldn't make them up in the summer?

A Yes, he did the online schooling. Online. At that time he was staying with his grandmother but he attended -- they had him taking classes online to get his credits back. He was going to after school programs.

Q So when school started again in the fall of that year was he elevated to the next grade or did he have to start off in the same grade again?

A That next following year after he got kept back that first -- that first year he did go back and started part of that first -- that next semester into the tenth. And he got promoted within the next semester. He was going up for promotion.

Q I see. And now, turning to the date of -- well, before I leave the day of May the 30th, were you with Tavarious that day?

A No, sir. I wasn't with him, but I spoke with him that day over the telephone.

Q And he -- as far as you know, and you've heard Shay Higgins' testimony, he was with your first cousin, Shay Higgins; is that right?

A Yes. But she had told me the next following day that him and her were together. But it didn't surprise me, because if he wasn't coming up to Hodges to visit, or, you

know, being with some of his friends or at his grandma's house I knew he spent the majority of the time at Maquitta's house.

Q So there was --

A Her and her baby brother are both are very close. They were very close to Tavarious. They kind of helped me look out for him when I couldn't be the eyes.

Q Now we'll turn to the June date.

A Yes, sir.

Q The date that Tavarious was arrested.

A Yes, sir.

Q Did he call you on the phone, or how did you find out he was arrested?

A I didn't -- he did not call. I received a call from one of my previous neighbors that stayed on -- that knew me from staying over there. I had been moved from other there maybe a year and a half when all of this happened. So some of the neighbors still remember me living over there. And one of them gave me a call and they told me, Ms. Calhoun --

MS. WHITE: Objection, Your Honor.

Q As a result of the call --

THE COURT: Sustained.

Q -- what did you do?

A As a result to the phone call I got -- I went on Taggart first. As soon as I got over there -- it was

raining that day. They said that he had just left with the police department.

Q What did you do next?

A As soon as I left from Taggart I went straight to the police department. It was a little after -- I can't remember the time, but I know it was between maybe 9:00 or 10:00, and I had to go to the backdoor because it was closed on front.

Q Did you -- were you able to make contact with anyone?

A When I first arrived there, as I was getting out the car a black Jeep and four officers pulled in as I was getting ready to try and go in and they asked me could they help me.

Q And did they -- what happened next?

A I told them that I had gotten information that my son had just got picked up. They asked me his name. I gave them his name. And no one would let me talk to him. I asked could I speak to someone that was -- all they told me was he had got picked up and they had to question him about a murder on Franklin.

Q Did you ask to speak to him?

A I asked could I speak with him. They told me that I couldn't speak with him at that time because they had to have a talk with him. I asked was there anyone else that I could speak to on his behalf, anybody like a captain. They

told me that some people were off for the day and some of the detectives was kind of busy. And they promised me that he could give me a call that night, but I didn't receive a call.

Q What did you do next?

A I came down here to the courthouse. Me and my boyfriend, his step-father. And I had to come down there early that morning. And to be honest, I had to literally show them how much I cared. I had to show out but -- soon as somebody told me what was going on with my child.

Q So you were never allowed to speak with him?

A No, not --

Q Were you there when he was being interrogated?

A No, sir.

Q Were you at the jail though?

A No, sir.

Q Or do you know?

A I really don't know. I know when I got down there -- I got down there maybe 30 -- I said it takes me 15 minuets to leave Hodges to get to Greenwood area, and from there I left -- I went to Tag. So it was a total of maybe 25 minutes. Like I said, the neighbor told me that he had just left. Within 25, 30 minutes I was right there at the police department to check on my son, and I had no result.

Q So you never were allowed to speak with him?

A No. And it was one officer that I've known. I known two years ago. And I know that you didn't ask for this. But it was one officer, he was so mean and hateful towards me.
Q Well, I'm sorry about that. That's unfortunate. But -- so you really didn't find anything out concretely until the next -- the following morning; is that correct?
A I found out everything that evening. Because when I got there that morning, like I said, I had to pretty much kind of let them know that I wasn't leaving until someone told me what was going on with my son. And then they took me to the back room in the detention center, sat down with the officer, and that's when he was telling me that him and some other boys had got brought in about a robbery. The officer -- so at that time I started asking questions. The officer told me, well, Ms. Calhoun, right now we're just questioning him. We're investigating a shooting. We know he's not the shooter, but all we know that he was there. And I said, well, can I speak with him. They say you have to come back. And I think they told me to be back up there around 2:00 or 3:00, and they had me thinking that I would be able to talk to someone or see him then. But when I came back within 24 hours, well -- within 24 hours of his arrest, when they had me and some of my family to come back around 2:00 or 3:00 that evening, they brought us to a little room in the detention center and they was -- they was having him

to sign these papers and charging him with murder.

Q So you did ask to speak with him?

A Yeah, I asked to speak with him several times.

Q Whether or not he was being interviewed?

A Because I didn't even -- once I got there that evening and saw what they was doing, charging him, that's when I came to you. And when I first came to you I told you I still didn't know what was going on, but I felt I needed the lawyer because at the time they didn't want to talk to me.

MR. TINSLEY: Beg the Court's indulgence.

THE COURT: Yes, sir.

MR. TINSLEY: Answer any questions the Solicitor may have.

THE COURT: Ms. White.

CROSS-EXAMINATION

BY MS. WHITE:

Q Ms. Calhoun, what I'm hearing is that neither you nor Mr. Settles' grandmother, nor your cousin knew where ths just turned 17-year-old was for a good portion of the time; is that true?

A When I talked to Tavarious on May the 30th? Is that the day you're talking about, ma'am?

Q I'm talking about -- I mean, it seems like every date that we've been asking you I didn't -- well, I heard from so and so he was somewhere. I heard from so and so he was

somewhere. He was not with you?

A At the time my son wasn't living with me, but me and my son spoke and talked on the phone.

Q But you didn't know where he was at 9:00 on May 30th?

A I hadn't talked to him at 9:00 but I talked to him around 10:00.

Q He wasn't with you at 9:00 on May 30th?

A No, ma'am.

Q And you don't know who he was with at 9:00 on May 30th?

A No, ma'am.

MS. WHITE: No further questions.

THE COURT: Thank you, ma'am. You may step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Call your next witness.

MR. TINSLEY: If we could approach.

THE COURT: Sure, come on up.

(Whereupon, a side bar was held.)

THE COURT: Call your next witness, please, Mr. Tinsley.

MR. TINSLEY: Thank you so much, Your Honor. Beg the Court's indulgence.

THE COURT: Yes, sir.

MR. TINSLEY: The Defense calls Steve Jones to the stand.

DIRECT EXAMINATION

BY MR. TINSLEY:

Q Very briefly, Ms. Alvarez. Where do you work?

A Carolina Pride.

Q And are you here today as a records custodian?

A Yes, sir.

Q And do you have some records with you?

A I do.

Q Do you happen to have the work records of one Markece Moore?

A I do.

Q And was he working at the packing plant of Carolina Pride on the day of May the 30th, or thereabout, of 2013?

A No, sir.

Q What dates do you show reflecting his working there?

A December 3rd of 2012 until December 5th of 2012.

Q Two or three days?

A Yes, sir.

Q And that's all?

A That's all.

Q And that goes back through that period?

A Yes, sir.

Q That's inclusive?

A Yes.

MR. TINSLEY: That's all. Thank you.

MS. WHITE: No questions, Your Honor.

THE COURT: Ms. Alvarez, thank you for coming. You are free to go.

THE WITNESS: Thank you.

(Witness steps down from the witness stand.)

THE COURT: Call your next witness, please, Mr. Tinsley.

MR. TINSLEY: The next witness for Mr. Settles is Germaine Adams.

GERMAINE ADAMS, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TINSLEY:

Q. State your name, please.

A My name is Cordell Alonzo Adams.

Q And, Mr. Adams, where are you from?

A Greenwood.

Q And where did you grow up?

A In Russell Street.

Q And Russell Street is -- isn't that off Taggart?

A Yes, sir. Russell and Taggart. Yes, sir.

Q Yeah. Where did you go to school?

A Greenwood High.

Q Now, I want to keep this as brief as possible also. Do you happen to know Bryson Jefferson?

A Yes.
Q Do you know Markece Moore?
A Yes.
Q Do you know Michael Patton?
A Yes.
Q And do you know the Defendant, Tavarious Settles?
A Yes, sir.
Q And who of those did you know the longest?
A The man right there, Mr. Purp.
Q Purp. Mr. Purp. And who next?
A And Michael.
Q Mr. Patton?
A Yes.
Q Who did you know the least?
A Markece.
Q When did you first see him?
A I first met him in 2012.
Q So as far as you know he didn't grow up in this area --
MS. WHITE: Objection, Your Honor.
Q As far as you know?
THE COURT: Overruled. Go ahead. So far as he's aware.
A No, sir.
Q And let's get specific to the dates of May the 30th and May the 31st of 2013. On May the 30th was the date of the

incident we've been discussing here in this trial.
A Yes.
Q And that was the killing of the Guatemalan. Okay. Did you see any of those parties that I've mentioned together that day or not?
A I seen -- I met Mr. Purp walking up the hill. I was coming down. And seen the other two up there in the cut --
BAILIFF: Judge, you might want to --
JUROR: Could you get closer to the mic so we can hear you?
THE COURT: Thank you. Just scooch forward a little bit. Thank you, ma'am, for speaking up.
A I met -- Markece and them, they was already up there in the cut. I met Purp. He was coming up the hill. I was going down Taggart Hill -- I mean, New Market.
Q And who was with Mr. Moore?
A The tall -- KeeKee. It was Purp -- Purp was coming down, like I said. I was going up. And Markece and Mike, they was already up there in the cut on Russell Street.
Q Did you see Bryson?
A I ain't see him that night, but --
Q You didn't?
A No, sir.
Q And what was Markece doing?
A He was sitting in the car talking, smoking a little

weed, drinking, you know.

Q And let's talk about the next day. Did you observe Markece Moore the next day?

A Yes, sir.

Q What did you observe -- what, if anything, did you observe him do?

A I observed him selling a gun to my home boy.

Q What kind of gun did it appear to be, or do you know?

A I don't know. I just know he sold it for three grams of crack.

Q He sold the gun for three grams of crack?

A Yes, sir.

Q But you didn't see the shooting incident by any means, did you?

A No, sir.

MR. TINSLEY: That's all I have. Answer any questions the Solicitor may have.

THE COURT: Ms. White.

CROSS-EXAMINATION

BY MS. WHITE:

Q Mr. Adams.

A Yes, ma'am.

Q When did you report to the police that you saw Mr. Moore sell the gun?

A I didn't tell the police nothing. They didn't never

ask me.

Q You knew that a man had been murdered in that area?

A I found out the next day.

Q And the next day you saw, you claim, Mr. Moore sell a gun?

A Yes, ma'am. I was standing right there.

Q And you knew the police were looking for information about the murder?

A Like I said, I did not talk to the police.

Q Have you spoken to Mr. Settles any since May the 30th, 2013?

A No, ma'am.

Q Have you spoken to him on the phone?

A No, ma'am.

Q He hasn't called you from the jail?

A No, ma'am.

MS. WHITE: No further questions.

THE COURT: Thank you, sir. You can step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Call your next witness.

MR. TINSLEY: Your Honor, at this point in time the Defense calls the Defendant, Tavarious Settles, to the stand.

THE COURT: If you'll come forward, please, Mr.

Settles.

MR. TINSLEY: Subject, of course, to prior admonishments.

THE COURT: Of course.

TAVARIOUS SETTLES, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TINSLEY:

Q Now, Mr. Settles, I'm going to tell you on the way up there that you're soft spoken, so you're going -- kind of like Mr. Adams there. You're going to have to get right on the microphone and speak up. Okay?

A Yes, sir.

Q That's good. I like that. Now, let me ask you this. I want to go back in time to the day of May the 30th of 2013. What did you do that morning?

A I went to school.

Q You did go to school?

A Yes, sir.

Q Because your grandmother wasn't sure if you were ill or -- was that the last day of school or -- just about, wasn't it?

A It was close.

Q And we'll come back to that. Where did you grow up, Mr. Settles?

A Hodges.
Q And that was out on Cromer Road?
A Yes, sir.
Q And now, of course you've been in jail, but until you were arrested where were you living and with whom?
A My grandmother, Brenda Settles, on [redacted].
Q What school were you attending on May the 30th?
A Greenwood High School.
Q Were you passing?
A Yes, sir.
Q So you had missed some sick days your grandmother said. Set you a little behind.
A Yeah, I have before.
Q But were you able to catch that up?
A Yeah.
Q So when you would come back to school -- now, let's see. You were just turning 17. Your birthday -- your birthday is when?
A April the 18th, 1996.
Q So on May the 30th of 2013 you would have just turned 17?
A Yes, sir.
Q Now, were you going to be in the -- the start of the eleventh or the middle of the eleventh when you went back to school?

A I was starting the eleventh. The beginning.
Q So you were a little bit behind.
A Yes, sir.
Q But not much.
A No, sir.
Q Did you intend to graduate?
A Yes, sir.
Q Now, you've heard some people testify here today and throughout the week, and, of course, you are the accused. You've heard Jackie Calhoun. That's your mother, right?
A Yes, sir.
Q You've heard your first cousin, Shay Higgins.
A Yes, sir.
Q You've heard your grandmother testify and that sort of thing; is that right?
A Yes, sir.
Q There was one issue -- well, let me finish with May the 30th. So how did you go -- how did you get to school?
A My grandmother took me to school.
Q She took you to school that day. What did you do after school?
A I went home.
Q Over on Stanley, right?
A Yes, sir.
Q And what -- where, if anywhere, did you go after that?

A Went to my cousin Shay's house.
Q And she lives -- well, she's already testified where she lives. Do you go over there frequently?
A Yeah.
Q And when you got over there about what time was it?
A 5:00.
Q And how did you get there?
A She came and picked me up from my grandmother's house.
Q And she said you were real close with one of her children; is that right?
A Yes, sir.
Q What would you all do over at Shay's house?
A Watch TV.
Q Watch TV. Did you all play those games that are beyond my technical skills?
A No. We just watch TV and talk.
Q Just kind of hung out together?
A Yes, sir.
Q And Shay was presently usually or --
A Yeah, she always there.
Q Does she got another child?
A Say what, now?
Q Does she have another child?
A No, just have a daughter.
Q And a son?

A Soon to be.
Q So at that time it was the daughter that --
A It was just the daughter.
Q You were close to her daughter?
A Yes, sir.
Q You all about the same age?
A No. Her daughter is three. My little cousin.
Q Oh, I misunderstood that. So you -- did you help her babysit the daughter some or --
A I just always be around. I like to be around.
Q You like the child?
A Yeah.
Q You all got along good. That's already been testified to by Ms. Higgins. What happened later on that evening and about what time?
A Well, Mike started calling me around like 7:00.
Q Mike who?
A Michael Patton. I answered the first time. He wanted me to come over, but I told him I come later. And then --
Q Come over where?
A Come over to Taggart in the cut.
Q Okay. What's the cut?
A Well, where Markece baby mama stay.
Q Well, when did you meet Markece? Did you grow up with him like he said?

A No, sir.
Q I'm interested in -- let's see. He was about how old at the time? I think he testified he was 20 or 21,, something like that?
A Yeah. He's around that age.
Q And how old are you, 17?
A Yes, sir.
Q Patton?
A I think he's 17.
Q What about Bryson Jefferson? He was even younger, wasn't he?
A Yes, sir.
Q How old is he?
A Maybe one or two years younger than me.
Q Okay. Did he hang around with a woman who lived in that area? Had a baby with her or something?
A Who, Bryson?
Q No. I'm talking about Markece.
A Yeah, his baby momma.
Q She stayed where?
A In the cut on Taggart Street. I don't know the address.
Q So you didn't go over there?
A Yeah. That where we be at, in the cut. I don't know the address though. We just call it the cut.

Q So when would you -- did you go in the residence or did you go into another associate friend by the name of KiKi?
A KiKi?
Q Yeah.
A Yeah.
Q Now, who is he?
A That's Markece's baby mama brother.
Q So he lived in the same area?
A In the same house.
Q In the same house?
A Yes, sir.
Q Well, how old is he?
A Maybe 19. I really don't know. He's older than me.
Q He's older than you?
A Yes, sir.
Q And when you were over at Shay's approximately how many times did Patton call you up before you agreed to meet with him over there?
A Say like five.
Q Did you just have other plans?
A Well, I was staying with my cousin's.
Q Were you going to spend the night that night?
A No. She was going to take me home later when she left out again.
Q But they -- what changed that?

A Well, they kept calling me and I just told them to come pick me up.
Q So who came and picked you up?
A Michael and Markece.
Q And who was driving?
A Michael.
Q And what was he driving?
A A Corolla.
Q What color was it?
A Like an orange color.
Q And where did you all go first?
A We went to the cut on Taggart Street.
Q The cut on Taggart Street. And what happened next?
A Well, we stayed out there like 30 minutes and they told me they were going to Mr. Chip and I told them I was staying, so they left. When they got -- got down the street they called me on the phone like two or three times and keep telling me to get in the car, but I told them no. So they backed up and kept asking me to get in the car. So I got in the car with them.
Q Speak up.
A They backed up. Kept asking me to get in the car. So I got in. So on the way down the street Lank saying we're fixing to go hit a lick, as in rob somebody. So we turned on -- we go down to the bottom of Taggart -

Q Let me stop you there. Now, when he said he was going to hit a lick, what can that involve?
A Anything, like taking something from somebody really. It could be breaking in anybody's house, anything like that.
Q So it really was -- it was his idea, right?
A From my understanding.
Q Well, what did you hear?
A That's what I heard.
Q Yeah.
A Yes, sir.
Q That's what you heard. How did you feel about that?
A I don't know. It's been a long time.
Q Well, it's a very important day today and a very important night that night.
A Yes, sir.
Q Now, tell me. Did you have any money in your pockets?
A Yes, sir.
Q Did you need any money or anything?
A No, sir.
Q Did your grandmother give you an allowance, that sort of thing?
A They gave me money daily.
Q So you were okay?
A Yes, sir.
Q So long as you were in school and doing right?

A Yes, sir.
Q So Lank says he's going to make a lick?
A Yes, sir.
Q And a lick has a broad terminology of meaning; is that correct?
A Can you say that again?
Q Well, it can mean anything from stealing out of the poker pot to knocking somebody upside their head and taking their wallet?
A Yeah.
Q On down the line?
A It's just taking something really.
Q So in the process there's been some talk about Justin and a guy named Little Black.
A Yes, sir.
Q Can you tell us anything about that?
A Well, back up to when they said they were going to the store. Bryson wasn't with them. But when they came back he was in the car then.
Q Where was Little Black?
A I didn't see Little Black.
Q You didn't see him?
A No, sir.
Q I guess they saw him in that interim while you were in the car.

A Yes, sir.
Q Because they testified accordingly. What happened next, Tavarious?
A We turned on Millwee Street -- well, not Millwee. New Market Street going down and then we turned on Millwee, and Mike tell Markece -- he pointed out the Mexican and he say there you go. So Markece started to get out the car and I got out the car.
Q Why did you get out of the car?
A I really don't have an explanation. Probably cause of peer pressure.
Q Because -- did he ask you to?
A Well, obviously when they kept calling, I guess that's what the whole thing was for.
Q But they had been together. You hadn't been with them.
A No, sir.
Q So really you don't know what they'd planned, right?
A No, sir.
Q Not until that incident, correct?
A No, sir.
Q So you got out of the car. Did you have a gun?
A No, sir.
Q Did you know he had a gun?
A No, sir.
Q What happened next?

A We got out of the car and walked around the church. Markece pulled a gun out and told the Mexican to take his pants off.
Q How did you feel about that?
A I ain't know he had a gun. I felt like I need to get away from what was going on.
Q What did you do?
A Started like backing up going toward the hill. The Mexican reach for the gun and Markece started shooting.
Q What did you do next?
A Went up the hill.
Q You ran up the hill?
A Toward the apartments.
Q How many of these shots you actually see?
A One.
Q How many did you hear?
A Like four.
Q Where were you when it was presumably over, or did you stay and watch or what?
A I went up the hill past the apartments and got back on New Market Street.
Q So you were gone?
A Yes, sir.
Q So I'm asking you this, Mr. Settles. When you had got out of that car and used that poor judgement, did you have

any idea that this was the kind of lick that Mr. -- Mr. Markece had in mind?

A No, sir.

Q Were you down with anything like that?

A No, sir.

Q Did you know the guy that he went after in any way?

A No, sir.

Q Did you get any money from him later or anything for doing it?

A No, sir.

Q Did you back him up in any way?

A No, sir.

Q Now, Mr. Turner testified that he thought -- well, he said he had cataracts at night and that sort of thing. And the growth in his back yard. And he said it was possible either one could have been the shooter. But he also said --

MR. BROWN: Judge, can he ask a question?

THE COURT: Let's do that, please. Go ahead. Go ahead and ask him a question.

MR. TINSLEY: Kind of lost my train of thought, Judge.

THE COURT: I think you were about to suggest that perhaps Mr. Turner indicated it was he that --

MR. TINSLEY: Yeah, that the shorter of the two.

Q Are you shorter than Mr. Markece?

A Yes, sir.

Q All right. Did you shoot the Mexican?
A No, sir.
Q Who shot the Mexican?
A Markece.
Q Let's turn to the day of your arrest. Now, you were arrested in June; is that right?
A Yes, sir.
Q You gave the officer -- you were with him for a grand total, according to his testimony, of about 30 minutes?
A Yes, sir.
Q Did you answer his questions truthfully?
A Yes, sir.
Q He said that at first, but then he tried to say that he had --
MR. BROWN: Judge, can he ask a question?
THE COURT: It's not necessary to restate the testimony of the witnesses, but if you want to ask him about something that they touched on, that's fine. Just ask him the question, if you would, Mr. Tinsley.
MR. TINSLEY: Okay, Your Honor.
Q Did you ever lie to the detective?
A No, sir.
Q You gave how many statements in this case?
A One.
Q And were you honest and truthful in the statement?

A Yes, sir.
Q Are you honest and truthful here today?
A Yes, sir.
MR. TINSLEY: Beg the Court's indulgence.
THE COURT: Yes, sir.
Q So you didn't get back in the car?
A No, sir.
Q You ran up the -- ran up the hill, right?
A Yes, sir.
Q You ran away from the scene?
A Yes, sir.
Q Well, did it -- did it bother you what you had witnessed?
A Yes, sir.
Q Did you hear later about what happened?
A Yes, sir.
Q Why didn't you call the police?
A I didn't want to get involved.
Q As you look back on it now don't you think that would have been a wise decision?
A Yes, sir.
Q Did you talk to your parents or anybody about it?
A No, sir.
Q What did you do during that interim couple of weeks there?

A Stayed away from them.
Q You didn't go back around them?
A No, sir. Not until around the 12th. I seen them at school, but -- Michael. But I ain't go over that way for a minute.
Q And then the next thing you know you're talking to Officer Collins, right?
A Yes, sir.
Q Did you ask him if you could use the phone?
A I asked the people in the detention center could I use the phone. They told me I was on phone restriction.
Q Well, before he interviewed you, or while he interviewed you, did you understand the gravity of the situation so that you asked -- did he offer you a phone or anything like that?
A No, sir.
Q Did you ask for a phone right away?
A I did at the detention center.
Q When you talked to Officer Collins?
A Yes, sir.
Q And they wouldn't let you use one?
A No. They told me I was on phone restriction.
Q So you weren't going to call -- well, who were you going to call if you had had the phone?
A My grandmother.

Q Brenda Settles?
A Yes, sir.
Q But you were never given that opportunity?
A No, sir.
Q Now, Markece Moore, is there any question in your mind that he shot the Guatemalan on his own without your assistance?
A I know he did.
Q Did you assist him in any way?
A No, sir. I just got caught with them.
Q How far away from the scene were you when you heard the final shot approximately?
A On New Market Street.
Q You were all the way up the hill?
A New Market Street. It was like spaces between the shots.
Q How did you feel when that was happening?
A Like I needed to get from the area. So I text my cousin to come and get me.
Q Were you shocked?
A Yeah. I never -- I never been in a situation like that.
Q Have you ever seen anybody shot before?
A No, sir.
Q How would you describe it?

A Nothing you want to be a part of.
Q Well, were you a part of it?
A No, sir.
Q But you did get out of the car with the man you thought was your friend; is that right?
A Yes, sir.
Q And he is, what, four years older than you?
A Like three. Three or four.
Q Why was he hanging around all you young kids?
A I don't know.
Q Were there any guys in the group who were like his age?
A KiKi was closer to his age.
Q Well, KiKi was basically his baby's mother's brother.
A Yes, sir.
Q And he was like middle between you and Markece in age, correct?
A Basically.
Q Did you already know him?
A Who, KiKi?
Q Yeah.
A Yes, sir.
Q So as you reflected upon this would you have made some different decisions if you could have?
A Yes, sir.
Q And how do you feel for the Guatemalan? The

Guatemalan's demise that night?

A I feel sorry for him. I just wish I had -- I wish I hadn't seen none of that.

Q Did you ever get a bad feeling that night?

A No, sir.

Q About all those phone calls, I mean?

A No. I thought they just wanted to, you know, chill or whatever, as usual.

Q Kind of as usual?

A Yes, sir.

Q But you didn't anticipate anything like that; is that right?

A No, sir.

Q So is it true to say that you were not down with anything of that level; is that correct?

A Yes, sir.

Q What were you willing to do, if anything?

A Nothing.

Q You were just going to watch?

A Just watch, until I seen him pull out a gun.

Q Why didn't you just run then?

A I did. I started backing up when he told the Mexican to take his pants off and he reached for it. Reached for the gun.

Q You've heard these other witnesses, co-defendants, and

they've all testified you had the gun. You were behind all this. Of course, they changed their -- they all changed their stories two or three times, but --

MR. BROWN: Judge, can a question be asked?

Q -- was there any truth in that?

A No, sir.

Q So when you got out of the car you did not have a gun, right?

A No, sir.

Q And you didn't realize that Mr. Moore had a gun, correct?

A No, sir.

MR. TINSLEY: Answer any questions the Solicitor might have.

CROSS-EXAMINATION

BY MR. BROWN:

Q Mr. Settles, so you're saying here today that you really didn't have anything to do with this. You just got out of the car?

A Yes, sir.

Q That's not what you told the law enforcement officer on the 13th, is it?

A Yes, I did. I told them I decided to get out of the car with him.

Q But you said you didn't know what was happening until

you actually got down on Millwee and Mike had pointed out the Mexican or the Hispanic coming down on Franklin? You didn't know what was going on?

A No. I thought it would just be like, you know, take something from nobody. I ain't know he had a gun or anything like that.

Q Well, I think you -- what you told the law enforcement officer is that when you all got in the car at Lank's baby's momma's house at [redacted] you all knew you were going to hit a lick.

A I said Lank said something about hitting a lick.

Q So you knew what you were getting in the car for, right?

A Yes, sir.

Q You knew what you were going to do? You were hitting a lick.

A I didn't --

Q And tell me what a lick is.

A Like take something from somebody.

Q So you were going to rob somebody, or it could be going to somebody's house; is that right?

A Yes, sir.

Q Doing something that you're not -- taking something from somebody that you don't -- that doesn't belong to you, right?

A Yes, sir.
Q So you go down New Market Street and then you take a left onto Millwee; is that right?
A Yes, sir.
Q And then who points out the Hispanic?
A Michael.
Q Michael Patton?
A Yes, sir.
Q Well, what do you think he was doing when he pointed out that Hispanic?
A Just telling Lank, like, he going to rob him.
Q You thought what?
A He telling Lank he can rob him.
Q And then peer pressure took over and you hopped out of that car?
A Yes, sir.
Q Did somebody force a gun to your head to get you out of that car?
A No, sir.
Q Did somebody push you out of the car?
A No, sir.
Q Did somebody kick you out of the car?
A No, sir.
Q Why did you get out of the car?
A I just got out of the car. I didn't -- it was like

peer pressure. It was like a split decision thing.
Q You wanted to take a part in hitting that lick, didn't you?
A No, sir.
Q But you got out of the car.
A Yes, sir.
Q And you knew what you were going to do, right?
A I wasn't going to do anything.
Q But you got out of the car with him?
A Yes, sir.
Q With the guy that was going to hit a lick?
A Yes, sir.
Q Where did Mike go?
A I guess he drove to the dirt or whatever.
Q Who else was in the car with Mike?
A Bryson.
Q What did they do? Did they get out of the car?
A Not that I know of.
Q Seems like Bryson is the youngest one out of the group who's 14 or 15-years-old. That peer pressure really would have been the pressure on him, right?
A Could have.
Q You were actually one of the older ones in the car, right? Right?
A Yes, sir.

Q I'll show you what's been marked as State's Evidence 39. Do you recognize this person?

A Yes, sir.

Q Who is that?

A The man Markece shot.

Q Is that the Hispanic or the Mexican that you all were going to hit a lick on?

A It's the man he was going to hit the lick on.

Q But you got close enough where you can recognize that guy?

A I seen -- I passed him.

Q You passed him?

A Yes, sir.

Q So you ran toward him?

A No. I didn't say I ran toward no one. I said when Markece pulled out the gun I started backing up. I seen the Mexican's face.

Q But you got out -- your testimony here today is you got out on Millwee, right?

A Yes, sir.

Q And you walked around the corner of that church, where Mr. Turner said he saw you, right?

A Yes, sir.

Q And you and Markece went up Franklin Street, correct, toward the Hispanic?

A Yes, sir.
Q And you didn't know what you were doing? You weren't taking a part in that lick?
A No. I wasn't getting anything out of that, so no.
Q You admit that you're a little shorter than Markece, right?
A Yes, sir.
Q What kind of hair did you have at the time?
A Small twists.
Q Small twists? I'll show you what's been marked State's Evidence 35. Who is that?
A That's me.
Q That's you?
A Yes, sir.
Q Small twists, and Mr. Turner says Shirley Temple twists?
A Yes, sir.
Q Mr. Settles, you said you were over at your cousin's house earlier that night, right?
A Yes, sir.
Q And then Mike called you up?
A Yes, sir.
Q And you joined up with them?
A Yes, sir.
Q It was you, Markece, Mike, and Bryson?

A No, sir.
Q Bryson ultimately got in the car with y'all at some other time right before the lick?
A He got in the car before me.
Q Before you. That's another thing. You said they went to the store --
A They said --
Q -- the cut.
A I didn't say they went to the store. I said they said they were going to the store. I told them I was staying.
Q That's not what you told law enforcement on June 13th, is it?
A He didn't ask me that.
Q So you weren't telling him all the truth, were you? He said tell me about that night. Why did you leave that out? You telling the truth then or are you telling the truth now?
A I'm telling the truth now and I told the truth then.
Q So you got in the car with Mike, Markece and Bryson to go hit a lick?
A Yes, sir.
Q Yes? Is that a yes?
A Yes, sir.
Q And you got out of the car on Millwee with Markece, right?
A Yes, sir.

Q Nobody forced you out of that car, did they?
A No, sir.
Q You got out of your own free will?
A Yes, sir.
Q And you walked towards the Hispanic, Mr. Prudencio Sis, a guy you didn't know; is that right?
A Yes, sir.
Q To hit a lick, right?
A Yes, sir.
Q Is that a yes, sir?
A Yes, sir.
Q And during this time you say Markece pulled out that -- what kind of gun was it?
A A black Glock 40.
Q A black Glock 40?
A Yes, sir.
Q That black Glock 40 pulled out and shot Mr. Prudencio Sis dead?
A Yes, sir.
Q It's funny how everybody says that you had that gun, but you have a totally different story. Why is that?
A It's funny how everyone was together other than me too.
Q Mr. Turner, too?
A No, sir.
Q Mr. Turner doesn't have a dog in the fight, does he?

A Mr. Turner admitted that he ain't sure who pulled out the gun.
Q Again, State's Evidence 35.
A That's me.
Q That's you?
A Yes, sir.
Q Are those twists in your hair?
A Yes, sir.
Q You were in here. Didn't Mr. Turner say it was a shorter guy with twists in his hair that had a Glock 40 -- black Glock 40 that pulled out the gun and shot the Hispanic? You heard that, right?
A Yes, sir.
Q Mr. Tinsley asked you did you have money in your pocket that night. What did you say?
A Yes, sir.
Q He also asked you -- you said that your grandmother gave you money, put minutes on your phone; is that right?
A Yes, sir.
Q So if you had all this in your pocket and you had minutes on your phone, then why in the world did you have to go out there and hit a lick on this guy walking from his girlfriend's house?
A I didn't hit a lick on him.
Q You got out of the car. You just said you were going

to hit a lick.
A Yeah, but I ain't never did it.
Q Now, Mr. Tinsley was asking you if you ever hung out around Mike or Markece or Bryson again. Did you ever hang out with him?
A Later on like a week or two. Close to two weeks.
Q What were you all doing then?
A Bryson wasn't around. I had came over there. I went up toward the cut. I seen Markece and them standing out there. He just kept asking me where Mike was or whatever. I just went up the street.
Q Y'all didn't play poker?
A No. I don't play poker.
Q Isn't it true though that you and Mike were actually in the car when you were all pulled over by law enforcement to be arrested; is that right?
A Yes, sir. That was the night prior to my arrest.
Q So you were back together with him?
A I said close to two weeks.
MR. BROWN: I've got no further questions.
THE COURT: Okay.
MR. TINSLEY: You can step down, Mr. Settles.
THE COURT: You may step down. Thank you, sir.
(Witness stepped down from the witness stand.)
THE COURT: Mr. Tinsley, call your next witness,

please.

MR. TINSLEY: You're Honor, at this point the Defense for Mr. Settles respectfully rests.

THE COURT: Solicitor, do you have anything in reply or do you need a moment?

MS. WHITE: No, Your Honor.

THE COURT: Ladies and gentlemen of the jury, here's where we are. We're at the point where you've received all the evidence that you're going to have in this particular case. I'm going to let you take a very brief break. And what I'm going to do is the law requires me to have a brief discussion with the attorneys about the law that I'm going to instruct you on. While you're taking that break, Madam -- - Mr. Foreman, while you're taking that break, if you could sort of poll the jury and find out from them -- it's about a quarter until 3:00 and I have a running rule that once a case is submitted to the jury how long the jury wants to go is entirely up to the jury. We have inconvenienced you for two days, three days. I'm going to now be the one inconvenienced by whatever schedule you all set. So you all get to set the schedule. It's going to take probably an hour, hour and a half, I would think, for closing arguments and maybe my instructions, which is going to put us around 4:30. If you want to do that tonight and then start your deliberations, that's perfectly fine. If you want to do

that in the morning, that's perfectly fine, too. I don't know if any of you have any obligations, any pressing obligations this evening that you have to attend to. But if you want to go forward tonight and deliberate we're at your disposal. If you want us to argue and charge you on the law tonight, or if you just want to hear the arguments tonight and I'll charge you on the law tomorrow, that's fine, too. But just kind of get a feeling for what you all want to do. Okay?

Don't talk about the case yet, but you can discuss the scheduling. We'll be at ease for a few minutes while I talk to the attorneys.

(Whereupon, the jury exited the courtroom at 2:45 p.m.)

THE COURT: I've previously emailed a corrected copy of my charge to the jury. We'll take a few minutes, and if there's any suggestions, additions, deletions, et cetera, just let me know or let my clerk know in the next couple of minutes and then we'll go back on the record and figure out where we stand for the day. Okay?

MR. TINSLEY: Your Honor, at this point, of course, I renew all prior motions.

THE COURT: We'll do that in a second, Mr. Tinsley.

MR. TINSLEY: You'd rather wait on that?

THE COURT: Yes, sir. I'm more concerned about the instructions at this point.

(Whereupon, a recess was held.)

THE COURT: We'll go back on the record, if we could. The Defendant is present with counsel. I assume that you've all had an opportunity to review the revised jury instructions that I sent to you before lunch. Has the State taken a look at them yet or --

MS. WHITE: Yes, sir. We don't have any problems with the instructions.

THE COURT: Mr. Tinsley?

MR. TINSLEY: Your Honor, the only changes that I'm going to ask for is a little more emphasis on mere presence and a little less on the hand of one. And under the statement I would ask you to include factors of telephone, the policeman's representation and isolation from a 17-year-old and his family. And those are the only two things.

THE COURT: The instructions that I -- that my clerk and I used pretty much come from the bench book. I'm not quite sure what you, Mr. Tinsley, in all candor about a little less emphasis on hand of one and a little more on mere presence. If you have specific portions of those instructions you would -- you would like me to pay greater attention to I'm more than happy to look at them.

What's the State's position on his concern on the statement of the Defendant portion of the charge?

MS. WHITE: Your Honor, I think what he's asking for is

a comment on the facts specifically when he asks for the isolation of a 17-year-old from your family. I'm not aware of any law -- any case law that requires a phone call prior to questioning. That's not the law of the state, as I understand it, and don't believe it should be charged to the jury.

THE COURT: Number one of the factors, the first of the factors is age of the Defendant. So that could cut both ways, obviously, Mr. Tinsley. Six and seven relate to the place and length of the detention and the nature of the questioning. So I think that kind of plays into your second concern there. Seeing how these charges are drawn from established law, including some that I think were cited to me by the Defense, I'm comfortable with them as they stand.

But there are no other requests to charge from either side. Is that what I'm hearing? Aside from those comments, Mr. Tinsley, you're good?

MR. TINSLEY: I always reserve the fact that I can argue after the charge, as always, in any criminal case.

THE COURT: After I instruct the jury?

MR. TINSLEY: After you instruct the jury about misinterpreting something or if I feel like you've misstated --

THE COURT: Oh, sure. You can definitely object to me after the --

MR. TINSLEY: Right.

THE COURT: -- after the instructions are given. Yes, you can certainly offer any objections. And if I misstate something to the jury, obviously I will be more than happy to correct that once the instruction is given.

MR. TINSLEY: The other thing is, you know, a second motion in my packet. A motion to compel discovery compliance. On February 20th -- February 20th of 2014 and the first response was January 26th of 2015.

THE COURT: Don't mean to cut you off, Mr. Tinsley, but -- and I realize -- I understand, Mr. Tinsley, that at this stage of the game I haven't heard any other objections over Rule 5 Brady. The evidence is closed. It's over. It's done with.

MR. TINSLEY: It was brought up in chambers. I'm just pointing out that, you know, that it seems to be, as you state, a bit of an ongoing problem. Now, I'm not like most lawyers and --

THE COURT: I don't mean to cut you off, but I want to find out what this jury wants to do, Mr. Tinsley. If there was an objection to the discovery I needed to hear that before we ever impaneled the jury --

MR. TINSLEY: I understand.

THE COURT: -- as opposed to when the trial is done. So we're done with the evidence.

MR. TINSLEY: I understand that.

MS. WHITE: And, Your Honor --

THE COURT: My next question is are you ready to argue if the jury says that they are ready to go forward --

MR. TINSLEY: We are.

THE COURT: -- because we're not going to burn any more daylight on an argument that should have been raised pretrial if it was going to be brought up. If this --

MR. TINSLEY: Well, it was brought up in chambers.

THE COURT: Is the State ready?

MS. WHITE: Your Honor, for the record -- the State is ready.

THE COURT: Good.

MS. WHITE: The first discovery response was July 11th, 2013, for the record.

THE COURT: Good enough. Let's find out what the jury wants to do.

(Whereupon, the jury entered the courtroom at 3:06 p.m.)

THE COURT: Mr. Foreman, I assume you've been caucusing back there with the rest of the jurors. What's your all's pleasure?

MR. FOREMAN: We'd like to hear the closing arguments today and the charge and deliberations tomorrow.

THE COURT: Fair enough. That's the way we will

proceed then. Ladies and gentlemen, as I mentioned a moment ago, we have reached the point in the trial where you've received all the evidence that you're going to have. All the factual evidence that you will have available in order to judge this case, and it's now the lawyers' opportunity to have their closing summation or their closing argument. And the way that we proceed is the State will go first to be followed by the Defense and then the State will have the final argument to you this afternoon. And normally the lawyers will refer to facts or they may refer to certain testimony or bits of evidence or pieces of evidence when they give you their closing arguments. I will tell you right now, ladies and gentlemen, however, if anything that the lawyers say about the facts differs from what you recall those facts being, you should go with your recollection of the facts as opposed to what they say the facts are. Okay? And obviously that's because you are ultimately the judges of the facts. So, for example, if they were to say that yesterday the weather was cold and rainy and cloudy and miserable but you remember it yesterday as being relatively pleasant and maybe some pollen in the air but otherwise a pleasant day, go with your recollection of the weather as opposed to what they say the weather was like. Okay?

With that, Ms. White, you are recognized for your closing, ma'am.

MS. WHITE: May it please the Court.

THE COURT: Yes, ma'am.

CLOSING ARGUMENT

BY MS. WHITE: Ladies and gentlemen, like the Judge said, I get to talk to you all twice, and I'm going to be very brief in the beginning because the only thing I want to talk to you all about right now is the law. The charges that Mr. Settles is facing and the law that you should apply in this case. The Judge will charge you all more fully on that, and obviously what he says controls. If something is different from what he says, what he says goes. But first and foremost Mr. Settles is charged with murder. And the legal definition of murder is the killing of another human being with malice aforethought. Killing of another human being, that's pretty easy. I think we all know what that is. But malice aforethought. Malice is a hatred or an ill-will. It's an intentional act of doing something wrong that you don't have a just cause to do. Malice can be expressed or implied. Expressed malice could be I'm going to kill you, or I've got you now, mother f'er. That's expressed malice. Implied malice, inferred malice, can come from a total disregard of human life. So firing a gun at someone, and from point blank range and then as they're turning around, a total disregard for that person's life. Malice can also be inferred on something called felony murder.

What felony murder means if you're going to commit a felony, an armed robbery, and someone is killed in the commission of that felony, then you can infer malice in that situation. So if you're going to rob someone to hit a lick and someone gets killed then you can infer malice and find that person guilty of murder.

The other charge, possession of a weapon during a violent crime, again, that's an easy one. We all know what that means. You had a gun, a knife, whatever, a deadly weapon while you were committing a violent crime. In this case, murder.

Another important factor of the law that the Judge is going to tell you all about, and this one comes into play in this case. It's called the hand of one is the one of all. And what that means is if two people or more have a conspiracy or have an agreement to go commit a crime, everything that happens in that crime they are all liable for as long as it's a natural consequence. So for instance, if Mr. Brown and I are going to rob a bank and I'm the getaway driver, Mr. Brown is going to go in with a gun. There's no plan to murder anybody. But he's going in with a gun to rob a bank. And while he's in the bank I'm sitting in the car. I'm not in there. I don't know what's going on. While he's in the bank he kills somebody. I'm just as guilty of murder as he is because the hand of one is the

hand of all, and when you go to rob someone with a deadly weapon it is a natural consequence that somebody could end up dead.

Another factor of the law that the Judge is going to tell you all about, and this is an important one. Reasonable doubt. Mr. Brown told you all in the beginning that we have the burden of proving our case beyond a reasonable doubt, and as he told you all, that is burden that we welcome, because what that means is when you all go in there and you look at all the evidence and you look at -- you hear the statements again if you want to. You look at the pictures. What it means is you are firmly convinced that Mr. Settles murdered Mr. Sis. It doesn't mean beyond all doubt, because there's no way we could ever do that. I could never convince all 12 of you beyond all possible doubt in the entire world of anything. But what it means is that feeling, that firmly convinced feeling deep in your gut that this is the right thing. This is what he did. He murdered that man in cold blood.

So that's the law for you all to apply. And after Mr. Tinsley gets a chance to talk to you I'll come back and I will talk about how the facts and the testimony relate to that law.

THE COURT: Mr. Tinsley, you're recognized, sir.

MR. TINSLEY: Thank you so much, Your Honor. May it

please the Court.

THE COURT: Yes, sir.

CLOSING ARGUMENT.

BY MR. TINSLEY: Ladies and gentlemen of the jury, first of all, I want to thank you. Thank you for your service, attention and listening to the witnesses from the stand and the evidence that was presented, the difficulty of the case, and the predicament that Tavarious Settles finds himself in.

Sometimes in life we find ourselves with associates, and it's happened to me. It's happened to all of us at one time or another, that perhaps don't have the most desirable attributes. Sometimes they maybe show you one side and don't show you the other until the crucial moment. I'll give you an example. It happened to me. I had two friends, and they were buddies. Close buddies. I thought they were, you know, above board, decent guys. So it was a Friday night. Not early. I was going to bed and I hear that rap. It's them. They say Hey, come on, let's go. I have my aunt's car and we are going to go for a spin around town. Sure, sounds great. I climb out the window, like I shouldn't have. Young like Mr. Settles. Low and behold, we get to riding up the road, go about three blocks doing wheelies on two wheels. We get to the stop sign. Thank God they stopped so I could jump out and run home. And the next day, the next day, I saw one of them. And I could tell by

the look on his face what had happened. I didn't even have to ask. Went joyriding in a neighbor's car, who lived in a different neighborhood from me, and sure enough they'd wrecked it. Turned it over. Wrecked it in a ditch. Thank the Lord that I got out of that car. But what tipped me off was that they were drunk. We were about 16-years-old. And sometimes you find yourself in a predicament. What if that first wheelie they'd done had been the one that flipped then I'd get in trouble or killed or whatever instead of that. Now, granted, it's up to me to pick my friends. But sometimes when we are young and introduced to older people. He had a little undue influence. And I'm really concerned about this Markece Moore. I have put him in so many lies from the packing plant lady coming up here today. He was doing wings over there. Remember that? He wasn't doing any wings. He worked there three days on December '12. Two or three days. That's all he could cut it. He wasn't no worker. Tavarious Settles found out the hard way. Some of these places they talking about. Somebody's rolling the dice, and they keep rolling it. And then they got the edge trimmed off. And they know it's off. All they got to do is put it in a certain position and they can make that. And don't tell me it can't, because it can.

Anyway, Markece Moore was caught in no less than eight lies. One, oh, no, I've never owned a gun. Two, I grew up

with those boys. Turns out something about Promised Land and nobody really seeing him until sometime after 2010 he pops on the scene. The other thing, whether it's brass knuckles or a gun -- you can hit with brass knuckles in the head and it can kill you. It can kill you. It's not something you take to school because you got your butt beat. That's something you deal with with your fists, or you wisely take it to the Principal. And that's just -- you know, that's just a couple of his lies. He not only owned guns, he sold guns. He's swapped guns for drugs. He's got this kid going down there with him. And he's older than the whole bunch. And I submit to you for your thorough consideration, we've got the wrong man on trial here. The man that ought to be on trial is Markece Moore. He's over 20 years old. He said all along it's Lank's lick. I thought his nickname was Link, but Lank. He admitted it was Lank's lick. My client, because poor ole Mr. Turner, and he finally admitted he didn't see what happened. That was interesting testimony that I thought was -- that little shaky thing. I never have quite figured that out. But it was -- I'm just glad nothing happened to him and he was able to run back to his house. If he had his dog out there maybe the whole thing wouldn't have happened. But I wish -- I wish the dog had been there at least for his sake. But nothing happened to him. He just got emotionally shook up.

And he admitted that he didn't -- that it was possible that the man with the shirt over his face -- upper part of his face going down his back. Which brings -- you know, I understand that people wear things differently. Some people wear it one way and some people wear it another way. But those bushes behind Mr. Tuner's house, I submit to you that white shirt stood out to him on that man's head, and when he saw that and he heard some foul language toward the victim, he was boogieing to get back to the house, and I don't blame him. I would have been, too. Unless I had a gun that I would have fired in the air, which is exactly what I would have done. Then call 9-1-1. He didn't have a dog in the fight. It was a good watchdog for him. And this is a rough situation. But I come back to Mr. Moore. The man who took the stand and told repeated lies about his past, his present, his future, that involved guns. Not only guns but drugs. Crack cocaine. Now, nothing like that has been offered into evidence or testimony from this stand -- from this witness stand against my client, Mr. Tavarious Settles. Not a thing. All the investigators and poor Mr. Stevie Jones. Been working on and off for years. They want to attack him because he has some SLED credentials. Let me tell you what. He's done more good investigative work for me than more retired police officers ever thought about doing. He can go places like we're talking about in this

case. And I can go too. I can go down there with him. And my son can go. But he can get more than I do with these folks down in that area, from that end near the packing plant than I can. Than my son can get out of them. And I've represented a lot of people from down that way, proudly, gladly, over many, many years, and that gives me some credibility in that area. And that's the advantage that I have that some other folks may not have. It takes time to build up. But Mr. Jones, he's got his radio show, his productions, several ventures, works for me on a contract basis. And the very idea. Of course he's going to want to get paid to do this kind of work. It isn't easy. And it is a kind of situation where the payment typically comes at the end of the case, you know. It depends on when he submits his voucher to me based on the hours that he's got into it and that sort of thing, what I'm going to write him a check for. And I'm going to report it and I'm going to issue him a 1099 at the end of the year. But I'll match his work. I'll match his work. I'll take his work. He's done some good work in this case. This is just a difficult case. This is a difficult case. I want you all when you walk out in front of the courthouse and look right behind the desk there's a wall. There'll be a lady with a blindfold on and she'll be holding the scales of justice and they'll rest evenly. Evenly. And they're trying to on

this side and shift it. I'm trying to put pebbles on my side and shift it back and let it rock back and forth, back and forth and see. But in a case of reasonable doubt there's a lot of reasonable doubt, to cause you to hesitate to convict my client of the crime of murder in this case. It's got to go like that. It's got to weigh down. It's not by a preponderance of the evidence like you hear in a civil case, which is 51 percent versus 49 percent, as for a preponderance of the evidence for civil defense. In a criminal case is reasonable doubt. Any doubt that you may have inferred from the testimony that you've heard that ways in behalf of my client you should apply to his benefit. He's an ordinary local fellow, going to Greenwood High, got mixed up with an older fellow who turned out to be a desperado. It can happen. It happened to me. But I submit to you -- you heard his testimony; calm, consistent. Gave the police officer one statement and one statement only. And at first the police officer admitted when he talked to him for a little while, this statement. And then I guess I asked him one question too many and he started backing up, like he wasn't satisfied. And he got one statement on the other two. On the other three they got about three each. And another thing, the two that were who knows where in the getaway car, circling I guess, they didn't witness it. There aren't but two eyewitnesses to what happened. Poor

Mr. Turner with his cataract and his brain aneurysm surgery looking through the bushes at nighttime in a dark area going to convict this one man for murder. I'm sorry. That is just not enough to meet the burden the State has to remove the presumption of innocence from my client, Tavarious Settles, beyond a reasonable doubt. Can't do it. Can't do it. Can't do it. Inference. Draw inferences. Draw assumptions. Get ideas out of this thing. But you have taken an oath. And that oath swears you to apply the law and the facts as you determine them to be. And there's a lot of things that make me uncomfortable in this case. I'm not going to react to it. You know why? You all have been sitting here listening. You've raised your hand when you couldn't hear something. You paid good attention. I don't have to rehash the testimony of every one of them. I will say that three of them got up there and lied repeatedly to protect themselves, and the very idea -- and this is another one of those Markece Moore. No, I'm not hoping for anything. He's hoping for a sweetheart deal is what he's hoping for. And the same with the other two. One charged a juvenile and maybe not. The driver, he seemed to be - I want you all to factor in in great detail. The order and priority of the togetherness of the group. They were together. No telling how long. But the truth of the matter is, they had -- they had a plan what they were up to.

And how do we know this was a random victim. How do we know that? How do we know that this wasn't a predetermined Markece Moore mark. It was Markece's hit. He brings a logical fall guy. Have you ever heard the term of a fall guy, this is a classic example of a fall guy. Tavarious Settles sitting right over there. In school, trying pretty hard, doing pretty good, gets associated with older guys. And I think Patton was actually about his age, too. What's this Moore fellow coming in here and recruiting these other guys. I mean, that scares me. That bothers me. Evidently it doesn't bother the State too much, but it bothers me. Cause he ain't got no credibility. The only one in this case who has got any credibility in this case stood up here and told the truth. Just like he told the officer. I hate to raise my voice. But I've got a big voice. I get a little excited at times. I apologize. I apologize to y'all in advance. I continue to apologize for my shortcomings. But I hope you all will accept my considerations, my valid points, my logic. And this is a difficult case. But I've tried harder cases. I've tried easier cases. But I ain't tried much harder cases. But I submit to you out of all the witnesses relevant, and in particular to the two eyewitnesses as to what happened, given Mr. Turner's testimony its due respect, the place he was in, the circumstances he was in, and you weigh that. That's when

you look into the abyss. And that is where you find justice and reasonable doubt, and that is what will lead you to the proper verdict. I thank you so much for your consideration and continued work in this case.

THE COURT: Thank you, Mr. Tinsley. Ms. White.

MR. TINSLEY: Thank you, Your Honor.

THE COURT: You are recognized, Ms. White.

MS. WHITE: Thank you, Your Honor.

CLOSING ARGUMENT

BY MS. WHITE: Ladies and gentlemen, Mr. Tinsley, he may have -- he has been doing this a long time and I respect him for being an attorney that long in this community. I've been doing this for about a decade. And murder is murder. And there's a lot -- you know, it's easy to get distracted between talking about Mr. Turner's dogs and talking about GSR and talking about chain of custody. It's easy to get distracted about why we're here. The reason we're here is because this man, Prudencio Sis. His girlfriend, his fiancee, called him Freddie, so I'm going to call him Freddie. Freddie got off work, cashed his check and went to his girlfriend's house. Stayed over there for a little while, and then he was going to walk home. 9:00 at night he was walking home. Was minding his own business. Had told her he loved her. When two people came out of nowhere, approached him with a gun, said we've got you now, mother

fucker, excuse my language, pointed the gun at him and blew him away. And you all remember Dr. Woodard's testimony. Two in the front, two in the back. They shot that man in the back. Mr. Settles shot that man in the back as he was trying to get away. That's why we're here, because a man is dead. And we had some testimony earlier from Mr. Settles' family and they got a little bit upset about the 12 or so hours that they weren't able to see him, talk to him. Yvette, she'll never get to see Freddie again. She'll never talk to him again. She'll never hold him again. She'll never kiss him again. Never. Mr. Settles' family, they can see him. They're 10 feet away from him right now. So while I'm sure that this has been difficult for them, he is not the victim here. Tavarious Dequan Settles, if you want to call him Purp, Quan, whatever they want to call him, this man is a cold blooded murderer.

Now, Mr. Tinsley's job is to distract you all from the facts of the case and he's -- he didn't have much to work with here but he's done the best with what he has. And, you know, we've talked about -- we've talked about Mr. Turner's pit bull and when it may or may not have gotten stolen. We talked about Mr. Turner's aneurysm in 1988. We talked about Markece Moore and why he didn't go live with his momma. We talked about -- oh, I can't even remember. We talked about where -- why some evidence ended up in an arson room at

SLED. We have been all over the place to try and distract you all from what the real point is. And the real point is that Markese Moore, Michael Patton, Bryson Jefferson all said Purp had the gun that night. They all said Purp got out of the car with the gun. Markece Moore is the one who said Purp pulled the trigger. He was the only other one out of the car. And then what do all three say again when they meet back up. Markese comes running up first and says Purp just shot a Mexican three or four times. What does Settles say when he comes running up. I shot a Mexican. He admits that to his buddies. And, ladies and gentlemen, if -- and Mr. Tinsley has said, you know, oh, Markece Moore was the shooter and he's just got all these other guys lying for him. If Markece Moore had all these other guys lying for him I think they would have done a little bit better job. They wouldn't have put him in it at all. They wouldn't have put him getting out of that car to go hit the lick. They wouldn't have put him planning the lick. He denied planning the lick, but everybody else put him there planning in. So if everybody is trying to save Markece they're doing a pretty bad job. Because I'll tell you all, Markece Moore is just as guilty of murder as Mr. Settles is, based on the testimony that's come from that stand, under the theory of felony murder and the hand of one is the hand of all.

Now, the Defense also -- and you all can hear any

testimony over again as many times as you want. So if you want to hear what Mr. Turner said, you all can certainly hear that again. But what I remember him saying, and when I asked him directly did you see who had the gun, yeah, it was the shorter guy with the little Shirley Temple twists. He seemed pretty confident about that. Then after we went through pictures, after picture, after picture and question, after question, after question, what did Mr. Tinsley manage to get him to say. It could have been the tall guy. They were really close together. But then what did he tell the police that night an hour after it happened. It was the short guy with the twists. So ladies and gentlemen, I'm going to submit to you all what happened is what he said an hour after the shooting and what he's on that stand, before he was berated for 20 minutes until he finally gave the answer -- sort of the answer that Mr. Tinsley was looking for. And just talking about Mr. Turner, he's the only one without a dog in the fight. And you all heard. He didn't want to be here. He didn't want to come in and tell what he saw. And the easiest way -- why would he make that up. Why would he say to the police when he didn't want to be involved it was the shorter guy who did the shooting, and he couldn't even see it. He said he saw it that night. And if there's one thing -- you all get to judge the credibility and the demeanor of the witnesses. If there's one thing

that I believe about Jerry Turner, and you all -- you all saw him, that man tells it like it is. Because when I asked him, you don't want to be here, you got that right. That was his answer. So there is no reason whatsoever for him to have made that up.

Now, Defense also had Mr. Jones come in, and we talked a little bit about how much he's getting paid. We still don't know. But he is getting compensated for coming in here, and that's something for you all to consider. But the other thing, he -- even he admitted, the Defense's paid investigator admitted the angles were changing as everybody was moving. The bushes had been cut back, Mr. Turner said. So we don't know today what that view was. Mr. Turner said he could see. Mr. Jones admitted Mr. Turner is the best person to say whether or not he could see. And he has no reason to make it up. And what he saw was the shorter guy with the little twists with the gun.

Talking about Mr. Settles' testimony today. He said about what you would expect him to. There were no surprises there. He minimized -- you know, his story changed from where -- from the story he gave law enforcement. And you all can hear both of those again if you want to. He told law enforcement that they got in the car to go hit a lick. They got in the car knowing they were going to go hit a lick. That he decided to get out of the car knowing Markece was

going to go hit a lick. Going to go help him. And then today, after someone has probably explained this theory of felony murder and the hand of one is the hand of all, he gets up there and says oh, no, I didn't know anything about it. He was just getting out of the car. Well, then on cross he admitted he knew. And he says he didn't know Markece had a gun. He's putting the gun in Markece's hands. He said he didn't know he had a gun. He sure knew what kind it was. If he had pulled it out just bam, bam, bam, how does he get close enough to know it's a Glock 40. He knew what type gun it was because it was on him. Even based on Mr. Settles' statement, if we had put in nothing else, he's guilty of murder because he said he was going to rob the Mexican. Everybody keeps calling him Mexican. He's Guatemalan, but everybody calls him a Mexican, so that's what I'm using. Says we were going to rob the Mexican, and the Mexican was killed as a result. That's it. He's guilty by his own statement. He tried to minimize his involvement. He tried to put the gun in the other guy's hand, and he didn't do a good enough job because that statement convicts him right there. But what really happened is these four guys got together. They all probably knew about it. I mean -- and they're not choir boys. Nobody who got on that stand we're not presenting any of them as a good guy. They were all going to rob somebody. They got up there and they told

y'all that Michael Patton put himself square in the middle of it. Put himself as picking out the victim. And that's something y'all can consider. He put himself guilty of murder on that stand. That's something to consider when deciding whether or not he was telling y'all the truth. But they all got up there. They all put the gun in Mr. Settles' hand. Mr. Moore says he was the shooter. Mr. Turner says he was the shooter. They all said it was a black Glock 40. The forensics experts, what did they say. The casings were fired, it was consistent with a black Glock 40. One gun. The bullets consistent with a Glock 40. And you can tell just from their demeanor none of those guys wanted to be in here. Again, just like Mr. Turner. I mean, Mr. Jefferson, my goodness. I was the one who questioned him and it was just evident he wanted to be anywhere but here. And he didn't want to tell it at first. It's hard. You know, these guys were friends. They would hang out together, and it's hard to get up there and say that your friend murdered somebody. And Mr. Tinsley wants to harp on their ages. I grew up in kind of a small neighborhood and the only friends I had were just the other kids, and my best friend was four years older than me. Another one of my good friends was two years younger. And we were scattered all over the ages, because were you grew up and the people you're around, those are who your friends are. You don't really get -- when

you're a kid it's just anybody who's around. And when you're a young teenager and you don't have a car and you can't get out, it's anybody who's around. So the fact that Mr. Moore is older than Mr. Settles and they're both way older than Mr. Jefferson, that's just how people grow up. That's who you grow up around. They all said that Mr. Settles went back to burn his shirt afterwards. Everybody said that. But really, you know, thinking about Mr. Turner again. The Defense wants to make it seem like he couldn't see. What did he say happened. The Mexican held up his hand, and he did this on the stand. He said he said no, no, no. What did the forensics show. The autopsy. We have a bullet wound right here that could have traveled into the body. There's one right here. There's a graze wound right here. And then there's one in the back, in the shoulder, and one at the waist. So he's got his hand up when that first shot comes. And this is the shot that killed him. It was probably the first shot fired. And remember the doctor said he had maybe two -- one to two seconds. Enough time to turn around and fall and die on the side of the street. So the forensics match what Mr. Turner saw. Mr. Dill, he was a short witness. He just corroborated. He saw the two guys come out of the road -- come out of the path and that they were on the side of the road. Because remember, they were the ones he was going to rob first. Mr. Patton told us

that. We were going to rob a car broken down on the side of the road, or Mr. Dill is the one who stopped to help that car. They decided not to rob him and kept going looking for another victim. And during that discussion I'm pretty sure Purp knew what was going on. And the GSR also backs up what I was just saying. It's on his right palm and the back of his left hand. So his hands up like that. Every witness who you all have heard from puts the gun inside his hand. Every witness who was there, except for the only person who has any reason to lie, Mr. Settles. Every other person put the gun in his hand, including Mr. Turner who had nothing to do with anything.

We've put it all out there. You know, we -- Mr. Moore testified in orange. We're not trying to hide the fact that any of these guys -- what they were doing, what they're charged with. They've had no promises. We could have shined them up. Put them in suits. But that's not -- not what this is about. We put it all out there. You all have all the evidence. You have all the statements. You have the bullets you call can look at. Where did those go? And you all take a look at these when you all get back there. Take a good look at how mangled they are. Just imagine the damage that was doing as it was going through Mr. Sis' body. The kill shot, breaking ribs, tearing a large hole in his heart, tearing a hole in his lung. Take a look at those

when you all are back there. These are the bullets that ended a man's life. It's not every day that you see something like that. If you all want to hear anything else, see anything else that's in evidence, you call can come back out and hear the statement. Hear the 911 call. You call can do that. We are confident, ladies and gentlemen, that you call will see, that you all are firmly convinced that Tavarious Settles, Purp, Quan, whatever you want to call him, you'll find him guilty of murdering Mr. Sis in cold blood. Thank you.

THE COURT: Thank you, Ms. White. Ladies and gentlemen, we're done for the day per your request. Same admonition goes as yesterday. Don't read about this in the paper. Don't look at anything. There won't be anything, I don't think, on TV. Do have a pleasant evening. And when you get here tomorrow morning, if you could, just be back in the jury room at -- I'm having trouble telling time this week. Be back at 9:15 tomorrow morning. Okay? What we'll do is we'll give you few moments to maybe get a cup of coffee and then bring you out. I'll give you the instructions on the law and you will then have this case. The two alternates, ladies, I do need you to come back tomorrow just in case somebody gets sick overnight and that way we'll have a full 12 to deliberate on this case. Again, don't talk about the case with anyone. See you at 9:15

tomorrow morning. Hope you have a very nice night. Take care.

(Whereupon, the jury was released for the day at 3:57 p.m.)

THE COURT: Two quick matters. First of all, before we took the break and started talking about the instructions Mr. Tinsley did, in fact, renew all previous motions and I -- at the close of all the evidence, but I did want it noted that he did renew those motions. While I was stepping off the bench I told him we would take that up after we came back on the record, but I forgot. I don't know if it's reflected on the actual transcript, but I did indicate to him that I'm taking note that all motions are renewed. Same rulings as before. Finally, and before we break for the evening, I just want to compliment the attorneys on an excellent job. Both of you have done -- all of you have done a very, very fine job on this case, and I know that this is not an easy case for anybody on either side of this courtroom. So my compliments to everyone on how they've conducted themselves. Not only -- not only the attorneys but also the individuals in attendance. We'll be at ease on this case until 9:15 tomorrow morning. I do have drug court that's supposed to be starting momentarily. Solicitor, I know your materials are going to be safe there if you want to leave them, but I need you all to clear out within the

next 10 minutes, if you could, so that I can address that. Okay?

MR. TINSLEY: Will do, Your Honor.

THE COURT: You all have a great evening. See you in the morning.

TRIAL DAY 4-04/2/2015

THE COURT: We'll go on the record, if we may, in the *State vs. Mr. Settles*. The Defendant is present with counsel. I'm told that the jury is here. One thing I neglected to take up, or discuss last evening, was the verdict form. It's going to be a basically standard up or down on murder and possession of a weapon during the commission of a violent crime. I had forgotten to print one out last evening. My clerk is working on it as we speak. But basically it was say, "We the jury in the above captioned case on the charge of murder unanimously find Tavarious Settles," and then the Foreperson will have the options of guilty or not guilty. Identical language for possession of a weapon during the commission of a violent crime. Any problem with that from anyone?

MR. TINSLEY: No, Your Honor. But wouldn't it state best if it said, of course, if you find him not guilty of that you don't have to proceed to the next charge. Wouldn't that be in there somewhere?

THE COURT: That's in the -- that's in the

instructions. I'll explain that to them. I think it's pretty self-explanatory. But I will definitely tell them that if they were to find Mr. Walker not guilty on the principal offense, the murder -- I'm sorry, Mr. Settles. I'm looking at the verdict form. It was from a case David Walker that I tried two weeks ago in Laurens. So if they were to find Mr. Settles not guilty on the murder charge then obviously they would not proceed to the second question involving the weapons charge.

MR. TINSLEY: One housecleaning matter, Your Honor.

THE COURT: Yes, sir.

MR. TINSLEY: Your Honor, the other day I had mentioned that I wanted to put my motions packet in the -- as a Court exhibit.

THE COURT: Right.

MR. TINSLEY: And I've got my extra copy of it now, and I don't think there's any objection to it coming in as a Court Exhibit Number 4.

THE COURT: Very good. Those will be filed as a Court's exhibit. I think they are actually on file with Mr. Settles' warrants.

MR. TINSLEY: They are in the Clerk's, but the original was in the Clerk's file.

THE COURT: Very good. Let's have the jury in, please.

(Whereupon, the jury entered the courtroom at 9:32

a.m.)

THE COURT: The record should reflect that the jury is back and seated. Ladies and gentlemen of the jury, thank you for being back this morning, and I trust that you all had a pleasant evening last night. We have reached that stage in the case, as I mentioned yesterday, where you've received all the evidence that you're going to have by which to judge this case. And at this stage, ladies and gentlemen, it's not possible for us to reopen the record and offer any additional testimony. Legally that's simply not possible. At the same time I know that there was an audio recording introduced into evidence. You'll have the photographs and the other physical pieces of evidence back there during your deliberations. If you need to replay the 911 recording let us know. We'll be more than happy to try and make that accommodation. Either get you some method by which you can play it back there. A computer or something like that, or we'll bring you back out here and play it out here. You can also hear any additional testimony that you -- or you can hear any testimony that's already been placed into the record. Just let us know what testimony it is that you're looking for, which witness it is that you're looking for, and it'll take us probably 10 to 15 minutes to boot that up and we can bring you back out here and replay that testimony.

Now, ladies and gentlemen, again, I can't help you on any additional facts. That's an area solely for you to determine, and it's not possible at this stage, again, to reopen the record. However, if you do have any questions about these instructions I can help you with that. I can assist you on any questions you may have concerning the law. When I first started practicing law the way that a jury was instructed is the judge would essentially sit up here and read to you 16, 17, 18 pages of the law and the 12 of you were supposed to sit there and simply absorb all this and understand it and get it on the first go-around. I always found that a little unreasonable. Like most people, it took me three years to get through law school. Three years to learn this stuff, and I'm still learning it. So long story short, I'm going to give you a copy of these instructions in written form that you can refer to during your deliberations if you feel the need to. Please, you know, pay attention to the instructions as a whole and don't simply focus on one specific area to the detriment of the other areas of these instructions. And again, if you have any problems with these instructions on the law, just let me know and I'll try and clarify them for you. When you're done and you've returned your verdict just return these instructions to the court with the other exhibits that you'll have back there.

Now, ladies and gentlemen, in this case the indictments

charge Mr. Settles with the offense of murder. And I'll remind you that the fact that Mr. Settles was arrested, charged and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor do the indictments create any presumption or inference of guilt. The indictments are simply the formal written instruments which contain the charges made against Mr. Settles. They're the formal documents by which the case is brought into court. The Defendant in this case has pled not guilty to these charges and that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of law that the Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictments were issued unless guilt has been proven by evidence satisfying you of his guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberations but it accompanies the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of his guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant. It remains with him until it's been stripped

from him by evidence satisfying you of his guilt beyond a reasonable doubt. Ladies and gentlemen, is presumption of innocence is not merely a legal theory. It's not just a legal phrase. It's a substantial right to which every Defendant is entitled unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

Well, what is a reasonable doubt in the law. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. The State has the burden of proving the Defendant guilty beyond a reasonable doubt. And some of you may have served as jurors as civil cases where you were told that it's only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases the State's proof must be more powerful than that. It must be proof beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. Now, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced of the Defendant's guilt, you must find the Defendant guilty. If on the other hand you think there's a real possibility

that the Defendant is not guilty, you must give him the benefit of the doubt and find him not guilty.

Now, ladies and gentlemen, I remind you that during this trial you and I have certain duties to perform. As the trial judge it's my responsibility to preside over the trial of this case, and I also have the obligation to rule on the admissibility of evidence offered during the trial. You are to consider only the confident evidence before you. Any testimony which was ordered stricken from the record in this case must be disregarded by you. You are to consider only the testimony which has been presented from the witness stand, as well as any exhibits which have been made a part of the record in this case and any stipulations of counsel. The additional duty to charge you the law applicable to this case, and as the presiding judge I'm the sole judge of the law. It's your duty as jurors to accept and apply the law as I now state it to you. If you already have any ideas to what the law is or what the law ought to be and it does not agree with what I tell you the law is you must abandon this idea because you're sworn to accept the law and apply it exactly as I state it to you. In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in a case. A trial judge cannot comment on, intimate state, or make any statement to a trial jury about the facts in a case. Since you the jury are the sole

judge of the facts, you're not to infer from what I've said during the progress of this trial in ruling upon the admissibility of evidence or otherwise, or anything that I say to you now, that I have any opinion about the facts in this case. Ladies and gentlemen, the law does not permit me to have an opinion about the facts. This is a matter solely for you to determine. As jurors it's your duty to determine the effect, value, weight and truth of the evidence presented during the trial.

Now, ladies and gentlemen, there are two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence and the law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. However, to the extent the State relies upon circumstantial evidence, all of the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the Defendant's behavior as suspicious the proof has failed. The State has the burden of proving the Defendant guilty beyond a reasonable doubt

and this burden rests with the State regardless of whether the State relies upon direct evidence, circumstantial evidence, or some combination of the two.

Now, necessarily, ladies and gentlemen, you must determine the credibility of witnesses who have testified. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of witnesses who have testified, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of that witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case and you may also consider the appearance and manner of a witness while on the witness stand.

Now, ladies and gentlemen, with regard to some of the expert witnesses who have testified I remind you that the rules of evidence usually don't permit witnesses to testify as to opinions or conclusions, but an exception to this rule exists for expert witnesses. A witness who by education and experience has become an expert in some art, science,

profession or calling may state an opinion as to relevant and material matters in which the witness claims to be an expert, and may also state the reasons for that opinion. You should consider any expert opinion received in evidence in this case and, like any other evidence, give it the weight you think it deserves. If you decide that the opinion of an expert is not based upon sufficient education or experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinions are outweighed by other evidence, you may disregard the opinion entirely. An expert witness' testimony is to be given no greater weight than that of any other witness simply because the witness is an expert. Further, you're not required to accept an expert's opinion even though it's not contradicted.

Now, ladies and gentlemen, I instruct you that a person who has a past criminal history or a past criminal record is competent to testify during a trial. A past record does not effect the ability of that witness to testify. The past record may only be considered by you, if at all, in determining the witness' believability. Remember you're the sole judges of the facts in this case and the believability of any and all of the witnesses.

Now, ladies and gentlemen, a statement made by the Defendant, Mr. Settles, has been admitted into evidence in

this case. While the Court has determined that the statement is admissible, I instruct you that you make the ultimate decision of whether or not the Defendant made the statement. That the Defendant did make the statement you must determine whether the statement was made by the Defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion or intimidation, or by hope or a promise of leniency, or a reward of any kind. In determining whether the statement was voluntary you should consider both the characteristics of the Defendant and the details of the questioning. Some of the factors that you must consider are the age of the Defendant, the Defendant's education or lack thereof, the Defendant's mental ability or capacity, the Defendant's IQ or intelligence, the Defendant's background and environment, the place and length of the detention, the nature of the questioning and the advice or lack thereof to the Defendant of his constitutional rights including, but not limited to, the right to remain silent, that any statement could be used against him in a court, the right to have a lawyer present, and that if he could not afford a lawyer a lawyer would have to be appointed to represent him, or a lawyer would be appointed to represent him without cost, and that he could stop making a statement at any time. You must carefully consider all of the surrounding

circumstances before you give any weight to an alleged statement made by the Defendant. The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine that it was, you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to the statement. If you determine that the alleged statement was not the free and voluntary statement of the Defendant you shouldn't consider the statement at all.

Now, ladies and gentlemen, I instruct you that if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probably or natural consequence of the acts done in carrying out the common plan and purpose. For example, two persons can be guilty of robbing a business even if only one of the two entered the business to accomplish the robbery while the other remained in the driver seat of the getaway car outside the business. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all, or as it is sometimes said, the hand of one is the hand of all. Prior knowledge that a crime is going to be committed without more isn't sufficient to make

a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, isn't sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore a finding of a prior arrangement, plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. I instruct you a principal of a crime is one who either actually commits the crime or who is present aiding, abetting or assisting in committing the crime. When the person doesn't act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plane or intent are present at the commission of a crime, it doesn't matter who actually commits the crime. All are guilty. The hand of one is the hand of all. Present at the commission of a crime means to be sufficiently near to -- means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of the crime isn't sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element, for there must have been a common design or intent to commit the crime, and the crime must

have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which actually occurs. Not accident or involuntarily. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonable infer intent. The State must prove these elements beyond a reasonable doubt.

Now, ladies and gentlemen, the Defendant in this case is charged with the crime of murder. The State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought. Malice is hatred, ill-will, or hostility towards another person. It's the intentional doing of a wrongful act with just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exists in the mind of the Defendant just before and at the time of the act or at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act. Malice aforethought may be expressed or inferred. These terms express or inferred do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances

which are proven. Expressed malice is shown when a person speaks words which express hatred or ill-will for another or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts of preparation going to show that the deed was within the Defendant's mind with the expressed malice. Malice may be inferred from conduct showing a total disregard for human life.

Now, ladies and gentlemen, I instruct you that if one intentionally kills another during the commission of a felony, the inference of malice may arise. If fact are proven beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be taken into consideration by you, along with all other evidence in this case, and you may give it the weight that you decide it should receive.

Now, ladies and gentlemen, in the addition to the offense of murder, the Defendant is charged with possession of a weapon during the commission of or attempt to commit a violent crime. The State must prove beyond a reasonable doubt that the Defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime. A firearm is defined in the law as any machine gun, automatic rifle, revolver, pistol,

or any weapon which will, is designed to, or may be readily converted to expel a projectile. In order to find the Defendant guilty of possession of a weapon during the commission of a violent crime you must find the Defendant guilty of committing a violent crime or attempting to commit a violent crime. I instruct you that under the laws of our state murder is classified as a violent crime. The State must prove beyond a reasonable doubt that the weapon furthered, advanced or helped in the commission of the crime.

Now, ladies and gentlemen, there are two possible verdicts that you may find in this case. And, Mr. Foreman, I've developed this verdict form to help guide your deliberations and help you return the verdict. Okay? The possible options are guilty of murder or not guilty of murder, or guilty of possession of a weapon during the commission of a violent crime or not guilty of possession of a weapon during the commission of a violent crime. There's absolutely no significance, ladies and gentlemen, to the order in which I state these verdicts. It's simply that one has to be stated first. The verdict form basically poses these two statements to you. It says -- up here is the caption of the case, the State vs. Mr. Settles, and then the first paragraph simply states, "We the jury in the above-captioned case on the charge of murder unanimously find

Tavarious Settles," and there's a place for the Foreperson to initial either guilty or not guilty. If you find the Defendant guilty on the charge of murder you would then proceed to the second caption. It says, "We the jury in the above captioned case on the charge of possession of a weapon during the commission of a violent crime unanimously find Tavarious Settles, and then again you have the same options of guilty or not guilty. Obviously, if you find the Defendant not guilty of murder, you would not proceed to the second question to the second statement.

When you have reached your verdict, Mr. Foreman, if you would, just initial appropriately and sign the verdict form right down here where it has a little blank.

Now, ladies and gentlemen, your verdict has to be a unanimous one. That means that all 12 of you have to agree. In South Carolina we do not have majority verdicts. I don't think we should ever have majority verdicts. So all 12 of you must agree on the verdict in this case. When you have reached your verdict, Mr. Foreman, just knock on the door of the jury room, let the Bailiff know, and we'll reassemble and receive you back into the courtroom to receive that verdict.

I remind you, ladies and gentlemen, in this case you have no enemies to punish. You have no friends to reward. You've been selected as fair and impartial jurors who have

no interest in the outcome of this case other than to judge the facts of this case and render a true verdict. Again, you've been picked as 12 people who have no interest whatsoever in the outcome of this case. And at this time, I'm going to ask that you retire to the jury room, but don't begin your deliberations yet. I want to make sure I've covered everything I need to cover with you. I think I have. But I want to make sure with the attorneys we've touched on everything I need to touch on. Your cue to begin your deliberations, Mr. Foreman, will be receipt of the verdict form, these instructions, the items of evidence in the jury room and my asking the two alternates to step out. Okay? So that will be your cue. If all that goes in then you all can start deliberating. Okay? So if you would, adjourn to the back for just a moment and you'll know when you can begin deliberations. Thank you.

(Whereupon, the jury exited the courtroom at 9:58 a.m.)

THE COURT: The jury is out. Exceptions from the State?

MS. WHITE: No, sir.

THE COURT: Defense?

MR. TINSLEY: As I said yesterday, I would ask that you add under the voluntariness of the statement the two facts of police misrepresentation and isolation of a 17-year-old from his family.

THE COURT: Hold on one moment, please. We're off the record.

(Whereupon, there was a brief pause in the proceedings.)

THE COURT: All right. You had --

MR. TINSLEY: Just those two factors. I mentioned them yesterday --

THE COURT: Yes, sir.

MR. TINSLEY: -- when we went over it. The isolation of a 17-year-old from his family and police misrepresentation. And I always like to hear in a charge -- I know it's confusing and you tried to define it. It's hard to define mens rea. But it's -- in your charge I think you addressed it without mentioning the term itself. Now, that may very well just be your choice of how you like to approach it. But, of course, it is a requirement in every criminal case that -- to have the prerequisite mens rea to be guilty or found guilty of any crime of this state.

THE COURT: Certainly. I appreciate your suggestions, Mr. Tinsley. I think the instructions as given adequately capture what the state of the law currently is. I don't disagree with you about mens rea and I know that that was something that 20 years ago, 25 years ago when I first started practicing maybe a judge would instruct it, but you often get more jurors scratching their heads any time you

try and throw Latin out there than maybe they would be assisted.

MR. TINSLEY: Judge. I guess being old school I just feel still tied to it.

THE COURT: I understand. Very good. Let's make sure we are correct on the exhibits. You all double check those before we send them back. And I'll give you an opportunity to look at the verdict form. I did make one correction on the instructions to the jury. I've had on the last paragraph you have no enemies to punish. You have no enemies to reward. I caught that before I read it to them and I said friends to reward, so I scratched through that and corrected that on the verdict form -- or on the instructions that I'm sending back.

MR. TINSLEY: Your Honor, you read it out.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Ladies, I appreciate you coming back this morning. I'm sorry that you had to. Seems like every case that I try we end up -- at least have the time we end up needing at least one alternate, and when we have only one alternate that, for whatever reason, never seems to be enough. So I've taken two. Okay? The checks are probably not ready?

MADAM CLERK: No, sir.

THE COURT: Checks are not ready. They'll be in the

mail. You'll probably get the Monday. Okay? You'll also get a letter from me asking if you have any feedback. You're free to talk to anyone about the case now. If somebody were to contact you and asked about, you know, how you perceived the case, you know, whether you choose to talk to them or not is your business entirely. If they insist upon you talking to them though, just call the police, tell them you were on the jury on this case and I'll take care of it from there on out. Okay? Have a great week. Take care, please.

(Whereupon, the jury alternates were released.)

MR. TINSLEY: And, of course, Your Honor, as the alternates leave, I renew all prior objections at this point in time.

THE COURT: Very good. All motions, all objections are noted. Same rulings as before.

MR. TINSLEY: Thank you so much.

THE COURT: We'll be at ease.

(Whereupon, jury began deliberations at 10:01 a.m.)

THE COURT: We're going to go back on the record on Mr. Settles' case. I've received a communication from the jury and I've asked my Clerk to share it with -- to share it with Mr. Tinsley and Ms. White. The statement that I received is, quote, "One juror would like clarification by the Judge that all individuals involved in this particular case are

charged with murder, and in particular the weapons charge. How would the parties suggest I deal with this inquiry? Ms. White?

MS. WHITE: Your Honor, I think that was covered in the testimony of all three co-defendants. It's something they heard. It would just be their recollection of the testimony as to what each person's charged with.

THE COURT: I think it was covered in the direct and cross.

MR. TINSLEY: Well, my position is that three were so charged, I believe, and one that was not charged I don't think with anything. And correct me if I'm wrong, Bryson Jefferson.

MS. WHITE: And that was covered in testimony.

THE COURT: If you all agree that that's what the testimony was is there any problem with me just -- I mean, we have one of two options. If they come out I can say that was covered in the testimony and you'll have to either remember it or we can replay it. Replaying it is going to be cumbersome. But if you agree that it was covered, I can simply say that you recall -- or that the parties agree that all three -- or that two of the witnesses indicated that they were charged with the two offenses and then the third one -- what was his name?

MS. WHITE: The juvenile, Bryson Jefferson.

THE COURT: And that Mr. Jefferson, he was not charged at all or he was charged as a juvenile or --

MS. WHITE: He was not charged with the events.

THE COURT: I'd rather have the jury be working with accurate information as opposed to inaccurate information. Thoughts Mr. Tinsley?

MR. TINSLEY: Seems pretty simple to me. Tell them that the two older ones were and Bryson Jefferson wasn't.

THE COURT: No problem with that.

MS. WHITE: No problem, Your Honor.

THE COURT: Very good.

MS. WHITE: And, Your Honor, just saying their names, Markece Moore and Michael Patton were charged, Bryson Jefferson was not.

MR. TINSLEY: I'll agree with that.

THE COURT: Markece Moore and Michael Patterson were. Mr. Jefferson was not. He was a juvenile. Good enough.

MR. BROWN: Both of them were both.

THE COURT: Right.

MR. BROWN: And the murder.

MR. TINSLEY: It's not Patterson. It's Patton --

THE COURT: Patton. I'm sorry.

MR. TINSLEY: -- Your Honor. And, of course, under this, it could have been -- he was old enough. So I'd just leave the juvenile part out, you know. He just wasn't

charged.

THE COURT: That's what I'm going -

THE COURT: I intend to just say that Jefferson -- Bryson Jefferson was not. He was a juvenile. And let it go at that. Let's have them, please.

(Whereupon, the jury entered the courtroom at 11:01 a.m.)

THE COURT: Have a seat, please. Mr. Foreman, I received the communication from you. You basically were asking, or you were saying that a juror was wanting clarification about all individuals being charged and the weapons charge in particular. And I've discussed this with the attorneys and the attorneys are okay with me informing you all that essentially Markece Moore and Michael Patton were both charged with the offenses of murder and possession of a weapon during the commission of a violent crime. The same charges that Mr Settles is facing. And that Bryson Jefferson, that was the juvenile who testified, he was not charged. Okay? So that's where things stand as far as the co-defendants and the charges brought against them. So please return to your deliberations. Thank you very much.

(Whereupon, the jury exited the courtroom at 11:03 a.m.)

(Whereupon, Court's Exhibit No. 5 was marked for identification purposes.)

THE COURT: We're going to go back on the record in the *State vs. Settles*. The jury has sent out another question. It reads, "Clarification, colon, on the weapons charge does the hand of one rule apply. If one man uses the weapon does this place the gun in all of their hands," end quote. I have kicked this question around with the attorneys in the back and I think we do all agree that it is a good question. *Jacobs* would indicate that constructive possession could, of course, apply to the firearms charge under 23-490. Basically the attorneys have told me in chambers that they think the wisest thing to do is for me to instruct the jury that the Court is prohibited from commenting on the facts and from charging them concerning factual issues. That they have a copy of the instructions that they can refer to, and that because this question is susceptible to multiple, factual scenarios the Court is a little hesitant to give them further instructions on it at this point in time. That they should refer back to the instructions I've previously given them. Would that, or words to that effect, be acceptable to the State?

MS. WHITE: Yes, sir.

THE COURT: Mr. Tinsley, is that all right with you?

MR. TINSLEY: Yes, Your Honor.

THE COURT: Let's have them out then, please.

(Whereupon, the jury entered the courtroom at 11:54

a.m.)

THE COURT: The record should reflect that the jury is back and seated. Mr Foreman, ladies and gentlemen, I've received your latest communication and it seeks clarification on the weapons charge. Apparently you are asking does the hand of one rule apply. If one man uses the weapon does this place the gun in all of their hands. Understand, ladies and gentlemen, that the Court has to be extremely careful about giving any sort of instructions or charge on the facts of a particular case, because as I explained earlier, I cannot instruct you on factual issues. You do have a copy of the instructions that I gave to you in the back, and the lawyers and I agree that the best thing for you to do would be to refer back to those instructions, because in all honesty this is capable of several different interpretations, and I'm having difficulty and the lawyers aren't quite sure and I'm not quite sure exactly, specifically what sort of factual scenario that you're discussing back there, and I don't want to give you an erroneous instruction on the law that confuses you. So -- and I certainly cannot legally give you an instruction on the facts. So I'm going to ask that you refer back to the instructions that I have previously given you on this particular question. If you're able to narrow this down, or maybe be a little bit more specific on what it is that

you're struggling with without necessarily disclosing to the Court what your factual discussion is about, I know that's asking a lot of you, then perhaps I can be of more assistance on this particular question. So I thank you for your continued deliberations on this case. I'm going to ask that you continue with those deliberations. And obviously these comments -- receive these comments and interpret these comments in conjunction with the instructions that I gave you earlier today. So I apologize for not being able to be of more assistance to you. But if you would, just refer back to those instructions that you have back there and I will make every effort, if need be, or if you're still struggling, to perhaps give you a more specific answer to a more specific question. Okay? If that, please continue.

Oh, by the way, it's going to take about 45 minutes to order lunch for you. If you want us to order lunch I can send the Clerk in shortly. If you feel like you're kind of close to a resolution and don't want to order lunch, that's fine. But if you want -- if you want us to order lunch it'll take about 45 minutes to get here. We would need to place that order pretty soon. So if you feel like you're going to be at it for a while longer and you want lunch, just let us know. I will send the Clerk -- let the Bailiff know and I'll send the Clerk in to take that lunch order. It is from the Dixie. But if any of you have any specific

dietary needs or medical constraints as far as your diet, let us know and we'll try to accommodate those. Okay? So please return to the jury room and continue your deliberations.

(Whereupon, the jury exited the courtroom.)

THE COURT: We'll mark this as Court's 6.

(Whereupon, Court's Exhibit No. 6 was marked for identification purposes.)

THE COURT: We're back on the record. The jury has requested to hear the 911 tape again. I asked my Clerk to have you go ahead and boot that up, Ms. White. So let's go ahead and bring them out and we'll play the tape for them. And I've marked this as Court's 7.

(Whereupon, Court's Exhibit No. 7 was marked for identification purposes.)

(Whereupon, the jury entered the courtroom at 12:27 p.m.

THE COURT: Ladies and gentlemen, I've received your note. I've asked the Solicitor to go ahead and cue up the 911 tape that was played for you earlier in the trial. She's going to do that in just a moment. Okay?

(Whereupon, 911 audio was played for the jury.)

THE COURT: I was just about to ask if you all wanted to hear it again. Ms. White, would you play it one more time, please.

(Whereupon, 911 audio was played for the jury.)

THE COURT: Anybody need it played again? No? If you need to hear it again or anything else just let us know. Continue your deliberations. My secretary is ordering your lunch. It should be here in about 40 minutes or so. Thank you very much.

(Whereupon, the jury exited the courtroom at 12:36 p.m.)

THE COURT: We'll remain at ease.

(Whereupon, a recess was held from 12:36 p.m. to 2:39 p.m.)

THE COURT: We're going to go back on the record, if we may, in the State vs. Mr. Settles. The record should reflect that Mr. Settles is present with counsel. The Bailiff has informed me that the jury has reached the verdict. Anything before we receive the jury into the courtroom from the State?

MS. WHITE: No, sir.

THE COURT: From the Defense?

MR. TINSLEY: No, Your Honor.

THE COURT: I want to remind everyone who is in attendance here today, I realize that this has been an emotional trial for everyone involved, and obviously it may be somewhat challenging when the verdict is rendered to maintain your composure. That's normal. That's

understandable. These cases are emotional. If you feel like you're unable to maintain your composure, once the verdict is announced I would simply ask that you quietly stand up and feel free to leave the courtroom the back. It's very important, however, that we not have any outbursts, pro, con. No celebration. No sighs. Audible loud sighs. Angry words, obviously. This jury has been here for four days. They had a lot of work to do, and I'm not going to allow anyone in the courtroom to display any kind of disrespect towards that jury and the conclusion that they have reached in this case. So if you find yourself unable to contain yourself just feel free to stand up quietly, leave the courtroom and that would be the best thing, I assure you, for you. Let's have the jury in, please.

(Whereupon, the jury entered the courtroom at 2:39 p.m.)

THE COURT: Let the record reflect that the jury is back and seated. Mr. Foreman, I'm told that the jury has reached a verdict; is that correct?

THE FOREMAN: Yes.

THE COURT: If you would hand the verdict form, please, to the Bailiff. Madam Clerk, if you'll publish the verdict, please.

MADAM CLERK: The State of South Carolina, the County

of Greenwood, the State of South Carolina versus Tavarious Settles in the Court of General Sessions indictment 2013-GS-24-01538 and 01539. We the jury in the above-captioned case on the charge of murder unanimously find Tavarious Settles guilty. We the jury in the above-captioned case on the charge of possession of a weapon during the commission of a violent crime unanimously find Tavarious Settles guilty. Foreman James McGaha. April 2nd, 2015. Greenwood County."

THE COURT: Thank you. Ladies and gentlemen, if this is, in fact, your verdict, if you would indicate by raising your right hands, please.

(Whereupon, jury panel raise their right hands.)

THE COURT: Let the record reflect that all 12 jurors did, in fact, raise their right hand. Anything further from the State?

MS. WHITE: No, sir, Your Honor.

THE COURT: From the Defense?

MR. TINSLEY: No, Your Honor.

THE COURT: Very good. Ladies and gentlemen of the jury, I want to thank you very much for your work on this case. I will tell you what I tell most juries. Anytime you have to get two or three or four people to agree on something that's very often a very difficult thing. I know in my personal life if we discuss going out to eat, I've only got a family of four, we end up getting four different

opinions, and any time 12 people can agree on something I think that that gives that decision a great deal of validity and a great deal of reliability. And I want to thank you for the very, very hard work that you have done these last four days. All right?

At this point in time your jury service is concluded. I do have a few post trial motions I'll need to take up with the attorneys. If you're wanting to stay that's perfectly fine. Just for security reasons, however, I'll need to ask that perhaps you all sit back out here, or in the audience so to speak. I will tell you you will also get a letter from me thanking you for your jury service this week. It solicits feedback. If there's anything you liked, tell me about it. If there's anything that you did not like jury service definitely tell me about it, because I've actually changed the way that we run court based upon feedback I have received from jurors. You'll also get paid. It's not a lot of money. The check is in the mail. You'll get it probably -- at the earlier probably Monday or Tuesday. Do remember that you get a get out of jury service free card for three years, so if you're summoned again for common pleas or general sessions court in this courtroom you can call the Clerk of Court, let them know that you've served in March and April of this year and they will exempt you. You won't even have to show up for the first day.

One final thing, ladies and gentlemen, at this point in time you are free to discuss this case with anybody. You can tell them anything that you want to tell them about the case. That's friends, family members, et cetera. Sometimes lawyers find it beneficial to solicit feedback from jurors who have tried cases in front of them. I will tell you that when I first started practicing juror feedback was absolutely essential in terms of honing my skills, so it's possible that you may be contacted by someone. As a general rule, what happens in the jury room stays in the jury room. Okay? That's the general rule. You should feel free to discuss anything that you want to discuss with them or don't discuss anything that you want to discuss with them. If you're contacted by a lawyer I assure you, if you tell them I don't want to talk to you, I've heard you for the last four days, they're going to understand that, thank you politely and hang up the phone. If for some reason someone were to insist on continuing to talk to you, try and get their name and simply politely hang up the phone. Contact the authorities. They will contact me. I will deal with it. Okay? So with that, I'm not going to keep you any further. You are excused. If you want to stay, that's perfectly fine. I'll just need you to sit out there. But if you would, collect anything that you've left back there, exit over to the side, and we will need those little juror

badges back.

Mr. Foreman, I need you to sign the actual verdict form -- or the actual indictments though before you leave, sir. But the rest of you are excused. Thank you very much for coming and thank you for your work.

(Whereupon, the jury was released.)

THE COURT: Motions, Mr. Tinsley?

MR. TINSLEY: Well, obviously for a new trial for Mr. Settles based upon the fact that four and a half hours of deliberation. Obviously the jury struggled with this. And it's evidence really is questionable as to who actually committed the act. And I consider moving for an interrogatory in this matter. But my basic outline is -- was under my motion to cap the sentence, which he was willing to take the 30 all along and would have done so if not there had been a flaw in the Abbeville side of things which held it -- held it back. Mr. Settles, of course, has no record. He's currently about to turn to the age of 19. He was 17 and six weeks when this happened. And he, I think, meets the prongs of *Miller vs. Alabama*, and *Acres vs. Byers*, South Carolina Supreme Court case. Of course, *Miller* is a US Supreme Court Case. And therefore, I think, a 30 years sentence would be appropriate in this case. He felt from the way things occurred that he really didn't have much choice in this matter based upon the fact that he was unable

to wrap it all up, and he -- I think he's been forthright, honest. He got himself in a situation with an older guy who, I think, had nefarious plans praying on youth and he was one of those victims. Case in question, he went to school that day. He was at Ms. Shay's. They burned his phone up until they got him involved. They witnessed against him. Certainly they were together. They put together a plan that would, you know, put Mr. Settles in an awkward not knowing situation that they had put together. And I think that's pretty clear from the testimony. And the one that we think was the shooter and submitted to -- was caught in repeated lies from employment to participation, everything. He had multiple statements as did the other defendants. Mr. Settles gave one. While the jury has spoken, we respect the jury's verdict, and we ask that you apply the 30 year sentence to Mr. Settles in this case realizing there's another matter to be disposed of. And we'll see what happens there. If there -- you know, depending on the results of that and his degree of cooperation or whatever there. It may very well -- and he did cooperate over there when I had him for two or three days and then was terminated and gave the probable cause situation. Not to go too much into that.

THE COURT: Certainly.

MR. TINSLEY: But let me limit it to this. An older

man. There's no question it was Lank's lick. Markece Moore's. This man got out with him, used poor judgement, and finds himself here convicted of murder. But under the prongs of *Miller vs. Alabama* and the Eighth Amendment to the Constitution, as well as due process of the Fourteenth Amendment, we submit that a 30 year sentence would be appropriate, or a deferral of sentencing until the other matter is resolved, whichever the Court would deem most appropriate.

THE COURT: All right. With regard to your motion for a new trial, Mr. Tinsley, I have no doubt that the jury worked very hard on this case, as you indicated, and I do believe that in all likelihood they struggled with certain facts that were in dispute in this case. But as you correctly state, the jury has spoken, and in all -- in my experience, at least, I would rather see a jury deliberating longer. That indicates that they took the matter much more seriously than a jury who instantly either acquits or convicts. So the fact that they were willing to work a substantial amount of time I think gives additional credence to their verdict. And so, I would deny your motion for a new trial.

MR. TINSLEY: Of course, I renew all prior motions also.

THE COURT: That is noted. Same rulings as before, of

course. Ms. White, where do you -- or where does the State stand with regard to the motions under *Miller v. Alabama* and the *Byers* case? Do you have a position on that?

MS. WHITE: Yes, sir. Mr. Tinsley asking to cap the sentence at 30 years I think is not consistent with the holding in *Byers* or *Miller vs. Alabama*. Those cases, Your Honor, merely provide that you can't sentence a juvenile to life without parole without some additional consideration into the immaturity, irresponsibility, impetuousness and reckless that are part of being young. I think certainly *Miller vs. Alabama* and *Aiken vs. Byers* contemplate at a sentencing hearing an exploration of those factors. That Mr. Tinsley be allowed to present whoever would wish to speak to those factors. But I think that after considering those factors the Court can certainly order anything from 30 years up to a life sentence if the Court deems that appropriate. The only thing they do is just prohibit a mandatory life without parole.

Your Honor, with regard to differing sentence until after the Abbeville matter, these are obviously two completely separate cases, and it's our position that Mr. Settles has not been cooperative on the Abbeville murder, which was a point we went back and forth about last Friday. And whether or not he cooperates in Abbeville is at this point immaterial to the sentence he receives on the murder

he has been convicted of committing now in Greenwood.

THE COURT: Does the State agree that Mr. Tinsley is entitled to a full sentencing hearing at this point, or what's your reading of *Byers* and *Miller*?

MS. MILLER: Your Honor, my reading of *Byers* and *Miller*, I don't know that it really requires anything more than what we already do. I've certainly been at sentencing hearings that were shorter and sentencing hearings that were longer, but in my experience the Court has never cutoff anyone from presenting evidence during sentencing and mitigation. I think you can hear whatever Mr. Tinsley wants to offer in mitigation. And after making your finding pursuant to those factors part of the record that we can proceed. I know he had a motion for an expert on mitigation and that's the only thing I can see that would hold it up potentially.

THE COURT: When you brought that motion to the Court's attention last week, Mr. Tinsley, and then on the record on Monday, you indicated that the desire for a mitigation expert was aimed more at perhaps the Abbeville charges that Mr. Nasrollahi represents your client on. The desire -- do you still have that desire to have a mitigation expert appointed in this case, or where do you stand with regard to that, or do you want to confer with Mr. Nasrollahi briefly before we do anything else on this?

MR. TINSLEY: Well, I just think that it would behoove my client to have -- he's a young man with basically no criminal history, and a situation where there may be something that I haven't uncovered that a mitigation specialist could do. I don't know exactly when they intend -- when they intend to try the case in Abbeville. The reason I said that, Your Honor, was because it really applies to both. It applies to both cases. But having been appointed in Abbeville it would seem more appropriate that Mr. Nasrollahi get that funding and mitigation specialist of his choice. Your Honor, we feel as if this is a classic *Miller vs. Alabama*. And also because the Abbeville was a 16-year-old, he -- and this was six weeks past 17. Still falls right in the range, and it's all over it. But, I mean, you know, I'm leaning for a minimal type sentence at this point and then it could be dealt with by Mr. Nasrollahi. But, you know, if the Court is prone to, you know, to not consider the factors that a mitigation specialist would bring out about his past, his parents' divorce, things like that, his school behavior records, things that he would be more able -- he or she would be more able to look into. It would -- it would -- it would give a -- it would certainly not hurt anything in terms of the other situation as well as this situation. We know he's facing a minimum of 30 years here. And, therefore, I think

in the interest of justice that -- you know, it was Friday before last that we met, and I was a bit -- a bit -- a bit tardy on the mitigation specialist. But I think Mr. Nasrollahi may have already made the motion in front of Mr. -- Judge -- I'm not certain. In front of Judge Griffith. He made some motions in Abbeville. And -- but for one so young and no criminal history, I would think that the -- and the questions in the case, that he would be entitled to the two cases cited to a minimal type sentence at this point, and then we see what happens over there.

THE COURT: All right. I have while you were speaking, Mr. Tinsley, had a chance to review the *Byers* decision, *Aiken v. Byers*. Clearly at the time this crime was committed your client was 17, so clearly he was of majority at that point in time.

MR. TINSLEY: The Supreme Court treats it as 18. The US Supreme Court clearly --

THE COURT: And that's what I was going to look at next.

MR. TINSLEY: -- in *Miller* they treat the age of majority as 18 versus 17.

THE COURT: Ms. White, Mr. Brown?

MS. WHITE: Well, first of all, Your Honor, I keep hearing that he wants to put this off after the Abbeville matter. The Abbeville murder has absolutely nothing to do

with the Greenwood murder.

THE COURT: I agree with you on that.

MS. WHITE: The State is -- we're ready to proceed with sentencing today. I believe Your Honor is more than capable of taking into consideration of Mr. Settles' youth and the impact that any traumatic experiences in his youth would have had on him into fashioning your sentence. However, if you are inclined to appoint some sort of mitigation expert or psychologist to speak with Mr. Settles, I see no reason that can't happen and us come back for sentencing during the next non-jury term. There's no reason to drag this out. We have the victim's fiancee who's been here all week who's been waiting two years for closure and we would like to get this wrapped up for her as quickly as we possibly could.

THE COURT: All right. If I may, would the parties afford me just maybe 10 minutes -- my clerk and I about 10 minutes to reread *Miller* and make sure that I'm applying the law correctly, and then we will look into going forward in some respect. Either as Mr. Tinsley suggests, appointing a mitigation expert or perhaps going to a full hearing, or just moving forward -- straight forward with sentencing. I do tend to agree with the State, Mr. Tinsley, that delaying sentencing until after the Abbeville charges are resolved, I'm not inclined to do that in my discretion. I don't think that that would be appropriate. These are clearly separate

crimes, and as things stand, Mr. Settles is still considered obviously under law not guilty of that crime. So I don't know how appropriate it would be for the Court necessarily to delay sentencing.

Afford me, if you would, just 10 minutes and then we'll be back on the record. Give my clerk and I just a quick chance to reread this and make sure that we're thinking correctly. Okay? We'll be at ease for about 10 minutes and then we'll be back on the record.

And, Mr. Brown, we may need sentencing sheets.

(Whereupon, Court was in recess.)

THE COURT: If we may, we're going to go back on the record in the *State vs. Settles*. Again, the Defendant is present with counsel. The Court has an opportunity to review the holding in *Miller v. Alabama*. It's one of those situations where both sides are correct and my memory is right, too. It does, of course, apply to individuals who are 18 or younger, but the holding applies to mandatory sentencing schemes which essentially call for a life sentence for juvenile offenders. And *Miller* I believe it was a number of 14-year-olds who were petitioning under the Eighth Amendment to have their life sentences set aside. So this Court believes that moving forward with sentencing at this time would be appropriate. We'll do this the way I'm accustomed to doing it. Solicitor, I'm more than happy to

hear any statements from the fiancee of Mr. Sis. And I'm assuming that perhaps your office has been in contact with his family, his blood relations, and if so, anything that they wanted to relate through you I'm happy to hear as well.

MS. WHITE: Yes, sir. And again, Your Honor, this is Yvette Castro. She and Mr. Sis were engaged to be married when this occurred, and she did just want to address the Court.

THE COURT: Certainly. Ms. Castro, I'm happy to hear from you.

MS. CASTRO: I thank you for the Judge and jury and for the decision it make. I'm glad. It does not mean that they going to bring me Freddie back. They never going to bring -- and I know their family feels that, too, about their son. But he got his family, his mom got his son, and I don't got him. And like his say. Thirty years. He need more than thirty years. Because I know if he get out he do it. He going to do it again. He did it twice. But like I say, I can take anything you want, 30 years. But like I say, he can take more than that. But I thank you. I thank everybody that found him guilty because he is the one who did it. He say no, but he is.

THE COURT: Thank you very much, Ms. Castro.

MS. WHITE: Your Honor, we have not been able to have contact with his relatives in Guatemala. Mr. Sis was

working here and sending money back to them. I don't think they had the resources to really stay in touch with us.

Your Honor, he -- when this happened it took about a month for the community to raise money to send Mr. Sis' body back to Guatemala. Obviously, just thinking from the standpoint about the amount of time knowing that their loved one was just laying in a funeral home in a morgue without being buried while they raised the money. Obviously a significant impact on the family, Your Honor.

With regards to sentencing, the State -- you know, Your Honor's heard all the facts. You've heard what happened that night. You've heard how Mr. Sis died. And we know you'll issue an appropriate sentence in this case, Your Honor.

THE COURT: Thank you, Ms. White. Mr. Tinsley, I'm happy to entertain anything that you may want to say or anything that certainly Mr. Settles' family or he himself may want to relate to me, sir.

MR. TINSLEY: I call Brenda Settles.

THE COURT: There's not going to be testimony. I'm just going to hear from her. And if Ms. Settles wants to just stand down here and address me the way we normally would, that's perfectly fine. And, Ms. Settles, I'm happy to hear anything you want to tell me or anything that you want to say on your son's behalf, ma'am.

MS. SETTLES: Well, I think they made a misjudgement on Tavarious. He's not like that at all. He's different. They don't know him. We all know him. Tavarious is -- he got off on the wrong path. He made a wrong decision. He never been in trouble. Never been convicted of nothing criminal. It's the wrong choice. I'm just trust the Lord to work it out. It's not Tavarious.

MR. TINSLEY: I want to ask you some specific questions, Ms. Settles -- I mean, yeah, Brenda Settles. How old was Tavarious again when this occurred?

MS. SETTLES: When this happened?

MR. TINSLEY: Yes.

MS. SETTLES: He had just turned 17.

MR. TINSLEY: What's his date of birth?

MS. SETTLES: April 18th, 1993.

MR. TINSLEY: Has he shown you -- you say he lived with you the last year and a half that he was out of jail. Has he shown tendencies of violence?

MS. SETTLES: No, sir. None whatsoever.

MR. TINSLEY: Has he followed your orders? Obviously you -

MS. SETTLES: Yes, sir.

MR. TINSLEY: -- had nothing to do with this. But in terms of residing in your home?

MS. SETTLES: Yes, sir.

MR. TINSLEY: And at the time was he -- would you describe that he was almost child like or in between childhood and adolescence?

MS. SETTLES: Yeah, he was still learning, but he was willing to learn.

MR. TINSLEY: And so, your -- let's talk about his maturity for a second. Did you -- did you note a diminished maturity in him or was he fully mature?

MS. SETTLES: Tavarious is the type of person, like I said, he's smart. He wasn't a troubled child, you know. He was obedient. I didn't have no problems out of him, you know, like that.

MR. TINSLEY: But in terms of --

MS. SETTLES: Of maturity?

MR. TINSLEY: -- of maturity?

MS. SETTLES: Yeah, he was mature. We've talked to him. He was getting himself together in school. He's a good person. A good-hearted person. I don't understand this at all. This is not Tavarious and I don't understand the jury's decision --

MR. TINSLEY: Well, don't -- we understand that, Ms. Settles, and I'm highly sympathetic to it. But I'm asking you specific questions as they relate to Mr. Settles' vulnerability to the influence of, say, an older individual. Was he subject to that?

MS. SETTLES: Yeah.

THE COURT: Mr. Tinsley, not to interrupt you, sir, and I do apologize. I do appreciate that there were four people in the car. I fully appreciate that your client was younger than some of the other folks in that car. I understand that there was at trial a dispute about who actually pulled the trigger that killed Mr. Sis. I do not believe that a full-blown sentencing hearing is appropriate in these circumstances, but obviously you have spoken to Ms. Settles and other members of the family and I'm happy to hear whatever it is that's been related to you as opposed to you questioning her. I think that might be a much more efficient way for you to present the mitigation in this particular case, because obviously you've spoken to her and you've got a good idea -

MR. TINSLEY: I can summarize it either way.

THE COURT: That would be perfect, Mr. Tinsley. I think that would probably be the best way for the Court to get a true picture of your client if you could summarize where he was emotionally and where he saw himself as far as this entire -- I mean, you've already touched on a lot of this. But if you would do it in that manner that might be more beneficial --

MR. TINSLEY: I will. I will.

THE COURT: -- for the Court.

MR. TINSLEY: I do want to ask her one more question.

At what point did his parents separate or divorced?

MS. SETTLES: His parents were never married. They were young when they had him, in school. They were never married.

THE COURT: And how long was his father in the home?

MS. SETTLES: His father been in his life ever since he was born. We all lived in the same area.

MR. TINSLEY: Right.

MS. SETTLES: His mother got a long with his father. We all love one another. We helping Tavarious.

MR. TINSLEY: So his father has been involved in his life?

MS. SETTLES: Ever since day one.

MR. TINSLEY: But was he -- how much of his life did he live with his father?

MS. SETTLES: His mother and his -- well, he stayed with me. I -- that would be his father because his mother and father didn't live together.

MR. TINSLEY: Did his father live with you?

MS. SETTLES: No, sir.

MR. TINSLEY: So he lived with you?

MS. SETTLES: Whenever he got in contact with his father he would be with me. I kept him the majority of the --

MR. TINSLEY: So you were the primary adult caretaker?

MS. SETTLES: Yes, sir.

MR. TINSLEY: Thank you so much. I'll summarize from there.

THE COURT: Certainly. Thank you, Ms. Settles. If you'd like to have a seat back there.

MR. TINSLEY: Your Honor, under *Miller vs. Alabama* I ask that you consider some of the factors that are found to -- this was the South Carolina Supreme Court case, *Aiken vs. Byers*, that the Eighth Amendment in the Constitution provides against unusual punishment that -- that -- of course, a 30 year sentence is day to day. That he was under the age of 18. Well under. Just turned 17. The Supreme Court states in *Miller* that they applied the age of majority is 18, and that Mr. Settles, you know, has no prior history of any of this. I think he has some maturity but limited. He was in school. Held back a grade, but was trying hard. He was vulnerable to negative influences. And -- as shown by associating with the older couple of guys that kind of led him into this negative situation and that he found himself unable to extricate himself from. And the -- leading to this horrific crime. He was really, actually, at the time he was very short and didn't weigh much at all, and very thin. He's been doing -- eating jail food and doing pushups since he's been over there for the last couple of

years. He was -- he was -- I would contend that at the time he was underdeveloped and his character traits were just being developed, and as such that they were less -- they were such that they were less likely to indicate the evidence that he possessed irretrievable depravity. And in the scheme of analyzing these cases the Court has stated that children are different, and how these differences work against suffering -- sentencing them to long prison sentences is not what the Court is desiring of one of such a tender age. Now he comes here two years later and he looks much more mature.

Now the South Carolina case, *Aiken vs. Byers*, refers to both mandatory and permissive sentences, and when we filed this motion with this Court he was filing it prospectively whether he was found -- whether he pled guilty or was found guilty at trial. He was making the argument in advance. And the South Carolina case states that -- that permissive sentences also apply. And, of course, the Eighth Amendment -- the Eighth Amendment of the US Constitution bars cruel and unusual punishment as I've mentioned and the Fourteenth Amendment makes the Bill of Rights applicable to the state and requires due process. And one at such a tender age as Mr. Settles was at the time lacked the capacity having the limitations cited above. He was -- I think I mentioned a month and a half, six weeks or whatever, over 17 at the time

of this crime. And reading the two cases together you see that they do apply -- they do apply to both -- to both mandatory and -- hope you've seen that in the materials, Your Honor.

THE COURT: I have.

MR. TINSLEY: And, Mr. Settles, will you come around. Now, I'm going to let him make a remark or two and then I'll conclude mine, Your Honor.

THE COURT: Certainly. Mr. Settles, I'm happy to hear anything that you may want to tell me or anything that you want to relate to me concerning this.

THE DEFENDANT: I understand the jury's decision, but I still remain innocent to myself because I know what happened.

MR. TINSLEY: Well, how do you feel about what happened to Mr. Sis?

THE DEFENDANT: I'm sorry about what happened to him, but I wasn't the one that did it.

MR. TINSLEY: But you understand now, after going through this trial, the concept of the hand of one is the hand of all; is that correct?

THE DEFENDANT: Yes, sir.

MR. TINSLEY: So with that, what would you say to Ms. Castro in this situation?

THE DEFENDANT: I apologize what happened to your

fiancee.

MR. TINSLEY: And your role in it?

THE DEFENDANT: Yes, and my role in the situation.

MR. TINSLEY: You've never been a person to fight or carry guns or anything, have you?

THE DEFENDANT: No, sir.

MR. TINSLEY: Did you own a gun?

THE DEFENDANT: No, sir.

MR. TINSLEY: Okay. But you've admitted to, subject to all objections, of course, that you got out of the car.

THE DEFENDANT: Yes, sir.

MR. TINSLEY: Did you have any -- at the time, just having turned 17, did you have any idea that this could go so far?

THE DEFENDANT: No, sir.

MR. TINSLEY: And how did you feel when Mr. Moore -- and you've been convicted of it, too. That Mr. -- of course, it's your position that Mr. Moore shot him. How did you feel about it?

THE DEFENDANT: Like I needed to get away from the situation.

MR. TINSLEY: Were you -- I think I asked you on the stand if you were shocked or surprised by it.

THE DEFENDANT: Surprised.

MR. TINSLEY: And you had any history of this kind of

behavior?

THE DEFENDANT: No, sir.

MR. TINSLEY: Your Honor, and I would concluded that -- by saying that the South Carolina Supreme Court issued its opinion granting the relief in *Aiken* and extending *Miller's* reach to those what it terms is under the age of 18 at the time of their crimes. And the proportionality rationale -- proportionality, clarifying my annunciation, rationale in the rule of *Miller* deserves universal application whether a sentence is mandatory or permissive, stated by the South Carolina Supreme Court. Therefore, I would conclude by saying that when I spoke with -- after we met Friday before last, when I spoke with Mr. Settles, who was very comfortable with accepting the two 30 year sentences. Unfortunately, I couldn't -- I couldn't carry through on the flip side, so to speak. That was out of my hands. It wasn't my job. It would have been, I think, inappropriate. But I did want to -- I think that would have been also negligent not to convey the offer, which I did and I did to counsel. So what we find here, Your Honor, is a young man caught up in a tragic situation and we ask that you consider all that I've said concerning the trend in the law, the *Miller* case and the *Byers* case and the lack of any prior indicia of depravity and the tender age is the primary consideration that these cases stand for. And we certainly

appreciate your consideration along those lines, sir.

THE COURT: I do agree, Mr. Tinsley, that perhaps the best argument against a life sentence is the fact that he was 17 and you indicate to me he had no prior involvement with the law. I'm assuming -- I mean, you've said that several times. Solicitor, I'm assuming that that is accurate or he did have prior contact, or where are we?

MS. WHITE: No prior adult record. I'm not sure about juvenile.

THE COURT: All right. Anything further from anybody on this matter?

MS. WHITE: Just, Your Honor, there's been nothing child like about his demeanor in the courtroom. There's been no tears. There's been -- he's been stone-faced the entire time. I've been watching him staring at everyone, making eye contact with everyone, and only offered an apology or any show of remorse once his attorney drug it out of him.

THE COURT: I understand both sides' position on this. I do. I assume he has been in jail since June the --

MS. WHITE: 13th.

MR. TINSLEY: 13th.

THE COURT: June 13th of 2013, correct?

MS. WHITE: Yes, sir.

MR. TINSLEY: 2013. Yes, sir, Your Honor. My client

would like to make one last comment.

THE COURT: Certainly, Mr. Settles.

THE DEFENDANT: I feel like the whole situation was aiming for one person, because if it was the hands of one the hands of all, all of us would have been tried.

THE COURT: I understand, I think, what you're trying to communicate.

MR. TINSLEY: I had a hard time explaining to him why he was the only one at trial, I will agree with that. But I also told him the State controls the docket and they call the cases under the current law as -- as their --

THE COURT: Even if they had -- even if the State had sought to seek permission of the Court to have all four Defendants' cases placed on the docket at the same time and tried at the same time, logistically that's extremely difficult. And more importantly, the Supreme Court has issued -- South Carolina Supreme Court has issued recent decisions indicating that those kinds of joint trials are to be disfavored.

MR. TINSLEY: Right. And I'm aware of that. I tried to explain it to him and he just never could quite -- quite grasp why it wasn't at least he and Mr. Moore. But, I mean, that's what he meant when he said that. But I have seen a lot of remorse from him at the jail.

THE COURT: Mr. Settles, out of fairness to you I feel

obliged to tell you what has gone into this sentence. Ms. Castro's comments are something that are -- they're succinct and they're dead-on. You've got your life. Your family has you. Mr. Sis does not have his anymore. And that is because of actions that you and three others took that evening, and it's as simple as that. Does the Court believe, based upon the jury's verdict, that you are the person who shot Mr. Sis? Yes. Mr. Settles, the jury has spoken in this case and I understand perhaps some hesitation that you have to accept full responsibility for this, but understand, sir, that you had numerous options that evening for avoiding where you have found yourself today. You could have gotten out of the car. You could have told them to stop and pull over and just stepped out. You could have tried to discourage the other guys from doing this. And it's not lost on this Court, Mr. Settles, that very often members of our Hispanic community here in Greenwood are sometimes targeted because the belief is some of them are not here legally and, therefore, if a crime is committed against those individuals who are not here legally the likelihood of them reporting that crime is less. Now, there's no evidence in the record in this case that you or any of the other fellows in that car specifically targeted a Hispanic individual, and clearly I'm not going to take into account any ethnic background or any nation of origin in

calculating a sentence because in all, at least in my mind, Mr. Settles, a man is a man whether he's black, white, Hispanic, American Indian, whatever. It does not matter. And it does not matter, as Ms. White correctly pointed out the other day, it doesn't matter whether Mr. Sis was here legally or not. He has a right to exist. He has a right that every individual has and that's the right to breath clean air and not have that right taken from him. You took that from him. I've taken into account the fact that you have no prior history. I agree with Mr. Tinsley that although the law might consider a 17-year-old to be a man there are certain developmental delays. Maybe you were not fully mature. Maybe emotionally you're not fully there. And that certainly mitigates somewhat the horrible crime that you did commit.

Now, there are several other individuals charged with this offense. There will be a day of reckoning for them. Mr. Settles, your protestations of, shall we say, less active participation in this, the Court's just not buying it. I heard you testify, and I understand that it's the policy of this Court, and it's well known, that I try to encourage people and reward people who are willing to take responsibilities for their actions with as much leniency as possible. And that's what Mr. Tinsley was talking about with regard to the 30 year sentences, Mr. Settles. But

sometimes it's best to try a case so that the Court can get a full and complete picture of the horror that was inflicted on an innocent person who wanted nothing more than to do what the rest of us want to do and that is earn a living, get married, provide for a family and grow old. Well, you've robbed Mr. Sis for every day that he's going to have for the rest of his life. You should be happy that at some point in time you will, in fact, sir, be getting out of prison.

The sentence on indictment 13-1538, that's the murder charge, is that you, Mr. Settles, are committed to the Department of Corrections for 45 years. On indictment 1539, that's the weapons charge, the sentence is five years in the Department of Corrections. The sentences will run concurrently. I've given you credit for the time that you have served in jail since June the 13th of 2013. By law these sentences will be day-for-day. Mr. Settles, I wish you luck, sir. I instruct you that you have 10 days to file notice of intent to appeal from this trial and you have one year after any appeals are exhausted to file an application under post conviction relief proceedings. Good luck. The record is closed.

MS. WHITE: Thank you, Your Honor.

MR. TINSLEY: Thank you for your consideration, Judge.

(END OF REQUESTED TRANSCRIPT OF RECORD.)

Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenwood County, South Carolina, on the 30th-31st day of March and 1st-2nd day of April, 2015.

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

July 14, 2015

S/ Tara T. Scott

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	Indictment Number(s): 13GS24-1538
COUNTY OF GREENWOOD	)	13GS24-1539
	)	
The State,	)	
	)	
vs.	)	**MOTION TO RECONSIDER SENTENCE**
	)	
Tavarious DeQuan Settles,	)	
	)	
Defendant.	)	
	)	

FILED GENERAL SESSIONS
8th JUDICIAL CIRCUIT
GREENWOOD, SC
2015 APR -8 PM 12: 22

NOW COMES THIS MOTION filed by Robert J. Tinsley, Sr., Attorney for the above-named Defendant on Wednesday, April 8, 2015 for Reconsideration Pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure (herein S.C.R.C.P.). The Defendant timely moves for Reconsideration of the forty five (45) year Sentence as announced by the Honorable Frank R. Addy, Jr. on Thursday, April 2, 2015. Sentence was imposed by the Honorable Judge Addy on that date. This Motion is well within the ten (10) days allowed by the Rules (S.C.R.C.P.# 29).

Defendant Settles moves for Reconsideration of the forty five (45) year active sentence. The grounds for said reconsideration are: 1) Defendant contends his sentence is too harsh; 2) Defendant has no prior record; 3) Defendant was not properly afforded a meaningful sentencing hearing pursuant to Aiken v. Byers (Appellate Case No. 2012-213286) and Miller v. Alabama, 1325. Ct. 2455 (2012); 4) And in fact it was impossible to have such a hearing without deferring sentencing and appointing Mr. Settles either a psychologist, psychiatrist or mitigation specialist as he had moved for; further, Aiken v. Byers, a S.C. Supreme Court Decision, has been stayed by the United States Supreme Court leaving the state of the law not currently determined; 5) The Apprendi line of cases: 530 U.S. 466, 120 5.Ct. 2348, 147 L. Ed. 2d 435 (2000) further demand such a

result, as does the VIII Amendment of the United States Constitution; 6) This is particularly true based upon Defendant's Motion to Cap his sentence at thirty (30) years pre-trial, whether convicted by trial or plea; and 7) Finally, the Defendant was seventeen (17) years of age on the date of the crime, May 30, 2013 with his birthdate being April 16, 1996.

SO MOVED.

Robert J. Tinsley, Sr.
Attorney for Defendant

April 8, 2015,

Greenwood, South Carolina.

STATE OF SOUTH CAROLINA	)	**THE COURT OF GENERAL SESSONS**
	)	
COUNTY OF GREENWOOD	)	**CASE NO. 13-GS-24-1538, 1539**
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	
	)	
TAVARIOUS DeQUAN SETTLES,	)	**ORDER DENYING MOTION FOR RECONSIDERATION OF SENTENCE IMPOSED**
	)	
Defendant.	)	
	)	

FILED GENERAL SESSIONS
6th JUDICIAL CIRCUIT
GREENWOOD, SC
2015 APR 21 PM 12:39

HAVING CONSIDERED THE ARGUMENT OF COUNEL for the Defendant, Tavarious DeQuan Settles, in the above captioned matter, the court denies Defendant's motion for reconsideration of his sentence for the following reasons.

1. The court had the opportunity to hear from the Defendant and the Defendant's mother prior to sentencing, and appointing a mitigation specialist, psychologist or psychiatrist would not have aided the court in deciding upon the sentence to impose.

2. The court took into account a variety of factors raised by the Defendant, such as his lack of a prior record and his age, in imposing the sentence of forty-five years. Such a sentence comports with the legislatively prescribed penalty range for the offense of murder. Based upon the factors considered in mitigation and in aggravation, the court finds the sentence was not unduly harsh.

3. The court finds that the cases cited by the Defendant in support of a sentencing hearing do not apply under the facts of this case, nor is the Eighth Amendment to the US Constitution offended by the sentence imposed.

4. Finally, with regard to the Defendant's motion to cap his sentence at thirty (30) years "whether convicted by trial or plea," the court declined this motion for the reasons outlined above, and the court possesses wide discretion in sentencing. Clearly, this case was a defensible case; regardless, no prejudice resulted in terms of sentencing due to the Defendant's decision to exercise his right to trial because the court may not consider the exercise of this right in any way

in sentencing. *See* Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999). In short, in imposing a particular sentence this court would never take into consideration a defendant's exercise of a fundamental constitutional right.

For the foregoing reasons, Defendant's motion for reconsideration of the sentence imposed is denied.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

April 21, 2015
Greenwood, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	Indictment Number(s): 13GS24-1538
COUNTY OF GREENWOOD	)	13GS24-1539
	)	
The State,	)	
	)	
vs.	)	**MOTION FOR FUNDING FOR A MITIGATION SPECIALIST/ INVESTIGATOR AND PSYCHOLOGIST OR PSYCHIATRIST**
	)	
Tavarious DeQuan Settles,	)	
	)	
Defendant.	)	

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD SC
2015 MAR 17 P 3 19

DUE TO THE tender age of the Defendant as well as the serious nature of the charge, Defendant moves for the above. He is charged with one count of murder in Greenwood allegedly after he was one (1) month past his seventeenth (17th) birthday. He is similarly charged in Abbeville County while sixteen (16) years of age.

SO MOVED:

Robert J. Finsley, Sr., Attorney for
Defendant Tavarious DeQuan Settles
in Greenwood, South Carolina

March 17, 2015;

Greenwood, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	Indictment Number(s): 13GS24-1538
COUNTY OF GREENWOOD	)	13GS24-1539
	)	
The State,	)	
	)	
vs.	)	**MOTION TO CAP SENTENCE AT**
	)	**THIRTY (30) YEARS MAXIMUM**
Tavarious DeQuan Settles,	)	**ON THE CHARGE OF MURDER**
	)	
Defendant.	)	

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2015 MAR 17 PM 3 20

THIS MOTION IS BASED on the fact the U.S. Supreme Court treats the age of majority as eighteen (18) years of age versus seventeen (17). This Defendant was sixteen (16) years of age at the time of the alleged Abbeville County crime and one month into the age of seventeen (17) at the time of the alleged Greenwood crime. Supporting references include, but are not limited to 1) Miller v. Alabama, 132 C t 2455 (2012); 2) The Eighth Amendment to the United States Constitution ban against cruel and unusual punishment; 3) The Fourteenth Amendment's prohibition against depriving "any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Also the Fourteenth Amendment makes the Bill of Rights applicable to all states; 4) §16-3-20 (A) of the South Carolina Code providing in part:

"A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life...For purposes of this section, "life or life imprisonment" means until death of the offender without the possibility of parole ---- No person sentenced to a mandatory minimum term of imprisonment for thirty (30) years to life pursuant to this section is eligible to receive any work credits, education credits, good conduct credits or any other credits that would

reduce the mandatory minimum term of imprisonment for thirty (30) years to life required by the section, Of course, the death penalty is not an option here due to the Defendant's age; 5) Aiken v. Byers, Appellate Case No. 2012-213286 and its holding retroactively applying Miller v. Alabama in support of the above holdings by the South Carolina Supreme Court. (Copies Enclosed)

Therefore, Mr. Settles case is made stronger by the fact he is not asking for retroactive application. Rather, he petitions The Court for prospective relief. This is in contrast to retroactive application which both Miller and Aiken provided for retroactive relief. In fact, on June 25, 2012 in Miller v. Alabama the United States Supreme Court held that "mandatory life without parole sentences" for those under the age of eighteen (18) at the time of their crimes violates the Eight Amendment's prohibition on "cruel and unusual punishments." Further, on November 12, 2014, the South Carolina Supreme Court issued an opinion captioned "Relief Granted" in Aiken which extended Miller's reach in South Carolina to non-mandatory sentences of life without parole for those under the age of eighteen (18) at the time of their crimes. The "proportionality rationale" integral to Miller "deserves universal application" whether a sentence is mandatory or permissible. Therefore, as in this case, since the sentence is permissible The Defendant Settles is entitled to prospective relief afforded by the foregoing. Considering his age of sixteen (16) at the time of the Abbeville case and just having turned seventeen (17) at the time of the Greenwood case, he is entitled to a maximum sentence of thirty (30) years if he is convicted or pleads. His date of birth is April 18, 1996. The Abbeville crime date is March 25, 2013 and the Greenwood crime date is May 30, 2013.

SO MOVED:

Robert J. Tinsley, Sr., Attorney for
Defendant Tavarious DeQuan Settles
in Greenwood, South Carolina

March 17, 2015,

Greenwood, South Carolina.

COF

FILED GENERAL SESSION
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2015 MAR 17 PM 3 22

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	Indictment Number(s): 13GS24-1538
COUNTY OF GREENWOOD	)	13GS24-1539
	)	
The State,	)	
	)	
vs.	)	**MOTION FOR FUNDING FOR A MITIGATION SPECIALIST/ INVESTIGATOR AND PSYCHOLOGIST OR PSYCHIATRIST**
	)	
Tavarious DeQuan Settles,	)	
	)	
Defendant.	)	

DUE TO THE tender age of the Defendant as well as the serious nature of the charge, Defendant moves for the above. He is charged with one count of murder in Greenwood allegedly after he was one (1) month past his seventeenth (17th) birthday. He is similarly charged in Abbeville County while sixteen (16) years of age.

SO MOVED:

Robert J. Tinsley, Sr., Attorney for
Defendant Tavarious DeQuan Settles
in Greenwood, South Carolina

March 17, 2015,

Greenwood, South Carolina.

COURT'S EXHIBIT NO. 4
IDENTIFICATION/EVIDENCE
DKT.# T. Settles
DATE: 4/2/15
PENGAD 800-631-6989

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	Indictment Number(s): 13GS24-1538
COUNTY OF GREENWOOD	)	13GS24-1539
	)	
The State,	)	
	)	
vs.	)	**MOTION TO COMPEL DISCOVERY COMPLIANCE**
	)	
Tavarious DeQuan Settles,	)	
	)	
Defendant.	)	

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2015 MAR 17 PM 3 22

NOW MOVES THE above-referenced Defendant for complete discovery from the State. This Motion includes any and all ongoing discovery which becomes available to the State. In particular the Defendant moves for the criminal records and any and all statements of any witnesses and co-defendants it intends to call to testify against the Defendant. The criminal records of co-defendants Moore. Patton and Jefferson are not provided and it is the State's position it requires Court Order. Rule 5 and Brady Motions were filed over a year ago on February 20. 2014. Compliance has been tardy. incomplete and has prejudiced the Defendant. First response by the Solicitor is dated January 26. 2015.

IT IS SO MOVED:

Robert J. Tinsley, Sr., Attorney for
Defendant Tavarious DeQuan Settles
in Greenwood, South Carolina

March 17, 2015.

Greenwood, South Carolina.

No. _____

IN THE

Supreme Court of the United States

WILLIAM R. BYARS, JR., DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, AND ALAN WILSON, ATTORNEY GENERAL OF SOUTH CAROLINA, *Petitioners*,

vs.

TYRONE AIKEN, MATTHEW CLARK, ERIC GRAHAM, BRADFORD M. HAIGLER, ANGELO HAM, J'COREY S. HOLL-KILGORE, DAMIAN INMAN, ROGER LEGETTE, TERRELL MACK, JENNIFER L. MCSHARRY, WALLACE PRIESTER, DAVON REED, DONDRE M. SCOTT, EDGAR L. THOMAS, JAMES VANG, ET AL., *Respondents*.

On Petition For A Writ Of Certiorari
To the South Carolina Supreme Court

PETITION FOR A WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
Counsel of Record for Petitioners

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QUESTIONS PRESENTED FOR REVIEW

1.

Whether nonmandatory sentences of life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on "cruel and unusual punishments."

2.

Whether the federal compulsion felt by two Justices of the South Carolina Supreme Court to extend *Miller v. Alabama* to nonmandatory sentences of life without parole created a federal question subject to review by this Court where that federal compulsion resulted in the grant of new sentencing hearings due to the court dividing one-to-four in favor of resentencing based on unpreserved state constitutional grounds.

3.

Whether *Miller*'s new rule of criminal procedure should be given retroactive application pursuant to *Teague v. Lane*.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iv

PETITION A WRIT OF CERTIORARI 1

OPINION AND ORDERS BELOW 1

JURISDICTION 1

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS 2

INTRODUCTION 3

STATEMENT OF THE CASE 4

REASONS CERTIORARI SHOULD BE GRANTED 7

I. The Supreme Court of South Carolina improperly exceeded the scope of current Eighth Amendment jurisprudence in holding Respondents are entitled to new sentencing hearings where: (1) *Miller* held the Eighth Amendment prohibits *mandatory* life without parole sentences for juveniles convicted of homicide, but did not prohibit or otherwise create a presumption against *nonmandatory* life without parole sentences; and (2) each Respondent was provided an individualized sentencing proceeding with the opportunity to present mitigating evidence in regard to his or her age and the circumstances of the crime 8

II. The federal compulsion felt by two justices of the South Carolina Supreme Court to extend *Miller v. Alabama* to nonmandatory sentences of life without parole created a federal question subject to review by this Court where that federal compulsion resulted in the grant of new sentencing hearings due to court dividing one-to-four in favor of resentencing based on unpreserved state constitutional grounds 20

III. The South Carolina Supreme Court incorrectly concluded *Miller*'s new rule of criminal procedure is substantive rather than procedural, and therefore erred in holding *Miller* should be given retroactive application pursuant to *Teague v. Lane*, 489 U.S. 288 (1989). 22

CONCLUSION 39

APPENDIX

Opinion of the South Carolina Supreme Court ..... App. 1

Order of the South Carolina Supreme Court staying execution of judgment pending review ..... App. 32

TABLE OF AUTHORITIES

Page

UNITED STATES SUPREME COURT CASES:

Alleyne v. United States, 133 S. Ct. 2151 (2013).....34
Atkins v. Virginia, 536 U.S. 304 (2002) 28
Bellotti v. Baird, 443 U.S. 622 (1979) 17, 18
Bousley v. United States, 523 U.S. 614 (1998).....26, 27, 28
Caldwell v. Mississippi, 472 U.S. 320 (1985).....30
Caspari v. Bohlen, 510 U.S. 383 (1994) 35, 37
Danforth v. Minnesota, 552 U.S. 264 (2008).....23, 30
Davis v. United States, 417 U.S. 333 (1974).. 27
Eddings v. Oklahoma, 455 U.S. 104 (1982)..... 18
Espinosa v. Florida, 505 U.S. 1079 (1992).....29
Graham v. Florida, 560 U.S. 48 (2010).....12, 18, 26, 28, 30
Helson v. Com. of Kentucky, 279 U.S. 245 (1929)...21
Johnson v. Texas, 509 U.S. 350 (1993)) 18
Lambrix v. Singletary, 520 U.S. 518 (1997)... ..29, 30
Lockett v. Ohio, 438 U.S. 586 (1978) 18
McKeiver v. Pennsylvania, 403 U.S. 528 (1971) 17
Penry v. Lynaugh, 492 U.S. 302 (1989) *abrogated on other grounds by Atkins v. Virginia*, 536 U.S. 304 (2002).....27, 28, 30
Ring v. Arizona, 536 U.S. 584 (2002) 32, 33
Robinson v. Neil, 409 U.S. 505 (1973)..... 26
Roper v. Simmons, 543 U.S. 551 (2005).....12, 16, 18, 19, 26, 28, 29, 30
Saffle v. Parks, 494 U.S. 484 (1990))..... 30
Sawyer v. Smith, 497 U.S. 227 (1990)..... 30
Schiro v. Farley, 510 U.S. 222 (1994).....37
Schriro v. Summerlin, 542 U.S. 348

State Oil Co. v. Kahn, 522 U.S. 3 (1997) 15
Sumner v. Shuman, 483 U.S. 66 (1987)..... 18
Teague v. Lane, 489 U.S. 288 (1989) ..... Passim
Thompson v. Oklahoma, 487 U.S. 815 (1988)..... 18
Toca v. Louisiana, 135 S. Ct. 781 (2014) 38
Tyler v. Cain, 533 U.S. 656 (2001)..... 36
United Air Lines, Inc., v. Mahin, 410 U.S. 623 (1973) 20, 21, 22
United States v. Playboy Entm't Grp., Inc., 529 U.S 803 (2000) 31
Whorton v. Bockting, 549 U.S. 406 (2007).....24, 25

OTHER CASES:

Bonilla v. Iowa, 791 N.W.2d 697 (2010)..... 29
In re Moss, 703 F.3d 1301 (11th Cir. 2013).....29
In re Sparks, 657 F.3d 258 (5th Cir. 2011).....29
Jackson v. Hobbs, 378 S.W.3d 103 (2011).....23, 35, 37, 38
Little v. Dretke, 407 F. Supp.2d 819 (W.D.Tex. 2005)..... 29
Miller v. Alabama, 132 S. Ct. 2455 (2012).....Passim
South Carolina v. Cantrell, 158 S.E.2d 189 (1967)..... 14
South Carolina v. George, 111 S.E. 880, 880 (1924) 15
South Carolina v. Waitus, 77 S.E.2d 256, 259 (1953)..... 15
Talley v. State, 640 S.E.2d 878, 880 (2007)..... 23

CONSTTTUTIONAL PROVISIONS:

U.S. Const. amend. VII.....2
U.S. Const. amend. XIV.....2

STATUTES:

S.C. Code Ann. § 16-3-20.....2, 3
S.C. Code Ann. § 16-3-85.....3, 4
S.C. Code Ann. § 24-13-125.....5
S.C. Code Ann. § 24-13-150.....5
S.C. Code Ann. § 24-13-560.....5
Rule 245, South Carolina Appellate Court Rules.....6

OTHER AUTHORITIES:

Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Rev. 339 (1992).....19

Erik Erickson, Identity: Youth and Crisis (1968).....19

7 Wayne R. LaFave et al., Criminal Procedure § 28.6(e) (3d ed. Supp. 2012).....29

PETITION FOR A WRIT OF CERTIORARI

Petitioners William R. Byars, Jr., Director, South Carolina Department of Corrections, and Alan Wilson, Attorney General of South Carolina, respectfully petition for a writ of certiorari to review the judgment and relief granted by the South Carolina Supreme Court.

OPINION AND ORDERS BELOW

The South Carolina Supreme Court's opinion, reported at 765 S.E.2d 572 (2014), is reprinted in the Appendix. (App. 1-31). The South Carolina Supreme Court's order granting Petitioners' motion to stay execution of its judgment pending review by this Court is unreported but is reprinted in the Appendix. (App. 32-33).

JURISDICTION

The judgment of the South Carolina Supreme Court was entered on November 12, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eighth Amendment to the Constitution of the United States provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the Constitution of the United States provides in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 16-3-20(A) of the South Carolina Code provides in part:

> A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. . . . For purposes of this section, "life" or "life imprisonment" means until death of the offender without the possibility of parole . . . . No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section.

Section 16-3-85 of the South Carolina Code provides in part: "Homicide by child abuse is a felony and a person who is convicted of or pleads guilty to homicide by child abuse . . . may be imprisoned for life but not less than a term of twenty years."

INTRODUCTION

On June 25, 2012, in *Miller v. Alabama*, this Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" 132 S. Ct. 2455, 2460 (2012).

On November 12, 2014, the South Carolina Supreme Court issued an opinion captioned "Relief Granted" which extended *Miller*'s reach in South Carolina to nonmandatory sentences of life without parole for those under the age of 18 at the time of

their crimes. The court found *Miller* created a new, substantive rule and should therefore apply retroactively. It then found that the "proportionality rationale" integral to *Miller* "deserves universal application" whether a sentence is mandatory or permissible. Based on these findings, the court concluded Respondents' nonmandatory sentences of life without parole violate the Eighth Amendment under *Miller*, and that Respondents and those similarly situated are entitled to resentencing pursuant to the United States Constitution. (App. 1-31).

Petitioners contend both the extension of *Miller* and the determination that *Miller* should apply retroactively were improper and now ask this Court to issue a writ of certiorari to review the judgment of the South Carolina Supreme Court.

STATEMENT OF THE CASE

With one exception, each named Respondent in this matter: (1) was convicted of murder,[1] (2) was

[1] Matthew Clark was convicted of homicide by child abuse pursuant to Section 16-3-85 of the South Carolina Code rather than murder; however, because the death occurred under circumstances manifesting an extreme indifference to human life, the penalty ranged from twenty years in prison to life in prison. S.C. Code Ann. § 16-3-85. In addition, homicide by child abuse is a "no parole offense" as defined in Section 24-13-100 of the South Carolina Code. Because Clark was sentenced to life imprisonment, he is not eligible for work release, early release, early discharge, or community supervision. S.C. Code Ann. §§ 24-13-125, 24-13-150 & 24-21-560.

under the age of 18 when the murder was committed,[2] and (3) was sentenced to life in prison without possibility of parole. Otherwise, each Respondent, and in all other respects each case, is different. The homicides involved different facts and circumstances and concerned unique victims who suffered violent deaths. Although each case is different, they share two important characteristics. First, each Respondent was given the opportunity to present evidence in mitigation without any apparent restrictions. Second, the life without parole sentences imposed were not mandatory. Indeed, the sentencing judge in each case had discretion to impose something less than life without parole for the relevant convictions.

In regard to the Respondents' individual sentencing proceedings, the record presented to the South Carolina Supreme Court[3] revealed that many

[2] According to the petition for a writ of certiorari which was filed in the South Carolina Supreme Court, eleven of the Respondents were seventeen (17) years old at the time of their crimes, and four were fifteen (15) years old.

[3] The record below does not appear in the Appendix to this petition; however, references to portions of that record are

of the Respondents presented evidence in mitigation in regard to their age and how it might relate to: (1) diminished maturity, recklessness, impulsivity, and needless risk taking; (2) vulnerability to negative influences and outside pressures and the inability to extricate themselves from horrific, crime-producing settings; and/or (3) underdeveloped and unfixed character traits that are less likely to be evidence of irretrievable depravity. The record also reveals there were no restrictions or limitations imposed by the trial courts to prevent Respondents from presenting any mitigating facts or arguments they wished to advance in an effort to convince the judge not to impose a sentence of life without parole.

On October 29, 2012, Respondents collectively filed a petition for writ of certiorari in the South Carolina Supreme Court asking that court: (1) to accept the matter for consideration in its original jurisdiction,[4] and (2) to grant certiorari to resolve several constitutional issues allegedly raised by this Court's decision in *Miller*. Respondents contended that because their life without parole sentences were imposed in proceedings which allegedly failed to satisfy the Eighth Amendment principles established in *Miller*, the South Carolina Supreme Court should order that Respondents be resentenced

made by the Justices of the South Carolina Supreme Court in the published opinion.

[4] Rule 245, South Carolina Appellate Court Rules.

in a manner consistent with *Miller*'s requirement of individualized sentencing.

In an Order dated May 6, 2013, the South Carolina Supreme Court granted the petition for a writ of certiorari and established a briefing schedule. Oral arguments were heard on January 8, 2014. On November 12, 2014, the South Carolina Supreme Court issued an opinion captioned "Relief Granted" which held that Respondents' sentences violate the Eighth Amendment under *Miller*, and that Respondents and those similarly situated are entitled to resentencing pursuant to the United States Constitution. (App. 1-31). Petitioners subsequently filed a motion asking the court to stay the relief granted until such time as this Court has made a final ruling on this petition and any ensuing appeal. On December 17, 2014, the South Carolina Supreme Court issued an order granting the motion and stayed execution of its opinion pending review by this Court. (App. 32-33).

REASONS CERTIORARI SHOULD BE GRANTED

I. The Supreme Court of South Carolina improperly exceeded the scope of current Eighth Amendment jurisprudence in holding Respondents are entitled to new sentencing hearings where: (1) *Miller* held the Eighth Amendment prohibits *mandatory* life without parole sentences for juveniles convicted of homicide but did not prohibit or otherwise create a presumption against *nonmandatory* life without parole sentences, and (2) each Respondent was provided an individualized sentencing proceeding with the opportunity to present mitigating evidence in regard to his or her age and the circumstances of the crime.

As explained by the South Carolina Supreme Court, it "granted certiorari to address the effect of *Miller* on the [Respondents] and others similarly situated who were sentenced to life without parole as juveniles." (App. 2). Thus, the court did not grant certiorari to address any aspect of the South Carolina Constitution. The court then held "[Respondents'] sentences violate the Eighth Amendment under *Miller* and the [Respondents] and those similarly situated are entitled to resentencing." (App. 3). This holding is the only stated ground for the grant of relief by the two-dustice "majority" and, despite the wishes expressed in the concurring opinion, it is the only ground that could possibly serve as a basis for a grant of relief due to what the South Carolina Supreme Court found to be a "new, substantive" rule created by *Miller*. Indeed, *Miller* did not and cannot implicate any provisions of the South Carolina Constitution because it is a federal decision.

The South Carolina Supreme Court recognizes that this Court's core holding in *Miller* has no direct application to the Respondents' cases because it "did not expressly extend its ruling to states such as South Carolina whose sentencing scheme *permits* a life without parole sentence to be imposed on a juvenile offender but does not *mandate* it." (App. 12) (emphasis in original). Nevertheless, the court finds it "must give effect to the proportionality rationale integral to *Miller*'s holding—youth has constitutional significance" and unilaterally extends *Miller* to nonmandatory juvenile life without parole sentences. (App. 12-14).

After declaring: "*Miller* is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution," the South Carolina Supreme Court concludes: "*Miller* does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement

that courts fully explore the impact of the defendant's juvenility on the sentence rendered" (App. 12). The court specifically focuses on the following language from *Miller*: "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." (App. 13-14). It then states:

> We believe this statement deserves universal application. The absence of this level of inquiry into the characteristics of youth produced a *facially unconstitutional* sentence for these [Respondents]. In our view, *whether their sentence is mandatory or permissible*, any juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment.

(App. 14) (emphasis added).

The South Carolina Supreme Court's conclusions are grounded wholly on its propitious, result based interpretation of dicta in *Miller*, and neither mandate nor justify ordering wholesale resentencing for this class of offenders. This is particularly true

where each Respondent was provided an individualized sentencing proceeding with the opportunity to present mitigating evidence in regard to his or her age and the circumstances of the crime.

Miller did not Preclude or Create A Presumption against Life Without Parole Sentences for Juveniles

Unlike the sentencing procedures prohibited in *Miller*, none of Respondents' sentences were mandatory. Each Respondent was sentenced pursuant to either Section 16-3-20 or Section 16-3-85 of the South Carolina Code. Neither statute required a mandatory sentence of life without possibility of parole and both statutes vested the sentencing courts with the discretion to sentence each Respondent to a term of thirty years (or twenty years) to life, without possibility of parole. As such, the sentences simply did not violate the proscription against cruel and unusual punishment set forth in *Miller*.

In an attempt to justify its grant of relief, the South Carolina Supreme Court obnubilates this Court's opinion in *Miller* by selectively focusing on particular words and phrases out of context. Contrary to the court's holding, *Miller* does not do "more than ban mandatory life sentencing schemes for juveniles." (App. 12). Rather, in specifically rejecting Miller's alternative argument "that the Eighth Amendment requires a categorical bar on life without parole for juveniles," this Court simply

explained that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," *Miller*, 132 S. Ct. at 2469 (emphasis added). This Court reiterated the difficulty, recognized in *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 48 (2010), of "distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption,'" and held: "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*

The Court, however, went on to address the statement to which the South Carolina Supreme Court attaches singular significance. It explained, "Our holding requires factfinders . . . to take into account the differences among defendants and crimes. By contrast, the sentencing schemes that the dissents find permissible *altogether preclude* considering these factors." *Id.* at 2469 n.8 (emphasis added). It is precisely this preclusion the Court found unconstitutional, not that all juvenile life without parole sentences are unconstitutional, as posited by Miller and as rejected by this Court. This distinction and the Court's conscious decision to decline expanding the Eighth Amendment's reach are important. At best they suggest an examination of sentencing proceedings on a case-by-case basis

where each Petitioner can attempt to show that he or she did not receive the benefit of the individual consideration described in *Miller*. But, as addressed below, even this suggestion is in doubt since *Miller* is procedural and not substantive in nature and does not constitute a watershed ruling. As such, it would apply to cases currently pending or on direct review, but would not apply retroactively to cases on collateral review, and would be of no benefit to Respondents.

Likewise in *Miller*, this Court did not explicitly or implicitly import Eighth Amendment capital sentencing principles into cases where juveniles face the possibility of a sentence of life without parole. Instead, in discussing how "mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics attendant to it," and noting that "[i]n meting out the death penalty, the elision of all these differences would be strictly forbidden," the Court found that "a similar rule should apply when a juvenile confronts a sentence of life (and death) in prison." *Miller*, 132 S. Ct. at 2467-68 (emphasis added). Thus, the "similar rule" is not a mandate to provide a sentencing proceeding identical to the sentencing proceeding conducted in capital cases, but is a "similar rule" that prohibits a mandatory death sentence where the sentencer's ability to consider individualized characteristics has been *eliminated* or *precluded*. *Miller* holds that the exclusion of an individual defendant's age and circumstances from the sentencing judge's

consideration would violate the Eighth Amendment when imposing a sentence of life without parole. Here, by comparison, Respondents' ages and circumstances were necessarily included in the discretionary decision to impose a sentence of life without parole rather than the mandatory minimum. Indeed, as described by the South Carolina Supreme Court over 45 years ago:

> A sentencing judge is not confined to the narrow issue of guilt. His task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. Highly relevant, if not essential, to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.

South Carolina v. Cantrell, 158 S.E.2d 189, 191 (1967). The "fullest information possible concerning [a juvenile] defendant's life and characteristics" necessarily encompasses his or her age, mental capacity, maturity, etc. Presumably the judge in each Respondent's case sentenced in accordance with these principles by considering Respondent's age, mental capacity and maturity.

The South Carolina Supreme Court has decided to blaze a trail through Eighth Amendment jurisprudence, a trail that was proposed by Miller

himself, but was expressly declined by this Court. *Miller*, 132 S. Ct. at 2469. Trying to extend the reach of this Court's existing precedent based on conjecture, even if time proves such speculation correct, is an improper overreach of the South Carolina Supreme Court's authority, and should be corrected. Indeed, both the South Carolina Supreme Court and this Court acknowledge that decisions of this Court constitute binding precedent and are the supreme law of the land on federal questions. *See South Carolina v. Waitus*, 77 S.E.2d 256, 259 (1953) (recognizing that decisions of the United States Supreme Court construing the United States Constitution are binding on South Carolina appellate courts in cases addressing questions involving the United States Constitution); *see also South Carolina v. George*, 111 S.E. 880, 880 (1921) ("State Courts are not bound to follow the Federal decisions, except in cases involving a Federal question[.]"). Existing Eighth Amendment precedent does not prohibit the sentences imposed in Respondents' cases, and that precedent controls the South Carolina Supreme Court's review of the United States Constitution. It is this Court's prerogative to extend the reach of the Eighth Amendment to sentences not heretofore deemed unconstitutional, not the province of a state court, even one with arguably noble intentions. *See State Oil Co. v. Kahn*, 522 U.S. 3, 20 (1997) ("It is this Court's prerogative alone to overrule one of its precedents.").

Petitioners were Given Constitutionally Adequate Individualized Sentencing Hearings

In *Roper*, this Court implicitly recognized the legitimacy of a juvenile receiving a sentence of life without parole for committing murder. In discussing the minimal deterrent effect on a juvenile facing possible execution, the Court noted: "To the extent the juvenile death penalty might have residual deterrent effect, it is worth noting that the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person." *Roper* at 572. The Court went on to explain: "When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties but the State cannot extinguish his life, and *his potential to attain a mature understanding of his own humanity*." *Id.* at 573-74. (emphasis added). That potential is not extinguished by a sentence of life without parole. The legitimacy recognized in *Roper* was not impugned by *Miller*, except in the case of *mandatory* sentences of life imprisonment without parole. Existing Eighth Amendment law does not prohibit the nonmandatory sentencing procedures used in Respondents' cases, because consideration of the relevant aspects of youth were not precluded.

The South Carolina Supreme Court erred in ordering across-the-board resentencing where it is not mandated by *Miller*, either explicitly or implicitly. Each Respondent had an individualized sentencing proceeding with the opportunity to

present mitigating evidence in regard to his or her age and circumstances in an effort to convince the judge not to impose a life without parole sentence. Nothing prevented each Respondent from presenting facts in mitigation in regard to his or her age and how it might relate to: (1) diminished maturity, recklessness, impulsivity, and needless risk taking; (2) vulnerability to negative influences and outside pressures and the inability to extricate themselves from horrific, crime-producing settings; and/or (3) underdeveloped and unfixed character traits that are less likely to be evidence of irretrievable depravity. Indeed, the same characteristics described in *Miller* concerning the differences between children and adults in regard to diminished culpability and capacity for reform were *known and available* to Respondents at the time they were sentenced.

In 1979 this Court specifically commented on the psychological differences between adults and children. *Bellotti v. Baird*, 443 U.S. 622 (1979). Referring to the juvenile court system, the Court noted: "[T]he State is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, . . . sympathy, and . . . paternal attention.'" *Id.* at 635 (quoting *McKeiver v. Pennsylvania*, 403 U.S. 528, 550 (1971)). Three years later this Court described youth as "a time and condition of life when a person may be most susceptible to influence and psychological damage" and said that "minors . . . especially in their early years, generally are less mature and responsible

than adults." *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982). The Court noted: "Particularly 'during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment' expected of adults." *Id.* at 116 (quoting *Bellotti* at 635). Six years later, in 1988, this Court again recognized that children are psychologically different from adults stating:

> Thus, informing the judgment of the Court today is the virtue of consistency, for the very assumptions we make about our children when we legislate on their behalf tells us that it is likely cruel, and certainly unusual, to impose on a child a punishment that takes as its predicate the existence of a fully rational, choosing agent, who may be deterred by the harshest of sanctions and toward whom society may legitimately take a retributive stance.

Thompson v. Oklahoma, 487 U.S. 815, 825 n.23 (1988). As acknowledged by this Court in *Miller*: "Everything we said in *Roper* and *Graham* about that stage of life [youth] also appears in these decisions." *Miller*, 132 S. Ct. at 2467 (citing *Sumner v. Shuman*, 483 U.S. 66 (1987); *Eddings*, *supra*; *Lockett v. Ohio*, 438 U.S. 586 (1978); *Johnson v. Texas*, 509 U.S. 350 (1993). Thus, the concept that "children are different" was a well-established precedent when Respondents were sentenced.

In *Roper* and *Miller*, this Court certainly provided a more specific account of the differences of youth; however, even that specificity was based on scientific studies and concepts developed during the second half of the twentieth century. *See Roper*, 543 U.S. at 568-70 (citing Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Rev. 339 (1992) & Erik Erickson, Identity: Youth and Crisis (1968)). Because each named Respondent was sentenced in 1996 or later, he or she had the opportunity to present essentially the same arguments and mitigating evidence described in *Miller*. Despite being provided this opportunity, the South Carolina Supreme Court inexplicably concluded the proceedings for the named Respondents and those similarly situated were constitutionally insufficient, even though the life without parole sentences were not mandatory.

Conclusion

Miller neither mandates nor justifies the South Carolina Supreme Court ordering wholesale resentencing of Respondents. Each Respondent was provided an individualized sentencing proceeding with the opportunity to present mitigating evidence in regard to his or her age and the circumstances of the crime. This Court should issue a writ of certiorari to review and reverse the judgment of the South Carolina Supreme Court.

II. The federal compulsion felt by two Justices of the South Carolina Supreme Court to extend *Miller v. Alabama* to nonmandatory sentences of life without parole created a federal question subject to review by this Court where that federal compulsion resulted in the grant of new sentencing hearings due to the court dividing one-to-four in favor of resentencing based on unpreserved state constitutional grounds.

When the South Carolina Supreme Court concluded Respondents' sentences "violate the Eighth Amendment" under *Miller*, and that Respondents and those similarly situated are entitled to resentencing pursuant to the United States Constitution, it acknowledged it was extending the reach of *Miller* to a category of defendants and sentences *Miller* expressly declined to address. The fact that only two of the five Justices of that court actually relied upon *Miller* and the Eighth Amendment does not impact the improper reach of the decision or the need for review by this Court, because this was the *only* basis for the two-Justice majority opinion which ultimately resulted in the grant of relief. *See United Air Lines, Inc., v. Mahin*, 410 U.S. 623, 630-32 (1973) (finding it was appropriate to review a federal question addressed by the Supreme Court of Illinois despite the fact that only two of the five Justices mistakenly deemed themselves bound by the Federal

Constitution to have reached a particular conclusion).

In *United Air Lines*, this Court recognized that a federal constitutional basis for construing a state statute or state procedure creates a federal question. This Court found:

> The possibility that the state court might have reached the same conclusion if it had decided the question purely as a matter of state law does not create an adequate and independent state ground that relieves this Court of the necessity of considering the federal question. Since the other justices of the Illinois court divided three to two on the state law issue, the votes of the two who felt bound by *Helson* [*v. Com. of Kentucky*, 279 U.S. 245 (1929)] could be determinative of the state issue. Under these circumstances, we proceed to consider the validity of the "burn off" rule in the light of *Helson*, as United has urged us to do.

Id. at 630-31 (citations omitted). Here, no South Carolina constitutional issue was preserved for appellate review from the Respondents' sentencing hearings; therefore, any challenge under the state constitution was not properly before the South Carolina Supreme Court. Nevertheless, the state constitution served as the sole basis for the

concurring opinion of a single Justice. (App. 17). Similar to the circumstances in *United Air Lines*, this demonstrates a divided court on state law grounds, but in this case it is a one-to-four split on an unpreserved issue. This divide has resulted in a situation where the votes of the two Justices who feel a federal compulsion from their expansive interpretation of *Miller* have become outcome determinative. That outcome is demonstrated by the South Carolina Supreme Court's act of granting relief to Respondents. As in *United Air Lines*, these circumstances, coupled with what Petitioners contend is the South Carolina Supreme Court's significant misinterpretation and misapplication of *Miller*, provide a compelling reason for a grant of certiorari and reversal of the judgment.

III. The South Carolina Supreme Court incorrectly concluded *Miller*'s new rule of criminal procedure is substantive rather than procedural, and therefore erred in holding *Miller* should be given retroactive application pursuant to *Teague v. Lane*, 489 U.S. 288 (1989).

Before considering whether *Miller* applied to juveniles who received a sentence of life without parole under a nonmandatory sentencing scheme, the South Carolina Supreme Court first addressed what it describes as "the threshold issue of whether *Miller* applies retroactively." (App. 7). With

reference to one of its prior opinions, the court found that under South Carolina's current jurisprudence, this Court's decision in *Teague* "*governs* whether a new rule of criminal procedure is retroactive." *Talley v. South Carolina*, 640 S.E.2d 878, 880 (2007) (emphasis added). (App. 7). The South Carolina Supreme Court found it unnecessary to address whether it should employ a more expansive analysis for determining retroactivity after *Danforth v. Minnesota*, 552 U.S. 264 (2008) "because Miller is clearly retroactive under *Teague*." (App. 7). Thus, the court self-limited its retroactivity analysis solely to the federal non-retroactivity rule in *Teague* and one of the two well-vetted exceptions to that rule.

After identifying the general rule of non-retroactivity, the "substantive" rule exception, and the "watershed" rule exception, the South Carolina Supreme Court concluded: "*Miller* creates a new, *substantive* rule and should therefore apply retroactively." (App. 7-9). With virtually no analysis, the court found: "The rule plainly excludes a certain class of defendants—juveniles—from specific punishment—life without parole absent individualized considerations of youth." (App. 9). It also found support for its conclusion in this Court's decision to apply the rule announced in *Miller* to the companion case of *Jackson v. Hobbs*, 378 S.W.3d 103 (2011). These findings were in error.

In *Teague*, this Court considered its historically disparate methods of addressing retroactivity when announcing new "constitutional rule[s] of criminal

procedure," and declared its intent to "clarify how the question of retroactivity should be resolved for cases on collateral review." 489 U.S. 288, 299-300 (1989). This Court concluded that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final." *Id.* at 305 (citation omitted) (internal quotation marks omitted). Once a conviction or sentence becomes final however, the defendant is not entitled to the retroactive benefit of a new rule, subject to two exceptions. *Id.* at 307. First, "a new rule should be applied retroactively if it places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe." *Id.* (citation & internal quotation marks omitted). Second, "a new rule should be applied retroactively if it requires the observance of those procedures that are . . . implicit in the concept of ordered liberty." *Id.* (citation & internal quotation marks omitted). The second exception is "reserved for watershed rules of criminal procedure." *Id.* at 311. This Court rested its general rule of non-retroactivity to cases pending on collateral review on comity and finality considerations. Notably in *Teague*, the Court stated: "Application of constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." 489 U.S. at 309. Nearly two decades later, in *Whorton v. Bockting*, the Supreme Court reaffirmed its holding in *Teague* and discussed the two requirements necessary to meet the *Teague* "watershed" exception. 549 U.S. 406, 418 (2007).

Here, as explained above, the South Carolina Supreme Court acknowledges *Teague* and finds it "governs" its decision. However, the court then misapplies *Teague* to the new rule in *Miller* by conflating the procedure employed for imposing a particular punishment with the specific punishment being imposed.[5]

Miller's New Rule is Procedural Rather than Substantive

With little to no analysis under *Teague*, the South Carolina Supreme Court finds *Miller* is substantive by deeming "life without parole absent individualized considerations of youth" a "specific punishment." Yet, the "specific punishment" is life without parole. The factors that must be considered before imposing that specific punishment are not part of the punishment, but instead are part of the procedure for imposing it. It is not as simple as

[5] The parties do not dispute that *Miller* falls within the definition of a "new rule" because it "was not dictated by precedent existing at the time the Respondents' convictions became final." *Whorton*, 549 U.S. at 416 (citations & internal quotation marks omitted).

stringing together a single phrase that encompasses both the punishment and the procedure and then declaring it a "specific punishment." Indeed, in *Miller*, this Court declared:

> Our decision *does not categorically bar a penalty* for a class of offenders or type of crime—as, for example, we did in *Roper* and *Graham*. *Instead, it mandates only* that a sentencer follow *a certain process*—considering an offender's youth and attendant characteristics—before imposing a particular penalty.

Miller, 132 S. Ct. at 2471 (emphasis added).

This Court has explained that while the "distinction between substance and procedure is an important one," *Bousley v. United States*, 523 U.S. 614, 620 (1998), it is not necessarily always a simple matter to divine. *Robinson v. Neil*, 409 U.S. 505, 509 (1973). The Court has indicated that decisions of "criminal procedure" encompass those which implicate the functioning of the criminal trial process. Retroactivity of new procedural rules is severely limited, as only substantive new rules or decisions of "procedure" that incorporate into the criminal trial process a mechanism "without [which] the likelihood of an accurate conviction is seriously diminished," referred to as "watershed rules," are to be applied retroactively. *Bousley*, 523 U.S. at 620 (quoting *Teague*, 489 U.S. at 313).

Decisions characterized as comprising "substantive criminal law" extend beyond issues of procedural function and address the meaning, scope, and application of substantive criminal statutes. *Id.* at 620; *see also Davis v. United States*, 417 U.S. 333, 346 (1974) (indicating that included within the definition of "substantive" are those decisions that remove primary conduct from the purview of criminal punishment). In comparison, *Teague* established that a new rule is procedural if it affects the operation of the criminal trial process. *Bousley*, 523 U.S. at 620. Thus, "A rule is substantive rather than procedural if it alters the range of conduct or the class of persons that the law punishes. In contrast, 'rules that regulate only the manner of determining the defendant's culpability are procedural.'" *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) (citations omitted).

Several cases have clarified the difference between substantive and procedural rules. As noted above, a new rule is "substantive" if the rule "narrow[s] the scope of a criminal statute by interpreting its terms," or "'place[s] particular conduct or persons covered by the statute beyond the State's power to punish.'" *Schriro*, 542 U.S. at 351-52 (citations omitted). Furthermore, in *Penry v. Lynaugh*, this Court explained that the definition of a "substantive" rule for purposes of the first *Teague* exception was not limited to new rules that placed certain conduct completely beyond the State's power to punish. 492 U.S. 302, 330 (1989), *abrogated on other grounds by Atkins v. Virginia*,

536 U.S. 304 (2002). Instead, a substantive rule can also include new rules that place a certain class of individuals beyond the state's power to punish by death. *Schriro*, 542 U.S. at 351-52. In other words, substantive rules "apply retroactively because they 'necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal' or faces a punishment that the law cannot impose upon him" because of his status or offense. *Id.* at 352 (quoting *Bousley*, 523 U.S. at 620).

In *Penry* this Court explained that in both situations "the Constitution itself deprives the State of the power to impose a certain penalty, and the finality and comity concerns" underlying the retroactivity doctrine "have little force." 492 U.S. at 330. More specifically, the Court wrote: "[T]he first exception set forth in *Teague* should be understood to cover not only rules forbidding criminal punishment of certain primary conduct but also rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Id.* The Court explained that if it "held, as a substantive matter, that the Eighth Amendment prohibits the execution of mentally retarded persons such as Penry regardless of the procedures followed, such a rule would fall under the first exception to the general rule of nonretroactivity and would be applicable to defendants on collateral review." *Id.* (emphasis added). Courts have uniformly held, consistent with *Penry*, that the categorical sentencing bans announced in *Graham* and *Roper*

satisfy the substantive rule exception of the *Teague* doctrine. *See, e.g.*, *In re Moss*, 703 F.3d 1301, 1303 (11th Cir. 2013); *In re Sparks*, 657 F.3d 258, 262 (5th Cir. 2011) (holding that *Graham* announced a substantive rule under the *Teague* doctrine); *Little v. Dretke*, 407 F. Supp.2d 819, 823 (W.D. Tex. 2005) (holding that *Roper* announced a substantive rule under the *Teague* doctrine); *Bonilla v. Iowa*, 791 N.W.2d 697, 700–01 (2010) (same); *see also* 7 Wayne R. LaFave et al., Criminal Procedure § 28.6(e) (3d ed. Supp. 2012).

However, unlike categorical bans, rules that "regulate only the manner of determining the defendant's culpability are procedural." *Schriro*, 542 U.S. at 353. "They do not produce a class of persons convicted of conduct the law does not make criminal, but merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise." *Id.* at 352. Indeed, the definition of a procedural rule for purposes of the first *Teague* exception extends to rules that regulate the manner of determining a defendant's sentence. *Lambrix v. Singletary*, 520 U.S. 518, 539 (1997). In *Lambrix*, this Court considered whether the rule announced in *Espinosa v. Florida*, 505 U.S. 1079 (1992), constituted a substantive or procedural rule under the *Teague* doctrine. 520 U.S. at 526–27. Under the *Espinosa* rule, an actor with capital sentencing authority must not be permitted to weigh invalid aggravating circumstances. 505 U.S. at 1082. The *Lambrix* court held that the *Espinosa* rule was

procedural, not substantive, because it "neither decriminalized a class of conduct nor prohibited the imposition of capital punishment on a particular class of persons." 520 U.S. at 539 (quoting *Saffle v. Parks*, 494 U.S. 484, 495 (1990)); *see also Sawyer v. Smith*, 497 U.S. 227, 241 (1990) (holding that the rule announced in *Caldwell v. Mississippi*, 472 U.S. 320, 341 (1985), which requires that a jury with capital sentencing authority must be made aware of the gravity of its task, was procedural).

In summary, a new rule regarding sentencing is substantive if it eliminates the power of the state to impose the punishment in question regardless of the procedures followed. *Penry*, 492 U.S. at 330. On the other hand, the new rule is procedural if it merely regulates the manner in which the state exercises its continuing power to impose the punishment in question. *Lambrix*, 520 U.S. at 539. Keeping this crucial difference between substantive and procedural rules in mind, the error committed by the South Carolina Supreme Court is clear.

The rule announced in *Miller* is procedural, not substantive, for several reasons. First, the rule does not eliminate the power of the state to impose the punishment of life imprisonment without the possibility of parole upon a juvenile offender who has committed a homicide offense. Instead, *Miller* invalidated a sentencing scheme that mandated the punishment of life without the possibility of release without consideration of the unique characteristics of a juvenile offender. *Roper* and *Graham*

"establish[ed] that children are constitutionally different from adults for purposes of sentencing," *Miller*, 132 S. Ct. at 2464; however, unlike its predecessors, *Miller* specifically declined to impose a categorical ban on sentencing juveniles to life in prison without parole. *Id.* at 2459, 2469. In *Miller*, this Court indicated that its ruling was procedural in nature, stating, "Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentence follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Id.* at 2471 (emphasis added).

Targeted prohibitions are by definition less restrictive than a categorical ban. *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 815 (2000). While this Court commented that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," it specifically did not "foreclose a sentencer's ability to make that judgment in homicide cases . . . ." *Miller*, 132 S. Ct. at 2469. In contrast, in *Graham* this Court drew a line and distinguished between homicide and non-homicide juvenile offenders and the sentences that could be imposed in conformance with the Eighth Amendment. That distinction was reasserted in this Court's refusal to impose a categorical ban regarding the sentencing of juvenile homicide offenders to life in prison without parole in *Miller*. Similar to *Schriro*, this Court merely altered the

permissible methods by which the state can exercise its continuing power to punish juvenile homicide offenders by life imprisonment without the possibility of parole.

Second, the *Miller* rule does not announce a new "element." Unlike the Arizona statute at issue in *Ring v. Arizona*, 536 U.S. 584 (2002), the *Miller* rule does not mandate that a certain aggravating factor be proven before the state imposes the sentence in question. In *Ring*, the statute at issue provided that a "death sentence may not legally be imposed . . . unless at least one aggravating factor is found to exist beyond a reasonable doubt." 536 U.S. at 597 (citation & internal quotation marks omitted). This Court held that "[b]ecause Arizona's enumerated aggravating factors operate as the 'functional equivalent of an element of a greater offense,' the Sixth Amendment requires that they be found by a jury." *Id.* at 609 (citations omitted).

In *Schriro*, this Court rejected the defendant's argument that the rule announced in *Ring* was substantive under the first *Teague* exception because it "modified the elements of the offense for which he was convicted." 542 U.S. at 354. The Court explained that "because Arizona has made a certain fact essential to the death penalty, that fact must be found by a jury, [but that] is not the same as this Court's making a certain fact essential to the death penalty. The former was a procedural holding; the latter would be substantive." *Id.* By requiring a sentencer to consider the potentially

mitigating circumstances of an offender's youth and attendant characteristics, the *Miller* rule does not create a requirement that is the "functional equivalent of an element." *See Ring*, 536 U.S. at 609 (citations & quotation marks omitted). This is especially true when the *Miller* rule does not require the sentencer to make any specific finding of fact. *Miller* does not announce a new element because it does not require the state to prove any specific fact before the sentencer imposes the punishment of life imprisonment without the possibility of release on a juvenile homicide offender.

Petitioners' contention that *Miller* does not comprise a substantive new rule and, therefore, is not subject to retroactive application for cases on collateral review is also supported by the fact that the ruling does not place "certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe." *Teague*, 489 U.S. at 307 (citation & internal quotation marks omitted). *Miller* does not change the elements of homicide. Rather it simply requires the consideration, in sentencing, of certain factors when juveniles are involved. Otherwise stated, *Miller* is not substantive because it does not serve to "alter[ ] the range of conduct or the class of persons that the law punishes," *Schriro*, 542 U.S. at 353, but merely the manner in which a punishment may be imposed. Juveniles can still be subject to a sentence of life in prison without parole. It is simply the manner and factors to be considered in the imposition of that particular sentence that *Miller*

dictates. Similarly, *Miller* does not announce a new element because it does not alter the prescribed range of sentences to which a defendant is exposed, particularly for a nonmandatory sentence. *Alleyne v. United States*, 133 S. Ct. 2151, 2155 (2013).

In summary, the rule announced in *Miller* is procedural, not substantive, for two reasons. First, the *Miller* rule does not eliminate the power of the state to impose the punishment of life imprisonment without the possibility of parole upon a juvenile offender who has committed a homicide offense. Second, the *Miller* rule did not announce a new element. The South Carolina Supreme Court's conclusion to the contrary, that "*Miller* is clearly retroactive under *Teague*," is simply not supported by an analysis of *Teague* and the substantive rule exception described therein. Indeed, the fallacy of the conclusion is illustrated in the court's expressed concern that: "Failing to apply the *Miller* rule retroactively risks subjecting defendants to a legally invalid punishment." (App. 9-10). In *Miller*, this Court made it abundantly clear that a sentence of life without parole for a juvenile is not a "legally invalid punishment."

Thus, pursuant to *Teague*, which the South Carolina Supreme Court identified as its governing principle, *Miller* should not have been given retroactive application to Respondents or other defendants whose convictions were final on direct review before June 25, 2012.

Miller's Remand of *Jackson v. Hobbs* Is not Dispositive

State convictions and sentences are final "for purposes of retroactivity analysis when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied." *Caspari v. Bohlen*, 510 U.S. 383, 390 (1994). The South Carolina Supreme Court suggests that because *Jackson* was on collateral review, and because this Court granted certiorari to both Miller and Jackson, *Id.* 132 S. Ct. at 2463, this Court demonstrated retroactive application.

However, the mere fact that this Court remanded *Jackson* for resentencing does not constitute a ruling or determination on retroactivity. Indeed:

> The only way the Supreme Court can, by itself, "lay out and construct" a rule's retroactive effect, or "cause" that effect "to exist, occur, or appear," is through a holding. The Supreme Court does not "ma[k]e" a rule retroactive when it merely establishes principles of retroactivity and leaves the application of those principles to lower courts. In such an event, any legal conclusion that is derived from the principles is developed by the lower court (or

> perhaps by a combination of courts), not by the Supreme Court. We thus conclude that *a new rule is not "made retroactive to cases on collateral review" unless the Supreme Court holds it to be retroactive.*

Tyler v. Cain, 533 U.S. 656, 663 (2001) (emphasis added). In *Miller*, this Court did not hold its decision to be retroactive. In addition:

> [t]he nonretroactivity principle prevents a federal court from granting habeas corpus relief to a state prisoner based on a rule announced after his conviction and sentence became final. A threshold question in every habeas case, therefore, is whether the court is obligated to apply the *Teague* rule to the defendant's claim. We have recognized that the nonretroactivity principle "is not 'jurisdictional' in the sense that [federal courts] . . . must raise and decide the issue sua sponte." Thus, a federal court may, but need not, decline to apply *Teague* if the State does not argue it. But if the State does argue that the defendant seeks the benefit of a new rule of constitutional law, the court must apply *Teague* before considering the merits of the claim.

Caspari, 510 U.S. at 389 (citations omitted). This is consistent with this Court's determination in *Schiro v. Farley*, which provides:

> Nevertheless, the State failed to argue *Teague* in its brief in opposition to the petition for a writ of certiorari. In deciding whether to grant certiorari in a particular case, we rely heavily on the submissions of the parties at the petition stage. If, as in this case, a legal issue appears to warrant review, we grant certiorari in the expectation of being able to decide that issue. Since a State can waive the *Teague* bar by not raising it, and since the propriety of reaching the merits of a dispute is an important consideration in deciding whether or not to grant certiorari, the State's omission of any *Teague* defense at the petition stage is significant. Although we undoubtedly have the discretion to reach the State's *Teague* argument, we will not do so in these circumstances.

Schiro v. Farley, 510 U.S. 222, 229 (1994) (citations omitted). In *Jackson*, because the State did not raise the issue of retroactivity, the necessary predicate for this Court to resolve the question of retroactivity was waived. Coupled with this Court's failure to specifically hold *Miller* to be retroactive, the decision's application to *Jackson* is of no

moment. Hence, merely because *Jackson* was before the Court on collateral review is not dispositive on the issue of retroactivity.[6]

[6] Earlier this Term, this Court granted certiorari in *Toca v. Louisiana*, to decide whether the rule announced in *Miller* applies retroactively to Toca's case. 135 S. Ct. 781 (2014). In addition to the substantive challenge to the South Carolina Supreme Court's application of *Miller* to nonmandatory sentences of life without parole, the petition in the instant case also raises the question of retroactivity. *Toca* was set for argument on Monday, March 30, 2015; however, one week ago, on February 3, 2015, this Court dismissed Toca's petition under Rule 46 of the Supreme Court rules based on an agreement reached between the parties. Now that *Toca* has been dismissed, a granting of certiorari in this matter would provide this Court with another opportunity to analyze the retroactivity of *Miller* pursuant to *Teague*.

CONCLUSION

Accordingly, Petitioners ask the Court to grant the petition for a writ of certiorari to the South Carolina Supreme Court.

Respectfully submitted,

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February 9, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Tyrone Aiken, Matthew Clark, Eric Graham, Bradford M. Haigler, Angelo Ham, J'Corey S. Hull-Kilgore, Damian Inman, Rogert Legette, Terriel Mack, Jennifer L. McSharry, Wallace Priester, Davon Reed, Dondre M. Scott, Edgar L. Thomas, James Van, et al., Petitioners,

v.

William R. Byars, Jr., Director, South Carolina Department of Corrections, and Alan Wilson, Attorney General of South Carolina, Respondents.

Appellate Case No. 2012-213286

ORIGINAL JURISDICTION

Opinion No. 27465
Heard January 8, 2014 - Filed November 12, 2014

RELIEF GRANTED

John H. Blume, Sheri L. Johnson, Keir M. Weyble, of Cornell Law School, of Ithica, NY; Elizabeth Franklin-Best, of Blume, Norris, & Franklin-Best, LLC, of Columbia; Joshua A. Bailey, of Finklea Law

Firm, of Florence; Charles Grose, Jr., of Grose Law Firm, of Greenwood; Diana L. Holt, of Diana Holt, LLC, of Columbia; and Chief Appellate Defender Robert M. Dudek, of Columbia, all for Petitioners.

Attorney General Alan M. Wilson, Senior Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General J. Benjamin Aplin, all of Columbia, for Respondents.

Christopher D. Scalzo, of Greenville, for Amicus Curiae, S.C. Public Defender Association.

Joseph M. McCulloch, Jr., of Law Offices of Joseph M. McCulloch, Jr., of Columbia, and Abby F. Rudzin and Abby C. Johnston, both of O'Melveny & Myers, LLP, of New York, NY, for Amicus Curiae, The South Carolina State Conference of the NAACP.

John S. Nichols, of Bluestein Nichols Thompson & Delgado, LLC, of Columbia, for Amicus Curiae, South Carolina Psychological Association.

JUSTICE HEARN: In this case brought in our original jurisdiction, fifteen inmates who were sentenced to life without parole as juveniles petition this Court for resentencing in light of the United States Supreme Court's decision in *Miller v.*

Alabama, 132 S. Ct. 2455 (2012).[1] We hold their sentences violate the Eighth Amendment under *Miller* and the petitioners and those similarly situated are entitled to resentencing.

FACTUAL/PROCEDURAL BACKGROUND

The petitioners were all convicted for homicides committed while they were juveniles. Some pled guilty and others were convicted after a jury trial. Some were found directly responsible for the relevant homicide while others were convicted under a theory of accomplice liability. All were sentenced to life without parole according to existing sentencing procedures, which made no distinction between defendants whose crimes were committed as an adult and those whose crimes were committed as a juvenile. In most of the sentencing hearings—but not all—defense counsel mentioned the age of the defendant at the time of the crime, and in some cases, there was a brief discussion of the defendant's life prior to commission of the crime. Of the fifteen

[1] In South Carolina, pursuant to Section 63-19-20 of the South Carolina Code (2010), a juvenile is a person less than seventeen years of age. However, *Miller* extends to defendants under eighteen years of age and therefore for the purposes of this opinion we consider juveniles to be individuals under eighteen.

petitioners, thirteen of their cases have become final.[2]

The petitioners filed a petition for a writ of certiorari in our original jurisdiction, naming the Director of the South Carolina Department of Corrections, William R. Byars, Jr., and Attorney General Alan Wilson as the respondents. We granted certiorari to address the effect of *Miller* on the petitioners and others similarly situated who were sentenced to life without parole as juveniles.

ISSUES PRESENTED

I. Does *Miller* apply retroactively?

II. Does *Miller* apply to juveniles who received a nonmandatory sentence of life without parole?

LAW/ANALYSIS

The Eighth Amendment to the United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and

[2] Our holding is moot with respect to Damian Inman, whose convictions and sentences were reversed on other grounds in *State v. Inman*, 409 S.C. 19, 760 S.E.2d 105 (2014), and Dundre Scott, whose convictions and sentences were reversed on other grounds in *State v. Scott*, 406 S.C. 108, 749 S.E.2d 160 (Ct. App. 2013).

unusual punishments inflicted." U.S. Const. amend. VIII.[3] Although the earliest Eighth Amendment cases focused on the barbarous nature of a punishment, the jurisprudence evolved to encompass challenges to the proportionality of the sentence to the offense. *Gregg v. Georgia*, 428 U.S. 153, 170–72 (1976). When considering whether a sentence is proportional, the Supreme Court has acknowledged that the scope of the Eighth Amendment is not static, but "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

In *Miller*, the United States Supreme Court confronted a challenge to the mandatory imposition of life without parole sentences on juveniles as violative of the Eighth Amendment's prohibition of cruel and unusual punishments. 132 S. Ct. at 2461. In considering this question, the Supreme Court analyzed two strands of precedent impacting the proportionality compelled by the Eighth Amendment. The first line of cases dealt with categorical bans on certain sentences based on the inability to reconcile the class of offenders and the severity of the penalty. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court invalidated the

[3] The Eighth Amendment applies against the states by virtue of the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660, 666–67 (1962).

death penalty for all juvenile offenders. Thereafter, in *Graham v. Florida*, 560 U.S. 48 (2010), the Court held that life without parole violates the Eighth Amendment when imposed on juvenile nonhomicide offenders. The *Miller* Court noted that Graham equated life without parole sentences for juveniles to the death penalty, invoking a second line of cases that require sentencing authorities to consider the individual characteristics of a defendant and the details of his offense prior to imposing a sentence of death. 132 S. Ct. at 2463-64; *see also Lockett v. Ohio*, 438
U.S. 586, 604 (1978) (plurality opinion) (holding that "in all but the rarest kind of capital case" the sentencer must "not be precluded from considering as a *mitigating* factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death"); *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976) (requiring "consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death"). The Court therefore held that "the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violates the Eighth Amendment." 132 S. Ct. at 2464. A sentencer must be allowed to consider that "youth is more than a chronological fact," and carries with it "immaturity, irresponsibility, impetuousness[,] and recklessness," factors as transient as youth itself. Id. at 2467

(alteration in original). Although a court may still sentence a juvenile to life without parole after an individualized hearing, the Court cautioned that given "children's diminished culpability and heightened capacity for change" the "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Id.* at 2469.

I. RETROACTIVITY

Before considering whether *Miller* applies to juveniles who received a sentence of life without parole under a nonmandatory scheme, we first must resolve the threshold issue of whether *Miller* applies retroactively.

Under our current jurisprudence, the United States Supreme Court's decision in *Teague v. Lane*, 489 U.S. 288 (1989), governs whether a new rule of criminal procedure is retroactive.[4] *Talley v. State*, 371 S.C. 535, 640 S.E.2d 878 (2007). In *Teague*, the Supreme Court held that a new constitutional rule

[4] This Court has not addressed whether it should employ a more expansive analysis for determining retroactivity after *Danforth v. Minnesota*, 552 U.S. 264 (2008), which held that state courts can use a broader test than *Teague*. *Id.* at 282 (holding that *Teague* "does not in any way limit the authority of a state court, when reviewing its own state criminal convictions, to provide a remedy for a violation that is deemed 'non-retroactive' under *Teague*"). We find it unnecessary to do so today because *Miller* is clearly retroactive under *Teague*.

of criminal procedure should not apply to cases that became final before the new rule is announced. 489 U.S. at 310. However, this general prohibition against the retroactive application of new constitutional rules is subject to two exceptions.[5] First, a new rule may be applied retroactively if the rule is substantive. *Id.* at 311. Second, a new rule may be applied retroactively if it is a "watershed rule" of criminal procedure. Id. We need not consider whether *Miller*'s holding constitutes a watershed rule because we find it is substantive and thus meets *Teague*'s first exception.

A rule is substantive if it prohibits the States from criminalizing certain conduct or prohibits "a certain category of punishment for a class of defendants because of their status or offense." *Saffle v. Parks*, 494 U.S. 484, 494 (1990) (quoting *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989), *abrogated by Atkins v. Virginia*, 536 U.S. 304, 321 (2002)). New substantive rules apply retroactively on collateral review because they "necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him." *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004) (internal quotation marks omitted). By contrast, a

[5] The parties do not dispute that *Miller* announced a new rule, only whether an exception applies.

rule that merely regulates the manner in which a defendant is adjudicated guilty is procedural. *Id.*

We conclude *Miller* creates a new, substantive rule and should therefore apply retroactively.[6] The rule plainly excludes a certain class of defendants—juveniles—from specific punishment—life without parole absent individualized considerations of youth.[7] Failing to apply the *Miller* rule retroactively risks subjecting defendants to a legally invalid

[6] Our holding is in accord with several other jurisdictions that have addressed this question. *See, e.g., People v. Williams*, 982 N.E.2d 131, 196–97 (Ill. App. Ct. 2012); *State v. Ragland*, 836 N.W.2d 107, 116 (Iowa 2013); *Diatchenko v. Dist. Attorney for Suffolk Dist.*, 1 N.E.3d 270, 281 (Mass. 2013); *Jones v. State*, 122 So.3d 698, 702 (Miss. 2013); see also Erwin Chemerinsky, *Chemerinsky: Juvenile Life-Without-Parole Case Means Courts Must Look at Mandatory Sentences*, A.B.A. J. Law Daily (Aug. 8, 2012, 8:30 AM), http://www.abajournal.com/news/article/chemerinsky_juvenile_life-without-parole_case_means_courts_must_look_at_sent ("[*Miller*] says that it is beyond the authority of the criminal law to impose a mandatory sentence of life without parole. It would be terribly unfair to have individuals imprisoned for life without any chance of parole based on the accident of the timing of the trial.").

[7] We fail that the dissent is conflating the retroactivity analysis and the applicability analysis. A particular jurisdiction's statutory framework has no bearing on the threshold determination of whether *Miller* applies retroactively. A new rule announced by the Supreme Court is not amorphous; it is either a substantive rule of law that applies retroactively, or it is not.

punishment. Moreover, while not in itself determinative, we find support for our conclusion in the Court's decision to apply the rule announced in *Miller* to the companion case *Jackson v. Hobbs*, 378 S.W.3d 103 (2011). Although *Miller* was on direct appeal, *Jackson* involved a petition for habeas corpus after the affirmance of the defendant's convictions. That case was therefore final and was before the Court on collateral review. As noted by the Iowa Supreme Court, "There would have been no reason for the Court to direct such an outcome if it did not view the *Miller* rule as applying retroactively to cases on collateral review." *Ragland*, 836 N.W. 2d at 116.

II. SCOPE OF *MILLER*'S HOLDING

A. Applicability of *Miller* to the petitioners

Having concluded the rule in *Miller* applies retroactively, we now turn to whether it extends to the petitioners, who were sentenced to life without parole under a nonmandatory statutory scheme.

In analyzing the precedent relevant to the constitutional question before it, the Court in *Miller* noted that *Roper* and *Graham* established that children were constitutionally different from adults for sentencing purposes, a conclusion that was based on common sense as well as science and social science. 132 S. Ct. at 2464. "*Roper* and *Graham*

emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." Id. at 2465. Specifically, the Court noted juveniles differ from adults in their general "lack of maturity and [] underdeveloped sense of responsibility," "vulnerab[ility] . . . to negative influences and outside pressures, including family and peers," and still evolving character and personality traits. *Id.* at 2464 (ellipsis in original) (quoting Roper, 543 U.S. at 569–70). Important to our determination of the breadth of the *Miller* decision is this statement by the majority: "*Graham*'s reasoning implicates any life without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses." *Id.* at 2465.

Thus, the *Miller* Court unequivocally held that youth has a constitutional dimension when determining the appropriateness of a lifetime of incarceration with no possibility of parole, and that the mandatory penalty schemes at issue prevented the sentencing authority from considering the differences between adult and juvenile offenders before imposing a sentence of life without parole. Focusing on *Graham*'s treatment of juvenile life sentences as analogous to capital punishment, the majority held that *Woodson* and its progeny required an individualized sentencing proceeding before imposing a sentence of life without parole on a juvenile offender. *Id.* at 2467.

We recognize that in holding the Eighth Amendment proscribes a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders, the Court did not expressly extend its ruling to states such as South Carolina whose sentencing scheme *permits* a life without parole sentence to be imposed on a juvenile offender but does not *mandate* it. Indeed, the Court noted that because its holding was sufficient to decide the cases before it, consideration of the defendants' alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles was unnecessary. *Id.* at 2469. However, we must give effect to the proportionality rationale integral to *Miller*'s holding—youth has constitutional significance. As such, it must be afforded adequate weight in sentencing.

Thus, we profoundly disagree with the position advanced by the respondents and the dissent that the import of the *Miller* decision has no application in South Carolina. *Miller* is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution. Contrary to the dissent's interpretation, *Miller* does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered.

As evidenced by the record, although some of the hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by *Miller* where the factors of youth are carefully and thoughtfully considered.[8] Many of the attorneys mention age as nothing more than a chronological fact in a vague plea for mercy. *Miller* holds the Constitution requires more. As the majority states succinctly, "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those

[8] The dissent's discussion of the individual sentencing hearings—in particular its recitation of Angelo Ham's—does not dissuade us of the accuracy of this statement. Instead it highlights the distinction between its reading of *Miller* and ours—we recognize and give credence to the decision's command that courts afford youth and its attendant characteristics constitutional meaning. The dissent would simply continue to treat the characteristics of youth as any other fact.

We are likewise unfazed by the dissent's criticism that we have failed to pinpoint an abuse of discretion; that admonition appears to arise from a fundamental misunderstanding of our holding. We have determined that the sentencing hearings in these cases suffer from a constitutional defect—the failure to examine the youth of the offender through the lens mandated by *Miller*. We decline to denominate the error an abuse of discretion because the sentencing courts in these instances did not have the benefit of *Miller* to shape their inquiries. Those courts will have the opportunity on resentencing to exercise their discretion within the proper framework as outlined by the United States Supreme Court.

differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* We believe this statement deserves universal application. The absence of this level of inquiry into the characteristics of youth produced a facially unconstitutional sentence for these petitioners. In our view, whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment. The petitioners and those similarly situated are accordingly entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight.

B. Appropriate Procedure

We turn finally to the scope of the resentencing hearings that we order today. *Miller* requires the sentencing authority "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 132 S. Ct. at 2469. Consequently, *Miller* establishes a specific framework, articulating that the factors a sentencing court consider at a hearing must include: (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to

appreciate the risks and consequence"; (2) the "family and home environment" that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation." 132 S. Ct. at 2468.

While we do not go so far as some commentators who suggest that the sentencing of a juvenile offender subject to a life without parole sentence should mirror the penalty phase of a capital case,[9] we are mindful that the *Miller* Court specifically linked the individualized sentencing requirements of capital sentencing to juvenile life without parole sentences. 132 S. Ct. at 2463, 2467–68. Thus, the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above.

Without question, the judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating

[9] See Chemerinsky, *supra* note 6.

circumstances. Our General Assembly has made the decision that juvenile offenders may be sentenced to life without parole, and we honor that decision. However, *Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.[10]

CONCLUSION

We hold the principles enunciated in *Miller v. Alabama* apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole. Accordingly, any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.

---

[10] We decline the dissent's invitation to set out a specific process for trial court judges to follow when considering whether to sentence a juvenile to life without parole. The United States Supreme Court did not establish a definite resentencing procedure and we likewise see no reason to do so. We have the utmost confidence in our trial judges to weigh the factors discussed herein and to sentence juveniles in light of this new constitutional jurisprudence.

BEATTY, J., concurs. PLEICONES, J., concurring in a separate opinion. TOAL, C.J., dissenting in a separate opinion in which KITTREDGE, J., concurs.

JUSTICE PLEICONES: I agree with the majority that petitioners and those similarly situated should be allowed to seek resentencing in a proceeding that complies with the standards announced in *Miller v. Alabama*, 132 S.Ct. 2455 (2012). While I agree with the dissent that *Miller* does not require that we grant relief to juveniles who received discretionary life without the possibility of parole (LWOP) sentences, and that the majority exceeds the scope of current Eighth Amendment jurisprudence in ordering relief under *Miller*, I would reach the same result under S.C. Const. art. I, §15.

For the reasons given above, I concur in the result reached by the majority to allow persons sentenced as juveniles to LWOP to be resentenced upon their timely request.

CHIEF JUSTICE TOAL: I respectfully dissent. I would find the petitioners are not entitled to resentencing pursuant to *Miller v. Alabama*, 132 S. Ct. 2455 (2012), because the *Miller* decision is retroactive only with respect to juveniles sentenced to mandatory life without parole (LWOP), and

which Robinson murdered the victim (Victim), an elderly store manager.[13]

The day before the murder, Robinson shot his live-in girlfriend, and the police issued an arrest warrant for Robinson for assault and battery with intent to kill. Needing money so that he could leave town and avoid arrest, Robinson approached Petitioner Ham and Hunter and asked them to help him plan a robbery. Petitioner Ham maintained that he participated in the planning and execution of the robbery under duress, claiming that Robinson threatened to kill him if he refused to help. However, others testified at the sentencing hearing that Petitioner Ham was the "leader of this pack" because Petitioner Ham was the one who knew Victim prior to the robbery, and because Petitioner Ham was aware of Victim's habit of working late at the store by himself, thus making Victim a more accessible target.

Under the influence of marijuana and cocaine, the defendants drove to Victim's store after the store had closed for the night. Hunter stayed in the car, while Petitioner Ham and Robinson approached the

[13] At the time of the crime, Petitioner Ham was fifteen years old, Hunter was seventeen years old, and Robinson was nineteen years old. Neither Hunter nor Robinson is a petitioner here because the court did not sentence Hunter to LWOP, and because Robinson was an adult when he committed the crimes and is thus unaffected by *Miller*'s holding.

store. Petitioner Ham convinced Victim to open the door, and he and Robinson rushed past Victim into the store. The defendants were aware that Victim kept a gun at the store, and Robinson therefore immediately shot Victim ten times.[14]

The police arrested the defendants soon after the robbery and murder. Hunter immediately gave a videotaped statement to the police, and strongly and consistently indicated his willingness to testify against both of his co-defendants. Based on Hunter's testimony, the State noticed Robinson with its intent to seek the death penalty against him.[15]

Petitioner Ham and Hunter pled guilty to robbery and murder. In a joint sentencing hearing, the Solicitor and Victim's family recounted Victim's community service and moral characteristics, such

[14] Victim's body exhibited defensive wounds, indicating that he did not die immediately.

[15] Petitioner Ham likewise agreed to give a videotaped statement admitting his guilt in the robbery and murder; however, he was more apprehensive about testifying against Robinson because the two were incarcerated in the same facility, and he was concerned that Robinson would retaliate against him if he chose to testify. Ultimately, Robinson entered a guilty plea in exchange for receiving a LWOP sentence. After Robinson pled guilty, Petitioner Ham stated that he would have testified against Robinson had the matter gone to trial.

as his generosity to his employees and the community as a whole.

In mitigation, Petitioner Ham's and Hunter's attorneys painted a colorful picture of the boys' pasts. First and foremost, the attorneys cited the boys' youth, specifically noting that their youth made them ineligible for the death penalty because they lacked the judgment of an adult and could not reason or make "correct decisions" like an adult could.

Petitioner Ham's attorney stated that prior to being "waived up" to circuit court, a doctor evaluated Petitioner Ham and recommended that he remain in the juvenile system to face these charges, a recommendation which the court ultimately disregarded. The doctor noted that Petitioner Ham had a "borderline" I.Q. score and a third grade reading comprehension level.[16] Notes from Petitioner Ham's school file indicated that Petitioner Ham was "easily influenced by others" and succumbed readily to peer pressure. Moreover, the testimony revealed that Petitioner Ham had little to no contact with his father while he was growing up, that he had an older brother who was currently in jail, and that he

[16] The court later spoke to Petitioner Ham and found that, to the extent he suffered from a limited I.Q., he was nonetheless fully able to rationalize, think, and communicate.

was "in and out" of the Department of Juvenile Justice throughout his youth. Finally, Petitioner Ham's attorney stated that his stepfather abused him, and that Petitioner Ham witnessed numerous acts of domestic violence between his mother and stepfather.

Hunter's background was similar, revealing that his grandmother and grandfather raised Hunter and his four younger siblings. While living with his grandparents, Hunter performed well in school and avoided trouble. However, when Hunter was fourteen, Hunter's grandfather died, Hunter's performance in school declined sharply, and Hunter began "hanging out with the wrong crowd." Ultimately, Hunter dropped out of school in ninth grade. Although Hunter eventually wished to return to school, the school refused to readmit him because of his numerous behavioral problems. At age fifteen, Hunter began breaking the law, "and it was just downhill at that point." Hunter's grandmother, mother, and sister all remained involved in his life and supported him throughout the court proceedings.

After hearing all of the relevant testimony, the court acknowledged that punishing Petitioner Ham and Hunter would not restore Victim's life or the lives of his family members, who were distraught throughout the proceedings. The court differentiated between Hunter—who remained in the car throughout the robbery and murder and thus had no

have no remorse and you have no acceptance of the responsibility in connection with this matter.

. . .

I . . . find that . . . you have simply refused to accept and acknowledge any responsibility in here and—today and give me any hope that there is any reason to believe that you can be rehabilitated.

The court then sentenced Petitioner Ham to LWOP for Victim's murder; however, the court found that Hunter's situation was "different." The court stated that Hunter showed "some semblance that you can live long enough and/or remorseful enough that you should get the opportunity to live in society again at an advanced age." Therefore, the court sentenced Hunter to forty years for Victim's murder.

In considering Petitioner Ham's sentencing hearing, I cannot see how the sentencing court abused its discretion. Rather, I applaud the sentencing court in conducting such a thorough hearing, one in which it already considered each of the five *Miller* factors. Accordingly, it strikes me as

absurd that the majority orders resentencing for all petitioners without considering the adequacy of the original hearings.[17]

Further, and more egregiously, the majority fails to give adequate instructions to the resentencing courts regarding how to conduct the resentencing hearings. As demonstrated, supra, at least some of the original sentencing hearings were entirely compliant with *Miller*. For those cases, the majority does not provide any further direction to the resentencing courts regarding how to conduct a new hearing, nor identifies any facts that the courts should consider on remand that were not already considered. Rather, the majority simply directs all of the resentencing courts to give "constitutional meaning" to youth and its attendant characteristics, and to "fully explore the impact of the defendant's juvenility on the sentence rendered." These two directives are unmistakably vague and provide little concrete guidance, thus demonstrating the adequacy of the original hearings. *See Cantrell*, 250 S.C. at

[17] To be sure, unlike Petitioner Ham's sentencing hearing, and given the limited records before us, some of the petitioners' hearings could be viewed as less than exemplary; however, again, we must make such a determination on an individual basis, considering the specific circumstances of each hearing, and determining whether sentencing the petitioner to LWOP in that particular case was an abuse of the sentencing court's discretion.

379, 158 S.E.2d at 191 (stating that a sentencing judge is
presumed to have considered the information presented during the sentencing proceeding before imposing a punishment).[18] While the majority may disagree with the propriety of the petitioners' sentences, the Court is not a fact finder, and must apply the relevant legal principles. It is of no use to say that the sentencing hearings were inadequate, and simultaneously fail to give specific instruction to the resentencing court on how to avoid the same mistake in the future.

In my view, the dangers present in *Miller*—namely, that the sentencing courts were *foreclosed* from considering age as a mitigating factor based on the imposition of mandatory LWOP—were simply not present in the petitioners' cases. Specifically, when a juvenile is sentenced to LWOP by way of a discretionary sentencing scheme, the unifying principle from *Roper*, *Graham*, and *Miller*—that children, for purposes of imposing the most serious punishments, are constitutionally different—is not

[18] For similar reasons, I find the majority's statement that the "absence of this level of inquiry into the characteristics of youth produced a facially unconstitutional sentence" unhelpful to the resentencing courts. (Emphasis added). The majority disavows requiring a sentencing hearing which mirrors the penalty phase of a capital case, but to the extent Petitioner Ham's hearing does not comply with *Miller*, I am at a loss as to what—besides a penalty-phase-like hearing—would suffice

violated. *See Miller*, 132 S. Ct. at 2466–68, 2474–75 ("Such mandatory penalties, by their nature, preclude a sentence from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it").

Thus, I would ultimately find *Miller* does not apply retroactively to discretionary LWOP sentences, and certainly does not entitle each and every petitioner to resentencing. The petitioners each received a discretionary sentence, which *Miller* explicitly permits. *See Miller*, 132 S. Ct. at 2469.

CONCLUSION

For the foregoing reasons, I would find the rule announced in *Miller* does not apply retroactively to the petitioners herein, or any other similarly situated defendants who collaterally attack their convictions. Therefore, I would deny petitioners' requests for resentencing.

KITTREDGE, J., concurs.

The Supreme Court of South Carolina

Tyrone Aiken, Matthew Clark, Eric Graham, Bradford M. Haigler, Angelo Ham, J'Corey S. Hull-Kilgore, Damian Inman, Rogert Legette, Terriel Mack, Jennifer L. McSharry, Wallace Priester, Davon Reed, Dondre M. Scott, Edgar L. Thomas, James Van, et al., Petitioners,

v.

William R. Byars, Jr., Director, South Carolina Department of Corrections, and Alan Wilson, Attorney General of South Carolina, Respondents

Appellate Case No. 2012-213286

ORDER

Respondents filed a motion seeking a stay of this Court's opinion pending review by the United States Supreme Court. By order dated December 3, 2014, the opinion was temporarily stayed pending the filing of any returns and reply and a ruling on the motion to stay. We hereby lift the temporary stay and grant the motion to stay.

s/ Jean H. Toal ..... C.J.

s/ Costa M. Pleicones ..... J.

s/ Donald W. Beatty ..... J.

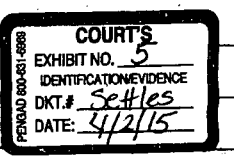
s/ John W. Kittredge ..... J.

s/ Kaye G. Hearn ..... J.

Columbia, South Carolina
December 17, 2014

cc:
John H. Blume, III, Esquire
Eric M. Weyble, Esquire
Elizabeth Anne Franklin-Best, Esquire
Joshua A. Bailey, Esquire
Diana L. Holt, Esquire
Robert Michael Dudek, Esquire
Ernest Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Sheri L. Johnson, Esquire
John Benjamin Aplin, Esquire
Donald J. Zelenka, Esquire
Christopher D. Scalzo, Esquire
Joseph M. McCullough, Jr., Esquire
Abby C. Johnston, Esquire
Abby F. Rudzin, Esquire
John S. Nichols, Esquire

ONE JUROR WOULD LIKE CLARIFICATION, BY THE JUDGE, THAT ALL INDIVIDUALS INVOLVED IN THIS PARTICULAR CASE ARE CHARGED WITH MURDER AND IN PARTICULAR THE WEAPONS CHARGE.



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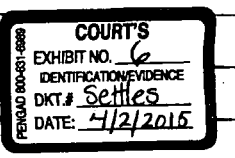

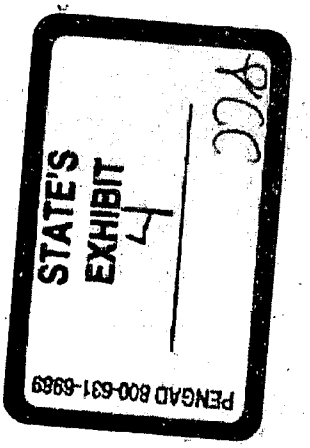

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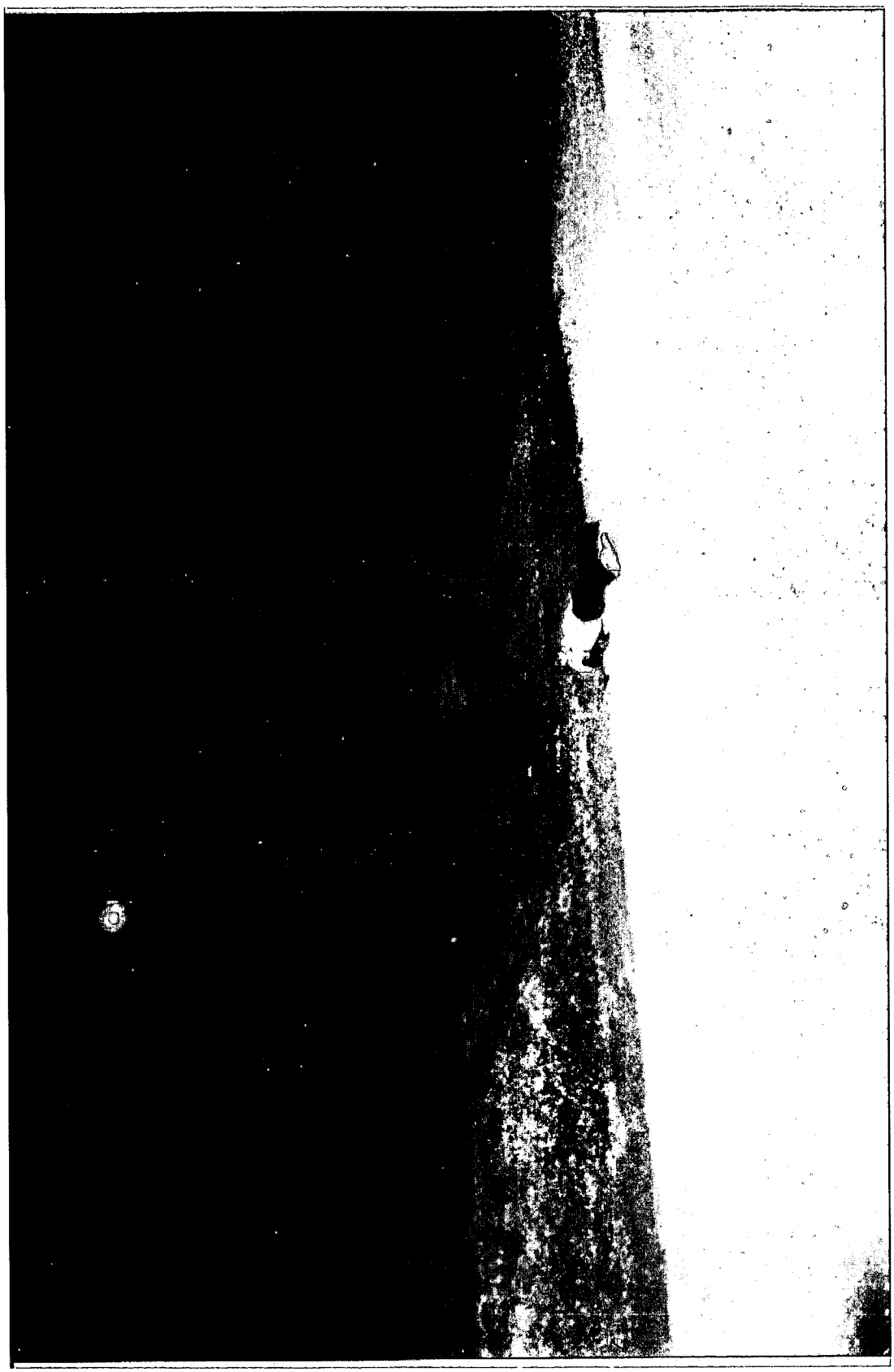


ADULT WAIVER OF RIGHTS

I, Tavirous Settles, am 17 years old.
My address is Stanley Ave Apt 7.
I have finished the 11th grade in school and can/cannot read. I have been told by Detective Collins, who I understand is a Police Officer, that he/she would like to question me concerning the crime of murder.

T.D.S 1. I have the right to remain silent. That means I do not have to say anything or answer any questions.

T.D.S 2. Anything I say can be used against me.

T.D.S 3. I have the right to talk to a lawyer and to have a lawyer here with me now to advise and help me during questioning.

T.D.S 4. If I want to have a lawyer with me during questioning but cannot afford to pay a lawyer, one will be provided to me at no cost before I am questioned.

T.D.S 5. If I decide to answer questions now, without a lawyer here, I still have the right to stop answering questions whenever I want to.

T.D.S 6. I also have the right to stop answering questions until I have talked to a lawyer.

I understand my rights as explained by Officer Collins. I now state that I DO wish to answer questions at this time and that I do NOT wish to have a lawyer here during questioning.

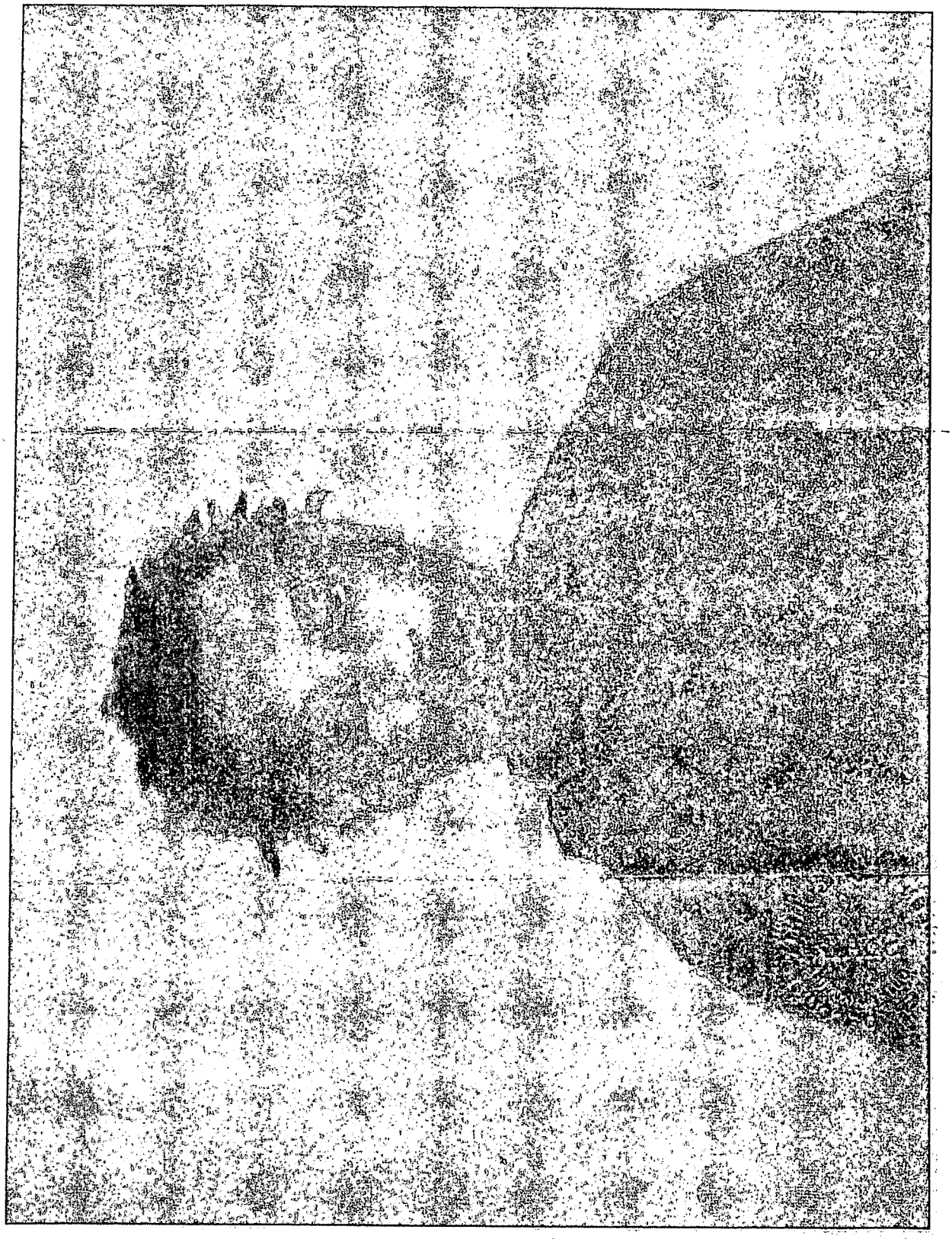
My decision to answer questions now, without a lawyer, is made freely and is my own choice. No one has threatened me in any way or promised me special treatment. To show my decision, I am signing my name in the space below.

SIGNED: Tavirous Settles DATE: 6-13-2013

(WITNESS) (WITNESS)

[redacted]

ATTESTA TRUE COPY
ANGELA WOODHURST
COUNTY CLERK
GREENWOOD COUNTY



WITNESSES

Nicholas Futch

Greenwood Police Department

WARRANT NUMBER

2013A2420100677

True Bill

Foreman of the Grand Jury

Date 9/27/13

VERDICT

Foreman

TEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

September Term, 2013

Indictment # 13GS24- 1538

THE STATE

vs.

Tavarious DeQuan Settles

INDICTMENT FOR

MURDER
16-03-0010

CDR: 0116

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

MURDER
16-03-0010

At a Court of General Sessions, convened on the 27th day of September, 2013, the Grand Jurors of Greenwood County present upon their oath:

That Tavarious DeQuan Settles did, in Greenwood County, on or about May 30, 2013 willfully, feloniously, and with malice aforethought kill one Prudencio Chiquin Sis by means of shooting and that the said Prudencio Sis did die in Greenwood County as a proximate result thereof on or about May 30, 2013, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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

Assistant Solicitor

WITNESSES

Nicholas Futch

Greenwood Police Department

WARRANT NUMBER

2013A2420100678

True Bill

Foreman of the Grand Jury

Date: 9/27/13

VERDICT

Foreman

ATTEST A TRUE COPY
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

September Term, 2013

Indictment # 13GS24- 1539

THE STATE

vs.

Tavarious DeQuan Settles

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A CRIME
16-23-0490

CDR: 0549

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A CRIME
16-23-0490

At a Court of General Sessions, convened on the 27th day of September, 2013, the Grand Jurors of Greenwood County present upon their oath:

That Tavarious DeQuan Settles did, in Greenwood County, on or about June 30, 2013 possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

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

Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Greenwood
STATE VS.
Tavarious DeQuan Settles

AKA:

Race: AFRICAN AMESex: M Age: 18

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City,State,Zip: Greenwood, SC

DL#: 102744027 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 13GS24-1539

A/W#: 2013A2420100678

Date of Offense: 6/30/2013

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

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

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life witho

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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

MWD

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [signature] 71182

White, Elizabeth SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 (five) ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment

of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference. Concurrent

~~CONCURRENT~~ or ☒ ~~CONSECUTIVE~~ to sentence on: 13-GS-24-1538

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections. Credit for time served since June 13, 2013.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.50
TOTAL		$ 133.50

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E begining _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____

$ _____ paid to Public Defender Fund

Other: _____

FILED GENERAL SESSIONS
8th JUDICIAL CIRCUIT
GREENWOOD, SC
2015 APR -2 PM 5:06

ATTEST A TRUE COPY
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

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

Clerk of Court/ Deputy Clerk [signature]

Court Reporter: Tara Scott

Presiding Judge [signature]

Judge Code: 2155

Sentence Date: 4/2/2015

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Greenwood)
STATE VS.)
Tavarious DeQuan Settles)
AKA:)
Race: AFRICAN AME Sex: M Age: 18)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Greenwood, SC)
DL#: 102744027 SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 13GS24-1538
A/W#: 2013A2420100677
Date of Offense: 5/30/2013
S.C. Code § : 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

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

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

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

ATTEST: [signature] 71182
White, Elizabeth SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 45 (forty-five) ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. Concurrent
☐ ~~CONCURRENT~~ or ☑ ~~CONSECUTIVE~~ to sentence on: 13-GS-24-1539
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit for time served since June 13, 2013
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.00
TOTAL		$ 133.00

Clerk of Court/ Deputy Clerk: Lisa R. Wells
Court Reporter: Tonia Scott

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

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

Presiding Judge [signature]
Judge Code: 2159
Sentence Date: 4/2/2015

FILED GENERAL SESSIONS 8th JUDICIAL CIRCUIT GREENWOOD, SC 2015 APR -2 PM 5:06

ATTEST A TRUE COPY
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

SCCA/217 (03/2011)

RECEIVED
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy Jr., Circuit Court Judge

Case Nos. 13-GS-24-1538 and -1539

The State, Respondent,

v.

Tavarious Settles, Appellant.

NOTICE OF APPEAL

Tavarious Settles appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Frank R. Addy Jr. on April 2, 2015. This appeal is taken from the order of the Honorable Frank R. Addy Jr., dated April 21, 2015, which denied Appellant's post-trial motion. Appellant received written notice of entry of this order on April 21, 2015.

Robert J. Tinsley Sr.
212 Oak Ave.
Greenwood, SC 29646
(864)223-0770
Attorney for Appellant
S.C. Bar No. 5581

Other Counsel of Record:
David Matthew Stumbo
Eighth Circuit Solicitor
PO Box 516
Greenwood, SC 29648

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	
	)	
State of South Carolina,	)	Indictments #2013-GS-24-1538; -1539
	)	
-vs-	)	**Motion for Reduction of Sentence for "Substantial**
	)	**Assistance" Pursuant to S.C. Code Section 17-25-65**
	)	
Tavarious DeQuan Settles,	)	
	)	
Defendant.	)	

FILED
2015 SEP 10 AM 9:59

PLEASE TAKE NOTICE that the undersigned Solicitor for the 8th Judicial Circuit will move before this Honorable Court on September 18, 2015 for a reduction in the sentence for Defendant Tavarious Dequan Settles pursuant to S.C. Code Section 17-25-65 for "substantial assistance rendered to the State" within one year of his sentence.

Defendant Settles was tried in the Greenwood County Court of General Sessions during the term of March 30, 2015 on indictments for Murder and Possession of a Firearm during the Commission of a Violent Crime. He was convicted as charged on April 2, 2015 by the jury on both counts, and was sentenced by the Honorable Frank Addy, Jr. to forty-five (45) years in prison for murder, and a concurrent five (5) year sentence on the weapon charge.

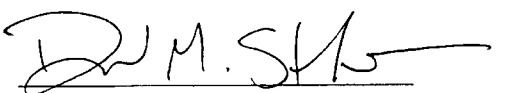
Defendant Settles was also charged with Murder (2014-GS-01-214) on an unrelated case out of Abbeville County. His co-Defendant in the Abbeville murder was an individual by the name of Karlita Desean Phillips. Karlita Phillips was tried on indictments of (1) Accessory Before the Fact of Murder and (2) Solicitation of a Minor to Commit a Crime during the week of July 20, 2015 in Abbeville County. During the trial of Ms. Phillips, Defendant Settles changed his position and offered testimony regarding this incident before the State closed its case-in-chief. In his testimony, Settles admitted to being the triggerman in the murder of Jamil Phillips. Settles also testified to new

details concerning how Karlita Phillips asked him to kill her husband (Dale Phillips, Jr. the deceased's brother), and that she drove him to the scene of the crime at the Phillips' house in Abbeville County. Settles offered this testimony of his own free will and accord, with no promises, negotiations, or plea offers from the State in exchange for his testimony.

After consultation of all parties involved, it is the State's position that Defendant Settles' testimony in the Karlita Phillips trial qualifies as "substantial assistance to the State" under section 17-25-65, as it applies to the prosecution of another person. Accordingly, the State moves for a reduction in Settles' sentence from forty-five (45) years down to forty (40) years incarceration as to indictment 2013-GS-24-1538. As part of the negotiations, the State respectfully requests that the Court run the Greenwood sentence concurrently with the negotiated forty (40) year sentence on Defendant's guilty plea to Murder on the Abbeville County charge being entered in court today.

IT IS SO MOVED.

Respectfully Submitted,



David M. Stumbo
Solicitor, 8th Judicial Circuit

September 18, 2015
Greenwood, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	
	)	
State of South Carolina,	)	Indictments #2013-GS-24-1538; -1539
	)	
-vs-	)	
	)	**ORDER FOR SENTENCE REDUCTION**
	)	
Tavarious DeQuan Settles,	)	
	)	
Defendant.	)	

FILED
2015 SEP 18 PM 2:10

The State moved before this Court on September 18, 2015 for a reduction in the sentence for Defendant Tavarious DeQuan Settles pursuant to S.C. Code Section 17-25-65 for "substantial assistance rendered to the State" within one year of his sentence. The State's motion was made in conjunction with a guilty plea on a murder charge for Defendant Settles out of Abbeville County at a hearing at the Greenwood County Courthouse on September 19, 2015. The State was represented by 8th Circuit Solicitor David M. Stumbo. The Defendant was represented by his attorneys Robert J. Tinsley, Sr., Esq. and Joshua Nasrollahi, Esq.

Defendant Settles was tried in the Greenwood County Court of General Sessions during the term of March 30, 2015 on indictments for Murder and Possession of a Firearm during the Commission of a Violent Crime. He was convicted as charged on April 2, 2015 by the jury on both counts, and was sentenced by this Court to forty-five (45) years in prison for murder, and a concurrent five (5) year sentence on the weapon charge.

Defendant Settles was also charged with Murder (2014-GS-01-214) on an unrelated case out of Abbeville County before this Court. Settles' co-defendant in the Abbeville murder was an individual by the name of Karlita Phillips. Karlita Phillips was tried on indictments of Accessory Before the Fact of Murder (2014-GS-01-213) and Solicitation of a Minor to Commit a Crime (2014-

GS-01-212) during the week of July 20, 2015 in Abbeville County. During the trial of Ms. Phillips, Defendant Settles changed his position and offered testimony regarding this incident before the State closed its case-in-chief. In his testimony, Settles admitted to being the triggerman in the murder of Jamil Phillips. Settles also testified to new details concerning how Karlita Phillips asked him to kill her husband (Dale Phillips, Jr. the deceased's brother), and that she drove him to the scene of the crime at the Phillips' house in Abbeville County. This Court finds that Settles offered this testimony of his own free will and accord, with no promises, negotiations, or plea offers from the State in exchange for his testimony.

This Court agrees with the State that Defendant Settles' testimony in State v. Karlita Phillips trial qualifies as "substantial assistance to the State" under S.C. Code Section 17-25-65, as it applies to the prosecution of another person. Therefore, this Court orders a reduction in Defendant Settles' sentence from forty-five (45) years down to forty (40) years incarceration as to his Greenwood County murder conviction (2013-GS-24-1538). As part of the negotiations between the parties, this Court also orders this sentence reduction will run concurrently with the negotiated forty (40) year sentence on Defendant's sentence on the Abbeville County murder conviction (2014-GS-01-214).

IT IS SO ORDERED.

Frank R. Addy, Jr.
Chief Administrative Judge
8th Judicial Circuit

September 18, 2015
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
)
-VS-)
TAVARIOUS DEQUAN SETTLES,)
DEFENDANT.)
)

2013-GS -24-1538, -1539
2014-GS-01-214
TRANSCRIPT OF RECORD

SEPTEMBER 18, 2015
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., JUDGE

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

ATTORNEY FOR PLAINTIFF:
DAVID STUMBO, SOLICITOR

ATTORNEYS FOR DEFENDANT:
JOSH NASROLLAHI, ESQUIRE
ROBERT TINSLEY, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEX

WITNESS	PAGE NO.
HEARING	3
CERTIFICATE OF REPORTER	23

(NO EXHIBITS WERE ADMITTED DURING THIS HEARING)

MR. STUMBO: Judge, for the record I know we're waiting on Mr. Tinsley, but we can go ahead and put on the record the caption of the case. Today we're here to essentially deal with two matters, Your Honor. Before you is Tavarious Dequan Settles with his attorneys, Mr. Josh Nasrollahi and Mr. Robert Tinsley, both of the Greenwood County Bar. Mr. Settles is here today to plead guilty to murder on a charge of murder out of Abbeville County, 2014-GS-01-214 is the indictment number. Judge, this is for the murder of one Jameel Phillips. I know Your Honor is very familiar with this case because we tried the co-defendant, Ms. Karlita Phillips back in July over in Abbeville. Mr. Settles ended up being a witness for the State in that trial.

Your Honor, I do have the indictment and sentencing sheet on the Abbeville charge. I also will be passing up to Your Honor a motion based on code section 17-25-65. That is the state statute that deals with sentence reductions. The motion essentially is part of the negotiations today to reduce the 45 year sentence on indictment 2013-GS-24-1538. That was, as Your Honor is familiar with, a case you tried in Greenwood. Mr. Settles murdered a Guatemalan individual down in -- not too far from the courthouse here, and Your Honor sentenced him to 45 years. Also, I'm passing up the State's motion in a proposed order for Your Honor in regards to the sentence reduction and what this plea we'll do here

today is essentially wrap this up into a 40 year resolution to this case. If I may approach, Your Honor.

MR. NASROLLAHI: Judge, Mr. Tinsley and I have both received copies of the motion. We have reviewed the motion and we've also reviewed the proposed order. If Your Honor is inclined to accept the negotiations this morning we have no issue that I'm aware of with regard to the proposed order.

THE COURT: Mr. Nasrollahi, I think that you are representing Mr. Settles on the Abbeville case that we're addressing by plea today. You have explained to Mr. Settles that, of course, the offense of murder carries a minimum of 30 years and a maximum of life?

MR. NASROLLAHI: Yes, Your Honor.

THE COURT: You've also gone over with him the collateral consequences of this plea, mainly that it's classified as a most serious offense, violent offense, and things of that nature?

MR. NASROLLAHI: Yes, Your Honor.

THE COURT: The 40 years would have to be served day for day. Is that your understanding?

MR. NASROLLAHI: Yes, Your Honor. We are also waiving venue as this is an Abbeville case.

THE COURT: Correct. You have then reviewed with Mr. Settles all the penalties, ramifications, and the other

consequences of this plea; is that correct?

MR. NASROLLAHI: Yes, Your Honor. Because of Miller vs. Alabama and the Byers case also we discussed potential sentences and mitigating and aggravating factors at length in the course of representation.

THE COURT: A 40 year sentence concurrent with the Greenwood charges is what has been negotiated; correct?

MR. NASROLLAHI: Yes, Your Honor.

THE COURT: Based upon your investigation of the facts and circumstances surrounding this Abbeville charge, do you believe that the State possesses sufficient credible evidence to prove Mr. Settles' guilt beyond a reasonable doubt and that if he were to stand trial his conviction would be likely?

MR. NASROLLAHI: Yes, Your Honor.

TAVARIOUS SETTLES, having first been duly sworn to tell the truth, testified as follows:

EXAMINATION BY THE COURT

Q Sir, are you Tavarious Dequan Settles?

A Yes, sir.

Q Mr. Settles, they tell me you want to plead guilty to the murder case arising out of Abbeville County. Is that correct?

A Yes, sir.

Q Obviously I was present at the time that you testified

during the trial, so I'm already familiar with the background and the facts, and the assistance that you gave to the State on Wednesday or Thursday when that case was tried. You do understand, of course, that murder carries a minimum of 30 years and a maximum of life. Do you understand that, sir?

A Yes, sir.

Q In this case, Mr. Settles, apparently you, your attorney, and the State have negotiated a 40 year sentence which would run concurrent with a 40 year sentence on a charge out of Greenwood that involved Mr. Seace. Is that your understanding?

A Yes, sir.

Q Do you understand that that 40 year sentence would have to be served day for day. Do you understand that?

A Yes, sir.

Q It's also, of course, classified as a most serious offense and a violent offense. A most serious offense, Mr. Settles, means that once you get finished serving this 40 year sentence if you were convicted subsequently for another most serious offense the State would seek life without the possibility of parole against you. Do you understand that, sir?

A Yes, sir.

Q I mentioned this, but this has to be served day for

day. Do you understand that, sir?
A Yes, sir.
Q Mr. Settles, because this is a negotiated sentence, if I accept your plea I have to impose a sentence of 40 years on this and a 40 year sentence on the Greenwood charge. Do you understand that, sir? I cannot go below 40 years.
A Oh, yes, sir.
Q So if I accept your plea today I have to give you 40 years on this charge as well as the Greenwood charge concurrent. Do you understand, sir?
A Yes, sir.
Q Mr. Settles, in the last twenty-four hours have you taken any medication, drugs, or alcohol that affects your thinking now?
A No.
Q Have you ever been treated for any mental illness issues or problems understanding what is taking place, or were you in special education when you were in school?
A No.
Q Mr. Settles, are you, in fact, guilty of these particular charges, sir?
A Yes, sir.
Q I'm very familiar with the facts, but for the benefit of the record and for your benefit I'm going to ask the Solicitor to give me the facts in the Abbeville charge.

Then I will ask you if you agree that's what you did. Go ahead, Solicitor.

MR. STUMBO: Thank you, Judge. I'll try to keep it brief, but just to make a record. This incident did occur March 25, 2013. It occurred at 1522 Old Douglas Mill Road in Abbeville County. That's between Abbeville and Hodges, not too far from the Greenwood County line, but it is in Abbeville County. Obviously, we do waive venue here today for the purpose of this plea in Greenwood. Judge, the victim in this case is Jameel Phillips. The intended target of this murder was Dale Phillips, Jr., Judge, who is standing here behind me. I know Your Honor heard from him during the Karlita Phillips trial at sentencing. Dale Phillips, Jr. was married to Karlita Phillips. They were separated. There was a contentious separation. Karlita Phillips moved to Greenwood and Dale Phillips moved in with his parents, Mr. Dale Phillips, Sr. and Martha Phillips who are here to my left. Also living at the home was his brother, who was the victim in this case, Jameel Phillips.

The night of March 25th Jameel comes home from work, starts to go into the door, and he is shot and killed by Mr. Settles. Judge, this case was not solved in Abbeville for about nine months. He was able to get away. There was a link back to Ms. Karlita Phillips because of the relationship and the silver car that was seen by neighbors

in an adjacent driveway. Ultimately Ms. Phillips was a suspect from the beginning of this case. Through witnesses and further investigation, law enforcement developed Mr. Settles as a suspect and ultimately, Your Honor, Tavarious Settles' DNA was found on four cigarette butts there at the house and that was linked up by SLED later via lab testing on the DNA. Of course the Greenwood charge that Mr. Settles later caught was what provided the DNA that helped solve the Abbeville case even though the Abbeville murder of Jameel Phillips happened before this one in Greenwood.

Those are the facts of the case, Your Honor. Mr. Settles ultimately did testify. He was tried in Greenwood for the murder of Mr. Seace. He indicated at the beginning of the Karlita Phillips trial that he was not going to testify, but ultimately changed his mind. He was not given any kind of offer or promises on sentences at the time he testified -- before the time he testified in the Karlita Phillips trial. Ms. Phillips was ultimately convicted, as Your Honor knows.

We have been in discussion with the family since then. In fact, I've had the pleasure of seeing Mr. Dale Phillips, Sr. at different events in the community. He came by my office and we just had a good chat one day. The family, I think, is at peace going forward with this 40 year offer today. Obviously, they're heartbroken. I don't think any

of them want to speak today. Just speaking on their behalf, Your Honor, they're glad to get some closure today where they don't have to keep coming back to court on this anymore. We have talked about this and we believe that the 40 year offer, not only on the Abbeville case, but knocking the five years off of the Greenwood charge. We've discussed that not only with the Phillips family but also with the girlfriend of Mr. Seace who is not here today. My Victim Advocate, Ms. Stroup, spoke with her on the phone even this morning and earlier this week as well. She's not able to come to court, but was in agreement with what we're doing today, Your Honor.

THE COURT: That was going to be my next question whether she agreed and understood the reasons for what is happening.

Q Mr. Settles, you've heard what the State alleges happened in March 2013. Is it true that you murdered Mr. Phillips?

A Yes, sir.

Q So you are guilty of this charge?

A Yes, sir.

THE COURT: Mr. Tinsley, you represented Mr. Settles on the Greenwood charge. Because the sentence reduction on the Greenwood charge is part and parcel to this, did the Solicitor correctly state the negotiations that have been

agreed to with regard to the charge that you tried with Mr. Settles?

MR. TINSLEY: Yes, Your Honor, he did. It's basically his decision and that's the decision that he made. I asked for 30 to 35. He was firm on the 40. The way we read the statute that's pretty much his determination. I am certainly grateful for any reduction that Mr. Settles can get. There's still a couple of co-defendants out there. I will point that out for the Court in this matter. That sums up that answer, Your Honor.

MR. STUMBO: Just to clarify. I think Mr. Tinsley is referring to the Greenwood case. Not any co-defendants left out there on the Abbeville case as it pertains to Mr. Phillips.

THE COURT: I do agree that the way the code section is written it looks like the Solicitor would be the moving party seeking reduction for any assistance provided to the State once the case has been resolved. I think it may very well be an open question as to whether or not it's in the discretion of the Court or the Solicitor as far as how much of a reduction could take place, but quite candidly as I related to everybody in chambers -- quite candidly, this judge would be very hesitant to go below 40 years in any event. Based upon what has transpired concerning Mr. Settles. I just put that on the record because I think it

is a relatively new statute.

MR. TINSLEY: Right, Your Honor, and I'd like to respond to that. I said to Solicitor Stumbo -- I said, "Judge Addy is in the unique position and he is in the business of sentencing. And it would be fine with me to leave it with the discretion of the Court." And I understand your position. So that was part of our discussion. I think Mr. Stumbo will agree with that.

MR. STUMBO: It is, Your Honor. And quite frankly, we trust Your Honor's discretion too. That wasn't part of this. We --

MR. TINSLEY: No. I'm not making any --

MR. STUMBO: We felt that providing some closure and certainty for this family walking in here today was appropriate considering what they have been through.

THE COURT: Certainly. All right. Mr. Settles, I need to briefly review with you rights that you're giving up by pleading guilty on the Abbeville indictment. Again, you've been through a jury trial so you know what it's like. If you don't understand something, stop me and I will let you talk to either Mr. Nasrollahi or Mr. Tinsley as long as you need to. Okay, sir?

A Yes, sir.

Q Obviously, Mr. Settles, we're located here in Greenwood County and you have the right to have this matter heard in

Abbeville County. I can accept your plea today, but you'll have to waive venue and allow it to be heard here in Greenwood. Are you willing to do that, sir?

A Yes, sir.

Q Additionally, you understand, sir, that you don't have to plead guilty. You could have a jury trial on this case just like you had in the Greenwood case. Do you understand that?

A Yes, sir.

Q In a jury trial you and Mr. Nasrollahi would help pick 12 people. They would be the jury and the State would have the burden of proving you guilty beyond a reasonable doubt on the Phillips case just like they had that same burden on the Seace case. Do you understand, sir?

A Yes, sir.

Q All 12 jurors would have to agree on your guilt before you could be punished in any way. You would not have to prove the first thing. They would attempt to do that by calling witnesses against you. You and your attorney would have a chance to see, confront, and cross-examine those witnesses. At trial you could also call your own witnesses even though you have no burden of proof, and you could of course take the stand in your own defense. Do you understand that?

A Yes, sir.

Q If you chose not to take the stand, however, I would instruct the jury that they couldn't hold that against you. They couldn't use that as evidence of guilt. Do you understand that, sir?

A Yes, sir.

Q That's your Fifth Amendment right against self incrimination. By pleading guilty you waive that right in that you admit to me that you did commit this crime. Additionally, at trial you would be presumed innocent of any wrongdoing. I would explain that presumption of innocense to the jury. You would also be able to present any defense you might have or challenge the State's evidence. I have a general feel for the evidence that they've got against you because I tried the Phillip's case and obviously you testified in that case under oath. So I do understand some of the evidence against you and I'm sure you've had a chance to review that evidence with Mr. Nasrollahi. Is that correct?

A Yes, sir.

Q You do understand though that by pleading guilty you waive that right to challenge any of the State's evidence. You also waive your right to present any defense that you have. I understand that you did take the stand and admit to being the shooter in the Phillip's case. You do understand though, Mr. Settles, you could still maintain your innocence

and you could still take this case to trial and present a defense. Do you understand that, sir?

A Yes, sir.

Q If you plead guilty you waive those rights. Are you sure you still want to waive those rights and plead guilty?

A Yes, sir.

THE COURT: Mr. Nasrollahi, are you satisfied with discovery response from the State?

MR. NASROLLAHI: Yes, Your Honor. I've dealt mostly with Mr. Brown and he can attest that there are multiple follow up questions that I have sent to him and he has complied with. There's been a lot of discovery passed back and forth in this case and we are satisfied.

THE COURT: Very good. And you've reviewed that with Mr. Settles?

MR. NASROLLAHI: I have.

THE COURT: To the extent he has needed or wanted?

MR. NASROLLAHI: Yes, Your Honor.

Q Mr. Settles, are you happy with the way Mr. Nasrollahi and Mr. Tinsley have represented you, sir?

A Yes, sir.

Q Any complaints to make against either one of them with regard to these cases?

A No, sir.

Q So they've done everything that you've wanted them to

do?

A Yes.

Q Have you understood all of your conversations with Mr. Nasrollahi?

A Yes.

Q So you're totally happy with his help and Mr. Tinsley's help?

A Yes, sir.

Q Mr. Settles, do you have any complaints to make against your attorneys, the Solicitor, law enforcement personnel, anyone involved in these cases?

A No, sir.

Q Aside from the 40 years and I'm assuming the firearm thing will be dismissed?

MR. STUMBO: That's correct.

Q Aside from the straight sentence of 40 years on both cases has anyone promised you anything else or held out any other hope or reward?

A No, sir.

Q Has anyone tried to force you, coerce you, threaten you in any way to make you plead guilty?

A No, sir.

Q Mr. Settles, are you in fact pleading guilty of your own free will because you did, in fact, commit this crime?

A Yes, sir.
Q Have you understood all of my questions, sir?
A Yes, sir.
Q Is there anything that you need to ask me about anything that we have discussed?
A No, sir.
Q Do you need any more time to talk to your lawyers?
A No.
Q Very good. Are you certain that you want to plead guilty, sir?
A Yes, sir.

THE COURT: Very good. I do find there is a substantial factual basis for this plea. It is freely, voluntarily, knowingly, and intelligently made. Mr. Settles is satisfied with counsel of both Mr. Tinsley and Mr. Nasrollahi. I will accept his pleas. Mr. Nasrollahi?

MR. NASROLLAHI: Thank you, Judge. I will be very brief. This is a very tragic conclusion to this case. It is tragic for three families. Mr. Settles' family, the Phillip's family. The gentleman from Greenwood. But this is the ultimate conclusion. I know Your Honor was there in Abbeville and Your Honor heard the testimony. You heard my client take the stand and testify. He was 17 at the time that this happened. Mr. Tinsley and I have both -- I think we expressed our outrage at the way that this woman, Karlita

Phillips manipulated this young man. He's taking responsibility for his part, for his complicity in what happened in Abbeville. But we and I think the Solicitors Stumbo and Solicitor Brown in addition to Sheriff Watson over in Abbeville -- we all have the main understanding that the person behind this, the person that really pulled that trigger was Karlita Phillips and she is serving a life sentence.

We believe that Mr. Settles' testimony in Abbeville when he came forward and did the right thing and he testified for the State significantly and substantially helped that case. He has done the right thing. He is a young man now and he will be a very old man when he is released from prison and that is tragic. But he has got his family here in support of him. He has expressed remorse to us for what has happened. We just believe that this negotiation is fair and reasonable in light of everything that has happened. We would ask that the Court accept a negotiated sentence.

THE COURT: Thank you. Mr. Tinsley, any additional comments?

MR. TINSLEY: Briefly, Your Honor. I was appointed by you for a few days on the Abbeville case. That's when I met with Sheriff Watson who wanted me to assist him in getting probable cause for a warrant for Ms. Phillips, which Mr.

Settles did. We met with the Abbeville Sheriff's Department and SLED and gave them their probable cause. The Sheriff has been very appreciative. He was actually 16 at the time of the Abbeville case. She was 38. She was plying him with sex and marijuana and things like that. I think Your Honor made the comment that the Seace event may not have occurred but for Karlita Phillips. Very heinous situation there, Your Honor. He did take the stand in the Greenwood case. He was convicted by a jury, but he admitted presence and I believe that the jury convicted him on the hand of one is the hand of all. He is willing to testify for the State again in the matter of the co-defendants in the Greenwood case.

But the last thing I want to say. This is one of the toughest cases I've ever handled in 36 years. I was taken off the case. I think some rule at OID caused that. But to the Phillips family I will say this from the bottom of my heart. I have two sons similar in age to these young men. I cannot imagine the agony that you've gone through. My sympathies are extended to you. I hope that as good Christian people that I know you are that you will forgive or at least try to understand the position that this woman put this kid in. Sixteen years old. He was going to Greenwood High. He was doing okay until he met Karlita Phillips who offered him $13,000 in addition to those other

incentives and she got her just deserts in Abbeville County. And this young man made sure she got them. Thank you and I love you and God bless every one of you. Thank you, Judge.

THE COURT: Mr. Settles, is there anything that you would like to say, sir?

MR. SETTLES: No.

THE COURT: Do you want to say anything, Solicitor?

MR. STUMBO: I think they said all they needed to say over in Abbeville. It has been a long road. It is time for them to be able to move on so they can focus on grieving for Jameel, which they have been doing, but certainly coming back to court is a major feat here today. Thank you. That's all from the State.

MR. NASROLLAHI: I would make one request and I don't know what the Solicitor's response is going to be. We would just ask that this sentence be back dated to the time that he was sentenced in Abbeville. It is just a matter of months.

MR. TINSLEY: Well, actually when the warrant was served in Abbeville. He was locked up June 13, 2013. So I'm asking you to give him credit from that day. I think it's only fair because we were working with the Sheriff's Department and that sort of thing shortly thereafter.

THE COURT: I am following the negotiations that have been entered into in this case. In the for what it's worth