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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Honorable Larry B. Hyman, Circuit Court Judge

TRAMAINE D. NELSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001024

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) INDICTMENT NO.: 2007-GS-10-11054

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TERMAINE NELSON,)
)
 DEFENDANT.)
 _____)

JURY TRIAL

VOLUME 1 OF 2

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Monday, November 9, 2009, Commencing at 11:27 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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PROCEEDINGS

- - - - -

JURY VOIR DIRE

- - - - -

[Whereupon, the jury panel enters the courtroom
at 11:27 a.m.]

THE COURT: Good morning, ladies and gentlemen.
I am Judge Kristi Harrington. I am a resident judge
for the ninth circuit, which is comprised of Berkeley
and Charleston Counties.

The case that we are beginning today is the case
of the State vs. Termaine Devon Nelson.

Mr. Clerk, has the jury been sworn?

THE CLERK OF COURT: Yes, they have, Your Honor.

THE COURT: Thank you.

Mr. Nelson has been charged through an
indictment, which is the formal process that brings us
to court here today, with the charge of murder and
assault and battery with intent to kill. Mr. Nelson
has pled not guilty to both of these indictments.

Mr. Runyon, does your client waive formal
arraignment?

MR. RUNYON: Absolutely, Your Honor.

THE COURT: Thank you.

Mr. Runyon, if you would please stand, introduce

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1 yourself, as well as Mr. Nelson.

2 MR. RUNYON: My name is William Runyon. I
3 practice law here in Charleston.

4 This is my client, Termaine Nelson. He's a
5 resident of Charleston, also.

6 THE COURT: Ladies and gentlemen of the jury
7 panel, is there any member related by blood, marriage,
8 close personal friend, ever have any business,
9 personal, professional dealings with Mr. Nelson? If
10 so, please stand.

11 [Whereupon, there is no response]

12 THE COURT: Thank you. There are none.

13 Is there any member of the jury panel related by
14 blood, marriage, close personal friend, have any
15 business, personal, professional dealings, or ever been
16 represented by Mr. Runyon? If so, please stand.

17 [Whereupon, there is no response]

18 THE COURT: Thank you. There are none.

19 Mr. Leventis, if you will please stand,
20 introduce yourself and any persons that will be
21 assisting you throughout this trial.

22 MR. LEVENTIS: Good morning. My name is Henry
23 Leventis. I represent the State in this matter, trying
24 the case along with my colleague, Jim Stack.

25 THE COURT: Ladies and gentlemen, is there any

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1 member of the jury panel related by blood, marriage,
2 close personal friend, have any business, personal,
3 professional dealings with either Mr. Leventis or
4 Mr. Stack? If so, please stand.

5 [Whereupon, there is no response]

6 THE COURT: Thank you. There are none.

7 Is there any member of the jury panel that has
8 ever had any matter handled by the Ninth Circuit
9 Solicitor's Office? The elected solicitor is Scarlett
10 Wilson. And, again, the ninth circuit is Charleston
11 and Berkeley County. If so, please stand.

12 [Whereupon, there is no response]

13 THE COURT: Thank you. There are none.

14 Ladies and gentlemen, the indictment states that
15 in Charleston County on or about July 13th, 2007, with
16 malice aforethought, Mr. Nelson did kill and murder
17 Deshawn Brown by means of shooting him, and that Mr.
18 Brown did die in Charleston County as a proximate
19 result thereof on July 13th, 2007. The State further
20 alleges that on or about July 13th, 2007, that Mr.
21 Nelson did with malice aforethought commit an unlawful
22 act of violent nature upon the victim, Cory Watkins.

23 Is there any member of the jury panel who has
24 heard anything about this case prior to what I have
25 just read? If so, please stand.

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1 [Whereupon, there is no response]

2 THE COURT: Thank you. There are none.

3 Ladies and gentlemen, I am now going to call a
4 list of witnesses who may be called to testify. If you
5 are related by blood, marriage, close personal friend,
6 have any business, personal, professional dealings with
7 any of these individuals, please stand when I call
8 their name. John Neale, with the North Charleston
9 Police Department; Scott Wyantt, North Charleston
10 Police Department; O.J. Faison, North Charleston Police
11 Department; Lewanda Denson; Antonio Simmons; Cory
12 Watkins; Shameeka Graham; Shareen Bennett; Javon
13 Bryant; Shawn Patrick, North Charleston Police
14 Department; Michael Moskal, with State Law Enforcement
15 Division; Dr. Kim Collins, MUSC; Greg Gomes, North
16 Charleston Police Department.

17 Any member of the jury panel related by blood,
18 marriage, close personal friend, know any of these
19 individuals, please stand at this time.

20 Yes, ma'am. If you will please state your name
21 and your juror number.

22 MS. MARTIN: Crystal Martin. 164.

23 THE COURT: Yes, ma'am.

24 MS. MARTIN: I worked under Kim Collins when she
25 was at MUSC.

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1 THE COURT: All right. And, ma'am, is there
2 anything about your relationship working under
3 Dr. Collins that will affect your ability to be fair
4 and impartial in this case?

5 MS. MARTIN: No.

6 THE COURT: All right. Your jury number and
7 name one more time.

8 MS. MARTIN: Crystal Martin. 164.

9 THE COURT: Thank you, Ms. Martin.
10 Is there anyone else?

11 [Whereupon, there is no response]

12 THE COURT: Thank you. There are none.

13 Is there any member of the jury panel that has
14 ever been employed by, or a family member of yours
15 employed by, the North Charleston Police Department,
16 MUSC, or State Law Enforcement Division? If so, please
17 stand.

18 All right. Yes, ma'am. We'll start with you.
19 Your jury number and name?

20 MS. BEARDEN: 305. Pam Bearden.

21 THE COURT: Yes, Ms. Bearden.

22 MS. BEARDEN: I currently work for MUSC.

23 THE COURT: And, Ms. Bearden, what do you do at
24 MUSC?

25 MS. BEARDEN: I'm a heart-transplant

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1 coordinator.

2 THE COURT: And is there -- you heard that
3 Dr. Collins may be called to testify, and she works at
4 MUSC. Is there anything about your employment with
5 MUSC that will affect your ability to be fair and
6 impartial in this case?

7 MS. BEARDEN: No, ma'am.

8 THE COURT: Thank you.

9 Yes, ma'am?

10 MS. WILLIAMS: 288. Tasha Williams.

11 Thelma Grant and Officer Winston Williams,
12 employed with North Charleston Police Department.

13 THE COURT: And how are those individuals
14 related to you?

15 MS. WILLIAMS: Mother, and ex-husband.

16 THE COURT: All right. And they both are
17 employed with North Charleston Police Department?

18 MS. WILLIAMS: Yes, ma'am.

19 THE COURT: Is there anything about your mother
20 and your ex-husband being employed with the North
21 Charleston Police Department that will affect your
22 ability to be fair and impartial in this case?

23 MS. WILLIAMS: None at all.

24 THE COURT: And your juror number and name?

25 MS. WILLIAMS: Tasha Williams. 288.

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1 THE COURT: Thank you, Ms. Williams.

2 Yes, sir?

3 MR. SANTOS: 231. Gary Santos.

4 THE COURT: Yes, sir.

5 MR. SANTOS: My mother-in-law, my grandmother-
6 in-law, my wife, and one of her cousins work for the
7 Medical University.

8 THE COURT: All right, sir. And, again, you
9 heard Dr. Collins, from MUSC, may be called to testify.
10 Is there anything about your family working for MUSC
11 that will affect your ability to be fair and impartial
12 in this case?

13 MR. SANTOS: No, ma'am.

14 THE COURT: Thank you. Mr. Santos, your jury
15 number?

16 MR. SANTOS: 231.

17 THE COURT: Thank you, sir.

18 Yes, ma'am.

19 MS. STEWART: Alice Stewart. 259.

20 I was employed at MUSC.

21 THE COURT: And how long ago was that, ma'am?

22 MS. STEWART: In 2003.

23 THE COURT: And what did you do there?

24 MS. STEWART: Patient accounting.

25 THE COURT: Is there anything about your

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1 previous employment with MUSC that will affect your
2 ability to be fair and impartial in this case?

3 MS. STEWART: No, ma'am.

4 THE COURT: Thank you. Your jury number and
5 name?

6 MS. STEWART: Alice Stewart. 259.

7 THE COURT: Thank you, Ms. Stewart.

8 Yes, sir?

9 MR. JENKINS: Juror 136. Albert Jenkins.

10 My wife is employed at the Medical University.

11 THE COURT: And, Mr. Jenkins, what does your
12 wife do at MUSC?

13 MR. JENKINS: She's a medical research analyst.

14 THE COURT: Is there anything about your wife's
15 employment at MUSC that will affect your ability to be
16 fair and impartial in this case?

17 MR. JENKINS: No, ma'am.

18 THE COURT: Thank you. And your juror number
19 and name?

20 MR. JENKINS: 136. Albert Jenkins.

21 THE COURT: Thank you, Mr. Jenkins.

22 Yes, ma'am?

23 MS. PAULLING: I worked at MUSC up until 1996.

24 THE COURT: And your juror number and name,
25 ma'am?

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1 MS. PAULLING: 202. Rosemarie Paulling.

2 THE COURT: And is there anything about your
3 previous employment that will affect your ability to be
4 fair and impartial in this case?

5 MS. PAULLING: No.

6 THE COURT: Thank you. Yes, sir?

7 MR. REED: I'm sorry, ma'am.

8 Ed Reed, number 216. I work for the City of
9 North Charleston Public Works Department.

10 THE COURT: And what do you -- with the Public
11 Works Department?

12 MR. REED: Yes.

13 THE COURT: And is there anything about you
14 working with the City of North Charleston that will
15 affect your ability to be fair and impartial in this
16 case?

17 MR. REED: No, ma'am.

18 THE COURT: And your juror number and name, sir?

19 MR. REED: 216. Edward Reed.

20 THE COURT: Thank you, Mr. Reed.

21 Is there anyone else?

22 [Whereupon, there is no response]

23 THE COURT: Thank you. There are none.

24 Is there any member of the jury panel who has
25 not previously stood up that has any law enforcement

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1 experience, training, or ever been employed by any
2 other law enforcement agency? If so, please stand.

3 Thank you. There are none.

4 MR. HERRITAGE: Ma'am?

5 THE COURT: Yes, sir?

6 MR. HERRITAGE: Back in '72 I was in the
7 security police in the air force.

8 THE COURT: Your jury number and name?

9 MR. HERRITAGE: James Herritage. 315.

10 THE COURT: And, Mr. Herritage, you were with
11 the air force security police?

12 MR. HERRITAGE: Yes, ma'am.

13 THE COURT: All right. Thank you, sir.

14 Anyone else?

15 [Whereupon, there is no response]

16 THE COURT: Thank you. There are none.

17 Is there any member of the jury panel that was a
18 member of the grand jury which found an indictment of
19 this case? If so, please stand.

20 [Whereupon, there is no response]

21 THE COURT: Thank you. There are none.

22 Ladies and gentlemen, I am now going to ask a
23 series of questions. I'm going to allow you to come
24 forward and speak with me privately so that you don't
25 have to stand up and answer any of these questions out

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1 loud.

2 Ladies and gentlemen, is there any member of the
3 jury panel that currently has any criminal charges
4 pending against you in any jurisdiction?

5 Is there any member of the jury panel that has
6 ever been convicted of a crime?

7 Is there any member of the jury panel that has
8 any moral, religious, or political beliefs that would
9 prevent you from sitting in judgment or determining
10 guilt in this particular case?

11 Or, ladies and gentlemen, just a general catch-
12 all: if there is some particular reason that -- based
13 upon any of the questions that I have asked or that
14 this is a particularly bad week for you to serve on a
15 jury and you need to speak with me in private, now
16 would be the time to come forward.

17 If you need to answer any of those questions, if
18 you will please stand and the bailiffs will assist you
19 in coming forward.

20 THE BAILIFF: Juror number 164, Your Honor.

21 THE COURT: All right. Hold on one second.

22 All right. Counsel?

23 [Whereupon, the Court, juror number 164, and
24 counsel confer]

25 THE COURT: Thank you, Ms. Martin.

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1 MS. MARTIN: Okay. Thank you.

2 THE BAILIFF: Juror number 259, Your Honor.

3 [Whereupon, the Court, juror number 259, and
4 counsel confer]

5 THE COURT: 259 is excused from the trial of
6 this case.

7 Yes, sir?

8 THE BAILIFF: Juror number 105, Your Honor.

9 [Whereupon, the Court, juror number 105, and
10 counsel confer]

11 THE COURT: Juror 105 is excused from the trial
12 of this case.

13 THE BAILIFF: Juror number 313, Your Honor.

14 THE COURT: Yes, sir. Please come forward.

15 [Whereupon, the Court, juror number 313, and
16 counsel confer]

17 THE COURT: Juror 313 will remain. Is there
18 anyone else?

19 [Whereupon, the Court and counsel confer]

20 THE COURT: Any further questions from the
21 State?

22 MR. LEVENTIS: No, ma'am.

23 THE COURT: From the defendant?

24 MR. RUNYON: No, Your Honor..

25 THE COURT: All right. Thank you.

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STRIKING OF THE JURY

1
2 THE COURT: Mr. Clerk, if you will please draw
3 the jury.

4 THE CLERK OF COURT: Yes, Your Honor.

5 Ladies and gentlemen of the jury, as I call your
6 name and juror number, if you would please gather your
7 personal belongings, come forward and stand in front of
8 this podium and face your peers, just as the bailiff
9 just indicated. Thank you.

10 Juror number 288, Tasha Williams.

11 [Whereupon, Ms. Williams comes forward]

12 THE CLERK OF COURT: What say ye for the State?

13 MR. LEVENTIS: Please seat this juror.

14 THE CLERK OF COURT: What say ye for the
15 defendant?

16 MR. RUNYON: Swear this juror, please,
17 Mr. Clerk.

18 THE CLERK OF COURT: Ma'am, you've been selected
19 for the trial of this case. Please have a seat in the
20 jury box.

21 [Whereupon, Ms. Williams is seated in the jury
22 box as a juror]

23 THE CLERK OF COURT: Juror number 1, Eugene
24 Abernathy.

25 [Whereupon, Mr. Abernathy comes forward]

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1 THE CLERK OF COURT: What say ye for the State?

2 MR. LEVENTIS: Please excuse this juror.

3 THE CLERK OF COURT: Sir, you've been excused
4 from the trial of this case. If you would please have
5 a seat back in the audience.

6 [Whereupon, Mr. Abernathy returns to the
7 audience]

8 THE CLERK OF COURT: Juror number 321, Molly
9 Moore.

10 [Whereupon, Ms. Moore comes forward]

11 THE CLERK OF COURT: What say ye for the State?

12 MR. LEVENTIS: Please seat this juror.

13 THE CLERK OF COURT: What say ye for the
14 defendant?

15 MR. RUNYON: Please excuse the juror, Mr. Clerk.

16 THE CLERK OF COURT: Ma'am, you've been excused
17 from the trial of this case. Please have a seat back
18 in the audience.

19 [Whereupon, Ms. Moore returns to the audience]

20 THE CLERK OF COURT: Juror number 336, Rebecca
21 White.

22 [Whereupon, Ms. White comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MR. LEVENTIS: Please seat this juror.

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. RUNYON: Swear this juror, please,
3 Mr. Clerk.

4 THE CLERK OF COURT: Ma'am, you've been selected
5 for the trial of this case. Please have a seat in the
6 jury box.

7 [Whereupon, Ms. White is seated in the jury box
8 as a juror]

9 THE CLERK OF COURT: Juror number 136, Albert
10 Jenkins.

11 [Whereupon, Mr. Jenkins comes forward]

12 THE CLERK OF COURT: What say ye for the State?

13 MR. LEVENTIS: Please seat this juror.

14 THE CLERK OF COURT: What say ye for the
15 defendant?

16 MR. RUNYON: Please excuse this juror,
17 Mr. Clerk.

18 THE CLERK OF COURT: Sir, you've been excused
19 from the trial of this case. Please have a seat back
20 in the audience.

21 [Whereupon, Mr. Jenkins returns to the audience]

22 THE CLERK OF COURT: Juror number 202, Rosemarie
23 Paulling.

24 [Whereupon, Ms. Paulling comes forward]

25 THE CLERK OF COURT: What say ye for the State?

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1 MR. LEVENTIS: Please excuse this juror.

2 THE CLERK OF COURT: Ma'am, you've been excused
3 from the trial of this case. Please have a seat back
4 in the audience.

5 [Whereupon, Ms. Paulling returns to the
6 audience]

7 THE CLERK OF COURT: Juror number 297, Carl
8 Young.

9 [Whereupon, Mr. Young comes forward]

10 THE CLERK OF COURT: What say ye for the State?

11 MR. LEVENTIS: Please excuse this juror.

12 THE CLERK OF COURT: Sir, you've been excused
13 from the trial of this case. Please have a seat back
14 in the audience.

15 [Whereupon, Mr. Young returns to the audience]

16 THE CLERK OF COURT: Juror number 231, Gary
17 Santos.

18 [Whereupon, Mr. Santos comes forward]

19 THE CLERK OF COURT: What say ye for the State?

20 MR. LEVENTIS: Please seat this juror.

21 THE CLERK OF COURT: What say ye for the
22 defendant?

23 MR. RUNYON: Please excuse this juror,
24 Mr. Clerk.

25 THE CLERK OF COURT: Sir, you've been excused

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1 from the trial of this case. Please have a seat back
2 in the audience.

3 [Whereupon, Mr. Santos returns to the audience]

4 THE CLERK OF COURT: Juror number 22, Tawana
5 Black.

6 [Whereupon, Ms. Black comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MR. LEVENTIS: Please seat this juror.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. RUNYON: Swear the juror, please, Mr. Clerk.

12 THE CLERK OF COURT: Ma'am, you've been selected
13 for the trial of this case. Please have a seat in the
14 jury box.

15 [Whereupon, Ms. Black is seated in the jury box
16 as a juror]

17 THE CLERK OF COURT: Juror number 264, Howard
18 Taylor.

19 [Whereupon, Mr. Taylor comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MR. LEVENTIS: Please seat this juror.

22 THE CLERK OF COURT: What say ye for the
23 defendant?

24 MR. RUNYON: Please excuse the juror, Mr. Clerk.

25 Sir, you've been excused from the trial of this

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1 case. Please have a seat back in the audience.

2 [Whereupon, Mr. Taylor returns to the audience]

3 THE CLERK OF COURT: Juror number 119, Matthew
4 Harper.

5 [Whereupon, Mr. Harper comes forward]

6 THE CLERK OF COURT: What say ye for the State?

7 MR. LEVENTIS: Please seat this juror.

8 THE CLERK OF COURT: What say ye for the
9 defendant?

10 MR. RUNYON: Please excuse the juror, Mr. Clerk.

11 THE CLERK OF COURT: Sir, you've been excused
12 from the trial of this case. Please have a seat back
13 in the audience.

14 [Whereupon, Mr. Harper returns to the audience]

15 THE CLERK OF COURT: Juror number 205, Tracy
16 Pelham.

17 [Whereupon, Ms. Pelham comes forward]

18 THE CLERK OF COURT: What say ye for the State?

19 MR. LEVENTIS: Please seat this juror.

20 THE CLERK OF COURT: What say ye for the
21 defendant?

22 MR. RUNYON: Swear the juror, please, Mr. Clerk.

23 THE CLERK OF COURT: Ma'am, you've been selected
24 for the trial of this case. Please have a seat in the
25 jury box.

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1 [Whereupon, Ms. Pelham is seated in the jury box
2 as a juror]

3 THE CLERK OF COURT: Juror number 216, Edward
4 Reed.

5 [Whereupon, Mr. Reed comes forward]

6 THE CLERK OF COURT: What say ye for the State?

7 MR. LEVENTIS: Please seat this juror.

8 THE CLERK OF COURT: What say ye for the
9 defendant?

10 MR. RUNYON: Please excuse this juror,
11 Mr. Clerk.

12 THE CLERK OF COURT: Sir, you've been excused
13 from the trial of this case. Please have a seat back
14 in the audience.

15 [Whereupon, Mr. Reed returns to the audience]

16 THE CLERK OF COURT: Juror number 229, Peggy
17 Rollinson.

18 [Whereupon, Ms. Rollinson comes forward]

19 THE CLERK OF COURT: What say ye for the State?

20 MR. LEVENTIS: Please seat this juror.

21 THE CLERK OF COURT: What say ye for the
22 defendant?

23 MR. RUNYON: Please swear the juror, Mr. Clerk.

24 THE CLERK OF COURT: Ma'am, you've been selected
25 for the trial of this case. Please have a seat in the

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1 jury box.

2 [Whereupon, Ms. Rollinson is seated in the jury
3 box as a juror]

4 THE CLERK OF COURT: Juror number 185, Holly
5 Mood.

6 [Whereupon, Ms. Mood comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MR. LEVENTIS: Please seat this juror.

9 THE CLERK OF COURT: What say ye for the State?

10 MR. RUNYON: Please swear the juror, Mr. Clerk.

11 THE CLERK OF COURT: Ma'am, you've been selected
12 for the trial of this case. Please have a seat in the
13 jury box.

14 [Whereupon, Ms. Mood is seated in the jury box
15 as a juror]

16 THE CLERK OF COURT: Juror number 72, Pamela
17 Deveaux.

18 [Whereupon, Ms. Deveaux comes forward]

19 THE CLERK OF COURT: What say ye for the State?

20 MR. LEVENTIS: Please excuse this juror.

21 THE CLERK OF COURT: Ma'am, you've been excused
22 from the trial of this case. Please have a seat back
23 in the audience.

24 [Whereupon, Ms. Deveaux returns to the audience]

25 THE CLERK OF COURT: The State has one strike

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1 remaining.

2 Juror number 106, Brandi Grant.

3 [Whereupon, Ms. Grant comes forward]

4 THE CLERK OF COURT: What say ye for the State?

5 MR. LEVENTIS: Beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 [Whereupon, Mr. Leventis and Mr. Stack confer]

8 MR. LEVENTIS: Please seat this juror.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. RUNYON: Please swear the juror, Mr. Clerk.

12 THE CLERK OF COURT: Ma'am, you've been selected
13 for the trial of this case. Please have a seat in the
14 jury box.

15 [Whereupon, Ms. Grant is seated in the jury box
16 as a juror]

17 THE CLERK OF COURT: Juror number 305, Pamela
18 Bearden.

19 [Whereupon, Ms. Bearden comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MR. LEVENTIS: Please seat this juror.

22 THE CLERK OF COURT: What say ye for the
23 defendant?

24 MR. RUNYON: Swear the juror, please, Mr. Clerk.

25 THE CLERK OF COURT: Ma'am, you've been selected

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1 for the trial of this case. Please have a seat in the
2 jury box.

3 [Whereupon, Ms. Bearden is seated in the jury
4 box as a juror]

5 THE CLERK OF COURT: Juror number 322, Mark
6 Mullins.

7 [Whereupon, Mr. Mullins comes forward]

8 THE CLERK OF COURT: What say ye for the State?

9 MR. LEVENTIS: Please seat this juror.

10 THE CLERK OF COURT: What say ye for the
11 defendant?

12 MR. RUNYON: Swear the juror, please, Mr. Clerk.

13 THE CLERK OF COURT: Sir, you've been selected
14 for the trial of this case. Please have a seat in the
15 jury box.

16 [Whereupon, Mr. Mullins is seated in the jury
17 box as a juror]

18 THE CLERK OF COURT: Juror number 196, Dorothy
19 Horry [phonetic].

20 [Whereupon, Ms. Horry comes forward]

21 THE CLERK OF COURT: What say ye for the State?

22 MR. LEVENTIS: Please excuse this juror.

23 THE CLERK OF COURT: Ma'am, you've been excused
24 from the trial of this case. Please have a seat back
25 in the audience.

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1 [Whereupon, Ms. Horry returns to the audience]

2 THE CLERK OF COURT: The State has exhausted all
3 its strikes.

4 Juror number 287, Julia Wiggins.

5 [Whereupon, Ms. Wiggins comes forward]

6 THE CLERK OF COURT: Any challenge from the
7 State?

8 MR. LEVENTIS: None from the State.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. RUNYON: Please swear this juror, Mr. Clerk.

12 THE CLERK OF COURT: Ma'am, you've been selected
13 for the trial of this case. Please have a seat in the
14 jury box.

15 [Whereupon, Ms. Wiggins is seated in the jury
16 box as a juror]

17 THE CLERK OF COURT: Juror number 293, Anthony
18 Wright.

19 [Whereupon, Mr. Wright comes forward]

20 THE CLERK OF COURT: Any challenges from the
21 State?

22 MR. LEVENTIS: No, none from the State.

23 THE CLERK OF COURT: What say ye for the
24 defendant?

25 MR. RUNYON: Please swear the juror, Mr. Clerk.

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1 THE CLERK OF COURT: Sir, you've been selected
2 for the trial of this case. Please have a seat in the
3 jury box.

4 [Whereupon, Mr. Wright is seated in the jury box
5 as a juror]

6 THE CLERK OF COURT: Juror number 328, Karen
7 Shaw.

8 [Whereupon, Ms. Shaw comes forward]

9 THE CLERK OF COURT: Any challenge from the
10 State?

11 MR. LEVENTIS: No.

12 THE CLERK OF COURT: What say ye for the
13 defendant?

14 MR. RUNYON: Please excuse the juror, Mr. Clerk.

15 THE CLERK OF COURT: Ma'am, you've been excused
16 from the trial of this case. Please have a seat back
17 in the audience.

18 [Whereupon, Ms. Shaw returns to the audience]

19 THE CLERK OF COURT: Juror number 211, Demetrius
20 Price.

21 [Whereupon, Mr. Price comes forward]

22 THE CLERK OF COURT: Any challenge from the
23 State?

24 MR. LEVENTIS: No challenge from the State.

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. RUNYON: Please swear the juror, Mr. Clerk.

3 THE CLERK OF COURT: Sir, you've been selected
4 for the trial of this case. Please have a seat in the
5 jury box.

6 [Whereupon, Mr. Price is seated in the jury box
7 as a juror]

8 THE CLERK OF COURT: Your Honor, those are our
9 twelve jurors.

10 THE COURT: All right. One alternate -- two
11 alternates.

12 THE CLERK OF COURT: Two alternates?

13 THE COURT: Yes, sir.

14 THE CLERK OF COURT: Strikes are two and one.
15 Juror number 35, Gwendolyn Button.

16 [Whereupon, Ms. Button comes forward]

17 THE CLERK OF COURT: What say ye for the State?

18 MR. LEVENTIS: Please seat Ms. Button.

19 THE CLERK OF COURT: What say ye for the
20 defendant?

21 MR. RUNYON: Please swear the juror, Mr. Clerk.

22 THE CLERK OF COURT: Ma'am, you've been selected
23 for the trial of this case. Please have a seat in the
24 jury box.

25 [Whereupon, Ms. Button is seated in the jury box

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1 as a juror]

2 THE CLERK OF COURT: Juror number 262, Victoria
3 Sullivan.

4 [Whereupon, Ms. Sullivan comes forward]

5 THE CLERK OF COURT: What say ye for the State?

6 MR. LEVENTIS: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 [Whereupon, Mr. Leventis and Mr. Stack confer]

9 MR. LEVENTIS: Please seat the juror.

10 THE CLERK OF COURT: What say ye for the
11 defendant?

12 MR. RUNYON: Please excuse the juror, Mr. Clerk.

13 THE CLERK OF COURT: Ma'am, you've been excused
14 from the trial of this case. Please have a seat back
15 in the audience.

16 [Whereupon, Ms. Sullivan returns to the
17 audience]

18 THE CLERK OF COURT: Juror number 309, Carol
19 Currie.

20 [Whereupon, Ms. Currie comes forward]

21 THE CLERK OF COURT: What say ye for the State?

22 MR. LEVENTIS: Please excuse this juror.

23 THE CLERK OF COURT: Ma'am, you've been excused
24 from the trial of this case. Please have a seat back
25 in the audience.

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1 [Whereupon, Ms. Currie returns to the audience]

2 THE CLERK OF COURT: The state has exhausted its
3 strikes.

4 Juror number 39, Sharon Campbell.

5 [Whereupon, Ms. Campbell comes forward]

6 THE CLERK OF COURT: What say ye for the State?

7 MR. LEVENTIS: Please seat this juror.

8 THE CLERK OF COURT: What say ye for the
9 defendant?

10 MR. RUNYON: Please excuse the juror, Mr. Clerk.

11 THE CLERK OF COURT: Ma'am, you've been excused
12 from the trial of this case. Please have a seat back
13 in the audience.

14 [Whereupon, Ms. Campbell returns to the
15 audience]

16 THE CLERK OF COURT: The defendant has exhausted
17 its strikes.

18 Juror number 120, Elaine Harris.

19 [Whereupon, Ms. Harris comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MR. LEVENTIS: Bet the Court's indulgence. I
22 believe I've exhausted my strikes.

23 THE COURT: Yes, sir. Take your time.

24 MR. LEVENTIS: I have no challenge.

25 THE CLERK OF COURT: No challenge? Any

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1 challenge from the defendant?

2 MR. RUNYON: None whatsoever. Please swear the
3 juror, Mr. Clerk.

4 THE CLERK OF COURT: Ma'am, you've been selected
5 for the trial of this case. Please have a seat in the
6 jury box.

7 [Whereupon, Ms. Harris is seated in the jury box
8 as a juror]

9 THE CLERK OF COURT: Your Honor, the jury has
10 been selected.

11 THE COURT: Thank you.

12 Any motions or matters pertaining to the jury as
13 selected? From the State?

14 MR. LEVENTIS: None from the State, Your Honor.

15 THE COURT: From the defendant?

16 MR. RUNYON: None from the defense, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury,
18 you have been selected as the jury in this case. There
19 are some matters that I -- and it's lunch time, and
20 there are some matters that I must take up outside of
21 your presence, so if you will be escorted to your jury
22 room by the bailiff. We will begin the trial of this
23 case at 3:00 p.m., so you are excused until 3:00 p.m.
24 Thank you.

25 [Whereupon, the jury exits the courtroom at

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1 12:09 p.m.]

2 THE COURT: Thank you. Be seated.

3 Any motions or matters outside of the presence
4 of the jury?

5 MR. LEVENTIS: None from the State, Your Honor.

6 MR. RUNYON: None from the defense, Your Honor.

7 THE COURT: Thank you.

8 Ladies and gentlemen, the remaining panel, you
9 are also excused for lunch. You must return back to
10 the jury assembly room at 2:00 p.m. So you are
11 excused. Again, thank you. It was a pleasure having
12 you in my courtroom. Please return to the jury
13 assembly room at 2:00 p.m. Thank you.

14 [Whereupon, the jury panel exits the courtroom
15 at 12:10 p.m.]

16 THE COURT: All right. Any other matters? Are
17 we prepared to begin the Jackson v. Denno?

18 MR. LEVENTIS: We are ready to go forward on
19 that, Your Honor.

20 MR. RUNYON: No other matters other than the
21 Denno hearing, Judge.

22 THE COURT: All right. Why don't we take just a
23 comfort break. Y'all get your witnesses situated and
24 then we'll begin the hearing.

25 MR. LEVENTIS: Thank you, Your Honor.

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1 THE COURT: Thank you. We'll be at ease. About
2 five minutes, Mr. Leventis?

3 MR. LEVENTIS: That will be great.

4 THE COURT: All right. Thank you.

5 [Whereupon, a recess is taken from 12:14 p.m. to
6 12:20 p.m.]

7 THE COURT: Thank you. Be seated.

8 Mr. Leventis, are you ready?

9 MR. LEVENTIS: The State is ready to proceed,
10 Your Honor.

11 THE COURT: Mr. Runyon?

12 MR. RUNYON: Yes, Your Honor. Ready to go.

13 - - - - -

14 JACKSON V. DENNO HEARING

15 THE COURT: All right. Mr. Leventis?

16 MR. LEVENTIS: The State calls the State v.
17 Termaine Nelson.

18 We would like to call Greg Gomes for the Jackson
19 v. Denno hearing.

20 THE COURT: Thank you.

21 [Whereupon, Mr. Gomes comes forward]

22 THE CLERK OF COURT: Sir, if you would please
23 place your left hand on the Bible and raise your right
24 hand.

25 [Whereupon, Mr. Gomes is duly sworn by the clerk

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1 of court as follows: do you swear or affirm to tell
2 the truth, so help you God]

3 THE WITNESS: Yes, I do.

4 THE CLERK OF COURT: Please be seated.

5 [Whereupon, the witness takes the witness stand]

6 THE CLERK OF COURT: And for the record, please
7 state your full name to the Court and spell it.

8 THE WITNESS: George Gregory Gomes. G-O-M-E-S.

9 MR. LEVENTIS: Good afternoon, Officer Gomes.
10 How are you doing?

11 THE WITNESS: Good.

12 MR. LEVENTIS: Great.

13 - - - - -

14 GEORGE G. GOMES

15 Having Been First Duly Sworn,
16 was Examined and Testified as Follows:

17 DIRECT EXAMINATION

18 BY MR. LEVENTIS:

19 Q. Where do you currently work?

20 A. City of North Charleston Police Department.

21 Q. How long have you worked there?

22 A. Twelve years.

23 Q. What are your responsibilities as an employee of
24 North Charleston Police Department?

25 A. Currently, I'm a sargent over the narcotics

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1 unit.

2 Q. Okay. And in July of 2007, were you employed
3 with the North Charleston Police Department?

4 A. Yes, sir.

5 Q. And what were your job -- what was your job
6 title and responsibilities?

7 A. I was a detective in the persons crime unit.

8 Q. Okay. In your capacity as a detective with
9 North Charleston Police Department, did you work on a
10 murder and ABWIK case that took place between Calvert and
11 Iris and -- in North Charleston on July the 13th, 2007?

12 A. Yes, sir, I did.

13 Q. Okay. Could you tell the judge about your
14 involvement in that case, what you were asked to do.

15 A. Two defendants were arrested. And they were
16 being housed in Atlanta, and I was asked to go there to
17 interview each of them.

18 Q. Okay. And did you, in fact, go there?

19 A. I did.

20 Q. Who did you go there with?

21 A. Detective Shawn Patrick.

22 Q. Okay. And do you remember what date it was that
23 you went to interview the defendant?

24 A. We traveled I think on the 25th and interviewed
25 them the following day on the 26th of July.

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1 Q. Okay. And just so we're clear. Was one of the
2 defendants that you went to Atlanta to interview the
3 defendant in this case, Termaine Nelson?

4 A. Yes, sir.

5 Q. Okay. And you did, in fact, interview Termaine
6 Nelson?

7 A. Yes, sir.

8 Q. And where did that take place?

9 A. The Fulton County Courthouse, I believe.

10 Q. Could you tell the Court who was present during
11 the interview?

12 A. Myself and Detective Patrick.

13 Q. Okay. And the defendant.

14 Was anybody else present during the interview?

15 A. No, sir.

16 Q. Okay. Prior to the interview, did you inform
17 this defendant of the nature of your investigation?

18 A. Yes, sir, we did.

19 Q. Do you recall approximately what you told him?

20 A. Told him it was in reference to a shooting and a
21 death that occurred in North Charleston.

22 Q. Okay. And did you advise him of his
23 constitutional rights and Miranda rights?

24 A. Yes, sir, I did.

25 Q. Okay. Including the right to remain silent?

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1 A. Yes, sir.

2 Q. The right to an attorney?

3 A. Yes, sir.

4 Q. One would be appointed to him if he could not
5 afford one?

6 A. That's correct.

7 Q. Okay. You explained to him that the statement
8 he gave could be used against him in court, did you not?

9 A. Yes, sir.

10 Q. Okay. Did the defendant indicate to you that he
11 understood those rights?

12 A. Yes, sir.

13 Q. How did he do that?

14 A. He was given the opportunity to review the
15 rights, and then he signed at the bottom indicating that
16 he understood his rights.

17 Q. Okay. When you say review the rights, are you
18 talking about the advice of rights form?

19 A. Yes, sir. Typically, I'll read them over and
20 then I'll -- I give them the opportunity to read them
21 themselves and then sign once they read it and understand
22 it.

23 MR. LEVENTIS: All right. Your Honor, at this
24 time I request permission to approach the witness.

25 THE COURT: You may.

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1 Q. [Mr. Leventis] Detective Gomes, I'm going to
2 show you -- excuse me. Sargent Gomes --

3 A. That's fine.

4 Q. -- I'm going to show you what's been marked as
5 Court's Exhibit 1, for purposes of this hearing, and ask
6 you to review it. Take as much time as you need.

7 [Whereupon, the witness reviews documents]

8 A. Sir, this is the advice of rights for
9 Mr. Nelson.

10 Q. [Mr. Leventis] Okay. Is that your signature at
11 the bottom of the advice of rights form?

12 A. Yes, sir. I was the first witness to sign.

13 Q. Okay. Did the defendant sign that document?

14 A. Yes, sir, he did. Twice.

15 Q. Okay. Is Detective Patrick's signature on that
16 document?

17 A. Yes, sir, it is.

18 Q. Why is his signature on there?

19 A. As a witness to him understanding and -- signing
20 his name understanding that he understood his rights and
21 wishing to waive those rights.

22 Q. Okay. So Detective Patrick actually was there
23 observing you go over the defendant's rights with the
24 defendant?

25 A. Yes, sir.

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1 Q. And his signature indicates that he agrees that
2 the defendant understood his rights?

3 A. That's correct.

4 Q. Okay. Is Court's Exhibit Number 1 a fair and
5 accurate representation of the advice of rights or
6 constitutional rights form that you presented and reviewed
7 with Termaine Nelson and he signed?

8 A. Yes, sir, it is.

9 Q. Okay. Now, you said a moment ago that you
10 explained the defendant's rights to him orally prior to
11 going over this form with him; is that right?

12 A. Yes, sir.

13 Q. And the defendant initialed several areas on
14 that page; is that correct?

15 A. He just -- he signed it where it says I fully
16 understand each of these rights explained to me. It has
17 his signature. And then after waiving these rights, he
18 also signed there, as well.

19 MR. LEVENTIS: Beg the Court's indulgence for a
20 moment.

21 THE COURT: Yes, sir.

22 [Whereupon, Mr. Leventis reviews documents]

23 Q. [Mr. Leventis] Now, Detective -- Sargent Gomes,
24 did the defendant's responses to your verbal advice of
25 rights -- you know, going over his rights with him

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1 verbally, did the defendant's responses to that indicate
2 to you that he understood what you were saying?

3 A. Yes, sir.

4 Q. When you were talking with him about his
5 constitutional rights, was he paying attention?

6 A. Yes, sir.

7 Q. Was he looking at you in the eye?

8 A. Yes, sir.

9 Q. Any erratic behavior that you noticed?

10 A. No, sir.

11 Q. Anything that would indicate to you that he did
12 not understand at that time what you're talking about?

13 A. No, sir.

14 Q. Okay. Did he seem disoriented in any way?

15 A. No, sir.

16 Q. Did his responses to you make sense?

17 A. Yes, sir.

18 Q. So you would ask him a question and the response
19 he provided indicated an understanding of that question;
20 is that correct?

21 A. Yes, sir.

22 Q. Okay. Did he ever make any statements or
23 actions during your interview that indicated to you that
24 he may have been hearing voices?

25 A. No, sir.

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1 Q. Okay. Can you tell the Court about the
2 defendant's composure during the interview? Was he
3 breathing heavy, was he sweating, was he acting unnormal
4 in any way?

5 A. No, sir. We were just sitting at a table in a
6 room, and he seemed fine. He understood what was going
7 on. And he was able to verbalize -- any questions we had,
8 he was able to respond to it.

9 Q. Okay. What time on July 26th, 2007, did you
10 advise the defendant of his rights?

11 A. He signed at approximately 1:00 p.m. stating
12 that he understood his rights, and approximately three
13 minutes later he elected to waive his rights and answer
14 questions concerning the charge.

15 Q. Okay. So that process took about three minutes?

16 A. Yes, sir.

17 Q. For him to -- for you to go over his rights and
18 then him to voluntarily waive his rights?

19 A. Yes, sir.

20 Q. Okay. During the interview did you or Detective
21 Patrick threaten the defendant in any way to get him to
22 give a statement?

23 A. No, sir.

24 Q. Okay. Did you or Detective Patrick promise the
25 defendant anything in exchange for his statement?

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1 A. No, sir.

2 Q. And Detective Patrick actually wrote the
3 defendant's statement out for him; is that correct?

4 A. Yes, sir.

5 Q. Okay. And you witnessed that process?

6 A. I did.

7 Q. Did you witness Detective Patrick review the
8 defendant's statement with him before the defendant signed
9 his statement?

10 A. Yes, sir.

11 Q. And did the defendant appear to understand the
12 statement before he signed it?

13 A. Yes, sir, he did.

14 Q. Was the statement that the defendant gave to
15 Detective Patrick a coherent statement that was consistent
16 with the facts of your investigation thus far?

17 A. Yes, sir.

18 Q. Okay. At any time before, during, or after this
19 interview, did the defendant indicate to you that he did
20 not understand what was going on?

21 A. No, sir.

22 Q. At any time before, during, or after the
23 interview, did the defendant indicate to you that he was
24 hearing voices?

25 A. No, sir.

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1 Q. And nothing about his behavior led you to
2 believe he might be hearing voices?

3 A. No, sir.

4 Q. Okay. At any time during this interview, did
5 the defendant indicate to you that he needed medication?

6 A. No, sir.

7 Q. Okay. Did the defendant ask you for medication
8 at all during the interview?

9 A. No, sir.

10 MR. LEVENTIS: Okay. Your Honor, at this time I
11 would move Court's Exhibit 1, the advice of right --
12 the advice of rights form, into evidence for purposes
13 of this hearing.

14 And I don't have any further questions for
15 Sargent Gomes at this time.

16 THE COURT: All right. Mr. Runyon, any
17 objection to --

18 MR. RUNYON: No objection --

19 THE COURT: -- State's 1?

20 MR. RUNYON: -- to the admission of that for the
21 purpose of this hearing as --

22 THE COURT: For the purposes of this hearing
23 only.

24 MR. RUNYON: -- as Mr. Leventis said.

25 [Whereupon, Court's Exhibit Number 1 is admitted

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1 by the Court for purposes of the Jackson v. Denno
2 Hearing]

3 THE COURT: Mr. Runyon, your witness.

4 CROSS-EXAMINATION

5 BY MR. RUNYON:

6 Q. Mr. Gomes --

7 A. Yes, sir.

8 Q. Sargent Gomes. I'm sorry.

9 A. That's all right.

10 Q. Well, you're entitled to the title.

11 A. Thank you. Appreciate it.

12 Q. You worked hard for it, and you got it.

13 A. Well, I appreciate it.

14 Q. Let me ask you this: in the course of
15 investigating this case, you had to figure out -- you had
16 to go see the defendant; correct?

17 A. Yes, sir.

18 Q. And so you must have found out some things about
19 the defendant?

20 A. As far as?

21 Q. Well, you know, like where he lived, where he
22 was, how big he was, how short he was, his education
23 level, any -- any of those things.

24 A. Yes, sir.

25 Q. Okay. Did you find out any of those things?

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1 A. I knew when I was going over his advice of
2 rights that -- as part of the questions you ask them
3 what's the highest grade in school you completed, and his
4 response was the tenth grade. And then, of course, you
5 know, you go over the advice of rights.

6 Q. Well, you didn't know that before you went over
7 to Atlanta to talk to him?

8 A. I didn't know the highest grade in school
9 completed, no, sir.

10 Q. Okay. And you didn't know whether or not he had
11 been treated for any kind of mental illness or anything of
12 that sort?

13 A. No, sir, I didn't.

14 Q. Okay. And at the time -- and of course you and
15 Detective Patrick certainly did not threaten him in any
16 way, did you?

17 A. No, sir.

18 Q. And you advised him of his rights.

19 And was there any reason why he couldn't write
20 his own statement?

21 A. Usually we give the people the opportunity to
22 allow us to write it, or they can write it if they choose
23 to. But typically it's most people's request that we
24 write it, and they just kind of tell us and we just write
25 what they're saying.

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1 Q. Did he request that someone write his statement?

2 A. I don't particularly remember, but usually -- I
3 don't think I've had maybe two that I've ever taken where
4 someone actually asked to write their own statement.

5 Q. All right. Now, this was -- I believe you said
6 you interviewed him in the Fulton County Courthouse. Was
7 it the courthouse, or the Fulton County jail?

8 A. I believe it was the courthouse, but I can't be
9 one hundred percent. I know there's -- we interviewed one
10 of them at the courthouse. I believe it was Mr. Nelson.

11 Q. Okay. Now, in the course of that, he of course
12 was in the -- believe me, I've seen the Fulton County
13 jail. If you had seen the Fulton County jail, you would
14 remember that.

15 A. I was there, as well.

16 Q. Okay. Now, let me ask you this. Did you, prior
17 to interviewing him, review any files of -- that the
18 sheriff's department or the jail had on Mr. Nelson?

19 A. No, sir, I didn't.

20 Q. Okay. So at that point in time you had no --
21 you had no knowledge of any particular medical concerns,
22 and he didn't tell you about any medical concerns?

23 A. I didn't have any knowledge and he didn't tell
24 me of any medical concerns.

25 Q. Okay. And so you proceeded to conduct the

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1 interview, and then Detective Patrick wrote his statement?

2 A. Yes, sir.

3 Q. All right. Did he -- and you don't recall
4 whether or not he asked for Detective Patrick to write his
5 statement or whether or not that was just, I'll go ahead
6 and write it for you, or something of that sort?

7 A. Yeah. I don't remember.

8 Q. But at the time of his interview, you had no
9 knowledge of any kind of -- certainly there were no
10 physical medical concerns that you were aware of?

11 A. No, sir. He didn't display any obvious signs of
12 needing any medical attention.

13 Q. And you certainly had nothing from your
14 investigation which indicated any mental health history?

15 A. I had no knowledge of any, no, sir.

16 MR. RUNYON: Okay. No further questions at this
17 time.

18 THE COURT: Mr. Leventis?

19 MR. LEVENTIS: Nothing further for the Court
20 regarding Sargent -- regarding Sargent Gomes.

21 THE COURT: Any objection to having this witness
22 step down?

23 MR. RUNYON: I have no objection. Obviously,
24 he's got to come back, Judge.

25 THE COURT: All right. Sargent, you may step

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1 down.

2 THE WITNESS: Thank you.

3 [Whereupon, the witness exits the witness stand]

4 THE COURT: Call your next witness.

5 MR. LEVENTIS: Thank you. The State calls
6 detective Shawn Patrick.

7 [Whereupon, Mr. Patrick comes forward]

8 THE CLERK OF COURT: Sir, if you would please
9 place your left hand on the Bible and raise your right
10 hand.

11 [Whereupon, Mr. Patrick is duly sworn by the
12 clerk of court as follows: do you swear or affirm to
13 tell the truth, so help you God]

14 THE WITNESS: I do.

15 THE CLERK OF COURT: Thank you. Please be
16 seated.

17 [Whereupon, the witness takes the witness stand]

18 THE CLERK OF COURT: Please state your full name
19 to the Court and spell it, as well, please.

20 THE WITNESS: Shawn Patrick. S-H-A-W-N
21 P-A-T-R-I-C-K.

22 THE COURT: Mr. Leventis.

23 MR. LEVENTIS: Thank you, Your Honor.

24 - - -

25 - - -

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SHAWN PATRICK,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. LEVENTIS:

Q. Detective Patrick, where do you currently work?

A. North Charleston Police Department.

Q. How long have you worked there?

A. Approximately ten years.

Q. What are your current job responsibilities?

A. Current responsibilities, I'm with the narcotics office right now.

Q. In July, 2007, what were your -- what was your job title and responsibilities?

A. I was a detective in persons crimes. We investigated armed robberies, homicides, anything involving a person.

Q. Okay. In your capacity as a detective with the North Charleston Police Department in July of 2007, were you involved in the investigation of a murder that took place off Calvert Street in North Charleston on July 13, 2007?

A. Yes.

Q. All right. And would you tell the Court about your involvement in that case.

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1 A. Myself and Detective Gomes went to Atlanta, on
2 Detective Faison's request, to interview two individuals.

3 Q. All right. And Detective Faison, is he the lead
4 investigator in the case?

5 A. Yes.

6 Q. And he asked you and Detective Gomes to go to
7 Atlanta?

8 A. Correct.

9 Q. Interview two individuals.

10 Can you remember the -- is one of these
11 individuals Termaine Nelson, the defendant in this case?

12 A. Yes.

13 Q. Okay. Can you remember the name of the other
14 individual?

15 A. Jovan Bryant.

16 Q. Okay. Also a defendant?

17 A. Yes.

18 Q. Accused of these charges?

19 A. Yes, sir.

20 Q. Okay. And did you, in fact, interview the
21 defendant, Termaine Nelson, in this case?

22 A. Yes.

23 Q. Was Detective Gomes present when you interviewed
24 him?

25 A. Yes.

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1 Q. Anyone else present in the room besides you,
2 Detective Gomes, and the defendant?

3 A. No.

4 Q. Do you remember where that interview took place?

5 A. It's the Fulton County Courthouse, I believe.

6 Q. Okay. Prior to interviewing the defendant, was
7 he informed of the nature of the investigation?

8 A. Yes.

9 Q. Was that by you, or Detective Gomes?

10 A. I believe Detective Gomes spoke with him
11 initially.

12 Q. Did Detective Gomes tell him it was a murder
13 investigation?

14 A. If I remember correctly, yes.

15 Q. Okay. Told him about what murder and where it
16 took place and --

17 A. Yes.

18 Q. -- that sort of thing?

19 A. Yes.

20 Q. Okay. Did the defendant appear to understand
21 what Detective Gomes was saying --

22 A. Yes.

23 Q. -- with regard to that?

24 Okay. Did you advise the defendant of his
25 constitutional rights prior to interviewing the defendant?

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1 A. Detective Gomes advised him of his
2 constitutional rights. I witnessed that.

3 Q. You witnessed the defendant being advised of his
4 constitutional rights?

5 A. Correct.

6 Q. And as a witness, did you believe the defendant
7 understood the rights he was being given and told about?

8 A. Yes.

9 Q. Okay. What about -- was it the defendant's
10 response that led you to believe that he understood what
11 was going on?

12 A. Yes.

13 Q. Did his behavior indicate that he understood
14 what was going on?

15 A. Definitely. He was clear, eye contact, spoke
16 intelligently, and he answered questions intelligently.

17 Q. Okay. Anything about the defendant's behavior
18 or responses to indicate to you that he did not understand
19 what Detective Gomes was talking to him about --

20 A. No.

21 Q. -- his rights?

22 A. No.

23 Q. And did the defendant, in fact, give a statement
24 to you at that time?

25 A. Yes, he did.

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1 Q. Okay. And I'm going to show you what's been
2 marked as Court's Exhibit 2 for purposes of this hearing.

3 MR. LEVENTIS: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 MR. LEVENTIS: Thank you.

7 Q. [Mr. Leventis] Ask you to review this. And
8 take all the time you need.

9 [Whereupon, the witness reviews documents]

10 A. Okay.

11 Q. [Mr. Leventis] Do you recognize that document?

12 A. Yes, I do.

13 Q. What do you recognize it to be?

14 A. It's a North Charleston Police Department
15 defendant's statement of Termaine Nelson, which I took on
16 July 26th, 2007.

17 Q. Okay. Is that your signature at the bottom of
18 each page?

19 A. Yes, it is.

20 Q. Okay. And why is your signature there?

21 A. As a witness.

22 Q. Okay. Is that the defendant's signature at the
23 bottom of each page?

24 A. Yes.

25 Q. Why is the defendant's signature there?

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1 A. He signed that he provided the statement, it's
2 his statement, it's accurate.

3 Q. And then Detective Gomes actually signed the
4 first page, did he not?

5 A. Yes, he did.

6 Q. Why did he do that?

7 A. As also a secondary witness.

8 Q. Is Court's Exhibit Number 2 a fair and accurate
9 representation of the statement given by Termaine Nelson
10 on July 26th, 2007?

11 A. Yes.

12 Q. Okay. What time on July 26th, 2007, did
13 Detective Gomes advise the defendant of his rights? Can
14 you tell by looking at that form?

15 A. Not by this form. I would have to look at the
16 advice of rights form.

17 Q. Excuse me.

18 MR. LEVENTIS: Your Honor, may I approach?

19 THE COURT: You may.

20 MR. LEVENTIS: Thank you.

21 Q. [Mr. Leventis] I'm going to give you what's
22 been marked as Court's Exhibit 1, identified as
23 defendant's advice of rights form, and ask you to look at
24 that. Can you tell me, by looking at that form, what time
25 the defendant was advised of his rights?

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1 A. 1300.

2 Q. Okay. Is that one o'clock?

3 A. Yes.

4 Q. What time did he choose to waive his rights?

5 A. At 1:03. 1303.

6 Q. Okay. And then what time was the defendant's
7 statement taken?

8 A. 1:18.

9 Q. Okay. So all of that took place within the
10 course of about twenty minutes?

11 A. Correct.

12 Q. Okay. Very good.

13 During the interview that you and Detective
14 Gomes conducted with the defendant, did either you or
15 Detective Gomes threaten the defendant in any way to get
16 him to give a statement?

17 A. No, we did not.

18 Q. Did you promise him anything in exchange for his
19 statement?

20 A. No, we did not.

21 Q. Okay. And you wrote out the statement for the
22 defendant; is that correct?

23 A. That's correct.

24 Q. Was that at his request?

25 A. No. It's just something I normally do when we

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1 arrest people, individuals.

2 Q. Did you ask him if he wanted to write it
3 himself?

4 A. I don't recall if I asked him if he wanted to
5 write it himself or not.

6 Q. Okay. But you --

7 A. I don't remember.

8 Q. He gave a statement and you wrote it out?

9 A. Correct.

10 Q. Okay. Now, as we went over earlier, he signed
11 the statement --

12 A. Correct.

13 Q. -- Court's Exhibit 2. Did you review the
14 statement with him before he signed that?

15 A. Yes.

16 Q. Okay. And then if you look on page 1, there's
17 an area where something has been scratched through and the
18 initials T.N. are above it. Can you tell the Court what
19 that is about?

20 A. What that is is upon reviewing with the
21 defendant, reading the statement back, if they find
22 something that's not right, a misspelled word or something
23 that I misunderstood, and he corrects me, we mark it out
24 and I have him initial above it to show that it was his
25 initials there and he's the one requested that changed.

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1 Q. Okay. Now, before the defendant signed his
2 statement, did you believe him to understand his
3 statement?

4 A. Yes.

5 Q. Did he indicate to you that he did understand
6 his statement?

7 A. Yes, sir.

8 Q. Okay. At any time before, during, or after this
9 interview, did the defendant indicate to you that he did
10 not understand what was going on?

11 A. No.

12 Q. Okay. At any time during the interview, did the
13 defendant indicate to you that he was hearing voices?

14 A. No.

15 Q. Anything about the defendant's behavior during
16 this interview that would lead you to believe that he was
17 hearing voices?

18 A. No.

19 Q. At any time during the interview, did the
20 defendant indicate to you that he was taking any type of
21 medication?

22 A. No.

23 Q. Did the defendant ask you for any type of
24 medication during the interview?

25 A. No, he did not.

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1 MR. LEVENTIS: Okay. Your Honor, at this time I
2 would move Court's Exhibit Number 2 into evidence for
3 purposes of this hearing.

4 THE COURT: Mr. Runyon, any objection?

5 MR. RUNYON: No, no objection for the purposes
6 of this hearing, Judge, obviously.

7 [Whereupon, Court's Exhibit Number 2 is
8 admitted into evidence by the Court for purposes of the
9 Jackson v. Denno Hearing]

10 Q. [Mr. Leventis] Now, have you had a chance to
11 read over the defendant's statement?

12 A. Yes, sir.

13 Q. Okay. And based on what you knew about this
14 murder/ABWIK prior to going to Atlanta, was the
15 defendant's statement coherent and consistent with what
16 you already knew about the crime?

17 A. Yes.

18 Q. Okay. And there's a line scratched through at
19 the end of this statement. What is that line all about?

20 A. The last page towards the bottom.

21 Q. If you would show the Court.

22 A. This line?

23 Q. Yes, sir. What's going on there?

24 A. That just shows the statement is over, nothing
25 else can be added after I leave him, the defendant. After

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1 the statement, after everything is signed, there's no way
2 I can go back and write an extra couple of lines. I draw
3 that line to show that that's the end of the statement,
4 it's the last page, last sentence.

5 Q. Does the defendant see you making that line
6 indicating nothing else is going to be inserted after he
7 signs that statement?

8 A. That's correct.

9 Q. Okay. Now, generally speaking, during the
10 course of this interview anything about the defendant's
11 behavior, his eye contact, his responses, words he's
12 saying, indicate to you that he doesn't understand what's
13 going on?

14 A. No, he does not.

15 Q. I'm sorry?

16 A. No, nothing.

17 Q. Nothing did?

18 A. Huh-uh.

19 MR. LEVENTIS: Okay. Beg the Court's indulgence
20 for a moment, Your Honor.

21 THE COURT: Yes, sir.

22 [Whereupon, Mr. Leventis and Mr. Stack confer]

23 MR. LEVENTIS: I have no further questions for
24 Detective Patrick at this time.

25 THE COURT: Mr. Runyon?

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CROSS-EXAMINATION

1
2 BY MR. RUNYON:

3 Q. Detective Patrick, did you know that he was
4 schizophrenic at the time of the interview?

5 A. No.

6 Q. And you wrote a statement down --

7 A. Yes.

8 Q. Do you have a copy of his statement?

9 A. I usually do. I usually ask if they want the
10 copy, and I'll tear it off. It's a yellow piece that goes
11 on the back. But I don't know. I don't remember if he
12 said yes or no. Some do, some don't. But it is offered.

13 Q. Well, now, let me ask you about that. I know
14 you say your standard practice -- and I believe you.
15 Okay? I'm not suggesting you wouldn't tell the truth
16 about that.

17 Your standard practice is to offer to give a
18 person a copy of their statement?

19 A. That's correct.

20 Q. And you are an employee of a legal entity of the
21 sovereign state of South Carolina; correct?

22 A. Yes, sir.

23 Q. And you took a statement from him, which he
24 signed?

25 A. Yes.

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1 Q. But you can't -- you don't recall giving him a
2 copy --

3 A. It was -- I always offer the carbon copy. It's
4 the yellow copy on the back. And some people in jail
5 don't want copies of their statements, defendant's
6 statements, in [sic] them at all. So I offer them, also.
7 Some people in jail don't take them; some do. I can't
8 make them. I can't force them to take it. But I don't
9 know if -- I don't recall if he took it or not.

10 Q. At this time, you don't recall if he took it?

11 A. Right.

12 Q. But your standard practice is to offer it?

13 A. Right.

14 Q. And he seemed okay to you as you were talking to
15 him?

16 A. Yes, sir.

17 Q. And did he read the statement, or did you read
18 it to him?

19 A. I read it back to him.

20 Q. Okay.

21 A. And I also put it in front of him and offered
22 him to review it, if he would like to, before he signed.

23 Q. Well, did you know whether or not he could read?

24 A. No. That's why I read it back to him.

25 MR. RUNYON: Okay. No further questions of this

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1 witness at this time, Judge.

2 THE COURT: Mr. Leventis?

3 MR. LEVENTIS: Those are all the questions for
4 Detective Patrick at this time. Thank you, Judge.

5 THE COURT: Detective, you may step down. Thank
6 you.

7 [Whereupon, the witness exits the witness stand.]

8 THE COURT: Do you have any further witnesses,
9 Mr. Leventis?

10 MR. LEVENTIS: I do not.

11 THE COURT: Mr. Runyon, do you have witnesses?

12 MR. RUNYON: Your Honor, we would call at this
13 time the defendant, for the purposes of this hearing
14 only, Mr. Termaine Nelson.

15 THE COURT: Mr. Nelson, please come forward to
16 the witness stand.

17 [Whereupon, Mr. Nelson comes forward]

18 THE CLERK OF COURT: Sir, if you would please
19 place your left hand on the Bible and raise your right
20 hand.

21 [Whereupon, Mr. Nelson is duly sworn by the
22 clerk of court as follows: do you swear or affirm to
23 tell the truth, so help you God]

24 THE WITNESS: Yes, sir.

25 THE CLERK OF COURT: Please be seated.

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1 [Whereupon, the witness takes the witness stand]

2 THE CLERK OF COURT: Sir, if you would please
3 come closer.

4 Please state your full name to the Court and
5 spell it, as well.

6 THE WITNESS: Termaine Nelson. T-E-R-M-A-I-N-E
7 N-E-L-S-O-N.

8 - - - - -

9 TERMAINE NELSON,
10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MR. RUNYON:

14 Q. Mr. Nelson, how far did you go in school?

15 A. Tenth grade.

16 Q. All right. And where did you go to school?

17 A. Burke High School.

18 Q. Okay. Now, on the day in question when you met
19 these fine officers from the North Charleston Police
20 Department, was that in Atlanta?

21 A. Yes, sir.

22 Q. Okay. And were you taking any medication at the
23 time?

24 A. Yes, sir.

25 Q. What were you taking?

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1 A. Haldol.

2 Q. Okay. When was the last time you had had Haldol
3 before you talked with them?

4 A. Like a week.

5 Q. Okay. Why were you taking Haldol, sir?

6 A. I suffer from hearing voices.

7 Q. Okay. Now, on the day in question you, in fact,
8 talked to these officers; correct?

9 A. Yes, sir.

10 Q. Now, they didn't threaten you?

11 A. No, sir.

12 Q. And they didn't beat you?

13 A. No, sir.

14 Q. And they didn't torture you, or anything like
15 that, did they?

16 A. No, sir.

17 Q. I mean, we've got to be honest about that;
18 right?

19 A. Yes, sir.

20 Q. Okay. Where have you been living the last
21 couple of years?

22 A. In Charleston, South Carolina.

23 Q. I know. But where in Charleston, South
24 Carolina?

25 A. North Charleston.

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1 Q. Where in North Charleston have you been living
2 for the last year and a half or two years?

3 A. In Union Heights.

4 Q. No, no. Well, where did -- did you come here to
5 the courthouse by yourself?

6 A. Oh. No. No, sir.

7 Q. Okay. Where did you come from?

8 A. Charleston County Detention Center.

9 Q. Okay. And how long have you been there?

10 A. Twenty-eight months.

11 Q. All right. And during that time, did -- you
12 have just been staying there and eating and sleeping and
13 what-have-you?

14 A. Yes, sir.

15 Q. Do you take -- do you get any medicine?

16 A. Yes, sir. Every night.

17 Q. What kind of medicine do you get?

18 A. Haldol, amercumine [phonetic], and Visterol
19 [phonetic].

20 Q. Okay. And that's for what?

21 A. Hearing voices, and depression.

22 Q. All right. Now, do you remember going down to
23 the medical University and talking to some nice folks down
24 there?

25 A. Yes, sir.

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1 Q. Back in when? Do you remember?

2 A. I don't -- I don't remember.

3 Q. Well, back in December or January of 2008?

4 A. I think so.

5 Q. Okay. And did you cooperate with them?

6 A. Yes, sir.

7 Q. Okay. And after you finished there, what did
8 they do to you?

9 A. Took me back to the common care.

10 Q. Okay. Now, did you understand what the
11 detectives were telling you that day in Atlanta?

12 A. Yes, sir.

13 MR. RUNYON: Okay. I have no further questions
14 of this witness, Your Honor.

15 THE COURT: Mr. Leventis?

16 MR. LEVENTIS: Thank you, Your Honor.

17 Good afternoon, Mr. Nelson.

18 THE WITNESS: How you doing?

19 MR. LEVENTIS: Good. Thanks.

20 CROSS-EXAMINATION

21 BY MR. LEVENTIS:

22 Q. How old are you?

23 A. Twenty-seven.

24 Q. So approximately how old were you in July of '07
25 when you gave that interview?

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1 A. Twenty-five.

2 Q. Okay. And you dropped out of school with only
3 two years left; right? In the tenth grade?

4 A. Yes, sir.

5 Q. Okay. So by that time in the tenth grade, is it
6 fair to say you could read and write and understand the
7 English language? Correct?

8 A. Not that good.

9 Q. Well, I guess it was a several-part question, so
10 let me go over it one part at a time.

11 Could you read by that time?

12 A. Not that good. I could, but not that good,
13 though.

14 Q. Okay. Could you write?

15 A. Not that good.

16 Q. And could you understand the English language?

17 A. Yes, sir.

18 Q. Okay. Any problem understanding the English
19 language?

20 A. No, sir.

21 Q. Okay. But you made it to the tenth grade?

22 A. Yes, sir.

23 Q. Okay. Meaning you passed grades one through
24 nine?

25 A. Yes, sir.

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1 Q. And, obviously, this is the second time we've
2 had this hearing; correct?

3 A. Yes, sir.

4 Q. And you remember the first time -- why don't we
5 go over a little bit of the testimony. It sounds like
6 you've already mentioned some of it. We can all agree
7 that neither Detective Patrick nor Sargent Gomes coerced
8 you in any way in giving your statement? Threats or
9 promises or anything like that?

10 A. No, sir.

11 Q. Very good. You agree to that?

12 A. Yes, sir.

13 Q. And we can still agree that you understood what
14 they were saying to you; correct?

15 A. Yes, sir.

16 Q. Okay. If you would bear with me one moment.

17 MR. LEVENTIS: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 MR. LEVENTIS: Thank you.

21 Q. [Mr. Leventis] I want to show you what's been
22 marked as Court's Exhibit Number 1, and identified as the
23 advice of rights form that Detective Gomes reviewed with
24 you, and ask you to take a look at it real quick. Okay?
25 Thanks.

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1 [Whereupon, the witness reviews documents]

2 Q. [Mr. Leventis] Have you had a chance to look it
3 over?

4 A. Yes, sir.

5 Q. Okay. Do you see -- do you see your name next
6 to the top where it says the words full name and then you
7 see your name next to that?

8 A. Yes, sir.

9 Q. Okay. And next to the words date of birth, it's
10 written -- and can you tell the Court what's written
11 there?

12 A. [REDACTED].

13 Q. [REDACTED] [REDACTED]. Is that, in fact, your
14 birthday?

15 A. Yes, sir.

16 Q. Okay. And you would have given the detective
17 that answer in response to the question when were you
18 born?

19 A. Yes, sir.

20 Q. And that's an accurate answer; correct?

21 A. Yes, sir.

22 Q. Okay. You see where it says grade completed in
23 school and then written there it says tenth? Do you see
24 that?

25 A. Yes, sir.

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1 Q. Okay. And you already told the Court today that
2 is, in fact, how far you got in school; right?

3 A. Yes, sir.

4 Q. And you gave the detectives that response and
5 you gave the detectives that information in response to
6 the question they asked you during that interview;
7 correct? how far did you get in school?

8 A. Yes, sir.

9 Q. Okay. And then it goes on to say: [reading] I,
10 Termaine Nelson, have been advised by Detective Gomes of
11 the North Charleston Police Department that, dot, dot,
12 dot.

13 And it gives you several rights that you've been
14 advised of. It lists your constitutional rights. Do you
15 see where it says that?

16 A. Yes, sir.

17 Q. Okay. Did Detective Gomes read those rights to
18 you?

19 A. Yes, sir.

20 Q. Okay. And in the section below that in the
21 section that says, I fully understand each of these rights
22 explained to me, is that your signature?

23 A. Yes, sir.

24 Q. Okay. But you testified to the Court that you
25 were hearing voices during this interview; is that

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1 correct?

2 A. Yes, sir.

3 Q. Okay. Now, do you remember being evaluated at
4 MUSC, for the voices you heard, prior to giving this
5 interview? You had been evaluated; correct?

6 A. Yes, sir.

7 Q. And do you remember telling the lady at MUSC
8 that you first started hearing these voices in 2006? Does
9 that sound familiar?

10 A. Yes, sir.

11 Q. Is that accurate?

12 A. Yes, sir.

13 Q. Okay. Setting that aside for a second.

14 July 2007 was not the first time that you had
15 been arrested; correct?

16 A. No, sir.

17 Q. In fact, it wasn't the second or third time, was
18 it?

19 A. No, sir.

20 Q. Is it fair to say that during your prior arrests
21 you were given your constitutional rights, just like in
22 this case? You had the right to remain silent, right to
23 an attorney, if you can't afford one one will be appointed
24 for you. Was that given to you in your prior arrests?

25 A. Yes, sir.

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1 Q. Had you, in fact, been arrested several times
2 before 2006?

3 A. Yes, sir.

4 Q. Okay. And that -- so you've been arrested and
5 given your advice of constitutional rights several times
6 before you ever started hearing these voices; isn't that
7 correct?

8 A. Yes, sir.

9 MR. LEVENTIS: Beg the Court's indulgence for
10 one moment, Your Honor.

11 THE COURT: Yes, sir.

12 [Whereupon, Mr. Leventis reviews documents]

13 MR. LEVENTIS: Your Honor, those are all the
14 questions I have of the defendant at this time. Thank
15 you.

16 Thank you, Mr. Nelson.

17 THE COURT: Mr. Runyon?

18 MR. RUNYON: Come down, Mr. Nelson.

19 [Whereupon, the witness the witness stand]

20 MR. RUNYON: We have no other witnesses on this
21 point, Judge.

22 THE COURT: All right. Counsel, I'll be happy
23 to hear from you concerning arguments.

24 MR. LEVENTIS: Thank you, Your Honor. And as
25 you're aware, I submitted a lengthy memo on this

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1 earlier last week.

2 You know, the paramount consideration of a
3 Jackson v. Denno hearing is voluntariness. There's
4 State case law, including State v. Doby and State v.
5 Hughes that says, we have consistently held -- the
6 South Carolina State Supreme Court: we have
7 consistently held that mental deficiency alone is not
8 sufficient to render a confession involuntary, but that
9 is a factor to be considered along with other factors.

10 However, in Caldwell v. Conley, United States
11 Supreme Court, a case very similar to the case at the
12 bar, said that in order to find the confession
13 involuntary, you must find police misconduct. Because
14 what we're talking about, ultimately, is depriving the
15 defendant of his due-process rights. And in order to
16 deprive someone of their due-process rights, there has
17 to be State action. In this instance, the State action
18 would be police coercion or misconduct. Both sides of
19 this case can agree there has been no police coercion
20 or misconduct.

21 Ultimately, I think it's the Court's decision as
22 to whether the totality of the circumstances in this
23 case bear a finding that this -- this confession was
24 somehow involuntary or not knowing and intelligently
25 given. However, I think that case law in South

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1 Carolina is very clear that the only thing the
2 defendant is asserting is mental insufficiency or
3 incapacity. That is not sufficient to find voluntary
4 -- excuse me -- the confession involuntary. There was
5 certainly no police misconduct.

6 And I point to the State v. Hughes, which is
7 another murder case, confession case, out of York
8 County. The South Carolina Supreme Court citing Doby,
9 which I mentioned earlier in Conley, confirmed: absent
10 police conduct causally related to the confessions,
11 there's no basis for finding the confession
12 constitutionally involuntary -- involuntary. Excuse
13 me. A defendant's mental condition in and of itself
14 does not render a statement involuntary. Furthermore,
15 under state law, a confession is not inadmissible
16 because of mental deficiency alone.

17 In this case we've got two highly-trained,
18 experienced detectives from the North Charleston Police
19 Department testifying that the defendant was made aware
20 of all of his constitutional rights, and made aware of,
21 the nature of the investigation, prior to giving a
22 statement. No threats or promises were made in
23 exchange for the defendant's statement. The defendant
24 reviewed and signed the advice of rights form in the
25 appropriate areas. The defendant appeared to

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1 understand everything that was taking place during the
2 interview and taking of the defendant's statement. The
3 defendant gave -- and coherent answers and responded to
4 the questions that were posed to him. Furthermore, the
5 defendants [sic] testified defendant never requested
6 medication during the interview, never mentioned
7 hearing voices during the interview, never gave any
8 outward indication that he didn't understand what was
9 going on during the interview. And that's consistent
10 with the defendant's testimony that there was no police
11 coercion, that he understood -- he stood up and
12 testified he understood everything that was going on
13 there.

14 And, finally, I would just note that prior to
15 the defendant giving his statement, prior to the
16 interview, the defendant had been involved in the
17 criminal justice system on numerous occasions. Even
18 prior to the beginning of his mental incapacity, he had
19 been involved -- he had been arrested many, many times,
20 been advised during his constitutional rights during
21 those arrests, understood what was taking place at that
22 time. And I think that's important to take into
23 consideration because it goes to his understanding
24 during this interview.

25 That's all I have, Your Honor. Thank you.

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1 THE COURT: Mr. Runyon?

2 MR. RUNYON: Judge, I would never suggest to the
3 Court that these two officers threatened him, abused
4 him, tortured him, any of those other things. So when
5 you start talking about real police misconduct, like
6 these other cases that the courts -- the appellate
7 courts are talking about, you know, I can't suggest to
8 you, and I wouldn't even hint, that these two fine
9 officers even thought about doing that. They went over
10 to Atlanta and interviewed him. No question about
11 that.

12 The problem we have here, Judge, is that, number
13 one, the totality of the circumstances: Mr. Patrick
14 testified he ordinarily writes his own statements. I
15 mean, that's his practice. And I'm not suggesting
16 anything sinister about that. But the fact that he
17 went to the tenth grade -- my wife is a principal at
18 West Ashley High School and I can tell you, twenty
19 percent of the people that hit the ninth grade over
20 there can't read, period.

21 And so the long and short of it is is that
22 you've got a person with limited education, you've got
23 a person who is, by -- and the officer didn't know it
24 at the time but since he was taken into custody, he's
25 been evaluated by an order of this court and he has

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1 been determined to be schizophrenia-paranoia type
2 versus substance induced psychotic disorder.

3 I mean, he's really crazy, Judge, with all due
4 respect to my client. He is schizophrenic-paranoid
5 type. He's been on medication, and the person you see
6 here today -- and he wasn't bouncing off the walls in
7 Atlanta. He wasn't throwing chairs. I mean, you know,
8 he was a calm crazy person. But the simple fact of the
9 matter is is that he had been off his medication for at
10 least a week here. The -- he comes before the Court to
11 answer questions. And he's been -- for almost two
12 years he's been on three different kinds of
13 medications. Every night they bring it to him. That's
14 one of the reasons why it costs our honorable sheriff
15 so much money to run that jail. And so, therefore, I
16 think that that's one of the considerations that you
17 have to consider.

18 In addition to that, Judge, there's no testimony
19 that he was ever given a copy of the statement once it
20 was signed, and I believe that that is a requirement,
21 that it should be -- a law in this state that should be
22 taken into consideration as to whether or not the
23 statement should be admissible or should be admitted.

24 But I can't assert to you there's not any
25 evidence of misconduct.

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1 THE COURT: Mr. Runyon, the mere fact -- is it
2 the sole -- is it your position or your client's
3 position that the confession was not voluntary because
4 of his -- because he was, to quote you, a calm crazy
5 person, that he did not understand what was going on at
6 that time; therefore, it is not voluntary? Is that
7 your position?

8 MR. RUNYON: That's the basic position we have,
9 Judge. We can't make it any better than that; we can't
10 make it any worse than that. Obviously, we're not in
11 the position to just say, okay, the statement is
12 admissible, because given some success by the State in
13 this case, I would be answering that question for the
14 next ten years, so we have to -- we have to do this
15 through a Denno process.

16 But the simple fact is is there's a question --
17 these officers, as I said, they didn't do misconduct
18 but by the same token, they didn't even know he was
19 schizophrenic and they didn't know that he had been off
20 his medication. And what you see coming from that
21 stand is two years of pretty good medications being
22 supplied to him every night. And so -- and,
23 unfortunately, that's where we stand. I mean, that's
24 the best we can do insofar as arguing against the
25 admissibility, Judge.

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1 THE COURT: Thank you. Mr. Leventis?

2 MR. LEVENTIS: Thank you, Your Honor. Just
3 briefly.

4 None of the cases I cited, Doby, Conley, or
5 Hughes include police misconduct. In fact, it's just
6 the opposite. In every case there's been no police
7 misconduct, just like this case, but the defendant is
8 standing up and saying because I was mentally retarded
9 or because I was schizophrenic, or for whatever reason,
10 I had a mental deficiency that was -- did not allow me
11 to give a voluntary statement. And in every case the
12 South Carolina Supreme Court or the United States --
13 South Carolina said, that doesn't work, that's not
14 enough.

15 In this case there are no other circumstances to
16 suggest that this statement was given involuntarily.
17 He was found competent to stand trial, and I don't
18 think that whether he was given a copy of his statement
19 or he wasn't -- which the record is not clear on that.
20 Detective Patrick just testified that he didn't
21 remember. I don't think that goes to whether or not
22 the statement was voluntarily given or not voluntarily
23 given at all. Certainly, it's at your discretion to
24 find that it is or is not. But I've never come across
25 a case to find that. Thank you, Your Honor.

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1 THE COURT: Mr. Runyon, I'll allow you one last
2 -- do you have anything else to say?

3 MR. RUNYON: Judge, I'm not going to belabor the
4 point. I mean, we know where we are, and I can't make
5 it any better than what we've got, and so I'm not going
6 to -- I'm not going to bore you to death, Judge.

7 THE COURT: Thank you.

8 I'm going to take just a few moments, and we'll
9 be at ease for ten minutes. Thank you.

10 [Whereupon, a recess is taken from 1:06 p.m. to
11 1:21 p.m.]

12 THE COURT: I have reviewed the cases cited by
13 the State, as well as the testimony here today by
14 Sargent Gomes, Detective Patrick, as well as the
15 defendant, Mr. Nelson.

16 I have reviewed the totality of the
17 circumstances, looking at several factors, in order
18 to make my determination of whether or not I find that
19 the statement was freely and voluntarily given.

20 Mr. Nelson was twenty-five years old at the
21 time, according to testimony and my calculations as to
22 his date of birth. As to the lack of education or lack
23 thereof, he testified that he had made it successfully
24 through the previous nine grades. He had made it into
25 the ten grade. He testified as to -- that he did

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1 understand the English language. He said that he could
2 read and write, even though there was testimony that he
3 was not that good at reading and writing. But he did
4 indicate that he could read and write the English
5 language. The reaction to the prison environment, one
6 of the factors to consider, Mr. Nelson had been
7 arrested before. He indicated that he had been read
8 his rights during those previous arrests and that he
9 understood his rights then.

10 Based upon arguments of counsel, the details of
11 the interrogation, there was no indication -- and
12 defense counsel even agreed that there were no threats,
13 no promises, no coercion.

14 That leaves the only remaining issue for the
15 Court to consider as to the voluntariness or lack
16 thereof of the confession, the statement, that was
17 given is whether or not the defendant's assertion that
18 he was hearing voices during the time of the -- that he
19 gave the statement to Detective Gomes and Detective
20 Patrick, whether or not that affected the voluntariness
21 of the statement. Nothing in the defendant's behavior
22 during the time that he was giving the statement
23 indicates that he did not voluntarily and intelligently
24 waive his rights. Both the detectives indicated that
25 the defendant's responses made sense to them, they were

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1 appropriate, there was no erratic behavior, the
2 defendant never mentioned anything about his mental
3 illness or that he was hearing voices during the time
4 he gave the statement. Both -- even the defendant
5 stated here today that he understood what the
6 detectives were saying to him while he was giving his
7 statement and that he even signed and understood the
8 statement when he gave it during the time he gave it on
9 that day.

10 Based upon those foregoing analyses as to the
11 totality of the circumstances, as well as the testimony
12 given here today, I find that the defendant's statement
13 was freely, voluntarily given, and it will be
14 admissible.

15 Anything further?

16 MR. LEVENTIS: No, Your Honor.

17 MR. RUNYON: Nothing further, Your Honor.

18 THE COURT: All right. And we will break. We
19 are ahead of schedule, which is nice, so we will be
20 down until 3:00 unless there is any further pretrial
21 matters.

22 MR. LEVENTIS: None from the State, Your Honor.

23 MR. RUNYON: Nothing from the defense, Your
24 Honor.

25 THE COURT: Thank you. Mr. Nelson, we will be

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1 back at three o'clock.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Thank you.

4 MR. RUNYON: Thank you, Judge.

5 THE COURT: We'll be at ease until 3:00. Thank
6 you.

7 [Whereupon, a recess is taken from 1:24 p.m. to
8 3:01 p.m.].

9 THE COURT: Thank you. Be seated.
10 Anything before we bring in the jury?

11 MR. LEVENTIS: Nothing from the State.

12 MR. RUNYON: Nothing from the defense, Your
13 Honor.

14 THE COURT: All right. Please bring in the
15 jury.

16 Please rise for the jury.

17 [Whereupon, the jury enters the courtroom at
18 3:03 p.m.]

19 THE BAILIFF: The jury is present, Your Honor.

20 THE COURT: Thank you. Please be seated.

21 Ladies and gentlemen, I just wanted to let you
22 know when you -- just as when you rise when I come in,
23 and out of respect for your new position as judges of
24 the facts, the members of the audience, as well as the
25 parties involved in this case, will be standing when

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1 you come in and leave the courtroom. So please come in
2 and take your seats, because they will all remain
3 standing until you are all seated.

4 Mr. Clerk, if you will please swear the jury.

5 THE CLERK OF COURT: Yes, Your Honor.

6 Mr. Defendant, please stand.

7 [Whereupon, Mr. Nelson complies]

8 THE CLERK OF COURT: Ladies and gentlemen of the
9 jury, at this time would you please stand and raise
10 your right hand and be sworn in. And if you would,
11 once I have finished the oath, please respond verbally.
12 Everyone raising their right hand? Thank you.

13 [Whereupon, the jury is duly sworn by the clerk
14 of court]

15 THE CLERK OF COURT: Thank you. Please be
16 seated.

17 THE COURT: Thank you.

18 Ladies and gentlemen of the jury, you have also
19 been given notepads. I want to caution you those are
20 for you. One juror's notes are no more correct or
21 accurate than another juror's notes. And I also want
22 to remind you, just remember back in school some of us
23 were much better note-takers than others. And also,
24 while you are taking notes, sometimes you tend to miss
25 what is actually happening in front of you. So with

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1 all of those caveats, you are free to take notes as you
2 see fit.

3 Ladies and gentlemen, before we begin the trial,
4 I want to tell you that this trial probably will be
5 different from what you might expect. Most people
6 don't have the opportunity to attend court sessions as
7 you are doing now, and may think from watching
8 television or movies or reading books that trials are
9 always full of high drama and riveting circumstances.
10 Some of these things are true at times, but I want you
11 to understand that this trial is not for entertainment.
12 It is a fundamental part of our democracy, a search for
13 the truth, in an effort to make sure that justice is
14 done between the parties here today. Searching for the
15 truth is often slow, deliberate, and repetitive, the
16 opposite of what you may have seen in movies,
17 television, or read in books.

18 This courtroom is a place of honor. It is
19 dedicated to the protection and preservation of
20 citizens' rights through what many have called the
21 greatest justice system ever created. The attorneys
22 that appear before you are advocates for the parties
23 that they represent, but first and foremost they are
24 officers of this court. They are sworn to uphold the
25 integrity and the fairness of our judicial system and

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1 to help you in the search for the truth. You should
2 expect them to be ethical, competent, and professional.
3 Remember that you have just taken an oath to try this
4 case and reach a fair and just verdict, and you are
5 also expected to be professional, reasonable, and
6 ethical. Thank you again for accepting the important
7 responsibility of jury service and for your
8 contribution here today to our justice system.

9 What I now say is intended to serve as an
10 introduction to the trial of this case. These remarks
11 are not a charge on the law. I will instruct you on
12 the law applicable to this case at the of the trial
13 before you retire to consider your verdict. This is
14 merely an explanation of the procedure that we will
15 follow so that you will better understand what is
16 happening.

17 The defendant is charged by an indictment filed
18 in this court. He is charged with murder and assault
19 and battery with intent to kill. The elements of both
20 of those crimes will be explained to you later. The
21 indictment is simply the charge by which the case is
22 brought into this court. It is not in any sense
23 evidence of the allegations it contains. The defendant
24 has pled not guilty to each indictment. The State,
25 therefore, has the burden of proving each of the

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1 elements of each indictment beyond a reasonable doubt
2 and it will be your duty, ladies and gentlemen of the
3 jury, to decide whether the State has met that burden.

4 Your purpose as jurors is to find and determine
5 the facts. You are the sole judge of the facts in this
6 case and if at any time I make any comment regarding
7 the facts in this case, you must disregard it. You are
8 to determine the facts from the testimony you hear and
9 any other evidence that is introduced in this court.
10 It is up to you to determine the inferences which you
11 feel may be properly drawn from that evidence. It is
12 especially important that you perform your duty of
13 determining the facts diligently and conscientiously
14 because ordinarily there is no way to correct an
15 erroneous determination of facts by a jury.

16 On the other hand, and with equal emphasis, the
17 same law that makes you the judge of the facts also
18 makes me the judge of the law. The law as given by
19 this Court is the only law that you may consider. You
20 must accept it and follow it, even though you may
21 disagree with it. I cannot tell you what I think the
22 facts are in this case, and you cannot disagree with me
23 about what the law is or what the law should be. Your
24 job is to take the law as I give it to you, apply the
25 facts as you find them to be from the testimony of the

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1 witnesses from that witness stand, as well as any other
2 evidence that may be introduced. After doing that, you
3 will render your verdict, a true and just verdict,
4 under the solemn oath that you just took as jurors.

5 Until I advise you to begin your deliberations,
6 do not discuss this case with anyone. That includes
7 your fellow jurors, friends, family members, anyone
8 else involved in this case. This includes any
9 discussions and those by telephone, e-mail, text,
10 blogs, or any other methods of communications. After
11 this case is submitted to you, you must discuss it only
12 in the jury room and only with your fellow jurors.

13 The attorneys and all the parties in this case
14 have been advised that they are not to speak to you at
15 all, so if you see any of the parties involved and they
16 do not even say hello, they're not being rude, they're
17 merely following the Court's instructions.

18 During the trial you may not read, watch, listen
19 to any news reports about this case, should there be
20 any. You must not consider anything that you have read
21 or heard about this case before or -- outside of the
22 courtroom before or during the trial.

23 It is important that you keep an open mind and
24 not decide any issue in this case until all of the
25 evidence has been presented, the parties have made

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1 their closing arguments, and I have instructed you on
2 the law applicable to this case. It is your solemn
3 responsibility to determine the guilt or innocence of
4 the defendant and your verdict must be based solely on
5 the evidence as it is presented to you in this trial
6 and on the law as I instruct during and at the close of
7 the trial.

8 In just a moment the solicitor will make what is
9 called an opening statement, in which the solicitor
10 will explain to you the issues in this case, or at
11 least what he thinks the issues are in this case. The
12 attorney for the defendant may also make an opening
13 statement, although he is not required to do so. What
14 the attorneys tell you in their opening statements is
15 not evidence in this case. It is only their contention
16 as to what the issues are. The evidence in this case
17 will be presented to you by testimony of sworn
18 witnesses from the witness stand, as well as any
19 exhibits that may be introduced into evidence.

20 From time to time during the trial, you may hear
21 one of the lawyers say something like, Your Honor, I
22 believe we have a matter of law, may we approach the
23 bench, or I might find it necessary to excuse you from
24 the courtroom for a short while. The reason for this
25 is we're not trying to hide anything from you, but

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1 sometimes I must make a comment on the facts when I
2 make a ruling on the law. And, again, I am not
3 supposed to tell you what I think the facts are, so I
4 will excuse you so that nothing I say may influence
5 your decision in connection with the facts.

6 In determining what the true facts are in this
7 case, you must decide whether or not the testimony of
8 the witnesses is believable. It will be my
9 responsibility to rule, as a matter of law, as to
10 whether certain testimony is admissible or not at all
11 but once the testimony is admissible and admitted,
12 whether or not you believe it is solely for you to
13 determine.

14 In deciding whether to believe a witness, you
15 may believe one witness over several witnesses. You
16 also have the right to consider the interest of a
17 witness, the bias of a witness, the prejudice of a
18 witness, as well as the opportunity for the witness to
19 have seen the matter and things about which the witness
20 may testify, as well as the way the witness acts on the
21 witness stand.

22 It is your duty to pay close attention to the
23 witnesses as they testify, to listen to the witnesses,
24 as well as to pay close attention to the Court and to
25 the attorneys. Don't let your thoughts wander. Give

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1 strict attention so that at the end of all the
2 testimony, after the closing arguments of counsel, and
3 I have instructed you on the law applicable to this
4 case, you will be in a position to determine what the
5 true facts are and able to apply the facts and render a
6 true and just verdict.

7 It is your added duty, Madam Foreperson -- you
8 are the jury spokesperson here in court. It will also
9 be your duty to write the verdict, but I will give you
10 further instructions regarding that.

11 Please give strict attention to the opening
12 statement by the solicitor.

13 Mr. Leventis?

14 MR. LEVENTIS: Thank you, Your Honor. May it
15 please the Court.

16 THE COURT: Yes, sir.

17 - - - - -

18 OPENING STATEMENT

19 MR. LEVENTIS: Good afternoon.

20 On the afternoon of July 13th, 2007, outside of
21 apartment complexes in between Calvert and Iris Street
22 in North Charleston, one of the victims in this case,
23 Cory Watkins, was just sitting down having a beer with
24 his old friend, Deshawn Brown. All this time, Cory and
25 Deshawn had been friends for a good number of years,

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1 and they often sat outside these apartment complexes
2 and they drank beer, joked around, caught up on what
3 was going on in the neighborhood.

4 But on this particular day Cory, did not feel
5 like joking around. You see, it was Friday the 13th
6 and Cory and Deshawn both knew that there had been a
7 robbery in these apartment complexes earlier in that
8 day. So Cory looked at his old friend, Deshawn Brown,
9 and he said, you know what, we're going to finish this
10 beer and we're going to get out of here; something
11 doesn't feel quite right; let's just finish this beer;
12 let's leave. And as he was saying that, an SUV that
13 neither of them recognized sped into the parking lot,
14 came to a hard stop. It was a driver and two
15 passengers. Two men jumped out of the SUV, the
16 passengers: one man, Termaine Nelson, the defendant,
17 and another man, Timothy Hoard, a codefendant who's not
18 being tried today.

19 Both men had guns. They looked at Cory and
20 Deshawn and they said, don't run now, don't run now.
21 And Cory knew what that meant, so he took off running
22 as fast as he could. And as he ran, he heard bullets
23 exploding behind him. And it wasn't until Cory was
24 able to duck into an apartment complex, an apartment
25 nearby, that he actually stopped to catch his breath

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1 and only at that point did he realize he had been shot
2 in the leg.

3 Cory's friend, Deshawn Brown: Deshawn Brown was
4 not so lucky, ladies and gentlemen. As Deshawn Brown
5 got up to run, a bullet struck him in the back and
6 pierced his thorax, and it took his life.

7 The defendant and Timothy Hoard got back into
8 that car, and the driver sped away with those two men
9 in tow. They ditched the car, they ditched the guns.
10 And the defendant, the driver fled to Atlanta. Timothy
11 Hoard was picked up within a day or so. The driver and
12 Termaine Nelson were picked up several days later in
13 Atlanta. And now we're here for Termaine Nelson's
14 murder trial.

15 And while this is a murder trial, this is not a
16 murder mystery. The evidence in this case is clear.
17 You're going to hear from several eyewitnesses,
18 including the victim, Cory Watkins, who is a victim but
19 he's also an eyewitness. You're also going to hear
20 from Jovan Bryant. Jovan Bryant was the driver who
21 drove Termaine Nelson over to those apartments to
22 commit this crime, drove him away, and then fled to
23 Atlanta. So, yes, this is a murder trial. But this is
24 no murder mystery. We know who committed these crimes,
25 where he did it, when he did it, why he did it.

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1 I ask you, the jury, to please pay close
2 attention to all of the evidence, to each of the
3 witnesses put before you. Use your common sense.
4 That's what you are here for. And I'm confident that
5 if you do that, if you apply your common sense to the
6 evidence put before you, you can only reach one verdict
7 in this case; and that is that the defendant, Termaine
8 Nelson, is guilty beyond any reasonable doubt. He's
9 guilty of assault and battery with the intent to kill
10 Cory Watkins, and he is guilty of the murder of Deshawn
11 Brown. Thank you.

12 THE COURT: Mr. Runyon?

13 - - - - -

14 OPENING STATEMENT

15 MR. RUNYON: Madam foreperson, ladies and
16 gentlemen of the jury, I guess, then, what we ought to
17 do is we ought -- I ought to go over here and get the
18 indictment forms from the judge and just have the
19 forelady go ahead and sign guilty on them. That's not
20 what this is all about.

21 What the solicitor has told you is is that this
22 deceased had -- was talking about -- with Cory about
23 some robbery that he had heard earlier. Let me tell
24 you what you're going to hear about it. You're going
25 to hear about something that doesn't happen in your

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1 neighborhood or next door to you. But it happened that
2 day. The deceased assisted in robbing that man. You
3 didn't hear that. It was over a drug deal. And, yes,
4 that man came back.

5 The real question is is who was doing the
6 shooting. Let's -- we can stand up here all afternoon
7 and talk, which I'm not going to. The important thing
8 is for us to listen to exactly what happened and
9 exactly how he was victimized earlier, in part by the
10 victim, by the deceased, and while -- and he was almost
11 victimized a second time that afternoon. The State
12 doesn't want to talk to you about that.

13 Listen to the evidence, take it all in, and then
14 at the end of the case we'll be able to talk with you a
15 little bit more intelligently -- not emotionally, but
16 intelligently -- about what the evidence is and about
17 what happened that day and about how he was victimized
18 that day once and almost victimized a second time.
19 Thank you very much.

20 THE COURT: Mr. Leventis.

21 MR. STACK: The State calls deputy John Neale,
22 with the Charleston County Sheriff's Office.

23 [Whereupon, Mr. Neale comes forward]

24 THE CLERK OF COURT: Sir, if you would please
25 place your left hand on the Bible and raise your right

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1 hand.

2 [Whereupon, Mr. Neale is duly sworn by the clerk
3 of court as follows: do you swear or affirm to tell
4 the truth, so help you God]

5 THE WITNESS: I do.

6 THE CLERK OF COURT: Please be seated.

7 [Whereupon, the witness takes the witness stand]

8 THE CLERK OF COURT: And, sir, for the record,
9 please state your full name and spell it, as well.

10 THE WITNESS: John Hughes Neale, II. J-O-H-N
11 H-U-G-H-E-S N-E-A-L-E.

12 THE COURT: Mr. Stack?

13 MR. STACK: Thank you, Your Honor.

14 Good afternoon, Deputy. How are you doing
15 today?

16 THE WITNESS: I'm good.

17 - - - - -

18 JOHN H. NEALE, II,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MR. STACK:

23 Q. Would you please tell the jury what you do for a
24 living.

25 A. I'm a police officer.

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1 Q. With what organization?

2 A. With the Charleston County Sheriff's Office.

3 Q. And how long have you worked with the sheriff?

4 A. Almost two and a half years.

5 Q. Prior to being employed by the sheriff, did you
6 work for another police agency?

7 A. I did.

8 Q. And who was that?

9 A. North Charleston.

10 Q. Okay. And how long did you work for the North
11 Charleston Police Department?

12 A. For approximately a year.

13 Q. Okay. Back on July 13th of '07, were you
14 working for the North Charleston Police Department?

15 A. I was.

16 Q. And back then, what were your duties? Tell the
17 jury the types of things you were responsible for as an
18 officer with the North Charleston Police Department back
19 in July of '07.

20 A. To respond to calls for service, to help
21 citizens in my patrol area, and enforce the laws.

22 Q. Back in July of '07, what was your patrol area?

23 A. The south end of North Charleston City.

24 Q. On 13 July, July 13th of '07, did you respond to
25 a call that day?

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1 A. I did.

2 Q. Okay. Tell the jury the nature and the location
3 of that call, please.

4 A. I responded to a shooting call at [REDACTED] Calvert
5 Street.

6 Q. All right. Is that location between Calvert --
7 the location of the shooting, was that between Calvert
8 Street and Iris Street in Charleston County?

9 A. It is.

10 Q. Okay. Were you the first officer to arrive at
11 the scene?

12 A. I was.

13 Q. All right. In a moment I'm going to approach
14 and show you an aerial photograph that's been marked as
15 State's Exhibit Number 1 for identification purposes only.
16 I would like for you to take a few moments to review the
17 photographs.

18 MR. STACK: If I have permission to approach?

19 THE COURT: You do.

20 Q. [Mr. Stack] Take a few moments and review this
21 photograph, please.

22 [Whereupon, the witness reviews documents]

23 Q. [Mr. Stack] Okay. Does this photograph depict
24 the area of the crime scene on 13 July of '07?

25 A. It does. The only correction to this photograph

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1 would be a fence around a certain lot near the area.

2 Q. I'm going to have you show the jury that fence
3 in a moment. But other than that, is this a true and
4 accurate depiction of the crime scene area --

5 A. Yes.

6 Q. -- area around Calvert and Iris Street --

7 A. Yes.

8 Q. -- back in that location?

9 MR. STACK: Your Honor, the State moves State's
10 Exhibit Number 1 into evidence.

11 MR. RUNYON: No objection, Judge.

12 THE COURT: State's --

13 MR. RUNYON: Sorry. No objection, Your Honor.

14 THE COURT: State's 1 into evidence without
15 objection.

16 [Whereupon, State's Exhibit Number 1 is admitted
17 into evidence by the Court]

18 MR. STACK: Beg the Court's indulgence just one
19 moment.

20 THE COURT: Yes, sir.

21 MR. STACK: With the Court's permission, go
22 ahead and step down. I'm going to ask you to show a
23 few things to the jury.

24 THE COURT: You may step down.

25 [Whereupon, the witness complies]

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1 Q. [Mr. Stack] All right. Just to orient the jury
2 to the crime scene, would you show the jury where North
3 Carolina Avenue is located?

4 A. This is North Carolina Avenue.

5 Q. And Iris and Calvert Streets?

6 A. This is Calvert Street; and Iris.

7 Q. Okay. Earlier you stated that the location of
8 the call was at [REDACTED] Calvert Street; is that correct?

9 A. That's correct.

10 Q. Would you please show the jury where that is on
11 the photograph.

12 A. It's going to be -- brick building. It's going
13 to be right here.

14 Q. You say brick building. Is it red in color?

15 A. It is.

16 Q. Okay. So a two-story, red-brick building. The
17 building next door, [REDACTED] Calvert: can you point that out
18 to the jury?

19 A. It's this building right here.

20 Q. And what color is that?

21 A. It's a white, single story.

22 Q. Okay. Is it made out of cinder block,
23 apparently?

24 A. I can't remember exactly.

25 Q. Okay. But it's a white, one-story building?

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1 A. Yes..

2 Q. Okay. Is there a walkway between the two
3 buildings?

4 A. There is. It's this grassy -- grassy-looking
5 area right here.

6 Q. All right. Does it go all the way through?
7 Back then, does it go all the way through from Calvert
8 Street to Iris Street?

9 A. It does. It -- the whole thing is from here,
10 all the way to over here.

11 Q. Okay. Now, you said earlier there was a fence
12 back then. Did that partially enclose the area?

13 A. It did. The fence came right through here and
14 then covered this area right here, and it still left a
15 good-size opening right here at the corner.

16 Q. Okay. Using the pen, would you go ahead and
17 draw that in there, please.

18 [Whereupon, the witness complies]

19 Q. [Mr. Stack] All right. The shooting, did that
20 occur on a cement pad between the two buildings?

21 A. It did.

22 Q. All right. Would you please point out the
23 cement pad.

24 A. It was this part of the cement pad, and also
25 this part of the cement pad.

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1 Q. Okay. And you could walk freely from here to
2 here?

3 A. Yes.

4 Q. There was no -- the fence didn't block you from
5 that?

6 A. No. There's actually -- from my memory, there
7 is a section enough for at least two cars to get through
8 very easily.

9 MR. STACK: If you would go ahead and take your
10 seat again.

11 [Whereupon, the witness complies]

12 Q. [Mr. Stack] All right. You said earlier -- and
13 you were the first officer to respond to the crime scene;
14 is that correct?

15 A. It is.

16 Q. All right. Would you please tell the jury upon
17 arrival what you did and what you observed.

18 A. When I first arrived, I found a large group of
19 people at the back corner of the building of [REDACTED] towards
20 the opening where the -- actually, to where the fence was
21 towards Iris Street. Deshawn Brown was laying on the
22 ground. He had been shot. He was bleeding at that
23 corner. As soon as we got -- as soon as I got there, I
24 tried to get the people off from around him, identifying
25 who was out there who saw anything, and immediately

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1 started to rope off the area around the location.

2 Q. When you say location, do you mean of the
3 shooting?

4 A. Yes, sir.

5 Q. Okay. Did EMS, Emergency Medical Services,
6 respond to the scene?

7 A. They did. Once I was able to clear the scene,
8 it was safe for them to enter.

9 Q. And did they enter and take Deshawn?

10 A. They did.

11 Q. What did they do with Deshawn?

12 A. They took him to the hospital.

13 Q. All right. While you were there, were any
14 photographs taken of the crime scene?

15 A. There was. North Charleston Crime Scene
16 responded to the scene shortly after we got there and took
17 photos of the scene.

18 MR. STACK: Approach the witness, Your Honor?

19 THE COURT: You may.

20 Q. [Mr. Stack] I'm now going to hand you nine
21 photographs that are marked State's Exhibits 2 through 10
22 for identification purposes only. Please review each of
23 the photographs.

24 [Whereupon, the witness reviews documents]

25 Q. [Mr. Stack] Okay. Have you reviewed each of

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1 the photographs?

2 A. I have.

3 Q. Do they depict the crime scene as it appeared on
4 13 July of '07?

5 A. It does.

6 Q. Are they true and accurate depictions of the
7 crime scene?

8 A. They are.

9 MR. STACK: Your Honor, the State moves State's
10 Exhibit Numbers 2 through 10 into evidence.

11 MR. RUNYON: No objection, Judge.

12 THE COURT: State's 2 through 10 into evidence
13 without objection.

14 [Whereupon, State's Exhibit Numbers 2 through 10
15 are admitted into evidence by the Court]

16 THE COURT: You may continue.

17 MR. STACK: Thank you.

18 In a moment, State's Exhibit Number 2, which is
19 a photograph, is going to appear behind you. If you
20 can answer from your seat, that's fine, and if not,
21 perhaps you can stand if you need a better angle.

22 Q. [Mr. Stack] This is State's Exhibit Number 2.
23 And what does this photograph depict?

24 A. It depicts the -- it depicts Calvert Street, the
25 single-story white building at [REDACTED] and actually --

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1 Q. This --

2 A. Yes, sir. And [REDACTED] is actually off to the
3 corner here.

4 Q. Okay. So when we say two-story, red-brick
5 building, we're not talking about that building; is that
6 correct?

7 A. That's correct.

8 Q. All right. And so [REDACTED] is over here?

9 A. It is.

10 Q. And [REDACTED] the white one-story, is there?

11 A. It is.

12 Q. So the alleyway is between the two?

13 A. Yes, sir.

14 Q. All right, then. Let's talk about the others.

15 This is State's Exhibit Number 3. What does
16 this photograph depict?

17 A. It's the alleyway between [REDACTED] and [REDACTED] Calvert.
18 And you can see through the section to Iris Street beside
19 the fence.

20 Q. Iris Street is back in this location here?

21 A. It is.

22 Q. And so Calvert Street is like behind the
23 photographer as he takes this photo? Like behind us?

24 A. Say that again.

25 Q. Calvert Street is that way, and Iris Street is

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1 that way?

2 A. Correct.

3 Q. Okay. Good.

4 Now, in the distance, what are these yellow-tape
5 things?

6 A. That's the crime-scene tape.

7 Q. And what is the purpose of that?

8 A. To keep people from coming into the crime scene
9 either leaving evidence or taking evidence.

10 Q. Okay. And those personnel there, are they law
11 enforcement officers?

12 A. They are.

13 Q. All right. Then let's do a closeup. This is
14 State's Exhibit Number 4. And what does this show?

15 A. It's a closer picture of the alleyway between.
16 It also shows a closer picture where Deshawn was found.

17 Q. Okay. That bundle of rags or clothing there, is
18 that where Deshawn was?

19 A. Yes, sir.

20 Q. And how do you know that? Do you know what
21 those rags are?

22 A. I believe that those were his clothes that EMS
23 cut off of him.

24 Q. They cut them off and left them there?

25 A. Yes, sir.

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1 Q. Left the clothes and then took Mr. Brown?

2 A. Correct.

3 Q. All right. This is State's Exhibit Number 5.

4 Please tell the jury what's shown here.

5 A. This is the cement pad where -- again, where the
6 clothes are at is where Deshawn Brown was located.

7 Q. Right there?

8 A. Yes, sir.

9 And it also shows crime-scene workers that
10 marked shell casings that were located at the scene.

11 Q. All right. Go ahead and -- crime-scene markers?
12 You mean this?

13 A. Yes.

14 Q. This, and this?

15 A. Correct.

16 Q. And they're numbered what? One, two, and three?

17 A. They are.

18 Q. And what's the purpose of putting out an
19 evidence marker?

20 A. To show the location in the photo of evidence
21 that was located at the scene.

22 Q. To do what? To gauge distances and things like
23 that?

24 A. Correct.

25 Q. So that's where they actually found the evidence

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1 at that location?

2 A. Correct.

3 Q. All right. Do you know what was found at those
4 markers?

5 A. I do.

6 Q. Okay. And we're going to have another photo
7 soon, but go ahead and tell us what was found in those
8 three.

9 A. At those particular markers, 7.62 shell casings
10 were found.

11 Q. Shell casings?

12 A. Correct.

13 Q. All right. Is that the -- is the shell casing
14 what comes out of the bullet? Or it's what's left over,
15 the residue?

16 A. It's what's left over. It's the spin-a-round.

17 Q. Okay. Is it ejected from the weapon, normally?

18 A. It is.

19 Q. But it's not what hits -- it's not the part that
20 hits somebody?

21 A. Correct.

22 Q. And this is Number 6. It's kind of a different
23 perspective. Do you see the bundle of clothing up there?

24 A. I do.

25 Q. Okay. So this photo, is this of the same cement

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1 pad?

2 A. It is. It's just the view from Iris Street to
3 Calvert Street.

4 Q. All right. Does that mean it's like a reverse
5 angle of what we've been looking at before?

6 A. It is.

7 Q. All right. So Iris -- I'm sorry. So Calvert
8 Street is down there, and Iris Street would be behind
9 us --

10 A. Correct.

11 Q. -- who took the photo?

12 Okay. Are those the clothes for Deshawn?

13 A. They are.

14 Q. Okay. And what is this down here?

15 A. It's another crime-scene marker.

16 Q. Okay. And what was found at that? Do you know?

17 A. It was a .223 shell casing, spent shell casing.

18 Q. It was a spent shell casing?

19 A. It was.

20 Q. Now, is it the same caliber as the other three?

21 A. It's not.

22 Q. And you quoted 7.62 and two -- .223. How can
23 you tell that?

24 A. My experience. Also, it's written on the bottom
25 end of the shell casings.

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1 Q. It's stamped on the shell casings?

2 A. It is.

3 Q. You can read it and you can tell what caliber it
4 is?

5 A. You can.

6 Q. Okay. This is State's Number 7. Okay. What
7 does this photo depict?

8 A. The shell casing that was marked at crime-scene
9 marker number one on the cement pad.

10 Q. Okay. Number one is what? What kind of round
11 is that?

12 A. That is a 7.62.

13 Q. Okay. And is that the shell casing right there?

14 A. It is.

15 Q. So that's number one. Then what is this?

16 A. That's the second 7.62 shell casing that was
17 marked with the number two crime-scene marker at the
18 scene.

19 Q. Okay. And I think you already answered this.
20 But you put the marker where you find the evidence?

21 A. You do.

22 Q. So that evidence has not been moved yet until it
23 was collected?

24 A. Correct.

25 Q. Okay. And that's another spent shell casing?

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1 A. Correct.

2 Q. All right. One and two. Let's take a look at
3 this. What does this depict?

4 A. It's the 7.62 shell casing, spent shell casing,
5 that was located on the cement pad that was marked with
6 crime-scene marker number three.

7 Q. Okay. And one, two, and three are all the same
8 caliber; is that correct?

9 A. Correct.

10 Q. And let's back up a little bit. This is back to
11 number five. And this is one, two, and three depicted on
12 the cement pad?

13 A. It is.

14 Q. Okay. So a spent shell casing was found there;
15 is that correct?

16 A. Yes, sir.

17 Q. Found there?

18 A. Correct.

19 Q. And found there?

20 A. Correct.

21 Q. And Deshawn was there; is that correct?

22 A. That's correct.

23 Q. Was he lying on the ground when you responded?

24 A. He was.

25 Q. And those are the clothes they cut off of him?

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1 A. Correct.

2 Q. Okay. About, just estimate, what's the
3 difference from the shell casings to Deshawn Brown, about?

4 A. If I remember correctly, I don't think it was
5 more than twenty feet, at least the closest shell casings.

6 Q. Okay. Good.

7 This is State's Exhibit Number 10. We've talked
8 about one, two and three. What does this indicate?

9 A. It's the .223 shell -- spent shell casing that
10 was marked on the cement pad with crime-scene marker
11 number four.

12 Q. And this is a shell casing; is that correct?

13 A. Correct.

14 Q. And it's on the cement pad?

15 A. It is. And that's the one that was actually
16 towards Iris Street.

17 Q. All right. Let's back up a little bit, get a
18 different perspective. All right. So that's number -- is
19 that the same number four there?

20 A. It is.

21 Q. Okay. So four is here. It looks like one, two
22 and three is over there; is that correct?

23 A. Correct.

24 Q. Okay. And this is a reverse view again? From
25 Iris looking towards Calvert?

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1 A. Correct.

2 Q. And you were able to tell the caliber of the
3 .223 how?

4 A. It's written on the bottom of the shell casing.

5 Q. All right. The two different calibers --
6 they're not the same caliber, are they?

7 A. No.

8 Q. Okay. The two different calibers, does that
9 indicate that two firearms were used?

10 A. Correct.

11 Q. Or at least two firearms are used?

12 A. Correct.

13 Q. Okay. And those shell casings, they were on the
14 cement pad. Was that inside the crime scene taped-off
15 area?

16 A. That was.

17 Q. Okay. Now, who searched the crime scene area?

18 A. I searched the crime scene area, along with a
19 couple of other officers that were on scene.

20 Q. Okay. Did you search it in a diligent manner?

21 A. We did.

22 Q. Okay. And how so?

23 A. Actually, once we had the witnesses separated
24 and the scene roped off, we went -- once we had some more
25 help there, me and a couple of other officers actually

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1 walked almost side by side throughout the whole cement pad
2 looking for the shell casings.

3 Q. Did it include the entire cement pad?

4 A. It did.

5 Q. The area between the two buildings?

6 A. It did.

7 Q. The area between the nearby buildings?

8 A. Correct.

9 Q. Okay. Did you or any of the other officers that
10 responded find any shell casings, other than the four
11 we've looked at already?

12 A. No.

13 Q. All right. And were those casings collected
14 into evidence?

15 A. They were.

16 Q. And who would have done that?

17 A. North Charleston Crime Scene.

18 Q. And would that be Corporal Scott Wyantt

19 A. Correct.

20 MR. STACK: With the Court's permission, I'm
21 going to approach the witness.

22 THE COURT: Yes, sir.

23 Q. [Mr. Stack] I'm going to hand you what's
24 been marked as State's Exhibit Number 11 and 12 for
25 identification purposes only. I would like you to

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1 take a few moments and review the two bags.

2 [Whereupon, the witness reviews]

3 THE COURT: Mr. Stack, could you remove that?

4 MR. STACK: Yes.

5 THE COURT: Thank you.

6 Q. [Mr. Stack] Have you had a chance to review
7 those bags?

8 A. I have.

9 Q. All right. Do they indicate that Corporal Scott
10 Wyantt collected these on 13 July, '07?

11 A. Correct.

12 Q. Does it indicate both bags that we talked about
13 that involves a crime of murder with the victim, Deshawn
14 Brown?

15 A. They do.

16 Q. Okay. Do they indicate -- on Number 11, does
17 that -- well, let me back up a little bit.

18 MR. STACK: Your Honor, the State moves State's
19 Exhibit 11 and 12 into evidence with the defense's
20 stipulation, I believe.

21 MR. RUNYON: He's identified what he found,
22 Judge. We have no objection.

23 THE COURT: 11 and 12 into evidence without
24 objection.

25 [Whereupon, State's Exhibit Number 11 is

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1 admitted into evidence by the Court]

2 [Whereupon, State's Exhibit Number 12 is

3 admitted into evidence by the Court]

4 Q. [Mr. Stack] All right. Look at Number 11.

5 What is in the bag in State's Exhibit Number 11?

6 A. It's going to be the three spent 7.62 shell
7 casings.

8 Q. Okay. Would you go ahead and open up the three
9 small boxes and show the jury the context -- contents.

10 A. [Witness complies]

11 This is the one found in box number one; and
12 this is the one located in box number two; and this shell
13 casing in box number three.

14 Q. Okay. If you would go ahead and open up State's
15 Exhibit Number 12, the box in that.

16 A. [Witness complies]

17 This is the .223 round.

18 Q. Is that the one found in position number four,
19 evidence marker number four?

20 A. It is.

21 Q. Okay. Just so the jury can see -- I know many
22 are familiar, but not everybody is -- hold up a 7.62 and a
23 .223 and show the difference.

24 A. [Witness complies]

25 Q. Thank you.

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1 Now, you said earlier that you searched the
2 area; is that correct?

3 A. Correct.

4 Q. And you searched it diligently?

5 A. We did.

6 Q. All right. And during that search, did you find
7 any indication at all -- shell casings or otherwise, did
8 you find any indication of any other firearm being used,
9 other than the two weapons that fired these two rounds,
10 two shell -- sets of shell casings?

11 A. No. These are the only shell casings that I --
12 we located on the -- at the scene.

13 Q. Okay. And you looked diligently?

14 A. We did. We checked the -- we checked the whole
15 cement pad, and behind [REDACTED] and on this -- on that side
16 of the fence, this whole cement pad, actually all the way
17 to Iris Street, the section around where Deshawn Brown was
18 found, and also the area, the grassy area, towards Calvert
19 Street.

20 Q. Thank you.

21 MR. STACK: Beg the Court's indulgence just one
22 moment.

23 THE COURT: Yes, sir.

24 [Whereupon, Mr. Stack and Mr. Leventis confer]

25 Q. [Mr. Stack] I think we covered this, but the

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1 crime scene location, is that in Charleston County?

2 A. It is.

3 Q. Okay. And you said earlier that you separated
4 the witnesses when you responded; is that correct?

5 A. Correct.

6 Q. What is the purpose of doing that?

7 A. So that they can't talk to where one witness who
8 saw something -- they saw what they saw, and it wouldn't
9 change from what they -- their interpretation if -- so
10 they couldn't talk with someone else and say what they saw
11 so they could basically intermingle what -- you know,
12 change what -- kind of what they saw.

13 Q. Okay. So it keeps them -- you get better
14 information that way?

15 A. Correct.

16 Q. Okay. And did you separate the witnesses before
17 or after you began to tape off the area?

18 A. Actually, we started separating them about the
19 same -- at the same time.

20 Q. Okay. And obviously other officers responded;
21 is that correct?

22 A. Correct.

23 MR. STACK: Thank you, Deputy Neale. If you
24 would answer any questions defense counsel may have.

25

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CROSS-EXAMINATION

BY MR. RUNYON:

Q. Let me see if I understand how this works, Deputy. You arrived -- you got the call?

A. Yes, sir.

Q. And as I understand your testimony, you arrived at the scene and the deceased -- well, he wasn't deceased at the time, because EMS took him on. But the deceased was generally in the area where those clothes are?

A. Correct.

Q. All right. But there were a lot of people. How many people were in the area of that concrete pad?

A. I would estimate maybe around fifteen.

Q. All right. So there were fifteen people milling around in there maybe trying to help, looking to see what happened or whatever?

A. Correct.

Q. Okay. Now, so that as a practical matter, where those markers are for the shell casings is where you found the shell casings after you cleared everybody out and roped everything off?

A. Correct.

Q. But that doesn't necessarily point to a point of origin, the shell casings, does it?

A. That's where we found -- located the shell

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1 casings after we roped off the scene.

2 Q. Right. But with fifteen people milling around,
3 they could have been kicked, could have been stepped on?
4 Whatever could have happened to alter the area could have
5 happened prior to your taking your very aggressive and
6 appropriate police action to rope off the scene and move
7 people out of there; correct?

8 A. It's possible.

9 Q. Okay. And that's one reason why you move people
10 out; right?

11 A. Correct.

12 Q. You come up there and there's someone laying on
13 the ground and you've got -- you've got a crime scene and
14 say, oh, my goodness, we've got to -- we've got to kind of
15 try to preserve this crime scene; correct?

16 A. Correct.

17 Q. Where did EMS pull up?

18 A. EMS pulled up actually the -- this part of the
19 cement pad towards Iris Street.

20 Q. Okay. So EMS was kind of back towards me?

21 A. Correct.

22 Q. All right. And so that -- and did you find --
23 did y'all attempt to find any blood spatters or anything
24 of that sort on the concrete pad?

25 A. We -- when we checked the cement pad, we kind of

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1 checked for all of that. Just anything that we locate in
2 the area, if it's of relevance or not, we let crime scene
3 advised of it [phonetic].

4 Q. But that -- but where the deceased was laying
5 doesn't necessarily mean that was the exact location of
6 where he was shot? Because you didn't see that, did you?

7 A. Correct.

8 Q. Okay. And where these shell casings were, it
9 doesn't necessarily mean that that was the general
10 vicinity from where they -- where they were fired from,
11 because they could have gotten kicked around and altered
12 by virtue of all these people walking around?

13 A. It's possible.

14 Q. Okay. Now, did you attempt to ascertain,
15 through your part of the investigation, whether or not
16 there was any other damage to any buildings by other shots
17 being fired?

18 A. I didn't -- I wasn't aware of anything else.

19 Q. Okay. Basically, what you did was you and the
20 officers got together and you walked down and across the
21 geographic area and you looked for shell casings?

22 A. Correct.

23 Q. Okay. And as a result of those -- of that
24 diligent search, you came to a conclusion that, [a], you
25 had two different kinds of shell casings?

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1 A. Correct.

2 Q. Which as an experienced police officer would
3 indicate to you there were at least two weapons?

4 A. Correct.

5 Q. But that doesn't mean there weren't other
6 weapons around?

7 A. The only thing we found was the two different
8 shell casings.

9 Q. All right. And so we know there are two -- at
10 least two weapons. Could have been more, could have been
11 not more; correct?

12 A. Anything's possible.

13 Q. All right. But there's -- for example, if a
14 person is not using what sometimes is referred to as an
15 automatic or a semi-automatic weapon, such as a revolver,
16 there wouldn't be any shell casings; correct?

17 A. Correct.

18 Q. Okay. How many -- did you separate the
19 witnesses, and did you interview any witnesses?

20 A. I got -- the only thing that I got from the
21 witnesses was a -- kind of a general kind of what they
22 saw. The only thing that all of them could tell me was
23 that there was several black males that came in an SUV and
24 they got out with guns and started shooting.

25 Q. Several black males?

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1 A. Correct.

2 Q. All right. That certainly means more than one.

3 A. Correct.

4 Q. All right. As an experienced police officer,
5 does that mean at least two or more?

6 A. Correct.

7 Q. And that they all got out of the -- and several
8 black males got out of the SUV?

9 A. Correct.

10 Q. All right. And nobody knew anything about
11 anything, so to speak?

12 A. They -- no one could provide any details.

13 Q. Okay. Where was the SUV located, based upon
14 your investigation?

15 A. The SUV was actually located in this area of the
16 cement pad.

17 Q. Okay. You're sure it was on the cement pad?

18 A. That's what the witnesses said.

19 Q. That's what the witnesses said.

20 There were no tire -- there were no tread prints
21 or tread marks or anything of that sort?

22 A. Not that I -- that we located.

23 MR. RUNYON: Okay. No further questions of this
24 witness, Your Honor.

25 THE COURT: Mr. Stack?

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1 MR. STACK: No redirect, Your Honor.

2 THE COURT: May this witness be excused?

3 MR. STACK: Yes, Your Honor.

4 MR. RUNYON: I have no objection.

5 THE COURT: Deputy, you may step down. You are
6 free to remain with us, but you are also excused.
7 Thank you.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 THE COURT: Deputy, if you will leave those
11 right on the table. Leave the evidence on the table.
12 Thank you.

13 Mr. Stack, call your next witness.

14 MR. STACK: The State calls Dr. Kim Collins,
15 Medical University of South Carolina.

16 [Whereupon, Dr. Collins comes forward]

17 THE CLERK OF COURT: If you would please place
18 your left hand on the Bible and raise your right hand.

19 [Whereupon, Dr. Collins is duly sworn by the
20 clerk of court as follows: do you swear or affirm to
21 tell the truth, so help you God]

22 THE WITNESS: I do.

23 THE CLERK OF COURT: Please be seated.

24 [Whereupon, the witness takes the witness stand]

25 THE CLERK OF COURT: And for the record, please

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1 state your full name and spell it, as well.

2 THE WITNESS: Dr. Kim A. Collins, C-O-L-L-I-N-S.

3 THE COURT: Mr. Stack?

4 MR. STACK: Thank you, Your Honor.

5 Good afternoon, Doctor.

6 THE WITNESS: Good afternoon.

7 - - - - -

8 KIM A. COLLINS, M.D.,

9 Having Been First Duly Sworn,

10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MR. STACK:

13 Q. Would you please tell the jury what you do for a
14 living.

15 A. I'm a forensic pathologist.

16 Q. Okay. And where do you currently work?

17 A. I currently work out of the Fulton County
18 Medical Examiners Office, which is affiliated with Emory
19 University in Atlanta.

20 Q. Okay. Prior to that, did you work for the
21 Medical University of South Carolina?

22 A. Yes, I did. For fifteen years I was a full
23 professor of pathology and laboratory medicine. And when
24 we had a medical examiner system, I was chief medical
25 examiner.

MIA PERRON, CCR, CVR-CM

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1 Q. Okay. And have you ever testified as an expert
2 witness in court before?

3 MR. RUNYON: Your Honor, I --

4 A. Yes, I have.

5 MR. RUNYON: I apologize. I don't mean to
6 interrupt this line of questioning, but I stipulate to
7 her expertise and the fact that she's an expert witness
8 in the area of forensic pathology.

9 MR. STACK: I would like the jury to hear her
10 qualifications so that they --

11 THE COURT: All right. You may continue,
12 Mr. Stack.

13 Q. [Mr. Stack] Okay. And how many times -- in
14 what field have you testified as an expert witness?

15 A. In forensic pathology.

16 Q. And how many -- approximately how many times?

17 A. Approximately 200.

18 Q. Okay. You've already been qualified as an
19 expert witness so will you tell not the judge but rather
20 the jury your experience, your training, and the education
21 you have in that field?

22 A. I went to college at the University of Georgia
23 and I received my bachelor's in microbiology. Following
24 college I went to medical school at the Medical College of
25 Georgia in Augusta, Georgia, and I received my M.D. After

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1 medical school, I completed a combined five-year anatomic
2 and clinical pathology residency at Bowman Gray School of
3 Medicine which is also known as Wake Forest University
4 School of Medicine. After my five-year residence, I then
5 went to the Medical University of South Carolina and I
6 completed a forensic pathology fellowship.

7 Q. Okay. Pretty impressive.

8 What is the purpose of an autopsy?

9 A. An autopsy is a whole-body examination that is
10 conducted by a physician after death. There are several
11 reasons that you would have an autopsy performed. One of
12 them would be to determine why someone died, so the cause
13 of death. Also, you might want to determine whether or
14 not some treatment, such as a chemotherapy, worked. Or if
15 you wanted to see what kind of diseases that are passed
16 down through the family, such as heart disease, lung
17 disease, whether or not that is in your loved one. So
18 there are several different reasons to perform an autopsy.

19 Q. Okay. And what does an autopsy consist of?

20 A. An autopsy consists of an external examination.
21 The body comes into the autopsy room, the laboratory, and
22 we examine the body. We examine any clothing. We
23 photograph and x-ray the body. After we've looked at the
24 outside of the body, we then open the body and we examine
25 all of the organs, including the brain, the heart, the

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1 lungs, the kidneys, et cetera. And then when we take the
2 organs out, we dissect each organ and we take sections of
3 those organs so that we can turn them into microscopic
4 slides and look under the microscope, and then we can tell
5 any diseases or any finds under the microscope. Also,
6 during the autopsy is the time that we gather evidence or
7 specimens that we want to run additional laboratory tests
8 on.

9 Q. Okay. Is authorization needed to conduct an
10 autopsy?

11 A. Authorization is needed to conduct an autopsy if
12 it's not a forensic case. For instance, if you wanted to
13 have an autopsy performed on your family member, we would
14 just need the next-of-kin authorization. When we're
15 talking of a forensic case, the authorization that we need
16 is the coroner or the solicitor's authorization to perform
17 an autopsy.

18 Q. Okay. When an autopsy is conducted, who assists
19 in an autopsy and what are their roles?

20 A. The people that perform the autopsy would be the
21 prosecutor or the pathologist, such as myself. I may have
22 a trainee, a physician that's training in forensic
23 pathology, assist me. Also, we'll have an autopsy
24 technician, which is similar to like a nurse -- a doctor's
25 nurse, that would assist us in the autopsy.

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1 Q. Okay. Were you -- are you normally involved in
2 autopsies?

3 A. Yes.

4 Q. Okay. And what is your role, then, in the
5 autopsy?

6 A. As a forensic pathologist, I'm the primary
7 prosector. I'm the one that examines the body, takes
8 notation of the body, looks for any injuries. I examine
9 and interpret the radiographs, and also look under the
10 microscope at the tissues.

11 Q. And how long does it take to do an autopsy?

12 A. An autopsy could take two hours, it could take
13 twelve hours. It depends on the type of case. A very
14 simple, straightforward case could probably take about two
15 hours. Most of them take along the lines of four to five
16 hours to complete.

17 Q. Now, when the issue of death involves a crime,
18 are autopsies normally performed?

19 A. Yes, they are.

20 Q. Okay. Back on July 14th of '07, did you conduct
21 an autopsy of a deceased person named Deshawn Brown?

22 A. Yes, I did. We received information from the
23 chief deputy coroner, Judy Colpen, and we performed an
24 autopsy on July 14th, and we started the examination at
25 nine o'clock in the morning.

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1 Q. Okay. And where was that autopsy performed?

2 A. That was performed on the second floor in the
3 Medical University autopsy suite.

4 Q. Okay. Based on the autopsy, what types of
5 injuries did Deshawn Brown have?

6 A. The primary or significant finding that we had
7 on the body was a gunshot wound to the back that went from
8 left to right. He also had injury to the nose and to the
9 lip.

10 Q. And what kind of injury to the nose and lip?

11 A. There is what we call an abrasion or scratching
12 of the nose or the lip -- and the lip.

13 Q. So if a person fell down on a cement pad, would
14 that be consistent with that type of injury?

15 A. Yes. An abrasion is like a scratch if you fall
16 and scratch the skin. Or you might have heard the term a
17 strawberry or raspberry slide along gravel. That's an
18 abrasion. So it's caused from blunt trauma or from
19 falling or hitting a firm object.

20 Q. Okay. Now, Mr. Brown, Deshawn Brown, did he
21 have a single gunshot wound?

22 A. Yes, he did. He had a single gunshot wound, and
23 the bullet went into the body and out of the body. And we
24 call this perforated gunshot wounds.

25 Q. So the bullet did not stay inside the body?

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1 A. That's correct.

2 Q. Okay. So there's an entrance wound and an exit
3 wound; is that correct?

4 A. Yes.

5 Q. All right. And how can you tell the difference,
6 or if you can, between an entrance wound and where the
7 bullet comes out, the exit wound?

8 A. The entrance wound is caused from the bullet
9 coming out of the gun. And as it's traveling through the
10 air there's a kinetics or an energy to it, and a spin to
11 the bullet, and as the bullet hits the skin it pushes
12 against the skin and it actually causes a rubbing of the
13 skin as it pushes in and then breaks the skin. And what
14 we're left with is a type of round defect, like a cookie-
15 cutter defect. And sometimes, depending on the angle of
16 the bullet, we can see a certain abrasion or scratching
17 that the bullet caused on the skin as it was headed in --
18 in the direction.

19 Now, an exit wound is usually -- not always, but
20 usually -- larger than the entrance wound. It usually is
21 stellate or has multiple jagged edges to it. It's not a
22 nice, round hole that we see on the entrance wounds.

23 Q. Okay. And he had -- Deshawn had both entry and
24 exit wounds?

25 A. Yes. Both.

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1 Q. Okay. And that means the bullet was not in his
2 body; is that correct?

3 A. That's correct. It was perforated. So the
4 bullet left the body and exited.

5 Q. Okay. So without the bullet but just the hole
6 that it created through his body, is it possible for any
7 ordinary person to determine the caliber of the bullet?

8 A. No.

9 Q. And why not?

10 A. Bullets of different sizes do create different
11 sizes of wounds on the body depending on the speed of the
12 bullet, but more importantly, depending on the part of the
13 body that the bullet strikes. For instance, if it strikes
14 a place on the body where the skin is very tight, like on
15 your scalp or another less-fleshy area such as the top of
16 your foot, you're going to get a different size hole in
17 the skin than if it goes through your abdomen or your
18 breast or the skin that's looser.

19 Also, depending on age. Younger individuals
20 will have more of an elastic skin, whereas people that are
21 older possibly have sun damage, et cetera, they will have
22 less-elastic skin so you'll get a stretching and a
23 distortion and you cannot match the size of the hole in
24 the skin with the size of the bullet.

25 Q. So the entrance wound for Deshawn Brown, was it

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1 on the front or the back of his body?

2 A. It was on the back of his body.

3 Q. Does that indicate he was shot in the back?

4 A. Yes.

5 Q. Doctor, would the use of a diagram be helpful in
6 explaining Deshawn Brown's injuries?

7 A. Yes.

8 MR. STACK: Your Honor, we're going to utilize
9 this for demonstrative purposes only and not admit into
10 evidence.

11 THE COURT: All right. Mr. Stack, just so the
12 record is clear, are you requesting that Dr. Collins be
13 admitted as an expert?

14 MR. STACK: Yes.

15 THE COURT: In the area of forensic pathology?

16 MR. STACK: Yes, Your Honor.

17 THE COURT: Mr. Runyon, there's no objection?

18 MR. RUNYON: I stipulated, Judge.

19 THE COURT: Thank you.

20 Ladies and gentlemen, just so you understand
21 what an expert witness is: normally, a person cannot
22 give opinion testimony. When a person typically
23 testifies, they must testify as to what they either
24 heard or saw by sense of smell or something of that
25 nature. However, there is an exception. When someone

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1 is qualified because of their education or experience,
2 they are permitted to give their opinion in certain
3 areas if the Court qualifies them that way.

4 Mr. Stack, for the State, and Mr. Runyon, for
5 the defendant, have stipulated or agreed that Dr.
6 Collins is an expert in the area of forensic pathology.
7 This witness will be qualified to give opinion
8 testimony in that area. That does not mean that you
9 must accept the opinion. It's simply evidence for you
10 to use in any way that you see fit and to give the
11 weight and credibility that you believe is appropriate.

12 Mr. Stack?

13 MR. STACK: Thank you, Your Honor. And I'm
14 sorry for getting out of sequence with that.

15 Doctor, if you would go ahead and step down,
16 please.

17 [Whereupon, the witness complies]

18 Q. [Mr. Stack] If you would, using the diagram and
19 either of these two, if you wish --

20 A. Okay.

21 Q. -- go ahead and describe Deshawn Brown's
22 injuries.

23 A. This is what we call a man diagram, and we have
24 him standing in an anatomical position such that the palm
25 of his hand is facing outwards. So you can see the front

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1 of the body and you can see the back of the body.

2 Now, what I'm going to do is I'm going to draw
3 the injuries that we saw on Mr. Brown. And I'll first
4 start with the face area where we had an abrasion. It was
5 about a third-by-a-fifth-of-an-inch abrasion on the top of
6 his nose. And then the lower lip also had an inch by
7 about one-half-of-an-inch abrasion. So these, again, are
8 the abrasions I mentioned where the surface of the skin is
9 scratched off and sometimes they'll bleed.

10 Now, on the back of the body, we have the
11 gunshot wound. Now, we usually label a gunshot wound as A
12 or B, C, and D, so that you don't get confused with the
13 numbering. There are two wounds but there was one shot,
14 so we use the letters. We choose the letters based on a
15 head to toe. So it does not mean that one came before the
16 other or A came before B. And, in fact, in this case B
17 was the entrance and then A was the exit. So B was to the
18 left back, near the shoulder blade region. About in this
19 area here. And then it was about two tenths of an inch
20 long and .15 inch wide.

21 The other what else we saw on the back around B
22 was an abrasion collar, so I'll draw that in blue. Now,
23 what this abrasion collar is: we see this on the entrance
24 wounds. What this means is this is the part on the body
25 as the bullet is tilted and it rubs the skin. And when we

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1 see an abrasion collar that is uneven, meaning it's only
2 on part of the entrance wound, it's only from about -- if
3 you're looking at clocks and six to eight o'clock, you can
4 envision that the bullet is tilted, such as in this
5 manner, and as it enters into the body it rubs the skin
6 away around the hole.

7 Also on the back is the exit wound where the
8 bullet came out, and that is labeled A, and that's on the
9 right-posterior shoulder in this location. The bullet
10 traveled. We know that B is the entrance wound, has a
11 typical entrance wound configuration, whereas A has a
12 typical exit wound shape and configuration. The bullet
13 traveled from B to A. It went into the body and then came
14 out of the body at A.

15 Q. Did it cause any interior -- internal injuries?

16 A. Yes, it did. The bullet goes through the left
17 back at B. It goes through the skin and the muscle of the
18 left back. It then also goes into and fractures the left
19 number four rib on the back in this area here. It then
20 goes through the top of the left lung and tears through
21 the top of the left lung. And that's the -- the lung is a
22 very vascular organ, has a lot of blood circulation going
23 through it. The bullet then crossed the midline, meaning
24 it goes from the left side over to the right side. It
25 goes -- it doesn't hit the spinal column. It just kind of

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1 tunnels under the musculature of this region. It then
2 fractures right ribs one to three on the right side, and
3 then again it goes through the right lung, the top of the
4 right lung, and then it comes out the defect A. So it
5 goes from B to A, fractures ribs on the left side, the
6 right side, and it goes through the tops of both lungs
7 creating much bleeding in the body in those cavities.

8 Q. So he's shot through both lungs?

9 A. Yes.

10 Q. With a single bullet?

11 A. Correct.

12 Q. All right. So the autopsy, you determined the
13 cause of death; is that correct?

14 A. Correct. The cause of death is that event or
15 disease that results in the person's death on that day.

16 So the cause -- that was the cause of death,
17 were the lung perforations or the lung tearing due to the
18 single gunshot wound in this area from B to A.

19 Q. And did the autopsy determine a manner of death?

20 A. Yes, it did.

21 Q. And what is that?

22 A. There are five manners of death. There's
23 natural death, there's suicide, there's accident, there's
24 undetermined which is usually reserved for such findings
25 as skeletal remains which were 200 years old and you

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1 really don't know why that person died. And then the
2 fifth manner of death is homicide. And this was
3 classified as a homicide.

4 Q. Okay. And so the manner of death is homicide?

5 A. Yes.

6 Q. And the cause of death -- I'm sorry -- is what?

7 A. Pulmonary or lung perforations due to a single
8 perforating -- meaning in and out -- gunshot wound to the
9 back.

10 MR. STACK: Thank you, Doctor. If you would go
11 ahead and take a seat.

12 [Whereupon, the witness complies]

13 Q. [Mr. Stack] And you did this autopsy yourself;
14 is that correct?

15 A. That's correct. I was assisted by one of my
16 trainees. He was a physician -- or is a physician named
17 Dr. David Holloman, and then my autopsy technician was
18 Mr. Raymond Edwards.

19 Q. Is it correct to assume that you were the senior
20 person there, so to speak?

21 A. Yes. And I was senior prosector. I dictated
22 the report, did the microscopic, did all the findings,
23 conclusions.

24 Q. And you're an M.D.; is that correct?

25 A. Yes, that's correct.

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1 Q. And you're trained in pathology?

2 A. Yes.

3 MR. STACK: Thank you, Doctor. If you would
4 please answer any questions defense counsel may have.

5 THE COURT: Mr. Runyon?

6 CROSS-EXAMINATION

7 BY MR. RUNYON:

8 Q. You'll have to bear with me. It took me three
9 semesters to get two semester's credit, biology credit, in
10 college forty some-odd years ago. So bear with me.

11 As a practical matter, I think you said that --
12 and I think you had a very good explanation of how you
13 can't tell how those bullets from the entrance and exit
14 wounds because the slug can sometimes be from different
15 angles, it's -- you don't know what the material was made
16 of, whether it's jacketed or not?

17 A. Correct.

18 Q. Okay. Now, was this a -- was this angle of
19 flight through the body, was it straight and level, was it
20 upward and downward, did it kind of --

21 A. It was forty-five degrees upwards.

22 Q. All right. So it's forty-five degrees upwards,
23 but that doesn't necessarily mean that he was standing
24 straight up when someone shot him?

25 A. That's correct. What that means is looking at

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1 the body as I showed you in anatomical position and
2 looking at the entrance and exit in anatomical position,
3 it's forty-five degree angle. I cannot tell you what
4 position he was in at the time he was shot or how the
5 bullet was traveling with relation to the ground, whether
6 the bullet was going forty-five degree up. That's not
7 what that means. What that means is in his body, it was
8 going from B to A at forty-five degrees if you have him in
9 that position.

10 Q. All right. Now, and I believe you said you took
11 various tissue and fluid samples and had toxicology tests?

12 A. That's correct.

13 Q. And was there anything of note in those, if any?

14 A. Yes. He had gone to -- he had been treated by
15 physicians, and so at that time in order to look at his
16 drugs or alcohol we needed to use the eye fluid. And so
17 we did draw the vitreous or the eye fluid, and his ethyl
18 or drinking alcohol level was a 213 milligrams per
19 deciliter.

20 Q. Okay. What does that mean?

21 A. It would be like a .213.

22 Q. Okay. Now, as it relates to the injury -- by
23 the way -- strike that.

24 Do your notes note whether or not the hands of
25 the deceased were bagged in any way or --

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1 A. Just a minute.

2 [Whereupon, the witness reviews documents]

3 A. He wasn't bagged, according to that. But one
4 moment.

5 [Whereupon, the witness reviews documents]

6 A. I don't have any -- that his hands were bagged.
7 They could have been when they arrived at the morgue
8 before they went to the autopsy room. Usually they will
9 be bagged and then they'll be examined by the police
10 department.

11 Q. [Mr. Runyon] All right. Now, as a practical
12 matter, we don't know the position that the body -- that
13 his body was in at the time he was struck?

14 A. That's correct.

15 Q. And thus we're not really sure what position a
16 shooter or shooters were in at the time the shots were
17 fired?

18 A. That's correct.

19 Q. Okay. And as another -- a practical matter with
20 regards to the autopsy, what kind of -- what kind of
21 affect would that type of wound have on the body? I mean,
22 if you shot me in the back like that, would I -- could I
23 stagger around, would I fall down? What's the situation
24 there?

25 A. Well, since the bullet did not go through the

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1 spinal column, you could still walk, move around. It
2 would be more of a jolt with the fracturing of the ribs.
3 But also the loss of the blood. So as you continue to
4 lose blood, you'll start to pass out.

5 Q. And that hemorrhaging mostly is within the body
6 cavity? The thoracic cavity?

7 A. Yes.

8 Q. Okay. And so we're not sure if they find -- if
9 they found -- this spot right here, that doesn't
10 necessarily mean I was shot here?

11 A. Correct.

12 MR. RUNYON: Okay. No further questions, Judge.
13 Thank you very much, Doctor.

14 THE COURT: Mr. Stack?

15 MR. STACK: Nothing further, Your Honor. We
16 would ask that the witness be excused.

17 THE COURT: Any objection?

18 MR. RUNYON: No objection.

19 THE COURT: Dr. Collins, you may step down.

20 THE WITNESS: Thank you.

21 THE COURT: Feel free to remain with us, but you
22 are also excused.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 THE COURT: Call your next witness

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1 MR. LEVENTIS: Your Honor, may we take a brief
2 recess at this time before we take -- call our next
3 witness?

4 THE COURT: That's fine.

5 Ladies and gentlemen of the jury, we're going to
6 take our mid-afternoon break. We're going to go until
7 approximately 5:30 this afternoon.

8 Do not begin your deliberations. Do not discuss
9 this case amongst yourselves.

10 If you need to use the telephone to make
11 childcare arrangements or anything of that nature, you
12 may do so at this time.

13 Please rise for the jury.

14 [Whereupon, the jury exits the courtroom at
15 4:15 p.m.]

16 THE COURT: Thank you. Be seated.

17 Mr. Leventis, how many witnesses do you have
18 that you're able to call this afternoon?

19 MR. LEVENTIS: Well, that was one of my points.
20 I believe they would like to go from 9:00 to 5:00, and
21 this witness would probably go up on 5:30. If that's
22 any way -- 5:30, that would be great.

23 THE COURT: We'll go ahead and do that witness.

24 MR. LEVENTIS: Okay. If I could --

25 THE COURT: And which --

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1 MR. LEVENTIS: -- I would like to run to the
2 restroom real quick.

3 THE COURT: That's fine. And which witness is
4 that? Who is your next witness?

5 MR. LEVENTIS: Is Lewanda Denson.

6 THE COURT: All right. And assuming that she
7 does not go that long, do you -- is there --

8 MR. LEVENTIS: I think O.J. Faison, who would be
9 the lead detective in this case, would take us to six
10 o'clock.

11 THE COURT: All right. But you do have a
12 witness that we could put on until 5:30?

13 MR. LEVENTIS: I think so.

14 THE COURT: All right. Thank you.

15 All right. We'll take a ten-minute break.

16 [Whereupon, a recess is taken from 4:17 p.m. to
17 4:31 p.m.]

18 THE COURT: All right. Counsel, juror number 22
19 believes that she knows the victim's mother, so I'm
20 going to bring her out and inquire. I believe that
21 she -- there was an individual in the audience and she
22 assumed that that was the victim's mother.

23 Mr. Leventis, do you know if the victim's mother
24 was present?

25 MR. LEVENTIS: The victim's mother has been

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1 present, Your Honor.

2 THE COURT: All right. Bring in juror 22,
3 please.

4 [Whereupon, juror 22 enters the courtroom]

5 THE COURT: Yes, ma'am. Juror number 22, the
6 bailiff has informed me that you believe that you may
7 know one of the parties or one of the family members
8 involved in this case; is that correct?

9 JUROR 22: Correct.

10 THE COURT: And who is it that you believe that
11 you know?

12 JUROR 22: I think it's the defendant's mother.

13 THE COURT: All right. And what do you know the
14 defendant's mother's name to be?

15 JUROR 22: Doreen, I believe.

16 THE COURT: All right. And is there anything
17 about you knowing, or may know, the defendant's mother
18 that will affect your ability to be fair and impartial
19 in this case?

20 JUROR 22: Yes.

21 THE COURT: All right. Counsel approach.

22 Ma'am, if you'll just have a seat right there.

23 I'll have a few more questions.

24 Counsel approach.

25 [Whereupon, an off-the-record bench conference

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1 is held]

2 THE COURT: If you would randomly choose which
3 alternate takes the place of juror 22.

4 Madam, based upon your response, I am going to
5 release you from the trial of this case.

6 You will need to call back after 6:00 p.m. You
7 will be put back into the general pool. And I
8 appreciate your sharing that info with us. Thank you
9 again for your service. You are excused.

10 [Whereupon, juror number 22 is excused from the
11 jury]

12 THE CLERK OF COURT: Alternate number 2.

13 THE COURT: Alternate number 2 will take the
14 place --

15 THE CLERK OF COURT: Juror number 120.

16 THE COURT: And it's juror number 120. Juror
17 120 will take the place of juror 22.

18 Please bring in our thirteen.

19 [Whereupon, the jury enters the courtroom at
20 4:35 p.m.]

21 THE BAILIFF: Your Honor, all the jurors are
22 present.

23 THE COURT: Thank you. Thank you. Please be
24 seated.

25 Mr. Leventis, call your next witness.

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1 MR. LEVENTIS: Thank you, Your Honor. The State
2 calls Lewanda Denson.

3 [Whereupon, Ms. Denson comes forward]

4 THE CLERK OF COURT: If you would please place
5 your left hand on the Bible and raise your right hand.

6 [Whereupon, Ms. Denson is duly sworn by the
7 clerk of court as follows: do you swear or affirm to
8 tell the truth, so help you God]

9 THE WITNESS: Yes.

10 THE CLERK OF COURT: Please be seated.

11 [Whereupon, the witness takes the witness stand]

12 THE CLERK OF COURT: For the record, please
13 state your full name to the Court and spell it, as
14 well.

15 THE WITNESS: Lewanda Renee Denson.

16 L-E-W-A-N-D-A R-E-N-E-E Denson, D-E-N-S-O-N.

17 THE COURT: Thank you. Mr. Leventis, your
18 witness.

19 MR. LEVENTIS: Thank you, Your Honor.

20 Good afternoon, Ms. Denson.

21

22

23

24

25

- - -

- - -

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1 LEWANDA R. DENSON,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. LEVENTIS:

6 Q. You go by Lewanda, or Wanda?

7 A. Wanda.

8 Q. Okay. Thank you.

9 And you live in North Charleston; is that
10 correct?

11 A. Yes.

12 Q. How long have you lived in North Charleston?

13 A. Thirty-four years.

14 Q. Okay. Do you have family who lives in North
15 Charleston?

16 A. Yes.

17 Q. Do you have a grandmother that lives on Coroner
18 Street in North Charleston?

19 A. Grandmother? No.

20 Q. Do you have a mother, any family, that lives on
21 Coroner Street in North Charleston?

22 A. Used to, yes.

23 Q. What is the address they live now?

24 A. [REDACTED] Coroner Avenue.

25 Q. [REDACTED] Coroner Avenue?

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- 1 A. That's correct.
- 2 Q. Okay. And did -- and that was your mother?
- 3 A. Uh-huh.
- 4 Q. And she lived there in July of 2007?
- 5 A. Yes.
- 6 Q. Okay. And did your grandmother did, or does
- 7 your grandmother, live on Hugo Street?
- 8 A. Yes.
- 9 Q. And what is the address on Hugo Street she lives
- 10 on?
- 11 A. [REDACTED] Hugo Avenue.
- 12 Q. Okay. What do you do for a living?
- 13 A. I don't work.
- 14 Q. You don't work. Do you have any kids?
- 15 A. Yes.
- 16 Q. How many kids do you have?
- 17 A. Four.
- 18 Q. Four kids. Okay. Are you in school?
- 19 A. No.
- 20 Q. Okay. And you know the defendant -- you know
- 21 the victim in this case, Deshawn Brown; is that correct?
- 22 A. Yes.
- 23 Q. In fact, you have a child with Deshawn Brown?
- 24 A. Yes.
- 25 Q. How old is your child with Deshawn Brown?

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1 A. Eight years old.

2 Q. Okay. And what is his or her name?

3 A. Her name is Augenine [phonetic].

4 Q. Okay. And you know Deshawn's family; right?

5 You know his brother, Tomeko?

6 A. Yes.

7 Q. You know his mother, Loretta?

8 A. Yes.

9 Q. Okay. And how long had you known Deshawn Brown
10 before he was murdered?

11 A. Fourteen years.

12 Q. And what was the nature of your relationship?

13 Can you tell the jury about that? Did you guys date?

14 A. Around that time?

15 Q. Any time.

16 A. Yes.

17 Q. And then I take it by your response at some
18 point, then, you broke up?

19 A. Yes.

20 Q. Okay. But you had a child together prior to
21 that?

22 A. Yes.

23 Q. Okay. Very good.

24 And how about the other victim in this case,

25 Cory Watkins? Did you know Cory Watkins?

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- 1 A. Yes.
- 2 Q. You know his face?
- 3 A. Yes.
- 4 Q. Okay. And how did you know Cory Watkins? Did
5 you know him through Deshawn?
- 6 A. Yes.
- 7 Q. He was a friend of Deshawn's?
- 8 A. I don't know if they were friends or not but --
- 9 Q. You don't know?
- 10 A. -- they just hang out in the same area.
- 11 Q. Okay. And you also know the defendant in this
12 case, Termaine Nelson; is that correct?
- 13 A. Yes.
- 14 Q. Okay. How long have you known Termaine Nelson?
- 15 A. Like five, six years, or better.
- 16 Q. And he goes by a couple of nicknames; right?
17 Some people call him Main; is that correct?
- 18 A. Yeah.
- 19 Q. And some people call him Lutch? Have you heard
20 him called Lutch?
- 21 A. Yes.
- 22 Q. Okay. What did you call him?
- 23 A. Main.
- 24 Q. Main.
- 25 How would you describe for the jury the nature

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1 of your relationship with the defendant, Termaine Nelson?

2 A. A good relationship. No problem.

3 Q. Are you dating Termaine Nelson? Are you
4 romantically involved with Termaine Nelson?

5 A. Yes.

6 Q. Okay. Thank you.

7 And how long have you been dating Mr. Nelson?

8 A. For about five years.

9 Q. Okay. And you continue to be dating today; is
10 that right?

11 A. Yes.

12 Q. And you also know one of the codefendants
13 involved in this crime, Timothy Hoard; is that correct?

14 A. Yes.

15 Q. How do you know Timothy Hoard?

16 A. Through Termaine.

17 Q. And what do you call -- does Timothy Hoard have
18 any nicknames that you refer to him?

19 A. T.

20 Q. T. Okay.

21 So Termaine Nelson is sometimes called Main or
22 Lutch, and then Timothy Hoard is sometimes referred to as
23 T. Okay. And then Jovan Bryant, do you know who that is?

24 A. A.T.L.

25 Q. Is that his nickname, A.T.L.?

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1 A. Yeah.

2 Q. And how do you know Mr. Bryant?

3 A. Through Termaine.

4 Q. Going back to Timothy Hoard for a second. How
5 long had you known Timothy Hoard prior to July the 13th,
6 2007, the day Deshawn Brown was murdered?

7 A. About a year and a half, two years.

8 Q. How about Jovan Bryant, A.T.L.? How long had
9 you known him?

10 A. A couple of months, also.

11 Q. Okay. Did you know them through Termaine
12 Nelson?

13 A. Yes.

14 Q. Were they Termaine Nelson's friends?

15 A. I would assume so.

16 Q. And why would you assume so?

17 A. I mean, they used to hang out together.

18 Q. Okay. These aren't trick questions. I'm just
19 trying to help the jury understand how everybody is
20 related to each other, how everybody knew each other --

21 A. Okay.

22 Q. -- what relationship they had.

23 Now, let me take you to Friday, July 13th, 2007.
24 You remember that day, don't you?

25 A. Vaguely.

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1 Q. Vaguely? Why do you say vaguely? That's the
2 day your child's father died; right?

3 A. I understand that.

4 Q. He was murdered that day. Vaguely?

5 A. I understand all that.

6 Q. Okay. You were hanging out at your mother's
7 house on Coroner Avenue that day, weren't you?

8 A. Yes.

9 Q. Termaine Nelson was with you?

10 A. Yes.

11 Q. Troy Cohen, Tooka, was with you, too, wasn't he?

12 A. Yes.

13 Q. Okay. And at some point, did the three of you
14 go over to the apartment complex between Iris and Calvert
15 Street in North Charleston?

16 A. Yes.

17 Q. Okay. Who was with you when you did that?

18 A. Me, Termaine, Tooka.

19 Q. Just the three of you?

20 A. Uh-huh.

21 Q. Okay. Why did you go over there?

22 A. It was a drug transaction.

23 Q. Who was involved in the drug transaction?

24 A. Termaine. And I don't know the other fellow's
25 name.

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1 Q. So Termaine was going there and you went with
2 him, and Tooka went with you, so that it could be involved
3 in a drug transaction in that parking lot; is that right?

4 A. Yes.

5 Q. Okay. About how far away from your mother's
6 house on Coroner Avenue is it to those apartments in
7 between Iris and Calvert Street?

8 A. Couple of miles.

9 Q. About how long did it take y'all to drive over
10 there?

11 A. About ten -- about ten minutes. A few minutes.

12 Q. Okay. And would you tell the jury what car you
13 took over there.

14 A. A white Grand Marquis.

15 Q. White Grand Marquis. Was that your car?

16 A. Yes.

17 Q. Were you driving it?

18 A. Yes.

19 Q. Was Termaine in the passenger seat?

20 A. Yes.

21 Q. Was Tooka in the back?

22 A. Yes.

23 Q. Okay. Now, I want to ask you to --

24 MR. LEVENTIS: Actually, beg the Court's
25 indulgence for one moment, Your Honor.

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1 THE COURT: Yes, sir.

2 [Whereupon, Mr. Leventis reviews documents]

3 Q. [Mr. Leventis] I'm going to ask you --

4 MR. LEVENTIS: May I approach the witness, Your
5 Honor?

6 THE COURT: You may.

7 Q. [Mr. Leventis] -- to review what's already in
8 evidence as State's Exhibit 1 and has been identified as
9 an aerial shot to the apartments between Calvert and Iris
10 Street in North Charleston. Give you a second to look at
11 that and familiarize yourself with it. And that's been
12 identified as [REDACTED] -- [REDACTED].

13 [Whereupon, the witness reviews documents]

14 Q. [Mr. Leventis] Do you recognize that? Does
15 that look familiar to you?

16 A. Uh-huh.

17 MR. LEVENTIS: Okay. Now, with the Court's
18 permission, I would ask the witness to come off the
19 stand and show the jury where she and the defendant and
20 Tooka parked when they went over to the apartments to
21 do a drug transaction.

22 THE COURT: Ms. Denson, you may step down. I
23 remind you you won't be near a microphone, so I'm going
24 to need you to speak loudly.

25 Q. [Mr. Leventis] If you would show the jury where

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1 you drove into the apartment complex, where you parked,
2 and then how you left. That's Iris Street, that's
3 Calvert, that's North Carolina.

4 A. Show --

5 Q. That's the one-story brick front of the
6 building. That's the red-brick apartment building.

7 A. Okay. We went in here at those brick apartment,
8 and I backed up in here.

9 Q. Okay. So you backed your white --

10 A. -- Grand Marquis --

11 Q. -- Grand Marquis --

12 A. -- right here.

13 Q. -- right in here?

14 Okay. Where did you come from? Which -- how
15 did you get there? Did you come down North Carolina and
16 take around Calvert -- or a left on Calvert? Or did you
17 come up from here from Iris Street?

18 A. No. I come up from --

19 Q. Where's Coroner Avenue? How about that. Can
20 you tell from that map?

21 A. Not really.

22 Q. Okay. Well, can you tell the jury how you
23 approached that apartment complex when you --

24 A. We passing Iris Street, making a right on to
25 Iris Street.

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1 Q. Okay. So then you would have come up this
2 little driveway?

3 A. Exactly.

4 Q. And you backed your Grand Marquis up on this --

5 A. Exactly.

6 Q. -- that apartment building.

7 MR. LEVENTIS: Okay. Thank you. You can sit
8 down now. Thank you.

9 [Whereupon, the witness complies]

10 Q. [Mr. Leventis] Now, you backed your car up to
11 that apartment building on Iris Street. And then could
12 you tell the jury what happened next? You and Termaine
13 and Tooka are in the car, you back it up. Then what
14 happens?

15 A. Young man came to the car to purchase whatever
16 it was they spoke about.

17 Q. What do you believe it was?

18 A. Crack.

19 Q. Okay.

20 A. Whatever they had going on, they went -- was so
21 much back and forth, back and forth, back and forth.

22 Q. When you say back and forth, that was between
23 the young man that came to the car and Termaine Nelson?

24 A. The young man went back and forth from the car
25 to the apartment about three times.

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1 Q. Okay. Do you know what he was doing at that
2 time? Did he say what he was up to?

3 A. No.

4 Q. Okay.

5 A. The third time he went to the apartment and came
6 back, he had a gun. He was like, oh, I didn't want -- I
7 don't mean to do this, but --

8 Q. Go ahead.

9 A. -- no. Go ahead.

10 Q. Very well. While he's going back and forth,
11 back and forth to the car, is Termaine in the car the
12 whole time?

13 A. Yes.

14 Q. Okay. At some point while he's going back and
15 forth I guess to an apartment, did you see Tomeko Brown,
16 Deshawn Brown's brother

17 A. Yes. Tomeko came to the car.

18 Q. Did you talk to him?

19 A. Yes.

20 Q. Okay. And then at some point while this
21 transaction is going on and this fellow is going back and
22 forth to the car, did you see Deshawn Brown, the victim?

23 A. Yes.

24 Q. Did you talk to him?

25 A. Yes.

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1 Q. What did you guys talk about?

2 A. He was just like, oh, well, where's my daughter.

3 At home. Okay.

4 Q. Asking about his child?

5 A. And that was that.

6 Q. Okay. Did he talk to Termaine at that point?

7 A. Not at all.

8 Q. They didn't have any conversation?

9 A. Not at all.

10 Q. Okay. So then where does he go? Does he leave,
11 or does he stay next to the car?

12 A. Who's he?

13 Q. I'm sorry. Did Deshawn Brown leave, or does he
14 stay next to the car?

15 A. Deshawn Brown left the car. Where did he go, I
16 don't know.

17 Q. Okay. Now, I didn't mean to interrupt you. If
18 you would -- so you said the young man came back to the
19 car and he had a gun. Could you tell the jury about that?

20 A. Well, he pulled -- basically, he robbed us. And
21 he was like, well, what they called me back in school
22 stuck. I didn't mean to do this, but I'm going to do
23 this. And after that, I mean, we left.

24 Q. Now, when you say he robbed us, did he rob
25 Termaine Nelson?

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1 A. [No response]

2 Q. Did he take any of your property?

3 A. He didn't take anything from me. I never once
4 turned around, I mean, because somebody's got a gun behind
5 me so, I mean, my first reaction was not to move at all.

6 Q. Okay. And what did Termaine Nelson say when
7 he -- when he pulled -- when he fired the gun, pulled a
8 gun on him? Do you remember?

9 A. Oh, you can have that. I mean --

10 Q. So you can have it?

11 A. Exactly.

12 Q. Okay. And did the guy who pulled the gun, did
13 he open up the back door and go in the back of the car?

14 A. Yes, he did.

15 Q. What was he doing there?

16 A. Sir, I can't answer that. I never did turn
17 around when the gentleman was behind me with the gun.

18 Q. Okay. Well, let's be clear about one thing. It
19 wasn't Deshawn Brown who had a gun?

20 A. No.

21 Q. It wasn't Deshawn Brown who robbed Termaine
22 Nelson, was it?

23 A. No.

24 Q. Was Deshawn Brown even around when that
25 happened?

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1 A. Like I say, when he left the car after he asked
2 the question about our daughter --

3 Q. Yeah.

4 A. -- I don't know where he went.

5 Q. Okay. But you didn't see him when the guy was
6 pointing the gun at Termaine?

7 A. No.

8 Q. Okay. How about Cory Watkins? Was he around
9 when that happened?

10 A. I'm not sure. It just been a whole bunch of
11 people.

12 Q. Okay. So you don't -- so you didn't see Cory
13 Watkins?

14 A. I'm not sure.

15 Q. You're not sure. Okay.

16 So the guy pulls a gun on Termaine, says, I'm
17 going to take your drugs, have a nice day, why didn't
18 Termaine just pull the gun back on him and say give me my
19 drugs back?

20 A. What gun?

21 Q. He didn't have a gun?

22 A. No.

23 Q. Oh. So Termaine Nelson did not have a gun at
24 the time?

25 A. No.

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1 Q. And yet the guy who robbed him didn't shoot him,
2 did he?

3 A. No.

4 Q. In fact, he let Termaine Nelson get back in that
5 car and drive away, didn't he?

6 A. And let me drove away, yeah.

7 Q. You were driving.

8 A. Uh-huh.

9 Q. Termaine Nelson is in the passenger seat?

10 A. Uh-huh.

11 Q. Tooka is in the back?

12 A. Yes.

13 Q. After the person that robbed Termaine Nelson,
14 took his drugs, did he allow him to get back in the car?

15 A. He was already in the car.

16 Q. I see. Did he allow you guys to drive off
17 without shooting at you, or anything like that?

18 A. Yes.

19 MR. LEVENTIS: Okay. Beg the Court's indulgence
20 for one moment, Your Honor.

21 THE COURT: Yes, sir.

22 [Whereupon, Mr. Leventis reviews documents]

23 Q. [Mr. Leventis] Now, you were driving; is that
24 right?

25 A. Yes.

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1 Q. And where did the three of you go after that?

2 A. Back at [REDACTED] Coroner Avenue.

3 Q. [REDACTED] Coroner Avenue, about two or three miles
4 away?

5 A. Yes.

6 Q. That's where you left from originally, and you
7 went back there?

8 A. [No response]

9 Q. On your way back over there to Coroner Avenue
10 from the apartments in North Charleston at Calvary and
11 Iris, did Termaine Nelson make any phone calls?

12 A. I can't remember. I know when we got back to
13 [REDACTED] Coroner Avenue, he was on the phone.

14 Q. Okay. Did Termaine Nelson call A.T.L., or Jovan
15 Bryant that you identified A.T.L. to be --

16 A. Who he was on the phone with, I don't know.

17 Q. Okay. Now, you gave a statement to the police
18 in this -- to the police in this case, did you not?

19 A. Yes.

20 Q. And did you go to the North Charleston Police
21 Department to see the police, or did they come find you?

22 A. I wouldn't say they come and find me, because
23 they were actually escorted to me.

24 Q. Where was it that you gave the statement to the
25 North Charleston Police Department? Where were you when

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1 you gave that statement?

2 A. North Charleston --

3 Q. City Hall?

4 A. -- City Hall.

5 Q. At the police department?

6 A. Yes.

7 Q. Was that the same day that Deshawn Brown was
8 murdered that you gave that statement?

9 A. Yes.

10 Q. Okay. Same day that Termaine Nelson was ripped
11 off on his drugs; right?

12 A. Yes.

13 Q. Do you remember who you gave a statement to?

14 A. Yes.

15 Q. Was it a detective from the North Charleston
16 Police Department?

17 A. Yes.

18 Q. Do you know his name?

19 A. No.

20 Q. Do you see him in court today?

21 A. Yes.

22 Q. Could you point him out for the jury?

23 A. [Witness complies]

24 Q. The gentleman in the blue suit?

25 A. Uh-huh.

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1 Q. Okay.

2 A. Actually I talked to two --

3 THE COURT: Is that a yes?

4 A. -- people --

5 THE COURT: Ms. Denson, I need you to answer yes
6 or no.

7 A. Yes.

8 Q. [Mr. Leventis] I'm going to --

9 MR. LEVENTIS: With the Court's permission, may
10 I approach the witness?

11 THE COURT: You may.

12 Q. [Mr. Leventis] I'm going to show you what's
13 been marked as State's Exhibit 13 for identification
14 purposes, ask you to look it over. Take as much time as
15 you need to get familiar with it.

16 [Whereupon, the witness reviews documents]

17 Q. [Mr. Leventis] Have you had a chance to look
18 over that exhibit?

19 A. Uh-huh. Yes.

20 Q. Now, you testified that you gave a statement to
21 the North Charleston Police Department, and you identified
22 Detective Faison as one of the people present when you
23 gave that statement. Do you recall that?

24 A. Yes.

25 Q. Okay. You gave a statement the day that your

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1 child's father had been murdered. You were angry or upset
2 at the time you gave the statement?

3 A. Yes.

4 Q. Were you telling the truth when you gave the
5 statement?

6 A. Yes.

7 Q. Now, if you'll look at the State's Exhibit that
8 I just put in front of you and go to the second page, and
9 I want you to go two lines down. Take all the time you
10 need.

11 [Whereupon, the witness reviews documents]

12 Q. [Mr. Leventis] The first sentence in the third
13 line that starts with, on the way to my mother's house.
14 Do you see that?

15 A. Uh-huh.

16 Q. Okay. Did you tell Detective Faison of the
17 North Charleston Police Department that: on the way to my
18 mother's house, Termaine was on the phone talking to a guy
19 named A.T.L. you've just identified as Jovan Bryant. He
20 was telling A.T.L. that he had just gotten robbed.

21 Is that the truth?

22 A. That's in the statement, yes.

23 Q. Okay. So you remember that now? You were
24 driving back on Calvert and Iris Street going back over to
25 Coroner Avenue. Do you want to take a second?

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1 A. [No response]

2 Q. Going back over to Coroner Avenue, Termaine
3 Nelson is on the phone with A.T.L., with Jovan Bryant,
4 telling Jovan Bryant, I just got robbed; is that correct?

5 A. Yes.

6 Q. Okay. And then what happened when you got back
7 to Coroner Avenue?

8 A. Termaine left, T, and whoever else, in a Jeep.

9 Q. Well, let me ask you this. When you got back to
10 Coroner Avenue, did Termaine make any other phone calls?

11 A. He was on the phone.

12 Q. Okay. At some point after you got back to
13 Coroner Avenue with Termaine and Tooka, did T, Timothy
14 Hoard, arrives with his girlfriend, Crystal Frazier?

15 A. Yes.

16 Q. Okay. So now you're at Coroner Avenue.
17 Termaine is there. Timothy Hoard arrives with his
18 girlfriend. Okay? At some point, did an SUV pull up?

19 A. Yes.

20 Q. What color was it?

21 A. Gray, I believe.

22 Q. Okay. Did you see who was driving it?

23 A. No.

24 Q. You didn't? Did Termaine Nelson get in that
25 SUV?

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1 A. Yes.

2 Q. Did Timothy Hoard get in that SUV?

3 A. Yes.

4 Q. Did Tooka get in that SUV?

5 A. I can't remember.

6 Q. You don't remember. Okay.

7 All right. Did Termaine say where he was going
8 when he got in the SUV?

9 A. No.

10 Q. This was your boyfriend at the time; right?

11 A. Yes.

12 Q. He had just been robbed. Would you like to take
13 a second?

14 A. [No response]

15 Q. Do you want to continue talking?

16 A. Uh-huh.

17 MR. LEVENTIS: Do we have tissue up there?

18 THE COURT: They're up there. Thank you, Mr.
19 Leventis.

20 Q. [Mr. Leventis] Your boyfriend had just been
21 robbed moments ago. An SUV pulls up. Timothy Hoard has
22 now arrived at Coroner Avenue. He gets in the SUV.
23 Termaine Nelson gets in the SUV, but he didn't tell you
24 where he was going?

25 A. No.

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1 Q. Now, what did you do after that? Did you leave
2 Coroner Avenue, did you stick around, or do you remember?

3 A. I stayed there. Because when the detectives
4 come, that's where they got me from.

5 Q. Okay. And for the jury's clarification here,
6 approximately how long was it from the time you arrived
7 back at Coroner Avenue until the time the SUV pulled up,
8 Timothy Hoard arrived, and Termaine Nelson and Timothy
9 Hoard got into that SUV?

10 A. About twenty minutes later or so.

11 Q. Approximately twenty minutes. Okay.

12 MR. LEVENTIS: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 [Whereupon, Mr. Leventis reviews documents]

15 Q. [Mr. Leventis] Do you remember going to your
16 grandmother's house on Hugo Avenue after that?

17 A. Yes.

18 Q. Do you remember who went with you?

19 A. I'm not sure.

20 Q. While you were at your grandmother's house on
21 Hugo Avenue, did you call Termaine to see what he was up
22 to?

23 A. Yes.

24 Q. And what did he say he was up to?

25 A. He didn't say anything.

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1 Q. He said he had to go?

2 A. Yeah.

3 Q. Now, a short time later did you learn that your
4 child's father, Deshawn Brown, had been shot?

5 A. What was that?

6 Q. I'm sorry. Thereafter, you're at Hugo Avenue
7 now at your -- is that your grandmother's house?

8 A. Yes.

9 Q. At some point during that time did you learn
10 that Deshawn Brown, your child's father, had been shot?

11 A. Yes.

12 Q. Okay. At some point thereafter, did Termaine
13 Nelson call you to tell you he had shot Deshawn Brown?

14 A. I think.

15 Q. You think?

16 A. [No response]

17 Q. Is that what you told the North Charleston
18 Police Department?

19 A. He said, I think.

20 Q. I think I shot Deshawn Brown?

21 A. [No response]

22 Q. Do you remember exactly what he said?

23 A. Not exactly what he said.

24 Q. Did you tell him you were going to go over there
25 to those apartments to see what was going on?

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1 A. No. Actually, I got a phone call.

2 Q. Who called you?

3 A. My uncle's girlfriend.

4 Q. Okay. What did -- what was that about?

5 A. Your baby daddy just got shot.

6 Q. At some point did Termaine Nelson call you and
7 tell you, I think I shot your baby's daddy?

8 A. What was that?

9 Q. At some point did Termaine Nelson, the
10 defendant, call you and tell you, I think I shot your
11 baby's daddy?

12 A. Yes.

13 Q. Okay. Did he ask you to come get him, come pick
14 him up?

15 A. Yes.

16 Q. Do you remember going over to Burton Lane and
17 picking up Termaine Nelson and Timothy Hoard?

18 A. Yes.

19 Q. Do you remember where you drove them?

20 A. I was going back to A.T.L.'s.

21 Q. Would that be Surrey Avenue?

22 A. Yes.

23 Q. Okay. On your way back to T's house -- excuse
24 me -- Timothy Hoard's house, did Termaine Nelson have --
25 was he on the cell phone?

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1 A. I'm not sure.

2 Q. Would you refer to page 2 of State's Exhibit 13
3 that I put in front of you. Go down to about line 18,
4 right after Hugo Avenue. Did you tell Detective Faison
5 that: while we were driving to my grandmother's house,
6 Termaine was talking on the phone and I overheard Termaine
7 telling the person on that phone that, I think I shot him
8 in the shoulder?

9 A. It says that here but, if I may, I don't
10 remember.

11 Q. You don't remember if you told Detective Faison
12 that?

13 A. [No response]

14 Q. Okay. And then a little later on that evening
15 it looks like Crystal, Crystal Frazier, came over to your
16 grandmother's house and you guys went out to get a drink.
17 Do you remember that?

18 A. A drink?

19 Q. Alcohol?

20 A. A drink?

21 Q. It says alcohol.

22 A. No.

23 Q. Did you not go out to get alcohol?

24 A. No.

25 Q. Okay. While at my mother's [phonetic] house,

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1 Ashley brought Crystal's phone to me. The phone rang and
2 it was Termaine's number so I answered it and he told me
3 to bring him drugs because he needed to smoke a blunt. I
4 said, okay. But I couldn't find the weed. Before we got
5 off the phone he said, I've got to go because I think I
6 shot your baby's daddy, and hung up. Did you tell
7 Detective Faison that that's what the defendant said to
8 you?

9 A. Yes, again.

10 Q. Did you review the statement before you gave
11 it to the police? Excuse me. Did you review the
12 statement -- did the police review that statement with you
13 after you had given it to them?

14 A. I vaguely went over the statement that I gave to
15 them.

16 Q. Okay. You signed the statement, didn't you?

17 A. I sure did.

18 Q. And, again, on the day that you gave that
19 statement you're giving pretty accusatory statements
20 against your boyfriend Termaine Nelson, but he had also
21 just murdered -- he was saying he murdered your father --
22 the father of your child; is that correct?

23 A. Yes.

24 Q. So you were upset at that time, weren't you?

25 A. Yes.

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1 MR. LEVENTIS: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 [Whereupon, Mr. Leventis and Mr. Stack confer]

4 MR. LEVENTIS: I don't have any further
5 questions for you right now, Ms. Denson. If you would
6 answer any questions Mr. Runyon has, I would appreciate
7 it.

8 THE COURT: Mr. Runyon?

9 CROSS-EXAMINATION

10 BY MR. RUNYON:

11 Q. Ma'am, Mr. Nelson never said, I think I murdered
12 your baby's father. He said, I think I may have shot him.
13 Right?

14 A. Yes.

15 Q. Now, did you ever see Mr. Nelson that afternoon,
16 or that day, with a long gun?

17 A. No, sir.

18 Q. Did you ever see anybody with a long gun that
19 afternoon --

20 A. No.

21 Q. -- or that day?

22 A. No, sir.

23 Q. Now, you went over to the apartment originally,
24 and Mr. Nelson was to make a drug deal; correct?

25 A. Yes, sir.

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1 Q. And Mr. Brown was there, wasn't he?
2 A. Who is Mr. Brown?
3 Q. The deceased. Deshawn Brown.
4 A. Yes.
5 Q. He was there?
6 A. Yes.
7 Q. He came out and he talked to you; right?
8 A. Yes.
9 Q. And then he went kind of back in with the crowd;
10 correct?
11 A. Yes.
12 Q. And a crowd were standing there watching,
13 weren't they?
14 A. Yes.
15 Q. And the young man goes into the apartment,
16 didn't he, two --
17 A. Yes.
18 Q. -- or three times; correct?
19 A. Yes.
20 Q. -- as I understand your testimony.
21 And then he comes back with a gun and he says,
22 I'm taking the drugs; correct?
23 A. Yes.
24 Q. Okay. So at least then there was a gun around
25 that place, wasn't there?

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1 A. Yes.

2 Q. All right. Now, did your child's father come
3 out to help you?

4 A. No.

5 Q. Okay. Now, when you were interviewed by the
6 police, this fine officer back here, he was asking you --
7 you talked to him about telephones and all that sort of
8 stuff, didn't you?

9 A. Yes.

10 Q. And you told him -- and you told him what the
11 numbers were?

12 A. Yes.

13 Q. That your numbers and Termaine's numbers and all
14 that sort of stuff; correct?

15 A. Yes.

16 Q. All right. Who is your telephone service with
17 at that time; do you remember?

18 A. I don't remember.

19 Q. Do you remember who Termaine's service was with?

20 A. Don't remember.

21 Q. But certainly you knew what the numbers were?

22 A. Yes.

23 Q. And you told the police the numbers --

24 A. Yes.

25 Q. -- right? And at any time did you see anyone

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1 with Termaine with a long gun?

2 A. No, sir.

3 Q. Okay. Now, was Termaine receiving telephone
4 calls before he went back over there, to your knowledge?

5 A. I'm not sure.

6 Q. Okay. Do you know if he -- do you know who he
7 was talking to, if he talked to anybody?

8 A. No, sir.

9 Q. Okay. And did you go back over to the apartment
10 area where Mr. Brown was shot?

11 A. No, sir.

12 Q. Okay. Now, when you were there earlier in the
13 day and you were being robbed in front of everybody, about
14 how many people were there?

15 A. Two much. I'm not sure how many people there
16 were.

17 Q. Well, I mean, can you -- was it more than one?

18 A. Yes.

19 Q. More than two?

20 A. Yes.

21 Q. More than three?

22 A. Yes.

23 Q. A lot of people there?

24 A. Yes.

25 Q. Now, I believe you said that the last time you

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1 saw Termaine before any shooting or anything went on, he
2 got into a Jeep?

3 A. Yes.

4 Q. What color was the Jeep; do you remember?

5 A. I believe it was gray.

6 Q. A green Jeep?

7 A. Gray.

8 Q. Excuse me. A gray Jeep?

9 A. Yes.

10 Q. And who was driving the Jeep?

11 A. I'm not sure.

12 Q. How many people were in the Jeep?

13 A. I can't answer that.

14 Q. Okay. Was there a gun in the white Grand
15 Marquis when y'all went over there for Termaine to make
16 his drug deal?

17 A. No, sir.

18 Q. All right. Did Termaine ordinarily carry a gun,
19 to your knowledge?

20 A. No, sir.

21 Q. Okay. Which apartment did the young man go into
22 and out of on several occasions? Do you know?

23 A. I don't know the address. All I know, it's the
24 flat apartment.

25 Q. I beg your pardon?

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1 A. Flat apartment.

2 Q. The flat apartment?

3 A. [Indicates affirmatively]

4 Q. And he went in and out of that apartment?

5 A. Yes, sir.

6 Q. He and Termaine were haggling about something?

7 A. Yes, sir.

8 Q. And Termaine never got out of the car?

9 A. No, sir.

10 Q. The last time he came out he had a gun and he
11 said, I'm sorry, I'm taking it all?

12 A. Yes, sir.

13 Q. At least he apologized, didn't he, that he was
14 robbing you?

15 A. [No response]

16 MR. RUNYON: No further questions, Judge.

17 MR. LEVENTIS: Just briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. LEVENTIS:

20 Q. Just so the jury is clear, Ms. Denson. When you
21 talk about Termaine getting into a Jeep, you're talking
22 about an SUV that he got into over on Coroner Avenue;
23 correct?

24 A. Yes, sir.

25 Q. After he had been robbed, you guys drove back

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1 over to Coroner Avenue, Termaine got into a Jeep, you
2 didn't see who was driving; is that correct?

3 A. No, sir.

4 Q. And drove away?

5 A. Yes, sir.

6 MR. LEVENTIS: That's all, Your Honor.

7 THE COURT: Mr. Runyon?

8 MR. RUNYON: No further questions, Judge.

9 THE COURT: May this witness step down?

10 MR. LEVENTIS: Yes, Your Honor.

11 THE COURT: Ms. Denson, you may step down. You
12 may remain in the courtroom, but you are excused.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: Mr. Leventis, your next witness will
16 take us past 5:30; is that correct?

17 MR. LEVENTIS: He will, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, I
19 indicated that we would stop at 5:30, so this is an
20 appropriate time for us to break for our evening
21 recess. Just for scheduling purposes, Wednesday is a
22 court holiday so just for your scheduling purposes, we
23 will not be in court on Wednesday. So plan
24 accordingly. We will begin tomorrow. Please be back
25 in your jury room at 9:15.

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1 Do not discuss this case amongst yourselves or
2 with anyone. I know you're going to go home and your
3 significant other is going to want to know what you
4 have been doing today. You may not discuss this case
5 with him or her or anyone involved. Do not do any
6 independent research. Do not read, watch, listen to
7 any news accounts, should there be any. I will see you
8 back in your jury room -- or back in the courtroom
9 promptly at 9:15. Have a wonderful evening.

10 Please rise for the jury.

11 [Whereupon, the jury exits the courtroom at
12 5:15 p.m.]

13 THE COURT: Thank you. Be seated. Anything
14 before we break for the evening? From the State?

15 MR. LEVENTIS: Nothing from the State, Your
16 Honor.

17 MR. RUNYON: Nothing --

18 THE COURT: From the defendant?

19 MR. RUNYON: -- from the defense, Your Honor.

20 THE COURT: All right. Thank you, gentlemen.
21 We'll see you back at 9:15. Court is in recess.

22 {JURY TRIAL ADJOURNS AT 5:16 P.M.}

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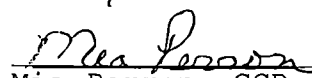
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Monday, November 9, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 23rd day of November, 2010.


Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) INDICTMENT NO.: 2007-GS-10-11053

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TERMAINE NELSON,)
)
 DEFENDANT.)
 _____)

JURY TRIAL

VOLUME 2 OF 2

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Tuesday, November 10, 2009, Commencing at 9:20 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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[Exhibits pre-marked by counsel unless otherwise noted
in transcript]

MARKED/ADMITTED

State's Exhibit Number 14
[Proffer Agreement]

/ 42

State's Exhibit Number 15
[Defendant's Statement]

/ 28

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PROCEEDINGS

THE COURT: Thank you. Please be seated.

Anything before we bring in the jury, Mr.
Leventis?

MR. LEVENTIS: Nothing from the State, Your
Honor.

THE COURT: Mr. Runyon?

MR. RUNYON: Your Honor, I think at some point
in time Henry and I have to get together -- I'm just
putting it on the record -- and formalize for the
record our stipulation as to the chain stipulation so
we don't have any -- so the record is clear that we're
not just letting something slip by. But we can do that
later on.

MR. LEVENTIS: That will be fine.

THE COURT: Okay. Thank you.

And just for scheduling purposes, we're going to
break right at noon, Mr. Leventis.

MR. LEVENTIS: Okay.

THE COURT: All right. Thank you.

Please bring in the jury.

Please rise for the jury.

[Whereupon, the jury enters the courtroom at
9:21 a.m.]

THE BAILIFF: The jury is present, Your Honor.

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1 THE COURT: Thank you. Please be seated.

2 Please pass out the notebooks. Thank you.

3 [Off the record momentarily]

4 THE COURT: Mr. Leventis, please call your next
5 witness.

6 MR. LEVENTIS: Thank you, Your Honor. The State
7 calls Detective O.J. Faison.

8 [Whereupon, Mr. Faison comes forward]

9 THE CLERK OF COURT: Sir, if you would please
10 place your left hand on the Bible and raise your right
11 hand.

12 [Whereupon, Mr. Faison is duly sworn by the
13 clerk of court as follows: do you swear or affirm to
14 tell the truth, so help you God]

15 THE WITNESS: I do.

16 THE CLERK OF COURT: Please be seated.

17 [Whereupon, the witness takes the witness stand]

18 THE CLERK OF COURT: If you would please state
19 your full name to the Court and spell it, as well.

20 THE WITNESS: Olenthial Faison. O-L-E-N-T-H-I-
21 A-L F-A-I-S-O-N.

22 MR. LEVENTIS: Good morning, Detective Faison.

23 THE WITNESS: Good morning.

24 - - -

25 - - -

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1 OLENTIAL J. FAISON,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. LEVENTIS:

6 Q. Would you please tell the jury where you work
7 currently.

8 A. I'm employed with the City of North Charleston.

9 Q. How long have you worked with the City of North
10 Charleston?

11 A. For approximately ten years.

12 Q. You work for the City of North Charleston Police
13 Department?

14 A. Yes, I do.

15 Q. What are your current job responsibilities?

16 A. I'm a detective. I'm a detective in the persons
17 unit.

18 Q. Okay. And in July of 2007, were you a detective
19 in the persons unit?

20 A. Yes, I was.

21 Q. Okay. In your capacity as a detective with the
22 North Charleston Police Department in July of 2007, did
23 you have occasion to work on a murder and assault and
24 battery with intent to kill that occurred between Calvert
25 and Iris Street?

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1 A. Yes, I did.

2 Q. Okay. And, in fact, you were the lead detective
3 in that case, were you not?

4 A. Yes, I was.

5 Q. Okay. Would you tell the jury a little bit
6 about what the lead detective does at a crime scene.

7 A. I'm basically like the supervisor of the scene.
8 I kind of like direct and give directives of where every
9 officer go, and everything get channeled back to me.

10 Q. Okay. And, in fact, did you do that at this
11 crime scene, the murder and ABWIK, July 13, 2007?

12 A. Yes, I did.

13 Q. Okay. And, now, did you speak with witnesses at
14 the crime scene?

15 A. Yes, I did.

16 Q. And did you get other officers who spoke with
17 witnesses come back and tell you what they had learned?

18 A. Yes, I did.

19 Q. Okay. Were all the witnesses consistent about
20 what took place at the crime scene?

21 A. Yes, they were.

22 MR. RUNYON: Objection, Your Honor.

23 THE COURT: Sustained.

24 Ladies and gentlemen, I have determined that the
25 response to that question is inappropriate. Please

MIA PERRON, CCR, CVR-CM

1 strike it from any consideration.

2 Mr. Leventis.

3 Q. [Mr. Leventis] Based on your conversation with
4 the witnesses, what did you learn took place at the crime
5 scene?

6 A. After talking with several witnesses, and also
7 the officers, they basically say that it was a SUV pulled
8 up on the side of -- I can't remember if it was Iris or
9 Calvert. But, anyway, there was a SUV pull up. A couple
10 of gentlemens got out of the vehicle and start shooting,
11 and they run back in the vehicle and the vehicle left the
12 scene, basically.

13 Q. Okay. And as part of your investigation in this
14 crime, did you speak with Lewanda Denson?

15 A. Yes, I did.

16 Q. Okay. Did you learn what Lewanda Denson's
17 relationship was to the defendant?

18 A. Yes, I did.

19 Q. And what was that?

20 A. The relationship between Lewanda and the
21 defendant was they were girlfriend and boyfriend,
22 basically.

23 Q. Okay. Where did you interview Ms. Denson?

24 A. At the City of North Charleston.

25 Q. At the police department?

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1 A. Yes, sir.

2 Q. Okay. And did she come to the police department
3 voluntarily, or did you have to go out in the community
4 and pick her up?

5 A. Actually, when I arrived back from the scene to
6 the police department, she was already there.

7 Q. Okay. And when was she interviewed?

8 A. On the same day of the incident occurred, and
9 which that would have been July 13th.

10 Q. And Ms. Denson gave a statement in this case; is
11 that correct?

12 A. Yes, she did.

13 Q. All right. So based on your interview with the
14 witnesses at the crime scene, and the defendant's
15 girlfriend, did you develop the defendant and Timothy
16 Hoard and Javon Bryant as suspects in this case?

17 A. Yes. Through interviewing Lewanda Denson,
18 that's when I developed the suspects.

19 Q. And after that interview, were you able to
20 immediately take the defendant into custody?

21 A. No, I did not.

22 Q. All right. At some point thereafter, did you
23 learn of the defendant's whereabouts?

24 A. Yes, I did.

25 Q. About approximately when was that?

1 A. I would say approximately, let's see, the 13th.
2 And I think around about the 25th I found that they was
3 actually in Atlanta. So I figure about two weeks, I
4 figure it was.

5 Q. Okay. And had the defendant been taken into
6 custody in Atlanta?

7 A. Yes, they was.

8 Q. Okay. And did you go to Atlanta to speak with
9 the defendant?

10 A. I didn't. I had two of my detectives go.

11 Q. Who were those detectives?

12 A. Detective Shawn Patrick and Detective Greg
13 Gomes.

14 Q. Okay. And were they actually able to speak with
15 the defendant in this case?

16 A. Yes, they did.

17 Q. Okay. Let me ask you on a separate subject.
18 There were guns used in this case; correct?

19 A. Yes, there were.

20 Q. Were you able to locate those guns?

21 A. No. No, we did not.

22 Q. Is that unusual for a murder that is not solved
23 immediately that you're not able to locate weapons used?

24 A. No, it's not unusual.

25 MR. LEVENTIS: Okay. Beg the Court's indulgence

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1 one moment.

2 THE COURT: Yes, sir.

3 [Whereupon, Mr. Leventis and Mr. Stack confer]

4 MR. LEVENTIS: Those are all the questions I
5 have of this witness at this time, Your Honor.

6 MR. RUNYON: Good morning, Detective Faison.

7 THE WITNESS: Good morning.

8 MR. RUNYON: We've got to stop meeting like this
9 for so many years.

10 Permission to approach the exhibits?

11 THE COURT: You may.

12 CROSS-EXAMINATION

13 BY MR. RUNYON:

14 Q. Now, Detective Faison --

15 A. Faison.

16 Q. -- as the lead detective, you're familiar with
17 State's Exhibit Number 11 and State's Exhibit Number 12,
18 which are the shell casings; correct?

19 A. Yes, sir.

20 Q. And as a result of those shell casings being
21 found, it was more than just some people got out of the
22 car and started shooting. I believe the State's position
23 of the investigation was was that some people with rifles
24 or long guns got out of the car and started shooting.

25 A. From the individual witnesses I stated

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1 [phonetic], they said it was guns and they would start
2 shooting.

3 Q. But the important thing is they were long guns
4 or rifles.

5 MR. LEVENTIS: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. LEVENTIS: No basis for this -- no basis for
8 this line of questioning.

9 THE COURT: Overruled.

10 MR. RUNYON: All right. Let me withdraw that.

11 Q. [Mr. Runyon] Did you -- as part of your
12 investigation, did you check on what those shell casings
13 were?

14 A. Actually, the crime scene officer is the one
15 that collected all the shell casings and --

16 Q. I'm not asking you about who collected them.
17 I'm asking you do you know what those shell casings were.

18 A. Yeah. These shell casings, yeah.

19 Q. Okay. Now, what kind -- time -- kind of firearm
20 did they come from? Did your investigation reveal that?

21 A. Of these -- no, because we never found a weapon,
22 so I can't --

23 Q. I know you didn't find a weapon.

24 A. -- so I can't really say what kind of gun was
25 shot -- I mean, the shell casings, because we never found

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1 the weapon.

2 Q. All right. So you have no concept in the course
3 of the investigation as to what type of weapons those came
4 from?

5 A. I can give you basically what they usually come
6 from, but I can't tell you if that was the gun that
7 actually shoot these type of bullets.

8 Q. Okay. Well, now, how long -- how long have we
9 been going at this over the years?

10 A. For a good while.

11 Q. Okay. You've been a detective a long time?

12 A. Yes, sir.

13 Q. And I've been practicing law for a long time.

14 A. Yes, you have.

15 Q. A little bit longer than you've been a
16 detective. But we've been around a long time.

17 A. Yes.

18 Q. Now, and you follow your leads --

19 A. Yes.

20 Q. -- don't you?

21 A. Yes, I do.

22 Q. And you don't neglect anything in a case?

23 A. No, I don't.

24 Q. That's right.

25 And so you attempted to ascertain the type of

1. weapon that those shell casings came from?

2. A. Yes.

3. Q. All right. Did you ascertain the type of weapon
4. that those shell casings could -- would have been fired
5. from?

6. A. Yes. They could have possibly come from a long
7. -- a long gun instead of a handgun.

8. Q. Now, did you ever develop any information -- I
9. believe you said you developed suspects in this case?

10. A. Yes, I did.

11. Q. Okay. Did you ever develop any information that
12. this defendant ever had in his possession any kind of long
13. gun that would fire either of those types of shells?

14. A. Did I find out that if he had any gun?

15. Q. Yes, sir.

16. A. Yes. I did through Lewanda Denson, and also the
17. other individual that we had.

18. Q. That wasn't my question.

19. My question: did you develop any information
20. that he had a weapon that would fire those shells.

21. A. That if he had this weapon?

22. Q. Yes.

23. A. I don't know which weapon he had.

24. Q. Did you develop in the course of your
25. investigation any information that he had a weapon that

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1 would fire those shells?

2 A. I don't know what type of weapon he had so I
3 can't say that --

4 Q. Okay. Now, as a practical matter, you had the
5 telephone numbers that Lewanda Denson had; correct?

6 A. Yes.

7 Q. And she gave you his telephone number?

8 A. Yes.

9 Q. And as an investigative tool, it's possible for
10 y'all to obtain cell phone records; correct?

11 A. Yes, sometimes we do.

12 Q. And in this case you didn't obtain the cell
13 phone records?

14 A. No, I don't believe so, sir.

15 Q. Okay. And in the course of attempting to track
16 the possible weapons, did you consult with ATF?

17 A. Yes. We have actually a ATF officer work with
18 us.

19 Q. Okay. So you had an ATF officer working with
20 you --

21 A. Yes.

22 Q. -- that could tell you about the possible
23 weapons?

24 A. Uh-huh. Yeah.

25 Q. All right. Now, in the course of interviewing

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1 Ms. Denson, she advised you that there had been, in
2 essence, a robbery of drugs earlier in that day?

3 A. Yes.

4 Q. And she advised you of where the young man with
5 the weapon came in and out of, did you not -- did she not?

6 A. Yes, she did.

7 Q. All right. Did y'all obtain a search warrant to
8 look in that -- in those premises for a weapon?

9 A. No, we did not.

10 Q. Okay. Now, certainly you remember January --
11 July 13, 2007, because this was a significant incident in
12 your life?

13 A. Yes, sir.

14 Q. And the people who were in the immediate area
15 remember that date because they were there and there was
16 goings on that day?

17 A. Yes, sir.

18 Q. Okay. And did you ascertain -- excuse me.
19 Strike that.

20 You didn't follow up on the cell phone records?

21 A. No, sir.

22 Q. Okay. So you don't know who he spoke to that
23 day, other than Ms. Denson, based on what she told you?

24 A. Yes. Yes, sir.

25 Q. And you don't know who may have called him,

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1 other than what she may have told you or what your
2 investigation developed?

3 A. Yes, sir.

4 Q. Okay. Now, how long you been being a policeman?

5 A. Approximately ten years.

6 Q. How long have you been in investigation?

7 A. Investigation-wise, I would say probably
8 about -- I would say about five years.

9 Q. Well, actually, that's not a fair question
10 because when you're out in the street wearing a uniform,
11 every single stop and every single call you answer is an
12 investigation, isn't it?

13 A. Yes, sir.

14 Q. So you're pretty experienced at investigation?

15 A. Yes, sir.

16 Q. All right. And one of the things that you know
17 about in investigations is trying to maintain the crime
18 scene?

19 A. Yes, sir.

20 Q. And in this case Officer Neale attempted to do
21 the best he could to clear it as soon as he could and to
22 rope it off and what-have-you?

23 A. Yes, sir.

24 Q. Okay. Prior to his arrival, there were a whole
25 gaggle of people walking through the crime scene?

1 A. Yes, sir.

2 Q. Okay. And there was no way to maintain the
3 crime scene prior to Mr. Neale arriving?

4 A. That is correct.

5 Q. Okay. And what you developed as a result of
6 your investigation was the location of the deceased by
7 virtue of where he was laying; correct?

8 A. Yes.

9 Q. All right. And but that doesn't necessarily
10 tell us where he may have been shot; correct?

11 A. From the witnesses.

12 Q. From witnesses.

13 And he was shot somewhere in that general area?

14 A. Yeah. He was sitting like on a little stool-
15 like of some short.

16 Q. Okay. And by those clothes that are in the
17 picture --

18 A. Uh-huh.

19 Q. You and I are familiar with the pictures?

20 A. Yes. Yes, we are.

21 Q. There is no stool by those clothes, is there?

22 A. No, sir.

23 Q. All right. Where is that stool located, by the
24 way? Do you recall?

25 A. I don't recall, no.

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1 MR. RUNYON: No further questions, Judge.

2 MR. LEVENTIS: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. LEVENTIS:

5 Q. Detective Faison, the shell casings that were
6 found at the crime scene, could they have come from
7 several different types of weapons?

8 A. Yes, they could have.

9 Q. Several different sizes of weapons?

10 A. Yes, they could have.

11 MR. LEVENTIS: That's all, Your Honor. Thank
12 you.

13 THE COURT: Mr. Runyon?

14 RECROSS-EXAMINATION

15 BY MR. RUNYON:

16 Q. Can you enumerate the weapons in which your
17 investigation revealed those shell casings could have come
18 from?

19 A. I'm not the crime scene officer. I couldn't
20 really tell you. I can tell you that it come from -- it
21 could have come from different type of weapons but the
22 particular one, I couldn't tell you.

23 Q. I know you can't tell me what particular one.
24 I'm just talking about whether they're handguns or long
25 guns.

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1 A. I can tell you normally they are shoot from a
2 long gun, but that's not -- not to say that somebody put
3 the wrong bullet in the wrong gun and shoot.

4 Q. Well, now, you know you can't put the wrong
5 bullet in the wrong gun --

6 A. Yes, you can.

7 Q. -- and shoot it; right?

8 A. You can -- you can do some of them like that.

9 Q. You can do some of them like that?

10 A. Yes, sir.

11 Q. Can you -- what kind of gun do you carry?

12 A. I carry a .45 Glock.

13 Q. Okay. Can you put either of those caliber of
14 shells in your .45 Glock and shoot it?

15 A. No, sir.

16 MR. RUNYON: Okay. No further questions, Judge.

17 THE COURT: Detective, you may step down.

18 THE WITNESS: Thank you.

19 [Whereupon, the witness exits the witness stand]

20 THE COURT: Call your next witness.

21 MR. LEVENTIS: Thank you, Your Honor. The State
22 calls Detective Shawn Patrick.

23 [Whereupon, Mr. Patrick comes forward]

24 THE CLERK OF COURT: Sir, if you would please
25 place your left hand on the Bible and raise your right

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1 hand.

2 [Whereupon, Mr. Patrick is duly sworn by the
3 clerk of court as follows: do you swear or affirm to
4 tell the truth, so help you God]

5 THE WITNESS: I do.

6 THE CLERK OF COURT: Please be seated.

7 [Whereupon, the witness takes the witness stand]

8 THE CLERK OF COURT: For the record, please
9 state your full name to the Court and spell it, as
10 well.

11 THE WITNESS: Shawn Patrick. P-A-T-R-I-C-K.

12 MR. LEVENTIS: Good morning, Detective Patrick.

13 THE WITNESS: Good morning.

14 - - - - -

15 SHAWN PATRICK,

16 Having Been First Duly Sworn,
17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MR. LEVENTIS:

20 Q. Would you tell the jury where you currently
21 work.

22 A. North Charleston Police Department.

23 Q. How long have you worked there?

24 A. Approximately ten years.

25 Q. Okay. And what are your job responsibilities

1 currently?

2 A. Currently I'm assigned to the narcotics unit.

3 Q. Okay. In July of 2007, what were your job
4 responsibilities with the North Charleston Police
5 Department?

6 A. In '07 I was assigned to the North Charleston
7 Police Department persons crimes unit.

8 Q. And you were a detective with that crime unit?

9 A. Yes.

10 Q. Okay. In your capacity as a detective with the
11 North Charleston Police Department in July of 2007, did
12 you have occasion to work on a homicide and assault and
13 battery with intent to kill that occurred in between Iris
14 and Calvert Street?

15 A. Yes, I did.

16 Q. Okay. Can you tell the jury about your
17 involvement in that case?

18 A. Detective Faison requested myself and Sargent
19 Gomes to travel to Atlanta, Georgia, to interview Mr.
20 Bryant and Javon Nelson.

21 Q. Okay. And did you, in fact, go to Atlanta?

22 A. Yes.

23 Q. And you went with Detective Gomes --

24 A. I did.

25 Q. -- is that correct?

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1 A. Yes.

2 Q. Did anybody else go with you?

3 A. No.

4 Q. Okay. And do you recall when you went to
5 Atlanta?

6 A. July 25th. I think we drove up on the 25th and
7 spoke with Mr. Bryant and Mr. Nelson on the 26th.

8 Q. Where did the interview take place?

9 A. At the Fulton County jail.

10 Q. Okay. So Mr. Nelson was in custody at the time
11 of your interview?

12 A. Correct.

13 Q. Okay. Who was present during the interview?

14 A. Detective Gomes.

15 Q. So it was you, Detective Gomes, and the
16 defendant --

17 A. That's correct.

18 Q. -- in the room together?

19 Okay. Prior to the interview, did you tell the
20 defendant about the nature of your investigation?

21 A. Yes, I did.

22 Q. Do you remember approximately what you told him
23 you were investigating?

24 A. It was in reference to a homicide.

25 Q. Did you tell him which homicide?

1 A. Yes.

2 Q. Okay. Prior to the interview, did you tell the
3 defendant -- did you advise him of his constitutional
4 rights, the right to remain silent, right to an attorney,
5 et cetera?

6 A. Yes. Actually, Detective Gomes advised him of
7 his rights.

8 Q. Okay. Do you believe the defendant understood
9 those rights?

10 A. I do.

11 Q. Did the defendant actually give a statement in
12 this case?

13 A. Yes, he did.

14 MR. LEVENTIS: All right. Your Honor, request
15 permission to approach the witness.

16 THE COURT: You may.

17 Q. [Mr. Leventis] I'm going to show you what's
18 been marked as State's Exhibit 15 for identification
19 purposes and ask you to review it. Take all the time you
20 need.

21 [Whereupon, the witness reviews documents]

22 A. All right.

23 Q. [Mr. Leventis] Do you recall that document?

24 A. Yes, I do.

25 Q. What do you recognize that document to be?

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1 A. It's a North Charleston Police Department
2 defendant's statement of Termaine Nelson.

3 Q. Okay. Is that your signature on each page?

4 A. Yes, sir.

5 Q. And what does your signature indicate?

6 A. It indicates that I was a witness to the
7 interview as well as the statement-writing.

8 Q. Okay. And then did the defendant sign each page
9 of that statement?

10 A. Yes, he did.

11 Q. And what was his -- why did he sign it?

12 A. Just acknowledging that he provided the
13 statement -- the information to me to write down.

14 Q. Okay. And then Detective Gomes' signature is
15 also on that statement, is it not?

16 A. Yes, it is.

17 Q. And why is Detective Gomes's signature on there?

18 A. Because he was present during the taking of the
19 statement, and also a witness.

20 Q. All right. Did the defendant write out this
21 statement or did you write it out for him?

22 A. I wrote it out for him.

23 Q. Is that a common practice for you to write out
24 defendant's statements for them?

25 A. Yes.

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1 Q. Okay. And why is that?

2 A. Just it makes it easier, it's clear, it's
3 quicker. Sometimes you can give them the opportunity to
4 write their own statement, but in this case I wrote it
5 myself.

6 Q. And do you review the statement with the
7 defendant before he signs it?

8 A. Yes.

9 Q. Did you do that in this case?

10 A. Yes.

11 Q. Okay. Is the State's Exhibit 15 a fair and
12 accurate representation of the statement that Termaine
13 Nelson gave you on --

14 A. Yes, it is.

15 Q. -- July 26th, 2007?

16 MR. LEVENTIS: Your Honor, at this time I would
17 move the defendant's statement into evidence.

18 MR. RUNYON: Subject to prior discussions,
19 Judge.

20 THE COURT: State's 15 into evidence pursuant
21 to -- over defendant's objection.

22 [Whereupon, State's Exhibit Number 15 is
23 admitted into evidence by the Court]

24 THE COURT: You may continue, Mr. Leventis.

25 MR. LEVENTIS: Thank you, Your Honor.

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1 Q. [Mr. Leventis] Detective Patrick, would you
2 read the defendant's statement for the jury, please.

3 A. Yes.

4 [Reading] This statement is written by Detective
5 Patrick for me with my permission. On Friday, me, Wanda
6 Denson, and a friend named Tooka went to some apartments
7 off of Spruel Avenue. My home boy, Juan, set up a drug
8 deal for me. I called the guy I was doing the deal with
9 on the cell phone. I got out. Wanda -- wait a second --
10 and Tooka went to some apartments off Spruel Avenue. My
11 home boy, Juan, set up a drug deal for me. I called the
12 guy I was doing the deal with on the cell phone. I got
13 out of Wanda's white Grand Marquis and gave the guy the
14 dope. He ended up pulling a handgun out and robbing me of
15 the drugs. Me, Wanda, and Tooka went back to Wanda's
16 house on Coroner Avenue. Tooka called his cousin Timothy,
17 and Timothy came over to Coroner Avenue. A.T.L. showed up
18 a minute later. The guy who robbed me called my cell
19 phone and told me to come and get my money. He was trying
20 to intimidate me. Me, Timothy, and A.T.L. got into a
21 small SUV-style vehicle. I don't remember the color.
22 A.T.L. drove, I sat behind the driver, and Timothy was in
23 the front passenger seat. We pulled up to the apartments
24 where I was robbed. Timothy got out of the car and
25 started shooting. I got out of the back seat with a black

1 Glock .45. I ran around the car and shot one time. I
2 don't know how many times Timothy shot.

3 Q. Okay. So the defendant told you that he jumped
4 out of the car -- excuse me -- that Timothy Hoard jumped
5 out of the car and started shooting --

6 A. Correct.

7 Q. -- then he jumped out of the car and shot once?

8 A. Correct.

9 Q. Okay. And based on that statement and prior to
10 the investigation leading up to that statement, was the
11 defendant charged with murder and ABWIK?

12 A. Yes.

13 MR. LEVENTIS: Okay. Beg the Court's indulgence
14 for one moment, Your Honor.

15 THE COURT: Yes, sir.

16 [Whereupon, Mr. Leventis and Mr. Stack confer]

17 Q. [Mr. Leventis] Did you read the portion on the
18 second page?

19 A. I haven't read the second page yet.

20 Q. Would you read that to the jury, as well.

21 A. [Reading] I got back in the back seat and
22 Timothy got in the front seat. A.T.L. drove us back to
23 Wanda's house. A.T.L. left, and me and Timothy went to
24 Timothy's house on East Surrey. I left there and went
25 back to my cousin's house -- I went to my cousin's house.

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1 I left the gun at my cousin's Josh Nelson's house. I
2 don't know the name of the street he lives on.

3 Q. Okay. So he said he left the gun at Josh
4 Nelson's house. Based on that vague information that he
5 gave you, were you able to identify where Josh Nelson
6 lived?

7 A. I do not. I don't remember if we did or not.

8 Q. Okay. Based on your discussion with the
9 defendant, were you able to identify who he was referring
10 to when he said A.T.L.?

11 A. Yes. I believe it was Timothy Hoard or Termaine
12 Nelson, one of the two. I mean, Javon Bryant. One of the
13 two of those guys. I'm not --

14 Q. Timothy Hoard or Javon Bryant?

15 A. Yes. One come from Atlanta and they gave him
16 that nickname when he got to Charleston.

17 Q. I see.

18 MR. LEVENTIS: Those are all the questions I
19 have for this witness at this time, Your Honor.

20 THE COURT: Mr. Runyon?

21 CROSS-EXAMINATION

22 BY MR. RUNYON:

23 Q. Detective Patrick, you wrote that statement;
24 correct?

25 A. Yes, sir.

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1 Q. And you wrote down every single solitary thing
2 that Mr. Nelson told you during the course of that
3 conversation?

4 A. That's correct. And reviewed it afterwards.

5 Q. Okay. Now, did he tell you why the gentleman
6 got out of the car and started shooting?

7 A. Other than what's in his statement, sir. He
8 said that they went over there, he was robbed, he went
9 back to get his money back, and what took place as far as
10 him getting out of the vehicle with the gun shooting once
11 and another individual getting out of the vehicle and
12 shooting, as well.

13 Q. Did he tell you that anyone else shot at them?

14 A. No.

15 Q. Okay. And so he was going over there to get his
16 money because the man had called him to come get it?

17 A. That's correct.

18 Q. And so they just jumped out of the car and
19 started shooting?

20 A. Exactly.

21 Q. Okay. And that's all he told you?

22 A. Yes, sir.

23 Q. And so when you got back to Charleston, y'all
24 went over to Mr. Nelson's place. You located where he
25 lived and --

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1 A. I don't know. I don't know if I was even
2 present at that time.

3 Q. Well, did you ever find the gun that Mr.
4 Termaine Nelson --

5 A. I did not.

6 Q. Okay. Did anybody follow up on that?

7 A. I do not know.

8 Q. Okay. Now, you're in narcotics now; correct?

9 A. That's correct.

10 Q. And in narcotics -- everybody has got a cell
11 phone these days, don't they?

12 A. Oh, yeah.

13 Q. And even children have cell phones these days,
14 don't they?

15 A. Some may, yes.

16 Q. So if you have a cell phone number, you can
17 pretty well look at the history of that cell phone
18 activity, can't you?

19 A. Yes, you can.

20 Q. Okay. And the interesting thing about cell
21 phone records is it not only tells you who called who, but
22 it can even tell you where they may be located because of
23 where the signal bounces off of towers and what-have-you?

24 A. That's also a possibility.

25 Q. Okay. So there had been actually no reason for

1 that not to be used as an investigative tool to ascertain
2 the weapon that Mr. Nelson had?

3 A. I don't know if it was used or not. I don't --

4 Q. Okay.

5 A. I wasn't involved in that process.

6 Q. All right. So you have no knowledge of anything
7 other than the statement you took from Mr. Nelson?

8 A. That's correct.

9 Q. Okay.

10 A. I may have taken another witness statement.

11 Q. You may have taken another witness statement?

12 A. I may have. I don't remember exactly.

13 Q. And then you came back to Charleston with
14 Mr. Gomes and the legal process went and Mr. Nelson came
15 back?

16 A. Yes, sir.

17 Q. Okay. And that's basically your role in this
18 whole investigation?

19 A. That's correct.

20 MR. RUNYON: All right. No further questions,
21 Judge.

22 MR. LEVENTIS: Just a brief follow-up, Your
23 Honor.

24 - - -

25 - - -

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REDIRECT EXAMINATION

BY MR. LEVENTIS:

Q. Let's be clear about this, Detective Patrick.
The defendant told you that the person who ripped him off
called him and said, you can come get your money back; is
that right?

A. That's correct.

Q. But he also said, he was trying to intimidate
me?

A. That's correct.

Q. The guy was trying to intimidate the defendant?

A. That's correct.

Q. And so he said in response to that intimidation
he got together with Timothy Hoard and Javon Bryant and
went back over to that crime scene?

A. That's correct.

MR. LEVENTIS: That's all the questions I have.

THE COURT: Mr. Runyon?

RE CROSS-EXAMINATION

BY MR. RUNYON:

Q. To collect his money from the man --

A. Yes. That's what he says.

Q. -- who had called him?

A. That's right.

Q. And you could have ascertained whether or not

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1 that wasn't accurate by simply getting the telephone
2 records, the cell phone records, to prove that Mr. Nelson
3 wasn't telling you the truth; isn't that correct?

4 A. I don't know if that was done or not. There's a
5 possibility it was done, but I don't know. I didn't have
6 anything to do with that process, sir.

7 Q. I understand. You didn't have anything to do
8 with the process. But as a trained investigator one of
9 the ways you can follow up on that statement and ascertain
10 whether or not he was telling you a lie was to simply get
11 his telephone record and find out who called him?

12 A. That's correct.

13 Q. Right?

14 A. That's a possibility.

15 MR. RUNYON: No further questions.

16 THE COURT: Detective, you may step down. Feel
17 free to remain with us, but you are excused.

18 [Whereupon, the witness exits the witness stand]

19 THE COURT: Call your next witness.

20 MR. LEVENTIS: Thank you, Your Honor. The State
21 calls Javon Bryant.

22 [Whereupon, Mr. Bryant comes forward]

23 THE CLERK OF COURT: Sir, if you would please
24 place your left hand on the Bible and raise your right
25 hand.

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1 [Whereupon, Mr. Bryant is duly sworn by the
2 clerk of court as follows: do you swear or affirm to
3 tell the truth, so help you God]

4 THE WITNESS: Yes sir.

5 THE CLERK OF COURT: Please be seated.

6 [Whereupon, the witness takes the witness stand]

7 THE CLERK OF COURT: For the record, please
8 state your full name for the Court and spell it, as
9 well.

10 THE WITNESS: Javon Bryant. J-A-V-O-N
11 B-R-Y-A-N-T.

12 THE COURT: Thank you, Mr. Bryant. You may be
13 seated.

14 THE WITNESS: Thank you.

15 [Whereupon, the witness complies]

16 THE COURT: Mr. Leventis?

17 MR. LEVENTIS: Thank you, Your Honor.

18 Good morning, Mr. Bryant.

19 THE WITNESS: Good morning, sir.

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- - -

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JAVON BRYANT,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. LEVENTIS:

Q. In addition to Javon Bryant you also go by the
nickname A.T.L.; correct?

A. Yes, sir.

Q. And that's because you're from Atlanta; is that
right?

A. Yes, sir.

Q. You currently reside in Atlanta?

A. Yes, sir.

Q. Okay. Did you go to high school in Atlanta?

A. Yes, sir.

Q. Grew up in Atlanta?

A. Yes, sir.

Q. Did you graduate from high school?

A. Yes, sir, I did.

Q. Which high school?

A. Bethany Mays [phonetic].

Q. Okay. But you've lived in Charleston before?
That's correct?

A. Yes, sir.

Q. Okay. And what were you doing when you were

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1 living in Charleston?

2 A. I was working for Beezer Holmes, electrician.

3 Q. Okay. What else were you doing?

4 A. Selling drugs.

5 Q. Okay. And you know the defendant in this case,
6 Termaine Nelson; is that correct?

7 A. Yes, sir.

8 Q. How do you know the defendant?

9 A. We did business before.

10 Q. What kind of business did you and the defendant
11 do?

12 A. Drug activity.

13 Q. Okay. In July of 2007, approximately how long
14 had you known the defendant?

15 A. About three, four years.

16 Q. How about Timothy Hoard? You know him, don't
17 you?

18 A. Yes, sir.

19 Q. How do you know Timothy Hoard?

20 A. Through Lutch.

21 Q. And who's Lutch? When you say Lutch, who are
22 you referring to?

23 A. Termaine.

24 Q. Okay. Is that one of Termaine Nelson's
25 nicknames is Lutch?

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1 A. Yes, sir.

2 Q. All right. So you know Timothy Hoard through
3 Lutch?

4 A. Yes, sir.

5 Q. Lutch is Termaine Nelson.

6 Were you and Timothy Hoard friends?

7 A. Yes, sir.

8 Q. Were Timothy Hoard and Termaine Nelson friends?

9 A. Yes, sir.

10 Q. How long had you known Timothy Hoard before July
11 of 2007?

12 A. About the same time.

13 Q. A couple of years?

14 A. Yes, sir.

15 Q. How about Lewanda Denson? Do you know her?

16 A. Yes, sir.

17 Q. How do you know Lewanda Denson?

18 A. Through Lutch.

19 Q. Okay. When you say Lutch, again, you're
20 referring to Termaine Nelson?

21 A. Yes, sir.

22 Q. The defendant.

23 And so you and Lewanda Denson were friends,
24 acquaintances?

25 A. Acquaintances, yes, sir.

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1 Q. Okay. And you were for a period of time prior
2 to July 13th, 2007?

3 A. Yes, sir.

4 Q. Okay. And before we go any further, let's talk
5 about your testimony today. Did you enter into a proffer
6 agreement with the solicitor's office?

7 A. Yes, sir.

8 Q. Okay. I'm going to show you --

9 MR. LEVENTIS: With the Court's permission, may
10 I approach the witness, Your Honor?

11 THE COURT: You may.

12 Q. [Mr. Leventis] I'm going to show you what's
13 been marked as State's Exhibit 14 and ask you to review
14 it. Take all the time you need.

15 [Whereupon, the witness reviews documents]

16 Q. [Mr. Leventis] Do you recognize that document?

17 A. Yes, sir, I do.

18 Q. What is that document?

19 A. It's a proffer agreement.

20 Q. Who is it between?

21 A. Me and the solicitor.

22 Q. Okay. How do you know that?

23 A. Because I signed it.

24 MR. LEVENTIS: All right. Your Honor, at this
25 time I would move State's Exhibit --

1 Q. [Mr. Leventis] Is it 14?

2 A. Yes, sir.

3 MR. LEVENTIS: -- into evidence.

4 MR. RUNYON: We have no objection to that,
5 Judge.

6 THE COURT: State's 14 into evidence without
7 objection.

8 [Whereupon, State's Exhibit Number 14 is
9 admitted into evidence by the Court]

10 THE COURT: Mr. Leventis?

11 MR. LEVENTIS: Thank you, Your Honor.

12 Q. [Mr. Leventis] Mr. Bryant, what is your
13 understanding of the proffer agreement you have with our
14 office?

15 A. To tell the truth -- tell the truth, where the
16 judge might have consideration on my case.

17 Q. You have charges pending against you?

18 A. Yes, sir.

19 Q. Okay. Has our office promised you anything in
20 exchange for your testimony?

21 A. No, sir.

22 Q. Okay. Now, let's talk about July the 13th,
23 2007. Okay. At some point -- well, let's go back to the
24 beginning. Were you in Charleston, South Carolina, on
25 July 13th, 2007?

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- 1 A. Yes, sir.
- 2 Q. Were you called by Termaine Nelson at some
3 point?
- 4 A. Yes, sir.
- 5 Q. Did he tell you that he had been robbed?
- 6 A. Yes, sir.
- 7 Q. What did he tell you?
- 8 A. He called my phone and he explained to me that
9 he had got robbed, told me to come over. So I came over
10 to see him.
- 11 Q. Okay. Did you have a car at that time?
- 12 A. Yes, sir.
- 13 Q. What kind of car did you have?
- 14 A. I had a '08 Ford Edge.
- 15 Q. Is that an SUV?
- 16 A. Yes, sir.
- 17 Q. What color was it?
- 18 A. '08, green.
- 19 Q. '08, green. Is that a light green?
- 20 A. Yes, sir.
- 21 Q. Almost a gray?
- 22 A. Green. Sea gray.
- 23 Q. Sea gray. Okay.
- 24 Where did you get that car from?
- 25 A. I rented it. I had a friend to rent it for me.

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1 Q. What kind of friend?

2 A. A crack-head.

3 Q. You had a crack-head rent the car for you?

4 A. Yes, sir.

5 Q. Okay. Was it a two-door or a four-door SUV?

6 A. Four-door.

7 Q. Four-door SUV. Okay.

8 So Termaine Nelson called you and he told you
9 that he had been robbed, and you went over to meet him.
10 Where did you go to meet him?

11 A. To his house. I don't know the name of the
12 street.

13 Q. Was it Termaine Nelson's house, or was it a
14 house that Lewanda Denson was at?

15 A. Both of theirs.

16 Q. Both of them stay over there a little bit?

17 A. Yes, sir.

18 Q. Do you remember if it was on Coroner Avenue?

19 A. Yes, sir.

20 Q. Okay. Do you remember approximately what time
21 of day that was?

22 A. Maybe 3:00, four o'clock. In the afternoon.

23 Q. Okay. When you arrived at that house, who was
24 over there?

25 A. When I arrived there was Termaine, T-Man, Tooka,

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1 Ms. Wanda, the uncle, the mama, and Crystal.

2 Q. Okay. Termaine, the defendant. T-Man: is that
3 Timothy Hoard?

4 A. Yes, sir.

5 Q. Tooka: is that Timothy Hoard's cousin?

6 A. Yes, sir.

7 Q. Also goes by Troy Cohen? Do you know that?

8 A. Yes, sir.

9 Q. Okay. When you say Ms. Wanda, is that Wanda
10 Denson?

11 A. Yes, sir.

12 Q. And then uncle: is that somebody's uncle, I
13 guess?

14 A. Yes, sir.

15 Q. Okay. So they were over there. Did you get out
16 of the car?

17 A. Yes.

18 Q. Okay. At some point, does Termaine Nelson get
19 in the car with you?

20 A. Yes, sir. When I got out of the car, he was on
21 his cell phone and he explained to me that the person had
22 called and told him he can come pick his money -- pick his
23 money up.

24 Q. The person that robbed him?

25 A. Yes, sir.

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1 Q. Okay. So he gets into your SUV?

2 A. At that time I agreed to -- I agreed to take him
3 over there.

4 Q. Okay. If you would, just answer my questions
5 for me. All right?

6 A. Yes, sir.

7 Q. Termaine Nelson get's into your SUV?

8 A. Yes, sir.

9 Q. Does Timothy Hoard get into your SUV?

10 A. Yes, sir.

11 Q. How about Tooka, Timothy Hoard's cousin? Does
12 he get in?

13 A. No. He tried to, but T-Man told him not to.

14 Q. Do you know why T-Man didn't want his little
15 cousin going along?

16 A. No, sir.

17 Q. But he said don't get in?

18 A. Yes, sir.

19 Q. What did he say exactly; do you remember?

20 A. No, sir.

21 Q. Cool it, or something like that?

22 A. Yes, sir.

23 Q. The three of you drove over to that apartment
24 complex between Iris and Calvert; is that right?

25 A. Correct.

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

3 A. Maybe five minutes.

4 Q. Okay. Not very far away?

5 A. No, sir.

6 MR. LEVENTIS: All right. Beg the Court's
7 indulgence one moment, Your Honor.

8 THE COURT: Yes, sir.

9 [Whereupon, Mr. Leventis reviews documents]

10 MR. LEVENTIS: May I approach the witness, Your
11 Honor?

12 THE COURT: I'm sorry?

13 MR. LEVENTIS: May I approach the witness?

14 THE COURT: You may.

15 MR. LEVENTIS: Thank you.

16 Q. [Mr. Leventis] I'm going to show you what's in
17 evidence as State's Exhibit 1, an aerial photo of those
18 apartments between Iris and Calvert Street, ask you to
19 take a look at it.

20 [Whereupon, the witness reviews documents]

21 Q. [Mr. Leventis] Do you recognize that?

22 A. Yes, sir.

23 Q. Okay. Now, I'm going to set the stand up and
24 ask you to show the jury where you guys came into the
25 apartment complex and where you parked.

1 MR. LEVENTIS: Your Honor, request permission
2 for the witness to come off the stand momentarily.

3 THE COURT: Yes, sir.

4 [Whereupon, the witness complies]

5 Q. [Mr. Leventis] If you would just show the jury
6 where you guys drove into the apartment complex and where
7 you parked.

8 A. We came -- we come in from this way right here.

9 Q. From Iris Street?

10 THE COURT: Mr. Bryant, I'm going to need you to
11 speak loudly.

12 THE WITNESS: Yes. Yes, Your Honor.

13 A. We came in from Iris Street right here and we
14 parked -- and we parked between this car here. It wasn't
15 no cars here. But we parked here.

16 Q. [Mr. Leventis] You parked over in here?

17 A. Yes, sir.

18 Q. Okay.

19 A. This way. We -- I think we parked right over
20 here.

21 Q. You think you parked right over there?

22 A. Yes, sir.

23 Q. Okay. So approximately on the corner there?

24 A. Yes, sir.

25 MR. LEVENTIS: All right. Again, thank you.

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1 You can be seated.

2 [Whereupon, the witness complies]

3 Q. [Mr. Leventis] Now, when you arrived in that
4 alleyway between Iris and Calvert where the apartments
5 are, did you see anybody outside?

6 A. Only I -- I got a glimpse of a few people, yes,
7 sir.

8 Q. What were they doing?

9 A. Sitting around.

10 Q. Okay. Do you remember approximately where they
11 were located? Were they in front of the apartments?

12 A. A few, yes, sir.

13 Q. Do you remember approximately how many were
14 there?

15 A. Maybe four or five.

16 Q. Okay. Did Timothy Hoard get out of the car?

17 A. Yes.

18 Q. Did Termaine Nelson get out of the car?

19 A. Yes.

20 Q. Did you get out of the car?

21 A. No, sir.

22 Q. All right. At the time Timothy Hoard got out of
23 the car, did you see him in possession of a gun?

24 A. No, sir.

25 Q. At the time Termaine Nelson got out of the car,

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1 did you see him in possession of a gun?

2 A. No, sir.

3 Q. Okay. Did you know the two men had guns when
4 you were taking them over there?

5 A. No, sir.

6 Q. Okay. After Timothy and Termaine got out of the
7 car, you're in the car; correct?

8 A. Yes, sir.

9 Q. At some point, did you hear gunshots?

10 A. Yes, sir.

11 Q. About how many shots did you hear?

12 A. Maybe four or five.

13 Q. Okay. Thereafter, did Timothy -- what did
14 Timothy Hoard and Termaine Nelson do?

15 A. After I heard the gunshots, the first gunshots,
16 I was backing back.

17 Q. You were getting ready to leave?

18 A. Yes, sir, I was going to leave. And they come
19 running back to the car. And Lutch dropped his shoe.

20 Q. Timothy -- excuse me. Termaine Nelson dropped
21 his shoe?

22 A. Yes.

23 Q. He ran out of his shoe?

24 A. Yes, sir, he ran out of his shoe.

25 Q. Okay. Did he go back to pick it up?

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- 1 A. Yes.
- 2 Q. Okay. So he goes back and picks up his shoe.
- 3 Does he jump back in the SUV?
- 4 A. Yes, sir. Yes, sir.
- 5 Q. Is Timothy Hoard in the SUV by this point?
- 6 A. Yes, sir.
- 7 Q. Okay. Then what happens?
- 8 A. Well, we was riding back to Lutch house.
- 9 Q. Well, let me stop you right there. Before -- as
- 10 you are leaving, is anybody following you?
- 11 A. Yes. I seen a -- when I looked back, I seen a
- 12 lady carrying a baby. She running --
- 13 Q. Was she running after you?
- 14 A. She was running, yes, sir.
- 15 Q. Okay. And you sped out. And did you leave the
- 16 same way you came in on Iris Street?
- 17 A. Yes, sir.
- 18 Q. Okay. Where did you go after that?
- 19 A. Back to Lutch house.
- 20 Q. The same house you picked him up at?
- 21 A. Yes, sir.
- 22 Q. Okay. On the way back over there to the house,
- 23 you picked up Termaine Nelson, did he say anything --
- 24 A. Yes.
- 25 Q. -- about the shooting?

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1 A. Yes, sir.

2 Q. What did he say?

3 A. He think he hit one.

4 Q. He thinks he hit one?

5 A. Yes, sir.

6 Q. Okay. Now, later that evening you were on East
7 Surrey Avenue; is that correct?

8 A. Yes, sir.

9 Q. Is that Timothy Hoard's house?

10 A. Yes, sir.

11 Q. Okay. Who was over there with you?

12 A. When I pulled up, it was Tooka and T-Man.

13 Q. All right. And T-Man is Timothy Hoard?

14 A. Yes, sir.

15 Q. At some point did you hear -- overhear a phone
16 conversation between the defendant, Termaine Nelson, and
17 Timothy Hoard while you were in Surrey?

18 A. Yes, sir.

19 Q. And how could you hear that conversation?

20 A. They was on speaker.

21 Q. Okay. And did you hear the defendant say
22 anything about the shooting during that conversation?

23 A. Yes, sir.

24 Q. What did he say?

25 A. He tagged one.

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- 1 Q. He thinks he tagged one?
- 2 A. Yes, sir.
- 3 Q. What did you take that to mean?
- 4 A. He shot one.
- 5 Q. Okay. After the shooting, what did you do with
- 6 the SUV?
- 7 A. I took it back.
- 8 Q. Took it back to the car rental place?
- 9 A. Yes, sir.
- 10 Q. That all took place on a Friday; correct?
- 11 A. Yes, sir.
- 12 Q. Did you stick around Charleston that weekend?
- 13 A. Yes, sir.
- 14 Q. Did you eventually go to Atlanta?
- 15 A. Yes, sir. The next day.
- 16 Q. You went to Atlanta the next day?
- 17 A. Yes, sir.
- 18 Q. Who went to Atlanta with you?
- 19 A. Me and Termaine.
- 20 Q. Anybody else?
- 21 A. My girlfriend.
- 22 Q. So the three of you went to Atlanta?
- 23 A. Yes, sir.
- 24 Q. Had the three of you been planning a trip to
- 25 Atlanta?

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1 A. Yes, sir.

2 Q. Termaine had been planning on going to Atlanta?

3 A. No, sir.

4 Q. But he tagged along?

5 A. Yes, sir.

6 Q. Do you know why he tagged along?

7 A. Because of the incident that occurred.

8 Q. Because of the shooting that occurred between
9 Iris and Calvert Street?

10 A. Yes, sir.

11 Q. So essentially Termaine Nelson was trying to
12 avoid law enforcement at that point?

13 MR. RUNYON: Objection, Your Honor.

14 THE COURT: Sustained.

15 Q. [Mr. Leventis] Is it your understanding that
16 Termaine Nelson left Charleston County to avoid law
17 enforcement?

18 MR. RUNYON: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. LEVENTIS: Very well.

21 Q. [Mr. Leventis] Now, when the defendant went to
22 Atlanta with you, was it your agreement that he was going
23 to stay with you?

24 A. No, sir.

25 Q. Who was he going to stay with?

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1 A. With his aunt.
2 Q. With his aunt?
3 A. Yes, sir.
4 Q. Did you guys, in fact, go to his aunt's house?
5 A. Yes, sir.
6 Q. Did he stay with his aunt?
7 A. No, sir.
8 Q. Why didn't he stay with his aunt?
9 A. She -- I mean, she was feared. She was scared
10 of her nephew. She was scared.
11 Q. Okay. She wouldn't let him stay with her?
12 A. [Indicates negatively]
13 MR. LEVENTIS: Okay. Beg the Court's indulgence
14 one moment, Your Honor.
15 THE COURT: Yes, sir.
16 [Whereupon, Mr. Leventis and Mr. Stack confer]
17 MR. LEVENTIS: Those are all the questions I
18 have of this witness at this time, Your Honor.
19 THE COURT: Mr. Runyon.
20 MR. RUNYON: Good morning, Mr. Bryant.
21 THE WITNESS: Good morning, sir.
22
23
24 - - -
25 - - -

CROSS-EXAMINATION

BY MR. RUNYON:

Q. Let's talk about the trip over to Calvert Street and that area.

A. Yes, sir.

Q. Did Mr. Cory -- strike that.

Did Mr. Nelson say, we're going to go over there and shoot people?

A. No, sir.

Q. As a matter of fact, you didn't see any short guns, long guns, handguns, anything, did you?

A. No, sir.

Q. Okay. And based upon your conversation with Mr. Nelson, y'all were going over there for him to collect the money that he should have gotten that morning?

A. Yes, sir.

Q. Okay. Did you see shots fired?

A. No, sir.

Q. Okay. But you heard shots fired?

A. Yes.

Q. All right. In the course of this conversation that the solicitor asked you about where he says I may have tagged one or may have hit somebody, did he tell you whether or not someone else fired at them?

A. [No response]

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1 Q. Do you recall whether or not he talked about
2 that?

3 A. No. No, sir.

4 Q. Okay. So at -- and in the course of later on in
5 the conversation, was there any conversation talking about
6 what actually happened at that scene?

7 MR. LEVENTIS: Objection, Your Honor. It calls
8 for hearsay.

9 THE COURT: Sustained --

10 MR. RUNYON: I'm asking --

11 THE COURT: Mr. Runyon.

12 MR. RUNYON: -- what he said.

13 THE COURT: Mr. Runyon. Counsel approach.

14 [Whereupon, an off-the-record bench conference
15 is held]

16 THE COURT: Rephrase your question.

17 Q. [Mr. Runyon] In your trip back to the house and
18 going back to Atlanta and everything else -- talking to
19 Mr. Nelson, now, so it's very clear, okay -- did he talk
20 to you about, quote, the shooting?

21 A. No, sir.

22 Q. He never talked about it at all?

23 A. No, sir.

24 Q. And he never said why he shot at people?

25 A. They were shooting at him.

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1 Q. I beg your pardon?

2 A. They were shooting at him.

3 Q. All right. So they were shooting at him and
4 that's why he shot at other people. How do you know they
5 were shooting at him? Because he told you that?

6 A. Yes, sir.

7 Q. Okay. So now we have it that you went over to
8 collect the money; correct?

9 A. Yes, sir.

10 Q. You went up there to collect the money; correct?

11 A. Yes, sir.

12 Q. And someone started shooting at them?

13 A. I don't know.

14 Q. Well, you didn't see it but that's what he told
15 you; correct?

16 A. Yes, sir.

17 Q. All right. And you never saw him with long
18 guns?

19 A. No, sir.

20 Q. Saw him with a pistol?

21 A. Yes, sir.

22 Q. You saw Timothy Hoard with a pistol?

23 A. Yes, sir.

24 Q. You don't know what caliber they were?

25 A. Yes, sir.

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1 Q. Well, what caliber were they?

2 A. Lutch had a .9 millimeter or a .45, and Termaine

3 -- I mean, and T-Man had a .380.

4 Q. Okay. So Lutch had a .9 millimeter or a .45
5 pistol and T-Man had a .380?

6 A. Yes, sir.

7 Q. Now, when did he say he shot because -- when did
8 he, namely Mr. Nelson, say that they had shot at him and
9 that's why he shot back?

10 A. He never said it.

11 Q. He never said it? But you just told me that.

12 A. I said he said he shot. But he never told me
13 why -- what happened around the corner.

14 Q. He never told you that?

15 A. Termaine never told me why the incident
16 occurred. He just told me that they shot.

17 Q. Okay. Who is they shot?

18 A. The fellows who was out on the porch.

19 Q. Okay. So he told you -- he never could say why
20 the incident occurred?

21 A. No, sir.

22 Q. But he said the fellows who were on the porch
23 shot at them?

24 A. Yes, sir.

25 Q. And they shot back?

1 A. Yes, sir.

2 MR. RUNYON: Okay. No further questions.

3 Excuse me. Strike that. I apologize.

4 Q. [Mr. Runyon] When you heard shots, you started
5 backing out of there; right?

6 A. They was fixing to get left, yes, sir.

7 Q. Okay. Why were you backing out of there?

8 A. Because the shots caught me off guard. I wasn't
9 expecting to hear no shots fired.

10 Q. All right. Because no one had planned to shoot;
11 right?

12 A. No, sir.

13 Q. And you -- were you -- did you feel like you
14 were in danger?

15 A. Yes, sir.

16 MR. RUNYON: Okay. No further questions, Judge.

17 THE COURT: Mr. Leventis?

18 MR. LEVENTIS: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. LEVENTIS:

21 Q. Mr. Bryant, you're charged with murder, as well;
22 correct?

23 A. Yes, sir.

24 Q. And if you were to testify or admit that you saw
25 long guns in the car with the defendant, it would be

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1 pretty hard to say, I didn't know we were going over there
2 to make a hit. Isn't that correct?

3 A. Yes, sir.

4 MR. LEVENTIS: Those are all the questions I
5 have.

6 THE COURT: Mr. Runyon?

7 RECROSS-EXAMINATION

8 BY MR. RUNYON:

9 Q. Were there long guns in the car?

10 A. No, Your Honor. I mean, no, sir.

11 Q. Okay. Did you make a contract with the State of
12 South Carolina in that proffer agreement?

13 A. Make a contract?

14 Q. Yeah. An agreement.

15 A. I made a proffer.

16 Q. Did --

17 A. Yes, sir.

18 Q. Did you make that -- excuse me. I'm sorry. I
19 didn't mean to approach.

20 You have the proffer letter in front of you?

21 A. Yes, sir.

22 Q. That's an agreement between you and the State?

23 A. Yes, sir.

24 Q. Are you living up to that agreement?

25 A. Yes, sir.

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1 Q. All right. Because why? You're telling the
2 truth?

3 A. Yes, sir.

4 MR. RUNYON: All right. No further questions,
5 Judge.

6 THE COURT: Thank you.

7 Mr. Bryant, you may step down.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Thank you.

10 [Whereupon, the witness exits the witness stand]

11 MR. STACK: The State calls Shameeka Graham.

12 [Whereupon, Ms. Graham comes forward]

13 THE CLERK OF COURT: Ma'am, if you could please
14 place your left hand on the Bible and raise your right
15 hand.

16 [Whereupon, Ms. Graham is duly sworn by the
17 clerk of court as follows: do you swear or affirm to
18 tell the truth, so help you God]

19 THE WITNESS: Yes, I do.

20 THE CLERK OF COURT: Please be seated.

21 [Whereupon, the witness takes the witness stand]

22 THE CLERK OF COURT: Please state your full name
23 to the Court and spell it, as well.

24 THE WITNESS: Shameeka Graham. S-H-A-M-E-E-K-A
25 G-R-A-H-A-M.

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1 THE COURT: Mr. Stack.

2 MR. STACK: Thank you, Your Honor.

3 Good morning, Ms. Graham, how are you?

4 THE WITNESS: Fine.

5 - - - - -

6 SHAMEEKA GRAHAM,

7 Having Been First Duly Sworn,

8 was Examined and Testified as Follows:

9 DIRECT EXAMINATION

10 BY MR. STACK:

11 Q. Just to acquaint the jury with you, may I ask
12 how old are you?

13 A. Thirty-two.

14 Q. And do you live in the Charleston area?

15 A. Yes, sir.

16 Q. And how long have you lived here in Charleston?

17 A. All my life.

18 Q. Back on July 13th of '07, where were you living?

19 A. With a friend.

20 Q. Would that be Shareen Bennett?

21 A. Yes, sir.

22 Q. And do you recall the street address?

23 A. No, sir.

24 Q. All right. If I was to prompt you: did you
25 live at 1815 Calvert Street?

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1 A. Yes, sir, it was Calvert Street.

2 Q. All right. Thank you.

3 The events of 13 July of '07, do you recall what
4 happened that day?

5 A. Yes, sir.

6 Q. And would you please tell the jury what you saw
7 and what you heard on that day, please.

8 A. There was a altercation that was outside. I
9 didn't recall what was going on with the altercation.
10 About ten minutes later, a car came back, a truck-like,
11 came back. They were shooting. Deshawn got shot; Cory
12 got shot.

13 Q. Okay. All right. Do you know -- do you know
14 a -- person anyone named Termaine Nelson or a Lewanda
15 Denson?

16 A. Yes, sir.

17 Q. All right. Earlier in the day, did you see
18 Termaine Nelson and Lewanda Denson in a white car?

19 A. Yes, sir. They were like in the driveway by my
20 friend's house.

21 Q. Okay. Is that on Calvert Street --

22 A. Uh-huh.

23 Q. -- between Calvert and Iris?

24 A. Yeah, between Calvert and Iris.

25 Q. Okay. And it was a white car?

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1 A. Yes, sir.

2 Q. Okay. And Termaine Nelson and Lewanda Denson
3 were in that car?

4 A. Yes.

5 Q. Okay. Did you observe -- did you see any other
6 person walk up to that car?

7 A. I know Deshawn went to the car to talk to Wanda
8 but after that I went inside the house, and that's when
9 the altercation took place.

10 Q. All right. And when you say Deshawn, you're
11 talking about Deshawn Brown?

12 A. Uh-huh.

13 Q. The man that was killed?

14 A. Yes, sir.

15 Q. And you say you walking -- you observed him walk
16 out and speak with Wanda Denson?

17 A. Yes, sir.

18 Q. Do you know -- what kind of relationship does
19 Wanda and Mr. Brown have or had?

20 A. They were all right with each other. She called
21 his phone. He spoke to his little girl. They never had
22 no fights or argument around me.

23 Q. Was Deshawn Brown the father of one of Lewanda's
24 Children?

25 A. Yes, sir.

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1 Q. All right. And after that, you went inside. Is
2 that what you said?

3 A. Uh-huh.

4 Q. How much time elapsed when you saw Termaine
5 Nelson and Lewanda Denson in the white car to when the
6 gunmen arrived and started shooting?

7 A. I would say about ten, fifteen minutes.

8 Q. Okay. And did you see anyone sitting out that
9 house? Outside the apartments?

10 A. Yes. Deshawn and Cory was sitting to the right,
11 and Antonio and Shareen brother, Mikey, was sitting on the
12 porch; my son was standing I think right on the side of
13 Deshawn.

14 Q. Okay. And your son is Alphonso, I believe?

15 A. Yes, it is.

16 Q. And back then, how old was he?

17 A. He was what, ten, eleven? Eleven.

18 Q. Okay. And what were they doing outside?

19 A. They was just sitting outside. They had not too
20 long come from the store.

21 Q. They were just hanging out?

22 A. Yes, sir.

23 Q. Did you hear anything once you went inside your
24 house?

25 A. Yeah. We were sitting in the living room

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1 talking and we started hearing like loud booms and we
2 thought it was someone shooting firecrackers, those little
3 bomb firecrackers, by the window. But when Antonio and
4 Mikey came busting through the door and said they was
5 shooting, everybody in the house just starting running
6 and, you know, looking for some place safe. And me and
7 Shareen ran to the window. T.R. was trying to get out the
8 door because Alphonso hadn't come in the house yet because
9 Alphonso was sitting outside with Deshawn.

10 Q. So your son came back in the house?

11 A. Yeah. He came in through the side door, because
12 he had to run on the side of the building.

13 Q. Okay. And you said that you heard booms
14 outside?

15 A. Yes, sir.

16 Q. Did they sound like gunshots?

17 A. Yeah. They were pretty loud.

18 Q. All right. Did you hear any commotion or
19 arguing between people prior to hearing the shots?

20 A. Like I said, there was an altercation. But I
21 wasn't outside to see what was going on, so --

22 Q. Okay. The cement pad is like between the red
23 building and the white building. Did the shots seem to
24 come from that location?

25 A. Yeah, from right there, because it was right by

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1 the side window, because there's a window to the front and
2 a window right on the side.

3 Q. Okay. I think you said you looked out the
4 window after you heard the shots?

5 A. Yeah, we looked through the front window right
6 by the front door.

7 Q. Okay. And when you looked out the window, what
8 did you see?

9 A. We saw -- well, I saw someone running back for
10 their shoes because they came out one of their shoes.

11 Q. Somebody ran out of a shoe?

12 A. Yeah.

13 Q. Okay. Did you recognize the person you saw?

14 A. Yes, sir.

15 Q. Do you know that person by name?

16 A. Yes, sir.

17 Q. And what is his name?

18 A. Termaine.

19 Q. Termaine Nelson?

20 A. Yes, sir.

21 Q. All right. Did he -- when he -- so you saw --
22 he ran out of his shoe and he came back and got it?

23 A. Yes, sir. He turned back around to pick up his
24 shoes.

25 Q. All right. Did Mr. Nelson have anything in his

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1 hands that you saw?

2 A. It was a gun. I can't tell you what kind or how
3 it looked or whatever.

4 Q. Okay. Was it a pistol, or a long gun?

5 A. I couldn't -- I couldn't tell you.

6 Q. Okay. But you're sure it was a gun?

7 A. Yes, sir.

8 Q. You've seen guns before --

9 A. Uh-huh.

10 Q. -- on TV or whatever?

11 A. Yes, sir.

12 Q. I'm not going to ask you what -- which hand was
13 he holding a gun with?

14 A. I believe his right side.

15 Q. Okay. When you saw him with the gun and you saw
16 him come back and get the shoe that he ran out of, did you
17 see him do anything after that?

18 A. He went and got inside the truck.

19 Q. A truck?

20 A. Yes.

21 Q. Was that truck light in color or dark in color?

22 A. It was like -- we -- it was like a light color,
23 like in between a gray or a green.

24 Q. All right. And did he get into that truck?

25 A. Yes, sir.

1 Q. All right. Do you recall which side or which
2 door that he got into?

3 A. He got in on the passenger side.

4 Q. Okay. So he didn't get in and drive the car?

5 A. No, sir.

6 Q. All right. And when you say passenger, are you
7 talking about front seat or back seat?

8 A. I --

9 Q. Or do you recall?

10 A. I can't remember.

11 Q. Okay. But you're sure he didn't get in and
12 drive the car?

13 A. No, he wasn't driving. Someone else was
14 driving.

15 Q. Okay. Were there other -- any other persons in
16 that vehicle?

17 A. There were two other people.

18 Q. Okay. And one presumably is the driver?

19 A. Yes, sir.

20 Q. And the other one was -- and a third person --

21 A. Yes, sir.

22 Q. -- was in the car?

23 All right. Were all of them men?

24 A. Yes.

25 Q. Were all of them of African decent?

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1 A. Yes, sir.

2 Q. Okay. Did you recognize either of those two
3 men?

4 A. No, sir.

5 Q. So the only person you recognized is Termaine
6 Nelson --

7 A. Yes, sir.

8 Q. -- in the vehicle; is that correct?

9 A. -- because I saw -- when I was looking out the
10 window, I looked right in his face.

11 Q. Okay. How do you know Termaine Nelson? Are you
12 a friend of his, or you --

13 A. No, I'm not --

14 Q. -- just know him?

15 A. I'm not a friend of his.

16 Q. Okay. But you do know Termaine Nelson by face?

17 A. Yeah. I just know him, but by face, from other
18 people that I know.

19 Q. Okay. And you know his name?

20 A. Yes, sir.

21 Q. Okay. Now, did you observe the vehicle when it
22 left?

23 A. Yeah, because I the one -- I ran behind the
24 vehicle. I was six months pregnant. But when everybody
25 started to come outside, when we noticed Deshawn on the

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1 ground, they didn't even move the truck. They sat there.
2 Because Tomeko was yelling at them asking them what did
3 they do, why did they shoot his brother. And they was
4 just sitting there. When I started to walk towards the
5 truck to get a license plate, the truck sped off.

6 Q. So you ran behind --

7 A. Yeah. And I --

8 Q. -- to get a license number?

9 A. -- ran behind the truck. I ran behind the truck
10 across North Carolina and the next street, onto Iris
11 Street.

12 Q. When you looked out the window before you went
13 outside -- when you looked out the window, how close was
14 Termaine to you about?

15 A. I guess it was from -- I'm right here and he's
16 right there where the young man is sitting right here,
17 about.

18 Q. Now, ever know -- did you know Deshawn Brown?

19 A. Yes, sir.

20 Q. The man who was killed?

21 A. Uh-huh.

22 Q. Have you ever known him to be violent or armed
23 with a weapon?

24 A. No, sir.

25 Q. And did he live or hang out in that area?

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1 A. He hanged out right there, but he didn't live
2 there.

3 Q. But you knew him, also?

4 A. Yeah. I used to go to school with him.

5 Q. Okay. Did you ever known him to carry a gun or
6 act in a violent manner?

7 A. No, sir.

8 Q. Deshawn Brown.

9 A. No.

10 Q. Okay. The person that you saw outside the
11 window holding the gun and running back to get his shoe,
12 the person you've identified as Termaine Nelson, do you
13 see that person in the courtroom today?

14 A. Yes, sir, I do.

15 Q. Would you please point to that person and
16 describe what he is wearing?

17 A. He's sitting right there with the white shirt
18 and black pants.

19 MR. STACK: Your Honor, the State ask that the
20 record reflect that this witness has identified the
21 defendant, Mr. Termaine Nelson.

22 THE COURT: Mr. Runyon, any objection?

23 MR. RUNYON: No objection to that, Judge.

24 That's him --

25 THE COURT: The record --

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1 MR. RUNYON: -- sitting right there.

2 THE COURT: -- will reflect. Thank you, Mr.

3 Stack.

4 MR. STACK: And beg the Court's indulgence just
5 for a moment.

6 THE COURT: Yes, sir.

7 [Whereupon, Mr. Stack and Mr. Leventis confer]

8 Q. [Mr. Stack] Now, you said you heard some booms
9 earlier in your testimony; is that correct?

10 A. Yes, sir.

11 Q. About how many booms did you hear?

12 A. About five or six.

13 Q. And when you said there was an altercation, are
14 you talking about the one that occurred at the white car
15 that Lewanda --

16 A. Yes, sir.

17 Q. -- and Termaine Nelson were in?

18 A. Yes, sir.

19 Q. Okay. So you're not talking about -- and
20 correct me. Are you talking about -- you're talking about
21 an altercation then?

22 A. Yeah.

23 Q. And that happened you said about ten or fifteen
24 minutes before the gunmen showed up?

25 A. Yes, sir.

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1 Q. And the gunmen showed up in a different vehicle?

2 A. Yeah.

3 Q. And you --

4 A. The car -- yes. Lewanda and Termaine, they left
5 and about ten, fifteen minutes later a truck, Jeep or
6 whatever, pulled up.

7 Q. Okay. That's the altercation you were talking
8 about?

9 A. No. I was talking about the altercation they
10 had when they were out there. There wasn't no
11 altercations when the gun shoots -- the shooting started.

12 Q. Okay. I just -- I was unclear on that.

13 A. Okay.

14 Q. You made it clear. Thank you.

15 Now, you said you saw Termaine Nelson like stop
16 and turn around and run back and get one or both of his
17 shoes; is that correct?

18 A. Just one foot.

19 Q. Just one shoe?

20 A. Yeah.

21 Q. Okay. Was anyone shooting at him when he was
22 doing this?

23 A. No, sir.

24 Q. But he had time to stop running and turn around
25 and walk back --

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1 A. Yeah.

2 Q. -- or run back?

3 A. There was no one else shooting because when the
4 gunfire start, Antonio and Mikey already came in the
5 house. And like I said, my son Alphonso came in through
6 the side door. Deshawn was on the ground, and Cory ran
7 out to the back to someone's else house.

8 Q. Okay. And when you say Cory, you're talking
9 about --

10 A. Cory Watkins.

11 Q. -- Cory Watkins, the man who was shot in the
12 ankle?

13 A. Yes, sir.

14 Q. Okay. So when he was coming back, was he
15 walking back to get his shoe, or was he running back, or
16 do you recall?

17 A. Well, he walked back and picked up his shoes and
18 walked back to the truck.

19 Q. And was anybody shooting at him when he --

20 A. No, no one else was shooting.

21 Q. -- walked back to get his shoes?

22 And then when he got his shoe, did he walk back
23 to the truck?

24 A. Yeah. He walked and get in his truck. And
25 that's when everybody started coming -- to come outside.

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1 Q. And yelled at them --

2 A. Yeah.

3 Q. -- why did you do this?

4 All right. And no one was shooting at them --

5 A. Huh-uh.

6 Q. -- when he walked back to pick up his shoe?

7 A. No.

8 Q. And he had a gun of some type in his hand?

9 A. Yeah.

10 Q. Now, I think I've asked you: you're not an
11 expert on firearms, are you?

12 A. No.

13 Q. You can't really tell one brand from another?

14 A. No, sir.

15 Q. But you're pretty sure -- or you're sure it's a
16 gun?

17 A. Yes, sir.

18 Q. Okay. The people that came out of the house and
19 were like yelling at them for what they did, were any of
20 them armed?

21 A. No, no one was armed.

22 Q. Did you see any gun at all that day, other than
23 the one that --

24 A. No.

25 Q. -- Mr. Nelson was carrying?

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1 A. The only person came out of the house at that
2 time was me, Shareen, her mother, Tomeko, Antonio, Mikey,
3 and my son.

4 Q. Okay. Were any of them armed?

5 A. No, sir.

6 Q. And when you were chasing along behind the car
7 running after it, what -- why were you doing that? I
8 think you already answered that.

9 A. To either get the license plate or try to get
10 someone to help me stop the vehicle. Because at that time
11 a whole lot of people had starting coming, you know,
12 outside because there were people across the street or
13 whatever. But I couldn't get the license plate number.
14 But we already knew who it was.

15 Q. And you did this when you were six months
16 pregnant?

17 A. Yes, sir.

18 Q. Now, when you came out of the house, did you see
19 Deshawn Brown lying on the cement pad?

20 A. Yes, sir.

21 Q. Did he have a gun with him?

22 A. No. The only thing he had in his hand was an
23 Icehouse beer.

24 Q. An Icehouse beer?

25 A. Yes, sir.

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1 Q. No weapon?

2 A. None.

3 Q. And you know Deshawn Brown because you went to
4 school with him?

5 A. Yes, sir.

6 Q. And you've never known him to be violent?

7 A. No.

8 Q. Or armed?

9 A. [Indicates negatively]

10 MR. STACK: Thank you. If you would please
11 answer any questions the defense counsel may have.

12 THE COURT: Mr. Runyon.

13 CROSS-EXAMINATION

14 BY MR. RUNYON:

15 Q. Ms. Graham, who was involved in the first
16 argument or altercation that you talked about?

17 A. I can't tell you, because at that time I had
18 went in the house.

19 Q. Okay. Let me ask you about the -- how long had
20 you been living there at the time?

21 A. I had been staying with my friends for about a
22 year at that time.

23 Q. Okay. Is there an apartment there that's a flat
24 apartment?

25 A. All the apartments are flat.

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1 Q. Okay.

2 A. And the second apartment do have upstairs
3 apartments.

4 Q. Okay. Now, did you see anybody that morning in
5 the first incident come back and forth to an apartment?

6 A. No, sir.

7 Q. Okay. You don't know what the argument about --
8 was about?

9 A. No.

10 Q. And so you don't know whether there was drugs
11 involved or anything?

12 A. No, sir. I can't tell you that part.

13 Q. Okay. Now, when you looked out the window the
14 last time you recall, before these pops as you say,
15 Deshawn Brown was sitting on the porch on a stool?

16 A. He was sitting off the porch.

17 Q. Sitting off the porch but by --

18 A. Yeah, by the --

19 Q. -- the stool?

20 A. Yeah. By the porch on the broken chair.

21 Q. Okay. And he's like over here by the building.
22 And later on when you looked, he was laying over here on
23 the other side?

24 A. No. Where he was sitting at, that's where he
25 got shot at. He never moved or anything.

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1 Q. Right there in front of the building?

2 A. Yes.

3 Q. He never moved from there?

4 A. No, he didn't.

5 Q. Okay. Now, you said you heard loud pops right
6 outside the window. Which window are you talking about?

7 A. There is a window that's to the front. There's
8 a window that's to the front and right -- not even -- I
9 would say about right here on the side is a little side
10 window. So the windows are like practically close
11 together, how the building was built.

12 Q. Right.

13 A. And Antonio and Mikey was sitting on the porch
14 right here, and Deshawn and Cory and my son were on the
15 side right here.

16 Q. Okay.

17 A. And the gunfire was like right there, like right
18 by the window --

19 Q. Right by the --

20 A. I mean, you could hear it how the little -- how
21 the back is, how it was blocked in.

22 Q. Okay. And there were at least five shots?

23 A. Yes.

24 Q. At least five booms?

25 A. Yes. Five or six.

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1 Q. Five or six?

2 A. Yes.

3 Q. All right. And, now, you're not an expert on
4 guns, are you?

5 A. No, sir, I'm not.

6 Q. Okay. But you could tell that Mr. Nelson, who
7 had picked up his shoe, was holding a handgun; correct?

8 A. He was holding a gun.

9 Q. Okay. That's not my question. He was holding a
10 handgun or a long gun?

11 A. It wasn't long and it wasn't that short. It was
12 like in between, I believe. But he --

13 Q. Was it in his hand?

14 A. -- was holding a gun. Yeah, it was in his hand.

15 Q. Kind of like a pistol?

16 A. I don't know if it was a pistol. I know he was
17 holding it in his hand, because he was holding it down.
18 He was holding a gun.

19 Q. Okay. And so all of the shots that occurred
20 occurred right there by the window?

21 A. Yeah. They sounded like they were right there
22 by the window.

23 Q. Okay. And did you hear any conversation before
24 that?

25 A. No, there was no conversation. The only

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1 conversation that was going on out there was he was just
2 coming from the store and they were out there laughing.
3 The next thing you know, you heard loud pops.

4 Q. Okay. Who was out there?

5 A. Antonio and Mikey was sitting on -- in the front
6 of Shareen's porch, right on the side, Deshawn was sitting
7 on a stool, Cory was standing up on the porch, and my son
8 was standing next to Deshawn.

9 Q. Okay. And other than Deshawn, you don't know
10 who interacted with Mr. Nelson and the lady in the white
11 car earlier in the day?

12 A. No. I -- all I know is Deshawn and Tomeko went
13 to the car to speak to her. That's all I know. And I
14 went in the house.

15 Q. Okay. And you don't know anything about any
16 drug activity that day?

17 A. No, I don't.

18 Q. Okay. And so why was Deshawn -- did he work
19 around there?

20 A. No.

21 Q. He just --

22 A. He came around there. We used to have cookouts.
23 I mean, that's where we used to, you know, sit and hang
24 out at.

25 Q. So he just hung out there every day?

1 A. Yeah.

2 Q. Every single day he was there?

3 A. Yeah.

4 MR. RUNYON: Okay. No further questions, Judge.

5 THE COURT: Mr. Stack?

6 MR. STACK: Thank you, Your Honor. Just one
7 moment.

8 [Whereupon, Mr. Stack and Mr. Leventis confer]

9 MR. STACK: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. STACK:

12 Q. Okay. Termaine Nelson: is it correct to say he
13 did not live in that area where the shooting occurred?

14 A. No, sir.

15 Q. And does he -- did he normally come by that
16 area?

17 A. No, sir, he never went around there.

18 Q. Okay. That's not an area that he hangs out?

19 A. No.

20 Q. So he came there from somewhere else?

21 A. Yeah.

22 Q. And he was in the white car, initially, with
23 Lewanda?

24 A. Yes.

25 Q. And then later you saw him get into a light-

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1 colored truck; is that correct?

2 A. Yes.

3 Q. An SUV?

4 A. Yes, sir.

5 Q. Okay. And if there was a confrontation when he
6 arrived, the Defendant Mr. Nelson had aroused a
7 withdrawal; isn't that correct?

8 A. [No response]

9 Q. He could have gotten in the truck and left?

10 A. Well, when he -- when the altercation happened,
11 he was in the white car.

12 Q. Okay.

13 A. That's what I'm trying to tell you. He was in
14 the white car. Now, when he him -- when he got back into
15 that truck, when he got in that truck there was no
16 altercation at that time. It was just gunfire.

17 Q. Well -- okay. But he -- when he got in the
18 truck, he had a way to leave; is that correct?

19 A. Yeah.

20 Q. Okay. And he doesn't normally live there?

21 A. No. He never been on that side before.

22 Q. So he came from somewhere else to that location?

23 A. Yeah.

24 MR. STACK: Okay. Thank you. Nothing further
25 from this witness.

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1 THE COURT: Mr. Runyon?

2 MR. RUNYON: Excuse me, Ms. Graham.

3 THE COURT: Ms. Graham, please be seated.

4 MR. RUNYON: I'm sorry. I apologize.

5 RECROSS-EXAMINATION

6 BY MR. RUNYON:

7 Q. After the shooting stopped, Mr. Nelson had a way
8 to leave; correct?

9 A. Yes, sir.

10 MR. RUNYON: No further questions.

11 THE COURT: Ms. Graham, you may now be excused.
12 You are excused from the courthouse. Feel free to
13 remain in the courtroom.

14 [Whereupon, the witness exits the witness stand]

15 THE COURT: Ladies and gentlemen, we are going
16 to take our midmorning break. Do not begin your
17 deliberations. Do not discuss this case amongst
18 yourselves.

19 We'll take about a ten-minute recess. Please
20 rise for the jury.

21 [Whereupon, the jury exits the courtroom at
22 10:36 a.m.]

23 THE COURT: Thank you. Be seated.

24 Just for scheduling, Mr. Leventis, I show you
25 have about four witnesses left.

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1 MR. LEVENTIS: Between two and four, Your Honor.

2 THE COURT: Mr. Runyon, I will not hold you to
3 this, but do you anticipate any witnesses?

4 MR. RUNYON: Not at this time, Judge.

5 THE COURT: All right.

6 MR. RUNYON: We're doing the best we can with
7 what they've got put up.

8 THE COURT: Do we anticipate that we are going
9 to argue and charge this afternoon, Mr. Leventis?

10 MR. LEVENTIS: I think that's a possibility,
11 Your Honor. I think it's a good possibility.

12 THE COURT: All right. And, counsel, y'all work
13 on your stipulations so we can go ahead and put those
14 on the record.

15 MR. RUNYON: Your Honor, just to clarify the
16 record: Mr. Leventis and I stipulated as to the chain
17 of custody that the -- from the time the original
18 officer, Mr. Neale, ascertained the location of these
19 exhibits, 11 and 12, he collected same and put them
20 into the chain of custody within the evidence procedure
21 of the City of North Charleston. We've stipulated to
22 the chain of custody of those exhibits at that point in
23 time.

24 MR. LEVENTIS: That's fine. I think that's
25 right.

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1 MR. RUNYON: And the reason why we're doing that
2 is because Mr. Wyantt may not testify.

3 MR. LEVENTIS: That's correct.

4 MR. RUNYON: Okay.

5 THE COURT: All right. And is that the only
6 stipulation?

7 MR. RUNYON: The only stipulation. I think we
8 need to --

9 THE COURT: I have a notation about the GSR.

10 MR. LEVENTIS: We don't need to stipulate to
11 that at this time.

12 THE COURT: All right. We'll go ahead and take
13 our midmorning break, if there's no other matters.

14 MR. LEVENTIS: Ten minutes?

15 THE COURT: Ten minutes. All right. Thank you.

16 [Whereupon, a recess is taken from 10:38 a.m. to
17 10:50 a.m.]

18 THE COURT: Be seated. Anything before we bring
19 in the jury?

20 MR. RUNYON: I don't think so, Judge.

21 MR. LEVENTIS: No, Your Honor.

22 THE COURT: And, Mr. Stack, who is your next
23 witness?

24 MR. STACK: It's Mister -- I'm sorry. Mr.
25 Simmons. Antonio Simmons.

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1 THE COURT: And is he in the courtroom?

2 MR. STACK: He's right outside. We're ready to
3 go.

4 THE COURT: Please bring in the jury.

5 [Whereupon, the jury enters the courtroom at
6 10:52 a.m.]

7 MR. STACK: The State calls Antonio Simmons.

8 [Whereupon, Mr. Simmons comes forward]

9 THE CLERK OF COURT: Sir, if you would please
10 place your left hand on the Bible and raise your right
11 hand.

12 [Whereupon, Mr. Simmons is duly sworn by the
13 clerk of court as follows: do you swear or affirm to
14 tell the truth, so help you God]

15 THE WITNESS: Yes, sir.

16 THE CLERK OF COURT: Please be seated.

17 [Whereupon, the witness takes the witness stand]

18 THE CLERK OF COURT: Please state your full name
19 to the Court and spell it, as well.

20 THE WITNESS: Antonio Simmons. A-N-T-O-N-I-O
21 S-I-M-M-O-N-S.

22 MR. STACK: Thank you, Your Honor.

23 Good morning, Mr. Simmons. How are you, sir?

24 THE WITNESS: All right.

25 MR. STACK: I need to ask you a few questions,

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1 if you don't mind.

2

3

ANTONIO SIMMONS,

4

Having Been First Duly Sworn,

5

was Examined and Testified as Follows:

6

DIRECT EXAMINATION

7

BY MR. STACK:

8

Q. Sir, where do you -- how old are you?

9

A. Thirty-two.

10

Q. Okay. And how long have you lived in the

11

Charleston area?

12

A. All my life.

13

Q. Born and raised here?

14

A. [Indicates affirmatively]

15

Q. Okay. Do you have a nickname?

16

A. Duffy.

17

Q. Okay. And back on July the 13th of 2007, where
18 did you live?

19

A. 1813 Calvert Street.

20

Q. All right. Is that between Calvary and Iris
21 Street?

22

A. Yes, sir.

23

Q. All right. And did you live with anyone there?

24

A. Uh-huh. Yes, sir.

25

Q. And who were they?

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1 A. Shareen Bennett and Billy Bennett.

2 Q. Okay. Shareen Bennett.

3 All right. On July 13th of '07, do you recall
4 the events? Do you recall what happened that day?

5 A. I was sitting on the porch, me and Mikey, and a
6 Jeep pull up. And the passenger and the back seat man
7 jump out, and I hear somebody say nobody move, and they
8 started shooting. Mikey jump up and run in the house. I
9 jump up behind him and run in the house.

10 Q. Okay. You say a vehicle pulled up; is that
11 correct?

12 A. Uh-huh.

13 Q. What color was that vehicle?

14 A. Like gray.

15 Q. Gray.

16 How many people? Did you observe anyone inside
17 the vehicle?

18 A. I just see the passenger and the back-seat
19 person jump out.

20 Q. Okay. Was anyone else inside the vehicle?

21 A. There had to be a driver because if you come
22 from -- like the passenger and the back-seat person would
23 be coming from that side.

24 Q. The person that jumped out, was he male or
25 female?

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1 A. Been a male.

2 Q. Okay. Was he black or white or Hispanic?

3 A. He was black.

4 Q. A black male jumped out of the vehicle?

5 A. Uh-huh.

6 Q. All right. Did you see -- did he have -- did
7 that person have anything in his hands?

8 A. One of them had -- I could see a big gun, a long
9 gun.

10 Q. He had a weapon on him? A gun?

11 A. Uh-huh.

12 Q. Okay. And did you hear any shots fired?

13 A. Yeah. When they jump out, I hear a gunshot. By
14 the time I jump up and get in the house -- go into the
15 house, another shot. I run in the bathroom and lay on the
16 floor and I hear more shot.

17 Q. Okay. You heard multiple shots?

18 A. Uh-huh.

19 Q. Okay. When you were sitting out on the porch
20 before the truck arrived, was anybody armed with a gun out
21 there?

22 A. No. I just had come out there. I probably been
23 sitting on the porch for three to five minutes. After I
24 been out there, ain't nobody been out there with no gun.

25 Q. Okay. And who else was out on the porch or in

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1 that area?

2 A. It be me and Mikey sitting on the porch.

3 Q. Okay. Anyone else out there?

4 A. And Deshawn and Carey been like a little across
5 in the field, like across in the yard.

6 Q. And when you say Deshawn, do you mean Deshawn
7 Brown?

8 A. Yes, sir.

9 Q. And Cory Watkins?

10 A. Uh-huh.

11 Q. All right. Now, a vehicle pulled up and it was
12 gray in color; is that correct?

13 A. Uh-huh.

14 Q. And at least one adult black male jumped out of
15 the vehicle?

16 A. Two jump out, but I say I only -- I seen one
17 with a gun, a big gun.

18 Q. Okay. So two men jumped out?

19 A. Uh-huh.

20 Q. Okay. That's fine.

21 And when the -- and when one of the persons --
22 or when they get out of the vehicle, the two that jumped
23 out, did they say anything or did you hear any statement
24 being made?

25 A. I just heard somebody say nobody move.

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1 Q. Okay. And did they begin to shoot? You said
2 you heard shots; correct?

3 A. Uh-huh.

4 Q. How much time elapsed? Did they shoot -- begin
5 to shoot immediately upon getting out of the vehicle?

6 A. Soon as they jump out. Soon as we jump up, say
7 that one person done -- a shot come off. By the time I
8 get to the door, I hear another one. When I get in the
9 bathroom, I hear more.

10 Q. Okay. So the persons that jumped out of the
11 vehicle began shooting as soon as they got out of the
12 vehicle?

13 A. Uh-huh.

14 Q. There wasn't any altercation between you and
15 them?

16 A. No. Huh-uh.

17 Q. Did you have a weapon that day?

18 A. Huh-uh.

19 Q. Did any of you, like Cory or Deshawn or when the
20 children were there, did they have weapons?

21 A. Huh-uh.

22 Q. Were there young people there, too?

23 A. I think -- I think Shameeka's little son been
24 out there.

25 Q. Is that Alphonso?

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- 1 A. Uh-huh.
- 2 Q. And he's about ten or eleven?
- 3 A. Uh-huh.
- 4 Q. And he's sitting out there, too --
- 5 A. I think he --
- 6 Q. -- is that correct?
- 7 A. Uh-huh. He been out there on the side.
- 8 Q. And these two adult black males jump out?
- 9 A. Uh-huh.
- 10 Q. And they began shooting as soon as they got out
- 11 of the vehicle?
- 12 A. Uh-huh.
- 13 Q. And there's a child there, too?
- 14 A. Alphonso was on the side. Yeah.
- 15 Q. All right. When you saw the person that jumped
- 16 out of the vehicle, did you recognize him?
- 17 A. I didn't recognize no person.
- 18 Q. Okay. You're not familiar with him?
- 19 A. I didn't recognize no face. But it happened so
- 20 fast I just jump up and run. I didn't recognize no face.
- 21 Q. Okay. And you started running when?
- 22 A. After I hear the first shot. Mikey jump up and
- 23 run. I sit about two seconds thinking, and I jump up and
- 24 run, too.
- 25 Q. And why did you run?

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1 A. Why I running? Cause people was shooting.

2 Q. For your safety?

3 A. Uh-huh.

4 Q. Okay. Good.

5 When you saw the person jump out of the vehicle,
6 how far away were you? How far from them were you?

7 A. Like the last person in line right there.

8 Q. Okay. About fifteen feet, perhaps?

9 A. Uh-huh.

10 Q. Okay. And the vehicle pulled in --

11 A. Uh-huh.

12 Q. -- while you were sitting there?

13 A. Uh-huh.

14 Q. Okay.

15 MR. STACK: Beg the Court's indulgence --

16 THE COURT: Yes, sir.

17 MR. STACK: -- just for a moment.

18 [Whereupon, Mr. Stack and Mr. Leventis confer]

19 Q. [Mr. Stack] Now, you said you have Cory Watkins
20 and Deshawn who were also in that open area hanging out?

21 A. Uh-huh.

22 Q. What were they doing?

23 A. They just been -- Deshawn was sitting down
24 drinking his beer, and Cory was standing up on the side of
25 him.

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1 Q. Deshawn was drinking a beer?

2 A. Uh-huh. And Cory was standing right there on
3 the side next to -- Cory had one, too.

4 Q. Okay. And they're just -- what, just hanging
5 out BS'ing?

6 A. That's what we do, you know.

7 Q. All right. Did any of them have a weapon?

8 A. No. I know they ain't had no gun at all.

9 Q. How long were they sitting out there?

10 A. They been out there before me. I think Cory
11 just had come up. But Deshawn been out there before me
12 because I been in the house watching TV.

13 Q. Okay. And how long were you sitting out there
14 before the gunmen pulled up in that vehicle and jumped out
15 and started shooting?

16 A. Probably about five minutes.

17 Q. All right. Good.

18 MR. STACK: If you would please answer any
19 questions that defense counsel may have.

20 THE COURT: Mr. Runyon?

21 CROSS-EXAMINATION

22 BY MR. RUNYON:

23 Q. Mr. Simmons --

24 A. Uh-huh.

25 Q. -- Mr. Brown, the deceased, he just kind of hung

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1 out around there; correct?

2 A. Yeah. That's what we just do up there. Yeah.

3 Q. Kind of like every day?

4 A. Uh-huh.

5 Q. Because he didn't work? I mean, he just hung
6 out there?

7 A. Uh-huh.

8 Q. Okay. Were you out there earlier in the day
9 when the white car was there?

10 A. I just had come outside.

11 Q. Okay. So you don't know anything about any
12 transactions or anything that happened before?

13 A. Huh-uh.

14 Q. Okay. And you said you saw this car and one and
15 then the second person got out?

16 A. Two people get out.

17 Q. Two people get out.

18 A. Uh-huh.

19 Q. And they didn't come up on the concrete pad?

20 A. What concrete pad?

21 Q. Well, right there in front of the apartments.

22 A. Yeah, they come up on -- in the front of the
23 concrete on the brick apartment, the --

24 Q. Yes.

25 A. -- the brown one, they pull up right here.

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1 Q. Well, they pull up there on the driveway.
2 That's what I'm trying to ascertain.

3 A. Uh-huh.

4 Q. And you say one of them had a long gun?

5 A. Uh-huh.

6 Q. Okay. And all you know is when the shooting
7 started, you got out of there. You went inside.

8 A. I run in the house.

9 Q. Okay. And was Deshawn sitting there by the
10 porch near the building?

11 A. Yeah. They been like right there over there.
12 Him and Cory -- he was sitting down and Cory was standing
13 next to him.

14 Q. All right. Let's assume that you're sitting on
15 the porch where you were.

16 A. Uh-huh.

17 Q. Where you are now. And Deshawn would be where
18 in relation to you?

19 A. Right over there.

20 Q. Right over there by the building?

21 A. Yeah. Right there. It ain't much far from me
22 much at all.

23 Q. Just a few feet from you?

24 A. Uh-huh.

25 Q. Okay. And then after all this shooting and all

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1 that sort of stuff and people left, and everybody kind of
2 came out and milled around in the area?

3 A. What you say?

4 Q. A lot of people came out?

5 A. How you mean? Like afterwards?

6 Q. Yes, sir.

7 A. Uh-huh.

8 Q. And they checked on Deshawn --

9 A. Uh-huh.

10 Q. -- and what-have-you.

11 And you can't identify anybody?

12 A. Huh-uh.

13 Q. And you said one person had a long gun. How
14 about the other one?

15 A. I don't know if he had a gun. I just --

16 Q. Okay. So you're saying two people got out --

17 A. The passenger.

18 Q. -- but only one of them that -- to your
19 recollection, only one of them had a gun and it was a long
20 gun?

21 A. Uh-huh.

22 Q. Okay. No further questions, Judge.

23 THE COURT: Mr. Stack?

24 MR. STACK: Nothing further, Your Honor.

25 THE COURT: Mr. Simmons, you may step down.

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1 [Whereupon, the witness exits the witness stand.

2 THE COURT: Call your next witness.

3 MR. STACK: The State calls Cory Watkins.

4 And just to make the Court aware, Mr. Watkins
5 has a hearing impediment that we'll be working through.

6 THE COURT: All right. Thank you.

7 Mr. Watkins, please come forward.

8 [Whereupon, Mr. Watkins comes forward]

9 THE CLERK OF COURT: Sir, if you would please
10 place your left hand on the Bible and raise your right
11 hand.

12 [Whereupon, Mr. Watkins is duly sworn by the
13 clerk of court as follows: do you swear or affirm to
14 tell the truth, so help you God]

15 THE WITNESS: Yes, sir.

16 THE CLERK OF COURT: Please be seated.

17 [Whereupon, the witness takes the witness stand]

18 THE CLERK OF COURT: Please state your full name
19 to the Court and spell it, as well.

20 THE WITNESS: Cory Watkins. C-O-R-Y
21 W-A-T-K-I-N-S.

22 THE COURT: Mr. Stack?

23 MR. STACK: Thank you, Your Honor.

24 Good morning, Mr. Watkins. How are you, sir?

25 THE WITNESS: I'm all right, sir.

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CORY WATKINS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. STACK:

Q. This is not to get -- first of all, is it true
that you wear a hearing aid? Is that correct?

A. Yes, sir.

Q. Okay. We'll be working through that.

Sir, how old are you?

A. Thirty-one.

Q. And where do you live?

A. North Charleston.

Q. And how long have you lived in the Charleston
area?

A. All my life.

Q. Okay. Back on 13 July of '07, did you live in
the Charleston area?

A. Yes, sir.

Q. Do you remember what happened that day?

A. Yes, sir.

Q. Okay. Taking your time, would you please tell
the jury what you saw and what you heard back on July 13th
of '07.

A. On July 13th, I was coming from Spruel Market

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1 heading to -- excuse me -- heading to Iris Street
2 apartments. As I was coming through, a young man told me,
3 Cory, be careful, because a robbery just occurred back
4 there. So I said --

5 MR. RUNYON: Your Honor, I've got to object to
6 that being hearsay by the young man said.

7 THE COURT: Sustained as to hearsay.

8 Q. [Mr. Stack] Without going into what another
9 person might have told you, just what you saw --

10 A. Yes, sir.

11 Q. -- and what you observed, go ahead and continue,
12 please.

13 A. Okay. So as I was walking towards Iris Street
14 apartments, I saw a white Town Car coming out with three
15 people in it. So when I got to the back of the
16 apartments, there was Deshawn sitting on a bench and there
17 was Duffy sitting over there by the apartment. So I sat
18 down and started talking to Deshawn.

19 So we was engaged in a conversation. So we was
20 drinking our beer, talking, and something say -- I said,
21 Deshawn, after I finish drinking this beer, we're going to
22 leave because something don't feel right. So he said
23 okay. So we talking for a little while. So as the
24 conversation went on, something told me to get out.

25 So I stand up. And I saw a gray Suzuki coming.

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1 Looked like they was heading to the back, but they put it
2 in reverse and then they start heading out. I was like,
3 Deshawn -- so they just started laughing. I said, y'all
4 laughing but y'all don't know who this is coming back
5 here.

6 So at this time the Suzuki speed back there, the
7 passenger jumped out and was like, don't run now, and
8 started shooting. So I turned around and I started
9 running. I ran on Calvert Street to a resident. I was --
10 I sat down. And she was like, what's going on. I said,
11 someone was out there shooting.

12 So by this time, I looked down at my left -- at
13 my left ankle, and I realized that I was shot. So I
14 called my mama and they came and get me and they took me
15 to the hospital. And that's when I found out that
16 Deshawn's dead.

17 Q. Okay. Thank you.

18 You said that when you arrived at Iris Street
19 that you observed a white car pulling away; is that
20 correct?

21 A. Yes, sir.

22 Q. Okay. And did you recognize anyone inside that
23 car?

24 A. Yes, sir.

25 Q. And who did you recognize in the car?

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1 A. Wanda.

2 Q. Lewanda Denson?

3 A. Yes.

4 Q. Okay. Was anyone inside the car with Lewanda?

5 A. Yes. Two other people.

6 Q. Were they male, or female?

7 A. Male.

8 Q. Black? Or white?

9 A. Black.

10 Q. Okay. And did you get a good look at that
11 person inside the white car that was with Lewanda?

12 A. Yes, sir.

13 Q. Okay. And later, was that person that was in
14 the white car with Lewanda, was that one of the people
15 that arrived later in the gray vehicle that pulled up and
16 people got out and started shooting?

17 A. Yes, sir.

18 Q. So the person in the white car leaving was one
19 of the people in the gray car that returned; is that
20 correct?

21 A. Yes, sir.

22 Q. Okay. And how much time elapsed from when the
23 white car was pulling away with Lewanda and the two other
24 men, to when the truck pulled in and the shooting began?

25 A. About fifteen minutes.

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1 Q. About fifteen minutes?

2 A. [No response]

3 Q. Okay. And the vehicle they pulled in with when
4 they came back, what color was that vehicle?

5 A. Gray Suzuki.

6 Q. It was gray in color?

7 A. [No response]

8 Q. And how many people were in that vehicle?

9 A. Three.

10 Q. Three people. Were they male -- all males?

11 A. Yes, sir.

12 Q. And were they all of African descent?

13 A. Yes, sir.

14 Q. Three black men?

15 A. Three black men.

16 Q. Okay. All right. And how many of them got out
17 of the car?

18 A. At the time, I only saw the passenger got out
19 the car, sir.

20 Q. Okay. So you saw at least one person get out of
21 the car?

22 A. Yes, sir.

23 Q. Did you recognize that person?

24 A. Yes, sir.

25 Q. And was that the same person who was in the

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1 white car earlier?

2 A. Yes, sir.

3 Q. All right. Did that person say anything?

4 A. Yes, sir.

5 Q. What did he say?

6 A. He said, don't run now.

7 Q. Okay. Did he have any type of gun?

8 A. Yeah. A sawed-off rifle.

9 Q. Okay. A sawed-off rifle?

10 A. Yes, sir.

11 Q. All right. Now, how much time elapsed when you
12 saw him pull in and he got out of the car until when the
13 first shot was fired?

14 A. Two seconds.

15 Q. Two seconds?

16 A. [No response]

17 Q. So he fired almost immediately as soon as he got
18 out of the car?

19 A. Yes, sir.

20 Q. Okay. Now, before this, you were out there in
21 that area with Deshawn Brown --

22 A. Yes.

23 Q. -- the man who was murdered. And other people
24 are out in that open area?

25 A. Yes, sir.

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1 Q. Did they -- did you or any of them, to your
2 knowledge, have any weapons or guns?

3 A. No, sir.

4 Q. Okay. And you were injured in this shooting; is
5 that correct?

6 A. Yes, sir.

7 Q. And were you shot in the ankle?

8 A. Yes, sir.

9 Q. All right. Did it go all the way through?

10 A. No, sir.

11 Q. The bullet was lodged in your ankle?

12 A. Yes.

13 Q. And about how many shots did you hear?

14 A. Five.

15 Q. Is that approximate?

16 A. Yes.

17 Q. Okay. And how far away were you from the gunmen
18 when you saw him get out of the vehicle and start to
19 shoot?

20 A. About twenty feet.

21 Q. And this was during daylight hours?

22 A. Yes, sir.

23 Q. And you got a good -- did you get a good look at
24 the man that got out and started firing the weapon?

25 A. Yes, sir.

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1 Q. All right. I'm going to show you an overhead
2 photograph and I'm going to ask you where everybody was
3 when the shooting began. Okay?

4 A. Yes, sir.

5 Q. But first let me ask you: this is State's
6 Exhibit Number 1, already entered into evidence. And do
7 you recognize the overhead photograph? It's like taken
8 from an airplane. Do you recognize this neighborhood?

9 A. Yes, sir.

10 Q. Okay. Do you remember where you guys are
11 sitting out in the area?

12 A. Yes, sir.

13 Q. Can you point to that, please?

14 A. Over here.

15 MR. STACK: I'll move it a little closer.

16 A. Over here by these apartments.

17 Q. [Mr. Stack] Okay. And that's where the vehicle
18 pulled in?

19 A. They pulled to the front of the brick -- it's
20 like a brick apartments, and it's like not a brick
21 apartment but, you know, like a regular house.

22 Q. Okay. And between the two buildings, is there
23 like a cement like pad?

24 A. No. Just nothing but dirt.

25 Q. Okay. And when the people pulled out, did they

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1 arrive from the Iris Street location? I'm sorry. I need
2 to face you when I speak to you. I'm sorry.

3 Did the vehicle that came with the gunmen, did
4 it arrive from the Iris Street side or Calvert Street
5 side?

6 A. Iris Street side.

7 Q. Okay. The man you saw leaving in the white car
8 with Lewanda Denson, the man you saw returning in that
9 gray truck and start firing with a weapon, do you see that
10 man in the courtroom today?

11 A. Yes, sir.

12 Q. Would you please point to him and describe what
13 he's wearing.

14 A. He's wearing a white shirt, white tie, and black
15 pants, sir.

16 MR. STACK: Okay. And, again, Judge, we're
17 going to ask that the record reflect that this witness
18 has identified the defendant, Termaine Nelson.

19 THE COURT: It will.

20 MR. STACK: And we ask for your indulgence just
21 for a moment.

22 THE COURT: Yes, sir.

23 [Whereupon, Mr. Stack and Mr. Leventis confer]

24 MR. STACK: Your Honor, we have nothing further.

25 THE COURT: Mr. Runyon?

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CROSS-EXAMINATION

BY MR. RUNYON:

Q. Mr. Watkins, you went to the hospital?

A. Yes, sir.

Q. And the bullet was in your ankle?

A. No. It went through.

Q. It went through?

A. Yes, sir.

Q. So the bullet wasn't lodged in your ankle?

A. It went -- no, it wasn't lodged. It went through.

Q. Okay. And where were you working at the time?

A. Where was I working? Nowhere.

Q. At that time in July of --

A. I just got laid off at Parkcycle Car Cleaning [phonetic].

Q. Okay. And how did you know Deshawn Brown?

A. I been knowing him from the neighborhood, sir.

Q. Okay. Where did he live?

A. Where did Deshawn live?

Q. Yeah. I mean, if you know. I mean, if you don't know, then you don't.

A. I believe he had live with his mother on the Heights.

Q. On the Heights?

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1 A. On Winslow or something like that.

2 Q. Okay. Now, that would be down in Union Heights?

3 A. Okay. Yes, sir.

4 Q. I mean, I know what you are saying but we need
5 to make it clear for the record.

6 A. Okay. That would be -- but that would be Union
7 Height..

8 Q. Okay. And that's not where he was that day?

9 A. Right.

10 Q. And that's not where he spent all of his time?

11 A. Well, I couldn't say that, sir.

12 Q. Okay. So you don't know how much time he spent
13 around those apartments?

14 A. No, sir.

15 Q. And it's your testimony that only one person got
16 out of the gray vehicle?

17 A. At the time that all this occurred, yes, sir.

18 Q. Only one person got out?

19 A. Yes, sir.

20 Q. And that person was the defendant?

21 A. Yes, sir.

22 Q. Okay. And that he never came up on the concrete
23 pad?

24 A. No, sir. Like I was telling you, sir, this was
25 a life-and-death situation so after he said, don't run

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1 now, I took off running.

2 Q. All right. And so you never saw him on the
3 concrete pad?

4 A. No, sir.

5 Q. Okay. And it was only after you got to the
6 hospital that you heard that Mr. Brown had been shot and
7 ultimately died?

8 A. Yes.

9 Q. Okay. And you don't know about any -- you never
10 saw any situation with a white car or anything of that
11 sort, did you?

12 A. No, sir, because I just came -- I just arrived,
13 like I told you.

14 Q. All right. So you didn't see that?

15 A. I didn't see what, sir?

16 Q. You didn't see the white car or any incident
17 involving the white car?

18 A. No, sir. I didn't see no incident involved.

19 Q. Okay. Did you see the white car earlier?

20 A. When I came onto Iris Street, I saw the white
21 car pulling up, yes.

22 Q. Okay. So you saw the white car pulling away?

23 A. Yes, sir.

24 Q. All right. And you hang around there a lot?

25 A. No, sir.

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1 Q. Okay. How did you come to be there that day?

2 Simply because you know --

3 A. I'm from that --

4 Q. -- you knew Mr. Brown?

5 A. -- neighborhood, sir.

6 Q. I beg your pardon?

7 A. I'm from that neighborhood, sir, so I come
8 around every once in a while, yes.

9 Q. All right. And you saw Mr. Brown and so you
10 just kind of hung around and talked to him?

11 A. Yes, sir.

12 Q. Y'all were drinking beer?

13 A. Yes, sir.

14 Q. And it was hot on July 13th?

15 A. Say it again, sir.

16 Q. It was hot on July 13th?

17 A. Yes, sir.

18 Q. So there's nothing wrong with drinking a beer on
19 a hot day?

20 A. No, sir.

21 Q. Particularly when you weren't going to be
22 driving anywhere?

23 A. No, sir.

24 Q. And about how many beers did you have?

25 A. That was my first one, sir.

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1 Q. That was your first one?

2 A. Uh-huh.

3 Q. All right. And had you picked that up at the
4 store?

5 A. Yes, sir.

6 Q. And how many beers did you have with you?

7 A. One.

8 Q. Just one?

9 A. Yes, sir.

10 Q. All right. On July 13th, 2007, you had your
11 hearing difficulties at that time, too, didn't you?

12 A. Yes, sir.

13 MR. RUNYON: Okay. No further questions, Judge.

14 THE COURT: Mr. Stack?

15 MR. LEVENTIS: Beg the Court's indulgence.

16 [Whereupon, Mr. Stack and Mr. Leventis confer]

17 MR. STACK: Your Honor, we have nothing further
18 of this witness. Thank you.

19 THE COURT: Sir, you may step down.

20 THE WITNESS: Thank you.

21 [Whereupon, the witness exits the witness stand]

22 THE COURT: Call your next witness.

23 MR. LEVENTIS: Your Honor, at this time the
24 State rests.

25 THE COURT: All right. Ladies and gentlemen,

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1 that signifies to the Court that there is a matter of
2 law that I must take up outside of your presence. Do
3 not begin your deliberations, do not discuss this case
4 amongst yourselves. We will receive you back in the
5 courtroom momentarily.

6 Please rise for the jury.

7 [Whereupon, the jury exits the courtroom at
8 11:17 a.m.]

9 - - - - -

10 MOTION FOR A DIRECTED VERDICT

11 THE COURT: Thank you. Be seated.

12 Mr. Runyon, the State has rested.

13 MR. RUNYON: Your Honor, at this point in time,
14 since the Supreme Court requires us, I would move for a
15 directed verdict of acquittal on both indictments on
16 the grounds that the State has failed to show a prima
17 facie case against the defendant before the bar.

18 Obviously, Judge, it's been a sort presentation,
19 much shorter than the first time we tried this case,
20 and I would suggest that you've heard the evidence and
21 you can assess what's been said. Obviously, there
22 probably are some questions of fact here but because we
23 are required to, I'm moving for a directed verdict at
24 this time and in anticipation of the ruling of the
25 Court, I'm prepared to take it to the next step.

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1 THE COURT: All right.. Mr. Leventis, if you
2 would address the elements of each indictment.

3 MR. LEVENTIS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. LEVENTIS: I believe there's been ample
6 evidence on each element. Deputy John Neale testified
7 that this shooting occurred in Charleston County.
8 After that, Doctor Susan Collins testified to the
9 victim's cause and manner of death. Deputy Neale
10 testified to the fact that Cory Watkins had been shot
11 in the ankle. And after that occurred several
12 eyewitnesses stood up and said that this defendant
13 jumped out of the car and immediately began shooting at
14 the two victims. That is more, in our opinion, than
15 sufficient evidence to prove our case and to go forward
16 to the jury.

17 THE COURT: Mr. Runyon, any response?

18 MR. RUNYON: No, Your Honor. As it relates to
19 the rendition of the evidence and the testimony
20 presented, I would argue that -- well, my arguments on
21 those issues would be to the jury, I'm afraid, versus
22 to the Court, as not satisfying any of the elements of
23 the charge of murder or assault and battery with intent
24 to kill.

25 THE COURT: All right. Based upon the testimony

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1 that the Court has heard -- pursuant to Rule 19, the
2 Court is of course concerned with the existence or
3 nonexistence of evidence, not as to its weight. Based
4 upon the testimony that has been heard, as well as the
5 exhibits that have been introduced into evidence, I am
6 denying your motion for directed verdict on both the
7 murder charge as well as the assault and battery with
8 intent to kill.

9 There has been evidence testified to as to the
10 manner of death; that the victim, Deshawn Brown, was --
11 the manner of death was a homicide. There was
12 testimony by Cory Watkins that he was shot in the
13 ankle. There was ample testimony from several
14 different witnesses that there was a gun in the hands
15 of the defendant. Witnesses testified that both the
16 murder and the assault and battery with intent to kill
17 occurred within the jurisdiction of Charleston County.

18 Decline to grant your motion for directed
19 verdict as to both of those indictments.

20 - - - - -

21 DEFENDANT'S RIGHTS

22 THE COURT: Mr. Nelson, please rise.

23 [Whereupon, Mr. Nelson complies]

24 THE COURT: Please place Mr. Nelson under oath.

25 THE CLERK OF COURT: Yes, Your Honor.

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1 Sir, if you would please raise your right hand.

2 [Whereupon, Mr. Nelson complies]

3 [Whereupon, Mr. Nelson is duly sworn by the
4 clerk of court as follows: do you swear or affirm to
5 tell the truth, so help you God]

6 MR. NELSON: Yes, sir.

7 THE CLERK OF COURT: Put your hand down.

8 [Whereupon, Mr. Nelson complies]

9 THE COURT: Mr. Nelson, at this time I am going
10 to explain to you certain of your rights. If you do
11 not understand anything that I say to you, please let
12 me know and if you need for me to explain anything
13 further to you, please let me know.

14 Do you understand what I have just said?

15 MR. NELSON: Yes, ma'am.

16 THE COURT: We have now reached the stage of the
17 trial where you may present your defense. You have the
18 right to claim the protections given to you by the
19 fifth amendment to the constitution of the United
20 States. This amendment states in part that no person
21 shall be compelled in any criminal case to be a witness
22 against himself. This means that you cannot be
23 required to testify in this case. You have the right
24 to testify on your own behalf; however, no one can make
25 you testify. This is a personal right and no one can

1 waive this right except for you.

2 If you decide to testify, you will be subject to
3 the same rules that govern other witnesses and you may
4 be examined and cross-examined on any relevant issue in
5 this case. In addition, if you have any convictions
6 involving dishonesty or false statement or for crimes
7 punishable by imprisonment for more than one year and
8 the Court determines that the probative value of
9 admitting this evidence outweighs its prejudicial
10 effect to you, the solicitor will be able to introduce
11 your record to attack your credibility.

12 Mr. Leventis, do you have convictions that you
13 would plan to introduce?

14 MR. LEVENTIS: We do, Your Honor.

15 THE COURT: All right. And, Mr. Runyon, you
16 agree that your client does have convictions that may
17 under -- to be used for impeachment purposes?

18 MR. RUNYON: Absolutely, Judge, there are those,
19 without quibbling over which ones.

20 THE COURT: All right. If you decide to
21 testify, Mr. Nelson, the decision on your part must be
22 freely, voluntarily, intelligently made with the
23 knowledge of the protections given to you by the fifth
24 amendment and the consequences of your decision to
25 testify.

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1 If you decide not to testify, I will instruct
2 the jury that they cannot give the fact that you did
3 not testify any consideration whatsoever and there is
4 to be absolutely no prejudice to you because you did
5 not testify.

6 It is left entirely up to you, Mr. Nelson,
7 whether or not you testify. You may talk with your
8 attorney, your friends, your family members, or anyone
9 else, but the final decision is yours alone.

10 Do you understand what I have just explained to
11 you?

12 MR. NELSON: Yes, ma'am.

13 THE COURT: Do you have any questions about what
14 I have explained to you?

15 MR. NELSON: No, ma'am.

16 THE COURT: Have you discussed with your lawyer
17 whether you should or should not testify?

18 MR. NELSON: Not yet, Your Honor.

19 THE COURT: I'm sorry?

20 MR. NELSON: Not yet, Your Honor.

21 THE COURT: All right. Do you wish to talk to
22 your lawyer about your decision to testify at this
23 time?

24 MR. NELSON: Yes, ma'am.

25 THE COURT: All right. And, Mr. Runyon, how

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1 long will we need to --

2 MR. RUNYON: Judge, just for the record so the
3 Court is -- we were anticipating that they would run at
4 least until noon.

5 THE COURT: Yes, sir.

6 MR. RUNYON: This case has been tried once
7 before. Because of his limitations, I would like to
8 go over it again. I would state for the record that he
9 chose not to testify in the previous trial in March.
10 I'm not sure that's going to be his decision now.

11 But since he has requested a conference, I would
12 like five or ten minutes.

13 THE COURT: All right. Mr. Runyon, we'll do
14 this, because we're getting close to the noon hour.

15 MR. RUNYON: All right.

16 THE COURT: If you need additional time -- I'll
17 give you ten minutes. If you need additional time, if
18 you'll just let the Court know and we'll proceed
19 accordingly.

20 MR. RUNYON: Well, maybe we can just do it right
21 here.

22 THE COURT: Mr. Runyon, you take the time that
23 you need to go back and meet in the conference room and
24 meet with Mr. Nelson. And take all the time that you
25 need.

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1 MR. RUNYON: Thank you, Judge.

2 THE COURT: Thank you.

3 We'll be at ease.

4 Mr. Runyon, if you will just let the bailiff
5 know, and I'll take the bench.

6 MR. RUNYON: We will, Judge.

7 THE COURT: Thank you.

8 [Whereupon, a recess is taken from 11:24 a.m. to
9 11:32 a.m.]

10 THE COURT: Please be seated.

11 Mr. Runyon?

12 MR. RUNYON: Your Honor, I believe my client is
13 ready to address the Court and answer any questions.

14 THE COURT: All right. Mr. Nelson, please rise.

15 [Whereupon, Mr. Nelson complies]

16 THE COURT: Mr. Nelson, I remind you that you
17 are under oath.

18 You have had an opportunity to meet with
19 Mr. Runyon. Have you had enough time to meet with him?

20 MR. NELSON: Yes, ma'am.

21 THE COURT: And have you reached a decision
22 about whether or not you wish to testify?

23 MR. NELSON: Yes, ma'am.

24 THE COURT: And do you wish to testify?

25 MR. NELSON: No, ma'am.

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1 THE COURT: All right. Thank you.

2 Mr. Runyon, do you have any addition witnesses?

3 MR. RUNYON: No, Your Honor.

4 THE COURT: Mr. Nelson, you may be seated.

5 Thank you.

6 [Whereupon, Mr. Nelson complies]

7 MR. RUNYON: No, Your Honor.

8 I would like the record to note, because these
9 things may be reviewed one day, that this decision by
10 the defendant is the same decision the defendant made
11 in March. That's not my decision -- the defendant,
12 but -- because he was free to change his mind. But it
13 is consistent with where he's been in this case.

14 And we would be prepared to rest at this time,
15 Judge.

16 THE COURT: All right. Anything before I bring
17 in the jury? Are they back? We have two smokers.

18 THE BAILIFF: No, Judge.

19 THE COURT: All right.

20 MR. RUNYON: Judge, if I can -- if I can address
21 this issue. Mister --

22 MR. LEVENTIS: Leventis.

23 MR. RUNYON: Mr. Leventis and I discussed this
24 about possibly -- and I know you wanted to break at
25 noon. It's about twenty minutes of. Perhaps we could

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1 break now, give that little bit of extra time so that
2 we can get ready to argue and charge.

3 There were a total of fifteen witnesses on the
4 State's witness list and they have trimmed that down,
5 which accounts for the shortening of the time. So
6 we're well within the time frame that we originally --

7 THE COURT: My thought was to bring the jury in,
8 allow you to rest, and then send them to lunch.

9 - - - - -

10 CHARGE CONFERENCE

11 THE COURT: But let's go ahead and use this
12 time. Are there any request to charge from the State?

13 MR. LEVENTIS: Yes, Your Honor. We would be
14 seeking a charge on the hand of one, the hand of all, a
15 transferred intent charge, presumption of malice with
16 use of a weapon.

17 THE COURT: All right. Anything else?

18 MR. LEVENTIS: Those are the -- other than the
19 standard charges, those are the charges we would be
20 requesting.

21 MR. RUNYON: Your Honor, obviously, we
22 anticipate them to request the use of weapon -- malice
23 through the use of a weapon obviously would be
24 involved. That we couldn't argue against.

25 We would ask the Court to consider charging

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1 self-defense, the reason being is because we think
2 there's a suspicion of nexus, based on the testimony of
3 Mr. Bryant, who was there, and who had talked to Mr.
4 Nelson, who said -- and, admittedly, our argument is
5 for the jury to decide. If they wish to disregard it,
6 then they can -- who said that Mr. Nelson said that he
7 shot because they shot at him.

8 And the argument would be that the geography of
9 the crime scene, his ability to run away, all those are
10 factual determinations for the jury to be made and
11 something for the Court to instruct the jury that they
12 would have to find. But we would ask for a charge --
13 or for the Court to consider a charge of self-defense.

14 THE COURT: Mr. Leventis?

15 MR. LEVENTIS: Your Honor, we're not going to
16 contest the defendant's request for a charge of self-
17 defense.

18 THE COURT: All right. And then, Mr. Runyon,
19 what is your position on the hand of one?

20 MR. RUNYON: Judge, for forty-three years I've
21 tried to argue against that. I decided to stop arguing
22 against that.

23 Obviously, under the circumstances of the case
24 -- and I'm not being flippant with the Court, by any
25 means. But, obviously, under the circumstances of the

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1 case, the state of the evidence and the theory of the
2 State, they probably would be entitled to the hand of
3 one is the hand of all given the testimony about Mr.
4 Hoard. And there's ample testimony about three people
5 in the car. There is divergent testimony about who got
6 out of the car, who may have fired, who may not have
7 fired, et cetera, et cetera.

8 The simple fact of the matter is is that we
9 can't successfully argue against you charging the hand
10 of one is the hand of all, although we would love to be
11 able to.

12 THE COURT: And transferred intent, Mr. Runyon?

13 MR. RUNYON: Judge, I think that's the same
14 situation as the hand of one is the hand of all, Judge,
15 with regards to transferred intent. And I don't want
16 to concede that point to the State, but I recognize
17 that the Court is probably going to charge that.

18 THE COURT: All right. As of now, the Court's
19 charge includes the hand of one, hand of all,
20 transferred intent, as well as self-defense.

21 The Court's interpretation of the use of a
22 weapon under Belcher, we now -- well, let me ask you
23 this. What is your understanding that if the Court
24 charges self-defense as to the use of a weapon to infer
25 malice?

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1 MR. LEVENTIS: To be honest with you, Your
2 Honor, my understanding is that would be inconsistent,
3 so I think that we would withdraw our request for the
4 charge on malice on those grounds.

5 THE COURT: Mr. Runyon, do you agree under the
6 Belcher case?

7 MR. RUNYON: Your Honor, I'm not going to oppose
8 that.

9 THE COURT: All right. Great. Thank you.
10 Are our jurors here?

11 THE BAILIFF: Yes.

12 THE COURT: What I would like to do is we'll go
13 ahead, I'll allow you to rest, then we will break until
14 2:00. Will that give counsel sufficient time?

15 MR. LEVENTIS: That should be sufficient.

16 MR. RUNYON: That should be sufficient for us,
17 Judge.

18 THE COURT: All right.

19 MR. RUNYON: And we would anticipate by resting
20 and not introducing any evidence that we would have the
21 last argument.

22 THE COURT: I'm sorry?

23 MR. RUNYON: We would anticipate that we would
24 have the final argument.

25 THE COURT: Mr. Leventis, is that your

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1 understanding?

2 MR. LEVENTIS: That's my understanding.

3 THE COURT: All right. Thank you.

4 Please bring in the jury.

5 [Whereupon, the jury enters the courtroom at
6 11:39 a.m.]

7 THE BAILIFF: The jurors are all present, Your
8 Honor.

9 THE COURT: Thank you. Please be seated.

10 Mr. Runyon?

11 MR. RUNYON: Your Honor, the defendant would
12 rest at this point in time.

13 THE COURT: All right. Thank you.

14 Ladies and gentlemen of the jury, that indicates
15 to the Court that you have now heard all of the
16 evidence, the testimony, in this case and have been --
17 received into evidence all of the exhibits that will be
18 made part of the record.

19 We have now reached the part of the trial, the
20 stage of the trial, where you will hear closing
21 arguments from counsel and then receive the charge on
22 the law from the Court.

23 Because it is close to our lunch hour, this is
24 an appropriate time for us to break for lunch and so
25 what I need you to do is remember the Court's

1 admonition. You may not begin your deliberations. You
2 have not received the instruction on the law. Do not
3 discuss this case amongst yourselves. Do not do any
4 independent research. Do not read, watch, listen to
5 any news accounts should there be any regarding this
6 case.

7 Please be back in your jury room promptly by
8 2:00 p.m. and we will begin the closing arguments of
9 counsel, as well as the instruction on the law.

10 Have a wonderful lunch. I'll see you back at
11 2:00.

12 Please rise for the jury.

13 [Whereupon, the jury exits the courtroom at
14 11:41 a.m.]

15 THE COURT: Thank you. Please be seated.

16 Anything before we break for our lunch hour?

17 Mr. Leventis?

18 MR. LEVENTIS: No, Your Honor.

19 THE COURT: Mr. Runyon?

20 MR. RUNYON: Nothing from the defense, Your
21 Honor.

22 THE COURT: Well, I will see you back at 2:00.

23 All of you have a delightful lunch. Thank you.

24 [Whereupon, a recess is taken from 11:41 a.m. to
25 1:55 p.m.]

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1 THE COURT: Anything before we bring in the
2 jury?

3 MR. LEVENTIS: Nothing from the State, Your
4 Honor.

5 MR. RUNYON: Nothing from the defense, Your
6 Honor.

7 THE COURT: All right.

8 THE CLERK OF COURT: Nothing from the clerk.

9 THE COURT: Nothing from the clerk. Thank you.
10 Please bring in the jury.

11 Please rise for the jury.

12 [Whereupon, the jury enters the courtroom at
13 1:57 p.m.]

14 THE BAILIFF: The jury is present, Your Honor.

15 THE COURT: Thank you. Please be seated.

16 Ladies and gentlemen, we, as I indicated by our
17 lunch break, have reached the stage of the trial where
18 you will now hear closing argument of counsel. Just
19 like opening statements, closing arguments are not
20 considered evidence in this case.

21 Mr. Leventis.

22 MR. LEVENTIS: Thank you, Your Honor. May it
23 please the Court, counsel.

24 - - -

25 - - -

CLOSING ARGUMENT

MR. LEVENTIS: Good afternoon, ladies and gentlemen. It has been a fairly quick trial.

I want to talk to you briefly about the law in this case and then I'm going to talk to you about how the facts in this case apply to the law.

Murder: one of the charges the defendant has been charged with is obviously murder. In order to find the defendant guilty of murder, you have to find him guilty of killing another with malice aforethought. Now, I note that the State is not required to prove motive. We're not required to prove why the defendant murdered the victim to prove murder.

Assault and battery with intent to kill is the other charge the defendant has been charged with. The elements there are unlawful violent act upon another with malice aforethought. Again, specific intent to kill someone is not an element of assault and battery with intent to kill. We just have to show the defendant committed an unlawful and violent act upon another person who had malice aforethought.

Again, the term malice aforethought comes up. What does that mean? It's a legal terminology but essentially what it boils down to is committing a wrongful act intentionally and without just cause or

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1 excuse. May be found directly through defendants words
2 or actions or inferred through his intent to do serious
3 bodily harm, to kill.

4 I want to talk to you about another important
5 legal doctrine in this case, and that is the hand of
6 one is the hand of all. What that means is that if a
7 crime is committed by two or more persons who are
8 acting together in the commission of that offense, the
9 act of one is the act of all.

10 And I want to talk to you about how that might
11 apply in this case. For example, Termaine Nelson got
12 out of that car. Timothy Hoard got out of the SUV.
13 Termaine Nelson shoots, but he misses. Timothy Hoard
14 shoots and hits. If they are acting together, Termaine
15 Nelson is still guilty of murder and assault and
16 battery with intent to kill.

17 Another example: Termaine Nelson gets out of
18 that SUV. Timothy Hoard gets out of the SUV. Termaine
19 Nelson doesn't even shoot. Timothy Hoard shoots and
20 hits. If they are acting together, Termaine Nelson is
21 still guilty, just as guilty, of murder and assault and
22 battery with the intent to kill.

23 I want to talk to you about another legal
24 doctrine that applies in this case, and that is the
25 doctrine of transferred intent. If the defendant or

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1 Timothy Hoard intended -- when they shot, if they
2 intended to hit one person, if they thought they saw
3 the person that ripped the defendant off -- if they
4 intended to hit that person but in fact hit one of the
5 victims, the defendant is still guilty of murder by way
6 of transferred intent. His intent to murder someone
7 transfers to the person he actually hit.

8 Now, let's talk about how that might play out in
9 this case. For example, Termaine Nelson gets out of
10 the car, shoots, intends to hit someone else but, in
11 fact, hits Deshawn Brown and Cory Watkins. Under the
12 law of South Carolina, Termaine Nelson is just as
13 guilty as if he had hit the person he intended to hit
14 in the first place.

15 Second example: Timothy Hoard gets out of the
16 car, shoots, intends to hit one person but, in fact,
17 hits Cory Watkins or Deshawn Brown. Under the law of
18 South Carolina, Timothy Hoard is just as guilty as if
19 he had hit the person he intended to hit. And if
20 Timothy Hoard and Termaine Nelson are acting in concert
21 together, then Termaine Nelson is just as guilty as if
22 Timothy Hoard had hit the person he intended to hit.

23 These are very powerful doctrines, and they
24 apply in this case.

25 Let's talk beyond a reasonable doubt, because

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1 that's the standard the State has to prove in this
2 case. You hear it a lot. I would like to explain it
3 to you for a second. Beyond a reasonable doubt is not
4 required in the absence of doubt, and, in fact, there
5 are very few instances in life where there is an
6 absence of doubt. It does not require proof that will
7 overcome every possible doubt. Anything you can
8 conjure up. What it requires is that each of you is
9 firmly convinced that the defendant is guilty at the
10 conclusion of this trial.

11 What does that all mean in this case? Well, if
12 you are firmly convinced that Termaine Nelson and
13 Timothy Hoard were acting together in committing a
14 crime, it doesn't matter who they were shooting at or
15 which defendant is a good shot and which defendant is a
16 bad shot. Both are equally guilty of murder and both
17 are equally guilty of assault and battery with the
18 intent to kill.

19 I want to talk about self-defense for a second,
20 because self-defense -- there was one iota of evidence
21 in this case about self-defense, and that was, if you
22 recall, Javon Bryant got up and he said that the
23 defendant said that he shot because he was being shot
24 at. If you search through the testimony and the
25 evidence given, the only iota of evidence you'll find

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1 that would even suggest self-defense in this case was
2 Javon Bryant's statement about the defendant's
3 statement.

4 There are several elements that the State can
5 prove to you beyond a reasonable doubt and, if we do
6 that, self-defense does not apply. One of them is that
7 the defendant had some fault in bringing about
8 difficulty. The defendant had some fault in bringing
9 about difficulty. If I prove that to you beyond a
10 reasonable doubt, then self-defense wouldn't apply in
11 this case. Another is that the defendant was not in
12 imminent fear or danger of great bodily harm or death.
13 If I prove that to you beyond a reasonable doubt, then
14 self-defense would not be applicable in this case. And
15 the third is that the defendant had other means of
16 avoiding the danger. If I prove to you that the
17 defendant had an alternative means of getting away from
18 the danger other than staying and defending himself,
19 self-defense would not apply in this case. In fact, if
20 I prove any one of those three, self-defense would not
21 be applicable in this case.

22 Now, the defense would have you believe that
23 this case is about phone records, about missing stools,
24 about different recollections of what types of gun the
25 defendant used. If we don't have the phone records,

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1 then how are you really going to show that the
2 defendant was even at that crime scene. How do we know
3 that he was there, without phone records to show which
4 phone tower his phone is pinging off of? If different
5 eyewitnesses get up and remember it was a different
6 type of gun, then how do we know the defendant really
7 used a gun at all? How do we know he was even there?

8 Ladies and gentlemen, that is not what this case
9 is about. That is, I submit to you, smoking mirrors,
10 an attempt to divert your attention to anything but the
11 defendant's guilt. That is not what this case is
12 about. It is not about whether the SUV driven over
13 there was silver or green. You don't have to discuss
14 that when you go back to the jury room.

15 The reason you don't have to discuss that is
16 because there are certain things that everybody in this
17 case agrees upon. One is that the defendant was at the
18 crime scene, and the other is that he was shooting a
19 gun. Cory Watkins agrees with that, Shameeka Graham
20 agrees with that, Javon Bryant agrees with that. The
21 defendant told that to Lewanda Denson, the defendant
22 told that to Detective Shawn Patrick. Everybody agrees
23 with that.

24 The defendant even went so far as to say, I
25 think I hit one of them between the shoulders. And he

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1 might be right. In fact, if you remember, that's where
2 Deshawn Brown was hit, in his back close to his
3 shoulders. Maybe he's right.

4 So we can all agree that the defendant returned
5 to the crime scene, that this time he had brought a gun
6 with him. Both the defendant -- Timothy Hoard and
7 Termaine Nelson got out of that car. We can all agree
8 on that.

9 What this case boils down to is whether the
10 defendant was firing his gun in self-defense or whether
11 he was not. Because if he didn't have just cause or
12 excuse to be firing that weapon, to be shooting it,
13 then he committed murder and he committed murder even
14 if Timothy Hoard was the one who was actually a good
15 shot.

16 So let's talk about self-defense again. The
17 first element I mentioned, if the State proves to you
18 that the defendant had some fault in bringing about
19 this difficulty, self-defense would not be applicable
20 in this case. I submit to you that the defendant had
21 more than some fault. He was completely at fault for
22 bringing about this difficulty. He was robbed at the
23 crime scene earlier that day. He went back to Coroner
24 Avenue. He chose to call his friends and go back over
25 there. He chose to get guns. He got out of the car

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1 when he got there and he starting shooting immediately.
2 He was completely at fault, and this difficulty was
3 completely avoidable.

4 Let's talk about the second element. If I prove
5 to you the defendant was never in imminent danger of
6 harm, severe bodily injury or death, self-defense
7 wouldn't apply in this case. Think about the
8 testimony. Cory Watkins, Antonio Simmons, Shameeka
9 Graham, all testified that people out at that crime
10 scene were hanging out drinking beer. They had beer;
11 they didn't have guns. There was never any testimony
12 about anybody having guns. There was never any
13 testimony to support a finding that the defendant was
14 in imminent harm or danger.

15 Think about the testimony that Javon Bryant, the
16 codefendant in this case, gave and that Shameeka
17 Graham, someone who doesn't know Javon Bryant,
18 corroborated. Javon Bryant said Termaine Nelson ran
19 out of his shoes, he went back to get his shoe, and
20 then he got back in the car and left. Shameeka Graham
21 said, yeah, I'm walking out there, I saw that guy right
22 there, he ran out of his shoes, he walked back to get
23 his shoes, then he got in the SUV and he left.
24 Contrast that testimony with Antonio Simmons' testimony
25 and Cory Watkins' testimony about what they did when

1 they were in imminent fear for their life, imminent
2 danger, harm, and death. They got up and they hauled
3 it out of there. They didn't stay around long enough
4 to see what happened.

5 Contrast that with Termaine Nelson's actions.
6 He's going back to get his shoe. Why do you go back to
7 get your shoe? Certainly not because you're being shot
8 at. Certainly not because you're in fear for your
9 life. You go back and get your shoe because if you
10 leave your shoe there, then we're going to find it and
11 I'm going to put it in front of you when we go to
12 trial. That's why you go back to get your shoe.

13 Finally, let's talk about alternative routes for
14 the defendant to leave that scene, to withdraw, remove
15 himself from that situation. Because if he had the
16 opportunity to do that, even if you believe that he was
17 somehow in imminent danger of great bodily harm or
18 death -- if he had the opportunity to back himself out
19 of that, then the law doesn't protect him. Self-
20 defense does not apply.

21 I can't be threatened by somebody but be in my
22 car and stop my car and get out to defend myself. If I
23 have the opportunity to leave the situation, then I'm
24 not protected under the law, and neither is the
25 defendant. In this instance, the defendant chose to go

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1 back over to the crime scene after he had been
2 threatened with a gun, after he was robbed, at
3 gunpoint. He chose to get out of that car and he chose
4 to confront whoever was there and he started shooting
5 immediately. He had every opportunity to avoid that
6 situation, and he didn't.

7 And as an aside, if somebody at that crime scene
8 had wanted to hurt that defendant, they had a perfect
9 opportunity to do so when they were robbing him earlier
10 in the day and he didn't have a gun on him. If I want
11 to hurt somebody, I've got the gun and they don't,
12 that's when they're getting hurt. You're not giving
13 them the opportunity to go out, get their friends and
14 get their guns and come back and talk to me. That
15 doesn't make any sense.

16 When I began this trial, I said to you that this
17 is not a mystery. And it's not. And I ask you to use
18 your common sense and apply it to the evidence that we
19 put before you. And I'm confident you will do that.
20 And I still believe that if you do that, there's only
21 one verdict that you can reach in this case and that is
22 that the defendant, Termaine Nelson, is guilty beyond
23 any reasonable doubt. He's guilty of assault and
24 battery with intent to kill Cory Watkins and he's
25 guilty of the murder of Deshawn Brown. Thank you.

1 THE COURT: Mr. Runyon.

2 - - - - -
3 CLOSING ARGUMENT

4 MR. RUNYON: Madam Forelady, ladies and
5 gentlemen of the jury, to quote my learned colleague
6 here: it will be found and it will be put before you.
7 Remember what he said about the shoe? It will be found
8 and if there are fingerprints of my client, Timothy
9 Hoard, or anybody else's associated with my client, on
10 these shell casings, they would be found and they would
11 be put before you. They are not before you.

12 Now, let's talk about this reasonably and
13 sensibly. We're not talking about saints and sinners
14 here. Unfortunately, in most cases, in criminal court,
15 particularly, you're talking about saints and sinners
16 and usually they can point to the defendant and say,
17 well, he really is a sinner.

18 Here, everybody was a sinner. I hate to say
19 that. My client is a sinner. He took drugs over
20 there to sell that day. Right? There's no question
21 about that. No question. And what happened? Someone
22 with the deceased right there in the crowd -- and
23 remember what Ms. Graham said, there was a controversy
24 or what-have-you. You take your recollection. They
25 pulled a gun on him. Said, he ain't paying you. So

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1 there were guns around. There were guns around.

2 Let's talk about the absent telephone records
3 that they talk about. The testimony of Mr. Bryant, the
4 statement and other evidence and Ms. Denson, was that
5 there were calls back and forth and Mr. Nelson had
6 finally arranged to go over and, quote, get his money.
7 They said, come over and get your money. Remember what
8 I said in opening statements yesterday. You know, fool
9 me once, shame on me; fool me twice -- okay? Well,
10 this time he calls, they said, look, you've got to give
11 me my money or what-have-you, whatever the -- and if
12 those conversations didn't occur, the police officer
13 right back there would have gotten those telephone
14 records and this fine lawyer would have put it in front
15 of you that there weren't any such call.

16 Remember what he said: if we find it, we're
17 going to put it front of you. They could have found
18 that those calls didn't exist and they would have put
19 it in front of you. The calls occurred. There's no
20 question about that.

21 He goes back over with his friends. This
22 time he goes -- he's got -- look, this is not like
23 going down to the local True Value hardware store and
24 saying, look, you put me on this deal on these nails or
25 what-have-you, and, say, well, come on back and get

1 your money. So you go back to get your money, and you
2 take your gun. That's not this kind of transaction. I
3 doubt anybody on this jury can relate to this
4 transaction, but you're going to have to try in order
5 to put it in some perspective. And I ask you to try to
6 put it in perspective. So he goes back over. Calls
7 were made. Now, he would have found they weren't made.

8 And what does Mr. Bryant say? Now, this is the
9 gentleman who has this contract with the State. Says,
10 we're going to give you some -- we're going to give you
11 some consideration; tell the truth and we give you
12 consideration. So he gets on the stand and what does
13 he tell you? He says, well, yeah, Mr. Nelson said they
14 were shooting at us so I shot back. That's an iota, an
15 iota. That's evidence. That's -- but that -- what
16 weight you give that is totally in your hands. You are
17 the jury. You decide facts. Why wouldn't he -- why
18 wouldn't he -- why would he tell you that if it might
19 infringe on his contract? But of course if he tells
20 the truth, he doesn't infringe on his contract.
21 They've got to live up to the contract, as long as he
22 tells the truth.

23 Now, let's talk about the guns, the guns which
24 are not before you because nobody tried to find them.
25 Remember that? The guns. We know that there are two

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1 guns here that would fire these shells. There was at
2 least one handgun earlier that morning that was used to
3 rip him off. That was in that apartment complex
4 somewhere. So that's three guns. Then there are two
5 handguns, according to Mr. Bryant, that Mr. Nelson and
6 Mr. Hoard were supposed to have had. So maybe we have
7 five guns that we know of. The question is is whose
8 hands were those guns in. Mr. Bryant says, I never saw
9 any long guns. I did see them with handguns. No
10 question about that.

11 Now, can we -- do we know what happened to Mr.
12 Brown? No, we don't. Is it possible that Mr. Nelson
13 shot him? Sure it's possible that Mr. Nelson shot him,
14 because we don't have the -- remember Kim Collins, Dr.
15 Collins? She said, I can't tell you what caliber gun
16 made that wound because it exited and we don't have it,
17 and because of the entrance and because of the exit,
18 you know -- you know, I can't tell you whether or not
19 that wound was caused by one, or another, or these or
20 some other weapon. And if they could tell you that, it
21 would be before you. Remember what the State said: if
22 we find it, it will be before you. And they didn't
23 try, or they couldn't find that.

24 Now, Mr. Bryant has no reason to lie to you.
25 He's got a contract with the State. He's supposed to

1 tell the truth. Said, I didn't see any long guns.
2 These are rifle shells, no matter how they cut it. You
3 don't put a rifle shell in a pistol and try to fire it.
4 Despite what they might try to tell you, it doesn't
5 work that way. And, you know, got all this -- these
6 experts in, the State, SLED and everybody. So they
7 could have brought them in here and told you that.
8 Could have put it before you: oh, yeah, that could
9 have happened. They didn't put it before you.

10 Now, about the crime scene itself: you'll have
11 these pictures. And we're not going to bore you by
12 turning on the lights and putting these down and going
13 over them one at the time. But the problem with it is
14 is this crime scene can't be relied upon. Mr. Neale
15 got there and he roped it off, he cleared it off, just
16 as soon as he could.

17 I'm not suggesting that the officer didn't act
18 appropriately. But when he got there, there were all
19 sorts of people walking all over the place. They're
20 all running over to Mr. Brown. And where they found
21 Mr. Brown was not by -- say, well, this is not about
22 missing stools. Of course it's about missing stools.
23 Of course it's about it. Because if Mr. Brown was over
24 by the porch sitting on the broken chair -- remember
25 that testimony from Ms. Graham? And there were shots

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1 from behind him by someone else in that complex, you
2 know, the people who stole the drugs and all that sort
3 of stuff? Of course it's about where the stool was.

4 You say, well, lawyer, there's no blood trail
5 from the apartment over to where he was found collapsed
6 and died. It ain't one. Why wasn't there one? Now,
7 nearly fifty years ago, as I said when I asked Dr.
8 Collins this: you've got to be patient with me because
9 it took me three semesters to get two semesters' credit
10 for freshman biology in college. And that's a true
11 story. So I ain't the brightest light in the lamp.

12 So I asked her, what about the bleeding. She
13 said, I recall -- and you take your recollection, not
14 mine, because you're the jury. She said the bullet
15 came through the back shoulder, across the right,
16 exited out there, and it punctured both lungs. Where
17 would the bleeding be? She said it would have been in
18 the thoracic cavity. A big word I learned. Sound like
19 I know what I'm talking about. That means in the
20 chest. The blood would have been in the chest and not
21 dribbling along -- not dribbling along from the
22 apartment over here where he was found.

23 So the crime scene is not necessarily what it
24 appears to be. The shells that they found -- with all
25 these people running around trying to figure out what's

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1 going on, what-have-you, the shells are going to be
2 kicked all over. They're not in the appropriate -- not
3 necessarily indicating where the weapon was that fired
4 those shells. Were they on the porch?

5 And that afternoon, that afternoon -- now, let
6 me see here. That afternoon, Mr. Faison talks with Ms.
7 Lewanda Denson and she tells him, look, went over
8 there, we got ripped off or what-have-you. Did they go
9 get a search warrant and try to find the drugs or the
10 weapon? No, because they had all these people saying,
11 oh, these people came out and they were shooting up
12 with all sorts of weapons and what-have-you. And they
13 went with that. They didn't go try to find guns. They
14 just didn't.

15 These shell casings right here, what do they
16 tell you? They tell you that they're from two
17 different weapons, and that's about it. But what did
18 Detective Faison tell you? Oh, we've have -- actually,
19 we've got ATF working with us. And I don't know if
20 they have a lady like on that NCIS that goes around and
21 roller skates on some of those things in the laboratory
22 and what-have-you. But ATF could have come in here.
23 They could have put it before you, if it was there.
24 And that's what my friend said: if we've got it, we'll
25 put it before you.

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1 Now, my client will never, ever, ever find a
2 cure for cancer. Okay? He is not going to be some
3 brilliant person and win some great national award. At
4 least I don't think so, with all due respect to my
5 client. But the simple fact of the matter is is he's
6 the kind of person that tests the system. He tests
7 this system, the jury system, because if it works for
8 him it'll work for anybody above him.

9 This is not a great person -- position to be in,
10 given his background, drug dealer. Did he sell drugs?
11 Sure he's sold the drugs. But he ain't charged with
12 selling drugs. And the people on the other side aren't
13 charged with stealing. And this isn't something that
14 should happen in anybody's neighborhood, but it did.

15 Now, they spent a lot of time talking about
16 self-defense. You look at these pictures and you
17 consider the circumstances. And if Mr. Bryant
18 fulfilled his contract with my friend over here and
19 told you the truth, that Mr. Nelson said and was --
20 well, I went over there to get my money; I didn't go
21 over there to shoot people; I go walking up there and
22 they started shooting. They didn't start shooting that
23 morning when they took his drugs. They started
24 shooting that afternoon. And unfortunately Mr. Brown,
25 who was on their side: a casual deal from Mr. Brown,

1 friendly fire -- you've got to find that Mr. Nelson or
2 Mr. Hoard fired the fatal shot. That's the test.
3 That's the test.

4 Now, so it is about -- it is about what is not
5 before you, and it is about what is before you. If
6 Mr. Nelson walked up there, even if -- and I don't know
7 if Mr. Nelson and Mr. Hoard got out of the car. And
8 this is why you've got -- this is why you're the jury.
9 Okay? And I don't -- and I don't envy your position.
10 Because Mr. Watkins, I believe it was, said -- I
11 believe Mr. Watkins said he only saw one person get out
12 with a gun, a long gun. Okay?

13 Now, if there was only one gun -- and the judge
14 is going to tell you you can believe part of what one
15 witness says and a part of what another witness says.
16 You can disregard this witness over here and believe
17 what this witness said. You can do that, because
18 you're the jury. You're the judges of the facts. And
19 it's not a question of believing necessarily some -- my
20 client, but it is a question of credibility, which
21 means believability.

22 So if you believe Mr. Watkins is the one who can
23 accurately tell you that only one person got out of
24 that car, then it was only one gun. But there are two
25 guns. Where's the other gun from? These are all the

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1 questions. And I'm not going to put something up on
2 this fancy screen over here, because I'm
3 technologically challenged and I don't know how to do
4 that.

5 But the simple fact of the matter is is that
6 what you saw about reasonable doubt, it's not a
7 fanciful doubt. It's a doubt for which you can give a
8 reason. You can base it upon one part of the case, all
9 the case. But, see, the State has to prove all the
10 elements of the crime beyond a reasonable doubt --
11 beyond a reasonable doubt.

12 What happened that day? Mr. Nelson got ripped
13 off. Did he go back over -- did he have phone calls to
14 him about the money? Sure he did. And then he went
15 over -- this time he went -- he took some friends with
16 him. He went over to get his money. And so he showed
17 up. Started shooting at him. He shot some shots and
18 took off. Did he hit Mr. Brown? That's the big
19 question. He told Ms. Denson, I think I may have hit
20 him. But he doesn't know. In this case, the deceased
21 and/or Cory Watkins, could have just as easily been hit
22 by friendly fire. And remember there's at least six
23 shots. At least that's what Ms. Graham said. There
24 are only four shell casings. Okay? It sure would have
25 been nice to try to get those guns. It sure would have

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1 been nice to hear the evidence, if it had been put
2 before you, about how those shots could have multiplied
3 from four to six or seven or what-have-you.

4 I'm not articulate, and I ain't very good at
5 this and sometimes during trials I might say or do
6 something that makes you mad at me. I've never had a
7 jury in forty-two years of practicing law hold
8 something against my client because of something I did.
9 But if I've done something that's made you mad, you
10 know, I apologize for it. I really do. And if I
11 really make you mad, and after you've made your
12 decision, whatever it is, and you're really mad at me,
13 call me up at the office or ring me at home and give me
14 down the road for it. That's why they call it
15 practicing law, because we're always trying to get it
16 right. Now, I told that to my doctor about practicing
17 medicine and he didn't appreciate my humor, but he
18 still sees me. But he's a serious fellow, anyway.

19 Now, I want to thank you for your attention.
20 This case has turned out not to be as long as maybe
21 some indications that it would be. You're the jury.
22 Y'all must reach a unanimous verdict. I ask you to
23 find my client not guilty, not because you don't have a
24 lingering doubt, really in truly, not because in your
25 heart of heart you know that he's pure of heart. There

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1 ain't nobody in this case pure of heart except maybe
2 our friend Mr. Faison and Mr. Patrick and a few of
3 them.

4 I want to thank you for your attention. I want
5 to thank you for your patience, and I want to thank you
6 for your verdict, whatever that is, but I would ask you
7 to find Mr. Nelson not guilty on both indictments.
8 Thank you.

9 THE COURT: ladies and gentlemen of the jury,
10 we've reached the part of the trial where I will
11 instruct you on the charge and the law applicable to
12 this case. If you would like to take a moment. It's
13 kind of mid-afternoon and we've just had lunch so if
14 you want to stand up and stretch before I instruct you
15 on the law, feel free to do so. Now would be an
16 appropriate time. Feel free to stand up and stretch.

17 [Off the record momentarily]
18
19
20
21
22
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24 - - -
25 - - -

CHARGE OF THE COURT

1 THE COURT: I remind you that during this trial
2 you and I have had certain duties to perform. As the
3 trial judge it has been my responsibility to preside
4 over this trial, and I also have the duty to rule on
5 the admissibility of the evidence that has been offered
6 during this trial. You are to consider only the
7 competent evidence before you. If there was any
8 testimony that I ordered stricken from the record, you
9 must disregard that testimony. You are to consider
10 only the testimony that has been presented from the
11 witness stand, the exhibits that have been introduced,
12 as well as stipulations of counsel. I have the
13 additional duty to charge you on the law applicable to
14 this case. As the presiding judge, I am the sole judge
15 of the law of this case and it is your duty as jurors
16 to accept it and apply the law as I state it to you
17 now. If you already have any idea as to what the law
18 is or what the law ought to be, and it does not agree
19 with what I now tell you, you must abandon your idea of
20 the law, because you are sworn to accept the law as I
21 state it to you now. In every case tried in this court
22 before a jury, the jury becomes the sole and exclusive
23 judge of the facts of the case. A trial judge cannot
24 state, comment on, or make any statement to a trial
25

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1 jury about the facts in this case. Since you , the
2 jury, are the sole judge of the facts in this case, you
3 are not to infer from anything that I have said or done
4 during the progress of this trial, or anything that I
5 say now during the charge, that I have any opinion as
6 to the facts of this case. The law simply does not
7 allow me to have an opinion about the facts in this
8 case. It is your duty as jurors to determine the
9 effect, value, and weight and the truth of the evidence
10 that has been presented during this trial.

11 The indictments charge the defendant with murder
12 and assault and battery with intent to kill. I remind
13 you that the fact that the defendant was arrested,
14 charged, and indicted in this case is not evidence in
15 this case and cannot be considered by you as evidence
16 of guilt in this case, nor does it create any
17 presumption or inference of guilt. The document is
18 simply the formal written instrument which contains the
19 charges made against the defendant. It is the formal
20 document by which this case is brought to this Court.
21 The indictments in this case allege several different
22 offenses against the defendant. The charges are,
23 indictment number one, murder, indictment number two,
24 assault and battery with intent to kill. Each
25 indictment charges a separate and distinct offense.

1 You must decide each indictment separately of the
2 evidence and the law applicable to it, uninfluenced by
3 your decision as to any other indictment. The
4 defendant may be convicted or acquitted on any or all
5 of the offenses charged. You will be asked to write a
6 separate verdict of guilty or not guilty for each
7 indictment.

8 The defendant has pled not guilty to each
9 indictment and that plea puts the burden on the State
10 to prove the defendant guilty. A person charged with
11 committing a criminal offense in South Carolina is
12 never required to prove himself innocent.

13 I charge you that it is an important rule of law
14 that the defendant in a criminal trial, no matter what
15 the seriousness of the charge may be, will always be
16 presumed to be innocent of the crime for which the
17 indictment was issued unless guilt has been proven by
18 evidence satisfying you of that guilt beyond a
19 reasonable doubt. This presumption of innocence does
20 not end when you begin your deliberations but it
21 accompanies the defendant throughout the trial until
22 you reach a verdict of guilt based on evidence
23 satisfying you of that doubt beyond a reasonable doubt.
24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the

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1 defendant, which remains with the defendant until it
2 has been stripped from the defendant by evidence
3 satisfying you of the defendant's guilt beyond a
4 reasonable doubt. The presumption of innocence is not
5 a mere legal theory, it's not just a legal phrase, it
6 is a substantial right to which every defendant is
7 entitled unless you, the jury, are satisfied from the
8 evidence of the defendant's guilt beyond a reasonable
9 doubt.

10 The State has the burden of proving the
11 defendant guilty beyond a reasonable doubt. Some of
12 you may have served as jurors in civil cases where you
13 were told that it was only necessary to prove that a
14 fact is more likely true than not true, such as by the
15 greater weight or preponderance of the evidence. In
16 criminal cases, the State's proof must be more powerful
17 than that. It must be beyond a reasonable doubt.
18 Proof beyond a reasonable doubt is proof that leaves
19 you firmly convinced of the defendant's guilt. There
20 are very few things in this world that we know with
21 absolute certainty, and in criminal cases the law does
22 not require proof that overcomes every possible doubt.
23 If based upon your consideration of the evidence you
24 are firmly convinced that the defendant is guilty of
25 the crime charged, you must find the defendant guilty.

1 If on the other hand you think there is a real
2 possibility that the defendant is not guilty, you must
3 give the defendant the benefit of the doubt and find
4 him not guilty.

5 There are two types of evidence which are
6 generally presented during a trial: direct evidence
7 and circumstantial evidence. Direct evidence is the
8 testimony of a person who claims to have actual
9 knowledge of a fact, such as an eyewitness. It is
10 evidence which immediately establishes the main fact to
11 be proved. Circumstantial evidence is proof of a chain
12 of facts and circumstances indicating the existence of
13 a fact. It is evidence which immediately establishes
14 collateral facts from which the main fact may be
15 inferred. Circumstantial evidence is based on
16 inference and not on personal knowledge or observation.
17 The law makes absolutely no distinction between the
18 weight or value to be given either direct or
19 circumstantial evidence, nor is a greater degree of
20 certainty required of circumstantial evidence than that
21 of direct evidence. You should weigh all of the
22 evidence in this case and after weighing all of the
23 evidence if you are not convinced of the guilt of the
24 defendant beyond a reasonable doubt, you must find the
25 defendant not guilty.

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1 Necessarily, you must determine the credibility
2 of the witnesses who have testified in this case.
3 Credibility simply means believability. It becomes
4 your duty as jurors to evaluate and analyze the
5 evidence and determine which evidence convinces you of
6 its truth. In determining the believability of
7 witnesses who have testified in this case, you may
8 believe one witness over several witnesses or several
9 witnesses over one witness. You may believe part of
10 the testimony of one witness and reject the remaining
11 part of the testimony of that same witness. You may
12 believe the testimony of a witness in its entirety or
13 reject the testimony of a witness in its entirety. You
14 may consider whether the witness has exhibited to you
15 any interest, bias, prejudice, or other motive in this
16 case. You may also consider the appearance and manner
17 of a witness while on the witness stand.

18 The rules of evidence ordinarily do not permit
19 witnesses to testify to opinions or to conclusions. An
20 exception to this rule exists for witnesses we call
21 expert witnesses, a witness who by education and
22 experience has become expert in some art, science,
23 profession, or calling may state an opinion as to
24 relevant and material matter in which the witness
25 claims to be an expert and may also state the reasons

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1 for that opinion. You should consider any expert
2 opinion received into evidence in this case and like
3 any other evidence, give it the weight you think it
4 deserves. If you decide that the opinion of an expert
5 witness is not based on sufficient education and
6 experience, or if you conclude that the reasons given
7 in support of the opinion are not sound or that the
8 opinion is outweighed by other evidence, you may
9 disregard the opinion entirely. An expert witness'
10 testimony is to be given no greater weight than that of
11 other witnesses simply because that witness is an
12 expert. Further, you are not required to accept an
13 expert opinion although it is not contradicted.

14 I instruct you and emphasize that the fact that
15 the defendant did not testify is not a factor to be
16 considered by you in any way in your deliberation and
17 in your consideration on the question of the guilt of
18 the defendant. It must not be considered by you in any
19 manner whatsoever. A defendant has the constitutional
20 right to remain silent, and the assertion of this right
21 must not be considered by you in your deliberations. I
22 repeat: under your oath, you are to draw no
23 conclusions whatsoever from the fact that the defendant
24 in this case did not testify. The fact that the
25 defendant did not testify should not even be discussed

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1 in the jury room. The burden of proof, as I have
2 stated to you, is on the State. The defendant is not
3 required to prove his innocence. The burden of proof
4 remains on the State to prove guilt beyond a reasonable
5 doubt.

6 In order to establish criminal liability,
7 criminal intent is required. For example, the mental
8 state required to be proven by the State for a
9 particular crime might be purpose, intent, knowledge,
10 recklessness, or criminal negligence. Criminal intent
11 must be proven by the State beyond a reasonable doubt.
12 Criminal intent is always a matter that must be
13 determined by the jury from the circumstances
14 surrounding the situation. There is no way to prove
15 intent to a mathematical certainty. There is no way
16 medical science can dissect a person's brain and
17 determine what that person had in mind, so the law says
18 that criminal intent may be inferred from the
19 circumstances shown to have existed. This is how you
20 make a determination of whether or not the element
21 requiring intent was present. It is not necessary to
22 establish intent by direct and positive evidence but
23 intent may be established by inference in the same way
24 as any other fact: by taking into consideration the
25 acts of the parties and all the facts and circumstances

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1 in this case. Criminal intent is a mental state, a
2 conscious wrongdoing. It is up to you to determine
3 what the defendant intended to do, based on the
4 circumstances shown to have existed. Criminal intent
5 can arise from action or a failure to act. It may
6 arise from negligence, recklessness, or an indifference
7 to duty, or to consequences that is considered by the
8 law to be the equivalent of criminal intent.

9 A statement alleged to have been made by the
10 defendant has been admitted into evidence in this case.
11 While the Court has determined that the statement is
12 admissible, I instruct you that you make the ultimate
13 decision of whether or not the defendant made the
14 statement. If the defendant did make the statement,
15 you must determine whether the statement was made by
16 the defendant voluntarily and of his own free will.
17 This means that the statement was not caused by
18 pressure, force, fear, threats, coercion, or
19 intimidation, or by hope of or a promise of leniency or
20 reward of any kind. In determining whether the
21 statement was voluntary, you should consider both the
22 characteristics of the defendant as well as the details
23 of the questioning. Some of the factors that you must
24 consider are the age of the defendant, the defendant's
25 education or lack of education, the defendant's mental

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1 ability or capacity, the defendant's IQ or
2 intelligence, the defendant's background and
3 environment, the place and length of detention, the
4 nature of the questioning, the advice or lack thereof
5 to the defendant of his constitutional rights,
6 including but not limited to the right to remain
7 silent, that any statement could be used against him in
8 a court of law, the right to have a lawyer present,
9 that if he could not afford a lawyer a lawyer would be
10 appointed to represent him without any cost, and that
11 he could stop making a statement at any time. You must
12 carefully consider all of the surrounding circumstances
13 before you give any weight to an alleged statement.

14 The State has the burden of proving beyond a
15 reasonable doubt that the alleged statement was
16 voluntary. If you determine it was, you may give the
17 statement any further consideration that you deem
18 proper. You must decide what weight, if any, should be
19 given to the alleged statement. If you determine that
20 the alleged statement was not the free and voluntary
21 statement of the defendant, you should not consider the
22 statement at all.

23 If a crime is committed by two or more people
24 who are acting together in committing a crime, the act
25 of one is the act of all. A person who joins with

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1 another to commit an unlawful act is criminally
2 responsible for everything done by the other person
3 which happens as a probable or natural consequence of
4 the acts done in carrying out the common plan and
5 purpose. If two or more people are together, acting
6 together, assisting each other in committing the
7 offense, the act of one is the act of all, or it is
8 sometimes said the hand of one is the hand of all.
9 Prior knowledge that a crime is going to be committed,
10 without more, is not sufficient to make a person guilty
11 of that crime. Mere knowledge that another person is
12 going to commit a crime, even if the defendant is
13 present when the crime is committed, is not sufficient
14 to convict the defendant as a principle. Guilt as a
15 principle is shown by actual or constructive presence
16 at the scene as a result of prior arrangement;
17 therefore, a finding of a prior arranged plan or common
18 scheme is necessary for a finding of guilt as a
19 principle. The State must prove beyond a reasonable
20 doubt, by competent evidence, the theory of the hand of
21 one is the hand of all. A principle in a crime is one
22 who either actually commits the crime or who is present
23 aiding, abetting, or assisting in committing the crime.
24 When a person does an act in the present of and with
25 the assistance of another, the act is done by both.

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1 Where two or more acting with a common plan or intent
2 are present at the commission of a crime, it does not
3 matter who actually commits the crime. All are guilty.
4 The hand of one is the hand of all. Present at the
5 commission of a crime means to be sufficiently near, to
6 aid and abet and assist in the commission of the crime.
7 However, mere presence at the scene of the crime is not
8 sufficient to convict one as a principle on the theory
9 of aiding and abetting. Intent is also a necessary
10 element, for there must have been a common design or
11 intent to commit the crime and the crime must have been
12 committed pursuant thereto with the person aiding and
13 abetting by some overt act. Intent means actually
14 intending the result which occurs, not accidentally or
15 involuntarily. Intent may be shown by acts in conduct
16 of the defendant and other circumstances from which you
17 may naturally and reasonably infer intent. The State
18 must prove these elements beyond a reasonable doubt.

19 An issue in this case is the identification of
20 the defendant as the person who committed the crime
21 charged. The State has the burden of proving identity
22 beyond a reasonable doubt. You must be satisfied
23 beyond a reasonable doubt of the accuracy of the
24 identification of the defendant before you may convict
25 the defendant. Identification testimony is an

1 expression of belief or impression by a witness. You
2 must determine the accuracy of the identification of
3 the defendant. You must consider the believability of
4 each identification witness in the same way as any
5 other witness. You may consider whether the witness
6 had an adequate opportunity to observe the offender at
7 the time of the offense. This will be affected by
8 things such as how long or short a time was available,
9 how far or close the witness was, the lighting
10 conditions, and whether the witness had the chance to
11 see or know the person in the past. Once again, I
12 instruct you the burden of proof on the State extends
13 to every element of the crime charged, and this
14 specifically includes the burden of proving beyond a
15 reasonable doubt the identity of the defendant as the
16 person who committed the crime. If after examining the
17 testimony you have a reasonable doubt as to the
18 accuracy of the identification, you must find the
19 defendant not guilty.

20 The defendant is charged with murder. The State
21 must prove beyond a reasonable doubt that the defendant
22 killed another person with malice aforethought. Malice
23 is hatred, ill will, or hostility towards another
24 person. It is the intentional doing of a wrongful act
25 without just cause or excuse and with an intent to

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1 inflict an injury or under circumstances that the law
2 will infer an evil intent. Malice aforethought does
3 not require that malice exist for any particular time
4 before the act is committed, but malice must exist in
5 the mind of the defendant just before and at the time
6 of the act is committed; therefore, there must be a
7 combination of the previous evil intent and the act.
8 Malice is shown when a person speaks words which
9 express hatred or ill will for another or when the
10 person prepared beforehand to do the act which was
11 accomplished. For example, lying in wait for a person
12 or any other acts of preparation going to show that the
13 deed was within the defendant's mind would be express
14 malice.

15 The defendant has been charged with assault and
16 battery with intent to kill. In order to prove assault
17 and battery with intent to kill, the State must prove
18 beyond a reasonable doubt that the defendant committed
19 an unlawful act of a violent nature to the person of
20 another with malice aforethought. An assault occurs
21 when a person unlawfully attempts or offers to commit a
22 violent injury upon another person and had the present
23 ability to complete the attempted injury. An assault
24 is the intentional creation of a reasonable fear of
25 immediate bodily harm. It is not necessary that the

1 attempted injury or harm actually take place. For
2 example, if I walk up to you and when we are within
3 arms reach I draw back to hit you, that is an assault.
4 A battery is the unlawful touching of another person by
5 a person who has committed the assault. An unlawful
6 touching can be caused by a part of the accused's body
7 or by any object the accused puts into motion. A
8 battery is the completion of the assault by using or
9 applying force to another person, however slight, in a
10 rude, angry, or resentful manner without legal
11 justification for doing so. Using my earlier example,
12 if I carry through the assault by hitting you, then
13 that is the battery. If facts are proved beyond a
14 reasonable doubt sufficient to raise an inference of
15 malice to your satisfaction, this inference would
16 simply be an evidentiary fact to be considered by you
17 along with the other evidence in this case and you may
18 give it the weight you decide it should receive.

19 A specific intent to kill is not an element of
20 assault and battery with intent to kill, but there must
21 be a general intent to commit serious bodily injury.
22 Intent means intending the result which actually occurs
23 not accidentally or involuntarily. Intent may be shown
24 by acts and conduct of the defendant and other
25 circumstances from which you may naturally and

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1 reasonably infer intent. Evidence of the character of
2 the assault, the character of the instrument used, the
3 manner in which it was used, the purpose to be
4 accomplished, and the resulting wounds and injuries may
5 be considered in determining the intent with which the
6 assault was committed. Intent may be inferred when it
7 is demonstrated that the defendant voluntarily and
8 willfully commits an act, the natural tendency of which
9 is to destroy another's life. If the defendant with
10 malice aforethought attempts to kill another person but
11 by mistake injures or kills a different person, the
12 defendant still had the intent to kill. The intent to
13 kill is merely transferred from the original person the
14 defendant attempted to kill to the actual person killed
15 or injured. The defendant would be guilty of assault
16 and battery with intent to kill just as if the attempt
17 had resulted in the death or injury of the person the
18 defendant attempted to kill.

19 The defendant has raised the defense of self-
20 defense. Self-defense is a complete defense and if it
21 is established, you must find the defendant not guilty.
22 The State has a burden -- had the burden of disproving
23 self-defense by proof beyond a reasonable doubt. If
24 you have a reasonable doubt of the defendant's guilt
25 after considering all the evidence, including the

1 evidence of self-defense, then you must find the
2 defendant not guilty. On the other hand, if you have
3 no reasonable doubt of the defendant's guilt after
4 considering all the evidence, including the evidence of
5 self-defense, then you must find the defendant guilty.
6 The following elements are required to establish self-
7 defense. First, the defendant must be without fault in
8 bringing on the difficulty. If the defendant's conduct
9 was the type which was reasonably calculated to and did
10 provoke a deadly assault, the defendant would be at
11 fault in bringing on the difficulty and would not be
12 entitled to an acquittal based on self-defense. The
13 second element of self-defense is that the defendant
14 was actually in imminent danger of death or serious
15 bodily injury or that the defendant actually believed
16 he was in imminent danger of death or serious bodily
17 injury. If the defendant was actually in imminent
18 danger, it must be shown that the circumstances would
19 have warranted a person of ordinary firmness and
20 courage to strike the fatal blow to prevent death or
21 serious bodily injury. If the defendant believed he
22 was in imminent danger of death or serious bodily
23 injury, it must be shown that a reasonably prudent
24 person of ordinary firmness and courage would have had
25 the same belief. In deciding whether the defendant was

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1 actually, or believed he was, in imminent danger of.
2 death or serious bodily injury, you should consider all
3 the facts and circumstances surrounding the crime,
4 including the physical condition and characteristics of
5 the defendant and the victim. Evidence of prior
6 difficulties between the defendant and the victim may
7 be considered in deciding whether a threat existed,
8 whether the defendant had a reason to believe a threat
9 existed, and how serious that threat was. The final
10 element of self-defense is that the defendant had no
11 other probable way to avoid the danger of death or
12 serious bodily injury than to act as the defendant did
13 in this particular instance. A person cannot be
14 required to make an exact calculation as to the degree
15 or amount of force which may be needed to avoid death
16 or serious bodily harm; therefore, in self-defense the
17 defendant has the right to use the force needed to
18 avoid death or serious bodily harm. The force used in
19 self-defense does not have to be limited to the degree
20 or amount of force used by the victim. The defendant
21 has the right to use so much force as appeared to be
22 necessary for complete self-protection in which a
23 person of ordinary reason and firmness would have
24 believed to be needed to prevent death or serious
25 bodily harm.

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1 Ladies and gentlemen -- Madam Foreperson, as I
2 indicated to you, you are responsible for writing the
3 verdict form. There is no significance whatsoever in
4 the way that I read these verdict forms. It's simply
5 one must go first and one must go on the paper first.

6 In the Court of General Sessions, the State of
7 South Carolina vs. Termaine Nelson, docket 2007-GS-10-
8 11054, verdict form: we, the jury, find the defendant
9 -- excuse me. We, the jury, find the defendant not
10 guilty, or, we, the jury, find the defendant guilty, of
11 murder.

12 You certify, Madam Foreperson, that this
13 decision is the unanimous decision of the jury. All
14 twelve of you must agree on the decision that you
15 reach. You will sign the verdict form, as well as
16 date it.

17 In the Court of General Sessions, State of South
18 Carolina vs. Termaine Nelson, docket number 2008-GS-10-
19 7463, we, the jury, find the defendant not guilty, or
20 we, the jury, find the defendant guilty, of assault and
21 battery with intent to kill.

22 Again, Madam Foreperson, you must certify that
23 the decision is the unanimous decision of the jury,
24 sign it, and date it.

25 Ladies and gentlemen, this will be the last time

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1 I say this to you. Do not begin your deliberations.
2 Do not discuss this case amongst yourselves until you
3 are told to do so. We will be gathering the evidence
4 that goes back to the jury room with you, as well as
5 the verdict form. When the bailiff brings all of those
6 items to you, he will indicate that you may begin your
7 deliberations.

8 Ms. Alternate, Ms. Buttons, you have completed
9 your service. I ask that you remain with us in a
10 separate room until I personally release you. Again,
11 you have completed your service, but do not discuss
12 this case with anyone until I have told you that you
13 may do so.

14 Please rise for the jury.

15 [Whereupon, the jury exits the courtroom at
16 2:59 p.m.]
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1 THE COURT: Thank you. Be seated.

2 Any additions, corrections or exceptions to the
3 charge as read? From the State?

4 MR. LEVENTIS: None from the State, Your Honor.

5 THE COURT: From the defendant?

6 MR. RUNYON: Checking my list, Judge.

7 THE COURT: Certainly. Mr. Runyon, while you
8 are checking your list, if you'll just come and check
9 the verdict forms before they go back. Mr. Leventis,
10 Mr. Runyon?

11 [Off the record momentarily]

12 MR. RUNYON: There are no additions or
13 exceptions to the charge from the -- and the defense
14 agrees with the forms of the verdict.

15 THE COURT: Thank you.

16 MR. LEVENTIS: I agree with the forms of the
17 verdict, Your Honor. Thank you.

18 THE COURT: All right. And I believe -- if you
19 will just make sure there are no problems with the
20 exhibits going back.

21 [Off the record momentarily]

22 THE COURT: All right. So we agreed on the
23 exhibits to go back?

24 MR. LEVENTIS: We have.

25 MR. RUNYON: Yes, Your Honor.

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1 THE COURT: All right.

2 [Whereupon, the evidence and verdict forms go
3 out to the jury at 3:02 p.m.]

4 THE COURT: Anything before we -- anything
5 further from the State?

6 MR. LEVENTIS: Nothing, Your Honor.

7 THE COURT: Anything further from the defendant?

8 MR. RUNYON: Nothing from the defendant, Judge,
9 unless you entertain motions again for directed
10 verdict. And I don't anticipate the Court will do
11 that.

12 THE COURT: No, sir.

13 So we'll be at ease at this time until we have a
14 question or a verdict.

15 MR. LEVENTIS: Thank you.

16 THE COURT: Thank you.

17 [Whereupon, a recess is held from 3:02 p.m. to
18 3:45 p.m.]

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VERDICT

THE COURT: All right. I understand we have a verdict. Anything from the State?

MR. LEVENTIS: Nothing from the State.

MR. RUNYON: Nothing from --

THE COURT: From the defendant?

MR. RUNYON: -- the defendant, Your Honor.

THE COURT: Please bring in the jury.

[Whereupon, the jury enters the courtroom at 3:46 p.m.]

THE BAILIFF: The jury is all here.

THE COURT: Thank you. Please be seated.

Madam Foreperson, I understand we have reached a verdict?

THE FOREPERSON: Yes, ma'am.

THE COURT: If you will please hand the verdict form to the bailiff.

[Whereupon, the foreperson proffers documents to the bailiff. The bailiff proffers documents to the Court. The Court proffers documents to the clerk of court]

THE COURT: Mr. Clerk.

THE CLERK OF COURT: The State of South Carolina versus Termaine Nelson, defendant; we, the jury, find the defendant guilty of murder; signed by foreperson,

MIA PERRON, CCR, CVR-CM

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1 dated November 10th, 2009.

2 Ladies and gentlemen of the jury, if this is
3 your verdict, please reply by raising your right hand.

4 [Whereupon, jurors comply]

5 THE CLERK OF COURT: Let the record reflect that
6 all twelve jurors have raised their right hand.

7 State of South Carolina, again, versus Termaine
8 Nelson, indictment 2008-GS-10-7463, we, the jury, find
9 the defendant guilty of assault and battery with intent
10 to kill; signed by foreperson, dated November 10th,
11 2009.

12 Once again, ladies and gentlemen of the jury, if
13 this is your verdict, please reply by raising your
14 right hand.

15 [Whereupon, jurors comply]

16 THE CLERK OF COURT: Thank you.

17 Again, let the record reflect that all twelve
18 jurors have raised their right hand, Your Honor.

19 THE COURT: Thank you.

20 Mr. Runyon, anything further required of the
21 jury?

22 MR. RUNYON: We respectfully request that the
23 jury be polled. I think they could be polled one time
24 for both indictments, Your Honor.

25 THE COURT: All right. Please poll the jury.

POLLING OF THE JURY

THE CLERK OF COURT: Ladies and gentlemen of the jury, I will be asking you two questions as to each indictment. When I do call your juror number, please respond.

Juror number 305, is this your verdict?

JUROR 305: Yes.

THE CLERK OF COURT: And is it still your verdict as to murder?

JUROR 305: Yes.

THE CLERK OF COURT: As to the indictment for assault and battery with intent to kill, is this your verdict?

JUROR 305: Yes, it is.

THE CLERK OF COURT: And is it still your verdict?

JUROR 305: Yes, it is.

THE CLERK OF COURT: Thank you.

Juror number 288, is this your verdict to murder?

JUROR 288: Yes.

THE CLERK OF COURT: And is it still your verdict?

JUROR 288: Yes.

THE CLERK OF COURT: As to assault and battery

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1 with intent to kill, is this your verdict?

2 JUROR 288: Yes.

3 THE CLERK OF COURT: And is it still your
4 verdict?

5 JUROR 288: Yes.

6 THE CLERK OF COURT: Thank you.

7 Juror number 336, is this your verdict?

8 JUROR 336: Yes.

9 THE CLERK OF COURT: And is it still your
10 verdict for murder?

11 JUROR 336: Yes.

12 THE CLERK OF COURT: As to assault and battery
13 with intent to kill, is this your verdict?

14 JUROR 336: Yes.

15 THE CLERK OF COURT: And is it still your
16 verdict?

17 JUROR 336: Yes.

18 THE CLERK OF COURT: Thank you.

19 Juror number 205, is this your verdict?

20 JUROR 205: Yes.

21 THE CLERK OF COURT: And is it still your
22 verdict for murder?

23 JUROR 205: Yes.

24 THE CLERK OF COURT: And as to assault and
25 battery with intent to kill, is this your verdict?

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1 JUROR 205: Yes.

2 THE CLERK OF COURT: And is it still your
3 verdict?

4 JUROR 205: Yes.

5 THE CLERK OF COURT: Thank you.

6 Juror number 229, is this your verdict?

7 JUROR 229: Yes.

8 THE CLERK OF COURT: And is it still your
9 verdict for murder?

10 JUROR 229: Yes.

11 THE CLERK OF COURT: As to assault and battery
12 with intent to kill, is this your verdict?

13 JUROR 229: Yes.

14 THE CLERK OF COURT: And is it still your
15 verdict?

16 JUROR 229: Yes.

17 THE CLERK OF COURT: Thank you.

18 Juror number 185, is this your verdict?

19 JUROR 185: Yes.

20 THE CLERK OF COURT: And is it still your
21 verdict for murder?

22 JUROR 185: Yes.

23 THE CLERK OF COURT: Thank you.

24 As to assault and battery with intent to kill,
25 is this your verdict?

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1 JUROR 185: Yes.

2 THE CLERK OF COURT: And is it still your
3 verdict?

4 JUROR 185: Yes.

5 THE CLERK OF COURT: Thank you.

6 Juror number 106, is this your verdict?

7 JUROR 106: Yes.

8 THE CLERK OF COURT: And is it still your
9 verdict for murder?

10 JUROR 106: Yes.

11 THE CLERK OF COURT: As to assault and battery
12 with intent to kill, is this your verdict?

13 JUROR 106: Yes.

14 THE CLERK OF COURT: And is it still your
15 verdict?

16 JUROR 106: Yes.

17 THE CLERK OF COURT: Thank you.

18 Juror number 120, is this your verdict?

19 JUROR 120: Yes.

20 THE CLERK OF COURT: And is it still your
21 verdict for murder?

22 JUROR 120: Yes.

23 THE CLERK OF COURT: And as to assault and
24 battery with intent to kill, is this your verdict?

25 JUROR 120: Yes.

1 THE CLERK OF COURT: And is it still your
2 verdict?

3 JUROR 120: Yes.

4 THE CLERK OF COURT: Thank you.

5 Juror number 322, is this your verdict?

6 JUROR 322: Yes.

7 THE CLERK OF COURT: And is it still your
8 verdict for murder?

9 JUROR 322: Yes.

10 THE CLERK OF COURT: As to assault and battery
11 with intent to kill, is this your verdict?

12 JUROR 322: Yes.

13 THE CLERK OF COURT: Again, is your verdict with
14 assault and battery with intent to kill guilty?

15 JUROR 322: Yes.

16 THE CLERK OF COURT: Thank you.

17 I apologize, Your Honor.

18 Juror 287, is this your verdict?

19 JUROR 287: Yes.

20 THE CLERK OF COURT: And is it still your
21 verdict for murder?

22 JUROR 287: Yes.

23 THE CLERK OF COURT: As to assault and battery
24 with intent to kill, is this your verdict?

25 JUROR 287: Yes.

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1 THE CLERK OF COURT: And is it still your
2 verdict?

3 JUROR 287: Yes.

4 THE CLERK OF COURT: Thank you.

5 Juror 293, is this your verdict?

6 JUROR 293: Yes.

7 THE CLERK OF COURT: And is it still your
8 verdict for murder?

9 JUROR 293: Yes.

10 THE CLERK OF COURT: As to assault and battery
11 with intent to kill, is this your verdict?

12 JUROR 293: Yes.

13 THE CLERK OF COURT: And is it still your
14 verdict?

15 JUROR 293: Yes.

16 THE CLERK OF COURT: Thank you.

17 Juror 211, is this your verdict?

18 JUROR 211: Yes.

19 THE CLERK OF COURT: And is it still your
20 verdict for murder?

21 JUROR 211: Yes.

22 THE CLERK OF COURT: As to assault and battery
23 with intent to kill, is this your verdict?

24 JUROR 211: Yes.

25 THE CLERK OF COURT: And is it still your

1 verdict?

2 JUROR 211: Yes.

3 THE CLERK OF COURT: Is there any juror's name I
4 have missed?

5 [Whereupon, there is no response]

6 THE CLERK OF COURT: Your Honor, the jury has
7 been polled.

8 THE COURT: Thank you.

9 Anything further required --

10 MR. RUNYON: Nothing further, Your Honor.

11 THE COURT: -- of the jury?

12 Anything further required of the jury,

13 Mr. Leventis?

14 MR. LEVENTIS: No, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury,
16 this completes your service to this case.

17 [Off the record momentarily]

18 THE COURT: Of course, as I indicated, tomorrow
19 is a court holiday so there will be no jury service
20 tomorrow, but you will need to call back this evening
21 at 6:00 p.m. to receive instructions for the remainder
22 of the week.

23 You may discuss this case now amongst yourselves
24 or with anyone you choose to, but you also have the
25 right not to discuss this case. If anyone continues

State vs. Termaine Nelson
Jury Trial, Volume 2 of 2
November 10, 2009

1 and you feel that it rises to the level of harassment,
2 if you will call the Court and I will handle the matter
3 personally.

4 Again, it was a pleasure having you in my
5 courtroom, and, again, thank you for your service to
6 Charleston County.

7 Please rise.

8 You are excused. Thank you.

9 [Whereupon, the jury is excused and exits the
10 courtroom at 3:52 p.m.]

11 THE COURT: Thank you. Be seated.

12 Outside of the presence of the jury, anything
13 further, Mr. Runyon?

14 MR. RUNYON: Nothing further, Your Honor.

15 I think he would be ready for sentencing. I
16 mean, there's no other pending matters to come before
17 the Court, as far as I'm concerned.

18 THE COURT: Thank you, Mr. Runyon.

19 Are we prepared, Mr. Leventis, are you ready to
20 go forward with sentencing at this time?

21 MR. LEVENTIS: Your Honor, the State
22 respectfully requests that we defer sentencing to
23 give the defendant the opportunity to consider
24 cooperating against the remaining codefendants in
25 this case.

1 THE COURT: Mr. Runyon?

2 MR. RUNYON: Well, Judge, we appreciate the
3 consideration but considering the nature of the
4 sentencing, I'm not sure what consideration we can get
5 him, since the jury has spoken. But we accept the
6 indulgence of the State that's been offered to us.

7 THE COURT: Mr. Leventis, when do you anticipate
8 calling the codefendant for trial?

9 MR. LEVENTIS: It's set for trial February 22,
10 2010.

11 THE COURT: And so, Mr. Leventis, you are
12 requesting that Mr. Nelson remain in the Charleston
13 County Detention Center until then?

14 MR. LEVENTIS: That is correct, Your Honor. If
15 at any point between now and then he unequivocally
16 decides he does not want to cooperate with the State's
17 case, we'll be happy to bring him back before you and
18 have him sentenced at that time. Otherwise, he can
19 cooperate on February 22nd, 2010.

20 THE COURT: Mr. Runyon?

21 MR. RUNYON: Judge, I understand. I think that
22 Mr. Leventis has given us a safety valve in the sense
23 that we have the ability to call Mr. Leventis and
24 decline his offer of assistance, which would trigger a
25 sentencing and the proceeding would go on from there.

State vs. Termaine Nelson
Jury Trial, Volume 2 of 2
November 10, 2009

1 But, I mean, obviously I have to talk to my client. I
2 have to -- you know, we have to discuss it.

3 And, I mean, I will tell you this, Judge. And
4 I'm not being facetious. The mental health program
5 that he's in at the Charleston County Jail is far
6 superior to what he could receive with the South
7 Carolina Department of Corrections. And so for
8 purposes of that alone, we would welcome a little bit
9 more time under that program.

10 THE COURT: All right. Then nothing further is
11 required; is that correct, Mr. Leventis?

12 MR. LEVENTIS: Not at this time, Your Honor.
13 That's correct.

14 THE COURT: All right. Again, Mr. Leventis, Mr.
15 Stack, Mr. Runyon, thank you for your professionalism,
16 your zealous representation of your clients. And as
17 always, it was a pleasure having you in my courtroom.

18 We are dismissed.

19 [JURY TRIAL CONCLUDES AT 3:58 P.M.]
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State vs. Termaine Nelson
Jury Trial, Volume 2 of 2
November 10, 2009

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on November 10, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 23th day of November, 2007.

Mia Perron
Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

-188-

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
07-GS-10-11054, 7463

ORIGINAL

THE STATE,
 PLAINTIFF
 vs.
TREMAINE NELSON,
 DEFENDANT

TRANSCRIPT OF RECORD

APRIL 23, 2010
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KRISTI LEA HARRINGTON

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

HENRY C. LEVENTIS, ESQUIRE
ASSISTANT SOLICITOR

WILLIAM RUNYON, JR., ESQUIRE
ATTORNEY FOR DEFENDANT

SHARON D. JONES,
OFFICIAL COURT REPORTER

I N D E X

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3	Sentencing	3
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* * * P R O C E E D I N G S * * *

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THE COURT: This is the matter of the State vs. Tremaine Devon Nelson, is that correct?

MR. LEVENTIS: That's correct, Your Honor.

THE COURT: Good morning, Mr. Runyon.

MR. RUNYON: Good morning, Your Honor.

THE COURT: And we had deferred sentencing, is that correct, Mr. Leventis?

MR. LEVENTIS: Yes, Your Honor.

THE COURT: Mr. Leventis, I'll be happy to hear from you.

MR. LEVENTIS: Thank you, Your Honor. As you recall, Mr. Nelson was convicted of murder and assault and battery with intent to kill in November of 2009. We asked that you defer sentencing at that time to give the defendant the opportunity to cooperate against the remaining co-defendant in this matter. The co-defendant's case has now been resolved. We are ready to move forward with the sentencing.

I'd be happy to go over his prior record and give you a refresher on the facts of the case, if you would like me to do that.

THE COURT: Yes, sir, Mr. Leventis.

MR. LEVENTIS: Very well. Let me start with his

1 prior record. This crime occurred in 2007, July of 2007.
2 Prior to that in 2001, the defendant was convicted of
3 possession of cocaine; possession with the intent to
4 distribute cocaine within the proximity of a school;
5 possession of a stolen motor vehicle; failure to stop for
6 a blue light.

7 In 2003, he was convicted twice of criminal
8 domestic violence; malicious injury to personal property;
9 unlawful possession of a firearm. And, again, unlawful
10 possession of a firearm.

11 In 2005, he was convicted of unlawful carrying, and
12 possession of crack. In 2006, driving under suspension.

13 As you recall, this incident occurred on July 13,
14 2007. The defendant was at an apartment complex in North
15 Charleston. He was ripped off while selling crack cocaine
16 at the apartment complex. He went back to a house he had
17 come from, also in North Charleston, and called his two
18 co-defendants. They all met at his house in North
19 Charleston on Connor Avenue. And the three co-defendants
20 returned to the scene of the rip-off, this time carrying
21 A-K 47 assault rifles. Tremaine Nelson and Timothy Hoard
22 got out of the car and fired repeatedly in the direction
23 of the two victims, Corey Watkins (ph) and DeShaun Brown.

24 Over the course of three jury trials, it was
25 established repeatedly that neither Corey Watkins nor

1 Deshaun Brown had any involvement in the defendant's prior
2 drug dealings or rip-off.

3 All the evidence proved that the two victims were
4 sitting at the crime scene, minding their own business,
5 when the defendant got out of his SUV and began to fire
6 his A-K 47. The evidence also showed that there were
7 children as young as six years old at the crime scene when
8 this occurred.

9 Deshaun Brown died as a direct result of being shot
10 in the back by a high powered rifle. Corey Watkins was
11 permanently maimed as a result of being shot in the leg.

12 After the shooting, the defendant got back in the
13 SUV and fled the scene. He fled later to Atlanta, where
14 he was ultimately picked by U.S. Marshals.

15 This was a senseless act of violence done to
16 protect the defendant's credibility as a drug dealer.
17 Over the course of three jury trials, two for this
18 defendant and one for his co-defendant, Timothy Hoard,
19 Tremaine Nelson never once expressed remorse for his
20 actions. In fact, he cooperated with the co-defendant's
21 attorney in an attempt -- in an attempt to exonerate
22 Timothy Hoard.

23 I can't stand before you today and say absolutely
24 that he committed perjury during that trial, but what I
25 can say with absolute certainty, is that the defendant's

1 testimony at the trial of his co-defendant was
2 inconsistent with the defendant's prior statements to the
3 police. It was inconsistent with all the other evidence
4 and testimony, and it was inconsistent with his
5 co-defendant, his third co-defendant, Jaquan Bryant's
6 testimony. At the end of the day, the defendant's
7 testimony at Timothy Hoard's trial, while as a side note,
8 I would bring it to your attention to demonstrate his lack
9 of remorse and his failure to accept responsibility in
10 this matter.

11 This was a senseless crime against two innocent
12 victims, and the defendant has never accepted
13 responsibility for these crimes. And so I ask that you
14 take that into consideration in your sentencing, Your
15 Honor. And I believe one of his family members would like
16 to speak to you.

17 **THE COURT:** Okay.

18 **MR. SHEPPARD:** My name is Anthony Sheppard. I'm
19 Deshaun's uncle. And, you know, when I first heard about
20 what happened to him, I was away and I came back. And
21 from listening to people and then also coming to court on
22 numerous occasions to find out what was actually going on,
23 and as counsel just mentioned just now, that there was a
24 lot of kids and he got shot in the back, just sitting
25 there doing -- doing nothing.

1 And then as I sit in the trial to see that -- how
2 it was trying to be turned that he wasn't involved, where
3 it consistently shows that he was. So, I just hope and
4 pray that just your system will show these young kids
5 today that what they do, that there are consequences for
6 it. You know, even to the point that -- even life,
7 because you don't have the right to take life because you
8 didn't give it. So, I just hope that you'll take
9 everything that was said today in consideration for giving
10 my sister that closure to come to this even now. Thank
11 you.

12 **THE COURT:** Thank you.

13 **MR. LEVENTIS:** That's all from the State, Your
14 Honor. Thank you.

15 **THE COURT:** Mr. Leventis, what did the co-defendant
16 receive?

17 **MR. LEVENTIS:** The co-defendant pled out to
18 accessory after the fact and was sentenced to 15 years.

19 **THE COURT:** And this -- what is the State
20 requesting?

21 **MR. LEVENTIS:** The maximum, Your Honor.

22 **THE COURT:** Mr. Runyon, I'll be happy to hear from
23 you or anyone regarding the sentencing.

24 **MR. RUNYON:** Judge, you know, I'm getting old and
25 I'm real old compared to my young friend over here, but I

1 don't remember it quite like he said it.

2 First of all, if we go back to the trial which you
3 heard, the deceased -- and since we've made this a focal
4 point of the sentencing, the deceased came to the car of
5 the defendant, in which the defendant, his girlfriend and
6 the child of the deceased were riding when they first came
7 to the apartment complex, and he engaged them in
8 conversation.

9 And then when the man with the gun appeared to take
10 the -- to arm rob them of the drugs -- and I'm not saying
11 that drug dealing is a proper thing -- the deceased did
12 tell -- and it's in the transcript -- the deceased did
13 tell the mother of his child, you know, I sure am sorry
14 about all this, but we've just got to do it.

15 Now, this was an unfortunate set of circumstances.
16 It's -- it's an unseemingly set of circumstances that, you
17 know, most people don't hear and don't witness in their
18 every day life, that doesn't mean it's justification for
19 killing or anything of that sort, but I have to call this
20 to the court's attention.

21 After his trial, they asked that the -- the
22 sentencing be deferred. And there was a colloquy between
23 myself and Mr. Leventis. And I went to the jail and I
24 finally sat down with him and I said, listen, now is the
25 time, you've -- you've been convicted. Now -- you haven't

1 testified, now is the time that you should discuss with
2 somebody what you recall really happened.

3 After he told me what his version was -- and you've
4 got to remember this was after sitting in jail for two
5 years under psychotropic medications, Judge. He tells --
6 if you recall -- to testify to what his recollections
7 would be. I informed Mr. Leventis and both of us
8 concurred that this is probably potentially Brady
9 material.

10 He was subpoenaed, brought in by the defendant,
11 which material -- very ethically done, was revealed to the
12 defendant. So, when they couched this as -- well, you've
13 got to punish him, Judge, because he corroborated with the
14 defense, he's sitting in jail. And he was put on the
15 stand by the defense because he had a -- his version of
16 the story was -- was -- is true. It differed from his --
17 his previously given statement, which was introduced into
18 evidence, which was made when he was without his
19 psychotropic meds and what have you.

20 And I would suggest to the court, that I would
21 agree with my friend, that it probably helped the
22 co-defendant in that case and resulted in some benefit to
23 that defendant. However, when you're talking about
24 justice, you don't send the message from the courthouse as
25 the State did in this case that says, you know, when you

1 come in this courthouse and you say something that the
2 State doesn't like or doesn't agree with the State's
3 position, therefore, you know, you're going to be punished
4 for it. That's the wrong message.

5 But, in any event, Judge, this man is stabilized on
6 psychotropic meds. Unfortunately, he probably will not
7 remain stabilized on those psychotropic medications
8 because the South Carolina Department of Corrections can't
9 afford to do that. And that's where he's going and he's
10 going there for a substantially long period of time.

11 And I would suggest, Judge, that giving him a life
12 sentence -- a 30 year life would be equivalent to a life
13 sentence, and that he probably won't ever see the light of
14 day anyway under that sentence, Judge, because of the
15 circumstances in which he'll have to live.

16 And, therefore, I would ask the court to impose the
17 30 year life sentence, Judge, just to avoid the
18 appearance, quite frankly, of the State's request to
19 punish him because his testimony was somehow not favorable
20 to the State. I mean, I'm not suggesting that the court
21 would do that, but just that -- the whole thing in here
22 that, well, he cooperated with the defendant in the other
23 case, therefore, he needs to be punished for that. He
24 testified under oath, after two years on psychotropic
25 medications, what his recollection -- as a matter of fact,

1 his testimony under oath was what he finally told me when
2 I followed my friend's suggestion, that I go to the jail
3 and see what his testimony really would be. Because
4 other -- up to that time, we had been standing on his
5 statement, which we had resisted being introduced into
6 evidence, Judge, for a lot of reasons. That's neither
7 here nor there.

8 So, I think that when you say life in prison and --
9 and 30 years is day-to-day, Judge, given his age and what
10 have you, he's not going to be getting out.

11 **THE COURT:** Mr. Runyon, is it your position that
12 the murder statute is 30 or life, or 30 to life?

13 **MR. RUNYON:** No. It's my position that -- that you
14 can sentence him to life without parole. And it's my
15 position that there is the ability to sentence him to,
16 what I would suggest, is the 30 year life sentence, which
17 would mean that he would have to serve 30 years before he
18 would be eligible for any type of release.

19 **THE COURT:** And does any of the family members wish
20 to address the court or does Mr. Nelson wish to address
21 the court? Ma'am, I need you to state your name for the
22 record and spell your last name, please.

23 **MS. NELSON:** My name is Elizabeth Nelson,
24 N-e-l-s-o-n. To the Judge, Mr. Runyon and the State, I am
25 Tremaine's grandmother. And Tremaine was under good

1 supervision until he became 18 and he wanted to do his
2 thing on his own. But what Tremaine did, he did it on his
3 own free will because me and his mom, we keep talking to
4 him, counselling, telling him, don't hang out. Be with
5 men who want to be somebody. We sent him to a traditional
6 school, where he was learning different things and he was
7 trying to get his GED, but it all fell through. But
8 whatever the court does today, this mother will never see
9 her son again, but yet we can still see Tremaine. And I
10 pray to God, what decision is made, is a willing decision
11 of God. Thank you.

12 **THE COURT:** Anyone else, Mr. Runyon?

13 **MR. RUNYON:** No, Your Honor.

14 **THE COURT:** Mr. Nelson, anything you wish to tell
15 the court before I impose sentence?

16 **MR. NELSON:** Yes, Your Honor. I would like to
17 apologize to the court and to the victim's family for
18 their loss. And ask you to please be lenient on my
19 sentence, but it was an accident.

20 **THE COURT:** Mr. Nelson, what do you think would be
21 lenient in this particular case? Please stand when you
22 address the court.

23 **MR. NELSON:** Ma'am?

24 **THE COURT:** What do you think would be an
25 appropriate sentence for you in this case?

1 **MR. NELSON:** Something less than 30 years.

2 **THE COURT:** All right. Mr. Nelson, do you
3 understand that I can't get you anything less than 30
4 years?

5 **MR. NELSON:** Yes, ma'am.

6 **THE COURT:** And, Mr. Runyon, have you gone over Mr.
7 Nelson's appellate rights?

8 **MR. RUNYON:** Yes, Your Honor. We will be filing a
9 Notice of Appeal on Monday. I -- I just wanted to add one
10 more thing, and I don't want to keep talking -- because we
11 are kind of limited in what the court can do, we might as
12 well get -- get on with it. But I've -- I've been
13 representing him now for a couple of years, Judge. And I
14 can tell you that is the sanest he's been, the last few
15 months here. When I first went to see him, he was -- he
16 was really out there. And it's all attributable to this
17 underlying mental disorder, Judge, which he's finally
18 stabilized -- how long he remains stabilized is we --
19 we'll -- we'll see. Thank you, Judge.

20 **THE COURT:** Thank you. Mr. Nelson, please rise.
21 Mr. Nelson, you were convicted by jury trial. Your
22 attorney has indicated to me that he has explained to you
23 your appellate rights. Do you understand that you have a
24 right to appeal the trial and the sentence that I'm about
25 to impose upon you here today?

1 **MR. NELSON:** Yes, ma'am.

2 **THE COURT:** Mr. Nelson, it's the order of the court
3 on indictment 2008-GS-10-7463, which is a true bill
4 indictment for assault and battery with intent to kill,
5 that you be committed to the State Department of
6 Corrections for a term of 20 years. You are to be given
7 credit for any time that you have previously served.

8 That is concurrent to 2007-GS-10-11054, that you be
9 committed to the State Department of Corrections for a
10 term of 45 years. You are to be given credit for any time
11 that you have served. Good luck to you, sir.

12 **MR. RUNYON:** Thank you very much, Your Honor.

13 **THE COURT:** Thank you, Mr. Runyon.

14 **MR. LEVENTIS:** Thank you, Your Honor.

15 (Whereupon, the hearing adjourned.)

16 * * * END OF TRANSCRIPT * * *

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1 CERTIFICATE OF REPORTER

2

3 I, SHARON D. JONES, OFFICIAL COURT REPORTER FOR THE

4 9TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO

5 HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND

6 COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND

7 EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,

8 RELATIVE TO APPEAL, IN THE FAMILY COURT FOR CHARLESTON

9 COUNTY, SOUTH CAROLINA, ON THE 23RD DAY OF APRIL, 2010.

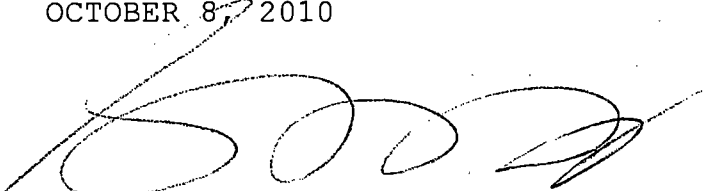
10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL

11 NOR INTEREST TO ANY PARTY HERETO.

12

13 OCTOBER 8, 2010

14

15 

16 _____

17 SHARON D. JONES,

18 FAMILY COURT REPORTER

19 COMMISSION EXPIRES: 3/20/12

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NSW20070809177

WITNESSES

CHARLES BULLARD

North Charleston Police Department

AGENCY CASE NUMBER

2007029529

ARREST WARRANT NUMBER

F969651

DATE OF ARREST

2007-07-30

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *[Signature]*

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. Z007GS1011054

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2007

THE STATE

vs.

TRAMaine DEVON NELSON

Indictment for

Murder

FILED

2007 OCT 15 PM 3:17

JULIE J. ARMSTRONG
CLERK OF COURTBY *[Signature]*

07-4782-1

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURTBy *[Signature]*
DEPUTY CLERK

EXHIBIT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 8, 2007 the Grand Jurors of Charleston County
present upon their oath:

Murder

That in Charleston County on or about July 13, 2007, with malice aforethought, TRAMAINE DEVON NELSON did kill and murder Deshaun Brown by means of shooting him, and that Deshaun Brown did die in Charleston County as a proximate result thereof on July 13, 2007; in violation of Section 16-3-10 of the Code of Laws of South Carolina (1976) as amended.

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

Nathan Williams
NATHAN WILLIAMS
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE L ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By [Signature]
DEPUTY CLERK

NSW20071010573

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2007029529

ARREST WARRANT NUMBER

I100994

DATE OF ARREST

August 21, 2007

ACTION OF GRAND JURY

Matthew
Foreperson of Grand Jury
Date:

OCT 07 2008

VERDICT

Guilty

Pamela
Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1007463

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2008

THE STATE

VS.

TRAMaine DEVON NELSON

B/M

Indictment for

Assault and Battery With Intent to Kill

REC
2008 OCT 10 PM 2:39

CLERK OF COURT

BY

07-5327-1

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

Assault and Battery With Intent to Kill

That in Charleston County, South Carolina, on or about July 13, 2007, the Defendant, TRAMINE DEVON NELSON, alone or while acting with others, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Corey Watkins, to wit: shooting; all in violation of the Common Law of South Carolina and Section 16-03-620 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 case made and provided.


NATHAN WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
TRAMAIN DEVON NELSON

AKA:

Race: B Sex: M Age: 21DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COU

GENERAL SESSIONS

INDICTMENT/CASE#: 2007 GS1011054A/W#: F969651Date of Offense: [REDACTED]S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The 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] 71618

Leventis, Henry

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 45 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 paymentof \$ plus costs and assessments as applicable; the balance is suspended with probation for days/months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2151Sentence Date: 4/23/10

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
TRAMAIN DEVON NELSON

AKA: _____
 Race: B Age: 24
 DOB: SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: ABWIK/Assault and Battery with Intent to Kill

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS1007463A/W#: 1100994Date of Offense: 7/13/2007S.C. Code §: 16-03-0620CDR Code #: 0014

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code #: 0014
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Leventis, Henry 71618

Leventis, Henry

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2008 GS-10-11054
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ 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 \$ _____
 § 47.12 (Public Def Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$100 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____
 § 90.7 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.98
 TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk SHARDN JONES

Court Reporter: _____

SCCA/217 (11/2009)

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

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

Presiding Judge Kristi H. SmithJudge Code: 215Sentence Date: 4/23/10

FORM 5

C12-CP-10-7003

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTONTRAMANE D. NELSON

Full name and prison number (if any) of Applicant.

DEPARTMENT OF CORRECTIONS

State of South Carolina County of
CHARLESTON MUNICIPALITY OF
NORTH CHARLESTON

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

APPLICATION FOR

POST-CONVICTION REVIEW

PURSUANT TO

17-27-20 (A)(3) 17-27-20 (A)(3)

2012 OCT 26 PM 4:06

JULIE J. AUSTIN
CLERK

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) Jaguan Bryant, Timothy Heard, Jr.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007 - GS - 101154 MURDER
 - (b) 2008 - GS - 107463 (ABWIK)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) APRIL 23RD 2010 45 YEARS
 - (b) APRIL 23RD 2010 20 YEARS

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty AFTER A PLEA OF NOT GUILTY
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. SEPTEMBER 12th 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. OPINION NO 2012-UP-518
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: SEE ATTACHMENT AND EXHIBITS

- (a) SEE ATTACHMENT AND EXHIBITS
- (b) SEE ATTACHMENT AND EXHIBITS
- (c) SEE ATTACHMENT AND EXHIBITS

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE ATTACHMENT EXHIBITS AND REFERENCE TRANSCRIPT
- (b) SEE ATTACHMENT EXHIBITS AND REFERENCE TRANSCRIPT
- (c) SEE ATTACHMENT EXHIBITS AND REFERENCE TRANSCRIPT

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) COUNSEL FAILED TO CHALLENGE ADVERSARIA PROCESS

(b) APPELLATE COUNSEL DID NOT ADEQUATELY REVIEW RECORD

(c) THE SOLICITORS OFFICE WITHHELD EXCULPATORY EXONERATING EVIDENCE

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. WILLIAM L RUNYON JR ESQUIRE
- ii. #3 GAMEROCK AVENUE SUITE 303
- iii. CHARLESTON SC 29407

- (b) the proceedings at which each such attorney represented you:

- i. PRELIMINARY HEARINGS
- ii. TRIAL
- iii. ROBERT M DUDER APPELLATE DEFENDER

19. State clearly the relief you seek in filing this application:

A VACATION OF CONVICTION AND SENTENCES

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Terrence Neh

SWORN to and subscribed before me this 11th
day of October, 2012

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Thompson Nelson
Applicant

SWORN or affirmed to and subscribed before me this
11th day of October, 2012

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
COUNTY OF CHARLESTON) PLEAS
TRAMaine NELSON) NINTH JUDICIAL CIRCUIT
) ATTACHMENT FOR
STATE OF SOUTH CAROLINA) APPLICATION FOR POST-CONVICTION
COUNTY OF CHARLESTON, SCDC) RELIEF
ET AL DEFENDANTS)

INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL FOR APPLICANT WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE STATED JURISDICTION TO INITIATE TRIAL CONVICTION AND SENTENCE THE APPLICANT

FACTS IN SUPPORT

THE RECORD WOULD REFLECT BY TRANSCRIPT OF PROCEEDINGS THAT THE TRIAL JUDGE, WHO IS THE RESIDENT JUDGE OF THE NINTH CIRCUIT ASKED COUNSEL FOR THE APPLICANT ON PAGE 7 LINES 21 - 24: "MR. RUNYON, DOES YOUR CLIENT WAIVE FORMAL ARRANGEMENT?"

MR. RUNYON, ABSOLUTELY, YOUR HONOR.

THE COURT ALSO ASKED "DID HE EVER MAKE ANY STATEMENTS OR ACTIONS DURING YOUR INTERVIEW THAT INDICATED TO YOU THAT HE MAY HAVE BEEN HEARING VOICES?" NO, SIR. SEE PAGE 48 LINES 22 - 25

THE COURT ON PAGE 85 LINES 18 - 23 THE COURT STATED WE WILL TAKE A BREAK UNLESS THERE IS ANY

PRETRIAL MATTERS. APPLICANTS COUNSEL MR. RUNYON
RESPONDED. NOTHING FROM THE DEFENSE YOUR HONOUR.

CAUSE AND PREJUDICE

By NOT CHALLENGING THE STATE AUTHORITY TO ACT, THIS
RESULTED IN A WAIVER OF SEVERAL IMPORTANT CONSTITUTIONAL
RIGHTS SUCH AS, A CHALLENGE TO THE SUFFICIENCY OF
THE INDICTMENT AS WRITTEN.

(B) A CHALLENGE AS TO WHETHER OR NOT THE CAUSE
WAS WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT OF
GENERAL SESSIONS.

(C) WHETHER OR NOT THE APPLICANT WAS BEING HELD TO
ANSWER TO AN OFFENSE, THAT WAS NOT SUPPORTED BY PROBABLE
CAUSE DETERMINATION BY THE JUDICIAL DEPARTMENT.

(D) WHETHER OR NOT THE INDICTMENT WAS FRAUDULENTLY
TRUE BILLED.

LAW ANALYSIS

IN STRICKLAND V WASHINGTON, 466 U.S. 668 (1984) THE COURT SET
FORTH A TWO-PART TEST FOR DETERMINING WHETHER THE PERFOR-
MANCE OF COUNSEL IS CONSTITUTIONALLY DEFICIENT.

FIRST, A DEFENDANT MUST SHOW THAT COUNSEL'S ERROR WAS SO
SERIOUS, THAT HE OR SHE WAS NOT FUNCTIONING AS THE
COUNSEL GUARANTEED BY THE SIXTH AMENDMENT, SEE ID. AT
687.

FAILURE TO CHALLENGE THE SUFFICIENCY OF AN INDICTMENT
BEFORE THE JURY WAS SWORN AND NOT RETRAINED.

CANNOT BE CONSIDERED TO BE WITHIN THE WIDE RANGE OF PROFESSIONALLY COMPETENT ASSISTANCE

SC CODE ANN § 17-19-90 CHALLENGES TO THE SUFFICIENCY OF AN INDICTMENT MUST BE MADE BEFORE THE JURY IS SWORN THEREFORE, COUNSEL COMMITTED ERROR.

THE SUFFICIENCY OF AN INDICTMENT IS DETERMINED BY, (1) WHETHER THE OFFENSE IS STATED WITH SUFFICIENT CERTAINTY AND PARTICULARITY TO ENABLE THE COURT TO KNOW WHAT JUDGMENT TO PRONOUNCE, AND THE DEFENDANT TO KNOW WHAT HE IS CALLED UPON TO ANSWER AND, WHETHER HE MAY PLEAD AN ~~AQUITTAL OR CONVICTION THEREON~~ (2) WHETHER IT APPRAISES

THE DEFENDANT OF THE ELEMENTS OF THE OFFENSE INTENDED TO BE CHARGED STATE V GENTRY, 363 SC 93 101-02 610 SE 2d 494, 499 (2005) CITING STATE V WILKES, 353 SC 462, 465. 578 SE 2d 717, 719 (2003) A RULING ON A TIMELY OBJECTION, BEFORE THE JURY IS SWORN, THAT AN INDICTMENT IS NOT SUFFICIENT, WILL RESULT IN THE QUASHING OF THE INDICTMENT UNLESS, WAIVED BY NOT FILING THE A PROPER TIMELY OBJECTION

THE INDICTMENT

THE INDICTMENT GIVES NOTICE THAT THE APPLICANT WAS ARRESTED ON JULY 30TH 2007, ON THE BASIS OF WARRANT NO F 96.9651, THE PROSECUTOR'S AGENCY IS NORTH CHARLESTON POLICE DEPARTMENT. THE GRAND JURY TOOK ACTION ON OCT 9TH 2007

THE CAPTION OF THE INDICTMENT, GIVES NOTICE THAT AT A COURT OF GENERAL SESSIONS, CONVENED ON OCT. 8, 2007, THE GRAND JURORS OF CHARLESTON COUNTY, PRESENT UPON THEIR OATH.

THE BODY OF THE INDICTMENT READS THAT IN CHARLESTON COUNTY ON OR ABOUT JULY 13TH 2007 WITH MALICE AFORETHOUGHT TRAMANE DEVON NELSON DID KILL AND MURDER DESHAUN BROWN BY MEANS OF SHOOTING HIM, AND THAT DESHAUN BROWN DID DIE IN CHARLESTON COUNTY, AS A PROXIMATE RESULT THEREOF ON JULY 13, 2007 IN VIOLATION OF SECTION 16-3-10 OF THE CODE OF LAWS OF SOUTH CAROLINA (1976) AS AMENDED.

MURDER STATUTE 16-3-10

16-3-10 IS AMBIGUOUS, UNCONSTITUTIONALLY VAGUE, AND IS ONLY A DERIVATIONAL STATUTE WHICH WAS NEVER PART OF THE THE 1976 CODE OF LAWS OF THE STATE OF SOUTH CAROLINA. IT DOES NOT GIVE NOTICE OF A PENALTY, OR SENTENCE TO BE IMPOSED AND THE ELEMENTS, SUFFICIENT TO CONFER JURISDICTION UPON A COURT TO TRY, CONVICT AND SENTENCE A DEFENDANT BEYOND A TERM OF (10) TEN YEARS, IT IS NOT THE CURRENT AND CORRECT LAW TO BE CHARGED, AND HAD BEEN REPEALED.

SUFFICIENCY OF AN INDICTMENT

FOR MURDER

STATE STATUTE 17-19-30 IS THE STATUTE THAT SETS FORTH THE ESSENTIAL ELEMENTS AS IT RELATES TO THE SUFFICIENCY OF AN INDICTMENT FOR MURDER, AND STATES THAT "EVERY INDICTMENT FOR MURDER SHALL BE DEEMED SUFFICIENT AND GOOD IN LAW, IN ADDITION TO SETTING FORTH THE DATE AND THE TIME, CHARGES THAT THE DEFENDANT DID KNOWINGLY, WILLFULLY, INTENTIONALLY, AND WITH MALICE AFORETHOUGHT DID KILL

AND MURDER THE DECEASE.

THE INDICTMENT MUST ALLEGED A PLACE OF ASSAULT AND
A PLACE OF DEATH, AS WELL AS THE TIME OF ASSAULT AND
 THE TIME OF DEATH. THESE INGREDIENTS ARE NOT ONLY
 TO BE ALLEGED IN THE INDICTMENT, RETURNED AGAINST THE
 ACCUSED, THEY MUST BE PROVEN, BEFORE THE ACCUSED MAY BE
 HELD TO ANSWER FOR THE OFFENSE CITING STATE V. RECTOR
 (SC 1980) 212, 155 SE 385

STATUTES

KEY 181 (1) 184 190

ALL RULES OF STATUTORY CONSTRUCTION ARE SUBSERVANT TO
 THE ONE THAT LEGISLATIVE INTENT, MUST PROVE IF IT CAN
 BE REASONABLY DIFFERED, IN THE LANGUAGE, AND THE LANGUAGE
MUST BE CONSTRUED IN LIGHT OF PURPOSE OF STATUTE,
 MEANING, IF A STATUTE LANGUAGE IS PLAIN AND LINGUISTIC
 UOUS, AND CONVEYS A CLEAR MEANING, THERE IS NO OCCASION
 FOR EMPLOYING RULES OF STATUTORY INTERPRETATION, AND
 COURT HAS NO RIGHT TO LOOK FOR, OR, IMPOSE ANOTHER
 MEANING. SEE ALSO STATUTE KEY 188 "COURT IS BOUND
BY PLAIN LANGUAGE OF STATUTE IN DETERMINING LEGISLATIVE INTENT

DUE-PROCESS CLAUSE

THE DUE-PROCESS CLAUSE REQUIRES THAT A CRIMINAL
 DEFENDANT, BE PROPERLY SERVED WITH A VALID INDICTMENT
CONSTITUTIONAL LAW KEY 4579

WHERE TIME IS OF THE ESSENCE OR CRIT OF THE OFFENSE
 AND INDICTMENT IS REQUIRED TO CHARGE THE SPECIFIC TIME AND
 DATE

CRIMINAL STATUTE IS UNCONSTITUTIONALLY VAGUE UNDER DUE-PROCESS CLAUSE, WHERE ITS LANGUAGE DOES NOT CONVEY SUFFICIENTLY DEFINITE WARNINGS AS TO PRESCRIBE CONDUCT.

THE PRINCIPLE IS APPLICABLE TO STATUTES SETTING FORTH STANDARD OF CONDUCT WHICH IS SUBJECT TO REGULATION AND IT IS EQUALLY IMPORTANT THAT STANDARDS ARE THERE TO GUIDE OFFICERS OR AGENCIES REQUIRED TO PASS JUDGEMENT ON PARTIES CALLED TO ACCOUNT FOR THEIR CONDUCT.

CHARGE BY THE COURT

THE CHARGE BY THE COURT WAS ~~ERRONEOUS~~ BURDEN SHIFTING, AND PREJUDICIAL IN THAT IT ALLOWED THE DEFENDANT TO BE CONVICTED OF AN OFFENSE FOR WHICH HE WAS NOT INDICTED. HE NOTED BY TRANSCRIPT PAGE 163 LINES #28. THE COURT NOTED THAT THE APPLICANT WAS CHARGED WITH THE HAND OF ONE THE HAND OF ALL. STATES 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. ON THE FOLLOWING PAGE THE COURT STATED ON LINES 11-21 COURT: MERE KNOWLEDGE THAT ANOTHER PERSON IS GOING TO COMMIT A CRIME, EVEN IF THE DEFENDANT IS PRESENT, WHEN THE CRIME IS COMMITTED, IS NOT SUFFICIENT TO CONVICT THE DEFENDANT AS A PRINCIPAL. GUILT AS PRINCIPAL IS SHOWN BY ACTUAL OR CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF PRIOR ARRANGEMENT THEREFORE, FINDING A PRIOR ARRANGEMENT PLAN OR COMMON

SCHEME IS NECESSARY FOR A FINDING OF GUILT AS A PRINCIPLE. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT, BY COMPETENT EVIDENCE, THE THEORY OF THE HAND OF ONE IS THE HAND OF ALL.

ON PAGE 165 LINES 9-14 THE JUDGE GAVE INSTRUCTION ON INTENT, STATING, "INTENT MEANS ACTUALLY INTENDING THE RESULT WHICH OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILLY. LINE 17 THE STATE MUST PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.

THE ISSUE IS THAT, THESE ELEMENTS WAS NOT ~~ADDRESSED IN THE INDICTMENT, AND PROVEN, BEFORE THE APPLICANT~~ WAS HELD TO ANSWER FOR SUCH.

WERE THE TERMS WAS ALTERED, CHANGING THE ELEMENTS OF A HAND OF ONE A HAND OF ALL, TO A PRINCIPAL AND IN ORDER TO BE GUILTY AS A PRINCIPAL, IT MUST BE SHOWN BY ACTUAL OR CONSTRUCTIVE PRESENCE AT THE SCENE OF THE CRIME, AS A RESULT OF PRIOR ARRANGEMENT. THEREFORE THE FINDING OF A PRIOR ARRANGED PLAN OR SCHEME IS NECESSARY FOR A FINDING OF GUILT AS A PRINCIPAL. SEE PAGE 164 LINES 14-19 IN STATE V PETERSON 287 SC 244 335 SE 2d 800 (1985). THE SOUTH CAROLINA SUPREME COURT, HAS LONG HELD THAT BURDEN SHIFTS PRESUMPTIONS ARE UNCONSTITUTIONAL, AND THAT EVIDENT ANY PRESUMPTIONS MUST BE CHARGED, STATE V KEY 282 SC 413 319 SE 2d 338 (1984).

IN SANDSTROM V MONTANA CITE 99 SCT 2450 1979) THE SUPREME COURT STATED, THAT THE FOURTEENTH AMENDMENT REQUIRE THAT THE STATE PROVE EACH AND EVERY ELEMENT OF

A CRIME, BEYOND A REASONABLE DOUBT CONSTITUTIONAL
LAW KEY 268 (1)

FINDING PROOF OF ONE ELEMENT, AND NOT PROOF OF THE OTHER,
 THE STATE DID NOT MEET ITS BURDEN, PROVING EVERY FACT
 NECESSARY, TO CONSTITUTE THE CRIME.

HERE IN VIEWING THE INDICTMENT WITH A PRACTICAL EYE,
 THE INDICTMENT DOES NOT GIVE NOTICE OF ANY OF THE
 NECESSARY ELEMENT, SUFFICIENT FOR AN INDICTMENT FOR MURDER,
 AS REQUIRED BY STATE STATUTE 17-19-30

THE DEFENDANT APPLICANT IS NOT PLACED AT THE SCENE OF
 THE CRIME IN THE INDICTMENT, A NECESSARY ELEMENTAL
 FACT IN ORDER TO BE FOUND GUILTY AS A PRINCIPAL,
 OR AN AIDER AND ABETTER,

COUNSEL DID NOT CHALLENGE, OBJECT, OR FILE, ANY MOTION
 IN THIS REGARD IN MY DEFENSE. RESULTING IN NOT ONLY
 A UNCONSTITUTIONAL CONVICTION, OR FAIR TRIAL, BUT ALLOWING
 ME TO BE CONVICTED FOR AN OFFENSE, FOR WHICH I WAS
 NOT INDICTED.

FURTHER, THE INDICTMENT CHARGED NO OFFENSE WHICH WAS
 COMMITTED WITH A DEADLY WEAPON, THEREFORE THE CASE WAS
 NOT WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT OF
 GENERAL SESSIONS. STATE V. McLENDON (S.C. 1901) 59 SC 226
37 SC 819 17-19-40

CONSTITUTIONAL PROVISION

INITIATIVE PROTECTION

THE FIFTH AMENDMENT GUARANTEES, THAT AN INDIVIDUAL
 CANNOT BE PROSECUTED FOR CAPITAL OR INFAMOUS OFFENSE
 (8)

EXCEPT ON PRESENTMENT OR INDICTMENT, OF A GRAND JURY UNDER SOUTH CAROLINA LAW, NEITHER POLICE OFFICERS, OR CORONER, HAVE EXCLUSIVE JURISDICTION TO INITIATE CRIMINAL PROSECUTION, IN INVOLVING CASES OF MURDER PURSUANT TO 17-7-230 AND OFFICIAL JUDICIAL DETERMINATION IS REQUIRED BY AN INQUEST.

THE CORONER SHALL TAKE TESTIMONY IN WRITING AND BIND OVER OR COMMIT WITNESSES.

LIKEWISE, THE PROVISION OF 16-23-460 PROVIDES, FOR A SPECIAL COUNT IN THE INDICTMENT FOR CARRYING A CONCEAL WEAPON. FOR ALL CASES EMERGED IN SECTION 17-19-40, SHALL BE, IN THE EXCLUSIVE JURISDICTION OF THE COURT GENERAL SESSION INDICTMENT AND INFORMATION KEY 113 WEAPONS KEY 17 (1)

WEST LAW TOPIC NO 210.406

CJS INDICTMENT AND INFORMATION KEY 126 CJS WEAPONS 12

WHERE THE INDICTMENT FOUND BY THE GRAND JURY, CHARGE NO CRIME, WHICH WAS COMMITTED WITH A DEADLY WEAPON, THE CASE IS NOT WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT OF GENERAL SESSIONS. CITING STATE V MCLENDON (S.C. 1901) 59 S.C. 226 37 S.E. 819

WHEREFORE APPLICANT PRAYS THAT A HEARING BE HELD, AND HIS CONVICTION AND SENTENCE, BE VACATED WITHIN THE INTEREST OF JUSTICE.

THE SIXTH AMENDMENT PROVIDES, "IN ALL CASES OF CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT TO HAVE THE ASSISTANCE OF COUNSEL, FOR HIS DEFENSE

HERE, COUNSEL FAILED TO DEFEND AGAINST THE STATES
 WANT OF JURISDICTION, OF THE SUBJECT MATTER, AND
 JURISDICTION OF HIS PERSON, BECAUSE OF THE LACK OF
 ORIGINAL JURISDICTION OF THE CIRCUIT COURT.
 IN GIDEON V. WAINWRIGHT THE COURT RECOGNIZED THE
 SIXTH AMENDMENT GUARANTEE OF COUNSEL AS FUNDAMENTAL
 AND ESSENTIAL TO A FAIR TRIAL 342, 83 S.Ct. AT 795
 EVEN THE EDUCATED LAYMAN REQUIRES THE GUIDING HAND
 OF COUNSEL AT EVERY STEP OF THE PROCEEDINGS AGAINST
 HIM

ASSAULT AND BATTERY WITH INTENT

TO KILL

COUNSEL FOR THE DEFENDANT WAS ALSO IMPERFECTIVE
 FOR FAILING TO OBJECT TO THE COURT CHARGE, AND
 INSTRUCTION ON MALICE AFORETHOUGHT, THAT WAS ERRONEOUS,
 AND PREJUDICIAL.

FACTS IN SUPPORT

THE COURT STATED ON LINES 19 - 25 ON PAGE 168
 QUOTE "A SPECIFIC INTENT TO KILL IS NOT AN ELEMENT
 OF ASSAULT AND BATTERY WITH INTENT TO KILL, BUT,
 THERE MUST BE A GENERAL INTENT TO COMMIT SERIOUS
 BODILY INJURY"
 INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS

NOT ACCIDENTALLY OR INVOLUNTARILY.

INTENT, MAY BE SHOWN BY ACTS, AND CONDUCT, OF THE DEFENDANT AND OTHER CIRCUMSTANCES, FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.

EVIDENCE OF THE CHARACTER OF THE ASSAULT. THE CHARACTER OF THE INSTRUMENT USED, THE MANNER IN WHICH IT WAS USED, THE PURPOSE TO BE ACCOMPLISHED AND THE RESULTING WOUNDS AND INJURIES MAY BE CONSIDERED IN DETERMINING THE INTENT WAS COMMITTED.

LAW ANALYSIS

IN SANDSTROM V MONTANA 442 U.S. 510, 524 THE SUPREME COURT, STATED THE DUE-PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT IS VIOLATED, WHEN, A JURY CHARGE CREATES A MANDATORY PRESUMPTION, AND IMPERMISSIBLY SHIFTS THE BURDEN OF PROOF TO THE DEFENDANT.

CONCLUSIVE PRESUMPTIONS, DEPRIVES A DEFENDANT OF THE DUE PROCESS OF LAW, AND, ARE THEREFORE UNCONSTITUTIONAL.

THE SOUTH CAROLINA SUPREME COURT HAS HELD IN THE RECENT CASE OF STATE V BELCHER OPINION NO 26729 THAT THE USE OF A DEADLY WEAPON "IMPLIED" MALICE INSTRUCTION HAS NO PLACE IN A MURDER OR ASSAULT AND BATTERY WITH INTENT TO KILL PROSECUTION WHERE EVIDENCE IS PRESENTED THAT WILL REDUCE MITIGATE EXCUSE OR JUSTIFY THE KILLING, OR THE ASSAULT AND BATTERY WITH INTENT TO KILL.

THE HOLDING IN BELCHER IS AFFIRMED IN GRIFFIN V. KENTUCKY 479 US 314 328 1987. HOLDING THAT A NEW RULE FOR CONDUCT, OF CRIMINAL PROSECUTION IS TO BE APPLIED RETROACTIVELY, TO ALL CASES PENDING ON DIRECT REVIEW, OR NOT YET FINAL, AND TRIAL JUDGE IS REQUIRED TO CHARGE THE CURRENT AND CORRECT LAW OF SOUTH CAROLINA. SEE STATE V FOUST, 325 SC.12. 479 SE 2d 50 (1996).

HERE THE COURT'S INSTRUCTION NOT ONLY, IMPLIED MALICE BY THE "USE OF INSTRUMENT", BUT SUCH AMOUNTS TO "A CONSTRUCTIVE AMENDMENT¹ OF THE INDICTMENT VIOLATING U.S. V. BOLDEN, 325 F.3d 471 (4th Cir 2003).

IN BOLDEN THE COURT HELD THAT A DEFENDANT MAY ONLY BE TRIED, ON CHARGES ALLEGED IN AN INDICTMENT, AND ONLY THE GRAND JURY, MAY BROADEN, OR ALTER, THE CHARGES IN THE INDICTMENT.

THE COURT'S INSTRUCTION THAT "INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT," EVIDENCE OF THE CHARACTER OF THE ASSAULT¹ THE CHARACTER OF THE INSTRUMENT USED.

EVEN THOUGH THE COURT, NOTED THAT THE APPLICANT HAS RAISED THE DEFENSE OF "SELF DEFENSE" THE COURT STILL WENT ON TO USE THE "IMPLIED MALICE INSTRUCT BY THE USE OF A WEAPON IN VIOLATION OF STATE V BELCHER SEE TRANSCRIPT PAGE 169 LINES 19-21

WHEREFORE THE APPLICANT PRAYES THAT HIS CONVICTION FOR ASSAULT AND BATTERY WITH INTENT TO KILL BE REVERSED SEE EVANS V LUCY, 469 U.S. 357, 105 S.Ct. 820, 83 L.Ed.2d 821

LACK OF SUBJECT MATTER JURISDICTION

THE COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO HEAR MURDER CHARGE, AT THE HAND OF ONE HAND OF ALL, OR FELONY MURDER CHARGE, AND COUNSEL WAS INEFFECTIVE FOR FAILURE TO FILE MOTION TO QUASH INDICTMENT, AND OBJECT, TO BURDEN SHIFTING CHARGE.

FACTS IN SUPPORT

THE CHARGING TERMS OF THE INSTRUMENT DOES NOT, ALLEGES THAT THE APPLICANT AND TWO(2) OF THESE OTHER, WERE PRESENT, AIDING AND ABETTING EACH OTHER, WHILE IN THE COMMISSION OF A FELONY, DID ASSAULT AND MURDERED, THE DECADE ALLEGED IN THE INDICTMENT.

LAW AND ANALYSIS

SUBJECT MATTER JURISDICTION IS THE POWER OF A COURT TO HEAR A PARTICULAR CLASS OF CASE, CIVILS, CRIMES, SUPERIOR, GOLDKISTINE, 314 S.C. 235, 442 S.E.2d 598 (1994)

THE COURT HAS STATED THAT AN APPLICANT WHOSE TO RAISE CHALLENGES TO THE SUFFICIENCY OF AN INDICTMENT MUST DO SO IN THE CONTEXT OF, INEFFECTIVE ASSISTANCE OF COUNSEL.

(13)

IN TABORY, IT WAS HELD THAT THE STATE MAY NOT SUPPORT A CONVICTION, TO THE EXCLUSION OF THE LANGUAGE CONTAINED IN THE BODY OF THE INDICTMENT.

HERE THE STATE SOUGHT TO TRY, AND CONVICT, THE APPLICANT AS AN ACCOMPLICE UNDER THE HAND OF ONE HAND OF ALL BUT THIS LANGUAGE IS NOT IN THE BODY OF THE INDICTMENT THE INDICTMENT ONLY CHARGE APPLICANT AS A PRINCIPAL THEREFORE, THE COURT DID NOT HAVE JURISDICTION OF THIS PARTICULAR CLASS OF CASE!

SEE ALSO PAGE 165 LINE 1 - 5. THE COURT STATES UNDER THIS OR MORE ACTING WITH A COMMON PLAN OR INTENT ARE PRESENT AT THE COMMISSION OF A CRIME, IT DOES NOT MATTER WHO ACTUALLY COMMIT 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 HOWEVER NEAR PRESENCE AT THE SCENE OF THE CRIME IS NOT SUFFICIENT TO CONVICT ONE AS A PRINCIPLE, OR THE THEORY OF AIDING AND ABETTING.

SENTENCING AND PUNISHMENT KEY 201 "A JUDGE'S ROLE IN SENTENCING IS CONSTRAINED AT ITS OUTER LIMITS BY FACT, ALLOCATED IN INDICTMENT AND TRIED BY A JURY, AND THE RANGE OF SENTENCING OPTIONS PRESCRIBED BY THE LEGISLATURE SEE ES HANDED STATE V JIMMER 404 U.S. 448, 447, 92 S.Ct. 589, 80 L.Ed.2d 592

VIEWING THE INDICTMENT WITH A PRACTICAL EYE, IT DOES NOT PROVIDE THE ELEMENTS OF, FELONIOUSLY, WILLFULLY, VOLUNTARILY, WHILE ARMED WITH A DEADLY WEAPON, THE TIME OF ASSAULT, THE TIME OF DEATH.

(15)

BASICALLY ALLEGING THAT HIS TRIAL COUNSEL FAILED TO PROPERLY MOVE TO QUASH THE INDICTMENT IN ACCORDANCE WITH SC CODE ANN § 17-19-90

IN WISSE V STATE 349 SC 291 562 SE 2d 654 (2002) TRIAL COUNSEL WAS INEFFECTIVE, FOR FAILING TO REQUEST CLARIFICATION AS TO WHICH DEGREE OF A BURGLARY CHARGE THE JURY HAD CONVICTED THE DEFENDANT OF.

IN DATE V STATE 351 SC 418, 570 SE 2d 622 (2002) THE COURT HELD THAT FAILURE TO OBJECT TO PARAMOUNT BURDEN SHIFTER CHARGE WAS INEFFECTIVE ASSISTANCE OF COUNSEL. THE COURT STATED ON PAGE 163 LINE 23-25 "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"

THE COURT THEN WENT ON TO ADD, "PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED, WITHOUT MORE, IS NOT SUFFICIENT TO MAKE A PERSON GUILTY OF THAT CRIME, NEAR KNOWLEDGE THAT SOMEONE ELSE IS GOING TO COMMIT A CRIME, EVEN IF THE DEFENDANT IS PRESENT, WHEN THE CRIME IS COMMITTED, IS NOT SUFFICIENT TO CONVICT THE DEFENDANT AS A PRINCIPLE. GUILT AS A PRINCIPLE 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 PRINCIPLE."

THE PLACE 1815 CALVERT STREET WHICH IN ORDER TO BE FOUND GUILTY, THE APPLICANT'S PRESENCE AT THE SCENE OF THE CRIME IS NEEDED. SEE TRANSCRIPT AND JUDGE INSTRUCTION PAGE 164 LINE 13-23. "THE STATE MUST PROVE BEYOND A REASONABLE DOUBT, BY COMPETENT EVIDENCE, THE TRAIL OF THE HAND OF ONE IS THE HAND OF ALL. A PRINCIPAL IN A CRIME IS ONE WHO IS WHO ACTUALLY COMMITTS THE CRIME, OR WHO IS PRESENT BEFORE AND ASSISTED HERE THE CHARGE HAD BEEN ALTERED AND REOPENED. THE COURT HAS HELD THAT CONSTRUCTIVE ARRANGEMENTS OR DEFECTIVE INDICTMENT PREJUDICIAL.

IN WISSE V BOLSON 325 F 3d 471 (4th Cir. 2003) THAT COURT HELD THAT A DEFENDANT MAY ONLY BE TRIED ON CHARGES ALLEGED IN AN INDICTMENT, AND ONLY THE GRAND JURY, MAY BRING OR ALTER THE CHARGES IN SUCH IN POST CONVICTION REVIEW ACTION ONLY ERROR AND REVERSAL MUST BE SHOWN TO HAVE RESULT, WHEREAS APPLICANT MOVE THAT FOR CONVICTION AND REVERSAL BE VARIED WITHIN THE INTEREST OF JUSTICE. SEE POSCOV V STATE SC (1990) 345 SC 16 546 SE 2d 417.

THE APPLICANT WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF HIS FIFTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, BECAUSE HE WAS SERVED WITH AN UNLAWFUL INDICTMENT CONSTITUTIONAL LAW KEY 4579

LACK OF SUBJECT MATTER JURISDICTION

THE TRIAL COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO ARREST, TRY AND CONVICT, APPLICANT FOR ASSAULT AND BATTERY WITH INTENT TO KILL.

FACTS IN SUPPORT

ORIGINAL JURISDICTION WAS NOT PROPERLY INSTITUTED, BECAUSE THE WARRANT WAS ISSUED FROM A MUNICIPAL COURT. SEE WARRANT EXHIBIT ATTACHED.

MUNICIPALITIES Key 724-725 TOWN ACTS IN DUAL CAPACITY EXERCISING GOVERNMENTAL DUTIES AND OF PRIVATE CO-OPERATION ENJOYING POWERS AND PRIVILEGES CONFERRED FOR ITS OWN BENEFIT. COURT'S KEY 4 SUBJECT MATTER JURISDICTION, IS THE POWER OF A COURT TO HEAR AND DETERMINE CASES OF THE GENERAL CLASS TO WHICH THE PROCEEDING BELONG. ASSAULT AND BATTERY WITH INTENT TO KILL IS NOT AN OFFENSE, THAT IS WITHIN THE JURISDICTION OF THE MUNICIPAL COURTS, AND SUCH IS BEYOND THEIR JURISDICTION. S.C. CONST ART 1 § 8 PROVIDES THAT 'NO PERSON SHALL DO OR PERFORM THE FUNCTION OF ANOTHER. AND NO BRANCH OF GOVERNMENT SHALL PERFORM THE FUNCTIONS OF ANOTHER, IN THE ADMINISTRATION OF THE GOVERNMENT, FOR SUCH IS FOREVER SEPARATE, AND WOULD BE CONSIDERED SPECIAL LEGISLATION IN VIOLATION OF S.C. CONST ARTICLE 5 § 34.

BECAUSE, THE GRAND JURY IN THIS CASE WAS UNCONSTITUTIONALLY SUMMONED AND IMPANELLED ON THE BASIS OF A MUNICIPAL COURT DOCUMENT, IN A MATTER TO WHICH IT HAD NO JURISDICTION.

THE SOUTH CAROLINA SUPREME COURT HAS HELD THAT JUDGEMENT WILL BE ARRESTED, IF JURY IS ILLEGALLY DRAWN. STATE V JENKINS 5 C 1867) JURY KEY 63 (1)

STATE V MALLOY (SC 1912) 91 SC 429 74 SE 988. GRAND JURY KEY 10

WITHOUT NEED FOR CITATION OF AUTHORITY IT IS AXIOMATIC THAT THE ACTS OF A COURT AS TO A MATTER TO WHICH IT HAS NO JURISDICTION ARE VOID. CITAS STATE V FINGERBURY 191 SE 2d AT 521 COURTS KEY 40

THE APPLICANT PRAYS THAT A HEARING BE HELD AND HIS CONVICTION AND SENTENCE BE VACATED WITHIN THE INTEREST OF JUSTICE.

RESPECTFULLY SUBMITTED

TRAMANE DEVON NELSON

APPLICANT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2012-CP-10-7003
	)	
Tramaine D. Nelson, #316883,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed October 26, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the October 2007 term of the Charleston County Grand Jury for murder (2007-GS-10-11054) and at the October 2008 term for assault and battery with intent to kill (2008-GS-10-7463). The Applicant was represented by William L. Runyon, Esquire.

On November 10, 2009, the Applicant proceeded to trial and was convicted of both charges. On April 23, 2010, the Applicant was sentenced by the Honorable Kristi Lea Harrington to confinement for a period of forty-five (45) years for murder and twenty (20) years for assault and battery with intent to kill. The sentences are to be served concurrently. The Applicant filed a timely Notice of Appeal at the South Carolina Court of Appeals. Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense represented the Applicant on appeal. The Court of

Appeals affirmed the Applicant's convictions and sentences. State v. Nelson, 2012-UP-518 (S.C. Ct. App. September 12, 2012). The Remittitur was issued on September 28, 2012.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate documents. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failing to investigate co-defendant's credibility.
 - b. Failure to challenge the State's jurisdiction to initiate, try, convict, and sentence the Applicant.
 - c. Failing to object to the jury charge on malice.
 - d. Failing to file motion to quash indictment.
2. Subject matter jurisdiction.
 - a. Court did not have subject matter jurisdiction to hear the murder and ABWIK charges.

III.

The Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges the court did not have subject matter jurisdiction over his charges. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had

subject matter jurisdiction. The Respondent submits the Applicant has failed to present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide. Therefore, the Respondent requests that this allegation be summarily dismissed.

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

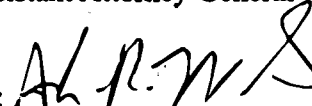
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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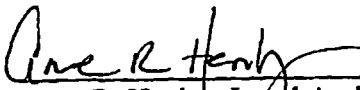
 8, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2012-CP-10-7003
	)	
TRAMAIN D. NELSON, #316883	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
 Stuckey Law Office, LLC
 123 Meeting Street
 Charleston, SC 29401

DATED this 8th day of July, 2013


 Anne R. Henley, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2013-CP-10-7003
3 TRAMaine D. NELSON,)
4 Plaintiff,) Transcript of Record
5 vs.)
6 THE STATE OF SOUTH) Date: September 10, 2015
7 CAROLINA,)
Defendant.

8 * * * * *

10 B E F O R E:

11 The Honorable LARRY HYMAN
12
13
14
15

16 * * * * *

17
18 Denise J. Lauder, RPR

19 Ninth Judicial Circuit
20
21
22
23
24
25

1 A P P E A R A N C E S

2

3 REPRESENTING THE PLAINTIFF:

4 CHRISTOPHER L. MURPHY, ESQUIRE

5 Murphy Law Offices, LLC

6 Post Office Box 2008

7 Mt. Pleasant, SC 29465

8

9 REPRESENTING THE STATE OF SOUTH CAROLINA:

10 J. RUTLEDGE JOHNSON, ESQUIRE

11 Rembert Dennis Building

12 1000 Assembly Street, Room 519

13 Columbia, SC 29201

14

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15		
16	(No exhibits were offered or marked for	
17	identification.)	
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1 (The following proceedings were had
2 September 10, 2015, Charleston County Circuit
3 Court, in front of Judge Larry Hyman.)

4 MR. JOHNSON: May it please the Court.
5 This is Tramaine Nelson v. The State of South
6 Carolina, case number 2012-CP-10-7003. Mr. Nelson
7 was indicted at the October 2007 term of the
8 Charleston County Grand Jury for murder and at the
9 October 2008 term for assault and battery with
10 intent to kill. He was represented by Bill Runyon.
11 On November 10, 2009, he proceeded to trial and was
12 convicted of both charges.

13 On April 23, 2010, he was sentenced by
14 the Honorable Kristie Lee Harrington for a
15 confinement period of 45 years for the murder and
16 20 years for assault and battery with intent to
17 kill to be served concurrently.

18 He filed a notice of appeal and an
19 appellate brief was filed in his behalf and the
20 South Carolina Court of Appeals confirmed those
21 convictions. The remittitur was issued on
22 September 28, 2012; he filed this instant action on
23 October 6, 2012; and the State filed its return on
24 July 8, 2013. He is represented today by Mr. Chris
25 Murphy.

1 THE COURT: All right. Mr. Murphy.

2 MR. MURPHY: Yes, thank you, Your
3 Honor. We have four issues that were raised in
4 this application if the Court would like me to name
5 them at the beginning to kind of give you --

6 THE COURT: I certainly would.

7 MR. MURPHY: Okay. Thank you, Your
8 Honor.

9 Four issues we have; two of them we're
10 going to rely on the record, two will require
11 testimony from Mr. Nelson. The first one is that
12 this is a case where -- and I'll just give you a
13 skeleton of the facts of this case. There was an
14 armed robbery earlier in the day by -- the
15 defendant was robbed.

16 Later on that day, he and some other
17 folks went to recover the property that was taken
18 from them. It was at that point there was a
19 shooting. Bullets were flying in both directions
20 and there was a person died as a result. Mr.
21 Nelson's attorney put up a -- he didn't take the
22 stand, didn't put up any testimony, but he argued
23 self defense as a mitigating factor. So that's
24 just kind of a skeleton of what happened.

25 Number one issue we're raising is that

1 Mr. Nelson did not take the stand in his defense.
2 He tells me he didn't discuss the ramifications,
3 the pros and cons of him testifying on his own
4 behalf or not testifying on --

5 THE COURT: Did the Court enter into
6 its --

7 MR. MURPHY: The Court did do that.
8 They questioned him, yes, sir, Your Honor.

9 The second issue is -- there was
10 actually two trials in this case. There was a
11 first trial before Judge Dennis that resulted in a
12 mistrial, a hung jury. At that trial, there was a
13 statement that he gave when he was first arrested.
14 Judge Dennis initially suppressed that statement in
15 the trial. In the second trial before Judge
16 Harrington, the statement was allowed to be
17 admitted into evidence over objection from
18 Mr. Runyon.

19 At the conviction, appellate counsel
20 did not raise that issue, did not talk to Mr.
21 Runyon about any appellate issues and specifically
22 the testimony -- he doesn't recall any
23 conversations with appellate counsel about the
24 issue at all.

25 The other two charges we have are going

1 to rest on the record first -- with form. The
2 first issue -- the third issue would be that he was
3 charged with murder during the jury charge aspect.
4 At no time did trial counsel ask for a charge of
5 lesser included offenses of voluntary or
6 involuntary manslaughter. At no time did
7 Mr. Runyon discuss the possibility of a lesser
8 included offense with the defendant, which I think
9 is error as a matter of law.

10 Secondly, there's a fourth and final
11 charge -- or fourth and final issue was the jury --
12 the judge charged the jury with the hand of one
13 versus the hand of all because there were
14 co-defendants in this case. In this instance, the
15 facts show that they were going -- the defendants
16 were going to recover their property, which is not
17 a crime, Your Honor. Taking a gun to go recover
18 your property is not a crime, Your Honor. There is
19 no agreement to show that they were going to rob
20 these folks or engage in a shooting; therefore, I
21 believe it was an error to -- or at least not to
22 object to the hand of one versus the hand of all,
23 Your Honor. I think that's an improper charge
24 based on the facts as they played out in this case.

25 So those would be the four issues we

TRAMAINÉ NELSON - DIRECT EXAM BY MR. MURPHY

1 would raise in this application, Your Honor.

2 THE COURT: All right.

3 MR. MURPHY: And we would call

4 Mr. Tramaine Nelson.

5 TRAMAINÉ NELSON,

6 being first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MURPHY:

9 Q. And, Mr. Nelson, who did you hire to
10 represent you in these charges?

11 A. William Runyon.

12 Q. How did you come to hire Bill Runyon?

13 A. My mother and grandmother got him for
14 me.

15 Q. And he was retained privately?

16 A. Yes, sir.

17 Q. And how many times did you meet with
18 him to discuss the case?

19 A. Like twice.

20 Q. And do you remember where those
21 meetings took place?

22 A. At the county jail.

23 Q. And do you remember how long those
24 meetings took place?

25 A. No more than five minutes.

TRAMAINÉ NELSON - DIRECT EXAM BY MR. MURPHY

1 Q. Okay. And each of those meetings
2 lasted about five minutes?

3 A. Yes, sir.

4 Q. And let's talk about the first trial
5 that you had. There was -- did these meetings
6 occur prior to the first trial?

7 A. Yes, sir.

8 Q. Both of them?

9 A. Yes, sir.

10 Q. Do you recall any meetings after the
11 first trial, prior to the second?

12 A. The only thing I recall is when Mr.
13 Runyon came to me and asked me if I wanted to go to
14 trial or take a 20-year plea.

15 Q. And you said 20-year plea, there was an
16 offer relayed to you prior to trial?

17 A. That's the only thing, 20 years. He
18 asked me if I wanted to take 20 years or go to
19 trial.

20 Q. So you understood you could have pled
21 to a deal that would have given you 20 years?

22 A. Yes, sir.

23 Q. And let's talk about at trial. Did you
24 discuss any of your potential defenses at your
25 first trial?

TRAMAINÉ NELSON - DIRECT EXAM BY MR. MURPHY

1 A. No, sir.

2 Q. Did you talk about self defense at all?

3 A. No, sir.

4 Q. Did you talk about that at the second
5 trial?

6 A. No, sir.

7 Q. What was your understanding of what
8 your defense was at your trial?

9 A. We never talked about it.

10 THE COURT: I'm sorry, I couldn't hear
11 you.

12 THE APPELLANT: We never talked about
13 it.

14 THE COURT: Okay.

15 BY MR. MURPHY:

16 Q. And let's talk about -- did you take
17 the stand to testify in the first trial?

18 A. No, sir.

19 Q. And you didn't take the stand in the
20 second trial, did you?

21 A. No, sir.

22 Q. Did you have discussions with your
23 attorney about whether or not you should take the
24 stand?

25 A. No, sir.

TRAMAINÉ NELSON - DIRECT EXAM BY MR. MURPHY

1 Q. Okay. You didn't have any discussions
2 about that?

3 A. No, sir.

4 Q. Do you recall the Court asking you
5 whether or not you should take the stand?

6 A. No, sir.

7 Q. Now, prior to your -- let's just focus
8 on your second trial because that's what's really
9 relevant here. Did you talk to Mr. Runyon about
10 asking the judge to charge you on any lesser
11 included offences?

12 A. No, sir.

13 Q. Do you know what a lesser included
14 offence is?

15 A. Not really.

16 Q. Do you ever discuss the terms
17 involuntary or voluntary manslaughter with Mr.
18 Runyon?

19 A. No, sir.

20 Q. Do you know if he asked the judge to
21 include any lesser included charges?

22 A. He never did.

23 Q. Okay. In terms of your appeal, you
24 filed an appeal in your case?

25 A. Yes.

TRAMAINÉ NELSON - CROSS EXAM BY MR. JOHNSON

1 Q. And did you talk to the appellate
2 counsel at all?

3 A. I talked to him a couple of times, but
4 we never really talked about...

5 Q. You never really talked about what?

6 A. About what we were going to argue on my
7 appeal.

8 Q. Did you ever discuss any specific
9 issues with him?

10 A. No, sir.

11 Q. Did you ever discuss the statement that
12 was suppressed in the first trial and admitted in
13 the second trial?

14 A. No, sir.

15 Q. Did you discuss any other -- anything
16 else that you think is important that you discussed
17 with your appellate counsel?

18 A. No, sir.

19 MR. MURPHY: That's all I have, Your
20 Honor.

21 THE COURT: Mr. Johnson.

22 MR. JOHNSON: Yes, Your Honor; may it
23 please the Court.

24 CROSS-EXAMINATION

25 BY MR. JOHNSON:

TRAMaine NELSON - CROSS EXAM BY MR. JOHNSON

1 Q. Mr. Nelson, one of the things you said
2 is that you didn't discuss any of the lesser
3 included charges with your attorney; isn't that
4 correct?

5 A. Yes, sir.

6 Q. Okay. And so you didn't know what
7 lesser included charges were?

8 A. Yes.

9 Q. Have you ever been convicted of any
10 crimes before?

11 A. Yes, sir.

12 Q. This is not your first rodeo in the
13 criminal justice system, is it?

14 A. No, sir.

15 Q. So I'm sure along the way, some other
16 attorney has explained something about lesser
17 included charges to you?

18 A. No, sir, because I always plead guilty.
19 At any one time I had been charged with any other
20 charges, I already -- I always plead guilty.

21 Q. Because you are guilty in those cases,
22 right?

23 A. No, sir.

24 Q. You didn't -- you pled guilty because
25 you weren't guilty in those other cases?

TRAMAINÉ NELSON - CROSS EXAM BY MR. JOHNSON

1 A. Say that again.

2 Q. You pled guilty in those other cases,
3 but you just said you weren't guilty in those other
4 cases.

5 A. Oh, I misunderstood you, I apologize.

6 Q. So you did plead guilty in those cases
7 because you were guilty in those cases?

8 A. Yes, sir.

9 Q. Okay. Let's go over the facts in the
10 case, Mr. Nelson. First of all, you gave a
11 statement to the police, did you not?

12 A. Yes, sir.

13 Q. And you said that you fired a gun that
14 day, correct?

15 A. Yes, sir.

16 Q. And -- but let's back up. So you go
17 over to this area, the Cement Pad apartment
18 complex, correct? In a white car with your
19 girlfriend, right?

20 A. Yes, sir.

21 Q. And another co-defendant, correct?

22 A. No, he's no --

23 Q. Or a friend, excuse me?

24 A. Yes, sir.

25 Q. And your testimony in that statement is

TRAMAINÉ NELSON - CROSS EXAM BY MR. JOHNSON

1 that somebody comes and robs you of crack cocaine
2 and money?

3 A. Yes, sir.

4 Q. And then a little while later, the
5 testimony you give is that you find ATL, who is the
6 driver of this gray green car, correct?

7 A. Yes, sir.

8 Q. And that you were in the back seat
9 behind the driver, correct?

10 A. Yes, sir.

11 Q. And there's somebody in the passenger
12 seat, correct?

13 A. Yes, sir.

14 Q. And that you-all drive over, and the
15 testimony is, of your statement, that you get out
16 of the car and you see a gentleman run away,
17 correct? Mr. Brown?

18 A. No, sir.

19 Q. No? You didn't fire a gun that day?

20 A. Yes, sir.

21 Q. Okay. And somebody died because of
22 that, correct?

23 A. Yes, sir.

24 Q. So you jump back in that car and you
25 take off and head down to Atlanta, right?

TRAMAINÉ NELSON - CROSS EXAM BY MR. JOHNSON

1 A. Yes, sir.

2 Q. Okay. And your girlfriend also
3 testified, your girlfriend at the time, that she
4 sees you get robbed and then that you go and leave
5 her and then call her on the cell phone and say, I
6 think I just shot your boyfriend; am I not correct?

7 A. No, sir.

8 MR. JOHNSON: Court's indulgence, Your
9 Honor. May I approach Your Honor?

10 THE COURT: All right.

11 BY MR. JOHNSON:

12 Q. Looking at page 175 of the transcript.
13 And, Mr. Nelson, I don't mean to be rude; you can
14 read and write, correct?

15 A. Yes.

16 Q. Okay. Thank you.

17 THE COURT: What page?

18 MR. JOHNSON: 175.

19 Q. (BY MR. JOHNSON) And if you would, read
20 aloud lines six and seven please?

21 A. Six and seven?

22 Q. Yes, sir.

23 A. At some point did Tramaine Nelson call
24 you and tell you I think I shot your baby daddy?

25 Q. And now read line 12 for me. Or you

TRAMAINÉ NELSON - CROSS EXAM BY MR. JOHNSON

1 can read seven through 12 or --

2 A. Yes. What was that? At some point did
3 Tramaine Nelson, the defendant, call you and tell
4 you that I think I shot your baby daddy? Yes.

5 Q. Okay. So there is evidence that your
6 girlfriend at the time called you or you called her
7 and said, I think I shot your baby daddy, correct?

8 A. Yes.

9 Q. Okay. And then you had the
10 co-defendants come in and point the finger at you,
11 did you not?

12 A. Yes, sir.

13 Q. And they said that you were guilty of
14 murder, that you were the one that fired the shots?

15 A. Yes, sir.

16 Q. Okay. And there also was testimony in
17 the record that there was never a scuffle between
18 you and the victim in this case, correct?

19 A. There was never what?

20 Q. There was never a scuffle, never an
21 argument, never a fight?

22 A. No, sir.

23 Q. There was no evidence of a fight in the
24 record, is there?

25 A. No, sir.

TRAMAINÉ NELSON - CROSS EXAM BY MR. JOHNSON

1 Q. And you said you don't remember that
2 the Court advised you of your right to testify in
3 this case?

4 A. Yes, sir.

5 Q. You do remember the judge telling you
6 that?

7 A. No, sir.

8 MR. JOHNSON: Your Honor, Court's
9 indulgence.

10 BY MR. JOHNSON:

11 Q. Looking at pages 307, I believe,
12 through 309.

13 MR. JOHNSON: May I approach?

14 Q. (By MR. JOHNSON) Before I let you read
15 that, your testimony is Mr. Runyon never discussed
16 with you your right to testify, right?

17 A. (Nodding)

18 Q. Okay. If you would please, sir, would
19 you read 18 through 25 aloud to the Court?

20 A. You have had an opportunity to meet
21 with Mr. Runyon. Have you had enough time to meet
22 with him? Mr. Nelson: Yes, ma'am.

23 What did you say?

24 Q. All the way down to the bottom of the
25 page.

TRAMAINÉ NELSON - CROSS EXAM BY MR. JOHNSON

1 A. 25?

2 Q. Yes, sir.

3 THE COURT: This is where now?

4 MR. JOHNSON: Page 307 through the
5 bottom of page 309.

6 THE APPELLANT: And you have reached a
7 decision about whether or not you wish to testify?
8 Yes, ma'am.

9 BY MR. JOHNSON:

10 Q. And that decision was? You said, all
11 right, thank you.

12 And the decision was not to testify,
13 correct?

14 A. Yes, sir.

15 Q. Yes, sir?

16 A. Yes, sir.

17 MR. JOHNSON: That's all I have at this
18 time, Your Honor. Thank you.

19 MR. MURPHY: Nothing further, Your
20 Honor.

21 THE COURT: You may step down, sir.

22 MR. JOHNSON: May we approach, Your
23 Honor?

24 THE COURT: Yes.

25 (Whereupon, Robert Dudek was contacted

TRAMAINÉ NELSON - CROSS EXAM BY MR. JOHNSON

1 via telephone and testified as follows.)

2 MR. JOHNSON: We are here at the
3 Charleston County Courthouse with Judge Hyman, in
4 the matter of Tramaine Nelson.

5 THE WITNESS: Oh, hey.

6 MR. JOHNSON: How are you doing?

7 THE WITNESS: Doing well.

8 MR. JOHNSON: Do you mind if we take
9 some testimony from you?

10 THE WITNESS: No. Am I already on
11 speaker?

12 MR. JOHNSON: Yes, you are.

13 THE WITNESS: Okay. No, just give me
14 just one second to close my door.

15 MR. JOHNSON: All right. Sounds good.

16 THE WITNESS: Thank you. Go ahead.

17 THE CLERK: We need to get you sworn in
18 sir.

19 ROBERT DUDEK,

20 being first duly sworn, testified as follows:

21 THE WITNESS: I do.

22 THE CLERK: Give us your full name and
23 spell your last please.

24 THE WITNESS: Sure. Robert M. Dudek,
25 D-U-D-E-K.

ROBERT DUDEK - DIRECT EXAM BY MR. JOHNSON

1 DIRECT EXAMINATION

2 BY MR. JOHNSON:

3 Q. Hey, Bob. We are, like I said, with
4 Mr. Tramaine Nelson and -- first of all, do you
5 remember becoming involved in this case?

6 A. I do.

7 Q. And what is your position at the
8 appellate defense?

9 A. I am the Chief Appellate Defender for
10 the Office of Appellate Defense.

11 Q. Okay. And when you first get a case,
12 how do you go about researching the case?

13 A. What I do is, I read -- my pattern is
14 to read the transcript. I take notes, kind of a
15 flowing from witness to witness, not every page,
16 but -- in other words, each witness I write down a
17 name, the page their testimony starts on, and I
18 keep sort of a running list of their testimonies,
19 anything that might go into my statement of facts
20 or into the facts. In other words, when I go back
21 to do my facts, I can already have a page number of
22 something interesting I might cite to.

23 And then usually what I will do is, at
24 the very top of the legal pad, when there is an
25 objection or a motion of any note, I will just kind

ROBERT DUDEK - DIRECT EXAM BY MR. JOHNSON

1 of write that down at the top. And so that's how I
2 do it. And then afterwards, you know, I will
3 narrow it down to what -- what I'm going to argue
4 if there's more than one issue, or more than one or
5 two issues all -- it's all case to case, and then
6 you do the legal research from there.

7 I mean, I've done this going on a
8 little over 25 years, or close to 26, so, I mean, a
9 lot of the cases came out of this office are -- you
10 know, a good many of them I guess are my own so
11 issue-spotting at this point, hopefully, is not
12 that hard.

13 Q. Do you remember specifically any issues
14 in this case?

15 A. Well, looking back on the brief, you
16 know, the issue I argued was this statement should
17 have been suppressed because there was evidence
18 that he was a -- the appellant was a schizophrenic
19 person off his medication. Defense counsel told
20 the judge it was apparent appellant was quote,
21 crazy, unquote, and that the detective should have
22 realized appellant's mental state prohibited him
23 from making a voluntary statement.

24 Q. And, Judge Harrington, denied defense
25 counsel's motion?

ROBERT DUDEK - DIRECT EXAM BY MR. JOHNSON

1 A. That's correct.

2 Q. And then he preserved the issue for
3 appeal?

4 A. If I can refresh my memory for a
5 second, be sure I don't mislead you on error
6 preservation because I'm not remembering right off
7 the top of my head. Excuse me, I'm right here.
8 I'm on page 7 of my Anders brief and I had, you
9 know, the conclusion of the Jackson v. Denno
10 hearing. Solicitor argued, despite his mental
11 illness, did not in and of itself render statement
12 -- involuntary is a violation of the due process
13 clause absent police misconduct under Colorado v.
14 Connelly, and then Defense Counsel Runyon argued he
15 was not alleging the police committed misconduct,
16 but rather under totality of circumstances the
17 detective should have been aware that appellant was
18 mentally ill, I mean, he's really crazy.

19 Mr. Johnson, I don't know if I'm
20 reading too much into your question on error
21 preservation, but, you know, looks like the issue
22 was presented and argued to the judge as far as
23 coercion. Again, I hope I'm not reading too much
24 into it; maybe you're saying he didn't argue
25 Colorado v. Connelly.

ROBERT DUDEK - CROSS EXAM BY MR. MURPHY

1 Q. No. No. You're going right where I
2 was asking. And that's the issue you raised in
3 your brief.

4 A. It is.

5 MR. JOHNSON: Okay. That's all I have
6 for Mr. Dudek. If you will please answer any
7 defense counsel -- or PCR Counsel's questions.

8 THE WITNESS: Sure.

9 CROSS-EXAMINATION

10 BY MR. MURPHY:

11 Q. Afternoon, Mr. Dudek. My name is Chris
12 Murphy; I represent Mr. Nelson in this case. Can
13 you hear me fine?

14 A. Yes, sir, Mr. Murphy, I sure can.

15 Q. I just have a couple of questions for
16 you. Did you talk to -- or recall talking to Bill
17 Runyon about this case at any time while you were
18 handling the appeal for Mr. Nelson?

19 A. No, sir. I really -- I really don't.
20 If I did, it's -- it's -- I do not remember it.

21 Q. Okay. And did you know that there was
22 a previous trial where there was a pretrial ruling
23 that the statement was to be suppressed?

24 A. Again, off the top of my head, I don't
25 recall that either.

WILLIAM RUNYON - DIRECT EXAM BY MR. MURPHY

1 MR. MURPHY: That's all I have, Your
2 Honor.

3 MR. JOHNSON: Judge, do you have any
4 questions?

5 THE COURT: None.

6 MR. JOHNSON: Mr. Dudek, I appreciate
7 you being available. Thank you so much.

8 THE WITNESS: Thank you very much.

9 MR. JOHNSON: Thank you, Your Honor.
10 We're waiting on Mr. Runyon.

11 (A recess transpired.)

12 MR. JOHNSON: Your Honor, may we call
13 Mr. Runyon?

14 THE COURT: Yes, please.

15 MR. RUNYON: Sorry, Your Honor. I just
16 got free from Judge McMahon.

17 WILLIAM RUNYON,
18 being first duly sworn, testified as follows:

19 THE CLERK: Have a seat and state your
20 full name please.

21 THE WITNESS: William L. Runyon,
22 Junior.

23 DIRECT EXAMINATION

24 BY MR. MURPHY:

25 Q. Thank you. Mr. Runyon, I'll be brief.

WILLIAM RUNYON - DIRECT EXAM BY MR. MURPHY

1 You represented Mr. Nelson in his murder charge?

2 A. Yes, sir.

3 Q. And you actually had two trials I
4 believe of this case; do you recall that?

5 A. Yes, sir.

6 Q. And the first trial was before Judge
7 Dennis?

8 A. Yes, sir.

9 Q. And that resulted in a hung jury?

10 A. Yes.

11 Q. And in that case there was -- you
12 successfully argued a suppression motion with
13 regard to Mr. Nelson's statement; do you recall
14 that?

15 A. Yes.

16 Q. That would have been the law of the
17 case as it went forward -- well, strike that.
18 Mr. Dennis -- or Judge Dennis suppressed this
19 statement, correct?

20 A. Yeah, there was -- he, Mr. Nelson, was
21 questioned, interrogated in Atlanta by state
22 officers from here and made certain statements. He
23 had -- as is my usual custom, I sent my entire file
24 to appellate defense when we -- when I'm finished
25 with the case, but he had certain mental health

WILLIAM RUNYON - DIRECT EXAM BY MR. MURPHY

1 issues.

2 I don't think he -- I'm relying on my
3 recollection now, I don't think he was taking his
4 medication and so there was just a lot of
5 circumstances that militated against that being a
6 voluntary statement, let alone him understanding
7 his Miranda rights.

8 Q. And in any event, the second trial, the
9 trial court allowed that statement to be admitted
10 into evidence; is that correct?

11 A. That's right.

12 Q. And in between the first trial and the
13 second trial, was there any change of circumstance
14 or change of facts that you know with regard to his
15 statement?

16 A. Absolutely none that I'm aware of.

17 Q. And after the conviction in the second
18 trial, you filed an appeal as appropriate, correct?

19 A. Yes, sir. We filed a notice of
20 intention to appeal, I believe I was retained in
21 that case, and so I wrote to appellate defense. We
22 got the paperwork done so he would qualify for an
23 indigent defense and -- and once they reviewed
24 everything, they took over the appeal.

25 Q. And after you filed the necessary

WILLIAM RUNYON - CROSS EXAM BY MR. JOHNSON

1 paperwork and he got appointed an indigent
2 appellate counsel, did you have any conversations
3 with his appellate counsel about any trial issues?

4 A. I don't recall talking to any appellate
5 counsel. I do recall talking to some of their
6 staff about the nuts and bolts of the affidavits of
7 indigency and where to send the file and things of
8 that sort.

9 Q. And that would have been just to make
10 sure that he was represented on appeal, right?

11 A. Right. Because we filed notice of
12 intention to appeal and then, you know, the 30 days
13 was run to order the transcripts and all that sort
14 of stuff. So we had to -- I think I may have even
15 filed an extension to request the copy of the
16 transcript. I don't want to be -- I'm not -- I am
17 under oath, but I'm not trying to swear to that at
18 this point in time that I've done that. I usually
19 do that if the time starts running close.

20 MR. MURPHY: Yes, sir. That's all I
21 have, Your Honor.

22 MR. JOHNSON: Just briefly.

23 CROSS-EXAMINATION

24 BY MR. JOHNSON:

25 Q. Mr. Runyon, how many times did you meet

WILLIAM RUNYON - CROSS EXAM BY MR. JOHNSON

1 with Mr. Nelson over the course of your
2 representation?

3 A. On and off, probably at least a dozen
4 times. Not counting the times right around the
5 time of the two trials and during the two trials.

6 Q. And did you ever discuss self defense
7 in this case with him?

8 A. I did discuss with him -- yes, sir, we
9 did talk about the possibility of a self-defense
10 theory. You have to understand, as I recall, this
11 was a case where the location where the ultimate
12 shooting occurred, he had gone there to deliver
13 some drugs in a transaction and they ripped him
14 off. His girlfriend knew the person who ripped him
15 off; it was her former boyfriend. And Mr. Nelson
16 was determined to go back and pick up what was due
17 him.

18 The basic framework of the case was
19 that when he got back there, all heck broke loose,
20 and that was part -- part and parcel of the
21 transcript. I haven't read the transcript since I
22 finished with the case, but there was shooting from
23 all over the place and Mr. Nelson was supposed to
24 have been doing some shooting back. I think he had
25 someone else with him, too, and that sort of thing.

WILLIAM RUNYON - CROSS EXAM BY MR. JOHNSON

1 Q. And he didn't take the stand in either
2 of his trials, did he?

3 A. No, sir.

4 Q. Did you discuss his testimony or
5 potential testimony with him?

6 A. I discussed potential testimony with
7 him. Part of the problem was he was legally sane,
8 but at that point in time he was -- he was still
9 problematic as to whether or not he would be
10 quixotic on the stand, things of that sort. There
11 was some practical problems with him testifying.

12 In the first trial they didn't have his
13 statement to use against him, quite frankly, and
14 that was the -- kind of the big difference between
15 the first and second trial, and that I think helped
16 -- of course you never know what a jury does, but
17 that helped us get the hung jury.

18 Q. You argued vehemently in the second
19 trial to get that statement suppressed, did you
20 not?

21 A. Well, I would suggest I argued
22 vigorously versus vehemently.

23 Q. And Judge Harrington denied your
24 Jackson v. Denno request, correct?

25 A. That's correct.

WILLIAM RUNYON - CROSS EXAM BY MR. JOHNSON

1 Q. Okay. And then once it came time to --
2 for the statement to come in, you renewed your
3 objection, correct?

4 A. Yes, sir. I vigorously renewed my
5 objections at all stages, I thought, to protect the
6 record, because I really did think that his -- his
7 -- he was arrested in Atlanta, Georgia. He
8 actually was brought back here. We actually looked
9 at the question as to how he got back here to South
10 Carolina because he was brought back by the
11 Marshals on a removal hearing versus extradition.

12 Once the Marshals got him here, they
13 turned him over to the State, which is a quirky way
14 of getting around extradition if you want to do it.
15 He was not in the best of shape when they -- when
16 they questioned him and when they brought him back
17 here.

18 Q. Did you ever discuss any lesser
19 included offences of murder with him?

20 A. I discussed lessor included offenses
21 with the Solicitor.

22 Q. Okay.

23 A. But never had an offer. Had we had an
24 offer, I would have discussed that with Mr. Nelson.
25 We were never offered anything less than what he

WILLIAM RUNYON - CROSS EXAM BY MR. JOHNSON

1 was charged with.

2 Q. And the last allegation is that the
3 trial judge charged the jury instruction of the
4 hand of one, hand of all and that you did not
5 object to that. Is there a reason that you would
6 not have objected in the case?

7 A. I think it's the law in South Carolina
8 when you have multiple actors in a situation -- I
9 would have to go back and review the file in
10 detail, but basically when you have multiple
11 people -- I forget how many people went back with
12 him, at least one person went back with him, and my
13 recollection is they were waiting for him.

14 And -- and it really didn't matter
15 whose -- whose shots, so to speak, took out the
16 ultimate victim. The State was entitled to charge
17 him hand of one is hand of all. I don't usually
18 object to everything just to be objecting. Maybe
19 that's a fault on my part.

20 MR. JOHNSON: All right. Thank you.

21 No further questions, Your Honor.

22 MR. MURPHY: Nothing further, Your
23 Honor.

24 THE COURT: You may step down, Mr.
25 Runyon.

1 THE WITNESS: Thank you.

2 MR. MURPHY: That's our case, Your
3 Honor.

4 THE COURT: All right. Very well.

5 MR. JOHNSON: Nothing further from the
6 State.

7 THE COURT: Very well. Is the State
8 calling anyone?

9 MR. JOHNSON: No, Your Honor.

10 THE COURT: Okay.

11 MR. JOHNSON: If you would like to hear
12 our directed verdict motion.

13 THE COURT: Yes, please.

14 MR. JOHNSON: Your Honor, the State
15 would ask for a directed verdict in this case on
16 Civil Procedure Rule 41, as we feel that the
17 applicant has failed to meet his burden of proof.

18 First of all, there is overwhelming
19 evidence of guilt in this case. I have gotten Mr.
20 Nelson to admit that not only did he make the
21 statement, that he implicated himself in this
22 crime, he had a girlfriend that said, I think I
23 just shot your baby daddy, that's an admission of a
24 party opponent, he's had co-defendants that point
25 the finger at him, and he admits to being on the

1 scene and firing the gun that ultimately killed the
2 victim in this case, Your Honor.

3 So under Ford v. State, any -- any type
4 of ineffectiveness by counsel is completely wiped
5 out by overwhelming evidence of Mr. Nelson's guilt
6 in this case. Further, Counsel has testified that
7 he discussed the right to testify with Mr. Nelson,
8 he discussed self defense with Mr. Nelson --

9 THE COURT: That was amply covered by
10 the Court and the Court charged self defense, did
11 it not?

12 MR. MURPHY: Yes, they did.

13 MR. JOHNSON: Yes, sir, they did --
14 that the statement was admitted in the second
15 trial; however, that is the sound discretion of the
16 trial judge. Court of appeals and --

17 THE COURT: That was raised on the
18 direct appeal, was it not?

19 MR. JOHNSON: Yes, it was, and that's
20 the law of the case, Your Honor; that he was
21 charged with murder, that counsel would have
22 discussed lesser included had the Solicitor offered
23 anything less than murder, that did not happen, and
24 that it is the right law to charge the hand of one,
25 hand of all in this case because there were

1 multiple codefendants in this case. I think the
2 State is entitled to a judgment as a matter of law
3 in this case, Your Honor.

4 THE COURT: How about the issue of
5 lesser includeds?

6 MR. MURPHY: Are you talking --

7 THE COURT: Yes, sir.

8 MR. MURPHY: Yes, sir, Your Honor. The
9 law used to be that failure to ask for a lesser
10 included crime was ineffective, per se; however, I
11 believe defense counsel purposely didn't do that
12 for a number of years, and the Court changed that
13 ruling to say there has to be some type of trial
14 strategy not to ask for a lesser included.

15 My practice, when I tried cases, I put
16 on the record either we're asking for a lesser
17 included or we're not going to ask for a lesser
18 included, and I explained in open court the trial
19 strategy. And, typically, the judge will question
20 the defendant as to that. Here, there is no
21 testimony about any trial strategy for not asking
22 for the lesser include offense.

23 Furthermore, as the judge pointed out,
24 he got the self-defense charge. And if you have a
25 self-defense charge, I think that takes away the

1 premeditation element for murder, making either an
2 involuntary or voluntary charge all the more likely
3 that -- or all the more appropriate, Your Honor.

4 And I believe not allowing the jury
5 that option, to sentence him to a lesser included
6 charge, constitutes ineffective assistance and
7 would entitle him to a new trial.

8 THE COURT: How about that, Mr.
9 Johnson? That's the thing that gives me some
10 concern.

11 MR. JOHNSON: Is that, Your Honor, any
12 -- yeah. We go back to overwhelming evidence of
13 guilt in this case. Any alleged deficiencies by
14 counsel are completely wiped out by his
15 overwhelming guilt in this case.

16 THE COURT: But if we take away
17 overwhelming evidence, what do we have left?

18 MR. JOHNSON: Well, then, he said that
19 his trial strategy was he would have discussed this
20 with his client had he gotten any type of offer
21 from the State.

22 THE COURT: What does the offer have to
23 do with it?

24 MR. JOHNSON: That all they were going
25 forward with is murder.

1 THE COURT: I understand that, but
2 isn't that even more of a reason to ask?

3 MR. JOHNSON: Well, Your Honor, it's
4 been my understanding that the Court is not
5 supposed to charge lesser includes unless there is
6 some evidence of a lesser included. There was no
7 evidence -- there was no rational reason why Mr.
8 Nelson went with the gun to the site -- he went to
9 go get drugs back.

10 All right. There was no fight, there
11 was no voluntary manslaughter, there was no
12 involuntary manslaughter. It is premeditated
13 murder. That's the State's position, Your Honor.

14 THE COURT: Okay. All right.

15 MR. MURPHY: Your Honor, I would state
16 -- and what Mr. Runyon did -- there was no question
17 that Mr. Nelson fired the gun, that wasn't an
18 issue. And if I were trying this case, I wouldn't
19 make that an issue either. What Mr. Runyon alleged
20 is that there were bullets flying both ways, he
21 fired the gun in self defense, and that's what the
22 Court charged.

23 THE COURT: Self defense could have
24 been dismissed by a jury simply -- but not as a
25 matter of intent, but because the defendant

1 participated in the difficulty that brought it up.

2 MR. MURPHY: Absolutely, and I don't --
3 I agree with you 100 percent; however, we have --
4 the State's talking about overwhelming evidence,
5 that they're relying on the statement saying, I
6 think I shot your baby daddy. To me, that shows
7 that there was no premeditation, that they did go
8 there -- and there is no testimony that indicates
9 they went there to commit a crime, to do an armed
10 robbery, or to do a shooting.

11 The testimony is they went there, guns
12 -- bullets started flying, as one side shot back at
13 them, they shot back. Going to get that property
14 is not a crime. If they went to go to commit a
15 robbery, that certainly is a crime, but just going
16 there to recover what was stolen from them is not
17 a crime in this state.

18 THE COURT: Mr. Johnson, are you
19 familiar with Catrell one, the first Catrell case?

20 MR. JOHNSON: No, sir, I'm not.

21 THE COURT: That was a case involving a
22 defendant who shot a police officer, and then Judge
23 Thomas did not charge self defense. And the court
24 of appeals -- the supreme court determined that
25 where there was evidence, any evidence, that could

1 support that -- and there was very little I can
2 tell you, I ended up trying the case later on the
3 retrial, they reversed it -- if there's any
4 evidence to support the lesser included, that's
5 what comes from Catrell. Okay.

6 MR. JOHNSON: And, Your Honor, just to
7 that last point, I think once you review the entire
8 record, you'll see there is no evidence to support
9 that. There are other witnesses that say there
10 were no bullets fired at Mr. Nelson, that he and
11 the codefendant were the only ones shooting the gun
12 at that --

13 THE COURT: You know, the only
14 difference between voluntary and murder is simply
15 the -- basically, the premeditation.

16 MR. MURPHY: That's correct, yes.

17 THE COURT: Okay. Well, I want you
18 both to submit Orders to me and I want you to
19 address that issue. I will tell you right now that
20 part gives me concern.

21 MR. MURPHY: Yes, sir. Your Honor, if
22 I may for the record briefly just address the other
23 issues that I've raised, if Your Honor would allow.

24 THE COURT: All right. Sure.

25 MR. MURPHY: The first issue is with

1 regard to the hand of one crime -- the hand of one
2 of -- hand of one charge. Your Honor, as I said,
3 there is no issue that Mr. Nelson fired the gun and
4 the testimony is that bullets were going back and
5 forth. And this is a very technical point --

6 THE COURT: What do you mean there's no
7 evidence that he fired a gun?

8 MR. MURPHY: Well, no. No. The
9 evidence that he fired, he fired -- there is no
10 evidence that he did not -- he fired a gun, there
11 is no question about that. This is real technical,
12 but it is a very important point because if he was
13 going there to recover what was stolen from him, I
14 don't believe that constitutes a crime. And if he
15 -- if that does not constitute a crime, then I
16 think that's an improper charge. If it was a
17 crime, then I believe the charge is proper, Your
18 Honor.

19 THE COURT: Who would make that
20 determination?

21 MR. MURPHY: Well, I think that's a
22 legal question for the Court.

23 THE COURT: Wouldn't it require a
24 finding of the facts to their intent when they went
25 there?

1 MR. MURPHY: That's correct. As I read
2 the transcript, I didn't find any testimony or
3 anything that they could draw the inference that
4 they were doing anything other than recovering what
5 was stolen from them. So, as you know, the jury
6 charges are dependent on the facts, but I think
7 that's how -- that's how I read this case.

8 And, like I said, if they were going
9 there to commit a crime, then I think that's an
10 important charge.

11 THE COURT: Okay.

12 MR. MURPHY: And, finally, Judge, we've
13 already addressed the lesser included charge, but I
14 would say with the pretrial ruling, Judge Dennis
15 issued a pretrial Order that the statement was
16 suppressed. I believe that's the law of the case.
17 There wouldn't --

18 THE COURT: Motions in limine are not
19 binding on the trial judge. That's a problem --

20 MR. MURPHY: Well --

21 THE COURT: -- the preliminary --

22 MR. MURPHY: I understand that, yes,
23 Your Honor, and I agree with that; however, there
24 wouldn't have been anything that changed from the
25 first trial to the second trial. It's kind of like

1 a summary judgment motion, moving for summary
2 judgment twice in a case. You're arguing the exact
3 same thing before a different judge to get a second
4 crack at the apple, and although it wouldn't have
5 been binding in terms of -- you have to renew your
6 objections.

7 I believe that that should have been an
8 issue that would have been raised at least by
9 appellate counsel, Your Honor. And that would be
10 all I would have.

11 THE COURT: Thank you.

12 Do you want to respond, Mr. Johnson?

13 MR. JOHNSON: No, Your Honor.

14 THE COURT: Submit proposed Orders to
15 me within 30 days.

16 MR. MURPHY: Thank you.

17 THE COURT: And, Mr. Johnson, can I
18 have this record?

19 MR. JOHNSON: Yes, Your Honor. All of
20 that is for you.

21 (These proceedings were concluded at
22 3:16 p.m.)

23

24

25

1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 23rd day of June, 2016 at
13 Charleston, Charleston County, South Carolina.

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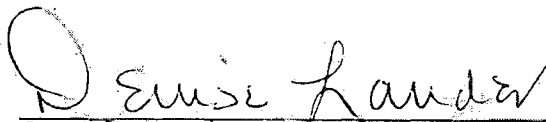
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Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Tramaine D. Nelson, #316883,

2012-CP-10-7003

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
2016 MAY -2 AM 11:04
JULIE J. ARISTON
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 26, 2012. The Respondent made its Return on July 8, 2013. An evidentiary hearing into the matter was convened on September 10, 2015, at the Charleston County Courthouse. Christopher L. Murphy, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Bill Runyon, Esquire and Bob Dudek, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the Record on Appeal and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the October 2007 term of the Charleston County Grand Jury for murder (2007-GS-10-

11054) and at the October 2008 term for assault and battery with intent to kill (2008-GS-10-7463).

The Applicant was represented by William L. Runyon, Esquire.

On November 10, 2009, the Applicant proceeded to trial and was convicted of both charges. On April 23, 2010, the Applicant was sentenced by the Honorable Kristi Lea Harrington to confinement for a period of forty-five (45) years for murder and twenty (20) years for assault and battery with intent to kill. The sentences are to be served concurrently. The Applicant filed a timely Notice of Appeal at the South Carolina Court of Appeals. Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense represented the Applicant on appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Nelson, 2012-UP-518 (S.C. Ct. App. September 12, 2012). The Remittitur was issued on September 28, 2012.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified his mother hired Bill Runyon to represent him. Applicant stated he met with counsel twice, both times in the jail and no more than five minutes per visit. Applicant stated there was a 20 year offer, which he rejected. Applicant stated counsel never discussed a self-defense claim with him. Applicant also stated he did not take the stand in his own defense in either the first or second trials; he claimed he never discussed testifying with his attorney. Applicant then testified he never discussed lesser included offenses with counsel. Applicant lastly stated that while an appeal was filed on his behalf, he did not discuss his issues with his appellate attorney.

On cross-examination, Applicant testified that his statement was introduced at trial, in which he admitted that some third party had robbed him of drugs, went back to a friend's house, had another friend call a codefendant, got into a different vehicle, and drove to the apartments where he

was robbed. Codefendant got out of the car and started shooting; whereupon, defendant admitted to exiting the vehicle with a black Glock .45, ran around the car, and shooting one time. This shot killed victim, an innocent bystander at the apartments. Applicant also admitted that his codefendant gave a statement, implicating defendant in this crime. Furthermore, Applicant's girlfriend gave a statement to law enforcement, in which she stated Applicant called her asking for marijuana and then stated, "I have got to go because I think I shot your baby's daddy." Additionally, Applicant admitted other witnesses saw him shoot the victim in this case.

Appellate counsel testified as to how he reviews cases based on the record before him. In this case, is strongest argument was a statement given to law enforcement by Applicant. Applicant's appeal was dismissed pursuant to Anders v. California, 386 U.S. 738 (1967).

Trial counsel testified he represented Applicant at both his trials. He stated the first trial was a hung jury; with a successful suppression motion concerning Applicant's statement to law enforcement. He also stated at the second trial, the trial court allowed Applicant's statement into evidence. Counsel testified there was no change in circumstances between the first and second trials. Counsel stated he filed the appeal, but did not recall speaking to appellate counsel.

On cross-examination, Counsel testified he met with Applicant around 12 times. He also testified he fully discussed self-defense claim with Applicant, as well as Applicant's potential testimony had he chosen to testify at his trial. Counsel then stated Applicant was legally sane but still had some ill health issues. As far as the Jackson v. Denno hearing was concerned, Counsel testified he renewed his objections and preserve it for appeal. As to the lesser included offenses, he would have asked for them by the trial judge if there was an offer from the solicitor lesser included

offenses; but there was no offer. Lastly, Counsel stated as to the theory of "hand of one hand of all," he thought this was proper because there were multiple actors involved in this incident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript and the appellate records, all of which assists the Court in judging their credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong,

attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden to proving that counsel was ineffective in his representation of Applicant.

Lesser included offenses

Applicant claims Counsel was ineffective for not discussing lesser included offenses with him or requesting jury charges of voluntary manslaughter or involuntary manslaughter. This Court finds this allegation to be without merit.

For a defendant to be entitled to a jury instruction on a lesser-included offense, there must be some evidence in the record that would tend to show that the defendant is guilty of the lesser rather than the greater offense. State v. Fields, 356 S.C. 517, 589 S.E.2d 792 (Ct. App. 2003); State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976). The possibility that the jury might believe some of the State's case and not the rest is an insufficient argument for a lesser-included offense instruction. Funchess, 267 S.C. at 430, 229 S.E.2d at 332. Additionally, voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). "To warrant the court eliminating the charge of manslaughter, there must be no evidence whatsoever tending to reduce the crime from murder to manslaughter." State v. Starnes, 388 S.C. 590, 596-97, 698 S.E.2d 604, 608 (2010). "A

defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion." Id. "Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked." Id. "Moreover, there must be evidence that the heat of passion was caused by sufficient legal provocation." Id.

In this case, no evidence exists to warrant a lesser included offense charge of voluntary manslaughter. Applicant's own statement, introduced into evidence on page 215-216 of the appellate record, implicates Applicant in a murder, not a voluntary manslaughter. According to the statement, Applicant, with individuals Tooka and Wanda, drove to some apartments and was robbed of some drugs. Applicant then went back to Wanda's house, where Tooka called his cousin Timothy, one of Applicant's co-defendants. Timothy then came over to Wanda's house. Around 20 minutes later a gentleman, who went by the name A.T.L., pulled up in a small SUV-type vehicle. (ROA p. 173 lines -10). Apparently, the person who robbed Applicant called Applicant and stated for Applicant to come get his money. As a result, Applicant, Timothy and A.T.L. drove over to the apartments, where Timothy got out of the vehicle and started shooting. Applicant then decided to exit the vehicle and fire one shot. Victim was killed by Applicant's bullet. (ROA p 133 lines 24). But more importantly, witnesses testified that Victim was an innocent bystander and was not the person who robbed Applicant earlier that day, nor did he have a gun. (ROA p. 164 lines 18-23; p. 283 lines 16).

In Cottrell¹, the South Carolina Supreme Court held that the trial court erred in not instructing the jury on voluntary manslaughter as a lesser included offense. In that case, a law enforcement officer, after an initial consensual encounter with the defendant, observed the defendant raise his hands at which time the officer pulled out his gun. After holstering his gun, the officer and the defendant got into a struggle with each other. At this time, the defendant shot the officer in the face. After an exchange of gunfire with a second officer, the defendant fled the scene. The Supreme Court held "an alternative and reasonable inference was that the victim reacted in an impermissibly aggressive manner, physically assaulting and then shooting [defendant] when he exercised his constitutional right to walk away." Cottrell at 265, 657 at 454. Unlike Cottrell, Applicant was not involved in a struggle whatsoever with Victim in this case. Victim was an innocent bystander who had no involvement with the earlier robbery that Applicant claims to be the "sufficient legal provocation" for his actions. Therefore, there is no other reasonable inference other than Applicant acted with malice in this case.

Additionally, Starnes, *supra*, held "[w]hether a voluntary manslaughter charge is warranted turns on the facts." Id. at 597, 698 at 608. Starnes focused on the "heat of passion" prong of voluntary manslaughter in that "there must be evidence that the heat of passion was caused by sufficient legal provocation." Id. at 597, 698 at 608. However, this Court finds this case distinguishable from Starnes. Starnes satisfied the "sufficient legal provocation" prong because there was an incident between the victims and the defendant prior to the defendant shooting and killing the

¹ State v. Cottrell, 376 S.C. 260, 657 S.E.2d 451 (2008).

victims. Here, as stated prior, there was no interaction between Victim and Applicant as to satisfy the "sufficient legal provocation prong." As such, Starnes is inapplicable as this Court need not address the "heat of passion" prong if sufficient legal provocation does not exist.

Even assuming *arguendo*, there existed sufficient legal provocation, Starnes states, "in order to constitute 'sudden heat of passion upon sufficient legal provocation,' the fear must be the result of sufficient legal provocation and cause the defendant to lose control and create an uncontrollable impulse to do violence." Id. at 598, 698 at 609. Nowhere in the trial testimony or the testimony presented at the PCR hearing did Applicant or any of the witnesses state Applicant was in fear for his life and/or lose control as to create an uncontrollable impulse to do violence. As such, this Court need not analyze these facts as in depth as Starnes because there was no prior altercation between Victim and Applicant which would mitigate the homicide as to justify a voluntary manslaughter charge.

Likewise, Cook v. State, Op. No. 27596 (S. Ct. filed December 9, 2015) is inapplicable to this case because in that case there was sufficient legal provocation.² However, the Supreme Court found there was no heat of passion and further found that "Cook either shot victim with malice or in self-defense." In this case, there was no self-defense claim presented, nor was there any sufficient legal provocation that even necessitates a "heat of passion" analysis.

Consequently, this Court finds that a charge of voluntary manslaughter was not warranted in this case as no sufficient legal provocation existed. While Applicant claims that he was legally

² "At trial, Cook conceded that there was a sufficient legal provocation."

entitled to forcibly recover one's own property, in this case, Victim was an innocent bystander who had absolutely no involvement with the earlier robbery for drugs. Thus, Applicant simply cannot claim that he had legal provocation to shoot and kill Victim. Even if Applicant had sufficient legal provocation, this Court finds there was a sufficient "cooling off period" such that Applicant was not acting in the heat of passion. According to Applicant's own statement, after Applicant was robbed of the drugs by a third party, he, Tooka and Wanda went back to a house, where they called other people to explain the events of what just occurred. There was a period of around 20 minutes or so to "cool off." It was not until the third party who robbed Applicant called him that Applicant, et al. got into a car and proceeded to the apartments where the third party and Victim were located. At this point it was decided to exit the vehicle and fired the guns. For these reasons, this Court finds that Applicant was not entitled to a charge of voluntary manslaughter. As such, Counsel was not ineffective in not discussing voluntary and involuntary manslaughter with Applicant or requesting a charge of voluntary manslaughter at trial. Therefore, this allegation is denied.

"Hand of one, Hand of all"

Applicant also claimed counsel was ineffective for failing to object to the "hand of one hand of all" jury charge. This Court finds this allegation is without merit.

Evidence in the record supports that there was an implicit agreement between codefendants to pursue their stolen property and money, none of which Victim had any involvement. According to Applicant's own statement, after Applicant was robbed of drugs and money when he was with Wanda and Tooka and they drove back to Wanda's house, Tooka's cousin, Timothy, was called over to Wanda's house, presumably to aid Applicant in getting his drugs and money back. Another

codefendant, A.T.L. then drove up in a small SUV-type vehicle; both Timothy and Applicant proceeded to get into the car and drive to the apartments where Applicant was robbed earlier that day. Both Timothy and Applicant possessed guns. Timothy was the first to get out and began shooting, followed by Applicant shooting one shot that ultimately killed Victim. Implicit in this action is an agreement between Timothy and Applicant which displays a common plan to retrieve Applicant's drugs and money. Therefore, the "hand of one hand of all" jury instruction was proper.

Even assuming, *arguendo*, that the "hand of one hand of all" jury instruction was improper and Counsel was ineffective for failing to object to this jury instruction, Applicant can prove no resulting prejudice as there is overwhelming evidence of his guilt in this case. Where there is overwhelming evidence of guilt, trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). In Ford, trial counsel failed to request an alibi instruction and his representation was found deficient as a result. However, the evidence of the Applicant's guilt in Ford was overwhelming and this Court held that the Applicant failed to prove the second prong of Strickland, which requires that an Applicant show prejudice by the deficient representation. Likewise, the Applicant here has shown no prejudice resulting from any alleged deficient representation.

In this case, Applicant admitted to law enforcement that he was fully involved in the shooting death of Victim. Codefendant, Jovan Bryant, also testified that defendant stated to him, "[I] think [I] hit one." (ROA p. 238 lines 2-5). Later, there was a phone conversation between all three defendants in which Applicant stated he tag one, meaning he shot victim. (ROA p. 238 line 15- p. 239 line 4).

Additionally, Applicant's girlfriend stated Applicant called her and stated, "I think I shot your baby's daddy." (ROA p. 175 lines 9-12). Moreover, other witnesses saw Applicant at the scene with a gun in his hand. (ROA p. 255 lines 9- p. 255 line 3; p. 259 lines 10-18). Based on these statements, especially Applicant's own statements to law enforcement and to others, there is overwhelming evidence of Applicant's guilt in this case. As such, Applicant can prove no resulting prejudice from any alleged deficiency of counsel's performance. Therefore, this allegation is denied.

All other allegations

This Court notes that Applicant alleged other allegations such ineffective assistance concerning Applicant statement being admitted at the second trial, when is excluded the first trial and counsel's alleged ineffectiveness concerning Applicant's decision to testify at his trials. However, this Court finds Applicant either failed to meet his burden of proving Counsel was ineffective or failed to show how Counsel's actions prejudiced Applicant's case. Specifically, this Court finds that properly objected and argued for the suppression of Applicant statement at the second trial, preserving this issue for appeal. Additionally, this Court finds the trial court properly advised Applicant of the advantages and disadvantages of testifying or exercising his right to remain silent. Accordingly, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Larry B. Hyman
Presiding Circuit Court Judge
Ninth Judicial Circuit

4-20-2018
C. [Signature] South Carolina

2012-CP-10-7003