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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODSHEEN AYER,

APPELLANT

APPELLATE CASE NO 2015-002416

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBIT #65 (PHOTOGRAPH); STATE'S EXHIBIT #67 (PHOTOGRAPH);
STATE'S EXHIBIT #68 (PHOTOGRAPH); STATE'S EXHIBIT #69 (PHOTOGRAPH);
STATE'S EXHIBIT #70 (PHOTOGRAPH); STATE'S EXHIBIT #112 (PHOTOGRAPH);
STATE'S EXHIBIT #113 (PHOTOGRAPH); COURT'S EXHIBIT #1 (PHOTOGRAPH)**

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1 this diagram. Now, I'm going to ask you, Mr. Johnson.

2 We've paused in your testimony and please pay attention.

3 We've paused in your testimony to the point that you, Greg

4 Howell, Alvin Clark, Calvin Kennedy and Rodsheen Ayer are

5 all in the residence. Is that accurate and correct?

6 A Yes, sir.

7 Q Okay. Now, I want you to tell me at that moment. You
8 said you were all around the counter?

9 A It was just me, it was just me and Mr. Howell.

10 Q Whoa, whoa, before you mark it up, when you say it was
11 me, put your initial T and draw a circle around it wherever
12 you say you were?

13 A Okay. This would be Mr. Howell. I'm going to put GH
14 for Mr. Howell.

15 Q Okay. Now, put a little circle around that, please?

16 A (Witness complies)

17 Q Okay. Now, how about where were you at that time?

18 A Me and Mr. Howell was like sitting right like directly
19 like right here on the corner.

20 Q You were sitting like on bar stools?

21 A No, no. We was standing, like leaning over. Leaning
22 over.

23 Q Okay.

24 A This is me right here. C.J. That's him, I'm going to
25 circle that.

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1 Q All right. Now, where was Clark?

2 A Clark was right here. Right here. It was a microwave
3 right here. Right here. He was going from the microwave to
4 the sink.

5 Q Okay. And then where was -- you've already said Howell.
6 Where was Calvin Kennedy?

7 A Calvin Kennedy was right here, leaning in the doorway.

8 Q All right. And finally, where was Mr. Rodsheen Ayer?

9 A Mr. Ayer was -- where was he, right here.

10 Q And what was Rodsheen Ayer doing at that time?

11 A He was just standing there. He was just standing
12 there.

13 Q And was there a discussion going on?

14 A No, we just -- you know, like we was just looking at,
15 you know, at Mr. Clark cook up the dope.

16 Q Were you all sharing the blunt that you referred to?

17 A Yeah. It was just -- at that point in time it was just
18 me, Mr. Howell, and Mr. Clark sharing that blunt because Mr.
19 Kennedy had just came in.

20 Q Okay. And was Mr. Ayer partaking in the blunt?

21 A No.

22 Q Okay. He's just standing there?

23 A Yeah. He was just standing there.

24 Q Not doing anything else?

25 A Not doing nothing.

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1 Q Okay. All right. So at that moment what happens next?

2 A Okay. First, I don't know what happened. To this day,
3 I'm still lost. You get what I'm saying? To what
4 transpired to all of that. I have no idea. But I heard
5 shots go off, whatever the case may be.

6 Q And before we get into that, what were you wearing?

7 A I had on basketball shorts and a tank top and some Nike
8 flip flops.

9 Q Okay. Did you have anything in your pockets?

10 A I didn't have no pockets on my basketball shorts.

11 Q Did you have anything in your waistband?

12 A No, sir.

13 Q Did you have anything in your hands?

14 A No, sir.

15 Q Did you have a firearm?

16 A No, sir.

17 Q Okay. Continue then?

18 A So as the shots start going off Me and Mr. Howell
19 trying to make our way out the door. These two are fighting
20 it out. For whatever reason, I have no idea because my back
21 was turned. I never seen it.

22 Q How many shots did you hear?

23 A Sir, don't make me lie, please. I would be lying if I
24 gave a specific amount of shots that I heard. I would be
25 lying.

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1 Q Okay. So is the answer I don't know?

2 A Yeah. I don't know.

3 Q Would you call it many shots or just a few shots?

4 A It was a couple shots went off like pow, pow, pow, pow,
5 pow, pow.

6 Q Okay. And how close did they sound to where you were
7 standing?

8 A Right. It was like right there. They were right
9 there.

10 Q Okay. And which way were you facing?

11 A Sir, when the shots went off I just like --

12 Q When you first heard the first shot, which way were you
13 headed?

14 A I'm leaning on the counter. Like we still looking at
15 Mr. Clark cooking the dope.

16 Q Okay. All right. Continue, please?

17 A Okay. So when the first shots went off, me and Mr.
18 Howell, boom and went for the door right at the same time.
19 The door is small. Mr. Howell is not a slim guy, you get
20 what I'm saying. So me and him is fighting to get out the
21 door. So I ended up making it out the door. And there's
22 two cars like parked directly in front of the steps. I ran
23 between the car. I didn't have a gun to shoot back. I ran
24 between the cars and I duck down, whatever the case may be.
25 And that's when, probably a couple minutes later, I seen Mr.

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1 Ayer run out the house and went around the house. I seen
2 Mr. Kennedy come on the porch, fired shots at Mr. Ayer,
3 whatever the case may be. Mr. Ayer run around the house.
4 Mr. Kennedy run out the porch, went around the house and
5 was, you know, like was trying to chase Mr. Ayer or whatever
6 the case may be. When I see that, I try to go to the car.
7 I try to run -- make my way to the car because no one was
8 there. That's when Mr. Clark came out, firing. That's when
9 my co-defendant, Mr. Morrison jumped out the car so I could
10 make it to the car. He was firing at Mr. Clark to make sure
11 I made it to the car.

12 Q When you first heard the first shot, did you have a
13 chance to see what Mr. Clark was doing?

14 A He dropped. He just, he ducked.

15 Q He ducked, from what position? Where was he?

16 A He was like right here. Like right in here.

17 Q Okay. Is that -- you agree that -- and this may not be
18 the most artistic diagram. And it's certainly not to scale.
19 But do you agree that that is about the sink was?

20 A A little further over.

21 Q Okay.

22 A A little further over.

23 Q Would he have been standing near the sink?

24 A Yeah. He was still standing there. You know, like he
25 would go from the sink to microwave, the sink to the

1 microwave.

2 Q Is that part of the cooking process?

3 A Yes, sir.

4 Q Okay. Continue, please.

5 A So Mr. Morrison jumped out the car and fired shots at
6 Mr. Clark or whatever the case may be. And to be honest, we
7 was going to leave Mr. Ayer. We was going to leave him. We
8 was pulling out. Mr. Ayer came running from behind the
9 house and snatched the back door open and jumped in the car.

10 Q And what condition did he appear to be in?

11 A He was bleeding where he was shot. He was shot.

12 Q And what part of him was bleeding?

13 A I have no idea.

14 Q Did you happen to determine at any time after that,
15 where he'd been shot?

16 A No, sir. Because I was like, what the fuck -- excuse
17 me. Excuse me. I just kept saying what happened? What
18 happened? What happened? What happened? The only thing
19 Mr. Ayer, son pulled out. Son pulled out. Son pulled out.

20 Q What does that mean?

21 A I guess he pulled out a gun. He was like son pulled
22 out.

23 Q Was he saying someone pulled out a weapon, some of the
24 people in there?

25 A When I say son, I guess that's a New York thing that

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1 people from New York say, son. The only thing he kept
2 saying is son pulled out. Son pulled out. Son pulled out.
3 That's what he kept saying.

4 Q Okay. And it's your testimony that when Mr. Ayer made
5 it to the car, he had a gunshot wound?

6 A Yes, sir.

7 Q But you don't know where it was?

8 A No, sir.

9 Q All right. And at this point what seat were you
10 sitting in in the Impala?

11 A At that time, I was in the front seat. I ran and
12 jumped in the front seat.

13 Q Which front seat?

14 A The passenger's side front seat.

15 Q Okay.

16 A Of the white Impala.

17 Q And at that point, what was Taquan Morrison doing?

18 A He was panicking. He was like what happened? What
19 happened? What happened? Like everybody was panicking.
20 You know, like everybody was in a panic.

21 Q Didn't you say that Morrison fired some shots?

22 A Yes, sir.

23 Q And what kind of gun did he have?

24 A I don't know.

25 Q And where was he shooting at?

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1 A At the house, directly at the house.

2 Q Do you remember how many shots he got off?

3 A No, sir. I do not.

4 Q Okay. Is it your testimony you saw Alvin Clark firing
5 a weapon?

6 A Yes, sir.

7 Q How many times?

8 A I have no idea.

9 Q How many times did Calvin Kennedy fire a weapon that
10 you saw?

11 A Two times that I seen because he fired one -- when he
12 first came out the house. Pow. And once Mr. Ayer hit the
13 corner, he fired again. Pow. And that's when he jumped off
14 the porch and went around the house.

15 Q Did he appear to be in any type of distress?

16 A No, not the way he was -- no, like --

17 Q What I'm asking did he have any gunshot wounds that you
18 saw?

19 A No, sir. No, sir. No, sir.

20 Q Okay. And when you were in the house did you see
21 anybody actually take a round or suffer a gunshot wound?

22 A No, sir.

23 Q When you first heard the shot and you say you were
24 standing here -- and you turn and ran towards the door,
25 which way did you turn? Did you turn to your left or to

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1 your right?

2 A I have -- I would be lying. I have no idea. I have no
3 idea which way I turned.

4 Q Did you go straight towards the door?

5 A Yeah. I know I headed straight towards the door. I
6 had on flip flops. I can't defend myself. You know, like I
7 don't have no gun. I have flip flops and basketball shorts
8 and a tank top. These are my friends. I didn't have a
9 reason to feel threatened around them. None of that. You
10 know what I'm saying? Because it was all love. It was all
11 love like these people, these guys know where my mama stayed
12 at. They know where my baby mama stay at. These guys know
13 where I go to school. My little sister, you know what I'm
14 saying? We know each other family. You get what I'm
15 saying. So I didn't expect nothing. I didn't need a gun.

16 Q Did you suffer any gunshot wounds?

17 A No, sir. I didn't.

18 Q Did you suffer any type of injury?

19 A Besides -- no, sir.

20 Q What happened to your flip flops?

21 A To be honest, I really didn't know. To be honest, I
22 don't know. I know -- like, I know I had one flip flop once
23 I came to my senses, like. When I went to go get in the
24 house, I knew I had one flip flop on.

25 Q Okay. So you get in the white Impala. You're in the

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1 front. Taquan gets behind the wheel. Is that what
2 happened?

3 A We was about to leave. To be honest with you, we was
4 going to leave Mr. Ayer. We were going to leave him.

5 Q But Mr. Ayer comes -- you said he came around the
6 house?

7 A Yeah. He came running from around the house.

8 Q Show the jury how around the house, how he did that.

9 A Say the car's parked maybe --

10 Q You can draw the car in there if you want.

11 A Say, maybe the car's parked like right here. Whatever
12 the case might be. It's two cars parked like right here.
13 It's two cars parked right -- I'm in between these two cars.
14 I'm in between these two cars.

15 Q And were you crouched down hiding or were you standing
16 --

17 A Yeah. I could see because of the windows. You get
18 what I'm saying. Like, you can look through the window.
19 Like when you down, you can see through the windows. Like
20 you leaning up like that, whatever the case may be. Mr.
21 Ayer came and ran this way right here. Went around the
22 house. I guess, you know -- like, I never been on the back
23 house of you know, nothing like that. He came around. When
24 he came around, we were pulling -- this is the car. We were
25 pulling off this way, like we were pulling off this way. He

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1 came from around at an angle. He snatched the car door
2 open. That's when we stopped and he jumped in the car.

3 Q Okay. Then what? Where did you go?

4 A We pulled off. We pulled off.

5 Q Okay. And where did you go?

6 A We got to the stop sign and made a right and took Mr.
7 Ayer to the hospital.

8 Q So you and Taquan took Rodsheen Ayer to what hospital?

9 A I'm not sure which hospital that was, sir. I'm not
10 sure.

11 Q Do you know where it was?

12 A It was in Columbia.

13 Q So you drove him all the way to Columbia. Did you stop
14 anywhere?

15 A No, sir.

16 Q How long did it take to get him to the hospital?

17 A I have no idea.

18 Q Do you remember -- well, actually, who knew where the
19 hospital was if you didn't?

20 A I mean, like when we were coming up the interstate we
21 could see the hospital sign right there, you know. So the
22 first hospital we seen, that's the first hospital we
23 stopped. He didn't want to go to the hospital at first
24 because he was like I don't want my probation officer to
25 find out I'm in South Carolina. That was more his concern

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1 than anything. You get what I'm saying.

2 MR. STEVENS: Objection, Judge. May we approach?

3 THE COURT: You may.

4 (Off the record bench conference with counsel and the
5 Court.)

6 THE COURT: Ladies and gentlemen, you're not to
7 consider that last statement made by Mr. Johnson. It's
8 stricken from the record.

9 BY MR. PALMER:

10 Q So Terrance is it your testimony that you're in
11 Orangeburg, you leave the scene of whatever happened there.
12 You've got a passenger with a gunshot wound and you make the
13 decision to get on the interstate until you find a hospital?

14 A Sir, I know I was in shock.

15 Q Well, why didn't you just go to Regional Medical Center
16 here in Orangeburg?

17 A Sir, I would be lying if I sit here and make up a lie
18 an explanation.

19 Q Okay. And so whose idea was it to head to Columbia?

20 A It was no one idea in general. We just -- that was our
21 instinct you know, like that was --

22 Q Well, were you afraid this guy was going to bleed out
23 in the back of the car?

24 A I wasn't thinking about that. I just -- you know, like
25 my head was -- I just was worried about like what happened.

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1 That's all I kept saying, what happened. What happened?

2 What happened?

3 Q Well, was Mr. Ayer trying to stabilize his gunshot
4 wound in any way?

5 A I don't remember all that, sir.

6 Q Okay. Was there a conversation that took place on the
7 way to Columbia to the hospital?

8 A No, sir.

9 Q And you don't remember how long it took to get there?

10 A No, sir.

11 Q Did you ultimately arrive at a hospital?

12 A Yes, sir.

13 Q Do you know the name of it?

14 A No, sir.

15 Q And what happened then?

16 A Then we just dropped him off.

17 Q You dropped him off?

18 A Yeah. And went back to Ms. Counts. Ms. Counts, the
19 young lady that was here yesterday.

20 Q Where was her place?

21 A I don't know, sir.

22 Q Okay. And is Columbia where Taquan Morrison was
23 living?

24 A Yes, sir.

25 Q And that's where Ms. Minick lived as well, who owned

1 the car?

2 A Yes, sir.

3 Q Is that why you went there?

4 A Yes, sir.

5 Q Okay. So you dropped off Mr. Ayer at the hospital.

6 You go to Ms. Counts house. And what happened to the car
7 and Taquan Morrison?

8 A I have no idea.

9 Q Okay. And you had your clothes in the trunk. Was that
10 your testimony?

11 A Yes, sir. I went back over there like early that
12 morning because they were going to take me back on campus.
13 So all my clothes was in the trunk of Mr. Morrison car. I
14 went back over there, whatever the case may be. I don't
15 know -- I know it was like earlier that morning or whatever
16 the case might be. And I had my clothes in a basket, you
17 know, like and that was it.

18 Q All right. So then what did you do when you got to Ms.
19 Counts house?

20 A Just croaked out. Croaked out.

21 Q How long did you stay there?

22 A I don't know.

23 Q You don't remember?

24 A No, sir.

25 Q What's the next thing you remember that you did?

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1 A Getting threatening phone calls from -- I guess like
2 people in Orangeburg, you know. Mr. Howell, wasn't -- he
3 was -- that right there effected a lot of people. A lot of
4 people loved Mr. Howell. So at that time a lot of people
5 was hurt and my name was being called in the mix of it, you
6 get what I'm saying. And it was like -- they were wanting
7 to try to put it all on me, you get what I'm saying. That
8 wasn't the case. Everyone was mad at me whatever the case
9 may be. So I left.

10 Q Where did you go?

11 A To Mississippi.

12 Q Who took you there?

13 A (No verbal response)

14 Q You must remember that, Mr. Johnson.

15 A It was me and --

16 Q Does that include your mother? Did she help drive you
17 to Mississippi?

18 A Yes, sir.

19 Q Why did you go to Mississippi of all places?

20 A Like I said, these guys were my friends. They know
21 where my mama stay at. They know where my sister stay at.
22 They know where my baby mama stay at. All of us were
23 friends. I couldn't hide from them. I couldn't hide. I
24 can't hide. You can't hide.

25 Q Why didn't you just go to the police and tell them

1 what happened?

2 A To be honest, what I was going to the police for. I
3 didn't know nobody was hurt besides Mr. Ayer. I didn't know
4 no one was shot. I didn't know no one was shot.

5 Q At the time you left for Mississippi, how many days had
6 passed since this incident?

7 A Maybe two. I think one. One or two, I'm not sure.

8 Q And at the time you left to drive to Mississippi, did
9 you have reason to believe that charges would be filed
10 against you?

11 A Sir. I didn't have a firearm and those guys know I
12 didn't have a firearm.

13 Q Did you leave there to avoid any kind of criminal
14 prosecution or warrant?

15 A No, sir.

16 Q And so what's the reason you went all the way to
17 Mississippi?

18 A Fear for my family.

19 Q And when you got to Mississippi, where did you end up?

20 A Just at a family members house.

21 Q Okay. So you have some family in Mississippi?

22 A They're not really family. They're just close -- like
23 I said, I went to college, so I know a lot of people. You
24 know, when you go to college, you meet a lot of people from
25 different places. You know what I'm saying.

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1 Q Okay. And how long did you stay in Mississippi?

2 A I don't even remember. I don't remember exactly how
3 many days or -- I don't remember how many days I stayed or
4 the exact days it was.

5 Q And then your family members dropped you off there and
6 then they returned to South Carolina; is that your
7 understanding?

8 A Yes, sir.

9 Q And then what happened then as far as you being
10 arrested or charged?

11 A U.S. Marshals came in there and locked me up and said I
12 was wanted for murder. I was locked up.

13 Q When they locked you up and took you into custody, were
14 you read your rights?

15 A Yes, sir.

16 Q Did they tell you that you had the right to remain
17 silent?

18 A Yes, sir.

19 Q Did they tell you that any statement you made could and
20 would be used against you in a court of law?

21 A Yes, sir.

22 Q Did they say you had a right to have an attorney
23 present?

24 A Yes, sir.

25 Q And if you couldn't afford an attorney one would be

1 provided for you?

2 A Yes, sir.

3 Q And did you take them up on that deal?

4 A Yeah.

5 Q And did you remain silent?

6 A Yes, sir, I did.

7 Q Did you give the police any type of statement about
8 what happened?

9 A No, sir.

10 Q Did you retain an attorney?

11 A Yes, sir. You're my attorney.

12 Q Okay. And so why haven't you said anything to any type
13 of authority until today?

14 A To be honest, because I didn't want to give the state
15 time to dig holes in my story or try to make it look like I
16 was lying. That's why.

17 Q Okay. And you obviously consider this your day in
18 court. Are you telling the complete and truthful story of
19 what happened?

20 A It's the God's honest truth.

21 Q Are you leaving anything out that could be important to
22 resolving this case?

23 A No, sir.

24 Q After this happened, you went to Mississippi and you
25 eventually were returned to South Carolina. Did you have

State v Ayer Johnson - Direct Palmer 11/19/15 660

1 any contact with Calvin Kennedy or Alvin Clark?

2 A Mr. Kennedy he said little threatening statements
3 around town or whatever the case may be. But, other than
4 that, that was that.

5 Q And at what point did you find out that Greg Howell had
6 passed? }

7 A I received a phone call from a friend.

8 Q And how did you react to that?

9 A It broke me down because like I said, he wasn't no bad
10 dude. You know what I'm saying, all these guys are my
11 friends, you know, like we got together. You know like his
12 brother is my brother. Me and his brother went to school
13 together. We used to swap out shoes. You know what I'm
14 saying. We used to wear the same shoes. You know what I'm
15 saying. He'd get to school, I'd have on a pair of shoes and
16 we would swap shoes. I remember his mama calling my aunt,
17 you know, like because I went home with his tennis shoes.
18 And I'm like, you know, like we were just that close. It
19 was never nothing bad. It was never no bad blood or
20 nothing.

21 Q Have you ever been a participant in any kind of gun
22 fight, Mr. Johnson?

23 A No, sir.

24 Q Have you ever fired a gun at anybody?

25 A No, sir.

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1 Q At any point during this time, and what I'm talking
2 about is what happened on September 10th, 2012, did your
3 hand ever touch a firearm?

4 A Like earlier that day, to be honest I did have a
5 firearm that was in my hand. I went to the pawn shop and
6 purchased it in my name. I don't have a record, you know,
7 so I did have a firearm.

8 Q What kind of firearm was it?

9 A A Hi-Point 9 millimeter.

10 Q Is that the one that was in the Impala?

11 A Yes, sir.

12 Q Are you saying that you bought that firearm legally at
13 a pawn shop here in Orangeburg?

14 A Yes, sir.

15 Q And when you bought it, did you go in and fill out the
16 ATF form for them to do a background check?

17 A Yes, sir.

18 Q And is it your understanding that they did do that?

19 A Yes, sir.

20 Q And then you were allowed to purchase the firearm?

21 A Yes, sir.

22 Q In your name?

23 A Yes, sir.

24 Q And have you ever used that firearm to threaten, injure
25 or kill anyone?

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1 A No, sir.

2 Q During this sequence of events, where was the firearm?

3 A In the back seat of the car. I left the gun in the
4 car. I didn't need a gun with these guys.

5 Q So you're saying that you had a loaded firearm, but you
6 left it in the car?

7 A Yes, sir.

8 Q You didn't take it inside with you at all?

9 A No, sir.

10 Q When you went into this residence -- let's move back to
11 that. When you went in at anytime during your interaction
12 with these guys, did you see any guns inside that house?

13 A Yes, sir. I did.

14 Q Where did you see the gun and what kind was it?

15 A I'm not sure what kind of gun it was. But there was
16 one sitting on the counter.

17 Q Well, you know the difference between an automatic and
18 a revolver?

19 A Yes, sir.

20 Q Well, let me ask you specifically. Was it this
21 firearm? Do you recognize this firearm?

22 A Yes, sir.

23 Q Is that the gun you saw on the counter?

24 A I think it is, sir.

25 Q Okay. You know what kind of gun this is?

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1 A No, sir.

2 Q Okay. Do you know what caliber it is?

3 A No, sir.

4 Q Besides the Hi-Point that you've told us about, have
5 you ever owned any other firearms?

6 A No, sir.

7 Q Have you ever --

8 MR. SORENSON: Your Honor, I can't -- if he's
9 answering these questions, I can't hear him if he is or not.

10 THE COURT: Mr. Johnson, you need to speak up.

11 MR. SORENSON: At this point in time, I mean,
12 unless you're using the diagram. You may want to --

13 MR. PALMER: Yeah.

14 BY MR. PALMER:

15 Q Come on up, back up here Terrance.

16 A (Witness takes stand)

17 Q Have you ever received any firearms training?

18 A I've been to the gun range a few times and I was
19 actually going to get a carriers permit.

20 Q Had you taken the training, the class for that?

21 A Yeah. I just had to finish my hours. Finish getting a
22 certain amount of hours.

23 Q Okay. Was there ever a drug transaction completed that
24 day?

25 A Not that night but earlier that day it was. But not

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1 that night.

2 Q Okay. So this deal that you're talking about was going
3 to take place in [REDACTED] never happened?

4 A No, sir.

5 Q Did you see anyone shoot anybody else during that
6 sequence of events?

7 A No, sir.

8 Q Did you see Mr. Howell suffer a gunshot wound before
9 you ran out of the trailer?

10 A No, sir.

11 Q Did you hear any gunshots after you left the mobile
12 home?

13 A Not that I can remember.

14 Q That you haven't told us about?

15 A Not that I recall.

16 Q And do you have a recollection, Mr. Johnson, of the
17 total number of gunshots that went off between the time you
18 arrived there and the time you left in the Impala?

19 A I have no idea.

20 Q Do you know how many rounds that Taquan shot towards
21 the house?

22 A No, sir, I don't. But it was my firearm. My firearm
23 only held ten rounds.

24 Q Okay. Where is that firearm now?

25 A I got rid of it. I got rid of it. I don't --

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1 Q You didn't take it to Mississippi with you?

2 A No, sir. No, sir.

3 Q Okay. And have you seen it since you got back from
4 Mississippi?

5 A No, sir. I was locked up.

6 Q That's right. Okay. Please answer any questions the
7 State has?

8 MR. SORENSON: Do I go first or do they go first?
9 How does this go?

10 THE COURT: Mr. Stevens, cross-examination.

11 MR. PALMER: Excuse me. My error.

12 TERRANCE S. JOHNSON - CROSS-EXAMINATION

13 BY MR. STEVENS:

14 Q Good afternoon, Terrance.

15 A Hello.

16 Q You don't really know me well but you do know I
17 represent Rodsheen Ayer; correct?

18 A Yes, sir.

19 Q All right. I want to start just by talking about
20 September 10th, 2012 in general; all right?

21 A Yes, sir.

22 Q You knew Taquan Morrison at the time a little?

23 A Yes, sir.

24 Q Okay. And you knew he wanted to buy drugs?

25 A Yes, sir.

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1 Q All right. And his god brother was with him that day?

2 A Yes, sir.

3 Q And that's Rodsheen; correct?

4 A Yes, sir.

5 Q And you arranged the buy?

6 A Yes, sir.

7 Q With Alvin Clark?

8 A Yes, sir.

9 Q And you rode over with them to buy drugs; correct?

10 A Yes, sir, I did.

11 Q Okay. And you knew that Rodsheen had money on him;
12 correct?

13 A Yes, sir.

14 Q You knew he had a lot of money on him; correct?

15 A I didn't know an exact amount, but I knew he had money
16 on him; yes, sir.

17 Q At least twelve hundred and fifty dollars; correct?

18 A That's what I had. But, yes, sir. I knew he had that
19 amount if he wanted to purchase, you know, what he wanted to
20 purchase. Yes, sir.

21 Q Right. You also knew he had some really high quality
22 marijuana on him; correct?

23 A Yes, sir.

24 Q That would also be a thing of value; right?

25 A Yes, sir.

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1 Q So y'all rode over. Taquan Morrison drove?

2 A Uh-huh. (Affirmative response)

3 Q And that night you arrived; correct?

4 A Yes, sir.

5 Q Okay. And you said you're the one that had a Hi-Point;
6 correct?

7 A Yes, sir.

8 Q Let's focus on what you did when you got there. You
9 said you got out of the car?

10 A Yes, sir.

11 Q But Rodsheen stayed in the car; correct?

12 A Yes, sir.

13 Q Okay. Did he know anybody in that trailer?

14 A No, sir.

15 Q He wasn't familiar with anybody in that trailer?

16 A No, sir.

17 Q He'd never done business with anybody in that trailer?

18 A Earlier that day they bought some marijuana, but that
19 was that.

20 Q Okay. So inside Alvin Clark is cooking crack?

21 A Yes, sir.

22 Q Using the kitchen you said?

23 A Yes, sir.

24 Q Okay. And you guys were in there for a little while?

25 A Yes, sir.

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1 Q Do you remember about how long?

2 A Maybe five, five, seven -- it wasn't a long period of
3 time and it wasn't a short period of time.

4 Q I got you. Long enough to start cooking crack but not
5 long enough to finish cooking it?

6 A Yeah. Yeah.

7 Q Honestly, I don't know how long that is.

8 A That depends on how much --

9 Q Okay. Now, they knew Rodsheen was outside in the car;
10 correct?

11 A Yes, sir.

12 Q Like you said they knew Rodsheen was there to purchase
13 drugs; right?

14 A Yes, sir.

15 Q And so they told you to tell him, to bring him inside;
16 right?

17 A Yeah. Mr. Clark said, tell them peoples they can come
18 in.

19 Q Okay. Now, you didn't see Rodsheen Ayer with a gun on
20 him; did you?

21 A No, sir. I didn't.

22 Q Not before he went inside?

23 A No, sir. I didn't.

24 Q And not when he went inside?

25 A No, sir.

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1 Q You certainly didn't see him carrying this firearm;
2 correct?

3 A No, sir. I didn't see him carry that.

4 Q This was not in Rodsheen Ayer's possession; correct?

5 A Correct.

6 Q And you certainly didn't see him with a revolver;
7 correct?

8 A Correct.

9 Q So Rodsheen Ayer did go inside; right?

10 A Yes, sir.

11 Q Because you all asked him to go inside; right?

12 A Mr. Clark said --

13 THE BAILIFF: Excuse me, Your Honor. The juror
14 can't hear right here.

15 THE COURT: All right. Mr. Johnson, you need to
16 speak up, please?

17 DEFENDANT JOHNSON: Okay. Yes, ma'am.

18 A Mr. Clark stated to tell your friend to come inside.
19 Yes, sir.

20 BY MR. STEVENS:

21 Q Okay. So he was invited in by everybody inside; right?

22 A By Mr. Clark. Not everybody inside.

23 Q Okay. By Mr. Clark?

24 A Yes, sir.

25 Q And it's at that invitation he came on in; right?

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1 A Yes, sir.

2 Q And they used you to bring him in; correct?

3 A Yes, sir.

4 Q And he didn't have a gun; right?

5 A No, sir.

6 Q Now, let's talk about real quick where you said
7 everybody was at. You said when he was in there, he was in
8 between -- excuse me. He was effectively standing in
9 between this area here and that area that was in between
10 there; right?

11 A Yes, sir.

12 Q So Calvin Kennedy effectively was kind of at his flank;
13 right?

14 A Yes, sir.

15 Q And he didn't know anybody in there?

16 A Not from since earlier that day. Like knowing knowing,
17 no. But he knew of them. We had all dealt earlier that
18 day. You know what I'm saying. But on a personal level, he
19 didn't know none of them.

20 Q And the only people -- I'm going to touch on that. The
21 only smoking -- you called them boom; right?

22 A (Inaudible)

23 Q That was you, right?

24 A Well, to be honest, I really didn't have a chance to
25 hit it yet because we just rolled it. You get what I'm

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1 saying. But we were all going to smoke. You get what I'm
2 saying?

3 Q Okay. But before that was anybody smoking anything
4 else?

5 A Oh, yeah.

6 Q And who was smoking that? Alvin Clark?

7 A Yeah. Mr. Clark --

8 Q Mr. Howell?

9 A Yeah.

10 Q And you?

11 A I never hit. I never got a chance to hit the blunt
12 yet. I never got a chance to hit the blunt yet.

13 Q And shortly after Rodsheen is inside, you're facing
14 toward the kitchen or you're facing Mr. Howell?

15 A All us -- we're like -- could lean like right here to
16 show you. Like we're all leaning like this right here. You
17 get what I'm saying. Like Mr. Howell is beside me. We're
18 all leaning. You get what I'm saying. And this is the sink
19 area right here. We're all leaning. Mr. Kennedy and Mr.
20 Ayer is like behind us. We can't see what's going on. You
21 get what I'm saying? We don't know what's going on.

22 Q I'm with you. Now, go and have a seat. Thank you.
23 Now, you said earlier when Mr. Kennedy entered he was
24 agitated?

25 A Yeah.

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1 Q Angry?

2 A Yeah.

3 Q Upset?

4 A Yeah.

5 Q Okay. And right before y'all called Rodsheen in, let's
6 go back. I want to talk about this. You said Calvin said,
7 I ain't pressed?

8 A Uh-huh. (Affirmative response)

9 Q Meaning he's not worried?

10 A He's not worried.

11 Q And that's right before they had you bring in Rodsheen
12 Ayer?

13 A Yes, sir.

14 Q And when Rodsheen Ayer came in, Mr. Kennedy's still by
15 that door; correct?

16 A Yeah. Like he was blocking off the door. You get what
17 I'm saying? Like he was leaning on the door, like his back
18 was up against the door. He was like this right here.

19 Q Then you heard something?

20 A Just heard shots and a lot of commotion.

21 Q You heard shots. You're here. You said you just heard
22 it, boom; right?

23 A (No verbal response.)

24 Q Did it come from behind you or in front of you, do you
25 know?

1 A It came from behind.

2 Q Came from behind, okay. And like you said, Mr. Ayer
3 didn't have a gun with him before entering?

4 A No.

5 Q Right?

6 A Yes, sir.

7 Q He didn't have a gun with him after entering?

8 A No, sir.

9 Q That you saw at; right, at all?

10 A No, no, I didn't never see no gun.

11 Q You didn't see him with a gun on him even earlier that
12 day?

13 A No. I wasn't, you know, like -- earlier that day it
14 wasn't around him, you know, like that whole day. They just
15 come and pick me up. And, you know, like we went and chill,
16 smoke, smoke with my -- in Bowman. Went to Bowman. Smoke,
17 then came right back to Orangeburg. So it was like I was
18 paying attention to his ever move. You get what I'm saying.
19 Like it wasn't like that, because at the end of the day, I
20 don't know him.

21 Q All right.

22 A You get what I'm saying?

23 Q You come around and you see them struggling; correct?

24 A I just hear -- I just see a bunch -- I just hear a
25 bunch of commotion and shots going off. I didn't pay

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1 attention to them because I'm trying to get out the house
2 because the shots are going off?

3 Q Okay. You heard more shots?

4 A Excuse me?

5 Q You heard more shots?

6 A Yes, sir.

7 Q Shots from behind; right?

8 A Yes, sir.

9 Q Okay. And those shots were coming from behind you
10 while you were trying to exit?

11 A Yes, sir.

12 Q Not from next to you while you were trying to exit but
13 from behind you while you're trying to exit?

14 A From behind me while I'm trying to leave.

15 Q Just so I'm straight, you were trying to run out
16 because you heard shots from behind you over here, this
17 side, by the door?

18 A Yes, sir.

19 Q Where as you turn to run out, you heard more shots from
20 behind you. Would that be from the kitchen area?

21 A Yes, sir.

22 Q You said you ran outside; right?

23 A Yes, sir.

24 Q And you went between those two cars?

25 A Yes, sir.

1 Q You weren't bleeding?

2 A No, sir.

3 Q And you saw Rodsheen run out?

4 A I seen him when he ran out the house. And after he ran
5 out the house I seen Mr. Kennedy stand on the porch firing
6 shots at him.

7 Q And he fired the shots from this gun?

8 A Don't make me lie, sir. I'm not sure which gun it was.
9 Don't make me lie.

10 Q But it was a gun?

11 A Yes, sir. Yes, sir.

12 Q Now, just to be clear, Mr. Ayer wasn't exactly facing
13 Mr. Kennedy when Mr. Kennedy was shooting at him, did he?

14 A No, sir. He was running --

15 Q Mr. Kennedy was shooting at him towards his back?

16 A Yeah. He was trying to -- to be honest, he was trying
17 to get on through. Like he was trying to go. Like he was
18 trying to go.

19 Q Safe to say Mr. Ayer was retreating from that
20 situation?

21 A Yeah. He was trying to run. He was trying to run from
22 Mr. Kennedy. You get what I'm saying? He was trying to get
23 away from him. That's why he ran around the house. Mr.
24 Kennedy stood on the porch, fired shots at him. After that,
25 Mr. Kennedy went off the porch and went around the house to

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1 chase him.

2 Q He's chasing him?

3 A Yes, sir.

4 Q With the gun in hand?

5 A Yes, sir.

6 Q Now, it's at that point you heard shots fired from
7 here; right?

8 A Yes, sir.

9 Q After --

10 A Wait, no. I didn't mean to cut you off. Shots didn't
11 come from that car until Mr. Clark seen me coming from
12 between the cars. He was going -- he was firing at, you
13 know, like I guess he was trying to fire at me or whatever
14 the case may be. Mr. Morrison seen that, because I'm on my
15 way trying to run to the car. You get what I'm saying? And
16 as I'm running to the car, trying to make it to the car, Mr.
17 Morrison jumps out the car and fires shots at Mr. Clark so I
18 can make it to the car.

19 Q Okay. Just so we're clear about this thing. After
20 Rodsheen runs around or starts to run around, Calvin Kennedy
21 is also chasing him, who has also been out here trying to
22 shoot from the back?

23 A (No verbal response)

24 Q After that, you see Mr. Clark; correct?

25 A Yes, sir.

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1 Q And Mr. Clark is there at the front porch; correct?

2 A Yes, sir.

3 Q And Mr. Clark is on the front porch with a gun;
4 correct?

5 A Yes, sir.

6 Q And he's firing that gun; correct?

7 A Yes, sir.

8 Q And then when he's firing that gun, shots are fired
9 over here, from over here?

10 A Yes, sir. Yes, sir.

11 Q And your position is that was to protect you?

12 A Yes, sir.

13 Q Or perhaps Mr. Ayer?

14 A Yes, sir.

15 Q And all of this occurred at what you call a trap house;
16 correct?

17 A A trap house.

18 Q Trap house. Excuse me. Are people at a trap house
19 typically paid money to be able to use their house?

20 A Yeah.

21 Q Okay.

22 MR. STEVENS: Court's indulgence.

23 MR. STEVENS:

24 Q Now, you said you made it to the car?

25 A (No verbal response)

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1 Q Taquan Morrison's in the car.

2 A Once I made it in the car, once I made it to the car,
3 Mr. Morrison got in the car. You know, like me and him got
4 in at the same time.

5 Q All right. And you all are ready to leave?

6 A Yeah. We was about to go. You get what I'm saying?
7 We were about to, like I said -- as I stated, as messed up
8 as it sound, we were actually going to leave Mr. Ayer. You
9 get what I'm saying.

10 Q So it's fair to say that y'all were in fear for your
11 lives?

12 A Yeah. Yeah.

13 Q And Mr. Ayer barely made it to the car before you left
14 him there; right?

15 A Yes, sir.

16 Q And he made it to the back of the car; right?

17 A Yes, sir.

18 Q And even though he didn't want to go to the hospital,
19 y'all still took him to the hospital; right?

20 A Yeah.

21 MR. STEVENS: Court's indulgence. No further
22 questions, Judge. Thank you.

23 THE COURT: Solicitor.

24 MR. SORENSON: May it please the Court, Your
25 Honor.

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TERRANCE S. JOHNSON - CROSS-EXAMINATION

BY MR. SORENSON:

Q The story that you told this jury this morning, this afternoon, early afternoon, Mr. Johnson, you had never told law enforcement that; is that correct?

A No, sir.

Q Okay. Back in September of 2012, September 10th that night, didn't contact the police; is that correct.

A No, sir.

Q The following day on September 11th, 2012, didn't contact the police; is that correct?

A Correct.

Q September 12th didn't contact the police?

A Correct.

Q 13th?

A Correct.

Q 14th?

A Correct.

Q 15th. Your first contact direct with law enforcement in reference to this is when they find you hiding out from them in Mississippi; is that correct?

A I wasn't hiding from the law enforcement. I was hiding in fear of my life. I wasn't hiding from law enforcement because I didn't know I had charges that were on me. In South Carolina and Mississippi are in different time zones.

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1 So I'm not knowing what's going on in South Carolina. I'm
2 not hiding from law enforcement.

3 Q Okay. Because of the fact that they're an hour behind
4 us in time, that's the reason why you had no idea what was
5 going on back here in South Carolina; that's your testimony?

6 A And the news, sir. It's different news. It's South
7 Carolina news and you have Mississippi news. The news are
8 different. Most stations are different.

9 Q Okay. The fact of the matter is, Mr. Johnson, is that
10 on September 14th of 2012 Orangeburg County Sheriff's Office
11 came and told your family that they were looking for you; is
12 that correct?

13 A Correct, I guess. I have no idea. I wasn't around. I
14 don't know.

15 Q Okay. Well, the following day -- is it just a
16 coincidence that the following day those family members,
17 your mother, your sister, your cousin, your girlfriend drove
18 you all the way to Mississippi and left you there. Is that
19 just a coincidence?

20 A It wasn't a day after sir, whatever you're trying to
21 get at, sir. You're trying to make it look like I'm guilty
22 for running. I didn't run in fear of law enforcement.

23 Q Okay. So you didn't run in -- okay. But your
24 testimony is that you ran because you were afraid of Calvin
25 Kennedy?

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1 A To be honest, yes, sir. Not only him. Not only him.

2 I was afraid of Orangeburg County to be honest.

3 Q Okay. But you told your lawyer on direct examination
4 that the reason you didn't go to the police was because you
5 didn't know that anyone besides Rodsheen Ayer?

6 A And that's the God -- that's the truth. I didn't know.

7 Q So you were afraid that they were going to come get you
8 because he got hurt?

9 A Sir, did you not hear what I said? I said a couple
10 days later, I received threatening phone calls. I said a
11 couple days later. Meaning, I found out a couple days later
12 that this young man was shot. I didn't find out directly at
13 that moment.

14 Q Okay. So it's your testimony that from the evening of
15 September 10th, 2012 until a few days later, you had no idea
16 that Gregory Howell had been shot?

17 A No, sir. I didn't.

18 Q Had no idea that Calvin Kennedy had been shot; that's
19 your testimony.

20 A I didn't have no contact with no one from Orangeburg
21 County.

22 Q Did you go back to school?

23 A No, sir.

24 Q Okay. Because September 10th is a Monday; correct?

25 A Yes, sir.

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1 Q You were supposed to be back in school that Tuesday
2 morning?

3 A Excuse me?

4 Q That Tuesday morning September 11th?

5 A I was actually going to go back to school that Monday.
6 I was going to go back to school that Monday. That's why my
7 clothes were in the trunk of the car.

8 Q But it's your testimony now that you did not go back,
9 that you had no idea that anything had happened to your
10 friends, Calvin Kennedy or Gregory Howell; is that correct?

11 A That's correct.

12 Q But you did not go back to school on Tuesday, September
13 11th or Wednesday, September 12th or whatever again; is that
14 correct?

15 A Sir, --

16 Q Answer my question then you can explain it.

17 A That's correct, sir. Your Honor, sir. That's correct.
18 But the only reason I didn't go back to school, because like
19 I said, these guys are my friends. They know my every move.
20 It's not like these guys are strangers, you get what I'm
21 saying. These guys know I went to school. Me and victim
22 brother, we went to school -- we went to the same school.
23 You get what I'm saying? So it's not like I could hide from
24 these guys.

25 Q All right. But you never -- this fear that you had of

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1 them, you never contacted the police and told them anything
2 about what had happened that night?

3 A No, sir.

4 Q All right. And you told your lawyer that the reason
5 why you didn't tell law enforcement or anybody this story
6 that you've told the jury was because you didn't want to
7 give anybody time to dig holes in that story; is that
8 correct? Like you're trying to do now. Yes, sir.

9 Q And that's because it's a story; right?

10 A No. That's because it's the truth.

11 Q Let's talk about this gun that you testified about, all
12 right?

13 A Yes, sir.

14 Q You said that this -- that you had a Hi-Point .9
15 millimeter that was your gun; is that correct?

16 A Yes, sir. It was in my name. It went through the SLED
17 check, all of that.

18 Q Is it similar to this? I mean, that type of gun? I
19 mean, not this gun specifically. But did it look like this
20 one?

21 A No, sir. It didn't.

22 Q All right. And it's your testimony that when you got
23 over to the house on Maedrine Street, that you left that
24 gun, that it was in the back seat of that vehicle?

25 A It was on the seat. It wasn't in the back seat. It

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1 was on the seat.

2 Q Okay. So it was just lose on the back seat?

3 A Yes, sir. Because I had it just sitting there. It was
4 supposed to be -- I was just supposed to run in there, get
5 the stuff, take it back to the car, get those guys' money
6 and take it back in there and we were supposed to leave.

7 Q Okay. And you testified that, in fact, you back then
8 were actually trying to get your concealed weapons permit.
9 Is that what you told this jury?

10 A Yes, sir. I was going to do that; yes, sir.

11 Q Okay. And that you actually had taken some of the
12 classes but were a few hours short. Is that what you
13 testified about?

14 A I said I went to the gun range and I have to get, I had
15 to complete it so I would get some more hours. So -- in
16 order to get a concealed weapons permit, you have to get a
17 certain amount of hours. And that's what I had to do.

18 Q Okay. And, of course, they would have told you during
19 that training that you're not allowed to drive around with a
20 gun just sitting on the back seat with you; is that correct?

21 A It's also if the clip and the gun is in two different
22 places.

23 Q Where was the clip?

24 A It was on the floor. The gun never had the clip in it.

25 Q Okay. So you had an unloaded gun just sitting on the

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1 back seat with you with the clip sitting on the floorboard.

2 Is that what your testimony is?

3 A Yes, sir. Yes, sir.

4 Q Okay. Because you wanted to make sure you were
5 following the law. Is that what your testimony is with
6 regarding transporting that weapon?

7 A I didn't know it was a crime to carry a firearm that's
8 in your name. I didn't know that was a crime.

9 Q All right. And it's your testimony, though -- so you
10 -- and let me just kind of back up that day. So your
11 testimony is that you are at, earlier that day are over at
12 some girls' apartment in Orangeburg?

13 A Yeah.

14 Q Okay. And you'd spent the night there the night
15 before?

16 A Yes, sir.

17 Q And that you had gotten up. And I assume you were
18 dressed how you testified you were dressed later on with the
19 basketball shorts, tank top, and flip flops?

20 A Yes, sir.

21 Q That's how you were dressed the entire day?

22 A Yes, sir.

23 Q Okay. And it's your testimony then that when you get
24 to the home -- just to make sure I understand it. When you
25 go into that mobile home on Maedrine Street, that gun is

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1 sitting unloaded on the back seat?

2 A Which gun?

3 Q Well, I'm sorry. Not that gun. Your gun, that you
4 testified, the Hi-Point .9 millimeter?

5 A It's on the back seat. I don't need a gun around my
6 friends, sir.

7 Q Okay. But it's unloaded sitting on the back seat?

8 A Yes, sir.

9 Q Okay. And when you go inside Rodsheen Ayer is sitting
10 in the front passenger seat, Taquan Morrison is sitting in
11 the front, the driver's seat; is that correct?

12 A Yes, sir.

13 Q All right. Let me just make sure I kind of understand
14 the sequence of how -- so when you get over there before all
15 this happens, the incident happens, your testimony is that
16 when you got there, you go inside and it's Gregory Howell
17 initially; is that correct?

18 A He's just there by himself.

19 Q Okay. You come outside get ready to leave with Taquan
20 Morrison and Rodsheen Ayer?

21 A Yes, sir.

22 Q And see a car that you think is Stephanie's with --

23 A I never said I think it's Stephanie. Mr. Clark called
24 me when I got to the stop sign to make a right. He said,
25 is that you leaving? I said, yeah. He said, well, turn

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1 around because he's coming to the house.

2 Q Okay. So you go back to the house and go back inside
3 and then Alvin and Stephanie come inside?

4 A Yes, sir.

5 Q So it's now you Gregory Howell, Alvin Clark, and
6 Stephanie Barnwell inside that residence; is that correct?

7 A Yes, sir.

8 Q Him and Taquan Morrison's still sitting outside?

9 A Yes, sir.

10 Q Is it dark out at this point in time?

11 A Yes, sir. It was.

12 Q And your testimony is that Stephanie Barnwell then
13 left; is that correct?

14 A Yeah. I don't know if she -- see, I don't know if she
15 went -- she didn't stay in the house for a long period of
16 time because she left the car running. In fact, she went in
17 the house, grabbed something and left right back out. She
18 didn't stay in there for a long period of time.

19 Q All right. She goes. And then who comes in next?

20 A When?

21 Q After she leaves?

22 A After she leaves?

23 Q Uh-huh. (Affirmative response)

24 A That's when Mr. Kennedy walked up. Mr. Kennedy came in
25 and he was leaning on the door.

State v Ayer Johnson - Cross Sorenson 11/19/15 688

1 Q Okay. So it's your testimony that Mr. Kennedy came in
2 before Mr. Ayer; is that correct?

3 A Yes, sir. Yes, sir.

4 Q All right. And you are leaning against the rail. How
5 long is Rodsheen Ayer in that mobile home before you hear
6 this commotion and the gunshots?

7 A Excuse me. Could I clear it. I wasn't leaning on no
8 rail. I was leaning on the counter.

9 Q Leaning on the counter.

10 A Yes, sir.

11 Q Counter?

12 A Yes, sir.

13 Q Counter?

14 A Yes, sir.

15 Q How long was he in the house, Rodsheen Ayer, before you
16 heard the commotion and the gunshot?

17 A Not even two minutes. Not even two minutes.

18 Q Okay. And that comes from behind you?

19 A Yes, sir.

20 Q Okay. And it's your testimony that you turned around
21 and saw the two of them, being Rodsheen Ayer and Calvin
22 Kennedy at that point in time fighting?

23 A I've never said I seen them fighting. I said I heard
24 the gunshots and I ran for the door. I never stated I seen
25 the fighting, sir.

State v Ayer Johnson - Cross Sorenson 11/19/15 689

1 Q Okay. So you didn't even see -- well, tell us, what
2 did you see? So you hear gunshots and you just take off
3 running?

4 A Of course. Sir, if I have a -- if you have on
5 basketball shorts and a tank top and flip flops and shots
6 going off, are you going to stay around, sir?

7 Q Well, you said you had nothing to fear from any of
8 these people. So how did you know that anything was amiss
9 at that point in time?

10 A A bullet has no name on it. Your mom teach you that
11 when you're young.

12 Q Okay. All right. So you're testimony is you have no
13 idea who was doing anything at that point in time, you just
14 ran through the front door?

15 A Yes, sir. If I can't defend myself why would I stick
16 around with shots being fired.

17 Q Okay. Don't know who had a gun at that point in time;
18 that's your testimony. You had no idea?

19 A No, I don't. Sir, it went on behind me. I don't know
20 who pulled out the firearm first. I don't know if Mr. Ayer
21 pulled out the firearm first. I don't know if it was Mr.
22 Kennedy pulled out the firearm first. I don't know. My
23 back was turned. All I know is I heard the shots and I
24 wanted to get out of there.

25 Q Okay. And it's your testimony that when Mr. Kennedy

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1 had come in that he was agitated and upset acting?

2 A Yeah.

3 Q He wasn't agitated and upset with you; was he?

4 A No.

5 Q Okay. Wasn't agitated or upset with him, right?

6 Rodsheen Ayer?

7 A No, sir.

8 Q I mean, didn't know him; is that correct?

9 A Correct.

10 Q Was he agitated or upset with Alvin Clark?

11 A No, that I know of, sir.

12 Q Gregory Howell?

13 A Sir, I don't know why he was agitated. I have no idea.

14 I wasn't with him before to know what events lead on to him

15 having an attitude, sir.

16 Q Okay. And at that point in time, you had said earlier

17 that Gregory tried to run out the front door also?

18 A Yes, sir.

19 Q Okay. And he's a bigger guy than you; right?

20 A Yes, sir.

21 Q All right. And did you get out the door before him or

22 he get out the door before you?

23 A I get out the door before him.

24 Q Okay. Did he come out the door right behind you?

25 A Yeah.

State v Ayer Johnson - Cross Sorenson 11/19/15 691

1 Q And you said that you came out and ran over in between
2 these cars over here?

3 A Yes, sir.

4 Q Now, where did Gregory Howell go?

5 A Sir, I have no idea. Once I turned around, I didn't
6 see no one. I didn't see which way Mr. Howell went. I
7 didn't -- I was more -- my more concern was me. I'm not
8 concerned -- I'm not going to make up a lie and say oh, I
9 seen him do this. I seen him do that. No, I didn't. The
10 only thing I know, when those shots went off, I ran out the
11 house. I ran between those cars and I ain't --

12 Q Okay. All right. That wasn't my question, but okay.
13 All right. So you don't know where Gregory Howell went; is
14 that correct?

15 A No, sir. I don't.

16 Q Okay. And it's your testimony that you heard, as you
17 are running out the door, that you heard gunshots now behind
18 you, coming from the kitchen?

19 A Yeah.

20 Q Okay. But still, at that point in time, you have not
21 seen anybody with a firearm; is that correct?

22 A I seen Mr. Clark with the firearm before I seen Mr.
23 Kennedy chasing Mr. Ayer around the house.

24 Q Okay. Okay. Listen to my question.

25 A Yes, sir.

State v Ayer Johnson - Cross Sorenson 11/19/15 692

1 Q Listen to my question. At that point in time when you
2 ran out the front door --

3 A Yes, sir.

4 Q -- you had not seen anybody with a firearm at that
5 point in time?

6 A No, sir. No, sir. When I run out the house, like I
7 said, I was between the cars.

8 Q Okay. And it's your testimony that you were then
9 between those cars when you see Rodsheen Ayer come running
10 out; is that correct?

11 A Uh-huh. (Affirmative response)

12 Q Now, could you tell whether he had been shot at that
13 point in time?

14 A No, sir. I didn't. I didn't know.

15 Q Okay. Was he holding his arm or anything as he was
16 running?

17 A Sir --

18 Q He basically ran by you; is that correct?

19 A No, sir. He didn't ran by me because -- can I use
20 these right here to show you because I don't want to
21 interpret -- misinterpreted my words or try to confuse the
22 jury.

23 Q I don't want to do that either, Mr. Johnson.

24 A That's how it works.

25 Q I'm going to show you State's Exhibit No. 6. Does that

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1 photograph show kind of where you were hiding?

2 A Yes, sir.

3 Q All right. Point out for the jury where it is that you
4 went and hid?

5 A Do y'all see these cars right here?

6 Q You tell me where to point and I'll --

7 A I'll point. Do you see these cars. The shots went
8 off. I ran right here between these two cars right here.
9 So I have a clear, clear --

10 Q Between which two? The white Crown Vic and the one
11 that's pulled in?

12 A And the other car that's right here.

13 Q Okay. So you're -- that's where you're crouched down;
14 is that correct? So if I put my finger right there, that's
15 where you're talking about; right?

16 A Yes, sir. Yes, sir.

17 Q So you were crouched down between those two cars; is
18 that correct?

19 A Yes, sir.

20 Q All right. And it's your testimony at that point in
21 time that you then see -- well, let me ask you this. As
22 you're crouched down over there, do you hear any other
23 gunshots before you see anybody come out of the trailer?

24 A No. No, sir. I didn't hear any gunshots because I was
25 getting ready to run back to the car. And as I came from

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1 between the cars, Mr. Clark came and was firing the shots.

2 Q Okay. And that happened before or after -- before or
3 after you saw Mr. Kennedy and Mr. Ayer came out?

4 A Excuse me. Could you repeat that, sir?

5 Q I just want to make sure. So you are crouched down --

6 A Between the brown car and the white car.

7 Q -- let me actually take, let me use State's Exhibit No.
8 4, okay, because that one shows the trailer a little better
9 too. So you're crouched down where my finger is; correct?

10 A Yeah. I'm crouched down in between those cars. And
11 the exact location, I don't know. But I know I'm between
12 those two cars.

13 Q Between those cars. All right. And at that point in
14 time, who's the first person you emerge from the trailer?

15 A Mr. Ayer.

16 Q Okay. And Mr. Ayer comes and he runs around that
17 corner; is that correct?

18 A Correct. Correct.

19 Q All right. Now, my question was prior to seeing him
20 come out of the trailer, had you heard any gunshots?

21 A Yeah. Gunshots was still going off as I was leaving
22 out the trailer.

23 Q Okay. But when you're crouched down in between the two
24 cars and are hearing gunshots still at that point?

25 A No. They stop for a few seconds, which I was going to

1 run to the car.

2 Q Okay. But then Mr. Ayer comes out first?

3 A Yeah. Mr. Ayer came running out and Mr. Kennedy stood
4 on the porch and fired a shot at Mr. Ayer. Could I show
5 you. Could I show you on the --

6 Q Yeah.

7 A Mr. Kennedy is standing right here on the porch. I'm
8 right here in between these cars. So I could see directly
9 at the porch. Mr. Ayer jumped from off the porch and went
10 to run around the house. Mr. Kennedy fired a shot down,
11 like down, off the porch. Mr. Ayer ran around the house.
12 And when Mr. Ayer got around the house, Mr. Kennedy fired
13 another shot. Once Mr. Ayer got around the house, Mr.
14 Kennedy came off the porch, and went around the house.
15 After Mr. Kennedy went around the house, that's when I tried
16 to come from between these two cars. As I tried to come
17 from between these two cars, Mr. Clark came on the porch,
18 and was firing shots at me. That's when Mr. Morrison got
19 out the car and was firing shots. That's why at the angle
20 the bullet holes were in the trailer like that.

21 Q Okay. All right.. So you see -- and Mr. Ayer, your
22 testimony is you do not see him with a gun when he was
23 running down, around the end on the back of the trailer?

24 A No, sir.

25 Q All right. That Mr. Kennedy is now standing on the

State v Ayer Johnson - Cross Sorenson 11/19/15 696

1 porch shooting in that direction; is that correct?

2 A Correct.

3 Q All right. And your testimony is that you saw him,
4 that he shot two times on the porch?

5 A Yeah.

6 Q All right. And then he takes off after him; is that
7 correct? He still had a gun in his hand?

8 A Yes, he do.

9 Q And they go around the back. Did you see where they
10 went?

11 A No, sir. When they went around the back, sir -- and I
12 knew they was going to the back, I tried to inch from
13 between the cars to a way to the car. Because the car is
14 parked right in the driveway. You get what I'm saying? So
15 I proceed, I proceed -- using my peripheral -- I can see the
16 car is directly ahead of me and the porch is like right
17 there. You get what I'm saying. And if you use your
18 periphery, you can see both of them.

19 Q And Mr. Kennedy basically -- since you're crouched down
20 in between these two cars here, I mean, he basically runs --
21 both of them go -- I mean, there's a car in between y'all
22 but they go right by you basically?

23 A Yes, sir.

24 Q That's correct?

25 A Yes, sir.

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1 Q And it was your testimony at that point in time that
2 you did not observe any injuries, couldn't tell any injuries
3 to Mr. Ayer?

4 A Correct, yes, sir.

5 Q And your testimony was that you did not see any
6 injuries to Mr. Kennedy either; is that correct?

7 A Correct.

8 Q Okay. And let me ask you, do you end up seeing Mr.
9 Kennedy again after that?

10 A No, sir. I never seen --

11 Q Obviously, you see Mr. Ayer again when he comes and
12 gets in the car. But did you see Mr. Kennedy again out
13 there?

14 A No, sir.

15 Q Okay. And it's your testimony at that point in time
16 that you began kind of creeping out to go run to get in the
17 Impala; is that correct?

18 A Yes, sir. Correct.

19 Q When at that point in time Alvin Clark comes out on the
20 porch and starts shooting at you; is that correct?

21 A Yes, sir.

22 Q How many shots did he fire at you?

23 A Sir, I don't want to lie. I don't remember.

24 Q One shot?

25 A Sir, I don't remember. If I give a statement, I want to

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1 be exact and I want to be -- I don't want to make no one
2 seem more so of a bad guy. You know, I'm not going to
3 downplay no one, nobody.

4 Q You testified he was basically shooting at you while
5 you were running; right?

6 A Yes, sir.

7 Q So it's hard to make him much --

8 A But I can't tell. I mean, I don't remember how many
9 shots he fired.

10 Q You didn't get hit though; is that right?

11 A No, sir. I didn't.

12 Q Ms. Minick's Impala didn't get hit; is that correct?

13 A Correct. Because I wasn't close by the Impala. When
14 Mr. Morrison jumped out the car and started firing shots,
15 Mr. Clark ran back in the house. Once he started, once Mr.
16 Morrison fired the shots, Mr. Clark went back in the house.

17 Q And when did you see Mr. Morrison for the first time
18 outside of the vehicle? What was going on?

19 A Mr. Clark standing on the porch and taking aim at me.
20 Because I was -- like I said, once those guys went around
21 the house, I tried to ease on between the cars. You get
22 what I'm saying? That's when Mr. Clark came on the porch.
23 And like as I was coming up, I'm like right there. You
24 can't miss me. You get what I'm saying. You standing on
25 the porch, you can't miss me. You get what I'm saying? So

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1 he's firing or he's getting ready to fire. That's when Mr.
2 Morrison jumped out the car, at the angle, you get what I'm
3 saying? Where the car's parked. That's how those bullet
4 holes get in the trailer by the door.

5 Q All right. So ultimately your testimony is -- I mean,
6 you have no idea who shot Calvin Kennedy; is that correct?

7 A Correct.

8 Q No idea who shot Gregory Howell?

9 A Correct.

10 Q Really no idea who shot Rodsheen Ayer; is that correct?

11 A Sir, as much as I want to go home and to be honest with
12 you if I know. I've told you.

13 Q Okay. All right. And it's your testimony that the
14 only gun that your group had was your gun which was unloaded
15 on the back seat of the car the last time you had seen it;
16 is that correct?

17 A That's the Hi-Point .9 millimeter, sir. Yes, sir.

18 Q All right. And the three of y'all ultimately end up
19 fleeing the scene that night; right?

20 A Correct.

21 Q All right. And you don't stop at the hospital in
22 Orangeburg; is that correct?

23 A No, sir.

24 Q You got a guy in the back seat that's been shot. I
25 mean, was he in pain?

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1 A Sir, I'm not him. I don't know. I guess so. He was
2 shot. I guess so.

3 Q All right. But so y'all didn't stop at the hospital in
4 Orangeburg. You didn't call the police?

5 A No, sir.

6 Q You end up going all the way to the hospital in
7 Lexington; is that correct?

8 A Yes, sir.

9 Q And y'all drop him off at the hospital; right? So the
10 three of y'all at that point in time are still in the car;
11 is that right? You, Taquan Morrison and Rodsheen Ayer?

12 A Yes, sir.

13 Q You drop him off at the hospital?

14 A Uh-huh. (Affirmative response)

15 Q And y'all leave right?

16 A Yes, sir.

17 Q You don't stick around to talk to the police?

18 A No, sir.

19 Q Don't call the police and tell them, you know, we've
20 just been shot at. We're, you know, victims. We need to
21 file a report?

22 A To be honest with you, that's not how it goes. The
23 only reason those guys went to the police is because they
24 were shot. If no one was shot they wouldn't have called no
25 police either.

1 Q Wasn't he shot?

2 A Yes, sir.

3 Q Alvin Clark wasn't shot. You've not heard any
4 testimony about Alvin Clark being shot; have you?

5 A Sir, did you not hear what I said? I said the only
6 reason they got police involved is because they were shot
7 also. If no one were shot on their side, sir. They would
8 have never went to the police. That's what I said.

9 Q And that's the fact of the matter is when you're going
10 to rob people that are selling drugs, part of the deal is
11 you're counting on the fact that they're not going to go to
12 the police; is that right?

13 A And, also, if you're going to rob someone, you're not
14 going to wear a tank top, basketball shorts and flip flops.

15 Q Oh, that's right. Because you wouldn't have been able
16 to carry your gun around that you'd had all day; is that
17 right?

18 A Correct.

19 Q Okay. Let me see. Did y'all talk about, you know,
20 what he was going to tell the police if he came in --

21 A Who?

22 Q Rodsheen Ayer. -- if the police came to the hospital?

23 A Sir, it was a quiet ride. The only thing I kept asking
24 was what happened? What happened? What happened? The only
25 thing he could say was son pulled out. Son pulled out.

State v Ayer Johnson - Cross Sorenson 11/19/15 702

1 That was it.

2 Q That's all he could say?

3 A That's all. That's all. That's all he said. No one
4 ever acts like -- you know, like, I'm still in shock because
5 I'm in the middle of this because at the same time those
6 guys were my friends. So I'm in the middle of all of this.
7 You get what I'm saying. So I'm trying to figure out what
8 happened? What happened? Son pulled out.

9 Q You didn't ask him what he meant by that?

10 A I know what he meant by that, sir. I'm not illiterate
11 nor slow.

12 Q Well, I must be then because I don't know what he meant
13 by that. So why don't you enlighten us, please?

14 A When someone says son and they're from up north,
15 that's just like us South Carolinians say Bo a lot. You get
16 what I'm saying? Bo. What's up Bo. They would say what's
17 up son. Everyone understand?

18 Q So it was like he was saying Bo pulled out?

19 A Pretty much.

20 Q Okay. And you took that to mean what?

21 A Someone pulled out a firearm.

22 Q Okay. And you go back over to, later on that morning
23 back over to Tenaja Minick's house; is that correct?

24 A Correct.

25 Q And what was the purpose of that?

State v Ayer Johnson - Cross Sorenson 11/19/15 703

1 A Because those guys were going to take me back on
2 campus. My clothes were still in the trunk of their car.
3 And you notice Ms. Minick said when I came to the house I
4 had a clothes basket. I had a clothes basket at her front.
5 That's why I went back, to get my clothes.

6 Q Okay. So you go back to get your clothes, pick up your
7 clothes basket. Nothing to do with trying to clean up, you
8 know, if you had blood on you from him or anything like
9 that?

10 A No, sir.

11 Q And the only reason you went over there was because
12 they were going to take you back to school; is that right?

13 A No, no, no, no. I didn't went over there because they
14 were going to take me back to school. I went over there to
15 get my clothes out the trunk of her car that were left in
16 there.

17 Q Okay. You get your clothes and you don't go back to
18 school; is that right?

19 A No, I didn't.

20 Q Okay. And Mr. Palmer asked you about that Hi-Point .9
21 millimeter and you were kind of vague. You said that I got
22 rid of it; is that right?

23 A I did, yeah.

24 Q Where?

25 A I don't remember, sir.

State v Ayer Johnson - Cross Sorenson 11/19/15 704

1 Q When?

2 A Sir, to be honest, I wasn't thinking about no firearm
3 after that. I wasn't thinking about that because I didn't
4 have the gun. The gun wasn't in my possession. So I'm not
5 going to ask for the gun back.

6 Q Well, you just said it was in your name; is that right?

7 A Yes, sir. That's correct. The gun was in my name.
8 But someone else had it in all this I'm not going to ask for
9 the gun back. To be honest, I'm not going to get the gun
10 back.

11 Q Well, let me ask you this. You said ou got rid of the
12 firearm. I mean, did you get the gun back to get rid of it?

13 A No, sir.

14 Q Okay. So that wasn't accurate when Mr. Palmer -- when
15 you told that to Mr. Palmer?

16 A I said I got rid of the firearm. Not necessarily
17 meaning I myself disposed of it personally. I just didn't
18 have it back in my possession after that.

19 Q Okay. So you never asked for it back?

20 A No, sir. My mind wasn't on a firearm. My mind was on
21 what happened.

22 Q Okay.

23 A I'm not thinking about a firearm. Who's thinking about
24 a firearm after all that goes on?

25 Q You ever look to see how many -- you said that it held

State v Ayer Johnson - Cross Sorenson 11/19/15 705

1 ten rounds in it. Did you ever look to see how many were
2 left in it in the car?

3 A No. Sir, sir -- all this was going on --

4 Q It's a simple question yes or no?

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

6 Q All right. And it's your testimony -- let me ask you
7 this. Y'all pulled out. Did you see Alvin, Calvin and
8 Gregory pull out after y'all?

9 A No, sir.

10 Q Okay. So you don't know -- you didn't see them leave?

11 A No, sir.

12 Q Okay. And it's also your testimony that you never saw
13 either one of them where you would have know that either one
14 of them had been shot that night?

15 A No, sir. I didn't know anyone was shot, sir, besides
16 Mr. Ayer. Because I didn't, I didn't -- I wasn't there with
17 Mr. Clark or Mr. Howell.

18 MR. SORENSON: I beg the Court's indulgence.

19 BY MR. SORENSON:

20 Q And Mr. Ayer, it's your testimony that you had know for
21 a couple of days at that point in time?

22 A Yeah. I don't know Mr. Ayer. I have a Co-defendant
23 that I don't even know. That's crazy. I don't know Mr.
24 Ayer. I don't know him from a can of paint. He could have
25 came here -- I didn't know him.

State v Ayer Johnson - Redirect Palmer 11/19/15 706

1 Q And, also, it is your testimony that he was intending
2 on getting ready to go back to New York; is that correct?

3 A Yes, sir.

4 MR. SORENSON: That's all I have.

5 THE COURT: Any redirect?

6 MR. PALMER: Just one question, Your Honor.

7 TERRANCE S. JOHNSON - REDIRECT EXAMINATION

8 BY MR. PALMER:

9 Q What is it about Calvin Kennedy, Greg Howell and Alvin
10 Clark that made you so afraid of them?

11 A Like I said, I'm more so not afraid of them. As I
12 stated, Mr. Howell wasn't a bad guy. A lot of people had
13 love for him. You get what I'm saying. I'm not afraid of
14 Mr. Kennedy. I'm not afraid of Mr. Clark. Mr. Howell,
15 wasn't a bad guy. A lot of people had love for him. You
16 get what I'm saying. So when that event took place, a lot
17 of people was hurt by that situation. You get what I'm
18 saying? A lot of people was hurt. A lot of people, were
19 like -- grown men I know broke down and cried about that
20 situation. So I feared more so of the whole town coming
21 against me. You get what I'm saying. Because I'm not from
22 Orangeburg. Mr. Howell was from Orangeburg. And he's not a
23 white guy. You get what I'm saying? A lot of people loved
24 this man. You get what I'm saying. So I wasn't afraid of
25 Mr. Kennedy. I was just afraid of being in that environment

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when I'm the outsider. That's just like you coming in the neighborhood and you off someone in that neighborhood when you're not from that neighborhood. You're going to be looked at as the bad guy. It's going to be everyone trying to get you. Everyone. Everyone. That's mostly what I feared. I didn't fear, you know, like I didn't fear. That's what I feared.

Q Thank you.

MR. PALMER: No further questions.

THE COURT: You may step down, Mr. Johnson.

Ladies and gentlemen, I know you've had a long morning. It's time for us to take our lunch recess. I note it's 1:37. I would like to start right back up at 2:30 if you can get back in time. We'll wait for you, of course. It's not quite an hour. But if you could be back in time, as soon as possible, we'll start back as soon as you get back. Have a nice lunch. Again, please do not discuss the case with anyone including amongst yourselves.

.(Jury out at 1:37 p.m.)

(Court in recess for lunch at 1:37

THE COURT: Counsel, please approach.

(Off the record bench conference with Counsel and the Court.)

(Court in session after lunch

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1 recess at 2:44 p.m.)

2 THE COURT: Are we ready to proceed?

3 MR. SORENSON: Yes, Your Honor.

4 THE COURT: Could we have our jury, please?

5 THE BAILIFF: Yes, Your Honor.

6 (Jury in at 2:44 p.m.)

7 THE COURT: Welcome back, ladies and gentlemen of
8 the jury.

9 Mr. Palmer, you may call your next witness.

10 MR. PALMER: I call, Tyler Sturkie.

11 THE CLERK: Please place your left hand on the
12 Bible and raise your right hand, please.

13 (WHEREUPON, Tyler Sturkie was duly
14 sworn.)

15 THE CLERK: Thank you. You may have a seat and
16 please state your name again for the record.

17 MR. STURKIE: Tyler Sturkie, S-t-u-r-k-i-e.

18 THE COURT: Your witness.

19 MR. PALMER: Thank you, Your Honor.

20 TYLER STURKIE - DIRECT EXAMINATION

21 BY MR. PALMER:

22 Q Is Agent Sturkie?

23 A You can -- Mr. Sturkie's fine.

24 Q Mr. Sturkie, okay. Mr. Sturkie, where do you live,
25 sir?

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1 A I live in Columbia, South Carolina?

2 Q And what is your occupation?

3 A I work for the South Carolina Law Enforcement Division,
4 commonly known as SLED in the trace evidence department of
5 the forensic services.

6 Q Okay. And what is your educational background?

7 A I graduated from Newberry College with a Bachelor of
8 Science Degree in Chemistry.

9 Q Okay. And since graduating, you have gone to work for
10 SLED?

11 A Correct.

12 Q And how long have you worked for SLED?

13 A I have worked for SLED since March of 2014.

14 Q In what capacity?

15 A Just the forensic services, trace evidence department.

16 Q Okay. And does that job description include analyzing
17 gunshot residue samples?

18 A Yes, sir. At the trace evidence lab at SLED we analyze
19 evidence such as gunshot residue, fire debris, glass,
20 paints, fibers, explosives and general unknowns.

21 Q And have you ever represented SLED in court before as
22 an expert?

23 A Yes, sir. I have.

24 Q And in those cases, have you been qualified as an
25 expert by a court?

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1 A Yes, sir. I have.

2 Q In how many cases have you been qualified as an expert
3 in gunshot residue?

4 A I have testified one time.

5 Q Okay. And in that case you were qualified as an
6 expert?

7 A Correct.

8 Q Okay.

9 MR. PALMER: I would move that this gentleman be
10 admitted as an expert in gunshot residue analysis, Your
11 Honor.

12 THE COURT: Any voir dire?

13 MR. STEVENS: No questions, Judge.

14 THE COURT: From the State?

15 MR. SORENSON: No, Your Honor.

16 THE COURT: The Court finds that he's qualified.

17 BY MR. PALMER:

18 Q Now, Mr. Sturkie, I'm going to call your attention to
19 case number 2012-009791. Is that a case number that you can
20 reference in your file?

21 A The case number I have is SLED's lab number L12-11461.

22 Q Okay. Right. And that number also appears on your
23 report?

24 A Yes, sir.

25 Q And what incident date does it reference?

1 A May I refer to my notes?

2 Q Sure.

3 A I have an incident date of September 10th, 2012.

4 Q Okay. And in this case, what were you asked to do?

5 A I was asked to analyze a gunshot residue kit submitted.

6 Q And by whom were you asked to do that?

7 A By my lieutenant.

8 Q Okay. And does your report indicate who -- well, first
9 of all, who was your report addressed to?

10 A I received a gunshot residue kit from a Alvin Leonard
11 Clark.

12 Q Okay. Is that the subject that was sampled or is that
13 the law enforcement officer that submitted?

14 A That is the subject that was sampled.

15 Q And who submitted the sample?

16 A Kimberly Pugh of the Orangeburg County Sheriff's
17 Office.

18 Q Okay. And I'm going to show you what's not yet marked,
19 but I'll show you for identification purposes. Do you
20 recognize that parcel?

21 A Yes, sir. I do.

22 Q And what is that?

23 A This SLED's lab number L12-11461, item number 7, the
24 GSR kit submitted.

25 Q Okay. And on the back there's a couple of sets of

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1 initials?

2 A Yes, sir. It has been sealed and initialed by me. The
3 date of when I opened it as well.

4 Q And you recognize those initials?

5 A Yes, sir. These are my initials.

6 Q You put them on there?

7 A Yes, sir.

8 MR. PALMER: Please mark that as a Defense --

9 COURT REPORTER: Defendant's 20 for ID, Judge.

10 MR. PALMER: Thank you.

11 (Defendant Johnson's Exhibit No.

12 20, GSR kit, was marked for ID.)

13 BY MR. PALMER:

14 Q Can you tell Mr. Sturkie whether or not this parcel is
15 in the same condition it was when you resealed it?

16 A There appears to be no tearing or opening from when I
17 have sealed this.

18 Q And you recognize that from your initials as the sample
19 that was analyzed?

20 A Yes, sir.

21 MR. PALMER: Move to admit, Your Honor.

22 THE COURT: Any objection?

23 MR. SORENSON: No objection.

24 MR. STEVENS: No objection.

25 THE COURT: It's in.

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(Defendant Johnson's Exhibit No. 20

GSR kit was marked and entered.)

BY MR. PALMER:

Q Now, what is a gunshot residue swab. How does that work?

A Gunshot residue is collected from stubs, not swabs. Swabs generally swab the skin or mouth wherever the swab is needed. But these stubs is what is used to collect the gunshot residue. These stubs are similar to the shape of a roofing nail. And they are aluminum. And on this aluminum stub is a double-sided carbon sticky tape, which is used then to dab the subject's hands from the location that is collected on the stub itself.

Q And what was the name of the subject from which this stub was collected?

A Alvin Leonard Clark.

Q Okay. And what exactly did you do to analyze this sample?

A When I received this GSR kit when it was submitted to us, the protocol is to take it into inventory, the kit. When we receive it, it will have four stubs that we label right palm, right back, left palm and left back. And these locations are those locations of the hands. The right palm will be the right palm including the fingers and the webbing in your thumb. And the right back. The same for the left

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1 hand. The officer will have already dabbed that subjects
2 hands to test for gunshot residue or to collect for any
3 gunshot residue that may be present. When it is submitted
4 to us, we put it on the instrument called a scanning
5 electron microscope and it automatically runs testing and
6 analyzing looking for particles of gunshot residue. When
7 the automation is over, then I will go back through and look
8 to see if any gunshot residue particles have been found. If
9 so, I will collect them, analyze them to make sure that they
10 are gunshot residue and then generate a report from that.

11 Q And did you do that exact procedure in this case with
12 this sample?

13 A Yes, sir.

14 Q And what did you determine based on the testing that
15 you performed?

16 A From my result the right palm contained no gunshot
17 residue found. The right back contained one round particle
18 associated with gunshot residue. The left palm contained
19 one particle of gunshot residue and one particle associated
20 with gunshot residue. And on the left back, round particles
21 consistent with gunshot residue were found.

22 Q What is a particle? What is a round particle?

23 A When we look for gunshot residue, a particle is a very
24 small microscopic material. To give you an illustration,
25 you'll take a hair off of your head. The diameter of that

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1 single hair is one hundred micrometers. Gunshot residue is
2 typically in the shape of one to ten micrometers. And the
3 scanning electron microscope has the ability to view and
4 characterize these small particles.

5 Q Okay. And in three out of four samples you found at
6 least one particle of gunshot residue from the sample
7 provided?

8 A No, sir. From three of the four I found particles that
9 were either associated with gunshot residue, consistent with
10 gunshot residue or were, in fact, gunshot residue.

11 Q And what is the purpose of your testing? Is it to
12 determine whether the subject has used a firearm?

13 A Our testing is to confirm whether or not gunshot
14 residue is present on these stubs. Gunshot residue can be
15 acquired by one of three ways. One is the subject fires,
16 discharges a firearm. Two, the subject is in the vicinity
17 of a firearm when it is discharged. Or three, the person
18 touched something that previously had gunshot residue on it.

19 Q And in this case of those three scenarios does the
20 result of your analysis indicate whether one is more likely
21 than the other?

22 A I cannot definitively say that. With these results,
23 the subject was a living victim. On victim kits we expect
24 to find gunshot residue due to being in the vicinity or --
25 in this case, I'm not sure whether or not this person was,

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1 in fact, hit with a gunshot wound. However, if a victim has
2 received a gunshot wound, we do expect gunshot residue to be
3 on them.

4 Q Okay. So if I can interpret, your testimony is gunshot
5 residue can be found both on someone who fires a firearm and
6 also someone who's on the business end, if you want to use
7 that term, who's in the line of fire?

8 A Yes, sir.

9 Q Is there any particular range of fire that would
10 include the likelihood that a victim would receive it?

11 A There's no definitive distance that we can determine
12 whether or not gunshot residue would be on the victim. We
13 can approximately usually a five to six foot area.

14 Q Okay. And conversely, is it possible, based on your
15 analysis and your report, that the subject in this case got
16 the residue from firing a weapon?

17 A With firing a weapon we usually see a population of
18 many, many particles. In this scenario the results were
19 very few particles, which is more consistent with transfer.
20 However, I cannot definitively say whether or not he shot or
21 did not shoot a firearm.

22 Q Okay. Thank you.

23 MR. PALMER: No further questions.

24 THE COURT: Any cross-examination?

25 MS. WYMAN: Yes, ma'am.

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TYLER STURKIE - CROSS-EXAMINATION

BY MS. WYMAN:

Q How are you doing, Mr. Sturkie. Why did your report specify the round shape as opposed to any other shape?

A When a firearm is discharged, a lot of heat and pressure is built up to discharge that firearm. When these particles are under the scenario of high head and pressure, they form a molten round shape as opposed to a crystalline box-like shape.

Q Okay. And so to clarify you said the right palm had no gunshot residue found. The right back had a round particle found, left palm round particle found, and left back round particles found. And all of those consistent with gunshot residue; right?

A To clarify a little more, the left back had round particles consistent. The left palm had one particle of gunshot residue and one round particle associated with gunshot residue. The right back had one round particle associated with gunshot residue. And the right palm, no gunshot residue found.

Q And you said the reason someone gets gunshot residue on their hands is either touching something with GSR on it, they're in the vicinity of someone who fired it or actually firing the weapon themselves?

A Yes, ma'am.

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1 Q And after getting a report back and you see GSR it can
2 be for any of those reasons?

3 A Correct.

4 Q And you can't definitively say how someone got it?

5 A No, ma'am.

6 MS. WYMAN: Thank you, Your Honor.

7 THE COURT: Solicitor?

8 MR. SORENSON: Just a couple of questions, Your
9 Honor. Thank you.

10 TYLER STURKIE - CROSS-EXAMINATION

11 BY MR. SORENSON:

12 Q Good afternoon, Agent Sturkie. Just to follow up a
13 couple of things. I'm not going to go over everything you
14 just testified about. But when Mr. Palmer was questioning
15 you, I thought I heard that when you're talking about that
16 vicinity that GSR can be found, if you're in the vicinity of
17 a gun when it's fired, is it up to five to six feet?

18 A Yes, sir.

19 Q And furthermore, you said that these findings in
20 looking at them, if a person had fired a gun you would
21 expect to see more GSR and more particles on their hands
22 than you found in Mr. Clark's?

23 A Yes, sir.

24 Q Okay. And that that what you're finding with him is
25 more consistent with somebody that has either come into

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1 contact with something with GSR on it or been in the
2 vicinity of a gun that's been fired?

3 A More consistent. However, I cannot definitively say
4 whether or not.

5 Q And showing you State's Exhibit No. 102, where -- if
6 you're in the vicinity of a gun such as this that's fired,
7 where is that gunshot residue, where is it coming from?

8 A For a semiautomatic such as that pistol, the gunshot
9 residue will come out of any of the openings of the firearm.
10 In this case the muzzle and the ejection port are where
11 gunshot residue will most likely come out of.

12 Q So if I'm standing a couple of feet to the right of
13 somebody firing this gun, I can get GSR if my hands are --
14 obviously, if my hands are out, I can get GSR on my hands?

15 A Potentially, yes, sir.

16 Q Thank you, Mr. Sturkie.

17 MR. PALMER: Just brief, redirect, Your Honor.

18 TYLER STURKIE - REDIRECT EXAMINATION

19 BY MR. PALMER:

20 Q You talked about a semiauto, what about a revolver? Is
21 that pattern itself differently?

22 A A revolver is different. It has more openings usually
23 than a semiautomatic pistol. The muzzle end will produce
24 GSR as well as any of the open cylinders that are in the
25 revolver.

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1 Q And if a right-handed shooter is using a revolver in
2 say the waver stance, would it be likely that the right palm
3 would get GSR as opposed to the back and the other hand?

4 A I can't definitively say whether or not the palm or
5 back will gather more particles than the other. If he's
6 holding the weapon, the weapon mostly like has gunshot
7 residue on it. Therefore the palms will have it. If the
8 firearm is discharged then the backs will also potentially
9 have it.

10 Q Is it possible for gunshot residue to linger after the
11 hands are washed?

12 A When we receive a kit, we have a six-hour window from
13 the time of the shooting to the time of collection as far as
14 when we can or cannot test for Gunshot residue. When
15 gunshot residue lands on the hands, the hands of a living
16 person tend to absorb those gunshot residue particles. Any
17 environment factor such as wind, rain, washing of the hands,
18 they all have effect in possibly removing any particles that
19 may be present.

20 Q Can particles remain after those factors, say rain,
21 wind, washing the hands?

22 A Those particles can still be there. However, those
23 factors help weigh-in to the possibility of removing hem.

24 Q Thank you.

25 MR. PALMER: No further questions.

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1 BY MS. CORNWELL:

2 Good afternoon. The good news is there's a light at
3 the end of the tunnel. We're almost finished. I appreciate
4 all the service that you've done this week. I know that
5 when it comes to jury service, it's a very painful service
6 sometimes. None of y'all called up the clerk and said hey,
7 I'd like to serve on a jury. Can you put me on a jury.
8 It's long and tedious and sometimes the testimony gets
9 monotonous. But I've kind of paid attention to y'all and I
10 know that you have all paid very close attention to the
11 testimony that was given. You also paid very close to
12 attention to the evidence that was presented to you. And
13 for that we're thankful.

14 On behalf of myself, Mr. Sorenson, as well as on behalf
15 of Calvin Kennedy, the family of Gregory Howell, and Alvin
16 Clark, we are thankful for your service. Obviously, your
17 service is important. Important not only to the County of
18 Orangeburg, but it's important to Calvin Kennedy, Alvin
19 Clark and the family of Gregory Howell because they want to
20 make sure that the men that gunned them down are held
21 accountable for their actions.

22 What's going to happen now is I'm going to go over a
23 little bit of what the law in the case is. Now, obviously,
24 if I say anything different of if Defense counsel says
25 anything different from the law than what the Judge charges

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1 you, you should always defer to the Judge. But I'm going to
2 go over what I believe the law of the case is. And then
3 after I sit down Defense counsel's going to have an
4 opportunity to speak with you briefly on what they believe
5 the case is. They'll get to argue to you, kind of tell you
6 what they think happened and why they think that you should
7 find a certain way. I'm going to ask you to maintain an
8 open mind while you're listening to them. You've done so up
9 until this point. And I ask you to hold on a little bit
10 longer before you make any decisions. And after they sit
11 down Mr. Sorenson's going to have the opportunity to get up
12 one last time and kind of put it all together for you. And
13 I feel quite certain that once he has an opportunity to do
14 that, you'll agree that Terrance Johnson and Rodsheen Ayer
15 are guilty of murder. They're guilty of attempted murder.

16 What do those terms mean? In the State of South
17 Carolina, murder, as we talked about earlier is the unlawful
18 killing of another with malice aforethought. I told you at
19 the very beginning of this trial that premeditation is not
20 an element of murder in South Carolina. So for murder you
21 simply have to have the unlawful killing of another -- in
22 this case, that would be Gregory Howell -- with malice
23 aforethought, either expressed or implied. What does
24 expressed or implied mean. Expressed malice is if I were to
25 come up, point a gun at you and say, I'm going to kill you.

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1 I have expressed malice at that point. Or even if I said I
2 hate you, that's malice. That is expressed. Implied malice
3 can be the use of a weapon. I don't have to say a word to
4 you. If I point a weapon in your face, clearly there is
5 some sort of malice there.

6 In this case, both Rodsheen Ayer and Terrance Johnson.
7 are charged with murdering Gregory Howell. If you believe
8 that they killed Gregory Howell with malice aforethought,
9 either expressed or implied, from the time that they were in
10 that trailer, then you should find them guilty of murder.
11 Mr. Ayer and Mr. Johnson are also charged with the attempted
12 murder of both Calvin Kennedy and Alvin Clark. Attempted
13 murder is a very simple statute as well. It's the
14 attempting to kill another person with the intent to kill
15 that person and with malice aforethought, either expressed
16 or implied. So, again, if you point a weapon at somebody,
17 if you fire a weapon at somebody and you have malice or
18 malicious intent, then that would constitute attempted
19 murder.

20 Let's talk a little bit more about malice. Malice is
21 an intentional act of violence. It is a reckless disregard
22 for the welfare of others. Conduct that signifies a
23 conscious effort creating a high risk of serious bodily
24 injury to another. In South Carolina the mere use of a
25 deadly weapon is malice. There's no time limit. It can

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1 happen at the very moment that you pull a gun. You don't
2 have to think about it for a while. It doesn't have to be
3 present for any amount of time, other than the second that
4 it happens. And, again, it can be expressed or implied. I
5 can either tell you that I hate you and pull a gun and kill
6 you or I can just pull a gun and kill you. Either way, I
7 have malicious intent. And if you die from those injuries,
8 that is murder. If I have malicious intent, I pull a gun
9 and I try killing you but I don't succeed, that is attempted
10 murder. In this case, Gregory Howell succumbed to his
11 injuries, so he was a victim of murder. Calvin Kennedy, you
12 heard suffered significant injuries. He had his jaw blown
13 out. He got hit in the shoulder, in the leg. That is an
14 attempt to kill. That would be attempted murder. With
15 Alvin Clark, he was shot at. He was fortunate that he
16 didn't get hit. But the mere act of shooting at him and
17 attempting to kill him, would qualify of the attempted
18 murder with malice aforethought.

19 You're going to hear some other charges on the law.
20 Obviously, the Defendants are indicted for murder and for
21 attempted murder. And when you get in your jury, go back in
22 your jury room, you're going to have verdict forms. And on
23 the first one it's going to say, Terrance Johnson is either
24 guilty or not guilty of murder. And you'll have Rodsheen
25 Ayer. And you'll say he's either guilty or not guilty of

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1 murder. And that's the only charge that you have to decide
2 when it comes to Gregory Howell. When it comes to Mr.
3 Calvin Kennedy, you're going to have a couple of options.
4 Terrance Johnson and Rodsheen Ayer are charged with the
5 attempted murder of Calvin Kennedy. And we just went over
6 what attempted murder is. When you go in your jury room if
7 you believe that Terrance Johnson and Rodsheen Ayer acted in
8 a way that intended to kill Calvin Kennedy by pulling a
9 gun, by shooting him multiple times, then you should find
10 him guilty of attempted murder. However, if you don't know
11 if the intent to kill was there, maybe you have some
12 questions about that, then you go to the next choice that
13 the Judge is going to charge you. And that's assault and
14 battery of a high and aggravated nature. If you find that
15 he is not guilty of attempted murder, you should determine
16 whether or not you think he's guilty of assault and battery
17 of a high and aggravated nature. Assault and battery of a
18 high and aggravated nature is the unlawful injuring of
19 another and either (a) great bodily injury of another
20 results or (b) the act was accompanied by means likely to
21 produce death or great bodily injury.

22 Again, if you believe that Terrance Johnson and
23 Rodsheen Ayer came in with some sort of unlawful intent, and
24 that unlawful intent resulted in them attempting to kill
25 Calvin Kennedy, then that's attempted murder. If you don't

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1 know what their unlawful intent was and you determine that
2 they injured Calvin Kennedy by shooting him multiple times,
3 or obviously great bodily injury resulted -- as you heard,
4 the jaw was blown out, shoulder was injured and the leg --
5 or by means likely to produce death, which a gunshot wound
6 would be, if you're unsure of the intent, then you could
7 find them guilty of assault and battery of a high and
8 aggravated nature. If you're certain of the intent, find
9 them guilty of attempted murder.

10 Mr. Johnson and Mr. Ayer are also charged with the
11 attempted murder of Alvin Clark. And as we discussed there,
12 Alvin Clark was fired at. We've heard testimony about that.
13 If you determine that they're intent on Alvin Clark was to
14 kill him as well; then you should find him guilty of
15 attempted murder. If you're unsure of the intent and you
16 think that the act was accompanied by means likely to
17 produce death or great bodily injury, you can find them
18 guilt of assault and battery of a high and aggravated
19 nature. The other charge with Alvin Clark is going to be
20 assault and battery first degree. If you determine that
21 they're not guilty of attempted murder, that they're not
22 guilty of assault and battery of a high and aggravated
23 nature when it comes to Alvin Clark, then you need to
24 consider assault and battery in the first degree.

25 Assault and battery in the first degree is the unlawful

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1 injury of another and the act occurred during the commission
2 of a robbery, kidnapping or theft. Or the act occurred by
3 means like to produce death or great bodily injury. Or the
4 act occurred during the commission of a robbery, kidnapping
5 or theft. So if you think that Mr. Johnson and Mr. Ayer
6 acted in concert and when they fired those gunshots at Alvin
7 Clark, that he had some sort of injury that could have been
8 accomplished by means likely to produce death or that it
9 occurred in the commission of a robbery, kidnapping or
10 theft, and you don't think it's attempted murder and you
11 don't think it's assault and battery of a high and
12 aggravated nature, you can consider whether or not it's
13 assault and battery first degree. But again, if you
14 determine that the act that happened at that trailer when
15 they shot at Alvin Clark with a gun, that their intent was
16 to kill him, then you should find them guilty of attempted
17 murder and you don't have to consider those other charges
18 whatsoever.

19 Now, let's talk about what great bodily injury is in
20 South Carolina. Great bodily injury is bodily injury which
21 causes a substantial risk of death, which causes serious
22 permanent disfigurement, or have a protracted loss or an
23 impairment of a function of a bodily member or organ. In
24 the case at hand, Calvin Kennedy clearly suffered great
25 bodily injury. Had his jaw blown out, his shoulder injured.

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1 You saw the scar on his leg where he had some bone removed.
2 He told you he lost feeling of his jaw. That would be
3 considered great bodily injury.

4 Now, let's talk about some of the more in depth legal
5 terms. We talked about a theory of accomplice liability at
6 the beginning of this. The hand of one is the hand of all.
7 And in South Carolina the hand of one is the hand of all, is
8 if two or more people set out to commit a crime together,
9 each is guilty no matter what role they play. So in this
10 case if you believe that Terrance Johnson and Rodsheen Ayer
11 set out to commit a crime together, then they are both
12 guilty of every crime that was committed. So if you believe
13 that Terrance Johnson killed Mr. Howell and that he acted in
14 concert with Mr. Ayer, just because Mr. Johnson is the one
15 that pulled the trigger against Gregory Howell, Mr. Ayer is
16 also guilty of the murder of Gregory Howell. The same with
17 the attempted murders of Alvin Clark and Calvin Kennedy.
18 Just to go a little bit more in detail on that, again, where
19 two or more people combine to commit a felony, during which
20 a homicide is committed, as a natural and probable
21 consequence, all of those present and participating are
22 guilty of murder, just as the ones who actually committed
23 the murder. So, again, in this case, Terrance Johnson
24 committed the murder of Gregory Howell while Rodsheen Ayer
25 was participating in the crime, Rodsheen Ayer is just as

1 guilty of murder as Terrance Johnson.

2 So how do you determine whether or not guilty --
3 actually -- Well, there are two types of evidence. We've
4 got direct evidence and circumstantial evidence and both are
5 equal under the law. Direct evidence is something that you
6 can see, hear, smell or touch. The easy way that I describe
7 direct evidence is if we walked outside and it was raining
8 and you had rain that touched you, you could hear the rain,
9 you could feel it, you could smell it, that is direct
10 evidence that it's raining. Circumstantial evidence is when
11 you infer something from the circumstances, a chain of
12 events that kind of prove and existence of fact. So along
13 those same lines, if I were to go outside right now and it's
14 not raining but the ground's wet, and you can smell the
15 rain, you can see puddles on the ground, that's
16 circumstantial evidence that it rained. You don't have to
17 actually feel the rain or see the rain to know that it
18 rained. In South Carolina both direct and circumstantial
19 evidence is equal under the law.

20 You also have to determine the credibility of the
21 witnesses. And in determining the credibility of the
22 witnesses, you should look at the demeanor of the witness on
23 the stand. How were they acting? Was the witness
24 forthright or were they hesitant. Was the testimony of a
25 witness consistent. Was the testimony of the witness

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1 corroborated. And did ask yourself, did the witness have a
2 reason to be biased or prejudiced. You have common sense.
3 You've brought that into this courtroom. You've lived your
4 whole life through common sense. You know when you believe
5 somebody and when you don't believe somebody. You can tell
6 when somebody's being untruthful. And based on that
7 credibility and that common sense that you use for each and
8 every witness on the stand, you should determine whether or
9 not you believe a person or not. You can believe part of
10 somebody's testimony. You cannot believe any of the
11 testimony or you can believe all of the testimony. You
12 determine what you believe and what you don't believe in
13 this case.

14 Finally, we're going to look at evidence of flight.
15 You've heard testimony in this case that Mr. Johnson went to
16 Mississippi after this happened. Mr. Ayer and Mr. Morrison
17 went to New York. Evidence of flight constitutes evidence
18 of a Defendant's guilty knowledge and intent. If in this
19 case -- you've heard testimony that Corporal Cain went and
20 spoke to Mr. Johnson's mother and sister on September 14th,
21 told them that there were warrants out for his arrest. And
22 on September 15th you heard that his mother and his sister
23 and two others drove him to Mississippi knowing there were
24 warrants out for his arrest. That evidence of flight will
25 constitute evidence that the Defendant knew that he had

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1 committed a crime and there was guilty knowledge and intent
2 there. That is something that you can consider in your jury
3 room.

4 Now, you're also going to be instructed on the law of
5 self defense. And the Judge is going to tell you that a
6 Defendant does not have to prove self defense. It's up to
7 the State to disprove self defense. How do we do that.
8 Well, self defense, in order to prove self defense, they
9 have to show that the Defendants were not at fault for
10 bringing on the difficulty, that they actually believed they
11 were in imminent danger of losing their life or sustaining
12 bodily injury. That a reasonably prudent person would have
13 believed the same thing. And the Defendant had no other
14 probable means of avoiding the danger. We don't have to
15 disprove all of these. If one of these is disproved then
16 the defense of self defense fails. In this case, the
17 Defendants have to be without fault in bringing on the
18 difficulty. Clearly, if they come to a trailer with the
19 intent to commit a crime and bring weapons with them,
20 they've brought on the difficulty to themselves. Self
21 defense fails right there. You don't even have to consider
22 these other three. As long as they brought on the
23 difficulty, there is no self defense.

24 Finally, we've heard a lot about reasonable doubt. We
25 talked about it in the beginning from TV shows and everybody

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1 knows that you have to find somebody guilty beyond a
2 reasonable doubt. And the State has the burden of proving
3 each and every element of these crimes beyond a reasonable
4 doubt. It's just that. Like we've discussed it's a doubt
5 that has a reason behind it. If you came into this
6 courtroom and you took your oath that you did, saying that
7 you knew nothing about this case before it started. And
8 after hearing the evidence and the testimony you now believe
9 that Terrance Johnson and Rodsheen Ayer are guilty of murder
10 and two counts of attempted murder, then we've proven our
11 case beyond a reasonable doubt. It is not your job as
12 jurors to go back in that jury room and look for reasonable
13 doubt. If you are firmly convinced that these Defendants
14 committed these crimes, then you must find them guilty. A
15 reasonable doubt causes a person to hesitate to act. If at
16 this juncture you don't hesitate to act at all and you know
17 those two Defendants are guilty, then we've proven our case
18 and you should find them guilty.

19 Now, I'm going to sit down and let Mr. Palmer and Mr.
20 Stevens speak to you a little bit. And then like I said,
21 Mr. Sorenson is going to be up and wrap it all up all up for
22 you. And at the end of this, after Mr. Sorenson has wrapped
23 it all up for you, I am quite certain that you will agree
24 with me, that Terrance Johnson and Rodsheen Ayer are guilty
25 of murder of Gregory Howell, and they're guilty of the

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1 attempted murder of Calvin Kennedy and they're guilty of the
2 attempted murder of Alvin Clark.

3 THE COURT: Mr. Palmer.

4 MR. PALMER: Thank you, Your Honor. May it please
5 the Court?

6 THE COURT: Yes, sir.

7 MR. PALMER: If I could just have a moment to look
8 over the exhibits. It's always at the bottom.

9 DEFENDANT JOHNSON CLOSING

10 BY MR. PALMER:

11 Logic, common sense and the rule of law, that's your
12 tool bag. You've got -- those are your three tools to
13 decide what the facts are. There's no facts in the case
14 yet, just evidence. Whether that evidence becomes a fact in
15 the case is up to you. That's your role in this as you
16 probably already stand. What is logic? Logic is math, not
17 calculus or algebra, it's taking one element and adding it
18 to another and reaching a conclusion. A plus B equals C.
19 And when I stood up here Monday, Tuesday maybe, I talked
20 about the assumption versus the inference. Let me just
21 remind you what I'm getting at there. Remember, an
22 assumption is a fact that you take for granted. Here's an
23 example. You have some friends that are diehard football
24 fans. I'm not going to name a team, not going to get into
25 that. But pick your favorite team. The big game day comes.

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1 A big rivalry. Some asks you are so and so going to the
2 game? Yeah, I assume they are. They're diehard fans. You
3 don't know if they are but you take for granted that they
4 are. You don't have any facts to support it. You assume
5 it. You can't do that here. The next step is an inference.
6 You drive by their house, you see a game flag on their car
7 and you see them getting in. That's a fact that you can use
8 to draw a conclusion. Oh, yeah. I see the flag. I still
9 don't know for sure if they're going, but there's a fact I
10 can use to draw an inference. That's logic. Flag, plus
11 diehard fan, plus getting in car equals they're going to the
12 game. You still don't know for sure but that's an
13 inference. And then the final one is absolute fact. You go
14 to the game and you see them there. Here they are. They're
15 here. I know for a fact they're going to the game.

16 Now, this case doesn't have a lot of absolute facts.
17 It's got a lot of evidence, but what does it prove? It
18 proves there were guns and bullets and blood and DNA and
19 pictures, but what does it all mean? That's for you to
20 decide. As far as Terrance Johnson is concerned, there's no
21 firearm, at least not the one they said he had. There's no
22 fingerprint on a firearm and there's no DNA on a firearm.
23 There's no, certainly no blood. There's no proof of
24 anything, except that he was there. You can draw an
25 inference from that.

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1 The only evidence is two so-called eyewitnesses. And
2 let's talk about them. I'm glad the Solicitor brought up
3 credibility of witnesses because that is a big deal in this
4 case, in this murder case and this attempted murder case.)
5 And one of the things that she instructed you to consider
6 was demeanor of the witness. Well, let's talk about the
7 demeanor of the State's witnesses. First we had Alvin
8 Clark. He can't remember what he saw. He made a statement
9 hours after this was supposed to have happened where he gave
10 a lot of detail. When questioned on the stand, he said
11 something completely different. He said Terrance Johnson
12 didn't shoot at him. He said Terrance Johnson didn't have a
13 gun. And when I asked him -- and I didn't throw him a curve
14 ball -- I just said are you're sure? You're saying Terrance
15 Johnson -- and he said, oh, wait a minute. Yeah, I saw it
16 when he was chasing Gregory Howell out of the door. In his
17 statement he gave to law enforcement, he said something
18 completely different. In his testimony he said I don't know
19 what kind of gun he had. I don't know what color it was. I
20 don't know what kind it was. I didn't even see it. In his
21 statement, he gave a specific caliber. A .357. And when
22 Mr. Stevens asked him how do you know it was a .357? His
23 answer almost exploded my head. He said I can read. I can
24 read. So his testimony is is that he looked at the weapon
25 and he could read that it was a .357. While it was pointing

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1 at him? While it was pointing at Mr. Howell going out the
2 door? I think the reason he said that, and I think he
3 slipped up, is that he had it in his hand. That's where he
4 read it. He had a .357 in his hand. That's where he got
5 .357 from because he knew that night at the hospital when he
6 talked to law enforcement, that a .357 had been at the scene
7 and it had been fired. That's why he said that. And he
8 said that because that's the gun he's familiar with. That
9 he's not supposed to have, by the way. Demeanor, was he
10 evasive? Yes. Was he argumentative? Yes. Was he
11 irritated? Was he hesitant? Was he -- I said evasive. He
12 was all those things.

13 Now, we've all -- we're all adults. We've all been
14 through school. We've all had relationships. We've had
15 jobs and co-workers. We've all had difficult conversations,
16 conversations where you confront someone as being dishonest.
17 And when you're confronting someone in a conversation like
18 that, is it more likely they're going to be humble and
19 contrite and patient or evasive and irritated and combative
20 and defensive? Are those characteristics of people who want
21 to tell you the truth? I don't think so. But his testimony
22 paled in comparison to Calvin Kennedy, the star witness in
23 this case. And I'm not making light of his injuries. I
24 don't think anybody should have to go through that, but I'm
25 talking about his testimony. Again, I wasn't throwing him

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1 any curve balls, trying to trick him or trip him up. I was
2 asking -- I was lobbing him underhanded softballs. Really
3 difficult questions like what was my client was wearing?
4 And his answer was, you need to talk to your client. I
5 don't know all that. I've already told the jury the facts I
6 want them to hear. So you're not going to get any more
7 answers out of me. I don't remember. I don't know.
8 Combative, evasive, defensive, irritated. Is that the type
9 of person who's come here to tell you what really happened?
10 I don't think so. And you put your logic to work there.

11 Now, here's another example of how you can put your
12 logic to work in settling this case. State's Exhibit 16 you
13 heard Detective Ketcherside -- and this is some physical
14 evidence you can consider -- testify about all the bullet
15 holes he found in this house. And around the doorway of
16 this mobile home there's a few .9 millimeter holes, one or
17 two of them went through into the interior. They found the
18 bullets. They put the rods in. And one thing he didn't
19 comment on too much was the trajectory of the hole in the
20 storm door, which is an exit hole. You remember that? And
21 then there's a bullet lodged in the railing. So you can
22 trust your own eyes to use as a trajectory rod to go from
23 that bullet through that exit hole and into the house. And
24 where does it go? Does it go here? No. Does it go here?
25 No. It goes here. And who was here? What's the

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1 uncontroverted testimony of who was here, hiding out, he
2 said in the closet? Mr. Clark. You can draw an inference
3 from that physical evidence and his own testimony that that
4 bullet came from this direction, through the storm door and
5 lodged in the rail. Now, why is that important? Number
6 one, it puts a gun in his hand. Number two, it shows he was
7 firing. But here's the kicker. Even he testified that my
8 client chased Gregory Howell out the door. So there's
9 really no contest that Mr. Howell scrambled out the door.
10 Now, whether or not he had his own weapon, that's something
11 for you to decide. But the testimony is uncontroverted that
12 Gregory Howell went out the front door. Remember the
13 forensic examiner who did the autopsy. Well, what kind of
14 wound did he have? It came in here and ended up here. Is
15 that consistent with Mr. Howell getting out the door and
16 catching a bullet from this direction? I think so. What
17 other explanation is there? If Terrance Johnson is chasing
18 him out, wouldn't he catch one square in the back? You can
19 draw an inference from that. And there was another bullet
20 wound he had, which went in the same direction, except it
21 exited. And while we're talking about Mr. Howell, again,
22 with the utmost respect, we all mourn the loss of Mr.
23 Howell. This wasn't his first business meeting, was it?
24 The forensics examiner also found, surprise, another bullet
25 that he'd been carrying around. You can draw an inference

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1 from that too. How did that bullet get there? Accident or
2 another business meeting gone bad? And before I leave the
3 testimony of the State's witnesses, their factual witnesses,
4 neither one of those guys was able to -- was willing to come
5 in and tell you exactly what was going on in this house.
6 You can draw an inference from that. Their story is, we
7 were just smoking a blunt and these dudes came in and robbed
8 us. Of what? And both of them said, I don't know. I guess
9 they thought we had some pocket change. Does that make
10 sense? Can you draw an inference from that testimony, that
11 they're not being truthful? Compare that to what Mr.
12 Johnson told you. He started from A and went to Z, exactly
13 what was going on that day. Does that testimony fit better
14 than I don't know. Of course, it does. It fits perfectly.
15 It tells you exactly what was going on that day and why it
16 was going on and why there was a robbery. Except, the
17 robbery wasn't being conducted by him. It was being
18 conducted against him. That's what really happened. Ask
19 yourself what makes more sense? Credibility, demeanor.

20 Now, you know, everybody that tries cases knows that
21 every witness, it's rare for a witness to be a hundred
22 percent perfect in their testimony. But consider that Mr.
23 Johnson took the stand when he didn't have to. When he
24 could sit here all week, just like he's sitting there now,
25 and if the State doesn't meet the burden of proof, he

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1 doesn't have to take the risk of testifying and exposing
2 himself. But he did it because he wanted his day in Court.
3 And his testimony wasn't all favorable. He owned up to the
4 fact that he had a weapon there. He owned up to the fact
5 that he brought a .9 millimeter Hi-Point that he bought
6 legally and had a background check and carried around with
7 him, he admitted that without -- not even on cross-
8 examination. He came up with it when I was questioning him.
9 You can draw an inference from that too. And you can draw
10 an inference that he's more interested in being truthful
11 than these other guys. Of course, he didn't take the weapon
12 into the residence, which is a huge fact. It shows lack of
13 intent and it shows what he expected was going to happen in
14 there was a drug transaction. I mean, it all adds up. What
15 these guys are saying, it doesn't add up at all. And they
16 became defensive and combative and irritated when I asked
17 them simple basic straightforward questions.

18 Now, Calvin Kennedy did say something important. He
19 said Terrance Johnson never shot at me. Alvin Clark said
20 Terrance Johnson never shot at me. So if you want to
21 believe them, you've got to believe those statements.
22 Demeanor is not the only element though in determining the
23 credibility of witnesses. There's another huge factor. I
24 call it consistency. And a way to understand that is,
25 simple proverb. The truth is the same every time you tell

1 it. That says it all.

2 Now on the pick sheet, the lineup sheet, Alvin Clark
3 says number four, which was Terrance Johnson shot at me and
4 Calvin and Greg. He says that Terrance somehow was able to
5 shoot at all of them before getting out of there. But on
6 the stand he said something different. He just said he
7 left, following Gregory Howell with a gun. And he shot
8 Gregory. He didn't say anything about Calvin or himself.
9 And Mr. Kennedy did the same thing, except he said -- he
10 described the scenario after the fact about Taquan Morrison
11 driving the car and everything. Made no mention of Taquan
12 Morrison shooting a gun. Yet in his testimony he said that
13 was, you know, a major part of his testimony. So he either
14 omitted something then or he omitted something now. And
15 that tells you when they're not consistent that they're not
16 being truthful.

17 Now, nobody is questioning the fact that each of these
18 guys has a reason, has a reason to tell their story the way
19 they told it. I call it skin in the game. They all got
20 skin in the game. The skin in the game on the night it
21 happened at the hospital was, well, we're going to put it on
22 someone else because we don't want to get in trouble. We
23 don't want to become suspects. So they committed
24 themselves. My client didn't. He didn't give a statement
25 at all. He didn't talk to anybody. He didn't tell anybody

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1 what happened until here today when he's under oath with
2 legal assistance and in a jury setting in a controlled court
3 setting. I consider that pretty smart. But he's got skin
4 in the game. Of course, he's got a reason to tell his story
5 the way that he did. He doesn't want to get in trouble. He
6 doesn't want to get convicted of murder and attempted
7 murder. And those guys didn't want to get charged with it.
8 So everybody had skin in the game.

9 Nobody's here testifying, you know, altruistically.
10 And also consider that you can talk about Mr. Johnson
11 leaving for Mississippi. But the law says unexplained
12 flight can be considered as knowledge of guilt. He has
13 provided you an explanation. Frankly, I think it was his
14 mother who made him do it. And quite honestly, she didn't
15 do him any favors. But he did leave and he's admitted. He
16 hasn't contested it at all. But he offered you an
17 explanation that he didn't leave because he thought he was
18 going to get arrested. He left because he thought he was
19 going to get killed. Here's another element you should
20 consider when considering the State's witnesses. Mr.
21 Kennedy specifically said he doesn't know what happened to
22 the gun. This Smith and Wesson, the one in this box here
23 that was found in the field, over the fence where somebody
24 threw it. Well, you heard the experts. They don't have any
25 skin in the game. They're just telling you what their

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1 scientific findings were. The only DNA on that gun was from
2 Calvin Kennedy and Rodsheen Ayer. And the testimony is
3 pretty consistent that Rodsheen Ayer got the heck out of
4 there in that white Malibu. So that leaves one person to
5 try and get rid of that gun. Now, why would he get rid of
6 the gun, especially since his claim was that he's a murder
7 victim or an attempted murder victim. Isn't that a good
8 piece of evidence. He throws it away. He didn't do a very
9 good job, but he tossed it in the field. And I guess he
10 expected that took care of it and nobody would find it.
11 Well, of course, law enforcement found it with their eyes
12 closed. But that's something else we can consider in
13 determining whether he was being truthful. So if you weigh
14 his testimony, there's so much untruth that so much
15 outweighs the truth, that you have to reach an inference,
16 draw a conclusion, that he wasn't being truthful. The same
17 with Mr. Clark. And if you discount those two pieces of
18 evidence, the testimony of the State's witnesses, there's
19 nothing else that you can base a conviction on for Terrance
20 Johnson. There's no physical evidence. There's none.
21 There's just bullets, holes in the wall, nothing that links
22 any of this stuff to him.

23 Finally, I don't like this term the hand of one is the
24 hand of all. To me it sounds medieval and barbaric and
25 that's not what our system is. I call it accomplice

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1 liability. The other reason I don't like that term is it
2 doesn't really explain what that law really means. What the
3 law really means is, if they prove beyond a reasonable doubt
4 that there was a common design, a plan amongst all three of
5 those guys that -- remember I called them the were theres
6 and the went theres, okay, that team. If they prove that
7 beyond a reasonable doubt, then even though, you know, only
8 one of them may have shot somebody, they can all be held
9 liable, responsible, culpable, whatever you want to call it.
10 But they have to prove a common scheme or design that was
11 known by all three of them before they went in there. That
12 the plan to go in there was to hold these guys up and rob
13 them for, I guess, their pocket change. Sure there was a
14 common scheme or plan, but it was to buy and sell drugs.
15 And they're not charged with that.

16 This isn't a drug case. They're charged with murder
17 and attempted murder. So where's the evidence that they
18 intended to commit these crimes. Or where's the evidence
19 that they even committed them? There is none, especially if
20 you discount these two guys who had skin in the game, who
21 had every reason to tell you a false statement, a false
22 story and didn't even do a good job of it. So not only has
23 the burden not been met, they're not even close. There's
24 all kinds of doubt in this case. There's question marks
25 just -- all this evidence is riddled with question marks.

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1 Sure, we got guns and bullets. We don't know whether there
2 was one gun or two. There was only one found. There's
3 evidence of two, but where was it? Who had it? Did Mr.
4 Howell have a gun? I mean, these are question marks that
5 create a reasonable doubt. And if you agree with me on
6 this, and you find that there is a reasonable doubt as to
7 all three charges, one count of murder and two counts of
8 attempted murder, your job is easy. Acquittal. This is a
9 murder case. This is as serious as it gets. I'm asking you
10 to do one thing. Get it right. And the way you do that is
11 to make them get it right. They haven't done it. Thank you

12 THE COURT: Counsel for Mr. Ayer.

13 MR. STEVENS: Counsel. May it please the Court?

14 THE COURT: Yes, sir.

15 DEFENDANT AYER CLOSING

16 BY MR. STEVENS:

17 Lies, guns and reasonable doubt. That is what this
18 case is truly all about, truly is. We've seen it from day
19 one in this case. We've seen it throughout this case and
20 even here in closing argument you hearing it again. You see
21 here the State chose to build its case on the sinking sands
22 of the lies of its two critical witnesses rather than go
23 ahead and stick to the bedrock foundation of truth. So
24 let's look and see what we know is true.

25 We know, for example, that a Smith & Wesson .9

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1 millimeter was found in the neighboring yard. Not here, not
2 there, in the neighboring yard, over a roughly eight foot
3 fence. And it had blood on it. And that DNA from blood was
4 there from Kennedy. A clip from the same gun was found
5 inside the trailer. Again, with DNA on it from blood from
6 both Kennedy and Ayer. There is also blood going from the
7 trailer, yet again, and around the front, the side and the
8 back. Again, Kennedy and Ayer. So these are indisputable
9 facts and yet they contradict the stories of the State's
10 foundational witnesses, Kennedy and Clark. I mean, you
11 remember Kennedy and Clark, right? You see one was a drug
12 dealer and the other one's his friend. And they're the only
13 two people in this whole case that have known access to a
14 .38 caliber revolver.

15 So let's look at their lies. As Mr. Palmer said, Mr.
16 Clark was all over the place. And we know he didn't just
17 give his account that he came up with from this stand really
18 to speak. Now, we know that he actually met with police on
19 several occasions shortly after the incident, one written
20 and two verbal. And we know there's inconsistency even
21 between what he said here on the stand and between those
22 other statements. It just doesn't make sense. Unless you
23 realize, wait. I think Mr. Kennedy said that, too. Well,
24 now that he knows the evidence. It is different than
25 previously told.

1 According to Mr. Clark's statement here, he and Kennedy
2 were in the living room, just sitting getting high. But he
3 wasn't too high. He just goes to the sink and puts his face
4 under there to get some water. And then he hears shots. He
5 didn't see anybody shooting. Didn't even see who was
6 shooting himself. He just hears shots and then he runs to
7 the master bedroom closet. But he says he sees Johnson
8 shoot Howell, and Ayer tussle with Kennedy over a gun. He
9 tries to clean it up later on and say, oh, no, see what
10 happened was, it wasn't after I was in there seeing the
11 inside the closet. He fixed that; right. No. No. No.
12 One was when I was running past the other one. I had to
13 and looked to the side. Well, use your eyes. If the
14 tussling is here and everybody's running out there and he's
15 running that way, where are his eyes? He's making it up,
16 he's lying right from this witness stand. He placed his
17 hand on this Bible. He said he saw Kennedy run outside and
18 around the trailer. He says he sees Kennedy go outside and
19 around the trailer. He's seeing this. How's he seeing
20 that? Huh. But let's look at his prior statements. Number
21 one, on cross-examination when I asked him questions about
22 his prior statements to police, it's closer to the incident,
23 close to when everything's fresh in his mind. What did he
24 say? That story was -- oh, well, when he actually came out
25 of the closet, what did he see? He sees Kennedy on the

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1 ground. His friend is on the ground. This is inside. And
2 he sees Mr. Howell outside. Really? Clearly we've got a
3 problem, not just consistency. We've got a problem with
4 truth when it comes to Mr. Clark. And let's not forget, of
5 course, at one point he says that he knew Mr. Howell for
6 many years. I don't doubt that part. I don't have any
7 reason to doubt that part. What I do doubt is that he
8 claims that Mr. Howell was never involved in a situation
9 with a gun. Now, this is allegedly his friend of many
10 years. He says, no, no, never had any incident or
11 involvement with a gun. And yet what do we know that's
12 true? We know when the good Dr. Ross came up here, what did
13 she say she also find in the body of Mr. Howell? That's
14 right. She found another bullet that had nothing to do with
15 this incident. She said it takes at least a month for that
16 dense growth to get around it. That's scar tissue. He had
17 no idea of his best friend's previous gunshot wounds. And,
18 yet, there it is for all to see. It's pretty clear. Again,
19 he's lying. Same guy denied ever having a gun, the only guy
20 with GSR on his hands, and the same guy who ever denied
21 owning a gun or having a gun is, again, later on caught in a
22 car with the same friend, Mr. Kennedy. And, again, with a
23 loaded .38 caliber revolver. He also said Mr. Kennedy
24 didn't have a gun; didn't he? But when we asked him about
25 his own written statement what did he say when he was

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1 confronted with it? In his written statement, oh, yeah, we
2 saw guns, he, referring to C.J., C.J. referring to Mr.
3 Kennedy, he grabbed his gun. Excuse me? Again, his prior
4 statements disprove his courtroom testimony.

5 Now, speaking of Mr. Kennedy, let's talk about him.
6 Let's talk about his testimony. He puts Rodsheen Ayer by
7 the door and him over here. Quite the opposite of what Mr.
8 Johnson said; right? You see his story, frankly, is one of
9 personal bravado. But when we compare it with the evidence
10 in the case it's one without reality. He says Rodsheen put
11 a gun in his back. But he manages a grizzly elbow cop to
12 the head, around the back, and a struggle ensues. And in
13 this struggle, he says that gun goes off up to five times.
14 That's his testimony up here. Now, after being shot in the
15 knee, he says, in the face and the shoulder, he says he's
16 overpowering Mr. Ayer and hemming him up at the door. Yeah.
17 He also testified that after he got the gun, he managed to
18 clip, I think is what he said, trip Mr. Ayer and have him
19 laying down right there and shot him when he's on the porch,
20 laying down right there. But, again, when we actually look
21 at the State's own DNA evidence. Again, compared to truth,
22 right? What do we see? Whose blood's over here? Oh, wait.
23 That's not Mr. Ayer's. The front steps are eight and nine.
24 That's Mr. Kennedy. Let's do blue for Kennedy and we'll do
25 red for Mr. Ayer. Well, if he's shot, if he's laying down

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1 shot, where's his blood? Nope, not there. Again, their
2 story is inconsistent with undeniable evidence. So then he
3 claims, many claims actually before we get back to the
4 evidence itself. He claims to chase Rodsheen around the
5 trailer, after a number of hits. He claims he chased
6 Rodsheen around the trailer, all the way around. This was
7 the first time he testified before being confronted with his
8 prior statements of course. And you see, he even said, that
9 he acknowledged saying to Sergeant Stokes that he didn't
10 chase Rodsheen around the trailer. He didn't say anything
11 about that whatsoever. What he did say on this stand, from
12 that seat right there, is he acknowledged what? That, you
13 know, he's saying this after he found out about the
14 evidence. The man acknowledged in so many words, he's
15 changing his testimony to match what he thinks is the
16 evidence. On, and the gun. Let's not forget that. He had
17 it, trying to shoot it, but it wouldn't work. Right? And
18 then he finally gets it to work and it goes off and that's
19 when he claims to have shot him on the porch. And he's
20 shooting around here or trying to shoot out here. It
21 doesn't work anymore so he drops it. We know it wasn't just
22 dropped; right? No. Again, it's way over here in a field.
23 It's right about there. And let's also remember he wasn't
24 in the line of fire from the car when shots were being fired
25 from it. That's his own words; right? Meaning what? If he

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1 was shot at the five times as he claims, it wouldn't have
2 been from this driveway over here. And it wouldn't have
3 been when it was outside. It had to occur when he was
4 inside.

5 And ask yourselves, where's the other gun. This one
6 allegedly only shot three bullets. Where did the other
7 shots come from? I submit to you the only other person that
8 we know who has a proclivity for .38 caliber revolvers.
9 Because see, his claim was that he never owned a firearm.
10 But we know he did possess a .38 caliber revolver that he
11 claims he got from a home boy. He didn't say where. He
12 does claim that he got it after the incident, about a month
13 after the incident; right? Again, we have no receipts.
14 And, of course, no testing by the State on the only .38
15 caliber revolver possessed by any party to this case. Well,
16 let's put this in perspective. If they actually found the
17 hollow point .9 millimeter of Mr. Johnson at some later
18 date, whether it's one month away, two months away or five
19 months away, whether it's in Mississippi or South Carolina
20 or even California. If they found that gun and suspected
21 that was the one used they would have tested it, and yet,
22 five month after this incident, a loaded .38 caliber
23 revolver is found with that man, Calvin Kennedy and his
24 friend, drug dealer, Alvin Clark. Not tested. Not tested.

25 You see the State already had its theory. It's theory

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1 was robbery by my client, Rodsheen and Terrance, and you see
2 they weren't going to do anything to threaten their case.
3 They weren't going to do anything to threaten that theory.
4 The problem is that the State's theory is nonsense. It
5 makes no sense because it was built on a lie. Lots of lies
6 as a matter of fact. You see, the only person who had money
7 to be robbed was Rodsheen Ayer. He would have had at least
8 twelve hundred and fifty dollars plus and apparently some
9 really good weed from New York. He was the target. He was
10 the target.

11 So what it is, when we test the lies of Kennedy and
12 Clark, let's test them against what you know to be true,
13 guns and DNA; right? Let's start with the clip. It had
14 only three rounds fired from it, consistent with the shells
15 found inside this address, right, [REDACTED]. And
16 it had blood on it too. And we know from what this DNA
17 expert said, there's no way to tell what cells are from skin
18 and what cells are from blood. They can't tell you whose
19 blood it is. They can't tell you whose skin it is. The
20 only thing they can tell you, there are two contributors.
21 Here's the one. Here's the other. That clip had both, Mr.
22 Ayer and Mr. Kennedy. And, the fact that it's on the floor
23 means it like came out during the struggle, period. And
24 don't forget Mr. Kennedy said that he was shot the five
25 times by the driver.

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1 Now, I honestly don't disagree with the man that he was
2 shot. I don't like the fact that people get shot. I don't.
3 But, again, remember if he was shot up to five times, it
4 wasn't by the driver outside, because as he says, he wasn't
5 in the line of fire. Then -- and not only that if only
6 three bullets ultimately came out of this gun, where did the
7 rest come from? The guy in the kitchen who was a little
8 stoned or a little high who's got an angle right there? Who
9 might be shooting at the person wrestling with his friend.
10 That's the inference you can draw from this evidence. And
11 the fact that Rodsheen Ayer's blood is not here. He wasn't
12 shot here. He didn't fall here. He wasn't shot here. You
13 can draw one of two inferences. Either he was shot inside
14 where his blood is there with Mr. Kennedy's and also mixed
15 on the gun with Mr. Kennedy's that was found the following
16 day or it was outside. I submit to you it's more likely
17 inside. And again, if he was shot inside by a person
18 inside, well, that's only two folks struggling, by the way
19 the guy pulling the trigger is likely stoned as well or at
20 least high. Excuse me. Apparently there's a defense. Ask
21 ourselves, again, by whom? The only guy with GSR, Mr.
22 Clark. Again, we see it. Where was he? Again, the same
23 angle where when Mr. Howell was running out, where would the
24 angle be? He's running out. Mr. Clark shot from the back
25 right side and travels forward up like this. There's only

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1 one direction that bullet came from? That .38 caliber
2 bullet was fired from that angle. I submit to you we do
3 know who the true killer is in this case. We know the true
4 killer in this case, whether you want it to be or not, is
5 Alvin Clark. Where else does science prove that Kennedy and
6 Clark are lying, well, run around the trailer, right. We
7 know that running around the trailer totally contradicts
8 what they said before being made aware of the evidence, why?
9 It proves that Rodsheen tried to run away from Mr. Kennedy
10 and Mr. Clark, the two folks with guns. All right? It
11 proves that he ran beside the high fence. Ran around to the
12 back and saw another really high fence, because in the
13 pictures you'll see, it's a high fence that goes around both
14 sides of that trailer. And he comes on around the front.
15 You see, just like the struggle inside, Rodsheen Ayer was
16 fighting for his life outside, trying to get away from the
17 known gunmen. The known gunmen that were inside that are
18 now coming outside. Alvin Clark and Calvin Kennedy.

19 Again, the real evidence proves it's Clark and Kennedy
20 who are lying. The State's case is premised on the sinking
21 sand of these lies. And another way of putting it is this,
22 the State blindly chose to follow the stories of two folks,
23 two criminals, Kennedy and Clark, whose stories are proven
24 false by what we know is true; right? You see, that should
25 cause each and every reasonable person to hesitate to act.

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1 That is reasonable doubt. Lies, guns and reasonable doubt.
2 That's where we are.

3 But where is the truth? The truth is Rodsheen Ayer was
4 going to buy crack. No one's hiding that, except for the
5 two people that don't want to admit that they were in the
6 crack place, selling crack. The truth is that Rodsheen Ayer
7 had at least twelve hundred and fifty dollars on him and he
8 had some good weed from New York. The truth is that
9 Rodsheen Ayer is from out of state. And the truth is that
10 Rodsheen Ayer was a target who was ambushed. That's what
11 the truth is. By who? The only people who were selling
12 drugs at that trap house. You remember, that they pay money
13 to use it for selling drugs. I'm not here to cast
14 dispersions on people I think she's a very sweet lady who
15 actually rented that place. But let's be quite clear. It's
16 a convenient way for someone who is unemployed, who has
17 children and who needs to make rent. Let's not forget. She
18 made her rent that day. The same day that trap house was
19 used as a location ostensibly to sell drugs. And you want
20 to know by who? Who did the ambush? The only people we
21 know who use a .38 caliber handgun, Mr. Kennedy and Mr.
22 Clark. We know what happened. He was drawn inside. Mr.
23 Kennedy was behind him. And what do we hear? Later on when
24 they're in the car, getting out of there. He's bleeding.
25 Oh, no. What happened. Son pulled out. Son pulled out.

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1 He didn't say I pulled out. Son pulled out. In other words
2 he said Bo pulled out. Mr. Kennedy pulled out. Mr. Kennedy
3 pulled a gun. A struggle happens. It happens over Mr.
4 Kennedy's weapon. After all, his DNA's all over. They try
5 and say it's one way. Science can't tell you one way or the
6 other. Science puts both of them on there. And we also
7 know Mr. Clark fires his revolver. That's the truth. I
8 mean, it's a lot like that clip -- Colonel Mustard in the
9 library with the candle stick. Hear me now. Hear me now,
10 it was Alvin Clark at the trailer with a revolver.

11 See Rodsheen Ayer didn't kill or try to kill anybody.
12 It was .38 caliber shot by Mr. Clark that killed Gregory
13 Howell. Kennedy was shot when his gun was fired in a
14 struggle which is after he pulled out. Son pulled out. And
15 Clark was shot at. Let's be clear. Mr. Clark was shot at
16 over here by Mr. Morrison when Mr. Clark comes out with a
17 gun trying to shoot his friends. There's a term for that.
18 It's called defensive of others. You're going to hear the
19 Judge tell you about that as well. And if he was defending
20 others and they're trying to say that, oh, wait. Just
21 because he's shooting a gun at somebody that's attempted
22 murder through what we the accessory liability. But they
23 like to call it hand of one is hand of all.

24 If he's actually in the right shooting, you can't put
25 our guys in jail for that. Here's why. The threat was

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1 here. Alvin Clark with the revolver on the trailer. Taquan
2 Morrison was just defending his friends from the threat, the
3 treat of Mr. Clark. That's defensive of others. Now, like
4 we said, Rodsheen, here, didn't kill anybody. He didn't try
5 to kill anybody. According to actual evidence from the
6 scene, Alvin Clark's story is a lie. And so is Calvin
7 Kennedy's, both of whom were again, were found five months
8 later with a .38 caliber revolver. The only .38 caliber
9 revolver associated with anyone in this case. And yet to
10 this very day remains untested. And you heard Mr. Kennedy
11 say -- You see, without their lies, the State's case
12 collapses against Rodsheen Ayer. It's built on the sinking
13 sands of lies. And frankly, even if you had questions about
14 the actual events that night, it's not your job to play
15 investigator. See, your job, your sworn duty is to put
16 their evidence to the test. It's to see if their evidence
17 rises to the highest level in any court in this country,
18 proof beyond a reasonable doubt. And the very fact that if
19 you still have any doubts about it, if you don't know
20 exactly what happened, that is proof. It's proof of one
21 thing. It's proof they didn't meet their burden. I submit
22 to you this case is all about reasonable doubt. When you
23 add up the lies and when you add up -- you get reasonable
24 doubt in this case. That's all it is. Period. It's proof
25 that the State failed to meet its highest standard. The

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1 standard that it must meet. The standard that you were
2 sworn to apply to this case. Not go on any fact-finding
3 mission, apply it to the evidence. That's it. Nothing
4 more.

5 Now, I won't have an opportunity to speak with you
6 again. But I will ask you apply the law. I want you to
7 apply it to the facts you've heard. I want you to hold the
8 State to its burden as you must. If you don't want to, you
9 must. It's your sworn duty. And if you do your duty, if
10 you do your sworn duty, I am confident that you'll find
11 Rodsheen Ayer not guilty. You will acquit him of all
12 charges because Rodsheen Ayer is not guilty of murder. He
13 is not guilty of attempted murder of anybody either. Not
14 guilty of murder of Mr. Howell. Not guilty of attempted
15 murder of Mr. Kennedy and not guilty of attempted murder of
16 Mr. Clark. Thank you.

17 THE COURT: Solicitor?

18 MR. SORENSON: May it please the Court, Your
19 Honor.

20 THE COURT: Yes, sir.

21 STATE CLOSING

22 BY MR. SORENSON:

23 How can you get any more malicious, any more evil-
24 spirited and void of social duty than what those two men and
25 their cohort did back on September 10th, 2012.

1 Before I forget about it, I want us to talk about
2 Taquan Morrison. He's going to have his day in court,
3 another day. Another jury. He's just as guilty as those
4 two sitting over there. The very definition of malice,
5 ladies and gentlemen, is that man right there shooting an
6 unarmed man in the back two times as he's running out a
7 door. For a definition of malice that man right there
8 blowing the left side of his jaw out. The definition of
9 malice is their cohort, their getaway driver out in that
10 car, peppering that trailer with at least seven rounds, not
11 knowing who's behind those walls, who's behind that door.
12 The definition of malice, ladies and gentlemen.

13 I want to take a few minutes of your time to talk to
14 you, I submit, about the cold hard facts in this case that
15 prove their guilt beyond a reasonable doubt. I submit to
16 you beyond any and all doubt. The cold-hearted facts that
17 they tried to run from on the evening of September 10th.
18 They tried to run as far away as they could get, I submit to
19 you prove their guilt beyond any and all doubt.

20 I'm going to kind of break it down, ladies and
21 gentlemen to kind of four, four kind of little things I want
22 to talk to you about. The first one is about I submit to
23 you the witnesses that prove their guilt, Stephanie
24 Barnwell, Alvin Clark, Calvin Kennedy. I want to talk to
25 you about the crime scene, the DNA, firearms and stuff

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1 that's found out there. And I'm going to talk about the GSR
2 also and the pathologist I submit to you prove their guilt
3 beyond any and all doubt. I've got a whole different take
4 on that than Mr. Stevens and Mr. Palmer do.

5 I want to talk about the actions of Terrance Johnson,
6 Rodsheen Ayer and Taquan Morrison after the fact. You
7 contrast that with the actions of what I submit to you a
8 victim would do, as opposed to what they do. The actions
9 that an Alvin Clark, Calvin Kennedy and Gregory Howell.
10 And, lastly, I'm going to talk to you about the story that
11 you heard from this witness stand. The holes that are
12 riddled throughout that story that he told you today.

13 All right. So let's start and talk about the facts.
14 The facts about what happened out there. Let me kind of
15 fast forward. Obviously, you've heard testimony from Ms.
16 Barnwell and Mr. Kennedy, Mr. Clark, and Mr. Johnson about
17 earlier that day. Fast forward to about 9:00 that night.
18 All right. What does Stephanie Barnwell tell us? All
19 right. She is in her home. She is in there with Gregory
20 Howell, Calvin Kennedy. A car pulls up. Terrance Johnson
21 comes in. She's cooking pork chops, everybody eating. She
22 was starting to leave to go find her kids. Now, Calvin
23 Kennedy's not there at that point in time. Not there at
24 that point in time. She goes outside and her car is blocked
25 in out in that driveway, a white Chevy. Looked like maybe,

1 I believe she said a Malibu, but it ended up being an
2 Impala. They have to move so she can pull out. She can
3 tell there's two black males in there. At that point in
4 time when she is leaving, she encounters as she's pulling
5 out of her driveway, Calvin Kennedy coming in. The two of
6 them briefly converse with each other. What happens in the
7 meantime kind of shows to you how much no good they were up
8 to. In the meantime, Rodsheen Ayer has gotten out of that
9 car and has gone inside. I submit to you what they're
10 waiting for was Stephanie Barnwell to leave. Waiting for
11 Stephanie Barnwell to leave. They don't know at that point
12 in time Calvin Kennedy's pulling in. And he comes in and
13 you heard his testimony, that it was almost like there was
14 tension when he got in there because there's this guy he
15 doesn't know standing off against the wall with a hoodie
16 pulled up. That's Rodsheen Ayer who has just come in there.
17 Ask yourself, who's up to no good. Again, our driver is
18 still sitting out in the car. As Calvin says he sees a
19 white car out there and the brake lights lit up so he can
20 tell there's somebody in there.

21 I want to talk and I'm kind of want to talk about his
22 motive. It's something -- the State doesn't have to prove a
23 motive. A lot of time things are just senseless acts that
24 happen. I submit to you this is about as senseless as one
25 that I have ever encountered. And part of their argument

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1 from the get go has been that it makes no sense, makes no
2 sense for Terrance Johnson to try to rob them. We know him.
3 We're friends with him. I submit to you if you flip-flop
4 that, it makes even less sense for the people that they're
5 claiming to be the drug dealers to be robbing basically
6 customers coming to their home. And that makes even less
7 sense. But also, it's just like they say it makes no sense
8 that Terrance Johnson would try to rob Calvin -- Alvin Clark
9 and Gregory Howell. What sense does it make that Alvin,
10 Calvin and Gregory would try to rob Terrance Johnson? So
11 you look at it, what's the wild card in here? What's the
12 wild card? The wild card is that man sitting at the end of
13 the table. The man from out of town, from New York. And
14 Terrance told you this morning, I submit to you the reason
15 why they were over there. And they were going to rob these
16 guys that were in this house because they counted on nobody
17 calling the cops. People selling drugs, people that are up
18 to no good get robbed, they're not going to call the police.
19 Unfortunately, it goes wrong when Calvin walks in, kind of
20 right before, I submit to you, everything was going to
21 happen or the two of them were going to rob Alvin and
22 Gregory. But he doesn't cooperate and unfortunately it
23 turns into something where the police are going to get
24 involved. Because what does Calvin tell you when he gets
25 that gun jabbed in his side like he does? He immediately

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1 fights back. Immediately fights back.

2 Now, I'm not going to dig through all the photographs,
3 but there's evidence of that. He showed it, pointed to you
4 the hole in the wall. He chopped down on Rodsheen Ayer and
5 knocked him into the wall and they began fighting over that
6 gun. I submit to you the gun, just to kind of talk about
7 the little nit picky things that kind of get twisted around.
8 Alvin Clark that night talks to law enforcement, gives them
9 a statement. And I'm going to talk a lot more about that in
10 a few minutes about how he did -- he cooperated with law
11 enforcement that night. But what does he tell you? This is
12 something that Mr. Palmer brought up and I submit to you put
13 a little spin out there I think was disingenuous when you
14 look at what he's describing happened. But he looks over --
15 he's in the kitchen getting some water. And he hears a
16 commotion and the gunshot and looks up and sees that
17 Terrance and Rodsheen, the guy that we now know is Rodsheen
18 Ayer, have their guns out. And Calvin goes for his. Not
19 going for his gun, going for the gun which is consistent
20 with what everybody then testifies about. They eventually
21 are struggling over that gun. I'm going to talk a lot more
22 in a little while about, but this gun right here. Where
23 this gun came from, right? But what else does Calvin tell
24 us? I think it's real important. All right. He sees this
25 guy tells him don't move, jabs a gun in his side. He starts

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1 fighting with him. And at that point in time the gunshot
2 goes off. He looks over. He sees Terrance Johnson has
3 pulled out a gun. Gregory Howell is going to run out the
4 door. Alvin Clark is going to run down the hallway. And he
5 sees Terrance Johnson, that man right there, fire that gun
6 at both of his friends. Consistent, I submit to you, with
7 the injury that Gregory Howell suffers. He gets shot twice
8 in the back going out that door. I submit to you one of
9 them that goes through him and through that storm door.
10 Alvin Clark, as he's running back to the bedroom, one shot
11 in his direction ends up impacting in the freezer. That
12 shot doesn't make any sense from what they're saying
13 happened. Why on earth would anybody be shooting in that
14 direction? Why would Calvin Kennedy be shooting in that
15 direction? Why would Alvin Clark be shooting in that
16 direction? Well, what makes sense, though is what Calvin
17 tells you, that he saw Terrance Johnson fire a shot at his
18 friend Alvin as he ran down the hallway to the master
19 bedroom. And then what happened, Calvin basically, at that
20 point in time, ends up -- he's in a fight basically for his
21 life. He's fighting with this man over this gun.

22 You know, somehow we're to believe that he's one of the
23 robbers, Alvin's one of the robbers, Gregory's one of the
24 robbers, that the three of them are the bad guys in this
25 equation here. But yet they somehow -- if they are, they're

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1 the worst robbers in the world, because they're somehow --
2 one ends up being dead and the other one lucky to be with us
3 today. But what does he tell you? He fights over that.
4 The guns goes off. I mean, he is here. And for anyone to
5 attack their credibility and say they're lying because they
6 can't remember how many shots they heard, that Alvin said it
7 was twenty-five. I'm sure he wasn't counting every one of
8 them. There's a whole of commotion going on in that
9 trailer. I submit to you Terrance Johnson's firing that
10 revolver in the kitchen at Gregory and Alvin, maybe at
11 Calvin too. I don't know. He's fighting for his life over
12 this gun with that man right there. He's been shot in the
13 leg. He's been shot in the face, shoulder. I submit to you
14 the shot actually going through, right through his face into
15 his shoulder. He's hit in the arm. Then, again, it could
16 be one of shot into the leg or a shot from somebody else.
17 And he's also been able to get -- you saw Calvin. He's a
18 pretty big guy -- ultimately able to get that gun away from
19 Mr. Ayer. And what did he tell you at that point in time.
20 And I'm sure I can't imagine having just had what happened
21 to him. You've been shot in the face. The left side of his
22 jaw is basically blown out. I'm sure he was pretty pissed
23 off at that point in time. And he's got this gun in his
24 hand at that point in time. He said, you know, I just lost
25 my mind. You know, basically, I mean, if he could have

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1 killed him. I guarantee you he would have at that point in
2 time. And he was having trouble because his hands were
3 bloody, getting a good grip on the gun. And he saw that man
4 fall and he shot him. And then he hit him in the door,
5 inside the doorway standing over him, just like Alvin Clark
6 testified. And I submit to you that's how that gunshot
7 residue gets on Alvin Clark. Because you heard Agent
8 Sturkie testify today if you're in five to six feet on the
9 right side of this gun, which I submit to you, that Alvin,
10 when he comes out of the bedroom, that the shooting is over,
11 hasn't heard any more shots. Comes out, sees the end of the
12 struggle, because Rodsheen Ayer has now lost control of his
13 weapon trying to get out of that home, fall on that floor in
14 the doorway, fires one time. I submit at that point in
15 time, if he could have, he would have fired again. He tried
16 to. Well, what has happened? This button has been pushed
17 some time during that altercation, them fighting over this
18 gun. And the magazine has fallen out. It's sitting on the
19 floor in the middle of the living room. At that point in
20 time, Mr. Ayer gets up and runs out. Calvin Kennedy chases
21 behind him. I submit to you at that point in time Taquan
22 Morrison has come out of that car and starts shooting. We
23 know that because Calvin was able to identify him. He
24 picked him out of a photo lineup. And we know it's him. I
25 mean, from his testimony, it's him that's shooting. Of

1 course, with his testimony, Calvin when that happened is
2 behind the trailer. Well, how does he know he was shooting
3 and picked him out of a lineup as being the driver of the
4 car unless he saw him get out? But he chases him around the
5 trailer. And ultimately at that point in time got to a time
6 he realizes that -- I mean, his gun is not operable at that
7 point in time. I don't know if he -- I mean, imagine what
8 he has just gone through? All right? What has gone inside
9 that home. He's been shot multiple times, including in the
10 face. He's got blood all over him. He said he thought he
11 just dropped the gun. Maybe he threw it. I don't know. I
12 mean, obviously it ended up over the fence. It's not hidden
13 underneath the trailer. I mean it's sitting out in broad
14 daylight. And at that point in time he ends up coming back
15 because doesn't keep chasing him around the trailer. He
16 sees that he's gone, that Mr. Ayer has gone all the way
17 along the back. He comes back. And at that point, they're
18 loading up in the white car and they're taking off. And he
19 finds his other friend. Finds Mr. Howell who was shot in
20 the back. And they ultimately end up going to the hospital.
21 All right. That, I submit to you, ladies and gentlemen is
22 the facts.

23 And now, I want to talk to you about the crime scene
24 that I submit to you corroborates that. Corroborates that.
25 I want to back up one second to when we were talking about,

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1 talking about Mr. Kennedy and Mr. Clark. They're making a
2 big deal about them -- about their testimony not being
3 consistent with what they told the police. Well, there's a
4 difference. You know, it's one thing if you tell the
5 police, you know, that X, Y, and Z happened. And then you
6 come into court and you say, you know, not X, Y, and Z.
7 It's A, B, and C, you know. The inconsistencies that
8 they're picking apart, especially with Calvin. So whenever
9 Calvin doesn't -- when they talk to him a couple of weeks
10 later when he gets out of the hospital, he didn't give a
11 written statement. I mean, he's just talking with Sergeant
12 Stokes. And Sergeant Stokes made some notes in there.
13 There's nowhere that he's ever been, you know, ever gave a
14 written statement where somebody told him now make sure you
15 write down every single possible detail about what happened
16 that night, because God forbid, if you leave out a detail,
17 if you leave out a detail, the defense lawyer is going to
18 come into court down the road and call you a liar because
19 you didn't tell them that you chased him around the back of
20 the trailer, because you didn't tell them that. There's a
21 difference between, you know -- and, yet, again, even with
22 Alvin who gave a written statement on the night of September
23 10th, just keep in mind what his frame of mind is at that
24 point in time because he is at the hospital. I mean, he has
25 seen one of his friends, I mean, literally has half his face

1 been blown off and has been flown to another hospital.
2 Another one has been shot in the back twice and is in the
3 hospital suffering from wounds that ultimately are going to
4 lead to his death within a week. And yet we're supposed to
5 believe that he's going to be in a frame of mind to, yet
6 again, to sit down and make sure that he tells them every
7 possible detail about what happened that night. But what
8 does he do? Well, he's cooperative with law enforcement.
9 He gives them a statement. Most importantly tells them that
10 man's name so they can identify him that night. At 11:00
11 that night, law enforcement knows that they're looking for
12 Terrance Johnson. They show the lineup the next day to
13 confirm that they're looking for not a super uncommon name,
14 confirms the following day, the following morning, that
15 that's the man that was involved in this. Does that make
16 any sense that he's making that up? And the other thing he
17 does is he lets them, you know, swab my hands. I don't
18 care. I didn't fire a gun. I didn't fire a gun. What did
19 we learn today from Mr. Sturkie? That basically the results
20 of that gunshot residue test that was given does not support
21 him having fired a gun, consistent with him being within
22 five or six feet of a gun being fired. I submit to you he
23 was inside that trailer, but not consistent with him having
24 fired.

25 All right. So let's look at the crime scene. We start

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1 off with -- one second. We start off with markers one
2 through seven, right? That was the shell casings right
3 there. All consistent with being fired by the same gun but
4 not this gun. All right? All consistent with it. And I'm
5 going to talk a little more about that gun in a minute. But
6 Taquan Morrison fired out all these rounds into the front of
7 that trailer when Alvin Clark attempts to come out the door.
8 All right. They go through the trailer. One that impacts
9 all the way into the back bathroom. One that goes through
10 the kitchen window. They fire -- there's a round found
11 inside here, just loose on the floor, one that has
12 penetrated through. All right. What's our second gun? Our
13 second gun is the revolver. A revolver that -- a revolver,
14 ladies and gentlemen, that we find basically two different
15 projectiles inside the residence that are consistent with
16 having been fired by either a .38 or a .357. The freezer,
17 yet again I talked about a little while ago. I mean, why on
18 earth is Alvin -- I mean, if they're saying Alvin Clark had
19 that gun, why on earth does he ever fire in that direction
20 where he'd be shooting into the freezer. What makes more
21 sense though is Terrance Johnson shooting from this kitchen
22 area as he's attempting to -- as Alvin Clark is running down
23 the hallway, just like Calvin Kennedy told you. All right.
24 And the other one that comes from that same -- consistent
25 with the same gun, the bullet that's removed from Gregory

1 Howell's abdomen. It absolutely corroborates Calvin's
2 testimony and Alvin's testimony.

3 All right. Most importantly, let's talk about this gun
4 right here. No doubt about it, this is the gun that shot
5 Rodsheen Ayer. No doubt about it, this is the gun that I
6 submit to you most likely caused all the injuries to Calvin
7 Kennedy, okay? We know that there's three shell casings
8 that are found, that are matched back to this gun. There's
9 one found right out on the front porch, right at the base of
10 this doorway. There's one found in the living room, up
11 against here. And the last one found down there. All
12 right. I submit to you it's absolutely consistent with that
13 gun being fired two times, striking Mr. Kennedy during this
14 struggle here. And you will have all the pictures back,
15 there. The TV knocked over, the DVDs, all of that stuff,
16 blood all over the floor, leaving those two casings right
17 there at the doorway. The magazine gets knocked out.
18 Calvin Kennedy gets that gun away. Rodsheen Ayer is
19 attempting to run out the door and falls. Whether he's
20 slipping in blood or gets tripped or what have you, in the
21 doorway. Calvin Kennedy comes over, fires that gun one
22 time. Remember now, the magazine's out so it's got one
23 round left in it with that shell casing kicking back and to
24 the right, putting it right where you're going to find it
25 down the hallway here. I submit to you none of that --

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1 there's nothing out of all the casings, projectiles that
2 suggest there's any other guns involved in that. And I
3 submit to you that it absolutely matches what Calvin
4 Kennedy, the person that was present in there when all the
5 shooting inside was taking place, where it happened.

6 Now, let's talk about the blood, the DNA, because I
7 submit to you that's the thing that ultimately ends up
8 absolutely corroborating what Calvin says. All right. All
9 the blood inside on the floor, you've got blood on the
10 coffee table, blood in the doorway, all of that comes back
11 to Calvin. None of that coming back to Rodsheen Ayer. In
12 fact, the front steps, Calvin. And Mr. Stevens made a big
13 deal about well, that shows that obviously they're lying
14 about Rodsheen Ayer not being shot when he was in the
15 doorway. Well, think about kind of where and how everybody
16 was shot, okay? That man right there is shot in the face,
17 blown out the left side of his face. And you can see the
18 scar that he's got now. He's going to be bleeding
19 everywhere. And you can see that from those pictures in the
20 living room. And there's blood all over the floor. The
21 front porch, there's drips of blood all over it. I submit
22 to you when he's going out the door, he's actively bleeding.
23 Think about Rodsheen Ayer, though. All right? He's got a
24 hoodie on. He's been shot in the arm. His arm's not going
25 to start bleeding -- he's not going to be gushing blood

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1 right away. He gets up and starts running and ultimately
2 that's why, by the time he gets around, I submit to you back
3 around here -- and he's basically trying to figure out where
4 to go? Is my ride still here or what am I doing? Now,
5 blood from that gunshot wound is coming down and it's
6 dripping. You can see in those pictures it's just drops
7 that continue back here because he's trying to figure out.
8 Can I come out to get in my getaway car or not. So the fact
9 that there's no blood up here from Rodsheen Ayer, I submit
10 to you corroborates him, but it makes absolute sense giving
11 what he says happened. But what's more important than
12 looking at that, all right? And you've got -- bear with me
13 one second. You've got this picture taken several hours
14 later at the hospital of Rodsheen Ayer. And his face isn't
15 all busted up. Doesn't have any other injuries, other than
16 I submit to you, the gunshot wound to his arm. Calvin's
17 testimony puts that gunshot wound happening in the doorway
18 -- I submit to you his testimony puts it happening even
19 after that. Puts it as he's running and being chased and
20 shot at. Remember he said, he hadn't heard -- there were no
21 other gunshots he heard until they came out on the porch and
22 Calvin's shooting at him. And we'll talk about the other
23 reason why that doesn't make any sense. Well, let's just
24 say that happened. What doesn't make any sense then?
25 You've got sitting on the living room floor, marker twenty-

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1 nine, this magazine. I submit to you it's fallen out of
2 that gun during the struggle and it's got blood drops on it.
3 There's obviously going to be DNA on it. I submit to you
4 this magazine -- if this gun is Calvin Kennedy's gun, that
5 this gun is a gun that Rodsheen Ayer didn't have, didn't
6 possess prior to possibly touching it during that struggle,
7 this shouldn't have anybody else's DNA on it but Calvin
8 Kennedy's, from Calvin Kennedy's blood. But what did we
9 learn about number twenty-nine, the swabs from the magazine?
10 A mixture, Calvin Kennedy and it's got Rodsheen Ayer's DNA
11 on it also. He's not bleeding in there for his blood to be
12 on there. But what could be on there? Rodsheen Ayer, prior
13 to going over to that home, loaded this gun. Rodsheen Ayer
14 loaded this magazine into this gun. His skin cell are going
15 to be there. There are not going to be as many of them as
16 there is Calvin's blood, exactly consistent with what the
17 DNA findings are on this gun. The handgun, exact same
18 thing. The handgun. Absolutely corroborates Calvin
19 Kennedy. Got to swab the trigger and the grip. The mixture
20 of the two of them basically, absolutely consistent. I
21 submit to you that both of them fighting during the course
22 of all this handling this gun, Rodsheen initially. Calvin
23 Kennedy then getting it from him. Obviously, there's blood
24 present because Calvin's bleeding. The same thing with the
25 other one. And look at it, just a couple of other things

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1 with the DNA to talk about, that said, that you know, where
2 the blood drops of Rodsheen Ayer is behind where Calvin's
3 is, absolutely corroborating him having chased after him.
4 There's blood on -- this isn't the right one -- but there's
5 blood of his on the electric meter, the corner of the thing
6 where he's rubbed against it. I mean, he is -- I can't
7 imagine how much blood he's got on the left side of his body
8 as he's going around that corner. Then you look at the, you
9 know, the end of the trailer, the window blind. The mixture
10 of the two. If you look at those photographs there's some
11 little drops of blood on the window blind that we would have
12 swabbed basically all of the drops of blood. Consistent, I
13 submit to you, both of them having at some point in time
14 that they were running, rubbed up against it. When Calvin
15 tells you that he ends up stopping and then coming back,
16 consistent yet again with blood drops of his on the ground
17 at the end of that trailer in marker sixteen. Absolutely
18 consistent with what Calvin Kennedy tells you happened. And
19 I submit to you some of these, that are actually, probably
20 in these mixtures like on the vehicle, was probably when
21 he's running away. When he has got his blood, I imagine,
22 all over him, fighting with him after he'd been shot in the
23 face. And rubbing up against that vehicle, leaving behind
24 a mixture of a lot of his blood and his DNA also. And
25 obviously, you know, a lot of what we had to do initially,

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1 you know, taking the photograph, showing the tattoos,
2 showing the scars, the picture of the hospital, his DNA in
3 the Impala is because we needed to prove that Rodsheen Ayer
4 was the other person there. I don't think there's a doubt
5 about that now after, especially not after Mr. Johnson's
6 testimony.

7 All right. So and the third thing I wanted to talk to
8 you about is their actions. Their actions. All right. And
9 I want to kind of contrast that with what Alvin, Calvin and
10 Gregory did that night. Who goes straight to the closest
11 hospital? They do. The Regional Medical Center. They go
12 all the way to Lexington. Actually, somebody with nothing
13 to hide and done nothing wrong or somebody who wants to
14 hide, get away, get as far away from Orangeburg and what
15 they have done. Who cooperates with law enforcement that
16 night? Alvin Clark gives them a statement that talked about
17 -- provides them information about Terrance Johnson. Lets
18 his hands be swabbed. Gets law enforcement in contact with
19 Stephanie Barnwell to go meet them at the house. I mean, if
20 he's got stuff to hide, he's the drug dealer who was cooking
21 crack in that kitchen, he stays at the hospital. He doesn't
22 go back and clean up. There's no evidence of crack being
23 out and cooked when law enforcement gets there. Contrast
24 that to them. You know, just like he stays and talks to law
25 enforcement, his two buddies take off. They drop him off

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1 and they're gone. Now, what does Rodsheen Ayer do? What
2 does Rodsheen Ayer do? You know, keep in mind it's almost
3 the exact same time. He checked in at 10:48 so he's meeting
4 with hospital staff, you know, around 11:00 or so and giving
5 them his story about the same time that Alvin Clark is
6 talking with the Orangeburg County Sheriff's Office at a
7 little after 11:00. Gives them a false name, Emanuel Ayer.
8 Yet, again, if you've done nothing wrong why on earth are
9 you doing that? Lies to the nurses. Gives them the story,
10 you know, that somebody's robbed him. He wasn't sure where
11 it happened. You know, as little information as possible at
12 that point in time. But uh oh, unfortunately hospitals have
13 a procedure where they have to call -- on a gunshot wound,
14 they've got to call in the police. So the police show up.
15 And what does he tell them? He was outside a club smoking.
16 Two guys robbed him. They took his wallet and his phone,
17 which is convenient then so he wouldn't have to have any
18 personal information on him to show that he's -- for them to
19 be able to prove at that point in time he's lying about his
20 identity. He got shot when he ran and he doesn't want to
21 prosecute. At that point in time, he wants those cops out
22 of there as quick as possible. Are those the actions of a
23 guilty man or an innocent man. Contrast their actions that
24 night and I submit to you, there's no doubt about it who the
25 guilty parties are in this scenario. You know, they attack

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1 -- this kind of made me chuckle when they were questioning
2 Alvin about this; that, you know, he didn't -- you know, the
3 five minutes or so that it took him to get his two buddies,
4 his two friends who are seriously wounded to The Regional
5 Medical Center that he didn't call -- I mean, that I can't
6 believe you didn't call 9-1-1 before you got them there.
7 Contrast that with them who never even talked to the police.
8 But yet, Alvin has supposed something that shows that, you
9 know, that he was up to no good. The fact that he didn't
10 call 9-1-1 before he took his friends to the hospital.
11 Well, what is his answer to that? He was worried about
12 getting them there. He wasn't going to sit around and wait
13 for the police or EMS. I submit to you that's yet again a
14 reasonable response as opposed to driving all the way to
15 Lexington, lying about your name. Lying about what
16 happened. And then they're all back together too. All back
17 together over at Mr. Morrison's girlfriend's house. And Mr.
18 Ayer telling a different lie to her. You know, he tells her
19 that he shot himself playing with the gun. And Mr. Morrison
20 backs that up. Yet, again, the words and actions of guilty
21 parties. And then to top it all off when they go -- two of
22 them up to New York. And Mr. Johnson, you know, he finds
23 out -- yet again, they never contact law enforcement in
24 these days, several days after this. Mr. Johnson finds out
25 from his finally on September 14th that the sheriff's is

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1 looking for him. And the next day he had his mother, his
2 sister, I believe it was a cousin and a girlfriend drive him
3 all the way to Mississippi. They turn around and drive
4 straight back. And he wants you to believe that he wasn't
5 hiding from the police? The police have come to his family
6 and said that we're looking for him. And if you've got some
7 fear that they're after him or somebody's after him, the
8 police are there. They're looking for you. Talk to them.
9 Contrast that with Alvin and Calvin. Come in and meet with
10 the sheriff's office when they need them. Show them
11 lineups. There are lineups they show them where they don't
12 pick anybody out. They're not just trying to blame anybody.

13 THE COURT: Five minutes, Solicitor.

14 MR. SORENSON: Yes, ma'am. Yes, ma'am. Thank
15 you.

16 BY MR. SORENSON:

17 All right. And then Mr. Johnson, let's talk about him
18 just real briefly now. All right. Now, he didn't have to
19 testify but he did. And he's subject to the same scrutiny
20 as everybody else. It boils down to ladies and gentlemen,
21 if you believe that story that he testified earlier, find
22 him not guilty. I'm sorry for wasting your time. But I
23 submit to you that would be absolutely ludicrous to believe
24 that story and all the holes that are in it. Let's look at
25 just a couple of them, all right? It's obvious that this

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1 gun is involved because I've talked to you about the DNA on
2 it. But where does he put that gun when this all starts in
3 the first shooting? He puts this gun sitting on the
4 counter. Well, if this gun's sitting on the counter, how is
5 he pulling it out on Rodsheen Ayer? You know, if he puts
6 Calvin Kennedy and Alvin Clark out on that front porch
7 shooting, shooting at, initially Mr. Ayer and then at him,
8 there are no casings out there. Puts him shooting that gun
9 that way. There's no casings back here where it ejects.
10 You know, sees him run by and doesn't see any injuries on
11 him. He's been shot in the face. I mean, he is bleeding.
12 Look at the blood in the house. And why does he go -- when
13 he comes out the door, why does he go the way he said? That
14 makes no sense. His car, his getaway is the other way. All
15 right. And the other .9 millimeter that he's supposedly
16 been toting around all day, but yet he supposedly didn't
17 have any pockets, unloaded on the back seat. But yet
18 somehow Taquan Morrison is able to get it and start shooting
19 back seven times at that trailer. Does that make any sense.
20 He told Mr. Palmer that he got rid of it but couldn't say
21 when or where. And then changed it to oh, I just never got
22 it back. I submit to you if you believe that story find
23 them not guilty. I submit to you it makes no sense.

24 Ladies and gentlemen, in a few minutes. I'm going to
25 sit down actually probably about in two minutes. Her Honor

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1 is going to charge you on the law in this case. And then
2 you've got an opportunity to go back into your jury room and
3 begin deliberation. And you're going to be asked to return
4 a verdict. Verdict comes from a Latin word that means to
5 speak the truth. All I ask of you, all the State of South
6 Carolina and the citizens of Orangeburg County ask of you is
7 to return a verdict that speaks the truth. I submit to you
8 when you look at the cold hard facts, the facts that they've
9 tried to -- that caught up with them back in September of
10 2012, the only truthful verdict in this case is guilty.
11 Guilty of the murder of Gregory Howell. Guilty of shooting
12 at Alvin Clark inside that trailer. They're guilty of
13 shooting at and attempting to kill Alvin Clark when he was
14 coming out of that trailer and guilty of the horrible
15 injuries that were inflicted on Calvin Kennedy that night.
16 Thank you.

COURT'S CHARGE

17
18 THE COURT: Ladies and gentlemen of the jury, it
19 is now time for me to instruct you on the law of this case.
20 The indictments charge the Defendants with murder and two
21 counts of attempted murder. I remind you that the fact the
22 Defendants were arrested, charged and indicted in this case
23 is not evidence in this case and cannot be considered by you
24 as evidence of guilt in this case. Nor does it create any
25 presumption or inference of guilt. These documents are

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1 simply the formal written instruments, which contain the
2 charges made against the Defendants. They are formal
3 documents by which this case is brought into court. The
4 indictments in this case allege several different offenses
5 against the Defendants. Again the indictments are for
6 murder and two counts of attempted murder for each of the
7 Defendants. Each indictment charges a separate and distinct
8 offense. You must decide each indictment separately on the
9 evidence and the law applicable to it, uninfluenced by your
10 decision as to any other indictment. The Defendants may be
11 convicted or acquitted on any or all of the offenses
12 charged. You will be asked to write a separate verdict of
13 guilty or not guilty for each indictment. I charge you that
14 there are two Defendants in this case, each of whom is
15 charged with murder and two counts of attempted murder. The
16 case of each Defendant and the evidence and the law
17 concerning that Defendant should be considered separately
18 and individually. Your verdict does not have to be the same
19 for both Defendants. The fact that you may find one
20 Defendant guilty or not guilty should not control your
21 verdict as to the other Defendant. Where more than one
22 person is charged with a crime if the evidence warrants it,
23 you may convict one and acquit the other. You may acquit
24 both or you may convict both. It will depend on your view
25 of the testimony and the evidence. You must take each

1 Defendant and consider the evidence as to that Defendant and
2 my instructions to you on the law. You will then write a
3 separate verdict of guilty or not guilty for each individual
4 Defendant.

5 The Defendants have pled not guilty to these
6 indictments and that plea puts the burden on the State to
7 prove the Defendants guilty. A person charged with
8 committing a criminal offense in South Carolina is never
9 required to prove himself innocent. I charge you that it is
10 an important rule of the law that the Defendant in a
11 criminal trial, no matter what the seriousness of the charge
12 may be, will always be presumed innocent of the crime for
13 which an indictment was issued unless guilt has been proven
14 by evidence satisfying you of that guilt beyond a reasonable
15 doubt.

16 The presumption of innocence does not end when you
17 begin your deliberations but it accompanies the Defendant
18 throughout the trial until you reach a verdict of guilt,
19 based on evidence satisfying you of that guilt beyond a
20 reasonable doubt. The presumption of innocence is like a
21 robe or righteousness placed about the shoulders of the
22 Defendant, which remains with the Defendant until it has
23 been stripped from the Defendant by evidence satisfying you
24 of the Defendant's guilt beyond a reasonable doubt. The
25 presumption of innocence is not a mere legal theory. It is

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1 not just a legal phrase but it is a substantial right to
2 which every Defendant is entitled to unless you, the jury,
3 are satisfied from the evidence of the Defendant's guilt
4 beyond a reasonable doubt.

5 What is a reasonable doubt in the law? A reasonable
6 doubt is the kind of doubt that would cause a reasonable
7 person to hesitate to act. The State has the burden of
8 proving the Defendants guilty beyond a reasonable doubt.
9 Some of you may have served as jurors in civil cases where
10 you were told that it is only necessary to prove that a fact
11 is more likely true than not true, such as by the greater
12 weight or the preponderance of the evidence. In criminal
13 cases, the State's proof must be more powerful than that and
14 must be beyond a reasonable doubt. Proof beyond a
15 reasonable doubt is proof that leaves you firmly convinced
16 of the Defendant's guilt. There are very few things in this
17 world that we know with absolutely certainty. And in
18 criminal cases the law does not require proof that overcomes
19 every possible doubt. If based on your consideration of the
20 evidence, you are firmly convinced that the Defendant is
21 guilty of the crime charged, you must find the Defendant
22 guilty. If, on the other hand you think there is a real
23 possibility that the Defendant is not guilty, you must give
24 the Defendant the benefit of the doubt and find him not
25 guilty.

1 I remind you that during this trial you and I have
2 certain duties to perform. As the trial judge, it's my
3 responsibility to preside over the trial of the case. And I
4 also have the duty to rule on the admissibility of evidence
5 offered during the trial. You are to consider only the
6 competent evidence before you. If there was any testimony
7 ordered stricken from the record in this case during this
8 trial, you must disregard that testimony. You're to
9 consider only the testimony which has been presented from
10 the witness stand, any exhibits which have been made part of
11 the record in this case, and any stipulations of counsel.

12 I have the additional duty to charge you the law
13 applicable to this case. As the presiding judge, I'm the
14 sole judge of the law in this case. And it is your duty to
15 accept and apply the law as I now state it to you. If you
16 already have an idea as to what the law is or what the law
17 ought to be, and it does not agree with what I now tell you
18 the law is, you must abandon this idea because you are sworn
19 to accept the law and apply the law exactly as I state it to
20 you. In every case tried in this court before a jury, the
21 jury becomes the sole and exclusive judges of the fact in
22 the case. A trial judge cannot intimate, state, comment on
23 or make any statement to a trial jury about the facts in a
24 case. Since you, the jury, are the sole judge of the facts
25 in this case, you're not to infer from what I have said

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1 during the progress of this trial, in ruling upon the
2 admissibility of evidence or otherwise or anything that I
3 may now during the course of this instruction to you, that I
4 have any opinion about the facts in this case. The law does
5 not allow me to have an opinion about the facts in this
6 case. This is a matter solely for you, the jury, to
7 determine. As jurors it is your duty to determine the
8 effect, value, weight and truth of the evidence presented
9 during this trial.

10 There are two types of evidence which are generally
11 presented during a trial, direct evidence and circumstantial
12 evidence. Direct evidence is a testimony of a person who
13 claims to have actual knowledge of a fact, such as an
14 eyewitness. Circumstantial evidence is proof of a chain of
15 facts and circumstances indicating the existence of a fact.
16 The law makes absolutely no distinction between the weight
17 or value to be give to either direct or circumstantial
18 evidence, nor is a greater degree of certainty required of
19 circumstantial evidence than of direct evidence. You should
20 weigh all of the evidence in this case. Afer weighing all
21 the evidence if you're not convinced of the guilt of the
22 Defendant beyond a reasonable doubt, you must find the
23 Defendant not guilty. Necessarily, you must determine the
24 credibility of witnesses who have testified in this case.
25 Credibility simply means believability. It becomes your

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1 duty as jurors to analyze and to evaluate the evidence and
2 to determine which evidence convinces you of its truth. In
3 determining the believability of witnesses who have
4 testified in this case, you may believe one witness over
5 several witnesses or several witnesses over one witness.
6 You may believe a part of the testimony of a witness and
7 reject the remaining part of the testimony of that same
8 witness. You may believe the testimony of a witness in its
9 entirety or reject the testimony of a witness in its
10 entirety. You may consider whether any witness has
11 exhibited to you any interest, bias, prejudice or other
12 motive in this case. You may also consider the appearance
13 and the manner of a witness while on the witness stand. The
14 rules of evidence ordinarily do not permit witnesses to
15 testify as to opinions or conclusions. An exception to this
16 rule exists for witnesses that we call expert witnesses. A
17 witness who, by education and experience, has become an
18 expert in some art, science, profession or calling, may
19 state an opinion as to relevant or material matter in which
20 the witness claims to be an expert. You may also state the
21 reasons for that opinion. You should consider any expert
22 opinion received in evidence in this case. And like any
23 other evidence, give it the weight that you think it
24 deserves. If you decide that the opinion of an expert
25 witness is not based on sufficient education and experience

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1 or if you conclude that the reasons given in support of the
2 opinion are not sound or that the opinion is outweighed by
3 other evidence, you may disregard the opinion entirely. An
4 expert witness's testimony is to be given no greater weight
5 than that of other witnesses, simply because the witness is
6 an expert. Further, you are not required to accept an
7 expert's opinion, even though it's not contradicted.

8 I instruct you and emphasize that the fact that the
9 Defendant, Rodsheen Ayer, did not testify is not a factor to
10 be considered by you in any way in your deliberation in your
11 consideration on the question of guilt or innocence of the
12 Defendant. It must not be considered by you in any manner
13 whatsoever. The Defendant has a constitutional right to
14 remain silent. And the assertion of this right must not be
15 considered by you in your deliberations. I repeat. Under
16 your oath you're not to draw any conclusions whatsoever from
17 the fact that the Defendant in this case did not testify.
18 The fact that the Defendant did not testify should not even
19 be discussed in the jury room. The burden of proof, as I
20 have stated to you, is on the State. The Defendant is not
21 required to prove his innocence. The burden of proof
22 remains on the State to prove guilt beyond a reasonable
23 doubt.

24 If a crime is committed by two or more people who are
25 acting together in committing a crime, the act of one is the

1 act of all. A person who joins with another to commit an
2 unlawful act is criminally responsible for everything done
3 by the other person which happens as a probable or natural
4 consequences of the act done in carrying out the common plan
5 and purpose. For example, two people can be guilty of
6 killing another person when only one of the two had a gun.
7 There was only one bullet and only one of the two fired the
8 shot that caused the death. If two or more people are
9 together, acting together, assisting each other in
10 committing the offense, the act of one is the act of all or
11 is it sometimes said, the hand of one is the hand of all.
12 Prior knowledge that a crime is going to be committed
13 without more is not sufficient to make a person guilty of
14 that crime. Mere knowledge that another person is going to
15 commit a crime, even if the Defendant is present when the
16 crime is committed, is not sufficient to convict the
17 Defendant as a principal. Guilt as a principal is shown by
18 actual or constructive presence at the scene as a result of
19 a prior arrangement. Therefore, a finding of a prior
20 arranged plan or common scheme is necessary for a finding of
21 guilt as a principal. The State must prove beyond a
22 reasonable doubt by competent evidence the theory of the
23 hand of one is the hand of all. A principal in a crime is
24 one who either actually commits the crime or is present,
25 aiding, abetting or assisting in committing the crime. When

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1 a person does an act in the presence of and with the
2 assistance of another, the act is done by both. Where are
3 two or more acting with a common plan or intent and present
4 at the commission of the crime, it does not matter who
5 actually commits the crime. All are guilty. The hand of
6 one is the hand of all. Present at the commission of a
7 crime means to be sufficiently near to aid and abet and
8 assist in the commission of the crime. However, mere
9 presence at the scene of a crime is not sufficient to
10 convict one as a principal on the theory of aiding and
11 abetting. Intent is also a necessary element for there must
12 have been a common design or intent to commit the crime and
13 the crime must have been committed pursuant thereto with the
14 person aiding and abetting by some overt act. Intent means
15 intending the result which actually occurred, not
16 accidentally or involuntarily. Intent may be shown by act
17 and conduct of the Defendant and other circumstances from
18 which you may naturally and reasonably infer intent. The
19 State must prove these elements beyond a reasonable doubt.
20 Under an accomplice liability theory or the hand of one is
21 the hand of all, one who joins with another to accomplish an
22 illegal purpose is liable criminally for everything done by
23 his confederate incidental to the execution of the common
24 design and plan. A person must personally commit the crime
25 or be present at the scene of the crime and intentionally or

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1 through common design aid, abet, or assist in the commission
2 of that crime through some overt act to be guilty under the
3 theory of accomplice liability. One is not liable for the
4 accomplice unless the act is a natural or probable
5 consequence of an agreed to plan.

6 An issue in this case is the identification of the
7 Defendant as the person who committed the crime charged.
8 The State has the burden of proving identity beyond a
9 reasonable doubt. You must be satisfied beyond a reasonable
10 doubt of the accuracy of the identification of the Defendant
11 before you may convict the Defendant. Identification
12 testimony is an expression of belief or impression by a
13 witness. You must determine the accuracy of the
14 identification of the Defendant. You must consider the
15 believability of that identification witness in the same way
16 as any other witness. You may consider whether the witness
17 had an adequate opportunity to observe the offender at the
18 time of the offense. This will be effected by things like
19 how long or short a time was available. How far or close a
20 witness was. The lighting conditions and whether the
21 witness had a chance to see or know the person in the past.
22 Once again, I instruct you, the burden of proof on the State
23 extends to every element of the crime charged. And this
24 specifically includes the burden of proving beyond a
25 reasonable doubt the identity of the Defendant as the person

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1 who committed the crime. If, after examining the testimony
2 you have a reasonable doubt as to the accuracy of the
3 identification, you must find the Defendant not guilty.

4 In order to establish criminal liability, criminal
5 intent is required. For example, the mental state required
6 to be proven by the State for a particular crime might be
7 purpose, intent, knowledge or recklessness or criminal
8 negligence. Criminal intent must be proven by the State
9 beyond a reasonable doubt. Criminal intent is always a
10 matter that must be determined by the jury from the
11 circumstances surrounding the situation. There is no way to
12 prove intent to a mathematical certainty. There is no way
13 medical science can dissect a person's brain and determine
14 what the person had in mind. So the law says that criminal
15 intent may be inferred from the circumstances shown to have
16 existed. This is how you make a determination of whether or
17 not the element requiring intent was present. It is not
18 necessary to establish by direct and positive evidence, but
19 intent may be established by inference in the same way as
20 any other fact by taking into consideration the acts of the
21 parts and all the facts and circumstances of the case.
22 Criminal intent is a mental state, a conscious wrongdoing.
23 It is up to you to determine what the Defendant intended to
24 do based upon the circumstances shown to have existed.
25 Criminal intent can arise from action or a failure to act.

1 It may arise from negligence, recklessness or an
2 indifference to duty or to consequences that is considered
3 by law to be the equivalent of criminal intent. Mere
4 presence at the scene is not sufficient to prove someone
5 guilt of a crime. A Defendant's presence where a crime is
6 being committed or mere association with a person who
7 commits a crime, does not make a Defendant an accomplice or
8 an aider and abetter of the person committing that crime.
9 The burden is on the State to prove every element of the
10 crime charged. If you find after reviewing all of the
11 evidence that the State has proved that the Defendant was
12 only present at the scene of a crime, that they have not
13 proved beyond a reasonable doubt any other participation in
14 the crime, then you must find the Defendant not guilty. The
15 law is that proof of at the scene of the crime is not
16 sufficient to find someone guilty.

17 There has been evidence presented that witnesses have
18 made prior statements, which are not consistent with the
19 witnesses present testimony. You may use this evidence to
20 decide whether to believe the witness. You may also use
21 evidence of the earlier contradictory statements to
22 determine the truth of those statements. It is up to you to
23 decide whether to believe the earlier statements or the
24 testimony given at trial. If a witness is shown to have
25 knowingly testified untruthfully concerning any material

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1 matter, you may consider this in determining whether to
2 trust the witnesses testimony as to other matters. You may
3 reject all testimony of that witness or give all or part of
4 the testimony the weight that you think it deserves. A
5 person who has a past criminal record is competent to
6 testify during a trial. A past record does not effect the
7 ability of that witness to testify. The past record may
8 only be considered by you, if at all, in determining the
9 witnesses believability. Remember, you are the sole judges
10 of the facts in this case and the believability of any and
11 all of the witnesses.

12 Each Defendant is charged with murder. The State must
13 prove beyond a reasonable doubt that the Defendant killed
14 another person with malice aforethought. Malice is hatred,
15 ill will or hostility toward another person. It is the
16 intentional doing of a wrongful act without just cause or
17 excuse and with the intent to inflict an injury or under
18 circumstances that the law will infer an evil intent.

19 Malice aforethought does not require that malice exists
20 for any particular time before the act is committed. But
21 malice must exists in the mind of the Defendant just before
22 and at the time of the act is committed. Therefore, there
23 must be a combination of the previous evil intent and the
24 act. Malice aforethought may be expressed or inferred.
25 These terms expressed and inferred do not mean a different

1 kind of malice but merely the manner in which the malice may
2 be shown to have existed. That is either by direct evidence
3 or by inference from the facts and circumstances which are
4 proved. Expressed malice is shown when a person speaks
5 words which express hatred or ill will for another but when
6 the person prepared beforehand to do the act which is later
7 accomplished. For example, lying in wait for a person or
8 any other acts of preparation going to show that the deed
9 was within the Defendant's mind would be expressed malice.

10 A deadly weapon is any article, instrument or
11 substance, which is likely to cause death and great bodily
12 harm. Whether an instrument has been used as a deadly
13 weapon depends upon the facts and circumstances of each
14 case. The following are examples of instruments, which may
15 be used as deadly weapons. A pistol, a shotgun, a rifle, a
16 dirk, a dagger, a knife, a sling shot, metal knuckles, a
17 razor, gasoline, a firebomb, or Molotov cocktail and lighter
18 fluid. A gun may be a deadly weapon even if it is not
19 operating.

20 An attempt is an effort to accomplish a crime which
21 does not succeed. An attempt includes a specific intent to
22 do a particular criminal act, along with an act, falling
23 short of the act intended. The State must show more than
24 mere preparation and intent. There must be some overt act
25 committed in the effort to commit the crime. Intent means

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1 the intending result which actually occurs, not accidentally
2 or involuntarily. Intent may be shown by acts and conduct
3 of the Defendant and other circumstances from which you may
4 naturally and reasonably infer intent.

5 The Defendants are charged with attempted murder. In
6 order to prove this crime, the State must prove that the
7 Defendant attempted to kill another person with malice
8 aforethought either expressed or implied. Malice again is
9 hatred, ill will or hostility towards another person. It is
10 the intentional doing of a wrongful act without just cause
11 or excuse and with the intent injury or under circumstances
12 that the law will infer an evil intent. Malice aforethought
13 does not require that malice exists for any particular time
14 before the act is committed. But malice must exist in the
15 mind of the Defendant just before and at the time the act is
16 committed. Therefore, there must be a combination of the
17 previous evil intent and the act. Malice aforethought may
18 be expressed or inferred. These terms expressed and
19 inferred do not mean a different type of malice but merely a
20 manner in which malice may be shown to exist. That is
21 either by direct evidence or by inference from the facts and
22 circumstances which are proven. Expressed malice is shown
23 when a person speaks words which express hatred or ill will
24 for another or when a person prepared before hand to do the
25 act, which was later accomplished. For example, lying in

1 wait for a person with other acts of preparation going to
2 show the deed was within the Defendants mind would be
3 expressed malice. Malice may be inferred from conduct
4 showing a total disregard for human life. If facts are
5 proved beyond a reasonable doubt sufficient to raise an
6 inference of malice to your satisfaction, this inference
7 would be simply an evidentiary fact to be considered by you,
8 the jury, along with other evidence in this case. You may
9 give it the weight you decide it should receive.

10 A specific intent to kill is an element of attempted
11 murder. Intent means intending the result which actually
12 occurred, not accidentally or involuntarily. Intent may be
13 shown by acts and conduct of the Defendant and other
14 circumstances which you may naturally and reasonably infer
15 in intent. Evidence of the character of the act and the
16 character of the instrument used and the manner in which it
17 is used, the purpose to be accomplished and the resulting
18 wounds or injuries, which may be considered in determining
19 intent, with which the act was committed. Intent may also
20 be inferred and demonstrated if the Defendant voluntarily
21 and willfully commits act, the natural tendency of which is
22 to destroy another's life. A person commits the offense of
23 assault and battery of a high and aggravated nature of a
24 person unlawfully injures another person and great bodily
25 injury to another person results or the act is accomplished

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1 by means likely to produce death or great bodily injury.

2 Great bodily injury means bodily injury which causes a
3 substantial risk of death or which causes serious permanent
4 disfigurement or protracted loss or impairment of the
5 function of a bodily member or organ.

6 Assault and battery in the first degree. A person
7 commits the offense of assault and battery in the first
8 degree if the person unlawfully injures another person and
9 the act either involved not consistent with touching of the
10 private parts of an adult, either under or above clothing
11 with lewd and lascivious intent or occurred during the
12 commission of a robbery, burglary, kidnapping or theft.
13 Private parts means the genital area or buttocks of a male
14 or female, the breast of a female. A person may also commit
15 the offense of assault and battery in the first degree if a
16 person unlawfully offers or attempts to injure another
17 person with the present ability to do so and the act of
18 either accomplished by means likely to produce death or
19 great bodily injury. Or occur during the commission of a
20 robbery, burglary, kidnapping or theft. Great bodily injury
21 means bodily injury which causes a substantial risk of death
22 or which causes various permanent disfigurement or
23 protracted loss or impairment of the function of a bodily
24 member or organ.

25 The Defendants have raised the defense of self-defense.

1 Self-defense is a complete defense and if is established,
2 you must find the Defendant not guilty. The State has the
3 burden of disproving self-defense by proof beyond a
4 reasonable doubt. If you have a reasonable doubt of the
5 Defendant's guilt after considering all of the evidence,
6 including the evidence of self-defense, then you must find
7 the Defendant not guilty. On the other hand, if you have no
8 reasonable doubt of the Defendant's guilt after considering
9 all of the evidence, including the evidence of self-defense,
10 then you must find the Defendant guilty. The following
11 elements are required to establish self-defense. Number
12 one, without fault. First, the Defendant must be without
13 fault in bringing on the difficulty. If the Defendant's
14 conduct was the type which was reasonably calculated to and
15 did provoke a deadly assault, the Defendant would be at
16 fault in bringing on the difficulty and would not be
17 entitled to acquittal based on self-defense. Two, imminent
18 danger. The second element of self-defense is that the
19 Defendant was actually in imminent danger of death or
20 serious bodily injury or the Defendant actually believed he
21 was in imminent danger of death or serious bodily injury.
22 If the Defendant was actually in imminent danger it must be
23 shown that the circumstances would have warranted a person
24 ordinary firmness in courage to strike a fatal blow to
25 prevent death or serious bodily injury. If the Defendant

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1 believed he was in imminent danger of death or serious
2 bodily injury, it must be shown that a reasonable prudent
3 person of ordinary firmness and courage would have had the
4 same belief. In deciding whether the Defendant actually was
5 or believed he was in imminent danger of death and serious
6 bodily injury, you should consider all of the facts and
7 circumstances surrounding the crime, including the physical
8 condition and characteristics of the Defendant and the
9 victim. The Defendant does not have to show that he was
10 actually in danger. It is enough if the Defendant believed
11 he was in imminent danger and a reasonably prudent person of
12 ordinary firmness and courage would have the same belief.
13 The Defendant has a right to act on appearances even if the
14 Defendant believes he may have been mistaken. It is for you
15 to decide whether the Defendant's fear of imminent danger of
16 death or serious bodily injury was reasonable and would have
17 been felt by an ordinary person in the same situation. The
18 final element of self-defense is that the Defendant had no
19 other probable way to avoid the danger of death or serious
20 bodily injury than to act as the Defendant did in this
21 particular instance. A person cannot be required to make
22 exact calculation as to the degree or the amount of force
23 which may be needed to avoid a theft or serious bodily harm.
24 Therefore, in self-defense, the Defendant has the right to
25 use the force needed to avoid death or serious bodily harm.

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1 The force used in self-defense does not have to be limited
2 to the degree or the amount of force used by the victim.
3 The Defendant has the right to use so much force as appeared
4 to be necessary for a complete self protection in which a
5 person of ordinary reason and firmness would have believed
6 to be needed to prevent death or serious bodily harm. The
7 Defendant had no duty to retreat if by doing so the danger
8 of being killed or suffering serious bodily injury would
9 increase.

10 Ladies and gentlemen of the jury, there are several
11 possible verdicts which you may find in this case. As to
12 the Defendant, Rodsheen Ayer, you may find him guilty or not
13 guilty of murder; guilty or not guilty of attempted murder
14 of Calvin Kennedy; and, guilty or not guilty of the attempt
15 murder of Alvin Clark. If you find the Defendant Rodsheen
16 Ayer not guilty of attempted murder of Calvin Kennedy, then
17 you may find him guilty or not guilty of assault and battery
18 of a high and aggravated nature. If you find the Defendant,
19 Rodsheen Ayer not guilty of attempted murder of Alvin Clark,
20 then you may find him guilty or not guilty of assault and
21 battery in the first degree.

22 As to the Defendant, Terrance Johnson, you may find him
23 guilty or not guilty of murder; guilty or not guilty of the
24 attempted murder of Calvin Kennedy; and, guilty or not
25 guilty of the attempted murder of Alvin Clark. If you find

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1 the Defendant, Terrance Johnson, not guilty of attempted
2 murder of Calvin Kennedy, then you may find him not guilty
3 of assault and battery of high and aggravated nature. You
4 may find the Defendant, Terrance Johnson, not guilty of the
5 attempted murder of Alvin Clark, then you may find him
6 guilty or not guilty of assault and battery in the first
7 degree.

8 There is no significance whatsoever in the order which
9 I state the possible verdict. Ladies and gentlemen, I just
10 went through the possible verdicts with you but actually
11 you'll have the verdict forms, which are rather self-
12 explanatory so you can go through each one and see what I'm
13 referring to. You will also have the indictments with you
14 in the jury room. And you can match up the indictments with
15 the indictment numbers so you could go through each verdict
16 form. You have a verdict form for Rodsheen Ayer and you
17 also have a verdict form for Mr. Johnson. Consider each one
18 separately and each verdict must be on each form. So you
19 can follow along as it goes with each charge.

20 Again, ladies and gentlemen, your verdict must be a
21 unanimous verdict. Once you reach a verdict if you would
22 please knock on the door and we will receive your verdict.
23 Before you begin your deliberations please wait one last
24 time. Do not begin your deliberations until we bring all of
25 the exhibits to you and the verdict forms. And Ms. Foreman,

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1 Ms. Brown, on each indictment on the front of the indictment
2 it says the verdict. You will write the verdict there and
3 sign your name. . And, again, on the verdict form as well
4 circle the appropriate verdict and sign your name at the
5 bottom. I will give both parties and opportunity in case we
6 forgot any of the pertinent instructions to object to what I
7 have just stated. All right. Ladies and gentlemen, if
8 you'd return to your jury room, please?

9 (Jury out at 5:28 p.m.)

10 THE COURT: Any exceptions or objections to the
11 charge on the law from the State?

12 MR. SORENSON: Not from the State, Your Honor.

13 MR. PALMER: Nothing from Defendant Johnson, Your
14 Honor.

15 MR. STEVENS: Just a couple, Judge.

16 THE COURT: Yes, sir.

17 MR. STEVENS: I apologize if I misunderstood but
18 my understanding at the bench conference immediately before
19 we went into argument to the jury, was that we were going to
20 have the instruction for defense of others, and I didn't
21 hear it. So I just wanted to make sure that's right or
22 wrong?

23 THE COURT: I was actually surprised when you
24 argued it. I thought I made it clear when I handed you a
25 copy of the proposed instructions that I included most of

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1 (Court in session for verdict at
2 7:26 p.m.)

3 THE COURT: It's my understanding that we have a
4 verdict.

5 THE BAILIFF: Yes, Your Honor.

6 THE COURT: May we have our jury, please?

7 THE BAILIFF: Yes, Your Honor.

8 (Jury in at 7:27 p.m.)

9 THE COURT: Madam Forelady, has the jury reached a
10 verdict?

11 MADAM FORELADY: Yes, ma'am.

12 THE COURT: Would you please hand it to the
13 bailiff.

14 Madam Clerk, would you publish our verdict.

15 THE CLERK: I bring the Court's attention to the
16 State verses Rodsheen Ayer, verdict form, Indictment No.
17 2013-GS-38-1679, 1681 and 1682. As to the charge of murder,
18 we the jury unanimously find the Defendant not guilty. As
19 to the charge of attempted murder, we the jury unanimously
20 find the Defendant not guilty. As to the charge of assault
21 and battery in the first degree, -- sorry -- as to the
22 charge of attempted murder we the jury unanimously find the
23 Defendant guilty. As to the charge of assault and battery
24 of a high and aggravated nature, -- sorry --

25 I bring the Court's attention to the State verses

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1 Terrance Sean Johnson, verdict form, 2013-GS-38-0561, 558
2 and 559. As to the charge of murder, we the jury unanimously
3 find the Defendant not guilty. As to the charge of attempted
4 murder, we the jury unanimously find the Defendant not
5 guilty. As to the charge of attempted murder, we the jury
6 unanimously find the Defendant not guilty. And this is
7 signed November 19, by Madam Forelady.

8 Would you please poll the jury.

9 THE CLERK: Yes. As I call your name, please
10 stand.

11 Melinda Mcalhaney Strickland - Strickland Mcalhaney. Is
12 this your verdict?

13 Ms. Mcalhaney: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 Ms. Mcalhaney: Yes, ma'am.

16 THE CLERK: Thank you.

17 Elizabeth Guzior, is this your verdict?

18 MS. GUZIOR: Yes, ma'am.

19 THE CLERK: Is it still your verdict?

20 MS. GUZIOR: Yes, ma'am.

21 THE CLERK: Thank you.

22 Kevin Crapse -- I'm sorry -- Joshua Washington, is this
23 your verdict?

24 MR. WASHINGTON: Yes, ma'am.

25 THE CLERK: Is it still your verdict?

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1 appropriate verdict and then just let us know.

2 (Jury out at 8:10 p.m.)

3 THE COURT: Any objection or exceptions to the
4 charge to the jury from the State and from the Defense?

5 MR. SORENSON: Nothing, Your Honor.

6 MR. PALMER: None from us, Your Honor.

7 MR. STEVENS: As we said before, Judge, our
8 position is that the jury did put not guilty on it. They
9 confirmed everything. The jury was polled. Our position is
10 their intention was not guilty for all aspects of the
11 counts.

12 THE COURT: I think whatever their intention that
13 certainly they can disclose that on the verdict form. It
14 shouldn't be a specific problem. Also, previously the jury
15 did come out with a written question and all parties met in
16 chambers to request the written answer from the Court.
17 We'll mark that as a Court's Exhibit. And just for the
18 record all parties did review the answer that the Court gave
19 them during the jury instruction. And all parties were in
20 accordance and had no objection. Is that correct? From the
21 State?

22 MR. SORENSON: That's correct, Your Honor.

23 MR. PALMER: Correct, Your Honor.

24 MR. STEVENS: Yes, ma'am.

25 (Court's Exhibit No. 5, Note from

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1 jury, was marked.)

2 THE BAILIFF: Your Honor, the jury's ready.

3 THE COURT: Okay.

4 (Jury in at 8:15 p.m.)

5 THE COURT: Madam Forelady, has the jury reached a
6 verdict on the lesser included crimes as stated?

7 MADAM FORELADY: Yes, ma'am.

8 THE COURT: Would you please hand it to the
9 bailiff.

10 MADAM FORELADY: (Complies)

11 THE BAILIFF: Your Honor, may I approach?

12 THE COURT: Yes, ma'am.

13 THE CLERK: I call the Court's attention to
14 Terrance Sean -- the State versus Terrance Sean Johnson. As
15 to the charge of assault and battery in the first degree,
16 we, the jury, unanimously find the Defendant not guilty.

17 As to the charge of attempted murder, we, the jury,
18 unanimously find the Defendant, not guilty.

19 And as to the charge of assault and battery of a high
20 and aggravated nature, we, the jury, unanimously find the
21 Defendant not guilty.

22 I bring the Court's attention the State versus Rodsheen
23 Ayer. As to the charge of assault and battery in the first
24 degree, we, the jury, unanimously find the Defendant not
25 guilty.

Ladies and gentlemen that's in the gallery, no one is to leave the courtroom at this time until we have sufficient

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1 THE COURT: Well, Mr. Ayer, you know what's sad in
2 these cases is that obviously there's a lot of tragedy that
3 goes around with this type of case. You were not convicted
4 of murder but somebody did lose their life. And Mr. Kennedy
5 certainly sustained serious injuries and you were shot. The
6 problem is that you're capable of working obviously. But
7 what you're doing obviously just seemed to appear to be a
8 drug deal gone bad or some robbery involving drugs and guns.
9 And that's a dangerous aspect of society where basically if
10 that's the line of work that you choose, eventually you're
11 going to end up in jail or you're going to get killed or
12 shot. So that's an unfortunate choice of a way to make
13 money or to be present in that type of circumstance. And
14 unfortunately that's not a good path for you to have taken.

15 On indictment 2013-GS-38-1682, you are hereby committed
16 to the State Department of Corrections for a period of
17 thirty years. You are to be given credit for your time
18 served.

19 And if security could just check the parking lot, make
20 sure that all the jurors are cleared before we let anybody
21 else out of the courtroom.

22 Court is adjourned.

23 (Court adjourned November 19, 2015
24 at 8:50 p.m.)

25

WITNESSES

John C Stokes

Orangeburg County Sheriff

2029791

ARREST WARRANT NUMBER

2012A3810100024

Arrested: October 16, 2013

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: March 5, 2014

VERDICT

TRUE BILL

Guilty

Michael A. Brown

Date MAR 05 2014

Zelma Brown

Foreperson of Petit Jury

Date: 11/19/15

DOCKET NO. 2013GS38-1682

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

March 10, 2014 TERM

THE STATE

vs.

Rodsheen Ayer

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY
 Winnie B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY
 FILED FOR RECORD
 2014 MAR -5 PM 12-29

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2013GS38-1682

At a Court of General Sessions, convened on March 10, 2014 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Rodsheen Ayer, did in Orangeburg on or about September 10, 2012 did with the intent to kill, attempt to kill one Calvin Kennedy with malice aforethought by shooting at the victim. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor

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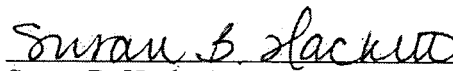
Sentence Date:

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 10th day of April, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 10th day of April, 2017.

RECEIVED
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SC Court of Appeals