

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

AUG 26 2015

Appeal from Horry County
Kristi Lea Harrington, Circuit Court Judge

S.C. Supreme Court

KEION GRIFFIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000024

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JOSHUA L. THOMAS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENT AND SENTENCING SHEET	419
APPLICATION FOR POST-CONVICTION RELIEF	425
RETURN	432
POST-CONVICTION RELIEF HEARING TRANSCRIPT	437
ORDER OF DISMISSAL	504

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

STATE OF SOUTH CAROLINA,

PLAINTIFF,

vs.

KEION MONTRELL GRIFFIN.

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

08-GS-26-2552

08-GS-26-2553

TRANSCRIPT OF RECORD

NOVEMBER 2-5, 2009
CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, LARRY B. HYMAN, JR.; AND A JURY

APPEARANCES:

BY: DONNA E. ELDER, ESQ.
ATTORNEY FOR STATE

BY: JAMES C. GALMORE, ESQ.
ATTORNEY FOR KEION MONTRELL GRIFFIN

BRENDA R. BABB
Circuit Court Reporter

INDEX				
<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
OFFICER CHAD MULLINIX				
MS. ELDER	41			
MR. GALMORE		54		
ZACHARY S. MATHIS				
MS. ELDER	55			
MR. GALMORE		65		
JEFFREY DAVID KING				
MS. ELDER	69			
MR. GALMORE		74		
VERNON BROWN				
MS. ELDER	78		86	
MR. GALMORE		83		
DARIUS PRIEST				
MS. ELDER	87		121	
MR. GALMORE		97		125
INVESTIGATOR TONY ALLEN (IN CAMERA)				
MS. ELDER	129		146	
MR. GALMORE		140		
CS OFFICER CANDY MICHELLE MCSPADDEN				
MS. ELDER	153		163	
MR. GALMORE		158		
OFFICER DEBRA A. MCCORKLE				
MS. ELDER	164		287	
MR. GALMORE		171,284		

INDEX (CONTINUED)

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DAMARIO STUKES				
MS. ELDER	185			
MR. GALMORE		210		
DETECTIVE TONY ALLEN				
MS. ELDER	233		271	
MR. GALMORE		258		274
OFFICER JAMES VARN				
MS. ELDER	276		282	
MR. GALMORE		280		
AGENT SUZANN CROMER				
MS. ELDER	292			
MR. GALMORE		299		
DR. EDWARD LEROY PROCTOR				
MS. ELDER	303			
MR. GALMORE		309		
ASIA JADE HARRIS				
MR. GALMORE	320		349	
MS. ELDER		338		
VOIR DIRE				8
JURY SELECTION				20
OPENING STATEMENT BY STATE				41
OPENING STATEMENT BY DEFENSE				47
<u>JACKSON V. DENNO</u> HEARING				128

INDEX (CONTINUED)

MOTION FOR MISTRIAL BY DEFENSE	176/400
MOTION FOR DIRECTED VERDICT BY DEFENSE	314
CLOSING ARGUMENT BY DEFENSE	354
CLOSING ARGUMENT BY STATE	365
JURY CHARGE	375
ALLEN CHARGE	398
VERDICT	403
POLLING OF JURY	404
DEFENSE MOTION FOR ARREST OF JUDGMENT, NEW TRIAL	408
SENTENCING	409
CERTIFICATE OF REPORTER	418

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	LARGE PHOTOGRAPH	33	
S-2	PHOTOGRAPH	33	
S-3	PHOTOGRAPH OF VEHICLES AND HAT	33	64
S-4	PHOTOGRAPH OF VEHICLES	33	58
S-5	PHOTOGRAPH	33	349
S-6	PHOTOGRAPH HOUSE (REMARKED AS DEFENDANT'S EXHIBIT 6)	33	
S-7	GUN - 9-08-40818	33	156
S-8	PHOTOGRAPH	151	305
S-9	PHOTOGRAPH	151	305
S-10	PHOTOGRAPH	151	307
S-11	PHOTOGRAPH	152	247
S-12	PHOTOGRAPH	152	247

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EXHIBITS</u> (CONTINUED)	<u>ID.</u>	<u>EV.</u>
S-13	PHOTOGRAPH		152	247
S-14	PHOTOGRAPH		152	156
S-15	PHOTOGRAPH		152	156
S-16	SPENT BULLET - CASE NO. 01-08-040818 5/25/2008		152	158
S-17	NEW YORK YANKEE BALL CAP (BLACK/RED/WHITE)		176	200
S-18	PHOTOGRAPH GRIFFIN - (REMARKED AS DEFENSE EXHIBIT NUMBER 4)		247	
S-19	PHOTOGRAPH STUKES (REMARKED AS DEFENSE EXHIBIT NUMBER 5)		247	
S-20	TIME LINE POSTER		258	
D-1	PROFFER AGREEMENT		117	118
D-2	INCIDENT REPORT		179	
D-3	CD OF INTERVIEW (DEMARIO STUKES)		217	218
D-4	PHOTOGRAPH GRIFFIN - (PREVIOUSLY MARKED AS STATE'S EXHIBIT NUMBER 18)			268
D-5	PHOTOGRAPH STUKES (PREVIOUSLY MARKED AS DEFENSE EXHIBIT NUMBER 19)			268
D-6	PHOTOGRAPH HOUSE (PREVIOUSLY MARKED AS STATE'S EXHIBIT 6)			329
C-1	STATEMENT OF MIRANDA RIGHTS FOR KEION GRIFFIN		132	
C-2	JURY CHARGE		396	
C-2	QUESTION FROM JURY: WE WOULD LIKE TO REVIEW MR. BROWN'S TESTIMONY		397	

CALL OF CASE

6

1 THE COURT: ALL RIGHT, MS. ELDER, I THINK WE'RE
2 READY TO GO; IS THAT CORRECT?

3 MS. ELDER: THAT IS CORRECT, YOUR HONOR.

4 THE COURT: MR. GALMORE?

5 MR. GALMORE: YES, SIR, YOUR HONOR.

6 THE COURT: COULD I HAVE A COPY OF THE
7 INDICTMENT, PLEASE? THANK YOU VERY MUCH.

8 LADIES AND GENTLEMEN OF THE POTENTIAL JURY PANEL,
9 MY NAME IS LARRY HYMAN. I AM A CIRCUIT JUDGE HERE IN HORRY
10 COUNTY AND I HAVE BEEN ASSIGNED TO PRESIDE OVER THIS CASE.
11 YOU HAVE BEEN SELECTED AS POTENTIAL JURORS AND IT'S MY
12 UNDERSTANDING THAT THIS MORNING JUDGE JOHN'S QUALIFIED ALL
13 OF YOU AS, AS JURORS OR POTENTIAL JURORS FOR THIS TERM OF
14 COURT. IT'S MY UNDERSTANDING THAT WE HAVE BOTH CIVIL AND
15 CRIMINAL COURT GOING ON BUT THIS IS A CRIMINAL TRIAL AND I
16 HAVE BEFORE ME AN INDICTMENT. I WANT TO TELL YOU A LITTLE
17 BIT ABOUT THE CASE THAT WE'RE ABOUT TO TRY.

18 IN THIS CASE AS I SAID I HAVE TWO INDICTMENTS
19 WHICH HAVE BEEN TRUE BILLED BY THE GRAND JURY. I WANT TO
20 SAY AT THE BEGINNING THAT AN INDICTMENT IS NOT EVIDENCE IN
21 A CASE. IT IS NOT EVIDENCE WHATSOEVER. THE FACT THAT A
22 PERSON HAS BEEN INDICTED IS NOT FOR YOUR CONSIDERATION IN
23 SELECTION OF THE JUROR OR IF YOU WERE TO SEAT ON THE JURY
24 PANEL. IT IS NOTHING MORE THAN A DOCUMENT WHICH BRINGS
25 BEFORE THE COURT A CHARGE. IT IS THE DOCUMENT THAT GIVES

CALL OF CASE

7

1 ME JURISDICTION TO HANDLE A CASE.

2 IN THIS CASE IT IS ALLEGED THAT, IS IT KEION?,
3 KEION MONTRELL GRIFFIN, WHO IS SEATED HERE WITH MR.
4 GALMORE, DID IN HORRY COUNTY ON OR ABOUT MAY THE 25TH OF
5 2008 WILLFULLY, FELONIOUSLY, AND INTENTIONALLY KILL THE
6 VICTIM ONE COREY BROOKS WITH MALICE AFORETHOUGHT EITHER
7 EXPRESSED OR IMPLIED BY MEANS OF A GUNSHOT AND THE VICTIM
8 DID DIE AS A RESULT THEREOF ON MAY 25TH OF 2008 IN HORRY
9 COUNTY. THAT IS AN INDICTMENT FOR THE OFFENSE OF MURDER.

10 IT'S MY UNDERSTANDING THAT THIS OCCURRED IN
11 MYRTLE BEACH; IS THAT CORRECT?

12 MS. ELDER: THAT IS CORRECT, YOUR HONOR.

13 THE COURT: MYRTLE BEACH PROPER?

14 MS. ELDER: YES, SIR.

15 THE COURT: IN MYRTLE BEACH ON MAY 25TH OF 2008.

16 A SECOND INDICTMENT ALLEGES THE OFFENSE OF
17 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
18 CRIME. THAT INDICTMENT ALLEGES THAT KEION MONTRELL GRIFFIN
19 DID IN HORRY COUNTY ON OR ABOUT MAY THE 25TH OF 2008
20 POSSESS A FIREARM OR VISIBLY DISPLAY WHAT APPEARED TO BE A
21 FIREARM OR VISIBLY DISPLAY A KNIFE DURING THE COMMISSION OR
22 ATTEMPTED COMMISSION OF A VIOLENT CRIME, TO WIT, THE
23 OFFENSE OF MURDER.

24 THOSE ARE THE TWO CHARGES THAT WE HAVE TO GO
25 FORWARD WITH.

VOIR DIRE

8

1 NOW THE JURY SELECTION PROCESS HAS ONE AIM AND
2 THAT IS TO MAKE SURE THAT WE HAVE A FAIR AND IMPARTIAL JURY
3 TO TRY THIS CASE. BOTH THE STATE AND THE DEFENDANT ARE
4 ENTITLED TO HAVE A FAIR AND IMPARTIAL JURY.

5 NOW YOU WERE REQUIRED TO TAKE AN OATH WHEN YOU
6 WENT THROUGH QUALIFICATIONS THIS MORNING. YOU ARE AGAIN
7 REQUIRED TO TAKE ANOTHER OATH WHILE I DO WHAT WE CALL
8 GENERAL VOIR DIRE.

9 THE PURPOSE OF THIS VOIR DIRE IS TO DETERMINE
10 WHETHER OR NOT YOU HAVE ANY PARTICULAR KNOWLEDGE ABOUT THIS
11 CASE, WHETHER YOU HAVE ANY INTEREST, PREJUDICE OR BIAS IN
12 THIS CASE, WHETHER YOU MIGHT KNOW THE WITNESSES, IF THERE'S
13 ANYTHING ABOUT THIS CASE THAT MIGHT CAUSE YOU OR AFFECT
14 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR. SO I'M
15 GOING TO ASK YOU ALL TO STAND AND I'M GOING TO ASK THE
16 CLERK TO AGAIN ADMINISTER ANOTHER OATH AND YOU'RE GOING TO
17 HAVE ANOTHER OATH IF YOU GET SELECTED ON THE JURY SO GET
18 USED TO THIS PROCESS. IF YOU WOULD, MADAM CLERK?

19 VOIR DIRE

20 THE COURT: THANK YOU VERY MUCH. NOW LISTEN
21 VERY CAREFULLY TO THESE QUESTIONS.

22 HAS ANYONE EVER BEEN RELATED BY BLOOD OR MARRIAGE
23 TO EITHER THE DEFENDANT IN THIS CASE WHO IS KEION MONTRELL
24 GRIFFIN OR THE VICTIM IN THIS CASE MR. COREY BROOKS, ANYONE
25 RELATED BY BLOOD OR MARRIAGE?

VOIR DIRE

9

1 (NO RESPONSE.)

2 HAS ANYONE EVER HAD A CLOSE -- AND THERE WAS NO
3 RESPONSE TO THAT INQUIRY, MADAM COURT REPORTER.

4 HAS ANYONE EVER HAD A CLOSE PERSONAL OR SOCIAL
5 RELATIONSHIP WITH EITHER THE DEFENDANT THAT I NAMED OR THE
6 VICTIM THAT I NAMED?

7 AND AGAIN, MADAM COURT REPORTER, THERE IS NO
8 RESPONSE.

9 I AM GOING TO ASK BOTH THE STATE AND POSSIBLY THE
10 DEFENSE TO PROVIDE ME WITH A LIST OF POSSIBLE WITNESSES IN
11 THIS CASE AND I WANT TO DETERMINE WHETHER OR NOT ANYONE HAS
12 A POSSIBLE OR IS RELATED BY BLOOD OR MARRIAGE TO ANY OF
13 THOSE WITNESSES OR HAS A CLOSE PERSONAL OR SOCIAL
14 RELATIONSHIP WITH ANY OF THOSE WITNESSES.

15 DO YOU HAVE YOUR WITNESS LIST, MADAM?

16 MS. ELDER: YOUR HONOR, I HANDED IT UP AND
17 PLACED ON YOUR BENCH.

18 THE COURT: THANK YOU VERY MUCH, AS USUAL I
19 LOOSE WHAT'S PUT UP HERE, LET'S SEE WHAT WE'VE GOT.

20 ALL RIGHT, THE POTENTIAL WITNESSES IN THIS CASE,
21 AND THERE AGAIN LET ME SAY THESE ARE MERELY POTENTIAL
22 WITNESSES. THEY MAY OR MAY NOT BE CALLED BUT WHAT WE WANT
23 TO DO IS MAKE SURE THAT ANYONE THAT MIGHT BE CALLED THAT
24 YOU MAY HAVE A RELATIONSHIP WITH IS MADE KNOWN TO YOU.

25 DETECTIVE MIKE HULL WITH THE MYRTLE BEACH POLICE

VOIR DIRE

10

1 DEPARTMENT, AND I'LL GO THROUGH THE FULL LIST AND THEN ASK
2 YOU TO RESPOND:

3 DETECTIVE TONY ALLEN;

4 OFFICER TRAVIS PRESTON, ALL THOSE ARE WITH THE
5 MYRTLE BEACH POLICE DEPARTMENT;

6 OFFICER PETER SCHMIDT WITH THE MYRTLE BEACH
7 POLICE DEPARTMENT;

8 OFFICER DEBRA MCCORKLE WITH THE MYRTLE BEACH
9 POLICE DEPARTMENT;

10 OFFICER JOHN, WHAT IS THAT LAST NAME, IS IT
11 MISSPELLED OR IS IT --

12 MS. ELDER: IAONNONE.

13 THE COURT: --- IAONNONE, OKAY, WITH THE MYRTLE
14 BEACH POLICE DEPARTMENT, THAT'S OFFICER JOHN IAONNONE;

15 OFFICER, CS OFFICER MCCLELLAND WITH THE MYRTLE
16 BEACH POLICE DEPARTMENT;

17 OFFICER MCSPADDEN WITH THE MYRTLE BEACH POLICE
18 DEPARTMENT;

19 DR. EDWARD PROCTOR WHO IS WITH THE GRAND STRAND
20 REGIONAL MEDICAL CENTER.

21 (WHEREUPON, A CELL PHONE RINGS IN THE COURTROOM.)

22 WE GOT THAT TURNED OFF. LET'S KEEP ALL THE CELL
23 PHONES TURNED OFF, PLEASE.

24 (CONTINUING) AGENT SUZANN CROMER WITH SLED;

25 AGENT JENNIFER CLAYTON WITH SLED;

VOIR DIRE

11

1 DARIUS PRIEST OF COLUMBIA, SOUTH CAROLINA;
2 DEMARIO STUKES OF COLUMBIA, SOUTH CAROLINA;
3 EMMA CHANDLER OF COLUMBIA, SOUTH CAROLINA;
4 SHERITA ANDERSON OF MYRTLE BEACH, SOUTH CAROLINA;
5 VERNON BROWN, DARLINGTON, SOUTH CAROLINA;
6 NATHAN JOSEPH, VANCE, SOUTH CAROLINA;
7 JEFFREY KING, MYRTLE BEACH, SOUTH CAROLINA;
8 KEITH GRIFFIN FROM COLUMBIA, SOUTH CAROLINA;
9 DAN SWEENEY, ATLANTA, GEORGIA;
10 EDWIN SALTERS, MYRTLE BEACH, SOUTH CAROLINA;
11 ZACHARY MATHIS, COLUMBIA, SOUTH CAROLINA;
12 MICHAEL BENNETT, VANCE, SOUTH CAROLINA;
13 JOSHUA HUGHES, COLUMBIA, SOUTH CAROLINA;
14 ASIA HARRIS, ORANGEBURG, SOUTH CAROLINA;
15 JULUIS JOSEPH, VANCE, SOUTH CAROLINA;
16 OFFICER CHAD MULLINIX, MYRTLE BEACH POLICE
17 DEPARTMENT'
18 DETECTIVE SHANNON CASTLE, MYRTLE BEACH POLICE
19 DEPARTMENT;
20 AND OFFICER JAMES VARN.
21 IS ANYONE RELATED BY BLOOD OR MARRIAGE OR DOES
22 ANYONE HAVE A CLOSE SOCIAL RELATIONSHIP OR A PERSONAL
23 RELATIONSHIP WITH ANY OF THE POTENTIAL WITNESSES FOR THE
24 STATE?
25 MS. ELDER: AND, YOUR HONOR, THERE WAS A TYPO,

VOIR DIRE

12

1 JUST TO BE CLEAR THE LAST WITNESS IS JAMES VARN, IT'S V-A-
2 R-N.

3 THE COURT: OFFICER JAMES VARN AND THAT'S WITH
4 HORRY COUNTY?

5 MS. ELDER: YES, SIR, YOUR HONOR, IT'S THE
6 DETENTION CENTER OUT AT THE JAIL.

7 THE COURT: OFFICER JAMES VARN.

8 DOES ANYONE HAVE A CLOSE PERSONAL OR A SOCIAL
9 RELATIONSHIP OR ARE YOU RELATED BY BLOOD OR MARRIAGE IN ANY
10 WAY TO ANY OF THE WITNESSES FOR THE STATE?

11 YES, MA'AM?

12 JUROR NUMBER 177: I'M A GOOD FRIEND AND
13 SOCIALLY KNOW DR. PROCTOR.

14 THE COURT: DR. PROCTOR, OKAY, AND YOUR NAME AND
15 NUMBER IS?

16 JUROR NUMBER 177: MY NUMBER IS 177 AND MY NAME
17 IS BILLIE HUDSON.

18 THE COURT: ALL RIGHT, MS. HUDSON, WOULD THE
19 FACT THAT YOU KNOW DR. PROCTOR IN ANY WAY AFFECT YOUR
20 ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

21 JUROR NUMBER 177: NO, SIR.

22 THE COURT: COULD YOU GIVE BOTH THE STATE AND
23 THE DEFENSE A FAIR ---

24 JUROR NUMBER 177: YES, SIR.

25 THE COURT: VERY WELL. NOW, MR. GALMORE, I

VOIR DIRE

13

1 BELIEVE THAT YOU HAVE A WITNESS LIST WHICH MAY ENCOMPASS
2 SOME OF THOSE, DO YOU HAVE ANY TO ADD?

3 MR. GALMORE: NO, SIR.

4 THE COURT: NONE AT ALL?

5 MR. GALMORE: NO, SIR.

6 THE COURT: OKAY, ALL THE WITNESSES ARE INCLUDED
7 ON THAT WITNESS LIST AND THAT OFTEN IS THE CASE WHEN WE
8 LIST ALL OF THE POTENTIAL WITNESSES FOR ONE SIDE SO THAT
9 ONE SIDE KNOWS WE GENERALLY COVER BOTH SIDES SO THAT'S NOT
10 UNUSUAL.

11 OKAY, NOW THE ATTORNEYS IN THIS CASE ARE MS.
12 DONNA ELDER WHO'S SEATED OVER HERE TO YOUR RIGHT, MY LEFT,
13 SHE'S WITH THE HORRY COUNTY SOLICITOR'S OFFICE AND SEATED
14 HERE TO MY RIGHT AND YOUR LEFT IS MR. JAMES GALMORE. MR.
15 GALMORE IS WITH THE HORRY COUNTY PUBLIC DEFENDERS
16 CORPORATION.

17 NOW DO YOU REQUIRE, MR. GALMORE, THAT WE NAME ALL
18 THE SOLICITORS IN THE SOLICITOR'S OFFICE?

19 MR. GALMORE: NO, SIR.

20 THE COURT: MS. ELDER, DO YOU REQUIRE THAT WE
21 NAME ALL THE ATTORNEYS IN THE PUBLIC DEFENDERS OFFICE?

22 MS. ELDER: NO, SIR, YOUR HONOR.

23 THE COURT: ALL RIGHT, IS ANYONE RELATED TO MR.
24 GALMORE OR MS. ELDER OR ARE YOU CLOSE PERSONAL FRIENDS, DO
25 YOU HAVE ANY SOCIAL RELATIONSHIP WHATSOEVER WITH EITHER MR.

VOIR DIRE

14

1 GALMORE OR MS. ELDER?

2 YES, MA'AM?

3 JUROR NUMBER 180: I'M LISA HUGHES.

4 THE COURT: AND, MS. HUGHES, I BELIEVE YOU WORK
5 FOR THE PUBLIC DEFENDER CORPORATION AND I DON'T THINK IT
6 WOULD BE FAIR TO PUT YOU ON THIS JURY EITHER TO YOU, THE
7 DEFENDANT, OR THE STATE. SO WHAT I'M GOING TO DO IS EXCUSE
8 YOU FOR CAUSE ON THIS CASE AND YOUR NUMBER IS?

9 JUROR NUMBER 180: 180.

10 THE COURT: 180, I THINK MS. ELDER I'M SURE
11 KNOWS YOU BUT THAT WILL BE THE COURT'S STRIKE.

12 JUROR NUMBER 180: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT, HAS ANYONE EVER BEEN
14 REPRESENTED BY MS. ELDER OR MR. GALMORE?

15 (NO RESPONSE.)

16 HAS ANY MEMBER OF THE JURY PANEL FORMED OR
17 EXPRESSED AN OPINION ABOUT ANY ISSUE OR MATTER INVOLVED IN
18 THIS CASE OR ARE YOU AWARE OF ANY BIAS OR PREJUDICE YOU
19 WOULD HAVE EITHER TOWARDS THE STATE OR THE DEFENDANT IN
20 THIS CASE? AND THE PURPOSE OF THAT QUESTION IS SIMPLY
21 THIS. AS I SAID AT THE BEGINNING WHAT WE WANT TO DO IS
22 MAKE SURE THAT WE SELECT A JURY IN THIS CASE THAT IS FAIR
23 AND IMPARTIAL AND THAT WILL GIVE BOTH THE STATE AND THE
24 DEFENSE A FAIR TRIAL.

25 IN THAT REGARD I'M ASKING YOU BY THESE TWO

VOIR DIRE

15

1 QUESTIONS WHETHER OR NOT YOU HAVE HEARD, SEEN, OR KNOW
2 ANYTHING ABOUT THIS CASE THAT WOULD CAUSE YOU TO HAVE ANY
3 FEELINGS ABOUT WHAT OCCURRED, WHAT DIDN'T OCCUR, THE GUILT
4 OR INNOCENCE OF THE DEFENDANT? WOULD YOU HAVE ANY
5 INTEREST, PREJUDICE OR BIAS OR STRONG FEELINGS OF ANY KIND
6 ABOUT THIS CASE?

7 AND THERE IS NO RESPONSE.

8 IS THERE ANY MEMBER OF THE JURY PANEL BY CHANCE
9 THAT WOULD HAVE BEEN A MEMBER OF THE GRAND JURY THAT ISSUED
10 THE INDICTMENT IN THIS CASE? WE TRY TO MAKE THAT DOESN'T
11 HAPPEN BUT IT'S A QUESTION THAT I ALWAYS ASK AND THERE IS
12 NO RESPONSE.

13 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS A
14 MEMBER OR A CONTRIBUTOR TO ANY GROUP WHICH HAS AS ITS
15 PRIMARY CONCERN THE PROMOTION OF LAW ENFORCEMENT OR VICTIMS
16 RIGHTS AND, OF COURSE, THESE GROUPS WOULD INCLUDE BUT NOT
17 BE LIMITED TO MADD OR SADD OR CAVE, ANYTHING LIKE THAT?

18 THERE'S NO RESPONSE.

19 IS THERE ANY MEMBER OF THE JURY PANEL THAT KNOWS
20 ANY REASON WHATSOEVER WHY HE OR SHE SHOULD NOT SERVE AS A
21 JUROR IN THIS CASE WITH PARTICULAR EMPHASIS BEING PLACED
22 UPON YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR TO BOTH
23 THE STATE AND TO THE DEFENDANT?

24 THERE IS NO RESPONSE.

25 NOW THIS CASE INVOLVES A SHOOTING INCIDENT THAT

VOIR DIRE

16

1 OCCURRED DURING MEMORIAL DAY, OR WHAT IS COMMONLY REFERRED
2 TO IN THE MEDIA AS BLACK BIKE WEEK. HAS ANY MEMBER OF THE
3 JURY PANEL FORMED OR EXPRESSED AN OPINION ABOUT BLACK BIKE
4 WEEK, WHATEVER THAT OPINION CAN YOU SET ASIDE THAT OPINION
5 AND TRY THIS CASE SOLELY ON THE FACTS? CAN YOU BE A FAIR
6 AND IMPARTIAL JUROR TO BOTH THE STATE AND THE DEFENDANT?

7 THERE IS NO RESPONSE.

8 HAS ANY MEMBER OF THE JURY PANEL READ OR HEARD
9 ANY INFORMATION ABOUT THIS CASE THROUGH NEWSPAPER,
10 TELEVISION OR ON THE INTERNET THAT WOULD CAUSE YOU TO
11 EXPRESS AN OPINION OR HAVE YOU EXPRESSED AN OPINION ABOUT
12 THE GUILT OR INNOCENCE OF THE ACCUSED BASED ON THIS
13 INFORMATION?

14 IF YOU HAVE RECEIVED OR READ ANY INFORMATION OR
15 READ ANYTHING ABOUT THIS CASE CAN YOU SET THAT ASIDE OR IS
16 THERE ANY REASON THAT YOU KNOW WHY YOU WOULD NOT BE A FAIR
17 AND IMPARTIAL JUROR AND THERE IS NO RESPONSE.

18 MADAM CLERK: JUDGE?

19 THE COURT: I'M SORRY, I'M SORRY, I DO HAVE ONE
20 PERSON AND I'M GOING, BECAUSE OF THE SENSITIVE NATURE OF
21 THAT QUESTION I'M GOING TO ASK YOU TO COME FORWARD WITH THE
22 ATTORNEYS, OKAY.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
24 RECORD IN THE PRESENCE OF THE JURY VENIRE, BUT OUT OF THE
25 HEARING OF THE JURY VENIRE AND THE COURT REPORTER.)

VOIR DIRE

17

1 THE COURT: JUROR NUMBER 161 IS EXCUSED.
2 TECHNOLOGY IS A WONDERFUL THING, WE'VE GOT ALL KIND OF
3 LITTLE TOYS UP HERE THAT I CAN PLAY WITH.

4 ALL RIGHT, I FIND THAT THE JURY IN THIS CASE IS
5 QUALIFIED TO SERVE. NOW LET ME TELL YOU ABOUT THE PROCESS
6 THAT WE FOLLOW IN THE SELECTION OF A JURY.

7 WHAT I WANT TO DO THIS MORNING IS, IS ACTUALLY
8 SELECT A JURY. THOSE OF YOU THAT ARE NOT SELECTED I'M
9 GOING TO SEND HOME. I'M SURE YOU WERE GIVEN SOME
10 INSTRUCTIONS ABOUT CALLING BACK AFTER 6:00 AND FINDING IF
11 YOU'RE GOING TO BE NEEDED LATER IN THE WEEK. I'M SURE I'M
12 NOT GOING TO NEED ANYBODY BUT THE OTHER JUDGES THAT ARE
13 HERE, I THINK WE'VE GOT ABOUT FOUR OTHER JUDGES THAT ARE
14 HERE, MAY IN FACT NEED SOMEONE, BUT WE'RE GOING TO SELECT A
15 JURY OF 12 AND I BELIEVE TWO ALTERNATES WILL BE SUFFICIENT.
16 MR. GALMORE, MS. ELDER?

17 MS. ELDER: YES, SIR.

18 MR. GALMORE: YES, SIR.

19 THE COURT: AND I'M GOING TO SELECT TWO
20 ALTERNATES.

21 WE GO THROUGH A PROCESS IN ORDER TO DO THAT
22 DEPENDING ON WHICH KIND OF COURT WE'RE HAVING. WE HAVE
23 SOME COMMON PLEAS WHICH IS CIVIL COURT WHICH IS ALSO GOING
24 ON THIS WEEK AND, OF COURSE, WE HAVE CRIMINAL COURT WHICH
25 WE HAVE HERE.

VOIR DIRE

18

1 IN THE COMMON PLEAS COURT WE'RE VERY GENERAL IN
2 HOW WE SELECT THE JURY. YOU'RE PUT ON A LIST AND THE
3 ATTORNEYS STRIKE FROM THE LIST AND YOU'RE GIVEN NEW NUMBERS
4 SO YOU DON'T EVEN KNOW THAT YOU HAVE BEEN STRUCK.

5 IN THE CRIMINAL COURT WE DO IT DIFFERENTLY. WE
6 FOLLOW THE TRADITIONAL METHOD OF DOING IT AND YOUR NAME IS
7 GOING TO BE CALLED AND YOU'LL HAVE TO COME RIGHT UP HERE
8 AND TURN AROUND AND FACE EVERYBODY ELSE IN THE AUDIENCE AND
9 THE LAWYERS AND THE STATE IS GIVEN THE FIRST OPTION.

10 THE STATE WILL SAY PRESENT THE JUROR OR THE STATE
11 WILL SAY EXCUSE THE JUROR. THEN THE DEFENDANT WILL HAVE
12 THE OPTION OF SAYING SWEAR THE JUROR OR EXCUSE THE JUROR
13 AND THAT PROCESS WILL GO ON UNTIL WE HAVE OUR 14 POTENTIAL
14 JURORS.

15 NOW THAT IS AN EMBARRASSING SITUATION TO A LOT OF
16 PEOPLE. A LOT OF PEOPLE FEEL UNCOMFORTABLE ABOUT DOING
17 THAT AND THEY FEEL BAD WHEN, WHEN THEY GET STRUCK BUT LET
18 ME TELL THIS ABOUT THE SELECTION PROCESS. I PRACTICED LAW
19 FOR OVER 30 YEARS BEFORE I BECAME A JUDGE AND I PRACTICED A
20 LOT OF JURY TRIALS, IN A LOT OF JURY TRIALS. THESE
21 ATTORNEYS THEY AIN'T GOT A CLUE OF WHY THEY STRIKE YOU, I
22 CAN TELL YOU THAT. THEY DON'T KNOW WHAT THEY'RE DOING;
23 THEY'RE JUST DOING THE BEST THEY CAN. MOST OF THE TIME
24 WHEN SOMEONE IS STRUCK IT'S JUST BECAUSE THEY WANT TO TRY
25 TO GET TO A JUROR THAT THEY SEE ON THE LIST THAT MIGHT BE

JURY SELECTION

19

1 MORE SYMPATHETIC TO THEIR POSITION WHETHER IT'S THE STATE
2 OR, OR THE DEFENSE.

3 YOU MAY HAVE BEEN STRUCK BECAUSE YOU PART YOUR
4 HAIR ON THE RIGHT OR YOU PART YOUR HAIR ON THE LEFT OR YOU
5 DON'T HAVE ANY HAIR TO PART. THERE'S NO TELLING WHY YOU
6 WILL GET STRUCK SO DON'T TAKE IT TO HEART. I KNOW MOST OF
7 YOU ARE SITTING OUT THERE THINKING WELL, HEY, DON'T WORRY
8 ABOUT ME, JUDGE, I'M HOPING I WON'T GET SELECTED AND THAT'S
9 USUALLY THE SITUATION. BUT LET ME SAY THIS, THAT IF YOU
10 ARE SELECTED ON THIS JURY YOU'RE GOING TO FIND IT TO BE AN
11 INTERESTING EXPERIENCE.

12 MOST PEOPLE WHO I HAVE TALKED TO WHO HAVE BEEN ON
13 JURORS SAY, YOU KNOW I DIDN'T WANT TO GET A JURY BUT, YOU
14 KNOW, ONCE I GOT INTO IT, ONCE I SAW WHAT WE WERE DOING I
15 REALLY ENJOYED IT AND IT WAS AN INTERESTING PROCESS.

16 THE FACT THAT YOU ARE HERE AND WILLING TO SIT ON
17 A JURY IS PROBABLY THE MOST IMPORTANT THING THAT YOU CAN
18 POSSIBLY DO AS A CITIZEN. EVERYONE, EVERYONE, THIS
19 DEFENDANT, YOU, I, WE ALL HAVE A RIGHT TO HAVE A CASE
20 RESOLVED BY A JURY OF OUR PEERS, A FAIR AND IMPARTIAL JURY
21 AND THAT'S WHY WE GO THROUGH THIS PROCESS TO MAKE SURE THAT
22 YOU HAVE THAT RIGHT TO HAVE -- TO SAY OTHERWISE WOULD MEAN
23 THAT YOU COULD JUST COME, BE ARRESTED AND PUT IN JAIL OR
24 WHATEVER WITH, WITHOUT TRIAL AND THAT, THAT'S THE CASE IN
25 MANY AREAS OF THE WORLD BUT NOT IN THE UNITED STATES. YOU

JURY SELECTION

20

1 HAVE AN ABSOLUTE RIGHT TO BE TRIED BY A JURY OF YOUR PEERS
2 AND THE STATE HAS A RIGHT TO HAVE A FAIR AND IMPARTIAL JURY
3 DECIDE ITS CASES AS WELL SO IT'S IMPORTANT THAT YOU'RE
4 HERE.

5 NOW WHAT WE'RE GOING TO DO IS WE'RE GOING TO
6 BEGIN BY CALLING THE JURORS BY NAME AND OUR CLERK IS GOING
7 TO DO THAT AND, IF YOU WOULD, JUST COME FORWARD RIGHT UP
8 HERE, TURN AROUND, FACE THE ATTORNEYS AND WE'LL GET ON WITH
9 THE SELECTION PROCESS, OKAY. MADAM CLERK?

10 JURY SELECTION

11 MADAM CLERK: ANY BELONGINGS THAT YOU HAVE IF
12 YOU'LL, PLEASE, BRING THAT UP WHENEVER YOU COME.

13 JUROR NUMBER 272, JERRY NORRIS.

14 THE COURT: RIGHT THERE, MR. NORRIS, AND TURN
15 AROUND.

16 MADAM CLERK: WHAT SAY THE STATE?

17 MS. ELDER: PLEASE PRESENT THIS JUROR.

18 MADAM CLERK: DEFENSE?

19 MR. GALMORE: PLEASE EXCUSE THE JUROR IN THE
20 TRIAL OF THIS CASE.

21 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
22 CASE, YOU CAN GO BACK AND HAVE A SEAT.

23 148, VICKIE GREEN.

24 WHAT SAY THE STATE?

25 THE COURT: JUST ONE SECOND, WHAT NUMBER IS SHE?

JURY SELECTION

21

1 MADAM CLERK: 148.
2 WHAT SAY THE STATE?
3 MS. ELDER: PLEASE EXCUSE THE JUROR FROM THIS
4 TRIAL.
5 MADAM CLERK: YOU'RE EXCUSED FROM THIS
6 PARTICULAR CASE.
7 186, TIMOTHY ICARD.
8 WHAT SAY THE STATE?
9 MS. ELDER: PLEASE PRESENT THE JUROR IN THIS
10 MATTER.
11 MADAM CLERK: DEFENSE?
12 MR. GALMORE: PLEASE SEAT THE JUROR.
13 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.
14 238, JOHN MCCALL, JR.
15 WHAT SAY THE STATE?
16 MS. ELDER: PLEASE PRESENT THE JUROR IN THIS
17 MATTER.
18 MADAM CLERK: DEFENSE?
19 MR. GALMORE: PLEASE SEAT THE JUROR.
20 MADAM CLERK: 62, ANNE CASTO.
21 WHAT SAY THE STATE?
22 MS. ELDER: PLEASE PRESENT THIS JUROR.
23 MADAM CLERK: DEFENSE?
24 MR. GALMORE: PLEASE EXCUSE THE JUROR IN THE
25 TRIAL OF THIS CASE.

JURY SELECTION

22

1 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
2 CASE.
3 171, CHERIE HOPKINS.
4 WHAT SAY THE STATE?
5 MS. ELDER: PLEASE PRESENT THIS JUROR.
6 MADAM CLERK: DEFENSE?
7 MR. GALMORE: PLEASE SEAT THE JUROR.
8 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.
9 371, NANCY TINGLEY.
10 WHAT SAY THE STATE?
11 MS. ELDER: PLEASE PRESENT THIS JUROR.
12 MADAM CLERK: DEFENSE?
13 MR. GALMORE: PLEASE EXCUSE THE JUROR IN THE
14 TRIAL OF THIS CASE.
15 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
16 CASE.
17 109, LOUIS FACCIUOLO.
18 THE COURT: TELL US WHAT YOUR NAME IS, SIR?
19 JURY PANEL MEMBER: FACCIUOLO.
20 THE COURT: FACCIUOLO, OKAY, MR. FACCIUOLO.
21 MADAM CLERK: WHAT SAY THE STATE?
22 MS. ELDER: PLEASE PRESENT THIS JUROR.
23 MADAM CLERK: DEFENSE?
24 MR. GALMORE: PLEASE SEAT THE JUROR.
25 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.

JURY SELECTION

23

1 203, DONALD JORDAN.

2 WHAT SAY THE STATE?

3 MS. ELDER: PLEASE PRESENT THIS JUROR.

4 MADAM CLERK: DEFENSE?

5 MR. GALMORE: PLEASE EXCUSE THE JUROR IN THE
6 TRIAL OF THIS CASE.

7 MADAM CLERK: YOU'RE EXCUSED FROM THIS
8 PARTICULAR CASE.

9 217, THOMAS KRAEFT.

10 WHAT SAY THE STATE?

11 MS. ELDER: PLEASE PRESENT THIS JUROR.

12 MADAM CLERK: DEFENSE?

13 MR. GALMORE: PLEASE EXCUSE THE JUROR IN THE
14 TRIAL OF THIS CASE.

15 MADAM CLERK: YOU'RE EXCUSED FROM THIS
16 PARTICULAR CASE.

17 45, ROY BROWN.

18 WHAT SAY THE STATE?

19 MS. ELDER: PLEASE PRESENT THIS JUROR.

20 MADAM CLERK: DEFENSE?

21 MR. GALMORE: PLEASE SEAT THE JUROR.

22 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.

23 157, GARY HARRELSON.

24 WHAT SAY THE STATE?

25 MS. ELDER: PLEASE PRESENT THIS JUROR.

JURY SELECTION

24

1 MADAM CLERK: DEFENSE?
2 MR. GALMORE: PLEASE SEAT THE JUROR.
3 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.
4 85, RANDALL COX.
5 WHAT SAY THE STATE?
6 MS. ELDER: PLEASE PRESENT THIS JUROR.
7 MADAM CLERK: DEFENSE?
8 MR. GALMORE: PLEASE EXCUSE THE JUROR IN THE
9 TRIAL OF THIS CASE.
10 MADAM CLERK: YOU'RE EXCUSED FROM THIS
11 PARTICULAR CASE.
12 188, LAURA IRVIN.
13 WHAT SAY THE STATE?
14 MS. ELDER: PLEASE PRESENT THIS JUROR.
15 MADAM CLERK: DEFENSE?
16 MR. GALMORE: PLEASE SEAT THE JUROR.
17 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.
18 47, SHEILA BRYANT.
19 WHAT SAY THE STATE?
20 MS. ELDER: PLEASE EXCUSE THE JUROR FROM THIS
21 CASE.
22 MADAM CLERK: YOU'RE EXCUSED FROM THIS
23 PARTICULAR CASE.
24 361, JAMES SWAIM.
25 WHAT SAY THE STATE?

JURY SELECTION

25

1 MS. ELDER: PLEASE PRESENT THE JUROR IN THIS
2 CASE.

3 MADAM CLERK: DEFENSE?

4 MR. GALMORE: PLEASE SEAT THE JUROR.

5 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.
6 67, STEVEN CHENAULT.

7 WHAT SAY THE STATE?

8 MS. ELDER: PLEASE PRESENT THE JUROR.

9 MADAM CLERK: DEFENSE?

10 MR. GALMORE: PLEASE SEAT THE JUROR.

11 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.
12 153, ANTHONY HARDEE.

13 WHAT SAY THE STATE?

14 MS. ELDER: PLEASE PRESENT THIS JUROR.

15 MADAM CLERK: DEFENSE?

16 MR. GALMORE: PLEASE SEAT THE JUROR.

17 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.
18 406, PHILLIP WISEMAN.

19 WHAT SAY THE STATE?

20 MS. ELDER: PLEASE PRESENT THIS JUROR.

21 MADAM CLERK: DEFENSE?

22 MR. GALMORE: PLEASE EXCUSE THE JUROR IN THE
23 TRIAL OF THIS CASE.

24 MADAM CLERK: YOU'RE EXCUSED FROM THIS
25 PARTICULAR CASE.

JURY SELECTION

26

1 176, BOBBY HUCKS.
2 WHAT SAY THE STATE?
3 MS. ELDER: PLEASE PRESENT THIS JUROR.
4 MADAM CLERK: DEFENSE?
5 MR. GALMORE: PLEASE EXCUSE THE JUROR IN THE
6 TRIAL OF THIS CASE.
7 MADAM CLERK: YOU'RE EXCUSED FROM THIS
8 PARTICULAR CASE.
9 151, KENNETH GUNTER, JR.
10 WHAT SAY THE STATE?
11 MS. ELDER: PLEASE PRESENT THIS JUROR.
12 MADAM CLERK: DEFENSE?
13 MR. GALMORE: PLEASE SEAT THE JUROR.
14 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.
15 318, PAULA SARTOR.
16 WHAT SAY THE STATE?
17 MS. ELDER: PLEASE EXCUSE THIS JUROR FROM THIS
18 CASE.
19 MADAM CLERK: YOU'RE EXCUSED FROM THIS
20 PARTICULAR CASE.
21 297, JOHN PRUETT.
22 WHAT SAY THE STATE?
23 MS. ELDER: PLEASE PRESENT THIS JUROR.
24 MADAM CLERK: DEFENSE?
25 MR. GALMORE: PLEASE SEAT THE JUROR.

JURY SELECTION

27

1 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.

2 32, JEFFERY BLANTON.

3 THE COURT: ALTERNATES TWO AND ONE.

4 MADAM CLERK: WHAT SAY THE STATE?

5 MS. ELDER: PLEASE PRESENT THIS JUROR.

6 MADAM CLERK: DEFENSE?

7 MR. GALMORE: PLEASE SEAT THE JUROR.

8 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.

9 319, AMANDA SAUNDERS.

10 WHAT SAY THE STATE?

11 MS. ELDER: PLEASE PRESENT THIS JUROR.

12 MADAM CLERK: DEFENSE?

13 MR. GALMORE: PLEASE SEAT THE JUROR.

14 MADAM CLERK: PLEASE BE SEATED IN THE JURY BOX.

15 THE COURT: VERY WELL, ANY CHALLENGE TO THE JURY

16 FROM THE STATE?

17 MS. ELDER: NONE, FROM THE STATE, YOUR HONOR.

18 THE COURT: FROM THE DEFENSE?

19 MR. GALMORE: NO, SIR.

20 THE COURT: ALL RIGHT, VERY WELL. ALL RIGHT,

21 LADIES AND GENTLEMEN OF THE JURY, YOU WILL SERVE AS JURORS

22 ON THIS PARTICULAR CASE. MR. BLANTON AND MS. SAUNDERS,

23 I'LL ASK YOU TO ALWAYS OCCUPY THOSE TWO SEATS WHEN YOU ARE

24 BROUGHT INTO THE JURY ROOM.

25 MR. SWAIM, GUESS WHAT, YOU ARE OUR FOREPERSON.

JURY SELECTION

28

1 I'LL ASK YOU TO ALWAYS OCCUPY THAT SEAT. THE REST OF YOU
2 MAY SEAT WHEREVER YOU PLEASE WHEN YOU COME AND GO.

3 I'M GOING TO LET YOU GO TO LUNCH NOW FOR ABOUT AN
4 HOUR AND A HALF, A LITTLE LESS THAN THAT. I'LL ASK YOU TO
5 BE BACK IN THE COURTROOM AT 2:00. THIS IS MR. ROPP, MR.
6 ROPP IS MY BAILIFF. I ALWAYS HAVE MR. ROPP AS MY BAILIFF
7 BECAUSE HE TAKES SUCH GOOD CARE OF THE JURY.

8 LET ME TELL YOU THIS IF AT ANY TIME DURING THIS
9 TRIAL YOU FEEL UNCOMFORTABLE OR YOU NEED A BREAK I'M GOING
10 TO ASK YOU TO DO SOMETHING FOR ME. I WANT YOU TO JUST
11 RAISE YOUR HAND AND LET ME KNOW YOU ARE UNCOMFORTABLE. I
12 WON'T ASK YOU IF YOU'RE UNCOMFORTABLE, I'LL JUST TAKE THAT
13 AS A SIGNAL THAT YOU ARE UNCOMFORTABLE. IF AT ANY TIME YOU
14 CAN'T HEAR OR YOU CAN'T SEE LET ME KNOW THAT. IF YOU NEED
15 TO SEND ANY MESSAGES TO ME DURING THE TRIAL MR. SWAIM IS
16 YOUR SPOKESPERSON. HE IS GOING TO BE THE FOREMAN OF YOUR
17 JURY. HE'S GOING TO OVERSEE WHAT OCCURS DURING THIS TRIAL
18 AND IN YOUR JURY ROOM.

19 MR. ROPP IS HERE FOR ONE THING AND THAT IS FOR
20 YOUR COMFORT. HE'S GOING TO MAKE SURE THAT WE'VE GOT HAM
21 BISCUITS OR DOUGHNUTS IN THE MORNING CAUSE HE ALWAYS BRINGS
22 ME ONE, TOO. HE'S GOING TO MAKE SURE THAT YOU'VE GOT SOFT
23 DRINKS AND COKES. IF YOU HAVE ANY PROBLEMS WHATSOEVER
24 DURING THIS TRIAL BRING IT TO MR. ROPP'S ATTENTION, I
25 PROMISE YOU HE'LL TAKE CARE OF IT OR HE'LL BRING IT TO MY

JURY SELECTION

29

1 ATTENTION AND WE'LL DEAL WITH IT.

2 NOW I'M GOING TO LET YOU GO TO YOUR JURY ROOM.
3 HE'S GOING TO SHOW YOU HOW TO COME AND GO DURING THIS
4 TRIAL, HOW YOU WILL ACCESS THE COURTROOM AND THEN HE'S
5 GOING TO LET YOU GO TO LUNCH AND I'LL ASK YOU TO BE BACK
6 HERE ABOUT 2:00, OKAY. AT THAT TIME I'LL GIVE YOU SOME
7 PRELIMINARY INSTRUCTIONS ABOUT THIS CASE AND WE'LL GET
8 STARTED WITH THE EVIDENCE, THANK YOU VERY MUCH.

9 (WHEREUPON, THE JURY WAS EXCUSED FOR LUNCH AT
10 12:35 P.M.)

11 THE COURT: THIS MAY BE THE BEST WE COULD HAVE
12 POSSIBLY BEEN ON JURY DUTY. I HAVE CHECKED WITH THE CLERK
13 AS TO OUR OTHER JUDGES. JUDGE CORDELL MADDOX IS HERE; HE'S
14 GOING TO ALSO BE HANDLING CRIMINAL COURT BUT I THINK HE'S
15 MOSTLY GOING TO BE DOING PLEAS ALL WEEK. JUDGE JOHN IS IN
16 THE MIDST OF HIS RE-EVALUATION FOR REAPPOINTMENT AS A
17 CIRCUIT JUDGE AND HE'S GOING TO HAVE TO BE GOING TO
18 COLUMBIA FOR THE BETTER PART OF THE WEEK TO ANSWER
19 QUESTIONS OF THE SENATE AND THE HOUSE AND JUDGE CULBERTSON
20 IS, HAS THIS FULL WEEK LINED UP FOR NON JURY. SO IT LOOKS
21 LIKE THIS MAY BE THE ONLY TRIAL THAT WE'RE GOING TO,
22 ACTUALLY JURY TRIAL THAT WE'RE GOING TO HAVE THIS WEEK. NOW
23 I DON'T WANT TO PROMISE YOU THAT, I WANT YOU TO CALL BACK
24 AT 6:00 THIS AFTERNOON, ANY TIME AFTER SIX. YOU WERE GIVEN
25 A NUMBER AND THEY WILL GIVE YOU SOME INSTRUCTIONS, BUT IT

JURY SELECTION

30

1 LOOKS YOU'RE OFF THE HOOK SO I WANT YOU ALL TO GO HOME AS
2 QUICK AS YOU CAN AND CALL YOUR BOSS AND SAY I'M OFF JURY
3 DUTY, I'M COMING AS FAST AS I CAN, MAYBE YOU WILL, MAYBE
4 YOU WON'T, BUT LET ME JUST SAY THIS. THE FACT THAT YOU ARE
5 HERE TODAY HAS ALREADY PROVIDED A SUBSTANTIAL CIVIC SERVICE
6 BECAUSE WE WOULD NEVER MOVE CASES UNLESS YOU WERE HERE. AS
7 I SAID JUDGE MADDOX HAS ENOUGH PLEAS LINED UP TO TAKE THE
8 REST OF THE WEEK. I DON'T THINK WE'RE GOING TO NEED YOU
9 BUT BE SURE AND CALL BACK, LET'S MAKE SURE. I THINK THAT I
10 HAVE THE RIGHT INFORMATION ABOUT OUR OTHER JUDGES THAT ARE
11 HERE BUT I AM NOT POSITIVE OF THAT SO CALL BACK AFTER SIX
12 AND YOU'RE PROBABLY GOING TO GET EXCUSED FOR THE WEEK.
13 THANK YOU AGAIN FOR COMING.

14 (WHEREUPON, THE VENIRE WAS EXCUSED.)

15 THE COURT: ALL RIGHT NOW, MS. ELDER, I BELIEVE
16 THAT YOU'RE GOING TO HAVE YOUR WITNESSES, THEY'LL BE HERE
17 BY 2:00 AND READY TO GO.

18 MS. ELDER: YES, SIR.

19 THE COURT: MR. GALMORE AND MS. ELDER, DURING A
20 STATUS CONFERENCE PRIOR TO THIS TRIAL I INQUIRED AS TO
21 WHETHER THERE WERE ANY ISSUE AT ALL CONCERNING COMPETENCY
22 AND I WAS ADVISED THAT THERE HAS NOT BEEN A COMPETENCY
23 HEARING BECAUSE THERE HAS BEEN ABSOLUTELY NO INDICATION OF
24 A NEED FOR A COMPETENCY HEARING; IS THAT YOUR, YOUR, YOUR
25 POSITION, MR. GALMORE?

JURY SELECTION

31

1 MR. GALMORE: YES, SIR.

2 THE COURT: YOU HAVE HAD AMPLE OPPORTUNITY TO
3 DISCUSS THIS CASE WITH YOUR CLIENT, DISCUSS THE TRIAL
4 TACTICS AND STRATEGIES WITH HIM?

5 MR. GALMORE: YES, SIR.

6 THE COURT: DOES HE UNDERSTAND AND HAS HE BEEN
7 ABLE TO ASSIST YOU IN THE PREPARATION OF YOUR TRIAL?

8 MR. GALMORE: YES, SIR.

9 THE COURT: YOU HAVE NO QUESTIONS WHATSOEVER AS
10 TO HIS COMPETENCY?

11 MR. GALMORE: NO, SIR.

12 THE COURT: ALL RIGHT, MS. ELDER, DOES THE STATE
13 HAVE ANY QUESTIONS AS TO THIS DEFENDANT'S COMPETENCY?

14 MS. ELDER: NO, SIR, YOUR HONOR.

15 THE COURT: THEN THERE IS NO NEED FOR A BLAIR
16 HEARING; IS THAT CORRECT, MR. GALMORE?

17 MR. GALMORE: YES, SIR, THAT'S CORRECT.

18 THE COURT: IS THAT CORRECT, MS. ELDER?

19 MS. ELDER: YES, SIR, YOUR HONOR.

20 THE COURT: OKAY, ALL RIGHT, MR. GRIFFIN, LET ME
21 ASK YOU THIS. IT'S MY UNDERSTANDING FROM YOUR ATTORNEYS
22 AND BOTH SIDES THAT THERE'S NO ISSUE IN THIS CASE AS TO
23 YOUR ABILITY TO UNDERSTAND THE PROCEEDINGS THAT WE'RE GOING
24 THROUGH TO ASSIST YOUR ATTORNEY DURING THIS TRIAL; IS THAT
25 CORRECT?

JURY SELECTION

32

1 DEFENDANT GRIFFIN: YES, SIR.

2 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.

3 ALL RIGHT, GENTLEMEN, LADIES, I'LL SEE YOU AT

4 2:00, OKAY, ANYTHING WE NEED TO TAKE UP BEFORE THEN?

5 MR. GALMORE: NO, SIR.

6 THE COURT: MS. ELDER?

7 MS. ELDER: NO, SIR, YOUR HONOR. THE DENNO

8 HEARING HAVE WE DECIDED ON WHEN WE WANT TO DO THAT?

9 THE COURT: ALL RIGHT, NOW MY UNDERSTANDING IS
10 THAT YOU WERE NOT GOING TO ADDRESS IT, YOU WERE NOT GOING
11 TO REFERENCE IT AND NONE OF YOUR WITNESSES WERE TODAY?

12 MS. ELDER: THAT'S CORRECT.

13 THE COURT: AND THAT THERE WOULD BE NO NECESSITY
14 OF DOING IT TODAY, OKAY?

15 MS. ELDER: YES, SIR.

16 THE COURT: ALL RIGHT, THEN WHAT WE'LL PROBABLY
17 DO WITH THE DENNO, WHEN WILL BE GET TO IT, MAYBE FIRST
18 THING TOMORROW MORNING?

19 MS. ELDER: WE, IF WE'RE GOING TO GET, YES, YOUR
20 HONOR, WE'LL PROBABLY NEED TO DO IT IN THE MORNING.

21 THE COURT: ALL RIGHT, WELL WHY DON'T WE TRY TO
22 GET MOVING WITH YOUR EXPERTS AND I ASSUME YOU'RE GOING TO
23 CALL THE DOCTOR FIRST; IS THAT CORRECT?

24 MS. ELDER: NO, SIR.

25 THE COURT: WHO ARE YOU GOING TO CALL?

PRELIMINARY CHARGE

33

1 MS. ELDER: WE HAVE LAY WITNESSES, ONE POLICE
2 OFFICER AND LAY WITNESSES THIS AFTERNOON.

3 THE COURT: OKAY, ALL RIGHT, VERY WELL, WE'LL
4 GET MOVING WITH THAT AND GET SOME WITNESSES BEHIND US AND
5 WE WILL, WE'LL ADDRESS THE DENNO HEARING TOMORROW MORNING,
6 OKAY.

7 MS. ELDER: YES, SIR, YOUR HONOR.

8 THE COURT: THANK YOU VERY MUCH.

9 MS. ELDER: THANK YOU.

10 (WHEREUPON, COURT WAS RECESSED FOR LUNCH AND
11 STATE'S EXHIBITS NUMBERS 1, 2, 3, 4, 5, 6, AND 7 MARKED FOR
12 IDENTIFICATION DURING THE BREAK.)

13 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
14 2:16 P.M.)

15 THE COURT: ALL RIGHT, MR. FOREMAN, I SEE THAT
16 YOU HAVE ALL YOUR JURORS AND YOUR ALTERNATES HERE. I HOPE
17 YOU ALL HAD AN OPPORTUNITY TO HAVE A LEISURELY LUNCH BUT
18 WE'LL BEGIN, READY TO BEGIN THIS TRIAL AND I'M GOING TO
19 BEGIN BY ASKING THE CLERK TO SWEAR YOU AS JURORS.

20 (WHEREUPON, THE JURY WAS SWORN.)

21 THE COURT: WAS THERE ANYONE WHO ANSWERED
22 NEGATIVELY OR REFUSED TO ACCEPT THE OATH?

23 THE RECORD REFLECTS NONE.

24 PRELIMINARY CHARGE

25 THE COURT: LADIES AND GENTLEMEN OF THE JURY,

PRELIMINARY CHARGE

34

1 BEFORE WE GET STARTED I WANT TO MAKE A FEW OPENING REMARKS
2 TO YOU. THIS CERTAINLY IS NOT INTENDED AS A CHARGE ON THE
3 LAW. AT THE END OF THE CASE I WILL CHARGE YOU FULLY AS TO
4 THE LAW THAT YOU WILL APPLY DURING YOUR DELIBERATIONS. THE
5 REASON WE DON'T DO IT NOW IS BECAUSE UNTIL THE CASE IS
6 ENDED AND ALL THE EVIDENCE IS IN I DON'T KNOW WHAT LAW I
7 SHOULD CHARGE YOU OR WHAT WOULD BE APPLICABLE IN THIS CASE.

8 NOW I'M SURE THAT ALL OF YOU ARE USED TO WATCHING
9 THE CSI PROGRAMS AND LAW AND ORDER AND ALL THE POLICE
10 PROGRAMS THAT WE SEE ON T.V. AND DURING THOSE PROGRAMS
11 EVERY CASE SEEMS TO JUST BE FRAUGHT WITH MOMENTS OF DRAMA
12 AND HIGH INTENSITY AND IT'S ALL EXCITED BUT LET ME TELL YOU
13 THAT IN THE SEARCH FOR TRUTH IN A COURTROOM THAT IS
14 NORMALLY NOT THE CASE.

15 THERE MAY BE MOMENTS IN A TRIAL THAT ARE LIKE
16 THAT BUT THE SEARCH FOR TRUTH IS GENERALLY LABORIOUS, IT'S
17 SLOW, AND IT'S TEDIOUS. JUSTICE GRINDS SLOWLY BUT IT
18 GRINDS VERY FINELY AND I WANT YOU TO KEEP THAT IN MIND AS
19 WE'RE TRYING THESE CASES.

20 NOW TODAY WE HAVE MS. ELDER AND MR. GALMORE WHO
21 ARE GOING TO BE REPRESENTING THEIR CLIENTS. THEY HAVE A
22 JOB TO DO BUT EVEN SO I EXPECT THEM AND YOU CAN EXPECT THEM
23 TO BE PROFESSIONAL AND COURTEOUS AND PROFESSIONAL AND
24 ETHICAL IN THEIR DUTIES SO WE WOULD EXPECT THE SAME THING
25 OF YOU BECAUSE YOU AS A, AS A GROUP HAVE ACCEPTED THE JOB

PRELIMINARY CHARGE

35

1 OF JURORS IN THIS CASE AND IT IS YOUR JOB AT THE END OF
2 THIS CASE TO RENDER A VERDICT THAT SPEAKS THE TRUTH, A FAIR
3 AND EQUITABLE VERDICT.

4 NOW AS I SAID WHAT I AM GOING TO TELL YOU RIGHT
5 NOW IS NOT INTENDED AS A GENERAL CHARGE ON THE LAW BUT I
6 WANT TO GIVE YOU SOME IDEA OF WHAT YOU COULD EXPECT IN, IN
7 THIS, THIS TRIAL.

8 FIRST OF ALL LET ME BEGIN BY TELLING YOU THAT THE
9 BURDEN OF PROOF IN THIS CASE IS UPON THE STATE. THE STATE
10 HAS THE BURDEN OF PROVING TO YOU BEYOND A REASONABLE DOUBT
11 THAT THE DEFENDANT COMMITTED THE OFFENSES FOR WHICH HE IS
12 CHARGED. A MOMENT AGO BEFORE WE SELECTED THIS JURY I
13 EXPLAINED TO YOU WHAT THE INDICTMENTS ALLEGE AND LET ME
14 REITERATE WHAT I TOLD YOU THEN.

15 AN INDICTMENT IS NOTHING MORE THAN A PIECE OF
16 PAPER THAT BRINGS THIS CASE TO TRIAL. IT IS NOT EVIDENCE.
17 THE FACT THAT THIS DEFENDANT HAS BEEN CHARGED WITH THE
18 CRIME SHOULD NOT BE CONSIDERED BY YOU AS EVIDENCE AGAINST
19 HIM. AGAIN IT'S MERELY A FORMALITY THAT WE MUST HAVE FOR
20 THE, FOR THE COURT.

21 NOW DURING THE TRIAL YOU'RE GOING TO BE ASKED AS
22 A JURY TO DETERMINE WHAT THE FACTS ARE IN THIS CASE AND LET
23 ME ADVISE YOU THAT YOU MUST CONSIDER ONLY THE EVIDENCE
24 WHICH YOU HAVE HEARD FROM THE WITNESS STAND, THE EVIDENCE
25 WHICH, AND EXHIBITS THAT COME IN TO THIS TRIAL, THAT WHICH

PRELIMINARY CHARGE

36

1 YOU WILL HEAR AND THAT WHICH I TELL YOU IS ADMISSIBLE IN
2 THIS TRIAL.

3 YOU ARE THE SOLE AND ONLY FINDERS OF FACTS IN
4 THIS CASE AND THAT IS AN AWESOME BURDEN UPON YOU. IT IS AN
5 IMPORTANT DUTY BECAUSE IF DURING THIS TRIAL I MAKE A
6 MISTAKE, I DO SOMETHING INCORRECTLY OR I MAKE AN INCORRECT
7 RULING, WE HAVE THE APPELLATE COURTS WHICH CAN CORRECT WHAT
8 I DO BUT THERE IS ALMOST ABSOLUTELY NO WAY IN WHICH AN
9 APPELLATE COURT CAN CORRECT AN IMPROPER FINDING OF FACT BY
10 THE JURY.

11 IN DETERMINING WHAT THE FACTS ARE IN THIS CASE AS
12 I SAID YOU WILL CONSIDER THE EVIDENCE AND THE EXHIBITS, THE
13 TESTIMONY THAT YOU HEAR IN THIS TRIAL. IN DETERMINING WHAT
14 TO BELIEVE OR WHAT TO REJECT YOU CAN APPLY ANY STANDARD OR
15 ANY TEST THAT YOU ARE ACCUSTOMED TO APPLYING IN YOUR DAILY
16 LIVES.

17 YOU CAN CONSIDER SUCH THINGS AS THE INTEREST,
18 PREJUDICE, OR BIAS THAT A WITNESS MIGHT HAVE.

19 YOU CAN CONSIDER WHETHER A WITNESS ACTUALLY HAD
20 AN OPPORTUNITY TO SEE OR HEAR THAT WHICH HE TESTIFIES TO OR
21 SHE TESTIFIES TO DURING THE TRIAL.

22 YOU CAN CONSIDER EVEN THE WITNESSES Demeanor OR
23 APPEARANCE ON THE STAND IF YOU FEEL THAT THAT IS
24 APPROPRIATE.

25 ALL THESE THINGS ARE AVAILABLE TO YOU AS JURORS

PRELIMINARY CHARGE

37

1 IN DETERMINING WHETHER A WITNESS IS CREDIBLE OR BELIEVABLE
2 BUT THE SAME LAW THAT GIVES YOU THE RIGHT AND THE SOLE
3 RIGHT TO DETERMINE WHAT THE FACTS ARE IN THE CASE GIVES ME
4 THE SOLE AND ONLY RIGHT TO DETERMINE WHAT THE LAW IS IN
5 THIS CASE.

6 THE DELIBERATION PROCESS IS REALLY A TWO PART
7 PROCESS. ON THE ONE HAND YOU HAVE TO FILE, DETERMINE WHAT
8 THE FACTS ARE AND THEN YOU HAVE TO TAKE THE LAW AS I GIVE
9 IT TO YOU AND YOU BRING THE TWO TOGETHER AND YOU DETERMINE
10 WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROVING TO
11 YOU BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY
12 OF THESE CHARGES.

13 NOW WHEN I SAY BEYOND A REASONABLE DOUBT THAT IS
14 A DIFFERENT STANDARD THAT WE USE IN THE CIVIL COURTS. I
15 EXPLAINED TO YOU EARLIER TODAY THAT DURING THIS WEEK SOME
16 JURORS MIGHT BE ON A CIVIL TRIAL. THAT IS A DISPUTE
17 BETWEEN INDIVIDUALS AS OPPOSED TO A, A, A SITUATION LIKE WE
18 HAVE HERE WHERE THE STATE HAS ALLEGED SOMEONE HAS COMMITTED
19 A CRIME.

20 IN A CIVIL CASE THE PLAINTIFF WOULD ONLY HAVE TO
21 PROVE THAT A PERSON HAD WRONGED HIM OR THAT HE WAS ENTITLED
22 TO RECOVER WHAT WE CALL A PREPONDERANCE OF THE EVIDENCE,
23 THAT MEANS 51 PERCENT. IF YOU IMAGINE, IMAGINE IF YOU
24 WOULD A SET OF SCALES THAT ARE PERFECTLY BALANCED AND YOU
25 START PUTTING THE EVIDENCE FOR THE PLAINTIFF ON ONE SIDE

PRELIMINARY CHARGE

38

1 AND THE DEFENDANT ON THE OTHER SIDE, AT THE END OF THE
2 TRIAL IF THE DEFENDANT OR THE PLAINTIFF HAS TIPPED IT EVER
3 SO SLIGHTLY IN HIS FAVOR THAT'S BY A GREATER WEIGHT OF THE
4 EVIDENCE. HE HAS PROVEN HIS CASE. HE'S SHOWN IT BY THAT
5 51 PERCENT. THAT'S NOT THE CASE IN A CRIMINAL CASE.

6 IN A CRIMINAL CASE THE STATE MUST PROVE BY A
7 PREPONDERANCE, I MEAN, EXCUSE ME, BEYOND A REASONABLE DOUBT
8 WHICH IS A MUCH GREATER STANDARD AND I'LL EXPLAIN THAT TO
9 YOU MORE FULLY AT THE END OF THIS TRIAL, BUT IN YOUR
10 DELIBERATIONS PLEASE KEEP IN MIND THAT YOU MUST BE GUIDED
11 BY THE LAW THAT I WILL GIVE YOU AT THE END OF THIS CASE.

12 AGAIN I AM THE SOLE JUDGE OF THE LAW. YOU MAY
13 NOT AGREE WITH THE LAW AS I GIVE IT TO YOU. YOU MAY HAVE
14 SOME IDEA AS WHAT THE LAW OUGHT TO BE OR HOW IT SHOULD BE
15 CHANGED BUT YOU MUST PUT THAT OUT OF YOUR MIND BECAUSE AS
16 YOU ARE THE SOLE JUDGES OF THE FACT I AM THE SOLE AND ONLY
17 JUDGE OF THE LAW. AS I SAID DELIBERATION IS A TWO PART
18 PROCESS. YOU TAKE YOUR FACTS AND MY LAW AND YOU PUT THEM
19 TOGETHER AND YOU SEE HOW THEY FIT.

20 LET ME TELL YOU THAT DURING THIS TRIAL I
21 ANTICIPATE THIS TRIAL WILL TAKE MORE THAN ONE DAY, I NOTICE
22 THAT THE MEDIA IS HERE, YOU SHOULD NOT BEGIN YOUR
23 DELIBERATIONS OR CONSIDERATIONS OF THIS TRIAL UNTIL YOU
24 HAVE HEARD ALL OF THE EVIDENCE IN THE CASE.

25 THE STATE WILL GO FORWARD AND PUT UP ITS CASE

PRELIMINARY CHARGE

39

1 FIRST. IN JUST A MOMENT WE WILL BEGIN THE TRIAL AND YOU
2 WILL HEAR THE STATE'S EVIDENCE FIRST AND THAT WILL BE
3 FOLLOWED BY THE DEFENSE'S CASE IF THE DEFENSE CHOOSES TO
4 PUT UP A CASE.

5 UNTIL YOU HAVE HEARD ALL OF THE EVIDENCE YOU
6 SHOULD NOT BEGIN TO CONSIDER THIS CASE OR DELIBERATE IN
7 THIS CASE IN ANY FORM OR FASHION EVEN AMONG YOURSELVES.

8 WHEN YOU GO HOME AT NIGHT I'M GOING TO ASK YOU
9 NOT TO READ ANY NEWSPAPER ACCOUNTS OF THIS CASE. I'M GOING
10 TO ASK YOU NOT TO LOOK ON THE INTERNET. I'M GOING TO ASK
11 YOU NOT TO VIEW ANY NEWS REPORTS ABOUT THIS CASE. I'M
12 GOING TO ASK YOU TO DO THE MOST DIFFICULT THING YOU CAN DO.
13 THAT IS WHEN YOU GO HOME YOUR HUSBANDS, YOUR WIVES, YOUR
14 GIRLFRIENDS ARE THERE OR YOUR BOYFRIENDS SAY, I'M SORRY, I
15 CANNOT DISCUSS THIS CASE. THE JUDGE HAS INSTRUCTED ME NOT
16 TO DISCUSS THIS CASE BECAUSE THAT WOULD AMOUNT TO PREMATURE
17 DELIBERATIONS ABOUT THE CASE AND AGAIN WE DON'T WANT ANYONE
18 TO DISCUSS THE CASE UNTIL EVERYBODY HAS HAD THE BENEFIT OF
19 SEEING OR HEARING ALL THE EVIDENCE THAT HAS BEEN OFFERED IN
20 THIS CASE AND THAT IS TRUE THROUGHOUT THE CASE.

21 LET ME ALSO SAY THIS, I'VE HAD JURORS THAT, YOU
22 KNOW, YOU GET INTO A CASE AND WE, WE RETIRE FOR THE EVENING
23 AND THEY WANT TO GO OUT AND MAKE MEASUREMENTS OR GO TO THE
24 SCENE OF THE EVENT AND THINGS OF THAT NATURE, PLEASE DON'T
25 DO THAT. AGAIN ALL THE EVIDENCE THAT YOU MAY CONSIDER IN

PRELIMINARY CHARGE

40

1 THIS CASE WILL BE EVIDENCE YOU HEAR FROM THE WITNESS STAND
2 OR EXHIBITS THAT ARE PRESENTED IN THIS CASE.

3 NOW FROM TIME TO TIME DURING THE CASE YOU MAY
4 HEAR AN ATTORNEY SAY SOMETHING LIKE, YOUR HONOR, I OBJECT,
5 AND IF HE DOES I MAY SEND YOU OUT OF THE COURTROOM OR I MAY
6 SEND YOU OUT OF THE COURTROOM OF MY OWN VOLITION IF I
7 ANTICIPATE SOMETHING. IT'S NOT THAT WE ARE TRYING TO KEEP
8 ANYTHING FROM YOU. THE REASON THAT THAT IS DONE IS SIMPLY
9 THIS, USUALLY WHEN THAT OCCURS I AM MAKING A RULING ON THE
10 ADMISSIBILITY OR INADMISSIBILITY OF A PIECE OF EVIDENCE OR
11 POTENTIALLY WHAT COULD BE A PIECE OF EVIDENCE. WE'RE NOT
12 TRYING TO KEEP IT FROM YOU, IT'S JUST THAT. I HAVE TO MAKE
13 THESE DECISIONS FROM TIME TO TIME AND IN MAKING THOSE
14 DECISIONS I OFTEN AM REQUIRED TO MAKE A COMMENT ABOUT THE
15 CASE OR THE EVIDENCE. I HAVE TO SAY WHAT I THINK OR
16 BELIEVE ABOUT THAT PIECE OF EVIDENCE AND THAT WOULD BE AN
17 INVASION UPON YOUR DUTY AS A JUROR FOR ME TO HAVE AN
18 OPINION OR TO MAKE ANY COMMENT ABOUT A PIECE OF EVIDENCE
19 AND THAT IS WHY WE TAKE YOU OUT OF THE COURTROOM. I AM NOT
20 ALLOWED TO HAVE EVEN AN OPINION ABOUT THE EVIDENCE IN THIS
21 CASE, THAT IS SOLELY UP TO YOU.

22 NOW IN ORDER TO MAKE SURE THAT EVERYONE IS
23 SATISFIED WITH MY OPENING REMARKS TO YOU I'M GOING TO ASK
24 THE STATE IF THERE'S ANY EXCEPTIONS TO THE OPENING REMARKS?

25 MS. ELDER: NO, SIR, YOUR HONOR.

OPENING STATEMENT BY STATE

41

1 THE COURT: ANY EXCEPTIONS TO THE OPENING REMARK
2 OF PRELIMINARY CHARGE?

3 MR. GALMORE: NO, SIR.

4 THE COURT: ALL RIGHT, NOW WE'RE GOING TO BEGIN
5 WITH WHAT WE CALL OPENING REMARKS BY THE ATTORNEYS. MS.
6 ELDER WILL GO FIRST THEN FOLLOWED BY MR. GALMORE IF HE
7 CHOOSES TO. HE DOES NOT HAVE TO BUT HE MAY CHOOSE TO IN
8 THIS CASE.

9 THESE OPENING REMARKS ARE NOT TESTIMONY. THEY
10 ARE NOT TO BE CONSIDERED BY YOU AS EVIDENCE. WHAT THE
11 ATTORNEYS ARE DOING ARE SETTING OUT THE CASE, EXPLAINING
12 THE CASE TO YOU AND EXPLAINING TO YOU THE POSITION THAT
13 THEIR CLIENT TAKES IN THE CASE. AGAIN IT'S NOT EVIDENCE.
14 THEY MAY TALK TO YOU ABOUT THINGS YOU WILL SEE IN THE
15 TRIAL, THINGS THAT YOU MAY NOT SEE IN THE TRIAL BUT AGAIN
16 CONSIDER IT FOR EXACTLY WHAT IT IS, NOTHING MORE THAN THE
17 ATTORNEYS SETTING OUT THEIR POSITIONS IN THE CASE FOR YOU.
18 MS. ELDER?

19 MS. ELDER: IF IT PLEASES THE COURT, YOUR HONOR?

20 OPENING STATEMENT

21 BY MS. ELDER:

22 TO ALL OF US WHO LIVE HERE IN HORRY COUNTY WHEN
23 YOU SAY THE MONTH OF MAY THAT BRINGS MANY THINGS TO MIND,
24 INCREASED BEACH TRAFFIC, MOTORCYCLES, MEMORIAL WEEKEND, AND
25 WE'VE ALL WITNESSED THE MIGRATION OF THOUSANDS AND

OPENING STATEMENT BY STATE

42

1 THOUSANDS OF VISITORS TO OUR COMMUNITY DURING THAT MONTH
2 AND THOSE YOUNG PEOPLE, A LOT OF THOSE ARE YOUNG PEOPLE
3 THAT COME DOWN HERE, THEY'RE COMING DOWN HERE TO ENJOY OUR
4 BEACHES, SOCIALIZE, HAVE A GOOD TIME, RIDE THEIR BIKES, AND
5 MOST OF THEM GET IN NO TROUBLE WHATSOEVER. THEY ACTUALLY
6 GO THE OTHER WAY FROM TROUBLE BECAUSE THEY'RE JUST DOWN
7 HERE TO HAVE A GOOD TIME, BUT AS ALWAYS THERE'S ALWAYS A
8 SMALL GROUP THAT WANTS TO MESS EVERYTHING UP. THERE'S
9 ALWAYS A SMALL GROUP THAT WANTS TO COME DOWN, THEY MAY LIVE
10 HERE, THEY MAY BE VISITING, THEY COME DOWN LOOKING FOR
11 TROUBLE. THEY'RE EAGER FOR IT; THEY'RE READY FOR IT;
12 THEY'RE ARMED FOR IT. KEION GRIFFIN, A DEFENDANT, IS ONE
13 OF THOSE PEOPLE.

14 I'M GOING TO TELL YOU ABOUT TWO GROUPS OF
15 FRIENDS. THE FIRST GROUP OF FRIENDS DECIDE THEY WANT TO
16 SPEND MEMORIAL WEEKEND HERE. A YOUNG MAN NAMED JOSH
17 INVITES HIS FRIENDS DOWN TO SPEND THE WEEKEND AT HIS
18 FAMILY'S HOUSE ON THIRD AVENUE NORTH IN MYRTLE BEACH.
19 ALONG WITH JOSH, ZACK, DAN, KEITH, AND COREY COME DOWN FOR
20 THE WEEKEND.

21 DURING THAT WEEKEND WHAT DID THEY DO, THEY DO THE
22 THINGS THAT YOUNG PEOPLE DO. THEY PLAY CARDS, THEY DRINK
23 SOME, THEY WALK THE BOULEVARD, TALK TO GIRLS, WATCH THE
24 BIKES SOCIALIZE WITH EACH OTHER, JUST HAVE FUN.

25 THE SECOND GROUP OF FRIENDS WHO LIVED HERE AT THE

OPENING STATEMENT BY STATE

43

1 TIME GO DOWN THE BOULEVARD AND THEY MEET UP, KEION GRIFFIN,
2 DARIUS PRIEST, AND DEMARIO STUKES, HAVEN'T KNOWN EACH OTHER
3 FOR THAT LONG. THEY KNOW EACH OTHER FROM SCHOOL. THEY
4 COME DOWN HERE, WHAT DO THEY DO. THEY WALK THE BOULEVARD,
5 THE BIKES, TALK TO SOME GIRLS, VERY SIMILAR ACTIVITIES THAT
6 JOSH AND HIS FRIENDS DO BUT THERE WAS ONE DIFFERENCE.
7 KEION AND HIS FRIENDS CAME DOWN HERE, CAME DOWN THE
8 BOULEVARD THAT WEEKEND LOOKING FOR TROUBLE, LOOKING FOR A
9 FIGHT. THEY WANT IT, TO GET INTO SOMETHING THAT WEEKEND,
10 THAT'S THE BIG DIFFERENCE.

11 THEY WANTED EVERYBODY TO KNOW HOW TOUGH THEY WERE
12 AND IF YOU DIDN'T KNOW IT WE'RE GOING TO BRING A GUN JUST
13 TO SHOW IT, JUST TO SHOW YOU HOW TOUGH WE ARE.

14 THESE TWO GROUPS OF FRIENDS MET UP ON THIRD
15 AVENUE NORTH. JOSH AND HIS FRIENDS WERE RETURNING FROM THE
16 BOULEVARD GOING BACK TO THE HOUSE AND THEY WALK UP. WHEN
17 THEY WALK UP THEY SEE A CAR THAT THEY DON'T RECOGNIZE AND
18 IT HAS THREE FEMALES IN IT. IT WAS PARKED IN THE YARD.
19 THE BOYS GO UP AND SAY YOU CAN'T PARK HERE. THERE'S A
20 CONVERSATION BETWEEN A GROUP OF BOYS AND THOSE GIRLS ABOUT
21 THE PARKING. NO BIG DEAL, NOBODY WAS FIGHTING, THERE WAS
22 NO YELLING, THERE WAS NO ARGUMENT AND HAD THAT BEEN IT WE
23 WOULDN'T BE HERE TODAY. IF SOMEBODY ELSE HAD NOT GOTTEN
24 INVOLVED THE GIRLS WOULD HAVE LEFT, THE BOYS WOULD HAVE
25 GONE BACK TO DOING WHAT THEY WERE DOING AND THAT WOULD HAVE

OPENING STATEMENT BY STATE

44

1 BEEN THE END OF IT. BUT THAT WASN'T THE END OF IT BECAUSE
2 AS JOSH AND HIS FRIENDS WERE TALKING TO THOSE YOUNG LADIES
3 IN THAT CAR GUESS WHO'S WALKING BY ON THIRD AVENUE, KEION,
4 DEMARIO AND DARIUS AND THEY INTERJECT THEMSELVES INTO THIS
5 CONVERSATION ABOUT THE PARKING SPACE. WELL WHY WOULD YOU
6 DO THAT? EGO, PURE AND SIMPLE, I'M THE MAN, I'M GOING TO
7 STEP IN CAUSE I'M LOOKING FOR A FIGHT, I'M LOOKING FOR
8 TROUBLE. BUT THEY APPROACH AND THERE'S A CONVERSATION,
9 MORE, MORE JABBERING ABOUT PARKING SPACE, BACK AND FORTH.
10 THE BOYS ARE SAYING YOU GIRLS ARE GOING TO NEED TO LEAVE,
11 KEION AND HIS FRIENDS ARE SAYING, NO, THEY CAN PARK THERE,
12 THEY DON'T NEED TO LEAVE.

13 DEMARIO, KEION'S FRIEND, LEANS IN THE PASSENGER
14 SEAT OF THAT VEHICLE THE WINDOW BECAUSE HE THINKS HE KNOWS
15 ONE OF THE GIRLS SO HE STARTS TALKING TO HER, KEION IS WITH
16 THEM. THE BOYS SAY YOU'RE GOING TO HAVE TO MOVE THE CAR,
17 YOU CAN'T PARK IN THE YARD. GUESS WHAT HAPPENS NEXT, SOME
18 TALKING, SOME TALKING, JOSH AND DEMARIO START TALKING TO
19 EACH OTHER, IT LEADS TO A PUSHING. THEY'RE PUSHING EACH
20 OTHER.

21 TWO OF JOSH'S FRIENDS, ZACK AND COREY, COME IN
22 TRY TO STOP THIS FIGHT. ZACK EVEN GETS IN THE MIDDLE AND
23 SAYS, HOLDS HIS HANDS UP AND SAYS, HEY, MAN, DON'T WORRY,
24 NO BIG DEAL, DON'T WANT ANY TROUBLE HERE, THEY CAN PARK
25 HERE, DON'T WANT ANY TROUBLE, A PARKING SPACE IS NOT WORTH

OPENING STATEMENT BY STATE

45

1 IT.

2 IS THAT ENOUGH, OF COURSE NOT, THAT CONCESSION
3 WAS NOT ENOUGH TO KEION GRIFFIN, HE KEEPS ON. ONE OF THE
4 BOYS PULLS OUT A CELL PHONE, I'M GOING TO CALL THE POLICE,
5 DON'T WANT TROUBLE, GOING TO CALL THE POLICE. A CELL PHONE
6 IS SLAPPED OUT OF THAT BOY'S HAND BY KEION GRIFFIN BUT THAT
7 DOESN'T STOP THERE.

8 KEION GRIFFIN THEN TAKES OUT HIS POWER, THE POWER
9 HE BROUGHT DOWN TO THE BOULEVARD THAT NIGHT IN CASE HE
10 NEEDED TO SHOW IT TO ANYBODY, HE PULLS IT OUT. EVERYBODY
11 IS GOING CRAZY, THEY SEE A GUN, THE GIRLS PULL OFF, BOYS
12 RUN, KEION GRIFFIN TAKES THAT GUN AND HITS COREY BROOKS WHO
13 IS STANDING THERE TRYING TO BREAK UP THAT FIGHT, UP SIDE
14 HIS HEAD WITH THE BARREL OF THAT GUN.

15 COREY BROOKS FALLS DOWN TO THE GROUND AT THAT
16 POINT FROM THAT STRIKE TO THE HEAD.. IS THAT ENOUGH FOR
17 KEION GRIFFIN, ABSOLUTELY NOT. WHILE COREY BROOKS IS ON
18 THE GROUND KEION GRIFFIN KICKS HIM MORE THAN ONCE. IS THAT
19 ENOUGH, ABSOLUTELY NOT. WHILE COREY BROOKS IS FACE DOWN ON
20 THE GROUND HE IS SHOT ONE TIME IN THE BACK AND THAT'S HIS
21 FATAL SHOT.

22 KEION GRIFFIN, DEMARIO STUKES, DARIUS PRIEST ALL
23 TAKE OFF RUNNING, RUNNING UP TOWARDS KINGS HIGHWAY. KEION
24 HAS GOT THAT GUN IN HIS HAND, HE'S THE MAN, HE'S TOUGH.
25 YOU KNOW WHAT HE DOES WITH IT, HE HANDS IT OFF TO HIS 16-

OPENING STATEMENT BY DEFENSE

46

1 YEAR-OLD FRIEND WHO'S RUNNING WITH HIM, DARIUS PRIEST, AND
2 HE DOES IT JUST IN TIME BECAUSE BY THE TIME THEY RUN UP TO
3 KINGS HIGHWAY IT'S GONE OUT ON THE RADIO TO THE POLICE.
4 POLICE ARE GOING EVERYWHERE.

5 DEMARIO STUKES, KEION GRIFFIN ARE STOPPED BY A
6 FEMALE MYRTLE BEACH OFFICER BECAUSE THEIR CLOTHING MATCHES
7 THE DESCRIPTION GIVEN OUT ON THE RADIO. THE MYRTLE BEACH
8 POLICE OFFICER SEES DARIUS. THEY SAY HE'S GETTING IN THE
9 CAR WITH HIS MAMA TO GO HOME, SHE LET'S HIM GO. SHE PATS
10 DOWN KEION GRIFFIN, DEMARIO STUKES, IT'S TOO LATE, KEION
11 HAD ALREADY HANDED THAT GUN OFF TO DARIUS WHO RODE OFF WITH
12 IT IN HIS MAMA'S CAR, THEN KEION AND DEMARIO WENT ON WITH
13 THEIR NIGHT, NO BIG DEAL.

14 BACK ON THIRD AVENUE COREY BROOKS LOST HIS
15 BATTLE, HE LOST HIS LIFE.

16 THAT'S WHAT YOU'RE GOING TO HEAR ABOUT THIS WEEK.
17 THOSE ARE THE EVENTS THESE PEOPLE ARE GOING TO TESTIFY TO.
18 IT'S ABSOLUTELY TRAGIC AND IT'S ABSOLUTELY SENSELESS.

19 IF I ASKED YOU TODAY WHAT IS THE PRICE OF A LIFE
20 NOT ONE OF YOU WOULD BE ABLE TO QUANTIFY THAT. MORE THAN
21 LIKELY YOU WOULD SAY IT'S ABSOLUTELY PRICELESS. MAY 25TH,
22 2008, THE PRICE OF A LIFE IN HORRY COUNTY, THE PRICE OF
23 COREY BROOKS LIFE IN HORRY COUNTY WAS A PARKING SPACE.

24 YOU HAVE TO ASK YOURSELF WHO WOULD VALUE LIFE SO
25 LITTLE THAT THEY WOULD TRADE IT OFF OVER A FIGHT OVER A

OPENING STATEMENT BY DEFENSE

47

1 PARKING SPACE. WELL WE KNOW WHO, HE'S IN THIS COURTROOM,
2 THAT MAN RIGHT THERE, KEION GRIFFIN.

3 COREY BROOKS PAID A VERY BIG PRICE THAT NIGHT,
4 THE ULTIMATE PRICE. IT IS TIME TODAY FOR KEION GRIFFIN TO
5 PAY A PRICE. IT IS TIME THAT WE MAKE HIM ACCOUNTABLE. IT
6 IS TIME FOR HIM TO PAY HIS BILL. IT'S TIME FOR US TO FIND
7 HIM GUILTY, THANK YOU VERY MUCH FOR YOUR ATTENTION.

8 MR. GALMORE: MAY IT PLEASE THE COURT?

9 THE COURT: YES, SIR.

10 OPENING STATEMENT

11 BY MR. GALMORE:

12 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I
13 WOULD LIKE TO TALK TO YOU ABOUT ROLES AND RESPONSIBILITIES
14 BECAUSE IN THIS COURTROOM FOR THE NEXT FEW DAYS EVERYONE
15 HAS A ROLE AND EVERYONE HAS A RESPONSIBILITY TO THIS CASE.
16 MADAM COURT REPORTER HER RESPONSIBILITY IS TO TAKE A
17 TRANSCRIPT OF EVERYTHING THAT'S BEING SAID HERE TODAY, 10,
18 50, 100 YEARS FROM NOW A TAPE OF THESE PROCEEDINGS WILL BE
19 AVAILABLE, THAT'S HER JOB AND SHE DOES IT WELL.

20 YOUR HONOR'S JOB IS TO GIVE YOU A LAW TO TELL YOU
21 WHAT THE LAW IS. LIKE HE SAID NOT WHAT IT SHOULD BE, NOT
22 WHAT YOU THINK IT OUGHT TO BE BUT WHAT IT IS.

23 LET ME TALK ABOUT MY CLIENT'S JOB. MY CLIENT IS
24 PRESUMED INNOCENT. AT THIS MOMENT HE IS WRAPPED IN A CLOAK
25 OF INNOCENCE AND HIS JOB IS TO MAINTAIN THAT INNOCENCE. HE

OPENING STATEMENT BY DEFENSE

48

1 DOESN'T HAVE TO DO ANYTHING. ALL HE HAS TO DO IS BE HERE.
2 THE FACT THAT WE'RE HAVING A TRIAL THAT SAYS TO YOU THAT HE
3 HAS PLED NOT GUILTY TO THESE CHARGES AND, THEREFORE, IT IS
4 INCUMBENT UPON THE STATE TO DO THEIR JOB.

5 WHAT IS THE STATE'S JOB, THE STATE'S JOB IS TO
6 PROVE THE GUILT OF THE ACCUSED BEYOND A REASONABLE DOUBT.
7 WHAT DOES THAT MEAN? YOUR HONOR ALLUDED TO IT WHEN HE
8 TALKED ABOUT THE SCALES AND ALL YOU HAVE TO DO IS GO 51
9 PERCENT IN A CIVIL CASE. I ALLUDE TO IT IN TERMS OF A
10 FOOTBALL FIELD BECAUSE THAT WAY YOU GET TO SEE WHAT I'M
11 TALKING ABOUT.

12 JUST IMAGINE THAT THIS IS A FOOTBALL 100 YARDS
13 FROM END TO END. IF THIS IS A CIVIL CASE, LIKE HE SAID
14 WE'RE HAVING CIVIL COURT THIS WEEK, WHEN THE JUDGE SAYS 51
15 PERCENT IT MEANS COME TO THE 51 YARD LINE AND JUST CROSS
16 IT. THE END ZONE IS STILL DOWN THERE, NOT NECESSARY TO GO
17 THAT FAR, JUST CROSS THE 50, THE GREATER WEIGHT OR
18 PREPONDERANCE OF THE EVIDENCE.

19 WE HAVE WHAT'S CALLED CLEAR AND CONVINCING
20 EVIDENCE AND WE USE THAT IN CERTAIN TYPES OF CASES AS WELL
21 AND CLEAR AND CONVINCING EVIDENCE IS UP HERE SOMEWHERE
22 GETTING CLOSE TO THE END ZONE. YOU DON'T HAVE TO MAKE IT
23 TO THE END ZONE BUT IT'S CERTAINLY MORE THAN JUST CROSSING
24 THE 50.

25 NOW THIS IS A GENERAL SESSIONS CASE, THIS IS A

OPENING STATEMENT BY DEFENSE

49

1 CRIMINAL CASE AND, THEREFORE, THE STANDARD THAT THE STATE
2 HAS TO PROVE TO EACH AND EVERY ONE OF YOU IS HIGHER THAN
3 CROSSING THAT GOAL. THEY DON'T HAVE TO SCORE, I'LL TELL
4 YOU THAT NOW BECAUSE IT IS IMPOSSIBLE TO RESOLVE EVERY
5 DOUBT BUT WHEN WE SAY BEYOND A REASONABLE DOUBT YOU AS
6 JURORS HAVE TO BE CONVINCED THAT THEY'RE SO CLOSE TO THAT
7 END ZONE THAT THE NEXT PLAY IS GOING IN. I TELL YOU THE
8 STATE CANNOT MEET THAT BURDEN.

9 THIS CASE IS FULL OF DOUBT. NOW I COULD SAY
10 ANYTHING HAS DOUBT. I COULD SAY I DOUBT THE SUN IS GOING
11 TO COME UP TOMORROW, THAT'S TRUE IT MIGHT BLINK OUT TONIGHT
12 BUT THAT WOULD BE A LITTLE BIT UNREASONABLE. WHEN WE SAY
13 BEYOND A REASONABLE DOUBT THE JUDGE IS GOING TO TELL YOU
14 THAT YOU'RE GOING TO HAVE TO BE FIRMLY CONVINCED OF THE
15 GUILT OF THE ACCUSED. NOW WHEN I TALK ABOUT THE SUN LIKE I
16 SAID IT COULD BLINK OUT TONIGHT, HOWEVER I'M FIRMLY
17 CONVINCED THAT IT'S COMING UP TOMORROW. IN THIS CASE YOU
18 HAVE TO BE FIRMLY CONVINCED THAT KEION GRIFFIN IS THE
19 PERSON THAT PULLED THAT TRIGGER.

20 NOW THE SOLICITOR TOLD A WONDERFUL STORY.
21 THERE'S ONLY ONE PROBLEM WITH IT, EVERY TIME SHE SAID THE
22 NAME KEION GRIFFIN SHE SHOULD HAVE BEEN SAYING DEMARIO
23 STUKES BECAUSE ALTHOUGH KEION GRIFFIN HAS NO OBLIGATION TO
24 PROVE HIMSELF INNOCENT THAT'S EXACTLY WHAT WE'RE GOING TO
25 DO. WE'RE GOING TO DEMONSTRATE TO EACH AND EVERY ONE OF

OFFICER MULLINIX - DIRECT EXAMINATION BY MS. ELDER

50

1 YOU THAT THE SHOOTER IN THIS CASE WAS DEMARIO STUKES AND
2 THAT THIS WAS NOT SOME KIND OF PLANNED THING, THIS WASN'T
3 SOME CO-CONSPIRACY, THIS WASN'T SOME, WELL LET'S GO FIND
4 SOME PEOPLE AND BEAT THEM UP, WE'RE LOOKING FOR TROUBLE,
5 NO. DEMARIO STUKES HAD A GUN AND DEMARIO STUKES USED IT.

6 MY JOB IS TO CONVINCING YOU THAT THE WRONG MAN IS
7 ON TRIAL. WE'LL PRESENT EVIDENCE TO MEET THAT OBLIGATION
8 BECAUSE WHILE THIS IS A TRAGIC CASE THE ONLY THING THAT
9 COULD MAKE IT ANY WORSE IS IF YOU SENT THE WRONG MAN TO
10 PRISON.

11 NOW YOUR JOB IS GOING TO BE THE MOST DIFFICULT OF
12 ALL BECAUSE YOU'RE GOING TO HAVE TO LISTEN TO ALL OF THE
13 EVIDENCE, YOU'RE GOING TO HAVE TO GO BACK IN YOUR JURY ROOM
14 AND YOU'RE GOING TO HAVE TO SIFT THROUGH THAT EVIDENCE AND
15 YOU'RE GOING TO HAVE TO MAKE A DETERMINATION IN YOUR MIND
16 WHO IS RESPONSIBLE FOR THIS, WHO PULLED THE TRIGGER. THE
17 STATE SEEMS TO THINK IT'S KEION GRIFFIN, THE DEFENSE SEEMS
18 TO THINK IT'S DEMARIO STUKES. THEY'RE GOING TO PUT UP
19 WITNESSES I GUESS TRYING TO SAY IT WAS KEION GRIFFIN AND
20 WE'RE GOING TO PUT UP SAYING IT WAS DEMARIO STUKES AND
21 YOU'RE GOING TO HAVE TO FIGURE OUT WHO TO BELIEVE AND WHAT
22 TO BELIEVE.

23 NOW IN YOUR ENDEAVOR TO DO SO I WILL TELL YOU NOW
24 THAT IF YOU HAVE ANY DOUBTS YOU HAVE TO RESOLVE THAT DOUBT
25 IN FAVOR OF MR. GRIFFIN. HE IS THE PERSON THAT IS ON

OFFICER MULLINIX - DIRECT EXAMINATION BY MS. ELDER

51

1 TRIAL, BUT I SUBMIT TO YOU THERE WILL BE NO DOUBT. WHEN
2 THIS CASE IS CONCLUDED AND THE DEFENSE HAS RESTED YOU WILL
3 WALK AWAY FIRMLY CONVINCED THAT DEMARIO STUKES WAS THE
4 SHOOTER.

5 I'M GOING TO ASK YOU TO PAY ATTENTION, I'M SURE
6 YOU WILL, WE ASK YOU TO LISTEN TO ALL OF THE EVIDENCE, WE
7 ASK YOU TO HEED THE JUDGE'S INSTRUCTIONS, AND WE ASK YOU TO
8 TAKE YOUR OATH SERIOUSLY. I KNOW YOU ALL HAVE BEEN SWORN
9 IN THREE TIMES ALREADY BUT THIS IS A SERIOUS OATH. YOU
10 HAVE NO FRIENDS TO REWARD. YOU HAVE NO ENEMIES TO PUNISH.
11 YOU'RE NOT HERE FOR ANYBODY'S REVENGE. YOU'RE HERE TO
12 DETERMINE THE FACTS OF THIS CASE AND THAT'S IT AND IF
13 PEOPLE ARE DISAPPOINTED BY THAT THAT'S UNFORTUNATE, YOU
14 HAVE FULFILLED YOUR RESPONSIBILITY AS JURORS IN THIS CASE.
15 WE'RE GOING TO ASK YOU TO FIND KEION GRIFFIN NOT GUILTY.
16 WE ASK YOU TO PAY ATTENTION TO THE EVIDENCE AND PAY
17 ATTENTION TO THE LAW AS THE JUDGE GIVES IT TO YOU AND WE
18 ASK YOU TO REACH THE RIGHT VERDICT IN THIS CASE, THANK YOU.

19 THE COURT: MS. ELDER?

20 MS. ELDER: THANK YOU, YOUR HONOR, THE STATE
21 WOULD CALL OFFICER CHAD MULLINIX.

22 THE COURT: OFFICER MULLINIX, COME AROUND AND BE
23 SWORN.

24 OFFICER CHAD MULLINIX

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

OFFICER MULLINIX - DIRECT EXAMINATION BY MS. ELDER

52

1 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
2 SPELL YOUR LAST FOR THE COURT.

3 THE WITNESS: CHAD MULLINIX, M-U-L-L-I-N-I-X.

4 DIRECT EXAMINATION

5 BY MS. ELDER:

6 Q OFFICER MULLINIX, WHERE ARE YOU EMPLOYED?

7 A MYRTLE BEACH POLICE DEPARTMENT.

8 Q AND IN MAY OF 2008, PARTICULAR MAY 25TH,
9 2008, WERE YOU EMPLOYED THERE AS WELL?

10 A YES, MA'AM, I WAS.

11 Q IN WHAT CAPACITY?

12 A I WAS WORKING WITH MYRTLE BEACH POLICE
13 DEPARTMENT RESPONSE TEAM, S.W.A.T RESPONSE TEAM WITH SLED.

14 Q ALL RIGHT, WHEN YOU SAY S.W.A.T RESPONSE
15 TEAM SO WE'RE ALL ON THE SAME, SAME PAGE TELL ME JUST A
16 FEW, A BRIEF OVERVIEW OF WHAT THAT RESPONSIBILITY IS?

17 A YES, MA'AM, WE WOULD RESPOND TO CALLS WHERE
18 THERE MIGHT BE A LARGE CROWD OR SOMETHING JUST TO CALM THE
19 CROWD THAT WOULD BE CREATED.

20 Q OKAY, AND ON MAY 25TH WERE YOU OR DID YOU
21 RESPOND TO A LOCATION ON 3RD AVENUE NORTH IN THE CITY
22 LIMITS OF MYRTLE BEACH?

23 A YES, MA'AM, I DID.

24 Q OKAY, AND TELL ME WHY YOU RESPONDED THERE?

25 A WE RECEIVED A CALL OVER THE RADIO OF SHOTS

OFFICER MULLINIX - DIRECT EXAMINATION BY MS. ELDER

53

1 FIRED IN THE AREA OF 3RD NORTH.

2 Q AND WHAT DID YOU DO WHEN YOU ARRIVED?

3 A MYSELF AND OTHER MEMBERS OF THE RESPONSE
4 TEAM GOT OUT ON OCEAN BOULEVARD, RESPONDED TO THE LOCATION
5 OF 3RD AVENUE, WALKED UP WESTBOUND ON 3RD AVENUE, CHECKED
6 THE MOTELS IN THE AREA. ONCE I GOT TO 3RD AND FLAGG I
7 OBSERVED A BLACK GENTLEMEN FLAGGING, FLAGGING ME DOWN
8 WAVING HIS ARMS.

9 Q AND WHAT WAS HE FLAGGING YOU DOWN FOR?

10 A HE WAS YELLING AND SAYING THAT SOMEBODY HAD
11 GOT SHOT.

12 Q AND WHAT DID YOU DO AFTER YOU SAW THAT
13 GENTLEMAN FLAG YOU DOWN?

14 A I WENT TO HIM AND BEGIN TO SPEAK WITH HIM.

15 Q AND DID YOU, AFTER THAT DISCUSSION WITH HIM
16 DID YA'LL APPROACH THE LOCATION?

17 A YES, MA'AM, WE DID. OFFICERS BEHIND ME
18 DREW THEIR WEAPONS AS THEY DIDN'T KNOW WHO WAS INVOLVED IN
19 THE, IN THE SHOOTING ITSELF AND EVERYBODY WAS PLACED ON THE
20 GROUND.

21 Q AND AT THAT TIME DID YOU OBSERVE THE
22 VICTIM?

23 A YES, MA'AM, HE WAS LAYING DOWN.

24 Q AND DID YOU DO ANYTHING WITH THE VICTIM,
25 WAS THAT YOUR RESPONSIBILITY AT THAT TIME?

OFFICER MULLINIX - CROSS EXAMINATION BY MR. GALMORE

54

1 A NO, MA'AM, IT WAS NOT.

2 Q WERE YOU THERE FOR CROWD CONTROL?

3 A YES, MA'AM, YES, MA'AM, WE WERE THERE.

4 Q AND AFTER THAT DID YOU PUT A DESCRIPTION OR
5 ANYTHING OUT OVER THE RADIO?

6 A YES, MA'AM, I DID.

7 Q AND WHAT DESCRIPTION, DO YOU RECALL?

8 A THE GENTLEMAN ACTUALLY TOLD ME THERE WAS
9 TWO BLACK MALES, A LIGHTER SKIN BLACK MALE AND A DARKER
10 SKIN BLACK MALE WEARING WHITE TEE SHIRTS.

11 Q AND IS THAT WHAT YOU DISPATCHED OVER THE
12 RADIO AT THE TIME?

13 A YES, MA'AM, IT WAS.

14 Q AND AS FAR AS ANY OTHER INVOLVEMENT WITH
15 THAT SCENE OTHER THAN MAINTAINING AND WHAT YOU INDICATED
16 TODAY WAS THAT IT?

17 A YES, MA'AM.

18 MS. ELDER: NO FURTHER QUESTIONS, YOUR HONOR.

19 THE COURT: MR. GALMORE?

20 CROSS EXAMINATION

21 BY MR. GALMORE:

22 Q OFFICER MULLINIX, DID YOU ARREST ANY
23 SUSPECTS ON MAY 25TH?

24 A NO, SIR, I DID NOT.

25 MR. GALMORE: THANK YOU, NO FURTHER QUESTIONS.

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

55

1 THE COURT: YOU MAY STEP DOWN.

2 MS. ELDER: WE WOULD ASK THAT THIS WITNESS BE
3 EXCUSED AT THIS TIME, YOUR HONOR.

4 THE COURT: MR. GALMORE?

5 MR. GALMORE: THAT'S FINE, YOUR HONOR.

6 THE COURT: YOU'RE EXCUSED AND RELEASED FROM
7 YOUR SUBPOENA, OFFICER MULLINIX.

8 MS. ELDER: YOUR HONOR, THE STATE AT THIS TIME
9 WOULD CALL ZACHARY MATHIS.

10 **ZACHARY SCOTT MATHIS**

11 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

12 MADAM CLERK: PLEASE STATE YOUR NAME AND SPELL
13 YOUR LAST NAME FOR THE COURT.

14 THE WITNESS: ZACHARY SCOTT MATHIS, LAST NAME IS
15 M-A-T-H-I-S.

16 **DIRECT EXAMINATION**

17 **BY MS. ELDER:**

18 Q ZACHARY, WHERE ARE YOU CURRENTLY LIVING?

19 A IN COLUMBIA, SOUTH CAROLINA.

20 Q WHAT DO YOU DO?

21 A I'M IN COLLEGE AT THE UNIVERSITY OF SOUTH
22 CAROLINA.

23 Q WHAT'S YOUR MAJOR IN?

24 A ADVERTISING.

25 Q HOW LONG HAVE YOU BEEN UP THERE?

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

56

1 A THIS IS MY FIFTH YEAR.

2 Q AND IN MAY, MAY 25TH, 2008, WERE YOU IN
3 MYRTLE BEACH?

4 A YES, MA'AM.

5 Q AND DO YOU RECALL AN INCIDENT INVOLVING THE
6 DEATH OF YOUR FRIEND COREY BROOKS?

7 A YES, MA'AM.

8 Q DID YOU GIVE A STATEMENT TO POLICE ABOUT
9 THAT INCIDENT?

10 A I DID.

11 Q I KNOW IT'S BEEN A LITTLE WHILE BUT I WANT
12 TO TAKE YOU BACK TO THAT NIGHT, OKAY?

13 A OKAY.

14 Q OF THE EARLY MORNING, TELL ME WHOSE HOUSE
15 WERE YOU STAYING AT?

16 A JOSH HUGHES.

17 Q AND HOW DID YA'LL COME DOWN THERE, HOW DID
18 YA'LL COME TO BE DOWN THERE?

19 A HE OWNS A BEACH HOUSE ON 3RD AVENUE. WE
20 WERE DOWN THERE A FEW FRIENDS AND THEN TOWARDS THE END OF
21 THE NIGHT WE WERE WALKING ON OCEAN BOULEVARD AND THEN
22 WALKED BACK TO HIS HOUSE.

23 Q OKAY, AND WHILE YA'LL WERE STAYING DOWN
24 THAT WEEKEND WHO WAS STAYING WITH YOU?

25 A ME, JOSH HUGHES, OLD FRIENDS FROM SCHOOL,

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

57

1 AND COREY, JEFF, THAT'S IT.

2 Q AND WHAT DID YA'LL DO THAT WEEKEND?

3 A WE'D BEEN, WE'D BEEN DOWN THERE A COUPLE OF
4 DAYS JUST GRILLING OUT, HANGING OUT, DRINKING.

5 Q OKAY, AND YOU SAID THE NIGHT OF THE 25TH
6 YOU WENT TO THE BOULEVARD?

7 A YES, MA'AM.

8 Q AND WHAT HAPPENED THAT EARLY MORNING WHEN
9 YOU CAME BACK TO THE HOUSE?

10 A WHEN I CAME BACK TO THE HOUSE I WAS, I WAS
11 A LITTLE BIT BEHIND THE GROUP OF PEOPLE I WAS WITH AND WHEN
12 I WALKED UP I SAW A SILVER CAR PARKED BESIDE MY CAR WITH
13 THREE FEMALES IN IT AND ASKING IF THEY COULD PARK IN JOSH'S
14 FRONT YARD. WE TOLD THEM THEY COULDN'T.

15 Q OKAY, WHY WERE YA'LL NOT ALLOWING PARKING
16 THAT WEEKEND?

17 A I MEAN THE SAME REASON ANYBODY DOESN'T
18 ALLOW PEOPLE TO PARK IN THEIR FRONT YARD.

19 Q WERE YA'LL PARKED THERE?

20 A YES.

21 Q AND WHO WAS WITH YOU WHEN YA'LL WERE
22 TALKING TO THE GIRLS ABOUT THE PARKING?

23 A I WAS STANDING WITH KEITH GRIFFIN AND JOSH
24 HUGHES.

25 Q OKAY, I'M GOING TO SHOW YOU WHAT'S BEEN

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

58

1 MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT 4, DO YOU
2 RECOGNIZE THAT?

3 A YES, MA'AM.

4 Q IS THAT THE HOUSE THAT YA'LL WERE AT?

5 A YES, MA'AM.

6 Q IS YOUR VEHICLE IN THAT PHOTOGRAPH?

7 A YES, MA'AM.

8 Q COULD YOU POINT TO THAT?

9 A IT'S THE ONE IN THE MIDDLE.

10 Q OKAY, AND WHERE WERE THE GIRLS VEHICLE?

11 A IN BETWEEN, IT WAS RIGHT TO THE LEFT OF MY
12 CAR, IN BETWEEN MY CAR AND THIS BLACK CAR.

13 Q OKAY, IS THERE A SPACE THERE IN THIS
14 PICTURE?

15 A YES, MA'AM.

16 MS. ELDER: YOUR HONOR, WE'D LIKE TO INTRODUCE
17 STATE'S EXHIBIT 4 AT THIS TIME?

18 THE COURT: MAY I SEE IT?

19 MR. GALMORE: NO OBJECTION, YOUR HONOR.

20 THE COURT: NO OBJECTION, ALL RIGHT, ADMITTED
21 WITHOUT OBJECTION THAT IS STATE'S 4..

22 (WHEREUPON, STATE'S EXHIBIT NUMBER 4 ENTERED INTO
23 EVIDENCE.)

24 MS. ELDER: (CONTINUING)

25 Q AND, I'M GOING TO TRY TO HOLD IT UP HERE,

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

59

1 THAT VEHICLE IS THAT A SUV THAT YOU HAVE?

2 A YES, MA'AM.

3 Q ALL RIGHT, NOW YOU SAID YOU WERE STANDING
4 NEAR YOUR CAR?

5 A YES.

6 Q WHICH WAY WERE YOU FACING?

7 A MY BACK WAS UP AGAINST THE DRIVERS SIDE OF
8 MY CAR.

9 Q OF YOUR CAR, SO WOULD YOU BE FACING TOWARDS
10 THE OCEAN?

11 A YES.

12 Q WHO ELSE WAS THERE?

13 A KEITH GRIFFIN WAS ON MY LEFT, JOSH HUGHES
14 WAS ON MY RIGHT, AND LATER COREY AND JEFF WALKED DOWN FROM
15 THE PORCH.

16 Q OKAY, DID ANYBODY ELSE APPROACH YA'LL WHILE
17 YA'LL WERE TALKING TO THE GIRLS ABOUT THE PARKING?

18 A THREE MALES APPROACHED FROM THE REAR OF THE
19 GIRLS CAR COMING FROM THE STREET.

20 Q FROM 3RD AVENUE?

21 A YES, MA'AM.

22 Q AND WERE THERE ANY CONVERSATION BETWEEN
23 THEM AT THE TIME?

24 A BETWEEN THE MALES AND THE GIRLS?

25 Q AND YOU?

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

60

1 A YEAH, THEY WERE TRYING TO TALK US INTO
2 LETTING THESE GIRLS PARK THERE WHICH SAID, NO, AND JUST
3 KEPT PERSISTING ON THAT ISSUE.

4 Q ONE OF THE MALES THAT APPROACHED DID HE
5 TALK TO ANYBODY IN THE CAR, DO YOU RECALL?

6 A I DON'T, I DON'T REMEMBER.

7 Q AND HOW WERE THEY STANDING, IF YOU WERE
8 STANDING UP AGAINST YOUR CAR WITH THE BACK FACING THE OCEAN
9 WHERE WERE THEY STANDING?

10 A THEY HAD THEIR BACKS AGAINST THE FEMALES
11 CARS FACING ME.

12 Q SO YA'LL WOULD HAVE BEEN FACE TO FACE?

13 A YES.

14 Q OKAY, WHAT HAPPENED NEXT?

15 A WHAT HAPPENED NEXT WAS AN ARGUMENT STARTED
16 AND --

17 Q BETWEEN WHO?

18 A I BELIEVE IT WAS BETWEEN JOSH HUGHES AND
19 ONE OF THE OTHER GUYS AND THAT'S ABOUT THE TIME THAT COREY
20 AND JEFF HAD WALKED FROM THE STAIRS OF THE PORCH DOWN TO
21 THE FRONT OF MY CAR AND THERE'S PUSHING AND SHOIVING AND
22 THEN --

23 Q HOW MANY PEOPLE WERE PUSHING AND SHOIVING AT
24 THAT POINT?

25 A I'D SAY JOSH PUSHING AND SHOIVING WITH

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

61

1 ANOTHER PERSON AND EITHER JEFF OR COREY PUSHING AND SHOVING
2 WITH SOMEONE ELSE NEAR THE FRONT OF MY CAR, I'M NOT REALLY
3 SURE ON THAT.

4 Q OKAY, AND THERE WAS, DID YOU DO ANYTHING AT
5 THAT POINT?

6 A AT THAT POINT I, AT THE POINT OF THE
7 PUSHING AND SHOVING SOMEONE FROM STANDING AT THE BACK OF MY
8 CAR SAID, YOU KNOW HE HAS A STRAP, HE HAS A STRAP, HE HAS A
9 STRAP, JUST REPEATING THAT, AND AT THAT POINT I STEPPED IN
10 BETWEEN EVERYONE WHO WAS ARGUING AND SAID, NO, THIS IS A
11 PARKING SPOT. THIS IS A DUMB ARGUMENT TO BEGIN WITH AND
12 IT'S NOT WORTH ANYTHING HAPPENING OVER GO AHEAD AND PARK
13 HERE.

14 Q WHAT HAPPENED AFTER THAT?

15 A AFTER THAT SOMEONE PULLED OUT A GUN FROM
16 HIS PANTS, HAD IT IN HIS RIGHT HAND AND HE HIT COREY IN THE
17 LEFT SIDE OF HIS HEAD WITH IT.

18 Q WHEN HE HIT COREY WITH THE GUN WHAT DID
19 COREY DO?

20 A I'M NOT REALLY SURE.

21 Q DID YOU SEE COREY AT ANY POINT IN TIME ON
22 THE GROUND?

23 A NO.

24 Q AFTER YOU SAW COREY GET HIT WITH THE GUN
25 WHAT DID YOU DO?

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

62

1 A I RAN FROM THE BACK OF MY CAR, CIRCLED
2 AROUND THE BACK OF THE BEACH HOUSE AND RAN TO A NEARBY
3 MOTEL THAT'S TO THE RIGHT OF THE BEACH HOUSE. THAT'S WHERE
4 I CALLED 911.

5 Q DO YOU REMEMBER THAT NIGHT WHEN YOU GAVE
6 THE POLICE A STATEMENT DESCRIBING WHAT THE MAN WITH THE GUN
7 HAD ON?

8 A YES.

9 Q DO YOU RECALL, COULD TELL US WHAT YOU
10 RECALL THAT BEING?

11 A A LARGE WHITE SHIRT.

12 Q WHEN YOU SAY WHITE SHIRT WAS IT A BUTTONED
13 DOWN SHIRT OR A TEE SHIRT OR WHAT WAS IT?

14 A TEE SHIRT.

15 Q DO YOU REMEMBER ANYTHING ABOUT HIS HEIGHT?

16 A I REMEMBER HE WAS ABOUT FIVE EIGHT, FIVE
17 TEN.

18 Q WHAT ABOUT HIS AGE?

19 A SAY 18 TO 20 YEARS OLD.

20 Q WHAT ABOUT HIS COMPLEXION?

21 A I MEAN HE WASN'T LIGHT SKINNED, HE WAS ON
22 THE DARKER SIDE.

23 Q AND YOU DESCRIBED ANOTHER FRIEND; IS THAT
24 RIGHT?

25 A YES.

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

63

1 Q WHAT DID HE HAVE ON?

2 A I THINK IT WAS A BLACK SHIRT AND A BASEBALL
3 HAT.

4 Q AND THE THIRD GUY?

5 A THE THIRD GUY I DON'T REALLY RECALL THAT
6 MUCH ABOUT HIM.

7 Q OKAY, DO YOU RECALL A HAT BEING AT THE
8 SCENE?

9 A YES.

10 Q AND DO YOU RECALL ONE OF THOSE MALES THAT
11 APPROACHED YA'LL WEARING A HAT?

12 A YES.

13 Q AND THIS PERSON THAT WAS WEARING THE HAT
14 WAS HE THE SHOOTER?

15 A NO.

16 Q I'M SORRY, WAS HE THE ONE WITH THE GUN?

17 A NO.

18 Q WAS HE THE ONE THAT YOU SAW HIT COREY WITH
19 THE GUN?

20 A NO.

21 Q WAS HE THE ONE THAT YOU SAW PULL THE GUN
22 OUT?

23 A NO.

24 Q LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
25 EXHIBIT 3, I BELIEVE THAT'S A CLOSER PHOTOGRAPH OF STATE'S

MR. MATHIS - DIRECT EXAMINATION BY MS. ELDER

64

1 EXHIBIT 4. DO YOU RECOGNIZE THAT?

2 A YES.

3 Q IS THAT YOUR VEHICLE PARKED IN THERE?

4 A YES, MA'AM.

5 Q AND UNDERNEATH YOUR VEHICLE RIGHT THERE IS
6 THAT A HAT?

7 A IT IS.

8 Q DO YOU RECALL SEEING THAT HAT THAT NIGHT?

9 A I DO.

10 MS. ELDER: YOUR HONOR, I'D LIKE TO INTRODUCE
11 STATE'S EXHIBIT 3 AT THIS TIME.

12 THE COURT: HAVE YOU HAD AN OPPORTUNITY TO LOOK
13 AT IT, MR. GALMORE?

14 MR. GALMORE: YES, SIR.

15 THE COURT: ANY OBJECTION?

16 MR. GALMORE: NO OBJECTION.

17 THE COURT: WITHOUT OBJECTION THAT'S STATE'S
18 EXHIBIT 3.

19 MS. ELDER: THREE, YOUR HONOR.

20 THE COURT: THREE, OKAY.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER 3 ENTERED INTO
22 EVIDENCE.)

23 MS. ELDER: (CONTINUING)

24 Q IS THAT A HAT IN STATE'S EXHIBIT 3, IS THAT
25 WHAT THE OTHER FRIEND HAD ON THAT DIDN'T HAVE THE GUN?

MR. MATHIS - CROSS EXAMINATION MR. GALMORE

65

1 A IT IS.

2 MS. ELDER: JUST A MOMENT, YOUR HONOR. NO
3 FURTHER QUESTIONS AT THIS TIME.

4 THE COURT: MR. GALMORE?

5 CROSS EXAMINATION

6 BY MR. GALMORE:

7 Q MR. MATHIS, PRIOR TO THIS INCIDENT DID
8 YA'LL HAVE ANY PROBLEMS WHILE YA'LL WERE DOWN THERE ON THE
9 BEACH?

10 A NO.

11 Q AND YOU INDICATED THAT YOU WALKED UP TO THE
12 HOUSE AND SAW A CAR IN THE PARKING SPACE; IS THAT CORRECT?

13 A EXACTLY.

14 Q AND WHO TOLD THEM THAT THEY HAD TO LEAVE?

15 A IT WAS A COMBINATION OF EVERYBODY WE WERE
16 WITH.

17 Q SO DID SOME PEOPLE STAY IN THE CAR AND SOME
18 PEOPLE GO ON INTO THE HOUSE?

19 A YEAH.

20 Q WELL WHO STAYED IN THE CAR?

21 A ME, KEITH GRIFFIN, JOSH HUGHES.

22 Q NOW OF THE BLACK MALES HOW MANY WERE
23 TALKING TO YOU ABOUT THE PARKING SPACE?

24 A TWO AND THEN ONE STANDING WITH THEM DID NOT
25 REALLY SAY ANYTHING.

MR. MATHIS - CROSS EXAMINATION MR. GALMORE

66

1 Q OKAY, OF THESE TWO COULD YOU DESCRIBE WHAT
2 THEY HAD ON?

3 A A WHITE SHIRT AND ANOTHER ONE HAD A BLACK
4 SHIRT ON WITH A BASEBALL HAT.

5 Q I UNDERSTAND THERE WAS SOME PUSHING AND
6 SHOVING, WAS JOSH INVOLVED IN THAT?

7 A YES.

8 Q WOULD IT BE FAIR TO SAY THAT JOSH WAS
9 SOMEWHAT INTOXICATED THAT NIGHT?

10 A YEAH.

11 Q AND YOU WOULD HAVE BEEN DRINKING ALSO?

12 A YES.

13 Q DID JOSH START THE PUSHING AND SHOVING?

14 A I DON'T REMEMBER.

15 Q DO YOU RECALL IF JOSH CURSED ANYONE OUT?

16 A I MEAN THERE'S AN ARGUMENT, THERE'S SEVERAL
17 WORDS THROWN AROUND FROM BOTH SIDES.

18 Q WELL WHO DID JOSH PUSH, WHICH ONE?

19 A I'M NOT REALLY SURE.

20 Q DID YOU SEE WHICH PERSON PULLED THE GUN?

21 A THE PERSON WITH THE WHITE SHIRT ON.

22 Q THE PERSON WITH THE WHITE SHIRT ON, OKAY,
23 AND COULD YOU DESCRIBE THE PERSON WITH THE WHITE SHIRT?

24 A NOT REALLY.

25 Q COULD YOU DESCRIBE THAT PERSON'S HAIR?

MR. MATHIS - CROSS EXAMINATION MR. GALMORE

67

1 A NO.

2 Q COULD YOU DESCRIBE THAT PERSON'S SKIN
3 COMPLEXION?

4 A I MEAN HE WASN'T LIGHT SKINNED BUT WASN'T
5 DARK SKINNED, IT WAS MORE --

6 Q DO YOU RECALL MAKING A STATEMENT TO POLICE
7 ABOUT THIS?

8 A YES.

9 Q IF I USED THE PHRASE ABORIGINAL WOULD THAT
10 HELP YOU TO UNDERSTAND TO EXPLAIN TO THE JURY A SKIN
11 COMPLEXION?

12 A YEAH, LIGHTER THAN THAT.

13 Q NOT MUCH LIGHTER THAN THAT, THOUGH?

14 A I MEAN I'D SAY IF THERE IS LIGHT SKINNED,
15 FAIR SKINNED, ABORIGINE, IT'D BE SOMEWHERE IN THE MEDIUM.

16 Q DURING THAT STATEMENT WERE YOU ABLE TO GIVE
17 A DESCRIPTION OF THE HAIR OF THESE PEOPLE?

18 A YEAH, TIGHT CUT.

19 Q OKAY, KIND OF LOW CUT MAYBE LIKE THIS
20 ALMOST?

21 A YEAH.

22 Q AND THAT WOULD HAVE BEEN THE SHOOTER?

23 A I'M, I'M NOT SURE.

24 Q THAT WOULD HAVE BEEN THE PERSON IN THE
25 WHITE TEE SHIRT?

MR. MATHIS - CROSS EXAMINATION MR. GALMORE

68

- 1 A I'M NOT SURE.
- 2 Q OKAY, SO YOU DON'T KNOW WHICH ONE HAD THE
- 3 LOW, LOW HAIR?
- 4 A NO.
- 5 Q BUT ONE OF THEM DID?
- 6 A YEAH.
- 7 Q AND COULD YOU DESCRIBE THE OTHER PERSON'S
- 8 HAIR?
- 9 A NO.
- 10 Q HAVE YOU EVER VIEWED ANY LINEUPS IN THIS
- 11 CASE?
- 12 A YES.
- 13 Q WERE YOU ABLE TO PICK OUT ANYONE OUT OF
- 14 THOSE LINEUPS?
- 15 A I WASN'T.
- 16 Q YOU HAVE NEVER IDENTIFIED A SUSPECT, HAVE
- 17 YOU?
- 18 A NO.
- 19 Q AND YOU CAN'T IDENTIFY A PERSON TODAY, CAN
- 20 YOU?
- 21 A NOPE.
- 22 MR. GALMORE: NO FURTHER QUESTIONS, THANK YOU.
- 23 MS. ELDER: I HAVE NO FURTHER QUESTIONS AND
- 24 WOULD ASK THAT THIS WITNESS BE EXCUSED, YOUR HONOR.
- 25 THE COURT: ANY OBJECTION?

MR. KING - DIRECT EXAMINATION BY MS. ELDER

69

1 MR. GALMORE: NO, SIR.

2 THE COURT: ALL RIGHT, MR. MATHIS, YOU'RE
3 EXCUSED AND RELEASED FROM YOUR SUBPOENA.

4 MS. ELDER: YOUR HONOR, THE STATE WOULD CALL
5 JEFFREY KING.

6 JEFFREY DAVID KING

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 MADAM CLERK: PLEASE STATE YOUR NAME AND SPELL
9 YOUR LAST NAME FOR THE COURT.

10 THE WITNESS: JEFFREY DAVID KING, K-I-N-G.

11 DIRECT EXAMINATION

12 BY MS. ELDER:

13 Q MR. KING, WHERE DO YOU CURRENTLY RESIDE?

14 A CASTLEWOOD IN CONWAY.

15 Q AND WHAT DO YOU DO?

16 A I GO TO SCHOOL AT COASTAL CAROLINA.

17 Q HOW LONG HAVE YOU BEEN GOING TO SCHOOL
18 THERE?

19 A IT'S MY FIFTH YEAR.

20 Q AND WHAT ARE YOU MAJORING IN?

21 A GRAPHIC DESIGNER.

22 Q NOW BACK ON MAY 25TH, 2008, DID YOU GO TO A
23 FRIEND'S HOUSE FOR THE WEEKEND?

24 A YES, MA'AM.

25 Q WHOSE FRIEND WAS THAT?

MR. KING - DIRECT EXAMINATION BY MS. ELDER

70

1 A JOSH HUGHES.

2 Q AND WHO ELSE WENT WITH YOU?

3 A I MET EVERYONE THERE AFTER WORK SO I WENT
4 BY MYSELF.

5 Q ALL RIGHT, WHO ELSE WAS ALREADY AT THE
6 HOUSE?

7 A JOSH, HIS TWO FRATERNITY BROTHERS, KEITH
8 AND DAN, COREY AND ZACK.

9 Q AND WHAT DID YOU DO THAT NIGHT LEADING UP
10 TO THE EARLY MORNING HOURS OF MAY 25TH, WHAT WERE YA'LL
11 DOING?

12 A JUST HANGING OUT AND THEN WE WERE WALKING
13 DOWN THE BOULEVARD AND CHECKING OUT EVERYONE'S BIKES AND
14 JUST WALKING AROUND.

15 Q DID YA'LL COME BACK TO THE HOUSE AT SOME
16 POINT?

17 A YES, MA'AM.

18 Q EARLY THAT MORNING?

19 A YES, MA'AM.

20 Q WHEN YOU CAME UP TO THE HOUSE WHAT DID YOU
21 SEE?

22 A THERE WAS A CAR PARKED IN THE FRONT YARD
23 AND THERE WAS JUST PEOPLE CROWDED AROUND IT AND THAT WAS
24 IT.

25 Q OKAY, DID YOU SEE WHO WAS IN THE CAR?

MR. KING - DIRECT EXAMINATION BY MS. ELDER

71

1 A NO, I DIDN'T.

2 Q DO YOU KNOW IF THEY WERE MALE OR FEMALE?

3 A THE FEMALES WERE IN THE CAR AND THERE WERE
4 MALES OUTSIDE OF IT WITH THEM.

5 Q AND DID YOU STOP AT THE CAR OR DID YOU GO
6 SOMEWHERE ELSE?

7 A NO, COREY AND I WALKED ON THE PORCH AND WE
8 WERE JUST GOING TO GO INSIDE THE HOUSE AND WERE GOING TO
9 WAIT BUT NO ONE CAME UP AND THEN JOSH'S FRATERNITY BROTHER
10 EVENTUALLY CAME UP AND GOT US TO COME DOWN WHEN THERE
11 STARTED TO BE A PROBLEM.

12 Q WAS THERE AN ARGUMENT GOING ON?

13 A WHEN WE WALKED DOWN AFTER DAN, WHICH IS
14 JOSH'S FRATERNITY BROTHER, HE TOLD US TO COME DOWN BECAUSE
15 THERE WAS AN ARGUMENT BREAKING OUT AND THEN WE WALKED DOWN
16 THERE AND EVERYONE WAS THERE, JOSH, MYSELF, COREY, ZACK,
17 AND DAN AND KEITH.

18 Q DID COREY DO ANYTHING AT THAT POINT?

19 A WE WALKED DOWN THERE, WE OBVIOUSLY JUST
20 ASKED WHAT WAS GOING ON AND THEY WERE PARKED IN OUR, IN
21 JOSH'S FRONT YARD AND WE JUST ASKED THEM TO MOVE THEIR
22 VEHICLE.

23 Q DID YOU SEE ANYONE ENGAGE IN A PHYSICAL
24 STRUGGLE?

25 A AFTER WE HAD WORDS IT EVENTUALLY LED INTO A

MR. KING - DIRECT EXAMINATION BY MS. ELDER

72

1 SCUFFLE, YES.

2 Q AND DID YOU SEE ANYBODY HIT OR STRIKE
3 COREY?

4 A SOMEONE HIT HIM IN THE HEAD WITH A GUN
5 AFTER, AFTER WE PUSHED, EVERYONE WAS JUST PUSHING AT FIRST
6 AND THEN IT LED TO THAT AND HE PULLED OUT A GUN AND HIT HIM
7 IN THE HEAD.

8 Q AND WHERE WAS COREY AT WHEN HE HIT HIM IN
9 THE HEAD?

10 A WE WERE ALL STANDING IN BETWEEN ZACK'S CAR
11 AND THE GIRL'S CAR THAT WAS THERE WITH THE GENTLEMEN.

12 Q DO YOU KNOW WHAT HAPPENED TO COREY WHEN HE
13 GOT HIT IN THE HEAD?

14 A NO, WE ALL, WE ALL RAN CAUSE WE SAW THE KID
15 HAD A GUN. I JUST SAW HIM PULL IT OUT AND I THINK HE
16 STRUCK COREY IN THE HEAD WITH IT. THAT'S WHAT I SAW AND
17 THEN AFTER WE ALL SAW HE HAD A GUN WE RAN AND THEN I HEARD
18 A GUNSHOT AND THAT'S WHEN I SPRINTED BACK.

19 Q AND DID YOU SAY ANYTHING OR YELL ANYTHING
20 WHEN YOU SAW THE GUN?

21 A I SAID, YEAH, HE, WELL FIRST HE LET US KNOW
22 THAT HE HAD A GUN CAUSE HE YELLED I'M STRAPPED AND THAT'S
23 WHEN I KIND OF FIGURED, I WAS LIKE, ALL RIGHT, WE NEED TO
24 GET OUT OF HERE AND THEN HE PULLED IT OUT IMMEDIATELY
25 AFTER. IT LOOKED LIKE HE PULLED IT OUT FROM MAYBE HIS

MR. KING - DIRECT EXAMINATION BY MS. ELDER

73

1 PANTS OR MAYBE HIS BELT, I DON'T KNOW, BUT THEN HE PULLED
2 IT OUT AND I SAW HIM LIFT IT WITH, I GUESS IT WOULD BE HIS
3 RIGHT HAND CAUSE I WAS FACING HIM AND I SAW, IT WAS ALL
4 SILVER, THAT'S ALL I SAW WAS THE BARREL.

5 Q OKAY, AND YOU SAW HIM STRIKE COREY?

6 A YES, MA'AM.

7 Q WHERE DID YOU GO AT THAT POINT?

8 A WHENEVER HE PULLED THE GUN OUT IS WHEN I
9 RAN AND THEN AFTER I SAW HIM HIT HIM I DIDN'T EVEN KNOW IF
10 HE MADE CONTACT OR NOT BUT I RAN AND THEN WE ALL HEARD A
11 GUNSHOT AND THAT'S WHEN I RAN BACK AND THE ONLY TWO PEOPLE
12 THERE THAT I REMEMBER RIGHT AWAY WAS JOSH, COREY, AND I.

13 Q SO WHERE WAS COREY WHEN YOU RAN BACK?

14 A COREY WAS LAYING ON THE GROUND AND I PICKED
15 HIM UP.

16 Q THE PERSON THAT YOU SAW WITH THE GUN YOU
17 GAVE POLICE A STATEMENT THAT NIGHT; IS THAT CORRECT?

18 A YES, MA'AM.

19 Q AND DID YOU TELL THEM IF THE PERSON WITH
20 THE GUN WAS A WHITE MALE OR A BLACK MALE?

21 A HE WAS BLACK.

22 Q DID YOU TELL THEM WHAT COLOR SHIRT HE HAD
23 ON?

24 A I BELIEVE I GAVE A DESCRIPTION OF A WHITE
25 SHIRT.

MR. KING - CROSS EXAMINATION BY MR. GALMORE

74

1 MS. ELDER: JUST A MOMENT, YOUR HONOR. THAT'S
2 ALL THE QUESTIONS I HAVE AT THIS TIME, YOUR HONOR.

3 THE COURT: MR. GALMORE.

4 MR. GALMORE: THE COURT'S INDULGENCE, YOUR
5 HONOR.

6 THE COURT: CERTAINLY.

7 CROSS EXAMINATION

8 BY MR. GALMORE:

9 Q MR. KING, LET'S TAKE IT BACK TO WHERE YOU
10 ALL WERE WALKING UP FROM THE BOULEVARD. WHEN, WHEN YOU ALL
11 WERE WALKING UP FROM THE BOULEVARD YOU SAW A CAR THAT
12 WASN'T SUPPOSED TO BE PARKED IN THE YARD; IS THAT CORRECT?

13 A YES, SIR.

14 Q OKAY, WHO DID YOU SEE IN THE CAR?

15 A WHAT I SAW WAS THE GIRLS, THERE WAS NO
16 MALES IN THE CAR, IT WAS JUST THE GIRLS.

17 Q OKAY, WERE THE MALES AROUND THE CAR?

18 A YES, SIR.

19 Q SO THEY WERE ALREADY THERE BY THE TIME YOU
20 ALL GOT THERE?

21 A I MEAN OBVIOUSLY WE WALKED UP ON THEM THEY
22 WERE THERE, YES.

23 Q OKAY, SO THE MALES WERE THERE BEFORE YOU
24 ALL WALKED UP?

25 A YES, BEFORE I WALKED UP, I WASN'T WITH

MR. KING - CROSS EXAMINATION BY MR. GALMORE

75

1 EVERYONE ELSE. I WALKED ON THE PORCH AS I SAID WITH COREY
2 SO THEREFORE ---

3 Q BUT WHEN YOU WALKED UP FROM THE BOULEVARD
4 WERE THE MALES THERE AT THAT TIME?

5 A I DON'T REMEMBER.

6 Q OKAY, BUT THEN YOU WENT UP TO THE PORCH AND
7 WHEN YOU CAME OFF THE PORCH THE MALES WERE THERE?

8 A YES.

9 Q OKAY, DID YOU WITNESS ANY DISCUSSIONS
10 BETWEEN THE BLACK MALES THEMSELVES?

11 A I DON'T KNOW, I DON'T REMEMBER.

12 Q DO YOU REMEMBER THEM WHISPERING TO EACH
13 OTHER OR ANYTHING LIKE THAT?

14 A I DON'T REMEMBER.

15 Q NOW WHEN YOU CAME OFF THE PORCH THE
16 SCUFFLING HADN'T STARTED YET, HAD IT?

17 A NO, BUT WORDS WERE BEING EXCHANGED AND
18 EVERYONE WAS TALKING.

19 Q AND THAT'S WHEN COREY WAS TRYING TO BREAK
20 IT UP?

21 A THAT'S WHEN ALL OF US WERE TRYING TO BREAK
22 IT UP NOT JUST COREY.

23 Q OKAY, EVERYONE WAS TRYING TO BREAK IT UP;
24 DO YOU KNOW WHO PUSHED FIRST?

25 A YEAH, ONE OF THE BLACK MALES PUSHED.

MR. KING - CROSS EXAMINATION BY MR. GALMORE

76

1 Q WHICH ONE, DO YOU RECALL?

2 A I DON'T KNOW I DON'T REMEMBER.

3 Q THE ONE THAT PUSHED WOULD IT HAVE BEEN THE
4 ONE THAT SAID I'M STRAPPED?

5 A I DON'T REMEMBER.

6 Q DO YOU REMEMBER ANY PHYSICAL DETAILS ABOUT
7 THE ONE THAT PUSHED?

8 A NO, I DON'T REMEMBER. ALL I KNOW IS THAT
9 COREY WAS THE FIRST ONE TO GET PUSHED AND THEN EVERYTHING
10 BROKE OUT FROM THEN.

11 Q DO YOU REMEMBER ANY PHYSICAL DETAILS ABOUT
12 ANY OF THE BLACK MALES?

13 A YEAH, ONE OF THEM HAD A HAT, HE WAS WEARING
14 A HAT; ONE OF THEM HAD A WHITE TEE SHIRT ON, PLAIN WHITE
15 TEE SHIRT, IT WAS LONG. I MEAN ONE HAD LONG, ONE HAD LONG
16 HAIR, THAT'S ALL I REMEMBERED.

17 Q WELL WHICH ONE WAS THE ONE DOING THE
18 PUSHING?

19 A I DON'T REMEMBER.

20 Q SO WHAT DID YOU DO AFTER THE GUN WAS PULLED
21 OUT?

22 A I RAN.

23 Q SO DID YOU SEE MR. BROOKS GET SHOT?

24 A NO.

25 Q SO YOU DON'T KNOW WHO SHOT MR. BROOKS?

MR. KING - CROSS EXAMINATION BY MR. GALMORE

77

1 A NO.

2 Q DID YOU SEE IF MR. BROOKS GOT KILLED?

3 A I KNOW WHO HAD THE GUN, THOUGH, SO I WOULD
4 ASSUME THAT'S WHO SHOT HIM.

5 Q WHO HAD THE GUN?

6 A THE ONE WITH THE LONG HAIR AND THE WHITE
7 TEE SHIRT.

8 Q DID YOU TELL THAT TO THE POLICE OFFICERS
9 WHEN YOU MADE YOUR STATEMENT?

10 A I DON'T REMEMBER.

11 Q IF I HANDED UP A COPY OF YOUR STATEMENT
12 WOULD IT HELP TO REFRESH YOUR MEMORY?

13 A YEAH, IT WOULD.

14 Q CAN YOU IDENTIFY A SUSPECT IN THIS CASE?

15 A WHAT SUSPECT, I MEAN THERE'S --

16 Q DID YOU LOOK AT A PHOTO LINEUP AT ANY TIME?

17 A NO.

18 Q SO YOU'VE NEVER PICKED OUT A PERSON AS
19 BEING THE ONE WITH THE GUN?

20 A PERSONALLY, NO.

21 MR. GALMORE: THANK YOU, NO FURTHER QUESTIONS.

22 MS. ELDER: YOUR HONOR, I WOULD ASK THIS WITNESS
23 BE EXCUSED AT THIS TIME.

24 THE COURT: MR. GALMORE?

25 MR. GALMORE: NO OBJECTIONS.

MR. BROWN - DIRECT EXAMINATION BY MS. ELDER

78

1 THE COURT: YOU'RE EXCUSED AND RELEASED FROM
2 YOUR SUBPOENA.

3 MS. ELDER: THE STATE WOULD CALL VERNON BROWN.

4 VERNON BROWN

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
7 SPELL YOUR LAST NAME FOR THE COURT.

8 THE WITNESS: VERNON BROWN, B-R-O-W-N.

9 DIRECT EXAMINATION

10 BY MS. ELDER:

11 Q MR. BROWN, WHERE DO YOU CURRENTLY RESIDE?

12 A DARLINGTON, SOUTH CAROLINA.

13 Q AND WHAT DO YOU DO?

14 A I WORK AT HOME DEPOT AND GO TO FLORENCE
15 DARLINGTON TECH.

16 Q AND IN MAY OF 2008 WERE YOU DOWN HERE FOR
17 MEMORIAL WEEKEND?

18 A RIGHT.

19 Q OKAY, WHAT WERE YOU DOING DOWN HERE THAT
20 WEEKEND?

21 A JUST ENJOYING.

22 Q HANGING OUT?

23 A TAKING A LITTLE BREAK.

24 Q I GOT YOU, AND DO YOU REMEMBER BEING PARKED
25 ON 3RD AVENUE NORTH ---

MR. BROWN - DIRECT EXAMINATION BY MS. ELDER

79

1 A CORRECT.

2 Q --- WHEN THE INCIDENT HAPPENED?

3 A CORRECT.

4 Q AND DID YOU TALK TO THE POLICE ABOUT THAT
5 INCIDENT?

6 A I DID.

7 Q AND I'M GOING TO ASK YOU ABOUT WHAT YOU SAW
8 THAT NIGHT OR THE LATER MORNING HOURS?

9 A OKAY.

10 Q OKAY, TELL ME WHERE YOU WERE AT THE TIME?

11 A I WAS BACKED IN ON A FENCE ACROSS FROM THE
12 HOUSE.

13 Q OKAY, AND WERE YOU ON A MOTORCYCLE OR A
14 CAR?

15 A A TRUCK.

16 Q AND WHAT WERE YOU DOING OVER THERE ACROSS
17 FROM THE HOUSE?

18 A I WAS WAITING ON A FRIEND, HE WAS SUPPOSED
19 TO MEET ME ON THAT, ON 3RD AVENUE NORTH.

20 Q AND WHAT DID YOU SEE, WHAT DID YOU SEE
21 ACROSS THE STREET?

22 A WHEN I FIRST GOT THERE I REALLY DIDN'T PAY
23 ATTENTION TO THE HOUSE WHAT WAS THERE BUT AS I WAS SITTING
24 THERE I SEEN A GROUP OF GUYS CAME OFF THE STRIP AND ---

25 Q WERE THEY WHITE MALES OR BLACK MALES?

MR. BROWN - DIRECT EXAMINATION BY MS. ELDER

80

1 A WHITE MALES.

2 Q OKAY, GO AHEAD, I'M SORRY?

3 A OKAY, AND WHEN THEY WALKED DOWN I PRETTY
4 MUCH DIDN'T PAY THEM ANY ATTENTION ANY MORE AND I WAS
5 LISTENING TO THE RADIO AND I HEARD SOME REAL LOUD CUSSING
6 AND I TURNED MY RADIO DOWN AND THEN I LOOKED UP AND THEY
7 HAD STARTED FIGHTING.

8 Q AND WHEN YOU SAY THEY HAD STARTED FIGHTING
9 WHO ARE YOU TALKING ABOUT?

10 A THERE WAS A GROUP OF WHITE GUYS AND A GROUP
11 OF BLACK GUYS.

12 Q AND WERE THERE ANY VEHICLES OR ANYTHING
13 AROUND?

14 A IT WAS LIKE TWO OR THREE CARS IN THE YARD
15 AND DIRECTLY IN FRONT OF ME AND WHEN THEY STARTED FIGHTING
16 ONE OF THE CARS DROVE OFF THROUGH THE GRASS.

17 Q AND DO YOU KNOW IF THERE WERE MALES OR
18 FEMALES IN THAT CAR?

19 A I'M NOT SURE.

20 Q OKAY, ALL RIGHT, AND WHEN YOU SAID YOU
21 TURNED YOUR RADIO DOWN AND LOOKED UP AND THEY HAD STARTED
22 FIGHTING?

23 A RIGHT.

24 Q TELL ME WHAT YOU SAW IN THAT FIGHT?

25 A WELL THE FIGHT DIDN'T LAST LONG, IT WAS

MR. BROWN - DIRECT EXAMINATION BY MS. ELDER

81

1 PROBABLY ABOUT 10 SECONDS, MAY HAVE BEEN, AND THEN I HEARD
2 A GUNSHOT AND THEN THEREABOUT THE TIME, THE SAME TIME THE
3 CAR DROVE, DROVE ACROSS THROUGH THE GRASS AND I SEEN A GUY,
4 EVERYBODY HAD STARTED RUNNING AND A GUY HE WAS WALKING BACK
5 REAL SLOW LOOKING AT THE GUN LIKE AS IF HE WAS SURPRISED
6 THE GUN WENT OFF OR HE SHOT IT AND THEN ALL OF THEM TOOK
7 OFF AND RAN TOWARDS KINGS HIGHWAY.

8 Q AND DID YOU SEE THE GUN?

9 A I DID.

10 Q AND WHERE WAS THIS GUY COMING FROM WHEN YOU
11 SAW HIM WITH THE GUN?

12 A HE WAS COMING OUT THE YARD.

13 Q AND WHAT DID THE GUN LOOK LIKE?

14 A IT WAS LONG, ALL CHROME, IT LOOKED LIKE A
15 REVOLVER.

16 Q ARE YOU FAMILIAR WITH GUNS?

17 A VERY.

18 Q YOU HAD ANY PRIOR TRAINING?

19 A MILITARY.

20 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
21 I'VE CONFIRMED THAT THIS GUN IS SECURE, IT WILL NOT FIRE.

22 MS. ELDER: THANK YOU, YOUR HONOR.

23 Q (CONTINUING) MR. BROWN, I WANT YOU TO TAKE
24 A LOOK AT WHAT'S BEEN MARKED FOR IDENTIFICATION AS STATE'S
25 EXHIBIT 7. DOES THAT LOOK LIKE WHAT YOU SAW THAT NIGHT?

MR. BROWN - DIRECT EXAMINATION BY MS. ELDER

82

1 A THAT LOOK LIKE IT.

2 Q AND WHERE DID YOU SEE IT WHEN YOU SAW THAT
3 GUN, WHERE DID YOU SEE IT?

4 A WELL I WAS SITTING, MY TRUCK WAS BACKED IN
5 ON THE FENCE AND THE GUY HE WAS ALMOST PRETTY MUCH ON THE
6 ROAD WHEN I SAW THE GUN.

7 Q WAS IT ON HIS PERSON, WAS IT IN HIS HAND?

8 A IT WAS STILL IN HIS HAND.

9 Q AND DO YOU RECALL GIVING A DESCRIPTION TO
10 THE POLICE OF THE PERSON YOU SAW RUNNING AWAY FROM THAT
11 SHOOTING?

12 A I DO.

13 Q AND COULD YOU TELL THE JURY WHAT YOU TOLD
14 THEM THAT NIGHT?

15 A ABOUT FIVE FIVE LIGHT SKINNED, PROBABLY
16 ABOUT 120 POUNDS, LIGHT COLORED TEE SHIRT.

17 Q WHEN YOU SAY LIGHT COLORED TEE SHIRT --

18 A WHITE OR LIGHT GRAY.

19 Q AND WAS IT A REGULAR TEE SHIRT?

20 A JUST A PLAIN TEE SHIRT.

21 Q DID IT HAVE SLEEVES?

22 A IT DID.

23 Q DID YOU TELL THEM ANYTHING ABOUT HIS HAIR?

24 A I COULDN'T REMEMBER EXACTLY HOW HIS HAIR
25 WAS.

MR. BROWN - CROSS EXAMINATION BY MR. GALMORE

83

1 Q OKAY, DID HE HAVE A HAT ON?

2 A NO, I DIDN'T SEE A HAT.

3 Q DID YOU SEE OTHER, ANY OTHER INDIVIDUALS
4 RUNNING WITH HIM?

5 A LIKE TWO OR THREE.

6 Q OKAY, AND DO YOU KNOW ANY DESCRIPTION
7 APPLIED TO THEM?

8 A NO.

9 MS. ELDER: ONE MOMENT, YOUR HONOR. I HAVE NO
10 OTHER QUESTIONS OF THIS WITNESS, YOUR HONOR.

11 THE COURT: MR. GALMORE?

12 CROSS EXAMINATION

13 BY MR. GALMORE:

14 Q MR. BROWN, THE FIRST THAT YOU BECAME
15 INVOLVED IN THIS CASE WAS WHEN YOU TURNED THE RADIO DOWN;
16 IS THAT CORRECT?

17 A RIGHT.

18 Q HOW DID IT COME TO YOUR ATTENTION THAT YOU
19 NEEDED TO TURN YOUR RADIO DOWN?

20 A CAUSE I HEARD A LOUD CUSS WORD.

21 Q OKAY, WHAT DID YOU HEAR?

22 A THE FUCK.

23 Q OKAY, AND AS A RESULT OF THAT YOU --

24 A TURNED MY RADIO DOWN.

25 Q AND IT GOT YOUR ATTENTION?

MR. BROWN - CROSS EXAMINATION BY MR. GALMORE

84

1 A RIGHT.

2 Q DID THERE COME A TIME WHEN THE POLICE TOOK
3 YOU TO IDENTIFY SOMEONE?

4 A RIGHT.

5 Q AND DID YOU GO WITH THEM TO THAT PERSON?

6 A I DID.

7 Q AND WHAT DID THE PERSON LOOK LIKE THAT YOU
8 WENT TO IDENTIFY?

9 A TALL, BROWN SKINNED. I WENT AND LOOKED AT
10 LIKE TWO DIFFERENT GUYS BUT IT DIDN'T LOOK LIKE THE GUY
11 THAT I SAW.

12 Q YOU WERE TRYING TO HELP?

13 A RIGHT.

14 Q BUT YOU WEREN'T ABLE TO PICK OUT ANYONE?

15 A RIGHT.

16 Q HAVE YOU EVER BEEN SHOWN A PHOTO LINEUP?

17 A NO.

18 Q CAN YOU PICK OUT ANYONE TODAY?

19 A I JUST KNOW SKIN COMPLEXION.

20 Q OKAY, AND YOU SAID HIS SKIN COMPLEXION WAS
21 LIGHT SKINNED?

22 A LIGHT, RIGHT.

23 Q WERE YOU ABLE TO DESCRIBE THE PERSON'S
24 HAIR?

25 A NO.

MR. BROWN - CROSS EXAMINATION BY MR. GALMORE

85

1 Q AND YOU SAID THE PERSON HAD ON A WHITE OR
2 LIGHT COLORED TEE SHIRT?

3 A CORRECT.

4 Q DID YOU ACTUALLY SEE THE GUN BEING PULLED?

5 A I DIDN'T SEE IT BEING PULLED OR SHOT BUT I
6 DID SEE IT WHEN HE WAS WALKING BACK BESIDE THE CAR.

7 Q OKAY, DID YOU SEE ANY KICKING OF ANYBODY?

8 A NO.

9 Q WOULD YOU SAY THAT YOU OBSERVED THE ENTIRE
10 SCUFFLE PART OF IT?

11 A RIGHT.

12 Q YOU DIDN'T SEE ANYBODY KICKING ANYONE?

13 A NO.

14 Q AND YOU DID NOT SEE THE SHOT?

15 A NO, I DID NOT SEE THE SHOT.

16 Q ALL YOU SAW WAS THE PERSON WITH THE GUN?

17 A RIGHT, AND THE PERSON LAYING ON THE GROUND.

18 Q DID YOU SEE ANY INDICATION THAT THE BLACK
19 MEN WERE DISCUSSING PERHAPS WE SHOULD JUMP THESE GUYS?

20 A NO, I DIDN'T HEAR DISCUSSION, I JUST HEARD
21 ONE LOUD CUSS WORD, I TURNED MY RADIO DOWN AND I LOOKED.

22 Q COULD YOU DESCRIBE THE PERSON THAT CURSED?

23 A I WASN'T LOOKING AT THE MOMENT WHEN THEY
24 CURSED.

25 Q OKAY, BUT SOMEONE CUSSED BUT YOU DON'T KNOW

MR. BROWN - REDIRECT EXAMINATION BY MS. ELDER

86

1 WHO IT WAS?

2 A RIGHT.

3 MR. GALMORE: ALL RIGHT, NO FURTHER QUESTIONS.

4 REDIRECT EXAMINATION

5 BY MS. ELDER:

6 Q DID YOU HEAR A GUNSHOT, MR. BROWN, AFTER
7 THE SCUFFLE BROKE OUT?

8 A I DID.

9 Q BUT YOU DIDN'T SEE THE SHOOTING ITSELF?

10 A RIGHT.

11 Q WAS THERE A LOT OF PEOPLE AROUND AT THAT
12 TIME?

13 A NO, IT WASN'T.

14 Q OKAY, WAS THAT GROUP OF BOYS TOGETHER?

15 A WHEN THEY WAS FIGHTING AT THE TIME ---

16 Q THEY WERE GROUPED UP TOGETHER?

17 A RIGHT.

18 MS. ELDER: I HAVE NO FURTHER QUESTIONS.

19 THE COURT: MR. GALMORE, ANY RECROSS?

20 MR. GALMORE: NO, SIR.

21 THE COURT: ALL RIGHT.

22 MS. ELDER: YOUR HONOR, WE WOULD ASK THAT MR.
23 BROWN BE EXCUSED FROM HIS SUBPOENA.

24 THE COURT: MR. GALMORE, YOU HAVE ANY OBJECTION?

25 MR. GALMORE: NO, SIR.

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

87

1 THE COURT: MR. BROWN, YOU'RE EXCUSED FROM YOUR
2 SUBPOENA. ALL RIGHT, MS. ELDER, LET'S TAKE ABOUT 10
3 MINUTES FOR THE JURY, OKAY.

4 MS. ELDER: YES, SIR, YOUR HONOR.

5 THE COURT: MR. ROPP, IF YOU WOULD TAKE THE JURY
6 INTO THE JURY ROOM LET'S GIVE THEM A LITTLE BREAK.

7 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
8 3:29 P.M.)

9 THE COURT: WE'LL BE AT EASE FOR ABOUT 10
10 MINUTES.

11 MS. ELDER: THANK YOU, YOUR HONOR.

12 (WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING
13 TAKES PLACE ON THE RECORD AFTER THE RECESS.)

14 THE COURT: YOU GOT EVERYBODY IN THE COURTROOM?

15 MS. ELDER: YES, SIR.

16 THE COURT: ROY, IF YOU WOULD BRING IN THE JURY.

17 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
18 3:47 P.M.)

19 THE COURT: ALL RIGHT, THE JURY IS IN THE
20 COURTROOM, IF YOU WOULD, MS. ELDER, CALL YOUR NEXT WITNESS.

21 MS. ELDER: YOUR HONOR, THE STATE WOULD CALL
22 DARIUS PRIEST.

23 THE COURT: COME AROUND, MR. PRIEST, AND BE
24 SWORN.

25 DARIUS PRIEST

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

88

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
3 SPELL YOUR LAST NAME FOR THE COURT.

4 THE WITNESS: MY NAME IS DARIUS PRIEST, P-R--I-
5 E-S-T.

6 DIRECT EXAMINATION

7 BY MS. ELDER:

8 Q DARIUS, HOW OLD ARE YOU?

9 A SEVENTEEN.

10 Q AND WHERE ARE YOU CURRENTLY RESIDING?

11 A I WAS IN THIS CAMP IN SPARTANBURG CALLED
12 CAMP WHITE PINE.

13 Q OKAY, AND WHAT IS CAMP WHITE PINE?

14 A IT'S A WILDERNESS CAMP AND IT'S LIKE, IT'S
15 FOR BEHAVIOR MODIFICATION.

16 Q AND WHY ARE YOU THERE?

17 A FOR A PISTOL, MINOR IN POSSESSION OF A
18 PISTOL FOR THIS IN HERE.

19 Q THIS INCIDENT HERE, IS THAT, ARE YOU
20 REFERRING TO THE ONE THAT HAPPENED BACK IN MAY OF 2008?

21 A YES, MA'AM.

22 Q DO YOU REMEMBER GIVING A STATEMENT TO THE
23 POLICE ABOUT AN INCIDENT THAT OCCURRED DOWN ON 3RD AVENUE
24 ON MAY 30TH, 2008?

25 A YES, MA'AM.

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

89

1 Q WAS IT ABOUT A SHOOTING THAT TOOK PLACE ON
2 3RD AVENUE?

3 A YES, MA'AM.

4 Q AND DID YOU ALSO GIVE A SECOND INTERVIEW TO
5 THE POLICE ON JUNE 3RD OF 2008 HERE AT THE COURTHOUSE?

6 A YES, MA'AM, TELLING THEM WHERE THE PISTOL
7 WAS.

8 Q THAT'S WHEN YOU TOLD THEM WHERE THE PISTOL
9 WAS?

10 A YES, MA'AM.

11 Q I WANT TO TALK TO YOU ABOUT THIS INTERVIEW
12 AND WHAT YOU SAW THAT NIGHT, OKAY? PRIOR TO THE SHOOTING
13 WHAT HAD YOU BEEN DOING?

14 A I WAS ON THE PHONE WITH MY BROTHER. HE
15 BEEN CALLING ME AND ASKING ME WAS I COMING HOME AND DURING
16 THAT TIME I HEAR DEMARIO IN THE BACKGROUND ARGUING WITH
17 SOMEBODY AND THEN I GUESS THE KID PUSHED HIM AND THEY
18 STARTED FIGHTING.

19 Q ALL RIGHT, BEFORE WE GET TO THAT BEFORE
20 YA'LL GOT TO THE INCIDENT LOCATION WHAT WERE YOU DOING?

21 A JUST WALKING AROUND.

22 Q DOWN MYRTLE BEACH?

23 A YES, MA'AM.

24 Q WERE YOU ON THE BOULEVARD?

25 A WE WAS ALL OVER IT.

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

90

1 Q ALL OVER IT, IS THAT WHAT YOU SAID?

2 A YES, MA'AM.

3 Q OKAY, AND WHO WERE YOU WITH?

4 A KEION AND DEMARIO.

5 Q AND WERE YA'LL WITH OTHER PEOPLE?

6 A WHEN I FIRST MET UP WITH THEM, YES, MA'AM,
7 THEN THE REST OF THEM SEPARATED, THEY JUST WENT THEIR OWN
8 WAY.

9 Q OKAY, SO WHEN DID YOU GET TO 3RD AVENUE,
10 WHO WAS WITH YOU WHEN YOU WENT TO THAT 3RD AVENUE HOUSE?

11 A KEION AND DEMARIO.

12 Q AND YOU?

13 A YES, MA'AM.

14 Q OKAY, WHAT DID YOU HAVE ON THAT NIGHT?

15 A I HAD ON A BLACK SHIRT AND SOME BLACK, RED
16 AND YELLOW SHOES.

17 Q AND WHAT DID, DO YOU KNOW WHAT DEMARIO AND
18 KEION HAD ON?

19 A BOTH OF THEM HAD ON LIGHT SHIRTS, KEION HAD
20 ON SOME BLUE SHORTS AND DEMARION HAD ON BLACK PANTS.

21 Q AND DO YOU KNOW IF EITHER ONE OF THEM WAS
22 WEARING A HAT?

23 A DEMARIO WAS.

24 Q WHAT DID HIS HAT LOOK LIKE?

25 A IT WAS BLACK, RED AND WHITE AND IT HAD HIS

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

91

1 NAME ON IT.

2 Q HOW DO YOU KNOW DEMARIO?

3 A FROM SCHOOL.

4 Q WHERE WERE YOU GOING TO SCHOOL AT?

5 A MYRTLE BEACH HIGH.

6 Q IS HE OLDER THAN YOU?

7 A YES, MA'AM.

8 Q AND HOW DO YOU KNOW KEION?

9 A FROM DEMARIO.

10 Q NOW LET'S GO BACK TO THAT SCENE, YA'LL WALK
11 UP TO THE HOUSE, TELL ME WHAT HAPPENED?

12 A I GUESS DEMARIO KNEW SOME FEMALES THAT WAS
13 SITTING IN THE CAR AND HE WAS TALKING TO THEM AND THAT'S
14 WHEN MY PHONE RUNG AND I STEPPED TO THE MIDDLE OF THE
15 STREET AWAY FROM THEM. I WAS TALKING TO MY BROTHER, MY
16 BROTHER, AND THE KIDS, THE OTHER KIDS THEY GOT LOUD AND
17 THEY SAID YA'LL GOT TO PARK AND THEY WENT INTO THE HOUSE
18 AND THEN THEY CAME BACK OUT AND SAY, YA'LL GOT TO PAY TO
19 PARK HERE AGAIN, THEY KEPT TELLING THEM, DEMARIO TO GO, BUT
20 I GUESS HE GOT IMPATIENT AND HE PUSHED DEMARIO AND THAT'S
21 WHEN THEY STARTED FIGHTING.

22 Q WHO STARTED FIGHTING?

23 A DEMARIO AND ONE OF THE OTHER KIDS.

24 Q ALL RIGHT, WHEN YOU SAY ONE OF THE OTHER
25 KIDS WAS THAT A WHITE MALE, BLACK MALE?

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

92

1 A WHITE MALE.

2 Q OKAY, SO DEMARIO AND THE WHITE MALE STARTS
3 FIGHTING, WHERE ARE YOU AT?

4 A I'M STILL ON THE PHONE AND THEN THAT'S WHEN
5 ANOTHER WHITE, WHITE MALE JUMPED IN AND KEION HIT HIM IN
6 THE BACK OF THE HEAD WITH THE PISTOL AND HE FELL AND THEN
7 KEION KICKED HIM A COUPLE OF TIMES AND THAT'S WHEN HE SHOT.

8 Q NOW YOU SAID DEMARIO AND THE WHITE MALE WAS
9 FIGHTING?

10 A YES, MA'AM.

11 Q DID SOMEBODY ELSE JUMP INTO THAT FIGHT?

12 A YES, MA'AM.

13 Q AND WHO WAS THAT?

14 A ANOTHER ONE OF THEM WHITE MALES, I DON'T
15 KNOW WHO IT IS.

16 Q DO YOU KNOW WHAT COLOR SHIRT THEY HAD ON?

17 A NO, MA'AM.

18 Q AND WHEN THAT BOY JUMPED INTO THE FIGHT
19 WHAT DOES KEION DO?

20 A HE HIT HIM IN THE BACK OF THE HEAD WITH THE
21 GUN.

22 Q DID YOU SEE THE GUN?

23 A YES, MA'AM.

24 Q DID YOU RECOGNIZE THE GUN?

25 A YES, MA'AM.

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

93

1 Q SO HE HITS HIM IN THE HEAD WITH THE GUN,
2 WHAT DOES THE GUY DO WHEN HE HITS HIM IN THE HEAD?

3 A HE FELL TO THE GROUND.

4 Q AND DOES KEION DO ANYTHING ELSE TO HIM WHEN
5 HE WAS ON THE GROUND?

6 A HE KICKED HIM.

7 Q HOW MANY TIMES DID YOU SEE HIM KICK HIM?

8 A I DON'T RECALL, I JUST KNOW HE KICKED HIM A
9 COUPLE OF TIMES.

10 Q AND WHAT DID HE DO AFTER HE KICKED HIM?

11 A SHOT HIM.

12 Q HOW MANY GUNSHOTS DID YOU HEAR?

13 A ONE.

14 Q DID YOU SEE WHERE KEION PULLED THE GUN
15 FROM?

16 A NO, MA'AM.

17 Q DID ANYBODY TRY TO CALL THE POLICE BEFORE
18 IT ALL GOT TO THAT POINT?

19 A SOMEBODY SAID HAND ME THE PHONE SO I COULD
20 CALL THE POLICE BUT I DON'T KNOW WHO SAID IT OR WHO IT WAS.

21 Q AND DID SOMEBODY PULL OUT THEIR PHONE?

22 A YES, MA'AM.

23 Q AND WHAT HAPPENED TO THAT?

24 A KEION SMACKED IT OUT THEIR HAND.

25 Q AFTER KEION SHOT THAT YOUNG MAN WHAT DID

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

94

1 YA'LL DO?

2 A RAN.

3 Q WHERE DID YA'LL RUN TO?

4 A I RUN OPPOSITE WAY FROM KEION AND DEMARIO
5 BUT WE STILL END UP MEETING UP UP THE STREET SOMEWHERE.

6 Q OKAY, AND WHEN YA'LL MET UP WHAT HAPPENED?

7 A KEION AND DEMARIO BEEN HAVING A
8 CONVERSATION, DEMARIO ASKING KEION WHY HE SHOT HIM LIKE AND
9 THEN A LADY COP PULLED UP ON THE SIDE OF US AND THEN MY MOM
10 CALLED MY NAME AND I HAD WENT AND GOT IN THE CAR WITH HER.

11 Q WHAT HAPPENED TO THE GUN?

12 A KEION HANDED IT TO ME.

13 Q WHAT DID YOU DO WITH IT?

14 A TOOK IT BACK HOME.

15 Q AND WHEN YOU TOOK IT BACK HOME WHAT DID YOU
16 DO WITH IT AT HOME?

17 A I PUT IT UNDER MY MOM'S MATTRESS.

18 Q DID YOU EVENTUALLY DO SOMETHING ELSE WITH
19 IT?

20 A YES, MA'AM, I HAD TOOK IT AND THREW IT IN
21 THE TRASH CAN.

22 Q WHAT DID THE GUN LOOK LIKE?

23 A IT WAS SILVER.

24 Q SHORT, LONG?

25 A LONG BARREL.

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

95

1 Q AND YOU SAID YOU PUT IT IN THE TRASH CAN AT
2 YOUR HOUSE?

3 A THE HOUSE NEXT DOOR.

4 Q WHEN YOU GAVE YOUR STATEMENT TO POLICE THE
5 FIRST STATEMENT THAT YOU GAVE THAT WAS ON MAY 30TH, THAT
6 WAS ABOUT FIVE DAYS AFTER THE SHOOTING; IS THAT CORRECT?

7 A YES, MA'AM.

8 Q DID YOU TELL THEM, THE FIRST TIME YOU TOLD
9 THEM WHO SHOT, WHO YOU SAW SHOT COREY BROOKS, DIDN'T YOU?

10 A YES, MA'AM.

11 Q AND WHO DID YOU TELL THEM?

12 A KEION.

13 Q SO YOU DIDN'T TELL THEM ABOUT THE GUN WHERE
14 IT CAME FROM, DID YOU?

15 A NO, MA'AM.

16 Q WHEN DID YOU DECIDE TO TELL THEM ABOUT
17 THAT?

18 A THE SECOND TIME I SEEN THEM WHEN I WAS IN
19 COURT.

20 Q WHY DIDN'T YOU TELL THEM THE TRUTH ABOUT
21 THE GUN THE FIRST TIME?

22 A I WAS KIND OF SCARED.

23 Q WHY WERE YOU SCARED?

24 A I DON'T KNOW.

25 Q WELL LET'S GO BACK TO WHY YOU WERE SCARED,

MR. PRIEST - DIRECT EXAMINATION BY MS. ELDER

96

1 WHO BROUGHT THE GUN DOWN TO THE BOULEVARD THAT NIGHT?

2 A ME.

3 Q AND WHY DID YOU BRING IT?

4 A I JUST BRUNG IT TO BRING IT.

5 Q WHO DID YOU GIVE IT TO ON THE BOULEVARD?

6 A DEMARIO.

7 Q DID YOU HAVE IT AFTER THAT?

8 A NO, MA'AM.

9 Q UNTIL KEION GAVE IT TO YOU?

10 A YES, MA'AM.

11 Q DO YOU KNOW WHEN DEMARIO PASSED IT ON TO
12 KEION?

13 A NO, MA'AM.

14 Q BUT YOU'RE SURE THAT KEION HAD IT WHEN HE
15 SHOT THAT BOY?

16 A YES, MA'AM.

17 Q DID YOU SEE DEMARIO WITH A GUN DURING THE
18 FIGHT?

19 A NO, MA'AM.

20 MS. ELDER: ONE MOMENT, YOUR HONOR.

21 Q DARIUS, YOU SAID THAT THE FEMALE OFFICER
22 STOPPED AND YOU GOT IN THE CAR WITH YOUR MOM, DID YOU HAVE
23 THE GUN WITH YOU WHEN YOU GOT IN THE CAR WITH YOUR MOM?

24 A YES, MA'AM.

25 Q HAD KEION ALREADY HANDED IT TO YOU?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

97

1 A YES, MA'AM.

2 Q IS THAT RIGHT BEFORE THE POLICE STOPPED?

3 A YES, MA'AM.

4 MS. ELDER: I DON'T HAVE ANY MORE QUESTIONS,
5 YOUR HONOR.

6 THE COURT: ALL RIGHT, MR. GALMORE.

7 CROSS EXAMINATION

8 BY MR. GALMORE:

9 Q MR. PRIEST, HOW MANY TIMES HAVE YOU TALKED
10 WITH THESE DETECTIVES?

11 A THREE.

12 Q YOU SAID THREE?

13 A YES, SIR.

14 Q HOW MANY TIMES HAVE YOU TALKED WITH THE
15 SOLICITOR?

16 A I DON'T REMEMBER.

17 Q AT LEAST ONCE?

18 A YES, SIR.

19 Q MAYBE TWICE?

20 A YES, SIR.

21 Q YOU TALKED TO THE DETECTIVES THREE TIMES
22 AND YOU TALKED TO THE SOLICITOR TWO TIMES?

23 A THAT I CAN REMEMBER.

24 Q THAT YOU CAN REMEMBER, DO YOU REMEMBER ME
25 CALLING AND TALK TO YOU LAST WEEK?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

98

1 A YES, SIR.

2 Q DID YOU TALK TO ME?

3 A NO, SIR.

4 Q DID ANYBODY TELL YOU NOT TO TALK TO ME?

5 A NO, SIR.

6 Q WELL YOU TALKED TO THEM FIVE TIMES WHY

7 DIDN'T YOU WANT TO TALK TO ME?

8 A CAUSE YOU'RE KEION'S ATTORNEY.

9 Q NOW I UNDERSTAND YOU'RE NOT FROM MYRTLE

10 BEACH, ARE YOU?

11 A YES, SIR.

12 Q WHERE YOU FROM?

13 A OHIO.

14 Q HOW LONG HAVE YOU BEEN STAYING HERE?

15 A SINCE JANUARY '08.

16 Q YOU'VE BEEN GOING TO MYRTLE BEACH HIGH THE

17 WHOLE TIME?

18 A YES, SIR.

19 Q AND THIS SHOOTING HAPPENED MAY OF '08,

20 RIGHT?

21 A YES, SIR.

22 Q SO YOU BASICALLY BEEN LIVING DOWN HERE FOR

23 SIX MONTHS?

24 A YES, SIR.

25 Q AND YOU SAID YOU MET DEMARIO IN SCHOOL?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

99

1 A YES, SIR.

2 Q WHAT KIND OF RELATIONSHIP DID YOU AND HIM
3 HAVE?

4 A IT WAS A NICE RELATION, IT WAS A OKAY
5 RELATIONSHIP, LIKE I COULD TRUST HIM I THOUGHT.

6 Q YOU SAY YOU COULD TRUST HIM, DID YOU EVER
7 HANG OUT WITH HIM?

8 A YES, SIR.

9 Q HOW OFTEN WOULD YOU HANG OUT WITH HIM?

10 A EVERY DAY.

11 Q EVERY DAY?

12 A YES, SIR.

13 Q AND YA'LL WOULD, WOULD YOU CONSIDER YA'LL
14 TO BE CLOSE FRIENDS?

15 A YES, SIR.

16 Q WHAT ABOUT KEION HOW LONG HAVE YOU KNOWN
17 HIM?

18 A I MET HIM THE NIGHT BEFORE THE INCIDENT.

19 Q YOU MET HIM THE DAY BEFORE?

20 A YES, SIR.

21 Q SO YOU'VE KNOWN DEMARIO ABOUT SIX MONTHS
22 AND YOU'VE KNOWN KEION FOR ONE DAY, WOULD THAT BE FAIR TO
23 SAY?

24 A YES, SIR.

25 Q NOW YOU SAID YOU MET UP ON THE BOULEVARD

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

100

1 WITH WHO AGAIN?

2 A KEION AND DEMARIO.

3 Q AND WHO ELSE WAS THERE?

4 A IT WAS A GROUP OF THEIR FRIENDS.

5 Q CAN YOU NAME ANY NAMES?

6 A NO, SIR.

7 Q HOW MANY PEOPLE WOULD YOU SAY IT WAS?

8 A MORE THAN 15.

9 Q FIFTEEN PEOPLE THAT YOU MET UP WITH AND YOU
10 DON'T KNOW ANYBODY'S NAME EXCEPT THESE TWO?

11 A YES, SIR.

12 Q AND WE CAN'T GO BACK AND ASK ANY OF THOSE
13 PEOPLE IF THEY SEEN YOU DOWN THERE WITH KEION AND DEMARIO?

14 A YOU CAN GO BACK AND ASK THEM THEY GOING TO
15 SAY, YEAH.

16 Q WHO WE SUPPOSED TO ASK?

17 A I DON'T KNOW THEIR NAMES.

18 Q SO WHAT TIME DID YOU MEET UP WITH THIS
19 GROUP?

20 A IT WAS BETWEEN NINE AND TEN, I BELIEVE.

21 Q AND WHERE WERE YA'LL AT WHEN YOU FIRST MET
22 UP WITH THEM?

23 A ON THE BOULEVARD?

24 Q WHERE AT ON THE BOULEVARD?

25 A I CAN'T REMEMBER.

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

101

- 1 Q SOUTH END, NORTH END?
- 2 A I BELIEVE IT WAS SOUTH.
- 3 Q SOUTH END?
- 4 A I BELIEVE SO.
- 5 Q DO YOU REMEMBER ANY OF THE HOTELS DOWN
- 6 THERE WHERE YA'LL WERE AROUND WHERE YA'LL WERE AT?
- 7 A NO, SIR.
- 8 Q DO YOU REMEMBER WHICH STREET IT WAS ON?
- 9 A NO, SIR.
- 10 Q OKAY, BUT IT WAS ABOUT 15 PEOPLE?
- 11 A MORE THAN 15.
- 12 Q MORE THAN 15, NOW YOU INDICATED THAT THE
- 13 REST OF THE GROUP BROKE OFF AT SOME POINT.
- 14 A YES, SIR.
- 15 Q AND IT WAS JUST YOU, KEION AND DARIUS?
- 16 A I AM DARIUS.
- 17 Q I'M SORRY, YOU, KEION, AND DEMARIO?
- 18 A YES, SIR.
- 19 Q OKAY, HOW LONG WERE YOU WITH THIS GROUP
- 20 WITH MORE THAN 15 PEOPLE?
- 21 A NOT TOO LONG.
- 22 Q AN HOUR?
- 23 A IT WASN'T A LONG TIME, IT WAS A FEW
- 24 MINUTES.
- 25 Q OKAY, SO THE THREE OF YA'LL BROKE OFF FROM

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

102

1 THEM PRETTY QUICK?

2 A YES, SIR.

3 Q NOW ONCE IT WAS THE THREE OF YA'LL DID
4 YA'LL EVER SPLIT UP AGAIN BEFORE THE SHOOTING?

5 A NO, SIR.

6 Q OKAY, SO YOU WERE WITH THESE OTHER TWO THE
7 REST OF THE NIGHT?

8 A YES, SIR.

9 Q AND WHAT WERE YA'LL DOING?

10 A JUST WALKING AROUND.

11 Q YOU HAD THE GUN WITH YOU AT THAT TIME?

12 A DEMARIO HAD IT.

13 Q OKAY, I THOUGHT YOU BROUGHT THE GUN?

14 A I DID BRING IT. WHEN I FIRST MET UP WITH
15 THEM I GAVE IT TO DEMARIO AND LIKE BEHIND THE BUILDING.

16 Q WOULD THAT HAVE BEEN WITH THESE 15 PEOPLE?

17 A YES, SIR. NO, WE LIKE, WE WENT BEHIND THE
18 BUILDING, THEY STILL IN THE FRONT WHEN I GAVE IT TO HIM
19 THEN WE CAME BACK OUT IN THE FRONT AND WE WALKED OFF.

20 Q WHERE DID YOU GET THE GUN FROM?

21 A OUT OF MY MOM'S MATTRESS.

22 Q IT WAS HER GUN?

23 A YES, SIR.

24 Q WHY DID YOU BRING THE GUN OUT THE HOUSE?

25 A I JUST HAD IT, JUST TO HAVE IT.

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

103

- 1 Q OKAY, DID ANYBODY TELL YOU TO BRING IT?
2 A NO, SIR.
3 Q WERE YA'LL PLANING ON DOING ANYTHING WITH
4 IT?
5 A NO, SIR.
6 Q WERE YA'LL RUNNING AROUND STICKING UP
7 PEOPLE ON THE BOULEVARD?
8 A NO, SIR.
9 Q YOU JUST BROUGHT IT ON YOUR OWN?
10 A YES, SIR.
11 Q DID YOU TELL ANYBODY YOU WERE DOING THAT?
12 A I TOLD DEMARIO.
13 Q DID YOU TELL KEION YOU WERE BRINGING A GUN?
14 A NO, SIR.
15 Q CAUSE YOU DIDN'T KNOW KEION THAT WELL?
16 A EXACTLY.
17 Q AND WHEN YOU GOT TO THE BOULEVARD DID
18 DEMARIO ASK YOU FOR THE GUN?
19 A YES, SIR.
20 Q AND THAT'S WHEN YOU SAID YOU WENT BEHIND
21 THE BUILDING AND GAVE IT TO HIM?
22 A YES, SIR.
23 Q NOW YOU SAID YOU WERE WITH DEMARIO AND
24 KEION THE REST OF THE NIGHT, RIGHT?
25 A YES, SIR.

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

104

- 1 Q DID YOU EVER SEE DEMARIO GIVE THE GUN TO
2 KEION?
- 3 A NO, SIR.
- 4 Q DO YOU KNOW WHAT BUILDING YOU WERE BEHIND?
- 5 A NO, SIR.
- 6 Q AT THAT POINT IT WAS JUST YOU AND HIM, WAS
7 KEION BACK BEHIND THE BUILDING WITH YA'LL?
- 8 A NO, SIR.
- 9 Q SO YOU AND HIM ARE THE ONLY TWO PEOPLE THAT
10 CAN SAY YOU HANDED THE GUN TO HIM?
- 11 A YES, SIR.
- 12 Q NOBODY ELSE SAW IT?
- 13 A NO, SIR.
- 14 Q WAS THE GUN LOADED WHEN YOU LEFT THE HOUSE?
- 15 A NO, SIR.
- 16 Q YOU TOOK AN EMPTY GUN DOWN TO THE
17 BOULEVARD?
- 18 A YES, SIR.
- 19 Q WAS IT LOADED WHEN YOU GAVE IT TO DEMARIO?
- 20 A NO, SIR.
- 21 Q DID YOU EVER SEE DEMARIO LOAD THE GUN?
- 22 A NO, SIR.
- 23 Q DID YOU EVER SEE KEION LOAD THE GUN?
- 24 A NO, SIR.
- 25 Q HOW DID THE BULLETS GET IN THE GUN?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

105

1 A I DON'T KNOW.

2 Q OKAY SO, SO FAR YOU'RE TELLING US THAT
3 DEMARIO GAVE THE GUN TO KEION BUT YOU WERE THERE BUT DIDN'T
4 SEE IT, RIGHT?

5 A YES, SIR.

6 Q AND YOU'RE TELLING US YOU GAVE DEMARIO AN
7 UNLOADED FIREARM BUT YOU DIDN'T SEE ANYBODY LOAD IT?

8 A YES, SIR.

9 Q AND YOU SAID YOU DIDN'T LEAVE THEIR
10 PRESENCE THAT WHOLE NIGHT?

11 A NO, I AIN'T LEAVE THEIR PRESENCE LIKE, EVEN
12 LIKE, ALL RIGHT, WE BEEN LIKE POSTED UP LIKE STANDING BY
13 THE BUILDING LIKE AND I GO AND GET ON THE PHONE AND WALK
14 OFF A LITTLE BIT BUT I WON'T GO FAR AND I COME BACK TO THEM
15 AND THEN WHEN ONE OF THEM GET ON THE PHONE THEY DO THE SAME
16 BUT WE AIN'T ACTUALLY LEAVE EACH OTHER.

17 Q NOW YOU DID LEAVE?

18 A NO, SIR.

19 Q YOU DIDN'T LOAD THE GUN, DID YOU?

20 A NO, SIR.

21 Q YOU SURE?

22 A YES, SIR.

23 Q DID YOU HAVE ANY BULLETS?

24 A NO, SIR.

25 Q YOU SURE?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

106

- 1 A YES, SIR.
- 2 Q DID YOU SEE DEMARIO WITH ANY BULLETS?
- 3 A NO, SIR.
- 4 Q WHAT TYPE OF BULLETS DOES THAT GUN TAKE?
- 5 A I GUESS 22 BULLETS.
- 6 Q HAD DEMARIO EVER SEEN THAT GUN BEFORE?
- 7 A YES, SIR.
- 8 Q WHY YOU SAY THAT?
- 9 A BECAUSE HE BEEN OVER TO MY HOUSE BEFORE AND
- 10 I SHOWED IT TO HIM.
- 11 Q HAVE YOU EVER SHOWN KEION THE GUN?
- 12 A NO, SIR.
- 13 Q AND WE'RE TALKING ABOUT A SILVER REVOLVER,
- 14 RIGHT?
- 15 A YES, SIR.
- 16 Q WHEN YOU SHOWED HIM THE GUN BEFORE DID HE
- 17 JUST LOOK AT IT OR DID HE TOUCH IT OR WHAT?
- 18 A I LET HIM HOLD IT.
- 19 Q HOW MANY TIMES HAVE YOU LET HIM TOLD THE
- 20 GUN?
- 21 A TWICE.
- 22 Q AND THIS BIKE WEEK WOULD HAVE BEEN THE
- 23 THIRD TIME YOU LET HIM HOLD THE GUN?
- 24 A YES, SIR.
- 25 Q HAD HE EVER FIRED IT BEFORE?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

107

1 A NO, SIR.

2 Q SO IF HE HELD THE GUN ON TWO PRIOR
3 OCCASIONS WOULD IT FAIR TO SAY THAT HE KNEW WHAT TYPE OF
4 GUN IT WAS?

5 A YES, SIR.

6 Q DID KEION EVER HOLD YOUR GUN BEFORE, YOUR
7 MOTHER'S GUN BEFORE, I'M SORRY?

8 A NO, SIR.

9 Q NOBODY ASKED YOU TO BRING THE GUN?

10 A ???

11 Q WELL HOW DO YOU SUPPOSE BULLETS HAPPENED TO
12 BE THERE WHEN YOU ARRIVED WITH AN EMPTY GUN?

13 A THEY, THEY HAVE, ALL RIGHT, LIKE I KNOW
14 THEY HAD A BLACK 22 SO I DON'T IF THE SAME BULLETS FIT THE
15 GUN BUT I KNOW THEY HAD A BLACK 22 BEFORE.

16 Q HOLD ON, WHEN YOU SAY THEY WHO ARE YOU
17 TALKING ABOUT?

18 A DEMARIO AND KEION.

19 Q I THOUGHT YOU JUST MET KEION THE DAY
20 BEFORE?

21 A I DID.

22 Q OKAY, SO NOW YOU'RE SAYING KEION HAD A GUN
23 PREVIOUSLY?

24 A I FIND, THIS IS, YOU KNOW, THIS IS AFTER
25 THE INCIDENT I FIND THAT THEY HAD A BLACK 22.

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

108

- 1 Q HAVE YOU EVER SEEN KEION WITH A BLACK 22?
- 2 A YES, SIR.
- 3 Q WHEN WAS THAT?
- 4 A THAT WAS MEMORIAL, MEMORIAL DAY.
- 5 Q YOU TALKING ABOUT AFTERWARDS?
- 6 A YES, SIR.
- 7 Q DID YOU EVER TELL THAT TO THE POLICE?
- 8 A YEAH, I TOLD THEM.
- 9 Q YOU DID?
- 10 A YES, SIR.
- 11 Q OKAY, NOW ACCORDING TO YOU THE NEXT TIME
- 12 YOU SAW THE PISTOL WAS WHEN KEION PULLED IT OUT?
- 13 A YES, SIR.
- 14 Q NOW DURING THIS TIME YOU'RE SAYING YOU WERE
- 15 ON YOUR CELL PHONE?
- 16 A UH-UH, THIS, WHEN I SEEN HIM HIT HIM WITH
- 17 IT, YES, SIR, I WAS ON MY PHONE.
- 18 Q YOU WEREN'T UP THERE WITH YOUR FRIENDS?
- 19 A NO, SIR.
- 20 Q SO THEY WERE UP THERE AND YOU WERE STANDING
- 21 BACK ON THE PHONE WATCHING EVERYTHING?
- 22 A YES, SIR.
- 23 Q WELL TELL ME WHAT YOU SAW WHEN YOU WERE OUT
- 24 THERE?
- 25 A I SEEN, I SEEN, ALL RIGHT, I TURNED, I

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

109

1 TURNED AROUND AND I SEEN DEMARIO HE AND THE OTHER KID ON
2 THE CAR AND THAT'S WHEN I SEEN THE OTHER KID HOP ON
3 DEMARIO'S BACK AND THAT'S WHEN KEION HIT HIM IN THE BACK OF
4 THE HEAD WITH THE PISTOL AND HE HIT THE GROUND.

5 Q LET ME BACK UP, YA'LL WALKED UP ON THIS
6 CAR?

7 A YES, SIR.

8 Q IS THAT CORRECT?

9 A YES, SIR.

10 Q WHO WAS IN THE CAR?

11 A THERE WAS THREE FEMALES.

12 Q DID YOU GO UP TO THE CAR AND TALK TO ANY OF
13 THE FEMALES?

14 A NO, SIR.

15 Q DID DEMARIO GO UP TO THE CAR AND TALK TO
16 THE FEMALES?

17 A YES, SIR.

18 Q DID KEION GO UP TO THE CAR AND TALK TO THE
19 FEMALES?

20 A YES, SIR.

21 Q I'M SORRY?

22 A YES, SIR.

23 Q SO WHAT YOU'RE TELLING THIS JURY IS THAT
24 TWO PEOPLE WENT UP TO THE CAR AND WERE TALKING TO THE
25 GIRLS?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

110

- 1 A YES, SIR.
- 2 Q WHERE WAS DEMARIO IN RELATION TO THE CAR,
- 3 WHAT SIDE OF THE CAR HE WAS ON?
- 4 A ON THE PASSENGER DOOR.
- 5 Q KIND OF LIKE LEANING DOWN INTO THE CAR?
- 6 A YES, SIR.
- 7 Q WHERE WAS KEION?
- 8 A BEHIND HIM.
- 9 Q BEHIND HIM?
- 10 A YES, SIR.
- 11 Q SO HE WASN'T LIKE LEANING IN THE DRIVERS
- 12 DOOR?
- 13 A NO, SIR.
- 14 Q HE JUST STANDING BEHIND DEMARIO?
- 15 A IT WAS, THE BACK WINDOW WAS OPEN HE WAS
- 16 TALKING TO THE GIRL IN THE BACK SEAT.
- 17 Q AND YOU WEREN'T TALKING TO ANY OF THEM?
- 18 A NO, I WAS ON THE PHONE WITH MY BROTHER.
- 19 Q DID YOU SEE WHEN ANY OF THE WHITE GUYS CAME
- 20 UP?
- 21 A YES, SIR.
- 22 Q AND WHAT DID YOU OBSERVE?
- 23 A THEY WALK, FIRST THEY CAME, WHEN THEY FIRST
- 24 CAME UP THEY SAID YA'LL GOT TO PAY TO PARK HERE AND THEN
- 25 DEMARIO WAS LIKE, ALL RIGHT, AND THEY SAID WHEN WE COME

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

111

1 BACK YA'LL GOING TO HAVE THE MONEY AND THEY WAS LIKE, YEAH.
2 SO THEY WENT IN THE HOUSE AND CAME BACK OUT AND THE MONEY
3 WEREN'T, I GUESS THEY AIN'T HAD THE MONEY OUT AND I CAN
4 HANDLE THAT, DEMARIO KEPT SAYING STOP TOUCHING AND THEN --

5 Q HOLD ON, DID ANYBODY ASK FOR CHANGE?

6 A YEAH, THEY SAID, DEMARIO ASK ME DID I HAVE
7 CHANGE FOR A 100 AND I SAID, NO.

8 Q OKAY, SO THE NEXT THING YOU KNOW YOU HEARD
9 DEMARIO SAYING STOP TOUCHING ME?

10 A YES, SIR.

11 Q DID YOU SEE IF SOMEBODY WAS TOUCHING HIM?

12 A NO, SIR, I WEREN'T PAYING ATTENTION, I WAS
13 ON THE PHONE.

14 Q YOU WERE ON THE PHONE, AND YOU DIDN'T
15 PARTICIPATE IN THE FIGHT AT ALL?

16 A NO, SIR.

17 Q YOU HAD ON A BLACK TEE SHIRT THAT NIGHT?

18 A YES, SIR.

19 Q AFTER THE SHOOTING YOU SAID YA'LL RAN IN
20 DIFFERENT DIRECTIONS?

21 A YES, SIR.

22 Q HOW LONG WERE YOU SEPARATED FROM KEION AND
23 DEMARIO?

24 A IT WASN'T TOO LONG. IT WASN'T NO LONGER
25 THAN THREE MINUTES.

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

112

1 Q THREE MINUTES, AND WHAT DID YOU DO DURING
2 THAT THREE MINUTES?

3 A I WAS RUNNING AND THEN I TURNED UP THIS
4 STREET AND I STARTED WALKING AND THAT'S WHEN I SEEN THEM
5 TWO.

6 Q DID YOU CALL YOUR MOTHER DURING THAT THREE
7 MINUTES?

8 A YES, SIR.

9 Q DID YOU TELL YOUR MOTHER WHAT HAPPENED?

10 A NO, SIR.

11 Q WHAT DID YOU DO?

12 A I ASKED HER WHERE SHE WAS AT AND SHE SAID
13 SHE BEEN COMING DOWN THE STREET I BEEN ON AND THEN THAT'S
14 WHEN I RAN UP WITH THEM TWO.

15 Q SO SHE JUST HAPPENED TO BE ON THE SAME
16 STREET YOU WERE ON?

17 A YES, SIR.

18 Q AT WHAT POINT DID YOU TAKE BACK THE GUN?

19 A WHEN I MET UP WITH THEM.

20 Q AS SOON AS YOU MET UP WITH THEM OR WHAT?

21 A YES, SIR.

22 Q DID THEY GIVE YOU ANY BULLETS?

23 A THERE WEREN'T NONE IN THE GUN WHEN I GOT IT
24 FROM HIM.

25 Q I'M SORRY?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

113

- 1 A THERE WASN'T NONE IN THE GUN WHEN I GOT IT
2 FROM HIM.
- 3 Q WHY WOULD YOU TAKE THE GUN BACK?
- 4 A CAUSE I TOOK IT DOWN THERE.
- 5 Q WAS THE GUN REGISTERED TO YOUR MOTHER?
- 6 A I DON'T KNOW.
- 7 Q YOU DON'T KNOW, YOU SAID YOU WEREN'T
8 INVOLVED IN ANY FIGHT?
- 9 A NO, SIR.
- 10 Q DO YOU KNOW IF KEION AND DEMARIO HAD AGREED
11 TO FIGHT THOSE GUYS?
- 12 A NO, I MEAN, IT JUST HAPPENED, FROM WHERE I
13 SEEN I JUST SEEN IT HAPPEN.
- 14 Q WAS THERE A DISCUSSION THAT WE'RE GOING TO
15 LET'S FIGHT THESE GUYS?
- 16 A NO, SIR.
- 17 Q SO YOU WEREN'T IN THE FIGHT, YOU WEREN'T
18 INVOLVED IN ANYTHING, WERE YOU?
- 19 A I BRUNG THE PISTOL.
- 20 Q NOW WERE YOU CHARGED WITH MURDER?
- 21 A NO, SIR.
- 22 Q BUT YOU TOOK THE PISTOL?
- 23 A YES, SIR.
- 24 Q WERE YOU CHARGED WITH ACCESSORY?
- 25 A I DON'T, THEY DIDN'T TELL ME WHAT I WAS

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

114

1 CHARGED WITH. THEY JUST, MY MAMA AND MY LAWYER HANDLED
2 THAT.

3 Q OKAY, NOW YOU PLED TO SOMETHING?

4 A YES, SIR.

5 Q WHY DIDN'T KEION AND DEMARIO GET IN THE CAR
6 WITH YOU? YOU DON'T KNOW?

7 A NO, SIR.

8 Q NOW YOU TOOK THE GUN BACK TO YOUR HOUSE?

9 A YES, SIR.

10 Q DID YOU TAKE ANY BULLETS OUT OF IT?

11 A THEY WAS ALREADY OUT, WEREN'T NONE IN IT
12 WHEN I GOT IT BACK.

13 Q DID YOU SEE ANYBODY TAKE ANY BULLETS OUT OF
14 IT?

15 A NO, SIR.

16 Q NO? AS YOU WERE GETTING INTO THE CAR DID
17 YOU SEE THE POLICE STOP KEION AND DEMARIO?

18 A YES, SIR.

19 Q NOW WHAT DID THE POLICE DO?

20 A I WAS ALREADY IN THE CAR BY THEN.

21 Q OKAY, SO YOU DON'T KNOW WHAT THE POLICE DID
22 TO THEM BUT YOU KNOW THEY GOT STOPPED?

23 A YES, SIR.

24 Q AND YOU SAY YOU PUT THE GUN UNDER YOUR
25 MOTHER'S BED?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

115

- 1 A YES, SIR.
- 2 Q AND WHEN YOU TOOK IT FROM UNDER HER BED IT
- 3 WAS UNLOADED?
- 4 A YES, SIR.
- 5 Q AND WHEN YOU RETURNED IT BACK UNDER HER BED
- 6 IT WAS UNLOADED?
- 7 A YES, SIR.
- 8 Q DID YOU CLEAN IT? DID YOU WIPE IT DOWN FOR
- 9 PRINTS?
- 10 A YES, SIR.
- 11 Q YOU DID?
- 12 A YES, SIR.
- 13 Q WHY DID YOU DO THAT?
- 14 A CAUSE I KNEW IT BEEN A DIRTY GUN.
- 15 Q AND WHY NOT DISPOSE OF IT IF YOU KNEW IT
- 16 WAS A DIRTY GUN?
- 17 A I DID A FEW DAYS LATER.
- 18 Q BY PUTTING IT IN THE TRASH CAN, RIGHT?
- 19 A YES, SIR.
- 20 Q NOW YOU KNOW THE POLICE WENT AND GOT A
- 21 SEARCH WARRANT AND THEY FOUND THAT GUN, RIGHT?
- 22 A YES, SIR.
- 23 Q DO YOU KNOW WHERE THEY FOUND IT AT?
- 24 A IN THE TRASH CAN.
- 25 Q AND HOW DID THEY FIND IT IN THAT TRASH CAN?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

116

1 A CAUSE I TOLD THEM WHERE IT WAS.

2 Q YOU KNOW WHAT ELSE THEY FOUND IN THAT TRASH
3 CAN?

4 A YES, SIR.

5 Q WHAT ELSE DID THEY FIND IN THERE?

6 A THEY SAID THEY FOUND A BAG OF BULLETS.

7 Q A BAG OF BULLETS, THEY FOUND 22 CALIBER
8 BULLETS; IS THAT CORRECT?

9 A YES, SIR.

10 Q AND THEY ALSO FOUND 357 BULLETS; IS THAT
11 CORRECT?

12 A I GUESS SO.

13 Q BUT YOU'RE TELLING THIS JURY YOU DIDN'T
14 LOAD THAT GUN?

15 A YES, SIR.

16 Q NOW YOU WERE TAKEN INTO CUSTODY ON MAY THE
17 30TH; IS THAT CORRECT?

18 A YES, SIR.

19 Q FIVE DAYS AFTER THE SHOOTING?

20 A YES, SIR.

21 Q DO YOU REMEMBER SITTING DOWN FOR AN
22 INTERVIEW WITH THESE TWO DETECTIVES?

23 A YES, SIR.

24 Q AND DO YOU REMEMBER ASKING FOR YOUR MOTHER
25 DURING THAT INTERVIEW?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

117

1 A YES, SIR.

2 Q AND THEY LET YOUR MOTHER COME IN THE ROOM,
3 RIGHT?

4 A YES, SIR.

5 Q DO YOU REMEMBER ASKING THE DETECTIVES FOR A
6 DEAL?

7 A YES, SIR.

8 Q AND WHAT DID THEY TELL YOU ABOUT IT?

9 A THEY TOLD ME IF I TESTIFY THEY WOULD KEEP
10 MY CHARGE AS A JUVENILE.

11 Q OKAY, SO NOW YOU WENT TO COURT FOR YOUR
12 CHARGES ON JUNE THE 3RD; IS THAT RIGHT?

13 A YES, SIR.

14 Q NOW PRIOR TO YOU GOING TO COURT DID YOU
15 TELL THE DETECTIVES YOU HAD SOME ADDITIONAL FOR THEM?
16 LET ME BACK UP, DO YOU RECALL SIGNING A PROFFER AGREEMENT
17 WITH THE STATE?

18 A MY MOM AND MY LAWYER HANDLED THAT.

19 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 1 MARKED
20 FOR IDENTIFICATION.)

21 MR. GALMORE: MAY I APPROACH THE WITNESS, YOUR
22 HONOR?

23 THE COURT: CERTAINLY.

24 Q (CONTINUING) MR. PRIEST, LET ME HAND YOU
25 WHAT'S BEEN MARKED FOR IDENTIFICATION PURPOSES AS DEFENSE

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

118

1 EXHIBIT 1 AND ASK YOU IF YOU RECOGNIZE THAT DOCUMENT?

2 A YES, SIR.

3 Q WOULD YOU TURN THE PAGE TO PAGE TWO,
4 PLEASE. DO YOU RECOGNIZE YOUR SIGNATURE AT THE BOTTOM?

5 A YES, SIR.

6 Q WHO ELSE SIGNED ALONG WITH YOU?

7 A MY ATTORNEY.

8 Q YOUR ATTORNEY, THAT DOCUMENT HAS YOUR
9 SIGNATURE ON IT?

10 A YES, SIR.

11 Q DOES IT APPEAR TO BE SIGNED ON MAY THE
12 30TH, 2008?

13 A YES, SIR, THAT'S RIGHT.

14 MR. GALMORE: YOUR HONOR, I WOULD MOVE TO HAVE
15 DEFENSE EXHIBIT 1 MARKED FOR I.D. MOVED INTO EVIDENCE.

16 MS. ELDER: NO OBJECTION.

17 THE COURT: NO OBJECTION, WITHOUT OBJECTION
18 DEFENDANT'S 1.

19 MS. ELDER: I'M SORRY, CAN I SEE IT, I JUST WANT
20 TO MAKE SURE IT'S -- NO OBJECTION, YOUR HONOR.

21 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 1 ENTERED
22 INTO EVIDENCE.)

23 MR. GALMORE: (CONTINUING)

24 Q WHAT KIND OF DEAL DID YOU RECEIVE FOR YOUR
25 TESTIMONY TODAY?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

119

1 A JUST TO KEEP MY CHARGE TO STAY AS A
2 JUVENILE.

3 Q AND WHAT ELSE?

4 A WHAT DO YOU MEAN BY THAT, SIR?

5 Q NOT TO PUT ANY ADDITIONAL CHARGES ON YOU?

6 A YES, SIR.

7 Q SO WHAT CHARGE ARE YOU SERVING TIME AT CAMP
8 WHITE PINE?

9 A MINOR POSSESSION OF A PISTOL.

10 Q AND THAT WOULD BE THIS PISTOL RIGHT HERE?

11 A YES, SIR.

12 Q AND YOU WERE NOT CHARGED WITH ACCESSORY
13 AFTER THE FACT FOR HAVING A PISTOL, WERE YOU?

14 A NO, SIR.

15 Q AND YOU WERE NOT CHARGED WITH MURDER FOR
16 TAKING A PISTOL DOWN THERE TO THE CRIME SCENE, WERE YOU?

17 A NO, SIR.

18 Q WHEN ARE YOU SUPPOSED TO GET OUT OF CAMP
19 WHITE PINE?

20 A WHEN THEY RELEASE ME.

21 Q WHEN HAVE THEY TOLD YOU THEY'RE GOING TO
22 RELEASE YOU?

23 A THEY NEVER SAID.

24 Q HOW LONG DID THE JUDGE GIVE YOU WHEN YOU
25 PLED GUILTY TO THE CHARGE?

MR. PRIEST - CROSS EXAMINATION BY MR. GALMORE

120

- 1 A TWELVE TO 18 SENTENCE.
- 2 Q TWELVE TO 18 WHAT?
- 3 A SENTENCE GUIDELINE.
- 4 Q GUIDELINE, OKAY, DO YOU KNOW WHEN YOU'RE
- 5 SUPPOSED TO GET OUT?
- 6 A NO, SIR, BUT I KNOW MY 18TH MONTH IS
- 7 DECEMBER.
- 8 Q YOUR 18TH BIRTHDAY IS IN DECEMBER?
- 9 A EIGHTEEN MONTH.
- 10 Q EIGHTEEN MONTHS, SO IF YOU GOT SENTENCED TO
- 11 12 TO 18 MONTHS AND YOUR 18 MONTHS IS IN DECEMBER, THAT'S
- 12 CORRECT?
- 13 A YES, SIR.
- 14 Q AND YOU'RE NOT GOING TO BE CHARGED AS AN
- 15 ADULT, THAT'S CORRECT?
- 16 A YES, SIR.
- 17 Q AND YOU'RE NOT GOING TO BE CHARGED WITH
- 18 MURDER, THAT'S CORRECT?
- 19 A YES, SIR.
- 20 Q YOU GOT A PRETTY GOOD DEAL, WOULD YOU
- 21 AGREE?
- 22 A YES, SIR.
- 23 Q YOU DON'T WANT TO DO ANYTHING TO MESS THAT
- 24 UP, DO YOU?
- 25 A NO, SIR.

MR. PRIEST - REDIRECT EXAMINATION BY MS. ELDER

121

1 Q YOU WANT TO GO HOME, RIGHT?

2 A YES, SIR.

3 Q AND YOU'RE GOING TO SAY WHATEVER YOU NEED
4 TO SAY TO GET THERE?

5 A YES, SIR.

6 MR. GALMORE: NO FURTHER QUESTIONS.

7 THE COURT: REDIRECT?

8 MS. ELDER: THANK YOU, YOUR HONOR.

9 REDIRECT EXAMINATION

10 BY MS. ELDER:

11 Q DARIUS, WHEN YOU GAVE THE GUN TO DEMARIO ON
12 THE BOULEVARD YOU SAID YOU DID IT BEHIND A BUILDING?

13 A YES, MA'AM.

14 Q AND WHILE YOU AND DEMARIO AND KEION WERE
15 WALKING THE BOULEVARD WERE YOU WATCHING EVERY SINGLE
16 MOVEMENT THEY MADE?

17 A NO, MA'AM.

18 Q SO THEY COULD HAVE BEEN DOING SOMETHING AND
19 YOU MAY NOT BE AWARE OF IT?

20 A YES, MA'AM.

21 Q AND OBVIOUSLY THEY DID DO SOMETHING BECAUSE
22 KEION ENDED UP WITH THE GUN; IS THAT RIGHT?

23 A YES, MA'AM.

24 Q AND THAT WAS YOUR GUN?

25 A YES, MA'AM.

MR. PRIEST - REDIRECT EXAMINATION BY MS. ELDER

122

1 Q AND YOU'RE SURE THAT KEION USED YOUR GUN TO
2 FIRE THAT SHOT?

3 A YES, MA'AM.

4 Q NOW THERE WERE INDICATION THAT BULLETS WERE
5 FOUND IN THE BAG WHERE THE GUN, WHERE YOU THREW THE GUN IN
6 THE TRASH CAN, WHAT WAS THE GUN IN WHEN YOU THREW IT IN THE
7 TRASH CAN?

8 A A PLASTIC BAG AND A PILLOW CASE.

9 Q AND WHERE DID YOU GET THAT BAG FROM?

10 A UNDER THE MATTRESS.

11 Q WAS IT ALREADY THERE?

12 A YES, MA'AM.

13 Q DID YOU JUST GRAB THE WHOLE BAG?

14 A NO, MA'AM???.

15 Q HOW DID THE BAG GET INTO THE TRASH CAN?

16 A I PUT IT IN THERE.

17 Q ALL RIGHT, WAS THE BAG ALREADY UNDER YOUR
18 MOM'S BED?

19 A YES, MA'AM.

20 Q DO YOU KNOW HOW IT GOT THERE?

21 A NO, MA'AM.

22 Q DID YOU TAKE THAT BAG WITH YOU DOWN TO THE
23 BOULEVARD?

24 A NO, MA'AM.

25 Q AND WHEN YOU HID THE GUN AFTER THE SHOOTING

MR. PRIEST - REDIRECT EXAMINATION BY MS. ELDER

123

1 WAS THE GUN IN THAT BAG?

2 A YES, MA'AM.

3 Q AFTER THE SHOOTING YOU TOLD MR. GALMORE YOU
4 SAW KEION THE NEXT NIGHT; IS THAT CORRECT, WITH ANOTHER 22?

5 A NOT THE NEXT NIGHT, THAT MONDAY.

6 Q THAT MONDAY?

7 A YES, MA'AM.

8 Q ALL RIGHT, SO YOU SAW HIM AFTER THE
9 SHOOTING?

10 A YES, MA'AM.

11 Q DID YA'LL TALK ABOUT THIS, ABOUT WHAT
12 HAPPENED ON THIRD AVENUE?

13 A NO, MA'AM.

14 Q YOU AND KEION DIDN'T TALK ABOUT IT?

15 A NONE OF US DID, NO, MA'AM.

16 Q YOU DIDN'T TALK TO DEMARIO ABOUT IT?

17 A NO, MA'AM.

18 Q AND YOU WERE IN CUSTODY FOUR DAYS LATER?

19 A YES, MA'AM.

20 Q MR. GALMORE ASKED YOU ABOUT THE DEAL YOU
21 MADE IN DEFENSE EXHIBIT 1 AND DO YOU KNOW THE DATE ON THAT?

22 A JUNE 3RD.

23 Q JUNE 3RD, IS THAT 2008?

24 A YES, MA'AM.

25 Q WAS THAT WHEN YOU WERE IN COURT?

MR. PRIEST - RECROSS EXAMINATION BY MR. GALMORE

124

1 A YES, MA'AM.

2 Q NOW THAT JUNE 3RD DATE WHERE YOU GOT THAT
3 DEAL AND YOU SIGNED THAT PIECE OF PAPER IN DEFENSE EXHIBIT
4 1 THAT WAS AFTER YOUR FIRST INTERVIEW WITH POLICE, WASN'T
5 IT?

6 A YES, MA'AM.

7 Q CAUSE YOU GAVE, YOU GAVE YOUR FIRST
8 INTERVIEW MAY 30TH ABOUT 11:15 AT NIGHT; IS THAT RIGHT?

9 A YES, MA'AM.

10 Q AND ON MAY 30TH YOU DIDN'T HAVE A DEAL, DID
11 YOU?

12 A NO, MA'AM.

13 Q AND ON MAY 30TH WHEN YOU DIDN'T HAVE A DEAL
14 WHO DID YOU TELL POLICE SHOT COREY BROOKS?

15 A KEION.

16 Q AND WHEN YOU GOT A DEAL YOU GOT IT FOR
17 TELLING THEM WHERE THE MURDER WEAPON WAS, RIGHT?

18 A YES, MA'AM.

19 Q AND ACTUALLY IN DEFENSE EXHIBIT 1 IT SAYS
20 THAT YOU WERE GOING TO COOPERATE FOR INFORMATION LEADING TO
21 THE RECOVERY OF A WEAPON USED IN THE COMMISSION OF THE
22 MURDER OF COREY BROOKS; IS THAT RIGHT?

23 A YES, MA'AM.

24 Q BUT THAT ALSO, THIS AGREEMENT ALSO SAYS
25 THAT IN ORDER FOR THIS TO BE GOOD YOU'VE GOT TO GIVE

MR. PRIEST - RECROSS EXAMINATION BY MR. GALMORE

125

1 TRUTHFUL TESTIMONY; IS THAT CORRECT?

2 A YES, MA'AM.

3 Q WHAT HAPPENS IF YOU'RE NOT TRUTHFUL?

4 A I DON'T KNOW.

5 Q THAT DEALS GOES AWAY YOU WOULD THINK?

6 A YES, MA'AM.

7 Q SO ON MAY 30TH WHEN YOU TOLD POLICE THAT
8 KEION SHOT COREY BROOKS YOU DIDN'T HAVE A DEAL, DID YOU?

9 A NO, MA'AM.

10 Q YOU DIDN'T HAVE ANY REASON TO LIE AT THAT
11 POINT EITHER, DID YOU?

12 A NO, MA'AM.

13 MS. ELDER: NO OTHER QUESTIONS, YOUR HONOR.

14 MR. GALMORE: BRIEFLY, YOUR HONOR.

15 RECROSS EXAMINATION

16 BY MR. GALMORE:

17 Q ON MAY 30TH WHEN YOU SAT DOWN WITH THESE
18 TWO DETECTIVES DID YOU ASK THEM FOR A DEAL?

19 A I DON'T REMEMBER.

20 Q DID YOU RECEIVE A DEAL ON JUNE 3RD, 2008?

21 A YES, SIR.

22 Q NOW YOU INDICATED THAT THE BAG WAS UNDER
23 YOUR MOTHER'S BED; IS THAT CORRECT?

24 A YES, SIR.

25 Q HOW MANY TIMES HAVE YOU BEEN UNDER YOUR

MR. PRIEST - RECROSS EXAMINATION BY MR. GALMORE

126

1 MOTHER'S BED TO GET THE GUN?

2 A THE TIME I TOOK IT DOWN TO THE BOULEVARD
3 WHEN I, LIKE WHEN THAT TIME THE BAG WASN'T THERE.

4 Q SO WHEN YOU WENT TO PUT IT BACK WAS THE BAG
5 THERE?

6 A NO, SIR, WHEN I WENT AND GOT THE PISTOL TO
7 THROW IT AWAY IN THE TRASH CAN THAT'S WHEN IT WAS THERE.

8 Q DID YOU EVER TELL THE POLICE IN THESE
9 INTERVIEWS THAT YOU HAD WITH THEM THAT YOU WERE ON THE CELL
10 PHONE THE WHOLE TIME?

11 A I TOLD THEM I WAS ON THE PHONE, I NEVER
12 SAID THE WHOLE TIME.

13 Q DID YOU EVER TELL THE POLICE DURING THESE
14 INTERVIEWS THAT YOU SAW KEION A COUPLE OF DAYS LATER WITH A
15 22?

16 A YES, SIR.

17 Q WHY DID YOUR MOTHER HAVE A GUN IN THE
18 HOUSE?

19 A CAUSE AT THE TIME THERE HAD BEEN ROBBERIES
20 IN OUR AREA.

21 Q OKAY, SO BECAUSE YOU HAD ROBBERIES IN YOUR
22 AREA SHE KEPT AN UNLOADED FIREARM?

23 A YES, SIR.

24 MR. GALMORE: NO FURTHER QUESTIONS.

25 MS. ELDER: ONE MOMENT, YOUR HONOR. YOUR HONOR,

JACKSON V. DENNO HEARING

127

1 THAT'S ALL THE QUESTIONS I HAVE FOR THIS WITNESS AND I'D
2 ASK THAT HE BE EXCUSED.

3 THE COURT: ANY OBJECTION?

4 MR. GALMORE: NO, SIR.

5 THE COURT: HE'S EXCUSED AND RELEASED FROM THE
6 SUBPOENA.

7 MS. ELDER: THANK YOU, YOUR HONOR.

8 YOUR HONOR, CAN WE APPROACH FOR SCHEDULING?

9 THE COURT: CERTAINLY.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
11 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
12 OF THE JURY AND THE COURT REPORTER.)

13 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
14 I'M GOING TO EXCUSE YOU FOR THE BALANCE OF THE DAY. WE
15 HAVE A LEGAL MATTER THAT I CAN TAKE UP SO THE COURT CAN USE
16 THE REST OF THE DAY BUT THE NEXT WITNESS IS GOING TO BE A
17 LENGTHY WITNESS AND I DON'T WANT TO GO INTO 5:30, QUARTER
18 TO SIX AND KEEP YOU HERE, SO WHAT WE'RE GOING TO DO IS I'M
19 GOING TO LET YOU GO, ASK YOU TO BE BACK, MR. SWAIM, YOU
20 TELL ME WHEN YOU WANT TO BRING THE JURY BACK IN THE
21 MORNING?

22 MR. FOREMAN: 9:00.

23 THE COURT: 9:00, YOU WANT THEM HERE AT 9:00?

24 MR. FOREMAN: YES, SIR.

25 THE COURT: EVERYBODY AT 9:00 IS WHEN WE'LL BE

JACKSON V. DENNO HEARING

128

1 HERE IN THE MORNING. JUST BE BACK IN YOUR JURY ROOM AND
2 WE'LL BE READY TO START AT 9:00 AND WE'LL CONTINUE WITH
3 WHAT WE NEED TO DO SO WE'LL BE ABLE TO GET GOING IN THE
4 MORNING, OKAY, THANK YOU. TAKE THE JURY TO THE JURY ROOM,
5 MR. ROPP.

6 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
7 AT 4:32 P.M.)

8 THE COURT: ALL RIGHT, I UNDERSTAND THAT WE CAN
9 UTILIZE THE REST OF THE TIME WE HAVE THIS AFTERNOON FOR A
10 DENNO HEARING, ARE WE PREPARED TO GO FORWARD?

11 MS. ELDER: YES, SIR, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 MR. GALMORE: YES, SIR.

14 THE COURT: OKAY.

15 MS. ELDER: YOUR HONOR, THE STATE WOULD CALL
16 DETECTIVE TONY ALLEN.

17 THE COURT: ALL RIGHT, DETECTIVE ALLEN, COME
18 AROUND, HOW ARE YOU DOING TODAY?

19 DETECTIVE ALLEN: GOOD, HOW ARE YOU, SIR?

20 THE COURT: DOING GOOD.

21 JACKSON V. DENNO

22 TONY ALLEN

23 BEING FIRST DULY SWORN, TESTIFIED IN CAMERA AS FOLLOWS:

24 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
25 SPELL YOUR LAST NAME FOR THE COURT.

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER129

1 THE WITNESS: MY NAME IS TONY ALLEN, LAST NAME
2 IS SPELLED A-L-L-E-N.

3 DIRECT EXAMINATION

4 BY MS. ELDER:

5 Q DETECTIVE ALLEN, YOU ARE WITH THE MYRTLE
6 BEACH POLICE DEPARTMENT?

7 A YES, MA'AM, I AM.

8 Q IN WHAT CAPACITY?

9 A I'M A DETECTIVE.

10 Q HOW LONG YOU BEEN THERE?

11 A MY EMPLOYMENT WITH THE POLICE DEPARTMENT
12 STARTED AUGUST 2ND, 1989.

13 Q AND DID YOU HAVE AN OPPORTUNITY TO
14 PARTICIPATE IN AN INVESTIGATION OF THE DEATH OF COREY
15 BROOKS?

16 A YES, MA'AM.

17 Q IN THE COURSE OF THAT INVESTIGATION DID YOU
18 TAKE A STATEMENT OR TAPED INTERVIEW FROM KEION GRIFFIN?

19 A YES, MA'AM, I DID.

20 Q AND COULD YOU TELL ME THE DATE AND TIME OF
21 THAT INTERVIEW?

22 A I DON'T HAVE THE MIRANDA IN FRONT OF ME,
23 MAY THE 30TH, 2008, IS WHEN THE INTERVIEW TOOK PLACE.

24 THE COURT: WHAT WAS THE DATE AGAIN?

25 A MAY 30, 2008.

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER130

1 THE COURT: ALL RIGHT.

2 MS. ELDER: (CONTINUING)

3 Q DO YOU HAVE YOUR NOTES REGARDING THAT
4 INTERVIEW?

5 A THEY'RE IN THE SEAT RIGHT THERE.

6 Q IS THIS IT?

7 A I BELIEVE SO, YES, MA'AM, THAT'S IT.

8 THE FIRST INTERVIEW WITH KEION GRIFFIN WAS MAY
9 30, 2008, THE TIME WAS APPROXIMATELY 6:39 IN THE EVENING.

10 Q AND COULD YOU JUST TELL ME BRIEFLY HOW YOU
11 CAME TO INTERVIEW KEION GRIFFIN AS A SUSPECT IN THIS CASE?

12 A KEION GRIFFIN BECAME A PERSON OF INTEREST
13 IN THIS CASE DURING THE INTERVIEW OF DEMARIO STUKES.

14 Q AND WHEN DID DEMARIO STUKES INTERVIEW TAKE
15 PLACE?

16 A DEMARIO STUKES INTERVIEW WAS ON MAY THE
17 30TH, 2008, AND IT OCCURRED APPROXIMATELY 2:30 THAT DAY.

18 Q MR. GRIFFIN WAS BROUGHT INTO POLICE ANNEX?

19 A YES, MA'AM, HE WAS.

20 Q AND WHERE WAS HE TAKEN ONCE HE WAS BROUGHT
21 TO THE ANNEX?

22 A MR. GRIFFIN WAS TAKEN TO AN INTERVIEW ROOM.

23 THE COURT: THIS WAS AT THE MYRTLE BEACH POLICE
24 DEPARTMENT?

25 A AT THE POLICE DEPARTMENT ANNEX, THAT'S

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER131

1 LOCATED ON THE FORMER MYRTLE BEACH AIR FORCE BASE.

2 Q AND WHEN MR. GRIFFIN WAS BROUGHT INTO THE
3 INTERVIEW ROOM WHAT DID YOU DO?

4 A WE TALKED WITH MR. GRIFFIN AND PROVIDED HIM
5 WITH MIRANDA WARNING.

6 Q AND DO YOU DO THOSE IN WRITING, HOW DO YOU,
7 HOW DO YOU GIVE A DEFENDANT MIRANDA WARNING?

8 A GENERALLY WHAT WE WOULD DO IS WE WILL ASK
9 THE PERSON BRING INTERVIEWED WHAT THEIR AGE IS. WE WILL
10 ASK IF THEY UNDERSTAND THE ENGLISH LANGUAGE. WE WILL ASK
11 IF THEY'RE ABLE TO READ AND WRITE. WE WILL ASK IF THEY'RE
12 UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOL AT THE TIME OF
13 THE INTERVIEW. WE ALSO ASK IF THEY DON'T UNDERSTAND
14 SOMETHING DO THEY KNOW THAT THEY CAN ASK QUESTIONS. ONCE
15 WE'RE SATISFIED THAT THE PERSON BEING INTERVIEWED UNDER,
16 UNDERSTANDS WHAT'S GOING ON WE HAVE A FORM WITH THE MIRANDA
17 RIGHTS ON IT, WE ACTUALLY READ THAT FORM TO THEM.

18 Q AND WAS THAT DONE IN THIS CASE?

19 A YES, MA'AM.

20 Q AND ONCE YOU READ THAT FORM TO THEM DO THEY
21 ACKNOWLEDGE THAT THEY'VE RECEIVED THEM AND THEY'VE BEEN
22 EXPLAINED TO THEM?

23 A YES, MA'AM, THEY ACKNOWLEDGE IT WITH A
24 SIGNATURE.

25 Q AND DO YOU ALSO SIGN THAT FORM?

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER132

1 A YES, MA'AM.

2 MS. ELDER: YOUR HONOR, THE STATE WOULD HAVE THE
3 MIRANDA FORM MARKED FOR THE PURPOSE OF THIS HEARING.

4 THE COURT: ALL RIGHT, COURT'S EXHIBIT, LET'S
5 MARK THEM ALL AS COURT'S EXHIBITS.

6 (WHEREUPON, COURT'S EXHIBIT 1 MARKED FOR
7 IDENTIFICATION.)

8 THE COURT: LET ME SEE IT, PLEASE, THANK YOU.

9 Q I'LL SHOW YOU COURT'S EXHIBIT NUMBER 1, IS
10 THAT THE MIRANDA FORM THAT WAS PROVIDED AND PREPARED AND
11 KEION GRIFFIN'S INTERVIEW?

12 A YES, MA'AM, THIS IS THE FORM.

13 Q AND DOES THAT HAVE MR. GRIFFIN'S SIGNATURE
14 ON IT?

15 A YES, MA'AM, IT ALSO HAS MY SIGNATURE ALONG
16 THE BOTTOM.

17 Q DOES IT HAVE THE DATE?

18 A MAY 30, 2008.

19 Q AND THERE'S SOME CHECKS ON THAT FORM, WHAT
20 ARE THOSE CHECKS FOR?

21 A AT THE BEGINNING OF THE FORM THE WORD YOUR
22 RIGHTS AFTER I READ EACH LINE, AFTER I'VE READ THAT LINE I
23 CHECK IT. IN THIS PARTICULAR INSTANCE HERE, YOU HAVE THE
24 RIGHT TO REMAIN SILENT AND TO REFUSE TO ANSWER ANY
25 QUESTIONS,

INVESTIGATOR ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER133

1 ANYTHING YOU SAY CAN BE USED AGAINST YOU IN A
2 COURT OF LAW,

3 YOU HAVE THE RIGHT TO TALK TO AN ATTORNEY AND
4 HAVE HIM PRESENT WITH YOU WHILE YOU'RE BEING QUESTIONED,

5 IF YOU CANNOT AFFORD AN ATTORNEY ONE WILL BE
6 PROVIDED AT GOVERNMENT EXPENSE BEFORE ANY QUESTIONING, IF
7 YOU WISH,

8 IF YOU DESIRE TO MAKE A STATEMENT AND ANSWER
9 QUESTIONS YOU HAVE TO RIGHT TO STOP AT ANY TIME.

10 Q AND YOU CHECKED EACH ONE OF THOSE LINES?

11 A YES, MA'AM, I DID.

12 Q THERE'S ALSO A PROVISION ON THERE THAT
13 CERTIFIES THAT YOU'VE INDICATED THAT I'VE RECEIVED A COPY
14 OF THE ABOVE AND YOU'VE PUT NO COPY REQUESTED, WHAT DOES
15 THAT MEAN?

16 A GENERALLY ONCE WE ARE TALKING TO THE PERSON
17 AND WE GIVE THEM THE MIRANDA WARNING WE ALWAYS MAKE THE
18 MIRANDA WARNING THAT'S SIGNED AVAILABLE TO THEM. SOME
19 PEOPLE WANT IT, SOME PEOPLE DO NOT. GENERALLY WHAT I'LL DO
20 IS ASK THEM DO YOU WANT A COPY OF THIS, THEY WILL EITHER
21 INDICATE THEY DO OR DO NOT. IF THEY DON'T WANT A COPY
22 OFTENTIMES I WRITE SOMETHING LIKE THIS, NO COPY HAS BEEN
23 REQUESTED BUT THE COPY IS ALWAYS AVAILABLE TO THEM IF THEY
24 WANT IT AT A LATER DATE.

25 Q OKAY, AND DID MR. GRIFFIN WANT A COPY?

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER134

1 A NO COPY REQUESTED.

2 Q AND WHEN YOU WERE GIVEN MR. KEION GRIFFIN
3 HIS RIGHTS PRIOR TO TAKING HIS STATEMENT DID HE APPEAR TO
4 BE UNDER THE INFLUENCE OF ANY DRUGS TO ALCOHOL?

5 A NO, MA'AM, HE DID NOT.

6 Q DID HE APPEAR TO UNDERSTAND WHAT YOU WERE
7 TELLING HIM?

8 A YES, MA'AM, HE DID.

9 Q AND DID HE RESPOND TO YOU IN A MANNER THAT
10 WAS CONSISTENT, VERBAL RESPONSES THAT WERE CONSISTENT WITH
11 YOUR QUESTIONS?

12 A YES, MA'AM.

13 Q WHO ELSE WAS PRESENT DURING THE COURSE OF
14 THIS INTERVIEW?

15 A DETECTIVE MIKE HULL.

16 Q AND AT ANY POINT IN TIME DURING THE COURSE
17 OF THIS INTERVIEW DID ANYBODY COERCE, THREATEN?

18 A NO, MA'AM.

19 Q ANYTHING LIKE THAT TO KEION GRIFFIN TO GET
20 HIM TO TALK TO INVESTIGATORS?

21 A NO, MA'AM.

22 Q AND AFTER YOU READ HIM HIS MIRANDA RIGHTS
23 DID YOU IN FACT TAKE A STATEMENT FROM HIM?

24 A YES, MA'AM.

25 Q AND THAT WAS RECORDED AS WELL?

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER135

1 A YES, MA'AM, IT WAS.

2 Q AND DURING THE COURSE OF THAT INTERVIEW DO
3 YOU RECALL HOW LONG THAT FIRST INTERVIEW WAS?

4 A JUST ONE MOMENT, PLEASE. I BELIEVE THAT
5 FIRST INTERVIEW LASTED, WITH ME LASTED JUST OVER AN HOUR.

6 Q AND DURING THE COURSE OF THAT INTERVIEW WAS
7 MR. GRIFFIN, WAS KEION GRIFFIN GIVEN THE OPPORTUNITY OR WAS
8 ASKED ABOUT SOMETHING TO DRINK, BATHROOM BREAKS, THINGS
9 LIKE THAT?

10 A YES, MA'AM, I BELIEVE MY RECOLLECTION IS
11 THAT HE WAS PROVIDED WITH A BOTTLE OF WATER ALSO.

12 Q AND DID HE IN FACT GIVE YOU A STATEMENT?

13 A YES, MA'AM.

14 Q ABOUT THIS INCIDENT?

15 A YES, MA'AM, HE DID.

16 THE COURT: WHAT TIME WAS HE MIRANDIZED, DID YOU
17 MAKE A NOTE?

18 A I NOTE THE MIRANDA WAS SIGNED AROUND 18:39
19 WHICH WOULD BE 6:39.

20 THE COURT: 6:39?

21 A YES, SIR.

22 THE COURT: SO THAT WOULD HAVE BEEN RIGHT AFTER
23 YOU BEGAN YOUR INTERVIEW?

24 A YES, SIR.

25 THE COURT: THANK YOU.

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER136

1 MS. ELDER: (CONTINUING)

2 Q AND WHEN YOU CONCLUDED THAT FIRST
3 INTERVIEW, AT THE END OF THAT FIRST INTERVIEW WHY WAS IT
4 CONCLUDED?

5 A THE INTERVIEW WAS CONCLUDED BECAUSE AT THAT
6 TIME MR. GRIFFIN ACCORDING TO HIM HAD GIVEN US EVERYTHING
7 THAT HE KNEW, HE DIDN'T KNOW ANYTHING ELSE ABOUT IT AND
8 THERE WAS NOTHING ELSE TO OBTAIN. IT DIDN'T APPEAR AS IF
9 THERE WAS ANYTHING ADDITIONAL THAT WE WOULD BE ABLE TO
10 LEARN FROM HIS INTERVIEW HAD WE CONTINUED.

11 Q SO AT THE END OF THAT, THAT FIRST INTERVIEW
12 AT THE VERY END OF THAT FIRST INTERVIEW HE, IT DIDN'T STOP
13 BECAUSE HE ASKED FOR A LAWYER OR DIDN'T WANT TO TALK
14 ANYMORE, YA'LL WERE JUST THROUGH?

15 A YES, MA'AM, THAT'S CORRECT.

16 Q AND AFTER THE INTERVIEW WHAT HAPPENED TO
17 MR. GRIFFIN?

18 A AFTER THE INTERVIEW PROCESS MYSELF AND
19 DETECTIVE HULL CAME OUT, TWO OTHER DETECTIVES CAME IN FOR A
20 BRIEF MOMENT, THAT WAS DETECTIVE CROSBY AND DETECTIVE
21 CASTLE. THEY ATTEMPTED TO TALK TO MR. GRIFFIN; MR. GRIFFIN
22 GAVE BASICALLY NO ADDITIONAL INFORMATION THAN WHAT HAD
23 ALREADY BEEN OBTAINED AND HE WAS TAKEN BACK TO THE POLICE
24 DEPARTMENT AND JAIL.

25 Q TO THE MYRTLE BEACH JAIL OR --

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER137

1 A YES, I'M SORRY, YES, TO THE MYRTLE BEACH
2 JAIL.

3 Q DID THERE COME A TIME WHERE YA'LL
4 INTERVIEWED MR. GRIFFIN A SECOND TIME?

5 A YES, MA'AM.

6 Q WHEN WAS THAT?

7 A ONE MOMENT, MR. KEION GRIFFIN WAS
8 INTERVIEWED AGAIN ON MAY 31ST.

9 Q WHAT TIME?

10 A JUST ONE MOMENT, PLEASE. IT WAS
11 APPROXIMATELY 21:40 WHICH IS 9:40 P.M. IN THE EVENING.

12 Q SO THAT WAS THE NEXT DAY?

13 A YES, MA'AM.

14 Q AND WHEN YOU BEGAN THAT INTERVIEW WHAT
15 CAUSED YOU TO HAVE A SECOND INTERVIEW WITH, WITH KEION
16 GRIFFIN?

17 A I WAS AT HOME THAT DAY AND RECEIVED A
18 TELEPHONE CALL TO COME IN THAT MR. GRIFFIN HAD EXPRESSED TO
19 DETECTIVE CASTLE HE WANTED TO SPEAK TO DETECTIVES ABOUT THE
20 CASE.

21 Q AND WHEN HE REQUESTED TO SPEAK TO YA'LL
22 AGAIN HAD, DO YOU KNOW IF HE HAD BEEN SERVED WITH A WARRANT
23 AT THAT TIME?

24 A I BELIEVE HE HAD, YES, MA'AM.

25 Q AND HE HAD NOT BEEN TO, AS FAR AS YOU KNOW

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER138

1 HE HAD NOT BEEN TO ANY BOND PROCEEDING AT THAT POINT, IS
2 THAT CORRECT?

3 A THAT IS CORRECT.

4 Q SO DID YOU COME IN AND INTERVIEW HIM A
5 SECOND TIME?

6 A YES, MA'AM, MYSELF AND DETECTIVE HULL.

7 Q AND AT THE BEGINNING OF THAT SECOND
8 INTERVIEW DID YOU DO ANYTHING REGARDING HIS MIRANDA
9 WARNING?

10 A WE DID. DURING THE INTERVIEW WHEN WE CAME
11 IN WE INDICATED TO MR. GRIFFIN THAT WE NEEDED TO CLARIFY
12 WHY WE WERE THERE, THAT BEING THE FACT THAT HE REQUESTED TO
13 SPEAK TO DETECTIVES WHICH HE AFFIRMED THAT HE DID. THIS
14 MIRANDA FORM WAS SHOWN TO HIM. HE WAS ASKED DID HE STILL
15 UNDERSTAND WHAT HAD BEEN READ TO HIM ON THIS FORM. HE
16 INDICATED THAT HE DID AND HE WAS ASKED DO YOU KNOW THAT IT
17 WAS STILL IN AFFECT AND HE INDICATED THAT HE DID.

18 Q DID HE APPEAR TO KNOW WHAT HE WAS DOING AT
19 THAT TIME?

20 A YES, MA'AM.

21 Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF
22 ANY DRUGS OR ALCOHOL?

23 A NO, MA'AM.

24 Q DID HE APPEAR TO BE FUNCTIONING TO YOU IN A
25 NORMAL MANNER?

INVESTIGATER ALLEN - DIRECT EXAM. IN CAMERA BY MS. ELDER139

1 A YES, MA'AM.

2 Q AND THEN DID YOU IN FACT TAKE HIS
3 INFORMATION THAT HE HAD ADDITIONAL INFORMATION?

4 A YES, MA'AM, AND THAT WAS ALSO RECORDED.

5 Q AND DURING THAT SECOND INTERVIEW DID
6 ANYBODY COERCE OR FORCE OR THREATEN HIM IN ANY MANNER TO
7 GET HIM TO TALK TO THE POLICE ABOUT WHATEVER IT WAS HE WAS
8 PROVIDING THAT SECOND TIME?

9 A NO, MA'AM.

10 Q AND DURING THE COURSE OF THE FIRST AND THE
11 SECOND INTERVIEWS DID HE PROVIDE INFORMATION REGARDING THE
12 EVENT OF WHERE HE WAS AND WHO HE WAS WITH IN THAT
13 PARTICULAR NIGHT IN QUESTION ON MAY 25TH, 2008?

14 A YES, MA'AM, HE DID.

15 Q AND WITHOUT GOING INTO THE DETAIL OF THE
16 STATEMENT DID HE INDICATE THAT HE WAS IN THE PRESENCE OF
17 DEMARIO STUKES AND DARIUS PRIEST ALL NIGHT LONG?

18 A YES, MA'AM, HE DID.

19 Q DID HE INDICATE THAT HE SAW, THAT HE WAS,
20 HE SAW DARIUS PRIEST LEAVE WITH HIS MOTHER AFTER THEY SAW
21 THE POLICE BLOCKING THE ROADS OFF?

22 A YES, MA'AM, HE DID.

23 MS. ELDER: I DON'T HAVE ANY OTHER QUESTIONS,
24 YOUR HONOR.

25 THE COURT: MR. GALMORE?

INVESTIGATOR ALLEN - CROSS EXAM. BY MR. GALMORE

140

CROSS EXAMINATION

BY MR. GALMORE:

Q ABOUT WHAT TIME WAS MR. GRIFFIN TAKEN INTO CUSTODY?

A MR. GRIFFIN WAS BROUGHT DOWN TO THE ANNEX ABOUT SHORTLY BEFORE 2:30. WHEN THE INTERVIEW BEGAN THE INTERVIEW WITH MYSELF AND DETECTIVE HULL HEARD AFTER WE INTERVIEWED HIM WHICH IS A LITTLE MORE THAN AN HOUR DETECTIVE CROSBY AND DETECTIVE CASTLE ATTEMPTED TO TALK TO HIM. HE DIDN'T PROVIDE ANY ADDITIONAL INFORMATION. ONCE THAT WAS CONCLUDED HE WAS PLACED UNDER ARREST.

Q OKAY, SO HE WAS HELD FROM 2:30 UNTIL 6:30 WHEN THE INITIAL MIRANDA FORM WAS SIGNED?

A THE INITIAL MIRANDA FORM WAS TOWARDS THE BEGINNING OF THE INTERVIEW WITH MYSELF AND DETECTIVE HULL. THAT WAS ABOUT 6, THE ACTUAL SIGNING OF THE MIRANDA FORM I BELIEVE WAS 6:39.

Q RIGHT, AND HE WAS TAKEN INTO CUSTODY AT WHAT TIME AGAIN?

A IT WOULD HAVE BEEN SOMETIME AFTER 19:47, I DON'T HAVE THE EXACT TIME.

Q HE WAS BROUGHT DOWN TO THE STATION AT WHAT TIME, I MEAN TO THE ANNEX, WHAT TIME WAS HE BROUGHT TO THE ANNEX?

A HE WAS BROUGHT TO THE ANNEX SHORTLY BEFORE

INVESTIGATOR ALLEN - CROSS EXAM. BY MR. GALMORE

141

1 2:30 P.M.

2 Q OKAY, SO HE WAS AT THE ANNEX FOR FOUR HOURS
3 BEFORE THE INTERVIEW WAS CONDUCTED?

4 A EXCUSE ME, LET ME REFER TO MY NOTES. I
5 MISSPOKE, IT WAS DEMARIO WHO WAS INTERVIEWED AT 14, EXCUSE
6 ME, AROUND 2:30. MR. GRIFFIN INTERVIEW WAS NOT UNTIL
7 AROUND 6:40 THAT EVENING SO MR. GRIFFIN WAS BROUGHT TO THE
8 ANNEX SHORTLY BEFORE THE 6:30 P.M. HOUR.

9 Q OKAY, YOU CAN'T TELL US EXACTLY WHAT TIME
10 HE WAS TAKEN INTO CUSTODY?

11 A I DON'T KNOW WHAT TIME HE WAS ACTUALLY
12 PICKED UP. AS I RECALL MYSELF AND DETECTIVE HULL WAS IN
13 THE MIDST OF AN INTERVIEW WITH DEMARIO STUKES.

14 Q AND THE INTERVIEW WITH STUKES WAS AT 2:30?

15 A YES, SIR.

16 Q WOULD IT BE FAIR TO SAY THAT MR. GRIFFIN
17 WAS PICKED UP ABOUT 2:30?

18 A NO, SIR, MR. GRIFFIN HIS INFORMATION CAME
19 FROM DEMARIO STUKES INTERVIEW. IT WAS SOME TIME DURING THE
20 INTERVIEW WITH DEMARIO STUKES THAT KEION GRIFFIN'S NAME AND
21 PRESENCE TO THE INCIDENT CAME IN.

22 Q AND THAT'S WHEN YOU ALL WENT OUT OR YOU
23 SENT OTHERS OUT TO PICK UP MR. GRIFFIN?

24 A TO LOCATE MR. GRIFFIN THAT IS CORRECT.

25 Q OKAY, SO HOW LONG WAS DEMARIO STUKES

INVESTIGATOR ALLEN - CROSS EXAM. BY MR. GALMORE

142

1 INTERVIEW?

2 A DEMARIO STUKES INTERVIEW OCCURRED RIGHT
3 AROUND, BEGAN AT ABOUT 2:30 AND HIS INTERVIEW ENDED
4 APPROXIMATELY 16:50 OR 4:50 IN THE EVENING SO JUST BEFORE 5
5 P.M.

6 Q WOULD IT FAIR TO SAY SOMEWHERE BETWEEN 2:30
7 AND 4:50 IS WHEN MR. GRIFFIN WAS PICKED UP?

8 A THAT I DON'T KNOW. WHAT I CAN PROVIDE TO
9 YOU IS THAT ONCE MR. STUKES INTERVIEW WAS CONCLUDED
10 THEREAFTER ABOUT 6:30, 6:39 IS WHEN THE MIRANDA WAS SIGNED
11 FOR MR. GRIFFIN I HAVE INDICATED THAT OUR FIRST CONTACT
12 WITH HIM IS AT 6:35 AT THE ANNEX SO I, WHAT I'M TRYING TO
13 RELAY IS I WAS NOT OUT ON THE STREET IN THE EFFORT TO
14 LOCATE MR. GRIFFIN, I WAS IN THE INTERVIEW WITH MR. STUKES.

15 Q DO YOU KNOW HOW LONG MR. GRIFFIN WAS IN
16 POLICE CUSTODY BEFORE HE WAS INTERVIEWED?

17 A NO, SIR, I DO NOT.

18 Q DO YOU KNOW IF HE WAS PROVIDED FOOD, WATER,
19 OR TELEPHONE CALL DURING THIS TIME THAT HE WAS IN POLICE
20 CUSTODY BEFORE THE INTERVIEW?

21 A I DO NOT.

22 Q DID YOU INQUIRE OF MR. GRIFFIN WHETHER HE
23 WAS UNDER THE INFLUENCE OF DRUGS OR ALCOHOL?

24 A YES, SIR, I DID.

25 Q WHAT WAS HIS INDICATION TO YOU?

INVESTIGATOR ALLEN - CROSS EXAM. BY MR. GALMORE

143

1 A HE WAS NOT.

2 Q DID YOU ATTEMPT TO PERFORM ANY DRUG TESTS
3 OF ANY TYPE?

4 A NO, SIR, NOT AT THAT TIME. GENERALLY WHEN
5 I'M SPEAKING TO SOMEONE OR CONDUCTING THE INTERVIEW IF
6 THERE IS ANYTHING IMMEDIATELY APPARENT THAT I OBSERVE THAT
7 INDICATES THAT A PERSON DOES NOT UNDERSTAND WHAT'S GOING
8 ON, HAS SOME KIND OF LEARNING DISABILITY OR IS UNDER THE
9 INFLUENCE OR IMPAIRED IN ANY WAY I WILL EXPLORE THAT TO
10 DETERMINE WHAT'S GOING ON SO THAT I CAN CONFIRM WHAT MY
11 OBSERVATIONS ARE. AT THE TIME THAT I TALKED TO MR. GRIFFIN
12 HE UNDERSTOOD THE ENGLISH LANGUAGE. HE INDICATED HE WAS
13 NOT UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOL. HE
14 UNDERSTOOD THAT HE KNEW WHEN TO ASK A QUESTION IF HE DIDN'T
15 UNDERSTAND SOMETHING AND BY ALL ACCOUNTS IN TALKING TO HIM
16 THOSE FEW MINUTES THERE WAS NOTHING TO GIVE ME INDICATION
17 THAT HE WAS NOT OF ALL HIS FACULTIES.

18 THE COURT: WAS THERE ANYTHING TO INDICATE TO
19 YOU THAT HE WAS UNDER THE INFLUENCE, HAVE A MENTAL
20 DEFICIENCY OR ANYTHING OF THAT?

21 A NO, SIR, HIS SPEECH WAS NOT SLURRED. HE
22 DIDN'T APPEAR TO BE SWAYING AS IF HAVING TROUBLE SITTING UP
23 STRAIGHT OR ANYTHING LIKE THAT.

24 THE COURT: ALL RIGHT, MR. GALMORE?

25 MR. GALMORE: (CONTINUING)

INVESTIGATOR ALLEN - CROSS EXAM. BY MR. GALMORE

144

- 1 Q DID YOU INQUIRE OF MR. GRIFFIN'S
2 EDUCATIONAL LEVEL?
- 3 A YES, SIR, I DID.
- 4 Q AND WHAT DID HE TELL YOU?
- 5 A I WAS TOLD LAST GRADE COMPLETED WAS 11TH
6 GRADE.
- 7 Q DID YOU MAKE ANY THREATS OF MR. GRIFFIN?
- 8 A NO, SIR.
- 9 Q DID YOU COERCE HIM IN ANY WAY?
- 10 A NO, SIR.
- 11 Q DO YOU KNOW IF OTHER OFFICERS COERCED HIM
12 IN ANY WAY?
- 13 A I AM NOT AWARE OF THAT EVER HAPPENING.
- 14 Q ANY PROMISES MADE TO MR. GRIFFIN?
- 15 A NO, SIR.
- 16 Q WAS HE UNDER ARREST AT THE TIME HE GAVE HIS
17 FIRST INTERVIEW?
- 18 A AT THE CONCLUSION OF HIS FIRST INTERVIEW HE
19 WAS PLACED UNDER ARREST, THAT IS CORRECT. AT THE TIME --
20 GO AHEAD.
- 21 Q SO WHEN, WHEN HE PARTICIPATED IN THE
22 INTERVIEW HE WAS NOT UNDER ARREST?
- 23 A AT THE INITIAL BEGINNING HE WAS NOT UNDER
24 ARREST.
- 25 Q WAS HE ARRESTED DURING THE INTERVIEW LIKE

IBVESTIGATOR ALLEN -- REDIRECT EXAM. BY MS. ELDER

145

1 ON TAPE?

2 A THERE, ON TAPE, YES, AT THE CONCLUSION OF
3 THE INTERVIEWS.

4 Q SO FROM YOUR PERSPECTIVE HE WAS GOING TO BE
5 ARRESTED AT THE END OF THIS INTERVIEW REGARDLESS?

6 A I WOULD NOT SAY REGARDLESS. IT WASN'T
7 UNTIL THE INTERVIEW WAS COMPLETED DURING THE COURSE OF HIS
8 INTERVIEW INFORMATION DID COME UP TO GIVE US REASON TO
9 BELIEVE THAT HE WAS INVOLVED AND AT SOME POINT IN THE
10 INTERVIEW IN MY MIND HE WAS NOT FREE TO GO.

11 Q WAS HE EVER TOLD YOU COULD BE ARRESTED AS A
12 RESULT OF THIS INTERVIEW?

13 A NOT IN THOSE EXACT WORDS, NO, SIR. HE WAS
14 INFORMED PER THE MIRANDA THAT ANYTHING YOU SAY CAN BE USED
15 AGAINST YOU IN A COURT OF LAW.

16 Q WAS HE EVER TOLD YOU WILL BE ARRESTED AT
17 THE END OF THIS INTERVIEW?

18 A NO, SIR.

19 Q BUT WHEN HE CONDUCTED THE INTERVIEW HE HAD
20 NOT BEEN INFORMED THAT HE WAS GOING TO BE ARRESTED?

21 A HE HAD NOT.

22 Q NOW THE NEXT INTERVIEW TOOK PLACE THE NEXT
23 DAY ON THE 31ST; IS THAT CORRECT?

24 A YES, SIR.

25 Q AND AT THAT TIME NO BOND HAD BEEN SET FOR

IBVESTIGATOR ALLEN - REDIRECT EXAM. BY MS. ELDER

146

1 MR. GRIFFIN?

2 A NO, SIR, IT HAD NOT.

3 Q WERE ANY PROMISES MADE TO MR. GRIFFIN
4 REGARDING A BOND HEARING?

5 A NOT IN MY PRESENCE OR TO MY KNOWLEDGE, NO,
6 SIR, THEY WERE NOT.

7 Q WERE ANY PROMISES MADE AT ALL TO HIM?

8 A NO, SIR.

9 MR. GALMORE: I DON'T HAVE ANY FURTHER
10 QUESTIONS, YOUR HONOR.

11 THE COURT: MS. ELDER?

12 REDIRECT EXAMINATION

13 BY MS. ELDER:

14 Q YOU DIDN'T HAVE, WHEN YOU INITIATED THE
15 FIRST INTERVIEW WITH KEION GRIFFIN YOU DIDN'T HAVE THE
16 WARRANT PREPARED ALREADY, YOU DIDN'T HAVE THAT IN PLACE; IS
17 THAT CORRECT? YOU SAID YOU DIDN'T MAKE THE DECISION TO
18 ARREST HIM UNTIL THE VERY END?

19 A THAT'S CORRECT.

20 Q OKAY, SO THERE WASN'T WARRANTS IN EXISTENCE
21 PRIOR TO THAT, WERE THERE?

22 A NO, MA'AM.

23 MS. ELDER: THAT'S ALL THE QUESTIONS I HAVE,
24 YOUR HONOR.

25 THE COURT: MR. ALLEN, DESCRIBE THE FACILITY IN

IBVESTIGATOR ALLEN - REDIRECT EXAM. BY MS. ELDER

147

1 WHICH HE WAS INTERVIEWED?

2 A THE FACILITY IN WHICH HE WAS INTERVIEWED
3 ARE IT'S A BUILDING THAT HOUSES THE DETECTIVE OFFICES AND
4 ON THE DETECTIVE SIDE THERE IS A BAY WITH A ROOM THAT'S
5 SIMILAR, NOT QUITE AS LARGE AS THIS ROOM, BUT THERE ARE
6 SEVERAL DESKS IN THAT ROOM WHERE THE DETECTIVES SIT AND DO
7 THEIR PAPERWORK AND CONDUCT THEIR DAILY BUSINESS. COMING
8 DOWN THE HALLWAY THERE'S A SMALL INTERVIEW ROOM THAT HAS A
9 TABLE IN IT AND DEPENDING ON THE INTERVIEW IT MAY HAVE TWO,
10 THREE CHAIRS INSIDE THE ROOM AND IT'S --

11 THE COURT: IT'S CONDUCTED IN AN INTERVIEW ROOM?

12 A YES, SIR.

13 THE COURT: WAS IT TAPED?

14 A YES, SIR.

15 THE COURT: HAVE THESE TAPES BEEN PROVIDED TO
16 DEFENSE COUNSEL?

17 A YES, SIR.

18 THE COURT: OKAY, ARE THERE WEAPONS KEPT IN THE
19 ROOM OF ANY TYPE OR SORT?

20 A NO, SIR.

21 THE COURT: OKAY, ANY INTIMIDATING CIRCUMSTANCES
22 SURROUNDING THAT ROOM OTHER THAN YOU'RE IN A POLICE
23 STATION?

24 A NO, SIR, IT'S, IT'S A, IT'S A ROOM, THERE'S
25 A DOOR, TWO WALLS ON THE SIDE. THERE IS A REFLECTIVE GLASS

INVESTIGATOR ALLEN - REDIRECT EXAM. BY MS. ELDER

148

1 IN THE BACK AND THEN THE TABLES AND CHAIRS AS I DESCRIBED.

2 THE COURT: DOES IT HAVE A NORMAL DOOR?

3 A YES, SIR.

4 THE COURT: DOES NOT HAVE A CELL TYPE DOOR?

5 A NO, SIR, IT'S A WOODEN DOOR.

6 THE COURT: WAS THE DOOR OPEN OR CLOSED?

7 A SIR?

8 THE COURT: THE DOOR KEPT OPEN OR CLOSED?

9 A DURING THE INTERVIEW IT'S KEPT CLOSED.

10 THE COURT: IS IT LOCKED?

11 A NO, SIR.

12 THE COURT: OKAY, MR. GALMORE, YOU MAY ASK HIM
13 ANY QUESTIONS YOU WOULD LIKE.

14 MR. GALMORE: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: OKAY.

16 MS. ELDER: I DON'T HAVE ANY FURTHER QUESTIONS,
17 YOUR HONOR.

18 THE COURT: ALL RIGHT, STEP DOWN, MR. ALLEN.

19 THE WITNESS: THANK YOU, SIR.

20 THE COURT: IS THAT THE STATE'S SHOWING?

21 MS. ELDER: YES, SIR, YOUR HONOR. I'VE GOT
22 DETECTIVE HULL WHO WAS IN THE ROOM BUT HE WOULD TESTIFY
23 IDENTICAL TO THAT.

24 THE COURT: IT'S MERELY CUMULATIVE?

25 MS. ELDER: YES, SIR, YOUR HONOR.

IBVESTIGATOR ALLEN - REDIRECT EXAM. BY MS. ELDER

149

1 THE COURT: OKAY, ALL RIGHT, MR. GALMORE?

2 MR. GALMORE: YOUR HONOR, WE WOULD SUBMIT THAT
3 THE INTERVIEW, ESPECIALLY THE FIRST INTERVIEW WAS NOT
4 FREELY AND VOLUNTARILY GIVEN AND WE'RE GOING TO ASK THE
5 COURT TO SUPPRESS IT IN THIS CASE.

6 THERE IS I GUESS AN EXPECTATION THAT IF HE'S NOT
7 IN CUSTODY HE'S NOT UNDER ARREST HE'S THINKING THAT HE'S
8 MERELY COOPERATING WITH THESE POLICE OFFICERS.

9 THE COURT: AND THUS A NON CUSTODIAL NON
10 MIRANDIZABLE INTERROGATION, ISN'T IT?

11 MR. GALMORE: YES, YOUR HONOR, BUT AT THE SAME
12 TIME THE CLIENT HAS AN EXPECTATION THAT IF HE'S WORKING
13 WITH THEM THEY'RE GOING TO WORK WITH HIM AND UNFORTUNATELY
14 THAT WAS NOT ---

15 THE COURT: WELL WHAT YOU'RE ASKING ME TO DO IS
16 SAY THAT ANY TIME THE POLICE INTERVIEW YOU IF YOU'RE NOT
17 UNDER ARREST IT'S NOT ADMISSIBLE, IS THAT WHAT YOU'RE
18 SAYING? ISN'T THAT WHAT YOU'RE SAYING?

19 MR. GALMORE: YES, SIR.

20 THE COURT: I DIDN'T THINK YOU WOULD SAY THAT,
21 MR. GALMORE, IT WON'T WORK, GO ON TO THE NEXT ONE.

22 MR. GALMORE: THAT WILL BE OUR SHOWING.

23 THE COURT: ALL RIGHT, SIR. I HAVE CONSIDERED
24 THE CIRCUMSTANCES, THE TOTALITY OF THE CIRCUMSTANCES
25 SURROUNDING BOTH STATEMENTS. I AM COGNIZANT OF THE FACT

IBVESTIGATOR ALLEN - REDIRECT EXAM. BY MS. ELDER

150

1 THAT THE BURDEN IS UPON THE STATE TO PROVE BY A
2 PREPONDERANCE OF THE EVIDENCE THE STATEMENT WAS GIVEN
3 KNOWINGLY AND INTELLIGENTLY AND VOLUNTARILY. IN
4 DETERMINING WHETHER OR NOT THIS A KNOWINGLY AND
5 INTELLIGENTLY AND VOLUNTARILY MADE STATEMENT I'VE
6 CONSIDERED THE LENGTH OF THE INTERROGATION, THE LOCATION OF
7 THE INTERROGATION. I'VE CONSIDERED THE CONTINUITY OF THE
8 INTERROGATION. I DO NOTE THAT THE SECOND INTERROGATION WAS
9 PROMPTED BY THE DEFENDANT. I'VE CONSIDERED THE DEFENDANT'S
10 MATURITY, EDUCATIONAL LEVEL, PHYSICAL CONDITION AND MENTAL
11 HEALTH. THE OFFICER HAS TESTIFIED AT LENGTH THAT THIS
12 DEFENDANT WAS COHERENT AND FUNCTIONING NORMALLY. HE MADE
13 INQUIRIES AS TO WHETHER OR NOT HE HAD USED ANY ALCOHOL OR
14 DRUGS AND THAT THERE WAS NO INDICATION DURING HIS
15 EXAMINATION THAT THE DEFENDANT WAS NOT FUNCTIONING AT A
16 NORMAL LEVEL AT THE TIME OF THE INTERVIEW.

17 THERE WAS A MIRANDA WARNING GIVEN ON THE FIRST
18 AND HE WAS REMINDED ON THE SECOND BUT I DO NOTE THAT ON THE
19 SECOND INTERVIEW THAT THE INTERVIEW WAS AT HIS REQUEST NOT
20 AT THE REQUEST OF POLICE OFFICERS.

21 I HAVE CONSIDERED CUSTODY AS A FACTOR. I HAVE NO
22 EVIDENCE OF MENTAL DEFICIENCY OR NO EVIDENCE OF
23 MISREPRESENTATION AS EVIDENCED BY POLICE, THEREFORE, I'M
24 GOING TO FIND THAT THE STATEMENT WAS MADE FREELY,
25 VOLUNTARILY AND KNOWINGLY AND ADMISSIBLE. THANK YOU,

IBVESTIGATOR ALLEN - REDIRECT EXAM. BY MS. ELDER

151

1 GENTLEMEN, LADIES, ANYTHING FURTHER?

2 MS. ELDER: NO, SIR, YOUR HONOR.

3 THE COURT: OKAY, ANYTHING ELSE WE NEED TO TAKE
4 UP BEFORE TOMORROW MORNING, MR. GALMORE?

5 MR. GALMORE: NO, SIR.

6 THE COURT: MS. ELDER?

7 MS. ELDER: NO, SIR.

8 THE COURT: WHAT TIME ARE WE GOING TO BE HERE,
9 LADIES AND GENTLEMEN?

10 MS. ELDER: THE JURY SAID 9:00, YOUR HONOR.

11 THE COURT: 9:00.

12 MR. GALMORE: 9:00.

13 THE COURT: AND WHAT'S MY PRACTICE?

14 MS. ELDER: BE EARLY.

15 THE COURT: BE EARLY, THANK YOU VERY MUCH.

16 MR. GALMORE: YES, SIR.

17 THE COURT: THE COURT WILL SIT IN RECESS UNTIL
18 TOMORROW MORNING.

19 MS. ELDER: THANK YOU, YOUR HONOR.

20 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING
21 AND RESUMED ON NOVEMBER 3, 2009 AT 9:00 A.M.)

22 (WHEREUPON, STATE'S EXHIBITS NUMBERS 8, 9, 10,
23 11, 12, 13, 14, 15, AND 16 MARKED FOR IDENTIFICATION.)

24 THE COURT: ANYTHING BEFORE WE BRING THE JURY
25 IN?

IBVESTIGATOR ALLEN - REDIRECT EXAM. BY MS. ELDER

152

1 MS. ELDER: NO, SIR, YOUR HONOR.

2 THE COURT: MR. GALMORE?

3 MR. GALMORE: YOUR HONOR, WE WOULD JUST YOU TO
4 INQUIRE OF THE JURY IF THEY HAD ANY OUTSIDE INFORMATION
5 REGARDING THE CASE.

6 THE COURT: OKAY, WHERE IS MR. ROPP?

7 THE BAILIFF: I THINK HE WENT TO GET THE JURY.

8 THE COURT: IF YOU WOULD MAKE SURE THAT THE JURY
9 IS ON THE WAY.

10 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
11 9:05 A.M.)

12 THE COURT: I HOPE THAT YOU ALL HAD A PLEASANT
13 EVENING. DID MR. ROPP HAVE SOMETHING FOR YOU THIS MORNING?

14 MR. FOREMAN: OH, YES.

15 THE COURT: GOOD, I TOLD YOU HE WOULD TAKE CARE
16 OF YOU. MR. SWAIM, IS THERE ANYTHING THAT NEEDS TO BE
17 BROUGHT TO MY ATTENTION THAT YOU'RE AWARE OF?

18 MR. FOREMAN: NOT TO MY KNOWLEDGE.

19 THE COURT: HAS ANYONE ON THE JURY PANEL BEEN
20 APPROACHED BY ANYONE, READ ANYTHING ABOUT THIS CASE OR HAD
21 ANY CONTACT AT ALL CONCERNING THIS CASE?

22 THERE IS NOT RESPONSE, THANK YOU VERY MUCH.

23 MS. ELDER?

24 MS. ELDER: YES, SIR, YOUR HONOR, AT THIS TIME
25 THE STATE WOULD CALL OFFICER MCSPADDEN.

OFFICER MCSPADDEN - DIRECT EXAMINATION BY MS. ELDER 153

1 THE COURT: OFFICER MCSPADDEN, PLEASE COME
2 AROUND AND BE SWORN.

3 OFFICER CANDY MICHELLE MCSPADDEN

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
6 SPELL YOUR LAST NAME FOR THE COURT.

7 THE WITNESS: MY FULL NAME IS CANDY MICHELLE
8 MCSPADDEN, LAST NAME SPELLED M-C-S-P-A-D-D-E-N.

9 DIRECT EXAMINATION

10 BY MS. ELDER:

11 Q OFFICER MCSPADDEN, WHERE ARE YOU EMPLOYED?

12 A MYRTLE BEACH POLICE DEPARTMENT.

13 Q IN WHAT CAPACITY?

14 A CRIME SCENE OFFICER.

15 Q AND AS A CRIME SCENE OFFICER WHAT ARE SOME
16 OF YOUR DUTIES?

17 A EVIDENCE COLLECTION PROCESSING.

18 Q AND DID YOU OR WERE YOU WORKING IN
19 REFERENCE TO THE COREY BROOKS HOMICIDE?

20 A YES, MA'AM.

21 Q AND DID YOU HAVE AN OPPORTUNITY TO DO SOME
22 CRIME SCENE INVOLVING THAT INVESTIGATION?

23 A YES, MA'AM.

24 Q ON PARTICULAR DID YOU EXECUTE OR ASSIST IN
25 THE EXECUTION OF A SEARCH WARRANT TO RETRIEVE A PISTOL?

OFFICER MCSPADDEN - DIRECT EXAMINATION BY MS. ELDER 154

1 A YES, MA'AM.

2 Q AND COULD YOU TELL ME WHERE THAT LOCATION
3 WAS?

4 A 306 LIONS COVE DRIVE.

5 Q AND WAS THAT IN MYRTLE BEACH?

6 A YES.

7 Q AND THAT'S IN HORRY COUNTY?

8 A YES.

9 Q AND WHAT DID YOU RETRIEVE FROM THAT
10 LOCATION?

11 A IT WAS A SILVER REVOLVER WITH A BLACK
12 HANDLE. IT WAS A 22 CALIBER, 3 UNFIRED 357 ROUNDS, TWO
13 BOXES OF AMMUNITION, A PILLOW CASE, AND A WHITE PLASTIC
14 FAMILY DOLLAR BAG.

15 Q AND WHEN YOU LOOKED AT THE AMMUNITION WAS
16 THAT SEPARATE FROM THE GUN?

17 A YES.

18 Q DO YOU KNOW OR DID YOU KNOW IF THE GUN WAS
19 LOADED WHEN YOU RETRIEVED?

20 A I DID NOT CHECK, I JUST PROCESSED IT. WELL
21 I SWABBED IT AS IT WAS AND PACKAGED IT.

22 Q OKAY, AND WHEN YOU PACKAGE IT IF YOU'LL
23 TAKE A LOOK AT WHAT'S BEEN MARKED STATE'S EXHIBIT 7 FOR
24 IDENTIFICATION, DO YOU RECOGNIZE THAT PACKAGING?

25 A YES, MA'AM, THIS IS A REVOLVER OR THE

OFFICER MCSPADDEN - DIRECT EXAMINATION BY MS. ELDER 155

1 PACKAGE FOR THE REVOLVER AND THE REVOLVER COLLECTED AT 306
2 LIONS COVE.

3 Q AND YOU PACKAGE IT IN THAT MANNER?

4 A YES.

5 Q WHEN YOU COLLECT WEAPONS AND FIREARMS?

6 A INSIDE THE BOTTOM OF THE BOX THERE'S SOME
7 HOLES SO THE FIREARM IS SECURED IN THE BOX WITH SOME ZIP
8 TIES SO THAT IT DOESN'T FLY AROUND, THERE'S NO CHANCE OF
9 DISCHARGE, AND THEN THE BOX IS SEALED UP AND PLACED
10 EVIDENCE TAPE OVER THE EDGE.

11 Q ALL RIGHT, AND WHY DO YOU PLACE THE
12 EVIDENCE TAPE THERE?

13 A SO THAT WHEN IT GETS TO SLED THEY CAN
14 DETERMINE THAT IT HASN'T BEEN OPENED.

15 Q AND DID YOU SEND A REQUEST IN TO PROCESS
16 THIS PARTICULAR WEAPON?

17 A I DID.

18 Q AND IF YOU'LL LOOK AT ITEM 7, IS THAT THE
19 GUN YOU DID IN FACT RETRIEVE FROM THAT SEARCH WARRANT AT
20 LIONS COVE?

21 A YES, MA'AM.

22 MS. ELDER: YOUR HONOR, AT THIS TIME WE WOULD
23 INTRODUCE INTO EVIDENCE STATE'S EXHIBIT NUMBER 7.

24 MR. GALMORE: NO OBJECTION.

25 THE COURT: WITHOUT OBJECTION, NUMBER 7, IT IS

OFFICER MCSPADDEN - DIRECT EXAMINATION BY MS. ELDER 156

1 STILL SECURED.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER 7 ENTERED INTO
3 EVIDENCE.)

4 MS. ELDER: (CONTINUING)

5 Q AND WHEN YOU PROCESS A SCENE OR A
6 SEARCH WARRANT ARE PHOTOGRAPHS TAKEN AS WELL TO DOCUMENT
7 THAT?

8 A YES, MA'AM.

9 Q OKAY, I WANT YOU TO TAKE A LOOK AT ITEMS
10 14, STATE'S IDENTIFICATION 14 AND 15 AND COULD YOU TELL ME
11 IF YOU RECOGNIZE THOSE?

12 A YES, MA'AM.

13 Q AND WHAT ARE THOSE OF?

14 A THE FRONT OF THE RESIDENCE AT 306 LIONS
15 COVE DRIVE AND THE TRASH CAN THAT WAS ON THE FRONT PORCH.

16 Q AND I BELIEVE THAT ITEM 14 IS THAT THE
17 WEAPON THAT YOU RETRIEVED?

18 A YES, MA'AM.

19 MS. ELDER: YOUR HONOR, AT THIS TIME, YOUR
20 HONOR, WE WOULD MOVE TO INTRODUCE ITEMS 14 AND 15.

21 THE COURT: WHAT SAYS THE DEFENSE?

22 MR. GALMORE: NO OBJECTION, YOUR HONOR.

23 THE COURT: WITHOUT OBJECTION.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER 14 AND 15
25 ENTERED INTO EVIDENCE.)

OFFICER MCSPADDEN - DIRECT EXAMINATION BY MS. ELDER 157

1 MS. ELDER: (CONTINUING)

2 Q NOW, OFFICER MCSPADDEN, DID YOU IN YOUR
3 DUTIES AS A CRIME SCENE TECH DO YOU ALSO ATTEND AUTOPSIES?

4 A YES, MA'AM.

5 Q AND DID YOU HAVE AN OPPORTUNITY TO ATTEND
6 THE AUTOPSY OF COREY BROOKS?

7 A I DID.

8 Q AND DURING THAT AUTOPSY WERE ANY ITEMS
9 RETRIEVED FROM THE BODY OF MR. BROOKS?

10 A ONE SPENT BULLET.

11 Q AND DID YOU COLLECT THAT?

12 A YES, MA'AM.

13 Q IF YOU'LL TAKE A LOOK AT WHAT'S BEEN MARKED
14 FOR IDENTIFICATION ITEM 16, DO YOU RECOGNIZE THAT?

15 A YES, MA'AM, THE STIMPLE THAT WAS PLACED
16 INTO THE ROUND BOX AND THE BULLET IS HERE AS WELL.

17 Q AND WHEN YOU PACKAGED THAT YOU PLACED THAT
18 INTO EVIDENCE?

19 A YES, MA'AM.

20 Q AND THAT IS THE BULLET THAT YOU RETRIEVED
21 FROM THE AUTOPSY?

22 A IT APPEARS TO BE, YES.

23 Q AND DO YOU FORWARD THAT FOR PROCESSING AS
24 WELL?

25 A YES.

OFFICER MCSPADDEN - CROSS EXAMINATION BY MR. GALMORE 158

1 Q AND WHERE IS THAT FORWARDED TO?

2 A IT GOES TO SLED FOR THEIR FIREARMS

3 EXAMINER.

4 MS. ELDER: YOUR HONOR, AT THIS TIME THE STATE
5 WOULD MOVE STATE'S I.D. 16 INTO EVIDENCE.

6 MR. GALMORE: NO OBJECTION.

7 THE COURT: WITHOUT OBJECTION.

8 (WHEREUPON, STATE'S EXHIBIT NUMBER 16 ENTERED
9 INTO EVIDENCE.)

10 MS. ELDER: YOUR HONOR, THE STATE HAS NO FURTHER
11 QUESTIONS OF THIS WITNESS.

12 THE COURT: MR. GALMORE?

13 CROSS EXAMINATION

14 BY MR. GALMORE:

15 Q OFFICER MCSPADDEN, YOU INDICATED THAT, WELL
16 COULD YOU TELL US WHAT YOU RECOVERED AT THE RESIDENCE
17 AGAIN?

18 A OKAY, THE FIREARM, THREE UNFIRED 357
19 ROUNDS, TWO BOXES OF AMMUNITION, A WHITE PILLOW CASE, A
20 FAMILY DOLLAR BAG AND ALSO I LEFT OUT ONE DIGIT OF SCALE.

21 Q CAN YOU TELL US THE CALIBER OF THE BOXES OF
22 AMMUNITION?

23 A THEY WERE 22.

24 Q AND YOU COLLECTED THOSE?

25 A YES, SIR.

OFFICER MCSPADDEN - CROSS EXAMINATION BY MR. GALMORE 159

1 Q WHERE DID YOU COLLECT THOSE FROM AT THE
2 RESIDENCE?

3 A THEY WERE INSIDE THE SAME TRASH BAG AS THE
4 FIREARM IN A SEPARATE BAG IN THE BOTTOM BENEATH THE PILLOW
5 CASE.

6 Q IT'S A BAG WITHIN A BAG?

7 A YES, SIR.

8 Q SO ONE BAG INSIDE HAS THE FIREARM AND THEN
9 UNDER IT WAS THE AMMUNITION?

10 A RIGHT, THERE WAS A TRASH BAG AND THEN
11 INSIDE THE TRASH BAG WAS A BAG, I BELIEVE IT WAS A WAL MART
12 BAG, THE PILLOW CASE WAS IN IT, UNDERNEATH THE PILLOW CASE
13 WAS ANOTHER BAG THAT HAD THE AMMUNITION.

14 Q NOW WHAT DID YOU DO WITH THOSE BOXES OF
15 AMMUNITION?

16 A I SECURED THEM, WELL WHEN I WENT BACK TO
17 THE CRIME SCENE LAB I PHOTOGRAPHED THEM IN MORE DETAIL AND
18 THEN SECURED THEM IN EVIDENCE AND THEY WERE SENT TO SLED AS
19 WELL.

20 Q SO WHEN WE LOOK AT STATE'S EXHIBIT NUMBER
21 14 --

22 MR. GALMORE: MAY I APPROACH, YOUR HONOR?

23 THE COURT: YES.

24 MR. GALMORE: (CONTINUING)

25 Q COULD YOU TELL US WHERE EXACTLY THE

OFFICER MCSPADDEN - CROSS EXAMINATION BY MR. GALMORE 160

1 AMMUNITION WAS LOCATED?

2 A UNDERNEATH THIS WHITE PILLOW CASE.

3 Q BUT IT WAS IN THIS TRASH CAN?

4 A YES.

5 Q ALONG WITH THE 22?

6 A YES, SIR.

7 Q AND ALL OF IT ALL TOGETHER WAS IN ONE BAG?

8 A YES, SIR.

9 Q DO YOU KNOW WHERE THOSE BOXES OF AMMUNITION
10 ARE TODAY?

11 A NO, SIR, I DON'T.

12 Q COULD YOU IDENTIFY THEM IF YOU SAW THEM?

13 A YES, SIR.

14 Q YOU COLLECTED TWO BOXES OF AMMUNITION,
15 CORRECT?

16 A YES, SIR.

17 Q WHAT TYPES OF AMMUNITION DID YOU COLLECT?

18 A ONE BOX WAS MARKED FEDERAL AND IT WAS RED
19 AND BLACK AND THE OTHER BOX WAS CLEAR AND IT CONTAINED
20 SEVERAL DIFFERENT TYPES OF AMMUNITION. SOME ARE FEDERAL
21 AND I BELIEVE THERE WERE TWO OR THREE OTHER BRANDS MIXED IN
22 AS WELL.

23 Q BUT YOU DIDN'T BRING THOSE BOXES OF
24 AMMUNITION WITH YOU TO COURT TODAY?

25 A NO, SIR.

OFFICER MCSPADDEN - CROSS EXAMINATION BY MR. GALMORE 161

1 Q DO YOU KNOW IF ANY OTHER OFFICERS BROUGHT
2 THOSE BOXES OF AMMUNITION WITH THEM TO COURT?

3 A I DON'T KNOW.

4 Q WERE YOU ASKED TO BRING THOSE BOXES OF
5 AMMUNITION?

6 A NO, SIR.

7 Q HOW MANY BULLETS WERE IN THOSE TWO BOXES OF
8 AMMUNITION?

9 A I'LL HAVE TO COUNT THEM, MAY I HAVE JUST A
10 MOMENT?

11 Q YES?

12 A 47 ROUNDS IN THE SMALLER BOX, 125 OR 6 IN
13 THE SECOND BOX.

14 Q YOU'D SAY AT LEAST 150 ROUNDS OF 22 CALIBER
15 AMMUNITION?

16 A YES, SIR.

17 Q YOU INDICATED THAT YOU RECEIVED ITEM NUMBER
18 16 DIRECTLY FROM DR. PROCTOR'S AUTOPSY?

19 A YES, SIR, OFFICER MCCLELLAND AND I WORKED
20 IT TOGETHER AND --

21 Q AND WHAT IS ITEM NUMBER 16?

22 A ITEM NUMBER 16 IS THE BULLET RECOVERED FROM
23 THE BODY OF THE VICTIM.

24 Q CAN YOU TELL US WHAT CALIBER THAT BULLET
25 IS?

OFFICER MCSPADDEN - REDIRECT EXAMINATION BY MS. ELDER 162

1 A I CANNOT.

2 Q YOU HAVEN'T BEEN TRAINED IN RECOGNIZING
3 CALIBER AMMUNITION?

4 A I CAN TELL THAT IT IS A SMALL CALIBER BUT I
5 CANNOT TELL YOU THE DIFFERENCE BETWEEN A 22 AND A 25 BY
6 LOOKING AT IT.

7 Q OKAY, YOU INDICATED THAT YOU SWABBED THE
8 25, 22 CALIBER REVOLVER ---

9 A YES.

10 Q --- IS THAT CORRECT?

11 A YES, SIR.

12 Q WHY DID YOU DO THAT?

13 A TO COLLECT ANY DNA EVIDENCE THAT MAY HAVE
14 BEEN LEFT BEHIND, TOUCH DNA FROM THE TRIGGER AND THE GRIP.

15 Q AND WHAT DID YOU DO WITH THOSE SWABS?

16 A THEY WERE SENT TO SLED AS WELL.

17 Q AND WHAT DID SLED DO WITH THOSE SWABS?

18 A THEY TEST THEM FOR DNA.

19 Q DID YOU RECEIVE A REPORT AS A RESULT OF
20 SENDING THOSE SWABS TO SLED?

21 A I HAVE SEEN A REPORT, YES, SIR.

22 Q DOES THE REPORT INDICATE THAT THERE WAS ANY
23 DNA THAT MATCHED ANY PARTICULAR INDIVIDUAL?

24 A NONE.

25 Q DID THE REPORT INDICATE THAT THERE WAS ANY

OFFICER MCSPADDEN - REDIRECT EXAMINATION BY MS. ELDER 163

1 DNA ON THAT REVOLVER THAT MATCHED KEION GRIFFIN?

2 A NO, SIR.

3 Q DID YOU DUST THE REVOLVER FOR PRINTS?

4 A NO, SIR.

5 Q DID ANYONE ELSE DUST THE REVOLVER?

6 A NO, SIR, UNLESS SLED DID AND I'M NOT AWARE
7 OF THAT.

8 Q SO TO YOUR KNOWLEDGE DOES THAT REVOLVER
9 CONTAIN ANY FINGERPRINTS BELONGING TO KEION GRIFFIN?

10 A NO, SIR.

11 MR. GALMORE: THE COURT'S INDULGENCE, YOUR
12 HONOR.

13 Q WHAT WAS THE ADDRESS OF THE LOCATION WHERE
14 YOU WENT TO EXECUTE THE SEARCH WARRANT?

15 A 306 LIONS COVE DRIVE.

16 Q AND DO YOU KNOW WHO LIVES AT THAT
17 RESIDENCE?

18 A NO, SIR.

19 MR. GALMORE: THANK YOU, NO FURTHER QUESTIONS.

20 THE COURT: MS. ELDER?

21 REDIRECT EXAMINATION

22 BY MS. ELDER:

23 Q IN RESPONSE TO MR. GALMORE'S QUESTION THERE
24 WAS NO DNA RETRIEVED TO MATCH ANYBODY'S; IS THAT CORRECT?

25 A AS FAR AS I KNOW.

OFFICER MCCORKLE - DIRECT EXAMINATION BY MS. ELDER 164

1 Q THEY WERE NOT ABLE TO PROCESS IT?

2 A RIGHT.

3 MS. ELDER: NO FURTHER QUESTIONS, YOUR HONOR.

4 THE COURT: MR. GALMORE?

5 MR. GALMORE: NOTHING FURTHER, YOUR HONOR.

6 MS. ELDER: WE WOULD ASK THAT THIS WITNESS BE
7 EXCUSED, YOUR HONOR.

8 THE COURT: YOU MAY STEP DOWN, ANY OBJECTION TO
9 EXCUSING THE WITNESS?

10 MR. GALMORE: NO, SIR.

11 THE COURT: ALL RIGHT, YOU'RE RELEASED FROM YOUR
12 SUBPOENA.

13 A THANK YOU.

14 MS. ELDER: YOUR HONOR, AT THIS TIME THE STATE
15 WOULD CALL OFFICER DEBRA MCCORKLE.

16 THE COURT: MS. MCCORKLE, PLEASE COME AROUND AND
17 BE SWORN.

18 DEBRA MCCORKLE

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
21 SPELL YOUR LAST NAME FOR THE COURT.

22 THE WITNESS: DEBRA ANN MCCORKLE, -C-C-O-R-K-L-
23 E.

24 DIRECT EXAMINATION

25 BY MS. ELDER:

OFFICER MCCORKLE - DIRECT EXAMINATION BY MS. ELDER

165

1 Q OFFICER MCCORKLE, WHERE ARE YOU EMPLOYED?

2 A FOR MYRTLE BEACH POLICE DEPARTMENT.

3 Q IN WHAT CAPACITY?

4 A AS LIEUTENANT.

5 Q AND WERE YOU WORKING FOR MYRTLE BEACH
6 POLICE DEPARTMENT MAY 25TH, 2008?

7 A YES, I WAS.

8 Q AND WHAT WERE YOU DOING AT THAT TIME?

9 A I WAS WATERFRONT LIEUTENANT WORKING 12 HOUR
10 DAYS.

11 Q AND WHAT WERE SOME OF YOUR GENERAL
12 OBLIGATIONS AND DUTIES AS LIEUTENANT?

13 A AS A LIEUTENANT YOU ARE MANAGING PEOPLE,
14 ASSIGNMENTS, MAKING SURE THAT THE OFFICERS ARE SAFE, THAT
15 THEY ARE FULFILLING THEIR DUTIES.

16 Q AND DID YOU HAVE AN OCCASION, DO YOU DRIVE
17 A MARKED CAR OR AN UNMARKED CAR?

18 A UNMARKED.

19 Q AND MAY 25TH, 2008, WAS THAT MEMORIAL
20 WEEKEND?

21 A YES, IT WAS.

22 Q AND WERE YOU OUT DRIVING AT THAT POINT?

23 A YES.

24 Q ALL RIGHT, AND WHEN YOU'RE OUT DO YOU
25 LISTEN TO RADIO TRAFFIC?

OFFICER MCCORKLE - DIRECT EXAMINATION BY MS. ELDER

166

1 A YES, I DO.

2 Q AND DID YOU HEAR SOMETHING ON THE RADIO
3 ABOUT A SHOOTING IN THE AREA OF 3RD AVENUE NORTH?

4 A YES, I DID, I WAS AT THE MAIN STATION AT
5 THE TIME THE CALL WENT OUT.

6 Q AND WHERE IS THE MAIN STATION LOCATED?

7 A 1101 OAK STREET.

8 Q IS THAT, IN WHAT VICINITY IS THAT TO THE
9 INCIDENT LOCATION?

10 A IT'S AT 11TH AVENUE NORTH, THE INCIDENT
11 LOCATION WAS 3RD AVENUE NORTH.

12 Q SO NOT, NOT A BIG DIFFERENCE?

13 A NO, IT'S ABOUT MAYBE A THREE OR FOUR MINUTE
14 DRIVE.

15 Q OKAY, AND WHAT DID YOU DO WHEN YOU HEARD
16 THAT INCIDENT GO OUT OVER THE RADIO?

17 A I IMMEDIATELY GOT IN MY VEHICLE AND
18 PROCEEDED TO THAT LOCATION AND WAS SCANNING THE AREA IF
19 INDEED THAT I COULD ACTUALLY LOCATE THE SUSPECTS BEING THAT
20 THE INFORMATION WENT OUT INITIALLY THAT THE SUSPECTS WERE
21 TWO BLACK MALES IN WHITE TEE SHIRTS.

22 Q AND DID YOU COME UPON TWO BLACK MALES IN
23 TEE SHIRTS THAT DREW YOUR ATTENTION?

24 A YES, I DID.

25 Q AND TELL ME ABOUT THAT?

OFFICER MCCORKLE - DIRECT EXAMINATION BY MS. ELDER

167

1 A I WAS AT THE STOP SIGN AT KINGS HIGHWAY AND
2 6TH AVENUE NORTH WHICH IS RIGHT BESIDE THE POST OFFICE AND
3 I HAD PULLED UP THERE, TRAFFIC WAS TOTALLY GRIDLOCKED,
4 ACTUALLY I'D SEEN SOME SUBJECTS BEFOREHAND HOWEVER THEY
5 DIDN'T FIT THE DESCRIPTION, AND AS I SCANNED TO THE LEFT
6 AND RIGHT THE TRAFFIC WAS COMPLETELY STOPPED, YOU COULDN'T
7 GET ACROSS, HOWEVER I SAW THREE BLACK MALES ACROSS THE
8 STREET WAS IN FRONT OF THE SAVE MART AND THEY APPEARED TO
9 BE WALKING A LITTLE FASTER THAN EVERYONE ELSE AND JUST MY
10 INSTINCTS FOCUSED ON THEM. I WISH I COULD REMEMBER WHY,
11 BUT I, I FOCUSED ON THEM. THERE WAS A SEA OF BLACK MALES
12 WITH WHITE TEE SHIRTS TO THE LEFT TO THE RIGHT, HOWEVER I
13 TURNED ON MY BLUE LIGHTS AT THAT TIME AND THEN PROCEEDED TO
14 GET THROUGH TRAFFIC TO THOSE THREE SUBJECTS.

15 Q AND WHILE YOU WERE WATCHING THESE THREE
16 SUBJECTS DID YOU SEE ANYTHING HAPPEN AT THAT POINT BETWEEN
17 THE THREE OF THEM?

18 A AS WELL AS I REMEMBER THEY, THEIR BODY
19 MOVEMENTS THEY TURNED TO THE, THE LAST BLACK MALE WHO WAS
20 WEARING ALL BLACK AND THERE WAS SOME MOVEMENT THERE AND
21 THEN THEY CONTINUED NORTH ON THE SIDEWALK.

22 Q AND WHAT DID, WHAT HAPPENED TO THE MALE
23 THAT WAS IN THE BLACK, ALL BLACK?

24 A ACTUALLY I STOPPED THEM AT, IN FRONT OF
25 GRANDMA'S KITCHEN WHICH IS RIGHT AT, EXCUSE ME, 7TH AVENUE

OFFICER MCCORKLE - DIRECT EXAMINATION BY MS. ELDER 168

1 NORTH AND GOT OUT WITH THOSE SUBJECTS. AS I HAD STOPPED MY
2 VEHICLE ANOTHER VEHICLE PULLED IN BEHIND ME AND HAD STOPPED
3 WHICH I ALERTED TO THAT BEING THAT, YOU KNOW, USUALLY
4 PEOPLE WILL GO AROUND YOU. I GOT OUT, I LOOKED UP ON 7TH
5 AVENUE NORTH THERE WAS ANOTHER POLICE CAR STOPPED WITH BLUE
6 LIGHTS TALKING TO A BLACK MALE WITH A WHITE TEE SHIRT AND
7 THERE WERE BLACK MALES WALKING IN FRONT OF THE THREE
8 SUBJECTS THAT I HAD STOPPED. AT THAT TIME THE ONLY
9 DESCRIPTION I HAD WAS TWO BLACK MALES WITH WHITE TEE
10 SHIRTS.

11 Q DID THE BLACK, DID YOU SEARCH THE BLACK,
12 THE MALE IN THE BLACK TEE SHIRT?

13 A NO, I DID NOT.

14 Q WHAT HAPPENED TO HIM?

15 A ACTUALLY THE CAR THAT HAD PARKED IN BEHIND
16 ME A LADY GOT OUT AND ALSO THE SUBJECTS I WAS SPEAKING WITH
17 SAID THAT HIS MOM IS HERE TO PICK HIM UP AND SHE GOT OUT
18 AND YELLED TO ME, I'M HERE TO PICK UP MY SON. SHE WAS
19 LIKE, SHE OPENED UP HER DOOR AND WAS STANDING APEX OF HER
20 DOOR AND YELLED AND I WAS VERY CONCERNED BECAUSE THEY ALL
21 WERE VERY, VERY YOUNG AND THAT WAS LIKE AT 3:48 IN THE
22 MORNING WHEN THE CALL WENT OUT, THAT'S VERY LATE. SO I
23 SAID, OKAY, GO AHEAD AND GET IN THE CAR WITH YOUR MOM, SO
24 HE PROCEEDED TO GET IN THE CAR AND THAT'S THE LAST I SAW.

25 Q AND THE TWO MALES IN THE WHITE TEE SHIRTS

OFFICER MCCORKLE - DIRECT EXAMINATION BY MS. ELDER

169

1 WHAT DID YOU DO WITH THEM?

2 A I ASKED THEM QUESTIONS. I ASKED THEM WHERE
3 THEY WERE COMING FROM AND THE BLACK MALE ON THE LEFT SAID
4 FROM THE BOULEVARD. HE DID MOST OF THE TALKING. IF I CAN
5 REMEMBER THEY, I SAID WELL WHERE ARE YOU HEADED, WHERE ARE
6 YOU FROM AND THEY POINTED OVER TO THE WEST SO THAT WAS WEST
7 OF KINGS HIGHWAY. THEY, THEY SAID THAT I HAVE NOTHING TO
8 HIDE, I REMEMBER THAT, AND BEING THAT IT WAS A VERY
9 CRITICAL TIME THAT INFORMATION WAS GOING ACROSS THE RADIO,
10 I DIDN'T CALL IN THE STOP, HOWEVER I COULD SEE ANOTHER
11 OFFICER OVER THE WAY AND SO I SAID BEING THAT YOU'RE IN THE
12 VICINITY I LET THEM KNOW THAT THERE HAD BEEN A SHOOTING AT
13 SUPPOSEDLY 3RD AVENUE NORTH AND SINCE THEY WERE IN CLOSE
14 PROXIMITY THAT I WANTED TO PAT THEM DOWN FOR WEAPONS.

15 Q AND DID YOU PAT THE TWO MALES IN THE WHITE
16 TEE SHIRTS DOWN?

17 A YES, I DID.

18 Q AND YOU DIDN'T FIND ANYTHING?

19 A NO, I DIDN'T.

20 Q NOW TELL ME ABOUT THE TWO BLACK MALES THAT
21 WERE IN FRONT OF YOU AT THAT STOP. DO YOU REMEMBER,
22 OBVIOUSLY YOU SAID THEY WERE WEARING WHITE, BOTH OF THEM
23 WERE WHITE TEE SHIRTS?

24 A RIGHT.

25 Q DO YOU REMEMBER ANYTHING ABOUT THEIR HAIR?

OFFICER MCCORKLE - DIRECT EXAMINATION BY MS. ELDER 170

1 A I'M LIKE FIVE FOOT AND THEY WERE BOTH
2 TALLER THAN ME. THE ONE ON THE LEFT I REMEMBER ABOUT HIS
3 HAIR IS THAT AS HE SPOKE WITH ME HE WAS KIND OF LEANING
4 OVER LIKE THIS SO HIS HAIR WAS KIND OF WAVING LIKE THIS AS
5 HE TALKED TO ME, I REMEMBER THAT, AND THE SUBJECT ON THE
6 RIGHT HAD SHORTER LITTLE BRAIDS IN HIS HAIR.

7 Q OKAY, SO ONE OF THEM HAD LONGER HAIR?

8 A RIGHT.

9 Q DO YOU REMEMBER HOW IT WAS STYLED?

10 A IT WAS BRAIDED VERY CLOSE. IT HAD HOWEVER
11 AS I REMEMBER IT JUST KIND OF WAVED BACK AND FORTH AND
12 DREADS, I GUESS.

13 Q OKAY, AND WHICH ONE DID YOU SAY WAS DOING
14 MOST OF THE TALKING THE ONE WITH THE LONGER BRAIDS OR THE
15 ONE WITH THE LITTLE SHORT ONES?

16 A THE ONE WITH THE LONGER BRAIDS.

17 Q AND DO YOU RECALL ABOUT HOW TALL THESE TWO
18 INDIVIDUALS WERE?

19 A THE ONE ON THE LEFT WAS TALLER THAN THE ONE
20 ON THE RIGHT. IF I CAN REMEMBER CORRECTLY THEY WERE, THEY
21 KIND OF LEANED OVER TO SPEAK WITH ME BECAUSE OF OUR HEIGHT
22 DIFFERENCE AND IT WAS NOISY AS WELL. IF I CAN REMEMBER IT
23 WAS ON THE LEFT WAS LIKE FIVE NINE AND THE ONE ON THE RIGHT
24 WAS MAYBE AN INCH SHORTER SO FIVE EIGHT.

25 Q THEY WERE, WERE THEY SKINNY, FAT?

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 171

1 A VERY THIN.

2 Q AND THE COMPLEXION?

3 A THE ONE ON THE LEFT WAS LIGHT COMPLETED
4 AND IF I REMEMBER CORRECTLY THEY BOTH WERE LIGHT COMPLETED
5 BUT THE ONE ON THE RIGHT WAS DARKER THAN THE ONE ON THE
6 LEFT.

7 Q AND THE ONE ON THE LEFT IS THE DARK, THE
8 LONGER HAIR ONE?

9 A CORRECT.

10 Q AND AFTER YOU ALLOWED THESE TWO INDIVIDUALS
11 TO GO DID YOU COME TO FIND OUT THAT THESE TWO INDIVIDUALS
12 WERE IDENTIFIED AS DEMARIO STUKES AND KEION GRIFFIN?

13 A YES.

14 MS. ELDER: I HAVE NO OTHER QUESTIONS, YOUR
15 HONOR.

16 THE COURT: MR. GALMORE?

17 CROSS EXAMINATION

18 BY MR. GALMORE:

19 Q OFFICER MCCORKLE, DID YOU LOCATE ANY
20 FIREARMS ON EITHER OF THESE YOUNG MEN?

21 A NO, I DID NOT.

22 Q DID YOU LOCATE ANY BULLETS ON EITHER OF
23 THEM?

24 A NO, I DID NOT.

25 Q DID YOU STOP ANY OTHER PEOPLE THAT NIGHT?

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 172

1 A NO, I, AFTER THAT I WENT STRAIGHT TO THE
2 SCENE.

3 Q AND YOU SAID THAT OTHER OFFICERS WERE
4 STOPPING OTHER BLACK MALES WITH WHITE TEE SHIRTS; IS THAT
5 CORRECT?

6 A I DID SEE ONE.

7 Q AND YOU DESCRIBED IT I THINK DURING THE
8 DIRECT EXAMINATION AS A SEA OF BLACK MALES WITH WHITE TEE
9 SHIRTS; IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q WHEN YOU SAY SEA HOW MANY WOULD YOU
12 ESTIMATE DID YOU SEE?

13 A OH, GOODNESS, I WOULD SAY AT LEAST MAYBE 30
14 GOING NORTH AND, AND THE PEOPLE ON THE SIDEWALK THAT WERE
15 WALKING NORTH THAT WAS ON THE EAST SIDE OF KINGS HIGHWAY.

16 Q DID YOU SEE ANY ON THE WEST SIDE?

17 A VERY FEW.

18 Q DID YOU SEE ANY PEOPLE WALKING SOUTH ON THE
19 EAST SIDE OF KINGS HIGHWAY?

20 A YES.

21 Q SOME OF THEM HAD ON WHITE TEE SHIRTS ALSO?

22 A YES.

23 Q SO IT WOULD BE FAIR TO SAY YOU SAW A
24 SIGNIFICANT NUMBER OF BLACK MALES WITH WHITE TEE SHIRTS?

25 A CORRECT.

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 173

1 Q NOW THESE TWO THAT YOU STOPPED DID YOU
2 WRITE THEIR NAMES DOWN?

3 A NO, I DID NOT, THERE WERE THREE THAT I
4 STOPPED.

5 Q THERE WERE THREE, DID YOU TAKE ANY PICTURES
6 OF THEM?

7 A NO, IT WAS VERY QUICK INTERVIEW.

8 Q DID YOU GET ANY IDENTIFYING INFORMATION?

9 A NO.

10 Q YOU DIDN'T ASK THEM THEIR NAMES?

11 A NO, I DID NOT.

12 Q YOU SAID THAT YOU SUBSEQUENTLY LEARNED
13 ABOUT KEION GRIFFIN AND DEMARIO STUKES, DID YOU WRITE A
14 REPORT AFTER YOU SUBSEQUENTLY LEARNED THESE TWO NAMES?

15 A YES, I DID.

16 Q YOU DID?

17 A UH-HUH.

18 MR. GALMORE: YOUR HONOR, MAY WE TAKE UP A
19 MATTER OUTSIDE OF THE PRESENCE OF THE JURY?

20 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF
21 THE JURY, I'M GOING TO ASK YOU TO RETURN TO YOUR JURY ROOM
22 FOR JUST A FEW MINUTES WHILE I TAKE UP A MATTER OF LAW.

23 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
24 9:30 A.M. AND THE FOLLOWING TAKES PLACE ON THE RECORD.)

25 MR. GALMORE: I NEED TO TAKE A BRIEF RECESS JUST

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 174

1 TO VERIFY WHETHER OR NOT I HAVE THAT REPORT.

2 THE COURT: THANK YOU, GO AHEAD.

3 MR. GALMORE: I DO NOT HAVE A COPY OF OFFICER
4 MCCORKLE'S REPORT. IT'S ONE OF THE DISCOVERY MATTERS THAT
5 WE HAD DISCUSSED PREVIOUSLY PRIOR TO TRIAL. WE WOULD ASK
6 THE COURT TO MAKE A MISTRIAL IN THIS CASE OR IN THE
7 ALTERNATIVE TO STRIKE HER TESTIMONY. I CANNOT SAY THAT I
8 HAVE A COPY OF THIS REPORT. I'VE ASKED MS. KNOWLES AND
9 I'VE ASKED MY CLIENT AND NEITHER ONE OF THEM HAVE A COPY OF
10 THIS REPORT AS WELL.

11 THE COURT: WHAT ABOUT THE REPORT?

12 MS. ELDER: YOUR HONOR, IT'S, IT'S ABOUT A PAGE
13 AND A QUARTER. IT'S ON A WHAT WE WOULD CALL A UCR INCIDENT
14 REPORT. IT'S NOT IN THE FORMAT OF A REPORT AS A DETECTIVE
15 WOULD DO. MR., I HAVE SENT EVERY UCR THAT I HAVE IN HERE
16 TO MR. GALMORE. I NOT ONLY DID THAT BUT I HAD HIM IN MY
17 OFFICE AND SAID, HERE, LOOK THROUGH AND HE SAID, I'VE GOT
18 ALL OF IT.

19 THE COURT: ALL RIGHT, THIS IS WHAT I'M GOING TO
20 DO. I'M GOING TO, MS. ELDER, I WANT YOU TO GIVE HIM A COPY
21 OF IT. MR. GALMORE, I WILL ALLOW YOU TO ADJOURN YOUR CROSS
22 EXAMINATION AT THIS TIME. I WILL ALLOW YOU AFTER THE LUNCH
23 HOUR OR WHENEVER YOU PREFER TO RECALL THIS WITNESS WITHOUT
24 PREJUDICING YOUR RIGHT TO TAKE THE LAST ARGUMENT SHOULD YOU
25 NOT CHOOSE TO PUT UP ANY EVIDENCE. I WANT THAT VERY CLEAR,

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 175

1 MS. ELDER, HE IS NOT CALLING THE WITNESS. YOU'VE CALLED
2 THE WITNESS, I WILL ALLOW HIM TO PUT THE WITNESS BACK ON
3 THE WITNESS STAND DURING THE STATE'S CASE IN CHIEF.

4 MS. ELDER: I UNDERSTAND, YOUR HONOR, AND HE, HE
5 ALREADY ACTUALLY HAS, IN SUBMITTED EVIDENCE HE'S ALREADY,
6 THAT'S ALREADY ---

7 THE COURT: IS THAT WHAT YOU WANT TO DO, MR.
8 GALMORE?

9 MS. ELDER: THAT'S ALREADY A MOOT POINT.

10 THE COURT: I KNOW THAT'S NOT WHAT YOU WANT TO
11 DO, IS THAT, WOULD YOU LIKE TO CALL HER BACK, I'VE GIVEN
12 YOU THE OPTION. YOU CAN. I'LL GIVE YOU A FEW MINUTES TO
13 LOOK OVER THE REPORT OR I WILL LET YOU HAVE THE OPTION OF
14 BRINGING THIS WITNESS BACK WITH NO PREJUDICE TO YOU, IT
15 WILL NOT BE YOUR WITNESS; DO YOU UNDERSTAND?

16 MR. GALMORE: YES, SIR, I WOULD LIKE TO HAVE A
17 FEW MINUTES TO REVIEW THE REPORT AND REPORT BACK TO THE
18 COURT.

19 THE COURT: ALL RIGHT, LET'S TAKE ABOUT, YOU
20 NEED TEN MINUTES WOULD BE SUFFICIENT ---

21 MR. GALMORE: YES, SIR.

22 THE COURT: --- FOR YOU TO DO THAT I WOULD
23 THINK SO. ALL RIGHT, WE'RE AT EASE FOR TEN MINUTES.

24 MR. GALMORE: THANK YOU, YOUR HONOR.

25 MS. ELDER: THANK YOU, YOUR HONOR.

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 176

1 (WHEREUPON, A RECESS WAS TAKEN AND STATE'S
2 EXHIBIT 17 MARKED FOR IDENTIFICATION.)

3 THE COURT: WOULD YA'LL LIKE TO PLACE ANYTHING
4 ON THE RECORD?

5 MR. GALMORE: YOUR HONOR, FOR THE RECORD I WOULD
6 AGAIN REITERATE OUR MOTION FOR A MISTRIAL OR IN THE
7 ALTERNATIVE OUR MOTION TO STRIKE THE WITNESS' TESTIMONY.
8 SPECIFICALLY WE HAD A MOTION FOR A CONTINUANCE BASED ON
9 DISCOVERY, WHAT I FELT WERE DISCOVERY VIOLATIONS, THE COURT
10 DENIED THAT AND FURTHERMORE THE COURT SPECIFICALLY
11 SUSPENDED ANY DISCOVERY AT THURSDAY AT 5 P.M. AND HERE WE
12 ARE THE FOLLOWING TUESDAY AND WE ARE STILL RECEIVING
13 DOCUMENTS IN THIS CASE, THEREFORE, I WOULD MOVE FOR A
14 MISTRIAL OR IN THE ALTERNATIVE MOVE TO HAVE THIS WITNESS'
15 TESTIMONY STRICKEN.

16 THE COURT: NO QUESTION YOU HAD LT. MCCORKLE'S
17 NAME, THOUGH, DID YOU NOT?

18 MR. GALMORE: I DON'T THINK HER NAME IS ON ANY
19 OF THESE OTHER REPORTS, YOUR HONOR. I CAN CHECK AND MAKE
20 SURE BUT -- I HAVE REPORTS FROM INVESTIGATOR MARK JACKSON,
21 OFFICER TRAVIS PRESTON, OFFICER JEFFREY THOMAS, OFFICER
22 JAMES VARN, INVESTIGATOR JOSEPH CROSBY, DAVID BELLOU,
23 WILLIAM MEW, RYAN HAGGAR, LEONARD SLOAN, MICHELLE MARSH,
24 SPENCER CLARK, GARY CALQUART, PETER SCHMIDT, RODNEY KACEYA,
25 AND THOSE ARE ALL OF THE, I'M NOT SURE WHAT THEY CALL THESE

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 177

1 PARTICULAR INCIDENT REPORTS BUT THOSE ARE THE ONLY ONES
2 THAT I HAVE.

3 THE COURT: INVESTIGATIVE REPORTS.

4 MR. GALMORE: INVESTIGATIVE REPORTS, YES, SIR.

5 THE COURT: ALL RIGHT, LET ME, LET ME ASK YOU
6 THIS, YOU HAD AN OPPORTUNITY TO REVIEW THIS AND I'VE HEARD
7 THIS WITNESS' TESTIMONY IN WHAT WAY ARE YOU PREJUDICED?
8 RULE 5 GRANTS ME BROAD DISCRETION ---

9 MR. GALMORE: YES, SIR.

10 THE COURT: --- AS TO WHAT I DO WITH THIS AND I
11 WANT TO KNOW WHAT YOU HAVE DISCOVERED IN YOUR REVIEW OF
12 THIS THAT WOULD, HER TESTIMONY HAS BEEN SOMEWHAT INNOCUOUS
13 IN MY VIEW AND I WANT YOU TO TELL ME WHAT YOU HAVE
14 DISCOVERED IN THAT REPORT THAT WOULD TAKE YOU BY SURPRISE
15 OR WOULD BE PREJUDICIAL TO YOUR CLIENT?

16 MR. GALMORE: THERE'S NOTHING THAT TAKES ME BY
17 SURPRISE EXCEPT THE FACT THAT I DIDN'T HAVE IT.

18 THE COURT: THAT'S IT?

19 MR. GALMORE: YES, SIR.

20 THE COURT: OKAY, ALL RIGHT, I'M NOT GOING TO
21 GRANT YOU A MISTRIAL. WHAT I'M GOING TO DO IS AGAIN I WILL
22 ALLOW YOU, EVEN THOUGH YOU TELL YOU'VE HAD AN ADEQUATE
23 OPPORTUNITY TO REVIEW IT AND YOU WERE NOT TAKEN BY SURPRISE
24 I WILL STILL ALLOW YOU DURING THE STATE'S CASE IN CHIEF AT
25 ANY TIME THE RECALL THIS WITNESS. I WILL NOT EXCUSE THIS

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 178

1 WITNESS. I WILL KEEP HER HERE DURING THE STATE'S CASE.

2 MS. ELDER, THAT MAY BE INCONVENIENCE TO YOUR OFFICER BUT I

3 ---

4 MR. GALMORE: YOUR HONOR ---

5 THE COURT: --- BELIEVE IT WOULD BE THE
6 APPROPRIATE THING TO DO AND IT WILL NOT PREJUDICE YOU AS
7 FAR AS YOUR, WHETHER OR NOT YOU HAVE CALLED A WITNESS IF
8 YOU ARE PRESERVING THE LAST ARGUMENT BY NOT PUTTING UP
9 ANYONE IF YOU CHOOSE TO DO THAT.

10 MR. GALMORE: YOUR HONOR, WE, WE CAN GO FORWARD
11 AND CONTINUE OUR CROSS EXAMINATION.

12 THE COURT: ALL RIGHT, LET'S GO ---

13 MS. ELDER: AND, YOUR HONOR, IF I CAN JUST TO
14 MAKE SURE THAT WE'VE GOT IT ON THE RECORD INVESTIGATOR MIKE
15 HULL IN HIS CASE REPORT HE DOES IDENTIFY LT. MCCORKLE BY
16 NAME AS SHE BEING THE FEMALE OFFICER WHO STOPPED THE
17 SUSPECTS ACROSS FROM THE POST OFFICE THAT EVENING SO THAT
18 WAS IN THERE AND AS FAR AS, I UNDERSTAND THE COURT'S RULING
19 ABOUT LAST CLOSE, MR. GALMORE HAS ALREADY INTRODUCED
20 EVIDENCE THAT IS, THAT OBVIOUSLY ---

21 THE COURT: WHAT EVIDENCE HAS HE INTRODUCED?

22 MS. ELDER: HE INTRODUCED THE PROFFER, YOUR
23 HONOR, IN THE STATE'S CASE WHEN QUESTIONING DARIUS PRIEST.
24 HE INTRODUCED THAT INTO EVIDENCE, IT WAS MARKED.

25 MR. GALMORE: THAT'S CORRECT.

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 179

1 THE COURT: I'M SORRY, MR. GALMORE, I HAD FAILED
2 TO NOTE THAT. I DID NOT KNOW THAT YOU HAD OFFERED ANY
3 EVIDENCE BUT IT APPEARS THAT YOU HAVE DONE SO. ALL RIGHT,
4 I'M GOING TO ALLOW YOU TO CONTINUE. I WILL STILL ALLOW YOU
5 TO RECALL THIS WITNESS. OF COURSE YOU HAVE THAT RIGHT
6 ANYWAY SOMEWHAT DISCRETIONARY ON MY PART BUT I WILL ALLOW
7 YOU TO RECALL HER SHOULD YOU DECIDE EITHER IN YOUR CASE OR
8 BEFORE THE STATE RESTS TO RECALL HER, OKAY.

9 MR. GALMORE: YES, SIR, WE CAN CONTINUE WITH THE
10 CROSS EXAMINATION.

11 THE COURT: ALL RIGHT, LIEUTENANT MCCORKLE, IF
12 YOU WOULD, PLEASE TAKE THE STAND AGAIN YOU ARE STILL UNDER
13 OATH.

14 MR. GALMORE. BRING IN THE JURY.

15 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
16 9:53 A.M.)

17 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 2 MARKED
18 FOR IDENTIFICATION.)

19 THE COURT: ALL RIGHT, WE HAVE THE JURY BACK
20 IN THE BOX, MR. GALMORE, YOU MAY PROCEED.

21 MR. GALMORE: (CONTINUING CROSS EXAMINATION)

22 Q OFFICER MCCORKLE, LET ME HAND YOU WHAT'S
23 BEEN MARKED FOR IDENTIFICATION PURPOSES AS DEFENSE EXHIBIT
24 NUMBER 2 AND ASK YOU IF YOU RECOGNIZE THIS DOCUMENT?

25 A YES, I DO.

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE

180

1 Q AND WHAT IS THAT, MA'AM?

2 A THIS IS A SUPPLEMENTAL REPORT.

3 Q AND WHO FILED THAT?

4 A I DID.

5 Q SO THIS IS THE REPORT THAT YOU WERE
6 REFERRING TO IN YOUR PREVIOUS TESTIMONY?

7 A YES.

8 Q COULD YOU DESCRIBE FOR THE JURY THE TWO
9 PERSONS THAT YOU SAW?

10 THE COURT: ARE YOU ASKING HER TO REFER TO HER
11 REPORT?

12 MR. GALMORE: NO, I'M ASKING HER FOR HER FROM
13 MEMORY.

14 THE COURT: OKAY, ALL RIGHT.

15 A OKAY, ACTUALLY I SAW THREE.

16 Q OKAY, CAN YOU DESCRIBE THE TWO THAT YOU
17 SAID YOU SAW?

18 A THE ONE ON THE LEFT HAD A WHITE TEE SHIRT
19 ON, BAGGY PANTS, LONG HAIR, VERY THIN, VERY YOUNG LOOKING
20 VERY THIN ARMS, LIGHT SKINNED.

21 THE ONE ON THE LEFT, AND I'LL REFER TO MY REPORT,
22 WAS FIVE NINE AND THE ONE ON THE RIGHT WAS FIVE EIGHT WITH
23 SHORTER HAIR, WITH LIGHT SKINNED AS WELL BUT DARKER THAN
24 THE ONE ON THE LEFT. HE ALSO HAD A WHITE TEE SHIRT ON. I
25 CAN'T REMEMBER IF IT HAD SLEEVES OR NOT BUT I DO KNOW THE

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 181

1 ONE ON THE LEFT DID HAVE SLEEVES AND HE HAD DARK PANTS ON
2 THAT WERE BAGGY.

3 Q OKAY, YOU SAY THE ONE ON THE LEFT IS THE
4 ONE THAT WAS TALKING TO YOU?

5 A YES.

6 Q AND WHICH ONE HAD THE LONG DREADS?

7 A THE ONE ON THE LEFT.

8 Q COULD YOU REFER TO YOUR REPORT AND TELL US
9 IF YOU MIGHT HAVE MISREMEMBERED THAT?

10 A FROM THAT I REMEMBER HIS HAIR WAS, WAS
11 CLOSE TO HIS HEAD AND AS I WAS STANDING THERE WITH THE ONE
12 ON THE LEFT HIS HAIR WAS KIND OF LIKE BLOWING AS THE WIND
13 WAS BLOWING AND I REMEMBER THE ONE ON THE RIGHT HAD SHORTER
14 DREAD LIKE HAIR.

15 Q DOESN'T THE REPORT SAY THAT THE ONE ON THE
16 RIGHT WAS APPROXIMATELY FIVE EIGHT WITH DREAD LOCK HAIR?

17 A YES.

18 Q BUT YOU'RE TESTIFYING THAT IT'S THE ONE ON
19 THE LEFT THAT HAD THE LONG FLOWING HAIR?

20 A YES, FROM MY MEMORY HE DID.

21 Q SO YOUR REPORT IS NOT CORRECT?

22 A IT IS CORRECT.

23 Q YOUR REPORT INDICATES THAT THE ONE ON THE
24 LEFT HAD HAIR CLOSE TO HIS HEAD?

25 A CORRECT.

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE

182

1 Q AND THE ONE ON THE RIGHT HAD DREAD LOCK
2 HAIR?

3 A SHORTER HAIR, YES.

4 Q WHICH ONE HAD LONG FLOWING HAIR?

5 A THE ONE ON THE LEFT.

6 Q YOUR REPORT SAYS THE ONE ON THE LEFT HAD
7 HAIR CLOSE TO HIS HEAD?

8 A RIGHT.

9 Q HOW COULD IT BE CLOSE TO HIS HEAD AND
10 FLOWING AT THE SAME TIME?

11 A IT WAS BRAIDED CLOSE TO HIS HEAD AND AS I
12 STOOD THERE I CAN REMEMBER IT WAS LONGER AND WE WERE FACE
13 TO FACE AND I JUST REMEMBER HIM STOOPING OVER AND IT WAS
14 LONGER FROM WHAT I REMEMBER.

15 Q OKAY, AND YOU SAY BOTH OF THEM HAD ON WHITE
16 TEE SHIRTS?

17 A YES.

18 Q DID THE TEE SHIRTS APPEAR TORN IN ANY WAY?

19 A NO, ACTUALLY THEY LOOKED NEW.

20 Q DID YOU SEE ANY DIRT ON THEM?

21 A NO.

22 Q DID YOU SEEN ANY BLOOD STAINS ON THEM?

23 A NO.

24 Q IF YOU HAD SEEN ANY BLOOD STAINS WOULD THAT
25 HAVE HEIGHTENED YOUR AWARENESS OF THESE INDIVIDUALS?

OFFICER MCCORKLE - CROSS EXAMINATION BY MR. GALMORE 183

1 A YES, ABSOLUTELY.

2 Q AND YOU SAID THE ONE ON THE LEFT KIND OF
3 LEANED IN AND TALKED TO YOU; IS THAT CORRECT?

4 A RIGHT. ACTUALLY THEY BOTH DID, THE ONE ON
5 THE RIGHT SORT OF LEANED TOWARDS ME, TOO.

6 Q DID YOU SEE ANY INJURIES ON EITHER OF THEM?

7 A NO.

8 Q DID YOU SEEN ANY BLOOD ON EITHER OF THEM?

9 A NO.

10 Q WHEN YOU SEARCHED THEM I ASSUME YOU PATTED
11 THEM DOWN FROM HEAD TO TOE?

12 A YES.

13 Q DID YOU SEE ANY INJURIES WHEN YOU CONDUCTED
14 YOUR SEARCH?

15 A NO.

16 Q IF YOU HAD SEEN ANY INJURIES WOULD YOU HAVE
17 PUT IT IN YOUR REPORT?

18 A YES.

19 Q IF YOU HAD SEEN ANY INJURIES WOULD THAT
20 HAVE HEIGHTENED YOUR ATTENTION TOWARDS THESE TWO
21 INDIVIDUALS?

22 A YES.

23 Q AND YOU SAID THOSE WERE THE ONLY TWO PEOPLE
24 YOU STOPPED THAT DAY?

25 A THREE PEOPLE.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

184

1 Q YES, THE ONLY THREE PEOPLE YOU STOPPED THAT
2 DAY?

3 A YES.

4 MR. GALMORE: THANK YOU.

5 A NOT, NOT THAT DAY ACTUALLY, RIGHT AFTER THE
6 SHOOTING INCIDENT AND THEN I WENT STRAIGHT TO THE INCIDENT.

7 Q THOSE WERE THE ONLY PEOPLE THAT FITTED THE
8 DESCRIPTION THAT YOU STOPPED, WOULD THAT FAIR TO SAY?

9 A NO, BECAUSE THERE WERE MANY PEOPLE THAT FIT
10 THAT DESCRIPTION AND I HAD VERY LITTLE INFORMATION BEING
11 THAT IT WAS TWO BLACK MALES WITH WHITE TEE SHIRTS.

12 Q BUT YOU ONLY STOPPED TWO BLACK MALES WITH
13 WHITE TEE SHIRTS OR DID YOU STOP MORE, YOU PERSONALLY?

14 A ME PERSONALLY I STOPPED THREE BLACK MALES,
15 TWO WITH WHITE TEE SHIRTS AND ONE WAS DRESSED IN ALL BLACK.

16 Q DID YOU HAVE AN OCCASION TO STOP ANY OTHER
17 PEOPLE IN WHITE TEE SHIRTS?

18 A NO, I DIDN'T.

19 MR. GALMORE: THANK YOU, NO FURTHER QUESTIONS.

20 THE COURT: MS. ELDER?

21 MS. ELDER: NO FURTHER QUESTIONS FROM THIS
22 WITNESS, YOUR HONOR.

23 THE COURT: ALL RIGHT, THE WITNESS MAY STEP
24 DOWN, I'LL ASK THE WITNESS TO REMAIN AVAILABLE.

25 MS. ELDER: YOUR HONOR, THE STATE WOULD CALL

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

185

1 DEMARIO STUKES.

2 DEMARIO STUKES

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
5 SPELL YOUR LAST NAME FOR THE COURT.

6 THE WITNESS: DEMARIO STUKES, S-T-U-K-E-S.

7 DIRECT EXAMINATION

8 BY MS. ELDER:

9 Q DEMARIO, WHERE DO YOU CURRENTLY RESIDE?

10 A COLUMBIA, SOUTH CAROLINA.

11 Q AND WHO DO YOU LIVE THERE WITH?

12 A MY MOTHER.

13 Q HOW OLD ARE YOU?

14 A NINETEEN OF AGE.

15 Q AND WHAT DO YOU DO?

16 A I WORK, GO TO SCHOOL.

17 Q WHERE DO YOU GO TO SCHOOL AT?

18 A THE GED PROGRAM IN EASTOVER, THE MAGIC
19 JOHNSON CENTER.

20 Q AND WHAT KIND OF WORK DO YOU DO?

21 A KFC, I WORK AT KFC.

22 Q ALL RIGHT, AND YOU CURRENTLY HAVE CHARGES
23 PENDING AGAINST YOU; IS THAT CORRECT?

24 A YES, MA'AM.

25 Q AND WHAT ARE THOSE CHARGES?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

186

1 A MURDER, MURDER AND GUN POSSESSION.

2 Q OKAY, ONE COUNT OF MURDER AND WEAPON DURING
3 A VIOLENT OFFENSE?

4 A YES, MA'AM.

5 Q AND YOU RECALL GIVING POLICE A STATEMENT
6 ABOUT WHAT YOU KNEW IN REGARDS TO AN INCIDENT THAT HAPPENED
7 MAY 25TH, 2008?

8 A CORRECT.

9 Q AND HOW MANY STATEMENTS DID YOU GIVE THEM?

10 A IT WAS TWO.

11 Q AND AT THE TIME THAT YOU GAVE YOUR
12 STATEMENTS TO POLICE HAD YOU TALKED TO ME?

13 A EXCUSE ME?

14 Q WHEN YOU GAVE YOUR STATEMENTS TO POLICE HAD
15 WE TALKED?

16 A NO, MA'AM.

17 Q DID AT SOME POINT IN TIME AFTER YOU GAVE
18 YOUR STATEMENTS TO POLICE DID YOU AND I AND YOUR LAWYER SIT
19 DOWN TOGETHER?

20 A I'M SORRY, YES, MA'AM, WE DID, I'M SORRY.

21 Q OKAY, AND WHEN WE SAT DOWN TOGETHER AFTER
22 YOU GAVE YOUR STATEMENT YOU ENTERED INTO AN AGREEMENT WITH
23 THE STATE; IS THAT RIGHT?

24 A CORRECT.

25 Q TO TESTIFY HERE TODAY; IS THAT CORRECT?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

187

1 A YES, MA'AM.

2 Q AND IN THAT AGREEMENT I DIDN'T PROMISE YOU,
3 DID I PROMISE YOU ANYTHING TO DO ANYTHING WITH YOUR
4 CHARGES?

5 A NO, MA'AM.

6 Q AND YOU STILL HAVE A PENDING MURDER WARRANT
7 AND A WEAPON IN THE COMMISSION OF A VIOLENT CRIME; IS THAT
8 CORRECT?

9 A YES, MA'AM.

10 Q DID I PROMISE YOU ANY SENTENCE OR REDUCTION
11 IN YOUR CHARGES?

12 A NO, MA'AM.

13 Q AND YOU WERE TO COME HERE TODAY TO TESTIFY?

14 A CORRECT.

15 Q AND I ASSUME YOU'RE DOING THIS TODAY,
16 TESTIFYING, ARE YOU HOPING TO GET SOME HELP ON YOUR CHARGES
17 FROM THE STATE?

18 A NO, NOT LOOKING FOR HELP BUT IT IS THE
19 RIGHT THING TO DO.

20 Q AND ACTUALLY YOU HAD ALREADY GIVEN YOUR
21 STATEMENTS TO THE POLICE WHEN WE MADE THIS AGREEMENT,
22 RIGHT?

23 A YES, MA'AM.

24 Q IN THAT AGREEMENT YOU'RE REQUIRED TO
25 TESTIFY TRUTHFULLY; IS THAT CORRECT?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

188

1 A YES, MA'AM.

2 Q WHAT HAPPENS IF YOU SHOW UP TODAY AND YOU
3 DON'T TELL THE TRUTH?

4 A IF I DON'T TELL THE TRUTH?

5 Q UH-HUH?

6 A PENALTY.

7 Q OKAY, THAT AGREEMENT GOES AWAY, DOESN'T IT?

8 A YES, MA'AM, IT DOES.

9 Q YOU'RE NOT GETTING ANY HELP ON ANYTHING; IS
10 THAT CORRECT?

11 A RIGHT.

12 Q ALL RIGHT, DEMARIO, TAKE ME BACK TO MAY
13 25TH, 2008, WERE YOU ON THE BOULEVARD?

14 A YES, MA'AM, I WAS.

15 Q WAS THAT MEMORIAL WEEKEND?

16 A YES, MA'AM.

17 Q WHAT WERE YOU DOING DOWN THERE?

18 A YOU KNOW WALKING THE BOULEVARD, IT WAS BIKE
19 WEEKEND, HANGING OUT WITH SOME FRIENDS.

20 Q WHO WERE YOU WITH THAT NIGHT?

21 A ME, KEION GRIFFIN, AND DARIUS.

22 Q AND HOW DID YOU KNOW KEION GRIFFIN?

23 A WENT TO SCHOOL TOGETHER.

24 Q HOW LONG HAD YOU KNOWN HIM PRIOR TO THAT
25 NIGHT?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

189

1 A ABOUT NOT A FULL YEAR BUT CLOSE TO A FULL
2 YEAR.

3 Q AND HOW ABOUT DARIUS PRIEST?

4 A I KNOW DARIUS PRIEST FROM SCHOOL FOR 7
5 MONTHS, 8 MONTHS TOPS.

6 Q OKAY, SO YOU'VE KNOWN THEM ABOUT THE SAME
7 TIME?

8 A JUST ABOUT.

9 Q WAS IT JUST YA'LL THREE ALL NIGHT LONG OR
10 DID YOU HAVE OTHER FRIENDS WITH YOU?

11 A THERE WAS OTHER PEOPLE WITH US AHEAD OF
12 TIME BUT AT THE END IT WAS JUST ME, HIM, AND DARIUS.

13 Q OKAY, AND DID YA'LL COME UPON 3RD AVENUE?

14 A YES, MA'AM, WE DID.

15 Q TELL ME WHAT HAPPENED WHEN YOU GOT TO 3RD
16 AVENUE?

17 A 3RD AVENUE, WE WAS LEAVING FROM THE
18 LANDMARK, THE HOTEL, TRYING TO WALK BACK TO THE NORTH END
19 AND WE GOT ON THIS ONE STREET, IT WAS A HOUSE, AND THERE
20 WAS A GROUP OF GUYS STANDING IN FRONT OF IT AND THEY WAS
21 EXPLAINING TO A GROUP OF GIRLS WHO WAS IN THE CAR THAT THEY
22 COULDN'T PARK THERE ON THEIR PROPERTY. ME, KEION, AND
23 DARIUS WALKING, KEION SEES THE GROUP OF BOYS, HE COMES AT
24 THEM LIKE, MAN, YA'LL CAN PARK YA'LL CAR, YA'LL CAN PARK
25 YA'LL CAR.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

190

1 Q KEION IS SAYING THIS?

2 A YES, MA'AM.

3 Q AND WHO IS HE TALKING TO WHEN HE'S SAYING
4 THAT?

5 A HE WAS TALKING TO THE GROUP OF GUYS WHO WAS
6 STANDING THERE LETTING THE GIRLS KNOW THAT THEY COULDN'T
7 PARK THERE.

8 Q AND THIS GROUP OF GUYS WERE THEY WHITE
9 MALES OR BLACK MALES?

10 A THEY WERE WHITE MALES.

11 Q OKAY, GO AHEAD?

12 A HE WAS TELLING THEM THAT THEY CAN PARK
13 THEIR CAR THERE, THEY CAN PARK THEIR CAR THERE. THEY GOT
14 IN A LITTLE, THEY WAS TALKING AND IT COME TO AN ENDING TO
15 WHERE I WAS AT THE CAR WITH THE FEMALES AT THE TIME I
16 WALKED OFF CAUSE SHE RECOGNIZED ME. I KNEW HER FROM
17 SCHOOL, TOO, I WENT TO SCHOOL WITH HER SO I'M TALKING TO
18 HER.

19 Q WHERE WERE YOU TALKING TO HER AT?

20 A IN THE YARD WHERE THEY PARKED AT.

21 Q OKAY, AND ARE YOU ON THE DRIVERS SIDE OR
22 THE PASSENGERS SIDE?

23 A ON THE PASSENGERS SIDE.

24 Q WAS SHE IN THE FRONT OR THE BACK SEAT?

25 A SHE'S IN THE FRONT.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

191

1 Q SO YOU'RE LEANING INTO THE WINDOW?

2 A RIGHT, I'M LEANING IN THE WINDOW, I'M
3 TALKING TO HER, YOU KNOW, AND THEN THIS ONE GUY COMES UP HE
4 WAS TALKING, I WAS IGNORING HIM AT THE TIME, I DIDN'T
5 REALLY PAY ATTENTION TO WHAT HE WAS SAYING.

6 Q WHEN YOU SAY A GUY COMES UP AND I HATE TO
7 DO IT IN THESE TERMS BUT IT'S EASIER FOR US TO UNDERSTAND
8 WHO YOU'RE TALKING ABOUT, WAS THAT A WHITE MALE OR A BLACK
9 MALE?

10 A I'M SORRY, IT WAS A WHITE MALE WHO CAME UP,
11 HE APPROACHED ME, HE WAS TALKING, I DIDN'T, I DIDN'T PAY
12 HIM ANY ATTENTION. I WAS TALKING TO THE GROUP OF LADIES,
13 HE WAS STILL TALKING THEN HE GOT FRUSTRATED CAUSE I WASN'T
14 PAYING HIM ANY ATTENTION SO HE SLAPPED MY ON MY SHOULDER
15 AND TOLD ME, YOU KNOW, CURSE WORDS, THIS THAT AND THIRD, SO
16 I CLOSED THE DOOR ON THE GROUP OF FEMALES. HE WALKED OFF
17 TO THE GROUP WHERE THE OTHER WHITE GUYS WERE STANDING THERE
18 WITH KEION AND DARIUS. I WALKED BACK TO HIM, I TOLD HIM,
19 MAN, DON'T PUT YOUR F'ING HANDS ON ME, JUST LIKE THAT. HE
20 CAME BACK IN MY FACE, HE WAS LIKE I'LL WHOOP YOU "A" BOY,
21 YOU KNOW, CUSS WORDS AND STUFF, BUT AFTER THAT, YOU KNOW,
22 LIKE, MAN, YOU KNOW WHAT, WHAT'S THE PROBLEM. THERE'S A
23 BIG BUSH, PUSH, THIS THAT AND THE THIRD AND THEN ---

24 Q BETWEEN YOU AND THIS WHITE MALE?

25 A RIGHT.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

192

1 Q OKAY, GO AHEAD?

2 A ALL RIGHT, THEN THEY GOT ONE OF THE GUYS HE
3 SAID TO THE OTHER HE WAS GOING TO CALL THE POLICE, HE HAD A
4 CELL PHONE OUT. KEION SLAPPED THE PHONE OUT OF HIS HAND,
5 IT HIT THE GROUND, THEN KEION HAD THE GUN OUT. HE SAID LAY
6 IT DOWN AND THAT'S WHEN THE GUY THREW HIS HANDS UP IN THE
7 AIR AND THEN THAT'S WHEN THE WHOLE COMMOTION AND THE BIG
8 FIGHT STARTED, EVERYBODY'S FIGHTING.

9 Q ALL RIGHT, HANG ON RIGHT THERE, WHEN THE
10 PHONE WAS SLAPPED OUT OF HIS HAND THAT WAS THE WHITE MALE'S
11 HAND?

12 A RIGHT, THE WHITE MALE'S HAND.

13 Q RIGHT, AND KEION WAS STANDING THERE?

14 A RIGHT.

15 Q AND YOU SAW HIM SLAP THAT PHONE DOWN?

16 A YES, MA'AM.

17 Q WHEN HE YELLED I'M GOING TO CALL THE
18 POLICE?

19 A YES, MA'AM.

20 Q ALL RIGHT, AND WHEN OR DO YOU KNOW WHERE
21 KEION PULLED THE GUN OUT FROM?

22 A I BELIEVE HIS WAIST.

23 Q ALL RIGHT, AND DO YOU REMEMBER WHAT HAND HE
24 HAD IT IN?

25 A RIGHT, HIS RIGHT HAND.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

193

1 Q ALL RIGHT, AND YOU SAID HE SAID LAY IT
2 DOWN?

3 A YES, MA'AM.

4 Q AND WHAT DID THAT WHITE MALE DO?

5 A HE THREW HIS HANDS IN THE AIR.

6 Q OKAY, AND YOU DEFINITELY SAW A GUN?

7 A RIGHT.

8 Q OKAY, WHAT HAPPENS THEN?

9 A ALL RIGHT, AFTER THAT HAPPENED ONE OF THE
10 GUYS WHO TAPPED ME ON MY SHOULDER, WHO HAD BEEN RUDE TO ME,
11 ME AND HIM STARTING TO FIGHTING, GOING THROUGH THIS BIG
12 LITTLE TASSLE, LONG FIGHT. MR. BROOKS HE SEEN THAT, HE
13 SEEN HE WANTED TO HELP HIS FRIEND SO HE CAME AND ATTACKED
14 ME AND JUMPED ON MY BACK. I'M STILL FIGHTING WITH THE
15 OTHER GUY AND KEION SEEN THIS AND HE CAME AND HIT MR.
16 BROOKS WITH THE GUN AND WE COLLAPSED ON THE GROUND. I GOT
17 UP AND RAN TO THE OTHER SIDE OF THE CAR. I WENT IN THE
18 FRONT OF THE GRILL OF THE CAR, THAT WAS NEXT TO THE GIRLS
19 CAR CAUSE THEY DONE PULLED OUT SO THERE WAS A BIG SPACE. I
20 WAITED AND I HEARD A GUNSHOT FIRED FROM WHERE MR. KEION WAS
21 STANDING OUT BY MR. BROOKS. AS SOON AS I HEARD THE
22 GUNSHOTS FIRED I RAN FROM IN FRONT OF THE CAR AROUND AND I
23 SEEN MR. BROOKS LAYING ON THE GROUND, I JUST RAN.

24 Q AND YOU'RE CALLING HIM BY NAME BUT DID YOU
25 KNOW HIS NAME THAT NIGHT?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

194

1 A NO, MA'AM, I DIDN'T.

2 Q AND THAT NIGHT THE BOY THAT YOU SAW SHOT IS
3 THAT A WHILE MALE?

4 A IT'S A WHITE MALE.

5 Q ALL RIGHT, DO YOU RECALL WHAT HE HAD ON BY
6 CHANCE, COLOR SHIRT?

7 A I'M NOT SURE BUT I WANT TO SAY A RED SHIRT
8 MAYBE, MAYBE WHITE.

9 Q ALL RIGHT, AND YOU SAID THAT THE BOY THAT
10 YOU'RE DESCRIBING NOW AS COREY BROOKS CAME UP BEHIND YOU
11 WHILE YOU WERE ENGAGED IN A FIGHT ---

12 A RIGHT.

13 Q --- IS THAT RIGHT?

14 A YES, MA'AM.

15 Q OKAY, AND DID KEION ALREADY HAVE THE WEAPON
16 OUT AT THAT POINT?

17 A YES, MA'AM.

18 Q AND WHEN COREY CAME UP BEHIND YOU WHAT DID
19 KEION DO?

20 A AT THIS TIME I DIDN'T SEE KEION, HE MUST
21 HAVE BEEN STILL OVER THERE, YOU KNOW, WITH THE GUN AND WHAT
22 NOT.

23 Q OKAY?

24 A I DIDN'T SEE WHEN HE CAME UP BUT I KNEW
25 THAT WAS HIM WHEN HE HIT MR. BROOKS.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

195

1 Q WHERE DID HE HIT HIM AT?

2 A ON THE BACK IN HIS HEAD I THINK.

3 Q OKAY, HE WAS BEHIND COREY?

4 A RIGHT.

5 Q WHEN HE STRUCK HIM?

6 A YES, MA'AM.

7 Q AND YOU KNEW HE STRUCK HIM WITH THE GUN?

8 A MOST DEFINITELY.

9 Q AND WHEN HE STRIKES COREY WITH THE GUN WHAT
10 DOES COREY DO, WHAT HAPPENED TO HIM?

11 A MR. BROOKS HE WAS LIKE, HE WAS STILL ON MY
12 BACK SO ONCE HE GOT HIT HE FELL LIKE RIGHT ON TOP OF ME.

13 Q AND SO YA'LL BOTH FELL?

14 A YES, MA'AM.

15 Q ALL RIGHT, AND WHAT HAPPENED WHEN YOU GOT
16 ON THE GROUND?

17 A WHEN I GOT ON THE GROUND I WAS KIND OF HURT
18 SO I KIND OF LIKE BLUDGEONED HIM OFF ME AND GOT UP SO I
19 WAS, I KNEW KEION HAD THE GUN SO I'M TRYING TO GET OUT THE
20 WAY AND MOVE ON, I DON'T WANT NO PART OF IT.

21 Q WHY WERE YOU TRYING TO GET OUT OF THE WAY
22 IF YOU KNEW KEION HAD THE GUN?

23 A CAUSE I KNEW HE WAS, HE, I DIDN'T WANT NO
24 PART OF IT, YOU KNOW, CAUSE --

25 Q YOU WERE AFRAID HE WAS GOING TO SHOOT

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

196

1 SOMEBODY?

2 A YEAH, THAT, TOO.

3 Q AND WHEN YOU GOT UP WAS COREY BROOKS STILL
4 ON THE GROUND?

5 A YES, MA'AM.

6 Q AND WHERE WAS KEION?

7 A HE WAS LIKE ON TOP OF HIM.

8 Q DID HE STILL HAVE THE GUN IN HIS HAND?

9 A YES, MA'AM.

10 Q AND YOU SAID YOU RAN AROUND THE CAR IS
11 THAT, WHEN DID YOU HEAR THE SHOT?

12 A I HEARD THE SHOTS LIKE RIGHT AFTER I RAN
13 AROUND THE CAR I HEARD SHOTS I WANT TO SAY FIVE SECONDS
14 LATER.

15 Q HOW MANY SHOTS DID YOU HEAR?

16 A I JUST HEARD ONE GUNSHOT.

17 Q AND THEN YOU, WHERE WAS DARIUS DURING ALL
18 THIS?

19 A I BELIEVE DARIUS WAS STILL IN THE MIDST OF
20 FIGHTING.

21 Q OKAY, AND TO YOUR KNOWLEDGE DID HE HAVE ANY
22 OTHER WEAPONS ON HIM?

23 A NOT THAT I KNOW OF.

24 Q YOU DIDN'T SEE ANY?

25 A I DIDN'T SEE ANY.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

197

1 Q DID YOU HAVE A WEAPON ON YOU?

2 A NO, MA'AM.

3 Q DID ANY OF THE WHITE MALES DURING THE
4 COURSE OF THAT FIGHT DID YOU SEE ANY OF THEM WITH ANY KIND
5 OF WEAPONS PULLED OUT, KNIVES, GUNS, ANYTHING LIKE THAT,
6 STICKS?

7 A NOT THAT I KNOW OF, MA'AM.

8 Q YOU DIDN'T SEE ANYTHING LIKE THAT?

9 A NO, MA'AM.

10 Q AND WHEN YOU WERE FIGHTING WERE YA'LL
11 FIGHTING WITH JUST FISTS?

12 A RIGHT.

13 Q THE BOY THAT YOU WERE FIGHTING WAS HE
14 INTOXICATED?

15 A I WANT TO SAY HE WAS HEAVILY INTOXICATED.

16 Q ALL RIGHT, WAS HE STUMBLING AROUND, WORDS
17 SLURRING OR ---

18 A YES, MA'AM.

19 Q --- IS THAT HOW YOU FELT THAT HE WAS
20 INTOXICATED?

21 A YES, AND WHEN HE APPROACHED ME I SMELLED IT
22 ON HIS BREATH.

23 Q ALL RIGHT, WERE THE THREE OF YA'LL WERE
24 YA'LL INTOXICATED, DRUNK OR UNDER THE INFLUENCE OF
25 ANYTHING?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

198

1 A NO, MA'AM.

2 Q SO YA'LL KNEW WHAT YA'LL WERE DOING?

3 A RIGHT.

4 Q AFTER YOU HEARD THE GUNSHOT WHAT HAPPENED?

5 A AFTER I HEARD THE GUNSHOTS IT WAS LIKE A
6 BIG FLEE, LIKE EVERYBODY WAS MOVING SO FAST, YOU KNOW, YOU
7 COULDN'T REALLY GLIMPSE EVERYTHING. I RAN, KEION RAN
8 FIRST, HIM AND DARIUS, THEY FLEED BEHIND THIS LITTLE
9 PARKING SPACE. AFTER I CAME FROM AROUND THE CAR RUNNING I
10 WENT STRAIGHT TO THE MAIN STREET FROM THE BOULEVARD LIKE
11 THE BACK WAY RUNNING. I SEEN THEM TWO CATCH UP TO EACH
12 OTHER SO I'M STILL WALKING AHEAD AND THEN DARIUS' MOTHER
13 SHE PULLS UP ON THE ROAD AND THEN I SEE KEION SHIFT HIM THE
14 GUN AND HE RUNS ACROSS THE STREET AND GET IN THE CAR AND A
15 POLICE OFFICER CAME AND STOPPED ME AND KEION AS WE WERE
16 WALKING AND SEARCH CAUSE THERE'S BEEN A SHOOTING IN THE
17 AREA.

18 Q SO YOU SAY YOU SAW KEION SHIFTING THE GUN
19 WHO WAS HE SHIFTING IT TO?

20 A TO DARIUS.

21 Q WAS THAT RIGHT BEFORE HE GETS IN HIS MOM'S
22 CAR?

23 A RIGHT.

24 Q WHEN YA'LL WERE SEARCHED BY POLICE DID
25 EITHER ONE OF YOU HAVE A WEAPON ON YOU AT THAT TIME?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

199

1 A NO, MA'AM.

2 Q AND AFTER THE POLICE LEFT YOU GO AFTER THAT
3 SEARCH WHAT DID YA'LL DO?

4 A I WENT TO MY GIRLFRIEND'S HOUSE.

5 Q AND DO YOU KNOW WHAT KEION DID?

6 A I BELIEVE HE WENT HOME.

7 Q DID YA'LL SEE EACH OTHER AFTER THIS?

8 A YES, MA'AM.

9 Q HOW LONG AFTER THIS DID YA'LL SEE EACH
10 OTHER?

11 A IT WAS THE NEXT DAY, THE DAY AFTER THAT.

12 Q YOU SAW KEION?

13 A RIGHT.

14 Q DID YOU SEE DARIUS AS WELL?

15 A NO, I DIDN'T SEE DARIUS RIGHT AFTER.

16 Q DID YOU AND KEION TALK ABOUT THIS?

17 A NO, MA'AM.

18 Q DO YOU KNOW WHAT HE HAD DONE, LET ME CHANGE
19 THAT -- LET ME GO BACK AND ASK YOU ABOUT WHAT YOU GUYS WERE
20 WEARING THAT NIGHT? WHAT WERE YOU WEARING?

21 A I HAD ON A WHITE TEE SHIRT, BLACK, WHITE,
22 RED AND GRAY HAT, SOME BLACK PANTS, AND SOME BLACK SHOES.

23 Q WHAT KIND OF TEE SHIRT DID YOU HAVE ON?

24 A I HAD ON A WHITE SHIRT, A WHITE TEE SHIRT
25 BUT IT WAS LIKE A TANK TOP.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

200

1 Q OKAY?

2 A I HAD A TANK TOP UNDER SO I WAS WEARING MY
3 TANK TOP.

4 Q DIDN'T HAVE ANY SLEEVES?

5 A NO, MA'AM.

6 Q AND YOU SAID YOU WERE WEARING A HAT THAT
7 NIGHT?

8 A YES, MA'AM.

9 Q IF YOU'LL LOOK AT STATE'S EXHIBIT 17, DO
10 YOU RECOGNIZE THAT?

11 A YES, MA'AM, IT'S MY HAT.

12 Q IS THAT THE HAT YOU HAD ON THAT EVENING?

13 A YES, MA'AM.

14 Q IS THAT THE HAT YOU HAD ON WHEN THIS
15 INCIDENT STARTED?

16 A RIGHT.

17 MS. ELDER: YOUR HONOR, WE'D LIKE TO MOVE
18 STATE'S EXHIBIT 17 INTO EVIDENCE AT THIS TIME.

19 MR. GALMORE: NO OBJECTION.

20 THE COURT: WITHOUT OBJECTION.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER 17 ENTERED
22 INTO EVIDENCE.)

23 MS. ELDER: (CONTINUING)

24 Q NOW THIS HAT HAS THE WORDS STUKES ON IT,
25 RIGHT?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

201

- 1 A YES, MA'AM.
- 2 Q THAT'S YOUR LAST NAME?
- 3 A RIGHT.
- 4 Q DO YOU KNOW WHERE YOU LOST THAT HAT AT?
- 5 A ON THE BOULEVARD OVER WHEN WE WAS FIGHTING.
- 6 Q SO YOU LOST, IT WAS LEFT AT THE SCENE?
- 7 A YES, MA'AM.
- 8 Q IS THAT, DO YOU KNOW IF THAT'S HOW THE
- 9 POLICE TRACKED YOU DOWN?
- 10 A I WOULD THINK.
- 11 Q OKAY, WHAT WAS KEION GRIFFIN WEARING THAT
- 12 NIGHT?
- 13 A HE HAD ON WHITE AND SOME PLAID FORM SHORTS
- 14 THAT WAS RED AND SOME RED AND WHITE TENNIS SHOES.
- 15 Q AND THE SHIRT THAT HE WAS WEARING, WHITE,
- 16 WHAT KIND OF SHIRT WAS IT?
- 17 A IT WAS A WHITE TEE SHIRT.
- 18 Q PLAIN WHITE TEE SHIRT?
- 19 A YES, MA'AM.
- 20 Q WAS IT LIKE YOURS A TANK OR WAS IT SLEEVES?
- 21 A IT WAS SLEEVE.
- 22 Q DO YOU REMEMBER WHAT DARIUS HAD ON?
- 23 A DARIUS HAD ON BLACK, I BELIEVE.
- 24 Q OKAY, NOW I WANT TO TALK ABOUT THIS GUN,
- 25 TELL ME WHAT THAT GUN LOOKED LIKE?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

202

1 A IT WAS A LONG BARRELLED CHROME GUN. IT
2 LOOKED LIKE WHAT'S HIS NAME, CLINT EASTWOOD, LOOKS JUST
3 LIKE THAT.

4 Q OKAY, AND WHERE DID THIS GUN COME FROM?

5 A DARIUS.

6 Q DO YOU KNOW WHERE HE GOT IT FROM?

7 A NO, MA'AM.

8 Q I WANT YOU TO TAKE A LOOK AT WHAT'S BEEN
9 MARKED AS STATE'S EXHIBIT 7, IS THAT THE GUN THAT YOU SAW
10 THAT NIGHT?

11 A YES, MA'AM.

12 Q AND THAT'S THE GUN THAT KEION HAD?

13 A YES, MA'AM.

14 Q IS THAT THE ONE HE HIT COREY BROOKS ON THE
15 HEAD, ON THE HEAD WITH?

16 A YES, MA'AM.

17 Q SO DARIUS BROUGHT THE GUN TO THE BOULEVARD?

18 A YES, MA'AM.

19 Q WHAT DID HE DO WITH IT WHEN HE BROUGHT IT
20 TO THE BOULEVARD?

21 A I DIDN'T SEE THE GUN UNTIL KEION HAD IT SO
22 I WOULD THINK THAT DARIUS HAD GIVEN IT TO KEION CAUSE HE
23 SHIFTED IT BACK TO DARIUS WHEN HE GOT IN THE CAR WITH HIS
24 MOTHER.

25 Q DID YOU EVER TOUCH THE GUN?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

203

1 A NO, MA'AM.

2 Q DID YOU EVER HANDLE IT?

3 A NO, MA'AM.

4 Q WHEN YA'LL THREE WERE TOGETHER WERE YA'LL
5 THREE TOGETHER ALL NIGHT LONG?

6 A ME, KEION WAS TOGETHER FROM THAT AFTERNOON
7 UNTIL LATER ON THAT NIGHT AND THEN DARIUS CAME ALONG LATER
8 ON THAT NIGHT.

9 Q AND WHEN DARIUS JOINED YOU WERE THE THREE
10 OF YOU TOGETHER?

11 A YES, MA'AM.

12 Q AND YOU WEREN'T WATCHING EVERY SINGLE
13 MOVEMENT EACH OTHER MADE, I ASSUME?

14 A NO, I WASN'T.

15 Q WERE YA'LL TALKING TO OTHER PEOPLE? DID
16 YA'LL TALK TO OTHER PEOPLE ON THE PHONE AND STUFF LIKE
17 THAT?

18 A AT THE TIME?

19 Q NOT DURING THE FIGHT BUT PRIOR TO?

20 A I MEAN, YES, MA'AM, I WAS TALKING ON THE
21 PHONE WITH MY GIRLFRIEND, OF COURSE.

22 Q OKAY, BUT YA'LL THREE WERE TOGETHER?

23 A YES, MA'AM, WE WERE.

24 Q HAD YOU SEEN THAT GUN BEFORE AT DARIUS'
25 HOUSE?

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

204

- 1 A YES, MA'AM, ONCE.
- 2 Q WAS THAT THE SAME GUN?
- 3 A YES, MA'AM.
- 4 Q HAD DARIUS SHOWN THAT TO YOU?
- 5 A YES, MA'AM, HE DID.
- 6 Q WHAT WAS THE PURPOSE OF HIM SHOWING IT TO
- 7 YOU?
- 8 A I GUESS TO BRAG.
- 9 Q NOW AFTER YOU GIVE TWO STATEMENTS TO THE
- 10 POLICE YOU WERE ARRESTED FOR THIS CHARGE; IS THAT CORRECT?
- 11 A YES, MA'AM.
- 12 Q AND YOU'RE PLACED IN THE JAIL AT MYRTLE
- 13 BEACH; IS THAT RIGHT?
- 14 A YES, MA'AM.
- 15 Q AND DO YOU EVER HEAR FROM KEION WHILE
- 16 YOU'RE THERE?
- 17 MR. GALMORE: OBJECTION, HEARSAY, YOUR HONOR.
- 18 THE COURT: I'M GOING TO ALLOW HIM TO ANSWER
- 19 THAT.
- 20 MR. GALMORE: HE'S NOT A PARTY, YOUR HONOR, HE'D
- 21 BE SITTING AT THIS TABLE IF HE WAS.
- 22 THE COURT: SHE SAID KEION.
- 23 MR. GALMORE: SHE DON'T KNOW, SHE'S TRYING TO
- 24 GET WHAT KEION SAID.
- 25 MS. ELDER: YES.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

205

1 THE COURT: I THINK THAT'S EXACTLY WHAT SHE
2 ASKED IF HE HAD ANY CONVERSATION WITH THE DEFENDANT.

3 MR. GALMORE: YES, SIR, BUT SHE SAID THAT HE'S A
4 PARTY NAMED IT.

5 MS. ELDER: THE DEFENDANT.

6 THE COURT: OKAY.

7 MR. GALMORE: YES, SIR.

8 MS. ELDER: (CONTINUING)

9 Q DID YOU HAVE ANY CONVERSATION WITH KEION OR
10 DID YOU HEAR FROM KEION WHILE YOU WERE AT THE JAIL?

11 A YES, MA'AM, IN MYRTLE BEACH.

12 Q YES?

13 A YES, MA'AM, HE, WHEN I SEEN HIM RIGHT AFTER
14 I GAVE MY STATEMENT I CAME BACK IT WAS LIKE AFTERNOON,
15 MORNING, HE WAS CALLING MY NAME THROUGH A DIFFERENT SECTION
16 OF THE JAIL, ALL I HEARD WAS STUKES, STUKES, HE'S WAS
17 CALLING MY NAME SO I ANSWERED. HE WAS LIKE, MAN, THEY
18 AIN'T THE GUNS, THEY AIN'T GOT CURSE WORD.

19 Q GO AHEAD AND TELL, I WANT YOU TO TELL ME
20 WHAT YOU REMEMBER HIM SAYING?

21 A HE WAS LIKE, YO, THEY AIN'T GOT THE GUN SO
22 THEY AIN'T GOT SHIT, BASICALLY.

23 Q AND HE WAS YELLING THIS TO YOU?

24 A YES, MA'AM, THEN A CORRECTIONS OFFICER CAME
25 AND TOLD US TO BE QUIET.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

206

1 Q THIS WAS AFTER YOU GAVE YOUR STATEMENT?

2 A YES, MA'AM.

3 Q ALL RIGHT, I WANT TO TALK TO YOU ABOUT YOUR
4 STATEMENT, NOW THE FIRST STATEMENT THAT YOU GAVE, DEMARIO,
5 WAS ABOUT MAY THE 30TH, 2008; IS THAT ABOUT RIGHT?

6 A THAT'S ABOUT RIGHT.

7 Q AND THAT WAS, DO YOU REMEMBER IF THAT WAS
8 AFTERNOON?

9 A YES, MA'AM.

10 Q IF I TOLD YOU ABOUT 2:30 WOULD THAT BE
11 ABOUT RIGHT?

12 A RIGHT.

13 Q DO YOU REMEMBER WHAT YOU TOLD THE POLICE
14 THAT FIRST TIME IN THAT FIRST STATEMENT WHEN THEY TALKED TO
15 YOU?

16 A YES, MA'AM, I DID.

17 Q YOU DIDN'T TELL THEM EXACTLY WHAT YOU'RE
18 SAYING HERE TODAY, DID YOU?

19 A NO, MA'AM, I DIDN'T.

20 Q YOU TOLD THEM, DID YOU TELL THEM ABOUT THE
21 FIGHT?

22 A YES, MA'AM, I DID, I TOLD THEM ABOUT THE
23 FIGHT.

24 Q TELL ME HOW YOU TOLD IT TO THEM?

25 A BASICALLY I JUST TOLD THEM ABOUT IT IN

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

207

1 THIRD PERSON AS IF ---

2 Q WHEN YOU SAY YOU TOLD IT TO THEM IN THIRD
3 PERSON AS YOU WERE AN EYEWITNESS?

4 A RIGHT.

5 Q DID YOU TELL THEM THAT THERE WERE THREE
6 BLACK MALES THAT YOU WATCHED?

7 A YES, MA'AM, I DID.

8 Q AND THAT INFORMATION YOU WERE TELLING THEM
9 ABOUT THE THREE BLACK MALES THOSE THREE BLACK MALES WAS
10 THAT IN FACT YOU ---

11 A KEION -

12 Q --- KEION AND DARIUS?

13 A --- AND DARIUS, YES, MA'AM.

14 Q AND YOU PRETTY MUCH TOLD THEM EXACTLY WHAT
15 YOU TOLD US HERE TODAY EXCEPT FOR THIRD PERSON?

16 A RIGHT.

17 Q LIKE YOU WERE WATCHING THIS UNFOLD?

18 A RIGHT.

19 Q IS THAT CORRECT?

20 A YES, MA'AM.

21 Q WHY DID YOU DO THAT?

22 A CAUSE AT THE TIME I WAS SCARED I WASN'T
23 THINKING RATIONAL ENOUGH TO REALLY BE UP FRONT ABOUT
24 ANYTHING, I DIDN'T KNOW REALLY WHAT WAS GOING ON. I MEAN I
25 WAS BEING CHARGED WITH MURDER.

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

208

1 Q OKAY, NOW YOU MADE A SECOND STATEMENT; IS
2 THAT CORRECT?

3 A RIGHT.

4 Q AND THAT WAS ABOUT THE SAME DAY; IS THAT
5 RIGHT?

6 A YES, MA'AM.

7 Q IT WAS LATER THAT EVENING?

8 A YES, MA'AM.

9 Q AND YOU HAD BEEN IN THE JAIL FROM THAT
10 FIRST INTERVIEW TO THE SECOND?

11 A YES, MA'AM.

12 Q AND WHEN YOU CAME BACK TO THE POLICE FOR
13 THAT SECOND INTERVIEW IT WAS ABOUT 8:30 AT NIGHT; DOES THAT
14 SOUND ABOUT RIGHT?

15 A YES, MA'AM.

16 Q DID YOU ASK FOR THAT INTERVIEW, THAT SECOND
17 ONE?

18 A I DID.

19 Q SO YOU INITIATED THAT CONTACT?

20 A YES, MA'AM.

21 Q WHAT HAPPENED BETWEEN THE FIRST INTERVIEW
22 AND THE SECOND INTERVIEW TO MAKE YOU WANT TO GO BACK AND
23 TALK TO THE POLICE?

24 A WELL MY DADDY CAME, I TALKED TO MY DAD. HE
25 REALLY WANTED TO KNOW WHAT WAS GOING ON. HE TALKED SOME

MR. STUKES - DIRECT EXAMINATION BY MS. ELDER

209

1 SENSE TO MY HEAD, HE LET ME KNOW THAT I NEEDED TO COME UP
2 FRONT, THIS IS NOT A GAME, THIS IS SERIOUS, SOMEBODY LOST
3 THEIR LIFE.

4 Q SO AFTER TALKING TO YOUR DAD YOU WENT, YOU
5 CALLED OVER AND ASKED TO TALK TO POLICE AGAIN?

6 A YES, MA'AM.

7 Q AND DURING YOUR SECOND INTERVIEW YOU TOLD
8 THEM THAT THOSE THREE BLACK MALES YOU WERE TALKING ABOUT
9 BEFORE WERE WHO?

10 A WERE ME, KEION, AND DARIUS.

11 Q AND THAT SECOND INTERVIEW WHO DID YOU TELL
12 THEM SHOT COREY BROOKS?

13 A KEION GRIFFIN.

14 Q AND WHO DID YOU TELL THEM TOOK THE GUN AWAY
15 FROM THE SCENE?

16 A DARIUS.

17 Q AND YOU TOLD THEM ABOUT THE CELL PHONE
18 BEING SLAPPED OUT OF HIS HAND?

19 A YES, MA'AM.

20 Q AND YOU TOLD THEM WHAT YOU GUYS HAD ON THAT
21 NIGHT?

22 A YES, MA'AM.

23 Q DID YOU TELL THEM ABOUT KEION SMACKING
24 COREY IN THE HEAD WITH THAT GUN?

25 A YES, MA'AM.

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

210

1 Q DID YOU TELL THEM ABOUT THAT BOY PUTTING
2 HIS ARMS UP IN THE AIR?

3 A YES, MA'AM.

4 Q WHEN KEION PULLED THE GUN OUT? DURING THAT
5 FIGHT THAT YOU WERE INVOLVED IN DID YOU FEEL LIKE YOUR LIFE
6 WAS IN DANGER, WAS SOMEBODY BEATING YOU THAT YOU IMAGINED
7 THAT YOU FELT LIKE YOUR LIFE WAS IN DANGER?

8 A NO, MA'AM.

9 Q DID YOU FEEL THAT IT WAS NECESSARY TO SHOOT
10 ONE OF THOSE BOYS?

11 A NO, MA'AM, IT WASN'T NECESSARY AT ALL, NOT
12 ONE BIT.

13 Q NOBODY'S LIFE WAS BEING THREATENED?

14 A NOT TO THE POINT WHERE YOU HAVE TO SHOOT
15 SOMEONE, A FIST FIGHT, OKAY, A COUPLE OF BRUISES BUT TO
16 PULL A GUN OUT AND SHOOT SOMEONE.

17 Q AND YOU ACTUALLY TOLD POLICE THAT IN YOUR
18 SECOND INTERVIEW, DIDN'T YOU?

19 A YES, MA'AM.

20 MS. ELDER: ONE MOMENT, YOUR HONOR. YOUR HONOR,
21 THAT'S ALL THE QUESTIONS I HAVE FOR THIS WITNESS.

22 THE COURT: MR. GALMORE?

23 CROSS EXAMINATION

24 BY MR. GALMORE:

25 Q MR. STUKES, IS THIS YOUR HAT?

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

211

1 A YES, SIR.

2 Q AND WHAT DOES IT SAY RIGHT HERE?

3 A MY LAST NAME STUKES.

4 Q IT HAS YOUR NAME ON IT?

5 A YES, SIR.

6 Q WHAT DOES IT SAY RIGHT THERE?

7 A BAMA.

8 Q BAMA, AND WHAT DOES BAMA MEAN?

9 A WELL IT'S KIND OF LIKE COUNTRY, REAL

10 COUNTRY.

11 Q COUNTRY FOR WHAT?

12 A EXCUSE ME?

13 Q BAMA COUNTRY?

14 A YES, SIR, COUNTRY BAMA.

15 Q DID YOU TELL THE POLICE THAT BAMA HAD A

16 DIFFERENT DEFINITION?

17 A YES, SIR, AT THAT TIME, YOU KNOW, BECAUSE I

18 MEAN REALLY IT CAN GO FOR THAT, TOO, EITHER BAMA LIKE

19 YOU'RE A GOOD FIGHTER OR YOU'RE JUST COUNTRY BUT COUNTRY

20 BAMA.

21 Q OKAY, SO BAMA MEANS FIGHTER?

22 A YES, SIR.

23 Q AND THIS IS YOUR HAT?

24 A YES, SIR, IT'S MY BROTHER HAT, HE GAVE TO

25 ME, IT'S MY HAT.

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

212

1 Q YOU WERE WEARING IT THAT NIGHT?

2 A RIGHT.

3 Q AND WHAT HAPPENED TO THE HAT?

4 A IT FLEW OFF MY HEAD WHEN I WAS FIGHTING.

5 Q RIGHT THERE AT THE SCENE OF THE CRIME?

6 A RIGHT.

7 Q DID YOU TELL THE POLICE SOMETHING DIFFERENT
8 HAPPENED TO YOUR HAT?

9 A NO.

10 Q DO YOU RECALL TELLING THE POLICE OFFICERS
11 ANOTHER STORY ABOUT WHAT HAPPENED TO YOUR HAT?

12 A NO, SIR.

13 Q DO YOU RECALL BEING TAKEN INTO CUSTODY AND
14 RIDING IN THE BACK OF THE SQUAD CAR?

15 A FROM WHEN?

16 Q FROM WHEN YOU WERE ARRESTED AND TAKEN TO
17 THE POLICE STATION ---

18 A FROM SCHOOL?

19 Q --- ANNEX?

20 A YES, SIR, FROM SCHOOL.

21 Q DO YOU RECALL MAKING A STATEMENT REGARDING
22 YOUR HAT IN THAT SQUAD CAR?

23 A NOT THAT I RECALL.

24 Q DO YOU RECALL BEING ON VIDEOTAPE WHILE YOU
25 WERE RIDING IN THE SQUAD CAR?

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

213

1 A I BELIEVE I WAS.

2 Q IF I WERE TO PLAY FOR YOU A COPY OF THIS
3 VIDEOTAPE WOULD IT HELP YOU TO REMEMBER WHAT YOU TOLD THE
4 POLICE AT THAT TIME ABOUT YOUR HAT?

5 A SURE.

6 MS. ELDER: YOUR HONOR, CAN WE APPROACH FOR A
7 MOMENT?

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
9 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
10 OF THE JURY AND THE COURT REPORTER.)

11 THE COURT: MR. GALMORE, IT'S MY UNDERSTANDING
12 YOU WANT TO PLAY THE VIDEO AND I CERTAINLY HAVE NO
13 OBJECTION TO YOUR DOING THAT, I DON'T THINK THE STATE WOULD
14 EITHER. IT'S MY UNDERSTANDING THAT DURING THAT TAPE THERE
15 MAY BE REFERENCE MADE TO ANOTHER SHOOTING AND I'D ADVISE
16 YOU TO PROCEED CAUTIOUSLY IN THAT.

17 MR. GALMORE: YES, SIR.

18 THE COURT: I DON'T WANT ANY TESTIMONY
19 CONCERNING ANY OTHER INCIDENT; WE'RE HERE TO TRY ONE
20 SHOOTING.

21 WILL YOU BE A FEW MOMENTS?

22 MS. ELDER: YES, SIR, YOUR HONOR, I DIDN'T HAVE
23 THAT PART.

24 THE COURT: OKAY, WE'LL TAKE ABOUT A FIVE MINUTE
25 BREAK.

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

214

1 MS. ELDER: I APOLOGIZE, I DIDN'T HAVE THAT --

2 THE COURT: ALL RIGHT, LET'S SEND THE JURY OUT.

3 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
4 10:31 A.M.)

5 THE COURT: MR. GALMORE, MS. ELDER, ARE WE --

6 MS. ELDER: YOUR HONOR, I CAN'T FIND THE
7 SPECIFIC PART, THAT TRANSCRIPT IS OVER 200 PAGES LONG.

8 THE COURT: I THOUGHT WE WERE TALKING ABOUT JUST
9 A, THE RIDE.

10 MS. ELDER: NO, THE PROBLEM I HAVE WITH THE
11 RIDE, YOUR HONOR, IS THAT THAT WAS, I DON'T HAVE ANY
12 PROBLEM WITH WHAT'S ON THERE PRIOR TO HIS STATEMENT, NO
13 PROBLEM, NO OBJECTION.

14 THE COURT: 801.

15 MS. ELDER: CORRECT, HOWEVER WHEN THE DETECTIVES
16 CONFRONT THIS, THIS DEFENDANT ABOUT WHAT'S ON THAT TAPED
17 STATEMENT I'M OBVIOUSLY GOING TO ASK HIM ABOUT THAT BECAUSE
18 I HAVE, OBVIOUSLY I'M GOING TO HAVE TO FOLLOW THAT UP WITH
19 A QUESTION AND HE'S STARTING TO TALK ABOUT ANOTHER INCIDENT
20 THAT THAT'S WHAT HE WAS REFERRING TO WHEN WAS TALKING TO
21 CLARK, SO WE NEED TO BE VERY CAREFUL ---

22 THE COURT: WELL IF WE'RE TALKING ABOUT ANOTHER
23 INCIDENT THAT'S OKAY, BUT I DON'T WANT TO GET INTO ANYTHING
24 ABOUT ANY OTHER DISCHARGING OF FIREARMS, SHOOTING, ANYTHING
25 LIKE THAT. I WANT TO KEEP THE RECORD AS CLEAN AS POSSIBLE.

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

215

1 MS. ELDER: AND THEN THAT'S WHAT I'M CONCERNED
2 ABOUT, THAT IS THE OTHER INCIDENT. YOU KNOW WE'LL TRY,
3 YOUR HONOR, I'LL TRY TO DO WHAT I CAN DO AND I'M NOT GOING
4 TO ELICIT, ASK THOSE QUESTIONS UNLESS MR. GALMORE OPENS
5 THAT DOOR FOR THAT.

6 THE COURT: AND I'M SURE MR. GALMORE IS GOING TO
7 BE VERY CAUTIOUS THE WAY HE PROCEEDS, WE KNOW IT'S OUT
8 THERE.

9 MS. ELDER: YOUR HONOR, I'M SORRY, YOUR HONOR, I
10 DID FIND IT, IT STARTS ON PAGE 2 -- 82. HE STARTS TALKING
11 ABOUT WHEN OFFICER CLARK IS BRINGING YOU UP HERE WHEN HE
12 WAS DRIVING YOU UP YOU AND HIM TALK ABOUT, NO, WE DIDN'T
13 TALK ABOUT THIS INCIDENT, THIS INCIDENT. I DIDN'T EVEN
14 KNOW WHAT I WAS COMING HERE FOR. DID YOU MENTION ANYTHING
15 ABOUT YOUR HAT? NO, ONLY I TOLD THEM WHAT HAPPENED LIKE
16 EARLIER THAT NIGHT WHEN I GOT IN A DIFFERENT INCIDENT.
17 WHAT INCIDENT? I GOT HIT IN A CAR, I TOLD HIM WHAT THAT
18 WAS. DID YOU TELL? AND I'M PARAPHRASING, MR. GALMORE, DID
19 YOU TELL HIM THAT THAT'S HOW YOUR HAT WAS LOST? NO, NOT
20 PRECISELY. WELL WHAT DID YOU TELL THEM PRECISELY? I WAS
21 THERE ALL WEEKEND. I WAS ON THIS BOULEVARD ALL NIGHT AND
22 THAT SOMETHING HAPPENED TO WHERE A CAR GOT HIT AND THE DUDE
23 WAS HIT, HIT AND RUN, HE DIDN'T STOP. SO I GOT HIT ON THE
24 BUTT CHEEK. I DIDN'T RECALL I LOST MY HAT OR SHADES. WAS
25 THERE ANOTHER INCIDENT WHEN YOU GUYS MAYBE SHOT AT YOU OR

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

216

1 SOMETHING? THAT WAS ON MONDAY AT THE BOULEVARD. SOME GUY
2 TRYING TO SELL US SOMETHING, HE WAS TALKING TO SOMEBODY, HE
3 WAS TALKING TO SOME DUDE, HE STARTED SHOOTING. WHO WAS
4 WITH ME? KEION WAS THERE, TOO.

5 MR. GALMORE: THAT HAS NOTHING TO DO WITH THIS
6 CASE, YOUR HONOR.

7 MS. ELDER: WELL, YOUR HONOR, HE EXPLAINS WHY,
8 WHY THERE'S AN INCONSISTENCY THERE, THAT'S WHAT MY, THAT'S
9 WHAT I'M GOING TO BE RUNNING UP AGAINST. IF WE PLAY THIS,
10 I HAVE NO OBJECTION TO IT, BUT BACK ON REDIRECT I'M
11 CERTAINLY GOING TO BE ABLE TO ASK MY WITNESS, WELL DID YOU
12 TELL, DID YOU GO BACK WHEN THE POLICE ASKED YOU ABOUT THAT?
13 DID YOU EXPLAIN WHAT YOU WERE TALKING ABOUT WHEN YOU WERE
14 TALKING ABOUT WHEN YOU WERE TALKING ABOUT IT TO OFFICER
15 CLARK.

16 MR. GALMORE: AND HIS RESPONSE IS ---

17 THE COURT: HE WAS TALKING ABOUT ANOTHER
18 INCIDENT.

19 MR. GALMORE: RIGHT, I GOT -- YES, SIR, BUT HE'S
20 NOW TALKING ABOUT, NOW SHE'S TALKING ABOUT A THIRD INCIDENT
21 INVOLVED IN A SHOOTING. HIS RESPONSE IS ABOUT AN INCIDENT
22 WHERE A CAR HIT A CAR AND HE GOT HIT ON THE BUTT CHEEK.

23 THE COURT: I HAVE NO PROBLEM WITH THAT.

24 MR. GALMORE: AND I DON'T SEE HOW THAT CONNECTS
25 TO THIS THIRD INCIDENT THAT THE SOLICITOR'S TRYING TO

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

217

1 ELICIT.

2 MS. ELDER: WELL I'M NOT TRYING TO ELICIT THAT
3 AT ALL, I DON'T WANT TO ELICIT THAT.

4 THE COURT: WELL THEN CAN'T WE JUST LIMIT IT TO
5 THE INCIDENT ABOUT SOMEONE'S CAR HITTING ANOTHER CAR AND
6 THAT'S WHY HE THOUGHT, WHEN HE THOUGHT HE LOST HIS HAT?

7 MS. ELDER: THAT'S FINE WITH ME AS LONG AS, LIKE
8 I SAID I DON'T KNOW WHERE, WHERE CROSS IS GOING TO GO.

9 THE COURT: ALL RIGHT, MR. GALMORE, YOU
10 UNDERSTAND?

11 MR. GALMORE: YES, SIR.

12 THE COURT: ALL RIGHT, LET'S BRING THE JURY IN.
13 (WHEREUPON, DEFENSE EXHIBIT NUMBER 3 MARKED FOR
14 IDENTIFICATION.)

15 THE COURT: ARE YOU GOING TO NEED THE SCREEN?
16 IS THIS VIDEO OR AUDIO? I'VE GOT THE CONTROLS UP HERE BUT,
17 HEATHER, IF YOU CAN DO THAT FOR US I'D APPRECIATE IT CAUSE
18 I WILL HAVE IT DOING SOMETHING ELSE.

19 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
20 10:49 A.M.)

21 THE COURT: LET THE RECORD REFLECT THE JURY
22 IS BACK IN THE COURTROOM. LADIES AND GENTLEMEN, OF THE
23 JURY WE'RE ABOUT TO LOOK AT THE TAPE THAT WAS DISCUSSED A
24 LITTLE EARLIER ON THE VIDEO. MR. ROPP, CAN YOU DIM THAT
25 LIGHT A LITTLE MORE.

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

218

1 MS. ELDER: AND, YOUR HONOR, JUST FOR THE RECORD
2 THE STATE, I DON'T IF THE STATE, SO WE HAVE NO OBJECTION TO
3 DEFENDANT'S EXHIBIT 3.

4 THE COURT: ALL RIGHT, AND I THINK IT'S
5 ADMISSIBLE UNDER RULE 801 ANYWAY.

6 (WHEREUPON, DEFENSE EXHIBIT NUMBER 3 ENTERED INTO
7 EVIDENCE.)

8 (WHEREUPON, DEFENDANT'S EXHIBIT 3 PLAYED IN OPEN
9 COURT.)

10 MR. GALMORE: THAT'S ALL WE'RE PLAYING OF IT,
11 YOUR HONOR.

12 THE COURT: ALL RIGHT, MR. ROPP. HEATHER, CAN
13 YOU BRING IT UP. YOU MAY PROCEED.

14 MR. GALMORE: (CONTINUING CROSS EXAMINATION)

15 Q MR. STUKES, DID YOU TELL THE POLICE THAT
16 YOU LOST YOUR HAT AS A RESULT OF A HIT AND RUN?

17 A RIGHT.

18 Q AND YOUR SHADES ALSO?

19 A RIGHT.

20 Q WHERE DID YOU ACTUALLY LOOSE YOUR HAT?

21 A ON THE SCENE.

22 Q AND WHERE DID YOU ACTUALLY LOOSE YOUR
23 SHADES?

24 A ON THE SCENE.

25 Q THAT IS YOU ON THAT TAPE, RIGHT?

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

219

1 A RIGHT.

2 Q AND YOU SAID YOU WERE, WELL HOW DID YOU END
3 UP MEETING UP WITH DARIUS THAT DAY?

4 A THAT NIGHT DARIUS WAS ON THE BOULEVARD.

5 Q OKAY --

6 A WE JUST MET UP ON THE BOULEVARD, ME AND
7 KEION AND A FEW OTHER GUYS WAS WALKING.

8 Q DID YA'LL TALK PRIOR TO MEETING UP ON THE
9 BOULEVARD?

10 A NO.

11 Q YOU JUST HAPPENED TO BE WALKING AND SAW
12 DARIUS?

13 A RIGHT.

14 Q HE DIDN'T CALL YOU AND TELL YOU HE WAS
15 COMING?

16 A NO.

17 Q DID YOU CALL HIM AND ASK HIM TO COME?

18 A NO, I DIDN'T ASK HIM TO COME.

19 Q WAS KEION WITH YOU AT THAT TIME?

20 A YES, SIR.

21 Q HOW DID YOU MEET UP WITH KEION?

22 A ME AND KEION ACTUALLY WE WALKED TO THE
23 BOULEVARD TOGETHER FROM HIS HOUSE.

24 Q WALKED TOGETHER, DID YOU WALK WITH ANY
25 OTHER PEOPLE OR IT WAS JUST YOU AND KEION?

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

220

1 A WITH SOME OTHER PEOPLE.

2 Q WHO ELSE WAS WALKING WITH YOU?

3 A EDWIN, IT'S A GUY NAMED EDWIN AND THERE WAS
4 SOMEBODY'S BROTHER, I FORGOT HIS NAME.

5 Q SO EDWIN CAN VERIFY THAT YOU AND KEION WERE
6 WALKING TOGETHER?

7 A SURE.

8 Q HOW LONG HAD YOU KNOWN DARIUS?

9 A ABOUT SIX MONTHS, SEVEN MONTHS.

10 Q WHAT KIND OF RELATIONSHIP DO YOU AND HIM
11 HAVE?

12 A JUST USED TO HANG OUT.

13 Q USED TO HANG OUT, WHAT ABOUT KEION HOW LONG
14 HAVE YOU KNOWN HIM?

15 A ABOUT THE SAME AS DARIUS, WE HUNG OUT A
16 LITTLE BIT.

17 Q WOULD IT BE FAIR TO SAY, WELL LET ME BACK
18 UP, HOW LONG HAS DARIUS KNOWN KEION?

19 A I DON'T KNOW.

20 Q DID THEY KNOW EACH OTHER THROUGH YOU?

21 A I GUESS.

22 Q DID YOU INTRODUCE THEM TO ONE ANOTHER?

23 A NO, SIR.

24 Q NO, AND YOU SAID YOU'RE NOT FROM HERE,
25 RIGHT?

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

221

- 1 A NO, SIR.
- 2 Q YOU'RE FROM COLUMBIA?
- 3 A CORRECT.
- 4 Q HOW LONG HAVE YOU BEEN, HOW LONG WERE YOU
- 5 STAYING DOWN HERE ON THE BEACH?
- 6 A ABOUT A YEAR.
- 7 Q WHEN DID YOU GO BACK TO COLUMBIA?
- 8 A AFTER I WAS RELEASED.
- 9 Q YOU GOT ARRESTED ON MAY 30TH, HOW LONG DID
- 10 YOU STAY IN JAIL?
- 11 A ABOUT TWO MONTHS.
- 12 Q YOU GOT RELEASED AND WENT BACK TO COLUMBIA
- 13 IMMEDIATELY UPON RELEASE?
- 14 A TRANSPORTED BACK.
- 15 Q AND YOU STAYED DOWN HERE FOR A YEAR?
- 16 A RIGHT.
- 17 Q WHAT SCHOOL DID YOU ATTEND IN COLUMBIA?
- 18 A LOWER RICHLAND HIGH.
- 19 Q WHEN YOU WENT BACK TO COLUMBIA DID YOU GO
- 20 BACK TO LOWER RICHLAND?
- 21 A NO, SIR.
- 22 Q DID KEION EVER GO TO LOWER RICHLAND?
- 23 A NO, SIR.
- 24 Q DID DARIUS EVER GO TO LOWER RICHLAND?
- 25 A NO, SIR.

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

222

1 Q DID DARIUS HAND YOU THE GUN ON THE EARLY
2 MORNING HOURS OF MAY 25TH?

3 A NO, SIR.

4 Q YOU NEVER TOUCHED THE GUN AT ALL?

5 A NO, SIR.

6 Q DID DARIUS TELL YOU HE WAS BRINGING A GUN
7 TO THE BEACH, TO THE BOULEVARD?

8 A NO, SIR.

9 Q YOU DIDN'T KNOW DARIUS WAS BRINGING A GUN?

10 A NO, SIR, I DIDN'T.

11 Q DID YOU SEE DARIUS GIVE THE GUN TO KEION?

12 A NO, SIR.

13 Q AND DARIUS DID NOT GIVE THE GUN TO YOU?

14 A NO, SIR.

15 Q AND YOU DIDN'T ASK HIM FOR THE GUN, DID
16 YOU?

17 A NO, SIR.

18 Q BECAUSE YOU DIDN'T KNOW HE HAD IT?

19 A CORRECT.

20 Q WHEN WAS THE FIRST TIME YOU SAW THAT GUN
21 THAT MORNING?

22 A IT WAS EARLIER THAT SCHOOL YEAR WHEN HE
23 FIRST CAME TO MYRTLE BEACH HIGH, DARIUS.

24 Q OKAY?

25 A RIGHT.

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

223

1 Q SO DARIUS SHOWED YOU THE GUN BACK THEN?

2 A YES, SIR.

3 Q DID YOU SHOOT IT BACK THEN?

4 A NO, HE JUST SHOWED IT AND PUT IT BACK.

5 Q HOW MANY TIMES HAD YOU SEEN THE GUN BEFORE
6 THE SHOOTING?

7 A HOW MANY TIMES I SEEN THE GUN BEFORE THE
8 SHOOTING?

9 Q RIGHT, NOT INCLUDING THE NIGHT OF THE
10 SHOOTING?

11 A ONCE.

12 Q JUST THAT ONE TIME WHEN DARIUS SHOWED IT TO
13 YOU AND PUT IT BACK?

14 A RIGHT.

15 Q THE NEXT TIME YOU SAW THE GUN WAS THE NIGHT
16 OF THE SHOOTING?

17 A WHEN KEION HAD IT.

18 Q WHEN KEION HAD IT?

19 A RIGHT.

20 Q ON THE NIGHT OF THE SHOOTING WHEN WAS THE
21 FIRST TIME YOU SAW THAT GUN?

22 A WHEN KEION PULLED IT OUT AND TOLD THE GROUP
23 OF WHITE MALES TO LAY IT DOWN.

24 Q OKAY, SO KEION PULLED OUT A GUN?

25 A RIGHT.

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

224

1 Q AND YOU SAID ONE WHITE MALE RAISED HIS
2 HANDS LIKE THIS AND KEION SAYS TO HIM LAY IT DOWN?

3 A RIGHT.

4 Q AND WAS THAT BEFORE ANY TUSSLING STARTED?

5 A NO, THE TUSSLING HADN'T STARTED YET, THAT
6 WAS AFTER, THE TUSSLING STARTED AFTER THAT.

7 Q OKAY, SO WHAT YOU'RE TELLING THIS JURY IS
8 EVEN THOUGH THE WHITE MALES SAW SOMEONE STANDING THERE WITH
9 A GUN THEY STILL JUMPED ON YOU?

10 A YES, SIR, CAUSE I DON'T BELIEVE EVERYBODY
11 SEEN THE GUN. WHEN HE HAD IT HE HAD IT LOW ENOUGH FOR THAT
12 ONE PERSON TO SEE, DEFINITELY HE SEEN IT, BUT I DON'T THINK
13 THE ONE WHO WAS FIGHTING ME SEEN IT.

14 Q OKAY, YOU SAW IT?

15 A YES, I SEEN IT.

16 Q AND AT LEAST ONE WHITE MALE SAW IT?

17 A AT LEAST CAUSE THE ONE WHO PUT UP HIS HAND
18 HE NOTICED.

19 Q DID YOU EVER HEAR KEION ASK DARIUS FOR THE
20 GUN?

21 A NO, SIR.

22 Q ONCE YOU, DARIUS, AND KEION GOT TOGETHER
23 WERE YOU TOGETHER THE ENTIRE NIGHT UP UNTIL THE SHOOTING?

24 A RIGHT.

25 Q OKAY, AND NO TIME DURING THAT TIME DID

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

225

1 KEION ASK DARIUS FOR A GUN?

2 A I COULDN'T SAY THAT BECAUSE WE WAS AT THE
3 LANDMARK BEFORE WE EVEN WALKED TOWARDS THAT DIRECTION AND I
4 WASN'T WITH THEM THEN. I WAS LIKE OVER THERE BUT I WAS
5 WITH MY BROTHER TALKING AND THEY WAS IN THE BACK.

6 Q DID YOU EVER SEE -- OH, YOU SAID KEION AND
7 DARIUS WAS IN THE BACK?

8 A YEAH, THEY WAS LIKE OVER THERE WHERE THE
9 HOTEL WAS AT IN THE PARKING SPACE.

10 Q BEHIND THE HOTEL?

11 A RIGHT, THEY WAS OVER THERE BUT I WAS
12 TALKING TO MY PEOPLE.

13 Q DID YOU EVER SEE DARIUS HAND KEION THE GUN?

14 A NO, SIR, ONLY THAT ONE TIME, WELL, NO I
15 SEEN KEION HAND THE GUN TO DARIUS WHEN HE WAS GETTING IN
16 THE CAR.

17 Q AFTER EVERYTHING WAS OVER?

18 A RIGHT.

19 Q SO YOU DIDN'T SEE, FOR EXAMPLE, KEION
20 PULLING THE GUN OUT ON PEOPLE THROUGHOUT THE NIGHT?

21 A NO, SIR.

22 Q HE WOULDN'T HAVE BEEN TRYING TO STICK UP
23 PEOPLE ON THE BOULEVARD?

24 A NO, SIR.

25 Q THE ONLY TIME YOU SAW IT, THE FIRST TIME

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

226

1 YOU SAW IT THAT EVENING WAS WHEN HE PULLED IT OUT AND SAID
2 LAY IT DOWN?

3 A RIGHT.

4 Q NOW TELL ME WHAT YOU REMEMBER HOW THIS
5 WHOLE INCIDENT STARTED?

6 A WELL THE WHOLE INCIDENT STARTED WELL I
7 GUESS BECAUSE THE GROUP OF WHITE MALES DIDN'T WANT THE
8 YOUNG LADIES TO PARK IN THEIR YARD AND IT WAS BIKE WEEK,
9 IT'S PACKED, EVERYBODY CARS IS EVERYWHERE SO I GUESS THE
10 GIRLS DIDN'T REALLY KNOW THAT IT WAS SOMEBODY YARD AND THEY
11 DON'T KNOW.

12 Q AND THEN YA'LL ENDED UP APPROACHING THE
13 CAR, RIGHT?

14 A RIGHT.

15 Q AND WHAT HAPPENED FROM THERE?

16 A ALL RIGHT, KEION SEEN A GROUP OF MALES
17 STANDING THERE LETTING THE GIRLS KNOW THEY COULDN'T PARK
18 THEIR CAR. HE CAME UP AND HE YA'LL CAN PARK YA'LL CAR,
19 YA'LL CAN PARK YA'LL CAR THIS, THAT AND THE THIRD, SEEN A
20 GROUP OF YOUNG LADIES. I WENT OVER THERE TO TALK TO THEM.
21 I LEFT THE GROUP BEHIND TALKING. I WENT TO THE CAR AND
22 TALKED TO THE YOUNG LADY. THE WHITE MALE WHO WAS HEAVILY
23 INTOXICATED CAME, HE WAS TALKING, HE KEPT TALKING, I
24 IGNORED HIM. I WENT BACK TO TALKING TO THE YOUNG LADIES SO
25 HE GOT FRUSTRATED AND MAD AND HE SAID, YOU FUCKING DEAL

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

227

1 WITH IT, HE SLAPPED ME ON MY ARM WALKED OFF TO THE GROUP
2 WHERE THEY WERE STANDING AT SO I CLOSED THE DOOR IN THE
3 YOUNG LADY FACE, APPROACHED HIM AND TOLD HIM DON'T PUT HIS
4 F'ING HANDS ON ME.

5 Q DID ANYBODY OFFER TO PAY FOR PARKING?

6 A I HEARD A COUPLE, YOU KNOW, LIKE, YEAH, I
7 HEARD SOME MONEY BEING ARRANGED LIKE THAT, SOMEBODY SAID
8 SOMETHING ABOUT GIVE ME \$20 THEY CAN PARK.

9 Q DID YOU ATTEMPT TO PAY FOR PARKING?

10 A NO, SIR.

11 Q DID KEION ATTEMPT TO PAY FOR PARKING?

12 A NOT THAT I KNOW OF.

13 Q YOU SAID THE HIGHLY INTOXICATED WHITE MALE
14 CAME OVER AND PUT HIS HANDS ON YOU?

15 A YES, SIR.

16 Q HOW MANY TIMES DID HE PUT HIS HANDS ON YOU?

17 A THREE.

18 Q AND WHAT HAPPENED THE FIRST TIME HE PUT HIS
19 HANDS ON YOU?

20 A I MEAN IT WAS JUST LIKE A YOU DEAL WITH IT
21 LIKE THAT, LIKE A PAT, SO I JUST ADDRESSED HIM, LIKE DON'T
22 PUT YOUR F'ING HANDS ON ME.

23 Q AND HE DID IT AGAIN?

24 A NO, HE CAME IN MY FACE, HE APPROACHED ME
25 LIKE AS CLOSE TO MY FACE AS THE MIKE IS AND HE SAID, I'LL

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

228

1 WHIP YOUR FUCKING ASS, BOY.

2 Q SO FIRST HE PUT HIS HANDS ON YOU?

3 A RIGHT.

4 Q AND THEN HE THREATENED TO WHIP YOUR ASS?

5 A RIGHT.

6 Q WHAT DID YOU DO IN RESPONSE TO THAT?

7 A I WAS LIKE, MAN, THAT'S WHAT YOU WANT TO DO
8 AND THEN LIKE WE WAS ALREADY OVER THERE WHERE THE CROWD WAS
9 AND THEN THAT'S WHEN KEION I GUESS THE DUDE SAID HE WAS
10 GOING TO CALL THE POLICE, SAY I'M GOING TO CALL 911. KEION
11 SLAPPED THE PHONE OUT OF HIS HANDS THEN THE GUN WAS PULLED.

12 Q OKAY, SO YOU SAID HE TOUCHED YOU THREE
13 TIMES, WHEN WAS THE THIRD TIME THAT HE TOUCHED YOU?

14 A IT WAS ALL AT ONE TIME.

15 Q IT WAS ALL TOGETHER?

16 A RIGHT.

17 Q SO KEION PULLED THE GUN?

18 A RIGHT.

19 Q AND TWO PEOPLE JUMPED ON YOU; IS THAT
20 CORRECT, IS THAT YOUR TESTIMONY?

21 A TWO JUMPED ON ME?

22 Q YES, SIR?

23 A YES, I WAS FIGHTING WITH ONE AT ONE POINT
24 IN TIME IT WAS JUST ME AND HIM, ONE ON ONE, THEN HIS FRIEND
25 SEEN IT, MR. BROOKS, I GUESS HE WANTED TO HELP HIM SO HE

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

229

1 HAD CAME AND JUMPED ON ME.

2 Q ISN'T IT TRUE THAT MR. BROOKS WAS TRYING TO
3 BREAK IT UP?

4 A NO, I DIDN'T, NOT WHEN IT WAS ME AND THE
5 OTHER GUY ONE ON ONE HE WASN'T TRYING TO BREAK NOTHING UP.

6 Q WHILE YA'LL WERE FIGHTING KEION IS STANDING
7 THERE WITH A GUN DRAWN?

8 A I WOULD THINK SO.

9 Q SO NOW WHAT WERE YOU WEARING THAT NIGHT?

10 A A TANK TOP, BLACK PANTS, BLACK SHOES AND A
11 HAT AND SOME SHADES.

12 Q YOU DIDN'T HAVE ON A WHITE TEE SHIRT?

13 A EARLIER THAT NIGHT.

14 Q WHAT HAPPENED TO YOUR WHITE TEE SHIRT?

15 A I THINK IT GOT RIPPED.

16 Q DID YOU GET STOPPED BY A POLICE OFFICER
17 AFTER THE SHOOTING?

18 A YES, SIR.

19 Q YOU HAD ON YOUR TANK TOP AT THAT TIME?

20 A RIGHT.

21 Q NOT A WHITE TEE SHIRT?

22 A UH-UH.

23 Q WHAT HAPPENED TO YOUR SHOES?

24 A TO MY SHOES?

25 Q YES, SIR?

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

230

1 A NOTHING.

2 Q NOTHING HAPPENED TO YOUR SHOES?

3 A NO.

4 Q DID YOU DISPOSE OF YOUR SHOES AFTER THE
5 SHOOTING?

6 A NO, SIR.

7 Q DID YOU TELL POLICE THAT YOU DISPOSED OF
8 YOUR SHOES AFTER THE SHOOTING?

9 A NO, SIR.

10 Q DO YOU REMEMBER YOU TOLD THE POLICE WHETHER
11 YOU DISPOSED OF YOUR SHOES AFTER THE SHOOTING?

12 A I DON'T THINK I DID.

13 Q YOU GAVE TWO INTERVIEWS TO THE POLICE?

14 A CORRECT.

15 Q AT ANY TIME DURING THOSE TWO INTERVIEWS DID
16 YOU TELL THE POLICE THAT YOU THREW YOUR SHOES AWAY?

17 A IF I DID IT MUST HAVE BEEN IN THE FIRST
18 INTERVIEW.

19 Q THAT'S THE ONE WHERE YOU WERE LYING TO
20 THEM?

21 A EXACTLY.

22 MR. GALMORE: THE COURT'S INDULGENCE, YOUR
23 HONOR.

24 NOTHING FURTHER FROM THIS WITNESS, YOUR HONOR.

25 THE COURT: ALL RIGHT, MS. ELDER?

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

231

1 MS. ELDER: ONE MOMENT, YOUR HONOR.

2 I HAVE NO OTHER QUESTIONS FOR THIS WITNESS, YOUR
3 HONOR.

4 THE COURT: VERY WELL, YOU MAY STEP DOWN.

5 MS. ELDER: YOUR HONOR, I WOULD ASK THAT THIS
6 WITNESS BE EXCUSED.

7 THE COURT: MR. GALMORE, DO YOU HAVE ANY
8 OBJECTION TO EXCUSING THE WITNESS?

9 MR. GALMORE: NO, SIR.

10 THE COURT: ALL RIGHT, MR. STUKES, YOU'RE
11 RELEASED FROM YOUR SUBPOENA.

12 MS. ELDER: THANK YOU, YOUR HONOR. MAY MR.
13 GALMORE AND I APPROACH?

14 THE COURT: CERTAINLY.

15 MS. ELDER: FOR SCHEDULING.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
17 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
18 OF THE JURY AND THE COURT REPORTER.)

19 THE COURT: LADIES AND GENTLEMEN, THIS CASE HAS
20 GONE VERY QUICKLY SO FAR. IT MAY NOT SEEM THAT WAY BUT I
21 ASSURE THAT IN THE SCHEME OF THINGS AS TRIALS GO THIS CASE
22 IS MOVING ALONG VERY QUICKLY. THE SOLICITOR INFORMS ME
23 THAT SHE HAS TWO WITNESSES, ONE THAT WILL BE ABOUT AN HOUR
24 AND ONE THAT WILL BE JUST A FEW MINUTES, THAT ARE LEFT FOR
25 TODAY.

MR. STUKES - CROSS EXAMINATION BY MR. GALMORE

232

1 WE HAD DR. PROCTOR WHO PERFORMED THE AUTOPSY
2 COMING IN LATER. HE'S HAD AN EMERGENCY AT THE HOSPITAL AND
3 CANNOT COME THIS AFTERNOON, WON'T BE HERE UNTIL MORNING,
4 AND THE SLED AGENT, A SLED AGENT WHO IS TO TESTIFY WAS ALSO
5 NOT GOING TO BE HERE UNTIL MORNING. SO RATHER THAN BREAK
6 THIS UP AND HAVE YOU COME BACK IN THE AFTERNOON MY PLAN IS
7 FOR US TO LET'S JUST WORK STRAIGHT THROUGH. WE SHOULD BE
8 DONE BY ABOUT 1:30 OR SO THEN I CAN JUST LET YOU GO FOR THE
9 AFTERNOON. WOULDN'T YOU RATHER DO THAT THAN TAKE A LUNCH
10 HOUR AND BRING YOU BACK AT 2:00 AND THEN KEEP YOU THROUGH
11 THE AFTERNOON. I'M GOING TO ACCOMMODATE YOU AS MUCH AS I
12 CAN BUT I THINK YOU'D PROBABLY RATHER HAVE THE AFTERNOON
13 OFF THAN, THAN, THAN BREAK IT UP THAT WAY, SO WHAT WE WANT
14 TO DO SINCE WE HAVE A WITNESS THAT'S GOING TO TAKE ABOUT AN
15 HOUR LET'S TAKE A LITTLE QUICK BREAK, REFRESH YOURSELVES
16 AND WE'LL BE BACK IN THE COURTROOM. I DON'T KNOW IF YOU
17 NEED IT OR NOT BUT LET'S GO AHEAD AND DO IT SO THAT WE
18 WON'T HAVE ANY BREAKS AND THESE TWO WITNESSES WE'RE GOING
19 TO FINISH UP, OKAY. THANK YOU VERY MUCH.

20 MR. ROPP, IF YOU WOULD TAKE THE JURY TO THE JURY
21 ROOM, MAKE SURE THAT THEY HAVE EVERYTHING THEY NEED.

22 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
23 11:10 A.M.)

24 THE COURT: ALL RIGHT, 10 MINUTES, 15 MINUTES BE
25 ENOUGH, MS. ELDER?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 233

1 MS. ELDER: YES, SIR, YOUR HONOR.

2 (WHEREUPON, A RECESS WAS TAKEN.)

3 THE COURT: OKAY, LET'S GET THEM IN.

4 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
5 11:37 A.M.)

6 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
7 LET ME REMIND YOU THAT AS JUDGE JOHN ADVISED YOU DURING THE
8 QUALIFICATIONS YOU'RE NOT TO USE CELL PHONES AT ANY TIME
9 UNTIL THIS CASE HAS ENDED WHILE YOU'RE HERE IN THE
10 COURTROOM. I DON'T MAKE IT A PRACTICE OF TAKING UP CELL
11 PHONES BUT IF YOU NEED TO USE A CELL PHONE THE ONLY PURPOSE
12 FOR WHICH YOU CAN USE IT IS FOR AN EMERGENCY AT YOUR HOME
13 OR WITH YOUR FAMILY, OF COURSE, AND THOSE CALLS MUST BE
14 MADE IN THE IMMEDIATE PRESENCE OF MR. ROPP, OKAY.

15 ALL RIGHT, MS. ELDER?

16 MS. ELDER: THANK YOU, YOUR HONOR, AT THIS TIME
17 THE STATE WOULD CALL INVESTIGATOR TONY ALLEN.

18 THE COURT: MR. ALLEN, COME AROUND.

19 INVESTIGATOR TONY ALLEN

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
22 SPELL YOUR LAST NAME FOR THE COURT.

23 THE WITNESS: MY NAME IS TONY ALLEN, MY LAST
24 NAME IS SPELLED A-L-L-E-N.

25 DIRECT EXAMINATION

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELDER 234

1 BY MS. ELDER:

2 Q INVESTIGATOR ALLEN, WHERE ARE YOU EMPLOYED?

3 A I'M EMPLOYED WITH THE MYRTLE BEACH POLICE
4 DEPARTMENT.

5 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

6 A IT'S BEEN JUST OVER 20 YEARS. MY
7 EMPLOYMENT BEGAN WITH MYRTLE BEACH POLICE DEPARTMENT ON
8 AUGUST THE 2ND, 1989, AND CURRENTLY I'M ASSIGNED TO THE
9 DETECTIVE DIVISION.

10 Q AND IN SERVICE IN THE DETECTIVE DIVISION
11 WHAT ARE SOME OF YOUR GENERAL OBLIGATIONS AND
12 RESPONSIBILITIES?

13 A INVESTIGATE CRIME, INTERVIEWS, READ
14 REPORTS, HELP SUPERVISE SCENES WHERE CRIME IS BELIEVED TO
15 HAVE OCCURRED.

16 Q AND DO YOU ALSO DO INTERVIEWS OF SUSPECTS
17 AND WITNESSES?

18 A YES, MA'AM, I DO.

19 Q ALL RIGHT, ON MAY 25TH, 2008, WERE YOU
20 WORKING WITH THE MYRTLE BEACH POLICE DEPARTMENT?

21 A YES, MA'AM, I WAS.

22 Q AND YOU WERE AN INVESTIGATOR AT THAT TIME?

23 A YES, MA'AM.

24 Q AND WAS THAT MEMORIAL WEEKEND IN '08?

25 A AND WERE YOU ON DUTY DURING THAT PERIOD?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 235

1 A YES, MA'AM.

2 Q AND DID THERE COME AN OCCASION EARLY, EARLY
3 MORNING HOURS OF MAY 25TH THAT YOU GOT A CALL REGARDING A
4 SHOOTING?

5 A YES, MA'AM, I WAS NOTIFIED BY DETECTIVE
6 MIKE HULL THAT THERE HAD BEEN A SHOOTING AND I WAS ASKED TO
7 RESPOND TO THE HOSPITAL.

8 Q AND DURING THE COURSE OF YOUR INVESTIGATION
9 DID YOU DEVELOP PEOPLE OF INTEREST OR SUSPECTS?

10 A YES, MA'AM, WE DID. THE SHOOTING AND
11 MURDER OCCURRED ON MAY THE 25TH, SOME PERSONS OF INTEREST
12 WERE DEVELOPED AS EARLY AS MAY THE 29TH WITH SOME
13 INTERVIEWS TAKING PLACE ON MAY THE 30TH.

14 Q AND ONE OF THOSE PERSONS WAS THAT KEION
15 GRIFFIN?

16 A YES.

17 Q AND DID YOU HAVE AN OPPORTUNITY TO
18 INTERVIEW MR. GRIFFIN?

19 A I DID HAVE AN OPPORTUNITY TO INTERVIEW MR.
20 GRIFFIN AND THAT OCCURRED ON MAY THE 30TH, 2008.

21 Q AND HOW DID HE COME TO BE AT THE ANNEX FOR
22 THE INTERVIEW?

23 A MR. GRIFFIN'S INTERVIEW WAS PRECEDED BY AN
24 INTERVIEW WITH DEMARIO STUKES. DURING THE COURSE OF THE
25 INTERVIEW WITH DEMARIO STUKES KEION GRIFFIN'S NAME CAME UP.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 236

1 KEION GRIFFIN WAS A PERSON OF INTEREST AND WHILE THE
2 INTERVIEW WITH DEMARIO STUKES WAS TAKING PLACE REQUESTS
3 WERE MADE BY OTHER OFFICERS TO TRY AND LOCATE MR. GRIFFIN.

4 Q AND THIS WOULD HAVE BEEN DURING DEMARIO
5 STUKES FIRST INTERVIEW?

6 A YES, MA'AM, THAT IS CORRECT.

7 Q AND DID SOMEONE GET MR. GRIFFIN AND BRING
8 HIM TO THE POLICE DEPARTMENT?

9 A YES, MA'AM.

10 Q WOULD THAT HAVE BEEN ANOTHER POLICE
11 OFFICER?

12 A YES, MA'AM.

13 Q AND WHEN YOU BEGAN YOUR INTERVIEW WITH MR.
14 GRIFFIN DID YOU DO ANYTHING PARTICULARLY BEFORE YOU STARTED
15 THAT INTERVIEW?

16 A YES, MA'AM, AT THE INITIAL ONSET OF THE
17 INTERVIEW THERE WAS A BRIEF INTRODUCTION. I TALKED TO MR.
18 GRIFFIN, SOME OF THE THINGS THAT I ASKED HIM WAS HIS
19 EDUCATIONAL LEVEL. I TALKED TO HIM FACE TO FACE TO TRY AND
20 GAGE HIS COMPREHENSION OF WHAT WE, YOU KNOW, NORMAL
21 COMMUNICATION, DO YOU UNDERSTAND THE ENGLISH, ARE YOU ABLE
22 TO READ AND WRITE, ARE YOU UNDER THE INFLUENCE OF ANY DRUGS
23 OR ALCOHOL. ONCE SOME OF THOSE PRELIMINARIES WERE TAKEN
24 CARE OF I THEN PROVIDED THE MIRANDA FORM AND READ TO HIM A
25 MIRANDA FORM INFORMING HIM OF HIS RIGHTS.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSEY 237

1 Q AND WHEN YOU TALK ABOUT MIRANDA FORM IS
2 THAT WHAT COMMONLY WE SEE ON TELEVISION, YOU HAVE THE RIGHT
3 TO REMAIN SILENT, THOSE KIND OF THINGS?

4 A THAT IS CORRECT.

5 Q AND YOU WENT OVER THOSE WITH HIM?

6 A YES, MA'AM, I DID.

7 Q AND DID HE SEEM TO COMPREHEND AND
8 UNDERSTAND THOSE?

9 A ABSOLUTELY.

10 Q AND DID HE APPEAR TO BE UNDER THE INFLUENCE
11 OF ANY ALCOHOL OR DRUGS?

12 A NO, MA'AM, HE DID NOT.

13 Q AND WAS HE RESPONDING IN A MANNER THAT YOU
14 THOUGHT WAS REASONABLE UNDER THE CIRCUMSTANCES?

15 A YES, MA'AM.

16 Q DID HE SEEM TO UNDERSTAND WHAT YOU WERE
17 ASKING HIM?

18 A YES, MA'AM, AND I ALSO ASKED HIM IF YOU
19 DON'T UNDERSTAND SOMETHING DO YOU KNOW TO ASK A QUESTION
20 WHICH HE REPLIED HE DID.

21 Q AND DID HE THEN, THEN HE DID PROVIDE SOME,
22 HE ALLOWED YOU TO CONDUCT AN INTERVIEW WITH HIM?

23 A HE DID.

24 Q AND DURING THE COURSE OF THE INTERVIEW DO
25 YOU RECALL HOW LONG YOUR FIRST INTERVIEW WITH HIM WAS?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 238

1 A THE FIRST INTERVIEW WITH KEION GRIFFIN
2 OCCURRED SHORTLY AFTER 6:30 P.M. AND IT LASTED JUST BEFORE
3 8 P.M.

4 Q AND DURING THE COURSE OF THAT FIRST
5 INTERVIEW WAS HE ALLOWED BREAKS?

6 A YES, MA'AM.

7 Q AND WAS HE PROVIDED AN OPPORTUNITY FOR
8 WATER, RESTROOM?

9 A YES, MA'AM, HE WAS, AS I RECALL A BOTTLE OF
10 WATER WAS PROVIDED TO HIM ALSO.

11 Q AND DURING THE COURSE OF THE INTERVIEW WHO
12 WAS PRESENT WITH YOU?

13 A DURING THE COURSE OF THE INTERVIEW PRESENT
14 WERE MYSELF AND DETECTIVE MIKE HULL.

15 Q AND DURING THE COURSE OF THIS INTERVIEW DID
16 ANYBODY COERCE OR THREATEN HIM IN ANY MANNER, SHAPE OR FORM
17 TO GET HIM TO TALK WITH YOU?

18 A NO, MA'AM.

19 Q NOW I WANT TO GET INTO SOME SPECIFICS ABOUT
20 WHAT MR. GRIFFIN TOLD YOU OR WHAT KEION GRIFFIN TOLD YOU
21 ABOUT THAT NIGHT, DID YOU ASK HIM, OR EARLY MORNING HOURS,
22 DID YOU ASK HIM WHAT HE HAD BEEN DOING ON MAY 25TH, 2008?

23 A I DID. WE TALKED ABOUT THE EVENTS OF THE
24 DAY AND WHO HE WAS WITH.

25 Q WHO DID HE INDICATE THAT HE HAD BEEN WITH?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELDER 239

1 MR. GALMORE: OBJECTION, YOUR HONOR, CALLS FOR
2 HEARSAY ANSWER.

3 THE COURT: I THINK THIS COMES UNDER RULE 801 AS
4 AN EXCEPTION TO HEARSAY.

5 MR. GALMORE: WHICH EXCEPTION IS THAT?

6 THE COURT: IT'S A STATEMENT BY A PARTY OPPONENT
7 INTEREST.

8 MR. GALMORE: YES, SIR.

9 MS. ELDER: (CONTINUING)

10 Q WHO DID HE INDICATE THAT HE HAD BEEN WITH
11 ALL NIGHT?

12 A KEION GRIFFIN INDICATED HE HAD BEEN WITH
13 DEMARIO STUKES.

14 Q ANYBODY ELSE?

15 A IN THE FIRST INTERVIEW HE INDICATED THERE
16 WAS ANOTHER PERSON PRESENT, AS I RECALL HE REFERRED TO HIM
17 AS "J."

18 Q DID HE EVENTUALLY GIVE YOU THE NAME OF THAT
19 THIRD PERSON OR THAT SECOND PERSON THAT HE WAS WITH?

20 A YES, EVENTUALLY HE GAVE THE NAME OF DARIUS.

21 Q DID YOU INQUIRE OF HIM AS TO HOW LONG HE
22 HAD BEEN WITH DEMARIO AND DARIUS THAT EVENING?

23 A THE ENTIRE EVENING.

24 Q DID YOU ASK HIM SPECIFICALLY ABOUT THE
25 SHOOTING THAT OCCURRED ON 3RD AVENUE NORTH?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSEY 240

1 A I DID. DURING THE INTERVIEW MR. GRIFFIN
2 INDICATED THAT HE WAS IN THE AREA OF 3RD AVENUE NORTH. HE
3 WAS IN THE PRESENCE OF DEMARIO AND THE OTHER PERSON WHO HE
4 SUBSEQUENTLY IDENTIFIED AS DARIUS PRIEST. HE INDICATED
5 THAT HE SAW POLICE THERE, SAW THAT SOMETHING HAD GONE ON,
6 BUT HE DECLINED HAVING SEEN ANY FIGHT, HAVING HEARD ANY
7 GUNSHOT AND HE ALSO STATED THAT THE POLICE NEVER HAD ANY
8 CONTACT WITH HIM DIRECTLY.

9 Q DID HE SAY WHETHER THE FRIENDS THAT HE WAS
10 WITH THAT NIGHT IF THEY GOT INTO A FIGHT WHILE HE WAS WITH
11 THEM?

12 A MR. GRIFFIN STATEMENT WAS THAT HE WITNESSED
13 NO SUCH THING BUT THAT HE WAS WITH THEM THE ENTIRE TIME.

14 Q BUT HE WAS WITH DEMARIO AND DARIUS ALL
15 NIGHT?

16 A YES, MA'AM.

17 Q AND WHEN DID HE SAY HE SEPARATED FROM
18 DEMARIO AND DARIUS THAT NIGHT?

19 A MR. GRIFFIN INDICATED DURING HIS INTERVIEW
20 THAT ONCE THEY SAW THE POLICE AT 3RD AVENUE NORTH THEY LEFT
21 3RD AVENUE NORTH, WALKED AWAY. DARIUS ENDED UP GETTING IN
22 THE CAR WITH HIS MOM AND SUBSEQUENTLY THEREAFTER THEY ALL
23 SEPARATED. THAT WAS THE SEPARATION POINT AFTER, AFTER
24 SEEING WHAT WAS GOING ON AT 3RD AVENUE NORTH WITH THE
25 POLICE SETTING UP.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSE 241

1 Q SO WHEN, DID HE TELL YOU THAT HE SAW WHAT
2 WAS GOING ON AT 3RD AVENUE AND THE POLICE SETTING UP?

3 A YES, MA'AM, HE DID.

4 Q BUT HE DIDN'T SEE A FIGHT?

5 A HE DID NOT SEE A FIGHT; HE DID NOT HEAR ANY
6 GUN SHOTS. HE DID NOT SEE A GUN; HE DID NOT WITNESS
7 DEMARIO STUKES IN A FIGHT OR DARIUS PRIEST IN A FIGHT.

8 Q BUT HE WAS WITH DEMARIO AND DARIUS UNTIL
9 AFTER THEY SAW THE POLICE BLOCKING OFF THE ROAD?

10 A THAT IS CORRECT, HE INDICATED HE WAS WITH
11 THEM PRIOR TO COMING UP TO 3RD AVENUE NORTH WHERE THE
12 INCIDENT TOOK PLACE, ALSO WITH THEM WHEN THEY WALKED OFF
13 TOGETHER, ALSO WITH THEM WHEN DARIUS GOT IN THE CAR WITH
14 HIS MOM, BUT THERE WAS NO DIRECT CONTACT WITH THE POLICE
15 AND HE NEVER WITNESSED A FIGHT OR A GUN OR EVEN HEARD A GUN
16 SHOT.

17 Q WHAT DID HE TELL YOU, DID HE TELL HE DID
18 ANYTHING AFTER HE SEPARATED FROM DARIUS AND DEMARIO; DO YOU
19 RECALL?

20 A I DON'T RECALL AT THE MOMENT.

21 Q DID HE DESCRIBE TO YOU WHAT HE HAD ON THAT
22 NIGHT?

23 A YES, HE DID.

24 Q AND WHAT DID HE TELL YOU HE HAD ON THAT
25 NIGHT?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 242

1 A ONE MOMENT PLEASE.

2 MR GRIFFIN INDICATED HE WAS WEARING A WHITE TEE
3 SHIRT AND SOME RED AND WHITE SHOES AND JEAN SHORTS.

4 Q DO YOU RECALL WHAT HIS HAIR APPEARED LIKE
5 WHEN YOU INTERVIEWED HIM?

6 A AT THE TIME OF THE INTERVIEW HIS HAIR AT
7 THAT TIME IS VERY SIMILAR TO WHAT IT IS TODAY, KIND OF OR
8 MOST OFTEN REFERRED TO AS DREADS ONLY AT THE TIME OF THE
9 INTERVIEW THEY WERE NOT QUITE AS LONG AS THEY ARE TODAY.

10 Q DID THERE COME A TIME THAT YOU CONDUCTED A
11 SECOND INTERVIEW WITH KEION GRIFFIN?

12 A YES, MA'AM, A SECOND INTERVIEW WAS
13 CONDUCTED WITH KEION GRIFFIN ON SATURDAY MAY THE 31ST.

14 Q AND WHAT TIME DID THAT INTERVIEW START?

15 A THAT INTERVIEW BEGAN ABOUT 9:40 P.M.

16 Q AND HOW DID YA'LL COME TO INTERVIEW KEION
17 GRIFFIN AT THAT POINT?

18 A MYSELF AND DETECTIVE HULL WERE NOTIFIED
19 THAT WARRANTS HAD BEEN SERVED ON MR. GRIFFIN. MR. GRIFFIN
20 HAD EXPRESSLY ASKED TO TALK TO DETECTIVES IN THE CASE. AT
21 THE TIME OF BEING NOTIFIED I WAS NOT ON DUTY SO I ACTUALLY
22 HAD TO COME INTO WORK TO CONDUCT THE INTERVIEW.

23 Q AND WHERE WAS THE INTERVIEW CONDUCTED?

24 A THE INTERVIEW WAS CONDUCTED AT THE POLICE
25 DEPARTMENT ANNEX AND THAT'S THE BUILDING LOCATED AT 3340

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 243

1 MUSTANG AVENUE AND THAT'S LOCATED ON THE FORMER MYRTLE
2 BEACH AIR FORCE BASE.

3 Q AND WHO WAS PRESENT DURING THAT INTERVIEW?

4 A PRESENT IN THAT INTERVIEW WERE MYSELF AND
5 DETECTIVE MIKE HULL.

6 Q AND DID YOU DO ANYTHING PRIOR TO STARTING
7 THAT INTERVIEW?

8 A YES, MA'AM, PRIOR TO GETTING INTO THE
9 INTERVIEW PORTION OF WHAT MR. GRIFFIN WANTED TO TALK ABOUT
10 WE ESTABLISHED THAT MR. GRIFFIN IS THE PERSON WHO INITIATED
11 THE CONTACT AND REQUESTED THE INTERVIEW. WE WENT OVER THE
12 MIRANDA FORM TO MAKE SURE THAT HE UNDERSTOOD THAT HE
13 REMEMBERED SEEING IT FROM THE FIRST INTERVIEW AND THAT ALL
14 THE RIGHTS INDICATED THEREON ARE STILL IN AFFECT.

15 Q DID HE SEEM TO UNDERSTAND THAT?

16 A YES, MA'AM, HE DID.

17 Q DID HE SEEM TO WANT TO TALK TO YOU THE
18 SECOND TIME?

19 A YES, MA'AM.

20 Q AND HOW LONG DID THAT SECOND INTERVIEW
21 LAST?

22 A THAT SECOND INTERVIEW BEGAN ABOUT 9:40 P.M.
23 AND IT LASTED TILL ABOUT 10, 10:50 P.M.

24 Q HAD MR. GRIFFIN ALREADY BEEN CHARGED AT
25 THAT POINT?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSE 244

1 A YES, MA'AM, I BELIEVE HE HAD ALREADY BEEN
2 SERVED HIS WARRANTS.

3 Q AND HIS WARRANTS WERE FOR?

4 A MURDER AND POSSESSION OF A DEADLY WEAPON
5 DURING THE COMMISSION OF A VIOLENT CRIME.

6 Q DID HE TELL YOU ANYTHING ESSENTIALLY
7 DIFFERENT IN HIS SECOND INTERVIEW?

8 A DURING THE SECOND INTERVIEW THE ADDITIONAL
9 INTERVIEW THAT I RECALL MR. GRIFFIN PROVIDING WAS THAT HE
10 HAD HAD A CONVERSATION IN THE JAIL WITH MR. DEMARIO STUKES
11 AND THE INFORMATION HE RECEIVED AS THAT DARIUS PRIEST HAD
12 THE GUN.

13 Q DID HE INDICATE WHERE HE GOT THAT
14 INFORMATION FROM?

15 A FROM DEMARIO STUKES.

16 Q DID YOU ASK HIM AGAIN ABOUT WHO HE WAS WITH
17 ALL NIGHT LONG?

18 A I DON'T RECALL.

19 Q DID HE CHANGE HIS STORY ABOUT WHO HAD BEEN
20 WITH FROM HIS FIRST INTERVIEW ALL NIGHT LONG?

21 A AS I RECALL AS FAR AS CHANGING THE STORY HE
22 INDICATED THAT THE PERSON "J" WAS ACTUALLY DARIUS WHOM HE
23 MET THROUGH DEMARIO.

24 Q AND HE SAID HE WAS WITH DARIUS AND DEMARIO

25 -

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 245

1 A YES, MA'AM.

2 Q --- THAT NIGHT?

3 A YES, MA'AM, THAT'S CORRECT.

4 Q HE JUST NAMED DARIUS BY NAME?

5 A YES, MA'AM.

6 Q AND I BELIEVE YA'LL IN THAT SECOND
7 INTERVIEW ASKED HIM ANOTHER TIME WAS HE WITH HIM UNTIL THEY
8 SAW THE POLICE BLOCKING OFF THE ROAD?

9 A YES, MA'AM.

10 Q AND DID HE CONTINUALLY SAY YES?

11 A YES, BUT HE DOES NOT, HE DID NOT KNOW
12 ANYTHING ABOUT A FIGHTING, EXCUSE ME, A FIGHTING OR ABOUT A
13 GUN AS FAR AS SEEING A GUN OR HEARING A GUN SHOT OR EVEN
14 HAVING ANY DIRECT CONTACT WITH A POLICE OFFICER.

15 Q AND SO THE SECOND INTERVIEW HE MAINTAINED
16 THAT SAME STORY?

17 A YES, MA'AM.

18 Q DID YOU ASK HIM ABOUT WHAT HE THOUGHT ABOUT
19 FIGHTING?

20 A THE SUBJECT OF FIGHTING CAME UP. HE
21 INDICATED HE COULD BE VERY VIOLENT WHEN HE HAD TO BE OR
22 WHEN HE BECOMES ANGRY.

23 MR. GALMORE: OBJECTION, RELEVANCE, YOUR HONOR.

24 THE COURT: I'M NOT GOING TO ALLOW THAT.

25 MR. GALMORE: MOVE TO STRIKE IT, YOUR HONOR.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELDER 246

1 THE COURT: I WOULD ADVISE THE JURY TO
2 DISREGARD THAT LAST REMARK, THE QUESTION AND THE ANSWER.

3
4 MS. ELDER: (CONTINUING)

5 Q SO KEION GRIFFIN SAID HE NEVER SAW A FIGHT?

6 A THAT'S CORRECT.

7 Q HE NEVER SAW A GUN?

8 A THAT'S CORRECT.

9 Q HE NEVER HEARD A GUN SHOT?

10 A THAT'S CORRECT.

11 Q BUT HE WAS WITH DEMARIO AND DARIUS ALL
12 NIGHT UNTIL THE POLICE BLOCKED OFF THE ROAD AT 3RD AVENUE?

13 A YES, MA'AM, THAT'S CORRECT.

14 Q DURING THE COURSE OF YOUR FIRST INTERVIEW
15 WITH MR. GRIFFIN DID YOU OR DETECTIVE HULL NOTE ANY
16 INJURIES ON KEION GRIFFIN?

17 A INJURIES WERE NOTED DURING THE INTERVIEW,
18 SPECIFICALLY AS I RECALL DETECTIVE HULL ASKED ABOUT AN
19 INJURY TO THE FACE.

20 Q YOU CAN TAKE A LOOK AT WHAT'S BEEN MARKED
21 AS STATE'S EXHIBIT FOR IDENTIFICATION 12, 11, 12, AND 13?

22 A ONE MOMENT, PLEASE. YES, MA'AM.

23 Q AND DO YOU RECOGNIZE THOSE?

24 A YES, MA'AM.

25 Q WHAT ARE THOSE?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELDER 247

1 A THESE ARE PHOTOGRAPHS OF INJURIES ON KEION
2 GRIFFIN.

3 Q AND WERE THEY TAKEN AT THE DIRECTION OF AN
4 INVESTIGATOR?

5 A THEY WERE. AFTER THE INTERVIEW DETECTIVE
6 CASTLE WAS ASKED TO NOTIFY CRIME SCENE TO TAKE PHOTOGRAPHS
7 OF MR. GRIFFIN'S INJURIES.

8 Q AND DO THOSE REFLECT WHAT YOU VIEWED THAT
9 DAY IN THE INTERVIEW ROOM?

10 A YES, MA'AM.

11 MS. ELDER: YOUR HONOR, AT THIS TIME I WOULD
12 LIKE TO INTRODUCE STATE'S EXHIBIT 11, 12, AND 13.

13 THE COURT: DEFENSE?

14 MR. GALMORE: I WOULD OBJECT, YOUR HONOR.
15 THERE'S NO CONNECTION BETWEEN THESE PHOTOGRAPHS AND, AND
16 THE INCIDENT OF MAY 25TH.

17 THE COURT: WELL I'M GOING TO ADMIT THEM.

18 MR. GALMORE: YES, SIR.

19 (WHEREUPON, STATE'S EXHIBITS NUMBERS 11, 12, AND
20 13 ENTERED INTO EVIDENCE AND STATE'S NUMBERS 18 AND 19
21 MARKED FOR IDENTIFICATION.)

22 Q INVESTIGATOR ALLEN, WHEN INDIVIDUALS ARE
23 BOOKED INTO THE JAIL ARE THERE CERTAIN PROCEDURES THAT ARE
24 PERFORMED?

25 A YES, MA'AM.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSEY 248

1 Q AND ARE THERE PHOTOGRAPHS TAKEN, BOOKING
2 PHOTOS?

3 A BOOKING PHOTOS, YES, MA'AM.

4 Q IS HEIGHT AND WEIGHT DOCUMENTED?

5 A HEIGHT, WEIGHT, RACE, SEX, DATE OF BIRTH.

6 Q HAIR, EYES?

7 A YES, MA'AM, AND WHEN A BOOKING PHOTO IS
8 TAKEN GENERALLY IT'S JUST OF THE UPPER PORTION WHICH
9 INCLUDES THE FACE.

10 Q AND IS THAT A NORMAL PROCEDURE FOR MYRTLE
11 BEACH POLICE DEPARTMENT?

12 A YES, MA'AM, IT IS.

13 Q IF YOU'D TAKE A LOOK AT STATE'S
14 IDENTIFICATION, FOR IDENTIFICATION 18 AND 19?

15 A YES, MA'AM.

16 Q DO YOU RECOGNIZE WHAT THOSE ARE?

17 A YES, MA'AM, THESE ARE BOOKING PHOTOS THAT
18 ARE GENERATED DURING THE COURSE OF THE BOOKING PROCESS AT
19 THE MYRTLE BEACH POLICE DEPARTMENT JAIL.

20 Q AND WHO ARE THOSE BOOKING PHOTOS OF?

21 A STATE EXHIBIT 18 IS A BOOKING PHOTO OF MR.
22 KEION GRIFFIN. STATE'S EXHIBIT 19 IS A PHOTOGRAPH OF MR.
23 DEMARIO STUKES.

24 Q AND ON THAT ARE THERE IDENTIFYING
25 INFORMATION ABOUT HEIGHT AND WEIGHT?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELDER 249

1 A YES, MA'AM, FOR MR. KEION GRIFFIN THE
2 HEIGHT IS NOTED AT FIVE EIGHT, WEIGHT IS 145, HE'S LISTED
3 AS A BLACK MALE, HIS DATE OF BIRTH IS INDICATED ON THIS
4 ALSO.

5 ON DEMARIO STUKES HIS HEIGHT IS FIVE SEVEN, HIS
6 WEIGHT 150, HE'S INDICATED AS A BLACK MALE AND HIS DATE OF
7 BIRTH IS ALSO INDICATED ON THIS.

8 Q SO KEION GRIFFIN IS ABOUT AN INCH TALLER
9 THAN DEMARIO STUKES?

10 A YES, MA'AM.

11 THE COURT: ARE THOSE JUST FOR I.D.?

12 MS. ELDER: YES, SIR, YOUR HONOR.

13 THE COURT: OKAY.

14 MS. ELDER: (CONTINUING)

15 Q NOW, INVESTIGATOR ALLEN, YOU ALSO PERFORMED
16 OTHER INTERVIEWS IN THIS CASE?

17 A YES, MA'AM, WE DID.

18 MS. ELDER: YOUR HONOR, AT THIS TIME I'D LIKE
19 THE INVESTIGATOR TO STEP DOWN.

20 THE COURT: YOU MAY. MR. ALLEN, PLEASE SPEAK UP
21 NOW THAT YOU'RE AWAY FROM A MICROPHONE. COULD I SEE THE
22 EXHIBIT?

23 MS. ELDER: IT'S BLANK, YOUR HONOR.

24 THE COURT: IS IT JUST BLANK?

25 MS. ELDER: YES, SIR.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELDER 250

1 THE COURT: OKAY, ALL RIGHT.

2 (THE WITNESS COMPLIES AND MS. ELDER CONTINUES.)

3 Q INVESTIGATOR ALLEN, JUST SO WE'RE ALL CLEAR
4 ABOUT THE PROCESS THAT YA'LL WENT THROUGH REGARDING THIS
5 INVESTIGATION I WANT TO KIND OF GO THROUGH A TIME LINE OF
6 WHAT YOU DID AND AS WE GO I'D LIKE FOR YOU WRITE THAT DOWN
7 ON THIS ---

8 A YES, MA'AM.

9 Q --- THIS PIECE OF PAPER. ALL RIGHT, COULD
10 YOU GO BACK, TELL ME THE NIGHT OF THE INCIDENT, THE NIGHT
11 THE CALL WENT OUT ABOUT THE SHOOTING AT 3RD AVENUE NORTH?

12 A MAY 25TH, 2008.

13 Q AND DO YOU REMEMBER APPROXIMATELY WHAT
14 TIME?

15 A APPROXIMATELY 3:50 OR 3:40, 3:40 OR 3:50
16 THEREABOUT.

17 Q AND CAN YOU MARK THAT UP THERE FOR ME,
18 PLEASE?

19 ALL RIGHT, AFTER MAY 25TH THE NIGHT OF THE
20 SHOOTING YA'LL THEN WENT DO, WENT THROUGH AN INVESTIGATIVE
21 PROCESS, THAT INCLUDED WHAT?

22 A DURING THE INVESTIGATIVE PROCESS WHAT WE
23 WILL DO IS WE WILL TRY AND IDENTIFY WITNESSES OR
24 PARTICIPANTS OF THE INCIDENT THAT HAPPENED. HOPEFULLY FROM
25 THESE INTERVIEWS WITNESSES OR PARTICIPANTS ARE GOING TO

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 251

1 PROVIDE US WITH SOME INFORMATION AS TO WHO PEOPLE OF
2 INTEREST WHETHER IT BE VICTIMS, WHETHER IT BE SUSPECTS, OR
3 WHETHER IT BE OTHER WITNESSES.

4 Q AND WHEN DID YOU DEVELOP KEION GRIFFIN,
5 DEMARIO STUKES, AND DARIUS PRIEST AS SUSPECTS?

6 A THE FIRST PERSON OF INTEREST IN THIS
7 INVESTIGATION WAS DEMARIO STUKES. HE BECAME A PERSON OF
8 INTEREST ON THURSDAY MAY THE 29TH.

9 Q AND HOW DID HE BECOME A PERSON OF INTEREST?

10 A DURING THE COURSE OF THIS INVESTIGATION ONE
11 OF THE OTHER DETECTIVES WERE TASKED WITH CHECKING MY SPACE
12 ACCOUNTS AND PAGES. DURING THE COURSE OF HER CHECKING THE
13 MY SPACE ACCOUNTS THERE WAS A PHOTOGRAPH OF A HAT THAT HAD
14 STUKES BAMA ON IT.

15 Q COULD THAT BE, I'M SORRY, BE STATE'S
16 EXHIBIT 17 THAT WAS LOCATED FROM THE SCENE?

17 A THAT IS CORRECT.

18 Q AFTER DEVELOPING THIS INFORMATION DID YOU
19 BRING DEMARIO STUKES IN?

20 A YES, WE DID, MR. STUKES WAS BROUGHT IN ON
21 MAY THE 30TH TO BE INTERVIEWED.

22 Q AND WHERE DID YA'LL GET HIM FROM?

23 A MR. STUKES WAS LOCATED AT THE HIGH SCHOOL
24 BY OFFICER SPENCER CLARK AND HE WAS TRANSPORTED BY POLICE
25 CAR DOWN TO THE POLICE DEPARTMENT ANNEX WHICH AGAIN IS THE

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 252

1 BUILDING ON THE FORMER AIR FORCE BASE.

2 Q COULD YOU WRITE MAYBE A LITTLE BIT BIGGER?

3 A I'LL TRY.

4 Q THE DATE, THE DATE THAT YOU INTERVIEWED,
5 THE DATE AND TIME THAT YOU INTERVIEWED DEMARIO STUKES THE
6 FIRST TIME? COULD YOU WRITE THAT IN OUR TIME, I KNOW
7 THAT'S MILITARY.

8 A I APOLOGIZE.

9 Q OKAY, SO YOU INTERVIEWED THE FIRST TIME
10 DEMARIO STUKES ON MAY 30TH, 2008, AT 2:33 P.M. TILL 4:50
11 P.M., CORRECT?

12 A YES, MA'AM, THAT'S CORRECT.

13 Q AND AFTER THE FIRST INTERVIEW WITH DEMARIO
14 STUKES WHO DID YOU INTERVIEW NEXT?

15 A DURING THE COURSE OF INTERVIEWING MR.
16 DEMARIO STUKES THE NAME KEION CAME UP INDICATED TO US THAT
17 KEION AS WITH HIM SO WE LOCATED KEION GRIFFIN THAT SAME DAY
18 AND CONDUCTED AN INTERVIEW WITH MR. KEION GRIFFIN THAT
19 EVENING SHORTLY AFTER 6:30.

20 Q OKAY, AND COULD YOU NOTE THAT FOR ME?

21 A YES, MA'AM.

22 Q COULD YOU WRITE THE DATES ABOVE HIS NAME
23 JUST SO WE MAKE SURE WE'RE CLEAR, PLEASE?

24 A YES, MA'AM.

25 Q ALL RIGHT, AFTER YOU INTERVIEWED KEION

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 253

1 GRIFFIN WHO WAS THE NEXT PERSON YOU TALKED WITH OF
2 INTEREST?

3 A THE NEXT PERSON OF INTEREST TO BE
4 INTERVIEWED WAS DARIUS PRIEST.

5 Q AND ---

6 A EXCUSE ME, MISSPOKE. THE NEXT PERSON
7 INTERVIEWED WAS DEMARIO STUKES. WE HAD ALREADY TALKED TO
8 HIM ONCE BUT AFTER HIM THE OTHER PERSON OF INTEREST WAS
9 DARIUS PRIEST.

10 Q OKAY, SO YOU CONDUCTED --

11 A A SECOND INTERVIEW WITH DEMARIO STUKES.

12 Q AND WHY DID YOU CONDUCT A SECOND INTERVIEW
13 WITH DEMARIO STUKES?

14 A MYSELF AND DETECTIVE HULL WERE NOTIFIED
15 THAT DEMARIO STUKES HAD REQUESTED TO SPEAK TO DETECTIVES OR
16 OFFICERS IN THE CASE HE WANTED TO TALK ABOUT SOME
17 ADDITIONAL INFORMATION.

18 Q AND DID YA'LL BRING HIM BACK OVER TO
19 INTERVIEW HIM?

20 A YES, MA'AM, HE WAS BROUGHT BACK OVER TO THE
21 POLICE DEPARTMENT ANNEX TO BE INTERVIEWED.

22 Q AND COULD YOU NOTE THE DATE AND TIME OF
23 THAT ON HERE? BELOW?

24 A RIGHT HERE?

25 Q KEEP ON GOING BELOW TO KEEP IT IN ORDER.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSE 254

1 YOU'VE INDICATED MAY 30TH DEMARIO STUKES SECOND INTERVIEW
2 WAS AT 8:35 FOLLOWING KEION GRIFFIN'S FIRST INTERVIEW?

3 A YES, MA'AM.

4 Q NOW AFTER DEMARIO STUKES SECOND INTERVIEW
5 DID YOU INTERVIEW SOMEBODY ELSE?

6 A YES, MA'AM, AFTER DEMARIO STUKES INTERVIEW
7 ABOUT 11:16 P.M. THAT NIGHT WE INTERVIEWED DARIUS PRIEST.

8 Q AND WHERE DID YOU, HOW DID YOU COME TO
9 INTERVIEW HIM?

10 A MR. DARIUS PRIEST WAS IDENTIFIED AS A
11 PERSON OF INTEREST. HE WAS LOCATED NEAR HIS HOME AND HE
12 WAS DRIVEN TO THE POLICE DEPARTMENT ANNEX FOR THE PURPOSE
13 OF THE INTERVIEW.

14 Q AND COULD YOU NOTE AND DATE THE TIME OF
15 DARIUS PRIEST INTERVIEW?

16 A YES, MA'AM.

17 Q ALL RIGHT, SO YOU NOTED THAT DARIUS PRIEST
18 INTERVIEW STARTED ON MAY 30TH AT 11:16 P.M. AND IT WENT
19 INTO 12:55 A.M. WHICH WOULD HAVE BEEN SATURDAY MORNING
20 CAUSE IT WAS PAST MIDNIGHT; IS THAT CORRECT?

21 A YES, MA'AM, THAT'S CORRECT.

22 Q AND AFTER YOU SPOKE WITH DARIUS DID YOU
23 HAVE AN OPPORTUNITY TO INTERVIEW KEION GRIFFIN AGAIN?

24 A YES, MA'AM, THAT SATURDAY WAS THE DAY THAT
25 I WAS NOT ON DUTY BUT HAD BEEN CONTACTED THAT KEION WANTED

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSEY 255

1 TO TALK TO INVESTIGATORS INVOLVED IN THE INVESTIGATION.

2 Q AND COULD YOU NOTE THE DATE AND TIME OF
3 THAT?

4 SO YOU NOTED THAT A SECOND INTERVIEW TOOK PLACE
5 AFTER BOTH OF DEMARIO'S AND THE FIRST ONE WITH DARIUS IT
6 TOOK PLACE ON MAY 31ST AT 9:40 P.M.?

7 A YES, MA'AM, THAT'S CORRECT.

8 Q AND DID YOU HAVE AN OPPORTUNITY TO
9 INTERVIEW DARIUS PRIEST AGAIN?

10 A YES, MA'AM, THE OTHER OPPORTUNITY TO
11 INTERVIEW DARIUS PRIEST CAME ON JUNE THE 3RD.

12 Q AND COULD YOU, PLEASE, NOTE THAT FOR US?

13 A THAT'S WHEN THE INTERVIEW TOOK PLACE AT
14 11:43 A.M. THAT MORNING.

15 MADAM COURT REPORTER: I'M SORRY, I DIDN'T HEAR
16 YOU.

17 THE WITNESS: (CONTINUING)

18 A ON JUNE THE 3RD THE INTERVIEW WITH DARIUS
19 PRIEST TOOK PLACE AT 11:43 A.M.

20 Q AND WHERE DID THAT INTERVIEW OCCUR?

21 A THAT OCCURRED HERE AT THE COURTHOUSE.

22 Q AND AS A RESULT OF THAT INTERVIEW DID YOU
23 LOCATE STATE EXHIBIT 7 AS A WEAPON IN THIS CASE?

24 A THE WEAPON WAS LOCATED AS A RESULT OF THAT
25 INTERVIEW, YES, MA'AM.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 256

1 Q ALL RIGHT, JUST SO I'M CLEAR THE FIRST
2 INTERVIEW WITH DEMARIO STUKES WHEN YA'LL FINISHED THAT
3 INTERVIEW THERE WAS NO ONE NAMED AS FAR AT THE SHOOTER IN
4 THE CASE, IS THAT CORRECT?

5 A THAT IS CORRECT.

6 Q THE FIRST INTERVIEW WITH KEION GRIFFIN HE
7 INDICATED HE WAS WITH DEMARIO AND DARIUS ALL NIGHT BUT SAW
8 NO SHOOTING, NO FIGHTING, NO NOTHING?

9 A THAT IS CORRECT.

10 Q BUT HE SAW THE POLICE BLOCKING OFF THE
11 ROAD?

12 A YES, MA'AM, AND MR. PRIEST IN THE CAR WITH
13 HIS MOTHER.

14 Q THE SECOND INTERVIEW WITH DEMARIO STUKES
15 THAT OCCURRED LESS THAN AN HOUR LATER MR. STUKES AT THAT
16 TIME, WITHOUT SAYING WHAT HE SAID, DID MR. STUKES PROVIDE
17 YOU A NAME OF THE INDIVIDUAL RESPONSIBLE FOR THE DEATH OF
18 COREY BROOKS?

19 A YES, HE DID.

20 Q DID HE ALSO PROVIDE YOU THE NAME OF THE
21 PERSON WHO HAD THE WEAPON?

22 A YES, HE DID.

23 Q AS A RESULT OF THAT YOU THEN INTERVIEWED
24 DARIUS PRIEST APPROXIMATELY AN HOUR AND A HALF LATER?

25 A YES, MA'AM, WE DID.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MS. ELSER 257

1 Q AND DID HE AT THAT TIME, WITHOUT SAYING
2 WHAT HE SAID, INDICATE WHO WAS THE SHOOTER?

3 A YES, MA'AM, HE DID.

4 Q THE INDICATION OF THE PERSON HE NAMED
5 WITHOUT IDENTIFYING HIM DID DEMARIO AND DARIUS NAME THAT
6 INDIVIDUAL?

7 A THEY DID.

8 Q AND WERE THEY KEPT TOGETHER AT ANY IN POINT
9 DURING THIS INTERVIEWING PROCESS?

10 A NO, MA'AM, AS A RESULT OF THE AGE
11 DIFFERENCE WITH MR. PRIEST BEING 16 YEARS OF AGE WE ARE
12 REQUIRED TO KEEP THEM HOUSED SEPARATELY BY SITE AND SOUND.

13 Q SO THERE WAS NOT AN OPPORTUNITY FOR DARIUS
14 AND DEMARIO TO SPEAK?

15 A NOT TO MY KNOWLEDGE, NO, MA'AM.

16 Q AND THEN YOU INTERVIEWED KEION GRIFFIN?

17 A YES, MA'AM.

18 Q THE NEXT DAY?

19 A YES, MA'AM.

20 Q THAT WAS AT HIS REQUEST?

21 A YES, MA'AM.

22 Q AND AGAIN HE SAYS BASICALLY THE SAME THING
23 UP HERE EXCEPT HE TELLS YOU WHO THE JUVENILE WAS THAT HE
24 WAS WITH ALL NIGHT?

25 A THAT IS CORRECT.

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 258

1 Q AND THEN ON JUNE THE 3RD YOU GET A CALL TO
2 COME TO THE COURTHOUSE; IS THAT CORRECT?

3 A YES, MA'AM.

4 Q AND DARIUS, AS A RESULT OF THIS INTERVIEW
5 YOU LOCATE THE WEAPON?

6 A THAT IS CORRECT.

7 Q IF I COULD ASK YOU TO RETURN TO THE STAND,
8 PLEASE?

9 A YES, MA'AM.

10 MS. ELDER: YOUR HONOR, WE'D LIKE TO MARK THOSE.

11 THE COURT: NUMBER, PLEASE?

12 MS. ELDER: TWENTY.

13 THE COURT: STATE'S 20.

14 MS. ELDER: AND WE WOULD MOVE THAT INTO EVIDENCE
15 AT THIS TIME.

16 THE COURT: MR. GALMORE?

17 MR. GALMORE: NO OBJECTION, SIR.

18 THE COURT: WITHOUT OBJECTION.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER 20 MARKED AND
20 ENTERED INTO EVIDENCE.)

21 THE COURT: ARE YOU DONE WITH THE EASEL?

22 MS. ELDER: YES, THANK YOU, YOUR HONOR. ONE
23 MOMENT, YOUR HONOR. NO FURTHER QUESTIONS OF THIS WITNESS.

24 THE COURT: THE WITNESS IS YOURS, MR. GALMORE.

25 CROSS EXAMINATION

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 259

1 BY MR. GALMORE:

2 Q DETECTIVE ALTMAN, I MEAN EXCUSE ME ---

3 THE COURT: ALLEN.

4 Q DETECTIVE ALLEN, I'M SORRY --

5 A THAT'S ALL RIGHT.

6 Q THIS EXHIBIT KIND OF SKIPS FROM SUNDAY TO
7 FRIDAY; IS THAT CORRECT?

8 A YES, SIR, THAT'S CORRECT.

9 Q BUT YOU ALL WERE CONDUCTING INVESTIGATIONS
10 DURING THAT PERIOD OF TIME; IS THAT CORRECT?

11 A YES, SIR, AND THAT INVESTIGATION INCLUDED
12 AS I MENTIONED EARLIER WITH THE LOCATING AND INTERVIEWING
13 POTENTIAL WITNESSES OR PARTICIPANTS TO WHAT HAD HAPPENED.

14 Q DID YOU AT ANY TIME PASS AROUND THIS
15 EXHIBIT TO THE OFFICERS OF THE MYRTLE BEACH POLICE
16 DEPARTMENT TO SEE IF ANY OF THEM RECOGNIZED IT?

17 A THE ACTUAL HAT?

18 Q A PHOTO OF THE HAT?

19 A I DON'T REMEMBER SPECIFICALLY, HOWEVER,
20 EXCUSE ME, IN THE COURSE OF AN INVESTIGATION IF WE HAVE A
21 HAT LIKE THAT OR AN ITEM THAT'S FAIRLY UNIQUE THAT WOULD BE
22 SOMETHING COMMON PLACE TO ASK OTHER OFFICERS HAVE YOU SEEN
23 THIS HAT, DO YOU KNOW ANYBODY THAT WEARS THAT HAT.

24 Q ISN'T IT TRUE THAT THE SCHOOL RESOURCE
25 OFFICER AT MYRTLE BEACH HIGH SCHOOL WAS ABLE TO IDENTIFY

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 260

1 THAT HAT?

2 A YES, SIR, THAT IS CORRECT.

3 Q IS THAT HOW DEMARIO STUKES WAS DEVELOPED
4 AS A SUSPECT IN THIS CASE?

5 A NO, SIR, NO, SIR, NOT AT THAT TIME. THAT
6 WAS PART OF THE CONFIRMATION FOR DEMARIO STUKES BUT
7 INITIALLY WHEN I SPOKE ABOUT ANOTHER DETECTIVE BEING TASKED
8 FOR LOOKING THROUGH THE MY SPACE ACCOUNTS THAT DETECTIVE
9 WAS MEMORIALIZING OR COPYING THESE MY SPACE PAGES. AT THE
10 TIME OF HER TASK IN DOING THAT THIS HAT WAS PICTURED ON ONE
11 OF THOSE PAGES. AT MY RECOLLECTION IS SHE PRINTED THE PAGE
12 FOR THE INFORMATION, SHE STOOD UP TO GO TO THE PRINTER, HER
13 DESK IS ADJACENT TO DETECTIVE TONY LEVER WHO ALSO WAS
14 ASSISTING ON SOME OF THE INTERVIEWS, ON HIS DESK WAS A
15 PHOTOGRAPH OF THE HAT. AS SHE WALKED BY SHE SAW THE HAT
16 AND THAT'S WHERE HIS INITIAL DEVELOPMENT AS A SUSPECT OR
17 PERSON OF INTEREST INITIALLY CAME UP.

18 Q WERE YOU ABLE TO IDENTIFY THE OWNER OF A
19 CAR THAT WAS AT THE PARKING LOT THAT WAS AT THE CENTER OF
20 ALL THIS?

21 A THE CAR WITH THE FEMALES IN IT?

22 Q YES?

23 A WE DID IDENTIFY THE VEHICLE, MY
24 RECOLLECTION IS IT WAS A RENTAL VEHICLE.

25 Q AND HOW DID THE MYRTLE BEACH POLICE

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 261

1 DEPARTMENT COME TO IDENTIFY THAT VEHICLE?

2 A DURING THE COURSE OF THE INVESTIGATION
3 INFORMATION WAS PROVIDED ON POSSIBLE OR PROBABLE SOUTH
4 CAROLINA LICENSE PLATE NUMBERS; THE NUMBERS WERE CHECKED.
5 AS I RECALL ONE, MY RECOLLECTION IS ONE CAR CAME OUT TO THE
6 CHARLESTON AREA AND THEN THE OTHER CAR THAT WE SUBSEQUENTLY
7 IDENTIFIED AS BEING THE ONE WITH THE FEMALES IN IT CAME
8 BACK REGISTERED TO THE COLUMBIA AREA.

9 Q DID YOU HAVE AN OPPORTUNITY TO SPEAK TO
10 THOSE FEMALES?

11 A I DID.

12 Q AND WHAT ARE THEIR NAMES?

13 A BEAR WITH ME JUST ONE MOMENT. DURING THE
14 COURSE OF THE INVESTIGATION WE IDENTIFIED FEMALES IN THE
15 CAR AS ASIA JADE WINTER HARRIS, SHE WAS THE DRIVER OF THE
16 VEHICLE. THE NEXT PERSON IDENTIFIED WAS KIMBERLY JESSICA
17 WHITNER, SHE WAS THE FEMALE IN THE BACK SEAT, AND THE FRONT
18 PASSENGER FEMALE'S NAME WAS EMMA CHANDLER.

19 Q DID YOU HAVE AN OPPORTUNITY TO SIT DOWN AND
20 SPEAK WITH ONE OR ALL OF THESE YOUNG LADIES?

21 A YES, SIR, WE DID.

22 Q AND WHEN WAS THAT?

23 A THE INTERVIEWS OCCURRED WITH ASIA AND WITH
24 KIMBERLY ON MAY THE 27TH, 2008.

25 Q SO THAT WOULD HAVE BEEN BETWEEN THIS MAY

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 262

1 25TH AND MAY 30TH?

2 A THAT IS CORRECT.

3 Q AS A RESULT OF THOSE INTERVIEWS WERE YOU
4 ABLE TO IDENTIFY ANY PERSONS OF INTEREST?

5 A NOT BY NAME. AT THE TIME THAT THE
6 INTERVIEWS TOOK PLACE DURING THE INTERVIEW PROCESS WE ASKED
7 TELL US WHAT YOU SAW, TELL US WHAT YOU HEARD, PROVIDED TO
8 US DURING THE COURSE OF THE INTERVIEW AS BEST AS A PERSON
9 IN A INTERVIEW CAN GIVE IS A SEQUENCE OF EVENTS, PEOPLE
10 THAT THEY SAW, THINGS LIKE THAT, MAYBE DESCRIPTIONS.

11 Q WERE THEY ABLE TO GIVE YOU ANY INFORMATION
12 THAT WAS RELEVANT TO THIS CASE?

13 A A DESCRIPTION OF ONE OF THE BLACK MALES WAS
14 THAT HE HAD ON A HAT.

15 MS. ELDER: OBJECTION, YOUR HONOR, CALLS FOR
16 HEARSAY.

17 THE COURT: ABSOLUTELY, MR. GALMORE. GIVE ME AN
18 EXCEPTION.

19 MS. ELDER: (CONTINUING)

20 Q WERE YOU ABLE TO DEVELOP A COMPOSITE OF ANY
21 SUSPECTS AS A RESULT OF THE INTERVIEWS WITH THESE YOUNG
22 LADIES?

23 A I DON'T RECALL SPECIFICALLY A COMPOSITE
24 FROM THE YOUNG LADIES.

25 Q DID YOU RECEIVE INFORMATION THAT ONE OF THE

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 263

1 PERSONS ATTENDED LOWER RICHLAND HIGH SCHOOL?

2 A YES, SIR, POSSIBLY.

3 Q POSSIBLY, WERE YOU ABLE TO IDENTIFY THE
4 PERSON WHO ATTENDED LOWER RICHLAND HIGH SCHOOL?

5 A YES, SIR, WE LATER IDENTIFIED THAT PERSON
6 MAY 30TH, THAT PERSON WAS ACTUALLY A PERSON OF INTEREST ON
7 MAY 29TH BUT THE INTERVIEW WAS CONDUCTED MAY 30.

8 Q BUT YOU RECEIVED THAT INFORMATION ON I
9 THINK YOU SAID MAY 27TH?

10 A THE LOWER RICHLAND?

11 Q YES?

12 A YES, THERE WAS INFORMATION CONSISTENT WITH
13 THAT, YES.

14 Q SO YOU HAD THAT INFORMATION. YOU HAD THE
15 SCHOOL RESOURCE OFFICER AND YOU HAD THE MY SPACE PAGE
16 INFORMATION ALL GOING ABOUT THE SAME TIME; WOULD THAT BE
17 FAIR TO SAY?

18 A WITHIN A COUPLE DAYS TIME FRAME, THERE WAS
19 NO NAME UNTIL MAY 29TH.

20 Q YES, SIR, WELL THERE WAS A NAME ON THE CAP;
21 IS THAT CORRECT?

22 A THAT IS CORRECT.

23 Q NOW DURING THE COURSE OF THIS INVESTIGATION
24 YOU CONDUCTED, FINGERPRINTS, DID YOU LIFT ANY FINGERPRINTS?

25 A I DID NOT.

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 264

1 Q DO YOUR NOTES INDICATE WHETHER OR NOT ANY
2 OTHER OFFICERS DID?

3 A I'M NOT AWARE OF ANY FINGERPRINTS BEING
4 LIFTED. I DO KNOW THAT DURING THE COURSE OF THIS
5 INVESTIGATION CRIME SCENE WAS CALLED. THERE WERE SOME
6 THINGS THAT WERE PROCESSED. I SEEM TO RECALL THE CAR WAS
7 REQUESTED TO BE PROCESSED BUT I DON'T HAVE THE SPECIFICS AS
8 WHAT THE RESULTS OF PROCESSING THAT CAR WERE.

9 Q IF AS A RESULT OF PROCESSING THAT CAR DID
10 YOU, WELL LET ME BACK UP -- WERE ANY ITEMS SWABBED FOR DNA
11 EVIDENCE DURING THE COURSE OF YOUR INVESTIGATION?

12 A I AM WARE OF THAT, THERE WAS A GUN THAT WAS
13 SWABBED.

14 Q DID THE RESULTS OF THAT MATCH WITH KEION
15 GRIFFIN?

16 A NOT TO MY KNOWLEDGE.

17 Q WERE ANY ITEMS SENT OFF TO SLED FOR
18 TESTING?

19 A THERE WERE ITEMS SENT OFF TO SLED, I WOULD
20 NOT BE ABLE TO PROVIDE YOU WITH THE COMPLETE LIST BUT IF
21 THERE'S SOMETHING SPECIFIC I'LL BE GLAD TO ANSWER AS BEST I
22 CAN.

23 Q COULD YOU GIVE US AN APPROXIMATE, AN
24 APPROXIMATE NUMBER OF HOW MANY TIMES WERE SENT OFF TO SLED?

25 A NO, SIR, I HAVE NO IDEA. I DO KNOW THAT A

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 265

1 GUN WAS SENT OFF OR SWABS FROM A GUN MAYBE.

2 Q DOES THE MYRTLE BEACH POLICE DEPARTMENT
3 HAVE ANY PHYSICAL EVIDENCE THAT CONNECTS KEION GRIFFIN TO
4 THIS CASE?

5 A WITH SPECIFICITY TO FINGERPRINT OR DNA NOT
6 TO MY KNOWLEDGE.

7 Q WAS THERE ANY OTHER PHYSICAL EVIDENCE
8 THAT'S AVAILABLE?

9 A THAT IDENTIFIES HIM, NO.

10 Q SO THERE'S NO PHYSICAL EVIDENCE IN THIS
11 CASE THAT IDENTIFIES MR. GRIFFIN?

12 A THAT'S CORRECT.

13 Q SO ALL THE SCIENCE STUFF, TESTING, NONE OF
14 THAT COMES BACK TO KEION GRIFFIN?

15 A NOT TO MY KNOWLEDGE, NO, SIR.

16 Q ARE THERE ANY VIDEOS OF THE SHOOTING?

17 A NO VIDEOS TO MY KNOWLEDGE.

18 Q ANY PICTURES OF THE SHOOTING?

19 A OTHER THAN CRIME SCENE, NO, THERE ARE NOT.

20 Q BUT THERE ARE PERSONS WHO WERE PHYSICALLY
21 PRESENT WHEN THE SHOOTING TOOK PLACE?

22 A THAT IS CORRECT.

23 Q AND THOSE WOULD BE THE GROUP OF YOUNG WHITE
24 BOYS; IS THAT CORRECT?

25 A YES, SIR.

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 266

1 Q AND IT WOULD BE GIRLS IN THE CAR?

2 A YES, SIR.

3 Q AND IT WOULD BE THE CODEFENDANTS IN THE
4 CASE?

5 A YES, SIR, AND THE WITNESS ACROSS THAT WAS
6 BACKED IN IN THE TRUCK.

7 Q YES, SIR, WERE THERE ALSO SOME SHADES OR
8 SUNGLASSES RECOVERED ALONG WITH THE HAT?

9 A I BELIEVE THERE WERE, YES, SIR.

10 Q WAS THERE ANY DNA PERFORMED ON THEM?

11 A THAT I DO NOT KNOW.

12 Q ANY DNA TESTING PERFORMED ON THAT HAT?

13 A NOT TO MY KNOWLEDGE.

14 Q LET ME HAND YOU STATE'S EXHIBITS 18 AND 19
15 AND AGAIN ASK YOU IF YOU RECOGNIZE THOSE PHOTOS WHAT THEY
16 ARE?

17 A YES, SIR, THESE ARE THE BOOKING PHOTOS THAT
18 ARE GENERATED BY THE JAIL AT THE MYRTLE BEACH POLICE
19 DEPARTMENT.

20 Q IS THAT SOMETHING THAT YOU WOULD KEEP AS A
21 DETECTIVE IN THIS CASE DURING A NORMAL COURSE OF AN
22 INVESTIGATION?

23 A THE BOOKING PHOTOS ARE GENERALLY STORED IN
24 THE JAIL. THEY'RE AVAILABLE, FOR EXAMPLE, IF I NEEDED TO
25 GO GET ONE THEY'D BE AVAILABLE FOR ME TO GET.

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 267

1 Q DO THOSE PHOTOS APPEAR TO BE ALTERED IN ANY
2 WAY FROM WHEN THEY WERE ORIGINALLY TAKEN?

3 A NOT TO MY KNOWLEDGE, NO, SIR.

4 Q ARE THOSE NORMAL RECORDS KEPT BY THE MYRTLE
5 BEACH POLICE DEPARTMENT?

6 A BOOKING PHOTOS?

7 Q NORMAL BUSINESS RECORDS?

8 A YES, SIR.

9 MR. GALMORE: YOUR HONOR, I WOULD MOVE TO HAVE
10 STATE'S EXHIBIT 18 AND 19 ENTERED INTO EVIDENCE.

11 THE COURT: WHAT SAYS THE STATE?

12 MS. ELDER: NO OBJECTION, YOUR HONOR.

13 THE COURT: WITHOUT OBJECTION.

14 MR. GALMORE: MAY I PUBLISH, YOUR HONOR?

15 MS. ELDER: THAT WOULD BE MARKED AS DEFENDANT'S

16 --

17 THE COURT: MA'AM?

18 MS. ELDER: YOUR HONOR, I WOULD ASSUME THEY'D BE
19 MARKED AS DEFENDANT'S EXHIBITS 3 AND 4 AND NOT STATE'S 18
20 AND 19.

21 MR. GALMORE: YES, THAT'S CORRECT.

22 THE COURT: STATE'S FOR IDENTIFICATION,
23 DEFENDANT'S 3 AND 4.

24 MR. GALMORE: YES, SIR, THAT'S CORRECT, YOUR
25 HONOR.

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 268

1 MADAM COURT REPORTER: THAT WOULD BE 4 AND 5.

2 THE COURT: FOUR AND 5, I'M SORRY.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER 18 AND 19
4 REMARKED AS DEFENDANT'S EXHIBITS NUMBERS 4 AND 5 AND
5 ENTERED INTO EVIDENCE.)

6 MR. GALMORE: PERMISSION TO PUBLISH THE PHOTOS,
7 YOUR HONOR.

8 THE COURT: CERTAINLY.

9 MR. GALMORE: (CONTINUING)

10 Q AND YOU SAID THE PEOPLE IDENTIFIED IN THE
11 PHOTOS ARE KEION GRIFFIN AND DEMARIO STUKES; IS THAT
12 CORRECT?

13 A YES, SIR, THAT'S CORRECT.

14 Q DURING THE COURSE OF THIS INVESTIGATION DID
15 YOU RECEIVE STATE'S EXHIBIT 16?

16 A I'M SORRY, RECEIVE AS IN?

17 Q AS IN DID SOMEONE GIVE IT TO YOU?

18 A NOT TO MY KNOWLEDGE.

19 Q NOT TO YOUR KNOWLEDGE, DO YOU KNOW WHAT
20 STATE'S EXHIBIT 16 IS?

21 A I BELIEVE THAT'S THE BULLET THAT WAS
22 RECOVERED.

23 Q COULD YOU TELL THIS JURY WHAT CALIBER OF
24 BULLET THAT IS?

25 A I'M NOT TRAINED IN ANY FIREARMS

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. GALMORE 269

1 IDENTIFICATION. QUITE FRANKLY I COULD LOOK AT IT AND, AND
2 GUESS BUT I WOULD NOT KNOW IF THAT'S A FRAGMENT OF A BULLET
3 OR THE ACTUAL CALIBER OF THE BULLET ITSELF.

4 Q LET ME HAND YOU WHAT'S BEEN MARKED AS
5 STATE'S EXHIBITS 11, 12, AND 13, CAN YOU TELL US WHAT DATE
6 THOSE PHOTOGRAPHS WERE TAKEN?

7 A I BELIEVE THESE PHOTOGRAPHS WERE TAKEN ON
8 MAY 31, 2008.

9 Q DO YOU OF YOUR OWN KNOWLEDGE KNOW WHEN, IF
10 AT ALL, DO YOU KNOW WHEN THOSE INJURIES OCCURRED?

11 A I HAVE NO WAY OF KNOWING. I DID NOT
12 RECEIVE THAT INFORMATION FROM MR. GRIFFIN NOR DID I WITNESS
13 WHEN THE INJURIES OCCURRED.

14 Q SO THEY COULD HAVE OCCURRED BEFORE MAY
15 25TH?

16 A I WOULDN'T KNOW BUT THAT IS POSSIBLE.

17 Q LIKEWISE THEY COULD HAVE OCCURRED AFTER MAY
18 25TH?

19 A THAT'S CORRECT.

20 Q NOW WAS A SEARCH WARRANT CONDUCTED AT THE
21 HOME OF DARIUS PRIEST?

22 A I BELIEVE IT WAS, YES, SIR.

23 Q AND COULD YOU TELL US WHAT WAS OBTAINED AS
24 A RESULT OF THAT SEARCH?

25 A NOT FROM RECOLLECTION I COULD NOT.

INVESTIGATOR ALLEN - REDIRECT EXAMINATION BY MS. ELDER 270

1 Q DO YOU RECALL IF TWO BOXES OF 22 CALIBER
2 AMMUNITION WAS RECOVERED?

3 A I DO RECALL TWO BOXES OF AMMUNITION BEING
4 RECOVERED BY CRIME SCENE, YES, SIR.

5 Q DO YOU HAVE THOSE BOXES OF AMMUNITION IN
6 COURT TODAY?

7 A I DO NOT, THOSE BOXES SHOULD BE IN PROPERTY
8 AND EVIDENCE AT THE MYRTLE BEACH POLICE DEPARTMENT.

9 Q SO YOU BROUGHT SOME EVIDENCE TO COURT AND
10 LEFT SOME OF IT IN THE BACK OF THE POLICE DEPARTMENT?

11 A YES, THAT IS CORRECT, SOME ITEMS THAT WERE
12 COLLECTED WERE NOT BROUGHT TODAY.

13 Q WERE THE 357 BULLETS BROUGHT TO COURT
14 TODAY?

15 A NOT TO MY KNOWLEDGE.

16 Q WERE THE SUNGLASSES BROUGHT TO COURT TODAY?

17 A NOT TO MY KNOWLEDGE.

18 Q DID YOU CONDUCT A SEARCH OF THE GRIFFIN
19 RESIDENCE?

20 A I DID NOT, I DON'T RECALL EVER DOING THAT.
21 I DO KNOW THAT THERE WERE SOME SEARCH WARRANTS THAT WERE
22 ISSUED DURING THE COURSE OF THIS INVESTIGATION. WITHOUT
23 REVIEWING THEM AND BEING ABLE TO TELL YOU WHAT THEY WERE AS
24 FAR AS THE LOCATION AND WHAT'S BEING SOUGHT I WOULDN'T BE
25 ABLE TO GIVE YOU ANY PARTICULARS BUT I DO KNOW THAT THERE

INVESTIGATOR ALLEN - REDIRECT EXAMINATION BY MS. ELDER 271

1 WAS A FEW SEARCH WARRANTS THAT WERE ISSUED AND EXECUTED.
2 THE EXECUTION OF THOSE WARRANTS WOULD HAVE MOST LIKELY BEEN
3 DONE BY THE CRIME SCENE UNIT.

4 Q OKAY, WAS A SEARCH WARRANT OBTAINED FOR A
5 DNA SAMPLE FROM MR. GRIFFIN?

6 A I SEEM TO RECALL THAT, YES. THAT WOULD
7 HAVE BEEN, TO THE BEST OF MY RECOLLECTION THAT WOULD HAVE
8 BEEN EXECUTED BY CRIME SCENE OFFICER JOHN IACONNONE.

9 Q NOW YOU'VE INDICATED THAT MR. GRIFFIN GAVE
10 TWO INTERVIEWS TO THE POLICE; IS THAT CORRECT?

11 A YES, SIR, THAT'S CORRECT.

12 Q AT ANY TIME DID HE SAY TO YOU THAT HE WAS
13 THE PERSON THAT SHOT MR. BROOKS?

14 A NO, SIR, HE DID NOT.

15 MR. GALMORE: THAT'S ALL THE QUESTIONS I HAVE,
16 THANK YOU.

17 THE COURT: ANY FOLLOW UP, MS. ELDER?

18 MS. ELDER: JUST A FEW, YOUR HONOR.

19 REDIRECT EXAMINATION

20 BY MS. ELDER:

21 Q INVESTIGATOR ALLEN, MR. GALMORE ASKED YOU
22 SEVERAL QUESTIONS IN REGARDS TO FORENSIC EVIDENCE AGAINST
23 THIS PARTICULAR CLIENT, DO YOU HAVE KNOWLEDGE THAT THERE'S
24 ANY FORENSIC EVIDENCE TIED TO DEMARIO STUKES OR DARIUS
25 PRIEST HERE?

INVESTIGATOR ALLEN - REDIRECT EXAMINATION BY MS. ELDER 272

1 A NO, MA'AM, THE, THE BEST THING THAT I HAVE
2 THE KNOWLEDGE OF ARE THESE INTERVIEWS THAT WERE TAKEN PLACE
3 CONDUCTED BY ME OR IN MY PRESENCE.

4 Q AND ARE YOU AWARE THAT DNA SAMPLES WERE
5 TAKEN FROM THE OTHER TWO INDIVIDUALS IN THIS CASE?

6 A I DON'T RECALL THAT AT THE MOMENT.

7 Q WOULD IT HAVE BEEN PROCEDURE TO DO THAT?

8 A IT SHOULD HAVE BEEN, YES, MA'AM.

9 Q AND THE EVIDENCE IN THIS CASE WHEN YOU
10 INVESTIGATE A CASE DO YOU COLLECT, IN THE INITIAL STAGES OF
11 IT DO YOU COLLECT EVERYTHING YOU COME INTO CONTACT WITH?

12 A YES, MA'AM, AN EFFORT IS MADE TO COLLECT
13 EVERYTHING BECAUSE AT THE TIME OF THIS CRIME HAVING
14 OCCURRED IF I'M NOT PRESENT AND I DON'T WITNESS THE CRIME I
15 DON'T KNOW WHAT PIECE OF EVIDENCE MAY BE RELEVANT TO THE
16 CASE, SO OFTENTIMES AT A CRIME SCENE WE AS POLICE OFFICERS
17 AND INVESTIGATORS WILL REQUEST THAT EVERYTHING POSSIBLE TO
18 BE TAKEN. FOR EXAMPLE IF THE CRIME WAS TO HAPPEN IN A ROOM
19 IF IT WERE POSSIBLE I WOULD TAKE THAT ENTIRE ROOM AND
20 EVERYTHING WOULD GO, THE WALLS, WHAT'S ON THE WALL, CAUSE I
21 JUST DON'T KNOW NOT WITHOUT HAVING WITNESSED A CRIME THERE
22 ITSELF.

23 Q SO IN ANY GIVEN INVESTIGATION WHEN YOU LOG
24 THINGS INTO EVIDENCE THERE COULD BE MANY, MANY BOXES OF
25 EVIDENCE?

INVESTIGATOR ALLEN - REDIRECT EXAMINATION BY MS. ELDER 273

1 A ALL THE TIME, YES, MA'AM, ESPECIALLY IN THE
2 CASE OF A SHOOTING OR A MURDER WE TRY TO TAKE EVERYTHING.
3 WE JUST DON'T KNOW WHAT, WHAT PIECE OF OR WHAT ITEM
4 COLLECTED COULD MEAN SOMETHING. IT MAY COME UP IN A
5 STATEMENT SOMEWHERE BUT WE JUST DON'T KNOW AT THE TIME BUT
6 MANY THINGS ARE TAKEN.

7 Q AND IN THIS CASE THERE WERE A LOT OF ITEMS
8 TAKEN THAT ARE NOT HERE TODAY?

9 A THAT IS CORRECT.

10 Q AND YOU BROUGHT THE ITEMS THAT I REQUESTED
11 YOU BRING?

12 A YES, WE DID.

13 Q AND THE OTHER ITEMS THAT YOU MAY HAVE TAKEN
14 DURING THE COURSE OF YOUR INVESTIGATION ARE STILL PRESERVED
15 IN PROPERTY AND EVIDENCE; IS THAT CORRECT?

16 A UNDER LOCK AND KEY.

17 Q INCLUDING THE AMMUNITION THAT WE'RE TALKING
18 ABOUT?

19 A YES, MA'AM.

20 Q ARE YOU AWARE THAT THE AMMUNITION IT WAS
21 NOT SPENT, RIGHT, IT WAS, HAD NOT BEEN USED?

22 A THAT'S CORRECT.

23 Q SO TO YOUR KNOWLEDGE THERE WOULD HAVE BEEN
24 NO NEED TO TEST UNSPENT PROJECTILES, CORRECT?

25 A NOT TO MY KNOWLEDGE.

INVESTIGATOR ALLEN - REDIRECT EXAMINATION BY MS. ELDER 274

1 Q IN REFERENCE TO THE FEMALES IN THE CAR, THE
2 FEMALES THAT YOU INTERVIEWED DID YOU PROVIDE THEM A LINEUP?

3 A AS I RECALL A LINEUP WAS PROVIDED TO THEM
4 TO SEE IF THEY COULD IDENTIFY PERSONS OF INTEREST.

5 Q AND WAS THAT LINEUP PROVIDED FOR DEMARIO
6 STUKES AND KEION GRIFFIN?

7 A TO THE BEST OF MY KNOWLEDGE IT WAS.

8 Q AND COULD THEY, DID YOU HAVE IDENTIFICATION
9 OF EITHER ONE OF THOSE AS A RESULT OF THAT LINEUP?

10 A THERE WAS NOT A POSITIVE IDENTIFICATION OF
11 EITHER PERSON.

12 Q THE SHOOTER AND THE SUSPECT?

13 A THAT IS CORRECT.

14 Q FROM THE FEMALES IN THE CAR?

15 A YES, MA'AM.

16 MS. ELDER: NO FURTHER QUESTIONS, YOUR HONOR.

17 THE COURT: MR. GALMORE?

18 MR. GALMORE: BRIEFLY, YOUR HONOR.

19 RE CROSS EXAMINATION

20 BY MR. GALMORE:

21 Q YOU SPOKE ABOUT DNA. ISN'T IT TRUE THAT
22 DEMARIO STUKES DNA WAS FOUND ON THAT GUN?

23 A THAT I DON'T KNOW.

24 Q ALL RIGHT, NOW AS FAR AS THE SILVER
25 REVOLVER LET'S SAY HYPOTHETICALLY THAT IT WAS FOUND IN A

INVESTIGATOR ALLEN - REDIRECT EXAMINATION BY MS. ELDER 275

1 BAG AND ALSO INSIDE THE BAG WERE TWO BOXES OF MATCHING
2 CALIBER AMMUNITION, WOULD IT MORE PRUDENT TO BRING THOSE
3 BOXES OF AMMUNITION ALONG WITH THAT GUN TO COURT?

4 A FOR WHAT PURPOSE, SIR, I MEAN --

5 Q IF YOU'RE INTRODUCING A GUN INTO EVIDENCE
6 AND THAT GUN WAS FOUND WITH OTHER PIECES OF EVIDENCE THAT
7 CONNECT TO THAT PIECE OF EVIDENCE WOULD IT BE MORE PRUDENT
8 TO BRING ALL OF THAT EVIDENCE INSTEAD OF A PIECE OF IT?

9 A NOT ALL OF IT. OFTENTIMES WE'RE LIMITED ON
10 SPACE BUT IF EVIDENCE IS REQUESTED, FOR EXAMPLE, IF YOU
11 REQUESTED SOMETHING TO BE BROUGHT WE CERTAINLY WOULD HONOR
12 THAT REQUEST.

13 Q HAVE YOU SEEN THESE BOXES OF AMMUNITION?

14 A I KNOW THAT I WAS PRESENT AT THE TIME THAT
15 THEY WERE COLLECTED. DURING THAT TIME OF THE YEAR IT WAS
16 HOT AND I DO KNOW THERE WAS A CONCERN ABOUT DESTRUCTION OF
17 DNA DUE TO THE HEAT SO I KNOW I WAS PRESENT DURING THAT
18 TIME BUT I, I DON'T RECALL THAT FROM MEMORY.

19 Q DO YOU RECALL THE SIZE OF THESE BOXES OF
20 AMMUNITION?

21 A NO, SIR, I DO NOT.

22 Q WOULD IT BE FAIR TO SAY THEY'RE NOT VERY
23 LARGE?

24 A I WOULD SAY NOT VERY LARGE IN COMPARISON TO
25 SAY LIKE A BOX OF SHOTGUN SHELLS.

OFFICER VARN - DIRECT EXAMINATION BY MS. ELDER

276

1 Q YOU PROBABLY COULD HAVE PUT THEM RIGHT IN
2 THIS BAG?

3 A YES, SIR, AND IF YOU NEEDED THEM I WOULD
4 HAVE BEEN GLAD TO BRING THEM.

5 MR. GALMORE: THANK YOU, NO FURTHER QUESTIONS.

6 A YES, SIR.

7 MS. ELDER: I HAVE NO FURTHER QUESTIONS, YOUR
8 HONOR.

9 THE COURT: STEP DOWN, MR. ALLEN.

10 A YES, SIR.

11 THE COURT: ALL RIGHT, MS. ELDER, I BELIEVE YOU
12 HAVE ONE MORE WITNESS THIS MORNING.

13 MS. ELDER: I DO, YOUR HONOR, THE STATE WOULD
14 CALL OFFICER VARN.

15 **OFFICER JAMES VARN**

16 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

17 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
18 SPELL YOUR LAST NAME FOR THE COURT.

19 THE WITNESS: JAMES VARN, LAST NAME V-A-R-N.

20 **DIRECT EXAMINATION**

21 **BY MS. ELDER:**

22 A OFFICER VARN, WHERE ARE YOU CURRENTLY
23 EMPLOYED?

24 A HORRY COUNTY SHERIFF DEPARTMENT AT J.
25 REUBEN LONG DETENTION CENTER.

OFFICER VARN - DIRECT EXAMINATION BY MS. ELDER

277

1 Q AND WHAT DO YOU DO THERE?

2 A CORRECTION OFFICER.

3 Q AND BACK IN MAY OF 2008, SPECIFICALLY MAY
4 31ST, 2008, WHERE WERE YOU EMPLOYED?

5 A THE CITY OF MYRTLE BEACH AS A DETENTION
6 OFFICER.

7 Q AND WHAT WERE SOME OF YOUR GENERAL
8 RESPONSIBILITIES AND OBLIGATIONS AS A DETENTION OFFICER?

9 A BASICALLY TAKING INMATES TO COURT, I WAS A
10 TRANSPORT OFFICER SO I WOULD TAKE INMATES FROM J. REUBEN TO
11 CITY AND FROM THE CITY TO J. REUBEN LONG. I WAS ALSO A
12 JUVENILE OFFICER.

13 Q AND DID YOU HAVE AN OPPORTUNITY TO
14 TRANSPORT OR COME INTO CONTACT WITH THE DEFENDANT KEION
15 GRIFFIN?

16 A YES, MA'AM, I DID.

17 Q AND COULD YOU TELL ME THE DATE THAT THAT
18 OCCURRED?

19 A IF I COULD LOOK AT MY NOTES?

20 Q WOULD THAT HELP TO REFRESH YOUR MEMORY?

21 A YES, MA'AM, IT'S BEEN ALMOST TWO YEARS, I
22 BELIEVE.

23 Q YES, SIR?

24 A IT WAS ON MAY 31ST, '08 AT 1800 HOURS.

25 Q ON THE 31ST, AND WHAT TIME WAS THAT 1800

OFFICER VARN - DIRECT EXAMINATION BY MS. ELDER

278

1 HOURS?

2 A AT 6 P.M., I'M SORRY.

3 Q SIX P.M. ON THE 30TH?

4 A YES, MA'AM.

5 Q AND WHAT WERE YOU DOING WITH KEION GRIFFIN
6 AT THAT TIME?

7 A I WAS TRANSPORTING HIM FROM J. REUBEN LONG
8 DETENTION CENTER BACK TO OUR POLICE DETENTION CENTER AT
9 1101 OAK STREET TO BE INVESTIGATED OR SERVED WARRANTS FOR
10 AN ACT OF MURDER INVESTIGATION.

11 Q THAT BEING THE CASE WE'RE HERE FOR?

12 A YES, MA'AM.

13 Q AND WAS HE BOOKED IN; WAS THAT A NORMAL
14 PROCESS AT THAT TIME?

15 A YES, MA'AM, HE WAS BOOKED IN THEN HE WAS
16 TAKEN TO THE FEMALE SIDE OF OUR DETENTION CENTER AS HIS
17 CODEFENDANT WAS ON THE MALE SIDE. IT WAS TO GIVE SOME KIND
18 OF A SEPARATION SO THERE COULD BE NO COMMUNICATION BETWEEN
19 THE TWO.

20 Q AND DURING, WHILE YOU WERE PRESENT AND
21 DURING YOUR, YOUR TAKING HIM BACK TO HIS CELL DID HE HAVE
22 CONVERSATIONS OR MAKE STATEMENTS TO ANYBODY ELSE AT THE
23 JAIL?

24 A YES, MA'AM, SOMEHOW HE GOT INTO
25 COMMUNICATION WITH HIS CODEFENDANT A MR. STUKES, I THINK

OFFICER VARN - DIRECT EXAMINATION BY MS. ELDER

279

1 THAT'S HOW IT'S PRONOUNCED --

2 Q OKAY.

3 A IN WHICH HE HAD A COUPLE OF VERBAL
4 EXCHANGES AND ALSO MADE A STATEMENT, THERE'S SOME LANGUAGE
5 INVOLVED, BUT PRETTY MUCH SAID, LET'S SEE, THAT THEY DO NOT
6 HAVE THE GUN SO DO NOT TELL THEM SHIT. HE ALSO SAID DO NOT
7 TELL THEM, HE TOLD STUKES DO NOT SAY NOTHING.

8 Q ALL RIGHT, AND WHO WAS SAYING THEY DON'T
9 HAVE THE GUN SO THEY DON'T HAVE SHIT, WHO WAS THAT SAYING
10 THAT?

11 A MR. GRIFFIN.

12 Q AND WHO WAS HE SAYING THAT TO?

13 A MR. STUKES, I THINK IT'S PRONOUNCED.

14 Q AND WHO SAID DON'T TELL THEM NOTHING?

15 A MR. GRIFFIN.

16 Q AND WHO WAS HE SAYING THAT TO?

17 A MR. STUKES.

18 Q AND AFTER THIS VERBAL EXCHANGE BETWEEN THE
19 TWO OF THEM WHAT DID YA'LL DO?

20 A HE WAS ASKING IF SOMEBODY ELSE WAS IN THERE
21 THAT I LATER FOUND OUT WAS THE JUVENILE IN THE CASE AND
22 AFTER THEY WERE TOLD TO BE QUIET THEY KEPT ON PROCEEDING TO
23 HAVE CONVERSATION AND WE EVENTUALLY PUT THE FOOD TRAPS UP
24 TO LIMIT THAT CONVERSATION.

25 Q AND WAS THE JUVENILE PRESENT IN THERE?

OFFICER VARN - CROSS EXAMINATION BY MR. GALMORE

280

1 A NO, MA'AM, HE WAS UPSTAIRS.

2 MS. ELDER: I DON'T HAVE ANY OTHER QUESTIONS,
3 YOUR HONOR.

4 THE COURT: ALL RIGHT, MR. GALMORE, IT'S YOUR
5 WITNESS.

6 CROSS EXAMINATION

7 BY MR. GALMORE:

8 Q OFFICER VARN, WHAT WAS THE APPROXIMATE TIME
9 THAT THIS CONVERSATION TOOK PLACE?

10 A AT 6 P.M., SIR.

11 Q ON WHAT DATE?

12 A THE 31ST OF MAY '08.

13 Q OKAY, SO I KNOW YOU'RE NOT FAMILIAR WITH
14 THIS EXHIBIT BUT YOU SAID THE 31ST OF MAY?

15 A YES, SIR.

16 Q 2008, SO THAT WOULD BE BETWEEN HERE 11 P.M.
17 ON MAY 30TH AND HERE 9 P.M. ON MAY 31ST?

18 A YES, SIR.

19 Q AND THE CONVERSATION TOOK PLACE MAYBE 6
20 P.M. ON MAY 31ST?

21 A 6 P.M., UH-HUH, 1800.

22 Q NOW WHAT YOU RELATED TO THE JURY IS THAT
23 THE ENTIRE CONVERSATION OR IS THAT JUST WHAT YOU
24 REMEMBERED?

25 A THAT'S PRETTY MUCH THE GIST OF IT THAT I

OFFICER VARN - REDIRECT EXAMINATION BY MS. ELDER

281

1 HEARD WHEN I WAS DOING GUARD TOURS IN THE JAIL.

2 Q OKAY, WAS THERE OTHER CONVERSATION BETWEEN
3 THE TWO OF THEM?

4 A YES, THERE WAS.

5 Q BUT THE ONLY PART YOU HEARD WAS WHEN YOU
6 WERE WALKING THROUGH AND YOU HEARD THAT?

7 A YEAH, THAT STOOD OUT TO ME.

8 Q DOES THE JAIL HAVE VIDEO OR RECORDING
9 DEVICES?

10 A THEY HAVE VIDEO BUT AT THE TIME THE AUDIO
11 WAS OUT.

12 Q HOW MANY PEOPLE WOULD YOU SAY WERE IN THE
13 CELL WITH MR. GRIFFIN?

14 A HE WAS BY HIMSELF.

15 Q WHAT ABOUT THE CELL WITH MR. STUKES?

16 A HE WAS ALSO BY HIMSELF.

17 Q YOU ONLY HAD TWO PEOPLE IN THE WHOLE
18 DETENTION CENTER?

19 A IT WAS QUIET, IT WAS AFTER BIKE WEEK SO
20 EVERYBODY HAD LEFT TOWN.

21 Q AS A RESULT OF THIS CONVERSATION DID YOU
22 ATTEMPT TO RECORD IT?

23 A NO, SIR, I RECORDED IT ON A STATEMENT THAT
24 DETECTIVE CASTLE ASKED ME TO PROVIDE.

25 Q YES, SIR, I MEAN DID YOU TAKE A TAPE

OFFICER VARN - REDIRECT EXAMINATION BY MS. ELDER

282

1 RECORDER AND START PLAYING, START RECORDING?

2 A NO, SIR, I CAN'T TAKE ANY ELECTRONICAL
3 DEVICES IN THE JAIL.

4 Q OKAY, DID YOU CONTACT ANYONE TO COME DOWN
5 TO THE HOLDING AREA UPON HEARING THIS CONVERSATION?

6 A NO, SIR, I DON'T BELIEVE SO. THE ONLY
7 THING I DID IS I RAN INTO DETECTIVE CASTLE ON THE WAY WHEN
8 I WAS WALKING OUT TO THE BOOKING AREA AND TOLD HIM WHAT I
9 HAD HEARD.

10 Q OKAY, BUT IT IS FAIR TO SAY THAT THERE WAS
11 MORE CONVERSATION THAN JUST THE PART THAT YOU'VE RELATED?

12 A I'M SURE THERE WAS.

13 MR. GALMORE: ALL RIGHT, THANK YOU VERY MUCH,
14 OFFICER VARN, NO FURTHER QUESTIONS.

15 A THANK YOU.

16 MS. ELDER: JUST ONE QUICK QUESTION, YOUR HONOR.

17 REDIRECT EXAMINATION

18 BY MS. ELDER:

19 Q YOU INDICATED THAT THIS WAS MAY 31ST, 2008;
20 IS THAT CORRECT?

21 A YES, MA'AM.

22 Q AND WHAT'S THE DATE OF YOUR REPORT?

23 A 5-31-2008 AT 1800 HOURS WHICH IS 6 P.M.

24 Q OKAY, SO WHEN DID YOU CREATE THIS REPORT?

25 A I WROTE IT AT I BELIEVE IT WAS 9:30 THAT

OFFICER MCCORKLE - CONTINUED CROSS EXAM. BY MR. GALMORE 283

1 NIGHT.

2 Q ALL RIGHT, SO IT WAS PRETTY FRESH IN YOUR
3 MIND?

4 A YES, MA'AM.

5 Q IF ANYTHING ELSE OF SIGNIFICANCE BEEN SAID
6 REGARDING THIS CASE WOULD YOU HAVE NOTED IT IN YOUR REPORT
7 AT THAT TIME?

8 A YES, MA'AM.

9 MS. ELDER: ALL RIGHT, NO OTHER QUESTIONS, YOUR
10 HONOR.

11 MR. GALMORE: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: ALL RIGHT, SIR, YOU MAY STEP DOWN.

13 A THANK YOU.

14 MS. ELDER: I WOULD ASK THAT THIS WITNESS BE
15 EXCUSED, YOUR HONOR.

16 THE COURT: ANY OBJECTION, MR. GALMORE?

17 MR. GALMORE: NO, SIR.

18 THE COURT: ALL RIGHT, IS THAT THE WITNESS, ANY
19 OTHER WITNESSES?

20 MS. ELDER: THAT IS FOR TODAY, YOUR HONOR, YES,
21 SIR.

22 THE COURT: THAT IS FOR TODAY, ALL RIGHT.

23 LADIES AND GENTLEMEN OF THE JURY, I HATE TO BREAK. I'D
24 LIKE TO GO ON WITH THIS CASE BUT WE'VE HAD SOME UNAVOIDABLE
25 DELAYS THAT WE CANNOT HELP SO WE'RE GOING TO START THIS

OFFICER MCCORKLE - CONTINUED CROSS EXAM. BY MR. GALMORE 284
1 CASE AGAIN IN THE MORNING. MR. SWAIM, I KNOW YOU'D LIKE TO
2 START AT 9:00 AND I DO, TOO, I'D LIKE TO START ABOUT 8:30,
3 BUT IN THE MORNING THERE IS A MATTER THAT ---

4 MR. GALMORE: YOUR HONOR, MAY WE APPROACH?

5 THE COURT: YES, SIR.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
7 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
8 OF THE JURY AND THE COURT REPORTER.)

9 THE COURT: LADIES AND GENTLEMEN, MR. GALMORE
10 TELLS ME HE'D LIKE TO CALL, RECALL OFFICER MCCORKLE TODAY.
11 SHE IS STILL AVAILABLE?

12 MS. ELDER: YES, SIR, YOUR HONOR, WE TOLD HER TO
13 WAIT IN THE ROOM.

14 THE COURT: OKAY, ALL RIGHT, LET'S RECALL HER.

15 COME AROUND, OFFICER MCCORKLE, AND PLEASE BE
16 REMINDED THAT YOU ARE STILL UNDER OATH.

17 OFFICER DEBRA A. MCCORKLE

18 MR. GALMORE: CONTINUED CROSS EXAMINATION

19 Q OFFICER MCCORKLE, DID YOU OBSERVE ANY
20 INJURIES ON THE TWO MEN THAT YOU SPOKE WITH?

21 A NO, SIR.

22 Q DID YOU, YOUR REPORT INDICATED THAT BOTH
23 HAD ON WHITE TEE SHIRTS, COULD YOU DESCRIBE THE TEE SHIRTS
24 TO THE BEST OF YOUR RECOLLECTION?

25 A THE ONE ON THE LEFT HAD A WHITE TEE SHIRT

OFFICER MCCORKLE - CONTINUED CROSS EXAM. BY MR. GALMORE 285

1 WITH SLEEVES; THE ONE ON THE RIGHT I CAN'T ABSOLUTELY SAY
2 FOR SURE IF IT HAD SLEEVES OR NOT.

3 Q DID ANYONE HAVE ON A WHITE TANK TOP?

4 A IF ANYONE DID IT WOULD BE THE ONE ON THE
5 RIGHT. THE ONE ON THE LEFT I KNOW HAD WHITE SLEEVES.

6 Q AND YOUR REPORT SAYS THEY BOTH HAD WHITE
7 TEE SHIRTS?

8 A CORRECT.

9 Q IF ONE HAD ON A WHITE TANK TOP WOULD YOUR
10 REPORT HAVE INDICATED THAT SOMEONE HAD ON A WHITE TANK TOP?

11 A I DID NOT PUT THAT IN THERE, AS FAR AS AT
12 THE TIME I JUST DIDN'T THINK ABOUT PUTTING IT IN THERE
13 BEING THAT DETAILED.

14 Q DO YOU RECALL IF EITHER OF THOSE TWO HAD ON
15 A WHITE TANK TOP?

16 A NOT ABSOLUTELY. I REMEMBER WHEN I SEARCHED
17 THE ONE ON THE LEFT HE HAD SLEEVES AND THE ONE ON THE RIGHT
18 I, I JUST KNOW HE HAD A WHITE TEE SHIRT ON FOR SURE.

19 Q OKAY, BUT I MEAN WHEN WE SAY TEE SHIRT IS
20 IT ONE OF THESE THINGS HANGING DOWN HERE WITH SLEEVES, IS
21 IT A V NECK OR IS IT AN ATHLETIC SHIRT?

22 A TO THE BEST OF MY MEMORY THE ONE ON THE
23 LEFT WHITE TEE SHIRT WAS BAGGY AND THE ONE ON THE RIGHT AS
24 I CAN REMEMBER WHEN I SEARCHED FOR WEAPONS WAS CLOSER TO
25 HIS BODY FROM WHAT I REMEMBER ABOUT THEIR STATUTE.

OFFICER MCCORKLE - CONTINUED CROSS EXAM. BY MR. GALMORE 286

1 Q DID IT HAVE A COLLAR AROUND IT?

2 A NO, NO COLLAR ON EITHER ONE, I DON'T
3 REMEMBER COLLARS.

4 Q OKAY, I'M NOT TALKING ABOUT A COLLAR LIKE
5 THIS?

6 A OKAY.

7 Q DID EITHER PERSON HAVE ON WHAT APPEARED TO
8 BE A REGULAR TEE SHIRT WITH A V NECK COLLAR, DID ANYONE
9 HAVE ON A V NECK COLLAR TEE SHIRT?

10 A THE ONE ON THE LEFT IF I CAN REMEMBER
11 CORRECTLY HAD SLEEVES AND THE COLLAR WAS MORE ROUNDED AND
12 THE ONE ON THE RIGHT IF I CAN REMEMBER WAS WHITE AND CLOSE
13 TO THE BODY AND NOT V NECK, IF I CAN REMEMBER CORRECTLY,
14 WAS SCOOPED.

15 Q WELL YOUR REPORT SAYS TWO WHITE TEE SHIRTS;
16 IS THAT FAIR TO SAY?

17 A ABSOLUTELY.

18 Q DID THEY HAVE ON THE SAME WHITE TEE SHIRTS
19 OR SIMILAR, WELL YOU SAID ONE WAS SHORT SLEEVED AND ONE WAS
20 LONG SLEEVED?

21 A NO LONG SLEEVES, NO.

22 Q NO LONG SLEEVES, WERE THEIR SHIRTS VERY
23 SIMILAR, THE TWO WHITE TEE SHIRTS?

24 A THEY WERE WHITE, THE ONE ON THE LEFT LIKE I
25 REMEMBER VERY MUCH BECAUSE I TALKED TO HIM DIRECTLY MOST OF

OFFICER MCCORKLE - REDIRECT EXAMINATION BY MS. ELDER 287

1 THE TIME.

2 Q WOULD IT BE FAIR TO SAY THAT YOUR REPORT
3 INDICATED THAT BOTH HAD ON WHITE TEE SHIRTS; IS THAT
4 CORRECT?

5 A THAT'S CORRECT.

6 MR. GALMORE: THANK YOU, OFFICER MCCORKLE.

7 REDIRECT EXAMINATION

8 BY MS. ELDER:

9

10 Q JUST SO I CAN RECALL THE ONE ON THE LEFT
11 THAT YOU'RE DESCRIBING WAS A SLEEVED SHIRT, A SLEEVED TEE
12 SHIRT, THAT'S THE ONE YOU INDICATED WAS A LITTLE BIT
13 TALLER, ABOUT AN INCH TALLER, AND LONGER HAIR?

14 A YES.

15 Q AND THE OTHER WAS A FITTED SHIRT, YOU DON'T
16 KNOW WHETHER OR NOT IT WAS SLEEVELESS OR NOT, THAT WAS THE
17 SHORTER OF THE TWO?

18 A YES.

19 Q SHORTER HAIR?

20 A SHORTER HAIR.

21 MS. ELDER: THANK YOU, YOUR HONOR.

22 THE COURT: IS THAT IT?

23 MR. GALMORE: YES, SIR, THAT'S IT.

24 THE COURT: ALL RIGHT, WHAT'S THE STATUS OF THIS
25 WITNESS NOW, IS THERE ANY OBJECTION TO EXCUSING THIS

OFFICER MCCORKLE - REDIRECT EXAMINATION BY MS. ELDER 288

1 WITNESS?

2 MR. GALMORE: NO, SIR.

3 THE COURT: LIEUTENANT, YOU'RE RELEASED FROM
4 YOUR SUBPOENA.

5 THE WITNESS: THANK YOU, SIR.

6 MS. ELDER: THANK YOU, YOUR HONOR.

7 THE COURT: ALL RIGHT, IS THAT IT FOR TODAY?

8 MS. ELDER: YES, SIR, AS FAR AS I KNOW.

9 THE COURT: IS THAT RIGHT, MR. GALMORE?

10 MR. GALMORE: YES, SIR.

11 THE COURT: ALL RIGHT, LET'S GET BACK TO WHAT I
12 WAS TELLING YOU. I HAVE BEEN, I WAS ASKED LAST WEEK TO
13 TAKE UP A COMPLETELY DIFFERENT MATTER IN ANOTHER CASE THE
14 FIRST THING IN THE MORNING. I DON'T THINK THAT WILL TAKE
15 ME MORE THAN A HALF HOUR SO LET'S BRING YOU BACK IN AT 9:30
16 IN THE MORNING. I'D LIKE TO HAVE YOU IN AT 9 BUT I THINK
17 WE CAN FINISH UP THIS CASE TOMORROW, JUST GUESSING. I
18 DON'T KNOW BUT I THINK SO, SO BE BACK IN YOUR JURY ROOM AT
19 9:30 AND READY TO GO, THANK YOU.

20 AGAIN NO CONTACT WITH ANYONE ABOUT THIS CASE,
21 DON'T READ ANYTHING, DON'T SEARCH THE INTERNET, DON'T VISIT
22 THE SCENE, JUST RELY SOLELY ON WHAT YOU'RE GOING TO HEAR
23 FROM THIS WITNESS STAND TOMORROW AND TODAY, OKAY, THANK
24 YOU.

25 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING

OFFICER MCCORKLE - REDIRECT EXAMINATION BY MS. ELDER 289

1 AT 12:42 P.M.)

2 THE COURT: MS. ELDER AND MR. GALMORE, I EXPECT
3 YOU PROBABLY TO FINISH THIS CASE UP BY PERHAPS NOON
4 TOMORROW?

5 MS. ELDER: YOUR HONOR, THE STATE WILL BE
6 THROUGH PROBABLY WITHIN THE FIRST HOUR.

7 THE COURT: OKAY, AND YOU THINK THEN WE'LL BE
8 THROUGH BY NOON, MR. GALMORE?

9 MR. GALMORE: YES, SIR.

10 THE COURT: DEPENDING ON WHAT YOU HAVE TO PUT
11 UP?

12 MR. GALMORE: YES, SIR.

13 THE COURT: YOU DON'T THINK IT WILL TAKE PAST
14 THAT?

15 MR. GALMORE: NO, SIR.

16 THE COURT: OF COURSE YOU HAVE ALL THE TIME YOU
17 NEED.

18 MR. GALMORE: YES, SIR.

19 THE COURT: BUT IF WE'RE GOING BY THAT I'D LIKE
20 FOR YOU TO EACH BE AVAILABLE FOR ME IN THE MORNING FOR A
21 CHARGE CONFERENCE. IF YOU HAVE ANY SPECIFIC CHARGES ON THE
22 LAW, PLEASE, HAVE THEM PREPARED. CLARE IS GOING TO PREPARE
23 A CHARGE FOR ME THIS EVENING. WE'LL BE ABLE TO GO FORTH,
24 GO FORWARD AS SOON AS POSSIBLE TOMORROW AFTER ARGUMENTS SO
25 I'D LIKE TO BE ABLE TO CHARGE AND GIVE IT TO THE JURY

OFFICER MCCORKLE - REDIRECT EXAMINATION BY MS. ELDER 290

1 EARLY, OKAY.

2 MS. ELDER: WHAT TIME WOULD YOU LIKE US TO BE
3 HERE, YOUR HONOR, FOR THAT?

4 THE COURT: BE AVAILABLE TO ME ABOUT A QUARTER
5 AFTER, ARE YOU INVOLVED IN THAT CASE I HAVE TOMORROW?

6 MS. ELDER: NO, SIR.

7 THE COURT: YOU'RE NOT INVOLVED IN THAT CASE?

8 MS. ELDER: NO, SIR.

9 THE COURT: ALL RIGHT, WELL I DO HAVE THAT.
10 REMIND YOUR STAFF THAT 9:00 IS WHEN I GAVE THEM ---

11 MS. ELDER: YES, SIR, I WILL.

12 THE COURT: --- A TIME TO DO THAT.

13 MS. ELDER: YES, SIR.

14 THE COURT: AND I EXPECT YOU HERE AT 9, ALL
15 RIGHT.

16 MR. GALMORE: YES, SIR.

17 THE COURT: SO NORMALLY MY PLEAS DON'T LAST MORE
18 THAN 15 OR 20 MINUTES SO LET'S TRY TO BE AVAILABLE ABOUT
19 9:15, OKAY.

20 MR. GALMORE: YES, SIR.

21 MS. ELDER: YES, SIR.

22 THE COURT: THANK YOU, THE COURT'S AT EASE.

23 MS. ELDER: THANK YOU, YOUR HONOR.

24 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING.)

25 (WHEREUPON, COURT RESUMES ON NOVEMBER 4, 2009 AT

OFFICER MCCORKLE - REDIRECT EXAMINATION BY MS. ELDER 291

1 9:00 A.M.)

2 THE COURT: EVERYONE IS IN THE COURTROOM. READY
3 TO BRING IN THE JURY, MS. ELDER?

4 MS. ELDER: YES, SIR, YOUR HONOR.

5 MR. GALMORE: DID YOU WANT TO HAVE OUR CHARGE
6 CONFERENCE, YOUR HONOR?

7 THE COURT: NO, WE'LL DO IT AT THE END OF THE
8 TESTIMONY ---

9 MR. GALMORE: YES, SIR.

10 THE COURT: OKAY?

11 MR. GALMORE: OKAY.

12 THE COURT: OKAY, LET'S BRING IN THE JURY.

13 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
14 10:18 A.M.)

15 THE COURT: GOOD MORNING, I WANT TO APOLOGIZE
16 FOR NOT BRINGING YOU BACK IN EARLIER. THE MATTER THAT I
17 HAD SCHEDULED FOR 9:00 THIS MORNING THAT I TOLD YOU ABOUT
18 YESTERDAY TOOK SUBSTANTIALLY MORE TIME THAN WHAT WE
19 ANTICIPATED AND FOR THAT REASON WE COULD NOT BRING YOU OUT.
20 I PROMISE YOU WE WEREN'T OUT HERE JUST WASTING YOUR TIME
21 AND AGAIN I'M SORRY WE WERE NOT ABLE TO DO THAT.

22 MR. SWAIM, ANYTHING YOU NEED TO REPORT TO ME?

23 MR. FOREMAN: NO, SIR.

24 THE COURT: ANYONE ON THE JURY PANEL BEEN
25 APPROACHED BY ANY PERSON OR HAD ANY CONTACT CONCERNING THIS

AGENT CROMER - DIRECT EXAMINATION BY MS. ELDER

292

1 CASE?

2 THERE'S NO RESPONSE, THANK YOU. MS. ELDER, I
3 BELIEVE YOU'RE READY TO GO FORWARD.

4 MS. ELDER: WE ARE, YOUR HONOR.

5 THE COURT: THANK YOU.

6 MS. ELDER: THE STATE AT THIS TIME WOULD CALL
7 SUZANN CROMER.

8 AGENT SUZANN CROMER

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
11 SPELL YOUR LAST NAME FOR THE COURT.

12 THE WITNESS: MY NAME IS SUZANN CROMER, C-R-O-M-
13 E-R.

14 DIRECT EXAMINATION

15 BY MS. ELDER:

16 Q AGENT CROMER, WHERE ARE YOU EMPLOYED?

17 A I'M EMPLOYED BY THE SOUTH CAROLINA LAW
18 ENFORCEMENT DIVISION COMMONLY REFERRED TO AS SLED.

19 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

20 A IT WILL BE 11 YEARS THIS DECEMBER.

21 Q AND WHAT DO YOU DO THERE AT SLED?

22 A I AM A FIREARM AND TOOL MARK EXAMINER.

23 Q AND WHEN YOU SAY FIREARM AND TOOL MARK
24 EXAMINER COULD YOU EXPLAIN THAT IN LAYMAN TERMS FOR US?

25 A YES, MA'AM, WHAT WE DO IN FIREARMS

AGENT CROMER - DIRECT EXAMINATION BY MS. ELDER

293

1 IDENTIFICATION IS IT'S A DISCIPLINED FORENSIC SCIENCE WHERE
2 WE LOOK AT AMMUNITION COMPONENTS, THE BULLETS, CARTRIDGE
3 CASES, SHOTGUN SHELLS, FIRST TO DETERMINE WHAT THEY ARE AND
4 WHETHER OR NOT THEY WERE FIRED BY OR LOADED INTO AND
5 EXTRACTED FROM A SPECIFIC WEAPON.

6 Q AND HOW LONG HAVE YOU BEEN DOING THESE
7 EXAMINATIONS?

8 A ABOUT NINE AND A HALF YEARS?

9 Q DO YOU HAVE SPECIAL TRAINING TO DO THOSE
10 THINGS?

11 A YES, MA'AM. SLED HAS AN IN HOUSE TRAINING
12 PROGRAM OF THREE TO FIVE YEARS WHERE IT'S MORE OF AN
13 APPRENTICESHIP. I STUDIED UNDER FIVE COURT QUALIFIED
14 FIREARMS EXAMINERS. WE TAKE WRITTEN TESTS, ORAL TESTS,
15 PRACTICAL EXAMS.

16 Q AND YOU KEEP UP WITH THAT CERTIFICATION AS
17 WELL?

18 A YES, MA'AM.

19 MS. ELDER: YOUR HONOR, I BELIEVE MR. GALMORE IS
20 GOING TO STIPULATE AS FAR AS HER EXPERTISE IN THE AREA OF
21 FORENSIC FIREARM ANALYSIS.

22 MR. GALMORE: YES, SIR, YOUR HONOR.

23 THE COURT: IS THAT CORRECT, ALL RIGHT, SHE'S
24 ADMITTED AS AN EXPERT.

25 MS. ELDER: THANK YOU, YOUR HONOR.

AGENT CROMER - DIRECT EXAMINATION BY MS. ELDER

294

1 Q (CONTINUING) NOW, AGENT CROMER, DID YOU
2 HAVE AN OPPORTUNITY TO RECEIVE SOME EVIDENCE IN RELATION TO
3 A CASE FROM MYRTLE BEACH POLICE DEPARTMENT OF AN INCIDENT
4 DATE OF MAY 25TH, 2008?

5 A YES, MA'AM, I DID.

6 Q AND WHAT KIND OF ITEMS DID YOU RECEIVE --
7 WELL LET ME ASK YOU THIS, DID YOU RECEIVE A REVOLVER TYPE
8 FIREARM?

9 A YES, MA'AM, I DID.

10 Q COULD YOU TAKE A LOOK AT WHAT'S BEEN
11 IDENTIFIED AS, ADMITTED AS STATE'S EXHIBIT 7?

12 A YES, MA'AM, THIS IS ONE OF THE FIREARMS
13 THAT I EXAMINED ON THIS CASE AND IT'S MARKED WITH MY LAB
14 NUMBER, MY ITEM NUMBER, AND MY INITIALS.

15 Q AND IT'S ACTUALLY, YOU MARK IT ON THE GUN?

16 A YES, MA'AM, I ACTUALLY USE AN ELECTRIC
17 PENCIL OR SCRIBER AND INSCRIBE IT IN THE TOP STRAP HERE.

18 Q AND WHY DO YOU DO THAT?

19 A SO I CAN CONFIRM THAT THIS IS ACTUALLY THE
20 FIREARM I LOOKED AT WHEN I GO TO COURT.

21 Q AND DID YOU DO SOME, PERFORM ANY TESTING ON
22 STATE'S EXHIBIT 7?

23 A WHEN I RECEIVE A FIREARM I FIRST PULL IT
24 OUT, I LOOK AT IT FOR TRACE EVIDENCE. IF I FIND ANY BLOOD,
25 FIBERS, HAIR I'LL SWAB THAT AND REMOVE THAT, THEN I'LL TEST

AGENT CROMER - DIRECT EXAMINATION BY MS. ELDER

295

1 ITS FUNCTIONS. I'LL TEST ITS SAFETIES, DETERMINE WHETHER
2 OR NOT IT'S SAFE TO FIRE AND THEN I'LL TEST FIRE THE
3 WEAPON.

4 Q AND DID YOU DO THAT IN THIS CASE?

5 A YES, MA'AM, I DID.

6 Q AND WHEN YOU GOT THIS, RECEIVE THIS GUN IS
7 IT PACKAGED IN THIS TYPE OF PACKAGING?

8 A YES, MA'AM, ACTUALLY THIS BOX IS ALSO
9 LABELED WITH MY LAB NUMBER, MY ITEM NUMBERS, AND MY
10 INITIALS.

11 Q AND THERE'S A BUNCH OF TAPE ON THERE, IS
12 THAT SOMETHING THAT YA'LL DO AS WELL?

13 A YES, WHEN THEY BRING EVIDENCE INTO OUR LAB
14 IT COMES IN THROUGH OUR LOG IN DEPARTMENT. THE AGENCIES
15 WILL BRING IT IN AND THEY MAKE THEM PUT THE SLED EVIDENCE
16 TAPE ON IT AND INITIAL IT IN FRONT OF THEM.

17 WHEN I CUT IT OPEN I MAKE SURE THAT THAT, THAT
18 TAPE HAS NOT BEEN MESSED WITH, THEN WHEN I'M FINISHED WITH
19 THE GUN I WILL SEAL IT AND PUT EVIDENCE TAPE ON IT, INITIAL
20 IT, AND DATE IT MYSELF.

21 Q SO WHEN A PERSON SEALS IT AT CRIME SCENE
22 AND TRANSPORT IT TO SLED SLED PUTS TAPE ON IT AS WELL?

23 A THAT IS CORRECT.

24 Q AND THEN YOU CUT THAT TAPE?

25 A THAT IS CORRECT.

AGENT CROMER - DIRECT EXAMINATION BY MS. ELDER

296

1 Q AND WHEN YOU CUT THE TAPE AND ANALYZED
2 STATE'S EXHIBIT 7 DID YOU FIND IT TO BE LOADED OR UNLOADED?

3 A IT WAS UNLOADED AS I RECEIVED IT.

4 Q I WANT YOU TO TAKE A LOOK AT WHAT HAS BEEN
5 INTRODUCED AS STATE'S EXHIBIT 16; DO YOU RECOGNIZE THAT?

6 A YES, MA'AM, I DO.

7 Q AND WHAT DID YOU DO THAT ITEM, IF ANYTHING?

8 A WHEN WE FIRST GET ONE FIRED PROJECTILE AS
9 THIS IS WHAT I DO IS I WEIGH IT, I MEASURE IT, I DO WHAT'S
10 CALLED A GENERAL RIFLING CHARACTERISTIC EXAM. GENERAL
11 RIFLING CHARACTERISTICS INCLUDE THINGS LIKE CALIBER AND
12 RIFLING TYPE, DIMENSIONS, RATE OF TWIST, OR DIRECTION OF
13 TWIST.

14 A GRC EXAM I'LL MEASURE IT LIKE I SAID AND I
15 DETERMINE THE CALIBER TO BE MOST CONSISTENT WITH 22 LONG
16 RIFLE THEN I LOOK AT THE RIFLING.

17 RIFLING IS PUT INTO A GUN BARREL TO PUT ROTARY
18 MOTION ON A BULLET VERY SIMILAR TO A QUARTERBACK THROWING A
19 FOOTBALL. THEY WANT TO PUT IT IN A TIGHT SPIRAL SO IT WILL
20 GO MORE ACCURATE TO ITS TARGET. THAT'S THE SAME PREMISE
21 BEHIND THE RIFLING PUT IN A GUN BARREL, THEY WANT TO PUT
22 THAT BULLET INTO A TIGHT SPIRAL SO IT DOESN'T LOP OVER END
23 OVER END.

24 RIFLING CAN BE MADE UP OF MANY NUMBERS OF LANS
25 AND GROOVES. YOU CAN HAVE FOUR LANS AND GROOVES UP TO, I

AGENT CROMER - DIRECT EXAMINATION BY MS. ELDER

297

1 THINK IN THE 20'S, AND WHAT LANDS AND GROOVES ARE ARE
2 RAISED AND DEPRESSED AREAS THAT CAN MARK THAT BULLET WHEN
3 IT GOES THROUGH.

4 WHEN I TALK ABOUT TWISTS IT COULD EITHER SPIN TO
5 THE RIGHT OR TO THE LEFT SO WHAT I DID IS I LOOKED AT THIS,
6 I DETERMINED IT TO BE MOST CONSISTENT WITH A SIX LAND AND
7 GROOVE RIFLING AND A RIGHT TWIST AND THEN, I'M SORRY, AND
8 THEN I WILL GO TO MY COMPARISON MICROSCOPE AND I'LL
9 ACTUALLY MEASURE THE WIDTHS OF THOSE LAND AND GROOVES.

10 Q AND DID YOU COMPARE STATE'S EXHIBIT 16 WITH
11 STATE'S EXHIBIT 7, THAT BEING THE FIREARM?

12 A YES, MA'AM, I DID.

13 Q AND DID YOU MAKE ANY FINDINGS IN REGARDING
14 THAT COMPARISON?

15 A I FOUND THAT CONCLUSION TO BE INCONCLUSIVE.
16 WE CAN RENDER FOUR POSSIBLE CONCLUSIONS, POSITIVE, YES, IT
17 WAS FIRED BY THAT GUN; NEGATIVE, NO, IT WASN'T. IT MIGHT
18 NOT HAVE HAD THE RIGHT GENERAL RIFLING CHARACTERISTICS.
19 UNSUITABLE, THE PROJECTILE WAS TOO DAMAGED TO RENDER ANY
20 TYPE OF CONCLUSION OR INCONCLUSIVE. I CANNOT RULE OUT THIS
21 FIREARM NOR CAN I CONFIRM THAT THIS FIREARM FIRED THAT
22 BULLET.

23 Q AND CAN YOU TELL US IF THAT PROJECTILE IS
24 CONSISTENT WITH A PROJECTILE THAT WOULD BE FIRED FROM ITEM
25 7?

AGENT CROMER - CROSS EXAMINATION BY MR. GALMORE

298

1 A YES, MA'AM, IT IS.

2 Q SO THAT COULD BE SHOT OUT OF 7?

3 A YES, MA'AM.

4 Q AND DID YOU ALSO RECEIVE IN THIS CASE SOME
5 UNSPENT AMMUNITION?

6 A YES, MA'AM, I DID.

7 Q AND COULD YOU TELL ME WHAT YOU DID WITH
8 THAT, IF ANYTHING?

9 A I RECEIVED TWO SEPARATE ITEMS OF UNSPENT
10 AMMUNITION. ONE WAS A 50 CAPACITY BOX OF AMMUNITION THAT
11 HAD 47 UNFIRED ROUNDS IN IT, ALL OF THEM 22 LONG RIFLE
12 CALIBER.

13 I RECEIVED ANOTHER BOX OF AMMUNITION THAT
14 CONTAINED 76 ROUNDS IN IT. LET ME CHECK MY NOTES FOR A
15 SECOND, 72 OF THE ROUNDS WERE 22 LONG RIFLE AND 4 OF THEM
16 WERE 22 SHORT.

17 WHEN I'M TALKING ABOUT LONG RIFLE AND SHORT
18 THEY'RE ALL CALIBERS OF 22 AND EVEN THOUGH THIS FIREARM IS
19 DESIGNED TO FIRE 22 LONG RIFLE BULLETS YOU CAN FIRE 22
20 SHORT IN IT AND ACTUALLY ON THIS CASE I FIRED 9 OF THE
21 SUBMITTED AMMO AND RETURNED THEM TO THE AGENCY.

22 Q AND WHY DID YOU DO THAT?

23 A SOMETIMES WHEN WE'RE LOOKING AT AMMUNITION
24 WE LIKE TO USE THE SAME TYPE OF AMMO WE GOT IN THE CASE.
25 JUST BECAUSE THERE CAN BE SO MANY VARIATIONS EVEN IN THE

AGENT CROMER - CROSS EXAMINATION BY MR. GALMORE

299

1 SAME MANUFACTURER WITH PRESSURES, WITH GUN POWDER IF THEY
2 CHANGE FROM A DIFFERENT TYPE OF GUN POWDER, A GRANULAR
3 POWDER TO A DISK POWDER IT CAN CAUSE DIFFERENCE IN PRESSURE
4 WHICH CAN ALSO AFFECT HOW THE BULLET CAN BE MARKED BY THE
5 GUN. SO I LIKE TO USE THE SAME TYPE OF AMMO AND IF I CAN'T
6 MAKE MY CONCLUSION VERSUS MY REFERENCE AMMUNITION, AND I DO
7 HAVE SUBMITTED AMMO, I WILL SHOOT SOME SUBMITTED AMMO IN
8 THE FIREARM.

9 Q DID THAT ASSIST IN ANY WAY IN THIS
10 PARTICULAR CASE?

11 A NO, MA'AM, IT DIDN'T.

12 MS. ELDER: ONE MOMENT, YOUR HONOR.

13 NO FURTHER QUESTIONS.

14 THE COURT: MR. GALMORE, YOUR WITNESS.

15 CROSS EXAMINATION

16 BY MR. GALMORE:

17 Q MS. CROMER, YOU STATED THAT YOU RECEIVED
18 EXHIBIT 16 AS PART OF YOUR INVESTIGATION IN THIS CASE?

19 A YES, SIR, I DID.

20 Q ARE YOU ABLE TO IDENTIFY A NAME BRAND FOR
21 STATE'S EXHIBIT 26?

22 A NO, MA'AM, I'M NOT, I MEAN SORRY, NO, SIR,
23 I'M NOT.

24 Q ARE YOU ABLE TO TELL US WHETHER THAT IS A
25 22 CALIBER LONG RIFLE OR A SHORT?

AGENT CROMER - CROSS EXAMINATION BY MR. GALMORE

300

1 A IT'S MOST CONSISTENT WITH A 22 LONG RIFLE;
2 22 SHORT WOULD NOT HAVE BEEN THIS HEAVY.

3 Q AND IT'S YOUR TESTIMONY THAT IT'S
4 INCONCLUSIVE WHETHER THIS ITEM, STATE'S EXHIBIT 16 WAS
5 FIRED BY THIS HANDGUN?

6 A THAT'S CORRECT.

7 Q WERE YOU ABLE TO DETERMINE THE NUMBER OF
8 LANS AND GROOVES IN STATE'S EXHIBIT 16?

9 A YES, SIR, I SAID IT WAS MOST CONSISTENT
10 WITH A 6 RIGHT.

11 Q AND THIS STATE'S EXHIBIT NUMBER 7, THIS
12 REVOLVER, WHAT ABOUT THE LANS AND GROOVES IN THAT?

13 A IT IS ALSO A 6 RIGHT AND IT WAS THE SAME
14 DIMENSION SIZE OF THE LANS AND GROOVES.

15 Q IS THIS THE ONLY TYPE OF FIREARM THAT MEETS
16 THOSE CHARACTERISTICS?

17 A NO, SIR, IT'S NOT.

18 Q HOW MANY DIFFERENT FIREARMS MEET THOSE
19 CHARACTERISTICS?

20 A I GAVE A LIST OF DIFFERENT MANUFACTURERS
21 WHICH INCLUDED AT LEAST 49 MANUFACTURERS.

22 Q AND THIS BULLET COULD HAVE BEEN FIRED BY
23 ANY OF THOSE GUNS FROM ANY OF THOSE 49 MANUFACTURERS?

24 A YES, SIR.

25 Q DID YOU ALSO, I'M SORRY, YOU SAID YOU

AGENT CROMER - CROSS EXAMINATION BY MR. GALMORE

301

1 RECEIVED A BOX OF 50, A 50 CAPACITY BOX CONTAINING 47
2 UNFIRED CARTRIDGES; IS THAT CORRECT?

3 A YES, SIR.

4 Q WERE THOSE 22 CALIBER LONG OR SHORT?

5 A LONG RIFLE.

6 Q LONG RIFLE?

7 A THERE'S A DIFFERENCE, LONG RIFLE AND LONG
8 ARE TWO DIFFERENT CALIBERS.

9 Q CALIBER LONG RIFLE?

10 A YES, SIR..

11 Q OKAY, AND YOU RECEIVED ANOTHER BOX, A 100
12 CAPACITY BOX WITH 76 UNFIRED CARTRIDGES, CORRECT?

13 A THAT IS CORRECT.

14 Q AND YOU SAID THAT ONE CONTAINED LONG RIFLE
15 22 AND SHORT RIFLE 22?

16 A YES, SIR.

17 Q WERE YOU ABLE TO COMPARE ANY OF THOSE TEST
18 FIRED AMMUNITIONS TO STATE'S EXHIBIT 16?

19 A I DON'T UNDERSTAND WHAT YOU'RE ASKING?

20 Q I'M TRYING TO FIGURE OUT IF THIS BULLET IS
21 THE SAME AS ANY OF THOSE THAT YOU RECEIVED IN THAT, IN
22 THOSE TWO BOXES OF AMMUNITION?

23 A THAT BULLET WAS MOST CONSISTENT WITH THE
24 WINCHESTER SUPER X THAT I RECEIVED IN THE BOXES, THE 100
25 CAPACITY BOX OF THE 76, THAT'S WHY I FIRED NINE OF THEM.

DR. PROCTOR - DIRECT EXAMINATION BY MS. ELDER

302

1 Q OKAY, SO ARE YOU ABLE TO TELL THIS JURY
2 WHETHER OR NOT THIS WOULD HAVE BEEN ONE OF THE BULLETS THAT
3 MATCHED THAT 76 SET OF BULLETS?

4 A NO, SIR, I CAN'T.

5 Q BUT IT WAS CONSISTENT?

6 A IT WAS CONSISTENT WITH IT.

7 MR. GALMORE: THANK YOU, NO FURTHER QUESTIONS.

8 THE COURT: MS. ELDER, ANY FOLLOW UP?

9 MS. ELDER: NO, SIR, YOUR HONOR, WE WOULD ASK
10 THIS WITNESS BE EXCUSED.

11 THE COURT: MR. GALMORE, ANY OBJECTION TO
12 EXCUSING THIS WITNESS?

13 MR. GALMORE: NO, SIR, NO OBJECTION.

14 THE COURT: YOU ARE EXCUSED FROM YOUR SUBPOENA.

15 MS. ELDER: YOUR HONOR, AT THIS TIME THE STATE
16 WOULD CALL DR. PROCTOR.

17 THE COURT: COME AROUND, DR. PROCTOR, GOOD
18 MORNING.

19 DR. EDWARD LEROY PROCTOR, JR.

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
22 SPELL YOUR LAST NAME FOR THE COURT.

23 THE WITNESS: I'M EDWARD LEROY PROCTOR, JR. AND
24 THAT'S P-R-O-C-T-O-R.

25 MS. ELDER: YOUR HONOR, IT'S OUR UNDERSTANDING

DR. PROCTOR - DIRECT EXAMINATION BY MS. ELDER

303

1 THAT THE DEFENSE WILL STIPULATE THAT DR. PROCTOR IS AN
2 EXPERT IN FORENSIC PATHOLOGY.

3 THE COURT: IS THAT CORRECT, MR. GALMORE?

4 MR. GALMORE: YES, SIR, YOUR HONOR.

5 THE COURT: ALL RIGHT, HE IS SO ADMITTED.

6 DIRECT EXAMINATION

7 BY MS. ELDER:

8 Q DR. PROCTOR, WHERE ARE YOU, WHERE ARE YOU
9 EMPLOYED AT?

10 A I'M SELF EMPLOYED.

11 Q AND WHAT DO YOU DO?

12 A I AM PHYSICIAN ENGAGED IN THE PRACTICE OF
13 PATHOLOGY TO INCLUDE ANATOMIC, CLINICAL AND FORENSIC
14 PATHOLOGY.

15 Q AND DO YOU WORK OUT OF A PARTICULAR
16 HOSPITAL IN THE AREA?

17 A YES, MA'AM.

18 Q AND WHAT HOSPITAL?

19 A GRAND STRAND REGIONAL MEDICAL CENTER.

20 Q AND HOW LONG HAVE YOU BEEN DOING THAT?

21 A I HAVE BEEN AT GRAND STRAND APPROXIMATELY
22 ABOUT 23, 24 YEARS.

23 Q AND IN YOUR EMPLOYMENT DO YOU HAVE OCCASION
24 TO DO AUTOPSIES?

25 A YES, MA'AM.

DR. PROCTOR - DIRECT EXAMINATION BY MS. ELDER

304

1 Q AND DID YOU PERFORM AN AUTOPSY ON COREY
2 BROOKS ON MAY 25TH, 2008?

3 A YES, MA'AM.

4 Q AND DID YOU MAKE CERTAIN FINDINGS IN REGARD
5 TO YOUR AUTOPSY?

6 A I DID.

7 Q I WANT TO FIRST ASK YOU ABOUT DID YOU MAKE
8 ANY NOTATION ABOUT MARKS OR CONTUSIONS ON COREY BROOKS
9 BODY?

10 A MR. BROOKS AS PART OF THE EXAMINATION WE DO
11 AN EXTERNAL EXAMINATION THEN WE DO AN INTERNAL EXAMINATION.
12 WE ALSO SUBMIT FLUIDS FOR ANALYSIS FOR TOXICOLOGY AND WE DO
13 A MICROSCOPIC.

14 MY EXTERNAL EXAMINATION REVEALED TWO ABRASIONS ON
15 THE LEFT SIDE OF HIS HEAD SLIGHTLY ABOVE THE EAR WITHIN THE
16 HAIRLINE. ONE WAS A LINEAR ABRASION ABOUT TWO CENTIMETERS
17 IN LENGTH AND THE OTHER WAS A MORE ROUNDED ABRASION
18 MEASURED APPROXIMATELY THREE CENTIMETERS IN DIAMETER.

19 Q AND WHEN YOU'RE TALKING ABOUT LINEAR
20 ABRASIONS AND THE ROUNDED ABRASION WOULD YOU LOOK AT
21 STATE'S EXHIBIT 8 AND 9 FOR IDENTIFICATION ONLY?

22 A YES, MA'AM.

23 Q AND DO YOU RECOGNIZE THOSE?

24 A YES, MA'AM, I DO.

25 Q ARE THOSE THE INJURIES THAT YOU'RE

DR. PROCTOR - DIRECT EXAMINATION BY MS. ELDER

305

1 REFERRING TO WHEN YOU ARE TALKING ABOUT ROUNDED ABRASION
2 AND LINEAR ABRASION?

3 A YES, MA'AM.

4 MS. ELDER: YOUR HONOR, AT THIS TIME I WOULD
5 LIKE TO INTRODUCE STATE'S EXHIBIT 8 AND 9.

6 MR. GALMORE: NO OBJECTION.

7 THE COURT: WITHOUT OBJECTION, YOUR HONOR.

8 (WHEREUPON, STATE'S EXHIBITS NUMBERS 8 AND 9
9 ENTERED INTO EVIDENCE.)

10 MS. ELDER: (CONTINUING)

11 Q IF YOU'LL LOOK AT STATE'S EXHIBIT 9 AND YOU
12 INDICATE THAT THAT IS A LINEAR ABRASION; IS THAT CORRECT?

13 A YES, MA'AM.

14 Q AND TELL ME WHY IT'S LINEAR?

15 A OKAY.

16 Q AND EXPLAIN THAT?

17 A THIS, THIS PHOTOGRAPH ACTUALLY DEPICTS BOTH
18 ABRASIONS. THE LINEAR ABRASION IS MORE LIKE A, A STRAIGHT
19 LINE THAT'S ELONGATED WITH A NARROW WIDTH AND THAT IS THE
20 SUPERIOR ABRASION. IT'S ABOUT TWO CENTIMETERS IN LENGTH
21 AND A HALF CENTIMETER IN WIDTH.

22 Q COULD THAT HAVE BEEN CAUSED BY SOMETHING OF
23 THIS NATURE?

24 A IT IS CERTAINLY POSSIBLE THAT IT COULD
25 HAVE, YES, MA'AM.

DR. PROCTOR - DIRECT EXAMINATION BY MS. ELDER

306

1 THE COURT: LET THE RECORD REFLECT SHE REFERRED
2 TO THE REVOLVER WHICH HAS BEEN ADMITTED AS STATE'S 7.

3 MS. ELDER: THANK YOU, YOUR HONOR.

4 Q AND, DR. ---

5 THE COURT: IS THAT CORRECT?

6 MS. ELDER; (CONTINUING)

7 Q DR. PROCTOR, DID YOU MAKE ANY OTHER
8 NOTATION IN REGARDS TO WOUNDS OR FATAL WOUNDS TO COREY
9 BROOKS?

10 A YES, MA'AM, I DID.

11 Q AND WHAT WERE THOSE?

12 A MR. BROOKS HAD A GUNSHOT WOUND OF ENTRANCE
13 IN HIS LEFT BACK AT THE AREA OF THE SCAPULA WHICH IS THE
14 SHOULDER BLADE, IT WAS MEDIAL TO THAT. IT WAS A CIRCULAR
15 WOUND ABOUT A HALF A CENTIMETER IN DIAMETER WHICH WAS
16 BASICALLY THE ONLY EXTERNAL WOUND OTHER THAN THE ABRASIONS
17 THAT I SAW. NOW --

18 Q IF YOU'LL LOOK AT STATE'S FOR
19 IDENTIFICATION NUMBER 10?

20 A YES, MA'AM.

21 Q DO YOU RECOGNIZE THAT?

22 A I DO.

23 Q AND WHAT DOES THAT DEPICT?

24 A THAT IS THE GUNSHOT WOUND OF ENTRANCE ON
25 THE BACK OF MR. BROOKS.

DR. PROCTOR - DIRECT EXAMINATION BY MS. ELDER

307

1 MS. ELDER: YOUR HONOR, THE STATE WOULD MOVE
2 STATE'S EXHIBIT 10 INTO EVIDENCE.

3 THE COURT: WHAT SAYS THE DEFENSE?

4 MR. GALMORE: WE HAVE NO OBJECTION, YOUR HONOR.

5 THE COURT: WITHOUT OBJECTION.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER 10 ENTERED
7 INTO EVIDENCE.)

8 MS. ELDER: YOUR HONOR, IF I COULD ASK THE
9 WITNESS TO STEP DOWN.

10 THE COURT: PLEASE.

11 (THE WITNESS COMPLIES AND DEMONSTRATES ON A MALE
12 MANNEQUIN.)

13 MS. ELDER: (CONTINUING)

14 Q DR. PROCTOR, IF YOU WOULD CAN YOU
15 DEMONSTRATE WHERE ON THE BODY THE LINEAR AND ROUND
16 ABRASIONS WERE LOCATED?

17 A YES, MA'AM, THE ABRASIONS ON THE BODY OF
18 MR. BROOKS WERE ABOVE HIS LEFT EAR. THE LINEAR ABRASION
19 SUPERIOR TO INFERIOR DIRECTION IN THIS MANNER AND THE MORE
20 CIRCULAR ABRASION JUST ABOVE THE EAR WITH A SLIGHT PORTION
21 OF IT ACTUALLY ON THE EAR LOBE HERE.

22 Q AND THE LINEAR PART WAS IT COMING TOWARDS
23 HIS FACE OR GOING AWAY?

24 A PRETTY MUCH STRAIGHT DOWN IN THIS FASHION.

25 Q OKAY, ALL RIGHT, AND ALSO DEMONSTRATING ON

DR. PROCTOR - DIRECT EXAMINATION BY MS. ELDER

308

1 THAT MANNEQUIN CAN YOU SHOW THE POINT OF ENTRY FOR THE
2 GUNSHOT WOUND THAT YOU OBSERVED?

3 A YES, MA'AM, THE POINT OF ENTRY OF THE
4 GUNSHOT TO MR. BROOKS WAS IN HIS LEFT BACK MEDIAL TO THE
5 SHOULDER BLADE JUST LATERAL TO THE VERTEBRAL COLUMN ON THE
6 LEFT SIDE.

7 Q AND DO YOU KNOW THE PATH OF THAT BULLET?

8 A THE PATH OF THAT BULLET WAS POSTERIOR TO
9 ANTERIOR AT APPROXIMATELY 180 DEGREES. I THINK IT
10 PENETRATED TO THE FIFTH RIB SPACE IN THE BACK. IT WENT
11 THROUGH HIS AORTA. IT WENT THROUGH HIS LEFT UPPER LUNG
12 LOBE. IT WENT THROUGH THE LEFT SIDE OF HIS HEART AS THE
13 HEART SITS IN THE BODY SORT OF ROTATED OVER AND CAUGHT THE
14 LATERAL ASPECT OF THE RIGHT VENTRICLE AND WAS ACTUALLY
15 LODGED IN THE BONY PART OF THE STERNUM INTERIOR.

16 Q SO WHEN YOU SAY 180 DEGREES ARE WE TALKING
17 ABOUT STRAIGHT THROUGH?

18 A STRAIGHT THROUGH, YES, MA'AM.

19 Q HE WAS SHOT HERE AND THE BULLET PASSED
20 STRAIGHT?

21 A STRAIGHT THROUGH, THAT'S CORRECT.

22 Q YOU MAY TAKE A SEAT, DR. PROCTOR. (THE
23 WITNESS COMPLIES).

24 MS. ELDER: (CONTINUING)

25 Q AND, DR. PROCTOR, DID YOU ESTABLISH A CAUSE

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

309

1 OF DEATH FOR COREY BROOKS?

2 A YES, MA'AM, I DID.

3 Q AND WHAT WAS THAT CAUSE OF DEATH?

4 A MR. BROOKS DIED AS A RESULT OF THE GUNSHOT
5 WOUND WHICH CAUSED EXTENSIVE DAMAGE TO HIS AORTA, HIS
6 LUNGS, AND HIS HEART.

7 Q AND DID YOU ESTABLISH A MANNER OF DEATH FOR
8 COREY BROOKS?

9 A BASED UPON MY FINDINGS AND THE INFORMATION
10 I WAS GIVEN BY THE INVESTIGATIVE AUTHORITIES AT THE TIME OF
11 THIS AUTOPSY, I FELT THE MANNER OF DEATH IN THIS CASE WAS
12 HOMICIDE.

13 MS. ELDER: NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: MR. GALMORE.

15 CROSS EXAMINATION

16 BY MR. GALMORE:

17 Q DR. PROCTOR, WERE YOU ABLE TO DETERMINE A
18 TIME OF DEATH?

19 A I BASED MY TIME OF DEATH SPECIFICALLY ON
20 THE TIMES I WAS GIVEN BY THE CORONER AND INVESTIGATING
21 AUTHORITIES.

22 Q AND WHAT TIME OF DEATH DID YOU DETERMINE?

23 A THE TIME OF DEATH WAS STATED AS
24 APPROXIMATELY 4:45 A.M. ON THE 25TH OF MAY.

25 Q AND YOU PERFORMED YOUR AUTOPSY AT WHAT

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

310

1 TIME?

2 A THE AUTOPSY WAS PERFORMED AT APPROXIMATELY
3 4:45, 4:30 P.M. THE SAME DAY.

4 Q THANK YOU --

5 A YES, SIR.

6 Q DID YOU OBSERVE ANY ATTEMPTS AT
7 RESUSCITATION ON THE BODY?

8 A THIS MAN HAD UNDERGONE A SURGICAL
9 INTERVENTION OR AN ATTEMPT TO SAVE HIS LIFE. THERE WAS
10 EVIDENCE OF A SURGICAL INCISION BETWEEN THE RIBS. THERE
11 WAS A BALLOON PUMP ACTUALLY IN THE HEART WHICH IS A PUMP
12 PUT IN TO APPLY PRESSURE AND HELP INCREASE BLOOD PRESSURE
13 SO THAT THE SURGEONS COULD MAKE AN ATTEMPT TO SAVE HIS
14 LIFE.

15 Q DID THOSE RESUSCITATION EFFORTS IN ANY WAY
16 IMPEDE YOUR AUTOPSY?

17 A NO, SIR.

18 Q AND YOU MENTIONED THAT THERE WERE TWO HEAD
19 WOUNDS?

20 A YES, SIR.

21 Q WERE ANY OF THOSE HEAD WOUNDS, COULD YOU
22 DETERMINE IF ANY OF THOSE HEAD WOUNDS WERE FATAL?

23 A THOSE WERE SUPERFICIAL ABRASIONS WHICH
24 WOULD NOT HAVE BEEN FATAL.

25 Q SUPERFICIAL?

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

311

1 A YES, SIR, WELL SUPERFICIAL CONTUSIONS LET
2 ME CORRECT THAT.

3 Q YES, SIR, NOW REGARDING THE WOUND TO THE
4 BACK DID YOU OBSERVE ANY STIPPLING?

5 A I CLOSELY INSPECTED THE WOUND, THERE WAS NO
6 STIPPLING.

7 Q COULD YOU EXPLAIN FOR THE JURY WHAT
8 STIPPLING IS?

9 A YES, SIR, STIPPLING IS CAUSED BY THE HOT
10 POWDER AND RESIDUE THAT COMES OUT OF THE END OF THE GUN
11 WHEN A BULLET IS FIRED. STIPPLING IS USUALLY PRESENT WHEN
12 A WEAPON IS FIRED WITHIN APPROXIMATELY 18 TO 24 INCHES OR
13 CLOSER. THE PRESENCE OF STIPPLING IS AN INDICATOR THAT IT
14 WOULD BE A CLOSE RANGE SHOT.

15 Q CAN YOU MAKE A DETERMINATION AS TO THE
16 DISTANCE OF THE SHOT IN THIS CASE?

17 A IN THIS CASE I CANNOT FOR THE BIG REASON
18 BEING THERE WERE NO ITEMS OF CLOTHING PRESENT FOR ME TO
19 EXAMINE. IN CASES OF GUNSHOTS MANY TIMES IF SOMEONE HAS ON
20 ITEMS OF CLOTHING THE CLOTHING WILL PICK UP THE RESIDUE AND
21 THE POWDER AND THERE MAY BE NO STIPPLING SO I, TO ANSWER
22 YOUR QUESTION, NO, SIR, I CANNOT GIVE YOU AN ACCURATE
23 DISTANCE.

24 Q AND THAT'S BECAUSE YOU DIDN'T HAVE ANY
25 CLOTHING TO EXAMINE?

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

312

1 A I HAD NO CLOTHING TO EXAMINE, THAT IS
2 CORRECT.

3 Q WERE YOU ABLE TO ESTIMATE THE CALIBER OF
4 THE PROJECTILE?

5 A THE PROJECTILE I REMOVED WAS A SMALL
6 CALIBER PROJECTILE AND IN MY ESTIMATION WAS APPROXIMATE 22
7 TO 25.

8 Q YOU INDICATED YOU DO A MICROSCOPIC EXAM,
9 EXTERNAL EXAM, AN INTERNAL EXAM?

10 A YES, SIR.

11 Q AND A TOXICOLOGICAL EXAM?

12 A THAT IS CORRECT.

13 Q WHAT WERE THE RESULTS OF THE TOXICOLOGICAL
14 EXAMINATION?

15 A THE TOXICOLOGICAL EXAMINATION REVEALED A
16 NEGATIVE BLOOD DRUG SCREEN WHICH IS A SCREEN FOR DRUGS OF
17 ABUSE. A BLOOD ETHANOL REVEALED A LEVEL OF 116 MILLIGRAMS
18 PER DECILITER WHICH CONVERTING IT TO GRAMS PERCENT OR AS
19 YOU WOULD READ ON THE BREATHILYZER WOULD BE A .12.

20 Q SO THERE WERE NO DRUGS IN HIS SYSTEM?

21 A THERE WERE NO DRUGS OF ABUSE IN HIS SYSTEM.

22 Q AND AS FAR AS THE ALCOHOL YOU SAID IT WAS A
23 .12?

24 A THAT IS CORRECT.

25 Q IS THAT, AS A MEDICAL EXPERT WOULD YOU

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

313

1 DESCRIBE THAT AS BEING GROSSLY INTOXICATED?

2 A I WOULD DESCRIBE THAT AS BEING UNDER THE
3 INFLUENCE. .12 IS ABOVE THE SOUTH CAROLINA LEGAL LIMIT,
4 AT THAT LEVEL DEPENDING ON A PERSON'S TOLERANCE FOR ALCOHOL
5 THERE MAY BE SOME SLOWING OF REFLEXES AND IMPAIRMENT BUT TO
6 CANDIDATE IT WOULD BE VERY DIFFICULT BUT BY DEFINITION IT
7 IS ABOVE THE LEGAL LIMIT.

8 Q ABOVE THE LEGAL LIMIT?

9 A YES, SIR.

10 Q HOWEVER, WELL ARE YOU SAYING THAT, THAT A
11 PERSON WITH A .12 WOULD BE UNABLE TO HAVE RATIONAL
12 JUDGMENT?

13 A THAT IS SOMETHING THAT IS VERY DEPENDENT
14 UPON TOLERANCE FOR ALCOHOL AND IS BEYOND MY ABILITY TO GIVE
15 YOU AN ACCURATE ANSWER.

16 Q IS A .12 EXTREMELY INTOXICATED?

17 A NO, SIR, IT IS NOT.

18 Q AND ALSO YOU WEREN'T ON THE SCENE AT 3RD
19 AVENUE NORTH ON MAY 25TH, 2008, WERE YOU?

20 A NO, SIR, I WAS NOT.

21 Q DID YOU SEE WHO FIRED THE SHOT?

22 A NO, SIR, I DID NOT.

23 MR. GALMORE: NO FURTHER QUESTIONS, THANK YOU,
24 DR. PROCTOR.

25 MS. ELDER: I HAVE NO FURTHER QUESTIONS, YOUR

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

314

1 HONOR, AND I WOULD ASK THIS WITNESS BE EXCUSED AT THIS
2 TIME.

3 THE COURT: MR. GALMORE?

4 MR. GALMORE: NO OBJECTION.

5 THE COURT: DR. PROCTOR, YOU ARE RELEASED FROM
6 YOUR SUBPOENA, THANK YOU FOR COMING.

7 A THANK YOU, SIR.

8 MS. ELDER: YOUR HONOR, AT THIS TIME THE STATE
9 OF SOUTH CAROLINA WOULD REST.

10 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF
11 THE JURY, THE STATE HAS RESTED. THE MEANS I'M GOING TO
12 HAVE TO TAKE UP SOME, SOME MATTERS OUT OF YOUR PRESENCE.
13 I'M GOING TO ASK YOU TO RETURN TO YOUR JURY ROOM, BRING YOU
14 BACK AS SOON AS I CAN, ALL RIGHT.

15 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
16 10:45 A.M.)

17 THE COURT: ALL RIGHT, THE STATE RESTS, MR.
18 GALMORE, I'LL HEAR FROM YOU.

19 MR. GALMORE: MAY I HAVE JUST A MOMENT, YOUR
20 HONOR.

21 THE COURT: YES, SIR.

22 MR. GALMORE: YOUR HONOR, AT THIS TIME THE
23 DEFENSE WOULD MAKE A MOTION FOR A DIRECTED VERDICT. I
24 UNDERSTAND THAT THE STANDARD IS LOOKING AT THE EVIDENCE IN
25 THE LIGHT MOST FAVORABLE TO THE STATE ---

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

315

1 THE COURT: YES.

2 MR. GALMORE: --- HOWEVER, I WOULD SUBMIT TO THE
3 COURT THAT THE STATE HAS FAILED TO, THE STATE HAS FAILED TO
4 PUT FORTH ANY COMPETENT EVIDENCE TOWARDS THE GUILT OF THE
5 ACCUSED.

6 THE STATE HAS PRESENTED INCONSISTENT TESTIMONY
7 FROM THEIR CODEFENDANTS AND THE REMAINING TESTIMONY DOES
8 NOT IN ANY WAY SUGGEST THE GUILT OF THE ACCUSED IT IS
9 MERELY, IT SUGGEST A MERE SUSPICION AS TO THE GUILT OF THE
10 ACCUSED.

11 THE COURT: ALL RIGHT, MR. GALMORE, I
12 RESPECTFULLY DENY YOUR MOTION. THERE IS SUBSTANTIAL
13 EVIDENCE TO SUPPORT A FINDING BY THE JURY THAT YOUR CLIENT
14 IS GUILTY OF THIS OFFENSE WHEN YOU TAKE THE EVIDENCE IN THE
15 LIGHT MOST FAVORABLE TO THE STATE. THERE HAS BEEN TWO
16 WITNESSES WHO IDENTIFIED HIM AS HAVING SHOT THE VICTIM, AT
17 LEAST TWO, PLUS THERE'S OTHER CIRCUMSTANTIAL EVIDENCE IN
18 THIS CASE, I'M GOING TO DENY YOUR MOTION.

19 ALL RIGHT, ANYTHING FURTHER?

20 MR. GALMORE: NO, SIR.

21 THE COURT: ALL RIGHT, MR. GALMORE, WILL YOUR
22 CLIENT TAKE THE STAND?

23 MR. GALMORE: YOUR HONOR, MR. GRIFFIN INDICATES
24 THAT HE WILL NOT BE TESTIFYING.

25 THE COURT: ALL RIGHT, MR. GRIFFIN, PLEASE STAND

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

316

1 AND BE SWORN.

2 EXAMINATION OF DEFENDANT GRIFFIN REGARDING RIGHTS

3 THE COURT: ALL RIGHT, MR. GRIFFIN, I AM GOING
4 TO EXPLAIN CERTAIN OF YOUR RIGHTS TO YOU. IF YOU DON'T
5 UNDERSTAND ANYTHING I SAY, PLEASE, LET ME KNOW AND IF YOU
6 WANT ME TO EXPLAIN ANYTHING IN A MORE DETAILED FASHION I
7 WILL CERTAINLY DO THAT, DO YOU UNDERSTAND?

8 DEFENDANT GRIFFIN: YES, SIR.

9 THE COURT: ALL RIGHT, NOW WE'VE REACHED THE
10 STAGE OF THE TRIAL WHERE YOU MAY PRESENT YOUR DEFENSE. YOU
11 HAVE A RIGHT TO CLAIM THE PROTECTIONS GIVEN YOU BY THE
12 FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES
13 AND THIS AMENDMENT IN PART STATES THAT NO PERSON SHALL BE
14 COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST
15 HIMSELF.

16 THIS MEANS THAT YOU CANNOT BE REQUIRED TO TESTIFY
17 IN THIS CASE. YOU HAVE THE RIGHT TO TESTIFY ON YOUR OWN
18 BEHALF IF YOU WISH, HOWEVER NO ONE CAN MAKE YOU TESTIFY AND
19 THIS IS A PERSONAL RIGHT THAT NO ONE CAN WAIVE EXCEPT YOU.
20 YOUR ATTORNEY CAN'T WAIVE IT, YOU HAVE TO WAIVE IT; DO YOU
21 UNDERSTAND THAT?

22 DEFENDANT GRIFFIN: YES, SIR.

23 THE COURT: NOW IF YOU DECIDE TO TESTIFY I WANT
24 TO CAUTION YOU THAT YOU'LL BE SUBJECT TO THE SAME RULES
25 THAT GOVERN OTHER WITNESSES AND YOU MAY BE EXAMINED AND

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

317

1 CROSS EXAMINED ON ANY RELEVANT ISSUE IN THE CASE AND IN
2 ADDITION TO THAT IF YOU HAVE ANY CONVICTIONS INVOLVING
3 DISHONESTY OR FALSE STATEMENT OR FOR CRIMES PUNISHABLE BY
4 IMPRISONMENT FOR MORE THAN ONE YEAR AND THIS COURT
5 DETERMINES THAT THE PROBATIVE VALUE OF ADMITTING THAT
6 EVIDENCE OUTWEIGHS THE PREJUDICIAL AFFECT TO YOU THE
7 SOLICITOR WILL BE ABLE TO INTRODUCE YOUR RECORD TO ATTACK
8 YOUR CREDIBILITY; DO YOU UNDERSTAND THAT?

9 DEFENDANT GRIFFIN: YES, SIR.

10 THE COURT: OKAY, IF YOU DECIDE TO TESTIFY THE
11 DECISION ON YOUR PART MUST BE FREELY, VOLUNTARILY, AND
12 INTELLIGENTLY MADE WITH KNOWLEDGE OF THE PROTECTIONS GIVEN
13 YOU BY THE FIFTH AMENDMENT AND THE CONSEQUENCES OF YOUR
14 DECISION TO TESTIFY.

15 IF YOU DECIDE NOT TO TESTIFY I WILL INSTRUCT THE
16 JURORS THAT THEY CANNOT GIVE THE FACT THAT YOU DID NOT
17 TESTIFY ANY CONSIDERATION WHATSOEVER AND THAT THERE'S TO BE
18 ABSOLUTELY NO PREJUDICE TO YOU BECAUSE YOU DID NOT TESTIFY
19 BECAUSE THAT'S ENTIRELY UP TO YOU WHETHER OR NOT TO
20 TESTIFY. YOU MAY TALK WITH YOUR ATTORNEY IF YOU NEED
21 FURTHER TIME WITH HIM, YOU MAY TALK WITH YOUR FAMILY OR
22 FRIENDS OR ANYONE ELSE BUT THE FINAL DECISION WILL BE
23 ENTIRELY UP TO YOU; DO YOU UNDERSTAND THAT?

24 DEFENDANT GRIFFIN: YES, SIR.

25 THE COURT: NOW DO YOU UNDERSTAND WHAT I'VE

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

318

1 EXPLAINED TO YOU?

2 DEFENDANT GRIFFIN: YES, SIR.

3 THE COURT: OKAY, DO YOU HAVE ANY QUESTIONS
4 ABOUT WHAT I'VE EXPLAINED TO YOU?

5 DEFENDANT GRIFFIN: NONE AT ALL.

6 THE COURT: HAVE YOU DISCUSSED THIS MATTER WITH
7 YOUR ATTORNEY?

8 DEFENDANT GRIFFIN: YES, SIR.

9 THE COURT: DO YOU NEED ANY MORE TIME TO DISCUSS
10 THIS WITH YOUR ATTORNEY OR YOUR FAMILY OR YOUR FRIENDS OR
11 ANYONE ELSE?

12 DEFENDANT GRIFFIN: NO, SIR.

13 THE COURT: IS THERE ANY QUESTION ABOUT YOUR
14 RIGHT TO TESTIFY OR NOT TESTIFY THAT I COULD ANSWER FOR
15 YOU?

16 DEFENDANT GRIFFIN: NO, SIR.

17 THE COURT: OKAY, HAVE YOU MADE A DECISION AS TO
18 WHETHER OR NOT YOU WISH TO TESTIFY?

19 DEFENDANT GRIFFIN: YES.

20 THE COURT: ALL RIGHT, AND WHAT IS YOUR, YOUR
21 DECISION CONCERNING THAT?

22 DEFENDANT GRIFFIN: TO NOT TO TESTIFY.

23 THE COURT: ALL RIGHT, NOW YOU HAVE TOLD ME THAT
24 YOU DO NOT WANT TO TESTIFY, LET ME TELL YOU THAT YOU ARE
25 NOT BOUND BY THAT DECISION. I WANT TO MAKE SURE THAT YOU

DR. PROCTOR - CROSS EXAMINATION BY MR. GALMORE

319

1 UNDERSTAND THAT YOU HAVE THE RIGHT OR THE RIGHT TO TESTIFY
2 OR THE RIGHT NOT TO TESTIFY. IF BEFORE THIS CASE ENDS,
3 THAT IS BEFORE THE DEFENSE RESTS YOU CHANGE YOUR MIND AND
4 YOU DECIDE THAT YOU WANT TO TESTIFY YOU MUST NOTIFY ME OF
5 THAT BUT I WILL IN FACT HONOR A LATER REQUEST TO TESTIFY ON
6 YOUR PART; DO YOU UNDERSTAND THAT?

7 DEFENDANT GRIFFIN: YES, SIR.

8 THE COURT: THE FACT THAT YOU TELL ME NOW THAT
9 YOU DON'T WANT TO IS MERELY TO ASSIST ME IN GOING FORWARD
10 WITH THE TRIAL, LET'S ME KNOW WHAT YOUR FEELINGS ARE NOW.
11 I WANT TO MAKE SURE YOU UNDERSTAND YOUR RIGHTS, THAT YOU'RE
12 NOT BOUND BY WHAT YOU TELL ME. IF YOU CHANGE YOUR MIND YOU
13 CAN CERTAINLY TESTIFY, TELL YOUR ATTORNEY AND HE WILL BRING
14 IT TO MY ATTENTION; DO YOU UNDERSTAND THAT?

15 DEFENDANT GRIFFIN: YES, SIR.

16 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH,
17 YOU MAY BE SEATED.

18 ALL RIGHT, MR. GALMORE, ARE YOU READY TO PROCEED.

19 MR. GALMORE: YES, SIR.

20 THE COURT: ALL RIGHT.

21 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
22 10:53 A.M.)

23 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF
24 THE JURY, THE DEFENSE IS NOW READY TO PROCEED.

25 MR. GALMORE: YOUR HONOR, THE DEFENSE WOULD CALL

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

320

1 ASIA HARRIS TO THE STAND.

2 ASIA HARRIS

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 MADAM CLERK: PLEASE STATE YOUR FULL NAME AND
5 SPELL YOUR LAST NAME FOR THE COURT.

6 THE WITNESS: MY NAME IS ASIA JADE HARRIS, H-A-
7 R-R-I-S.

8 DIRECT EXAMINATION

9 BY MR. GALMORE:

10 Q HOW OLD ARE YOU, MS. HARRIS?

11 A TWENTY.

12 Q AND WHERE ARE YOU FROM?

13 A COLUMBIA, SOUTH CAROLINA.

14 Q DO YOU WORK?

15 A NOPE.

16 Q ARE YOU IN SCHOOL?

17 A YES.

18 Q WHERE ARE YOU IN SCHOOL?

19 A SOUTH CAROLINA STATE UNIVERSITY.

20 Q AND HOW LONG HAVE YOU BEEN ATTENDING STATE?

21 A THIS IS MY THIRD YEAR, I'M A JUNIOR.

22 Q WOULD IT BE FAIR TO SAY THAT YOU'RE A
23 LITTLE NERVOUS ABOUT BEING HERE TODAY?

24 A YES.

25 Q HAVE YOU EVER TESTIFIED IN COURT BEFORE?

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

321

1 A NO.

2 Q WOULD IT BE FAIR TO SAY YOU DON'T REALLY
3 EVEN WANT TO BE HERE TODAY?

4 A RIGHT, I DON'T.

5 Q WELL LET ME TURN YOUR ATTENTION TO THE
6 EARLY MORNING HOURS OF MAY 25TH, 2008. CAN YOU JUST TAKE
7 IT FROM THE TOP AND TELL US WHAT YOU OBSERVED?

8 A OKAY, MAY 28TH THAT WAS BIKE WEEK, YOU SAID
9 THE 28TH, RIGHT?

10 Q I SAID THE 25TH?

11 A 25TH, OKAY, THAT WAS BIKE WEEK, ME AND MY
12 TWO FRIENDS DECIDED TO GO TO BIKE WEEK FOR THE FIRST TIME.

13 Q WHO ARE YOUR TWO FRIENDS?

14 A ME AND EMMA AND KIM.

15 Q EMMA WHO?

16 A EMMA CHANDLER AND KIMBERLY WHITNER.

17 Q THE THREE OF YOU ALL CAME TO BIKE WEEK?

18 A YES.

19 Q OKAY, PLEASE CONTINUE?

20 A WE WERE LOOKING FOR A PLACE TO PARK THIS
21 PARTICULAR NIGHT BECAUSE THE PREVIOUS NIGHT WE STAYED IN
22 CONWAY AT A FRIEND'S HOUSE SO THE NEXT NIGHT WE DIDN'T WANT
23 TO GO ALL THE WAY BACK TO CONWAY SO WE WERE LOOKING FOR
24 SOMEWHERE TO PARK TO GO STAY WITH MY BROTHER'S GIRLFRIEND.

25 Q WHERE WAS YOUR BROTHER'S GIRLFRIEND

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

322

1 STAYING?

2 A SHE WAS STAYING AT THE HAPPY HOLIDAY.

3 Q OKAY?

4 A AND I COULDN'T PARK IN HER PARKING LOT
5 BECAUSE I DIDN'T HAVE A PARKING DECAL SO I SEEN THIS OPEN
6 LOT ON LIKE A SIDE STREET AND IT LOOKED LIKE A LOT TO A
7 HOUSE AND I WAS PARKED IN BETWEEN A CAR AND A TRUCK ---

8 Q OKAY ---

9 A --- AND ONCE I PARKED TWO WHITE GUYS CAME
10 UP AND THEY WERE SAYING ---

11 Q HOLD ON FOR A SECOND. LET ME SHOW YOU
12 WHAT'S BEEN MARKED AS STATE'S EXHIBIT 6 AND ASK YOU IF YOU
13 RECOGNIZE THIS HOUSE?

14 A YES.

15 Q AND WHAT IS THIS?

16 A I GUESS THAT WAS THE WHITE GUYS BEACH
17 HOUSE.

18 THE COURT: THAT'S ALREADY IN, ISN'T IT, MR.
19 GALMORE?

20 MR. GALMORE: YES, SIR.

21 THE COURT: OKAY.

22 MR. GALMORE: (CONTINUING)

23 Q AND YOU SAID YOU PARKED IN BETWEEN A CAR
24 AND A TRUCK?

25 A CORRECT.

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

323

1 Q LET ME HAND YOU WHAT'S BEEN, WHAT'S BEEN
2 ENTERED INTO EVIDENCE AS STATE'S EXHIBIT 4, CAN YOU TELL ME
3 IF ---

4 A I WAS PARKED RIGHT THERE.

5 Q WHERE WERE YOU PARKED?

6 A RIGHT HERE.

7 MR. GALMORE: PERMISSION TO PUBLISH, YOUR HONOR.

8 THE COURT: YES.

9 MR. GALMORE: (CONTINUING)

10 Q AND YOU WERE PARKED IN BETWEEN THAT CAR AND
11 THAT TRUCK?

12 A YES.

13 Q SO WHEN WE TALK ABOUT THERE WERE THREE
14 GIRLS IN A CAR YOU AND YOUR FRIENDS WERE THE THREE GIRLS
15 THAT WE'RE TALKING ABOUT?

16 A CORRECT.

17 Q AND TELL US WHAT YOU OBSERVED?

18 A AND WHEN I PARKED TWO WHITE GUYS CAME TO
19 THE CAR AND ONE OF THEM WAS HIGHLY INTOXICATED AND HE WAS
20 LIKE, ALL I COULD REALLY UNDERSTAND WAS \$10.

21 Q WHEN YOU SAY HIGHLY INTOXICATED WHAT DO YOU
22 MEAN?

23 A HE WAS SLURRING HIS WORDS, HE COULD BARELY
24 WALK, HE WAS WASTED.

25 Q YOU COULDN'T UNDERSTAND EVERYTHING THAT HE

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

324

1 WAS SAYING?

2 A NOT REALLY, NO, I ONLY UNDERSTOOD \$10.

3 Q YES, MA'AM, SO THE TWO WHITE GUYS CAME TO
4 YOUR CAR AND ONE OF THEM MENTIONED \$10; IS THAT CORRECT?

5 A CORRECT.

6 Q OKAY, WHAT DO YOU REMEMBER FROM THERE?

7 A AFTER HE MENTIONED IT WAS \$10 THREE DUDES,
8 THREE BLACK GUYS CAME TO THE CAR AND THEY WERE LIKE, NO,
9 YOU KNOW, JUST LET THEM, LET THEM PARK HERE, YOU KNOW HOW
10 MUCH IS IT TO PARK HERE. THEY WERE LIKE \$10 AND SO THE
11 BLACK GUYS WAS LIKE, OKAY, WE'LL PAY FOR YOU GIRLS TO PARK,
12 ALL WE HAVE IS A 20, SO THEY ASKED US DID WE HAVE CHANGE
13 FOR A 20 AND WE DIDN'T HAVE CHANGE FOR A 20 AND ONCE ONE OF
14 THE BLACK GUYS LEANED IN TO SAY, HOLD UP, WAIT, HOLD UP,
15 WAIT, THE BLACK, THE WHITE GUY THAT WAS INTOXICATED ---

16 Q LET ME STOP YOUR THERE FOR A MINUTE, YOU
17 SAID ONE OF THE GUYS LEANED IN AND SAID, HOLD UP, WAIT?

18 A CORRECT.

19 Q WHAT IMPRESSION OR UNDERSTANDING DID YOU,
20 DID YOU PERCEIVE FROM HIM SAYING HOLD UP, WAIT?

21 A MAYBE THAT HE KNEW ONE OF US, I'M NOT -- HE
22 JUST LOOKED IN THE CAR LIKE HOLD UP, WAIT, HOLD UP WAIT.

23 Q AND WHAT SIDE OF THE CAR WAS THAT?

24 A HE WAS ON THE PASSENGER SIDE.

25 Q SO A PERSON, ONE OF THE THREE BLACK GUYS

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

325

1 CAME OVER TO THE PASSENGER SIDE OF THE CAR?

2 A CORRECT.

3 Q AND SAID, HOLD UP, WAIT?

4 A CORRECT.

5 Q WHAT HAPPENED AFTER THAT?

6 A AND THAT'S THE BAD, THE INTOXICATED WHITE
7 GUY LIKE PUSHED HIM, PUT HIS HAND UP AND PUSHED HIM AND
8 THEY GOT INTO AN ALTERCATION. THE WHITE GUY WAS LIKE, HE
9 WAS BASICALLY CURSING AND THE BLACK GUY WAS LIKE, GET YOUR
10 "M F"ING" HANDS OFF OF ME THEN THEY STARTED, THEY GOT INTO
11 A LITTLE RUMBLE ALTERCATION, A RUMBLE AND WHEN THEY DID
12 SOMEONE, THEY HIT THE CAR AND WHEN THEY HIT THE CAR I DROVE
13 OFF INTO LIKE THE BACK YARD.

14 Q NOW WHAT SIDE OF THE CAR DID THEY HIT?

15 A THE PASSENGER, LIKE THE PASSENGER SIDE.

16 Q SO THIS IS THE SAME PERSON THAT CAME OVER
17 AND SAID HOLD UP WAIT?

18 A CORRECT.

19 Q THE SAME PERSON THAT YOU PERCEIVED OR
20 APPEARED TO YOU THAT HE MIGHT HAVE RECOGNIZED SOMEBODY IN
21 THE CAR?

22 A CORRECT.

23 Q AND THAT'S THE SAME PERSON THAT GOT INTO
24 THE SCUFFLE WITH THE INTOXICATED WHITE GUY?

25 A CORRECT, MIND YOU ALL OF THEM --

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

326

1 Q OKAY --

2 A ALL OF THEM WERE FIGHTING, ALL OF THEM
3 JUMPED ON.

4 Q NOW WHEN, WHEN YOU SAID THEY BUMPED THE
5 CAR, DID THEY CAUSE ANY DAMAGES TO THE VEHICLE?

6 A YES.

7 Q WHAT TYPE OF DAMAGE WAS IT?

8 A I HAD A BIG BUMP ON THE PASSENGER BUMPER,
9 ON THE FRONT BUMPER ON THE PASS, ON MY RIGHT HAND SIDE.

10 Q ALL RIGHT, SO THERE WAS A SCUFFLE ON THE
11 PASSENGER SIDE OF THE CAR?

12 A CORRECT.

13 Q WHAT DID YOU OBSERVE OR WHAT DO YOU
14 REMEMBER AFTER THAT?

15 A AFTER THAT ONCE THEY WERE, ONCE THEY GOT
16 INTO A FIGHT I DROVE THROUGH THE, THROUGH THE YARD LIKE
17 BEHIND THE HOUSE AND I STOPPED JUST IN CASE THEY STARTED
18 SHOOTING ALL OVER THE PLACE. I GOT OUT OF THE WAY AND I
19 STOPPED AND I NOTICED OUT OF MY REAR VIEW MIRROR THAT
20 SOMEBODY PULLED OUT A GUN AND SHOT.

21 Q DID THERE COME A TIME WHEN YOU HEARD ANY
22 COMMENTS BY ANY OF THE PEOPLE?

23 A YES, WHEN I GUESS DURING THE, DURING THE
24 SCUFFLE I HEARD SOMEBODY SAY WHERE'S MY STRAP, WHERE'S MY
25 STRAP, "F" THIS WHERE'S MY STRAP, WE'RE ABOUT TO FIGHT,

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

327

1 WHERE'S MY STRAP ---

2 Q OKAY, NOW ---

3 A --- AND THEY STARTED RUMBLING AND WHEN THEY
4 HIT THE CAR I DROVE OFF.

5 Q NOW WHEN YOU HEARD SOMEONE SAY WHERE'S MY
6 STRAP WAS THAT COMING FROM THE DRIVERS SIDE OF YOUR CAR OR
7 FROM THE PASSENGERS SIDE?

8 A THE PASSENGER, NOTHING HAPPENED ON MY SIDE,
9 EVERYTHING HAPPENED ON THE PASSENGERS SIDE.

10 Q THE PERSON THAT SAID WHERE'S MY STRAP WOULD
11 THAT HAVE BEEN THE SAME PERSON THAT WAS FIGHTING WITH THE
12 INTOXICATED WHITE GUY?

13 A YES.

14 Q AND THAT WOULD HAVE BEEN THE SAME PERSON
15 THAT RAN TO THE CAR AND SAID HOLD UP, HOLD UP?

16 A YES.

17 Q NOW ---

18 A THAT'S HOW, NO, THAT'S HOW THE SCUFFLE
19 BEGAN.

20 Q RIGHT?

21 A NOW ALL OF THEM WERE FIGHTING.

22 Q I UNDERSTAND?

23 A OKAY.

24 Q NOW YOU HEARD SOMEBODY SAY WHERE'S MY
25 STRAP?

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

328

1 A CORRECT.

2 Q DID YOU OBSERVE THE BLACK GUYS DISCUSS
3 HAVING A FIGHT, LIKE DID THEY SAY ALL RIGHT, LET'S, LET'S
4 UP, WE'RE GOING TO FIGHT THESE GUYS?

5 A NO.

6 Q YOU DIDN'T SEE ANY LIKE CONSPIRING AMONG
7 THE THREE GUYS PRIOR TO THE FIGHT? YOU GOT TO ANSWER?

8 A NO, NO.

9 Q SO YOU PULLED YOUR CAR OUT OF THE AREA, YOU
10 E BEHIND THE HOUSE?

11 A I JUST PUT THE CAR IN DRIVE AND DROVE
12 STRAIGHT.

13 THE COURT: MR. GALMORE, I DON'T THINK THAT'S IN
14 YET.

15 Q OKAY, WELL LET ME AGAIN REFER TO STATE'S
16 EXHIBIT NUMBER 6 FOR IDENTIFICATION PURPOSES AND ASK YOU IF
17 YOU CAN POINT OUT THE GENERAL DIRECTION THAT YOU DROVE?

18 A I WAS ON THIS SIDE OF THE DRIVEWAY AND I
19 DROVE STRAIGHT LIKE UP HERE.

20 Q SO YOU ENDED UP LIKE AT THE BACK OF THE
21 HOUSE?

22 A YEAH, BACK HERE, YES, I JUST DROVE
23 STRAIGHT.

24 THE COURT: ARE YOU OFFERING THAT, MR. GALMORE,
25 I DON'T THINK STATE'S 6 IS IN?

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

329

1 MR. GALMORE: YES, SIR.

2 THE COURT: THE ONE THAT'S MARKED, HAVE HER
3 IDENTIFY IT.

4 MR. GALMORE: (CONTINUING)

5 Q DO YOU, DO YOU RECOGNIZE WHAT'S BEEN,
6 WHAT'S BEEN IDENTIFIED AS STATE'S EXHIBIT NUMBER 6?

7 A YES, YES.

8 Q IS THIS THE HOUSE WHERE YOU PARKED YOUR
9 CAR?

10 A YES.

11 MR. GALMORE: YOUR HONOR, I'D LIKE TO MOVE
12 STATE'S EXHIBIT NUMBER 6 FOR IDENTIFICATION INTO EVIDENCE
13 AS DEFENSE EXHIBIT 6.

14 MS. ELDER: NO OBJECTION, YOUR HONOR.

15 THE COURT: ALL RIGHT, WHAT NUMBER WILL THAT BE,
16 MS. BABB?

17 MADAM COURT REPORTER: SIX.

18 THE COURT: OKAY.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER 6 IS REMARKED
20 AS DEFENDANT'S EXHIBIT NUMBER 6 AND ENTERED INTO EVIDENCE.)

21 MR. GALMORE: PERMISSION TO PUBLISH, YOUR HONOR?

22 THE COURT: CERTAINLY.

23 MR. GALMORE: (CONTINUING)

24 Q NOW LET ME HAND YOU WHAT'S BEEN MARKED FOR
25 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT NUMBER 3; DO YOU

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

330

1 RECOGNIZE THIS LOCATION?

2 A YES, MY CAR WAS PARKED RIGHT HERE IN
3 BETWEEN THIS TRUCK AND THAT CAR.

4 MR. GALMORE: YOUR HONOR, I WOULD MOVE STATE'S
5 EXHIBIT I.D. FOR IDENTIFICATION NUMBER 3 INTO EVIDENCE AS
6 DEFENSE EXHIBIT NUMBER 7, OH, IT IS IN EVIDENCE, ALL RIGHT.

7 Q (CONTINUING) YOU SAID YOUR CAR WAS PARKED
8 IN BETWEEN THESE TWO VEHICLES?

9 A CORRECT.

10 Q DO YOU SEE ANYTHING IN PARTICULAR UNDER THE
11 SUV?

12 A YOU MEAN RIGHT HERE?

13 Q DO YOU SEE ANYTHING UNDER THAT SUV, CAN YOU
14 OBSERVE ANYTHING IN THAT PHOTOGRAPH?

15 A IT'S A HAT.

16 Q DOES IT APPEAR TO BE THIS HAT?

17 A CORRECT.

18 MR. GALMORE: PERMISSION TO PUBLISH, YOUR HONOR?
19 THE COURT: ALL RIGHT.

20 MR. GALMORE: (CONTINUING)

21 Q SO YOUR CAR WAS PARKED IN BETWEEN THOSE TWO
22 CARS?

23 A CORRECT.

24 Q AND YOUR PASSENGER SIDE WOULD HAVE BEEN
25 NEXT TO THAT SUV?

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

331

1 A CORRECT.

2 Q AND YOU TESTIFIED THAT THE PERSON WHO
3 WALKED UP TO YOUR PASSENGER SIDE SAYING HOLD UP, WAIT, WAS
4 THE SAME PERSON THAT GOT INTO THE ALTERCATION WITH THE
5 WHITE MALE?

6 A CORRECT.

7 Q THAT'S THE SAME PERSON THAT SAID WHERE'S MY
8 STRAP?

9 A CORRECT.

10 Q AND THEN THE FIGHT STARTED?

11 A CORRECT.

12 Q NOW ONCE THE FIGHT STARTED YOU SAID THAT
13 YOU PULLED YOUR CAR OFF AND SORT OF DROVE BEHIND THE HOUSE?

14 A RIGHT, ONCE THE, ONCE THEY, ONCE THEY HIT
15 THE CAR, CORRECT.

16 Q AND WHAT DID YOU OBSERVE?

17 A ONCE I PULLED BEHIND THE CAR AND I LOOKED
18 OUT MY REARVIEW MIRROR I SEEN SOMEONE PULL OUT A GUN AND I
19 HEARD A POW.

20 Q COULD YOU DESCRIBE FOR THE JURY THE SKIN
21 TONE OR COMPLEXION OF THE PERSON YOU SAW WITH THE GUN?

22 A BROWN SKINNED, MAYBE ABOUT MY COMPLEXION OR
23 A LITTLE DARKER.

24 Q A LITTLE DARKER THAN YOU. NOW AFTER THE
25 SHOOTING WHAT DID YOU DO?

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

332

1 A I DROVE OFF.

2 Q DID THERE COME A TIME WHEN YOU AND EMMA HAD
3 A CONVERSATION ABOUT WHAT YA'LL HAD OBSERVED?

4 A WE SAID THAT WE WOULD NEVER GO TO BIKE WEEK
5 AGAIN, THAT WAS OUR FIRST TIME GOING TO BIKE WEEK, WE'D
6 NEVER GO.

7 Q WELL DID YOU ALL HAVE A CONVERSATION ABOUT
8 WHAT YOU OBSERVED?

9 A NOT REALLY, EXCEPT SAYING THAT WAS CRAZY,
10 OUR FIRST TIME GOING TO BIKE WEEK WE WERE WITNESS TO A
11 MURDER. BUT OTHER THAN THAT NOT REALLY I WAS IN, I DIDN'T
12 SPEAK NO MORE ON IT.

13 Q AFTER THAT TIME WHEN YOU OBSERVED THE
14 SHOOTING DID YOU RECOGNIZE ANYONE?

15 A NO, I DIDN'T UNTIL EMMA, EMMA MADE A
16 STATEMENT.

17 MS. ELDER: OBJECTION, YOUR HONOR.

18 THE COURT: THAT WOULD BE HEARSAY, MR. GALMORE.

19 MR. GALMORE: YOUR HONOR, EXCEPTION WOULD BE
20 EXCITED UTTERANCE.

21 THE COURT: WELL ESTABLISH YOUR BASIS THEN.

22 MR. GALMORE: YES, SIR.

23 Q (CONTINUING) YOU SAID EMMA MADE A STATEMENT
24 TO YOU, RIGHT?

25 A CORRECT.

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

333

1 Q HOW SOON AFTER THE SHOOTING DID EMMA MAKE
2 THIS STATEMENT TO YOU?

3 A ONCE WE DROVE OFF SHE'S LIKE, EMMA, ONE OF
4 THOSE GUYS ---

5 Q DON'T TELL ME WHAT SHE SAID YET?

6 A OKAY.

7 Q IT WAS ONCE YOU DROVE OFF AND WAS THIS THE
8 NEXT DAY THAT SHE MADE THIS STATEMENT?

9 A NO.

10 Q WAS IT TWO HOURS, TWO MINUTES, WHAT?

11 A IT WAS THAT DAY, THAT MORNING, THAT NIGHT,
12 BUT I DON'T ---

13 Q OKAY, BUT WHEN YOU SAY THAT MORNING, NIGHT
14 ARE YOU TALKING A.M. BEFORE THE SUN CAME UP?

15 A CORRECT.

16 Q OKAY, WOULD IT HAVE BEEN WITHIN MINUTES
17 AFTER, AFTER THE SHOOTING THAT THE COMMENT WAS MADE?

18 A CORRECT.

19 Q WOULD YOU SAY THAT YOU WERE UNDER THE
20 EMOTIONAL TOIL OR STRESS OF THE SHOOTING WHEN THE COMMENT
21 WAS MADE?

22 A CORRECT.

23 Q YOU WERE STILL I GUESS ---

24 A IN SHOCK.

25 Q THANK YOU, YOU WERE STILL IN SHOCK?

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

334

1 A CORRECT.

2 Q WAS YOUR SHOCK CAUSED BY THE SHOOTING?

3 A YES.

4 MR. GALMORE: YOUR HONOR, I WOULD SUBMIT THERE
5 IS AN EXCITED UTTERANCE --

6 THE COURT: YOU TELL ME WHAT THIS WITNESS STATE
7 OF MIND WAS, HOW ABOUT THE SPEAKER. DOESN'T THE RULE APPLY
8 TO THE SPEAKER NOT THE HEARER?

9 MR. GALMORE: YOUR HONOR --

10 Q (CONTINUING) MS. CHANDLER WOULD, EXCUSE ME,
11 MS. HARRIS, WAS MS. CHANDLER SHOCKED BY THE SHOOTING ALSO?

12 A YES.

13 Q SHE WAS STILL UNDER THE EMOTIONAL STRESS OF
14 WHAT YOU ALL HAD JUST OBSERVED?

15 A YES, CAUSE AFTER THE SHOOTING, AFTER THE
16 SHOOTING SHE WAS LIKE, ASIA, GO, ASIA, GO, GO.

17 MR. GALMORE: YOUR HONOR, I WOULD SUBMIT THAT IT
18 IS AN EXCITED UTTERANCE.

19 THE COURT: WELL, GO, GO IS CERTAINLY AN EXCITED
20 UTTERANCE BUT WHERE ARE YOU GOING WITH THIS, MR. GALMORE?

21 MR. GALMORE: MS. CHANDLER MADE A STATEMENT TO
22 MS. HARRIS THAT I THINK IS RELEVANT FOR THE JURY AND IT WAS
23 MADE IMMEDIATELY AFTER THE SHOOTING.

24 THE COURT: ALL RIGHT, LET'S SEND THE JURY OUT,
25 I WANT TO HEAR WHAT THE STATEMENT IS BEFORE I ADMIT IT.

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

335

1 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
2 11:10 A.M.)

3 THE COURT: GIVE ME A PROFFER, MR. GALMORE.

4 Q (CONTINUING IN CAMERA) MS. HARRIS, WHAT
5 STATEMENT DID MS. CHANDLER MAKE TO YOU?

6 A SHE STATED THAT ONE OF THE GUY'S LOOKED
7 FAMILIAR MAYBE THEY WENT TO HIGH SCHOOL WITH US.

8 MR. GALMORE: THAT'S THE EXTENT OF IT, YOUR
9 HONOR.

10 THE COURT: MS. ELDER?

11 MS. ELDER: YOUR HONOR, FIRST OF ALL MS.
12 CHANDLER WOULD BE AVAILABLE FOR THAT TESTIMONY. IT'S ALSO
13 THAT MS. CHANDLER DID NOT SEE THE SHOOTING. SHE DIDN'T
14 WITNESS THE SHOOTING. SHE WAS IN THE CAR, THEY HAD ALREADY
15 PULLED UP. MS. CHANDLER HERSELF IN HER STATEMENT SAYS SHE
16 NEVER SAW THAT SHOOTING. I DON'T THINK IT'S RELEVANT AND
17 IF THERE'S AN ISSUE MS. CHANDLER IS CERTAINLY AVAILABLE TO
18 TESTIFY.

19 THE COURT: WHAT ABOUT IT, MR. GALMORE?

20 MR. GALMORE: I THINK IT'S RELEVANT BECAUSE
21 WE'VE HAD TESTIMONY THAT ONE PERSON WALKED UP TO THE CAR
22 AND SAID, HOLD UP, WAIT, AS THOUGH HE RECOGNIZED SOMEONE
23 AND IMMEDIATELY AFTER THE SHOOTING MS. CHANDLER TELLS MS.
24 HARRIS THAT SHE RECOGNIZED HIM.

25 MS. ELDER: SHE DIDN'T SAY RECOGNIZED HIM, SHE

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

336

1 SAID THAT ONE OF THOSE GUYS.

2 THE COURT: I'M NOT GOING TO ADMIT IT.

3 MR. GALMORE: ALL RIGHT, THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT, LET'S BRING THE JURY BACK
5 IN. MR. NOBLES, IF YOU WOULD GET THEM FOR ME. I DON'T
6 THINK IT'S AN EXCITED UTTERANCE.

7 MR. GALMORE: YES, SIR.

8 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
9 11:12 A.M.)

10 THE COURT: ALL RIGHT, WE HAVE ALL OUR JURORS
11 BACK, MR. GALMORE, PROCEED.

12 MR. GALMORE: CONTINUED DIRECT EXAMINATION

13 Q MS. HARRIS, BEFORE THE BREAK YOU INDICATED
14 THAT YOU OBSERVED THE SHOT?

15 A CORRECT.

16 Q AND YOU SAID THAT THE SHOOTER WAS DARK
17 COMPLEXIONED?

18 A CORRECT.

19 Q SLIGHTLY DARKER THAN YOU?

20 A CORRECT.

21 Q DID YOU OBSERVE WHAT THE SHOOTER WAS
22 WEARING?

23 A I REMEMBER A WHITE TEE SHIRT. I REMEMBER A
24 WHITE TEE SHIRT, THAT'S IT.

25 Q DID YOU SEE ANYBODY OUT THERE WITH A WHITE

MS. HARRIS - DIRECT EXAMINATION BY MR. GALMORE

337

1 TANK TOP SHIRT?

2 A NOPE, NOT THAT I CAN REMEMBER, I JUST
3 REMEMBER A WHITE TEE SHIRT.

4 Q DO YOU KNOW -- DO YOU KNOW WHAT A TEE SHIRT
5 IS?

6 A YES.

7 Q DID YOU SEE ANYBODY WEARING A TEE SHIRT?

8 A NOT, NO, NOT THAT I CAN REMEMBER.

9 Q WOULD A TEE SHIRT AND A TANK TOP BE THE
10 SAME THING?

11 A I GUESS.

12 Q WHAT HIGH SCHOOL DID YOU ATTEND?

13 A I GRADUATED FROM LOWER RICHLAND.

14 Q WHAT HIGH SCHOOL DID EMMA ATTEND?

15 A SHE GRADUATED FROM LOWER RICHLAND AS WELL.

16 Q AT THE TIME OF THE SHOOTING DID YOU
17 RECOGNIZE ANYONE?

18 A NO.

19 Q NOW TWO DAYS AFTER THE SHOOTING YOU GAVE,
20 DID YOU HAVE AN OPPORTUNITY TO GIVE A STATEMENT TO THESE
21 DETECTIVES?

22 A YES.

23 Q WAS YOUR STATEMENT ON THE 27TH CONSISTENT
24 WITH YOUR TESTIMONY HERE TODAY?

25 A YES.

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

338

1 Q WERE YOU SUBPOENAED BY THE STATE TO BE
2 HERE?

3 A YES, YES.

4 Q WERE YOU SUBPOENAED BY ME TO BE HERE?

5 A YES.

6 Q DID ANYTHING HAPPEN WITH REGARD TO YOUR
7 SUBPOENA FROM THE STATE?

8 A I WAS RELEASED.

9 Q THEY RELEASED YOU OFF YOUR SUBPOENA?

10 A YES.

11 Q DID THEY TELL YOU WHETHER OR NOT YOU NEEDED
12 TO COME TODAY?

13 A NO.

14 Q THEY TOLD YOU YOU WERE RELEASED FROM YOUR
15 SUBPOENA?

16 A CORRECT.

17 MR. GALMORE: THANK YOU VERY MUCH, MS. HARRIS,
18 AND PLEASE ANSWER ANY QUESTIONS FROM THE STATE.

19 THE COURT: MS. ELDER.

20 MS. ELDER: THANK YOU, YOUR HONOR.

21 CROSS EXAMINATION

22 BY MS. ELDER:

23 Q ASIA, YOU GAVE A STATEMENT TO POLICE A
24 COUPLE OF DAYS AFTER THE SHOOTING; IS THAT CORRECT?

25 A CORRECT.

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

339

1 Q AND DO YOU REMEMBER TELLING THEM THAT THE
2 WHITE MALE THAT WAS, THAT YOU YOU'RE REFERRING TO THAT WAS
3 REALLY INTOXICATED DO YOU REMEMBER TELLING WHAT COLOR SHIRT
4 HE HAD ON?

5 A DID HE HAVE ON, I'M TRYING TO REMEMBER,
6 NAVY BLUE OR BLACK POLO?

7 Q DO YOU REMEMBER TELLING THEM IT WAS A LIGHT
8 BLUE SHIRT?

9 A NO.

10 Q OKAY, WAS IT, IT WAS, IT WAS SOME KIND OF
11 BLUE AS FAR AS YOU REMEMBER?

12 A YES.

13 Q NOW YOU SAID THAT YOU PULLED INTO THIS
14 SPACE CAUSE YA'LL WERE LOOKING FOR PARKING?

15 A CORRECT.

16 Q HARD TO FIND PARKING THAT WEEKEND, ISN'T
17 IT?

18 A YEAH, WITHOUT GETTING TOWED.

19 Q AND I'M GOING TO SHOW YOU STATE'S EXHIBIT 4
20 AND THAT SHOWS A HOUSE AND THERE'S SOME POLICE TAPE THERE
21 AND THERE'S A CAR AND THERE'S TWO CARS TOGETHER AND THERE'S
22 KIND OF A VACANT SPOT IN BETWEEN; IS THAT WHERE YOU WERE?

23 A YES, I WAS RIGHT HERE.

24 Q AND WHEN YOU PULLED IN DID YOU BACK IN SO
25 THAT YOU WERE FACING THIRD AVENUE OR WERE YOU PULLED IN

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

340

1 FACING THE HOUSE?

2 A I WAS PULLED IN FACING THE HOUSE SO WHEN I
3 DROVE OFF I JUST PUT MY CAR IN DRIVE AND DROVE.

4 Q AND YOU WENT STRAIGHT AROUND THE HOUSE AND
5 CIRCLED AROUND THE OTHER SIDE?

6 A CORRECT.

7 Q NOW WHEN YOU SAW THE WHITE MALE THAT WAS
8 INTOXICATED GETTING INTO A LITTLE SOMETHING WITH ONE OF THE
9 BLACK MALES WHERE WERE THEY STANDING?

10 A ON THE PASSENGER SIDE.

11 Q OKAY, AND SO WOULD THEY HAVE BEEN IN
12 BETWEEN YOUR CAR AND THAT TRUCK ON STATE'S EXHIBIT 4?

13 A CORRECT.

14 Q SO YA'LL WERE KIND OF CLOSE IN THERE
15 TOGETHER?

16 A CORRECT.

17 Q ALL RIGHT, AND THE THREE BLACK MALES HAD
18 COME UP TO YOUR SIDE OF THE CAR?

19 A CORRECT, THEY CAME LIKE DOWN THE STREET.

20 Q OKAY, SO THEY WERE ALL STANDING BETWEEN
21 THIS TRUCK AND YOUR CAR?

22 A CORRECT.

23 Q AND YOU SAID ONE OF THEM KIND OF LEANS INTO
24 YOUR CAR?

25 A CORRECT.

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

341

1 Q AND THEY'RE TALKING TO EMMA?

2 A THEY WERE JUST --

3 Q KIND OF THERE?

4 A YEAH, HE LEANED IN THE CAR.

5 Q WHERE WERE THE OTHER, WHERE WERE THE OTHER
6 TWO?

7 A LIKE KIND OF BEHIND, BESIDE HIM, BEHIND HIM
8 LIKE THE BACK PASSENGER SIDE.

9 Q SO THEY WERE KIND OF NEAR THE PASSENGER OR
10 THE BACK SEAT?

11 A CORRECT, NO ONE WAS ON MY SIDE, NOTHING
12 HAPPENED ON THE LEFT SIDE OF THE CAR.

13 Q AND DID YA'LL HAVE YOUR WINDOWS DOWN; DO
14 YOU REMEMBER?

15 A I THINK WE DID ROLL, I THINK EMMA ROLLED
16 HER WINDOW DOWN; HER WINDOW WAS DOWN.

17 Q AND WHEN THAT GUY LEANED INTO THE CAR DO
18 YOU REMEMBER TELLING THE POLICE HE DIDN'T LEAN IN FAR
19 ENOUGH YOU COULDN'T SEE HIS FACE?

20 A CORRECT, I REMEMBER, I SAID I SEEN HIS, I
21 SEEN DREADS.

22 Q OKAY, SO YOU DIDN'T SEE HIS FACE BUT YOU
23 COULD SEE HIS DREADS?

24 A I COULD SEE DREADS OR, YEAH, THE DREADS.

25 Q TELL ME WHAT DREADS ARE, WHEN YOU'RE SAYING

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

342

1 DREADS I WANT TO MAKE SURE THAT I'M THINKING THE SAME THING
2 YOU'RE THINKING?

3 A WHAT HE HAS IN HIS HAIR.

4 Q KIND OF LIKE THE WAY HE'S WEARING HIS HAIR
5 RIGHT NOW, IS THAT THE GENTLEMAN IN THE MIDDLE THAT YOU'RE
6 POINTING TO?

7 A CORRECT, BUT THEY WEREN'T LONG.

8 Q HOW LONG WERE THEY?

9 A THEY WEREN'T LONG, THEY WEREN'T SHOULDER
10 LENGTH, THEY WERE, THEY WEREN'T LONG OR SHOULDER LENGTH.

11 Q SO YOU COULD SEE HIM ENOUGH, YOU COULDN'T
12 SEE HIS FACE BUT YOU COULD SEE HIS DREADS?

13 A I SEEN LIKE DREADS WHEN HE BENT DOWN, I
14 SEEN THAT.

15 Q OKAY, NOW DO YOU REMEMBER TELLING SOMEONE
16 THAT YOU DIDN'T SEE THE GUY WITH THE HAT ON?

17 A I DIDN'T SEE ANYONE WITH A HAT ON. I
18 CAN'T, I DON'T, I DON'T REMEMBER SEEING ANYONE WITH A HAT
19 ON.

20 Q AND YOU COULDN'T DESCRIBE THE OTHER TWO
21 MALES EITHER, COULD YOU?

22 A NO.

23 Q SO YOU DON'T KNOW IF ONE OF THEM HAD A HAT
24 ON OR NOT?

25 A RIGHT.

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

343

1 Q THEY COULD HAVE?

2 A POSSIBLY.

3 Q BUT THE GUY THAT YOU'RE TALKING ABOUT HE
4 WAS NOT WEARING THAT HAT?

5 A NO, I DIDN'T SEE A HAT.

6 Q ALL RIGHT, NOW IN YOUR STATEMENT TO POLICE
7 DO YOU REMEMBER SAYING THAT THE WHITE MALE WITH THE RED
8 SHIRT CAME OUT?

9 A RIGHT.

10 Q TELL ME WHAT HE DID?

11 A HE TRIED TO BREAK UP THE FIGHT, HE TRIED TO
12 BREAK UP THE ALTERCATION. HE WAS LIKE HOLD UP, WAIT, WE
13 DON'T NEED THIS AND HE WAS THE ONE THAT, YEAH.

14 Q WAS HE THE ONE THAT GOT SHOT?

15 A UH-HUH.

16 Q NOW WHEN HE TRIED TO COME IN AND BREAK UP
17 THAT FIGHT WHO ALL WAS FIGHTING AT THAT TIME?

18 A EVERYONE WAS FIGHTING.

19 Q ALL RIGHT, WHEN YOU SAY EVERYBODY TELL ME
20 WAS THERE A BLACK MALES WHITE MALES?

21 A IT LOOKED LIKE THE BLACK MALES THAT KIND OF
22 JUMPED THE WHITE GUY.

23 Q OKAY, AND WHEN YOU SAY THE WHITE GUY WHICH
24 ONE ARE YOU TALKING ABOUT?

25 A THE ONE THAT TRIED TO BREAK UP THE FIGHT.

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

344

1 Q ALL RIGHT, SO IT LOOKED THE THREE OF THEM
2 TRIED TO JUMP THE GUY WHO WAS BREAKING UP THE FIGHT?

3 A RIGHT.

4 Q AND YOU SAID THE ONE, THE ONE BLACK MALE
5 THAT, THAT YOU COULD GIVE ANY DESCRIPTION ABOUT HE WAS
6 WEARING A WHITE SHIRT, IS THAT LIKE A TEE SHIRT?

7 A A WHITE TEE SHIRT.

8 Q YEAH, DID IT HAVE SLEEVES? YOU'RE SAYING
9 YES?

10 A YES.

11 Q OKAY, AND DO YOU REMEMBER TELLING
12 DETECTIVES WHEN THEY ASKED YOU ABOUT HOW TALL YOU SAID FIVE
13 SIX, FIVE SEVEN, FIVE EIGHT, FIVE NINE, SOMEWHERE IN THAT
14 AREA?

15 A CORRECT.

16 Q AND THIN? IS THAT YES, NO?

17 A I DON'T KNOW, I CAN'T REMEMBER.

18 Q WAS HE THIN, SKINNY, FAT?

19 A HE, YEAH, YES.

20 Q YES TO BEING THIN OR LITTLE OR --

21 A MIDDLE, LIKE MIDDLE.

22 Q OKAY, THAT'S FINE --

23 A LITTLE.

24 Q NOW THE POLICE ALSO ASKED YOU ABOUT HIS
25 COMPLEXION AND I BELIEVE DO YOU RECALL SAYING THAT HE WAS

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

345

1 DARK SKINNED ABOUT YOUR COMPLEXION?

2 A CORRECT.

3 Q DO YOU REMEMBER ALSO RIGHT AFTER THAT
4 TELLING THE POLICE WELL I DON'T KNOW THERE WASN'T MUCH
5 LIGHT IT WAS DARK OUTSIDE? WAS IT REALLY DARK?

6 A YES, IT WAS DARK.

7 Q OKAY, IT WAS EARLY IN THE MORNING?

8 A YES.

9 Q AND YOU HAD PULLED ACTUALLY UP CLOSER TO
10 THE HOUSE AT THAT POINT WHEN YOU SAW THE SHOOTING; IS THAT
11 RIGHT?

12 A CORRECT.

13 Q NOW YOU DIDN'T SEE A GUN BEING PULLED OUT,
14 DID YOU? DO YOU REMEMBER TELLING THE POLICE YOU DIDN'T SEE
15 THE GUN ---

16 A I SEEN ---

17 A --- BUT YOU SAW HIM PULL SOMETHING?

18 A RIGHT, WELL I DIDN'T SEE A GUN BUT I SEEN
19 THEM PULL SOMETHING.

20 Q OKAY ---

21 A AND NOW THAT I SEEN, I HEARD SOMETHING.

22 Q ALL RIGHT ---

23 A SO I'M ASSUMING IT WAS A GUN.

24 Q ALL RIGHT, YOU SAW ONE OF THE BLACK MALES
25 REACH INSIDE?

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

346

1 A THAT'S WHAT IT LOOKED LIKE.

2 Q AND WAS THAT THE ONE WITH THE DREADS AND HE
3 WASN'T WEARING A HAT?

4 A NOPE.

5 Q AND WHEN YOU LOOKED BACK AND YOU HEARD THAT
6 SHOT WHAT WERE THE BLACK MALES DOING?

7 A AFTER THEY SHOT?

8 Q BEFORE, RIGHT, RIGHT AS YOU WERE HEARING
9 THE SHOT WHAT DID YOU SEE? DID YOU HEAR THE SHOT, WERE YOU
10 LOOKING AT ANYTHING?

11 A I WAS LOOKING IN THE REAR VIEW MIRROR.

12 Q ALL RIGHT, AND WHAT WERE YOU LOOKING AT IN
13 THE REARVIEW MIRROR?

14 A LIKE THE ALTERCATION AND THEN A GUY PULL
15 OUT A GUN AND SHOOT LOOKED LIKE HE GOT SHOT IN THE STOMACH.

16 Q WAS THE GUY ON THE GROUND?

17 A YES, HE WAS.

18 Q WAS IT THE GUY IN THE RED SHIRT?

19 A YES.

20 Q AND HOW MANY WERE STANDING AROUND THEN?

21 A I THINK ALL OF THEM, IT HAPPENED SO QUICK
22 THEN THEY RAN.

23 Q SO ALL THE THREE BLACK MALES WERE STANDING
24 OVER THE GUY IN THE RED SHIRT WHEN THE SHOT HAPPENED? IS
25 THAT A YES?

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

347

1 A YES..

2 Q DO YOU RECALL TELLING THE POLICE THAT THE
3 THREE BLACK MALES LOOKED LIKE THEY WERE BEATING DOWN THE
4 GUY IN THE RED SHIRT?

5 A LOOKED LIKE THEY JUMPED HIM.

6 Q AND HE FELL TO THE GROUND?

7 A THAT'S WHAT IT LOOKED LIKE.

8 Q AND THEN YOU DROVE OFF, FINISHED DRIVING
9 OFF AROUND THE HOUSE?

10 A RIGHT.

11 Q AND YOU EXITED THE OTHER WAY; IS THAT
12 CORRECT?

13 A I DROVE, CAN YOU GET THE PICTURE?

14 Q I CAN -- THAT'S STATE'S EXHIBIT 4?

15 A I DROVE FRONT AND BACK AND AROUND AND I
16 CAME BACK OFF THIS ROAD AND I SEEN THE WHITE GUY LAYING --

17 Q OVER HERE WHERE YA'LL WERE?

18 A LIKE HE, YOU KNOW, HE LAY RIGHT THERE, I
19 THINK SO OR WAS HE OVER THERE. HE WAS LAYING SOMEWHERE
20 ONCE I DROVE OFF.

21 Q HE WASN'T LAYING ON THE ROAD, THOUGH, WAS
22 HE, HE WAS LAYING ON THE GRASS OR SOMEWHERE AROUND THERE?

23 A I THINK SO, YEAH.

24 Q AND WHERE DID YOU DRIVE WHEN YOU LOOK AT
25 DEFENDANT'S EXHIBIT 6, IS THAT, THAT'S THE DAY TIME

MS. HARRIS - CROSS EXAMINATION BY MS. ELDER

348

- 1 PICTURE, IT WAS NIGHT, THOUGH, WHEN YOU WERE THERE, RIGHT?
- 2 A CORRECT.
- 3 Q AND IF YOU WILL LOOK AT THAT SHOW, CAN YOU
- 4 SHOW ME WHERE, HOW YOU DROVE AROUND AGAIN?
- 5 A IT WAS OVER ON THIS SIDE.
- 6 Q OKAY?
- 7 A AND DROVE AROUND AND OUT.
- 8 Q THAT WAY?
- 9 A UH-HUH.
- 10 Q ALL RIGHT, AND WHEN YOU WENT BACK THAT WAY
- 11 WAS THAT TOWARDS THE BEACH?
- 12 A YES, I THINK SO, YEAH.
- 13 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
- 14 FOR IDENTIFICATION AS STATE'S EXHIBIT 5; DO YOU RECOGNIZE
- 15 THAT?
- 16 A THOSE ARE MY TIRE MARKS.
- 17 Q ALL RIGHT, AND THAT'S ON THE OTHER SIDE OF
- 18 THE HOUSE WHEN YOU PULLED AROUND, WASN'T IT? IF THAT'S THE
- 19 HOUSE RIGHT THERE WAS THAT, WAS THIS, THIS WOULD HAVE BEEN
- 20 ON THE LEFT SIDE OF THE HOUSE, IS THAT WHERE YOU PULLED OFF
- 21 AT? IS THAT A YES?
- 22 A YES.
- 23 Q OKAY ---
- 24 A THAT'S BACK AROUND.
- 25 Q THAT'S ON THE OTHER SIDE?

MS. HARRIS - REDIRECT EXAMINATION BY MR. GALMORE

349

1 A RIGHT, OKAY.

2 THE COURT: IS 5 IN, MADAM COURT REPORTER?

3 MS. ELDER: NO, I'M ABOUT TO, YOUR HONOR. YOUR
4 HONOR, I WOULD ASK TO INTRODUCE STATE'S EXHIBIT 5 AT THIS
5 TIME.

6 THE COURT: MR. GALMORE?

7 MR. GALMORE: NO OBJECTION.

8 THE COURT: WITHOUT OBJECTION.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER 5 ENTERED INTO
10 EVIDENCE.)

11 MS. ELDER: (CONTINUING)

12 Q ALL RIGHT, ASIA, IF YOU'LL TAKE A LOOK AT
13 STATE'S EXHIBIT 5 IT'S HARD TO SEE BACK IN THE BACK, IS
14 THAT KIND OF WHAT IT LOOKED LIKE THAT NIGHT, THAT DARK?

15 A IT WAS --

16 Q THERE WAS NO LIGHTS?

17 A RIGHT, WHEN WE DROVE OFF AROUND THE HOUSE,
18 YEAH, IT WAS REAL DARK.

19 MS. ELDER: JUST A MOMENT, YOUR HONOR. I HAVE
20 NO OTHER QUESTIONS, YOUR HONOR, THANK YOU, MS. HARRIS.

21 THE COURT: MR. GALMORE, ANY FOLLOW UP?

22 MR. GALMORE: YES, SIR.

23 REDIRECT EXAMINATION

24 BY MR. GALMORE:

25 Q MS. HARRIS, YOU SAID THERE WAS A PERSON ON

MS. HARRIS - REDIRECT EXAMINATION BY MR. GALMORE

350

1 THE PASSENGER SIDE OF YOUR CAR; IS THAT RIGHT?

2 A CORRECT.

3 Q AND THAT BLACK MALE THAT WAS ON THE
4 PASSENGER SIDE OF YOUR CAR HE CAME OVER AND SAID SOMETHING
5 LIKE HOLD UP, WAIT, LIKE HE RECOGNIZED SOMEONE?

6 A CORRECT.

7 Q IS THAT THE SAME PERSON THAT GOT INTO THE
8 ALTERCATION WITH THE HIGHLY INTOXICATED WHITE MALE?

9 A CORRECT.

10 Q IS THAT THE SAME PERSON THAT SAID WHERE'S
11 MY STRAP?

12 A CORRECT, I BELIEVE SO.

13 Q IS THAT THE SAME PERSON THAT YOU RECOGNIZED
14 AS BEING THE SHOOTER?

15 A CORRECT.

16 MR. GALMORE: NO FURTHER QUESTIONS.

17 MS. ELDER: I HAVE NO OTHER QUESTIONS, YOUR
18 HONOR.

19 THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

20 MR. GALMORE: YOUR HONOR, WE WOULD ASK THAT MS.
21 HARRIS BE RELIEVED FROM HER SUBPOENA.

22 MS. ELDER: NO OBJECTION, YOUR HONOR.

23 THE COURT: YOU ARE RELEASED FROM YOUR SUBPOENA,
24 STEP DOWN, PLEASE. MR. GALMORE?

25 MR. GALMORE: THE DEFENSE RESTS, YOUR HONOR.

MS. HARRIS - REDIRECT EXAMINATION BY MR. GALMORE

351

1 THE COURT: THE DEFENSE RESTS, OKAY. LADIES AND
2 GENTLEMEN OF THE JURY, THAT CONCLUDES THE EVIDENCE IN THIS
3 CASE, I'M GOING TO SEND YOU BACK TO YOUR JURY ROOM FOR JUST
4 A FEW MOMENTS. I HAVE SOME MATTERS TO TAKE UP WITH THE
5 ATTORNEYS, I'LL BRING YOU BACK AS SOON AS I CAN, OKAY. MR.
6 ROPP, IF YOU WOULD TAKE THEM BACK TO THE JURY ROOM.

7 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
8 11:29 A.M.)

9 THE COURT: ALL RIGHT, MR. GALMORE?

10 MR. GALMORE: YES, SIR, THE DEFENSE WOULD AGAIN
11 RENEW OUR MOTION FOR A DIRECTED VERDICT. AGAIN WE WOULD
12 SUBMIT TO THE COURT THAT THERE IS NO SUBSTANTIAL EVIDENCE
13 THAT POINTS TO THE GUILT OF THE ACCUSED, THERE'S MERE
14 SUSPICION.

15 THE COURT: ALL RIGHT, AND FOR THE SAME REASONS
16 PREVIOUSLY REITERATED BY THE COURT I WILL RESPECTFULLY DENY
17 YOUR MOTION.

18 LADIES AND GENTLEMEN, YOU NEED A FEW MOMENTS TO
19 COLLECT YOUR THOUGHTS BEFORE ARGUMENTS?

20 MR. GALMORE: YES, SIR.

21 THE COURT: OKAY.

22 MS. ELDER: YOUR HONOR, CAN WE TAKE CARE OF THAT
23 JUST SO I'LL KNOW, CAN WE TAKE CARE OF THAT CHARGING MATTER
24 WE WERE GOING TO PUT ON THE RECORD?

25 THE COURT: YES, I HAVE PROVIDED YOU WITH A COPY

MS. HARRIS - REDIRECT EXAMINATION BY MR. GALMORE

352

1 OF MY PROPOSED CHARGE ON YESTERDAY, THE ISSUE OF A CHARGE
2 ON A LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER WAS
3 LEFT OPEN. I HAVE HAD AN OPPORTUNITY TO LOOK AT IT OVER
4 THE EVENING. I WOULD BE INCLINED TO GRANT A MOTION TO
5 CHARGE A LESSER INCLUDED BUT, MR. GALMORE, I HAVE BEEN
6 INFORMED BY YOU THAT THE DEFENSE DOES NOT WANT A LESSER
7 INCLUDED AND NEITHER DOES THE STATE; IS THAT CORRECT, MR.
8 GALMORE?

9 MS. ELDER: THAT IS CORRECT, YOUR HONOR.

10 THE COURT: MS. ELDER?

11 MS. ELDER: THAT'S ---

12 THE COURT: THAT'S STILL YOUR POSITION, MR.
13 GALMORE?

14 DEFENDANT GRIFFIN: YES, SIR.

15 MR. GALMORE: YES, SIR.

16 THE COURT: MR. GALMORE, YOU AND YOUR CLIENT ARE
17 ASKING ME NOT TO GIVE YOU A CHARGE OF A LESSER INCLUDED?

18 MR. GALMORE: THAT'S CORRECT.

19 THE COURT: EVEN IN LIGHT OF HAYWARD & DAVID?

20 MR. GALMORE: YES, SIR.

21 THE COURT: ALL RIGHT, THEN I WILL CHARGE AS I
22 HAVE PROVIDED YOU WITH CHARGES ON YESTERDAY. YOU MAY RELY
23 ON THAT WITH CLOSING REMARKS. WE'LL BE AT EASE FOR 10
24 MINUTES, OKAY.

25 MR. GALMORE: YES, SIR.

MS. HARRIS - REDIRECT EXAMINATION BY MR. GALMORE

353

1 MS. ELDER: THANK YOU, YOUR HONOR.

2 (WHEREUPON, A RECESS WAS TAKEN.)

3 THE COURT: IS THE CHARGE AGREEABLE?

4 MS. ELDER: YES, SIR.

5 MR. GALMORE: YES, SIR.

6 THE COURT: OKAY, LET'S BRING THE JURY IN.

7 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
8 11:50 A.M.)

9 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, AS
10 YOU HAVE HEARD BOTH THE STATE AND THE DEFENSE HAVE RESTED
11 IN THIS MATTER. YOU HAVE HEARD ALL THE EVIDENCE THAT YOU
12 WILL HEAR IN THIS CASE. WE'RE NOW ABOUT TO HAVE CLOSING
13 ARGUMENTS BY THE STATE AND THE DEFENSE.

14 AS I TOLD YOU EARLIER THESE CLOSING ARGUMENTS ARE
15 NOT EVIDENCE. THEY'RE MERELY SUMMATIONS OF THE EVIDENCE
16 AND THE LAW THAT THE ATTORNEYS FEEL ARE PERTINENT FOR YOUR
17 CONSIDERATION IN THE CASE.

18 AT THE END OF CLOSING REMARKS I WILL CHARGE YOU
19 ON THE LAW. THE ATTORNEYS ARE PERMITTED TO COMMENT ON WHAT
20 THEY CONSIDER TO BE THE LAW DURING THEIR CLOSING REMARKS
21 BUT LET ME REMIND YOU THAT YOU ARE THE SOLE DETERMINER, YOU
22 WILL MAKE THE SOLE DETERMINATION OF THE FACTS IN THIS CASE
23 FROM THE EVIDENCE AND YOU WILL APPLY THE LAW ONLY AS I GIVE
24 IT TO YOU JUST BEFORE YOU BEGIN YOUR DELIBERATIONS.

25 MR. GALMORE, ARE YOU READY?

CLOSING ARGUMENT BY MR. GALMORE

354

1 MR. GALMORE: YES, SIR, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 CLOSING ARGUMENT

4 BY MR. GALMORE:

5 Q MR. FOREMAN, LADIES AND GENTLEMEN OF THE
6 JURY, WHEN THIS CASE FIRST STARTED I TOLD YOU THAT EVERYONE
7 HAD A ROLE AND RESPONSIBILITY TO THIS COURT, NOW IT IS TIME
8 FOR YOU ALL TO FULFILL YOUR RESPONSIBILITY. EACH AND
9 EVERYONE OF YOU HAVE TO MAKE A DECISION FOR YOURSELF
10 WHETHER OR NOT KEION GRIFFIN IS GUILTY OF MURDER. IN YOUR
11 HEART, IN YOUR MIND YOU HAVE TO MAKE THE DECISION WHETHER
12 THE STATE OF SOUTH CAROLINA HAS PROVEN TO YOU, WHETHER THEY
13 HAVE CARRIED THEIR BURDEN OF PROOF, WHETHER THEY HAVE
14 PROVEN TO YOU BEYOND A REASONABLE DOUBT THAT KEION GRIFFIN
15 IS GUILTY OF MURDER.

16 NOW YOU MIGHT NOT HAVE NOTICED BUT THIS CASE HAS
17 HAD A SUBTLE SWITCH. IT HAS GONE FROM KEION DID IT, THAT'S
18 WHAT IT WAS MONDAY WHEN PRIEST WAS ON THE STAND AND THAT'S
19 WHAT IT WAS TUESDAY WHEN STUKES WAS ON THE STAND. NOW THIS
20 CASE IS THAT KEION WAS THERE AND BECAUSE HE WAS THERE HE'S
21 JUST AS RESPONSIBLE AS WHOEVER DID IT EVEN IF IT WAS ONE OF
22 THOSE OTHER GUYS BUT THAT'S NOT THE CASE. THAT'S NOT WHAT
23 THEY SAID. THEY TOLD YOU KEION GRIFFIN PULLED THE TRIGGER
24 AND NOW YOU HAVE HEARD OTHERWISE.

25 LET'S GO THROUGH THE EVIDENCE. FIRST OF ALL

CLOSING ARGUMENT BY MR. GALMORE

355

1 THERE IS NO PHYSICAL EVIDENCE CONNECTING KEION GRIFFIN TO
2 THIS CASE. THERE'S NO PHYSICAL EVIDENCE PUTTING HIM AT THE
3 SCENE. THERE'S NO PHYSICAL EVIDENCE OF PUTTING HIM THE GUN
4 IN HIS HANDS. YOU GOT A PISTOL, NO FINGERPRINTS ON IT, NO
5 DNA ON IT, NOTHING THAT MATCHES KEION IS ON IT. ALL THAT
6 STUFF YOU SEE ON T.V., CSI, DOESN'T EXIST IN THIS CASE.
7 THE ONLY EVIDENCE THAT THE STATE HAS PRESENTED THAT EVEN
8 PUTS KEION OUT THERE, THE ONLY EVIDENCE THAT THE STATE HAS
9 PRESENTED THAT KEION DID IT DARIUS AND DEMARIO BUT THEY
10 CAN'T EVEN GET THEIR STORY STRAIGHT.

11 THEY'VE GOT PLEA AGREEMENTS BOTH, THEY'VE GOT
12 INCENTIVE, MOTIVE, BIAS, REASON TO LIE. DARIUS SAID I
13 DIDN'T WANT TO MESS IT UP, I'M GETTING OUT NEXT MONTH, HE
14 DIDN'T WANT TO MESS IT UP. DEMARIO HAS GOT A PLEA
15 AGREEMENT, TOO, HE DOESN'T WANT TO MESS HIS AGREEMENT UP.

16 THE ONLY THING THOSE TWO HAVE IN COMMON IN THEIR
17 TESTIMONIES WAS KEION DID IT. THEY COULDN'T GET ANYTHING
18 ELSE STRAIGHT AND THAT'S THE REASON WHY WE KEEP WITNESSES
19 OUT IN THE HALLWAY SEPARATED SO THAT THEY CAN'T OVERHEAR.

20 DEMARIO SAID THAT KEION KNEW DARIUS FOR SEVEN
21 MONTHS. DARIUS SAID I JUST MET KEION YESTERDAY. THAT'S A
22 BIG DIFFERENCE BECAUSE WHEN IT COMES DOWN TO IT IF I'M
23 RUNNING AROUND THE STREETS OF MYRTLE BEACH WITH A HANDGUN
24 ON ME AM I GOING TO GIVE IT TO A GUY THAT I KNEW FOR SEVEN
25 MONTHS OR AM I GOING TO GIVE IT TO THE GUY THAT I KNEW FOR

CLOSING ARGUMENT BY MR. GALMORE

356

1 ONE DAY.

2 DARIUS SAID HE AND DEMARIO WENT BEHIND THE
3 BUILDING. DEMARIO SAID DARIUS AND KEION WENT BEHIND THE
4 BUILDING. AGAIN THEY CAN'T GET THEIR BASIC FACTS STRAIGHT.
5 THE ONLY THING THEY HAD IN COMMON, AND THEY'RE ALL SUPPOSED
6 TO BE THERE AND THEY ALL WITNESSED THE SAME THING AT THE
7 SAME TIME, THE ONLY THING THEY HAD IN COMMON KEION DID IT.

8 DARIUS SAID THE GUN WASN'T LOADED. WELL I DON'T
9 KNOW IF THAT'S TRUE BECAUSE THE POLICE FOUND TWO BOXES OF
10 AMMUNITION. YOU HEARD ABOUT THEM YESTERDAY. YOU HEARD
11 ABOUT THEM TODAY. YOU HAVEN'T SEEN THEM YET BUT THERE ARE
12 TWO BOXES OF AMMUNITION THAT WERE FOUND RIGHT THERE IN THE
13 BAG WITH THAT GUN, SO WHEN, WHEN DARIUS SAYS IT WASN'T
14 LOADED I DON'T PARTICULARLY BUY THAT STORY BUT THAT'S WHAT
15 HE SAID.

16 DARIUS SAID HE GAVE THE GUN TO DEMARIO AND HE
17 NEVER SAW DEMARIO GIVE THE GUN TO KEION. WHAT DID DEMARIO
18 SAY ON THE STAND YESTERDAY, OH, I NEVER TOUCHED IT, I NEVER
19 SAW THE GUN. THESE ARE THE WITNESSES THAT THEY ARE USING
20 TO CONVICT KEION GRIFFIN AND THESE ARE THE ONLY WITNESSES,
21 THAT'S ALL THE EVIDENCE THEY HAVE, TWO GUYS THAT CAN'T GET
22 THEIR STORY STRAIGHT.

23 NOW I'VE NEVER BEEN ON TRIAL FOR MURDER BUT I
24 WOULD LIKE TO THINK THAT IF SOMEONE WAS ACCUSING ME THEY
25 WOULD AT LEAST HAVE A CONSISTENT STORY SINCE THEY ALL CLAIM

CLOSING ARGUMENT BY MR. GALMORE

357

1 TO BE THERE.

2 DARIUS, THE JUVENILE, SAID HE WAS ON HIS CELL
3 PHONE, DIDN'T DO ANYTHING, WASN'T PARTICIPATING, HE WAS ON
4 THE PHONE AND HE HEARD SOMEBODY SAY I'M STRAPPED. DEMARIO
5 SAID DARIUS WAS FIGHTING.

6 YOU AS JURORS REMEMBER THE FACTS THE WAY YOU
7 RECALL THEM. I'M REMEMBERING THEM THE WAY I RECALL THEM,
8 YOU REMEMBER THE WAY YOU RECALL THEM AND IF YOU REMEMBER
9 THEN DIFFERENTLY THAT'S FINE. IF YOU DON'T REMEMBER
10 SOMETHING YOU CAN COME BACK AND ASK THE JUDGE TO PLAY A
11 PIECE OF TESTIMONY FOR YOU AND THEY WILL, BUT AGAIN FOR ALL
12 OF THESE PEOPLE TO BE STANDING THERE LOOKING AT THE SAME
13 THING AT THE SAME TIME THEY DON'T HAVE THE SAME STORY, THAT
14 DOESN'T MAKE SENSE IF THAT'S ALL THE EVIDENCE YOU HAVE
15 AGAINST MR. GRIFFIN.

16 DARIUS, THE JUVENILE, HE TESTIFIED THAT HE CALLED
17 DEMARIO AND NOBODY ASKED HIM TO BRING A GUN BUT HE SAID, HE
18 SAID HE TOLD DEMARIO HE WAS BRINGING IT AND WHEN HE GOT
19 DOWN THERE DEMARIO SAID, YOU GOT IT. DEMARIO DENIED ALL OF
20 IT. WELL IF HE WASN'T GUILTY OF THIS CRIME ALL HE HAD TO
21 SAY WAS, YEAH, I HAD THE GUN, I, YOU KNOW, I GOT IT AND I
22 GAVE IT TO KEION AND THINGS HAPPENED. THAT WOULD HAVE BEEN
23 THE SAME STORY AS DARIUS BUT IT'S NOT. THIS GUY WAS
24 LITERALLY LYING TO YOU ON THE WITNESS STAND AND HE'S THE
25 ONE THAT'S GOT THE PLEA AGREEMENT. THIS IS A MISCARRIAGE

CLOSING ARGUMENT BY MR. GALMORE

358

1 OF JUSTICE.

2 DARIUS DESCRIBED EVERYONE AS HAVING ON TEE
3 SHIRTS, SAID HE HAD ON ALL BLACK LOOKED LIKE TEE SHIRT, THE
4 OTHER TWO GUYS HAD ON WHITE TEE SHIRTS.

5 DEMARIO GOT UP AND TOLD YA'LL THAT HE HAD ON A
6 TANK TOP. THERE IS A DIFFERENCE BETWEEN A TEE SHIRT AND A
7 TANK TOP, THAT'S NOT HARD TO FIGURE OUT.

8 OFFICER MCCORKLE TESTIFIED THAT SHE STOPPED THREE
9 PEOPLE, ONE HAD ON BLACK AND HIS MAMA CAME AND PICKED HIM
10 UP AND LET HIM GO, SEARCHED THE OTHER TWO, THEY HAD ON
11 WHITE TEE SHIRTS.

12 NOTICE WHEN I CALLED HER BACK AND I STARTED
13 ASKING HER ABOUT TEE SHIRTS AND TANK TOPS SHE STARTED, WELL
14 I DON'T REALLY REMEMBER, I DON'T KNOW. THAT'S A STATE'S
15 WITNESS TRYING TO HELP THE ATTORNEY.

16 I ASKED HER ABOUT HER WRITTEN REPORT, SHE SAID
17 HER WRITTEN REPORT SAYS BOTH OF THEM HAD WHITE TEE SHIRTS,
18 THEY BOTH HAD WHITE TEE SHIRTS AND AGAIN DEMARIO LIED TO
19 YOU ON THIS WITNESS STAND.

20 WHAT YOU'RE MISSING, EXCUSE ME, WHAT THE STATE IS
21 MISSING IS THE MOST CRUCIAL PIECE OF EVIDENCE OF ALL.
22 THEY'VE GOT SOME OF THE WHITE GUYS CAME AND TESTIFIED,
23 BLACK GUYS CAME AND TESTIFIED, THEY LEFT A BIG DOUGHNUT
24 HOLE IN THEIR CASE. THESE GIRLS WHO WERE IN THE CAR ARE
25 CLEAR WITNESSES TO WHAT HAPPENED AND WHAT DID ASIA HARRIS

CLOSING ARGUMENT BY MR. GALMORE

359

1 SAY, SHE WAS RELEASED FROM HER SUBPOENA BY THE STATE.
2 LET'S PUT TWO AND TWO TOGETHER IF ASIA SAID WHAT SHE SAID
3 ON THAT STAND TODAY I WOULDN'T WANT HER TO COME EITHER IF I
4 WAS THE STATE'S PROSECUTOR.

5 NOW WHAT DID SHE SAY ON THAT STAND. YOU JUST
6 HEARD IT 15, 20 MINUTES AGO, SOME GUY CAME UP TO THE CAR
7 AND SAID HOLD UP, WAIT, AS THOUGH HE RECOGNIZED SOMEONE.
8 THAT'S THE GUY THAT GOT INTO THE ALTERCATION WITH THE
9 HIGHLY INTOXICATED WHITE MALE AND THAT'S THE GUY THAT WAS
10 THE SHOOTER. SHE SAID HE WAS DARK SKINNED AND HE HAD SHORT
11 DREADS NOT EVEN SHOULDER LENGTH. THAT WAS THE DESCRIPTION
12 YOU JUST GOT 15, 20 MINUTES AGO. NOW THINK ABOUT DEMARIO
13 FOR A MINUTE, DEMARIO IS DARK SKINNED, DID YOU NOTICE HE
14 HAD A LITTLE PONY TAIL BACK THERE. IF YOU TAKE THAT RUBBER
15 BAND OFF THOSE THINGS ARE GOING TO DROP. DEMARIO IS YOUR
16 SHOOTER.

17 I THINK IT WAS ZACK MATHIS THAT TESTIFIED THAT
18 THE SHOOTER WAS DARK SKINNED AND I USED THE WORD ABORIGINE,
19 HE SAID NOT QUITE THAT DARK. WELL LOOK AT THE DEFENSE
20 TABLE AND TELL ME IF KEION GRIFFIN IS ANYWHERE CLOSE TO
21 ABORIGINE, NO, YOUR SHOOTER WHO YOU SAW YESTERDAY WHO IS
22 MUCH DARKER THAN KEION GRIFFIN AND HAS BEEN DESCRIBED BY
23 TWO PEOPLE AS BEING THE DARK SKINNED GUY, YOUR SHOOTER IS
24 DEMARIO STUKES.

25 DEMARIO HAS THE UNFORTUNATE PROBLEM OF LEAVING

CLOSING ARGUMENT BY MR. GALMORE.

360

1 HIS HAT AT THE SCENE OF THE CRIME AND HIS HAT JUST HAPPENED
2 TO HAVE HIS NAME ON IT, SO NO MATTER WHAT HAPPENED DEMARIO
3 IS INVOLVED.

4 LOOK AT WHAT HE JUST SAID, WHAT HE FIRST SAID
5 WHEN HE GOT ARRESTED. REMEMBER THE VIDEO THAT WE SAW THAT
6 VIDEO HE SAID, MAN, DID I TELL YOU I GOT HIT BY A CAR THE
7 OTHER DAY, I LOST MY HAT AND MY SHADES. WELL HE DIDN'T GET
8 HIT BY A CAR, HE LIED THE MINUTE HE GOT PUT IN CUFFS.

9 THE JUDGE WILL TELL YOU SOMETHING ELSE YOU CAN
10 LOOK AT A WITNESSES DEMEANOR, YOU CAN LOOK AT A WITNESSES
11 CREDIBILITY, YOU CAN LOOK AT A WITNESSES BELIEVABILITY, YOU
12 CAN LOOK AT A WITNESSES BIAS OR REASON TO LIE BUT I WANT
13 YOU TO REMEMBER HIS DEMEANOR WHEN HE WAS SITTING IN THAT
14 SQUAD CAR. HE WAS LAUGHING AND JOKING, AND I'M SORRY IF I
15 WAS JUST BEING CUFFED UP ON A MURDER CHARGE I DON'T THINK I
16 WOULD BE LAUGHING AND JOKING BUT HE'S LAUGHING AND JOKING
17 AND HE HAD HIS STORY READY. MAN, I TOLD YOU I GOT HIT BY A
18 CAR THE OTHER DAY, LOST MY HAT AND MY SHADES, SO WITHIN
19 THREE MINUTES OF GETTING THE CUFFS PUT ON HE'S TELLING LIES
20 AND HERE WE GO A YEAR AND A HALF LATER AFTER TWO STATEMENTS
21 AND A PROFFER AGREEMENT, THAT'S A PLEA AGREEMENT, HE COMES
22 IN HERE YESTERDAY AND CONTINUES TO TELL YA'LL LIES, NO, I
23 DIDN'T EVEN TOUCH THE GUN, NONE OF THAT STUFF, AND THIS IS
24 THE WITNESS THAT THEY WANT TO DEPEND UPON FOR YOU TO
25 CONVICT KEION GRIFFIN.

CLOSING ARGUMENT BY MR. GALMORE

361

1 NOW I'VE TALKED ABOUT A SUBTLE SWITCH THAT TOOK
2 PLACE IN THIS CASE AND IT STARTED OFF WITH KEION DID IT AND
3 NOW IT'S WELL KEION WAS WITH THE PEOPLE THAT DID IT, EVEN
4 IF HE DIDN'T PULL THE TRIGGER HE WAS WITH THEM AND THAT'S
5 GOOD ENOUGH, WELL THAT'S NOT GOOD ENOUGH. WHAT THAT'S
6 CALLED IS ACCOMPLICE LIABILITY OR AS WE SAY THE HAND OF ONE
7 IS THE HAND OF ALL AND THE JUDGE IS GOING TO TELL YOU THE
8 LAW OF ACCOMPLICE LIABILITY BUT I'M GOING TO GIVE YOU MY
9 SPEND ON IT AND WHAT THE JUDGE SAYS IS RIGHT, I'M JUST,
10 THIS IS MY OPINION BUT HE'LL GIVE YOU THE LAW, I'M NOT
11 GIVING YOU THE LAW, I'M JUST GIVING YOU AN OPINION.

12 THE HAND OF ONE WORKS LIKE THIS, SAY YOU HAVE
13 THREE GUYS IN A BANK ROBBERY. ALL RIGHT, YOU GO BE THE
14 LOOKOUT, YOU GO INSIDE THE BANK, AND I'M GOING WITH YOU.
15 SO YOU'VE GOT SOME GUY SITTING OUT IN THE CAR LOOKING OUT,
16 THE GETAWAY DRIVER, FOR WHEN THE OTHER TWO RUN OUT START
17 THE CAR AND TAKE OFF. THAT'S ACCOMPLICE LIABILITY EVEN
18 THOUGH THAT GUY IN THE CAR NEVER WENT IN THE BANK HE'S JUST
19 AS GUILTY AS THE GUYS THAT WENT IN THE BANK BECAUSE THEY
20 ALL HAD A PLAN TO GO ROB THE BANK.

21 THE FLIP SIDE OF THAT, BUT IF YOUR COUSIN CALLED
22 AND SAID, MAN, I NEED A RIDE TO THE LIQUOR STORE, OKAY, NO
23 PROBLEM, I'LL COME PICK YOU UP. YOU DRIVE UP THERE AND
24 PARK IN FRONT OF THE LIQUOR STORE, YOUR COUSIN GOES IN AND
25 HE COMES OUT A COUPLE OF MINUTES LATER AND SAYS, COME ON

CLOSING ARGUMENT BY MR. GALMORE

362

1 LET'S GO AND YA'LL LEAVE. YOUR COUSIN ROBBED THE LIQUOR
2 STORE BUT AS THE DRIVER YOU HAD NO IDEA WHAT HE WAS GOING
3 TO DO, THAT'S NOT ACCOMPLICE LIABILITY. THAT MAN DID THAT
4 AND THIS MAN WAS MERELY PRESENT WHEN IT HAPPENED. THAT'S
5 THE SITUATION THAT WE HAVE HERE.

6 NOW MIND YOU AT FIRST THE STATE SAID KEION DID IT
7 BUT IN A FEW MINUTES THEY'RE GOING TO SAY EVEN IF HE DIDN'T
8 HE'S STILL RESPONSIBLE BECAUSE THEY'RE ACCOMPLICES. WELL
9 THEY'RE NOT BECAUSE I ASKED THE WITNESSES DID YOU SEE THESE
10 GUYS HUDDLED UP, ALL RIGHT, WE'RE ABOUT TO JUMP THESE GUYS
11 OR WAS THERE ANY CONSPIRING, ANY CONFEDERATION BETWEEN THEM
12 PRIOR TO IT, HEY THEY WERE WALKING TOGETHER. OKAY
13 AFTERWARDS THEY TRIED TO COVER THINGS UP BUT AS FAR AS THE
14 ACTUAL SHOOTING WERE THEY ALL ACTING IN CONCERT.

15 NOW THERE'S SOME TESTIMONY THAT ONE PERSON
16 FOUGHT, THERE'S SOME TESTIMONY THAT TWO PEOPLE FOUGHT,
17 THERE'S SOME TESTIMONY THAT ALL OF THEM WERE FIGHTING.
18 WORSE CASE SCENARIO EVERYBODY'S OUT THERE FIGHTING. YOU'RE
19 IN A FIST FIGHT WITH YOU AND YOUR HOME BOYS AND SOMEBODY
20 PULLS OUT A GUN I HAD NOTHING TO DO WITH THAT. THAT'S THAT
21 MAN THAT PULLED OUT A GUN NOT UNLESS I SAID GET YOUR GUN
22 AND SHOOT HIM, NO TESTIMONY ABOUT THAT. THE TESTIMONY WAS
23 I'M STRAPPED, WHERE'S MY STRAP, SOMETHING ABOUT A GUN.
24 THAT DOESN'T MEAN THAT KEION HELPED DEMARIO SHOOT SOMEONE.
25 ALL THAT IS IS WE'RE IN A FIGHT AND THIS GUY TOOK THE NEXT

CLOSING ARGUMENT BY MR. GALMORE

363

1 STEP NOT WITH MY PLANNING, NOT WITH MY COORDINATION, NOT
2 WITH MY ASSISTANCE, HE DID THAT ON HIS OWN, BUT AGAIN THE
3 STATE IS SAYING KEION IS THE ONE THAT DID IT EVEN THOUGH
4 ASIA HARRIS ATTENDED LOWER RICHLAND AND DEMARIO STUKES
5 ATTENDED LOWER RICHLAND AND SOMEONE WALKED UP TO THE CAR AS
6 THOUGH THEY RECOGNIZED SOME PEOPLE IN THE CAR. I'M REALLY
7 THINKING HE RECOGNIZED THE GIRLS FROM LOWER RICHLAND SO
8 THAT'S WHY HE WAS OVER THERE TALKING TO THOSE GIRLS.

9 WHEN THE FIGHT STARTS IT'S UNFORTUNATE THAT IT
10 DID BUT PEOPLE JUMPED IN, I DON'T KNOW, SOME TESTIMONY SAID
11 NOBODY JUMPED IN BUT ASSUMING PEOPLE JUMPED IN THAT'S FINE,
12 THEY'RE ALL GUILTY OF FIGHTING. ONE OF THEM TAKES IT TO
13 THE NEXT LEVEL PULLS A GUN, THAT'S NOT THE OTHER GUY'S
14 FAULT. THEY DIDN'T ASK YOU TO DO THAT. THEY DIDN'T PLAN
15 ON THAT HAPPENING. THAT'S NOT KEION GRIFFIN'S FAULT.

16 NOW I'M GOING TO TALK ABOUT THE BURDEN OF PROOF
17 AND I TALKED TO YOU MONDAY AND DID THE WHOLE THING ABOUT
18 THE FOOTBALL AND YOU HAVE TO BE WAY DOWN HERE TO SHOW HE'S
19 GUILTY. ON THE FIRST THEORY OF THE STATE'S CASE WHICH IS
20 KEION PULLING THE TRIGGER THEY'RE NOWHERE CLOSE TO THE END
21 ZONE. THEY'RE NOWHERE CLOSE TO THAT. THEY HAVE NOT
22 PRESENTED YOU SUFFICIENT EVIDENCE. THEY PRESENTED YOU TWO
23 INCONSISTENT LYING CODEFENDANTS.

24 ON THE STATE'S SECOND THEORY THEY'RE STILL
25 NOWHERE CLOSE BECAUSE EVEN IF YOU'RE ASSUMING THERE WAS A

CLOSING ARGUMENT BY MR. GALMORE

364

1 FIGHT AND THIS IS THE CONSEQUENCE OF THE FIGHT YOU CAN'T
2 SAY THAT KEION HAD ANYTHING TO DO, ANY PRIOR KNOWLEDGE THAT
3 THE SHOOTING WAS GOING TO OCCUR AS A RESULT OF THE FIGHT.
4 THAT'S WHAT THE STATE IS TRYING TO CONVINCE YOU.

5 IN THE LAW OF REASONABLE DOUBT THE JUDGE WILL
6 TELL YOU THAT YOU HAVE TO BE FIRMLY CONVINCED OF THE GUILT
7 OF THE ACCUSED. FIRMLY CONVINCED I EXPLAINED YOU IN THE
8 OPENING STATEMENT I SAID I COULD HAVE A DOUBT THAT THE SUN
9 WILL COME UP TOMORROW BUT I'M FIRMLY CONVINCED THAT IT WILL
10 SO YOU DON'T HAVE TO ELIMINATE ALL DOUBT BUT YOU HAVE TO BE
11 FIRMLY CONVINCED OF KEION'S GUILT AND IF THERE'S A QUESTION
12 IN YOUR HEAD YOU HAVE TO RESOLVE THAT DOUBT IN FAVOR OF
13 KEION.

14 I'M NOT GOING TO BELABOR THE POINT BUT I JUST
15 WANT EACH, EVERYONE OF YOU TO THINK ABOUT IT. IF THERE'S A
16 FIGHT AND ONE OF THE COMBATANTS PULLS A GUN HOW'S THE OTHER
17 MAN HELD RESPONSIBLE WHEN HE DIDN'T PARTICIPATE IN THAT
18 PART OF IT. HE DIDN'T PLAN FOR THAT TO HAPPEN. HE DIDN'T
19 ASSIST IN THAT PART OF, OF THE FIGHT. IT WENT TOO FAR,
20 DEMARIO SHOT AND KEION DIDN'T HAVE ANY IDEA THAT THAT WAS
21 WHAT, THAT IS WHAT WAS GOING TO HAPPEN. WE'RE GOING TO ASK
22 YOU TO FIND HIM NOT GUILTY OF THE CHARGES.

23 I THANK YOU FOR YOUR ATTENTION. I CHARGE YOU ON
24 YOUR OATH TO DO WHAT YOU'RE SUPPOSED TO DO APPLY THE LAW TO
25 THE FACTS AND AGAIN YOU HAVE NO FRIENDS TO REWARD, YOU HAVE

CLOSING ARGUMENT BY MS. ELDER

365

1 NO ENEMIES TO PUNISH. ALL YOU HAVE TO DO IS DECIDE WHETHER
2 THE STATE OF SOUTH CAROLINA MET ITS BURDEN OF PROOF AND I
3 SUBMIT TO YOU THEY HAVE NOT.

4 THE COURT: MS. ELDER.

5 MS. ELDER: THANK YOU, YOUR HONOR.

6 CLOSING ARGUMENT

7 BY MS. ELDER:

8 IN A FEW MINUTES THE JUDGE IS GOING TO CHARGE YOU
9 WITH WHAT WE CALL THE LAW IN THIS CASE MEANING HE'S GOING
10 TO GIVE YOU WHAT THE LAW IS IN THE STATE OF SOUTH CAROLINA
11 THAT YOU ARE TO CONSIDER WHEN YOU DELIBERATE BACK IN YOUR
12 JURY ROOM. THE CHARGE THAT HE'S GOING TO GIVE YOU THE LAW
13 ON IS MURDER AND THESE ARE THE ELEMENTS OF WHAT WE CALL
14 MURDER.

15 MURDER IS THE KILLING OF ANOTHER PERSON. WELL
16 WE'VE GOT THAT, WE KNOW THAT, THAT WAS COREY BROOKS.

17 THE CAUSE OF DEATH HOMICIDE, GUNSHOT WOUND, DR.
18 PROCTOR GAVE YOU THAT.

19 WITH MALICE AFORETHOUGHT AND YOU HAVE TO SIT
20 THERE AND THINK WHAT IN THE WORLD IS MALICE. WHAT DOES
21 THAT MEAN IN LEGAL TERMS. IT MEANS A HATRED, AN ILL WILL
22 OR A HOSTILITY TOWARDS ANOTHER.

23 THE INTENTIONAL DOING OF A WRONGFUL ACT WITH
24 INTENT TO INFLICT INJURY ON ANOTHER.

25 NOW HOW DO WE DETERMINE MALICE. MALICE CAN BE

CLOSING ARGUMENT BY MS. ELDER

366

1 ONE OF TWO WAYS. IT CAN BE EXPRESSED OR IT CAN BE IMPLIED.
2 WELL EXPRESSED IS PRETTY EASY. EXPRESSED IS I'M LYING IN
3 WAIT, I'M GOING TO KILL YOU, WE ALL KNOW WHAT THAT MEANS,
4 THAT'S AN EASY ONE, BUT MALICE CAN ALSO BE IMPLIED AND
5 THAT'S WHAT WE HAVE HERE.

6 YOU CAN IMPLY MALICE BY SHOWING A CONDUCT THAT
7 HAS A TOTAL DISREGARD FOR HUMAN LIFE AND I ASK YOU WHAT
8 COULD BE MORE OF A DISREGARD FOR HUMAN LIFE THAN STRIKING A
9 YOUNG MAN WITH A GUN ACROSS HIS HEAD, KNOCKING HIM TO THE
10 GROUND, KICKING HIM SEVERAL TIMES, AND THEN SHOOTING HIM IN
11 THE BACK. I THINK WE'VE GOT THAT ONE.

12 THE JUDGE IS ALSO GOING TO INSTRUCT YOU ON THE
13 HAND OF ONE, WE CALL THE HAND OF ONE HAND OF ALL. MR.
14 GALMORE WAS RIGHT HE DID GIVE YOU HIS SPIN ON IT. THE HAND
15 OF ONE THE HAND OF ALL IS BASICALLY WHEN YOU JOIN WITH
16 SOMEONE ELSE, WHEN YOU ACT WITH SOMEONE ELSE IN COMMITTING
17 AN UNLAWFUL ACT, A CRIME, YOU CAN BE RESPONSIBLE FOR WHAT
18 THE OTHER DOES.

19 FOR EXAMPLE, ONE GUN, ONE SHOT, UNDER WHAT THE
20 JUDGE IS GOING TO TELL YOU THE LAW IS IN SOUTH CAROLINA
21 BOTH OF YOU CAN BE HELD RESPONSIBLE FOR THAT SHOOTING. WHY
22 DO YOU THINK WE HAVE BOTH KEION GRIFFIN AND DEMARIO STUKES
23 CHARGED WITH MURDER, ONLY ONE SHOT BUT WE GOT TWO CHARGES,
24 BECAUSE WE CAN UNDER THE HAND OF ONE THE HAND OF ALL
25 BECAUSE IF YOU JOIN WITH THAT PERSON, YOU ASSIST HIM,

CLOSING ARGUMENT BY MS. ELDER

367

1 YOU'RE TOGETHER, YOU'RE ACTING AS ONE, YOU'RE ACTING
2 TOGETHER THEN YOU CAN BE HELD RESPONSIBLE.

3 NOW I KNOW THAT YOU ALL LISTENED VERY ATTENTIVELY
4 TO THE WITNESSES AND I'M NOT GOING TO PULL A WHOLE LOT OUT
5 OF THEM AND RECAP THAT FOR YOU BECAUSE I KNOW THAT YOU
6 REMEMBER THAT VERY WELL BUT I DO THINK IT'S IMPORTANT TO
7 TOUCH ON A FEW THINGS ABOUT THE DESCRIPTION THAT THAT GAVE
8 YOU WHILE THEY WERE ON THE STAND.

9 ZACK MATHIS, ZACK MATHIS TELLS YOU THERE'S A
10 SCUFFLE BETWEEN ONE WHITE MALE, ONE BLACK MALE OVER
11 PARKING, THEY TRY TO BREAK IT UP, THE OTHER MALE COMES UP,
12 STRIKES COREY BROOKS IN THE HEAD AND THEN HE'S SHOT. I
13 ASKED HIM DESCRIBE THE MAN THAT YOU SAW WITH THE GUN, BLACK
14 MALE. HE SAYS I'M GOING TO MAKE SURE I GET IT RIGHT, HE
15 WAS WEARING A WHITE TEE SHIRT, HE'S FIVE EIGHT, FIVE TEN,
16 GUESS WHO'S FIVE EIGHT, KEION GRIFFIN.

17 I ASKED HIM DID YOU SEE THE GUY THAT HAD THE GUN,
18 WAS HE WEARING A HAT, NOPE, WASN'T WEARING A HAT. I KNOW
19 ONE OF HIS FRIENDS WAS WEARING A HAT BUT HE WAS NOT WEARING
20 A HAT, TWO GUYS IN A WHITE TEE SHIRT THAT NIGHT, WE KNOW
21 THAT, DEMARIO STUKES, KEION GRIFFIN. WE KNOW THAT,
22 EVERYBODY SAYS THAT, EVERYBODY. ONE OF THEM HAD A HAT ON,
23 STUKES, DEMARIO HAD THE HAT ON. ZACK WAS SURE ABOUT THAT.
24 THE GUY WITH THE GUN WASN'T WEARING A HAT.

25 THEN WE GO TO JEFF KING, HE TELLS YOU WE COME

CLOSING ARGUMENT BY MS. ELDER

368

1 DOWN FROM THE STEPS THERE'S A BIG SCUFFLE. NOW REMEMBER
2 WE'RE TALKING ABOUT A TIGHT SPACE, WE'RE IN BETWEEN TWO
3 CARS. WE GOT AT LEAST THERE BLACK MALES, WE GOT AT LEAST
4 THREE OR FOUR WHITE MALES AND THEY'RE ALL IN BETWEEN THE
5 SPACE. JEFF KING COMES DOWN, HE SAYS I CAN'T REALLY TELL
6 YOU A LOT ABOUT IT, IT WAS A BLACK MALE, WHITE TEE SHIRT,
7 IT WAS LONG, LONGER WHITE TEE SHIRT.

8 WHO WAS WEARING A LOOSE LONGER WHITE TEE SHIRT.
9 WELL LT. MCCORKLE TELLS YOU THAT, SHE SAYS WHEN SHE STOPPED
10 DEMARIO STUKES AND KEION GRIFFIN SAID KEION GRIFFIN WAS THE
11 ONE THAT HAD THE SLEEVED SHIRT, IT WAS LOOSER FITTING, IT
12 WAS LONGER. HE HAD THE LONG HAIR, LONGER HAIR.

13 THEN THERE'S VERNON BROWN. NOW VERNON BROWN
14 ISN'T CONNECTED WITH ANYBODY IN THIS CASE. HE DOESN'T KNOW
15 THE WHITE MALES THERE THAT NIGHT. HE DOESN'T KNOW THE
16 BLACK MALES THERE THAT NIGHT. HE'S JUST DOWN HAVING A GOOD
17 TIME. HE'S BACKED INTO A PARKING SPACE OR BACKED INTO A
18 YARD DIRECTLY ACROSS FROM WHERE ALL THIS GOES DOWN. THIRD
19 AVENUE IS NOT THAT BIG. HE'S SITTING THERE WATCH, WOW,
20 THERE'S A FIGHT, OR, WOW, WAIT A MINUTE, THERE'S A GUN.
21 WHO DOES HE TELL YOU AFTER HE HEARS THAT GUNSHOT THAT RUNS
22 FROM THE SCENE. THE MALE HE DESCRIBES RUNNING FROM THAT
23 SCENE AGAIN HE SAID BLACK MALE LIGHT SKINNED, LONGER HAIR,
24 WHITE TEE SHIRT. I SAID DID IT HAVE SLEEVES, YES, IT HAD
25 SLEEVES, I KNOW IT HAD SLEEVES, AND VERNON BROWN NOT ONLY

CLOSING ARGUMENT BY MS. ELDER

369

1 COULD GIVE US WHO WAS RUNNING FROM THE SCENE WITH A GUN HE
2 GAVE A PRETTY GOOD DESCRIPTION OF THE GUN ITSELF SO WE KNOW
3 HE SAW THE PERSON WITH THIS GUN. IT WAS A LONG SILVER GUN,
4 THAT'S NOT SOMETHING YOU WOULD COMMONLY SEE. VERNON BROWN
5 SAYS, YEAH, I KNOW GUNS, I WAS IN THE MILITARY, I RECEIVED
6 SOME TRAINING FOR IT. THAT'S THE GUY HE SEES RUNNING FROM
7 THE SCENE.

8 NOW WE ALSO HAVE THE CODEFENDANTS, DEMARIO
9 STUKES, DARIUS PRIEST. NOW DEMARIO STUKES IS PICKED UP ON
10 MAY 30TH, 2008, AND I THINK THE TIME LINE IS IMPORTANT,
11 THAT'S WHY WE TOOK THE TIME ON THE, ON THE TESTIMONY TO DO
12 THAT. DEMARIO GETS PICKED UP AT 2:33 P.M., THAT'S A
13 FRIDAY, HE'S AT SCHOOL. YOU SAW THE CAR VIDEO WHERE HE
14 GETS TRANSPORTED FROM SCHOOL. WHAT DOES HE SAY IN THAT CAR
15 VIDEO, I DON'T KNOW WHAT THIS IS ABOUT. I'VE BEEN AT
16 SCHOOL ALL DAY. I'M GOING OVER TO THE POLICE STATION.
17 FUNNY, WHAT DOES HE SAY IN THAT CAR VIDEO, HEY, MAN, I LOST
18 MY HAT AND MY SHADES, I GOT HIT BY A CAR. WHAT DOES ASIA
19 TELL YOU, YEAH, AS I WAS DRIVING OFF SOMEBODY HIT THE FRONT
20 OF MY CAR.

21 WELL DEMARIO GIVES US A STATEMENT AT THAT TIME AT
22 2:30, SAID WANT TO KNOW WHAT HAPPENED ON THE BOULEVARD THAT
23 NIGHT, YOU KNOW WHAT, DEMARIO TELLS THE POLICE EXACTLY WHAT
24 HAPPENED ON THE BOULEVARD AT THIRD AVENUE THAT NIGHT. THE
25 ONLY THING HE DOESN'T SAY IS THAT IT WAS HIM, KEION, AND

CLOSING ARGUMENT BY MS. ELDER

370

1 DARIUS. I MEAN HE DESCRIBES IT, HE TOLD YOU, YEAH, I TOLD
2 THE POLICE, I TOLD THEM EVERYTHING BUT I TOLD THEM IN THIRD
3 PERSON. YEAH, WE WERE ALL STANDING BACK WATCHING AND WE
4 SAW THESE THREE BLACK MALES AND THEY GOT INTO A FIGHT AND
5 ONE OF THEM GOT INTO A FIGHT OVER PARKING AND ONE OF THEM
6 CAME UP AND SHOT HIM IN THE, SHOT HIM IN THE BACK, THEY RAN
7 OFF DOWN THE STREET. WHAT DOES THAT SOUND LIKE, IT SOUNDS
8 LIKE THE SAME EXACT STORY EVERYBODY ELSE IS SAYING.

9 THEN WE GET FROM DEMARIO STUKES WHO WERE YOU WITH
10 THAT NIGHT, YOU KNOW YOU SAY YOU WEREN'T INVOLVED AND YA'LL
11 WITNESSED THIS, WHO WERE YOU WITH THAT NIGHT. WELL I WAS
12 WITH KEION GRIFFIN, ALL RIGHT, WELL LET'S GO PICK UP KEION
13 GRIFFIN, SAME DAY, A COUPLE OF HOURS LATER, 6:39 KEION
14 GRIFFIN COMES IN.

15 WE WANT TO ASK YOU ABOUT WHAT HAPPENED ON THE
16 BOULEVARD ON THIRD AVENUE, I DON'T KNOW NOTHING, I DIDN'T
17 SEE NO FIGHT, I DIDN'T SEE NO GUN, I DIDN'T HEAR NO
18 GUNSHOT. WELL WHO WERE YOU WITH ALL NIGHT LONG, WELL I WAS
19 WITH DEMARIO AND DARIUS ALL NIGHT LONG. WELL WHEN DID
20 YA'LL FINALLY SEPARATE, WELL WE SEPARATED WHEN THE POLICE
21 BLOCKED OFF THE STREET AFTER THAT SHOOTING AND DARIUS GOT
22 IN THE CAR WITH HIS MAMA, SO EVEN BY HIS OWN ADMISSION TO
23 POLICE THAT DAY HE WAS WITH DEMARIO AND DARIUS UNTIL AFTER
24 THAT SHOOTING AND DARIUS GOT INTO THE CAR WITH HIS MAMA BUT
25 YET HE DIDN'T SEE NO FIGHT, HE DIDN'T SEE DARIUS GET INTO A

CLOSING ARGUMENT BY MS. ELDER

371

1 FIGHT, HE DIDN'T SEE DEMARIO GET IN A FIGHT, NOBODY HAD A
2 GUN, UH-UH, NOT US.

3 SO AFTER DEMARIO'S INTERVIEW HE'S TAKEN TO THE
4 POLICE STATION, KEION'S TAKEN TO THE POLICE STATION AFTER
5 THIS ON MAY 30TH. KEION GRIFFIN'S INTERVIEW ENDS ABOUT
6 7:47. DEMARIO SOMETIME BEFORE 8:30 SAME NIGHT WHAT DOES HE
7 DO, HE CALLS OUT AND HE SAYS, HEY, I GOT TO TALK TO POLICE,
8 I NEED TO TALK TO THE DETECTIVES AGAIN. THE POLICE DIDN'T
9 GO TO HIM, THEY DIDN'T ASK TO TALK TO HIM AGAIN, HE ASKED
10 AND DO YOU REMEMBER WHY HE ASKED TO SEE THE DETECTIVES
11 AGAIN. HE TOLD YOU, MY DAD CAME TO SEE ME, MY DAD CAME TO
12 SEE ME, I WAS ARRESTED UP HERE, PUT IN JAIL, MY DAD CAME TO
13 SEE ME, CONVINCED ME TO DO THE RIGHT THING, COME CLEAN
14 BECAUSE THIS WAS SERIOUS, SOMEBODY LOST THEIR LIFE.

15 SO DEMARIO COMES IN AND HE TELLS THE POLICE YOU
16 KNOW THAT STORY I TOLD YOU BEFORE, YEAH, THAT'S THE WAY IT
17 HAPPENED THOSE THREE BLACK MALES, MYSELF, DARIUS AND KEION.
18 DARIUS BROUGHT THE GUN, I GOT INTO A FIGHT, KEION JUMPED
19 IN, SLAPPED THAT CELL PHONE OUT OF THAT BOY'S HAND, PULLED
20 OUT HIS GUN AND HE SHOT THAT BOY IN THE RED SHIRT.

21 HE TELLS US THEN ABOUT DARIUS. SAME NIGHT 11:16
22 WE GO PICK UP DARIUS, IN THE NEIGHBORHOOD, WE GO PICK HIM
23 UP BRING HIM TO THE ANNEX. DARIUS WHAT YOU KNOW ABOUT
24 THIRD AVENUE NORTH ON MAY 25TH. WELL THIS IS HOW IT
25 HAPPENED, THERE WAS A FIGHT, DEMARIO GOT INTO A FIGHT,

CLOSING ARGUMENT BY MS. ELDER

372

1 KEION PULLED OUT A GUN STRUCK THAT BOY IN THE HEAD AND THE
2 BOY WENT DOWN TO THE GROUND, HE KICKED HIM A FEW TIMES AND
3 THEN HE SHOT HIM IN THE BACK. WE RAN OFF. RIGHT BEFORE I
4 GOT INTO THE CAR WITH MY MAMA BEFORE THAT POLICE OFFICER
5 STOPPED US KEION HANDED ME THAT GUN.

6 DARIUS DIDN'T GIVE US THE GUN THAT NIGHT. HE
7 DIDN'T TELL US WHERE IT WAS BUT HE DID SAY HE BROUGHT IT,
8 HE BROUGHT IT TO THE PARTY. HE DID EVENTUALLY GIVE US THE
9 GUN ON JUNE 3RD AT 11:43 AND THAT'S THE GUN HE HAD AND HE
10 IDENTIFIED, THAT'S THE MURDER WEAPON.

11 NOW IN BETWEEN HERE KEION ON MAY 31ST, IT'S ON A
12 SATURDAY, HE GETS PULLED OUT OF THE JAIL AND HE GOES TO
13 HAVE MURDER WARRANTS SERVED ON HIM, A MURDER WARRANT FOR
14 THIS CASE AND I WANT TO MAKE SURE I GET THIS RIGHT. HE
15 JUST GOT A MURDER WARRANT SERVED ON HIM, HE COMES BACK TO
16 THE JAIL, WHO IS HE YELLING FOR, DEMARIO, YELLING OUT FOR
17 DEMARIO AND WHAT DOES HE SAY, HE SAYS, THEY DON'T HAVE THE
18 GUN SO THEY DON'T HAVE SHIT, DON'T TELL THEM NOTHING. NOW
19 YOU TELL ME A MAN WHO JUST TOLD POLICE HE DIDN'T SEE A GUN,
20 HE DIDN'T SEE A FIGHT, NOBODY IN HIS PRESENCE GOT INTO A
21 FIGHT, BUT YET HE WAS DEMARIO AND DARIUS ALL NIGHT LONG WHY
22 IN THE WORLD WOULD HE BE YELLING THEY DON'T HAVE A GUN,
23 THEY AIN'T GOT NOTHING. HE'S JUST BEEN SERVED WITH A
24 MURDER WARRANT. HOW DID HE KNOW ON MAY 31ST THAT WE DIDN'T
25 HAVE A GUN. HOW DID HE KNOW THAT WE DIDN'T RETRIEVE IT

CLOSING ARGUMENT BY MS. ELDER

373

1 FROM THE CRIME SCENE. YOU KNOW WHY HE DIDN'T, CAUSE HE HAD
2 GIVEN IT TO DARIUS TO DITCH, THAT'S WHY HE WAS YELLING THAT
3 OUT. HE WAS LETTING DEMARIO KNOW HEY, MAN, THEY AIN'T GOT
4 THE GUN, DON'T TELL THEM ANYTHING.

5 NOW THE DEFENSE WANTS TO MAKE A BIG DEAL ABOUT
6 HOW DEMARIO AND DARIUS' TESTIMONY SO TAINTED, TAINTED.
7 THEY MADE A DEAL WITH THE PROSECUTOR'S OFFICE. IT IS
8 UNFORTUNATE THAT AS A PROSECUTOR I DON'T ALWAYS HAVE LAW
9 ABIDING, UPSTANDING CITIZENS AS WITNESSES TO CRIME. IT'S
10 UNFORTUNATE THAT ALL THE CRIMES THAT ARE COMMITTED IN OUR
11 COMMUNITY ARE NOT ON TAPE, NOT PHOTOGRAPHED, VIDEO TAPED,
12 THAT THERE'S, SOMETIMES THEY DON'T HAVE FINGERPRINTS, DON'T
13 HAVE DNA. SOMETIMES ALL WE GOT IS TESTIMONY OF THOSE
14 AROUND AND, YES, SOMETIMES I HAVE TO MAKE AGREEMENTS WITH
15 PEOPLE WHO DO BAD THINGS TO GET TO PEOPLE WHO DO HORRIFIC
16 THINGS BUT YOU REMEMBER WHEN YOU'RE LOOKING AT THEIR
17 STATEMENTS YOU REMEMBER WHEN THEY ENTERED INTO AN AGREEMENT
18 WITH THE STATE.

19 DEMARIO STUKES WAS BROUGHT STRAIGHT FROM SCHOOL.
20 HE WAS PLACED IN JAIL. HE TALKED TO HIS FATHER WHO
21 CONVINCED HIM TO GO STRAIGHT. HE GAVE THE POLICE THAT
22 INFORMATION ABOUT WHO THE SHOOTER WAS AND WHO HAD THE GUN.
23 HE DIDN'T HAVE ANY DEALS, NONE AT ALL WHEN HE GAVE THOSE
24 STATEMENTS TO POLICE. HE HAD ABSOLUTELY NO MOTIVATION AT
25 THAT POINT, NO INCENTIVE. HE WAS PUTTING HIMSELF IN A

CLOSING ARGUMENT BY MS. ELDER

374

1 MURDER SCENE.

2 DARIUS PRIEST, HE GAVE HIS STATEMENT TO LAW
3 ENFORCEMENT, PICKED UP OFF THE STREET, CAME STRAIGHT IN, HE
4 DIDN'T HAVE A DEAL WITH LAW ENFORCEMENT WHEN HE TOLD POLICE
5 WHO THE SHOOTER WAS, IT WAS KEION GRIFFIN.

6 YEP, WE MADE AN AGREEMENT WITH HIM SO HE WOULD
7 TELL US WHERE HE DITCHED THE GUN ON JUNE 3RD SO THAT WAS
8 AFTER HE HAD ALREADY TOLD US WHAT HAPPENED THAT NIGHT.

9 NOW THE DEFENSE WANTS YOU TO BELIEVE THAT DEMARIO
10 IS THE SHOOTER AND YOU NEED BELIEVE HIM ON PARTS OF THE
11 STATEMENT, DON'T BELIEVE HIM ON OTHER PARTS, MAKE IT FIT.

12 THEY WANT YOU TO BELIEVE THAT AS ASIA HARRIS TOLD
13 YOU THE MAN WHO GOT IN THE FIGHT WAS YELLING, WHERE'S MY
14 STRAP, WHERE'S MY STRAP, LET ME ASK YOU WHY WOULD A MAN
15 WITH THE GUN BE YELLING WHERE IS MY GUN, CAUSE HE DIDN'T
16 HAVE IT, KEION GRIFFIN HAD IT.

17 NOW REMEMBER I TOLD YOU THAT A FEW PEOPLE COME
18 DOWN HERE LOOKING FOR TROUBLE, READY FOR TROUBLE, EAGER FOR
19 TROUBLE, AND ARMED FOR TROUBLE. KEION GRIFFIN IS ONE OF
20 THOSE PEOPLE. ON MAY 25TH, 2008, KEION GRIFFIN INVOLVED
21 HIMSELF IN A CONVERSATION ABOUT A PARKING SPACE THAT HAD
22 NOTHING TO DO WITH HIM. HE INVOLVED HIMSELF IN AN
23 ALTERCATION THAT HAD NOTHING TO DO WITH HIM. HE TOOK A GUN
24 FROM HIS WAIST BAND, HE STRUCK A YOUNG MAN UP SIDE HIS
25 HEAD, MADE HIM FALL TO THE GROUND AND KICKED HIM, NOT ONCE,

CLOSING ARGUMENT BY MS. ELDER

375

1 SEVERAL TIMES AND THEN HE SHOT HIM IN THE BACK JUST BECAUSE
2 HE COULD.

3 A PARKING SPACE, A PIECE OF DIRT, THAT'S WHERE
4 THIS ALL BEGAN AND THAT'S WHERE IT ALL ENDED FOR COREY
5 BROOKS ON A PIECE OF DIRT IN A VACANT PARKING SPACE, RIGHT
6 HERE, A VACANT PARKING SPACE IS WHAT ENDED HIS LIFE.

7 WHO WOULD VALUE LIFE SO LITTLE, I ASKED YOU THAT
8 MONDAY, KEION GRIFFIN. WHY, BECAUSE HE SHOWED UP THAT
9 NIGHT, HE HAD TO BE THE MAN, HE HAD TO SHOW EVERYBODY HE
10 HAD THE POWER AND HE WOULD USE IT AND HE WANTED EVERYONE IN
11 THAT FRONT YARD TO KNOW HE HAD THE POWER THAT NIGHT AND
12 THAT POWER WAS THAT GUN.

13 COREY BROOKS PAID A HEAVY, HEAVY PRICE FOR THAT
14 MAN'S EGO ON MAY 25TH, 2008. IT IS TIME FOR KEION GRIFFIN
15 TO PAY THE PRICE FOR KEION GRIFFIN'S EGO THAT NIGHT. YOU
16 FIND HIM GUILTY.

17 JURY CHARGE

18 THE COURT: LADIES AND GENTLEMEN, I'M ABOUT TO
19 CHARGE YOU ON THE LAW AND LET ME SAY THAT I DO THINGS A
20 LITTLE DIFFERENTLY THAN ANY OTHER JUDGE THAT I KNOW AND I
21 UNDERSTAND THAT YOU ARE LAYPERSONS AND YOU'RE NOT FAMILIAR
22 WITH THE COURT SYSTEM. THAT'S EVIDENT BY THE FACT THAT
23 YOU'RE QUALIFIED TO SERVE AS A JUROR IN THIS CASE. I
24 PREPARE A TRANSCRIPT OF THE CHARGE THAT I GIVE. I KNOW
25 THAT THE CHARGE WILL BE COMPLEX AND I KNOW THAT YOU COULD

CLOSING ARGUMENT BY MS. ELDER

376

1 NOT BE EXPECTED TO REMEMBER ALL THE NUANCES OF THE CHARGE
2 AS I GIVE IT TO YOU SO I PREPARE A TRANSCRIPT, A VERBATIM
3 TRANSCRIPT OF THE CHARGE THAT I GIVE.

4 THE SUPREME COURT HAS SAID THAT IT'S ALL RIGHT
5 FOR ME TO DO THAT AS LONG AS I FOLLOW THAT TRANSCRIPT
6 VERBATIM IN MY ACTUAL CHARGE. SO YOU WILL PROBABLY NOTE
7 THAT DURING MY CHARGE I WILL BE READING FROM MY TRANSCRIPT
8 BUT I WILL GIVE YOU THAT TRANSCRIPT AT THE END OF MY
9 CHARGE. I WILL MAKE IT A COURT'S EXHIBIT AND I'M GOING TO
10 LET YOU HAVE IN IT YOUR JURY ROOM FOR YOUR USE DURING YOUR
11 DELIBERATIONS PROCESS.

12 I WANT TO REMIND THAT DURING THIS TRIAL YOU AND I
13 HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE IT IS
14 MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THE CASE AND
15 I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF
16 EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER
17 ONLY THE COMPETENT EVIDENCE BEFORE YOU.

18 IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM
19 THE RECORD IN THIS CASE YOU MUST DISREGARD THAT TESTIMONY.
20 YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN
21 PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE
22 BEEN MADE A PART OF THIS RECORD AND ANY STIPULATIONS OF
23 COUNSEL.

24 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW
25 APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE I AM THE

CLOSING ARGUMENT BY MS. ELDER

377

1 SOLE JUDGE OF THE LAW OF THIS CASE AND IT'S YOUR DUTY AS
2 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 WHAT
6 I NOW TELL YOU THE LAW IS YOU MUST ABANDON THIS IDEA
7 BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW
8 EXACTLY AS I STATE IT TO YOU.

9 IN EVERY CASE TRIED IN THIS COURTROOM BEFORE A
10 JURY THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE
11 FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE,
12 COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE
13 FACTS IN A CASE.

14 SINCE YOU THE JURY ARE THE SOLE JUDGES OF THE
15 FACTS IN THIS 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 I
19 HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW
20 DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE FACTS IN
21 THIS CASE. THIS IS A MATTER SOLELY FOR YOU THE JURY TO
22 DETERMINE.

23 AS JURORS IT IS YOUR DUTY TO DETERMINE THE
24 EFFECT, THE VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE
25 PRESENTED DURING THIS TRIAL.

CLOSING ARGUMENT BY MS. ELDER

378

1 NOW THE INDICTMENTS IN THIS MATTER CHARGES THE
2 DEFENDANT WITH MURDER AND POSSESSION OF A WEAPON DURING THE
3 COMMISSION OF A VIOLENT CRIME. I REMIND YOU THAT THE FACT
4 THAT THE DEFENDANT WAS ARRESTED, CHARGED, AND INDICTED IN
5 THIS CASE IS NOT EVIDENCE IN THIS CASE AND CANNOT BE
6 CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE NOR
7 DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THIS
8 DOCUMENT OR THESE DOCUMENTS ARE SIMPLY THE FORMAL WRITTEN
9 INSTRUMENTS WHICH CONTAIN THE CHARGES MADE AGAINST THE
10 DEFENDANT. THEY ARE THE FORMAL DOCUMENTS BY WHICH THE CASE
11 IS BROUGHT INTO COURT.

12 THE INDICTMENTS IN THIS CASE ALLEGE TWO DIFFERENT
13 OFFENSES AGAINST THE DEFENDANT. THOSE CHARGES ARE:

14 INDICTMENT NUMBER ONE, MURDER;

15 INDICTMENT NUMBER TWO, POSSESSION OF A WEAPON
16 DURING THE COMMISSION OF A VIOLENT CRIME.

17 EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT
18 OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE
19 EVIDENCE AND THE LAW APPLICABLE TO IT UNINFLUENCED BY YOUR
20 DECISION AS TO ANY OTHER INDICTMENT.

21 A DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ANY
22 OR ALL THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A
23 SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH
24 INDICTMENT.

25 NOW THE DEFENDANT HAS PLED NOT GUILTY TO THESE

CLOSING ARGUMENT BY MS. ELDER

379

1 INDICTMENTS AND THAT PLEA PUTS THE BURDEN ON THE STATE TO
2 PROVE THE DEFENDANT GUILTY.

3 A PERSON CHARGED WITH COMMITTING A CRIMINAL
4 OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE
5 HIMSELF INNOCENT.

6 I CHARGE YOU THAT IT IS AN IMPORTANT OR THIS IS
7 AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A
8 CRIMINAL MATTER NO MATTER WHAT THE SERIOUSNESS OF THE CRIME
9 OR CHARGE MAY BE WILL ALWAYS BE PRESUMED TO BE INNOCENT OF
10 THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT
11 HAS BEEN PROVED BY EVIDENCE SATISFYING YOU OF THAT GUILT
12 BEYOND A REASONABLE DOUBT.

13 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN
14 YOU BEGIN YOUR DELIBERATION BUT IT ACCOMPANIES THE
15 DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF
16 GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND
17 A REASONABLE DOUBT.

18 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
19 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT
20 WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED
21 FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE
22 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

23 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
24 THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A
25 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED

CLOSING ARGUMENT BY MS. ELDER

380

1 UNLESS YOU THE JURY ARE SATISFIED FROM THE EVIDENCE OF THE
2 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

3 NOW THE STATE HAS THE BURDEN OF PROVING THE
4 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU
5 MAY HAVE SERVED AS JURORS IN CIVIL CASES WHERE YOU WERE
6 TOLD THAT IT'S ONLY NECESSARY TO PROVE THAT A FACT IS MORE
7 LIKELY TRUE THAN NOT TRUE SUCH AS BY THE GREATER WEIGHT OR
8 PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES THE
9 STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE
10 BEYOND A REASONABLE DOUBT.

11 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
12 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
13 THERE ARE VERY THINGS IN THIS WORLD THAT WE KNOW WITH
14 ABSOLUTE CERTAINTY AND IN CRIMINAL CASES THE LAW DOES NOT
15 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

16 IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE
17 YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF
18 THE CRIME CHARGED YOU MUST FIND THE DEFENDANT GUILTY.

19 IF ON THE OTHER HAND YOU THINK THERE'S A REAL
20 POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY YOU MUST GIVE
21 THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT
22 GUILTY.

23 WHAT IS A REASONABLE DOUBT IN THE LAW. A
24 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
25 REASONABLE PERSON TO HESITATE TO ACT.

CLOSING ARGUMENT BY MS. ELDER

381

1 NOW THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
2 GENERALLY PRESENTED DURING A TRIAL, DIRECT EVIDENCE AND
3 CIRCUMSTANTIAL EVIDENCE.

4 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
5 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN
6 EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
7 THE MAIN FACT TO BE PROVED.

8 CIRCUMSTANTIAL EVIDENCE ON THE OTHER HAND IS
9 PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE
10 EXISTENCE OF A FACT, OF A FACT. IT IS EVIDENCE WHICH
11 IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE
12 MAIN FACT MAY BE INFERRED.

13 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND
14 NOT ON PERSONAL KNOWLEDGE OR OBSERVATION. THE LAW MAKES
15 ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE
16 GIVEN EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE NOR IS A
17 GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
18 EVIDENCE THAN OF DIRECT EVIDENCE.

19 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE.
20 AFTER WEIGHING ALL THE EVIDENCE IF YOU ARE NOT CONVINCED OF
21 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT YOU
22 MUST FIND THE DEFENDANT NOT GUILTY.

23 NECESSARILY YOU MUST DETERMINE THE CREDIBILITY OF
24 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY
25 SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS

CLOSING ARGUMENT BY MS. ELDER

382

1 TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH
2 EVIDENCE CONVINCES YOU OF ITS TRUTH.

3 IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO
4 HAVE TESTIFIED IN THIS CASE YOU MAY BELIEVE ONE WITNESS
5 OVER SEVERAL OR SEVERAL WITNESSES OVER ONE WITNESS.

6 YOU MAY BELIEVE A PART OF THE TESTIMONY OF A
7 WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF
8 THAT SAME WITNESS.

9 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
10 ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS
11 ENTIRETY.

12 YOU MAY CONSIDER WHETHER ANY WITNESS HAS
13 EXHIBITED TO YOU ANY INTEREST, PREJUDICE, BIAS, OR OTHER
14 MOTIVE IN THIS CASE AND YOU MAY ALSO CONSIDER THE
15 APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS
16 STAND.

17 A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE
18 DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE.
19 WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS
20 ADMISSIBLE I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE
21 DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE
22 STATEMENT.

23 IF THE DEFENDANT DID MAKE THE STATEMENT YOU MUST
24 DETERMINE WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT
25 VOLUNTARY AND OF HIS OWN FREE WILL.

CLOSING ARGUMENT BY MS. ELDER

383

1 THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY
2 PRESSURE, FORCE, FEAR, THREATS, COERCION, OR INTIMIDATION,
3 OR BY HOPE OR A PROMISE OF LENIENCY OR REWARD OF ANY KIND.

4 IN DETERMINING WHETHER THE STATEMENT WAS
5 VOLUNTARY YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF
6 THE DEFENDANT AND THE DETAILS OF THE QUESTIONING.

7 SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE:

8 ONE, THE AGE OF THE DEFENDANT;

9 TWO, THE DEFENDANT'S EDUCATION OR LACK OF
10 EDUCATION;

11 THREE, THE DEFENDANT'S MENTAL ABILITY OR
12 CAPACITY;

13 FOUR, THE DEFENDANT'S IQ OR INTELLIGENCE;

14 FIVE, THE DEFENDANT'S BACKGROUND AND ENVIRONMENT;

15 SIX, THE PLACE AND LENGTH OF THE DETENTION;

16 SEVEN, THE NATURE OF THE QUESTIONING;

17 AND, EIGHT, THE ADVICE OR LACK THEREOF TO THE
18 DEFENDANT OF HIS OR HER CONSTITUTIONAL RIGHTS;

19 INCLUDING BUT NOT NECESSARILY LIMITED TO THE
20 RIGHT TO REMAIN SILENT,

21 THAT ANY STATEMENT CAN BE USED AGAINST HIM IN A
22 COURT OF LAW,

23 THE RIGHT TO HAVE AN ATTORNEY PRESENT,

24 THAT IF HE COULD NOT AFFORD A LAWYER A LAWYER
25 WOULD BE APPOINTED TO REPRESENT HIM WITHOUT ANY COST,

CLOSING ARGUMENT BY MS. ELDER

384

1 AND THAT HE COULD STOP MAKING A STATEMENT AT ANY
2 TIME.

3 YOU MUST CAREFULLY CONSIDER ALL OF THE
4 SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN
5 ALLEGED STATEMENT. THE STATE HAS THE BURDEN OF PROVING
6 BEYOND A REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS
7 VOLUNTARY.

8 IF YOU DETERMINE THAT IT WAS YOU MAY GIVE THE
9 STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER.
10 YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE
11 ALLEGED STATEMENT.

12 IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT A
13 FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT YOU SHOULD
14 NOT CONSIDER THE STATEMENT AT ALL.

15 THE RULES OF EVIDENCE NORMALLY DO NOT PERMIT A
16 WITNESS TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN
17 EXCEPTION TO THIS RULE EXISTS FOR WHAT WE CALL EXPERT
18 WITNESSES. A WITNESS WHO BY EDUCATION AND EXPERIENCE HAS
19 BECOME EXPERT IN SOME ART, SCIENCE, PROFESSIONAL CALLING
20 MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTERS IN
21 WHICH THE WITNESS CLAIMS TO BE AN EXPERT AND MAY ALSO STATE
22 THE REASONS FOR THE OPINION.

23 YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED
24 IN EVIDENCE IN THIS CASE AND LIKE ANY OTHER EVIDENCE GIVE
25 IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT

CLOSING ARGUMENT BY MS. ELDER

385

1 THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT
2 EDUCATION AND EXPERIENCE OR YOU CONCLUDE THAT THE REASONS
3 GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND OR THAT THE
4 OPINION IS OUTWEIGHED BY OTHER EVIDENCE YOU MAY DISREGARD
5 THE OPINION COMPLETELY OR ENTIRELY.

6 AN EXPERT WITNESSES' TESTIMONY IS TO BE GIVEN NO
7 GREATER WEIGHT THAN THAT OF ANY OTHER WITNESS SIMPLY
8 BECAUSE THE WITNESS IS AN EXPERT.

9 FURTHER YOU ARE NOT REQUIRED TO ACCEPT AN
10 EXPERT'S OPINION EVEN THOUGH IT IS NOT CONTRADICTED.

11 I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THAT
12 THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE
13 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN
14 YOUR CONSIDERATION ON THE QUESTION OF GUILT OR THE
15 INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY
16 YOU IN ANY MANNER WHATSOEVER.

17 A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REMAIN
18 SILENT AND THE ASSERTION OF THIS RIGHT MUST NOT BE
19 CONSIDERED BY YOU IN YOUR DELIBERATIONS.

20 I REPEAT, UNDER YOUR OATH YOU ARE TO DRAW NO
21 CONCLUSIONS WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN
22 THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT
23 DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY
24 ROOM.

25 THE BURDEN OF PROOF AS I STATED TO YOU IS ON THE

CLOSING ARGUMENT BY MS. ELDER

386

1 STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS
2 INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO
3 PROVE GUILT BEYOND A REASONABLE DOUBT.

4 AN ISSUE IN THIS CASE IS THE IDENTIFICATION OF
5 THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME
6 CHARGED. THE STATE HAS THE BURDEN OF PROVING IDENTITY
7 BEYOND A REASONABLE DOUBT. YOU MUST BE SATISFIED BEYOND A
8 REASONABLE DOUBT OF THE ACCURACY OF THE IDENTIFICATION OF
9 THE DEFENDANT BEFORE YOU MAY CONVICT THE DEFENDANT.

10 IDENTIFICATION TESTIMONY IS AN EXPRESSION OF
11 BELIEF OR IMPRESSION BY A WITNESS. YOU MUST DETERMINE THE
12 ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT.

13 YOU MUST CONSIDER THE BELIEVABILITY OF EACH
14 IDENTIFICATION WITNESS IN THE SAME WAY AS ANY OTHER
15 WITNESS.

16 YOU MAY CONSIDER WHETHER THE WITNESSES HAVE HAD
17 ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER AT THE TIME OF
18 THE OFFENSE. THIS WILL BE AFFECTED BY THINGS LIKE HOW LONG
19 OR SHORT A TIME WAS AVAILABLE, HOW FAR OR CLOSE THE WITNESS
20 WAS, THE LIGHTING CONDITIONS, AND WHETHER THE WITNESS HAD A
21 CHANCE TO SEE OR KNOW THE PERSON IN THE PAST.

22 ONCE AGAIN I INSTRUCT YOU THE BURDEN OF PROOF ON
23 THE STATE EXTENDS TO EVERY ELEMENT OF THE CRIME CHARGED AND
24 THIS SPECIFICALLY INCLUDES THE BURDEN OF PROVING BEYOND A
25 REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT AS A PERSON

CLOSING ARGUMENT BY MS. ELDER

387

1 WHO COMMITTED THE CRIME.

2 IF AFTER EXAMINING THE TESTIMONY YOU HAVE A
3 REASONABLE DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION
4 YOU MUST FIND THE DEFENDANT NOT GUILTY.

5 THERE HAS BEEN EVIDENCE PRESENTED THAT WITNESSES
6 HAVE MADE PRIOR STATEMENTS WHICH ARE NOT CONSISTENT WITH
7 THE WITNESSES PRESENT TESTIMONY. YOU MAY USE THIS EVIDENCE
8 TO DECIDE WHETHER TO BELIEVE THE WITNESS. YOU MAY ALSO USE
9 EVIDENCE OF THE EARLIER CONTRADICTIONARY STATEMENT TO
10 DETERMINE THE TRUTH OF THOSE STATEMENTS. IT IS UP TO YOU
11 TO DECIDE WHETHER TO BELIEVE THE EARLIER STATEMENTS OR
12 TESTIMONY GIVEN AT THE TRIAL.

13 IF A WITNESS IS SHOWN TO HAVE KNOWINGLY TESTIFIED
14 UNTRUTHFULLY CONCERNING ANY MATERIAL MATTER YOU MAY
15 CONSIDER THIS IN DETERMINING WHETHER TO TRUST THE WITNESSES
16 TESTIMONY AS TO OTHER MATTERS.

17 YOU MAY REJECT ALL TESTIMONY OF THAT WITNESS OR
18 GIVE ALL OR PART OF THE TESTIMONY THE WEIGHT YOU THINK IT
19 DESERVES.

20 IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO
21 ARE ACTING TOGETHER IN COMMITTING A CRIME THE ACT OF ONE IS
22 THE ACT OF ALL.

23 A PERSON WHO JOINS WITH ANOTHER TO COMMIT AN
24 UNLAWFUL ACT IS CRIMINALLY RESPONSIBLE FOR EVERYTHING DONE
25 BY THE OTHER PERSON WHICH HAPPENS AS A PROBABLE OR NATURAL

CLOSING ARGUMENT BY MS. ELDER

388

1 CONSEQUENCE OF THE ACTS DONE IN CARRYING OUT THE COMMON
2 PLAN AND PURPOSE.

3 IF TWO OR MORE PEOPLE ARE TOGETHER ACTING
4 TOGETHER, ASSISTING EACH OTHER IN COMMITTING THE OFFENSE
5 THE ACT OF ONE IS THE ACT OF ALL OR AS IT IS SOMETIMES
6 SAID, THE HAND OF ONE IS THE HAND OF ALL.

7 PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE
8 COMMITTED WITHOUT MORE IS NOT SUFFICIENT TO MAKE A PERSON
9 GUILTY OF THAT CRIME.

10 MERE KNOWLEDGE THAT ANOTHER PERSON IS GOING TO
11 COMMIT A CRIME EVEN IF THE DEFENDANT IS PRESENT WHEN A
12 CRIME IS COMMITTED IS NOT SUFFICIENT TO CONVICT THE
13 DEFENDANT AS A PRINCIPAL GUILT AS A PRINCIPAL IS SHOWN BY
14 ACTUAL OR CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF
15 PRIOR ARRANGEMENT, THEREFORE, A FINDING OF A PRIOR ARRANGED
16 PLAN OR SCHEME IS NECESSARY FOR A FINDING OF GUILT AS A
17 PRINCIPAL.

18 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT BY
19 COMPETENT EVIDENCE THE THEORY OF THE HAND OF ONE IS THE
20 HAND OF ALL.

21 A PRINCIPAL IN A CRIME IS ONE WHO EITHER ACTUALLY
22 COMMITS A CRIME OR WHO IS PRESENT AIDING, ABETTING, OR
23 ASSISTING IN COMMITTING THE CRIME.

24 WHEN A PERSON DOES AN ACT IN THE PRESENCE OF AND
25 WITH THE ASSISTANCE OF ANOTHER THE ACT IS DONE BY BOTH.

CLOSING ARGUMENT BY MS. ELDER

389

1 WHERE TWO OR MORE ACTING WITH A COMMON PLAN OR
2 INTENT ARE PRESENT AT THE COMMISSION OF A CRIME IT DOES NOT
3 MATTER WHO ACTUALLY COMMITS THE CRIME, ALL ARE GUILTY, THE
4 HAND OF ONE IS THE HAND OF ALL.

5 PRESENT AT THE COMMISSION, PRESENT AT THE
6 COMMISSION OF A CRIME MEANS TO BE SUFFICIENTLY NEAR TO AID
7 AND ABET AND ASSIST IN THE COMMISSION OF THE CRIME, HOWEVER
8 MERE PRESENCE AT THE SCENE OF A CRIME IS NOT SUFFICIENT TO
9 CONVICT ONE AS A PRINCIPAL ON THE THEORY OF AIDING AND
10 ABETTING.

11 INTENT IS ALSO A NECESSARY ELEMENT FOR THERE MUST
12 HAVE BEEN A COMMON DESIGN OR INTENT TO COMMIT THE CRIME AND
13 THE CRIME MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH A
14 PERSON AIDING AND ABETTING BY SOME OVERT ACT.

15 INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY
16 OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILY.

17 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
18 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
19 NATURALLY AND REASONABLY INFER INTENT.

20 THE STATE MUST PROVE THESE ELEMENTS BEYOND A
21 REASONABLE DOUBT.

22 MERE PRESENCE AT THE SCENE IS NOT SUFFICIENT TO
23 PROVE SOMEONE GUILTY OF A CRIME. A DEFENDANT'S PRESENCE
24 WHERE A CRIME IS BEING COMMITTED OR MERE ASSOCIATION WITH A
25 PERSON WHO COMMITS A CRIME DOES NOT MAKE A DEFENDANT AN

CLOSING ARGUMENT BY MS. ELDER

390

1 ACCOMPLICE OR AN AIDER AND ABETTOR OF A PERSON COMMITTING
2 THE CRIME. THE BURDEN IS ON THE STATE TO PROVE EVERY
3 ELEMENT OF THE CRIME CHARGED.

4 IF YOU FIND AFTER REVIEWING ALL THE EVIDENCE THAT
5 THE STATE HAS PROVED THAT THE DEFENDANT WAS ONLY PRESENT AT
6 THE SCENE OF A CRIME AND THAT THEY HAVE NOT PROVED BEYOND A
7 REASONABLE DOUBT ANY OTHER PETITION -- PARTICIPATION OF THE
8 CRIME THEN YOU MUST FIND THE DEFENDANT NOT GUILTY.

9 THE LAW IS THAT PROOF OF PRESENCE AT THE SCENE OF
10 A CRIME IS NOT SUFFICIENT TO FIND SOMEONE GUILTY.

11 THE DEFENDANT IS CHARGED WITH MURDER. THE STATE
12 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
13 KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

14 MALICE IS HATRED, ILL WILL OR HOSTILITY TOWARDS
15 ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL
16 ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO
17 INFLECT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL
18 INFER AN EVIL INTENT.

19 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE
20 EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED
21 BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST
22 BEFORE AND AT THE TIME THE ACT IS COMMITTED, THEREFORE,
23 THIS MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND
24 THE ACT.

25 MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED.

CLOSING ARGUMENT BY MS. ELDER

391

1 THESE TERMS EXPRESSED AND INFERRED DO NOT MEAN DIFFERENT
2 KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY
3 BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY
4 INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE
5 PROVED.

6 EXPRESSED MALICE IS SHOWN WHEN A PERSON SPEAKS
7 WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN
8 THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS
9 LATER ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR A
10 PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT
11 THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESSED
12 MALICE.

13 MALICE MAY BE INFERRED FROM THE CONDUCT SHOWING A
14 TOTAL DISREGARD, OR FROM CONDUCT, SHOWING A TOTAL DISREGARD
15 FOR HUMAN LIFE.

16 THE DEFENDANT IS ALSO CHARGED WITH POSSESSION OF
17 A WEAPON DURING THE COMMISSION OF OR ATTEMPT TO COMMIT A
18 VIOLENT CRIME. THE STATE MUST PROVE BEYOND A REASONABLE
19 DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A FIREARM OR
20 VISIBLY DISPLAYED WHAT APPEARED TO BE A FIREARM DURING THE
21 COMMISSION OF A VIOLENT CRIME.

22 A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE,
23 REVOLVER, PISTOL, OR ANY WEAPON WHICH WILL OR IS DESIGNED
24 TO OR MAY BE READILY CONVERTED TO EXPEL A PROJECTILE.

25 IN ORDER TO FIND THE DEFENDANT GUILTY OF

CLOSING ARGUMENT BY MS. ELDER

392

1 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
2 CRIME YOU MUST FIRST FIND THE DEFENDANT GUILTY OF EITHER
3 COMMITTING A VIOLENT CRIME OR ATTEMPTING TO COMMIT A
4 VIOLENT CRIME. THE MURDER IS A VIOLENT CRIME.

5 NOW, THERE ARE TWO FORMS OF VERDICT WHICH YOU MAY
6 FIND ON EACH INDICTMENT IN THIS CASE, THAT IS EITHER GUILTY
7 OR NOT GUILTY. THERE IS NO SIGNIFICANCE WHATSOEVER IN THE
8 ORDER WHICH I STATE THESE POSSIBLE VERDICTS. IT'S SIMPLY
9 THAT ONE MUST BE STATED FIRST.

10 NOW YOUR VERDICT, LADIES AND GENTLEMEN OF THE
11 JURY, MUST BE A UNANIMOUS VERDICT AND WHEN THE VERDICT, OR
12 THE JURY AGREES ON THAT VERDICT YOU WILL WRITE THE VERDICT
13 ON THE VERDICT FORMS AND I HAVE PREPARED THE VERDICT FORMS
14 FOR YOU.

15 MADAM COURT REPORTER, DID I GIVE THEM TO YOU?

16 MADAM COURT REPORTER: NO, SIR.

17 THE COURT: I HAVE THEM RIGHT HERE. I HAVE A
18 VERDICT FORM FOR THE OFFENSE OF MURDER AND YOU WILL SEE
19 IT'S VERY SIMPLE, AS TO THE CHARGE OF MURDER WE THE JURY
20 UNANIMOUSLY FIND THE DEFENDANT, AND YOU CIRCLE ONE, EITHER
21 GUILTY OR NOT GUILTY AND THE FOREMAN WILL SIGN IT.

22 THE SECOND VERDICT FORM IS FOR THE OFFENSE OF
23 POSSESSION OF A FIREARM OR A WEAPON DURING THE COMMISSION
24 OF A VIOLENT CRIME. I HAVE PUT AN INSTRUCTION AT THE TOP
25 THAT SAYS THAT IF AND ONLY IF YOU FIND THE DEFENDANT GUILTY

CLOSING ARGUMENT BY MS. ELDER

393

1 OF THE OFFENSE OF MURDER MAY YOU CONSIDER THIS CHARGE. IF
2 YOU HAVE NOT FOUND THE DEFENDANT GUILTY OF MURDER THEN YOU
3 WOULD AGAIN CIRCLE NOT GUILTY BUT IF YOU HAVE FOUND HIM
4 GUILTY OF MURDER THEN YOU MAY CONSIDER THIS OTHER CHARGE.
5 I HOPE THAT'S CLEAR TO YOU.

6 NOW LET ME TELL YOU WHAT WE'RE GOING TO DO, I AM
7 GOING TO HAVE MR. ROPP TAKE YOU INTO YOUR JURY ROOM. IT
8 MAY BE TIME FOR YOU TO BEGIN YOUR DELIBERATIONS OR IT MAY
9 NOT. I'M GOING TO ASK THE ATTORNEYS IF THEY HAVE ANY
10 ADDITIONS OR DELETIONS OR OBJECTIONS TO THE CHARGE THAT I
11 HAVE GIVEN TO YOU. I WOULD ASK YOU NOT TO BEGIN YOUR
12 DELIBERATIONS UNTIL ONE OF TWO THINGS HAS HAPPENED.

13 IF I BRING YOU BACK IN I WILL CHARGE YOU FURTHER
14 AND THEN TELL YOU TO BEGIN YOUR DELIBERATIONS. IF THERE
15 ARE NO OBJECTIONS TO MY CHARGE I WILL SIGNAL TO YOU THAT
16 YOU ARE TO BEGIN YOUR DELIBERATIONS BY HAVING THE EXHIBITS
17 DELIVERED TO YOU; IS THAT CLEAR? IF I DELIVER THE EXHIBITS
18 OR HAVE MR. ROPP DELIVER THE EXHIBITS THAT MEANS BEGIN YOUR
19 DELIBERATIONS AND THERE'S NOT GOING TO BE ANY NECESSITY OF
20 FURTHER CHARGING. I WILL ALSO SEND IN A COPY OF MY CHARGE
21 TO YOU JUST AS I READ IT TO YOU AND YOU'LL HAVE THAT
22 AVAILABLE FOR YOU.

23 IT IS 1:00. WHAT I INTEND TO DO IS THIS, I
24 INTEND TO HAVE MR. ROPP PROVIDE LUNCH FOR YOU. IF YOU WANT
25 TO TAKE A BREAK AND EAT LUNCH THAT'S FINE. AS SOON AS IT

CLOSING ARGUMENT BY MS. ELDER

394

1 ARRIVES I WOULD ASSUME THAT YOU WANT TO GO RIGHT INTO YOUR
2 DELIBERATIONS AND BEGIN THE DELIBERATIONS. LET ME ADVISE
3 YOU OF THIS, IF AT ANY TIME DURING YOUR DELIBERATION
4 PROCESS ONE OF YOU HAS TO LEAVE THE ROOM FOR A RESTROOM
5 BREAK OR YOU HAVE AN EMERGENCY PHONE CALL OR ANYTHING OF
6 THAT NATURE I WOULD ASK THE REST OF YOU TO CEASE YOUR
7 DELIBERATIONS BECAUSE EVERYBODY'S OPINION IS VERY IMPORTANT
8 TO THIS CASE AND YOU ALL NEED TO BE THERE DURING ALL THE
9 DELIBERATION PROCESS.

10 NOW I'M GOING TO ASK MR. ROPP TO SEPARATE THE TWO
11 ALTERNATES AT THIS TIME. MR. ROPP, ONCE WE BEGIN THE
12 DELIBERATIONS YOU MAY BRING THE ALTERNATES BACK IN AND I
13 WILL DISCHARGE THEM, THEY WILL NOT BE REQUIRED. BUT AT
14 THIS POINT IN TIME PLEASE SEPARATE THEM, OKAY.

15 MR. ROPP, IF YOU WOULD TAKE THE JURY TO YOUR JURY
16 ROOM.

17 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
18 1:01 P.M.)

19 THE COURT: MR. GALMORE, DURING THE COURSE OF MY
20 CHARGE I NOTED THAT ON PAGE THREE WHERE I WAS DISCUSSING
21 THE INDICTMENTS MY PREPARED CHARGES STATED THAT THE
22 INDICTMENTS CHARGE THE DEFENDANT WITH MURDER, ARMED
23 ROBBERY, AND POSSESSION OF A WEAPON DURING THE COMMISSION
24 OF A VIOLENT CRIME. I CAUGHT THAT AS I WAS READING IT AND
25 I DID NOT READ THAT ARMED ROBBERY WAS INVOLVED. I'M GOING

CLOSING ARGUMENT BY MS. ELDER

395

1 TO HAVE CLARE REPRINT PAGE THERE TO EXCLUDE THAT SO THAT
2 THERE'S NO CONFUSION FOR THE JURY WHATSOEVER, OKAY? AND
3 I'LL BE SENDING THAT BUT IT'S GOING TO BE A LITTLE
4 DIFFERENT FROM THE ONE THAT I ACTUALLY GAVE YOU ON
5 YESTERDAY.

6 ALL RIGHT, NOW, MS. ELDER, ARE THERE ANY
7 ADDITIONS OR OBJECTIONS TO THE CHARGE?

8 MS. ELDER: NO, YOUR HONOR, THAT WAS THE ONLY
9 ONE THAT I NOTED YOU DID NOT SAY ARMED ROBBERY AND IT IS ON
10 YOUR WRITTEN IF YOU'RE GOING TO TAKE CARE OF THAT AND THE
11 ONE THAT WE HAD ALREADY TAKEN CARE OF ON PAGE 22 THAT
12 EXAMPLE I BELIEVE YOU REPLACED THAT AS WELL.

13 THE COURT: WE ALREADY, THAT HAS BEEN TAKEN,
14 I'VE ALREADY DELETED THAT.

15 MS. ELDER: THAT WOULD BE THE ONLY THING, YOUR
16 HONOR.

17 THE COURT: ALL RIGHT, MR. GALMORE, ANYTHING?

18 MR. GALMORE: NO, SIR.

19 THE COURT: ALL RIGHT, ALL RIGHT, I'VE CLEANED
20 THIS UP BY TAKING THAT OUT AND I WILL SUBMIT IT TO THE
21 JURY.

22 MS. ELDER AND MR. GALMORE, I WANT YOU TO GET
23 TOGETHER AND MAKE SURE WE'VE GOT ALL THE EXHIBITS TOGETHER.
24 RAYMOND, COULD YOU MAKE SURE AND FIND OUT WHERE THEY'RE
25 GOING TO HAVE LUNCH AND LET'S GET SOME LUNCH ORDERED FOR

CLOSING ARGUMENT BY MS. ELDER

396

1 THEM, OKAY.

2 DEPUTY: YES, SIR.

3 THE COURT: OKAY, THE COURT'S AT EASE.

4 MR. GALMORE, MS. ELDER, DO YOU HAVE ANY PROBLEMS
5 WITH HEATHER GOING BACK AND ASK THEM WHERE THEY'D LIKE US
6 TO ORDER LUNCH?

7 MR. GALMORE: NO, SIR.

8 MS. ELDER: NO, SIR.

9 (WHEREUPON, COURT'S EXHIBIT NUMBER 2 MARKED FOR
10 IDENTIFICATION.)

11 (WHEREUPON, THE VERDICT FORMS, CHARGE, AND
12 EXHIBITS WERE DELIVERED TO THE JURY ROOM WITH INSTRUCTIONS
13 TO BEGIN DELIBERATIONS AT 1:09 P.M.)

14 (WHEREUPON, THE ALTERNATES ENTERED THE COURTROOM
15 AT 1:11 P.M.)

16 THE COURT: MR. BLANTON AND MS. SAUNDERS, I HOPE
17 THAT THIS WAS AN EDUCATIONAL EXPERIENCE FOR YOU BUT NOW
18 THAT THE DELIBERATION PROCESS HAS BEGUN YOUR DUTIES HAVE
19 BEEN FULFILLED. AGAIN I WANT TO THANK YOU FOR COMING.
20 YOU'RE WELCOME TO STAY AROUND TO SEE WHAT HAPPENS BUT YOU
21 ARE RELEASED FROM JURY DUTY, THANK YOU AGAIN FOR BEING
22 HERE.

23 (WHEREUPON, THE ALTERNATES WERE EXCUSED AT 1:12
24 P.M.)

25 (WHEREUPON, THE JURY KNOCKED WITH A QUESTION AT

ALLEN CHARGE

397

1 3:04 P.M.)

2 THE COURT: MR. GALMORE, I HAVE A NOTE FROM THE
3 FOREMAN. THE FOREMAN INDICATES THAT WE WOULD LIKE TO
4 REVIEW MR. BROWN'S TESTIMONY.

5 MR. GALMORE: YES, SIR.

6 MS. ELDER: YES, SIR, YOUR HONOR.

7 THE COURT: ALL RIGHT, MS. BABB IS TRYING TO
8 LOCATE IT. MS. BABB, YOU CAN MARK THIS FOR THE RECORD,
9 PLEASE.

10 (WHEREUPON, COURT'S EXHIBIT NUMBER 3 MARKED FOR
11 IDENTIFICATION.)

12 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
13 3:11 P.M. AND THE FOLLOWING TAKES PLACE ON THE RECORD.)

14 THE COURT: MR. FOREMAN, IT'S MY UNDERSTANDING
15 THAT YOUR JURY WOULD LIKE TO HEAR MR. VERNON BROWN'S
16 TESTIMONY.

17 MR. FOREMAN: THAT IS CORRECT, SIR.

18 THE COURT: ALL RIGHT, AND WE HAVE THAT
19 TESTIMONY LOCATED FOR YOU, WE WILL BEGIN PLAYING IT IN JUST
20 A MOMENT. IF AT ANY TIME WE REACH A POINT THAT WE HAVE
21 PASSED WHAT YOU WANT TO HEAR IF YOU'LL INDICATE THAT WE'LL
22 STOP OR BE GLAD TO PLAY IT ALL FOR YOU, OKAY.

23 MR. FOREMAN: I THINK WE'LL PLAY IT ALL.

24 THE COURT: ALL RIGHT, MS. BABB.

25 (WHEREUPON, THE TESTIMONY OF VERNON BROWN WAS

ALLEN CHARGE

398

1 PLAYED IN OPEN COURT.)

2 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I
3 BELIEVE THAT WAS THE TESTIMONY YOU WERE REQUESTING, IS THAT
4 CORRECT, MR. SWAIM?

5 MR. FOREMAN: YES, SIR.

6 THE COURT: ALL RIGHT, IF YOU NEED ANYTHING ELSE
7 JUST LET ME KNOW, ALL RIGHT. MR. ROPP, TAKE THEM TO THE
8 JURY ROOM.

9 (WHEREUPON, AT 3:20 P.M. THE JURY RETIRED TO THE
10 JURY ROOM TO RESUME THEIR DELIBERATIONS.)

11 THE COURT: THE COURT'S AT EASE UNTIL WE HAVE
12 ANOTHER QUESTION OR THE VERDICT IS REACHED.

13 (WHEREUPON, THE JURY KNOCKED WITH A NOTE AT 4:33
14 P.M.)

15 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
16 4:42 P.M.)

17 THE COURT: EVERYBODY IS IN, I BELIEVE. WE JUST
18 HAVE ONE OF THE JURORS SITTING BACK WHERE THE ALTERNATE WAS
19 AND THAT'S PERFECTLY ALL RIGHT. IT'S ALL RIGHT FOR YOU TO
20 BE THERE.

21 MR. FOREMAN, IT'S MY UNDERSTANDING THAT YOU ARE
22 DEADLOCKED AT THIS TIME.

23 MR. FOREMAN: THAT IS CORRECT, SIR.

24 ALLEN CHARGE

25 THE COURT: I AM GOING TO GIVE YOU ONE

ALLEN CHARGE

399

1 ADDITIONAL CHARGE THAT MAY HELP YOU AND IT HAS TO DO WITH
2 TRYING TO REACH A VERDICT BECAUSE HOPEFULLY YOU CAN MAKE
3 ANOTHER EFFORT TO REACH A VERDICT IN THIS CASE. I HAVE
4 SOME VERY BRIEF COMMENTS THAT I'D LIKE TO MAKE BY WAY OF
5 FURTHER INSTRUCTION ON THIS MATTER OF YOU BEING ABLE TO
6 REACH A VERDICT.

7 AS I'VE ALREADY TOLD YOU YOU ARE THE SOLE JUDGES
8 OF THE FACTS AND THE EVIDENCE IN THIS CASE. NOW AS THE
9 JUDGE I HAVE ALREADY TOLD YOU I AM NOT PERMITTED TO EVEN
10 GIVE YOU A HINT AS TO HOW I FEEL ABOUT ANY FACTUAL MATTER
11 AND CERTAINLY COULD GIVE YOU NO HINT ABOUT WHAT VERDICT YOU
12 OUGHT TO BRING IN IN THIS CASE. IT'S MY DUTY TO STATE THE
13 LAW OF THE CASE AS I HAVE DONE AND IT'S YOUR DUTY TO BRING
14 IN A VERDICT NOW, BUT I CAN SAY THIS, THAT WHEN A MATTER IS
15 IN DISPUTE IT IS NOT ALWAYS EASY FOR EVEN TWO PEOPLE TO
16 AGREE AND WHEN 12 MUST AGREE IT BECOMES OBVIOUSLY
17 CORRESPONDINGLY MORE DIFFICULT BUT IT IS IMPORTANT THAT
18 LITIGATION END AND THIS IS LITIGATION.

19 IT'S IMPORTANT THAT LITIGATION END IF IT MAY BE
20 ENDED WITHOUT A SINGLE ONE OF YOU DOING VIOLENCE TO HIS OR
21 HER OWN CONSCIENCE. NO JUROR IS EXPECTED TO GIVE UP AN
22 OPINION BASED ON REASONING SATISFACTORY TO HIMSELF MERELY
23 FOR THE PURPOSE OF BEING IN AGREEMENT AND I WANT YOU TO
24 UNDERSTAND THAT.

25 YOU ARE NOT CALLED UPON OFTEN TO TRY CASES AND

ALLEN CHARGE

400

1 THERE ARE ABOUT 50 JUDGES IN THIS STATE WHOSE WORK IT IS TO
2 TRY CASES FROM DAY TO DAY THROUGHOUT THE YEAR AND IT'S VERY
3 UNUSUAL, ALMOST UNHEARD OF, FOR A JURY TO GO OUT AND
4 IMMEDIATELY COME BACK AND BRING A VERDICT AND THIS IS WHAT
5 WOULD HAPPEN IF THE JURY WAS IN AGREEMENT TO BEGIN WITH.

6 AT THE SAME TIME WE USUALLY DO GET A VERDICT.
7 WHAT THIS MEANS IS THAT IT IS NORMAL FOR JURORS TO DISAGREE
8 AT FIRST BUT THE FACT THAT WE NORMALLY GET A JURY ALSO
9 MEANS THAT AFTER REASONABLE PERSONS LAY ASIDE ALL
10 EXTRANEOUS MATTERS AND DETERMINE TO DECIDE A CASE ON THE
11 BASIS OF THE LAW AND THE EVIDENCE THEY DO COME TO A COMMON
12 UNDERSTANDING AND WRITE A VERDICT.

13 IT'S NEVER BEEN INTENDED THAT THE VERDICT OF A
14 JURY SHOULD BE THE VERDICT OF ANY ONE PERSON. ON THE OTHER
15 HAND THE VERDICT OF THE JURY IS THE COLLECTIVE REASONING OF
16 ALL PERSONS PUT TOGETHER AND THAT IS WHY WE HAVE A JURY SO
17 THAT WE MAY HAVE THE BENEFIT OF COLLECTIVE THOUGHT,
18 COLLECTIVE REASONING.

19 IT BECOMES YOUR DUTY TO TELL THE OTHER JURORS HOW
20 YOU FEEL ABOUT THE CASE AND WHY YOU THINK AS YOU DO AND I'M
21 SURE THAT YOU HAVE BEEN DOING JUST THAT. ON THE OTHER HAND
22 IT BECOMES THE OTHER JURORS DUTY TO EXCHANGE VIEWS WITH YOU
23 AND YOU SHOULD LISTEN TO EACH OTHER AND GIVE TO THE OTHERS
24 THOUGHT SUCH MEANING AS YOU THINK IT SHOULD HAVE AND SO TO
25 SOME DEGREE IT CAN BE SAID THAT JURY SERVICE IS A MATTER OF

ALLEN CHARGE

401

1 GIVE AND TAKE.

2 IF YOU DO NOT AGREE ON A VERDICT IN THIS CASE IT
3 JUST MEANS THAT AT SOME TIME AT SOME FUTURE TERM OF COURT
4 BEFORE SOME OTHER JUDGE, PERHAPS, AND SOME OTHER JURY THE
5 SAME PARTICIPANTS WILL COME AND THE SAME LAWYERS WILL
6 PROBABLY COME AND THEY WILL ASK BASICALLY THE SAME
7 QUESTIONS AND WE'LL GO THROUGH THE WHOLE PROCESS AGAIN AND
8 I HAVE NO REASON TO THINK THAT ANY OTHER 12 CITIZENS OF
9 HORRY COUNTY WILL BE MORE CAPABLE OF SOLVING THIS
10 CONTROVERSY THAN YOU. SO I'M GOING TO ASK YOU ONE MORE
11 TIME TO DELIBERATE FURTHER AND SEE IF YOU CANNOT WRITE A
12 VERDICT IN THIS CASE AND I WANT TO CLOSE THIS CHARGE BY
13 REMINDING YOU AGAIN THAT WHILE IT IS IMPORTANT THAT
14 LITIGATION BE ENDED IT SHOULD BE ENDED IN THE FORM OF A
15 VERDICT BY NO JURORS DOING VIOLENCE TO HIS OR HER OWN
16 CONSCIENCE. NO JUROR IS EXPECTED TO GIVE UP AN OPINION
17 BASED ON REASONING SATISFACTORY TO HIMSELF OR HERSELF
18 MERELY FOR THE SAKE OF BEING IN AGREEMENT.

19 WITH THAT ADDED I'M GOING TO ASK YOU TO RETIRE
20 AND CONTINUE YOUR DELIBERATIONS, OKAY. THANK YOU.

21 (WHEREUPON, AT 4:46 P.M. THE JURY AGAIN RETIRED
22 TO THE JURY ROOM AND RESUMED THEIR DELIBERATIONS.)

23 THE COURT: IS THERE ANY OBJECTION TO MY ALLEN
24 CHARGE FROM THE STATE?

25 MS. ELDER: NO, SIR, YOUR HONOR.

VERDICT

402

1 THE COURT: FROM THE DEFENSE?

2 MR. GALMORE: FOR THE RECORD I WOULD OBJECT TO
3 THE ALLEN CHARGE, I'D ASK THE COURT TO GO AHEAD AND DECLARE
4 A MISTRIAL. THEY HAVE INDICATED THAT THEY ARE DEADLOCKED.

5 THE COURT: ALL RIGHT, THANK YOU, SIR. I WOULD
6 RESPECTFULLY DECLINE YOUR MOTION. ALL RIGHT, THE COURT'S
7 AT EASE.

8 (WHEREUPON, THE JURY KNOCKED WITH A VERDICT AT
9 5:05 P.M.)

10 THE COURT: IF YOU WOULD SECURE THE COURT.
11 LADIES AND GENTLEMEN, I HAVE BEEN INFORMED THAT THIS JURY
12 HAS REACHED A VERDICT AND LET ME SAY THAT THIS JURY HAS
13 WORKED VERY HARD TO REACH THIS VERDICT. THEIR JOB HAS BEEN
14 VERY DIFFICULT AS IT ALWAYS IS IN A CASE OF THIS MAGNITUDE.
15 I AM GOING TO ASK YOU ALL TO REFRAIN FROM ANY DISPLAYS OF
16 PLEASURE OR DISPLEASURE. ANY OUTBURSTS WHATSOEVER WILL NOT
17 BE TOLERATED, I CANNOT TOLERATE IT. I DO NOT WANT ANY
18 DISPLAYS IN THE PRESENCE OF THIS JURY. AS I SAID THEY HAVE
19 DONE THEIR JOB. THEY HAVE DONE WHAT WE HAVE ASKED.
20 REGARDLESS OF WHAT THE VERDICT IS WE WILL ACCEPT THAT
21 VERDICT AND THIS COURT WILL ACCEPT THAT VERDICT. IT'S A
22 TRUE VERDICT AND WE WILL PROCEED FROM THAT.

23 SHERIFF, COULD YOU INFORM MY BAILIFF THAT I'D
24 LIKE TO HAVE THE JURY.

25 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT

VERDICT

403

1 5:12 P.M. TO DELIVER ITS VERDICT AS TO DEFENDANT KEION
2 GRIFFIN.)

3 THE COURT: THANK YOU, LADIES AND GENTLEMEN, MR.
4 SWAIM, I AM INFORMED THAT YOU HAVE REACHED A VERDICT.

5 MR. FOREMAN: THAT IS CORRECT, YOUR HONOR.

6 THE COURT: AND HAVE YOU REACHED A VERDICT AS TO
7 BOTH COUNTS?

8 MR. FOREMAN: YES, SIR.

9 THE COURT: AND IT IS, IS IT A UNANIMOUS
10 VERDICT?

11 MR. FOREMAN: IT IS UNANIMOUS.

12 THE COURT: ALL RIGHT, IF YOU WOULD, MADAM
13 CLERK, RECEIVE THE VERDICT.

14 YOU MAY PUBLISH THE VERDICT.

15 MADAM CLERK: THE STATE OF SOUTH CAROLINA V.
16 KEION MONTRELL GRIFFIN, INDICTMENT 2008-GS-26-2552 AS TO
17 THE CHARGE OF MURDER WE THE JURY UNANIMOUSLY FIND THE
18 DEFENDANT GUILTY, JAMES R. SWAIM, FOREPERSON.

19 THE STATE OF SOUTH CAROLINA V. KEION MONTRELL
20 GRIFFIN, INDICTMENT 2009-GS-26-2553 AS TO THE CHARGE OF
21 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
22 CRIME WE THE JURY UNANIMOUSLY FIND THE DEFENDANT GUILTY,
23 JAMES R. SWAIM, FOREPERSON.

24 LADIES AND GENTLEMEN OF THE JURY, IF THESE ARE
25 YOUR VERDICTS SO SIGNIFY BY RAISING YOUR RIGHT HAND.

POLLING OF JURY

404

1 THE COURT: LET THE RECORD REFLECT THAT EACH
2 JUROR RAISED HIS RIGHT HAND. ANY REQUESTS FOR INDIVIDUAL
3 POLLING, MR. GALMORE?

4 MR. GALMORE: YES, SIR, YOUR HONOR.

5 THE COURT: ALL RIGHT, POLL THE JURY
6 INDIVIDUALLY.

7 MADAM CLERK: WHEN I CALL YOUR NAME PLEASE
8 STAND, I WILL ASK YOU TWO QUESTIONS AND THEN YOU MAY BE
9 SEATED.

10 361, JAMES SWAIM, FOREPERSON, IS THIS YOUR
11 VERDICT?

12 JURY PANEL MEMBER: IT IS.

13 MADAM CLERK: IS THIS STILL YOUR VERDICT?

14 JURY PANEL MEMBER: IT IS.

15 MADAM CLERK: THANK YOU.

16 186, TIMOTHY ICARD, IS THIS YOUR VERDICT?

17 JURY PANEL MEMBER: YES.

18 MADAM CLERK: IS THIS STILL YOUR VERDICT?

19 JURY PANEL MEMBER: YES.

20 MADAM CLERK: THANK YOU.

21 238, JOHN W. MCCALL, IS THIS YOUR VERDICT?

22 JURY PANEL MEMBER: YEAH.

23 MADAM CLERK: IS THIS STILL YOUR VERDICT?

24 JURY PANEL MEMBER: YES.

25 MADAM CLERK: THANK YOU.

POLLING OF JURY

405

1 171, CHERIE HOPKINS, IS THIS YOUR VERDICT?
2 JURY PANEL MEMBER: YES.
3 MADAM CLERK: IS THIS STILL YOUR VERDICT?
4 JURY PANEL MEMBER: YES.
5 MADAM CLERK: THANK YOU.
6 109, LOUIS FACCIUOLO, IS THIS YOUR VERDICT?
7 JURY PANEL MEMBER: YES.
8 MADAM CLERK: IS THIS STILL YOUR VERDICT?
9 JURY PANEL MEMBER: YES.
10 MADAM CLERK: THANK YOU.
11 45, ROY BROWN, IS THIS YOUR VERDICT?
12 JURY PANEL MEMBER: YES.
13 MADAM CLERK: IS THIS STILL YOUR VERDICT?
14 JURY PANEL MEMBER: YES.
15 MADAM CLERK: THANK YOU.
16 157, GARY HARRELSON, IS THIS YOUR VERDICT?
17 JURY PANEL MEMBER: YES.
18 MADAM CLERK: IS THIS STILL YOUR VERDICT?
19 JURY PANEL MEMBER: YES.
20 MADAM CLERK: THANK YOU.
21 188, LAURA IRVIN, IS THIS YOUR VERDICT?
22 JURY PANEL MEMBER: YES.
23 MADAM CLERK: IS THIS STILL YOUR VERDICT?
24 JURY PANEL MEMBER: YES.
25 MADAM CLERK: THANK YOU.

POLLING OF JURY

406

1 67, STEVEN CHENAULT, IS THIS YOUR VERDICT?
2 JURY PANEL MEMBER: YES.
3 MADAM CLERK: IS THIS STILL YOUR VERDICT?
4 JURY PANEL MEMBER: YES.
5 MADAM CLERK: THANK YOU.
6 153, ANTHONY HARDEE, IS THIS YOUR VERDICT?
7 JURY PANEL MEMBER: YES.
8 MADAM CLERK: IS THIS STILL YOUR VERDICT?
9 JURY PANEL MEMBER: YES.
10 MADAM CLERK: THANK YOU.
11 151, KENNETH GUNTER, IS THIS YOUR VERDICT?
12 JURY PANEL MEMBER: YES, IT IS.
13 MADAM CLERK: IS THIS STILL YOUR VERDICT?
14 JURY PANEL MEMBER: YES.
15 MADAM CLERK: THANK YOU.
16 297, JOHN PRUETT, IS THIS YOUR VERDICT?
17 JURY PANEL MEMBER: YES.
18 MADAM CLERK: IS THIS STILL YOUR VERDICT?
19 JURY PANEL MEMBER: YES.
20 MADAM CLERK: THANK YOU.
21 THE COURT: LADIES AND GENTLEMEN, YOU HAVE BEEN
22 GIVEN A DIFFICULT TASK AND YOU HAVE RESPONDED WELL. YOU
23 HAVE DONE WHAT WE HAVE ASKED OF YOU. YOU HAVE DELIBERATED.
24 YOU HAVE LISTENED ATTENTIVELY DURING THIS TRIAL AND THE
25 STATE OF SOUTH CAROLINA AND THE PEOPLE OF SOUTH CAROLINA

DEFENSE MOTION FOR ARREST OF JUDGMENT

407

1 THANK YOU FOR YOUR SERVICE.

2 IF YOU WOULD WISH TO RETIRE FROM THE COURTROOM
3 BEFORE SENTENCING YOU ARE FREE TO DO SO, I WILL EXCUSE YOU,
4 IF NOT YOU ARE FREE TO STAY. AGAIN THANK YOU FOR YOUR
5 SERVICE, YOU CAN BE PROUD OF THE SERVICE THAT YOU
6 PERFORMED. I BELIEVE YOU'VE DONE IT DILIGENTLY, THANK YOU.

7 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
8 AT 5:18 P.M.)

9 THE COURT: IF SOME OF YOU WOULD LIKE TO LEAVE
10 IF SO I'LL ALLOW IT.

11 IS THERE REASON WHY SENTENCE SHOULD NOT BE
12 IMPOSED AT THIS TIME?

13 MS. ELDER: NONE FROM THE STATE, YOUR HONOR.

14 MR. GALMORE: WE DO HAVE A MOTION, YOUR HONOR.

15 THE COURT: ALL RIGHT, VERY WELL, I'M SORRY, I
16 NEGLECTED TO RECEIVE YOUR MOTION.

17 MR. GALMORE: YES, SIR, I WOULD AGAIN MOVE FOR A
18 MISTRIAL ON THIS CASE ESPECIALLY GIVEN THE ALLEN CHARGE.
19 I BELIEVE THAT SINCE THE ALLEN CHARGE WAS GIVEN IT TOOK
20 APPROXIMATELY 15 MINUTES FOR THE JURY TO COME BACK WITH A
21 VERDICT AND I THINK THAT THE ALLEN CHARGE IN THIS CASE HAS
22 BASED AN UNWARRANTED AND UNDUE BURDEN ON WHATEVER JUROR OR
23 JURORS HAD FELT THAT, FELT THAT THE STATE HAD NOT MET ITS
24 BURDEN.

25 BECAUSE I FEEL THAT THE VERDICT THAT THE JURY

DEFENSE MOTION FOR ARREST OF JUDGMENT

408

1 REACHED WAS A REQUISITE OF THE ALLEN CHARGE JUST GIVEN THAT
2 IT WAS SUCH A SHORT LENGTH OF TIME BETWEEN THE CHARGE AND,
3 AND THE JURY RETURNING WITH THEIR VERDICT AND FOR THAT
4 REASON I WOULD ASK THE COURT TO CONSIDER THE MISTRIAL THAT
5 WE HAD PREVIOUSLY REQUESTED.

6 THE COURT: I UNDERSTAND YOUR MOTION AND I WOULD
7 RESPECTFULLY DENY IT.

8 MR. GALMORE: I WOULD ALSO MAKE A MOTION, YOUR
9 HONOR, FOR AN ORDER AND ARREST OF JUDGMENT AND A MOTION FOR
10 A NEW TRIAL JUST BASED ON THE INSUFFICIENCY OF THE EVIDENCE
11 AND BASED ON THE INSUFFICIENCY OF THE INDICTMENTS. IT
12 APPEARS TO ME, YOUR HONOR, THAT THE STATE SORT OF SWITCHED
13 THEORIES IN THE CASE AND, YOU KNOW, THEY WENT WITH MR.
14 GRIFFIN WAS THE SHOOTER AND SUDDENLY IT BECAME MAYBE HE'S
15 NOT THE SHOOTER BUT IT DOESN'T REALLY MATTER, HE'S
16 PARTICIPATING.

17 YOUR HONOR, I THINK WE PRESENTED FACTUAL EVIDENCE
18 THAT THE CODEFENDANT DEMARIO STUKES WAS IN FACT THE SHOOTER
19 AND FOR THESE REASONS WE'D ASK THE COURT TO CONSIDER BOTH,
20 BOTH AN ORDER AND ARREST OF JUDGMENT AND A NEW TRIAL.

21 THE COURT: I UNDERSTAND YOUR MOTION, MR.
22 GALMORE, THERE WAS EVIDENCE, SUBSTANTIAL EVIDENCE IN MY
23 VIEW TO SUPPORT THE JURY'S VERDICT. THERE WERE
24 EYEWITNESSES WHO WERE INVOLVED. THERE WERE CODEFENDANTS
25 WHO TESTIFIED. I DON'T KNOW WHAT ELSE MORE THE STATE COULD

SENTENCING

409

1 HAVE PRODUCED IN A CASE LIKE THIS. I FIND THAT THERE IS A
2 SUBSTANTIAL SUFFICIENCY OF EVIDENCE AND I WILL DENY YOUR
3 MOTION RESPECTFULLY.

4 MR. GALMORE: SPECIFICALLY, YOUR HONOR, I DON'T
5 THINK THE STATE MET ITS BURDEN OF SHOWING THAT THERE WAS
6 SOME TYPE OF CONSPIRACY BETWEEN, BETWEEN THE CODEFENDANTS
7 SO, THEREFORE, THEIR HAND OF ONE HAND OF ALL THEORY I JUST
8 DON'T THINK THEY'VE MET THAT, MET THE LEGAL REQUIREMENTS
9 FOR THAT.

10 THE COURT: AND I THINK THAT WAS JUST AN
11 ALTERNATE THEORY INVOLVED IN THIS CASE. I BELIEVE THAT THE
12 EVIDENCE WOULD SUPPORT A FINDING BY THE JURY THAT YOUR
13 CLIENT WAS IN FACT THE SHOOTER IN THIS CASE AND I WOULD
14 AGAIN RESPECTFULLY DENY YOUR MOTION.

15 MR. GALMORE: YES, SIR.

16 THE COURT: OKAY, ALL RIGHT, MS. ELDER, WOULD
17 YOU HAVE ANYTHING ELSE FOR ME?

18 MS. ELDER: YOUR HONOR, IN REFERENCE TO
19 SENTENCING?

20 THE COURT: YES.

21 MS. ELDER: YOUR HONOR, I DO HAVE SOME THINGS,
22 THE FAMILY, I BELIEVE, HAS ONE PERSON, IS THAT CORRECT, ONE
23 PERSON THAT WOULD LIKE TO ADDRESS THE COURT FOR SENTENCING
24 PURPOSES.

25 THE COURT: I WILL HEAR FROM THAT PERSON BEFORE

SENTENCING

410

1 I HEAR MITIGATION FROM MR. GALMORE.

2 MS. ELDER: THANK YOU, YOUR HONOR.

3 FAMILY MEMBER: MY NAME IS DEBBIE ALFORD AND I'M
4 SPEAKING FOR THE FAMILY.

5 YOUR HONOR, I APPRECIATE YOUR TAKING TIME TO LET
6 ME SPEAK TO YOU TODAY. THE EVENTS OF SUNDAY MAY 25TH,
7 2008, HAS CHANGED OUR LIVES MORE THAN YOU COULD POSSIBLY
8 IMAGINE. THIS TRAGEDY, THE GRIEF, THE HEARTACHE, AND THE
9 DESPAIR THAT WE'VE EXPERIENCED SINCE THE LOSS OF OUR SON
10 COREY HAS BEEN ALMOST MORE THAN WE COULD BEAR.

11 COREY WAS A WONDERFUL SON FULL OF LIFE AND
12 LAUGHTER. HE WAS A JUNIOR AT COASTAL CAROLINA UNIVERSITY
13 AND GOING TO BE A PHARMACIST. COREY WAS THE SWEETEST MOST
14 LOVING YOUNG MAN THAT YOU COULD IMAGINE AND HIS FUTURE WAS
15 BRIGHT, FULL OF HOPE AND PROMISE. ONE YEAR AND SIX MONTHS
16 AGO OUR GRIEF HAS BEEN AS STRONG TODAY AS IT WAS WHEN HE
17 WAS TAKEN FROM US.

18 WHEN YOU LOOSE A CHILD IT'S INDESCRIBABLE PAIN
19 AND THE WAY IN WHICH OUR COREY WAS TAKEN FROM US HAS MADE
20 OUR HEARTACHE SO MUCH GREATER.

21 AT THE END OF THIS TRIAL WE HOPE NOW TO BE ABLE
22 TO START A HEALING PROCESS WITHOUT OUR PRECIOUS SON COREY
23 BROOKS. I CAN THINK OF NO OTHER WAY TO EXPRESS THIS THAN
24 TO SAY THAT WE PRAY AND SINCERELY HOPE THAT NO OTHER FAMILY
25 HAS TO GO THROUGH THIS, BUT WE CAN'T EVEN THINK OF THE

SENTENCING

411

1 HEALING PROCESS WITHOUT ONE THING AND THAT'S WHAT WE ASK
2 FOR YOU TODAY.

3 WE'RE NOT OUT FOR HATE, HATE HAS NOTHING TO DO
4 WITH THIS. WE'RE NOT OUT FOR REVENGE, REVENGE HAS NOTHING
5 TO DO WITH THIS. WE SIMPLY ASK YOU FOR JUSTICE. WE WANT
6 TO HONOR THE MEMORY OF OUR SON COREY BROOKS BY MAKING SURE
7 THAT THE PERSON THAT'S FOUND GUILTY OF THIS RECEIVES THE
8 MAXIMUM SENTENCE THAT THE STATE OF SOUTH CAROLINA ALLOWS.

9 THERE ARE SO MANY PEOPLE HERE TODAY WHO LOVED
10 COREY AND WOULD GIVE ANYTHING IF THEY COULD STAND RIGHT NOW
11 AND PASS SENTENCE BUT AGAIN, YOUR HONOR, THAT IS SIMPLY
12 SOMETHING THAT YOU HAVE BEEN GIVEN THE RESPONSIBILITY OF
13 DOING.

14 AS COREY'S MOTHER, FATHER, AND BROTHER WE WOULD
15 LITERALLY DO ANYTHING IN OUR POWER TO SEE THAT JUSTICE IS
16 SERVED HERE TODAY. WE'D SPEND THE REST OF OUR LIVES DOING
17 WHATEVER IT TAKES TO MAKE SURE THAT JUSTICE OCCURS HERE
18 TODAY BUT AGAIN NO MATTER HOW MUCH WE LOVE COREY OR HIS
19 FAMILY AND OTHER FAMILY MEMBERS AND FRIENDS CAN DO WHAT
20 YOU'RE ABLE TO DO RIGHT NOW AND WE ASK THAT YOU AGAIN USE
21 THE POWER THAT'S GIVEN TO YOU BY THE STATE OF SOUTH
22 CAROLINA AND THIS COURT AND TO GIVE THIS DEFENDANT THE
23 MAXIMUM SENTENCE.

24 WE'D LIKE YOU TO SEND A MESSAGE LOUD AND CLEAR
25 THAT WE WILL NOT PUT UP WITH A BLATANT DISREGARD FOR HUMAN

SENTENCING

412

1 LIFE THAT'S OCCURRED HERE AND ON MAY 25TH. WE SIMPLY LOVE
2 OUR COMMUNITY AND WE'D LIKE TO KEEP IT SAFE AND WHERE
3 PEOPLE CAN GO OUT OF THEIR HOMES AND NOT HAVE TO WORRY
4 ABOUT FEAR IN THEIR LIVES.

5 AGAIN WE THANK YOU FOR WHAT YOU'VE DONE TODAY AND
6 WE BEG THAT YOU GIVE JUSTICE AND SO THAT WE CAN HAVE A
7 HEALING TO START AGAIN, THANK YOU, YOUR HONOR.

8 THE COURT: YOU'RE WELCOME.

9 MS. ELDER: YOUR HONOR, AS FAR AS MR. GRIFFIN'S
10 PRIOR RECORD TO SPEAK ON THAT IN SO FAR AS SENTENCING IS
11 CONCERNED HE DOES HAVE A PRIOR CONVICTION IN 2007, IT LOOKS
12 LIKE A ROBBERY WITHOUT A WEAPON.

13 YOUR HONOR, AT THE TIME OF THIS OFFENSE MR.
14 GRIFFIN AS YOU CAN SEE IS A VERY YOUNG PERSON. AT THE TIME
15 OF THIS OFFENSE AFTER HAVING A CONVICTION FOR ROBBERY IN
16 '07 HE WAS OUT ON BOND FOR A CHARGE FROM JANUARY OF 2008,
17 THAT WAS AN ASSAULT AND BATTERY WITH INTENT TO KILL. HE
18 WAS RELEASED. HE WAS THEN PICKED UP AGAIN ON A DIFFERENT
19 CHARGE, THAT'S ASSAULT OF A HIGH AND AGGRAVATED NATURE.
20 THAT WAS FEBRUARY 12TH OF '08.

21 HE WAS RELEASED OUT ON BOND ON MAY 15TH, 2008,
22 ABOUT 10 DAYS PRIOR TO THIS MURDER, YOUR HONOR.

23 AS YOU HEARD FROM TESTIMONY ON THE STAND, DARIUS
24 PRIEST REFERRED TO IT, THAT HE HAD SEEN KEION GRIFFIN WITH
25 A GUN TWO DAYS AFTER THE SHOOTING, ANOTHER 22.

SENTENCING

413

1 I UNDERSTAND THAT THE COURT WHEN THEY DETERMINE
2 SENTENCING WILL LOOK AT PRIOR RECORD. HE'S 19 YEARS OLD,
3 THERE'S NOT AN OPPORTUNITY FOR US TO LOOK AT TOO MUCH OF A
4 RECORD EXCEPT FOR WHAT HE ALREADY HAS.

5 YOUR HONOR, I WOULD ASK THE COURT TO ALSO TAKE A
6 LOOK AT THE POSSIBILITY OF HIM BEING ABLE TO BE BACK IN THE
7 COMMUNITY. AS I SAID HE WAS OUT ON BOND TWO WEEKS, LESS
8 THAN TWO WEEKS BEFORE HE KILLED COREY BROOKS. TWO DAYS
9 AFTER THAT DARIUS PRIEST SEES HIM WITH ANOTHER GUN.

10 I WOULD PRESENT, AND I'VE PROVIDED A COPY TO MR.
11 GALMORE, WHILE HE'S BEEN STAYING AT JAIL, YOUR HONOR, THERE
12 IS A SIGNIFICANT AMOUNT OF INFORMATION THAT HE WAS INVOLVED
13 IN GANG ACTIVITY ON A REGULAR BASIS, CORRESPONDENCE.
14 THERE'S HISTORICAL INFORMATION ABOUT THE GANG THAT HE
15 BELONGS TO, THAT BEING "BLOOD."

16 ALSO, YOUR HONOR, THIS IS GOING BACK TO ABOUT
17 FEBRUARY OF '08 SINCE MR. GRIFFIN HAS BEEN IN JAIL, THESE
18 ARE ALL INCIDENT REPORTS OF HIS BAD BEHAVIOR WHILE HE'S
19 BEEN INCARCERATED. HE'S NOT BEEN ABLE TO CONTAIN HIMSELF
20 IN JAIL. THAT WOULD LEAD US TO NO SUGGESTION THAT HE WOULD
21 NOT BE ABLE TO MAINTAIN HIMSELF OUT IN THE COMMUNITY AT ANY
22 POINT IN TIME.

23 HIS LATEST INFRACTION, YOUR HONOR, I WILL NOTE
24 WAS LAST WEEK ON, I BELIEVE, THURSDAY WHEN HE WAS CHARGED
25 WITH AN ATTEMPT TO ESCAPE, THAT'S FOUR DAYS PRIOR TO US

SENTENCING

414

1 STARTING THIS TRIAL.

2 YOUR HONOR, THE STATE IN THIS CASE WOULD ASK FOR
3 THE MAXIMUM, WE'D ASK FOR LIFE.

4 THE COURT: ALL RIGHT, MR. GALMORE, LET ME HEAR
5 FROM YOU IN MITIGATION.

6 MR. GALMORE: YOUR HONOR, FIRST I'D LIKE TO
7 CLARIFY THE ESCAPE ATTEMPT THAT MS. ELDER IS REFERRING TO.
8 I ASKED MY CLIENT ABOUT IT AND HE EXPLAINED TO ME THAT WHAT
9 HAPPENED IS THAT HE WAS PLAYING A JOKE ON HIS ROOMMATE.
10 THEY'RE AT THE DETENTION CENTER AND HIS ROOMMATE ASKED HIM
11 TO LEAVE THE CELL BECAUSE HE HAD TO USE THE BATHROOM AND
12 INSTEAD OF LEAVING THE CELL HE TOOK SOME PAPERS AND PUT
13 THEM IN A, PUT THEM IN HIS COT AND COVERED IT UP SO THAT
14 HIS ROOMMATE THOUGHT HE WAS STILL IN THERE AND WHEN THE
15 GUARDS CAME BY AND SAW PAPERS UNDER A COT THEY LOOKED AT IT
16 AS AN ESCAPE ATTEMPT. SO THE OTHER THING I WANTED TO
17 EXPLAIN TO YOU IS THE ARMED ROBBERY CHARGE, EXCUSE ME, THE
18 ROBBERY CHARGE THAT THE SOLICITOR REFERRED TO.

19 MR. GRIFFIN WAS A JUVENILE AT THE TIME, YOUR
20 HONOR, AND AS HE EXPLAINS IT SOMEONE'S HAT DISAPPEARED. HE
21 WAS CHARGED WITH ROBBERY SO THE STATE HAS PRESENTED SOME
22 EVIDENCE BUT THEY OR THEY HAVEN'T PRESENTED IT IN QUITE THE
23 PROPER LIGHT.

24 YOUR HONOR, MR. GRIFFIN IS GOING TO HAVE A LONG
25 ROAD TO HOE AND WE'D ASK THE COURT TO CONSIDER THAT HE'S 19

SENTENCING

415

1 YEARS OLD. WE'D ASK THE COURT TO CONSIDER THAT EVERYONE
2 HAS ROOM FOR CHANGE IN THEIR LIVES. IT LOOKS LIKE HE MIGHT
3 HAVE MADE SOME WRONG CHOICES. IT LOOKS HE'S MADE SOME BAD
4 AFFILIATIONS, BUT HE LIKE ANY PERSON IS CAPABLE OF CHANGE.

5 THE COURT: WELL TELL ME IS ONE OF THOSE
6 AFFILIATIONS GANG RELATED?

7 MR. GALMORE: YES, YOUR HONOR.

8 THE COURT: OKAY, HE IS CAPABLE OF CHANGE,
9 EVERYONE IS CAPABLE OF CHANGE. WE'D ASK THE COURT TO GIVE
10 HIM THAT OPPORTUNITY. IF YOU GIVE HIM A 30 YEAR SENTENCE
11 HE WOULD HAVE TO SERVE EVERY DAY OF IT, 100 PERCENT. I
12 BELIEVE THAT IN 30 YEARS HE WOULD HAVE MATURED ENOUGH TO
13 GET BEYOND THE POINT THAT YOU SEE ON THOSE PAPERS.

14 YOUR HONOR, HE IS 19. HE IS FROM FLORIDA. HE'S
15 A TRANSPLANT. HE GOES BACK AND FORTH. HIS MOTHER LIVES
16 DOWN IN FLORIDA, HIS FATHER HERE IN MYRTLE BEACH. THEY
17 LOVE HIM, THEY CARE FOR HIM, THEY COME TO SEE ME ABOUT HIS
18 CASE.

19 THE COURT: WHERE ARE THEY TODAY?

20 MR. GALMORE: HIS MOTHER COULD NOT BE HERE
21 TODAY, YOUR HONOR. HE DOES HAVE FAMILY MEMBERS THAT ARE
22 HERE, SOME OUT IN THE HALLWAYS THAT HAVE BEEN IN THE
23 COURTROOM.

24 YOUR HONOR, HE WAS WORKING WITH A FAMILY
25 BUSINESS, EVA'S SNACK SHACK AND HE HAD A 12TH GRADE

SENTENCE

416

1 EDUCATION. WE'D JUST ASK YOU TO CONSIDER THAT HE IS YOUNG
2 AND THAT HE DOES HAVE POTENTIAL TO BETTER HIMSELF EVEN AT
3 THE END OF A 30-YEAR SENTENCE AND WE'D ASK YOU TO CONSIDER
4 THE MINIMUM IN THIS CASE.

5 THE COURT: DOES YOUR CLIENT DESIRE TO MAKE A
6 STATEMENT TO THE COURT?

7 MR. GALMORE: YES, SIR.

8 THE COURT: LET ME HEAR FROM YOU, MR. GRIFFIN.

9 DEFENDANT GRIFFIN: MY NAME IS KEION GRIFFIN AND
10 YOU SEE I WAS HERE TODAY FOR MURDER AND POSSESSION OF A
11 WEAPON DURING A VIOLENT CRIME BUT MY SO CALLED FRIENDS BUT
12 I CAN GET ALONG WITH ANYBODY, YOU KNOW, I GOT A LOT OF
13 FRIENDS BUT YOU NEVER KNOW THE TRUTH ABOUT THEM TILL THEY
14 SHOW YOU, OKAY, AND YOU KNOW HOW PEOPLE ASK YOU IF YOU HAVE
15 ONE WISH WHAT WOULD YOU WISH FOR. IF I HAD ONE WISH I
16 WOULD WISH THAT COREY BROOKS WAS HERE RIGHT NOW SO FAMILY
17 MEMBERS COULD HAVE A WITNESS AND SO HE COULD TELL EVERYONE
18 WHO THE SHOOTER REALLY WAS. THAT'S WHAT I WOULD WISH FOR.
19 THAT'S ALL I HAVE TO SAY, SIR.

20 THE COURT: ALL RIGHT, ANYTHING FURTHER, MR.
21 GALMORE, ANYONE ELSE THAT WOULD LIKE TO ADDRESS THE COURT?

22 MR. GALMORE: NO, SIR.

23 THE COURT: MR. GRIFFIN, SOMEWHERE AT SOME TIME
24 THINGS WENT WRONG IN YOUR LIFE. I HAVE LISTENED TO THE
25 EVIDENCE IN THIS CASE AND THE JURY HAS TOLD ME WHAT

SENTENCE

417

1 HAPPENED, THAT IT WAS A COLD BLOODIED THOUGHTLESS
2 UNIMAGINABLE HEINOUS CRIME TO SHOOT SOMEONE LYING FACE DOWN
3 ON THE BACK, IN THE BACK. SOMEWHERE ALONG THE LINE HUMAN
4 LIFE HAS BEEN CHEAPENED IN YOUR VIEW. YOU HAVE NO RESPECT
5 WHATSOEVER FOR HUMAN LIFE AND IF I ALLOW YOU BACK IN THE
6 COMMUNITY I FEEL STRONGLY THAT YOU WOULD TAKE A LIFE AGAIN
7 AND I MUST PROTECT THIS COMMUNITY, THIS STATE, THIS COUNTRY
8 FROM YOU.

9 FOR THOSE REASONS THE SENTENCE OF THIS COURT IS
10 THAT YOU SHALL SERVE THE BALANCE OF YOUR LIFE IN THE STATE
11 PENITENTIARY FOR THE OFFENSE OF MURDER.

12 FOR POSSESSION OF A WEAPON DURING THE COMMISSION
13 OF A VIOLENT CRIME YOU SHALL SERVE AN ADDITIONAL FIVE
14 YEARS, THANK YOU, SIR.

15 MS. ELDER: THANK YOU, YOUR HONOR.

16 END OF REQUESTED TRANSCRIPT- - - -
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

January 18, 2010

Brenda R. Babb
BRENDA R. BABB, CVR

OFFICIAL REPORTER

WITNESSES

M Hull Myrtle Beach Police Department

DOCKET NO. 2008-GS-26-02552

The State of South Carolina

County of Horry

Donna E. Elder

08H02403

COURT OF GENERAL SESSIONS

July, 2008 TERM

ARREST WARRANT NUMBER

J737875

CDR: 0118 16-03-0010, 0020

DOA: 6/2/2008

THE STATE

VS.

ACTION OF GRAND JURY

Kelon Montrell Griffin

B/ M

Myrtle Beach, SC 29577-5851

DOB: [REDACTED]

TRUE BILL

James W. Williams
Foreperson of Grand Jury

Date: JUL 10 2008

ATTORNEY: Galtmore, James Cullen

VERDICT

Indictment for

Murder

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on July 10, 2008, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010.0020

That Keion Montrell Griffin did in Horry County, on or about May 25, 2008, willfully, feloniously, and intentionally kill the victim Corey Brooks, with malice aforethought, either express or implied, by means of gunshot, and the victim did die as a proximate result thereof on or about May 25, 2008 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

M Hill Myrtle Beach Police Department

DOCKET NO. 2008-GS-28-02553

The State of South Carolina

County of Horry

Donna E. Elder

08H02403

COURT OF GENERAL SESSIONS

July, 2008 TERM

ARREST WARRANT NUMBER

J737889

CDR: 0549 16-23-0490

DOA: 6/2/2008

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

James Wilburn
Foreperson of Grand Jury
Date: JUL 10 2008

Kelon Montrell Griffin
E/M

ATTORNEY: Gaimore, James Cullen

VERDICT

Indictment for

**Possession of a Weapon during the Commission of
a violent crime**

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on July 10, 2008, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Keion Montrell Griffin did in Horry County, on or about May 25, 2008, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.Keion Montrell Griffin

AKA:

Race: B Sex: M Age: 19DOB: SS#:

Address:

DL#: SID#:In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS2602552A/W#: J737875Date of Offense: 5/25/2008S.C. Code § : 16-03-0010.0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010.0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Elder, Donna E.SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE 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: 11/4/09
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2 1 1 1 5 1 2Sentence Date: 11-4-09

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

Melanie Huggins-WardBrenda Babb

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Keion Montrell Griffin

AKA:

Race: B

Sex: M

Age: 19

DOB:

#:

Address:

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was
TO: Possession of a Firearm During Commission of a Violent Crime

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS2602553

A/W#: J737889

Date of Offense: 5/25/2008

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47-12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Melanie Huggins - Ward

Court Reporter:

Brenda Babb

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel. §47.12
requires \$500 be paid to Clerk during probation.

2 1 1 5 1 2
11-4-09

FORM 5

STATE OF SOUTH CAROLINA

County of

Horry

IN THE COURT OF COMMON PLEAS

Leion Griffin #337833

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

11 DEC 28 AM 8:16
CLERK OF COURTINSTRUCTIONS TO 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 Lee C.I., 990 Wisacky Hwy., Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence General Sessions Court, 1301 2nd Ave., Conway, S.C. 29526
3. Name(s) of co-defendant(s) (if any) Demario Stokes, Darius Priest
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder - 2008-GS-26-02552

(b) Possession of Firearm During Commission of a Violent Crime
 (c) 2008-GS-26-02553

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 11/4/2009 Life + 5 years
 (b) 11/4/2009 5 years
 (c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere ✓

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered Ayes@ 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. Denied
 ii. _____
 iii. _____

(c) the date of each such result:
 i. August 15, 2011
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____

9. If you answered Ano@ 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) Counsel Failed to object to jury Instructions
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) Counsel waived Belcher Instruction to jury
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered Ayes@ 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) _____
 (b) _____
 (c) _____

N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. James Galmore - P.O. Box 1666, 203 Laurel street, Conway, SC 29528

ii. Joseph L. Savitz III - P.O. Box 1589, Columbia, SC 29211

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and sentencing

ii. Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Harry)

11
10757
VERIFICATION

I, Keion Griffin, 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.

Keion Griffin

SWORN to and subscribed before me this 2ND day of Nov, 2011.

Debra S. [Signature] (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
11 DEC 28 AM 8:16
CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

1075

I, Keion Griffin, 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.

Keion Griffin
Applicant

SWORN or affirmed to and subscribed before me this
2 day of Nov., 2011.

Debra Sosa
Notary Public

My Commission Expires: 11-4-2015

HORR COUNTY
11 DEC 28 AM 8:16
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2011-CP-26-10757
	)	
Keion Montrell Griffin, # 337833	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 28, 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 Horry County Clerk of Court. The Applicant was indicted at the July 2008 term of the Horry County Grand Jury for one count of Possession of a Weapon during the Commission of a Violent Crime, 2008-GS-26-02553, and Murder, 2008-GS-26-02552. He was represented by James Galmore, Esquire.

Applicant proceeded to trial during the November 2009 term of General Sessions Court before the Honorable Larry B. Hyman, Jr. and a jury. The jury found Applicant guilty, and Judge Hyman sentenced Applicant to life imprisonment. Applicant appealed the conviction, and the South Carolina Court of appeals dismissed Applicant's appeal pursuant to Anders v. California, 386 U.S. 738 (1967) in Opinion 2011-UP-387. The Remittitur was filed August 31, 2011.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Appeal records. Any abovementioned materials not so included will be forwarded upon receipt. 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. "Counsel failed to object to jury Instructions"
2. "Counsel waived Belcher Instruction to jury"

Applicant's relief requested in filing his Application is "vacate conviction."

III.

The state construes Applicant's allegations as claims in the nature of Ineffective Assistance of Counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 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, 80 L.Ed.2d 674. 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 counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of 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.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied, and the action dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

2/24, 2012

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

2011-CP-26-10757

KEION MONTRELL GRIFFIN, #337833

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

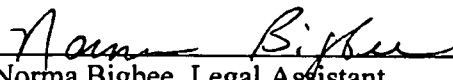
STATE OF SOUTH CAROLINA,

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:

Paul Archer, Esquire
233 Muirfield Dr.
Pawleys Island, SC 29585

DATED this 24th day of February, 2012.


Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CASE NO.: 2011-CP-26-10757

KEION GRIFFIN,)
)
 APPLICANT,)
)
VS.)
)
STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)

POST CONVICTION RELIEF HEARING

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Horry County Courthouse
Conway, South Carolina
on Tuesday, August 26, 2014, Commencing at 10:15 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE APPLICANT: Daniel A. Selwa, II, Esquire
Attorney at Law
1053 London Street, Suite A
Myrtle Beach, South Carolina 29577

FOR THE RESPONDENT: Joshua Thomas, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	5
OPENING STATEMENT BY MR. SELWA	12
KEION GRIFFIN	
Direct Examination by Mr. Selwa	14
Cross-Examination by Mr. Thomas	26
JAMES C. GALMORE	
Direct Examination by Mr. Selwa	29
Cross-Examination by Mr. Thomas	54
Redirect Examination by Mr. Selwa	60
CLOSING ARGUMENT BY MR. SELWA	62
CLOSING ARGUMENT BY MR. THOMAS	64
CERTIFICATE OF COURT REPORTER	67

INDEX TO EXHIBITS

MARKED/ADMITTED

Plaintiff's Exhibit Number 1	40 / 46
[Transcript of Chandler's Interview]	
Plaintiff's Exhibit Number 2	46 / 46
[Transcript of Bennett's Interview]	

Keion Griffin vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

PROCEEDINGS

1
2 THE COURT: Counsel, if you will state your name
3 for the record and the party you represent.

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

6 My name is Daniel A. Selwa, II, and I'm
7 representing Keion Griffin in this matter.

8 THE COURT: All right. Are you Keion Griffin?

9 MR. GRIFFIN: Yes, ma'am.

10 THE COURT: Please stand.

11 [Whereupon, Mr. Griffin complies]

12 THE COURT: Mr. Griffin, do you understand what
13 we are doing here today?

14 MR. GRIFFIN: Yes, ma'am.

15 THE COURT: What are we doing here today?

16 MR. GRIFFIN: PCR.

17 THE COURT: And are you prepared to go forward
18 on this application for post conviction relief?

19 MR. GRIFFIN: No, ma'am.

20 THE COURT: No? Why not?

21 MR. GRIFFIN: Me and my lawyer tried to file a
22 motion to receive all of my Rule 5s because I'm
23 missing some interviews, I don't have them, and they
24 didn't respond back to the motion yet that we sent to
25 the clerk of court. And that's something I need to

Keion Griffin vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 present to you -- excuse me -- that's something I
2 wanted to present to you so that my trial counsel
3 could investigate.

4 THE COURT: Mr. Griffin, you're here on a post
5 conviction relief for a murder indictment and you were
6 found guilty by a jury trial in November of 2009.
7 Judge Hyman sentenced you to life on November 4th of
8 2009. You were also found guilty of possession of a
9 weapon during the commission of a violent crime, which
10 is punishable by more than five years. You were
11 sentenced to five years to run concurrent with life on
12 that particular charge.

13 Do you understand that should we go forward here
14 today, and should I grant your motion for post
15 conviction relief, that these charges are not
16 dismissed? Do you understand?

17 MR. GRIFFIN: Yes, ma'am.

18 THE COURT: What do you understand is a possible
19 outcome to you?

20 MR. GRIFFIN: Yes, ma'am.

21 THE COURT: What do you -- what do you
22 understand is the possible outcome?

23 MR. GRIFFIN: What the possible outcome? What
24 do you mean?

25 THE COURT: Why did you answer yes if you didn't

Keion Griffin vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 understand my question?

2 MR. GRIFFIN: I thought you was saying something
3 else. I misunderstood.

4 THE COURT: All right. It is very important
5 that you listen to me and understand me. Do you
6 understand?

7 MR. GRIFFIN: Yes, Your Honor.

8 THE COURT: All right. What do you think is
9 going to happen here? What are the potential
10 possibilities of what is going to happen to you here
11 today?

12 MR. GRIFFIN: Oh. Okay. Vacate my sentence or
13 either don't vacate my sentence.

14 THE COURT: And so when I vacate your sentence,
15 what do you understand will happen to you?

16 MR. GRIFFIN: Either I'll go back to the County
17 and get a new trial or they'll come and try to give me
18 a plea agreement, either one.

19 THE COURT: So you understand that you are not
20 walking out of here today --

21 MR. GRIFFIN: Yes, ma'am.

22 THE COURT: -- regardless of what happens?

23 MR. GRIFFIN: Yes, ma'am.

24 THE COURT: That even if I grant your
25 application for post conviction relief, it does not

Keion Griffin vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 mean that the charge is dismissed. You will simply be
2 retried or you will be, as you indicated, given a plea
3 offer to these charges. Do you understand --

4 MR. GRIFFIN: Yes, ma'am.

5 THE COURT: -- that?

6 MR. GRIFFIN: Yes, ma'am.

7 THE COURT: And do you still wish to go forward
8 on your application here today?

9 MR. GRIFFIN: Yes, ma'am.

10 THE COURT: All right. Please have a seat.

11 [Whereupon, Mr. Griffin complies]

12 THE COURT: Mr. Selwa, Mr. Griffin has indicated
13 that he is not ready to go forward. Are you -- you
14 indicated that you were prepared to go forward; is
15 that correct?

16 MR. SELWA: Yes, Your Honor. And we have
17 continued this a number of times before the Court and
18 I think the last time was the last time that the judge
19 would continue it for us.

20 Me and Mr. Griffin had a -- not an argument, but
21 he submitted some stuff that I didn't feel was
22 necessary to file. He felt otherwise. I feel
23 prepared. I'm prepared. I know that Mr. Griffin
24 wants time to review stuff that he wasn't able to in
25 the trial, but I'm in possession of that stuff.

Keion Griffin vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 THE COURT: What claims are we going forward
2 here today?

3 MR. SELWA: Your Honor, the ineffective
4 assistance of counsel, specifically related to failing
5 to call witnesses and failing to ask for a lesser
6 included offense.

7 THE COURT: Are you --

8 MR. GRIFFIN: And failure to investigate.

9 THE COURT: Mr. Griffin, I'm going to explain
10 this to you one more time -- or one time. All right?
11 You have an attorney.

12 MR. GRIFFIN: Yes, ma'am.

13 THE COURT: You need to speak through him. I do
14 not tolerate outbursts. Do you understand what that
15 means?

16 MR. GRIFFIN: Yes, ma'am.

17 THE COURT: What does that mean?

18 MR. GRIFFIN: Don't speak out loud without
19 telling him.

20 THE COURT: Correct.

21 So what you just did I classify as an outburst.
22 Do you understand?

23 MR. GRIFFIN: Yes, ma'am.

24 THE COURT: Was that a yes?

25 MR. GRIFFIN: Yes, ma'am.

Keion Griffin vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 THE COURT: And I can sentence -- I can hold you
2 in contempt up to one year on each outburst, do you
3 understand that, separate and independent of what you
4 are already facing. Do you understand?

5 MR. GRIFFIN: Yes, ma'am.

6 THE COURT: It is important that I have an
7 orderly courtroom so that I am paying attention to
8 every aspect of your case, and outbursts do not allow
9 me to do that. Do you understand, sir?

10 MR. GRIFFIN: Yes, ma'am.

11 THE COURT: All right. Any questions?

12 MR. GRIFFIN: Yes.

13 THE COURT: About the outburst. Any questions
14 about what I just explained to you about an outburst?

15 MR. GRIFFIN: Yes.

16 THE COURT: Okay.

17 MR. GRIFFIN: What if I have something I wanted
18 to say? Will I have to ask you if I can speak?

19 THE COURT: You need to talk to your attorney
20 and he will indicate to me. All right?

21 MR. GRIFFIN: All right.

22 THE COURT: Mr. Griffin, I'm going to make sure
23 that you have a fair hearing here today and that I
24 have listened to everything that you say but in order
25 for me to do that, I can't respond to every outburst.

Keion Griffin vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 I will give you an opportunity to address the Court,
2 but it will be at the appropriate time and in the
3 appropriate fashion. Do you understand?

4 MR. GRIFFIN: Yes, ma'am.

5 THE COURT: Any questions?

6 MR. GRIFFIN: No, ma'am.

7 THE COURT: All right. Thank you. Have a seat.

8 [Whereupon, Mr. Griffin complies]

9 THE COURT: Are you prepared to go forward on
10 those issues, Mr. Thomas?

11 MR. THOMAS: The State is prepared, Your Honor.

12 THE COURT: And I do not see Mr. Galmore. Is he
13 prepared? Where is he?

14 MR. SELWA: He was coming this way. He was --
15 but we can begin without him.

16 THE COURT: Is he going to be your first
17 witness?

18 MR. SELWA: No, Your Honor, but he most
19 definitely will be the second one.

20 THE COURT: Well, we can begin, then.

21 Mr. Selwa, I'll be happy to hear if you want to
22 give me just a brief opening to direct me to the
23 issues. Or you can jump right in. Your choice.

24 MR. SELWA: Thank you, Your Honor. That does
25 help out a little bit.

Keion Griffin vs. The State of South Carolina
Opening Statement by Mr. Selwa
August 26, 2014

OPENING STATEMENT

MR. SELWA: Mr. Griffin was convicted and sentenced to life plus five years for the murder of Corey Brooks. It was basically an incident that arose out of a fight here in black bike week over a parking space. Mr. Griffin was convicted of hitting Mr. Brooks with a gun and then shooting him in the back. The trial was long, a lot of witnesses, there was competing witnesses, but in the end he was convicted of murder and possession of a weapon during a violent crime.

So, Your Honor, we are claiming that Mr. Galmore failed basically to properly investigate and call the witnesses which would have yielded testimony that may have proven his innocence. And also we are claiming that Mr. Galmore failed to request a lesser included offense, even at the suggestion of the judge.

So that's our claims, and that's where we're going.

THE COURT: Mr. Thomas, I'll allow you the same courtesy, or we can just begin.

MR. THOMAS: Your Honor, I think I'll just reserve that for the end of the hearing --

THE COURT: All right. Thank you.

MR. THOMAS: -- after the witnesses.

Keion Griffin vs. The State of South Carolina
Opening Statement by Mr. Selwa
August 26, 2014

1 THE COURT: Call your first witness.

2 MR. SELWA: Thank you, Your Honor. I would call
3 Keion Griffin to the stand.

4 [Off the record momentarily]

5 [Whereupon, Mr. Griffin comes forward]

6 THE CLERK OF COURT: If you would stand and
7 raise your right hand and place your left hand on the
8 Bible.

9 [Whereupon, Mr. Griffin is duly sworn by the
10 clerk of court as follows: do you solemnly swear that
11 the testimony you're about to give the Court in this
12 case will be the truth, the whole truth, and nothing
13 but the truth, so help you God]

14 THE WITNESS: Yes, ma'am.

15 THE CLERK OF COURT: Please be seated.

16 [Whereupon, Mr. Griffin takes the witness stand]

17 THE CLERK OF COURT: Please state your name and
18 spell your last name for the record.

19 THE WITNESS: Keion Griffin. G-R-I-F-F-I-N.

20 MR. SELWA: Thank you, Your Honor. May it
21 please the Court.

22

23

24

25

- - -

- - -

- - -

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

KEION GRIFFIN,

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

DIRECT EXAMINATION

BY MR. SELWA:

Q. Mr. Griffin, you were convicted back in 2010; is that correct?

A. 2009.

Q. 2009. And what were you convicted of?

A. Murder and possession of a weapon during a violent crime.

Q. Who were the codefendants in that case with you?

A. Demario Stukes and Darius Priest.

Q. And just to catch the judge up, because it does get confusing, what were each of you wearing that night that they allege that -- rather that you were convicted of murdering Mr. Brooks?

A. Two of us had on white tee-shirts --

Q. Let's just start with an individual. What were you wearing that night?

A. A white tee-shirt. Demario was wearing a white tee-shirt.

Q. What were -- what bottom half were you wearing? Shorts, long pants?

A. Shorts.

MIA PERRON, CVR-CM-M

-14-

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. Were you wearing anything else? Any hats,
2 glasses?

3 A. No. No, sir.

4 Q. So you had a white shirt and shorts?

5 A. Yes, sir.

6 Q. Was it a long white shirt?

7 A. A regular tee-shirt like the one I have under
8 this tan shirt, a circular collar.

9 Q. Now, Demario Stukes, what was he wearing?

10 A. A white tee-shirt and shorts. I'm not sure what
11 color.

12 Q. Would he have been wearing long pants?

13 A. I'm not sure.

14 MR. SELWA: The Court's indulgence.

15 THE COURT: Take your time.

16 [Whereupon, Mr. Selwa reviews documents]

17 Q. [Mr. Selwa] You sat through the trial; correct?

18 A. Yes, sir.

19 Q. And do you remember Mr. Stukes' testimony?

20 A. Yes, sir.

21 Q. If I showed you part of that testimony, would
22 that refresh your memory?

23 A. Yes, sir.

24 MR. SELWA: Your Honor, may I approach?

25 THE COURT: You may.

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. [Mr. Selwa] Just refresh your memory with
2 Mr. Stukes' testimony as to what he was wearing there.

3 [Whereupon, the witness reviews documents]

4 A. You want me to read it?

5 Q. [Mr. Selwa] Just do you remember that? Do you
6 recall that?

7 A. Yes. Yes, sir.

8 Q. And what was Mr. Stukes wearing?

9 A. A hat. He had a hat with New York and multiple
10 colors on it, a white tee-shirt, black pants.

11 Q. Now, there was a third guy, Mr. Darius Priest;
12 correct?

13 A. Yes, sir.

14 Q. And what was he wearing that night?

15 A. All black.

16 Q. Now, the two codefendants testified against you,
17 didn't they?

18 A. Yes, sir.

19 Q. And they named you as the shooter; is that
20 correct?

21 A. Yes, sir.

22 Q. At any time during that night, were you wearing
23 a hat?

24 A. No, sir.

25 Q. What color hat do you recall Mr. Stukes wearing?

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 A. Black. It was mostly black and it had red,
2 yellow, green and white.

3 Q. Did you have any kind of bandana or any kind of
4 red hat?

5 A. No, sir.

6 Q. Were you wearing any glasses?

7 A. No, sir.

8 Q. Now, through Mr. Galtmore's representation of you
9 during this trial, how do you feel Mr. Galtmore was
10 ineffective for you?

11 A. I feel like my trial counsel was ineffective for
12 failing to investigate and had he investigated he would
13 have known that I could have had a lesser included charge
14 of manslaughter and he denied it when the judge tried to
15 grant it to me at the end of my trial before the jury
16 deliberations.

17 And had he investigated into my Rule 5, he would
18 have seen that I was missing interviews of State's
19 witnesses that were supposed to testify at my trial. And
20 I have evidence saying that he was still missing
21 interviews from the witnesses in my transcript at trial.

22 MR. GRIFFIN: Your Honor, Page 127 --

23 THE COURT: Do not tell me what to do. Thank
24 you.

25 Q. [Mr. Selwa] Mr. Griffin, you claimed that he

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 basically failed to call witnesses for you; correct?

2 A. Yes.

3 He failed to call one witness because I believe
4 he -- he waited too long. He waited like weeks before
5 trial to really do anything in my case.

6 Q. And was that important to the case? Was there
7 an overwhelming amount of people that were identifying you
8 in this situation?

9 A. No, sir. Just my codefendants. And they were
10 contradicting their self. They were lying on the stand.
11 One said he gave -- Darius said he gave Demario the gun
12 and Demario saying he didn't never had the gun but Darius
13 saying he didn't give me the gun.

14 Q. And this was a big fight; correct? There was
15 like five guys with the victim's party, and three of you
16 guys; correct?

17 A. Yes.

18 Q. And then there was also a jeep parked in the --
19 that was the heart of the controversy; correct?

20 A. Yes.

21 Q. And that was full of how many girls; do you
22 recall?

23 A. I'm not sure --

24 Q. Three or four?

25 A. I'm not sure. I don't know.

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. So at this trial there was a lot of witness
2 testimony as to who may have been the shooter; correct?

3 A. Yes, sir.

4 Q. And to your memory, do you recall that --
5 identification being a problem with multiple witnesses
6 saying who was the shooter?

7 A. Yes.

8 Q. Do you think that if Mr. Galmore would have
9 called those witnesses, they could have possibly helped
10 your case?

11 A. Yes. The female witnesses that were supposed to
12 have been in the car.

13 Q. Did anybody on the victim's side of this case,
14 did all of those guys testify at your trial?

15 A. No, sir.

16 Q. Do you recall a Mr. Dan Sweeney testifying?

17 A. Yes. No.

18 Q. You have a copy of the transcript; correct?

19 A. Yes, sir.

20 [Whereupon, the witness reviews documents]

21 A. Dan Sweeney did not testify.

22 Q. Okay. Was he a member of that party?

23 A. Yes.

24 Q. Do you recall a Jeffery King testifying?

25 A. Yes.

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. And you have the transcript there; correct?

2 A. Yes.

3 Q. What about Mr. Josh Hughes?

4 A. No, sir.

5 Q. And Mr. Josh Hughes was a party in the victim's
6 party; correct?

7 A. Yes, sir.

8 Q. And there was another individual. Do you
9 remember a Keith Griffin testifying?

10 A. No, sir.

11 Q. And do you know him to be a member of the
12 victim's party?

13 A. Yes, sir.

14 Q. And did you learn all that through the discovery
15 process with your attorney?

16 A. I learned that on my own.

17 Q. Now, Mr. Griffin, at the end of the trial after
18 all of the evidence was presented, your attorney did not
19 ask the judge for a lesser included offense; is that
20 correct?

21 A. Yes, sir.

22 Q. And did he adequately explain that to you, the
23 implications of that?

24 A. He tried to explain it to me one time but
25 basically what he told me was if I accept the judges'

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 lesser included offense of manslaughter, I'll be found
2 guilty and if I keep going how we were going it's a chance
3 that I would be -- that I would not be found guilty. And
4 that was the only time -- that was the only time we talked
5 about manslaughter.

6 Q. Okay.

7 A. Before that, he never brought it up, he never
8 talked to me about it.

9 Q. Do you recall, during your trial, the jury
10 having any problems during their deliberations?

11 A. The first time they deliberated, when they first
12 started deliberations it was like three hours and then
13 they came and asked to hear the testimony from Vernon
14 Brown again.

15 Q. And who was Vernon Brown?

16 A. He was a witness across the street.

17 Q. He wasn't in your party?

18 A. He was in no one's party.

19 Q. Were they able to get that testimony to review
20 it?

21 A. Yes.

22 Q. And did they have any trouble after that?

23 A. They had a hung jury.

24 Q. Did the judge end the trial at that point?

25 A. No, sir.

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. What happened then?

2 A. He read them an Allen charge and then fifteen
3 minutes later they came back with a verdict of guilty.

4 Q. Do you feel that if you had had a lesser
5 included offense, they would have considered that?

6 A. Yes, sir.

7 Q. Do you feel that that was a pretty big gamble on
8 behalf of Mr. Galmore to go with just murder as opposed to
9 manslaughter?

10 A. Yes, sir.

11 Q. Did he explain the difference of what those
12 sentences carried?

13 A. No, sir, not really.

14 Like I said, he basically told me if I take the
15 manslaughter, I would be guilty.

16 Q. Were you aware that you were facing a possible
17 life sentence?

18 A. Yes, sir.

19 Q. Do you know whether or not manslaughter carries
20 life?

21 A. No, sir.

22 Q. Do you think it carries life?

23 A. No, sir.

24 Q. Do you think it includes less than life?

25 A. Yes, sir.

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. Did your attorney explain that to you at all?

2 A. Yes, sir.

3 Q. Do you feel that you had adequate information
4 from him to help him make that decision as to ask for a
5 lesser included offense?

6 A. Can you repeat that?

7 Q. I'm sorry.

8 Do you think that he adequately informed you of
9 everything that you needed to know in order to make the
10 decision not to ask for the lesser included offense?

11 A. No, sir.

12 Q. Mr. Griffin, is there anything else that you
13 would like to tell the Court in support of your petition
14 today?

15 A. Yes, sir.

16 Q. And can you tell the Court what that would be?

17 A. I just wanted to put my evidence out of my
18 transcript on the record. On page 176, from lines 5 to
19 15, my attorney had tried to get a -- had tried to file a
20 -- put in a motion for a mistrial or to strike the
21 witnesses' testimony because --

22 Q. But your attorney didn't fail to do anything in
23 that, did he?

24 A. Yes. He failed -- because the judge denied it.
25 But he was telling -- he was telling -- like basically he

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 was telling him that he was still receiving interviews
2 from the witnesses, that he never had, he was still
3 receiving these documents and we, just the week before,
4 Thursday -- this was on a Tuesday when he put it on the
5 record, and Thursday we had a -- I don't know what you
6 want to call it -- a pretrial hearing with the judge to
7 try to get a continuance because we were still -- we had
8 received documents from the solicitor, a stack of CDs of
9 interviews, pictures, a whole bunch of things that I never
10 had in my original motion from when he filed my -- when he
11 filed my Brady request. And we were trying to get a
12 continuance, but the judge denied it. And I feel like he
13 wasn't prepared for my case, he wasn't prepared to go to
14 trial.

15 Q. Is there anything else in support of your
16 petition that you wish to tell the Court?

17 A. I feel like -- I feel like my trial counsel was
18 ineffective in cross-examination because he didn't have
19 the witnesses' interviews before trial to prepare himself
20 to cross-examine. Had he -- had he had -- had he been
21 prepared and had these interviews, he could have -- he
22 could have -- what's the word -- he could have challenged
23 my witnesses' -- codefendants' credibility when they
24 testified at trial, but he didn't. And like I said, he
25 failed to go with the manslaughter charge. His defense

Keion Griffin
Direct Examination by Mr. Selwa
August 26, 2014

1 was that Demario Stukes was the shooter and not me, and I
2 feel like that defense wasn't strong enough.

3 Q. And Mr. Stukes was offered a plea offer or a
4 plea deal for testifying against you; correct?

5 A. Yes. Him and Darius Priest. They both had plea
6 offers.

7 Q. And did they get those offers?

8 A. Darius Priest, I'm sure he did. I'm not sure
9 about Demario. I'm sure he did, too.

10 Q. Did either of them -- I'm sorry. Scratch that.
11 Withdraw the question.

12 Anything further, Mr. Griffin?

13 A. Can I put on the record all the claims that I
14 feel he was ineffective for?

15 Q. I believe that's your right, if you wish to do
16 that. Is that what you want to do?

17 A. Yes. I want to say he was ineffective for
18 failure to investigate, he was ineffective for failing to
19 object to the jury charge, he was ineffective for not
20 putting up a defense for manslaughter, and that's it.

21 MR. SELWA: Thank you, Your Honor.

22 No further questions. Please answer any
23 questions the Attorney General's assistant attorney
24 will ask you.

25 THE COURT: Mr. Thomas?

Keion Griffin
Cross-Examination by Mr. Thomas
August 26, 2014

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Griffin, how many meetings did you have with Mr. Galmore?

A. Before trial?

Q. Yes, sir.

A. I would say no more than three.

Q. And during those meetings, you had a chance for him to go over the State's case against you?

A. Only one time.

Q. So he showed you all the State's -- he basically -- but he explained to you what the State was going to use to try and prove you were guilty?

A. No, sir.

Q. You testified on direct that he explained to you the difference between manslaughter and murder?

A. Excuse me?

Q. Did he explain the difference to you between manslaughter and murder?

A. No, sir.

Q. Did he explain to you the elements of murder, at least?

A. No, sir.

Q. During your meetings, did you have a chance to tell him your version of events?

Keion Griffin
Cross-Examination by Mr. Thomas
August 26, 2014

1 A. Yes, sir.

2 Q. And your version of events included the fact
3 that you basically got into a fight?

4 A. No, sir.

5 Q. You weren't there when that fight broke out?

6 A. No, sir.

7 Q. You weren't there at all?

8 A. No.

9 Q. So -- all right. All right.. So who are those
10 girls that were there, then?

11 A. Witnesses from Columbia.

12 Q. But if you weren't there, you didn't know who
13 those girls were?

14 A. No, sir.

15 MR. THOMAS: That's all the questions I have.

16 THE COURT: Mr. Selwa, any redirect?

17 MR. SELWA: No redirect, Your Honor.

18 THE COURT: Mr. Griffin, you may step down. Do
19 you need some assistance with your material?

20 THE WITNESS: No, ma'am.

21 [Whereupon, Mr. Griffin is excused and exits the
22 witness stand]

23 THE COURT: Did you have another witness?

24 MR. SELWA: Yes, Your Honor, I do. I would like
25 to call Mr. Galmore to the stand.

Keion Griffin
Cross-Examination by Mr. Thomas
August 26, 2014

1 [Off the record momentarily]

2 THE COURT: All right. If you will please swear
3 Mr. Galmore.

4 [Whereupon, Mr. Galmore comes forward]

5 [Whereupon, Mr. Galmore is duly sworn by the
6 clerk of court as follows: do you solemnly swear that
7 the testimony you're about to give the Court in this
8 case will be the truth, the whole truth, and nothing
9 but the truth, so help you God]

10 THE WITNESS: Yes, ma'am.

11 THE CLERK OF COURT: Please be seated, and
12 please state your name and spell your last name for
13 the record.

14 [Whereupon, Mr. Galmore takes the witness stand]

15 THE WITNESS: My name is James Galmore. G-A-L-
16 M-O-R-E.

17 MR. SELWA: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. SELWA: Thank you, Your Honor.

20 Mr. Galmore, how are you doing today?

21 THE WITNESS: Good, sir. How are you?

22 MR. SELWA: Good. I have most of your file.

23 Will you be needing any of it to refresh your memory?

24 THE WITNESS: I'll let you know.

25

- - -

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

JAMES C. GALMORE,

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

DIRECT EXAMINATION

BY MR. SELWA:

Q. Do you recall the trial of Keion Griffin and
versus -- or the State versus Keion Griffin?

A. Yes.

Q. And you represented Mr. Griffin; correct?

A. Yes, sir.

Q. Do you recall the codefendants in that case?

A. There were two codefendants. I cannot remember
their names offhand.

Q. Would Darius Priest and Demario Stukes sound
familiar?

A. Yes, sir. Those are the names.

Q. And do you recall those two making a plea offer
or a plea agreement to testify against Mr. Griffin in that
case?

A. Yes, sir.

Q. And to your knowledge or memory, did both of
those testify against him?

A. Yes, they did.

Q. Now, this was a large case with a number of
witnesses; correct?

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 A. Yes, sir.

2 Q. And this was during black bike week; correct?

3 A. Yes, sir.

4 Q. And the incident occurred late at night; right?

5 A. Yes, sir. What happened is it looks like it was
6 some type of argument over a parking space. The victim
7 and his friends were at a beach house in Myrtle Beach
8 during the black bike weekend. A little unusual, because
9 it's mostly black people at the black bike weekend but,
10 you know, it's their beach house so they can go whenever
11 they feel like going to a beach house.

12 There are -- if you haven't been to black bike
13 weekend, there are, you know, fifty, a hundred thousand
14 people in the area. It's extremely crowded. It's like
15 New York City downtown rush hour. It's very busy.

16 At some point, Mr. Griffin and his party had run
17 across some ladies that one of the young men recognized
18 from Columbia and the group of ladies and the group of
19 young men were talking back and forth and they ended up
20 pulling into a parking space at this beach house just to
21 sit there, continue talking, and whatever young people do.

22 At this point, the people in the beach house
23 came out of the house and asked for them to move the car.
24 I believe Mr. Griffin offered perhaps \$20 to rent the
25 parking space for a few minutes because they were still

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 talking to the young ladies. The money was rejected, and
2 it became an argument and ultimately became a shooting.

3 Q. And how many people were in that jeep? How many
4 girls?

5 A. I think there were three ladies in the car.

6 Q. And how many people were in the party with
7 the -- the victim's party, or do you recall?

8 A. I believe it was five. There was Mr. Brooks,
9 and I believe two of his friends testified at trial and
10 two others did not testify at trial.

11 Q. If I told you that Zachary Mathis and Jeffery
12 King testified, would that sound familiar?

13 A. Yes, sir.

14 Q. Do you recall Josh Hughes testifying?

15 A. No, sir.

16 Q. Do you remember him to be the family or part of
17 the family that owned the house?

18 A. Yes, sir.

19 Q. Do you remember a person named Keith Griffin in
20 that party as well?

21 A. In the party with the white kids, or the party
22 with the black kids?

23 Q. The white kids.

24 A. I don't remember that name.

25 Q. Would you recall a Dan Sweeney as a name in that

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 party?

2 A. Yes, sir.

3 Q. Did Josh, Keith, or Dan, to your knowledge,
4 testify at trial?

5 A. They did not.

6 Q. Were you able to interview, or have an
7 investigator interview, any of these parties of that
8 party?

9 A. I did not.

10 Q. Were you able to get discovery from the
11 solicitor's office and review those interviews of those
12 parties?

13 A. Yes, sir.

14 Q. Were you able to review each and every
15 interview?

16 A. Yes, sir.

17 Q. If one of those parties that didn't testify had
18 information that identified a different party as the
19 shooter, wouldn't you have thought that would have been an
20 important witness to call?

21 A. Yes, sir.

22 What happened is after Mr. Griffin was
23 convicted, a local attorney here in Horry County came to
24 me and basically just in passing said, well, you know what
25 happened, and --

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 MR. THOMAS: I'm going to object to that, Your
2 Honor. It sounds like it's about to be hearsay.

3 THE COURT: Is there an exception?

4 MR. SELWA: I don't think so, Your Honor.

5 THE COURT: Perhaps if you rephrase your
6 question, I think you can get to where you need to go.

7 Q. [Mr. Selwa] When you recall reviewing those
8 interviews, do you remember the identification being of a
9 different person as the shooter?

10 A. Well, at the time that I reviewed the
11 interviews, I did not know this information. After the
12 trial, I learned that the reason why the other people did
13 not testify is because they identified someone else as the
14 shooter.

15 Q. And when you say the other people, we're talking
16 about the same three white guys, correct --

17 A. Right.

18 Q. -- in Mr. Brooks' party?

19 A. Yes, the three white gentlemen.

20 Q. Were they available?

21 A. To my knowledge, yes, they were available.

22 Q. None of them has -- have passed away or left the
23 country or out of reach; correct?

24 A. That's correct.

25 Q. And the identification in that process was kind

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 of important, wasn't it?

2 A. Yes. That was the issue in the case.

3 Q. Do you recall what each of those -- the
4 defendant's party, what each of those persons were
5 wearing?

6 A. I don't remember each person's clothes. What I
7 remember the issue being is that one of Mr. Griffin's
8 codefendants I think -- I don't remember which one it was,
9 but one of his codefendants was a dark-skinned black male
10 and Mr. Griffin is a light-skinned black male and the
11 statements from the three white guys would have been that
12 the dark-skinned person was the shooter.

13 MR. SELWA: Court's indulgence.

14 THE COURT: Take your time.

15 MR. SELWA: Thank you, Your Honor.

16 [Whereupon, Mr. Selwa reviews documents]

17 Q. [Mr. Selwa] Let me back this up. How did they
18 find Mr. Stukes in this investigation process? How did
19 they come to know if he was at the scene?

20 A. What happened is after the shooting -- there was
21 a tussle and a shooting. And one person left a hat, I
22 believe it was. The Myrtle Beach police officers were
23 able to identify the hat because it was very distinctive.
24 I guess he had his own writing on it. And a police
25 officer had recognized the hat from Myrtle Beach High

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 School and they were able to go back and look at video
2 footage to determine who owned the hat.

3 Q. Did they do a DNA test on the hat?

4 A. They did do a DNA test on the skin and sweat
5 that was on the brim of the hat. They determined that it
6 was a match. I can't remember which codefendant it
7 matched, but it wasn't Mr. Griffin. I think it was
8 Stukes.

9 Q. Do you remember Mr. Stukes testifying that that
10 was his hat?

11 A. Yes.

12 Q. And do you remember him stating that he lost it
13 at the scene?

14 A. Well, his story was he -- that he lost the hat a
15 day earlier in some kind of altercation and that he hadn't
16 lost it at the scene during the fight. Ultimately, once
17 he came to testify, then he stated that he lost it at the
18 fight.

19 Q. If I can refresh your recollection of the trial,
20 Mr. Stukes' testimony -- this is the transcript.

21 A. Yes, sir.

22 THE COURT: What page, Mr. Selwa?

23 MR. SELWA: I'm sorry.

24 THE WITNESS: Page 201.

25 THE COURT: Thank you.

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 [Whereupon, the witness review documents]

2 A. Yes, sir.

3 Q. [Mr. Selwa] Did Mr. Stukes, after your
4 refreshment there -- did Mr. Stukes admit to the hat as
5 being his?

6 A. Yes, he did admit that the hat was his.

7 Q. And did he admit that he left it at the scene?

8 A. Yes, he did.

9 Q. To your knowledge --

10 MR. SELWA: Let me get that transcript back from
11 you.

12 Q. [Mr. Selwa] To your knowledge, did anybody else
13 identify Mr. Stukes wearing the hat or anything else?

14 A. I don't know if this was testified to or not, or
15 if it was just in discovery, but the hat was identified by
16 the school resource officer at Myrtle Beach High School.
17 That's the way they were able to determine it was Stukes.
18 And then they went back and did the DNA and confirmed it.

19 Q. Was one of the parties wearing glasses?

20 A. I don't recall.

21 Q. Do you recall a lady named Emma Chandler?

22 A. No, sir.

23 Q. If I told you that Emma Chandler was one of the
24 girls in the jeep, would that sound correct?

25 A. Yes, that sounds correct.

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. Does this look familiar to you?

2 [Whereupon, Mr. Selwa and Mr. Thomas confer]

3 Q. [Mr. Selwa] Can you identify this?

4 A. Yes, sir. This is a transcript of a tape-
5 recording that the Myrtle Beach police officers conducted
6 with Ms. Emma Chandler.

7 Q. Did you have a chance to review that --

8 A. Yes, sir.

9 Q. -- prior to trial?

10 A. Yes, sir.

11 Q. On page 9, do you recall Ms. Chandler
12 identifying anybody as wearing glasses and a hat?

13 A. Just a moment, sir.

14 [Whereupon, the witness reviews documents]

15 A. Yes, sir. Ms. Chandler does indicate that the
16 person had on glasses and a hat.

17 Q. [Mr. Selwa] And anywhere in that interview, do
18 you recall her identifying that party as the one that had
19 the gun?

20 A. I'm going to need just a minute to read through
21 it.

22 MR. SELWA: The Court's indulgence, Your Honor.

23 THE COURT: Take all the time you need.

24 [Whereupon, the witness reviews documents]

25 A. Ms. Chandler indicates that the person who had

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 the gun was the person that was trying to talk to her.
2 That would be the one with the hat and the glasses.

3 Q. [Mr. Selwa] Did she describe what kind of hat
4 that was?

5 A. She describes it as red and black, and she could
6 not describe the logo that was on the hat.

7 Q. As we've established, or you established during
8 trial, that Mr. Stukes was wearing the hat; correct?

9 A. Yes.

10 Q. Mr. Galmore, you're stating also that you don't
11 recall Ms. Chandler testifying; correct?

12 A. I know there were three girls in the car, and I
13 think we put two of them on the stand.

14 [Whereupon, Mr. Selwa and Mr. Thomas confer]

15 Q. [Mr. Selwa] Mr. Galmore, did that transcript
16 look like an interview that you reviewed prior to trial?

17 A. Yes, sir.

18 Q. And did it look accurate?

19 A. Yes, sir.

20 Q. And to your knowledge, has anything changed
21 about that?

22 A. No, sir.

23 Q. And in your file, would you have had a certified
24 sealed copy?

25 A. Yes, sir.

James Galtmore
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. And does this look like that certified sealed
2 copy?

3 A. Yes, sir. This appears to be the original copy
4 of the transcript. It is still sealed.

5 Q. Has it been opened in any way, to your
6 knowledge?

7 A. No, sir.

8 Q. Altered or amended?

9 A. No, sir. The seal is intact.

10 MR. SELWA: Your Honor, I would move to put this
11 in as Petitioner Number 1.

12 THE COURT: Any objection?

13 MR. THOMAS: The only -- if it's just going in
14 as, you know, something that Mr. Galtmore reviewed
15 prior to trial, I'm fine with it. If it's going in
16 for the truth, anything that's stated in here I would
17 object to that on hearsay grounds.

18 MR. SELWA: Your Honor, it is going in as a tool
19 for which he reviewed for trial and then failed to
20 call, so I think it would go towards the ineffective
21 claim.

22 THE COURT: It needs to be marked as Applicant's
23 1. I'll take that -- I'll take that issue under
24 advisement whether or not I admit it, but go ahead and
25 mark it.

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 MR. SELWA: Thank you, Your Honor.

2 [Whereupon, Plaintiff's Exhibit Number 1 is
3 marked by the court reporter]

4 MR. THOMAS: And may I be heard briefly in reply
5 to that, Your Honor?

6 THE COURT: One moment --

7 MR. THOMAS: May I be heard briefly in reply to
8 that?

9 THE COURT: If you'll -- when the court reporter
10 indicates she is ready.

11 THE COURT REPORTER: I'm ready.

12 THE COURT: All right.

13 MR. THOMAS: Just if that's -- if he's trying to
14 get -- there's a prohibition on it. If you're going
15 to say that counsel is ineffective for not calling a
16 witness, that witness has to testify. It would appear
17 that he's trying to sort of get around that by
18 introducing this hearsay evidence, and I would just
19 object to it on that ground.

20 THE COURT: Well, I need to hear a little more
21 testimony before I make the decision whether or not to
22 admit it.

23 You may continue.

24 Q. [Mr. Selwa] Mr. Galmore, in that interview you
25 reviewed, you saw that she stated that Mr. Stukes -- or

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 you saw that she identified the person wearing the hat and
2 glasses as the one with the gun; correct?

3 A. That's correct.

4 Q. Do you recall -- and I think you answered this
5 earlier. You do not recall Mr. Dan Sweeney testifying;
6 correct?

7 A. No, sir.

8 Q. Did you review his interview?

9 A. If it's in that box, I reviewed it.

10 Q. There were a number of CDs. And if -- would it
11 be fair to say if his interview was on those CDs, you
12 would have reviewed it?

13 A. Yes, sir.

14 Q. Do you recall the contents of that interview?

15 A. No, sir, I don't.

16 Q. If I played a portion of that interview, would
17 that refresh your memory?

18 A. Yes, sir.

19 MR. SELWA: The Court's indulgence.

20 Your Honor, I'm going to have to crank up my
21 computer, if that's okay.

22 THE COURT: Okay.

23 MR. SELWA: If you would push play and play the
24 identifying part, just to know.

25 THE WITNESS: Right here?

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

- 1 MR. SELWA: Yes.
- 2 [Whereupon, CD of interview is played]
- 3 [Interview is not transcribed by the court
- 4 reporter]
- 5 Q. [Mr. Selwa] Would you mind skipping to around
- 6 seven minutes and thirty seconds on that.
- 7 A. I'm at seven zero six now.
- 8 [Whereupon, CD of interview is played]
- 9 [Interview is not transcribed by the court
- 10 reporter]
- 11 Q. [Mr. Selwa] Mr. Galmore, does that refresh your
- 12 memory of that interview?
- 13 A. Yes, sir.
- 14 Q. Do you recall Mr. Sweeney identifying the guy
- 15 stating he was described as the guy wearing the hat?
- 16 A. Yes, sir.
- 17 Q. Mr. Sweeney wasn't called at trial, was he?
- 18 A. No, sir.
- 19 Q. The State didn't call Mr. Sweeney; correct?
- 20 A. That's correct.
- 21 Q. You didn't call Mr. Sweeney?
- 22 A. No, sir.
- 23 Q. Testimony suggests that Mr. Griffin wasn't
- 24 wearing a hat; correct?
- 25 A. That's correct.

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. This witness would have helped his case;
2 correct?

3 A. Yes, that would have helped.

4 Q. Do you recall reviewing an interview of a
5 witness named Michael Anthony Bennett?

6 A. Yes. I do recall that one.

7 Q. Do you recall the contents of that interview?

8 A. If I'm remembering correctly, Mr. Bennett was
9 one of the many people that the police interviewed who was
10 just in the area when the shooting occurred.

11 Q. Was Mr. Bennett called at trial?

12 A. I can't recall.

13 Q. If I handed you up a transcript of his
14 interview, would that refresh your memory as to the
15 contents of his --

16 A. Yes, sir.

17 Q. -- statement to the police?

18 A. Yes, sir.

19 [Whereupon, the witness reviews documents]

20 Q. [Mr. Selwa] Mr. Galmore, after you review that,
21 I would like to ask you some questions after you refresh
22 your memory. Is that okay?

23 A. Yes, sir. I'm ready.

24 Q. Do you recall Mr. Bennett stating in that
25 interview that he witnessed the shot?

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 A. Yes, he does say he witnessed the shot.

2 Q. And does he identify specifically the person
3 that he witnessed shooting?

4 A. He does say the person with the gun was wearing
5 a white tee-shirt and black or blue jeans.

6 Q. Did he say that -- and to your knowledge, after
7 your review of it, do you recall any statements from him
8 regarding any other identifying articles of clothing?

9 A. He also identified a red bandana.

10 Q. Okay. Could that red bandana have been mistaken
11 for a red hat?

12 A. You would have to ask --

13 MR. THOMAS: Your Honor, I'm going to object.
14 That calls for speculation.

15 THE COURT: If he knows, he may answer.

16 A. I don't know the answer.

17 Q. [Mr. Selwa] But you know, from your personal
18 knowledge of this case, Mr. Griffin was wearing shorts;
19 correct?

20 A. That's correct.

21 Q. And to your recollection, Demario Stukes was
22 wearing pants; correct?

23 A. Yes, sir.

24 Q. And a red hat?

25 A. And a hat and shades.

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. Mr. Bennett witnessed this whole thing?

2 A. Yes, sir.

3 Q. Did the State call Mr. Bennett?

4 A. No, they did not.

5 Q. Did you call Mr. Bennett?

6 A. I did not.

7 Q. But you reviewed this prior to trial; correct?

8 A. Yes, sir.

9 Q. Does this reflect an accurate -- or is this an
10 accurate reflection of the transcript that you reviewed
11 prior to trial?

12 A. Yes, sir, it is.

13 MR. SELWA: Your Honor, again, I would like to
14 move this into evidence as Michael Bennett's sealed
15 interview.

16 MR. THOMAS: Same objection as before.

17 THE COURT: So this is marked as 1. Is that
18 the --

19 MR. SELWA: This is Applicant's 2. The first
20 one was Ms. Emma Chandler's interview.

21 THE COURT: Let me hear from you, Mr. Thomas.

22 MR. THOMAS: Your Honor, I'm concerned that --
23 all of these interviews, I mean, it's hearsay. It's
24 something that someone else said to an investigator a
25 while back. It's clearly being offered at this point

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 for the truth of what they saw. He's trying to get
2 around the requirement that he call in witnesses to
3 actually prove ineffective assistance of counsel for
4 failure to call a witness.

5 THE COURT: Mr. Selwa, you're attempting to move
6 in at this time -- again, you're renewing Applicant's
7 1 and now Applicant's 2; is that correct?

8 MR. SELWA: Correct.

9 THE COURT: For the purposes for which you
10 articulated -- I'm noting the State's objection --
11 Applicant's 1 and 2 into evidence.

12 [Whereupon, Plaintiff's Exhibit Number 1 is
13 admitted into evidence by the Court]

14 THE COURT: And we need to mark 2. And if
15 you'll bring them up so we don't lose them.

16 MR. SELWA: I'm sorry. Excuse me.

17 THE COURT: Thank you.

18 [Whereupon, Plaintiff's Exhibit Number 2 is
19 marked by the court reporter]

20 [Whereupon, Plaintiff's Exhibit Number 2 is
21 admitted into evidence by the Court]

22 Q. [Mr. Selwa] Mr. Galmore, do you also recall a
23 recorded interview with Mr. Keith Griffin?

24 A. I don't remember that one.

25 MR. SELWA: The Court's indulgence.

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 THE COURT: Take your time.

2 [Off the record momentarily]

3 MR. SELWA: I'm ready to continue, Your Honor.

4 THE COURT: All right.

5 Q. [Mr. Selwa] Do you recognize this, Mr. Galmore?

6 A. Yes, sir. That is a CD that purports to be a
7 tape-recorded conversation with Keith Griffin.

8 Q. Do you now recall Keith Griffin as one of the
9 parties in Mr. Brooks' party? one of the persons in
10 Mr. Brooks' party?

11 A. I still don't recall Mr. Griffin.

12 Q. Mr. Galmore, if I play a part of that interview
13 for you, would that refresh your memory?

14 A. Yes, sir.

15 MR. SELWA: Same thing.

16 THE WITNESS: Just press play?

17 MR. SELWA: Uh-huh.

18 [Whereupon, CD of interview is played]

19 [Interview is not transcribed by the court
20 reporter]

21 MR. SELWA: Your Honor, may I have a second to
22 crank my computer up? I don't have that one on --

23 THE COURT: That's fine.

24 [Off the record momentarily]

25 MR. SELWA: If you could, that's -- to refresh

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 your memory, could you hit the play button.

2 [Whereupon, CD of interview is played]

3 [Interview is not transcribed by the court
4 reporter]

5 MR. SELWA: Mr. Galmore, could you pause it
6 right there for a second.

7 Q. [Mr. Selwa] Do you recall that interview at
8 all?

9 A. Yeah, I recall the -- yes, sir, I recall the
10 interview.

11 Q. If you'll skip to four fifteen, can you play
12 that for your recollection?

13 [Whereupon, CD of interview is played]

14 [Interview is not transcribed by the court
15 reporter]

16 Q. [Mr. Selwa] Do you recall that -- reviewing
17 that interview?

18 A. Yes, sir.

19 Q. Do you recall him identifying the guy with the
20 gun as the guy that was wearing sunglasses?

21 A. I think he said the guy with the white shirt.

22 Q. White shirt.

23 And Mr. Keith Griffin was not called at trial by
24 the prosecution; correct?

25 A. No, sir, he was not.

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. And you did not call him; correct?

2 A. That's correct.

3 Q. Do you think Mr. Griffin's testimony, Mr. Keith
4 Griffin's testimony, may have called into question the
5 facts identifying Mr. Griffin as the shooter?

6 A. Yes, sir. He does appear to be identifying a
7 different person.

8 Q. Does the same go with Mr. Bennett?

9 A. Yes, sir.

10 Q. Mr. Sweeney?

11 A. Yes, sir.

12 Q. And Ms. Emma Chandler?

13 A. That's correct.

14 Q. None of those people were called?

15 A. Yes, sir. That's correct.

16 Q. Do you think the trial would have been different
17 had they testified?

18 MR. THOMAS: Objection, Your Honor. That,
19 again, calls for a legal conclusion.

20 THE COURT: If there's some reason he can make
21 that analysis, feel free, Mr. Galmore.

22 A. Well, it would have been testimony that there
23 was someone else that was the shooter. Whether it would
24 have made a difference, I don't know.

25 Q. [Mr. Selwa] And at some point, did the -- when

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 the jury went out for deliberations, did they ever come
2 back and ask the Court for anything?

3 A. I don't remember. I would have to look at the
4 transcript.

5 Q. Would it refresh your memory if I -- do you
6 recall them, the jury, coming out and asking anyone -- for
7 anyone's testimony to review?

8 A. I don't remember it, sir.

9 MR. SELWA: Court's indulgence.

10 THE COURT: Take your time.

11 [Whereupon, Mr. Selwa reviews documents]

12 Q. [Mr. Selwa] To refresh your memory, can you
13 review the transcript.

14 [Whereupon, the witness reviews documents]

15 A. Yes, sir. It appears that the foreman had
16 requested to hear Mr. Brown's testimony again.

17 Q. [Mr. Selwa] And who was Mr. Brown, to your
18 recollection?

19 A. Just a moment.

20 [Whereupon, the witness reviews documents]

21 A. The transcript references a Vernon Brown. And
22 Mr. Brown appears to have been a witness who was not with
23 either of the parties but was present.

24 Q. [Mr. Selwa] Okay. As trial counsel, would that
25 have indicated to you that the jury had questions as to

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 who to believe?

2 A. Yes. That was an issue in the case.

3 Q. And had Mr. Griffin's defense had more testimony
4 about what others saw, do you think that would have helped
5 them make their decision?

6 A. Yes.

7 Q. Now, in this trial, Mr. Galmore, do you recall
8 which jury charges you advocated for?

9 A. I know there was an issue about whether or not
10 we should have requested a voluntary manslaughter charge,
11 but I did not.

12 Q. Did the judge ask you about whether or not you
13 wanted the lesser included offense of voluntary
14 manslaughter charged?

15 A. Yes, sir. And, again, we did not want a
16 voluntary manslaughter charge.

17 Q. And so the jury could only consider murder or
18 nothing; correct?

19 A. That's correct.

20 Q. And that's a pretty big gamble with Mr.
21 Griffin's life; correct?

22 A. Well, the theory was he's either the shooter or
23 he wasn't. And I thought that we had presented evidence
24 that Mr. Stukes was, in fact, the shooter.

25 Q. And had they been able to consider that lesser

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 included offense, that would have been a possibility as
2 opposed to murder; correct?

3 A. In my opinion, it would have been likely that he
4 would have been convicted of the lesser included offense.

5 Q. Did the judge urge you to consider that, in
6 light of the case law?

7 A. He did.

8 Q. Did you explain at any point the difference in
9 what a murder conviction carries and what a manslaughter
10 conviction carries to Mr. Griffin?

11 A. Well, this would have been a decision that I
12 would not have made on my own, so I would have consulted
13 with Mr. Griffin on it.

14 Q. And do you recall consulting with Mr. Griffin on
15 that?

16 A. I don't specifically recall it, but I -- again,
17 I would not have made that decision without consulting
18 with the client first.

19 Q. And to your recollection, what was Mr. Griffin's
20 instructions to you on that charge?

21 A. Well, we decided to not use the voluntary -- to
22 not request the voluntary manslaughter charge.

23 Q. And, ultimately, Mr. Griffin was convicted of
24 murder; correct?

25 A. Yes, sir.

James Galmore
Direct Examination by Mr. Selwa
August 26, 2014

1 Q. And received a life sentence; correct?

2 A. Yes, sir.

3 [Whereupon, Mr. Selwa and Mr. Griffin confer]

4 MR. SELWA: No further questions. Please answer
5 any questions Mr. Thomas may have for you.

6 THE COURT: Mr. Thomas.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- - -

- - -

- - -

James Galmore
Cross-Examination by Mr. Thomas
August 26, 2014

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Galmore, just some background information.
How long have you been practicing law?

A. Since 1995, sir.

Q. And this wasn't your first murder trial, was it?

A. No, sir. I don't know how many trials I've done
but it's been several, including capital cases.

Q. How many times did you get to meet with
Mr. Griffin?

A. I don't recall. Several times, but I don't
recall specifically how many times.

Q. But you felt like you had met with him enough to
explain sort of the elements and what the State's evidence
was against him?

A. Yes, sir.

Q. Let me back up and ask that question first.
Did you -- you filed the standard Rule 5 Brady
discovery type motions?

A. Yes, sir.

Q. Did you get a chance to review everything the
State turned over? Did you get a chance to review that
with Mr. Griffin?

A. Yes, sir.

Q. You explained to him the elements of murder?

James Galmore
Cross-Examination by Mr. Thomas
August 26, 2014

1 A. Yes, sir.

2 Q. Did y'all ever get a chance to talk about
3 voluntary manslaughter at any point before trial?

4 A. The only discussion would have been at that
5 point where we're discussing jury charges. We didn't
6 discuss it prior to trial.

7 Q. So you did tell him -- you basically explained
8 the elements of voluntary and sort of what the advantage
9 and disadvantage would be to that charge going to the
10 jury?

11 A. Yes.

12 Q. And you said it was your trial strategy to go
13 for an all or nothing and sort of try to prove that he
14 wasn't guilty of the murder and not look for a conviction
15 on a lesser included?

16 A. Right. We had evidence that someone else was
17 the shooter.

18 Q. He gave you his version of events of what
19 happened out there at some point; right?

20 A. Mr. Griffin?

21 Q. Yes.

22 A. Yes, sir.

23 Q. And he told you that someone else -- he told you
24 -- who did he tell you was the shooter?

25 A. I don't think he ever said who the shooter was.

James Galmore
Cross-Examination by Mr. Thomas
August 26, 2014

1 We got Mr. Stukes just based on the statements that we
2 received.

3 Q. But he never at any point told you he wasn't
4 there and didn't have anything to do with it?

5 A. Well, he said he didn't shoot the person.

6 Q. But he was -- he told you that he was there at
7 the fight?

8 A. Right. That's correct.

9 Q. But he didn't know who those girls were who were
10 in the car? He wasn't able to give you any information on
11 them?

12 A. No. He didn't know the girls.

13 I think the girls were familiar with Mr. Stukes
14 because Mr. Stukes lived in Columbia and apparently one of
15 the girls went to high school with him in Columbia.

16 Q. You had -- basically, you've kind of gone over
17 everybody's statements. You basically had statements from
18 everybody that testified at trial? You knew beforehand
19 what they were going to testify to?

20 A. Yes.

21 Q. Was there anything that I think Mr. Mathis,
22 Mr. King, specifically -- did they say anything on the
23 stand that was different from what you had expected them
24 to say from reviewing the file?

25 A. No, sir.

James Galmore
Cross-Examination by Mr. Thomas
August 26, 2014

1 Q. And you had an opportunity to cross-examine both
2 of the codefendants on the fact that they were charged
3 with this murder as well?

4 A. That's correct.

5 Q. And you crossed them on sort of the deals they
6 had gotten from the State in exchange for their testimony?

7 A. Yes.

8 Q. And do you recall -- I believe it was Mr.
9 Hughes' testimony -- I'm sorry -- Mr. Mathis' testimony
10 where he basically couldn't identify the shooter?

11 A. That's correct.

12 Q. So you basically elicited that testimony from
13 him that he couldn't positively sit there on the stand and
14 say Mr. Griffin was the man with the gun?

15 A. Yes, sir.

16 Q. And the same thing with Mr. King, I believe?

17 A. Yes, sir. And what we did was we tried to
18 couple that with the statement from the girls in the car
19 identifying who the shooter was. We did not get to call
20 Ms. Emma Chandler as a witness. I believe we called
21 another one of the young ladies that was in the car.

22 Q. And that would have been Ms. Harris?

23 A. Asia Harris? Yes.

24 Q. Just, I mean, why didn't you call those other
25 witnesses?

James Galmore
Cross-Examination by Mr. Thomas
August 26, 2014

1 A. Well, I was not sure if they were going to be
2 helpful or hurtful to Mr. Griffin. Two of the witnesses
3 were in Mr. Brooks' party. This fellow Mr. Bennett, he
4 had some North Carolina address and I didn't think we
5 would be able to pursue him.

6 And we were able to get -- we couldn't get Ms.
7 Chandler, but we were able to get one of the other young
8 ladies that was in the car with Ms. Chandler.

9 Q. So you actually tried to get Ms. Chandler to
10 come and testify?

11 A. As I recall, there were three people in the car.
12 One of them was actively hiding from being served with a
13 subpoena. Asia Harris, we interviewed her in Columbia and
14 she cooperated and came down and testified. And I don't
15 remember why we could not get the third person involved.
16 But we were only able to get one out of those three
17 ladies.

18 Q. And as far as the evidence in this case goes,
19 there was never any doubt, just sort of piecing the
20 testimony together, that there were three guys there and
21 they kind of all knew that there was a gun -- one of them
22 had a gun?

23 A. As I recall it, the third codefendant, who was a
24 juvenile, is the person who actually brought the gun and I
25 think his testimony was that Mr. Stukes asked him to bring

James Galmore
Cross-Examination by Mr. Thomas
August 26, 2014

1 the gun.

2 MR. THOMAS: I think that's all I have,

3 Mr. Galmore. Thank you.

4 THE WITNESS: Okay.

5 THE COURT: Mr. Selwa?

6 MR. SELWA: The Court's indulgence for one
7 minute, Your Honor. My client is writing --

8 THE COURT: Take your time.

9 Do y'all wish for a little break at this time
10 and then we'll go --

11 MR. SELWA: That might be nice, Your Honor.

12 THE COURT: Why don't we do that.

13 You can step down. You know all of my rules.

14 You are free to step down, but please make sure you
15 come back. Okay?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: And don't talk about your testimony.

18 So ten minutes. All right. Thank you.

19 [Whereupon, a recess is taken from 11:43 a.m. to
20 11:53 a.m.]

21 THE COURT: All right. Mr. Selwa?

22 MR. SELWA: Yes, Your Honor. I believe this is
23 redirect; correct?

24 THE COURT: Yes.

25 MR. SELWA: Thank you.

James Galmore
Redirect Examination by Mr. Selwa
August 26, 2014

REDIRECT EXAMINATION

BY MR. SELWA:

Q. Mr. Galmore, you stated in your answer to Mr. Thomas that you weren't sure those witness testimonies would hurt Mr. Griffin's case, correct, that didn't testify? Let me start over.

You testified that the individuals who did not testify, you were scared that their testimony might have hurt Mr. Griffin; correct?

A. Yes.

Q. But you were aware of what they -- the contents of what they were going to say; correct?

A. Yes.

Q. Because you had the interviews; correct?

A. That's correct.

Q. And you reviewed the interviews; correct?

A. Yes, sir.

MR. SELWA: No further questions.

MR. THOMAS: Nothing further from the State.

THE COURT: You can step down. Thank you.

THE WITNESS: Yes, ma'am.

[Whereupon, Mr. Galmore is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. SELWA: Your Honor, that would be the

James Galmore
Redirect Examination by Mr. Selwa
August 26, 2014

1 petitioner's case -- or the applicant's case.

2 THE COURT: All right. Do you have any
3 witnesses?

4 MR. THOMAS: No witnesses from the State. We'll
5 just rest on the record before the Court.

6 THE COURT: Thank you. Mr. Selwa, I'll allow
7 you a closing. Not necessary, but I will allow you
8 that.

9 MR. SELWA: Thank you, Your Honor.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

- - -

24

- - -

25

- - -

Keion Griffin vs. The State of South Carolina
Closing Argument by Mr. Selwa
August 26, 2014

CLOSING ARGUMENT

MR. SELWA: Your Honor, this is a tragic situation. Growing up here, the black bike weekend, the Harley weekend, are very racially tense times and it incited a lot of emotions during that time. And I think there was a rush in that investigation and it almost turned into a witch hunt, but I think the wrong person is sitting in jail and I think that Mr. Griffin was not the shooter and I think the evidence would have shown that fact had Mr. Galmore actually called those witnesses.

We know that the information was available to him, that he was able to review that, that he knew the contents of those interviews, he knew the contents of what they would testify to. He also knew that they would testify and call into question the ID of the actual shooter, and what you have is you have Mr. Griffin. His life has been taken away, essentially. He's sitting in jail for life, and he was not the shooter. And that's our contention.

He went out with three friends. They may have been a little dangerous. He may have known about it -- I don't know -- about them carrying the gun, but certainly I don't think he would have known that they were out to kill somebody. And that was part of the

Keion Griffin vs. The State of South Carolina
Closing Argument by Mr. Selwa
August 26, 2014

1 trial, as well, accomplice liability.

2 But I don't know that it's fair, Your Honor. I
3 think that if Mr. Griffin would have the opportunity
4 to have a retrial on this and have those witnesses
5 come forward, as painful as it would be to the
6 victim's family, I think justice would be served. And
7 I think it would be unfortunate if Mr. Griffin had to
8 sit in jail for the rest of his life because his
9 codefendant was able to pull off a gigantic lie. And
10 I think the evidence suggests it, and if submitted
11 properly would have suggested that Mr. Griffin was not
12 the shooter.

13 And, Your Honor, that's what we're asking for
14 today is a retrial.

15 MR. THOMAS: Just briefly, Your Honor.
16
17
18
19
20
21
22
23 - - -
24 - - -
25 - - -

Keion Griffin vs. The State of South Carolina
Closing Argument by Mr. Thomas
August 26, 2014

CLOSING ARGUMENT

MR. THOMAS: You know, Mr. Galmore did testify that he reviewed everything and that he had a strategic reason for not calling those other witnesses. He said he did try to track down the ones that he could. He did call the one that he was able to track down, as far as the girls that witnessed it.

You know, he fully articulated his position on the record to the jury. This was really one of those cases that they were either going to believe the argument that Mr. Griffin was not the shooter, or they were going to believe the argument that he was, and I think that was fully brought out as a quintessential jury question. Mr. Galmore crossed all the witnesses on their, you know, what they saw, brought out as best he could.

And even at the end of the day, there's still a hand of one, hand of all problem that was charged to the jury. There's still an inference that could be made that they knew that gun was there and that, therefore, there's a hand of one problem.

And, again, as far as the voluntary manslaughter goes, it seems kind of inconsistent to say, I wasn't there -- or not that I wasn't there, but I was not the shooter and then also say, but I would like a charge

Keion Griffin vs. The State of South Carolina
Closing Argument by Mr. Thomas
August 26, 2014

1 on voluntary manslaughter. And I think Mr. Galmore
2 articulated his position on that issue, as well.

3 We would just ask that the petition be denied.

4 THE COURT: Mr. Selwa, anything further?

5 MR. SELWA: No, Your Honor.

6 THE COURT: All right. I'm going to allow you
7 to submit proposed orders.

8 Mr. Selwa, how long do you need?

9 MR. SELWA: Honestly, Your Honor, I'm not that
10 familiar with submitting orders. It may take me a
11 little bit. Would one month be sufficient?

12 THE COURT: That's way too long.

13 MR. SELWA: Long? Your Honor, I'll just -- and
14 I'll tell you this just for the rest of the week, too.
15 I have a term of court next week, as well, on Friday
16 and I've got an oral argument at the Court of Appeals
17 on the 9th of September, so I'm happy to do whatever
18 you like. Just please consider that when you decide
19 how long you need.

20 THE COURT: Your argument is on the 9th?

21 MR. SELWA: Yes, ma'am. I just got that
22 assigned last week. It's one of Judge Few's -- cases
23 he's assigned.

24 THE COURT: I will give you until September
25 15th, 9:00 a.m., to submit proposed orders. And that

Keion Griffin vs. The State of South Carolina
Closing Argument by Mr. Thomas
August 26, 2014

1 is inclusive of exchanging back and forth, so make
2 sure you copy and provide to each other. I do not
3 entertain back-and-forth e-mails to my law clerk
4 about, I think Mr. Thomas's position is wrong, I think
5 Mr. Selwa -- I know what your positions are. It's
6 merely as a guideline for me. So the earlier you get
7 them in, the sooner I will render my decision.

8 Anything further?

9 MR. SELWA: No, Your Honor. I think Mr. Thomas
10 and I work pretty well together. I don't anticipate
11 any of those problems.

12 MR. THOMAS: Thank you, Your Honor.

13 THE COURT: All right. Anything further?

14 Mr. Griffin, good luck to you. Thank you.

15 [HEARING CONCLUDES AT 12:01 P.M.]

16

17

18

19

20

21

22

23

24

25

Keion Griffin vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

C E R T I F I C A T E

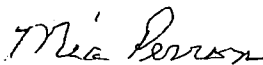
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the PCR hearing held before the Honorable Kristi L. Harrington, on Tuesday, August 26, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 20th day of March, 2015.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Keion Griffin, #337833,)

Case No. 2011-CP-26-10757

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
HORRY COUNTY
14 JUL 19 AM 9:42
MELANIE LOGGINS-WARD
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 28, 2011. Respondent made a timely Return on or about February 24, 2012. The Court convened an evidentiary hearing into the matter on August 26, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa II, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, James C. Galmore, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In July 2008, the Horry County Grand Jury indicted Applicant for murder (2008-GS-26-2552) and possession of a weapon during the commission of a violent crime (2008-GS-26-2553). James C. Galmore, Esquire ("trial counsel"), represented

Applicant. On November 2, 2009, Applicant proceeded to trial before the Honorable Larry B. Hyman Jr. and a jury. The jury found Applicant guilty as indicted. On November 4, 2009, Judge Hyman sentenced Applicant to concurrent terms of life imprisonment without the possibility of parole for murder and five (5) years for possession of a firearm during the commission of a violent crime.

Applicant filed a timely notice of appeal, and Joseph L. Savitz III, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of an *Anders*¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on August 15, 2011. *State v. Griffin*, Op. No. 2011-UP-387 (S.C. Ct. App. filed August 15, 2011). The remittitur was returned to the circuit court on August 31, 2011.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Counsel failed to object to jury Instructions"
 - a. "Counsel waived Belcher Instruction to jury"

At the evidentiary hearing, Applicant orally amended the application and proceeded on only the following allegations:

1. Ineffective assistance of counsel for failing to call witnesses.
2. Ineffective assistance of counsel for failing to request a lesser included offense.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

¹ *Anders v. California*, 386 U.S. 738 (1967).

A. Summary of Testimony

Applicant testified he was dressed similarly to a co-defendant, Demario Stukes, the night of the murder. He testified he was not wearing a hat, but Stukes was. Applicant testified trial counsel James Galtmore did not share the State's discovery response with him. He testified trial counsel should have interviewed the other witnesses to the crime to determine Stukes was actually the shooter. Applicant maintained he was not present at the scene and was not the shooter.

Applicant also testified trial counsel did not explain the decision to reject a charge on the lesser included offense of voluntary manslaughter. He stated trial counsel explained the jury would find him guilty if they requested a manslaughter charge. Applicant testified the fact the trial judge had to issue an *Allen*² charge indicates they would have likely convicted him of manslaughter if presented with the option. Applicant believed he did not have enough information to make the decision to reject a voluntary manslaughter charge.

Trial counsel testified he had several meetings with Applicant, and discussed the State's evidence and his defenses. Trial counsel testified Applicant never denied being present at the shooting, but he also would not reveal who the actual shooter was. Trial counsel testified he reviewed each and every interview of witnesses at the scene before trial. He recalled there were certain witnesses who identified a person with a hat and glasses as having the gun. On cross-examination, he testified he did not call Dan Sweeny, Keith Griffin, or any other members of the victim's party because their statements indicated they had no clear recollection of the events. He also testified he was afraid members of the victim's party would shape their testimony to implicate Applicant. Trial counsel testified he did not call Emma Chandler, a witness to the incident, as a witness because her statement indicated she did not see

² *Allen v. United States*, 164 U.S. 492 (1896).

the actual shooting. He also recalled being unable to locate Chandler to serve her with a subpoena. Trial counsel also recalled an interview with Michael Bennett, a witness to the incident, which indicated the shooter had on a red bandana. Ultimately, trial counsel admitted he did not know if the testimony of these witnesses would have made a difference in Applicant's trial.

Trial counsel recalled cross-examining the co-defendants on their plea deals. He also remembered presenting the testimony of Asia Harris to show Demario Stukes was the shooter. Trial counsel recalled the statements of the other witnesses were consistent with their trial testimony. He also recalled discussing the potential of a manslaughter charge with Applicant at the time of the charge conference. Trial counsel testified he did not ask for a manslaughter charge because he argued to the jury Applicant was not the shooter. He testified his strategy was not to get a conviction on a lesser included offense.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

1. Failure to call witnesses.

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to call further witnesses on Applicant's behalf. The evidence linking Applicant to this crime came largely through eyewitness testimony. Trial counsel was thoroughly familiar with all the witness statements prior to trial. He read the statements, reviewed the State's other evidence, and was not surprised by the testimony at trial. *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing *Daniels v. State*, 676 S.E.2d 13 (Ga. 2009)). Regarding Sweeny and Griffin, trial counsel articulated he did not want to call any members of the victim's party for two reasons. First, those witnesses did not have a clear recollection of the events the night of the murder. Second, trial counsel feared those witnesses would harm Applicant's case by testifying in the State's favor. Regarding Chandler, trial counsel articulated he attempted to subpoena her, but was unsuccessful. The Court finds trial counsel articulated valid strategic reasons for not calling these witnesses to testify in Applicant's defense. See *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a

valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” (citing *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992))).

The Court further finds Applicant failed to demonstrate he was prejudiced by not having these witnesses testify at this trial. None of these witnesses testified at the evidentiary hearing. Thus, any finding of prejudice would be purely speculative. *Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (“A PCR applicant cannot show that he was prejudiced by counsel’s failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.” (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). Furthermore, the testimony of these witnesses, even if consistent with their recorded statements, is “cumulative to or does not otherwise aid evidence introduced at trial[.]” *Edwards*, 392 S.C. at 459, 710 S.E.2d at 66 (citing *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998); *Glover*, 318 S.C. at 498, 458 S.E.2d at 540; *Cherry*, 300 S.C. at 118–19, 386 S.E.2d at 625–26). Neither of the testifying members of the victim’s party, Zachary Mathis and Jeffrey King, could positively identify Applicant as the shooter. However, they consistently testified the shooter was not wearing a hat and was not the individual who initiated the fight. Sweeny and Griffin’s statements are not inconsistent on these points. Likewise, Bennett’s statement did not positively identify Stukes as the shooter. Chandler’s statement indicates she did not actually see the gun or the shooting. Accordingly, the Court agrees with trial counsel’s assessment that testimony from these witnesses may not have affected the outcome of Applicant’s trial.

Instead, the Court notes testimony of these witnesses actually may have bolstered the State’s case against Applicant. The members of the victim’s party indicate two individuals were involved in the shooting. The first individual approached Harris’s car to speak to Harris and Chandler. The second



individual remained near the back of the car. This version of events is supported by Harris and Chandler. Harris and Chandler also indicate the first individual then engaged in a fight with a member of the victim's party. The victim attempted to break up this fight. The members of the victim's party, who actually saw the shooting, indicate the second individual was the actual shooter. Their testimony and statements were corroborated by Applicant's co-defendants. Thus, the Court is left with the conclusion Stukes was the first individual who engaged in a fight with a member of the victim's party, and Applicant was the second individual who shot the victim when the victim attempted to break up the fight. Accordingly, the Court finds Applicant has not shown any prejudice from trial counsel's decision to not call further witnesses on Applicant's behalf.

2. Rejection of voluntary manslaughter charge.

The Court also finds Applicant failed to meet his burden of proof to show trial counsel ineffective for rejecting an instruction on the lesser included offense of voluntary manslaughter. Trial counsel's defense strategy was to show Applicant was not the shooter. He attempted to elicit testimony indicating Applicant did not have the gun. He argued to the jury Stukes was the shooter. Trial counsel's theory of the case did not involve Applicant shooting the victim under circumstances indicating he committed manslaughter. *State v. Starnes*, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010) ("Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." (citing *State v. Wharton*, 381 S.C. 209, 672 S.E.2d 786 (2009))). Thus, a charge on voluntary manslaughter would have been incompatible with trial counsel's trial strategy. Accordingly, the Court finds trial counsel articulated a valid strategy for declining the manslaughter charge. *Abney v. State*, 408 S.C. 41, 46, 757 S.E.2d 544, 547 (Ct. App. 2014), *reh'g denied* (Apr. 24, 2014) (failing to ask for a jury charge on a lesser included offense is a valid trial strategy); *see also State v. Walker*, 605

S.E.2d 647, 654 (N.C. Ct. App. 2004), *overruled on other grounds*, 695 S.E.2d 750 (N.C. 2006) ("The record indicates defendants' counsel were employing an 'all or nothing' strategy[.] ... The fact that it failed does not mean that defendants were deprived of effective assistance of counsel."). Thus, trial counsel was not deficient in rejecting the manslaughter instruction.

Furthermore, under the facts of this case, a voluntary manslaughter instruction would have been improper. No testimony was presented at trial that Applicant was involved in a fight prior to firing the fatal shots. Instead, all the testimony indicated Stukes was fighting with a member of the victim's party when the victim intervened. Although it may be proper to charge manslaughter when the defendant and the victim engage in an argument, *State v. Locklair*, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000) (citations omitted), no such evidence was presented here. Instead, the evidence indicates the victim was engaged in a fight with Stukes. It is axiomatic that the provocation necessary to reduce a murder to manslaughter must come from the deceased and be directed toward the defendant. *See id.*; *see also Harris v. State*, 354 S.C. 382, 387, 581 S.E.2d 154, 156 (2003) ("Since Clifton put forth no evidence that Linda Jean provoked him, he cannot prove his entitlement to a charge on voluntary manslaughter."); *State v. Harris*, 998 P.2d 524, 528 (Kan. Ct. App. 2000) ("A theory of a sudden quarrel between the victim and a third party will not support a conviction of voluntary manslaughter." (citing *State v. Clark*, 949 P.2d 1099 (Kan. 1997))); *People v. Ford*, 516 N.E.2d 766, 770 (Ill. App. Ct. 1987) (finding "nothing in [the defendant's] testimony to indicate that he acted under sudden and intense passion due to provocation" when the defendant stabbed a victim who was engaged in a fight with a third party). Because Applicant has not demonstrated the victim provoked him, he has not shown how he was prejudiced by the lack of a manslaughter instruction.

C. All Other Allegations



As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

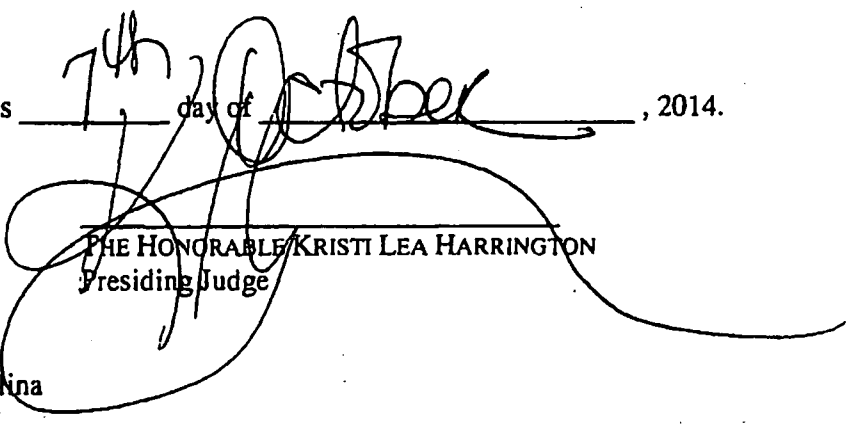
IV. CONCLUSION

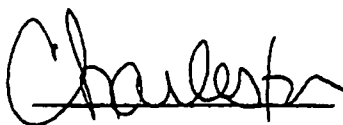
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14th day of October, 2014.


THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge


Charles, South Carolina