

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

R. Knox McMahon, Circuit Court Judge

RECEIVED

MAR 22 2016

SC SUPREME COURT

JOSHUA FORREST,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001045

APPENDIX

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
PETITIONER'S EXHIBIT # 4 (INDICTMENT, ARREST WARRANT AND SENTENCE
SHEET WHICH IS A PAPER EXHIBIT THAT IS ILLEGIBLE)**

1 STATE OF SOUTH CAROLINA
2 COUNTY OF AIKEN

CIRCUIT COURT
2006-GS-02-694, 695

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 JOSHUA LAMAR FORREST,
6 Defendant.

7
8 HEARD ON MONDAY, JUNE 22, 2009
9 TUESDAY, JUNE 23, 2009
10 & WEDNESDAY, JUNE 24, 2009

11 BEFORE:

12 THE HONORABLE MICHAEL G. NETTLES

13 AND A JURY

14 APPEARANCES:

15 Counsel on behalf of the State:

16 Stephen Kodman, Esq.

17 David Miller, Esq.

18 Counsel on behalf of the Defendant:

19 Sheri Stoney Hicks, Esq.

20
21
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Court's

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1 Miranda

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(Became State's Exhibit No. 1 during trial)

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Note from jury

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Note from Jury

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1 ON MONDAY, JUNE 22, 2009 AT 3:30 P.M.:

2 THE COURT: State's recognized. You may call
3 your case.

4 MR. KODMAN: May it please the Court. Your
5 Honor, we are here on two indictments, 2006-GS-02-694, the
6 State of South Carolina versus Joshua Lamar Forrest. It's
7 an indictment, true billed indictment for possession of a
8 firearm or knife during the commission of a violent
9 crime. And 2006-GS-02-695, State of South Carolina versus
10 Joshua Lamar Forrest which is an indictment for murder.

11 This is the case we intend to call for trial
12 tomorrow, Your Honor. We're ready to proceed with the
13 Jackson V. Denno hearing this afternoon.

14 THE COURT: Very good. I understand the jurors
15 are not scheduled to be here until tomorrow but there's no
16 one here in this courtroom who is scheduled to be a juror
17 for this term of court, is there?

18 (No response.)

19 Very good. You're recognized.

20 MR. KODMAN: Thank you, Your Honor. The State
21 would call investigator Chuck Cain from the Aiken County
22 Sheriff's Department.

23 THE COURT: Investigator, I'm going to ask you to
24 come forward, place your hand on the Bible as the clerk
25 administers your oath.

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 CHUCK CAIN, having been duly sworn, was examined
2 and testified as follows:

3 THE CLERK: Have a seat in the witness box.
4 State your full name for the Court and spell your last
5 name.

6 THE COURT: Sir, I'm going to ask you if you
7 could, pull up real close to that microphone. Speak
8 loudly, clearly and slowly so that everybody can hear what
9 you got to say.

10 THE WITNESS: Yes, sir. Investigator Chuck Cain,
11 C-A-I-N.

12 DIRECT EXAMINATION

13 BY MR. KODMAN:

14 Q. Investigator Cain, where are you employed at?

15 A. Aiken County Sheriff's Office.

16 Q. And what's your job title there?

17 A. I am a criminal investigator.

18 Q. And how long have you been employed with the Aiken
19 County Sheriff's Department?

20 A. Nineteen years.

21 Q. Previous to that did you have any experience in law
22 enforcement?

23 A. No, I did not.

24 Q. And what are your duties as investigator with the
25 county sheriff's department?

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 A. I pretty much investigate violent crime.

2 Q. And were you so employed as an investigator back in
3 December 4th of 2005?

4 A. Yes, sir.

5 Q. And are you familiar with what's commonly referred to
6 as Miranda warnings?

7 A. Yes, sir.

8 Q. Did you have occasion with regard to an investigation
9 relating to the death of Mario Reddish to interview the
10 Defendant in this case, Joshua Forrest?

11 A. Yes, sir.

12 Q. Could you please tell the Court how you came in
13 contact with Joshua Forrest?

14 A. I originally came into contact with Mr. Forrest
15 through his mother who had paged me to let me know that
16 she had located him. I went down to the Sleep Inn on
17 Ascauga Lake Road and Highway 25 in North Augusta which is
18 where I first made contact with Mr. Forrest.

19 Q. How were you brought into this case?

20 A. I was brought into the case to assist the lead
21 investigator, Kevin Liles, the morning of the incident.

22 Q. And about what time, give an approximate time of when
23 the incident occurred?

24 A. That happened on December 4th, 2005. I would say 1:30
25 to 2:30 in the morning.

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 Q. And what time was it when Mr. Forrest was brought to
2 the Aiken County Sheriff's Department?

3 A. I believe that was 16:45 hours that same day.

4 Q. I'm going to hand you what's been marked for
5 identification purposes as State's Exhibit One, and ask
6 you if you can identify that document.

7 A. That is the Aiken County Sheriff's Office Miranda
8 warning.

9 Q. And specifically, is that the Miranda warning that was
10 used in this case?

11 A. Yes, it is.

12 Q. If you can explain to the Court what are the questions
13 that are posed on that document.

14 A. The first question: Before we ask you any questions
15 you must understand your rights. You have the right to
16 remain silent. Anything you say can and will be used
17 against you in a court of law. You have the right to talk
18 to an attorney for advice before we ask you any questions,
19 and to have him/her present during questioning.

20 If you cannot afford an attorney, the Court will
21 appoint an attorney to represent you without cost if you
22 wish.

23 If you decide to answer questions now without an
24 attorney present, you will still have the right to stop
25 answering at any time. You also have the right to stop

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 answering at any time until you've talked to an attorney.

2 I have read this statement of my rights. And I
3 understand what my rights are.

4 Q. And did you use that form in your interview with
5 Joshua Forrest?

6 A. Yes, sir.

7 Q. And are there any places on there for anyone to
8 initial or any writing on that form?

9 A. Beside each question there is a block for the
10 Defendant to place their own initials. There's also a
11 block indicating that they do completely and fully
12 understand their rights. And there is a block there for
13 their signature.

14 Q. And did he initial in all the appropriate places?

15 A. Yes, sir.

16 Q. And did he sign that document?

17 A. Yes, sir.

18 Q. And did you witness that?

19 A. Yes, sir.

20 Q. And is that form in substantially the same condition
21 as it was when you interviewed the Defendant back on
22 December 4th of 2005?

23 A. Yes, sir. There's also one more block that I left
24 out. That is the waiver. He also initialed that and
25 signed beneath it.

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 MR. KODMAN: Your Honor, at this time we'd move
2 for purposes of this hearing to introduce this as State's
3 Exhibit Number One.

4 MS. STONEY: No objection, Your Honor.

5 THE COURT: Court's Exhibit Number One is made a
6 part of the record with regard to this hearing. It's
7 probably a court exhibit at this junction.

8 (Thereupon, Court's Exhibit No. 1, Miranda
9 warning, was received into evidence.)

10 BY MR. KODMAN:

11 Q. Was anyone else present when you gave the Defendant
12 these warnings?

13 A. Investigator Kevin Liles.

14 Q. Did the Defendant appear to be under the influence of
15 any drugs or alcohol at the time?

16 A. No, sir.

17 Q. Did he appear to understand his rights?

18 A. Yes, sir.

19 Q. Was his speech coherent?

20 A. Yes, sir.

21 Q. Did the Defendant ever tell you that he wanted an
22 attorney?

23 A. No, sir.

24 Q. Did the Defendant ever invoke his right to remain
25 silent?

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 A. No, sir.

2 Q. So he agreed to answer your questions without an
3 attorney present?

4 A. Yes, sir.

5 Q. Did you promise the Defendant anything in return for
6 him making a statement to you?

7 A. No, sir.

8 Q. Did you coerce the Defendant by threats or actions?

9 A. No, sir.

10 Q. To the best of your knowledge, was the Defendant's
11 statement given freely and voluntarily?

12 A. Yes, sir.

13 Q. And during the interview, did the Defendant ever
14 indicate that he wanted to stop answering your questions?

15 A. No, sir.

16 Q. You described the room where this interview took
17 place?

18 A. It is upstairs, second level of the Aiken County
19 Sheriff's Office. It is a enclosed room with one door.
20 There is also, there is a table, three chairs. There is a
21 camera mounted in the upper corner of the room which
22 focuses and views down on the person being interviewed and
23 the person providing the interview.

24 Q. Was the Defendant advised that his interview would be
25 recorded?

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 A. Yes, sir.

2 Q. And actually, was it recorded?

3 A. A portion of it; yes, sir.

4 Q. What portion was recorded?

5 A. The initial introduction of it between myself and the
6 Defendant, and the last few minutes of it.

7 Q. But the actual statement that he gave you with regards
8 to what happened on the night of the incident, was that
9 captured on the video recording device?

10 A. No, sir.

11 Q. And are you aware of what happened with the
12 recording? Why it was not all --

13 A. To my knowledge, the -- like I said, I was inside the
14 interview room the whole time. Apparently there was a
15 malfunction.

16 MS. STONEY: Your Honor, I would ask that he not
17 speculate.

18 THE COURT: Well, given the fact that the jury is
19 not here.

20 MS. STONEY: Okay.

21 THE COURT: I'm going to allow him to do that.

22 MR. KODMAN: Judge, we've got another witness
23 we're going to call, I think, that can clarify it some
24 more, too.

25 THE COURT: I'm going to allow him to testify in

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 that regard. If he indeed knows what happened and/or if
2 he has an idea what happened.

3 THE WITNESS: Investigator Kevin Liles initiated
4 the sequence to begin the taping of the interview. The
5 recording itself stopped minutes after it started. And
6 when Investigator Liles left the room, the interview room,
7 to go and turn the machine off, he noticed that it had
8 been turned off by itself, that it was not recording. So
9 he initiated it back again and that caught the last
10 segments of the entire interview.

11 BY MR. KODMAN:

12 Q. Did you make some written notes of what was said
13 during that interview?

14 A. Yes, sir.

15 Q. And when did you make those notes?

16 A. I made those notes while the interview was in
17 progress.

18 Q. At some point did you convert those notes into an
19 investigative report?

20 A. Immediately. That evening; yes, sir.

21 Q. And referring to your notes in your investigative
22 report, what specifically did the Defendant tell you as to
23 what he says happened on the night in question?

24 A. Mr. Forrest reported of Chantelle Epps driving him to
25 the Elk's Club and arriving and entering between 01:30 and

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 02:00 hours on 12-4-05 and consumed a large quantity of
2 alcohol that intoxicated him.

3 Forrest reported while inside Bussey, his
4 ex-girlfriend who had formed a relationship with Reddish
5 during his, being Forrest, recent incarceration, began a
6 verbal argument over his flirtations with Monique.

7 Forrest continued to report Bussey took his ball cap
8 and relocated within a group of 12 males toward the rear
9 of the Elk's Club. Forrest reported he approached her to
10 retrieve his cap whereas Bussey threw a drink on him and
11 slapped his face several times.

12 Forrest reported he ignored Bussey's assault and after
13 obtaining his cap the 12 males began to shove him and he
14 left the interior of the Elk's Club, relocating to the
15 rear driver door of the white-in-color Lincoln operated by
16 James Forrest.

17 Forrest reported he opened the door to enter, was
18 unable -- was unable to due to the driver's seat being
19 fully declined (sic) and upon relocating to the front of
20 the vehicle observed Bussey and the same group of males
21 approaching him.

22 Forrest reported Bussey hit his face several times and
23 he grabbed her throat and pushed her away. Forrest
24 reported Reddish then approached him and punched him in
25 the face and a physical fight erupted whereas Reddish

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 again struck him in the jaw as the fight relocated to the
2 front region of the Lincoln.

3 Forrest displayed apparent visible injury to his inner
4 lip region. Forrest reported and demonstrated during the
5 fight, Reddish secured him in a frontal bear hug, gripping
6 both of his, Reddish's, arms around his, Forrest's, arms
7 and torso.

8 Forrest reported upon trying to break free he heard
9 apparent gunshots and began to back away from Reddish, who
10 ripped his, Forrest, shirt off while falling forward to
11 the ground.

12 Forrest reported of running to and entering the
13 Lincoln with Little James, James Forrest and Jay, Joseph
14 Gartrell, while hearing Bussey state, shoot that nigger.
15 Forrest reported while departing the incident location
16 to -- while departing the incident location an unknown
17 black male ran beside the Lincoln firing a pistol.

18 Forrest reported of soon arriving to the Waffle House
19 located at Highway 19 and I-20, Aiken, South Carolina,
20 where he accepted a ride from Myron to his, Forrest,
21 girlfriend, Marcy Coleman's residence located in Apple
22 Valley Subdivision, Augusta, Georgia, arriving between
23 05:00 and 06:00 hours on 12-4-05.

24 Finally Forrest reported of overhearing Coleman's
25 mother state at 08:30 hours that he was wanted by the

1 police and of speaking with his mother later that day who
2 coordinated his surrender to law enforcement.

3 Q. Did he tell you anything else?

4 A. I asked him during the interview how was it possible
5 that while he was in a frontal bear hug and he heard
6 gunshots, how was it possible that the victim, Mario
7 Reddish, sustained two gunshots to his front while he was
8 in a frontal bear hug with Mr. Forrest. And he said that
9 was God's will.

10 Q. Did he make any other statements to you?

11 A. I asked him was -- did he mean divine intervention and
12 he said yes.

13 Q. And was that the extent of your contact with the
14 Defendant in terms of any statements he provided?

15 A. Statement wise. Yes, sir.

16 Q. Okay.

17 MR. KODMAN: Please answer any questions
18 Ms. Stoney may have.

19 THE WITNESS: Yes, sir.

20 THE COURT: Before we go, how long did the
21 questioning take place? How long? Over what period of
22 time did the statement take?

23 THE WITNESS: You mean the length of the
24 interview, sir?

25 THE COURT: Right.

JACKSON -V- DENNO: LARRY KEVIN LILES - DIRECT

1 THE WITNESS: The interview started at 16:45, and
2 took no longer than an hour, sir, no longer than an hour.

3 MS. STONEY: I don't have any questions, Your
4 Honor.

5 THE COURT: All right. Very good. You may call
6 your next witness. You may step down.

7 THE WITNESS: Thank you, sir.

8 MR. KODMAN: State calls Lieutenant Kevin Liles.

9 KEVIN LARRY LILES, having been duly sworn, was
10 examined and testified as follows:

11 THE CLERK: Please have a seat in the witness
12 box. State your full name for the Court and spell your
13 last.

14 THE COURT: Sir, I ask you to speak loudly,
15 clearly and slowly. State your full name.

16 THE WITNESS: Yes, sir. Lieutenant Kevin Larry
17 Liles. Last name is spelled L-I-L-E-S.

18 DIRECT EXAMINATION

19 BY MR. KODMAN:

20 Q. And Lieutenant Liles, where are you employed at?

21 A. The Aiken County Sheriff's Office.

22 Q. And what's your position there?

23 A. Currently I'm a road patrol supervisor, the shift
24 lieutenant.

25 Q. And how long have you been employed with the Aiken

JACKSON -V- DENNO: LARRY KEVIN LILES - DIRECT

1 County Sheriff's Department?

2 A. Nine years.

3 Q. Is that the full extent of your employment in law
4 enforcement?

5 A. Yes, sir.

6 Q. And how were you employed back on December 4th, 2005?

7 A. As an investigator in the criminal investigations
8 division.

9 Q. And back in that time, did you have occasion to
10 participate in the investigation involving the death of
11 Mario Reddish?

12 A. Yes, sir.

13 Q. And were you present at the Aiken County Sheriff's
14 Office when the Defendant was interviewed by Investigator
15 Chuck Cain?

16 A. Yes, sir; I was.

17 Q. And were you present when Investigator Cain provided
18 the Defendant with his Miranda warnings?

19 A. Yes, sir.

20 Q. Where were you specifically at when that happened?

21 A. Sitting in the corner of the room and then --
22 interview room. Actually sitting in the room.

23 Q. But prior to coming into the room, did you do anything
24 with the recording device at the sheriff's department?

25 A. Yes, I did. I had the most experience with the

JACKSON -V- DENNO: LARRY KEVIN LILES - DIRECT

1 equipment so I initiated the taping of the interview.

2 Q. Okay. And during the course of the Miranda warnings,
3 did the Defendant appear to understand his rights?

4 A. Yes, sir.

5 Q. Did he appear to be under the influence of alcohol or
6 drugs?

7 A. No, sir.

8 Q. Was his speech coherent?

9 A. Yes, sir.

10 Q. At any time during the interview and questioning did
11 he ever request an attorney be present?

12 A. No, sir; he didn't.

13 Q. Did the Defendant ever invoke his right to remain
14 silent?

15 A. No, sir.

16 Q. Was the Defendant ever offered any promises in
17 exchange for him making a statement to law enforcement?

18 A. No, sir.

19 Q. Was the Defendant threatened or coerced in any way?

20 A. No, sir.

21 Q. And were you present during the entire time of the
22 Defendant's interview?

23 A. The only time I wasn't present was when I went out to
24 check the recording system.

25 Q. And at what point in the interview process was that?

1 Had he concluded giving his statement?

2 A. No, he hadn't.

3 Q. Okay. And what happened when you went out of the
4 room?

5 A. I went out of the room to speak to the captain, the
6 lieutenant over investigations division. And asked them
7 if there were any other questions we felt we needed to
8 ask. Checked the machine at that time to ensure that it
9 was recording and found that it wasn't, and reinitiated
10 the recording.

11 Q. Okay. Did the Defendant at any time become
12 uncooperative or ask that he be allowed to stop answering
13 questions?

14 A. No, sir.

15 Q. And to the best of your knowledge was his statement
16 given freely and voluntarily?

17 A. Yes, sir; it was.

18 MR. KODMAN: Please answer any questions
19 Ms. Stoney may have for you.

20 MS. STONEY: Your Honor, I don't have any
21 questions for this witness either.

22 THE COURT: You may step down. You may call your
23 next witness.

24 MR. KODMAN: That's all the State has with
25 regards to Jackson-Denno hearing, Your Honor.

1 THE COURT: Be glad to hear anything offered on
2 behalf of the Defendant, Mr. Forrest.

3 MS. STONEY: Your Honor, we don't have any
4 witnesses.

5 THE COURT: All right. Very good. Any argument
6 from the State?

7 MR. KODMAN: Judge, I would just say the
8 testimony speaks for itself. The issue here was the
9 statement given freely and voluntarily and there was was
10 uncontradicted evidence in the record it was given freely
11 and voluntarily and the Miranda warnings were given to the
12 Defendant and that he understood those warnings and gave
13 them when he gave his statement to law enforcement.

14 THE COURT: Be glad to hear from the defense at
15 this time.

16 MS. STONEY: Your Honor, I don't have anything to
17 say.

18 THE COURT: Very good. All right. I'm going to
19 specifically find that the Defendant, Mr. Forrest, was
20 indeed detained and not free to leave, invoking the
21 Miranda rights. I do make a specific finding that the
22 Miranda rights were given. And I further indicated that
23 he understood what the Miranda rights were. It's
24 uncontradicted that each of the elements in the Miranda
25 rights were explained to him. He initialed that.

1 I further find that he waived his right to
2 counsel and right to remain silent. That's evidenced by
3 the initial and the signature with regard to the waiver.
4 As far as the circumstances of the questioning and the
5 interrogation, I find -- specifically find that it was
6 freely and voluntarily made. There were no threats, no
7 promise, no coercion.

8 The circumstances of the interrogation were that
9 he -- the questioning took place around an hour, not very
10 more than an hour, if any more than an hour.

11 There's nothing in the record that would seem to
12 indicate that the Defendant has a substandard
13 intelligence. At least a portion of the statement was
14 indeed recorded.

15 There was no evidence that he was intoxicated.
16 No evidence that he, anybody promised him anything,
17 threatened him or did anything in that light. He
18 specifically did not invoke his fifth amendment right to
19 remain silent.

20 And once again I reiterate that I specifically
21 find that the statement was freely and voluntarily given
22 and therefore is indeed admissible. Anything further?

23 MR. KODMAN: Judge, just to make sure the record
24 is clear. Investigator Liles did testify that when, I
25 believe he testified that when he walked out of the room

1 to go check with the other investigators the interview was
2 not yet over, however there is no, to be candid with the
3 Court, none of the statement that Investigator Cain put
4 forth is on the video.

5 THE COURT: Very good. All right. I assume it
6 was cut on and then caught the very tail end but none of
7 the statement.

8 MR. KODMAN: That's correct. The part that was
9 cut back on was serving him with the warrant at that
10 point.

11 THE COURT: Very good. All right. Of course,
12 that's really not relevant as to whether or not the
13 statement was given, whether or not Miranda was given to
14 him, whether or not it was freely and voluntarily given.
15 And I do specifically find that it is indeed admissible.

16 Anything further from the State?

17 MR. KODMAN: No sir, Your Honor.

18 THE COURT: Anything further from the defense?

19 MS. STONEY: No, Your Honor.

20 THE COURT: All right. Very good.

21 We will stand at ease with regard to this case.
22 I understand that we're going to start the jury
23 qualification at 9:30, ten o'clock in the morning
24 perhaps?

25 MR. KODMAN: Check with the clerks, but my

SELECTION OF THE JURY

1 understanding is I believe the jury comes in at 9:30 and
2 then reports to the courtroom at ten o'clock.

3 THE COURT: We'll begin the jury selection at ten
4 o'clock in the morning.

5 END OF DAY'S PROCEEDINGS: 4:29 P.M.

6 * * * *

7 ON TUESDAY, JUNE 23, 2009 AT 11:00 A.M.:

8 THE COURT: Mr. Solicitor, you may call your
9 first case.

10 MR. KODMAN: Thank you, Your Honor. The State
11 calls 2006-GS-02-695, the State of South Carolina versus
12 Joshua Lamar Forrest. It's a true-billed indictment for
13 murder. And 2006-GS-02-694, the State of South Carolina
14 versus Joshua Lamar Forrest. It's an indictment for
15 possession of a weapon during the commission of a violent
16 crime. Both indictments have been true billed, Your
17 Honor.

18 THE COURT: Thank you, Mr. Kodman.

19 Ladies and gentlemen of the jury, I hold in my
20 hand the indictments that accuse Joshua Lamar Forrest of
21 committing murder on December 4th, 2005, and the
22 additional charge of possession of a firearm during the
23 commission of a violent crime.

24 Ladies and gentlemen of the jury, these are the
25 actual indictments themselves. They're documents that

SELECTION OF THE JURY

1 just start the criminal process. They have absolutely no
2 evidentiary value whatsoever. Mr. Forrest is sitting
3 there at the defense table right here to my right. He is
4 presumed to be just as innocent as me or you or the
5 solicitor's office for that matter. That's the frame of
6 reference that we start from. This is merely an
7 accusation and that's where the case begins.

8 Ladies and gentlemen of the jury, I qualified
9 you. Each of are you qualified. None of you have
10 exercised an exemption.

11 The questions I'm going to be asking you deal
12 with whether or not you can be fair and impartial with
13 regard to the trial of this particular case, given the
14 facts and circumstances.

15 Ms. Stoney, I'm going to ask if you could have
16 Mr. Forrest stand up and face the jury panel.

17 MS. STONEY: (Complying.)

18 THE COURT: Thank you, Ms. Stoney. Mr. Forrest,
19 you may have a seat.

20 Is anyone related by blood or marriage to Joshua
21 Lamar Forrest? If so, please stand.

22 (No response.)

23 Does anyone have a close social, personal or
24 business relationship with Mr. Forrest? If so, please
25 stand.

SELECTION OF THE JURY

1 No response.

2 Ladies and gentlemen of the jury panel, I'm going
3 to ask if you could to pay very close attention to the
4 witnesses in this case. I'm going to ask you similar
5 questions with regard to marriage, blood relationship,
6 business relationship, personal relationships with any of
7 these potential witnesses. So pay very close attention.

8 Investigator Charles Cain, Aiken County Sheriff's
9 Office. Lieutenant Kevin Liles, Aiken County Sheriff's
10 Office. Lieutenant Clay Adams, Aiken County Sheriff's
11 Office. Investigator Mary Frances O'Grady-Watts, Aiken
12 County Sheriff's Office. Investigator Greg Savell, Aiken
13 County Sheriff's Office.

14 Agent Manuel Ortuno, SLED, State Law Enforcement
15 Division. Agent John Roberts, State Law Enforcement
16 Division. Agent David Black, State Law Enforcement
17 Division. Dr. Janice Ross, Newberry.

18 Latasha Brown of Aiken, South Carolina. Sherry
19 Cade of Aiken, South Carolina. Jonathan Thomas, Aiken
20 South Carolina. Tameka Campbell, Aiken, South Carolina.
21 Taneka Roberson, Columbia, South Carolina. James Forrest,
22 Aiken, South Carolina. Timothy Johnson, Aiken, South
23 Carolina. April Lightsey, Aiken, South Carolina. Tiffany
24 Nicole Grimes of Aiken, South Carolina.

25 Is anyone related by blood or marriage to any of

SELECTION OF THE JURY

1 these witnesses? If so, please stand.

2 (No response.)

3 Does anyone having a close social, personal or
4 business relationship with any of these witnesses? If so
5 please stand.

6 (No response.)

7 Mr. Kodman, I'm going to ask if you could to
8 stand up, identify yourself and members of the solicitor's
9 office.

10 MR. KODMAN: That will be participating in the
11 trial, Judge?

12 THE COURT: Of the entire office, if you could.

13 MR. KODMAN: I'll do my best. I'm Steve Kodman,
14 I'm an assistant solicitor here in Aiken. I'll be trying
15 this case with David Miller who's also an assistant
16 solicitor here in Aiken.

17 Our boss is Strom Thurmond, Jr. He's the elected
18 solicitor. Deputy Solicitor would be Bill Weeks. We have
19 assistant solicitors Beth Ann Young, Brenda Brisbin, Sam
20 Grimes, Evonne Rushton and Rochelle Oldfield are the other
21 prosecutors in our office.

22 THE COURT: I didn't mean for that to be a test.
23 There's a bunch of you.

24 Is anyone related by blood or marriage to any of
25 these lawyers, you have a close social, personal or

SELECTION OF THE JURY

1 business relationship with any of these lawyers, or have
2 you been represented by them in the past? If so, please
3 stand.

4 I don't think Aiken County has part-time
5 solicitors, do they?

6 MR. KODMAN: No, sir. Not in Aiken.

7 THE COURT: Very good. All right. There's no
8 response in that regard.

9 Ms. Stoney, I'm going to ask if you can stand and
10 identify yourself and the members of your firm.

11 MS. STONEY: I'm Sheri Stoney. I'm sole
12 practitioner, so it's a little easier for me.

13 THE COURT: Very good. Is anyone related to
14 Ms. Stoney by blood or marriage, do you have a close
15 social, personal or business relationship? Have you been
16 represented by her in the past or do you have a present
17 case that she is representing you on? If so, please
18 stand.

19 I'm going to ask each of y'all if y'all could
20 come forward. Counsel, you may approach. Your name and
21 number.

22 THE JUROR: Lorenzo Moffett, 94.

23 THE COURT: 94. And your name?

24 THE JUROR: Lorenzo Moffett.

25 THE COURT: Moffett?

SELECTION OF THE JURY

1 THE JUROR: Yes, sir.

2 THE COURT: Are you represented by Ms. Stoney
3 presently?

4 THE JUROR: No.

5 THE COURT: What, did she represent you? How?

6 THE JUROR: She was my divorce attorney.

7 THE COURT: How long ago was that?

8 THE JUROR: '96.

9 THE COURT: All right. So that's been a good
10 while ago. If you serve on this jury --

11 THE DEFENDANT: I take it back. I'm sorry. '06.

12 MS. STONEY: 2006.

13 THE COURT: How old are you, sir? Could you set
14 aside your relationship with Ms. Stoney and give the State
15 and the Defendant a fair and impartial trial?

16 THE JUROR: Yes, sir

17 THE COURT: Could you base it on the fact or the
18 evidence that is presented in this case and give both the
19 State and the Defendant a fair and impartial trial?

20 THE JUROR: Yes, sir.

21 THE COURT: Would you give more weight to
22 anything Ms. Stoney had to say as opposed to Mr. Kodman?

23 THE JUROR: No, sir.

24 THE COURT: You're qualified to serve. Thank
25 you.

SELECTION OF THE JURY

1 THE JUROR: Ashley Wright, juror number two.

2 THE COURT: What did Ms. Stoney do for you?

3 THE JUROR: (Conferring with Judge.)

4 THE COURT: If called upon to serve on this jury,
5 could you base your decision on the evidence or lack of
6 evidence that comes forth in this trial and give both the
7 State and the Defendant a fair and impartial trial?

8 THE JUROR: Yes.

9 THE COURT: Do you feel as though the
10 relationship with Ms. Stoney would give you or cause you
11 to give greater weight to anything she might say as
12 opposed to what the solicitors might say?

13 THE JUROR: No.

14 THE COURT: All right. You're qualified to
15 serve. Thank you.

16 Has any member of the jury panel formed or
17 expressed an opinion about any issue or matter involved in
18 this case? If so, please stand.

19 No response.

20 Is any member of the jury panel aware of any bias
21 or prejudice towards either the State or the Defendant in
22 this case? If so, please stand.

23 No response.

24 Is there any member of the jury panel that was a
25 member of the grand jury which issued the indictment in

SELECTION OF THE JURY

1 this case? If so, please stand.

2 No response.

3 Is there any member of the jury panel a former
4 law enforcement officer or have a family member who is a
5 law enforcement officer or former law enforcement
6 officer? If so, please stand.

7 If y'all could come forward, please.

8 THE JUROR: 164.

9 THE COURT: Juror 164. Let's kind of lean this
10 way so the court reporter can hear.

11 THE JUROR: My stepfather of 35 years was chief
12 of police for 14 years.

13 THE COURT: Let me ask you this: This is a very
14 important question. If called upon to serve on this jury,
15 could you give both the State and the Defendant a fair and
16 impartial trial and base your decision, your deliberation
17 process, on the evidence that comes forth in this trial
18 and perhaps lack of evidence and give both sides a fair
19 trial?

20 THE JUROR: I believe so.

21 THE COURT: Okay. Polite conversation quite
22 often qualifies things that we say. These are matters
23 where we have to deal in absolutes. My question to you
24 which requires a yes or no answer, can you give both the
25 State and the Defendant a fair and impartial trial?

SELECTION OF THE JURY

1 THE JUROR: Yes.

2 THE COURT: All right. Have you in fact -- the
3 fact that you were once related by marriage to a member
4 who's involved in law enforcement, would you give greater
5 weight to the testimony of a law enforcement officer just
6 by virtue of the fact they were a law enforcement officer
7 or would you listen to all the facts and circumstances?

8 THE JUROR: I'd listen to everything.

9 THE COURT: Very good. You're qualified to
10 serve. Thank you.

11 THE JUROR: Your Honor, I have a brother-in-law
12 who's a lieutenant in Connecticut, Highway Patrol.

13 THE COURT: State your name for the record.

14 THE JUROR: Alan Eckmyre, juror 155.

15 THE COURT: Very good. And any other members of
16 your family involved?

17 THE JUROR: No, just James.

18 THE COURT: Okay. If called upon to serve on
19 this jury, could you give set aside the fact that you have
20 a relative who's involved in law enforcement and listen to
21 the evidence as presented in this case or perhaps lack of
22 evidence, and the law as I charge it to you and give both
23 the State and the Defendant a fair and impartial trial?

24 THE JUROR: I would to the best of my ability,
25 yes.

SELECTION OF THE JURY

1 THE COURT: We always qualify what we say but in
2 these matters we have to deal in absolutes. My question
3 to you is: Could you give both the State and the
4 Defendant a fair and impartial trial?

5 THE JUROR: Your Honor, I'm predisposed to one
6 side to the other, to be honest about that.

7 THE COURT: And what would that be?

8 THE JUROR: I'm predisposed to the fact that the
9 grand jury brought the indictment and so I would not be a
10 fair representative for that.

11 THE COURT: All right. Thank you so much for
12 your honesty. What we're going to do is transfer you to a
13 civil term of court.

14 We're going to transfer this particular juror to
15 a civil term of court. And will he receive notice of
16 that, madam clerk?

17 THE CLERK: Yes, sir.

18 THE COURT: Very good. And your juror number
19 again?

20 THE JUROR: 155.

21 THE COURT: Juror number 155, civil term of
22 court.

23 THE JUROR: Thank you, Your Honor.

24 THE COURT: Ashley. Right?

25 THE JUROR: Ashley Wright, juror number two. My

SELECTION OF THE JURY

1 father-in-law's in law enforcement.

2 THE COURT: Okay. This is a very important
3 question I'm going to ask you: If called upon to serve on
4 this jury, could you listen to the evidence in this case
5 or lack of evidence and listen to the law as I charge it
6 to you and be fair to both the State and the Defendant,
7 give both a fair and impartial trial?

8 THE JUROR: I do.

9 THE COURT: You're qualified to serve. Thank
10 you.

11 THE JUROR: Juror number 142, Kim Weaver.

12 THE COURT: Juror number 142.

13 THE JUROR: My uncle Tommy is a retired police
14 officer.

15 THE COURT: Okay.

16 THE JUROR: And also I don't know if this would
17 count, but my fiancée works at the Aiken County Detention
18 center as a deputy.

19 THE COURT: All right. If called upon to serve
20 in this jury, could you listen to the evidence as
21 presented in this case or perhaps lack of evidence and the
22 law as I charge it to you, and give both the State and the
23 Defendant a fair and impartial trial?

24 THE JUROR: Yes, sir.

25 THE COURT: All right. You're qualified to

SELECTION OF THE JURY

1 serve.

2 THE JUROR: Thank you.

3 THE COURT: Yes, sir. Your full name?

4 THE JUROR: Leslie John Finn, number 40.

5 THE COURT: Juror number 40, Mr. Finn.

6 THE JUROR: Yes, sir. My father-in-law is a
7 chief of police in New Jersey. My brother-in-law is on
8 the police department, same department.

9 THE COURT: Very good.

10 THE JUROR: I also have two relatives shot in the
11 line of duty.

12 THE COURT: If called upon to serve on this jury,
13 could you listen to the evidence or the lack of evidence
14 perhaps as presented in this case, the law as I charge it
15 to you, and give both the State and the Defendant a fair
16 and impartial trial?

17 THE JUROR: Yes. Sure.

18 THE COURT: You're qualified to serve. Thank
19 you.

20 THE JUROR: Okay.

21 THE JUROR: Jan Wilson, 168.

22 THE COURT: Juror number 168, Ms. Wilson.

23 THE JUROR: I have a nephew by marriage on the
24 sheriff's department.

25 THE COURT: If called upon to serve on this jury,

SELECTION OF THE JURY

1 could you listen to the evidence that's presented in this
2 case or perhaps the lack of evidence, the law as I charge
3 it to you, and give both the State and the Defendant a
4 fair and impartial trial?

5 THE JUROR: Yes.

6 THE COURT: You're qualified to serve. Thank
7 you.

8 THE JUROR: 149. I have a relative who's in law
9 enforcement in Columbia County.

10 THE COURT: Columbia County? Is that Georgia?

11 THE JUROR: Yeah.

12 THE COURT: That actually is a county? Okay. If
13 called upon to serve on this jury, could you listen to the
14 evidence as presented in this case, perhaps lack of
15 evidence and the law as I charge it to you, and give both
16 the State and the Defendant a fair and impartial trial?

17 THE JUROR: Yeah.

18 THE COURT: You're qualified to serve. Your name
19 and number?

20 THE JUROR: Jerry Lott, juror 76.

21 THE COURT: Juror 76.

22 THE JUROR: I'm kin to Clay Adams, through
23 marriage, my wife's side.

24 THE COURT: Do you have a close social or
25 personal relationship with him?

SELECTION OF THE JURY

1 THE JUROR: No. Family gatherings and stuff like
2 that.

3 THE COURT: No blood relationship?

4 THE JUROR: No.

5 MR. KODMAN: Through your wife?

6 THE JUROR: Yeah, through my wife's side.

7 THE COURT: In view of that, I'm going to excuse
8 you for the purpose of this trial. I'm not going to
9 transfer you, I'm just going to allow you to sit in the
10 jury pool. He's going to be excused for the purpose of
11 this trial only and allow you to continue to serve out
12 there. And after we select the jury stand up as we direct
13 you in regard to your future jury selection. Good luck to
14 you.

15 THE JUROR: Okay. Thank you.

16 THE COURT: Is any member of the jury panel who
17 is a contributor to any law enforcement, any organizations
18 whose primary concern is law enforcement? There are a
19 number of these type organizations. I would imagine just
20 about every sheriff's department in the state has an
21 organization that supports law enforcement. There are
22 things such as Mothers Against Drunk Driving, Students
23 Against Drunk Driving, Citizens Against Violent Crime.
24 There are a number of different organizations that are out
25 there to promote law enforcement.

SELECTION OF THE JURY

1 Is there any member of the jury panel who is a
2 member or contributor to any of these type organizations?
3 If so, please stand.

4 Yes, ma'am. If y'all could come forward. Yes,
5 ma'am, your name and number?

6 THE JUROR: Florence Graham, 156.

7 THE COURT: Juror number 156, Ms. Graham.

8 THE JUROR: I am the Aiken County lady for MADD.

9 THE COURT: Okay. This case does not involve,
10 does not involve driving under the influence. If called
11 upon to serve on this case, would you give both the State
12 and the Defendant a fair and impartial trial?

13 THE JUROR: (Nods head). I could.

14 THE COURT: Okay. All right. And the fact that
15 you are involved in an organization that, it's primarily
16 for the promotion of law enforcement, do you feel as
17 though you would give greater weight to anything a law
18 enforcement officer might say just by virtue of the fact
19 that they're law enforcement officer or would you listen
20 to all the facts and circumstances in the case?

21 THE JUROR: I'd listen to all of them.

22 THE COURT: All right. You're qualified to
23 serve. Thank you very much.

24 THE JUROR: Juror 41.

25 THE COURT: Juror 41.

SELECTION OF THE JURY

1 THE JUROR: Uh-huh.

2 THE COURT: Your last name?

3 THE JUROR: Lisa Brown.

4 THE COURT: Ms. Brown. Ms. Brown, Juror 41.

5 THE JUROR: My daughter and I have (conferring
6 with Judge)...

7 THE COURT: Very good. Now one thing you need to
8 understand, you've heard the charges. This case does not
9 involve drinking and driving. If called upon to serve on
10 this jury, could you give both the State and the Defendant
11 a fair and impartial trial?

12 THE JUROR: I think so.

13 THE COURT: All right. Polite conversation we
14 always tend to qualify what was said. Something has to do
15 with these are matters, we have to deal in absolutes and
16 with requires a yes or no answer.

17 If called upon to serve on this jury, can you
18 base your decision on evidence that's presented in this
19 case or the lack of evidence and the law as I charge it to
20 you?

21 THE JUROR: Yes, sir.

22 THE COURT: You're qualified to serve. Thank
23 you.

24 Does any member of the jury panel know of any
25 reason whatsoever why you could not serve as a juror in

SELECTION OF THE JURY

1 this case with particular emphasis being placed on your
2 ability to be fair and impartial to both the State and the
3 Defendant in this case? If so, please stand.

4 No response.

5 Any additional questions from the State?

6 MR. KODMAN: None from the State, Your Honor.

7 THE COURT: Any additional questions from the
8 defense?

9 MS. STONEY: No, Your Honor.

10 THE COURT: We will begin the jury selection
11 process. Strikes are five and ten. Five and ten. We're
12 going to select two alternates and the strikes with regard
13 to alternates are one and two.

14 Ladies and gentlemen of the jury, many of you
15 have probably served in the court of common pleas which is
16 a civil, which involves civil matters, monetary disputes.
17 And the jury is selected different. It's a struck system
18 where you're just called from a list.

19 But in criminal court it's done differently. The
20 clerk is going to call your name, going to ask that you
21 come forward and stand right in between the two chairs,
22 turn around and face the State's table and the defense
23 table. And they will pass on you with regard to whether
24 or not you're to be seated on the jury.

25 Madam clerk?

SELECTION OF THE JURY

1 THE CLERK: Juror number 42, John Folk (white
2 male). What says the State?

3 MR. KODMAN: Please present Mr. Folk.

4 THE CLERK: What says the defense?

5 MS. STONEY: Please present Mr. Folk.

6 THE CLERK: You may have a seat in the jury box
7 to the left.

8 Juror number 50, George Grieve (white male).
9 What says the State?

10 MR. KODMAN: Please present Mr. Grieve.

11 THE CLERK: What says the defense?

12 MS. STONEY: Please present Mr. Grieve.

13 THE CLERK: You may have a seat in the jury box
14 to the left.

15 Juror number 119, Gregory Robinson (black male).
16 What says the State?

17 MR. KODMAN: Please present Mr. Robinson.

18 THE CLERK: What says the defense?

19 MS. STONEY: Please present this juror.

20 THE CLERK: You may have a seat in the jury box
21 to the left.

22 Juror number 16, Syderis Burkett (white female).
23 What says the State?

24 MR. KODMAN: Please present Ms. Burkett.

25 THE CLERK: What says the defense?

SELECTION OF THE JURY

1 MS. STONEY: Please excuse this juror.

2 THE CLERK: You may return to your seat.

3 Juror number Four, Natalie Askew (white female).

4 What says the State?

5 MR. KODMAN: Please present Ms. Askew.

6 THE CLERK: What says the defense?

7 MS. STONEY: Please present this juror.

8 THE CLERK: You may have a seat in the jury box
9 to the left.

10 THE BAILIFF: Ma'am?

11 THE JUROR: I need to get my purse.

12 THE BAILIFF: Okay.

13 THE CLERK: Juror 145, Juanicka Wideman (black
14 female). What says the State?

15 MR. KODMAN: Please excuse Ms. Wideman from this
16 case.

17 THE CLERK: You may return to your seat.

18 Juror number 41, Lisa Brown (white female). What
19 says the State?

20 MR. KODMAN: Please present Ms. Brown.

21 THE CLERK: What says the defense?

22 MS. STONEY: Please excuse this juror.

23 THE CLERK: You may return to your seat.

24 Juror number 139, Helen Vaughan (white female).

25 What says the State?

SELECTION OF THE JURY

1 THE JUROR: Pardon?

2 MR. KODMAN: Please present the juror.

3 THE CLERK: What says the defense?

4 MS. STONEY: Please excuse this juror.

5 THE CLERK: You may return to your seat.

6 Juror number 152, Kelly Brunson (white female).

7 What says the State?

8 MR. KODMAN: Please excuse Ms. Brunson.

9 THE CLERK: You may return to your seat.

10 The State has exhausted two strikes, the defense
11 three.

12 Juror number 158, Candice Hartley Ortiz (white
13 female). What says the State?

14 MR. KODMAN: Please present Ms. Ortiz.

15 THE CLERK: What says the defense?

16 MS. STONEY: Please present this juror.

17 THE CLERK: You may have a seat in the jury box
18 to the left.

19 Juror number 10, Ronald Berkshire (white male).

20 What says the State?

21 MR. KODMAN: Please present Mr. Berkshire.

22 THE CLERK: What says the defense?

23 MS. STONEY: Please excuse this juror.

24 THE CLERK: You may return to your seat.

25 Juror number 151, Cody Brecht (white male). What

SELECTION OF THE JURY

1 says the State?

2 MR. KODMAN: Please present Mr. Brecht.

3 THE CLERK: What says the defense?

4 MS. STONEY: Please present this juror.

5 THE CLERK: You may have a seat in the jury box
6 to the left.

7 Juror number 91, April Miller (white female).

8 What says the State?

9 MR. KODMAN: Please present Ms. Miller.

10 THE CLERK: What says the defense?

11 MS. STONEY: Please excuse this juror.

12 THE CLERK: You may return to your seat.

13 Juror number 143, Scottie Weeks (white male).

14 What says the State?

15 MR. KODMAN: Please present Mr. Weeks.

16 THE CLERK: What says the defense?

17 MS. STONEY: Please present this juror.

18 THE CLERK: You may have a seat in the jury box
19 to the left.

20 Juror number 104, Annette Paige (black female).

21 What says the State?

22 MR. KODMAN: Please present Ms. Paige.

23 THE CLERK: What says the defense?

24 MS. STONEY: Please present this juror.

25 THE CLERK: You may have a seat in the jury box

SELECTION OF THE JURY

1 to the left.

2 Juror number 163, Gary Pace (white male). What
3 says the State?

4 MR. KODMAN: Please present Mr. Pace.

5 THE CLERK: What says the defense?

6 MS. STONEY: Please present this juror.

7 THE CLERK: You may have a seat in the jury box
8 to the left.

9 Juror number 78, Steven Mackey (white male).
10 What says the State?

11 MR. KODMAN: Please present Mr. Mackey.

12 THE CLERK: What says the defense?

13 MS. STONEY: Please present this juror.

14 THE CLERK: You may have a seat in the jury box
15 to the left.

16 Juror number one, Paul Adams (black male). What
17 says the State?

18 MR. KODMAN: Please excuse Mr. Adams from this
19 case.

20 THE CLERK: You may return to your seat.

21 The State has exhausted three strikes, the
22 defense five.

23 Juror number 165, Benjamin Russell (white male).
24 What says the State?

25 MR. KODMAN: Please present Mr. Russell.

SELECTION OF THE JURY

1 THE CLERK: What says the defense?

2 MS. STONEY: Please present this juror.

3 THE CLERK: You may have a seat in the jury box
4 to the left.

5 Juror number 137, Melba Thompson (white female).
6 What says the State?

7 MR. KODMAN: Please present Ms. Thompson.

8 THE CLERK: What says the defense?

9 MS. STONEY: Please excuse this juror.

10 THE CLERK: You may return to your seat.

11 Juror number six, Anthony Back (black male).

12 THE COURT: What number was that? I'm sorry.

13 THE CLERK: Six. What says the State?

14 MR. KODMAN: Please excuse Mr. Back from this
15 case.

16 THE CLERK: You may return to your seat.

17 Juror number 58, Steven Higdon (white male).

18 What says the State?

19 MR. KODMAN: Please present Mr. Higdon.

20 THE CLERK: What says the defense?

21 MS. STONEY: Please present Mr. Higdon.

22 THE CLERK: You may have a seat in the jury box
23 to the left.

24 Alternate number one, juror number 57, Vera Heath
25 (black female). What says the State?

1 MR. KODMAN: Please excuse Ms. Heath.

2 THE CLERK: You may return to your seat.

3 Juror number two, Ashley Anderson Wright (white
4 female). What says the State?

5 MR. KODMAN: Please present Ms. Wright.

6 THE CLERK: What says the defense?

7 MS. STONEY: Please present Ms. Wright.

8 THE COURT: You may have a seat in the jury box
9 to the left.

10 Alternate number two, juror number 113, Jordan
11 Rapp (white female). What says the State?

12 MR. KODMAN: Please present Ms. Rapp.

13 THE CLERK: What says the defense?

14 MS. STONEY: Please excuse this juror.

15 THE CLERK: You may return to your seat.

16 Juror number 35, Kerri Dean (white female). What
17 says the State?

18 MR. KODMAN: Please present the juror.

19 THE CLERK: What says the defense?

20 MS. STONEY: Please present this juror.

21 THE CLERK: You may have a seat in the jury box
22 to the left.

23 (Off-the-record discussion.)

24 THE COURT: Ladies and gentlemen, we're going to
25 excuse the balance of the jury panel. The clerk informs

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 me that y'all have already been given a number to call
2 back. We'd ask that you call back after six o'clock this
3 afternoon and follow the instructions that are left on the
4 answering machine.

5 Thank you so much for your service. You're free
6 leave at this time. Thank you.

7 (Jury panel exits courtroom at 11:40 a.m.)

8 THE COURT: Ladies and gentlemen of the jury
9 panel, I'm going to ask if you could to stand as the clerk
10 administers your oath.

11 (Jury impaneled.)

12 THE CLERK: You may be seated.

13 THE COURT: Ladies and gentlemen of the jury
14 panel, you have taken a very solemn oath to well and truly
15 try this case. I'm certain that you're going to do that.
16 These are important matters and we're going to ask that
17 you proceed forward with a serious mind.

18 Mr. Weeks, I'm going to ask that you serve as the
19 foreman of this jury. I'm going to ask if you could to
20 change chairs with this gentleman right here. And I'm
21 going to ask the alternates to stay in those two chairs
22 the entire time. I'm going to ask that the foreman remain
23 in that chair the entire time. The rest of you are sort
24 of like general admission, just come and file in as you go
25 through, as you come out of the jury room.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 Logistically, it would probably be best if the
2 alternates and the foreman would be the last ones to exit
3 the jury room. So you'll come in and file in a natural
4 fashion.

5 Mr. Weeks, you are the foreman of this jury. And
6 you, like everyone else, at the conclusion of the case are
7 going to have one vote with regard to the deliberation
8 process.

9 But you're going to have additional duties. One
10 of which is you're going to be required to preside over
11 the jury deliberations. That simply means that you're to
12 ensure that everybody's voice is heard.

13 In addition to that, you're going to have the
14 duty of communicating any concerns that the jury might
15 have throughout the trial of this case. Even through the
16 deliberation process if there are questions that come up,
17 I'm going to ask that y'all relate those to the foreman,
18 he'll reduce it to writing, give it to the bailiff and
19 we'll address those if we can.

20 Throughout the trial of this case, I'm going to
21 ask that you not take notes. This is a very important
22 case and there's some legal matters that we need to tend
23 to before we begin the trial of this case. I'm going to
24 sort of give you an overview of what to expect here
25 momentarily. We have to take care of these legal

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 matters. I'm going to ask that you not begin
2 deliberations. You've heard nothing about this case other
3 than the mere allegation of criminal activity. You don't
4 know anything about it.

5 Mr. Foreman, I'm going to ask that you enforce
6 that rule when you're in the jury room now and throughout
7 the trial of this case. There shall be no discussion
8 about this case, anything about the case, anything about
9 the lawyers, anything about the evidence. You can talk
10 about anything you want to talk about, but you cannot talk
11 about the case or anything about the case throughout the
12 trial of the case.

13 At the conclusion of the case, once you've heard
14 all of the evidence and the law as I charge it to you,
15 then you can, I'll give you instructions as to when to
16 begin deliberations. Do not do so until that time.

17 Mr. Foreman, I'm going to ask if you could to
18 take your jury to the jury room at this time. Thank you
19 very much.

20 (Jury exits courtroom at 11:45 a.m.)

21 THE COURT: I understand we have counsel from
22 attorney general's office that needs to put something on
23 the record. I'm going to ask perhaps if the counsel in
24 this case have a seat on the second row.

25 (Thereupon, another matter was heard by the

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 Court.)

2 THE COURT: All right. Ready for the jury?

3 (Jury enters courtroom at 12 o'clock noon).

4 THE COURT: I see we've got some Baptists on the
5 jury panel. Some of them want to sit in the same spot
6 every time.

7 I'll reiterate, the alternates stay in those two
8 seats, the foreman in this seat, everybody else can file
9 in regardless of where you end up.

10 Ladies and gentlemen of the jury, this is a very
11 important case. This is an important case to the State of
12 South Carolina. It's an important case to Joshua Lamar
13 Forrest.

14 As I indicated to you in the jury selection
15 process, Joshua Lamar Forrest has been indicted and
16 accused of murder and the accompanying charge of
17 possession of a firearm during the commission of a violent
18 crime.

19 I hold in my hand the indictments. They're just
20 essentially pieces of paper that bring it in and start the
21 accusation process. I reiterate, once again, that Joshua
22 Lamar Forrest as he sits over there at defense table, he's
23 presumed to be just as innocent as me or you. That's the
24 frame of reference that our constitution requires that we
25 start from.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 You take a very solemn oath. That's a very
2 important substantive right that all of us have as
3 American citizens. Joshua Lamar Forrest has pled not
4 guilty to these indictments. And when that happens
5 certain constitutional safeguards come into play. One of
6 which as I've already mentioned is the presumption of
7 innocence. The second one is that the State has the
8 burden of proving each and every element of murder and
9 possession of a firearm during the commission of a violent
10 crime.

11 There's a reason behind that, because we live in
12 a free and democratic society. And the State has the
13 resources to investigate allegations of crimes. They have
14 the resources, the personnel to do that. And in addition
15 to that, we all in our everyday lives, we've been accused
16 of things and it's absolutely impossible to prove your
17 innocence.

18 The United States of America and our judicial
19 system, the Defendant doesn't have to prove a thing,
20 doesn't need to testify, doesn't need to offer any
21 evidence because quite often it's impossible to prove
22 one's innocence. In our court system, it doesn't even
23 require that you do that.

24 The third safeguard is that many of you have
25 probably served on civil jury before where the evidence is

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 merely by preponderance of the evidence. If you imagine
2 the scales of justice, if we were here talking about a car
3 wreck and how much money somebody was going to get, the
4 Plaintiff need only prove the liability and the damages by
5 preponderance of the evidence, just tilting the evidence
6 ever so slightly in their favor.

7 The criminal court is different than that because
8 we're talking about a person's liberty. And the State is
9 required to meet the highest burden known to our judicial
10 system which is proof beyond a reasonable doubt. Now,
11 envision that as locking up the scales. You're talking
12 about very important fundamental rights here.

13 Ladies and gentlemen of the jury, you are called
14 upon to be the sole and exclusive triers of the fact.

15 The law doesn't allow me to have an opinion about
16 the facts in the case. That's completely your parameter
17 to do that, within your province to determine what the
18 facts are.

19 In every case there's a discrepancy about the
20 facts or at least the inferences to be drawn from the
21 facts. And you're going to be called upon necessarily in
22 your role as the trier of fact to determine the
23 credibility of witnesses.

24 I'll tell you from the very outset, you need to
25 ask yourself what opportunity this witness had to observe

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 the things to which they're testifying. Ask yourself:
2 Does this witness have any interest or bias; whether or
3 not his testimony or her testimony is corroborated by
4 other evidence or other testimony; whether or not it's
5 contradicted.

6 I'll tell you from the very outset that you can
7 believe one witness over many, many against one. You can
8 believe all of what a witness says, a part of it or none
9 of it.

10 It's completely within your province as the trier
11 of fact in your collective wisdom to determine what the
12 truth is. In addition to that, you can evaluate how a
13 witness acts on the witness stand.

14 You know, any of y'all who are like myself who
15 has teenage children, sometimes it's important to listen
16 to what they say but also it's important to watch how they
17 say it, their demeanor. The law allows you to take that
18 into consideration. So, pay very close attention to the
19 evidence as it comes from the witness stand.

20 I'll tell you that it's very important for you to
21 be mindful of the fact that my job is to be the trier of
22 the law. I determine what evidence you get to hear. I
23 charge you with the law at the conclusion of the case.
24 And if I make a mistake in that regard, it's very easily
25 corrected.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 However, one thing you need to be made aware of
2 is that if there's an error in the findings of fact, quite
3 often that never can be corrected. So this is an
4 important case and you need to pay very close attention to
5 the facts as it comes from the witness stand.

6 We'll start this case by opening statements.
7 Mr. Kodman, Mr. Miller are going to have the opportunity
8 to give an opening statement for the State. The defense
9 will have an opportunity.

10 Now I emphasize an opportunity because they don't
11 have to do anything. They're going to be given an
12 opportunity to give an opening statement if they choose to
13 do so.

14 And then we'll start the trial of the case where
15 evidence is going to be presented before you. And
16 likewise in that process, the State goes first.

17 At the conclusion of their case, once again, the
18 Defendant is going to have an opportunity to go forward.
19 Of course, they aren't required to do anything. They're
20 going to be given an opportunity if they elect to do so.

21 Then we'll proceed forward with the closing
22 arguments. And closing arguments are very similar in form
23 to opening statements. However, they're truly
24 argumentative in nature because at that point in the trial
25 the evidence will have been before you and they can point

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 to the evidence that sort of supports their relative
2 positions.

3 So although what they say in the closing
4 arguments is not evidence, it will be extremely helpful in
5 your deliberation process. So pay very close attention in
6 that regard.

7 Throughout every trial that I've ever
8 participated in as a lawyer or as a Judge, there are going
9 to be objections. You'll hear lawyers stand up and say, I
10 object, I have a matter of law I need to take up with the
11 Court.

12 Those things quite often take place outside of
13 your presence. I want to tell you from the beginning why
14 that is. Because you are the sole and exclusive triers of
15 the fact and I'm the trier of the law, that's my job is to
16 determine what evidence you get to hear. In those
17 objections and in those motions quite often it requires
18 that I comment on the facts. Of course the law doesn't
19 allow you to hear any comments that I might have about the
20 facts because the law doesn't allow me to have an opinion
21 about the facts. So those conversations will take place
22 outside of your presence.

23 At the conclusion of the case, if there's a
24 particular point of law that you have a question about,
25 you want to hear about it, I'll be happy to, if I can

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 remember what it was about to tell you all about it at
2 that time, after a verdict has been rendered. But until
3 that time, it would be inappropriate to do so.

4 At the conclusion of the closing arguments I'll
5 charge you the law. Throughout the trial of this case,
6 once again, Mr. Foreman, I'm going to ask that you enforce
7 the rule that there will be no discussions whatsoever.

8 In addition to that, there are going to be
9 opportunities where we break, we'll break here momentarily
10 to go to lunch, you're going to be released to go back
11 home, go to a restaurant, go to wherever you want to go,
12 and I'm going to tell you that you should not discuss --
13 not should not, but you shall not. I'm going to order
14 that you not discuss this case with anyone.

15 I bet you my bottom dollar that if you go home,
16 your spouse or your significant other, your co-worker is
17 going to say, what's going on in jury duty, what kind of
18 case is going on. I'm going to order and instruct that
19 you not discuss the case. Don't even tell them what type
20 of case it is.

21 The reason for that is they might have some
22 opinion about this type litigation. And you need to base
23 your decision on what transpires here in this courtroom.
24 You are going to be the only 12 people in this entire
25 universe that get to hear the facts as it comes from the

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 witness stand. And that's what you need to base your
2 decision on; the facts as it comes from this witness
3 stand, and the law as I charge it to you.

4 In addition to that, there are going to be
5 opportunities for us to take evening breaks. And I'm
6 going to order and instruct and demand that you not do any
7 independent investigation.

8 I don't believe there's anything in the whole
9 world that you can't look up on the Internet. I'm going
10 to ask that you not do that, whether it deals with any
11 particular type law or anything that you might hear in
12 this case.

13 You need to base your decision on what transpires
14 here in this courtroom. There shall not and will not be
15 in any independent investigation. I'm sure that this
16 matter necessarily has to take place in Aiken County.
17 Some of you might be familiar with where these alleged
18 offenses took place. I'm going to order and instruct that
19 you not go and observe the scene and do any investigation
20 in any way, shape or form.

21 I'm going to ask and demand that y'all not take
22 notes. It's going to be very important for you to listen
23 to the evidence that comes from the witness stand. We're
24 in the position now to proceed forward with opening
25 statements. And the State's recognized.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 MR. KODMAN: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 OPENING STATEMENTS BY THE STATE

4 MR. KODMAN: Ms. Stoney. Mr. Foreman, ladies and
5 gentlemen of the jury.

6 I guess it's good afternoon now. I'm going to
7 echo some sentiments that the Judge said to you earlier
8 where he said this is a serious matter.

9 The Defendant in this case is charged with murder
10 and possession of a weapon during the commission of a
11 violent crime. In the criminal justice system, charges
12 don't get any more serious than that. The Judge said to
13 you earlier and I agree, this is a serious case to the
14 Defendant, Joshua Forrest. It's a serious case to the
15 State. And it's a serious case for the Reddish family,
16 the family of Mario Reddish who lost a brother, a child, a
17 friend, a loved one.

18 So those are the stakes that we're here today
19 about today. Obviously since it's a murder case one of
20 the things we have to talk about is death. And nobody
21 wants to talk about death. That's not a very popular
22 subject to talk about. But you're going to have to hear
23 testimony about that today and you guys at some point as
24 jurors are going to have to go back and deliberate and
25 discuss it as well.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 And the reason we're going to have to talk about
2 death and murder in this case is back on December 4th,
3 2005, Mario Reddish, a young man, had gone to the Elk's
4 Club over off Reynolds Pond on Highway 19. They were
5 having a get-together and party at the club.

6 And eventually outside the club as it was closing
7 down we believe he had a confrontation, as the evidence
8 will show, with the Defendant. And at that time during
9 the confrontation, the Defendant pulled out a handgun,
10 shot the victim, Mario Reddish, twice. One of those
11 bullets fatally wounding Mario Reddish.

12 Now, we as the State, we bear the burden of proof
13 as the Judge told you. We have to present the evidence in
14 this case. And what are we going to present to you in
15 this case? We're going to give you some witnesses who
16 were there that evening. We're going to present to you
17 some, what they call fact witnesses, who went to the Elk's
18 Club that night, who knew both Mario Reddish and Joshua
19 Forrest. And they're going to tell you about what
20 happened that night.

21 We believe the evidence will show that it was a
22 girl there that night named Tameka Campbell who was either
23 the current or ex-girlfriend of the Defendant, Joshua
24 Forrest, and that Joshua Forrest and Tameka Campbell got
25 into a dispute within the club.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 And that at some point the victim in the case,
2 Mario Reddish, maybe with some other folks, maybe by
3 himself, intervened in that confrontation between Joshua
4 Forrest and his either then current or ex-girlfriend,
5 Tameka Campbell.

6 But the club closed and after the club closed
7 everybody went outside to the parking lot where, once
8 again, Mario Reddish came face to face with Joshua
9 Forrest.

10 You're going to hear the witnesses tell you about
11 what was said between the parties, both inside the club
12 and some of the comments that were made outside the club
13 between Joshua Forrest and Mario Reddish. And you're
14 going to hear testimony about Joshua Forrest brandishing a
15 firearm and shooting Mario Reddish twice.

16 Those will be the witnesses we'll produce that
17 were there that evening. Obviously once the shooting
18 occurs the police were called and the Aiken County
19 Sheriff's Department responded in this case.

20 And you're going to hear from some of the
21 investigators who investigated this case. They're going
22 to tell you what they did in terms of their investigation,
23 witnesses they interviewed, evidence they collected and
24 the steps that they've taken.

25 You're also going to hear from some witnesses

OPENING STATEMENTS ON BEHALF OF THE STATE

1 from SLED which is known as the South Carolina Law
2 Enforcement Division. They're located in Columbia but
3 what happens is on most of the evidence they collect, some
4 of the evidence is going to the sheriff's department for
5 processing but a lot of the evidence we collected is sent
6 to SLED where they do the analysis.

7 And so we're going to have some folks from
8 Columbia come and tell you about some of the evidence that
9 was collected, how they analyzed it and what result that
10 came about from that.

11 In addition, finally, you're going to hear from
12 Dr. Janice Ross. She's from Newberry Pathology in
13 Newberry, South Carolina. Her job is to tell you about
14 the cause of death in this case.

15 Now, as the Judge said, we bear the burden of
16 proof in this case. The Defendant is charged with two
17 crimes; he's charged with murder and possession of a
18 weapon during the commission of a violent crime.

19 Murder has three elements. The killing of a
20 person. The killing of a person and the term with malice
21 aforethought. And that sounds complicated but in the law
22 that generally means doing of a wrongful act intentionally
23 and without just cause.

24 And let me also say this to you: The Judge is
25 the judge of the law. At the end of this case he's going

OPENING STATEMENTS ON BEHALF OF THE STATE

1 to give you what's known as the charge. And certainly, if
2 he tells you something about the law that's different than
3 what I say during my opening statement or my closing
4 statement, you take it the way he gives it to you because
5 that's his job. He's the judge of the law. I certainly
6 wouldn't mean to ever say something different than what he
7 might say.

8 In addition to the murder charge, we also have to
9 prove the Defendant was in possession of a weapon during
10 the commission of a violent crime. In South Carolina
11 murder is considered a violent crime. So we're going to
12 ask you at the end of this case if you do find him guilty
13 of murder you also make a determination, did he possess a
14 handgun during the commission of that murder.

15 Now, ladies and gentlemen, I've got three young
16 boys and recently I came home to learn that my oldest son
17 had pushed my youngest son down and he got hurt. And my
18 oldest son was upset because he regretted doing it. My
19 youngest son was upset because he got hurt.

20 I wanted to get to the bottom of it. So what I
21 did was I sat down my ten year old and I sat down my seven
22 year old and I sat down my four year old and talked to
23 them each separately. I sat down with my wife at first
24 because she was there, too, so she could tell me what
25 happened. The neighbor's kid was there, I talked to her.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 Her mother was there and I talked to her.

2 And it should come as no surprise that I didn't
3 get the exact same story from any one of them. But there
4 was two things that they all said that were in common.
5 They all said my ten year old pushed my four year old down
6 and my four year old got hurt.

7 And I tell you that to tell you this: In this
8 case there may be some discrepancies in what some of the
9 witnesses say as to what happened. I also submit to you
10 that the two consistent themes that you will hear from all
11 the witnesses in this case is that Joshua Forrest was the
12 only person who fired a handgun and he fired that handgun
13 at Mario Reddish and that Mario Reddish died as a result
14 thereof.

15 Now we all have roles to play in this court
16 process. As the Judge told you at the beginning, you're
17 what's known as the judge of the facts. You decide what
18 happened in the case. And you do that by listening to the
19 testimony.

20 The Judge, he's the judge of the law. At the end
21 of the case he's going to give you what's known as a
22 charge. He's going to say, you take the facts as you find
23 them and apply it to the law as I give it to you. I'm
24 confident that in this case at the end of the case when
25 you take the facts as you find and apply it to the law as

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 the Judge is going to give you, that you're going to find
2 that Joshua Forrest is guilty of both murder and
3 possession of a weapon during the commission of a violent
4 crime.

5 THE COURT: Ms. Stoney, you're, recognized.

6 MS. STONEY: Thank you, Judge. If it please the
7 Court.

8 THE COURT: Yes, ma'am.

9 OPENING STATEMENTS BY THE DEFENSE

10 MS. STONEY: Mr. Miller and Mr. Kodman. Ladies
11 and gentlemen of the jury. I'm bringing my notes because
12 I need them. I'm getting to the age where I have to have
13 my notes, otherwise it's not going to work.

14 I want to thank you for serving. I know y'all
15 have different places to be. You probably would rather be
16 about a million different places than right here, but we
17 really do need you to be here because this is very
18 important to both sides of the case. We have to have
19 people that are willing to serve, otherwise our system
20 just doesn't work.

21 The incident that occurred on December 4th of
22 '05, you're going to hear very different versions about it
23 today. One thing that's clear is that there was a party
24 at the Elk's Club. There were a lot of people there,
25 between 50 and a hundred, I believe, is the number that

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 people are throwing around.

2 And during that time my client did go. And he
3 was drinking. Everybody else was drinking. He got into
4 an argument with an old girlfriend. She's known as Tameka
5 Bussey and also as Tameka Campbell. And they were arguing
6 over, apparently, a hat.

7 Actually Ms. Campbell snatched a hat off
8 Mr. Joshua's head, and she was angry at him. I have no
9 idea why they got into an argument. He went to retrieve
10 his hat and she pushed him and threw a drink in his face.
11 And he backed away and at that time Mr. Reddish, who
12 happened to be a friend of Ms. Bussey's, and also a friend
13 of his, Jonathan Thomas, started at Joshua, my client.

14 And they got into an altercation. My client
15 tried to get away, was not able to do so. They argued
16 inside and then they went outside to argue. At this time
17 the club was closing. There were several people that were
18 leaving. Apparently there were still at least 50 people
19 in the parking lot.

20 Everyone agrees the parking lot was dark.
21 Everyone agrees that it was very difficult to see what was
22 going on, but there was a physical altercation between
23 Mr. Reddish and my client, Joshua.

24 During that time you'll hear a statement that my
25 client ended up in a bear hug with Mr. Reddish. And at

1 that time he heard shots ring out and Mr. Reddish falls to
2 the ground.

3 Now you'll hear the witnesses talk about hearing
4 shots. Some of them heard two, some of them heard four.
5 They're not really sure how many shots were fired, but
6 it's clear that Mr. Reddish did end up dead at this time
7 and my client had been in an altercation with him. But it
8 is not at all clear that my client was the one who shot
9 him.

10 My client fled the scene along with just about
11 everybody else there. You hear shots fired, everybody's
12 running. It's -- some of the witnesses say he left in a
13 white car. Some of the witnesses say he left in a dark
14 car, maybe dark blue, possibly black. So they're not
15 really sure. So apparently it was really dark at this
16 parking lot.

17 After you listen to the evidence and after
18 hearing not only the evidence against my client but also
19 the lack of evidence against my client, I think you'll
20 return a verdict of not guilty.

21 THE COURT: Might counsel approach the bench for
22 one moment?

23 (Off-the-record discussion).

24 THE COURT: State is recognized. You may call
25 your first witness.

LATASHA BROWN - DIRECT

1 MR. KODMAN: Thank you, Your Honor. State calls
2 Latasha Brown.

3 LATASHA BROWN, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Have a seat in the witness box.
6 State your full name for the Court, spelling your last.

7 THE COURT: Have a seat in the witness chair
8 right up here. Watch your step. Pull up real close to
9 that microphone. I want you to speak loudly, clearly and
10 slowly. These are important matters and everybody in the
11 jury has to hear what you've got to say.

12 So speak loudly so the gentleman on the very end
13 can hear what you've got say. And state your full name
14 for the record.

15 THE WITNESS: My name is Latasha Brown,
16 B-R-O-W-N.

17 DIRECT EXAMINATION

18 BY MR. KODMAN:

19 Q. And, Latasha, how old are you?

20 A. Thirty-one.

21 Q. And where are you from?

22 A. Aiken.

23 Q. How long have you lived in Aiken?

24 A. All my life.

25 Q. Do you know the Defendant, Joshua Forrest?

LATASHA BROWN - DIRECT

1 A. Yes.

2 Q. How long have you known him?

3 A. Just, like, a couple of years.

4 Q. Did you know him back in December of 2005?

5 A. Yes.

6 Q. Do you know who Mario Reddish was?

7 A. Yes.

8 Q. How did you know Mario Reddish?

9 A. He was a friend.

10 Q. How long prior to December of 2005 had you known

11 Mario?

12 A. Maybe, like, eight years, something like that.

13 Q. And do you remember going to the Elk's Club on the
14 evening of December 3rd, early morning hours of December
15 4th, 2005?

16 A. Yes.

17 Q. Who did you go there with?

18 A. I went with my friends; Sherry, Tina, April, Wendy.

19 Q. When you say first names, can you give us the full
20 names? You went there with Sherry?

21 A. Sherry Cade, Wendy Cade, Tina Padgett and April
22 Lightsey.

23 Q. Where had y'all been before you went to the club?

24 A. At Sherry house. Sherry Cade.

25 Q. Were you drinking that evening?

LATASHA BROWN - DIRECT

- 1 A. No.
- 2 Q. Do you drink?
- 3 A. No.
- 4 Q. How did y'all get to the club?
- 5 A. I drove us to the club.
- 6 Q. What kind of vehicle did you have back then?
- 7 A. A Honda Civic.
- 8 Q. About what time was it when you arrived at the club?
- 9 A. About 11.
- 10 Q. How long did you stay at the club that night?
- 11 A. We stayed until the closing of the club.
- 12 Q. Do you remember approximately what time that was?
- 13 A. Like two or 2:30.
- 14 Q. And do you remember anything unusual happening in the
- 15 club that night involving the Defendant, Joshua Forrest?
- 16 A. Yes.
- 17 Q. Tell the jury what you saw.
- 18 A. Him and Tameka Campbell was having, like, a argument
- 19 in the back of the club. And then it turned physical. He
- 20 had, like, pinned her against the wall, whatever. He had
- 21 pinned her to the back door of the club.
- 22 Q. Could you hear what they were arguing about?
- 23 A. A hat and some shoes.
- 24 Q. A hat and some shoes?
- 25 A. Uh-huh.

LATASHA BROWN - DIRECT

1 Q. You need to speak up just a little bit.

2 A. Okay.

3 Q. Describe what you saw happen next.

4 A. After they was arguing, he had her pinned against the
5 back door, Mario and Jonathan had came over.

6 Q. When you say Mario and Jonathan, let's talk about who
7 they are. Mario?

8 A. Mario Reddish and Jonathan Thomas. They had came over
9 to where the back door at. And then at that time Joshua
10 had pinned, he had choked Joenade (phonetically) against
11 the wall, too. And then all of us just left out the club.

12 Q. Could you repeat that? He had choked who against the
13 wall?

14 A. Jonathan Thomas.

15 Q. Now, you said Tameka Campbell. Do you know Tameka
16 Campbell?

17 A. Yes.

18 Q. Do your knowledge what was the relationship between
19 Tameka Campbell and the Defendant, Joshua Forrest?

20 A. They was ex-girlfriend and boyfriends.

21 Q. How did -- how did this thing end inside the club?

22 A. Everybody just walked out the club after that.
23 Everybody just start walking to the parking lot.

24 Q. Why was everybody leaving the club at that time?

25 A. The club was over. The D.J. had announced that the

LATASHA BROWN - DIRECT

1 club was over.

2 Q. And where did you go when you walked outside and left
3 the club?

4 A. I went to the parking lot, to my car.

5 Q. To your car?

6 A. Uh-huh.

7 Q. And do you remember anything happening involving the
8 Defendant outside the club near the cars?

9 A. Yes. Well, it was, like, some commotion going on in
10 the back, but I don't know what was going on. But I just
11 heard a shot fired in the air and then I heard Mr. Forrest
12 say that Mario wasn't going to leave from here tonight.

13 Q. Who was he talking to when he said that?

14 A. He was talking to Mario.

15 Q. Where were they located at?

16 A. They was behind my vehicle.

17 Q. As this is going on between Joshua Forrest and Mario
18 Reddish, how close to them were you?

19 A. Like, maybe five feet away.

20 Q. (Walking toward witness stand.)

21 A. A little further back.

22 Q. A little further?

23 A. Right there. About right there. Yes.

24 Q. And you said you heard a shot. Did you see who fired
25 that shot?

LATASHA BROWN - DIRECT

1 A. Not, not the shot that went in the air, whatever. I
2 didn't see that.

3 Q. What did you see next?

4 A. Then I seen Mario walk back towards the club. He was
5 walking back towards the club and then for some reason he
6 turned around and walked back and when he walked back he
7 punched -- Mr. Forrest start walking towards him and when
8 they met, Mario punched him in the face and then they had
9 locked up.

10 Q. When you say they locked up, what do you mean by that?

11 A. They was like, like in a bear hug. They had locked
12 up.

13 Q. Okay. And what happened next?

14 A. Then after that I seen Mr. Forrest pull a gun from
15 his, like, waist area, right here. And then I heard two
16 shots fired and Mario had hit the ground.

17 Q. Did you see him with a gun?

18 A. Yes.

19 Q. Can you describe it?

20 A. It was black.

21 Q. How many shots did you hear?

22 A. Two.

23 Q. After Mario hit the ground, what did the Defendant do?

24 A. He got in the car and left.

25 Q. Do you remember who he got -- who he went with or

LATASHA BROWN - DIRECT

1 anything about it?

2 A. No.

3 Q. And what did you do after the shooting happened?

4 A. I just started screaming and looking for my keys
5 because I couldn't find my keys.

6 Q. What happened? Was Mario moving at all after that?

7 A. No, he wasn't moving.

8 Q. And what happened next?

9 A. Then some, some guys picked Mario up off the ground
10 and they put him in the car. And then I got, got my keys
11 and I got in the car and I put on my blinkers and we
12 followed the car to the hospital.

13 Q. And other than the Defendant when he was locked up
14 with Mario, was there anybody else close to the two of
15 them when the shooting occurred?

16 A. No.

17 Q. And at any time during the altercation between Mario
18 and Joshua in the parking lot, was anybody ever standing
19 in between you and them?

20 A. No.

21 Q. The person that you say shot Mario Reddish, do you see
22 him here in the courtroom today?

23 A. Yes.

24 Q. Could you point him out for the jury?

25 A. Right there (pointing).

LATASHA BROWN - CROSS

1 Q. And what's he wearing?

2 A. A white shirt with a gray and black tie.

3 MR. KODMAN: Your Honor, let the record reflect
4 the witness has identified the Defendant. Please answer
5 any questions Ms. Stoney has for you.

6 THE WITNESS: Uh-huh.

7 THE COURT: Ms. Stoney, you're recognized.
8 Cross-examination.

9 CROSS-EXAMINATION

10 BY MS. STONEY:

11 Q. Ms. Brown, you say that my client was arguing with
12 Tameka Campbell and he pinned her against the wall?

13 A. Yes.

14 Q. Did you ever see her fight with him?

15 A. No.

16 Q. So you never saw anything go on as far as her coming
17 after him?

18 A. No.

19 Q. And you also said that Mario and Jonathan came over
20 and my client pinned Jonathan against the wall?

21 A. Yes.

22 Q. And in any of your statements before, any police
23 statements, have you ever said anything about Jonathan
24 being pinned against the wall?

25 A. Yes.

LATASHA BROWN - CROSS

1 Q. Okay. And you said that you heard a shot fired into
2 the air?

3 A. Uh-huh.

4 Q. How do you know a shot was fired into the air if you
5 didn't see it?

6 A. I didn't see it. I just heard a shot.

7 Q. You don't know whether or not it was shot into the air
8 or shot into the ground or shot into a car or shot
9 anywhere?

10 A. No.

11 Q. But you said it was shot into the air?

12 A. Yes.

13 Q. And you said you saw my client with a gun?

14 A. Yes.

15 Q. But he pulled it out of his waistband after they got
16 locked up together?

17 A. Yes.

18 Q. Do you have any idea what happened to the gun between
19 the time it was shot in the air and the time that he
20 pulled it out of his waistband?

21 A. No, I don't.

22 Q. How much time went by between the time you heard the
23 first shot and the time that you say that you saw him pull
24 the gun out of the waistband?

25 A. Not even five minutes.

LATASHA BROWN - CROSS

1 Q. Was it five minutes, two minutes?

2 A. I don't -- it wasn't five minutes. I don't know
3 exactly how many minutes.

4 Q. And you said my client left in a car. What color was
5 the car?

6 A. I don't know. I didn't see the car.

7 Q. Okay. Do you remember in a prior hearing that you
8 testified that it was a black car?

9 A. No.

10 Q. Your Honor, may I approach?

11 A. Yes, you may.

12 MR. KODMAN: Judge, may we approach, Your Honor?

13 THE COURT: Yes.

14 (Off-the-record discussion.)

15 BY MS. STONEY:

16 Q. Ms. Brown, I'm going to show you a transcript of prior
17 sworn testimony. Can you please read what you said right
18 here?

19 A. Joshua got in a black car.

20 Q. So, did he get in a black car?

21 A. I don't know. I didn't see the car.

22 Q. It's been kind of a while since then; hasn't it?

23 A. Yes, ma'am.

24 Q. But at that time you were sure it was black car.

25 That's what you testified to?

SHERRY CADE - DIRECT

1 A. Yes.

2 MS. STONEY: No more questions, Your Honor.

3 THE COURT: Redirect?

4 MR. KODMAN: No redirect, Your Honor.

5 THE COURT: Very good. You may step down. You
6 may call your next witness.

7 MR. MILLER: Thank you, Your Honor, State calls
8 Sherry Cade.

9 THE COURT: Yes, ma'am. I'm going to ask if you
10 come forward and place your left hand on the Bible and
11 raise your right hand as the clerk administers the oath.

12 SHERRY CADE, having been duly sworn, was examined
13 and testified as follows:

14 THE CLERK: Have a seat in the witness box.
15 State your full name for the Court, spelling your last.

16 THE COURT: Watch your step. I ask you to have a
17 seat in the witness chair. Pull up real close to that
18 microphone. I'm going to ask you to speak loudly, clearly
19 and slowly so that everyone can hear what you've got to
20 say. There are jurors fairly far away from you. Speak
21 loud.

22 THE WITNESS: Okay.

23 THE COURT: State your name and spell your last.

24 THE WITNESS: My name is Sherry Cade, C-A-D-E.

25 DIRECT EXAMINATION

SHERRY CADE - DIRECT

1 BY MR. MILLER:

2 Q. Good afternoon, Sherry.

3 A. Hey.

4 Q. Sherry, how old are you?

5 A. I'm 28.

6 Q. Where are you from?

7 A. Aiken.

8 Q. Have you lived in Aiken your whole life?

9 A. Yes, sir.

10 Q. Do you know the Defendant in this case, Joshua

11 Forrest?

12 A. Yes, sir.

13 Q. Would you say you were friends with the Defendant or
14 do you just know who he is?

15 A. Friends.

16 Q. How long have you known him?

17 A. Like, nine years now.

18 Q. Does the Defendant have a nickname or other name that
19 he's known by?

20 A. Junior.

21 Q. He's known by Junior?

22 A. Yes, yes.

23 Q. What about Mario Reddish, the victim; did you know
24 him?

25 A. Yes, sir.

SHERRY CADE - DIRECT

1 Q. Was he your friend?

2 A. Yes, sir.

3 Q. Do you know Jonathan Thomas?

4 A. Yes, sir.

5 Q. How do you know Jonathan?

6 A. That's my kids' father.

7 Q. Okay. Are you still friends with Jonathan?

8 A. Yes, sir.

9 Q. Do you know Tameka Campbell?

10 A. Yes.

11 Q. Would you say you and Tameka were good friends?

12 A. No, sir. I just knew of her.

13 Q. What, if anything, do you know about the relationship
14 between the Defendant and Tameka?

15 A. I know they was boyfriend and girlfriend.

16 Q. Do you recall being at the Elk's Club in the early
17 morning hours of December the 4th, 2005?

18 A. Yes, sir.

19 Q. Who did you go there with?

20 A. It was me, Tasha, my sister Wendy and Tina.

21 Q. And that was -- when you said Tasha, was that
22 Ms. Brown?

23 A. Yes, sir.

24 Q. Do you remember what time you got there?

25 A. Yes. We got there, like, 10:30.

SHERRY CADE - DIRECT

- 1 Q. Okay. Where were you before you went to the club?
- 2 A. I was home.
- 3 Q. What was going on at the club when you got there?
- 4 A. We just was partying.
- 5 Q. Were people drinking?
- 6 A. Yes. They was drinking there.
- 7 Q. Were you drinking that night?
- 8 A. No, sir. I don't drink.
- 9 Q. Okay. Were people dancing?
- 10 A. Yes.
- 11 Q. Were you dancing that night?
- 12 A. Yes, sir.
- 13 Q. Okay. How many people would you estimate were at the
- 14 club that evening when you got there?
- 15 A. I'd say, like, a hundred.
- 16 Q. Was it full?
- 17 A. Yes.
- 18 Q. Did you stay at the club until it was closed?
- 19 A. Yes, sir.
- 20 Q. And approximately what time did the club close?
- 21 A. It closed at two.
- 22 Q. Okay. Did you see the Defendant in this case inside
- 23 the club that night?
- 24 A. Yes.
- 25 Q. Where was he the first time that you saw him that

SHERRY CADE - DIRECT

1 evening?

2 A. I seen him at the back of the club, first time I seen
3 him.

4 Q. Do you recall approximately what time that would have
5 been.

6 A. No, sir.

7 Q. Okay. Did you talk to the Defendant when you saw him?

8 A. No.

9 Q. Did you see the Defendant any more that night inside
10 of the club?

11 A. Yes. I seen him before I was going to leave to get my
12 coat.

13 Q. What was he doing?

14 A. Him and Meka Campbell was fussing. And -- Joshua and
15 Tameka Campbell was fussing. She was fussing about a
16 baseball cap and some shoes.

17 Q. Was it a physical confrontation or were they just
18 yelling at each other?

19 A. They was fussing back and forth.

20 Q. Did you ever see Tameka throw a drink in the
21 Defendant's face?

22 A. I didn't see her throwing a drink.

23 Q. Did anyone try to break up the argument between Tameka
24 and the Defendant?

25 A. Yes, sir.

SHERRY CADE - DIRECT

1 Q. And who was that?

2 A. Jonathan Thomas and Mario Reddish.

3 Q. Okay. After the fight in the club between the
4 Defendant and Tameka was broken up, what happened next?

5 A. After we walked out the club, I seen Joshua Forrest
6 pull the gun out the pouch of his pants.

7 Q. All right. Before you get there, who did you leave
8 the club with? Who did you walk outside with?

9 A. Me and Tasha. Jonathan and Mario are walking behind
10 them.

11 Q. What about everybody else in the club? Was this --
12 what was everybody else in the club doing?

13 A. Everybody was getting ready to leave.

14 Q. Okay. Was the club closing at that point?

15 A. Yes, sir.

16 Q. Okay. When you walked out of the door of the club,
17 where did you go?

18 A. I went to the car, to Tasha car.

19 Q. What happened after that?

20 A. After I walked by the car, I was by a white Lincoln.
21 I seen Junior pull the gun out of his pants. And he was,
22 like, mother fucker, I'm going to kill you tonight. He
23 shot one time to the ground. He walked up to Mario. They
24 bear hugged and two more shots, Mario fell. Junior left
25 into the white Lincoln.

SHERRY CADE - DIRECT

1 Q. Okay. I'm going to show you what's been previously
2 marked for identification as State's Exhibit Two. Do you
3 recognize that?

4 A. Yes, sir.

5 Q. What is that a photo of?

6 A. A white Lincoln.

7 Q. Is that -- do you know if that's the same white
8 Lincoln that he left in that night?

9 A. Yes, that's it.

10 Q. Do you recall which side of the car that the Defendant
11 was standing by when you say he pulled out the gun?

12 A. On the driver's side. I was standing behind him.

13 Q. And where was the car -- you were in Ms. Brown's car;
14 correct?

15 A. Yeah.

16 Q. Where were you standing in relationship to the white
17 Lincoln?

18 A. Like, behind him on the passenger side.

19 Q. Okay. When you saw him with the gun, who was around
20 the Defendant at that time?

21 A. I'm not for sure who was with him.

22 Q. Okay.

23 A. Yeah.

24 Q. Did you see Mario there?

25 A. Yes, I seen Mario out there.

SHERRY CADE - DIRECT

1 Q. Okay. Did you see Jonathan there?

2 A. Yes.

3 Q. How far away -- you said that they had locked up. How
4 far away were you from the Defendant and Mario when they
5 were locked up?

6 A. I'd say about four feet. Not too far.

7 Q. Okay. And while they were locked up, you said you
8 heard the two shots?

9 A. Yes, sir.

10 Q. Okay. Did you hear any other shots that night?

11 A. No, sir.

12 Q. How long was it after you heard the shots before Mario
13 fell to the ground?

14 A. He fell right to the ground.

15 Q. How long was it between the time that you heard the
16 first shot and the second shot?

17 A. It wasn't even five seconds apart.

18 Q. All right. Did you see anyone else with a gun at the
19 club that night?

20 A. No, sir.

21 Q. What did the Defendant do after Mario fell to the
22 ground?

23 A. He got in the car and he left.

24 Q. Did you see anyone involved in a physical fight, like,
25 punching each other that night?

SHERRY CADE - CROSS

1 A. No, sir.

2 Q. Okay. Do you know any other people that were in the
3 white Lincoln besides the Defendant?

4 A. No, sir.

5 Q. Okay.

6 MR. MILLER: That's all I have right now, Your
7 Honor.

8 THE COURT: Cross-examination.

9 MS. STONEY: Yes. If I could have one second.
10 (Conferring with Defendant).

11 CROSS-EXAMINATION

12 BY MS. STONEY:

13 Q. Okay. You're friends with Mario; correct?

14 A. Yes, ma'am.

15 Q. As was Latasha Brown?

16 A. Yes, ma'am.

17 Q. And you're also friends with Jonathan Thomas?

18 A. Yes.

19 Q. In fact, he's the father of your children?

20 A. Yes.

21 Q. And Jonathan was friends with Mario also?

22 A. Yes, ma'am.

23 Q. And isn't it true that Mario and Jonathan were both
24 having a physical altercation with Mr. Forrest?

25 A. Yes. Before we left, they was stopping Meka and

SHERRY CADE - CROSS

1 Junior from fussing but they weren't in, physically
2 fighting. They was fussing.

3 Q. Okay. And was Jonathan helping Mario?

4 A. Yes.

5 Q. So he's good friends with Mario?

6 A. Yes, ma'am.

7 Q. Okay. You said that you -- the club closed at two
8 o'clock. How long after it closed did you see or did you
9 go back outside?

10 A. I went outside right after the club closed.

11 Q. So right about two o'clock?

12 A. Yes, ma'am.

13 Q. Okay. And you say that my client shot to the ground?

14 A. Yes.

15 Q. How many shots did you hear?

16 A. I heard three in all.

17 Q. Okay. Where was Jonathan during this time?

18 A. I couldn't tell you where Jonathan was at outside.

19 Q. You didn't see him?

20 A. Not outside.

21 Q. Was it dark out there?

22 A. Yes, ma'am.

23 Q. How dark was it? Was it very dark or just -- were
24 there lights in the parking lot?

25 A. It was lights in the parking lot.

1 Q. Could you see everybody around or was it dark?

2 A. I could see everybody around.

3 MS. STONEY: I have no more questions, Your
4 Honor.

5 THE COURT: Any redirect?

6 MR. MILLER: Just briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. MILLER:

9 Q. You said that you heard three gunshots total?

10 A. Yes, sir.

11 Q. And explain to the jury how those gunshots came about,
12 what the timing of the gunshots was that you heard.

13 A. Like, five seconds apart.

14 Q. Was it bang wait five seconds, bang, wait five
15 seconds, bang?

16 A. No, no.

17 Q. How was it?

18 A. It was one shot to the ground and, like, about five
19 seconds he walked to Mario, bang bang. Two more.

20 MR. MILLER: No further questions, Your Honor.

21 THE COURT: All right. You may step down.

22 THE WITNESS: All right.

23 THE COURT: Mr. Foreman, ladies and gentlemen of
24 the jury, we're going to take a recess for lunch. And I'm
25 going to ask that you be back at two o'clock. Two o'clock

1 sharp.

2 Does the jury have badges that identify them as
3 jurors? Do they have that here?

4 THE BAILIFF: Those -- we did have them but they
5 did away with them.

6 THE COURT: Very good. It's going to be very
7 important for y'all when you come back, don't tarry around
8 the courthouse. I'm going to ask that you come directly
9 to the jury room.

10 The reason for that is there might be some
11 witnesses that are out there that might be talking about
12 this case. Sometimes lawyers can be having a discussion
13 about the case. And so we don't want you to just dilly-
14 dallying around out in the courthouse. When you get out
15 of car when you come back from lunch, I'm going to ask
16 that you come directly to the jury room.

17 Once again, no independent investigation on the
18 Internet or looking at any alleged crime scene that you've
19 heard about here today.

20 You need to come directly to the courtroom. No
21 discussion amongst yourselves or with anyone else. And
22 you need to be back at two o'clock sharp. Thank you.

23 Everyone remain seated as the jury exits the
24 courtroom.

25 (Jury exits courtroom at 12:42 p.m.)

1 THE COURT: Anything from the State before we
2 break for lunch?

3 MR. KODMAN: No, Your Honor.

4 THE COURT: Anything from the defense?

5 MS. STONEY: Your Honor, the only issue that I
6 have, we've been given notice of Timothy Johnson as being
7 a witness. As of today, this is the first time I've ever
8 heard of this individual.

9 THE COURT: Say that again.

10 MS. STONEY: I said, this is the first time I've
11 ever been given notice that there's a Timothy Johnson on
12 the witness list.

13 THE COURT: Well, first of all, I don't think
14 there's really -- I'm not real sure there's an obligation
15 from the State to give you a witness list. If there are
16 statements that are outstanding, they have an obligation
17 to give you that, but --

18 MS. STONEY: I have no idea if that's the case.

19 MR. KODMAN: There's no written or recorded
20 statements from Timothy Johnson.

21 For the record, I believe one of the video
22 interviews of one of the witnesses in this case, Judge,
23 one of witnesses does mention that Timothy Johnson was
24 there.

25 There was notes taken on Timothy Johnson given to

JONATHAN THOMAS - DIRECT

1 law enforcement that we have to turn over to Ms. Stoney.

2 MS. STONEY: Thank you, Judge.

3 THE COURT: Thank you. We'll stand at ease until
4 two o'clock.

5 (Thereafter, the luncheon break was taken at
6 12:45 p.m. At 2:08 p.m. The trial resumed as follows:)

7 THE COURT: Anything from the State before we
8 proceed?

9 MR. KODMAN: No, sir.

10 THE COURT: Anything from the defense?

11 MS. STONEY: No, sir.

12 THE COURT: All right. We're ready for the
13 jury.

14 (Jury enters courtroom at 2:10 p.m.)

15 THE COURT: Mr. Foreman, ladies and gentlemen of
16 the jury. I want to thank you for being here and thank
17 you for being here on time. There was one legal matter we
18 had to attend to, but thank you so much for your
19 promptness.

20 The State, you're recognized. You may call your
21 next witness.

22 MR. KODMAN: Thank you, Your Honor. The State
23 calls Jonathan Thomas.

24 JONATHAN THOMAS, having been duly sworn, was
25 examined and testified as follows:

JONATHAN THOMAS - DIRECT

1 THE CLERK: Have a seat on the witness box.
2 State your full name for the Court, spelling your last.

3 THE COURT: I'm going to ask you to watch your
4 step. Come on around here. I want you to have a seat on
5 witness chair right there. I want you to pull up real
6 close to that microphone. Speak up loudly, clearly and
7 slowly so everybody can hear what you got to say.

8 THE WITNESS: Okay.

9 THE COURT: I notice you're kind of soft spoken.
10 I want you to speak up.

11 THE WITNESS: Yes, sir. My name's Jonathan
12 Thomas, T-H-O-M-A-S.

13 DIRECT EXAMINATION

14 BY MR. KODMAN:

15 Q. Jonathan, just like the Judge said, if you don't mind,
16 speak up. All these jurors have to hear what you got to
17 say.

18 A. All right.

19 Q. How old are you, Jonathan?

20 A. Thirty.

21 Q. Where are you from?

22 A. Aiken. Aiken, South Carolina.

23 Q. How long have you lived in Aiken?

24 A. All my life.

25 Q. Do you know the Defendant in this case, Joshua

JONATHAN THOMAS - DIRECT

1 Forrest?

2 A. Yes, sir.

3 Q. How long have you known him?

4 A. All my life.

5 Q. How about Mario Reddish, did you know Mario Reddish?

6 A. Yes, sir.

7 Q. How long did you know Mario Reddish?

8 A. About 15 years.

9 Q. And what was your relationship with Mario Reddish?

10 A. Best friend.

11 Q. Do you remember going into the Elk's Club on the
12 evening of December 3rd, 2005?

13 A. Yes, sir.

14 Q. Who did you go to the Elk's Club with?

15 A. Me, my cousin and Mario Reddish.

16 Q. Who's your cousin?

17 A. Charles Bush.

18 Q. Charles Bush?

19 A. Yes, sir.

20 Q. Before y'all went to the Elk's Club, where were you
21 all at?

22 A. We was at home, at our house.

23 Q. Had you been drinking before you went to the Elk's
24 Club?

25 A. No, sir.

JONATHAN THOMAS - DIRECT

1 Q. Who drove to the Elk's Club?

2 A. My cousin, Charles Bush.

3 Q. Do you know about what time it was when you arrived
4 there?

5 A. No, sir.

6 Q. Was it dark out?

7 A. Yes, sir. It was dark.

8 Q. Was it late?

9 A. No. It wasn't late. About, I'd say about 11, 11-so
10 or 12.

11 Q. And how long did you stay at the club that night?

12 A. We stayed until it closed.

13 Q. And back in December of 2005, was there anything
14 physically that was wrong with Mario Reddish at that time?

15 A. No, sir.

16 Q. What about with his arm?

17 A. Oh, yeah. He had broke his collarbone.

18 Q. Was his arm wrapped up in any way?

19 A. No. He had it in a sling.

20 Q. What about the night that y'all went to the Elk's
21 Club, did he have it in a sling then?

22 A. No, sir. He took it off.

23 Q. And while you were inside the Elk's Club that night,
24 do you remember anything unusual happening involving the

25 Defendant, Joshua Forrest?

JONATHAN THOMAS - DIRECT

1 A. Only thing I remember, he was fussing. Him and Meka
2 Campbell. That's it.

3 Q. He was what?

4 A. He was fussing. Him and Meka Campbell.

5 Q. Tameka Campbell?

6 A. Yes, sir.

7 Q. Do you know Tameka Campbell?

8 A. Yes, sir.

9 Q. How long have you known her?

10 A. All my life.

11 Q. Do you know what they were fussing about?

12 A. No, sir. Not really. About clothes, I think.

13 Q. What happened? How did that come to an end?

14 A. He had left. He had went outside.

15 Q. Did you get in the middle or get involved in that
16 argument?

17 A. Yes, sir. Yes, sir. Stopped them from fighting.

18 Q. Who else? Did anybody else go over there with you?

19 A. No, sir.

20 Q. And was this about, around the time the club was
21 fixing to close?

22 A. Yes, sir.

23 Q. Was the altercation between Joshua Forrest and Tameka
24 Campbell in the club, was that a physical altercation or
)25 verbal altercation? Can you describe it a little bit

JONATHAN THOMAS - DIRECT

- 1 more?
- 2 A. It was just an argument. That's all it was.
- 3 Q. And you went over to break it up?
- 4 A. Yes, sir.
- 5 Q. Did anything physical happen between you and Joshua
- 6 Forrest in the club?
- 7 A. No, sir.
- 8 Q. All right. After the altercation was over, did you
- 9 eventually go outside?
- 10 A. Yes, sir.
- 11 Q. And why did you leave the club?
- 12 A. I just went outside to catch some air.
- 13 Q. Was the club getting ready to close?
- 14 A. It was getting ready to close, too; yes, sir.
- 15 Q. And what did you observe when you went outside the
- 16 club?
- 17 A. When I went outside, just, I mean he called me over
- 18 there. Told me to come there.
- 19 Q. You say he --
- 20 A. Joshua Forrest.
- 21 Q. He called you --
- 22 A. Yes, sir.
- 23 Q. Who called you over?
- 24 A. Joshua Forrest.
- 25 Q. Where did he call you?

JONATHAN THOMAS - DIRECT

1 A. He called me over there by the car he was in.

2 Q. What did he say to you?

3 A. He just gave me a handshake, just like that.

4 Q. All right. What happened next?

5 A. I mean, I walked away.

6 Q. Did Mario come over there at any time?

7 A. Yes, sir.

8 Q. When was that?

9 A. That -- when I had walked out there he came, after I
10 had walked out there.

11 Q. What happened? Did you observe anything happening
12 between Mario and Joshua?

13 A. No, sir. Not right then.

14 Q. Not right then?

15 A. Yes, sir.

16 Q. What happened next?

17 A. What happened next?

18 Q. Yes.

19 A. When I looked back, I mean, he was shooting a gun.
20 Joshua was shooting a gun.

21 Q. Who was he shooting a gun at?

22 A. Mario Reddish.

23 Q. Where were they standing at; do you remember?

24 A. In the middle of the road by the Elk's.

25 Q. Did you hear Joshua say anything to Mario?

JONATHAN THOMAS - DIRECT

- 1 A. No, sir.
- 2 Q. Are you pretty familiar with handguns?
- 3 A. Yes, sir.
- 4 Q. Were you able to see what kind of handgun it was --
- 5 A. Yes, sir.
- 6 Q. -- that Jonathan had?
- 7 A. Yes, sir.
- 8 Q. What kind of handgun was it?
- 9 A. It was a .380.
- 10 Q. .380?
- 11 A. Yes, sir.
- 12 Q. Can you describe physically where they were in
- 13 relation to each other?
- 14 A. Could I do what? Say again.
- 15 Q. Could you describe physically where Mario and Joshua
- 16 were in relation to each other when the shooting
- 17 happened?
- 18 A. They was in the middle of the road, right there where
- 19 you drive in.
- 20 Q. Okay. What about, how close to each other were they?
- 21 A. They was wrapped up.
- 22 Q. Wrapped up?
- 23 A. Yes, sir.
- 24 Q. And then when did you see the gun?
- 25 A. When they start shooting. Pop pop pop, like that.

JONATHAN THOMAS - DIRECT

1 That's when I --

2 Q. Do you remember how many shots you heard?

3 A. I think it was about three, two or three.

4 Q. And who did you see with a gun?

5 A. Joshua Forrest.

6 Q. Did you see anybody else with a gun?

7 A. No, sir.

8 Q. Other than those two or three shots, did you hear any
9 other shots?

10 A. No, sir.

11 Q. After you heard the shots, what happened to Mario?

12 A. I seen him fall to the ground.

13 Q. What did Joshua do?

14 A. Jumped in the car, sped out.

15 Q. Do you remember what kind of car it was?

16 A. It was a Lincoln.

17 Q. Do you remember what color it was?

18 A. White.

19 Q. I'm going to hand you what's been marked for
20 identification purposes as State's Exhibit Two and ask you
21 if you can identify that photograph.

22 A. Yes, sir. This is it.

23 Q. When you say that's it --

24 A. That's the car.

25 Q. Is that the car that Joshua Forrest left in?

JONATHAN THOMAS - DIRECT

1 A. Yes, sir.

2 MR. KODMAN: Your Honor, we move to introduce
3 State's Exhibit Two into evidence.

4 THE COURT: You might want to show it to
5 Ms. Stoney.

6 MR. KODMAN: (Complies.)

7 MS. STONEY: No objection.

8 THE COURT: State's Exhibit Number Two is in
9 evidence without objection from the defense.

10 (Thereupon, State's Exhibit No. 2, photograph,
11 was received into evidence.)

12 BY MR. KODMAN:

13 Q. Was Mario moving or anything after the shooting?

14 A. No, sir.

15 Q. What did you do?

16 A. I ran. I ran. Dive on the ground. I didn't know
17 where the bullets was coming from at first.

18 Q. Did you ever go towards Mario?

19 A. Yes, sir.

20 Q. Describe what happened then.

21 A. I pulled him out the road because they was spinning
22 around in the Lincoln. I thought they was going to run
23 him over.

24 Q. What did y'all do with Mario?

25 A. My cousin, Chris Roper, took him to the hospital.

JONATHAN THOMAS - DIRECT

1 Q. What did you do?

2 A. I went home.

3 Q. And when you saw this shooting occur between Joshua
4 Forrest and Mario Reddish, was there anybody in between
5 you and them blocking your view?

6 A. No, sir.

7 Q. Did you see the Defendant get into any kind of
8 argument or altercation with anybody else outside the
9 club?

10 A. No, sir.

11 Q. Now, Josh. (sic), I'm going to show you what's been
12 marked for identification purposes as State's Exhibit

13 Six. And can you identify that diagram?

14 A. Yes, sir.

15 Q. What is that?

16 A. That's the Elk's.

17 Q. When you say where the shooting happened, can you
18 point on this diagram where the shooting happened at?

19 A. Yes, sir.

20 Q. Where?

21 A. Right by that number two.

22 Q. So if you could come around?

23 A. (Complying.) About right at there.

24 Q. Okay. So what is this right here?

25 A. That's a road.

JONATHAN THOMAS - CROSS

1 Q. Okay. Is this, like, the driveway?

2 A. Yes, sir.

3 Q. And this is the actually street out here?

4 A. Yes, sir.

5 Q. So when you call this a road, this is actually the
6 place where you pull into the Elk's Club; right?

7 A. Yes, sir.

8 Q. Jonathan, the person that you saw shoot Mario Reddish
9 on December 4th, 2005, do you see him here in the
10 courtroom?

11 A. Yes, sir.

12 Q. Could you point him out for the jury?

13 A. Right there.

14 Q. Could you describe what he's wearing?

15 A. White shirt, tie. Joshua Forrest.

16 MR. KODMAN: Your Honor, let the record reflect
17 that the witness has identified the Defendant.

18 Please answer any questions Ms. Stoney has for
19 you.

20 THE WITNESS: Okay.

21 THE COURT: Ms. Stoney, you're recognized.

22 CROSS-EXAMINATION

23 BY MS. STONEY:

24 Q. Mr. Thomas, you said that you stopped Tameka and
25 Joshua from fighting?

JONATHAN THOMAS - CROSS

1 A. Yes, ma'am.

2 Q. But no one else stopped?

3 A. No, ma'am.

4 Q. Where was Mario at the time?

5 A. Oh, they was in the club.

6 Q. He was nowhere around when they were fighting?

7 A. No, ma'am.

8 Q. You said that it was just an argument. There was no
9 physical altercation --

10 A. Yes.

11 Q. -- between you and him and Tameka and him?

12 A. No, ma'am. No, ma'am.

13 Q. You said you shook hands with Joshua --

14 A. Yes, ma'am.

15 Q. -- at his car? Did the two of you have any history at
16 all?

17 A. No, ma'am.

18 Q. No negative history at all?

19 A. No, ma'am.

20 Q. Isn't it true that your two families don't get along?

21 A. No ma'am. I ain't know nothing about that.

22 Q. Isn't it true that Joshua's brother was actually
23 accused of shooting your brother?

24 A. No, ma'am.

25 Q. That's not true?

JONATHAN THOMAS - REDIRECT

1 A. That ain't true.

2 Q. You said that Joshua said nothing to Mario. At least
3 you didn't hear him say anything?

4 A. No, ma'am.

5 Q. But he shot a .380. How big is that gun?

6 A. About that big (indicating).

7 Q. How far from the shooting were you?

8 A. I was in the front of the club.

9 Q. How far away?

10 A. Probably, like, probably -- it wasn't far. I could
11 show you on the board how far. I was standing in the
12 front. They was over there.

13 Q. Was it five feet? Ten feet?

14 A. About five or ten feet; yes, ma'am.

15 Q. Five or ten feet. And where was Sherry Cade at that
16 time?

17 A. She was in the club.

18 Q. So she wasn't outside?

19 A. I didn't see her if she was.

20 Q. Okay. What about Latasha Brown?

21 A. I didn't see none of them if they was.

22 MS. STONEY: No more questions, Your Honor.

23 THE COURT: Any redirect?

24 MR. KODMAN: Briefly, Your Honor.

25 REDIRECT EXAMINATION

CLAY ADAMS - DIRECT

1 BY MR. KODMAN:

2 Q. How many people were outside the club when the
3 shooting happened?

4 A. It was a lot of people outside the club. I couldn't
5 count them all.

6 Q. Were you going around taking names of who you saw
7 outside the club?

8 A. No. I mean, I don't know who was all out there.

9 Q. What were you looking at when you were outside the
10 club?

11 A. When I was outside the club?

12 Q. Yes, sir.

13 A. I was -- when Mario Reddish got shot, that's what I
14 was looking at.

15 MR. KODMAN: Thank you.

16 THE COURT: All right. You may step down. You
17 may call your next witness.

18 MR. MILLER: Thank you, Your Honor. State calls
19 Lieutenant Clay Adams.

20 CLAY ADAMS, having been duly sworn, was examined
21 and testified as follows:

22 THE COURT: Pull up real close to that
23 microphone. Speak loudly, clearly and slowly so that
24 everybody can hear what you got to say.

25 Thank you, sir.

CLAY ADAMS - DIRECT

1 THE WITNESS: Yes, sir. Clay Adams, A-D-A-M-S.

2 DIRECT EXAMINATION

3 BY MR. MILLER:

4 Q. Good afternoon, Lieutenant Adams.

5 A. Good afternoon.

6 Q. Who are you employed by, sir?

7 A. I am employed by the Aiken County Sheriff's Office.

8 Q. How long have you been employed at the sheriff's
9 office?

10 A. For nine years.

11 Q. What are your job responsibilities with the sheriff's
12 office?

13 A. I'm the lieutenant of forensic investigations for the
14 sheriff.

15 Q. What does that entail?

16 A. I am over our crime scene unit, our drug lab and our
17 evidence.

18 Q. Were you on duty the night that Mario Reddish was shot
19 at the Elk's Club off Reynolds Pond Road?

20 A. I was.

21 Q. Can you tell the jury, if you know, is the Elk's Club
22 located in Aiken County?

23 A. It is.

24 Q. Did you respond to the scene?

25 A. I did.

CLAY ADAMS - DIRECT

1 Q. Please explain to the jury generally what you did at
2 the scene.

3 A. When the forensic section is called by investigators
4 or the road patrol of the sheriff's office, we respond to
5 crime scenes where we will preserve any physical evidence
6 that we can, document the scene either by photography or
7 video, sketches. We collect the physical evidence and we
8 will process certain pieces of physical evidence at our
9 lab or we will see that it is transferred up to SLED.

10 Q. Could you explain to the jury the difference between a
11 shell casing and a round that's been fired from -- that's
12 fired from a bullet?

13 A. Well, yeah, you have a bullet which consists of a
14 shell casing and a projectile. Typically we refer to the
15 bullet as the fired projectile, the actual slug. And then
16 your shell casing is the fired housing of that bullet.

17 Q. Okay. Did you collect any shell casings at the scene,
18 at the Elk's Club that night?

19 A. I did.

20 Q. Can you explain how that type of evidence would be
21 collected?

22 A. The first thing that we do is when we go to a crime
23 scene and we find the physical evidence such as the shell
24 casings, we will photograph the shell casings and then we
25 will put down numerical markers for reference so that we

CLAY ADAMS - DIRECT

1 can also include that in the sketches, so we can go back
2 and look through the photographs and through our chains of
3 custody as to what we're looking at.

4 So we'll identify the piece of evidence, we'll
5 photograph the evidence and then we'll mark the evidence
6 with a marker and then photograph it again. Once it's
7 been documented as to where it is, what it is, Then we
8 will package these items individually for further
9 examination.

10 Q. I'm going to show you what's been previously marked
11 for ID as State's Exhibit Seven. Can you take a look in
12 there and tell me if those are the shell casings that you
13 collected at the scene that evening?

14 A. They are. These are individual packagings with my
15 initials on.

16 Q. So that -- how do you know that those are the same
17 three shell casings that you recovered from the scene that
18 night?

19 A. The packaging with the shell casings has our case
20 number, what item number it was that I took, the date and
21 the time and my initials on the evidence tape.

22 Q. Now these bags are opened that say evidence on them.
23 Who would have opened those bags?

24 A. Whoever did the examination at SLED.

25 Q. Okay. Did you recover a hat at the scene?

CLAY ADAMS - DIRECT

1 A. Bear with me just a moment.

2 Q. Sure.

3 A. Yes, I did. I collected a red, black and gray colored
4 H.R. hat.

5 Q. Okay. Can you explain how you would collect an item
6 of evidence like a hat?

7 A. I would photograph it and put it in its own individual
8 bag.

9 Q. Okay. I'm going to show you what's been previously
10 marked as State's Exhibit Five. Can you look in there and
11 identify that object for me?

12 A. Yes. This is the hat that I collected.

13 Q. How do you know it's the same hat that you collected
14 that night?

15 A. The markings on the bag are my markings.

16 MR. MILLER: Your Honor, at this time we would
17 move to have State's Exhibit Five entered into evidence.

18 THE COURT: Has defense had an opportunity to see
19 this item?

20 MR. MILLER: They have. I'll be glad to show it
21 to them again real quick.

22 THE COURT: Any objection from the defense?

23 MS. STONEY: No, Your Honor.

24 THE COURT: State's Exhibit Number Five is in
25 evidence without objection from the defense.

CLAY ADAMS - DIRECT

1 (Thereupon, State's Exhibit No. 5, hat, was
2 received into evidence.)

3 MR. MILLER: And, Your Honor, before I forget,
4 we'd also move to have State's Exhibit Seven that he just
5 testified to, the shell casing, entered into evidence?

6 THE COURT: You might need to show it to her.

7 MR. MILLER: (Complies.)

8 THE COURT: Any objection from defense?

9 MS. STONEY: No, Your Honor.

10 THE COURT: All right. State's Exhibit Number
11 Seven is into evidence without objection from the defense.

12 (Thereupon, State's Exhibit No. 7, shell casings,
13 was received into evidence.)

14 MR. MILLER: Thank you, Your Honor.

15 BY MR. MILLER:

16 Q. Lieutenant Adams, were there any fired rounds
17 collected at the scene?

18 A. Are you referring to projectile or shell casings?

19 Q. The projectile.

20 A. No projectiles; no, sir.

21 Q. Okay. To your knowledge, was any projectile recovered
22 during the autopsy?

23 A. Yes.

24 Q. I'm going to show you an item that's been previously
25 marked for ID as State's Exhibit Number Eight. Can you

CLAY ADAMS - DIRECT

1 identify that item?

2 A. Yes sir. This is the bullet removed from autopsy.

3 Q. And do you -- how do you know that this is the bullet
4 that was removed during the autopsy?

5 A. The markings on the container.

6 MR. MILLER: Okay. Your Honor, we would move to
7 have State's Exhibit Number Eight entered into evidence.

8 MS. STONEY: No objection, Your Honor.

9 THE COURT: State's Exhibit Number Eight is into
10 evidence without objection from the defense.

11 (Thereupon, State's Exhibit No. 8, bullet, was
12 received into evidence.)

13 BY MR. MILLER:

14 Q. Investigator Adams, I'm going to show you a box
15 containing some items that have previously been marked as
16 State's Exhibit Number Ten. Could you take a look at
17 those? And you can -- we can get you a pair of gloves if
18 you'd like before you go looking in there.

19 A. State's Exhibit Ten is a cardboard box containing
20 Aiken County Sheriff's Office case number that correlates
21 with this case as well as a bar code 80022657 which is an
22 Aiken County Sheriff's Office evidence room tracking case
23 number.

24 And the box is labeled as being, having contents of
25 brown pants, brown belt, cell phone clip, black Nike

CLAY ADAMS - DIRECT

1 shoes, boxer shorts, black shirt, white socks, black
2 shirt, brown jacket, black long johns and white socks.

3 Q. Lieutenant Adams, were those the items that were
4 collected from the victim in this case, Mario Reddish?

5 A. According to the bar code, 80022657, of the sheriff's
6 office evidence log, that is correct.

7 MR. MILLER: Your Honor, we would move to have
8 State's Exhibit Number Ten entered into evidence.

9 MS. STONEY: No objection, Your Honor.

10 THE COURT: State's Exhibit Number Ten is into
11 evidence without objection from the defense.

12 (Thereupon, State's Exhibit No. 10, bag of
13 clothing, was received into evidence.)

14 BY MR. MILLER:

15 Q. Lieutenant Adams, State's Exhibit Number Seven, were
16 these shell casings sent to your office by SLED for
17 analysis?

18 A. The shell casings were sent to SLED, by our office to
19 SLED for analysis; yes.

20 Q. Okay. In case I wasn't clear. Your office sent these
21 to SLED?

22 A. Correct.

23 Q. Okay. Do you know when they were sent?

24 A. Bear with me just a moment..

25 Q. Sure.

CLAY ADAMS - DIRECT

1 A. They were sent on December 19th, 2006.

2 Q. Okay. And State's Exhibit Number Eight, this bullet
3 that was removed from the victim during the autopsy, was
4 it sent to SLED for analysis by your office?

5 A. It was.

6 Q. And do you know when that was sent?

7 A. At the same time.

8 Q. And State's Exhibit Number Ten, the clothing that was
9 taken from the victim's body, was that clothing sent to
10 your -- sent to SLED by your office?

11 A. It was.

12 Q. For analysis?

13 A. Yes, sir.

14 Q. And do you know when that was?

15 A. On the same date.

16 Q. Okay. I want to show you a photograph that has been
17 previously marked for identification as State's Exhibit
18 Number Three. Can you identify what this photograph is
19 showing here?

20 A. Yes, sir. State's Exhibit Number Three is a
21 photograph that I took.

22 Q. What does it show?

23 A. This shows a side picture of the Elk's Club, with my
24 numerical markers of evidence in them.

25 Q. Does -- this photograph, does it fairly and accurately

CLAY ADAMS - DIRECT

1 display the scene as it appeared that night?

2 A. It does.

3 MR. MILLER: Your Honor, we would move to have
4 State's Exhibit Three entered into evidence.

5 MS. STONEY: No objection.

6 THE COURT: State's Exhibit Number Three is into
7 evidence without objection from the defense.

8 (Thereupon, State's Exhibit No. 3, photograph,
9 was received into evidence.)

10 BY MR. MILLER:

11 Q. I want to show you what's been previously marked for
12 ID as State's Exhibit Number Four. Can you identify that
13 for the jury?

14 A. I can. State's Exhibit Number Four is also a
15 photograph that I took at the Elk's Club.

16 Q. What are you photographing in that?

17 A. This is a continuation photograph of the first one
18 that shows my numerical markers.

19 Q. Your Honor, we would move -- and does this photograph
20 fairly and accurately represent the way that the markers
21 were laid out where the evidence was located?

22 A. It does.

23 MR. MILLER: Your Honor, the State would move to
24 have Exhibit Number Four entered into evidence.

25 MS. STONEY: No objection.

CLAY ADAMS - DIRECT

1 THE COURT: State's Exhibit Number Four is
2 entered into evidence without objection from the defense.

3 (Thereupon, State's Exhibit No. 4, photograph,
4 was received into evidence.)

5 MR. MILLER: Thank you, Your Honor.

6 BY MR. MILLER:

7 Q. Lieutenant Adams, I'm going to show you a diagram
8 which has been previously marked as State's Exhibit Number
9 Six. I want to ask you a couple of questions about it.
10 Do you -- can you explain to the jury what this is a
11 diagram of?

12 A. This is a diagram, overall diagram of how the evidence
13 was in correlation with other, with other surrounding
14 items.

15 Q. Okay. And did you assist in the preparation of this
16 diagram?

17 A. I did.

18 Q. Was this diagram made with your notes that you took
19 from the scene that night?

20 A. It is.

21 MR. MILLER: Your Honor, we'd move to have
22 State's Exhibit Number Six entered into evidence.

23 MS. STONEY: No objection.

24 THE COURT: State's Exhibit Number Six into
25 evidence without objection from the defense.

CLAY ADAMS - DIRECT

1 (Thereupon, State's Exhibit No. 6, diagram, was
2 received into evidence.)

3 BY MR. MILLER:

4 Q. Now is that diagram to scale? Can you tell exact
5 distances by looking at that diagram?

6 A. No, it is not to scale. That diagram is merely for an
7 overall idea as to how the evidence was.

8 Q. Okay. Lieutenant Adams, can you explain to the jury
9 what these -- and you can come down here to point it out
10 to them -- what these seven numbers are that are located
11 on the diagram?

12 A. Bear with me just a moment.

13 Q. Certainly. I'm sorry. There's an eighth number down
14 here, way at the bottom.

15 A. Like I said before, this is just an overall view of
16 how the evidence was situated at the crime scene when I
17 was there. Item number one pertains to item number one on
18 my chain of custody, the first item that was photographed
19 and collected. That would be a red, black, gray colored
20 H.R. hat.

21 Item number two, correlating with my chain of custody
22 is a set of gold teeth, commonly referred to as a grill.

23 Item number three is a spent CBC .380 caliber shell
24 casing. Number four is the a spent CBC .380 caliber shell
25 casing. Item number five is a spent CBC .380 shell

CLAY ADAMS - DIRECT

1 casing.

2 Item number six is a black-in-color woman's shoe.

3 Item number seven is a Waffle House plastic bag.

4 And item number eight which is down here, is a gray-
5 colored sweatshirt.

6 Q. Okay. Now, items number three, four, and five, are
7 those the shell casings that you previously testified
8 about?

9 A. It is.

10 Q. Item number one, the black and red and gray H.R. hat,
11 is that the item, State's Exhibit Number Five?

12 A. It is.

13 Q. The bag of things from the Waffle House, why would you
14 collect something like that at the scene whenever you're
15 out there?

16 A. In this instance we had basically a lack of physical
17 evidence. So I was trying to collect anything and
18 everything that I could that could identify anybody that
19 was at the scene.

20 In this instance we had a shoe and a Waffle House bag,
21 and I believe a sweatshirt which once we were able to get,
22 get the story as to what happened, it was then obvious
23 that they didn't have any evidentiary value then.

24 Q. But you collected them at the time so you'll have them
25 in case you need them?

CLAY ADAMS - CROSS

1 A. Correct.

2 MR. MILLER: Okay. Thank you, Lieutenant
3 Adams. Please answer any questions Ms. Stoney might have
4 of you.

5 THE COURT: Cross-examination, Ms. Stoney.

6 MS. STONEY: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MS. STONEY:

9 Q. You say you found no projectile at the scene?

10 A. No, ma'am.

11 Q. Was it thoroughly searched?

12 A. Yes, ma'am.

13 Q. And how many projectiles were found in the body?

14 A. If you'll bear with me.

15 Q. Uh-huh.

16 A. One projectile was recovered at autopsy.

17 Q. Okay. And what time did you arrive on the scene that
18 night?

19 A. Once again, please bear with me.

20 Q. That's fine. Can you tell me, was it before dawn?

21 A. It was before dawn; yes, ma'am.

22 Q. And it was on the 4th?

23 A. It was, within about an hour of the shooting.

24 Q. Okay. And the two photographs that you were shown,
25 the two that you took, were they taken that night before

CHUCK CAIN - DIRECT

1 dawn?

2 A. Yes, ma'am. They were taken when I arrived on the
3 scene.

4 MS. STONEY: Thank you. No more questions.

5 THE COURT: Any redirect?

6 MR. MILLER: No redirect. Thank you, Your Honor.

7 THE COURT: You may step down. Thank you, sir.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: You may call your next witness.

10 MR. KODMAN: State calls Investigator Charles
11 Cain.

12 CHUCK CAIN, having been duly sworn, was examined
13 and testified as follows:

14 THE CLERK: Have a seat on the witness box.
15 State your full name for the Court, spelling your last.

16 THE COURT: Pull up real close to that
17 microphone. Speak loudly, clearly and slowly. Thank you,
18 sir.

19 THE WITNESS: Yes, sir. Investigator Chuck Cain,
20 C-A-I-N.

21 DIRECT EXAMINATION

22 BY MR. KODMAN:

23 Q. Investigator Cain, where are you employed at?

24 A. Aiken County Sheriff's Office.

25 Q. How long have you been employed there?

CHUCK CAIN - DIRECT

1 A. Nineteen years.

2 Q. And what is your title at the Aiken County Sheriff's
3 Department?

4 A. Criminal investigator.

5 Q. And can you describe for the jury a little bit about
6 what you do as a criminal investigator?

7 A. I'm assigned several different types of
8 investigations, whether they are property, financial or in
9 this instance violent. The majority of my assignments are
10 in violent crimes.

11 Q. Tell the jury a little bit about what your job is as
12 investigator. What you do on these cases?

13 A. As an investigator, I'm pretty much called out to the
14 scene or assigned the case after the incident is over. At
15 that point in time my job is to identify whatever
16 evidence, locate evidence and follow that evidence,
17 whether it be physical, circumstantial or testimonial and
18 follow that evidence, qualify it, follow it until it takes
19 me to a known suspect.

20 Q. And were you -- did you have the title of investigator
21 back in December of 2005?

22 A. Yes, sir.

23 Q. How did you become involved in the investigation
24 relating to the shooting death of Mario Reddish?

25 A. I was paged early that morning and directed to respond

CHUCK CAIN - DIRECT

1 to the Aiken Regional Medical Center, Emergency Room, to
2 assist Lieutenant Kevin Liles with the investigation.

3 Q. And what did you do from there?

4 A. Upon arrival to the hospital I secured three
5 eyewitnesses, who I was told were eyewitnesses to the
6 scene. I was instructed to take them to the sheriff's
7 office for an interview.

8 Prior to that I was instructed to drive to the Elk's
9 Club to review the scene, prior to arriving to the
10 sheriff's office for interviews.

11 Q. Are you familiar with where the Elk's Club is located?

12 A. Yes, sir.

13 Q. Where is it located at?

14 A. It's located pretty much on Reynolds Pond Road in
15 Aiken County, South Carolina, close to the intersection of
16 Highway 19 North.

17 Q. And what about the building itself?

18 A. In appearance the building is steel structure,
19 aluminum siding, frame building, concrete floor and I
20 would say the interior would be larger than this
21 courtroom.

22 Q. Based on your interviews and your investigation, were
23 you able to develop a suspect in this case?

24 A. Yes, sir.

25 Q. Who was that?

CHUCK CAIN - DIRECT

1 A. Joshua Forrest.

2 Q. And did you make an attempt to contact Joshua Forrest?

3 A. Yes, sir.

4 Q. Explain how that happened.

5 A. I was able to contact Joshua Forrest's mother. I
6 spoke with her, explained to her the situation and why, my
7 interest in locating Joshua Forrest. She stated to me
8 that she would attempt to locate him and then she would
9 page me when she did.

10 Q. Did you come into contact with him?

11 A. Yes, sir.

12 Q. How did that happen?

13 A. At around, I believe it was 3:45 hours on December
14 4th, 2005, I did receive a page from Joshua Forrest's
15 mother. She stated that she had located Joshua and that
16 she would meet me at Ascauga Lake Road and Highway 25 in
17 North Augusta, South Carolina, and she would hand him over
18 to me.

19 Q. Did you go there?

20 A. Yes, sir.

21 Q. And what happened?

22 A. Upon arrival she presented Joshua Forrest to me. I
23 placed him in handcuffs in the front seat of my patrol or
24 my assigned vehicle.

25 Q. And where did you take him?

CHUCK CAIN - DIRECT

1 A. We drove straight to the Aiken County Sheriff's
2 Office.

3 Q. And what was the purpose of you taking him to the
4 sheriff's department?

5 A. For an interview.

6 Q. Prior to arriving at the sheriff's department, did you
7 have any conversations with the Defendant?

8 A. No, sir.

9 Q. And once you got to the sheriff's department, where
10 did you take him?

11 A. Upon arrival to the sheriff's office we walked
12 upstairs to the interview room, an enclosed interview room
13 and proceeded to initiate the interview.

14 Q. Investigator Cain, I'm going to hand you what's been
15 marked for identification purposes as State's Exhibit One,
16 and ask you if you can identify that document.

17 A. Yes, sir. This document is the Aiken County Sheriff's
18 Office Miranda warning.

19 Q. Is that the Miranda warning that you used in this
20 case?

21 A. Yes, sir.

22 Q. Does it fairly and accurately depict -- is it in
23 substantially the same condition as it was after you
24 filled it out with the Defendant?

25 A. Yes, sir.

CHUCK CAIN - DIRECT

1 Q. Has it been altered or tampered with in any way?

2 A. No, sir.

3 MR. KODMAN: Your Honor, the State would move
4 State's Exhibit One into evidence.

5 MS. STONEY: No objection, Your Honor.

6 THE COURT: State's Exhibit One is into evidence
7 without objection from the defense.

8 MR. KODMAN: Thank you, Your Honor.

9 (Thereupon, State's Exhibit No. 1, Miranda, was
10 received into evidence.)

11 BY MR. KODMAN:

12 Q. Investigator Cain, if you could, explain to the jury
13 what the rights are specifically that you have on that
14 form and that you read to the Defendant on December 4th,
15 2005.

16 A. The Defendant's Miranda rights simply state and
17 clearly state: Before we ask you any questions you must
18 understand your rights. You have the right to remain
19 silent. Anything you say can and will be used against you
20 in a court of law. You have the right to talk to an
21 attorney for advice before we ask you any questions, and
22 to have him or her present during questioning. If you
23 cannot afford an attorney the Court will appoint an
24 attorney to represent you without cost if you wish.

25 If you decide to answer questions now without an

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1 attorney present, you will still have the right to stop
2 answering at any time. You also have the right to stop
3 answering at any time until you've talked to an attorney.
4 I have read this statement of my rights, and understand
5 what my rights are.

6 The next segment is the waiver of these rights. I am
7 willing to make a statement and answer questions. I do
8 not want an attorney at this time. I understand and know
9 what I am doing. No promises have been made or threats --
10 no promises or threats have been made to me, and no
11 pressure or coercion of any kind has been used against me.

12 Q. And is there a place on there for the Defendant to
13 initial?

14 A. Beside each segment to include the waiver, there are
15 blocks for the Defendant's signature or, I'm sorry, blocks
16 for the Defendant's initials and two blocks for his
17 signature.

18 Q. And did he initial those blocks?

19 A. Yes, sir.

20 Q. And when did he do so?

21 A. That was done at 4:57 p.m.

22 Q. And did he sign that document?

23 A. Yes, sir.

24 Q. Did he indicate to you that he did want to give a
25 statement?

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1 A. Yes, sir; he did.

2 Q. Now describe a little bit to the jury about this room
3 where the interview takes place at.

4 A. The interview room is located upstairs in the criminal
5 investigation division of the sheriff's office. It is an
6 enclosed room. There is one table and three chairs. In
7 the upper corner of the room is a camera which audio and
8 video records the entire interview.

9 Q. Did you advise the Defendant in the case that his
10 interview would be recorded?

11 A. Yes, sir.

12 Q. Was the actual interview recorded?

13 A. A portion of it, sir.

14 Q. What about any of the portion where the Defendant
15 tells you what happened, was any of that recorded?

16 A. No, sir.

17 Q. Was anybody else present with you in the interview
18 room when this took place?

19 A. Lieutenant Kevin Liles was in the room.

20 Q. Do you make a written record of what -- did you make a
21 written record of what the Defendant told you?

22 A. Yes, sir.

23 Q. When did you do that?

24 A. I did take field notes during the interview. And
25 immediately after we were completed that evening, I

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1 transcribed them into my investigative-type, investigative
2 report.

3 Q. If you would, referring to your investigative report,
4 if you could relate to the jury the statement the
5 Defendant gave you as to what happened on December 4th,
6 2005.

7 A. Forrest reported of Chantelle Epps driving him to the
8 Elk's Club and arriving and entering between 1:30 and two
9 o'clock a.m. on December 4th, 2005 and consumed a large
10 quantity of alcohol that intoxicated him. Forrest
11 reported while inside Bussey, his ex-girlfriend, who had
12 formed a relationship with Mario Reddish during his,
13 Forrest, recent incarceration, began a verbal argument
14 over his flirtations with Monique.

15 Forrest continued to report Bussey took his ball cap
16 and relocated within a group of 12 males toward the rear
17 of the Elk's Club. Forrest reported he approached her to
18 retrieve his cap whereas Bussey threw a drink on him and
19 slapped his face several times.

20 Forrest reported he ignored Bussey's assault and after
21 obtaining his cap, the 12 males began to shove him and he
22 left the interior of the Elk's Club relocating to the rear
23 driver door of the white-in-color Lincoln operated by
24 James Forrest.

25 Forrest reported he opened the door to enter, was

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1 unable to due to the driver's seat being fully declined
2 (sic) and upon relocating to the front of the vehicle
3 observed Bussey and the same group of males approaching
4 him.

5 Forrest reported Bussey hit his face several times and
6 he grabbed her throat and pushed her away. Forrest
7 reported Reddish then approached -- Mario Reddish then
8 approached him and punched him in the face and a physical
9 fight erupted whereas Mario Reddish again struck him in
10 the jaw as the fight relocated to the front region of the
11 Lincoln.

12 At that time Forrest displayed apparent visible injury
13 to his inner lip region.

14 Forrest reported and demonstrated during the fight
15 Mario Reddish secured him in a frontal bear hug, gripping
16 both of his, Mario Reddish's, arms around his, Joshua
17 Forrest, arms and torso.

18 Forrest reported upon trying to break free he heard
19 apparent gunshots and began to back away from Mario
20 Reddish who ripped his, Joshua Forrest, shirt off while
21 falling forward to the ground.

22 Forrest reported of running to and entering the
23 Lincoln with Little James, James Forrest, and Jay, Joseph
24 Gartrell, while hearing Bussey state, shoot that nigger.

25 Forrest reported while departing the incident location

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1 an unknown black male ran beside the Lincoln firing a
2 pistol.

3 Forrest reported of soon arriving to the Waffle House
4 located at Highway 19 and I-20, Aiken, South Carolina,
5 where he accepted a ride from Myron to his, Forrest,
6 girlfriend Marcy Coleman's residence, located in Apple
7 Valley Subdivision, Augusta, Georgia, arriving between
8 five and six o'clock in the morning on December 4th.

9 Finally Forrest reported of overhearing Coleman's
10 mother state at around 8:30 that morning that he was
11 wanted by the police and of speaking with his mother later
12 that day who coordinated his surrender to law enforcement.

13 Q. Did the Defendant physically demonstrate to you the
14 altercation that he had with Mario Reddish?

15 A. Yes, sir.

16 Q. With the Court's permission, I'd like to have the
17 officer come down and demonstrate the Defendant's --

18 THE COURT: Certainly.

19 THE WITNESS: During the interview myself and
20 Joshua Forrest stood up while he was telling me his side
21 of the story. At that time, I took on the role of Joshua
22 Forrest and Joshua Forrest took on the role of Mario
23 Reddish.

24 I said, what happened. He stated to me that
25 Mario Reddish wrapped his arms all the way around him in

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1 this manner. And then Joshua Forrest stated he heard
2 two -- he heard the gunshots -- the gun go off. And as he
3 started to back away that Mario fell forward grabbing and
4 ripping his shirt as he backed up.

5 (Returns to witness stand).

6 BY MR. KODMAN:

7 Q. Did you ask him anything else?

8 A. Yes, sir.

9 Q. What did you ask him?

10 A. I asked him how could it be possible for him to be in
11 a frontal bear hug with Mario Reddish torso to -- front
12 torso to front torso, and for Mario Reddish to sustain two
13 gunshot wounds, two gunshot wounds to his front torso and
14 he, Joshua Forrest, not receive any injury at all.

15 He answered me that that was God's will. And I asked
16 him, does he mean divine intervention. And he said, yes.

17 Q. Investigator Cain, through your investigation, were
18 you able to establish how many people were outside the
19 Elk's Club that evening?

20 A. I do not have a number count, but I know it was a
21 large quantity of people. From what I gathered the Elk's
22 Club was full due to the party.

23 Q. Did you have a large number of people come forward to
24 law enforcement to give you statements?

25 A. No, sir.

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1 Q. And the person that you interviewed and gave the
2 statement, do you see him here in the courtroom today?

3 A. Yes, sir.

4 Q. Could you point him out for the jury?

5 A. He is the gentleman at the table wearing the white
6 shirt and the gray striped tie.

7 MR. KODMAN: Beg the Court's indulgence, Your
8 Honor.

9 Please answer any questions Ms. Stoney may have
10 for you.

11 THE WITNESS: Yes, sir.

12 THE COURT: Ms. Stoney, cross-examination.

13 CROSS-EXAMINATION

14 BY MS. STONEY:

15 Q. You said that you transported three witnesses to Aiken
16 County Sheriff's Office?

17 A. Could you speak up, ma'am? I didn't hear you. I'm
18 sorry.

19 Q. Did you say that you transported three witnesses to
20 the Aiken County Sheriff's Office?

21 A. Yes, ma'am.

22 Q. Who were they?

23 A. Taneka Roberson, Tameka Bussey Campbell and
24 Christopher Roper.

25 Q. Had any of them been drinking?

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1 A. I don't know.

2 Q. Okay. You said that you stopped by the scene. Was it
3 on the way? Were the witnesses in the car that you
4 stopped by at the scene?

5 A. Yes, ma'am.

6 Q. Did you take any statements from them there?

7 A. No, ma'am.

8 Q. Did they say anything to you at all?

9 A. They did begin to comment in conversation but there
10 were no official statements that I received. I was
11 driving, and I was driving to the hospital -- to the crime
12 scene, from the crime scene to the sheriff's office.

13 There was no way I was going to record or attempt to
14 conduct any type of interview while I was driving the
15 vehicle.

16 Q. Okay. And you said that my client, you were paged by
17 my client's mom and he turned himself in?

18 A. Yes, ma'am.

19 Q. Was he cooperative with you?

20 A. Yes, ma'am.

21 Q. And you don't have a recording of the actual
22 interview?

23 A. No, ma'am.

24 Q. But you did take field notes?

25 A. Yes, ma'am.

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1 Q. Do you believe they're as accurate as a recording
2 would have been?

3 A. The field notes?

4 Q. Yes.

5 A. I believe the -- my typed investigative report would
6 be as accurate as the tape would have been but not the
7 field notes. That was just bullets, so to speak, to get
8 me to my investigative report.

9 Q. So, did you take word-for-word notes?

10 A. Handwritten notes?

11 Q. Yes.

12 A. No, ma'am.

13 Q. But you were able to recall word for word everything
14 that happened?

15 A. To the best of my knowledge from my notes, from
16 conducting the interview I went straight to my
17 investigative report that same evening.

18 Q. Would you agree that a recording probably would have
19 been a little more accurate?

20 A. It would have probably been more detailed and more
21 lengthy.

22 Q. Did my client ever tell you that he shot Mario?

23 A. No, ma'am.

24 Q. And when he demonstrated the bear hug, was the bear
25 hug high up on the shoulders or lower down, pinning down

1 his arms?

2 A. Please understand that Joshua Forrest is taller than
3 me. And when he did wrap his arms around me, it was
4 towards the mid part of my upper arms because of his
5 height.

6 Q. Did he tell you how high up it was on him when Mario
7 poked him?

8 A. No, ma'am. He was just portraying Mario Reddish at
9 that time.

10 Q. Did he ever tell you that he separated slightly from
11 him before the second shot or any time?

12 A. I don't recall that, but the separation that I recall
13 from my notes and from the demonstration was that as soon
14 as Joshua Forrest heard the gun go off he began to back
15 away. And at that time Mario Reddish fell forward,
16 towards him, tearing his shirt, tearing his shirt down
17 with his hand.

18 Q. Did he ever tell you how many gunshots he heard?

19 A. No, ma'am. Just he heard gunshots.

20 MS. STONEY: No more questions.

21 THE COURT: Any redirect?

22 MR. KODMAN: No, Your Honor.

23 THE COURT: All right. You may step down. Thank
24 you, sir.

25 THE WITNESS: Thank you, sir.

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1 THE COURT: You may call your next witness.

2 MR. MILLER: Your Honor, the State calls
3 Lieutenant Kevin Liles.

4 KEVIN LARRY LILES, having been duly sworn, was
5 examined and testified as follows:

6 THE CLERK: Have a seat in the witness box.
7 State your full name for the Court, spelling your last.

8 THE COURT: Have a seat close to that microphone.
9 Speak loudly, slowly and clearly. Thank you.

10 THE WITNESS: Yes, sir. My name is Lieutenant
11 Kevin Larry Liles. The last name is spelled L-I-L-E-S.

12 DIRECT EXAMINATION:

13 BY MR. MILLER:

14 Q. Thank you. Lieutenant Liles, who are you employed by?

15 A. The Aiken County Sheriff's Office.

16 Q. How long have you been employed by the sheriff's
17 office?

18 A. Approximately nine years.

19 Q. What are your job responsibilities with the sheriff's
20 office?

21 A. Currently the shift lieutenant, shift commander.

22 Q. Back on December the 4th of 2005, what were your job
23 responsibilities with the sheriff's office?

24 A. Adult criminal investigator.

25 Q. Did you participate in the investigation into the

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1 death of Mario Reddish?

2 A. Yes, sir; I did.

3 Q. Where were you when you learned that Mario Reddish had
4 been shot?

5 A. I was actually at the Aiken Regional Medical Center's
6 ER.

7 Q. What did you do when you heard that there had been a
8 shooting -- or how did you find out there had been a
9 shooting and what did you do after that?

10 A. I was investigating another incident. A nurse came
11 down to get me to tell me that there was an incident that
12 I needed to be aware of. And she escorted me down to the
13 emergency room where Mario Reddish was.

14 Q. And at that time had he already been pronounced dead?

15 A. Yes, sir; he had.

16 Q. What did you do next?

17 A. Photographed him, and also contacted my lieutenant at
18 that time to notify him as to the occurrence of the
19 incident.

20 Q. Okay. I'm going to show you what's been marked
21 previously for identification as State's Exhibit 15. Can
22 you explain to the jury what this is?

23 A. It's a gunshot residue evidence collection kit.

24 Q. Okay. If you don't mind, could you please open that
25 kit and explain it -- or excuse me. Before you do that,

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1 has that kit been used?

2 A. No. Its tamper-resistant seal is still intact.

3 Q. Could you please open the kit and explain the contents
4 to the jury?

5 A. (Complying). Bunch of pieces, so it's going to take
6 me just a moment to get all of this out.

7 Q. Sure.

8 A. Each kit comes with a set of instructions. So the
9 first thing that I do is just actually pull out the
10 instruction sheet and read directly from the sheet what it
11 has me do.

12 Do you want me to read each step?

13 Q. Sure.

14 A. Step one. It says, fill out all information requested
15 on the enclosed gunshot residue analysis information
16 form. It's a form that's attached. I complete this.
17 It's got a section on here for my information, the agency
18 that I work for, my badge number. The case number is also
19 listed on the top. What type of crime is involved.
20 Subject information, which is a person, whoever I'm
21 conducting the gunshot residue test on. And the shooting
22 information. At the bottom it has my signature, whoever
23 completes the kit, the date, the time of collection.

24 Q. All right. What's next?

25 A. Step two. It says, put on disposable plastic gloves

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1 provided in this kit. A set of gloves are right here.

2 Step three. It says, right back, which is speaking of
3 these, carefully remove the cap from the vial labeled
4 right back (displaying). While holding the vial cap,
5 press the collecting surface of the particle lift onto the
6 back of the subject's right hand until the area shown
7 below in figure two has been covered.

8 It's referring to the right back of the hand. I don't
9 know if you actually want me to do that, but just remove
10 the top.

11 Right palm. Repeat the procedure described in step
12 three using the medical particle lift vial labeled, right
13 palm. Separate collection. Make sure to sample the area
14 shown below in figure three.

15 Step number five, left back and left palm. For
16 collection from the left, hand repeat steps three and four
17 using the vials labeled left back and left palm. Those
18 two collection vials.

19 After sampling all four areas, return capped vials to
20 the kit envelope. So I return those back into the
21 envelope. Here.

22 Step seven. Control swabs. Remove two of the swabs
23 from the unmarked zip-lock bag, moisten both swabs with
24 two to three drops of five percent nitric acid solution.
25 It's marked, supplied in the kit. Do not substitute.

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1 Swab an area of the subject that would not have been
2 exposed during an incident. For example, stomach or back
3 of calf. Place both swabs cotton tip down in the tube
4 labeled control. That's actually here.

5 Q. And so for that you're actually going to an area you
6 don't expect to find any gunshot residue?

7 A. Right. Where there would not be any present.

8 Q. Okay.

9 A. Step number eight. Right back. Moisten the tip of
10 one swab with two to three drops of nitric acid solution
11 and thoroughly swab the entire back of the hand including
12 the back of the fingers and all of the web area which
13 would be exposed while holding a weapon as shown in figure
14 four. Place swab, cotton tip down, in the tube labeled
15 right back.

16 Repeat the above procedure using a second swab. Place
17 a second swab, cotton tip down in the right back tube,
18 then recap tube and set aside.

19 Step number nine. Right palm. Moisten the tip of one
20 swab with two to three drops of nitric acid solution and
21 thoroughly swab the entire palm of the subject's right
22 hand as shown in figure five.

23 Place swab, cotton tip down, in the tube labeled for
24 right palm. Repeat the above procedure using a second
25 swab. Place the second swab, cotton tip down in the right

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1 palm tube. Then recap tube and set aside.

2 Step number ten. Left back left palm. Follow the
3 same procedures described in steps eight and nine but
4 swabbing the subject's left hand.

5 Step number 11. Cartridge case. Moisten the tip of
6 one swab with two to three drops of nitric acid solution,
7 then thoroughly swab the inside of the cartridge case.
8 Place swab cotton tip down in the tube labeled cartridge
9 case. Repeat the above procedure using a second swab.
10 Place the second swab, cotton tip down, in the cartridge
11 case tube, then recap the tube and set it aside.

12 Q. After you get done doing all of that, you got all your
13 cotton tip swabs inside your little tubes there, and you
14 got your other bottles, what do you do with it next?

15 A. It's sealed back in this envelope. Put inside here.
16 And I also attach this on the outside as evidence so that
17 I know that it's not been tampered with and I place my
18 initials on top of that seal, the top of the envelope.

19 Q. Would you ever test -- could you test more than one
20 person for the presence of gunshot residue from a single
21 kit?

22 A. No.

23 Q. And at the time that this investigation was going on,
24 December of 2005, were those the type of kits that you
25 would carry around inside your patrol vehicle?

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1 A. Yes, sir.

2 Q. Did you utilize one of these kits and try to collect
3 gunshot residue evidence from the victim, Mario Reddish,
4 at the hospital?

5 A. Yes, sir.

6 Q. I'm going to show you what's been previously marked
7 for identification as State's Exhibit Nine. Can you
8 identify that for me, please?

9 A. Yes, sir. This has my signature on it. It's also in
10 my handwriting with the subject's name, Mario T. Reddish,
11 my badge number and the case number.

12 Q. Okay. And the State's 15, I don't know if you
13 mentioned it or not, but the exterior of the envelope for
14 State's 15 which is the exemplary one there, does that
15 have a place for you to put all the information on the
16 exterior, too?

17 A. Yes, it does. Subject's name, officer's name,
18 officer's badge number, agency's name, agency case number
19 and then also a chain of possession.

20 Q. After you've taken all the swabs and secured the kit,
21 what did you do with State's Exhibit Number Nine?

22 A. It was placed into evidence.

23 Q. Okay. Your Honor, at this time the State would
24 request that State's Exhibit Number Nine be entered into
25 evidence.

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1 MS. STONEY: No objection.

2 THE COURT: State's Exhibit Number Nine is into
3 evidence without objection from the defense.

4 (Thereupon, State's Exhibit No. 9, GSR kit -
5 Reddish, was received into evidence.)

6 BY MR. MILLER:

7 Q. Lieutenant Liles, were you present later on in the
8 evening of December the 4th, 2005 when the Defendant was
9 arrested and taken into the Aiken County Detention Center?

10 A. Yes, sir.

11 Q. Where was the Defendant when the arrest warrants were
12 served on him?

13 A. He was at the Aiken County Sheriff's Office in the
14 interview room.

15 Q. Now the sheriff's office and the detention center are
16 not the same building; are they?

17 A. No, sir. Separated by probably two to three miles.

18 Q. Okay. Who served the Defendant with the arrest
19 warrants?

20 A. Investigator Chuck Cain.

21 Q. Prior to being served with the arrest warrants, what
22 was your interaction with the Defendant?

23 A. I conducted a gunshot residue test on him.

24 Q. When you say you conducted a gunshot residue test, did
25 you use one of the kits like the one in State's Exhibit

KEVIN LARRY LILES - DIRECT

1 15?

2 A. Yes, sir. Just like this.

3 Q. I'm going to show you what's been previously marked
4 for identification as State's Exhibit Number 12. Can you
5 identify that for the jury, please?

6 A. Yes, sir. Subject's name is Joshua Lamar Forrest. It
7 has my name on it, my badge number, the sheriff's office
8 and the case number. This is the one that I completed.

9 MR. MILLER: Your Honor, at this point the State
10 would move to have State's Exhibit Number 12 entered into
11 evidence.

12 THE COURT: Have you showed that to defense
13 counsel?

14 MR. MILLER: Yes, sir.

15 THE COURT: Any objection with regard to State's
16 Exhibit Number 12, Ms. Stoney?

17 MS. STONEY: No, Your Honor.

18 THE COURT: State's Number 12 is into evidence
19 without objection from the defense.

20 (Thereupon, State's Exhibit No. 12, GSR kit -
21 Forrest, was received into evidence.)

22 BY MR. MILLER:

23 Q. The form that you referenced in State's Exhibit Number
24 15, the information form, did you fill out one of those
25 forms for State's Exhibit Number 12?

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1 A. Yes, sir. I did.

2 Q. Where did you get the information from that you put on
3 that form?

4 A. From the Defendant.

5 Q. Does the form have a box for you to mark the subject
6 being tested is left-handed or right-handed?

7 A. Yes, sir; it does.

8 Q. What does the form say about the Defendant, Joshua
9 Forrest?

10 A. Right-handed.

11 Q. Where did you get that information?

12 A. From him.

13 Q. Did you go to the detention center with the Defendant?

14 A. Yes, sir; I did.

15 Q. Did you secure any evidence from the Defendant at the
16 detention center?

17 A. Yes, sir.

18 Q. Explain what that evidence was and how it was
19 collected.

20 A. We collected, myself and Investigator Chuck Cain
21 collected his clothing. I actually took the clothing into
22 my possession and placed them into a bag while
23 Investigator Cain logged it on an evidence sheet. So he
24 did the writing while I did the collecting of the items.

25 Q. Okay. I'm going to show you what's been previously

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1 marked for identification as State's Exhibit 13. Can you
2 take a look inside this box and tell me what those items
3 are? And you can match it up with your numbers as well if
4 you need to.

5 A. Did you want me to open these?

6 Q. You can, if you have to open them to identify it.

7 A. These are a pair of white and black Nike Air Jordan
8 tennis shoes. Have a gray T-shirt which is listed on the
9 evidence sheet. A white tank top, and a pair of blue
10 jeans.

11 Q. So are those the clothes from the Defendant that were
12 collected at the Aiken County Detention center?

13 A. Yes, sir; they are.

14 Q. And after you secured that -- after you secured that
15 clothing, what did you do with it?

16 A. It was taken into evidence and submitted into
17 evidence.

18 Q. I'll give you a second to box all of that back up.

19 MR. MILLER: Thank you, Your Honor. No further
20 questions?

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MS. STONEY:

24 Q. You said that my client told you he was right-handed?

25 A. Yes, ma'am.

1 Q. But when you did the gunshot residue test, did you do
2 both hands?

3 A. Yes, ma'am. Both hands.

4 Q. Did you ever ask for that to be tested?

5 A. We did. We submitted it for testing.

6 Q. And when you took the clothing, did you ever ask for
7 that to be tested?

8 A. We asked that it be tested for DNA.

9 Q. To your knowledge, were there ever any fingerprints
10 from my client found on the bullets, found on the shell
11 casings, found on anything at the scene?

12 A. I didn't go to the scene.

13 Q. And what about any blood? To your knowledge, was any
14 blood of the victim's ever found on my client?

15 A. No, ma'am.

16 MS. STONEY: No more questions, Your Honor.

17 THE COURT: Any redirect?

18 MR. MILLER: No redirect, Your Honor.

19 THE COURT: You may step down.

20 Might counsel approach the bench for one moment?

21 (Off-the-record discussion.)

22 THE COURT: Mr. Foreman, ladies and gentlemen of
23 the jury, that concludes the taking of testimony for
24 today. We're going to resume the trial of this case at
25 nine o'clock in the morning. I think previously you've

1 been asked to be here at 9:30 or ten, but we're starting
2 at nine o'clock sharp in the morning. Nine o'clock. Be
3 here and be here on time.

4 Once again, I admonish you not to do any
5 independent investigation. Do not discuss the case
6 amongst yourselves or with anyone else. I ask when you
7 come into the courthouse tomorrow to come directly to the
8 jury room. Have a good night. We'll see you at nine
9 o'clock sharp. Thank you.

10 (Jury exits courtroom at 3:20 p.m.)

11 THE COURT: Anything from the State before we
12 stand at ease?

13 MR. KODMAN: No, Your Honor.

14 THE COURT: Anything from the defense?

15 MS. STONEY: No, Your Honor.

16 THE COURT: All right. We'll stand at ease until
17 nine o'clock in the morning.

18 MR. MILLER: Thank you, Your Honor.

19 (Thereafter, other matters were heard by Court.)

20 END OF DAY'S PROCEEDINGS: 3:31 P.M.

21 * *** *

22 ON WEDNESDAY, JUNE 24, 2009 AT 9:10 A.M.:

23 THE COURT: Anything from the State before we
24 proceed?

25 MR. KODMAN: No, Your Honor.

MARY FRANCES O'GRADY-WATTS - DIRECT

1 THE COURT: Anything from the defense?

2 MS. STONEY: No, Your Honor.

3 THE COURT: All right. We're ready for the jury.

4 (Jury enters courtroom at 9:10 a.m.)

5 THE COURT: Mr. Foreman, ladies and gentlemen of
6 the jury, everybody looks rested, bright eyed and bushy
7 tailed, ready to start listening to evidence in this
8 case.

9 I want to thank you for being here and thank you
10 for being here on time. I've been all over the state. I
11 believe y'all are the most prompt jury in the whole State
12 of South Carolina. Thank you for being here on time.

13 You're recognized.

14 MR. MILLER: Thank you, Your Honor. The State
15 calls investigator Mary Frances O'Grady-Watts.

16 THE COURT: Yes, ma'am, if you could come forward
17 and place your left hand on the Bible and raise your right
18 hand as the clerk administers the oath.

19 MARY FRANCES O'GRADY-WATTS, having been duly
20 sworn, was examined and testified as follows:

21 THE CLERK: Please have a seat on the witness
22 box. State your full name for the Court and spell your
23 last.

24 THE COURT: I'm going to ask you to pull up a
25 chair, pull up real close to that microphone. Speak

MARY FRANCES O'GRADY-WATTS - DIRECT

1 loudly, clearly and slowly. I want everyone to hear what
2 you got to say. State your full name.

3 THE WITNESS: Mary Frances O'Grady-Watts.

4 THE COURT: Keep your voice up. Thank you,
5 ma'am.

6 DIRECT EXAMINATION

7 BY MR. MILLER:

8 Q. Investigator, who are you employed by?

9 A. The Aiken County Sheriff's Office.

10 Q. And how long have you been employed by that agency?

11 A. Since January of 2005.

12 Q. And were you employed by any law enforcement agency
13 prior to that?

14 A. Columbia Police Department since 1995.

15 Q. What are your job responsibilities with the Aiken
16 County Sheriff's Office?

17 A. I'm a forensic investigator within the forensics unit.

18 Q. Were you present for the autopsy of Mario Reddish?

19 A. Yes, I was.

20 Q. Where was that autopsy performed?

21 A. At the Newberry Hospital in the morgue.

22 Q. When was the autopsy performed?

23 A. On December 5th, '05 at 8:30 in the morning.

24 Q. Did you collect any evidence at the autopsy for
25 analysis?

MARY FRANCES O'GRADY-WATTS - DIRECT

1 A. Yes.

2 Q. Would you explain what that evidence was and how it
3 was collected?

4 A. The pathologist removed an unknown caliber fired
5 bullet from the victim's body. That was the only thing
6 that was actually sent for analysis.

7 Q. I want to show you what's been previously entered into
8 evidence as State's Exhibit Number Eight. Do you
9 recognize that item, ma'am?

10 A. Yes.

11 Q. How do you recognize it?

12 A. Actually it was -- all the markings that are on it
13 from autopsy, they'll label them and then you have to sign
14 for them when you collect them.

15 Q. What did you do with the bullet after you collected
16 it?

17 A. You transport it back to headquarters and put it in
18 the evidence room.

19 Q. I want to show you what's been previously entered into
20 evidence as State's Exhibit Two. Do you recognize that
21 vehicle?

22 A. Yes.

23 Q. Did you execute a search warrant on that vehicle?

24 A. Yes, I did.

25 Q. What evidence did you seize from the vehicle?

MARY FRANCES O'GRADY-WATTS - CROSS

1 A. I actually have three separate fabric samples I took
2 from the front passenger seat.

3 Q. I'm going to show you what's been previously marked
4 for identification as State's Exhibit 14. Would you look
5 at those and tell me what they are?

6 A. These are the fabric samples. I packaged them
7 individually. They have my markings on them.

8 Q. And those are the samples that you took from the
9 vehicle?

10 A. Yes.

11 Q. And you know that, why?

12 A. They have my markings on it. You have to label each
13 one of your packaging individually as to what you
14 collected, where you collected it from, and with the date
15 of it.

16 Q. When you searched the vehicle pursuant to the search
17 warrant, did you look at the exterior of the vehicle as
18 well?

19 A. Yes, I did. You photograph and you examine the
20 exterior and the interior of the vehicle every time.

21 Q. Did you find any bullet holes on the exterior of the
22 vehicle?

23 A. No, there were not.

24 Q. Thank you. That was all the questions I have, Your
25 Honor.

MANUEL JOHN ORTUNO - DIRECT

1 THE COURT: Cross-examination.

2 MS. STONEY: Just one question.

3 CROSS-EXAMINATION

4 BY MS. STONEY:

5 Q. The three fabric samples, what did you do with those?

6 A. I actually submitted them to evidence and what we
7 would eventually do is submit them to SLED for analysis.

8 MS. STONEY: No more questions.

9 THE COURT: Redirect?

10 MR. MILLER: None, Your Honor.

11 THE COURT: You may step down. Thank you,
12 ma'am. You may call your next witness.

13 MR. KODMAN: The State calls Manuel Ortuno.

14 MANUEL JOHN ORTUNO, having been duly sworn, was
15 examined and testified as follows:

16 THE CLERK: Please have a seat on the witness
17 box. State your full name for the Court and spell your
18 last.

19 THE COURT: Watch your step there. Speak loudly,
20 clearly and slowly. Thank you.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: And state your full name.

23 THE WITNESS: Manuel John Ortuno, O-R-T-U-N-O.

24 DIRECT EXAMINATION

25 BY MR. KODMAN:

MANUEL JOHN ORTUNO - DIRECT

1 Q. Mr. Ortuno, where do you work?

2 A. At the South Carolina Law Enforcement Division
3 commonly referred to as SLED.

4 Q. And what do you do at SLED?

5 A. I'm a forensic DNA analyst.

6 Q. Can you tell the jury a little bit about your
7 qualifications?

8 A. I graduated with honors from the American University
9 in Washington, DC with a bachelor's of science degree
10 majoring in chemistry. I have a master's degree also
11 majoring in chemistry from the University of South
12 Carolina, Columbia.

13 I was hired as a researcher at the University
14 afterwards where I performed experiments in the molecular
15 genetics laboratory for three and a half years. This led
16 to two publications in peer review journals.

17 I'm a graduate of the South Carolina Criminal Justice
18 Academy. I've completed my training at SLED in the field
19 of forensic serology and DNA analysis.

20 I was -- worked at a workshop in the FBI Academy in
21 Quantico, Virginia in advanced DNA analysis. I've
22 attended various conferences and seminars throughout the
23 entire United States on a regular basis, and have been
24 qualified as an expert in the field of forensic serology
25 and DNA analysis 46 times.

MANUEL JOHN ORTUNO - DIRECT

1 MR. KODMAN: Your Honor, at this time we'd move
2 to have Mr. Ortuno qualified as an expert in the field of
3 DNA analysis and forensic serology.

4 THE COURT: Any query with regard to his
5 qualifications?

6 MS. STONEY: No, Your Honor.

7 THE COURT: Mr. Foreman, ladies and gentlemen of
8 the jury, normally a person cannot give opinion
9 testimony. Normally when a person testifies they must
10 testify as to what they either saw, heard or sensed by
11 smell.

12 However, there's an exception. When someone is
13 qualified because of education or experience, they're
14 permitted to give their opinion in certain areas if the
15 Court qualifies them that way.

16 This witness will be qualified as a forensic
17 analyst to give opinions in that area. That does not mean
18 that you must accept the opinion. It is evidence for you
19 to use in any way you see fit.

20 Yes, sir.

21 MR. KODMAN: Thank you, Your Honor.

22 BY MR. KODMAN:

23 Q. Agent Ortuno, can you please describe to the jury a
24 little bit about what is DNA?

25 A. DNA stands for deoxyribonucleic acid. It's a very

MANUEL JOHN ORTUNO - DIRECT

1 large complex molecule that's found in essentially every
2 cell of the human body.

3 Now, most of our DNA is the same. In fact, 99 percent
4 of my DNA is indistinguishable from your DNA. However,
5 because the molecule is so large, the remaining one
6 percent is more than enough to allow us to identify one
7 person's DNA to the exclusion of everybody else's, within
8 reasonable scientific certainty.

9 What we do is receive evidence submitted from the
10 agency, in event that's occurred. We first determine
11 whether there's human body fluid. Typically what we're
12 looking for is, for example, blood, or semen, saliva.
13 Once we determine if it's human body fluid, we take the
14 samples through a series of chemical steps which allows us
15 to separate the DNA from the cells.

16 Once we've got this DNA, we can target specific
17 regions along the DNA that allow us to make this
18 determination or this distinction between this one person
19 and everybody else. This basically is what we call a DNA
20 profile.

21 Once we have a DNA profile from the evidence, we take
22 samples from individuals believed to have been involved in
23 the incident. Typically this is either going to be blood
24 that's drawn from the arm or now what we're going to more
25 and more are buccal swabs. Simply it's a Q-Tip, for lack

MANUEL JOHN ORTUNO - DIRECT

1 of a better word, that's inserted in the mouth. There are
2 a lot of cells within the mouth that we can collect.
3 Those cells within the mouth contain the DNA that we need
4 to develop a DNA profile from individuals.

5 So we have known samples of DNA from individuals
6 believed to have been involved in the incident and
7 evidence or unknown DNA that we've analyzed. And we
8 simply compare the DNA profile from the evidence to the
9 standards or known samples and see if they match or don't
10 match.

11 Q. Were you asked to perform some DNA analysis in the
12 case involving Joshua Forrest?

13 A. I did.

14 Q. Was a blood standard submitted to you in that case?

15 A. Yes, there was one blood standard submitted in this
16 case.

17 Q. And whose blood standard was that from?

18 A. From Mario Reddish.

19 Q. Agent Ortuno, I'm going to hand you what's been marked
20 for identification purposes as part of State's Exhibit 13,
21 some cuttings from the clothing, T-shirt and shorts of the
22 Defendant, Joshua Forrest, and ask you if you can identify
23 those?

24 A. Yes, sir. These are evidence envelopes that contain
25 the SLED lab number as well as my initials. And they

MANUEL JOHN ORTUNO - DIRECT

1 contain cuttings from blue jeans and a tank shirt that
2 were analyzed for these human body fluids.

3 Q. And if you could explain to the jury the analysis that
4 you conducted on those cuttings?

5 A. Yes. First, the first question that I had to ask is
6 if there's any human body fluid on these samples. And
7 what we're looking for here was blood.

8 So it was tested for blood and blood was indicated on
9 the three samples, two cuttings from the blue jeans and
10 one cutting from the tank T-shirt -- tank shirt.

11 Q. Did you compare that blood standard to the standard of
12 Mario Reddish that was submitted to you for analysis?

13 A. Yes. Once blood was determined we then, or I then
14 took these cuttings and developed a DNA profile from them
15 and they were compared to the DNA profile from Mario
16 Reddish.

17 Q. And what were your findings?

18 A. On one of the cuttings, on the cutting from the tank
19 T-shirt and one of the cuttings from the blue jeans, I
20 developed a DNA profile that was from an unidentified
21 male. In other words, it did not match Mario Reddish.

22 On the third cutting, which is actually the second
23 cutting from the blue jeans, what I found was a mixture.
24 Now, in the case of a mixture what happens is you have
25 more than one person. You've assumed the word mixture

MANUEL JOHN ORTUNO - DIRECT

1 means more than one person found in this DNA sample.

2 In this particular case I had a large amount of DNA
3 from one person, and a very small amount from what's
4 called a minor contributor, much smaller amount of DNA
5 there. It's so small that the second person I can't
6 really even compare to anybody. It's just too weak.

7 However, the major contributor or the stronger profile
8 in the mixture could be analyzed and compared. It was
9 also from an unidentified individual. So it didn't match
10 Mario Reddish. In other words, none of the samples that I
11 analyzed for DNA matched Mario Reddish.

12 Q. I'm going to hand you what's been marked for
13 identification purposes as State's Exhibit 14 which was
14 some cuttings from a Lincoln and ask you if you can
15 identify those items?

16 A. Yes. These contain the original work on this case
17 that I performed, a piece of fabric from the passenger
18 seat of vehicle. In fact, all three are pieces from the
19 passenger seat of a vehicle.

20 And they also contain lab number as well as the SLED's
21 number and my initials on each of the envelopes.

22 Q. Would you perform a DNA analysis on those items?

23 A. Yes. The same process was performed. First determine
24 whether in fact there's blood on these cuttings and there
25 was. Blood was indicated on the three, the three

1 cuttings. And then it was taken through a series of
2 chemical steps and a DNA profile was obtained from those
3 cuttings. And they were also found to be from an
4 unidentified male individual not matching the DNA profile
5 of Mario Reddish.

6 MR. KODMAN: Your Honor, at this time we'd move
7 to introduce State's Exhibit 13 into evidence.

8 MS. STONEY: No objection.

9 THE COURT: State's Exhibit 13 is into evidence
10 without objection from defense.

11 (Thereupon, State's Exhibit No. 13, clothes -
12 Forrest, was received into evidence.)

13 MR. KODMAN: Please answer any questions
14 Ms. Stoney has for you.

15 THE COURT: Cross-examination, Ms. Stoney.

16 CROSS-EXAMINATION

17 BY MS. STONEY:

18 Q. Mr. Ortuno, am I to understand that you tested the
19 victim -- I mean, the Defendant's clothes, and also the
20 car that he was riding in, and found no blood that matched
21 the victim at all?

22 A. None of the samples that were submitted to me had a
23 DNA profile that matched Mario Reddish. That's correct.

24 MS. STONEY: I have no more questions, Your
25 Honor.

JOHN GRAY DODD ROBERTS - DIRECT

1 THE COURT: Any redirect?

2 MR. KODMAN: No, Your Honor.

3 THE COURT: You may step down.

4 MR. KODMAN: Your Honor, we also ask that Agent
5 Ortuno and Investigator Watts be excused.

6 THE COURT: Any objection from the defense?

7 MS. STONEY: No, sir.

8 THE COURT: You're free to leave. Thank y'all
9 for being here.

10 JOHN GRAY DODD ROBERTS, having been duly sworn,
11 was examined and testified as follows:

12 THE CLERK: Please have a seat on the witness
13 box. State your full name for the Court and spell your
14 last.

15 THE COURT: I'm going to ask you pull up real
16 close to that microphone. Speak loudly, clearly and
17 slowly. State your full name and spell your last.

18 THE WITNESS: My name is John Gray Dodd Roberts,
19 R-O-B-E-R-T-S.

20 THE COURT: Thank you, sir.

21 DIRECT EXAMINATION:

22 BY MR. MILLER:

23 Q. Good morning, Major Roberts. Who are you employed by?

24 A. I work for the South Carolina Law Enforcement Division
25 also known as SLED.

JOHN GRAY DODD ROBERTS - DIRECT

1 Q. Okay. How long have you been employed by SLED?

2 A. Approximately four and a half years.

3 Q. Did you work in law enforcement before you were
4 employed by SLED?

5 A. No, sir. I did not.

6 Q. Okay. What are your job responsibilities with SLED?

7 A. I'm a trace analyst in the trace evidence department
8 at SLED.

9 Q. What formal education have you had to enable you to
10 perform your job duties at SLED?

11 A. I have a bachelor's of science in chemistry from Texas
12 A&M, Corpus Christi. After I got my degree I went to work
13 at USC as a researcher.

14 When I got my employment at SLED, I went into a
15 training program for gunshot residue analysis and bullet
16 hole analysis. I worked under my lieutenant, and other
17 court-qualified analysts, learning how to do the analysis
18 that we do, helping them work their cases and learning how
19 to make conclusions based on the evidence that I
20 received.

21 After I went through that training program I was peer
22 reviewed and qualified to work my own cases which I
23 continue to do until now.

24 Q. Have you ever been qualified as an expert witness in
25 South Carolina courts before this trial?

JOHN GRAY DODD ROBERTS - DIRECT

1 A. Yes, sir. I have.

2 MR. KODMAN: Your Honor, at this time the State
3 moves to qualify Special Agent Roberts, excuse me, Agent
4 Roberts, as an expert witness in the field of trace
5 evidence analysis, specifically in the field of gunshot
6 residue and bullet hole analysis.

7 THE COURT: Any query with regard to his
8 qualifications?

9 MS. STONEY: Yes, Your Honor. I have a few
10 questions.

11 VOIR DIRE

12 BY MS. STONEY:

13 Q. So your formal education is a bachelor's degree?

14 A. Bachelor's of science in chemistry; yes, ma'am.

15 Q. And nothing any further than that?

16 A. No, ma'am.

17 Q. How long was the course that you took when you became
18 employed with SLED?

19 A. It was approximately six months of working underneath
20 somebody before I was able to work my own cases.

21 Q. And who were you working underneath?

22 A. Joe Powell. Lieutenant Joe Powell.

23 Q. And what was his education?

24 A. He has a bachelor's of science in chemistry from
25 Mississippi State, I believe.

JOHN GRAY DODD ROBERTS - DIRECT

1 Q. And no further education?

2 A. I'm not aware -- I believe he went to graduate school,
3 but I'm not positive about that.

4 Q. But you haven't been to graduate school?

5 A. I went for one year. Yes, ma'am.

6 Q. How long -- how many times have you been an expert in
7 South Carolina cases?

8 A. Twenty-two.

9 MS. STONEY: No more questions, Your Honor.

10 THE COURT: This witness is indeed qualified to
11 testify in the area of trace analysis, trace evidence
12 testimony. And, once again, he is an expert witness and
13 allowed to give opinions in this field.

14 Just by virtue of the fact that he's an expert
15 does not mean that you have to accept his opinion, but
16 it's the evidence for you to consider just like any other
17 evidence. I will charge you at the conclusion of the case
18 with regard to how to specifically evaluate expert
19 witnesses. You're recognized.

20 MR. MILLER: Thank you, Your Honor.

21 DIRECT EXAMINATION (CONTINUED)

22 BY MR. MILLER:

23 Q. Agent Roberts, I'm going to show you what's been
24 previously marked or excuse me, what's been submitted into
25 evidence as State's Exhibit 12. Do you recognize that?

JOHN GRAY DODD ROBERTS - DIRECT

1 A. I do.

2 Q. Can you tell the jury what that is?

3 A. This is a gunshot residue kit. This is the kit that
4 we give out to agencies all around the state so that they
5 can test peoples' hands for gunshot residue.

6 Q. And who is that kit from?

7 A. This says that it's from Joshua Lamar Forrest.

8 Q. Did you perform any test or analysis on the materials
9 on this GSR kit?

10 A. No, sir. I did not.

11 Q. Why did you not test it?

12 A. With gunshot residue, we have a six-hour window in
13 order to obtain information on whether a person fired a
14 gun, handled a gun, or was near it when I went off.

15 In this case this gunshot residue kit was performed
16 after our six-hour protocol and therefore I did not do any
17 analysis on it.

18 Q. I'm going to show you what's been previously marked
19 and submitted into evidence as State's Exhibit Nine. Do
20 you recognize that?

21 A. Yes, I do.

22 Q. And what is that?

23 A. This is the remains of a gunshot residue kit from
24 Mario T. Reddish.

25 Q. Okay. Did you perform any tests or analysis on that

JOHN GRAY DODD ROBERTS - DIRECT

1 piece of evidence?

2 A. Yes, I did.

3 Q. Can you explain to the jury how you tested that type
4 of evidence?

5 A. When we give out gunshot residue kits there are two
6 types of sampling media that we give out. There are
7 particle lifts, which are what is left over in this kit.
8 And there are cotton swabs that are pre wet or wetted with
9 nitric acid. The swabs are applied to the hands after
10 particle lifts to look for materials that are found in the
11 primers of guns. Particle lifts are used to look for the
12 particles of gunshot residue themselves.

13 In this case, I -- we tested the swabs first and found
14 that they were negative. And I didn't have to go to the
15 particle lifts to test any further.

16 Q. Okay. So, just so I'm clear, what was your ultimate
17 conclusion about the presence of gunshot residue as it
18 related to that?

19 A. In this kit my report read that the quantities of
20 metals detected did not indicate the presence of gunshot
21 residue.

22 Q. Okay. I'm going to show you what's been previously
23 entered into evidence as State's Exhibit Ten. And I'm
24 going to get you some gloves as well. I'll ask you if you
25 can identify the items that are inside that box.

JOHN GRAY DODD ROBERTS - DIRECT

1 A. This is a box that was submitted to me full of
2 clothing for bullet hole analysis. It has my initials.
3 This is my handwriting where I put, return, because I
4 completed my analysis on it. It has our SLED lab number.
5 It has a biohazard bag in it that has two bags also inside
6 of it.

7 This bag contains three articles of clothing that I
8 tested for bullet hole analysis. What we do for bullet
9 hole analysis is when someone is shot with a firearm, we
10 can estimate the distance from which they were shot.

11 When the bullet comes out of the gun it pulls along
12 particles of gun powder with it. Based on chemical tests,
13 we can develop a pattern off of that clothing and give an
14 estimation on how far away that muzzle of that gun was
15 when it was fired.

16 In this case, I got three shirts that I tested for
17 bullet hole analysis. They all bear my initials on the
18 collar. That's how I know that they're mine. They all
19 smell like the chemicals that I use when I do bullet hole
20 analysis.

21 Q. Based upon your testing and the evidence, were you
22 able to reach any conclusion about the bullet holes in
23 those items?

24 A. I was. And let me get to my report here.

25 Q. Okay.

JOHN GRAY DODD ROBERTS - DIRECT

1 A. In addition to the shirts, I received several other
2 articles of clothing that I did not do any analysis on.

3 But the clothing I received, I received one black
4 T-shirt. I found three holes in the black T-shirt. The
5 holes that were found in the front left middle chest area
6 and the front left upper chest area are consistent with
7 those found in the other garments.

8 And the residue and physical characteristics around
9 the hole in the front left middle chest area are
10 consistent with a near contact shot. When someone is shot
11 from contact, put the muzzle up against a hard, relatively
12 hard object, somebody's body, the powder and the burning
13 things that come out of the muzzle are forced into the
14 skin and they blow back, and they create a signature
15 singeing and tearing of whatever that muzzle was in
16 contact with, in this case the shirt, and that's how I can
17 tell that it's a contact shot.

18 I also received a black long-sleeve knit shirt. I
19 found five holes in that shirt. The residue and physical
20 characteristics around the hole in the front left middle
21 chest area of that shirt were consistent with a near
22 contact shot which is consistent with a shirt that is
23 either under it or over it.

24 I also found gunpowder particles around the hole in
25 the front upper left chest area. Not all the time do you

JOHN GRAY DODD ROBERTS - CROSS

1 get consistent burning with a fired weapon. Sometimes
2 you'll get gunpowder particles that come out and they're
3 intact. We do a chemical test on them that tells us that
4 they're gunpowder particles and not just sand or dirt or
5 something like that.

6 And on the third shirt, I found it was a brown short-
7 sleeve work shirt. I found four holes in that shirt as
8 well. And a pattern of gunpowder residue and lead was
9 found around the hole in the front upper left chest area
10 of the shirt. I also found gunpowder particles around the
11 hole in the front upper left chest area of the shirt.

12 Q. Looking back to the Defendant's gunshot residue kit
13 that you did not test, can you explain the rationale
14 behind why there's a six-hour window to test for gunshot
15 residue?

16 A. What we found in our research at the lab is that these
17 materials disappear on their own simply by you walking
18 around, breathing, sweating, touching things in the area
19 of six hours. Therefore, that is our upper limit for
20 testing a gunshot residue on a living person.

21 Q. And when you tested the items of clothing for -- did
22 your bullet hole analysis, you mentioned that there were
23 multiple holes. Did you test all of the holes?

24 A. No, sir. I tested the ones in the front of the
25 shirt. The ones in the back of the shirt did not appear

DAVID WARREN BLACK - DIRECT

1 to be bullet holes so I just didn't test them. I tested
2 the ones that were bullet holes.

3 MR. MILLER: Thank you. Please answer any
4 questions Ms. Stoney might have.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MS. STONEY:

8 Q. Agent Roberts, you said that you did not test Joshua
9 Forrest for gunshot residue?

10 A. Yes, ma'am. That's correct.

11 Q. Was it sent to you for analysis?

12 A. Yes, ma'am.

13 Q. But you didn't test it?

14 A. That's correct.

15 Q. And the reason behind that was because it had been
16 more than six hours?

17 A. Yes, ma'am.

18 MS. STONEY: No more questions.

19 THE COURT: Redirect?

20 MR. MILLER: Nothing, Your Honor.

21 THE COURT: You may step down. You may call your
22 next witness.

23 MR. MILLER: Your Honor, State calls Agent David
24 Black.

25 DAVID WARREN BLACK, having been duly sworn, was

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1 examined and testified as follows:

2 THE CLERK: Please have a seat on the witness
3 box. State your full name for the Court and spell your
4 last.

5 THE COURT: Watch your step.

6 THE WITNESS: Yes, sir.

7 THE COURT: Pull up real close to that
8 microphone. Speak loudly, clearly and slowly. State your
9 full name and spell your last.

10 THE WITNESS: Yes, sir. My name is David Warren
11 Black. Last name is spelled B-L-A-C-K.

12 DIRECT EXAMINATION

13 BY MR. MILLER:

14 Q. Agent Black, who are you employed by?

15 A. I'm a senior agent employed with the South Carolina
16 State Law Enforcement Division, better known as SLED.

17 Q. Did you work in law enforcement before you were
18 employed by -- or excuse me. How long have you been
19 employed by SLED?

20 A. I've been employed with SLED for over 17 years.
21 Eleven years were in the latent print and crime scene
22 department, and over six years with the firearms
23 department.

24 As of March 2009, I was reassigned to the newly-formed
25 latent print department to assist with the training of the

DAVID WARREN BLACK - DIRECT

1 two new examiners based on the fact that I'm a -- my
2 experience in the field of latent prints, being court
3 qualified in that area.

4 Q. Did you work in law enforcement before you were
5 employed by SLED?

6 A. Yes, I did.

7 Q. Where did you work?

8 A. I worked for the Richland County Sheriff's Office in
9 Columbia, South Carolina. I was there for seven years.
10 Four years in uniform patrol, three years in their
11 forensic laboratory as a latent print examiner, crime
12 scene investigator.

13 Q. And what are your current job responsibilities with
14 SLED?

15 A. Current or when I was assigned to this case?

16 Q. Well, when you were assigned to this case. We'll go
17 back to that first.

18 A. Okay.

19 Q. When you were assigned to this case, what were your
20 job responsibilities?

21 A. At the time I was a firearms and tool mark examiner
22 assigned to the firearms department. With that job I
23 would examine firearms and firearms-related evidence. I
24 would examine tool marks and tool mark related evidence.
25 I would also conduct what is known as GRC, general rifling

DAVID WARREN BLACK - DIRECT

1 characteristics tests. That has to do with fired
2 bullets.

3 I would also do IBIS examination. IBIS is the
4 integrated ballistic identification system. It's where we
5 take fired bullets and cartridge cases and we can run them
6 against each other in a computer to determine if they
7 were, if the firearm may have been used in multiple
8 scenes. It's similar to the AFIS that's used with
9 fingerprints.

10 Also we would do some impression evidence work in the
11 firearm department, too.

12 Q. What formal education do you have to enable you to
13 perform your job duties at SLED that you just described?

14 A. I have an associate of arts degree in criminal justice
15 from Florence-Darlington Technical College. I transferred
16 to the University of South Carolina in Columbia, completed
17 my studies and received a bachelor of science in criminal
18 justice with a minor in sociology.

19 I have 14 years experience as a latent print examiner,
20 crime scene investigator. During those 14 years I became
21 very familiar with various firearms, the types, how they
22 function, how they operated. Also during those 14 years I
23 became familiar with various types of ammunition, the
24 parts of ammunition and how they relate to firearms
25 identification.

DAVID WARREN BLACK - DIRECT

1 With SLED in the firearms department there is an
2 in-house three-year training program. And in that
3 training program you have segments that covers different
4 areas. I would have to be tested, written, verbally and
5 with practical exercises, in each area. And at the end of
6 three years I was given a cumulative test for all the
7 material that was covered. And it was also in written
8 form, practical form, and oral exams.

9 I've also during that time was working firearm cases
10 under the direct supervision of a firearms examiner who
11 was court qualified and tenured in that area.

12 And I also spent a lot of time on the microscope.
13 That's probably at least 50 percent of the work that's
14 done in firearms identification.

15 Q. Have you ever been qualified as an expert witness in
16 South Carolina courts before this trial?

17 A. Yes, sir. In firearms identification, I have, several
18 times.

19 MR. MILLER: Your Honor, at this time the State
20 moves to qualify Senior Agent Black as an expert witness
21 in the field of firearms identification.

22 THE COURT: Any questions with regard to his
23 qualifications, Ms. Stoney?

24 MS. STONEY: No, Your Honor.

25 THE COURT: All right. He is indeed qualified to

DAVID WARREN BLACK - DIRECT

1 testify with regard to the area of firearms
2 identification. And he's allowed to render his opinion in
3 this field of study.

4 And I will charge you in greater detail at the
5 conclusion of the case how to evaluate expert testimony.
6 You're recognized.

7 MR. MILLER: Thank you, Your Honor.

8 BY MR. MILLER:

9 Q. Senior Agent Black, I'm going to show you what's been
10 previously entered as State's Exhibit Number Seven. Can
11 you identify those items?

12 A. Yes, sir. I can.

13 Q. And what are those items?

14 A. State's Exhibit Seven are three fired cartridge
15 cases. Each one of these cartridge cases, not only on the
16 plastic bag but the item itself, I ascribed the SLED lab
17 number, item number, my initials, D. W. B.

18 Q. Did you perform any tests or analysis on those items?

19 A. Yes, sir; I did.

20 Q. Explain to the jury, please, how you tested the shell
21 casings.

22 A. If I may, firearms identification is based on the
23 principle that the marks left on bullets and cartridge
24 cases and other ammunition components while in contact
25 with certain areas of the firearm are unique to a specific

DAVID WARREN BLACK - DIRECT

1 firearm.

2 In this particular case, when I received the evidence,
3 the three cartridge cases in State's Exhibit Seven, I
4 actually documented the information that's on the
5 cartridge case.

6 On the base of the cartridge case, what's known as the
7 case head, there's information that's referred to as head
8 stamp. Head stamp gives two pieces of information; the
9 manufacturer and also the caliber.

10 In this case the head stamp was a .380 auto CBC. CBC
11 is a designation for MagTech ammunition. So all three
12 cartridges were manufactured by MagTech, and all three
13 cartridge cases are .380 automatic caliber.

14 Also during the examination I use a comparison
15 microscope. The comparison microscope has two stages and
16 two oculars or eyepieces. And there's an optical bridge
17 between the two. So I look at two items simultaneously.

18 I mount the cartridge cases on the stage and I view
19 the cartridge cases with reflective light or oblique
20 light. And in this particular case, I was able to see
21 markings which are from the breech face of the firearm.
22 When a cartridge, which a cartridge is a complete round of
23 ammunition is fired, the bullet goes down the barrel and
24 the cartridge case will go backwards to the rear.

25 And what happens in the base of the cartridge case,

DAVID WARREN BLACK - DIRECT

1 this case head, there's -- in this case it's kind of a
2 brass color, is a primer. And that primer is pushed up
3 against the breech of the bolt of the firearm and what
4 happens marks from that breech which are known as the
5 breech face transfer to the primer and case head area of
6 the cartridge.

7 During my examination, I found matching identifying
8 marks in all three cartridge cases which allowed me to
9 realize that they were fired by the same firearm. All
10 three were fired by one firearm.

11 And if I may say something else?

12 Q. Absolutely.

13 A. I apologize. I forgot my glasses this morning. I
14 forgot my brain also it seems like.

15 With -- one of the things that's unique about the
16 markings that are on this particular three cartridge
17 cases, the breech face marks are parallel, they're
18 horizontal. What was interesting was there was firing pin
19 drag that was perpendicular to the breeched face marks or
20 they were, is a vertical mark.

21 This is unique to the High Point firearms. I've been
22 to the High Point Armor school and one of the things that
23 we found out was the firing pin in a High Point firearm is
24 also just used as the ejector. So as the firing pin is
25 kicking out that fired cartridge case, it is actually.

DAVID WARREN BLACK - DIRECT

1 dragging across that primer. So the firing pin drag was
2 perpendicular to the parallel breech face case. That is a
3 characteristic of a High Point firearm.

4 And I apologize again.

5 Q. Not a problem. I'm going to show you what's been
6 entered as State's Exhibit Eight. Can you identify that
7 for the jury?

8 A. Yes, sir; I can.

9 Q. Okay.

10 A. State's Exhibit Eight is a fired bullet. Not only on
11 the packaging does it have the SLED lab number, item
12 number, my initials, but that same information is also, I
13 ascribed onto the bullet itself.

14 Q. Did you perform any tests or analysis of that fired
15 bullet?

16 A. Yes, sir; I did. I referred to earlier something
17 known as GRC, general rifling characteristics. That
18 was -- in a case where we don't have a firearm, we try to
19 identify as much information on the fired bullet as we
20 can.

21 In this particular case, I was able to determine based
22 on its diameter and weight that it's most consistent with
23 bullets loaded in some .380 auto caliber cartridges. What
24 I was also able to determine that it had what's referred
25 to as the rifling, the lands and grooves.

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1 Rifling which is in the bore of the barrel, the raised
2 rifling are known as lands and the depressed areas between
3 the lands are known as grooves. That's something that is
4 done by the manufacturer. And in particular, knowing the
5 number and direction of twist -- direction of twist, if it
6 goes clockwise it's right. If it goes counter-clockwise
7 it's left. This particular bullet had nine lands and
8 grooves with a left-hand twist. There's only one
9 manufacturer that we know of today that makes firearms in
10 .380 auto caliber with a nine left twist and that's High
11 Point Firearms.

12 Q. After your analysis of these items, did you prepare a
13 written report?

14 A. Yes, sir; I did.

15 Q. I want to show you what's been previously marked for
16 identification as State's Exhibit 16. Do you recognize
17 that document?

18 A. Yes, sir; I do.

19 Q. What is that document?

20 A. That is the official firearms report that I issued in
21 this case for the SLED lab number of L. 0514372 and on the
22 back page it bears my signature, David W. Black.

23 MR. MILLER: Your Honor, at this time the State
24 would move to have the State's Exhibit 16 introduced into
25 evidence.

DAVID WARREN BLACK - CROSS

1 THE COURT: Any objection from the defense?

2 MS. STONEY: No objection.

3 THE COURT: State's Exhibit Number 16 is into
4 evidence without objection by the defense.

5 (Thereupon, State's Exhibit No. 16, firearms
6 report, was received into evidence.)

7 BY MR. MILLER:

8 Q. I want to make sure that we've got this right. Your
9 analysis revealed that the cartridge or the shell casings
10 themselves came from a .380, probably a High Point .380?

11 A. Yes, sir.

12 Q. And the bullet was a .380 bullet, probably came from a
13 High Point .380?

14 A. Yes, sir. It came from a High Point .380.

15 Q. It did come from a High Point?

16 A. Yes, sir.

17 MR. MILLER: Thank you. No further questions.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MS. STONEY:

21 Q. Officer Black, did you take prints off of the shell
22 casings or the bullet?

23 A. No, ma'am. I was -- at the time I was not in the
24 latent print department so that is something that I was
25 not asked to do. I strictly did a firearms examination in

1 this case.

2 Q. So, you have no idea whether there were prints on
3 this?

4 A. If I may refer to my notes?

5 I have no indication in my notes noticing any black
6 fingerprint powder or anything like that. So to my
7 knowledge, no, ma'am. But I don't know that. I did not
8 do a fingerprint exam on it.

9 MS. STONEY: No more questions.

10 THE COURT: Redirect?

11 MR. MILLER: No, Your Honor.

12 THE COURT: All right. You may step down.

13 THE WITNESS: Thank you.

14 MR. MILLER: Your Honor, Agents Black and Roberts
15 have other duties around the state. We would ask that
16 they be excused.

17 THE COURT: Any objection by the defense?

18 MS. STONEY: No objection, Your Honor.

19 THE COURT: You all are free to leave. Thank
20 you.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: You may call your next witness.

23 MR. KODMAN: Thank you, Your Honor. The State
24 calls Dr. Janice Ross.

25 THE COURT: Dr. Ross, please come forward.

JANICE EDWARDS ROSS - DIRECT

1 JANICE EDWARDS ROSS, having been duly sworn, was
2 examined and testified as follows:

3 THE CLERK: Please have a seat on the witness
4 box. State your full name for the Court and spell your
5 last.

6 THE COURT: Dr. Ross, watch your step there.
7 Pull up real close to that microphone. Speak loudly,
8 clearly and slowly. State your full name for the record.

9 THE WITNESS: Janice Edwards Ross.

10 THE COURT: Spell your last name.

11 THE WITNESS: Ross, R-O-S-S.

12 THE COURT: Thank you very much.

13 DIRECT EXAMINATION

14 BY MR. KODMAN:

15 Q. Dr. Ross, where are you employed at?

16 A. Newberry Pathology Associates in Newberry, South
17 Carolina.

18 Q. What do you do for a living?

19 A. We do pathology. We do hospital work, and we do
20 autopsies for -- forensic autopsies for coroners.

21 Q. Are you a licensed physician?

22 A. Yes.

23 Q. In what states are you licensed?

24 A. South Carolina, New York and Georgia.

25 Q. How long have you been licensed in your profession?

JANICE EDWARDS ROSS - DIRECT

1 A. Thirty-five years.

2 Q. And what is the specific field that you practice in?

3 A. Pathology, and more specifically, forensic pathology.

4 Q. And can you describe for the jury a little about what
5 that field entails?

6 A. Yes. I have a bachelor's degree from the University
7 of South Carolina, and then I went through four years of
8 medical school and received an M.D. from Upstate Medical
9 Center in Syracuse, New York. Then did four-plus years of
10 study in the field of pathology which is the study of
11 disease.

12 We -- pathologists in the hospital uses the microscope
13 and uses the laboratory to identify diseases such as
14 cancers, or leukemias. Forensic pathology, pathologists
15 further studies the forensic autopsy patterns of injury,
16 and we use our medical knowledge plus our forensic
17 knowledge to identify injuries and natural diseases in
18 such cases as homicides and suicides, accidents and
19 sometimes undetermined cases.

20 Q. So does your work involve performing of autopsies?

21 A. Yes.

22 Q. How many autopsies do you think you've performed?

23 A. Over 6,000.

24 Q. Have you been qualified before in court as an expert
25 in the field of forensic pathology?

JANICE EDWARDS ROSS - DIRECT

1 A. Yes, I have.

2 Q. Do you know how many times you've been qualified?

3 A. In the State of South Carolina, over 60 times.

4 MR. KODMAN: Your Honor, at this time we'd move
5 to qualify Dr. Ross as an expert in the field of forensic
6 pathology.

7 THE COURT: Any questions with regard to her
8 qualifications?

9 MS. STONEY: No, Your Honor.

10 THE COURT: Dr. Ross is indeed qualified as an
11 expert in the area of forensic pathology. She is allowed
12 to give her opinion in that field of study. Once again, I
13 will charge you in greater detail with regard to how to
14 evaluate expert testimony at the conclusion of the case.

15 Yes, sir, you're recognized.

16 MR. KODMAN: Thank you, Your Honor.

17 BY MR. KODMAN:

18 Q. Dr. Ross, did you have an occasion to perform an
19 autopsy on the body of Mario Reddish?

20 A. Yes.

21 Q. And when did this take place?

22 A. It was on December 5th, 2005.

23 Q. And where did that take place at?

24 A. In the morgue at the Newberry County Memorial
25 Hospital.

JANICE EDWARDS ROSS - DIRECT

1 Q. We're obviously here in Aiken. You're in Newberry.
2 How is it that autopsies are done in Newberry? Do you
3 ever go to the field? Are they brought to you?

4 A. They are brought to me. Occasionally we go to the
5 field but the deputy coroner here called and asked for us
6 to, and authorized us to do an autopsy. They transport
7 the body to us for the autopsy.

8 Q. Is that how you're normally brought into a case?

9 A. Yes.

10 Q. Prior to conducting the autopsy on Mario Reddish, were
11 you given any information about the incident?

12 A. Just that there was a shooting that occurred at an
13 Elk's Club between two males with an argument.

14 Q. And can you explain the autopsy procedure that you
15 performed on the body of Mario Reddish?

16 A. Yes. The body is brought to us. When we first look
17 at him externally, do an inventory of clothing, if there
18 is any. At this time we did not have any clothing. We
19 had a little bit of jewelry. We do photographs and, of
20 the body and examine it thoroughly. We found that there
21 were two -- evidence of two gunshot wounds. We then
22 proceeded with an internal examination.

23 Q. Describe what your internal -- well, before you get to
24 that. In preparation during, after your autopsy, and
25 during your autopsy, and preparation for court, do you

JANICE EDWARDS ROSS - DIRECT

1 prepare any diagrams?

2 A. Yes.

3 Q. Dr. Ross, I'm going to hand you what's been marked for
4 identification purposes as State's Exhibit 11 and ask you
5 if you can identify this?

6 A. Yes. That was, it's a blow-up of a diagram that we
7 prepared from the autopsy findings on Mario Reddish.

8 Q. There's some markings on this diagram. Are those
9 markings that you made?

10 A. Yes.

11 Q. Is this diagram in substantially the same condition as
12 it was when you prepared it?

13 A. Yes.

14 Q. It hasn't been altered in any way?

15 A. No, it has not.

16 MR. KODMAN: Your Honor, at this time we move to
17 introduce State's Exhibit Number 11 into evidence.

18 THE COURT: Any objection from the defense?

19 MS. STONEY: No, Your Honor.

20 THE COURT: State's Exhibit 11 is into evidence
21 without objection from the defense.

22 (Thereupon, State's Exhibit No. 11, diagram, was
23 received into evidence.)

24 MR. KODMAN: Your Honor, with the Court's
25 permission, I'd like to ask that Dr. Ross be able to come

JANICE EDWARDS ROSS - DIRECT

1 down off the witness to explain the diagram to the jury.

2 THE COURT: Sure. Watch your step.

3 THE WITNESS: This obviously shows the front and
4 the back of the body. And what we do is diagram the
5 bullets and the direction they went.

6 There was one bullet here that entered the left
7 side. It went from left to right across the body. And
8 internally we could see that it went through both lungs.
9 It also hit the spinal cord. The bullet was going then
10 from left to right. It went slightly backward and
11 slightly upward. We actually found that bullet underneath
12 the skin over here on the right chest.

13 Bullet number two -- it doesn't mean the order
14 that they went in, but another bullet went in the front
15 left lower abdomen. It stayed right underneath the skin
16 and came out the back, underneath the skin. It did not go
17 internally into the abdomen. It just stayed underneath
18 the skin.

19 BY MR. KODMAN:

20 Q. Can you tell the jury anything about the trajectory of
21 that bullet?

22 A. That one went backwards and very slightly upwards.
23 And this one had a muzzle imprint around the bullet
24 entrance wound itself indicating that this was a contact
25 wound. The gun was up against the skin.

JANICE EDWARDS ROSS - DIRECT

1 This wound did not have any indication that it was
2 contact. Looked like a distant wound.

3 Q. Okay. With regard to what you labeled as gunshot
4 wound number two, the lower wound on the diagram, were you
5 able to make any determination with regard to the
6 trajectory of the bullet?

7 A. Front to back.

8 Q. How about did it come in at -- at what kind of angle
9 did it come into the body at?

10 A. Well, it was a contact wound. It went front to back
11 and actually it went slightly slightly downwards by a half
12 an inch.

13 Q. Would you expect a -- from these two injuries, would
14 you expect a lot of blood spatter from these type
15 injuries?

16 A. No.

17 Q. And why not?

18 A. It didn't hit any surface arteries where there would
19 be intense blood located on the surface to spurt out. The
20 bleeding, especially with the first, the upper gunshot
21 wound that went through the lungs, caused a lot of
22 internal bleeding, bleeding from the lungs.

23 Q. All right. In addition to contact wound, what other
24 description can you give me with regard to distance when
25 you're performing your autopsies?

JANICE EDWARDS ROSS - DIRECT

1 A. When a gun is shot the bullet comes out, also there's
2 powder and there's some burning powder and some unburning
3 powder that comes out.

4 That powder only goes a certain distance. So when we
5 are talking about range of a gunshot wound, the contact
6 wound would have the muzzle imprint and evidence of the
7 gun being up against the skin with some burning and
8 searing of the skin around the hole.

9 If you pulled back a little bit and there's a few
10 inches away from the bullet -- the gun is away from the
11 skin and some of that powder hits the skin and leaves
12 marks. If the gun is -- that's an intermediate wound.

13 If the gun is far enough away so that only the bullet
14 hits the skin and not any of the powder then that's a
15 distant wound.

16 Q. Were you able to make any determinations with regard
17 to what you labeled as gunshot wound number one, the upper
18 wound?

19 A. The upper wound by the skin looks like a distant wound
20 but I did not have the clothing to look at. If it were an
21 intermediate wound some of that powder might have gotten
22 on the clothing but not on the skin.

23 Q. So if there was gunshot residue on the clothing near
24 the upper wound, that would be consistent with
25 intermediate?

JANICE EDWARDS ROSS - DIRECT

1 A. Yes.

2 Q. Gunshot wound number one, was that a fatal wound?

3 A. Yes.

4 Q. Describe to the jury why that is.

5 A. It causes a lot of bleeding from the lungs, so he
6 actually bled to death internally.

7 Q. What about gunshot wound number two?

8 A. The second one just went underneath the skin. There
9 would have been very minimal bleeding from that.

10 Q. With regard to what you referred to as gunshot wound
11 number one, the upper wound, what would you have expected
12 Mario Reddish's condition to be immediately following that
13 bullet entering his body?

14 A. It hit the spinal cord so he would have been --
15 immediately -- he would have collapsed immediately. He
16 would have lost nerve control to his legs.

17 Q. And what would have had to happen to try and save
18 Mr. Reddish's life after that injury?

19 A. Well, the bleeding would have caused his death within
20 minutes. So, if he were at the hospital and they could
21 get right into the chest and clamp off the lacerations of
22 the lungs, he may have been saved but that, it would have
23 to be right within minutes.

24 Q. So you were able to reach a conclusion then regarding
25 the amount of time that had passed between the injury,

JANICE EDWARDS ROSS - CROSS

1 what you referred to as gunshot wound number one, and
2 death in this case?

3 A. Yes.

4 Q. Once again, what is that?

5 A. Minutes.

6 Q. Based upon the autopsy you performed on Mario Reddish
7 within the bounds of reasonable medical certainty, have
8 you formed an opinion concerning the cause of death in
9 this case?

10 A. Yes.

11 Q. What is that finding?

12 A. It's called exsanguination which means to bleed out
13 due to gunshot wounds, gunshot wound of the chest.

14 Q. Is this characterized as a homicide?

15 A. Yes.

16 MR. KODMAN: Please answer any questions
17 Ms. Stoney may have for you.

18 THE COURT: Cross-examination, Ms. Stoney.

19 CROSS-EXAMINATION

20 BY MS. STONEY:

21 Q. Dr. Ross, I understand that you can't determine which
22 one of the bullets came in first?

23 A. Correct.

24 Q. But the upper wound, if two people are standing in
25 front of each other and the gun is pointing, is

1 it possible that that caused the upper wound?

2 A. The bullet goes straight, so it would have to come in
3 from the left side.

4 Q. So it would either have to be turned sideways or come
5 in from the left side, not direct?

6 A. Correct.

7 MS. STONEY: No more questions, Your Honor.

8 THE COURT: Very good. Redirect?

9 MR. KODMAN: No redirect, Your Honor. We'd ask
10 that Dr. Ross be excused.

11 THE COURT: Dr. Ross, you're excused.

12 THE WITNESS: Thank you.

13 THE COURT: You may call your next witness.

14 MR. KODMAN: The State rests, Your Honor.

15 THE COURT: Very good. Mr. Foreman, ladies and
16 gentlemen of the jury, the State has concluded the
17 presentation of evidence at this time. That requires we
18 take up some legal matters outside of your presence.

19 Mr. Foreman, ladies and gentlemen of the jury,
20 I'm going to ask that you retire to the jury room. Do not
21 under any circumstances discuss the case. Thank you very
22 much.

23 (Jury exits courtroom at 10:10 a.m.)

24 THE COURT: I'll hear motions at this time.

25 MS. STONEY: Your Honor, I would like to move for

1 a directed verdict in that the evidence presented cannot
2 possibly be, reasonable people can't possibly call this a
3 guilty verdict.

4 THE COURT: All right. Be glad to hear from the
5 State with regard to that motion.

6 MR. KODMAN: Judge, obviously we're at a point
7 where the evidence taken in the light most favorable to
8 the State, we believe we have presented evidence that the
9 Defendant in this case fired a gun that ultimately led to
10 the death of Mario Reddish. We've provided all the
11 elements of killing of a person with malice aforethought,
12 and that he possessed the weapon during the commission
13 thereof. And based on the eyewitness testimony combined
14 with some of forensic testimony presented in the light
15 most favorable to the State, we've met that burden, Your
16 Honor.

17 THE COURT: Motion for directed verdict is
18 denied.

19 Ms. Stoney, this might be an appropriate time for
20 me to discuss with your client his decision as to whether
21 or not he's going to testify. I'm going to ask him if he
22 could to stand where he is as the clerk administers the
23 oath.

24 (Defendant placed under oath.)

25 THE COURT: Mr. Forrest, are you under the

1 influence of any alcohol or drugs here today?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you experiencing any kind of
4 physical or mental problem that prevents you from
5 understanding what we're doing here today?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. We've reached the stage
8 in this trial where you may present a defense. And one
9 thing that you need to have a good understanding of and
10 I'm sure you've discussed it with your lawyer is the fifth
11 amendment of the constitution which provides in relevant
12 part that no person shall be compelled in any criminal
13 case to be a witness against himself.

14 The State could not call you to the witness
15 stand. You have an absolute right to exercise your right
16 to be silent. You can't be required to take the stand.

17 However, you can take the stand if you want to.
18 That's your decision. One thing you need to be made aware
19 of is you can talk with your lawyer about it, you can talk
20 with your significant others, your family members and get
21 advice from them, but this right belongs to you. It
22 doesn't belong to your lawyer. It doesn't belong to your
23 mama. It doesn't belong to your grandmama.

24 It's your decision. It's your fundamental
25 right. Nobody can waive that. You're the one that needs

1 to make the decision as to whether or not you take the
2 witness stand or not. It's completely within your
3 province to do that.

4 If you do take the witness stand, I need to
5 advise you that you'll be subjected to the same rules as
6 the other witnesses that have testified in this courtroom
7 that you've witnessed here today.

8 Clearly when a person calls a witness the person
9 calling them asks them direct questions which is kind of
10 like softball questions, kind of elicit information.
11 After the direct examination you see that they're exposed
12 to cross-examination which are more difficult questions to
13 answer from your point of view.

14 I have not heard what your specific criminal
15 record is, but I'm sure that your lawyer's discussed it
16 with you and if you have a conviction that is within the
17 past ten years, it's a crime of moral turpitude of which
18 you could have received more than one year and if I make a
19 determination that the conviction is more probative than
20 prejudicial, I can allow that into evidence.

21 If you decide to take the witness stand, we'll
22 have a hearing outside the presence of the jury to make a
23 a determination as to which of your criminal record or
24 what part of your criminal record would be admissible.

25 If you decide to testify, it must be your

1 decision. It can't be anybody else's. It must be made
2 freely and voluntarily and intelligently, with the
3 knowledge of your constitutional rights.

4 One thing that you also need to be made aware of
5 is if you decide on your own free will and accord not to
6 take the witness stand, I'll instruct the jury that they
7 can't even talk about that. That's not even for their
8 consideration. I'm going to explain to them that the
9 constitution guarantees that no defendant is compelled to
10 testify. And that not only that, they can't even talk
11 about it in the jury room.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand your fifth
15 amendment rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions of me or
18 your lawyer with regard to your fifth amendment rights?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you discussed these matters with
21 your lawyer?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you wish to testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. And that is your

1 decision?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Anything further from
4 you, Ms. Stoney?

5 MS. STONEY: No, Your Honor.

6 THE COURT: All right. Ms. Stoney, do you
7 anticipate calling any witnesses?

8 MS. STONEY: No, Your Honor.

9 THE COURT: All right. We are at a juncture, I
10 think that I'm going to take a recess for about 15 minutes
11 to allow y'all to gather your thoughts. And in view of
12 the fact that you have not offered any evidence or any
13 testimony, you're going to be afforded the last argument.
14 Do you concur, from the State?

15 MR. KODMAN: Yes, Your Honor.

16 THE COURT: I don't -- she did not introduce any
17 evidence through any of the witnesses.

18 MR. KODMAN: No, Your Honor.

19 THE COURT: All right. Very good. All right.
20 We'll stand at ease. If there's nothing further from the
21 State or the defense, we'll stand at ease, allow you to
22 gather your thoughts. We'll come back and the State will
23 open.

24 (Thereafter, another matter was heard by the
25 Court. A break was taken in this case from 10:15 a.m.,

1 until 10:40 a.m., and the trial resumed as follows:)

2 THE COURT: Since we have the luxury of time, I'm
3 going to kind of go over for the benefit of counsel, the
4 charge. And of course we'll go over it in greater detail
5 here so, just so you'll know what I'm going to charge.

6 I'm going to charge the -- or explain that the
7 indictment is not evidence; presumption of innocence;
8 reasonable doubt. I'm going to explain just a short
9 definition and go into that a little bit more about
10 difference between civil and criminal. I'm going to
11 explain to them the differing duties between the duties of
12 the jury and the trial judge; direct and circumstantial
13 evidence; credibility of witnesses; expert witnesses;
14 statement of the Defendant, how they're to evaluate that;
15 failure of the Defendant to testify.

16 And, Ms. Stoney, you know, in my tenure on the
17 bench and practicing law I've known counsel to
18 specifically request that I not charge that. What is your
19 preference?

20 MS. STONEY: No, I think you can charge that.

21 THE COURT: Very good. All right. I will indeed
22 do that.

23 I'm going to charge identification; charge mere
24 presence; prior inconsistent statements. Charge the
25 substantive law of murder and voluntary manslaughter; and

1 the substantive law possession of a weapon during the
2 commission of a violent crime.

3 Be glad to hear from counsel in that regard to
4 the extent that it affects your closing argument.

5 MR. KODMAN: With regard to the reasonable doubt,
6 Judge, do you charge firmly convinced or hesitate to act
7 or both?

8 THE COURT: I charge both. The law says I don't
9 have to define it any way, but I define it both ways.
10 Reasonable doubt is kind of doubt that would cause a
11 reasonable person to hesitate to act, and that proof
12 beyond a reasonable doubt is proof that leaves you firmly
13 convinced of the Defendant's guilt.

14 MR. KODMAN: Thank you, Your Honor.

15 THE COURT: I mean --

16 MS. STONEY: Your Honor, I object to the
17 voluntary manslaughter charge. I don't believe that
18 there's any evidence of voluntary manslaughter. One of
19 the witnesses, Sherry Cade, said that he walked up to
20 Mario and shot him. Jonathan said that he turned around
21 and he saw that Joshua was shooting him.

22 THE COURT: What did the other witnesses say?

23 MS. STONEY: Well, Tasha said that he walked up
24 in a bear hug

25 THE COURT: That would seem to indicate that

1 there is some evidence with regard to prior altercation,
2 wouldn't it?

3 MS. STONEY: It's possible that that's what was
4 going on --

5 THE COURT: All right

6 MS. STONEY: -- but I think --

7 THE COURT: And this did take place at a bar.

8 MS. STONEY: It did.

9 THE COURT: And there was a lot of drinking going
10 on.

11 MS. STONEY: There was.

12 THE COURT: There is at least some allegation of
13 a relationship between this gentleman and the girl. It
14 was a hat that was being tossed around and there was some
15 bad blood that existed as a result of that. What do you
16 think about that?

17 MS. STONEY: Well, that would have been between
18 him and the girl.

19 THE COURT: Well --

20 MS. STONEY: And according to the witnesses there
21 was no fight inside with Mario Reddish. Only Jonathan --
22 and Jonathan said that he didn't have any physical fight
23 with Joshua. And one of the other witnesses said that he
24 did.

25 THE COURT: Is it my imagination or was there

1 some testimony with regard to the fact that the girl was
2 the former girlfriend of the Defendant?

3 MS. STONEY: I think there was.

4 THE COURT: All right. And one of the
5 individuals that was fighting with the Defendant was the
6 present boyfriend; right?

7 MS. STONEY: I don't believe so.

8 THE COURT: Okay. All right.

9 MS. STONEY: I'm not 100 percent sure.

10 THE COURT: Regardless, there was liquor and
11 there was women involved in the altercation; is that
12 correct?

13 MS. STONEY: Definitely. Definitely.

14 THE COURT: And I will deny your motion in that
15 regard. I think the evidence is replete with plenty of
16 evidence concerning voluntary manslaughter.

17 Be glad to hear from the State in that regard.

18 MR. KODMAN: Thank you, Your Honor. I just
19 wanted to tell the Court and add to the record that
20 Investigator Cain testified as to what the Defendant told
21 him happened.

22 And the Defendant's version of events, this group
23 of 12 males who came to him in the club came towards him
24 outside the club, that Mario Reddish struck him more than
25 one time in the face outside the club as well. And those

1 are the factors to be considered with regard to a
2 voluntary charge as well.

3 THE COURT: Ms. Stoney, what do you have to say
4 about that?

5 MS. STONEY: Not a thing.

6 THE COURT: Very good. All right. Anything
7 further? Before we bring the jury out, I'm going to allow
8 you an opportunity to look at the verdict form.

9 Any objection from the State?

10 MR. KODMAN: No, Your Honor.

11 THE COURT: Any from the defense?

12 MS. STONEY: No, Your Honor.

13 THE COURT: All right. We're ready for the
14 jury.

15 (Jury enters courtroom at 10:48 a.m.)

16 THE COURT: I'm going to ask the bailiff to
17 secure the back door during the closing arguments. Don't
18 allow anybody in or out.

19 THE BAILIFF: All right, sir.

20 THE COURT: Mr. Foreman, ladies and gentlemen of
21 the jury, as I had indicated to you, the State has
22 completed their presentation of evidence.

23 At this time defense is recognized.

24 MS. STONEY: Your Honor, the defense rests.

25 THE COURT: Very good.

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 Mr. Foreman, ladies and gentlemen of the jury.
2 We have completed the taking of testimony and the
3 presentation of evidence in this case.

4 As I mentioned to you in the very beginning, at
5 this juncture in the trial we'll begin closing arguments.
6 The closing arguments are very similar in form to opening
7 statements. But they're truly argumentative in nature
8 because the evidence has been presented.

9 These lawyers are going to have an opportunity to
10 point to the evidence that supports their relative
11 positions. Although it's not evidence, it will aid you
12 immensely in your deliberation process.

13 So I'm going to ask that you pay very close
14 attention. The State, you're recognized.

15 MR. KODMAN: May it please the Court, Your Honor.

16 THE COURT: Yes, sir, Mr. Kodman.

CLOSING ARGUMENT ON BEHALF OF THE STATE

17 MR. KODMAN: Ms. Stoney, Mr. Foreman, ladies and
18 gentlemen of the jury.

19 This was not a long case. As I told you at the
20 beginning, however, it's a very important case. And it's
21 a serious case.

22 Please don't take the fact that the case did not
23 last long that it's not important and it's not serious. I
24 told you at the beginning of the case this was important,
25

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 both to the State of South Carolina, obviously important
2 to the Defendant, and it's important to the Reddish family
3 who lost a brother, a son, and a loved one.

4 Now at the beginning of this case I kind of gave
5 you a little bit of an analogy, talked about what you
6 should expect in this case. I told you the analogy with
7 my kids, where they had an incident where one of my sons
8 pushed another one down. When I went and talked to
9 everybody about what happened, I didn't quite get exactly
10 the same story from everyone, but I did get two important
11 facts, my oldest son pushed him down and that my youngest
12 son got hurt.

13 You heard from three eyewitnesses who were there
14 on December 4th, 2005, who testified to what they saw.
15 Now, did they all tell you exactly the same thing? No,
16 they didn't. Was Latasha Brown wrong about the color of
17 this car? Sure, she was.

18 But, what did they all say? All of them said
19 that Joshua Forrest, that man sitting over there in the
20 blue shirt, brandished a firearm and shot Mario Reddish
21 two times. One of those bullets fatally wounding him.

22 Now, the defense gets to go last. I get to speak
23 to you now. So I have to try to sometimes anticipate what
24 she may argue, what she may not argue.

25 And obviously you heard there was a large crowd

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 of people there. So she may get up and say, well, ladies
2 and gentlemen of the jury, where was everybody else.
3 Think about this. We put up three witnesses who all
4 testified they were within five to ten feet of the
5 shooting, but there was nothing obstructing their view of
6 the shooting.

7 And you've got pictures from the evening that
8 showed the lighting that was out there. There's no
9 evidence that there was any other witnesses any closer
10 than Latasha Brown, Sherry Cade or Jonathan Thomas. And
11 on the two important issues, they all saw the same thing.

12 Now this happened four years ago. And you might
13 expect some of the facts to not be easily remembered. But
14 you would certainly expect that if you witnessed someone
15 that you know be shot and murdered in cold blood five to
16 ten feet away, I don't care if it's 15 years later, that's
17 a fact you're not going to forget. And that's something
18 they have not forgotten and it's something they're never
19 going to forget.

20 Now in addition to eyewitness, what other
21 witnesses testified in this case? Well after the shooting
22 happened, the Aiken County Sheriff's Department
23 responded. And they responded in different ways. They
24 had investigators go to the scene. And you've got this
25 diagram that will be back there in chambers with you that

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 shows you the scene of the incident.

2 And Investigator Adams testified about the shell
3 casings that he recovered from the scene. How many shell
4 casings did they recover? Three shell casings. How many
5 times did the witnesses say Joshua Forrest fired his gun?
6 Latasha Brown said it was fired three times. Sherry Cade
7 said it was fired three times. Jonathan Thomas said it
8 was fired two to three times. And how many shell casings
9 were found at the scene? Three.

10 Now, Lieutenant Adams testified that they scoured
11 this area for evidence. There was no other shell casings
12 found at the scene, just the three.

13 In addition to that, Investigator Cain and
14 Investigator Liles assisted with interviewing witnesses.
15 As Investigator Cain testified, there weren't a lot of
16 witnesses coming forward to the sheriff's department to
17 tell them about what happened.

18 And maybe that can be expected in one of these
19 situations where it's 2:30 in the morning at a nightclub.
20 But they did develop a suspect through interviewing who
21 they did interview. And that suspect was Joshua Forrest.

22 When they collected the evidence in this case,
23 they went to the hospital and got the clothing from the
24 victim. They eventually got the clothing from the
25 Defendant. They took the shell casings and they sent it

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 all to SLED to be analyzed.

2 Some of the stuff at SLED I think is helpful, and
3 some of the stuff at SLED I don't think is helpful, and
4 some of the stuff at SLED I don't think really tells us
5 anything. But they sent it up there so we could present
6 it to you and say they tried.

7 What do we know about the firearms? Agent --
8 Senior Agent David Black testified about the firearms in
9 this case. And I know some of his testimony got a little
10 complicated because he was talking about trigger
11 mechanisms, and I'm not a gun guy but let me summarize
12 what's important, I think, from what Agent Black told
13 you.

14 Three shell casings found at the scene. What do
15 we know about all three shell casings? They were all
16 fired from a .380. And oh, by the way, what did Jonathan
17 Thomas say he saw in Joshua Forrest's hand? A .380. And
18 oh, by the way, all from the same .380. So we know that
19 all three shell casings that were found at the scene, the
20 only shell casings that were found at the scene were all
21 fired from the same gun.

22 What about the bullet that was taken from the
23 body of Mario Reddish? It was fired from a .380. I would
24 argue to you that that bullet came out of one of the shell
25 casings that was found at the scene. There was one person

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 firing a gun that day. There was one gun, and it was in
2 his hands.

3 Let's talk a little bit about gunshot residue
4 where they test to determine whether or not a gun was
5 close to the body or close to something when it was fired.

6 The Defendant's hands weren't tested. Well, they
7 were tested by the sheriff's department. The sheriff's
8 department did the gunshot residue kit on the Defendant.
9 It was sent off to SLED.

10 SLED says, look, if it's been more than six
11 hours, we don't test it because our experience has shown
12 that it doesn't stick around that long. If you remember,
13 this incident happened around two to three o'clock in the
14 morning. Joshua Forrest turned himself in and wasn't even
15 interviewed until, like, 12 or 13 hours later at the
16 sheriff's department.

17 So when he's at the sheriff's department Joshua
18 Forrest, even if they wanted to test it, had plenty of
19 time to wash his hands, had plenty of time to change his
20 clothes. We don't know, but it was too much time had
21 elapsed to test the gunshot residue on his hands.

22 But they did test the gunshot residue on the
23 victim's clothing and we know that the victim had multiple
24 layers of shirts on but we know he was shot twice. We
25 know the upper wound that came in here and went across his

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 body was a fatal wound. And we know the lower one was not
2 a fatal wound.

3 But what do we know about that lower wound based
4 on the gunshot residue? We know it's a contact wound.
5 And what does that mean? It means the barrel of that gun
6 was right up against his body.

7 Ladies and gentlemen of the jury, who was the
8 only person in the parking lot of the Elk's Club on
9 December 4th, 2005 close enough to Mario Reddish by any
10 evidence to put a gun up against Mario Reddish's body?
11 Joshua Forrest.

12 Now the upper wound on the clothing was not a
13 contact wound pursuant to the gunshot residue but there
14 was gunshot residue present which indicates that although
15 the gun may not have still be on Mario Reddish when the
16 second -- what I would submit to you was the second shot
17 fired, went into his body, it was close enough so the
18 gunshot residue did get on his clothing which is
19 consistent with the witness descriptions of them being
20 close and the two shots being fired at close range.

21 Dr. Ross testified. I think her testimony is
22 very important in this case. She testified consistent
23 with what John Roberts testified to about the gunshot
24 residue. What did she say about the lower wound on the
25 body? It was what? A contact wound. Meaning that gun

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 was up against Mario Reddish's body. Once again, who was
2 the only person by any evidence in this case, who was up
3 against Mario Reddish? Joshua Forrest.

4 The other thing that Dr. Ross testified to that I
5 think is very important in this case is that she said
6 based on where these injuries occurred, they are not the
7 type of injuries where you would expect blood splatter to
8 come back on you, based on what the organs are that are
9 inside. In other words, it's not one of these things
10 where you might envision shooting something exploding all
11 over you. She said, no, not at all. Those are not
12 consistent wounds that you would expect blood splatter
13 back on you.

14 That's important because when we took Mario
15 Reddish's blood and we took the clothes from Joshua
16 Forrest and we sent them to SLED and said, all right,
17 look, when Joshua Forrest turned himself in he had what
18 appeared to be some blood on his shirt and some blood on
19 his pants. So let's see if that's Mario Reddish's.

20 The police were doing their job to try and cover
21 all bases. Well, it's turns out it's not Mario
22 Reddish's. And I would say two things about that. Number
23 one, it should come as no surprise because ultimately
24 that's what Dr. Ross said. You should not expect to see
25 blood splatter. It's either probably his own blood where

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 maybe he got his lip busted because there's been some
2 testimony to that effect, or he changed his clothes and
3 it's from something else.

4 But obviously if we hadn't sent it up there to
5 SLED and had that tested, which it's not logical that it
6 would be the victim's blood, but if we hadn't done that
7 then Ms. Stoney could have gotten up here and said, you
8 know, ladies and gentlemen of the jury, my client's
9 clothes had blood on them but they never tested it.

10 So it came back the way it did but I would submit
11 to you it's not inconsistent with all the facts in this
12 case.

13 Which leads me to the Defendant's statement.
14 Investigator Cain testified to you that the Defendant came
15 to the sheriff's department after he went and got him and
16 brought him up there. Remember now, this is some 12 hours
17 after the fact after he had already fled the scene the
18 night of the incident and he gives him a statement.

19 And what does his statement say? He talks about
20 an altercation in the bar with Tameka. He talks about
21 going outside the club. He talks about the group of guys
22 coming to him. He said that Mario Reddish assaulted him.

23 And Investigator Cain even said during that
24 statement that there was a lip injury to the Defendant in
25 this case which could explain, perhaps, the blood that was

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 present on his clothing.

2 But what does he say happened? He actually gets
3 up with Investigator Cain and demonstrates with him how he
4 says this encounter happened. And I got up here with
5 Investigator Cain and we showed you. And as much as I
6 like Investigator Cain, I didn't want to get up here and
7 hug him but we did. And when we got up here, we were
8 hugged face to face, chest to chest, just as the Defendant
9 described to him.

10 Ladies and gentlemen of the jury, does that make
11 sense given all physical evidence that we have in this
12 case, that we know that whoever shot Mario Reddish was
13 right up against him? That if Joshua Forrest, by his own
14 statement, was right up against Mario Reddish, that
15 someone else could have come up and shot, made that shot?
16 That the bullet went through his body somehow?

17 There's no evidence of that. His statement that
18 he heard the gunshot, started to back away and the victim
19 fell, is not believable. Because we know that what really
20 happened is Joshua Forrest told Mario Reddish, you ain't
21 leaving here tonight. He went up to Mario Reddish with a
22 gun and that when they clamped up, he finished what he
23 started. He told him, you're not leaving here tonight.
24 And he sure made sure of that.

25 The Defendant also gives the story to

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 Investigator Cain about how he drives away. There's a
2 crowd of people and the people are shooting a gun at him.
3 Ladies and gentlemen of the jury, there's no evidence to
4 support that.

5 You look at the vehicle, the picture of the
6 vehicle. Investigator Watts testified there were no
7 bullet holes in that vehicle. There were no other shell
8 casings found in that vehicle. I mean, in that, in the
9 crime scene. That did not happen.

10 Now, the Judge in a few minutes is going to give
11 you what's known as a charge. He's going to charge you on
12 the law in this case. He's going to give you three
13 options: He's going to tell you, you can find the
14 Defendant guilty of what's known as murder, and that's the
15 killing of a person with what's known as malice
16 aforethought; or you can find the Defendant guilty of
17 voluntary manslaughter, which means it happened in the
18 sudden heat of passion with sufficient legal provocation;
19 or you can find him not guilty.

20 Those are going to be your three choices that you
21 have. So the first decision you have to make is whether
22 you believe that Joshua Forrest fired this gun and killed
23 Mario Reddish. And if you do, then you have to decide
24 between murder and voluntary manslaughter. And obviously
25 it's our position that it's one of those two things.

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 It's either murder or voluntary manslaughter. It
2 is not believable, it is not plausible, the physical
3 evidence does not support another theory that someone
4 other than Joshua Forrest committed this crime.

5 Now, y'all may have never served on jury duty
6 before. I know you come into the courtroom and got a
7 bunch of suits sitting around, and a bunch of officers and
8 the Judge is up there in his robe. It's kind of a formal
9 setting.

10 But you are the same person in here that you are
11 out in the street. You bring your common sense in here
12 and you take it back there to the jury room. And when
13 you're looking through this evidence and you're talking
14 about what you have, use your common sense and ask
15 yourself what makes sense, what's believable, what
16 happened. And you need to do that when you apply it to
17 this case.

18 Joshua Forrest when he was finally asked by
19 Investigator Cain how could this be that you're in this
20 bear hug situation and yet the victim gets shot twice in
21 the torso area, ultimately dying as a result thereof and
22 Joshua Forrest's response to Investigator Cain was, it's
23 God's will. It wasn't God's will. It was his will.

24 At the end of the case when the Judge gives you
25 the charge, you go back there and you return a jury

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 verdict that speaks the truth and one that finds the
2 Defendant guilty in this case. Thank you.

3 THE COURT: Ms. Stoney, you're recognized.

4 MS. STONEY: Thank you. If it please the Court.

5 THE COURT: Certainly.

6 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT:

7 MS. STONEY: Ladies and gentlemen, I do thank you
8 again for being here. I know you'd rather be a thousand
9 different places if not a million different places. But
10 we do appreciate you being here. You've been a very good
11 jury. You've listened to everything and you've been very
12 attentive. And that's all we can ask from you.

13 Joshua's family has been here also to support
14 him. And he's got a good family situation. He's -- this
15 case is full of reasonable doubt and that's what I want
16 you to focus on when you go into deliberations. Focus on
17 reasonable doubt.

18 There's many differences between the stories that
19 the three witnesses told, such as the fight with Tameka.
20 The fight inside with Tameka. Latasha said that Joshua
21 pinned her against the wall. She wasn't physical at all,
22 but Joshua pinned her against the wall. Sherry said she
23 didn't see it, so we have no information from her about
24 this at all. Jonathan said that it was just an argument
25 and he came up and stopped the argument.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 Then, according to Latasha, Joshua put Jonathan
2 against the wall. Sherry again didn't see it but Jonathan
3 said there was no physical contact whatsoever between him
4 and Joshua. And as a matter of fact, he said that after
5 they left and went outside he called, my client called
6 Jonathan over to shake his hand. So apparently there was
7 no animosity there at all.

8 Outside Latasha said that Jonathan and -- no,
9 Joshua and Mario were locked up together in a bear hug,
10 just like my client said. Sherry said they were in a
11 physical fight and he just walked up to and shot him.
12 There was no bear hug at all, no contact that she saw.
13 According to Jonathan there was a bear hug, that they were
14 in contact with each other.

15 But, according to Latasha, there were three shots
16 fired. The first one was maybe five minutes before the
17 last two. And I asked her whether or not she was sure
18 that it was five minutes. And she said, may have been a
19 little shorter but it was about five minutes.

20 Well, Sherry said they were five seconds apart.
21 Three shots, five seconds, five seconds, five seconds.
22 Now, I don't know about you but since the age of ten I've
23 known the difference between five seconds and five
24 minutes. I mean, it might be a little bit if it was five
25 seconds to ten seconds, I could understand that. Five

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 seconds, five minutes; totally different things.

2 Jonathan on the other hand said that he was
3 shaking hands with Joshua and the next thing he knows he
4 turned around and Joshua's in a bear hug with Mario and
5 shot him. Then Jonathan said he ran because he didn't
6 know where the shots were coming from.

7 Well, which is it? He saw him shoot him or he
8 didn't know where the shots were coming from? I submit to
9 you that that's the only true statement in his testimony.
10 He did not know where the shots were coming from.

11 And, the white Lincoln. Two of the witnesses
12 tell you that he left in a white Lincoln. One of the
13 witnesses tells you it was a black car. She wanted to
14 deny it at first but she did finally admit that she had
15 said it was a black car. So which was it? Apparently it
16 was very dark out there.

17 And, yes, I would like to say 50 to a hundred
18 other people out there, where are they but I won't. But I
19 will ask you one thing. Investigator Cain told you that
20 he transported three people. He transported them to the
21 scene, didn't take their statements because he was
22 driving, transported them to the sheriff's office and took
23 their statements. They were Tameka Campbell, Taneka
24 Roberson, Christopher Roper.

25 Not Sherry Cade, not Jonathan Thomas, and not

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 Latasha Brown. Where are those three witnesses? I submit
2 to you that possibly their statements didn't match what
3 the prosecutor wants you to hear. Otherwise I don't know
4 why they're not here, but they're not here.

5 All of the witnesses placed my client facing
6 Mario Reddish. Dr. Ross told you that one of the shots
7 came from the side and that it was a distant shot. If my
8 client was facing him, the shot would have been straight
9 through, it would not have gone from the side but that's
10 where the bullet came from. It came from the side.

11 My client told you, through Investigator Cain's
12 testimony, the entire situation was he was fighting with
13 Tameka. It was an old fight. They were ex-boyfriend,
14 girlfriend and they were fighting over a cap.

15 Well, Jonathan and Mario and several other guys
16 attacked him, wanted to get him away from Tameka and
17 attacked him. He told you that Tameka was throwing drinks
18 in his face, slapping his face. He was leaving her alone
19 but the guys attacked him.

20 So he left. He went outside. But Mario and
21 Jonathan wouldn't leave it alone. They kept coming at
22 him, kept coming at him. Finally Mario got him in a bear
23 hug. He had his hands down at his side, like Investigator
24 Cain said, he's shorter than Jonathan so it's a little
25 difficult to show exactly how they were. He had him in a

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 bear hug. He heard shots. He backed up. Mario fell to
2 the ground.

3 Dr. Ross told you that he collapsed. That's
4 consistent with what she had said. So my client's version
5 of the story makes more sense than anybody else's. And
6 the only people that put Mario or put Jonathan -- Joshua
7 with a gun in his hand are Latasha Brown, a friend of
8 Mario's, Sherry Cade, the mother of his children (sic) and
9 the best friend, Jonathan Thomas.

10 Again, who are those three other witnesses? What
11 would they have said? They were there. What would they
12 have said?

13 There's no fingerprint evidence that links my
14 client. There's no blood evidence that links my client.
15 My client turned himself in with blood on his clothes.
16 He's not an expert. If he had shot Mario, how would he
17 know that it wasn't Mario's blood?

18 But he turned himself in with blood on his
19 clothes. Blood came back, not Mario's. It's because he
20 didn't shoot Mario. That was more than likely his own
21 blood because he was being attacked.

22 There's no gun. There's no physical evidence at
23 all, basically. If you take any of these things, no gun,
24 that's understandable. No blood on my client, that's
25 understandable. Any of these things taken one at a time

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 might be understandable but all of them, there's no
2 physical evidence at all to link my client to this crime.

3 As a matter of fact, the only evidence is three
4 unreliable witnesses. And I told you why they're
5 unreliable. Unreliable, first of all, because their
6 stories are completely inconsistent. And second of all,
7 because they were really good friends with Mario and
8 they're going to want somebody to pay, somebody. And they
9 were also, they witnessed the fight between Mario and my
10 client.

11 So my client didn't testify but he did give you
12 his story through the investigator. And the Judge will
13 tell you that you can't take it against him because he
14 didn't testify. In our system the Defendant does not have
15 to testify. He is presumed to be innocent until the 12 of
16 you decide that he's not. So, he doesn't have to
17 testify.

18 We didn't have to prove anything which is why we
19 didn't put any evidence up. We don't believe that the
20 State has proven that my client was one who shot Mario
21 Reddish.

22 My client was very cooperative. He had an
23 injury. He was beat up during this. Everything that he
24 told you is consistent with the evidence. He said Mario
25 collapsed. Dr. Ross said Mario collapsed. And Your Honor

1 -- excuse me.

2 Ladies and gentlemen, remember what I said about
3 reasonable doubt. It's all over the place in here.
4 Reasonable doubt, they'll tell you it's not any doubt but
5 it is any doubt that a reasonable person would come up
6 with.

7 Now if you believe my client didn't shoot Mario
8 because he's got short hair and short people (sic) just
9 don't commit crimes, that's not reasonable. But if you
10 believe there's not enough evidence or the evidence is not
11 consistent that you don't think my client has committed
12 this murder, that's reasonable doubt.

13 And any reasonable doubt that you have is doubt
14 that you should use and if you have any reasonable doubt,
15 I submit to you there's plenty of it everywhere, you can't
16 bring back a verdict of guilty, you have to say not guilty
17 in this case.

18 Thank you.

19 THE COURT: Ladies and gentlemen of the jury.
20 That concludes the closing arguments and y'all have been
21 sitting for a while and we're going to move now to the
22 final phase of this trial which will be the charge of the
23 law.

24 And I know you've been sitting for a little
25 while. I'm going to ask if you could just stand up and

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1 stretch for just a little bit before we give you the
2 charge on the law.

3 THE JURY: (Complies.)

4 THE COURT: You can have a seat. Thank you.

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6 Mr. Foreman, ladies and gentlemen of the jury.
7 You have taken a solemn oath that you would listen to the
8 evidence in this case and render a verdict that speaks the
9 truth. I've watched y'all throughout the trial of this
10 case and you've paid very close attention as the evidence
11 has been presented to you. And I know that you have the
12 tools to be the fact-finder but you've only heard part of
13 it.

14 In order for you to do that, you have to find out
15 what the facts are and apply it to the law. I'm going to
16 charge you the law now and I'm going to ask if you could
17 to perk up and pay close attention. There's no easy way
18 to give you the law. It's almost like taking medicine.
19 You've got to pay very close attention. I'm going to ask
20 if you could to sit on the edge of your chair, to listen
21 to the law as I charge it to you. This is an important
22 matter. We need to proceed forward with a serious mind.
23 It's important to the State of South Carolina. It's
24 important to the Defendant. Pay very close attention.

25 Mr. Foreman, ladies and gentlemen of the jury.

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1 The indictments charge the Defendant with murder and
2 possession of a firearm during the commission of a violent
3 crime.

4 I remind you that the fact that the Defendant was
5 arrested, charged and indicted is not evidence and cannot
6 be considered by you as evidence of guilt, nor does it
7 create any presumption or inference of guilt. This
8 document is simply the formal written instrument which
9 contains the charges made against the Defendant. It is
10 the formal document which this -- which brings this case
11 to court.

12 Mr. Foreman, ladies and gentlemen of the jury.
13 The Defendant has pled not guilty to this indictment and
14 that plea puts the burden on the State to prove the
15 Defendant guilty.

16 A person charged with committing a criminal
17 offense in South Carolina is never required to prove
18 himself innocent. I charge you that it is an important
19 rule of the law that the defendant in a criminal trial, no
20 matter what the seriousness of the charge may be, will
21 always be presumed to be innocent of the crimes for which
22 the indictment was issued unless guilt has been proven by
23 evidence satisfying you of that guilt beyond a reasonable
24 doubt.

25 This presumption of innocence does not end when

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1 you begin your deliberations, but it accompanies the
2 Defendant throughout the trial until you reach a verdict
3 of guilt based on evidence satisfying you of that guilt
4 beyond a reasonable doubt.

5 The presumption of innocence is like a robe of
6 righteousness placed about the shoulders of the Defendant
7 which remains with the Defendant until it has been
8 stripped from the Defendant by evidence satisfying you of
9 the Defendant's guilt beyond a reasonable doubt.

10 The presumption of innocence is not a mere legal
11 theory. It's not just a legal phrase. It is a
12 substantial right to which every defendant is entitled
13 unless you, the jury, are satisfied from the evidence of
14 the Defendant's guilt beyond a reasonable doubt.

15 What is reasonable doubt? A reasonable doubt is
16 the kind of doubt that would cause a reasonable person to
17 hesitate to act. The State has the burden of proving the
18 Defendant guilty beyond a reasonable doubt.

19 Some of you may have served as jurors in civil
20 cases where you were told that it is only necessary to
21 prove that a fact is more likely true than not true, such
22 as by the greater weight or preponderance of the evidence.

23 In criminal cases the State must prove -- proof
24 must be more powerful than that. It must be beyond a
25 reasonable doubt. Proof beyond a reasonable doubt is

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1 proof that leaves you firmly convinced of the Defendant's
2 guilt.

3 There are very few things in this world that we
4 know with absolute certainty. And in criminal cases the
5 law does not require proof that overcomes every possible
6 doubt.

7 If, based on your consideration of the evidence,
8 you are firmly convinced that the Defendant is guilty of
9 the crime charged, you must find the Defendant guilty.
10 If, on the other hand, you think there's a real
11 possibility that the Defendant is not guilty, you must
12 give the Defendant the benefit of the doubt and find him
13 not guilty.

14 I remind you that during this trial you and I
15 have certain duties to perform. As the Trial Judge, it is
16 my responsibility to preside over the trial of this case.
17 And I also have the duty to rule on the admissibility of
18 evidence offered during this trial.

19 You are to consider only the competent evidence
20 before you. You are to consider only the testimony which
21 has been presented from this witness stand, any exhibits
22 which have been made a part of the record in this case,
23 and any stipulations of counsel.

24 I have the additional duty to charge you the law
25 applicable to this case. As the Presiding Judge, I'm the

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1 sole judge of the law of this case. And it is your duty
2 as jurors to accept and apply the law as I now state it to
3 you.

4 If you already have an idea as to what the law is
5 or what the law ought to be and it does not agree with
6 what I now tell you the law is, you must abandon this idea
7 because you were sworn to accept and apply the law exactly
8 as I state it to you.

9 In every case tried in this case (sic) before a
10 jury, the jury becomes the sole and exclusive judge of the
11 facts in the case. The Trial Judge cannot intimate,
12 state, comment upon or make any statement to a trial jury
13 about the facts in the case.

14 Since you, the jury, are the sole judge of the
15 facts in the case, you are not to infer from what I have
16 said during the progress of this trial, in ruling on the
17 admissibility of evidence or otherwise, or anything that I
18 say now during the course of this instruction to you, that
19 I have any opinion about the facts in this case. The law
20 does not allow me to have an opinion about the facts in
21 this case.

22 This is a matter solely for you, the jury, to
23 determine. As jurors, it is your duty to determine the
24 effect, the value, weight and truth of the evidence
25 presented during this trial.

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1 Ladies and gentlemen of the jury, there are two
2 types of evidence which are generally presented during a
3 trial, direct evidence and circumstantial evidence.
4 Direct evidence is the testimony of a person who claims to
5 have actual knowledge of a fact, such as an eyewitness.
6 It is evidence which immediately establishes the main fact
7 to be proved.

8 Circumstantial evidence is proof of a chain of
9 facts and circumstances indicating the existence of a
10 fact. It is evidence which immediately establishes
11 collateral facts from which the main fact may be
12 inferred. Circumstantial evidence is based on inference
13 and not on personal knowledge or observation.

14 The law makes absolutely no distinction between
15 the weight or value to be given to either direct or
16 circumstantial evidence, nor is a greater degree of
17 certainty required of circumstantial evidence than of
18 direct evidence.

19 You should weigh all of the evidence in the
20 case. After weighing all of the evidence if you are not
21 convinced of the guilt of the Defendant beyond a
22 reasonable doubt, you must find the Defendant not guilty.

23 Ladies and gentlemen of the jury, necessarily you
24 must determine the credibility of witnesses who have
25 testified in this case. Credibility simply means

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1 believability. It becomes your duty as jurors to analyze
2 and evaluate the evidence and determine which evidence
3 convinces you of its truth.

4 In determining the believability of witnesses who
5 have testified in this case, you may believe one witness
6 over several witnesses, or several witnesses over one
7 witness.

8 You may believe a part of the testimony of a
9 witness and reject the remaining part of the testimony of
10 that same witness. You may believe the testimony of a
11 witness in its entirety or reject the testimony of a
12 witness in its entirety. You may consider whether any
13 witness has exhibited to you any interest, bias, prejudice
14 or other motive in this case. You may also consider the
15 appearance and manner of the witness on the witness stand,
16 their demeanor.

17 The rules of evidence ordinarily do not permit
18 witnesses to testify to opinions or conclusions. An
19 exception to this rule exists for witnesses we call expert
20 witnesses. A witness who by education and experience has
21 become expert in some art, science, profession or calling
22 may state an opinion as to relevant and material matters
23 in which the witness claims to be an expert, and may also
24 state the reasons for the opinion.

25 You should consider any expert opinion received

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1 in evidence in this case like any other evidence, give it
2 the weight you think it deserves. If you decide that the
3 opinion of an expert is not based on sufficient education
4 or experience, if you conclude that the reasons given in
5 support of the opinion are not sound, that the opinion is
6 outweighed by other evidence, you may disregard the
7 opinion entirely.

8 An expert witness's testimony is to be given no
9 greater weight than that of any other witnesses simply
10 because a witness is an expert. Further you're not
11 required to accept an expert's opinion even though it is
12 not contradicted.

13 A statement alleged to have been made by the
14 Defendant has been admitted into evidence in this case.
15 While the Court has determined that the statement is
16 admissible, I instruct you that you make the ultimate
17 decision of whether or not the Defendant made the
18 statement.

19 If the Defendant did make the statement, you must
20 determine whether the statement was made by the Defendant
21 voluntarily and of his own free will. This means the
22 statement was not caused by pressure, force, fear,
23 threats, coercion or intimidation, or by hope or promise
24 of leniency or reward of any kind.

25 In determining whether the statement was

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1 voluntary, you should consider both the characteristics of
2 the Defendant and the details of the questioning. Some of
3 the factors you may consider are the age of the Defendant,
4 the Defendant's education or lack of education, the
5 Defendant's mental ability or capacity, the Defendant's IQ
6 or intelligence, the Defendant's background and
7 environment, place and length of detention, nature of
8 questioning, the advice or lack thereof to the Defendant
9 of his constitutional rights including but not limited to
10 the right to remain silent, that any statement could be
11 used against him in a court of law, the right to have a
12 lawyer present, that if he could not afford a lawyer, a
13 lawyer would be appointed to represent him without any
14 cost, and that he could stop making a statement at any
15 time. You must consider all of the surrounding
16 circumstances before you give any weight to any alleged
17 statement.

18 The State has the burden of proving beyond a
19 reasonable doubt that the alleged statement was
20 voluntary. If you determine it was, you may give the
21 statement any further consideration that you deem proper.
22 You must decide what weight, if any, should be given to
23 the alleged statement. If you determine that the alleged
24 statement was not free and voluntary -- a free and
25 voluntary statement of the Defendant, you should not

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1 consider the statement at all.

2 Ladies and gentlemen of the jury, I instruct you
3 and emphasize that the fact the Defendant did not testify
4 is not a factor to be considered by you in any way in your
5 deliberations and in your consideration on the question of
6 the guilt or innocence of the Defendant. It must not be
7 considered by you in any manner whatsoever.

8 A defendant has the constitutional right to
9 remain silent. And the assertion of this right must not
10 be considered by you in your deliberations. I repeat,
11 under your oath you're to draw no conclusion whatsoever
12 from the fact that the Defendant in this case did not
13 testify. The fact that the Defendant did not testify
14 should not even be discussed in the jury room.

15 Mr. Foreman, I'm going to ask that you enforce
16 that rule. There will be no discussion with regard to the
17 Defendant's not taking the witness stand in this case.

18 The burden of proof, as I stated to you, is on
19 the State. The Defendant's not required to prove his
20 innocence. The burden of proof remains on the State to
21 prove guilt beyond a reasonable doubt.

22 An issue in this case is the identification of
23 the Defendant as the person who committed the crime
24 charged. The State has the burden of proving identity
25 beyond a reasonable doubt. You must be satisfied beyond a

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1 reasonable doubt of the accuracy of the identification of
2 the Defendant before you convict the Defendant.

3 Identification testimony is an expression of
4 belief or impression by a witness. You must determine the
5 accuracy of the identification of the Defendant. You must
6 consider the believability of each identification witness
7 in the same way as any other witness. You may consider
8 whether the witness had an adequate opportunity to observe
9 the offender at the time of the offense. This will be
10 affected by things like how long or short a time was
11 available, how far or close the witness was, the lighting
12 conditions and whether the witness had the chance to see
13 or know the person in the past.

14 Once again, I instruct you the burden of proof on
15 the State extends to every element of the crime charged.
16 This specifically includes the burden of proving beyond a
17 reasonable doubt the identity of the Defendant as the
18 person who committed the crime. If after examining the
19 testimony you have a reasonable doubt as to the accuracy
20 of the identification, you must find the Defendant not
21 guilty.

22 Ladies and gentlemen of the jury, mere presence
23 at the scene is not sufficient to prove someone guilty of
24 a crime. A defendant's presence where a crime is being
25 committed or mere association with the person who commits

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1 a crime does not make a defendant an accomplice or an
2 aider, an abettor of the person committing the crime. The
3 burden is on the State to prove every element of the crime
4 charged.

5 If you find after reviewing all of the evidence
6 that the State has failed to prove the Defendant was -- if
7 you find after reviewing all of the evidence that the
8 State has proved that the Defendant was only present at
9 the scene of the crime and that they had not proved beyond
10 a reasonable doubt any other participation in the crime,
11 then you must find the Defendant not guilty.

12 The law is that proof of the Defendant being at
13 the scene of the crime is not sufficient to find someone
14 guilty.

15 There's been evidence presented that witnesses
16 have made prior statements which are not consistent with
17 the witness's present testimony. You may use this
18 evidence to decide whether to believe the witness. You
19 may also use evidence of an earlier contradictory
20 statement to determine the truth of those statements. It
21 is up to you to decide whether to believe the earlier
22 statements or the testimony given at trial.

23 If a witness is shown to have knowingly testified
24 untruthfully concerning any material matter, you may
25 consider this in determining whether to trust the

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1 witness's testimony as to other matters. You may reject
2 all the testimony of that witness or give all or part of
3 the testimony the weight you think it deserves.

4 Ladies and gentlemen of the jury, I'm going to
5 charge you the substantive law with regard to murder.
6 This is very important that you pay attention to this, the
7 law as to the substance, the substantive law with regard
8 to the charge.

9 On the verdict form there's going to be a place
10 for you to determine whether or not the State has proven
11 beyond a reasonable doubt whether or not he's guilty of
12 murder. You've heard the evidence. In order for you to
13 make the determination you need to know what the law is,
14 what is murder. And I'm going to charge you that.

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

22 Malice aforethought does not require that malice
23 exist for any particular time before the act is
24 committed. But malice must exist in the mind of the
25 Defendant just before and at the time that the act is

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1 committed. Therefore, there must be a combination of a
2 previous evil intent and the act.

3 Malice aforethought may be express or inferred.
4 These terms, express and inferred, do not mean different
5 kinds of malice but merely the manner in which malice may
6 be shown to exist.

7 This is either by direct or by inference from the
8 facts and circumstances which are proved.

9 Express malice is shown by a person's -- when a
10 person speaks words which express hatred or ill will for
11 another, or when the person prepared beforehand to do an
12 act which was later accomplished. For example, lying in
13 wait for a person or other acts of preparation going to
14 show that the deed was within the Defendant's mind would
15 be express malice.

16 Malice may be inferred from conduct showing total
17 disregard for human life. Inferred malice may also arise
18 when the deed is done with a deadly weapon. A deadly
19 weapon is any article, instrument or substance which is
20 likely to cause death or great bodily harm. Whether as
21 instrument has been used as a deadly weapon depends on the
22 facts and circumstances of the case.

23 The following are examples of instruments which
24 may be deadly weapons: A pistol, a shotgun, a rifle, a
25 dirk, a dagger, a knife, slingshot, metal knuckles, razor,

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1 gasoline, a fire bomb, Molotov cocktail and lighter fluid.

2 Ladies and gentlemen of the jury, there is
3 another place on the verdict form that I will go over with
4 you in a moment. It deals with the offense of voluntary
5 manslaughter. You need to understand what voluntary
6 manslaughter is and how it's juxtaposed to the elements of
7 murder. I'll explain that to you here.

8 If you find that the State has failed to prove
9 beyond a reasonable doubt the Defendant committed murder,
10 you may consider whether the State has failed -- has
11 proved beyond a reasonable doubt that the Defendant
12 committed voluntary manslaughter.

13 Included within the offense of murder is the
14 lesser-included offense of voluntary manslaughter. To
15 prove voluntary manslaughter, the State must prove beyond
16 a reasonable doubt that the Defendant took the life of
17 another in sudden heat of passion based on sufficient
18 legal provocation.

19 Both heat of passion and sufficient legal
20 provocation must be present at the time of the killing to
21 constitute voluntary manslaughter. Sudden heat of passion
22 may for a time affect a person's self-control and
23 temporarily disturb a person's reason. Sudden heat of
24 passion must be the type that would make an ordinary
25 person unable to coolly reflect on his actions and would

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1 produce an uncontrollable impulse to do violence.

2 Sufficient legal provocation must be the type
3 that would make a person of ordinary reason and caution
4 become enraged and to lose control temporarily.

5 Provocation needed for voluntary manslaughter must come
6 from some act of or related to the victim.

7 Words alone however vulgar and insulting are not
8 enough to become legal provocation. Where death is caused
9 by the use of a deadly weapon, the words must be
10 accompanied by some overt threatening act which could have
11 produced the heat of passion. The exercise of a legal
12 right, no matter how offensive it is to another is never
13 sufficient legal provocation for voluntary manslaughter.

14 In the heat of -- if the heat of passion had
15 cooled or if there was enough time between the provocation
16 if any and the killing for the passion of a reasonable
17 person to cool, the killing would not be voluntary
18 manslaughter. In deciding whether a reasonable person
19 would have enough time to cool off, you should consider
20 all of the circumstances surrounding the killing.

21 You may consider the nature of the provocation,
22 if any, the Defendant's mental and physical state, the
23 circumstances and the relationship between the parties.

24 Ladies and gentlemen of the jury, I'm going to
25 charge you the substantive law with regard to possession

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1 of a weapon during the commission of a violent crime. The
2 Defendant is charged with possession of a weapon during
3 the commission of or attempt to commit a violent crime.

4 The State must prove beyond a reasonable doubt
5 that the Defendant was in possession of a firearm or
6 visibly displayed what appeared to be a firearm during the
7 commission of a violent crime.

8 A firearm means any machine gun, automatic rifle,
9 revolver, pistol or any weapon which will -- is designed
10 to or may be readily converted to expel a projectile.

11 In order to find the Defendant guilty of
12 possession of a weapon during the commission of a violent
13 crime, you must first find the Defendant guilty of either
14 committing a violent crime or attempting to commit a
15 violent crime. For purposes of this statute, murder and
16 voluntary manslaughter are violent crimes.

17 Ladies and gentlemen of the jury, I'm going to
18 come forward and share with you the verdict form. I'm
19 going to ask the alternates, when the jury retires to the
20 jury room for you to stay with us. You will not go any
21 further with regard to that.

22 Mr. Foreman, I'm going to ask if you could stand
23 up right here. I'm going to go over this form with you.
24 It's fairly self-explanatory. It's got the State of South
25 Carolina, County of Aiken, State of South Carolina versus

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1 Joshua Lamar Forrest. It's got the indictment numbers.
2 Of course, we're in the Court of General Sessions here in
3 the Second Judicial Circuit here in Aiken County.

4 And the first thing is, as I mentioned to you,
5 deals with charge and allegation the Defendant is guilty
6 of murder. And what you need to do is go through this and
7 the first question says: We, the jury, by unanimous
8 consent, find that the State has proven beyond a
9 reasonable doubt each and every element of murder and
10 therefore find the Defendant, Joshua Lamar Forrest, guilty
11 of murder.

12 And the second one is the other alternative. It
13 says: We, the jury, by unanimous consent, find that the
14 State has failed to prove beyond a reasonable doubt each
15 and every element of murder and therefore find the
16 Defendant, Joshua Lamar Forrest, not guilty of murder.

17 All right. Obviously there's no significance to
18 be assigned to the order. You know, I have to put one of
19 them first. But there's no significance to which order it
20 comes in.

21 And you'll notice here that if you find the
22 Defendant guilty of murder, then you would go and
23 deliberate with regards to the commission of a crime of --
24 violent crime while in possession of a weapon.

25 However if you find that he's not guilty of

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1 murder, then you're going to be compelled and you'll see
2 right here with an asterisk, if you find the Defendant not
3 guilty of murder you must consider the lesser-included
4 offense of voluntary manslaughter which is Roman numeral
5 two.

6 Obviously if you find him guilty of murder, you
7 go directly to number three. You skip that because you
8 can't be guilty of murder and voluntary manslaughter.
9 They're mutually exclusive. And you'll see voluntary
10 manslaughter. There's a place for you to find that he's
11 guilty. And if that would be the case, then you'll
12 proceed forward to determine the weapons charge.

13 If you find him not guilty of voluntary
14 manslaughter, if you reach that junction of deliberations,
15 clearly he's been found not guilty of murder, not guilty
16 of voluntary manslaughter. So there is no violent crime
17 which is the predicate offense for possession of a weapon
18 during the commission of a violent crime. So if you
19 reached this point and you say not guilty of voluntary
20 manslaughter, then you discontinue deliberations because
21 he can't be found guilty of Roman numeral three if he's
22 not guilty of murder and not guilty of voluntary
23 manslaughter.

24 One thing that I will mention to you is that the
25 verdict must be unanimous. It says so here on the verdict

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1 form, by unanimous consent. It can't be 11 to one. It
2 can't be six to six or eight to four. Everyone has to
3 agree.

4 There will -- during this period of time during
5 the deliberation process, there might be a question that
6 comes up. That's not uncommon. However, I will share
7 with you that y'all have heard all of the evidence from
8 the witness stand. I've charged you the law, and you've
9 paid attention. Y'all have all the tools necessary to
10 resolve this case.

11 However, if there's a question I'm going to ask
12 that y'all reduce it to writing, give it to the bailiff
13 and if it's a question I can answer, I will. I'll tell
14 you from the very outset, the very difficult questions
15 about factual disputes I'm not going to be able to answer
16 them. You've heard the law that I can't have an opinion.
17 That's the difficult question that you're going to have to
18 resolve.

19 If there are questions about the law, I'll be
20 happy to answer that. If you're not real sure whether
21 it's a question of law or fact, write it down and we'll
22 address it but I don't anticipate there will be any
23 questions because you paid close attention to the facts
24 and the law. You'll see here it says it has to be
25 unanimous. There's a place for you to sign, a place for

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1 you to date.

2 Also it says, please knock on the door and notify
3 the bailiff after completing all deliberations. It's very
4 important because I heard tell that in Greenville there
5 was a jury that stayed back there a day and a half. They
6 didn't know they were supposed to knock on the door. So,
7 it's very important for you to knock on the door when you
8 finish.

9 I have told each of y'all when you go back into
10 the jury room not to begin deliberations. And once again,
11 I'm going to ask you to do that because I have to talk
12 with these very fine lawyers to determine whether or not
13 they have an objection or addition with regards to the
14 law, but also I'm going to have to gather up all this
15 documentary evidence to be presented to you.

16 If there is no need for me to give additional
17 charges with regard to the law, then I will gather up all
18 this evidence, and the bailiff will bring it to you with
19 some blank pieces of paper to aid you in your deliberation
20 process. And he will tell you when to begin
21 deliberations.

22 But once again, it's inappropriate for y'all to
23 even discuss the case until you're given instructions to
24 do so.

25 I'm going to leave this verdict form with you and

1 you may take your jury to the jury room. Ask the
2 alternates to remain with us.

3 (Jury exits courtroom at 11:45 a.m.)

4 THE COURT: I want to thank y'all for being
5 here. I know y'all feel sort like y'all got invited to a
6 dance and didn't get to dance.

7 But, you know, in the short tenure that I've been
8 on the bench, probably I can almost remember a dozen times
9 where we've utilized an alternate juror. Sometimes
10 throughout the trial of the case there can be a conflict
11 that develops, maybe some inappropriate communication,
12 inadvertent communication, sometimes people get sick and
13 there's -- it would be scary to know, and it would be an
14 interesting task to determine exactly how much money we
15 have expended, the State has expended with regards to the
16 trial of this case.

17 And you have sort of been our insurance policy.
18 So if something happened to one or two of those jurors, we
19 could proceed forward. It's very important in a criminal
20 case that we have 12 jurors to deliberate. I can't
21 imagine an occasion where a criminal defendant would allow
22 a case to go forward with less than 12. It's important
23 that we have 12 people deliberating these very important
24 matters.

25 I want to thank y'all for being here. I know

1 that, that it's been sort of an arduous process for you.
2 Y'all might be interested in the outcome of it. You're
3 welcome to stay with us if you would like; however, if you
4 don't want to stay, you're free to leave. You will indeed
5 receive that very hefty stipend from the county. It's not
6 enough to buy a new frock or anything like that, but it's
7 a small token of our appreciation on behalf of the State
8 of South Carolina.

9 Mr. Solicitor, is there any plan for trying
10 another case for the balance of the week?

11 MR. KODMAN: No, Your Honor.

12 THE COURT: All right. Y'all are excused for the
13 week. I do want to tell you that you've earned a three-
14 year exemption. If you're called to serve in this
15 courtroom within the next three years, you tell them that
16 you served this week and you'll be exempt. Of course you
17 can serve if you want to, but it is an exemption that
18 you're entitled to. You can't be required to serve in
19 this court more than once in a three-year period.
20 Unfortunately, it doesn't apply to municipal court,
21 magistrate's court or federal court, but you've earned an
22 exemption for this particular court.

23 Do you have any questions or anything that I can
24 help you with?

25 THE JURORS: (Shake heads.)

1 THE COURT: You're free to leave. Thank you so
2 much.

3 (Jurors exit courtroom.)

4 THE COURT: Are there any objections concerning
5 the jury charge from the State?

6 MR. KODMAN: No, Your Honor.

7 THE COURT: Any from the defense?

8 MS. STONEY: No, Your Honor.

9 THE COURT: All right. I want y'all to come
10 forward at this time to go through all of the documentary
11 evidence. I want to ask that it be put in one particular
12 place. Where would be best to do that? Probably right in
13 front of the court reporter, perhaps.

14 MR. MILLER: Yes, sir.

15 (Off-the-record discussion.)

16 THE COURT: All right. There's a pile of
17 evidence right in front of the court reporter. And I'll
18 hear from the State: Is everything that's in that pile
19 into evidence, Mr. Kodman?

20 MR. KODMAN: Yes, sir.

21 THE COURT: Is there anything in that pile that's
22 not in evidence?

23 MR. KODMAN: No, sir.

24 THE COURT: All right. Ms. Stoney, is everything
25 in that pile in evidence?

1 MS. STONEY: Yes, Your Honor.

2 THE COURT: Is there anything in that pile that's
3 not in evidence?

4 MS. STONEY: No, Your Honor.

5 THE COURT: I'm going to ask the bailiff if they
6 can take the documentary evidence to the jury room and
7 tell them to begin deliberations

8 THE BAILIFF: (Nods head.)

9 MR. KODMAN: Judge, that one box has got some
10 gloves.

11 THE COURT: Any objection to sending back two --

12 MR. KODMAN: Biohazard. So I think it would be
13 appropriate for them to have.

14 THE COURT: Any objection?

15 MS. STONEY: No, Your Honor.

16 THE COURT: We can send the box of gloves back as
17 well.

18 Anything further before we stand at ease,
19 Mr. Kodman?

20 MR. KODMAN: No, Your Honor.

21 THE COURT: Ms. Stoney?

22 MS. STONEY: No, Your Honor.

23 THE COURT: All right. We'll stand at ease and
24 I'm going to ask if y'all can kind of stay real close in
25 case there's a question.

1 (11:50 a.m., deliberations commence.)

2 (Jury enters courtroom at 12:25 p.m.)

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury. I have a question that's signed by the foreman
5 that says: How tall were the two.

6 And I'll answer fairly straight forward. That's
7 a factual matter. And you are to consider only the
8 testimony which has been presented from the witness stand,
9 any exhibits which have been made a part of the record in
10 this case, and any stipulations of counsel.

11 You may return to the jury room.

12 (Jury exits courtroom at 12:26 p.m., to continue
13 deliberations.)

14 THE COURT: Any objections or additions with
15 regard to the answer of the question?

16 MR. KODMAN: No, Your Honor.

17 THE COURT: Any from defense?

18 MS. STONEY: No, Your Honor.

19 THE COURT: We'll stand at ease. I'll make the
20 question part of the record.

21 (Thereupon, note from jury was marked as Court's
22 Exhibit No. 2 and was received into the record.)

23 (At 1:40 p.m.:)

24 THE COURT: I received a note from the foreman,
25 Mr. Weeks. It says: Does premeditated have to be toward

1 a specific person or toward a random crowd.

2 My initial impression is that -- well, first of
3 all, my initial impression is that premeditation has
4 nothing to do with any, with murder or voluntary
5 manslaughter.

6 I assume that the discussion with regard to
7 malice kind of got confused to some extent; or, they might
8 talking about intent and transferred intent.

9 Probably what I would propose would be to
10 recharge the law concerning the provisions of malice. Be
11 glad to hear from --

12 MR. KODMAN: Beg the Court's indulgence, Your
13 Honor.

14 State would agree with that, Your Honor.

15 THE COURT: Anything from the defense?

16 MS. STONEY: Your Honor, the only thing I'm
17 debating is whether or not to charge them the entirety of
18 the substantive law on at least the murder and the
19 voluntary manslaughter, and maybe just the murder. Could
20 be the intent that they're looking for.

21 THE COURT: Y'all just keep your seat. Bear with
22 me just one moment.

23 (At 1:50 p.m.:)

24 THE COURT: This is a fairly difficult question.
25 First of all, it contemplates premeditation as an element

1 of voluntary manslaughter or specifically murder.

2 And probably what I would propose is that, to
3 tell them that for whatever reason maybe they have
4 mentioned the term premeditation which is a legal term,
5 but premeditation is not an element of murder. The issue
6 that distinguishes murder from other type of killings is
7 malice. Define what malice is.

8 And the other thing, it sounds to me as if
9 they're asking about transferred intent.

10 Does premeditated have to be towards a specific
11 person or towards a random crowd. I'm really unclear as
12 to what they're asking, but it almost sounds like they're
13 asking if a person fires into a crowd are they guilty of
14 something.

15 I'm not real sure where that comes from but the
16 whole concept of transferred intent is dealt with this way
17 in South Carolina law: If a defendant with malice
18 aforethought attempts to kill another person but by
19 mistake injures or kills a different person, the defendant
20 still has the intent to kill. The intent to kill is
21 merely transferred from the original person the defendant
22 intended to kill to the actual person killed or injured.

23 The defendant would be guilty of assault and
24 battery with intent to kill as if the intent had resulted
25 in the death or injury of a person the defendant intended

1 to kill.

2 Be glad to hear from the State.

3 MR. KODMAN: With regard to the first part, what
4 Your Honor said, I have no objection to that explanation
5 you propose to give. However, with regard to transferred
6 intent, I don't believe that that applies in this case
7 based on all the facts and testimony taken under any
8 context.

9 It's obviously a question that the jury posed,
10 but --

11 THE COURT: I don't understand where that comes
12 from either, but does it sound like that's what they're
13 asking, to you?

14 MR. KODMAN: I don't know that they know the
15 legal definition of transferred intent.

16 THE COURT: Well, it sounds like they're talking
17 about -- that's the problem they're debating about a
18 person firing into a crowd as opposed to a specific
19 person.

20 MR. KODMAN: The State's opinion would be Your
21 Honor decided -- that was not part of the original charge
22 in this case based on the way the facts came out in the
23 case and that it would be appropriate to --

24 THE COURT: Well, but for me to say that that
25 doesn't apply is me commenting on the facts.

1 I'll be glad to hear from defense

2 MS. STONEY: Your Honor, I had the same concern
3 as Mr. Kodman, that it's not part of this case. They
4 might be trying to make it part of this case, but it's not
5 part of the case.

6 But I do understand what you're saying about
7 commenting on the evidence.

8 THE COURT: All right. We agree that we're not
9 going to charge them transferred intent.

10 Does everyone agree that the appropriate way to
11 handle it is to explain to them premeditation is not an
12 element of murder or voluntary manslaughter and define
13 malice?

14 MR. KODMAN: That would be the State's position,
15 Your Honor.

16 MS. STONEY: That's also the defense's position.
17 I think it would probably be best to leave alone the rest
18 of the question unless they come back with it again.

19 THE COURT: Well, that's indeed what we'll do.
20 All right. We're ready for the jury

21 (Jury enters courtroom at 1:52 p.m.)

22 THE COURT: Mr. Foreman, ladies and gentlemen of
23 the jury. I have received your note which I'll read into
24 the record. It says: Does premeditated have to be
25 towards a specific person or towards a random crowd.

VERDICT & SENTENCING

1 And to the extent this is a question about the
2 law, the word premeditated is a legal term which is not a
3 part of the offense of murder or voluntary manslaughter..
4 Premeditation is not contemplated in the two crimes as
5 defined in the State of South Carolina.

6 Malice aforethought does not require that malice
7 exist for any particular time before the act is committed,
8 but malice must exist in the mind of the Defendant just
9 before and at the time of the act -- the time the act is
10 committed. Therefore, there must be a combination of the
11 previous evil intent and the act.

12 I'm going to ask that you return to the jury room
13 for deliberations.

14 (Jury exits courtroom at 1:54 p.m.)

15 THE COURT: Any objection to the response to the
16 question from the State?

17 MR. KODMAN: No, Your Honor.

18 THE COURT: Any from the defense?

19 MS. STONEY: None, Your Honor.

20 THE COURT: All right. We will stand at ease.

21 (Thereupon, note from jury was marked as Court's
22 Exhibit No. 3, and received into evidence.)

23 (At 2:02 p.m.:)

24 THE COURT: I understand that we have a verdict.
25 Before we bring the jury back and receive the verdict,

VERDICT & SENTENCING

1 I'm -- this has been sort of a very quiet audience here.
2 And to be quite honest with you, I haven't been able to
3 discern who is here on behalf of the Defendant and who is
4 here on behalf of the victim.

5 But my job is to ensure that the Defendant and
6 the State get a fair and impartial trial. But I also have
7 a duty to maintain order in this court. And I will indeed
8 enforce that and I'm going to tell the deputies that if
9 there's any outbursts whatsoever, any body language, any
10 slamming around, any kind of attitude shown whatsoever,
11 that I'm going to ask the deputies to take you into
12 custody. We aren't going to have any outbursts
13 whatsoever.

14 And if any of you that are in the audience feel
15 as though you can't maintain your composure, I'm going to
16 allow you to leave the courtroom at this time. But if you
17 stay in here, you're subject to the order not to have any
18 outbursts, any demonstration of emotions whatsoever and
19 ask that the deputies abide by that order. And if they
20 violate it, I will tell you to take them into custody.

21 Anything from the State before we bring the jury
22 out?

23 MR. KODMAN: No, Your Honor.

24 THE COURT: Anything from the defense?

25 MS. STONEY: No, Your Honor.

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1 THE COURT: All right. We're ready for the
2 jury.

3 (Jury enters courtroom at 2:05 p.m.)

4 THE COURT: Mr. Foreman, ladies and gentlemen of
5 the jury, have you reached a verdict?

6 FOREPERSON OF THE JURY: Yes, we have, Your
7 Honor.

8 THE COURT: It is indeed unanimous?

9 FOREPERSON OF THE JURY: Yes, sir.

10 THE COURT: I'm going to ask if you could to give
11 the clerk the verdict form.

12 FOREPERSON OF THE JURY: (Complying).

13 THE COURT: Madam clerk, you may publish the
14 verdict.

15 THE CLERK: Your Honor, we have the State of
16 South Carolina versus Joshua Lamar Forrest, case number
17 2006-GS-02-694 and 695. We, the jury, by unanimous
18 consent, find the State has proven beyond a reasonable
19 doubt each and every element of murder and therefore find
20 the Defendant, Joshua Lamar Forrest, guilty of murder.

21 We, the jury, by unanimous consent, find that the
22 State has proven beyond a reasonable doubt each and every
23 element of the offense of possession of a weapon during
24 the commission of or intent to commit a violent crime and
25 therefore find the Defendant, Joshua Lamar Forrest, guilty

VERDICT & SENTENCING

1 of possession of a weapon during the commission of or
2 intent to commit a violent crime.

3 Signed by jury foreperson Scottie Weeks, June
4 24th, 2009.

5 THE COURT: Any additional requests with regard
6 to polling?

7 MR. KODMAN: None from the State, Your Honor.

8 MS. STONEY: Yes, Your Honor.

9 THE COURT: All right. Madam clerk, if we could
10 poll the jury.

11 THE CLERK: Juror number 42, John W. Folk, is
12 this your verdict and do you still agree?

13 THE JUROR: Yes, it is.

14 THE CLERK: Juror number 50, George L. Grieve.
15 Is this your verdict and do you still agree?

16 THE JUROR: Yes, it is.

17 THE CLERK: 119, Gregory Roberson. Is this your
18 verdict and do you still agree?

19 THE JUROR: Yes, it is.

20 THE CLERK: Juror number four, Natalie Askew. Is
21 this your verdict and do you still agree?

22 THE JUROR: Yes.

23 THE COURT: 158, Candace Ortiz. Is this your
24 verdict and do you still agree?

25 THE JUROR: I do.

VERDICT & SENTENCING

1 THE COURT: 151, Cody Brecht. Is this your
2 verdict and do you still agree?

3 THE JUROR: Yes.

4 THE CLERK: 143, Scottie Weeks. Is this your
5 verdict and do you still agree?

6 THE JUROR: Yes.

7 THE CLERK: 104, Annette Paige. Is this your
8 verdict and do you still agree?

9 THE JUROR: Yes.

10 THE CLERK: 163, Gary Pace. Is this your verdict
11 and do you still agree?

12 THE JUROR: Yes.

13 THE CLERK: 78, Steven Mackey. Is this your
14 verdict and do you still agree?

15 THE JUROR: Yes.

16 THE CLERK: Steven Higdon. Is this your verdict
17 and do you still agree?

18 THE JUROR: Yes.

19 THE CLERK: 165, Benjamin Russell. Is this your
20 verdict and do you still agree?

21 THE JUROR: Yes.

22 THE CLERK: All jurors polled.

23 THE COURT: Mr. Foreman, ladies and gentlemen of
24 the jury. I want to thank you for your service here
25 today. I know that it's been inconvenient. Y'all had

VERDICT & SENTENCING

1 other things that you'd rather do, but this is a very
2 important part of our judicial system.

3 And I know that y'all didn't volunteer to be
4 here. Y'all were sort of drafted to be here. If you
5 think about it, you have been able to do what nobody else
6 in this courtroom has been able to do.

7 This matter has been pending. There's been no
8 agreement, no plea arrangement. You've been able to bring
9 resolution to this when nobody else could.

10 And having a jury subpoenaed here to participate
11 is a necessary part of our judicial system. If you think
12 about it, an alternative would be to have the clerk go out
13 on the street and find 12 people who had absolutely
14 nothing better to do than serve on a jury. I don't think
15 we would get the same wisdom that y'all have brought to
16 this particular proceeding.

17 Many of you obviously know that we participate in
18 a democracy and, but if -- when you contemplate it, we all
19 have a mayor that presides over our city. We elect county
20 councilmen. We have people in the state legislature, we
21 have people in the senate, the government. And people on
22 the national level including the President of the United
23 States. That is what we call indirect democracy, where we
24 appoint people to make decisions.

25 But y'all today have participated in a direct

VERDICT & SENTENCING

1 democracy. Y'all were today the government. I know that
2 is a very difficult thing to do. And just going through
3 that process might make you more sympathetic to our
4 governmental leaders who have to make very difficult
5 decisions. It's never easy to do that. It's never easy
6 to be a part of the government, making those decisions.

7 I think that we all need to realize that we're
8 only, you and I, me personally and you personally, are
9 only a breath away from litigation ourselves. And I would
10 much rather have 12 members of Aiken County resolve a
11 dispute such as this, as opposed to a judge or a panel of
12 professional jurors.

13 I think our system is clearly the best that's
14 ever been devised and I want to thank you for your service
15 here today. I was a very serious matter and y'all have
16 given it great consideration. I can tell that you have
17 paid very close attention and engaged in the deliberative
18 process.

19 Your job and duties have been discharged here
20 today. It's my part, or my duty as the Judge of the law
21 to sentence the Defendant in this case. And that's
22 something that's completely my responsibility and you have
23 discharged yours.

24 However, this is a public forum. If you would
25 like to stay and watch the sentencing and if you're

VERDICT & SENTENCING

1 interested in that regard, you're welcome. As you leave
2 the courtroom you can go and have a seat out there and
3 watch it, because it is indeed a public forum.

4 However those of you who would like to be
5 discharged, you're free to do so at this time. This is
6 the last trial that we're going to have this week. We're
7 going to take care of some other matters for the balance
8 of the week. So you are free to leave and you have earned
9 a three-year exemption and y'all have truly earned it
10 because y'all participated in this trial and done a good
11 job in paying attention. For that I'm grateful on behalf
12 of the State of South Carolina and you're free to leave at
13 this time.

14 (Jury excused and exits courtroom.)

15 THE COURT: Ms. Stoney, if you could bring the
16 Defendant forward, Mr. Forrest, and we'll proceed with
17 sentencing.

18 MS. STONEY: Your Honor, I did have one motion
19 before we finish.

20 THE COURT: Okay.

21 MS. STONEY: I would move for a judgment not
22 withstanding the verdict, that 12 reasonable people could
23 not come up with a guilty verdict in this case.

24 THE COURT: Be glad to hear from the State in
25 regard to that motion.

VERDICT & SENTENCING

1 MR. KODMAN: Your Honor, I renew my arguments
2 made at the close of the states case with regard to
3 directed verdict.

4 THE COURT: Your motion is noted for the record
5 but denied.

6 If you could bring Mr. Forrest forward.

7 MS. STONEY: (Complies).

8 THE COURT: I'll be glad to hear from the State
9 with regard to sentencing.

10 MR. KODMAN: Yes, sir, Your Honor.

11 THE COURT: Pass up the sentence sheets.

12 MR. KODMAN: Judge, Mr. Forrest was convicted on
13 November 17th of 2005 in, I believe, Lexington County for
14 attempted armed robbery.

15 Attempted armed robbery under our laws is a most-
16 serious offense. And based on that prior conviction, the
17 State noticed Mr. Forrest that we would intend to seek a
18 life sentence without the possibility of parole in this
19 case. We filed a notice of intent to seek life
20 imprisonment. Notice with the Clerk of Court on April 3rd
21 of 2009. That notice was faxed to defense counsel and
22 mailed to her as well as it was also served personally on
23 the Defendant and the Department of Corrections as well.

24 And it was based on that prior attempted armed
25 robbery conviction which is on file with the Clerk of

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1 Court. I do have a copy of it if Your Honor would like to
2 see that.

3 THE COURT: If I could.

4 MR. KODMAN: (Document handed to the Judge).

5 THE COURT: Do you have a copy of the notice that
6 was given to the Defendant?

7 MR. KODMAN: It's the same notice that was --

8 THE COURT: Okay. Here it is right there. Very
9 good.

10 MR. KODMAN: And that should be on file in the
11 clerk's office. We did file it.

12 THE COURT: Ms. Stoney, do you agree that your
13 client, Mr. Forrest, received notice of intent to proceed
14 forward with life without parole?

15 MS. STONEY: Your Honor, I did receive notice and
16 I believe he did also.

17 THE DEFENDANT: (Nods head).

18 THE COURT: Mr. Forrest, did you receive this
19 notice?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. It's my understanding,
22 and correct me if I'm wrong, that there is no discretion
23 with regard to this sentence. This is a second most-
24 serious offense. It's mandatory that he receive a life
25 sentence. Is that your understanding from the State,

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1 Mr. Kodman?

2 MR. KODMAN: Yes, sir, Your Honor.

3 THE COURT: Is that your understanding,

4 Ms. Stoney?

5 MS. STONEY: Yes, Your Honor.

6 THE COURT: All right. It doesn't appear as if I
7 have any discretion in that regard. I'll be glad to hear
8 from you or your client, if you'd like to speak.

9 MS. STONEY: Your Honor, my client's family is
10 here, has been here supporting him since the beginning of
11 this. And having dealings with him, one of the things
12 that happened in the last trial is Judge Early put a
13 machine on him to shock him if, in case he did anything if
14 there was a guilty verdict. And of course he didn't need
15 that. He's right here and nothing happened. He's a good
16 guy.

17 I realize he's been convicted of murder now and I
18 wish you did have some discretion.

19 Do you want to say anything?

20 THE DEFENDANT: No.

21 THE COURT: Mr. Forrest, not necessary that you
22 speak but if you'd like to, I'll be glad to hear from you.

23 THE DEFENDANT: I mean, he -- the robbery, I
24 pleaded out to that in 2005. But I did that, like, that
25 charge was pending for, like, nine years.

VERDICT & SENTENCING

1 So you see, ain't like I did that in 2005,
2 committed the armed robbery, pleaded to it and then came
3 and committed this crime also.

4 That charge was pending for, like, nine years.
5 Then I pleaded out to that charge. So nine years take
6 away from my age, you know, I may a little misconstrued in
7 the head. You know what I'm saying. Doing a little bit
8 of stuff that I ain't had no business. So but we all
9 learn from our mistakes.

10 That's all I want to say. Those crimes wasn't
11 back to back. The plea came nine years later and then
12 this took place. So it wasn't like, you know, when I
13 committed the armed robbery in 2005 and also went out and
14 committed this crime.

15 THE COURT: Right.

16 THE DEFENDANT: It just happened I pleaded out in
17 2005 from the 1996, '97 case.

18 THE COURT: Right.

19 MS. STONEY: How old were you when that
20 happened?

21 THE DEFENDANT: Like, 17.

22 THE COURT: All right. MR. FORREST, ON
23 INDICTMENT 2006-GS-02-0695, ON THE OFFENSE OF MURDER, THE
24 SENTENCE OF COURT IS YOU BE COMMITTED TO THE STATE
25 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF YOUR NATURAL

1 LIFE.

2 THIS SENTENCE RUNS CONCURRENT IN ALL RESPECTS
3 WITH OTHER SENTENCE RENDERED HERE TODAY.

4 WITH REGARDS TO INDICTMENT 2006-GS-02-694,
5 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
6 CRIME. THE SENTENCE OF THE COURT YOU BE COMMITTED TO THE
7 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF FIVE
8 YEARS. SENTENCE TO RUN CONCURRENT WITH THE OTHER SENTENCE
9 RENDERED HERE TODAY.

10 Good luck to you.

11 (Commotion erupts in courtroom.)

12 THE OFFICER: Your Honor, this is the first
13 gentleman that slammed the door on the way out.

14 THE COURT: Very good.

15 THE OFFICER: There's another one coming in.

16 (More commotion.)

17 THE COURT: State your full name for the record,
18 please, sir.

19 MR. D. FORREST: David E. Forrest. David Emanuel
20 Forrest.

21 THE COURT: What relationship are you to the
22 Defendant?

23 MR. D. FORREST: I'm his nephew, sir.

24 THE COURT: Did you hear me say that there would
25 be no outbursts in this courtroom?

1 MR. D. FORREST: I was walking out, sir, because
2 I couldn't take it no more you gave him life.

3 THE COURT: Did you specifically hear me --

4 MR. D. FORREST: No.

5 THE COURT: Did you --

6 MR. D. FORREST: No, sir. I wasn't here then. I
7 didn't hear you, sir, but I was walking out. I couldn't
8 take it, not like it --

9 THE COURT: Did you specifically --

10 MR. D. FORREST: No, sir.

11 THE COURT: -- hear me?

12 MR. D. FORREST: I wasn't here, sir.

13 THE COURT: All right. Well, I'm going to ask
14 that you take him into custody, and take him into custody
15 right now. I'm going to deal with him at the conclusion
16 of the day.

17 THE OFFICER: Yes, sir.

18 THE COURT: All right. Your full name?

19 MR. JEREMY FORREST: Jeremy Forrest.

20 THE COURT: What relationship are you to the
21 Defendant?

22 MR. JEREMY FORREST: That's my uncle.

23 THE COURT: All right. Did you hear me say that
24 you weren't supposed to have any kind of outburst
25 whatsoever?

1 MR. JEREMY FORREST: No, sir. I was outside.

2 THE COURT: All right. What did this particular
3 individual do? I heard people slamming doors.

4 THE OFFICER: Well, he was slamming the door. We
5 have one of the barricades out here, when the other one
6 was taken into custody, he walked by, slammed it down.

7 THE COURT: Okay. All right. I'm going to ask
8 you to take him into custody. We'll deal with sentencing
9 here momentarily. Thank you very much.

10 THE OFFICER: Yes, sir.

11 THE COURT: We'll stand at ease for five minutes.

12 END OF PROCEEDINGS: 2:48 P.M.

13

14 * * *

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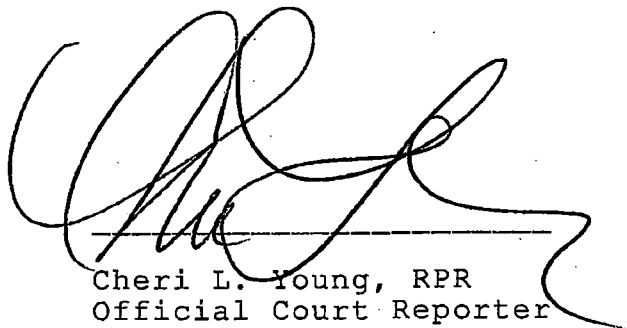
16 CERTIFICATE OF REPORTER

17 I, Cheri L. Young, Registered Professional Reporter,
18 and Official Court Reporter for the State of South
19 Carolina, do hereby certify that the foregoing transcript
20 of proceedings heard on Monday, June 22, 2009, Tuesday,
21 June 23, 2009 and Wednesday, June 24, 2009, in Aiken,
22 South Carolina, was reported by me using machine shorthand
23 and realtime computer-aided translation and is a true,
24 accurate and complete transcript of the proceedings had
25 and evidence introduced in the hearing of the matter.

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

3 I have hereunto set my hand this Friday, the 31st day
4 of July, 2009.

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Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Michael G. Nettles, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

JOSHUA LAMAR FORREST,

APPELLANT,

FINAL ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by instructing the jury that malice could arise "when the deed is done with a deadly weapon".

STATEMENT OF THE CASE

On June 22 through 24, 2009, Joshua Lamar Forrest stood trial in Aiken County, before Judge Michael G. Nettles and a jury, on indictments charging him with murder and possession of a firearm during the commission of a violent crime. The State's evidence indicated that Forrest and the victim, Mario Reddish, were fighting outside a club when Reddish was shot twice. Although Forrest offered no evidence, his defense was that an unidentified third party had killed Reddish. The State argued that Forrest was guilty of either murder or voluntary manslaughter. The jury convicted Forrest of murder, and the judge sentenced him to life imprisonment pursuant to S. C. Code Section 17-25-45.

ARGUMENT

The trial judge committed reversible error by instructing the jury that malice could arise "when the deed is done with a deadly weapon".

If Forrest was guilty of anything, it was either murder or voluntary manslaughter. The State's evidence indicated that he and the victim were fighting when the fatal shot was fired, and the State argued for a charge on voluntary manslaughter over defense objection. ROA p. 198 line 16- ROA p. 201 line 5. The judge subsequently charged the jury, "Malice may be inferred ... when the deed is done with a deadly weapon". ROA p. 234 lines 16- 18. Defense counsel did not object to this instruction. ROA p. 244 lines 4-8.

In the recent case of State v. Belcher, Opinion No. 26729, decided October 12, 2009, the South Carolina Supreme Court held:

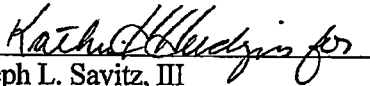
Under our policy-making role in the common law, we hold that the "use of a deadly weapon" implied malice instruction has no place in a murder ... prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing.

"Because our decision represents a clear break from our modern precedent," the Court continued, "today's ruling is effective in this case and for all cases which are pending on direct review or not yet final where the issue is preserved."

Belcher leaves open the question of whether counsel for defendants in his class may be found ineffective assistance under Strickland v. Washington, 466 U.S. 668 (1984). See, for example, Tate v. State, 351 S.C. 418, 570 S.E.2d 522 (2002).

Accordingly, the Court of Appeals may require Forrest to file an application for post-conviction relief alleging that he did not receive effective assistance of counsel at trial. If not, the Court should reverse his conviction for murder and remand for a new trial.

Respectfully submitted,



Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Michael G. Nettles, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

JOSHUA LAMAR FORREST,

APPELLANT,

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joshua Lamar Forrest states:

1. He is Senior Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Michael G. Nettles, which was held on June 24, 2009, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Joshua Lamar Forrest.

Respectfully submitted,


Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 9, 2010



Joseph L. Savitz, III
Senior Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Michael G. Nettles, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

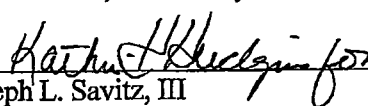
V.

JOSHUA LAMAR FORREST,

APPELLANT,

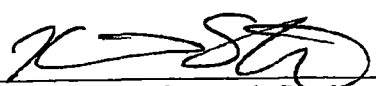
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at P.O. Box 50666, Columbia, SC; and the Final Anders Brief of Appellant and the Record on Appeal on Joshua Lamar Forrest, #274525 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 9th day of February, 2010.


Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 9th day of February, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 1, 2019.

2011 WL 11734627

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

The STATE,

v.

Joshua Lamar **FORREST**, Appellant.

No. 2011-UP-254. | Submitted
May 1, 2011. | Decided June 1, 2011.

Appeal from Aiken County; Michael G. Nettles, Circuit Court
Judge.

Attorneys and Law Firms

Appellate Defender Joseph Savitz, III, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, and Assistant Deputy Attorney
General Donald J. Zelenka, all of Columbia, for Respondent.

Footnotes

1 We decide this case without oral argument pursuant to Rule 215, SCACR.

Opinion

PER CURIAM.

*1 Joshua Lamar Forrest appeals his convictions for murder and possession of a weapon during the commission of a violent crime, arguing the trial court erred by instructing the jury that malice could arise when the deed is done with a deadly weapon. After a thorough review of the record and counsel's brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

FEW, C.J., KONDUROS, J., and CURETON, A.J., concur.

All Citations

Not Reported in S.E.2d, 2011 WL 11734627

End of Document

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The South Carolina Court of Appeals

TANYA A GEE
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V CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW.SCCOURTS.ORG

June 24, 2011

REMITTITUR

The Honorable Liz Godard
109 Park Ave
PO Box 583
Aiken, SC 29802-0583

Re: The State v Forrest, Joshua Lamar
2006-GS-02-00694
2006-GS-02-00695

Dear Mrs. Godard:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/tf

cc: Joshua Forrest, #274525
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

K093070
093069

2006-GS-02-694, 695, 79

FORM 5

Filed 8-23-2011

C.C.C.P. & G.S. Aiken County
J. K. Knapp 8am

IN THE COURT OF COMMON PLEAS
Trial Judge: Michael E. Neaves
Trial Atty.: Cheryl H. Stoney
Court Reporter: Cheryl Vollog
Sec: PCR Petitioner Solicitor
General Sessions Atty. Gen.
Appointed Atty.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Joshua Lamar Forrest, 274525,
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669
2. Name and location of Court which imposed sentence Aiken County Court of General Sessions, 109 Park Ave. SE, Aiken, SC 29801
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-02-694: Possession of a Firearm during a Violent Crime
 - (b) 2006-GS-02-695: Murder
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 24, 2009: 5 years concurrent

- (b) June 24, 2009: Life
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction affirmed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 1, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2011-UP-254
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial and Appellate Counsel.
 - (b) Due Process Violation.
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to prepare and investigate.
 - (b) See attached.
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 - (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR is the proper forum.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes.

(b) your trial, if any? Yes.

- (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Sherri Stoney, PO Box 211592, Augusta, GA 30917
 - ii. Joseph L. Savitz, Office of Appellate Defense, PO Box 11589, Columbia, SC
 - 29211
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial.
 - ii. Direct Appeal.
 - iii. _____
19. State clearly the relief you seek in filing this application:
A new trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

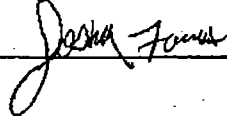
STATE OF SOUTH CAROLINA

County of Anderson

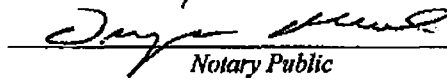
)
)
)

VERIFICATION

I, Joshua Lamar Forrest, 274525, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 17
day of Aug, 2011.

 (L.S.)
Notary Public

My Commission Expires: Jan 28, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Joshua Lamar Forrest, 274525, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Joshua Forrest

Applicant

SWORN or affirmed to and subscribed before me this

17 day of Aug, 2011.

Dwight Mune

Notary Public

My Commission Expires: Jan 28, 2018

DUE PROCESS VIOLATION

Article V §1 of the South Carolina Constitution Mandates an unified judicial system & of the judicial article designates the chief of the South Carolina Supreme Court as the administration (administrative head) of all courts in this state. Spartanburg Cty. Dept of S.G. v. Padgett, 370 S.E.2d 872, 375 S.C. 1983. Article V. §1 provides further, that the Supreme Court shall promulgate rules governing practice and procedure in all courts subject to statutory law ID

Pursuant to said provision, on March 5, 1999 the Chief Justice of the South Carolina Supreme Court, Ernest A. Finney, Jr., mandated "that all criminal cases in the state of South Carolina shall be disposed of within 180 days from the date of the defendant's arrest. Provided, however, that the circuit court may continue a criminal case beyond 180 days by written order if the court determines that exceptional circumstances exist in the case"

Rules of procedure, like statutes, are a necessary part of an orderly system of Justice. Their efficiency however depends upon the willingness of the court to enforce them according to their terms. Houston v. Lack, 108 S.Ct. 2379 (1988)

If the court does not enforce the rules and statutes equally on both parties i.e., declaring them as administrative and not mandatory enforcing them in favor of the prosecution, then such practice will be procedurally unfair. An unfair system of justice, violates due process clause of the S.C. Const Art 1 §3, and U.S Const Amend. XIV, §1

The commonly called "180 days Rule" is analogous to South Carolina Code of laws Ann. § 17-11-10 et seq, the Interstate Agreement on Detainer Act, holding that pursuant to:

Article V (c) if the appropriate authority shall refuse or fail to accept temporary custody of a prisoner, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice and any detainers based thereon shall cease to be of any force or effect"

Pursuant to State v. Holbrook, 260 S.E.2d 181, "120 day time limitation imposed under the interstate agreement on Detainers Act is mandatory and thus required dismissal of charges against defendants with prejudice where at no time during 124 day of their incarceration in jurisdiction did the state move for continuance"

As with the "180 days Rule" the court retains subject matter jurisdiction for 180 days. Jurisdiction can only be extended where a circuit court continue a criminal case by written order, and upon a showing of exceptional circumstances. The Solicitor can not show exceptional circumstances

note subject Matter jurisdiction to try criminal matter" See State v. Country, 1610 S.E.2d 494 (2005) 287

But the circuit court only retain jurisdiction for a set time, in the interest of fundamental fairness

Moreover, the 180 days Rule imposes on the solicitor to dispose of the case within 180 days or timely move for a continuance upon a showing of exceptional circumstances or the solicitor waives the right to prosecute the case. Such waivers must be held by the court and case dismissed with prejudice

A waiver is a voluntary an intentional abandonment or relinquishment of a known right, see Janusik v. Fairway Oaks Villa Horizontal Property Regime, 915 S.E.2d 384 (1992)

A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable" see Lyles v. BMT, Inc., 355 S.E.2d 282 (Ct App 1987)

Therefore, the solicitor failure to move to dispose of this case within 180 days from the date of defendant's arrest indicates a voluntary and intentional relinquishment of the right to do so, and upholding such waiver this case should of been dismissed with prejudice. Moreover, such is evidence of procedural Ineffective assistance of ~~the~~ Counsel and ~~Ineffective assistance of Plea Counsel~~

The Supreme Court of South Carolina

#10
3/13/99

ORDER

Pursuant to Article V, § 4, of the South Carolina Constitution,

IT IS ORDERED that all criminal cases in the State of South Carolina shall be disposed of within 180 days from the date of the defendant's arrest. Provided, however, that the circuit court may continue a criminal case beyond 180 days by written order of the court determines that exceptional circumstances exist in the case. This order does not create or define a right of a defendant to a speedy trial.

IT IS FURTHER ORDERED that the orders of Chief Justice Lewis dated August 17, 1983, and January 13, 1984, which appear at pages CC-ADMIN 12 and 13 of the South Carolina Court Register, are hereby rescinded.



ERNEST A. FINNEY, JR.
CHIEF JUSTICE

Columbia, South Carolina

March 5, 1999

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
)
)

2011-CP-02-1834

Joshua Forrest, #274525,

)
)
) Applicant,
)
)

v.)

RETURN

State of South Carolina,

)
) Respondent.
)
)

The Respondent, making its Return to the application for post-conviction relief filed August 23, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted during the April 2006 term of the Aiken County Grand Jury for murder (2006-GS-02-695) and possession of a firearm or knife during commission of or attempt to commit a violent crime (2006-GS-02-694). Applicant was represented by Sherri Stoney, Esquire. Applicant proceeded to trial and was found guilty on June 24, 2009. The Applicant was sentenced by the Honorable Michael G. Nettles, to Life without Parole to run concurrent with a sentence of five years imprisonment for possession of a weapon during a commission of or attempt to commit a violent crime.

A timely notice of Appeal was filed on behalf of the Applicant. The South Carolina Court of Appeals affirmed the conviction. State v. Forrest, Op. No. 2011-UP-254 (filed June 1, 2011). The Remittitur was sent June 24, 2011.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial court transcript, and the record on appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel.
 - a. "Failure to prepare and investigate."
2. Ineffective Assistance of Appellate Counsel.
3. Due Process Violation.
 - a. "If the court does not enforce the rules and statutes equally on both parties i.e., declared them as administrative and not mandatory enforcing them in favor of the prosecution, then such parties will be procedurally unfair. An unfair system of justice, violates due process abuse of the S.C. Const. Art 1 § 3 and U.S const. Amen XIV § 1."
 - b. "Therefore the solicitor failure to move to dispose of this case within 180 days from the date of defendants arrest indicates a voluntary and intentional relinquishment of the right to do so and upholding such waives this case should have been dismissed with prejudice moreover, such is evidence of procedural ineffective assistance of counsel."

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent

requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the

Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

The State therefore requests that this Court convene an evidentiary hearing solely on the issues of ineffective assistance of trial and appellate counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that

there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

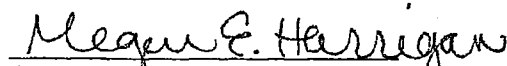
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 15, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2011-CP-02-1834

JOSHUA FORREST, 274525,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

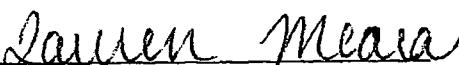
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Keith B. Taylor, Esquire
Law Offices of Richard W. Taylor, PC
302 E. Martintown Rd.
N. Augusta, SC 29841

DATED this 18th day of June, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
JOSHUA LAMAR FORREST,	)	
	)	Case No. 2011-CP-02-1834
Petitioner,	)	
	)	
vs.	)	
	)	<u>SUPPLEMENT TO PETITION FOR</u>
STATE OF SOUTH CAROLINA	)	<u>POST-CONVICTION RELIEF</u>
	)	
Respondent.	)	

COMES NOW the Petitioner, Joshua Lamar Forrest, by and through his attorney, and respectfully supplements his Petition for Post-Conviction Relief by alleging that he was deprived of the effective representation of counsel during both the mistrial, which occurred in December of 2006, and during the retrial in June of 2009 by his appointed counsel, Sherri Stoney. The Petitioner states the following in support thereof:

1. During the jury selection in June of 2009, even though the State exercised three of its four strikes by striking blacks during jury selection, no Batson challenge was raised by appointed counsel, Sherri Stoney. Petitioner was deprived of a jury of his peers.

2. Additionally, though many of the witnesses had criminal records, to-wit: felony convictions, at no time did appointed counsel, Sherri Stoney, attempt to introduce certified copies of the convictions for the witnesses.

3. Based upon information and belief, Jonathan Thomas, at the time of trial was a fugitive, to-wit: a warrant for failure to register as a sex offender was

outstanding against him. No inquiry was made by appointed counsel regarding the resolution of the outstanding warrant nor did appointed counsel attempt to introduce a certified copy of his felony conviction during his cross-examination.

4. Appointed counsel did not subpoena any witnesses to testify at the retrial.

5. Appointed counsel failed to file *in limine* seeking a limitation of the State's introduction of the word "incarceration" during the direct and cross-examination of Investigator Cain.

6. On November 17, 2005, the Petitioner, having been held in custody for three days on a bench warrant, entered an uncounseled guilty plea to attempted armed robbery, which was a most serious, violent offense and appointed counsel did not adequately explain to the Petitioner prior to the retrial that, if convicted, he would automatically receive a life-without-parole sentence.

7. Appointed counsel's failed to adequately apprise the Petitioner of the terms and conditions of the proposed plea agreement which would have resulted in a 20-year prison sentence as opposed to life without parole and such conduct fell below the standard set out in Lafley v. Cooper, 132 S.Ct. 1376 (2012).

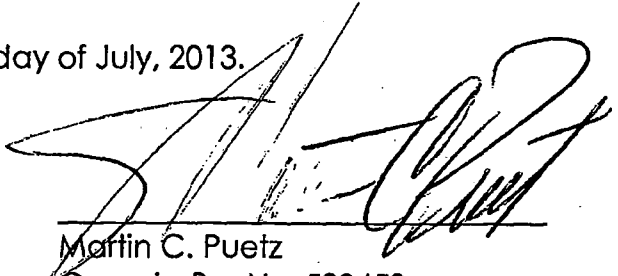
8. During the first trial, several of the State's witnesses who claimed sobriety were in fact convicted drug users and/or dealers.

9. Appointed counsel for the Petitioner failed to provide any explanation and/or investigation into the severity of the fractured humerus described in the autopsy report of Mario Reddish.

10. The conduct of appointed counsel fell below the standard set by the Supreme Court in Lafley v. Cooper, 132 S.Ct. 1376 (2012), and was in violation of Petitioner's right to counsel set out in the Fifth and Sixth Amendments to the United States Constitution.

11. Appointed counsel did not do a scene investigation, she did not interview the persons who had rented the Elks building nor did she interview any witnesses or potential witnesses prior to the trial in December of 2006 nor before the retrial in June of 2009.

Respectfully submitted this 2 day of July, 2013.



Martin C. Puetz
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415 Fourth Street
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706-722-4283
Attorney for Joshua Lamar Forrest

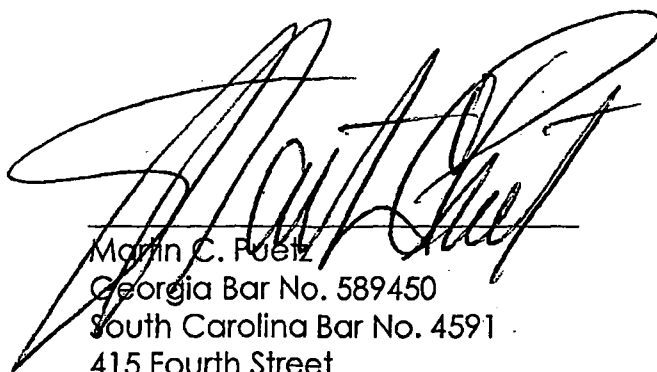
CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing **Supplement to Petition for Post-Conviction Relief** upon opposing counsel:

David A. Spencer, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

by email (dspencer@scag.gov) and by depositing same in the United States Mail, in a properly addressed envelope, with adequate postage thereon, prior to filing.

This 2 day of July, 2013.



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AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Joshua Lamar Forrest, 274525,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No: 2011-CP-02-1834

MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR POST-
CONVICTION RELIEFCOPY
ORIGINAL FILED

JUL 03 2013

AIKEN COUNTY
CLERK OF COURT

The applicant, above-named, presents the Memorandum of Law in Support of the Application for Post-Conviction Relief and would show the following unto the Honorable Court.

STATEMENT OF THE CASE

The applicant was indicted by the Aiken County Grand Jury during the April 2006 term of General Sessions Court for murder (2006-GS-02-695) and Possession of Firearm or Knife During Commission of or Attempt to commit a Violent Crime (2006-GS-02-694). On December 4-6, 2006, he went to trial before the Honorable Ooyet A. Early, III, and jury. He was represented by Sherri Hicks Stoney, Esquire, and the State was represented by De Grant Gibbons, Esquire. The jury could not reach a verdict, and Judge Early declared a mistrial.

On June 22-24, 2009, the applicant was retried for the same offenses before the Honorable Judge Michael G. Nettles, and jury. He was again represented by Sherri Stoney Hicks, Esquire; and David Miller, Esquire, and Stephen Kotman, Esquire represented the State. The jury found him guilty of murder and possession of a firearm during commission of a violent crime, and Judge Nettles sentenced him to life without parole for murder and five (5) years for possession of a weapon offense. A timely appeal was filed on applicant's behalf.

The applicant was represented on appeal by Josepy Lavitz, III, Division of Appellate Defense. The Court of Appeals denied the appeal in Unpublished Opinion

No. 2011-Up-254, Submitted May 1, 2011-Filed June 1, 2011.

ARGUMENT

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to judge's erroneous and misleading jury charge that reduced the state's burden of proof.

The evidence adduced at trial showed that while applicant was at a club ... he got into an argument with his ex-girlfriend, Tanika Bussey Campbell, who was having a relationship with the victim, Mario Reddish. Campbell took applicant's cap and went to the rear of the club where the victim and his friends were located. When applicant went to get his cap, Campbell threw a drink on him and slapped his face several times. Tr.p. 127, L. 10-19.

The applicant ignored Campbell's assault and got his cap. After getting his cap, the victim and his friends began shoving applicant, and applicant then left the club and went to the parking lot where his cousin's car was parked to leave the area. Upon trying to leave, the applicant seen his ex-girlfriend, the victim and his friends approaching him. Tr.p. 127, L. 20--p. 128, L. 4.

There was evidence adduced that the applicant allegedly fired shots in the air in an attempt to keep away the people who were approaching him. Tr.p. 72, L. 10-12. However, applicant's ex-girlfriend ignored the shots and again slapped the applicant's face several times, and he grabbed her and pushed her away. At this time the victim approached him and hit him in the face several times and grabbed him to start a fight, whereby several shots were fired and the victim was killed. Tr.p. 73, L.4-6; p. 128, L. 14-21. The applicant displayed apparent visible injuries to his inner lip region from the assaults. Tr. p. 128, L. 12-13.

During request for jury charges, the judge said he was going to charge both murder and manslaughter. Tr.p. 197, L. 23-25. Defense Counsel objected to the manslaughter charge, and the judge denied the objection informing counsel that he thought the case was replete with plenty of evidence concerning voluntary manslaughter. Tr. p. 200, L. 14-16. The judge then charged the jury on voluntary manslaughter, and specifically on the elements of murder as follows:

Jury: The Defendant is charged with murder. The State must prove beyond a reasonable doubt the defendant killed another person with malice aforethought. Malice aforethought may be expressed or inferred. These terms... do not mean different kinds of malice but merely the manner in which malice may be shown to exist. Express malice is shown when a person speak words which express hatred or ill will for

another, or when a person prepared before hand to do an act which was later accomplished. For example, lying in wait for a person or other acts of "preparation going to show that the deed was within the defendant's mind" would be expressed malice. Malice may be inferred when the deed is done with a deadly weapon...(Emphasis added.)

Tr. p. 233, L. 15--p. 234, L. 25.

Following the judge's charge and during jury deliberation, the jury foreman sent the judge a note asking the following question:

Jury Foreman: Does premeditation have to be toward a specific person or toward a random crowd?¹

Tr. p. 246, L. 24--p. 247, L. 1

The judge acknowledged that this was a fairly difficult question because it contemplated "premeditation" as an element of voluntary manslaughter or "specifically murder". Tr. p. 247, L. 24--p. 248, L. 1. The judge informed the counsels that he would...tell the jury that...the term "premeditation", which is a legal term, but that premeditation is not an element of murder. The judge said the issue that distinguished murder from other types of killings is malice and that he would define what "malice" is to the jury. Tr. p. 248, L. 2-7.

Following this discussion with the attorneys, the judge instructed the jury as follows:

Court: Mr. Foreman, ladies and gentlemen of the jury, I have read your note which I'll read into the record. It says: Does premeditated have to be toward a specific person or toward a random crowd...and to the extent this is a question about the law, the word "premeditated" is a legal term which is not a part of the offense of murder or voluntary manslaughter. Premeditation is not contemplated in the two crimes as defined in the state of South Carolina.

Tr. p. 250, L. 22--p. 251, L. 5.

The judge then gave the jury a supplemental jury charge as follows:

Court: Malice aforethought does not require that malice exist for any particular time before the act is committed,

1. Although the judge and counsels were confused by the jury's question, it can be reasonably assumed the jury's question was about the warning shots allegedly fired by the applicant in the parking lot. Tr. p. 12, L. 10-12.

but malice must exist in the mind of the defendant just before and at the time of the act....Therefore, there must be a combination of the previous evil intent and the act.

Tr. p. 251, L. 6-11.

Inasmuch as the jury's question contemplated "premeditation" as an element of murder, the judge instruction that it was not an element of murder in South Carolina was incorrect. See, e.g., State v. Franklin, 425 S.E.2d 759 (S.C. App. 1992) (holding that jury instruction on manslaughter as to defendant's total shooting of his father was not warranted, though they had argued and his father had told him that he would have to find another place to live, where they did not argue immediately before shooting; defendant's action in loading shotgun and returning to continue yard work with father before returning inside and shooting him evidenced "deliberation and premeditation".).

Moreover, in further contradiction to the judge's instruction, a review of the definition of the "aforethought" element of murder by the Black Law Dictionary shows that it defines this element as follows: (1) thought of in advance, (2) deliberate, (3) "premeditated malice"; malice aforethought is also defined as "premeditated malice", preconceived malice. With regard to the substance of the law to be charged to the jury, our Supreme Court has held that a trial judge is required to charge the substance of the current and correct law, and not any particular verbiage. State v. Higley, 529 S.E.2d 721 (S.C. 2000). The applicant thus contends that the judge could have correctly instructed the jury, that while the verbiage of "premeditation" is not used to accompany murder in South Carolina, the element of "aforethought" accompanying murder does connote a "similar or identical meaning."

Of no less importance, it should be judicially noted that the judge never asked the jury Foreman for any explanation as to why the jury was confused about the term "premeditation" as an element of murder. Then faced with supplemental jury instruction, reviewing court inquires whether supplemental instruction fairly respond to jury's question without... creating prejudice. U.S. v. United Medical Surgical Supply Corp., 989 F.2d 1300 (4th Cir.(S.C.) 1993); see also, State v. Nichols, 331 S.E.2d 113 (S.C. 1997).

Applicant contends that it is reasonable to assume that the jury had at the time of its request focused critical attention on the "aforethought/premeditated" element of murder and was in the process of deciding upon a verdict based on the judge's instruction. The supplemental instruction would be given special consideration by the jury in deciding the case since the instruction was in response to the jury's inquiry. Therefore, applicant's counsel's failure to object to the judge's

instruction and to request a specific inquiry by the judge regarding the jury's confusion over the term "premeditated" to accompany murder was ineffective assistance of counsel; and counsel's failure to object to the instruction also relieved the prosecution of the burden of proving the "aforethought/premeditated" element of murder in violation of the Due Process Clause. Const. Amend. 14. See also, In re Winship, 90 S.Ct. 1068 (1970) (The State must prove each element of the charge for a lawful conviction); State v. Blassingame, 244 S.W.2d 528 (S.C. 1978).

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to raise and argue the defense of self-defense.

A counsel's performance may be deemed ineffective and prejudicial if their conduct so undermine proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Smith v. Moore, 137 F.3d 908 (4th Cir (S.C.) 1999).

To begin with, the Due Process Clause requires that a criminal defendant be given a reasonable opportunity to present a complete defense to the crime charged. California v. Trombetta, 104 S.Ct. 2529 (1984). Const. Amend. 14. Also, the Sixth Amendment requires defense counsel to put the state's case through adversary testing on behalf of the defendant. United States v. Cronin, 104 S.Ct. 2039 (1984). Const. Amend. 6.

Here, in applicant's case, the evidence revealed at trial that while he was at a club his ex-girlfriend, Tanika Bussey Campbell, who was having a relationship with the victim, Mario Reddish, took his cap and went to the rear of the club where the victim and his friends were located. When applicant went to get his cap, his ex-girlfriend threw a drink on him and slapped his face several times. He ignored the assault, and after getting his cap from her, he was shoved by the victim and his friends. After this incident, he left the club and went to the parking lot to leave the club area in his cousin's car. Tr. p. 127, L. 15-24.

The evidence further showed that while applicant was in the parking lot trying to leave the area he seen his ex-girlfriend with the victim and his friends coming towards him. Tr.p. 127, L. 20--p. 128, L. 4. Upon seeing this, the applicant allegedly fired warning shots in the air to prevent these people from assaulting him again. Tr. p. 72, L. 10-12. However, the warning shots were ignored, and applicant's ex-girlfriend came and slapped his face again. After he pushed his car away from them, the victim assaulted him by hitting him in the face several times and grabbing him. At this time, the victim was shot several times and killed. Tr. p. 72, L. 13-14; p. 128, L. 11-12. The police testified that the applicant had visible injuries to his face and arm from the assault. Tr. p. 128, L. 12-13.

As evidenced by the facts adduced at trial, the applicant was physically assaulted by his ex-girlfriend, the victim and his friends inside the club. He ignored these assaults and left the club; therefore, he was without fault in bringing on the conflict. After leaving the club to get in his cousin's car to leave the area, his ex-girlfriend and the victim and his friends followed him to the parking lot and assaulted him again by hitting him in the face. The victim also grabbed him after hitting him in the face. In such a situation, the applicant submits that a prudent person of ordinary fairness and courage would have entertained the same belief about the danger perceived by the applicant in like circumstances. See, e.g., State v. Hill, 433 S.E.2d 349 (S.C. 1993).

Based on the evidence adduced at trial, the judge even acknowledged "that the case was replete with plenty of evidence concerning manslaughter". Tr.p. 200, L. 14-15. It is well-settled law in South Carolina that the defense of self-defense and manslaughter are not mutually exclusive and both should be submitted to ^{jury} if supported by the evidence adduced at trial. State v. Nichols, 491 S.E.2d 119 (S.C. 1997). In addition, if there is any evidence in the record from which it could be reasonably inferred that the defendant acted in self-defense, the defendant is entitled to instructions on that defense, and trial judge's refusal to do so is reversible error. State v. Day, 535 S.E.2d 131 (S.C. 2000).

The applicant accordingly submits that based on the evidence adduced at trial regarding this case his trial counsel was ineffective for failing to advise him of his right to a "self-defense defense", and for failing to request a self-defense jury charge, which deprived him of a fundamental right to a defense and was per se prejudicial. More, Supra; Day, infra.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to evidence of prior bad acts.

To establish claim of ineffective assistance of counsel, applicant for post-conviction relief must prove counsel's performance was deficient and that deficient performance prejudiced his case. Satterwhite v. State, 491 S.E.2d 709 (S.C. 1997).

During the trial, the state solicited evidence by a police officer that the applicant's ex-girlfriend had formed a relationship with the victim, Mario Reddish, "during applicant's recent incarceration" in prison. Tr.p. 127, L. 12-11. Evidence that defendant was previously jailed on unspecified charges was not admissible under and exception. Ceter v. State, 409 S.E.2d 344 (S.C. 1991). A defendant's character may not be attacked unless he puts it in issue; hence, evidence of commission of

another independent crime is not admissible against defendant for purpose of showing that he is a person of bad character and likely to have committed the crime charged. State v. Green, 200 S.E.2d 74 (S.C. 1973).

As a result, the applicant contends that his counsel was ineffective for not objecting to the prior bad act testimony and for failing to request a curative instruction to the jury. He also contends that he was prejudiced by counsel since the jury could have believed that he was a bad person who could have committed the crime for which he was charged.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to, and move to quash, an indictment that charged double jeopardy offenses.

The applicant contends that his indictment for "Possession of Firearm During Commission of or Attempt to Commit a Violent Crime" charged him with double jeopardy offenses because the indictment charges on the one hand that "he displayed a firearm during commission of a violent crime; while charging on the other hand that he displayed a firearm during an attempt to commit a violent crime: to wit murder". Jeopardy attaches when the jury is impaneled and sworn, unless prior to reaching a verdict, the jury is discharged with defendant's consent or upon grounds of legal necessity. State v. Rowland, 539 S.E.2d 717 (S.C.App. 2000).

The artful phrasing of an indictment cannot frustrate the protection of Double Jeopardy Clause when putatively "different offenses" are properly characterized as a single continuing offense (as in applicant's indictment). Hess v. Madlock, 320 F.2d 1363 (4th Cir. (S.C.)1987).

The applicant contends that based on the double jeopardy offenses alleged in his indictment counsel's failure to object to the charges and to move to quash the indictment was ineffective assistance that was prejudicial. See Johnson v. State, 130 S.E.2d 733 (S.C. 1997).

CONCLUSION

WHEREFORE, for the foregoing reason, the Honorable Court should grant the applicant post-conviction relief to reverse his unjust conviction.

Respectfully Submitted,

Joshua Forest
 Joshua Forest, 274525
 Perry Correctional Institution
 220 Oaklawn Court-221/211
 Belzer, S.C. 29669

This 1 day of July, 2017

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the within and foregoing
Memorandum of Law in Support of Application for Post-Conviction Relief upon
opposing counsel:

David A. Spencer, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia SC 29211

by depositing same in the United States mail, in a properly addressed envelope,
with adequate postage thereon, prior to filing.

This 1 day of July, 2013.



Martin C. Puetz
Georgia Bar No. 589450
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415 Fourth Street
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706-722-4283
Attorney for Joshua Lamar Forrest

COPY
ORIGINAL FILED
JUL 03 2013

AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JOSHUA LAMAR FORREST,

Petitioner

ORIGINAL FILED

Case No. 2011-CP-02-1834

vs.

STATE OF SOUTH CAROLINA
CLERK OF COURT

Respondent.

SUPPLEMENTAL GROUNDS IN SUPPORT
OF PETITION FOR POST-CONVICTION
RELIEF

COMES NOW the Petitioner, Joshua Lamar Forrest, by and through his attorney, and hereby states these additional grounds in support of his Petition for Post-Conviction Relief:

TRIAL COUNSEL DENIED APPLICANT EFFECTIVE ASSISTANCE IN VIOLATION OF THE SOUTH CAROLINA CONSTITUTION ARTICLE ONE, SECTIONS THREE AND FOURTEEN, AND THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The record reflects that defense counsel failed to object to the trial judge's charge that "malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon." (T r p. 234 l. 16-18) That was all that was charged with regard to the inference of malice. It is, of course, a violation of the due process clause of the Fourteenth Amendment "when a jury charge creates a mandatory presumption, and impermissibly shifts the burden of proof to the defendant." Sandstrom v. Montana, 442 U.S. 510, 524, 99 S.Ct. 2450, 61 L.Ed.2d 508 (1979). See also Mullaney v. Wilbur, 421 U.S. 684, 703-04, 95 S.Ct. 1881, 44

L.Ed.2d 508, holding that the due process clause forbids a state from placing the burden on the accused to prove his actions reduced the crime from murder to manslaughter.

Admittedly, the charge given in this case was that inferred malice may arise ... with a deadly weapon. It simply did not go far enough to protect applicant's due process rights. In the case of State v. Elmore, 279 S.C. 417, 421, 308 S.E.2d 781, 784 (1983), the South Carolina Supreme Court outlined a jury charge that it felt would pass muster with reference to the due process clause. "The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive." It is important to note that the Court will tolerate "only slight deviations from this charge." Id.

Telling a jury that it may infer malice from the use of a deadly weapon takes the decision as to malice out of its hands when, in fact, a deadly weapon was used. There is nothing to explain whether the word "may" means that the jury is allowed to infer malice, or that it should. Moreover, there was nothing in the charge that told the jury in this case that the inference was simply "an evidentiary fact to be taken into account ... along with other evidence." Without that caution, it is the same as telling the jury that a weapon equals

malice. Malice is required for the State to prove a charge of murder. When the jury is told that it may infer malice from the use of a deadly weapon, the State need not prove it beyond a reasonable doubt. Every element of a crime must be proven; the trial court's jury charge must correctly state the elements of the offense and "lest there remain any doubt about the constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which he is charged." Sandstrom at S.Ct. 2457, quoting In Re Winship, 397 U.S. 358, 90 S.Ct. 1068, L.Ed. 2d 368 (1970).

Telling the jury that it may infer malice from the use of a deadly weapon means that the State did not have to prove malice beyond a reasonable doubt. The proof of malice is necessary in order to sustain a murder conviction. Because defense counsel did not object to the faulty jury instruction, her conduct fell below the prevailing standards of the profession. The failure to object did not preserve the error when the jury charge reduced the burden of proof to that of strict liability. Use of a deadly weapon, which results in death, calls for a verdict of guilty to a layman (juror). The State no longer had to prove that essential element and the applicant was severely prejudiced by this error. Without this inference, the State was unable to prove murder in this case and the jury would have been forced to either find applicant not guilty or guilty of the lesser included offense of voluntary manslaughter or find that he acted in

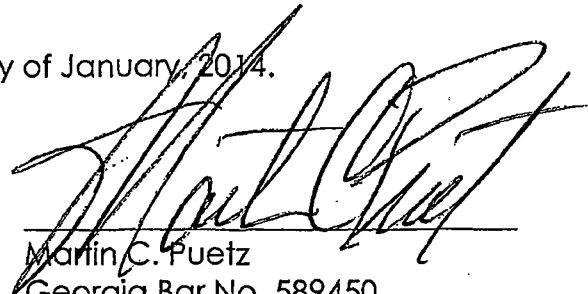
self-defense. As such, applicant would respectfully request that he be granted a new trial in this matter.

THE BELCHER DECISION.

The impropriety of the implied malice jury charge at issue here, where "evidence has been presented that would reduce, mitigate, excuse or justify the homicide" was addressed in 2009 by the State Supreme Court in the case of State v. Belcher, 385 S.C. 597, 685 S.E. 2d 802 (2009). The Court provided an analysis of the law surrounding the implied malice charge, dating back to the 1800s. The Court held that, if evidence is presented that would reduce, mitigate, excuse or justify the homicide, a charge that malice may be inferred from the use of a deadly weapon would no longer be good law in South Carolina. Id. The ruling was to apply to "all cases which are pending on direct review or not yet final where the issue is preserved." Belcher at 612.

Had counsel made proper objections to the inferred malice jury instruction, thus preserving it for appeal, applicant would have been given a new trial based upon the Belcher decision. There was clearly evidence presented at trial that would have reduced the crime to voluntary manslaughter or even self-defense. (See T tr p. 200, l. 14-16.) In light of the Belcher decision, applicant should be granted a new trial.

Respectfully submitted this 6 day of January, 2014.



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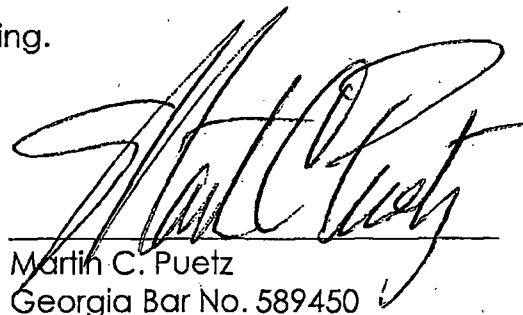
CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing **Supplemental Grounds in Support of Petition for Post-Conviction Relief** upon opposing counsel:

Daniel Gourley, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

by depositing same in the United States Mail, in a properly addressed envelope, with adequate postage thereon, prior to filing.

This 6 day of January, 2014.



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706-722-4283
Attorney for Joshua Lamar Forrest

STATE OF SOUTH CAROLINA

COUNTY OF AIKENS

Joshau Lamar Forrest, 274525,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-02-1834MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR POST-
CONVICTION RELIEFCOPY *LMC*
ORIGINAL FILED

JAN 06 2014

11:20 am
AIKEN COUNTY
CLERK OF COURT

The applicant, above-named, presents the Memorandum of Law in Support of the Application for Post-Conviction Relief and would show the following unto the Honorable Court.

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The applicant was represented on appeal by Joseph Savitz, III, Division of Appellate Defense. The Court of Appeals denied the appeal in Unpublished Opinion

No. 2011-UP-254, Submitted May 1, 2011-Filed June 1, 2011.

ARGUMENT

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to judge's erroneous and misleading jury charge that reduced the state's burden of proof.

The evidence adduced at trial showed that while applicant was at a club he got into an argument with his ex-girlfriend, Tanika Bussey Campbell, who was having a relationship with the victim, Mario Reddish. Campbell took applicant's cap and went to the rear of the club where the victim and his friends were located. When applicant went to get his cap, Campbell threw a drink on him and slapped his face several times. Tr. p. 127, L. 10-19.

The applicant ignored Campbell's assault and got his cap. After getting his cap, the victim and his friends began shoving applicant, and applicant then left the club and went to the parking lot where his cousin's car was parked to leave the area. Upon trying to leave, the applicant seen his ex-girlfriend, the victim and his friends approaching him. Tr. p. 127, L. 20--p. 128, L. 4.

There was evidence adduced that the applicant allegedly fired shots in the air in an attempt to keep away the people who were approaching him. Tr.p. 72, L. 10-12. However, applicant's ex-girlfriend ignored the shots and again slapped the applicant's face several times, and he grabbed her and pushed her away. At this time the victim approached him and hit him in the face several times and grabbed him to start a fight, whereby several shots were fired and the victim was killed. Tr. p. 73, L. 4-6; p. 128, L. 14-21. The applicant displayed apparent visible injuries to his inner lip region from the assaults. Tr. p. 128, L. 12-13.

During request for jury charges, the judge said he was going to charge both murder and manslaughter. Tr. p. 197, L. 23-25. Defense counsel objected to the manslaughter charge, and the judge denied the objection informing counsel that he thought the case was replete with plenty of evidence concerning voluntary manslaughter, Tr. p. 200, L. 14-16. The judge then charged the jury on voluntary manslaughter, and specifically on the elements of murder as follows:

Court: The Defendant is charged with murder. The State must prove beyond a reasonable doubt the defendant killed another person with malice aforethought. Malice aforethought may be expressed or inferred. These terms...do not mean different kinds of malice but merely the manner in which malice may be shown to exist. Express malice is shown when A person speak words which express hatred or ill will for

another, or when a person prepared before hand to do an act which was later accomplished. For example, lying in wait for a person or other acts of "preparation going to show that the deed was within the defendant's mind" would be expressed malice. Malice may be inferred when the deed is done with a deadly weapon... (Emphasis added).

Tr. p. 233, L. 15--p. 234, L. 25.

Following this charge and during jury deliberation, the jury foreman sent the judge a note asking the following question:

Jury Foreman: Does premeditation have to be toward a specific person or toward a random crowd?

Tr. p. 246, L. 24--p. 247, L. 1.

The judge acknowledged that this was a fairly difficult question because it contemplated "premeditation" as an element of voluntary manslaughter or "specifically murder". Tr. p. 247, L. 24--p. 248, L. 1. The judge informed the counsels that he would...tell the jury that...the term "premeditation", which is a legal term, but that premeditation is not an element of murder. The judge said the issue that distinguished murder from other types of killings is malice and that he would define what "malice" is to the jury. Tr. p. 248, L. 2-7.

Following this discussion with the attorneys, the judge instructed the jury as follows:

Court: Mr. Foreman, ladies and gentlemen of the jury, I have read your note which I'll read into the record. It says: does premeditation have to be toward a specific person or toward a random crowd...and to the extent this is a question about the law, the word "premeditated" is a legal term which is not a part of the offense of murder or voluntary manslaughter. Premeditation is not contemplated in the two crimes as defined in the state of South Carolina.

Tr. p. 250, L. 22--p. 251, L. 5.

The judge then gave the jury a supplemental jury charge as follows:

Court: Malice aforethought does not require that malice exist for any particular time before the act is committed.

1. Although the judge and counsels were confused by the jury's question, it can be reasonably assumed that the jury's question was about the warning shots allegedly fired by applicant in the parking lot. Tr. p. 72, L. 10-12.

but malice must exist in the mind of the defendant just before and at the time of the act....Therefore, there must be a combination of the previous evil intent and the act.

Tr. p. 251 , L. 6-11.

Inasmuch as the jury's question contemplated "premeditation" as an element of murder, the judge instruction that it was not an element of murder in South Carolina was incorrect. See, e.g. , State v. Franklin, 425 S.E.2d 758 (S.C.App. 1992) (holding that jury instruction on manslaughter as to defendant's total shooting of his father was not warranted, though they had argued and his father had told him that he would have to find another place to live, where they did not argue immediately before shooting; defendant's action in loading shotgun and returning to continue yard work with father before returning inside and shooting his evidenced "deliberation and premeditation".).

Moreover, in further contradiction to the judge's instruction, a review of the definition of the "aforethought" element of murder by the Black Law Dictionary shows that it defines this element as follows: (1) thought of in advance, (2) deliberate, (3) "premeditated malice"; malice aforethought is also defined as "premeditated malice", preconceived malice. With regard to the substance of the law to be charge to the jury, our Supreme Court has held that a trial judge is required to charge the substance of the current and correct law, and not any particular verbiage. State v. Hughey, 529 S.E.2d 721 (S.C. 2000). The applicant thus contends that the judge could have correctly instructed the jury, that while the verbiage of "premeditation" is not used to accompany murder in South Carolina, the element of "aforethought" accompanying murder does connote a "similar or identical meaning".

Of no less importance, it should be judicially noted that the judge never asked the jury Foreman for any explanation as to why the jury was confused about the term "premeditation" as an element of murder. When faced with supplemental jury instruction, reviewing court inquires whether supplemental instruction fairly responds to jury's question without... creating prejudice. U.S. v. United Medical Surgical Supply Corp., 989 F.2d 1390 (4th Cir.(S.C.) 1993); see also, State v. Nichols, 481 S.E.2d 118 (S.C. 1997).

Applicant contends that it is reasonable to assume that the jury had at the time of its request focused critical attention on the "aforethought/premeditated" element of murder and was in the process of deciding upon verdict based on the judge's instruction. The supplemental instruction would be given special consideration by the jury in deciding the case since the instruction was in response to its own inquiry. Therefore, applicant's counsel's failure to object to the judge's

instruction and to request a specific inquiry by the judge regarding the jury's confusion over the term "premeditated" to accompany murder was ineffective assistance of counsel; and counsel's failure to object to the instruction also re-relieved the prosecution of the burden of proving the "aforethought/premeditated" element of murder in violation of the Due Process Clause. Const. Amend. 14. See also, In re Winship, 90 S.Ct. 1068 (1970) (The State must prove each element of the charge for a lawful conviction); State v. Blassingame, 244 S.E.2d 528 (S.C. 1978).

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to raise and argue the defense of self-defense.

A counsel's performance may be deemed ineffective and prejudicial if their conduct so undermine proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Smith v. Moore, 137 F.3d 808 (4th Cir. (S.C.) 1998).

To begin with, the Due Process Clause requires that a criminal defendant be given a reasonable opportunity to present a complete defense to the crime charged. California v. Trombetta, 104 S.Ct. 2528 (1984). Const. Amend. 14. Also, the Sixth Amendment requires defense counsel to put the state's case through adversary testing on behalf of the defendant. United States v. Cronin, 104 S.Ct. 2039 (1984). Const. Amend. 6.

Here, in applicant's case, the evidence revealed at trial that while he was at a club his ex-girlfriend, Tanika Bussey Campbell, who was having a relationship with the victim, Mario Reddish, took his cap and went to the rear of the club where the victim and his friends were located. When applicant went to get his cap, his ex-girlfriend threw a drink on him and slapped his face several times. He ignored the assault, and after getting his cap from her, he was shoved by the victim and his friends. After this incident, he left the club and went to the parking lot to leave the club area in his cousin's car. Tr. p. 127, L. 15-24.

The evidence further showed that while applicant was in the parking lot trying to leave the area he seen his ex-girlfriend with the victim and his friends coming towards him. Tr.p. 127, L. 20--p. 128, L. 4. Upon seeing this, the applicant allegedly fired warning shots in the air to prevent these people from assaulting him again. Tr. p. 72, L. 10-12. However, the warning shots were ignored, and applicant ex-girlfriend came and slapped his face again. After he push his Ex away from him, the victim assaulted him by hitting him in the face several times and grabbing him. At this time the victim was shot several times and killed. Tr. p. 73, L. 4-6; p. 128, L. 14-21. The police verified that the applicant had visible injuries to his inner lip area from the assaults. Tr. p. 128, L. 12-13.

As evidenced by the facts adduced at trial, the applicant was physically assaulted by his ex-girlfriend, the victim and his friends inside the club. He ignored these assaults and left the club; therefore, he was without fault in bringing on the conflict. After leaving the club to get in his cousin's car to leave the area, his ex-girlfriend and the victim and his friends followed him to the parking lot and assaulted him again by hitting him in the face. The victim also grabbed him after hitting him in the face. In such a situation, the applicant submits that a prudent person of ordinary fairness and courage would have entertained the same belief about the danger perceived by the applicant in like circumstances. See, e.g., State v. Hill, 433 S.E.2d 848 (S.C. 1993).

Based on the evidence adduced at trial, the judge even acknowledged "that the case was replete with plenty of evidence concerning manslaughter". Tr.p. 200, L. 14-15. It is well-settled law in South Carolina that the defense of self-defense and manslaughter are not mutually exclusive and both should be submitted to jury if supported by the evidence adduced at trial. State v. Nichols, 481 S.E.2d 118 (S.C. 1997). In addition, if there is any evidence in the record from which it could be reasonably inferred that the defendant acted in self-defense, the defendant is entitled to instructions on that defense, and the trial judge's refusal to do so is reversible error. State v. Day, 535 S.E.2d 431 (S.C. 2000).

The applicant accordingly submits that based on the evidence adduced at trial regarding this case his trial counsel was ineffective for failing to advise him of his right to a "self-defense defense", and for failing to request a self-defense jury charge, which deprived him of a fundamental right to a defense and was per se prejudicial. Moore, Supra; Day, infra.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to evidence of prior bad acts.

To establish claim of ineffective assistance of counsel, applicant for post-conviction relief must prove counsel's performance was deficient and that deficient performance prejudiced his case. Satterwhite v. State, 481 S.E.2d 709 (S.C. 1997).

During the trial, the state solicited evidence by a police officer that the applicant's ex-girlfriend had formed a relationship with the victim, Mario Reddish, "during applicant's recent incarceration" in prison. Tr.p. 127, L. 12-14. Evidence that defendant was previously jailed on unspecific charges was not admissible under any exception. Geter v. State, 409 S.E.2d 344 (S.C. 1991). A defendant's character may not be attacked unless he puts it in issue; hence, evidence of commission of

another independent crime is not admissible against defendant for purpose of showing that he is a person of bad character and likely to have committed the crime charged. State v. Green, 200 S.E.2d 74 (S.C. 1973).

As a result, the applicant contends that his counsel was ineffective for not objecting to the prior bad act testimony and for failing to request a curative instruction to the jury. He also contends that he was prejudiced by counsel since the jury could have believed that he was a bad person who could have committed the crime for which he was charged.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to, and move to quash, an indictment that charged double jeopardy offenses.

The applicant contends that his indictment for "possession of Firearm during Commission of or Attempt to Commit a Violent Crime" charged him with double jeopardy offenses because the indictment charges on the one hand that "he displayed a firearm during commission of a violent crime; while charging on the other hand that he displayed a firearm during an attempt to commit a violent crime: to wit murder". Jeopardy attaches when the jury is impaneled and sworn, unless prior to reaching a verdict, the jury is discharged with defendant's consent or upon grounds of legal necessity. State v. Rowland, 539 S.E.2d 717 (S.C.App. 2000).

The artful phrasing of an indictment cannot frustrate the protection of Double Jeopardy Clause when putatively "different offenses" are properly characterized as a single continuing offense (as in applicant's indictment). Hess v. Madlock, 820 F.2d 1368 (4th Cir. (S.C.) 1987).

The applicant contends that based on the double jeopardy offenses alleged in his indictment counsel's failure to object to the charges and to move to quash the indictment was ineffective assistance that was prejudicial. See Johnson v. State, 480 S.E.2d 733 (S.C. 1997).

CONCLUSION

WHEREFORE, For the foregoing reason, the Honorable Court should grant the applicant post-conviction relief to reverse his unjust conviction.

Respectfully Submitted,

/s/

Joshua Forrest
Joshua Lamar Forrest, 274525
Perry Correctional Institution
430 Oaklawn Road-Q33/
Pelzer, S.C. 29669

This 1st day of July, 2013

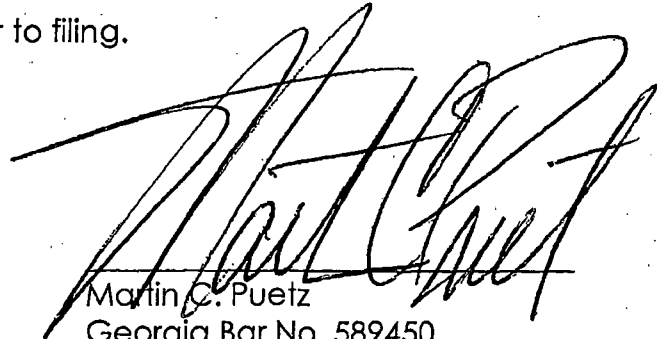
CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the within and foregoing
Memorandum of Law in Support of Application for Post-Conviction Relief upon
opposing counsel:

Daniel Gourley, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia SC 29211

by depositing same in the United States mail, in a properly addressed envelope,
with adequate postage thereon, prior to filing.

This 3 day of January, 2014.



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706-722-4283
Attorney for Joshua Lamar Forrest

1 State of South Carolina) In the Court
2 County of Aiken) Of Common Pleas

3 Docket No. 2011-CP-02-01834

4

5

6 Joshua Forrest,)
7 Applicant,)

8 vs.) Transcript of Record

9)
10 State of South Carolina,)
Respondent.)

11

12 July 31, 2014
13 Aiken, South Carolina

14

15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge.

17

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

19 Martin Puetz, Esquire
20 Attorney for the Applicant

21 David Spencer, Assistant Attorney General
22 Attorney for the Respondent

23

24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

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1 POST CONVICTION RELIEF HEARING

2 THE COURT: All right, Mr. Spencer?

3 MR. SPENCER: Thank you, Your Honor. This case is
4 Joshua Forrest versus the State of South Carolina,
5 2011-CP-02-1834. Mr. Forrest was indicted for murder in
6 April of 2006. He had a -- he was also indicted for
7 possession of a firearm or knife during the commission or
8 attempt to commit a violent crime. He had a trial in 2006
9 that ended in a mistrial. He was represented at the time
10 by Sherri Stoney. I think it was tried again in June of
11 2009; again Ms. Stoney represented him. That ended in a
12 conviction for murder and the weapon charges as well.

13 He received a sentence of life without parole on
14 the murder charge. A direct appeal was filed on his
15 behalf. The Court of Appeals heard the conviction. I
16 believe that was pursuant to an Anders Brief.

17 Mr. Forrest is represented here today by Mr. Marty
18 Puetz. I have the -- and they should be in your packet,
19 Your Honor. I have the original application and two
20 supplemental amended applications and unless there's any
21 other allegations that I'm unaware of, I'm prepared to go
22 forward, Your Honor.

23 THE COURT: All right. Thank you. Thank you very
24 much.

25 Mr. Puetz.

1 MR. PUETZ: Thank you, Judge. Good morning.

2 I just wanted to make sure, Judge, that the record
3 is clear that there was a filing of a Memorandum of Law in
4 support of the application for post-conviction. It was
5 filed on July 3rd of 2013. There was a supplement to the
6 petition for post-conviction relief which was filed on July
7 3rd of 2013. And then there was a filing that again
8 contained a Memorandum of Law in support of the application
9 for PCR that was -- it's typed version of what was filed on
10 July 3rd of 2013. This one's dated January 6th of 2014,
11 and then also the supplemental grounds that I had filed on
12 January 6th of 2014. I just wanted to make sure that
13 that's been filed and is before the Court.

14 THE COURT: All right. I have a packet that was
15 handed up.

16 MR. PUETZ: Judge, I'll be more than happy to hand
17 you my filings as well as those.

18 THE COURT: And do you have all of those, Mr.
19 Spencer?

20 MR. SPENCER: I'm not sure about the first
21 memorandum. That's -- I was looking to see what I have. I
22 see the --

23 MR. PUETZ: It, it goes, Judge, from -- the bottom
24 is the oldest.

25 MR. SPENCER: All right.

1 MR. PUETZ: And then it goes up. There's a number
2 of subpoenas and then the filing on July 3rd of 2013, as
3 well as the filing on January 6th of 2014. Certificate of
4 Service on both of those was filed and sent to the attorney
5 general's office.

6 MR. SPENCER: Is this the first memorandum you're
7 talking about July 3013?

8 MR. PUETZ: Yes.

9 MR. SPENCER: But you've basically incorporated it
10 in your own pleadings?

11 MR. PUETZ: Not incorporated, but this is in --
12 this is my client's --

13 MR. SPENCER: Right.

14 MR. PUETZ: -- and I haven't incorporated it.

15 MR. SPENCER: All right.

16 MR. PUETZ: I just want to make sure it's filed and
17 then all the issues that my client's raised are going to be
18 addressed.

19 MR. SPENCER: Your Honor, if I could just have a
20 moment to look at the pro se pleadings?

21 THE COURT: Certainly.

22 MR. PUETZ: While he's doing that, Judge, I'm going
23 to have the Court Reporter, if she would be kind enough to
24 label some exhibits.

25 THE COURT REPORTER: Judge, I have Applicant's or

1 Petitioners 1 through 4 marked.

2 MR. SPENCER: Your Honor, the Pro Se Memorandum
3 would constitute my representation, which is ordinarily not
4 allowed, but I'm willing to -- if Mr. Puetz adopts those
5 pleadings to kind of, it's already somewhere else anyway.
6 I wouldn't object.

7 MR. PUETZ: And I just want to make sure the issues
8 are all addressed, Judge.

9 THE COURT: Thank you. And I can keep this one?

10 MR. PUETZ: Certainly during this hearing, if you
11 need me, once my secretary gets back from vacation and I
12 will copy those and get them to you, but --

13 THE COURT: I'm sure our clerk will copy them for
14 me before we leave today.

15 Thank you. Thank you, Mr. Puetz, you may continue.

16 MR. PUETZ: Sure. Judge, very briefly, on November
17 17th of 2005, Mr. Joshua Forrest in Lexington County,
18 entered a guilty plea to attempted armed robbery that had
19 occurred allegedly in 1998. He was pro se admittedly, and
20 I don't want the Court to think that the PCR or any issues
21 regarding Lexington County are being raised here, but I'm
22 just trying to give you a little background. And I think
23 it really is -- shows -- will show the Court the importance
24 of the defense and how absolutely essential it was that he
25 have plenty of time to defend this case.

1 On December 4th of 2005, there was -- my client
2 simply went to the K.C.'s, I believe. It was out off of
3 Reynold's Pond Road. It was a -- there was an event going
4 on, drinking, that sort of thing. He simply went out there
5 at 1, 1:30 in the morning, was sitting at the bar having a
6 good time, minding his own business. An ex-girlfriend, in
7 essence, came up, started a scuffle with him, took personal
8 property from him, ended up in the back of the club. There
9 was -- he was slapped, he was hit, and then at some point
10 when the owners or the people that were sponsoring the
11 event that occurred on December 4th of 2005, only 17 days
12 after he had received a post-probated sentence in Lexington
13 County; he was pro se; he didn't even have a lawyer. So
14 long story short, my client went out, he had to find a way
15 away from the club that was on Reynold's Pond Road and a --
16 he was assaulted, fought with by Jonathan Thomas, Mario
17 Redish, and a number of other people that were in the
18 company Tanika Campbell, his ex-girlfriend, who had started
19 the assaultive behavior inside of the club.

20 Ended up Mario Redish was shot, a contact wound
21 here that was not fatal. There was another wound here that
22 went through his lungs and he died over at the Aiken
23 Regional Hospital.

24 Initially Mr. Forrest was represented by David
25 Mauldin, and I believe that Ms. Stoney -- David Mauldin, I

1 believe, was replaced because of a conflict that he had in
2 that he had represented someone who was a potential witness
3 in the case. So Ms. Stoney, I believe was appointed on or
4 about -- and I can't remember the exact date, it was August
5 24th, I think, or sometime in August of 2006. Within 75 or
6 80 days, my client was forced to go to trial December 4th
7 and 5th of 2006, in front of Judge Early. That case ended
8 up resulting in a mistrial because the jury was unable to
9 reach a verdict.

10 My client, because of the fact he was on probation
11 having pled November 17th of '05, Jack Early, Judge Early,
12 the next morning after the mistrial called my client up and
13 he thought he was coming here for a bond hearing and he was
14 coming for a probation revocation hearing and his probation
15 was revoked and he was sent off to prison. He was brought
16 back to Aiken County, I think, in June of 2009 or
17 perhaps -- yes, it was in June of 2009, and went on trial a
18 second time for the same events that occurred on December
19 4th of 2005; that is the murder of Mario Redish.

20 At no time during Ms. Stoney's representation of
21 him was there any real objection made to, and/or an attempt
22 to raise a self-defense issue. There was no objection that
23 was made and voluntary manslaughter was definitely in play;
24 and fortunately Judge Nettles did at least go ahead and
25 charge the jury on voluntary manslaughter, but there was

1 no -- no effort made regarding self-defense.

2 We are relying on the Elmore case which was decided
3 back in 1985 that called or prohibited the introduction or
4 the instruction that malice may be inferred from the use of
5 a deadly weapon. There was no objection to that charge in
6 any way, shape, or form. I think -- and also we are
7 alleging ineffective based upon the fact that there was no
8 effort made to raise the issue of self-defense and/or that
9 the intent was reduced and that it was voluntary
10 manslaughter at best.

11 I also have raised in my pleadings the fact that
12 during the second trial, Judge, the State struck four or
13 five black folks out of the five or six strikes that they
14 exercised. I've also marked some exhibits. There was some
15 issue in the second trial regarding the cross-examination
16 of Jonathan Thomas. Jonathan Thomas was a pretty good
17 friend of Mario Redish, lifelong friend. Mario Redish had
18 a tattoo on his arm MOB, member of the bloods; he was a
19 gang member. That was -- his grill was found out there.

20 MR. SPENCER: Your Honor -- first, Your Honor, I
21 object to going outside of the facts outside of record.
22 There's nothing in the record about him being a member of
23 the bloods or whatever. I mean -- and, Your Honor, if
24 there's a number of allegations in this case, why don't we
25 just get going with the testimony.

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 MR. PUETZ: Okay. I'll call Ms. Stoney.

2 THE COURT: All right. If you'd come around and be
3 sworn for us, please, Ms. Stoney.

4 THE CLERK: Raise your right hand.

5 SHERRI STONEY,

6 having been duly sworn, testified as follows:

7 THE CLERK: Have a seat and state your name for the
8 record, please.

9 THE WITNESS: Sherri Stoney.

10 **DIRECT EXAMINATION**

11 **BY MR. PUETZ:**

12 Q Would you be kind enough -- I'm sorry. Tell me
13 where your office is, Ms. Stoney.

14 A Now?

15 Q Back then.

16 A Back then, give me a second and let me think.

17 Q And when I say back then, I'm talking August of
18 2006.

19 A Give me one second to calculate where we are now.
20 I believe I was on Steven's Creek Road in Augusta.

21 Q Okay. So you're at -- your office -- how long have
22 you been practicing law?

23 A About 18 years.

24 Q And where did you -- and if you would, just briefly
25 outline, Ms. Stoney, the places where you have practiced,

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 starting off though where you went to law school, when you
2 were admitted to practice in the State of South Carolina
3 and the State of Georgia and the type of practice that you
4 have had.

5 A Okay. I went to law school in South Carolina, USC,
6 and graduated in 1996. I took the bar and passed it and
7 was licensed in November of 1996. I studied for the
8 Georgia Bar next and took that in February and while I was
9 waiting on the answer, I volunteered at the solicitor's
10 office here in Aiken for about 6 weeks.

11 And after I was licensed in Georgia in May of 1997,
12 I was hired on by Jackson Massey's Office for a year and
13 then laid off. And then I went to Chuck Pardue's Office
14 for 7 months and he asked me if he wanted -- if I wanted
15 him to help me start my own business and that was in 1999.
16 That started in 1999, April.

17 Q So you have been a sole practitioner the entire
18 time that you've been practicing other than when you were
19 with Chuck Pardue's Office and the 6 weeks volunteer work
20 in the solicitor's office; is that correct?

21 A And Jackson's Office; that's correct.

22 Q I'm sorry. Okay.

23 A So a little over 15 years.

24 Q Okay. And correct me if I'm wrong, is it correct
25 that you were appointed to represent James Forrest on or

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 about August 24th of 2006.

2 A Joshua, but yes, that's correct. James was his
3 cousin.

4 Q I'm sorry? It was --

5 A That's roughly the time, yes, sir.

6 Q Okay. Prior to that time, how much of your
7 practice was devoted to the representation of felony
8 criminal cases?

9 A Probably about 40, 45 percent.

10 Q And where were you practicing primarily at when you
11 were doing that for your 45 percent?

12 A Mostly in Georgia.

13 Q And were they -- were you on the appointed list
14 over in Georgia; is that what you were doing or were these
15 retained cases?

16 A A little retained, mostly the appointed cases over
17 there.

18 Q And tell us if you would, how many trials, murder
19 trials, did you have prior to the one that began on
20 December 4th of 2006, in front of Judge Early?

21 A That would be the first.

22 Q And tell me how many jury trials you had had here
23 in general sessions court prior to December 4th of 2006?

24 A I think there were three.

25 Q I'm sorry?

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 A I believe there were three.

2 Q And tell me what those charges were.

3 A Actually I believe his would have been the third.
4 They were both armed robbery.

5 Q And you tried those two to conclusion?

6 A Yes.

7 Q Okay. And what were the outcomes of those?

8 A One acquittal and one hung jury.

9 Q Now, you worked as appointed counsel. Tell me, if
10 you would, how you went about constructing Joshua Forrest's
11 defense.

12 A Well, the first thing I did was review all the
13 evidence that they sent me, took extensive notes and went
14 out to talk to him about, about the case, about the
15 witnesses and what they were saying and asked him if there
16 any witnesses on his behalf that he knew of that would come
17 in and testify for him.

18 Q Okay.

19 A And I believe he had one or two witnesses that had
20 not been there at the time, but had seen him afterwards.
21 And he always maintained that he did not have a firearm.
22 And the very first thing I told him when I looked at the
23 evidence and came to talk to him was that he had an
24 excellent self-defense case -- a good self-defense case. I
25 even told him it was the best one I'd ever seen and it

Sherri H. Stoney -- Direct Examination by Mr. Puetz

1 still is.

2 Q And did you reduce that to writing, i.e. by any
3 type of memorandum dictation to your file about the
4 meeting, the initial meeting that you had with Mr. Forrest?

5 A Somewhat. I didn't take very extensive notes
6 because I'm pretty good at remembering at least in the
7 short-term, long enough to get through a couple of trials.
8 I took some notes, but not a lot of notes and I know I
9 didn't write down anything about the self-defense. We just
10 talked about it and I kept trying to tell him that was the
11 best defense that he had.

12 Q Well -- so now would you look at your time sheet
13 and tell me, if you would, the number of times that you
14 actually went to the detention center and sat down and went
15 over the facts, the discovery, as well as the other things
16 that you received from the solicitor's office?

17 A I'll have to look and see if I have my time sheet
18 in here because I know I sent it to them.

19 Q Who is them?

20 A To the South Carolina criminal defense people, the
21 ones that -- and I'm not sure I ever got it back into the
22 file. Give me just a second and I can tell you. I know it
23 would be before we started the second trial. I don't see
24 it. I kept it in a folder waiting to be paid and I don't
25 know that I ever got it back in here. But I know I went to

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1 see him at least three times and it may not have been more
2 than three times.

3 Q Okay. That -- that's one of the things that I'm
4 getting at. And certainly the number of times that you
5 visited with Mr. Forrest would be noted on your time
6 sheet --

7 A It would.

8 Q -- correct?

9 A It would.

10 Q And how long -- just as we sit here today -- that
11 first meeting that you had with Mr. Forrest, I'm assuming
12 was sometime in August or at the beginning of September;
13 how long do you recall that meeting being?

14 A Probably an hour and a half to 2 hours.

15 Q And when do you recall going the second time?

16 A Probably in October.

17 Q So, I mean, is there anything that is in your file
18 to indicate when it was and how long you were there?

19 A I don't think so. The second meeting wasn't as
20 long; I know that.

21 Q What was -- do you recall -- do you have any
22 memorandum that indicates what the -- the substance or the
23 things that were discussed at this second meeting with Mr.
24 Forrest over at the detention center?

25 A We talked about what witnesses, if he wanted to

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1 bring the witnesses in that he had told me about and there
2 was one he did.

3 And --

4 Q Who was that?

5 A Give me one second and I can tell you. Tiffany
6 Nicole Grimes.

7 Q Okay.

8 A And if I'm not mistaken, that was his girlfriend at
9 the time.

10 Q And did you, in fact, end up interviewing her?

11 A I did. And she was telling me pretty much what
12 Joshua had told me; that she was there when he got home.

13 Q When he got home?

14 A Yes.

15 Q So she was not at the club; is that correct?

16 A I couldn't find -- no, there were no -- he didn't
17 have anybody -- witnesses he wanted me to interview that
18 were at the club.

19 Q Well, okay. And then when was the third time that
20 you saw him?

21 A A few days before the trial.

22 Q You actually, I think, just to refresh your memory,
23 you actually talked to Marcie Coleman as opposed to Tiffany
24 Grimes; isn't that correct?

25 A No, I don't recall that.

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1 Q Okay. Marcie Coleman, do you recall that was the
2 lady to whom -- his apartment that he went to?

3 A Yes, you're correct. Tiffany was at the Elks Club.
4 Marcie was the one that he had went -- he had gone to her
5 apartment after.

6 Q And tell me -- it's correct you never sought from
7 the Court any funds for a private investigator; is that
8 correct?

9 A No.

10 Q And it's also true that you never, yourself, went
11 out and interviewed any of the State's witnesses; is that
12 not correct?

13 A I never went to them; whether or not I spoke to
14 them I don't recall.

15 Q I just wanted to know if you went out and actually
16 interviewed them.

17 A (Witness shook head.)

18 Q And is that a no?

19 A That's a no.

20 Q Okay. And it's also true that you did not take --
21 you received recordings from the solicitor's office of some
22 interviews that were conducted by Chuck Cain and Kevin
23 Lyles; isn't that correct?

24 A Correct.

25 Q And you did not take your computer, go over to the

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1 jail and sit down and play and go through those hours of
2 recordings with Joshua Forrest, correct?

3 A No, I didn't have that ability at the time.

4 Q And so it is fair to say that Joshua Forrest had no
5 earthly idea, other than your representations, as to what
6 these --

7 MR. SPENCER: Your Honor, this is his witness. I
8 obviously object to the leading.

9 THE COURT: You can rephrase the question.

10 BY MR. PUETZ:

11 Q Jonathan -- or Joshua did not have the ability then
12 to see the recorded interviews prior to the trial; is that
13 correct?

14 A Correct. He wouldn't have had independent
15 knowledge of them. He -- it would have to be what I
16 represented to him.

17 Q And you did not, correct me if I'm wrong -- you
18 never went to the scene at night to see what the -- the
19 layout of the land was and the type of lighting that was
20 available on December 4th of 2005?

21 A No.

22 Q And I think -- and I did ask you -- you did not
23 apply to the Court for funding for a private investigator
24 to help assist you in the investigation of his defense?

25 A No, I did not.

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1 Q Do you recall -- and you did not obtain any
2 certified copies of convictions of -- for Jonathan Thomas;
3 is that correct.

4 A I don't believe so.

5 Q And you did -- you were aware of the fact, I
6 believe, were you not, that James Forrest, Joshua's
7 brother --

8 MR. SPENCER: Your Honor, I object to the leading.

9 BY MR. PUETZ:

10 Q What do you know -- who is -- tell me who is Louis
11 Thomas, Jr.?

12 A Louis Thomas, Jr.?

13 Q Who was Louis Thomas, Jr.?

14 A I don't know.

15 Q Do you know who James Forrest was?

16 A Yes.

17 Q Who is that?

18 A His cousin.

19 Q Okay. Are you also, were you aware that there is
20 another James Forrest, who is his brother?

21 A No. Well, yes, I think now I may have found that
22 out after the second trial. And I don't know whether it
23 was you or Mr. Forrest that told me.

24 Q Tell me how many hours of -- of legal research you
25 recall during -- doing prior to the beginning of the first

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1 trial?

2 A Probably about five.

3 Q Five what?

4 A Hours.

5 Q And what were the issues that you went ahead and
6 did the research on?

7 A Well, one of them was self-defense. I was hoping I
8 could still talk my client into that. And also the issues
9 about murder; what the charges would entail, what the
10 charges carried. I don't recall anything else, but I know
11 there was one more.

12 Q And in -- what would you -- do you have any of the
13 cases with you that you actually found during your research
14 that you could read into the record today?

15 A No.

16 Q And correct me if I'm wrong, if you had made copies
17 of those, I would assume that they would be in your file,
18 correct?

19 A Yes.

20 Q And you have had the opportunity to search your
21 file and it doesn't contain any case citations, correct?

22 A Correct.

23 Q And it is true that, strike that. Now there was
24 no -- what if any, objection did you make to the
25 representation by Chuck Cain that he had been incarcerated

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1 in front of the first jury?

2 A I didn't.

3 Q And what, if any, objection did you make to the
4 reference by the State's witness or James Forrest that he
5 had been hooked up to a lie detector?

6 A I didn't.

7 Q And what was it in your --

8 MR. SPENCER: What page is that in reference to the
9 lie detector; is that the first or second trial?

10 MR. PUETZ: First trial.

11 Judge, I will find that.

12 MR. SPENCER: Your Honor, I would just object to
13 relevancy. The first trial ended in mistrial. So I just
14 don't see the relevance of that.

15 THE COURT: What is, what is the relevance of that
16 Mr. Puetz?

17 MR. PUETZ: Judge --

18 THE COURT: In the first trial, it appears -- well
19 it doesn't -- it was a mistrial.

20 MR. PUETZ: That's correct, and I acknowledge the
21 fact that there -- that it might be tenuous, but the value
22 and the type of representation that Mr. Forrest received at
23 the first and second trial is the issue that this Court's
24 got to decide and those are pretty basic things for defense
25 attorneys; that you don't let your client's character be

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1 put into evidence and not object to it and move for a
2 mistrial, those kind of things. And so I think it does
3 have some relevancy and I'm not going to belabor the point,
4 but --

5 The trial -- the page at the first trial was page
6 127, lines 12 through 14, that references the
7 incarceration --

8 THE COURT: Incarceration for the homicide.

9 MR. PUETZ: No, the incarceration from prior
10 incidents before, you know, he had been sent to jail at
11 some point in time in the past before December 4th of '05
12 and Chuck Cain just fortuitously threw it in.

13 MR. SPENCER: Your Honor, actually what happened
14 with that was, that was Mr. Forrest's statement to Mr.
15 Cain. Mr. Cain just kind of referred to a statement that
16 he took from Mr. Forrest, which mentioned that he got in a
17 disagreement with Ms. Campbell, who was prior -- who was
18 his girlfriend, but left him while he was incarcerated and
19 that's how the term incarcerated came up.

20 It comes up in both trials. It comes up in
21 pretrial, for a Jackson v. Denno Hearing and comes up in
22 front of the jury.

23 MR. PUETZ: And -- and just to -- to go on a little
24 bit, it could, it wasn't a verbatim note, all Chuck Cain
25 had was his rough notes that were recorded -- audio and

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1 video recording -- that mysteriously, the machine wasn't
2 working and so my client nor his attorney were even
3 provided with a recording of what was said or the statement
4 that my client made to law enforcement when he was taken
5 into custody back in December of 2005.

6 BY MR. PUETZ:

7 Q And is that not correct, Ms. Stoney? I mean were
8 you ever provided by the State with an audio recording of
9 Joshua Forrest's statement?

10 A Not at all.

11 Q Were you provided any video recording of Joshua
12 Forrest's statement to Chuck Cain?

13 A No.

14 Q Were you ever even provided the rough notes?

15 MR. SPENCER: Your Honor, just -- is this an
16 allegation? I -- I'm not familiar with an allegation about
17 the --

18 MR. PUETZ: It goes to the representation of --
19 that he received.

20 MR. SPENCER: I mean are we, you know, there are
21 specific incidents raised, you know specific charge; from
22 this to that. I mean -- I mean if there's a claim about --
23 I object to anything, the recording because that's simply
24 not an allegation that's raised and we have some twenty
25 allegations allegations that are raised that have been

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1 mentioned, but that was not an allegation.

2 BY MR. PUETZ:

3 Q Well, did you argue to the jury at any point in
4 time, first trial, second trial, the fact that the State
5 failed to provide a recording of my client's statement?

6 MR. SPENCER: Your Honor, again, this is just
7 totally new allegation. I mean, I think he wants to go
8 through finding fifty or sixty things, you know, make
9 arguments about each one, but we've got some fifteen,
10 twenty allegations already and I would just ask that we
11 stick to them. You know, certainly some background is
12 fine, but I think this is kind of beyond that, Your Honor.
13 And the State has a right to have notice of specific
14 issues. And I was very generous in allowing that now --
15 that hybrid document.

16 THE COURT: I would agree. It's got to focus on
17 the notice given by the applicant as to why he did not
18 receive effective assistance of counsel. I mean it has to
19 be focused on what you noticed the State on.

20 MR. PUETZ: Well -- yes, sir. Can I at least
21 establish --

22 BY MR. PUETZ:

23 Q Did you at any point in time move or ask to see the
24 machine and why it didn't work?

25 A No.

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1 Q And did you transcribe any of the recorded video
2 recordings that you did receive?

3 A Not verbatim; I took notes.

4 Q Okay. And tell me what, if any, investigation you
5 did to determine the -- say the feelings between the
6 Forrests and the Thomas's?

7 A I spoke with my client about it and those -- I
8 could tell right away there was bad feelings already,
9 mostly involved with women.

10 Q And were you --

11 A And, yes, I did -- I was, now that I think about
12 it, I was aware that something had happened prior with the
13 brother that involved that family and I think that may be
14 where the hurt feelings came from.

15 Q And did you make any attempt to go ahead and -- and
16 find out what happened to -- whether there was a conviction
17 of James Forrest for the death of Louis Thomas?

18 A I don't think I did any investigation. I think
19 Joshua flat out told me there was.

20 Q Was there -- why didn't you obtain that and
21 introduce that to the jury?

22 A That didn't occur to me.

23 Q Okay. And there was some issue at some point in
24 time about Mario Redish having a injury to his shoulder or
25 collar bone; did you at any point in time speak to any of

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1 the friends of Mario Redish to determine if he was
2 physically capable of fighting?

3 A This is the first time I've heard about that.

4 Q You don't recall there being testimony about the
5 broken collar bone?

6 A I don't; not off the top of my head, no.

7 Q Is it fair to say -- did you consult with anyone at
8 all regarding the medical condition of this separated
9 shoulder that Mario Redish supposedly had on December 4th
10 of 2005?

11 A No, there was no one that was telling me he wasn't
12 in a bear hug, including my client.

13 Q Did you do any type of background investigation of
14 Jonathan Thomas?

15 A Not other than getting the record; I didn't get a
16 certified record, but I did get a copies of the record at
17 one time.

18 Q And what --

19 A I think I did.

20 Q What do you recall that record revealing?

21 A Between the first and the second trial, he had a
22 charge and was in jail for a very short time, I believe.

23 Q And tell me if -- what if any -- they looked for
24 him during the first trial; is that correct?

25 A I believe they did.

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1 Q Because there was a reference made by Judge Early
2 telling Mr. Gibbons, to hurry up and get his last witness
3 here and that never materialized. Jonathan Thomas never
4 made --

5 MR. SPENCER: Your Honor, I object to the leading.

6 MR. PUETZ: Judge, in light of the fact that it is
7 in the trial transcripts, I ask for just a little leeway.

8 THE COURT: You may answer that question if you
9 know the answer.

10 THE WITNESS: I'm not sure I know the question.

11 THE COURT: Restate your question. We're talking
12 about Jonathan Thomas.

13 BY MR. PUETZ:

14 Q Did he appear at the first trial?

15 A Not that I recall, no.

16 Q Okay. And -- and based upon your investigation,
17 were you able to determine the close friendship or lifelong
18 friendship between Mr. Thomas and Mario Redish?

19 A No.

20 Q So you had no earthly idea?

21 A I knew they were friends, but not lifelong friends.

22 Q Certainly that was something that had you known
23 that you would have offered it to the jury?

24 A Not in the first trial because he didn't show up.

25 Q I understand that. In the second?

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1 A In the second trial, probably.

2 Q And did you do any investigation before the first
3 or the second -- I want these questions to refer to the
4 first or second -- into the background of Tanika Campbell?

5 A Any independent investigation, no.

6 Q Right. Did you do any independent investigation of
7 Mario Redish?

8 A No, I think that would have required an
9 investigator.

10 Q Did you -- and then -- did you go to the
11 solicitor's office before December, the first trial, and
12 look at the evidence?

13 A No, they sent me the evidence.

14 Q I'm sorry?

15 A They sent me everything.

16 Q Well, they sent you copies of the discovery,
17 correct?

18 A Correct.

19 Q You, as far as going through, did you have color
20 photographs of the autopsy.

21 A I don't believe there were color photographs.

22 Q Okay. And so you didn't review any of those prior
23 to the trial?

24 A Not the color photographs, but I did review the
25 photographs.

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1 Q Now, you have indicated that -- tell me what in
2 your opinion led you to believe that this -- that he had
3 the best self-defense theory possible?

4 A Because from the very beginning these people were
5 after him. They were beating up on him. They actually did
6 hit him. Mario Redish would not let him leave and I don't
7 think he had a choice.

8 Q Can you explain to me why then you did not present
9 that to the jury?

10 A Because my client refused to acknowledge he had a
11 gun.

12 Q Any other reason?

13 A No, I could not get him to go with a self-defense,
14 but --

15 Q Tell me how you expected to get around, or tell me
16 why you did not object to the Court's instruction at both
17 trials that malice may be informed -- or presumed rather,
18 by the use of a deadly weapon.

19 A I think that was the law at the time.

20 Q And it is fair to say then that you had not read
21 Supreme Court of South Carolina, State v. Elmore decided
22 November 1st of 1983, where the Court upheld or -- not
23 upheld, but said that the instruction on the presumption of
24 malice from use of a deadly weapon erroneously constituted
25 a mandatory presumption rather than a permissive inference?

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1 A I believe I do remember reading that case, but I --
2 I still think that was the law at the time.

3 Q You didn't object?

4 A No.

5 Q And -- at either trial, did you?

6 A No.

7 Q And you also did not even want the judge at the
8 second trial --

9 MR. SPENCER: Your Honor?

10 THE COURT: Yes, sir?

11 MR. SPENCER: I object to that line of questioning
12 because that is not what was charged at trial. There was
13 nothing about presumption. And I would ask, the specific
14 language is on 234 of the transcript and malice may be
15 inferred from conduct showing total disregard for human
16 life. Inferred malice may also arise if it is done from --
17 with a deadly weapon. That's, you know -- that's not an
18 accurate representation of what was charged at trial. In
19 that question, he mentioned -- he used the term
20 presumption, whether the Judge cannot charge a presumption
21 instead it just may be inferred and that's a whole lot
22 different --

23 MR. PUETZ: Well I -- I -- I'm sorry, Your Honor.

24 THE COURT: No, go right ahead.

25 MR. PUETZ: It may be a whole lot difference to us

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1 lawyers, Judge, but when you're sitting over there in that
2 jury box, it ain't a whole lot of difference; infer,
3 presume; there's no -- no -- and that's really the thrust
4 of this case, is the fact that that jury was told the use
5 of a deadly weapon is malice.

6 THE COURT: In -- State v. Elmore it's a classic
7 case in South Carolina. It come out of Greenwood County.
8 Mr. Elmore received the death penalty three different
9 times, having been tried three different times. In the
10 first case the case you're citing from, I believe, 83, I
11 believe it was reversed because the trial judge, who I
12 think was Judge --

13 MR. PUETZ: It was Judge Burnette.

14 THE COURT: Burnette.

15 MR. PUETZ: Yes, sir.

16 THE COURT: I was about to say the one that's
17 retired from the Supreme Court now, charged the
18 presumption. And our Supreme Court changed it at that time
19 that you couldn't say a presumption; that it had to be an
20 inference when you take it along with all the other facts
21 whatever weight and value, you, the jury, want to give it.
22 So that's, that's what I always thought Elmore one stood
23 for. And of course Mr. Elmore is now out of prison I
24 believe.

25 Be that as it may, Belcher was not yet the law. So

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1 I think what -- what we as lawyers hear and what our jurors
2 hear that may be the same words with a different
3 interpretation. I don't know that answer, but you still
4 have to stick with whatever Judge Nettles charged. And if
5 he charged whatever the law was -- and the '09 trial, I
6 assume it was pre-Belcher. I'm assuming that.

7 MR. PUETZ: It was pre-Belcher decision, but the
8 case absolutely had been argued -- the Belcher case had
9 been argued prior to the second trial.

10 THE COURT: I would agree with the attorney general
11 that you have to -- I have to -- we have to focus on the
12 language that was charged by Judge Nettles and there is a
13 difference between presumption and inference.

14 But be that as it may, Mr. Puetz, you may ask your
15 next question.

16 BY MR. PUETZ:

17 Q As far as -- and certainly did you, you would agree
18 that -- that fists are considered weapons, aren't they?

19 A I suppose, but not technically.

20 THE COURT: Well State v. Davis, which was also a
21 case in that part of the woods, it does say fists under
22 certain circumstances may be considered a deadly weapon.
23 No question about that.

24 BY MR. PUETZ:

25 Q And you certainly did not include in your requests

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1 to charge at either trial --

2 MR. SPENCER: Your Honor, that's not an allegation.
3 I mean, you know, we had twenty allegations to go forward
4 on and he's just making up new ones and what he wants now
5 is failure to request an instruction that using fists is a
6 deadly weapon. I object to -- to that as an amendment.

7 MR. PUETZ: Well, I'm not really amending. I mean
8 we have, in fact, alleged the Belcher -- the fact that my
9 client -- well, once he testifies I guess it will clear it
10 up.

11 Just one second, Judge.

12 THE COURT: Certainly.

13 BY MR. PUETZ:

14 Q As far as the motions that you had filed, was a
15 Brady Motion, I believe; is that correct?

16 A I believe so.

17 Q And then the Rule 5, asking for the Rule 5 evidence
18 the State intended to use, correct?

19 A Yes.

20 Q Were there any other motions that you filed other
21 than the motion for bond?

22 A Not that I recall.

23 Q And did you, at any point in time -- strike that.

24 You indicated that you -- you don't have your bill,
25 but do you recall about how many hours you spent in

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1 preparation and in actually trying the case through the
2 first trial?

3 A Roughly, yes.

4 Q How many?

5 A At the moment I remember how much I was paid. I
6 would have to calculate how much that was and what the rate
7 was at the time, but give me just a second and let me see
8 if I can figure it out.

9 Probably on the first one, thirty-five hours.

10 Q And the second?

11 A Probably thirty.

12 Q Okay. Now tell me what, since you've said that his
13 best defense was self-defense, what are the elements of
14 self-defense?

15 A Well, off the top of my head -- I would look it up
16 before I did anything. But the self-defense that he had
17 was, like I said, based on the fact that he was being
18 attacked and he had to defend himself; he had no choice.

19 Q And clearly the car that he was attempting to get
20 in, it was operated by James Forrest; he didn't even have
21 access to leave without Mr. Forrest coming out, his cousin,
22 correct?

23 A Right. And he had to jump in the back of the car
24 just to be able to flee.

25 Q And there were cars basically all blocked in out

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1 there at the club; and they had to kind of wait until
2 people started leaving before they could even drive off,
3 correct?

4 A I believe that by the time that they got in the
5 car, it was clear enough for them to drive off. It wasn't
6 necessarily easy.

7 Q And was that -- tell me -- I've never gotten an
8 opportunity to look at this diagram that the State had.
9 What basically was on the diagram?

10 A I -- I don't even remember.

11 Q You were not provided a copy of the diagram
12 obviously in discovery?

13 A No, I was not. I just remember there being a
14 diagram.

15 Q Now, were you at any time made aware by the State
16 of South Carolina that a -- an agreement had been reached
17 between Jonathan Thomas and the State for his testimony?

18 MR. SPENCER: Your Honor, I object. There's
19 nothing in the -- I mean, that's assuming a fact not in
20 evidence.

21 THE COURT: Is that a part of the allegation?

22 MR. PUETZ: Sure.

23 THE COURT: What issue does it go to?

24 MR. PUETZ: The issue of the fact that regarding
25 the effectiveness of counsel who -- when he came up here

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1 and testified, didn't have his convictions; he failed to
2 register as a sex offender and had an active warrant, I
3 believe, against him on the day he appeared to testify in
4 June of 2009.

5 MR. SPENCER: Your Honor, that's not true. He had
6 a conviction in 2008 for failure to register as a sex
7 offender. He didn't have any outstanding warrants in 2009.

8 THE COURT: All right. Well, I'm looking at
9 supplement to petition, the post-conviction relief,
10 alleging ineffective assistance of counsel. And paragraph
11 three says, Based upon information and belief, Jonathan
12 Thomas, at the time of trial in 2009, was a fugitive, to
13 wit: A warrant for failure to register as sex offender was
14 outstanding against him. No inquiry was made by appointed
15 counsel regarding the resolution of the outstanding warrant
16 nor did appointed counsel attempt to introduce a certified
17 copy of his felony conviction during his cross-examination.

18 Now, was there an outstanding warrant.

19 MR. PUETZ: I have -- I don't know the answer to
20 that today, Judge, myself. I do know that he had a second
21 degree criminal sexual conduct conviction and if I could
22 have a chance here to look.

23 MR. SPENCER: Well, that wasn't outstanding at the
24 time of trial. I think -- I believe that was the second or
25 third degree CSC conviction in -- my notes say '97. He was

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1 arrested on June 8th, 2008 for failure to register as a sex
2 offender. And he was released, I think he pled and got
3 time served on June 18th, 2008.

4 THE COURT: All right. And -- and was that brought
5 out during the trial?

6 MR. SPENCER: No, it was not brought out during the
7 trial. You know, so I don't understand -- my concern too,
8 is they were assuming facts not in evidence and asking
9 counsel about facts that aren't true; and wasn't this the
10 case -- and that's what I'm concerned about. I'd rather
11 have the true facts examined about than -- so there is no
12 misunderstanding.

13 THE COURT: Well, that's why I was asking you. It
14 was not -- if he wasn't a fugitive then she wouldn't have
15 any -- that is my point.

16 MR. SPENCER: Right. My research indicated is
17 there wasn't an arrest warrant for him.

18 THE COURT: He can't ask her whether or not she
19 attempted to introduce a certified copy of his -- he had a
20 felony conviction --

21 MR. SPENCER: Right.

22 THE COURT: -- during her --

23 MR. SPENCER: The questioning.

24 THE COURT: -- cross examination.

25 MR. SPENCER: The question is whether he'd be able

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1 to cross -- if she would be able to cross examine Mr.
2 Thomas with either the '97 CSC conviction or the 2008
3 sex-offender registry. And, of course, you know, part of
4 my argument is going to be well, this is a 2009 trial and
5 '97 conviction, so you --

6 THE COURT: Well, then I guess you can go to that
7 subsection if you're going to attempt to use one over --
8 over ten years, don't you have to put the other side on
9 notice.

10 MR. SPENCER: Right. Yes, sir, you have to put the
11 other side on notice; and the Judge would have to admit it
12 since it's a bigger issue.

13 BY MR. PUETZ:

14 Q Did you attempt in any way to put the State on
15 notice of your use of these convictions?

16 A No.

17 Q I'm going to -- just so I can get these in the
18 record, can I hand her Petitioner's 1, 2 and 3? We may as
19 well look at 4 too while we're doing it.

20 MR. SPENCER: I have no objection to any of this.
21 I object to No. 4 as to relevance. It's not relevant.
22 It's James Forrest and his prior record, some prior stuff.
23 James Forrest didn't testify at the second trial, so I just
24 don't think that's relevant towards this record since
25 it's -- his conviction.

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 MR. PUETZ: Judge, in response to that,
2 Petitioner's Exhibit No. 4 is a arrest warrant for a
3 violation of probation, but it also is an assault and
4 battery high and aggravated indictment and sentencing of
5 one James Forrest, who beat with his fists Louis Thomas,
6 Jr., who was the brother of Jonathan Thomas. And
7 ultimately I have attempted to find it, but couldn't find
8 it because his records had to be pulled up from the
9 basement.

10 The -- Mr. Louis Thomas died and James Thomas --
11 James Forrest ended up pleading guilty to voluntary
12 manslaughter. So --

13 MR. SPENCER: This is James Thomas, James Forrest,
14 the brother?

15 MR. PUETZ: Yes.

16 MR. SPENCER: Okay. And this is just a prior
17 difficulty, argument you're making?

18 MR. PUETZ: It's a prior difficulty, but it is
19 documentary evidence to prove that there was bad blood
20 between the Thomas's and the Forrests and I at least
21 want --

22 MR. SPENCER: I understand that goes towards the
23 prejudice. I mean you couldn't admit extrinsic evidence of
24 convictions. I mean, you couldn't do anything more than
25 she did, which was ask about it because you can't put in

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 extrinsic evidence in a matter like that and even if he
2 asks about it, you just have to take the answer you get
3 from the witness.

4 MR. PUETZ: Well, Judge --

5 THE COURT: Let me see the petition, please.

6 MR. PUETZ: Sure.

7 THE COURT: Let me -- let me see if I can track
8 this; James Forrest was indicted February -- February the
9 8th of 1991 for assault on Louis Thomas, Jr. This James
10 Forrest is Joshua Forrest's --

11 MR. PUETZ: Brother.

12 THE COURT: -- brother; and Louis Thomas, Jr. is --

13 MR. PUETZ: Jonathan Thomas's brother.

14 THE COURT: -- Jonathan Thomas's brother. And
15 Jonathan Thomas was a witness.

16 MR. PUETZ: That's correct. Good friend and
17 witness.

18 THE COURT: To Mr. Redish?

19 MR. PUETZ: Correct.

20 THE COURT: All right. So we're saying that -- if
21 I understand the positions -- is that this would go to Mr.
22 Thomas's bias against Joshua because Joshua's brother 14
23 years earlier assaulted --

24 MR. PUETZ: Jonathan's --

25 THE COURT: -- Jonathan's brother.

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 MR. PUETZ: That's correct; and ultimately -- and
2 like I said, I tried to get it, Judge, but the clerk's
3 office couldn't find it. My client's going to testify
4 Louis Thomas ultimately died and Mr. James Forrest
5 ultimately was found guilty or pled guilty of voluntary
6 manslaughter.

7 THE COURT: Well, I thought you had to die with the
8 year. Here, it looks like this occurred October 5th, 1990
9 according to the indictment.

10 MR. PUETZ: Then he died about 3 days later, Judge.

11 THE COURT: It appears he pled to assault and
12 battery of a high and aggravated nature --

13 MR. PUETZ: And I think there is another indictment
14 that --

15 THE COURT: -- this is 2/12/91. So you're saying
16 they came back and they found this '91 indictment and they
17 can't find another indictment for James Forrest?

18 MR. PUETZ: I've looked and looked.

19 THE COURT: Now, here's a warrant for murder.
20 Charging James Forrest of murder. Basically -- what's
21 your, what's your position, Mr. Spencer?

22 MR. SPENCER: My position is it's not relevant.
23 It's -- basically it's not relevant because it wouldn't be
24 admissible. You couldn't use extrinsic evidence. Page 103
25 of the transcript Ms. Stoney asked about bad blood between

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 the two families, specifically, the two Josh's, your
2 brother and Mr. Thomas said, no. Which is perplexing in
3 light of -- of that opinion, I'm not sure I'm going to
4 agree that Mr. -- if the vic -- indicated in the
5 indictments Mr. Thomas -- I'm not even sure that I would
6 agree to the fact that that's relevant because Mr.
7 Thomas -- Jonathan Thomas, at trial didn't seem to know
8 anything about it. But even so, you couldn't come in and
9 use that as extrinsic evidence. It seems that Ms. Stoney
10 knew something of it, but couldn't --

11 THE COURT: I think it's too tenuous. I think you
12 can ask her if she -- you can ask Ms. Stoney if she
13 investigated any allegations of prior, or bad blood. I
14 don't see with the time frame of this and the time frame of
15 that, I just don't see any nexus between the two.

16 MR. PUETZ: Well, it's a little bit hard and -- I
17 concur with it where it's a little bit hard, but here's the
18 thing, there was no attempt to cross-examine him, that is
19 Jonathan Thomas, outside the presence of the jury to
20 refresh his memory with those documents and --

21 THE COURT: I'm not saying you can't ask her, I'm
22 not saying you can't -- I'm saying you can ask her what,
23 what investigation she did, if any, concerning allegations
24 of bad blood between the Thomas's and the Forrests.

25 MR. PUETZ: Okay.

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 THE COURT: You can ask her those questions, but,
2 but I think this is too -- I think this is too tenuous. I
3 just don't see a nexus between a 1991 offense and this
4 document of 2006 assault. Usually you have ongoing feuds
5 throughout the years. Maybe there have been that I don't
6 know of.

7 MR. PUETZ: Well -- and I understand, Judge, this
8 is my client's one opportunity so I wanted to at least get
9 it out.

10 THE COURT: I understand.

11 BY MR. PUETZ:

12 Q What investigations -- well first of all, where did
13 you get the idea, Ms. Stoney, that it was shooting?

14 A I think that's what my client had told me.

15 Q Okay. And it is fair to say that you did no
16 investigation to determine what, if any, bad blood did
17 exist between the Forrests and Thomas's, correct?

18 A Other than talking to witnesses, no.

19 Q Well, tell me which witness you talked to.

20 A I believe the ones that I talked to about that were
21 his witnesses.

22 Q And who were they?

23 A His girlfriend at the time and Tiffany Grimes and
24 him.

25 Q Okay. So -- and did, what, how long did you spend

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 interviewing Tiffany Grimes?

2 A I don't recall, probably about 30 minutes.

3 Q And did you at any time, make any attempt to -- or
4 inquiry to the Solicitor's Office regarding that prior act?

5 A Not that I recall.

6 Q Yet in looking at Petitioner's Exhibits 1, 2 and 3,
7 tell me what they are?

8 A Jonathan Thomas's record. The first one is failure
9 to register as a sex offender in '07.

10 Q And who was the prosecutor on that; if you look on
11 the plea sheet I think it --

12 A Steve Kodman.

13 Q And is Steve Kodman, in fact, the same person that
14 was lead prosecutor in the case against Joshua Forrest in
15 June of 2009?

16 A He is.

17 Q Okay. What is Petitioner's Exhibit No. 2?

18 A Failure to register as a sex offender in '99.

19 Q And who is the prosecutor on that case?

20 A Hard to tell. I can't tell what that signature is.
21 It looks like it might be Brown, so maybe Lawrence.

22 Q Okay. And then what is Petitioner's Exhibit No. 3?

23 A Jonathan Thomas's sentence in '96.

24 Q For what offense?

25 A Criminal sexual conduct with a minor in the second

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 degree.

2 Q And he pled guilty to that I believe; is that
3 correct?

4 A It looks like he did back in -- hold on just one
5 second and let me see if I can tell. I believe it was also
6 in '96.

7 Q And now it's been only 9 -- within 10 years of the
8 time that this offense, December 4th of '05, correct?

9 A Roughly 10 years.

10 Q Okay. Now, admittedly, did you have certified
11 copies prepared to utilize for the cross-examination of
12 Jonathan Thomas when he came and testified?

13 A No.

14 MR. PUETZ: And I think P-1 through 3 are
15 already -- I would move those in, Judge.

16 THE COURT: Without objection?

17 MR. SPENCER: No objection to those. No objection.

18 (Petitioner's Exhibit No. 1, No. 2, and No. 3 were
19 entered into evidence.)

20 BY MR. PUETZ:

21 Q So just to kind of summarize, the only people that
22 you talked to prior to actually going to trial at the end
23 of December of '06 for June of '09 was Tiffany Grimes and
24 my client -- your client, Joshua Forrest and his then
25 girlfriend, Ms. Coleman; is that correct?

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 A That's all I recall talking to.

2 Q And you never made any attempt at all to allow him
3 to speak to any of the people that were the owners of the
4 club, correct?

5 A No.

6 Q And, I mean, based on your recollection, the
7 testimony, I mean, it was poor lighting out in the parking
8 lot, correct?

9 A Some witnesses said it was poor lighting and some
10 witnesses said they could see everything.

11 Q But you never went out and inquired or investigated
12 yourself as to what the lighting conditions were?

13 A No, because most of the witnesses thought it was
14 poor lighting.

15 Q Okay.

16 MR. PUETZ: And, Judge, just for my benefit, am
17 I -- or can I assume that the transcript of these two
18 trials is a part of this PCR record?

19 MR. SPENCER: The second transcript we already
20 have; the second trial you already have up there, Your
21 Honor and I don't think I put the first trial in, but if
22 they want that to be part of the record, I can have it
23 ready. I just wasn't going to presume.

24 MR. PUETZ: I would ask, Judge, it be -- and
25 certainly would also ask that Petitioner -- my Exhibit No.

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 4. be attached and made a part of the record for the
2 purposes of here.

3 THE COURT: Yes, sir. All I have now as far as
4 transcripts is in the record.

5 MR. SPENCER: That's the second trial.

6 THE COURT: The record on appeal.

7 MR. SPENCER: It was an Anders Brief so it's
8 attached to the transcript in the record.

9 THE COURT: And then Petitioner's 4 would be marked
10 for identification also, as far as documentation concerning
11 Mr. James Forrest.

12 MR. PUETZ: Right.

13 THE COURT: Petitioner's 4 will be marked for
14 identification purposes.

15 MR. PUETZ: Right.

16 THE COURT: All right.

17 BY MR. PUETZ:

18 Q Did you, at any point in time, have any meetings
19 with -- strike that.

20 When did you become aware of the fact that Mr.
21 Forrest was looking at life without parole?

22 A Well, definitely in between the first trial and the
23 second. It wasn't -- I think it was in 2009.

24 Q So it -- and tell the Judge why that is. I mean
25 you'd been appointed to represent somebody who was charged

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 with murder and you were not aware of the fact that he
2 already pled guilty to a most serious offense just 14 days
3 or 15 days prior the events of December 4th, 2005?

4 A Not at the time of the first trial.

5 Q I'm just -- so it's fair to say then that during
6 your meeting with your client, you did not even inquire of
7 him of what kind of prior record he had?

8 A Yes, we talked about that. I didn't know it before
9 I went to see him, but I did as I went to see him.

10 Q Okay. And so -- but you did not understand the
11 legal significance of the guilty plea to the most serious
12 in November of 2005; if he got convicted on this murder
13 case?

14 A Yes, but they weren't asking for that.

15 Q Okay. So the State wasn't asking for it the first
16 time?

17 A No.

18 Q When did the State put you on notice that they were
19 going to be asking for that?

20 A I think it was at the beginning of 2009.

21 Q Isn't it mandatory?

22 A Yes.

23 Q Okay. So whether the State asked for it or not,
24 it's mandatory if he got convicted in December of 2006;
25 whether the State was asking for it or not, he had to get

Sherri H. Stoney - Direct Examination by Mr. Puetz

1 LWOP, correct?

2 A At this point, yes. But I don't recall whether
3 that was the case in 2006. I know that they were asking; I
4 know they weren't asking for it. Whether or not it's
5 mandatory only if they ask for it and put him on notice, I
6 don't -- I think they have to put him on notice.

7 Q Tell, tell us, if you would, Ms. Stoney, why you
8 didn't object to the jury -- why you didn't object to the
9 Judge's jury instruction that pre-meditation was not an
10 element of murder in South Carolina when clearly the jury
11 charge -- the Judge reduced the State's burden of proving
12 every element of murder?

13 A I didn't see anything at the time wrong with the
14 charges that he did.

15 Q And --

16 MR. SPENCER: Just to clarify. Is that the, was
17 that the instruction after the jury note?

18 MR. PUETZ: Both times.

19 BY MR. PUETZ:

20 Q Both times.

21 A I didn't see anything wrong with the jury charges.

22 Q And I'm sure -- was it -- I mean were you trying
23 to, at all times, to preserve any issues for Mr. Forrest?

24 A Do you mean on appeal?

25 Q Yeah.

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 A As best I could, yes.

2 MR. PUETZ: That's all the questions I have.

3 THE COURT: Thank you.

4 Mr. Spencer?

5 CROSS-EXAMINATION

6 BY MR. SPENCER:

7 Q Ms. Stoney, in order for the State to seek life
8 without parole on the basis of a prior most serious
9 offense, do they need to serve you and Mr. Forrest with
10 notice of that?

11 A That's my understanding.

12 Q Okay. Did they serve notice of that on you or Mr.
13 Forrest at the first trial?

14 A No.

15 Q Okay. Did they serve it -- when did they serve you
16 with notice of life without parole?

17 A I can't recall when that was, but it was in the
18 beginning of 2009; I'm almost certain.

19 Q Okay. Were there any plea offers --

20 A Yes.

21 Q -- made in this case?

22 A Yes.

23 Q And prior to the second trial, do you recall what
24 the plea offer was?

25 A Prior to the second trial, they offered him 20

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 years with credit for time served and he had already been
2 in there 5 years. So he would have gotten 15.

3 Q All right.

4 MR. SPENCER: Your Honor, just a moment?

5 BY MR. SPENCER:

6 Q What was your advice --

7 MR. SPENCER: Your Honor, this was a little bit out
8 of order because we haven't heard any testimony about this
9 yet or the allegation about this yet, but I believe there's
10 an allegation, that of ineffective assistance in offering
11 plea advice. I want to go through that right now.

12 BY MR. SPENCER:

13 Q What was your advice to Mr. Forrest about the plea
14 bargain, or plea offer?

15 A I advised him to take it. By the time the
16 conversation was over, I was pretty much begging him to
17 take it. And I was just not getting anywhere at all.

18 Q Did you tell him how much time he was facing on
19 this murder charge?

20 A I did. Basically the two things that I remember
21 the most after we talked about what he would be facing if
22 he didn't take the 20 years. I told him that he would be
23 younger than me when he got out and he told me that you
24 just don't -- Ms. Stoney, you don't know how hard it is in
25 here. And I asked him, do you think it's going to get any

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 easier if you're in here for the rest of your life. And I
2 think at that point, I was kind of shouting at him. But
3 yes, he was well aware of what he was facing and he just
4 continued to tell me, you did it the first time, I believe
5 you can do it the second. And I told him, I'm here telling
6 you that lightning doesn't strike twice in the same -- same
7 time, the same place, and I'm telling you I can't do it
8 twice. It's just, they close up all the holes, it's going
9 to be almost impossible to get through to them at this
10 point because there's going to be so few holes in the
11 second trial for them to walk through.

12 And he just kept saying he had faith in me to do it
13 a second time and he would not listen to me when I told him
14 he needed to take the plea.

15 Q All right. If, do you recall, did -- did the State
16 put you on notice of LWOP before or after Mr. Forrest
17 turned down the offer?

18 A Oh, way before.

19 Q Oh, so the State already had him on notice for LWOP
20 at the time?

21 A Yes.

22 Q So he knew that he was facing life without parole
23 if convicted?

24 A Yes.

25 Q And it was mandatory?

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 A Yes. And I believe we also talked about the old
2 men that were in there that had been in there for their
3 whole lives and pretty much he was looking at being one of
4 them. And he just wasn't going to take the plea.

5 Q All right. In terms of self-defense, I'm not going
6 to try and re-plow too much on this, but he maintained all
7 the time that he never had a gun?

8 A Yes.

9 Q Okay. And that's consistent with what he had said
10 in his statement to Mr. Cain, Investigator Cain; is that
11 correct?

12 A Yes.

13 Q And the entrance wounds on the victim, is it your
14 recollection one was in the side and one was in the front?

15 A That's what I remember.

16 Q And at the time the shots were fired, Mr. Forrest
17 was supposed to be in a bear hug with the victim?

18 A According to, I think everybody.

19 Q So basically the bullet would had to manage to hit
20 the victim in the front even though -- without going
21 through Mr. Forrest -- even though they were in a bear hug?

22 A I think that's what the evidence showed.

23 Q And when the investigator asked Mr. Forrest about
24 that, about how that could have occurred, he said it was
25 God's will or something like that?

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 A According to Investigator Cain, yes.

2 MR. PUETZ: Judge, I'm going to object from the
3 standpoint that it hasn't been offered into evidence.

4 MR. SPENCER: The statement?

5 MR. PUETZ: Yes.

6 MR. SPENCER: The statement's published to the jury
7 in the transcript, Your Honor, I can give you the page for
8 that.

9 It's published to the jury on page 127. Of course,
10 that actually includes the language about incarceration
11 that Mr. Puetz is complaining about. So I mean, that kind
12 of has to be part of the record or Mr. Puetz loses that
13 allegation.

14 MR. PUETZ: Well, that's fine since we've gone
15 ahead and made both trial transcripts part of the record.

16 MR. SPENCER: Well, short answer is that's part of
17 the record. The statement's published to the jury.

18 BY MR. SPENCER:

19 Q Going back to self-defense a little bit. Basically
20 the evidence that was presented by the State indicated --
21 Mr. Cain had indicated -- Investigator Cain, excuse me --
22 had indicated that Mr. Forrest had a cut on his lip?

23 A Correct.

24 Q And do you remember Ms. Campbell?

25 A Somewhat, yes.

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 Q Okay. And she's the woman that the disagreement
2 started -- that had the disagreement with Mr. Forrest?

3 A Apparently, yes.

4 Q And is it consistent with your recollection with
5 the trial testimony that she -- she basically got into an
6 argument with him and took his hat and --

7 A That's correct.

8 Q -- and kind of ran away with them, from him and,
9 and --

10 A Was just playing games, yes.

11 Q And she was an ex-girlfriend of Mr. Forrest, right?

12 A That was my understanding, yes.

13 Q And, in fact, basically they had -- they had broken
14 up while -- or she had left him, however you want to state
15 it, while he was incarcerated?

16 A That's my understanding.

17 Q And then kind of the State's evidence suggested
18 that she was for some reason jealous in starting -- in
19 provoking him?

20 A I believe so.

21 Q Now concerning Mr. Thomas's testimony, let's back
22 up just -- just to get a little more background
23 information. Now, the State's evidence indicated there
24 was -- that -- that Mr. Thomas and the victim went to
25 intervene between the defendant and Ms. Campbell; is that

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 right? Or Mr. Forrest and Ms. Campbell?

2 A I recall Mr. Thomas trying to intervene. I'm not
3 sure whether Mr. Redish was trying to intervene or he was
4 trying to interfere.

5 Q All right. And then everybody left the club at
6 that point after that, correct?

7 A Sometime after that, I don't believe it was very
8 long.

9 Q And this was all kind of around closing time at the
10 club?

11 A Correct.

12 Q All right. And do you recall Mr. Thomas's
13 testimony at trial that, that Mr. Forrest called him to his
14 car and Mr. Thomas walked up and they shook hands?

15 A I do remember that they shook hands.

16 Q And then Mr. Thomas said he had his back turned and
17 was walking away and then he heard shots and turned around?

18 A Correct.

19 Q So in terms of what Mr. -- and in terms -- and Mr.
20 Thomas --

21 MR. SPENCER: I apologize, Your Honor, if I could
22 just, Court's indulgence for a moment.

23 THE COURT: Yes, sir.

24 BY MR. SPENCER:

25 Q Now, in terms of Mr. Thomas's testimony, I just

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 kind of want to go through some of it. Mr. Thomas

2 indicated he knew Mr. Forrest all his life?

3 A Yes, sir, I believe so.

4 Q But he also testified he was best friends with the
5 victim?

6 A I believe so, yes.

7 Q And Mr. Thomas testified that there was, you know,
8 nothing physical in terms of the altercation within the
9 club?

10 A I don't recall whether he did. Literally, you put
11 all the witnesses together; there was a lot going on in the
12 club.

13 Q And there was -- there was, you know, between the
14 three witnesses that were in the club at the time, you
15 know, that testified at trial -- and was there
16 inconsistency between what they were saying?

17 A In the second trial?

18 Q Yeah.

19 A No, not a lot; a little here and there, but not a
20 lot.

21 Q Right. So basically, Mr. Thomas -- you know the
22 other two witnesses, Sharon Kate and Natasha Brown, were
23 pretty much in agreement with Mr. Thomas as to what
24 occurred inside the club?

25 A I believe so, yes.

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 Q And Mr. Thomas didn't actually see what happened
2 between the victim and Mr. Forrest before the shots were
3 fired?

4 A Right.

5 Q And Mr. Thomas actually established -- Mr. Thomas
6 indicated through his testimony that there were no hard
7 feelings between Mr. Forrest and Mr. Thomas outside the
8 club?

9 A That's what he said, yes.

10 Q Mr. Thomas and victim were together basically; they
11 were together in the club and -- and had come out of the
12 club?

13 A Correct.

14 Q Okay. And so was Mr. Thomas kind of
15 substantiating -- let me ask you this. Does Mr. Thomas
16 actually kind of substantiate some of the self-defense
17 aspect of this trial because there was no blood between him
18 and -- and Mr. Forrest?

19 A He substantiates it to the point that he had seen
20 the attack in the club and as far as he was saying, there
21 was no bad blood between them, yes.

22 Q And you would think that there was no blood, bad
23 blood, between Mr. Thomas and Mr. Forrest there would be no
24 bad blood -- Mr. Forrest wouldn't have any hard -- Mr.

25 MR. SPENCER: Let me rephrase that. I apologize,

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 Your Honor.

2 BY MR. SPENCER:

3 Q If there's no -- if Mr. Forrest didn't have any
4 hard feelings with Mr. Thomas, there's nothing in the
5 record to indicate why he would have any hard feelings with
6 the victim?

7 A Other than the fact that Ms. Campbell, I believe,
8 was a sometime girlfriend of Mr. Redish, but not from the
9 prior history, just the current girls.

10 Q And I guess the point I'm getting at is Mr. Forrest
11 was not mad at Mr. Thomas. He might not be mad at Mr. --
12 at the victim, and that would kind of substantiate the --
13 that it was self-defense rather than pre -- rather than a
14 murder?

15 A Correct. I don't believe that Mr. Forrest went in
16 to it thinking anybody was after him.

17 Q So is it fair to say Mr. Thomas was probably the
18 best witness from a defense standpoint?

19 A Of the three, probably, but not necessarily good,
20 but better than the other two.

21 Q In terms of the prior convictions, this trial was
22 in 2009?

23 A Yes.

24 Q And so the '97 offense would be more than 10 years
25 old?

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 A Yes.

2 Q And the '99 offense would be right at 10 years old?

3 A About.

4 Q Okay. And the '99 offense, failure to register as
5 a sex offender; do you know how much time the maximum
6 sentence had carried at that time?

7 A No, I don't.

8 Q Would you agree with me it doesn't carry more than
9 a year?

10 A I thought it would be --

11 MR. PUETZ: Judge, she can't answer that, she
12 didn't know what the penalty was.

13 THE COURT: Well, we can look it up. I think it
14 carried 6 months.

15 BY MR. SPENCER:

16 Q I noticed on one of the sheets it said 90 days, but
17 I'm pretty certain it doesn't carry more than a year.

18 A If I had to guess --

19 THE COURT: It might have on the second offense.

20 THE WITNESS: If I had to guess, I would have said
21 a year or less, but anywhere in between I don't know.

22 BY MR. SPENCER:

23 Q In terms of prior difficulties between the Forrests
24 and the Thomases, you did ask Mr. Thomas about that at
25 trial; is that right?

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 A I did.

2 Q And I want to really back up because I wasn't sure
3 about this from your testimony. When you tried this case
4 in 2006, was this your first murder trial ever or just your
5 first one in South Carolina?

6 A Actually going all the way to trial, I think it may
7 have been my first.

8 Q Okay. But you had represented clients in murder
9 charges before?

10 A Yes.

11 Q And some of them had started trial or just --

12 A Most of them had pled before they got to trial.

13 Q -- been resolved. But this was your third general
14 sessions trial --

15 A I believe so.

16 Q -- in South Carolina?

17 A I believe so.

18 Q Have you tried cases in Georgia?

19 A Yes.

20 Q Do you know how many you would have tried in
21 Georgia?

22 A I can't remember; it was several.

23 Q All right. And this 2006 trial ended in a
24 mistrial; is that right?

25 A Yes.

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 Q So basically you -- this was your third trial and
2 none of them, your client had been convicted?

3 A Correct, not in general sessions court.

4 MR. SPENCER: I beg the Court's indulgence?

5 THE COURT: Yes, sir.

6 BY MR. SPENCER:

7 Q And in just in general concerning all the
8 charges -- or excuse me, the jury instructions, were there
9 any instructions that you thought were erroneous?

10 A Not at the time, no.

11 Q Is that malice charge, was that consistent with
12 what was generally being charged at trial?

13 A Yes.

14 Q Did you think any of the charges were burden
15 shifting?

16 A No.

17 Q If you'd thought they were burden shifting, would
18 you have objected?

19 A Yes.

20 Q In terms of the recording and interview, was that
21 discussed during the Jackson v. Denno hearing; do you
22 recall?

23 A I don't recall.

24 Q All right. The transcript will reflect that.

25 In terms of interviewing witnesses at the crime

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 scene, did you consider whether or not to interview any
2 witnesses at -- that would have been at the Elks Club or --

3 A Personally interview them, no, but I did consider
4 whether or not to get an investigator.

5 Q All right. And what did you decide about getting
6 an investigator?

7 A Based on the facts and the evidence that I was
8 seeing, I was afraid that -- there were very few witnesses
9 that were coming forward. I was afraid that if we went out
10 there investigating, which would end up getting more people
11 talking to the State.

12 Q I'm sorry. You made a strategic decision not to
13 send an investigator or interview any additional people
14 that might have been at the Elks Club?

15 A Correct.

16 Q And that was because you were afraid of --

17 A Repercussions.

18 Q -- and results?

19 A Right, that it would bring forward more witnesses
20 that would be against Joshua.

21 Q In terms of the prior records, did the solicitor's
22 office give you a copy of the NCIS printouts --

23 A For the witnesses?

24 Q -- for the witnesses?

25 A I believe that they did. The one thing that sticks

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 out in my head is one of the girls had a shoplifting
2 charge.

3 Q Okay. And do you -- do you recall how old that
4 shoplifting conviction was?

5 A It was pretty old.

6 Q Did you consider using it?

7 A I considered using all of the records, but as old
8 as they were and not having gotten into trouble since, I
9 didn't want the jury to think that we were grasping at
10 straws trying to figure, you know, some way to discredit
11 the witnesses with past -- way past criminal histories and
12 not focusing on what they were saying. And again, that was
13 just strategic.

14 Q Certainly. And getting kind of to the central
15 issue, what was your trial strategies for the second trial?

16 A To try to go in there and kind of dig holes again.
17 The first time we saw many inconsistencies with all the
18 different witnesses and I believe that I did a pretty good
19 job of pointing them out to the jury. The second time I
20 was hoping to do the same thing. There weren't nearly as
21 many inconsistencies, but there still were some. And like
22 I said, I would have loved to use the self-defense, but
23 that wasn't happening.

24 So the one thing that I could do was try to
25 discredit them as far as what they were saying and being

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 inconsistent and not really having seen a whole lot.

2 Q All right. But do you recall during closing
3 argument -- and you had last closing argument; is that
4 correct?

5 A Correct, the second time.

6 Q The second time. The first time you put up one
7 witness?

8 A Correct, and she wasn't terribly effective. So we
9 didn't put up a witness the second time.

10 Q The second time though during closing argument,
11 would you agree with me that you argued to the jury there
12 were many differences between their stories?

13 A Yes.

14 Q And -- and -- and --

15 MR. SPENCER: Your Honor, this is on 214 and then
16 later 217.

17 BY MR. SPENCER:

18 Q You argued that what the three people were saying
19 doesn't match with what the State wants to hear; something
20 to that effect?

21 A I believe so, yes. And I think I also -- I don't
22 remember whether I argued it, but I know I was trying to
23 bring out with Mr. Thomas that this was a group of people
24 that didn't like him.

25 Q That didn't like Mr. Forrest?

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 A Right. And had been friends with Mr. Redish?

2 Q And did you point out that despite this being at a
3 nightclub that the State only brought -- that a crowded
4 nightclub, the State only brought out three witnesses?

5 A Correct.

6 Q And did you ask -- kind of ask rhetorically to the
7 jury about what about these other people?

8 A I remember doing that, yes.

9 MR. SPENCER: I beg the Court's indulgence?

10 THE COURT: Yes, sir.

11 BY MR. SPENCER:

12 Q In terms of the injury to the collar bone, was --
13 did you see any advantage into going into that in terms of
14 injury to the victim's collarbone; did you see an advantage
15 of going into that issue at trial?

16 A No.

17 Q And were you aware of any possible benefits from
18 going into that issue at trial?

19 A No because everybody agreed that saw it, said that
20 they were in a bear hug. I believe even Mr. Forrest had
21 said that.

22 Q And I want to turn back to Ms. Campbell again. Is
23 it fair to say that the evidence indicated that she was
24 sort of the instigator of this whole situation?

25 A Yes.

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 Q And that she was being unreasonable?

2 A Yes.

3 Q And the fact is that she had left Mr. Forrest while
4 he was otherwise not there and -- and -- and yet coming
5 back and taunting him?

6 A Yes.

7 Q All right. And the fact that he is incarcerated
8 and she leaves him then, that kind of, that kind of gives
9 you a bit of the res gestae of that situation, doesn't it?

10 A Somewhat, yeah.

11 Q And --

12 A That's only part of why I didn't object though.

13 Q Okay. What's the other reason?

14 A I didn't want -- well one part, I didn't want the
15 jury focusing on it; if I lost that issue they'd hear it
16 all. The second thing is I didn't want to be removing part
17 of Joshua's statement, like we were trying to hide
18 something.

19 Q And actually there's nothing in the record to say
20 what he was incarcerated for.

21 A No, and there was nothing in there saying he was
22 incarcerated for a long period of time either.

23 Q Now, that could have been like an overnight stay in
24 jail as far as we know?

25 A More than likely he left and that was at least a

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 couple of weeks.

2 Q Certainly.

3 A But I wouldn't think, I don't think it indicated he
4 was in for years or anything like that.

5 Q Okay.

6 MR. SPENCER: I beg the Court's indulgence?

7 THE COURT: Yes, sir.

8 BY MR. SPENCER:

9 Q I wanted to ask you about the jury selection. Did
10 you consider whether or not to try to make a Batson Motion?

11 A Briefly.

12 Q And why didn't you make a Batson Motion?

13 A I didn't think I'd be successful. The only people
14 that the State took off the jury had records and the make
15 up of the jury was not far off from the make up or the
16 county.

17 Q So in terms of racial representation, it was pretty
18 close to the county?

19 A Correct. It could have been one more, probably
20 about half, but 2, 2 1/2, 3 at the most would have been the
21 representation of the county. I mean I would have loved to
22 have had a completely black jury but --

23 Q Sure.

24 A -- we weren't getting it. But to my recollection,
25 the only people that they asked to get off the jury had

Sherri H. Stoney - Cross-Examination by Mr. Spencer

1 records.

2 Q All right. And is it fair to say -- do you recall
3 there were actually two black jurors seated?

4 A Yes, I believe so.

5 Q Okay. What was -- did you have other concerns
6 about the jury pool?

7 A Oh, I had great concerns about the jury pool before
8 we even walked in the door.

9 Q Could you explain that?

10 A I knew we were going to trial in the summer. And
11 in the summer all the teachers come in because they get
12 continued to the summer. There seemed to be an amazing
13 amount of professionals in Augusta in the first place, but
14 to add all the teachers to it was going to be a disaster
15 and I expressed that to Joshua. It was one of the reasons
16 I told him he did not want to go to trial because it was
17 not going to be pretty.

18 And when we did seat the jury, they were a lot of
19 professionals.

20 MR. SPENCER: I beg the Court's indulgence please.
21 Your Honor, I have no further questions.

22 THE COURT: Redirect, Mr. Puetz?

23 MR. PUETZ: Yes, sir.

24 ///

25 ///

Sherri H. Stoney - Redirect Examination by Mr. Puetz

REDIRECT EXAMINATION

1
2 BY MR. PUETZ:

3 Q You pointed to the fact the State struck -- they
4 exercised, I believe, six strikes and they struck, excuse
5 me -- they exercised five strikes and four of those were
6 blacks; is that not correct?

7 A That sounds right.

8 Q And there were other people that had -- and let me
9 ask you this: Do you have anything in your file that
10 indicates or backs up your statement that these people had
11 records?

12 A Give me one second and let me double-check.

13 I just saw the jury pool a few minutes ago. No,
14 this is the -- that's what I'm looking at. I don't know
15 that I have it in there. This -- I was looking at the
16 trial calendars, but the calendars are calendar pulls. Let
17 me keep looking and see if I can find it. That's the first
18 trial. I took notes when they, during the voir dire and
19 also there were notes on here from the solicitor about
20 charges, prior charges.

21 Q You're talking about the second trial?

22 A The second trial call is going to be exactly the
23 same. Let me find that jury strike. 2009, same thing.

24 Q Well, tell me which black jurors did you recall, or
25 that your notes indicates the State struck that had

Sherri H. Stoney - Redirect Examination by Mr. Puetz

1 records?

2 A I'm not sure which ones they struck. If I knew
3 which ones they struck, I could tell you what the records
4 are.

5 Q Juror No. 1, Paul Adams?

6 A Fraudulent check two, two counts.

7 Q Okay. And No. 6, Anthony Back or Beck?

8 A Dangerous drugs.

9 Q But none of these were disqualifying, correct? In
10 other words, they weren't struck -- it was the State that
11 struck them?

12 A Correct.

13 Q Okay. And No. 57, Vena Hearth or Vera Hearth --
14 Heath?

15 A That one I don't have one.

16 Q And No. 145, Wanica Wiseman?

17 A Fraudulent checks times three.

18 Q And it's your belief that that was the reason why
19 the State struck them; is that correct?

20 A Not necessarily, but I don't believe that I would
21 have been successful on Batson challenge because of those.

22 Q Well --

23 A If they were with cause.

24 Q What -- those were not struck by the Court, were
25 they?

Sherri H. Stoney - Redirect Examination by Mr. Puetz

- 1 A No.
- 2 Q Okay. Those were State exercising their peremptory
3 challenges, correct?
- 4 A Correct.
- 5 Q And it's your belief that they would have supported
6 that by the citing those convictions, correct?
- 7 A Correct.
- 8 Q What, if any, conviction did Mr. 119 have?
- 9 A Gregory Robinson?
- 10 Q Yes.
- 11 A Didn't.
- 12 Q What about Annette -- No. 104?
- 13 A She didn't, but I would not have let her on the
14 jury either.
- 15 Q You did not discuss with Mr. -- with your client
16 whether or not he wanted a Batson challenge to be made --
- 17 A No.
- 18 Q -- correct?
- 19 A No. We discussed whether or not we wanted
20 educators on the jury.
- 21 Q What -- what was the racial composition that you
22 recall of your second jury?
- 23 A I think it was ten to two.
- 24 Q Ten?
- 25 A Ten white and two black.

Sherri H. Stoney - Redirect Examination by Mr. Puetz

1 Q And what was the racial composition of the venire?

2 A I don't recall.

3 Q Do you -- was it greater than 1/6?

4 A I would have to go in here and count.

5 Q If you would -- would that take you a very long
6 time; are they noted?

7 A Probably not. It looks like 40 out of 168, but
8 some of those had already been struck through and I
9 didn't -- I didn't count how many those were because some
10 were white, some were black. So there's some that were
11 struck through just not there.

12 Q Right, but of the people that were here, were there
13 40 blacks out of the 168?

14 A Hold on one second. There weren't 168 people here
15 is what I'm saying.

16 Q Oh, okay. So --

17 A But there were originally -- and I would say there
18 was probably that percentage of blacks and whites that were
19 struck. So there was probably 40 out of 168 to begin with.

20 Q Okay. So roughly 25 percent?

21 A Roughly.

22 Q Okay. And --

23 A 20 or 25, something like that.

24 Q So the -- and it was your strategy that even though
25 your jury only had approximately 16 percent blacks, you

Sherri H. Stoney - Redirect Examination by Mr. Puetz

1 elected not to make the Batson challenge; is that my
2 understanding?

3 A I'm not sure that it's 16 percent, but okay, yes.

4 Q 1/6, whatever that is?

5 A Okay, whatever, yeah.

6 Q Okay. Now did you, did you receive a formal
7 statement from the solicitor's office stating what the
8 agreement was prior to the second trial?

9 A Good question, I'm not sure. I don't remember if
10 it was a verbal offer or if it was a written offer.

11 Q And I realize, Sherri, that, you know, this was 6
12 years ago or 4 or 5 years ago, but --

13 A It may have just been verbal.

14 Q It was never reduced by you to writing and
15 presented to Joshua Forrest, was it?

16 A No, I believe that it was given to me, seems like
17 it was on a Thursday or a Friday before trial.

18 Q And at no point in time did you ever put on the
19 record what the offer was and have Mr. Forrest acknowledge
20 that he was rejecting that offer; and thereby subjecting
21 himself to a life without parole sentence, correct?

22 A I don't think so.

23 Q And you didn't even present that to him in front of
24 any witnesses, did you?

25 A No, I talked to him in the prison.

Sherri H. Stoney - Redirect Examination by Mr. Puetz

1 Q Now, going back to Joseph -- Jonathan Thomas; his
2 nickname was Jonate, wasn't it?

3 A I don't remember.

4 Q In fact, the lady by the name of Teneshia Roberson,
5 she was interviewed by law enforcement, wasn't she?

6 A I believe so, yes.

7 Q You got a video of her recording, correct?

8 A Correct.

9 Q And clearly she indicated that Jonathan Thomas came
10 around in front of the vehicle and hit Joshua Forrest,
11 didn't she?

12 A I don't recall at this point.

13 MR. PUETZ: Judge, I'm going to ask that we attach
14 or I'll play the, the recorded interview, which I watched
15 last night, of Ms. Roberson. I want to attach this to the
16 record or do, have the record held open for 30 days so I
17 can attach a video clip of her recorded interview?

18 THE COURT: Mr. Spencer?

19 MR. SPENCER: Ms. Roberson's name is not brought up
20 anywhere in the application that I saw.

21 MR. PUETZ: Well --

22 MR. SPENCER: I believe it was made part of the
23 record in trial and this is the first time I'm hearing
24 about it in this. I'm sure it's out of the Solicitor's
25 file, but I've not seen it. So --

Sherri H. Stoney - Redirect Examination by Mr. Puetz

1 MR. PUETZ: Here's the -- it was attached to
2 that -- got from the solicitor's office. Long story --

3 MR. SPENCER: Judge, I don't have any objection
4 to -- I have objection on the grounds that this is
5 basically a surprise allegation.

6 THE COURT: What's the allegation? That Ms.
7 Roberson gave a video --

8 MR. PUETZ: Okay.

9 THE COURT: -- she wasn't aware of it, correct?

10 THE WITNESS: No, I believe I remember a video, I
11 just don't remember anything about it.

12 BY MR. PUETZ:

13 Q Well, you didn't subpoena her to the second trial,
14 correct?

15 A No.

16 Q And she didn't come and testify or the State didn't
17 put you on notice that weren't going to have her here, did
18 they?

19 A No.

20 Q Okay. And the State, through their cross
21 examination of you, seems to imply that Mr. Thomas just
22 walked up and shook hands with Joshua Forrest, correct?

23 A That's what he said, yes.

24 Q Right. And you would agree with me that the
25 recorded interview and the testimony of Ms. Roberson --

Sherri H. Stoney - Redirect Examination by Mr. Puetz

1 MR. SPENCER: I have an objection.

2 Actually I think she already said that she doesn't
3 recall. I'd ask for -- I'd object on the grounds of
4 leading.

5 MR. PUETZ: Well, since I have her on redirect,
6 Judge, I would ask that I be able allowed to or I'll just
7 go ahead and play the video showing that Ms. Roberson's
8 characterization of this encounter between my client and
9 Mr. Thomas was completely different. And if the Court will
10 look at the direct testimony of Ms. Roberson at the first
11 trial, page 119, I think it refutes what this Jonathan
12 Thomas -- and clearly indicates that Ms. Roberson testified
13 at the first trial that Jonathan Thomas hit Joshua Forrest.
14 That's at 119.

15 And it clearly rebuts the inferences the State was
16 trying to get the Court to buy into that Jonathan Thomas
17 was up there telling the truth and he really didn't have an
18 axe to grind and was a good old friend of Joshua Forrest.

19 THE COURT: Can't you prove what you're trying to
20 prove if two the records are in evidence? But I assume
21 what you're trying to prove is why didn't you call --

22 MR. PUETZ: That's correct.

23 THE COURT: -- why didn't you call x; I mean you've
24 got, like I say, on page 119. I thought she indicated she
25 didn't call any witnesses in the '09 trial and this Ms.

Sherri H. Stoney - Redirect Examination by Mr. Puetz

1 Roberson was not a witness in the '09 trial, correct?

2 MR. PUETZ: That's correct.

3 MR. SPENCER: Okay. I'd forgotten Ms. Roberson
4 testified at the first trial. I object to the videos being
5 proof of anything in the second trial. Her testimony is
6 there from the first trial.

7 BY MR. PUETZ:

8 Q The long and the short of it is, you simply were
9 going skinny; weren't you? That was a decision you made?

10 A No.

11 Q Well, you didn't subpoena any witnesses, correct,
12 for the second trial?

13 A Correct.

14 Q And you didn't even cross-examine or attempt to
15 cross-examine Mr. Thomas with Ms. Roberson?

16 A You mean to bring Ms. Roberson in?

17 Q Yeah.

18 A I didn't like all of what Ms. Roberson had to say.
19 I didn't want to bring in another witness.

20 Q Did you consult with your client at all about this
21 or is this your -- your decision?

22 A We didn't specifically talk about that, no, but we
23 did speak about whether or not to bring witnesses.

24 Q You -- you didn't get the prior record of Jonathan
25 Thomas, did you?

Sherri H. Stoney - Redirect Examination by Mr. Puetz

1 A No.

2 Q And made no effort to get any certified
3 convictions, correct?

4 A No.

5 Q And today you want to play it off as I'm --

6 MR. SPENCER: Your Honor, I object to that
7 characterization.

8 BY MR. PUETZ:

9 Q Or you want to say that it's because of the fact --
10 I mean why didn't you call Tenisha Roberson?

11 A I didn't like everything she was -- she had to say.

12 MR. PUETZ: I don't have any further questions.

13 THE COURT: Recross, Mr. Spencer?

14 MR. SPENCER: Briefly, Your Honor.

15 MR. PUETZ: Before, I'm sorry. I -- I did think of
16 a couple of questions that I had meant to ask. So --

17 MR. SPENCER: That's fine, Your Honor.

18 THE COURT: Yes, sir, go right ahead.

19 BY MR. PUETZ:

20 Q The point of fact Tanika Campbell was trying to get
21 back at that club all her items of personal property she
22 said she had given to Joshua Forrest during their
23 relationship, wasn't she?

24 A I don't know what she was trying to do.

25 Q Well, she took his cap; she said that was something

Sherri H. Stoney - Redirect Examination by Mr. Puetz

1 she gave him, correct?

2 A That's what she said.

3 Q And she also was trying to get his shoes; I mean
4 the man was taking his shoes off out in the parking lot,
5 wasn't he? Because she wanted them back?

6 A That's what she said.

7 Q And when she came to -- strike that.

8 MR. PUETZ: That's all I have, Judge.

9 THE COURT: Thank you, Mr. Puetz.

10 Mr. Spencer.

11 MR. SPENCER: Your Honor, I have no further
12 questions.

13 THE COURT: Thank you. Thank you, Mr. Spencer.
14 Thank you very much.

15 MR. SPENCER: Your Honor, unfortunately since the
16 applicant hasn't testified yet, I'd just ask that we not
17 excuse Ms. Stoney yet.

18 THE WITNESS: I didn't figure I was going anywhere.

19 MR. PUETZ: Thank you. Thank you for your
20 cooperation.

21 Are we going to take a lunch break, Judge.

22 THE COURT: Until 1:30.

23 MR. PUETZ: Thank you.

24 THE COURT: I've got a doctor's appointment at 5
25 o'clock in Columbia.

1 MR. SPENCER: Yes, sir.

2 THE COURT: Let's be back at 1:30. Thank you very
3 much.

4 (A lunch recess was observed.)

5 THE COURT: All right. We're back on the record
6 now in State v. Forrest.

7 Mr. Puetz, you may call your next witness.

8 MR. PUETZ: Judge, before we get started, I just
9 wanted to invoke the rule of sequestration, I had forgotten
10 to do it this morning.

11 THE COURT: What -- what are we sequestering?

12 MR. PUETZ: If there are any other witnesses.

13 THE COURT: Do you have other witnesses?

14 MR. SPENCER: Your Honor, the only, there's a
15 possibility I will call Mr. Miller. I actually don't
16 anticipate doing that right now. I might recall Ms.
17 Stoney. You know, Mr. Forrest is about to get on the
18 stand, presumably and, and try and say there's all these
19 things that Ms. Stoney said or didn't say or, or he thought
20 that she did not do --

21 THE COURT: I --

22 MR. SPENCER: -- so I think she needs to be in the
23 courtroom.

24 THE COURT: Yes, I'll deny, I'm going to deny that
25 motion.

Joshua Forrest - Direct Examination by Mr. Puetz

1 MR. PUETZ: I take exception. Thank you.

2 THE COURT: Yes, sir, certainly.

3 All right. Mr. Forrest, if you'll come around and
4 be sworn for us please.

5 JOSHUA FORREST,

6 having been duly sworn, testified as follows:

7 THE CLERK: Have a seat and state your name for the
8 record.

9 THE WITNESS: My name is Joshua Forrest.

10 DIRECT EXAMINATION

11 BY MR. PUETZ:

12 Q And where are you currently being held at Joshua?

13 A Perry Correctional Institution.

14 Q And it is correct you're serving a life without
15 parole sentence; is that correct?

16 A Yes, sir.

17 Q And that is as a result of having pled guilty on
18 November 17th, 2005, unrepresented to one count of
19 attempted armed robbery; is that correct?

20 A Yes, sir.

21 Q And then on June 24th of 2009 having sat through
22 the second trial, you were convicted of murder of Mario
23 Redish, correct?

24 A Yes, sir.

25 Q Okay. Tell me, if you would, going back to

Joshua Forrest - Direct Examination by Mr. Puetz

1 December of 2005, how did you come to be in police custody?

2 How did you get into custody?

3 A I turned myself in to authorities.

4 Q And did you turn yourself in to Chuck Cain?

5 A Yes, I did.

6 Q And just pull yourself up forward.

7 MR. PUETZ: Madam Court Reporter, can you hear him.

8 THE COURT REPORTER: Yes.

9 BY MR. PUETZ:

10 Q Okay. You don't have to bend down and, and just
11 make sure you talk loud.

12 Did you, in fact, at some point in time shortly
13 after being arrested or excuse me, turning yourself in to
14 Chuck Cain, did he serve some warrants on you?

15 A At the conclusion of our interview, yes.

16 Q And were you -- have you ever had an opportunity or
17 have you ever testified about your meeting with Chuck Cain
18 over there at the Sheriff's Department back in 2005?

19 A No, I hadn't.

20 Q And regarding your, tell me what your recollection
21 or what you told Chuck Cain during your interview with him
22 when you went into custody?

23 A When I went into custody with Investigator Chuck
24 Cain, we met at Ascauga Lake Road in North Augusta at the
25 Sleep Inn Motel. I turned myself in to Investigator Cain

Joshua Forrest - Direct Examination by Mr. Puetz

1 and was transported here to the Aiken County Sheriff's
2 Department, where we went upstairs to the second level and
3 conducted a interview. At that time, he presented me with
4 a Miranda Right Paper, advising me what my rights was. I
5 initialed them all where he told me to initial at in the
6 box.

7 Q Okay.

8 A All right. He asked me was I at the Elks Club; did
9 I know Mario Redish; did I know Jonathan Thomas; and those
10 type of things. I answered him yes, truthfully, and he
11 told me, he was like Mario Redish died this morning in the
12 hospital and I was like all right. He said now, we got --
13 we interviewed some people that was at the hospital; that's
14 why you're in custody or we got people saying that you did
15 it and I was like all right. And he was like, at this time
16 do you wish to stop answering questions? Do you want an
17 attorney and I was like no?

18 So we want on with the, with the questions. He
19 asked me what took place at the Elks Club as far as the
20 incident and I told him the incident, about Tanika how she
21 was carrying on and threw the drink in my face, took my
22 base --

23 Q Just go slow. Go ahead.

24 A So I informed him about the assault that I received
25 from the people and that I, um left out of the club.

Joshua Forrest - Direct Examination by Mr. Puetz

1 Q Okay. Once you left out of the club, what, about
2 what time was it when you left out of the club? I mean was
3 it close to closing time? Or do you even remember?

4 A No, it wasn't close to -- yeah, I say it was about
5 45 minutes to closing.

6 Q And what was going on at the club, what's the name
7 of the club and where is it located?

8 A Elks Club and it's located on Reynolds Farm Road.

9 Q Okay. So when I called it Night or KC Club that
10 was wrong; it was known as the Elks Club --

11 A Yes.

12 Q -- correct?

13 A Yeah.

14 Q Is the place even in existence today?

15 A I've been gone 9 years, I wouldn't even know.

16 Q Okay. What -- how many people were in the club
17 approximately?

18 A Give or take about 150.

19 Q And music playing that sort of thing. What was the
20 lighting like?

21 A Just disco lights, no real lighting.

22 Q And what about outside?

23 A A few parking lot lights because it's a trailer
24 park that's located right behind the club so it's like a
25 few street lights straggled out throughout the place.

Joshua Forrest - Direct Examination by Mr. Puetz

1 Q Okay. And how did you get to the club?

2 A I got to the club with a female friend of mine by
3 the name of Cynthia Epps.

4 Q And when you got to the club, where did you go
5 inside the club?

6 A Yes, when I got dropped off at the club, yes, I
7 entered the club.

8 Q Where did you go inside though; did you sit at the
9 bar; did you go to the back; tell me what happened?

10 A Well, I went to the bar first.

11 Q And tell me what happened then?

12 A What --

13 Q What did you tell Chuck Cain?

14 A Well, I just told him that I went to the bar and I
15 got a drink and I relocated to the rear end of the club
16 where I came in contact with Tanika Roberson. Me and her
17 sat down and had a conversation. Tanika Campbell came back
18 there and told Tanika Roberson, don't be talking to me; she
19 don't like me no more; she can't stand me.

20 So Tanika Roberson instructed her that I can't help
21 your personal feelings towards Joshua; he ain't never did
22 nothing to me. So they had a few words, they carried on
23 and they left outside until -- when they left outside the
24 club, I left from the rear of the club again and returned
25 to the bar where I engaged in a conversation with another

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1 female named Monique.

2 At this time Tanika Campbell re-entered the club
3 seeing me talking to Monique. That's when she came up to
4 me and took my baseball cap off my head and said I wasn't
5 going to be in the club disrespecting her no more by
6 talking to these bitches.

7 Q Okay. And -- and so what happened after she took
8 your baseball cap and said she wasn't going to have you
9 showing that disrespect to her; where did she go to?

10 A She relocated to the rear of the club with Jonathan
11 Thomas, the victim, Mario Redish, Lamont Bing, Grover
12 Tyler -- I can't remember them all, but it was like twelve
13 people.

14 Q And were they -- did you come to the realization
15 that they were there together; they were a group?

16 A Oh, yes.

17 Q Okay. Now, how long did you stay at the bar
18 before -- well did you ever attempt to retrieve your
19 baseball cap?

20 A Yes, I did. When she took my baseball cap, the
21 females that I was talking to was like they're ready to go
22 and I said okay, we can leave; just let me go and get my
23 baseball cap. So I say it was probably like a 3 minute
24 differential between me getting up and going to the back
25 and going to get my baseball cap. So upon me going to

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1 retrieve my baseball cap, when I got within I say 2 feet of
2 Tanika Campbell, which I'll reflect to the transcript
3 shortly, she threw a drink in my face and assaulted me
4 again; slapped me like two or three times and I know, her
5 assaulted me, and I told her I ain't want no problems; let
6 me get my hat so I could go. So that's when Mario and
7 Jonathan came and intervened and pushed me --

8 Q When you say intervened, what do you mean by
9 intervened?

10 A Okay. They came and got between --

11 Q Did they stand in between you? Did they push you?
12 What?

13 A At first they came and stood in between us. But
14 when she kept carrying on and I kept trying to reach for my
15 hat so it became a pushing and shoving match and they told
16 me that I wasn't going to be putting my hands on Tanika.
17 And I like, I don't fight females anyway; I just wanted to
18 get my hat so I could go. I didn't want no problems.

19 So at that point, that's when Jonathan Thomas told
20 me, because we both live --

21 MR. SPENCER: Your Honor, I object on hearsay.

22 THE COURT: Is any of it in the record that you
23 know of?

24 MR. SPENCER: It's kind of -- kind of more or less
25 by allowing his statement actually right now, but --

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1 THE COURT: I'm going to allow it. You may
2 continue, Mr. Forrest.

3 THE WITNESS: -- so as I, as I retrieved my hat,
4 after the pushing and shoving match with me, Jonathan and
5 Mario, that's when Jonathan told me he going to send me to
6 church. So apparently, I thought for a second as I got my
7 hat and I'm walking off, I said the only way you send
8 somebody to church is in a casket. So I just kept on
9 walking.

10 I came in contact with Tiffany Grimes then who was
11 located at the end of the bar on my way out the club and
12 she touched me on my arm and she always called me her
13 brother. So she was like, Bro, you all right? And I said
14 yeah, I'm straight; I'm about to go. And I walked out of
15 the club and I went to go and get in my cousin's car. Upon
16 me going to the --

17 BY MR. PUETZ:

18 Q Now, correct if I'm -- you got dropped off there so
19 you didn't have a car to leave in, correct?

20 A No, I didn't.

21 Q Okay. Did you tell your cousin that you wanted a
22 ride with him? Or I mean, was it just is that how you
23 intended to get home?

24 A Oh, that was already discussed. I had talked to
25 him previously in my arrival to the club by cell phone. So

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1 he was already expecting me.

2 Q And so the group of twelve were in the back; yet,
3 you're walking out the front door. Tiffany Grimes asked if
4 you're all right; then what happened?

5 A I continued to exit the club. I walked outside.
6 Upon me going to the white Lincoln, I ain't see my cousin
7 and them and I was like, where they at; but unbeknownst
8 they was with the group of females already challenged so I
9 went on to go to the vehicle.

10 So I got to the front driver's side of the car and
11 I pulled on the door latch and the door was locked. I went
12 to the back of the car, it's a four-door, car so I went to
13 the back, the same side driver's side and touched the back
14 door, pulled the back door and it was unlocked. He had his
15 seat so far reclined I couldn't get in the car. So I had
16 to reach in to try to adjust the seat. Upon me reaching in
17 to adjust the seat, that's when I seen Tanika and the males
18 coming to the car where I'm at.

19 Okay. So when she came to the car and I seen that
20 she was actually coming to me, she came to me again, she
21 assaulted me again; she hit me in the face a couple more
22 times.

23 Q Open-handed, fists, what?

24 A Fists, with her fists. This time I grabbed her by
25 her shoulders, told Tanika to stop showing out, man, I

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1 don't want no problems and I pushed her away from me and I
2 pushed her into the arms of Jonathan Thomas and Mario and I
3 said Man, why don't y'all go ahead and get Meka and go
4 ahead about y'all's business. At that point in time,
5 that's when the victim, Mario Redish, swung and hit me.

6 Q And where -- where at did he hit you?

7 A He hit me in the face in the mouth.

8 Q And was -- was that with his fist?

9 A Yes.

10 Q Okay. What did you tell, I mean have you told all
11 this to Officer Cain?

12 A Yes.

13 Q And then what happened?

14 A Upon me and him starting to fight, that's when the
15 other males attacked me; they jumped on me.

16 Q Okay. What happened then? I mean what did you
17 tell Cain next?

18 A That's when I told him that after they was jumping
19 on me, then he asked me, he cut me off in the line of
20 questioning and he asked me -- he said, okay, well
21 apparently at this time some shots was fired. He said
22 shots was fired in the air or some shots was fired with
23 him -- at him and he asked me at that time did I do the
24 shooting.

25 Q Okay. And what did you tell them?

Joshua Forrest - Direct Examination by Mr. Puetz

- 1 A I told him at that time, no, I didn't.
- 2 Q And did -- okay. Go on then with your statement
- 3 that you made to Officer Cain?
- 4 A That was it.
- 5 Q Okay. So and did you, in fact, have or retrieve a
- 6 firearm and -- and did you fire shots into the air?
- 7 A Yes, I did.
- 8 Q And did you have or did you have a, a struggle with
- 9 Mario Redish and were shots fired during that?
- 10 A Yes, there was.
- 11 Q Okay. Tell me was the recording, I mean was Cain
- 12 making notes during your conversation with him or meeting
- 13 with him?
- 14 A Not Investigator Cain, Investigator Chuck Lyles.
- 15 Q And did any of this recording of your statement,
- 16 was it made available and used?
- 17 A It was made available at my trial, yes.
- 18 Q Okay. The recording?
- 19 A Yes.
- 20 Q Just not the video?
- 21 A The actual video was played at my trial.
- 22 Q Okay. Well that's what I'm saying. Did it pick it
- 23 all up?
- 24 A No, it didn't.
- 25 Q Okay. How much of it was missing?

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1 A Everything, the only thing I did, the only thing
2 the video showed me doing was signing my Miranda Rights and
3 then it just showed me sitting in the chair like this and
4 then it just goes blank.

5 Q Now, did you have a -- how many meetings do you
6 recall having with Sherri Stoney, who was appointed to
7 represent you in August of 2006?

8 A I had two meetings with her while I was housed in
9 Aiken County Detention Center. When she first got
10 appointed to be my lawyer and we met again right before I
11 went to trial.

12 Q And when you say right before we went to trial,
13 we're referring to the first trial?

14 A Yes.

15 Q Did you have any meetings with her at the Aiken
16 County Detention Center in between the first trial and the
17 second trial?

18 A No, sir, and I believe the reason being is because
19 Judge Early violated my probation, which caused me to go to
20 Department of Corrections. So they shipped me off to
21 prison, so I was no longer housed in Aiken County.

22 Q Okay. Did Ms. Stoney ever come to your institution
23 where you were housed at to see you?

24 A Just before my second trial.

25 Q And what -- how long a meeting was that and where

Joshua Forrest - Direct Examination by Mr. Puetz

1 were you at?

2 A I was at McCormick Correctional Institution at that
3 time and she came to McCormick Correctional Institution,
4 I'd say we met probably about an hour.

5 Q Okay. Let's go back to the -- when you met with
6 Ms. Stoney the first time, what was it that you recall
7 discussing with her?

8 A She was just basically asking me did I have a gun;
9 did I have any witnesses that I intended to call and things
10 of that nature.

11 Q And what did you tell her?

12 A I told her at that time, yes, I do got a few
13 witnesses that I would like to call.

14 Q And did y'all -- and did you give her a list of
15 them?

16 A I can't recall, but I do know that I reached out to
17 my witnesses independently.

18 Q And -- and who do you recall those witnesses being?

19 A One was Tiffany Grimes; one was supposed to be
20 James Forrest; but he ended up testifying for the State.

21 Q Okay.

22 A And that was it.

23 Q Just those two?

24 A And Marcie Coleman, Marcie Coleman.

25 Q And that was the lady who lives over in Georgia to

Joshua Forrest - Direct Examination by Mr. Puetz

1 whose house you went to; is that correct? Or apartment.

2 A Yes, sir.

3 Q Okay. Now at the Jackson v. Denno hearing that was
4 held in both trials, did you have any discussion with Ms.
5 Stoney about testifying?

6 A Yes.

7 Q And, and what was that discussion?

8 A She advised me, her exact words was, I advise you
9 not to testify because they're going to eat you alive. So
10 I didn't testify at either trial.

11 Q And when you -- when she said eat you alive, what
12 specifically was going to be the problem areas for you?

13 A I believe my criminal record would have come into
14 play and beings that I had just pled out to that charge in
15 Lexington County...

16 Q Yes, sir.

17 A I think that's why she didn't want me to testify.

18 Q And why did you -- that was at the Jackson v. Denno
19 hearing, correct?

20 A Uh-huh (affirmative response).

21 Q You've got to say yes or no.

22 A Yes, sir.

23 Q First of all -- let's go back. Did you tell --
24 were you a hundred percent honest with Cain?

25 A Yes.

Joshua Forrest - Direct Examination by Mr. Puetz

1 Q Okay. So in other words, these people that have
2 said you reached in and got a gun out; that's not correct?

3 A Yes, it is correct.

4 Q Okay. Did you tell Cain that you had gotten a
5 firearm?

6 A No, sir.

7 Q Okay. So --

8 A I left that part out, but we stopped, he had cut me
9 off with that line of questioning that I told you and then
10 I stopped.

11 Q Okay.

12 A And then he asked to speak with Investigator Lyles,
13 I signed it off. They went out and talked for a few
14 minutes, came back in and now the recording don't work no
15 more. So he never got me to make a written statement,
16 anything like that.

17 Q Well let -- let's talk about the strategy, if you
18 will, that your attorney has indicated that was being
19 employed. Were you ever told by her that you could do
20 inconsistent defenses?

21 A Be more specific.

22 Q In other words, did -- were you ever told by her
23 that you could go ahead and present a self-defense as well
24 as ask for voluntary manslaughter?

25 A No, sir.

Joshua Forrest - Direct Examination by Mr. Puetz

1 Q Did -- when was the first time that you saw the
2 video recordings of the statements by these various people
3 that were there at the club that were interviewed by law
4 enforcement?

5 A 2014 when you brought them to my institution when
6 me and you met and you played them for me.

7 Q And did the fact that you were able to see what
8 those folks had said outside the presence -- obviously not
9 at the trial. I mean you saw it at the trial, correct,
10 what the various witnesses were going to be testifying to
11 the first time and the second time?

12 A Well, no, I wouldn't have knew what they was going
13 to testify to because I never seen the tapes.

14 Q I understand, but once you had seen them testify at
15 the first trial, did you anticipate or did your attorney
16 indicate to you that she was going to cross-examine them
17 with their testimony at the second trial and compare it to
18 the first trial?

19 A No, she didn't.

20 Q What affect, if any, would it have made upon
21 your -- the way you wanted to approach the case had you
22 been able to see these recorded statement that had been
23 given to law enforcement?

24 A I probably would have ended -- more than likely, I
25 would a entered a guilty plea.

Joshua Forrest - Direct Examination by Mr. Puetz

1 Q And why is that?

2 A Because she told me that my chances of going to
3 trial and testifying -- with me testifying that my
4 background was going to become an issue. So once she told
5 me that, they kind of planted the seed in my mind that I
6 would have lost anyway. So I would have just went on ahead
7 and pled guilty to avoid the life sentence.

8 Q Do you -- when did -- what did she tell you when
9 she came to the institution?

10 A For the second trial, she came to see me. She
11 said -- went about, she told me about the Mario Melendez
12 brothers, the twins and all that; about how second trials
13 are harder the second time around. And she was right, I
14 did tell her, well I got faith in you, you know, we had a
15 mistrial the first time; we might can have it again, but
16 she was like, Joshua, they had a circle this big the first
17 time. She was like, now they circle going to be this big
18 this time because they not going to use all of they
19 witnesses. They going to cross their T's and dot their
20 I's.

21 Q And -- and did -- when did you learn that a deal
22 had been proposed?

23 A I would say a month before I went to trial. I was
24 scheduled to go to trial earlier than what I did, so SCDC
25 transported me down here to the courthouse. I came and sat

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1 in the jury box over there on the right hand side and when
2 I got here, Ms. Stoney walked up to me and had a
3 manslaughter plea sheet printed out for 20 years and she
4 was like, they're offering you 20 years; will you take it?

5 Q And what did you tell her?

6 A I told her at that time, no, I wouldn't take 20
7 years.

8 Q Did you, at that point in time, know what the
9 consequences were going to be if you went to trial and
10 lost?

11 A No, sir, not at that time.

12 Q When did you learn that an LWOP was going to be the
13 outcome if you got convicted?

14 A Okay. Well, let me back up just for a second.

15 There was two pleas offered. She actually came to
16 McCormick the first time and offered me 30 years and I
17 declined the 30 years. So that's when they pulled me to
18 court and offered me the 20 years.

19 Okay. Upon me declining the 20 years, I went back
20 to SCDC. I say 15 to 20 days later, that's when the
21 solicitor's office came down to McCormick and told me then
22 that they was going to seek the life sentence without
23 parole if I proceeded to go to trial.

24 Q Okay. So am I correct that -- that both plea
25 offers that had been presented to you by your attorney were

Joshua Forrest - Direct Examination by Mr. Puetz

1 done prior to you knowing that LWOP was going to be the
2 potential outcome?

3 A Yes, because they didn't seek a life sentence
4 without parole at the first trial, so I didn't know nothing
5 about that.

6 Q Okay. Once the solicitor's office came back -- who
7 was it from the solicitor's office that came and I guess,
8 what did they do? Serve a notice on you?

9 A Yes, they served a notice on me and it was like a
10 sheet of paper that I remember I had to sign.

11 Q Do you remember who it was that came; was it David
12 Miller or was it Steve Kodman or was it both of them?

13 A No, sir, it was a female.

14 Q A female?

15 A Yes, sir.

16 Q Can you describe her?

17 A I want to say a little shorter than me, brown hair,
18 medium built.

19 Q Okay. And she, she indicated that she was from the
20 Solicitor's Office of Aiken County?

21 A Yes, we did this in front of Sargent Tutt at
22 McCormick Correctional Institution because he had to be a
23 witness of it. So he was there at the time because they
24 had to page me to come up front to operations for us to
25 have this meeting and he was the witness that she was going

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1 to need while she was serving -- seeking the life sentence
2 without parole on me.

3 Q Now, did you, at any point in time, after -- to the
4 best of your recollection, when did you arrive here at the
5 Aiken County Detention Center during the month of June of
6 '09?

7 A I didn't arrive to Aiken County Detention Center
8 because due to the fact of McCormick being so close to
9 Aiken County, I just come straight from my prison here. I
10 don't have to go to the county jail. So I came straight
11 from my institution to the courthouse.

12 Q Okay. So other than that one meeting where she
13 talked to you about a plea for 30 years, you never had any
14 more conversation with her except when you came her that
15 one day and they presented you with the 20 years, correct?

16 A Yes, sir.

17 Q And you sat right there?

18 A Yes, sir.

19 Q Did you have any conversation with Ms. Stoney
20 out -- outside the courtroom?

21 A No, sir.

22 Q How long was your "conversation" with her on the
23 day that you were sitting here in the courtroom going over
24 this 20 year deal?

25 A 30 seconds. She got the paper from the solicitor

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1 standing right over there where that podium is at and she
2 walked right there, sat it on the bench, presented it to me
3 and my mother was sitting on that first row where Officer
4 Blocker sitting at now. She presented the paper, I looked
5 down at it and she said, Joshua, they offering you 20
6 years. I looked at the paper; I said, I don't want it.
7 She then returned to the solicitor, gave him the paper and
8 I guess informed him that I declined 20 years and then he
9 sent me back to department of corrections the same day
10 right after I declined.

11 Q Okay. Did Ms. Stoney and you have any
12 discussions -- well on the day of trial, the second trial,
13 which --

14 MR. PUETZ: Give me just one second, Judge.

15 BY MR. PUETZ:

16 Q The trial started on Monday, June 22nd of 2009; is
17 that correct?

18 A Yes, sir.

19 Q And is it -- so am I understanding you correctly
20 that you came straight from McCormick to this courtroom?

21 A Yes, sir.

22 Q Did you have any opportunity or at all to discuss
23 any more about the plea deal?

24 A No, sir.

25 Q Did Ms. Stoney, in any way, shape or form, bring up

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1 the issue?

2 A No, sir.

3 Q Did you bring up the issue?

4 A No, sir.

5 Q Why not?

6 A I guess with me being in it to the law at the time,
7 which you know that's really probably no excuse at this
8 point, but by me being in it to the law at the time, I felt
9 like once I declined the plea that it was no longer on the
10 table. I felt like I was locked for trial once I declined
11 the plea and said okay, I'm going to go to trial. I didn't
12 know that I could still like back out of trial and tell
13 them that I wanted to plea or anything like that.

14 Q At any point in time, do you have -- during that
15 second trial, that is -- well, let me ask you this. Each
16 evening when you'd finish up, did they take you back to
17 McCormick?

18 A During my second trial?

19 Q Yeah, or would you stay over here at the Aiken
20 County Detention Center?

21 A I can't recall, but more than likely I went back to
22 SCDC because like I said, we didn't, they didn't check me
23 into the county jail. We came straight to the courthouse.

24 Q Okay. Do you recall having any ability to meet
25 with Ms. Stoney at all in the evenings to discuss

Joshua Forrest - Direct Examination by Mr. Puetz

1 cross-examination, any of those things?

2 A No, sir.

3 Q And did you, tell me what you told Ms. Stoney about
4 the relationship between Jonathan Thomas and your family,
5 James Forrest and yourself?

6 A Well, my family Forrest and Forrest and the Thomas
7 family due to the incident that occurred in '91, we never
8 got along, but during the time in '91, me and Jonathan was
9 like 11 and 12 because he's like a year older than me. So
10 we was like 11 and 12. So when I mentioned it to Ms.
11 Stoney to point out to the jury that those guys had revenge
12 in their eyes towards me that night and she asked him and
13 he said no, I find it hard to believe that your brother got
14 killed and you don't remember it and you sit right here on
15 the stand and say no, I don't remember that.

16 Q Well -- what actually -- was your brother, James
17 Forrest, killed Louis Thomas?

18 A Yes, that's Jonathan's older brother.

19 Q And how much time frame in between the fight that
20 they had and his death, that is Louis Thomas, how many days
21 was there in between the fight and his death?

22 A He died like on the third day. He had fluid on his
23 brain. He had, if I'm not mistaken, he had a plate on his
24 head, in his brain and he had ended up getting fluid on the
25 brain and he passed away.

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1 Q And was your brother ultimately charged with not
2 only assault and battery of a high and aggravated nature,
3 but also voluntary manslaughter?

4 A Yes, sir; charged and convicted.

5 Q Did he -- okay. And you pointed that out to Ms?
6 Stoney?

7 A Yes, I did.

8 Q Now, tell me what it is that why you feel as though
9 you should have had a self-defense strategy?

10 A Due to the facts and the circumstances around
11 involving my case. The South Carolina Supreme Court looks
12 at a case like State v. Dickie and they look at four
13 elements of self-defense and the first element is without
14 bringing on conflict.

15 The second element is retreating and the third
16 element is again trying to flee and I met all those
17 elements. I was without bringing on conflict due to the
18 record. I was assaulted, I received my baseball cap, I
19 left the club; that was my first retreat. When I got to
20 the car, I tried to get in the car, which I reflect to the
21 record in a minute; they wouldn't let me get in the car.
22 They attacked me and was beating me.

23 Now. I always knew where a gun was at in the car.
24 So as they was beating me, I feared for my life. Jonathan
25 had just told me prior to that in the club that he was

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1 going to send me to church. So it was like, when they
2 started beating on me and you would have really had to be
3 there to see the look in they eyes and, and on they face as
4 when anger and alcohol consumes a person. So in order for
5 me to save myself, I had to strike the fatal blow which is
6 State v. Dickie say I don't have to wait for them to kill
7 me or cause bodily harm to me before I strike the fatal
8 blow.

9 Q Did you discuss this with -- or did Ms. Stoney and
10 you have any discussion about self-defense as a viable
11 defense even though it might have been inconsistent with
12 the fact of your statement with Cain?

13 A No, sir, we never discussed self-defense. If we
14 had a discussed self-defense and she could have presented
15 with me case law at the time to show me, I would have pled
16 out to self-defense.

17 Q Do you have any recollection of her begging you to
18 take a plea?

19 A Only once and that was, that was the 30-year plea.
20 It wasn't the 20-year plea, it was the 30-year plea and she
21 was like take the 30; take the 30.

22 Q Okay. And did you ask her what the basis for her
23 recommendation for that was?

24 A That's -- I believe that's at the time that she
25 informed me of when I told you about she say the circle was

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1 this big and now it's going to be this little and it's
2 going to be harder the second time around and most lawyers
3 don't win trials the second time around of that nature.

4 Q Were you ever made aware of the fact that some
5 additional testing had been done to the three shell casings
6 that were recovered out in the parking lot in between the
7 first trial and second trial?

8 A No, sir.

9 Q And in fact there was -- correct me if I'm wrong --
10 there were some additional folks from SLED who did analysis
11 and were able to show that those third shell casings were
12 all fired from the same weapon; is that not correct?

13 A Yes.

14 Q And did -- did Ms. Stoney ever give you a copy of
15 the discovery that she had received from David Mauldin?

16 A No, she didn't.

17 Q So you didn't get a paper copy of the discovery,
18 correct?

19 A No, and I would say the reason being is because at
20 that point in time, I went through two different attorneys.
21 So I don't know if she assumed that David Mauldin gave it
22 to me, but she never checked to see if I had it and she
23 never gave it to me.

24 Q Okay. You didn't have it; is that correct?

25 A No, I didn't have it.

Joshua Forrest - Direct Examination by Mr. Puetz

1 Q You didn't have and were able to -- you did have
2 access to or listen to the recorded statements of Tanika
3 Bussey, correct?

4 A No.

5 Q Tanika Roberson, correct?

6 A No.

7 Q You were not provided with a copy and/or had the
8 ability to listen to 911 and dispatch calls, correct?

9 A No, sir.

10 Q And you were not able to listen to and/or see prior
11 to the first trial, the recording that Cain made, correct?

12 A Yes, sir, but I didn't even see it at trial. I
13 didn't see it; the jury seen it.

14 MR. SPENCER: What recording is that?

15 MR. PUETZ: The recording that Cain made of Joshua
16 Forrest the beginning and the ending.

17 THE WITNESS: That would be the recording of when I
18 turned myself in?

19 BY MR. PUETZ:

20 Q Right?

21 A He recorded the interview that only showed me
22 signing my Miranda Rights and then it just completely
23 stopped. And when that trial -- when they introduced it at
24 trial, I wasn't able to see it; they turned the T.V.
25 towards the jury and they played it and Ms. Stoney walked

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1 around and she watched and she came back to the table and
2 informed me of what the video was. She said Joshua, they
3 just showed you signing your Miranda Rights and just
4 sitting in the chair and then it don't work.

5 Q And did you see the recording of Tanika Roberson?

6 A No, sir.

7 Q Did you see the recording of Gartrell, Joseph
8 Gartrell's two statements?

9 A No, sir.

10 Q Did you see the recording of James Forrest
11 statement 1, 2, and 3?

12 A No, sir.

13 Q And you didn't see any of those until I came and
14 saw you at South Carolina Department of Corrections either
15 in 2013 or 2014; is that correct?

16 A Yes, sir.

17 Q And did -- you never saw the recorded statement of
18 Marcie Coleman; is that correct?

19 A No, sir.

20 Q Now, what kind of -- did you have any input as to
21 how you got appointed Ms. Stoney?

22 A No, sir.

23 Q And they did do -- was there any, did you see or
24 have the access to the crime lab reports from the gunshot
25 residue kit and the DNA testing that was performed on the

Joshua Forrest - Direct Examination by Mr. Puetz

1 three sections of material removed from James Forrest's
2 car?

3 A No, sir.

4 Q And I believe -- I mean did you learn during the,
5 the first trial that those things were all negative, that
6 is the gunshot residue testing on your hands and the
7 results of the tests that were performed on the three
8 swatches from the Lincoln?

9 A The gunshot residue?

10 Q Yes.

11 A It was pending at my preliminary hearing. So I
12 could say I kind of knew that that wasn't there because it
13 was already pending and my preliminary hearing was like
14 January.

15 Q Okay. I'm talking about though, did Ms. Stoney
16 give you or tell you what the results of these scientific
17 tests were before either trial?

18 A Oh, no, sir. I learned -- I learned of those
19 independent by myself in 2011 because I wrote SLED under
20 the Freedom of Information Act and that's what I filed and
21 they wrote me back and charged me \$250 to obtain that. So
22 I just in the last few years came up with that knowledge
23 myself because SLED sent me everything. I had to buy it,
24 but they sent it to me.

25 Q Okay. And tell me how long had you been in jail --

Joshua Forrest - Direct Examination by Mr. Puetz

1 this reference that Cain made to incarceration; how long
2 had you been in jail?

3 A See it's hard to say because I done been in and out
4 of jail; not that it's funny, but he would of had to say
5 which time. He just blurted out that I, I had already been
6 incarcerated.

7 Q Okay.

8 A And with that issue, I would have to say
9 ineffectiveness assistance of counsel, failure to object to
10 the prior bad act testimony and I would say, you know to
11 establish ineffectiveness assistance of counsel, at the
12 post-conviction relief --

13 THE COURT: Wait just a minute. Is there a
14 question on the table?

15 BY MR. PUETZ:

16 Q Yeah. Well, what was -- I mean, what were your --
17 I mean when you heard them say, tell this jury that you had
18 been incarcerated, did you know at the time that they were
19 putting your character, or talking about your character?

20 A No, sir.

21 Q Did you think your attorney should have objected?
22 Did you want her to object? Did you have any conversation
23 with her about it?

24 A No, sir.

25 Q After you got in prison and did some research, did

Joshua Forrest - Direct Examination by Mr. Puetz

1 you learn that that's putting your character at issue?

2 A Yes, sir, that would be Satterwhite v. State, sir.
3 My character can't come into issue if I'm not testifying.

4 Q Did Ms. Stoney give you the impression that your
5 character was going to be put into issue if you testified
6 or were you told that they were simply going to be able to
7 introduce any convictions to impeach your testimony?

8 A All the above.

9 Q Okay. And why didn't you -- is that the reason why
10 you didn't testify; you just didn't want the jury to hear
11 that you'd pled guilty the 2 weeks before you got charged?

12 A That and under advisement of my attorney, yes, I
13 chose not to testify. She advised me of that.

14 Q What did she advise you that it was going to go to
15 whether or not you were believable or was it going to go
16 toward showing you to be a bad person who's just acting in
17 conformity with his character?

18 A Showing that I was a bad person.

19 Q Now, let me ask you one other thing. Did -- who
20 grabbed who? Did you grab Mario Redish or did Mario Redish
21 grab you?

22 A Mario Redish grabbed me. At no time during this
23 altercation was I -- was I aggressive. At no time, even
24 when they attacked me, I didn't fight back. I still was
25 trying to get in the car and the record will reflect by

Joshua Forrest - Direct Examination by Mr. Puetz

1 State testimony that I was still trying to get in the car.
2 I had one foot in the car and I was still trying to get in
3 the car. I never even intended on getting the gun until I
4 heard Jonathan was like watch out, I'm about to kill this
5 nigger. And that's when I got, when I grabbed the firearm
6 and I shot in the air and asked them to leave me alone and
7 Tanika ignored my assault and attacked me again. At that
8 point in time, I pushed her away. Mario left and walked to
9 the front of the car and Mario and Jonathan came back and
10 took me as I was trying to get in the car.

11 Q They came back to -- which part of the car and
12 where at?

13 A I'm at the -- I'm at the back side of the car on
14 the passenger side.

15 Q Okay. And --

16 A On the driver's side, correct. On the driver's
17 side.

18 Q They confronted you there and is that where y'all
19 were -- when Redish grabbed you?

20 A Yes, he grabbed me and -- and he pulled me up out
21 of the car and as he was pulling me up out of the car,
22 that's when Jonathan was hitting me and that's when I just
23 squeezed the trigger.

24 Q And let me ask you this: How much -- how long were
25 you at the club that evening, Jonathan -- or Joshua?

Joshua Forrest - Direct Examination by Mr. Puetz

1 A Before this incident occurred?

2 Q Yeah.

3 A An hour.

4 Q And what -- how much had you had to drink?

5 A I had one drink, but I didn't even consume it all.

6 Q And were those folks the gang of twelve, were they
7 there before you got there?

8 A Yes.

9 Q And did you observe them drinking?

10 A Yes.

11 Q And let me ask you this. What does MOB stand for?

12 A To my knowledge, that mean Member of the Bloods.

13 Q And that's -- that's what --

14 MR. SPENCER: Your Honor --

15 BY MR. PUETZ:

16 Q -- Mario Redish had tatooed --

17 THE COURT: This isn't relevant. What's the
18 relevancy?

19 MR. PUETZ: I mean his belief if you're going to
20 submit a self-defense, the fact that a guy's a member of
21 the bloods, that -- that to me would be relevant, Judge.
22 His mindset.

23 THE COURT: Mr. Spencer? Mr. Spencer?

24 MR. SPENCER: I mean if that's his story, I guess
25 it's relevant.

Joshua Forrest - Direct Examination by Mr. Puetz

1 MR. PUETZ: It's not a story. Judge, I'm going to
2 move to introduce then these photographs and make a color
3 copy of them. They were given to me from the solicitor's
4 office.

5 BY MR. PUETZ:

6 Q Did you ever get colored copies of or legible
7 copies from anybody of -- of the autopsy?

8 A No, sir.

9 Q And is it or is it not true that Mario had MOB
10 tattooed on one of his wrists?

11 A Yes.

12 Q And what is -- did you ask Ms. Stoney to go ahead
13 and do some investigation about Mario Redish, i.e. his
14 propensity for violence?

15 A No, I didn't, and I believed that being an
16 attorney, that she would do that.

17 Q What about the issue -- did you, Joshua, even know
18 you had a right to challenge the way your race has -- is
19 being stricken or not stricken from the jury that
20 eventually hears your case?

21 A No, sir.

22 Q Have you, in other words the Batson challenge, did
23 Ms. Stoney ever discuss that with you?

24 A No, sir.

25 Q And now, admittedly now, both judges did, during

Joshua Forrest - Cross-Examination by Mr. Spencer

1 the trial, I believe, ask you if you wanted to testify, did
2 they not?

3 A Yes, sir.

4 Q And your response to each of them was no, I didn't
5 and I just want to know even though they asked you, that's
6 your decision solely, what you were basing that decision
7 on?

8 A The advice of my attorney.

9 Q i.e. that they were going to learn that you'd pled
10 guilty and, therefore, you're a bad person?

11 A Yes, sir.

12 Q Did you ever sign -- were you presented with a
13 document by anybody that said, Hey, I'm not taking the deal
14 or I'm going to roll the dice on the life without parole?

15 A Say that again?

16 Q I said did anybody ask you to sign a document
17 saying I'm rejecting pleas; I'm going to take a shot at
18 this life without parole?

19 A No, sir.

20 Q Answer any questions that they State may have.

21 THE COURT: Thank you, Mr. Puetz.

22 Mr. Spencer.

23 CROSS-EXAMINATION

24 BY MR. SPENCER:

25 Q Now, Ms. Stoney did tell you about the summertime

Joshua Forrest - Cross-Examination by Mr. Spencer

1 juries, didn't she?

2 A No, sir.

3 Q She told you how during the summertime you have a
4 lot of teachers in the jury pool and that's one reason it's
5 going to be harder to -- that was one reason it was more
6 likely you were going to get convicted the second time?

7 A No, sir.

8 Q And you -- am I understanding your testimony today
9 is she didn't really try and convince you to take the
10 20-year deal?

11 A No, sir, she didn't.

12 Q She didn't; your testimony is it was only, she
13 talked to you about it for what, 30 seconds you said?

14 A Yes, sir.

15 Q And that was it?

16 A Yes, sir.

17 Q And so her testimony that she was --

18 MR. PUETZ: I would object. You cannot pit one
19 against the other.

20 MR. SPENCER: No, I'm not going to ask him her
21 state of mind.

22 BY MR. SPENCER:

23 Q I'm just saying if she said that he -- she begged
24 you to take the deal; that's not true?

25 A No, the only deal she asked me, try to push the

Joshua Forrest - Cross-Examination by Mr. Spencer

1 issue on me really to take it -- again, I was at McCormick
2 Correctional Institution; that was the 30-year plea she
3 asked me to take. I rejected that plea.

4 Okay. They brought me down here to Aiken County as
5 if I was going to go to trial. When I came in the
6 courtroom, that's when she gave me the 20-year sentence
7 sheet, brought it over there, put it in front of me and
8 said, Joshua, they offered you 20. I said I don't want it,
9 she took it back to the solicitor, I returned to the
10 Department of Corrections.

11 Q Okay.

12 A And went to trial.

13 Q So -- so you told her you didn't want the 20-year
14 deal?

15 A Uh-huh (affirmative response).

16 Q Okay. But now what you're saying is in retrospect,
17 you would have taken that 20-year deal?

18 A I would say if I had at that time, if I had time to
19 think about it, yes; if I had had more time.

20 Q You would have gotten up in front of a judge and
21 said yes, I'm guilty?

22 A Yes.

23 Q Okay. But you never brought up that 20-year deal
24 again at any point before or during the trial?

25 A No, again because like I said earlier, by me being

Joshua Forrest - Cross-Examination by Mr. Spencer

1 ignorant to the law, when I rejected the plea deal, I
2 thought I was locked to go to trial; I never knew I could
3 back out of the trial and still accept the plea deal or
4 anything like that.

5 Q All right. But you don't know whether or not that
6 20-year offer was still open during the trial, do you?

7 A No, sir.

8 Q So the solicitor might not have gone along with it
9 by the time you're at trial.

10 A Exactly.

11 Q All right. And of course you sat through the first
12 trial, right?

13 A Yes.

14 Q And so you had the opportunity to -- and Ms.
15 Bussey, that's also Ms. Campbell, right, the same person?

16 A Correct.

17 Q Okay. You saw her testify at the first trial,
18 correct?

19 A Yes.

20 Q And you saw Ms. Roberson testify at the first
21 trial?

22 A Yes.

23 Q Okay. And James Forrest, your cousin --

24 A Yes.

25 Q -- testified at the first trial?

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1 A Yes.

2 Q Okay. And is Tanika Grimes the witness that Ms.
3 Stoney called at the first trial?

4 A Tiffany Grimes, yes.

5 Q Tiffany Grimes, thank you. Okay. So you had seen
6 them all testify by the time you had this 20-year offer on
7 the table?

8 A No, because they only testified at my first trial.
9 They didn't testify at the second trial.

10 The 20, yes, you're correct, yeah, 20 years was
11 offered between trials, I'm sorry.

12 Q Okay. Now I want to ask you, I'm sure I had a note
13 here about the gunshot residue test that you said you never
14 saw. They testified about the gunshot residue test at
15 trial; didn't they?

16 A Yes.

17 Q And in terms -- and you mentioned they took a
18 gunshot residue sample from you?

19 A Yes.

20 Q Okay. The shooting occurred around 2:00, 2:30 in
21 the morning; is that correct?

22 A Maybe 3:00.

23 Q Okay. And what time did you turn yourself over to
24 the police?

25 A I say between 2:00 and 4:00 p.m. the same day.

Joshua Forrest - Cross-Examination by Mr. Spencer

1 Q So about 12 hours or later?

2 A Yes.

3 Q Okay. So it'd been more than 6 hours, right?

4 A Yes.

5 Q And in fact SLED testified that they won't test GCR
6 samples taken more than 12 years, excuse me, 12 hours or
7 more than 6 hours after a shooting; is that right?

8 A They testified to that, but what they did was they
9 testified my -- I mean they tested my clothes too because I
10 turned my clothes over to Investigator Cain.

11 Q Okay.

12 A And they had blood on it and being the fact that we
13 was locked up in a bear hug, they believed that it was
14 going to be shot gunshot powder residue on my clothes too.
15 So they tested my clothes. So I don't see why they would
16 test my clothes after 12 hours and then not test my hand.

17 Q So they tested your clothes, but they didn't test
18 your hands?

19 A So they say.

20 THE COURT: No that's a kind of a double question.
21 They tested your clothes so they say?

22 THE WITNESS: Yes, sir, they said that they tested
23 my clothes.

24 THE COURT: Did they take gunpowder -- did they
25 take samples from your hand?

Joshua Forrest - Cross-Examination by Mr. Spencer

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. I just wanted to get that
3 straight.

4 BY MR. SPENCER:

5 Q They said they didn't test the gun samples on your
6 hands, correct?

7 A Right.

8 Q Okay.

9 THE COURT: Thank you.

10 MR. SPENCER: I apologize, Your Honor?

11 THE COURT: That's quite all right.

12 BY MR. SPENCER:

13 Q All right. I just kind of wanted to go through
14 your statement that you gave to Investigator Cain.

15 And what you told them initially was that, that you
16 got in an altercation in the club with Ms. Campbell, right?

17 A Yes, sir.

18 Q Okay. And Joshua or excuse me, Jonathan Thomas and
19 the victim intervened?

20 A Yes, sir.

21 Q Okay. But then you left the club?

22 A Yes, sir.

23 Q Okay. And that's when you went out to your car?

24 A Not my car, but my cousin's car.

25 Q Excuse me, your cousin's car and your cousin's car

Joshua Forrest - Cross-Examination by Mr. Spencer

1 is a white Lincoln?

2 A Yes, sir.

3 Q And some of the witnesses at trial got confused as
4 to whether that was a black car or a white car?

5 A Yes, sir.

6 Q It was a white Lincoln, right?

7 A Yes, sir.

8 Q Okay. And that would be the white Lincoln that you
9 left --

10 A Yes, sir.

11 Q -- the scene from as soon as you could?

12 A Yes, sir.

13 Q Okay. And then when they came up to you, Jonathan
14 and the victim came up to you outside the club, that's when
15 they attacked you?

16 A They came -- they had pushed me outside of the club
17 along with Tanika Campbell. Tanika Campbell was the head
18 of us all; she was the first one to strike the blow against
19 me; and then they --

20 Q She was the instigator?

21 A Right.

22 Q You're saying she struck you outside of the club
23 too?

24 A Yes, at the car.

25 Q Okay. All right. And when did you say you grabbed

Joshua Forrest - Cross-Examination by Mr. Spencer

- 1 the gun?
- 2 A When I was getting -- I was turned trying to get in
- 3 the car.
- 4 Q Okay.
- 5 A And I always knew that it's a gun that's kept up
- 6 under the driver's seat and I was on the back passenger
- 7 side and I was still trying to climb in the car.
- 8 Q Was that before or after Ms. Campbell hit you?
- 9 A That was before, the first time. See she -- the
- 10 first time she eventually struck me, I didn't have a
- 11 firearm in my hand.
- 12 Q But that's there in the club?
- 13 A No, this is outside too.
- 14 Q Oh, so she strikes you outside the club, then you
- 15 go to the car?
- 16 A No, I'm already at the car. The door open, I'm
- 17 trying to get in the car and leave. I can't get in because
- 18 the driver's seat is reclined.
- 19 Q Okay.
- 20 A So I'm trying to undo the seat; that's when she
- 21 came outside, she hit me then and --
- 22 Q Okay.
- 23 A -- and that's when I grabbed her and pushed her
- 24 into them and I told them to go ahead and get her and
- 25 leave, I don't want no problems.

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1 Q All right.

2 A Then they started -- they was jumping on me again
3 and I was steadily trying to get in the car. Then once I
4 heard Jonathan say watch out, I'm going to kill this
5 nigger; that's when I reached up under the seat and grabbed
6 the gun.

7 Q You didn't mention that before; you didn't say that
8 Jonathan said I'm going to kill this nigger?

9 A Yes, I did.

10 Q You didn't say that in your direct testimony?

11 A Yes, I did.

12 MR. PUETZ: Judge, I'm going to ask that Counsel
13 not to argue with him. I object.

14 THE WITNESS: It's in the record; she got it.

15 BY MR. SPENCER:

16 Q Let the record reflect -- Okay. So that's when
17 you -- that's when you grabbed the gun?

18 A Yes.

19 Q Okay. So -- because you heard Jonathan say I'm
20 going to kill this -- kill this guy or something like that,
21 right?

22 A It wasn't kill the guy; you can say it.

23 Q Kill the nigger, right?

24 A Yeah.

25 Q Okay. You hear that, okay. So you, so that's when

Joshua Forrest - Cross-Examination by Mr. Spencer

1 you decide to grab the gun?

2 A Yes, it was at that point.

3 Q Okay.

4 A That's when I really came afraid for my life at
5 that point and I still gave off warning shots for them to
6 leave me alone. And Tanika still ignored my shots and they
7 still continued to attack me and beat on me.

8 Q How many warning shots did you fire?

9 A I let off two warning shots.

10 Q Okay. Where did you leave them off -- where did
11 you -- where did you fire them? Which way did you fire the
12 shots?

13 A In the air.

14 Q Up in the air? Okay, so if somebody said in the
15 ground that's not right?

16 A No.

17 Q It should be up in the air?

18 A Yes.

19 Q But if they said that you fired warning shots;
20 that's true?

21 A Yes.

22 Q Okay. Okay. So what did they do? You fired off
23 the warning shots, what did they do then?

24 A They -- they backed up momentarily and then I guess
25 by Tanika knowing that we'd been in a relationship or

Joshua Forrest - Cross-Examination by Mr. Spencer

1 whatever that I would never really bring harm to her like
2 that, that's when she assaulted me again.

3 Q So Ms. Campbell comes up to you and assaults you
4 while you've got a gun?

5 A Yes.

6 Q Okay. And what do you do?

7 A I didn't do nothing to her.

8 Q Okay. Tell her to go away?

9 A Yes, I told her to go ahead home.

10 Q Okay. All right. So what happens next?

11 A It was faster than what it appears to be with me
12 and you just talking about it. Like you would have had to
13 be there, like, you know, they pulled me out the car. I
14 shot two times in the air; she backed up momentarily,
15 attacked me again and as soon as she hit me again, that's
16 when all them was back on me again.

17 Q Okay. So they were all back on you; who's on you?

18 A It's like twelve people fighting.

19 Q Twelve people are on you at once?

20 A Yes.

21 Q Okay. So there's twelve people on top of you?

22 A Yes.

23 Q And you've got the gun?

24 A Yes.

25 Q Okay. So -- so what happens next?

Joshua Forrest - Cross-Examination by Mr. Spencer

1 A What happens next is Mario -- at that point in
2 time, is actually the closest one to me that I can actually
3 grab hold of. So --

4 Q Well, see when you say twelve people are pouncing
5 on you, only one of them actually was within reach?

6 A No, I mean they was on me, but it's like he right
7 here; you understand what I'm saying, like the one I'm most
8 focusing on because this is where the fight initiated at,
9 but I could still feel people kicking me and hitting me all
10 from the side and in the back. It's not a one on one --

11 Q So you were getting kicked in the side and the back
12 and everything?

13 A Yeah, it's not a one-on-one fight; it's like me and
14 him right here and then you got other people intervening
15 that's fighting me; that's hitting me.

16 Q How do you know how many people there were, I mean,
17 you know?

18 A Because I testified -- but I seen twelve of them
19 come to the car; all twelve of them run together and I can
20 reflect to the record of testimony of Tanika Roberson in
21 the first trial transcript, page 119, Ms. Stoney asked her,
22 Joshua left out the door and y'all followed after him; how
23 many of y'all followed him out of the door? On trial
24 transcript page 120, she said, How many people came up
25 right next to Tanika? She said it was about ten to fifteen

Joshua Forrest - Cross-Examination by Mr. Spencer

1 people.

2 Q And that's people leaving the club?

3 A No, that's people that's with Tanika, who was
4 assaulting me.

5 Q All right. So you got all these people attacking
6 you; you got people hitting you and you grab for somebody
7 and that somebody is Mario?

8 A Yes.

9 Q Anybody else?

10 A No.

11 Q What do you do with your gun?

12 A What am I doing with the gun --

13 Q Yeah.

14 A -- at the time? I still got the gun in my hand,
15 but down by my side like right up against my leg, but I
16 still -- I got it like this, but it's down; it's towards
17 the ground.

18 Q You got it in your right hand?

19 A Yes.

20 Q Okay. So you got your gun; what did you do with
21 Mario?

22 A What did I do with Mario then?

23 Q Yes.

24 A I just -- I just grabbed his shirt.

25 Q Okay. And you grabbed his shirt with the left

Joshua Forrest - Cross-Examination by Mr. Spencer

- 1 hand?
- 2 A Yeah, I grabbed his shirt with my left hand.
- 3 Q And you got your gun in your other hand?
- 4 A In my right hand.
- 5 Q Okay. What are the other guys doing at that point?
- 6 A They -- they still fighting.
- 7 Q They're still fighting you; what are they, hitting
- 8 you?
- 9 A Yes.
- 10 Q Are they hitting you in the head?
- 11 A They hitting me in the head, the back, the legs,
- 12 anywhere they could get a piece of my body. This is an all
- 13 full-fledged assault here that we talking about.
- 14 Q They're -- all these people are assaulting you and
- 15 you're still standing up?
- 16 A Yeah, I mean, I'm tell you, I'm not a little guy,
- 17 but I'm still holding my own, but I still got the car to
- 18 support me.
- 19 Q Well, how big are all these guys?
- 20 A I mean, Jonathan is probably my size; Mario is not
- 21 this big, he's not my weight, but he's taller than I am.
- 22 He's much taller, probably like, at that time he was
- 23 probably like 6'2", 6'3", so when they're attacking me and
- 24 I'm leaning on the car, that's kind of a hard for me to
- 25 fall because as you remember, the door of the car is open

Joshua Forrest - Cross-Examination by Mr. Spencer

1 as they're attacking me because I was trying to get in the
2 car. So as they really hitting me, there's really no way
3 for me to fall because I'm supported by the car, but I got
4 Mario by the shirt.

5 Q Which side does -- excuse me, which side of the car
6 are you on?

7 A The driver's side.

8 Q You're on the driver's side facing which way,
9 forward or backward?

10 A Facing outside of the car because the door is open.

11 Q So basically your left -- your right shoulder would
12 be up against the car?

13 A My left shoulder is down by my side.

14 Q Your left should is against the car?

15 A No, my right one is down -- the gun is in my hand
16 down by my side. My right arm is against the car.

17 Somehow --

18 Q Right.

19 A -- we're being assaulted. I'm able to roll. Now,
20 my back is against the car and that's when I shoot, not
21 while --

22 Q You say you would roll and shoot?

23 A Yeah, what I'm saying is they're fighting me; we're
24 moving. We ain't; not being still.

25 Q Okay. So you're rolling --

Joshua Forrest - Cross-Examination by Mr. Spencer

- 1 A No, it's not rolling; it's like one roll like just
2 one move. It's like if this was the car, this was the base
3 of the car, this is the gun --
- 4 Q Okay.
- 5 A -- and all y'all attacking me right now; I've got
6 the gun on my side and the car's supporting me; boom, and
7 you fighting me and I just like this right here. The door
8 is wide open so there's no way the door can block it all.
9 We in the doorway of the car like. So once we get in the
10 doorway of the car --
- 11 Q And you were trying to roll and you shoot and you
12 miss Mario?
- 13 A No.
- 14 Q Well I thought Mario was in front of you?
- 15 A I got Mario; that's how Mario get a contact wound.
- 16 Q Well, you had to roll or you're saying you turned
17 around and fired, but Mario is right in front of you
18 because you were grabbing him?
- 19 A I'm on the side. You making it look like it's a
20 complete 360. It's not a complete 360. It's more like a
21 180 roll. If -- if this is the gun?
- 22 Q Uh-huh (affirmative response).
- 23 A This is me.
- 24 Q Okay.
- 25 A They were fighting me. I was supported by the car

Joshua Forrest - Cross-Examination by Mr. Spencer

1 like this. So as they hitting me, I grabbed and I spin
2 like this. Now my arm is free for me to do what I need to
3 do to save my own self. So now I shoot. It's not a whole
4 360 with a roll; it's more like a 180 because I'm like
5 this.

6 Q So basically --

7 A And I turn like this.

8 Q So basically, were your shoulders up against the
9 car and now it's parallel to the car?

10 A Yeah, and now my arm is, my arm is free.

11 Q Okay. So now you got your arm free and -- and --
12 and you shoot and you kick Mario. But the thing I'm
13 confused about is you're supposed to be in a bear hug with
14 Mario?

15 A That's what State witnesses -- his entourage
16 testified to.

17 Q Okay. And that's what, but that's what you told
18 Investigator Cain too?

19 A I'd like for you to show me that. In writing or by
20 audio or video.

21 Q Well I mean, I've got the statement that was
22 published to the jury.

23 A That I testified to that?

24 Q Well, I guess what I -- I'm sorry, I thought that
25 was -- I thought you had said you were truthful with him so

Joshua Forrest - Cross-Examination by Mr. Spencer

1 that's where I'm getting confused. But this is your day in
2 court. Let's go through this and see what's right and
3 what's wrong in here?

4 MR. PUETZ: Judge, could I give my client a copy of
5 the transcripts?

6 THE COURT: Sure, do you have a copy?

7 MR. PUETZ: I hope so.

8 THE COURT: Okay. Sure. Certainly. Here, he
9 can -- What page is it on; I'll let him look at mine.

10 MR. PUETZ: Okay. Which, which one are you going
11 to be referring to; the first trial, the second trial?

12 MR. SPENCER: We'll do second trial. It would be
13 the same statement.

14 THE COURT: And what page is it?

15 MR. SPENCER: It would be page 127.

16 THE COURT: All right. You got it? All right.

17 MR. PUETZ: What line?

18 MR. SPENCER: We'll start with line 7. That's
19 where the statement starts.

20 MR. PUETZ: 127, line 7.

21 MR. SPENCER: Page 127, line 7.

22 THE WITNESS: 127, line 7?

23 BY MR. SPENCER:

24 Q Uh-huh (affirmative response).

25 A It says Forrest -- Chantell Epps driving him to the

Joshua Forrest - Cross-Examination by Mr. Spencer

1 Elks Club and arriving and entering between 1:30 and 2:00
2 a.m. on December 4th, 2005, and consumed a large quantity
3 of alcohol being intoxicated. Forrest reported while
4 this --

5 BY MR. SPENCER:

6 Q All right. Hold on a second here. Now, actually I
7 just want to show you where, where it was, but I want to go
8 through and just ask you about it, sort of more or less
9 line-by-line, and you know -- so Investigator Cain said you
10 admitted that you were drinking at the club. If I
11 understand your testimony you said you only had part of a
12 drink and so I guess, did you tell Investigator Cain that
13 you consumed a large quantity of alcohol?

14 A I don't remember that. I don't recall that.

15 Q You may or may not have?

16 A No, I don't believe I told them that.

17 Q Okay. So that would be false then?

18 A Yes. A large quantity of alcohol.

19 Q So Investigator Cain got it wrong?

20 A Yes.

21 Q Okay. We talked about Bussey -- was your
22 ex-girlfriend. Began a verbal argument over your
23 flirtations with Monique; I think everybody agrees about
24 that, correct?

25 A Yes.

Joshua Forrest - Cross-Examination by Mr. Spencer

1 Q I mean everybody agrees about Ms. Bussey doing
2 that.

3 And then next paragraph that talks about what
4 happened inside the club and you mentioned twelve men
5 inside the club. You mentioned Ms. Bussey threw a drink at
6 you; all that's correct, right?

7 A Uh-huh (affirmative response).

8 Q Okay. So let's go down to the next paragraph on
9 line 20.

10 A Forrest reported he didn't know her --

11 Q That's okay. You don't have to read that out loud?

12 MR. PUETZ: I think Counsel, he's just making sure
13 he's at the right spot.

14 MR. SPENCER: That's right. Thank you, Mr. Puetz.

15 BY MR. SPENCER:

16 Q And that talks about you were getting pushed around
17 by these guys inside the club; is that --

18 A Uh-huh (affirmative response).

19 THE COURT: Is that a yes?

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you.

22 BY MR. SPENCER:

23 Q And so you go outside to the Lincoln?

24 A Yes, sir.

25 Q Okay. And the next paragraph that's -- that's kind

Joshua Forrest - Cross-Examination by Mr. Spencer

1 of what we've seen today; you tried to get inside the car
2 and couldn't because of the driver's seat being reclined?

3 A Uh-huh (affirmative response). Yes.

4 Q Okay. And you told law enforcement and told
5 Investigator Cain that Campbell came up and hit you again,
6 right?

7 A Uh-huh (affirmative response).

8 Q Okay. And then you say, you said Mario came and
9 struck you in the face, right?

10 A Uh-huh (affirmative response).

11 THE COURT: Yes?

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 BY MR. SPENCER:

15 Q Okay. But you didn't tell them about the other
16 eleven guys attacking you at that point, did you?

17 A No, sir, I didn't.

18 Q You didn't tell them about all those other guys?

19 A No, sir.

20 Q All those guys beating on you behind, from behind
21 you?

22 A No, sir.

23 Q Okay.

24 A He had already had that information from
25 independent State witnesses that he met independently at

Joshua Forrest - Cross-Examination by Mr. Spencer

1 the hospital that night.

2 Q But you didn't bother -- you didn't bother to tell
3 him about those eleven guys yourself, right?

4 A No, he was more concentrating on the victim.

5 Q Okay. Now this is -- this is the part -- this is
6 the part I'm confused about because I'm looking at 128,
7 line 14 through 17. And it says that you reported and then
8 demonstrated during the fight that Mr. -- the victim, Mario
9 Redish, had you in a frontal bear hug and he had both of
10 his arms around your arms and torso?

11 A No, sir.

12 Q That never happened?

13 A No, sir.

14 Q Did you tell -- is that what you told Investigator
15 Cain?

16 A No, sir.

17 Q Okay. So that part's not right?

18 A Yeah, the part right there, that ain't right and if
19 you was to watch the actual video then you will see that I
20 just signed my Miranda Rights and I talked to him. All--
21 we talked basically all the way to the point about the
22 shooting. That's when he asked Investigator Lyles to step
23 out of the room. He stepped out of the interview room, he
24 came back in; I guess he asked if he heard enough; he
25 served me with the warrants. The tape won't work, they

Joshua Forrest - Cross-Examination by Mr. Spencer

1 don't redo the interview and correct any of this. He's
2 been in law enforcement probably 20 or 30 years; he don't
3 get me to make a written statement or nothing about this
4 once they got knowledge of the tape not working.

5 Q So did -- so did the victim have you in a bear hug?

6 A No, the victim ain't never had me in no bear hug.

7 Q So all that testimony coming from the State's
8 witnesses about that; that's wrong?

9 A I mean, yes.

10 Q And did you demonstrate to Investigator Cain,
11 Investigator Cain about how he had you in a bear hug?

12 A No, sir.

13 Q You never heard -- did you demonstrate with
14 Investigator Cain?

15 A Nothing, and I never got up.

16 Q So Investigator Cain says he demonstrated and --
17 and how he, you know, how the victim had him in a bear hug
18 and all that, that's just false?

19 A Yes, sir.

20 Q That's just fiction?

21 A Well, I guess he, during trial, he, because I asked
22 Ms. Stoney to object to that and I believe she did at the
23 first trial and Judge Early said he wasn't going to allow
24 it because that was mere hearsay even coming from
25 Investigator Cain because you have nothing to support these

Joshua Forrest - Cross-Examination by Mr. Spencer

1 allegations. You had a video and all and now you don't
2 have nothing that works that corroborate your story and I
3 told you that. So Investigator Cain say his notes from
4 other independent witnesses on what happened, he put
5 together a brief.

6 Q And you know, I understand about the video and all
7 that. I mean I don't need to hear about that, but -- but
8 basically Investigator Cain is just making all of this up?

9 A What he's doing is taking statements from other
10 witnesses that he talked to at the hospital that night and
11 he's putting together a brief.

12 Q Okay. Let me -- let me clarify it now. When
13 Investigator Cain says that you said he had you -- the
14 victim had you in a bear hug; that's pure fiction, right?

15 A Yeah, he's saying that I told him that; yes, sir,
16 that's pure fiction.

17 Q That's pure fiction that he told in, and so you're
18 saying this law enforcement officer is lying?

19 A Yes.

20 Q Okay.

21 A If he's saying that I told him that, which that's
22 what he testified to; I ain't never tell him that. I never
23 demonstrated nothing with Investigator Cain, none of that.

24 Q Well, what about the gun in the statement he says
25 that you told him you didn't have a gun.

Joshua Forrest - Cross-Examination by Mr. Spencer

- 1 A I mean he asked me about a gun.
- 2 Q And you told him you didn't have a gun, right?
- 3 A Yes, I told him I didn't have a gun.
- 4 Q You did not have a gun?
- 5 A I did not have a gun.
- 6 Q Did you ever tell him you did have a gun?
- 7 A No.
- 8 Q Okay. So that part, I mean -- and he didn't make
- 9 up any facts about that. I mean he says in the statement
- 10 you did not have a gun, right.
- 11 A I did not have a gun.
- 12 Q All right?
- 13 A Now, he's talking to me.
- 14 Q So you're lying to Investigator Cain?
- 15 A Am I lying to Investigator Cain?
- 16 Q You told him you didn't have a gun; is that the
- 17 truth or a lie?
- 18 A Now, I told him I didn't have a gun at that point
- 19 in time.
- 20 Q So that's a lie?
- 21 A That I told him that?
- 22 Q Yes.
- 23 A That's the truth that I didn't, that I told him
- 24 that I did not have a gun is the truth.
- 25 Q Wait a minute. You did or you did not have a gun?

Joshua Forrest - Cross-Examination by Mr. Spencer

- 1 A You're asking me when Investigator Cain
2 interrogated me, questioned me, when he asked me did I have
3 a gun, I told him no. You asking me if that's the truth?
- 4 Q Okay. So and -- you really did tell him that you
5 did not have a gun?
- 6 A Yes.
- 7 Q Okay. What is the truth; did you or did you not
8 have a gun?
- 9 A I did obtain a gun that night, yes.
- 10 Q You did have a gun. Okay. And what's the truth,
11 you did shoot Mario, right?
- 12 A Yes.
- 13 Q Okay.
- 14 A Only in self-defense though.
- 15 Q Okay. But you would agree with me what you told
16 Investigator Cain was that you did not have a gun?
- 17 A Yes, that's correct.
- 18 Q And what you told Investigator Cain was a lie?
- 19 A Right.
- 20 Q Okay. Then so you were lying to Investigator Cain
21 to get out of trouble, right?
- 22 A I would also say because I was young and scared at
23 the time. I wouldn't say it was to get out of trouble. I
24 just want to say I was basically just scared at the time.
- 25 Q Okay. You're scared, you're at the law enforcement

Joshua Forrest - Cross-Examination by Mr. Spencer

1 center, right?

2 A Yes.

3 Q You're young; how old were you?

4 A Like 23, 24 at the time.

5 Q Okay. And so what you did was lie?

6 A At that -- on that particular question, yes.

7 Q Okay. And the reason you lied was to try and get
8 out of trouble, right?

9 A Yes.

10 Q And then you're charged with murder anyway, right?

11 A Yes.

12 Q Okay. And then you meet with Ms. Stoney and you
13 tell her what happened, right?

14 A Somewhat. We got she had my, she had my motion and
15 she asked me the same question, though. She asked me did I
16 have a gun.

17 Q Okay. And what did you tell her?

18 A I told her at the time no.

19 Q Okay. So -- and you understand your attorney was
20 there to represent you, right?

21 A Yes.

22 Q And you lied to your attorney then?

23 A About me having a gun, yes.

24 Q Okay. And then -- and at what point did you tell
25 Ms. Stoney the truth; what point did you tell Ms. Stoney,

Joshua Forrest - Cross-Examination by Mr. Spencer

1 okay, this is the deal; I did have a gun?

2 A Never until today.

3 Q You never told -- who -- who's -- who have you

4 told -- other than the Court today, who have you told that

5 you had a gun?

6 A Nobody.

7 Q So this is a big revelation now?

8 A Yes, I never testified at neither trial.

9 Q But who, you never told your attorney you had a

10 gun?

11 A Correct.

12 Q Of course, you didn't tell Investigator Cain you

13 had a gun?

14 A Correct.

15 THE COURT: Your attorney being Ms. Stoney?

16 MR. SPENCER: Yes.

17 THE COURT: Yes.

18 BY MR. SPENCER:

19 Q And you never told Ms. Stoney you had a gun?

20 A Correct.

21 Q Okay.

22 THE COURT: Whatever he may have told Mr. Puetz

23 would be attorney client --

24 MR. SPENCER: That, that would be --

25 THE COURT: -- it would be attorney/client

Joshua Forrest - Cross-Examination by Mr. Spencer

1 privilege.

2 MR. SPENCER: I agree.

3 THE COURT: I just wanted to clear that for the
4 record.

5 MR. SPENCER: That would be privilege.

6 THE COURT: Yes, sir. All right. Thank you.

7 BY MR. SPENCER:

8 Q So -- so, you know, for the first time today,
9 you're letting everybody know, I'm not, you know, I'm
10 excluding what you may or may not have told Mr. Puetz is
11 not relevant. I understand that, but for the first time
12 today, you're telling everybody else?

13 A Yes.

14 Q And that you actually did shoot Mario?

15 A Yes.

16 Q And the question is whether or not it was
17 self-defense?

18 A Yes.

19 Q And that whole mess about, we've heard a lot of
20 testimony in both trials about that bear hug; that's just
21 false?

22 A Yes.

23 Q Okay. Well how -- how can Ms. Stoney had known to
24 raise self-defense, if you wouldn't tell her that it
25 actually really was self-defense?

Joshua Forrest - Cross-Examination by Mr. Spencer

1 A I would say because being it was the due process
2 clause, required the defendant be given a reasonable
3 opportunity to present a complete defense to the crime
4 charged.

5 Q Well, you know, that's not a response. I mean how
6 does Ms. Stoney is relying on you to tell her what really
7 happened so that she can formulate a defense and you're
8 telling her no, this is not a self-defense and you're
9 alleging today that she's ineffective for not raising
10 self-defense, but how can she know?

11 A Okay. Reason being because when she was up here,
12 she told you that she got my case and when she first came
13 to see me, she said from the time she read the paperwork,
14 she seen self-defense from the very beginning.

15 Q Sure, but she could have put you on the stand to
16 say that you're, because she doesn't know what you're going
17 to say at trial. She's, wouldn't you assume she's going to
18 expect you to say that you didn't have a gun?

19 A Like I said, if we would have ever discussed
20 self-defense; if she would have advised me of a
21 self-defense defense or advised me of a self-defense and
22 requested a self-defense jury charge, then yes, I would
23 have went with it. The Judge charged manslaughter over her
24 objection. Manslaughter and self-defense are not mutually
25 exclusive. If you charge one, you can charge the other.

Joshua Forrest - Cross-Examination by Mr. Spencer

1 Q Okay. But what were you going to -- you had
2 decided to testify in 2006; what would you have testified
3 to; would you have testified to the bear hug, or would you
4 have testified to shooting Mario in self-defense?

5 A I would have testified to saving my life in
6 self-defense.

7 Q Then you would have admitted shooting Mario in
8 self-defense?

9 A Self-defense. Had she advised me of a self-defense
10 defense and raised a self-defense jury instruction, I'd
11 have took the stand and told them that I shot Mario in
12 self-defense.

13 Q But how is Ms. Stoney going to know that you're
14 going to do that when you're telling her you didn't have a
15 gun?

16 A If Ms. Stoney would have advised me of a
17 self-defense defense, we would have discussed this then I
18 would have took the stand and told them that I shot Mario
19 in self-defense, but if we don't discuss the self-defense
20 defense, then she's not going to request a self-defense
21 jury charge.

22 Q In all her testimony about talking with you about
23 the self-defense is false?

24 A Yes, not once did we discuss self-defense.

25 MR. SPENCER: I beg the Court's indulgence.

Joshua Forrest - Redirect Examination by Mr. Puetz

1 THE COURT: Yes, sir.

2 BY MR. SPENCER:

3 Q And by the way, how tall are you?

4 A I might be 6 feet now.

5 Q And, you know, at the time of the shooting, how
6 much did you weigh roughly?

7 A About 180, 190, 185, 190.

8 Q All right. And when you -- you -- when
9 Investigator Cain mentioned you were incarcerated in the
10 State, he's not talking about the armed robbery charge,
11 right?

12 A I wouldn't have the slightest idea what he's
13 talking about because I had a criminal record. I hadn't
14 been to prison before. I had just pled it out to a charge
15 so it was kind of like up for grabs which one he was
16 referring to.

17 MR. SPENCER: Your Honor, I have no further
18 questions?

19 THE COURT: Thank you, Mr. Spencer.

20 Mr. Puetz, redirect?

21 REDIRECT EXAMINATION

22 BY MR. PUETZ:

23 Q When you kept referring to had a gun, did you bring
24 a gun or did you get the gun out of your car?

25 A I got the gun out of the car.

1 Q Okay.

2 MR. PUETZ: And that's really all the questions I
3 have, Judge.

4 THE COURT: Thank you. Recross?

5 MR. SPENCER: None, Your Honor.

6 THE COURT: Thank you.

7 THE WITNESS: Before I step down --

8 THE COURT: Yes, sir.

9 THE WITNESS: -- I would like to exercise one of my
10 first amendment rights and read my memorandum into the
11 record so I can make sure, it's only like 6 pages and I'd
12 be happy to answer any more questions that they have for
13 me.

14 THE COURT: I don't have any other questions. Just
15 mark it as an exhibit. It will then be in the record, all
16 right, and I will certainly read it. That would be
17 Plaintiff's 5 or Petitioner's 5 --

18 THE COURT REPORTER: Petitioner's 5.

19 THE COURT: -- or applicant's 5. Okay.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right.

22 (Petitioner's Exhibit No. 5 was entered into
23 evidence.)

24 THE COURT: Thank you. Thank you very much, Mr.
25 Forrest.

1 THE WITNESS: Yes, sir. Thank you.

2 THE COURT: All right. Mr. Puetz, do you have
3 other witnesses?

4 MR. PUETZ: No, sir, but I would like to attach to
5 the record these recordings that I received and went over
6 with my client just so the record's complete.

7 THE COURT: Do you have objections to that?

8 MR. SPENCER: Putting in the recordings?

9 MR. PUETZ: Yes.

10 MR. SPENCER: Yeah, I would have an objection to
11 that, Your Honor.

12 THE COURT: And you -- you want them as part of the
13 record for, for review --

14 MR. PUETZ: In this case.

15 THE COURT: For me to review?

16 MR. PUETZ: Yes.

17 MR. SPENCER: There's somebody that should have
18 been called as a witness. I object because they should
19 have been here today to testify as to prejudice not -- I
20 don't think that's sufficient evidence in lieu of live
21 testimony.

22 THE COURT: And correct me -- let me see if I'm
23 tracking this right, Mr. Puetz. Please correct me if I'm
24 not. I thought the issue with those, I thought were they
25 were never made available to Mr. Forrest.

1 MR. PUETZ: That's correct.

2 THE COURT: And -- and not necessarily the content
3 of them as far as PCR, but -- but they were never made
4 available, number one, except for the one as to Mr. -- with
5 him and Mr. Cain or Officer Cain; he didn't even see it at
6 his trial because he was, I mean we all know it's typically
7 faced towards the jury and many --

8 MR. PUETZ: Sure.

9 THE COURT: -- courthouses do not have that video
10 capability. But and it also was not complete, the machine
11 quit working.

12 MR. PUETZ: That's correct.

13 THE COURT: Now, I think you're protected on the
14 record in that regard.

15 MR. PUETZ: Okay.

16 THE COURT: As far as you went through them, you
17 itemized them, the 911 tapes, the tapes of the various
18 witnesses and he testified he never saw them until he
19 either reviewed them with you in 2013 or 2014.

20 MR. PUETZ: That's correct.

21 THE COURT: And I think that -- I think that's
22 clear on the record.

23 MR. PUETZ: Okay, sir. And just there's 1, 2, 3,
24 4, 5, 6, 7, 8 of them, Judge. And I just want the record
25 to make sure it's absolutely clear. Obviously there's some

1 inconsistencies between what the recordings show and what
2 the witnesses testified to.

3 THE COURT: Yes, sir. All right. All right. But
4 no other witnesses?

5 MR. PUETZ: No, sir.

6 THE COURT: Witnesses --

7 MR. SPENCER: Your Honor, no, I don't have any
8 witnesses.

9 THE COURT: All right. Thank you. Thank you very
10 much.

11 All right. What kind of time y'all need to submit
12 proposed orders; y'all know how busy you are.

13 MR. PUETZ: Judge, if I could have 30 days, I'd
14 really appreciate it. My secretary is out on vacation. I
15 don't even type. She's not going to be in for, in my
16 office for another week and so it will probably -- if I
17 could have 30 days from today.

18 THE COURT: Mr. Spencer?

19 MR. SPENCER: I was actually going to ask for 30,
20 so that suits me.

21 THE COURT: So y'all agree to 30 days?

22 MR. SPENCER: Yes, sir.

23 THE COURT: He wants his 30 and you want your 30,
24 right?

25 MR. SPENCER: That works.

1 THE COURT: We can run them concurrent.

2 All right. 30 days. You have access to legal
3 resources, Mr. Forrest?

4 THE WITNESS: Yes, sir, I do.

5 THE COURT: And how often are you able to go to the
6 library and read and study?

7 THE WITNESS: If I'm not on lockup, sir, I can go
8 every day of the week. If I'm in lockup and they have --
9 the department of corrections where I'm currently housed
10 at, they're real bad on being short staffed. They kind of
11 did away with the law books and allow us to use computers
12 now and they have to escort us to the computer and a lot of
13 times they don't have the manpower to do it.

14 THE COURT: And you're at Perry?

15 THE WITNESS: Yes, sir.

16 THE COURT: I thought you said Perry. You're a
17 very intelligent young man. Good luck to you.

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you, Mr. Puetz.

20 Thank you, Mr. Spencer.

21 * * * * * END OF TRANSCRIPT * * * * *

22

23

24

25

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Eleventh Judicial Circuit
8 of the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 31st day of July 2014.

12 I FURTHER CERTIFY that the foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 4th day of September 2015.

19
20
21
22
23
24
25

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

WITNESSES

C. Funk, A.C.S.O.

FILED Nov-8 2007

Liz Godard

Clerk

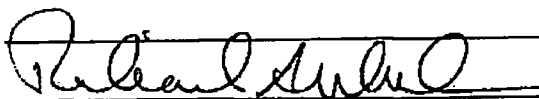
D. Godard AS

ARREST WARRANT NUMBER

H-974590

ACTION OF GRAND JURY

Jury Bill



Foreperson of Grand Jury
Date: November 8, 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-02-

2040

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER 12, 2007

THE STATE
vs.

JOHNATHAN PAUL THOMAS

Indictment for

FAILURE TO REGISTER AS A SEX OFFENDER

SC Code: 23-3-460
CDR Code: 2606
Class: MIS-UNC

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JAN 06 2014

Liz Godard
C.C.P. & G. S., Aiken County, SC
Deputy Clerk
Dostanin-Rell

FILED
JAN 14 2014
CLERK OF COURT
DEPUTY CLERK
PETITIONER'S
EXHIBIT
23-14-11

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

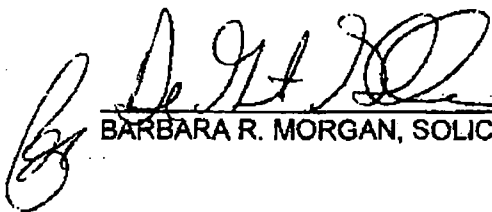
INDICTMENT

At a Court of General Sessions, convened on November 12, 2007, the Grand Jurors of Aiken County present upon their oath:

FAILURE TO REGISTER AS A SEX OFFENDER

That JOHNATHAN PAUL THOMAS did in Aiken County on or about February, 6 2006, being a resident of Aiken County and having been convicted of the offense of Criminal Sexual Conduct 3rd Degree on March 11, 1997, fail to register annually with the Aiken County Sheriff's Office as required by Section 23-3-460 of the South Carolina Code of Laws (1976), as amended. The said Johnathan Paul Thomas having been notified by the South Carolina Department of Probation, Parole and Pardon Services that he must register annually as a sex offender for life, and having previously registered as a sex offender with the Aiken County Sheriff's Office on January 5, 2005.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN
 STATE VS
JONATHAN PAUL THOMAS
 AKA:
 Race: B Sex: M Age: [REDACTED]
 DOB: [REDACTED]
 City, State, Zip: AIKEN, SC 29801
 DL# [REDACTED] SID# SC D1073509

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 07 -GS-02-2040
 AWW# H-974590
 Date of Offense: 2-6-06
 S.C. Code §: 23-3-460
 CDR Code #: 2606

SENTENCE SHEET

90 DAYS

In disposition of the said Indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: FAILURE TO REGISTER AS A SEX OFFENDER

In violation of 23-3-460 of the S.C. Code of Laws, bearing CDR Code # 2606

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45 w/minor 1st or Lawd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

S.P.H.
 Solicitor

Jonathan P. Thomas
 Defendant

DAE Rountz
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 90 days months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-208 (Assessments 107.5%)	\$	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$58-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$58-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

PTUP

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN

day, month, year, Public Service and Employment and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

Obtain GED
 Attend Voc. Rehab. beginning
 May serve WVE beginning
 Substance Abuse Counseling JAN 8 8 2014
 Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ beginning
 Other: CCCP, A.G.S., Aiken County, S.C.

Deborah M. Bell
 Deputy Clerk

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

Ann Sanders
 Clerk of Court/ Deputy Clerk
 Court Reporter: Lisa Dicklin

PRESIDING JUDGE

Judge Code:

Sentence Date:

0156
MR. Carlyle
June 17, 2008

WITNESSES

George Burgess, A.C.S.O.

FILED

CCCPAGS

ARREST WARRANT NUMBER

F887275

ACTION OF GRAND JURY

True Bill

Rebecca B. Cady
Foreperson of Grand Jury
Date: September 30, 1999

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 99-GS-02-1532

The State of South Carolina
County of Aiken

COURT OF GENERAL SESSIONS

OCTOBER 11, 1999

THE STATE
VS.

JONATHAN PAUL THOMAS

Indictment for

FAILURE TO REGISTER AS A SEX OFFENDER

SC Code: 23-3-470
CDR Code: 2006
Class: MIS-UNC

PETITIONER'S
EXHIBIT

FILED
B.1.23
Liz Godard
C.C.C.P. & G.S.
Deputy Clerk

Jonathan P. Thomas
9-13-78
P. Jones
90 days
JAN 06 2001

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, clerk of Court of General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

Liz Godard
C.C.C.P. & G.S., Aiken County, S.C.
Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on October 11, 1999, the Grand Jurors of Aiken County present upon their oath:

FAILURE TO REGISTER AS A SEX OFFENDER

That JONATHAN PAUL THOMAS did in Aiken County on or about July 15, 1999, being a resident of Aiken County and having been convicted of the offense of Criminal Sexual Conduct In The Third Degree on March 11, 1997, fail to register annually with the Aiken County Sheriff's Office as required by Section 23-3-460 of the South Carolina Code of Laws (1976), as amended. The said Jonathan Paul Thomas having been notified by the South Carolina Department of Probation, Parole and Pardon Services that he must register annually as a sex offender for life, and having previously registered as a sex offender with the Aiken County Sheriff's Office on April 3, 1998.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BARBARA R. MORGAN, CLERK

ARREST WARRANT

H- 974590

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
AIKEN

 THE STATE ~~95-071834~~
against 06-071832

JOHNATHAN PAUL THOMAS

Address: ~~██████████~~ SC 29801Phone: ~~██████████~~ SSN: ~~██████████~~Sex: ~~M~~ Race: ~~W~~ Height: ~~5~~ Weight: ~~170~~DL State: ~~7/13/78~~ DL #: ~~0200~~DOB: ~~██████████~~ Agency ORI#: ~~0200~~

Prosecuting Agency: SHERIFF DEPT

Prosecuting Officer: SGT. C. FUNK

Offense: FAILURE TO REGISTER

AS SEX OFFENDER Offense Code: 2606

Code/Ordinance Sec. 2606

 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

 A copy of this arrest warrant was delivered to
 defendant JOHNATHAN PAUL THOMAS
 on 1-6-07

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 AIKEN MAGISTRATE COURT
 1680 RICHLAND AVENUE, WEST
 AIKEN SC 29801

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
AIKEN

AFFIDAVIT

 Personally appeared before me the affiant SGT. C. FUNK
 being duly sworn deposes and says that defendant JOHNATHAN PAUL THOMAS
 did within this county and state on 11/27/06 violate the criminal laws of
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)

In the following particulars:

 DESCRIPTION OF OFFENSE: FAILURE TO REGISTER AS SEX OFFENDER
 VIOLATION SECTION 23-3-470

 I further state that there is probable cause to believe that the defendant
 the crime set forth and that probable cause is based on the following facts:

 DEFENDANT, JOHNATHAN PAUL THOMAS, CONVICTED OF CRIMINAL SEXUAL
 CONDUCT 3RD DEGREE ON 3-11-97. DEFENDANT REQUIRED TO REGISTER
 A SEX OFFENDER ACCORDING TO SC CODE OF LAWS. DEFENDANT REGISTERED
 WITH ACSO ON 1-5-05 BUT FAILED TO RETURN FOR ANNUAL
 REGISTRATION. THIS INCIDENT OCCURRING IN THE COUNTY OF AIKEN,
 STATE OF SC AND IN VIOLATION OF 23-3-470 SC CODE OF LAWS.

Signature of Affiant

Affiant's Address: ~~██████████~~ AIKEN SC 29801

Affiant's Telephone: _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 11/27/06 defendant JOHNATHAN PAUL THOMAS

did violate the criminal laws of the State of South Carolina (or ordinance of _____)

☐ County/ ☐ Municipality of _____ as set forth below:

 DESCRIPTION OF OFFENSE: FAILURE TO REGISTER AS SEX OFFENDER
 VIOLATION SECTION 23-3-470

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/28/06

Signature of Issuing Judge

Judge Code: _____

Judge's Address: 1680 RICHLAND AVENUE WEST AIKEN SC 29801 - 0000

Judge's Telephone: 803 642-1744

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

JEC:28 06 3:12 PM

2007-65-02-2040

 Form Approved by
 SC Attorney General
 April 21, 2003
 SCCA #18

 I, _____
 Sheriff of Aiken County
 do hereby certify
 that the above
 named person
 has been
 arrested
 and is being
 held in custody
 of the
 Aiken County
 Jail.

JAN 6 2014

FILED Jan 8 2007

 Sgt. C. Funk
 Aiken Sheriff's Office
 1 Deputy Clerk

DAVID
Carney Seal
January 6, 2007
\$10,000.00

PRELIMINARY HEARING

DISPOSITION

JURORS

WITNESSES

CODEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE

VS.

Jonathan ThomasAKA: N/ARace: black Sex: maleDOB: [REDACTED] 21SSN: [REDACTED]DL#: N/ASID#: SC 01073509IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:99 -GS- 02 - 1532A/W#: F-887275

Date of Offense:

S.C. Code § : 23-3-470CDR Code #: 2161016

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Failure to Register as a Sex Offenderin violation of § 23-3-470 of the S.C. Code of Laws, bearing CDR Code # 2161016☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The pleas is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
SolicitorJonathan Thomas
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 90 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ The Defendant is to be given credit for 23 days/months/jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: to any Public Violation

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 - Assessments 100%..... \$ _____

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$ _____

County (3%)..... \$ 3.00TOTAL..... \$ 103.00Clerk of Court/Deputy Clerk Patty BrestCourt Reporter: Brenda Douglas

File - Clerk

Crim - Corrections

Crim - Probation

Post - Detention

SCCABT (1/10)

PTUP

Obtain GED JAN 06 2014

Attend Voc Rehab. or Job Corps

May serve with [Signature]Substance Abuse [Signature]Random Drug/Alcohol Testing [Signature]

Fine may be pd. in equal, consecutive weekly installments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE [Signature]Judge Code: 01/11/14Sentence Date: Dec 7, 2009

ARREST WARRANT

F- 887275

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AIKEN COUNTY

THE STATE
against

THOMAS, JONATHAN

Address: [REDACTED] SC 29801-

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 11 Weight: 150

DL State: [REDACTED] DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: 0200

Prosecuting Agency: SHERIFF DEPT

Prosecuting Officer: BURGESS

Offense: FAILURE TO REGISTER AS A

SEX OFFENDER Offense Code: 200

Code/Ordinance Sec. [REDACTED]

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered to
defendant JONATHAN THOMAS
on 8-6-99

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

JAMES H. L. LEE'S OFFICE

7-15-99

SCU

34057

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AIKEN COUNTY

AFFIDAVIT

Personally appeared before me the affiant BURGESS GEORGE who
being duly sworn deposes and says that defendant THOMAS, JONATHAN
did within this county and state on 7/15/99 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of AIKEN COUNTY)
in the following particulars:

DESCRIPTION OF OFFENSE: FAILURE TO REGISTER AS A SEX OFFENDER
OFFENCE CODE--23-3-470

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following: THE STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
CASE# 0009929657
DEFENDANT CONVICTED OF CSC 3RD IN MARCH 1997
REQUIRED TO REGISTER AS A SEX OFFENDER
23-3-470. DEFENDANT REGISTERED WITH ACSO ON 040398
HAS FAILED TO RENEW REGISTRATION ON OR ABOUT 040398
Liz Godard, clerk of Court of Common Pleas and General
Session for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents now on file in my office this
8/6/99

Sworn to and subscribed before me)
on 7/15/99)
Signature of Issuing Judge (L.S.))

Signature of Affiant

Affiant's Address

Affiant's Telephone

C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

AIKEN

SC 29801

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AIKEN COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THE COUNTY

It appearing from the above affidavit that there are reasonable grounds
on 7/15/99 defendant THOMAS, JONATHAN
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of AIKEN COUNTY) as set forth below:
DESCRIPTION OF OFFENSE: FAILURE TO REGISTER AS A SEX OFFENDER
OFFENCE CODE--23-3-470

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of his arrest, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)
Judge's Address 1400 STONE ROAD AVE, AUST
AIKEN
Judge's Telephone (803) 442-1200
Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

BAIL set by
Judge Ch. R. Smith
on 8-6-89
Type and Amount \$5,000.00
Name of Surety _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defense Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name _____
Address _____
Telephone _____

Name _____
Address _____
Telephone _____

Name _____
Address _____
Telephone _____

Name _____
Address _____
Telephone _____

Name _____
Address _____
Telephone _____

Name _____
Address _____
Telephone _____

Name _____
Address _____
Telephone _____

Name _____
Address _____
Telephone _____

COPIES DESTROYED

WITNESSES

Amanda Millwood, ACSO

March 11 1997
Pat [signature]

ARREST WARRANT NO. E255047

0396 16-3-655(2)

ACTION OF GRAND JURY

True Bill
10/10/96

Dwight N. Brown

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 96-GS-02-1359

The State of South Carolina,

County of _____ Aiken

COURT OF GENERAL SESSIONS

October 28th TERM 1996

THE STATE

vs.

JOHNATHAN THOMAS

ROSTER# _____

DEFENDANT: Johnathan Thomas

AGE: 18 DATE OF BIRTH: [REDACTED]

ATTORNEY: Kent Landry

MAXIMUM SENTENCE: 10 years

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR -
SECOND DEGREE

Johnathan Thomas
and being guilty of the within Indictment,
do hereby certify that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
10/10/96

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Deputy Clerk
10/10/96

JAN 06 2014

Deputy Clerk
10/10/96
 C.C.C.P. & G.S. Aiken County, S.C.
 Deputy Clerk

FILED 2 10/10/96

PETITIONER'S
FEE

Depu

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR CRIMINAL
SEXUAL CONDUCT WITH A MINOR -
SECOND DEGREE

At a Court of General Sessions, convened on October 28, 1996,
the Grand Jurors of Aiken Co. who met on October 10, 1996 ~~XXXXX~~ present upon their oath:

That JOHNATHAN THOMAS did in Aiken County on or about the 6th day of
July, 1996, unlawfully commit sexual battery upon minor , a
minor of thirteen (13) years of age, by means of vaginal intrusion, such
being Criminal Sexual Conduct With A Minor In The Second Degree.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR

GENERAL SESSIONS COURT

SENTENCE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)

CASE NO. 96-GS-02-1359
 TICKET/WARRANT NO. E 255047
 TICKET/WARRANT NO. _____

The defendant, Johnathan Thomas, is committed to the State Dept. of Corrections/Aiken County Detention Center for a term of 40A NTE 60 days/months/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus pay/waive costs and assessments as applicable*; the balance suspended with probation for _____ months/years. Special conditions: urinalysis at random every _____ days during first _____ month; must perform _____ days/hours, 8 hours per day, community service for _____ with _____ in charge in lieu of jail; must attend and complete ASAP within _____ months.

Find indigent - waive fees for Probation and ASAP

* *Restitution (YES/NO) in the amount of \$ _____ to be paid in equal consecutive weekly/monthly payments of \$ _____ beginning _____ to Clerk of Court for _____

Allowed to serve sentence on weekends beginning _____ at _____ A.M. until _____ P.M.

Date: 3/11/97

Frank Egger
 Presiding/Judgment Judge - Second Judicial Circuit

* Fine _____ \$ X
 62% _____ \$ X
 TOTAL _____ \$ X

Pauline L. Fanning
 CLERK OF COURT, DEPUTY CLERK

PRECEDENT - NONE
 DATE 9-26-96 12:00 PM 12:00 PM
 " " 12:00 PM 12:00 PM

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN

I, Liz Godard, clerk of Court, of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in this case.

JAN 8 6 2011

To be paid in full by _____, Pd in full
 To be paid equal, consecutive weekly/monthly payments of \$ _____ beginning _____ until _____ paid in full as condition of probation.

* *Pay to Victim's Compensation Fund if subrogated.
 FOUND GUILTY _____ OR)

PLEAD ✓
 CONCURRENT _____
 CONSECUTIVE _____

TO:)

CCC.P. & G. S., Aiken County, S.C.
 Age 18 12:00 PM 12:00 PM
 M ✓ 12:00 PM 12:00 PM
 Date of birth 9-26-78
 Attorney/Public Defender L. Godard

CSC 3rd Degree

ARREST WARRANT

E-255047

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AIKEN

CASE #:

0009618187

THE STATE

against

THOMAS, Johnathan

Phone: _____ SSN: _____
 Sex: M Race B Height 6' Weight 140
 DL State: _____ DL#: _____
 DOB: 17 USA Agency ORI#: _____
 Prosecuting Agency: Aiken Co Sheriff's Office
 Prosecuting Officer: Deputy A. Millwood -3637
 Offense: Criminal Sexual Conduct w/
Minor - 2nd Deg Offense Code: _____
 Code/Ordinance Sec. 16-3-655(2)

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of _____
 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
 defendant Johnathan Thomas
 on 07-09-96

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

JUDGE JOEY L. ADDIE
 14 Masonic Shopping Center
 Graniteville, SC 29829

AIKEN CO. SHERIFF'S OFFICE

Signature of Issuing Judge

Judge Code: 647

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
AIKEN

AFFIDAVIT

Personally appeared before me the affiant Deputy A. Millwood who
 being duly sworn deposes and says that defendant Johnathan Thomas
 did within this county and state on July 6, 1996
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of AIKEN)
 in the following particulars:

DESCRIPTION OF OFFENSE: **CRIMINAL SEXUAL CONDUCT WITH MINOR/Second Degree**
 Violation of Section 16-3-655(2)

I further state that there is probable cause to believe that the defendant above
 the crime set forth and that probable cause is based on the following facts:
 Personally comes Deputy Millwood, who on oath says that she has been informed and
 verily believes that on the 6th day of July 1996 at Graniteville, SC
Graniteville in the County and State aforesaid one Johnathan Thomas did
 engage in sexual battery by having sexual intercourse with Chantous Richardson,
 the victim being between eleven and fourteen year old and the said Johnathan
 Thomas being three or more years older. This being in violation of Section
 16-3-655(2) of the 1976 Code of Laws for the State of South Carolina, as amended.

Sworn to and subscribed before me
 on July 8, 1996
 Signature of Issuing Judge

Signature of Affiant

Affiant's Address

Aiken County Sheriff's Office

Aiken, South Carolina

Affiant's Telephone

803-642-1761

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
AIKEN

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe
 on July 6, 1996 defendant Johnathan Thomas
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of AIKEN) as set forth below:

DESCRIPTION OF OFFENSE: **CRIMINAL SEXUAL CONDUCT w/MINOR/Second Degree** --- Violation of Section 16-3-655

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address

14 Masonic Shopping Center

Judge's Telephone

Graniteville, SC 29829

803-663-6634

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

BAIL

Angelo P. Williams
July 9, 1996
\$5,000.00

PRELIMINARY HEARING IN :

DISPOSITION

JURORS

WITNESSES

CODEFENDANTS

Form 16.1

Filed Approved by
S.C. Attorney General
Section 17-15-180
March 15, 1978

W-07-91-165

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF Aiken

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF

Aiken

AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT.

It appearing from the attached affidavit that there are reasonable grounds to believe that (name of defendant)

James Forrest. #00719300

did on the 19th day of April 19 91
violate the criminal laws of the State of South Carolina as set forth below

DESCRIPTION OF OFFENSE

VIOLATION OF PROBATION PURSUANT TO SECTION 24-21-450

Now, therefore, you are empowered and directed to arrest the said defendant and bring James Forrest

before me forthwith to be dealt with according to law

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Done at Aiken

S C 19th

day

April

19 91

Signature of Probation and Parole Agent

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Aiken

Personally appeared before me, one

Geraldine G. Cummings

who, first being duly sworn, deposes and says that (name of defendant)

James Forrest

did within this County and State on the 14th day of April 19 91
the criminal laws of the State of South Carolina in the following particulars

DESCRIPTION OF OFFENSE

PROBATION VIOLATION CONCURRENT TO SECTION 24-21-430 IN THAT THE DEFENDANT HAS VIOLATED
THE CONDITIONS OF HIS PROBATION SENTENCE AS IMPOSED BY JUDGE FRANK EPPES AT THE 2-12-91
TERM OF GENERAL SESSIONS COURT HELDEN IN AIKEN COUNTY, AIKEN S. C.

The Affiant states that there is probable cause to believe that the defendant named above did commit the crimes set forth, and that
such probable cause is based on the following facts

By failing to pay restitution, having paid 0-; By failing to be at his residence on
4-10-91 at 10:15 PM; By failing to follow the advice and instructions of his agent which
constitute violation of sections 12,13 and special conditions of his probationary sentence.

Sworn to and Subscribed before me

this

19th

day of April

19 91

Signature of Notary Public

B-1 2084

Geraldine G. Cummings

Affiant

Address P.O. Box 2194, Aiken, SC 29801
(902 Yorkline Road)

Phone (803) 648-4221

(Form continues on Back)

PETITION FOR

Foran

4:00 PM

Deputy

RETURN

A copy of this Arrest Warrant was delivered to the following defendant:

EDWEST, JAMES

on the 9th day of Oct. 1990

N.H. B. 2743
Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

Aiken (County) (Circle one)
Municipality (one)

The accused is to be arrested and brought before me to be dealt with according to law

Signature of Judge

PRELIMINARY HEARING held by

Judge

on 19

with Attorney for Defendant

Decision:

BAIL

Date Set 19

Judge

Amount

Surety

RETURN WARRANT TO:

Liz Godard
Cheryl B. West

ARREST WARRANT

No. **C 757913**

0009021978

STATE OF SOUTH CAROLINA

County

Municipality

(Circle one)

THE STATE

James Forrest

Address Aiken, S. C. 29801

Phone

Sex M Race B Height 5'9" Weight 150

DOB 11/11/61

Charge MURDER

Arrested on 10/10/90

Arrested by Max A. Mack

Officer Inv. G. A. Hall

Agency ACSD

Date of Offense 10/05/90

Date of Detention

Disposition

Sentence

Co-Defendants

WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

I, Liz Godard, clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

IAN 06 2018

JURORS

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Deborah M. Bell
Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

SENTENCE

GENERAL SESSIONS COURT

CASE NO. 91-GS-02-262TICKET/WARRANT NO. C 757913

TICKET/WARRANT NO. _____

The defendant, James Forrest, is committed to the State Dept of Corrections/Aiken County Detention Center for a term of Ten 10 years and/or to pay a fine of \$_____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$_____. plus pay/waive costs and assessments as applicable*, the balance suspended with probation for Five 5 months/years and, special conditions: urinalysis, at random every _____ days. Must perform _____ days/hours - 8 hours per day - community service for _____ and _____ in charge in lieu of jail. Must attend and complete ASAP within _____ months. At Prob Home about 6 miles Enroll Prob + fee

Restitution (YES/NO).....Total \$ _____

Weekly/Monthly \$ 50 - i.e. mother

to Clerk for (victim) _____

Public Defender Fund \$ _____

Date: 2/12/91

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
Resident/Presiding Judge, Second Frank [Signature]
I, [Signature], Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this
Prior Record - None

*Fine.....\$ _____
Law Enforcement and Hall of Fame.....\$ _____
Community Corrections Assessment/Waive Indigent.....\$ (0)
20% of Fine or \$7.75.....\$ 17.75
DUI Test, if Applicable.....\$ _____
Total Fines and Costs.....\$ 17.75

Date 01 JAN 06 2014 Sentence _____

C.C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

Clerk of Court/Deputy Clerk

Age: _____ S.S. No. 251-19-3826M ☒ F _____ Married _____ Single _____Date of birth: 11-22-72Attorney: Virginia H. Smith

White copy to Clerk
Canary to Detention Center
Pink to Probation
Goldenrod to Defendant

**Pay to Victim's Compensation Fund if subrogated.

WITNESSES

G. A. Hall, ACSD

Feb 13 91
~~*[Signature]*~~
~~*[Signature]*~~
~~*[Signature]*~~

ARREST WARRANT NO. C757913

013 C/L

ACTION OF GRAND JURY

True Bill
Meredith Miller
 Foreman of Grand Jury *2/8/91*

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 91-GS-02-262

The State of South Carolina,

County of _____ Aiken

COURT OF GENERAL SESSIONS

February 11th TERM 1991

THE STATE

vs.

JAMES FORREST

**Indictment for Assault and
 Battery of a High and
 Aggravated Nature and
 Carrying Concealed Weapon**

James Forrest
 appears in my own proper person and
 is not guilty in the within indictment
 by reason of the facts stated herein

James Forrest
Feb 13 1991
 James Forrest

198

James Forrest

DATE OF BIRTH: 11-22-72

NAME: Virginia F. Hurrick

SENTENCE: 10 years

JAN 06 2018

[Signature]
 C.C.P. & G.S., Aiken County, S.C.
 Deputy Clerk

FORM 23 (12/87)

STATE OF SOUTH CAROLINA)

INDICTMENT FOR ASSAULT AND BATTERY
OF A HIGH AND AGGRAVATED NATURE
~~AND CARRYING CONCEALED WEAPON~~COUNTY OF AIKEN)At a Court of General Sessions, convened on February 11, 1991the Grand Jurors of Aiken County present upon their oath:**COUNT ONE — ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE**

That JAMES FORREST did
in Aiken County on or about October 5, 1990, commit
an assault and battery upon the victim, Lewis Thomas, Jr.
constituting an unlawful act of violent injury to the person of the said victim, accompanied by cir-
cumstances of aggravation, to wit: James Forrest did ^{Strike} body-slam Lewis Thomas, Jr.
with his fists, James Forrest being older and larger
several times on a concrete driveway causing serious bodily injury
than Lewis Thomas, Jr.

COUNT TWO — CARRYING CONCEALED WEAPON

That _____ did
in _____ County on or about _____, carry
concealed about his person a deadly weapon, to wit: _____

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

Barbara R. Morgan
BARBARA R. MORGAN
SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO. 11-01-0000
Solicitor: _____
Defense Attorney: _____

State of South Carolina

vs.

**AFFIDAVIT OF DEFENDANT FOR
GUILTY PLEA**

James Forrest

Defendant

The defendant, states to the court that the defendant wants to plead guilty to the following charge(s): Assault & Battery on H & H nature
PENALTY: 10 years

In connection with the plea, I certify that the answers to the following questions are true:

Background of Defendant

1. How old are you? 18
2. How far did you go in school? 10th
3. (a) Can you read and write the English language?
☒ yes ☐ no
- (b) Are you able to read and understand this form?
☒ yes ☐ no

(c) If not, who is explaining it to you and putting out your answers?

Name of person: _____

4. What kind of work do you do? work for mill
5. Have you ever been treated for abuse of alcohol or drugs or for mental illness? ☐ yes ☒ no

If so, when? _____

For how long? _____

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, _____, Clerk of Court, of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JAN 06 2014

C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

Feb 12 2014

[Signature]

Did you successfully complete the program?

☐ yes ☐ no

6. Have you taken any medication, drugs, or alcohol in the last 24 hours? ☐ yes ☒ no

If yes, what? _____

How much? _____

When? _____

Does this affect your ability to know and understand what you are doing here today?

☐ yes ☒ no

7. Are you today under the influence of any medication, drugs, or alcohol? ☒ yes ☐ no

8. Are you today aware of any physical, emotional, or nervous problem that might keep you from understanding what you are doing?

☐ yes ☒ no

If yes, explain: _____

9. Have you ever been ordered by a judge to submit to a mental evaluation to determine your competency to stand trial?

☐ yes ☒ no

Waiver of Constitutional Rights

1. Do you understand that you have the right to remain silent, that is, your right against self-incrimination? You cannot be compelled to testify or give evidence against yourself. Do you understand this right?

☒ yes ☐ no

2. Do you wish to give up this right and plead guilty?

☒ yes ☐ no

3. Do you understand that you have a right to a jury trial; you have a right to have a jury decide whether or not you are guilty beyond a reasonable doubt. They would base their decision upon evidence which the state presents and on any evidence you might wish to introduce. In a trial, you would be presumed to be innocent, and the state would have to produce evidence that would convince all 12 members of the jury that you were guilty beyond a reasonable doubt. Do you understand this right?

☐ yes ☐ no

Do you wish to give up your right to a jury trial and plead guilty? ☒ yes ☐ no

3. Do you understand that you have the right to confront and be confronted by the witnesses against you; that is, the right to see, hear, and cross-examine any witnesses that may be called against you during the trial and the right to subpoena and call witnesses in your own behalf. Do you understand these rights?
☒ yes ☐ no

Do you wish to give up these rights and plead guilty?
☒ yes ☐ no

- [4] If your case has not yet been before the grand jury, you have the right to have the case presented to the grand jury. After hearing evidence, 12 of the 18 people on the grand jury would have to agree that you were probably guilty before the charge against you could be reported out as a True Bill ready for trial. A grand jury might return a No Bill, which would mean that the charge would be dismissed. Do you understand this right?
☒ yes ☐ no

Do you wish to give up your right to have the grand jury examine your case? ☒ yes ☐ no

5. Do you understand that when you plead guilty you give up these constitutional rights?
☒ yes ☐ no

Is that what you want to do?
☒ yes ☐ no

Do you understand that you will not get a jury trial if you plead guilty? ☒ yes ☐ no

Nature of the Charge and Consequences of Pleading Guilty

1. Has your attorney discussed with you the charge(s) and possible punishment for the charge(s)?
☒ yes ☐ no
2. What acts did you do which cause you to think that you are guilty of the charge or charges to which you now want to plead guilty?

Cause I hit the boy

3. Are you pleading guilty for any reason other than the fact that you are guilty? ☐ yes ☒ no

If so, what is the other reason? _____

4. As you understand, the maximum possible penalty for this charge is: _____

(Include jail time, fines, and forfeiture, if applicable.)

5. (If an offense with graduated penalties) Do you understand that if you plead guilty to this offense and you are convicted at a later time of the same crime, the punishment will be higher next time? ☒ yes ☐ no

6. Do you have any questions about the nature of the charge(s) against you and the possible punishments? ☐ yes ☒ no

If yes, please write your questions here: _____

7. Do you understand that when you plead guilty you admit the truth of the charge(s) against you? ☒ yes ☐ no

8. You may have defenses to the charge(s) against you. The judge does not know whether you do or not. Do you understand that if you plead guilty you will waive or give up any defenses to the charge(s)? ☒ yes ☐ no

9. You may have given an incriminating statement in this case. Do you understand that if you plead guilty you waive or give up the right to contest or challenge whether such a statement was freely and voluntarily given in accordance with your constitutional rights? ☒ yes ☐ no

10. Understanding the nature of the charge(s) against you and the consequences of a guilty plea, do you still wish to plead guilty? ☒ yes ☐ no

Plea Negotiations

1. Has any plea agreement been made by you with the solicitor's office? ☐ yes ☒ no

STATE OF SOUTH CAROLINA

County of Aiken

Joshua Lamar Forrest, 274525,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No: 2011-CP-02-1834

MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR POST-
CONVICTION RELIEF

The applicant, above-named, presents the Memorandum of Law in Support of the Application for Post-conviction Relief (PCR) and would show the following unto the Honorable Court.

STATEMENT OF THE CASE

The applicant was indicted by the Aiken County Grand Jury during the April 2006 term of General Sessions Court for murder (2006-GS-02-695) and Possession of Firearm or Knife during Commission of or Attempt to Commit a Violent Crime (2006-GS-02-694). On December 4-6, 2006, he went to trial before the Honorable Doyet A. Early, III, and Jury. He was represented by Sherri Hicks Stoney, Esquire, and the State was represented by De Grant Gibbons, Esquire. The Jury could not reach a verdict, and Judge Early declared a mistrial.

On June 22-24, 2009, the applicant was retried for the same offenses before the Honorable Judge Michael G. Nettles, and Jury. He was again represented by Sherri Stoney Hicks, Esquire, and David Miller and Stephen Kadman, Esquires represented the State. The Jury found him guilty of murder and possession of a firearm during Commission of a violent crime, and Judge Nettles sentenced him to life without parole for murder and five(5) years for possession of a weapon offense. A timely appeal was filed on applicant's behalf.

The applicant was represented on appeal by Joseph Savitz, III, Division of Appellate Defense. The Court of Appeals denied the appeal in unpublished Opinion No. 2011-UP-254, Submitted May 1, 2011-Filed June 1, 2011.

FILED

PETITIONER'S
EXHIBIT

forrest

7-31-11

Deputy Clerk

2011

4:00pm

ARGUMENT

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to judge's erroneous and misleading Jury Charge that reduced the State's burden of proof.

The evidence adduced at trial showed that while applicant was at a Club he got into an argument with his ex-girlfriend, Tamika Bussey Campbell, who was having a relationship with the victim, Mario Reddish. Campbell took applicant's cap and went to the rear of the Club where the victim and his friends were located. When applicant went to get his cap, Campbell threw a drink on him and slapped his face several times. Tr. p. 127, L. 16-19.

The applicant ignored Campbell's assault and got his cap. After getting his cap, the victim and his friends began shoving applicant, and applicant then left the Club and went to the parking lot where his cousin's car was parked to leave the area. Upon trying to leave, the applicant seen his ex-girlfriend, the victim and his friends approaching him. Tr. p. 127, L. 20-p. 128, L. 4.

There was evidence adduced that applicant allegedly fired shots in the air in an attempt to keep away the people who were approaching him. Tr. p. 12, L. 10-12. However, applicant's ex-girlfriend ignored the shots and again slapped the applicant's face several times, and he grabbed her and pushed her away. At this time the victim approached him and hit him in the face several times and grabbed him to start a fight, whereby several shots were fired and the victim was killed. Tr. p. 73, L. 4-6; p. 128, L. 14-21. The applicant displayed apparent visible injuries to his inner lip region from the assaults. Tr. p. 128, L. 12-13.

During request for Jury Charges, the Judge said he was going to charge both murder and manslaughter. Tr. p. 197, L. 23-25. Defense Counsel objected to the manslaughter charge, and the Judge denied the objection informing Counsel that he thought the case was replete with plenty of evidence concerning voluntary manslaughter. Tr. p. 200, L. 14-16. The Judge then charged the Jury on manslaughter, and specifically on the elements of murder as follows:

Court: The Defendant is charged with murder. The State must prove beyond a reasonable doubt the defendant killed another person with malice aforethought. Malice aforethought may be expressed or inferred. These terms... do not mean different kinds of malice but merely the manner in which malice may be shown to exist. Express malice is shown when a person speaks words which express hatred or ill will for another, or when a person prepared before hand to do an act which was later accomplished. For example, lying in wait for a person or other acts of "preparation