

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Jasper County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

APR 24 2017

S.C. SUPREME COURT

ERIC DARIEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001685

APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH
THIS COURT:**

**STATE'S EXHIBIT #2 FROM TRIAL DATED
FEBRUARY 8-10, 2010 (RECORDED INTERVIEW
OF ERIC DARIEN)**

State of South Carolina

Court of General Sessions

County of Jasper

2008-GS-27-728

The State of South Carolina :

:

-VS-

:

TRANSCRIPT OF RECORD

:

Eric F. Darien :

:

February 8 - 10, 2010

Ridgeland, South Carolina

B E F O R E:

The Honorable Carmen T. Mullen, Judge, and
jury.

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

Steven H. Knight, Esquire
Attorney for the State

Michael McCloskie, Esquire
Attorney for the Defendant

Daphne D. Helms
Circuit Court Reporter

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County: Gasper
 Date: 2-8-10

VOIR DIRE

Case No: 2008-65-27-728

Judge: Mullen

Pl. / State: State

State/Pl's. Atty: Steve Knight

Defendant: Eric Darnen

Defense Atty: Mike Mcloskie

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes		Accept
					Plaintiff	Defense	
12	Jonny Burrisin	M	B				✓
123	Linda Woods	F	W			✓	
100	Gettis Smith	M	W			✓	
49	Theodore Hale	M	W			✓	
13	Amanda Carroll	F	W			✓	
25	Gloria Davis	F	W				✓
26	Ronald Dawkins	M	W		✓		
72	William Lancaster	M	W			✓	
89	George Pettit	M	W				✓
29	Caress Doe	F	B		✓		
16	Kelly Childress	F	W				✓
108	Jason Stephens	M	W			✓	
109	Andre Stokes	M	B				✓
15	Willie Chatman	M	B				✓
5	Sommer Bacon	F	W			✓	
17	Rachel Chisolm	F	B		✓		

* For the Court column, indicate who made the motion to strike the jurors "for cause."

C-Court, P-Plaintiff, D-Defense

County: Gasper⁷
 Date: 2-8-70

Case No: 2008-65-27-728 VOIR DIRE

Judge: Muller

Pl. / State: State

State/Pl's. Atty: Knight

Defendant: Eric Daner

Defense Atty: McCluskie

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
42	John Gladson	M	B				✓
121	Sharon Wilson	F	W			✓	
68	Sierra Jones	F	B				✓
110	Clyton Swinton	M	B				✓
86	Jennifer Patterson	F	B				✓
48	Eugene Habersham, Jr.	M	B			✓	
10	James Brown	M	W				✓
21	Gerry Cooler	M	W			✓	
84	Baishali Patel	F	F				✓
- Alternates -							
83	Jason Morton	M	W				✓
6	Rhonda Bentley	F	B		✓		
65	David Jones	M	W				✓

* For the Court column, indicate who made the motion to strike the jurors "for cause."
 C-Court, P-Plaintiff, D-Defense

1 **The Court:** At this time if you would give me your
2 attention. We're about to begin the trial of the case
3 entitled the State of South Carolina versus Mr. Eric
4 Fitzgerald Darien who is charged in the bill of indictment by
5 the grand jury of Jasper County with the offense of murder.
6 Ladies and gentlemen, the defendant in this case is
7 represented by Mr. Mike McCloskie, if you would turn and face
8 the bar and also, Mr. McCloskie, if you would introduce Mr.
9 Darien.

10 **Mr. McCloskie:** This is my client, Eric Darien.

11 **The Court:** Thank you, sir. Ladies and gentlemen, the
12 State in this case is represented by Steve Knight. If you
13 would stand and face the jury panel, sir. Thank you. Ladies
14 and gentlemen, I now have a number of questions to ask you
15 more directly in response to this case. Again, I remind you
16 that you are under oath to give accurate and true answers.

17 Ladies and gentlemen, is there any member of the jury
18 panel who is related by blood or connected by marriage with
19 the defendant in this case, Mr. Eric Darien? If so, please
20 stand. Yes, ma'am, your name and juror number?

21 **Juror Patterson:** I'm sorry. I don't know my juror
22 number. My name is Kim Howse Patterson. I don't know my
23 jury number.

24 **Mr. McCloskie:** Number 57.

25 **The Court:** Thank you. Ma'am, how are you related to

1 Mr. Darien?

2 Juror Patterson: Eric is my cousin.

3 The Court: All right. First cousin? Second cousin?

4 Juror Patterson: Second cousin.

5 The Court: Second cousin. All right, ma'am. I'm going
6 to go ahead and excuse you from the trial of this case.

7 Ma'am, what I'm going to ask you to do: On your card that
8 you were given when you came in this morning, there is a
9 number to call. Ma'am, what I need you to do is call that
10 number after 6:00 tonight. It will tell you whether or not
11 you need to report tomorrow or it may say call back on
12 Tuesday night after 6:00. Okay? Don't call the number
13 before 6:00 because there will be no message on it. Okay? I
14 appreciate it, Ms. Howse. You are excused from the trial of
15 this case, and you're free to leave, ma'am.

16 Is there any member of the jury panel who is a close
17 personal friend or share a special relationship with the
18 defendant, Mr. Eric Darien? If so, please stand.

19 Juror Housey: Hi. I'm Ebony Housey. My number is 51
20 (sic). He's not a friend, but we live in the same area.

21 The Court: Okay.

22 Juror Housey: The Pineland area.

23 The Court: The Pineland area?

24 Juror Housey: Yes.

25 The Court: All right. Ma'am, are you acquaintances

1 with him or...

2 **Juror Housey:** Well, I know him. I went to school with
3 him, and I know him from where I live so...

4 **The Court:** All right. Ms. Housey, I'm going to ask
5 that you come approach me for a moment, and I'm going to ask
6 the attorneys to come up as well, please.

7 (Juror Housey approaches the bench. The following bench
8 conference takes place in the presence of the Court, Juror
9 Housey, and the attorneys.)

10 **The Court:** All right. I know you live in the Pineland
11 community. Did you also know Richard Furman, Jr.?

12 **Juror House:** I did but...

13 **The Court:** Okay. When you say you're friends with him
14 or you know him, you went to school with him, I need to know
15 what friends -- did you have supper together?

16 **Juror House:** (Shook head from side to side.)

17 **The Court:** Did you socialize?

18 **Juror Housey:** No, but if I see him at the store, how
19 are you doing, stuff like that.

20 **The Court:** But that's it? I mean, you would not have
21 dinner with him?

22 **Juror Housey:** No.

23 **The Court:** Okay. The allegations in this case involve
24 an incident between Mr. Darien and Mr. Furman.

25 **Juror Housey:** Uh-huh.

1 **The Court:** Do you know anything independently about it?

2 **Juror Housey:** (Shook head from side to side.) No.

3 **The Court:** Okay. Did you know that Mr. Furman has
4 passed away?

5 **Juror Housey:** Yes.

6 **The Court:** You did know that?

7 **Juror Housey:** Uh-huh.

8 **The Court:** Have you ever heard anything on the street
9 about the case or anything about what occurred? Has anyone
10 said anything?

11 **Juror Housey:** No. I just know that he died.

12 **The Court:** Okay.

13 **Juror Housey:** I mean, I don't know. I wasn't there
14 so...

15 **The Court:** Do you know how or was there allegations or
16 have you been sitting around with a group of people that have
17 said this is what happened?

18 **Juror Housey:** No.

19 **The Court:** Nothing?

20 **Juror Housey:** Nothing.

21 **The Court:** You have no idea what happened?

22 **Juror Housey:** No.

23 **The Court:** Okay. Well, let me ask you: Just based on
24 the parties and you having -- sounds like you know both. You
25 know the defendant and the victim in this case. Would you

1 feel comfortable sitting on a jury in this case?

2 Juror Housey: No.

3 The Court: You don't feel comfortable?

4 Juror Housey: No, because I don't know anything.

5 The Court: Okay. You just don't -- well, you shouldn't
6 know anything. That's a good thing. You shouldn't know
7 anything, but you think you don't want to sit on it?

8 Juror Housey: No.

9 The Court: Okay. I understand. All right. I'm going
10 to go ahead and excuse you from the trial.

11 Juror Housey: Okay.

12 The Court: I appreciate it.

13 Juror Housey: Thank you.

14 The Court: Just like I told the last person, you are
15 free to leave right now. Just call in after 6:00 and it will
16 tell you whether or not you need to report tomorrow or it may
17 just say call in the next day.

18 Juror Housey: What number?

19 The Court: It says it on the paper. It's on the little
20 yellow card you got.

21 Juror Housey: Thank you. Have a good day.

22 The Court: Thank you. She's excused.

23 (The bench conference concluded.)

24 The Court: Yes, ma'am, your name and juror number?

25 Juror Jenkins: Shonte Jenkins, juror number 63. I am

1 good friends with Mr. Darien's sister.

2 **The Court:** You're good friends with Mr. Darien's
3 sisters? Is that---

4 **Juror Jenkins:** You mean do I know him?

5 **The Court:** That's what I'm asking.

6 **Juror Jenkins:** Yes.

7 **The Court:** Okay. Do you socialize with Mr. Darien?

8 **Juror Jenkins:** Occasionally. Sometimes.

9 **The Court:** You do. All right. Ma'am, will you go
10 ahead and approach, please?

11 (The following bench conference took place in the
12 presence of the Court, Juror Jenkins, and the attorneys.)

13 **The Court:** How are you?

14 **Juror Jenkins:** Fine.

15 **The Court:** Good. You say you socialize with Mr.
16 Darien's sister. Is that correct?

17 **Juror Jenkins:** We live right next door.

18 **The Court:** Do you know anything about this incident?

19 **Juror Jenkins:** No, not -- no.

20 **The Court:** What do you know? Did you know Richard
21 Furman by any chance?

22 **Juror Jenkins:** No, ma'am.

23 **The Court:** No? Okay. You don't know anything about
24 this?

25 **Juror Jenkins:** Just like maybe through his sisters.

1 **The Court:** What have you heard?

2 **Juror Jenkins:** That I guess he shot someone.

3 **The Court:** Okay. Do you know the facts, when or
4 anything?

5 **Juror Jenkins:** No.

6 **The Court:** Okay. The fact that you know Mr. Darien --
7 and I understand the sisters are in the courtroom. Is that
8 correct?

9 **Juror Jenkins:** No, ma'am.

10 **The Court:** They're not here?

11 **Juror Jenkins:** (Shook head from side to side.)

12 **The Court:** Okay. Would you feel comfortable sitting on
13 the jury of this case?

14 **Juror Jenkins:** No, ma'am.

15 **The Court:** Okay. You would not?

16 **Juror Jenkins:** Uh-huh.

17 **The Court:** All right. All right, ma'am. I'm going to
18 go ahead and excuse you from this trial. You can call the
19 number after 6:00. It will tell you whether you need to call
20 back, and I appreciate it. Thank you. She is excused.

21 (The bench conference concluded.)

22 **The Court:** Anybody else? Ladies and gentlemen, the
23 victim in this case is Richard Furman, Jr. My question is
24 the same: Is there any member of the jury panel related by
25 blood or connected by marriage with Mr. Richard Furman, Jr.?

1 If so, please stand. Is there any member of the jury panel
2 that has a close personal relationship or a social
3 relationship with Mr. Furman? If so, please stand.

4 Ladies and gentlemen, I'm going to go through a
5 potential witness list, and again keep in mind my question is
6 going to be the same: Is there any member of the jury panel
7 related by blood or connected by marriage with any of these
8 potential witnesses or is there any member of the panel who's
9 a close personal friend or share a special relationship with
10 any of these potential witnesses? And they are as follows:
11 Deputy sheriff Montana Wilbur. Deputy sheriff Stephon Ashby.
12 Deputy sheriff Adam Thompson. Deputy sheriff Donald Hipp.
13 Deputy sheriff Jeff Crosby. Shakaria White. Jamontay
14 Darien. Tamika Furman. Y'Briana Furman. Dr. Nicholas
15 Batalis from M.U.S.C. Albert Kleckley also known as Buster
16 Kleckley. Robin Ray. Megan Fletcher with SLED. Kenneth
17 Bogan with SLED. Suzann Cromer with SLED. Amy Daniel from
18 Jasper County E.M.S. Dr. Saeed Rehman. Melinda Ellis.
19 Deputy sheriff Sam Woodward. Deputy sheriff Ernest Walker.
20 Deputy sheriff Charles Mitchell. Brian Dobbs. Keli Lucas
21 Davis. Leon Darien. Margie Darien. Anthony Goodman.
22 Martin Sauls, III. Taquan Eady.

23 Again, ladies and gentlemen, my question is: Is there
24 any member of the jury panel related by blood or connected by
25 marriage with any of these potential witnesses? If so,

1 please stand. Is there any member of the jury panel who is a
2 close personal friend or share a special relationship with
3 any of these potential witnesses? If so, please stand. Yes,
4 ma'am, your name and juror number.

5 **Juror Woods:** Linda Woods, juror number 121, I think.

6 **The Court:** Ms. Woods, who do you know?

7 **Juror Woods:** Amy Daniel, related by marriage.

8 **The Court:** Okay. What is the relation by marriage?

9 **Juror Woods:** Her sister is married to my nephew.

10 **The Court:** Her sister is married to your nephew. Okay.

11 Ma'am, the fact that Amy Daniel may be testifying in the
12 trial of this case, I believe based on her E.M.S. response --
13 is that correct, gentlemen?

14 **Mr. Knight:** That's correct, Your Honor.

15 **The Court:** Okay. Would that affect your ability to be
16 fair and impartial in the trial of this case?

17 **Juror Woods:** No, ma'am.

18 **The Court:** Is she going to testify to any conclusions
19 or anything of any importance?

20 **Mr. McCloskie:** As far as I know she's not.

21 **The Court:** Okay.

22 **Mr. McCloskie:** Just observations.

23 **The Court:** Yes.

24 **Mr. Knight:** She pronounced the defendant deceased,
25 dead.

1 **The Court:** That's it.

2 **Mr. Knight:** That's it. That's all.

3 **The Court:** Ma'am, thank you. I want to make sure --
4 the simple fact that Ms. Woods (sic) is going to testify in
5 this case, again that doesn't affect your ability to be fair
6 and impartial to both the State and the defendant, does it?

7 **Juror Woods:** No, ma'am.

8 **The Court:** Thank you, ma'am. I appreciate that.
9 Anybody else? Ladies and gentlemen, you've been introduced
10 to the attorneys involved in this case. My question is going
11 to be the same: Is there any member of the jury panel
12 related by blood or connected by marriage with either of
13 these attorneys or is there any member of the jury panel that
14 has a close personal friendship or share a special
15 relationship with the attorneys in this case, either Mr. Mike
16 McCloskie or Mr. Steve Knight? If so, please stand.

17 Additionally, ladies and gentlemen, is there any member
18 of the jury panel that is either currently or in the past
19 been represented by either of the attorneys involved in this
20 case? If so, please stand.

21 Ladies and gentlemen, I know I've told you very little
22 about this case. The allegations are that in Jasper County
23 on or about September 29th of 2008 that there was a shooting
24 involving Mr. Darien and a Mr. Richard Furman, Jr. Ladies
25 and gentlemen, my question is this: Is there any member of

1 the jury panel who has seen, heard, or read anything about
2 this case or has any independent knowledge about this case
3 whatsoever? If so, please stand.

4 Ladies and gentlemen, is there any member of the jury
5 panel who is a member of or a contributor to any group which
6 has as its primary concern the promotion of law enforcement
7 or victims' rights? And these groups would include groups
8 such as Mothers Against Drunk Driving or SADD, Students
9 Against Drunk Driving, or CAVE, Citizens Against Violent
10 Crime. And again the question is: Is there any member of
11 the jury panel who is a member of or a contributor to any of
12 these types of groups? If so, please stand.

13 Is there any member of the jury panel who has formed or
14 expressed an opinion as to the guilt or innocence of the
15 defendant in this case, Mr. Eric Darien? If so, please
16 stand. Is there any member of the jury panel who is aware of
17 any conscious (sic), of any interest or any bias or prejudice
18 for or against the defendant in this case, Mr. Darien, or the
19 State? If so, please stand.

20 Does any member of the jury panel know of any reason
21 whatsoever that you cannot give both the State of South
22 Carolina and the defendant, Mr. Eric Darien, a fair and
23 impartial trial in this matter? If so, please stand. Is
24 there any further questions requested of this panel from the
25 State?

1 **Mr. Knight:** Nothing from the State, Your Honor.

2 **Mr. McCloskie:** May we approach?

3 **The Court:** Yes, sir.

4 (Whereupon, a bench conference was held.)

5 **The Court:** Would Mr. Eugene Habersham come forward? Is
6 Mr. Habersham here?

7 (An off-the-record discussion takes place between the
8 Court, the attorneys, and Juror Habersham.)

9 **The Court:** Is Ronald Dawkins here? Come on forward,
10 Mr. Dawkins.

11 (An off-the-record discussion takes place between the
12 Court, the attorneys, and Juror Dawkins.)

13 **The Court:** Ladies and gentlemen of the jury panel, is
14 there any member of the panel or a family member of yours
15 ever been the victim of a violent crime? If so, please
16 stand. Ma'am, if you would -- once you get the microphone,
17 I'm going to ask you to give me your name and number, and if
18 you feel comfortable, you can disclose it right there or if
19 you would like to approach, that would be fine as well.
20 Okay?

21 **Juror Fickling:** Okay. Carol Fickling, 36.

22 **The Court:** Yes, ma'am.

23 **Juror Fickling:** May I approach?

24 **The Court:** Absolutely.

25 (An off-the-record discussion takes place between the

1 Court, the attorneys, and Juror Fickling.)

2 The Court: Yes, sir, your name and juror number?

3 Juror Smith: Robert Smith. I forgot my juror number.

4 The Court: Robert Smith. Number 104?

5 Juror Smith: That's it.

6 The Court: That's it. All right, sir. Did you want to
7 approach or are you comfortable right there?

8 Juror Smith: I'll approach if I may.

9 The Court: Please come forward, Mr. Smith.

10 (An off-the-record discussion takes place between the
11 Court, the attorneys, and Juror Smith. Also, an
12 off-the-record discussion takes place between the Court and
13 the clerk.)

14 The Court: Ladies and gentlemen, what we're doing right
15 now is all of you that I have qualified as potential jurors
16 in the trial of this case, we're putting your name into a
17 computer. They're going to be randomly mixed up and pulled.
18 What's going to happen is this: When your name is called,
19 you're going to come forward right here to the front, turn
20 around and face the panel, and the attorneys are going to do
21 their strikes. You're either going to be invited to take a
22 seat in the jury box or you're going to be excused to go back
23 to where your seat is.

24 After that, ladies and gentlemen, once I sit my jury,
25 I'm going to excuse everybody for the day, those of you that

1 are on the jury and the rest of you as well. Those of you
2 that have not been chosen as jurors in this first case, I'm
3 just going to ask that you call back after 6:00 tonight that
4 number on the card to tell you whether or not you need to
5 come tomorrow. More likely than not, ladies and gentlemen,
6 it's going to say on that message, "Thank you very much but
7 call back Tuesday night after 6:00." Okay? So that's what
8 our plan is.

9 Those of you that are sitting on the jury, I'm going to
10 confer with the attorneys, but I believe we'll probably start
11 at 10 a.m. tomorrow morning. You'll report back at 10 a.m.
12 to your jury room. All right? That's just to tell you what
13 you're doing. Does anybody desperately need a break right
14 now very quickly? Because what we're hoping to do is trying
15 to move you along so we can pull this first jury and then get
16 y'all out of here for the day. Does anyone need a quick
17 break or are you all okay? I hear a little murmuring. You
18 want to get going? All right.

19 Well, ladies and gentlemen, you're welcome to stand up
20 and stretch if you want for a moment. She's going to need to
21 print out these lists, and then we'll go ahead and pull this
22 jury immediately. Okay? So, please, if you want to stand up
23 and stretch, you're welcome to. If someone needs to take a
24 quick trip to the rest room, you are also welcome to. Just
25 as you walk out, let the deputies know so we know to account

1 for you. Okay? Thank you.

2 (Pause in proceedings.)

3 **The Court:** Thank you all. Please be seated. That's
4 the longest walk for any judge in this state; I assure you.
5 Margaret, when is the courthouse going to be done? Do we
6 know, roughly?

7 **The Clerk:** They're saying July, Your Honor, but I
8 sincerely doubt that.

9 **The Court:** Okay. Ladies and gentlemen, as I'm sure you
10 all realize driving through town, there are extensive
11 renovations going on in the courthouse. It is going to be
12 gorgeous, and we are all very much looking forward to getting
13 in. So although I know y'all will have served and been on
14 jury service and probably don't have a reason to come to the
15 courthouse too much, I invite you that once it's open again
16 to come on in because, again, it is going to be spectacular,
17 and we are very excited to get back in there. With that
18 said, ladies and gentlemen, Ms. Bostick, are we ready to go?

19 **The Clerk:** Yes, ma'am.

20 **The Court:** All right. Ladies and gentlemen, as I told
21 you, when your name is called, come forward to right by this
22 microphone. You're just going to turn around and face the
23 jury panel. You don't have to say a word. You're either
24 going to be invited to take a seat or you're going to be
25 excused to go back to your original seat. All right? With

1 that said, Margaret, if you'll begin.

2 The Clerk: Juror number 12, Tony Burrison.

3 The Court: What number is it?

4 The Clerk: 12.

5 The Court: Yes, ma'am. Thank you. Okay.

6 The Clerk: How says the State?

7 Mr. Knight: Present the juror.

8 The Clerk: How says the defense?

9 Mr. McCloskie: Swear Mr. Burrison, please.

10 The Clerk: Have a seat in the jury box, sir.

11 The Court: Right over here. Sir, if you'll take the
12 first seat up here, I'd appreciate it.

13 The Clerk: Juror number 123, Linda Woods. How says the
14 State?

15 Mr. Knight: Present the juror.

16 The Clerk: How says the defense?

17 Mr. McCloskie: Excuse Ms. Woods from the trial of this
18 case, please.

19 The Clerk: Thank you, ma'am. Have a seat back in the
20 audience. Number 100, Gettis Smith. How says the State?

21 Mr. Knight: Present the juror.

22 The Clerk: How says the defense?

23 Mr. McCloskie: Excuse Mr. Smith from the trial of this
24 case, please.

25 The Clerk: Thank you, sir. Have a seat back in the

1 audience. Number 49, Theodore Hale. How says the State?

2 Mr. Knight: Present the juror.

3 The Clerk: How says the defense?

4 Mr. McCloskie: Excuse Mr. Hale from the trial of this
5 case, please.

6 The Clerk: Thank you, sir. Number 13, Amanda Carroll.
7 How says the State?

8 Mr. Knight: Present the juror.

9 The Clerk: How says the defense?

10 Mr. McCloskie: Excuse Ms. Carroll from the trial of
11 this case, please.

12 The Clerk: Thank you. Thank you, ma'am. Have a seat
13 back in the audience. Number 25, Gloria Davis. How says the
14 State?

15 Mr. Knight: Present the juror.

16 The Clerk: How says the defense?

17 Mr. McCloskie: Swear Ms. Davis, please.

18 The Clerk: Have a seat in the jury box, ma'am. Number
19 26, Ronald Dawkins. How says the State?

20 Mr. Knight: Excuse Mr. Dawkins from the trial of this
21 case.

22 The Clerk: Thank you, sir. Number 72, William
23 Lancaster. How says the State?

24 Mr. Knight: Present the juror.

25 The Clerk: How says the defense?

1 **Mr. McCloskie:** Excuse Mr. Lancaster from the trial of
2 this case, please.

3 **The Clerk:** Thank you, sir. Number 89, George Pettit.
4 How says the State?

5 **Mr. Knight:** Present the juror.

6 **The Clerk:** How says the defense?

7 **Mr. McCloskie:** Swear Mr. Pettit, please.

8 **The Clerk:** Have a seat in the jury box, sir. Number
9 29, Caress Doe. How says the State?

10 **Mr. Knight:** Excuse Ms. Doe from the trial of this case,
11 please.

12 **The Clerk:** Thank you, ma'am. Please have a seat back
13 in the audience. Number 16, Kelly Childress. How says the
14 State?

15 **Mr. Knight:** Present the juror.

16 **The Clerk:** How says the defense?

17 **Mr. McCloskie:** Swear Ms. Childress, please.

18 **The Clerk:** Have a seat in the jury box, ma'am. Number
19 108, Jason Stephens. How says the State?

20 **Mr. Knight:** Present the juror.

21 **The Clerk:** How says the defense?

22 **Mr. McCloskie:** Excuse Mr. Stephens from the trial of
23 this case, please.

24 **The Clerk:** Thank you, sir. Number 109, Andre Stokes.
25 How says the State?

1 Mr. Knight: Present the juror.

2 The Clerk: How says the defense?

3 Mr. McCloskie: Swear Mr. Stokes, please.

4 The Clerk: Have a seat in the jury box, sir. Number
5 15, Willie Chatman. How says the State?

6 Mr. Knight: Present the juror.

7 The Clerk: How says the defense?

8 Mr. McCloskie: Swear Mr. Chatman, please.

9 The Clerk: Have a seat in the jury box, sir. Number 5,
10 Sommer Bacon. How says the State?

11 Mr. Knight: Present the juror.

12 The Clerk: How says the defense?

13 Mr. McCloskie: Excuse Ms. Bacon from the trial of this
14 case, please.

15 The Clerk: Thank you, ma'am. Number 17, Rachel
16 Chisolm. How says the State?

17 Mr. Knight: Excuse Ms. Chisolm from the trial of this
18 case.

19 The Clerk: Thank you, ma'am. Have a seat back in the
20 audience. Number 42, John Gadson. How says the State?

21 Mr. Knight: Present the juror.

22 The Clerk: How says the defense?

23 Mr. McCloskie: Swear Mr. Gadson, please.

24 The Clerk: Have a seat in the jury box, sir. Number
25 121, Sharon Wilson. How says the State?

1 **Mr. Knight:** Present the juror.

2 **The Clerk:** How says the defense?

3 **Mr. McCloskie:** Excuse Ms. Wilson from the trial of this
4 case, please.

5 **The Clerk:** Thank you, ma'am. Number 68, Sierra Jones.
6 How says the State?

7 **Mr. Knight:** Present the juror.

8 **The Clerk:** How says the defense?

9 **Mr. McCloskie:** Swear Ms. Jones, please.

10 **The Clerk:** Have a seat in the jury box, ma'am. Number
11 110, Clifton Swinton. How says the State?

12 **Mr. Knight:** Present the juror.

13 **The Clerk:** How says the defense?

14 **Mr. McCloskie:** Swear Mr. Swinton, please.

15 **The Clerk:** Have a seat in the jury box, sir. Number
16 86, Jennifer Patterson. How says the State?

17 **Mr. Knight:** Present the juror.

18 **The Clerk:** How says the defense?

19 **Mr. McCloskie:** Swear Ms. Patterson, please.

20 **The Clerk:** Have a seat in the jury box, ma'am. Number
21 48, Eugene Habersham, Jr. How says the State?

22 **Mr. Knight:** Present the juror.

23 **The Clerk:** How says the defense?

24 **Mr. McCloskie:** Excuse Mr. Habersham from the trial of
25 this case, please.

1 **The Clerk:** Thank you, sir. Number 10, James Brown.

2 How says the State?

3 **Mr. Knight:** Present the juror.

4 **The Clerk:** How says the defense?

5 **Mr. McCloskie:** Swear Mr. Patterson (sic), please.

6 **The Clerk:** Have a seat in the jury box.

7 **Mr. Knight:** It's Mr. Brown, isn't it?

8 **Mr. McCloskie:** I'm sorry. Mr. Brown.

9 **The Clerk:** Number 21, Jerry Cooler. How says the
10 State?

11 **Mr. Knight:** Present the juror.

12 **The Clerk:** How says the defense?

13 **Mr. McCloskie:** Excuse Mr. Cooler from the trial of this
14 case, please.

15 **The Clerk:** Thank you, sir. Plaintiff three, defense
16 ten.

17 **Mr. McCloskie:** Yes, ma'am.

18 **The Clerk:** Number 84, Baishali Patel. How says the
19 State?

20 **Mr. Knight:** Present the juror.

21 **The Clerk:** Does the defense have cause for strike?

22 **Mr. McCloskie:** Swear Mrs. Patel, please.

23 **The Clerk:** Have a seat in the jury box, ma'am.

24 Alternate one. Number 83, Jason Morton. How says the State?

25 **Mr. Knight:** Present the juror.

1 **The Clerk:** How says the defense?

2 **Mr. McCloskie:** Swear Mr. Morton, please.

3 **The Clerk:** Have a seat in alternate chair one, sir.

4 Number 6, Rhonda Bentley. How says the State?

5 **Mr. Knight:** Excuse the juror from the trial of this
6 case, please.

7 **The Clerk:** Thank you, ma'am. Number 65, David Jones.
8 How says the State?

9 **Mr. Knight:** Present the juror.

10 **The Clerk:** How says the defense?

11 **Mr. McCloskie:** Swear Mr. Jones, please.

12 **The Clerk:** Have a seat in alternate two chair.

13 (Whereupon, the jury was impaneled at 4:20 p.m.)

14 **The Court:** Are there any matters of law we need to take
15 up regarding the jury selection process? From the State?

16 **Mr. Knight:** None from the State, Your Honor.

17 **The Court:** From the defense?

18 **Mr. McCloskie:** None from the defense, Your Honor.

19 **The Court:** Thank you, gentlemen. All right.

20 (The jurors not impaneled were excused from the
21 courtroom.)

22 **The Court:** Welcome, ladies and gentlemen. I'm sure, as
23 you understand, you are now sitting as jurors in the trial of
24 this first case. Before I excuse you for the evening, I just
25 want to tell you a couple of the ground rules that we have in

1 regards to jurors sitting actually on juries.

2 Ladies and gentlemen, at this time it is not appropriate
3 for you to discuss this case with anyone. That includes when
4 you go home tonight. The only thing you can say to your
5 family members or a loved one is that, "I have been chosen to
6 sit on a criminal jury," but you cannot say what it's about,
7 who it involves or any of the allegations that you may have
8 heard here today during the qualification process. And the
9 reason why, ladies and gentlemen, is inevitably whoever you
10 run into or talk to will have to say they know something
11 about this case and, of course, they don't know anything
12 because this case is going to be presented by way of evidence
13 here in this courtroom and you are going to have everything
14 you need to decide this case right here presented to you in
15 this courtroom, and it would be inappropriate for you also to
16 be influenced by anyone else.

17 Additionally, ladies and gentlemen, I will tell you that
18 the attorneys in this case as well as any witnesses or any
19 family members have been instructed that they are not allowed
20 to approach you or speak to you or even say hello when
21 passing you possibly in the parking lot. And the reason why,
22 ladies and gentlemen, is an innocent conversation, an
23 innocent nod or a hello can be misconstrued, and we wouldn't
24 want that to happen. Of course, a jury is fair and impartial
25 to all sides, and under your oath you swore to be fair and

1 impartial in the trial of this case.

2 Now, ladies and gentlemen, lastly, you are not to read
3 anything, watch anything on T.V. or the radio or by the
4 internet anything about this case. Again, I don't know if
5 anything is going to be reported in the local newspapers, but
6 out on abundance of caution if tomorrow morning you get up
7 and your habit is to read the paper and there happens to be
8 something about this case, you are to close that article and
9 disregard it because if there is something in the paper I'm
10 going to ask you if you read it. Okay? Or if there happens
11 to be anything on the news. I have not been given any notice
12 that there will be, but out of an abundance of caution again,
13 ladies and gentlemen, you are going to have everything you
14 need to decide this case right here, and a newspaper is not
15 accurate. All right?

16 With that said, ladies and gentlemen, also you are not
17 to do any independent research. I don't even think I told
18 you where this occurred, but again your only job tonight is
19 to go home, get a good night's sleep, not think about this
20 case or worry about this case and just come back tomorrow
21 morning well rested and ready to hear the case.

22 The attorneys have instructed me that they believe it's
23 going to take two, possibly three days, to try this case, but
24 we anticipate that by the latest we'll be done by Thursday.
25 So I wanted you all to know that. So you can rest assured

1 that your service won't go past that. All right?

2 Again, ladies and gentlemen, I want to thank you for
3 being here. After we break, I'm going to excuse you. Lynn
4 is going to take you back and show you where your jury room
5 is. So tomorrow morning when you report at 10 a.m., you're
6 going to report back to your jury room, and then we're going
7 to accept you into the courtroom to swear you in and begin
8 the trial of this case.

9 I will tell you: The attorneys are going to stay with
10 me this afternoon, and we're going to work on some pretrial,
11 matters to get the case streamlined for you tomorrow. So,
12 again, I will tell you this: I apologize if you have to wait
13 at all tomorrow morning. I don't think you're going to have
14 to because I think we're going to get everything taken care
15 of, but please know we're working in here.

16 With that said, ladies and gentlemen, also I can't start
17 until all 14 of you are here, so please be on time. If
18 anyone has a problem with transportation, before you leave
19 tonight I need you to let Lynn, your bailiff, know and we'll
20 make sure that you have arrangements to be transported. All
21 right? And, Mr. Pettit, I'm giving you a phone number, sir.
22 So before you leave, Ms. Bostick will give you a number that
23 your wife can call in.

24 Ladies and gentlemen, that lastly begs the question:
25 You are not to bring any cell phones, computers, any iPods,

1 anything that you could access anything via the internet, and
2 the reason why is again it's just too easy to access
3 information that way. When you sit on a jury, it's that much
4 more important. So I'm just asking: Please leave your cell
5 phones. You know, leave your computers at home or in the
6 car.

7 If someone needs to get a hold of you, they can simply
8 call the clerk's office and they will immediately contact me
9 and I will find you. Okay? We all know who you 14 are, and
10 so we will take care of you to make sure that if there are
11 any outside emergencies you are taken care of.

12 Lastly, ladies and gentlemen, when you all go break for
13 the evening, if anyone has any issues about being home or
14 taking care of children for day care either Tuesday or
15 Wednesday or possibly if you are a coach for some type of
16 sporting team or have a child that plays in any type of
17 sporting event that you want to go to, just let Lynn know and
18 I can make sure that we break in time. I don't want anyone
19 to miss any important sporting event to you.

20 With that said, ladies and gentlemen, our intention is
21 to put this case up from 10 in the morning 'til as long as we
22 have witnesses for the day and typically get you out of here
23 by anywhere between 5, 5:30, 6:00 at night, of course,
24 depending on your schedule. All right? So again with that
25 said, ladies and gentlemen, I also tell you that you are not

1 to discuss this case not only with anyone else but also each
2 other, and the reason why is you haven't heard all the
3 evidence in the case. You haven't heard the arguments of the
4 lawyers nor my charge on the law, and it certainly wouldn't
5 be appropriate for you to do so.

6 So when you're back there, before you take the case for
7 deliberations, you can certainly talk about everything but
8 the case and you're welcome to, and jurors often become
9 friendly and know each other because you spend a good bit of
10 time together. But again I caution you that you are not to
11 discuss this case even with each other until it's all over
12 and sent to you for your deliberation. All right? So again
13 good night and thank you for being here. I look forward to
14 seeing you all at 10 a.m. sharp tomorrow morning. Thank you.

15 (Whereupon, the jury was excused from open court for the
16 day at 4:27 p.m.)

17 **The Court:** Thank you. Thank you. All right. Do we
18 have any pretrial motions?

19 **Mr. McCloskie:** No, Your Honor, we don't. Mr. Knight
20 had approached me earlier in the day about stipulating to a
21 chain of custody on evidence items. I have discussed that
22 with Mr. Darien, and he agrees with me that that would be
23 appropriate in this case. This is not a case that involves
24 the challenges to chain of custody and---

25 **The Court:** Speak up just a little bit, Mr. McCloskie.

1 Thank you, sir.

2 **Mr. McCloskie:** Mr. Knight and I have agreed to
3 stipulate to the chain of custody to certain pieces of
4 physical evidence that were examined by the forensics units
5 at SLED and the Medical University, that kind of thing.
6 There's no need in bringing all those in. I will stipulate
7 in whatever manner Mr. Knight feels comfortable with.

8 **The Court:** Okay.

9 (Mr. McCloskie and Mr. Knight talk off the record.)

10 **Mr. McCloskie:** No problem with that.

11 **Mr. Knight:** We'll stipulate -- there's three people,
12 Your Honor, just to set it for the record so we don't have
13 any problem. Mike, as to the chain of custody, it will be
14 Albert Kleckley. He collected stuff from the Medical
15 University. Brian Dobbs, Charles Mitchell, Ernest Walker,
16 Sam Woodward. Those are the people that were involved in the
17 chain of custody.

18 There are three folks from SLED. One is Megan M.
19 Fletcher. She did the gunshot residue. We'll just
20 stipulate, and I'll read that into the record. The other is
21 Kenneth L. Bogan. He's the D.N.A. guy. I'll read his into
22 the record. And Suzann F. Cromer, C-r-o-m-e-r. She's a
23 firearms expert from SLED. So that's taken care of.

24 **Mr. McCloskie:** If Your Honor please, I have the benefit
25 of all the reports---

1 Mr. Knight: Yeah.

2 Mr. McCloskie: ---that substantiate what those three
3 SLED witnesses will testify to, and again we'll be glad to
4 stipulate to that so we don't have to require their presence
5 here.

6 The Court: Okay. Thank you.

7 Mr. Knight: That's like seven, I think.

8 The Court: Okay.

9 Mr. Knight: Seven.

10 Mr. McCloskie: That's two hours.

11 The Court: Okay.

12 Mr. McCloskie: At least.

13 Mr. Knight: Judge, the only thing that I'm concerned
14 with - there was a confession in this case - is a Jackson v.
15 Denno. I assume when Mr. McCloskie says he doesn't have any
16 problems or any motions -- normally that's the first thing I
17 hear, so I'll just leave that---

18 Mr. McCloskie: Well, as I understand the status of the
19 law in this state, that a Jackson v. Denno hearing is
20 mandatory---

21 Mr. Knight: Right.

22 Mr. McCloskie: ---when you have---

23 Mr. Knight: That's correct.

24 The Court: Any kind of statement.

25 Mr. McCloskie: Exactly.

1 **The Court:** So I think we need to go ahead and have a
2 Jackson v. Denno. You're prepared to go forward on the
3 Jackson vs. Denno hearing for any statement given?

4 **Mr. Knight:** I'm ready.

5 **The Court:** Was it an oral statement or a written
6 statement or...

7 **Mr. McCloskie:** It was an oral statement.

8 **Mr. Knight:** It's recorded.

9 **The Court:** Okay.

10 **Mr. McCloskie:** It was recorded, and it was reduced to
11 writing by the deputy sheriff who took it.

12 **The Court:** Okay. All right. Additionally, is there
13 any motion to sequester the witnesses in this case or not?

14 **Mr. McCloskie:** I think that probably is the best thing
15 to do.

16 **Mr. Knight:** I would agree.

17 **The Court:** Okay. We'll go ahead and sequester the lay
18 witness -- are all witnesses in this case except for the
19 representatives? You tell me.

20 **Mr. Knight:** I think the lay witnesses, as far as the
21 State is concerned, are the ones we're most concerned with.

22 **The Court:** Okay. So do you want all of the witnesses
23 sequestered or just the lay witnesses?

24 **Mr. McCloskie:** If we're going to sequester any of them,
25 we need to sequester all of them.

1 The Court: All of them? All right.

2 Mr. McCloskie: Law enforcement included.

3 The Court: Okay. Well, why don't we go ahead and do
4 that? Do you want to do that before we actually do the
5 Jackson v. Denno hearing as well? I don't know if any of
6 them are in the courtroom, Mr. Knight. I just---

7 Mr. McCloskie: I don't know that it's necessary for the
8 purposes of this Jackson v. Denno.

9 The Court: Okay.

10 Mr. McCloskie: That's going to be short.

11 The Court: Okay.

12 Mr. McCloskie: I'll tell you now I have no grounds to
13 challenge that statement.

14 The Court: Okay. Well, I think we need to go ahead and
15 put it up regardless---

16 Mr. Knight: We do.

17 The Court: ---because I need to make a determination.

18 Mr. Knight: That's correct.

19 The Court: So -- all right. Well, let's go ahead, if
20 you don't mind -- I'm sorry, Mr. McCloskie. Was there
21 anything further?

22 Mr. McCloskie: No, Your Honor.

23 The Court: Okay. I didn't mean to cut you off, sir.
24 All right. Well, then, why don't we go ahead? And if you
25 will call your first witness, Mr. Knight.

1 Mr. Knight: Donald Hipp.

2 Donald L. Hipp, after being duly sworn, testified
3 as follows in camera:

4 Direct Examination

5 By Mr. Knight:

6 Q. Your full name and spell your last name, please?

7 A. Donald L. Hipp, H-i-p-p.

8 Q. Mr. Hipp, who are you employed with?

9 A. Jasper County Sheriff's Office.

10 Q. In what capacity, sir?

11 A. I'm an investigator with the sheriff's office.

12 Q. And how long have you been employed with the sheriff's
13 department?

14 A. Approximately 20 years.

15 Q. Were you working on or about September the 30th, 2008?

16 A. I was.

17 Q. Did you have an occasion to meet with one Eric Darien?

18 A. I did.

19 Q. And what was the purpose of that meeting?

20 A. In reference of an interview of an incident that took
21 place the day before, September the 29th, 2008.

22 Q. Did you advise him of his constitutional rights?

23 A. I did.

24 Q. Did you use anything to assist you?

25 A. Detective Crosby was there. I used the Miranda right

1 form which I have in my presence as well with his signature
2 on it.

3 Q. Do you have it there?

4 A. I have one here as well. I've got the original.

5 Q. Okay. Let's use the original.

6 Mr. McCloskie: Without objection.

7 The Court: Thank you.

8 (State's exhibit 1 was received in evidence.)

9 By Mr. Knight:

10 Q. Detective Hipp, for the purpose of this hearing I show
11 you State's exhibit number 1 and ask you what that is and
12 what did you do with it, sir?

13 A. That is a Miranda right form. I indicated the date on
14 there which would have been September the 30th, 2008, and the
15 time we started this interview and Mr. Darien was read his
16 Miranda rights. Then I proceeded by reading him the
17 information that's listed on this Miranda right.

18 Q. Did you read each and every sentence to him?

19 A. I did.

20 Q. At the conclusion of reading those particular sentences,
21 did you ask him whether or not he understood it?

22 A. I did.

23 Q. Did you ask him to execute this document which is
24 State's exhibit number 1 as his acknowledgment?

25 A. I did.

1 Q. Okay. What was the next thing you did?

2 A. After I read his Miranda right, there's a waiver of
3 right at the bottom of that. I read that to him as well.

4 Q. How about read that waiver of rights into the record
5 even though this is State's exhibit number 1 is in the
6 record? Go ahead, please.

7 A. Waiver of right: I'm willing to make a statement and
8 answer questions. I do not want a lawyer at this time. I
9 understand and I know what I'm doing. No promises or threats
10 have been made to me. No pressure or coercion of any kind
11 has been used against me.

12 Q. And did you have him execute this document?

13 A. I did.

14 Q. Okay. Now, during the course of this, the advising of
15 his constitutional rights, he has a right to a lawyer,
16 anything he can say will be used against him, if he couldn't
17 afford a lawyer, one would be brought in - you told him all
18 these things.

19 A. Yes, sir.

20 Q. Now, let me ask you this. Did you infer to him that if
21 he would talk to you about these things that good things
22 would happen to him?

23 A. No, I did not.

24 Q. Did you make him any promises like, "You know, I'll get
25 you bail."

1 A. No, sir.

2 Q. Okay. So there's no inferences in any of the things you
3 read to him or in his waiver of rights that would cajole him
4 into giving you a statement.

5 A. No, sir.

6 Q. Okay. And he signed both the waiver of rights and his
7 acknowledgement of his constitutional rights.

8 A. He did.

9 Q. Okay. Who was with you?

10 A. Detective Crosby.

11 Q. Is this Jeff Crosby back here?

12 A. It is.

13 Q. Okay. Did, in fact, after you read him his rights and
14 you read him the waiver of rights and he executed said
15 document which is State's exhibit number 1, did he, in fact,
16 give you a statement?

17 A. He did which was also audiotaped.

18 Q. It was audiotaped.

19 A. Yes, sir.

20 Q. Was that statement freely and voluntarily given to the
21 best of your information?

22 A. Yes, sir.

23 Q. You were sitting across the table I would assume from
24 the defendant.

25 A. Adjacent to. Side by side.

1 Q. Adjacent. Did it appear to him (sic) that he was under
2 the influence of intoxicants and/or drugs?

3 A. No, sir. I asked him that.

4 Q. Did it appear to him (sic) that he was sick, head cold,
5 sinuses, all these things we hear about on television?

6 A. No, sir.

7 Q. That would impair his ability to understand what you
8 were saying?

9 A. No, sir.

10 Q. And he, in fact, gave you a statement.

11 A. He did.

12 Q. And did you, in fact, record that statement?

13 A. I did.

14 Q. Do you have the cassette with you today?

15 A. I do. It's seated on the table.

16 Q. I'll have to let you pick it out because they both look
17 the same to me.

18 A. This is the cassette that was used.

19 **Mr. Knight:** Let me show it to Mike. The State would
20 offer this as State's exhibit number 2, the voluntary
21 audiotaped confession of the defendant which I'd like to
22 publish after it's admitted.

23 **The Court:** Okay.

24 (State's exhibit 2 was received in evidence.)

25 **Mr. Knight:** Would you play it for His (sic) Honor,

1 please?

2 Mr. McCloskie: If Your Honor please, we're -- I'm
3 sorry.

4 The Court: I'm sorry. Yes, sir.

5 Mr. McCloskie: If Your Honor please, we're not here to
6 determine the contents of the statement.

7 Mr. Knight: Okay. That's fine.

8 Mr. McCloskie: We're here to determine whether or not
9 the contents of it were voluntarily given. So I would object
10 to its coming in insofar as it's being played at this point.
11 I see no---

12 The Court: Okay.

13 Mr. McCloskie: Nothing to be served.

14 The Court: I presume, Mr. McCloskie, then since you
15 don't want it played that there is nothing on the tape that
16 would suggest that Mr. Darien's statement was not voluntarily
17 and freely given. Is that correct?

18 Mr. McCloskie: That's correct.

19 The Court: And you've had an opportunity to review it,
20 sir?

21 Mr. McCloskie: I have had an opportunity to review
22 that.

23 The Court: All right. Thank you, Mr. McCloskie. We
24 don't need to publish it then. If he's not going to
25 challenge---

1 **Mr. Knight:** That's fine. I was going to do it for the
2 Court's edification just to make sure no questions...

3 **The Court:** Okay. Thank you.

4 **Mr. Knight:** Thank you. Okay. That's all the questions
5 I have of this witness.

6 **Mr. McCloskie:** Mr. Hipp, I just have a few, if Your
7 Honor pleases.

8 Cross-Examination

9 By Mr. McCloskie:

10 Q. Mr. Hipp, Mr. Darien had been in custody for how long?

11 A. Approximately maybe ten hours at the most.

12 Q. Right. And do you recall how -- did you go to the
13 scene?

14 A. I did.

15 Q. And do you recall how you were called there?

16 A. My dispatch informed me.

17 Q. Do you know how dispatch was informed?

18 A. They receive telephone calls, 9-1-1 calls.

19 Q. And do you know who made those calls?

20 A. I know it's indicated that the defendant made a call
21 himself as well.

22 Q. All right, sir. Now, what was his condition when you
23 interviewed him?

24 A. The next morning he was in fair condition, good
25 condition.

1 Q. In fair condition. As a matter of fact, you took him to
2 the hospital the night before.

3 A. Yes.

4 Q. And that was because he was injured.

5 A. He claimed that he was injured; yes, sir.

6 Q. Well, you could see it on his face. The medical report
7 says he had abrasions and contusions to his face and his
8 scalp.

9 A. No, sir, I couldn't see it, sir.

10 Q. Otherwise, did he understand what you were doing?

11 A. Yes, sir.

12 Q. And was he completely cooperative?

13 A. He was very cooperative; yes, sir.

14 Q. Was his demeanor quiet and responsive to you?

15 A. He was responsive. He wanted to let us know what took
16 place.

17 Q. Right. He was eager to tell his side.

18 A. Yes, sir.

19 Mr. McCloskie: Thank you, sir. That's all I have.

20 The Court: Anything---

21 Mr. Knight: That's all I have of this witness. I call
22 Jeff Crosby.

23 The Court: All right. You may step down. Thank you,
24 sir.

25 Mr. McCloskie: If Mr. Crosby is going to testify

1 basically to the same thing, I have no objection to
2 proffering that testimony as such.

3 Mr. Knight: That's correct. That's exactly what he was
4 going to say.

5 The Court: Okay. Is that correct, Detective Crosby?

6 Mr. Crosby: Yes.

7 The Court: So help you God?

8 Mr. Crosby: So help me God.

9 The Court: All right. Thank you, sir. I appreciate
10 that. Okay. Anything further, Mr. Knight?

11 Mr. Knight: That's all.

12 The Court: Any argument, Mr. McCloskie?

13 Mr. McCloskie: If Your Honor please, there are no
14 grounds of any substance for me to challenge the voluntary
15 nature of this statement given by Mr. Darien, and for that
16 reason I won't argue.

17 The Court: Okay. Thank you. I do find that he
18 received and understood his rights and that it was a
19 voluntary statement made to the two officers. So with that
20 said, it is going to come in. Anything else, gentlemen, as
21 far as---

22 Mr. McCloskie: Nothing from the defense.

23 The Court: Okay. For those of you that are in the
24 courtroom, I just want to caution you that oftentimes in a
25 case with these type of allegations I know emotions can run

1 very high. I want to make sure, ladies and gentlemen, that
2 everyone on both sides of this case understands that there's
3 to be no discussions, threats, anything back and forth among
4 the families.

5 Additionally, ladies and gentlemen, we take the
6 sequestration order very seriously which simply means this:
7 If you are not a witness in this case and you are sitting and
8 watching the trial and if you go discuss any testimony that
9 has been given in this courtroom with any potential witness
10 in this case, I will hold you in contempt of court and I will
11 hold you in jail, and I just want to make sure we are all
12 very clear about this because I am very serious about this.
13 All right? So, again, it would be inappropriate for anyone
14 on either side to discuss the testimony in this courtroom
15 with anyone that is a potential witness in this case.

16 Additionally, ladies and gentlemen, during the trial of
17 this case - again, I know it's emotional and it's hard - but
18 I can't have any outbursts or any physical or emotional
19 outbursts during the trial of this case. If you cannot
20 contain yourself and if certain testimony is just too
21 difficult for you to sit through, you need to excuse yourself
22 because if I have anyone who makes any type of sound or
23 begins crying or getting upset, again that is going to be a
24 violation of my order and I'm going to have to hold you in
25 contempt of court. I would hate to do that, but I will do

1 that and have done that, if necessary. Again, if you cannot
2 control yourself or control your emotions, you are welcome to
3 leave until you can collect yourself. All right?

4 And I just also ask that family members maybe assist
5 each other. If you are upset or see someone becoming upset,
6 take them by the hand and take them out the door. Okay? All
7 right, ladies and gentlemen. With that said, I appreciate
8 everyone being here. Mr. McCloskie?

9 Mr. McCloskie: One thing. Members of the family that
10 you just addressed are members of Mr. Darien's family. I see
11 none of Mr. Furman's family here.

12 The Court: Okay.

13 Mr. McCloskie: And if you would, might I request for
14 you to repeat that admonition when the Furman family gets
15 here? I would appreciate it.

16 The Court: I will, sir, and I appreciate that, and I
17 will do the same as to everyone in this case. Again, I
18 understand that you all are from the same area and probably
19 have known each other for a good long time and I know that
20 makes it more difficult, but again we need to contain
21 ourselves. This is a court of law and you need to be
22 respectful, and I just want to make sure everyone understands
23 that, and we will have the same discussion tomorrow morning
24 again and probably every time we leave. All right? Anything
25 further, Mr. McCloskie?

1 **Mr. McCloskie:** No. No, Your Honor. Thank you very
2 much.

3 **The Court:** Anything further from the State other than
4 we're going to take care of Mr. Brooks before we break or do
5 we have other cases?

6 **Mr. Knight:** That's all I have.

7 **The Court:** We're just going to take care of Mr. Brooks?
8 And then, y'all, we'll begin tomorrow morning. The jury is
9 coming back at 10. If you all could be here at 9:30, 9:45,
10 if we could---

11 **Mr. Knight:** That's fine.

12 **The Court:** You know, any last-minute things we need to
13 take up, we can certainly do that. Lastly, I will -- and
14 actually I'll just talk to the attorneys just briefly once we
15 send everyone away. Okay? All right. Thank you all. For
16 the rest of y'all, this case will be at ease. Mr. McCloskie,
17 just if I could talk to you and Mr. Knight right before you
18 leave, if that's fine, and if you need a moment to speak with
19 your client, you're free to do that certainly.

20 (Whereupon, the trial concluded for the day at 4:49 p.m.
21 and resumed the following day, February 9, 2010, as follows.)

22 **The Court:** Thank you. Be seated. Good morning. Good
23 morning. Thank you, Mr. McCloskie. Good morning, gentlemen.
24 Gentlemen, is there anything we need take up before we begin
25 this morning?

1 **Mr. Knight:** Nothing from the State, Your Honor.

2 **Mr. McCloskie:** Nothing from the defense, Your Honor.

3 **The Court:** All right. It's my understanding the jury
4 is all here. I'm just going to give my standard opening
5 comments, and then we'll go ahead and open it up for opening
6 statements. I trust y'all have worked it out with the court
7 reporter. We think we're going to be loud enough that she
8 can hear you during openings? Is that correct?

9 **Mr. Knight:** Yes, ma'am.

10 **The Court:** Y'all okay? Can you hear me?

11 **Mr. McCloskie:** I think we have done that. I can hear
12 you.

13 **The Court:** Okay. And also, too, y'all just wave your
14 hand if you can't hear me at any point, too. Okay?

15 **Mr. McCloskie:** Thank you.

16 **The Court:** All right. Ladies and gentlemen, for those
17 of you that are in the gallery this morning, I just want to
18 go ahead and caution you that the witnesses in this case have
19 been sequestered, and what that means, ladies and gentlemen,
20 is that no one who is out here in the gallery is allowed to
21 talk and tell any witnesses that may be coming up to testify
22 what's happening in the trial or how other witnesses have
23 testified. I'm not allowing that, and if for some reason
24 someone did do that -- if someone went and told a witness
25 that was expected to come testify about what has been said by

1 previous witnesses or by the lawyers in the case, they would
2 be found in contempt of court and I will put you in jail. So
3 I just want you to know that for fair warning.

4 Additionally, ladies and gentlemen, I just want to
5 remind you all that this is a court of law. I understand
6 that we are in temporary facilities, so it may not quite seem
7 that we have the majesty that we normally have in a
8 courtroom, but I want you to understand, too, that you need
9 to give these lawyers and the witnesses your utmost respect.
10 With that said, we're having a real hard time hearing up
11 here, so I'm going to ask that you keep any background noise
12 to a minimum.

13 I'm also going to ask you that during the opening
14 statements by these attorneys I do not want anyone coming and
15 going from the courtroom. You are to keep your seats and be
16 quiet and respect the attorneys while they give their opening
17 statements because I don't want the jury to be distracted.
18 All right? So with that said, ladies and gentlemen, good
19 morning, and we'll go ahead and bring the jury in. Thank
20 you.

21 (Whereupon, the jury was brought into open court at
22 10:32 a.m.)

23 **The Court:** Good morning, ladies and gentlemen of the
24 jury. Welcome back this morning. At this time, ladies and
25 gentlemen, we are going to begin the trial of this case. To

1 start, we are going to swear you in as the jury. Then I'm
2 going to give a couple of opening comments. Then you're
3 going to hear opening statements from the attorneys. So at
4 this time if you would all please stand and raise your right
5 hand.

6 (Whereupon, the jury was sworn at 10:33 a.m.)

7 **The Court:** Thank you. Please be seated. And, ladies
8 and gentlemen, I'm also going to ask you that if at any time
9 during my comments or when the attorneys or the witnesses are
10 speaking -- we're having a real hard time with the acoustics
11 in here. If at any time you can't hear what someone is
12 saying, if you would just wave your hand, we'll know that
13 that's a signal that we need to speak up and the attorneys
14 will know that as well as the witnesses.

15 Ladies and gentlemen, what I'm now going to say to you
16 is intended to serve as an introduction to the trial of this
17 case. These remarks are not a charge on the law. I'm going
18 to instruct you on the law that's applicable to this case at
19 the end of the trial before you retire to consider your
20 verdict. This is merely an explanation of what's going to
21 happen during the trial so that you can better understand
22 what's going on.

23 Ladies and gentlemen, the defendant in this case, Mr.
24 Eric Darien, is charged in an indictment that's filed in this
25 court with the crime of murder, the elements of which I'm

1 going to explain to you later. The indictment is simply the
2 charge by which the case is brought here into the courtroom,
3 and it is not in any sense evidence of any of the allegations
4 it contains.

5 The defendant, Mr. Darien, has pled not guilty to that
6 charge. Therefore, the State has the burden of proving each
7 of the elements of the indictment beyond a reasonable doubt.
8 And it's your duty, ladies and gentlemen of the jury, to
9 decide whether the State has met that burden.

10 Your purpose as jurors is to find and determine the
11 facts. You are the sole judge of the facts. If at any time
12 I make any comment regarding the facts of this case, you must
13 disregard it. You are only to determine the facts from the
14 testimony that you're going to hear right up here from the
15 witness stand as well as any other evidence that's introduced
16 into this court or any stipulations that the attorneys may
17 have entered into, and it is up to you to determine the
18 inferences which you feel may be properly drawn from the
19 evidence.

20 Ladies and gentlemen, it is especially important that
21 you perform your duty of determining the facts diligently and
22 conscientiously because ordinarily there is no way to correct
23 an erroneous determination of the facts by a jury. On the
24 other hand and with equal emphasis, the same law that makes
25 you the judges of the facts of this case makes me the judge

1 of the law. The law as given by the Court is the only law
2 that you may consider. You must accept and follow it even if
3 you disagree with it.

4 I cannot tell you what the facts of this case are, and
5 you cannot disagree with me about what the law is or should
6 be. Your job is to take the law as I give it to you and
7 apply it to the facts as you find them based on again the
8 testimony of the witnesses and any other evidence that's been
9 entered into, and after doing that you will render a verdict,
10 a true and just verdict, under the solemn oath that you just
11 took as jurors in this case.

12 Now, until I advise you to begin your deliberations, you
13 must not discuss this case with anyone, and that includes
14 your fellow jurors, friends, family members, or anyone
15 involved in this case. And after the case is submitted to
16 you, you must discuss it only in the jury room with your
17 fellow jurors.

18 The attorneys and parties in this case have been advised
19 that they're not to talk to you at all. So again, ladies and
20 gentlemen, if you happen to see anyone involved in this case
21 coming back and forth from the courtroom over the next few
22 days, please understand if they don't say hello they're not
23 being unfriendly. Again, they are just following my strict
24 order.

25 Now, ladies and gentlemen, additionally during the trial

1 of this case you are not to read, listen to, or watch any
2 news reports about this case, and that includes anything that
3 might be in the newspapers or on the internet, radio, or
4 television. Ladies and gentlemen, you must not consider
5 anything you may have read or heard about the case outside
6 the courtroom, whether before or during the trial. It is
7 vitally important that you keep an open mind and not decide
8 any issue in this case until all of the evidence has been
9 presented, the parties have made their closing arguments, and
10 I've instructed you on the law in this case. It is your
11 solemn responsibility to determine the guilt or the innocence
12 of the defendant, and your verdict must be based solely on
13 the evidence as it's presented to you in this trial and on
14 the law as I instruct you during and at the close of the
15 trial.

16 Ladies and gentlemen, now in a moment the solicitor, Mr.
17 Knight, is going to make what's called an opening statement
18 in which he's going to explain to you what the issues are in
19 this case or at least what he believes the issues are in this
20 case, and then the attorney for the defendant, Mr. Darien,
21 Mr. McCloskie is also going to make an opening statement,
22 although he's not required to do so. What these attorneys
23 tell you in their opening statements is not evidence in this
24 case. It is only their contention as to what the issues are.
25 Again, ladies and gentlemen, the evidence in this case will

1 be presented to you by the testimony of sworn witnesses right
2 here in this witness stand and the other exhibits and any
3 stipulations that are entered during the trial of this case.

4 Now, from time to time during the trial you may hear one
5 of the attorneys say something like, "Your Honor, I believe
6 we have a matter of law we need to take up," or, "May we
7 approach the bench?" Or sometimes I myself might find it
8 necessary to excuse you back into the jury room for a short
9 time so I can talk to the attorneys. I want you to
10 understand: We are not hiding anything from you.

11 Oftentimes when I have to rule as a matter of law
12 whether or not something is admissible, I may make a comment
13 on the facts of this case, and again I would never want
14 anything I say in regards to the facts of the case to infer
15 or impress on you that I have a belief as to the facts
16 because again I don't. You are the sole judges of the facts
17 of this case. So, again, sometimes I may need to speak
18 outside your presence.

19 Ladies and gentlemen, in determining what the true facts
20 are in this case, you must decide whether or not the
21 testimony of the witnesses is believable. It's my
22 responsibility to rule as a matter of law whether or not
23 certain testimony is admissible, but once the testimony is
24 admitted, whether or not you believe it is solely for you to
25 determine. In deciding whether to believe a witness, you

1 have the right to consider the interest of any witness, the
2 bias of any witness, the prejudice of any witness. You can
3 look at the opportunity the witness had to have seen the
4 matters and things about which they're testifying, and you
5 can look at the way the witness acts on the witness stand.

6 You have the right to consider anything that is in the
7 record that will help you evaluate the testimony of the
8 witnesses. That means, ladies and gentlemen, it is your duty
9 to pay close attention to the witnesses, to observe them, and
10 to listen to them so you can go back in your jury room at the
11 conclusion of this case and accurately remember the
12 testimony. Because this case is going to be relatively
13 short, I am not going to permit you to take notes in this
14 case. So, again, I just ask that you pay close attention to
15 the witnesses on the stand again so you can accurately
16 remember their testimony when you retire to your jury room.

17 Ladies and gentlemen, at the end of this case, of
18 course, we are going to submit the case to you for your
19 deliberations, but again I caution you that during all the
20 breaks that we have you are not to begin discussing this case
21 and, again, that's because you haven't heard all the
22 testimony. You haven't heard the arguments from the lawyers
23 nor my charge on the law, and it wouldn't be appropriate to
24 do so.

25 With that said, ladies and gentlemen, we're going to

1 begin the trial of this case. I'm going to ask the
2 attorneys, as I do every time I address you, whether or not
3 they have any exceptions or additions to my instruction on
4 you -- to you. If not, we're going to go ahead and begin the
5 case. Any exceptions or additions from the State?

6 **Mr. Knight:** None from the State, Your Honor.

7 **The Court:** From the defense?

8 **Mr. McCloskie:** No, Your Honor. Thank you.

9 **The Court:** Thank you, gentlemen. At this time, ladies
10 and gentlemen, we are going to begin the trial of this case.
11 If you would give Mr. Knight your full attention.

12 **Mr. Knight:** May it please the Court, Your Honor?

13 **The Court:** Yes, sir.

14 **Mr. Knight:** Mr. Foreman, ladies and gentlemen of the
15 jury, this case is about murder. His (sic) Honor at the
16 conclusion of the trial will give you a detailed instruction
17 as to the elements of murder, and I'm going to give you a
18 general -- what I consider the elements of murder, so when
19 you listen to the facts you can apply them until she gives
20 you the final instruction on the law.

21 Now, as I understand murder, it's the unlawful killing
22 of another with malice aforethought. What's malice? Malice
23 is importing wickedness, an intentional killing, knowing it
24 to be wrong, aforethought. You can conceive to kill someone
25 right in the moment the fatal blow happens. But she's going

1 to give you a much better definitive definition of what
2 murder is, but that's the general idea for you to consider
3 when you're listening to the testimony during the course of
4 this trial.

5 Now, on September the 29th of 2008 here in Jasper County
6 out in the Pineland area, okay, the deceased, Richard Bubba
7 Furman - and you're going to hear him referred to as Bubba -
8 was with his girlfriend, and he saw the defendant in close
9 proximity to his mother's house or his sister's house, Tamika
10 Furman. He jumped out of the car. As he leaps out of the
11 car, jumped out of the car, an argument ensued between the
12 two of them - they'd known each other - which led to a tussle
13 and a fight which led to the defendant pulling out a weapon
14 and shooting four times, one in his direction, his direction
15 being Bubba Furman, and the other three in the back of Bubba
16 Furman.

17 Now, they're going to have several witnesses that were
18 out there. You're going to hear from Tamika Furman who is
19 the daughter of the deceased. You're going to hear from
20 Jamontay Darien who is the son of the defendant, and you're
21 going to hear from Shakaria White who was the girlfriend who
22 drove the car that brought Richard Bubba Furman out to [REDACTED]
23 [REDACTED] Road here in Jasper County.

24 Then you'll hear from the pathologist about what he did
25 during his performance of his autopsy, and you'll hear from

1 the law enforcement as to what they found, what they
2 recovered, and what they did with any evidence during the
3 course of their investigation, and that's basically it.
4 That's what you're going to hear.

5 Now, you took an oath a few moments ago from the clerk
6 of court to truly try the case between the State of South
7 Carolina and the defendant, Eric Darien. I submit to you
8 there are other elements in that oath. Number one, that you
9 look at the witness stand so you can determine the
10 credibility of the witnesses. Number two, that you would
11 listen to the testimony of each and every witness, not one
12 but all witnesses, and that's important. It's important that
13 you look, listen, and finally that you remember the testimony
14 that you've heard in this case and the evidence that you're
15 going to take to the jury room with you.

16 It's very, very important because at the conclusion of
17 this trial after you've looked, listened, and remembered, I'm
18 going to ask you to return a verdict of guilty of murder
19 against Eric Darien. Thank you.

20 **Mr. McCloskie:** May it please the Court? Mr. Knight?

21 **The Court:** Yes, sir.

22 **Mr. McCloskie:** Good morning. I've been told that I
23 talk too lowly, so I'm going to use this microphone and not
24 be mobile because I've got some things I need to talk to you
25 about. Mr. Knight and I disagree right from the very

1 beginning for this is not a case of murder. This is a case
2 of self-defense. What Mr. Knight did not tell you that will
3 come out off the witness stand: One of the witnesses very
4 close to Mr. Furman who Mr. Knight has already told you he
5 goes by the name of Bubba will testify, as she told the law
6 enforcement officers when she was interviewed I think the day
7 after this happened, and this is what she told them. Quote,
8 nobody can do anything with Bubba when he is mad.

9 What Mr. Knight didn't tell you is how this fight
10 started also. The first blow struck -- the fight started
11 when Bubba, Mr. Furman, struck Eric Darien. This is a case
12 that can be easily explained if you understand the
13 definitions of two very simple English words and put them
14 opposed to one another. This is a case that involves rage on
15 the one hand - nobody can do nothing with Bubba when he's mad
16 - and fear on the other. And you're going to hear testimony
17 from the law enforcement officers that Eric Darien was one of
18 the people who called 9-1-1 to report this and didn't make
19 any bones about it: I just shot someone. And then he asked
20 the law enforcement officers to get him out of there for fear
21 of what Mr. Furman's family might do to him.

22 Now, you've got to understand that this event occurred
23 in a very short period of time. We're going to spend
24 probably two to two and a half days talking about an
25 occurrence that happened in somewhere between one and one and

1 a half minutes, minutes, and we're going to spend days doing
2 it. During these two, two and a half days, I only have the
3 right and the responsibility to ask you to do one thing and
4 that is to put aside all the other important things you have
5 going on in your life. I realize and this court realizes and
6 Mr. Knight realizes that nothing happens in the back -- none
7 of us are allowed to live life in some sense of splendid
8 isolation. There are things going on in your lives, and I'm
9 asking you to put those things aside and pay strict attention
10 to what happens here in the next two, two and a half days
11 where Mr. Knight and I try to do our best to put before you
12 accurately what happened in a span of one to one and a half
13 minutes.

14 Now, throughout this process Mr. Darien has no
15 obligation to prove anything, not even self-defense. It is
16 the State's obligation to prove beyond a reasonable doubt
17 that this is not a case of self-defense. Does everybody
18 understand that?

19 Now, this is not complicated. I realize that for most
20 of you this is the first time you've ever sat on a jury, and
21 to sit on a jury for the first time trying a case of this
22 importance has to do something to your sense of confidence.
23 Confidence is usually something that we acquire through
24 practice, isn't it?

25 When I was a young kid, the first time my father threw a

1 baseball at me asking me to hit it, my thought wasn't about
2 hitting that baseball. My thought was about not getting hit
3 by that baseball. But as I stood there and swung, I finally
4 hit the thing, and with that kind of practice becomes
5 confidence. You don't have that opportunity. This is not
6 practice. This is the real thing. But let me assure you of
7 this: This is not anything that the exercise of common sense
8 acquired through common experience cannot deal with and deal
9 with not only adequately but very, very well. So don't be
10 afraid. Don't be apprehensive. Be confident.

11 When you get back in the jury room after this thing is
12 all over and you've gotten all the testimony and all the
13 evidence, do not be afraid to speak up. Every one of you has
14 an important part to play in this. This verdict must be
15 unanimous. All 12 of you must agree on the verdict. And if
16 one of you has something of substance to say about that, say
17 it. The others please listen.

18 There is a small box in the courtroom, the new
19 courtroom, in Beaufort county - there used to be one here in
20 Jasper County - and that box sits right within the rail that
21 separates the gallery from where the lawyers and the
22 witnesses and the jury sits. Does everybody have that
23 picture? And the box is about -- oh, about 30 inches square
24 and it used to be the practice in cases of this nature that
25 someone accused of murder would be placed in that box, and

1 the solicitor would read the indictment word for word for
2 that person accused and, of course, that person accused would
3 be in the company of his lawyer standing outside that box
4 right next to his client. And at the end of reading that,
5 the solicitor would say, "How do you plead to the indictment
6 with which you have been charged?" And the defendant on
7 instructions from his lawyer normally would say, "Not
8 guilty." And then the solicitor would look at him and say,
9 "How will you be tried?" And the defendant with the
10 assistant of his lawyer would respond, "By God and my
11 country," and the last sentence is important. The solicitor
12 would look that man in the eyes and say, "God grant you a
13 true deliverance."

14 If you pay attention to these facts, if you follow the
15 law as you're instructed, if you bring to this exercise
16 common sense that you have acquired through common
17 experience, God will grant a true deliverance, and that true
18 deliverance will be in the form of a finding of not guilty.
19 Thank you very much.

20 **The Court:** Thank you, Mr. McCloskie. Mr. Knight, if
21 you'll call your first witness, sir.

22 **Mr. Knight:** Montana Wilber.

23 Montana Wilber, Jr., after being duly sworn,
24 testified as follows:

25 **The Court:** Deputy Wilber, if you will just -- I

1 apologize, sir. If you will give and spell your last name
2 for my court reporter, sir.

3 The Witness: Montana Wilber.

4 The Court: Will you spell your last name for my court
5 reporter?

6 The Witness: W-i-l-b-e-r.

7 The Court: Thank you, sir.

8 Direct Examination

9 By Mr. Knight:

10 Q. State your full name, please.

11 A. Montana Wilber, Jr.

12 Q. Who are you employed with, sir?

13 A. Jasper County Sheriff's Office.

14 Q. How long have you been employed with the Jasper County
15 Sheriff's Department?

16 A. Just shy of 10 years.

17 Q. Were you on duty on or about September the 29th, 2008?

18 A. Yes, sir.

19 Q. Did you respond to a call at [REDACTED] Road
20 here in Jasper County?

21 A. Yes, I did.

22 Q. Upon arrival, what, if anything, did you find?

23 A. Upon my arrival, when I arrived on the scene there was
24 E.M.S. already on the scene working on a victim in the front
25 yard.

1 Q. After you arrived and noticed the E.M.S. working on the
2 victim in the front yard -- what do you mean a front yard?

3 A. It was in the front of the residence just a little bit
4 to the left, right -- not far from the road.

5 Q. Which would be [REDACTED] Road?

6 A. Correct.

7 Q. What else did you do after you arrived?

8 A. After I arrived and made sure everything was okay on the
9 scene, then myself and two other deputies went and placed the
10 defendant under arrest.

11 Q. Okay. Did you recover any evidence while you were out
12 there?

13 A. Well, we recovered the weapon when we arrested the
14 defendant.

15 Q. Okay.

16 A. In the yard we recovered several items.

17 Q. Okay. Let me ask you if you can identify this.

18 A. Yes, sir.

19 Q. Did you recover that?

20 A. Yes, I did.

21 Mr. Knight: Any objection?

22 Mr. McCloskie: What is it?

23 Mr. Knight: Purple bag.

24 Mr. McCloskie: Without objection.

25 The Court: It's in evidence without objection.

1 (State's exhibit 3 was received in evidence.)

2 By Mr. Knight:

3 Q. State's 3, State's exhibit number 3, you recovered that?

4 A. Yes, sir.

5 Q. Could you identify who that purple bag belonged to by
6 looking inside?

7 A. The defendant.

8 Q. Mr. Eric Darien?

9 A. Yes, sir.

10 Q. Okay. And where did you locate that bag or State's
11 exhibit number 3?

12 A. Upon interviewing people in the area and starting to
13 collect evidence in the crime scene area, the defendant's son
14 had approached me and said---

15 Mr. McCloskie: If Your Honor please, I'm going to
16 object.

17 Mr. Knight: Don't testify to what he said.

18 The Court: Okay. Thank you.

19 By Mr. Knight:

20 Q. But you located this purple bag.

21 A. Yes, I did.

22 Q. That you identified belonging to the defendant.

23 A. Correct.

24 Q. Okay. Did you recover anything else while you were out
25 there?

1 A. We recovered, I believe, two shell casings.

2 Q. Did you personally recover the shell casings?

3 A. I don't recall if I personally recovered them. I know I
4 helped search for them.

5 Q. Okay. Did you personally recover the weapon?

6 A. I believe that was Corporal Thompson that took that into
7 custody.

8 Q. How many people when you arrived were at the scene
9 approximately? If you don't remember, say "I don't
10 remember."

11 A. Approximately -- by my recollection, three or four
12 besides E.M.S. personnel in the area.

13 Mr. Knight: Answer any questions Mr. McCloskie may
14 have.

15 Mr. McCloskie: Thank you. May it please the Court?

16 The Court: Yes, sir.

17 Cross-Examination

18 By Mr. McCloskie:

19 Q. Mr. Wilber, I just have a few for you. What time of day
20 did you arrive there?

21 A. I believe it was in the evening around 7 or something.

22 Q. Was it dark?

23 A. I think it was dark or close to dark.

24 Q. Okay. And did you speak with the defendant at all
25 yourself?

1 A. I took him into custody, but I didn't interview him.

2 Q. And the incident report says something and I don't know
3 whether you heard this or not; I'm just going to ask you.

4 "The suspect was not interviewed at this time and begged the
5 deputies to hurry up and take him to jail because he could
6 not defend himself against the victim's family."

7 A. That's correct.

8 Q. Did you hear that?

9 A. Yes, sir.

10 Q. Would that lead you to believe that he was still in a
11 state of fear?

12 A. Lead me to believe he was in fear of, you know, any
13 family members of the victim that might show up.

14 Q. Were you also there when he turned over the weapon to
15 Corporal Thompson?

16 A. Yes, sir.

17 Q. So it wasn't something y'all had to search for. He gave
18 it to you.

19 A. Correct.

20 Q. I think that's all I have. Thank you, sir.

21 A. Thank you.

22 Mr. Knight: May he be excused?

23 The Court: All right.

24 Mr. McCloskie: He may without objection.

25 The Court: You are excused, Deputy Wilber. Thank you.

1 **Mr. Knight:** Adam Thompson.

2 **The Court:** Deputy Thompson?

3 **The Clerk:** He is being sequestered.

4 Adam C. Thompson, after being duly sworn, testified
5 as follows:

6 **The Court:** Deputy Thompson, if you'll just give your
7 full name for my court reporter and spell your last name for
8 her.

9 **The Witness:** Adam Christopher Thompson. It's
10 T-h-o-m-p-s-o-n.

11 **The Court:** Thank you, sir.

12 Direct Examination

13 By Mr. Knight:

14 Q. Adam, obviously you're employed the Jasper County
15 Sheriff's Department?

16 A. Yes, sir.

17 Q. Were you on duty on or about September the 29th, 2008?

18 A. Yes, I was.

19 Q. Did you respond to a call at [REDACTED] Road
20 here in Jasper County?

21 A. Yes, I did.

22 Q. Upon your arrival, what, if anything, did you find?

23 A. When I arrived on the scene, I met with Corporal Wilber.
24 He was the first one to actually arrive there. The fire
25 department and E.M.S. were already there. They had already

1 loaded the victim into the back of the ambulance. At that
2 time in the I guess it would be the left side of the front
3 yard there was some items laying in the grass there, some
4 blood that was actually -- or appeared to be bloodstains or
5 right there stains in the grass. There were several people
6 that were out over kind of by the driveway area of the house
7 where the front door and everything is at, and that's -- at
8 that time I spoke with Corporal Wilber and he kind of filled
9 me in on what exactly had happened at least with what he had
10 found out up until that point.

11 Q. Did you speak with the defendant, Eric Darien?

12 A. Yes, I did.

13 Q. Did Mr. Darien call 9-1-1 about this incident?

14 A. Yes, he did.

15 Q. Okay. I ask you if you can identify... Can you
16 identify that? Can you identify that, please, sir?

17 A. That's the firearm that Mr. Darien gave us when we made
18 contact with him at the residence next door to where the
19 incident occurred.

20 Mr. Knight: I offer State's exhibit number 4.

21 Mr. McCloskie: Without objection.

22 The Court: It's in evidence without objection.

23 (State's exhibit 4 was received in evidence.)

24 By Mr. Knight:

25 Q. And who did you turn this weapon over to after you got

1 it?

2 A. I turned it directly over to Corporal Wilber.

3 Q. Did you secure any other evidence, casings that were out
4 there?

5 A. While I was there - and this was after we actually taped
6 off the crime scene area - I believe it was Lieutenant
7 Jenkins, I believe, brought a metal detector up there. We
8 used the metal detector to search the area where the incident
9 occurred for shell casings. We did recover - I don't know
10 how many - but I know we did recover shell casings. The
11 other evidence that was laying out in the grass, I didn't
12 collect that and I don't know who did.

13 Q. Okay. Did you make an inquiry of the people that were
14 out there if they saw anything?

15 A. Yes, we did.

16 Q. How many people did you talk to that night trying to
17 find out if anyone saw anything?

18 A. There were so many people -- I mean, there were people
19 that were not only at the residence where the incident
20 occurred, but there were also people that we tried to speak
21 with where we found the defendant. To be honest with you, I
22 can't give an exact number. I know there were quite a few
23 people that we did speak with though.

24 Q. The people that you talked to, did any of them tell you
25 that they saw this incident?

1 A. Yes.

2 Q. Okay. And you turned them over to other law
3 enforcement.

4 A. Yes, I did.

5 Q. You said that when you got there you noticed in the yard
6 what appeared to be blood. Is that correct?

7 A. Yes.

8 Q. When you say yard, which yard are you talking about?
9 The yard at [REDACTED]?

10 A. Yes, the yard where the -- I believe that's the address.
11 It's a brick residence, one story. It's got white trim. I
12 believe it was 2570.

13 Q. I ask you if you can identify this, please, sir.

14 A. This is the magazine that was handed to us as well by
15 Mr. Darien when we made contact with him.

16 Mr. Knight: No objection, Mr. McCloskie?

17 Mr. McCloskie: Without objection.

18 The Court: It's in evidence without objection.

19 (State's exhibit 5 was received in evidence.)

20 By Mr. Knight:

21 Q. And you turned this over to Lieutenant Hipp also?

22 A. I turned all that -- everything that was handed to me I
23 handed directly Corporal Wilber.

24 Q. Okay.

25 A. That was later turned over to Lieutenant Hipp.

1 **Mr. Knight:** If the court will indulge me one moment.
2 There's some things that were sealed that I don't have a
3 knife for. Just one moment, Your Honor.

4 **The Court:** Yes, sir.

5 **Mr. Knight:** That's all I have. Answer any questions
6 Mr. McCloskie may have.

7 **Mr. McCloskie:** Thank you, Mr. Knight.

8 Cross-Examination

9 By Mr. McCloskie:

10 Q. Hey, Mr. Thompson.

11 A. How are you doing?

12 Q. I'm good. How are you?

13 A. Very good.

14 Q. That's good. I just have a few things. First of all,
15 when you got there was it dark?

16 A. Yes, sir. It was evening time when the actual call came
17 in.

18 Q. All right. Did you determine where Eric Darien's
19 parents lived relative to this house, the address of which is
20 [REDACTED]?

21 A. You mean -- I don't...

22 Q. The house where you found Darien, how far away was it?

23 A. I'd probably say maybe 20 yards, 25 yards.

24 Q. All right.

25 A. It's relatively close.

1 Q. Let's do this. Let's use this building right here.

2 A. Okay.

3 Q. And if you would, just tell us: Was it as far as that
4 first post away or is that about the distance?

5 A. It's -- I would say it's about the distance; yes, sir.

6 Q. All right, sir. So it's fair to say that the two houses
7 were in close proximity, and this event occurred in between
8 them.

9 A. Yes. That's correct.

10 Q. All right. Now, did you hear Eric say anything about --
11 any complaints about his head hurting?

12 A. He did complain that his -- I believe it was his head.

13 Q. And his leg.

14 A. I couldn't remember what the other...

15 Q. Yeah. All right. And what, if anything, happened in
16 response to those complaints?

17 A. I don't understand the question.

18 Q. Didn't somebody from your office take him to the
19 hospital?

20 A. Yes. He was actually transported to Beaufort Memorial
21 by I believe it was Deputy Lewis.

22 Q. That's correct.

23 A. And I believe it was Beaufort Memorial is where he was
24 transported to.

25 Q. All right. Now, were you there when they found shell

1 casings?

2 A. Yes, I was.

3 Q. All right. And is this an accurate description of where
4 they were found? I'm reading to you from the incident
5 report, and if it's not accurate, you let us know. Okay?

6 A. Okay.

7 Q. Deputies located two nine millimeter shell casings which
8 were located not far from where the victim's feet are -- were
9 as he was found on the scene. Is that accurate?

10 A. To be honest with you, I can't actually say where the
11 victim was because when I actually arrived on the scene, the
12 victim was no longer in the yard.

13 Q. All right. Do you know who found those shell casings?

14 A. Myself, Corporal Wilber, were the two that were running
15 the metal detector with the flashlights and everything like
16 that out there.

17 Q. Do you know where this information -- do you need a copy
18 of this to look at?

19 A. I -- I can if you...

20 **Mr. McCloskie:** Excuse me. May I approach, Your Honor?

21 **The Court:** Yes, sir.

22 **Mr. McCloskie:** Thank you.

23 By Mr. McCloskie:

24 Q. Adam, it's in the second paragraph there about two-
25 thirds of the way down.

1 A. It does say that in the report. This report---

2 Q. Did I read it accurately?

3 A. Yes, sir, you read it exactly.

4 Q. All right. But you don't know who wrote this part of
5 the report or who found it?

6 A. This actual part of the report was written by Corporal
7 Wilber. The actual original incident was written by Corporal
8 Wilber, but I can't say distance-wise like you asked.

9 Q. I understand.

10 A. Okay.

11 Mr. McCloskie: May I approach again?

12 The Court: You may, sir.

13 Mr. McCloskie: Mr. Thompson, thank you so much. That's
14 all I have.

15 The Witness: Yes, sir.

16 The Court: Mr. Knight?

17 Mr. Knight: May he be excused, Your Honor?

18 The Court: Any---

19 Mr. McCloskie: Without objection.

20 The Court: You are excused. Thank you.

21 Mr. Knight: Amy Daniels.

22 Amy Daniel, after being duly sworn, testified as
23 follows:

24 The Court: Ms. Daniels, will you give us your name for
25 the record and spell your last name for my court reporter?

1 **The Witness:** Amy Daniel, D-a-n-i-e-l.

2 **The Court:** Thank you.

3 Direct Examination

4 By Mr. Knight:

5 Q. Ms. Daniel, who are you employed with, ma'am?

6 A. Jasper County Fire Rescue.

7 Q. And how long have you been employed with fire rescue?

8 A. About seven years.

9 Q. What training and experience do you have as an E.M.S.

10 E.M.T.?

11 A. I'm a firefighter E.M.T. I have been to paramedic
12 class, but I do not have -- I am not a paramedic.

13 Q. Did you have an occasion to respond to

14 here in Jasper County on September the 29th,
15 2008?

16 A. Yes, sir.

17 Q. Were you by yourself?

18 A. No, sir.

19 Q. Who was with you?

20 A. My partner on the ambulance and then we also had a fire
21 engine that responded.

22 Q. When you got to that location, [REDACTED]
23 Road, what, if anything, did you find? Did you find a body?

24 A. Yes, sir.

25 Q. And what was the name of the body? Do you know?

1 A. I...

2 Q. Okay. What did you discover about the body?

3 A. It was---

4 Q. What tests did you perform on the body?

5 A. We just loaded him in the back of the truck and took him
6 to meet the coroner.

7 Q. You made an -- you had an opinion at the scene that he
8 was dead?

9 A. Yeah, we put him on the cardiac monitor.

10 Q. Oh, okay.

11 A. And...

12 Q. It was flat-lined as we call it?

13 A. Yes, sir. Yes, sir.

14 Q. So that's?

15 A. D.O.A.

16 Q. D.O.A. Dead on arrival?

17 A. Yes, sir.

18 Q. Did you subsequently learn who that individual was?

19 A. I can't remember.

20 Q. Okay. But you did, in fact, take him to the coroner
21 after that?

22 A. Yes, sir.

23 Mr. Knight: Answer any questions Mr. McCloskie may
24 have.

25 Mr. McCloskie: Ms. Daniel, thank you for coming. I

1 have no questions.

2 The Witness: All right. Thank you.

3 Mr. McCloskie: I do not object to her being excused.

4 Mr. Knight: Please excuse her.

5 The Court: Ms. Daniel, you are excused. Thank you.

6 The Witness: Thank you.

7 Mr. Knight: Shereka (sic) White. Shakaria White.

8 Excuse me.

9 Shakaria N. White, after being duly sworn,
10 testified as follows:

11 The Court: Thank you. Ma'am, go ahead and take a seat,
12 please. If you would give us your name for the record and
13 please spell your first name for my court reporter. All
14 right? Thank you.

15 The Witness: My name is Shakaria Nicole White. I spell
16 my first name S-h-a-k-a-r-i-a.

17 The Court: And the spelling of your last name is the
18 common name of White? Is that correct?

19 The Witness: Yes, ma'am.

20 The Court: Thank you.

21 Direct examination

22 By Mr. Knight:

23 Q. Ms. White, where do you live?

24 A. I stay in Pineland.

25 Q. Pineland. Okay. And where do you work?

1 A. Jasper County Board of Disabilities and Special Needs.

2 Q. What do you do there?

3 A. I take care of the mentally retarded.

4 Q. I'm sorry. You're going to have to speak up so they can
5 hear you down here.

6 A. I take care of the mentally retarded.

7 Q. Do you have any specialty? Certified nursing assistant?

8 A. Certified nursing assistant.

9 Q. How long have you been doing that?

10 A. Ten years. Eight, ten years.

11 Q. Eight to ten years?

12 A. Uh-huh.

13 Court Reporter: Please say yes or no.

14 The Court: Thank you, Daphne.

15 By Mr. Knight:

16 Q. Did you know Richard Bubba Furman?

17 A. Yes.

18 Q. How did you know him?

19 A. He was my boyfriend.

20 Q. And how long was he your boyfriend?

21 A. For about three years.

22 Q. Three years?

23 A. Yes, sir.

24 Q. Were you with him on September the 29th, 2008?

25 A. Yes, sir.

1 Q. What time did y'all get together that day?

2 A. What time did I see Bubba?

3 Q. Yeah.

4 A. What time... Practically all day. He only left once,
5 and when he came back, we were together that whole time.

6 Q. What were y'all doing in the late afternoon hours of
7 September the 29th, 2008?

8 A. At?

9 Q. Around 7:00.

10 A. Around 7? We probably was standing -- no, we was
11 probably going to Robertville store.

12 Q. After that, where did y'all go?

13 A. We was on our way back home.

14 Q. You were driving the vehicle or Bubba was driving the
15 vehicle?

16 A. I was driving.

17 Q. Did Bubba give you any instructions while you were
18 driving?

19 A. Yes.

20 Q. What instructions, if any, did he give you?

21 A. When we seen the defendant, he told me to turn around.

22 Q. Okay. Where did you see the defendant at?

23 A. At Tamika Furman's house.

24 Q. Okay. And did you turn car around at that point?

25 A. I turned around when we got to Mary Brown's house.

1 Q. Okay. Did you stop the car?

2 A. Did I stop the car? At Tamika Furman's house?

3 Q. Yeah.

4 A. Yes.

5 Q. What, if anything, did Bubba do?

6 A. When he got to Tamika Furman's house, he just jumped out
7 of the car and went straight at Eric.

8 Q. What did you observe or hear between Eric and Bubba?

9 A. They were arguing about Eric being there. Bubba was
10 telling Eric that he shouldn't have been there no more and
11 that he was upset about the situation about him breaking a
12 fish tank and messing up the...

13 Q. Okay. Then what did you observe?

14 A. Eric -- Eric --- Eric swung at Bubba, and then that's
15 when, you know, they started fighting.

16 Q. And did you witness the fight?

17 A. Yes.

18 Q. How far away were you from Eric and Bubba when they were
19 fighting?

20 A. At the beginning probably from like me to you.

21 Q. Okay. How long did the fight go on? If you don't know,
22 say, "I don't know."

23 A. I don't know, sir.

24 Q. Did the fight end?

25 A. Yes, sir.

1 Q. Okay. How did it end?

2 A. Bubba got up and walked towards me and asked me to take
3 him home.

4 Q. Okay. What happened then?

5 A. That's when the shots began to ring out.

6 Q. Okay. Did you see who fired a weapon?

7 A. Yes, sir.

8 Q. Who fired the weapon?

9 A. Eric Darien.

10 Q. Okay. What happened, if you know, when the weapon was
11 first fired? Where was it fired? Who was it fired at?

12 A. Towards us.

13 Q. Okay. And then what did you do?

14 A. I ducked.

15 Q. And then what happened?

16 A. Then I ran -- after I felt safety was there, then I ran
17 to help Bubba get C.P.R.

18 Q. Who was out there at the yard at [REDACTED]

19 Road when you and Bubba arrived?

20 A. It was me -- when me and Bubba first arrived, it was
21 just Eric out there and there was two -- I don't know their
22 names. There was two guys.

23 Q. Okay.

24 A. When we first arrived. You said when we first arrived,
25 so I told you who was there when we first---

1 Q. When the fight was going on, who was out there?

2 A. His daughter, Briana.

3 Q. Right.

4 A. Tamika Furman, Sally Darien, Anthony, and I think that's
5 it.

6 Q. When you saw Bubba coming towards you, you were on the
7 car, behind the car or where?

8 A. I was on the car. I was smoking a cigarette.

9 Q. Okay. When Bubba was coming towards you, how far was
10 the defendant from Bubba?

11 A. Not far, sir.

12 Q. Okay. I'm going to stand in front of you, and I'll back
13 up and you tell me how far he was from you.

14 A. Probably about right there, sir.

15 Q. That was the distance between Bubba when he was going to
16 your car---

17 A. Uh-huh.

18 Q. ---and the defendant, Eric Darien.

19 A. Yes, sir.

20 Q. What's that? Six feet?

21 A. About six feet, yes, sir.

22 Q. Seven feet? And at that point did you hear the first
23 shots?

24 A. Yes, sir, the first shot.

25 Q. Do you know what, if anything, Bubba did at that point?

1 A. When we heard the first shot, Bubba went to turn, but he
2 couldn't make it all the way.

3 Q. And then what did you hear?

4 A. Just the rest of the gunshots went off when...

5 Q. After -- after you saw Bubba turn, what did you do?

6 A. I was on the ground.

7 Q. Okay. Were you looking at Bubba and the defendant or
8 what were you doing?

9 A. I was crushed in between my car door and wedged in
10 between my car door and my car door was open.

11 Q. When you and Bubba got to [REDACTED] Road, was
12 it dark or was it light?

13 A. It was still light outside, sir.

14 Q. Still light outside?

15 A. Yes, sir.

16 Q. Do you recall whether or not there was any streetlights
17 or anything in that area close to the house?

18 A. Yes, there are streetlights. There was a -- I mean a
19 light pole right there.

20 Q. And there's a light on it?

21 A. Yes, sir.

22 Q. Do you know of your own knowledge whether or not it
23 points towards [REDACTED] Branch Road or does it point
24 away?

25 A. It points towards.

1 Q. Towards? Okay. So after the first shot, you looked
2 down to the ground, didn't look up.

3 A. No, sir.

4 Q. Do you recall what Mr. Darien was wearing?

5 A. It was like a -- he had on like a bulletproof vest and
6 like an army-fatigue-looking shirt.

7 Q. Now, had you seen Mr. Darien earlier that day?

8 A. Yes, sir.

9 Q. Do you recall what he was doing earlier that day when
10 you saw him?

11 A. Riding up and down the road on a four wheeler, sir.

12 Q. Do you recall whether or not he had this bulletproof
13 vest on?

14 A. No, sir.

15 Mr. Knight: Okay. If the court would indulge me one
16 moment.

17 The Court: Yes, sir.

18 By Mr. Knight:

19 Q. Do you know who broke the fight up between Bubba and
20 Eric?

21 A. Well, his -- Eric's mother was over there. Anthony was
22 over there asking Bubba to get off of him. Bubba just
23 basically just got off himself because nobody could get Bubba
24 off of Eric.

25 Q. Okay. Do you recall how many gunshots you heard?

1 A. I heard five shots, sir.

2 Q. Five? Did Bubba have a gun?

3 A. Not on him, sir.

4 Q. Not on him?

5 A. No, sir.

6 **Mr. Knight:** Ms. White, if you would answer any
7 questions that Mr. McCloskie may have.

8 **Mr. McCloskie:** Thank you, Mr. Knight. May it please
9 the Court?

10 **The Court:** Yes, sir.

11 Cross-Examination

12 By Mr. McCloskie:

13 Q. Good morning, Ms. White.

14 A. Good morning, sir.

15 Q. I need to ask you a few questions. First of all, let's
16 kind of go backwards here. You say that Bubba didn't have a
17 gun on him.

18 A. Meaning that he didn't have one there at the scene. He
19 owned shotguns, sir.

20 Q. All right. But Bubba owned a gun?

21 A. He owned several guns. He's a hunter.

22 Q. All right. But he didn't have one on there. That's
23 what you're saying?

24 A. They were at our address in...

25 Q. You deny him hollering at you when he got off of Eric,

1 "Go get my gun"?

2 A. He didn't tell me to go get his gun. He told me to take
3 him home to get his gun.

4 Q. And he wanted to get his gun for what purpose?

5 A. I don't know, sir.

6 Q. Well, it's night. He ain't going hunting, is he?

7 A. No, sir.

8 Q. Unless it's hunting Eric Darien. Is that right?

9 A. If that's how you feel, sir.

10 Q. How I feel is not important; I'm asking you what
11 happened. Now, you say that after they started -- after the
12 first shot was fired, you didn't see anything after that.

13 A. After the first shot was fired, I seen that first
14 bullet. Then Eric just -- it's an automatic. It just -- the
15 bullets just kept coming, sir.

16 Q. Just bam bam bam bam.

17 A. Bam bam bam.

18 Q. That quick?

19 A. No -- without no remorse.

20 Q. But you didn't see that. You just heard it because you
21 were hiding down between the car and the car door. Is that
22 what you said?

23 A. Yes, sir. Yes, sir.

24 Q. All right. Now, you testified about some lights. Were
25 the lights on? The light on the pole, was it on?

1 A. When? When Eric shot him?

2 Q. Yeah.

3 A. Yeah, the lights was on then, sir.

4 Q. And those are automatic lights that come on when it gets
5 dark?

6 A. Yes, sir.

7 Q. All right. Now, do you recall talking to Corporal Ashby
8 on September the 29th right after this happened?

9 A. I don't know any of the detectives' names. I can't
10 remember none of their names.

11 Q. Well, tell me this: Do you recall talking to a
12 detective?

13 A. I talked to a guy in the -- at the -- at the detective
14 station, sir.

15 Q. All right. And was he writing notes down as you talked
16 to him?

17 A. Yes, sir.

18 Q. And he was asking you questions, was he?

19 A. Yes, sir.

20 Q. And you were telling him the truth, were you?

21 A. Yes, sir.

22 Q. All right. And was there a recording also made of this?

23 A. I'm not sure, sir.

24 **Mr. McCloskie:** Okay. Let me -- if I may with your
25 permission, Your Honor, approach the witness.

1 **The Court:** You may.

2 By Mr. McCloskie:

3 Q. Let me give you a copy of the incident report which
4 memorializes this conference you had with a detective, and it
5 starts on the bottom of that page. Do you see where it
6 starts off "synopsis" on today's date, September the 29th?

7 A. Yes, sir.

8 Q. All right. Now, you use this, if it refreshes your
9 memory at all. But one of the things you said was that when
10 Bubba saw Eric, you told the detective that Bubba told you to
11 stop the car now. Isn't that what that says?

12 A. He did and then I didn't -- was able to stop the car
13 right then.

14 Q. But that's what Bubba said: Stop the car now.

15 A. Uh-huh.

16 Q. And you said that Bubba jumped out of the car. Is that
17 right?

18 A. Yes, sir.

19 Q. Do you see that down there? And then the next thing she
20 knows, that's you -- this is what you said, according to the
21 police. The next thing you know is that Furman, Bubba, hits
22 Darien, Eric. Isn't that right? Isn't that what that says?

23 A. That's what it says.

24 Q. All right. Well, isn't that what you told them?

25 A. That's not what I just said. Eric -- Eric swung first.

1 Q. Did you -- do you see anywhere in that report where it
2 says anything about you telling that police officer that Eric
3 swung first?

4 A. No, sir.

5 Q. Anything at all? Look at it carefully.

6 A. I see it, sir.

7 Q. Can you find anything in there where you told the police
8 that Eric swung first?

9 A. I don't know.

10 Q. Well, tell me this: Can you find anything in there
11 where you told the police that Eric had on a bulletproof
12 vest? Can you find that?

13 A. I don't even know what you're talking about, sir.

14 Q. Well, you just testified that Eric had on a bulletproof
15 vest.

16 A. I did, but you're telling me to find it here, sir, but I
17 don't see it here.

18 Q. That's because you didn't tell the police that, did you?

19 A. I sure did. I told them all of that, sir.

20 Q. And that would be on the recording if we had it?

21 A. I don't know where you're going to find that, sir.

22 Q. All right. Well, tell me this: Is that part of the
23 report on the second page? If you would flip that page over,
24 please, ma'am, if you would like. Up close to the top on the
25 second line it says, "Tamika Furman came on to the outside

1 and she began to try to get her brother off of the victim --
2 her brother, the victim, off of Darien." Do you see that?

3 A. Uh-huh.

4 Q. All right. And then it says, "Mrs. White stated that
5 Tamika Furman was unable to get her brother Furman off of
6 Darien," and what's the other -- what's the rest of that
7 sentence say?

8 A. What?

9 Q. What does it say?

10 A. "Mrs. White stated that as Furman was walking toward her
11 Darien ran up behind---"

12 Q. No, no. You're skipping something. "She began to try
13 to get her brother, the victim, off of Darien. Mrs. White
14 stated that Tamika Furman was unable to get her brother
15 Furman off of Darien because..." Do you see that? What's
16 the rest of the sentence read? Well, let me help you out.

17 Mr. Knight: The lighting up there is not that good.
18 She may not be able to see it.

19 The Court: Ma'am, can you see?

20 The Witness: I don't even know where he's at so...

21 The Court: All right. If you'd like to, Mr. McCloskie,
22 you may orient her to the page.

23 Mr. McCloskie: Thank you, ma'am.

24 By Mr. McCloskie:

25 Q. Ms. White, I'm sorry. See it right here?

1 A. "Because nobody could do nothing with Bubba when he's
2 mad."

3 Q. "Because nobody could do nothing with Bubba when he's
4 mad." You told them that, didn't you?

5 A. Yes.

6 Q. And he was mad, wasn't he?

7 A. He was very upset.

8 Q. Yeah. He was in a rage, wasn't he? Wasn't he?

9 A. I guess if you want to call it that, sir. I don't know.

10 Mr. McCloskie: Thank you, ma'am.

11 Mr. Knight: Just one question.

12 The Court: Yes, sir.

13 Redirect Examination

14 By Mr. Knight:

15 Q. Mr. McCloskie asked you about the report that you have a
16 copy of in front of you about that you said in the report
17 that Bubba jumped out of the car and swung at Eric Darien.
18 Were you asked by an investigator who swung first that night?

19 A. No, sir.

20 Mr. Knight: Okay. That's all I have. May she be
21 excused?

22 The Court: Mr. McCloskie?

23 Mr. McCloskie: May I recross briefly?

24 The Court: Yes, sir.

25

Recross Examination

By Mr. McCloskie:

Q. But if that were so, you would have certainly told the police something different than Furman hit Eric first, wouldn't you? You would have told them that, wouldn't you?

A. I don't know, sir.

Mr. McCloskie: Thank you, ma'am. I have no objection to her being excused.

Mr. Knight: May she be excused? She has to go to school.

Mr. McCloskie: No objection.

The Court: You are excused, Ms. White. Thank you, ma'am. Mr. Knight, if you would call your next witness.

Mr. Knight: Tamika Furman. Oh, okay. That's okay. I call Y'Briana Furman.

The Court: Briana?

Mr. Knight: Briana.

Y'Briana Furman, after being duly sworn, testified as follows:

The Court: Ms. Furman, will you please state your name for the record and spell your first name for my court reporter?

The Witness: Y'Briana Furman. Y. Apostrophe B-r-i-a-n-a.

The Court: Thank you, ma'am. Mr. Knight?

Direct Examination

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By Mr. Knight:

Q. Your nickname is Bri?

A. Uh-huh.

Q. May I call you Bri?

A. My dad? Did you say what my dad called me?

Q. No. Is that your nickname?

A. Oh, Yes.

Q. All right. Bri, are you related to Richard Furman?

A. Yes.

Q. You're going to have to speak up now.

A. Yes.

The Court: Ms. Furman, you need to sit a little closer to the microphone. Okay? Thank you. Ma'am, would you go ahead and throw your gum out, please? There you go. Thank you.

By Mr. Knight:

Q. How are you related to Richard Furman?

A. Daughter.

Q. He was your father?

A. (Witness nodded head up and down.)

Q. You've got to -- you can't shake your head. You've got to answer so she can take it down. Okay?

A. Oh, okay.

Q. On September the 29th of 2008, where did you live?

1 A. Pineland.

2 Q. Pineland?

3 A. (Witness nodded head up and down.)

4 Q. And who did you live with?

5 A. Tamika.

6 Q. Tamika who?

7 A. Furman.

8 Q. Okay. Were you home on September the 29th of 2008?

9 A. Yes, sir.

10 Q. Home being [REDACTED] Road.

11 A. Yes, sir.

12 Q. What happened that night?

13 A. I was asleep, and Jamontay, he came in my room---

14 Q. Who is Jamontay?

15 A. Darien.

16 Q. Okay.

17 A. He came in my room. He said, "Bri, come get your daddy.

18 He's fighting my daddy." So I went outside and stood on the

19 porch, and I was calling my daddy's name. He wasn't

20 listening to me. By that time they was breaking up. So I

21 went off the porch. My dad said, "Shakaria, take me to get

22 my gun." So he turned around, and when he turned around, I

23 seen Eric pull out his gun and like aim at him from the back,

24 but we yelled, so my daddy missed it. So he turned around

25 and they was like charging at each other, and that's when I

1 seen him shoot him in the back.

2 Q. You saw who shoot your father in the back?

3 A. Eric. Eric.

4 Q. Eric?

5 A. Uh-huh.

6 Q. You've got to -- you have to respond. You can't just
7 shake your head.

8 A. Oh, Yes.

9 **The Court:** Ma'am, you need to say yes or no.

10 **The Witness:** Okay.

11 **The Court:** All right?

12 **The Witness:** Yes.

13 By Mr. Knight:

14 Q. Okay. You saw the fight?

15 A. Huh-uh.

16 **The Court:** Is that a---

17 **The Witness:** No.

18 **The Court:** ---no for the record?

19 **The Witness:** No.

20 **The Court:** Thank you, ma'am.

21 By Mr. Knight:

22 Q. No? Okay. Thank you, ma'am. You came out and stood on
23 the porch?

24 A. Yes.

25 Q. How was the lighting conditions out there?

1 A. There was one light post, and that was right over where
2 the fight was.

3 Q. Okay. How far away were you from where the fight was
4 going on? And I'll come up here and you tell me to stop.

5 A. Where the fight was?

6 Q. Uh-huh.

7 A. Keep moving. Keep going. Keep going. Keep moving.
8 Keep on going. Keep on going. Keep on going. Keep on
9 going. Keep going. A little further than that.

10 Q. Okay. At least this distance?

11 A. Yeah.

12 Q. Okay. Now, when the -- did you come off the steps?

13 A. Yes.

14 Q. When did you come off the steps?

15 A. After my daddy -- when he was about to walk to the car.

16 Q. Okay. When he was about -- when your daddy was about to
17 walk to the car, where was Eric Darien?

18 A. Still where the fight was. It wasn't that far away from
19 -- he was walking to the car. The car was probably a little
20 by that chair that's behind you. The car probably was right
21 there, and he was walking towards the chair -- the car.

22 Q. So this would be the car?

23 A. Uh-huh.

24 Q. He was walking -- your father was walking towards the---

25 A. Yes.

1 Q. ---car?

2 A. Yes.

3 Q. How far was Eric Darien behind your father? And I'll
4 stop. You tell me when to stop.

5 A. You can stop.

6 Q. About eight, ten feet?

7 A. (Witness nodded head up and down.)

8 Q. You have to answer.

9 A. Yes.

10 Q. You can't shake your head. I'm sorry. She has to take
11 everything down. Okay?

12 A. Okay.

13 Q. Everything we say in here she's got a -- she's doing
14 this little thing here. That means she's recording
15 everything.

16 A. Yes.

17 **The Court:** She can't take down an uh-huh or an huh-uh.

18 **The Witness:** Okay.

19 **The Court:** It doesn't translate. All right? Thank
20 you.

21 By Mr. Knight:

22 Q. Was there anything blocking your view seeing your father
23 walk to the car and seeing Eric Darien?

24 A. No.

25 Q. Okay. And what did you see Eric Darien do when your

1 father was walking toward the car?

2 A. He pulled out his gun to try to shoot him in the back.

3 Q. Okay. Did the -- how many shots did you hear?

4 A. I heard three.

5 Q. After the first shot, what, if anything, did your father
6 do?

7 A. That's when they just started -- he started charging
8 towards (unintelligible words spoken)---

9 Court Reporter: I'm sorry. He started what?

10 The Witness: They started charging towards each other.

11 By Mr. Knight:

12 Q. Okay. Your father charged towards Eric?

13 A. Uh-huh.

14 Q. And Eric charged towards your father?

15 A. Yes.

16 Q. Okay. And did you see Eric shoot the gun anymore?

17 A. Yes.

18 Q. How many times did he shoot?

19 A. I think it was one.

20 Q. One more time?

21 A. One.

22 Q. And did he shoot your father in the front or in the
23 back?

24 A. I saw the back.

25 Q. In the back.

1 A. (Witness nodded head up and down.)

2 Q. Okay. Do you know what the distance was when he was
3 firing the gun at your father's back?

4 A. Oh, he was very close.

5 Q. Very close.

6 A. Very close.

7 Q. You tell me when to stop.

8 A. Stop.

9 Q. Okay. Three to five feet?

10 A. Yes.

11 Q. Okay. When Eric was shooting your father, was he on top
12 of your father or was he, Eric, standing up?

13 A. They were standing up.

14 Q. After the shooting, what did Eric do?

15 A. He walked away in the hole.

16 Q. In the hole?

17 A. It's a little dirt road right beside the house.

18 Q. Did he run?

19 A. I didn't see him run.

20 Q. You saw him walk.

21 A. Uh-huh.

22 Q. Bri, answer any questions Mr. McCloskie may have. Okay?
23 Speak up. Don't nod your head. Okay?

24 A. Uh-huh.

25 **Mr. McCloskie:** May it please the Court?

2 Cross-Examination

4 Q. Good morning, Ms. Furman. How are you?

6 Q. I just have a few questions to ask you. Do you remember
7 talking to Detective Hipp about this?

9 | Q. Kind of a stocky fellow?

11 Q. And do you remember him recording this?

13 Q. Okay. So you know there's a recording of your
14 interview.

16 Q. All right. Is that -- is that...

18 Q. Do you know... When you were sleeping, as I understand
19 it, and Jamontay came into your room and woke you up and told
20 you to go get your daddy off of his daddy -- isn't that --
21 isn't that true?

23 Q. All right. And then you went outside, but the fight had
24 already broken up.

25 | A. Yes.

1 Q. All right. And you heard Mr. Furman, your father, tell
2 his girlfriend, Shakaria White, to take him to the house to
3 get his gun.

4 A. Yes.

5 Q. You heard that. Then you heard a gun cock and you heard
6 a shot.

7 A. Yes.

8 Q. Is that right?

9 A. Yes.

10 Q. And then you saw your daddy turn around and charge Eric
11 Darien, didn't you?

12 A. Yes.

13 Q. Is that right?

14 A. Yes.

15 Q. And you told Detective Hipp when he interviewed you that
16 they, meaning Eric Darien and your daddy, were on the ground
17 when Eric shot him. Do you remember that?

18 A. One shot when he was on the ground.

19 Q. Did you tell Detective Hipp that both of them were on
20 the ground when your father got shot?

21 A. I don't recall.

22 Q. Detective Hipp would remember that, wouldn't he?

23 A. Yes.

24 **Mr. McCloskie:** That's all I have. Thank you, ma'am.

25 **The Court:** Mr. Knight?

1 **Mr. Knight:** May she be excused, Your Honor?

2 **Mr. McCloskie:** Without objection.

3 **The Court:** You're excused, Ms. Furman. Thank you.

4 **Mr. Knight:** Do you want to call another witness or do
5 you want to take a break?

6 **The Court:** How long is it going to take? A little bit?

7 **Mr. Knight:** About the same length, maybe a little bit
8 little longer.

9 **The Court:** Okay. All right. Ladies and gentlemen of
10 the jury, are you all right or do you want to go ahead and
11 take a break at this point? Anyone? All right. All right.
12 Ladies and gentlemen, we'll go ahead, and if you'll call your
13 next witness, we'll take a break after that.

14 **Mr. Knight:** Jamontay Darien.

15 **The Court:** All right.

16 Jamontay Darien, after being duly sworn, testified
17 as follows:

18 **The Court:** Mr. Darien, would you give us your name for
19 the record and spell your first name for the court reporter?

20 **The Witness:** Jamontay Darien, J-a-m-o-n-t-a-y.

21 **The Court:** All right. And, Mr. Darien, I'm going to
22 ask that you move a little closer to the microphone and I'm
23 going to ask that you speak as loudly as you can, and in
24 response to the questions I need to make sure that you say
25 yes or no. My court reporter can't take down a head nod or

1 an uh-huh or an huh-uh. Okay?

2 **The Witness:** Yes, ma'am.

3 **The Court:** All right. I appreciate it, and get a
4 little closer to that microphone to make sure everybody can
5 hear you. All right, sir?

6 **The Witness:** Yes, ma'am.

7 **The Court:** Thank you.

8 Direct Examination

9 By Mr. Knight:

10 Q. Jamontay?

11 A. Yes, sir.

12 Q. Make sure you speak up and answer the questions. Don't
13 nod your head. Okay?

14 A. Yes.

15 Q. I'm not preaching. She has to take everything down.
16 Okay?

17 A. Yes, sir.

18 Q. Jamontay, who is your father?

19 A. Eric Darien.

20 Q. And who is your mother?

21 A. Tamika Furman.

22 Q. Okay. On September the 29th of 2008 where did you live?

23 A. Behind the post office.

24 Q. You lived with your mother?

25 A. Yes, sir.

1 Q. Tamika Furman?

2 A. Yes, sir.

3 Q. Okay. Were you home on September the 29th, 2008?

4 A. Yes, sir.

5 Q. About 7:30 at night?

6 A. Yes, sir.

7 Q. Okay. What, if anything, were you told about 7:30?

8 A. I was sleeping.

9 Q. You were sleeping?

10 Mr. McCloskie: I object, Your Honor. He can say -- he
11 can testify as to what he did in response to what he was
12 told.

13 The Court: Right. Okay.

14 Mr. Knight: What did you do in response---

15 The Court: Thank you.

16 Mr. Knight: ---to what you were told?

17 The Court: Sustained.

18 The Witness: (No response.)

19 The Court: Mr. Knight, why don't you rephrase the
20 question? Mr. Darien, you can't say what someone else told
21 you, but you can say what you did. Do you understand that?

22 The Witness: Yes, ma'am.

23 The Court: So, Mr. Knight, why don't you rephrase the
24 question for Mr. Darien?

25 By Mr. Knight:

- 1 Q. You were in bed?
- 2 A. Yes, sir. I was sleeping.
- 3 Q. Did you get up?
- 4 A. Yes, sir.
- 5 Q. What did you do after you got up?
- 6 A. I got up and went to the door. My mama told me to---
- 7 Q. Wait. Don't tell what your mama said. Just say what
- 8 you did.
- 9 A. I went to the door.
- 10 Q. You're going to have to speak up, too.
- 11 A. I went to the door. I went back to get a shirt, and I
- 12 walked outside. Then I went down the step and I turned. I
- 13 saw my uncle -- my uncle and my daddy on the ground fighting.
- 14 Q. Okay. Your uncle is Bubba Furman?
- 15 A. Yes, sir.
- 16 Q. And your daddy is Eric Darien.
- 17 A. Yes, sir.
- 18 Q. Okay. Did you stay on the steps or did you go down
- 19 there where they were fighting?
- 20 A. I go down where they was fighting.
- 21 Q. How far away from them -- from them were you when you
- 22 saw them fighting?
- 23 A. I don't know.
- 24 Q. Well, I'll just be where the fight was going on. Tell
- 25 me when to stop.

1 A. Right there.

2 Q. Right here?

3 A. Yes, sir.

4 Q. Okay. Did the fight stop?

5 A. Yes, sir.

6 Q. What happened then?

7 A. Then my uncle got up. Then my daddy got up. Then my
8 daddy walked the other way. Then he turned back around and
9 he picked something up, picked two things up. He dropped
10 one. He walked the other way.

11 Q. What was the other thing he picked up?

12 A. He picked up -- it was two black things on the ground.

13 Q. Okay. Did you see a weapon in your father's hand?

14 A. Yes, sir.

15 Q. What did your father do with the gun?

16 A. He shot.

17 Q. I'm sorry. You have to speak up now.

18 A. He shot.

19 Q. He shot? Which direction did he shoot?

20 A. He shot towards the woods.

21 Q. Okay. Is that where your uncle was at?

22 A. Yes, sir.

23 Q. What did your uncle do when the shot went off?

24 A. He ducked. He dropped down to the ground.

25 Q. Okay. Then what did your uncle do?

1 A. Then he charged.

2 Q. Charged who?

3 A. He charged at my daddy.

4 Q. What did your daddy do?

5 A. He had fallen to the ground. Then the shots went off.

6 Q. And your daddy had the gun?

7 A. Yes, sir.

8 Q. And how many times when they were on the ground did your
9 father pull the trigger?

10 A. Three times.

11 Q. Three times?

12 A. Yes, sir.

13 Q. You need to speak up because I don't like having to
14 repeat you. Okay?

15 A. Yes, sir.

16 Q. It sounds like I'm testifying. What was your uncle
17 doing when the first shot went off?

18 A. He -- when he was standing up?

19 Q. Uh-huh.

20 A. He ducked.

21 Q. No. What was he doing? Was he walking toward your
22 father or away from your father?

23 A. Away.

24 Q. Away from your father. Do you know where he was going?

25 A. No, sir.

1 Q. But he was walking away.

2 A. Yeah, and he turned back around.

3 Q. He turned back around.

4 A. (Witness nodded head up and down.)

5 Q. After the first shot?

6 A. No. He walked away. Then he turned back around. Then
7 the first shot happened.

8 Q. Who was out there other than your father and Eric and
9 Bubba Furman when the fight was going on? People. Do you
10 remember?

11 A. Yes, sir. There was---

12 Q. Speak up now.

13 A. It was me, my uncle, dad, and my auntie Joanne and some
14 other people and my mom and Bri.

15 Q. When your uncle was walking away, what was your father
16 doing?

17 A. He was getting up off the ground.

18 Q. Okay. When he got up off the ground, what did he do?

19 A. He walked towards two things on the ground that was
20 black---

21 Court Reporter: I'm sorry. Walked towards what?

22 The Witness: He walked towards two things on the
23 ground.

24 By Mr. Knight:

25 Q. And what were those two things?

1 A. It was a phone and a gun.

2 Q. I'm sorry?

3 A. It was a phone and a gun.

4 Q. Okay. Do you know what kind of clothes your father was
5 wearing that night?

6 A. He was wearing a white shirt and some shorts -- I think
7 some short pants and some white shoes.

8 Q. Anything else?

9 A. No, sir.

10 Q. Okay. When you heard the first shot, what did you do?

11 A. I was still froze. I was still standing up, just
12 frozen.

13 Q. Just frozen?

14 A. (Witness nodded head up and down.)

15 Q. Jamontay, I want you to answer any questions Mr.
16 McCloskie may have. Okay?

17 A. Yes, sir.

18 **Mr. Knight:** Speak up.

19 **Mr. McCloskie:** Thank you, Mr. Knight. May it please
20 the Court?

21 **The Court:** Yes, sir.

22 Cross-Examination

23 By Mr. McCloskie:

24 Q. Good morning, Mr. Darien.

25 A. Good morning.

1 Q. How are you?

2 A. Fine.

3 Q. Do you remember talking to a detective by the name of
4 Donald Hipp?

5 A. No.

6 Q. Kind of a stout fellow, big fellow? Did you talk to him
7 on October the 1st? I believe you were with your aunt, Ms.
8 Harris?

9 A. Yes, sir.

10 Q. Do you remember that?

11 A. Yes, sir.

12 Q. Did you know that that interview was being recorded?

13 A. No, sir.

14 Q. You did not?

15 A. (Witness shook head from side to side.)

16 Q. There was something on that interview about you seeing a
17 car pull away. Do you remember that?

18 A. After -- after everything had happened, I saw a car pull
19 away.

20 Court Reporter: I'm sorry. You're going to have to
21 speak up.

22 The Witness: After the car pulled away -- after
23 everything had happened, the car pulled away.

24 By Mr. McCloskie:

25 Q. And how quickly after everything happened did that car

1 pull away?

2 A. It pulled fast because my mama was driving it.

3 Q. Your mama was driving?

4 A. Yes, ma'am (sic).

5 Q. And was Shakaria White in that car?

6 A. No, sir.

7 Q. All right. Where was your mama going? Do you know?

8 A. No, sir.

9 Q. Did you tell the police officers that Shakaria White was
10 driving that car that pulled out---

11 A. No, sir.

12 Q. ---right after this? But you told -- you told Mr. Hipp
13 that you saw your Uncle Bubba tackle your daddy, Eric. Isn't
14 that right?

15 A. Yes, sir.

16 Q. And that you saw your uncle keep on punching your daddy.
17 Isn't that right?

18 A. Yes, sir.

19 Q. And your uncle was on top of your daddy, wasn't he?

20 A. Yes, sir.

21 Q. And you told Officer Hipp that your daddy was bleeding
22 real bad. You told him that, didn't you?

23 A. No, sir.

24 Q. You don't remember doing that?

25 A. No, sir.

1 Q. Mr. Hipp would remember that, wouldn't he, if that was
2 so?

3 A. Yes, sir.

4 Q. Sure he would. And then you told him that you heard one
5 shot and that was your daddy and he was shooting toward the
6 woods.

7 A. Yeah, at my uncle.

8 Q. I'm sorry?

9 A. At my uncle.

10 Q. At your uncle. And at that point your uncle had turned
11 around. Isn't that what you had just testified to? And was
12 walking toward---

13 A. He was walking away. Then he turned back around.

14 Q. Right. And then he charged your daddy, didn't he?

15 A. After the first shot happened.

16 Q. Right. He charged him.

17 A. Yes, sir.

18 Q. And he tackled him.

19 A. Yes, sir, and then he fall on the ground.

20 Q. And they went on the ground. That's when you heard the
21 three shots or did you hear that?

22 A. Yes, sir, I heard the three shots.

23 Q. Now, the other people there were your uncle who?

24 A. It was me, my cousin Bri.

25 Q. Speak up just a little bit now.

1 A. It was me and my mom, my cousin Bri, and my grandma.

2 Q. And your grandmother is Ms. Margie Darien?

3 A. Yes, sir.

4 Q. Okay. And who else?

5 A. And other---

6 Q. You said something about somebody -- an Anthony being
7 there?

8 A. Anthony? I don't remember that.

9 Q. Okay. I think that's all I have, Mr. Darien, but if you
10 would be patient with me, I'll let you know in a minute. How
11 is that?

12 A. Yes, sir.

13 **Mr. McCloskie:** Thank you, Mr. Darien. No other -- no
14 exceptions -- no objection to this witness being excused.

15 **The Court:** Mr. Knight?

16 **Mr. Knight:** May he be excused, Your Honor?

17 **The Court:** He may be excused. All right. Ladies and
18 gentlemen of the jury, we're going to go ahead and take a
19 brief break. It's getting close to noon, and I intend to
20 probably run 'til roughly 1:00, maybe a little bit after
21 then. Then we'll break for lunch. Again, ladies and
22 gentlemen, I need to caution you: When you go back to the
23 jury room, you are not to begin discussing this case. It
24 wouldn't be appropriate to do so at this time. You haven't
25 heard all the evidence nor the arguments from the lawyers nor

1 my charge on the law. So with that said, go get a cup of
2 coffee or a Coke and we'll bring you back in just a few
3 minutes when you've had a chance to refresh yourself. Thank
4 you.

5 (Whereupon, the jury was excused from open court at
6 12:02 p.m.)

7 The Court: Gentlemen, is there anything we need to put
8 on the record before we take a break?

9 Mr. Knight: No, ma'am.

10 Mr. McCloskie: I think not. Thank you, Your Honor.

11 The Court: All right. Mr. Knight, you just need to let
12 me know that there's anyone that's here that you want to get
13 up before lunch. I'll just take wherever your natural break
14 is.

15 Mr. Knight: Tamika is next.

16 The Court: Okay. Fine. And I just didn't know if you
17 had anyone from SLED here or anyone else that you needed to
18 get...

19 (An off-the-record discussion took place between Mr.
20 Knight and Mr. McCloskie.)

21 The Court: Okay. You just let me know.

22 Mr. Knight: Mr. McCloskie needs an extra five minutes.

23 The Court: Absolutely. You can have it. Gentlemen, 15
24 after? Twenty after? You tell me.

25 Mr. Knight: Fifteen should be sufficient.

1 The Court: Is that enough?

2 Mr. McCloskie: If Mr. Knight says so.

3 The Court: All right. You -- all right. So 20 after,
4 y'all. We'll take a break until 20 after. Thank you.

5 (Whereupon, a short break was taken.)

6 The Court: Thank you, y'all. Please be seated. State
7 ready?

8 Mr. Knight: Yes, Your Honor.

9 The Court: Defense ready?

10 Mr. McCloskie: We are. Thank you, Your Honor.

11 The Court: All right. Let's go ahead and bring the
12 jury in.

13 Mr. Knight: Your Honor, this will be the last witness
14 before lunch.

15 The Court: Okay.

16 (Whereupon, the jury was brought into open court at
17 12:37 p.m.)

18 The Court: Welcome back, ladies and gentlemen of the
19 jury. Mr. Knight, if you'll call your next witness, sir.

20 Mr. Knight: Tamika Furman.

21 Tamika N. Furman, after being duly sworn, testified
22 as follows:

23 The Court: Ms. Furman, come take a seat and I'm going
24 to ask that you come close to the microphone to make sure
25 everyone can hear you. And if you would give us your name

1 for the record and spell your first name for my court
2 reporter, please.

3 The Witness: Tamika Nicole Furman. T-a-m-i-k-a.

4 The Court: Thank you, Ms. Furman. Mr. Knight?

5 Mr. Knight: May it please the Court, Your Honor?

6 The Court: Yes, sir.

7 Direct Examination

8 By Mr. Knight:

9 Q. Tamika, where do you reside? Where do you live?

10 A. [REDACTED] Road, Pineland, South Carolina.

11 Q. Do you know Richard Bubba Furman?

12 A. Yes, sir.

13 Q. How do you know him?

14 A. That's my brother.

15 Q. That's your brother.

16 The Court: I'm sorry. I couldn't hear. I apologize.

17 The Witness: Yes, that's my brother.

18 The Court: Okay. Thank you.

19 Mr. Knight: Are you ready?

20 The Court: Yes.

21 Mr. Knight: Did you hear her?

22 The Court: Yeah. She just needed to take her hand away
23 from her mouth. Okay?

24 By Mr. Knight:

25 Q. And do you know the defendant, Eric Darien?

- 1 A. Yes, sir.
- 2 Q. How do you know Mr. Darien?
- 3 A. He's my son's father.
- 4 Q. And your son's name is?
- 5 A. Jamontay Darien.
- 6 Q. Okay. On September the 29th of 2008 did you reside at
- 7 [REDACTED] Road?
- 8 A. Yes, sir.
- 9 Q. Who lived there with you?
- 10 A. Me, my son, and at the time my niece.
- 11 Q. Your niece's name?
- 12 A. Y'Briana Furman.
- 13 Q. Do you recall the 29th of September?
- 14 A. Yes, sir.
- 15 Q. What was the first thing you heard or observed that
- 16 evening around 7 or 7:30?
- 17 A. Just getting a phone call from him to see his son.
- 18 Q. From who?
- 19 A. Mr. Darien.
- 20 Q. Wanted to see his son?
- 21 A. Yes, sir.
- 22 Q. And what, if anything, did you tell him about seeing his
- 23 son?
- 24 A. I replied for him to go to his mother's house and I
- 25 would send him over there.

1 Q. You would send who?

2 A. My son.

3 Q. His mother's house is not too far from your house, is
4 it?

5 A. No, sir, it's not that far.

6 Q. How far approximately?

7 A. I don't know. It's just like right next door.

8 Q. Okay. And what's the next thing you did?

9 A. I went to get my -- wake up my son which he was sleeping
10 in his room and tell him to go see his daddy.

11 Q. And where -- did you tell him where to go?

12 A. Yes, to his grandmama's house.

13 Q. Okay. And then what's the next thing you did or heard?

14 A. When I woke him up -- he didn't have his jacket on, so I
15 fussed at him to get his jacket, and that's when I heard the
16 commotion outside.

17 Q. When you heard the commotion outside, what, if anything,
18 did you do?

19 A. I went outside to look to see what was going on.

20 Q. And what did you see when you went outside?

21 A. Mr. Darien and my brother was tussling. My brother was
22 on him tussling with him.

23 Q. And did you attempt to break the fight up?

24 A. Yes, sir.

25 Q. Were there any others out there that attempted to break

1 the fight up?

2 A. I was basically the only one telling him -- telling my
3 brother to stop, but there was other people there.

4 Q. Was his mother, Ms. Margie Darien, out there?

5 A. She came up a little bit after everything was still
6 going on to try to help me break it up.

7 Q. Okay. And did the fight stop?

8 A. It didn't immediately stop, but it did stop.

9 Q. Okay. What happened when it stopped?

10 A. There was some words exchanged between them, and my
11 brother got a little bit more madder and he was telling Ms.
12 White to take him home or something, and then the next thing
13 I know I just heard a gun click.

14 Q. Okay. When the fight had ended, where did your brother
15 go?

16 A. He was walking towards Ms. White's car.

17 Q. And do you know where Mr. Darien was when your brother
18 was walking towards Ms. White's car?

19 A. He was -- they just had got him off the ground, and he
20 was like -- his mama was talking to him. And then he came
21 from behind his mom and she was telling him no, before
22 anybody know what was happening that's when it went off.

23 Q. What went off?

24 A. The gun.

25 Q. Did you see Mr. Darien with a gun?

1 A. I didn't know where it was coming from.

2 Q. And when the gun went off, what, if anything, did you
3 do?

4 A. When I heard it shot, I screamed for my brother.

5 Court Reporter: You screamed?

6 The Witness: I screamed. I was screaming his name.

7 By Mr. Knight:

8 Q. Okay. When you screamed his name, what did you observe
9 that your brother did?

10 A. He turned and ducked, and a bullet went across his head.

11 Q. Okay. What then did your brother do?

12 A. He kind of like football-tackled Mr. Darien.

13 Q. He came at Mr. Darien?

14 A. Uh-huh.

15 Q. Before your brother came at Mr. Darien, what did Mr.
16 Darien do after the first---

17 A. He was just -- he just was standing there.

18 Q. Okay. So your brother like football-tackled Mr. Darien.

19 A. Yes, sir.

20 Q. Was it a high tackle up here or a low tackle?

21 A. Probably like midways, a little lower probably.

22 Q. When Mr. -- when Bubba, your brother---

23 A. Uh-huh.

24 Q. ---tackled Mr. Darien, what did Mr. Darien do?

25 A. He just was shooting. I don't know which way it was

1 going, but he was just firing a gun.

2 Q. Firing the gun.

3 A. Yes, sir.

4 Q. You saw the gun in Mr. Darien's hand?

5 A. Yes, sir, at that time.

6 Q. How many shots did you hear?

7 A. Probably like two or three at the first. I'm not sure,
8 but it was about two or three.

9 Q. Okay. After the last shot, what did Mr. Darien do?

10 A. They done had fall on the ground. So when my brother
11 started moving, his cousin told him to get up and he took him
12 over to his mom's house.

13 Q. That's Mr. Darien you're talking about?

14 A. Yes.

15 Q. When Mr. -- when your brother tackled Mr. Darien, who
16 was on top and who was on the bottom?

17 A. Well, Mr. Darien was still standing up, and my brother
18 was like in a football tackle position. So when they fell,
19 my brother was on the bottom and he was on top. Mr. Darien
20 was on top.

21 Q. Was your brother's face up or face down to the ground?

22 A. He was sideways.

23 Q. Sideways. After the fight was over, okay, did you see
24 the gun?

25 A. Not until he came from behind his mom with it.

1 Q. Tamika, I want you to answer any questions Mr. McCloskie
2 has. Okay?

3 A. Yes, sir.

4 Mr. McCloskie: Thank you, Mr. Knight. May it please
5 the Court?

6 The Court: Yes, sir.

7 Cross-Examination

8 By Mr. McCloskie:

9 Q. Good morning, Ms. Furman. How are you?

10 A. Fine.

11 Q. Good. I just have a few things I want to talk to you
12 about. You said something about after -- first of all, you
13 couldn't get him, your brother, off of Eric, could you?

14 A. No, sir.

15 Q. And -- but when he did get up, did I hear you say, and
16 you correct me if I'm wrong, that your brother just got
17 madder and madder?

18 A. There was some words they were saying back and forth to
19 each other.

20 Q. Uh-huh. And, of course, he was mad when the fight
21 started. You didn't see the fight start though, did you?

22 A. No, sir.

23 Q. Now, how long do you think this thing took in your
24 observation, from the time you got there and saw them
25 struggling on the ground 'til it was all over? It was a

1 matter of seconds, wasn't it?

2 A. No. I don't know. About ten minutes.

3 Q. About ten minutes?

4 A. That's when a lot of people started coming over was
5 about ten minutes because we was trying to break it up.

6 Q. Are you saying that Mr. Furman was beating on Eric for a
7 full ten minutes?

8 A. No, I can't tell you that because I don't know what time
9 it started. I'm just going from the time I walked outside
10 'til the end.

11 Q. Was ten minutes?

12 A. Yeah, somewhere close in that proximity.

13 Q. But the shooting was real fast, wasn't it?

14 A. Yes, sir.

15 Q. And you testified that your brother tackled Eric around
16 the waist?

17 A. Yes, sir.

18 Q. And then did that move Eric backwards?

19 A. No. They just kind of stumbled on the ground after the
20 shots was fired.

21 Q. They just tumbled on the ground.

22 A. Yes, sir.

23 Q. And you heard -- you heard your brother, Bubba, tell
24 Shamika (sic) White to do something.

25 A. Yeah. He said, "Karia, take me home," or something like

1 that.

2 Q. How about, "Get my gun"?

3 A. He probably did, sir, but I didn't hear it, so I don't
4 know.

5 Q. He probably did that though.

6 A. Yes, sir.

7 Mr. McCloskie: Thank you, ma'am. That's all I have.

8 The Court: Mr. Knight, anything further?

9 Mr. Knight: Nothing further from this witness. May she
10 be excused, Your Honor?

11 Mr. McCloskie: Without objection.

12 The Court: You are excused, ma'am. Thank you.

13 Mr. Knight: Your Honor, as I previously instructed the
14 Court, this will be the last witness before lunch.

15 The Court: All right. Ladies and gentlemen of the
16 jury, as you've just heard Mr. Knight say, this is going to
17 be our last witness before lunch. It right now is about a
18 quarter 'til 1. I'm going to ask, ladies and gentlemen, that
19 you be back in your jury room at 5 minutes 'til 2.

20 You are over the lunch hour free to go about and do
21 whatever you want. Go grab lunch. Go run errands, whatever
22 you need to do. The only instruction you have is if you
23 happen to run into anyone or speak to anyone over the lunch
24 hour, you are not to discuss this case.

25 Additionally, I know you've heard a little bit about

1 where it occurred. I don't think you're going to have time
2 to go out and look, but again out of an abundance of caution
3 I'm telling you that you're not to do any on-site visits.
4 All right? So with that said, ladies and gentlemen, I ask
5 that you all be back in your jury room at five minutes 'til
6 2, and I will bring you on out here and we'll continue the
7 trial of this case. All right? Thank you, y'all. Have a
8 nice lunch. You are excused.

9 (Whereupon, the jury was excused from open court to go
10 to lunch at 12:50 p.m.)

11 **The Court:** All right. Gentlemen, anything we need to
12 put on the record before we break for lunch?

13 **Mr. Knight:** Nothing from the State.

14 **Mr. McCloskie:** Not from the defense, Your Honor. Thank
15 you.

16 **The Court:** Okay. Y'all have a nice lunch, and we'll
17 see you back at about five minutes 'til 2.

18 **Mr. McCloskie:** Thank you.

19 **Mr. Knight:** Thank you, Your Honor.

20 **The Court:** Thank you.

21 (Whereupon, a lunch break was taken. State's exhibits 6
22 through 12 were marked for identification only.)

23 **The Court:** Thank you, y'all. Please be seated. Is the
24 State ready?

25 **Mr. Knight:** The State's ready, Your Honor.

1 **The Court:** Defense ready?

2 **Mr. McCloskie:** We are.

3 **The Court:** All right. Let's bring the jury in.

4 (Whereupon, the jury was brought into open court at 2:23
5 p.m.)

6 **The Court:** Welcome back, ladies and gentlemen of the
7 jury. At this time if the State would call their next
8 witness.

9 **Mr. Knight:** The State calls Dr. Nicholas Batalis.

10 **The Court:** Dr. Batalis, please come forward to be
11 sworn.

12 Nicholas I. Batalis, after being duly sworn,
13 testified as follows:

14 **The Court:** Dr. Batalis, if you'll give us your name for
15 the record and spell your last name for my court reporter.

16 **The Witness:** Yes. It's Nicholas I. Batalis.

17 **The Court:** I don't think that mic is on or it's not
18 close enough to you, one or the other.

19 **Mr. Knight:** I don't think it's on.

20 **The Witness:** My name is Nicholas I. Batalis. It's
21 B-a-t-a-l-i-s.

22 **The Court:** Thank you.

23 Direct Examination

24 By Mr. Knight:

25 Q. Doctor, are you licensed to practice medicine in the

1 State of South Carolina?

2 A. Yes, I am.

3 Q. Would you relate to the Court and the jury your
4 educational background, please?

5 A. I'm employed as a forensic pathologist at the Medical
6 University of South Carolina. My background before getting
7 there: I completed four years of college, got a degree at
8 Buckner University. After that, I went on to Indiana
9 University School of Medicine and completed a four-year
10 medical degree there.

11 Following that, I came down to Charleston, South
12 Carolina, for training in anatomic and clinical pathology at
13 the Medical University of South Carolina, then went on to do
14 a one-year fellowship with specialty training in forensic
15 pathology in Dallas, Texas, before coming back to work at
16 M.U.S.C. about a year and a half ago.

17 Q. And is your specialty forensic pathology?

18 A. It is.

19 Q. Okay.

20 Mr. McCloskie: If Your Honor please, at this time we'll
21 be glad to stipulate that Dr. Batalis is an expert in the
22 field of forensic pathology.

23 The Court: Okay.

24 Mr. McCloskie: And we will consent---

25 Court Reporter: I'm sorry. Say the last thing---

1 **The Court:** I'm sorry. The court reporter couldn't hear
2 the last, Mr. McCloskie...

3 **Mr. McCloskie:** We will consent to him being admitted to
4 testifying as such.

5 **The Court:** All right. Ladies and gentlemen of the
6 jury, typically a witness cannot give an opinion. We allow
7 an exception for that in cases where someone has been
8 designated as an expert witness in some field, science, or
9 art. In this case, Dr. Batalis is being admitted as an
10 expert in forensic pathology to give his opinion and his
11 maybe reasons for his opinion to that end.

12 However, ladies and gentlemen, just because Dr. Batalis
13 has been designated an expert does not mean you have to
14 accept the opinion. Certainly it's for you to do what you
15 believe is appropriate. So with that said, Mr. Knight,
16 continue.

17 By Mr. Knight:

18 Q. Doctor, during the month of September of 2008, do you
19 recall where you were employed?

20 A. Yes. I was employed at the Medical University of South
21 Carolina, Charleston.

22 Q. Did you have an occasion to perform an autopsy on a
23 Richard Furman?

24 A. I did. We performed the autopsy on September 30th of
25 2008.

1 Q. Where did you perform the autopsy?

2 A. We performed the autopsy at the university in
3 Charleston.

4 Q. Was this the first time you saw the victim?

5 A. Yes, it was.

6 Q. Let me ask you this. Did you take any photographs
7 during the autopsy?

8 A. Yeah. In general the first thing we do at the beginning
9 of the autopsy is take photographs as we receive the body,
10 then clean the body and then take another set of photographs.

11 Q. Do you recognize those photographs - and there's about
12 four or five of them - as the photographs that you took
13 during the autopsy on September the 30th of 2008?

14 A. Yes. These are some of the photographs that I took.

15 Mr. Knight: Mr. McCloskie, you have seen these.
16 Without objection?

17 Mr. McCloskie: I've seen those and agreed to their
18 being admitted without objection.

19 Mr. Knight: That's State's exhibit 8, State's exhibit
20 9, State's exhibit 10, State's exhibit 11, and State's
21 exhibit number 12.

22 The Court: State's exhibit 8 through 12 is admitted
23 without objection.

24 (State's exhibits 8 through 12 were received in
25 evidence.)

1 By Mr. Knight:

2 Q. Doctor, I ask you during the course of your autopsy --
3 if you'll look at State's exhibit number 12. What does that
4 depict, sir?

5 A. This is an x-ray we took of the body, and in the lower
6 corner, kind of the right side of the belly, there's an
7 opaque projectile which is what -- is a bullet that we're
8 seeing on the x-ray. We do x-rays routinely beforehand in
9 gunshot cases to detect bullets before we begin the autopsy.

10 Q. Okay, sir. Doctor, I ask you if you can identify this,
11 please, sir.

12 A. Yes. This is the bullet that we recovered from the
13 right side of the abdomen that we saw in the previous x-ray.

14 Mr. Knight: That's exhibit -- State's exhibit number 7.
15 I apologize.

16 Mr. McCloskie: Without objection.

17 Mr. Knight: Into evidence.

18 The Court: It's already in evidence.

19 (State's exhibit 7 was received in evidence.)

20 By Mr. Knight:

21 Q. Doctor, did you also have an occasion to withdraw blood
22 from the victim, Richard Furman, at that time?

23 A. Yes, we did.

24 Q. Okay. I show you State's exhibit number 6 and ask you
25 if that is the document you used to procure the blood and put

1 it inside a tube.

2 A. Yes, this is the blood we collected.

3 Q. Okay.

4 Mr. McCloskie: Without objection.

5 Mr. Knight: State's exhibit number 6, without
6 objection.

7 The Court: Without objection.

8 (State's exhibit 6 was received in evidence.)

9 By Mr. Knight:

10 Q. Doctor, in State's exhibit number 8 -- I show you
11 State's exhibit number 8. What do 8 and 9 depict?

12 A. Photographs or -- excuse me. State's exhibits 8 and 9
13 are photographs of the decedent's back, and they document the
14 three major findings of the autopsy and that is three gunshot
15 entrance wounds to the decedent's back.

16 Q. Okay. Now, is there a gunshot wound to the upper back?

17 A. Yes.

18 Q. Okay. How would you describe the range?

19 A. When we determine the range of a gunshot wound, we
20 depend on factors that we see on the skin itself. When a
21 bullet is fired from a gun, it's not the only thing that
22 comes out. One material that comes out is called soot, and
23 it's the burned-up gun powder gradoo that comes out of the
24 gun barrel. That travels up to about a foot from the barrel
25 of the gun.

1 Another thing that comes out of the gun when it's fired
2 is unburned flakes of gun powder. So not all the gun powder
3 gets burned up when you fire a gun, so some of these unburned
4 flakes of gun powder can go and then strike the skin and
5 cause little tiny scrapes on the skin. We call that
6 stippling. Stippling, depending on the gun and the
7 ammunition, will go out to about four feet.

8 Regarding the gunshot wound on the decedent's -- the
9 upper back, we did have a sparse amount of stippling on the
10 skin which tells us it was less than four feet away and there
11 was no soot present which tells us that the gun was further
12 than -- more than a foot away when it was fired. So it would
13 be between one and four feet or the intermediate range.

14 Q. Now, you also found a gunshot wound to the midback. Is
15 that correct?

16 A. Yes.

17 Q. And you described that as a contact wound.

18 A. Yes. This is a contact wound that -- we could tell that
19 for two different reasons. One is the soot material that I
20 referenced earlier that can go out to about a foot. In this
21 case we actually saw the soot extending into the wound, into
22 the back, the musculature in the decedent's body.

23 The other thing we see that's characteristic of a
24 contact wound is what we call a muzzle imprint or a muzzle
25 stamp which is from when the gun is pressed against the body

1 and it's fired, it presses against the skin leaving a mark on
2 the skin, and the gunshot wound to the midback has a distinct
3 circular imprint around it which characterizes it as a
4 contact wound.

5 **Mr. Knight:** With the permission of the Court, may he
6 stand down?

7 **The Court:** Yes, sir.

8 By Mr. Knight:

9 Q. I'll let him... Doctor, you described the midback wound
10 as a contact wound. Can you describe to the jury and show
11 them by using my back where the weapon was at the time the
12 trigger was pulled?

13 A. It would have been approximately right here midback just
14 right at the midline.

15 Q. Was the gun impressed against the skin of the deceased?

16 A. Yes, it was.

17 Q. Okay. Thank you. You can have a seat. Doctor, you
18 also found a gunshot wound of the lower back. Is that
19 correct?

20 A. Yes.

21 Q. And what was the range on that gunshot?

22 A. The range on the one in the lower back is the same as
23 the one that was on the upper back. So the first one I
24 mentioned, that intermediate range between one and four feet
25 -- because again there was no soot on skin, but there were

1 little flakes of what we call stippling present.

2 Q. And they were in the back.

3 A. Yes. Yeah, all three -- all three gunshot entrance
4 wounds were to the back.

5 Q. I show you State's exhibit number 10 and State's exhibit
6 number 11. These are photographs that are in evidence. What
7 do they depict?

8 A. State's exhibit 10 shows an exit wound on the upper
9 right side of the chest kind of right below the collarbone,
10 and this is the corresponding exit wound to the entrance
11 wound in the upper back. So the bullet following -- entering
12 the skin of the upper back passed through the chest, went
13 through the lung, and then came out on the skin of the chest
14 again just below the collarbone.

15 State's exhibit 11 shows the exit wound that corresponds
16 with the gunshot wound in the midback or the contact wound.
17 It's located on the lateral side of the chest just kind of
18 below the area of the armpit, and it also, as it passed
19 through the body, did pass through the lung, the right lung,
20 as well before exiting near the armpit.

21 Q. On the gunshot wound to the upper -- upper back, what
22 was the traffic path -- traffic path of travel for the
23 bullet? I'll get it sooner or later.

24 A. All right. So the gunshot wound to the upper back, it
25 passed through. It went the skin of the back, then into the

1 chest cavity itself. Once it went in there -- excuse me. As
2 it was going through, it struck part of the spine. Then as
3 it struck the spine, it also caused a bruise to the spinal
4 cord, continued through into the chest cavity where it went
5 through the right lung and then exited just below the
6 collarbone on the right side.

7 Q. How about the path of travel of the gunshot wound to the
8 midback?

9 A. All right. The gunshot wound to the midback again went
10 through the skin and soft tissues of the back, then went into
11 the chest cavity, and then also went through the right lung
12 before leaving the skin on the right side of the chest.

13 Q. And the path of travel on the lower back?

14 A. The path of travel in the lower back? This one went
15 through again the skin and subcutaneous tissues. As it was
16 going through, it struck also one of the backbones and caused
17 a bruise to the spinal cord down low. Then this is the one
18 that we ended up recovering in the abdomen that on its way
19 through it went through the diaphragm and the decedent's
20 liver as well before ending up in the soft tissues in the
21 abdomen.

22 Q. Doctor, on State's exhibit number 6 and State's exhibit
23 number 7, what did you do with those two exhibits after you
24 completed your work?

25 A. Could you please remind me...

1 Q. State's exhibit number 7 is the bullet, and State's
2 exhibit number 6 is the blood. What did you do with those
3 two items?

4 A. So in the course of the autopsy after I recovered the
5 bullet and the -- regarding the bullet, once I recovered the
6 bullet, cleaned it up, took a photograph of it, sealed it in
7 an envelope and then passed it off to an assistant who then
8 signed it over to a representative of the coroner's office.
9 The blood tube was the same except I didn't take a picture of
10 it. So we collected the tube of blood, labeled it, and then
11 it was submitted by an assistant to the coroner's officer.

12 Q. Doctor, based on this particular autopsy, within the
13 bounds of reasonable medical certainty, have you formed an
14 opinion as an expert -- an expert opinion concerning the
15 proximate cause of the death?

16 A. Yes, I have.

17 Q. What is that opinion?

18 A. Gunshot wounds of the trunk.

19 Mr. Knight: Thank you, sir. Answer any questions Mr.
20 McCloskie may have.

21 Mr. McCloskie: Thank you, Mr. Knight. May it please
22 the Court?

23 The Court: Yes, sir.
24
25

Cross-Examination

By Mr. McCloskie:

Q. Good afternoon, Dr. Batalis.

A. Good afternoon.

Q. How are you?

A. Good. How are you?

Q. Good. Thank you. Please correct me if I'm wrong. What you have testified to, as I understand it, is that in the case of all three bullet wounds the basic path was back to front, left to right, and up to down.

A. Yes.

Q. Is that correct?

A. That's correct.

Q. Can you determine which one of those shots was fired first?

A. No, I can't -- you cannot determine which was fired first.

Q. Based on your examination of this body and your expertise in this field, can you tell this jury which three shots you considered to be the fatal one?

A. No. In this case all three of them went through structures that could cause fatal injuries: The one on the upper back going through the right lung, the one on the midback also went through the right lung, and then the one on the lower back went through the liver.

1 Q. And could you tell in any one of these things, based on
2 your experience and your expertise, how long it would take
3 from the shooting to the onset of death?

4 A. That would be quite variable, depending on the
5 individual. There was a large collection of blood in the
6 cavity surrounding the right lung. So, again, depending on
7 resuscitation, it's possible that somebody could die within
8 minutes from such an injury, but with resuscitation it could
9 live -- could live longer.

10 Q. Well, in this case do you have an opinion as to the
11 onset of death?

12 A. I don't. I would need to review the medical records and
13 such.

14 Q. Now -- so let me -- let me make sure again. The path of
15 all three bullets was from the back to the front, from up to
16 down, and from left to right.

17 A. Yeah. The primary path went always from back to front.
18 Kind of the secondary direction was from left to right, and
19 then they were only really slightly downwards so...

20 Q. So if Mr. Knight in his demonstration - of course, you
21 couldn't see this - was using his hand and his index finger
22 to indicate the weapon, if he was holding that weapon
23 completely straight, that would not be how this -- any of
24 these three wounds were administered.

25 A. When I mentioned the pathway through the body, the

1 direction you just mentioned, we're talking about the
2 relationship of the gun to the body when it's fired.

3 Q. Right.

4 A. So the gun would not have been at a straight 90-degree
5 angle to the body.

6 Q. Right. Right.

7 A. You know, the gun could have been held straight out if
8 the body was tilted. So essentially I'm not sure if that
9 helps, but I'm testifying that the angle that the gun was --
10 the angle that the gun was in relationship to the body.

11 Q. Now, you did some measurements, did you not?

12 A. I did.

13 Q. And would you tell the jury Mr. Furman's size in terms
14 of weight and what have you and length? Height?

15 A. We say approximately because measuring tapes aren't the
16 best, but we had him approximately 65 and a half inches which
17 would be about five and a half feet or -- about five and a
18 half feet and weighing 200 pounds.

19 Q. Did you detect in your examination any -- any form of
20 physical disability on the body?

21 A. (No response.)

22 Q. Let me ask it another way. Did it appear to you that
23 Mr. Furman's body indicated that he was a well-built, well-
24 nourished male?

25 A. Yes. Yes, he was.

1 Mr. McCloskie: That's all I have. Thank you, sir.

2 The Court: Thank you, Mr. McCloskie.

3 Mr. Knight: Thank you. May the doctor be excused?

4 Mr. McCloskie: Without objection.

5 The Court: You are excused, Dr. Batalis. Thank you,
6 sir.

7 The Witness: Thank you.

8 Mr. Knight: The State would call Jeff Crosby.

9 The Court: All right.

10 Jeff Crosby, after being duly sworn, testified as
11 follows:

12 Direct Examination

13 By Mr. Knight:

14 Q. State your full name, please, sir.

15 A. Jeff Crosby.

16 Q. Mr. Crosby, who are you employed with?

17 A. Jasper County Sheriff's Office.

18 Q. In what capacity?

19 A. I'm a detective with the sheriff's office.

20 Q. Were you working on or about September the 30th of 2008?

21 A. Yes, I was.

22 Q. Did you have an occasion to meet with the defendant,
23 Eric Darien?

24 A. Yes, I did.

25 Q. Was there anyone else there when you met with him?

1 A. Lieutenant Hipp.

2 Q. Donald Hipp here?

3 A. Yes, sir.

4 Q. Okay. What was the purpose of meeting with Mr. Darien?

5 A. Conducting an interview with him, assisted Detective
6 Hipp in conducting an interview with him.

7 Q. Did you witness the advisement of his Miranda rights?

8 A. Yes, I did.

9 Q. I ask you if you can identify State's exhibit number 1.

10 A. Yes, sir, I do.

11 Q. How can you identify that exhibit?

12 A. It's the Miranda rights form that we use when we conduct
13 an interview with individuals, and my signature is on the
14 bottom of it where I witnessed it.

15 Q. Did you read these rights to the defendant, Eric Darien,
16 or did Detective Hipp?

17 A. Detective Hipp.

18 Q. Okay. Do you recall this interview of September 30th?

19 A. Somewhat, yes, sir.

20 Q. Do you recall whether or not the defendant, in your
21 opinion, understood those rights?

22 A. Yes, sir.

23 **Mr. McCloskie:** If Your Honor please, we'll be glad to
24 stipulate to that.

25 **Mr. Knight:** Okay.

1 **Mr. McCloskie:** The Miranda rights were properly given,
2 that Mr. Darien understood those rights, and at the end of
3 which he signed that form. It has his signature on that
4 form, and thereafter he consented to an interview. We'll
5 stipulate to that.

6 **The Court:** Okay. All right. Thank you, Mr. McCloskie.

7 **Mr. Knight:** If he'll stipulate, that's all the
8 questions I have of Mr. Crosby.

9 **The Court:** All right.

10 **Mr. McCloskie:** Jeff, if that's all you have to say, I
11 don't have any questions. Thank you.

12 **The Witness:** Thank you.

13 **The Court:** Okay.

14 **Mr. Knight:** I call Donald Hipp.

15 **The Court:** Any objection to Detective Crosby being
16 excused?

17 **Mr. McCloskie:** Without objection.

18 **The Court:** You are excused. Thank you, sir.

19 **The Witness:** Thank you.

20 Donald Hipp, after being duly sworn, testified as
21 follows:

22 **The Court:** Lieutenant Hipp, will you just give your
23 name and spell your last name for my court reporter?

24 **The Witness:** Sure. Donald Hipp. H-i-p-p.
25

Direct Examination

By Mr. Knight:

Q. You're employed with who?

A. Jasper County Sheriff's Office.

Q. In what capacity?

A. I'm an investigator with the sheriff's office.

Q. Lieutenant Hipp, did you respond to [REDACTED]

Road on September 29th, 2008?

A. I did.

Q. And did you collect certain evidence at that site?

A. Collected the evidence that was turned over to me from the officer that collected the original...

Q. Okay.

A. Who originally collected it.

Q. State's exhibit number 4 is a weapon?

A. That's correct.

Q. That was turned over to you?

A. Yes, it was.

Q. State's exhibit number 5 was a clip with two projectiles in it?

A. That's correct.

Q. State's exhibit number 3 is a purple bag?

A. That's correct.

Q. That was turned over to you?

A. Yes, sir.

1 Q. And State's exhibit number 7 which is a projectile from
2 the Medical University, that was turned over to you?

3 A. That was turned over to me from the coroner's office.

4 Q. Okay. And State's exhibit number 6 is the blood that
5 was turned over to you.

6 A. Correct.

7 Q. Okay. Did you perform a gunshot residue test on the
8 victim, Richard Bubba Furman?

9 A. I did.

10 Q. And did you perform a gunshot residue test on the
11 defendant, Eric Darien?

12 A. I did.

13 Q. Are these those tests?

14 A. They are.

15 **Mr. Knight:** Okay. And let's mark these. Without
16 objection, Mr. McCloskie?

17 **Mr. McCloskie:** Without objection.

18 **The Court:** That's in evidence without objection.

19 (State's exhibits 13 and 14 were received in evidence.)

20 By Mr. Knight:

21 Q. I ask you if you can identify these two items.

22 A. I can.

23 **Mr. Knight:** Mr. McCloskie, two casings?

24 **Mr. McCloskie:** Without objection.

25 **The Court:** What number is that?

1 Court Reporter: It will be 15 and 16.

2 Mr. Knight: 15 and 16.

3 The Court: Thank you. All right. 15 and 16 in
4 evidence without objection.

5 (State's exhibits 15 and 16 were received in evidence.)

6 By Mr. Knight:

7 Q. On State's exhibits 12 and -- no, 13 and 14 and 15 and
8 16, what did you do with all these items of evidence that you
9 received?

10 A. All the evidence I received in this particular case I
11 prepared them, filled out the documentation to be submitted
12 to the South Carolina Law Enforcement Division.

13 Q. And they were submitted there?

14 A. They were.

15 Q. Detective Hipp, did you also have an occasion to meet
16 with the defendant, Eric Darien, on September 30th?

17 A. I did.

18 Q. And Mr. McCloskie has no problem with the giving of his
19 Miranda rights and his understanding of those Miranda rights.
20 Now, did the defendant give to you a statement concerning the
21 incident of September the 29th, 2008?

22 A. He did.

23 Q. And was it handwritten or was it a verbal statement?

24 A. It was verbal. Audio recording.

25 Q. And do you have that recording today?

1 A. It has been admitted as a State exhibit.

2 Mr. Knight: State's exhibit number 2, Mr. McCloskie.

3 Mr. McCloskie: Without objection.

4 Mr. Knight: It's into evidence now without objection.

5 The Court: It's in evidence without objection.

6 By Mr. Knight:

7 Q. Would you publish it for the jury, please, sir?

8 A. Sure.

9 (Whereupon, the witness plays State's exhibit 2 for the
10 jury.)

11 Mr. McCloskie: Your Honor?

12 The Court: Yes.

13 Mr. McCloskie: I'm going to object to anything about
14 any kind of arrests or anything else.

15 The Court: All right. That's sustained.

16 Mr. McCloskie: That's on that tape, and we need to
17 redact it.

18 The Court: All right. Your objection is sustained.

19 Ladies and gentlemen, the last portion of that tape was
20 improper. It should not be before you. You are not to
21 consider it in any way in your deliberations in this case.
22 Anything further as far as a request to charge to them?

23 Mr. McCloskie: I think not. I think that curative
24 instruction takes care of it. Thank you, Your Honor.

25 The Court: All right. Thank you. All right. So as

1 far as the tape is concerned, we are done. Correct?

2 Mr. Knight: I think that's the end of it, yes. I've
3 got the notes.

4 By Mr. Knight:

5 Q. Did that conclude your interview with the defendant, Mr.
6 Darien?

7 A. It did.

8 Q. It did?

9 A. It did.

10 Mr. Knight: Answer any questions Mr. McCloskie has.

11 Cross-Examination

12 By Mr. McCloskie:

13 Q. Mr. Hipp, I heard on that tape - and please correct me
14 if I'm wrong about this - about Eric telling you about other
15 witnesses that were there?

16 A. Yes.

17 Q. A Mr. Barnwell?

18 A. He indicated a Mr. Barnwell.

19 Q. And did you find out who that was?

20 A. I have no idea. I spoke with Mr. Goodman as well,
21 informed me that Mr. Barnwell used to live in Pineland, but
22 he's no longer there.

23 Q. Right. Mr. Goodman told you that --- where he lived in
24 Bluffton and in Pineland and who he was married to, didn't
25 he?

1 A. Gave me an idea. He told me who he used to be married
2 to, gave me an idea of where he lived at in Pineland.

3 Q. Well, did you know that Mr. Barnwell was on probation in
4 Beaufort County? Did you even go that far to find out?

5 A. No, sir.

6 Q. How about -- he mentioned his mother. Eric mentioned
7 his mother being there.

8 A. Yes, he did.

9 Q. Did you interview his mother?

10 A. The night of the incident when the officers were there,
11 we asked who all witnessed this incident, but everybody that
12 was there pretty much said nobody witnessed anything.

13 Q. All right. Well, this interview took place when?

14 A. The following day, the 30th.

15 Q. Right. Less than 24 hours later.

16 A. Less than 20, yes, sir.

17 Q. And isn't that one of the things you do as a
18 detective---

19 A. Yes, sir, we---

20 Q. Find out who witnesses are? You may not find them out
21 that night, but Eric told you that his mother was there.

22 A. I interviewed everybody -- every potential witness that
23 came forward in this case.

24 Q. All right. Did you interview Mrs. Margie Darien after
25 Eric told you that his mother was there?

1 A. No, I did not.

2 Q. And how about Leon? Did you determine -- did you ask
3 any questions about who Leon was?

4 A. When I asked the witnesses that were there at the scene,
5 Ms. White, Ms. Furman, Jamontay, they pretty much told me
6 that they were the ones that were on the scene when this
7 incident happened.

8 Q. Yeah, but within 24 hours you find out that other people
9 were there, and all I'm asking is: Did you attempt to
10 interview those people?

11 A. I did not indicate Mr. Leon nor Mr. Barnwell.

12 Q. Now, did you notice Eric was saying that this guy hit
13 him in the head - I think one time I heard him ten times -
14 telling him he was going to kill? I'm going to kill him?
15 Didn't Eric have some abrasions on his scalp and around his
16 face?

17 A. Eric indicated that he experienced some head trauma. I
18 didn't witness anything, any bruises or abrasions.

19 Q. Well, when you asked him if he was on any medication, he
20 told you he was taking Motrin.

21 A. He said he took some Motrin earlier that morning; yes,
22 sir.

23 Q. That the nurse in the jail gave to him.

24 A. That's correct.

25 Q. And the nurse in the jail doesn't give medicine to

1 somebody just because they ask for it, do they?

2 A. I can't answer that.

3 Q. Thank you, sir. That's all I have.

4 A. You're welcome.

5 The Court: Mr. Knight, anything further?

6 Mr. Knight: No, ma'am.

7 The Court: All right.

8 Mr. Knight: He may come down.

9 The Court: You may step down, sir. Thank you,
10 Lieutenant Hipp.

11 Mr. Knight: Your Honor, may Mr. McCloskie and I
12 approach?

13 The Court: You may.

14 (Whereupon, a bench conference was held.)

15 The Court: Ladies and gentlemen of the jury, I was just
16 speaking with the attorneys in regards to the next witnesses
17 that are coming up. What we're going to go ahead and do is
18 break for the evening. I know it's only 3:15, but again
19 there are certain people that may have to come in, and the
20 attorneys have given me their schedule for the most part for
21 tomorrow.

22 So, anyway, there is a chance that this case will go
23 into Thursday, and I will tell you that right now. So I just
24 want to make sure that you all make plans accordingly. With
25 that said, I am going to send you home for the evening.

1 Again, ladies and gentlemen, you are not to begin discussing
2 this case. It wouldn't be appropriate to do so at this time.

3 Additionally, I don't know that there's going to be
4 anything in the paper, but again out of an abundance of
5 caution, if there is anything in the paper, the news, the
6 radio, you are not to read it, of course. Additionally, you
7 are to do no site visits or do any of your own research on
8 the internet. Again, that would be inappropriate. You will
9 have everything you need to decide this case right here in
10 this courtroom, and again for you to do any outside research
11 would be inappropriate.

12 Ladies and gentlemen, we're going to begin promptly
13 tomorrow morning at 10 a.m. When you all arrive here, we're
14 going to start at 10:00. All right? So for the evening go
15 home, rest up, and we look forward to seeing you again
16 tomorrow morning at 10 a.m. Thank you.

17 (Whereupon, the jury was excused from open court for the
18 day at 3:19 p.m.)

19 **The Court:** All right. Gentlemen, the door is closed.
20 I know we haven't completed certainly any of our testimony.
21 I just want to make sure -- and if any of you have any
22 proposed requests to charge, if you don't mind giving them to
23 me now -- you certainly don't have to, but tomorrow morning
24 would be a good idea if you're ready. And I can tell you
25 just generally what I'm seeing so far and, of course, it can

1 always change based on testimony. So I don't even know if
2 right now is a good time to do it. But if you are going to
3 come with proposed charges, I will tell you I have all the
4 standard charges as you both well know. I have tried cases
5 with both of you.

6 We have our standard set. I use that and a combination
7 of Ross Anderson's charges. So I just wanted you all to know
8 that. So with that said, unless there's anything very
9 specific and detailed towards a case that you want me to
10 charge, I probably have got everything covered. Okay?

11 Mr. Knight: Thank you, ma'am.

12 The Court: All right?

13 Mr. McCloskie: I don't think there's anything unusual
14 or exotic. Of course, I'm going to ask you for a charge on
15 the lesser included offense of manslaughter, a charge of
16 self-defense, a good charge on circumstantial evidence.

17 The Court: Right.

18 Mr. McCloskie: I don't know if that case last year that
19 disallowed malice being inferred---

20 The Court: Right, under the law based on the use of a
21 deadly weapon. I have already taken that out of my charge on
22 murder. I assure you it is not there and is long gone. So,
23 of course, we---

24 Mr. Knight: It wasn't even in my opening statement. I
25 took it out of there.

1 **The Court:** Well, very good. Yes, Mr. McCloskie, I
2 agree with you and, of course, that case did change how we've
3 been charging juries for a lot of years and, of course, that
4 was taken out because there is no inference that they are
5 allowed to draw under the law on the use of a deadly weapon.
6 So that is taken out. All right? So that is clearly out.

7 What I will do, gentlemen, is once I finalize my charge,
8 I'll probably let you both take a look at the murder charge,
9 the voluntary manslaughter charge, and then also the self-
10 defense charge just before you all do your closings so you
11 can know what -- how I say it.

12 **Mr. McCloskie:** Thank you.

13 **Mr. Knight:** Thank you so much.

14 **The Court:** I guess put it that way. Okay? But I
15 appreciate it. Gentlemen, anything else we need to take up
16 this evening before we break for the evening?

17 **Mr. McCloskie:** I think not.

18 **Mr. Knight:** I think not.

19 **The Court:** All right.

20 (Whereupon, the trial concluded for the day at 3:22 p.m.
21 and resumed the following day, February 10, 2010, as
22 Follows. State's exhibits 17 through 20 were received in
23 evidence.)

24 **The Court:** Thank you, y'all. Please be seated. Well,
25 good morning, everyone.

1 **Mr. Knight:** Good morning, Your Honor.

2 **The Court:** All right. My understanding is the jury is
3 all here. Is Mr. McCloskie here? Am I just missing him?

4 **Officer:** He's right out here.

5 **The Court:** All right.

6 (Mr. McCloskie enters the courtroom.)

7 **The Court:** Is the State ready to go?

8 **Mr. Knight:** The State's ready, Your Honor.

9 **The Court:** Defense ready?

10 **Mr. McCloskie:** We are, Your Honor. Thank you.

11 **The Court:** All right. Let's bring in the jury for this
12 morning.

13 (Whereupon, the jury was brought into open court at
14 10:26 a.m.)

15 **The Court:** Good morning, ladies and gentlemen. Welcome
16 back. At this time we're going to continue the trial of this
17 case. Mr. Knight, if you will call your first witness this
18 morning, sir.

19 **Mr. Knight:** The State would call Dr. Saeed Rehman.

20 **The Court:** Dr. Rehman, come on forward, sir.

21 Dr. Saeed Rehman, after being duly sworn, testified
22 as follows:

23 **The Court:** Dr. Rehman, would you give us your name for
24 the record? And if you don't mind for my court reporter,
25 spell both your first and your last name, sir.

1 **The Witness:** Yes, ma'am. My name is Saeed Rehman.

2 S-a-e-e-d. Last name is R-e-h-m-a-n.

3 **The Court:** Thank you, Doctor.

4 Direct Examination

5 By Mr. Knight:

6 Q. Dr. Rehman, who are you employed with?

7 A. Beaufort Memorial Hospital.

8 Q. And your specialty is what?

9 A. Emergency medicine.

10 **Mr. Knight:** No objection, Mr. McCloskie?

11 **Mr. McCloskie:** I will be glad to stipulate that the
12 field of -- I'll be glad to stipulate to the field of
13 emergency medical health care that Dr. Rehman is an expert in
14 and should be admitted as such.

15 **The Court:** All right. Ladies and gentlemen, as we
16 spoke yesterday in reference to the other doctor that was
17 admitted as an expert, in this case also Dr. Rehman is going
18 to be admitted as an expert witness in the field of emergency
19 medicine. Again, ladies and gentlemen, just because he is
20 qualified as an expert does not mean you have to accept his
21 opinion. It is to assist you in any way that you see fit.
22 With that, Mr. Knight.

23 By Mr. Knight:

24 Q. Dr. Rehman, who are you employed with?

25 A. Beaufort Memorial Hospital.

1 Q. Were you employed on September the 29th, 2008?

2 A. That's correct.

3 Q. Did you have an occasion to treat a patient by the name
4 of Eric Darien?

5 A. That's correct, sir.

6 Q. Did you perform an examination on Mr. Darien?

7 A. Yes, sir.

8 Q. What were your findings, sir?

9 A. My findings -- I'll read from my chart.

10 Q. Okay.

11 A. On physical exam, his vitals were normal. His
12 temperature was 98. His blood pressure was 120 over 80. His
13 pulse was 80 and respiratory rate was normal. On his -- did
14 you want me to go through the entire exam or give you the
15 pertinent...

16 Q. Give me the pertinent part, please.

17 A. On pertinent exam he was found to have bruises around
18 his facial area.

19 Q. Doctor, did you authorize any imaging studies?

20 A. Yes, sir. We ordered a head C.T. scan. It's a CAT scan
21 of his head and CAT scan of his neck.

22 Q. And what were the results of those examinations?

23 A. The results were negative. There was no evidence of any
24 bleeding or a fracture.

25 Q. Okay. You described in your report that there was scalp

1 and facial contusions.

2 A. That's correct.

3 Q. And a contusion is what?

4 A. A contusion is a bruising.

5 Q. Okay. As a result of your examination and your
6 findings, what, if anything, did you -- what treatment did
7 you recommend for him?

8 A. We recommended ice therapy. We recommended anti-
9 inflammatory such as Motrin.

10 Q. Motrin is an over-the-counter drug?

11 A. Over the counter. Can be acquired as well.

12 Q. You did not keep him overnight for any additional
13 treatment.

14 A. That's correct, sir.

15 **Mr. Knight:** Answer any questions Mr. McCloskie may
16 have.

17 **Mr. McCloskie:** Thank you. May it please the Court?

18 **The Court:** Yes, sir.

19 Cross-Examination

20 By Mr. McCloskie:

21 Q. Dr. Rehman, I just have one question. Your examination
22 of Eric Darien and the injuries that he had, are they
23 consistent, in your opinion, with a history of being beat in
24 the head by a fist?

25 A. I can't tell you if he was beaten by a fist, but the

1 injuries are consistent with some type of trauma inflicted
2 upon him.

3 Q. And do you have an opinion as to whether or not that
4 trauma was administered immediately in a short frame before
5 you saw him?

6 A. I could not be certain.

7 Q. Is it consistent with an immediate history of being
8 beaten in the head with a fist?

9 A. Given the circumstances, yes.

10 Mr. McCloskie: Thank you, sir.

11 The Court: Mr. Knight?

12 Mr. Knight: That's all I have for the doctor. May he
13 be excused?

14 The Court: Any objection?

15 Mr. McCloskie: Without objection.

16 The Court: Dr. Rehman, you are excused, sir. Thank
17 you.

18 The Witness: Thank you.

19 Mr. Knight: Your Honor, that's -- at this time I just
20 want to put into the record State's exhibit number 17 which
21 was pre-marked. It's just the internal chain of custody
22 without objection.

23 The Court: All right. Thank you. Is that correct, Mr.
24 McCloskie?

25 Mr. McCloskie: That's correct.

1 **The Court:** Without objection? Thank you.

2 **Mr. McCloskie:** These are -- these are documents that
3 are offered into evidence pursuant to our stipulation.

4 **The Court:** Thank you, Mr. McCloskie.

5 **Mr. Knight:** Unfortunately, I'm going to have to read
6 the next three stipulations. They are reports, and I'll
7 start with the State's exhibit number 20 which was
8 pre-marked.

9 **The Court:** Okay.

10 **Mr. Knight:** It is the report of Megan M. Fletcher.
11 She's a forensic scientist with the South Carolina Law
12 Enforcement Division.

13 **The Court:** All right.

14 **Mr. Knight:** Items of evidence is one G.S.R. kit from
15 Eric Darien, the right palm. The results: The quantities of
16 metals found did not indicate the presence of gunshot
17 residue. Item 4.2, the right back: The quantities of metals
18 found are consistent with gunshot residue. The left palm,
19 the results: The quantities of metals may be associated with
20 gunshot powder residue. The left back hand results: The
21 quantities of metals found did not indicate the presence of
22 gunshot residue.

23 Item 5 is a gunshot residue kit from Richard Furman,
24 Jr., right palm. The results: The quantities of metal found
25 did not indicate the presence of gunshot residue. Right

1 back, results: Quantities of metals found did not indicate
2 the presence of gunshot residue. Left palm, results: The
3 quantities of metals found did not indicate the presence of
4 gunshot residue. Left back: The quantities of metals found
5 did not indicate the presence of gunshot residue. That's
6 Megan Fletcher from SLED, and that's State's exhibit number
7 20.

8 The next report is that of Kenneth L. Bogan, B-o-g-a-n.
9 He's a forensic scientist with SLED. Submitted was a Kel Tec
10 9 MM handgun and blood from Richard Furman, Jr., and a swab
11 from the barrel of the K-Tec 9 millimeter handgun and
12 fingernail clippings from Richard Furman, Jr. A DNA analysis
13 was performed on the items above and the results: Partial
14 DNA profile developed from the Item 3.1 matches the DNA
15 profile of Richard Furman, Jr. The probability of selecting
16 an unrelated individual having the DNA profile matching 3.1
17 which was the blood of Mr. Furman is approximately 1 in 16
18 million. That's State's exhibit number 18, Your Honor.

19 The Court: Thank you.

20 Mr. Knight: The last is designated pre-marked is
21 State's exhibit number 19. It is a report of Suzann F.
22 Cromer, C-r-o-m-e-r, forensic scientist. The first item is
23 one fired Luger caliber cartridge. Results one and two were
24 fired by Item 3. Item 3 is the nine millimeter Tec weapon
25 that was submitted.

1 Item 3.1, Kel Tec model PF-9 was examined. The results:
2 It was test-fired using the submitted magazine and found to
3 be working in firing order, and debris was found on the gun
4 and that was referred to in State's exhibit number 20. One
5 fired bullet that was the result of being removed from the
6 body of the deceased. Item 10 was the bullet that was fired
7 by Item 3 which is the 9 -- one Kel Tec 9 model PF-9
8 millimeter. That was Suzann Cromer. That's State's exhibit
9 number 19.

10 **The Court:** Is that all the stipulations, Mr. Knight?

11 **Mr. Knight:** Yes, ma'am.

12 **The Court:** Ladies and gentlemen of the jury, just to
13 explain to you what a stipulation is, it's a voluntary
14 agreement between the attorneys concerning the disposition of
15 some point in the case. The reason they do this is to
16 obviate the need for bringing those witnesses here into court
17 to testify. Counsel have stipulated and agreed that the
18 reports say what they say in fact. All right? So with that
19 said, ladies and gentlemen, is there anything further?

20 **Mr. Knight:** Your Honor, I would just like to further
21 indicate that those witnesses would have been called
22 yesterday afternoon. So fortunately for the jury's sake,
23 they were able to -- we were able to turn them loose because
24 those witnesses---

25 **The Court:** Exactly.

1 **Mr. Knight:** ---would have carried us 'til 5, 5:30,
2 maybe 6:00.

3 **The Court:** Thank you, and I appreciate that.

4 **Mr. Knight:** With that, the State rests.

5 **The Court:** Thank you, Mr. Knight. Ladies and gentlemen
6 of the jury, at this time the State has rested their case. I
7 need to go ahead and send you back to your jury room to
8 discuss a matter of law with the attorneys. We will bring
9 you back shortly where we'll continue the trial of this case.

10 Ladies and gentlemen, again I caution you not to begin
11 discussing this case. It wouldn't be appropriate to do so at
12 this time. As soon as we're ready for you, we'll bring you
13 back out from the jury room and, of course, you're welcome to
14 bring coffee back or whatever you need. You are excused.
15 Thank you.

16 (Whereupon, the jury was excused from open court at
17 10:38 a.m.)

18 **The Court:** Are there any motions?

19 **Mr. McCloskie:** Yes, Your Honor. At this time I would
20 move respectfully for a directed verdict on the indictment on
21 the charge of murder on the grounds of being -- taking all
22 the evidence in the light most favorable to the State,
23 there's no evidence from which an inference could be drawn to
24 go to the jury on that charge. There is no evidence of
25 malice here. All the evidence points fairly conclusively to

1 the fact that it was not a murder. At most it was a
2 manslaughter.

3 Quite frankly, all the evidence appears to be directed
4 toward self-defense. I don't see anything that the State can
5 present or has presented that allows this jury to reach a
6 verdict on that -- on that charge other than not guilty, and
7 we respectfully move that that be taken out of the hands of
8 the jury as a matter of law.

9 **The Court:** Mr. Knight?

10 **Mr. Knight:** Your Honor, I think there's sufficient
11 evidence as to the unlawful killing of another with malice.
12 We've got one, two, three, four shots in the back. There was
13 also testimony about the weapon being picked up off the
14 ground, cocked, and then fired four times. That's sufficient
15 I think on the issue of malice. He thought about it. It was
16 an intentional act of shooting the deceased.

17 **The Court:** Okay. As we all know, malice doesn't need
18 to exist for any particular amount of time before the act is,
19 in fact, committed. It just has to exist in the mind of Mr.
20 Darien right before and then during while it occurs. I think
21 based on the evidence that, in fact, the decedent was shot in
22 the back more than warrants -- I think I can send it to a
23 jury, although I admit that it is somewhat of a close issue
24 based on the facts and circumstances that have come out.
25 But, of course, in taking the motion in the light most

1 favorable to the State, I am going to allow the murder charge
2 to go to the jury.

3 At this time, Mr. McCloskie, would you like me to go
4 over Mr. Darien's rights to testify or not testify, sir?

5 Mr. McCloskie: First of all, thank you for hearing me
6 out and, second of all, yes, I would.

7 The Court: All right. Mr. Darien, if you would please
8 stand, sir, and I'm going to put you under oath. If you'll
9 raise your right hand, sir.

10 Eric Darien, after being duly sworn, testified as
11 follows in camera:

12 Examination by the Court

13 Q. Mr. Darien, I'm going to have to ask you to speak up, as
14 you all know. Why don't you come around? In front of the
15 podium would be helpful. Thank you, sir. All right, sir.
16 Sir, at this time I'm going to explain to you certain rights
17 you have. If there's anything I say that you do not
18 understand, Mr. Darien, I'm going to ask you to stop me, and
19 I will either repeat it or rephrase it to make sure you
20 understand. Is that okay?

21 A. Yes, ma'am.

22 Q. All right. Thank you, sir. We've now reached the stage
23 in the trial where you may present your defense. Now, you
24 have the right to claim the protections that are provided to
25 you by the Fifth Amendment to the Constitution of the United

1 States which states in part that no person can be compelled
2 in any criminal case to be a witness against themselves.

3 Now, this means you cannot be required to testify.

4 However, sir, I want to make sure you understand that you do
5 also have the right to testify. Again, no one can make you
6 do it, and please understand, sir, that this is a personal
7 right. It's one that only you can determine and, of course,
8 you counsel with Mr. McCloskie, but again this is a personal
9 right that only you can invoke. Do you understand that?

10 A. Yes, ma'am.

11 Q. Sir, if you decide to testify, you're going to be
12 subject to the same rules that govern the other witnesses,
13 and understanding that, you can be examined and cross-
14 examined on any relevant issue in this case. And, in
15 addition, sir if you have any past convictions for either
16 dishonesty or false statements or for crimes that are
17 punishable by more than one year, certainly the State is
18 going to be able to introduce those or your attorney can
19 introduce those to cut that off. But, again, I want to make
20 sure you understand that they could ask you those questions
21 if I determine that the probative value outweighs any
22 prejudice for asking you about those prior convictions. Do
23 you understand that?

24 A. Yes, ma'am.

25 Q. Sir, also if you decide to testify, I want to make

1 absolutely sure you understand that you are doing that and
2 your decision is made freely, voluntarily, intelligently, and
3 understanding all the knowledge and having all the knowledge
4 of all the protections that are provided to you under the
5 Fifth Amendment of the Constitution. Do you understand that,
6 sir?

7 A. Yes, ma'am.

8 Q. Sir, if you decide not to testify, I'm going to tell
9 this jury that they can't hold it against you. Again, sir,
10 you are never required to prove your innocence. The burden
11 is on the State to prove your guilt as to the charge beyond a
12 reasonable doubt. Now, sir, do you need any further time to
13 talk with your attorney, Mr. McCloskie, to decide whether or
14 not you want to testify?

15 A. No, ma'am.

16 Q. All right. Sir, do you wish to testify in this case?

17 A. No, ma'am.

18 The Court: All right, sir. Now, Mr. McCloskie, are you
19 confident that your client understands his rights and that
20 he's making this determination freely, voluntarily,
21 knowingly, and intelligently?

22 Mr. McCloskie: I am, Your Honor.

23 The Court: All right. Thank you, gentlemen. You may
24 be seated.

25 Mr. McCloskie: Thank you.

1 **The Court:** All right. Mr. McCloskie, it's my
2 understanding you do have some witnesses that you wish to put
3 up. Is that correct?

4 **Mr. McCloskie:** I do.

5 **The Court:** All right, sir. Are you prepared for me to
6 go ahead and bring the jury back in?

7 **Mr. McCloskie:** I'm prepared, Your Honor.

8 **The Court:** All right. And, Mr. Knight, are you ready?

9 **Mr. Knight:** Yes, ma'am.

10 **The Court:** All right. Let's bring the jury back in.

11 (Whereupon, the jury was brought into open court at
12 10:44 a.m.)

13 **The Court:** Welcome back, ladies and gentlemen of the
14 jury. At this time we're going to continue the trial of this
15 case. Mr. McCloskie, if you'll call your first witness, sir.

16 **Mr. McCloskie:** The defense calls Anthony Goodman.

17 **The Court:** Bring Mr. Goodman forward, please.

18 Anthony Goodman, after being duly sworn, testified
19 as follows:

20 **The Court:** Mr. Goodman, sir, would you give us your
21 name for the record and spell your last name for my court
22 reporter, sir?

23 **The Witness:** Anthony Goodman, G-o-o-d-m-a-n.

24 **The Court:** Thank you, sir.
25

Direct Examination

1

2

By Mr. McCloskie:

3

Q. Mr. Goodman, where do you live?

4

A. I live in Garnett, South Carolina.

5

Q. And what do you do for a living, sir?

6

A. I'm an auto technician.

7

Q. All right. And do you know Eric Darien?

8

A. Yes, sir, I do.

9

Q. How do you know him?

10

A. He's my friend.

11

Q. All right. Do you remember the day of September the

12

29th, 2008, the day of this shooting?

13

A. Yes, sir, I do.

14

Q. And were you with Eric Darien that day?

15

A. Yes, sir, I was.

16

Q. And tell the jury what the purpose of your being with

17

him was and what happened.

18

A. Well, the morning started off -- I was outside cutting

19

grass and he came up. He always used to come over on Mondays

20

because I'm off on Mondays, and he helped me with the yard

21

work. After he helped me with the yard work, we went over to

22

a friend's house to put something on the grill, just to kind

23

of like hang out and kick back and socialize a little bit,

24

you know. We stopped by the store. You know what I'm

25

saying? We took some beer over to the guy's house because he

1 was providing the meat to cook. So like I said---

2 Q. Did you later on take Eric over to his mother's house?

3 A. I dropped him off; at the end of the day I did.

4 Q. All right. And his mother's house is?

5 A. Well, really not to his mother's house. Tamika Furman's
6 house.

7 Q. All right. And what was the purpose, as you understand
8 it, for taking him there?

9 A. He was going to check on his son because his son missed
10 the bus earlier that day and he just wanted to make sure that
11 he was okay.

12 Q. All right. And what was -- what were Eric's plans for
13 the immediate future?

14 A. Well, he told me that he was getting ready to leave to
15 go to Alabama to get -- just to get away.

16 Q. And had he been around there, to your knowledge, around
17 the Furman residence during the period of time immediately
18 prior to the 29th of September?

19 A. Not that I know of.

20 Q. Okay. What was his state of mind?

21 A. That day?

22 Q. Yes.

23 A. He was fine, just like he was just Eric, just like he
24 was just fine. He was just himself.

25 Q. All right. Now, were you interviewed by the Jasper

1 County Sheriff's Department?

2 A. Yes, sir, I was.

3 Q. And were you asked about other people that might have
4 been there when the shooting took place?

5 A. Yes, sir, I was.

6 Q. And did you give the detective who asked that question
7 some names?

8 A. Yes, sir, I did.

9 Q. And what were those names, as you recall?

10 A. One person that I can remember was Jack Barnwell. We
11 call him -- in the neighborhood we call him Dickey.

12 Q. Okay.

13 A. But there was another guy out there, but I didn't know
14 who that was. I seen him around, but I didn't know who he
15 was.

16 Mr. McCloskie: That's all I have. Answer any questions
17 that Mr. Knight might ask you, please.

18 The Court: Mr. Knight?

19 Cross-Examination

20 By Mr. Knight:

21 Q. Did Mr. Darien have any articles with him that day when
22 he was in your car?

23 A. Yes, sir, he did.

24 Q. Do you recall what it was?

25 A. He carried a bag.

1 Q. A bag? This is State's exhibit number 3. Do you
2 recognize that as being the bag that he was carrying that
3 day?

4 A. It looks like it.

5 Mr. Knight: That's all I have.

6 Mr. McCloskie: Thank you, Mr. Goodman. May we excuse
7 this witness?

8 The Court: Any objection?

9 Mr. Knight: None.

10 The Court: You are excused, Mr. Goodman. Thank you,
11 sir.

12 Mr. McCloskie: I call Leon Darien, please.

13 The Court: All right. Please bring Leon Darien in.

14 Leon A. Darien, after being duly sworn, testified
15 as follows:

16 The Court: Mr. Darien, will you give your full name for
17 the record, sir?

18 The Witness: Leon Anthony Darien.

19 The Court: Thank you, sir. Mr. McCloskie?

20 Direct Examination

21 By Mr. McCloskie:

22 Q. Mr. Darien, where do you live?

23 A. In Pineland.

24 Q. And are you related to Eric Darien?

25 A. Yes, sir. That's my cousin.

1 Q. He's your first cousin?

2 A. First cousin.

3 Q. Do you remember the events of September the 29th of 2008
4 that involved the shooting of Richard Furman?

5 A. Yes, sir.

6 Q. I want you to tell this jury in your own words and way
7 what you recall of that event.

8 A. On this day I was just getting off from work and then---

9 Q. You're going to have speak up now.

10 A. On this---

11 **The Court:** Excuse me. Scoot forward so we can all hear
12 you. Thank you, Mr. Darien.

13 **The Witness:** On this day I just get off from work and
14 I'm going into the house to check on my dad. So I come back
15 outside and I hear the commotion -- some commotion going on
16 on the outside. So as I sat down and listened---

17 By Mr. McCloskie:

18 Q. Stop just for a minute. The house you were in, how far
19 is it away from the house that Tamika Furman lived in?

20 A. Probably -- I'm going to estimate it about from my house
21 to a little past where you're standing at.

22 Q. All right.

23 A. From where I'm at.

24 Q. Now, where was this commotion taking place?

25 A. At Tamika's house. Tamika Furman's house.

1 Q. All right. And you went out there, did you?

2 A. Yes. First I went into my auntie's house and I told
3 them that it sounds like Eric is on the outside out there
4 fighting. So as I approached her, she said to go out there
5 and see. So as I went towards that side, it was Eric and --
6 Eric Darien and Bubba Furman out there fighting.

7 Q. All right. Now, what did you see?

8 A. As I approached it, Bubba Furman was on top of Eric
9 punching Eric in the face and ramming his head into the
10 ground, and Eric was hollering like "help" and that's as far
11 as he's hollering help, and then that's when my auntie came.
12 Auntie Margie said for you to get off my son. So as he said,
13 "Okay" -- then as Bubba got up, Eric was dazed, so I had to
14 grab Eric so I could take him back to the house.

15 So at the same time I took him back to the house -- I
16 picked him up. I haven't reached the house yet. Eric was
17 dazed. So the only thing I heard was somebody said to go get
18 my gun.

19 Q. Now, what do you mean somebody said---

20 A. Well---

21 Q. ---go get my gun?

22 A. At the same time it was Bubba -- Bubba said to Shakaria
23 to go get my gun.

24 Q. Okay. Now, how far away was Shakaria from where Bubba
25 was when he told her that?

1 A. Probably about the feet of where you're standing and
2 where I'm sitting.

3 Q. All right. And did he say it in that tone of voice that
4 you just used?

5 A. Yes, sir.

6 Q. And did he say anything else?

7 A. That's -- when I heard that, he said to go get my gun
8 because there's going to be trouble right down. So I was
9 like okay; there's going to be trouble. So as I get Eric---

10 Q. What did you take that to mean: There's going to be
11 trouble?

12 A. Well, if somebody said to go get their gun, that means,
13 you know, eventually they're going to end up killing somebody
14 or shooting somebody so...

15 Q. All right. Go on from there. What happened after that?

16 A. So I picked up Eric, and at the same time Eric was
17 dazed. So I'm trying to get him to go back to the house, and
18 after Eric said "Hold on" -- and then that's when I seen the
19 gunfire. And then when the gun fired, it didn't hit Bubba
20 Furman the first time. The first shot went past Bubba. Then
21 Bubba rushed Eric, and that's when everything happened so
22 quickly.

23 Q. All right. Now, when Bubba rushed at Eric, what
24 happened after that?

25 A. The -- when Bubba rushed Eric, that's when I seen the

1 gunfire, but it happened so quickly, Eric -- Bubba fall.

2 Then Eric went over Bubba on the ground.

3 Q. Well, that has been characterized in this case by
4 testimony as Bubba tackling.

5 A. Yes, sir.

6 Q. Is that what you saw?

7 A. Yes, sir.

8 Q. And did he tackle him low in the legs?

9 A. Actually, it was sort of up in the waist.

10 Q. Was it so that Eric went over the back of Mr. Furman?

11 A. Yes, sir.

12 Q. And then the two of them went to the ground. Is that
13 correct?

14 A. Yes, sir.

15 Q. And is that when you heard the gunshots?

16 A. Yes, sir. The gunshots were as Bubba attacked Eric, and
17 as both of them are falling, that's when we heard the
18 gunshots.

19 Q. All right. Now, tell me this: How long did this whole
20 thing take?

21 A. It happened so quick, sir.

22 Q. Was it a matter of seconds or a matter of minutes?

23 A. I would say a matter of minutes.

24 Q. Minutes?

25 A. Seconds.

1 Q. Seconds?

2 A. Well, yeah, because it happened so quickly, you know,
3 the time everything -- they broke apart. It happened just
4 like that quickly.

5 Q. Tell me this: You were standing right close by, were
6 you?

7 A. Yes, sir.

8 Q. And you correct me if I'm wrong, but did you have any
9 time to react to anything at all?

10 A. No, sir, because I -- at the same time of the first
11 shot, I kind of backed up a little bit because I didn't know
12 what was going on at the time.

13 Q. Did you have any fear that Bubba was going to kill Eric?

14 A. Yes, sir. I can say yes because if somebody said to go
15 get their gun and you're just having a fight, that's --
16 that's almost like, you know, you never know what's going to
17 happen.

18 Q. Was there any way that Eric could have gotten away from
19 Bubba?

20 A. No, Eric was dazed.

21 **Mr. McCloskie:** Thank you, sir. Answer any questions
22 that Mr. Knight might ask you, please.

23 **The Court:** Mr. Knight?

24 **Mr. Knight:** May it please the Court?

25 **The Court:** Yes, sir.

Cross-Examination

1

2 By Mr. Knight:

3 Q. Mr. Darien, the fight ended. Okay. As I understand
4 your testimony, you grabbed Eric to take him home?

5 A. Yes, because he was dazed.

6 Q. He was dazed. Was he talking to you and you talking to
7 him?8 A. Well, actually I wasn't talking to him and he wasn't
9 saying nothing to me because he didn't really know who had
10 him.

11 Q. Okay. So you were walking him to his mother's house?

12 A. Yes, sir.

13 Q. Which is, what, 10, 20 yards from where y'all were at?

14 A. You can probably say from where you're standing.

15 Q. Okay. I apologize. And how far did you and Eric get
16 walking to his mother's house?17 A. Not -- not that far. By the time I picked him up, that
18 was...

19 Q. A couple of steps?

20 A. I'm going to say about one step.

21 Q. One step. And then what did Eric tell you? Stop? Hold
22 on?

23 A. No. Eric did not say stop or hold on.

24 Q. What did Eric do then when you took that one step and
25 you stopped?

1 A. Eric went to shaking.

2 Q. He went to shaking?

3 A. Yes, sir.

4 Q. Okay. What did he then do?

5 A. After he went to shaking, he was beginning to fall back
6 again.

7 Court Reporter: Beginning to fall back?

8 The Witness: Down to the -- like he was about to fall
9 to the ground.

10 By Mr. Knight:

11 Q. And then what did he do?

12 A. And the only thing I know: When he did that, the gun --
13 I heard the fired shots.

14 Q. Okay. Now, where was the gun at?

15 A. I don't know, sir.

16 Q. Was it on the ground or was it on him or you just don't
17 know?

18 A. Well, he had a bag, but I don't know what was in the
19 bag, so I couldn't say where the gun was.

20 Q. Do you know whether or not Eric went to the bag before
21 the gun went off?

22 A. No, sir, because I was paying attention, trying to get
23 him back to the house.

24 Q. Okay. When you picked Eric up off the ground, did you
25 see a gun in the close area around him?

1 A. No, sir.

2 Q. Okay. So the gun must have been on him.

3 A. Probably was, sir.

4 Q. Okay. Now, you said that Eric couldn't have left there
5 - is that correct - before the shots were fired?

6 A. Well, he was dazed and he was out of it, so eventually
7 if you're dazed and out of it, you're trying to get your
8 strength and stuff back to be able to -- to be able to move.

9 Q. Okay. But his mother's house was so close. He could
10 have walked to his mother's house, couldn't he?

11 A. No, sir.

12 Q. You could have helped him to his mother's house,
13 couldn't you?

14 A. Yes, sir.

15 Q. Okay. Now, when you heard the first gunshot, you said
16 it missed Bubba?

17 A. Yes, sir.

18 Q. Okay. How far away -- and I'm going to be Eric and I --
19 you'll be Eric and I'll be Bubba. When was that first shot
20 fired? How far away was Bubba? Tell me when to stop.

21 A. Well, you have to come -- come...

22 Q. Come closer? I'm sorry.

23 A. Probably about a little bit -- step back about a little
24 -- probably about somewhere up in there.

25 Q. Okay. That was when the first shot was fired---

1 A. Yes, sir.

2 Q. ---that missed Bubba.

3 A. Yes, sir.

4 Q. And then you say Bubba turned around after the first
5 shot and he came toward Eric.

6 A. Well, that's when Bubba -- with the first shot, that's
7 when Bubba rushed Eric.

8 Q. Okay. But the first shot Bubba was walking away from
9 Eric?

10 A. No, actually he was standing.

11 Q. He was just standing still?

12 A. Yeah.

13 Q. Okay. Now, you say that Bubba tackled Eric---

14 A. Yes, sir.

15 Q. ---after the first shot.

16 A. Yes, sir.

17 Q. You say he tackled him waist down?

18 A. That's what it looked like from the waist...

19 Q. And that would then put Eric on top of Bubba with a gun.

20 A. Yes, sir.

21 Q. And that's when you heard the additional shots?

22 A. Yes, sir.

23 Q. How many additional shots after the first shot did you
24 hear?

25 A. Well, it happened so quickly, you know, so we can't

1 really say how much of shots because of the gun -- what type
2 of gun it was.

3 Q. I understand. If you don't know how many, that's fine.
4 If the court would indulge me one moment.

5 The Court: Yes, sir.

6 Mr. Knight: Your Honor, that's all I have of this
7 witness.

8 Mr. McCloskie: I have some redirect.

9 The Court: Yes, sir.

10 Redirect Examination

11 By Mr. McCloskie:

12 Q. Mr. Darien, when this occurred, it was already dark, was
13 it not?

14 A. Yes, sir.

15 Q. So you couldn't have seen what -- if Richard Furman had
16 anything in his hands or not, could you?

17 A. No, sir.

18 Q. But you distinctly heard him tell Shakaria White to get
19 his gun.

20 A. Yes, sir.

21 Q. And you considered that to be a threat.

22 A. Yes, sir.

23 Q. Now, when Mr. Knight asked you about where this gun was
24 that Eric eventually wound up with, your answer in response
25 to that question was it was probably on him. Do you actually

1 know -- did you actually see?

2 A. No, sir.

3 Q. And what was the reason that you couldn't get Eric to
4 Eric's mother's house?

5 A. Because Eric was shaking and during the -- I don't know
6 anything about C.P.R. or none of that. So he was shaking,
7 but he was dazed. I don't know if he was gagging to try to
8 get breath.

9 Q. Well, did it have anything to do with the immediate
10 threat that Mr. Furman had made? Could he have gotten safely
11 to his mother's house in light of that threat?

12 A. Well, if somebody said to get my gun and -- your first
13 instinct is going to be let me take charge of what happened.

14 Mr. McCloskie: Thank you, sir. That's all I have.

15 The Court: Mr. Knight?

16 Mr. Knight: No, ma'am. I don't have anything.

17 The Court: All right.

18 Mr. McCloskie: If Your Honor please---

19 The Court: Any objection to Mr. Darien being excused?

20 Mr. McCloskie: Without objection.

21 Mr. Knight: None from the State.

22 The Court: All right. You are excused, sir. Thank
23 you.

24 Mr. McCloskie: If Your Honor please, we rest.

25 The Court: Thank you. Ladies and gentlemen of the

1 jury, at this time the defense has now rested their case as
2 well. I'm going to send you back to your jury room, but
3 again I caution you not to begin your deliberations. You
4 have not heard the arguments from the lawyers nor my charge
5 on the law, and it would not be appropriate to do so at this
6 time.

7 I'm also going to ask, ladies and gentlemen of the jury,
8 when you go back there you do something for me. I need you
9 to elect a foreperson among the 12 of you that are main
10 jurors in this case. A foreperson does not have any more say
11 than anyone else. It is simply the person that facilitates
12 the conversation when you begin your deliberations, and it
13 also is the person that fills out the verdict form in this
14 case.

15 What I'm going to ask that you do is among you again go
16 elect your foreperson, and when you come back, you all are
17 free to sit in any chairs as you wish other than my
18 alternates stay where they are, but I'm going to ask that
19 whoever is elected foreperson: Take this very first front
20 seat so I know who it is. All right? So with that said,
21 you're excused back to your jury room. We'll be with you
22 shortly. Thank you.

23 (Whereupon, the jury was excused from open court at
24 11:08 a.m.)

25 **The Court:** All right. Gentlemen, are there any

1 motions?

2 **Mr. McCloskie:** I would renew my motions at this time.
3 Of course, the standard is increased upon the State. There
4 is no evidence to go to this jury upon which they could find
5 murder beyond a reasonable doubt. There is no evidence to
6 rebut self-defense, that the jury can find it was self-
7 defense beyond a reasonable doubt, in fact. For those
8 reasons, I respectfully make the motions.

9 **The Court:** Okay. And again respectfully, based on the
10 same grounds as before, I'm going to deny your motion again.
11 In the light most favorable to the State, I do think there
12 was some evidence from which the jury could determine that
13 your client had malice, and so I think that was the issue
14 that we were concerned about. With that said, I'm going to
15 go ahead and send it to the jury.

16 Gentlemen, are you prepared right now for me to go over
17 my jury charge?

18 **Mr. McCloskie:** I would -- I would like to do that if
19 you...

20 **The Court:** Okay. Mr. Knight, is that fine?

21 **Mr. Knight:** I'm prepared. The only thing I'd like to
22 do is go to the rest room.

23 **The Court:** Right now?

24 **Mr. Knight:** I can wait if---

25 **The Court:** Let's go, please. I'm not going to hold

1 anyone... Let's do this. Gentlemen, let's go take about a
2 ten-minute break, come back. I'm going to go through my jury
3 charge. Our intention now is just based on the time that we
4 go ahead and argue and charge, send this to them, and if they
5 end up holding it for, you know, 'til about 1 or 1:30 or so
6 that we will go ahead and just lunch brought in for them just
7 based on how quickly this morning has moved, as long as
8 that's fine with you gentlemen.

9 **Mr. McCloskie:** That's fine.

10 **Mr. Knight:** That's fine with me.

11 **Mr. McCloskie:** That's fine.

12 **The Court:** Okay. So why don't we take ten minutes?

13 We'll come back. I'll tell you -- in the meantime,
14 gentlemen, what I might do is go ahead and give you a copy of
15 the verdict form. Just over the break, the ten-minute break,
16 you both make sure you're fine with it, and I'll go over my
17 charge, and then I'll take y'all -- I'll give y'all a brief
18 amount of time, whatever you need, to go ahead and kind of
19 prepare for your closing statements.

20 **Mr. Knight,** do you have any idea how long you are going
21 to argue? And, again, I would never limit you. Just so I
22 have an idea...

23 **Mr. Knight:** Fifteen minutes at the maximum, I mean...

24 **The Court:** Right.

25 **Mr. Knight:** If I go longer than that, it's...

1 **The Court:** Unusual.

2 **Mr. Knight:** Very.

3 **The Court:** Mr. McCloskie?

4 **Mr. McCloskie:** I don't -- I don't think I have ever
5 argued more than 15 or 20 minutes.

6 **The Court:** Okay. And, again, I would never limit
7 y'all, as you know. So...

8 **Mr. Knight:** I just don't think there's...

9 **The Court:** Just for scheduling. That's fine. Okay.

10 **Mr. Knight:** I don't have any problem with it, Judge.

11 **The Court:** Okay. Thank you.

12 **Mr. McCloskie:** I have no objection.

13 **The Court:** Okay. Thank you, gentlemen. Let's take ten
14 minutes, and we'll be back and I'll go through my charge with
15 y'all.

16 (Whereupon, a short break was taken.)

17 **The Court:** Thank you, y'all. Be seated. Please be
18 seated. All right. Gentlemen, in light of our discussion
19 yesterday in regards to proposed charges, I'd like to go over
20 my charge with you first, and then, of course, if there's
21 anything additionally you would like charged, let me know.

22 I know both of you have tried cases with me before,
23 actually many, so you know what my standard charge is. I go
24 through, as you all know, and I read the indictment. I tell
25 them about the presumption of innocence, do the robe of

1 righteous speech, talk about reasonable doubt certainly,
2 explain the duties of the jury, that they're the judges of
3 the facts and that I'm the judge of law. I then go on and
4 talk about direct and circumstantial evidence and the law
5 allows them to give equal weight to both.

6 I then talk about expert testimony. We had two doctors
7 testify in this case. We go in and talk about the weighing
8 of and evaluating the credibility of the witnesses that have
9 testified. I am not going to charge anything on the
10 statement given by the defendant because you have stipulated,
11 Mr. McCloskie, that it was given freely and voluntarily and
12 subject to Miranda. So that is not an issue. Is that
13 correct, sir?

14 **Mr. McCloskie:** That's correct, Your Honor.

15 **The Court:** All right. And then I am going to state --
16 do the charge where the defendant has not testified in this
17 case and that the jury is not allowed to give that any
18 consideration whatsoever back in the jury room during their
19 deliberations because he has a constitutional right not to
20 testify. I then am going to go through and charge them as to
21 murder in this case which, Mr. McCloskie and Mr. Knight,
22 probably for both of your sake what I think I may do - it's
23 not that long - I'm going to read it to you so you know
24 exactly what I'm going to say to make sure that there's
25 nothing objectionable.

1 "The defendant in this case is charged with murder. The
2 State must prove beyond a reasonable doubt the defendant
3 killed another person with malice aforethought. Malice is
4 hatred, ill will or hostility towards another person. It is
5 the intentional doing of a wrongful act without just cause or
6 excuse and with an intent to inflict an injury.

7 "Malice aforethought may be express or inferred. Now,
8 these terms, express and inferred, do not mean different
9 kinds of malice but merely the manner in which malice may be
10 shown to exist, that is, either by direct evidence or by
11 inference from the facts and circumstances which are proved.

12 "Express malice is shown when a person speaks words
13 which express hatred or ill will for another or when the
14 person prepared beforehand to do the act which was later
15 accomplished, for example, lying in wait for a person, or any
16 other acts of preparation going to show that the deed was
17 within the defendant's mind would be express malice.
18 Inferred malice is when circumstances demonstrate a wanton or
19 reckless disregard for human life or where a reasonably
20 prudent person would have known that according to common
21 experience there was a plain and strong likelihood that death
22 would follow the contemplated act.

23 "Malice aforethought does not require that malice exists
24 for any particular time before the act is committed, but
25 malice must exist in the mind of the defendant just before

1 and at the time that the act is committed. Therefore, there
2 must be a combination of the previous evil intent and the
3 act." That's for murder. Any objections to that, Mr.
4 Knight?

5 **Mr. Knight:** None from the State.

6 **The Court:** Thank you.

7 **Mr. McCloskie:** Without objection.

8 **The Court:** Thank you. And then I'm going to go on to
9 say, "If you find the defendant (sic) has failed to prove
10 beyond a reasonable doubt the defendant committed murder, you
11 should consider whether the State has proved beyond a
12 reasonable doubt that the defendant committed voluntary
13 manslaughter. To prove voluntary manslaughter, the State
14 must prove beyond a reasonable doubt that the defendant took
15 the life of another in the sudden heat of passion based on
16 sufficient legal provocation.

17 "Both heat of passion and sufficient legal provocation
18 must be present at the time of the killing to constitute
19 voluntary manslaughter. Sudden heat of passion may for a
20 time affect a person's self-control and temporarily disturb a
21 person's reason. The sudden heat of passion must be the type
22 that would make an ordinary person unable to coolly reflect on
23 his actions and would produce an uncontrollable impulse to do
24 violence.

25 "Sufficient legal provocation must be the type that

1 would make a person of ordinary reason and caution become
2 enraged and to lose control temporarily. The provocation
3 needed for voluntary manslaughter must come from some act of
4 or related to the victim. Words alone, how ever vulgar or
5 insulting, are not enough to be legal provocation. Where
6 death is caused by the use of a deadly weapon, the words must
7 be accompanied by some overt, threatening act which could
8 have produced the heat of passion.

9 "The exercise of a legal right, no matter how offensive
10 it is to another, is never sufficient legal provocation for
11 voluntary manslaughter. If the heat of passion had cooled or
12 if there was enough time between the provocation, if any, and
13 the killing for the passion of a reasonable person to cool,
14 the killing would not be voluntary manslaughter.

15 "In deciding whether a reasonable person would have had
16 enough time to cool off, you should consider all the
17 circumstances surrounding the killing. You may consider the
18 nature of the provocation, if any, the defendant's mental and
19 physical state, and the circumstances and relationships
20 between the parties."

21 Any objection to the voluntary manslaughter charge, Mr.
22 Knight?

23 **Mr. Knight:** None from the State.

24 **Mr. McCloskie:** No objection.

25 **The Court:** Thank you. Lastly, gentlemen, I'm going to

1 charge self-defense as that has been the defense that Mr.
2 McCloskie has put up and that he requested yesterday. And,
3 again, gentlemen, I'm going to go through that for you just
4 for the record so you know how I'm going to present it to the
5 jury so you know how to argue it.

6 "The defendant has raised the defense of self-defense.
7 Self-defense is a complete defense. If established, you must
8 find the defendant not guilty. There are four elements
9 required by law to establish self-defense. First, the
10 defendant must be without fault in bringing on the
11 difficulty. Second, the defendant must have been in actual
12 imminent danger of losing his life or sustaining seriously
13 bodily injury or he must have actually believed he was in
14 imminent danger of losing his life or sustaining serious
15 bodily injury.

16 "Third, if his defense is based upon his belief of
17 imminent danger, a reasonably prudent person of ordinary
18 firmness and courage would have entertained the same belief,
19 if the defendant actually was in imminent danger and the
20 circumstances were such as would warrant a person of ordinary
21 prudence, firmness, and courage to shoot the fatal shots in
22 order to save himself from serious bodily harm or losing his
23 life. Fourth, the defendant had no other probable means of
24 avoiding the danger of losing his own life or sustaining
25 serious bodily injury than to act as he did in this

1 particular instance. These are the elements of self-defense.

2 "A defendant in a self-defense case has the right to act
3 on appearances. A defendant must have believed he was in
4 imminent danger, not that he was actually in such danger,
5 because he had the right to act on appearances and under the
6 circumstances as they appeared to him he believed he was in
7 such danger and a reasonably prudent man of ordinary firmness
8 and courage would have entertained the same belief.

9 "Words accompanied by hostile acts may, depending on the
10 circumstances, establish a plea of self-defense. If the
11 defendant is justified in firing the first shot, the
12 defendant is justified in continuing to shoot until it is
13 apparent that the danger to his life and body has ceased.
14 Ordinarily a defendant is not justified in shooting or
15 employing a deadly weapon after the adversary has been
16 disarmed or disabled.

17 "Now, there has been evidence about bad blood or ill
18 feelings between these parties. If there is bad blood or ill
19 feelings between the victim and the defendant and there have
20 been antecedent threats between them, that would not give
21 either of them in itself the right to injure or physically
22 harm the other. If there are ill feelings or bad blood
23 between the victim and the defendant and they have that
24 information, they have the right to judge the other person's
25 conduct more harshly than otherwise.

1 "If there have been ill feelings and bad blood, if there
2 have been any antecedent threats, the other person is
3 justified in interpreting acts more harshly than in the case
4 of friends. If there are threats of harm or ill feelings or
5 bad blood, the conduct has to be judged in that light, and
6 the other person may judge more harshly in determining
7 whether there is any necessity to act for that person's
8 safety.

9 "There is no burden upon the defendant to prove self-
10 defense. The defendant is not required to prove any element
11 of self-defense. The burden is on the State to disprove
12 self-defense beyond a reasonable doubt. If you have a
13 reasonable doubt of the defendant's guilt after considering
14 all the evidence, including the evidence of self-defense,
15 then you must find the defendant not guilty. On the other
16 hand, if you have no reasonable doubt of the defendant's
17 guilt after considering all the evidence, including the
18 evidence of self-defense, then you must find the defendant
19 guilty."

20 Gentlemen, then also I go on to read a very small
21 portion about a reputation for violence and turbulence as to
22 the victim because there was testimony in one of the State's
23 witnesses that allegedly Mr. Furman - and I'm not sure
24 exactly what the words were - that when he was angry -- I
25 mean, do y'all have a position on that? I'm assuming, Mr.

1 McCloskie, you want the charge. I mean, there was clearly
2 testimony that---

3 **Mr. McCloskie:** Yes, ma'am. Yes, ma'am, I do. The
4 words you're looking for come out of the mouth and by the
5 testimony of Ms. Shakaria White and the words are these.
6 Quote: Nobody can do anything with Bubba when he is mad.
7 End quote.

8 **The Court:** I'm going to go ahead and read you the
9 portion that I plan on reading in reference to that. It
10 says, "In a case where self-defense has been raised, you may
11 consider the victim's reputation for turbulence and violence
12 in the community as it bears on self-defense. In considering
13 the actions of the defendant, you are warranted in
14 considering the bad character and reputation for turbulence
15 and acts of violence of the victim, if any. If the defendant
16 knew the victim was of such character and reputation, then he
17 would be warranted in construing his actions more harshly and
18 acting upon hostile appearances more readily than he would
19 have been entitled to to do of a man of good character and
20 reputation.

21 "If the victim was a man of violent and dangerous
22 character, more prompt and decisive measures of defense are
23 justifiable than if he was of a peaceable disposition.
24 Further, you may consider the victim's temper at the time of
25 the fatal encounter."

1 **Mr. Knight:** I have a problem with some of that.

2 **The Court:** Okay.

3 **Mr. Knight:** The problem is there's a reference in your
4 charge to bad character.

5 **The Court:** Uh-huh.

6 **Mr. Knight:** The quote that Mr. McCloskie addressed the
7 court with does not indicate bad character. I mean, your
8 charge is putting his character into evidence. Just because
9 you can't control him when he's mad is not an issue of
10 character. It's an issue of discipline. That's not
11 character because if you use the phrase in your charge "bad
12 character," that's a kiss of death to the State.

13 **The Court:** I can tell you that I do think I need to
14 temper it a little bit. This is Ralph King Anderson's
15 charge, of course, as to this direct issue. I would agree
16 with you to some extent, Mr. Knight, about that because I
17 think it does almost in the way it's worded make it sound
18 like it's established, but I do think the issue as to his
19 reputation for -- and I don't know if we want to call it
20 violence and turbulence. That's what Judge Anderson calls
21 it, but I'm going to temper it a bit.

22 **Mr. Knight:** Right. I don't like the word violence
23 either.

24 **The Court:** And I agree with you, and that certainly
25 isn't even in the portion of the charge. What I'm going to

1 do right now is, gentlemen, while you just prepare for a few
2 minutes more, I'm going to temper that charge a bit. Again,
3 I think it's appropriate because, as you know, Mr. McCloskie
4 pointed out, I think it was, as you said, Shakaria White that
5 said that nobody can do anything with Bubba when he's angry,
6 and that is a reputation for anger and turbulence.

7 Mr. Knight: I understand that.

8 The Court: And I think it's appropriate.

9 Mr. Knight: I agree with you.

10 Mr. McCloskie: If Your Honor please---

11 Mr. Knight: Not use the phraseology "violence and bad
12 character."

13 Mr. McCloskie: Your Honor?

14 The Court: Yes, sir.

15 Mr. McCloskie: May I respectfully make a suggestion?

16 The Court: Yes, sir.

17 Mr. McCloskie: I think all you need to do is, taking
18 Judge Anderson's charge, to simply remove from the second
19 full sentence that begins, "In considering the actions of the
20 defendant, you are warranted in considering bad character or
21 reputation of turbulence and violence of the victim," remove
22 the words "bad character" -- "bad character and." So that
23 sentence would read and the charge would read: "In
24 considering the actions of the defendant, you are warranted
25 in considering the reputation of turbulence and acts of

1 violence of the victim," and that would cure any objection
2 that Mr. Knight might have to it.

3 **Mr. Knight:** I'm not sure... She's still indicating
4 violence, and there's no testimony that he was violent.

5 **Mr. McCloskie:** Well, there is testimony that he was
6 violent.

7 **Mr. Knight:** You couldn't control him when he was mad,
8 but that doesn't mean he was violent.

9 **Mr. McCloskie:** When you get violent, then you get mad.
10 I have never known somebody who was at peace with the world
11 to be violent.

12 **The Court:** All right. Gentlemen, what I'm going to do
13 is this. I'm going to give you a few minutes and I'm just
14 going to go tailor it just a little bit more, and I'll come
15 back and let you know what I am going to say before y'all
16 argue. Gentlemen, how long do you need?

17 **Mr. McCloskie:** To argue?

18 **The Court:** No, just to prepare. It's going to take me
19 two minutes, but if you need five minutes, ten minutes, 20
20 minutes, you tell me what you want before I come back and
21 we'll bring the jury out.

22 **Mr. McCloskie:** Would ten minutes be too much of an
23 imposition?

24 **The Court:** Absolutely not at all.

25 **Mr. Knight:** Ten minutes would be fine.

1 **The Court:** Whatever you want is what I'll give you. I
2 just wanted to make sure I gave you enough.

3 **Mr. McCloskie:** Thank you very much.

4 **Mr. Knight:** Thank you.

5 **The Court:** Absolutely. We'll wait ten minutes. Thank
6 you, and I'll be back out. We'll be at ease.

7 (Whereupon, a short break was taken.)

8 **The Court:** Thank you, y'all. Please be seated. All
9 right. Gentlemen, just for the record I want to read to you
10 that portion that I changed in request of Mr. Knight's issue
11 with the bad character of the victim. What I'm going to read
12 in that portion is, "In the case where self-defense has been
13 raised, you may consider the victim's reputation for
14 turbulence and anger in the community as it bears on self-
15 defense. In considering the actions of the defendant, you
16 are warranted in considering the reputation for turbulence
17 and anger of the victim, if any.

18 "If the defendant knew the victim was of such
19 reputation, then he'd be warranted in construing his actions
20 more harshly in acting upon hostile appearances. Further,
21 you may consider the victim's temper at the time of the fatal
22 encounter." Okay?

23 **Mr. Knight:** I can live with that.

24 **The Court:** All right. Mr. McCloskie?

25 **Mr. McCloskie:** Yes, ma'am.

1 **The Court:** Thank you, sir. I appreciate it. Is that
2 no objection?

3 **Mr. McCloskie:** No objection.

4 **The Court:** All right. Thank you.

5 **Mr. McCloskie:** Just one thing. Which reasonable doubt
6 charge are you going to use?

7 **The Court:** I will tell you that it's both, and I kind
8 of have mixed the two. Why don't I just go ahead and read it
9 to you, Mr. McCloskie, so you know? I have just kind of
10 married the two so... I did one the prosecution likes and
11 one the defense likes.

12 **"The State has the burden of proving the defendant**
13 **guilty beyond a reasonable doubt. The term reasonable doubt**
14 **must be given its plain and ordinary meaning. However, to**
15 **the extent that I may define it for you, a reasonable doubt**
16 **is the kind of doubt that would cause a reasonable person to**
17 **hesitate to act in the most important of their personal**
18 **decisions. The defendant is entitled to every reasonable**
19 **doubt arising in the whole case. If upon any issue of fact**
20 **essential to conviction you have a reasonable doubt as to how**
21 **that issue should be resolved, you must resolve that**
22 **reasonable doubt in favor of the defendant.**

23 **"Now, some of you may have served as jurors in civil**
24 **cases where you were told that it is only necessary to prove**
25 **that a fact is more likely true than not true such as by a**

1 greater weight or the preponderance of the evidence. In
2 criminal cases, the State's proof must be more powerful than
3 that. It must be beyond a reasonable doubt. Proof beyond a
4 reasonable doubt is proof that leaves you firmly convinced of
5 the defendant's guilt.

6 "Now, there are few things in this world that we know
7 with absolute certainty, and in a criminal case the law does
8 not require proof that overcomes every possible doubt. If
9 based on your consideration of the evidence you are firmly
10 convinced that the defendant is guilty of the crime charged,
11 you must find the defendant guilty. If, on the other hand,
12 you think there is a real possibility the defendant is not
13 guilty, you must give the defendant the benefit of the doubt
14 and find him not guilty."

15 Mr. McCloskie: Thank you, ma'am.

16 Mr. Knight: No problem.

17 The Court: All right. Any objection either side?

18 Mr. Knight: None.

19 The Court: Like I said, I think I covered both of them.
20 I just put the two together.

21 Mr. McCloskie: Without objection.

22 Mr. Knight: Without objection.

23 The Court: All right. Anything else you want me to go
24 over, gentlemen, before we go ahead and bring the jury back?

25 Mr. Knight: None from the State, Your Honor.

1 **The Court:** Okay.

2 **Mr. McCloskie:** None from the State (sic), and I'm going
3 to require the State to open in full.

4 **The Court:** Okay. All right. With that said, let's
5 bring the jury on back in.

6 (Whereupon, the jury was brought into open court at
7 12:02 p.m.)

8 **The Court:** Welcome back, ladies and gentlemen of the
9 jury. At this time you are going to hear the closing
10 arguments from the attorneys, my charge on the law, and then
11 we're going to go ahead and send the case to you. If you
12 would, give Mr. Knight your full attention at this time.

13 **Mr. Knight:** May it please the court, Your Honor?

14 **The Court:** Yes, sir.

15 **Mr. Knight:** At this point I'm going to talk to you
16 about the law that I'm relying upon in this case. Murder is
17 the unlawful killing of another with malice aforethought.
18 Malice is importing wickedness, an intentional killing,
19 knowing it to be wrong and intending to do it. That's what
20 malice is. Aforethought is the idea, conception, may be
21 conceived at the moment he pulled the trigger. It's the
22 unlawful killing of another with malice aforethought. Now,
23 again, as I told you earlier in my opening statement, His
24 (sic) Honor will charge you much better than I can.

25 Reasonable doubt. That's a doubt that would cause a

1 reasonable person to hesitate to act. Use your common sense.

2 Credibility of the witnesses. That simply means this,
3 as I understand it: That you can believe a part of a
4 witness's statement, all of a witness's statement, none of a
5 witness's statement, any of a witness's statement. That's
6 left up entirely to you all.

7 Now, how do you determine the credibility of a
8 particular witness? Look at him or her on the stand, his
9 demeanor on the stand, his bias or prejudice, why he or she
10 would testify one way or the other. That's essentially
11 credibility of the witnesses.

12 We have a couple of types of evidence. Direct evidence"
13 that's when someone sees something or hears something. We
14 also have circumstantial evidence. That means that a fact
15 can be proved or facts can be proved which would prove
16 another fact.

17 So those are the areas of the law that I'm relying upon
18 in this case. That's murder, reasonable doubt, credibility
19 of the witnesses, and direct and circumstantial evidence.
20 And I'll be back with you in a few moments to discuss the
21 facts. Thank you.

22 Mr. McCloskie: Mr. Knight? May it please the Court?

23 The Court: Yes, sir.

24 Mr. McCloskie: Good morning for the last time. I'm
25 going to talk to you a few minutes, and then Mr. Knight is

1 going to talk to you for a few minutes. Please bear in mind
2 the judge's instruction at the beginning of this trial that
3 nothing that Mr. Knight and I say in these arguments is to be
4 considered by you as evidence. This is not evidence. What
5 it is is an attempt on our part to guide you as finders of
6 facts toward your deliberations.

7 Now, I'm going to talk about the facts a little bit and
8 I'm going to talk about the law a little bit. However, if I
9 mention anything to you about a fact that you don't recall as
10 being accurate, you forget what I said. You remember the
11 facts like they came off that witness stand like you've seen
12 with your own eyes. I make mistakes. I don't want to make a
13 mistake here, but if I do, you remember it the way you
14 remember it, not the way I remember it.

15 Also, I'm going to talk a little bit about the law, and
16 if I say something about the law that is contrary to what
17 Judge Mullen is going to tell you the law is, don't pay any
18 attention to what I said. All right? I make mistakes. I'm
19 going to try not to.

20 This case has been, quite frankly, shorter than I had
21 thought it would be, but please remember that what we're
22 talking about also is an extremely compacted period of time,
23 in seconds, and remember some of the testimony that came out
24 that I think you'll find might bear witness to what I told
25 you to begin with. For example, I told you to begin with

1 that this is a case of rage versus fear, and I told you to
2 begin with you'd hear statements from one witness that nobody
3 can do nothing with Bubba when he's mad. As I recall the
4 testimony, that came out.

5 Other things came out that I need to point your
6 attention to. One of the things that Mr. Knight mentioned in
7 his opening statement is the element that you must prove --
8 you must find beyond a reasonable doubt of malice on the part
9 of Eric Darien when he fired these fatal shots. Malice is a
10 complete depravity of anything good. It's an ill intention.
11 It's a malignant heart, a bad spirit. Some of those words I
12 think you'll hear in the judge's charges.

13 Well, remember when you hear that charge and when you
14 deliberate on whether or not there's malice in this case on
15 the part of Eric Darien what he told Detective Donald Hipp
16 when he was interviewing him. And he gave a thorough
17 interview, didn't he? One of the things he said: "I didn't
18 intend to kill nobody." Do you remember that?

19 Oh, by the way, if you have a problem, if y'all have a
20 dispute about this evidence here, you can come back in this
21 jury (sic) room and you can request to hear that portion of
22 that testimony over. Did you know that? And also if some of
23 the judge's instructions to you about the law become confused
24 to you, you can come back and hear those charges again. So
25 it's not that you depend completely on your memory. You've

1 got some help in this thing. You can come back here and
2 request, "Can we hear this part of that person's testimony?
3 Can we hear that instruction again?" You can do that and do
4 it if you have to.

5 "I didn't intend to kill nobody." Another thing that he
6 mentioned in the interview -- and I know that that interview
7 was kind of hard to understand because Eric talks fast, but
8 the fact of the matter is I heard him say distinctly: "I
9 would give my life to get him back." Now, tell me: Is that
10 an indication that somebody's heart is filled with malice?

11 I bring your attention to the facts of this evening as
12 they've unfolded here on this witness stand, and by the way,
13 not only do you not have an obligation to fill in any gaps
14 that the State has left in this case, you have an obligation
15 to avoid that because one of the instructions you're going to
16 get from Judge Mullen is you've got to base your finding
17 solely, solely only upon what you heard from that witness
18 stand and these pieces of evidence that were entered in the
19 case. You cannot fill in any gaps.

20 I mean, it makes sense, doesn't it, out of a common
21 experience? Somebody brings you a check. You ain't going to
22 fill in the amount and sign their name to it. Well, this
23 indictment is a charge. It's a check, and you've got to make
24 sure that the State has made the check good, period, the end.
25 And, again, I advise you that the law is that we don't have

1 to prove a thing. Eric Darien does not have to prove self-
2 defense beyond a reasonable doubt. He doesn't have to prove
3 it at all. The State has the burden of proving that this is
4 not a case of self-defense beyond a reasonable doubt.

5 Now, let's go over that, as I recall it, just briefly.
6 First of all, I think maybe you ought to consider it because
7 it makes sense if you do, and this is just a suggestion of
8 how you might want to go about this. Consider the evidence
9 of Dr. Batalis, the pathologist that came here, and as I
10 recall his testimony, this is in essence three bullet wounds,
11 point of entry, all three in the back. One was what he
12 described as a contact wound. I believe that was the one in
13 the midback. The other two were what he described as
14 proximate wounds. They could have been anywhere from a
15 distance of one foot to four feet. He doesn't know. He
16 doesn't know which shot was fired first. He does know that,
17 based on his expert opinion, his practice, that all three of
18 them were fired, either one contact and two within a distance
19 of one to four feet. Please bear that in mind.

20 Please bear in mind also what he testified to as far as
21 the path that all three of those bullets took: From back to
22 front, upward to downward, and left to right. Please bear in
23 mind that he testified that any one of the three could have
24 been fatal. He doesn't know which one, but he did not say
25 that the onset of death would have been instant. He did not

1 say that. Bear that in mind with a history of the testimony
2 that came out or by the testimony that came out, the history
3 of this event.

4 You've got a man for whatever reason that is enraged
5 enough to stop Eric Darien who is on his way cutting through
6 this yard and it just happens to be the house of the mother
7 of one of Eric's children, going to his mother's house, and I
8 recall the testimony of one witness as putting that distance
9 between the houses from that witness stand to that door.
10 Bubba Furman, Mr. Furman, sees him, tells Shakaria White:
11 Stop the car. She turns around and goes back. He calls Eric
12 over to wherever he was. Eric goes over there, and the next
13 thing you know he punches him.

14 Now, Mr. Knight told you something about the credibility
15 of the witnesses. This is a perfect example of the
16 credibility of the witnesses. Shakaria White got up here and
17 testified under oath that Eric Darien swung at Mr. Furman.
18 Is that what she told Mr. Hipp? Was that what Mr. Hipp put
19 in his incident report? She didn't want to read it. Do you
20 remember that? She didn't want to read it. That wasn't what
21 she told him Mr. Hipp. She told Mr. Hipp that Bubba hit
22 Eric, period, the end, nothing about -- nothing about Eric
23 swinging at all.

24 The next thing you know they're on the ground. Mr.
25 Furman is on top of Eric Darien pounding him to the point of

1 being dazed. The testimony was that at the end of it all Mr.
2 Darien, that is Leon Darien, the one that testified here
3 last, had to take him to his mother's house. That's how
4 dazed he was.

5 Now, between that time Bubba gets off of Eric. That's
6 the way I understand it. Tells Shakaria White to get his
7 gun, that he's going to kill him. Now, how do we know that
8 that more likely than not is true? Well, because Tamika
9 Furman says that when Bubba finally got off of Eric, he did
10 what? He got madder. He got madder. When I asked her
11 whether or not she heard Bubba tell Shakaria to get his gun,
12 do you remember what she said? She said she didn't hear
13 that, but he probably did. She didn't hear it, but he
14 probably did. Now, we're talking about this man's sister. I
15 didn't hear that, but he probably did.

16 Self-defense is a right that all of us has, every one of
17 us, and self-defense does not exclude the use of deadly
18 force. The elements of self-defense are fairly simple. One,
19 you can't have any part on bringing on about the immediate
20 difficulty. There is no evidence that Eric Darien did
21 anything to bring on this immediate difficulty. Two, you've
22 got to have a reasonable fear, that is a fear that a
23 reasonable person would have, that if you did not use force
24 you would either be seriously hurt or killed, and the law
25 says you can act on appearances. You can act on appearances.

1 Now, one thing I might want to clear up for you right
2 now -- and, again, if you remember it differently, you follow
3 your memory, not mine. There was some question early on
4 about the time period that this thing happened in respect to
5 whether or not it was light or it was dark. Well, Shakaria
6 White testified - I believe it was Shakaria White testified -
7 that it was light. She had also testified prior to that time
8 that there was a light pole out there.

9 In response to questions I asked her, I asked her
10 whether or not the light outside was on, and she said yes.
11 And I asked her, well, is it one of those kind of lights
12 that's activated by it getting dark? And she said yes. Do
13 you remember that?

14 So that ought to clear up any question about whether it
15 was light or dark. It was dark. It was dark when this thing
16 happened, and Eric Darien doing this had every right to act
17 on appearances. Do you remember his testimony when he talked
18 - not his testimony - the statement when he gave his
19 statement voluntarily to Donald Hipp? Do you remember that?
20 He didn't know whether he had a gun or not. He knew -- his
21 words were: He heard the threat, "Get my gun," coming out of
22 the mouth of Bubba Furman and his thought was: I thought
23 this man was going to kill me now. That's the way I remember
24 it. If you don't remember it that way and have any doubt
25 about it, let's play it back for you. Eric was so afraid

1 that night that he told Deputy Hipp the next morning that
2 Bubba Furman was going to hunt him down, hunt him down like a
3 dog.

4 Now, I've got to tell you that reasonable doubt is not
5 any kind of a super secret formula to anything. What Judge
6 Mullen is going to instruct you about reasonable doubt is
7 simply this: Reasonable doubt, among other things, is a
8 doubt that causes an ordinary person to hesitate to act in
9 the most important of their business affairs, something like
10 that.

11 This verdict of yours has to be unanimous. Every one of
12 you have to find guilt beyond a reasonable doubt before he
13 can be found guilty. However, it's very indigenous -- you
14 see, the law allows each one of you to hold on to that
15 reasonable doubt. Now, listen to your neighbors back there
16 and listen to them respectfully. Don't be afraid to tell
17 them how you feel about this critical element of whether or
18 not the State has proved guilt beyond a reasonable doubt, and
19 if any one of you have a reasonable doubt, it is your duty to
20 hold on to that reasonable doubt unless it can be dislodged.
21 It's like Eric's property. In this room right now, in this
22 county right now, there is only one person that has the
23 property right to a reasonable doubt, and that's my friend,
24 Eric Darien. It's his property.

25 Now, tell me this: If I was to walk away from here and

1 leave my glasses - and hopefully I could make it back to that
2 desk without stumbling without them - and you found my
3 glasses, would you just take them? Would you give them to
4 somebody else? Would you throw them in the trash can? We
5 don't do that to somebody else's property, do we? One of
6 you, if not all of you, would say to me, "Mr. McCloskie, you
7 forgot something. Here are your glasses." You'd return my
8 property to me, wouldn't you?

9 That's exactly what you do with reasonable doubt, not
10 because McCloskie says so but because the law says so. I
11 have never spent one minute, one second, of a 71-year-old
12 life making a law. This is not what McCloskie says; this is
13 what the law says. And right now, as of the moment you were
14 sworn in as jurors, you become like Mr. Knight, like myself,
15 and like Judge Mullen: A perfect servant of nothing more nor
16 less than the law. The law requires you, if you have a
17 reasonable doubt, to return that in the form of a verdict of
18 not guilty in this case.

19 **The Court:** Thank you, Mr. McCloskie. Mr. Knight?

20 **Mr. Knight:** May it please the Court, Your Honor?

21 **The Court:** Yes, sir.

22 **Mr. Knight:** I told you folks I'd be back earlier.

23 Let's talk about the testimony of Shakaria White. It appears
24 that the defense is making a big mistake about this, and
25 again if I misstate what I heard of the testimony, disregard

1 it. The only testimony that counts is what came from that
2 stand up there. What I say is not evidence. But I heard her
3 say that when they first got there it was light. Mr.
4 McCloskie asked her was the light on, and, yes, it was on.
5 During that time it came on. She doesn't know when it came
6 on. Automatic I think is what was said, so that takes care
7 of that.

8 Then there's the issue about what she told, she being
9 Shakaria White, what she told Detective Hipp. Well, I don't
10 know what she told Detective Hipp; I didn't see the statement
11 come from that stand. But I do recall asking her: Ms.
12 White, did anyone, Detective Hipp or any other investigator,
13 ask you specifically who swung first? Her answer was, "No."
14 So on the stand was the first time that anyone had mentioned
15 who swung first. Okay?

16 Judge her credibility, her demeanor, her manner of
17 testifying, bias and prejudice. She doesn't have prejudice,
18 the way I see it, one way or the other or bias one way or the
19 other. She's testifying as to what she saw. And she said --
20 it's so consistent through all the testimony from all the
21 four people that were out there that the distance in the
22 shooting was approximately six feet when it began. We know
23 that in the end it was much closer as Dr. Batalis testified
24 to. The top wound to the back, within four feet. The bottom
25 wound was one to four feet. And you know what? This one

1 right here right in the middle, up against the back, the gun
2 pointed in there, boom. The doctor testified he couldn't say
3 which one of these three killed him, but we do know it's in
4 the back.

5 We know there's no such thing in this case as an entry
6 wound in front. There were two exit wounds here and here I
7 think is what the doctor testified to. That's amazing, isn't
8 it? Ms. White's testimony is consistent with six feet. She
9 said when they're moving forward and they're coming this way,
10 the one to four feet that the doctor testified to and then
11 the contact wound. Pretty consistent. And she doesn't know
12 Dr. Batalis from the Medical University.

13 Tamika. You know, she testified as to what she saw.
14 She saw it just like Shakaria did. The first shot that Eric
15 fired missed him. They yelled. He turned. He charged like
16 an attack motion I think Tamika testified and Eric just boom
17 boom boom. The same thing that Jamontay testified to. The
18 first shot was missed. Missed Bubba. The next three was on
19 top. I think he said he tackled him and he was shooting
20 down, the same testimony as Bri. Her testimony is basically
21 the same: That Eric was on top when he was shooting her
22 daddy.

23 A lot of discussion has been made in the course of this
24 trial about Eric being the one that did not bring upon the
25 fault in this matter. Who swung first? Eric Darien. But

1 more importantly, more importantly than that: When the fight
2 ended, what was the testimony consistent by all the
3 witnesses? What did Bubba do? He walked away. Who had a
4 gun? Bubba didn't have a gun. Well, we know he had a gun
5 and he used it.

6 Remember, this is the testimony. He's walking, fired a
7 shot, missed him. He turns around and charges. Ain't but
8 one person got a gun and who is using it? So there is an
9 issue as to who brought upon the difficulty in this matter.

10 Now, the other thing was mentioned about the defendant
11 being in imminent danger of serious bodily injury or death.
12 Okay? Bubba is walking this way. Is Eric in imminent
13 danger? Is he? Eric is back there six to ten feet. He
14 knows Bubba is going this way, that way, and Eric's there.

15 And one other thing: If Bubba is going that way and
16 Eric's mama's house is here, why didn't he go to mama's
17 house? Because he did go to mama's house and he did call
18 9-1-1 after the incident. He could have done that right
19 then. Bubba is going that way. We'll go to mama's house and
20 report it.

21 This fellow -- I forget his name and I don't mean to
22 disparage him: Leon Darien. I think Leon said to the effect
23 that I could have helped after the fight Eric go to his
24 mama's house. He said he was in a daze. Well, you know, the
25 doctor testified these were minor bruises. Put ice on it.

1 Take Motrin. But Leon Darien said I could have helped him to
2 his mama's house. It was right over there. Right there.

3 Is that self-defense when you can go what -- 20, 30, 40,
4 whatever it is? Very close. Is that self-defense? And
5 here's what I recall in Eric's statement to law enforcement:
6 He admitted in that statement having the gun in the purple
7 bag when he got out of Mr. Goodman's car. It was in the bag
8 when he got out of the car and he talked to Eric. So if the
9 gun is in the bag after Eric is walking away, the inference
10 is he had to reach in the bag to get the gun. That's an
11 inference. An inference is nothing more than a piece of the
12 evidence that you can give any weight to.

13 Admits -- he also admitted that the first time I shot
14 him I missed him. Very consistent with the testimony of the
15 four who were out there. He did say by the time he got off
16 the ground Furman was returning. After he shot the first
17 time, he was -- Furman -- Bubba Furman was turning around and
18 that's when he charged.

19 Also, there was some testimony - and I stand to be
20 corrected - that as Bubba is turning around after the first
21 shot, Eric is moving in this direction and he gets tackled.
22 So he's moving towards Bubba. You know, that doesn't sound
23 like any self-defense to me.

24 So is that all the elements of self-defense, you know?
25 Was he in imminent danger of physical injury or death? He

1 was starting the initial confrontation with a swing, and even
2 after that, after the fight and Bubba is walking away, when
3 Bubba is walking away he could have walked home. And you
4 know what? Just like after he called -- after the shooting
5 incident, he called 9-1-1. He could have went straight to
6 his mama's house, picked up the same phone and said, "Hey,
7 look a here, police. Bubba Furman threatened me," if that's
8 what you want to believe his testimony is, and that's what it
9 was in the statement.

10 He didn't do that, did he? He took the law in his own
11 hands and he had the gun, if you listened to the testimony,
12 in this bag and he brought it with him. That's self-defense?
13 That's self-defense?

14 I submit to you that this is an unlawful killing of
15 another with malice. He intended to do it. He missed the
16 first time. He knew it was wrong. It was wicked. You shoot
17 one time. You know, it may be accidental. Maybe it
18 misfired. Shoot two times, it's intentional. Shoot three
19 times, it's intentional. Shoot four times, that's malice.
20 You intended to commit an act, and the act was killing Bubba
21 Franks (sic) and I ask you to return -- Bubba Franks -- Bubba
22 Furman on September 29th, 2008. Return a verdict of murder.
23 Thank you.

24

25

1 **The Court:** Thank you, Mr. Knight. Madam Foreperson and
2 ladies and gentlemen of the jury, you've followed very
3 patiently and listened very attentively to the presentation
4 of the evidence in this case, and I want to thank y'all for
5 that and also the able arguments made by Solicitor Steve
6 Knight on the part of the State and Mr. Mike McCloskie on
7 behalf of defendant. It now becomes the duty of the trial
8 judge under the Constitution of this state to charge and
9 instruct you on the law that's applicable to this case, and
10 it's your duty as jurors to accept and apply the law as the
11 Court will now state it to you.

12 As jurors, it is your exclusive duty to decide all the
13 issues of fact in this case. You must determine the effect,
14 the value, the weight, and the truth of the evidence. Both
15 the State and the defendant have a right to expect that you
16 will carefully consider and evaluate the evidence and apply
17 the law of the case to the evidence. By doing so, both the
18 State of South Carolina and the defendant will receive and
19 obtain a fair and impartial trial in this case.

20 The State of South Carolina by the bill of indictment in
21 this case charges the defendant, Eric Fitzgerald Darien, with
22 murder. I remind you that the fact that the defendant was
23 arrested, charged, and indicted in this case is not evidence
24 in this case and cannot be considered by you as evidence of
25 guilt in this case nor does it create any presumption or

1 inference of guilt. The document is simply the formal
2 written instrument which contains the charge made against the
3 defendant. It is the formal document by which the case is
4 brought into this court.

5 The defendant has pled not guilty to that indictment,
6 and that plea puts the burden on the State to prove the
7 defendant guilty beyond a reasonable doubt. A person charged
8 with committing a criminal offense in South Carolina is never
9 required to prove himself innocent.

10 I charge you that it is an important rule of law that a
11 defendant in a criminal trial, no matter what the seriousness
12 of the charge may be, will always be presumed innocent of the
13 crime for which the indictment was issued unless guilt has
14 been proven by evidence satisfying you, the jury, of that
15 guilt beyond a reasonable doubt. Now, this presumption of
16 innocence does not end when you begin your deliberations, but
17 it accompanies the defendant throughout the trial until you
18 reach a verdict of guilt based on evidence satisfying you,
19 the jury, of that guilt beyond a reasonable doubt.

20 The presumption of innocence is like a robe of
21 righteousness that's placed about the shoulders of the
22 defendant, and it remains with the defendant until it has
23 been stripped from him by evidence satisfying you of the
24 defendant's guilt beyond a reasonable doubt. The presumption
25 of innocence is not a mere legal theory. It's not just a

1 legal phrase we use. It's a substantial right to which every
2 defendant is entitled unless you, the jury, are satisfied
3 from the evidence of the defendant's guilt beyond a
4 reasonable doubt.

5 Now, the term reasonable doubt must be given its plain
6 and ordinary meaning. However, to the extent that I may
7 define it for you: A reasonable doubt is the kind of doubt
8 that would cause a reasonable person to hesitate to act in
9 the most important of their personal decisions. The
10 defendant is entitled to every reasonable doubt arising in
11 the whole case. If upon any issue of fact essential to
12 conviction you have a reasonable doubt as to how that issue
13 should be resolved, you must resolve that reasonable doubt in
14 favor of the defendant.

15 Now, some of you may have served as jurors in civil
16 cases where you were told that it is only necessary to prove
17 that a fact is more likely true than not true such as by what
18 we call the greater weight or the preponderance of the
19 evidence. In criminal cases the State's proof must be more
20 powerful than that. It must be beyond a reasonable doubt.
21 Proof beyond a reasonable doubt is proof that leaves you
22 firmly convinced of the defendant's guilt.

23 Now, ladies and gentlemen, there are very few things in
24 this world that we know with absolute certainty, and in
25 criminal cases the law does not require proof that overcomes

1 every possible doubt. If based on your consideration of the
2 evidence you are firmly convinced that the defendant is
3 guilty of the crime charged, you must find the defendant
4 guilty. If, on the other hand, you think there is a real
5 possibility that the defendant is not guilty, you must give
6 the defendant the benefit of the doubt and find him not
7 guilty.

8 I remind you that during this trial you and I have
9 certain duties to perform. As the trial judge, it's my
10 responsibility to preside over the trial of the case, and I
11 also have the duty to rule on the admissibility of the
12 evidence that's offered during the trial. You are to
13 consider only the competent evidence before you. You are to
14 consider only the testimony which has been presented from the
15 witness stand and the exhibits that have been entered into
16 the record as well as the stipulations entered into on behalf
17 of the attorneys.

18 Now, I have the additional duty to charge you the law
19 that's applicable in this case. As the presiding judge, I'm
20 the sole judge of the law, and it's your duty as jurors to
21 accept and apply the law as I now state it to you. If you
22 have any idea as to what the law is or what the law ought to
23 be and it does not agree with what I'm now going to tell you
24 the law, in fact, is, you must abandon this idea because you
25 are sworn and have sworn to accept the law and apply the law

1 exactly as I state it to you.

2 In every case tried in this court, in all courts, before
3 a jury, the jury becomes the sole and exclusive judge of the
4 facts. A trial judge cannot state, intimate, comment on or
5 make any statement to a trial jury about the facts in a case.
6 And since you, the jury, are the sole judge of the facts in
7 this case, you are not to infer from what I've said during
8 the progress of this trial in ruling upon the admissibility
9 of the evidence or otherwise or anything that I now say to
10 you during the course of this instruction that I have any
11 opinion about the facts of this case. The law does not allow
12 me to have an opinion about the facts of this case. This is
13 a matter solely for you, the jury, to determine.

14 Now, ladies and gentlemen, there are two types of
15 evidence which are generally presented during a trial. This
16 is direct evidence and circumstantial evidence. Direct
17 evidence is the testimony of a person who claims to have
18 actual knowledge of a fact such as an eyewitness. It is
19 evidence which immediately establishes the main fact to be
20 proved. Circumstantial evidence is proof of a chain of facts
21 and circumstances indicating the existence of a fact. It is
22 evidence which immediately establishes collateral facts from
23 which the main fact may be inferred.

24 Circumstantial evidence is based on inference and not on
25 personal knowledge or observation. The law makes absolutely

1 no distinction between the weight or value to be given to
2 either direct or circumstantial evidence nor is a greater
3 degree of certainty required of circumstantial evidence than
4 of direct evidence. You should weigh all the evidence in
5 this case, and after weighing all the evidence, if you are
6 not convinced of the guilt of the defendant beyond a
7 reasonable doubt, you must find the defendant not guilty.

8 Now, the rules of evidence ordinarily do not permit
9 witnesses to testify to opinions or conclusions. An
10 exception to this rule exists for witnesses we call expert
11 witnesses. A witness who by education and experience has
12 become an expert in some art, science, or profession may give
13 an opinion as to the subject the witness claims to be an
14 expert in and may also give the reasons for their opinion.

15 You should consider an expert opinion given by a witness
16 and like any other evidence give it the weight you think it
17 deserves. If you decide that an expert witness's opinion is
18 not based on sufficient education and experience or if you
19 decide that the reasons given in support of the opinion are
20 not sound or that the opinion is outweighed by other
21 evidence, you may disregard the opinion entirely. An expert
22 witness's testimony is to be given no greater weight than
23 that of other witnesses simply because the witness is an
24 expert, and you do not have to accept an expert's opinion
25 even though it is uncontradicted.

1 Now, ladies and gentlemen, it's your duty to determine
2 the credibility of the witnesses who have testified in this
3 case. Credibility simply means believability. It becomes
4 your duty as jurors to analyze and evaluate the evidence and
5 determine which evidence convinces you of its truth. In
6 determining the believability of witnesses who have testified
7 in this case, you may believe one witness over several
8 witnesses or several witnesses over one witness. You may
9 believe a part of the testimony of a witness and reject the
10 remaining part of the testimony of that same witness.

11 You may believe the testimony of a witness in its
12 entirety or reject the testimony of a witness in its
13 entirety. You may consider whether the witness has exhibited
14 to you any interest, any bias, any prejudice or other motive
15 in this case. You may also consider the appearance and
16 manner of a witness while on the witness stand.

17 Ladies and gentlemen, the defendant in this case has not
18 testified. This is his constitutional right. It is not a
19 circumstance that you can take into consideration or even
20 allow to enter into your discussion in the jury room. Under
21 the Constitution of South Carolina and the United States
22 Constitution, it is the defendant's constitutional right not
23 to testify. The burden of proof is on the State of South
24 Carolina to establish his guilt by competent evidence beyond
25 a reasonable doubt.

1 Now, ladies and gentlemen, the defendant in this case is
2 charged murder. The State must prove beyond a reasonable
3 doubt that the defendant killed another person with malice
4 aforethought. Malice is hatred, ill will or hostility
5 towards another person. It is the intentional doing of a
6 wrongful act without just cause or excuse and with an intent
7 to inflict an injury.

8 Malice aforethought may be express or inferred. Now,
9 these terms express and inferred do not mean different kinds
10 of malice but merely the manner in which malice may be shown
11 to exist, that is, either by direct evidence or by inference
12 from the facts and circumstances which are proved.

13 Express malice is shown when a person speaks words which
14 express hatred or ill will for another or when the person
15 prepared beforehand to do the act which was later
16 accomplished. For example, lying in wait for a person or any
17 other acts of preparation going to show that the deed was
18 within the defendant's mind would be express malice.

19 Inferred malice is when circumstances demonstrate a
20 wanton or reckless disregard for human life or where a
21 reasonably prudent person would have known that according to
22 common experiences there was a plain and strong likelihood
23 that death would follow the contemplated act.

24 Malice aforethought does not require that malice exist
25 for any particular time before the act is committed, but

1 malice must exist in the mind of the defendant just before
2 and at the time the act is committed. Therefore, there must
3 be a combination of the previous evil intent and the act.

4 Now, if you find that the State has failed to prove
5 beyond a reasonable doubt that the defendant committed
6 murder, you should consider whether the State has proved
7 beyond a reasonable doubt that the defendant committed
8 voluntary manslaughter. To prove voluntary manslaughter, the
9 State must prove beyond a reasonable doubt that the defendant
10 took the life of another in the sudden heat of passion based
11 on sufficient legal provocation. Both heat of passion and
12 sufficient legal provocation must be present at the time of
13 the killing to constitute voluntary manslaughter.

14 Sudden heat of passion may for a time affect a person's
15 self-control and temporarily disturb a person's reason. The
16 sudden heat of passion must be the type that would make an
17 ordinary person unable to coolly reflect on his actions and
18 would produce an uncontrollable impulse to do violence.

19 Sufficient legal provocation must be the type that would
20 make a person of ordinary reason and caution become enraged
21 and to lose control temporarily. The provocation needed for
22 voluntary manslaughter must come from some act of or related
23 to the victim. Words alone, how ever vulgar or insulting,
24 are not enough to be legal provocation. Where death is
25 caused by the use of a deadly weapon, the words must be

1 accompanied by some overt act, threatening act, which could
2 have produced the heat of passion.

3 The exercise of a legal right, no matter how offensive
4 it is to another, is never sufficient legal provocation for
5 voluntary manslaughter. If the heat of passion had cooled or
6 if there was enough time between the provocation, if any, and
7 the killing for the passion of a reasonable person to cool,
8 the killing would not be voluntary manslaughter.

9 In deciding whether a reasonable person would have had
10 enough time cool off, you should consider all the
11 circumstances surrounding the killing. You may consider the
12 nature of the provocation, if any, the defendant's mental and
13 physical state, and the circumstances and relationships
14 between the parties.

15 Now, the defendant has raised the defense of self-
16 defense. Self-defense is a complete defense. If
17 established, you must find the defendant not guilty. There
18 are four elements required by law to establish self-defense.
19 First, the defendant must be without fault in bringing on the
20 difficulty. Second, the defendant must have been in actual
21 imminent danger of losing his life or sustaining serious
22 bodily injury or he must have actually believed he was in
23 imminent danger of losing his life or sustaining serious
24 bodily injury.

25 Third, if his defense is based upon his belief of

1 imminent danger, a reasonably prudent person of ordinary
2 firmness and courage would have entertained the same belief.
3 If the defendant actually was in imminent danger, then the
4 circumstances were such as would warrant a person of ordinary
5 prudence, firmness, and courage to shoot the fatal shots in
6 order to save himself from serious bodily harm or losing his
7 own life. And, fourth, the defendant had no other probable
8 means of avoiding the danger of losing his own life or
9 sustaining serious bodily injury than to act as he did in
10 this particular circumstance.

11 These are the elements of self-defense. A defendant in
12 a self-defense case has the right to act on appearances. A
13 defendant must have believed he was in imminent danger, not
14 that he was actually in such danger, because he had the right
15 to act on appearances, and under the circumstances as they
16 appeared to him he believed that he was in such danger and a
17 reasonable prudent man of ordinary firmness and courage would
18 have entertained the same belief. Words accompanied by
19 hostile acts may, depending on the circumstances, establish a
20 plea of self-defense.

21 If the defendant is justified in firing the first shot,
22 the defendant is justified in continuing to shoot until it is
23 apparent that the danger to his life and body has ceased.
24 Ordinarily a defendant is not justified in shooting or
25 employing a deadly weapon after the adversary has been

1 disarmed or disabled.

2 Now, there has been evidence about bad blood or ill
3 feelings between these parties. If there is bad blood or ill
4 feelings between the victim and the defendant and there have
5 been antecedent threats between them, that would not give
6 either of them in itself the right to injure or physically
7 harm the other. If there are ill feelings or bad blood
8 between the victim and the defendant and they have that
9 information, they have the right to judge the other person's
10 conduct more harshly than otherwise.

11 If there have been ill feelings and bad blood, if there
12 had been any antecedent threats, the other person is
13 justified in interpreting acts more harshly than in the case
14 of friends. If there are threats of harm or ill feelings or
15 bad blood, the conduct is to be judged in that light, and the
16 other person may judge more harshly in determining whether
17 there is any necessary to act for that person's safety.

18 There is no burden upon the defendant to prove self-
19 defense. The defendant is not required to prove any of the
20 elements of self-defense. The burden is on the State to
21 disprove self-defense beyond a reasonable doubt. If you have
22 a reasonable doubt of the defendant's guilt after considering
23 all the evidence, including the evidence of self-defense,
24 then you must find the defendant not guilty. On the other
25 hand, if you have no reasonable doubt of the defendant's

1 guilt after considering all the evidence, including the
2 evidence of self-defense, then you must find the defendant
3 guilty.

4 In a case where self-defense has been raised, you may
5 consider the victim's reputation for turbulence and anger in
6 the community as it bears on self-defense. In considering
7 the actions of the defendant, you are warranted in
8 considering the reputation for turbulence and anger of the
9 victim, if any. If the defendant knew the victim was of such
10 reputation, then he would be warranted in construing his
11 actions more harshly and acting upon hostile appearances.
12 Further, you may consider the victim's temper at the time of
13 the fatal encounter.

14 Madam Foreperson and members of the jury, as you retire
15 to begin your deliberations, I wish to express the hope that
16 each of you will be mindful of the importance of your
17 responsibility here today. You're not called upon very often
18 to serve as jurors, and the proper performance of the duty
19 requires each of you to reach the height of freeing your mind
20 of all improper influences. You and I are acting for the
21 community, and that's why we must see to it that this trial
22 is fair and the verdict is just.

23 You've observed the presiding officer of this court is
24 always addressed as Your Honor. The reason is that the Court
25 is entrusted with the honor of this community, the honor of

1 this state, and the honor of this country in seeking that
2 every case tried here receives fair and impartial justice.
3 Now, you, the jury, take into your care and keeping the
4 preservation of the honor of this community, the honor of
5 this state, and the honor of this country.

6 Now, please don't get the idea that I'm trying to
7 intimate to you how I think you should decide this case. As
8 I've already told you, the laws of the State of South
9 Carolina do not allow me to have an opinion as to the facts
10 of this case, and it would be highly improper for me to
11 influence you in the performance of your duty. But as the
12 presiding officer of this court, I am vitally concerned that
13 whatever verdict you reach is the result of you going back
14 there into your jury room and confining your consideration to
15 the evidence and the law that you heard here in this
16 courtroom, weighing it fairly and impartially as I have every
17 confidence you will.

18 Ladies and gentlemen, everyone is entitled to justice in
19 this case, both the State and the defendant. You owe no
20 support or sympathy to anyone. The Court is of the confirmed
21 opinion that whatever verdict you reach will represent truth
22 and justice for all the parties.

23 Now, Madam Foreman and members of the jury, you remember
24 your verdict must be unanimous. It must be the verdict of
25 all 12 jurors, and to that end, ladies and gentlemen, my law

1 clerk has prepared a verdict form. It reads: The State of
2 South Carolina, County of Jasper, versus Eric Fitzgerald
3 Darien, defendant. It just has the caption and the court of
4 general sessions with the indictment number.

5 And there are two questions on this verdict form, Madam
6 Foreperson. The first says: As to indictment number
7 2008-GS-27-728, the charge of murder of Richard Furman, Jr.,
8 we, the jury, unanimously find the defendant, Eric Fitzgerald
9 Darien, and it says check one - either not guilty, excuse me,
10 or guilty.

11 Now, ladies and gentlemen, please don't infer by the
12 order that I put these in that it has any significance
13 whatsoever. Every trial, I just flip them.

14 Ladies and gentlemen, if you find as to the charge of
15 murder not guilty, you would then go on and consider the
16 lesser included charge of voluntary manslaughter which is
17 question number two. However, if you found that the
18 defendant is guilty in this case, the line says: Stop your
19 deliberations, knock on the door, and we'll receive you back
20 to the jury room. All right? On the back page, Madam
21 Foreperson, there is a line for you to sign your name and
22 date for today's date, ma'am.

23 So with that said, ladies and gentlemen, for the last
24 time I'm going to send you back to your jury room, and I'm
25 going to tell you not to begin your deliberations, and the

1 reason why is I'm going to ask these attorneys if there's
2 anything further they would want me to charge you before we
3 send the case to you. If there is, I'm going to bring you
4 back out here and I'm going to charge you further. If not,
5 ladies and gentlemen, I'm going to send this verdict form
6 along with all the evidence that's been entered into this
7 case back to you, and that is going to be your signal to
8 begin your deliberations.

9 Madam Foreperson, as I stated before, when you have
10 reached a unanimous verdict, I want you to knock on the jury
11 room door, and we will accept you back into the courtroom to
12 receive your verdict. All right? Again, ladies and
13 gentlemen, I appreciate your attention, and we will be back
14 with you shortly. You're excused back to your jury room.

15 (Whereupon, the jury was excused from open court at
16 12:58 p.m.)

17 **The Court:** Any exceptions or additions to the charge
18 from the State?

19 **Mr. Knight:** The only thing I'm concerned with: In
20 describing to the jury the form of verdict that you have, you
21 said on the murder charge guilty or not guilty and you
22 explained all that, and then you flipped to the second page
23 which is for the foreman to sign. I didn't hear you say they
24 could find guilty or not guilty on voluntary manslaughter
25 which you've submitted to them. The inference would be that

1 if they don't find him guilty of murder, then they don't have
2 to go any further because I think some---

3 **The Court:** Mr. Knight, you must have missed it because
4 I did say, in fact, that if you chose not guilty, you would
5 then go on and consider question number two---

6 **Mr. Knight:** Okay. I just wanted to make sure.

7 **The Court:** ---which would ask whether or not you
8 believe Mr. Darien was guilty of the lesser included offense
9 of voluntary manslaughter.

10 **Mr. Knight:** Thank you, ma'am. Maybe you just
11 hesitated.

12 **The Court:** All right.

13 **Mr. McCloskie:** We have no exceptions, objections or
14 requests for additional instructions.

15 **The Court:** Thank you. And, gentlemen, for the record,
16 you had both seen the verdict form and agree to it. Correct?

17 **Mr. Knight:** Yes, ma'am.

18 **Mr. McCloskie:** Yes, ma'am.

19 **The Court:** All right. Thank you. Gentlemen, I'm going
20 to give this to my court reporter and I assume Ms. Lynn is
21 somewhere around or Ms. Bostick, one of the two. You'll take
22 the evidence. If the attorneys will go through and make sure
23 the evidence is all together. Again, I want to tell you:
24 Certainly as a judge it's a pleasure trying cases with great
25 lawyers. There's never any exception between Mr. Knight and

1 Mr. McCloskie. Again, couldn't be a more joyful experience
2 from up here on the bench, and I want to thank you all and
3 commend you all on a wonderful job.

4 (Whereupon, the alternates were excused from the trial.
5 The jury began deliberating at 1:03 p.m.)

6 **The Court:** Thank you, y'all. Please be seated. All
7 right. I understand that we do have a verdict from the jury.
8 I want to caution those of you that are here in the courtroom
9 that are family members or friends: There will be absolutely
10 no outbursts in the courtroom regardless of what the verdict
11 is. If you do not think you can contain yourself, you need
12 to excuse yourself and leave right now. If there is any
13 outburst whatsoever, I will take you into custody and I want
14 you to understand that, and you will spend at a minimum
15 overnight in jail. So I want to make sure that everyone
16 understands the result of them not being able to contain
17 themselves so just so we're all completely clear.

18 All right, ladies and gentlemen. I'll give you this
19 opportunity now to go ahead and excuse yourself. Very well.
20 I appreciate that. Again, I want to commend the attorneys
21 for what a great job they did trying this case. They both
22 represented their sides very well, and if there's anything
23 else, Mr. Knight, Mr. McCloskie, if you're ready to bring the
24 jury in...

25 **Mr. Knight:** Ready for the jury, Your Honor.

1 **Mr. McCloskie:** Ready for the jury.

2 **The Court:** Thank you, gentlemen. Let's go ahead and
3 bring them on in.

4 (Whereupon, the jury returned to open court with a
5 verdict at 3:12 p.m.)

6 **The Court:** Welcome back, ladies and gentlemen of the
7 jury. It's my understanding from the bailiffs that y'all
8 have reached a verdict. Is that correct, Madam Foreperson?

9 **Forelady:** Yes, ma'am.

10 **The Court:** Would you please hand it to Ms. Bostick?
11 All right. Ms. Bostick, will you go ahead and publish the
12 verdict? Remind me to have the foreperson date it when we're
13 done.

14 **The Clerk:** State of South Carolina, County of Jasper.
15 The State of South Carolina versus Eric Fitzgerald Darien,
16 indictment 2008-CP-27-728 (sic). As to the indictment number
17 2008-GS-27-00728, the charge of murder of Richard Furman,
18 Jr., we, the jury, find unanimously Eric Fitzgerald Darien
19 not guilty of murder.

20 As to the lesser included offense of voluntary
21 manslaughter, we, the jury, unanimously find the defendant,
22 Eric Fitzgerald Darien, guilty. Signed by the foreperson.

23 **The Court:** Thank you, ma'am.

24 (The forelady signs the indictment.)

25 **The Clerk:** Dated February 10th, 2010.

1 **The Court:** Would either side like the jury individually
2 polled?

3 **Mr. Knight:** Not from the State, Your Honor.

4 **Mr. McCloskie:** The defense would request a polling.

5 **The Court:** Thank you. Ms. Bostick?

6 **Mr. McCloskie:** May we be seated?

7 **The Court:** All right. If you would go ahead---

8 **The Clerk:** As I call your name, will you raise your
9 right hand? Tony Burrison, was this your verdict? Is it
10 still your verdict?

11 **Juror Burrison:** It's my verdict.

12 **The Clerk:** Sir?

13 **Juror Burrison:** It's my verdict.

14 **The Clerk:** Thank you. Gloria Davis, was this your
15 verdict? Is it still your verdict?

16 **Juror Davis:** Yes.

17 **The Clerk:** George Pettit, was this your verdict? Is it
18 still your verdict?

19 **Juror Pettit:** Yes.

20 **The Clerk:** Thank you. Kelly Childress, was this your
21 verdict? Is it still your verdict?

22 **Juror Childress:** Yes, ma'am.

23 **The Clerk:** Ma'am, you have to speak up.

24 **Juror Childress:** Yes.

25 **The Clerk:** Thank you. Andre Stokes, was this your

1 verdict? Is it still your verdict?

2 Juror Stokes: Yes.

3 The Clerk: Thank you. Willie Chatman, was this your
4 verdict? Is it still your verdict?

5 Juror Chatman: Yes.

6 The Clerk: Thank you. John Gadson, was this your
7 verdict? Is it still your verdict?

8 Juror Gadson: Yes.

9 The Clerk: Thank you. Sierra Jones, was this your
10 verdict? Is it still your verdict?

11 Juror Jones: Yes.

12 The Clerk: Thank you. Clifton Swinton, was this your
13 verdict? Is it still your verdict?

14 Juror Swinton: Yes.

15 The Clerk: Thank you. Jennifer Patterson, was this
16 your verdict? Is it still your verdict?

17 Juror Patterson: Yes.

18 The Clerk: Thank you. James Brown, was this your
19 verdict? Is it still your verdict?

20 Juror Brown: Yes.

21 The Clerk: Thank you. Baishali Patel, was this your
22 verdict? Is it still your verdict?

23 Juror Patel: Yes.

24 The Clerk: Thank you. That's everyone.

25 The Court: All right. Thank you. Is there anything

1 further requested from this jury? From the State?

2 Mr. Knight: Nothing from the State, Your Honor.

3 The Court: From the defense?

4 Mr. McCloskie: Nothing from the defense.

5 The Court: Thank you. Ladies and gentlemen, I want to
6 thank you for your jury service here this week. I know it's
7 not easy to sit as jurors in a case and particularly in a
8 murder case. I know it's a bit more intensive and certainly
9 based on the severity of the charges it is more difficult,
10 but I want to tell you that y'all have been a wonderful jury,
11 that you all have listened diligently to all sides in this
12 case and I know you weighed it fairly and impartially, and I
13 want to thank you for that.

14 At this time I am going to excuse you from jury service
15 and, of course, you have also earned your exemption from jury
16 service in circuit court for the next three years. I will
17 tell you, ladies and gentlemen, at this time I'm going to go
18 ahead and sentence Mr. Darien. You are welcome to stay or
19 leave, either one. It's up to you. You are certainly not
20 required to stay, and you are certainly free to leave.

21 With that said also, ladies and gentlemen, lastly, as I
22 told you throughout the trial of this case, you are not to
23 discuss this case with anyone. At this time you are allowed
24 to discuss your verdict if you want to. Ladies and
25 gentlemen, however, no one can make you discuss your verdict

1 in any way. Sometimes in some cases attorneys or parties or
2 someone else may contact you and just want to ask you about
3 your verdict. If you do not wish to speak to anyone, you
4 say, "No, thank you. I do not want to discuss it," and
5 politely hang up the phone or walk away. If someone
6 persists, you are to call the clerk's office and ask for Ms.
7 Bostick and tell me who it is that is doing it and I'll make
8 sure they are taken care of. All right?

9 Again, whether or not you want to discuss the case is up
10 to you. You don't ever have to if you don't want to, but I
11 also want you to know that if you do want to you are free to
12 at this time. All right?

13 As far as ordering lunch is concerned, it's my
14 understanding from Ms. Bostick that it's still about 15
15 minutes away. Y'all are welcome to stay and wait for it and
16 take it home with you if you like. It's my understanding
17 that this is going to complete our business for today at the
18 courthouse. I will be back tomorrow morning again hearing
19 guilty pleas all day, but you are welcome again if you want
20 to wait for your salads - is what I believe it is - you can
21 take them with you, and you're certainly free to do that.

22 But, again, I want to send you away, if you do want to
23 go, with my thanks and certainly now is the time to leave if
24 you do not wish to be present for the sentencing or, of
25 course, you can stay again. Does anyone want to leave at

1 this time? No? All right. Well, then y'all just sit tight
2 and we'll go ahead and take care of sentencing.

3 All right. Mr. McCloskie. All right. Is there
4 anything further from the State in regards...

5 Mr. Knight: No, ma'am. He has a minor criminal
6 history.

7 The Court: What is his criminal history, please?

8 Mr. Knight: 1/29/1996, simple assault and battery.
9 D.U.S., looks like 6/4/2001. Criminal domestic violence
10 first offense, 8/22/2001. Breach of the peace, 5/29/2007.
11 This says violation of court order of protection, 9/12/2007.
12 I don't know what that is. That's -- and there's a
13 conviction of 1/7/2008 for simple possession of marijuana.
14 Is that correct, Mr. McCloskie, according to...

15 Mr. McCloskie: According to your records it is.

16 Mr. Knight: Yes, sir.

17 The Court: All right. Mr. McCloskie?

18 Mr. McCloskie: If Your Honor please, Eric is 35 years
19 old. He was born in Beaufort, was raised in Ridgeland, lived
20 Jasper County all his life. His family lives in the Pineland
21 area, and I don't know if you're familiar with that area of
22 Jasper County or not, but it's north and west of here. It's
23 a little community. Everybody knows everybody.

24 Eric has lived with his mother and father and on and off
25 with Tamika Furman who testified here today. His father was

1 disabled totally as a result of a horrible wreck not long
2 ago, I think about five years ago. A logging company had
3 pulled a skidder out of the woods up on the road with no
4 lights on it and he hit it. He's bedridden. The only person
5 that is around to care for Mr. Darien on a full-time basis is
6 his wife, Mrs. Margie Darien, who is with us here today.
7 I've had the pleasure of visiting with the Darien family, all
8 of them, in that home.

9 I can tell you it's a devout home. They're all devout
10 Christians. It's a stable home, and I'm sad not to see Eric
11 going back so he can assist his mother at least in caring for
12 his father. That has been Eric's overriding concerns: Who
13 is going to take care of my daddy? Who is going to take care
14 of my daddy?

15 I think the most impressive evidence of how Eric feels
16 about this event that took one life and changed his forever
17 was in two things. One of the expressions came out in the
18 trial. When he was interviewed by Donald Hipp the morning
19 after this event, having spent the night in the Jasper County
20 Detention Center, his concern obviously was not alone for
21 himself. He was open, accurate, complete in his interview
22 with Mr. Hipp, but I was taken by what he said about Mr.
23 Furman: I would give my own life if I could bring him back.

24 Sure, there was bad blood. Eric had tried to avoid it
25 for years, and then this event occurred in his life. Even

1 with the history and -- by the way, the reason for Eric not
2 being around this area for a period of ten days to two weeks
3 immediately prior to this happening -- please understand he
4 had just gone home to say good-bye to his parents and see his
5 son and to leave some belongings there because he was leaving
6 on a bus the next morning for Alabama. He was going to get
7 away from there, and that's what he tried to do all of his
8 life and just was absolutely unsuccessful in doing it this
9 time. His expression of regret I don't think could be any
10 deeper or more heartfelt than what he told Donald Hipp: I
11 would give my life to have his back.

12 Throughout my relationship with Eric which was
13 probably -- it probably began -- he was taken into custody
14 immediately on September the 29th. He's been there ever
15 since. It probably was within a month and a half of that -
16 and Eric can correct me if I'm wrong - but Eric has over and
17 over and over again expressed to me his sorrow for this event
18 taking place. This is not something that he wished or
19 intended at all.

20 I'm telling you this not to -- not to negate the
21 influence of the jury verdict but simply to make it
22 understandable when I ask you to, in light of the maximum
23 possible punishment for manslaughter in this state, to go
24 well below that maximum. Eric is made of the kind of
25 material that can recover and not only recover but grow

1 better and stronger, not just in spite of this event in his
2 life but because of it. He, too, is -- unnoticed by anybody
3 but me -- unusual in my experience, although I would have to
4 say that normally God follows the defendants into the jail
5 cell, you don't see people carry copies of the New Testament
6 in their pocket to trial. This has been the first experience
7 in 43 years, and Eric and I have talked about that.

8 And I'm not asking you and requesting a lenient sentence
9 for Eric or to do anything that I don't think Eric deserves.
10 He deserves it. He tried his best to avoid this event and
11 was absolutely unsuccessful, and for that he'll regret it for
12 the rest of his life.

13 If you ask him today would he exchange his life for Mr.
14 Furman's, you'd get the same answer: Yes. That's what he's
15 made of. And he's got all these people back here who are
16 important to him, stability to him. They have come to him in
17 his time of need. They're going to be there for him, and I
18 look forward to when Eric is back in the community, changed
19 for the better because he's stronger, and I ask you to please
20 be lenient with him.

21 **The Court:** Thank you, sir. Would anyone from his
22 family like to speak on his behalf?

23 **Mr. McCloskie:** If anyone would like to speak, you're
24 invited to at this point. If I have left anything out, if
25 there's anything to add...

1 **The Court:** Mr. Darien, what would you like to tell me,
2 sir?

3 **Mr. Darien:** I have nothing to say.

4 **Mr. Knight:** Your Honor, I have asked members of---

5 **The Court:** Right.

6 **Mr. Knight:** ---victim's family if they wished to
7 address the court, and they indicated no.

8 **The Court:** Thank you. All right. Anyone further? I
9 can tell you what's so unfortunate in situations like this is
10 that I can't bring Mr. Furman back. Certainly regardless of
11 what I do, Mr. Darien's life is ruined. You all are families
12 that live in such close proximity to each other that you're
13 going to have to pass each other and live with each other for
14 the rest of your lives.

15 I'm just hopeful that your hearts will all mend and
16 certainly that y'all will get past this and be able to go on
17 about your lives and, you know, even be able to be in each
18 others' presence certainly at church and in the grocery store
19 or wherever you may pass and that can understand that, you
20 know, unfortunately sometimes things like this happen. As
21 such though, I have to look at what has occurred, and someone
22 has lost their life and certainly that's significant. It
23 always reminds me: If we didn't have such an easy access to
24 guns, maybe we all wouldn't be here, unfortunately.

25 With that said, Mr. Darien, I wish you the best. I wish

1 your family the best, and certainly for the Furman family I
2 wish you and your children all the best.

3 On indictment number 2008-728, it's for voluntary
4 manslaughter. The sentence of this Court is that you be
5 committed to the department of corrections for a period of 18
6 years. Again, good luck to you, sir.

7 **Mr. McCloskie:** Thank you, Judge.

8 **The Court:** Of course, I'll give you credit for the time
9 you've served.

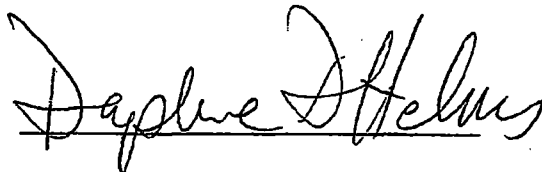
10 **Mr. Knight:** Thank you, Your Honor.

11 (Whereupon, the proceedings were concluded.)
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I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Jasper County, South Carolina, on the 8th through 10th of February, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 10, 2010

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above the printed name.

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF GENERAL SESSIONS
FOR THE 14th JUDICIAL CIRCUIT

MURDER
INDICTMENT NUMBER: 08-GS-2700728

STATE OF SOUTH CAROLINA)
VS.)
ERIC DARIEN,)
Defendant.)

NOTICE OF MOTION AND MOTION
TO RECONSIDER SENTENCE

TO: STEVEN KNIGHT, ASSISTANT SOLICITOR FOR THE FOURTEENTH
JUDICIAL CIRCUIT:

PLEASE TAKE NOTICE that the Defendant, **ERIC FITZGERALD DARIEN**, through his undersigned attorney, Charles B. Macloskie, will move before The Honorable Carmen T. Mullen, Judge for The Fourteenth Judicial Circuit at a time, date and place to be set, for a reconsideration of the sentence rendered in the above captioned case. based upon the grounds to be later set forth.

MACLOSKIE LAW FIRM



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Beaufort, South Carolina

February 11th, 2010

FILED
2010 FEB 11 AM 11:06
CLERK OF COURT
JASPER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

COURT OF GENERAL SESSIONS
2008-GS-27-728

STATE OF SOUTH CAROLINA,

Plaintiff

VS

ERIC DARIEN,

Defendant

TRANSCRIPT OF RECORD
Motion to Reconsider
Sentence

JUNE 8, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

A P P E A R A N C E S

STEVE KNIGHT, Attorney at Law
Attorney for Plaintiff

CHARLES B. MACLOSKIE, Attorney at Law
Attorney for Defendant

I N D E X

NO WITNESSES INTRODUCED

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EXHIBITS

NO EXHIBITS INTRODUCED

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MOTION TO RECONSIDER SENTENCE

(Whereupon Court began at 10:19 A.M.)

THE COURT: Good Morning. Come on up, Mr. Darien.

MR. STEVE KNIGHT: Your Honor, this is Mr. Macloskie's motion to reduce sentence I believe you imposed on February the 10th of 2010 over in Jasper County.

Additionally, pursuant to the Victim's Bill of Rights, I have an obligation to notify the victims in this case. I did so. My office did, I should say. I was advised yesterday that they would be here this morning. They were told the matter would start at 9:45. It's now 10:18. I went downstairs earlier and I cannot find them. Not saying that they are not in this building, but I can't find them.

THE COURT: All right. Thank you. Mr. Macloskie, is this your motion sir?

MR. CHARLES MACLOSKIE: It is. And thank you for arranging transportation for Mr. Darien and for hearing this motion.

If Your Honor please, before the trial of this case, Mr. Knight came to me with an offer that if--if Mr. Darien would plead, the family of the victim had no objection to the imposition of a sentence for fifteen years. At the conclusion of the trial the jury did not

1 find him guilty of murder, as you recall, but found him
2 guilty of manslaughter.

3 There were some facts that came out during the
4 trial of this case that--that--that somewhat mitigate
5 the circumstance that Eric found himself in on this
6 day. If you recall the testimony of some of the
7 State's witnesses, one of which, as I recall was
8 related to the victim. And that testimony was to the
9 extent that, when--when--when brother gets mad, nobody
10 can do nothing with him, as I recall.

11 For that reason I ask you to reconsider the
12 sentence. I've tried to find, for your benefit, some
13 information about the average sentences in cases like
14 this. Unfortunately, the data does not break down to
15 include manslaughter. It does include murder and that
16 kind of thing so I can't assist you there. But I have
17 faith in Mr. Knight's assertion that the family would
18 be satisfied with a sentence of fifteen years to ask
19 you to do that. I don't think that Mr. Knight would
20 have proposed that if he didn't think that under the
21 circumstances, all of the circumstances, that would not
22 have been a fair sentence serving, of course, the best
23 interest of Mr. Darien but also societal interest.

24 I don't know that I'm a great fan of the deterrent
25 effect of sentences. Carried to it's logical

1 conclusion it might be that if it had a numeric we
2 would see a reduction in the rate of crime, not only in
3 these kinds of offenses but in others. But if it, if
4 it does send a message, the message has been sent.

5 And of course, you are aware of the fact that
6 whatever you impose it's an eighty-five percent
7 eligibility for parole. So I'm respectfully requesting
8 that you reduce his sentence.

9 THE COURT: Thank you. Anything you want to say,
10 Mr. Knight?

11 MR. KNIGHT: Your Honor, Mr. Macloskie is
12 absolutely correct. Prior to trial I did make an offer
13 of fifteen years. But once the trial starts, it's out
14 of my hands, ya' know.

15 The victims in this case, at the conclusion of the
16 trial when you imposed eighteen year sentence were very
17 satisfied. I can tell you that.

18 In addition to contacting these folks, I guess it
19 was Friday or whenever it was, they are opposed to
20 reducing the sentence because they thought the sentence
21 that you imposed was appropriate considering all the
22 facts. And as you may recall, most of the folks that
23 were involved, the witnesses and the defense, they were
24 all---

25 THE COURT: I remember.

1 MR. KNIGHT: All lived within close proximity. So
2 for them to maintain a consistent posture of eighteen
3 years is reasonable and they thought you were
4 reasonable and fair.

5 For them, as victims, I would just ask the Court
6 to sustain your eighteen year sentence.

7 THE COURT: All right. Well, I can tell you it's
8 something we all discussed back in chambers. This is a
9 case that could have gone either way. It truly could
10 have. There was a lot of testimony back and forth in
11 again, for people who were either dating one of the two
12 of them or cousins or related--I am reviewing my notes,
13 remember it was Shakiria White who was Richard Furman's
14 girlfriend said that Tamika Furman was unable to get
15 her brother off of Darien.

16 Obviously, this was a fight. My understanding the
17 concern was Bubba said, "Go get the gun". Certainly
18 there was a fight involved. I think very
19 appropriately, as Mr. Macloskie pointed out, this jury
20 convicted him of voluntary manslaughter and not murder.
21 That's truly what this was.

22 I do remember though that aggravating part was,
23 and I can remember the doctor who did the autopsy, the
24 forensic pathologist, Dr. Pitalis stated that gunshots
25 were in the back and I remember that was a concern,

1 certainly that I had.

2 I also remember countering that the Deputy Werber
3 (sp) was the first one that responded to the scene said
4 that, in fact, Mr. Darien is the one that called the
5 police and also that Mr. Darien handed him the gun or
6 gave him the gun. So certainly this wasn't a case of
7 anyone that was trying to hide or avoid it.

8 While I appreciate and understand exactly what you
9 said, once the case goes to trial it's out of your
10 hands. I am gonna go ahead in this case and reduce the
11 sentence to fifteen years. For the lawyers and the
12 people that aren't doing the time fifteen years to
13 eighteen years doesn't sound like a whole lot of
14 difference but for you, Mr. Darien, I know it is a big
15 difference for you and I recall that you are a young
16 man. You have a relatively very small record and we're
17 just hopeful that you will go and get your time done
18 and get out and go become a productive citizen. You
19 did have some people speak on your behalf. I will go
20 ahead and reduce your sentence to fifteen years.

21 MR. MACLOSIE: Thank you, Your Honor very much.

22 THE COURT: Absolutely. I'm gonna need a whole
23 new sentencing sheet. It's okay to go ahead and amend
24 this one but I think he might be better off if I have a
25 new one.

10

(Whereupon the hearing ended at 10:28 A.M.)

--- END OF TRANSCRIPT OF RECORD ---

I, the undersigned Deborah E. Everett, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Jasper County, South Carolina, on the 8th day of June, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 4, 2011


Deborah E. Everett
Official Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC DARIEN,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the judge erred by refusing to direct a verdict of acquittal as a matter of law based on self-defense where it was undisputed the decedent attacked appellant and injured him, and appellant shot him in self-defense?

STATEMENT OF THE CASE

Appellant was indicted by the Jasper County Grand Jury for the offense of murder. R. 262. His case was called to trial on February 8, 2010 before the Honorable Carmen T. Mullen, and a jury. Michael McCloskie represented appellant. Steven H. Knight was the assistant solicitor. R. 1.

On February 10, 2010 the jury found appellant not guilty of murder but guilty of voluntary manslaughter. R. 239, ll. 14-22. Judge Mullen sentenced appellant to eighteen years imprisonment. R. 249, ll. 3-6.

On June 8, 2010 a hearing was held on appellant's motion to reconsider the sentence. R. 251. At the conclusion of the hearing Judge Mullen reduced appellant's sentence to fifteen years imprisonment. R. 259, ll. 10-11.

This appeal follows.

ARGUMENT

The judge erred by refusing to direct a verdict of acquittal as a matter of law based on self-defense where it was undisputed the decedent attacked appellant and injured him, and appellant shot him in self-defense.

Relevant Facts

The decedent, Bubba Furman, and appellant were related. Shakaria White was the girlfriend of the decedent. She remembered on September 29, 2008 that the decedent and appellant got into a fight. There was evidence of bad blood between these two men long before the fight, and evidence from White that the decedent was dangerous when he was angry. R. 82, l. 16 – 84, l. 17.

The anger and the fight apparently started over a broken fish tank. White admitted that the decedent asked her to go to his nearby house and get his gun. R. 90, ll. 2-5. During the fight the decedent was shot. White claimed that appellant was about six feet from the decedent when he shot him three times. R. 86, ll. 15-21. However, the pathologist contradicted that testimony and said that two of the three gunshot wounds were contact wounds. R. 135, l. 16 – 138, l. 4.

All three gunshot wounds were to the decedent's back. That corroborated evidence that the two men were on the ground fighting.

Y'Briana Furman was the daughter of the decedent. She acknowledged she told Detective Hipp that her father and appellant were on the ground when appellant shot him. R. 165, ll. 15-18. She acknowledged they were unable to get the decedent off of appellant during the fight. R. 126, ll. 11-14. Furman estimated the fight lasted almost ten minutes. R. 127, ll. 11-12.

The Emergency Room Doctor, Dr. Saeed Reham, acknowledged appellant had bruises on him as a result of the fight. R. 160, l. 16 – 161, l. 9.

Appellant's cousin, Leon Darien, also witnessed the fight. He testified that the decedent "was on top of Eric punching Eric in the face and ramming his head into the ground, and Eric was hollering . . ." Darien remembered that appellant's first shot at the decedent missed him, and then "Bubba rushed Eric, and that's when everything happened [the apparent fight on the ground] happened so quickly." Darien confirmed that the decedent "tackled" appellant by hitting him "up in the waist" and bringing him to the ground. R. 178, ll. 15-22.

Directed verdict motion

At the conclusion of the state's case defense counsel moved for a directed verdict of acquittal: "[A]ll the evidence appears to be directed toward self-defense. I don't see anything that the State can present or has presented that allows this jury to reach a verdict on that -- on that charge other than not guilty. . ." Defense counsel added "we respectfully move that that be taken out of the hands of the jury as a matter of law." R. 166, l. 19 – 167, l. 8.

The judge cited the fact that the decedent was shot in the back as her reason for denying the directed verdict motion. R. 167, l. 17 – 168, l. 2. At the close of all the evidence appellant again moved for a directed verdict: "There is no evidence to rebut self-defense, that the jury can find it was [other than] self-defense beyond a reasonable doubt, in fact." R. 188, ll. 2-8. The judge again declined to direct a verdict.¹ R. 188, ll. 9-15.

¹ The solicitor argued in closing that appellant admitted in his statement to the police that he had a gun in a bag when he arrived at the scene and that he missed the decedent the first time he shot at him. This was also evidence of the bad blood between the men and

Discussion

It was undisputed that there was bad blood between the decedent and appellant and that the decedent started the fight. The decedent's girlfriend conceded there was no stopping him when he was angry. There was evidence the two men were fighting on the ground after the decedent tackled him, and that two of the three gunshot wounds were contact wounds to the decedent's back. There was simply no substantial circumstantial evidence the shooting was anything other than self-defense. See, State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004).

Further, the judge was duty bound to direct a verdict when the evidence merely raises a suspicion that the defendant was guilty. Here, evidence that appellant was guilty of voluntary manslaughter rather than that he shot the decedent in self-defense. See, State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

While the decedent being shot in the back raises the mythic distain for the dishonorable cowboy -- and perhaps there was another kind -- here the decedent having contact wounds to his back strongly corroborated appellant's self-defense case that the decedent tackled him and there was a struggle on the ground. Appellant had the right to act on appearances, and he did not have to let the decedent get the drop on him again. See State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936). Further, appellant was not obligated to retreat if, as here, retreating placed him in greater danger, and it is readily apparent appellant shot the stocky powerful decedent in the back when he had the split second to do so. State v. Bruno,

that appellant knew the decedent was dangerous. In addition, there was testimony no one could control the decedent when he got mad, and that the decedent "rushed" appellant and tackled him which explained the contact wound gunshots to the decedent's back.

322 S.C. 534, 537, 473 S.E.2d 450, 452, n.2 (1996) *citing* State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989).

In State v. Hendricks, 270 S.C. 653, 244 S.E.2d 503 (1978), our Supreme Court held that the judge erred by not directing a verdict of self-defense as a matter of law. As in this case, it was undisputed that appellant was without fault in bringing on the difficulty, and that was in imminent danger of losing his life or sustaining serious bodily injury, and that a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. Finally, as stated above appellant had no duty to retreat since he was not on the decedent's property. *See*, State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955); State v. Hardin, 114 S.C. 280, 103 S.E.2d 557 (1920).

A look at the jurisprudence on directed verdicts in this state shows that our Supreme Court has directed a verdict where there was much more circumstantial evidence of the defendant's guilt than in this case.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) evidence of the dead women's belongings were found in Bostick's nearby burn pile. Gasoline was used to start the burn pile, and Bostick's mother said she never used accelerants to start a fire. Further, gasoline was found on Bostick's clothes. The blood on his clothes led to an inconclusive DNA match to the decedent. Our Supreme Court held while this raised a strong suspicion of Bostick's guilt, it was insufficient to take the case to the jury.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) there was evidence a vehicle was seen on the night of the murder in the victim's apartment complex that was very similar to the car in which Martin and his co-defendant were traveling that night. When Martin and his co-defendant were late picking up Martin's girlfriend the defendant told her "some shit

happened,” and the co-defendant added, “somebody may have died tonight.” State v. Martin, 340 S.C. at 600, 533 S.E.2d at 601.

Evidence tied to the murder scene in Martin was also found in trash cans surrounding the bar where Martin’s girlfriend worked. This Court held that all of this evidence, while certainly raising a suspicion of Martin’s guilt, was insufficient to withstand a directed verdict motion.

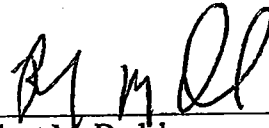
In State v. Schrock, 288 S.C. 129, 322 S.E.2d 450 (1984), the Supreme Court held that evidence the defendant was in the area of the murder scene, and that footprints at the scene were similar to his and were found in the area where the defendant was walking were insufficient to take the case to the jury. There was also evidence that Marlboro cigarette butts were found at the murder scene, and the defendant admitted to the police that he smoked Marlboro cigarettes. However, tests performed on an oil can did not supply any conclusive connection between the crime scene and the defendant. The Supreme Court held that Schrock was entitled to a directed verdict.

The state’s case against petitioner only raised a suspicion that he was not acting in self-defense. The trial judge therefore abused his discretion by not directing a verdict. Consequently, this Court should issue an order of acquittal since appellant was entitled to a directed verdict of acquittal as a matter of law based on self-defense.

CONCLUSION

An order of acquittal should be issued.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of December, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC DARIEN,

APPELLANT

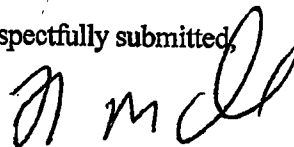
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eric Darien states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Carmen T. Mullen, which was held on June 3-8, 2010, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Eric Darien.

Respectfully submitted,



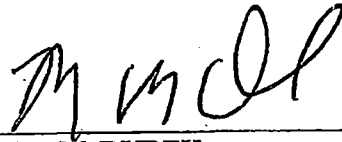
Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of December, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



ROBERT M. DUDEK
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

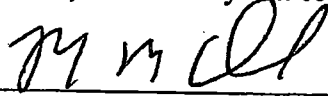
V.

ERIC DARIEN,

APPELLANT

CERTIFICATE OF SERVICE

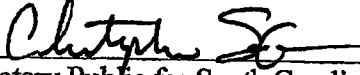
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at P.O. Box 50666, Columbia, SC; and the Final Anders Brief of Appellant and Record on Appeal on Eric Darien, #275549 at Lieber Correctional Institution, this 13th day of December, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of December, 2011.



(L.S.)
Notary Public for South CarolinaMy Commission Expires: May 16, 2021.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Eric Darien,

Appellant.

Appeal From Jasper County
Carmen T. Mullen, Circuit Court Judge

Unpublished Opinion No. 2012-UP-307
Submitted May 1, 2012 – Filed May 16, 2012

APPEAL DISMISSED

Chief Appellate Defender Robert M. Dudek, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Deputy Attorney General Donald J. Zelenka, all of
Columbia; and Solicitor Isaac McDuffie Stone III, of
Bluffton, for Respondent.

PER CURIAM: Eric Darien appeals his conviction of voluntary manslaughter, arguing the trial court erred in denying his motion for a directed verdict because the evidence presented established self-defense as a matter of law. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 05, 2012

The Honorable Margaret Bostick
PO Box 248
Ridgeland SC 29936-0248

REMITTITUR

Re: The State v. Darien, Eric
Lower Court Case No. 2008GS2700728
Appellate Case No. 2010-163868

Dear Ms. Bostic:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The following exhibit filed in this case is being returned to you:

State's Exhibit 2 - Mini Cassette-Recorded Interview of Eric Darien

Please sign and return the enclosed copy of this letter acknowledging receipt of this item.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Donald J. Zelenka
Robert Michael Dudek

Receipt Acknowledgment

Name: _____ Date: _____

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of JASPER)

Eric Darien, # 275549)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst., POB 205, Ridgeville, SC
2. Name and location of Court which imposed sentence Jasper County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-27-728 - Murder

POSTED

FILED 2/21/12

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) 2/10/2010 - Voluntary Manslaughter - 18 years
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty No
 (b) after a plea of not guilty Yes
 (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. S.C. Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Dismissed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. Submitted MAY 1, 2012 Filed MAY 16 2012
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. No: 2012-4P-307
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attached pages 3 (A) - (C)
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached pages 3 (A) - (C)
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion to Reconsider Sentence
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Jasper County Court of General Sessions
- ii. _____
- iii. _____

- 10(a) Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to sequester witnesses and jurors during an in camera hearing.
- 11(a) The State intended to rely upon Applicant's statement. Trial counsel failed to move to sequester relevant trial witnesses and selected jurors during an in camera proceeding to determine whether Applicant's statement required a Jackson v. Denno hearing to determine the admissibility of the statement.
- 10(b) Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to challenge Applicant's statement in a Jackson v. Denno hearing.
- 11(b) Trial counsel failed to utilize the mandatory Jackson v. Denno procedure to challenge Applicant's statement that Applicant was under the influence of alcohol and suffered head trauma on the night of the incident, hours prior to making the statement.
- 10(c) Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to review the contents of Applicant's statement which contained evidence of prior bad acts.
- 11(c) Trial counsel failed to challenge, object to, or review the contents of Applicant's statement in the Jackson v. Denno proceeding. The State introduced and published the statement, which contained a highly prejudicial review of Applicant's criminal history, which was not admissible unless the Applicant testified, which he did not.

- 10(d) Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to move for a mistrial.
- 11(d) Trial counsel failed to challenge the contents of Applicant's statement in the Jackson v. Denno hearing. Upon publication of the nontestifying Applicant's statement to the jury, Applicant's criminal history was also published to the jury. Although counsel moved for redaction, the judge issued a curative instruction to disregard that part of the taped statement. No instruction was issued concerning the statement in the jury charges. Given the prejudicial impact on the jury of the prior bad acts, the fair trial guarantee was tainted and counsel should have moved for a mistrial.
- 10(e) Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to object to the Solicitor's pitting State and Defense witnesses.
- 11(e) Trial counsel failed to object to the Solicitor pitting family witnesses [children] against Detective Hipp during direct examination of the children.
- 10(f) Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel abandoning Applicant's defense in an improper cross-examination of a State witness.
- 11(f) Trial counsel abandoned the Applicant's defense at a critical stage of trial where counsel cross-examined Detective Hipp and elicited testimony that Applicant was completely lucid and cooperative, conceding Applicant's mens rea and guilt.

- 10(g) Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel abandoning Applicant's defense by proffering the testimony of a State witness.
- 11(g) Trial counsel abandoned the Applicant's defense at a critical stage [Jackson v. Denno hearing], by proffering the testimony of Detective Jeff Crosby, regarding Applicant's statement, without subjecting the witness to the adversarial process.
- 10(h) Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel failing to object to the trial court's failure to include a jury charge supported by the record.
- 11(h) The trial court declined to give a jury charge on confessions, where Applicant's statement contained prejudicial prior bad acts, based upon trial counsel's earlier stipulation that "...I have no grounds to challenge that statement," and counsel failed to request a charge on confessions or object to the omission thereof.

iv. _____

(c) the disposition thereof:

i. Sentence Amended to 15 years

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. 6/8/2010

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Amended Sentence Sheet

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) ~~Not cognizable on direct appeal and evidence of material facts, not previously presented and heard, require vacation~~
- (b) ~~of the conviction.~~
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Charles B. McCloskie
POB 286, Beaufort, SC 29901
- ii. Robert M. Dudek
SC Office of Appellate Defense
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate the conviction and remand to the Court of General Sessions for a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of JASPER)

VERIFICATION

I, Eric F. Darien, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

x Eric F. Darien

SWORN to and subscribed before me this 4th
day of February, 2013.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Eric F. Darien, #275549, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

x Eric F. Darien
Applicant

SWORN or affirmed to and subscribed before me this

4th day of February, 2013

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: M. Smith
DATE: June 30, 2014

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Eric Darien, #275549,

2013-CP-27-0111

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on February 21, 2013 and received by the Respondent on July 2, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Jasper County Clerk of Court's orders of commitment. The Applicant was indicted by the December 2008 term of the Jasper County Grand Jury for Murder (2008-GS-27-0728). Charles McKloskie, Esquire, represented him. On February 8-9, 2010, the Applicant proceeded to a jury trial pursuant to which he was found guilty of Voluntary Manslaughter as a lesser included offense of murder. The Honorable Carmen T. Mullen sentenced the Applicant to confinement for eighteen (18) years for Voluntary Manslaughter. On June 8, 2010, Judge Mullen amended Applicant's sentence to fifteen (15) years.

A notice of appeal was filed and an appeal perfected pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Darien, Op. No. 2012-UP-307 (filed May 16, 2012). The Remittitur was issued on June 6, 2012.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to sequester witnesses and jurors during an in camera hearing."
 - a. "The State intended to rely upon Applicant's statement. Trial counsel failed to move to sequester relevant trial witnesses and selected jurors during an in camera proceeding to a Jackson v Denno hearing to determine the admissibility of the statement."
2. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to challenge Applicant's statement in a Jackson v Denno hearing."
 - a. "Trial counsel failed to utilize the mandatory Jackson v Denno procedure to challenge Applicant's statement that Applicant was under the influence of alcohol and suffered heard trauma on the night of the incident, hours prior to making the statement."
3. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to review the contents of Applicant's statement which contained evidence of prior bad acts."
 - a. "Trial counsel failed to object to, or review the contents of Applicant's statement in the Jackson v Denno proceeding. The State introduced and published the statement, which contained a highly prejudicial review of Applicant's criminal history, which was not admissible unless the Applicant testified, which he did not."
4. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to move for a mistrial."
 - a. "Trial counsel failed to challenge the contents of Applicant's statement in the Jackson v Denno hearing. Upon publication of the nontestifying Applicant's statement to the jury, Applicant's criminal history was also published to the jury. Although counsel moved for a redaction, the judge issued a curative instruction to disregard that part of the taped statement. No instruction was issued concerning the statement in the jury charges. Given the prejudicial impact on the jury of the prior bad acts, the fair trial guarantee was tainted and counsel should have moved for a mistrial."
5. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States

Constitution, as a result of trial counsel's failure to object to the Solicitor pitting State and Defense witnesses."

- a. "Trial counsel failed to object to the Solicitor pitting family witnesses [children] against Detective Hipp during direct examination of the children."
6. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel abandoning Applicant's defense in an improper cross-examination of a State witness."
 - a. "Trial counsel abandoned the Applicant's defense at a critical stage of trial where counsel cross-examined Detective Hipp and elicited testimony that Applicant was completely lucid and cooperative, conceding Applicant's mens rea guilt."
7. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel abandoning Applicant's defense by proffering the testimony of a State witness."
 - a. "Trial counsel abandoned the Applicant's defense at a critical stage (Jackson v. Denno hearing), by proffering the testimony of Detective Jeff Crosby, regarding Applicant's statement, without subjecting the witness to the adversarial process."
8. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel failing to object to the trial court's failure to include a jury charge supported by the record."
 - a. "The trial court declined to give a jury charge on confessions, where Applicant's statement contained prejudicial prior bad acts, based upon trial counsel's earlier stipulation that "I have no grounds to challenge that statement," and counsel failed to request a charge on confessions or object to the omission thereof."

Attached herewith and incorporated herein by reference are the records of the Jasper County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the transcript, and the opinion of the South Carolina Court of Appeals. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial

counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably

raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged

ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

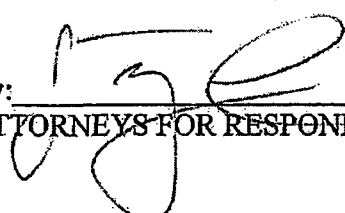
Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
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By: 

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September 8, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

2013-CP-27-0111

ERIC DARIEN, #275549,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

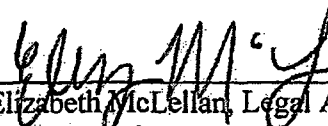
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esq.
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 8th day of September, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

1 POST-CONVICTION RELIEF HEARING

2

3 State of South Carolina }

4 County of Jasper } Case No. 2013CP150442

5

6 Eric F. Darien, }

7 Applicant }

8 } Transcript of Record

9

10

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15 March 3, 2016

16 Beaufort, South Carolina

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21 BEFORE:

22 The Honorable R. Lawton McIntosh

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APPEARANCES

APPLICANT'S ATTORNEY:

James K. Falk, Esquire

STATE'S ATTORNEY:

J. Rutledge Johnson, Esquire

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10:00:27

1

PROCEEDINGS

2

THE COURT: All right. Applicant ready to proceed?

3

4

MR. FALK: We are, Your Honor.

5

MR. JOHNSON: May it please the Court, Your Honor.

6

This is Eric Darien versus State of South Carolina.

7

It's Case Number 2013CP270111. Mr. Darien was indicted

8

at the December 2008 term of the Jasper County grand

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jury for murder. On February 8th or 9th, 2010, he

10

proceeded to a jury trial pursuant to which he was

11

found not guilty of the murder, but guilty of voluntary

12

manslaughter as a lesser included offense.

13

The Honorable Carmen T. Mullen sentenced him to

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confinement for 18 years for voluntary manslaughter.

15

On June the 8th, 2010, Judge Mullen amended his

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sentence to 15 years. A Notice of Appeal was filed, an

17

appeal was perfected pursuant to Honors (phonetic)

18

versus California. The South Carolina Court of Appeals

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confirmed his conviction sentence and was issued on

20

June 6th, 2012. He filed this application on

21

February 21st, 2013 and received by my office on

22

July 2nd, 2014. We filed a return on September 8th,

23

2015, and he is represented today by Mr. Jim Falk.

24

THE COURT: All right, sir. Glad to hear from

25

you.

10:09:33 1 MR. JOHNSON: Your Honor, we'd like to call trial
2 counsel to the stand.

3 THE COURT: Come on around, please, sir.
4 Thereupon,

5 CHARLES MACLOSKIE
6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FALK:

10 Q Good morning. Could you please state your name?

11 A My full name is Charles, middle initial is B,
12 Macloskie is spelled M-A-C-L-O-S-K-I-E.

13 Q How did you come to know Eric Darien?

14 A I think I got a phone call from a member of his
15 family when he was still in custody, immediately after this
16 event.

17 Q And what was the purpose of the phone call?

18 A Wanted me to go see him for the purpose of
19 representing him.

20 Q Okay. About how -- how much time elapsed between
21 his arrest date and when you went to see him?

22 A Be patient with me, please.

23 My notes reflect that I was notified by
24 telephone on October the 7th, 2008 and I saw Mr. Darien on
25 October the 20th, 2008.

10:11:46 1 Q And did you file a motion for discovery?

2 A I did.

3 Q And did that motion for discovery include a
4 statement that he had given to the Jasper County Sheriff's
5 Office or police department?

6 A It did.

7 Q How often did you review that statement?

8 A Oh, great day, I have no idea. It -- I really
9 don't know. Numerous times, but I can't -- I can't give you
10 a --

11 Q Did you play the statement -- did you ever go
12 to the -- was he out on bail or was he in custody the whole
13 time?

14 A I can't recall.

15 Q Okay.

16 A I think he was in custody.

17 Q Do you recall ever playing the statement for him?

18 A I can't recall that.

19 Q Okay. Did you have any concerns about the effect
20 on his case if the statement were admitted?

21 A Oh, certainly.

22 Q Is that -- was it -- did you think that was a
23 signature part of the State's case?

24 A Could they have proved his guilt without the
25 statement, yes.

10:13:01 1 Q Okay.

2 A It never is helpful to have a -- to have an
3 accused make a statement that's inculpatory, never.

4 Q And what was your -- what was your theory on this
5 case?

6 A Based on what Mr. Darien had told me initially, I
7 felt like he had a chance, it might have been slim, to
8 establish self-defense. The forensics didn't bear that out
9 at all. But as I recall, we went to trial based on the idea
10 of self-defense.

11 Q Okay. Did you ever have any conversations with
12 Mr. Darien about what his physical and mental condition was
13 on the day he gave the statement?

14 A I can't recall that.

15 Mr. Falk, you're asking me perfectly
16 legitimate questions, I'm sorry I just don't recall it.

17 Q Okay. So there was a Jackson versus Denno hearing
18 in this case; is that right?

19 A There was.

20 Q Okay. And do you recall how many witnesses the
21 State was going to call in the Denno hearing?

22 A My notes reflect that they only put up one, and
23 that was Donald Hipp.

24 Q Okay. If you would look at Page 47 of the
25 transcript, if you read through that page, it looks like --

10:15:00 1 starting on Page 5, they're talking about Detective Crosby.

2 THE COURT: Forty-seven?

3 MR. FALK: Yes, Your Honor. Starting about Line
4 5, going down through really Line 21.

5 THE WITNESS: All right.

6 BY MR. FALK:

7 Q So there was also a Detective Crosby?

8 A There was.

9 Q Okay. Now, when Mr. Hipp gave his statement, you
10 elected not to have those two witnesses for the State
11 sequestered during the Jackson versus Denno hearing; is that
12 correct? That's reflected on Page 38 of the transcript. So
13 they were both in the room when the Denno hearing was going?

14 A If that's what the record reflects, I have no
15 challenge to that.

16 Q Okay. Was there a strategy behind having both
17 officers in the room for the Denno hearing?

18 A No.

19 Q If the officers would have had different
20 testimony, would that not have drawn doubt out to the
21 State's proof on the Denno hearing?

22 MR. JOHNSON: Objection. Speculation on that,
23 Your Honor.

24 THE COURT: Just one second. What's your
25 question?

10:16:31 1 MR. FALK: My question is had Mr. Crosby's
2 testimony differed from Mr. Hipp's testimony,
3 detective/detective, would that have raised doubt in
4 the --

5 THE COURT: I'll sustain the objection.

6 BY MR. FALK:

7 Q Had there been a -- had there been a difference in
8 the testimony between Mr. Crosby and Mr. Hipp, as far as the
9 circumstances on when the statement was given, would you
10 have tried to exploit that as part of your proof? Would you
11 have tried to impeach one of the witnesses?

12 A In the Jackson V Denno hearing?

13 Q Yes, sir.

14 A I don't think so.

15 Q Okay. So if Mr. Hipp said that the -- Mr. Darien
16 was in custody for 20 hours, and Mr. Crosby said that
17 Mr. Darien was in custody for only an hour, would that have
18 been an inconsistency that you could have exploited?

19 MR. JOHNSON: Objection. Speculation and hearsay,
20 Your Honor.

21 THE COURT: Overruled. Go ahead.

22 THE WITNESS: I would not have thought about that
23 at that part at that stage in this trial in the Jackson
24 V Denno hearing, raising something like that.

25 BY MR. FALK:

10:17:57 1 Q Because then those would have also been issues
2 that you could have raised when the statement was actually
3 played at the trial; could you not?

4 A I could have.

5 Q All right. And so by not sequestering the two
6 witnesses, it was pretty assured that their testimony would,
7 in fact, be the same?

8 MR. JOHNSON: Objection to -- that's a conclusion
9 and a legal argument, Your Honor. That's not a
10 question.

11 MR. FALK: You allowed --

12 THE COURT: Just one second, let me rule. I'll
13 sustain it. Go ahead and rephrase.

14 BY MR. FALK:

15 Q You allowed Dr. Crosby, his testimony, just to be
16 proffered. He actually never even testified; is that
17 correct?

18 A That's as I recall.

19 Q And it was just based on, as I think the
20 conversation went, somebody asked was Mr. Crosby's testimony
21 going to be the same as Mr. Hipp's and Mr. Crosby said yes,
22 or the State said yes. And you said, all right, we'll just
23 go ahead and proffer it; is that sort of what happened?

24 A If that's what the record reflects, that's -- I
25 have no challenge to that.

10:18:59 1 Q Okay. And you had an opportunity to interview
2 either Mr. Crosby or Mr. Hipp prior to the trial?

3 A I'm sure I did. Do I have specific recollection
4 of it, no.

5 Q Did you have any conversations with Mr. Darien as
6 to how long he had been in police custody before he had
7 given this statement?

8 A I don't recall ever doing that.

9 Q Do you recall ever asking him how long -- if he
10 had -- if he had any sleep the night before?

11 A I -- I don't recall.

12 Q I'm just kind of going through --

13 THE COURT: Just one second.

14 Do you have your file with you?

15 THE WITNESS: I do.

16 THE COURT: Have you reviewed your file?

17 THE WITNESS: I have.

18 THE COURT: Before today?

19 THE WITNESS: Yes, sir.

20 THE COURT: Do you have any notes to indicate
21 whether or not you interviewed these officers or any of
22 these actions that you're being questioned about?

23 THE WITNESS: I have a note that I met with
24 Jeff Crosby and Donald Hipp to discuss the interview,
25 but I don't have --

10:20:38

1 THE COURT: The results of it?

2 THE WITNESS: -- a date on that.

3 THE COURT: All right. Let's do this, if you
4 would, because obviously these are very important
5 matters. Let's -- before we say I don't know, let's
6 make sure that it's not contained in your file, please.

7 THE WITNESS: All right, sir.

8 THE COURT: Thank you. Go ahead.

9 BY MR. FALK:

10 Q Again, I'm just trying to go through any kind of
11 questions you might have asked my client regarding his
12 physical or mental health at the time he was giving that
13 statement. Had he had any sleep, had he had anything to
14 eat, how long he had been in custody, those types of
15 questions.

16 A I don't believe I asked him anything like that.

17 Q How about injuries, physical injuries?

18 A I didn't ask him anything about that, I don't
19 think.

20 Q Were you aware that he had -- actually brought in
21 from the hospital?

22 A I was aware of that.

23 Q He had a head injury?

24 A When I initially talked to him, I asked him if he
25 was in good health, he said he was. I asked him if he had

10:22:08 1 any impairments or disabilities, he said no. I asked him if
2 he had any history of nervous, mental, or emotional
3 disorders, he said no. I asked him if he had any history of
4 treatment for drug and alcohol abuse, he said no. I asked
5 him if he had any learning disabilities or thought he did,
6 he said no. I asked him if he had any history of either ADD
7 or ADHD, and he said no.

8 He told me he had been hit by Mr. Furman
9 (phonetic). He told me he was in a daze. And that's all my
10 notes reveal.

11 Q Do you think it's grounds at a Jackson versus
12 Denno hearing to challenge the voluntariness of the
13 confession based on whether or not the Defendant had
14 adequate sleep, was still suffering from a head injury?
15 Were those -- are those the types of issues you could raise
16 to challenge the voluntariness of a confession?

17 A You may be able to do that.

18 Thank you.

19 Q Now, you chose to have the tape admitted without
20 objection; is that correct?

21 A That's correct.

22 Q And actually you didn't even have the Court play
23 it at the Jackson versus Denno hearing; is that correct?

24 A I don't believe -- I believe that's correct.

25 Q Okay. So that when the tape was admitted into

10:24:49 1 evidence about -- around Page 150, you had no grounds for
2 a -- to -- for raising any issues regarding Mr. Darien's
3 state and his ability to have given a voluntary confession?

4 A That's correct.

5 Q Because you would agree that that's still up to
6 the jury to determine the voluntariness of a confession; is
7 that correct?

8 A Correct.

9 Q Okay. And was that -- is the reason to have the
10 confession go in uncontested, was that a trial strategy?

11 A I don't know whether it was a trial strategy or
12 whether I didn't -- I couldn't find any way to keep it out.

13 Q Okay. When was -- do you recall how soon, how
14 close in time between the trial date and the last time you
15 reviewed the tape, the confession tape?

16 A My general practice, and I don't believe that this
17 case was any exception to it, is either the day before or
18 closely associated before trial to review everything, and I
19 don't think this case would have been any exception.

20 Q Did you -- you knew that there were statements on
21 the tape prior to it being published to the jury that
22 discussed his prior criminal record; did you not?

23 A I did.

24 Q And did you try to have the tape redacted prior to
25 it being played?

10:26:50 1 A I recall, after reading the transcript, of
2 objecting to portions of that interview that had to do with
3 prior criminal history.

4 Q That was after the tape had been published to the
5 jury?

6 I'll find it for you.

7 A No, I think you're right. Not before.

8 Q Okay. So the bell had already been rung, the jury
9 heard it?

10 A That's true.

11 MR. FALK: Your Honor, and I have certain places
12 in here -- I don't know if you want to listen to the
13 tape all the way through. I'm just trying to show
14 prejudice by showing what the tape -- what the jury
15 actually heard. How do you want to do that?

16 THE COURT: How long is the entire tape?

17 MR. FALK: The tape is I think about 29 minutes,
18 which is ...

19 THE COURT: I'll tell you what. Why don't you
20 play what you feel are the relevant portions.

21 MR. FALK: Okay.

22 THE COURT: And if you want more of that or the
23 State wants more of it, then we'll go that way.

24 MR. FALK: Okay.

25 BY MR. FALK:

10:28:05 1 Q Before the tape was published to the jury, did you
2 consider redacting any of the police officer's statements
3 that were made during the tape?

4 A No, I did not. And I should have.

5 Q All right. I'm going to try and go through this,
6 and maybe I'll ask you some questions as we go along.

7 MR. FALK: Now, just to give the Court and
8 everybody some context here, I've listened to this tape
9 a couple of times. He had actually really made
10 everything he was going to say as far as --

11 THE COURT: "He"?

12 MR. FALK: Excuse me. Mr. Darien had already had
13 a lengthy discussion with the investigating officer as
14 to the actions and the altercation that led to the
15 shooting. And so this is taking place sort of after
16 that quick set.

17 THE COURT: Okay.

18 (Audio played for the Court.)

19 THE COURT: That was a little bit difficult for me
20 to understand. Would you basically paraphrase?

21 MR. FALK: This is what I think it says, is that
22 he asked how many times have you been in jail, and
23 first he said nothing, then he talked about child
24 support charges, that he'd been in jail on child
25 support charges. And the investigator asked him how

10:30:58 1 many times, and it was like so many times or some kind
2 of response that, a lot of times. And then he asked
3 him --

4 THE COURT: And he says something about marijuana?

5 MR. FALK: And then he asked him about felony
6 charges, which he denied. But then he talked about a
7 marijuana charge, and that is actually why he was in
8 jail. And I'm not sure if the marijuana charge arose
9 from being in custody on the child support, you know,
10 taking contraband to the jail.

11 THE COURT: Any other evidence on that tape other
12 than the child support, the number of times that he was
13 in jail, and marijuana?

14 MR. FALK: I think there is all this stuff that's
15 problematic.

16 THE COURT: As far -- I understand that you --

17 MR. FALK: Oh, but as far but the charge --

18 THE COURT: -- that's part of prior criminal
19 record.

20 MR. FALK: Prior criminal record, no, Your Honor.

21 THE COURT: Okay. Very good. Thank you.

22 BY MR. FALK:

23 Q So that is the evidence that you chose to have --
24 that you asked for a curative instruction on; is it not?

25 A That's right.

10:31:46 1 Q Okay. The reason you asked for the curative
2 instruction is because you didn't want the jury to consider
3 that information; is that right?

4 A That's correct.

5 Q Because it obviously would be prejudicial to him?

6 MR. JOHNSON: Objection. That's a legal
7 conclusion, Your Honor.

8 THE COURT: Overruled.

9 BY MR. FALK:

10 Q Overruled.

11 You feel that would have been prejudicial?

12 A It wouldn't have been helpful.

13 Q Thank you.

14 Okay. So there are statements on here about
15 the prior criminal record that he heard. Now, there's also
16 statements made by the law enforcement officers during the
17 course of this interrogation that the jury also heard, which
18 if a law enforcement officer is saying -- okay. I don't
19 want to try to get into a legal argument here.

20 All right. Let me just play this other
21 statement. I don't want to influence everybody what they're
22 hearing, I'm going to say what I think he says. Do you want
23 to do it that way?

24 THE COURT: Is there ever a -- do you have
25 anything transcribed from this CD, there's not a

10:32:55 1 transcript from it?

2 MR. FALK: No, Your Honor.

3 THE COURT: All right.. Go ahead. You can go
4 ahead and I'll let the State tell their version.

5 MR. JOHNSON: Your Honor, just allow me to oppose
6 this on hearsay grounds, anything that the officer
7 said.

8 MR. FALK: That's my point.

9 THE COURT: That's overruled. It was played to
10 the jury.

11 All right. Tell me, before you play it, what you
12 think I'm going to hear.

13 MR. FALK: Okay. What I think that you're going
14 to hear is the police officer say, You don't have the
15 right to take a man's life. You're also going to hear
16 the police officer say, You shot him in the back.

17 There's another point where you could certainly
18 take an inference from the conversation that is, You
19 were too close to him to have been to -- you know, you
20 would have been -- you were too close for that shot to
21 have been fired in self-defense.

22 And this is the one that I really think --

23 THE COURT: Well, let me -- let's restate it.

24 What is problematic about those three statements?
25 That's not a fair question?

10:33:47 1 MR. FALK: Well, one, it's hearsay information
2 from -- so the jury is hearing that the guy's shot in
3 the back. The police officer has --

4 THE COURT: He's asking the Defendant, did you
5 shoot him in the back?

6 MR. FALK: No.

7 THE COURT: That's hearsay?

8 MR. FALK: No, no, no, no. He said, You shot him
9 in the back. My client is talking about the shootings
10 and all that and coming at him. Because my client is
11 saying that, I shot him as he was attacking me. And he
12 says, You shot him in the back.

13 So that's -- it's not a question. It says --
14 well, it's certainly, did you shoot him in the back?
15 He said, You shot him in the back.

16 THE COURT: Sounds a little like it might be a
17 colloquialism to me. Because, like people make a
18 statement in the form of a question, but go ahead. I'm
19 going to hear it.

20 What's that other part of it?

21 MR. FALK: Well, here's the other thing. He's
22 also asking him about why he was in possession of a
23 stolen gun, which maybe that is irrelevant. So I might
24 put that aside.

25 But what I think is also a problem is at some

10:34:40 1 point it sounds like the officer is saying, when he's
2 asking him about a story, saying, I'm not the one that
3 was out there, I'm not the one that has to prove
4 something. And this is regarding a conversation about
5 witnesses and who saw what. And I believe that is a
6 burden shifting type accusation that the jury is
7 hearing, and I think that is not good case law.

8 THE COURT: Okay. Yes, recent case law. All
9 right.

10 MR. JOHNSON: And, Your Honor, I don't know if
11 this is the proper time to object to -- it's about the
12 shooting in the back, and that was a colloquialism.
13 But there's also forensic evidence that proved that he
14 was -- the victim was shot three times in the back.

15 THE COURT: Well, I assume that you resent the
16 fact --

17 MR. JOHNSON: Yes, sir.

18 THE COURT: I'm sure that's the State's position,
19 but I'll hear it.

20 MR. FALK: But it's still a question of fact for
21 the jury to determine and the police officer who was
22 not there did not --

23 THE COURT: Just go ahead and play the tape. I'll
24 let you argue it.

25 And I overrule your objection.

10:35:36

1

MR. JOHNSON: Thank you, Your Honor.

2

(Audio played for the Court.)

3

MR. FALK: This comes about 30 seconds. We're

4

going to start about 30 seconds before I think the

5

statement's made.

6

(Audio resumed.)

7

MR. FALK: So he said, How is it that Bubba

8

sustained a gunshot wound in -- that's not a court --

9

well, it's a question, but it sort of presupposes that

10

he was shot in the back.

11

THE COURT: Understand. Okay.

12

(Audio resumed.)

13

THE COURT: I didn't catch that.

14

MR. FALK: Yeah, and I didn't catch it. For some

15

reason, I indexed these last night, and the index is

16

not the same.

17

Let me try to get to one or two that I think are

18

the biggest problems.

19

THE COURT: Are you okay, Mr. Macloskie?

20

THE WITNESS: I'm fine. Thank you, sir.

21

(Audio resumed.)

22

MR. FALK: This is all the same.

23

I don't know why the tape's not playing this far

24

out. Let me try and reload it. It's going to take a

25

minute.

10:41:24 1 THE COURT: All right. Let's do this, take a
2 quick break and see if we can work it out.

3 Mr. Macloskie, you are free to get off the stand
4 if you like.

5 (Pause.)

6 THE COURT: Did you get your bugs worked out?

7 MR. FALK: I believe so. What I think I'm going
8 to do instead of starting and stopping, which makes it
9 fall apart, there's about three minutes I'm going to
10 ask the Court to hear in a row. And during these three
11 minutes, I think that you will hear a statement to the
12 effect where the police officer is saying, You don't
13 have the right to take a man's life.

14 THE COURT: Okay. Hang on. Let me write those
15 down.

16 Okay.

17 MR. FALK: And the other one, as I took it down
18 was, I'm not the one that was out there, I'm not the
19 one that has to prove something.

20 MR. JOHNSON: I believe we've already heard that,
21 Your Honor.

22 MR. FALK: No, we haven't.

23 MR. JOHNSON: I have it in my notes that we've
24 heard that.

25 THE COURT: It doesn't matter. The tape says what

10:57:21 1 it says. It's already a part of the record.

2 (Audio resumed.)

3 MR. FALK: Anyways, there at the end, I was trying
4 to get it to stop. So -- but the tape speaks for
5 itself. It's clear.

6 THE COURT: Right.

7 MR. FALK: Did you ask for -- may I continue
8 questioning?

9 THE COURT: Sure.

10 BY MR. FALK:

11 Q You didn't ask for a curative instruction on those
12 comments, did you?

13 A I don't believe I did.

14 Q Do you believe you asked for a curative --

15 A I do not.

16 Q The comments, what the police officer said that's
17 related to burden shifting, you didn't ask for a curative
18 instruction on that?

19 A I did not.

20 Q Okay. And you did not move for -- once this was
21 played to the jury, you did not move for a mistrial?

22 A I did not.

23 Q Was there a trial strategy behind those decisions?

24 A There was not.

25 MR. FALK: I have no further questions.

11:00:04 1 THE COURT: Thank you. Cross-examination.

2 MR. JOHNSON: Beg the Court's indulgence,

3 Your Honor.

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. JOHNSON:

7 Q Mr. Macloskie, just a few questions, sir.

8 As far as the Jackson versus Denno hearing,

9 please explain to the Court why you did not challenge this.

10 Did you find that he gave it voluntarily, in your assessment

11 as an attorney?

12 A I did.

13 Q And how long have you been practicing law?

14 A Forty-nine years.

15 Q And how much of that is criminal work?

16 A Oh, I don't know, a good bit of it. Maybe

17 50 percent, 60 percent.

18 Q And can you give a rough ballpark of how many

19 cases you've tried in your career?

20 A Oh, my Lord. I have no idea.

21 Q Would you say hundreds?

22 A It would be in the hundreds.

23 Q Have you ever tried murder cases?

24 A I have.

25 Q And have you ever challenged statements pursuant

11:01:05 1 to Jackson versus Denno?

2 A I have.

3 Q Have you been successful on those challenges?

4 A I have.

5 Q Can you take each statement a defendant gives on a
6 case by case basis, correct?

7 A I do.

8 Q And if you found something that was objectionable
9 in this police officer's statements to Mr. Darien, you would
10 have objected, wouldn't you?

11 A I should have.

12 Q But you did ask for a curative instruction,
13 correct, on the jail and the prior convictions?

14 A I did.

15 Q And the Judge gave a curative instruction,
16 correct?

17 A She did.

18 Q And told the jury to disregard that information?

19 A She did.

20 Q And going back to the theory of this case, this --
21 the theory of this case was self-defense, correct?

22 A It was.

23 Q And the State was trying him for murder?

24 A That's correct.

25 Q And ultimately, he was convicted for voluntary

11:02:30 1 manslaughter, correct?

2 A Correct.

3 Q Because there was a struggle between him and the
4 victim.

5 A Correct.

6 Q "Him," being Mr. Darien?

7 A That's correct, yes.

8 Q And you actually presented witnesses on his behalf
9 to show that it was self-defense, correct?

10 A I did.

11 Q And you presented evidence through witnesses that
12 Mr. Darien was in a haze when he shot Mr. -- Bubba?

13 A That's correct, yes.

14 Q Okay. And the jury heard those witnesses and the
15 State's witnesses, correct?

16 A Correct.

17 Q And there was evidence that through other
18 witnesses that there was a struggle, and then there was a
19 brief time where Mr. Darien goes and picks up a gun, and
20 then fires at Bubba after Bubba charges him, correct?

21 A That's correct.

22 Q And that there was forensic evidence presented
23 that Bubba was shot three times in the back, and that's what
24 he died of, correct?

25 A I can't recall how many times the pathologist

11:03:34 1 found that he was shot in the back, but he was shot in the
2 back.

3 Q And that's what he ultimately died of?

4 A He died of gunshot wounds.

5 Q So there was more evidence than just this
6 statement that Mr. Darien shot and killed the victim,
7 correct?

8 A That's correct.

9 Q There were numerous witnesses out there, right?

10 A That's correct.

11 Q Now, one issue is whether or not you asked
12 witnesses to be sequestered during the Jackson versus Denno,
13 correct? Now, you -- is that correct?

14 A That's correct.

15 Q Now, you did ask for witnesses to be sequestered
16 during the trial, correct?

17 A That's correct.

18 Q And Judge granted that motion?

19 A She did.

20 Q Okay. Now, is it typical in your practice to ask
21 witnesses to be sequestered during Jackson versus Denno
22 hearing?

23 A I don't know whether it's typical, but in some
24 cases it -- maybe in all cases you ought to do that as a
25 defense lawyer.

11:04:55 1 Q But there's no point in this case, because you
2 were -- you had no legal grounds to challenge the statement,
3 did you?

4 A As I recall, I did not -- or at that time, thought
5 I did not.

6 Q At that time, correct?

7 A Yes.

8 Q And you also testified that you have notes that
9 when you interviewed Mr. Darien, he was in good health, had
10 no impairments, no mental disorders, no history of
11 treatment, no learning disabilities, and no ADHD, correct?

12 A That was all based upon his responses to questions
13 I asked him about those different areas.

14 Q So the information he provided you?

15 A That's correct.

16 Q Okay.

17 MR. JOHNSON: That's all I have for this witness
18 at this time, Your Honor.

19 MR. FALK: Redirect?

20 THE COURT: Yes, you may.

21 REDIRECT EXAMINATION

22 BY MR. FALK:

23 Q Was it just your testimony that you didn't find
24 the police officer's statements that we played
25 objectionable?

11:06:28 1 A I don't think I said that.

2 Q Okay. I guess that's why I was asking.

3 Rutledge, what did he say?

4 THE COURT: I got it.

5 MR. FALK: You got it? Okay.

6 BY MR. FALK:

7 Q And when you interviewed him and got his medical
8 history, that was about a month after the incident?

9 Well, let me just put it this way. The
10 shooting occurred on October -- excuse me, the shooting
11 occurred September 29th, 2008. I think your earlier
12 testimony was sometime middle to late October that you
13 interviewed him.

14 A My notes reflect that I saw him on October the
15 20th, 2008 for the first time.

16 Q Okay. So any questions about his physical health
17 were how he was feeling at that time?

18 A Well, certainly.

19 MR. FALK: No further questions.

20 THE COURT: May Mr. Macloskie may be excused?

21 MR. FALK: The witness is excused, yes.

22 MR. JOHNSON: Your Honor, he's under my subpoena.
23 I'd like to keep him just in case I need him for
24 rebuttal testimony.

25 THE COURT: Mr. Macloskie, if you don't mind, can

11:07:36 1 you stick around?

2 THE WITNESS: Not a bit.

3 THE COURT: Thank you so much.

4 Call your next witness.

5 MR. FALK: Call Mr. Darien. You want him from

6 here or up there or ...

7 THE COURT: Come around, please.

8 Thereupon,

9 ERIC DARIEN

10 was called as a witness, having been first duly sworn,

11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FALK:

14 Q You gave a statement that we heard earlier; did
15 you not?

16 A Yes, sir.

17 Q Okay. Where did you come from immediately prior
18 to going to the police station, where were you before that?

19 A At the hospital.

20 Q Okay. And why were you at the hospital?

21 A I had just got beaten.

22 Q And you said you just got beaten?

23 A Yes.

24 Q And can you just briefly describe where your
25 injuries were?

11:08:39 1 A Face, temple, head -- head area.

2 Q Okay. At the beginning of the tape, which I'm not
3 sure I played for the Court, it said that the interview was
4 taking place at 2:53. So about 3:00 in the afternoon the
5 following day; does that sound right to you?

6 A Yes. Yes, sir. Yes, sir.

7 Q How much sleep -- and when did the incident occur?

8 A About 7:30, 8:00 the night before.

9 Q Okay. How much sleep had you had between the
10 incident and when you made this statement?

11 A None.

12 Q What kind of -- how were you feeling when you made
13 the statement?

14 A I just had got through taking some Motrins and I
15 had gotten no sleep, so ...

16 Q Were you suffering from your head injury?

17 A Yes, sir.

18 Q Did you feel -- what did they give you to eat?
19 How long do you think you were there?

20 A Uh --

21 Q There's testimony in here --

22 MR. JOHNSON: Objection, Your Honor. May he
23 answer the question?

24 THE COURT: Rephrase your question.

25 BY MR. FALK:

11:09:42 1 Q There's testimony in the record that you were
2 there about ten hours; does that sound right to you?

3 A Yeah, that's about right.

4 Q Okay. In the ten hours, had you had anything to
5 eat?

6 A No, sir.

7 Q Okay. Did you ever hear your statement prior to
8 your trial?

9 A No, sir.

10 Q Did you ever discuss with your lawyer about trying
11 to object to the statement?

12 A No, sir.

13 MR. FALK: All right. No further questions.

14 BY MR. FALK:

15 Q No, wait. Let me just -- do you have anything
16 else you would like to say?

17 A Yes. I would like to apologize.

18 MR. JOHNSON: Judge, that's nonresponsive, Your
19 Honor. That's an open ended --

20 THE COURT: Overruled. Go ahead.

21 BY MR. FALK:

22 Q Go ahead.

23 A Yeah. I'd like to apologize to the victim of the
24 family, let him know I'm sorry for what happened. I'd like
25 to be forgiven for what had happened, if that's all right

11:10:38 1 with the family member.

2 Q Thank you.

3 THE COURT: All right. Cross-examination.

4 MR. JOHNSON: The Court's indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 MR. JOHNSON: I don't think I have any questions
7 for this witness. Thank you, Mr. Darien.

8 THE COURT: Thank you, sir. You may step down.

9 MR. FALK: We rest.

10 THE COURT: You rest. Okay.

11 MR. JOHNSON: Your Honor, I would recall
12 Mr. Macloskie, just for two questions.

13 THE COURT: All right. Mr. Macloskie, you mind
14 coming back around, please, sir?

15 Thereupon,

16 CHARLES MACLOSKIE

17 was called as a witness, having been first previously duly sworn,
18 was examined and testified as follows:

19 THE COURT: As you know, you are still under oath.

20 WITNESS: I am. Thank you, sir.

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q Mr. Macloskie, do you have any recollection on
25 discussing the statement with Mr. Darien?

11:11:29 1 A I do not.

2 Q Is it your typical practice to discuss evidence
3 with a client prior to trial?

4 A Oh, I would have.

5 Q So you would have discussed, in your normal
6 practice, the statement with Mr. Darien?

7 A That's correct.

8 MR. JOHNSON: No further questions, Your Honor.

9 THE COURT: All right. Any questions?

10 MR. FALK: No redirect.

11 THE COURT: Now, may Mr. Macloskie be excused?

12 MR. JOHNSON: Yes, Your Honor.

13 MR. FALK: Yes.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Thank you, sir.

16 Any other witnesses?

17 MR. JOHNSON: None from the State, Your Honor.

18 THE COURT: All right. I'm glad to hear final
19 statements.

20 Mr. Falk.

21 MR. FALK: Yes, Your Honor.

22 I'll draw the Court's attention to a recent
23 decision from the South Carolina Supreme Court. And
24 the only thing I have is Sheila -- Shearhouse Advance
25 Sheet site. But it is State --

11:12:09

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THE COURT: Is that the Bar case, where the officers kept saying, it's your burden, your burden, your burden?

MR. FALK: Yes. That's the --

THE COURT: Yeah, I'm familiar. I don't know the name of the case, I'm familiar with it.

MR. FALK: It's State versus Brewer, and the cite I have is 2015 Shearhouse Advance Sheet Number Four.

THE COURT: What date?

MR. FALK: January 2015.

THE COURT: What's the opinion number -- oh, you don't have that. That's fine.

MR. FALK: Oh, wait. No, I do have that handy. It's appellate case number, it's State versus Jaquan Brewer, and it's 2012 -- I mean, it's appellate case 2012-208487.

THE COURT: Okay. Thank you.

MR. FALK: And it says, opinion number -- I'm sorry. Then it says, Opinion Number 27487.

THE COURT: Okay.

MR. FALK: So the Court had an opportunity to read that case, the South Carolina Supreme Court, but especially look at the statements by police officers, the hearsay statements by police officers, that ineffectively bootstrapped in or back-doored in through

11:13:42 1 one of these -- through one of these confessions. And
2 particularly, the hearsay statement would be, He was
3 shot in the back, and that's probably the most damning
4 of the hearsay statements. And then the burden
5 shifting statements, and the Court certainly has --

6 THE COURT: You say statements, I heard one.

7 MR. FALK: You're right. I should have said
8 statement.

9 THE COURT: Statement. And in the Brewer case,
10 wasn't that a repetitive statement they kept saying,
11 that they kept shifting the burden onto the Defendant?

12 MR. FALK: I agree with you, but there --

13 THE COURT: Is there a distinction?

14 MR. FALK: I think it goes to weight. I think --
15 yeah, I'm sure it goes to balancing of how strong the
16 other evidence, how close the cases was. But I do
17 think there's two that shifted the burden. It's, You
18 don't have the right to kill anybody, or, You don't
19 have a right to take a man's life. That certainly is a
20 response to a self-defense -- this was a self-defense
21 case.

22 And then the other one, I wasn't there, I don't
23 have to prove anything.

24 So I think there were two statements that the jury
25 heard that went on, that went forth. You know, that

11:14:45 1 the jury was able to hear, and possibly would have
2 shifted the burden to my client that he had to prove
3 that he acted out of self-defense, that he had the
4 burden of proof on that issue.

5 There is also, since the Jackson versus Denno
6 hearing, since the transcript of the hearing did not go
7 in, the trial counsel had no opportunity to offer any
8 type of jury charge regarding confessions.

9 The Court specifically stated in -- on page-- now,
10 I'm going back to this trial. So, the trial judge in
11 this case specifically stated on Page 191 that, I'm not
12 going to give my standard charge regarding confession
13 since you admitted the validity of the confession.

14 And our position would certainly be that, although
15 we granted the fact that maybe this was a clear case
16 out of Jackson versus Denno hearing, I'm not sure as
17 far as the Judge's gatekeeping role, but certainly his
18 mental condition, the fact that he hadn't slept, the
19 fact that he had any food, was there for ten hours,
20 those are certainly factors that the jury had a right
21 to hear, could have heard. And when because -- as I
22 said earlier, the jury has the ultimate determination
23 whether or not that statement was given voluntarily.

24 THE COURT: Did the Judge give a standard Jackson
25 Denno charge to the jury?

11:16:18 1 MR. FALK: No.

2 THE COURT: She didn't tell --

3 MR. FALK: If you look at Page 191, starting at
4 Line 9.

5 THE COURT: Page 191?

6 MR. FALK: Page 191, Line 9.

7 THE COURT: Okay.

8 MR. FALK: Okay. So -- and I don't believe that
9 trial counsel necessarily articulated a trial strategy
10 in letting this statement go in unchallenged. So we
11 find that -- it's certainly our position that the jury
12 hearing the statement was prejudicial, certainly the
13 jury hearing the burden shifting statements were
14 additionally prejudicial, and the statement from the
15 police officer -- the hearsay statement from the police
16 officer about the guy being shot in the back, we also
17 think that's prejudicial. That was a matter that the
18 State had to prove and it -- but instead, the State was
19 able to -- the jury was able to hear testimony from a
20 witness that did not have firsthand knowledge as to how
21 the person was shot. So that's where we find prejudice
22 in this case.

23 THE COURT: Thank you, sir.

24 MR. JOHNSON: May it please the Court, Your Honor.
25 I may take these in reverse order.

11:17:52 1 Well, first, I lead off by stating Strickland
2 versus Washington, which as you know is the pinnacle
3 case in PCR matters, in that judicial scrutiny of
4 counsel's performance must be highly deferential. It's
5 all too tempting for a Defendant to second guess
6 counsel's assistance after conviction or adverse
7 sentence, and it's all too easy for a Court examining
8 counsel's defense after it's proven unsuccessful to
9 conclude that a particular act or omission of counsel
10 was unreasonable.

11 A fair assessment of attorney performance requires
12 that every effort be made to eliminate the distorting
13 effects of hindsight, to reconstruct the circumstances
14 of counsel's -- challenge conduct and to evaluate the
15 conduct from counsel perspective at the time. And
16 that's very important, Your Honor.

17 Because I asked Mr. Macloskie did he have any
18 legal grounds to challenge the statement made by
19 Mr. Darien at the time, to which he said he did not
20 think so. And that's what we have to examine this. We
21 can't take the statement, yeah, I should have objected.
22 That's what Strickland completely eliminates, the
23 distorting effects of hindsight. So we have to think
24 about it at the time of this trial.

25 Your Honor, I don't believe that Judge Mullen or

11:19:00 1 counsel made any error in not asking for a jury charge
2 concerning the Jackson V Denno because they stipulated.
3 As he stated, he had no legal ground to challenge
4 Mr. Darien's statement. As such, I believe there's no
5 prejudice because there's no error, Your Honor.

6 As far as the mental condition when he gave the
7 statement, yes, he testified he hadn't ate or slept.
8 However, he provided no mental health expert to say he
9 was under any duress. Under Banister (phonetic) versus
10 State, he has to present credible evidence here at the
11 hearing to show prejudice, and he simply has not done
12 so.

13 THE COURT: Let me ask you this. You mentioned, I
14 have not read the transcript to prepare to testify, is
15 that what you were saying this morning. Was there
16 eyewitness testimony from the Defendant's side and the
17 State's side of the case?

18 MR. FALK: Yes, Your Honor, and that's another
19 thing I'm going to get to -- actually right -- it's my
20 next argument is that even if the statement is taken
21 completely out of the trial, they were -- I think five
22 or six different eyewitnesses, I want to say, four or
23 five on the State's side and then counsel put up two
24 witnesses in order to kind of defeat, you know, the
25 malice aspect of murder and show self-defense. To

11:20:11 1 show -- so there's -- the statement is cumulative to
2 all the rest of the testimony presented at the
3 hearing -- at the trial, Your Honor, if that answers
4 your question.

5 THE COURT: Yes.

6 MR. JOHNSON: And you'll see that, I believe -- I
7 don't know if it's Mr. Darien's sister or Mr. Darien's
8 child's mother and then other children. Actually
9 Mr. Darien's son testifies as to what happened. There
10 were -- it was a good amount of people that testified,
11 Your Honor. So I believe this statement would be
12 cumulative even if it was in error to admit the
13 statement to everybody else's testimony.

14 Further, Mr. Darien apologized on the stand for
15 his actions to the witnesses -- I mean, to the victims
16 in this case, Your Honor.

17 THE COURT: I'm not considering that. Go ahead.

18 MR. JOHNSON: Understand.

19 As far as the statements by the police, I don't
20 believe there's a burden shifting. The one statement
21 says, I have nothing to prove. It never says, You have
22 to do it, you have to prove anything. These statements
23 are not --

24 THE COURT: Well, hang on. And it wasn't real
25 distinctive when I was listening to it. He said, I

11:21:17 1 have nothing to prove. But he didn't go further to
2 delete one or he didn't say anything on the replies?

3 MR. JOHNSON: What I have is he says, I was not
4 there, I have nothing to prove, the Court has to decide
5 those things. That's what I have written down in my
6 notes, Your Honor.

7 MR. FALK: He said, I heard it as, I'm not -- I'm
8 not the one that was out there. I'm not the one that
9 has something to prove. That's a little bit different.
10 I'm not the one that has to be --

11 THE COURT: All right. And, again, whatever it
12 says, it says.

13 MR. FALK: Yeah.

14 THE COURT: All right.

15 MR. JOHNSON: And I have yet to read the Brewer
16 case, Your Honor, but apparently it's a repeated burden
17 shifting and this one is -- if there was any burden
18 shifting whatsoever, it was one isolated incident. You
19 have to take that in context of the entire trial.

20 There were no statements like Rhode Island
21 (phonetic) versus Ennis or Miranda, you know, trying to
22 elicit an incriminating response. And also, I don't
23 believe he had an incriminating response, Your Honor.

24 There was, No, yes, I did it. But he admits to
25 shooting the guy, but in self-defense. And that's the

11:22:16 1 entire theory of the case. And once you read it, it is
2 a very close call. That's why Judge Mullen then goes
3 and knocks the sentence down from 18 to 15. It is a
4 very close call, voluntary manslaughter versus
5 self-defense. I completely admit that, Your Honor.
6 This is a close case.

7 But the statement by police, I think, should be
8 taken in context with the entire trial, not in
9 isolation.

10 As far as talking about his prior convictions,
11 talking about his prior arrest, there was a curative
12 instruction, Your Honor, given and under State versus
13 White, 371 SC 439, Court of Appeals, if a judge
14 sustained a timely objection, which she did, to
15 evidence and gives the jury a curative instruction,
16 that is to be disregarded, the error is deemed to have
17 been cured by the instruction.

18 So any error that was from that statement was
19 cured by the Judge's curative instruction.

20 Finally, I just reiterate the fact that this has
21 to be viewed at the time of the trial and not with the
22 blinding and distorting effects of hindsight. Your
23 Honor, we ask to deny this application.

24 MR. FALK: Your Honor, if I could just -- brief
25 rebuttal.

11:23:20 1 Regarding the curative instruction, there's a
2 difference between a witness saying something that
3 they're not supposed to say, it being hearsay, then an
4 objection. Our contention why this was ineffective
5 assistance of counsel, because there's no excuse for
6 that coming in. Trial counsel said that he heard the
7 tape several times. So he knew it was there. He knew
8 it was coming as soon as it played. He knew it was
9 going to come. So that's a little bit different
10 situation. Thank you.

11 THE COURT: I don't disagree with you. And here
12 is where I do disagree with you. If the evidence of
13 prior criminal record or similar prior conduct or
14 something more substantial than a child support,
15 marijuana, alleged not identified felonies -- three
16 notes I have -- I'd have a lot more concern with it
17 that, as we all used to say as lawyers, the bell is
18 rung, you can't unring it.

19 MR. FALK: Yes, Your Honor.

20 THE COURT: I think those are much more subject to
21 being cured by a curative charge.

22 But let me go over some matters with both the
23 attorneys to make sure I'm on board.

24 MR. FALK: Yes.

25 THE COURT: Number one, there is a ground failure

11:24:31 1 to sequester witnesses and jurors. Well, I haven't
2 heard one iota of anything about jurors. That was
3 concerning to me.

4 MR. FALK: And it was when I initially got the
5 application and --

6 THE COURT: You said you withdraw that allegation
7 as to --

8 MR. FALK: We would withdraw that allegation.

9 THE COURT: And so, Mr. Falk, let me make sure I
10 understand. As to the non-sequestration, it occurred
11 during the Jackson Denno, and it was simply the law
12 enforcement folks who were allowed to testify at that
13 hearing without sequestering; is that correct?

14 MR. FALK: Yes, Your Honor.

15 THE COURT: Okay. I just wanted to make sure.

16 And you have failure to utilize the mandatory
17 Jackson Denno. What makes it mandatory?

18 MR. FALK: I believe -- I don't know --

19 THE COURT: Just the facts of the case under this
20 particular case?

21 MR. FALK: Again, this was my -- Mr. Darien did a
22 pretty thorough job. That's actually his application.

23 THE COURT: I gotcha. Okay.

24 MR. FALK: And whether or not it's really
25 mandatory or it's just inexcusable best practices not

11:25:35 1 to do it any time you've got a statement.

2 THE COURT: Then -- and I'm making sure I have the
3 issues covered. You have failure to review Defendant's
4 statements which contained prior bad acts, testimony,
5 failure to move for a mistrial once his criminal record
6 was played. Failure to object to picking witnesses,
7 I've not heard anything about that.

8 MR. FALK: And, again, I don't believe that was
9 there. I think that was a mistake.

10 THE COURT: There's nothing in the record about
11 it.

12 MR. FALK: Well, actually, the pinning was
13 actually on cross-examination by the trial counsel
14 against --

15 THE COURT: But even so, that just doesn't direct
16 it here.

17 By abandoning Defendant's defense by improper
18 cross-examination.

19 MR. FALK: Well, that's -- what he means there is
20 that his contention was that --

21 THE COURT: That was Officer Crosby who said, you
22 know, You're going to say the same thing as the other
23 officer, Yeah, I am. Okay.

24 MR. FALK: Yeah.

25 THE COURT: Okay. All right. And that's the same

11:26:41 1 thing by the family, the defense, by proffering
2 testimony of Crosby, those are the same --

3 MR. FALK: Right.

4 THE COURT: Okay. And failure to object to the
5 jury charge is part of this.

6 MR. FALK: Yes.

7 THE COURT: Anything further?

8 MR. FALK: I guess it's really not reflected in
9 that list, but it certainly was proved. And, again,
10 I'm sort of resting more on the Brewer type
11 information, the statements by the police officers.

12 THE COURT: All right. I'm giving you my
13 thoughts, I'm not making this rule. Quite frankly, it
14 appears that there was sufficient amount of evidence of
15 this Defendant's guilt to overcome any errors. I agree
16 with Mr. Falk that the prior record should not have
17 come in. I think that the shifting burden -- burden
18 shifting statements were what you described them to be.

19 But I don't know that it amounts to necessarily
20 granting a PCR in this case. I'm going to reread
21 Brewer. Those are the ones -- that is what I have a
22 concern about. There's been no evidence of any -- you
23 know, this gentleman having been intoxicated. There's
24 no evidence of him having a head injury that would
25 suffice to make his statements not admissible or not

11:28:01 1 proper. That's his burden in this case. So I'm not
2 considering anything along those lines.

3 MR. FALK: Your Honor, on that point --

4 THE COURT: Let me finish.

5 And so I'm going to look at this. I'm going to
6 look at your transcript a little bit further, mull it
7 when I look at the transcript, then I'll issue an
8 order.

9 Yes, sir.

10 MR. FALK: I just wanted to clarify my point. We
11 were not contending that by the Jackson versus Denno
12 that -- where he lost the opportunity was for the jury
13 to hear that stuff. Because the jury would have had a
14 different view of the voluntariness than possibly a
15 court would have in a Jackson versus Denno. So by not
16 objecting to the statement, the jury could have heard
17 about the injury that he testified about.

18 THE COURT: I gotcha. Okay.

19 MR. JOHNSON: And just that point, Your Honor, and
20 this is not implicating his right to remain silent,
21 because the PCR, that right is not implicated. He had
22 the opportunity to testify and give his side of the
23 story. He chose not to. That's his right.

24 THE COURT: I'm not considering that.

25 Guys, thank you for your recitations.

11:29:04 1 Mr. Darien, I'll issue an order and have it out to
2 your attorney by the end of next week at the latest.

3 MR. FALK: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (The hearing concluded.)

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2 CERTIFICATE

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4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 22nd day of November, 2016.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

(850) 893-6662

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mmanley@scccourts.org

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STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Eric Darien, #275549,

2013-CP-27-0111

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina, AG

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 21, 2013. The Respondent made its Return on July 2, 2014. An evidentiary hearing into the matter was convened on March 3, 2016, at the Beaufort County Courthouse in Beaufort, SC. James K. Falk, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Charles Macloskie, Esquire, also testified. This Court had before it a copy of the records of the Jasper County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript, the appellate and records.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Jasper County Clerk of Court's orders of commitment. The Applicant was indicted by the December 2008 term of the Jasper County Grand Jury for Murder (2008-GS-27-0728). Charles Macloskie, Esquire, represented him. On February 8-9, 2010, the Applicant proceeded to a jury trial

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Page 1 of 12

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Referred to J. Johnson /dm
Answered _____

POSTED
BY DATE MAY 20 2016

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pursuant to which he was found guilty of Voluntary Manslaughter as a lesser included offense of murder. The Honorable Carmen T. Mullen sentenced the Applicant to confinement for eighteen (18) years for Voluntary Manslaughter. On June 8, 2010, Judge Mullen amended Applicant's sentence to fifteen (15) years.

A notice of appeal was filed and an appeal perfected pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Darien, Op. No. 2012-UP-307 (filed May 16, 2012). The Remittitur was issued on June 6, 2012.

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to sequester witnesses and jurors during an in camera hearing."
 - a. "The State intended to rely upon Applicant's statement. Trial counsel failed to move to sequester relevant trial witnesses and selected jurors during an in camera proceeding to a Jackson v Denno hearing to determine the admissibility of the statement."
2. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to challenge Applicant's statement in a Jackson v Denno hearing."
 - a. "Trial counsel failed to utilize the mandatory Jackson v Denno procedure to challenge Applicant's statement that Applicant was under the influence of alcohol and suffered heard trauma on the night of the incident, hours prior to making the statement."
3. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to review the contents of Applicant's

statement which contained evidence of prior bad acts."

- a. "Trial counsel failed to object to, or review the contents of Applicant's statement in the Jackson v Denno proceeding. The State introduced and published the statement, which contained a highly prejudicial review of Applicant's criminal history, which was not admissible unless the Applicant testified, which he did not."
4. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to move for a mistrial."
 - a. "Trial counsel failed to challenge the contents of Applicant's statement in the Jackson v Denno hearing. Upon publication of the nontestifying Applicant's statement to the jury, Applicant's criminal history was also published to the jury. Although counsel moved for a redaction, the judge issued a curative instruction to disregard that part of the taped statement. No instruction was issued concerning the statement in the jury charges. Given the prejudicial impact on the jury of the prior bad acts, the fair trial guarantee was tainted and counsel should have moved for a mistrial."
5. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to object to the Solicitor pitting State and Defense witnesses."
 - a. "Trial counsel failed to object to the Solicitor pitting family witnesses [children] against Detective Hipp during direct examination of the children."
6. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel abandoning Applicant's defense in an improper cross-examination of a State witness."
 - a. "Trial counsel abandoned the Applicant's defense at a critical stage of trial where counsel cross-examined Detective Hipp and elicited testimony that Applicant was completely lucid and cooperative, conceding Applicant's mens rea guilt."
7. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel abandoning Applicant's defense by proffering the testimony of a State witness."
 - a. "Trial counsel abandoned the Applicant's defense at a critical stage (Jackson v. Denno hearing), by proffering the testimony of Detective Jeff Crosby, regarding Applicant's statement, without subjecting the witness to the

adversarial process.”

8. “Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel failing to object to the trial court’s failure to include a jury charge supported by the record.”

- a. “The trial court declined to give a jury charge on confessions, where Applicant’s statement contained prejudicial prior bad acts, based upon trial counsel’s earlier stipulation that “I have no grounds to challenge that statement,” and counsel failed to request a charge on confessions or object to the omission thereof.”

SUMMARY OF TESTIMONY

Counsel, Charles Macloskie, testified he was retained by the family on October 7, 2008 and met with Applicant on October 20, 2008. Counsel stated that he received discovery from the State, which included Applicant’s statement to police. Counsel testified he reviewed the statement numerous times, but could not recall if he played a recording of the statement to Applicant. Counsel then stated the State could prove its case without Applicant’s statement. Counsel testified is never helpful for an accused to make a statement to police.

Counsel testified, according to his theory of the case, that initially he thought there was a chance for a self-defense claim; however, the forensics showed otherwise. Counsel testified he went to trial on a self-defense theory. Counsel stated he could not recall discussions with Applicant concerning physical/mental health.

Concerning the Jackson v Denno¹ hearing, Counsel testified he only put up one witness on Applicant’s behalf and did not challenge the statement. Counsel stated that both detectives were in

¹ 378 U.S. 368, 84 S.Ct. 1774 (1964).

the courtroom during the Denno hearing. Counsel stated he could think of no strategic reason as to why both detectives were in the courtroom. Counsel stated that the outcome of the hearing would not have changed if the detectives had testified differently; he could have raised this at trial if the testimony was different. Counsel was sure that he had a chance to interview the detective before trial; Counsel having noted his file that he met with the detective to discuss the statement prior to trial. Counsel did not recall asking defendant if he had slept that night before, whether he had eaten, or whether he was injured. Counsel testified that when he initially spoke with Applicant, Applicant said he was in good health, with no impairments, no mental disorders, no history of treatment, learning disabilities, and no ADHD. Counsel stated that Applicant said he was hit by the victim and was in some sort of a daze.

Concerning the audiotape, Counsel testified it was admitted into evidence without objection. This tape was not played at the Denno hearing, and that he did not have any grounds for objection. Counsel then testified it was the jury's decision to determine whether the statement was voluntarily given. Counsel then stated he did not know if it was his trial strategy to have admitted or whether he could not find a way to keep it from being admitted into evidence.

Counsel testified that it is his general practice to review all of the evidence prior to trial and that this case was no exception. Counsel testified he knew the audiotape contained information of Applicant's prior criminal history and objected to this after the tape was published to the jury. Counsel admitted he did not consider redacting the police statements before the trial, but should have. In the tape, a police officer talked about Applicant's prior jail time. Counsel asked for curative instruction and received one because he did not want the jury to consider the tape because it would

not be helpful to Applicant's case. Counsel also testified that in the audiotape there was a police officer saying that he had nothing to prove and talking about the shooting of victim.

In addition, Counsel testified the biggest issue concerning Applicant's statements to the police was the police's statements to Applicant. Specifically, one police officer stated to Applicant, "you do not have the right to take someone else's life" and "I have nothing to prove... The court has to decide those things." Counsel admitted he did not ask for curative instructions or move for mistrial. Counsel lastly stated he did not have a trial strategy as to the statements.

On cross-examination, Counsel admitted that he found Applicant statement to be voluntary and has been practicing law for 49 years. Counsel testified he is handled hundreds of cases, including murder cases. Counsel also admitted that he has challenge many defendant statements, and has been successful previously; but challenges statements on a case-by-case basis. Counsel stated that in hindsight, he should have objected to the police officer statements concerning Applicant's prior jail time, but he asked for and received a curative instruction. Counsel testified he presented evidence for a self-defense claim, but witnesses testified that Applicant was the one who picked up the gun. Counsel then testified the forensic evidence revealed that three shots were fired and numerous witnesses testified as such. Counsel also testified that he was granted sequestration during the trial, but does not know if it is typical for him to ask for sequestration during a Denno hearing. Counsel admitted that he did not have any legal grounds to challenge Applicant's statement at the time; he based his decision on information supplied by the Applicant.

Applicant testified that he was at the hospital prior to giving his statement to law enforcement because he had just been beaten up. Applicant admitted he gave his statement around 3:00 PM the

following day, while the incident had occurred at 7:00 PM the night before he gave his statement. Applicant claims that he did not sleep and was suffering from head injury. Applicant stated he had not eaten in more than 10 hours. Applicant further claimed that he did not hear his statements prior to trial and had no discussions about his statements with counsel.

Counsel was recalled by the State and testified that he would have certainly discussed Applicant statement with him prior to trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witness presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

First, this Court finds Applicant's testimony concerning Counsel's alleged ineffectiveness not credible while finding Counsel's testimony credible.

Ineffective Assistance of Counsel

The Applicant alleges he is entitled to post-conviction relief on the basis that he received ineffective assistance of trial counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). To be entitled to post conviction relief, the Applicant must prove both of the following: (1) his counsel failed to render reasonably effective assistance under prevailing

professional norms, and (2) the Applicant suffered prejudice by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). Under this standard, counsel's deficient performance must have prejudiced the Applicant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy."

Strickland at 689-90, 104 S. Ct. at 2065-66.

The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information. For example, when the facts that support a certain potential line of defense are generally known to counsel because of what the defendant has said, the need for further investigation may be considerably diminished or eliminated altogether. And when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable.

Id. at 691, 104 S. Ct. at 2066.

Failure to challenge Applicant's statement

Applicant alleges that Counsel was ineffective for failing to challenge his statement to law enforcement. However, Counsel testified that he had no legal basis by which to challenge the statement. Counsel further testified that when he initially met with Applicant, Applicant stated he was in good health, with no impairments, no mental disorders, no history of mental health treatment, no learning disabilities, and no ADHD. Counsel also stated that he spoke with the detective prior to trial during his investigation. Based on this information, Counsel decided not to challenge the statement because he had no legal grounds to do so. Also, Counsel testified that he should have objected to the statements prior to them being published to the jury; however, he asked for a curative instruction and received one.

This Court finds Counsel effectively represented Applicant concerning his statements to law enforcement. Under Strickland, Counsel based his decision to not challenge Applicant's statement on

Applicant's own information. Therefore, Counsel's actions cannot now be challenged as unreasonable. Concerning the statement itself, Counsel asked for and received a curative instruction concerning the statements made by the police officer during their interrogation. See State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) ("Generally, a curative instruction is deemed to have cured any alleged error. A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission.") (internal citations omitted). Therefore, this Court finds Applicant has failed to meet his burden of proving this allegation. Thus, it is denied.

Applicant's Mental Condition

Applicant also alleges that Counsel failed to investigate his mental condition at the time of the incident and at the time that he gave his statement to law enforcement. As stated above, Counsel testified that when he initially interviewed Applicant, Applicant stated he was in good health, had no impairments, had no mental disorders, had no history of treatment, had no learning disabilities, and had no ADHD. This Court also notes Applicant failed to produce any mental health expert at the PCR hearing to show that an investigation by Counsel would have been fruitful. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). (An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.). Based on the information given to Counsel by Applicant and based on the fact that no expert testified at the PCR

hearing, this Court finds Applicant has failed to meet his burden of proving this allegation. Thus, it is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

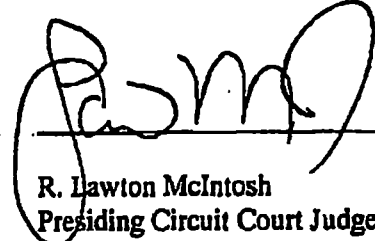
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

12

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



R. Lawton McIntosh
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

5-17, 2016

Anderson, South Carolina

2013-CP-27-0111



STATE OF SOUTH CAROLINA
COUNTY OF JASPER
IN THE COURT OF COMMON PLEAS

ERIC DARIEN, #275549

Applicant,

v.

STATE OF SOUTH CAROLINA,

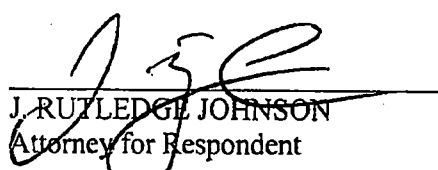
Respondent.

CERTIFICATE OF SERVICE

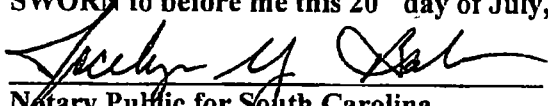
The undersigned hereby certifies that a true copy of the **Order of Dismissal** (2013-CP-27-0111) has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

James K. Falk, Esquire
Post Office Box 1058
Charleston, South Carolina 29402

This 20th day of July, 2016.


J. RUTLEDGE JOHNSON
Attorney for Respondent

SWORN to before me this 20th day of July, 2016.


Notary Public for South Carolina.

My Commission Expires: 12/16/2024

WITNESSES

Hipp - JCSO

ARREST WARRANT NUMBER

J366759

ACTION OF GRAND JURY

TRUE BILL ☒

NO BILL ☐

FOREMAN *Charles E. Eide*

DATE *12/16/08*

Foreperson of Grand Jury
Date:

VERDICT

Shera J. ...
Foreperson of Petit Jury
Date: *2/10/2010*

DOCKET NO. 2008GS2700728

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

December Term 2008

THE STATE

vs.

Eric Fitzgerald Darien

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

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.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: *[Signature]*
DATE: *12/16/08*

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT

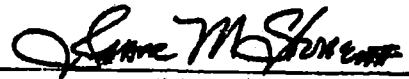
2008GS2700728

At a Court of General Sessions, convened on December 16, 2008, the Grand Jurors of Jasper County present upon their oath:

Murder / Murder

That in Jasper County on or about September 29, 2008, with malice aforethought, Eric Fitzgerald Darien did kill and murder Richard Furman, Jr. by means of shooting the victim, and that Richard Furman, Jr. did die in Jasper County as a proximate result thereof on September 29, 2008; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Jasper
STATE VS.
Eric Darien

INDICTMENT/CASE#: 2008GS2700728

A/W#: J366759

Date of Offense: 9/29/2008

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

AKA:

Race: B Sex: M Age: 34

DOB: SS#

Address:

City, State, Zip: Pineland, SC 29934-5732

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder Voluntary Manslaughter☒ CONVICTED OF or ☐ PLEADS
16-03-0050in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0217☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-43 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Knight, Steve

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 years days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered FTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	0
§ 14-1-206 (Assessments 107.5 %)	\$	0
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 0
§ 56-5-2995 (DUI Assessment)	\$12	\$ 0
§ 56-1-286 (DUI Breath Test)	\$25	\$ 0
§ 47.12 (Public Def/Prob)	\$500	\$ 0
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$100	\$ 0
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ 0
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 0
§ 90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2142

Sentence Date: 2/10/10

Amended Sentence 6/8/10
1 15 11:22 AM 02-11-10

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: [Signature]
DATE: 2-10-10