

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Chesterfield County

Honorable Paul M. Burch, Circuit Court Judge

OSCAR FORTUNE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 16-002231

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 6, 2006	1
FINAL BRIEF OF APPELLANT	623
FINAL BRIEF OF RESPONDENT	648
<u>STATE V. FORTUNE</u> , UNPUBLISHED OPINION NO. 2009-UP-259 (S.C. Ct. App. filed June 1, 2009)	672
APPLICATION FOR POST-CONVICTION RELIEF (2009-CP-13-323)	675
RETURN (2009-CP-13-323)	681
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 11, 2012	685
ORDER OF DISMISSAL (2009-CP-13-323)	846
ORDER DENYING MOTION PURSUANT TO RULES 59(A)(2) AND 59(E), SCRCP	858
PETITION FOR WRIT OF CERTIORARI	859
REQUEST TO EXCEED THE PAGE LIMIT	895
RETURN TO PETITION FOR WRIT OF CERTIORARI	896
ORDER GRANTING CERT PETITION	914
BRIEF OF PETITIONER	915
BRIEF OF RESPONDENT	965
AMENDED BRIEF OF PETITIONER	994
<u>FORTUNE V. STATE</u> , UNPUBLISHED OPINION NO. 2016-UP-102 (S.C. Ct. App. filed March 2, 2016)	1043
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 2, 2016	1048
ORDER FILED SEPTEMBER 12, 2016	1060

RULE 59(E) MOTION AND MEMORANDUM OF FACT AND LAW	1065
ORDER DENYING APPLICANT’S MOTION TO RECONSIDER.....	1091
INDICTMENT.....	1092

STATE OF SOUTH CAROLINA	)	
COUNTY OF CHESTERFIELD	)	COURT OF GENERAL SESSION
	)	02-GS-13-0137

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
OSCAR FORTUNE	)	
DEFENDANT	)	

March 6, 2006
 Chesterfield, South Carolina
 SELECTION OF THE JURY

B E F O R E:

THE HONORABLE JOHN M. MILLING, JUDGE; and a jury.

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

FRANKLIN JOYNER, ASSISTANT SOLICITOR
 Attorney for the State

KEVIN HALES, ASSISTANT SOLICITOR
 Attorney for the State

ED SALEEBY, JR., ESQ.
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HATTIE O. GORDON
 Circuit Court Reporter

1		
2	<u>I N D E X</u>	
3	General Sessions Jury Selection Form	4
4	Selection of the Jury	5
5	Certificate of Reporter	13
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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16
17
18
19
20
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22
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EXHIBITS

SEE NEXT PAGE FOR JURY PANEL SELECTION INFORMATION

GENERAL SESSIONS JURY SELECTION

CASE NO. 02-0151 / 03-1255

DATE: 5-6-50

PLAINTIFF: 21412

ATTORNEY: E. SOYNEZ & ASSOC.

DEFENDANT: JOHN F. OZON

ATTORNEY: S. ALLEN BROWN

PRESIDING JUDGE: CHAMILLING

COURT REPORTER: GORDON, HATTIE O.

[illegible]

Selection of the Jury

5

1 THE COURT: All right. If you will call the names
2 out in random order. All right.

3 (WHEREUPON, the jury panel was selected.)

4 THE COURT: What says the State as to any motions
5 regarding the selection of this jury as to Batson or JEB
6 matters?

7 MR. JOYNER: None from the State, Judge.

8

9

SELECTION OF THE JURY

10 THE COURT: Ladies and gentlemen, if your name is
11 called out if you will you please bring you belongings and
12 come forward. Let me ask this question. Any objection by
13 the State for the use of the Clerk's Office personnel
14 selecting this in lieu of a blind person or someone under
15 ten?

16 MR. JOYNER: None from the State, Judge.

17 THE COURT: Any from the Defense?

18 MR. SALEEBY: None from the Defense, Your Honor.

19 THE COURT: All right. If you will call the names
20 out in random order. All right.

21

22 CLERK OF COURT: Number 45, Patti P. Hancock. What
23 says the State?

24 MR. JOYNER: Please present the juror.

25 CLERK OF COURT: What says the Defense?

Selection of the Jury

6

1 MR. SALEEBY: Please excuse Miss Hancock.

2 CLERK OF COURT: You may return to your seat. Number
3 67, Easter Z. Lee. What says the State?

4 MR. JOYNER: Present the juror.

5 CLERK OF COURT: What says the Defense?

6 MR. SALEEBY: Excuse Miss Lee.

7 CLERK OF COURT: You may return to your seat. Number
8 65, Lashonda A. Jowers. What says the State?

9 MR. JOYNER: Please excuse Miss Jowers.

10 CLERK OF COURT: You may return to your seat. Number
11 28, Grayson R. Cauthen. What says the State?

12 MR. JOYNER: Present the juror.

13 CLERK OF COURT: What says the Defense?

14 MR. SALEEBY: Please excuse Mr. Cauthen from the
15 trial of this case.

16 CLERK OF COURT: Number 6, James E. Baker. What says
17 the State?

18 MR. JOYNER: Present the juror.

19 CLERK OF COURT: What says the Defense?

20 MR. SALEEBY: Present Mr. Baker.

21 CLERK OF COURT: Have a seat in the jury box. Number
22 112, Betty R. Quick. What says the State?

23 MR. JOYNER: Present the juror.

24 CLERK OF COURT: What says the Defense?

25 MR. SALEEBY: Please excuse Miss Quick.

Selection of the Jury

7

1 CLERK OF COURT: You may return to your seat. Number
2 157, Francis Patrick. What says the State?
3 MR. JOYNER: Present the juror.
4 CLERK OF COURT: What says the Defense?
5 MR. SALEEBY: Present Miss Patrick.
6 CLERK OF COURT: Have a seat in the jury box. Number
7 160, Christopher D. Sellers. What says the State?
8 MR. JOYNER: Please excuse the juror.
9 CLERK OF COURT: Return to your seat. Number 66,
10 Caroline V. King-Miles. What says the State?
11 MR. JOYNER: Present the juror.
12 CLERK OF COURT: What says the Defense?
13 MR. SALEEBY: Seat Miss King.
14 CLERK OF COURT: Have a seat in the jury box. Number
15 5, Tommy C. Bailey. What says the State?
16 MR. JOYNER: Present the juror.
17 CLERK OF COURT: What says the Defense?
18 MR. SALEEBY: Seat Mr. Bailey.
19 CLERK OF COURT: Have a seat in the jury box. Number
20 78, Steve W. McKenzie. What says the State?
21 MR. JOYNER: Present the juror.
22 CLERK OF COURT: What says the Defense?
23 MR. SALEEBY: Please excuse Mr. McKenzie.
24 CLERK OF COURT: Return to your seat, please. Number
25 121, Frances M. Robinson. What says the State?

Selection of the Jury

3

1 MR. JOYNER: Present the juror.

2 CLERK OF COURT: What says the Defense?

3 MR. SALEEBY: Excuse this juror.

4 CLERK OF COURT: Return to your seat. Number 54,

5 Keith Horton. What says the State?

6 MR. JOYNER: Present the juror.

7 CLERK OF COURT: What says the Defense?

8 MR. SALEEBY: Seat Mr. Horton.

9 CLERK OF COURT: Have a seat in the jury box. Number
10 82, Jenny S. McQueen. What says the State?

11 MR. JOYNER: Please excuse the juror.

12 CLERK OF COURT: Return to your seat, please. Number
13 75, Mary F. McClain. What says the State?

14 MR. JOYNER: Present the juror.

15 CLERK OF COURT: What says the Defense?

16 MR. SALEEBY: Seat Ms. McClain.

17 CLERK OF COURT: Have a seat in the jury box. Number
18 64, Micah T. Jordan. What says the State?

19 MR. JOYNER: Present the juror.

20 CLERK OF COURT: What says the Defense?

21 MR. SALEEBY: Please excuse Mr. Jordan.

22 CLERK OF COURT: You may return to your seat. Number
23 113, Shirley L. Reardon. What says the State?

24 MR. JOYNER: Present the juror.

25 CLERK OF COURT: What says the Defense?

Selection of the Jury

10

1 MR. SALEEBY: Excuse Mr. McMillon.

2 CLERK OF COURT: Return to your seat, please. Number

3 47, Joseph E. Hatchell, Sr. What says the State?

4 MR. JOYNER: Present the juror.

5 CLERK OF COURT: What says the Defense?

6 MR. SALEEBY: Seat Mr. Hatchell.

7 CLERK OF COURT: Have a seat in the jury box.

8 THE COURT: Defense Counsel, we will, if you have

9 cause to excuse the juror, just simply say so.

10 CLERK OF COURT: Number 44, Paul J. Guest. What says

11 the State?

12 MR. JOYNER: Present the juror.

13 CLERK OF COURT: Defense?

14 MR. SALEEBY: No cause.

15 CLERK OF COURT: You can have a seat in the jury box.

16 Number 122, Mariafe D. Robinson. What says the State?

17 MR. JOYNER: Excuse the juror.

18 CLERK OF COURT: You may return to your seat. Number

19 49, Timothy W. Helms. What says the State?

20 MR. JOYNER: Excuse the juror.

21 CLERK OF COURT: You may return to your seat. Number

22 134, Roger J. Oxendine. What says the State?

23 THE COURT: Any cause for challenge by the State?

24 MR. JOYNER: None from the State.

25 MR. SALEEBY: None from Defense.

Selection of the Jury

11

1 CLERK OF COURT: You can have a seat in the jury box,
2 please.

3 THE COURT: All right. At this time we'll go with
4 two alternates. Strikes are one and one.

5 CLERK OF COURT: Number 161, Curtis H. Jackson, Jr.
6 What says the State?

7 MR. JOYNER: Present the juror.

8 CLERK OF COURT: Defense?

9 MR. SALEEBY: Please excuse Mr. Jackson.

10 CLERK OF COURT: You may return to your seat. Number
11 156, Gregory A. Zearfoss. What says the State?

12 MR. JOYNER: Present the juror.

13 CLERK OF COURT: Defense?

14 MR. SALEEBY: Seat Mr. Zearfoss.

15 CLERK OF COURT: Have a seat in the jury box. Number
16 116, James W. Rhea. What says the State?

17 MR. JOYNER: Present the juror.

18 CLERK OF COURT: What says the Defense?

19 MR. SALEEBY: Seat Mr. Rhea.

20 CLERK OF COURT: Have a seat in the jury box, please.

21 THE COURT: What says the State as to any motions
22 regarding the selection of this jury as to Batson or JEB
23 matters?

24 MR. JOYNER: None from the State, Judge.

25 THE COURT: And from Defendant as to that issue as to

Selection of the Jury

12

1 protect on any others?

2 MR. SALEEBY: None, Your Honor.

3 THE COURT: All right.

4 MR. SALEEBY: Renew our motion.

5 END OF TRANSCRIPT OF RECORD

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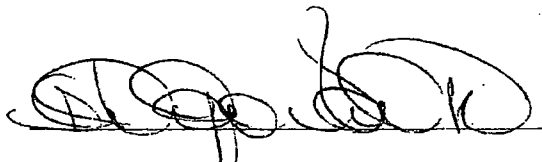
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
partial Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 6th day of
March, 2006.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

February 26, 2008

A handwritten signature in dark ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 02-GS-13-0137

STATE OF SOUTH CAROLINA)
 PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
))
 OSCAR FORTUNE)
 DEFENDANT)

March 6-9, 2006
Chesterfield, South Carolina
VOLUME NUMBER 01

B E F O R E:

THE HONORABLE JOHN M. MILLING, JUDGE; and a jury.

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

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Attorney for the State

ED SALEEBY, JR., ESQ.
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Attorney for the Defendant

HAROLD HANEY, Chesterfield Cty. Sheriff Dept.
DAVID WATSON, Chesterfield Cty. Sheriff Dept.
JOHNNY QUICK, Chesterfield Cty. Sheriff Dept.
DENISE SHIELDS, Defendant's Wife
IRIS GASTON,

TONNETTE CASH,
ARTHUR MUNGO,
VINCENT DAVIS,
INAS YACOB, Pathologist
BARRY DAVIS,
STEPHANIE DOUGLAS,
JESSIE ELLISON,
DAVID LEE,
WAYNE JORDAN, Chesterfield Cty. Sheriff Dept.
VELLO PAAVEL, S.L.E.D.
DUSTIN SMITH,
DOROTHY FILIATREULT,
SONTA MCCALL,

HATTIE O. GORDON
Circuit Court Reporter

1	<u>M A S T E R I N D E X</u>	
2		
3	VOLUME 01: March 6, 2006	
4	Voir Dire of the Jury	14
5	Selection of the Jury	56
6	Colloquy	61
7		
8	JACKSON V. DENNO HEARING	68
9	HAROLD HANEY	
10	Direct By Mr. Joyner	68
11	Cross By Mr. Quinn	75
12	Redirect By Mr. Joyner	77
13	Examination By The Court	77
14	Recross By Mr. Quinn	82
15	DAVID WATSON	
16	Direct By Mr. Joyner	83
17	Cross By Mr. Quinn	87
18	JOHNNY QUICK	
19	Direct By Mr. Joyner	88
20	Decision of the Court	92
21	Colloquy	93
22	Certificate of Reporter	100
23		
24	VOLUME 02: March 7, 2006	
25	Colloquy	103

1	<u>M A S T E R I N D E X</u>	
2		
3	Pretrial Charge	110
4	Colloquy	117
5	Opening Statement by Mr. Hales	125
6	Opening Statement by Mr. Saleeby	129
7	Colloquy	148
8		
9	DENISE SHIELDS	
10	Direct By Mr. Joyner	150
11	Cross By Mr. Quinn	157
12	IRIS GASTON	
13	Direct By Mr. Hales	164
14	Cross By Mr. Quinn	170
15	TONNETTE CASH	
16	Direct By Mr. Hales	174
17	Cross Mr. Quinn	181
18	ARTHUR MUNGO	
19	Direct By Mr. Joyner	186
20	Cross By Mr. Saleeby	194
21	Redirect By Mr. Joyner	222
22	Recross By Mr. Saleeby	223
23	VINCENT DAVIS	
24	Direct By Mr. Hales	227
25	Cross By Mr. Quinn	233

M A S T E R I N D E X

1		
2		
3	Redirect By Mr. Hales	238
4	Recross By Mr. Quinn	239
5	Colloquy	240
6		
7	INAS YACOUN	
8	Direct By Mr. Joyner	241
9	Cross By Mr. Saleeby	257
10	Redirect By Mr. Joyner	284
11	Certificate of Reporter	289
12		
13	VOLUME 03: March 8, 2006	
14	BARRY DAVIS	
15	Direct By Mr. Hales	292
16	Cross By Mr. Quinn	300
17	Examination By The Court	302
18	HAROLD HANEY	
19	Direct By Mr. Joyner	304
20	Cross By Mr. Quinn	325
21	Redirect By Mr. Joyner	337
22	Recross By Mr. Quinn	341
23	STEPHANIE DOUGLAS	
24	Direct By Mr. Joyner	343
25	Cross By Mr. Quinn	350

M A S T E R I N D E X

1		
2		
3	Redirect By Mr. Hales	356
4	Recross By Mr. Quinn	357
5	JESSIE ELLISON	
6	Direct By Mr. Hales	359
7	Cross Mr. Quinn	363
8	DAVID LEE	
9	Direct By Mr. Joyner	365
10	Cross By Mr. Quinn	368
11	WAYNE JORDAN	
12	Direct By Mr. Joyner	369
13	Cross By Mr. Quinn	373
14	Colloquy	373
15		
16	VELLO PAAVEL	
17	Direct By Mr. Joyner	379
18	Cross By Mr. Quinn	389
19	Redirect By Mr. Joyner	395
20	Recross By Mr. Quinn	396
21	DUSTIN SMITH	
22	Direct By Mr. Hales	397
23	Cross By Mr. Quinn	402
24	DOROTHY FILIATREAU	
25	Direct By Mr. Joyner	406

M A S T E R I N D E X

1		
2		
3	Cross By Mr. Quinn	412
4	Redirect By Mr. Joyner	423
5	Recross By Mr. Quinn	423
6	Colloquy	424
7	Certificate of Reporter	433
8		
9	VOLUME 04: March 9, 2006	
10	SONTA MCCALL	
11	Direct By Mr. Quinn	437
12	Cross By Mr. Hales	446
13	Redirect By Mr. Quinn	452
14	Recross By Mr. Hales	453
15	OSCAR FORTUNE	
16	Direct By Mr. Quinn	454
17	Cross By Mr. Joyner	462
18	Redirect By Mr. Quinn	471
19	Colloquy	473
20	Closing Statement by Mr. Joyner	485
21	Closing Statement by Mr. Saleeby	488
22	Closing Statement by Mr. Joyner	528
23	Charge of the Court	548
24	Question from the Jury	584
25	Verdict of the Jury	594

1
2
3
4
5
6
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M A S T E R I N D E X

Sentence of the Court	597
Certificate of Reporter	611

1	STATE'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Miranda Waiver - O. Fortune	68	71
4	2	Voluntary Statement - O. Fortune	68	72
5	3	.38 Special Pistol	110	179
6	4	Fired .38 Cartridges (5)	110	389
7	5	.25 Caliber Pistol	110	389
8	6	Magazine for .25 Pistol	110	389
9	7	GSR Kit - Anthony Shields	110	
10	8	GSR Kit - Michael McManus	110	339
11	9	Projectile from .25	110	389
12	10	Cartridge Casing from .25	110	389
13	11	White Tee Shirt	110	156
14	12	Green Coveralls	110	155
15	13	Autopsy Report	110	247
16 246		Photo	244	
17	15	Photo	253	253
18	16	Photo	253	253
19	17	Photo	253	253
20	18	Photo	253	253
21	19	Photo	253	253
22	20	Photo	253	253
23	21	Photo	253	253
24	22	Photo	253	253
25	23	Photo	253	253

1	24	Photo	253	253
2	25	Bullets	254	256
3	26	Bullets	254	255
4	27	Bullets	254	255
5	28	Bullet from Chest	292	389
6	29	Photo	292	308
7	30	Photo	292	378
8	31	Photo	292	309
9	32	Photo	292	309
10	33	Photo	292	309
11	34	Photo	292	309
12	35	Photo	292	309
13	56	Vol. Stmt - Vincent Davis	292	
14	36	Photo	308	309
15	37	Photo	308	309
16	38	Photo	308	309
17	39	Photo	308	309
18	40	Photo	308	309
19	41	Photo	308	309
20	42	Photo	308	309
21	43	Photo	308	309
22	44	Photo	308	309
23	45	Photo	308	309
24	46	Photo	308	309
25	47	Photo	308	309

1	48	Photo	308	309
2	49	Photo	308	309
3	50	Photo	308	309
4	51	Photo	308	309
5	52	Photo	308	309
6	53	Photo	308	309
7	54	Photo	308	309
8	55	Photo.	308	308
9	57	Diagram	323	
10	58	Firearms Report	379	
11	59	Trace Evidence Report	409	409

12

13

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1	DEFENDANT'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Incident Report	162	
4	2	Vol. Stmt - Vincent Davis	236	237
5	3	LIST OF WITNESSES	326	
6	4	WARRANT NO. D649530	329	331
7	5	Vol. Stmt - Stephanie Gaston	351	355
8	6	Miranda: Sonta McCall	452	
9				
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COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Jury Question	593	593
2	Newspaper	594	594

1
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VOIR DIRE OF THE JURY

THE COURT: Solicitor, you may call the case.

MR. JOYNER: First, 02-GS-13-0137 State of South Carolina v. Oscar James Fortune. Indictment for murder in violation of South Carolina 16-3-10. And the second indictment is 05-GS-13-1222, the State of South Carolina v. Oscar James Fortune. He's indicted for possession of a weapon during the commission of a crime in violation of South Carolina 16-23-490.

THE COURT: Thank you very much. There is some question the defendant ever been formally arraigned. The question of any arraignment is being waived. Thank you. Ladies and gentlemen, if you will please give my your attention. The State has called the case of the State v. Oscar James Fortune. They have charged Mr. Fortune with the offense of murder.

It is alleged that Oscar James Fortune in the County of Chesterfield on or about December 23rd 2001 did feloniously, willfully and with malice aforethought kill one Anthony Shields by means of shooting and that Anthony Shields did die in Chesterfield County as a proximate result therefrom on or about the 23rd day of December 2001.

The State has also charged Oscar Fortune with possession of a weapon during a crime of violence. It is

Voir Dire of the Jury

15

1 alleged that Oscar Fortune in the County of Chesterfield
2 no or about December 23rd 2001 was in possession of and
3 did visibly display a firearm during the commission of a
4 violent crime; that being murder in violation of 16-23-490
5 of our Code of Laws.

6 Ladies and gentlemen, these are the two charges that
7 are pending against this defendant, Mr. Fortune in
8 connection with the indictments that have been identified.
9 Mr. Fortune, if you would, please stand a moment, please.
10 Thank you, sir. If you would just face back towards the
11 jury for me. Thank you, sir. You maybe seated.

12 Ladies and gentlemen, Mr. Fortune has been introduced
13 to you. Are any of you related by blood or by marriage to
14 Mr. Fortune? Do you know him out in the community? Do
15 you have contact with him through work? Through civic
16 organizations? Charitable, religious organizations? Or
17 know him in any capacity from just being out in the
18 community? If you do would ou please stand at this time.

19 All right. Thank you so much. You back on the wall
20 have got to yell at me. Your name, please.

21 PROSPECTIVE JUROR: Dorthena Ganzy.

22 CLERK OF COURT: Number 159?

23 THE COURT: Miss Ganzy, you recognize Mr. Fortune?

24 PROSPECTIVE JUROR: No, I do not.

25 THE COURT: You do not?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: You just know him?

3 PROSPECTIVE JUROR: No, I don't know him.

4 THE COURT: All right. If you will come forward for
5 a moment. What is your situation?

6 PROSPECTIVE JUROR: I am related to Anthony Shields.

7 THE COURT: The deceased?

8 PROSPECTIVE JUROR: Yes, the deceased.

9 THE COURT: What is your relation to him?

10 PROSPECTIVE JUROR: His father and I are first
11 cousins and I used to babysit him when he was a baby.

12 THE COURT: You had stood previously indicating that
13 you had some connection with one of the people you thought
14 maybe involved in a case this week. Considering your
15 relationship to the Shields Family do you think you will
16 be unable to -- do you feel you can set aside these
17 relationships, the family relationship, taking care of him
18 as a child, and be fair and impartial to both sides or do
19 you feel you would be affected.

20 PROSPECTIVE JUROR: I think I would be affected.

21 THE COURT: Mrs. Gantz, what I am going to do I'm
22 going to excuse you from participating in this trial.
23 Just have a seat back with the balance of the jury panel
24 and just don't say anything. We may need you later on for
25 something else. You will not have any cause in connection

Voir Dire of the Jury

17

1 with this trial. Thank you very much.

2 Ladies and gentlemen, the decedent in this charge of
3 murder, the alleged victim was one Anthony Shields. His
4 wife I guess -- I am sorry if I don't know the exact
5 relationship, but I'm assuming that Denise Shields would
6 be a wife?

7 MR. JOYNER: Yes, sir.

8 THE COURT: Is Mrs. Shields in the courtroom?
9 Mrs. Shields, stand and turn towards the jury. Thank you,
10 ma'am. You may be seated. Ladies and gentlemen of the
11 jury panel, are any of you related by blood or by marriage
12 to Mrs. Shield? Do you know her? Did you know her
13 husband? And out in the community? Did you have contact
14 with them through work, civic, charitable and social
15 organizations or just knew them in some capacity.

16 If you did would you please stand. I'm going to ask
17 you few if you would if you will you just stand up and
18 come around and she will have you come forward one at a
19 time.

20 THE BAILIFF: Number 147.

21 THE COURT: Mr. Wilson, how are you, sir? What was
22 your relationship with either Mr. or Mrs. Shields?

23 PROSPECTIVE JUROR: It was just best friend.

24 THE COURT: Best friends with Mr. Shields. Because
25 of that relationship with him do you think you can be fair

1 and impartial to both sides or do you feel you need to be
2 excused from this one?

3 PROSPECTIVE JUROR: I don't think so.

4 THE COURT: I don't know whether we will need you for
5 a trial later this week or not. Rather than excuse you
6 totally we will take your name out of the jury panel for
7 this case. So if you will just have a seat back and do
8 not discuss anything. Thank you very much.

9 THE BAILIFF: Number 132.

10 THE COURT: Miss Tillman, and what is your
11 relationship to either Mr. or Mrs. Shields?

12 PROSPECTIVE JUROR: I'm kin to Mrs. Shield, but my
13 aunt is her sister. My aunt is her sister -- sister in
14 law and Mrs. Shields' wife is my cousin.

15 THE COURT: So you are related to the Shields through
16 marriage and blood?

17 PROSPECTIVE JUROR: I'm not related to her at all.
18 My people.

19 THE COURT: It's marriage that brings your family
20 into contact with the Shields Family?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Now, as a result of your relationship
23 through marriage with the Shields Family can you be fair
24 and impartial to both sides or do you feel this would be
25 the kind of case with that relationship through the

Voir Dire of the Jury

19

1 marriages would end up causing you to be affected in your
2 impartiality?

3 PROSPECTIVE JUROR: I don't know.

4 THE COURT: I need for you to make a decision. I
5 need to know whether or not you can listen only to the
6 evidence that's present in this case, sitting aside
7 anything else and be fair to the State and be fair to the
8 person who is accused of the crime. Can you do that?

9 PROSPECTIVE JUROR: Yeah.

10 THE COURT: All right. Thank you, ma'am. If you
11 would just have a seat back with the rest of the panel.

12 THE BAILIFF: Number 67.

13 THE COURT: Ms. Lee, good morning. Miss Lee, what is
14 your connection with either Mr. or Mrs. Shields?

15 PROSPECTIVE JUROR: Well, I graduated with -- I went
16 to school with Thomas Shields, the victim's father.

17 THE COURT: You went to school with the older
18 generation of the Shields Family?

19 PROSPECTIVE JUROR: Yes and my daughter is friend
20 with them.

21 THE COURT: With that relationship that you've got
22 through school and through you daughter's relationship,
23 would that in any way affect your ability to be fair and
24 impartial to both the State and the Defendant?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Is it going to make a difference that
2 some family members may be called as witnesses in the
3 case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Thank you very much. If you will have a
6 seat.

7 THE BAILIFF: Number 81.

8 THE COURT: Mr. McMillin. And what is your situation
9 with this relationship to this family?

10 PROSPECTIVE JUROR: Well, classmates of the
11 decedent's father.

12 THE COURT: All right. Do you have contact with them
13 on a regular basis?

14 PROSPECTIVE JUROR: No, I don't.

15 THE COURT: I just need to know when you were both in
16 school.

17 PROSPECTIVE JUROR: Years ago.

18 THE COURT: As a result of that relationship you had
19 at some point in time with him can you be fair and
20 impartial to both the State and the Defendant in
21 connection with this case?

22 PROSPECTIVE JUROR: Yes, sir, I could.

23 THE COURT: If various family members are called as
24 witnesses is that going to make a difference to you one
25 way or the other or will you just listen to the evidence

Voir Dire of the Jury

21

1 fairly?

2 PROSPECTIVE JUROR: Yes, sir, I could.

3 THE COURT: Thank you so much, Mr. McMillin. Just
4 have a seat back with the jury panel.

5 THE BAILIFF: Number 13.

6 THE COURT: Miss Brown. And what is your contact
7 with the family?

8 PROSPECTIVE JUROR: Well, Anthony grew up with me and
9 we went to school together and played together. And
10 whether or not we see him in the street he would come and
11 talk to me, hug me. I know his brother, he goes to church
12 with me up here. His mother also works where I work at.

13 THE COURT: As a result of those types of contacts
14 and relationships with the Shields Family do you feel that
15 you can be fair and impartial to the State and the
16 Defendant or do you feel that relationship would interfere
17 with that?

18 PROSPECTIVE JUROR: To be honest I think they might
19 interfere with it.

20 THE COURT: All right, Miss Brown. I'm going to take
21 your name out of this case but not going to release you
22 totally. I may need jurors for something else this week.
23 Just have a seat back with the balance of the jury panel
24 and just not discuss your relationship.

25 PROSPECTIVE JUROR: Thank you.

1 THE COURT: Thank you so much.

2 THE BAILIFF: Number 143.

3 THE COURT: Miss Watson, what is your contact with
4 the Shields Family?

5 PROSPECTIVE JUROR: Co-worker.

6 THE COURT: Co-worker with who?

7 PROSPECTIVE JUROR: With Anthony Shields.

8 THE COURT: And did y'all -- where were y'all
9 working?

10 PROSPECTIVE JUROR: Dan River.

11 THE COURT: And did you see him on a regular basis?

12 PROSPECTIVE JUROR: He worked in my department.

13 THE COURT: And as a result of that those types of
14 contact with him and that relationship can you be fair and
15 impartial to the State and the Defendant or do you think
16 your contact with the family and with him contact
17 specifically would affect your ability to be fair and
18 impartial?

19 PROSPECTIVE JUROR: I think it would since know him.

20 THE COURT: You think it would hurt?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Miss Watson, I will excuse you from
23 participating in this particular trial. Just don't say
24 anything about your relationship. I'm going to have you
25 sit back out. We may need a jury for something later in

Voir Dire of the Jury

23

1 the week. We'll just remove you from this first trial but
2 not remove you totally. Thank you, ma'am. Just have a
3 seat.

4 THE BAILIFF: Number 145.

5 THE COURT: Miss Williams, what's your connection
6 with the Shields Family?

7 PROSPECTIVE JUROR: My ex-husband is close kin to the
8 Shields'. My mother was a Shields and also my nephew have
9 a child by the defendant, Sonta.

10 THE COURT: So the young lady sitting there, your
11 nephew has a child with her?

12 PROSPECTIVE JUROR: Um hum.

13 THE COURT: And because of those types of family
14 ties, do you feel you can be fair and impartial to both
15 sides or will you be affected by your relationship with
16 the families?

17 PROSPECTIVE JUROR: I feel that I could be fair to
18 both sides if I here the evidence.

19 THE COURT: You're going to listen to the evidence
20 and make your decision on nothing else?

21 PROSPECTIVE JUROR: Right.

22 THE COURT: Thank you, ma'am. If your -- if a few
23 turn out to be witnesses or something like that would you
24 weigh everybody's testimony the same way?

25 PROSPECTIVE JUROR: I'll weigh both sides.

1 THE COURT: Thank you very much. Just have a seat
2 with the balance of the jury panel.

3 THE BAILIFF: Number 82.

4 THE COURT: Mrs. McQueen, what is your contact with
5 the Shields family?

6 PROSPECTIVE JUROR: I don't really know the Shields
7 Family. I know her sister. I went to school with her
8 sister.

9 THE COURT: You know Anthony's wife because?

10 PROSPECTIVE JUROR: I went to school with her sister.

11 THE COURT: You went to school with her sister?

12 PROSPECTIVE JUROR: We're no family.

13 THE COURT: And would the fact you had gone to school
14 with Mrs. Shields affect you in any way or affect your
15 ability to be fair and impartial?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Thank you very much. If you would just
18 have a seat.

19 THE BAILIFF: Number 121.

20 THE COURT: Miss Robinson, what is your contact with
21 the Shields Family?

22 PROSPECTIVE JUROR: I worked with Anthony very
23 briefly.

24 THE COURT: And would that type of contact that you
25 have with him even though briefly in any way affect your

Voir Dire of the Jury

25

1 ability to be fair and impartial to the State as well as
2 to the Defendant.

3 PROSPECTIVE JUROR: No, I wouldn't.

4 THE COURT: Very good, ma'am. You may be seated.

5 THE BAILIFF: Number 64.

6 THE COURT: Mr. Jordan, and what is your contact with
7 the Shields Family?

8 PROSPECTIVE JUROR: We are related in some way in the
9 family, and I was just well known. Friends, I knew him
10 very well.

11 THE COURT: And would the closeness of your
12 relationship with Mr. Shields affect in any way your
13 ability to be fair and impartial to the State and the
14 Defendant or do you think you would be affected by that?

15 PROSPECTIVE JUROR: No, sir, I wouldn't be affected.

16 THE COURT: Can you listen carefully to the evidence
17 regardless of who the witnesses are and judge the case
18 solely on that?

19 PROSPECTIVE JUROR: That is correct.

20 THE COURT: Very good. Thank you, Mrs. Jordan. You
21 may be seated.

22 THE BAILIFF: Number 94.

23 THE COURT: Mr. Oliver, how is it you have contact
24 with the Shields Family?

25 PROSPECTIVE JUROR: Well, I've known their uncle. We

1 grew up on the same -- plus, the Shields Family, I went to
2 school with them and plus I had friends, good friends with
3 the family. He was a co-workers of mine.

4 THE COURT: With these types of relationships that
5 you have do you feel that you could be fair and impartial
6 to both the State and the Defendant or do you think those
7 relationships would interfere with your impartiality?

8 PROSPECTIVE JUROR: It may interfere with my
9 impartiality and put a lot of stress on me between the two
10 of them.

11 THE COURT: What I will do is excuse you from
12 participating in this trial but ask you to sit back with
13 the balance of the jury panel because I may need jurors
14 for other cases during the course of the week.

15 Ladies and gentlemen of the jury panel. I am advised
16 that there was an article in the Cheraw Chronical on March
17 the 2nd 2006 which indicated that the 2001 Huddle House
18 Murder goes to trial was the way they article was
19 entitled.

20 I just need to know if there are any members of this
21 jury panel who read that article. If so if you would
22 please stand. If there are any of you what I have excused
23 from participating in the trial of case if y'all will have
24 a seat.

25 PROSPECTIVE JUROR: Will you repeat that again.

Voir Dire of the Jury

27

1 THE COURT: If I have already excused you from
2 participating in the trial of the first case on that
3 charge I'll let you sit down cause if not for that I've
4 already excused you for other reasons. All right. Very
5 good that reduces my number. The lady in the white
6 sweater, the first one closest to me what is your name and
7 number?

8 PROSPECTIVE JUROR: Frances Patrick, Number 157.

9 THE COURT: Mrs. Patrick, I'm going to ask you to --
10 I think I'm going to do it this way. The other people who
11 have some knowledge about things I'll ask y'all that are
12 currently standing if you will simply move over here to
13 the corner. I will call you up one at a time.

14 THE BAILIFF: Number 157.

15 THE COURT: Thank you. Mrs. Patrick, how are you?
16 Mrs. Patrick, after having reviewed that article did you
17 form any opinion whatsoever about the guilt or innocence
18 of the accused?

19 PROSPECTIVE JUROR: I heard it from what a paper
20 said.

21 THE COURT: Can you take any opinions that you may
22 have formed as a result of reading that article and cast
23 these opinions aside and listen solely to the evidence in
24 this case and base your decision not on anything in an
25 article but what was actually testified to and what the

1 law is that I give you and begin anew so to speak about
2 just not be affected by that reading at all.

3 Newspapers often times report things. Those people
4 write articles which have not been cross examined. They
5 don't have all the details. Sometimes that's why they
6 don't get to come into the courtroom because we require
7 the truth of the testimony to be tested through direct
8 examination and cross-examination. So I just need to know
9 if you can set aside what you read in that article and
10 base your decision solely on the evidence you actually
11 hear in the courtroom?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: You could do that?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Thank you, ma'am. Just have a seat and
16 don't discuss with anybody what you read.

17 THE BAILIFF: Number 45.

18 THE COURT: Mrs. Hancock, as a result of having read
19 that article have you formed any opinion as to the guilt
20 or innocence of the defendant?

21 PROSPECTIVE JUROR: No, I haven't.

22 THE COURT: Do you understand that any opinion that
23 is reached by a jury always must be reached based on the
24 evidence and testimony that comes in to the courtroom
25 where those people are subject to direct examination and

Voir Dire of the Jury

29

1 cross-examination and they're placed under oath. You
2 understand that?

3 PROSPECTIVE JUROR: Yes, I do.

4 THE COURT: And you can disregard anything you read
5 and base your opinion solely on that evidence and the
6 legal instructions I give you?

7 PROSPECTIVE JUROR: I can.

8 THE COURT: Thank you so much. You may be seated.

9 THE BAILIFF: Number 28.

10 THE COURT: Nice to see you. Mrs. Cauthen, you read
11 that article. Did you form any opinion about the guilt or
12 innocence of the defendant based on that article?

13 PROSPECTIVE JUROR: No, I did not.

14 THE COURT: And can you set aside anything that you
15 may have read and base your decision solely on the
16 evidence that came in from the witnesses and from the
17 exhibits and on nothing else?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: You understand that newspaper often times
20 got information that's not incorrect. You can start
21 afresh and go forward?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Thank you so much.

24 THE BAILIFF: 112.

25 THE COURT: Good morning. Mrs. Quick, as a result of

1 reading that article that was in the paper did you form
2 any opinion whatsoever as to the guilt or innocence of the
3 defendant?

4 PROSPECTIVE JUROR: I can keep an open mind.

5 THE COURT: Can you set aside anything that you may
6 have felt one way or the other following the reading of
7 that and just base your decision, your opinion solely on
8 the evidence that's presented from the witness stand, that
9 testimony and any exhibits that go along with it?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Just completely ignore what you read.
12 Can you do that?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Just based on what I tell you about the
15 law and facts you hear?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: You understand that quite often when
18 newspapers make reports they don't necessarily have all
19 the information and people don't have all the information
20 either?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Can you set aside any reading you had and
23 just go based on what you hear in the case?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Thank you so much. You may be seated.

Voir Dire of the Jury

31

1 THE BAILIFF: Number 120.

2 THE COURT: Mr. Rivers, did you form any opinion one
3 way or the other as to the guilt or innocence of the
4 defendant after reading what was written in the paper?

5 PROSPECTIVE JUROR: As to what was written in the
6 newspaper, frankly, I honestly I can find him guilty if
7 you hear the instruction that said not to listen to any
8 outside or things we heard or read you know just have to
9 evaluate all the evidence.

10 THE COURT: Would you listen and listen only to the
11 evidence in the courtroom, testimony of the witnesses,
12 review the exhibits, any that might be introduced, set
13 aside what the newspaper was saying and base your decision
14 solely on to evidence and the trial and the instruction I
15 give you?

16 PROSPECTIVE JUROR: Yes, sir. I believe I could
17 honestly.

18 THE COURT: And you understand that the people who
19 write those articles often times don't have full
20 information about things?

21 PROSPECTIVE JUROR: I know that very well from
22 experience.

23 THE COURT: That's why we can't let their testimony,
24 their article come in because we don't know what went into
25 making these things up. And can you be fair to both sides

1 and ignore what you may have read and simply listen to the
2 evidence that's presented from the courtroom?

3 PROSPECTIVE JUROR: Yes, sir, I can.

4 THE COURT: Thank you, Mr. Rivers. You may have a
5 seat.

6 THE BAILIFF: Number 152.

7 THE COURT: Mr. Jones, after reading the article in
8 the paper did you form any opinions one way or the other
9 as to the guilt or innocence of the defendant?

10 PROSPECTIVE JUROR: I know some about the way it was
11 read -- it was written. There was no information about
12 the defense or prosecutor side.

13 THE COURT: Can you set aside anything you may have
14 read about the case in the paper and base your decision
15 solely on the evidence that would be presented on the
16 witness stand and apply the law as I give it?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: You understand it is dangerous with
19 newspaper articles. We don't know what the sources are or
20 anything. Case you base your opinion simply on the
21 evidence here in this courtroom?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Thank you. You may have a seat.

24 THE BAILIFF: Number 75.

25 THE COURT: Thank you so much for bringing that to my

Voir Dire of the Jury

33

1 attention. I understand from Miss Lear you saw but did
2 not read the article.

3 PROSPECTIVE JUROR: I did not read the article.

4 THE COURT: You have not formed any opinion about
5 matter?

6 PROSPECTIVE JUROR: No.

7 THE COURT: And so you're not being affected by
8 anything they may have appeared in the newspaper?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Thank you, ma'am. Just have a seat.

11 Ladies and gentlemen, I'd asked you about the Cheraw
12 paper. I am now advised that perhaps there was some
13 article with the same or a similar heading that was in the
14 Pageland paper. So I had asked about the Cheraw paper but
15 if you saw it in the Pageland paper or any our paper I
16 would need for you to stand.

17 If you saw anything on television, newscast or
18 anything if you would please stand. Thank you very much.
19 Let the record reflect that no one stood as a result of
20 that question.

21 Ladies and gentlemen of the jury panel. It is my
22 understanding that at the time this incident is alleged to
23 have occurred that there were various people supposedly at
24 the Huddle House. Just by chance are there any members of
25 the jury panel who you yourself happen to be there at the

1 Huddle House during that timeframe of December the 23rd
2 2001 where this situation happened. If you were with
3 somebody who was there if you would please stand. Let the
4 record reflect that no one stood.

5 Ladies and gentlemen, I had talked with you about
6 television news programs, newspapers as being a source of
7 some information. Have any of you who are members of this
8 jury panel had anyone talk with you at any time about this
9 case? Do you have any information about it other than
10 what I have brought to you and to your attention today?
11 If so would you please stand. Let the record reflect that
12 no one stood.

13 Ladies and gentlemen, from time to time we find that
14 we are -- we ourselves or some family member or close
15 personal friend has been the victim of some type of crime
16 of violence where somebody has had some property taken
17 from them under the threats or the person who did the
18 taking was armed with some type of weapon.

19 Or your home or business has been broken into. Or
20 you work as a cashier at a store that has been robbed
21 where you yourself or some family member or some friend
22 have been that type of victim in a situation. If that
23 applies to any of you would you please stand at this time?
24 All right, sir. If you would come forward and let me get
25 the information from you.

Voir Dire of the Jury

35

1 THE BAILIFF: Number 144.

2 THE COURT: All right.

3 PROSPECTIVE JUROR: Not sure, but I was a victim of a
4 crime.

5 THE COURT: What kind of crime was that?

6 PROSPECTIVE JUROR: I'm a truck driver. I was
7 hijacked, beaten, robbed, kidnapped, held hostage -- well,
8 not hostage, but all day.

9 THE COURT: All right. I don't know all about this
10 case yet. I'm learning as I go along but based on what we
11 heard it appears this is an allegation that somebody was
12 shooting somebody else and so that would be a crime of
13 violence.

14 And I was just trying to get some information, people
15 themselves been victims of crimes of violence. And I just
16 did not know whether or not because you had had these
17 types of circumstances occur to you would you be in a
18 position to listen carefully to the evidence without
19 prejudice or anything?

20 PROSPECTIVE JUROR: I probably could. Crime is crime
21 no matter who it's against.

22 THE COURT: At this particular point.

23 PROSPECTIVE JUROR: Sometimes it's just a charge.

24 THE COURT: The State has to prove it beyond a
25 reasonable doubt and you have to listen to the evidence

1 and can you come in and be fair to both sides?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Great. Thank you, Mr. Wilkes.

4 PROSPECTIVE JUROR: Just a little side note. Since
5 the speaker system went out it's hard to understand.

6 THE COURT: I will try to do better. Thank you.

7 Ladies and gentlemen, I use certain crimes but also this
8 is a charge of murder that has been brought against this
9 defendant.

10 So if any of you have been the victim where you had a
11 family relative or personal friend or someone such as that
12 who has been a victim of a crime resulting in their death
13 I would also need for you to stand so I can question you
14 further, so any of those people if you will stand and join
15 the rest of the crowd. It appears there are none.

16 And, ladies and gentlemen, Mr. Wilkes kindly pointed
17 out since we do not have the speaker system working that
18 you may be having some difficulty with my speaking to you.
19 If that runs into a problem wave at me or let me know in
20 some way so I can repeat the question to you.

21 THE BAILIFF: Number Ten.

22 THE COURT: Mr. Bowman, what is your situation with
23 you?

24 PROSPECTIVE JUROR: My sister was murdered?

25 THE COURT: Sister was murdered.

Voir Dire of the Jury

37

1 PROSPECTIVE JUROR: Um hum. Stayed in Florence,
2 Tameka Douglas.

3 THE COURT: And that happened in Florence?

4 PROSPECTIVE JUROR: Right.

5 THE COURT: About how long ago?

6 PROSPECTIVE JUROR: I guess about six, seven years
7 ago. Not sure what the date is.

8 THE COURT: And with your having lost a sister under
9 those types of situations do you feel you can be fair and
10 impartial to the State and this Defendant, listen to the
11 evidence without being in any way influenced by what you
12 experienced yourself?

13 PROSPECTIVE JUROR: I think I could, yes.

14 THE COURT: Is that going to be a problem for you?
15 Each side is entitled to 12 men and woman who can listen
16 and open their minds and be fair and impartial?

17 PROSPECTIVE JUROR: I feel like I need to pass.

18 THE COURT: What I'm going to do, Mr. Bowman, is
19 release you because I may end up needing some witnesses --
20 not witnesses, jurors in connection with some other cases.
21 If you will you just have a seat out with the rest of the
22 panel. Don't discuss your situation with them. Thank you
23 very much. Have a seat back out there.

24 THE BAILIFF: Number 35.

25 THE COURT: What is your situation?

1 PROSPECTIVE JUROR: I didn't lose anybody. It wasn't
2 a death, but I'm involved with a situation, C.D.V. high
3 and aggravated nature, where he pulled a gun.

4 THE COURT: So you're the victim of a C.D.V. HAN?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: And with the nature of the charges here
7 can you just back away from that, listen only to the
8 evidence that's presented in connection with the trial of
9 this case and reach a verdict that speaks the truth and be
10 fair to both the State and Defendant and not be prejudiced
11 by what happened to you yourself?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Okay. Very good. Thank you, ma'am.
14 Just have a seat. Ladies and gentlemen, there are some
15 number of witnesses who may testify in connection with the
16 trial of this case. Our general practice is to identify
17 for the jury panel all of those people we think may
18 testify, though, in the fact you may not see all of them
19 as witnesses.

20 Sometimes it's not necessary to call more than one
21 person on a particular point. Or if it maybe that Witness
22 Number One testified about information that the State
23 feels that or the Defense feel is adequately provided by
24 other witnesses. And so you don't actually hear these
25 people testify, but I need to go over the names of

Voir Dire of the Jury

39

1 individuals that I have not yet identified for you. And
2 if you are related by blood or by marriage to any of those
3 individuals, know them out in the community, have some
4 contact with them through civic, charitable, religious,
5 social or some other organization, have some knowledge
6 about these people, live in your neighborhood or something
7 if you will please stand when that person's name is
8 called.

9 And then for those of you who happen to be standing
10 I'll come back to you and ask you particularly as to what
11 it was you recognized and what your contact is. But
12 potential witnesses who I have not previously called are a
13 Iris Gaston, a Tonnette Cash, an Arthur Mongo, a Barry
14 Davis, a Nicole Byrd, a Jessie Ellison, a Stephanie
15 Douglas, a Vincent Davis, a Sonta McCall, a Damien
16 Shields, a Johnny Quick with the Sheriff's Department, a
17 Kernard Redmond with the Solicitor's Office, a Deputy Lee,
18 a Harold Haney, Donnie Baker, the coroner, a Rod Green who
19 is with S.L.E.D., a Vello Paavel who I think maybe with
20 S.L.E.D., a Filiatreault who is with S.L.E.D., a Dustin
21 Smith with S.L.E.D.

22 A Dr. Inas Yacoub who is -- was involved with the
23 autopsy, a David Watson who is an evidence or who is an
24 investigator, a Wayne Jordan who is an evidence clerk, an
25 Eric Hewitt, an investigator and a Brooke Reid who is with

1 S.L.E.D. State, did I call all your potential witnesses?

2 MR. JOYNER: Yes, sir.

3 THE COURT: Defense?

4 MR. QUINN: Yes, sir.

5 THE COURT: All right. Now, I'll begin. All right,
6 sir. I'll start from the front and run to the back.

7 Gentleman who just stood up. Did you recognize some name.

8 PROSPECTIVE JUROR: Vincent Davis, I went to school
9 with him.

10 THE COURT: First off, let me get your name and
11 number.

12 PROSPECTIVE JUROR: Roger Oxendine, 154.

13 THE COURT: All right. Just one minute,
14 Mr. Oxendine. Number 154. Mr. Oxendine, you recognize
15 who?

16 PROSPECTIVE JUROR: Vincent Davis.

17 THE COURT: Anybody else?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: And what is your relationship with that
20 witness?

21 PROSPECTIVE JUROR: I know him from school.

22 THE COURT: Know him from school?

23 PROSPECTIVE JUROR: Yeah.

24 THE COURT: And would the fact that you know him from
25 school in any way affect your ability to be fair and

Voir Dire of the Jury

41

1 impartial to both sides?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Thank you, sir. You may be seated.

4 Gentlemen in the blue shirt.

5 PROSPECTIVE JUROR: David Watson.

6 THE COURT: I'm sorry. Your name is what?

7 PROSPECTIVE JUROR: Joseph Cagle.

8 CLERK OF COURT: Number 20.

9 THE COURT: And Mr. Cagle, you recognize who?

10 PROSPECTIVE JUROR: David Watson.

11 THE COURT: And what is your connection with

12 Mr. Watson?

13 PROSPECTIVE JUROR: I went to school with him.

14 THE COURT: And would that in any way affect your
15 ability to be fair and impartial to the both sides?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Thank you. You may be seat. Gentlemen
18 with the tie.

19 PROSPECTIVE JUROR: Wayne Jordan. Joseph Hatchell is
20 my name.

21 THE COURT: Thank you, Mr. Hatchell. Number 47. And
22 the people you recognize again were who.

23 PROSPECTIVE JUROR: Wayne Jordan, Barry Davis.

24 THE COURT: And Mr. Hatchell, what is your connection
25 with them?

1 PROSPECTIVE JUROR: I just know them both all my life
2 just through the community.

3 THE COURT: Would your relationship with them affect
4 in any way your ability to be fair and impartial?

5 PROSPECTIVE JUROR: Absolutely not.

6 THE COURT: Thank you. You may be seated. All
7 right. And the black shirt. Give me your name again.

8 PROSPECTIVE JUROR: Lerutheanna Tillman.

9 CLERK OF COURT: Number 132.

10 THE COURT: Please tell us, Ms. Tillman, whom it is
11 you recognize?

12 PROSPECTIVE JUROR: I know Barry Davis, Vincent Davis
13 and Nicole Byrd. I just know them.

14 THE COURT: Would your knowledge of these witnesses in
15 any way affect your -- affect your ability to be fair and
16 impartial?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Thank you, Mrs. Tillman. You may be
19 seated. Move over to the lady in the black and blue
20 blouse.

21 PROSPECTIVE JUROR: Easter Lee, Juror Number 67.

22 THE COURT: And, Miss Lee, who do you recognize.

23 PROSPECTIVE JUROR: Damien Shields.

24 THE COURT: What type of contact do you have with
25 him? Family contacts?

Voir Dire of the Jury

43

1 PROSPECTIVE JUROR: Well, friends with my daughter.

2 THE COURT: And would that affect in any way your
3 ability to be fair and impartial to either the State or
4 the Defendant?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Thank you, ma'am. You may be seated.
7 Going to the lady in the brown sweater. Your name again.

8 PROSPECTIVE JUROR: Brenda Williams.

9 CLERK OF COURT: Number 145.

10 THE COURT: Mrs. Williams, who was it you recognized?

11 PROSPECTIVE JUROR: Arthur Mongo.

12 THE COURT: Any family relationship there or you just
13 know him in the community?

14 PROSPECTIVE JUROR: Nephew.

15 THE COURT: Nephew?

16 PROSPECTIVE JUROR: And also related to the Shields'.

17 THE COURT: Would these in any way, these
18 relationship to those various witnesses, affect in any way
19 your ability to be fair and impartial to either side?

20 PROSPECTIVE JUROR: No, it wouldn't, but, Your Honor,
21 could I ask you a question?

22 THE COURT: If you will come forward cause I'm not
23 sure what that question may be.

24 PROSPECTIVE JUROR: Could you excuse me off this
25 case?

1 THE COURT: You started feeling like there might tear
2 on you too much?

3 PROSPECTIVE JUROR: Both sides is family.

4 THE COURT: Both side are family?

5 PROSPECTIVE JUROR: Yes. I mean I can be impartial
6 but, I would like to be excused and serve on another case.

7 THE COURT: All right, Mrs. Williams, I'll excuse you
8 from participating. I know that puts you between the rock
9 and the hard spot and could affect your decision having
10 feeling like you need to vote. So I appreciate your
11 bringing this back to my attention and having me consider
12 it, the kind of position you're in. Have a seat with the
13 rest of the crowd. Thank you.

14 Let's see. Gentlemen in the red sweater, your name
15 and number?

16 PROSPECTIVE JUROR: Curtis Jackson, Juror Number 161.
17 I recognize Wayne Jordan and Harold Haney.

18 THE COURT: And, Mr. Jackson, you recognize these
19 individuals. Do you see them on a frequent basis or
20 infrequently?

21 PROSPECTIVE JUROR: Wayne Jordan and I are members of
22 same church.

23 THE COURT: And the fact that you are a member of the
24 same church with Mr. Jordan would that in any way affect
25 your ability to be fair and impartial to both sides?

Voir Dire of the Jury

45

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Thank you, sir. You may be seated. Yes,
3 ma'am, in the pink. Give me your name and number again.

4 PROSPECTIVE JUROR: Betty Quick, 112.

5 THE COURT: And, Miss Quick, whom did you recognize?

6 PROSPECTIVE JUROR: Wayne Jordan.

7 THE COURT: And are you related or just know him in
8 the community?

9 PROSPECTIVE JUROR: We're related.

10 THE COURT: What is that relationship?

11 PROSPECTIVE JUROR: Cousins.

12 THE COURT: Cousins. And as a result of that
13 relationship can you be fair and impartial to both sides
14 not giving any more weight to anybody's testimony one way
15 or the other and treat each side the same way?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Thank you, ma'am. You may be seated.
18 Gentlemen in the black sweater right there on the end.
19 Your name and number.

20 PROSPECTIVE JUROR: Mack Wilson, Juror Number 81.

21 THE COURT: Mr. Wilson, who was it you recognized?

22 PROSPECTIVE JUROR: Mr. Damien Shields.

23 THE COURT: And I think you had told me previously
24 you had some connection with that family through going to
25 school with one of the family members?

1 PROSPECTIVE JUROR: Right.

2 THE COURT: Recognizing Damien Shields as a potential
3 witness can you be fair and impartial to both sides?

4 PROSPECTIVE JUROR: I could.

5 THE COURT: Thank you, sir. You may be seat. And
6 gentleman, your name and number again, please.

7 PROSPECTIVE JUROR: Number 28, Grayson Cauthen.

8 THE COURT: And, Miss Cauthen, who do you recognize?

9 PROSPECTIVE JUROR: Donnie Baker. I've known him
10 most of my life as an acquaintance.

11 THE COURT: And considering that relationship can you
12 be fair and impartial to both the sides?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Thank you, ma'am. You may be seated.
15 Yes, sir, the gentlemen at the end of the row.

16 PROSPECTIVE JUROR: Wayne Jordan and Harold Haney.

17 THE COURT: Do you remember your number?

18 PROSPECTIVE JUROR: 116.

19 THE COURT: Again, did you say you recognized?

20 PROSPECTIVE JUROR: Wayne Jordan and Harold Haney.

21 THE COURT: Are you related or just know them in the
22 community?

23 PROSPECTIVE JUROR: Just know them.

24 THE COURT: With that connection you have with them
25 would that in any way affect you ability to be fair and

Voir Dire of the Jury

47

1 impartial?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Thank you, sir. You may be seated. Yes,
4 ma'am in the stripe blouse.

5 PROSPECTIVE JUROR: Carol King-Miles. I'm not sure
6 of my number.

7 CLERK OF COURT: 66.

8 THE COURT: You are Number 66. And, Mrs. Miles, who
9 do you recognize?

10 PROSPECTIVE JUROR: David Watson has been a friend of
11 my family and Eric Hewlett, I teach his daughter.

12 THE COURT: As a result of those types of contact can
13 you be fair and impartial to both sides?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Thank you, ma'am. You may be seated.
16 Last but not least, your name and number for the record,
17 please.

18 PROSPECTIVE JUROR: Juror Number 94, Charles Oliver.
19 I know Officer Damien Shields.

20 THE COURT: As a result of having knowledge of those
21 people -- well, let's see. I have excused you so that's
22 fine. You can't leave yet, though. It was only for this
23 case. Good try, but.

24 Ladies and gentlemen of this jury panel, are there
25 any of you who are related by blood or marriage or have

1 very close personal friend who are employed in law
2 enforcement in some capacity or perhaps employed in
3 medical services, rescue squad, fire department, or some
4 fire fighting department whether these individuals are
5 paid individuals or volunteer individuals.

6 If you've got family members or friends who are so
7 employed if you would please stand at this time. Yes,
8 sir, in the yellow shirt?

9 PROSPECTIVE JUROR: John Vaughn, 162.

10 THE COURT: Mr. Vaughn, hold just a minute. Let's
11 see. I have you down as a retired trooper yourself?

12 PROSPECTIVE JUROR: That is correct.

13 THE COURT: And so you would have friends who either
14 retired from or still involved with law enforcement?

15 PROSPECTIVE JUROR: I have a son on the Chesterfield
16 County Sheriff's Department.

17 THE COURT: And would your former occupation as well
18 as you son's occupation in any way affect your ability to
19 be fair and impartial to both sides?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Thank you, Mr. Vaughn. You may be
22 seated. Yes, sir, gentlemen in the dark shirt.

23 PROSPECTIVE JUROR: Ronald Bradley, Number 12.

24 THE COURT: And, Mr. Bradley, what type of
25 relationship do you have with law enforcement people?

Voir Dire of the Jury

49

1 PROSPECTIVE JUROR: Assistant Chief in Pageland is a
2 friend of mine.

3 THE COURT: Assistant Chief in Pageland is a good
4 friend?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: And would that affect in any way affect
7 your ability to be fair and impartial to both sides?

8 PROSPECTIVE JUROR: Absolutely not.

9 THE COURT: Thank you, sir. You may be seat.
10 Gentlemen in the gray sweater.

11 PROSPECTIVE JUROR: Mason Stevens.

12 THE COURT: If you will give me you name again.
13 Mr. Bowman, for this particular trial I had excused you.
14 That question would not apply. Thank you. You may be
15 seated. Yes, ma'am, your name again for the jury.

16 PROSPECTIVE JUROR: Easter Lee, Juror 67. I have a
17 daughter work volunteer.

18 THE COURT: Miss Lee, you have a daughter that works
19 as a volunteer? For what department?

20 PROSPECTIVE JUROR: Rescue squad.

21 THE COURT: Rescue squad. Would that in any way
22 affect you ability to be fair and impartial?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Thank you, ma'am. You may be seated. If
25 any of you that are standing if I have already excused you

1 from participating in this trial you may have a seat.

2 Lady who is next to her, your name and number please.

3 PROSPECTIVE JUROR: Jennie McQueen, 82.

4 THE COURT: And, Miss McQueen, you have a family
5 members or a friend?

6 PROSPECTIVE JUROR: Schoolmates Keith Thomas.

7 THE COURT: And would that affect in any way your
8 ability to be fair and impartial?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Thank you, ma'am. You may be seated. In
11 the green sweater.

12 PROSPECTIVE JUROR: Lashonda Jowers, Number 65.

13 THE COURT: Miss Jowers. And, Miss Jowers, you have
14 a family member or friend?

15 PROSPECTIVE JUROR: Larry Brown, Mason Stevens and

16 ---

17 THE COURT: And would your contact with these three
18 individuals in any way affect your ability to be fair and
19 impartial?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Thank you, ma'am. You may be seated.
22 Yes, ma'am, your name and number.

23 PROSPECTIVE JUROR: Number Eight, Susanne Blevins.

24 THE COURT: And, Miss Blevins, who is it that you
25 have as a family member or friend?

Voir Dire of the Jury

51

1 PROSPECTIVE JUROR: A cousin, they work in the
2 medical field. One of them, helicopter.

3 THE COURT: Local or elsewhere?

4 PROSPECTIVE JUROR: Well, Carolina Medical comes down
5 to cover accidents.

6 THE COURT: Okay. And the fact that you have a
7 cousin so employed would that in any way affect your
8 ability to be fair and impartial?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Thank you, ma'am. You may be seated.
11 All right. Mr. Joyner, would you please stand and
12 identify yourself.

13 MR. JOYNER: Yes, sir. My name is J.R. Joyner from
14 Patrick, South Carolina.

15 THE COURT: Mr. Hales.

16 MR. HALES: My name is Kevin Hales. I'm from
17 Bennettsville, South Carolina.

18 THE COURT: Ladies and gentlemen, Mr. Joyner and Mr.
19 Hales will be involved in the prosecution of the case on
20 behalf of the State. Mr. Quinn.

21 MR. QUINN: Terry Quinn with Saleeby and Cox in
22 Hartsville, South Carolina?

23 THE COURT: Mr. Saleeby.

24 MR. SALEEBY: Ed Saleeby from Hartsville, South
25 Carolina and Jim Cox is in my office. I would ask Your

1 Honor for Mr. Joyner for judicial circumspect meaning
2 which is represented around here.

3 THE COURT: Ladies and gentlemen, the Defendant in
4 this matter is being represented by Mr. Cox, Mr. Saleeby
5 and Mr. Quinn of the Saleeby & Cox Law Firm. As I said
6 the State will be represented in the trial of this case by
7 Mr. Joyner and Mr. Hales. We have also in this area I
8 think joining you, Mary Johnson Thomas Lee. Elizabeth
9 Munnerlyn still ---

10 MR. HALES: Yes, sir.

11 THE COURT: Elizabeth Munnerlyn over in Bennettsville
12 is an Assistant Solicitor. Will Rogers out of
13 Bennettsville is an Assistant Solicitor. Kernard Redmond
14 in Dillon is the Chief Deputy Solicitor. Sherry Baugh in
15 Darlington.

16 MR. JOYNER: She was from Conway and is no longer
17 with us.

18 THE COURT: These are Assistant Solicitors, ladies
19 and gentlemen. Mr. Cox, Mr. Saleeby, anybody else
20 currently with the Saleeby firm?

21 MR. COX: No, Your Honor. Thank you.

22 THE COURT: These are all people involved with the
23 Solicitor's Office or the Saleeby & Cox Firm. Are any of
24 you related by blood or by marriage to any of those
25 individuals I just identified to you? Know them out in

Voir Dire of the Jury

53

1 the community? Have contact with them through civic,
2 charitable, social organizations? Ever been represented
3 by the Solicitor's Office as result of being a victim of a
4 crime? Or you currently being represented by the Saleeby
5 & Cox Firm? Have you been represented by them in the
6 past? If that applies to any of you would you please
7 stand. I'll go to opposite end. The gentlemen in the
8 stripe shirt.

9 PROSPECTIVE JUROR: John Martin Byrd. I'm not sure
10 of my number.

11 CLERK OF COURT: Number 19.

12 THE COURT: Juror Number 19. Who is it you
13 recognized?

14 PROSPECTIVE JUROR: J.R.

15 THE COURT: And you know him out in the community?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: And would that affect in any way your
18 ability to be fair and impartial to the State and to the
19 Defendant?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Thank you. You may be seated. Yes, sir,
22 for the record, your name again.

23 PROSPECTIVE JUROR: Roger Oxendine. Number 154.

24 THE COURT: Mr. Oxendine, who is it you recognize?

25 PROSPECTIVE JUROR: J.R. Joyner from the community

1 and from going through school.

2 THE COURT: And would your relationship with them in
3 any way affect your ability to be fair and impartial?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Yes, ma'am, for the record your name.

6 PROSPECTIVE JUROR: Betty Quick.

7 CLERK OF COURT: Number 112.

8 THE COURT: And, Miss Quick, whom do you recognize?

9 PROSPECTIVE JUROR: I think you called Mary Johnson
10 Lee?

11 THE COURT: Yes.

12 PROSPECTIVE JUROR: I had dealing with her in my
13 divorce case.

14 THE COURT: And would that in any way affect your
15 ability to be fair and impartial to both sides?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Thank you, ma'am. Ladies and gentlemen,
18 of course, as I have told you when State charges someone
19 with the commission of a crime the burden is on the State
20 always. The State must prove the guilt of the person who
21 has been charged beyond a reasonable doubt to the
22 satisfaction of each and every member of jury.

23 There is no obligation on a defendant to prove
24 themselves innocent because under the law regardless of
25 how serious the crime is that the defendant is charged

Voir Dire of the Jury

55

1 with a defendant is always presumed to be innocent.

2 From time to time there maybe various matters that
3 are revealed during the trial of a case where it may be
4 appropriate to instruct a jury on the elements of
5 self-defense and if self-defense exists in connection with
6 a case where murder has been alleged, that self-defense
7 would absolve a defendant from any guilt.

8 I need to know if there are any members of this jury
9 panel who feel that they could not accept such
10 instructions from the Court; that they could not follow
11 the law that would relate to these types of charges, and
12 would always feel like it is necessary to find somebody
13 guilty when a case involves murder or the killing of
14 someone regardless of the issues.

15 If for any reason anyone feels like they could follow
16 the law related to this type of case or this case
17 specifically and you have not already been excused if you
18 would please stand. Let the record reflect that no one
19 stood.

20 Does the State have any further inquiry they want me
21 to make?

22 MR. JOYNER: No, sir.

23 THE COURT: Defense have any further inquiry they
24 would like me to make?

25 MR. QUINN: No, Your Honor.

1 THE COURT: Ladies and gentlemen, you have been back
2 for about an hour and 15 to an hour and 30 minutes and at
3 this particular point in time we would begin selecting
4 from among you the people to serve on the jury. That
5 could take us another some period of time. Do I need to
6 give you a very short recess now and let you step to the
7 restroom or you -- I see some nods of yes. All right. We
8 will be in recess for ten minutes. Please promptly return
9 back to the courtroom.

10 (WHEREUPON, the jury was excused from the courtroom
11 at 2:39 p.m.)

12 (WHEREUPON, Court was in recess at 2:39 p.m. and
13 reconvened at 2:49 p.m.)

14 (WHEREUPON, the jury enters the courtroom at 2:49
15 p.m.)

16 SELECTION OF THE JURY

17 THE COURT: Ladies and gentlemen of the jury panel,
18 the procedure that we will next follow is the selection of
19 the individuals to serve as jurors in connection with the
20 case of the State v. Oscar Fortune. The Clerk's Office is
21 going to randomly draw your name from a bin that is in
22 front of us. Your name will be read out, and if your name
23 is read out if you will please bring you belongings and
24 come forward. We would need for you to stand and face
25 back out towards the balance of the jury panel and

Selection of the Jury

57

1 Miss Lear will help you get yourself located for that
2 purpose.

3 MR. SALEEBY: Approach, Your Honor?

4 THE COURT: Yes, you may.

5 (WHEREUPON, a bench conference was held on the record
6 but outside the hearing of the jury pool.)

7 MR. SALEEBY: Mr. Cox and I and Terry counted 162
8 jurors were summoned. Of that 162 only 64 showed up. We
9 all know the basic law that a jury panel is supposed to be
10 of the complexity and reflect the makeup of the county.
11 That we do not have here.

12 So 162, only half showed up and we have heard nothing
13 from the Clerk or from the Solicitor's Office as to why
14 they're not here. Not as to age. We couldn't find them.
15 They couldn't be served. No return. So that 64 only of
16 that did show up. 41 of the potential jurors are here of
17 that.

18 And that 41, cause the rest were excused, 29 of the
19 41 got up at least one time. That leaves 12 that didn't
20 stand up for any reason. Now, but I read the paper
21 Friday. I worked with them. Some say they can do this,
22 that and the other. Eat dinner. Mom, dad and the other.

23 Your Honor, I think it's absolutely impossible and
24 there is one Supreme Court case that they'd love to get
25 their hands on here.

1 THE COURT: Well, they're going to get their chance.
2 I do not find anything that has been shown by y'all, the
3 Defense, with any of the people who were not present nor
4 does it appear the jury panel is not a reasonable and
5 accurate reflection of the makeup of male and female and a
6 rational composition of Chesterfield County.

7 As to the individuals who have got close personal
8 ties with the family members I have excused most of them.
9 The broad questions that I asked at your request were
10 hardly designed to have somebody stand up. At least one
11 of those people who did stand up in response to the broad
12 questions they properly identified them as to whether they
13 could or could not be fair and impartial to both the State
14 and the Defendant.

15 And so I do not feel there is anything wrong with the
16 group that we have and that a fair and impartial jury can
17 be selected from the 41 who are available for which we can
18 draw the 12 with the State exercising its five strikes and
19 the Defendant exercising its ten strikes.

20 MR. SALEEBY: We appreciate that. I take exception.
21 I would object, Your Honor. I've never seen it done that
22 if there are under 60. Aren't there forms that the
23 Sheriff's Department or the Clerk's Office either says no
24 return or why they can't and they should be here?

25 THE COURT: Mrs. Sellers?

Selection of the Jury

59

1 MR. SALEEBY: She has that right.

2 CLERK OF COURT: Yes, sir, Your Honor.

3 THE COURT: Do you have an identification why certain
4 jurors were not here but you did not put that on the
5 record?

6 CLERK OF COURT: All of them that I had read I
7 checked were here expect for five which I drew a circle
8 by. I do not know why they weren't here.

9 THE COURT: Do you know why from the Sheriff's
10 Department why out of the 162 ---

11 CLERK OF COURT: They were all put in the mail and
12 were returned by the Post Office because we went on the
13 new 911 system.

14 THE COURT: Did they attempt to find out why those
15 people were not served at their known addresses and to be
16 available?

17 CLERK OF COURT: They just come back from the Post
18 Office as no such address.

19 THE COURT: Have you checked with the Sheriff's
20 Department?

21 CLERK OF COURT: No, Your Honor. I have not.

22 THE COURT: And in light of what the Clerk has told
23 me about the effort to make contact with the individuals
24 being the names of the individuals, they being close to
25 100, that were not received information about that they

1 simply had the form sent back. They have addresses and
2 the Clerk's Office did not ask the Sheriff's Office to
3 assist in any way. What's the State's position in the
4 matter?

5 MR. JOYNER: Judge, I think we should proceed.

6 THE COURT: All right. This is what I am going to
7 do. I'm going to go forward. I'm going to note your
8 objection. I don't think we are prejudiced by attempting
9 to select the jury, and if you can get me some case law
10 since we're not swearing them until in the morning anyhow
11 if you can get me case law that supports your respective
12 positions I'll be glad to.

13 MR. SALEEBY: May I ask Your Honor in terms of that
14 breach the rules or just in Your Honor's discretion where
15 the Court -- when there is no explanation send -- direct
16 the Sheriff's Department to go out to find these people.

17 THE COURT: At this particular point in time I want
18 to select a jury and we may end up or may not weight your
19 position in the matter. I don't know until I have the
20 people and an alternate seated.

21 MR. SALEEBY: Never seen anything like this, Your
22 Honor.

23 THE COURT: Ladies and gentlemen, if your name is
24 called out if you will you please bring you belongings and
25 come forward. Let me ask this question. Any objection by

Colloquy

61

1 the State for the use of the Clerk's Office personnel
2 selecting this in lieu of a blind person or someone under
3 ten?

4 MR. JOYNER: None from the State, Judge.

5 THE COURT: Any from the Defense?

6 MR. SALEEBY: None from the Defense, Your Honor.

7 THE COURT: All right. If you will call the names
8 out in random order. All right.

9 (WHEREUPON, the jury panel was selected.)

10 THE COURT: What says the State as to any motions
11 regarding the selection of this jury as to Batson or JEB
12 matters?

13 MR. JOYNER: None from the State, Judge.

14 THE COURT: And from Defendant as to that issue as to
15 protect on any others?

16 MR. SALEEBY: None, Your Honor.

17 THE COURT: All right.

18 MR. SALEEBY: Renew our motion.

19 COLLOQUY

20 THE COURT: Ladies and gentlemen, I think of what I'm
21 going to do is release you in a moment because we have
22 some motions that need to be disposed of. Ladies and
23 gentlemen, those of you what have not been selected in
24 connection with the trial of this case even though I think
25 I know what I'm going to. I'm still going to ask if you

1 will to call back after six o'clock tonight. The message
2 will be one asking you to come back in the morning or the
3 message will be asking you to call back some time late
4 morning or the message will ask you to call back after
5 six o'clock. Please call back and get further
6 instructions and you are excused at this time.

7 (WHEREUPON, the jury pool was excused from courtroom
8 at 3:23 p.m.)

9 THE COURT: Ladies and gentlemen, those of you who
10 have been selected as trial juror in connection with this
11 case I'm not sure whether we're starting at 9:00 or 9:30
12 in the morning. So I would like for you to likewise call
13 back. Do we have a message that they's Panel One and have
14 a separate message for them?

15 CLERK OF COURT: Yes, sir.

16 THE COURT: You will be known as Panel One and I will
17 have a message on there after six o'clock tonight as to
18 whether or not you come back at 9:00 in the morning or
19 9:30 in the morning. I will make that determination
20 following these pretrial hearings. In the morning whether
21 it's 9:00 or 9:30 I need you to take a few minutes and
22 from among the first 12 of you who were selected as jurors
23 in this trial I need for you to determine someone who will
24 act as your foreperson. The foreperson does not get any
25 extra votes, but they do have certain responsibilities.

1 It is never proper to begin discussing a case until all of
2 the evidence is in, the cases ends and I have given you
3 your jury instructions. Only then would it be proper to
4 discuss the matter.

5 At such time as -- sometimes inadvertently somebody
6 wants to discuss it early. Just something pop out their
7 mouth. Just couldn't help themselves. The foreperson
8 will gently remind them that it's not proper to discuss
9 the case until everything has been told to us through all
10 the witnesses and the Judge has given us our instructions
11 and he's told us that it's fine to go ahead and discuss
12 it.

13 So one job of the foreperson is to ensure that there
14 are no early discussions about the case. Another job of
15 foreperson is to ensure that once it is proper to discuss
16 the case that everybody gets a chance to discuss it just
17 as fully as they would like to. Also the foreperson
18 speaks on behalf of the jury.

19 It will be the foreperson that signs that verdict
20 form, whatever your verdict may be, that has to be
21 unanimous but rather than having all of you sign it we
22 simply have the foreperson sign on behalf of the jury. So
23 that would be a responsibility of the foreperson.

24 And also if there is matters of creature comfort or
25 something of that nature the foreperson can bring that to

1 our attention. Now, those of you who were chosen as
2 alternates I don't want you to in any way think you are
3 lessor because somebody could have something happen and
4 you need to come in and take their place. So you need to
5 learn carefully to all of the evidence but you would not
6 be in a position to serve as the foreperson.

7 So call back after 6:00 and there will be about
8 message that either says report to the jury room at 9:00
9 or report to the jury room at 9:30. Do not discuss the
10 case with anyone. Do not allow anybody to discuss the
11 case with you. Do not look at any news reports, if any
12 there are with respect to this trial.

13 Do not look at any newspaper articles, if any there
14 are with respect to this trial. As I have previously
15 stated the newspapers do not get its source or does not
16 get its information from sources that are sitting on the
17 witness stand, under oath and subject to direct and
18 cross-examination. Therefore, that is why the only basis
19 for making your decision in a matter is that which is
20 presented to you from the evidence inside the courtroom
21 and nowhere else.

22 This is one of those occasions where you go home and
23 your significant other says, "What did y'all do today?"
24 You say, "I can't talk to you about it at this particular
25 point in time. The Judge has told us we have a gag order

Colloquy

65

1 in effect and we're not to discuss it until after the case
2 is over with." So please go have a restful evening. Do
3 not discuss the case or do not allow anyone to discuss it
4 with you. If anyone attempts to do that let me know about
5 it in the morning. I'll see you at 9:00 in the morning or
6 9:30 in the morning.

7 (WHEREUPON, the jury pool was excused from the
8 courtroom at 3:29 p.m.)

9 THE COURT: All right. Counsel, we're going to be in
10 recess for a moment. Do you have the people in hand that
11 we need for the Jackson v. Denno Hearing the and the other
12 hearing?

13 MR. JOYNER: Yes, sir, we do, Your Honor.

14 THE COURT: Just give me about five minutes. We'll
15 be in recess.

16 (WHEREUPON, Court was in recess at 3:29 p.m. and
17 reconvenes at 3:42 p.m.)

18 THE COURT: All right. Mr. Quinn, if you will you
19 located Mr. Saleeby and Mr. Cox. All right. Counsel, it
20 appears with respect to motions made to continue the case
21 because of the limited number of jurors who responded. It
22 appears there was 160 some odd jurors who were summoned.
23 There were slightly less than 70 something or so who
24 responded. It appears from Section 14-7-660, 'at least 75
25 persons shall be served or -- shall be served as -- or

1 summoned as jurors to serve as petit jurors to attend one
2 and the same time in any Court.' So it appears that the
3 Clerk or the Jury Commission have complied with the
4 requirement to summon at least 75 jurors for this term of
5 Court.

6 MR. SALEEBY: Please the Court. My count shows only
7 64 here.

8 THE COURT: Summoned, not attends but summoned.

9 MR. SALEEBY: Does that mean, Your Honor, then that
10 under that theory that 20 can show up and we got 10 and
11 five strikes and five ---

12 THE COURT: Well, of course, have to have enough to
13 impanel a jury, but 14-7-390 says, 'Circuit court of a
14 county may serve a summons for jury duty by first class
15 mail,' which appears to be what took place in this case.
16 These are current statutes as I find them with the method
17 for summons by first class mail, being one has been
18 selected and complied with by the Clerk of Court for
19 Chesterfield County.

20 Beyond that, I do not find anything that requires
21 that the Clerk if she does not get 75 returns back as a
22 result of undertaking summons by first class mail to do
23 anything else. Of course, we did have enough jurors show
24 up, fortunately, that when we began to selection of the
25 trial jury we had 41 jurors. I am going to respectfully

Colloquy

67

1 at this time again deny your motion and as I said
2 previously if you can find me something specifically on
3 point that would indicate that Clerk's Office has not
4 followed the correct procedure and would invalidate the
5 jury panel that has been summoned I will be glad to hear
6 you.

7 My proposal would be to hear you first thing in the
8 morning while they're back selecting somebody to be their
9 foreperson, and then should I choose to excuse them
10 because you find me some case law that would compel my
11 doing so then I think what the message would be next for
12 the balance of the jury panel would be just call back
13 after eleven o'clock.

14 So if I loose your jury as a result of something you
15 find me I still have jurors to come back and we can find
16 something else to try. But right now I find this to be an
17 appropriate jury in connection with the case against Mr.
18 Fortune, and I deny your motion.

19 As I said I'll be glad to hear you in the morning.
20 So, Madam Clerk, if you will is there any problem about us
21 beginning at 9:00 in the morning with open arguments?

22 MR. JOYNER: None from the State.

23 THE COURT: From Defense?

24 MR. SALEEBY: No, sir, Your Honor.

25 THE COURT: What we'll do is, and, Mr. Saleeby, I'll

1 protect you tomorrow afternoon for your medical
2 appointment. It also appears that tomorrow evening Drug
3 Court begins at five o'clock. They need to use this
4 courtroom at about the 5:00, 5:15 timeframe anyhow. Since
5 we're going to need to break a little bit early to
6 accommodate Drug Court and I appreciate your offer to meet
7 any time he needs to meet with you in following the Court
8 schedule. Looks like we won't have to make him stay too
9 late. We can start at 9:00 in the morning that way we
10 won't lose any time.

11 JACKSON V. DENNO HEARING

12 (WHEREUPON, State's Exhibits Nos. 1 AND 2 were marked
13 for identification only.)

14 THE COURT: Okay. That's bring us now to the Jackson
15 v. Denno Hearing.

16 CLERK OF COURT: Yes, sir, Judge. I'd like to call
17 Officer Harold Haney.

18 HAROLD HANEY, after being duly sworn, testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. JOYNER:

22 Q. Afternoon, Mr. Haney.

23 A. Good afternoon.

24 Q. Would you state your name for the Court.

25 A. Harold Haney.

- 1 Q. And how old are you?
- 2 A. Thirty-eight.
- 3 Q. Who do you work for.
- 4 A. Chesterfield County Sheriff's Office.
- 5 Q. How long?
- 6 A. Seventeen years.
- 7 Q. How long have you been -- you've been in the
- 8 Sheriff's Department for 17 years?
- 9 A. Yes, sir.
- 10 Q. How much time is in law enforcement all together?
- 11 A. Seventeen years.
- 12 Q. Officer, when did you become involve in this case?
- 13 A. When I was called the evening it happened, December
- 14 23rd 2001.
- 15 Q. Were you able to see the defendant that day?
- 16 A. Later, that day it was.
- 17 Q. About what time?
- 18 A. Somewhere around four o'clock.
- 19 Q. Where did you see him? Would that be 4:00 in the
- 20 afternoon or 4:00 a.m.
- 21 A. Yes, sir, 4:00 p.m. 1600 hours.
- 22 Q. Okay. Where did you see him?
- 23 A. At the Cheraw Police Department.
- 24 Q. Did you have a chance to talk with him?
- 25 A. Yes, sir, I did.

1 Q. Were you able to take a statement from him?

2 A. Yes, I did.

3 Q. Okay, Officer, are you familiar with Miranda Rights?

4 A. Yes I am.

5 Q. Would you explain them for the Judge to hear you?

6 A. It's just a right to waiver that we give to actually
7 help to protect the individual that he doesn't make any
8 statements.

9 Q. Officer, showing you what's been marked as State's
10 Exhibit One. Do you recognize that?

11 A. Yes, sir, I do.

12 Q. What is that?

13 A. This is a Miranda Rights Form and a Waiver of Rights
14 that was read and signed by Oscar Fortune.

15 Q. Who else's signature is on that?

16 A. Investigator David Watson and my signature.

17 Q. Would you show the judge where your signatures are on
18 it.

19 A. Yes, sir. Your Honor, this is the Investigator David
20 Watson's signature. This is his signature and this is
21 Mr. Oscar Fortune's.

22 THE COURT: Have you seen State's Exhibit One?

23 MR. QUINN: Yes, sir, Your Honor.

24 THE COURT: Very good. Any objection to it's
25 introduction with connection to this case?

1 MR. QUINN: No, Your Honor.

2 THE COURT: That accepted as State's One.

3 (WHEREUPON, State's Exhibit No. 1 was admitted into
4 evidence.)

5 BY MR. JOYNER:

6 Q. Officer, could you show or could you explain how you
7 advised the defendant of his rights?

8 A. Yes, sir. What we do is the defendant is sitting
9 there. We, of course, we read him his rights and after we
10 read them they puts their initial beside that indicating
11 they understand these rights.

12 Q. Right.

13 A. After we read their rights we ask them to sign that
14 do they understand their rights and they advise yes or no.
15 In this case Mr. Fortune advised yes, he did understand
16 his right and that he wanted to waive his rights and give
17 us a statement.

18 Q. Okay. Showing you what's been marked as State's
19 Exhibit Number Two. Do you recognize that?

20 A. Yes, sir, I do.

21 Q. Explain what it is?

22 A. This is a statement form that was given by Mr.
23 Fortune and pretty much gives a description of what
24 happened at that early morning event at the Huddle House.

25 Q. Did he sign that -- did he give that statement after

1 you advised him of his Miranda Rights?

2 A. Yes, he did.

3 Q. All right. Would you show to the Judge where your
4 signatures are on there?

5 A. Yes, I would. Your Honor, this statement is Mr.
6 Fortune's signature. This is my signature, and this is
7 Lieutenant Johnny Quick's signature.

8 THE COURT: Thank you, sir.

9 THE WITNESS: Yes, sir.

10 THE COURT: Any objection to State's Number Two for
11 purposes of this hearing.

12 MR. QUINN: Yes, sir, Your Honor. Objection is that
13 it is not a sworn statement. It is signed by the
14 defendant but the fact it is not notarized gives me some
15 pause as to its voluntariness. And we object that this is
16 a custodial statement that was given under ordinary
17 circumstances.

18 THE COURT: I will note your objection for purposes
19 of the record, but I will allow this statement in this
20 hearing over your objection.

21 (WHEREUPON, State's Exhibit No. 2 was admitted into
22 evidence.)

23 BY MR. JOYNER:

24 Q. You said that there were other signatures. There was
25 a signature from Investigator David Watson and also

1 Investigator Johnny Quick?

2 A. Yes, sir, Investigator David Watson's signature was
3 on the Miranda Waiver Form.

4 Q. Okay?

5 A. And Investigator Johnny Quick's signature is on the
6 voluntary statement form.

7 Q. Were those two present at the statement that the
8 defendant signed?

9 A. Yes, sir, they were.

10 Q. Okay. While you were explaining this Miranda Waiver
11 to the defendant what was his appearance?

12 A. He was well -- I mean he was clean cut. Very, very
13 nice in the situation. He just wanted to resolve this
14 matter.

15 Q. Did he appear to be intoxicated?

16 A. No, sir, he did not.

17 Q. Did he respond to your questions?

18 A. Yes, sir, he did.

19 Q. Did he understand your questions?

20 A. Yes, he did.

21 Q. At any point was he -- did he slur his speech or was
22 he incoherent?

23 A. Not that I can recall.

24 Q. Okay. Did you have to raise your voice with him at
25 any time? Be rough with him to get at the statement?

1 A. No, sir.

2 Q. You didn't force him?

3 A. No, sir.

4 Q. On the Miranda Waiver there is a place where there is
5 an initial beside 'has a right for an attorney?'

6 A. Yes, sir.

7 Q. Did you advise him that he had a right to have an
8 attorney present?

9 A. Yes, sir, I did.

10 Q. Did he continue on and sign this statement?

11 A. Yes, sir, he did.

12 Q. Okay. Did he ever ask for an attorney present during
13 this time?

14 A. Not during this time he did not.

15 Q. And in your opinion was his statement freely and
16 voluntary given?

17 A. Yes, sir it was.

18 MR. QUINN: Objection, Your Honor, leading.

19 THE COURT: You can rephrase.

20 BY MR. JOYNER:

21 Q. Was his statement freely and voluntarily given?

22 A. Yes, sir.

23 Q. Okay. Thank you. And one final question. Did you
24 at any time coerce him or threaten him in any way to give
25 the statement?

1 A. No, sir, I did not.

2 Q. Okay.

3 THE COURT: Cross?

4 MR. QUINN: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. QUINN:

7 Q. You said that Mr. Fortune came in at 4:00 p.m.; is
8 that correct?

9 A. Around about that time.

10 Q. And you said David Watson and you signed the Miranda
11 Rights Form?

12 A. Yes, sir.

13 Q. And Johnny Quick and you signed the statement,
14 correct?

15 A. That is correct, sir.

16 Q. Where there any other officers present?

17 A. There were several officers there doing other --
18 different duties.

19 Q. In the immediate area around the defendant?

20 A. We were at the police department.

21 Q. How many officers would you say? How many officers
22 would you say?

23 A. Couldn't actually give you a correct count. At least
24 four.

25 Q. Four. Okay. You said he gave a statement about

1 5:30. I guess it's on the statement?

2 A. I have to reflect back.

3 Q. Okay.

4 A. It was completed Saturday, 5:30 p.m.

5 Q. What did y'all do for an hour and a half?

6 A. Just -- well, we talked and we had to wait for him to
7 complete his statement.

8 Q. Okay. So he -- that's 5:30 he finish giving the
9 statement not when began to give his statement?

10 A. When he completed his statement.

11 Q. And you feel like you followed proper procedure in
12 getting that statement from him?

13 A. Yes, sir.

14 Q. Why isn't it notarized?

15 A. This was a statement form that we were -- there are
16 different -- I didn't have a statement form. This was a
17 borrowed formed from the Cheraw Police Department.

18 Q. Okay. So why wasn't it notarized?

19 A. We don't -- have never notarized ours.

20 Q. Do you think it would be better to have a statement
21 notarized especially when the form has a place to be
22 notarized? Wouldn't that give it more credibility?

23 A. Well, I understood the statement was freely and
24 voluntary. I mean, yes, you can construe that as that.

25 MR. QUINN: That's all I have, Your Honor.

Harold Haney - Examination by the Court

77

REDIRECT EXAMINATION

BY MR. JOYNER:

Q. Officer, would you read for the Court the time on the Miranda Waiver.

A. Yes, sir. The time the Miranda Waiver was given to Mr. Fortune was 1640 hours which would be 4:40 p.m.

Q. What time was the statement?

A. The statement was completed at 5:30 p.m.

Q. Thank you.

THE COURT: Let me see the statement. I would like to a look at it. State One and Two admitted for purposes of this hearing only.

EXAMINATION BY THE COURT

BY THE COURT:

Q. You remember when this statement that was that's State's Exhibit Number Two when Mr. Fortune began writing the statement?

A. No, sir, not exactly. It would have been shortly after the Miranda Warning was given after we actually talked with him and then he put it down on paper for us.

Q. Do you know how long Mr. Fortune had been at the Cheraw Police Department at the time you give him his Miranda Rights?

A. I can't answer with any certainty, Your Honor. I can give you a guess. Twenty to 30 minutes. He did turn

1 himself in to the police department. That's how I came at
2 being in the police department.

3 Q. He was bought from one location to the police
4 department?

5 A. No, sir. He had a friend bring him to the police
6 department and turn himself in.

7 Q. The area where he was sitting when you and Officer
8 Quick were talking to him, where in the police department
9 was that?

10 A. It was in the investigation area of the police
11 department.

12 Q. Since I've not had the benefit of being there
13 officially or unofficially can you tell me sort of how
14 that area is laid out where Mr. Fortune was when you were
15 discussing the matter with him?

16 A. At the old police department. Since it was remodeled
17 it's a much larger room. It would be little bit more
18 smaller than this contained area with approximately four
19 desks.

20 Q. Four desks in a room. 15 x 20 or estimate the size?

21 A. I'd say a little bit larger than that.

22 Q. About what size?

23 A. Judge, I'm not good with numbers. It is definitely
24 bigger than 15 by 20.

25 Q. Is it off from the general area where the rest of the

Harold Haney - Examination by the Court

79

1 police employees were located?

2 A. It's just basically one police department in that one
3 building, but in investigation the only separation you
4 would have is a door.

5 Q. Just a door?

6 A. Yes, sir.

7 Q. Is it like a wall with windows in it that separates
8 you from the balance of the police department or is it
9 just like an enclosed room that separates investigators or
10 something like that?

11 A. It's an enclose room with investigations.

12 Q. At the time individuals were talking to Mr. Fortune
13 how many law enforcement officers would have been in that
14 investigation room where the statement was taken?

15 A. At one time during the statement process there would
16 have been as many as seven.

17 Q. What would those officers be doing?

18 A. Investigators were in and out. We were still
19 interviewing other suspects involved in the case and they
20 were in and out. It was my Sheriff and Chief Deputy were
21 there and they would bring information in and out. Also
22 we had assistance from the Cheraw Police Department.
23 Their investigators were in and out as well helping us.

24 Q. Other officers who were going in and out you said
25 were bringing you information about the investigation?

1 A. Yes, sir. They let us know that an individual that
2 night at the Huddle House might have saw somebody or
3 something or a phone number to call and check with other
4 personnel.

5 Q. What were you doing as it relates to Mr. Fortune at
6 the time these people were coming in and out and giving
7 you phone numbers and telling you there is somebody that
8 may have seen something?

9 A. Actually, I directed another officer would handle
10 that. During the statement process myself and Lieutenant
11 Quick were with Mr. Fortune while he was writing his
12 statement.

13 Q. Do officers have different desks?

14 A. Yes, sir.

15 Q. They may come and out?

16 A. As I said they were still interviewing other persons
17 involve with it?

18 Q. Were any other interviews taking place in that same
19 room Mr. Fortune was in?

20 A. Not at that time.

21 Q. This was the only one there who was being
22 interviewed?

23 A. Yes, sir.

24 Q. The statement is a handwritten statement. Is there a
25 statement that was written by who actually wrote this?

- 1 A. Mr. Fortune.
- 2 Q. This is his handwriting?
- 3 A. Yes, sir.
- 4 Q. Of if something is marked through and it is initialed
- 5 it is Mr. Fortune who wrote it -- marked through it and
- 6 initial it?
- 7 A. Yes, sir, that's correct.
- 8 Q. You had stated these were forms that were Cheraw
- 9 Police Department forms?
- 10 A. Yes, sir.
- 11 Q. You know why Page One of the two page statement has
- 12 got the information on it about a notary and Page Two has
- 13 nothing about a notary?
- 14 A. Page -- can I look, please, sir?
- 15 Q. Yes, sir.
- 16 A. No, sir, I couldn't tell you that. I could tell you
- 17 Page Two is consistent with the forms we normally use.
- 18 Q. The location of Huddle House is in Cheraw.
- 19 A. Yes, sir. It's in Cheraw right out -- just outside
- 20 the town limits.
- 21 Q. All right. So how is it that the Cheraw Police
- 22 Department, since it's not within that jurisdiction, was
- 23 the location where it was decided to meet with and take
- 24 the statement from Mr. Fortune?
- 25 A. That was just a good plain area that had enough room

1 to put all the personnel we needed there, and most of the
2 people were from the eastern portion of Chesterfield
3 County or the western portion of Marlboro or just north of
4 Darlington County.

5 Q. When Mr. Fortune turned himself in were you at the
6 Cheraw Police Department?

7 A. Yes, sir, I was.

8 Q. And the Sheriff's Department does not have any type
9 of annex or any capacity independent use other than that
10 area?

11 A. No, sir. Wish we did. We need it.

12 Q. Talk to county council.

13 A. Yes, sir.

14 Q. Thank you.

15 THE COURT: I have no further questions. Any
16 questions further from the State?

17 MR. JOYNER: No, sir.

18 THE COURT: Any question from the Defendant?

19 MR. QUINN: Just one, Your Honor.

20 RE CROSS-EXAMINATION

21 BY MR. QUINN:

22 Q. You know Damien Shields?

23 A. Yes, sir.

24 Q. What relation to Anthony Shields?

25 A. His brother.

1 Q. What was his occupation at the time?
2 A. Do you mean what was he doing?
3 Q. Yeah.
4 A. I believe he was in the police academy.
5 Q. He wasn't a Cheraw Police Department?
6 A. He could have just gotten out.
7 Q. Was he there when his statement was taken?
8 A. No, sir.
9 Q. You sure?
10 A. Yes, sir.
11 MR. JOINER: David Watson.
12 DAVID WATSON, after being duly sworn, testified
13 as follows:
14 DIRECT EXAMINATION
15 BY MR. JOYNER:
16 Q. Afternoon?
17 A. Good afternoon.
18 Q. Mr. Watson, would you state your full name?
19 A. David Warren Watson.
20 Q. What do you do?
21 A. Investigator with the Chesterfield County Sheriff's
22 Office.
23 Q. How long have you held that position?
24 A. I've been in law enforcement seven years.
25 Q. And what does being an investigator involve?

1 A. Just follow up crimes or suspects. Crimes whether
2 it's burglary, larceny, forgery, shooting, such of that
3 nature.

4 Q. When did you first become involved in this case?

5 A. On the night of the incident on the 23rd
6 approximately 4:00 a.m. All the investigators, any time
7 we have a murder, shooting, like that, all the
8 investigators all are called out.

9 Q. Did you see the defendant that night?

10 A. I saw him the next day approximately 4:00 p.m. or the
11 same day cause it happened after midnight but it was
12 approximately 4:00 p.m.

13 Q. Where did you see him?

14 A. At the Cheraw Police Department.

15 Q. What were you doing there?

16 A. We were just talking about the case and different
17 people we were talking to and kind of regrouping. And if
18 I recall right his family or someone had called and said
19 he was coming in to turn himself in. This was at 4:00 or
20 shortly after.

21 Q. Were you present when Officer Haney explained the
22 defendant's Miranda Rights for him?

23 A. I was.

24 Q. Okay. Showing you what's been marked for
25 identification purposes as State's Exhibit One. Do you

1 recognize that?

2 A. I do.

3 Q. Whose signature is on it?

4 A. Mr. Oscar Fortune's signature on it and then mine as
5 a witness and also Captain Haney.

6 Q. Could you explain what you saw, how Officer Haney
7 explained it to Mr. Fortune?

8 A. Yes, sir. He did it like we always do. We pull this
9 form out and read basically straight down the form, each
10 line. And then as you see over for Mr. Oscar Fortune's
11 initials as we read each line we ask does he understand
12 and if he does he initials and we proceed on down.

13 Q. Okay. What time is on the statement? Excuse me, on
14 the waiver?

15 A. 1640, which would be 4:40 p.m.

16 Q. Okay. And at what point did you sign the waiver?

17 A. It would have been this time. This is the time we
18 start. By the time he signed it and I sign it and Captain
19 Haney signed it. We talked a couple minute for him to get
20 through it.

21 Q. I see. Have you seen, through your experience in law
22 enforcement, have you seen drunk drive people under the
23 influence?

24 A. I have.

25 Q. Okay. Was Mr. Fortune under the influence?

1 A. In my opinion he was not.

2 Q. Could you describe his appearance?

3 A. Very quiet, but he observant. He was coherent,
4 talked, exchanged information.

5 Q. Did ---

6 MR. SALEEBY: Your Honor, for time purposes we do not
7 argue -- we admit he was coherent, competent, and not
8 under the influence of anything.

9 MR. JOYNER: Okay.

10 BY MR. JOYNER:

11 Q. Did you make Mr. Fortune any promise to sign this
12 paper?

13 A. No, sir.

14 Q. Okay. Did you force him or put him under any kind of
15 duress?

16 A. No, sir.

17 Q. And did he freely and voluntarily give you that
18 statement and sign the waiver?

19 A. Yes, sir, he did.

20 Q. Okay. Thank you.

21 MR. JOYNER: Judge, I move to admit at this time the
22 Miranda Waiver, State's Exhibit one?

23 THE COURT: I think it's already been agreed on, the
24 Miranda Waiver Form without objection?

25 MR. SALEEBY: No objection.

1 THE COURT: Okay. Thank you.

2 MR. JOYNER: No further questions for Officer Watson.

3 CROSS-EXAMINATION

4 BY MR. QUINN:

5 Q. Were you there when Mr. Fortune gave his written
6 statement?

7 A. I was not.

8 Q. Okay. Where were you?

9 A. I couldn't tell you exactly, but I wasn't there when
10 he gave that written statement.

11 Q. You were there in the room or at the police
12 department?

13 A. I wasn't there when he gave that statement to
14 Lieutenant Quick and Sergeant Haney.

15 Q. So after he signed this form you left the building?

16 A. Right.

17 Q. What did you go do?

18 A. I couldn't tell you right off. I mean there were so
19 many avenues being worked in the case and that was my
20 sergeant and my lieutenant there to take the statement.
21 That's was we did.

22 Q. You can testify as to it being a custodial
23 interrogation?

24 A. I can tell you it was voluntarily. We read the
25 Miranda Rights and he voluntarily and freely signed the

1 form and wanted to talk to us.

2 Q. But as to the form you cannot testify if it was
3 voluntary or not?

4 A. No, I cannot.

5 THE COURT: Anything further from this witness at
6 this time?

7 MR. JOYNER: Yes, sir, I have just one more. One
8 more. If I could call Johnny Quick.

9 JOHNNY QUICK, after being duly sworn, testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. JOYNER:

13 Q. Afternoon, Mr. Quick?

14 A. Same to you, sir.

15 Q. Could you please tell us your full name?

16 A. Johnny Quick.

17 Q. And are you currently working?

18 A. I'm pastor at Edwards Chapel Baptist Church.

19 Q. Have you ever been involved in law enforcement?

20 A. Yes, sir.

21 Q. How long?

22 A. Twenty-five years, six months, and 12 days.

23 Q. And what was your job title?

24 A. I was -- my rank was lieutenant over investigation in
25 the Chesterfield County Sheriff's Department.

1 Q. Okay. Were you working at the time of this case?

2 A. Yes, sir, I was.

3 Q. How did you become involved in this case?

4 A. I was dispatched or called by dispatch to respond to
5 the Huddle House. There had been a shooting at the Huddle
6 House.

7 Q. Did you see the defendant that night?

8 A. I saw him that afternoon. The incident occurred
9 early morning hours, however, I saw him that afternoon.
10 He never -- he came to the Cheraw Police Department.

11 Q. What were you doing at the police department?

12 A. We were trying to gain as much information as we
13 could. We were pulling our resources together. Myself
14 Officer Haney and Officer Watson, but the uniform officers
15 there were in the area. There was a lot of people at the
16 Huddle House that particular night and there was a lot of
17 people had to be talked to.

18 Q. Were you present while the defendant gave a
19 statement?

20 A. Yes, sir, I was.

21 Q. Okay. Showing you what's been marked for
22 identification purposes as State's Exhibit Two. Do you
23 recognize that?

24 A. Yes, sir, I do.

25 Q. Who's signatures are on it?

1 A. Mr. Oscar Fortune, Sergeant Harold Haney and myself.

2 Q. Okay. During the time he give this statement who
3 wrote the statement?

4 A. Mr. Fortune wrote it.

5 Q. At any point was Mr. Fortune coerced or was he
6 threatened in any way?

7 A. No, sir, he was not.

8 Q. Did you all, you or Mr. Haney, either one, make a
9 promise to him?

10 A. No, sir, we did not.

11 Q. At what time did you sign your name to this
12 statement?

13 A. It was immediately my after he had finished his
14 statement, signed the statement and we read over the
15 statement. He signed it.

16 Q. Okay. What was the time?

17 A. It was 5:30 p.m.

18 Q. Okay. Thank you.

19 A. Yes, sir.

20 MR. JOYNER: Judge, move this be entered in evidence
21 as State's Exhibit Two?

22 THE COURT: All right. I'm sorry. I thought you
23 previously entered it and it was objected to because it
24 was not notarized and I had noted the objection for the
25 record and already allowed it in.

Johnny Quick - Direct by Mr. Joyner

91

1 MR. JOYNER: Okay. Thanks.

2 BY MR. JOYNER:

3 Q. You were there the entire time Mr. Fortune gave his
4 statement?

5 A. Yes, sir.

6 Q. And it was -- the entire statement was voluntary?

7 A. Yes, sir.

8 Q. Handing you State's Exhibit Two. Turning to the back
9 page about the third line or fourth line up left and went
10 to Laurinburg and then to Cheraw to turned myself in. Did
11 you suggest anything at all the that was written in this
12 statement to Mr. Fortune namely the last two lines, two
13 and a half lines? Did you ask him to write that part of
14 the statement?

15 A. No, sir.

16 Q. You didn't?

17 A. No, sir.

18 Q. Okay. And how many officers do you remember being in
19 the room?

20 A. There was a number of officers that kept coming in
21 and out during the whole period Mr. Fortune got there.
22 What I recall is that myself and Officer Haney was the,
23 basically, two officers there.

24 Q. Were y'all the only two talking to him or other
25 officers?

1 A. No, we were the only two.

2 Q. Nobody else?

3 A. That I'm aware of, no.

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

5 THE COURT: Anything further? For purposes of this
6 is there any evidence the defendant would like to offer?

7 MR. QUINN: No, sir.

8 THE COURT: Very good. You may step down, Officer
9 Quick. Anything further from the State as you say you do
10 not?

11 MR. JOYNER: Not on the Jackson v. Denno issue, I do
12 not.

13 THE COURT: Very good.

14 DECISION OF THE COURT

15 THE COURT: All right. Gentleman, I find that the
16 defendant has been properly advised of his Miranda Rights;
17 that each of those have been gone over with -- by the
18 defendant and that there has been acknowledgement by the
19 defendant with respect to State's Exhibit Number One of
20 his rights having been explained to him.

21 I find there is a knowing and intelligent, free and
22 voluntary waiver for purposes of this hearing of those
23 rights and this statement had been given by the defendant
24 without being coerced or any threat or force or promise.
25 It was freely and voluntarily given to him.

Decision of the Court

93

1 I'll make these finding by the greater weight or
2 preponderance of the evidence whether or not this is in
3 fact a statement by the defendant that has been freely and
4 voluntarily entered into and is a question for the trial
5 jury to make the final determination on. For purposes of
6 the supression motion I will deny the motion to suppress
7 the statement.

8 MR. QUINN: Thank you, Your Honor.

9 COLLOQUY

10 THE COURT: What was the other hearing we needed to
11 do?

12 MR. JOYNER: Judge, there are two things. We have
13 Dr. Yacoub. She was originally with Newberry Pathology in
14 Newberry and she has since moved to Oklahoma. With the
15 way her schedule is now she is only going to be able to be
16 here tomorrow. She's flying in tomorrow and, hopefully,
17 will be here in Court about 3:00 and have to go out
18 tomorrow afternoon.

19 And I was hoping that if there was no objection from
20 the Defense we could call her out of order possibly
21 tomorrow afternoon around three o'clock?

22 THE COURT: Well, I don't think we'll have a problem
23 accommodating her getting up if she gets here. The
24 problem we're going to have is whether or not she gets
25 here, once she gets her, she's going to be a couple hours

1 and interfere with Mr. Saleeby with your getting back
2 depending on how long the cross-examination lasts, whether
3 or not you want to be here during the entire cross of the
4 case cause I just don't know if she's late getting here
5 from Charlotte once we put her up she's here for the
6 duration.

7 MR. JOYNER: Yes, sir.

8 MR. SALEEBY: Your Honor, I'll try to get here this
9 evening, that shot, or either early in the morning,
10 whatever, the doctor has to come accommodate me.

11 THE COURT: At this point in time is she scheduled --
12 is she flying into Charlotte?

13 MR. JOYNER: She is flying into Charlotte and flying
14 out of Raleigh. So Mr. Hodge said he would actually
15 himself got pick her up and he said at the latest they
16 would be here at three o'clock tomorrow afternoon. And,
17 Judge, she's not actually flying out until Wednesday about
18 lunchtime. So if it becomes a problem tomorrow afternoon
19 we can always wait and put her on in the morning.

20 THE COURT: She doesn't have a plane to catch that
21 night. If push comes to shove it makes no sense to put
22 her up if we can start her at 9:00 in the morning.

23 MR. JOYNER: Yes, sir.

24 THE COURT: All right. Very good. That makes me
25 feel better about that.

1 MR. JOYNER: Judge, the other thing I had. In her
2 autopsy report there is a statement that we believe needs
3 to be redacted. It's hearsay within hearsay. And I'll
4 let Your Honor see it. It's highlighted in yellow. It's
5 on the second page.

6 THE COURT: I'm not going to keep it out. I mean
7 many times at least I'm not going to keep it out now.
8 It's the kind of thing a doctor relies upon as a normal
9 part of what they're doing and their information.

10 Often times information in doctor's report can be
11 hearsay. That doesn't automatically exclude it from being
12 a part of the doctor's testimony.

13 MR. JOYNER: Judge, I think in this case, 803,
14 Subsection Four, allows doctor's reports or allows the
15 doctors themselves to rely on hearsay testimony. For
16 example, the person or the coroner explains to the doctor
17 this individual was shot five times and the doctor can
18 proceed.

19 The problem that we have on the State is that it
20 says, "There was reportedly one shot followed by four or
21 five other shots," and the problem is that that gives a
22 sequence and an order to things that the doctor has no
23 direct knowledge of and it's totally irrelevant to her
24 diagnosis.

25 In 803 Subsection Four only allows information that's

1 directly relevant to the diagnosis and sequence of those
2 shots is not directly related.

3 MR. SALEEBY: Yes, sir. We've already been there
4 before. She didn't have to tell me. She had to put that
5 on the report. She relied upon that in her examination of
6 the body.

7 THE COURT: I mean if she's going to testify he was
8 allegedly shot while inside a vehicle, I don't see how you
9 can have one without to other.

10 MR. SALEEBY: That's exactly what I was say.

11 THE COURT: That it would be hearsay also.

12 MR. JOYNER: She's not going to testify that he was
13 shot inside a car. She is going to testify as to cause of
14 death.

15 THE COURT: You had asked to ---

16 MR. JOYNER: I would prefer ---

17 THE COURT: --- exclude the entire part which ---

18 MR. JOYNER: I did, Your Honor, but I would actually
19 prefer to have that whole paragraph taken out because my
20 primary concern was with the sequence of the shots.

21 THE COURT: Well, I think as a practical matter you
22 ask her the questions and you have indicated you're not
23 going to ask her a question coming out of that case
24 history. I'm assuming that's when Mr. Quinn or
25 Mr. Saleeby is going to ask the question coming out of the

Colloquy

97

1 case history?

2 MR. JOYNER: Yes, sir.

3 THE COURT: So you're making at this point in time a
4 motion in liminie as to those types of facts; is that
5 correct?

6 MR. JOYNER: I am, Your Honor.

7 THE COURT: All right. Mr. Quinn, I'll be glad to
8 hear from you or Mr. Saleeby as to motions as it relates
9 to the matter being related in that part of the autopsy
10 report?

11 MR. SALEEBY: Well, yes, Your Honor, it clearly had
12 to come -- it clearly had to come from the police officer
13 or somebody involved on the law enforcement side from the
14 investigation. And from that she started making from her
15 case history her findings of fact as the cause of death.

16 Now, what it does to us is that if that was left out
17 as hearsay that would not allow us then to assert --
18 certainly would block us, but it would be a big part of
19 the key to our self-defense that, yes, there was one shot
20 and then there were several other shots.

21 The case will show through the facts, through the
22 State's witnesses that a bullet was found in a case
23 jacket, shell casing, inside of the .25 caliber in the
24 decedent's vehicle. That with what the officer told this
25 nice lady doctor from up there in Newberry and it partly

1 dovetails right hand in hand. They can't have it both
2 ways, Your Honor.

3 THE COURT: Well, this is something that I am going
4 to take under advisement right now and part of our ruling
5 maybe based upon other evidence that comes in the case
6 prior to this witness's testimony and I'll just have to
7 take a look as to the case history part of it and render
8 an opinion about whether or not that it would be
9 appropriate cross-examination by Defense counsel. And I
10 will let you know in the morning or at least prior to her
11 testimony.

12 MR. SALEEBY: Thank you, Your Honor. It would not
13 be, if the Court could make the Court's witness available
14 as the Solicitor revealed, and maybe interesting just not
15 people who are with it, who that officer or whether it was
16 a coroner that told her that. That would clearly take it
17 out of the hearsay substance matter cause that person
18 would then be here to cross-examine.

19 THE COURT: Well, it maybe that even if I don't ask
20 you who -- allow you to ask questions about the specifics
21 of what was said to her in connection how she developed
22 her case history, I certainly will allow you to ask the
23 question of her as to who gave her the information to
24 serve as a basis and then put that witness up.

25 MR. SALEEBY: All right.

1 THE COURT: All right, sir. Anything else we need to
2 take up this afternoon?

3 MR. JOYNER: None from the State.

4 MR. QUINN: None from the Defense.

5 THE COURT: All right. Very good. We'll crank up at
6 nine o'clock in the morning.

7 MR. QUINN: Your Honor, one other issue.
8 Mr. Fortune's bond, whether or not he will be allowed to
9 stay out on bond.

10 THE COURT: What has been the status of Mr. Fortune's
11 and his bond?

12 MR. QUINN: His bail bondsman is willing to stay on
13 the bond. He's been out on bond for four and a half
14 years.

15 THE COURT: So he has been continuously out on bond?

16 MR. QUINN: He has, Your Honor.

17 MR. SALEEBY: With no infraction, Your Honor.

18 THE COURT: What says the State?

19 MR. JOYNER: Judge, I don't have any objection.

20 THE COURT: Very good. He will remain out on bond.

21 MR. SALEEBY: Thank you, Your Honor.

22 MR. QUINN: Thank you, Your Honor.

23 THE COURT: Very good. See y'all in the morning.

24 (WHEREUPON, Court was in recess at 4:35 p.m.)

25 END OF TRANSCRIPT OF RECORD

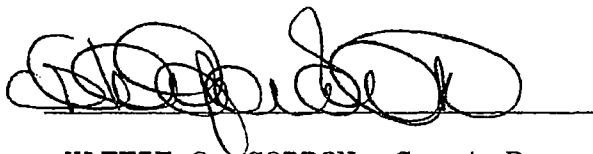
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 6th day of
March, 2006.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

March 21, 2007

A handwritten signature in dark ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

101

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 02-GS-13-0137

STATE OF SOUTH CAROLINA)
 PLAINTIFF)
 vs.)
)
OSCAR FORTUNE)
 DEFENDANT)

TRANSCRIPT OF RECORD

March 6-9, 2006
Chesterfield, South Carolina
VOLUME NUMBER 02

B E F O R E:

THE HONORABLE JOHN M. MILLING, JUDGE; and a jury.

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

FRANKLIN JOYNER, ASSISTANT SOLICITOR
Attorney for the State

KEVIN HALES, ASSISTANT SOLICITOR
Attorney for the State

ED SALEEBY, JR., ESQ.
Attorney for the Defendant

TERRENCE QUINN, ESQ.
Attorney for the Defendant

HAROLD HANEY, Chesterfield Cty. Sheriff Dept.
DAVID WATSON, Chesterfield Cty. Sheriff Dept.
JOHNNY QUICK, Chesterfield Cty. Sheriff Dept.
DENISE SHIELDS, Defendant's Wife
IRIS GASTON,

TONNETTE CASH,
ARTHUR MUNGO,
VINCENT DAVIS,
INAS YACOB, Pathologist
BARRY DAVIS,
STEPHANIE DOUGLAS,
JESSIE ELLISON,
DAVID LEE,
WAYNE JORDAN, Chesterfield Cty. Sheriff Dept.
VELLO PAAVEL, S.L.E.D.
DUSTIN SMITH,
DOROTHY FILIATREAUULT,
SONTA MCCALL,

HATTIE O. GORDON
Circuit Court Reporter

205

1 this kind as for the number of jurors summoned. My
2 research indicates you were correct, Your Honor.

3 THE COURT: As to the motion for change of venue I
4 have determined after talking to the witnesses there were
5 maybe some four to six who indicated they may have had
6 some opinion after reading the article. After discussing
7 it with them they all indicated that there was no problem
8 with respect to following the Court's instructions to
9 disregard those matters and set them aside.

10 So I deny the motion for your change of venue. I
11 find all the jurors indicated that they can be fair and
12 impartial, rely only on the evidence introduce during the
13 trial of the case and follow the Court's instructions.

14 So, accordingly, I deny the motion for a continuance
15 to give the matter in essence time for the pot to boil and
16 the matter to cool off. I find there is not sufficient
17 pretrial publicity to justify a continuance in the matter
18 as well. I'll be glad to hear from you as to your issue
19 on the case history portion, Page Two of the autopsy
20 report of Dr. Yacoub, coming into the record.

21 MR. QUINN: Yes, sir, Your Honor. I state to the
22 Court which states under Rule 803, Subsection Eight, about
23 an autopsy report is clearly admissible and is not
24 hearsay. It doesn't differentiate between the sexes in
25 the autopsy report. It just states that autopsy reports

1 are admissible.

2 THE COURT: What says the Defense? I mean the State?

3 MR. JOYNER: Judge, I would disagree on the grounds
4 of 803.4 which specifically state the doctor's records and
5 doctor's diagnosis and under the circumstances for the
6 fact that whoever said and if the coroner said it, the
7 coroner had to hear it from a law enforcement officer.
8 And the law enforcement officer had to have heard from an
9 individual that was at the scene. So we're now getting it
10 by the third, fourth party that she gets this information.

11 So I think it's clear that the fact he was shot is
12 appropriate to be in the report, but the sequence in which
13 he was shot or the order of the firing of the bullets or
14 we heard one loud shot then there was a break, then we
15 heard three or four or five other shots is wholly
16 inappropriate due to the fact that that's totally
17 irrelevant to the point of him being shot.

18 And our plain problem is just with the sequence or
19 the order.

20 THE COURT: All right. I am at this particular point
21 in time going to deny the State's motion in limine in
22 total. I will caution you to listen to how the evidence
23 is coming in or coming, of course, on cross-examination.
24 There maybe appropriate ways to question the doctor about
25 those matters which would constitute things that were not

1 hearsay and not offered for the truth of the matter.
2 There were differences of opinion as to how the shooting
3 in fact occurred and that she has no opinion based on her
4 doing an autopsy report as to whether or not the shot that
5 was fired was one that was in response to a shot by the
6 decedent. The autopsy report can't disclose those types
7 of thing. So I'm not sure I would let the information
8 come in exactly where it is just knowing how the
9 questions.

10 803 rule or Subparagraph Nine is the basis upon which
11 they were making this offer as to this being a document
12 that's required. However, that particular case was
13 dealing with the issue where autopsy reports of inference
14 were improperly admitted and the Supreme Court in the Gail
15 Cutroe Case ruled that there were three bases.

16 One is that three questionable death of young people
17 under a SIDS type argument were required to be reported
18 and where matters that the expert relied upon in forming
19 her opinion which is a little bit different than the case
20 at hand because the sequence of the shots does not relate
21 to the opinion of the doctor as to how the death occurred
22 as opposed to the Cutroe Case where the issue of whether
23 or not that brain imagining was a part of the Sudden
24 Infant Death Syndrome was something that she testified
25 about and I think she reviewed on it, too.

Colloquy

107

1 The two in which Miss Cutroe was involved show signs
2 of brain hemorrhaging as those children had. So I'm not
3 going to grant your motion at this time. Just leave it to
4 how it's presented in the context of things. Are there
5 any other motions you feel we need to deal with from the
6 State?

7 MR. JOYNER: None from the State, Judge.

8 THE COURT: There any from the Defense at this time?

9 MR. SALEEBY: I hate it all being about me, Your
10 Honor and, of course, the State and Your Honor have been
11 quite accommodating to my doctor's appointment and I can
12 do it. I just would ask the State if they have an idea
13 when they are going to call the lady that did the autopsy
14 cause that would be the one with the doctor. I can go
15 today at 12:00 or in the morning early.

16 THE COURT: We had an indication yesterday that it
17 was anticipated that Dr. Yacoub would be flying in from
18 out of state and arriving at the courthouse around
19 three o'clock. And that we could either put her up at
20 this time or she has a flight out tomorrow at what time?

21 MR. JOYNER: Judge, I believe she's leaving at
22 six o'clock.

23 THE COURT: Tomorrow evening at 6:00?

24 MR. JOYNER: Yes, sir.

25 MR. SALEEBY: That's why -- the only thing I didn't

1 understand was she going to be here at approximately
2 three o'clock to testify. That way I couldn't get to the
3 doctor this afternoon. Well, I can go at noon.

4 THE COURT: Are we anticipating -- you indicated
5 yesterday you could see the doctor around 5:30 in the
6 evening; is that correct?

7 MR. SALEEBY: Yes, sir, it was yesterday. It was
8 noon today, and at 7:45 in the morning. And I can either
9 do that today or at noon.

10 MR. JOYNER: Judge, I don't have a problem and wait
11 and call her in the morning as my first witness. We can
12 finish up what testimony we have.

13 THE COURT: Mr. Saleeby, we're not going to leave you
14 out not going to cause us some trouble sometime during
15 this trial.

16 MR. SALEEBY: Not by tomorrow. Tomorrow is just
17 Wednesday.

18 THE COURT: I'm just picking on you.

19 MR. SALEEBY: Tomorrow is just Wednesday.

20 THE COURT: You would need to leave here around 11:30
21 to try to get there at noon.

22 MR. SALEEBY: If you give me a fast ticket.

23 THE COURT: What we may end up doing, depending on
24 the nature of what's going on at that point in time, I
25 will leave it up to you to advise whether you can slip out

Colloquy

109

1 and go to the doctor and come back following lunch. If
2 you choose to stay during that time then we will perhaps
3 start at 9:30 in the morning and run a little bit tomorrow
4 afternoon in order to be sure that we don't ---

5 MR. SALEEBY: I know we don't have to show the Court
6 order telling them who is going to be here.

7 THE COURT: We will certainly ---

8 MR. SALEEBY: This afternoon, maybe I can go and
9 leave Terry here, and shoot and back.

10 THE COURT: We will work with you on that. Do you
11 know if we have a foreperson yet? If you will check with
12 them and see.

13 MR. SALEEBY: I don't want to hold the trial up.

14 THE COURT: Got you. Mr. Joiner, I have a copy of an
15 autopsy report. I don't know if this is the one you gave
16 me yesterday. I don't know whether you need it back or
17 not.

18 MR. JOYNER: Yes, I do. Thank you.

19 THE BAILIFF: Yes, sir they do.

20 THE COURT: Do you know who it is?

21 THE BAILIFF: Eric Hatchel.

22 THE COURT: Counsel, the foreperson is Number 47,
23 Mr. Joseph Eric Hatchel. He verified on his check as Eric
24 Hatchel. I guess he goes by his middle name of Eric. So
25 Mr. Hatchel will be our foreperson. All right. Will you

1 bring the jury in.

2 (WHEREUPON, the jury panel enters the courtroom at
3 9:15 a.m.)

4 (WHEREUPON, State's Exhibits Nos. 3 THROUGH 13 were
5 marked for identification only.)

6 THE COURT: Mr. Hatchell, thank you for enlisting to
7 accept the draft that has been imposed upon you by the
8 balance of your jury panel. We appreciate it very much.
9 And, ladies and gentlemen, welcome back this morning.
10 Thank you for your getting here in a timely fashion. We
11 had a few motions left from yesterday that we took care of
12 while you were back there making your decision on the
13 selection of a foreperson.

14 PRETRIAL CHARGE

15 I need to talk with you a little bit about this trial
16 and what you might anticipate in connection with how it
17 will proceed. Some of you may have been involved
18 previously in serving as jurors or having been in some way
19 involved with the court system.

20 The case will have opening statements by each of the
21 attorneys involved. The State has a chance to open. The
22 Defense has a chance to open. These are opportunities for
23 the attorneys to discuss with you what they believe is
24 going to be established by the evidence. What the
25 attorneys talk with you about is very important for you in

Pretrial Charge

111

1 listening to because they give you a broad overview of
2 where they think the evidence will lead in this case.

3 Now, ladies and gentlemen, the attorneys are, of
4 course, advocates. They're here for the purposes of
5 presenting to you for your consideration the best they can
6 their view of the evidence, but what the attorneys tell
7 you is not evidence. It's important for you to listen to
8 it, but they are not under oath.

9 They're are setting forth the best position they can
10 for their particular client and they hope that the
11 evidence that you find will correspond with their view of
12 the evidence.

13 But, ladies and gentlemen, the evidence in the case;
14 that which you must base your decision on whatever that
15 decision maybe is going to come from the witness stand.
16 It is going to be the testimony under oath where the
17 witnesses are examined by direct examination and in
18 cross-examination.

19 That's the evidence upon which you base your decision
20 along with the other documentary evidence that maybe
21 allowed into the trial of the case. The State always has
22 the burden of proof when it has charged someone with a
23 crime. Makes no difference how serious the crime is the
24 State must prove that guilt beyond a reasonable doubt to
25 the satisfaction of each and every member of the jury.

1 A defendant is always presumed under the law to be
2 innocent. The State has to prove that guilt. That's an
3 affirmative duty on the State's part. It is never a
4 requirement that a defendant prove themselves innocent
5 because under the law they are innocent. Just as all
6 parties are considered to be innocent people until the
7 State convinces each of you beyond a reasonable doubt that
8 they have met the burden of proof as to each element of
9 the crime charged.

10 Now, ladies and gentlemen, the State has charged the
11 defendant with the crime of murder. They have charged
12 that, he, with malice aforethought committed this crime
13 shooting and killing the decedent, Mr. Shields, in this
14 action. They must prove that. They move prove that he
15 did in fact commit a crime where he shot with malice
16 aforethought and killed someone.

17 So, ladies and gentlemen, I will talk with you in
18 more detail once the case is over with about the various
19 elements that constitute murder, the unlawful shooting of
20 someone. The defendant may raise the defense of
21 self-defense and even though that is evidence that is put
22 out by the defendant through cross-examination and perhaps
23 some witnesses on his own. The burden is not on the
24 defendant to prove self-defense. The burden is on the
25 State to prove that self-defense does not exist.

Pretrial Charge

113

1 So, ladies and gentlemen, listen carefully to the
2 evidence that is presented in connection with this trial.
3 You have to judge the credibility, the believability of
4 the witnesses who testify. You can believe part of what a
5 witness tells you and disregard the balance of that same
6 witness' testimony.

7 If you have a good and sound reason you can believe a
8 witness' testimony in its entirety or you may reject a
9 witness' testimony in its entirety. You have to determine
10 whether or not there maybe some bias or prejudice that
11 would affect a particular witness' testimony. You can
12 determine whether or not a witness' testimony is made more
13 believable, more credibility by other testimony and
14 evidence in the case or was it made less credible by other
15 testimony and evidence in the case.

16 Has their testimony been impeached here today by
17 other statements they made in connection with this case.
18 You can determine what is the demeanor or appearance of
19 the witnesses as they testify to you. Do they appear to
20 be open and forthright and hesitant and forward.

21 You can determine the reasonableness of their
22 testimony based upon their ability to see and hear and
23 perceive them. You can determine whether or not their
24 testimony makes any sense based upon your own good common
25 sense and your sense of logic and reason cause that's what

1 you're here for, ladies and gentlemen. You're here to
2 take the testimony that's present to you in the trial of
3 this case, weight it, to use you sense of logic, your
4 sense of reason, your experiences in life, and your good
5 common sense as you listen to the evidence that's being
6 presented in connection with the trial of the case to
7 determine what did happen.

8 Now, ladies and gentlemen, my job is to preside over
9 the trial of the case, to handle questions as to
10 inadmissibility of the evidence. I do not have any
11 opinion about what your factual findings should be. You
12 and you alone are the fact finders in this matter. You
13 have to determine, based on your view of the evidence
14 that's presented to you whether or not the State has met
15 it's burden of proof, proving guilt beyond a reasonable
16 doubt.

17 As I say that is the job for you and you alone.
18 Nobody can invade your province. Nobody can assume your
19 duty to make such factual findings as you feel are
20 supported by the evidence. So regardless of what I may
21 say or may do in connection with my rulings while the
22 trial is proceeding or even when I give you your jury
23 instructions please remember that I have no opinion about
24 the facts in this case because that's your job and your
25 job alone.

Pretrial Charge

115

1 Once all the evidence comes before you the attorneys
2 will then have a chance to address you again in their
3 closing remarks. They will talk with you about what they
4 believe has been established by the evidence, but, of
5 course, that's your responsibility again to determine what
6 is established by the evidence in the case.

7 Once the matter has been concluded then I will give
8 you your legal instructions and more detail as to the
9 charge of murder and as to the charge of possession of a
10 weapon during a crime of violence. And if you find that
11 the defendant has been proven guilty beyond a reasonable
12 doubt then murder would be a crime of violence.

13 Of course, you have to make that determination as
14 part of your other determination. There are two separate
15 charges. Each of these charges has got its own elements
16 to them. So, ladies and gentlemen, please listen
17 carefully because you're making two decisions.

18 Has the State proven murder. Has the State proven
19 possession of a weapon during the commission of a crime of
20 violence. This is the burden that is on the State, and as
21 I say I will discuss that in more detail with you once all
22 my legal instructions have been given to you. Then it
23 will be your time to begin your deliberations.

24 And at that point in time you will know all there is
25 no know about this case as far as this case is concerned

1 from the evidence that's been presented to you. Don't
2 make your decision on anything that happens outside the
3 courtroom setting. You make your decision based solely on
4 the evidence presented to you as jurors in the trial of
5 this case.

6 Now, ladies and gentlemen, as I indicated to you the
7 witnesses upon whom you will base your opinion as to what
8 has happened. The method by which the State meets its
9 burden of proof, these witnesses are placed under oath.
10 They are placed under oath and they take an oath where
11 they say they're going to tell you the truth about the
12 case.

13 Now, ladies and gentlemen, you also have an oath as a
14 trial jury. You have an oath where you promise to well
15 and truly try the case. You're going to listen to the
16 evidence and render a verdict that speaks the truth
17 between the State and this Defendant. Apply the law as I
18 give it to you to the facts as you find them.

19 And then, regardless of what your verdict maybe,
20 nobody will have a reason to fuss about it because you
21 will have in fact as jurors consciously listened to the
22 evidence in the case and have agreed and have listened
23 carefully to the law that you have said you will apply.

24 And that will be your responsibility. It's not an
25 easy job. It's a difficult job. As I told the entire

Colloquy

117

1 panel this is where the rubber meets the road. There is
2 where you're here and you participate in the judicial
3 system and make your determination. So listen carefully
4 be attentive, and at any point in time you're having
5 difficulty hearing or having difficulty concentrating, let
6 me know.

7 We can take a short break if you need to go to the
8 restroom, whatever the occasion maybe, because we need for
9 you to be attentive and to listen carefully to what is
10 taking place. So, ladies and gentlemen, if you will, if
11 you will please stand so the Clerk can administer your
12 oath to you.

13 (WHEREUPON, the jury panel was sworn in at 9:27 a.m.)

14 COLLOQUY

15 THE COURT: This is will be a good time for y'all to
16 leave without creating any disturbance. Ladies and
17 gentlemen, we're not having any secret discussions at this
18 time. What we're basically taking a look at this time in
19 that case like where witnesses have been sequestered.
20 That mean that the witnesses -- sometimes a witness comes
21 into the courtroom when that witness testifies and in your
22 presence. Otherwise, they are held so they don't sit and
23 listen to each other's testimony.

24 And so what the attorneys are doing now is discussing
25 the practicality of where these witnesses can be held and

1 so this is quite often. And what we'll do in a case like
2 this here, it takes between witnesses some few minutes to
3 move the next witness who is upstairs down to the
4 courtroom. If you will just take just a few moments
5 before they begin with their opening remarks.

6 Ladies and gentlemen of the jury, for purposes of
7 what you will see in the courtroom there will be the chief
8 investigating officer and the victim's wife. And, of
9 course, the defendant will be here. They will be
10 witnesses who will not be sequestered as representatives
11 of the respective agencies.

12 (WHEREUPON, the jury panel was excused from the
13 courtroom at 10:40 a.m.)

14 THE COURT: Mrs. Lear as advised me that she was
15 approached this morning by Caroline. She's now Milsey, I
16 think. She was Kink previously. She's Jury Number 86,
17 did not remember yesterday when the question was
18 presented, but she says that she, 14 years ago had been
19 accosted -- attacked by a mentally challenged student at
20 school. Nothing ever came of it and, quite frankly, had
21 to forgot about it and doesn't affect how she feels in
22 this matter.

23 Being conscience she wanted me to be aware of it, and
24 Miss Lear made me aware of it. And so I am making each of
25 you aware of it. Is there any further question the State

Colloquy

119

1 would like for me to make?

2 MR. JOYNER: No, sir.

3 THE COURT: Defense?

4 MR. QUINN: No, Your Honor.

5 THE COURT: All right. Thank you very much. Have we
6 got everything taken care of on sequestration?

7 MR. JOYNER: Yes, sir.

8 MR. QUINN: One question, Your Honor. Several
9 witnesses are on both witness lists, and I believe at
10 least would like to separate the Defense witnesses. I
11 don't think the State is going to object to that.

12 MR. JOYNER: I guess they can be separated.

13 THE COURT: She is being called by the State. She is
14 being called by the Defense. She is indicated that she
15 would prefer to sit with the Defense as opposed to sitting
16 with the State's witnesses?

17 MR. QUINN: I believe so, Your Honor. She's also a
18 codefendant, Sonta McCall.

19 MR. JOYNER: Yes, sir. She's our third witness.
20 We're calling those two as witnesses.

21 THE COURT: So she, likewise, is charged with murder
22 in connection with the death of Mr. Shields?

23 MR. JOYNER: Yes, sir.

24 MR. QUINN: Accessory before and after?

25 MR. JOYNER: I think. I believe.

1 THE COURT: She represented by counsel?

2 MR. JOYNER: Yes, sir, he's here, Mr. Ballard.

3 THE COURT: That's good. Will you let her say
4 anything?

5 MR. BALLARD: Yes, sir.

6 THE COURT: All right. Does the State have some feel
7 when Miss Cash might be called?

8 MR. JOYNER: She will be our second witness.

9 THE COURT: Second witness?

10 MR. JOYNER: Yes, sir. Again, the same situation
11 also with Iris Melton -- Gaston.

12 THE COURT: Miss Sellers, is there someplace in your
13 office where they can simply sit until they were needed?

14 CLERK OF COURT: They can sit in my office until
15 they're needed.

16 THE COURT: Let's sequester these two witnesses in
17 Miss Seller's office.

18 MR. QUINN: Sonta McCall, codefendant.

19 THE COURT: Are counsel for all these codefendants
20 present?

21 MR. JOYNER: Mr. Knox represents Iris Gaston. I
22 think Mr. Knox is over in his office right now, actually.

23 MR. QUINN: Pat Rivers represents Miss McCall.

24 MR. JOYNER: And Miss McCall should be represented as
25 well, Judge.

Colloquy

121

1 THE COURT: Well, all right. Mr. Ballard, you were
2 notified about the trial and your client was a potential
3 witness.

4 MR. BALLARD: Yes, sir.

5 THE COURT: Have you notified Ms. Rivers about her
6 client, a key defendant in this case?

7 MR. JOYNER: Yes, sir, she knows.

8 THE COURT: Does she plan on being here?

9 MR. JOYNER: I don't know. I know that I had tried
10 to schedule an interview with Miss McCall, but Ms. Rivers
11 decided she didn't want to and she knew we were going to
12 trial.

13 THE COURT: And Mr. Knox?

14 MR. JOYNER: He was here yesterday and I assume he's
15 over at his office right now because I spoke to him about
16 it. Yesterday, I did actually deliver subpoenas for
17 Miss Gaston and Mrs. Cash to their attorneys.

18 THE COURT: Well, let's put them together in separate
19 locations in Miss Seller's office and your first witness
20 is going to be whom?

21 MR. JOYNER: Mrs. Shields.

22 THE COURT: Best guess as to direct examination from
23 a time stand point?

24 MR. JOYNER: Judge, I would think it wouldn't take
25 more than 15 minutes.

1 THE COURT: All right. And she was not present at
2 the time?

3 MR. JOYNER: She was with him directly before.

4 THE COURT: Was she present. Okay, so you would have
5 some 30 minutes to an hour, perhaps?

6 MR. QUINN: She was there during the altercation at
7 the scene of the incident but not at the actual incident.

8 THE COURT: But we need to at some point prior to
9 these individuals being called to the stand notify their
10 attorneys and get their attorney over here and put
11 something on the record like I have Mr. Ballard noted as
12 being here and he is available to offer counsel to his
13 client in connection with her testimony.

14 And I have the same about for the record reflect that
15 at the time you get ready to try the codefendants that
16 they were here and they had counsel with them because that
17 in essence becomes a questioning by the State of witnesses
18 after they been notified of representation which would
19 cause you problems in prosecuting those defendants based
20 on anything they said on the stand to the extent that it
21 would be a violation of their rights. Mr. Ballard, do you
22 have any problem about just calling these people?

23 MR. BALLARD: I'm willing to discuss the matter with
24 my client. She's fully aware of her right to take the
25 stand and testify. We've gone over that in detail on a

Colloquy

123

1 number of occasions.

2 THE COURT: Would you mind call Mr. Knox and Ms.
3 Rivers and telling them that their clients will probably
4 but put up for examination in the morning?

5 MR. JOYNER: Judge, I'm sorry, Miss -- we're not
6 going to be calling Sonta McCall, and she won't be I
7 assume a witness for the Defense.

8 THE COURT: Mr. Knox's client?

9 MR. JOYNER: Yes, sir.

10 THE COURT: And just let Mr. Knox know his client
11 will probably be about the second person called in
12 connection with this matter just so he can have his client
13 come over and do that.

14 MR. JOYNER: And, Judge, I could put on the record,
15 I -- anything that the codefendants testify to I won't use
16 against them in a later trial if that would help move
17 things along. I mean I can grant immunity of what they
18 say today?

19 THE COURT: I'm still hesitant to do something where
20 the attorney for that particular individual hasn't had an
21 opportunity to be present and discuss that situation with
22 the client which we've got Mrs. Knox -- Mr. Knox and
23 Miss Rivers as the attorneys involved.

24 MR. JOYNER: Yes, sir. Well, Mr. Knox.

25 THE COURT: Ms. Rivers' client you're not calling?

1 MR. JOYNER: No, sir.

2 THE COURT: All right. State ready now? Tell me
3 again who they are.

4 MR. QUINN: Tonnette Cash.

5 THE COURT: Tonnette Cash in the courtroom.

6 MR. QUINN: Iris Gaston.

7 THE COURT: Iris Gaston in the courtroom.

8 MR. QUINN: And Sonta McCall.

9 THE COURT: Miss McCall, if you will go down to the
10 Clerk of Court's location and just find a seat in there
11 and we'll give your a call when he need you. Thank you,
12 Miss McCall. Bring me the jury.

13 (WHEREUPON, the jury panel enters the courtroom at
14 10:52 a.m.)

15 THE COURT: All right. Ladies and gentlemen of the
16 jury panel, I want you to know there are only four
17 assigned seats in connection with this. So however you
18 come in is fine. The alternates always sit down on the
19 end. The foreperson always sits in this chair.

20 I worked out a deal with Mr. Guest cause he's got
21 problems like I do sometimes with hearing. So he's
22 sitting there so he will be close as he can be to the
23 witness stand.

24 Counsel, as you are asking the questions if you will
25 please bear in mind that Mr. Guest and I need for you to

Opening Statement by Mr. Hales

125

1 speak a little bit louder so we can hear the questions
2 that are being asked and the responses. Thank you.
3 Mr. Joyner, you or Mr. Hales may open.

4 OPENING STATEMENT BY HALES

5 MR. HALES: Thank you, Your Honor. Good morning. My
6 name is Kevin Hales. I'm from Bennettsville, South
7 Carolina, and along with J.R. Joyner who is from Patrick,
8 South Carolina we're going to be representing the State of
9 South Carolina.

10 The defendant, Oscar Fortune, is charged with murder.
11 That's a very serious crime. Some people say it's the
12 most serious crime you can be charged with. We believe
13 after you've seen all the evidence in the case you will
14 come to the conclusion that Oscar Fortune murdered Anthony
15 Shields.

16 I'm setting the stage for you a little bit. I'm
17 going to take you back to 2001 right before Christmas.
18 There was a Christmas party at the Green Villa here in
19 Chesterfield County. It's on December 22nd, three days
20 before Christmas. At that party at the Green Villa was
21 Anthony Shields, who is the victim in this case, his wife,
22 Denise Shields, and a whole bunch of other people having a
23 good time.

24 Also at that party was a name you're going to hear
25 throughout the trial, Sonta McCall. Now, during the

1 course of the evening Sonta McCall, the defendant, Anthony
2 Shields, and his wife, Denise Shields, got in an argument
3 and a fight ensued out of the argument. People stepped
4 in and broke the fight up and broke the party up and
5 everybody left.

6 Some people went home. Some people went to the
7 Huddle House like an after party. Anthony Shields and his
8 wife went home. While they went home Anthony Shields
9 decided, hey, I need some cigarettes and some other
10 things. I'm going out for a little while.

11 Sonta McCall, when she left the party, decides she
12 needed to call somebody to come and help her out. Who did
13 she call? She called the defendant, Oscar Fortune. He
14 wasn't there at the party. He was at home.

15 She telephoned him. When he got the call the young
16 lady he was staying with, Tonnette Cash, gets in her car
17 and drives to the Huddle House to meet Sonta McCall and
18 find out what's going on.

19 While they're there at the Huddle House, they're
20 talking. Sonta McCall is telling him about how she got in
21 a fight. She got beat up and she got hit with bottle and
22 all these things. And then what do you know? There they
23 see Anthony Shields drive up. There he is. That's him.

24 So Tonnette Cash and Oscar Fortune pull their car up
25 near where Anthony Shields is. Oscar Fortune decides he's

Opening Statement by Mr. Hales

127

1 going to confront Anthony Shields. Before he gets out of
2 the car he gets one last thing. His .38 revolver. He
3 asks Tonnette Cash where is that gun you had. She tells
4 him it's in the console. He gets in the console, gets
5 that gun out and takes it with him to confront
6 Mr. Shields.

7 Now, Mr. Shields is sitting there is his car with the
8 driver's side door open. He's sitting in the driver's
9 seat with the driver's side door open, just sitting there.
10 Oscar Fortune approaches and stands in that doorway.
11 Mr. Shields is sitting in the driver seat. Exchange some
12 words, then shots are fired. Mr. Shields is hit.

13 Now, Mr. Shields, also at some point fired a shot.
14 But you know what his bullet was found in the floorboard.
15 Mr. Fortune's bullets ended up in Mr. Shields.
16 Mr. Shields then tries to get away, tries to escape and
17 climbs across the seat. Trying to exit out the passenger
18 side. Falls out.

19 What happens next? Mr. Fortune walks around the car
20 and fires some more shots. Then Mr. Fortune leaves. He
21 leaves the scene. Not only did he leave the scene, he
22 leaves the State. He goes to North Carolina. He comes
23 back the next day and turns himself in and also brings the
24 gun that was used to murder Anthony Shields.

25 In addition to all these facts you have witnesses

11 testify to all these fact. You also have witnesses who
12 are expert witnesses who will testify to thing they formed
13 their opinion on base on their expertise. And some of
14 those things are going to tell you are Anthony Shields was
15 shot at close range.

16 That Anthony Shields was shot five times. That
17 Anthony Shields was shot three times in the back. One of
18 those wounds on his back was a contact wound meaning that
19 someone placed the gun on his back and fired it. Also
20 they're going to tell you few bullets that were take from
21 Anthony Shields body's match the gun that Oscar Fortune
22 brought with him to the police when he turned himself in.

23 Ladies and gentlemen, I'm about to sit down and the
24 Defense is going to come up and give you their opening
25 statement, but before I do this is the last time the State
is going to have the opportunity to address you
personally. From now on you're going to get witnesses on
the stand testifying and then at the end we're going to
give you a closing statement or closing argument where we
address you again one more time personally.

21 But before I sit down I want to leave you with three
22 questions I want you to think about throughout the course
23 of this trial and like you to answer them.

24 The first is who confronted who at the Huddle House?
25 Who approached who? Who initiated this? That's the first

Opening Statement by Mr. Saleeby

129

1 question.

2 The second question I'd like you to answer is how
3 many times was each person shot? How many times was the
4 defendant shot? How many times was the victim shot?

5 The final question I want you to answer during the
6 course of this trial here is where in his body was Anthony
7 Shields shot? Meaning was he shot in the front? In the
8 back? In the side? Where in his body were the bullets?
9 Where did the bullets enter his body?

10 And if you answer those three questions the way we
11 believe you're going to answer these three questions
12 you're going to find Oscar Fortune guilty of murder. I
13 thank you for your time.

14 THE COURT: Mr. Saleeby.

15 OPENING STATEMENT BY MR. SALEEBY

16 MR. SALEEBY: Ladies and gentlemen of the jury. What
17 you just heard is the State's opening. Some call it
18 arguments. Some call it a statement. Others call it just
19 a rendition of their facts, their side of the facts. Make
20 no regard about it that we're here for a particular
21 purpose and that y'all are, too.

22 The Judge here, the Honorable John Milling, he is
23 here to try as he will tell you the facts. If I quote
24 through this case or Mr. Quinn, my associate, quotes
25 through the case any law that is different than what the

1 Judge says you take what the Judge says the law is, not
2 what I or the Solicitor says. He is the tryer of the law
3 as he has told you before.

4 If in our close or opening statement or our closing
5 argument. Now, I don't know why that started calling it a
6 closing argument. I'm certainly not going to argument
7 with y'all at that end of case. I'm going to present the
8 facts that have come out in the light most favorable to my
9 client, Oscar, just as will one of the Solicitors, I
10 assume, Mr. Joyner.

11 This is Mr. Quinn. This is Oscar Fortune. This is
12 my son back here. He's thinking about going to law
13 school. I'm trying to get him to go to medical school but
14 he won't do it. But make no mistake about it we're up
15 here in chesterfield County, and I'm sure my boy -- he's
16 Edward the Third. We call him Son. There are just, too
17 many Ed's around here. Ed, Sr. We call him Son. He'd
18 rather be down there in a little part of the county than
19 Chesterfield.

20 We've got a lot of people, lot of kin on him. We
21 call it Patrick out of Chesterfield Highway looking at
22 graveyard, the cemetery. Some of my relatives there feel
23 a common bond, but if there is one thing I know a little
24 bit of difference is that you here picked as 12 jurors.
25 There are 14 of you are here to do what the right thing

Opening Statement by Mr. Saleeby

131

1 is.. It's here for y'all 12 good common sense heads to put
2 your heads together in that back room after all the
3 evidence is in and after all the law that you've heard
4 from us and from the Judge and arrive at your opinion.

5 And that would be guilty or not guilty. And we said
6 it would be not guilty because we think -- we think and I
7 challenge you on this or I ask you to challenge this, to
8 prove our case not in the defense but in the State's case.

9 Oscar shouldn't be the one sitting here. I'm sorry.
10 He shouldn't be. I'm sorry for him. I'm sorry for his
11 family. Anthony Shields ought to be here and would be
12 sitting here had he hit Oscar first. Now, this case
13 started out in the Green Villa. Any of y'all been to the
14 Green Villa? I've been to the Green Villa.

15 You can get out there and dance on the floor. It's a
16 big dance floor and make you feel like you had too much to
17 drink because sometimes the floor sort of slopes. They
18 wash down at the bottom where they can take a hose and
19 just wash everything down.

20 Be like you feel a little something wrong here. I'm
21 not dancing quite right, but that's where they were having
22 a company party. And for whatever reason you know
23 Chesterfield County is known and I don't know why cause I
24 got a lot of family up here and a lot of lawyers say you
25 know Chesterfield County if you kill somebody in

1 Chesterfield County, you know, it didn't matter if
2 somebody fires at you a hundred times and your family.
3 They will convict you of murder. That's what the
4 reputation of the Chesterfield County jury is. Most
5 lawyers.

6 I don't believe that and I don't believe that of
7 y'all and if 14 are here. Cause as we will show and I
8 wrote this down. I didn't make this up. I don't have it
9 memorized, but I will quote it to you, okay, and keep this
10 in your mind, please, as you're very attentive now, and
11 I'll quote it to you again late.

12 "It would be an injustice for any criminal defendant
13 to be convicted on evidence that doesn't prove a criminal
14 charge beyond a reasonable doubt." And His Honor will
15 tell you what a reasonable doubt is. One reasonable
16 doubt. One reasonable doubt that will cause you as 12
17 good common head sense people to hesitate to act.

18 Now, what does hesitate to act mean? Ladies and
19 gentlemen, it means hesitate to convict. In other words
20 it means you're not absolutely sure. You've got that
21 little thing in you or in my case we're going to have a
22 lot to show you that I can't convict that man. He didn't
23 do it.

24 He -- yes, he did shoot. We're going to tell you he
25 shot. We'll admit that, but if you'd been shot at

Opening Statement by Mr. Saleeby

133

1 wouldn't you be shot at, too? Would you shoot, too? So I
2 finish on with this little quote here, it's an injustice
3 for any criminal defendant to be convicted on evidence
4 that doesn't prove a criminal charge beyond a reasonable
5 doubt. An injustice anywhere, and that includes here in
6 Chesterfield County, is an injustice anywhere in South
7 Carolina or anywhere else in the United States.

8 And if you're willing to tolerate an injustice here
9 today with Oscar you're willing to tolerate the same
10 injustice at any time, at any place. Where we work.
11 Where we live or with our own selves and our own people.
12 Think about that.

13 Now, the facts will show you that, yes, that at
14 twelve o'clock, one o'clock, two o'clock that morning,
15 late in the evening close to Christmas, office party. And
16 yes, Sonta McCall was there. And mind you she's involved
17 in this thing, too. And Iris Gaston was there. She will
18 be called as a witness. Guess who wasn't there? Well,
19 who else was there? Anthony Shields was there. Guess who
20 wasn't there? Oscar McCall [sic] wasn't there. He was in
21 bed.

22 Now, I've grown up around the Pee Dee and Darlington
23 and Chesterfield all around here, and I know one thing. I
24 know when I was a kid growing up, I'm talking about as
25 kids, when you fought it out you fought it out and the

1 best man, might be right or wrong, and you got up and
2 left. It ain't that way anymore. It's a tough world now.
3 We worry about our children, and in this case adults. Who
4 we didn't worry about anybody getting cut 30 years ago.
5 It did happen on occasion. We didn't worry about anybody
6 at school or getting shot over a fight because they lost,
7 did we. We do now, but we didn't then.

8 But there was also something else I was always taught
9 by my father, Ed Saleeby, Sr. and probably y'all by your
10 y'all's own father. Don't ever hit a woman. Don't care
11 how mad you are with them or what she's doing. Leave.
12 Get away. Cool off, but don't hit her. And that means
13 with your hand. It would be uncontroverted in our
14 challenging the Solicitor's Office.

15 We will show and I wish Anthony were here to talk to
16 you and I'm sorry for the family. I'm sorry for them, but
17 whatever the argument was about Oscar wasn't there at the
18 Green Villa. He was home in bed, and whatever the
19 argument was about, and you'll see both of those ladies,
20 it wasn't Oscar but it was Anthony Shields who hit Sonta
21 McCall in the head with be a beer bottle. Not his hand.
22 A beer bottle.

23 What you ladies think about that? What you gentlemen
24 think about that? Hitting a woman with a beer bottle no
25 matter how mad you are. Not good enough. This sounds

Opening Statement by Mr. Saleeby

135

1 like the old, as we will show you the facts are, the old
2 saloon days. He hit her with a dad gum chair. A man.
3 I'd be embarrassed to do that. I'd run looking like a dog
4 and get out the way and cool down. And all the while
5 where is Oscar? He's home. He's in the bed.

6 It might have been some mention earlier this fight
7 broke up peaceably. It didn't unless if you call the
8 bouncers and the managers and all that getting everybody
9 under control and closing the place down and everybody
10 sort of getting in at caravan and going on down the road
11 to the Huddle House.

12 And if we're all familiar with the Huddle House in
13 Cheraw. It's got a big parking lot cause a lot of tractor
14 trailer trucks park up there. And that's where this
15 happened. Y'all are probably familiar with it. It stays
16 open all night long. And so Sonta, who is Oscar's cousin,
17 being scared called him and told him about it. And we
18 don't know what Anthony said cause he's not here to tell
19 us or for us to ask him.

20 But something made Sonta, Iris and the rest of them
21 scared of him or mad at him or something. But we do know
22 this and as the Solicitor asked the witnesses they went to
23 the Huddle House and they were sitting there minding their
24 own business. And the facts will show you that Anthony --
25 and I'm sorry, folks, that he did this. And I feel for

1 the Shields' family. I really do. The lost of anybody.
2 It's a terrible thing, but Anthony goes and changes his
3 clothes and puts on a -- some kind of jump suit or work
4 clothes. And guess what? He comes back with a .25
5 automatic.

6 Now, Sonta -- Oscar, which is on trial right here
7 today. Here is Oscar. Got other trials later on about
8 other people. Today is just Oscar. He is sitting in the
9 car with Sonta -- excuse me, not Sonta. Sonta is there.
10 Sonta sees, as the facts will show, she's already there.
11 Sees Anthony Shields drive up. He knows they're there.
12 He goes to them.

13 Now, these are two women, he and Iris, that he goes
14 up to in his truck; that he's already hit in the head with
15 a beer bottom, and he already whammed with a chair. What
16 was he going to do next to them? I don't know.

17 But I know it wasn't going to be good. I wouldn't
18 think it would be good. So Sonta goes over to his truck
19 as the evidence will show and gives them the what for.
20 Cousin Oscar, fine, hard working man, who's been driven
21 there just because he had been called by her saying, "Man
22 just hit me in the head with a dad gum beer bottle."
23 About knocked her out.

24 Friend Iris got knock with the chair. Thank goodness
25 wasn't anything else around before the bouncer could get

Opening Statement by Mr. Saleeby

137

1 there. So he drives and they're like 60 70 people in the
2 parking lot. Most all from the party. Well, Oscar did
3 what I would have done. I have here in my pocket in my
4 wallet. A concealed weapons permit. I would have carried
5 my gun whether I had a permit or not. You go down to a
6 crowd common sense tells you, as the State will show
7 through their evidence, and there had been a fight going
8 on.

9 You take something to protect yourself with, don't
10 you, cause you don't know what might happen to you. How
11 many times we heard of somebody coming up and just a crowd
12 jumping on them or them getting shot? Or guess what, it
13 happens because Sonta, his cousin, who calls for just
14 relief for help, this is what was going to happen.

15 He came there. They were going to go home or either
16 to Bennettsville to get out of there. To get away, but
17 about that time Anthony had already driven by and seen
18 them there. He come back and pulled up, and you know it
19 all busted loose again. But they were going home.

20 So Oscar goes over to see what they're arguing about.
21 To protect his cousin which he's got the right to do. And
22 then, bam, a shot goes off. A shot, and we tend to prove,
23 by the deceased in this case, Anthony Shields. Now, once
24 who he was shotting at doesn't matter. Oscar tells you
25 they're pretty close together.

1 But the law as His Honor will tell you all and
2 y'all's common sense will tell you if you've got a gun on
3 you to protect you, and you're not bothering anybody and
4 somebody takes a shot at you, you've got the right to
5 shoot him back, don't you? Now, it's bad that that
6 happens. Are we supposed to just stand there and be shot?
7 Are we supposed to say, "Okay, Anthony, you shot one time
8 at us and then we're going to stand right here and see how
9 many more times you're going to shoot at us." That's not
10 what the law is.

11 That's not what we would do with common sense, is it.
12 If we didn't have anything we'd run like mad dogs. If we
13 did have a gun we would probably use it because a man
14 shooting at me, I feel he's trying to kill me or do me
15 serious bodily harm. So the facts will show that Oscar,
16 after being shot at shot Anthony Shields in self-defense.

17 And this is all in the parking lot at the Huddle
18 House. And His Honor, Judge Milling, will tell you that
19 that's a defense that once we show the State has to
20 totally disprove it just as if it was one of y'all.

21 Now you heard that old saying, and I think the
22 Australian that same to the United States? Fellow
23 pulls -- pulls out his knife about like that. Guy from
24 Australia pulls out -- this is the knife. It's about that
25 long. Well, he pulls out a gun. Gun is a gun. Oscar's

Opening Statement by Mr. Saleeby

139

1 just a little bit bigger. But when you pull out a weapon,
2 and our law has taught this, you better be ready to use
3 it. Because if you don't, and you better have a good
4 reason to use it, and the only reason you can use in
5 defense of your life or your person.

6 Because if you don't pull the trigger that person on
7 the other side over there he didn't know whether you're
8 going to pull the trigger or not. But clearly in this
9 case, am I right, we're going right there. The facts will
10 show this, common sense. The facts will show that when
11 Anthony popped that shot off, sorry, he missed. Thank
12 goodness.

13 What Oscar do? Fired on him. Went around and fired
14 on him some more because what will hurt you more than any
15 other kind of animal -- I'm not calling Anthony Shields an
16 animal. I'm talking about people that hunt some like we
17 hunt a lot down in our part. Like I hunted deer before.
18 What animal will hurt you more than anyone? A wounded
19 animal. A wounded animal.

20 So whether Oscar hit him three more times or four
21 more times, or five more times, the law will tell you we
22 have it. He's got the right to unload on him to make sure
23 he doesn't get shot at again. We see it time and time
24 again. We see it time and time again with law
25 enforcement. In real life. We see it on t.v. Somebody

1 is shot, but they ain't dead. They look like their dead,
2 but then they turn around and grab that gun and get that
3 last shot off and we dead.

4 So we've got the right to make sure we're protected.
5 Are we right on this? You follow me? This is what
6 happened in this case. If this is not what happened in
7 this case ask Mr. Fortune. Excuse me. Mr. Fortune will
8 tell you differently. Ask either one of the Solicitors.
9 They will tell you differently.

10 Now, that's basically what happened. A bad fight for
11 whatever silly or stupid reason. Alcohol probably
12 involved at Green Villa. Oscar in the bed. In the bed,
13 mind you, asleep. Asleep. Cousin calls and says, "I'm
14 scared. Come down here and tell me what to do. I'm at
15 the crowd down at the Huddle House."

16 You know how many down at the Huddle House?
17 Somewhere between 60 or 70. Officer Haney crowd the place
18 up as he should and according to him he got -- he talked
19 with all 60 something up to 70, and there weren't about
20 but three or four of them like on t.v. being down in the
21 Bronx or in Manhattan in the City. You see what happened?
22 No, I ain't see anything.

23 The vast majority would of stated they didn't see it.
24 They saw what happened. The State wishes they were here.
25 They know what happened. So that's Number Three. Number

Opening Statement by Mr. Saleeby

141

1 Four is Sonta was there. Oscar came. They were getting
2 ready to leave. whether Sonta was hot and went over there
3 and wanted to argue some more with Anthony. And I guess I
4 probably want to argue with a man that had hit me in the
5 head with a bottle, too, for a moment particularly if I
6 was a woman.

7 I'd be embarrassed for anybody to know if I hit a
8 woman with my hand, but a beer bottle, and the State will
9 show in their case and they can't deny it and then another
10 lady with a chair. And so they're trying to and did --
11 this is key. I wish you were here. And if he were here
12 we wouldn't have to be here. Maybe Oscar or maybe Sonta
13 wouldn't be here.

14 Anthony Shields didn't have to drive back up in the
15 crowds in that Huddle House parking lot. He could have
16 kept going right down the road, but did he do that? No.
17 He pulled up shooting. And, yes, he shot first, and, yes,
18 did he shoot him several times? I think he already knows
19 what they will show.

20 But if somebody shoots me I'm not going to shot them
21 in the kneecap. I ain't that good a shot to take a chance
22 that he's going to not shoot me again. If I could shoot
23 the gun out of his hand, if I was that good, but I'm not
24 that good of a shot. And I'm going to tell you that once
25 you start shooting you can do what you need to do to make

1 sure that you don't get shot.

2 And then, then enters Vincent Davis, y'all. And look
3 at this. Vincent Davis will be here before y'all. And as
4 the State will show admit as we will Vincent Davis takes
5 the .25 caliber gun out of the driver's floorboard where
6 Anthony was and takes it out of his truck, Anthony's
7 truck and takes it home with him. He's not sitting out
8 there or I'd look at him.

9 When he sitting on the stand ask yourselves this. If
10 you do one thing to say, "Mr. Vincent Davis, if you're
11 good friend, Anthony Shields, wasn't at fault why did you
12 take that gun from the scene and keep it at your house for
13 a week? And why did it take Officer Johnny Quick a week,
14 and he had to go get from you at your house or wherever.

15 Folks, if we hadn't done anything wrong why should we
16 hide something. You know I didn't make this up, but
17 somebody told me a long time ago it's not the oath but it
18 should be. It should be. The old days a person's word
19 was worth a lot more than it is now. And the handshake
20 was good enough. Not anymore now.

21 A hand on the bible used to be good enough. It's not
22 the oath that makes you believe the person on that witness
23 stand right here. It's the way the person reacts or
24 doesn't react or is hesitant or is recalcitrant or get
25 squirmy when I ask a question it makes you believe whether

Opening Statement by Mr. Saleeby

143

1 they're telling the truth.

2 If they're not telling the truth we just all
3 naturally get jiggly and wiggly and think of the answers.
4 But you know what speaks if you tell the truth the one
5 time, the first time, you don't have to lie and you can
6 tell the same story every dog gone time.

7 If you tell the lie the first time you're going to
8 tell another lie to cover it up the second time and the
9 third time you've got to tell another lie like that time.
10 And by the fourth or fifth time you've got -- you've got
11 lies all mixed up. And that's what's going to happen here
12 today and tomorrow.

13 And so, Anthony, he's dead. We guess he's dead.
14 He's been shot a bunch of times. But if he hadn't been
15 dead either our man, Oscar, over here would have been dead
16 or Sonta would have been dead. Twenty-five caliber, it
17 doesn't matter what kind of gun you've got, .25 caliber is
18 one of the most dangerous guns in the world. Know why?

19 It goes in, but it doesn't have enough to come out.
20 Hit a bone and it goes, zoom. Hit another bone. Goes
21 zoom. That way it just tears up your insides and it go
22 round and round tearing up vital organs. It doesn't come
23 out.

24 So what are you using? We will show you where he
25 fired. We will show you where he fired first. We will

1 show you where Oscar was minding his business sitting
2 there in the parking lot getting ready to leave with
3 Sonta. We will show you that he did leave after the
4 shooting for about a 12 hour period of time. But then we
5 will show you the honest man that he is that he came back
6 to the city police station in Cheraw, turn himself in with
7 the gun and with the spent cartridge. Hasn't changed a
8 thing about it. Does that sound like somebody that's got
9 something to hide?

10 Yeah, he left. He was scared, and yeah, there were
11 60, 70 people out there who -- Lord knows how many of them
12 had guns with what was going on. He got the dog out of
13 Dodge and he came back to the police station where he was
14 safe and gave a statement.

15 We will show y'all that. He acted in self-defense,
16 and I'm sorry that he had to. I'm sorry that it couldn't
17 have been a peaceable resolution that whatever the
18 argument was. I'm sorry that at Green Villa it got so hot
19 where Oscar wasn't even at that he wasn't fist fighting
20 and all just going on. There was beer hitting the head
21 and there were chairs flying around up against women heads
22 by men and on and on.

23 I'm sorry about all that. I'm sorry that when Oscar
24 got out of bed cause his cousin called him; that he went
25 there to get her and get her away from that area. I'm

Opening Statement by Mr. Saleeby

145

1 sorry that he didn't get out of there before Anthony got
2 there with the gun. I'm so sorry Sonta went up to the
3 window and an argument got started. I'm sorry, but he had
4 the right to have that gun on him. He's not charged with
5 having that gun on him. He's charged with having a gun
6 during a violent crime.

7 But you don't take a knife to a gun fight. All he
8 wanted to do is protect himself from all these people.
9 I'm sorry about all that and I'm sorry that Anthony, of
10 most of all, I'm sorry Anthony didn't wish he hadn't fired
11 that first shot. If he hadn't fired that first shot or
12 had that pistol, we wouldn't be here today. Be some more
13 fussing and fighting, probably.

14 Big as Oscar is he could have gotten Sonta away,
15 gotten in the car and gotten out of there. Now, ladies
16 and gentlemen of the jury, in closing up this opening
17 statement to you these are the facts. Remember the State
18 has to show Oscar guilty, and until and unless they can
19 beyond a single, that's one, obviously, reasonable doubt.

20 And for those of us who watch Perry Mason or used to
21 remember the lady of justice, she had on an blinders. Had
22 the scale here. Clothe around her eyes and the State must
23 prove the case. We just have to show that scale tip like
24 that with one reasonable doubt. I'll show you in our
25 closing the weight will be that heavy in our favor, in

1 Oscar's favor.

2 And what was right and when you come out and you hear
3 all the evidence and the law you will be asked to give you
4 verdict. And the jury's verdict will be not guilty or
5 guilty. And the verdict means, that's a Latin term, verus
6 dictum, to speak the truth. It's for 12 of y'all. After
7 you deliberate, talk about it, hash it around in the back
8 room, to figure out what happened.

9 We're going to make it right simple for you. Had not
10 the gun been there, sorry. Had not the beer bottle went
11 up against the lady's head, I'm sorry. Had there not been
12 chairs up against women, whether the women was right or
13 wrong, I'm sorry. Needs cousin to come help her, get her
14 out of there. Get her out of Green Villa. That were
15 getting ready to leave. Wish they had but couldn't.

16 I'm sorry that Sonta went over there and the argument
17 between her and Anthony. Again, I'm sorry. Oscar's
18 sorry. But I'm the most sorriest of all that Anthony shot
19 that first shot. Because it escalated from the bottle to
20 a chair to where she didn't have to go to the Huddle House
21 to where he shot first. And that ain't right.

22 And if that's right in the Chesterfield County where
23 I've got friends. I've got people with homes up here.
24 Not on the lake. Lake Houston Hunting Farm when I get
25 breaks. It ain't right where y'all live. It ain't right

Opening Statement by Mr. Saleeby

147

1 in your backyard. It ain't right at your school. It
2 ain't right at your job. And I'm sure the facts will show
3 you that Oscar Fortune is not guilty beyond many, many
4 reasonable doubts.

5 Now I know I tend to be long winded. I apologize,
6 but I'm passionate about my cases. I don't take many
7 cases. Probably don't make more on those cases than I do
8 taking this. I believe in this case of this man. I
9 believe that he's right.

10 And of all the people that were in the jury that knew
11 Anthony Shields and seen this or knew that and all that
12 some of y'all in there I know in my heart that y'all will
13 do the right thing because you shall be speaking for
14 Chesterfield County.

15 And at the end, after the State puts up their
16 evidence, we'll put up ours. We'll give our statements
17 again. The Judge will give you the law, and I know that
18 you 12 fine, good people that you; that you 12 fine, good
19 people from Mr. Hatchel -- that's the only time I will
20 refer to you by name is foreman -- foreperson, will do the
21 right thing. Do what you do want done with you.

22 And I thank you for your attention. We'll try to
23 move this case along as fast as we can and sometimes I'll
24 be here. Sometimes I'll not. I apologize. I've got two
25 steel hips. I was cursed with bad knees. I've got to get

1 both of these knees replaced, and the Judge is going to
2 let me get some shots. If I have to leave I apologize.
3 I'm here for Oscar. I'm here for y'all. I'm here for
4 Chesterfield County. I'm here to make the statement and
5 for y'all the make the statement you don't slap women.
6 You don't hit women in the head with beer bottles. You
7 don't beat them with chairs, and you don't go to where
8 they are and pull out a gun and shoot. We don't do that
9 in Chesterfield County.

10 At least if you do do it it's the wrong thing to do,
11 and Oscar Fortune did the right thing. He kept himself
12 from getting killed. He kept Sonta from getting killed,
13 and we will show you that at the end. Thank y'all very,
14 very much for your attention. We'll try to move as fast
15 as we can I said. I know you will be attentive. I've
16 watched.

17 Sometimes things get at little slow but we'll try to
18 make it interesting but factual for you. And again I
19 appreciate your time for Oscar. I appreciate your time
20 for his family. I appreciate y'all's time for
21 Chesterfield County. And I thank you very much for your
22 attention. We'll be talking to you later on. Thank you.

23 COLLOQUY

24 THE COURT: Mr. Knox, let me talk to you a minute.
25

Colloquy

149

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 THE COURT: Thank you, ladies and gentlemen. The
5 first witness may take an hour to an hour and a half. If
6 y'all would like to take a brief recess before we begin
7 the testimony I will allow you to do so. If you're
8 prepared to go forward it's about an hour. You've been
9 sitting for about an hour, hour 15 minutes. I will allow
10 that or take a break?

11 JURY FOREPERSON: Break.

12 THE COURT: Okay. We'll be in recess about ten
13 minutes and then we'll begin with the first witness.
14 Thank you very much.

15 .
16 (WHEREUPON, the jury panel was excused from the
17 courtroom at 10:47 a.m.)

18 (WHEREUPON, the Court is in recess at 10:47 a.m. and
19 reconvenes at 10:55 a.m.)

20 THE COURT: All right. The State has sequestered its
21 witnesses?

22 MR. JOYNER: Yes, sir.

23 THE COURT: Defense sequestered its witnesses?

24 MR. QUINN: Yes, sir.

25 THE COURT: Each side double check that we don't have

1 anybody that's a witness or improperly in here. All
2 right. If you will bring us the jury.

3 (WHEREUPON, the jury panel enters the courtroom at
4 10:56 a.m.)

5 THE COURT: State may call it's first witness.

6 MR. JOYNER: The State could like to call Denise
7 Shields.

8 THE COURT: Mrs. Shields, come around.

9 DENISE SHIELDS, after being duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JOYNER:

13 Q. Good morning, Mrs. Shields.

14 A. Good morning.

15 Q. I'm going to ask you to pull the microphone so that
16 everybody on the front -- so the jury can hear you. Would
17 you state your full name?

18 A. Denise Shields.

19 Q. And how old are you, Mrs. Shields?

20 A. I'm 34.

21 Q. Where do you live?

22 A. [REDACTED]

23 Q. And where do you work?

24 A. I'm a social worker through the Triple A Agent
25 Lieutenant Governor's Office on Aging.

1 Q. I'm going to ask you something about Anthony. What
2 was your relationship with Anthony?

3 A. We had a regular relationship. Been together 10
4 years. We had been married for three and we had two
5 children.

6 Q. What are their names?

7 A. [REDACTED]

8 Q. How old are they?

9 A. At the time of his death they were 11 and nine. Now
10 their 16 and 10. She'll be ten in two weeks.

11 Q. You said you guys were together for a total of ten
12 years?

13 A. Um hum.

14 Q. Let me ask you this. How tall is Anthony?

15 A. He's about 5'8", about 135, 40 pounds.

16 Q. Okay. I want to take you back to December the 23rd.
17 Well, actually December 22nd into the night of December
18 23rd or the morning of December 23rd of 2001. Do you
19 remember where you were that night?

20 A. Yes.

21 Q. Where were you?

22 A. We had been to a Christmas party at Green Villa which
23 Anthony and I attended the party probably three or four
24 years that they had that party.

25 Q. And Anthony was with you?

1 A. Yes.

2 Q. Miss Shields, what was Anthony wearing that night?

3 A. Black slacks, off white shirt and a black jacket.

4 Q. Okay. While you were at the party did anything
5 unusual happen?

6 A. Yes, well, while we were there I mean we sat around
7 and talked to friends and after, as we got ready to leave,
8 that's when Sonta approached me.

9 Q. What did she say?

10 A. She made a comment that she had seen me at McDonalds
11 like a week so or before then. I was there to attend a
12 friend's birthday party. She said I made some remark or
13 smirked at her or something to that nature.

14 Q. Okay. Did any other kind of altercation arise out of
15 her confrontation with you?

16 A. She starting saying things to me and then Anthony
17 came and he was asking what was going on. And he grabbed
18 my hand, and that's when she pushed me. When I turned
19 back around she like hit me like by the side of my ear and
20 she and I got into an altercation.

21 Q. Okay. What was Anthony's participation?

22 A. By this time other friends that we were with got up
23 as well and they were trying to separate Anthony and my
24 friend's husband as well as trying to separate us.

25 Q. Did Anthony ever hit anybody?

Denise Shields - Direct by Mr. Joyner

153.

1 A. No.

2 Q. Mr. Saleeby said a lot about beer bottles in his
3 opening statement. Did the Green Villa serve beer?

4 A. They may have had beer that night but it was not like
5 the Green Villa's party. It was sponsored by a company so
6 we were not allowed to drink out of beer bottles.

7 Whatever the bartender was there are no bottles other
8 than them being poured by the bartender. They did not
9 leave from that area.

10 Q. What were people drinking out of?

11 A. Just different alcoholic coolers and wine.

12 Q. What type of containers were people drinking from.

13 A. A cup. They'd pour like a plastic cup. That's how
14 you were served your drink.

15 Q. I see. I want to go back to the argument you were
16 talking about. How long after the argument did you guys
17 leave?

18 A. We waited cause the owner of the Green Villa she came
19 and got us, and she put Anthony and a separate room cause
20 she told us she didn't want anything to be getting out of
21 hand. So she put us in separate rooms and we waited until
22 everyone else had left and then she got Sonta and I guess
23 the rest of the persons had left.

24 And she made us stay in that particular area until
25 she could make sure that they had gone and then I think

1 the guy helping with security I think he came back and
2 said she was gone. That's when Anthony and I left.

3 Q. And when y'all left where did you go?

4 A. Left and went home.

5 Q. And where did you live at the time?

6 A. At the same location [REDACTED]

7 Q. Okay. What did Anthony do when he got home?

8 A. He and I talked for a few minutes. He was like,
9 well, you know, baby, I'm not going to let this ruin your
10 night. That shouldn't have happened. We're going to make
11 the best of what we have left of the night. And so he
12 changed his clothes and said I'm going to the store and
13 get me some cigarettes and I'm be right back.

14 Q. Okay. Do you remember what he changed into?

15 A. Some green overalls and I think like a tee shirt and
16 work boots.

17 Q. Mrs. Shields, sorry I have to ask you and put you
18 through this. Again, I'm showing you what's been marked
19 for identification purposes as State's Exhibit 12. Do you
20 recognize these?

21 A. Yes.

22 Q. Will you explain what that are?

23 A. Those a Anthony's overalls. He always worm them
24 cause he was a mechanic. So he just always had overalls
25 on most times when he wasn't dressed.

Denise Shields - Direct by Mr. Joyner

155

1 Q. Are they basically in the same condition now as they
2 were then? I'm sorry, Mrs. Shields. Are these basically
3 in the same condition now as they were when he was wearing
4 them?

5 A. Yes, except those holes in them. There were no holes
6 in them, but, yeah.

7 Q. Okay. Thank you.

8 MR. JOYNER: Judge, I would move that State's Exhibit
9 12 be entered in evidence at this time.

10 MR. QUINN: Without objection.

11 THE COURT: Without objection.

12 MR. JOYNER: Thank you, Judge.

13 (WHEREUPON, State's Exhibit No. 12 was admitted into
14 evidence.)

15 BY MR. JOYNER:

16 Q. And, again, Mrs. Shields, when Anthony -- you said he
17 came home and changed into the coveralls. Did he have --
18 did he wear anything else other than the coveralls?

19 A. He may have on a tee shirt on him and like I said
20 more likely his boots. He always wore his boots.

21 MR. QUINN: Your Honor, may we approach?

22 (WHEREUPON, a bench conference was held off the
23 record in the presence of the jury, but out of the
24 hearing of the jury.)

25 THE COURT: That exhibit number is in at this point

1 in time, Mr. Joyner?

2 MR. JOYNER: Move that State's Exhibit 11 be entered
3 into evidence?

4 THE COURT: That would be the shirt that had been
5 removed from the decedent along the coveralls he was
6 wearing at the time?

7 MR. JOYNER: Yes, sir. Yes, sir, that's correct.

8 THE COURT: Any objection?

9 MR. QUINN: No objection.

10 (WHEREUPON, State's Exhibit No. 11 was admitted into
11 evidence.)

12 THE COURT: Ladies and gentlemen, the Defense has
13 agreed that the green coveralls, State's 11, and the
14 shirt -- green coverall, State's 12, and the tee shirt,
15 State's 11, are those items that were being worn by
16 Mr. Anthony Shields at the time of this incident
17 occurring.

18 MR. JOYNER: Thank you, Judge.

19 BY MR. JOYNER:

20 Q. Mrs. Shields, after Anthony changed and went, when he
21 left do you remember what time he left, approximately?

22 A. Gosh, I guess it had to be between 2:00 and 3:00. I
23 can't exactly remember the exact time.

24 Q. Okay. And did you see Anthony again in between those
25 times?

1 A. From the time he left?

2 Q. Yes, ma'am. When did you first find out? What was
3 your first knowledge that something had happened?

4 A. Someone had gotten his cell phone and was trying to
5 call me, and I thought it was him and I -- by the time I
6 got to the phone they hung up. I kept calling the phone
7 back but I couldn't get Anthony. And so then I got a bad
8 feeling because it didn't matter what time I called
9 Anthony on that cell phone he's going to answer the phone.

10 So I hung up again and the phone rang again. It was
11 his phone, and so when I answered the phone it was someone
12 at the Huddle House and they told me exactly -- told me
13 Anthony was shot and said he was hurt and I needed to get
14 there.

15 Q. Okay. Mrs. Shields, one moment. Mrs. Shields, thank
16 you. Answer any questions the Defense attorney has for
17 you.

18 CROSS-EXAMINATION

19 BY MR. QUINN:

20 Q. Good morning, Mrs. Shields. You testified earlier I
21 believe that Anthony did not hit Sonta McCall in the face
22 with a beer bottle?

23 A. No, sir.

24 Q. What did she hit her with?

25 A. I didn't see Anthony or Sonta have any contact

1 whatsoever cause Anthony was trying -- there were too many
2 people there and he was mostly trying to get us away from
3 the situation because I didn't know who else was in that
4 crown that might try to hurt us. I don't know where the
5 beer bottle -- there was no bottle inside that club.

6 Q. There were no beer bottles. How do you know that?

7 A. Because they were serving drinks in cups.

8 Q. But somebody could have brought a beer bottle from
9 the outside or any kind of bottle?

10 A. I mean the could have.

11 Q. Could have?

12 A. But I don't see how they would have been able to stay
13 in there.

14 Q. You said people were serving wine?

15 A. I think so.

16 Q. What were they serving it out of?

17 A. The bartender was the one serving the drinks. It
18 wasn't like you buy your own bottle. They were pouring
19 the drink in cups.

20 Q. At any point did you see your husband hit Iris Gaston
21 with a chair or a stool?

22 A. No, actually I was the one that picked up the chair.

23 Q. You said that after Anthony dropped you off at your
24 house he was going to buy cigarettes?

25 A. Um hum.

Denise Shields - Cross by Mr. Quinn

159

- 1 Q. What store did he say he was going to?
- 2 A. He usually got to Quick Fill.
- 3 Q. Where is that?
- 4 A. Right in town.
- 5 Q. Okay. Did he have to pass the Huddle House to go get
- 6 cigarettes?
- 7 A. No, he does not got.
- 8 Q. Okay. So do you have any idea why he went to the
- 9 Huddle House?
- 10 A. No, I do not.
- 11 Q. Are you familiar with guns?
- 12 A. Yes.
- 13 Q. Okay. You know the difference between a revolver and
- 14 an automatic weapon?
- 15 A. No, I do not.
- 16 Q. You don't. Okay. Have you ever fired a gun?
- 17 A. No, I have not.
- 18 Q. Do you know if your husband, Anthony, ever fired a
- 19 gun before that night?
- 20 A. No, I do not.
- 21 Q. Do you like guns in your house?
- 22 A. No, we don't have guns in our house.
- 23 Q. You don't. Have you ever seen a .25 caliber pistol
- 24 used by your husband?
- 25 A. No.

1 Q. You've never seen it in your home?

2 A. No.

3 Q. Okay. Obviously, he didn't leave your house with
4 that gun?

5 A. I don't know.

6 Q. You don't know, but you've never seen it in your
7 house. If it had been in your home you think you would
8 have seen it?

9 A. Might have. Anthony has his things. I had mine, so.

10 Q. Okay. You're saying that -- you're testifying that
11 Anthony did strike either Sonta McCall or Iris Gaston on
12 this night?

13 A. No, he did not.

14 Q. At any other time had he gotten into a fight over you
15 in the past?

16 A. No.

17 Q. Never. Okay, this is the first time. You say it
18 didn't happen?

19 A. That's right.

20 Q. All right. You said you and Sonta McCall, there was
21 something that happened at the McDonalds before this
22 happen?

23 A. Yes.

24 Q. Is that the only time y'all had had words or an
25 altercation that night?

1 A. Exactly.

2 Q. Never happened before?

3 A. No.

4 Q. Okay. Have you been in any altercations with Sonta
5 McCall or Iris Gaston or Tonnette Cash before this day?

6 A. No, sir.

7 Q. Were you in Rockingham, North Carolina on August 4,
8 2002?

9 A. Yes, sir, I was.

10 Q. Did you have a verbal altercation with Tonnette Cash
11 in a mall?

12 A. We were in a particular store. She saw me come into
13 that particular store. She came up next to me like trying
14 to ridicule me, and then I made the comment of you know I
15 told her that I didn't think like it was right that she
16 called herself trying to be funny.

17 And after they left out that particular store and I
18 went to Belks that's when they all approached me and she
19 made it seem like I came up to her when I wasn't even that
20 nowhere.

21 Q. Okay. In fact you told Tonnette on than day that she
22 was going to burn in hell?

23 A. I did not. I told her that I hope that every time
24 she closes her eyes to go to sleep she saw Anthony's face.

25 MR. QUINN: I would like to have this mark as a

1 Defense exhibit.

2 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
3 identification only.)

4 MR. JOYNER: Judge, I would object to this. I've
5 never been given that I gave him in my Rule Five request.

6 THE COURT: I assume it's some kind of incident
7 report?

8 MR. JOYNER: Yes, sir. I object that no notice of
9 that or ever given a copy. I didn't have any knowledge
10 that the exhibit existed until now and I requested Rule
11 Five months and months ago?

12 THE COURT: All right. I'll sustain the objection.
13 It appears to be something similar on collateral matter.

14 BY MR. QUINN:

15 Q. Okay. You do have knowledge that the police were
16 called about to an altercation at Rockingham, North
17 Carolina?

18 A. It wasn't an altercation. I said some things and she
19 said some things.

20 Q. But the police were called?

21 A. Yes, sir.

22 Q. So you have been in an altercation with Tonnette Cash
23 since this happened?

24 A. It was just words exchanged. There wasn't any
25 touching or anything like that. Like I said she actually

Denise Shields - Cross by Mr. Quinn

163

1 approached me, but I felt like once I got back to
2 Chesterfield County I was going to contact the authorities
3 once I explained to the police what had happened she would
4 be advised not to contact me, and if she saw me anymore
5 that day she was to go and leave out the store.

6 Q. Did you contact the authorities when you got back?

7 A. Yes, I contacted Jay Hodge at the Solicitor's Office.
8 She did.

9 Q. Did you contact the police?

10 A. No, I didn't see a need to contact the police. It
11 really wasn't that serious.

12 Q. Okay. Now, the store that Anthony was going to buy
13 cigarettes was that north or south of U.S. One of the
14 Huddle House?

15 A. I'm not that familiar. I think like up Number Nine
16 near the apartments.

17 Q. If you're going down U.S. One you live south?

18 A. Okay.

19 Q. From the Huddle House?

20 A. Um hum.

21 Q. Is that store between your house and the Huddle House
22 or before the Huddle House?

23 A. Before you get to the Huddle House.

24 Q. Thank you.

25 MR. QUINN: That's all I have.

1 THE COURT: Any redirect?

2 MR. JOYNER: No, sir.

3 THE COURT: Thank you, ma'am. You may step down.

4 MR. HALES: State call Iris Gaston.

5 IRIS GASTON, after being duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. HALES:

9 Q. Please state your full name for the record.

10 A. Iris Gaston.

11 Q. Where do you live, Miss Gaston?

12 A. [REDACTED]

13 Q. Okay. Do you know the defendant, Oscar Fortune?

14 A. Yes.

15 Q. Okay. Do you know Sonta McCall?

16 A. Yes.

17 Q. Are they friends of yours?

18 A. Um hum.

19 Q. Okay. I'm taking you back to December 22nd into the
20 morning of December 23rd 2001.

21 A. Okay.

22 Q. Do you remember where you were?

23 A. Yes.

24 Q. Where were you?

25 A. The early part of the night at the Green Villa.

Iris Gaston - Direct by Mr. Hales

165

- 1 Q. At the Green Villa?
- 2 A. Um hum.
- 3 Q. Why were you at the Green Villa?
- 4 A. A Christmas party.
- 5 Q. Christmas party?
- 6 A. Um hm.
- 7 Q. Anything happen at the Green Villa?
- 8 A. A fight broke out.
- 9 Q. Involving who?
- 10 A. Denise Shields and Sonta McCall.
- 11 Q. Okay. So it was Denise Shields and Sonta McCall that
- 12 got in the fight?
- 13 A. Um hum.
- 14 Q. When that fight broken up ---
- 15 A. Yes.
- 16 Q. --- what happened then?
- 17 A. I got Sonta in the car. We left. We went to the
- 18 Huddle House.
- 19 Q. Okay. So you drove?
- 20 A. Yes.
- 21 Q. Okay. Lot of people go to the Huddle House?
- 22 A. There was a lot of people already there.
- 23 Q. Okay. What did you do when you got to the Huddle
- 24 House?
- 25 A. First, we circled through, left, came back later and

1 went on inside. I was looking for someone, but he wasn't
2 there, so we came back out. Oscar came ---

3 Q. Okay. Oscar came. He just showed up? Is there a
4 reason he came?

5 A. Sonta talked to him the earlier part of the night.

6 Q. Okay. When he came did he find y'all?

7 A. He was -- we was in the Huddle House.

8 Q. What happened next?

9 A. We went outside. Sonta approach Anthony's truck.
10 Then Oscar approached Anthony's truck. They exchanged
11 words and gunshots and that was it.

12 Q. Okay. You said Sonta approached Anthony's truck?

13 A. Yes.

14 Q. On foot or drive over?

15 A. She walked on foot.

16 Q. When you said Oscar approached Anthony's truck ---

17 A. Yep.

18 Q. --- there after Sonta?

19 A. Yes.

20 Q. And how did he get there?

21 A. How did he get to the Huddle House?

22 Q. To the truck?

23 A. He walked.

24 Q. He walked?

25 A. Um hum.

Iris Gaston - Direct by Mr. Hales

167

1 Q. What happened when the shots were fired? What did
2 you do?

3 A. I went down by my car.

4 Q. Take cover?

5 A. Yes.

6 Q. Okay. Shots were fired?

7 A. Yeah.

8 Q. Did you duck?

9 A. No, I actually stood on the outside of my car.

10 Q. Did you see anything?

11 A. Everybody running. That's it.

12 Q. Everybody running. That's it?

13 A. That's it.

14 Q. Okay. What happened after the shots were fired?

15 A. Meaning?

16 Q. Meaning did you stick around?

17 A. Yes. Stayed and waited on Sonta.

18 Q. Okay. Did Sonta find you?

19 A. No, she wasn't there.

20 Q. Wasn't there?

21 A. Um hum.

22 Q. So what did you do then?

23 A. I went looking for her.

24 Q. Okay. Did you find her?

25 A. She called my cell phone and told me to meet her on

1 Market Street.

2 Q. Did you do that?

3 A. Yep.

4 Q. Okay. Well, what you do then?

5 A. We went back to Tonnette and Oscar's house.

6 Q. Were they there?

7 A. No.

8 Q. Okay. What did you do after you went to their house?

9 A. We sat there and waited on Tonnette. She came. We

10 left. We were getting ready to leave.

11 Q. You were getting ready to leave when she showed up?

12 A. Yeah.

13 Q. Was anybody with her?

14 A. No.

15 Q. What happened next?

16 A. We went on the inside. We talked. Then she later

17 went to Bennettsville.

18 Q. Okay. So you left Tonnette's house?

19 A. Um hum.

20 Q. And went directly to Bennettsville?

21 A. Um hum.

22 Q. Why you go to Bennettsville?

23 A. I had to take Sonta home.

24 Q. What happened after you took Sonta home when you got

25 to Bennettsville?

Iris Gaston - Direct by Mr. Hales

169

1 A. Much of nothing. Police officers called and wanted
2 to talk to Sonta. I mean we was just at her house. That
3 was it.

4 Q. Okay. Did you leave? What time did you leave
5 Sonta's house?

6 A. I left about maybe about one.

7 Q. Where did you go?

8 A. I went back home. So I heard the police wanted to
9 talk to me. So I went home to wait for hem.

10 Q. You went to your house?

11 A. Um hum.

12 Q. What happened next?

13 A. They came and arrested me and went to the police
14 department.

15 Q. Okay. They arrested you and you went to the police
16 department. What did you do when you got to the police
17 department?

18 A. Answer questions. Wrote my statement.

19 Q. You wrote a statement?

20 A. Um hum. Yes.

21 MR. HALES: Beg the Court's indulgence.

22 THE COURT: All right.

23 BY MR. HALES:

24 Q. You did write a statement when you got to the police
25 station?

1 A. Yes, I did.

2 Q. One more question. Did you see -- did you see
3 Tonnette drive up?

4 A. No, I didn't see her drive up. When I looked they
5 were already outside.

6 Q. Did you see her move her car at all?

7 A. No.

8 MR. HALES: Court's indulgence. I don't have any
9 more questions.

10 CROSS-EXAMINATION

11 BY MR. QUINN:

12 Q. Good afternoon, Miss Gaston. You were at the Green
13 Villa the night of the incident?

14 A. Yes.

15 Q. You witnessed the altercation between Sonta and
16 Denise Shields?

17 A. Yes.

18 Q. Did you see Anthony Shields strike Sonta McCall?

19 A. I saw a bottle coming.

20 Q. A bottle. Are you sure you saw a bottle?

21 A. A beer bottle. Where it come from I don't know.

22 Q. That's what hit Sonta McCall in the face?

23 A. Yes, sir.

24 Q. You were also struck?

25 A. Um hum.

1 Q. What were you hit with?

2 A. A bar stool.

3 Q. Did you see who hit you with that stool?

4 A. No, sir.

5 Q. Where did that stool hit you?

6 A. Across my back.

7 Q. Across your back. After the fight was broken up the
8 club close down, correct?

9 A. Empty.

10 Q. And you said you left with Sonta?

11 A. Yes.

12 Q. Okay. And while you were in the car did you hear
13 Sonta call Oscar Fortune, the defendant?

14 A. Yes, I heard her call him.

15 Q. What did she say to him?

16 MR. HALES: Objection, that would be hearsay?

17 THE COURT: Sustained.

18 BY MR. QUINN:

19 Q. How long was that conversation?

20 A. Maybe, I don't know. Maybe -- maybe 10, 15 minutes
21 at the most.

22 Q. On the phone?

23 A. Um hum.

24 Q. Did you hear Sonta say anything that would indicate
25 that she and Oscar were planning to shoot or take down

1 Anthony Shields?

2 A. No.

3 Q. No. You were also present at the Huddle House when
4 Oscar and Sonta spoke, were you not?

5 A. Yeah.

6 Q. Okay. And you said that you were there when gunshot
7 did start firing?

8 A. Yes.

9 Q. Did you see or hear where the first gunshot came
10 from?

11 A. No.

12 Q. You did not. Okay. Where were you when the gunshots
13 were fired?

14 A. I was standing not too far from my car but not very
15 close.

16 Q. And you have been charged regarding the incident?

17 A. Yes.

18 Q. What have you been charged with?

19 A. Accessory after the fact.

20 Q. What do the police allege you did to be an accessory
21 after the fact?

22 A. From my understanding I was told I took and brought
23 Oscar to the Huddle House.

24 Q. Took and brought Oscar to the Huddle House? Is that
25 true?

1 A. No, sir.

2 Q. Did you tell the police that?

3 A. No.

4 Q. One more question. You said you didn't see where the
5 gunshots came from, the first gunshot here came from or
6 hear it?

7 A. I heard it but where it came from I don't exactly
8 know.

9 Q. Thank you.

10 MR. QUINN: That's all I have, Your Honor.

11 THE COURT: Any re-direct?

12 MR. HALES: No, Your Honor.

13 THE COURT: Ma'am, you may step down. You may call
14 your next witness.

15 MR. HALES: Your Honor, we would ask that Miss Gaston
16 be excused.

17 THE COURT: Miss Gaston, they have said no objection
18 to your being excused and able to leave. They're
19 releasing you from any subpoena the Defense has got. Any
20 objection.

21 MR. QUINN: No, Your Honor.

22 THE COURT: Very good. You maybe released from your
23 subpoena. Thank you, ma'am.

24 MR. HALES: State calls Tonnnette Cash.

25 TONNETTE CASH, after being duly sworn, testified

1 as follows:

2 MR. HALES: Please the Court.

3 DIRECT EXAMINATION

4 BY MR. HALES:

5 Q. Please state your name?

6 A. Tonnette Cash.

7 Q. Miss Cash, where do you live?

8 A. [REDACTED]

9 Q. Where?

10 A. [REDACTED]

11 Q. [REDACTED] All right. I'm going to
12 take you back to December of 2001. What was your
13 relationship with Oscar Fortune at that time?

14 A. He was my fiance at the time.

15 Q. Okay. Two of you live together?

16 A. Yes.

17 Q. Okay. On December 22nd, into the morning of December
18 23rd of 2001, do you remember where you were?

19 A. Yes.

20 Q. Okay. Where were you?

21 A. I had gone to a party at the Green Villa. The Takata
22 Christmas Party.

23 Q. And what happened there?

24 A. I stayed a while and I left.

25 Q. You left?

Tonnette Cash - Direct by Mr. Hales

175

1 A. Um hum.

2 Q. What did you do when you left?

3 A. I went home.

4 Q. You went home. Was Oscar home when you got there?

5 A. Yes.

6 Q. Okay: What y'all do? Y'all go to sleep?

7 A. Yeah.

8 Q. Okay. Did he sleep all the way through the night?

9 A. No. A phone call came and I woke up about -- well,
10 he was already on the phone. I woke up after he had
11 gotten on the phone.

12 Q. Can you speak up a little bit?

13 A. When I awake Oscar was getting off the phone and
14 Sonta had called and said that she had gotten in an
15 altercation. He was going to see what was going on with
16 her. What was going on.

17 Q. Okay. So he had received a phone call?

18 A. Um hum.

19 Q. What happened then?

20 A. We went to the Huddle House.

21 Q. I'm sorry. Could you please speak up?

22 A. We went to the Huddle House to see what was going on
23 with Sonta.

24 Q. Who drove to the Huddle House?

25 A. I did.

1 Q. Okay. Did you anybody there?

2 A. When we first drove up I didn't see Sonta when we
3 drove into the parking lot. When we pulled into the
4 parking lot we drove to the back of the parking lot, and
5 we didn't see them. When we started back out we saw Iris'
6 car and when we got back to the front of the Huddle House
7 Sonta was coming out of the Huddle House.

8 Q. Now, you say you drove the parking lot. Could you
9 describe that parking lot for us?

10 A. When you drive the parking lot, it's paved. You go
11 towards the back it's like gravel, like sand. And we
12 turned around and came back towards the front of the
13 Huddle House.

14 Q. So you drove through?

15 A. We turned around and came back.

16 Q. You saw Sonta?

17 A. She came out the Huddle House.

18 Q. What happened then?

19 A. She stopped and talked to -- I don't recall who it
20 was. Some guy sitting on a car. And then Jay Jay --
21 Oscar saw Jay Jay and he got out and talking to Jay Jay a
22 couple second couple minutes and got back in the car.

23 Q. Jay Jay. You got a last name?

24 A. Mungo.

25 Q. Jay Jay Mungo?

1 A. Yes.

2 Q. Okay. And then what did he do? What did Oscar do?

3 A. He got back in the car with me.

4 Q. And then what happened?

5 A. By the time Iris got up beside my car and Sonta got
6 back in the car with her and she said she had already
7 reported the incident, whatever. She went on at the Green
8 Villa and she had already reported it.

9 By this time Oscar was back in the car with me then
10 and he looked up and Sonta said, she said, "There is
11 Anthony." Anthony came past the Huddle House and pulled
12 on the other side.

13 Q. Okay. She saw Anthony?

14 A. Come up.

15 Q. What happened then?

16 A. So he -- Oscar said let me talk to him. See what's
17 going on.

18 Q. What did y'all do?

19 A. We pulled over to the side where Anthony went.

20 Q. Y'all drove your car over there?

21 A. Um hum.

22 Q. What happened next?

23 A. Then he got out the car to go talk to Anthony.

24 Q. He got out the car?

25 A. Um hum.

1 Q. Did he take anything with him?

2 A. Well, he asked me where the gun was. I said in the
3 console, and he got it and put it in his pocket.

4 Q. Okay. I'm showing you what's been marked State's
5 Exhibit Number Three. Do you recognize that?

6 A. Yes.

7 Q. And please speak up. What is that?

8 A. It's a handgun.

9 Q. You've got to speak up.

10 A. A handgun.

11 Q. A handgun. Do you recognize that handgun?

12 A. Yes.

13 Q. How do you recognize it?

14 A. It's mine.

15 Q. It's your's. Was that the one in the console?

16 A. Yes.

17 Q. That's the gun that Oscar ---

18 A. Yes.

19 Q. --- took? Okay.

20 MR. JOYNER: Your Honor, we request that this be
21 admitted into evidence pending change of custody.

22 MR. QUINN: Without objection.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit No. 3 was admitted into
25 evidence.)

Tonnette Cash - Direct by Mr. Hales

179

1 BY MR. HALES:

2 Q. So Oscar got the gun. He gets out the car. What
3 happened next?

4 A. He walked over to Anthony's truck.

5 Q. And then what happened?

6 A. I heard some -- I heard shots.

7 Q. You heard shots. Did you see anything or you just
8 heard it?

9 A. I couldn't see what was going on where I was parked.

10 Q. Okay. All at one time you say you heard shots?

11 A. I heard a shot. I heard like a small sound, small
12 sound. Then I heard other louder sounds.

13 Q. Okay. What happened next?

14 A. Well. During all this I panicked. I laid down in
15 the car because I heard shots. I panicked. I didn't know
16 what was going on and then I heard shots. Then I looked
17 up again and I saw this car was trying to back out.

18 So I started to back out again. I tried to pull out.
19 That's when she turned around -- I tried to turn around
20 Oscar came back and got in the car with me and said take
21 me in the police department.

22 Q. You didn't actual see anyone?

23 A. No, sir.

24 Q. Okay. So Oscar get in the car. Where do y'all go
25 then?

1 A. We went and said take me to my brother's house.

2 Q. Brother's house. Where is that?

3 A. Bennettsville.

4 Q. Y'all drove to Bennettsville?

5 A. Yes.

6 Q. Did you stay at the brother's house?

7 A. I dropped him and came back home.

8 Q. What did you don't when you got back home?

9 A. When I got back home I met Iris and Sonta leaving my
10 house. And by the time they went back to my house with me
11 and when I got back to the house Iris' phone was ringing
12 and it was a police officer said -- asking did somebody
13 call the police. And said her girlfriend did, and it was
14 Sonta.

15 They talked. Sonta talked to the police. They told
16 her that she needed to come back up there and we went back
17 to the Huddle House and maybe a minute later they came
18 back to my house. Maybe not that long. They came back to
19 my house and that's when they told me Anthony was dead.

20 Q. Okay. So that's when you found out that Anthony was
21 dead?

22 A. Um hum.

23 Q. What did you do after that? Did you do anything
24 after that?

25 A. She asked to make me to go find James -- Oscar.

Tonnette Cash - Cross by Mr. Quinn

181

1 Q. Okay. Did you find him?

2 A. No.

3 Q. Okay. Did you do anything after that?

4 A. I went to his brother's house and he wasn't there.
5 Then I went to Sonta's house and went over to my mother's
6 house and stayed there.

7 Q. Did you ever speak to a police officer?

8 A. No.

9 Q. You never spoke to a police officer.

10 A. No.

11 Q. Okay. I'm sorry. Did you give a statement?

12 A. Yes.

13 Q. Okay.

14 A. That was what I was getting at.

15 Q. I'm sorry. Are you and Mr. Fortune still together?

16 A. No.

17 MR. HALES: Court's indulgence. I have no further
18 questions. Please answer any question the Defense may
19 have for you.

20 THE COURT: Any cross?

21 CROSS-EXAMINATION

22 MR. QUINN: Afternoon, Ms. Gaston. You were at the
23 Green Villa that evening?

24 A. Yes.

25 Q. Did you leave before or after the fact?

- 1 A. Before.
- 2 Q. Before. And where did you go?
- 3 A. Home.
- 4 Q. Okay. And was anybody there?
- 5 A. At my house?
- 6 Q. Who was there?
- 7 A. Oscar.
- 8 Q. What was he doing?
- 9 A. Sleeping.
- 10 Q. And you remember him receiving the phone call from
- 11 Sonta?
- 12 A. Well, I woke up after he got off the phone. He told
- 13 me she had called.
- 14 Q. And why did you go to the Huddle House?
- 15 A. To check on Sonta and see if she was okay.
- 16 Q. So that it wasn't for any other purpose just to check
- 17 on his cousin, Sonta?
- 18 A. Yes.
- 19 Q. Okay. Who owns the gun that the Solicitor just
- 20 showed you? You said it was your gun?
- 21 A. Yes.
- 22 Q. Is it properly registered?
- 23 A. Yes, it was registered when I brought it.
- 24 Q. Where did you keep that gun?
- 25 A. Console of the car.

- 1 Q. All the time?
- 2 A. Yes, sir.
- 3 Q. So you didn't get that gun to go to the Huddle House.
- 4 It was just in your car and you kept it there all the
- 5 time?
- 6 A. Yes.
- 7 Q. Okay. Okay. You said the parking lot was full at
- 8 the Huddle House when y'all arrived?
- 9 A. Yes, sir, there was a lot of cars there.
- 10 Q. How many people, just estimate, would be about lot?
- 11 A. I really -- it was a lot of people. Maybe 50, 60.
- 12 Might have been more.
- 13 Q. Full of cars?
- 14 A. Yes.
- 15 Q. Where did you all park before Oscar walked in front
- 16 of the Huddle House? Where did y'all park?
- 17 A. Front. We were parked right in front.
- 18 Q. Okay. When you pulled over behind Anthony Shields'
- 19 car to the side of Anthony Shields' car when you pulled in
- 20 Oscar asked you for the gun? Did he get out of the car
- 21 with a gun in his hand?
- 22 A. No.
- 23 Q. Where was the gun?
- 24 A. In the console.
- 25 Q. When Oscar had the gun?

1 A. Oh. It was in his pocket. He put the gun in his
2 pocket.

3 Q. Okay. He put the gun in his pocket. And you said
4 you couldn't see Oscar, Sonta or Anthony?

5 A. No, sir.

6 Q. Thereafter, and you just described the gunshots that
7 were fired. Can you describe that for me again?

8 A. It was like a small metal sound and louder sound.

9 Q. Like a crackling and some louder gunshots?

10 A. Yes.

11 Q. How many shots did you hear fired?

12 A. First maybe twice -- two times, and then I heard two
13 or three times and louder sounds. It could have been
14 somewhere because I leaned down scared.

15 Q. Okay. And after you heard the gunshots you just
16 left?

17 A. After it settled down I went back out to leave.
18 That's when Oscar got in the car.

19 Q. Have you been charged with this incident?

20 A. Yes.

21 Q. What have you been charged with?

22 A. Accessory before and after.

23 Q. Before and after. What are the police alleging you
24 did before to be charged with accessory before the fact of
25 murder?

1 A. They say that we planned it. That I was a part of
2 it.

3 Q. Okay. Basically, you were the one who drove to the
4 Huddle House?

5 A. Yes.

6 MR. QUINN: Beg the Court's indulgence. Few more
7 questions.

8 BY MR. QUINN:

9 Q. You said when you heard gunshots, two or three
10 sounds, how many smaller sounds did you hear?

11 MR. HALES: Objection, Your Honor.

12 THE COURT: And ---

13 MR. HALES: May I approach?

14 THE COURT: Just tell me what it is.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury, but out of the
17 hearing of the jury.)

18 THE COURT: I'm sustaining your objection. Rephrase
19 the question.

20 BY MR. QUINN:

21 Q. How many smaller sounds did you hear?

22 A. I want to say two.

23 Q. How many larger sounds?

24 A. Two or three.

25 Q. Thank you very much.

1 MR. QUINN: That's all I have, Your Honor.

2 THE COURT: Any redirect?

3 MR. HALES: No, Your Honor.

4 THE COURT: Thank you. You may step down.

5 MR. HALES: State would ask that Miss Cash be
6 excused.

7 THE COURT: Any objection?

8 MR. QUINN: No, Your Honor.

9 THE COURT: Miss Cash, you're relieved of any
10 subpoena obligations. Thank you. You may call your next
11 witness.

12 MR. JOYNER: State would like to call Arthur Mungo.

13 MR. SALEEBY: May we approach, Your Honor?

14 (WHEREUPON, a bench conference was held off the
15 record in the presence of the jury, but out of the
16 hearing of the jury.)

17 THE COURT: Mr. Mungo is where?

18 MR. JOYNER: Please, right here.

19 THE COURT: Mr. Mungo, if you will come forward,
20 please.

21 ARTHUR MUNGO, after being duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. JOYNER:

25 Q. Morning, Mr. Mungo?

Arthur Mungo - Direct by Mr. Joyner

187

1 A. How are you doing.

2 Q. Please state your full name.

3 A. Arthur James Mungo, Jr.

4 Q. How old are you?

5 A. 30.

6 Q. Where are you from?

7 A. Cheraw, South Carolina.

8 Q. Okay. Where do you currently live right now?

9 A. I'm in Dillon County.

10 Q. And where are you living?

11 A. In a Federal holding unit.

12 Q. Why are you in a Federal holding unit?

13 A. Conspiracy to distribute crack cocaine and crack
14 cocaine.

15 Q. Have you already pled guilty?

16 A. Yes.

17 Q. Okay. Are those Federal or State charges?

18 A. Federal charges.

19 Q. Okay. Were you ever indicted in State court?

20 A. Yes, sir, I was but they took over -- turned it over
21 to the Feds.

22 THE COURT: Ladies and gentlemen of the jury, let me
23 just tell you that when a witness is examined about at
24 prior criminal record for purposes of bringing into your
25 background of knowledge that information. But it's for

1 purposes of simply having that as one element for you to
2 consider when you consider the credibility of a witness
3 and for no other purpose. So just give it such weight as
4 you determine it is entitled to receive on the issue of
5 credibility or believability of the witness' testimony and
6 other matters.

7 MR. JOYNER: Thank you, Judge.

8 BY MR. JOYNER:

9 Q. Mr. Mungo, do you have any kids?

10 A. Yes, I do.

11 Q. How many?

12 A. One.

13 Q. And what's his name?

14 A. What's her name? [REDACTED]

15 Q. And who is her mother?

16 A. Sonta McCall.

17 Q. Okay. And how old is your daughter?

18 A. She's seven.

19 Q. Are you currently have any type of relationship with
20 Miss Sonta?

21 A. No, I do not.

22 Q. Mr. Mungo, let me take you back to December 23rd of
23 2001. Where were you that night?

24 A. At the Huddle House.

25 Q. Did anyone call you that night?

- 1 A. No, they didn't.
- 2 Q. Did you ever have a chance to speak to Sonta that
- 3 night?
- 4 A. Yes, I did.
- 5 Q. And what did she tell you?
- 6 A. She told me that Anthony Shields had hit her in the
- 7 head with at champagne bottle.
- 8 Q. What was your reply?
- 9 A. My reply was to take out a warrant on him.
- 10 Q. Why you tell her that?
- 11 A. I believe that was the best thing at the time for her
- 12 to do. She didn't want to get involved. Me and her
- 13 wasn't dealing with each other.
- 14 Q. And the night of this incident you mean you didn't
- 15 have a relationship?
- 16 A. We had been separated for a minute, for about two
- 17 years.
- 18 Q. Okay. Did you ever see the defendant, Mr. Oscar
- 19 Fortune?
- 20 A. Yes, I did.
- 21 Q. Is he in the courtroom?
- 22 A. Yes, he is.
- 23 Q. Where is he?
- 24 A. Right there in the brown shirt.
- 25 MR. JOYNER: Judge, I'd like the record to reflect he

1 identified the Defendant.

2 THE COURT: Record will so reflect.

3 BY MR. JOYNER:

4 Q. Did you have an occasion to talk to Mr. Fortune that
5 night?

6 A. Yep, I did.

7 Q. What did he tell you.

8 A. He asked me what was I going to do about it.

9 Q. What did you tell him?

10 A. I was going to talk to him -- talk to Shields about
11 the matter.

12 Q. Okay. And did he say anything else to you?

13 A. I guess he was like he'd handle situation.

14 MR. SALEEBY: Objection to anything Mr. Shields may
15 have said.

16 THE COURT: I think he was talking -- you're talking
17 about Mr. Shields or Mr. Fortune having said that?

18 THE WITNESS: Mr. Fortune.

19 THE COURT: He's talking about the defendant having
20 made that statement.

21 BY MR. JOYNER:

22 Q. Fortune, what did he say?

23 A. I'll handle the situation?

24 Q. What did he mean by that?

25 A. I don't know what me meant by that.

1 MR. SALEEBY: Opinion, Your Honor.

2 THE COURT: I think he said I don't know if I heard
3 correctly.

4 BY MR. JOYNER:

5 Q. At the time he told you that he'd have to deal with
6 it was Anthony present at the Huddle House?

7 A. Yes, he was.

8 Q. What happened next after he told you that?

9 A. Well, I seen him walk over to the driver's side of
10 the car and shoot him.

11 THE COURT: Excuse me just a second. We got
12 equipment ---

13 MR. JOYNER: No, sir. A watch, I believe.

14 THE COURT: All right. Very good. It must be noon.
15 It won't drop off again between now and supertime. Very
16 good. Thank you.

17 BY MR. JOYNER:

18 Q. Can you explain what ---

19 THE COURT: That interrupted. Sort of take him back
20 and sort of get to where it was.

21 MR. JOYNER: Thank you, Judge.

22 BY MR. JOYNER:

23 Q. Where was Anthony at this time while you were
24 discussing this with Mr. Fortune?

25 A. He was in the Huddle House sitting in his truck.

1 Q. Okay. Could you -- did you have a clear view of
2 them?

3 A. Yes, I was -- I was about from me to where she's
4 sitting at.

5 Q. From here?

6 A. Five to 10-yards.

7 Q. Okay. At what point did he go over to Anthony's
8 truck?

9 A. Actually, after I got finished talked to him he
10 started walking back to the Huddle House to go get his
11 order cause I just ordered. As I was walking back and
12 what not I seen him walking over to the driver's side of
13 the truck.

14 He shot him like two or three times, and Anthony he I
15 guess he jumped over his console seat and jumped out the
16 passenger side of the truck, and he met him over there and
17 shoot him at least two or three more times.

18 Q. If the car is sitting right here and there is the
19 driver's side door and I'm Mr. Fortune describe how it hit
20 him on the other side. Did he walk around?

21 A. He walked around the back of the truck.

22 Q. Like this? How far away would you say he was when he
23 shot him once he got over the other side of the truck?

24 A. Probably about me to you. Probably a little closer.

25 Q. Okay. Did anybody say anything during -- did

1 Mr. Fortune say anything while they were shooting?

2 A. No, I didn't hear nothing.

3 Q. Okay. After he shot him on the other side of the
4 truck what did he do next? What did Mr. Fortune do next?

5 A. He left.

6 Q. What did he drive?

7 A. I think it was a black Grand Prix, Tonnette Cash's.

8 Q. Where was that car parked while this shooting took
9 place?

10 A. Directly behind Anthony's truck.

11 Q. And at this time did -- you said earlier that he
12 started back to the Huddle House? At that time where were
13 you in relation? How far away from the shooting?

14 A. From the location?

15 Q. Yes.

16 A. Same distance. About five to ten, maybe nine to
17 10-yards.

18 Q. You hadn't gotten there?

19 A. No.

20 Q. Was there anything obstructing your view?

21 A. No.

22 Q. And did Mr. Fortune take the gun with him when he
23 left in the black car?

24 A. I guess he did.

25 Q. You could see?

1 A. I couldn't see it.

2 Q. After the shooting took place or shortly thereafter
3 did anybody yell anything out? Did Sonta say anything or
4 did Oscar say anything?

5 A. No, she -- when the shooting occurred she ran. What
6 direction she ran, I don't know, but I seen she were
7 running.

8 Q. Okay.

9 MR. JOYNER: No further questions.

10 THE COURT: You recross?

11 MR. SALEEBY: Yes.

12 CROSS-EXAMINATION

13 BY MR. SALEEBY:

14 Q. How are you doing?

15 A. I'm doing alright.

16 Q. I know you as Jay Jay. What would you rather be
17 called?

18 A. Well, whatever feels comfortable with you.

19 Q. I understand, but would you rather be called Arthur
20 or Jay Jay?

21 A. Whatever feels comfortable with you.

22 Q. Okay. You and I been knowing each other for a while,
23 Jay Jay?

24 A. Excuse me.

25 Q. We've known each other for a while, hadn't we?

1 A. No. We don't know each other. I probably had a
2 lawyer out of your lawyer firm.

3 Q. Quite a few times haven't you?

4 A. No, one time.

5 Q. One time. Well, do you admit or deny that you were
6 convicted back on 1/23/1998 of assault and battery?

7 A. Yes.

8 Q. You admit or not?

9 A. Yes, I was.

10 Q. You admit or deny you didn't have a lawyer for that?

11 A. No, I didn't.

12 Q. You just whooped up somebody and paid a fine?

13 A. I was protecting myself?

14 Q. You were protecting yourself. Then why did you plead
15 guilty?

16 A. Cause I was guilty.

17 Q. Why were you convicted?

18 A. Why was I convict? I was guilty.

19 Q. You were guilty?

20 A. Yes, I was.

21 Q. You were guilty of protecting yourself. Tell the
22 ladies and gentlemen and the Court you were convicted, but
23 you were convicted of assault and battery. They go hand
24 and hand, Jay Jay.

25 I mean isn't you protecting yourself -- if I was up

1 and pointed that gun or if you slapped somebody with that
2 gun and bopped them in the head you wouldn't have done
3 anything wrong. You would have done the right thing and I
4 would have done the wrong thing, correct?

5 A. I don't know. I guess.

6 Q. Okay.

7 A. That's how you see it.

8 Q. That's common sense. You can't have it both ways. I
9 mean you've got too much to spend all afternoon long. You
10 can't be protecting yourself and be not guilty and be
11 convicted at the same time or plead guilty?

12 A. You just read what's on that paper. You don't know
13 the situation.

14 Q. You don't get to tell me what. You've been in Court
15 at lot of times. More than a lot of times, but just
16 answer my question, okay. If you have a problem then you
17 can comment. Just answer yes or no and you can make a
18 comment, okay.

19 Now, then how about when you were convicted and given
20 five years and \$5,000 fine suspended to three years
21 probation. Eighty-two days public service. That sounds
22 like Judge Cottingham, his 82 day plan back on April 20 of
23 '98.

24 THE COURT: That was for what charge?

25 MR. SALEEBY: Possession of a controlled substance,

1 Your Honor, in front of Judge Cottingham. It was General
2 Sessions. It was a felony?

3 THE COURT: And, ladies and gentlemen, as a I have
4 indicated to you prior criminal record is being introduced
5 for purposes of simply assisting how you have the
6 information as you determine believability or credibility
7 of a witness who is shown to have had a prior record for a
8 crime punishable by imprisonment in excess of one year and
9 you should give it such weight as you deem appropriate to
10 give it when junction correct. You may continue.

11 MR. SALEEBY: Thank you, Your Honor.

12 BY MR. SALEEBY:

13 Q. That's '98 is you on three years probations. How
14 about in 2001. You were eventually convicted or pled
15 guilty to aggravated assault and battery of a high nature?

16 A. Yes, sir, I was.

17 Q. All right. Didn't go do jail then, did you?

18 A. I got probation.

19 Q. Had to just do some community service, correct?

20 A. Yes, sir.

21 Q. Okay. Now, the Court date on this was March 20,
22 2002. But low and behold, on also -- on March 8th, 22
23 days before that, you pled to, again, assault and battery
24 of a high and aggravated nature. Another one. A
25 different one?

1 A. Only got one assault and battery of a high a
2 aggravated nature.

3 Q. Your record reflects two?

4 A. I don't know what's on my record.

5 Q. Would you like to see that?

6 MR. JOINER: I think maybe he misstated. It is
7 listed twice on a lot of N.C.I.C. reports?

8 MR. SALEEBY: That is enough here. We'll go forward,
9 Your Honor.

10 THE COURT: All right, sir.

11 BY MR. SALEEBY:

12 Q. Weren't you on probation back about this same time
13 just a few months later? In July of 2002 you had
14 marijuana on you, didn't you and hash or hash, correct?

15 A. 2002?

16 Q. Yeah, 2002. July 12th of 2002. [REDACTED]
17 [REDACTED]

18 A. If it's stated, I guess so.

19 Q. All right. And then so that's July 12th 2002. And
20 then comes -- you had your driver's license suspended,
21 correct, cause of those charges?

22 A. You talking about 2002?

23 Q. Your driver's license been suspended a long time?

24 A. I have my license now.

25 Q. You got your license now?

- 1 A. Yes, I do. I've got my license.
- 2 Q. May of, but you have lost them before?
- 3 A. I have, yes, I have lost.
- 4 Q. It was because of dope charges?
- 5 A. No, driving under suspension.
- 6 Q. You're under suspension because of the dope charge?
- 7 A. Yes, I was.
- 8 Q. Okay. So you're driving under suspension in April of
- 9 2003, correct?
- 10 A. No. What it was I was riding a four wheeler and they
- 11 charged me with driving on a pavement since I have no
- 12 license they charged me with that.
- 13 Q. Now, did you have -- let's go over this a little bit,
- 14 okay. This case at hand, were you at the Green Villa?
- 15 A. No, I was not.
- 16 Q. Okay. When did you get -- how did you get to the
- 17 Huddle House and about what time?
- 18 A. I was at another club. After the club was over I
- 19 went to the Huddle House to get me something to eat before
- 20 I went home.
- 21 Q. Okay. And did you know Mr. Shields?
- 22 A. I been knowing him all my life. We grew up playing
- 23 sports together.
- 24 Q. Grew up playing sports together?
- 25 A. Um hum.

1 Q. How did you know Mr. Fortune?

2 A. I know him through the daughter of -- my child, sir.

3 Q. I know him through the mother of my child. Okay. So
4 when you told the jury that you didn't have anything to do
5 with, and I guess no relationship with Sonta that's not
6 true is it because you've got a child by her, correct?

7 A. That point don't mean nothing.

8 Q. That don't mean nothing?

9 A. We don't have any dealings. I just take care of my
10 daughter.

11 Q. Are you telling the ladies and gentlemen of the jury
12 that what having a child with a woman means to you that
13 you ain't have nothing to do or never had anything to do
14 with her?

15 A. You misinterpreted it. I'm not having a sexual
16 relationship with her.

17 Q. You did at one time. It takes two to tango. She
18 didn't get pregnant by herself. Come on. If you won't
19 admit that's how you think we're -- relationship with a
20 woman, the birds and the bee story. How many children do
21 you have?

22 A. I have one child.

23 Q. One child. That by Sonta?

24 A. Yes, sir, it is.

25 Q. Okay. Well, you how that child come to be and you

1 know how that child came about?

2 A. Yes, I know how. Sexual relationship.

3 Q. You call that nothing to do -- never had nothing to
4 do that?

5 A. You misinterpreted it.

6 Q. You misinterpreted ---

7 MR. JOYNER: He's clearly misstated what the witness
8 has said. Multiple times, he's asked and answered the
9 question.

10 THE COURT: I'll sustain and ask -- and I want to
11 hear up here what the witness said. I'll give you an
12 opportunity to ask him on redirect.

13 BY MR. SALEEBY:

14 Q. Well, was it a one time thing or an affair?

15 MR. JOINER: Objection. Asked and answered.

16 THE WITNESS: We were in a relationship.

17 THE COURT: I will allow your question. It's a
18 different question.

19 THE WITNESS: We was in a relationship but we broke
20 up.

21 BY MR. SALEEBY:

22 Q. So, now, finally. It's like pulling my jaw teeth.
23 It was a relationship. Thank you. You said you saw Oscar
24 that night at the Huddle House. That's Oscar Fortune,
25 correct?

- 1 A. Excuse me. You had your back to me.
- 2 Q. You saw Oscar Fortune at the Huddle House?
- 3 A. Yes.
- 4 Q. This tragic night?
- 5 A. Yes, I did.
- 6 Q. Okay. You know him? Do you know him?
- 7 A. Yes, I know him.
- 8 Q. Been knowing him?
- 9 A. Yes, I know him.
- 10 Q. Okay. And I think you said something earlier to him
- 11 and she said, well, what was it you said to him?
- 12 A. What was it I said to him?
- 13 Q. What was the first thing you said to him?
- 14 A. He asked me what was you going to do about the
- 15 situation. I said I was going to be talk to Anthony about
- 16 it.
- 17 Q. You and Anthony talked?
- 18 A. We grew up together. I had no reason to harm him or
- 19 anything.
- 20 Q. Okay. You got a record fighting on hear. Are you a
- 21 fighter?
- 22 A. Am I a fighter?
- 23 Q. You had several convictions for whooping people. Are
- 24 you a fighter?
- 25 A. No, I'm not a fighter.

- 1 Q. I'm old and broken down. I need news joint. You the
2 type of person, Jay Jay, that if they follow -- come after
3 me you'd take care of him? Are you that kind of person?
- 4 A. You've got the wrong person.
- 5 Q. Got the wrong person?
- 6 A. You've got the wrong person.
- 7 Q. I don't mean man for hire?
- 8 A. I hope you got that from t.v. Not around here.
- 9 Q. All right. So there is no question Oscar was there
10 first at the Huddle House?
- 11 A. He was or wasn't there first?
- 12 Q. Yeah.
- 13 A. I don't know.
- 14 Q. Him and Tonnette, the mother of your child?
- 15 A. No, when I walked out to the Huddle House I can't
16 tell you when he got there.
- 17 Q. But he was there?
- 18 A. Yes, he was there.
- 19 Q. And then you seen Anthony drive up?
- 20 A. Yes, I seen him drive up.
- 21 Q. Okay, now we already heard -- you know where Anthony
22 lived, don't you?
- 23 A. Do I know where he lived?
- 24 Q. Where he lived back then at 2001?
- 25 A. No, I don't know where his lived.

1 Q. You don't know where his lived?

2 A. No.

3 Q. But there is no question that Oscar and Tonnette, the
4 mother of your child, that you now said had a relationship
5 with and that's okay. He was there minding his own
6 business. He wasn't fighting anybody?

7 A. Who are you talking about?

8 Q. Oscar.

9 A. When he was walking around?

10 Q. He wasn't bothering anybody, was he?

11 A. No, he wasn't bothering nobody.

12 Q. The key question is there was big old crowds of
13 people out there. Wasn't it Oscar -- Officer Haney got a
14 list of sixty something names?

15 A. About 50, 60 people were out there.

16 Q. Okay. And did Oscar come and talk to you or any or
17 Officer Haney?

18 A. I do not hear for question. You had your back
19 turned.

20 Q. Sir?

21 A. I didn't hear the question. Your back was turned.

22 Q. Did any law enforcement officers talk to you after
23 the shooting?

24 A. No, they came do my house later on that night after
25 the shooting.

1 Q. All right. So got as you say Oscar walked around.

2 He wasn't causing any trouble, was he?

3 A. Not.

4 Q. Wasn't fighting anybody else, was he?

5 A. No, he wasn't.

6 Q. Wasn't flashing a gun around, was he?

7 A. No.

8 Q. Pretty good guy, isn't he?

9 A. I don't know.

10 Q. As far as you know?

11 A. I don't know.

12 Q. But it's here. He was there and Sonta drove up --
13 excuse me. Mr. Shields drove up?

14 A. Yes.

15 Q. Mr. Shields parked, correct?

16 A. Mr. What?

17 Q. Anthony Shields parked his truck?

18 A. Yes.

19 Q. Okay. What happened then?

20 A. Well, at that time I was getting ready to walk up to
21 the truck to talk to him and see what the situation had
22 happen. As I was walking up that's when I seen him go
23 over there and shoot him in the truck.

24 Q. You say you walked up to the truck to see what
25 happened. How did you know something had happened?

1 A. Gunshots.

2 Q. So you only walked up to the truck after the
3 gunshots?

4 A. No. I was walking up to talk to Anthony about what
5 went on at the Green Villa. As I was walking towards the
6 truck that's when your client shot him while he was
7 sitting in the truck.

8 Q. Okay. Gunshots. So you weren't there when the
9 gunshots were fired? You were walking up?

10 A. About from here.

11 Q. Well, you wrote it down. You were 30 yards. That
12 was ninety feet?

13 A. I don't know where you got that from.

14 Q. The jury heard that?

15 MR. JOYNER: Judge, I'm going to object. That is
16 clearly a misstatement of what he said.

17 MR. SALEEBY: Judge, you ---

18 THE COURT: Ladies and gentlemen, we'll come back to
19 the issue of playback. The problem becomes created
20 between the court reporter's system and the court house
21 system. If she get's static on this system, she's gets
22 static on her system. So you will have to, until we play
23 it back for you, always use your memory of the testimony
24 and not what the attorney's remember as to the testimony
25 which you must rely upon.

1 Mr. Saleeby, you can ask the question and, ladies and
2 gentlemen of the jury, you remember the testimony as to
3 distances that was given by this witness briefly. All
4 right. He is withdrawing the question so you can move on.

5 BY MR. SALEEBY:

6 Q. But I think it's pretty clear from what the Solicitor
7 that you on the way to pick up your order from the Huddle
8 House?

9 A. Yes.

10 Q. So you were walking. I guess you had to be walking
11 towards the Huddle House?

12 A. I was coming from -- I had placed the order. I was
13 walking outside to smoke a cigarette when all this was
14 getting ready to occur.

15 Q. I couldn't hear you.

16 A. I had already placed my order and I was walking out.

17 Q. I took it to mean, and if I'm wrong, that you were
18 walking back to the Huddle House?

19 A. No, no, no, no.

20 Q. Well, you didn't see Mr. Fortune in the Huddle House,
21 did you?

22 A. No, I seen him outside.

23 Q. Okay. How far outside?

24 A. He walked up to me.

25 Q. Okay. Well, how close to the Huddle House was it?

1 A. How close to the Huddle House? What you mean, how
2 close was it?

3 Q. That being the back wall of the Huddle House, Jay
4 Jay, how close were y'all from the Huddle House?

5 A. We was in the parking lot.

6 Q. Well, don't have any pictures. Is this a big parking
7 lot where the truck was parked?

8 A. No.

9 Q. Right there close to the Huddle House?

10 A. Right in front of the Huddle House.

11 Q. Not trying to trick you up. Just trying to get where
12 we are for so the ladies and gentlemen of the jury can
13 hear you. He wasn't waving a gun or anything then, was
14 he?

15 A. No, he wasn't.

16 Q. He wasn't doing anybody about going to hurt anybody,
17 was he?

18 A. No, he wasn't.

19 Q. Okay. Then up comes Anthony Shields in his truck at
20 some point of time. A minute or two or three or four
21 later?

22 A. Exactly.

23 Q. Then Sonta goes over. I guess you say and heard
24 that, didn't you?

25 A. She was already on the passenger side of the -- I

1 mean driver's side of the truck.

2 Q. Okay. But Oscar who wasn't there yet, was he?

3 A. What you mean in his truck?

4 Q. Yeah.

5 A. No, not at that moment he wasn't. Shortly after
6 that. I'd say about two minutes later at the most.

7 Q. About two minutes later. So Sonta had gone over to
8 the truck?

9 A. Yes.

10 Q. Well, could you hear arguing?

11 A. Yes, I heard.

12 Q. This would be the truck Anthony Shields was in?

13 A. I heard arguing.

14 Q. You heard arguing?

15 A. Yeah, that's when I was getting ready to walk to the
16 truck to talk to him about the situation.

17 Q. Talk to him is who?

18 A. Anthony that went to the Green Villa?

19 Q. And where was Mr. Fortune during all this?

20 A. At this time I didn't see him. After I got finished
21 talking to him I didn't see him no more. That's when I
22 was getting ready to walk up and talk to Anthony about
23 what happened.

24 As I was walking towards the truck that's when the
25 gunshots went off.

- 1 Q. Now, you said you talked to Mr. Shields, correct?
- 2 A. No, I said I was getting ready to talk to him.
- 3 Q. To be getting ready to you had to be close to the
- 4 truck?
- 5 A. Yes, like I said five to ten yards.
- 6 Q. Five to ten yards which means 15 to 30 feet?
- 7 A. About from me to the chair back there.
- 8 Q. To the chair?
- 9 A. Yeah.
- 10 Q. Okay.
- 11 A. I didn't get a chance to talk to him.
- 12 Q. From 15 to 30 feet. You don't know who fired first,
- 13 do you?
- 14 A. I don't know who fired first.
- 15 Q. I can't hear you. Speak up for me.
- 16 A. I don't know who fired first. I saw you client shoot
- 17 Anthony.
- 18 Q. Fair enough. Now, after this happened in 2001 ---
- 19 A. Um hum.
- 20 Q. Correct?
- 21 A. Correct.
- 22 Q. And you were real close with Anthony, correct?
- 23 A. I mean we was close, good friends. Like I said I'd
- 24 never do any harm to him. We played sports all our life
- 25 together.

1 Q. Okay. Now, do you know the Quick Mart is on that
2 street, same street as the Huddle House is on?

3 A. Quick Mart? You talking about the Quick Fill?

4 Q. Quick Fill, whatever. The market type place?

5 A. Where the gas is, yeah, I know that.

6 Q. And do you know -- you may have answered this. I
7 apologize. Anthony, where he lived at with his wife?

8 A. I remember he used to live on if I'm not mistaken
9 [REDACTED]

10 Q. Okay?

11 A. That's over not too far from the new Long Jr. High
12 School.

13 Q. Well, if you're correct he didn't have to pass the
14 gas place, markette, whatever, to get to the Huddle House
15 or did he have from pass it?

16 A. I don't know where he was coming from when he came
17 back.

18 Q. You don't know?

19 A. I'd just seen him pull up.

20 Q. Regarding the shots, was Sonta, was she right there?
21 She was right there at the window?

22 A. When the shots were fired and she ran after he fired
23 the shot. She ran. I seen her run. What direction she
24 ran I don't know.

25 Q. He being, Anthony, very well could have fired a shot

1 or two, couldn't he?

2 A. I didn't see Anthony fire.

3 Q. I didn't ask you if you saw it. He could have?

4 MR. JOYNER: Calls for speculation, Judge.

5 THE COURT: Sustained.

6 BY MR. SALEEBY:

7 Q. Did you hear any shots? Do you know the difference
8 of what a .25 caliber gunshot sounds like and a .38
9 caliber doesn't sound like?

10 A. No, I do not.

11 Q. You familiar with pistols, right?

12 A. No, I am not.

13 Q. You are not?

14 A. No, I am not.

15 Q. If you're not, you're not. From what I understand
16 most of this was between from what you're saying Sonta and
17 who you've got a child by? And Anthony's now wife or now
18 widow, correct? That's what started all this stuff?

19 A. Anthony was with her. I don't know.

20 Q. That's where all the fighting started?

21 A. I don't have any knowledge of that.

22 Q. You don't know what they were arguing about?

23 A. I was at another club. They were at the Green Villa.

24 Q. Did you hear Sonta and Anthony argue at the truck?

25 A. Yes, I heard them arguing when I proceeded to walk to

1 the truck to see what was going on.

2 Q. And you did you -- didn't you say, well, it's here
3 you said that Oscar Fortune and Tonnette they were there
4 before Anthony drove up. That's what you said before.
5 It's here. They were parked. That's what you said
6 before, correct?

7 A. Correct.

8 Q. Correct. And then some 60 or 70 people out there in
9 the parking lot?

10 A. Fifty, 60 people.

11 Q. Okay. Mr. Mungo, let me ask you this. This happened
12 in 2001. Didn't you have, tell the ladies and gentlemen
13 of the jury, since 2001 didn't you have 10 -- one, two,
14 three, four -- not talking about these that I just read to
15 you that you've been convicted of or pled guilty to, but
16 since this shooting since then didn't -- didn't you have
17 ten State charges against you?

18 A. No, I did not.

19 Q. You did not?

20 A. No, I did not.

21 Q. You admit or deny that you had ten, nine, eight, some
22 State charges against you after this incident happened?

23 A. What State charges are you referring to?

24 Q. Any State charges?

25 A. No, I was arrested for distribution of crack cocaine.

1 Q. And what else?

2 A. Since then, that's it.

3 Q. Just one charge?

4 A. Yep.

5 MR. SALEEBY: Court's indulgence.

6 BY MR. SALEEBY:

7 Q. Do you admit or deny -- now, you're under oath. Do
8 you admit or deny that since 2001 when this tragic thing
9 happened that you had in the State charges, nine
10 distribution of crack cocaine charges and one count of
11 something else. I forget. That makes ten. You admit or
12 deny it?

13 A. Yes, I had nine charges but only plead to one.

14 Q. Why did you just say you didn't? Why did you just
15 tell these ladies and gentlemen of the jury you didn't?

16 A. You talking about separate charges?

17 Q. You're telling the jury the truth now or telling the
18 truth then? What is it? Do you have selective truthful,
19 sir, or am I being that stupid and unclear to you when I
20 ask have you been charged since 2001, since this incident
21 and you said, "No, sir, I have not."

22 But, now, when I go back and I know what I've got to
23 do and you know what the deal is. You admit that you had
24 nine, nine, nine selling crack charges or had nine and one
25 of some other. It was a felony. Now, you've got it now

1 that I got it. I'm sorry that I ain't smart enough to
2 remember it all. I can't keep up with your lies. What's
3 the truth?

4 A. You put it like that I guess you're right.

5 Q. And they have been dropped, haven't they?

6 A. Yes, they have been dropped.

7 Q. You didn't give a statement in 2001 about this
8 incident, did you, to the police?

9 A. No, I did not.

10 Q. You did not, did you?

11 A. No, I did not.

12 Q. When Chesterfield County, City of Cheraw, S.L.E.D,
13 anybody with State about the incident of December 23rd
14 2001 asked you about what happened, what you knew about
15 this shooting you did not give a statement, did you?

16 A. No, I did not.

17 Q. And since 2001, you've gotten popped by the law,
18 State, County, City, whatever. It doesn't matter on State
19 charges with nine separate counts of selling which you
20 denied earlier ---

21 MR. JOYNER: Judge, I'm going to ---

22 MR. SALEEBY: --- crack cocaine?

23 THE COURT: Hold on. He made an objection.

24 MR. JOYNER: He asked this question approximately six
25 times, and he's answered it six times. He's made it

1 clear. I asked him on direct.

2 MR. SALEEBY: I'm trying to get through to him. All
3 he's trying to do is to break the case.

4 THE COURT: If you will ask a single question and not
5 compound it and if your just ask your questions.

6 BY MR. SALEEBY:

7 Q. The question this one. I've got to back up a little
8 bit. When any law enforcement officer asks you about what
9 you knew about what happened that night at the Huddle
10 House you give no law enforcement member a statement, did
11 you?

12 A. No, I did not.

13 Q. You told them you didn't know anything about it,
14 didn't you?

15 A. I did not.

16 Q. What did you tell them?

17 A. They asked me -- they were pointing fingers at me and
18 came and looked me up. They thought I did it.

19 Q. They thought you did it?

20 A. Somebody told them I had did it.

21 Q. Okay. But since 2001 ---

22 A. Then they came back and find out who did it.

23 Q. Okay. But since 2001, after that, since 2001 you had
24 nine different charges plus one more charge was what?

25 Possession of a stolen car or car somebody stole or you

1 stole. You had those charges dropped, hadn't you?

2 A. I had possession -- receive possession of a stolen
3 four wheeler.

4 Q. Okay. A stolen four wheeler?

5 A. Since the four wheeler was over \$5,000 the charge was
6 possession of a stolen vehicle.

7 Q. And those charges have been dropped?

8 A. Yes, that have.

9 Q. And you were now since you dropped those charges,
10 you've gone Fed, haven't you?

11 A. Yes, I have.

12 Q. Now, have you entered a plea agreement or a proffer
13 with the Feds?

14 A. I entered a plea agreement, but I never signed a
15 proffer.

16 Q. In that plea agreement isn't there an agreement for a
17 downward departure?

18 A. They never promised me nothing.

19 Q. Who is your attorney?

20 A. Clifford Wells.

21 Q. And they never promised you anything?

22 A. Only thing they promised me was I know I got a
23 minimum and mandatory.

24 Q. Have you been sentenced?

25 A. No, I have not.

1 Q. Do you know what substantial assistance is?

2 A. Yes, I know what substantial assistance is.

3 Q. What is it?

4 A. By (inaudible).

5 Q. About you testifying?

6 A. Yep.

7 Q. Okay. About other people, correct?

8 A. Yes.

9 Q. And low and behold we sit here today, one, you said
10 you hadn't been charged. Now that the Feds have got you
11 and you've pled guilty, but they've got a photograph in
12 there about substantial assistance which means they will
13 lower the amount of time if you testify in a case cause
14 you wouldn't before?

15 A. It's up to the sole discretion of the Judge.

16 Q. It's up to the discretion of the Judge as to how much
17 time he will take off of your time, isn't it?

18 A. It was never promised. Nothing was promised.

19 Q. It is promised that this Solicitor have -- that the
20 D.A. will make a negotiation for downwards departure for
21 your providing substantial assistance, correct or not,
22 Mr. Mungo?

23 A. That's correct.

24 Q. And substantial assistance is they drop these charges
25 if you're going to give a statement and you're going to

1 testify against whether it be dope, stolen stuff, and
2 particularly the big daddy of them all, which you'll hear
3 today, murder, correct?

4 A. Yes.

5 Q. And those charges have been dropped by the State?

6 A. State charges have been dropped.

7 Q. And your lawyer is going to move for downwards
8 departure based upon your helping today, isn't it?

9 A. I guess they will put in a motion for it.

10 Q. It's good. You're a human being. You're here to
11 help yourself, Mr. Mungo?

12 A. I'm here to tell the truth.

13 Q. You didn't tell the truth back in 2001?

14 A. They never, like I said, that thought I did it. When
15 they came back to me they knew who did it.

16 Q. Why didn't you tell them you didn't do it?

17 A. I did.

18 Q. Why didn't you tell them what you said today?

19 A. Like I said they came back.

20 Q. Why didn't you tell them what you told today? What
21 you told this jury today? It was real fresh in your mean
22 then?

23 A. It's fresh now.

24 Q. Why didn't you tell the law back then?

25 A. They came back and talked to me and found out who did

1 it later on that night.

2 Q. Answer my question?

3 MR. JOYNER: Judge, he answered it twice.

4 MR. SALEEBY: I'm talking about initially when they
5 questioned him Why he didn't tell him then what he's
6 saying now.

7 THE COURT: Do you understand the question?

8 THE WITNESS: Like I said I did. They asked me did I
9 do it and they came back on the walkie talkie later on and
10 said we have found our suspect.

11 Q. That night when they talked to you, the first time,
12 did you mention anything about your talking to Oscar
13 Fortune?

14 MR. JOYNER: Objection. Asked and answered.

15 THE COURT: I don't know that is not specifically
16 been asked and answered. You may ask the question.

17 BY MR. SALEEBY:

18 Q. You hadn't talked to Oscar Fortune?

19 A. No.

20 Q. You didn't tell them that, did you?

21 A. No I didn't.

22 Q. You didn't tell them that you told Oscar that you wee
23 going to go over there or that you told somebody else to
24 go over there to Anthony to try to see what was up and try
25 to calm them down, correct? You didn't tell them that,

1 did you?

2 A. No, I did not.

3 Q. You didn't tell them that Oscar was there first and
4 Anthony drove up after he was already there, did you?

5 A. No, I did not.

6 Q. You didn't tell them anything about that, did you?

7 A. No, I did not.

8 Q. In fact you told them that you didn't know anything
9 about it?

10 A. I never told them if I didn't know anything about it.

11 Q. Be you didn't tell them what I just asked you?

12 A. No, sir.

13 Q. Out of the nine or ten crack charges against you,
14 excuse me. Possession of a stolen four wheeler and nine
15 selling crack charges to children and adults.

16 Distribution; that's what that means, selling, have been
17 dropped and now that you are with the Feds ---

18 MR. JOYNER: Your Honor, I'm going to object. He's
19 testifying.

20 THE COURT: I'm going to sustain it. I don't see a
21 question there.

22 BY MR. SALEEBY:

23 Q. Last question. When were you sentenced?

24 A. I'm not sentenced.

25 Q. You're not sentenced?

1 A. I'm not sentenced. I pleaded.

2 Q. Pleased. You're testifying in this case plans to be
3 part of what we call relevant conduct or substantial
4 assistance in the plea. Doesn't it come pleading and
5 sentencing statement. You talked to your lawyer about it,
6 doesn't it? It is, isn't it?

7 A. Like I said it's up to the Judge.

8 Q. It is up to the Judge, but you want and you talked to
9 your lawyer in Federal court now about you getting less
10 time in federal court because of what you're saying today
11 that you didn't say in 2001, correct?

12 MR. JOYNER: Judge, I'm going to object. I think
13 that's ---

14 MR. SALEEBY: That's all I have, Your Honor.

15 MR. JOYNER: Thank you.

16 MR. SALEEBY: The jury can understand what he's
17 saying.

18 THE COURT: You have any redirect?

19 MR. JOYNER: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. JOYNER:

22 Q. Mr. Mungo, these state charges Mr. Saleeby has
23 extensively asked you about were they in federal or state
24 court to begin with?

25 A. It was State court.

1 Q. Okay. And were they eventually dropped?

2 A. Once the Feds picked up your case all your State
3 charges are dropped.

4 Q. If you'd just explain why the State cases were
5 dropped?

6 A. Because I had cooperated. An informant wrote a
7 statement on plea and all the charge turned to conspiracy.

8 Q. Okay. And is conspiracy a federal specific case?

9 A. It's -- yes, it's a federal case.

10 Q. Thank you. My next question is in crime you have a
11 right to remain silent?

12 A. Yes.

13 Q. And why did you choose to not speak to law
14 enforcement when they thought you had committed the crime
15 that evidence will show Mr. Fortune did?

16 A. They asked me the question. They never asked me who
17 did it. They came to arrest me as if I did it. Then
18 while they were at my house they found said, "The suspect.
19 We got the suspect."

20 Q. All right, thank you.

21 MR. JOYNER: No further questions.

22 RECROSS-EXAMINATION

23 BY MR. SALEEBY:

24 Q. I know if I got the law coming in my house,
25 Mr. Mungo, we're here and I think your argument of a

1 killer. My reaction would have been you're not, but you
2 let me tell you.

3 A. I talked to Mr. Fortune and I talked to my good
4 friend, Anthony Shields. And I was this close to that
5 truck and I saw -- heard the shots and I saw what
6 happened. And I got out of there and I got home.

7 Q. Would that -- that would be my first reaction that
8 wouldn't be yours?

9 A. I guess if you change things more. I didn't than
10 you.

11 Q. So instead of just telling them that guy, it ain't
12 me, let me tell you what happened, you just chose to say
13 nothing and now that you got in the deal you're telling it
14 all, whatever, all and whether it's the truth or not?

15 A. I don't have a deal.

16 Q. Jay Jay, you've been around the block for a long
17 time?

18 A. I ain't been around the block a long time.

19 Q. You are hoping for the downward departure?

20 A. I'm hoping for one.

21 Q. Yeah, you're hoping real hard, aren't you?

22 A. I got a plea, ten years.

23 Q. But you hope for downwards departure of those ten
24 year?

25 A. If it comes, it come. If it don't, it don't.

1 Q. You don't care?

2 A. Repeat the last question.

3 Q. I asked ---

4 MR. JOYNER: Judge ---

5 THE COURT: I'm going to sustain the objection. This
6 is get far beyond the information that was addressed in
7 the redirect.

8 BY MR. SALEEBY:

9 Q. Well, their talking about charges going. I just want
10 to ask him a question.

11 THE COURT: You had asked him previously on
12 cross-examination if he would be entitled to have his
13 lawyer move for downwards departure. This is not
14 something new brought up on redirect so I sustain the
15 objection.

16 BY MR. SALEEBY:

17 Q. When do you go to Court.

18 A. When do I go to Court?

19 Q. Um hum?

20 A. I don't know when i get sentenced.

21 MR. SALEEBY: Thank you, Jay Jay.

22 MR. JOYNER: Nothing from the State.

23 THE COURT: Thank you. You may step down.

24 MR. JOYNER: Judge, may Mr. Mungo be excused?

25 THE COURT: Without objection. All right ladies and

1 gentlemen, we have about arrived at the lunch hour of
2 one o'clock. It's about ten or 15 till. If you will be
3 back in the jury room at two o'clock. Again, do not
4 discuss the case or allow anyone to discuss it with you.
5 Thank you very much. And after the jury has had a chance
6 to leave we'll be in recess for lunch.

7 (WHEREUPON, the jury panel was excused from the
8 courtroom at 12:49.)

9 (WHEREUPON, Court was in recess at 12:52 p.m. and
10 reconvened at 2:10 p.m.)

11 THE COURT: All right. Counsel, the jury is here.
12 Who is the next witness.

13 MR. HALES: State calls Vincent Davis.

14 THE COURT: Is he in the courtroom?

15 MR. HALES: He's here, Your Honor.

16 THE COURT: Bring the jury in.

17 (WHEREUPON, the jury enters the courtroom at
18 2:09 p.m.)

19 THE COURT: Foreperson and members of the jury, I
20 understand sometimes when you have had lunch the weight of
21 the meal can work on you, and you may get a little heavy
22 eyed in the afternoon or that second glass or third glass
23 of ice tea might work on you and cause you to squirm.

24 If you start feeling that let me know. We can stop
25 the testimony as is necessary in order to accommodate you

Vincent Davis - Direct by Mr. Hales

227

1 and keep you fresh and awake so you will be able to follow
2 all the testimony. We are bringing our witness down. He
3 is here now and we will begin with the testimony.
4 Mr. Davis, if you will come forward and be sworn.

5 VINCENT DAVIS, after being duly sworn, testified
6 as follows:

7 THE COURT: You may examine.

8 DIRECT EXAMINATION

9 BY MR. HALES:

10 Q. Please state your name?

11 A. Vincent Maurice Davis?

12 Q. Mr. Davis, you're going to have to speak up some so
13 everybody can hear you.

14 A. Vincent Maurice Davis.

15 Q. Where do you live, Mr. Davis?

16 A. [REDACTED]

17 Q. Speak up.

18 A. [REDACTED]

19 Q. Okay. I'm taking you back -- is that here in
20 Chesterfield County?

21 A. That's in Cheraw.

22 Q. Chesterfield County, Cheraw?

23 A. Cheraw.

24 Q. Okay. I'm taking you back to December 22nd, the
25 night of or morning of December 23rd 2001. Do you

1 remember what you were doing on that evening?

2 A. I was in the parking lot at Huddle House.

3 Q. Speak up.

4 A. We were in the parking lot at Huddle House.

5 Q. What were you doing in the parking lot?

6 A. Just sitting in the car waiting for some of the

7 people to leave out to get something to eat.

8 Q. Had you been anywhere earlier that night?

9 A. At a party.

10 Q. So you were sitting in the parking lot waiting for it

11 to clear out to get something to eat?

12 A. Waiting for people to come out. It was real crowded.

13 Q. What happened next?

14 A. We were in the car. We saw Anthony pull up. We

15 didn't think too much of it.

16 Q. Anthony, you mean?

17 A. Shields.

18 Q. All right.

19 A. We seen him pull up. He pulled a couple cars down

20 from us. He went about a couple minutes later, maybe two,

21 three minutes later you see a black car pull up behind

22 him. And we're still not thinking nothing about it. So

23 we're sitting there. We heard somebody shot something.

24 Didn't know it was a gun at the moment. Just heard a

25 noise, so we looked over and see a guy in the truck like

1 with his arms inside Anthony's truck on the driver's side
2 like he was shooting or something. So we seen Anthony
3 trying to get out on the passenger side.

4 Q. Stop for a minute. Did you know who it was who was
5 shooting?

6 A. No, I didn't know. I don't know who it was.

7 Q. But you did see?

8 A. Yes, I see somebody but I don't know who it was.

9 Q. Okay. And where with -- with respect to where
10 Anthony was parked how far away from you?

11 A. Probability like from here to the first set of seats
12 right there.

13 Q. This set of seats?

14 A. No, further back than that.

15 Q. Here?

16 A. We were parked like here from here to probably right
17 there were you're at.

18 Q. Both facing that way?

19 A. Towards the Huddle House.

20 Q. Was anything in between you?

21 A. No. No cars were there.

22 Q. And then you say a car pulled behind him?

23 A. Right behind Anthony's truck and just stopped.

24 Q. Okay. So after it started shoot what happened next?

25 A. Like I said like somebody shooting in the inside of

1 the truck. I saw Anthony like trying get out on the other
2 side, the passenger side of his truck and that guy,
3 whatever it was, ran on the other side and was still
4 shooting and that was it.

5 Q. Okay. So you can see him trying to get out the
6 passenger side?

7 A. Yes.

8 Q. Could you see when he ran around the other side?
9 Could you see?

10 A. He was on the driver's side. No, you couldn't see
11 what was on the other side.

12 Q. Oh, okay.

13 A. He was on the other side of the truck.

14 Q. That's right. That's what I was trying to get out?
15 You didn't see that?

16 A. No, not on that side. We seen somebody on the inside
17 like they were shooting or something.

18 Q. But you could hear?

19 A. Yes.

20 Q. Then what happened next after that?

21 A. Well, after all that occurred, whoever was in the car
22 they jumped in the car and backed out and drove off. So
23 we get out the car and go over to Anthony's car so we
24 could see what was going on and he was laying on the
25 ground. That was it.

- 1 Q. He was laying on the ground?
- 2 A. Yeah.
- 3 Q. What you do?
- 4 A. Grabbed the gun out the -- right here by the what you
- 5 call it? The little holder right here. You know in the
- 6 car the -- not the glove compartment. The little thing
- 7 like here.
- 8 Q. Like a little storage place?
- 9 A. Yeah, you know cup holder right there.
- 10 Q. Okay. You say you grabbed what?
- 11 A. The gun.
- 12 Q. Okay. The do you know what kind it was?
- 13 A. .22, .25, something like that. A little small gun.
- 14 Wasn't nothing big.
- 15 Q. Okay. Did you know Anthony?
- 16 A. Yes, sir.
- 17 Q. Did you do anything after you grabbed the gun?
- 18 A. I put the gun in my pocket, got in the car and I
- 19 left.
- 20 Q. You left?
- 21 A. Yep.
- 22 Q. Where did you go?
- 23 A. I went home.
- 24 Q. What did you do when you got home?
- 25 A. I put the gun up, went in the house and went to

1 sleep.

2 Q. Where did you put did you gun?

3 A. Outside.

4 Q. Where outside?

5 A. Well, where I stay it's a little road. I just put it
6 like side the road right there.

7 Q. Why did you do that?

8 A. I don't know. We had been out drinking. I don't
9 know. It was just a bad decision to take it anywhere.

10 Q. So it was a bad decision to take it?

11 A. Yeah.

12 Q. Trying to hide it from somebody?

13 A. Not in particular, nobody. I'm saying I stay with
14 little kids. I wasn't going to take it in the house and
15 let one of them find it and something happen with one of
16 them.

17 Q. Well, what happened after that?

18 A. About two days later S.L.E.D. agent came to my house.
19 I gave them the gun. They asked me for a statement. I
20 give them the statement and that was it until today.

21 Q. Do you remember the name of the S.L.E.D. agent?

22 A. No, sir.

23 Q. That's all right. It's not a big deal. You said you
24 give a statement. Was it a written statement?

25 A. Yeah, they told me to write it out and give it back

1 to them so I wrote a statement and give it to them.

2 Q. And what you testified to today is the same thing you
3 wrote ---

4 A. Yes, sir.

5 Q. --- in that statement?

6 A. Yes, sir.

7 MR. HALES: Court's indulgence. I have no further
8 questions. Please answer any questions the Defense may
9 have.

10 THE COURT: Cross?

11 MR. QUINN: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. QUINN:

14 Q. Afternoon, Mr. Davis.

15 A. Afternoon.

16 Q. You said know Anthony Shields?

17 A. Yes, sir.

18 Q. How do you know him?

19 A. From being around Cheraw. I know his family, his
20 mother, his brother.

21 Q. Okay. Now, I think you said you just testified where
22 you took the gun from in his car?

23 A. Right beside the holder thing -- cup holder thing
24 right here and the cup holder. It was right down in here.

25 Q. Okay. Did you take anything else out of the car?

1 A. No.

2 Q. No, sir?

3 A. Nothing.

4 Q. Okay. Had you ever seen that gun before?

5 A. No, sir.

6 Q. Okay. So, obviously, you've never fired it before or
7 anything like that?

8 A. No, sir.

9 Q. Okay. Are you aware that you committed a crime by
10 taking that gun?

11 A. Not at the moment, sir.

12 Q. But you admit to taking that gun from the scene?

13 A. Yes, sir.

14 Q. Have you been charged?

15 A. No, sir.

16 Q. You have not been charged. What possible benefit
17 would you have to taking the gun?

18 A. There wasn't any. We was out drinking that night.
19 It was a bad decision.

20 Q. You just wanted to take the gun?

21 A. I don't know. Yes, I did it.

22 Q. Okay. After you took the gun at some point did you
23 become aware that Mr. Shields passed -- had died?

24 A. Later.

25 Q. Were you aware the Sheriff's Department was

1 investigating the crime?

2 A. Yes, sir.

3 Q. You've got the gun, that they might want to come get
4 it?

5 A. Somebody had already told me that they were coming to
6 get the gun. Somebody investigating the case was told
7 that I had the gun. So somebody told me they was coming
8 to get the gun. So I felt like they already knew where
9 the gun was so they should have so call -- they already
10 told me.

11 Q. And when did somebody tell you this?

12 A. Huh.

13 Q. When did somebody tell you this?

14 A. The next day.

15 Q. The next day?

16 A. Yes, sir. Well that same day, really.

17 Q. Okay. When did they actually come get the gun?

18 A. Two o'clock the next day.

19 Q. I think you said -- you just testified that you
20 didn't take the gun inside your house. You left it
21 outside?

22 A. Yes, sir.

23 Q. And why wouldn't you have taken it in your house?

24 A. I got little kid in the house. I didn't want them to
25 get it.

1 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
2 identification only.)

3 BY MR. QUINN:

4 Q. Do you recognize that document?

5 A. Yes, sir.

6 Q. What is it?

7 A. It's my statement that I gave the S.L.E.D. agent.

8 Q. How you know it's that statement? Is your signature
9 on it?

10 A. Yes, sir.

11 Q. Okay. Can I get you to read that statement for me,
12 please?

13 A. "After the shooting I, Vincent Maurice Davis, walked
14 over to Anthony Shields' vehicle and saw the .25 caliber
15 pistol on the passenger side floorboard. I picked up the
16 gun and put it in my back pocket. I stayed until the
17 first two paramedics arrived on the scene. I left, went
18 home and went to sleep.

19 I put the caliber under my bed until I had a chance
20 to remove it. Then a friend said the caliber. His name
21 was Fred. He went on to tell me there were no bullets in
22 the gun so I went on and hid the gun in a Kawasaki Four
23 Wheeler that was in the yard and let it stay there until
24 two officers came and got it."

25 Q. Can you read the last two sentences a little slower,

1 please?

2 A. "He went on to tell me there were no bullets in the
3 gun so I hid the gun in a Kawasaki Four Wheeler that was
4 in the yard and let it stay there until two officers came
5 and got it."

6 Q. Is that statement dated?

7 A. With 1:50.

8 Q. And the date?

9 A. On the 28th.

10 Q. Of?

11 A. '01.

12 Q. What month?

13 A. I don't see a month. Twelve.

14 Q. December?

15 A. Yeah.

16 MR. QUINN: Move that this document be admitted as
17 Defense One, Your Honor.

18 MR. HALES: Two.

19 MR. QUINN: Two, I'm sorry.

20 THE COURT: Without objection.

21 (WHEREUPON, Defendant's Exhibit No. 2 was admitted
22 into evidence.)

23 BY MR. QUINN:

24 Q. Now, this statement says that you put the gun under
25 your bed?

1 A. I didn't say anything. I'm saying we were all
2 together.

3 Q. You just said you never took it inside your house?

4 A. It's been a long time.

5 Q. You also said you got the gun the next day. This is
6 five days later?

7 A. I thought so. Man, it's been five years.

8 Q. Okay. But you never picked up the phone and called
9 the Sheriff's Department and told them that you had the
10 gun?

11 A. Somebody told them that I had the gun. That's what
12 they told me.

13 Q. I asked you -- just answer the question, please. Did
14 you ever pick up the telephone?

15 A. No, sir.

16 Q. You did not.

17 MR. QUINN: Court's indulgence. That's all I have,
18 Your Honor.

19 THE COURT: Any re-direct?

20 MR. HALES: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. HALES:

23 Q. Just to clear up. When you got home what did you do?

24 A. Tell you the truth I don't remember.

25 Q. Okay.

1 A. It's been so long ago. Five years ago.

2 Q. But you did take the gun?

3 A. Yeah, I did take the gun.

4 Q. Did you try to conceal it from law enforcement?

5 A. No, sir. For what reason?

6 Q. Did you turn it over when they asked for it?

7 A. Yes, sir.

8 MR. HALES: That's all I have, Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. QUINN:

11 Q. If you weren't trying to hide the gun why put it in
12 the four wheeler?

13 A. Law enforcement didn't want the kids to find it.

14 Q. But it was already up under your bed?

15 A. Nobody sleeps in my bed.

16 Q. Now, do kids go in that room?

17 A. Sometimes.

18 Q. So they could have gotten the gun from under the bed?

19 A. Not with me in the bed.

20 Q. Did you stay in the bed until the gun was gone? The
21 whole time?

22 A. No, sir.

23 MR. QUINN: That's all I have, Your Honor.

24 THE COURT: You may step down.

25 MR. HALES: Ask that this witness be excused.

1 THE COURT: Any objection?

2 MR. QUINN: No, Your Honor.

3 COLLOQUY

4 THE COURT: You had indicated earlier that Dr. Yacoub
5 would be your next witness?

6 MR. HALES: Yes, sir, Your Honor.

7 THE COURT: And if Doctor Yacoub runs into a problem
8 getting here from the airport do you have any other
9 witness who are available this afternoon? She just it?

10 MR. JOYNER: She's just it.

11 THE COURT: All right. Are there any witnesses in
12 addition to Doctor Yacoub who would be available?

13 MR. HALES: No, Your Honor, just the doctor.

14 THE COURT: All right. Ladies and gentlemen, as a
15 practical matter Doctor Yacoub, the next witness that the
16 State intends to call, she is flying here from another
17 state and eventually coming in from the airport in
18 Charlotte. She's in the city limits but not here.

19 As far as the courthouse is concerned I'm going to
20 ask you to step back to your jury room and relax for a few
21 minutes and do not discuss the case among yourselves at
22 this time. We will call the Solicitor, who is evidently
23 with the doctor and let him know we have reached the point
24 in time that their testimony or her testimony -- is it a
25 male or female doctor?

1 MR. JOYNER: Female.

2 THE COURT: Her testimony would be called for and try
3 not to keep you waiting any longer than necessary. Please
4 step back to your jury room for just a few moments. All
5 right, Mr. Joyner or Mr. Hales, call the Solicitor and
6 inform him that we have reached the point in time where
7 we're ready for their arrival.

8 (WHEREUPON, the jury panel was excused from the
9 courtroom at 2:24 p.m.)

10 THE COURT: We'll just be in recess until the doctor
11 arrives.

12 (WHEREUPON, Court was in recess at 2:43 p.m. and
13 reconvenes at 3:14 p.m.)

14 THE COURT: Thank you. Bring the jury back in.

15 (WHEREUPON, the jury panel enters the courtroom at
16 3:15 p.m.)

17 THE COURT: Solicitor, you may call the doctor.

18 MR. JOYNER: State calls Dr. Inas Yacoub to the stand
19 please.

20 INAS YACOUB, after being duly sworn, testified
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. JOYNER:

24 Q. Afternoon, Doctor?

25 A. Good afternoon.

1 Q. I'm going to ask if you would to try to speak up.
2 The acoustics are pretty bad in this courtroom. Could you
3 please state your name and address?

4 A. My name is Inas Yacoub. [REDACTED]
5 [REDACTED]

6 Q. What is your occupation?

7 A. I am a forensic pathologist and I work at the Office
8 of the Chief Medical Examiners at Oklahoma City.

9 THE COURT: How are you doing at the end down there?
10 Can y'all hear.

11 JURY PANEL: Barely.

12 THE COURT: Speak loudly.

13 THE WITNESS: Can you hear this okay?

14 BY MR. JOYNER:

15 Q. Thank you, Doctor. Doctor, what is your education?

16 A. I graduated from medical school. In order to be a
17 forensic pathologist you have to be a doctor first and
18 then take training in pathology and forensic pathology.
19 So I did go to medical school and completed that in 1980.
20 I did my medical training in Cairo, Egypt.

21 After that I came to the United States. I had to
22 take equivalency exams to be able to practice in the
23 United States, which I passed. After that I trained in
24 pathology in a combined program of anatomic and forensic
25 pathology and the University of Alabama at Birmingham.

1 And after that training I was eligible to sit for an
2 exam which would allow me to be board certified which
3 tells the board and the public that I have completed
4 certain courses of training, and I could have -- I have
5 the body of knowledge that would allow me to take that
6 exam.

7 After that in anatomic and clinical pathology
8 training I did a whole year of forensic pathology training
9 in a fellowship over at the University of Alabama at
10 Birmingham. And that training enabled me to sit also to
11 be qualified for sitting for the board of forensic
12 pathology and take an exam and pass it. So now they call
13 me board certified in anatomic pathology, clinical
14 pathology and forensic pathology.

15 So this is in a nutshell what you need to be working
16 in forensic pathology.

17 MR. SALEEBY: Your Honor, to save time I know the
18 Doctor tired from make that flight and we'll stipulate.

19 THE COURT: All right. Ladies and gentlemen, it has
20 been stipulated that the Doctor is qualify as an
21 anatomical and forensic and -- what was the other area of
22 pathology?

23 THE WITNESS: Clinical.

24 THE COURT: Clinical pathology. An expert is someone
25 who by virtue of their education, their training, their

1 background they have certain skills and expertise that
2 normally we don't have within our own repertoire.
3 Therefore, they're entitled to come in and offer opinions
4 about things that are being disputed. The purpose of a
5 doctor or any expert testimony is to assist you in
6 understanding what is going on.

7 It's not for the purpose of controlling your findings
8 or controlling what you decide. But it's here to assist
9 you and you assign such weight -- and to the testimony of
10 an expert witness. You evaluate it the same way you do a
11 lay witness, and you determine what the testimony means to
12 you.

13 It's for your assistance but not for purposes of
14 controlling your findings on anything.

15 MR. JOYNER: Thank you, Judge.

16 (WHEREUPON, State's Exhibit No. 14 was marked for
17 identification only.)

18 BY MR. JOYNER:

19 Q. Doctor, where were you working on December 23rd of
20 2001?

21 A. I was working at Newberry Pathology Associates which
22 is a private practice in pathology and forensic pathology.
23 It serves various counties in South Carolina. We contract
24 with them in cases they have cases of sudden unexpected
25 death or violent death or accidental death or death on the

1 job or different types of cases that a person had passed
2 away and we need to determine for them why did this person
3 die.

4 Did they die of natural causes or of trauma and if
5 trauma then what type of trauma. Was this person shot or
6 beaten or strangled or poisoned or what happened. So this
7 is where I was working at this time.

8 Q. Thank you, Doctor. Did you have an opportunity to
9 perform an autopsy that day on Anthony Shields?

10 A. Yes, I have.

11 Q. Okay. I want to ask you -- I'm showing you what's
12 been marked for identification purposes State's Exhibit

13 14. You recognize that photo?

14 A. State's Exhibit Number 14 is a photograph of the
15 head, neck and upper body of the person with a case number
16 that says FA01699 which was assigned case number for
17 Mr. Anthony Shields. So I do recognize this picture.

18 Q. Thank you.

19 MR. JOYNER: Judge, I would move that this be entered
20 as State's Exhibit Number 14?

21 THE COURT: What says the Defense?

22 MR. JOYNER: Just moving it in for identification
23 purposes.

24 THE COURT: For identification only?

25 MR. QUINN: Okay.

1 THE COURT: Or evidence?

2 MR. JOYNER: I'm moving it into evidence.

3 MR. SALEEBY: Without objection.

4 (WHEREUPON, State's Exhibit No. 14 was admitted into
5 evidence.)

6 MR. SALEEBY: Could we cut that mike up a little bit.
7 I'm having trouble over here. I'll move.

8 THE COURT: Well, I was going to say does the chair
9 have rollers on it?

10 MR. SALEEBY: Yes, sir.

11 THE COURT: Well, let's just bring you closer, but if
12 you can't hear down there flag me.

13 MR. SALEEBY: All right.

14 BY MR. JOYNER:

15 Q. Doctor, when was the first time you saw Mr. Shields?

16 A. At the time of the autopsy.

17 Q. Okay. How long approximately did the autopsy last?

18 A. That autopsy -- we started on December the 23rd of
19 the year 2001 at 1:00 p.m. Examination -- I can't
20 remember what time exactly we finished the examination
21 itself, but the autopsy involved not only the examination
22 of the body and the clothes and the external wounds and
23 the internal wounds and collection of evidence.

24 It also entails additional studies. For example
25 microscopic sections and toxicology analysis and what have

1 you. I can tell you the report itself was completed, of
2 course the transcription and revision of it, that case was
3 completed and the report was issued on December at 29th of
4 the year 2001.

5 Q. Okay. Doctor, I'm showing you what's been marked for
6 identification purposes as State's Exhibit 13. Do you
7 recognize that?

8 A. State's Exhibit 13 I do recognize as the report about
9 the case of Mr. Anthony Shields.

10 Q. Okay. Did you prepare that report?

11 A. Yes, I did.

12 Q. Okay. Judge, I move that State's Exhibit 13 be
13 entered as evidence.

14 THE COURT: What's is the position of the Defense?

15 MR. QUINN: Without objection.

16 MR. SALEEBY: Without objection subject to our ---

17 THE COURT: Well, if he's offering it in it's
18 entirely.

19 MR. SALEEBY: As I understand then it's all in then?

20 THE COURT: Yes, sir.

21 MR. SALEEBY: Thank you. Without objection.

22 (WHEREUPON, State's Exhibit No. 13 was admitted into
23 evidence.)

24 BY MR. JOYNER:

25 Q. Doctor, would you explain the process of the autopsy?

1 Would you explain what you did?

2 A. Any autopsy is like any patient going to a doctor.
3 You have to have a complaint. Why are you coming to me.
4 And that -- this case was about somebody who was found
5 shot. So this is briefly the history that I received at
6 the time before I started the examination. The autopsy
7 proceeds by identifying that body by photographs depending
8 on what type of case.

9 In this case we had a photo identification of him.
10 Examining the body essentially starts with the clothes or
11 any evidence on the body. Outside collected evidence,
12 examining the clothe as far as what the person was
13 wearing. Do those clothes have any holes or cuttings or
14 tears that maybe accompanied or may not be accompanied
15 with what's on the body itself.

16 And after that collecting those documents from the
17 clothes and then examining the body itself externally
18 determining if that person was injured or not. If he was
19 injured, where was he injured. How many times was he
20 injured. Were these injuries superficial and had nothing
21 to do with why he died.

22 Or were his injuries that significant with the damage
23 personally. It also entailed step by step photographing
24 of that person. If he was wounded we would document
25 appearance and location of those wounds. After that is

1 done we do an internal examination to see if internally he
2 was injured and if there is evidence that needed to be
3 collected, bullet or foreign material or blood samples to
4 submit those for toxicology.

5 After this documentation we prepare a report and that
6 report is offered to the Court in cases where the case
7 comes to Court.

8 MR. JOYNER: Thank you. Dr. Yacoub, on your autopsy
9 have you formed an expert opinion as to cause of death?

10 A. Yes, I have.

11 Q. What is that opinion?

12 A. The cause of death of Mr. Anthony Shields was gunshot
13 wound to the core torso, the chest and abdomen.

14 Q. Okay, Doctor, would you come down here and for the
15 jury could you describe the wounds on Mr. Shields?

16 A. May I use my diagram?

17 Q. Yes, of course. Doctor, just for solely for
18 demonstrative purposes you can actually use me. You can
19 use me and you can show the jury points if you like?

20 A. We examine the person. If they're standing in an
21 anatomic position with their hands, palms of the hands
22 face up towards, I observed that Mr. Shields had gunshot
23 wounds to the back, to the left side of the back up ---

24 Q. Just gave the number for the reason of the
25 description. Did you not mean the orders how they would

1 have actually happened?

2 A. This bullet was in the left upper of the back. I
3 examined the clothes. There was gun powder particles
4 around that area and also gun powder on the wound itself
5 on the body. So by definition if I see gun powder there
6 it means that the gun was close enough that when it was
7 fired the gun powder particles did not go in the air.
8 They were close enough to be on whatever part of the body.
9 We call this an intermediate gunshot wound.

10 This wound was fatal. It went left to right passing
11 through vital organs like the heart and lungs associated
12 with internal bleeding. In addition to damage to vital
13 organs the second wound that I called Group Two was on the
14 left side of the torso. This would be in that location of
15 that wound I called a contact gunshot wound.

16 Why because the search of the hole that was made in
17 the clothes from that shot was big, was having black edges
18 which means that when the bullet was going through it was
19 associated with gases that made not only a small hole in
20 the fabric. It had some gas effects and damage so the hole
21 looks bigger.

22 And the edges were charred and have soot. Heat is
23 involved also. On internal examination of the body itself
24 that was muzzling imprint with that wound meaning that
25 that gun was on the skin when that shot was fired. This

Inas Yacoub - Direct by Mr. Joyner

251

1 would was also fatal because again went to left to right
2 involving vital organs like heart, lungs, liver and
3 scrotum.

4 The third wound was on the left buttock and this
5 wounds was not associated with gun powder particles or
6 soot neither on the clothes nor on the body itself. This
7 wound also appears faint meaning when it happened there
8 was enough blood lost that there was not much bleeding
9 with that wound.

10 This wound also passed from left to right and it
11 ended up in the pelvis on the right side. This bullet was
12 what we call a penetrating wound because the bullet
13 entered but remained in the body. This wound, Number Two,
14 we call a penetrating wound. We retrieved the bullet from
15 inside the body.

16 The fourth wound was to the stomach also on the left
17 side. It passed through. It did not injure the pelvis
18 but it passed through towards the abdomen to the right and
19 also ended up on the right side of the pelvis. That wound
20 also appeared fatal.

21 The fifth wound was to the back of the left hand, and
22 this is a perforated wound meaning the bullet ended --
23 entered and came out. It exited in the back of the left
24 hand at the knuckle and came out from the palm of the hand
25 at the finger and from the finger which would be this

1 part.

2 So in total he had five gunshot wounds. Two of them
3 were fatal because of the damage to vital organs and
4 associated bleeding. Two were faint which are the related
5 wounds and the wound of the hand. Because the hand is not
6 as vascular as the chest organ so there is not much
7 bleeding in it, but this wound, the wound to the left hand
8 would not have been in my opinion not damaging any vital
9 organs.

10 Q. Thank you, Doctor. During the course of the autopsy
11 did you take a blood samples, Doctor, from Mr. Shields?

12 A. Right. We routinely take samples for toxicology
13 analysis and D.N.A. if the condition of the body is such
14 that there is still blood and it is not composed or
15 burned.

16 Q. Doctor, did you remove any bullets from the body?
17 The bullets you said were penetrating, did you remove any?

18 A. I retrieved a total of three bullets, the penetrating
19 wounds. The wound from the left side, it was a contact
20 wound. The wound in the buttock to the left buttock and
21 the wound that passed through the scrotum.

22 Q. Doctor, what do you do with the blood samples and
23 bullets when you pull them out?

24 A. The bullets are documented by staff and they are
25 labeled and submitted as evidence with the change of

1 custody and they were submitted to S.L.E.D.

2 Q. Doctor, I'm going to ---

3 MR. SALEEBY: Without objection.

4 MR. JOYNER: Judge, they're unmarked. I apologize
5 for not having them previously marked.

6 (WHEREUPON, State's Exhibits Nos. 15 THROUGH 24 were
7 marked for identification and received into
8 evidence.)

9 BY MR. JOYNER:

10 Q. Doctor, I'm showing you what has been marked for
11 identification purposes as State's Exhibit 14. I'm sorry.
12 That's already in evidence. Fifteen, 16, 17, 18, 19, 20,
13 21, 22, 23 and 24 and I'd ask do you recognize those?

14 A. I do recognize State's Exhibit Number 15, Number 16,
15 Number 17, Number 18, Number 19, Number 20, Number 21,
16 Number 22, Number 23, Number 24.

17 Q. Okay, would you describe what these are?

18 A. State's Exhibit Number 24, Number 22 and Number 19
19 are photograph of Bullet Number Two. It's labeled with a
20 case number which was FA01699 and it shows different
21 angles of the bullet that was retrieved which would be the
22 bullet that passed in the left side of the chest that was
23 the contact gunshot wound.

24 State's Exhibit Number 15, Number 20, and Number 23
25 are three photographs of Bullet Number Four. Again

1 labeled with a case number FA01699. There are three
2 different views of that bullet is which is the bullet that
3 passed through the scrotum and ended up in the right side
4 of the pelvis.

5 And State's Exhibit Number 16, Number 17, and Number
6 18 and Number 21 are photographs of Bullet Number Three
7 which are again different views of that bullet, and those
8 bullets are labeled with the case number, FA01699.

9 Q. Thank you, Doctor. Doctor, for purposes of maintain
10 the chain of custody?

11 A. I haven't open this yet.

12 (WHEREUPON, State's Exhibits Nos. 25 THROUGH 27 were
13 marked for identification only.)

14 Q. Doctor, I'm showing you what's been marked for
15 identification purposes as State's Exhibit 25, 26 and 27.
16 Do you recognize those?

17 A. State's Exhibit Number 26 is a plastic bag containing
18 brown viles labeled with FA01699, the autopsy number and
19 Anthony Shields' name. And Bullet Number Two and that bag
20 contains also a small bag that contains a bullet and that
21 bullet is the same that I took a picture of and submitted
22 as evidence.

23 Q. All right. Thank you.

24 MR. JOYNER: Judge, I move that Item 26 be entered
25 into evidence.

1 THE COURT: Any objection?

2 MR. SALEEBY: Without objection.

3 (WHEREUPON, State's Exhibit No. 26 was admitted into
4 evidence.)

5 A. State's Exhibit Number 27 is also a plastic bag
6 containing a vile labeled with the case number FA01699 and
7 Anthony Shields' name.

8 And Bullet Number Three this evidence also contains a
9 plastic bag has a bullet. The bullet has a deformed tip
10 and it is the bullet that I labeled as Number Three that I
11 retrieved from the body of Mr. Anthony Shields.

12 Q. All right. Thank you, Doctor.

13 MR. JOYNER: Judge, I move that Number 27 be entered
14 as evidence.

15 THE COURT: Any objection?

16 MR. SALEEBY: Without objection.

17 (WHEREUPON, State's Exhibit No. 27 was admitted into
18 evidence.)

19 A. State's Exhibit Number 25 is a plastic bag containing
20 a vile also labeled with case number FA01699 with Anthony
21 Shields's name on the label.

22 And Bullet Number Four, and that bag also contains a
23 plastic bag that has a bullet that I labeled as Number
24 Four and submitted that as evidence.

25 Q. Okay. Thank you, Doctor.

1 MR. JOYNER: And, Judge, I move that 25 be entered as
2 a State's Exhibit.

3 THE COURT: Objection on that, Mr. Saleeby?

4 MR. SALEEBY: No, Your Honor?

5 THE COURT: Without objection.

6 (WHEREUPON, State's Exhibit No. 25 was admitted into
7 evidence.)

8 BY MR. JOYNER:

9 Q. All right. Doctor, thank you. And other than these
10 three bullets and blood samples was there any other
11 physical evidence that was taken as a result of this
12 autopsy for testing?

13 A. The clothes.

14 Q. The clothes. And I'm showing you what's already been
15 entered in evidence as State's Exhibit 11. Do you
16 recognize this?

17 A. Yes, I do.

18 Q. Would you explain for the jury what it is?

19 A. That's a blood stained shirt that had a Nautica
20 inscription on it and gunshot hole on it.

21 Q. Okay. And I will also show you what has already been
22 entered into evidence as State's Exhibit 12. Do you
23 recognize this?

24 A. Yes, this is kind of olive green overalls that had --
25 would you turn it around?

1 Q. Yes, ma'am.

2 A. Had gunshot holes in it that corresponded to the
3 gunshot wound on the decedent.

4 Q. Thank you, Doctor. Doctor, answer questions
5 Mr. Saleeby may have.

6 THE COURT: You may cross, Mr. Saleeby.

7 CROSS-EXAMINATION

8 BY MR. SALEEBY:

9 Q. Now, Doctor, basically, how many case, forensic type
10 cases, have you done?

11 A. According to my last count which is a month back was
12 about 2,500 cases.

13 Q. 2,500. How many with Doctor Sexton? I think he's
14 the main man in Newberry?

15 A. Right. I've been there for about nine years.

16 Q. Been thee for nine years, and now you're in Oklahoma?

17 A. Right.

18 Q. Okay. On this particular evening were -- well, did
19 you report reflect when y'all received the body?

20 A. The report reflects when the autopsy was performed as
21 far as when the body was received. That would be in a
22 logbook in the morgue. It would not be on my report.

23 Q. Would it be in your notes whether the hands of the
24 decedent were bagged or not?

25 A. The hands were not bagged.

1 Q. Were not bagged?

2 A. Correct. The hands already had fingerprint ink on
3 them so the hand were processed before we received the
4 body.

5 Q. You're assuming that?

6 A. The hand were fingerprinted at the time it had black
7 fingerprint ink.

8 Q. Okay. Could you not have checked for gunpowder
9 residue on the hands?

10 A. If there is a S.L.E.D. agent that had been at that
11 scene that had seen on the body they may elect to go ahead
12 and do that before the body is moved to our facility.

13 Q. You didn't know if that had been done or not?

14 A. Right, I knew the hands already had been
15 fingerprinted.

16 Q. Fingerprinted?

17 A. Right.

18 Q. But you don't know about G.S.R.?

19 A. Right.

20 Q. If it had been do you know?

21 A. Right.

22 Q. Prudent thing is to be absolutely sure that the
23 decedent had not fired the gun. Was he right or left
24 handed? The best thing to do would be to do the G.S.R.
25 test which is very simple?

1 A. Has he fired the gun, are you asking?

2 Q. Yes, ma'am.

3 A. The gunshot residue kit depends on how much time had
4 passed between when the body was found and when that test
5 is done. The results may vary. At the time when I
6 received the body for examination I was not aware that he
7 had a gun. And I received the body already with that
8 fingerprint on it so I don't know that that test was done
9 or not.

10 Q. Okay. Well, with you not knowing that what would be
11 the prudent thing for you to do?

12 A. If that was done already, if that had already
13 fingerprinted then I could not do gunpowder residue.
14 There was already fingerprint ink on it.

15 Q. I understand that.

16 A. The results would not -- I would not be able to do it
17 because of that material on it.

18 Q. But you could have with the palm? You could have in
19 this area right here or this area right here, couldn't
20 you? In the back of the hand the gunpowder with a pistol
21 blow back cover basically the fingertip on the back?

22 A. Right.

23 Q. Front of the hand and back of the hand and wrist?
24 There was nothing to prevent you from doing a gunpowder
25 test on either hand, was it? Please, just answer my

1 question. Please, yes or no, and then explain?

2 A. The hands were not bagged. There was evidence put on
3 it and may give extraneous results. The hands already had
4 black fingerprint ink on the palm of the hand. I was
5 under the impression that test was done or the samples
6 were collected before the body came to me.

7 Q. Okay. I understand that. What was your impression?

8 A. Based on that why would I do an additional sample.
9 The sample maybe contaminated because the hands were not
10 bagged and because there was already fingerprint ink on
11 the palm of the hands.

12 Q. You're basing that on conjecture and assumption, are
13 you not?

14 A. It's based on the evidence I had at the time of the
15 examination.

16 Q. Yes. So how long would it have taken you ---

17 MR. JOYNER: Judge, I object and I would like to
18 approach.

19 (WHEREUPON, a bench conference was held off the
20 record in the presence of the jury, but out of the
21 hearing of the jury.)

22 BY MR. SALEEBY:

23 Q. Okay. Doctor, the read in there that somewhere the
24 body was in full rigor mortise, meaning?

25 A. Stiff. Very stiff.

1 Q. And at some point in time they came out of rigor
2 mortise?

3 A. Right.

4 Q. Okay. With regards to your wounds which one of the
5 five wounds did you determine to be fatal, by number? And
6 you had Mr. Joyner. He stood over here. We don't have a
7 chart. We don't have anything else. Somewhere on the
8 back or the side or something, I remember that. I'm sure
9 the jury saw that. Then I did over here. I just need to
10 know the number. What number, Three? Four? Five? Two?
11 Which number was it?

12 A. Gunshot wound that I designated Number One and Number
13 Two are fatal because they, as I mentioned before, passed
14 from the left to the right injuring vital organs, the
15 heart and lungs.

16 Number Two, heart and stomach and in addition to the
17 heart and lungs. So those two wounds by themselves would
18 be fatal because of the amount of bleeding that they
19 caused and because of the damage to vital organs.

20 Q. That would be Gunshot Number Two and Gunshot Number
21 One?

22 A. That is correct.

23 Q. Okay. But not immediately fatal, obviously?

24 A. They would be fatal relatively quickly and these
25 would be wounds that even if that person had access to

1 medical treatment very quickly the damage is such in the
2 organs that were injured it's not going to be treatable
3 medically or surgically.

4 Q. How far in your training -- I've got all kinds of
5 friends with all kinds of pistols and got shotguns and
6 rifles, all kinds of guns and each of them are different.
7 In your training you're qualified when you say that it was
8 you found a scant -- the word is scant, which means very
9 little. Is that what it means to you, the word 'scant?'

10 A. Right.

11 Q. How much do you know about guns? Let me ask you
12 first. Do you know about guns a .25 caliber, a .38
13 caliber, a .45 caliber, or magnum?

14 A. As a forensic pathologist I'm trained in wounds.
15 Gunshot wounds I can recognize if this is a gunshot wound.
16 I cannot recognize if this wound was from a rifle, for
17 example.

18 I'm not a firearms expert meaning that when the
19 bullet is removed then there is a separate expert that
20 looks at those bullets and knows what type of bullet
21 exactly this would be and how they could be fired. I'm
22 not at firearms expert. I'm a forensic pathologist.

23 I could tell this, was that a small caliber bullet or
24 medium caliber bullet or large caliber bullet or a shotgun
25 or a rifle, but I'm not a firearms expert.

1 Q. Okay. Not being a firearms expert then you don't
2 know how the powder was then blown out of the barrel?

3 A. As a forensic pathologist I look at the clothes and
4 at the body and I can recognize that a contact gunshot
5 wound. That wound leaves a muzzle imprint on the body and
6 it can leave a big hole in the clothes because when the
7 gun is fired you don't only have the bullet you have gas
8 that's in the room to go make bigger holes in the clothes
9 and gunpowder on the hands. It can leave an imprint.

10 I can also recognize gunpowder particles on the
11 clothes and I mentioned that in the report and even though
12 there is another expert looking at those clothes and test
13 firing the gun with the same ammunition at different
14 distances and saying where the distance you can get that
15 kind of pattern and give an opinion as to how far that gun
16 was from the target.

17 Q. Okay. I turn your attention to your report, Doctor,
18 to Page Three. You there now, ma'am? You're there?

19 A. Yes.

20 Q. Okay. Thank you. And this third line down says a
21 scant amount.

22 THE COURT: Has this been introduced into evidence?

23 MR. SALEEBY: Yes, sir.

24 BY MR. SALEEBY:

25 Q. The third line down, a scant amount, and you said

1 that means a little bit, correct?

2 A. Correct.

3 Q. Amount of powder tattoo. This is Gunshot Wound
4 Number One, correct?

5 A. Right.

6 Q. Observed a 1 inch -- I assume that means suggests a
7 one inch area. You are rounding the wound so that was not
8 a close range shot then, was it?

9 A. Based on my training the gunshot wounds are
10 classified into contact. If that gun was on the target if
11 it's further -- a little further away from the target and
12 does leave a gunpowder particle and gunpowder tattoo on
13 the skin. This is classified as intermediate range.

14 If I don't see soot or gunpowder particles or
15 gunpowder tattoos then that gun would have been further
16 away from the target; that those powder particles
17 dissipated in the air and did not have a chance of
18 depositing on the target.

19 I call it intermediate because I saw there was powder
20 tattoos as far as how far this gun would have been from
21 the target. I could not do that because I'm not a
22 firearms expert. I'm just ---

23 Q. But from your experience what you testified to it was
24 not a close up shot?

25 A. Gunshot number?

1 Q. Number One.

2 A. Number One, this was far enough from the target that
3 I did not observe any soot and the hole in the clothes was
4 not big. So I classified it as intermediate cause it was
5 a little bit further away. Then the exact gunshot wound
6 that he had which was Number Two.

7 Q. Okay. So the first shot -- and you don't know what
8 order these shots were fired?

9 A. I don't.

10 Q. What you labeled as Five could have been One. And
11 Four could have been Two. And you know, you get what I'm
12 getting at?

13 A. Generally.

14 Q. That's no way of you knowing?

15 A. Generally, we would not be able to tell because we
16 were not an eyewitness to the shooting. However, in this
17 case it appears that Gunshot Wound Number One and Gunshot
18 Wound Number Two, both of them were associated with
19 bleeding and both of them did not appear pale compared to
20 Gunshot Wound Number Three and Number Four which are the
21 one in the buttock and scrotum.

22 These appeared pale so it appeared to me that --
23 again, this is my opinion based on what I saw and my
24 training, that either Gunshot One or Number Two came
25 before the paler wound, which would be Numbers Three and

1 Four.

2 Q. To a reasonable degree, and I understand this is a
3 tough call because particularly since you're not a gun
4 expert, but to a reasonable degree of medical certainty
5 you can't say Number One and Number Two, as listed in your
6 report were the first two shots, can you, to reasonable
7 degree of medical certainty?

8 A. I can. It's my opinion within the reasonable degree
9 of medical certainty that either Gunshot Wound Number One
10 or Number Two happened before Gunshot Wound Three or Four
11 because of the appearance of the pallor of Number Three
12 and Number Four and the minimum associated bleeding with
13 those compared to Gunshot Wound One and Number Two, which
14 were the intermediate range and the contact wounds that
15 were associated with the bleeding and did not appear pale.

16 Q. Okay. And I appreciate you're saying that. And you
17 can -- you're saying that now to a reasonable degree of
18 medical certainty, I wrote down the word, 'assumed' and
19 assumed is not to a reasonable degree of medical
20 certainty.

21 Now, let me ask you this question. You were paid by
22 the State, were you not, or the County of Chesterfield or
23 your group -- was your medical group?

24 A. I was paid by my group to perform the autopsy ---

25 Q. Correct.

1 A. --- which involved rendering my opinion as to doing
2 the examination and rendering the opinion about the case.
3 Right now I'm working in Oklahoma in another agency and a
4 that sometimes requires of me to come to testify in Court
5 and travel. That's compensated by the State, that's
6 correct.

7 Q. Okay. Thank you. So you're a State's witness and
8 based on the State's side not what I want to say?

9 A. No, sir. I'm a forensic pathologist. I'm a doctor.
10 I'm trained to do certain examinations, and I do them and
11 I report my findings. The State has used me. The Defense
12 can use me. My findings are the same findings.

13 Q. All right. Thank you. And I appreciate that. Then
14 go to the top then of your report, please, ma'am.

15 A. Which page are you referring to?

16 Q. First page. I'm sorry, Doctor. First page.

17 A. First page. Yes, sir.

18 Q. Okay. Start back, case history. Correct. On the
19 very top?

20 A. You're referring to Page Two?

21 Q. Well, if that's Page Two then I'm sorry. I
22 apologize. Page Two, ma'am. Yes, ma'am. Are you with
23 me, Doctor?

24 A. Yes, Page Two.

25 Q. You had a case history. Would you start reading

1 under case history and these are your own words and your
2 own opinion and this is your knowledge?

3 A. Correct.

4 Q. Your accurate reflection and knowledge. Answer that
5 question first, please, ma'am. Ma'am, answer the
6 question. Is this ---

7 A. I'm sorry.

8 Q. Ma'am, what is this writing here in your report is in
9 your accurate remembrance of what you did saw, told, and
10 was heard, correct, or you wouldn't have put it down there
11 if it wasn't the truth, correct? I know you're an being
12 honest lady.

13 What I'm saying is what you put in your report
14 although the report is your opinion and what is not in the
15 opinion type things is put down as the truth, correct?

16 A. I'm sorry. I'm missing the question.

17 Q. You didn't lie in here. You're a nice lady, nice.
18 Dr. Yacoub, well known and glad -- wish you were still in
19 South Carolina. I'm saying in your report everything is
20 truthful that you put down, right? You did not put
21 anything unfair or untruthful in your report did, you?

22 A. You're asking about the case history or I'm not
23 hearing as to what your question is.

24 Q. Case history, all the way through your report
25 basically isn't just yes or no. Isn't it all truth?

1 A. As much I know.

2 Q. You, Doctor ---

3 THE COURT: Mr. Saleeby, give her a chance to answer
4 your question before you answer another one.

5 THE WITNESS: What is the question?

6 BY MR. SALEEBY:

7 Q. The question simply is from the beginning of your
8 report to the end of your report which you dictated,
9 correct?

10 A. Oh, my report I typed?

11 Q. Okay. You typed it yourself?

12 A. Yes, sir.

13 Q. Okay. Did you type from memory or from what you had
14 a machine or what?

15 A. Okay. The report is composed of -- my report was
16 several pages. The typed parts of it, the front page,
17 would be a summary of the findings and the cause of death
18 and the manner of death. The second page that you were
19 referring to it included at the beginning case history.

20 If you look at the left upper part of it which says
21 FA01699. So when I was -- used to remember things very
22 well. But I was taught by Doctor Sexton and I part of my
23 trade is that you will not remember things five years down
24 the line. That's why you write things down.

25 The case history involves what was told to me or what

1 was know about the case that was passed to me about this
2 case. So five years or 20 year down the line I would have
3 a recollection of what this case was about. The part of
4 there report which is the case history is the information
5 which was passed to me about this case based on what was
6 known at the time when the body came to us.

7 This information may have additional information that
8 becomes known later on -- may have information that proves
9 not to be true because more information came or the
10 witness just changed their story or they did not remember
11 or for whatever reason. So part of the report which is
12 the case history is what I put down of what I know about
13 this case at this time whether this is confirmed and
14 verified later. That's the story that I don't have a
15 handle on, but I had to put what I know about the case at
16 that time for me to remember.

17 Q. All right.

18 A. Now, the autopsy protocol is my examination of that
19 case and it start about the description of the clothing,
20 what I saw and this is documented by diagrams and by
21 photographs and I looked at these then when I typed my
22 report so I would be accurate. So I have the description
23 of the clothing then. Simple external examination which
24 involves what I saw on the body with reference to wounds
25 or no wounds.

1 MR. SALEEBY: Excuse me, Judge.

2 BY MR. SALEEBY:

3 Q. I don't mean to be disrespectful. I'm trying to be
4 short with you. I know you're taking your time. I just
5 want you to respond to my questions. I don't want you to
6 go through the whole report. We don't need to -- just
7 limit it to a yes or no.

8 A. The correctness of the Court, the case history is
9 what availability the rest of the report is. Examination
10 and the documentation of it and then the summary.

11 Q. Yes, ma'am. You told us that four of five times. I
12 want you to go back to Page Two so we don't have to go
13 over it a fifth time, okay? So, again, when it says case
14 history you were just typing up as you had been taught by
15 Dr. Sexton and other professionals to do it right then so
16 you won't forget it years -- two, three, four, five years
17 later?

18 A. That's correct.

19 Q. So when you signed the case history you typed it up
20 as correct from your memory as you could recall?

21 MR. JOYNER: Judge, I'm going object. He's asked
22 this question I believe.

23 MR. SALEEBY: I never got an answer.

24 THE COURT: I think she can answer as best she could.
25 She has testified that that is information that was given

1 to her. And she put it down and that it might change I
2 don't know other than she can answer as to whether or not
3 it's truthful information or not in answering that
4 question cause she said she can't.

5 MR. SALEEBY: I'll move to take care of that.

6 BY MR. SALEEBY:

7 Q. Then, Doctor, would you start reading where under
8 case history it is decedent there on Page Two. This is
9 very important cause this is what your first information
10 was, correct? Before you did the autopsy? Before you did
11 this and that and even before you did any tests you had a
12 case of what we call a case history given to you by
13 somebody?

14 A. Right.

15 Q. And who was that somebody?

16 A. That would be either the Chesterfield County Coroner
17 or the investigator that came with the case.

18 Q. Your records indicate which one that was? Who was
19 it? Who it was?

20 A. I know that there was a S.L.E.D. agent, Diane Bodie.

21 Q. Diane Bolam?

22 A. Bodie.

23 Q. Bodie? Okay.

24 A. She received the evidence from our office which was
25 the clothes and the bullets and the samples of blood. So

1 I'm saying either one of them would have given me this
2 information. Which one of them I can't recall.

3 Q. Either Diane Bodie or the coroner?

4 A. Correct.

5 Q. Okay. Would you start reading that where it says the
6 decedent and that is what's being told by either the
7 coroner or Diane Bodie?

8 A. Or if there was an investigator with the case, I
9 don't remember.

10 Q. Or if there was an investigator with the case before
11 your autopsy examination, correct?

12 A. Correct.

13 Q. Will you start reading, please?

14 A. The decedent was a 27 year-old allegedly shot while
15 inside a vehicle parked in the parking lot of the Huddle
16 House. Reportedly a shot was heard and then four or five
17 shots. He got back up again.

18 Q. You're right. Say that -- begin slowly. Start with
19 reportedly?

20 A. Reportedly, a shot was heard. Then four or five
21 shots after it.

22 Q. Okay. Reportedly, a shot was heard and then four or
23 five shots after that, correct?

24 A. That's what ---

25 Q. That's what it says and that's what you were told?

1 A. That was the information I got.

2 Q. A shot, one, was fired and then four or five shots
3 after that. After it. Okay. Now, I ask you, you doing
4 autopsy protocol, and go to the third line from the
5 bottom.

6 MR. SALEEBY: Ladies and gentlemen of the jury will
7 have this in the back.

8 BY MR. SALEEBY:

9 Q. We're starting some gun powder, you with me?

10 A. Which page are you referring to?

11 Q. Still on Page Two under autopsy protocol?

12 A. Which paragraph?

13 Q. Under to -- you see case history? You've gone
14 through it. Right under the autopsy protocol in big bold
15 black letters. Is your's not like mine, ma'am?

16 A. I do so the autopsy protocol. Yes, sir.

17 Q. You see autopsy protocol?

18 A. Yes, sir.

19 Q. Well, then you see where it says description of
20 clothing?

21 A. Yes.

22 Q. I'm just trying to cut through all that and save time
23 for the ladies and gentlemen. Go down from the third line
24 from the bottom of that paragraph, Number One, and start
25 reading with the word 'some' to you see where it says

1 'some gunpowder'?

2 A. Right.

3 Q. Read that, please, ma'am, to the end.

4 A. Okay. Even around the gunshot wound on the left
5 upper aspect of the decedent's back.

6 Q. Continue, please.

7 A. There was the stain with blood -- upper aspect.

8 Q. Okay. Now, as I understand it and tell me if I'm
9 wrong there were only two shots and you say their One and
10 Two, but Number One, we're going back, was not a close
11 upshot, correct? What you call an intermediate range
12 shot?

13 A. It was not a contact meaning the gun would not leave
14 an imprint with the first -- if it left gun powder tattoos
15 on the skin which meant the gun was -- had some room
16 between it and the target for the soot to dissipate and
17 leave some powders.

18 Q. All right. Would you turn to Page Three then and go
19 down to Gunshot Wound Number One?

20 A. Yes, sir.

21 Q. All right. Can I read it cause I can read faster
22 than you can and just tell me if I'm wrong. That all
23 right with you?

24 A. Sure.

25 Q. Okay. Thank you. These are your words not mine and

1 you tell me if how many different. "Gunshot wounds
2 entrances -- this is one gunshot. Gunshot wound entrance
3 is located in left side of the back, 15.5 inches below the
4 top of the head and 6.5 inches to the left of the
5 posterior midline plains. It appears round and measures
6 0.35 inches in diameter. A scant, and you said that meant
7 a little bit, amount of powder tattoos are observe
8 around -- and -- that should have been an 'a.'.

9 A one inch area surrounding this wound. After
10 penetrating the skin the bullet inflicted the wound,
11 passed to the right forward lobe and slightly upward. It
12 entered the chest cavity between Left Rib Number Five and
13 Six, perforates upper lobe of the left lung, the
14 pericardial sac, the left atrium, the pulmonary artery
15 contusion/lacerated the upper lobe of the right lung and
16 exited the front of the right side of the chest between
17 ribs.

18 Number Two and Number Three just to the right of the
19 sternum. On Page Four now. The .035 inch slit shape exit
20 wound is located 14 inches below the top of the head and
21 3.30 -- three and 3/4 inches to the right of the midline
22 plain."

23 Now, in anywhere on that did you call that a contact
24 wound or even an intermediate wound? Anywhere in there
25 did you use those words, and those are your professional

1 words I used far up sort of near?

2 A. I did describe the powder tattoo which was ---

3 Q. It know you did. Just answer my question, please,
4 ma'am?

5 A. In this section I don't -- I called it an
6 intermediate wound. I described it as a wound that to
7 have been occurring with the gun slightly away from the
8 body for it to deposit gunpowder tattoos.

9 Q. You don't describe that. You don't say that. You
10 say a scant amount of powder tattoos are observed around a
11 one inch area surrounding the wound.

12 In other words you don't say it was a contact wound.
13 You don't say it was an intermediate wound or you don't
14 say it was a far distance wound, do you? Now, you do or
15 don't? I mean it reads for itself?

16 A. I described it this and ---

17 Q. Well, I'm asking what this report says. I'm not -- I
18 do not want to argue with you. I just either want you to
19 agree or disagree with me on what words you put down on
20 your report because this is critical.

21 You either agree or disagree that this is not an
22 intermediate wound, far off or not a contact wound. You
23 either agree with me or disagree with me. That's all I'm
24 asking you to do. I know the State has called you here.
25 I know the State's job is to convict. Hauled you out here

1 from Oklahoma. Is it in there? Any of those three words
2 in there?

3 A. In the evidence?

4 Q. Yes or not in that paragraph?

5 A. I'm describing what the evidence of the injury. What
6 the appearance of the wound. On the first page I have the
7 opinion that says Number One is a fatal intermediate range
8 perforating gunshot wound to the upper aspect, left upper
9 back, perforation of the heart and lung.

10 Q. Excuse me, ma'am.

11 MR. SALEEBY: Your Honor, I would just ask her to
12 answer yes or no and then she can explain.

13 THE COURT: Doctor, you can either -- if you will
14 answer as to yes or no as to whether these words are or
15 are not contained in that section he has read from and if
16 there is a reason why you would not have used those words
17 in that section you can tell him the reason that words, if
18 their not in there are not in there.

19 THE WITNESS: Okay. The question again is what?

20 BY MR. SALEEBY:

21 Q. The question again is in Paragraph One on Page Two,
22 or it is Three, where you talk about the Number One
23 Gunshot Wound anywhere in there do you say it was a long
24 distance shot, an intermediate range shoot or a contact
25 wound shot meaning very, very close up. Are those words

1 in there or not?

2 A. In Page Number Three where the description of gunshot
3 entrance where I described the scant amount of powder
4 tattoos observed around the wound there is a description
5 of what I saw. The words, 'intermediate' is not in the
6 description, but the description translates into my
7 opinion as an intermediate gunshot wound.

8 Q. Why didn't you put it in there? If that's correct
9 why didn't you put it in there?

10 A. I put it in the first page.

11 Q. Why didn't you put it here?

12 A. I had an option to put it or not put it. I described
13 it. I'm not ---

14 Q. Man's life is on the line. Don't you think you ought
15 to be completely accurate in your report and let your
16 report be completely accurate, page by page by page and
17 not just at your whim and whimsy as where you should put
18 something or where you shouldn't?

19 A. I did put the description as there is gunpowder
20 tattoos. This is the description of the wounds.

21 Q. I didn't ask you that. Don't you think you should be
22 consistent. You're taught to be consistent. I know I've
23 taken courses down at M.U.S.C. You were taught to be
24 consistent, aren't you, throughout your report and not
25 just place something where you want to?

1 A. Right. I'm consistent in my examination and my
2 recording of the findings.

3 Q. You're not consistent in the words that you're using,
4 are you? I'm not beating up on you, Doctor. You're a
5 lovely lady. This man's life is on the line. What school
6 did you graduate from?

7 A. Which part of my graduation?

8 Q. Forget that. Didn't, Doctor -- didn't too long for
9 than. Didn't Dr. Joel Sexton, who I've known for 30 years
10 teach you to be consistent in your report?

11 A. Dr. Sexton thought me to be thorough and honest and
12 this is what I put as far as my description translates
13 into this gunshot wound that's designated as Number One
14 would be classified as an intermediate range gunshot wound
15 based on the description of being -- having gunpowder
16 particles around the wound and not soot.

17 Q. I know you're being fair, but the state is saying in
18 terms of this part of the autopsy report and that autopsy
19 report the words you used are not consistent?

20 A. If you're looking at the word intermediate in that
21 paragraph it is not there, however, the same description
22 of an intermediate gunshot wound which is the presence of
23 gunpowder tattoos which is present on the first page on
24 fatal intermediate range perforated gunshot wound.

25 Q. Okay. Would you turn to Page Number Four then and

1 there is Gunshot Wound Number Two, Line Three. It says --
2 or start with Line Two, it measures .45. Has blackage and
3 muzzling imprint around it. So you said that Number Two
4 had a muzzling imprint around it and you told us muzzling
5 imprint around it meant close range?

6 A. Contact.

7 Q. Contact?

8 A. Right.

9 Q. So Number Two is one way you described that one
10 contact, but you didn't say intermediate.

11 A. Number One. Gunshot Number One.

12 Q. Right, but the description is still there.

13 MR. JOYNER: I'm going to object, Judge. It doesn't
14 say contact wound Number Two. He just said something
15 that's not in the report.

16 THE COURT: I'll let -- the report doesn't have the
17 word contact in it then I'll ---

18 MR. JOYNER: Specific area.

19 THE COURT: Use the word consistently. Use the word
20 that's in the record. Ladies and gentlemen of the jury,
21 of course, you will have the report at the time it's
22 appropriate for review back in the jury room.

23 BY MR. SALEEBY:

24 Q. Okay. Dr. Yacoub, I'm apologize for taking up all
25 your time up here, but you should get at good night's

1 sleep. Just -- I respect you for your credentials.
2 You've got a lot. I know your report was fair. You said
3 it was fair. In your fair opinion, correct, based on your
4 knowledge and training, correct?

5 A. My report is accurate.

6 Q. Fair, accurate, according to your training and
7 knowledge, correct?

8 A. Accurate.

9 Q. Well, accurate?

10 A. Just the facts.

11 Q. It's just the fact. In other words, what you say
12 goes?

13 A. What I see.

14 Q. Have you ever made a mistake?

15 A. Excuse me.

16 Q. Have you ever made a mistake?

17 A. I'm human.

18 Q. Thank you. Then what I'm saying is, and I'm not
19 trying to -- I'm not being mean, I make 10,000 mistakes
20 and probably 10,000 more I don't know about. God knows,
21 probably another 200,000. But you've made a mistakes but
22 you're saying it's accurate. Are you saying that you've
23 never made a mistake in none of your reports?

24 A. No, sir.

25 Q. Glad to know you're human. Thank you. Now, but I

1 know you're well qualified and very much a lady and very
2 honest and I appreciate you're taking the time to come way
3 out or way back over here to bring the information in
4 front of this jury which is important.

5 And so closing I will just ask you again particularly
6 going back to just taking your report as a whole, and you
7 use the word, 'accurate' -- you use the word, accurate.
8 Then accurate to you means from Page One all the way
9 through you whole report, correct?

10 A. To the best of my knowledge.

11 Q. To the best of your knowledge?

12 A. Correct.

13 Q. So from the very first part of this report, from the
14 case history, to the autopsy protocol and all the other
15 finding you did an excellent job on this report is
16 accurate from front to back or top to bottom cover,
17 whatever things you want to call it?

18 A. To the best of my knowledge.

19 Q. To the best of your knowledge. Okay. And getting
20 back to the case history. You weren't at the scene of
21 this shooting, were you?

22 A. No, sir.

23 Q. So what you had in there in that first paragraph you
24 would have had to be told that by a law enforcement
25 officer, would you not?

1 MR. JOYNER: Judge, I'm going to object. Asked and
2 answered three times already.

3 MR. SALEEBY: No, sir, not that one.

4 THE COURT: I think she has said that her source of
5 the information either came from the S.L.E.D. agent, an
6 investigator with the Sheriff's Department or from the
7 coroner. I will sustain the objection.

8 MR. JOYNER: Okay.

9 BY MR. SALEEBY:

10 Q. I will go from what the Judge said. Your source of
11 information would have been coming from the S.L.E.D.
12 agent? The coroner?

13 MR. JOYNER: Objection, Judge, asked and answered.

14 THE COURT: If I sustained it there is no point in
15 asking it again.

16 BY MR. SALEEBY:

17 Q. I do appreciate your time and your honesty and hope
18 you have a good flight back. Thank you, ma'am.

19 THE COURT: Any redirect by the State?

20 MR. JOYNER: Very briefly, Judge.

21 REDIRECT EXAMINATION

22 BY MR. JOYNER:

23 Q. Doctor, I want to refer you to the paragraph we were
24 just discussing, Paragraph One which starts on Page Two.
25 Excuse me. It starts on Page Three. I'm sorry. It talks

1 about the gunshot wound. Does the entire paragraph that
2 Mr. Saleeby had you read is that -- could that be a
3 definition for an intermediate wound?

4 MR. SALEEBY: Objection, Your Honor. Leading.

5 THE COURT: If you will rephrase your question.

6 MR. JOYNER: I will, Judge.

7 BY MR. JOYNER:

8 Q. Doctor, what was Paragraph One on Page Three? You
9 see Number One Gunshot Wound? What does that describe?

10 A. That describes the appearance of the Gunshot Wound
11 Number one Entrance. Where it was, what it looked like
12 and how that wound injured the body. Where did it go and
13 what organs did it pass through. So it's a description of
14 that gunshot wound.

15 Q. Doctor, could I ask you a question. Would you define
16 what an intermediate wound is?

17 A. Right. Like I mentioned before a contact gunshot
18 wound is one in which the gun was on the target and that
19 would be associated with soot, with burning. It would be
20 associated with wounds that appear bigger than the bullet
21 either on the clothes or on the body.

22 And if the gun was on the body to kind of -- close
23 enough to the body that it would leave a muzzle imprint,
24 then you would see that on a contact gunshot wound.

25 An intermediate range gunshot wound is one that the

1 gun had been further away from the target to the degree
2 that soot is not observed around that wound. We see
3 gunpowder particles around the wound which it was
4 definition of an intermediate gunshot wound.

5 And then the third classification is the distance
6 gunshot wound in which we don't see either soot or
7 gunpowder particles which translate into the gun had been
8 far away from the target that wouldn't leave soot or
9 gunpowder particles.

10 Q. Thank you, Doctor. I just want to ask you a few more
11 questions. In your opinion would Gunshot Wound One or Two
12 cause the death of the victim in this case?

13 A. In my expert opinion either Gunshot Wound Number One
14 or Gunshot Wound Number Two either of them by themselves
15 would cause the death. Having both of them together would
16 make things even worse. So either of them in my opinion
17 caused his death.

18 Q. And, Doctor, in you expert opinion did, after the
19 autopsy, after the examination, is it your opinion that
20 when One and Two occurred before either Three or Four?

21 MR. SALEEBY: Objection, Your Honor. Leading.

22 THE COURT: Ask if she has an opinion.

23 MR. JOYNER: Judge, that's fine. I think the jury
24 knows. No further questions.

25 THE COURT: All right. Doctor, thank you. Any

1 objection to the doctor being excused by the State?

2 MR. JOYNER: None from the State.

3 MR. SALEEBY: None from the Defense, Your Honor.

4 THE COURT: You're excused from your subpoena, ma'am.

5 You can take your report, but please be sure that you do

6 not include any exhibits when you take your file back.

7 Ms. Hattie, you got all the exhibits?

8 COURT REPORTER: I think so.

9 THE COURT: All right. Ladies and gentlemen, we have
10 changed our schedule a little bit. We may or may not work
11 a little bit later tomorrow night just depending on the
12 nature of how things go. I was not sure of the doctor's
13 availability today so I had you come in earlier.

14 I also had you come in earlier because I needed to
15 try and finish some testimony today by five o'clock
16 because Judge Davis is the Drug Court Judge and those
17 individuals are scheduled to come in today at 5:00 and
18 their scheduled to report here and have those proceedings
19 that he's involved with take place in this courtroom.

20 So it's about 20 minutes until 5:00 probably so this
21 would probably be a good point in time to break and give
22 y'all a chance before those individuals start coming into
23 the courtroom. Tomorrow I'm giving you little bit of a
24 break. We're going to start -- well, we should be able
25 the start at 9:00, I think. Just let me check from the

1 standpoint of who is going to be doing cross-examination
2 and those types of things. Is Mr. Quinn going to be
3 handling those?

4 MR. SALEEBY: Yes, Your Honor.

5 THE COURT: So we'll start at 9:00 in the morning and
6 see where we go with that. Mr. Saleeby has a medical
7 appointment to attend to so he won't be here when we
8 start. As soon as the doctor has a chance to see him
9 he'll come on in so don't take his absence in the morning
10 as a lack of interest or anything like that. He's just
11 committed to something different.

12 He's got to have an appointment, and so I will excuse
13 you at this time. Do not discuss the case among
14 yourselves or do not allow anybody to discuss it with you.
15 We'll see you back here at 9:00 in the morning. Have a
16 very good evening.

17 (WHEREUPON, the jury panel was excused from the
18 courtroom at 4:40 p.m.)

19 THE COURT: All right. Counsel we'll be ready to go
20 at nine o'clock in the morning.

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HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	02-GS-13-0137

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
OSCAR FORTUNE	)	
<u>DEFENDANT</u>	)	

March 6-9, 2006
 Chesterfield, South Carolina
 VOLUME NUMBER 03

B E F O R E:

THE HONORABLE JOHN M. MILLING, JUDGE; and a jury.

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

FRANKLIN JOYNER, ASSISTANT SOLICITOR
 Attorney for the State

KEVIN HALES, ASSISTANT SOLICITOR
 Attorney for the State

ED SALEEBY, JR., ESQ.
 Attorney for the Defendant

TERRENCE QUINN, ESQ.
 Attorney for the Defendant

HAROLD HANEY, Chesterfield Cty. Sheriff Dept.

DAVID WATSON, Chesterfield Cty. Sheriff Dept.
JOHNNY QUICK, Chesterfield Cty. Sheriff Dept.
DENISE SHIELDS, Defendant's Wife
IRIS GASTON,
TONNETTE CASH,
ARTHUR MUNGO,
VINCENT DAVIS,
INAS YACOUN, Pathologist
BARRY DAVIS,
STEPHANIE DOUGLAS,
JESSIE ELLISON,
DAVID LEE,
WAYNE JORDAN, Chesterfield Cty. Sheriff Dept.
VELLO PAAVEL, S.L.E.D.
DUSTIN SMITH,
DOROTHY FILIATREAU,
SONTA MCCALL,

HATTIE O. GORDON
Circuit Court Reporter

1 (WHEREUPON, State's Exhibits Nos. 28 THROUGH 35 were
2 marked for identification only.)

3 THE COURT: State ready to call their first witness?

4 MR. HALES: No, sir, Your Honor.

5 THE COURT: Get your first witness and bring him in.
6 Check and see if the jury is ready to come out.

7 (WHEREUPON, the jury panel enters the courtroom at
8 9:19 a.m.)

9 THE COURT: Good morning to you. Hope everybody had
10 a rest evening last night. State may call it's next
11 witness.

12 MR. HALES: State calls Barry Davis, Jr.

13 THE COURT: Very good. Mr. Davis, if you will come
14 around.

15 BARRY DAVIS, after being duly sworn, testified
16 as follows:

17 (WHEREUPON, State's Exhibit No. 56 was marked for
18 identification only.)

19

20 THE COURT: You may proceed.

21 MR. HALES: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. HALES:

24 Q. Please state your name.

25 A. Barry Davis, Jr.

1 Q. And please speak up, Mr. Davis. That microphone
2 isn't on. Where do you live, Mr. Davis?

3 A. [REDACTED]

4 Q. [REDACTED]

5 A. [REDACTED]

6 Q. Is that here in Chesterfield County?

7 A. Yes, sir.

8 Q. Mr. Davis, I'm taking you back to the night of
9 December 22nd 2001 to early morning of December 23rd 2001.
10 Do you remember what you were doing that night?

11 A. At the Huddle House.

12 Q. Okay. What were doing at the Huddle House?

13 A. Sitting around.

14 Q. Sitting around. Just -- were you going to get
15 something to eat?

16 A. Yeah, I was.

17 Q. Okay. What happened while you were at the Huddle
18 House?

19 A. Just sitting there. Seen my home boy, Anthony.

20 Q. Okay. Your home boy Anthony. Who is that?

21 A. Anthony Shields.

22 Q. Okay. You say you saw him. How did you see him?

23 A. He pulled up in his truck.

24 Q. Okay. What did he do?

25 A. Nothing.

- 1 Q. Okay. What did you do when you saw him pull up?
- 2 A. I went to holler at him. Say, Yo, Anthony, what's
- 3 up. And I saw a car pull up and shots got fired?
- 4 Q. Okay. Now, you say you saw a car pull up. Where did
- 5 it pull up.
- 6 A. I think behind his truck.
- 7 Q. What happened after the car pulled up?
- 8 A. People got out, was words said and then shots fired.
- 9 Q. People got out. Who got out?
- 10 A. Two people, a girl and an dude. A girl and a guy.
- 11 Q. Girl and a guy. Did you know them?
- 12 A. No.
- 13 Q. But it was a girl and a guy? You have to verbalize
- 14 your answer. You can't shake your head. You have to
- 15 speak. It was a girl and a guy?
- 16 A. Yes, sir.
- 17 Q. Okay. What happened after they got out?
- 18 A. Some words were exchanged and shots were fired.
- 19 Q. Words were exchanged between who?
- 20 A. First it was the girl and the guy -- the girl and
- 21 Anthony and then shots got fired after that.
- 22 Q. So it was a girl talked to Anthony and then shots
- 23 were fired. Okay. What happened after the shots were
- 24 fired?
- 25 A. After the shots were fired. The first shot?

- 1 Q. Um hum. There was more than one set of shots?
- 2 A. The first shot from the driver's side and then shots
- 3 on the passenger side.
- 4 Q. Okay. Well, explain to me how that happened?
- 5 A. I don't know. I just heard the first set of shots.
- 6 Seen the second set of shots.
- 7 Q. Okay. That's what I'm trying to ask you. You said
- 8 you heard the first set of shots and those were where?
- 9 A. The driver's side.
- 10 Q. The second set, where were those?
- 11 A. On the passenger's side.
- 12 Q. Okay. How were there shots from the passenger side?
- 13 A. How was it?
- 14 Q. Yeah, how was somebody shot on the passenger side of
- 15 the car?
- 16 A. Walked around -- walked around. I guess walked
- 17 around the truck.
- 18 Q. Okay. Did they shot into the car or towards the
- 19 ground?
- 20 A. Second set of shots.
- 21 Q. Yeah?
- 22 A. Towards the ground.
- 23 Q. Okay. So run through that sequence of shots one more
- 24 time?
- 25 A. Words were exchanged, shot three times, I think three

1 times. Boom, boom, boom. And walked around the truck and
2 two more shots.

3 Q. Okay. And what did you do after that second set of
4 shots?

5 A. What did I do? I stood there for a little while and
6 i waited until they left and checked on my home boy.

7 Q. You said he left. Who is he?

8 A. I ain't never see the guy's face.

9 Q. I know. But when you say he are you talking about --
10 what you talked about then. You don't have to give me a
11 name?

12 A. I don't know.

13 Q. Was it the guy doing the shooting?

14 A. Yeah.

15 Q. That's what I was getting at. Okay. So he left and
16 what did you do?

17 A. I went and checked on my home boy.

18 Q. And your home boy was who?

19 A. Anthony.

20 Q. How was he?

21 A. He was -- I think he was dead. He was laying there.
22 He was just laying on the ground.

23 Q. What did you do then?

24 A. Then I left.

25 Q. You left. Did you stay with him or did you leave

1 immediately?

2 A. I stayed there for a little while then I left.

3 Q. Okay. Where did you go when you left?

4 A. To home boy house.

5 Q. When the shots were fired did you hear anybody say
6 anything?

7 A. No, I really can't remember.

8 Q. Can't remember. Okay. That's all right. When you
9 went to your house after the shots were fired did you stay
10 there?

11 A. Yes.

12 Q. Did you have the opportunity to speak to any law
13 enforcement officers?

14 A. The next day.

15 Q. That's what I was getting at. The next day you spoke
16 to a law enforcement officer?

17 A. Yes, sir.

18 Q. What did you do?

19 A. They had me fill out a statement.

20 Q. So you wrote a statement?

21 A. Yes, sir, I wrote a statement.

22 Q. Did you give a statement?

23 A. Yes, sir.

24 Q. I'm handing you what's been marked as State's Exhibit

25 55. I'd like you to take a look at that. Do you

1 recognize that?

2 A. Yes, sir.

3 Q. Is your signature on that?

4 A. Yes, sir.

5 Q. What is that?

6 A. The statement I signed the day after the shooting.

7 Q. Okay. That's your statement?

8 A. Yes, sir.

9 MR. HALES: At this time the State would move that
10 Mr. Davis' statement be admitted into evidence.

11 MR. SALEEBY: I object, Your Honor.

12 THE COURT: Sustained. The witness is here. There
13 is no point in putting the statement in subject to
14 examination or cross-examination.

15 BY MR. HALES:

16 Q. Mr. Davis, I'd like you to review the last two lines
17 of that statement?

18 MR. SALEEBY: Objection. Your Honor. He can use it
19 to refresh his memory.

20 A. You want me to read it?

21 Q. You remember that now, the last two lines of that
22 statement?

23 A. Not really.

24 Q. Would you please read the last two lines?

25 THE COURT: No, sir. You can ask him a question

1 using it to refresh his memory not to read it into the
2 record.

3 BY MR. HALES:

4 Q. Okay. Mr. Davis, you remember writing that
5 statement?

6 A. Yeah, I remember writing it.

7 Q. Do you remember writing those last two lines?

8 A. Yeah, I remember writing the last two lines.

9 Q. Do you remember that night of the incident what those
10 two line describe?

11 A. Yeah.

12 Q. Okay. What was that?

13 MR. SALEEBY: Objection, Your Honor.

14 THE COURT: Ask him a question not asking him what
15 his statement says. Ask him if he has refreshed his
16 memory as a result of having read his statement and ask
17 him a question based on the statement.

18 BY MR. HALES:

19 Q. What was said the night?

20 A. By whom?

21 Q. By the lady who was with the man who did the
22 shooting?

23 A. What was said?

24 Q. Yes, sir.

25 A. You want me to say it?

1 Q. Yes, sir.

2 A. "That's what the fuck you get."

3 Q. Sir? I couldn't hear you.

4 A. "That's what the fuck you get."

5 MR. HALES: I have no further questions of this
6 witness.

7 THE COURT: Ladies and gentlemen, if construction
8 noise interferes with your being able to hear any of the
9 testimony let me know. I want to get the roof on while
10 our weather is dry, but I will stop the construction if it
11 interferes with your being able to hear what's going on
12 today. So just keep me posted. Go ahead.

13 MR. QUINN: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. QUINN:

16 Q. Now, you said that when that car pulled up behind
17 Anthony's car both a girl and a guy got out the car?

18 A. Yes, sir.

19 Q. You sure about that? You've got to answer verbal.

20 A. Yes, sir.

21 Q. The girl that got out of the car she the one that
22 started the argument with Anthony, that car?

23 A. Yes, sir.

24 Q. And you're sure positive she got out that car?

25 A. I think so.

- 1 Q. Yes or no?
- 2 A. Yes, sir.
- 3 Q. Yes. Okay. Where were you in relation to Anthony
- 4 Shields' car when this was happening?
- 5 A. Where was I at.
- 6 Q. Where? On the driver's side? Passenger side?
- 7 A. Was I in the car?
- 8 Q. No, on which side of the car?
- 9 A. The driver's side.
- 10 Q. About how far away?
- 11 A. About I was about four or five cars down.
- 12 Q. Four or five cars down. Were there other cars in
- 13 between you and that car, four or five cars?
- 14 A. I wasn't sitting in the car. I was in the back of
- 15 the car.
- 16 Q. Would you describe the gentlemen that got out the
- 17 car?
- 18 A. I can't. All I can say is he had a leather jacket
- 19 on.
- 20 Q. Leather jacket. Anything else remarkable about him?
- 21 A. All I remember is he had a black leather jacket.
- 22 Q. Black leather jacket, and that's it? Did you ever
- 23 see Anthony Shields fire a gun?
- 24 A. No, I just heard shots.
- 25 Q. So you never say anybody fire at all? You didn't see

1 Anthony Shields fire?

2 A. No.

3 MR. QUINN: That's all I have, Your Honor. Thank
4 you.

5 MR. HALES: State would ask that Mr. Davis be allowed
6 to leave.

7 THE COURT: I have just a couple of questions.

8 EXAMINATION BY THE COURT

9 BY THE COURT:

10 Q. Mr. Davis, you indicated that the girl made some
11 statement?

12 A. Yes, sir.

13 Q. Was that before or was that after the shooting took
14 place?

15 A. I Think it was after. I think in between. I think
16 it was after or in between one.

17 Q. When you say in between you're meaning in between
18 what?

19 A. In between the shots.

20 Q. One side of the car and then the other side?

21 A. Yes, sir.

22 Q. You indicated that when the girl went out to the car
23 that she and Anthony had some words; is that correct?

24 A. Yes, sir.

25 Q. Did you hear the words themselves? Can you tell us

1 what these word were?

2 A. My can't really say what they were saying cause there
3 was a lot of people out there.

4 Q. Can you describe to tone of voice that those words
5 were given?

6 A. Just going off of body language like they ---

7 Q. Sir?

8 A. Just going off the body language the way they were
9 talking to each other looked like they were real serious.

10 Q. And when you say all -- you've got to do two things
11 maybe speak to me loud enough for the jury to hear you.
12 You say real serious. What does that mean?

13 A. Like they were about to do something.

14 Q. And that would have been Anthony and the girl?

15 A. Yes, sir.

16 Q. This person that you didn't see other than in a black
17 jacket where were they at this time?

18 A. They was approaching, coming up to the truck then.

19 Q. Did you hear that person say anything?

20 A. No, sir.

21 Q. Had the words between the girl and Anthony stopped
22 before the shooting started or were they continuing at
23 that time the shooting started?

24 A. I think they were still talking. They was still
25 arguing.

1 Q. Thank you, sir.

2 THE COURT: All right. You may step down. You may
3 call your next witness.

4 MR. JOYNER: Judge, State would call Officer Harold
5 Haney.

6 THE COURT: Ladies and gentlemen, again, just because
7 I asked some questions don't think I have an opinion. It
8 was a point in time when testimony was being given while
9 the noise was going on and I wasn't sure I had heard
10 everything clearly and so I just wanted to get some
11 questions asked.

12 HAROLD HANEY, after being duly sworn, testified
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. JOYNER:

16 Q. Morning, Officer Haney.

17 A. Morning.

18 Q. Would you state your full name for the Court.

19 A. Harold Ruben Haney.

20 Q. Where do you live?

21 A. I live any Cheraw, South Carolina.

22 Q. And how long have you lived there?

23 A. Seventeen years.

24 Q. And are you married?

25 A. Yes, I am.

- 1 Q. And you have any kids?
- 2 A. Yes, sir, I do.
- 3 Q. How many?
- 4 A. Two.
- 5 Q. And how old are they?
- 6 A. Fourteen and 11.
- 7 Q. And, Mr. Haney, what is your job title?
- 8 A. Captain.
- 9 Q. And what is that entail?
- 10 A. I'm pretty much over all the road patrol, the fleet
- 11 maintain, ordering new parts. Things like that.
- 12 Q. Is investigation a part of your work?
- 13 A. Yes, sir, it is.
- 14 Q. Okay? And how long have you been in law enforcement?
- 15 A. Seventeen years.
- 16 Q. Okay. I want to take you back to December 23rd of
- 17 2001 and talk about this incident. How did you first
- 18 become involved in this case?
- 19 A. I was called out at home that morning at a shooting
- 20 at the Huddle House.
- 21 Q. What time did you arrive at the scene?
- 22 A. Probably about 20 minutes to 5:00, 25, 20 minutes to
- 23 5:00 a.m.
- 24 Q. A.m.?
- 25 A. Yes, sir.

1 Q. And what did you see when you got there?

2 A. There was law enforcement already on scene. Numerous

3 folks in the parking lot in vehicles with vehicles

4 running. And the deputy had the scene secured.

5 Q. A rough estimate, how many people would you say were

6 there not including law enforcement, just people?

7 A. At least 80 to 100 if not more than that.

8 Q. Were there other investigators there?

9 A. Not at the time.

10 Q. Okay. During the course of your investigation were

11 you able to take any statements or interview anybody?

12 A. I did during the course of investigation.

13 Q. Okay. And did these people make statements that you

14 spoke to?

15 A. At the scene, no, sir.

16 Q. I'm going to ask you a few questions about the

17 actual -- Mr. Anthony Shields' car ---

18 A. Okay.

19 Q. --- and his body position. When you arrived on the

20 scene what position was he body in?

21 A. The best I could tell was Mr. Shields was lying on

22 his back.

23 Q. And what was he wearing?

24 A. At that time I could only tell some type of green

25 type of overalls.

1 Q. I'm showing you what's already been entered into
2 evidence as State's Exhibit 12. Do you recognize these?

3 A. Yes, sir, I do.

4 Q. Would you describe what they are?

5 A. That looks like a green flight suit or green jump
6 suit.

7 Q. Is that similar to a what Mr. Shields was wearing?

8 A. Yes, sir.

9 Q. All right. Thank you. Officer, did you have
10 occasion to view Mr. Shields' car?

11 A. Yes, I did.

12 Q. While you were there?

13 A. Yes, sir.

14 Q. All right. I'm going to show you several items that
15 have been marked. This first is State's Exhibit 29. Do
16 you recognize this?

17 A. Yes, sir. Thi is the scene at the Huddle House that
18 depicts Mr. Shields' vehicle as well as a green Dodge
19 Intrepid within the secured zone.

20 Q. Okay. Is that a fair and accurate depiction of what
21 you saw?

22 A. Yes, sir.

23 MR. JOYNER: Judge, move that State's Exhibit 29 be
24 entered into evidence.

25 MR. SALEEBY: Without objection.

1 THE COURT: Without objection.

2 (WHEREUPON, State's Exhibit No. 29 was admitted into
3 evidence.)

4 (WHEREUPON, State's Exhibits Nos. 36 THROUUGH 55 were
5 marked for identification only.)

6 MR. JOYNER: And, Your Honor, I won't publish these
7 for the jury now. I'll wait until the deliberations.
8 They can take them back. Okay.

9 BY MR. JOYNER:

10 Q. I'm showing you what's been marked as State's Exhibit
11 55. You recognize that?

12 A. Yes, sir. There would be the broken console of
13 Mr. Shield's vehicle.

14 Q. Okay. Is that a fair and accurate depiction of what
15 you saw that day?

16 A. Yes, sir, it is.

17 MR. JOYNER: Judge, move that State's Exhibit 55 be
18 entered into evidence?

19 MR. SALEEBY: Without objection.

20 (WHEREUPON, State's Exhibit No. 55 was admitted into
21 evidence.)

22 THE COURT: How many picture you have there?

23 MR. JOYNER: I have exhibits ---

24 THE COURT: Mr. Quinn, have you seen these?

25 MR. QUINN: I'm looking real quick.

Harold Haney - Direct by Mr. Joyner

309

1 THE COURT: Why don't you take a look. It may be
2 that we just move them in without objection and if there
3 are objections we'll know which ones will be objected to.

4 MR. JOYNER: Judge, I have 31 through 55.

5 THE COURT: Thirty-one through 55. Let Mr. Quinn
6 take look a at them. That may help us move along.

7 MR. QUINN: Without objection, Your Honor.

8 THE COURT: All right. State's Exhibit 31 through 55
9 are in without objection.

10 (WHEREUPON, State's Exhibits Nos. 31 through 55 were
11 admitted into evidence.)

12 THE COURT: Those I assume are photographs from the
13 Huddle House?

14 Q. Yes, sir, photographs of the crime scene. Judge,
15 would you have any objection to me publishing these to the
16 jury as they're described by Mr. Haney?

17 THE COURT: I have no objection.

18 MR. SALEEBY: None, Your Honor.

19 THE COURT: All right. Thank you.

20 BY MR. JOYNER:

21 Q. Here, Mr. Haney, just for identification purposes.
22 What is this?

23 A. This is the broken console from Mr. Shields' vehicle.

24 Q. Okay. Thank you. And describe for the jury, please,
25 this photo?

1 A. This photo depicts the scene when I arrived. It was
2 already secured. The gold Ford Explorer belonging to
3 Mr. Shields and we don't know who the green Dodge?

4 THE COURT: That's exhibit what?

5 THE WITNESS: Sir?

6 THE COURT: What exhibit is that?

7 MR. JOYNER: That's Exhibit 29.

8 THE COURT: All right. If you would when you are
9 describing something give it as Exhibit Number so the
10 court reporter can keep the record.

11 MR. JOYNER: Yes, sir. This depicts the victim's
12 vehicle, Mr. Shields, the gold Ford Explorer. There was
13 another vehicle in the picture. We had to rope off to
14 secure the crime scene.

15 BY MR. JOYNER:

16 Q. Mr. Haney, this is State's Exhibit 51?

17 A. Exhibit 51 depicts a more further away version of the
18 picture of Exhibit 29 that also depicts the victim's
19 vehicle, Mr. Shields, and the secured area.

20 Q. Thank you. All right. Mr. Haney, this is State's
21 Exhibit 52?

22 A. State's Exhibit 52 depicts the interior driver's door
23 opening of Mr. Shields' vehicle and what it has in it, it
24 has several different markings on the floor in just --
25 this is not what I thought it was.

1 It's just the interior driver's side with the door
2 side open of Mr. Shields' vehicle.

3 Q. This is State's Exhibit 48?

4 A. State's Exhibit 48 is a portion of the interior of
5 Mr. Shields' vehicle. It's clearly marked by measuring
6 tape commonly use to measure different items and
7 photographs but it also depicts blood splatter in the
8 vehicle.

9 Q. Thank you. Officer, this is State's Exhibit 47?

10 A. State's Exhibit 47 is the interior shot of the
11 vehicle from the passenger side. It has numerous
12 measuring tapes that would depict where blood splatter
13 would be for photographing purposes.

14 It also shows the center console in the middle that's
15 been broken apart.

16 Q. That's state exhibit 46.

17 A. State's Exhibit 46 shows again the measuring tape on
18 the dashboard of Mr. Shields' vehicle with some blood
19 splatter on the dashboard.

20 Q. Okay. This is State's Exhibit 45?

21 A. State's Exhibit 45 is a shot on the driver's side of
22 Mr. Shields' vehicle. It shows blood splatter and
23 measuring tapes as well on the steering wheel, as well as
24 the dashboards and the gauge area. The clear lens on the
25 gauge area.

1 Q. Okay. I'm showing you State's Exhibit 54?

2 A. State's Exhibit 54 would be a spent shell casing in
3 the rear of the Ford Explorer owned by Mr. Shields and
4 marked also with a measuring identifier. The shell casing
5 would be the -- if you made a triangle from this it would
6 be in the very middle at the bottom of the triangle. You
7 can see it at the bottom of the picture.

8 Q. This is State's Exhibit 30?

9 A. State's Exhibit 30 depicts a spent round or a bullet
10 if you will in the floorboard of Mr. Shield's vehicle.
11 It's also marked by a measuring guide. This is a black
12 floor mat.

13 Q. Officer, which floorboard was that?

14 A. The passenger floorboard.

15 THE COURT: Which floorboard?

16 THE WITNESS: The passenger floorboard, Your Honor.

17 MR. JOYNER: Thank you.

18 BY MR. JOYNER:

19 Q. Officer, this is State's Exhibit 31.

20 A. State's Exhibit 31 would show again measuring tape
21 identifying blood splatter as well as on the armrest or
22 door handle of Mr. Shields' vehicle. There is also blood
23 marked with measuring tape.

24 Q. Thank you.

25 A. Yes, sir.

Harold Haney - Direct by Mr. Joyner

313

1 Q. All right. Officer, this is State's Exhibit 32?

2 A. State's Exhibit 32 would be a more enlarged version
3 of the door handle on Mr. Shields' vehicle relative to the
4 photo you just had. And it's clear that there is blood
5 there. The door handle is actually broken with blood on
6 the handle.

7 Q. Thank you. Officer, this is State's Exhibit 33?

8 A. State's Exhibit 33 would also be the same door with
9 blood splatter as well as the measuring tape.

10 Q. Thank you.

11 A. Yes, sir.

12 Q. All right, sir. Officer, this is State's Exhibit 34?

13 A. State's Exhibit 34 also shows the handle with the
14 measuring tape along with the blood splatter.

15 Q. Thank you. Officer, this is State's Exhibit 35?

16 A. State's Exhibit 35 is a photograph taken from the
17 passenger side of the vehicle that has the depiction of
18 the measuring tape on the door but also on the roof of the
19 vehicle for blood splatter.

20 Q. Thank you. Officer, this is State's Exhibit 36?

21 A. State's Exhibit 36 is a picture depicting the
22 driver's side door, measuring tape all other to door,
23 blood splatter as well as the door release on the driver's
24 side door is broken.

25 Q. Okay. Officer, this is State's Exhibit 37?

1 A. State's Exhibit 37 depicts Mr. Shields' vehicle rear
2 view and off to the right of his vehicle would be
3 Mr. Shields.

4 Q. This is State's Exhibit 44?

5 A. State's Exhibit 44 has, of course, measuring tape
6 that they used and blood splatter on the gauge panel
7 predominantly over the speedometer.

8 Q. This is State's Exhibit 43?

9 A. State's Exhibit 43 depicts the measuring tape. This
10 would be the steering wheel or steering cover on the
11 steering wheel with blood splatter on it.

12 Q. Thank you. And this is State's Exhibit 39?

13 A. State's Exhibit 39 is a photograph of Mr. Shields
14 face up with the green overalls on and appears to be
15 gunshot wounds.

16 Q. And State's Exhibit 40?

17 A. State's Exhibit 40 is also a photo of Mr. Shields in
18 the same position, face up, with gunshot wounds. This is
19 next to the green Dodge Intrepid that I talked about.

20 Q. Thank you, sir. And, officer, are each of these
21 photos duplicates of what we have already seen for the
22 jury, just to save time?

23 A. Yes, sir, they are.

24 Q. And these, which will be back with the jury during
25 deliberations, are Exhibit 49, 50, 53, 38, 41, and 42.

1 Thank you?

2 A. Yes, sir.

3 Q. Officer, I'm handing you what has already been
4 entered in evidence as State's Exhibit 3. Do you
5 recognize that?

6 A. Yes, sir, I do.

7 Q. Okay. Would you explain for the jury what that is?

8 A. It is a .38 special handgun, five shot revolver.

9 Q. And what is the make of that gun?

10 A. Charter Arms.

11 Q. Charter Arms?

12 A. Or Charter 2000.

13 Q. Have you seen that gun before?

14 A. Yes, sir, I have.

15 Q. Would you explain for the jury when you first saw it?

16 A. I first saw it in Cheraw at the police department.

17 Mr. Fortune turned himself in to us. At that time I was
18 advised that the firearm was in a vehicle outside and we
19 retrieved the firearm from the vehicle outside.

20 Q. Okay. At what time did you first see Mr. Fortune?

21 A. It was 4:00 -- between 4:00 and 4:15 on the 23rd of
22 December. Roughly in that area. It's been four year ago.

23 Q. I know. And where did you see him?

24 A. At Cheraw Police Department.

25 Q. Okay. How did you actually come to process this gun?

1 A. I was told by Mr. Fortune as well as a friend with
2 him that they had the firearm with them and we went to the
3 vehicle to recover it.

4 Q. Okay. At this time did Mr. Fortune give a statement?

5 A. Yes, he did, sir.

6 Q. And what was his statement?

7 A. I couldn't tell you exactly.

8 Q. Well, I'm sorry. Showing you what's been previously
9 entered in evidence as State's Exhibit One and State's
10 Exhibit Two and I'll question you about State's Exhibit
11 One first. Do you recognize State's Exhibit One?

12 A. Yes, I do.

13 Q. Explain for the jury what it was?

14 A. State's Exhibit One is a common -- it's a Miranda
15 Waiver Form. We have to advise anybody questioned of
16 their Miranda Rights. And as we do we have them all wrote
17 down so we don't forget them.

18 We first read their rights to them and ask do they
19 understand it. If they understand it they initial beside
20 each part of the rights.

21 In the middle of the form is a waiver of rights and
22 that means that they can waive their previous rights we
23 read and talk with us and make a statement at that time.

24 This waiver of rights has been signed by Mr. Fortune,
25 witnessed by Investigator David Watson and myself.

- 1 Q. All right, sir. Thank you. Officer, would you read
2 the time?
- 3 A. I'm sorry.
- 4 Q. On the -- when the Miranda waiver was finished?
- 5 A. The Miranda waiver was giving or read and understood
6 by Mr. Fortune at 1640 hours which would be 4:40 p.m.
- 7 Q. All right. Thank you. Officer, as an attorney I as
8 well as Mr. Quinn, all attorneys know you have to give an
9 individual that they ask for an attorney, you have to stop
10 questioning?
- 11 A. That is correct.
- 12 Q. And in fact does it say as much?
- 13 A. It does, sir.
- 14 Q. On the waiver?
- 15 A. It does.
- 16 Q. Did you advise Mr. Fortune of his rights?
- 17 A. Yes, sir, I did.
- 18 Q. Did he ever ask for an attorney?
- 19 A. No, sir, he did not.
- 20 Q. Did he know he had a right to an attorney?
- 21 A. Yes, sir, he did.
- 22 Q. And do you recognize State's Exhibit Two?
- 23 A. Yes, sir, I do.
- 24 Q. Okay. Would you explain for the jury what that is?
- 25 A. State's Exhibit Two is a voluntary statement form and

1 Mr. Fortune when he turn himself in to us, he come to us
2 and said he wanted to clear this whole matter up.

3 After advising him of his Miranda rights and waiving
4 his rights he give a statement of what happened that
5 individual night. And also in the voluntary statement
6 form in this section here at the top section is filled out
7 with pertinent information like name, date of birth and
8 Social Security number.

9 This section here also advises, again, Mr. Fortune of
10 his Miranda rights. Mr. Fortune did make a statement at
11 that time. He signed this form and turned it back over to
12 us.

13 Q. Okay. Well Officer, let me go ahead and clear this
14 up right now. I apologize. After you received this gun
15 what did you do with it?

16 A. It was placed in evidence and eventually taken to
17 S.L.E.D. for testing.

18 Q. What type of testing would S.L.E.D. do on this gun?

19 A. I can't think of the proper word. I drew a blank.
20 It's firearms testing is what it would be compared with
21 the rounds that were taken from Mr. Shields.

22 Q. All right. I see and would you read Mr. Fortune's
23 statement, please?

24 MR. SALEEBY: Objection, Your Honor.

25 THE COURT: Ladies and gentlemen of the jury, based

1 upon some prior rulings that I had made the statement
2 which is Number Two has been admitted into evidence and I
3 assume you're renewing your objection?

4 MR. SALEEBY: Yes, sir, Your Honor, correct.

5 THE COURT: But, ladies and gentlemen, this is a
6 statement that is alleged to have been made by this
7 defendant, but before you may consider this statement as
8 evidence for my purpose you must you determine four
9 questions:

10 One. Did this defendant in fact make the statement.

11 Second, was the defendant warned of his
12 constitutional rights.

13 Third, did the defendant knowingly and intelligently
14 waive those constitutional rights, and.

15 Four, was the statement given voluntarily.

16 I want you to understand that the fact that I have
17 admitted this statement into evidence should not be
18 considered by you as any evidence whatsoever that the
19 defendant has made such a statement or that the required
20 constitutional safeguards were in fact provided and waived
21 by the defendant.

22 Or that the statement was voluntarily given because,
23 ladies and gentlemen, even though I ruled the statement
24 into evidence these issues are for you and you alone. You
25 must determine each of these matters, and the State must

1 prove beyond a reasonable doubt each of those four
2 requirements that I have just set out and stated to you
3 before you may consider this statement as evidence for any
4 purpose whatsoever. You may continue.

5 BY MR. JOYNER:

6 Q. Officer, whenever you -- before you took this
7 statement or -- excuse me. Before Mr. Fortune wrote this
8 statement did you have an opportunity to observe him?

9 A. Yes, I did.

10 Q. And in your history as a law enforcement officer have
11 you ever observed a person under the influence?

12 A. Yes, I have.

13 Q. Of alcohol or drugs?

14 A. Yes, I have.

15 Q. Did Mr. Fortune appear to be under the influence?

16 A. No, sir, he did not.

17 Q. Could you describe his appearance for the jury?

18 A. Yes. He come in that day and wanted to clear this
19 thing up. He was clean cut, dressed well. I mean he was
20 just -- I want to say he was just nice.

21 He come in and wanted to clear this whole thing up.
22 That's pretty much -- he wasn't under the influence that I
23 can tell.

24 Q. Was his speech slurred?

25 A. No, sir.

1 Q. Did you make him any promises to give a statement?

2 A. No, sir.

3 Q. Did you force him?

4 A. No, sir.

5 Q. Okay. So to your best knowledge he freely and
6 voluntarily gave this statement?

7 A. Yes, sir.

8 Q. Would you please read that statement aloud for the
9 jury?

10 A. Mr. Solicitor, want me to start from the top just
11 what Mr. Fortune put in?

12 Q. You can start from where Mr. Fortune starting
13 writing?

14 A. Okay. Mr. Fortune started, "On the morning of
15 December 23rd '01 at about 3:15, 3:30 a.m. I received a
16 call from my first cousin, Sonta McCall. She said that
17 she was just in a fight with the guy and his wife at the
18 Green Village. I asked where she was at. She told me at
19 the Huddle House.

20 So I told here I would be up there. So I got up to
21 put on some clothes. At that time Tonnette asked what was
22 wrong so I told her and she got up. We got in the car.
23 We got up and we got in the car and went to the Huddle
24 House.

25 When we got there I saw a lot of people that I did

1 not know. The first person I saw that I knew was Jay Jay,
2 Sonta's baby's father. I asked him what was going on. He
3 said nothing that he could not handle. I asked where is
4 Sonta. He said in the Huddle House.

5 So I walked towards the place. At that time I saw
6 Sonta and Iris. I asked what was going on. She proceeded
7 to tell me about the fight in which she was hit in the
8 face with the bottle by the guy and Iris was hit with a
9 chair.

10 So I asked where the guy was. They said they did not
11 know. So I asked what did they want to do, go to my house
12 or B-Ville as they were -- second page -- answering me
13 Sonta said there he is right there. I said where. She
14 said in the brown Explorer. So the guy pulled in. I got
15 in my car and pulled up where he was expecting to fight
16 the guy.

17 Sonta got to him before I did. When I got to the
18 truck him and Sonta were already exchanging words. I
19 asked him what was up and I saw a flash and heard a bang
20 in which at that time I felt as if he had shot Sonta so I
21 was in fear for my life and returned fire.

22 He came out the passenger side of his truck. By this
23 time I was at the back and he pointed his gun again and I
24 fired then I got in my car and left. And went to B-Ville
25 and Laurinburg and then to Cheraw to turn myself.

1 I believe I shot four to six times with a .38
2 revolver. When I got out of the car the asked Tonnette to
3 hand me the gun from the console." That's the complete
4 statement.

5 Q. Okay. Thank you.

6 (WHEREUPON, State's Exhibit No. 57 was marked for
7 identification only.)

8 All right. Officer, I'm showing you what's been
9 marked for identification purposes State's Exhibit 57. Do
10 your recognize this?

11 A. Yes, sir, I do.

12 Q. Would you explain what it is?

13 A. It's a not to scale depiction overview of the Huddle
14 House parking lot and Huddle House itself.

15 Q. Who authored this diagram?

16 A. I unfortunately did.

17 Q. Okay. Would you ---

18 MR. JOYNER: And, Judge, I'm going to use this
19 solely -- I'm not going to enter this as evidence. This
20 is solely for purposes of identification as a diagram.

21 BY MR. JOYNER:

22 Q. Would you describe, officer, for the jury what this
23 is?

24 A. It's just a general overview of the Huddle House
25 itself that I kind of put together to remind me what the

1 scene was that evening. This in fact would be the Huddle
2 House, the paved parking lot. If any of you folks have
3 been there you will be able to relate to this.

4 It has the trash cans here, rear exit door here and
5 this is all dirt parking lot all through here. The actual
6 incident took place in this corner I marked.

7 Number One would be the victim, Mr. Shields. Number
8 Two would be the victim's car, Mr. Shields' gold Ford
9 Explorer. Number Three, the Dodge Intrepid, the green and
10 silver one. Number Four, is the parking lot right here.
11 Probably ten, maybe ten to 15 feet from the corner of
12 Mr. Shields' vehicle.

13 In the photographs that you have, ladies and
14 gentlemen, it will show a knocked down garbage can. So if
15 you can relate back to this drawing of the garbage can.
16 That's where the light would be. That's pretty much the
17 fence. Of course, there is a wooded area there.

18 Q. Officer, would you explain for the jury the lighting
19 level that the light put off in relation to where the
20 incident took place?

21 A. The lighting level was very good there. I mean it
22 was -- you can actually get in and out your cars. You can
23 actually look in people's cars and see what was in them
24 because of the other head lighting here.

25 Q. Thank you, Officer.

1 A. Yes, sir.

2 Q. Thank you, Officer.

3 MR. JOYNER: No further questions, Your Honor.

4 THE COURT: Your cross.

5 MR. QUINN: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. QUINN:

8 Q. Good morning, Officer?

9 A. Good morning, sir.

10 Q. Okay. Through your investigation were you able to
11 determine what happened at the Green Village?

12 A. No, sir.

13 Q. You have now idea what happened at the Green Village?

14 A. The only statement have is that Mr. Shields hit the
15 young lady with a bottle of some sort.

16 Q. And the young lady would be?

17 A. Sonta.

18 Q. Sonta McCall?

19 A. Yes, sir.

20 Q. Okay. And through you investigation were you able to
21 determine whether or not Mr. Oscar Fortune was at the
22 Huddle House before or after Anthony Shields arrived? Who
23 was there first?

24 A. I would think Mr. Fortune, going strictly from his
25 statement.

1 Q. When you responded to the scene I believe you stated
2 there were 50 or more people there; is that right?

3 A. More like 80 to 100?

4 Q. It was more like 80 to 100?

5 A. Yes, sir?

6 Q. Was Nicole Byrd there?

7 A. I can't recall.

8 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
9 identification only.)

10 BY MR. QUINN:

11 Q. Can you identify this, please?

12 A. Yes, sir. This is a copy of the list that all the
13 deputies and folks out there in law enforcement were
14 trying to help log down the people at the Huddle House
15 that evening.

16 Q. Those were the names and phone numbers of the people
17 who were there?

18 A. Yes, we tried to get as much information as we could.

19 Q. Is Nicole Byrd's name on there?

20 A. Allow me just a moment, please.

21 Q. Sure. Take your time.

22 A. The name on here appears to be a Nicole Byrd.

23 Q. Nicole Byrd. Is here phone number listed next to
24 that name?

25 A. Yes, sir. There is a number under there for 537-

1 1342.

2 Q. Thank you very much. Is there a Jesse Ellison on
3 that list?

4 A. Yes, sir, Ellison is on this list?

5 THE COURT: Would you give me that name again?

6 Q. Jesse Ellison?

7 A. I'm having a hard time finding it cause it's not on
8 there.

9 Q. That's fine?

10 A. I didn't see it.

11 Q. All right. Thank you. Now, did you or an officer
12 that was at the scene talk to each and every one of those
13 people? Obviously, you had to get their name and phone
14 number?

15 A. Yes, sir. It was real short. We had so many people
16 there, and we already had some that run through the woods.
17 We had no way of identifying them.

18 Q. Right?

19 A. So we pretty much phoned them, they come through, two
20 deputies got on each side. One wrote down the names and
21 numbers and also asked did you see anything. What
22 happened. Did you hear anything. And the response we
23 pretty much got from all the folks out there was, no, sir.

24 Q. Okay. So Nicole Byrd didn't give a statement? Had
25 nothing to say that night?

1 A. No, sir, not then. She may have come back later and
2 made that statement but not then.

3 Q. But that night she had nothing to say?

4 A. No, sir.

5 Q. Did any witness that you talked to that evening tell
6 you that either Mr. Shields or Mr. Fortune had fired
7 first?

8 A. No, sir, not to me they didn't.

9 Q. Are you aware of any witness who said that
10 Mr. Fortune or Mr. Shields fired their weapon first?

11 A. The only thing I know they just said he opened fire.

12 Q. Nothing about the order of fire?

13 A. No, sir.

14 Q. Did any witness there that evening identify Mr. Oscar
15 Fortune as a participant in this shoot out?

16 A. Not while we were at the Huddle House.

17 Q. Not that evening? No one at the Huddle House?

18 A. Not at the scene, no, sir.

19 Q. Okay. Did anybody at the scene identify Michael
20 McManus as somebody who may have been involved?

21 A. Yes, sir. That was not identified to me. It was
22 identified I believe as one of the individuals with Cheraw
23 Police Department who in turn contacted my sheriff and
24 chief deputy and that's where that name come up.

25 Q. Okay. And was a gunshot residue kit or test ordered

- 1 to be done on Mr. Michael McManus?
- 2 A. Yes, sir.
- 3 Q. Was he ever charged?
- 4 A. No, sir, he was not.
- 5 Q. Did any witness there that evening or the next day
- 6 indicate that Sonta McCall fired the weapon?
- 7 A. No, sir.
- 8 Q. Didn't?
- 9 A. No, sir.
- 10 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
- 11 identification only.)
- 12 Q. Would you identify that document for, me please?
- 13 A. Yes, sir, it is a arrest warrant.
- 14 Q. For whom?
- 15 A. Sonta McCall.
- 16 Q. And how do you know that?
- 17 A. It's written on the warrant.
- 18 Q. Okay. And who signed that warrant?
- 19 A. I did.
- 20 Q. Okay. And to obtain that warrant did you not have to
- 21 give a sworn statement to get that arrest warrant?
- 22 A. Yes, sir.
- 23 Q. Is that sworn statement contained on that warrant?
- 24 A. Yes, sir.
- 25 Q. Would you read it for the jury, please?

1 A. "That on December 23rd '01, the defendant, Sonta
2 McCall, did with malice aforethought caused the death of
3 Anthony Shields by shooting the victim in the chest. This
4 happened in the Cheraw area of Chesterfield County."

5 Q. Okay. And what time was that warrant issued? What
6 day and time?

7 A. It was issued on the 23rd of December. The time, I
8 couldn't give you an accurate time.

9 Q. So it's the same day as the incident?

10 A. Yes, sir.

11 Q. Now, you just said nobody told you that night or
12 therefore that Sonta McCall ever fired a weapon. That
13 statement seems to contradict your earlier testimony. Can
14 you explain that?

15 A. Well, it does contradict. I agree there. While at
16 the scene my Sheriff told me to get a warrant for murder
17 for Sonta McCall.

18 Q. Under any circumstances?

19 A. Well, she was still involved. She brought him to the
20 scene.

21 Q. But would you explain to the jury the purpose of that
22 affidavit? Why is it necessary?

23 A. It's to show probable cause that you have some reason
24 to believe that they were involved in this crime.

25 Q. Okay. So you gave a false statement under oath to

1 get an arrest warrant for Sonta McCall?

2 A. No, sir. She was still involved with this case.

3 Q. That she fired the gun? Did she fired the gun or any
4 gun?

5 A. Not that we found. I mean all we have is two guns.

6 Q. But isn't that what the warrant says?

7 A. Yes, sir.

8 Q. Now, is Miss Sonta McCall still under that charge of
9 murder? Has that charge been dropped?

10 A. I don't know. You have to speak with the Solicitor's
11 Office. They handle that.

12 Q. If you later find out that the basis for that warrant
13 is not valid what action do you usually take?

14 A. It has to be dismissed.

15 Q. Has to be dismissed?

16 A. Yes, sir.

17 Q. As a matter of procedure?

18 A. It has to be done away with.

19 Q. I move to have Defense Four admitted in evidence?

20 MR. JOYNER: No objection.

21 THE COURT: Without objection.

22 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
23 into evidence.)

24 MR. QUINN: Also, would like to publish it to the
25 jury.

1 THE COURT: You may.

2 BY MR. QUINN:

3 Q. Has anybody else to your knowledge been charged in
4 connection with this crime for this incident?

5 A. I believe Mrs. Iris melton was charged. And Sonta as
6 well. Of course, we went over that before. You have to
7 excuse me. I believe there was one more individual I
8 can't recall.

9 Q. Tonnette Cash?

10 A. That's it. You're correct.

11 Q. Okay. Now, when you were responding to the scene of
12 the incident that evening did you recover the .25 caliber
13 pistol used by Mr. Shields?

14 A. I didn't recover any weapons, sir.

15 Q. Did anybody recover that evening that you're aware of
16 as a law enforcement officer?

17 A. I believe it was recovered but by another law
18 enforcement officer. It was not recovered that day I
19 know.

20 Q. Do you know where the weapon was?

21 A. No, sir.

22 Q. Who had it?

23 A. No, sir.

24 MR. SALEEBY: May we approach, Your Honor.

25 THE COURT: Yes.

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 BY MR. QUINN:

5 Q. I know it's been a while, but do you recall
6 testifying at a preliminary hearing in this matter on
7 February 11, 2002?

8 A. No, sir. I know we had one, but I don't recall the
9 testimony.

10 Q. You remember testifying?

11 A. Yes, sir.

12 Q. Okay. You remember testifying that Vincent Davis
13 took the gun the .25 caliber pistol use by Mr. Shields
14 from the scene?

15 A. No. I don't recall that, sir.

16 Q. Do you remember testifying that a week later Johnny
17 Quick, Lieutenant Johnny Quick, had to go to Vincent
18 Davis's house on the 28th of December to retrieve that
19 gun?

20 A. No, sir, I don't.

21 MR. JOYNER: Judge, I don't have a problem to
22 stipulation because I know there has been some time
23 passed.

24 THE COURT: So the State is stipulating that in fact
25 this witness testified at the preliminary hearing that he

1 in fact did testify?

2 MR. JOYNER: We will stipulate he did testify
3 consistent with what Mr. Vincent Davis said yesterday. He
4 say that he had possession of gun; that he took the gun
5 from the scene; and that the gun was picked up from him by
6 investigator Johnny Quick; and that's accurate as far as
7 Mr. Quinn is concern.

8 THE COURT: Rather than playing the actual tape of
9 the preliminary hearing it's stipulated that that would be
10 the testimony on the tape.

11 Q. Yes, sir.

12 MR. SALEEBY: It is, Your Honor. Maybe other
13 testimony as well.

14 THE COURT: Ask him about it.

15 BY MR. QUINN:

16 Q. Okay. Now, you said there were about 80 people at
17 the scene of the incident that night?

18 A. Yes, sir, there were a good many.

19 Q. Would you consider given that many people being there
20 at the scene to be a secured crime scene or secured scene
21 or investigative purposes?

22 A. I believe after we -- the officer were there it was
23 secured.

24 Q. Now, the State has just stipulated that you testified
25 that Mr. Vincent Davis removed a weapon, Mr. Shields'

1 weapon, from the scene of the incident. Is that not a
2 crime in the State of South Carolina to take evidence from
3 the scene of an alleged crime scene? Is it against the
4 law to take evidence from the crime scene?

5 A. It's against the law to steal, yes, sir.

6 Q. Have you charged Vincent Davis with any crime?

7 A. I have not, sir.

8 Q. Why not?

9 A. I was not involved in obtaining that firearm.

10 Q. Are you aware if Lieutenant Johnny Quick has charged
11 him?

12 A. No, sir, I'm not.

13 Q. Now, you said that the next day Mr. Fortune came and
14 turned himself and didn't ask for an attorney?

15 A. Yes, sir.

16 Q. And you described his demeanor I believe as
17 cooperative?

18 A. Yes, sir, very cooperative.

19 Q. Okay. Now did you know that there were two gun used
20 in this incident before Mr. Fortune told you about his
21 weapon in the car?

22 A. We knew after S.L.E.D. found the shell casing in the
23 car. Then we knew there was another weapon involved.

24 Q. So before Mr. Fortune turn himself in you knew that
25 was a missing weapon?

1 A. Yes, sir.

2 Q. Okay. And were you looking for Oscar Fortune before
3 he turned himself in?

4 A. Later in the day we had gotten a statement and pretty
5 much put Mr. Fortune.

6 Q. Who gave that statement, do you know?

7 A. I hate to be this, but I can't recall. I mean there
8 was over investigators working on different areas.

9 Q. And just one last question. You obtained a warrant
10 for murder against Sonta McCall based on your sworn
11 statement that she fired a gun and caused the death of
12 Anthony Shields? Did you ever order a gunshot residue kit
13 on Mrs. McCall?

14 A. No. There was not one done on her.

15 Q. Is that proper procedure when you feel that somebody
16 fired a weapon or think you know somebody's fired a weapon
17 and caused the death of a person is the proper procedure
18 to order a gunshot residue kit?

19 A. No, it's just a tool that we use, but I think the
20 actual time we talked to Mrs. McCall several hours had
21 passed. If your just place your hands in your pocket that
22 reduces over time or could eliminate it completely or wash
23 your hands.

24 Q. So in your mind there was no reason to do one?

25 A. We didn't make contact with her. The G.S.R. kit or

1 gunshot residue kit comes back with a six hour -- I always
2 go by the directions on it, and I believe it's six hours.
3 Anything over that you don't get it, but again I mean
4 there were more investigators than I was, sir.

5 Q. In hindsight do you think one should have been done
6 if it truly was believed that she fired a weapon?

7 A. If we would have had her at the scene, yeah. But she
8 was not at the scene.

9 Q. Thank you, Officer Haney.

10 THE COURT: Any redirect?

11 MR. JOYNER: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. JOYNER:

14 Q. Officer, are you familiar with the legal doctrine,
15 the hand of one is the hand of all?

16 A. Yes, sir, I am.

17 Q. Explain for the jury?

18 A. That means if myself and Mr. Joyner go out ---

19 THE COURT: Counsel, I'm going to prohibit that line
20 of questioning. I'm the only authority on the law in this
21 case, and if there is proper charge for hand of one is the
22 hand of all then I'll be the one giving it. Not somebody
23 else.

24 MR. JOYNER: Yes, sir. I'll move on.

25 BY MR. JOYNER:

1 Q. Officer, did you write a warrant for anyone else in
2 this case other than Miss McCall and Mr. Fortune.

3 A. I believe it was Miss Cash and Mrs. Melton.

4 Q. What was your reason for writing warrants based on
5 all of that?

6 A. They were all involved in a similar crime.

7 Q. Okay. Is that standard practice in a situation like
8 this?

9 A. A lot of times I mean you have to determine what
10 happened.

11 Q. Okay. I want to -- speaking of that I want to take
12 you back. Mr. Quinn questioned you about Mr. Michael
13 McManus?

14 A. Yes, sir.

15 Q. Was he ever a suspect?

16 A. Again, personally, Cheraw P.D. sent us or my Sheriff
17 sent me down there, and by some statement made by some
18 individual. And, anyway, we carried him to Cheraw P.D. to
19 have the G.S.R. kit done on him. At that time he was a
20 suspect and released.

21 Q. What was the results of the G.S.R. kit?

22 A. It come back negative. No gun metal or powder
23 present.

24 Q. Would you explain what a G.S.R. kit is? We've been
25 saying G.S.R. I don't know if the jury knows?

1 A. Yes, sir. A G.S.R. kit is just a short police term.
2 We like to shorten things up, but G.S.R. is gunshot
3 residue kit. And what a gunshot residue kit does is there
4 is -- you have one there?

5 Q. We actually have Mr. McManus' here today. I'm
6 showing you what's been marked as State's Exhibit 80. Do
7 you recognize that?

8 A. Yes, sir. This is the gunshot residue evidence
9 collection kit.

10 Q. And whose name is on it?

11 A. Michael Antoine McManus.

12 MR. JOYNER: And, Judge, I would move for the G.S.R.
13 kit for Michael McManus to be entered at this time?

14 MR. SALEEBY: No objection.

15 THE COURT: Without objection.

16 (WHEREUPON, State's Exhibit No. 8 was admitted into
17 evidence.)

18 BY MR. JOYNER:

19 Q. Would you describe to the jury without actually
20 opening any of the already used ---

21 A. I'm not.

22 Q. --- will you explain to the jury how you retrieve a
23 gunshot residue test?

24 A. Yes, sir. The first thing, like everybody else, when
25 you open one of those packages there is an instruction

1 sheet and the best thing we do or we do all the time is
2 follow the instruction to the T.

3 And, of course, we place gloves on and there are
4 several different cartridges in here. And they're
5 labeled: Right back, left back, right palm, left palm.
6 And if they get these in evidence they would be able to
7 see what the bullet is.

8 These will be unplugged. These actually come off and
9 this is the right palm. You take this. It comes off.
10 It's got like a pick up on it. You rub it on the hands
11 and it will pick up any gunshot powder or residue.

12 Then you place it back in here and you do the same
13 for the left palm. The right back the is same thing
14 except this is the back of the hand.

15 Q. Hold it up, please, so they can see it.

16 A. This is the back. When this is actually out you
17 would rub back through here and thus will pick up any
18 gunshot powder residue because when it's fired it kind of
19 blows back on the hand.

20 Q. Okay. And what did this, after S.L.E.D. tested this,
21 what was the result?

22 A. The result of Michael McManus' test was negative.

23 Q. Okay. And at what point did you decide that Michael
24 McManus was no longer a suspect?

25 A. The test actually come back a little bit later, but

1 that afternoon when Mr. Fortune come in and give a
2 voluntary statement and free statement that he was indeed
3 the shooter we pulled him out then.

4 And subsequently got the results of the test and it
5 come back negative.

6 Q. I see. Did you perform a test on Mr. Fortune, a
7 G.S.R. test?

8 A. No, sir, we did not.

9 Q. Why?

10 A. Again, with the instructions it's six hours. It was
11 well over six hours. As a matter of fact it was closer to
12 12 hours. Again, Mr. Fortune was clean when he come in
13 you know like anybody, you just -- just perfectly nice. I
14 mean just nice and clean.

15 And he would have took a bath and washed his hands at
16 that time, that therefore, the gunshot metal or powder
17 couldn't be found.

18 Q. I'll take this and put it back. Thank you. I have
19 no further questions.

20 A. Yes, sir.

21 THE COURT: Anything on redirect.

22 MR. QUINN: Yes, sir.

23 RECROSS-EXAMINATION

24 BY MR. QUINN:

25 Q. To your knowledge has Sonta McCall been charged with

1 conspiracy to commit murder?

2 A. I guess. I mean I can't recall. I guess.

3 Q. Okay. Do you remember how long after the incident
4 the G.S.R. kit was performed on Michael McManus? Any
5 idea?

6 A. Not exactly, but I do recall it was in that six hour
7 timeframe. I mean S.L.E.D. actually did the test on Mr
8 ---

9 Q. McManus?

10 A. Yes, sir.

11 Q. You said that when Mr. Fortune came in and gave his
12 statement Mr. McManus no longer was a suspect, correct?

13 A. He was still in the back. I mean in trying to
14 explain it. We had him stuck here. You know this was the
15 guy who said he did it. Other folk said he did it. We
16 kind of stuck him in the back and we confirmed through
17 that.

18 Q. But you never charged him?

19 A. No, sir.

20 Q. Okay. Now, at that time under facts given or the
21 affidavit given for Sonta McCall's warrant should she also
22 have been eliminated as a suspect?

23 A. No. She was involved in the actual case itself.

24 Q. Under the facts given on the warrant -- the affidavit
25 given to obtain the arrest warrant?

1 A. I mean that needs to be dismissed.

2 Q. So it should have been once he admitted to being the
3 person who shot the .38 caliber weapon?

4 A. He was up -- she was involved. There was a whole
5 crime. I understand what you're saying, but then I can't
6 give you a nice and short answer. Not myself any way.

7 Q. Okay.

8 A. But I mean it's all one group criminal act.

9 Q. Okay. That's all I have. Thank you?

10 THE COURT: You may step down. Ladies and gentlemen,
11 we're going to take about a 15 minute morning recess at
12 this time. Just step back to your jury room and do not
13 discuss the case.

14 (WHEREUPON, the jury panel was excused from the
15 courtroom at 10:43 a.m.)

16 (WHEREUPON, Court is in recess at 10:43 a.m. and
17 reconvenes at 11:15 a.m.)

18 (WHEREUPON, the jury panel enters the courtroom at
19 11:15 a.m.)

20 THE COURT: All right. Next witness.

21 MR. HALES: State would call Stephanie Douglas.

22 STEPHANIE DOUGLAS, after being duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. JOYNER:

- 1 Q. Please state your name?
- 2 A. Stephanie Gaston.
- 3 Q. And, Miss Gaston, where do you live?
- 4 A. [REDACTED]
- 5 Q. Cheraw. Okay. You work anywhere?
- 6 A. No, sir.
- 7 Q. Do you have any children?
- 8 A. Yes, sir.
- 9 Q. You stay at home with them?
- 10 A. Yes.
- 11 Q. What you're children's names?
- 12 A. [REDACTED]
- 13 Q. Miss Gaston, I'm going to take you back to December
- 14 22nd of 2001. Do you remember what you were doing on that
- 15 night?
- 16 A. Yeah, I had went to the club.
- 17 Q. Okay?
- 18 A. Green Villa in Society Hill.
- 19 Q. Please speak up, Ms. Gaston.
- 20 A. I went to the club.
- 21 Q. Go ahead, Miss Gaston?
- 22 THE COURT: Miss Gaston, keep your voice elevated.
- 23 From time to time we have some construction noise and it's
- 24 also difficult sometimes to hear in a courtroom setting
- 25 anyhow. So if you project your voice loud enough. The

1 mike systems aren't working to pretend you're talking to
2 that group of people back there behind the rail. That
3 might help everybody else to be able to follow what you're
4 saying?

5 THE WITNESS: Okay.

6 BY MR. HALES:

7 Q. What were your doing on the night of December 22nd
8 2001?

9 A. I had went to the club in Society Hill.

10 Q. The name of the club was what?

11 A. Green Villa.

12 Q. Okay. What did you go there for?

13 A. They had a party out there.

14 Q. Okay. Who did you go with?

15 A. My friends.

16 Q. Okay. Did you see anybody you knew out there?

17 A. Basically, everybody know each other down there.

18 Q. Did you witness any kind of altercation or fight or
19 anything at the Green Villa that night?

20 A. Yes, I did.

21 Q. What happened then?

22 A. Denise and Sonta was fighting. Everybody tried to
23 break it up. Anthony even broke it up and it just went
24 from there. They had to closed the club down early
25 because they were fighting.

- 1 Q. Everyone had to leave?
- 2 A. Yes.
- 3 Q. Did you go anywhere else after the club closed down?
- 4 A. Yes, I went to the Huddle House after the club.
- 5 Q. What did you do when you got to the Huddle House?
- 6 A. Park in front of the Huddle House.
- 7 Q. Okay.
- 8 A. Just sitting in the car.
- 9 Q. Now. It's been testified to earlier that it's a
- 10 paved parking lot and a dirt gravel parking lot. Which
- 11 one were you in?
- 12 A. The paved parking lot.
- 13 Q. Okay. And you were in the car?
- 14 A. Yes, sir, I was inside the car.
- 15 Q. Did you see anyone at the Huddle House that you
- 16 recognized while you were sitting in the car?
- 17 A. Yes, everybody -- I mean everybody, you know, know
- 18 each other was coming to the Huddle House.
- 19 Q. Did you see anybody involved in the fight at the
- 20 Green Villa -- at the Huddle House?
- 21 A. Yes.
- 22 Q. Who did you see?
- 23 A. Sonta McCall.
- 24 Q. Okay. Where did you see Miss McCall?
- 25 A. She was going inside the Huddle House.

1 Q. Okay. Did she come back out?

2 A. Yeah, she came back out.

3 Q. What was she doing when she came back out?

4 A. She was talking to Iris Melton.

5 Q. Okay. Were they doing anything just walking?

6 A. Iris was on the cell phone.

7 Q. Okay?

8 A. And after she got off the cell phone Iris gave the

9 phone to Sonta. And after that they put the phone up.

10 Q. Okay. What happened next?

11 A. It was a black Grand Prix had pulled up.

12 Q. Okay?

13 A. And I don't know who was driving, but like I said I

14 was in the back seat of the car. Anthony had pulled up.

15 Q. Okay. Let me slow down right there. Anthony. Who

16 is Anthony?

17 A. Shields.

18 Q. Okay. You saw him pull up?

19 A. Yes.

20 Q. What happened next?

21 A. He was pulling up and he backed his truck away. It

22 was facing the Huddle House anyway, but he pulled up in

23 the parking lot. Oscar ---

24 Q. When you say pulled in, what was the front of his car

25 facing? The hood, where was that facing?

- 1 A. To the Huddle House.
- 2 Q. Okay. So he was facing the Huddle House?
- 3 A. Yes.
- 4 Q. Okay. Please continue?
- 5 A. Oscar came towards -- well, he came to the truck.
- 6 Q. Oscar who?
- 7 A. I don't know his last name.
- 8 Q. Okay. Did you recognize him?
- 9 A. Yes, I do.
- 10 Q. How do you recognize him? Did you know him before?
- 11 A. Yes, I used to work at Homer Ford in Cheraw and I
- 12 sold him an Expedition.
- 13 Q. Do you see him in the courtroom today?
- 14 A. Yes, sir.
- 15 Q. Could you please describe what he's wearing and where
- 16 he's sitting?
- 17 A. Right in front of me in the white shirt and black
- 18 slacks.
- 19 MR. HALES: I would ask that the record reflects the
- 20 witness identified the Defendant, Oscar Fortune.
- 21 THE COURT: So reflects.
- 22 BY MR. HALES:
- 23 Q. You saw Oscar get out of the car. What happened
- 24 after he got out of the car?
- 25 A. She went to towards Anthony's truck.

- 1 Q. Okay. She approached Anthony's truck. What happened
2 next?
- 3 A. They was talking, arguing or whatever. They was just
4 like passing words back and forth.
- 5 Q. Did you hear anything?
- 6 A. I didn't hear nothing. Only thing I know is I heard
7 gunshots. I hit the floor.
- 8 Q. So you didn't see gunshots but you heard gunshots?
- 9 A. Yes.
- 10 Q. Did you differentiate the sounds of the gunshots?
- 11 A. I don't know different, but I know I heard gunshots.
- 12 Q. Okay. You hit the deck in the car?
- 13 A. Um hum.
- 14 Q. What happened next?
- 15 A. I got up after there wasn't no more gunshots. I saw
16 Anthony crawling.
- 17 Q. Okay. Where was he crawling?
- 18 A. He was just crawling on the ground away from his
19 truck.
- 20 Q. Okay. With respect to his truck was he on the
21 driver's side? Passenger side? Behind the truck? Where
22 was he?
- 23 A. The passenger side.
- 24 Q. And what happened as he was crawling?
- 25 A. I got up. Me and my friend jumped up, and Oscar came

1 around the truck and he shot him in the back.

2 Q. So he shot him while he was crawling?

3 A. Yes.

4 Q. Did you see Anthony shoot at all?

5 A. I didn't see, no.

6 Q. Did you see him have a gun when out the car crawling?

7 A. No, I didn't see no gun.

8 MR. HALES: Beg the Court's indulgence.

9 Q. I have no more questions. Please answer any
10 questions that the Defense has.

11 THE COURT: You may cross-examine.

12 CROSS-EXAMINATION

13 BY MR. QUINN:

14 Q. Good afternoon, Miss Douglas. How are you doing?

15 You said -- first of all did you get out of your car?

16 A. Yes, after he got shot I got out of the car.

17 Q. After he got shot. Anthony got shot?

18 A. I got out the car then.

19 Q. You never saw Anthony Shields fire a gun?

20 A. I didn't see nobody fire. I just seen -- I heard it
21 you know after them last shots I got -- we got out the
22 car.

23 Q. So you didn't ever see anybody fire a gun?

24 A. Um hum.

25 Q. You just testified that Oscar shot Anthony while he

1 was crawling on the ground?

2 A. Oh, yeah, I seen that, but I heard the other ones.

3 Q. Going back to the Green Villa did you witness the
4 fight?

5 A. Yes.

6 Q. Okay. And did you see Iris Gaston get hit with a
7 chair?

8 A. Yes.

9 Q. Did you see who did it?

10 A. I can't remember who hit her. Nobody hit her with a
11 chair. Nobody hit her.

12 Q. Okay. Do you remember giving the statement to the
13 police on December 23rd 2001?

14 A. Yes.

15 MR. QUINN: Have this marked for identification.

16 (WHEREUPON, Defendant's Exhibit No. 5 was marked for
17 identification only.)

18 BY MR. QUINN:

19 Q. Do you recognize this document?

20 A. Yes, sir.

21 Q. Take it. What is it?

22 A. It's a statement that I wrote.

23 Q. How do you know you wrote it?

24 A. Cause I was there when they wrote it -- when I wrote
25 it.

1 Q. The statement has your name as Stephanie Renee
2 Gaston; is that correct?

3 A. Yes.

4 Q. Is that the name you use now?

5 A. Yes.

6 Q. Okay. So don't go by the name of Stephanie Douglas?

7 A. No.

8 Q. Okay. Could you read that statement to the jury,
9 please?

10 A. I don't want to read that statement.

11 Q. You don't have a choice. Please read the statement
12 to the jury.

13 A. "At the Green Villa Sonta McCall, Denise Shields was
14 fighting. Then Anthony was trying to break the fight up.
15 Denise picked up a chair and a chair hit Iris Melton in
16 the back. Everything happened so fast. Everyone started
17 pushing. Everybody running.

18 Denise, Anthony, his wife, she was still trying to
19 fight Sonta McCall. So Sonta, Iris Melton left the Green
20 Villa. Also Tonnette Cash, too, she left with them. At
21 that time everything was over. So everybody left because
22 the fight was -- the club closed down. Everybody left.

23 Everybody started leaving, going to the Huddle
24 House -- going towards the Huddle House. So we pushed --
25 we was parked. So many people were coming rolling in from

1 which and everywhere. Later, here comes Sonta and Iris
2 Melton.

3 They got out of the car, walked inside the Huddle
4 House. Iris was -- made a phone call on her cell phone.
5 Next, they was coming out of the Huddle House. Sonta --
6 Iris gave Sonta the cell phone, and Sonta was up -- I mean
7 she was on the phone. After the phone call stopped there
8 comes a black Grand Am pulled up.

9 Black Grand Am pulled up. Iris and Sonta they went
10 back inside the Huddle House. They was on their way
11 coming back out. That's when Oscar, he was coming back
12 out with them. Anthony pulled up inside -- I mean in his
13 truck. All three of them came towards the truck, Oscar,
14 Sonta and Oscar.

15 Anthony was trying to run but he couldn't make it. I
16 heard about four to five shots. Anthony got out the
17 passenger side and tried to run. I guess I get -- I guess
18 to get help. He was on the ground by the -- by a green
19 car. Person that drives the car was Vincent James."

20 Q. Are you reading the entire statement?

21 A. Yeah, I'm trying to get it together. I was nervous
22 the day I wrote this thing.

23 Q. Will you continue, please?

24 A. "The guy that did the shooting was kind of stout and
25 dark skinned. He had a blue shirt, black pants and a

1 green -- I mean a blue jean jacket. He's about 30.

2 Robert told us his name was -- who his name was. I
3 just can't recall what the name he said. But he said --
4 but he was in a black Grand Am two door. Him and his
5 girlfriend and -- him and his girlfriend and the next car
6 was a mint green Honda Civic with rims and four door.

7 They left after each other after the shooting. Iris
8 and Sonta were in the (inaudible).

9 Q. Okay. You just testified that Iris was not hit with
10 a chair but in your statement you say that Denise Shields
11 hit her with a chair, correct?

12 A. That is correct.

13 Q. Okay. And nor in this statement does it say that you
14 saw Oscar Fortune shooting Anthony Shields while he was
15 crawling out on the ground, does it? Pretty detailed
16 statement. Doesn't say anything about shooting Oscar --
17 Anthony Shields while he's crawling on the ground, does
18 it?

19 A. No, I don't.

20 Q. You also state in this statement that Iris, Sonta and
21 Oscar walked over to Anthony Shields' truck. Is that how
22 you remember it?

23 A. Yes.

24 Q. Okay.

25 MR. QUINN: Move to have this admitted as Defense

1 Exhibit Five?

2 MR. HALES: Without objection.

3 (WHEREUPON, Defendant's Exhibit No. 5 was admitted
4 into evidence.)

5 MR. QUINN: I publish to the jury, Your Honor?

6 THE COURT: You may.

7 MR. QUINN: Court's indulgence. Just a couple more
8 questions, Your Honor.

9 BY MR. QUINN:

10 Q. You wrote that statement the day of the incident,
11 correct?

12 A. No, I think that they came back because I was
13 hysterical. They came back.

14 Q. But you wrote it soon after the incident?

15 A. Yes, sir.

16 Q. And it's clearly different than your testimony here
17 today. Which is true? Your testimony here today or what
18 you wrote in your sworn statement soon after the incident?

19 A. Both of them is true.

20 Q. That can't be possible. Which one is true?

21 A. The statement.

22 Q. Thank you.

23 MR. QUINN: No further questions, Your Honor.

24 THE COURT: Any redirect?

25 MR. HALES: Yes, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. HALES:

3 Q. Miss Gaston, once again did you go to the event of
4 the shooting when you were in the car? Excuse me. Would
5 you go through the events of the shooting while you were
6 in the car one more time for us?

7 A. Oscar, they was going ---

8 MR. QUINN: Your Honor, this is not ---

9 THE COURT: I agree, I sustain the objection. The
10 purpose of redirect is to clear up matters that were
11 introduced by Defense counsel direct examination not for
12 purposes of having a witness repeat in their entirety what
13 their previous testimony was.

14 BY MR. HALES:

15 Q. Do you remember giving a statement to law
16 enforcement?

17 A. Yes, I do.

18 Q. Did you wrote that statement?

19 A. Yes, I did.

20 Q. Was everything in that statement true to the best of
21 your knowledge at that time?

22 MR. QUINN: He's leading the witness, Your Honor.
23 Not proper foundation.

24 THE COURT: Stated as to form of the question.

25 BY MR. HALES:

1 Q. Miss Gaston, have you been truthful today and in your
2 statement?

3 A. Yes.

4 MR. HALES: No further questions.

5 RECROSS-EXAMINATION

6 BY MR. QUINN:

7 Q. You've admitted that your statement is different than
8 your testimony here today, correct?

9 A. Yes.

10 Q. How can you possibly be being truthful here today and
11 in your statement?

12 A. I mean it has been a while, and I mean it happened,
13 you know what I'm saying. I didn't remember about the
14 statement about the hitting of the chair. I just couldn't
15 remember that time. I did write that statement.

16 Q. When would your memory have been better, today or
17 when you wrote that statement?

18 A. When I saw that statement everything came back to me.

19 Q. Once against which is a more accurate portrayal of
20 your memory? What you said today or what you wrote in
21 that statement?

22 A. What you mean?

23 Q. Which is more truthful in your mind, which is more
24 truthful? What you wrote in that statement or said here
25 today?

1 A. It's true what I wrote in that statement.

2 Q. Thank you.

3 MR. HALES: No further questions.

4 THE COURT: Thank you, ma'am. You may step down.

5 MR. HALES: We ask that Miss Gaston be excused.

6 THE COURT: Any objection?

7 MR. QUINN: No objection, Your Honor.

8 THE COURT: You may be excused Miss Gaston. You may
9 call your next witness.

10 MR. HALES: Yes, sir. Jessie Ellison.

11 JESSIE ELLISON, after being duly sworn, testified as
12 follows:

13 THE COURT: Mr. Ellison, often times witnesses don't
14 know what it's like to sit where you are sitting now and
15 offer testimony in response to questions. And, naturally,
16 they don't understand, like a stage actor might
17 understand, when you're doing a play or something on stage
18 you speak to the audience.

19 Well, you are here today for the purposes of speaking
20 to the jury. And if you simply engage in that normal
21 conversational tone it could be that the members of the
22 jury won't be able to hear you clearly. And they need to
23 hear what you're saying. So please speak loud enough and
24 bear that in mind so they can hear and even the people who
25 are seated back there beyond the rail would be able to

1 hear your testimony. You may examine.

2 DIRECT EXAMINATION

3 BY MR. HALES:

4 Q. Please state your name?

5 A. Yes, sir, James Ellison the Third.

6 Q. Mr. Ellison, the microphone is not on. Where do you
7 live, Mr. Ellison?

8 A. [REDACTED]

9 Q. Cheraw, okay. You remember the night of December
10 22nd 2001?

11 A. Yes, sir.

12 Q. Where were you that night?

13 A. The whole night or during the incident? Start from
14 the beginning? I went down to the Green Villa Supper
15 Club.

16 Q. Okay. When did you leave the Green Villa?

17 A. Once the D.J. came over to the microphone and said
18 the club was over. Something had happened.

19 Q. Did you see what had happen?

20 A. No.

21 Q. Where did you go after that?

22 A. To the Huddle House.

23 Q. What were you doing at that Huddle House?

24 A. Standing around. Standing in the parking lot.

25 Q. Okay. Were you with people?

1 A. Yes.

2 Q. Okay. Tell me what happened next?

3 A. Me and a friend talked about what happened cause I

4 didn't know. We were talking about what happened. I

5 found out who it was, what happened at the club. And I

6 seen Anthony pulled up on the dirt side of the parking

7 lot. I was standing on the pavement side of the parking

8 lot.

9 Q. Okay. What happened when Anthony pulled up? Did he

10 get out the car or sit there?

11 A. No, he sat there.

12 MR. QUINN: Leading the witness. Objection.

13 THE COURT: I will allow that question, whether he

14 stayed in or got out.

15 THE WITNESS: He stayed.

16 BY MR. HALES:

17 Q. What happened next?

18 A. Few minutes later a black Oldsmobile pulled up.

19 Black Oldsmobile and green Honda Civic pulled up behind.

20 Q. Did you recognize those cars?

21 A. Yes.

22 Q. Who was that?

23 A. Tonnette Cash and Iris Melton.

24 Q. Whose car was whose?

25 A. Tonnette had the black Oldsmobile.

1 Q. Okay. What happened next after that?

2 A. Gentlemen got out -- got out of the black car and
3 went up to ---

4 Q. Did you know the guy who got out?

5 A. No, sir.

6 Q. Continue.

7 A. He went up to Anthony's driver's side.

8 Q. Okay. What happened when he went up to Anthony's
9 driver's side?

10 A. I guess they had a few words. I don't know who he
11 was. I don't know. I didn't really know what happened at
12 the club so I don't know who he was. I guess they had a
13 few words and after a couple minutes shots rang out.

14 Q. Okay. Did you see anything?

15 A. Well, I seen the -- I heard the shots and I was
16 looking. I just heard the shots.

17 Q. So explain to me. You didn't actually see the shots?

18 A. Well, I was looking at the shooting going on, I
19 didn't know who was doing the shooting but I heard the
20 shots.

21 Q. Okay. What happened after the shots?

22 A. The gentlemen went around the back of the Bronco --
23 the Ford Explorer and went, and I guess Anthony got out on
24 the passenger's side. I was still planted because it was
25 a shock to me, and I then -- but I heard another shot ring

1 out after his wasn't on the other side.

2 Q. Okay. What happened next?

3 A. The gentlemen left. I don't know if he got in the
4 car or not.

5 Q. But he left?

6 A. Yeah, the car that had pulled up behind Anthony,
7 after the first shots rang out they pulled off. I don't
8 know if they left the Huddle House completely or just
9 pulled up out the way.

10 Q. You didn't see anything?

11 A. No, I didn't see anything.

12 Q. What did you then do?

13 A. Went over to Anthony to check on him.

14 Q. How did he appear?

15 A. He wasn't responding or nothing. I tried to talk to
16 him, tell him to hang on, but he wasn't responding. He
17 was still alive though.

18 Q. What did you do then?

19 A. Well, my first instinct was to pick him up and put
20 him in the car and take him to the emergency room. It
21 seemed like wasn't nobody coming, but the crowd was
22 telling me just don't touch him. Don't move him.

23 Q. So what did you do after that?

24 A. I went to his parent's house and let them know.

25 Q. You spoke to them?

Jessie Ellison - Direct by Mr. Hales

363

1 A. I believe I spoke to somebody already arrived there
2 before me.

3 Q. Okay. And then after that what was next in the
4 sequence of events?

5 A. Emergency room, I ran -- I drove to the emergency
6 room.

7 Q. Okay?

8 A. But I had talked to somebody in the emergency room.
9 They had told me he was already gone. He wasn't there
10 yet.

11 Q. When you say he's gone?

12 A. He was gone, passed before he made it to the
13 emergency room.

14 MR. HALES: Court's indulgence. I have no further
15 questions. Answer any questions the Defense has.

16 CROSS-EXAMINATION

17 MR. QUINN: Good afternoon, Mr. Ellison. You say you
18 didn't see what happened at the Green Villa?

19 A. No.

20 Q. No idea?

21 A. No idea what happened at the Green Villa.

22 Q. And when Mr. Shields pulled into the Huddle House
23 parking lot onto the dirt side you said ---

24 A. Yes.

25 Q. --- you were on the pavement side?

- 1 A. Yes.
- 2 Q. So you were facing him kind of like I'm facing you
- 3 now had to be ---
- 4 A. Just like the jury right there. They was at an
- 5 angle.
- 6 Q. You were on the driver's side looking at him?
- 7 A. Yeah.
- 8 Q. Okay. And you didn't see who fired a gun?
- 9 A. No, I didn't see who.
- 10 Q. None?
- 11 A. No.
- 12 Q. Did you see Mr. Fortune get out of his car?
- 13 A. The black car?
- 14 Q. Um hum.
- 15 A. Yes, but I didn't know him at the time.
- 16 Q. Anything about his appearance alarm you?
- 17 A. No.
- 18 Q. Okay.
- 19 MR. QUINN: No further questions, Your Honor.
- 20 MR. HALES: Nothing further Your Honor.
- 21 THE COURT: You may step down, Mr. Ellison.
- 22 MR. HALES: We ask that Mr. Ellison be excused?
- 23 THE COURT: Any objection?
- 24 MR. HALES: No, Your Honor.
- 25 THE COURT: Without objection. Call you next

1 witness.

2 MR. JOYNER: Call Sergeant David Lee.

3 DAVID LEE, after being duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. JOYNER:

7 Q. Morning, Sergeant?

8 A. Morning.

9 Q. Would you please state your name and address?

10 A. David Lee, [REDACTED]

11 Q. Mr. Lee, are you married?

12 A. Yes.

13 Q. You have any kids?

14 A. Yes, sir.

15 Q. How many?

16 A. Three.

17 Q. And what are their ages?

18 A. Eight, two and a week old.

19 Q. Congratulations?

20 A. Thank you.

21 Q. Mr. Lee, what is your job title?

22 A. Sergeant, shift sergeant.

23 Q. Was does that entail?

24 A. Supervise other shifts. Also answer calls.

25 Q. Okay. How long have you been in law enforcement?

1 A. Nine years.

2 Q. All right. I want to take you back do December 23rd
3 of 2001 when this incident happened. How did you first
4 become involved in this incident?

5 A. Our dispatch advised us that we had a 1075 at the
6 Huddle House, a shooting.

7 Q. Explain for the jury what a 1075 is?

8 A. It means a shooting occurred. That meant you have a
9 suspect and a victim.

10 Q. Okay. About what time did you arrive, approximately?

11 A. Approximately, four a.m.

12 Q. And would you describe the scene for the jury. Well,
13 describe the scene concerning the amount of people there
14 first?

15 A. When I arrived it appeared to be between 50 and a
16 hundred people throughout the parking lot. Majority --
17 just everybody was everywhere in kind of a chaos.

18 Q. Describe to scene as far as the victim?

19 A. When I arrived the victim was covered up. E.M.S. had
20 already covered him up and he was laying beside his
21 vehicle.

22 Q. What did you do when you arrived at the scene?

23 A. Sorry?

24 Q. What was your responsibility when you got to the
25 scene?

1 A. When I got to the scene I met with -- an officer from
2 Cheraw Police Department was there. I asked him what he
3 had. We secured the scene by taping it off and arriving
4 deputies was placed to secure the scene to make sure
5 nobody did cross the crime scene tape to the scene.

6 Q. Okay. If you, just for an example, if you were to
7 secure this enclosed area, how would you secure the area?

8 A. Take it as far out as possible from the point of the
9 actual immediate crime scene, out as far as possible and
10 tape it from objects that are there so nobody could cross.

11 Q. Is that what we see, the yellow ---

12 A. Yes, sir.

13 Q. --- tape we see on occasion?

14 A. Yes, sir.

15 Q. Okay. Thank you. Was it your responsibility to
16 secure the scene?

17 A. Yes, sir.

18 Q. Did you do anything else while you were there?

19 A. No, sir, just secured the scene and the only other
20 jobs that we had as the first responding deputies to try
21 to keep the people there so they could talk to witnesses
22 when investigators arrived.

23 Q. Do you remember any other law enforcement coming to
24 the scene?

25 A. Other law enforcement was S.L.E.D. forensic team.

1 Q. Okay.

2 A. Showed up at a later time.

3 Q. All right. Thank you.

4 MR. JOYNER: No further questions.

5 CROSS-EXAMINATION

6 BY MR. QUINN:

7 Q. Good afternoon. Do you know about how long it took
8 you to get to the scene before you were able to secure
9 it?

10 A. Not right off the top of my head. I was in -- I was
11 in Pageland so.

12 Q. You remember approximately how long it would take you
13 to get there?

14 A. Thirty minutes, maybe, approximate.

15 Q. So for about 30 minutes that scene was unsecured with
16 about a hundred people roaming around?

17 A. I can't say it was secured until I got.

18 Q. That was your job to secure the scene?

19 A. Being the first one there, yes, sir.

20 Q. So for that 30 minutes you don't know what went on
21 there?

22 A. No, sir.

23 Q. You don't have any idea what evidence may have been
24 misplaced? Moved? Taken, whatever?

25 A. I wasn't there. I can't recall.

1 MR. QUINN: Court's indulgence. That's all I have,
2 Your Honor.

3 THE COURT: You may step down. Call your next
4 witness.

5 MR. JOYNER: We call Wayne Jordan.

6 WAYNE JORDAN, after being duly sworn, testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. JOYNER:

10 Q. Morning, Officer Jordan?

11 A. Morning.

12 Q. Would you please state your name for the Court?

13 A. Wayne Jordan.

14 Q. And where are you from?

15 A. I'm from Cheraw.

16 Q. And how long been in law enforcement?

17 A. I've been in law enforcement for 13 years.

18 Q. And what is your job?

19 A. Right now I'm a criminal investigator for the
20 Sheriff's Office.

21 Q. Do you have any other jobs with the Sheriff's
22 Department?

23 A. Also I do -- I'm the evidence custodian.

24 Q. What does that involve?

25 A. I accept up the evidence that's turned in by the

1 officers for the Sheriff's Office.

2 Q. Okay. All of the evidence that we have here today
3 who brought it up here?

4 A. I brought it up here Tuesday morning.

5 Q. All right. I'll go through each individual piece.
6 I'm showing you what's been marked as State's Exhibit
7 Three. Do you recognize that?

8 A. Yes, I do.

9 Q. What is it?

10 A. That's a handgun that was turned into -- that was in
11 evidence.

12 Q. Okay. But before I get to the handgun where is all
13 the evidence kept when it's in your control and custody?

14 A. We have a building outside of the county jail complex
15 that is enclosed by fencing and a locked fence area. And
16 inside the building we have a storage locker that is dead
17 bolted and also locked by lock. And inside that locker is
18 another cage that separates where all the evidence is
19 stored inside of a cage and only one person has a lock and
20 key to this and I have the lock -- the keys to all these
21 building.

22 Q. Okay. Does anybody else have access to it?

23 A. The only other person that has a set of keys is the
24 Sheriff.

25 Q. Okay.

1 A. And that's it.

2 Q. Okay. This evidence that you bought up here, all
3 that's been shown to the jury and entered, is it in the
4 same condition as when you received it? When you took ---

5 A. When I took over the evidence in May of '05, the
6 evidence you see that's the way I accepted it and that's
7 the way I brought it over to the courthouse today. I mean
8 yesterday.

9 MR. SALEEBY: Your Honor, we're stipulating to the
10 chain of custody of .the 25 caliber to save 45 minutes.

11 THE COURT: Thank you very much.

12 BY MR. JOYNER:

13 Q. All right. I'm showing you what's been marked as
14 State's Exhibit Five. Do you recognize it?

15 A. Yes, I do.

16 Q. What is it? Would you also explain what it is for
17 the jury?

18 A. It's also a handgun. I believe it's a .25
19 semi-automatic handgun.

20 Q. If I may restate for a second. There is a fence.
21 The barbed wire that's locked. You go through the fence.
22 There is a building that's locked. You're inside the
23 building. There is -- did you say another room?

24 A. There was a door -- another room inside of this
25 building.

1 Q. That's locked?

2 A. That's locked.

3 Q. Okay. Inside of there is that where the .25
4 automatic I just showed you, is that where it was kept?

5 A. It was kept inside of this room in a locked file
6 drawer, and it was -- it is also locked. The file cabinet
7 is locked and the two bottom drawers has evidence, and
8 then the top two drawers has all my records for the
9 evidence forms, the return form from S.L.E.D., etc.

10 Q. Okay. And is there any way it could have been
11 tampered with?

12 A. The gun was never tampered with.

13 Q. Who broke the seal?

14 A. I did.

15 Q. Explain to the jury what breaking of the seal means?

16 A. It just -- there is a red tab that was secured back
17 from S.L.E.D. where they examined it, put it back in the
18 paper bag and they put a seal on it. I was not sure what
19 was in the bag. It was labeled as a .25 auto pistol.

20 And just to confirm that this was the pistol I broke
21 the seal, looked inside the bag, pulled the gun out,
22 looked at it, and set it back in the bag.

23 Q. Thank you?

24 MR. JOYNER: No further questions.

25 CROSS-EXAMINATION

1 BY MR. QUINN:

2 Q. Good afternoon. Regarding the .25 caliber pistol
3 there was a period of time that you could not locate that
4 weapon, isn't that true?

5 A. I could not put my hands on that; is that correct.

6 Q. It never left the evidence room?

7 A. It never left the evidence locker. Like I say it was
8 locked inside this file cabinet, inside the evidence room,
9 inside the building which was inside the fenced in gate.

10 Q. But there was about a two year period when you could
11 not find the gun in the evidence room?

12 A. No, sir, two months.

13 Q. Two month period where you could not find it inside
14 the evidence room?

15 A. That's correct.

16 Q. But you did find it eventually?

17 A. I found it in the evidence room. It was under a
18 couple other pieces of evidence that I -- it was the last
19 piece of evidence I put my hands on.

20 Q. Okay. No further questions. Thank you.

21 COLLOQUY

22 THE COURT: You may step down. Call your next
23 witness.

24 MR. JOYNER: Judge, we have four S.L.E.D. experts
25 that are going to be here to testify after lunch, and

1 their our testimony is going to be faster today than we
2 imagined.

3 THE COURT: When you indicate the S.L.E.D. agents
4 will be here you are having them subpoenaed at what time?

5 MR. JOYNER: I have them subpoenaed from -- my first
6 one said he would be here a little bit before 2:00. And
7 the rest of them will be here approximately between 2:00
8 and 2:30.

9 THE COURT: Have you had any contact in the last 30
10 minutes with that particular witness to determine if they
11 could get here at say 1:30?

12 MR. JOYNER: Judge, I had Mr. Hodge call and she is
13 actually trying to find the babysitter to come earlier.
14 She's since had a child, and she's not working right now
15 and she is in the process of finding a babysitter to get
16 here faster.

17 THE COURT: Which witness is that?

18 MR. JOYNER: That is Miss Dorothy Filiatreault. She
19 is a gun powder residue expert but I can certainly call.
20 I have other witnesses -- three other experts that I can
21 call and see if I can have them here as early as 1:00 or
22 1:30.

23 THE COURT: Ladies and gentlemen of the jury, just so
24 we don't have a big break why don't you step back to your
25 jury room for a moment, relax, and let me see if I could

1 get some witnesses that would be available. If they're
2 coming from Columbia they couldn't get here much before
3 1:30. If you will, if you will just step to the jury
4 room.

5 Take about a five, ten minute break, and we will then
6 either advise you that we're going to have lunch break
7 like 12:15 to 1:15 or whether we're going to have a lunch
8 break from like 12:15 to 2:00. So if you will just step
9 back to your jury room for a moment.

10 And, ma'am, I'm going to ask if you will if you will
11 hand that card and just sit it there and there you go.
12 Thank you so much.

13 (WHEREUPON, the jury panel was excused from the
14 courtroom at twelve o'clock.)

15 THE COURT: All right. Let me make a couple of
16 inquiries. Mrs. Filiatreault has done a G.S.R. kit on
17 someone?

18 MR. JOYNER: Judge, there are two G.S.R. kits which
19 are in evidence, and also she did a gun powder test on the
20 green coveralls. And she's going to testify about those
21 as well?

22 THE COURT: What is she going to testify to?

23 MR. JOYNER: She is going to testify that the shot in
24 the upper back is consistent with a contact wound?

25 THE COURT: All right. And she did two G.S.R. kits?

1 MR. JOYNER: Yes, sir, we have two G.S.R. kits?

2 THE COURT: Those were for what?

3 MR. JOYNER: Michael McManus that we discuss earlier
4 and one on the defendant.

5 THE COURT: Is the victim's G.S.R. kit going to
6 indicate that he fired?

7 MR. JOYNER: Well, he was shot in the hand so there
8 is -- there could be gun residue from him being shot at
9 close range in the hand or from him shooting the gun. I
10 also have -- we have Dustin Smith who is going to be here
11 about two o'clock as well. He is a toxicology expert
12 also, and he's going to testify there was not drugs of any
13 kind in the body; that there was a level of alcohol. The
14 level was approximately .14, and he will be a relatively
15 quick expert. Mr. Paavel is our firearms expert and he
16 will just match the bullets. And, Mr. Rod Green, he's
17 actually not an expert. Mr. Green was the C.S.I. person
18 who collected evidence at the scene.

19 THE COURT: What evidence did he collect?

20 MR. JOYNER: He collected -- he took the photos. He
21 was the courier. As to the chain of custody has been
22 stipulated to we could possibly get by without him.

23 MR. HALES: He found the .25 bullet and casing?

24 MR. JOYNER: All that's fine now since they're
25 stipulating to the chain of custody.

Colloquy

377

1 THE COURT: He found the casing, where?

2 MR. JOYNER: In the hatchback area of the car.

3 THE COURT: Was there ever a projectile from the .25?
4 Where was that found?

5 MR. HALES: That was found on the floorboard.

6 THE COURT: Passenger side?

7 MR. JOYNER: Yes, sir, the passenger side of the
8 floorboard. I've actually got the photos if you'd like to
9 see them.

10 THE COURT: All right. So that's the -- you've got
11 the .25 caliber on the floorboard. We got .25 caliber
12 casing in the hatchback area. He was in what kind of
13 vehicle?

14 MR. HALES: Ford Explorer.

15 THE COURT: So when you say hatchback area are you
16 talking about back seat or cargo area?

17 MR. HALES: Way in the back.

18 THE COURT: Cargo area in the back part. All right.
19 Well, does the Defense need somebody to come and testify
20 about.

21 MR. QUINN: Well, I would like to talk to whoever
22 processed the car.

23 THE COURT: Okay.

24 MR. JOYNER: Rod Green is who he needs to talk to.

25 THE COURT: Well, if you will check, and can you call

1 single S.L.E.D. number and find out whether or not these
2 people can begin filtering in at the 1:30 timeframe?

3 MR. JOYNER: I've got Mr. -- we would actually like
4 to call Rod Green first. I 've got his cell phone number
5 and I can see if he can be here.

6 THE COURT: Well, call him and see what the status
7 is. Call your other people as well if you have numbers
8 for them in the event they can come if this gentlemen
9 didn't call back within the next ten minutes.

10 All right. We'll be in recess so we can see --
11 determine how to schedule things.

12 (WHEREUPON, Court was in recess at 12:13 p.m. and
13 reconvened at 1:44 p.m.)

14 MR. JOYNER: Judge, would it be all right -- we made
15 a mistake. I only read Items 31 through 55 up there into
16 evidence and I mistakenly didn't read Item 30 and I'd like
17 to move for it to be moved into evidence at this time.

18 THE COURT: You have no objection.

19 MR. JOYNER: He has no objection.

20 MR. QUINN: No objection.

21 THE COURT: Without objection.

22 MR. JOYNER: Thank you, Judge.

23 (WHEREUPON, State's Exhibit No. 30 was admitted into
24 evidence.)
25

1 (WHEREUPON, State's Exhibit No. 58 was marked for
2 identification only.)

3 THE COURT: All right. State ready to go forward?

4 MR. JOYNER: Yes, sir.

5 THE COURT: Defense?

6 MR. SALEEBY: Yes, sir.

7 THE COURT: All right. Very good. Bring us the
8 jury.

9 (WHEREUPON, the jury panel enters the courtroom at
10 1:47 p.m.)

11 THE COURT: All right. Thank you, ladies and
12 gentlemen. I hope each of you had a good lunch break.
13 Again, if for some reason you feel a little snoozy this
14 afternoon or you need to break earlier if you will just
15 bring that to my attention and we'll work around that to
16 keep you comfortable. Solicitor, you may call your next
17 witness.

18 MR. JOYNER: The State would call Mr.Vello Paavel.

19 THE COURT: Very good. Mr. Paavel, if you would come
20 around.

21 VELLO PAAVEL, after being duly sworn, testified as
22 follows:

23 THE COURT: You may examine.

24 DIRECT EXAMINATION

25 BY MR. JOYNER:

1 Q. Afternoon, sir?

2 A. Good afternoon, sir.

3 Q. Sir, would you please state your name for the Court?

4 A. My name is Vello Paavel, spelled V-E-L-L-O.

5 P-A-A-V-E-L.

6 Q. Mr. Vello, what is your occupation?

7 A. I work for the South Carolina Law Enforcement

8 Division which is commonly known as S.L.E.D. In

9 particular I work in the Forensic Services Laboratory in

10 the Firearms Department where I am a firearms and tool

11 mark examiner.

12 Q. How long have you been involved in law enforcement?

13 A. Law enforcement, approximately 25 and a half years.

14 I've been at S.L.E.D. almost 19 years.

15 Q. Would you explain to the jury what firearms

16 identification is?

17 A. Yes, firearms identification is a discipline of

18 forensic science in which the examiners try to determine

19 primarily whether or not the bullets and cartridge cases

20 and other fired components such as shot gun shells were

21 fired by a particular gun.

22 In the absence of a gun what the examiner does is

23 compare the bullets to bullets and cartridge cases to

24 cartridge cases and try to determine whether they were

25 fired by more than one gun or one gun.

1 Also a firearms examiner will examine firearms to
2 determine whether or not they are working properly and
3 sometimes we'll do serial number restorations on firearms
4 that have been damaged or altered or the serial number has
5 been obliterated.

6 Q. Mr. Paavel, what is your educational background?

7 A. I attended the University of South Carolina. I have
8 a bachelor of science degree. I majored in chemistry. I
9 also attended the South Carolina Criminal Justice Academy,
10 however, my education and training in the area of firearms
11 and tool mark identification was given to me through a
12 training program that was administered by S.L.E.D. When I
13 first went to work at S.L.E.D. I was required to
14 participate in this training program. I was given tests
15 on reading material. I was required to work with other
16 examiners in the area of firearms tool marks and at the
17 time I also did latent prints and crime scene
18 investigations.

19 I had an opportunity to attend schools that were put
20 on by various firearm manufacturers where they showed me
21 how these different firearms worked and how they
22 functioned. I also had an opportunity to attend the
23 F.B.I. school on specialized techniques in firearms
24 identification?

25 And during my training program I did a lot of hands

1 on practice work. I was given fired bullets, fired
2 cartridge cases by other examiners and required to look at
3 these and compare them. I was tested on this information
4 and after I successfully completed this training program I
5 was allowed to work cases on my own.

6 Also prior to my law enforcement career I worked for
7 several year in Columbia in a gun shop where my primary
8 job was to buy, sell, repair guns and other firearms.

9 Q. All right. Thank you, sir. Previously, how many
10 times have you testified as an expert in firearms
11 identification?

12 A. I've testified approximately 285 times in South
13 Carolina General Sessions Court and in federal court as an
14 expert in firearm and tool mark identification.

15 MR. JOYNER: Judge, at this time I would move that
16 Mr. Paavel be declared an expert in the field of firearms
17 identification?

18 MR. QUINN: No objection, Your Honor.

19 THE COURT: Without objection. And, ladies and
20 gentlemen, as you will recall I told you that an expert is
21 someone who by virtue of their training, their background,
22 their experience they are in a position to come in and are
23 allowed to offer testimony as ultimate matters under your
24 consideration. They are here.

25 Their testimony is for the purpose of assisting you.

1 You weight it and consider it as you do with all testimony
2 whether from an expert or from a layperson. Give it such
3 weight as you feel is appropriate for that testimony.
4 You're to be assisted but not bound by the testimony of
5 the an expert who testifies in a case. You may continue?

6 MR. JOYNER: Thank you, Your Honor.

7 Q. So, Mr. Paavel, I'm going to show you several items
8 that have already been entered in evidence. This is
9 State's Exhibit Three and I ask do you recognize that?

10 A. Yes, sir, I do. This is a firearm that I examined in
11 reference to this incident.

12 Q. Okay. Also showing you what has previously been
13 entered in evidence as State's Exhibit Four. Do you
14 recognize that this?

15 A. Yes, sir. These are five fired cartridge casings
16 that were in this particular revolver when it was examined
17 by myself.

18 Q. Okay. And I show you what has been previously been
19 entered as State's Exhibit 28. You recognize that?

20 A. Yes, sir. This is a fired bullet or projectile.
21 This was also submitted to me for examination.

22 Q. I show you what's been entered in evidence as State's
23 Exhibit 27. Do you recognize that?

24 A. Yes, sir. This is another fired bullet that was
25 submitted for examination.

1 Q. Okay. And I will for time purposes show you State's
2 Exhibit 25 and 26 and ask if you recognize those?

3 A. Yes, sir. These are two additional fired bullets
4 that were submitted for examination.

5 Q. Mr. Paavel, under what circumstances did those items
6 come into your possession?

7 A. I obtained these from an evidence locker that's
8 located on the second floor of our building. Normally
9 what happens is evidence is submitted or brought to our
10 laboratory either by a contributor such as the Sheriff's
11 Office or a police department or a S.L.E.D. agent may
12 actually go out and retrieve evidence.

13 Occasionally, we get evidence via the mail. It goes
14 to a central location and that evidence is distributed to
15 the different departments. This particular evidence ended
16 up in the fire lock as it's called. This is a secured
17 firearms evidence storage area that's on the second floor
18 of your building.

19 Q. You said earlier that you examined those items.
20 Would you explain for the jury how you examined them?

21 A. Yes, sir. What I do when I examine a firearm is
22 document it's condition. I write down what make, model,
23 serial number cartridges in it. Are there any unfired or
24 fired cartridge cases in it. Is there any obvious blood
25 on it and simply document all the features that I normally

1 would thin I need in an examination such as the barrel
2 length, number of cartridges it holds, again, make, model,
3 serial number, and then I would examine to see whether or
4 not it work properly.

5 Ultimately, I will take it and test fire it. What I
6 will do is take ammunition, the type that was used in the
7 crime, and then I test fire or have the gun test fired
8 into our vertical water recovery tank. And what that is
9 is a large tank of water. It's about 3 feet in diameter.
10 It's about 14 feet long. The opening is on the second
11 floor. The bottom is on the first floor of our building.

12 I literally take the gun, shot it into the mouth or
13 opening of that large tank in the water. The bullet is
14 slowed down by the water and ultimately the bullet just
15 falls down to the bottom of the tank. Now, the bottom of
16 the tank is shaped like a large cone or funnel.

17 And at the bottom of that cone or funnel is a very
18 small cup and the bullets are literally rolled into that
19 cup and then there is a chain attached to that cup which
20 goes all the way up to the mouth of the bullet recovery
21 tank and I simply pull up the chain and the bullets will
22 be in the cup.

23 Then I will have the bullets that I can use for
24 comparison purposes and then in a gun like this I would
25 simply take the cartridge casings out of the cylinder and

1 I can use these for comparison purposes.

2 Q. Thank you. Mr. Paavel, what conclusion did you make
3 after you made the -- after you did your examination?

4 A. What I determined after this gun was test fired and
5 the test specimens were recovered, marked, I concluded
6 that these particular items -- let me get these in order.

7 State's Exhibit 25, 26, 27 and 28, those four fired
8 bullets or projectiles were fired by this particular
9 revolver which is State's Exhibit Number Three.

10 Regarding the fired cartridge cases I determined that
11 three of those cartridge casings were positively fired by
12 this gun. The other two, the result was inconclusive. I
13 could not tell what if they were fired by this gun or not.
14 I could not positively because they didn't have enough
15 markings on the primer and the area where the markings
16 would normally be found.

17 This happen occasionally. When a gun is fired the
18 firing pen either doesn't mark it well or the breach area,
19 which is this area here, simply does not mark the
20 cartridge case as well as others. Something that I can't
21 predict when it happens or how it happens.

22 In this particular case I can say three of these can
23 be positively identified as being fired by the gun and two
24 were inconclusive. And then the four bullets were
25 positively fired by this particular gun.

1 Q. Thank you, sir.

2 A. Yes, sir.

3 Q. All right. Now, I'm going to show you State's
4 Exhibit 10 and State's Exhibit Nine and State's Exhibit
5 Five and Six, all of which have previously been entered
6 into evidence and I ask do you recognize those?

7 A. Yes, sir. I recognize these items. These also were
8 submitted for examination and particular State's Exhibit
9 Number Nine is a fired bullet or projectile. State's
10 Exhibit number 10 is a fired cartridge case. State's
11 Number Five is a .25 automatic caliber pistol, and State's
12 Exhibit Six is a magazine or sometimes called a clip that
13 will fit this pistol.

14 Q. Okay. And were you able to perform an examination of
15 those items?

16 A. Yes, sir. I followed the same procedure as I did the
17 revolver. I documented information about the physical,
18 the magazine and these other components were documented,
19 make, model, caliber, whether or not they functioned in
20 the area of the bullet. And the cartridge case and what
21 caliber are they, how much does the bullet weigh, what
22 kind of rifling characteristics on the bullets itself.

23 All these things are documented on forms that we
24 have. I then test fired or had this pistol test fired and
25 I obtain the tests and then did a microscopic comparison

1 test to the evidence specimens.

2 Q. And what did you conclude?

3 A. I concluded that these two items which are State's
4 Exhibit Number 10 and State's Exhibit Number Nine were
5 fired by this particular pistol which is State's Exhibit
6 Number Five.

7 Q. Is there anything unusual about the .25 automatic?

8 A. Yes, sir. There is a part missing from this firearm.
9 I'm going to put my finger at it and please I'm going to
10 try to point it at the ceiling here so we don't scare
11 anybody. There is a whole on this side and goes through
12 to the other side. You can see a small hole over here and
13 there is a safe lever here. These guns normally have a
14 safety that can be clipped back and forth in order to
15 prevent the gun from firing. That particular lever is
16 missing. As a result of that the gun will fire as is but
17 it does not fire reliably and it has no particular safety
18 feature on it.

19 Once you put a cartridge in the barrel and load and
20 ready to fire and the hammer is cocked you're merely
21 pulling the trigger will allow you to shoot the firearm.
22 You don't have to disengage the safety in order to shoot.

23 Q. Thank you, Mr. Paavel?

24 A. Thank you.

25 MR. JOYNER: Judge, I believe I may have misspoken

1 earlier. I would move that Items Nine, Ten, Five and Six
2 be entered into evidence at this time.

3 MR. QUINN: Without objection.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibits Nos. 5, 6, 9 and 10 were
6 admitted into evidence.)

7 THE COURT: And also Items Four and 28 be entered in
8 evidence as well?

9 MR. QUINN: Without objection.

10 THE COURT: Without objection.

11 (WHEREUPON, State's Exhibits Nos. 4 and 28 were
12 admitted into evidence.)

13 THE COURT: How about 25, 6 and 7?

14 MR. JOYNER: That were already entered into evidence.

15 THE COURT: Very good.

16 MR. JOYNER: They were entered through Dr. Yacoub.

17 No further questions for Mr. Paavel.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. QUINN:

21 Q. The .25 caliber pistol you were just talking about I
22 think it was that number identified?

23 A. Yes.

24 Q. You said that the safety has been removed?

25 A. The safety is missing. Normally it won't just fall

1 out.

2 Q. So it has to be purposely removed?

3 A. Normally, if it's properly installed it doesn't fall
4 out by itself relatively easy. It rotates to a certain
5 position and pushed from this side or pulled from the
6 other side and it comes out.

7 Q. Okay. And that makes the gun just all the time live
8 if it's got a cartridge in the chamber?

9 A. Yes, sir. The safety lever prevents the gun from
10 firing in the safety on position or engage. So if you
11 don't have a lever what that means is that any time you
12 have a cartridge in the barrel and the hammer is cocked
13 back all you have to do is pull the trigger in order to
14 make it shoot.

15 Q. Okay. Now, your report indicates that the trigger
16 mechanism is sometimes stuck in the forward position. How
17 does that affect function if it has a full magazine?

18 A. If you pull the trigger all the way to the back the
19 gun would fire but the trigger simply gets stuck. It
20 would get stuck in a forward position and not fire more
21 than one round if the locking mechanism on the gun was
22 disconnect or which prevents that latch and that was
23 working properly. It either needed lubrication or a good
24 cleaning, but the trigger would sometimes simply get
25 stuck.

1 Q. But not all the time?

2 A. Not all the time.

3 Q. Cause the gun to fire one time and that's it?

4 A. That is correct. Simply fire one shot every time you
5 pull the trigger.

6 Q. All right. Your report also states -- indicates that
7 the .25 caliber magazine failed to feed and hold
8 cartridges properly?

9 A. Yes, sir.

10 Q. Okay, how would that affect the function of the gun?

11 A. What it was doing when it was being -- let me refer
12 to my notes here one second. What it would do is if you
13 identify to feed or make the cartridge go into the chamber
14 from the magazine on this type of firearm. The magazine,
15 a small piece of metal that we had or cartridges are slide
16 in the magazine and that magazine is simply a sheet metal
17 box in this gun.

18 And if you take that magazine with the cartridge in
19 it and invert in to the bottom this gun this is called the
20 butt or bit grip area. Then you're pulling the slide back
21 in the barrel essentially only letting the slide go
22 forward. In other words, to feed or place a cartridge
23 from the magazine into the barrel or the chamber itself.

24 What it would do sometimes is it would feed the first
25 round or top round and not go into the barrel but the

1 bullet would actually go down and run into what's known
2 the feeds ramp. This is a small ramp behind the barrel.
3 The sign feeds or guides cartridges into in barrel.

4 Q. That's the feed ramp and gets stuck on the magazine
5 feed lip?

6 A. That's the portion of the magazine that controls how
7 the cartridge come out the magazine would not hold
8 cartridges in the magazine properly?

9 Q. Okay. Now, you tested one spent cartridge and one
10 spent bullet from a .25 caliber weapon and you determined
11 both were fired from the gun, correct?

12 A. Yes, sir. There was a fired bullet or projectile and
13 fired the automatic cartridge case that I concluded were
14 fired by this particular gun.

15 Q. Now, is there any way for you to determine if that
16 fired spent bullet came out of that fired spent cartridge?

17 A. No, sir. I don't have a means to tell positively
18 whether that particular bullet came out of that particular
19 cartridge case.

20 Q. Okay. So the fact that there was one fired bullet
21 and one fired spent cartridge doesn't meant that only one
22 bullet was fired, necessarily?

23 A. One cartridge.

24 Q. Right.

25 A. You're referring to ---

1 Q. I'm sorry.

2 A. --- just a little terminology. We're talking about
3 bullets and cartridges and cartridge cases here. It's
4 going to get a little confusing if I haven't already
5 confused you. A piece of ammunition is unfired.
6 Something that's in a magazine or placed in the gun in
7 order to fire is called a cartridge or a round of
8 ammunition.

9 That cartridge is composed of a bullet and the bullet
10 is the projectile or the part that comes out the barrel
11 and travels towards the target. Also on this type of
12 firearm the cartridge case will be left over with the
13 cartridge case holds the bullet, the gunpowder and the
14 primer which is the explosive cap at the back of it.

15 So I can't tell positively whether or not a bullet
16 comes out of a particular fired cartridge case. That
17 bullet was .25 caliber. That cartridge case was .25
18 caliber. Both were fired by this gun. I can't tell
19 whether they were fired at the same time. I don't know
20 whether that bullet came out of that particular cartridge
21 case.

22 Q. Okay. Now, the spent bullet -- I'm sorry, spent
23 cartridge found in the back hatchback area of the truck
24 does that indicate in any way the positioning of that gun
25 when it was fired?

1 A. No, sir, not particularly to me. It can indicate
2 that the gun may have been fired inside the vehicle.
3 Generally, what happens with a gun like this the cartridge
4 case is ejected or thrown out of this port.

5 This particular gun has an ejection port that opens
6 substantially on both sides. Normally, they go up to the
7 right. They could potentially go to the left. Now, the
8 problem is I don't know how the gun is being held. So it
9 can go literally anywhere. Again, I'm trying not to point
10 it at your.

11 If you can imagine the cartridge case is coming out
12 the top of this gun. As I move it it can literally go
13 anywhere. So the fact that it's in the rear portion of
14 that passenger compartment or hatchback area I can't put
15 any particular importance on that.

16 Q. Okay. And what the closed compartment of a car also
17 affected possibly where that cartridge may go?

18 A. Yes, that's a problem also with a cartridge case
19 cause you have to bear in mind the cartridge case is being
20 eject or thrown out of this firearm with some force. If
21 it strikes something, let's say the head liner of the
22 vehicle, it could bounce or hit the windshield or hit some
23 other part of the inside of a vehicle. It could
24 potentially bounce and go in another location.

25 MR. QUINN: Beg the Court's indulgence. That's all I

1 have, Your Honor.

2 THE COURT: Anything on redirect?

3 REDIRECT EXAMINATION

4 BY MR. JOYNER:

5 Q. Mr. Paavel, if for example and you may not be able to
6 answer this question. If the gun is being pointed down
7 and the bullet is fired at an angle into the floor is it
8 possible that the shell could eject this way if the gun is
9 being point down like this?

10 A. Yes, sir. Normally, it would tend to come out to the
11 right side of the firearm, but again depending on how it's
12 being held and the circumstances as a matter of how clean
13 this gun is, how well it's lubricated and, realistically,
14 you can make sure that 10, 15 or 20 times and most of them
15 go to the right. And you may have one go to the left. I
16 can't predict positively where that cartridge case would
17 go.

18 Q. But, normally?

19 A. Normally, they would tend to go out to the right. Up
20 and to the right.

21 Q. Thank you, sir.

22 A. Yes, sir.

23 MR. QUINN: No further questions.

24 THE COURT: Anything on recross?

25 MR. QUINN: One moment, please.

RECROSS-EXAMINATION

BY MR. QUINN:

Q. Basically, you're saying the positioning of the spent .25 caliber bullet and the position of the spent .25 caliber cartridge gives you no indication of how that gun was being held when it was fired? No reliability?

A. I can't reliably tell from the positioning of a cartridge case. If I have a bullet path -- for instance, let's say the gun was fired through a door and you have an entrance hole in the door and you have an exit hole in the door, you can put a stick in it and follow back and see approximately -- the approximate path of that bullet which may give you an idea of the origin of the bullet.

But without having some sort of firm bullet pash or bullet track I can't tell where a particular shooting origin location would be.

Q. You have a bullet present in this case?

A. I don't know, sir.

Q. You didn't examine the car?

A. No, sir.

Q. Thank you.

MR. QUINN: That's all I have, Your Honor.

THE COURT: Very good. Thank you, sir. All right.

Any objection to releasing?

MR. QUINN: No, sir.

1 MR. JOYNER: None from the State.

2 THE COURT: Very good. Thank you for coming. You
3 may return to you duties. You may call your next witness.

4 MR. JOYNER: Judge, we should have our other S.L.E.D.
5 agent arriving.

6 MR. HALES: State calls Dustin Smith.

7 DUSTIN SMITH, after being duly sworn, testified
8 as follows:

9 MR. HALES: May it please the Court.

10 DIRECT EXAMINATION

11 BY MR. HALES:

12 Q. Please state your name?

13 A. Dustin Smith.

14 Q. Mr. Smith, where do you live?

15 A. I live in Lexington, South Carolina.

16 Q. What is your occupation?

17 A. I'm a forensic toxicologist.

18 Q. And what does a forensic toxicologist do?

19 A. We analyze blood, urine and other bodily fluids for
20 the presence of alcohol, drugs and poisons and then we
21 interpret these results in a court of law.

22 Q. What is you educational background as to being a
23 toxicologist?

24 A. I have a Bachelor of Science in biology with a minor
25 in chemistry from the University of Charleston. In

1 regards to my training at S.L.E.D. I have been certified
2 by S.L.E.D. as a forensic toxicologist and have undergone
3 training both in alcohol analysis and the pharmacology of
4 alcohol as well as the analysis of drugs and other
5 pharmacological substances as well as the interpretation of
6 those.

7 MR. QUINN: Your Honor, we'll stipulate.

8 THE COURT: Stipulate as to his qualifications?

9 MR. QUINN: Yes, sir.

10 THE COURT: Thank you. Ladies and gentlemen, it has
11 been stipulated that Mr. Smith is an expert in the field
12 of forensic toxicology. You may continue examination.

13 BY MR. HALES:

14 Q. Mr. Smith, did you have the opportunity to examine
15 any fluids from Anthony Shields?

16 A. Yes, I did.

17 Q. And what kind of tests did you run?

18 A. The case was submitted to us as it had at the time
19 that this case was submitted for a homicide. We did a
20 blood alcohol analysis and always of the bodily fluids
21 including bodily fluids in this case. We did -- and I
22 also did a standard drug screen at that time which
23 included barbiturates, benzodiazepine and opiates.

24 Q. What conclusion did you reach?

25 A. Well, if I can just read from my report and blood

1 labeled, Anthony D. Shields, FA01-699. I found 0.041
2 percent blood alcohol.

3 I also found a negative screen for barbiturates,
4 benzodiazepines for cocaine and cocaine and/or cocaine
5 metabolites in the urine. 0.018 percent weight ethanol
6 and in the ocular fluid 0.052 weight per volume ethanol.
7 Bile, gastric, liver and brain were also submitted in this
8 case. I didn't analyze those.

9 Q. What was the reason for not analyzing?

10 A. Well, in general we don't analyze the bio-gastric
11 brain and liver except under certain circumstances, don't
12 analyze for any reason if it's not a sample that we find
13 to be certain. It helps if he gives blood. On the front
14 end gastric suspect the case could have possibly been an
15 overdose of drugs just to kind of get an idea as to what
16 was taken.

17 And the brain and liver, again, in other words just
18 to affirm the level we find in the blood. We will analyze
19 the brain and liver due to the phenomenon post mortem
20 redistribution.

21 Q. In your interpretation of the results you said that
22 Mr. Shields had a 0.041 blood alcohol level?

23 A. That's correct.

24 Q. Would you please describe what a person would be like
25 if they had that blood level?

1 A. Sure. I find it generally helps to relate this even
2 though this has absolutely nothing to do with a D.U.S.
3 type trial. To relate it into similar to your D.U.I.
4 statute if someone is impaired, obviously, about half of
5 what the level we see some impairment. It's certainly not
6 to a level where the person would be what I consider to be
7 intoxicated. This is the equivalent to approximately two
8 drinks.

9 Q. Mr. Smith, I ask you please what is the reason for
10 the discrepancy in the blood alcohol level, the urine
11 alcohol level and ocular fluid level?

12 A. First, I'll address the blood and ocular, the two
13 most pertinent ones. You begin to consume alcohol, your
14 blood alcohol -- your -- the alcohol in your blood begins
15 to show up immediately. The absorption in your ocular
16 fluid is a bit -- you can use that in saying that so.

17 As your blood alcohol begins the rise, as you're
18 absorbing the alcohol your ocular fluid waits just a bit
19 before it begins to rise and then in turn as your blood
20 alcohol begins to come down your ocular alcohol won't come
21 down for just a bit after that.

22 So if we see a slightly -- let's say we see a
23 slightly higher blood alcohol and ocular alcohol, then we
24 can assume they're still in absorption hadn't gone to
25 eliminate the alcohol in a guy. On their way back down

1 there may be a slightly higher ocular than blood alcohol
2 assuming their is elimination.

3 In this case it appears there was an elimination
4 meaning they already peeked blood alcohol and were on
5 their way down. The urine alcohol is actually not a very
6 good way to estimate any type of impairment. It depends
7 on when the person last went to the restroom or whether
8 the alcohol is being drawn out with their kidneys. It's
9 just to show a history of alcohol used in this case.
10 There is some alcohol, relatively, ocular fluid alcohol.

11 We can see if they have been using ethanol. All we
12 gain from the urine and what was seen for barbiturates
13 benzodiazepines and cocaine and opiates that tell us that
14 the four very common drugs were not present in the
15 individual. It certainly does not mean that he haven't
16 been taking other drugs. It only means these four classes
17 of drugs that we looked for all were clean for at the time
18 of the homicide case.

19 They weren't present including drugs like Buterol,
20 Zanex and Valium which are antianxiety trial drugs,
21 cocaine and cocaine metabolites like of course cocaine and
22 crack cocaine and opiates including drugs like Oxycontin
23 or Lortab which are common analgesic and pain reliever,
24 assuming from this that they didn't have any of those four
25 classes of drugs present at the time.

1 Q. Mr. Smith, I see an absence for testing for
2 marijuana. Is there a reason for that?

3 A. Sure at the time there was not a commercially
4 available test that we can test for marijuana to a
5 reasonable degree of certainty. We do actually include
6 marijuana in your screen today because that methodology
7 has come a long way and is now available to us. In 2001
8 it wasn't available to us so we didn't screen for it.

9 Q. Finally, Mr. Smith, person's blood alcohol level
10 function normally?

11 A. They certainly wouldn't be able to function normally.

12 MR. JOYNER: I have a further question.

13 CROSS-EXAMINATION

14 BY MR. QUINN:

15 Q. Good afternoon. Now, you said there was a 0.041
16 alcohol level present?

17 A. Yes, sir, that is correct.

18 Q. Does the size of the individual got something to do
19 with how it affects that individual?

20 A. No, actually it wouldn't.

21 Q. Not at all?

22 A. The level of alcohol that is present in the blood
23 affecting that individual is the same in a larger
24 individual as it would be in a smaller individual but the
25 difference being that if a larger individual were to drink

1 the same amount of alcohol without taking more to reach
2 symptoms at the same level that a smaller individual would
3 need to drink but the level correlates across the board
4 the same.

5 Q. Okay, now I may have heard wrong but do make an
6 occasion regarding the time between the end of consumption
7 that would be viable?

8 A. I wouldn't have any idea about that. All that I can
9 say is that based on the ocular fluid and blood ethanol
10 level they were there in elimination. How long they were
11 in elimination I can't have any idea as to how long.

12 Q. These number don't indicate how much the individual
13 might have drank that night?

14 A. It only indicates how much was in the victim's blood
15 at the time of death. That's all I can notice.

16 Q. You said in 2002 there wasn't a reliability test for
17 marijuana?

18 A. Well, 2001.

19 Q. 2001. When this test was run there was not a test
20 that was initially available to us that we could use to
21 test for marijuana? You couldn't test his urine or blood.

22 A. We could have tested the urine if we had had a
23 history of it, but since we didn't have a history of it at
24 the time this was not something that we did on a regular
25 basis. If we had known that drugs were suspected we could

1 have tested for it in the urine but not in the blood.

2 Q. Okay. So it was is a lack of suspension that kept
3 you from testing for marijuana not that the test wasn't
4 possible?

5 A. At the time for a lot of cases we screen for those
6 four particular drugs. If we had an occasion of any other
7 drugs we would have gone and looked for those drugs as
8 well. But there was no history of any other type of drug
9 use.

10 MR. QUINN: Beg the Court's indulgence. We have no
11 further questions, Your Honor. Thank you.

12 MR. JOYNER: No further questions, Your Honor.

13 THE COURT: Any objection to excusing this witness?

14 MR. JOYNER: None from the State.

15 MR. QUINN: No, Your Honor.

16 THE COURT: You are excused from your subpoena.

17 Thank you, Mr. Smith. You may I call your next witness.

18 Ladies and gentlemen of the jury panel, we have couple
19 more employees of S.L.E.D. who are hopefully on their way.
20 We're going to take sort of an early break and while we
21 wait if there are those among you who I recall yesterday
22 who may have a desire to smoke a cigarette this would be
23 an opportunity time for you to participate in that
24 undertaking.

25 And the weather is prettier today than it was

1 yesterday. And if the rest of you would like to go
2 outside while the portion smokes instead of sitting in
3 that jury room for a few moment I will allow you to do
4 that. We'll be in recess for the next ten or 15 minutes.
5 And if you will just take those outside what would like to
6 go out. Kind of keep them together and do not allow
7 anyone to approach.

8 (WHEREUPON, the jury panel was excused from the
9 courtroom at 2:32 p.m.)

10 (WHEREUPON, Court is in recess at 2:32 p.m. and
11 reconvenes at 2:58 p.m.)

12 THE COURT: You will bring us the jury. Thank you.

13 (WHEREUPON, the jury enters the courtroom at
14 2:59 p.m.)

15 THE COURT: And, ladies and gentlemen, yes, you smell
16 tar. It's been poured this afternoon on the backside of
17 the building. We do not know whether there will be more
18 pouring that takes place today. We're trying to see if
19 they haven't completed the pouring if they can wait and do
20 it on Friday to give up as much relief as possible.

21 But we'll work around that as best we can and I don't
22 have any control over it but I apologize for any problems
23 it may cause any of you. You may call your next witness.

24 MR. JOYNER: The State would call Dorothy
25 Filiatreault.

1 DOROTHY FILIATREULT, after being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. JOYNER:

5 Q. Good afternoon?

6 A. Good afternoon.

7 Q. Please state your full name for the Court.

8 A. Dorothy L. Filiatreault. F-I-L-I-A-T-R-E-A-U-L-T.

9 Q. Thank you. And where are you from?

10 A. I am from Lexington, South Carolina.

11 Q. Mrs. Filiatreault, what is your occupation?

12 A. At the time of this case I was an agent with the
13 State Law Enforcement Division, S.L.E.D., but currently
14 I'm a stay at home mom.

15 Q. And you're married?

16 A. Yes, I am.

17 Q. And how many kids you have?

18 A. Two children. Three and one and a half.

19 Q. Miss Filiatreault, how long were you in law
20 enforcement?

21 A. I was with the State Law Enforcement Division for six
22 and a half years.

23 Q. And what was your title while you were there?

24 A. I was a trace evidence expert working in the Trace
25 Evidence Department as a forensic chemist of the Forensic

1 Division.

2 Q. What does the forensic chemist do?

3 A. Specifically, trace evidence chemically analyzes and
4 compares any trace evidence found at a crime scene or
5 potential crime scene or anything linked to a sign or it's
6 integrity, chemical analysis and compare it to each other.

7 Q. Do you hold any degrees?

8 A. I have a degree in chemistry from Spartanburg, South
9 Carolina.

10 Q. And were you required to have any specialized
11 training as far as trace evidence goes?

12 A. Absolutely. Trace is one of the longest training
13 programs that there is in forensic. It takes about three
14 years to be fully qualified in all the areas of trace
15 gunshot residue I do perform and it is an in-house type of
16 program where I was under the direct supervision of the
17 lieutenant of the trace evidence department.

18 I also attended some graduate courses in Chicago,
19 Illinois as well as extensive school at the F.B.I. Academy
20 in Quantico, Virginia.

21 MR. QUINN: Your Honor, Defense stipulates to her
22 qualifications.

23 THE COURT: You evaluate her testimony as you do to
24 any other expert witness' testimony, but the parties have
25 agreed that Mrs. Filiatreault is an expert in the field of

1 forensic and trace evidence. You may continue.

2 MR. JOYNER: Thank you, Judge.

3 BY MR. JOYNER:

4 Q. Miss Filiatreault, I'm going to show you what's been
5 marked as State's Exhibit Seven, and feel free to open
6 that. Do you recognize that?

7 A. I do. State's Exhibit Seven is a marked gunshot
8 residue kit on Anthony Shields and bearing the lab number,
9 the S.L.E.D. lab number, the item number, and any initials
10 as well as the date I resealed the container.

11 Q. You can open it, please, if you would. Would you
12 explain what these items are for the jury?

13 A. Yes, sir. These are four samples of the kit, the
14 gunshot residue collection kit, there are actually two
15 different parts of the kit. And this is the remaining
16 part of the kit remaining after examination. This is the
17 adhesive stubs that are collected first from a suspect or
18 victim's hands in potential of a discharge of a weapon.

19 Q. Okay. And did you make a report when you examined
20 these things?

21 A. Yes, sir, I did. The part that is no longer in the
22 kit because it is destroyed upon examination is the Q-Tip
23 swab that was collected from each region of the hands as
24 well as a control sample taken from the body so that we
25 have entire environmental chemical taken into

1 consideration as well.

2 (WHEREUPON, State's Exhibit No. 59 was marked for
3 identification only.)

4 Q. Thank you. I show you what's been marked as State's
5 Exhibit 59 and ask do you recognize that?

6 A. Yes, sir. State's Exhibit 59 is a copy of my report
7 with signature and date.

8 Q. Okay.

9 MR. JOYNER: Judge I would ask that State's Exhibit
10 59 be entered as evidence.

11 MR. QUINN: Without objection.

12 THE COURT: Without objection.

13 MR. JOYNER: Thank you.

14 (WHEREUPON, State's Exhibit No. 59 was admitted into
15 evidence.)

16 BY MR. JOYNER:

17 Q. Mrs. Filiatreault, what did you find after you
18 examined the gunshot residue kit?

19 A. I'll read from my report. In the sample submitted in
20 the kit labeled, Shields, Anthony Duane, metal consistent
21 was gunshot residue were found on the back of the left
22 hand.

23 Q. Dr. Yacoub testified earlier that the victim was shot
24 in the back of the left hand. Is that consistent with
25 what you found in you gunshot residue examination?

1 A. Absolutely. It does not surprise me at all to find
2 metal consistent with gunshot residue around the gunshot
3 hole.

4 Q. Okay. Was there any other part of that same hand
5 tested or swabbed?

6 A. Yes, sir. Each region of the hand is swabbed and the
7 adhesive stub is also collected on each region
8 individually so that we can determine positions of the
9 hands if possible with reference to the discharge of the
10 weapon.

11 Samples are taken from the right palm, the right
12 back, the left palm and the left back area and separated
13 and remained individually package so that we can analyze
14 each of these and determine what type of metal are on
15 those areas and if it is consistent with gunshot residue.

16 Q. Okay. Would gunshot residue be on the hands in a
17 similar fashion had the person shot a gun?

18 A. If the person were left handed and shot and used
19 their left hand to shoot the weapon then it is certainly
20 considerable to have gunshot residue on the back of the
21 left hand or any other region that they used to hold the
22 weapon.

23 However, simply because we don't find gunshot residue
24 does not mean that a person did not shoot a weapon. This
25 material is very fragile and destroys very easily. For

1 instance if I shot a weapon and then wipe my hands, put my
2 hands in my pocket, put my hands through my hair, wash my
3 hands certainly will destroy the evidence.

4 And then if I simply sit here within four hours the
5 absorption rate of my will actually absorb the gunshot
6 residue into my system where I cannot find it on a
7 collection kit.

8 Q. Thank you. I'm showing you now what has been marked
9 in evidence as State's Exhibit 12. It's already been
10 entered into evidence and I ask do you recognize this?

11 A. I do. It is the green coveralls that were examined
12 for gunpowder and gunshot analysis.

13 Q. Okay. And what was your conclusion of your
14 examination?

15 A. Again, I'll read from my report. Six holes were
16 found in the green coveralls. Residue and physical
17 characteristics found around the hole located in the left
18 back area were consistent with a contact shot. A pattern
19 of lead was detected around the hole located in the left
20 shoulder blade area of the back.

21 No pattern of gunshot residue or lead was detected
22 around the two holes located in the seat area or around
23 the two holes located in the right arm of the coveralls.

24 Q. Would you just point to the hole where you described
25 to contact wound?

1 A. The contact shot is, of course, the most visible hole
2 on the coveralls which is the one right at the flank of
3 the shoulders and the arm base.

4 Q. All right. Would you explain for the jury what
5 contact wound or exact shot?

6 A. Certainly. A contact shot can not only be described
7 as a contact shot when there is actual pressure or contact
8 between the weapon in use and the material that it is
9 actually shooting through. No other shot can be described
10 as a contact shot. There are typical characteristics of
11 this that cannot be found even from a half inch or
12 further.

13 It is one of the most consistent and identifiable
14 shots that we do have in the gun powder analysis realm.

15 Q. Thank you. And just for clarification purposes if
16 this was the barrel of the gun and I was to shoot his hand
17 how close would the barrel have to be to my hand?

18 A. It would have to be in contact with it.

19 Q. It would have to be like this?

20 A. Yes, sir.

21 Q. Thank you. Thank you, Mrs. Filiatreault.

22 CROSS-EXAMINATION

23 BY MR. QUINN:

24 Q. Good afternoon. Have you had a chance to review the
25 autopsy report in this case?

1 A. No, I have not.

2 Q. The wound to the back of Mr. Shields' hands was
3 described as Number Five Gunshot Wound and the report and
4 as you read, if you would read that paragraph, it
5 describes that the back of Anthony Shields' left hand was
6 free of soot, gunpowder particles and gun powder tattoos,
7 okay?

8 A. Would you like me to read it?

9 Q. Not out loud but to yourself. Okay. This is State's
10 Exhibit Number Three which was the gun that was used,
11 okay?

12 A. Yes, sir.

13 Q. That's a revolver, is it not?

14 A. Yes, sir, it is.

15 Q. Okay. Now, is there a difference between the
16 gunpowder residue expelled by a resolver and a closed
17 chamber gun such as a .25 caliber?

18 MR. JOYNER: Judge, I object. She's not firearm's
19 expert.

20 THE COURT: Let him ask the question and she's trace
21 evidence so she maybe sufficiently trained to answer it.
22 She may not.

23 A. Would you repeat your question.

24 BY MR. QUINN:

25 Q. Sure. Is the amount of gunpowder residue expelled

1 forward from it different from a .38 caliber handgun
2 revolver and State's Exhibit Number Five which is .25
3 caliber closed chamber gun?

4 A. It is considered normal that the smaller weapons have
5 the smaller -- obviously, the smaller the bullet the
6 smaller amount of gun powder that is needed. The smaller
7 amount of primer that's needed. Therefore, it's typical
8 that there would be a smaller amount of the residue left
9 to begin with. Yes, sir.

10 Q. So you're saying the shorter the barrel the less gun
11 powder?

12 A. The smaller the caliber typically, however, this --
13 the analysis that I performed, a gunshot residue analysis,
14 is not necessarily quantitative meaning that if I have a
15 .45 caliber weapon versus a .25 caliber weapon it makes no
16 distinction. I'm not analyzing for a quantitative amount
17 to determine type of gun. I'm simply looking for the
18 presence of gunshot residue.

19 Q. You testified under direct examination that the gun
20 powder you found on the back of Mr. Shields' left hand
21 would be consistent with being shot in the hand?

22 A. It does not surprise me. I did not say that it was
23 consistent with being shot. I said that it does not
24 surprise me to find gunshot residue around something that
25 qualifies as a bullet wound.

1 Q. Okay. Is it not true that a revolver that gunshot
2 residue escapes from the side and some to the back and
3 less comes out the front of the barrel? Is that not true?

4 A. I agree with the first part of your question. I
5 can't necessarily agree with the second part of your
6 question. It's not necessarily that less comes out of the
7 barrel because we don't know that for sure. There is not
8 way to quantitatively determine whether or not more comes
9 out a barrel, but we do know based on the science behind
10 the explosion in a cartridge casing as well as the burning
11 of the gunpowder that it's going to try and escape from
12 any area that's open.

13 That includes any of the chambers. Obviously in a
14 revolver you have the open chamber of the revolver itself
15 versus colliding cartridge excuse me, a semiautomatic, but
16 to say that more comes out a revolver from the side than
17 the others I can't determine that.

18 Q. Okay. Most bullets have the same amount of gunpowder
19 in them, do they not? Same caliber bullets?

20 A. I'm currently not qualified to answer that question.
21 That would be a firearms.

22 Q. Okay. Gunpowder residue doesn't pass through solid
23 metal, does it?

24 A. No, sir.

25 Q. So if Mr. Shields had fired this weapon, this .45

1 caliber weapon, with his right hand isn't it possible that
2 no gunshot -- no gunpowder residue would have gotten on
3 his right palm or back of his hands because it doesn't
4 expel out the side of the gun but rather out with the
5 bullet is ejected and out the front of the barrel? Is
6 that fair to say? Is it possible that there would be no
7 gunshot residue on his hands?

8 A. Well, certainly, in any case where a person
9 discharges a weapon there is no guarantee that we will
10 find gunshot residue regardless of what type of weapon.
11 However, we do find it and simply because a person shoots
12 a weapon and we don't find it doesn't mean they did not
13 shoot a weapon. So I would not be able to answer your
14 question.

15 Q. Now you said it wouldn't surprise you if somebody was
16 shot in the back of the hand if there was gunshot residue
17 consistent with what you found there?

18 A. Yes, sir.

19 Q. Okay. If someone had been sitting in the passenger
20 side of their car and fired this weapon across their body
21 to the driver's side window would it surprise you if you
22 found gunshot residue on the back of their left hand? If
23 they shot across that left hand?

24 A. From the passenger side?

25 Q. No, from the driver's side. The driver's side of the

1 car, sitting there, has the gun in his right hand and
2 fires out the driver's side window across his body, would
3 it surprise you to find gunshot residue consistent with
4 what you found on the back of Mr. Shields' left hand?

5 A. I cannot tell you how the gunshot residue was placed
6 on the back of Mr. Shields' left hand. I simply know it's
7 there certainly. It certainly is a possibility that if he
8 fired over his left hand it would find gunshot residue
9 there. If I found it on the back of his left hand and he
10 did fire a shot I would also assume to find that gunshot
11 residue on his firing hand. Regardless of whether it was
12 a closed claim or revolver.

13 Q. Now, you analyzed the green overalls the Solicitor
14 showed you?

15 A. Yes, sir.

16 Q. And your report states that you analyzed about his
17 six bullet holes, correct?

18 A. The six holes.

19 Q. Six holes, sorry. Did you analyze the rest of it?

20 A. I found six holes.

21 Q. Did you analyze the entire garment?

22 A. Yes, sir.

23 Q. Did you find gunshot residue anywhere else?

24 A. The examination was performed for a gunshot residue
25 kit on the hands versus a gunpowder and gunshot residue

1 kit. Gunshot residue examination on the clothing is a
2 completely different examination. I did examinations per
3 protocol on all of the holes in the overalls, and if you
4 give me a second.

5 Of the six holes the hole in the left -- lower left
6 back was a contact shot. I found a pattern of lead around
7 the hole in the hop left back -- upper left back. And one
8 particle of partial burned gunpowder was found around the
9 hole in the buttock area.

10 However, one particle is not consistent for me to
11 determine a pattern or anything like that.

12 Q. Did you analyze anywhere on this document that didn't
13 have a hole in it? For instance, the left shoulder or
14 front of the garment or left sleeve?

15 A. No, sir. What we are trying to determine when we do
16 a gunshot residue analysis and gunpowder analysis of
17 clothing, those examinations are specific to determine
18 distance from a weapon to the entrance of a bullet hole.
19 Therefore, we have to have a bullet hole as a reference
20 point to determine a distance or a pattern.

21 Q. Okay. If somebody were sitting in a driver's side --
22 driver's seat of a car as I described and did fire a
23 weapon, cross their body out the driver's side window
24 would you expect to find residue on the shoulder and the
25 sleeve and maybe the front of the garment?

1 A. No, sir. Not examinations that are performed by the
2 Forensic Division of S.L.E.D. Unlike C.S.I. on t.v. you
3 can't just look willy nilly for evidence and determine
4 what it actually means. The gunshot residue examine, like
5 I stated before, in clothing is determined a distance
6 between the weapon and where the bullet entered.

7 And, unfortunately, the possibility that you are
8 producing is not an examination that I can perform.

9 Q. You can't or you didn't?

10 A. No, sir, we can't. We have attempted to look for
11 gunpowder or gunshot residue on clothing before, however,
12 there is very little conclusive evidence. It cannot be
13 limited to a today factor like the gunshot residue on our
14 hands.

15 Therefore, simply because someone has gunshot residue
16 on their clothing it doesn't necessarily mean that it came
17 from that the incident and we are trying to limit the
18 evidence to what is particular to that incident. So it's
19 not an examination that S.L.E.D. will allow.

20 Q. So you're not saying it wasn't there. You didn't
21 test for it?

22 A. Correct. There is no examination that I can perform.

23 Q. Is it possible that there was residue where I
24 described on the left shoulder, left arm and front?

25 MR. JOYNER: Judge, I'm going to object. That calls

1 for speculation. She didn't test.

2 MR. QUINN: She's the residue expert, Your Honor.

3 THE COURT: I don't know if she was speculating or
4 not. I'll have to allow her a chance to answer it. You
5 know whether or not?

6 MR. JOYNER: Well, Judge, she just said she didn't
7 perform a test.

8 THE COURT: She did not test for it. She did not say
9 one way or the other as to whether it could or could not
10 exist or whether it's possible to determine. She said she
11 didn't run the test for it.

12 MR. JOYNER: That's the reason I think that it would
13 call for speculation outside of her expertise. We're only
14 asking for ---

15 THE COURT: Let's just let her determine whether she
16 has the expertise to answer or not. If you will just tell
17 us whether you do.

18 THE WITNESS: Would you ask the question, again
19 please?

20 BY MR. QUINN:

21 Q. I forgot it. Okay. You tested for gunshot residue
22 around the bullet hole only?

23 A. I tested for gunpowder and lead and the bullet hole,
24 yes, sir.

25 Q. Because you were trying to limit your examination to

1 this case for whatever reason?

2 A. Because we at S.L.E.D. in the Forensic Division have
3 to limit our cases to evidence pertinent to the case and
4 have to limit our examinations to examining pertinent and
5 scientifically accepted in the scientific forensic
6 community. Yes, sir.

7 Q. How do you determine what's relevant to the case?

8 A. That has been -- there is a protocol at S.L.E.D. for
9 each of those examinations when a piece of evidence comes
10 into me. I do have some leeway as to determine what type
11 of test to perform. For instance, if we know that a
12 victim had been stabbed then I rarely do a gunshot residue
13 examination on that person's hands.

14 If something has been requested as a gunshot residue
15 we know that someone has discharged a weapon in this
16 particular instance then I look for gunshot residue on the
17 hands of whatever kit were sent to me.

18 Gunshot residue in that form to determine whether or
19 not a gun has been discharged is not done on clothing.

20 Q. By protocol or because it's not possible?

21 A. By protocol. It is not done on clothing because you
22 can't limit the time factors. When we do a kit for hands
23 to determine if someone discharged a weapon we have a
24 timeframe in which we are working. If I find gunshot
25 residue on someone's hand six to seven hours after an

1 incident I can't limit it to that incident six to seven
2 hours before.

3 This material is very fragile and can be destroyed as
4 well as absorbed into the system. Therefore we can do
5 examinations and we accept kits collected within a four
6 hour timeframe of the time of the incident. Clothing, we
7 cannot have that limit of time.

8 I cannot guarantee that if I found gunshot residue on
9 a piece of clothing that did not have a bullet hole if it
10 was just gunshot residue, I cannot tell you whether or not
11 that happened within the time of the incident or if it
12 happened four years earlier and they left that piece of
13 clothing hanging in their closet and they just got it out
14 this particular day.

15 Q. So you're not saying that the shot I described didn't
16 happen? You're just saying you didn't test for it?

17 A. Right. I cannot say that shot didn't happen. I can
18 tell you that there is no forensic examination that I can
19 perform per protocol.

20 Q. Your confusing me by saying that. It's not
21 scientifically impossible? It's just that S.L.E.D.
22 protocol won't allow you to do it?

23 A. Correct.

24 Q. The gunshot residue that was found on the back of
25 Mr. Shields' hand could be consistent with being shot or

1 having a gunshot near the back of his hand?

2 A. Certainly. Any time there is gunshot residue present
3 on a person's hands it means that they either fired a
4 weapon or close proximity to a weapon when it was
5 discharged. I can't determine either.

6 Q. Okay.

7 MR. QUINN: Court's indulgence. That's all I have,
8 Your Honor.

9 MR. JOYNER: A few more questions.

10 REDIRECT EXAMINATION

11 BY MR. JOYNER:

12 Q. Mrs. Filiatreault, was there any gunshot residue
13 found on the victim's right hand?

14 A. The victim, Anthony Dywane Shields?

15 Q. Yes, ma'am.

16 A. No, sir. Metal consistent with gunshot residue were
17 found on the back of the left hand and the back of the
18 left hand only.

19 Q. Thank you.

20 MR. JOYNER: No further questions.

21 RECROSS-EXAMINATION

22 BY MR. QUINN:

23 Q. The absence of gunshot residue on the right hand of
24 Mr. Shields is that absolutely preclude that he fired a
25 weapon with his right hand?

1 A. No, sir, that does not.

2 Q. Thank you.

3 MR. QUINN: That's all I have.

4 THE COURT: All right. Thank you, ma'am. You may
5 step down. Call your next witness.

6 MR. JOYNER: Judge the State rests it's case.

7 COLLOQUY

8 THE COURT: Ladies and gentlemen, the State has
9 indicated that it is concluded the presentation of
10 evidence in this case. There are some matters that I need
11 to take up out of your presence and I need to talk
12 somewhat with the Defense counsel about coordinating the
13 timing on their case. Simply step back to your jury room
14 for a moment.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 3:26 p.m.)

17 THE COURT: As far as Defense witnesses are concerned
18 would the Defense be in a position to put anybody up this
19 afternoon. I didn't know whether Miss McCall would be
20 available.

21 MR. QUINN: I told her she could go home, Your Honor.
22 The State joined us in that.

23 MR. HALES: Yes, sir.

24 MR. QUINN: The State -- we discussed it, Your Honor,
25 and had no idea we would get to her. She wanted to go and

1 had made request to do so and so we let her go.

2 THE COURT: All right. What we will do is begin the
3 Defense's case at nine o'clock in the morning. We'll do
4 motions this afternoon, and I will just let the jury go
5 ahead and go home now so they don't have to smell tar any
6 more than necessary. If you will bring the jury back out,
7 and tell them to bring their things with them.

8 (WHEREUPON, the jury panel enters the courtroom at
9 3:28 p.m.)

10 THE COURT: All right, Mr. Foreman and members of the
11 jury, a trial is somewhat like a live and breathing
12 creature. It has ebbs and flows and things happen at
13 different points in time. Not anticipating that the case
14 would finish as early as it had all the parties had agreed
15 that the Defense would probably not need to start it's
16 case until in the morning.

17 Defense witnesses were released until that time. So
18 we would not have been able to complete all the testimony
19 today anyhow but we do anticipate completing matters in
20 the morning. Considering the wonderful smell from the tar
21 I'm going to go ahead and release you early today.

22 I've got some matters that I need to deal with the
23 attorneys on and ask that you be back in the jury room at
24 nine o'clock in the morning and we'll begin with the
25 presentation of the Defense. Do not discuss the case with

1 each other or allow anyone to discuss it with you or watch
2 any news reports if any that relate to this matter or read
3 any articles in the paper that may relate to this matter
4 have a nice comfortable afternoon and I look forward to
5 seeing you in the morning.

6 (WHEREUPON, the jury panel was excused from the
7 courtroom at 3:30 p.m.)

8 THE COURT: All right. Motions by the Defense.

9 MR. QUINN: First motion renew all objections
10 admitted to this point.

11 THE COURT: All right. Those are respectfully denied
12 and overruled.

13 MR. SALEEBY: Also make a motion for directed
14 verdict. Even in the evidence -- light most favorable to
15 the State -- the Defense there is no evidence to prove the
16 elements of the crimes charged.

17 THE COURT: State?

18 MR. JOYNER: Judge, the murder I believe it's obvious
19 after hearing testimony from the Dr. Yacoub that there was
20 a killing. It was obviously of a person other than the
21 defendant himself, malice. Aforethought malice can be
22 proven in various ways, Judge. One way is the fact that a
23 weapon was used, a deadly weapon, in this case. The
24 number of shots. Also the malice, the violent nature. So
25 much injury itself also leads to malice and the fact that

1 death occurred as a result of all of the prior leads to
2 malice aforethought. The last element included with
3 malice is malice has been demonstrated in various ways.

4 He had the thought. He had the motive before it
5 happened when he turned to Miss Cash and asked where is
6 the gun. Give it to me. He get the gun and approached
7 the car with the aforethought to do damage. Also I
8 believe the fact that after he shot him and he crawled
9 through the car out the passenger door he had an
10 opportunity to cool off but chose not to.

11 He walked around and had the aforethought and
12 finished him off on the other side. And I believe that as
13 to murder all elements have sufficiently been proved and I
14 believe a reasonable doubt has been proven to this point.
15 And as to the unlawful carrying of a weapon there were --
16 excuse me, possession of a weapon during the commission of
17 a crime.

18 Murder, since I just now explained why we have made a
19 sufficient proof of murder, that's a violent crime. The
20 possession of a weapon during the commission of a violent
21 crime is, of course, due to the fact that Mr. Vello
22 testified. We have the defendant's own statement that he
23 used a violent weapon or excuse me, a deadly weapon while
24 he committed that crime.

25 THE COURT: All right. I am not concerned at this

1 particular point in time with the weight of evidence and
2 whether or not there is evidence upon which the jury may
3 find of murder or the lessor included charge. Malice can
4 be inferred from the use of a deadly weapon and I think it
5 will have to be up to the jury to make that determination
6 as to whether or not this is a situation where a murder
7 has occurred or whether it is a situation of self-defense.
8 So I respectfully deny your motion for directed verdict as
9 to these two charges.

10 MR. QUINN: Thank you, Your Honor.

11 THE COURT: Thank you. Mr. Fortune, if you would
12 stand for just a moment where you are and I'm placing you
13 under oath. I just need to talk with you about some
14 matters. Raise your right hand for me.

15 OSCAR FORTUNE, after being duly sworn, testified
16 as follows:

17 THE COURT: Thank you, you may put your hand down.
18 Mr. Fortune, the State has now concluded it's presentation
19 of their evidence in this case, and it will be your
20 decision tomorrow as to what evidence you put up in
21 defense of this case. As a part of your presentation you
22 have the right to testify. However, no one can make you
23 testify. You understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, I am advised that you do not have a

1 prior criminal record which would subject you to being
2 impeached. In that regard I do not need to go into detail
3 with that. I have not been advised of any type of record
4 for dishonesty or false statements or crimes punishable by
5 imprisonment for more than one year. So I don't need to
6 cross that bridge with you.

7 But if you are placed on the stand and choose to
8 testify then you are going to be required to answer all
9 the questions that are properly posed to you. Do you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You wouldn't be able to say I don't like
13 that question. I didn't mind answering the first question
14 but I'm not going to answer the second question. Do you
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: It's totally your determination in this
18 matter as to whether or not you will choose to testify or
19 not testify. Do you understand that?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: You can talk with your attorney, talk
22 with family and friends but it ultimately come down to
23 you. Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I am not going to ask you to make that

1 final decision at this particular point in time,
2 Mr. Fortune. You will have the opportunity to consider
3 these matters overnight and I will simply ask you in the
4 morning before we bring the jury out as to whether or not
5 you have reached a decision as to whether you yourself
6 will testify. Is that fair?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Thank you very much. You may be seated.
9 Anything further from the State this afternoon?

10 MR. JOYNER: Yes, sir. Judge, I would move that the
11 defendant's bond at this point be revoked. I believe
12 there has been a sufficient change in circumstances from
13 that we've shown today being that the weight of the
14 testimony was so great that the vital serious nature of
15 injury and also the fact that this defendant is facings
16 upwards -- is actually facing life without parole in
17 prison.

18 Judge, I believe that includes his being a flight
19 risk and for that reason I would ask Your Honor to revoke
20 his bond.

21 THE COURT: What says the Defense?

22 MR. SALEEBY: Your Honor, we would respectfully ask
23 that you allow Mr. Fortune to stay out. In fact we plan,
24 he and his family, to meet with us tonight to go over the
25 case. He is on \$100,000 bond. This happened December

1 23rd of 2001. So it's been a number of years and he's not
2 been in one incident. Not one from any trouble between
3 he -- between himself or any member of the Shields Family.
4 And if anything, Your Honor, he has been released. Also
5 the State's witness, and who is also charged is Sonta
6 McCall. We're all -- I mean it's conclusive. I have --
7 that's why all the fighting -- cat fighting started, Your
8 Honor, when the bad blood started.

9 So this is just like a case three weeks ago over no
10 Marlboro County. Of course, each Judge can do what they
11 want to. The family has satisfied a huge bond and have
12 been in contact with us. He has not bothered anybody. We
13 want to be able to prepare him tonight in light of what we
14 heard today for his testimony in the morning.

15 THE COURT: All right. It appears that the evidence
16 that's been presented to this jury is the same evidence
17 that has been seen and reviewed by the Defense. So I
18 don't get the impression that there is something new that
19 has caused the defendant to be more concerned about the
20 State's case than what he has known about the State's case
21 from the beginning.

22 And that he is now aware of something that he was not
23 aware of at the time the State indicated it did not have
24 any objection to his remaining free on bond when the case
25 began.

1 I am not going to revoke his bond tonight and at this
2 particular point today, however, of course, Mr. Fortune,
3 should you for some reason not be here at nine o'clock in
4 the morning I will consider that as you decision to waive
5 your right or give up your right to be present during the
6 trial of this case and we will continue the case in your
7 absence. Do you understand that?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: All right.

10 MR. SALEEBY: He'll be here before 9:00, Your Honor.

11 MR. QUINN: Thank you, Your Honor.

12 THE COURT: See you in the morning.

13 MR. SALEEBY: Yes, sir.

14 END OF TRANSCRIPT OF RECORD
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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 02-GS-13-0137

STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
OSCAR FORTUNE)
DEFENDANT)

March 6-9, 2006
Chesterfield, South Carolina
VOLUME NUMBER 04

B E F O R E:

THE HONORABLE JOHN M. MILLING, JUDGE; and a jury.

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

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DENISE SHIELDS, Defendant's Wife

IRIS GASTON,
TONNETTE CASH,

ARTHUR MUNGO,
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WAYNE JORDAN, Chesterfield Cty. Sheriff Dept.
VELLO PAAVEL, S.L.E.D.
DUSTIN SMITH,
DOROTHY FILIATREULT,
SONTA MCCALL,

HATTIE O. GORDON
Circuit Court Reporter

1 THE COURT: Mr. Fortunate, give me your attention,
2 please, sir. As we discussed yesterday evening about your
3 decision about your right to the testify or not testify in
4 connection with the trial of this case. Have you reached
5 a decision?

6 THE DEFENDANT: Yes, I have, Your Honor. I will
7 testify.

8 THE COURT: Is this your own decision reach freely
9 and voluntarily understanding all the rights you have with
10 regards to that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: At the appropriate time we will look to
13 have you testify. Thank you very much. Does the State
14 have any proposed charge they would like for me to look at
15 this morning?

16 MR. JOYNER: Judge, we don't have an objection to the
17 general charge. There was just one thing I wasn't sure if
18 it would be in there. This is something I just printed
19 out. Just the bottom part.

20 (WHEREUPON, a bench conference was held off the
21 record, but out of the presence of the jury.)

22 THE COURT: All right. State ready this morning?

23 MR. JOYNER: Yes, sir.

24 THE COURT: Defense ready this morning?

25 MR. QUINN: Yes, sir.

1 THE COURT: Check and see if everyone is ready to
2 come out.

3 THE BAILIFF: Yes, sir, they are.

4 THE COURT: If you'll bring them forward.

5 (WHEREUPON, the jury panel enters the courtroom at
6 9:15 a.m.)

7 THE COURT: All right. Ladies and gentlemen, we are
8 going to get as much reprieve from th roof construction as
9 we can. So hopefully this morning we will not have the
10 smell from the hot tar coming into the courtroom. State
11 rested yesterday, so you have heard the evidence from the
12 State and the Defense now has an opportunity to present
13 it's side of the case. Mr. Quinn, you may call your first
14 witness.

15 MR. QUINN: Defense calls Sonta McCall, Your Honor.

16 THE COURT: Very good.

17 SONTA MCCALL, after being duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. QUINN:

21 Q. Morning, Miss McCall?

22 A. Good morning.

23 THE COURT: Miss McCall, before you begin with your
24 testimony often times witnesses use just conversation type
25 tones of voice when they're here in the courtroom. But

1 our courtroom, unfortunately, the sound system is not
2 working today so there is no amplification effect that
3 what you say can be heard by all the jurors. It's going
4 to have to come from you without any assistance. So when
5 Mr. Quinn is asking you questions or as one of the
6 attorneys with the Solicitor's Office is asking you
7 questions pretend that you're talking to those people over
8 there on the other side of the rail.

9 Remember, keep your voice up and the jurors will be
10 able to hear you, and, ladies and gentlemen, if you have
11 any problems hearing the witness this morning. Yesterday
12 afternoon we had law enforcement personnel so they knew to
13 keep their voices up. Often times people not involved
14 with law enforcement forget about that. If you have any
15 difficulty let me know so I can remind the witness. You
16 may proceed.

17 BY MR. QUINN:

18 Q. State your name for the record?

19 A. Sonta McCall.

20 Q. And where do you live, Miss McCall?

21 A. Bennettsville, South Carolina.

22 Q. I'm going to take you back to the night of December
23 the 22nd and early morning hours of December 23rd 2001.

24 Do you remember that night?

25 A. Yes, I do.

1 Q. What were you doing that evening?

2 A. I was at a Christmas party at the Green Villa Club in
3 Society Hill.

4 Q. Who did you go to that party with?

5 A. Iris and Tonnette Cash.

6 Q. What did you do?

7 A. We danced and had a good time.

8 Q. Did anything else happen?

9 A. I got into an altercation with Denise Shields and her
10 husband.

11 Q. What was that altercation of?

12 A. An argument that had happens maybe a week earlier at
13 McDonalds.

14 Q. And what happened during that altercation?

15 A. Denise an I got into a physical altercation. I was
16 hit by Anthony with a beer bottle. The fight was broke
17 up. Denise then hit Iris with a chair. I was escorted
18 outside. Iris came out behind me and we left the Green
19 Villa.

20 Q. Who started that altercation?

21 MR. HALES: Objection, Your Honor. Leading.

22 THE COURT: Sir?

23 MR. JOYNER: Leading the witness.

24 THE COURT: Rephrase your question.

25 MR. QUINN: I'll just strike it.

1 BY MR. QUINN:

2 Q. What did you do after you left the party?

3 A. Went back to call 911 from Iris' cell phone and take
4 a warrant out on Anthony Shields for hitting me with the
5 beer bottle.

6 Q. Where in Cheraw did you go?

7 A. I went on the Huddle House in Cheraw.

8 Q. Okay. What did you do when you got to the Huddle
9 House?

10 A. I called Oscar, my cousin.

11 Q. What is Oscar's last name?

12 A. Oscar Fortune.

13 Q. Why did you call Oscar?

14 A. I was telling him ability what happened at the Green
15 Villa and Anthony hitting me with the bottle. I also
16 asked him to assist me going to the police department to
17 take out a warrant. He then asked me where I was. I told
18 him the Huddle House. He said he would be up there. Iris
19 and I waited at the Huddle House for him to come.

20 Q. When did he come?

21 A. Maybe about 20, 30 minutes later I would say.

22 Q. Okay. And why did you want him to go to the police
23 station with you?

24 A. I just felt comfortable with him being there.

25 Q. Okay. And did you go to the police station?

- 1 A. No, sir, not at that moment.
- 2 Q. Okay. Why not?
- 3 A. Once Oscar came to the Huddle House Iris and I talked
4 with Oscar, went into further details about the fight at
5 the Green Villa, about me being hit with the bottle.
6 Oscar then asked me if Anthony was out there. I said no.
7 He also asked what did we want to do. Got to the police
8 department then go back to his house or go to
9 Bennettsville. Anthony pulled in at that time and I said,
10 "There he is."
- 11 Q. Anthony?
- 12 A. Shields.
- 13 Q. Okay?
- 14 A. Pulled into the Huddle house at that time. Oscar
15 said, "Where?" I said, "That's him in the brown
16 Explorer." I went over to Anthony's truck an we argued.
- 17 Q. Where was Oscar when you started arguing?
- 18 A. Oscar was at his car.
- 19 Q. Okay. And then what happened?
- 20 A. As Anthony and I was arguing I notice Oscar came up
21 from the back. He came up around. He said something to
22 Anthony like what's up. And the next thing I know a flash
23 and a bang and I just dropped.
- 24 Q. Okay. You said a flash and a bang?
- 25 A. Yes, sir. Anthony had reached across and just shot.

1 Q. Shot what?

2 A. A gun.

3 Q. Do you remember what hand it was in?

4 A. His right hand.

5 Q. What did you do after Anthony shot at you?

6 A. I dropped down. I thought I was hit and I ran.

7 Q. Okay. Where did you run to?

8 A. I ran to Louise Singleton's house?

9 Q. Who is that?

10 A. She's my brother's and my sister's grandmother.

11 Q. Okay. After you fell to the ground did see anything

12 else at the Huddle House?

13 A. No, sir. I just took off. I was scarred.

14 Q. Okay. What happened after you went to your aunt's

15 house?

16 A. My grandmother.

17 Q. Your grandmother's house. Excuse me.

18 A. I told my grandmother about what happened you know.

19 We started trying and I asked if I could use her phone to

20 call someone. I ended up calling Iris asking Iris if she

21 could please pick me up and take me home. Iris came maybe

22 about ten minutes later.

23 Q. Okay. Did Iris -- so Iris didn't drive you from the

24 Huddle House?

25 A. No, sir. I ran.

1 Q. Okay. And where did you and Iris go?

2 A. We were headed back to Tonnette's house. Iris' cell
3 phone rang. The police called and asked who had made the
4 911 call. Iris then handed the phone to me to ask if I
5 was the one who made the phone call. I said yes. They
6 asked me if I could come back to the Huddle House.

7 Q. Did you go back to the Huddle House?

8 A. Yes, sir, I did.

9 Q. What happened at the Huddle House?

10 A. Officers, a lot of officers was there. I can't say
11 exactly which officers I talked to. I'm not familiar with
12 their names. They asked me if I had shot Anthony Shields.
13 I said no I hasn't. An officer said, "Well, you were --
14 we know you were at the truck. We know that you shot
15 him." And I said, "No, sir I did not."

16 Q. Okay?

17 A. They also informed me that to stay in the area
18 because they would need to talk to me again and I later
19 talked to them a few hours later at the City Police
20 Department.

21 Q. You went to the City Police Department?

22 A. Yes, sir.

23 Q. And okay. And how long later was that?

24 A. I can't -- I'm not exactly sure. I would say maybe
25 two or three hours later.

1 Q. Okay. What happened when you went to the police
2 station?

3 A. I went over. They went over my rights. I had to
4 initial and sign my rights to an attorney. The rights
5 paper and then I was served with a warrant.

6 Q. So you were charged?

7 A. Yes, sir, I was.

8 Q. You recognize that document, Defense Exhibit Number
9 Six -- Number Four. I'm sorry.

10 THE COURT: Yes, sir.

11 Q. What is it?

12 A. It was -- it's the warrant for my arrest for a charge
13 of murder.

14 Q. Okay. Could you read the affidavit, please?

15 A. That on 12/23/01 the Defendant, Sonta McCall, did
16 with malice aforethought cause the death of Anthony
17 Shields by shooting the victim in the chest. This
18 happened in the Cheraw area of Chesterfield County.

19 Q. Okay. When did you shot or fire a gun at Anthony
20 Shields?

21 A. I never shot at Anthony Shields. I never had a gun.

22 Q. Is that warrant true?

23 A. No, it's not true.

24 Q. Will did you tell anybody that that wasn't true?

25 A. Yes, I did after say read it.

- 1 Q. Who did you tell?
- 2 A. The officers that were in the police department
- 3 specifically the officer that handed it to me.
- 4 Q. You remember his name?
- 5 A. I believe it was Harold Haney.
- 6 Q. What was Officer Haney's reaction?
- 7 A. Just nothing, really.
- 8 Q. Okay?
- 9 A. They escorted me to the holding cell.
- 10 Q. You were taken into custody?
- 11 A. Yes, sir, I was.
- 12 Q. How long did you stay in jail?
- 13 A. Seven weeks approximately.
- 14 Q. Okay. How did you get out of jail?
- 15 A. I was on a bond, a \$20,000 bond.
- 16 Q. Okay. Who paid that bond.
- 17 A. Arthur Mungo.
- 18 Q. Arthur Mungo. Does he go by any other names?
- 19 A. Jay Jay.
- 20 Q. Jay Jay Mungo?
- 21 A. Yes, sir.
- 22 Q. Do you have a relationship with Mr. Mungo?
- 23 A. Not now I don't.
- 24 Q. Okay. Are you still facing these murder charges?
- 25 A. Yes, I am.

1 Q. Under that warrant?

2 A. Yes, sir.

3 Q. Okay, how long has that been?

4 A. Little over four years now.

5 Q. Okay.

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

7 THE WITNESS: Say that again, sir.

8 THE COURT: He's asking for a moment to take a look
9 at his notes.

10 BY MR. QUINN:

11 Q. Okay. You said that Anthony Shields fired at you?

12 A. Yes, sir, he did.

13 Q. You absolutely sure about that?

14 A. I'm positively sure.

15 MR. QUINN: That's all I have, Your Honor.

16 THE COURT: You may cross.

17 MR. HALES: One moment, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. HALES:

20 Q. Miss McCall, you were at the Green Villa?

21 A. Yes, sir, I was.

22 Q. You got in that fight?

23 A. Yes, sir.

24 Q. You got hit in the eye with the bottle?

25 A. I didn't go to the hospital.

1 Q. So it wasn't that bad an injury?

2 A. I didn't feel a need for medical attention though.

3 Q. You've previously been charged with assault and
4 battery, right, or assault, simple assault?

5 A. Yes, sir.

6 Q. In Marlboro County?

7 A. Yes.

8 Q. In 2001?

9 A. Yes.

10 Q. So you like to fight?

11 MR. QUINN: Objection, Your Honor. May we approach,
12 please.

13 (WHEREUPON, a bench conference was held off the
14 record in the presence of the jury, but out of the
15 hearing of the jury.)

16 THE COURT: Ladies and gentlemen, I am sustaining the
17 objection to the question about some charge. Our rules
18 provide that individuals can have their credibility
19 impeached by showing that they have a conviction of a
20 previous crime where they could have gone to jail for more
21 than one year. Or perhaps certain crimes involving moral
22 turpitude and that's only for the purpose of having their
23 credibility questioned by the prior conviction.

24 In this particular case there was no conviction of
25 assault or assault and battery or any other conviction

1 that would be one that would be proper for
2 cross-examination on that issue. And so that's why I
3 sustained the objection. You may continue.

4 BY MR. HALES:

5 Q. Okay. You called Oscar that night, right?

6 A. Yes, sir, I did.

7 Q. As a result of your call Oscar killed Anthony, right?

8 MR. QUINN: Objection, Your Honor.

9 A. I don't think that was a result of my call.

10 Q. But he would not have been there except for your
11 call, right?

12 A. Yes, sir.

13 Q. And he met you at the Huddle House?

14 A. Yes, sir.

15 Q. Earlier at the Huddle House you talked to Jay Jay
16 Mungo?

17 A. No, sir, I did not.

18 Q. You didn't talk to Jay Jay Mungo?

19 A. No, sir, I did not.

20 Q. But he is the father of your child?

21 A. Yes, sir.

22 Q. He was at Huddle House?

23 A. Yes, sir.

24 Q. But you didn't speak to him?

25 A. No, sir.

- 1 Q. You confronted Anthony at the Huddle House, didn't
2 you?
- 3 A. No, sir -- oh, yes, sir.
- 4 Q. He didn't confront you?
- 5 A. No, sir.
- 6 Q. And Oscar confronted Anthony at the Huddle House?
- 7 A. Yes, sir.
- 8 Q. Anthony didn't confront Oscar?
- 9 A. No, sir.
- 10 Q. And you know that Oscar fired his gun, don't you?
- 11 A. I know that after the fact, sir.
- 12 Q. Did you say anything at all during the firing of that
13 gun?
- 14 A. Did I do what?
- 15 Q. Did you say anything at all during shots being fired
16 for after shots being fired?
- 17 A. No, sir, I didn't.
- 18 Q. Made no statement at all?
- 19 A. No, sir. I was scare.
- 20 Q. Okay.
- 21 A. And wanted to get away from there.
- 22 Q. That's why you left the scene?
- 23 A. Yes, sir, it is.
- 24 Q. Okay. You're close with Oscar, right?
- 25 A. Yes, I am.

- 1 Q. Is he related to you at all?
- 2 A. First cousin.
- 3 Q. First cousin so you're very close with him?
- 4 A. I would say so, yes, sir.
- 5 Q. I would say so, too. He's the one you called when
- 6 this happened?
- 7 A. Yes, sir.
- 8 Q. You didn't call anybody else. You called Oscar?
- 9 A. Yes.
- 10 Q. Cause you knew he'd take care of Anthony?
- 11 A. No, sir.
- 12 Q. Okay. Would you lie for Oscar?
- 13 A. No, I would not, sir.
- 14 Q. You would not lie for Oscar. So you're telling the
- 15 truth now?
- 16 A. Yes, sir, I am.
- 17 Q. Your always tell the truth?
- 18 A. I try my best to.
- 19 Q. You would definitely always tell the truth if it
- 20 would clear your name, right?
- 21 A. Could you repeat that question, please.
- 22 Q. If you had the opportunity to tell the truth and it
- 23 clear your name you would do so?
- 24 A. No, I would not.
- 25 Q. You wouldn't tell the truth to clear your own name?

1 A. If it was the truth I would tell it.

2 Q. Okay?

3 A. I would not lie ---

4 Q. All right.

5 A. --- if that's what your asking.

6 Q. I'm not asking you that, and you always tell the
7 truth if it would clear your name and Oscar's name,
8 wouldn't you?

9 A. If the truth is the truth, I would, sir.

10 Q. And what you're saying today is the truth, right?

11 A. Yes, sir, I am.

12 Q. Why didn't you write a statement on December 23rd of
13 2001?

14 A. I was already being charged and had been handed a
15 warrant. And once I told them that that warrant was a
16 lie; that I did not shoot Anthony Shields they didn't
17 bother with speaking with me.

18 Q. Okay?

19 A. They took me to the holding cell.

20 THE COURT: Counsel, if y'all would approach a
21 moment.

22 (WHEREUPON, a bench conference was held off the
23 record in the presence of the jury, but out of the
24 hearing of the jury.)

25 BY MR. HALES: No further questions, Your Honor.

1 THE COURT: Anything further on redirect?

2 MR. QUINN: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. QUINN:

5 Q. Did Anthony Shields hit you in the face with a beer
6 bottle?

7 A. Yes, sir, he did.

8 Q. Did you arrive at the Huddle House before Anthony
9 Shields?

10 A. Yes, sir, I did.

11 Q. Did Oscar arrived at the Huddle House before Anthony
12 Shields?

13 A. Yes, sir, he did.

14 Q. Why did you confront Anthony Shields?

15 A. I was still upset when I saw him. I thought about
16 him hitting me with the beer bottle.

17 MR. QUINN: We would like to have this marked as
18 Defense, for identification purposes, Number Six.

19 (WHEREUPON, Defendant's Exhibit No. 6 was marked for
20 identification only.)

21 THE COURT: What is that exhibit?

22 MR. QUINN: It's the waiver of rights.

23 THE COURT: This is redirect. Direct towards issues
24 raised by the State on cross-examination not new matters
25 that haven't been dealt with.

1 MR. QUINN: I'll withdraw it, Your Honor.

2 THE COURT: Very good. That's not an exhibit at this
3 time. It's just marked for identification.

4 BY MR. QUINN:

5 Q. Have you been truthful here today?

6 A. Yes, sir, I have.

7 MR. QUINN: That's all I have, Your Honor.

8 THE COURT: All right. Thank you, ma'am. Anything
9 arising as a result of the redirect that the State would
10 like to inquire into recross.

11 MR. HALES: Just one question, Your Honor.

12 RECROSS EXAMINATION

13 BY MR. HALES:

14 Q. You and Oscar Fortune approached Anthony Shields,
15 isn't that right, at the Huddle House?

16 A. Not together, no.

17 Q. But each of you individually approached Anthony?
18 Anthony didn't approach you?

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

20 MR. HALES: That's all I have.

21 THE COURT: Thank you, ma'am. You may step down.
22 All right. Your next witness.

23 MR. QUINN: Defense calls Oscar Fortune.

24 THE COURT: Mr. Fortune, if you will come around.

25 OSCAR FORTUNE, after being duly sworn, testified

1 as follows:

2 DIRECT EXAMINATION

3 BY MR. QUINN:

4 Q. Morning, Mr. Fortune?

5 A. Morning.

6 Q. State your name for the record, please?

7 A. Oscar Fortune.

8 Q. Where do you live.

9 A. Bennettsville, South Carolina.

10 Q. What is your occupation?

11 A. Truck driver.

12 Q. Where do you drive trucks?

13 A. All over the United States.

14 Q. I want to take you back to the early morning hours of
15 December 23rd 2001. Do you remember that day?

16 A. Yes, I do.

17 Q. What do you remember?

18 A. I remember being awakened by a phone call in the
19 early morning hours.

20 Q. By whom?

21 A. From my cousin, Sonta.

22 Q. What did she say?

23 A. She told me she had been in a fight at the Green
24 Villa.

25 Q. With whom?

1 A. Denise Shields and Anthony Shields.

2 Q. What else did she say to you?

3 A. That she was hit with a beer bottle.

4 Q. All right. What happened next?

5 A. I told her -- asked where she was at and she told me
6 at the Huddle House.

7 Q. And what did you do?

8 A. Tonnette woke up and she asked me what was going on,
9 and I told her what happened and we went to the Huddle
10 House.

11 Q. Okay. How long did it take you to get to the Huddle
12 House?

13 A. About 20 minutes.

14 Q. And would you describe the scene at the Huddle House,
15 please?

16 A. When we got there. There was just a lot of people.
17 Just probably about 80 to a hundred people there.

18 Q. How many of those people did you know?

19 A. Just Jay Jay Mungo.

20 Q. Nobody else?

21 A. Well, I eventually saw Sonta and Iris.

22 Q. Where did you see them?

23 A. As I was walking toward the Huddle House they were
24 coming out.

25 Q. What y'all do?

- 1 A. We talked about what happened.
- 2 Q. And then what did y'all do?
- 3 A. We were about the leave and that's when Sonta
- 4 informed me Anthony was pulling in.
- 5 Q. Okay. What happened next?
- 6 A. I told Tonnette to pull around so I could go talk to
- 7 him. Sonta went to his truck. So when I was walking
- 8 towards his truck she was already there exchanging words
- 9 with him.
- 10 Q. How long was he by his truck?
- 11 A. Five, ten seconds.
- 12 Q. You said they were arguing?
- 13 A. Yeah -- yes.
- 14 Q. And you said you got out the car and approached the
- 15 truck?
- 16 A. Yes.
- 17 Q. Did you do anything before you got out of the car?
- 18 A. I asked Tonnette was the gun still in the car.
- 19 Q. What did she say?
- 20 A. She said, 'yes'.
- 21 Q. What did you do?
- 22 A. I took it and put it in my pocket.
- 23 Q. Why did you take the gun out of the car?
- 24 A. For my protection.
- 25 Q. Why did you need protection?

1 A. I didn't know what was about to happen. Like I said
2 80 to 100 people out there. I don't know any of them. I
3 had no idea what was going to happen.

4 Q. What happened when you approached Mr. Shields' truck?

5 A. Him and Sonta were arguing, and I asked him what was
6 up and he just shot.

7 Q. Shot what?

8 A. A gun.

9 Q. How close were you to his truck when he shot the gun?

10 A. Right at his car.

11 Q. Right at his car?

12 A. Yeah.

13 Q. After he shot his gun what did you do? .

14 A. I returned fire.

15 Q. Why did you return fire?

16 A. Because at that time I was in fear for my life. I
17 mean he shot. I was in fear for my life at this time.

18 Q. Okay. How many times did you shoot?

19 A. Five times.

20 Q. Okay. All while he was sitting in the car?

21 A. No. That's total.

22 Q. How many did you shoot while you were standing
23 outside the driver's side door?

24 A. Four times.

25 Q. Four times?

- 1 A. Yes.
- 2 Q. Then what did you do.
- 3 A. At the time he was getting out of the passenger side
4 and I went around the truck and I shoot again.
- 5 Q. Okay. Where was Mr. Shields' gun when you shot?
6 When you came around the truck where was his gun when you
7 shot at him the last time?
- 8 A. He still had it.
- 9 Q. Still had it where?
- 10 A. In his hand.
- 11 Q. In his hand?
- 12 A. Yes.
- 13 Q. After you fired that last time what happened?
- 14 MR. JOYNER: Objection, Your Honor. He's leading.
- 15 THE COURT: I will allow the question he's asking for
16 a description of what took place.
- 17 THE WITNESS: Could you ask me that again?
- 18 BY MR. QUINN:
- 19 Q. After you fired the last time what did you do?
- 20 A. I left.
- 21 Q. Okay. And where did you go?
- 22 A. First to Bennettsville and then to Laurinburg.
- 23 Q. Why did you leave?
- 24 A. Afraid.
- 25 Q. Of?

1 A. Of what just happened. Never had anything like that
2 to happen in my life before and just afraid.

3 Q. Okay. And you said went to Bennettsville?

4 A. Bennettsville and then Laurinburg.

5 Q. Where in Laurinburg?

6 A. Pine Acres Hotel.

7 Q. Why did you go to the Pine Acres Hotel?

8 A. Just try to get my mind together and try to figure
9 out what just happened.

10 Q. How far is that from the Huddle House in Cheraw,
11 approximately?

12 A. I would say about 30 miles.

13 Q. Thirty miles. How long did you stay at the Pine
14 Acres Hotel?

15 A. I would say I stayed there about four hours.

16 Q. Okay.

17 A. Four to five hours.

18 Q. Why did you leave?

19 A. Because I mean after everything that happened and
20 being able to get my senses back together I knew I had to
21 go and tell my side of the story of what happened.

22 Q. So where did you go?

23 A. To the Cheraw Police Department.

24 Q. And who did you see at the Cheraw Police Department?

25 A. Harold Haney, Johnny Quick and there were about seven

1 more officers in there.

2 Q. And what happened inside the Cheraw Police
3 Department?

4 A. They asked me what happened and I told them what
5 happened. And they asked me would I give a statement and
6 I told them yes. I told them what happened. The first --
7 when I told them what happened their first answer was
8 there is no other gun, and I told them, "Well, if there is
9 not somebody took it."

10 And when Johnny Quick told -- was taking me to put me
11 in custody he told me that if there was another gun he'd
12 find it.

13 Q. Where was your gun at?

14 A. I turned it in along with myself.

15 Q. Then what happened?

16 A. As far as?

17 Q. After you turned in the gun and yourself?

18 A. I was arrested and charged with murder.

19 Q. Okay. You were taken into custody?

20 A. Yes.

21 Q. How long were you in jail?

22 A. Forty-five days.

23 Q. You were able to make bond?

24 A. On the second time. My first bond was denied. My
25 second bond was \$100,000.

- 1 Q. Okay. I want to show you what's been listed as
2 State's Exhibit Number Two. You recognize that?
- 3 A. Yes, I do.
- 4 Q. What is it?
- 5 A. It's the statement that I gave on December 23rd.
- 6 Q. Okay. In there, in this statement, you write that
7 you asked Sonta if Anthony was at the Huddle House. Why
8 did you ask her that?
- 9 A. Once I arrived there?
- 10 Q. Yes, sir.
- 11 A. Because I didn't know him.
- 12 Q. You don't know Anthony Shields?
- 13 A. No, I didn't know Anthony.
- 14 Q. You couldn't recognize him?
- 15 A. No, I didn't know him.
- 16 Q. Okay. How many people were there again?
- 17 A. Estimating, 80 to a hundred.
- 18 Q. Will you turn to the second page where you write, "I
19 got in my car and pulled up where he was expecting to
20 fight the guy." Why were you expecting to fight Anthony
21 Shields?
- 22 A. I mean under the circumstances of everything that had
23 happened that night and him and Sonta exchanging words,
24 everything that I've ever known told me that me and him
25 probably would end up fighting.

1 Q. Okay. When was the first time you took your gun out
2 of or pocket?

3 A. After he fired.

4 Q. You're absolutely positive he fired?

5 A. 100 percent.

6 Q. Which hand did he fire with?

7 A. Right.

8 MR. QUINN: Beg the Court's indulgence.

9 BY MR. QUINN:

10 Q. Did you also sign a Notice of Waiver Form?

11 A. Yes.

12 Q. But you chose to give a statement any way?

13 A. Yes.

14 MR. QUINN: That's all I have, Your Honor.

15 THE COURT: You may cross.

16 CROSS-EXAMINATION

17 BY MR. JOYNER:

18 Q. Mr. Fortune?

19 A. Yes, sir.

20 Q. You weigh about 250, 260?

21 A. 260.

22 Q. Now, you said earlier you weren't involved in this
23 original conflict that happened at the Green Villa? You
24 were home in bed?

25 A. Yes.

- 1 Q. And Sonta called you, right?
- 2 A. Yes.
- 3 Q. Okay. And you and Tonnette got up at 3:30 and left
- 4 and went down to the Huddle House?
- 5 A. Yes, sir.
- 6 Q. When you got there you talked to Jay Jay?
- 7 A. Yes, I did.
- 8 Q. And you told Jay Jay, "Jay Jay, you just going to let
- 9 that man hit you baby's momma like that?"
- 10 A. No.
- 11 Q. What did you tell Jay Jay?
- 12 A. I asked Jay Jay what was going on.
- 13 Q. And you told Jay Jay that you could handle it, didn't
- 14 you?
- 15 A. No.
- 16 Q. Okay. Now, you said earlier your whole intent, you
- 17 were just going to talk to Anthony when y'all approached
- 18 him, right?
- 19 A. Earlier when?
- 20 Q. When Sonta went up to him first and then you got in
- 21 the car with Tonnette, and y'all drove around and parked
- 22 behind him and you got out, but you were just going to
- 23 talk to him to see what was going on?
- 24 A. Right.
- 25 Q. Cause you in your statement you say, 'what's up'?

1 A. Right.

2 Q. Okay. You were going to talk to him. And you just
3 said that you didn't know what would happen earlier.
4 That's why you carried the gun with you?

5 A. Right.

6 Q. You didn't know what would happen so you carried a
7 gun. The problem that I have is in your statement. Read
8 this again. Read this again right here for me, please.
9 Okay, read, 'I got in my car'. Read from here on. Read
10 it loud so the jury can hear you.

11 A. "I got in my car and I pulled up to where he was
12 expecting to fight the guy."

13 Q. You were expecting to fight him?

14 A. Right.

15 Q. When you expect to fight him you take a gun with you
16 to a fight. That's what you did, isn't it?

17 A. No.

18 Q. You expected -- you just said you took a gun when you
19 went up to him?

20 A. Yes.

21 Q. And you were expecting to fight him?

22 THE COURT: Right. As I stated in my I was expecting
23 to fight him.

24 Q. You expected to fight somebody. You were expecting a
25 gun fight, weren't you?

- 1 A. No.
- 2 Q. Then why did you carry a gun if you were not
- 3 expecting a fight?
- 4 A. For my protection. It's 80 to a hundred people there
- 5 that I don't know.
- 6 Q. I see. I see. So y'all park behind Anthony's car?
- 7 A. No. Tonnette parked there.
- 8 Q. Oh, excuse me. You were in the car with Tonnette.
- 9 Y'all parked behind his car?
- 10 A. Right.
- 11 Q. You were expecting to fight. You took a gun up to
- 12 him. Now, did he get out of his car and come and see you
- 13 before your got out of your car?
- 14 A. No, he didn't see me.
- 15 Q. Oh, he didn't even know you?
- 16 A. I didn't know him so he couldn't have known me.
- 17 Q. Okay. When did he threaten you? Did he threaten you
- 18 before you got out of your car?
- 19 A. He threatened me when he shot at me.
- 20 Q. No, no, no. When you got out of your car and walked
- 21 up to him did he threaten you before then?
- 22 A. No.
- 23 Q. Okay. That's what I thought. And you went up to the
- 24 driver's side?
- 25 A. Yes.

1 Q. And he fired a shot at you?

2 A. Yes.

3 Q. How far away was he when he fired the shot?

4 A. As close as the court reporter.

5 Q. He was within arm's length?

6 A. Right.

7 Q. Okay. Mr. Shields was a pretty bad shot, wasn't he?

8 A. I can't answer that.

9 Q. Well, it seems to me like he's have to be a bad shot
10 to me if he couldn't hit something from here to the wall.
11 This is arm's distance?

12 MR. QUINN: Your Honor, I'll object. He's asking the
13 witness to speculate as to marksmanship.

14 THE COURT: I will let him ask these questions.

15 BY MR. JOYNER:

16 Q. He had to be a bad shot if he couldn't hit something
17 from here with a gun. If he's close enough to put the
18 barrel on it and couldn't hit it he's a pretty bad shot,
19 wouldn't you say?

20 A. I can't say what type of shooter he is.

21 Q. That's fine. That's fine. So when you got to the
22 car and if he did indeed fire first and he was a bad shot
23 cause he missed something this close, is that the point
24 where your stuck the gun to his back and shot him?

25 A. When I returned fire, yes, sir.

1 Q. Did you -- I guess you -- the man shot at you this
2 close and guns a loud, aren't they, when they shoot? I
3 shoot some so I now guns are loud. Especially when you're
4 holding it this way. You're not at the front of it. It's
5 loud. It's scarry?

6 A. Right.

7 Q. And you're a brave person to be able the stand where
8 somebody just shot and miraculously missed you and put a
9 gun -- my question is this to you. That's when you stuck
10 the gun down to his back when he was sitting in the car
11 about an arm's distance from you?

12 A. After he shot at me.

13 Q. I see. And how many times did you shoot him right
14 then?

15 A. Four.

16 Q. Okay. You shot him at arm's length and he crawled
17 through the car. Isn't that right that he crawled out of
18 the passenger side?

19 A. He came out the passenger side.

20 Q. I'm showing you what's been marked before as State's
21 Exhibit 50. Do you know what that is?

22 A. A console.

23 Q. That's right. That's the broken console?

24 A. Okay.

25 Q. And Mr. Shields he was so desperate to get away from

1 you murdering him and so desperate he got out and broke
2 the center console trying to get away from you?

3 SPEAKER 2: Objection. We have no question. If that
4 was broken before or after this incident.

5 THE COURT: I'll sustain the objection. There is no
6 evidence of that.

7 BY MR. JOYNER:

8 Q. And you testified earlier when Mr. Quinn asked you,
9 you said you went around the car after he got out and
10 finished the rest of the bullets you had?

11 A. Yes. One time.

12 Q. In other words for it to be self-defense you can't
13 got ---

14 MR. QUINN: Your Honor.

15 THE COURT: I'm the only one on self-defense.

16 MR. JOYNER: All right, Judge. Forgive me.

17 BY MR. JOYNER:

18 Q. Your on this indicate of the car he crawled through
19 that side and you got a Bronco? You've got an Explorer.
20 Green, you and him?

21 A. Yes, sir.

22 Q. My question is if a man with a gun is on this side
23 and you're worried about him shooting you you've got a
24 whole car in between you. Why didn't you turn around and
25 run away.

- 1 A. Way I didn't turn to run away when he was on the
2 other side of the car?
- 3 Q. The car was blocked so his couldn't shot you?
- 4 A. I didn't want to get shot in the back.
- 5 Q. Like you shot him in the back?
- 6 A. No, I didn't want to shoot.
- 7 Q. What you -- did you walk around the car like this,
8 pow, pow, and you emptied the rest of the bullets into
9 him, didn't you?
- 10 A. I was still afraid and I didn't want to get shot in
11 the back.
- 12 Q. So you parade rent around and obviously you went and
13 ordered something but you saw this man with a gun. You
14 were afraid of this man with a gun, and shot him more
15 after your just testified that you shot him four times in
16 the back already?
- 17 A. I want to answer you, but.
- 18 Q. Answer it?
- 19 A. I was still afraid.
- 20 Q. Okay. And then you left after you shoot him in the
21 back. All this time you admit that you went to
22 Laurinburg? Bennettsville first then to Laurinburg?
- 23 A. Yes.
- 24 Q. And you said you went to get you mind together?
- 25 A. Yes.

1 Q. Right. You went to get your stuff right, isn't that
2 right? So you knew you just murdered him, didn't you?

3 A. No, I didn't know ---

4 MR. QUINN: Objection, Your Honor. He had no idea
5 that Mr. Shields was dead when he left the scene. Nobody
6 testified that he did.

7 BY MR. JOYNER:

8 Q. You knew you just shot a man five times?

9 A. I didn't know how many times he was shot.

10 Q. You knew you fired at a person five times within
11 arm's length?

12 A. I knew that person fired at me from arm's length
13 also.

14 Q. Okay. That's fine. That's fine. There is a
15 question I have. Did you have some kind of magic bullet
16 in your gun?

17 A. In don't understand the question.

18 Q. Well ---

19 MR. QUINN: Your Honor.

20 MR. JOYNER: If somebody fires ---

21 MR. QUINN: He's asking about -- that doesn't exist.

22 MR. JOYNER: It's fine, Judge.

23 BY MR. JOYNER:

24 Q. Mr. Fortune, which is what I'm asking. If he fired
25 at you first -- I'm shotting at you. I find it odd how

1 you can shoot at him and the bullets magically go around
2 and land in his back?

3 A. I don't understand what you're saying.

4 THE COURT: You got a question?

5 BY MR. JOYNER:

6 Q. Mr. Fortune, arm's distance. Arm's distance away.
7 Mr. Shields fired first. He was close enough to reach out
8 and touch you?

9 A. Yes.

10 Q. But he somehow managed to miss you from you to me.
11 That means he wasn't a good shot. Yet, you were still
12 afraid of a person that had a shot. They were on the
13 other side of a car this high with a car blocking them
14 that you went around to him and shot him more, right?

15 You went around the car, around the back of his car
16 and you shot him more, right?

17 A. Are you asking a question?

18 Q. Yes, I'm asking?

19 A. I felt the danger was still there.

20 MR. QUINN: Asked and answered, Your Honor.

21 MR. JOYNER: Judge, I have no further questions.

22 REDIRECT EXAMINATION

23 BY MR. QUINN:

24 Q. Why did you approach Anthony's car at the Huddle
25 House?

1 A. To let him know it was over.

2 MR. JOYNER: Judge, he's leading his witness.

3 THE COURT: He's asking for an explanation. He's not

4 suggesting an answer. Just ask why did you approach. I

5 will allow the question.

6 BY MR. QUINN:

7 Q. Why?

8 A. To let him know it was over.

9 Q. Any other reason?

10 A. No.

11 Q. Why did you return fire after Anthony shot at you?

12 A. Because my life was in danger.

13 Q. Had you ever seen Anthony shoot a gun before?

14 A. No.

15 Q. Were you aware of his marksmanship?

16 A. No, sir.

17 Q. Why didn't you just turn around and run? Why didn't

18 you turn your back to him and run?

19 A. I didn't want to get shot in the back.

20 Q. Why did you go towards the car?

21 A. Because the danger was still there.

22 Q. How do you know that?

23 A. Because he had just shot at me and he still had the

24 gun and when I went to the other side he still had the

25 gun.

1 Q. Have you ever been shot at before?

2 A. Just that one time.

3 Q. Okay. So why did you go do Laurinburg?

4 A. Just to gather myself from the situation that just
5 happened.

6 Q. Did the police come find you?

7 A. No.

8 Q. How did you get taken into custody?

9 A. I turned myself in.

10 MR. QUINN: That's all I have, Your Honor.

11 MR. JOYNER: Nothing else, Judge.

12 THE COURT: Thank you very much. You may step down.
13 Defense have any further witnesses?

14 MR. QUINN: Defense rests, Your Honor.

15 THE COURT: Does the state have any witnesses in
16 reply?

17 MR. JOYNER: No, Your Honor.

18 COLLOQUY

19 THE COURT: Thank you very much. Ladies and
20 gentlemen, you have heard all of the evidence in
21 connection with this case. There are some legal matters
22 that I need to address at this time and so what we'll do
23 is we will take a morning break while I handle the legal
24 issues. Once I handle those types of matters we will
25 bring you back out and we will allow each side to have

1 their closing arguments.

2 As I indicated to you previously what the attorneys
3 will tell you in their closing argument is not evidence in
4 the case. It's their view of what the evidence has
5 established. You and you alone are the fact finders in
6 this matter. Should there be any difference in your
7 collective memory about what happened and what either of
8 the attorneys urge you to remember you rely on your memory
9 in connection with the matter.

10 They will also have the right to talk about what the
11 law that may apply to this case. But remember again I am
12 the sole instructor of the law. So should what I tell you
13 about the law differ from what they tell you about the law
14 under your oath you have agreed to follow my legal
15 instructions.

16 The State will have the opportunity to open first and
17 to spoke to you. Then the Defense will speak to you in
18 between those arguments. The State has the burden of
19 prove beyond a reasonable doubt and that is why they have
20 the opportunity to argue both times because that burden of
21 proof is on them.

22 So as I say there were some matters that I need to
23 address with the attorneys. If you will at this time
24 simply step back and relax for a minute in the jury room
25 while I go forward with those issues.

1 (WHEREUPON, the jury panel was excused from the
2 courtroom at 10:37 a.m.)

3 THE COURT: All right. Anything further?

4 MR. QUINN: Your Honor, I believe we agreed to a
5 stipulation regarding Johnny Quick's forgetting the button
6 record.

7 THE COURT: Is there a stipulation that resulted in
8 your not calling Johnny Quick?

9 MR. QUINN: Yes, Your Honor.

10 THE COURT: And what is that stipulation?

11 MR. QUINN: That he went and talked to Vincent Davis
12 and recovered the gun and committed a crime and hasn't
13 been charged.

14 MR. JOYNER: We stipulated that he hasn't been
15 charged for having taken the gun from the scene.

16 MR. QUINN: He had the gun for five days. We talked
17 about it in chambers, Your Honor. I remember.

18 THE COURT: Well, we had some conversations but I
19 don't remember any. What I would like for you to do
20 during this break when we finish the motions is to see if
21 you can reach a stipulation to that before you begin your
22 arguments can be read to the jury. And that way we don't
23 have to worry about what it is or anybody's understanding.
24 It will be read into the record based on what the written
25 document says the stipulation is and we can make it a

1 Court's Exhibit if we need to. Motions on behalf of the
2 Defendant.

3 MR. SALEEBY: Renew all objections to this point,
4 Your Honor.

5 THE COURT: The objections are still overruled to the
6 extent that if I'm wrong on those you've been protected
7 for the record. As to a motion for a directed verdict.

8 MR. SALEEBY: Your Honor, the Defense moves for
9 directed verdict in view of the evidence most favorable to
10 the Prosecution, the State, the Defense feels a lack, a
11 total lack of any elements of any crime charged.

12 THE COURT: I think that it is still a jury issue as
13 to whether or not they want to believe some statements
14 were given by Miss McCall that night indicates what was
15 going on. Some belief by them of what Mr. Mungo said.

16 If I remember the State's position was that
17 Mr. Fortune made some statement to Mr. Mungo that he would
18 take care of it himself. So there are other
19 interpretations that can be made of his act of putting the
20 pistol in his pocket when he went to talk or to do
21 whatever takes place at the vehicle where Mr. Shields was
22 located. So I respectfully deny your motion for directed
23 verdict. I believe that it's an issue that the jury is
24 going to have to decide.

25 MR. SALEEBY: Thank you, Your Honor.

1 THE COURT: Based upon the evidence that has been
2 presented at this particular point in time I assume you're
3 inclined to charge it as a straight up -- straight down
4 murder with the charge of self-defense also being
5 presented to the jury?

6 As to the State do you have any position as there are
7 any lessor included that I need to charge with murder?
8 Voluntary manslaughter?

9 MR. JOYNER: I agree with Your Honor. Murder and
10 self-defense would be appropriate, Judge. State would
11 waive our right to instruct first on the law.

12 THE COURT: You're waiving your right to open on the
13 law?

14 MR. JOYNER: Yes, sir.

15 THE COURT: Does the Defendant require them to open
16 on the law?

17 MR. JOYNER: Yes, sir.

18 MR. SALEEBY: Afternoon. We would like Your Honor if
19 I could have -- Mr. Quinn brought in a secretary early
20 this morning and we need to finish the reasonable doubt
21 charge chart up here.

22 THE COURT: Do what?

23 MR. SALEEBY: Finish our reasonable doubt charge
24 chart.

25 THE COURT: Related to the reasonable doubt charge

1 I'm going to use?

2 MR. SALEEBY: Yes, sir, used during my closing.

3 THE COURT: The reasonable doubt charge I will charge
4 the jury will relate to that which is standard in our
5 charge book as well as a portion of language that's taken
6 from the State v. Needs, which comes out of State v.
7 Manning.

8 MR. SALEEBY: Judge, that's fine.

9 THE COURT: You shade charge or chart.

10 MR. SALEEBY: Your Honor, seem to use it before
11 things came up early this morning. I've Been up since
12 five o'clock. We're now just trying to get finished. We
13 would need approximately 30 minutes with Mr. Quinn and the
14 secretary to finish the reasonable doubt chart I am using
15 in my close.

16 We know it's not evidence and that it can't be taken
17 back to the jury room. It's just my interpretation or our
18 interpretation of the facts. If you could give the jury
19 about a 30, 40 minute break. We appreciate it, Your
20 Honor. I apologize. I had no idea.

21 MR. JOYNER: State is ready to proceed now, Your
22 Honor.

23 THE COURT: I will give the jury a little longer
24 break because we're getting ready to occupy their time. I
25 have to give them a break again before I actually begin

1 the charge. I'll let them take a smoke break at this time
2 and finish putting my charge together. And we may end up
3 having to leave you at this particular point in time while
4 Mr. Quinn is present in the courtroom while the State
5 opens on the law.

6 MR. SALEEBY: I'll stay for that part.

7 THE COURT: Mr. Quinn is doing the argument in full?

8 MR. SALEEBY: I'm doing it in full, Your Honor.

9 THE COURT: You need Mr. Quinn?

10 MR. SALEEBY: He will be helping her.

11 THE COURT: All right, sir. Very good.

12 MR. QUINN: Your Honor, I have some requested
13 charges.

14 THE COURT: Let me see those, please. I will include
15 both of those because it is the burden of the State to
16 prove or disprove self-defense. I'm asking at this point
17 in time whether you think there is evidence here as to
18 whether or not it would be proper to charge voluntary
19 manslaughter. So I need to know that now.

20 MR. QUINN: The second one. Second, Your Honor.

21 THE COURT: I don't know. I'll grant it or won't
22 grant it. I just need to hear from you on it.

23 MR. SALEEBY: Voluntary manslaughter.

24 THE COURT: Yes, sir.

25 MR. SALEEBY: It's here from a number of witnesses.

1 Most of the State's witnesses there was not only an
2 argument between Mr. Fortune cousin and gotten over to the
3 truck and but they once Mr. Fortune got to the truck that
4 there were words, arguing, what not. By statement witness
5 name them out not you Your Honor and then there were
6 shots.

7 So on or about all the cases clearly come under he
8 heat of passion.

9 MR. JOYNER: Judge, I would respectfully disagree.
10 The defendant himself just said that he didn't know him;
11 that he wasn't threatened by him. I specifically asked
12 him those questions. And under the circumstances to have
13 a charge of voluntary manslaughter you must have
14 sufficient legal provocation and under the circumstances,
15 Judge, I just don't believe there is any evidence
16 whatsoever that constitutes a sufficient legal
17 provocation.

18 THE COURT: I think the case law says here words.

19 MR. JOYNER: Are not enough.

20 THE COURT: Are not sufficient.

21 MR. JOYNER: And, Judge, if you believe under the
22 circumstances if Mr. Shields fired first and they believe
23 that's enough for self-defense then there is only
24 self-defense and he should walk. And if the jury believes
25 otherwise that he didn't fire first and there is nothing

1 but murder. I simply believe we're lacking the elements
2 for manslaughter. Only charge for murder and he
3 self-defense.

4 MR. SALEEBY: Your Honor, self-defense, murder and
5 voluntary manslaughter, I just went through that in the
6 case law three weeks ago over in Marlboro County. Man
7 been shot out of anger. It entitled him. It upset him.
8 It scared him from provocation for retaliation of force
9 necessary to protect himself.

10 THE COURT: At this particular point in time if I am
11 wrong the Appellate Court can address it, but based on the
12 testimony of the State's witnesses, they heard arguing.
13 They heard people fussing at each other. Based on what
14 they said nobody was able to identify any particular
15 language.

16 So there is no evidence of threats. We just know
17 they were arguing. And there was some arguing that took
18 place over some period of time when Mr. Fortune first
19 approached the vehicle in which Mr. Shields was sitting.
20 Mr. Fortune says that when he got there he said, 'what's
21 up' and that's when Mr. Shields proceeded to try and shoot
22 him. That's Miss McCall's testimony as well; that as
23 Mr. Fortune arrived she had been arguing back and forth.

24 But all of a sudden she thought she'd been shot when
25 the gun went off. So I don't think there is anything

1 that's going on. The only thing that sort of gives me
2 some inclination to do it is that pointing a gun at a
3 defendant can become legal provocation. And that's what
4 was testified to here.

5 Sudden mutual combat in which the one person was
6 killed by another without previously formed intent to do
7 so. Or another example. So we do have some indication of
8 that. If the jury found that this was a situation where
9 the gun was pointed first, but the circumstances did not
10 justify or that there was a sudden mutual combat
11 circumstances incident to justify a self-defense.

12 They could still make a determination there was a
13 voluntary manslaughter. I think I will charge voluntary
14 manslaughter in connection with this. I will.

15 MR. SALEEBY: All right.

16 MR. JOYNER: I would also ask for a charge on mutual
17 combat.

18 THE COURT: In can't charge mutual combat because our
19 case law, article and number I'm not sure. I'll use the
20 word mutual combat in that there is a fairly recent South
21 Carolina case on mutual combat. I unfortunately have my
22 charge books scattered.

23 MR. JOYNER: Judge, I think you're looking for state
24 v. Taylor. I have a copy here if you'd like to see it.

25 THE COURT: There is no indication in this case that

1 these parties had any prior agreement or any knowledge of
2 each other and that's normally where the mutual combat
3 arises where there is some occasion they are going to
4 fight. Both of them are armed and so under those
5 circumstances the defense of self-defense isn't even
6 available but I don't think this is one where the mutual
7 combat charge is appropriate.

8 MR. JOYNER: Thank you, Judge.

9 THE COURT: All right, sir. Let's see. We'll take
10 about a 15, 20 minute break. Let the jury go out and
11 smoke. We'll bring them back in and we'll begin the
12 process.

13 (WHEREUPON, Court is in recess at 10:30 a.m. and
14 reconvened at 10:57 a.m.)

15 THE COURT: If you'll check and see if they're ready
16 to come forward.

17 THE BAILIFF: Yes, sir.

18 THE COURT: For you'll bring them out.

19 (WHEREUPON, the jury panel enters the courtroom at
20 11:09 a.m.)

21 THE COURT: Ladies and gentlemen of the jury panel,
22 as I indicated to you we will now proceed to listen to
23 closing argument, final arguments that these attorneys
24 have the opportunity to give to you in connection with
25 their view of the evidence that has been brought to your

1 attention during the trial of the case.

2 Please listen carefully as they talk with you about
3 the evidence. As I told you previously what they tell you
4 is not testimony and if you remember things differently
5 than they tell you then you rely upon own memory, not
6 their memory because you are the fact finders. Not me.
7 Not the attorneys.

8 You have to make the factual determination of what
9 took place. When they conclude I will give you your legal
10 instructions. Now, because this case is one that involves
11 serious charges and has taken several days to try I would
12 anticipate the arguments would have some length to them
13 because this part of the case is somewhat of a package
14 where the arguments and charge go together.

15 I've determined that we will send out for some
16 sandwiches from Subway so that the attorneys can have
17 ample time to address you. And then depending on the time
18 matter I can certainly send you back and we can take a
19 short break and come back out and give you your legal
20 instructions.

21 I don't want to break it up, y'all leave and go
22 somewhere for an hour and come back. I'd like to have the
23 jury hear the argument and charge within approximately to
24 each other or weave the two together.

25 State is going to open in the matter. Then you will

1 hear from Mr. Saleeby and then the State will close. Mr.
2 Joyner or Mr. Hales, you may address the jury.

3 CLOSING STATEMENT BY MR. JOYNER

4 MR. JOYNER: I am simply going to talk to you about
5 the law in this case and what law is. What you will apply
6 the facts to, decide your verdict whether it be guilty or
7 not guilty. And the first law I instruct you on is
8 murder, and murder has three key points that you have to
9 find.

10 The first is you have to have a killing. And a
11 killing simply means that one person has by their own act
12 ended the life of another person.

13 You have to have a person killing. One, a person
14 is -- two -- and by person we mean it certainly can't be
15 an animal, dog or cat. It has to be a individual and it
16 can't be suicide. It has to be a person, and the second
17 or the third one is where malice aforethought. And I'm
18 breaking down malice first and then I'll go in
19 aforethought.

20 What malice is our Supreme Court has said is that
21 malice is when a person does an act without just cause or
22 excuse. They all put it in another word. It is a
23 malignant recklessness of life and safety for another
24 person. They also described it generally as a person
25 whose heart is intent on mischief and recklessness. And

1 that is malice.

2 A aforethought is simply the state of mind. A
3 forethought is when was the malice is present. At what
4 point of the act was malice present, and our Supreme Court
5 has said that malice doesn't need to exist for any
6 appreciable period of time. It can be very quick. It can
7 be at the moment the fatal blow is struck.

8 In fact our Supreme Court said that malice can be
9 conceived at the very moment the fatal blow is given.
10 That's aforethought so to have murder, to have the killing
11 of another person with malice afore thought.

12 The Judge will also instruct you on everything I'm
13 telling you as he gives you the charge. Mr. Saleeby will
14 argue on behalf of the defendant and then I argue. The
15 next thing you will be instructed on -- excuse me, is
16 voluntary manslaughter.

17 And voluntary manslaughter is similar to murder but
18 it's different in two ways. First, you have to have the
19 killing of another just as in murder. The third thing is
20 that there must be a heat of passion when the killing of
21 another takes place. And the killing of another in the
22 heat of passion must be accompanied with a sufficient
23 legal provocation.

24 Must be a such legal provocation. And finally,
25 ladies and gentlemen, I will instruct you on self-defense.

1 The Judge will instruct you on self-defense in this case.
2 In other words, for the defendant to have an excuse of
3 self-defense he must be able to show that he was without
4 fault in the bringing on the conflict. He must be able to
5 show in no way was his actions the cause of the conflict
6 for which we're here today.

7 Not only that he must also show that he was in
8 imminent danger of his life. He must show he was in
9 imminent danger of his life and the imminent danger must
10 not be what he himself believed. It must be what an
11 ordinary person would believe, that what an average person
12 would believe, a prudent person whether or not you would
13 if that person thinks their life was imminent danger.

14 He also must show that there must be no other way to
15 avoid this conflict. He must show did he have any other
16 means to have not had to use the force that he used.
17 Finally, ladies and gentlemen, retreat.

18 The defendant cannot have self-defense if at any time
19 he could have retreated and not had to use the force that
20 he used. So if in any of these the Defendant fails or
21 excuse me -- if at a time the Defendant fails to disprove
22 any of these then he was entitled -- excuse me. The State
23 disproves any one of these then he was not entitled to
24 self-defense. If the State shows that he was with fault
25 in bringing on the difficulty the Defendant is not

1 entitled to self-defense.

2 If they show that an ordinary person in that
3 situation would have been in fear for his life he's not
4 entitled to self-defense as a defense. If the State shows
5 there was not other means by which he could have avoided
6 this conflict he's not entitled to self-defense.

7 And, finally, if the State can prove beyond a
8 reasonable doubt that he could have at some point have
9 retreated without using force then he was not entitled to
10 self-defense. Thank you.

11 CLOSING STATEMENT BY MR. SALEEBY

12 MR. SALEEBY: Please the Court, Solicitor. Good
13 morning, ladies and gentlemen of the jury. I appreciate
14 Mr. Joyner's comments, and his first I want to make clear
15 that we've got things written back behind here. Make sure
16 all of you can see. If not nod and I'll turn sit. Maybe
17 one day I'll be able to get a projector and project there
18 and it looks like a big screen t.v.

19 Can y'all read and see that? Each of you needs to be
20 able to see. Each of you are just as important as the
21 others. If you can't I'll turn a little bit towards you.
22 Thank you.

23 Let me address very quickly what Mr. Joyner would
24 like you to believe the law is, and I have different
25 versions of the law and that's the law of South Carolina.