

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Michael G. Nettles, Circuit Court Judge

BRETT HOWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000246

APPENDIX

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF GENERAL SESSIONS
CASE NO'S. 2010-GS-27-00014 & 2010-GS-27-00015

STATE OF SOUTH CAROLINA

PLAINTIFF

ORIGINAL

VERSUS

MAY 14, 15, & 16, 2012

TRANSCRIPT OF TRIAL

RIDGELAND, SOUTH CAROLINA

BRETT HOWARD

DEFENDANT

B E F O R E:

HON. PERRY M. BUCKNER, JUDGE; AND A JURY.

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

ON BEHALF OF THE STATE:

HON. SEAN THORNTON, DEPUTY SOLICITOR, AND
HON. TAMEAKA A. LEGETTE, ASSISTANT SOLICITOR

ON BEHALF OF DEFENDANT:

HON. ROBERT HUGHES, ASSISTANT PUBLIC DEFENDER,
AND STEPHEN PLEXICO, CHIEF PUBLIC DEFENDER

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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1 BEGIN DAY ONE, MAY 14, 2012

2 3:00 P.M.

3 BY THE COURT:

4 THE COURT: All right, ladies and gentlemen. I'm
5 glad to see I've got jurors here. Been waiting. And
6 thank you for your patience during the roll call. We
7 had some problems with the weather and our computer
8 system. Margaret tells me she thinks it's working now.
9 Is it Margaret?

10 MADAM CLERK: Yes, sir.

11 THE COURT: All right. First of all, let me
12 introduce myself to you for those of you I haven't met.
13 I see a couple of familiar faces out there. My name is
14 Perry Buckner, and I'm one of the two resident judges in
15 the 14th Circuit. I'm a circuit court judge. I hold
16 court all over the state. The two of us reside in the
17 14th circuit.

18 And for those of you that may not be familiar with
19 our judicial circuit, the 14th circuit is the largest
20 circuit in number of counties in the state of South
21 Carolina. It's comprised of Allendale, Beaufort,
22 Colleton, Hampton, and Jasper counties.

23 Judge Mullen, who lives over in Beaufort County, I
24 live in Colleton, we're the two resident circuit judges
25 in the 14th circuit.

1 I've been assigned to preside over this term of
2 General Sessions or criminal court for Jasper County.
3 And it's a pleasure for me to be here, and I look
4 forward to serving with each and every one of you during
5 this term of court.

6 First of all, I'm going to promise you something.
7 If you're with me this week, and some of you will be,
8 some won't, because of the nature, obviously, if I have
9 a jury, but I'm not going to waste your time. I realize
10 you left your homes. I realize you left your families.
11 I realize you left your job to serve on the jury. And I
12 consider that, in peacetime, the single most important
13 duty you can give your country.

14 Now, Winston Churchill actually said that. And I
15 believe it. Believe me. So I appreciate that service.
16 And I'm going to get you home early this week. I can
17 promise you, you won't be here the whole week. So if
18 any of you sitting out there, and I know you are, you
19 know, I'm going to ask Judge Buckner if he'll excuse me,
20 or I'm going to ask him if he'll transfer me, careful
21 what you wish for, ladies and gentlemen, cause I could
22 easily be transferring you to into a multi-week term of
23 jury service. That's not going to happen this week.
24 Everybody listening to me?

25 My mom had a great saying: Careful what you wish

1 for; you might get it.

2 Now, how many of you have ever served on a circuit
3 court jury before? Raise your hand for me.

4 I got a gentleman up front and a lady in the
5 middle. About four or five. Well, for the most of you,
6 obviously, this is going to be the first time that
7 you've been called to this important service as jurors.

8 You know, the truth is, ladies and gentlemen, this
9 call upon your time this week, it doesn't frequently
10 come to you. And in fact, it may never be repeated
11 again in your lifetime.

12 Now, you're wondering how we picked you? I'll tell
13 you. You can't see it, but Margaret's got her computer
14 right in front of her. Everything's done now by
15 computer. We don't draw any capsules out of a box. The
16 computer chooses you completely at random.

17 And for those of you that are wondering what your
18 presence this week will do, by virtue of sitting right
19 here, right now, you will be exempt, even if the
20 computer chooses you, for three years, by virtue of your
21 service this week. And I'm going to get you home early
22 this week. So you're in good shape this week.

23 And you know, ladies and gentlemen, the judicial
24 system of our state, and this court in particular, could
25 not function without your willingness to contribute as a

1 juror to the administration of justice in this
2 courtroom.

3 I can tell you, ladies and gentlemen, without you,
4 the jury, justice cannot be accomplished in a courtroom.
5 And I thank you for that service in advance. I thank
6 you for your willingness to serve. And I will try to be
7 mindful of that service this week. I will try to see to
8 it that your time is not wasted. And just as you don't
9 want your time wasted, the only thing I ask of you in
10 return is that you not waste the court's time. And that
11 means, ladies and gentlemen, if I ask you to be present,
12 be on time. If one of you is late, all the rest of you
13 have to sit and wait until everyone is present. So be
14 mindful of your fellow jurors. Don't come late.

15 Now, if you run into an emergency, call the clerk.
16 I can tell you, we want to know about that, if there's a
17 true, bonafide emergency. But other than that, if I ask
18 you to be present, be on time. Otherwise, every one of
19 you are going to be sitting out there waiting on a juror
20 that couldn't get here on time. And then you're going
21 to be wondering why we aren't doing something. Because
22 we have to wait till all of you are present before we
23 can start. So please be mindful of the court's time,
24 just as you want me to be mindful of your time this
25 week, and be on time.

1 Now, in just a moment, I'm going to qualify you
2 through a series of questions that the law requires me
3 to ask you in order to ensure that you have
4 qualifications required by law to serve on a jury in
5 South Carolina. But before -- and I'm going to actually
6 -- Margaret, you haven't sworn them, have you?

7 MADAM CLERK: No, sir.

8 THE COURT: I'm going to actually have the clerk
9 have you stand up, each of you are going to raise your
10 right hand when I qualify you, and you're going to swear
11 or affirm. If your faith prevents you from swearing,
12 you can affirm. Just acknowledge you'll tell the truth
13 to the questions I'm going to ask you during the
14 qualifying process.

15 But before I qualify you -- now, you've all been
16 through the roll on everybody on employment, haven't
17 you?

18 MADAM CLERK: Yes, sir.

19 THE COURT: I like for you to have a little bit of
20 an idea -- we all know each other. We're with each
21 other every week. Every week, I start a new term of
22 court. For instance, I'm in Barnwell next week. I
23 hadn't even told my lawyers this. I'm not starting in
24 Barnwell until next Tuesday, because I'm swearing in my
25 oldest son next Monday in Columbia. I'm proud to tell

1 you I've got two sons that are both members of the Bar
2 now in South Carolina.

3 But and I go to a different county each week, as do
4 the other circuit court judges. So we start a new term
5 each Monday. And I like for you to have an idea of who
6 all the people are that are here to serve you, to make
7 your stay on the jury a pleasant one and, hopefully, and
8 informed one.

9 First of all, you're blessed to have an excellent
10 clerk of court's office here in Jasper. You've already
11 met her, cause she did the roll call. Even though the
12 weather's -- it's raining everywhere else. But right
13 here in Jasper right now, and it looks like you might
14 have escaped a little bit of rain for a while, although,
15 there's still a chance of it. I was looking at the
16 radar back there. My secretary just told me it's been
17 raining in Walterboro since 9:00 o'clock this morning,
18 and hadn't stopped. So it's raining around you right
19 now, and it's scattered. It's not consistent, but
20 hopefully, you won't be in any bad weather when I send
21 you home this afternoon.

22 You're blessed to have a great clerk of court here,
23 Margaret Bostic. Margaret, stand up so they can see
24 you. I know you're hiding back there behind the
25 computer. She does a great job for you.

1 Right beside her is Jean Thomas. Jean, stand up so
2 they can see you.

3 MADAM CLERK: Good afternoon.

4 THE COURT: Now, ladies and gentlemen, you'll
5 notice that there's a young lady over to my right and
6 your left. This is our court reporter this week. She
7 lives over in Beaufort. Her job will be to make a
8 verbatim, that is, a word-for-word transcript, if
9 necessary, of all the proceedings that take place. She
10 can't do her job unless she can hear. Because, in order
11 to do her job, you see her talking into a mask right
12 now, she has to be able to hear what's being said,
13 because she's got to take it down word-for-word.

14 That's one of the reasons we don't allow talking in
15 the courtroom, because the court reporter can't do her
16 job. This is Wanda Rowe, ladies and gentlemen. Wanda's
17 it's a pleasure to have you here this week. Thank you
18 for being -- she likes me because I've shot a shotgun
19 all my life. I'm deaf. I've got a hearing aid. I talk
20 loud. So she does not have to worry about me.

21 But we do have some people, particularly those of
22 you on the back row back there, that like to sit in the
23 back like people in my church, that talk like this
24 (indicating). And nobody's quite sure, including the
25 court reporter, what they say. So if I ask you a

1 question today, and you don't talk like I do, I'm going
2 to ask you to come right on down here to the front,
3 cause the court reporter's got to be able to hear you.

4 The first thing you're going to have to do is,
5 you're going to have to tell us who you are, cause she
6 has to put down who's speaking. We only allow one
7 person to speak in the courtroom at a time. She can't
8 take down two people speaking simultaneously.

9 So if you are responding to one of my question, for
10 Wanda's sake, stand up and say I'm John Smith, so that
11 she knows -- if you know your juror number, it would
12 really help, but I've got it. Well, I say I do.
13 Margaret, you got me a jury list? Oh, you don't. You
14 got one? We don't have one. See if you can print me
15 one.

16 MADAM CLERK: All right. It'll take this printer a
17 minute.

18 THE COURT: Is it out?

19 MADAM CLERK: It's still scanning.

20 THE COURT: All right.

21 MADAM CLERK: I can give you mine now.

22 THE COURT: That's all right if you can't -- oh,
23 you -- no, no, I won't take yours. Let's wait and see.

24 MADAM CLERK: Okay.

25 THE COURT: Might come back up. That's okay.

1 Thank you, though.

2 If you know your number, give us your number. If
3 not, you're going to have to give us time to look it up.
4 Why? Because the court reporter can correlate who's
5 speaking to a number, as well as listen for a name.
6 That's the way she checks, because she's got to put down
7 what you say.

8 Now, you'll notice, also, there's a young lady
9 seated beside me to my left. This is my law clerk,
10 ladies and gentlemen, Hope Lumpkin. Hope's a graduate
11 of the Charleston School of Law. She does all my
12 research and my scheduling. She does a great job for
13 me. She's got everything -- if you all could see on my
14 bench right now, she's got everything spread out for me
15 right now, because soon as I finish qualifying you,
16 we're going right to work, so that we can get you out of
17 here at a reasonable time today. And she knows and
18 she's prepared for that by putting everything that I
19 need on the bench.

20 You may see Hope going in and out of the courtroom.
21 If you do, it's because the phone keeps ringing back
22 there. And if it does, we don't stop once you're here.
23 We don't stop court to take telephone calls. She might
24 go and try to put out any emergency. I told you I hold
25 court all over the state. And believe me, we have

1 problems in other counties, and they call and want
2 emergency hearings. We try to schedule that around your
3 time to try to minimize the inconvenience to you, once
4 we start a jury term.

5 Now, I've already told you who I am. I live over
6 in Walterboro. I graduated from Wofford College,
7 University of South Carolina Law School. I've been on
8 the Bench now this -- this is my twelfth year as a
9 circuit court judge after I practiced for 25 years. So
10 I've been at it for 37 years, ladies and gentlemen.

11 And one of the things I love about this profession
12 is, you learn something every day. You never stop
13 learning in this profession.

14 Now, I'd like for you to have an idea of who the
15 people are here for criminal court. First of all, the
16 State of South Carolina will be represented by our 14th
17 Judicial Circuit Solicitor's Office. And we're pleased
18 to have with us today from the 14th Judicial Circuit
19 Solicitor's Office, Deputy Solicitor Sean Thornton.
20 Sean, stand up so they can see you.

21 MR. THORNTON: Yes, sir. Good afternoon.

22 THE COURT: He'll be representing the State of
23 South Carolina. He'll be assisted by Assistant
24 Solicitor Tameaka Legette.

25 MS. LEGETTE: Good afternoon.

1 THE COURT: And I don't know where they ran off to.
2 Where's Casey now, Rankin? There you -- stand up back
3 there, Casey. Quit hiding back there. This is Casey
4 Rankin, Assistant Solicitor. And by her is Assistant
5 Solicitor and member of the Dream Team, stand up Carra
6 Henderson, back there. Native of Jasper County, right
7 here, ladies and gentlemen. Thank you, Carra.

8 Also, the person that's going to be in charge of
9 the solicitor's office in running the Court, is Erin
10 Vaux. Erin, stand up so they can see you. She's in the
11 back, back here.

12 All of these individuals, ladies and gentlemen,
13 that I've just introduce, Erin, Sean, Tameaka, Casey,
14 and Carra, all represent the State of South Carolina in
15 the 14th Judicial Circuit Solicitor's Office. And they
16 will each probably have different -- they've already had
17 matters to come before me this morning before you got
18 here, because we've been working to get ready for you.
19 But they'll be here representing the state.

20 We also have representatives in the courtroom from
21 the Jasper County Public Defender's office. The public
22 defender is charged with the responsibility of
23 representing those individuals who are accused of
24 criminal offenses and who are indigent and unable to
25 afford counsel. They do a very good job, and I'd like

1 to introduce them to you at this time.

2 First of all, Steven Plexico.

3 THE COURT: Bob Hughes, who is also a native of
4 Jasper.

5 MR. HUGHES. Good afternoon.

6 THE COURT: I also have representatives in the
7 courtroom of South Carolina Probation and Parole, ladies
8 and gentlemen. Mr. Mike Herd. Mike, stand up so they
9 can see you.

10 MR. HERD: Hello.

11 THE COURT: And I did have Gregory Whittaker in
12 here, but I don't see him now. David, where's Greg
13 Whittaker? He take off on me?

14 MR. HOTCHKISS: Over in the office.

15 THE COURT: We worked him too hard this morning?

16 MR. HOTCHKISS: Worked him too hard, yes, sir.

17 THE COURT: All right. David Hotchkiss. All of
18 these are representatives of Probation and Parole,
19 ladies and gentlemen.

20 Now, I've got a great staff, ladies and gentlemen,
21 of sheriff's deputies here and bailiffs. First of all,
22 my bailiff who's back there on the door, who's the pride
23 of City Council in Ridgeland, South Carolina, and my
24 dear friend, Ms. Jo Boyles. Jo, hold your hand up so
25 they can see you back there.

1 I also have Sergeant Melnick. Where is he? There
2 he is at the back door back here.

3 I have Detective Baxter. I saw him earlier. Where
4 is he now? There is he, over here to the right. I have
5 Deputy Wright is holding your hand up to my left, ladies
6 and gentlemen. They're all here for security this week.
7 If you have a problem or a question about your jury
8 duty, let one of my bailiffs know, Jo Boyles, or one of
9 my deputies know. We'll be happy to assist you. We
10 want to make sure your stay on the jury is a pleasant
11 one and an informed one.

12 Now, ladies and gentlemen, I told you we'd get
13 right to work. So the next thing we're going to do --
14 have I left anybody out, Hope? Margaret, did I miss
15 anybody?

16 MADAM CLERK: No, sir.

17 THE COURT: All right. Now, first thing I'm going
18 to ask the clerk to do is to swear you. That means the
19 answers you're about to give me, everything's being
20 taken down by the court reporter will be on the record.
21 If you have to give me an answer, stand up, speak up,
22 tell us who you are. And if you know your juror number,
23 give us that. It's a backup for us to check numbers on
24 the list, because the list is 20 pages. And we have to
25 go through all the pages to find you. So if you know

1 your number, it helps. If you don't, we'll look it up.

2 Speak up for the court reporter. If we can't hear
3 you, I'm going to bring you down to the front. So I
4 need you to talk up.

5 Can you people on the back row -- Casey, can you
6 hear me right now?

7 MS. RANKIN: Yes, your Honor.

8 THE COURT: That's what I thought. Now, I want you
9 to remember that, because she's sitting right against
10 the wall in the back. And I want Wanda to be able to
11 hear. So speak up if you stand up. Don't hold your
12 head down. Otherwise, I'm going to bring you down to
13 the front of the courtroom so we can hear you.

14 Madam Clerk, would you please swear the jury for
15 me.

16 SWEARING JURORS, MADAM CLERK:

17 MADAM CLERK: Would you please stand and raise your
18 right hand? Do you swear or affirm the answers that
19 you're about to give the Court will be the truth, the
20 whole truth, nothing but the truth, so help you God?

21 RESPONSES FROM JURORS.

22 MADAM CLERK: You can have a seat. Thank you.

23 THE COURT: Now, you've finished the roll,
24 Margaret?

25 MADAM CLERK: Yes, sir.

1 BY THE COURT:

2 THE COURT: Is there anyone here for jury service
3 and your name has not been called by the clerk of court,
4 please stand at this time.

5 Wanda, let the record reflect no one is standing.
6 Is there anyone here for jury service who did not accept
7 the oath just administered by the clerk of court of
8 Jasper County? If so, please stand at this time.

9 Let the record reflect no one is standing.

10 All right. Ladies and gentlemen, as I told you,
11 there are a series of questions that the law requires me
12 to ask to determine if you're qualified to serve on a
13 jury. In the past, some jurors have told me, gosh,
14 Judge Buckner, I was embarrassed to stand up in front of
15 a court and answer the qualifying questions. Let me
16 assure you, ladies and gentlemen, these questions are
17 not designed to be embarrassing to anyone.

18 If you are not comfortable in standing up, my
19 bailiff, Jo Boyles, will assist you one at a time down
20 the middle aisle. She's going to stop you at the Bar,
21 because we can only take one at a time. I'll meet you
22 right by the court reporter's stand, if you don't want
23 to stand up and speak. Everything you say is going to
24 be on the record with the court reporter. Everything
25 that I say will be on the record with the court

1 reporter.

2 So if you're uncomfortable about standing up in
3 front of a court, you can step down here, and I'll speak
4 with you at the court reporter's stand one at a time, at
5 the Bench. But I do need a response from each of you to
6 each of my qualifying questions.

7 If you are not certain whether one of my qualifying
8 questions applies to you, please go ahead today and
9 respond to me about your uncertainty, and let me take
10 care of that problem today, rather than later on in the
11 week when you may have already been seated on a jury.

12 And let me give you an example of that. There's
13 nothing that's more difficult, that's why we want you to
14 listen right now. If you're not certain whether
15 something applies to you during my qualifying and after
16 we qualify you, I'm going to ask you questions about the
17 first case for trial to see if you're related to anybody
18 or if you know things about it that other jurors might
19 not know or read about it. That doesn't necessarily
20 disqualify you, but I need to know that, and I might be
21 calling you up.

22 I want you to tell me all about that today. Why?
23 Cause that's why we're taking the time today to make
24 sure we get an impartial and a neutral and a fair jury.

25 So when we're asking you about your qualifying

1 questions, and you're not certain whether any question
2 the court asks applies to you, go ahead today and
3 respond to me today about your uncertainty, and let me
4 take care of that problem today, rather than later on in
5 the week when you may have already been seated on the
6 jury.

7 We don't want to have something come up and you
8 say, oh, yes, I meant to tell you back on Monday, and
9 it's now Wednesday, that I did so and so. So please, if
10 you have some uncertainty, let me take care of it today.

11 Most of these qualifying questions are very simple.
12 One or two are a little bit more involved. I'll repeat
13 those for you.

14 Now, I'm going to tell you -- I'm going to tell you
15 what my last question's going to be right now. At the
16 end of all of my qualifying questions, the last thing
17 I'm going to ask, I'll ask if there's anyone here who
18 thinks that this is the worst week in their life to be
19 on the jury, and they would like for me to consider
20 transferring them to a multi-week term of court in
21 Jasper County, instead of going home early this week,
22 because they feel they've got some conflict. That's
23 going to be my last question.

24 I'll tell you right now, up front, it's going to be
25 very, very, very difficult to be excused from jury

1 service, unless your reason for excusal rises to the
2 level of a legal excuse, which is going to be covered by
3 the questions I'm about to ask you, which are required
4 by the legislature.

5 But if one of you, at the end, feels that you have
6 a particular problem that makes this the worst week in
7 your life to be serving on the jury, and you would like
8 for me to consider transferring you to another term of
9 court, I will -- I'm not going to promise you I'll do
10 it, but I promise you I'll listen to you.

11 I'm not trying to be hard on you at all, ladies and
12 gentlemen, but we simply can't hold court if we don't
13 have enough jurors here.

14 Now, sometimes, ladies and gentlemen, people will
15 come up to me and they'll say, Judge Buckner, I'm self-
16 employed, as I was for many years before I got elected
17 to the Bench, and if I have to be here serving on the
18 jury, my employees aren't getting paid if I'm not there.
19 Now, I want you to understand, I certainly sympathize
20 with anybody that's self-employed, but that is not a
21 reason to be excused from jury service. If I excused
22 everybody that's self-employed, we'd have to shut court
23 down.

24 Another problem is that some companies don't pay
25 their employees for jury service. Some companies are

1 very good about that. And I wish I could do something
2 about that, but I can't. That is also not a reason to
3 be excused from jury service.

4 I say these things to you before we start, cause
5 they're examples of things that have come up. And I
6 want you to understand that you're not going to be
7 excused for those types of reasons.

8 All right. Each of you have been sworn or
9 affirmed. You're now under oath. You've indicated to
10 me by not standing that you've accepted the oath or
11 affirmation. Let's begin with the qualifying questions.
12 And I remind you your answers are under oath. If you
13 have to respond by standing up, speak up, give us your
14 name and your juror number.

15 We got a portable microphone. Is it on, Jo?

16 BAILIFF BOYLES: Yes, sir.

17 THE COURT: All right. We'll pass the microphone
18 to you so we can hear you, so please speak up. Let's
19 begin.

20 QUALIFYING JURORS, BY THE COURT:

21 THE COURT: Is there anyone here for jury service
22 who is not a citizen of the United States? If so,
23 please stand at this time.

24 Wanda, let the record reflect no one is standing.
25 We're doing real good so far, ladies and gentlemen.

1 Is there anyone here for jury service who is not
2 currently a resident of Jasper County, South Carolina?
3 If so, please stand at this time.

4 Let the record reflect no one is standing.

5 Is there anyone here for jury service who does not
6 possess one of the following three identifications. You
7 only have to possess one. And no, that does not mean
8 you have to be holding it in your hand. It could be in
9 your pocketbook or in your car at home.

10 Is there anyone here for jury service who does not
11 possess one of the following three identifications:
12 either a voter registration card from Jasper County, or
13 a South Carolina driver's license, or a South Carolina
14 Department of Public Safety Identification Card. Is
15 there anyone here for jury service who does not possess
16 one of those three identifications. If so, please stand
17 at this time.

18 Yes, sir. Your name and juror number.

19 JUROR JOSEPH HOUSTON: Joseph Houston.

20 THE COURT: You know your number?

21 JUROR JOSEPH HOUSTON: No, sir.

22 THE COURT: What's his number, Margaret? Because I
23 don't have a list.

24 MADAM CLERK: Number 73.

25 THE COURT: Counsel, I hope you have a list. I am

1 told by the clerk this is Juror Number 73. You have a
2 list, Mr. Hughes?

3 MR. HUGHES: Yes, your Honor.

4 THE COURT: You have a list, Mr. Thornton?

5 MR. THORNTON: Yes, sir.

6 THE COURT: All right. The Court doesn't. All
7 right. Are you currently -- you do not have a driver's
8 license?

9 JUROR JOSEPH HOUSTON: Yes, I have a driver's
10 license, but I don't have it on me right at the moment.

11 THE COURT: I told you, you don't have to have it
12 in your hand. Nice try, though. Take a seat.

13 In the back, back here. Jo, we got somebody else.
14 Your name, and if you know it, your number. Speak up.

15 JUROR FRED BROWN: I don't know my number, but my
16 name is Fred Brown.

17 THE COURT: Hold on a second. What's his number,
18 Margaret.

19 MADAM CLERK: Number 86.

20 THE COURT: Counsel, this is Juror, according to
21 the clerk, 86. You got a driver's license?

22 JUROR FRED BROWN: No, sir.

23 THE COURT: Why not?

24 JUROR FRED BROWN: It was suspended maybe about ten
25 years ago.

1 THE COURT: Yes, sir. Other matters?

2 MR. THORNTON: Yes, sir.

3 THE COURT: All right. I'll excuse you from
4 service this week. You may leave the courtroom at this
5 time.

6 JUROR FRED BROWN: Thank you, sir.

7 Mr. THORNTON: May I approach, your Honor?

8 THE COURT: Yes. You want to show it to them?

9 Mr. THORNTON: I'll show it to them, but I've got
10 an extra copy, Judge.

11 THE COURT: All right. Bob, you want to see it?

12 MR. HUGHES: Yes, please.

13 MR. THORNTON: Thank you, your Honor.

14 THE COURT: Thank you. Now, ladies and gentlemen,
15 so you know, because we do this each week, I'm very much
16 aware, you're going to see me ask a question later on
17 that involved this juror, did not involve -- even if
18 your license has been suspended, that means you had a
19 license. You're still eligible for jury duty during the
20 suspension. However, if you have other problems for
21 which -- thank you. I now have a list, Counsel -- that
22 would disqualify you, and that juror did, and that's
23 what they were telling me, so you're aware of what
24 occurred.

25 All right. Is there anyone else who does not

1 possess one of those three identifications? If so,
2 please stand at this time.

3 Let the record reflect no one is standing.

4 Is there anyone here for jury service who is unable
5 to read, write, speak, or understand the English
6 language? If so, please stand at this time. Let the
7 record reflect no one is standing.

8 I see that look on your faces, ladies and
9 gentlemen. I know. If you couldn't understand English,
10 how could you respond to that question, but I'm required
11 to ask it.

12 Is there anyone here for jury service who has less
13 than a sixth grade education or its equivalent as
14 determined by the Court?

15 I always tell this story about my grandfather,
16 Daniel Graham, when I ask this question every Monday. I
17 had graduated from Wofford College, in law school, I was
18 25 years old -- 26 before I finally figured out that my
19 grandfather, who had a fifth grade education, and who
20 came when he was 16 years old and started a lumber mill
21 and employed everybody in his community, had far more
22 education than I did. And that's why it took me till
23 I'd finished school to realize that. But that's why the
24 law asks the question in the equivalency. In order to
25 reach the equivalency, which my grandfather taught me

1 from his experience in life, I have to first ask if
2 there's anyone present for jury duty this afternoon who
3 has less than a sixth grade education. If you have less
4 than a sixth grade education, please stand at this time.

5 Yes, ma'am. If you'll come forward.

6 MADAM CLERK: Juror Number 274.

7 THE COURT: 274.

8 MADAM CLERK: 274.

9 THE COURT: Thank you.

10 ON-THE-RECORD BENCH CONFERENCE,

11 THE COURT, MR. THORNTON, MR. HUGHES,

12 JUROR JANNIE R. WRIGHT:

13 THE COURT: Come on up here. One represent from
14 the Solicitor, one from the Public Defender's office.
15 Just stay right here so Wanda can see you.

16 The numbers --

17 MADAM CLERK: The very last juror.

18 THE COURT: They're not sequential. Right,
19 Margaret?

20 MADAM CLERK: She's the very last one. The last
21 one on the last page. They're alphabetical, your Honor
22 because we pulled two separate juries.

23 THE COURT: You're Ms. Jannie Wright?

24 JUROR JANNIE R. WRIGHT: Um-hmm. Yes, sir.

25 THE COURT: Wanda, this is Juror Number 274, Jannie

1 R. Wright.

2 Ms. Wright, I understand you have less than a sixth
3 grade education. Is that correct?

4 JUROR JANNIE R. WRIGHT: Right.

5 THE COURT: How far did you go in school?

6 JUROR JANNIE R. WRIGHT: About sixth grade.

7 THE COURT: You went to about sixth grade?

8 JUROR JANNIE R. WRIGHT: Uh-huh.

9 THE COURT: What kind of work do you do?

10 JUROR JANNIE R. WRIGHT: Right now, I don't do
11 nothing.

12 THE COURT: When you last worked, what did you do?

13 JUROR JANNIE R. WRIGHT: I was working in a
14 Laundromat.

15 THE COURT: Are you married?

16 JUROR JANNIE R. WRIGHT: Was. I'm a widow.

17 THE COURT: Do you have any children?

18 JUROR JANNIE R. WRIGHT: I have a handful of
19 children.

20 THE COURT: How many?

21 JUROR JANNIE R. WRIGHT: Four.

22 THE COURT: Four. How old are they?

23 JUROR JANNIE R. WRIGHT: Oldest one would been 40.
24 Forty-two.

25 THE COURT: You raised all four children?

1 JUROR JANNIE R. WRIGHT: 32 and 35 -- thirty -- 38.

2 THE COURT: Did you raise all four children?

3 JUROR JANNIE R. WRIGHT: Um-hmm.

4 THE COURT: And how long did you work, Ms. Wright?

5 JUROR JANNIE R. WRIGHT: I didn't work that long.

6 My husband took sick.

7 THE COURT: I see. I certainly think you have the
8 equivalent of a sixth grade education. Thank you very
9 much. You may return to your seat.

10 JUROR JANNIE R. WRIGHT: Okay.

11 END BENCH CONFERENCE.

12 THE COURT: Juror Number 274 will remain with us.
13 Let the record reflect no one else stood in response to
14 my last question.

15 Is there anyone here for jury service who is
16 employed within the walls of this courthouse in any
17 county office? You have to be in this courthouse. But
18 if you're employed within the walls of this courthouse,
19 in any county office, please stand at this time.

20 Let the record reflect no one is standing.

21 Is there anyone here for jury service who has a
22 state constable's commission that is issued by SLED, the
23 South Carolina Law Enforcement Division, that gives you
24 the power to arrest? If so, please stand at this time.

25 Let the record reflect no one is standing.

1 Is there anyone here for jury duty this afternoon
2 who is employed by the Department of Corrections as a
3 correctional officer? If so, please stand at this time.

4 Let the record reflect no one is standing.

5 This next question deals with your prior criminal
6 record. And the question is a little confusing. So I'm
7 going to repeat it for you. Listen carefully.

8 Is there anyone here for jury duty who has ever
9 plead guilty or been convicted by a judge or a jury, in
10 state or federal court, for any type of criminal offense
11 that had as its possible punishment more than one year
12 in prison, and you have not had your civil rights
13 restored by pardon? I'll need to talk with you at the
14 court reporter's stand up here.

15 Now, ladies and gentlemen, this does not mean that
16 you had to serve a year or more than a year in prison,
17 but that you could have received more than one year in
18 prison as a result of your prior criminal conviction in
19 state or federal court.

20 There is no time limit on this. I had a man two
21 weeks ago that had a conviction 50-something years ago.
22 There is no -- it has nothing to do with the sentence
23 you got. You could have gotten a fine. You could have
24 gotten probation. It could have been 30 years ago. It
25 has everything to do with the maximum possible sentence

1 you could have received as a result of your prior
2 criminal conviction in state or federal court.

3 So again, the question is this. Is there anyone
4 here for jury duty this afternoon who has ever plead
5 guilty or been convicted by a judge or jury in state or
6 federal court for any criminal offense that had as its
7 possible punishment more than one year in prison, and
8 you have not had your civil rights restored by pardon?
9 I would ask you to come forward at this time.

10 Let the record reflect no one has come forward.

11 Is there anyone here for jury duty this afternoon
12 who is unable to serve this week because of a physical
13 or mental infirmity? Any physical or mental infirmity
14 that would prevent you from serving on the jury. You
15 may bring your doctor's excuse with you and come forward
16 at this time.

17 Let the record reflect -- yes, sir.

18 MADAM CLERK: Anthony Sauls.

19 THE COURT: What number?

20 MADAM CLERK: Don't know his number.

21 THE COURT: What number, Margaret?

22 MADAM CLERK: We don't know his number. Let me get
23 my sheet out. So he is Number 251. It's alphabetical.
24 Middle of Page 3.

25 ON-THE-RECORD BENCH CONFERENCE,

1 THE COURT, MR. THORNTON, MR. HUGHES,

2 JUROR ANTHONY D. SAULS:

3 THE COURT: How you doing, Mr. Sauls?

4 JUROR ANTHONY D. SAULS: How you doing, sir?

5 THE COURT: Come on. I got -- Mr. Thornton.

6 MR. THORNTON: Sorry.

7 THE COURT: Wanda, this is Juror Number 251,

8 Anthony D. Sauls. Is that right, Mr. Sauls?

9 JUROR ANTHONY D. SAULS: Correct.

10 THE COURT: Mr. Sauls, have you had some physical
11 or mental problem that would prevent you from serving on
12 a jury?

13 JUROR ANTHONY D. SAULS: Yes, sir. I am scheduled
14 for heart catherization Wednesday, due to results of
15 something that happened last week.

16 THE COURT: I want you to go get that heart cath,
17 and if there's any blockage, I want you to have it taken
18 care of, and come back.

19 JUROR ANTHONY D. SAULS: That's what they're going
20 to do.

21 THE COURT: How about this? Instead of -- I want
22 to see how you do.

23 JUROR ANTHONY D. SAULS: I'll be more than glad to
24 serve.

25 THE COURT: Oh, I know you would, and I'd love --

1 but let's see how you do with the heart cath. And then
2 I'll get you back here another time. How's that?

3 JUROR ANTHONY D. SAULS: That's fine.

4 THE COURT: Good luck to you. Go ahead and you may
5 leave at this time.

6 JUROR ANTHONY D. SAULS: Thank you.

7 END BENCH CONFERENCE.

8 THE COURT: Juror Number 251 is disqualified from
9 service.

10 MADAM CLERK: Number 85, Jerome Lewis.

11 THE COURT: What's the last name?

12 MADAM CLERK: Lewis. The third page. I'm sorry.
13 Third page.

14 ON-THE-RECORD BENCH CONFERENCE,

15 THE COURT, MR. THORNTON, MR. HUGHES,

16 JUROR JEROME LEWIS:

17 THE COURT: You're Juror Lewis?

18 JUROR JEROME LEWIS: Yes, sir.

19 THE COURT: You got a doctor's excuse, Mr. Lewis?

20 JUROR JEROME LEWIS: No, sir.

21 THE COURT: Okay. Hold on a second. Hold on a
22 second. This is Juror Number 85, Jerome Lewis. Yes,
23 sir.

24 JUROR JEROME LEWIS: In reference to the first
25 question about criminal -- about criminal, I been --

1 over 25 years ago, I got into something. I wasn't
2 convicted, but I got a paper sheriff's department.

3 THE COURT: If you weren't convicted, you got no
4 problem. You do exactly what I asked you to do, and
5 you're fine. And believe me, they check everybody's
6 criminal record on there. So we would have a record if
7 there was something to disqualify you. So you can rest
8 assured your record doesn't show any conviction. How's
9 that? That make you feel better?

10 JUROR JEROME LEWIS: Yes, sir.

11 THE COURT: Thank you, sir. Have a seat for me.
12 And thank you very much.

13 END BENCH CONFERENCE.

14 THE COURT: Juror Number 85's going to remain with
15 us.

16 MADAM CLERK: Number 100, Robert Meyer.

17 MADAM CLERK: Robert C. Meyer III.

18 ON-THE-RECORD BENCH CONFERENCE,

19 THE COURT, MR. THORNTON, MR. HUGHES,

20 JUROR ROBERT C. MEYER III:

21 JUROR ROBERT C. MEYER III: How are you, your
22 Honor?

23 THE COURT: Yes, sir. You got a doctor's excuse?

24 JUROR ROBERT C. MEYER III: I have an
25 echocardiogram scheduled for Thursday on my heart. I

1 spent the weekend in the hospital.

2 THE COURT: You've already had it? You had it last
3 Thursday?

4 JUROR ROBERT C. MEYER III: No. It's scheduled for
5 this Thursday, at 10:00 o'clock. I mean, I don't have a
6 problem between now and then, but after Thursday.

7 THE COURT: I understand that.

8 How many jurors I got?

9 MADAM CLERK: We have 86. One, two, -- we've lost
10 two so far.

11 THE COURT: I tell you what I'm going to do. Mr.
12 Meyer, I know you'd make a good juror. This is Number
13 100, Robert C. Meyer III. Right?

14 JUROR ROBERT C. MEYER III: Yes, sir.

15 THE COURT: You got it, Wanda? I think I've got
16 enough jurors. I want you to go ahead and have your
17 echo. And hopefully, everything goes well with the
18 doctor.

19 JUROR ROBERT C. MEYER III: All right. Thank you,
20 sir.

21 THE COURT: Have a nice day.

22 JUROR ROBERT C. MEYER III: You, too.

23 THE COURT: You're excused at this time.

24 END BENCH CONFERENCE.

25 THE COURT: Juror Number 100 is disqualified from

1 service.

2 MADAM CLERK: Number 273.

3 THE COURT: Name?

4 ON-THE-RECORD BENCH CONFERENCE,

5 THE COURT, MR. THORNTON, MR. HUGHES,

6 JUROR TRACEY L. THORNBERRY:

7 JUROR TRACEY L. THORNBERRY: I think that was
8 Tracey Thornberry.

9 THE COURT: Hold on one second.

10 MADAM CLERK: The last page.

11 THE COURT: This is Juror Number 263, Tracey L.
12 Thornberry. Ms. Thornberry, you got a doctor's excuse
13 for a medical problem?

14 JUROR TRACEY L. THORNBERRY: Well, no. I just -- I
15 do have mental illness, so I don't know if it's going to
16 -- I don't want to go down the road and you guys be
17 like, what, why didn't you say something. So I have bi-
18 polar, anxiety, and depression. I take a lot of
19 medication for it. I just want to make sure that's
20 clear.

21 THE COURT: I'm like the walking pharmacy myself,
22 Ms. Thornberry. I can tell you my sons like to remind
23 me of it. I'm on Lipitor. I'm on Metformin. I'm on
24 Micardis. I'm on Vitamin B.

25 JUROR TRACEY L. THORNBERRY: But you're on all the

1 good stuff.

2 THE COURT: I wish I could tell you that was all
3 good stuff. I think that's more indicative of my age.

4 JUROR TRACEY L. THORNBERRY: I just want to make
5 sure. I didn't want to make that decision, so I want to
6 make sure it's okay.

7 THE COURT: Unless there's something that you think
8 would affect your ability to be fair and impartial.

9 JUROR TRACEY L. THORNBERRY: I don't think so.

10 THE COURT: I appreciate you coming up, because I
11 know you'd make a good juror.

12 JUROR TRACEY L. THORNBERRY: Okay.

13 THE COURT: Thank you, ma'am.

14 END BENCH CONFERENCE.

15 THE COURT: Juror Number 263 is going to remain
16 with us. Anyone else?

17 OFF-THE-RECORD DISCUSSION,

18 THE COURT, MADAM CLERK, MR.

19 THORNTON, MR. HUGHES.

20 BACK ON THE RECORD.

21 THE COURT: Let the record reflect no one else has
22 come forward in response to my last question concerning
23 physical or mental infirmities that would prevent you
24 from serving on the jury.

25 Is there anyone here for jury service this

1 afternoon who has had jury service within the past year
2 in circuit court? Not magistrates court. Not city or
3 municipal court. Not even federal court. But if you
4 have had jury service in the past year in circuit court,
5 either civil or criminal circuit court. We call
6 criminal, general sessions. We call civil, common
7 pleas. If you have had jury service within the past
8 year in common pleas or general sessions circuit court,
9 please stand at this time.

10 Let the record reflect no one is standing.

11 All right, ladies and gentlemen, those questions
12 cover all of the legal excuses for being excused from
13 jury service. But in addition to those questions, the
14 legislature of our state has also provided for some
15 exemptions from jury service. An exemption is different
16 from a disqualification in that you may qualify for an
17 exemption, but if you'd like to stay and serve on the
18 jury, we'd be glad to have you. In other words, you
19 don't have to claim your exemption unless you want to.

20 The first question under exemptions, as opposed to
21 disqualifications, deals with age. If you're over the
22 age of 65 years, you may claim an exemption and be
23 excused from jury service. Again, if you're over 65 and
24 would like to stay, serve on the jury, we'd be glad to
25 have you.

1 I've found that my jurors who are over 65 have had
2 the experiences of life and make excellent jurors. But
3 if I have anyone over 65 who would like to claim their
4 exemption, please stand at this time.

5 Let the record reflect no one is standing.

6 Now, you don't have this list that I have now, and
7 if Margaret had called out -- how many did you pull?

8 MADAM CLERK: 275.

9 THE COURT: We have a list with 275 names on it.
10 Had we called out all 275 when she did the roll call for
11 you a while ago, you'd have been wondering, well, I'm
12 here; why aren't those people here. Well, some of them
13 were over 65, claimed their exemption. Some have moved
14 out of the county. Some have passed away. But anyone
15 who's name was called out a while ago by the clerk of
16 court, and they did not appear here this afternoon, and
17 we don't have any indication of why they aren't here,
18 I'm going to be sending deputies from the Jasper County
19 Sheriff's Department out to locate them to help them
20 find their way down to the courthouse. So don't think,
21 ladies and gentlemen, by not showing up for jury duty,
22 that they're off the hook.

23 I tell each of you that because each of you took
24 the time to be where you were supposed to be, when you
25 were supposed to be. And the Court is most appreciative

1 of that fact.

2 There's also an exemption for students. If serving
3 this week interferes with your school work, I can
4 transfer you to a term of court when school is not in
5 session. If I have any student who wishes to claim this
6 exemption, please stand at this time.

7 Let the record reflect no one is standing.

8 There's also an exemption for teachers and school
9 principals. If serving this week interferes with
10 school, I can transfer you to a term when school is not
11 in session. If I have anyone who wishes to claim this
12 exemption, I will consider transferring you to another
13 term. Have anyone in that situation, please stand at
14 this time.

15 Let the record reflect no one is standing.

16 There's also an exemption for a man or a woman with
17 a child or children under age seven. Now, when I say
18 *with a child*, it has to be your child. It has to be
19 your blood child or you have legal custody of the child
20 and you do not work; you stay home with the child under
21 age seven. And you don't stay home and keep children,
22 cause that's work. If you stay home with your child and
23 the child's under age seven, and you have the primary
24 legal responsibility or care or the legal custody or
25 care of a child or children under age seven, and you're

1 a stay-at-home parent, you may claim an exemption. If I
2 have anyone in that situation, please stand at this
3 time.

4 Let the record reflect no one is standing.

5 There's also an exemption for a person who is the
6 primary caretaker of a person 65 years of age or older
7 or a severely disabled person who cannot care for
8 himself or herself and who cannot be left medically
9 unattended. If I have anyone in that situation who
10 wishes to claim this exemption, please stand at this
11 time.

12 Let the record reflect no one is standing.

13 Now, I asked you a while ago if anyone had had jury
14 service in state circuit court within the past year,
15 because that would disqualify you. Now, as I told you
16 earlier, under exemptions, I ask if anyone has had jury
17 service in state circuit court within the past three
18 years, you may claim an exemption. In other words, you
19 can claim the exemption, or if you'd like to stay and
20 serve on the jury, that'll be fine. Is there anyone who
21 has had jury service in state circuit court within the
22 past three years? Not federal court. Not magistrates
23 court. Not municipal court. But if you have had jury
24 service in state circuit court, either civil or
25 criminal, within the past three years and would like to

1 claim your exemption, please stand at this time.

2 Let the record reflect no one is standing.

3 All right. I told you this would be my last
4 question. If one of you feels that you have a
5 particular problem that makes this the worst week in
6 your life to be serving on the jury and you would like
7 for me to consider transferring you to another term of
8 court, albeit, it could very easily be longer, in Jasper
9 County, I'll ask you to step up here. I'm not going to
10 promise you I'll transfer you, but I'll promise you I'll
11 listen to you.

12 Now, you'll know what I'm dealing with. We summon
13 how many, Margaret?

14 MADAM CLERK: 275.

15 THE COURT: We summoned 275 jurors for this term of
16 court, and we now have?

17 THE COURT: Eighty-three.

18 THE COURT: Eighty-three out of 275. So I hope we
19 won't have a lot of problems, ladies and gentlemen. But
20 all those that feel they have a problem and would like
21 for me to consider transferring them to another term of
22 court, please stand or come forward at this time.

23 MADAM CLERK: Number 29, Elaine Summer.

24 THE COURT: What number?

25 MADAM CLERK: 29.

1 MADAM CLERK: What's your last name?

2 JUROR ELAINE KOCZWARA: Koczwarra.

3 MADAM CLERK: Oh, K. Page 3, sir, at the top.

4 ON-THE-RECORD BENCH CONFERENCE,

5 THE COURT, MR. THORNTON, MR. HUGHES,

6 JUROR ELAINE KOCZWARA:

7 THE COURT: How are you?

8 JUROR ELAINE KOCZWARA: I'm good. How are you?

9 THE COURT: You want to pronounce it for me?

10 JUROR ELAINE KOCZWARA: Elaine Koczwarra.

11 THE COURT: Now, I'm going to see if this spelling
12 is correct. K/o/c/z/w/a/r/a?

13 JUROR ELAINE KOCZWARA: Correct.

14 THE COURT: Very well. All right, ma'am. Tell me
15 what the problem is.

16 JUROR ELAINE KOCZWARA: I'm a grandma, and my
17 daughter lives in Saint Petersburg, Florida. And she
18 and her husband, who is an attorney, have a firm weekend
19 in Largo Key, and they'd ask me months ago if I'd come
20 down and babysit for them.

21 THE COURT: When?

22 JUROR ELAINE KOCZWARA: Well, I was planning on
23 leaving May the 17th, which is Thursday. So --

24 THE COURT: Let me ask you this.

25 JUROR ELAINE KOCZWARA: Okay.

1 THE COURT: I'm probably going to tell you we're
2 not even going to be here Friday, --

3 JUROR ELAINE KOCZWARA: That's fine.

4 THE COURT: -- and you're going to get --

5 JUROR ELAINE KOCZWARA: Well, if I can leave on
6 Thursday, that'll be good.

7 THE COURT: Well, here's the problem, ma'am. It
8 might be on Thursday, and I don't know this for a fact.
9 It isn't up to me when you leave.

10 JUROR ELAINE KOCZWARA: Right.

11 THE COURT: See, if you're on the jury, that's
12 going to be up to the jury and not to the court. You
13 understand that?

14 JUROR ELAINE KOCZWARA: Yes. That's the reason I'm
15 asking about this.

16 THE COURT: Well, here's the thing. I know you're
17 going to be finished early this week, and you're going
18 to be exempt for a year if you stay. And even if you
19 had to stay for some portion of Thursday, would you
20 still be all right?

21 JUROR ELAINE KOCZWARA: Yes. It's only a six-hour
22 drive. If I can get out by 3:00. I'd like to get there
23 at daylight.

24 THE COURT: Okay. How long does it take you to get
25 there?

1 JUROR ELAINE KOCZWARA: Six hours.

2 THE COURT: Well, I would think if you left -- you
3 think if you left by about 3:00 to 4:00 o'clock on
4 Thursday?

5 JUROR ELAINE KOCZWARA: Yeah, I'd be good.

6 THE COURT: Well, I can't promise that.

7 JUROR ELAINE KOCZWARA: Okay.

8 THE COURT: But I can tell you that indications are
9 that that probably might happen.

10 JUROR ELAINE KOCZWARA: Okay.

11 THE COURT: But I can't promise.

12 JUROR ELAINE KOCZWARA: Right.

13 THE COURT: You're going to have to tell me whether
14 you want me -- now, if I transfer you, you might not be
15 babysitting, but you might be here a whole lot more than
16 you will this week.

17 JUROR ELAINE KOCZWARA: Well, that's okay. I don't
18 mind serving.

19 THE COURT: And you might not -- let me tell you,
20 you may not even get on a jury, and you might go and not
21 serve a day.

22 JUROR: ELAINE KOCZWARA: That's true. That's
23 true. I just wanted to know if there was a possibility.

24 THE COURT: Now, the one thing I can't do, so you
25 know, if you stay with me, --

1 JUROR ELAINE KOCZWARA: Um-hmm.

2 THE COURT: -- and you get your exemption for three
3 years, --

4 JUROR ELAINE KOCZWARA: Um-hmm.

5 THE COURT: -- if you're on a jury, you have to
6 stay until the trial's complete.

7 JUROR ELAINE KOCZWARA: Right.

8 THE COURT: No matter when that --

9 JUROR ELAINE KOCZWARA: I served before years ago,
10 back in 1980, I think.

11 THE COURT: Is that okay with you?

12 JUROR ELAINE KOCZWARA: Yeah, it's good. My
13 daughter's the one that's really nervous about this.

14 THE COURT: Well, you tell your daughter -- you
15 would get there, I feel certain that you would -- even
16 if you had to wait and leave Friday morning, you'll be
17 there on time.

18 JUROR ELAINE KOCZWARA: Well, they're wanting to
19 leave Friday morning.

20 THE COURT: I know. And we'll get you there by --

21 JUROR ELAINE KOCZWARA: Okay.

22 THE COURT: Well, you're the one telling me you
23 don't want to drive at night.

24 JUROR ELAINE KOCZWARA: Well, --

25 THE COURT: And if you're on the jury, I can't make

1 them stop.

2 JUROR ELAINE KOCZWARA: Right. Right. Right.

3 THE COURT: And the one thing I can't do is tell
4 you, oh, it's time for you to leave. You understand?

5 JUROR ELAINE KOCZWARA: Right. I gotcha. I
6 gotcha.

7 THE COURT: Other than that, -- now, there is a
8 good possibility, I believe, that you could be finished
9 before Thursday, but that's a possibility.

10 JUROR ELAINE KOCZWARA: RIGHT.

11 THE COURT: I can't tell you it's a probability.

12 JUROR ELAINE KOCZWARA: Okay.

13 THE COURT: That's the best information I can --

14 JUROR ELAINE KOCZWARA: Okay.

15 THE COURT: You understand I don't know how long a
16 witness is going to last.

17 JUROR ELAINE KOCZWARA: Right. Exactly.

18 THE COURT: Would you like to stay with us? Or
19 you'd like to be transferred to another term of court?

20 JUROR ELAINE KOCZWARA: I'd like to be transferred
21 to give my daughter some peace of mind.

22 THE COURT: Some assurance for your daughter, huh?

23 JUROR ELAINE KOCZWARA: Yes.

24 THE COURT: All right. Margaret, what have I got?

25 MADAM CLERK: July 16th.

1 THE COURT: What's the next one?

2 MADAM CLERK: June 18th or July 16th.

3 THE COURT: You want June 18th or you want July
4 16th?

5 JUROR ELAINE KOCZWARA: June 18th.

6 THE COURT: Is the address that we have for you on
7 Dogwood Lane, correct?

8 JUROR ELAINE KOCZWARA: Correct.

9 THE COURT: We'll see you on June 18th.

10 JUROR ELAINE KOCZWARA: Thank you so much.

11 THE COURT: Have a nice day.

12 JUROR ELAINE KOCZWARA: Thank you.

13 THE COURT: Thank you.

14 END BENCH CONFERENCE.

15 THE COURT: Next. Juror Number 229 is transferred
16 to the June 18 term of court in Jasper County.

17 MADAM CLERK: 21, Randy Carter.

18 ON-THE-RECORD BENCH CONFERENCE,

19 THE COURT, MR. THORNTON, MR. HUGHES,

20 JUROR RANDY O. CARTER:

21 THE COURT: Mr. Carter, how are you? Wanda, Randy
22 O. Carter, 21. What's the problem?

23 JUROR RANDY O. CARTER: Yes. I have a daughter
24 that graduates from the University of New Orleans on
25 Friday night.

1 THE COURT: You'll be there. When you leaving?

2 JUROR RANDY O. CARTER: I was planning on leaving
3 Thursday morning, because I'm driving through.

4 THE COURT: I understand you want to leave Thursday
5 morning. We might still be in court Thursday. I can't
6 guarantee that. I just don't know. There's a chance we
7 may not. But you'll certainly get to the graduation,
8 even if you had to leave at midday Thursday. I'm not
9 going to let you miss your daughter's graduation. I
10 promise you that.

11 JUROR RANDY O. CARTER: I appreciate that. All
12 right.

13 THE COURT: So you tell me. I'll transfer you, but
14 this is going to be a week in which I know you're not
15 going to be here Friday. But the question now is
16 whether or not you want me to transfer you, or whether
17 you want to go ahead and get your exemption out of the
18 way. Cause I feel like the latest you could be here
19 probably -- and of course, it would be -- not me, it'd
20 be you, cause what will keep you here, if you're on the
21 jury, is deliberating. That would be the thing that
22 would keep you here. Not me. You understand that?

23 JUROR RANDY O. CARTER: Yes, sir. I'd like to --
24 I'd like to be there for her graduation. I just --

25 THE COURT: Well, you're going to be there for her

1 graduation, because you could actually -- I've driven
2 New Orleans several times in my life from here.

3 JUROR RANDY O. CARTER: Yes, sir.

4 THE COURT: I live right over in Walterboro, and I
5 remember those days pretty well.

6 JUROR RANDY O. CARTER: Yes, sir.

7 THE COURT: So I understand. Where's she
8 graduating from?

9 JUROR RANDY O. CARTER: University of New Orleans.

10 THE COURT: Well, wonderful.

11 JUROR RANDY O. CARTER: Yes, sir. So --

12 THE COURT: Great. I know you're proud. I've got
13 one being sworn in next week, so I understand that, too.

14 JUROR RANDY O. CARTER: Yes, sir.

15 THE COURT: I would want you to make that. I'm
16 going to see to it. Only thing I can't promise you is
17 how long you deliberate if the case went into Thursday.
18 You follow me? And I don't know that it will.

19 JUROR RANDY O. CARTER: Yes, sir.

20 THE COURT: There are those who tell me that they
21 think the case probably that we're going to try might
22 end Wednesday. Which case, you would have any problem
23 at all. There's no way for me to predict that or them,
24 cause you don't know how long a person's going to
25 testify, how long somebody's going to argue, what's

1 going to come up, what juror's going to get sick.
2 There's too many -- however, I feel certain at some
3 point Thursday, you'll probably be safe in saying that
4 you could get on the road, cause you will not be here
5 Friday. That's my best guess right now so that you've
6 got information. And if something comes up -- but I
7 don't want you to be sitting on a jury when you're --
8 then you tell the jury I got to leave here. You
9 understand that?

10 JUROR RANDY O. CARTER: Yes, sir.

11 THE COURT: And that ain't going to happen on
12 Friday, cause I don't believe that we're going to have a
13 jury on Friday. So that's why I told you, you were
14 going home early this week. And that's why I told you
15 you, could get your exemption this week. You understand
16 that?

17 JUROR RANDY O. CARTER: Yes, sir.

18 THE COURT: Your call, man. You want to go to
19 another term of court in Jasper, or you want to stay and
20 get it done this week, and leave just soon as we finish?

21 JUROR RANDY O. CARTER: I don't mind doing this. I
22 just don't want to miss her graduation, so.

23 THE COURT: Well, you might -- even if you -- I
24 know you want to leave on Thursday, sir.

25 JUROR RANDY O. CARTER: Yes, sir.

1 THE COURT: Even if you had to leave on Friday, you
2 can get to New Orleans, but I'm not saying that. I
3 think you'll be out of here at some point. I don't have
4 any control over that, cause I can't tell you how long
5 to deliberate. You understand that?

6 JUROR RANDY O. CARTER: Yes, sir.

7 THE COURT: If the case went Thursday, I told you
8 the best -- nobody's going to be able to give you
9 absolute assurance on how long a jury's going to
10 deliberate, just like you can't tell me whether it's
11 going to rain in the next five minutes.

12 JUROR RANDY O. CARTER: Yes, sir.

13 THE COURT: You understand that?

14 JUROR RANDY O. CARTER: Yes, sir.

15 THE COURT: Okay. Now, if you want to be
16 transferred, I'll consider transferring. But I don't
17 think you're going to have a problem, but I can't
18 guarantee that. That's as honest as I know how to be.

19 JUROR RANDY O. CARTER: I just hate to commit, and
20 then I've got to make her graduation.

21 THE COURT: You're not going to not make her
22 graduation.

23 JUROR RANDY O. CARTER: All right, sir. I guess
24 I'll stay here, then, sir.

25 THE COURT: Well, you just let me know, now, if

1 there's a problem. Okay?

2 JUROR RANDY O. CARTER: All right, sir.

3 THE COURT: Thank you, sir.

4 JUROR RANDY O. CARTER: All right.

5 THE COURT: I appreciate your service.

6 JUROR RANDY O. CARTER: Thank you.

7 END BENCH CONFERENCE.

8 OFF THE RECORD BENCH CONFERENCE,

9 THE COURT, MR. THORNTON, MR. HUGHES.

10 BACK ON THE RECORD.

11 THE COURT: Ladies and gentlemen, those of you
12 still here, I find that you're qualified to serve on a
13 jury in South Carolina. I know I've been keeping you.
14 We're going to strike a jury in just a couple of
15 moments. But before we do, I know you've been sitting
16 now for a while. I'm going to give you a chance to
17 stand up, stretch your legs, use the restroom. We're
18 not going to take long. It's two minutes till 4:00.
19 I'd like to start at ten after 4:00. So be back in your
20 seats ten after 4:00. We'll take ten minutes.

21 I need to see the lawyers in chambers.

22 OFF THE RECORD 4:10 P.M.

23 BACK ON THE RECORD 4:15 P.M.

24 VOIR DIRE, BY THE COURT:

25 THE COURT: Thank you. Please be seated. State's

1 ready to proceed?

2 MR. THORNTON: State is ready to proceed, your
3 Honor.

4 THE COURT: Defendant ready to proceed?

5 MR. HUGHES: Defense is ready, your Honor.

6 THE COURT: Very well. Solicitor, call your case.

7 MR. THORNTON: State calls the case of the State
8 versus Brett Howard. He's charged in two indictments,
9 your Honor. 2010-GS-27-14, charging Mr. Howard with the
10 offense of murder. 2010-GS-27-15, charging Mr. Howard
11 with possession of a weapon during the commission of a
12 violent crime.

13 May I approach?

14 THE COURT: You may. All right, ladies and
15 gentlemen of my jury panel, I ask once again that you
16 give me your attention.

17 I remind you that earlier this afternoon, you were
18 placed under oath by the clerk. I asked you general
19 qualifying questions. I'm now going to ask you
20 questions to ensure your impartiality to serve as a
21 juror in this case. The answers you will be giving me
22 to these questions are also under oath.

23 The State has called for trial the case of the
24 State of South Carolina versus Brett Howard. Mr. Howard
25 is charged by these two pieces of paper I hold in my

1 hand, which we call indictments. The indict --

2 MADAM CLERK: That's a juror.

3 MADAM CLERK: Is that a juror?

4 MADAM CLERK: Is that a juror?

5 UNKNOWN PERSON IN AUDIENCE: No.

6 THE COURT: The indictments are not evidence of any
7 of the allegations contained in the indictments. The
8 evidence, I'll explain to you what constitutes evidence.
9 And if you're selected as a juror, you must base your
10 decision solely upon evidence. The indictment just
11 contains allegations.

12 The defendant is charged with the offenses of
13 murder in one indictment, possession of a weapon during
14 the commission of a violent crime in the second
15 indictment.

16 Now, to these indictments, the defendant has pled
17 not guilt. That places the burden on the State of South
18 Carolina to prove each and every element of the offenses
19 beyond a reasonable doubt. I will explain the elements
20 to you of the offenses in my charge to you on the law at
21 the conclusion of the evidence, if you are selected as a
22 juror in the trial of the case.

23 Now, ladies and gentlemen, I would like for you to
24 meet the lawyers that are going to be trying this case.
25 I would ask that they stand and introduce themselves to

1 you, face my jury panel, beginning with Counsel for the
2 State of South Carolina.

3 MR. THORNTON: Thank you, your Honor. Good
4 afternoon, ladies and gentlemen. As the Judge told you
5 earlier, my name is Sean Thornton. I'm Deputy Solicitor
6 for the 14th Circuit. We're the only five-county
7 circuit --

8 THE COURT: Hold on a second, Solicitor. Do I have
9 any other jurors out there?

10 MADAM CLERK: Margaret, don't come tell me ready
11 when I still got jurors walking in after I've been --

12 BAILIFF: No, sir, your Honor. I don't see any
13 anyone else.

14 THE COURT: Go check the restroom.

15 BAILIFF: All clear, sir.

16 THE COURT: Thank you. Now, let me start over
17 again, for those of you who were not present when we
18 began. Thank you, Solicitor. Take a seat for me.

19 MR. THORNTON: Yes, sir.

20 THE COURT: That's why I tell you, ladies and
21 gentlemen, everybody's got to be in here at the same
22 time we start. You don't get up and walk out and come
23 back in, cause you don't know what's going on, and
24 you're going to miss something. I thought -- we thought
25 we had everybody here, and people are walking in and out

1 while we're talking. That means you're going to miss
2 instructions, and that means we could have a problem in
3 the trial of the case. And we don't want to repeat it.

4 Now, let me start over again for those of you who
5 weren't present that have walked in while I'm talking.

6 The State has called for trial the case of the
7 State of South Carolina versus Brett Howard. Mr. Howard
8 is charged by these two pieces of paper I hold in my
9 hand, which we call indictments.

10 Mr. Howard is charged with the offenses of murder
11 and possession of a weapon during the commission of a
12 violent crime.

13 The indictments are not evidence. They are simply
14 the formal written instruments by which the case is
15 brought into this court. I will explain to you, if
16 you're selected as a juror, what is evidence, because,
17 if you're on the jury, you must base your decision
18 solely upon evidence introduced in the courtroom, when
19 both sides are present, with the right of cross-
20 examination.

21 To these indictments, the defendant, Brett Howard,
22 has plead not guilty. That places the burden on the
23 State of South Carolina to prove each and every element
24 of the offenses in the indictment beyond a reasonable
25 doubt. And it will be your duty, if you are selected as

1 a juror in the trial of this case, to determine whether
2 or not the State has met that burden.

3 I will explain to you the elements of these
4 offenses in my charge to you on the law at the
5 conclusion of the case, after all the evidence has been
6 presented.

7 For now, you should simply understand that the
8 indictments contain the allegations against the
9 defendant, and it is not evidence in any sense of what's
10 contained in the indictments.

11 Now, I want you to meet the attorneys that are
12 going to be trying this case, both for the State of
13 South Carolina and for the defendant, as well as meet
14 the defendant. I'm going to have them stand, face you,
15 and introduce themselves at this time, beginning with
16 counsel for the State of South Carolina. Mr. Thornton.

17 MR. THORNTON: Thank you, Judge. As I was saying
18 earlier, ladies and gentlemen, my name is Sean Thornton.
19 I'm Deputy Solicitor for the 14th Circuit. That's the
20 only circuit in the state with five counties. We cover
21 Allendale, Beaufort, Jasper, Colleton, and Hampton
22 counties.

23 My direct supervisor is the elected solicitor,
24 Duffy Stone. I supervise all five counties for him.
25 Also with me is Assistant Solicitor Tameaka Legette, who

1 has been with our office, I think, since 2002. We will
2 be the lawyers trying the case on behalf of the State.
3 Thank you.

4 THE COURT: Counsel for the defendant.

5 MR. HUGHES: Good afternoon. My name is Robert
6 Hughes. I'm one of the public defenders in the 14th
7 Circuit. My home base is in Jasper County, because my
8 home is in Jasper County. Thank you.

9 THE COURT: Introduce your client for me.

10 MR. HUGHES: Okay. Stand up.

11 THE COURT: Stand up, please, and face my jury
12 panel.

13 MR. HUGHES: This young man is Mr. Brett Howard.
14 He is from Ridgeland, also.

15 THE COURT: Very well. Please be seated.

16 All right, ladies and gentlemen, you have now met
17 the defendant, Mr. Brett Howard, who's from Ridgeland,
18 South Carolina. I ask first of all, is any member of my
19 jury panel related by blood, connected by marriage, or a
20 close personal friend of the defendant, Brett Howard?
21 If so, please stand.

22 Listen carefully to me. They going to pass you a
23 microphone. Give me -- trying to hand you a mic.

24 First, just give me your name.

25 JUROR KEITH L. GARBIN: Keith Garbin.

1 THE COURT: All right. Hold on. What number,
2 Margaret?

3 MADAM CLERK: What's your name?

4 JUROR KEITH L. GARBIN: Keith Garbin.

5 THE COURT: I can't --

6 MADAM CLERK: It's 51. Second page, your Honor.

7 THE COURT: 51?

8 MADAM CLERK: Yes, sir.

9 THE COURT: Counsel, this is Juror Number 51, Keith
10 L. Garbin. Mr. Garbin, yes or no. Are you related by
11 blood to Mr. Howard?

12 JUROR KEITH L. GARBIN: Yes.

13 THE COURT: How are you related to him?

14 JUROR KEITH L. GARBIN: My grandmother's family.
15 Through my family.

16 THE COURT: I can't under -- you're holding it too
17 close, cause I can't understand your words.

18 JUROR KEITH L. GARBIN: He was my grandfather's
19 family.

20 MADAM CLERK: He's with his grandfather's --

21 MR. THORNTON: Said he's with his grandfather's
22 family, your Honor.

23 THE COURT: All right. I'll excuse you from
24 service in the trial of this case only. Have a seat for
25 me.

1 Anyone else related by blood, connected by
2 marriage, or a close personal friend of the defendant in
3 this case, Brett Howard. If so, please stand at this
4 time.

5 Let the record reflect, other than the juror that
6 stood, no one else is standing.

7 Now, you've met the lawyers that are involved in
8 this case. You've met Mr. Thornton and Ms. Legette from
9 the Solicitor's Office, 14th Circuit. Mr. Hughes from
10 the Public Defender's office. Let me start with the
11 Solicitor's Office.

12 Any member of my jury panel related by blood,
13 connected by marriage, or a close personal friend of
14 either Mr. Sean Thornton, Deputy Solicitor to the 14th
15 Judicial Circuit, or Ms. Tameaka Legette, Assistant
16 Solicitor for the 14th Judicial Circuit. If so, please
17 stand at this time.

18 Let the record reflect no one is standing.

19 Any member of my jury panel ever been represented
20 in the past by either Mr. Sean Thornton or Ms. Tameaka
21 Legette of the 14th Judicial Circuit Solicitor's Office?
22 If so, please stand at this time.

23 Let the record reflect no one is standing.

24 You've also met counsel for the defendant, Mr. Bob
25 Hughes. Mr. Hughes is with the Public Defender's office

1 in the 14th Judicial Circuit. Any member of my jury
2 panel related by blood, connected by marriage, or a
3 close personal friend of counsel for the defendant, Mr.
4 Bob Hughes, of Ridgeland, South Carolina? If so, please
5 stand at this time.

6 Let the record reflect no one is standing.

7 Any member of my jury panel ever been represented
8 in the past or currently represented by Mr. Bob Hughes,
9 counsel for the defendant, Brett Howard? If so, please
10 stand at this time.

11 Let the record reflect no one is standing.

12 Now, ladies and gentlemen, I'm going to tell you a
13 little bit about the allegations in this case. I've
14 told you defendant has plead not guilty. That places
15 the burden on the State to prove guilt beyond a
16 reasonable doubt.

17 In Indictment Number 2010-GS-27-00014, the State
18 versus Brett Howard is an indictment for murder. It is
19 alleged in this indictment that this offense allegedly
20 took place in Jasper County, on or about December the
21 11th, 2009. And that the defendant, Brett Howard, with
22 malice aforethought, did kill and murder Woodrow
23 Brantley, that's B/r/a/n/t/l/e/y, by means of shooting
24 Woodrow Brantley, and that Woodrow Brantley did die in
25 Jasper County as a proximate result of that incident on

1 December the 11th, 2009.

2 In Indictment Number 2010-GS-27-00015, the State
3 versus Brett Howard, indictment for a weapon during the
4 commission of a violent crime, it is alleged in that
5 indictment that the defendant, Brett Howard, did, in
6 Jasper County, South Carolina, on or about December the
7 11th, 2009, possess a firearm or did visibly display
8 what appeared to be a firearm during the commission of
9 or attempted commission of a violent crime. His alleged
10 violent crime was murder. And it alleges that murder is
11 a violent crime under the laws of the State of South
12 Carolina.

13 Those are the allegations in the two indictments
14 that the State has called for trial.

15 I've read you those allegations in order to simply
16 -- and they're just allegations, not evidence. I've
17 read you those to ask you this. Is any member of my
18 jury panel read about, heard about, or know anything
19 whatsoever about the facts which are alleged in this
20 case? If so, please stand at this time.

21 If you'll come forward, please, ma'am.

22 MADAM CLERK: Carla Ashcraft.

23 THE COURT: What number, Margaret?

24 MADAM CLERK: Number 2. Third from the top, first
25 page.

1 THE COURT: One representative from the solicitor's
2 office and Mr. Hughes.

3 ON-THE-RECORD BENCH CONFERENCE,

4 THE COURT, MR. THORNTON, MR. HUGHES,

5 JUROR CARLA C. ASHCRAFT:

6 JUROR CARLA C. ASHCRAFT: Good afternoon.

7 THE COURT: How are you?

8 JUROR CARLA C. ASHCRAFT: I'm fine. Thank you.

9 THE COURT: Come right on over here and let me get
10 in here. You face her so Wanda can hear you. They
11 going to close in behind you and they'll listen to you.

12 JUROR CARLA C. ASHCRAFT: Okay.

13 THE COURT: Give me your name, please.

14 JUROR CARLA C. ASHCRAFT: Carla Ashcraft.

15 THE COURT: And you're Juror Number 2?

16 JUROR CARLA C. ASHCRAFT: Yes, sir.

17 THE COURT: All right. I don't have my list. Is
18 that right, Margaret?

19 MADAM CLERK: Yes, sir. Third from the top.

20 THE COURT: You got it, Wanda? Carla C. Ashcraft.
21 All right. Now, I asked whether or not you read about,
22 heard about, or know anything whatsoever about the
23 facts, and you stood up. Is that correct?

24 JUROR CARLA C. ASHCRAFT: Yes, sir, that's correct.

25 THE COURT: Let me ask you this. Did you read

1 about it?

2 JUROR CARLA C. ASHCRAFT: Yes, sir. I'm the
3 reference custodian for Jasper County Coroner's Office.

4 THE COURT: I see. All right. The fact that
5 you're records custodial, you tell me you only read
6 about it because a death was involved and you had to
7 read about it in the records?

8 JUROR CARLA C. ASHCRAFT: Yes, sir. And I have to
9 gather the records for the subpoenaed witnesses in the
10 case..

11 THE COURT: Can you put aside anything that you may
12 have read in those records about the death which
13 occurred in the case and decide this case solely upon
14 evidence introduced in this courtroom when both sides
15 are present --

16 JUROR CARLA C. ASHCRAFT: Yes, sir.

17 THE COURT: -- with the right of cross-examination?

18 JUROR CARLA C. ASHCRAFT: Yes, sir, I think I can.

19 THE COURT: Did anything you read in those records,
20 do you feel like improperly influenced you so that you
21 could not be a fair and an impartial juror in this case?

22 JUROR CARLA C. ASHCRAFT: No, sir. They were
23 basically just factual reports.

24 THE COURT: Is that the only reason that you stood,
25 Ms. Ashcraft?

1 JUROR CARLA C. ASHCRAFT: Yes, sir.

2 THE COURT: Thank you, ma'am. You may return to
3 your seat.

4 END BENCH CONFERENCE.

5 THE COURT: Juror Number 2 is going to remain with
6 us.

7 MR. THORNTON: Judge, one more.

8 MADAM CLERK: 127, John Schaffer. John Schaffer.

9 ON-THE-RECORD BENCH CONFERENCE,

10 THE COURT, MR. THORNTON, ROBERT

11 HUGHES, JUROR JONATHAN SCHAFFER:

12 THE COURT: Wanda, this is 127, Jonathan -- is it
13 Schaffer?

14 JUROR JONATHAN SCHAFFER: Yes, sir.

15 THE COURT: S/c/h/a/f/f/e/r. Mr. Schaffer, have
16 you read about this case?

17 JUROR JONATHAN SCHAFFER: No, sir, I don't know
18 him.

19 THE COURT: Oh, okay. Hold on a second. My
20 question was have you heard anything, read, anything, or
21 know anything about the facts which are alleged in this
22 case, and you came forward.

23 JUROR JONATHAN SCHAFFER: I heard about it.

24 THE COURT: You heard about it?

25 JUROR JONATHAN SCHAFFER: Um-hmm.

1 THE COURT: All right. Who did you hear about it
2 from?

3 JUROR JONATHAN SCHAFFER: Just different people.

4 THE COURT: Different. You don't know who told you
5 about it?

6 JUROR JONATHAN SCHAFFER: Just some guys I know
7 about.

8 THE COURT: Some guys you know about.

9 JUROR JONATHAN SCHAFFER: Yeah, some guys I knew
10 told me about it.

11 THE COURT: Some friends of yours?

12 JUROR JONATHAN SCHAFFER: Um-hmm.

13 THE COURT: All right. The fact that people told
14 you about that, --

15 JUROR JONATHAN SCHAFFER: I don't know this guy.
16 Just know about what happened.

17 THE COURT: I'm not asking you that. Take it easy,
18 now. Listen to my question so that you don't try to
19 talk until I ask you a question. All right. The fact
20 that your friends told you about this incident, would
21 that in any way prevent you from being a fair and an
22 impartial juror?

23 JUROR JONATHAN SCHAFFER: I don't know.

24 THE COURT: It's yes or no, Mr. Schaffer. The fact
25 somebody told you about something, can you put that

1 aside and decide this --

2 JUROR JONATHAN SCHAFFER: I was just letting you
3 know they told me about the -- I know what happened, so.

4 THE COURT: No, sir, you don't know what happened,
5 cause you weren't there.

6 JUROR JONATHAN SCHAFFER: Okay. Okay.

7 THE COURT: You know what somebody told you.

8 JUROR JONATHAN SCHAFFER: Right. Okay. That's
9 what I know.

10 THE COURT: Can you put aside what somebody told
11 you and decide this case solely upon the evidence?

12 JUROR JONATHAN SCHAFFER: I don't know. I reckon.

13 THE COURT: You have to tell me yes or no, not I
14 reckon.

15 JUROR JONATHAN SCHAFFER: I don't -- yeah, I reckon
16 so.

17 THE COURT: The answer is yes?

18 JUROR JONATHAN SCHAFFER: Yeah, I guess.

19 THE COURT: So you feel like you can give both the
20 State and the Defendant a fair and impartial trial, and
21 put aside anything that anybody told you, and decide
22 this case solely upon evidence introduced in this trial?
23 Yes or no.

24 JUROR JONATHAN SCHAFFER: Yeah. I mean, I'm just
25 -- I was just saying I knew what --

1 THE COURT: I understand.

2 JUROR JONATHAN SCHAFFER: Okay.

3 THE COURT: It's perfectly normal for people to
4 talk or for you to read.

5 JUROR JONATHAN SCHAFFER: Yeah. Right.

6 THE COURT: What I want to know is can you put it
7 aside and decide this case on the evidence.

8 JUROR JONATHAN SCHAFFER: And put what I heard -- I
9 mean, I -- okay.

10 THE COURT: You don't use that. I'm asking you can
11 you put that aside and decide this --

12 JUROR JONATHAN SCHAFFER: No, because I'm going to
13 know what I heard.

14 THE COURT: Hold on a second.

15 JUROR JONATHAN SCHAFFER: All right.

16 THE COURT: Let me finish, --

17 JUROR JONATHAN SCHAFFER: Okay.

18 THE COURT: -- because you want to talk over me
19 every time I ask you a question. Look at me.

20 JUROR JONATHAN SCHAFFER: All right.

21 THE COURT: Not them. You look at me.

22 JUROR JONATHAN SCHAFFER: Okay.

23 THE COURT: I'm asking you can you put aside
24 anything anybody else said to you and decide this case
25 on the evidence? Yes or no?

1 JUROR JONATHAN SCHAFER: No.

2 THE COURT: Have a seat back in the courtroom.

3 END BENCH CONFERENCE.

4 THE COURT: Next.

5 MADAM CLERK: Jacquan Manigo. Number -- Page 3,
6 Number 90.

7 THE COURT: You got it, Wanda?

8 COURT REPORTER: Number who?

9 THE COURT: Number 90, Jacquan Manigo. How you
10 doing, Mr. Manigo?

11 JUROR JACQUAN MANIGO: How you doing?

12 THE COURT: Come on up here so the court reporter
13 can hear you. I asked if you read about, heard about,
14 or know anything whatsoever about the facts which are
15 alleged in this case, and you came forward.

16 JUROR JACQUAN MANIGO: Yes, sir.

17 THE COURT: All right. Now, I want to ask you
18 this. Just yes or no. Have you read something about
19 this case?

20 JUROR JACQUAN MANIGO: No, sir.

21 THE COURT: Have you heard something about this
22 case?

23 JUROR JACQUAN MANIGO: Yes, sir.

24 THE COURT: Who did you hear it from?

25 JUROR JACQUAN MANIGO: Relatives, co-workers.

1 THE COURT: Your co-workers?

2 JUROR JACQUAN MANIGO: Yeah.

3 THE COURT: They talked about it?

4 JUROR JACQUAN MANIGO: Yeah, and his -- part of the
5 person was murdered relatives.

6 THE COURT: The person who was murdered relatives
7 talked to you about it?

8 JUROR JACQUAN MANIGO: Yes, sir.

9 THE COURT: Can you -- hold on a second. They
10 talked to you about what allegedly happened. Is that
11 what you're telling me?

12 JUROR JACQUAN MANIGO: Yeah. No, they didn't,
13 like, come to me, but it's like being talked about.

14 THE COURT: It was discussed in your presence. Is
15 that what you're telling me?

16 JUROR JACQUAN MANIGO: Yes, sir.

17 THE COURT: I understand that. Can you put aside
18 what was discussed in your presence and decide this case
19 solely upon the evidence in this case?

20 JUROR JACQUAN MANIGO: Yes, sir.

21 THE COURT: You think you could still, despite the
22 fact that people talked to you, can you give both the
23 defendant and the State in this case a fair and an
24 impartial trial?

25 JUROR JACQUAN MANIGO: Yes, sir. I was real close

1 friends. I went to school with him.

2 THE COURT: With who?

3 JUROR JACQUAN MANIGO: With Brett Howard.

4 THE COURT: With Mr. Howard?

5 JUROR JACQUAN MANIGO: Yeah.

6 THE COURT: All right. The fact that you went to
7 school with Mr. Howard, would that in any way prevent
8 you from giving the defendant or the State in this case
9 a fair and an impartial trial?

10 JUROR JACQUAN MANIGO: No, sir.

11 THE COURT: And you believe you can decide this
12 case solely upon the evidence.

13 JUROR JACQUAN MANIGO: Yes, sir.

14 THE COURT: Thank you, sir. You may return to your
15 seat.

16 JUROR JACQUAN MANIGO: Yes, sir.

17 END BENCH CONFERENCE.

18 OFF-THE-RECORD BENCH CONFERENCE,

19 THE COURT, MR. THORNTON, MR. HUGHES.

20 BACK ON THE RECORD.

21 THE COURT: Hold on. I've got one more, I think.
22 Jo, do I have another one?

23 MADAM CLERK: No, that's it.

24 MR. THORNTON: Your honor, I deeply apologize. May
25 we approach briefly.

1 THE COURT: Counsel approach. Come around to the
2 side so --

3 MR. THORNTON: Yes, sir.

4 OFF-THE-RECORD BENCH CONFERENCE,

5 THE COURT, MR. THORNTON, MR. HUGHES.

6 BACK ON THE RECORD.

7 THE COURT: All right, ladies and gentlemen, I
8 asked if anybody was related by blood, connected by
9 marriage, or a close personal friend of the defendant in
10 this case, Brett Howard, of Ridgeland, South Carolina.
11 Is there anybody here for jury service that attended
12 school with Brett Howard that has not already told me
13 about it? Please stand at this time.

14 All right. Ma'am. Ma'am. Ma'am, you all come
15 forward.

16 MADAM CLERK: Mary Scott.

17 THE COURT: Got a number?

18 MADAM CLERK: 133.

19 ON-THE-RECORD BENCH CONFERENCE,

20 THE COURT, MR. THORNTON, MR. HUGHES,

21 JUROR MARY SCOTT.

22 THE COURT: How you doing?

23 JUROR MARY SCOTT: I'm good.

24 THE COURT: This is Juror 133, Wanda. Mary Scott,
25 right?

1 JUROR MARY SCOTT: Yes, sir.

2 THE COURT: Ms. Scott, you went to school with
3 Brett Howard?

4 JUROR MARY SCOTT: Yes, sir.

5 THE COURT: Where'd you go to school with him?

6 JUROR MARY SCOTT: Jasper County High.

7 THE COURT: Jasper County High. Did you know him
8 in school, or you just know you went to school with him?

9 JUROR MARY SCOTT: I knew him -- I knew him as --

10 THE COURT: You knew who he was?

11 JUROR MARY SCOTT: Right.

12 THE COURT: The fact that you went to school with
13 him and knew who he was, would that in any way prevent
14 you from giving the State or the defendant in this case
15 a fair and an impartial trial?

16 JUROR MARY SCOTT: No.

17 THE COURT: Thank you very much. You may return to
18 your seat.

19 END BENCH CONFERENCE.

20 MADAM CLERK: Monique Bush, Number 18.

21 THE COURT: You got her? How you doing? Monique
22 Bush, Number 18. Is that right, Ms. Bush?

23 JUROR MONIQUE BUSH: That's right.

24 THE COURT: All right. Ms. Bush, you went to
25 school with Brett Howard?

1 JUROR MONIQUE BUSH: Yes, sir.

2 THE COURT: Now, where did you attend school with
3 him?

4 JUROR MONIQUE BUSH: Jasper High.

5 THE COURT: Did you know him in school, or you just
6 attended school with him and knew who he was?

7 JUROR MONIQUE BUSH: Knew who he was.

8 THE COURT: You knew who he was. The fact that you
9 went to Jasper County High at the same time as Mr.
10 Howell, would that in any way keep you from giving the
11 defendant or the State of South Carolina in this case a
12 fair and an impartial trial?

13 JUROR MONIQUE BUSH: No, sir.

14 THE COURT: Thank you, ma'am. You may return to
15 your seat.

16 END BENCH CONFERENCE.

17 MADAM CLERK: Ashley Elam. Don't know a number.

18 MADAM CLERK: Number 201. Last one on the page.

19 THE COURT: Ashley Elam?

20 JUROR ASHLEY ELAM: Um-hmm.

21 THE COURT: How you doing, Ms. Elam?

22 JUROR ASHLEY ELAM: Fine.

23 THE COURT: This is Ashley Elam, Number 201. Ms.
24 Elam, did you go to school with Brett Howard?

25 JUROR ASHLEY ELAM: Yes.

1 THE COURT: Where did you go to school with him?

2 JUROR ASHLEY ELAM: Ridgeland Middle and Jasper
3 County High.

4 THE COURT: All right. Did you know him in school?

5 JUROR ASHLEY ELAM: Yes.

6 THE COURT: The fact that you knew him and went to
7 school with him at Ridgeland Middle and Jasper County
8 High, would that in any way keep you from giving the
9 defendant of the State of South Carolina a fair and an
10 impartial trial?

11 JUROR ASHLEY ELAM: Yes.

12 THE COURT: It would?

13 JUROR ASHLEY ELAM: (Nodded head indicating
14 affirmative.)

15 THE COURT: I'll excuse you from service in the
16 trial of this case only.

17 JUROR ASHLEY ELAM: Okay.

18 THE COURT: You may have a seat. Take her out.

19 END BENCH CONFERENCE.

20 MADAM CLERK: Michael Seabrooks. Don't know his
21 number.

22 MADAM CLERK: He is Number 253.

23 ON-THE-RECORD BENCH CONFERENCE,

24 THE COURT, MR. THORNTON, MR. HUGHES,

25 JUROR MICHAEL C. SEABROOKS:

1 THE COURT: How you doing? Okay. You're Mr. Mike
2 Seabrook?

3 JUROR MICHAEL B. SEABROOKS: Yes.

4 THE COURT: Is that right? This is Juror Michael
5 B. Seabrooks. Is it with an S?

6 JUROR MICHAEL B. SEABROOKS: Yes.

7 THE COURT: Number 253. Mr. Seabrooks, come on up
8 here so the court reporter can hear you. And that's
9 good. Did you go to school with Brett Howard?

10 JUROR MICHAEL B. SEABROOKS: Yes.

11 THE COURT: Did you know him in school?

12 JUROR MICHAEL B. SEABROOKS: Yes.

13 THE COURT: All right. You're not related to him.

14 JUROR MICHAEL B. SEABROOKS: He's -- he like
15 family.

16 THE COURT: Pardon?

17 JUROR MICHAEL B. SEABROOKS: He's something like
18 family.

19 THE COURT: You like family.

20 JUROR MICHAEL B. SEABROOKS: He's something like
21 family. I grew up -- his family grew up with my family.

22 THE COURT: His family grew up with your family?

23 JUROR MICHAEL B. SEABROOKS: Yeah.

24 THE COURT: All right. But you're not related to
25 him.

1 JUROR MICHAEL B. SEABROOKS: No.

2 THE COURT: By blood or marriage.

3 JUROR MICHAEL B. SEABROOKS: No, not by blood.

4 THE COURT: Okay. You consider yourself a personal
5 friend of his?

6 JUROR MICHAEL B. SEABROOKS: Yeah.

7 THE COURT: The fact that you're personal friends
8 with Mr. Howard, would that in any way prevent you from
9 giving the defendant or the State in this case a fair
10 and an impartial trial?

11 JUROR MICHAEL B. SEABROOKS: I mean, no, I ain't --
12 no, I wouldn't say that, but I probably wouldn't feel
13 comfortable.

14 THE COURT: Well, if you wouldn't feel comfortable,
15 that's the reason I'm asking you. You feel like it
16 would be better for you not to serve as a juror in the
17 trial of this case because of your relationship with
18 him?

19 JUROR MICHAEL B. SEABROOKS: Yeah.

20 THE COURT: I'll excuse you from service in the
21 trial of this case. You may return to your seat. Take
22 him out.

23 END BENCH CONFERENCE.

24 OFF-THE-RECORD BENCH CONFERENCE,

25 THE COURT, MR. THORNTON, MR. HUGHES.

1 BACK ON THE RECORD.

2 THE COURT: All right. I'm advised that the
3 potential witnesses in the trial -- let the record
4 reflect no one else has come forward in response to my
5 last question.

6 I'm advised the potential witnesses in the trial of
7 this case will be as follows. If they're present in the
8 courtroom when I call your name, please stand and face
9 my jury panel. I'm going to give you an occupation or a
10 home town with each of these, because many of them will
11 not be in the courtroom.

12 Detective Eric Baxter. Jasper County Sheriff's
13 Office. Detective, stand up for me. He's standing to
14 my right, your left, ladies and gentlemen. Thank you.
15 You may be seated.

16 Cornelius Shiflett, formerly of the Jasper County
17 Sheriff's Office.

18 Deputy Scott Melnick, Jasper County Sheriff's
19 Office. He's holding his hand up in the back of the
20 courtroom, ladies and gentlemen.

21 Detective Gary Morris, Jasper County Sheriff's
22 Office.

23 Stacy Phillips, Jasper County 911.

24 Jessica Horton, Jasper County EMS.

25 Buster Kleckley. You've got on the list, Counsel,

1 just Jasper County. Who is he with?

2 MR. THORNTON: He is with the coroner's office,
3 your Honor. I apologize.

4 THE COURT: Buster Kleckley, Jasper County
5 Coroner's Office.

6 MR. THORNTON: I believe he's also running for
7 probate Judge, your Honor.

8 THE COURT: All right. Dr. Erin Presnell, Medical
9 University of South Carolina.

10 Suzann Cromer, South Carolina Law Enforcement
11 Division, SLED.

12 Henry Criss, Bluffton Police Department.

13 Jerrieme --

14 MR. THORNTON: Jerrieme, Judge. I promise.

15 THE COURT: But that is the correct spelling?

16 MR. THORNTON: Yes, sir.

17 THE COURT: All right. Wanda, for your sake,
18 J/e/r/r/i/e/m/e, Jerrieme Washington.

19 MR. THORNTON: It's Jerrieme, Judge.

20 THE COURT: Jerrieme Washington, Beaufort County.

21 Kyron Shaw, Jasper County.

22 Christopher Keith Johnson, Jasper County.

23 Lorraine Missy Hunt, Jasper County.

24 Monique Chester, Jasper County.

25 Wallace Mike, Jasper County.

1 Mark Childs, Jasper County.

2 Raymond Bert Medlock, Jasper County.

3 Claude Danny Morris, Jasper County.

4 Brett Howard. Stand up, please, sir, and face my
5 jury panel. Ridgeland, South Carolina. You may be
6 seated.

7 Any additional witnesses for the State?

8 MR. THORNTON: No, sir.

9 THE COURT: Any additional witnesses for the
10 Defendant?

11 MR. HUGHES: No, your Honor.

12 THE COURT: Any member of my jury panel related by
13 blood, connected by marriage, or a close personal friend
14 of any of the potential witnesses in the trial of this
15 case whose names I have just called? If so, please
16 stand at this time, if I have not already disqualified
17 you in this case.

18 Everybody up? Pass it to her.

19 Give me your name, and if you know it, your jury
20 number. What number, Margaret?

21 MADAM CLERK: 191, sir, the first page.

22 THE COURT: What page?

23 MADAM CLERK: Page 1, 191. It's about middle of
24 the page.

25 THE COURT: Oh, I got it. Ms. Carroll? Counsel,

1 this is 191, Megan Carroll.

2 Ms. Carroll, listen to me. Are you related by
3 blood to any of the witnesses?

4 JUROR MEGAN CARROLL: By marriage.

5 THE COURT: Pardon?

6 JUROR MEGAN CARROLL: Marriage. I just got married
7 last Saturday.

8 THE COURT: Don't hold it quite so close.

9 MR. THORNTON: She's indicating, Judge, she's not
10 related by blood. She's related by marriage to one of
11 the witnesses.

12 THE COURT: Well, that would be my second question.
13 All right. When I say are you related by blood, the
14 answer's no. Is that right?

15 JUROR MEGAN CARROLL: Right.

16 THE COURT: Are you related by marriage to any of
17 the potential witnesses?

18 JUROR MEGAN CARROLL: Yes.

19 THE COURT: Which witness?

20 JUROR MEGAN CARROLL: Jessica Horton.

21 THE COURT: All right. The fact that Jessica
22 Horton, with Jasper County EMS, is a potential witness,
23 how are you related to her by marriage?

24 JUROR MEGAN CARROLL: Sister-in-law.

25 THE COURT: She's your sister-in-law. The fact

1 that she's a potential witness, would that in any way
2 affect your ability to give the State of South Carolina
3 or the defendant in this case a fair and an impartial
4 trial?

5 JUROR MEGAN CARROLL: No, sir.

6 THE COURT: Thank you, ma'am. You may be seated.
7 Pass the microphone. Let Jo take it or pass it back to
8 this gentleman on this side.

9 Your name, please, for the record. Don't hold it
10 quite so close, because it goes (indicating). Okay.
11 And you can't understand a word anybody's saying when
12 you do that..

13 JUROR JOHN C. MALPHRUS: John Malphrus.

14 MADAM CLERK: Number 88, Page 3. Middle of Page 3,
15 John C. Malphrus.

16 THE COURT: Counsel, this is Juror Number 88, John
17 Malphrus.

18 Mr. Malphrus, are you related by blood to any of
19 the potential witnesses?

20 JUROR JOHN C. MALPHRUS: No, sir.

21 THE COURT: Are you connected by marriage to any of
22 the potential witnesses?

23 JUROR JOHN C. MALPHRUS: No, sir.

24 THE COURT: Are you a close personal friend of any
25 of the potential witnesses?

1 JUROR JOHN C. MALPHRUS: Yes, sir.

2 THE COURT: Which witness?

3 JUROR JOHN C. MALPHRUS: Ms. Horton and Mr.

4 Kleckley,

5 THE COURT: Mr. Kleckley, and who else?

6 JUROR JOHN C. MALPHRUS: Ms. Horton.

7 THE COURT: And Ms. Horton. The fact that you are
8 friends with Ms. Horton and Mr. Kleckley, would that in
9 any way prevent you from giving the State of South
10 Carolina or the defendant in this case a fair and an
11 impartial trial?

12 JUROR JOHN C. MALPHRUS: No, sir.

13 THE COURT: Thank you, sir. You may be seated.
14 Pass the microphone to my young lady back here that's
15 standing.

16 Your name, please, for the record.

17 JUROR CARLA ASHCRAFT: Carla Ashcraft, Juror Number
18 2.

19 THE COURT: Counsel, this is Juror Number 2, Carla
20 Ashcraft. Ms. Ashcraft, are you related by blood to the
21 any of the potential witnesses?

22 JUROR CARLA ASHCRAFT: No, your Honor.

23 THE COURT: Are you connected by marriage to any of
24 the potential witnesses?

25 JUROR CARLA ASHCRAFT: No, sir.

1 THE COURT: Are you a close personal friend of any
2 of the potential witnesses?

3 JUROR CARLA ASHCRAFT: Yes.

4 THE COURT: Which witnesses?

5 JUROR CARLA ASHCRAFT: Mr. Kleckley.

6 THE COURT: The fact that you're close friends with
7 Mr. Kleckley, who is a potential witness in the trial of
8 this case, would that in any way affect your ability to
9 give the State of South Carolina or the defendant in
10 this case a fair and an impartial trial?

11 JUROR CARLA ASHCRAFT: No, your Honor.

12 THE COURT: Thank you. Pass the microphone. I got
13 a gentleman up front here. I'm going to go to the
14 front. Then I'll get you fellows on the back.

15 Give me your name, please, sir.

16 JUROR TERRELL E. MEDLOCK: Terrell Medlock.

17 THE COURT: I couldn't hear that. Back off a
18 little bit.

19 JUROR TERRELL E. MEDLOCK: Terrell Medlock.

20 THE COURT: I still can't understand it. What
21 number?

22 MADAM CLERK: Terrell Medlock, Juror Number 239.
23 Third page. About six up from the bottom.

24 THE COURT: All right. Counsel, this is Juror
25 Number 239, Terrell Medlock.

1 Mr. Medlock, are you related by blood to any of the
2 potential witnesses?

3 JUROR TERRELL E. MEDLOCK: Yes.

4 THE COURT: Which witnesses?

5 JUROR TERRELL E. MEDLOCK: Raymond Medlock.

6 THE COURT: Raymond Bert Medlock?

7 JUROR TERRELL E. MEDLOCK: Yes, sir.

8 THE COURT: How are you related to him?

9 JUROR TERRELL E. MEDLOCK: Cousin.

10 THE COURT: He's your cousin. The fact that
11 Raymond Bert Medlock is a potential witness -- what
12 cousin is he? You know whether it's first or second?

13 JUROR TERRELL E. MEDLOCK: Second.

14 THE COURT: Third? Second?

15 JUROR TERRELL E. MEDLOCK: Yes, sir.

16 THE COURT: The fact that he's your second cousin,
17 would that in any way affect your ability to give the
18 State or the defendant in this case, who is Brett
19 Howard, a fair and an impartial trial?

20 JUROR TERRELL E. MEDLOCK: No, sir.

21 THE COURT: Thank you. Pass the microphone. You
22 may be seated.

23 Yes, sir. Your name, please, for the record.

24 JUROR TRACY W. CROSBY: Tracy Crosby.

25 THE COURT: You know your number? No, sir.

1 MADAM CLERK: 27, first page.

2 THE COURT: Counsel, this is Juror Number 27, Tracy
3 Crosby.

4 Mr. Crosby, are you related by blood to any of the
5 potential witnesses?

6 JUROR TRACY W. CROSBY: No, your Honor.

7 THE COURT: Are you connected by marriage to any of
8 the potential witnesses?

9 JUROR TRACY W. CROSBY: Yes, your Honor.

10 THE COURT: Which witness?

11 JUROR TRACY W. CROSBY: Mr. Kleckley.

12 THE COURT: How are you connected to Mr. Kleckley
13 by marriage?

14 JUROR TRACY W. CROSBY: He's my late wife's
15 brother.

16 THE COURT: He's your wife's brother?

17 JUROR TRACY W. CROSBY: My late wife's brother.

18 THE COURT: Your late wife's brother. All right.
19 The fact that you're related by marriage to a potential
20 witness, Mr. Kleckley, would that in any way affect your
21 ability to give the State of South Carolina or the
22 defendant in this case a fair and an impartial trial?

23 JUROR TRACY W. CROSBY: No, your Honor.

24 THE COURT: Thank you, sir. You may be seated.
25 Pass the microphone.

1 Yes, sir. Your name for the record, please.

2 JUROR DONALD L. HUBBARD: 74.

3 THE COURT: Thank you for knowing your number.

4 Just a moment.

5 MADAM CLERK: Page 2, your Honor.

6 THE COURT: Counsel, this is Juror Number 74,

7 Donald Hubbard.

8 Mr. Hubbard, are you related by blood to any of the
9 potential witnesses?

10 JUROR DONALD L. HUBBARD: No, sir.

11 THE COURT: Are you connected by marriage to any of
12 the potential witnesses?

13 JUROR DONALD L. HUBBARD: No, sir.

14 THE COURT: Are you a close personal friend of any
15 of the potential witnesses?

16 JUROR DONALD L. HUBBARD: A few of them.

17 THE COURT: And who are they?

18 JUROR DONALD L. HUBBARD: Jessica Horton and Buster
19 Kleckley.

20 THE COURT: Ms. Horton and Mr. Kleckley?

21 JUROR DONALD L. HUBBARD: Monique.

22 THE COURT: All right. The fact that you are close
23 personal friends of Mr. Kleckley and Ms. Horton, would
24 that in any way affect your ability to give the State of
25 South Carolina or the defendant in this case a fair and

1 an impartial trial?

2 JUROR DONALD L. HUBBARD: No, sir.

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

4 Let the record reflect no one else is standing in
5 response to my last question.

6 All right, ladies and gentlemen, I've told you when
7 I read you the allegations that the alleged victim in
8 this case was Woodrow -- yes, sir.

9 MR. THORNTON: Your Honor I apologize. May we
10 approach.

11 THE COURT: Counsel approach.

12 OFF-THE-RECORD BENCH CONFERENCE,

13 THE COURT, MR. THORNTON, MR. HUGHES.

14 BACK ON THE RECORD.

15 THE COURT: What number?

16 MADAM CLERK: 74.

17 THE COURT: Juror Number 74, please stand back up
18 for me. Did you also tell me in addition -- I thought
19 you said Raymond Medlock you were friends with -- no,
20 excuse me -- Buster Kleckley and Jessica Horton. Is
21 that correct?

22 JUROR DONALD L. HUBBARD: Yes, sir.

23 THE COURT: And Monique. So when you say -- you
24 got to say more than Monique. You referring to Monique
25 Chester?

1 JUROR DONALD L. HUBBARD: Yes.

2 THE COURT: The fact that you're also close
3 personal friends with Monique Chester, would that in any
4 way affect your ability to give the State or the
5 defendant in this case a fair and an impartial trial?

6 JUROR DONALD L. HUBBARD: No, sir.

7 THE COURT: Thank you, sir.

8 All right. I identified for you that the alleged
9 victim in the murder case, ladies and gentlemen, was
10 Woodrow Brantley. I ask now, is any member of my jury
11 panel related by blood, connected by marriage, or a
12 close personal friend of Woodrow Brantley. If so,
13 please stand at this time.

14 Let the record reflect no one is standing.

15 I also asked, ladies and gentlemen, is any member
16 of my jury panel related to this family. And that is
17 the victim's family, which would include former Jasper
18 County Sheriff Clifford Brantley and current State
19 Representative Curtis Brantley. If you're related to
20 this family, please stand at this time.

21 Let the record reflect no one is standing.

22 I also asked if any member of my jury panel has any
23 social or political connections with any member of the
24 family to include former Jasper County Sheriff Clifford
25 Brantley and current State Representative Curtis

1 Brantley. If so, please stand at this time.

2 Let the record reflect no one is standing.

3 Any member of my jury panel ever been the victim of
4 a violent crime? If so, please stand at this time.

5 Coming to you with the microphone. If you'd give
6 me your name, just your name, for the record, please,
7 ma'am.

8 JUROR TRACEY L. THORNBURY: Tracey Thornbury.

9 THE COURT: You know your number? Hold on.

10 MADAM CLERK: Juror Number 263. Last page, your
11 Honor.

12 THE COURT: Counsel, this is Juror 263, Tracey
13 Thornbury.

14 Ms. Thornbury, you yourself were the victim of a
15 violent crime?

16 JUROR TRACEY L. THORNBURY: Yes, sir.

17 THE COURT: Was there a criminal case in connection
18 with that?

19 JUROR TRACEY L. THORNBURY: Yes, sir.

20 THE COURT: Has the case been concluded? Yes or
21 no?

22 JUROR TRACEY L. THORNBURY: Yes, sir.

23 THE COURT: The fact that you were a victim of a
24 violent crime, would that in any way prevent you from
25 giving the State of South Carolina or the defendant in

1 this case a fair and an impartial trial? I need a yes
2 or no.

3 JUROR TRACEY L. THORNBURY: No, sir.

4 THE COURT: Pardon?

5 JUROR TRACEY L. THORNBURY: No, sir.

6 THE COURT: Thank you, ma'am. Pass the microphone.
7 Your name for the record, please, sir.

8 JUROR JOSEPH A. ARZILLO: Joseph Arzillo, 178.

9 MADAM CLERK: First page, your Honor. Second one
10 on the list.

11 THE COURT: First page?

12 MADAM CLERK: Yes, sir. 178.

13 THE COURT: Counsel, this is Juror 178, Joseph
14 Arzillo.

15 Mr. Arzillo, were you yourself the victim of a
16 violent crime?

17 JUROR JOSEPH A. ARZILLO: Yes.

18 THE COURT: Was a criminal case brought as a result
19 of your being a victim?

20 JUROR JOSEPH A. ARZILLO: Yes, sir.

21 THE COURT: Has the case been concluded?

22 JUROR JOSEPH A. ARZILLO: Yes, sir.

23 THE COURT: The fact that you were the victim of a
24 violent crime, would that in any way affect your ability
25 to give the State of South Carolina or the defendant in

1 this case a fair and an impartial trial?

2 JUROR JOSEPH E. ARZILLO: No, sir.

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

4 OFF-THE-RECORD BENCH CONFERENCE,

5 THE COURT, MADAM CLERK.

6 BACK ON THE RECORD.

7 THE COURT: Counsel approach.

8 OFF-THE-RECORD BENCH CONFERENCE,

9 THE COURT, MR. THORNTON, MR. HUGHES.

10 MR. HUGHES CONFERRING WITH CLIENT.

11 BACK ON THE RECORD.

12 MR. HUGHES: As to what we talked about, your
13 Honor, he has no objection.

14 THE COURT: No objection. I'll put it on the
15 record at the appropriate time, based on our conference
16 at the Bench. You understand that?

17 MR. HUGHES: Yes, your Honor.

18 THE COURT: And I thank the clerk and you for
19 calling it to the Court's attention.

20 All right. Any member of my jury panel formed any
21 opinion about the facts which are alleged in this case?
22 If so, please stand at this time.

23 Let the record reflect no one is standing.

24 Any member of my jury panel a member of or
25 contributed to any group which has as its primary

1 concern the promotion of law enforcement or victim's
2 rights? These groups would include, MADD, SADD, CAVE,
3 or CADRE. If so, please stand at this time.

4 Let the record reflect no one is standing.

5 Any member of my jury panel know of any bias or
6 prejudice they may have about the facts which are
7 alleged in this case, any of the potential witnesses
8 involved in this case, or any of the potential officers
9 or attorneys involved in this case? If so, please stand
10 at this time.

11 Let the record reflect no one is standing.

12 Any member of my jury panel formerly a member of
13 the Jasper County Grand Jury which found the indictments
14 in this case? If so, please stand at this time.

15 Let the record reflect no one is standing.

16 Any member of my jury panel know of any reason
17 whatsoever why they can't give the State of South
18 Carolina and the defendant in this case a fair and an
19 impartial trial? If so, please stand at this time.

20 Let the record reflect no one is standing.

21 Any additional voir dire from the State?

22 MR. THORNTON: No, sir.

23 THE COURT: From the defendant?

24 MR. HUGHES: No, your Honor.

25 THE COURT: Madam Clerk, the strikes are ten and

1 five on the jury. We will be drawing two alternate
2 jurors. The strikes are two and one on the alternate.

3 By agreement of counsel, at the Bench, they allow
4 you, Madam Clerk, to select the jury by computer, giving
5 a copy, if you can, if you've got power, hope you do, to
6 myself, the court reporter, and my law clerk, and
7 calling the names of the jury in the order selected by
8 the computer that have not been disqualified and are
9 able to serve as fair and impartial jurors in the trial
10 of this case.

11 What's happening right now, ladies and gentlemen,
12 is the computer is selecting, at random, so you'll know.
13 And then, they're printing it out on the printer. No
14 one knows what order, other than the computer. It's
15 being done completely at random. And I'll be given a
16 copy, my law clerk, and the court reporter.

17 The clerk will then call your names. As your name
18 is called, come down the middle isle, turn and face the
19 back of the courtroom when you get up here so the
20 counsel on both sides can see your face as your name is
21 called.

22 When your name is called, please bring all of your
23 personal belongings with you, which would include your
24 pocketbook or coat, if you have one.

25 MADAM CLERK: Just waiting for it to print, your

1 Honor.

2 THE COURT: All right. Everybody got a copy?

3 MADAM CLERK: Yes, sir.

4 THE COURT: State ready to proceed?

5 MR. THORNTON: State's ready, your Honor.

6 THE COURT: Defendant ready to proceed?

7 MR. HUGHES: Yes, your Honor.

8 THE COURT: Madam Clerk, give us a jury.

9 JUROR STRIKES, MADAM CLERK:

10 MADAM CLERK: Juror Number 60, Gussie Green. Come
11 forward, ma'am. Right here. If you'll turn around.
12 How says the State?

13 MR. THORNTON: Please present this juror.

14 MADAM CLERK: How says the Defendant?

15 MR. HUGHES: Please seat the juror.

16 MADAM CLERK: Have a seat in the jury box, ma'am.
17 Number 13, William Bolden. Come forward, please. How
18 says the State?

19 MR. THORNTON: Please excuse this defendant.

20 MADAM CLERK: Thank you, sir.

21 MR. THORNTON: Excuse me. Please excuse this
22 juror.

23 MADAM CLERK: Thank you, sir. Have a seat back in
24 the audience. Number 102, Katie Mitchell. How says the
25 State?

1 MR. THORNTON: Please present this juror.

2 MADAM CLERK: How says the Defense?

3 MR. HUGHES: Please seat the juror.

4 MADAM CLERK: Have a seat in the jury box, ma'am.

5 Number 15, Kandy Brooks. How says the State?

6 MR. THORNTON: Please excuse this juror.

7 MADAM CLERK: Thank you, ma'am. Have a seat back
8 in the audience. Number 35, Brooke Draper. How says
9 the State?

10 MR. THORNTON: Please present this juror.

11 MADAM CLERK: How says the Defense?

12 MR. HUGHES: Please excuse the juror from the trial
13 of this case.

14 MADAM CLERK: Thank you, ma'am. Have a seat back
15 in the audience. Number 54, Teresa Gloor. How says the
16 State?

17 MR. THORNTON: Please present this juror.

18 MADAM CLERK: How says the Defense?

19 MR. HUGHES: Please seat the juror.

20 MADAM CLERK: Please have a seat in the jury box,
21 ma'am. Number 199, Robert Dunham. How says the State?

22 MR. THORNTON: Please present this juror.

23 MADAM CLERK: How says the Defense?

24 MR. HUGHES: Please excuse this juror from the
25 trial of this case.

1 MADAM CLERK: Thank you, sir. Have a seat back in
2 the audience. Number 245, Leora Payne. How says the
3 State?

4 MR. THORNTON: Please present this juror.

5 MADAM CLERK: How says the Defense?

6 MR. HUGHES: Please seat the juror.

7 MADAM CLERK: Have a seat in the jury box, ma'am.
8 Number 162, Tyshawn Walls. How says the State?

9 MR. THORNTON: Please excuse this juror from the
10 trial of this case.

11 MADAM CLERK: Thank you, sir. Have a seat back in
12 the audience. Number 196, James Dunbar. How says the
13 State?

14 MR. THORNTON: Please present this juror.

15 MADAM CLERK: How says the Defense?

16 MR. HUGHES: Please excuse the juror from the trial
17 of this case.

18 MADAM CLERK: Thank you, sir. Have a seat back in
19 the audience. Number 85, Jerome Lewis. How says the
20 State?

21 MR. THORNTON: Please present this juror.

22 MADAM CLERK: How says the Defense?

23 MR. HUGHES: Please seat the juror.

24 MADAM CLERK: Have a seat in the jury box, sir.
25 Number 70, Denise Horry. How says the State?

1 MR. THORNTON: Please present this juror.

2 MADAM CLERK: How says the Defense?

3 MR. HUGHES: Please seat the juror.

4 MADAM CLERK: Have a seat in the jury box, ma'am.

5 Number 127, Jonathan Schaffer. How says the State?

6 THE COURT: Hold on a second. I mean, did I
7 disqualify him?

8 MADAM CLERK: No. No, sir.

9 THE COURT: Counsel approach. Yeah, I did,
10 Margaret. Come on up here.

11 OFF-THE-RECORD BENCH CONFERENCE,

12 THE COURT, MR. THORNTON, MR. HUGHES.

13 BACK ON THE RECORD.

14 THE COURT: Mr. Schaffer, because of the responses
15 you gave me, I've disqualified you from service in the
16 trial of this case only. You may return to your seat,
17 and remain with me. I'm sure you can serve in another
18 case, but not this one. Thank you.

19 Call the next juror, Madam Clerk. That juror was
20 disqualified by the Court.

21 MADAM CLERK: Number 18, Monique Bush. How says
22 the State?

23 MR. THORNTON: Please excuse the juror from the
24 trial of this case.

25 MADAM CLERK: Thank you, ma'am. Have a seat back

1 in the audience. The State is four. Defense is three.

2 Number 27, Crosby. How says the State?

3 MR. THORNTON: Please present this juror.

4 MADAM CLERK: How says the Defense?

5 MR. HUGHES: Please excuse the juror from the trial
6 of this case.

7 MADAM CLERK: Thank you, sir. Have a seat back in
8 the audience. Number 152, Eddie Taylor. How says the
9 State?

10 MR. THORNTON: Please present this juror.

11 MADAM CLERK: How says the Defense?

12 MR. HUGHES: Please seat the juror.

13 MADAM CLERK: Have a seat in the jury box, sir.

14 Number 219, Joan Jansen. How says the State?

15 MR. THORNTON: Please present this juror.

16 MADAM CLERK: How says the Defense?

17 MR. HUGHES: Please seat the juror.

18 MADAM CLERK: Have a seat in the jury box, ma'am.

19 Number 74, Donald Hubbard. How says the State?

20 MR. THORNTON: Please present this juror.

21 MADAM CLERK: How says the Defense?

22 MR. HUGHES: Please excuse the juror from the trial
23 of this case.

24 MADAM CLERK: Thank you, sir. Please have a seat
25 back in the audience. Number 198, Jerry Duncan. How

1 says the State?

2 MR. THORNTON: Please present this juror.

3 MADAM CLERK: How says the Defense?

4 MR. HUGHES: Please seat the juror.

5 MADAM CLERK: Have a seat in the jury box, sir.

6 Number 191, Megan Carroll. How says the State?

7 MR. THORNTON: Please present this juror.

8 MADAM CLERK: How says the Defense?

9 MR. HUGHES: Please excuse the juror from the trial
10 of this case.

11 MADAM CLERK: Thank you, ma'am. Have a seat back
12 in the audience. Number 88, John C. Malphrus. How says
13 the State?

14 MR. THORNTON: Please present this juror.

15 MADAM CLERK: How says the Defense?

16 MR. HUGHES: Please excuse the juror from the trial
17 of this case.

18 MADAM CLERK: Have a seat back in the audience,
19 sir. Thank you.

20 THE COURT: Four and seven.

21 MADAM CLERK: Number 21, Randy Carter. How says
22 the State?

23 MR. THORNTON: Please present this juror.

24 MADAM CLERK: How says the Defense?

25 MR. HUGHES: Please excuse the juror from the trial

1 of this case.

2 MADAM CLERK: Thank you, sir. Have a seat back in
3 the audience. Number 92, Richard Manning. How says the
4 State?

5 MR. THORNTON: Please present this juror.

6 MADAM CLERK: How says the Defense?

7 MR. HUGHES: Please seat the juror.

8 MADAM CLERK: Have a seat in the jury box, sir.
9 Number 273, Robert Williams. How says the State?

10 MR. THORNTON: Please excuse this juror from the
11 trial of this case.

12 MADAM CLERK: Thank you, sir. Have a seat back in
13 the audience. Number 72, Nell Housey. Does the State
14 have cause for strike?

15 MR. THORNTON: No, ma'am. Please present the
16 juror.

17 MADAM CLERK: How says the Defense?

18 MR. HUGHES: Please seat the juror.

19 MADAM CLERK: Have a seat in the jury box, ma'am.
20 Number 29, Cara Daley. Does the State have cause for
21 strike?

22 MR. THORNTON: No, ma'am. Please present the
23 juror.

24 MADAM CLERK: How says the Defense?

25 MR. HUGHES: Seat the juror, please.

1 MADAM CLERK: Have a seat in the jury box, ma'am.

2 THE COURT: All right. Alternate Number 1, two and
3 one.

4 MADAM CLERK: Number 78, Victoria Kehrer.

5 MR. PLEXICO: I'm sorry, ma'am. What number?

6 MADAM CLERK: Number 78.

7 THE COURT: 78.

8 MADAM CLERK: How says the State?

9 MR. THORNTON: Please present this juror.

10 MADAM CLERK: How says the Defense?

11 MR. HUGHES: Please seat the juror.

12 MADAM CLERK: Have a seat in Alternate Chair One,
13 ma'am. Number 73, Joseph Houston. How says the State?

14 MR. THORNTON: Please present this juror.

15 MADAM CLERK: How says the Defense?

16 MR. HUGHES: Please seat the juror.

17 MADAM CLERK: Have a seat in Chair -- Alternate
18 Chair Two.

19 BY THE COURT:

20 THE COURT: Are there any matters of law pertaining
21 only to the selection of the jury that need to be
22 decided at this time before the jury is sworn, from the
23 State?

24 MR. THORNTON: Nothing from the State, Judge.

25 THE COURT: From the defendant?

1 MR. HUGHES: Nothing from the Defense, your Honor.

2 THE COURT: You understand, both of you, that
3 decision is irrevocable as of now. Does the State so
4 understand?

5 MR. THORNTON: State understands, your Honor.

6 THE COURT: Does counsel for the defendant so
7 understand?

8 MR. HUGHES: Yes, your Honor.

9 THE COURT: Regardless of when the jury's sworn.
10 You understand, Counsel?

11 MR. PLEXICO: Yes, sir.

12 THE COURT: You understand, Mr. Thornton?

13 MR. THORNTON: Yes, sir.

14 THE COURT: Very well. All right. Ladies and
15 gentlemen of my jury panel, I want you to go with my
16 beloved Jo Boyles right here. And believe me, she's a
17 good person to take excellent care of you. She's going
18 to show you your jury room.

19 We're not going to start tonight. I'm going to get
20 you home. I told you I would. I see that look on your
21 face. However, and it's been raining. It's stopped
22 now. I do want you to do a little work, now. Madam
23 Alternate, and Sir, you're my first -- you're my first
24 alternate, ma'am. Sir, you're my second. You're just
25 as important as a member of the jury. If for some

1 reason a member of the jury becomes ill, or for some
2 reason can't continue to serve, you would take their
3 place on the jury. You're going to be with the jury
4 throughout the entire trial of the case.

5 I want you to do a little work. In your jury room,
6 Jo's going to have a pad and a pencil. I want you to
7 elect a foreperson. It has to be one of the twelve of
8 you. Can't be one of my alternates. Any of the twelve
9 of you are eligible.

10 Let me tell you the duties of the foreperson. It's
11 the foreperson's job to preside in the jury room once
12 deliberations begin, to see that each and every member
13 of the jury has a full and a fair opportunity to voice
14 their opinions in the jury room. Just like the
15 chairperson of a committee would preside at a committee
16 meeting.

17 It is the foreperson's job to write the jury's
18 verdict and sign it. But I will give you instructions
19 about how to do that in my charge to you on the law.
20 But the foreperson signs the verdict for the entire
21 jury. And signs the indictment, which my law clerk will
22 be handing to you at the conclusion of the trial.

23 The foreperson is also the spokesperson out here in
24 the courtroom for the jury. Should that need arise
25 during the trial of the case, the foreperson speaks for

1 the entire jury. So the foreperson presides in the jury
2 room. Foreperson speaks for the jury. The foreperson
3 writes the jury's verdict. Those are the basic duties
4 of the foreperson. Any of the twelve of you are
5 eligible to be foreperson.

6 When you go to your jury room, I want you to
7 quickly decide on a foreperson. Write the name of a
8 piece of paper. You'll have a pad and pencil in the
9 jury room. When you've selected a foreperson, knock on
10 the door, and we'll bring you back in the courtroom.

11 Now, my two alternates can't be foreperson. Just
12 one of the twelve of you at this time.

13 While you're in the jury room, you haven't heard
14 any evidence in this case, it would be improper for you
15 to discuss the case amongst yourselves or with anybody
16 else. So talk about the weather, whether it's going to
17 rain anymore. Talk about anything. Just don't talk
18 about this case.

19 Select me a foreperson, knock on the door, I'll
20 bring you back, and I'm going to send you home for the
21 evening. But do not discuss this case.

22 You may retire to your jury room at this time.

23 JURORS LEAVE COURTROOM 5:30 P.M.

24 THE COURT: All right, ladies and gentlemen, those
25 of you who were not selected -- Margaret, they already

1 have the card?

2 MADAM CLERK: Yes, sir.

3 THE COURT: All right. Each of you -- what's the
4 number here, Margaret?

5 MADAM CLERK: 726-7972.

6 THE COURT: 726-7972. Let me see what it looks
7 like. Is that what they got?

8 MADAM CLERK: Yes, sir.

9 THE COURT: Each of you should have a juror call-in
10 card that looks like this. If you don't have one of
11 these that I'm holding up at this time, please raise
12 your hand, cause it's got a telephone number on it, and
13 I want you to use that number. So if you don't have
14 one, Jo's got more. Raise your hand for me. I'm
15 assuming everybody's got one.

16 There's a number on that card, 726-7972. Please
17 call that number after 6:00 o'clock tonight. I will
18 have a taped instruction whether or not I will need you
19 to return, and if so, when. Do not call the number
20 prior to 6:00 o'clock. Wait till after 6:00 o'clock.
21 There's one message for all jurors. It might tell you
22 to call back tomorrow night. It might tell you thank
23 you for your service. It might tell you to report at
24 10:00 o'clock tomorrow morning. I don't know yet.
25 We'll keep working after you're gone, but wait until

1 after 6:00 o'clock and call the number on this card.

2 Any questions about the call-back procedure from
3 any of my jurors? Everybody understand what to do.

4 I want to thank you for your patience. You're now
5 excused for the balance of today. Call the number after
6 6:00 o'clock.

7 OFF THE RECORD DISCUSSION.

8 BACK ON THE RECORD.

9 THE COURT: First of all, I want to put on the
10 record that my clerk of court, because of a voir dire
11 question that was requested by Mr. Hughes on behalf of
12 his client, and that was the question concerning the
13 former sheriff, I think it was many years ago, and the
14 current house member of Clifford and Curtis Brantley,
15 whether or not any jury was either socially involved
16 with them, politically involved with them, related by
17 blood or marriage to them. No jury responded that they
18 were.

19 However, my clerk of court came to the bench and
20 told me that she was second cousins, not with,
21 obviously, the defendant, but with members of the -- I
22 mean, not with the victim, but member of the member's
23 family, that being Clifford and Curtis Brantley. Is
24 that right?

25 MADAM CLERK: Yes, sir.

1 THE COURT: Because of that, I brought both lawyers
2 to the Bench, and I advised them what the clerk of court
3 had told me because of the voir dire question. That she
4 was a cousin of the people who were in the family of the
5 victim, one of which being a former sheriff and like 15
6 to 20 years ago, and the current house member, and
7 whether or not any of the lawyers in this case had any
8 objection to the clerk being involved with the selection
9 of the jury or being involved in the trial of this case
10 because of the relationship which she had disclosed to
11 the Court.

12 Both counsel for the State and counsel for the
13 defendant, after conferring with his client, advised me
14 they had no objection to the clerk remaining and being
15 involved in the selection of the jury.

16 Have I accurately stated what occurred at the Bench
17 insofar as counsel for the State is concerned?

18 MR. THORNTON: Yes, your Honor.

19 THE COURT: Insofar as counsel for the defendant is
20 concerned?

21 MR. HUGHES: Yes, your Honor.

22 THE COURT: All right. I also advised both lawyers
23 that as to any Batson motion pertaining to the selection
24 of the jury, that even though I did not intend to swear
25 the jury until 9:30 in the morning, that their Batson

1 motion decision was made irrevocably as of today. And
2 they both told me they understood that.

3 Anything outside the presence of the jury from the
4 State before I bring the jury back?

5 MR. THORNTON: None, your Honor.

6 THE COURT: From the defendant?

7 MR. HUGHES: Your Honor, I mentioned earlier I
8 would be moving to sequester all witnesses.

9 THE COURT: Any objection to sequestration?

10 MR. THORNTON: None, sir.

11 THE COURT: All right. The State will be
12 responsible for advising all of their witnesses that
13 they're not allowed -- and I would like for you, if you
14 would, Sean, and you can work with people -- get a room
15 where they can be located so we don't have to go looking
16 for them and that the bailiffs know, Jo knows and the
17 deputies know where they are so we can get them and
18 bring them into the courtroom if they're going to be
19 sequestered so we don't have to go around the courthouse
20 looking for them during sequestration.

21 Now, obviously, this would apply equally to the
22 defendant, but Mr. Hughes says he only has, potentially,
23 just the defendant as a witness, who would be allowed to
24 stay.

25 Also allowed to stay with my sequestration would be

1 any member of the victim's family under the *Victim's*
2 *Bill of Rights*, and your lead investigating officer,
3 who, I assume, the detective is sitting here, it will be
4 your officer. Is that correct?

5 MR. THORNTON: Yes, sir. Detective Baxter's here.
6 He's going to be my lead. The case officer, the other
7 witnesses, Judge, we'll take care of them.

8 THE COURT: All right. Your motion is granted. It
9 would apply, obviously, if you had any other witnesses,
10 both ways. Motion for sequestration is granted, and
11 I'll expect you, Mr. Thornton, to notify your witnesses
12 they can't discuss their testimony with anyone unless
13 authorized by the Court or released by the Court. You
14 understand?

15 MR. THORNTON: Yes, sir.

16 THE COURT: Very well. Anything else from the
17 defendant before I bring the jury?

18 MR. HUGHES: No, your Honor.

19 THE COURT: Very well. The jury has sent me a
20 note. They have chosen Juror Jerome Lewis as the
21 foreperson of the jury. Any objection from the State to
22 making the jury's note a court's exhibit?

23 MR. THORNTON: No objection, your Honor.

24 THE COURT: From the defendant?

25 MR. HUGHES: None, your Honor.

1 THE COURT: All right. Will you mark it as Court's
2 Exhibit Number 1. Without objection.

3 DOCUMENT IDENTIFIED AS NOTE FROM

4 JURORS MARKED COURT'S EXHIBIT NUMBER 1.

5 THE COURT: Bring us the jury, please.

6 JURORS ENTER COURTROOM 5:40 P.M.

7 THE COURT: Mr. Lewis, congratulations on your
8 election as foreperson. That'll be your seat. And the
9 alternates, you're sitting in the order in which you're
10 selected. That's going to be your seat. The rest of
11 you can sit anywhere you want to. But one thing I ask
12 during the trial is that you fill all the way down.
13 Don't sit down in the second seat and make people crawl
14 over you, because I don't want anybody tripping.

15 If you want to sit by somebody, line up that way in
16 your jury room and come out. The foreperson's going to
17 sit where Mr. Lewis sits. And the Alternate Number One
18 is going to sit where this lady is seated right now.
19 And Alternate Number Two is going to sit where this
20 gentleman. The rest of you can sit anywhere you want
21 to.

22 Now, I don't know whether there'll be anything on
23 radio, in the newspaper, or on television about this
24 case. Please don't read such, watch such, or listen to
25 such. You must decide this case solely upon evidence

1 introduced during the trial of this case when both sides
2 are present with the right of cross-examination. So it
3 would be improper for you to watch television, read the
4 newspaper, or listen to the radio about this case.

5 I also need to discuss with you a matter that has
6 come up in the world today and that involves the use of
7 electronic devices, ladies and gentlemen. I've told you
8 not to discuss it with other people, including other
9 jurors. I've told you not to read or listen to any news
10 reports about the case. I'm also instructing you not to
11 use a computer or cellular phone or any other electronic
12 device with communication capability during this trial.

13 Even if you think that information would help you,
14 being a conscience juror, it is improper for you to try
15 to do any research about things such as a party or a
16 witness or an attorney or court officer or any news
17 account on the computer or phone about the case. Any
18 information collected through any type of jury research
19 on any topic raised or testimony offered by any witness
20 is improper. Even if you think it would help you to
21 decide the case, you're not allowed to do that.

22 You may not communicate with anyone about this case
23 on your cell phone, through email, Blackberry, iPhone,
24 text messaging. You're not allowed to go on Twitter
25 through any blog or web site or through any Internet

1 chat room or by way of any other social networking
2 website, which includes Facebook, MySpace, LinkedIn,
3 YouTube, none of those things are permitted. You must
4 decide the case based on the evidence, and not on any
5 research you do, not on any news account or television
6 report, or radio or newspaper. Not on anything but what
7 the parties have the right to know exactly what you're
8 deciding the case on. And that's the evidence that they
9 confront in this courtroom, and only that.

10 So while you're on jury duty, please don't read,
11 watch, listen, or use any type of electronic device to
12 do any type of research. Decide this case solely upon
13 evidence introduced in this courtroom when both sides
14 are present with the right of cross-examination.

15 Now, I know people are curious, so when you get
16 home tonight, and I'm sending you home, someone's liable
17 to say, at your house, did you get on the jury; what's
18 the case about. Simply say, the Judge said we couldn't
19 talk about it. And you can honestly say you don't know
20 anything about the case, because you hadn't heard any
21 evidence in the case.

22 Now, if a person persists in wanting to talk to
23 you, you get their name and you give it to me. And I
24 can promise you, I'll handle that problem for you,
25 ladies and gentlemen. That person will not bother you

1 anymore. I can assure you of that.

2 So please do not discuss this case with each other
3 or anything else. I'm instructing you not to do so.
4 You must decide the case solely upon evidence introduced
5 in this courtroom when both sides are present with the
6 right of cross-examination.

7 Now, we're going to start in the morning at 9:30.
8 When you come in the morning, I want you to report to
9 your jury room. Jo will be right here. We're going to
10 start as close to 9:30, cause I want to get started
11 cause I promised I'd get you home in a timely fashion.
12 I know it's 5:45, but we had to get a jury today.

13 And frankly, based on the way the weather was at
14 4:30, it's much better now than it was at 4:30.
15 However, I didn't mean to keep you this late, but we had
16 to get started, and it took a while to ask all those
17 voir dire questions to ensure your impartiality to serve
18 as a jury in the trial of this case.

19 I want you to report to your jury room prior to
20 9:30 in the morning, so we can start at 9:30. Don't
21 come at 9:45. Please be here -- we'll have something --
22 we're going to take good care of you. I can promise you
23 that. Be in your jury room prior to 9:30 so we can
24 start as close at 9:30, and I can get you home in a
25 timely fashion. If one of you is late, all the rest of

1 you have to sit and wait till everybody's present. So
2 please be on time.

3 If anybody needs transportation to get here on
4 time, you let Josephine Boyles know, I'll provide
5 transportation to get you here, because I don't want
6 anybody telling me they can't get here cause their car
7 couldn't get them here, they didn't have a way here. So
8 just let me know before you leave the courtroom tonight,
9 so we can start promptly at 9:30 in the morning.

10 Any questions about what you're to do from what
11 I've just told you from anyone? Everybody understand.
12 Wonderful.

13 I want to thank you for your patience. I know this
14 has been a little bit of a long afternoon, but it takes
15 time sometimes to get started. I can assure you that in
16 order for justice to be done, it is often slow, it is
17 often deliberate, and we mean for it to be that way. We
18 try not to get in too big a rush, even though I want to
19 be mindful of your time, cause we want to make sure that
20 we are trying to do justice when we're here.

21 I recognize, however, that you've left your homes
22 and your families, and I'm now going to return you for
23 the night to them. Please don't discuss the case.
24 Please be in your jury room prior to 9:30 in the
25 morning. You may now leave the courtroom, and I thank

1 you for your patience today.

2 Everyone else remain seated while the jury's
3 leaving.

4 JURORS LEAVE COURTROOM 5:47 P.M.

5 THE COURT: All right, Counsel, it was my intention
6 to stop for Margaret's sake at 5:00 o'clock, but it
7 looked like once the ball got rolling, it took us this
8 long. I apologize for the lateness. I realize that you
9 have people coming here tonight at 7:00, and so, I'm
10 going to stop at this point for the evening.

11 Court is recessed until 9:30 a.m tomorrow morning.

12 END DAY ONE, 5:48 P.M.

13 BEGIN DAY TWO, MAY 15, 2012,

14 9:35 A.M.

15 BY THE COURT:

16 THE COURT: Good morning. Please be seated. You
17 all need a minute?

18 MR. THORNTON: Need to approach, Judge.

19 OFF-THE-RECORD BENCH CONFERENCE,

20 THE COURT, MR. THORNTON, MS. LEGETTE,

21 MR. HUGHES, DEPUTY LOWERY.

22 THE COURT: All right. On the record now, please.
23 Let the record reflect that everyone's present. It's
24 now 9:43.

25 When I arrived this morning at 9:30, I was

1 confronted by the fact that Mr. Hughes told me that when
2 he arrived at the courthouse this morning, he exchanged
3 pleasantries with the deputies at the metal detector,
4 which included Deputy Lowery with the Jasper County
5 Sheriff's Department, who is now in the courtroom. Who
6 I have also met with at length, along with the attorneys
7 this morning.

8 Mr. Hughes said he said good morning to Deputy
9 Lowery, and that he told Deputy Lowery he wished that
10 this were Friday rather than Tuesday, the end of the
11 week. Is that right, Mr. Hughes?

12 MR. HUGHES: Yes, your Honor.

13 THE COURT: To which Deputy Lowery replied, *Well,*
14 *if your client would plead, we could get home early,* or
15 words to that effect. Is that right, Mr. Hughes?

16 MR. HUGHES: Yes, your Honor.

17 THE COURT: Mr. Hughes is concerned, even though
18 the jurors were in another room, the door was opened,
19 that the jury may have heard comments exchanged between
20 themselves and the deputy as he was moving through the
21 metal detector, coming into the courthouse this morning.
22 Is that correct, Mr. Hughes?

23 MR. HUGHES: Yes, your Honor.

24 THE COURT: All right. I told Mr. Hughes I would
25 bring the jury out and inquire if anybody overheard any

1 comments between Mr. Hughes and Deputy Lowery, who I've
2 asked to remain the courtroom so I can show the jury is
3 face if need be to inquire of them.

4 Is that satisfactory with you, Mr. Hughes?

5 MR. HUGHES: Yes, sir.

6 THE COURT: And you believe that's the way you'd
7 like to handle it, in light of you bringing it to the
8 court's attention this morning. Is that correct?

9 MR. HUGHES: Yes, your Honor.

10 THE COURT: Solicitor, do you wish any further
11 inquiry other than my asking the jury, which Mr. Hughes
12 has requested of me?

13 MR. THORNTON: No, sir. I'd like as little ringing
14 of that bell as possible, Judge.

15 THE COURT: I understand that. I also have been
16 asked by Mr. Hughes to instruct the jury that the
17 lawyers are not allowed to talk to them. They can say
18 good morning, good evening, but they're not allowed to
19 have any conversation, even if it's about something as
20 innocuous as the weather, because the appearance of that
21 makes it look to others as if a lawyer is having some
22 conversation about the juror about the case. And I told
23 Mr. Hughes, at his request, I would remind the jury of
24 that.

25 Is that what you asked me, Mr. Hughes?

1 MR. HUGHES: Yes, your Honor.

2 THE COURT: Any objection to that, Mr. Thornton?

3 MR. THORNTON: No, sir.

4 THE COURT: All right, my lovely Jo, would you
5 bring us the jury, please.

6 BAILIFF: Yes, sir

7 THE COURT: I assume we're ready to go, other than
8 that.

9 JURORS ENTER COURTROOM 9:47 A.M.

10 THE COURT: Morning. All right. Good morning, Mr.
11 Foreman.

12 FOREMAN JEROME LEWIS: Good morning.

13 THE COURT: Good morning, ladies and gentlemen of
14 the jury.

15 RESPONSES FROM JURORS.

16 THE COURT: Thank you for being here on time. When
17 I arrived this morning, we were all here on time, just
18 like you were, I want to ask you a couple of things to
19 make sure about your impartiality to serve as a juror.

20 It's been reported to the Court that a conversation
21 occurred downstairs at the metal detector. Of course,
22 very often, you know, when we're not in the courtroom,
23 people have conversations. This would have been the
24 conversation, potentially, between counsel for the
25 defendant, Mr. Hughes, who, of course, is seated over at

1 the defense table with his client, and Deputy Lowery,
2 who is seated at the State's table now.

3 Deputy Lowery was working the metal detector
4 downstairs, where, of course, we require people to come
5 into the courtroom for security purposes.

6 So my first question to you this morning is, any
7 member of my jury overhear any conversation between Mr.
8 Hughes and Deputy Lowery this morning when you arrived
9 at the courthouse? If so, just raise your hand for me.

10 Let the record reflect no hands are raised.

11 Now, ladies and gentlemen, let me help you. I
12 talked to you yesterday before you left about all kinds
13 of things. Newspaper, radio, television, computers,
14 social networks. One of the things that I didn't
15 mention that I need to mention is we have all sorts of
16 rules in the courtroom. We don't expect you to be
17 familiar with them, but I have to be, and believe me,
18 the members of the Bar have to be.

19 One of those rules is that a lawyer cannot talk to
20 you when you're serving on a jury. Not just when you're
21 in that box, even when you're out there in the
22 courtroom. They can say good morning. They can say
23 good evening. But that's as far as they can go. Why?
24 Because of the appearance. Even if they're not talking
25 about the case to you, somebody else sees the lawyer

1 talking to you, and they think that -- possibly might
2 think they might be attempting to talk to you about the
3 case or influence you. And so, they know the rules are
4 very strict. They don't -- they're not being rude. They
5 want very much, they wish they could, and they're going
6 to have opportunities during the trial to speak with
7 you, like in opening statement or in closing argument.
8 But other than that, when everybody's present and the
9 court reporter's present, and every word's being taken
10 down, all they can do is simply exchange a pleasant good
11 morning or a good evening to you. They can have no
12 conversation.

13 So please, don't feel like they're trying to be
14 rude. They're not. They're following the rules, which
15 I enforce in the courtroom. And that's why they're not
16 talking to you. So you can't ask them questions and
17 they can't answer the questions, even if you ask them a
18 question. That's part of the rules we'll follow.

19 Everybody understand that?

20 RESPONSES FROM JURORS.

21 THE COURT: Okay. Madam Clerk, would you please
22 swear the jury.

23 JURORS SWORN, MADAM CLERK:

24 MADAM CLERK: Would you stand and raise your right
25 hand, please. You shall well and truly try and true

1 deliberance make between the State of South Carolina and
2 the prisoner at the Bar and a true verdict render
3 according to the evidence, so help you God.

4 RESPONSES FROM JURORS.

5 MADAM CLERK: Thank you.

6 ADDRESSING JURORS, BY THE COURT:

7 THE COURT: All right. Any exceptions or additions
8 to the Court's comments from the State?

9 MR. THORNTON: None, your Honor.

10 THE COURT: From the defendant?

11 MR. HUGHES: No, your Honor.

12 THE COURT: All right. Ladies and gentlemen, I'm
13 going to briefly talk to you a little bit about how
14 we're going to begin, because I told you I was going to
15 get right down to it.

16 Thank you, Deputy Lowery. You're excused. I know
17 you need to go downstairs to the metal detector. And
18 thank you very much for being here.

19 While you're on the jury, ladies and gentlemen, I
20 want to remind you that you're not to discuss this case
21 with each other. That's what we call premature
22 negotiations.

23 You're not to discuss it with anybody. You're not
24 to read or listen to any newspaper or radio or
25 television reports, or use a computer or cell phone or

1 any other electronic device. I emphasize that because
2 we have had -- I'll give you a perfect example so you'll
3 know. This is how innocent, you know.

4 I had a jury in the county several years ago, and
5 they were discussing a medical issue. And one of the
6 jurors said, *Well, my brother's a doctor; I'll just call*
7 *him on my cell phone and ask him about that.*

8 Well, obviously, ladies and gentlemen, that's
9 improper. You have to decide the case based on evidence
10 introduced during the trial of the case when both sides
11 are present with the right of cross-examination. So
12 please don't communicate with anyone about the case on
13 your cell phone or through email or Blackberry or
14 iPhone, text messaging, Twitter, all the things I
15 covered with you, even if you think it might be helpful
16 to you.

17 Now, I've gone over those rules because I want you
18 to understand them. I realize you don't live with those
19 rules every day, but we have real -- we have very firm
20 reasons for them, and that's to ensure the fairness in a
21 trial.

22 Now, before we begin this trial, I want to tell
23 each of you that this trial probably will be different
24 from what many of you sitting over there probably
25 expect.

1 You know, most people really don't have a chance to
2 attend an actual court session, as each of you are doing
3 right now. And most people, unfortunately, think from
4 watching television such shows as CSI, Cold Case, and
5 things of that nature, that trials are always full of
6 high drama and intense action and riveting and
7 entertaining circumstances. While all those things may
8 be true at times, ladies and gentlemen of the jury, an
9 actual trial is not for entertainment. It's not like a
10 60-minute television show where, at the end, someone on
11 a white coat comes out of the lab and says I know so and
12 so. It is not an entertainment program.

13 An actual trial is a search for the truth, in an
14 effort to make sure that justice is done between the
15 parties before the court. Searching for the truth,
16 making sure that justice is done is often slow, it is
17 often repetitive, it is often deliberate. The exact
18 opposite of what you may have seen in a movie or watched
19 on television or read in a book.

20 This courtroom, ladies and gentlemen, is a place of
21 honor. It is dedicated to the protection and to the
22 preservation of the citizens' rights, through what many
23 people have called the greatest justice system in the
24 entire world.

25 Now, the attorneys that are going to be appearing

1 before you, ladies and gentlemen, they're advocates for
2 the parties they represent, for the State of South
3 Carolina and for the defendant. But first and foremost,
4 which is why we took additional time this morning, they
5 are officers of this court. And even though they're
6 advocates for their clients, they are officers of this
7 court, and as officers of this court, they took an oath
8 just like you just took an oath.

9 And in that oath, the attorneys swore that they
10 would uphold the integrity and they would uphold the
11 fairness of our judicial system, and they would help
12 you, the jury, in a search for the truth.

13 So, you should expect the attorneys in this trial to
14 be professional; you should expect the attorneys to be
15 competent, and you should expect the attorneys to be
16 ethical in the discharge of their duties to their
17 respective clients.

18 Now, I'm going to remind each of you, just like
19 I've just done with the attorneys, that each of you on
20 this jury just raised your hand and each of you just
21 took an oath. And you swore in that oath, or you
22 affirmed in that oath, that you would try this case and
23 that you would reach a fair and a just verdict, based on
24 evidence introduced during the trial of the case.

25 So you as a juror, just like the attorneys and

1 myself, are expected to be professional, to be ethical,
2 and to be reasonable in your duty as a jury.

3 Before we even begin the trial, I want to thank
4 each and every one of you for accepting this very
5 important responsibility of jury service. Without you,
6 ladies and gentlemen of the jury, justice cannot be
7 accomplished in the courtroom, and I thank you for that
8 service.

9 Now, Mr. Foreman, -- Margaret, you got my
10 indictments?

11 MADAM CLERK: Yes, sir.

12 THE COURT: Thank you. Mr. Foreman and ladies and
13 gentlemen of the jury, the case we're about to try, and
14 I'm holding up the two indictments in my hand, is the
15 case of the State of South Carolina versus Brett Howard.
16 Mr. Howard is charged by these -- he's the defendant
17 seated at the table with Mr. Hughes. He's charged by
18 these two pieces of paper which I hold in my hand, which
19 we call indictments, he's charged with the offense of
20 murder in one indictment. He's charged with the offense
21 of possession of a weapon during the commission of a
22 violent crime in the other indictment.

23 The elements of murder and possession of a weapon
24 during the commission of a violent crime, I will explain
25 to you after you've heard all the evidence in my case in

1 my charge to you on the law at the conclusion of the
2 case.

3 You should understand that these indictments, these
4 two pieces of paper I've just shown you, are simply the
5 charges by which the case is brought into this court.
6 And the indictments are not, in any sense, evidence of
7 any of the allegations contained in the indictments.

8 Now, to the indictments, the defendant, Brett
9 Howard, has pled not guilty. The State of South
10 Carolina, therefore, has the burden of proving each of
11 the essential elements of the indictment beyond a
12 reasonable doubt. And it will be your duty, ladies and
13 gentlemen, to decide whether the State has met that
14 burden.

15 It is your solemn responsibility, ladies and
16 gentlemen, under that oath you took, to determine the
17 guilt or the innocence of the defendant. And your
18 verdict must be based solely and only on the evidence as
19 it is presented to you in this trial and on the law as I
20 instruct it to you to be during the trial and in my
21 charge to you on the law at the conclusion of the trial
22 after you've heard all of the evidence in this case.

23 Now, in just a moment, the deputy solicitor for our
24 circuit will make what is called an opening statement,
25 in which he will explain the issues in this case, or at

1 least what he contends, as an advocate for the State of
2 South Carolina to be the issues in this case.

3 Following the opening statement by the deputy
4 solicitor, the attorney of the defendant will make an
5 opening statement.

6 Now, the attorneys have worked hard, ladies and
7 gentlemen, to prepare the case. Believe me, I know.
8 But what the attorneys tell you in opening statement,
9 what the attorneys argue to you at the conclusion of the
10 case in their closing argument, is not evidence in this
11 case.

12 The attorneys are advocates for the parties they
13 represent, and what they suggest to you by a question
14 they ask, what they contend in their opening statement,
15 what they argue to you in their closing argument is not
16 evidence in this case.

17 The evidence in this case will be presented to you
18 by sworn witnesses who will take this witness stand
19 right here in close proximity to you. Or evidence may
20 take the form of what we call an exhibit, a photograph,
21 a model. But as to any exhibit that is introduced in
22 evidence, you will hear me say that it is in evidence
23 before you see it. Because part of my role will be to
24 rule, as the presiding judge, on the admissibility of
25 any evidence offered during the trial of this case by

1 either side in the case.

2 Evidence might also take the form of a stipulation,
3 and agreement, and understanding, between the two sides
4 that a fact is true, and therefore, not necessary to be
5 proved.

6 So evidence may be sworn testimony, it may be an
7 exhibit, or it may be a stipulation. Those are the
8 forms of evidence that might be presented during the
9 trial of this case. And you must base your decision as
10 a juror solely on the evidence.

11 Now, in consideration of evidence, you should
12 remember at all times that under the *Constitution of the*
13 *State of South Carolina*, you and you alone are the sole
14 judges of the facts in this case. The sole judges of
15 the evidence. No one but you, the jury, will be
16 permitted to weight the evidence or to consider the
17 evidence and to determine which evidence convinces you
18 of its truth.

19 And the same law that makes you the sole judges of
20 the facts, based on evidence introduced during the trial
21 of the case, makes me the sole judge of the law in this
22 case. I cannot invade your province, ladies and
23 gentlemen, and tell you, comment to you, say anything to
24 you about the facts in this case. And you, as a juror,
25 should not invade my province and differ with me about

1 what the law is in this case..

2 Everything that I say during the course of this
3 trial's being taken down by my court reporter, Wanda
4 Rowe, right here below me. She's talking into the mask
5 right now as I speak. And if I make a mistake as to the
6 law to the detriment of either party, they can appeal
7 the case to an appellate court, and if the appellate
8 court agrees that I've made a mistake on the law, they
9 will reverse the case and send it back for a new trial.

10 So don't you, as a juror, worry about whether or
11 not I've told you the law correctly. That is somebody
12 else's worry. That is not your concern. Your job is to
13 take the law as I give it to you, and apply it to the
14 facts as you find them to be based on evidence
15 introduced during the trial of the case. And that means
16 witnesses who testify from the witness stand; any
17 exhibit which may be introduced into evidence, which you
18 will have with you in your jury room if it's in evidence
19 during your deliberations; and you will consider, if one
20 occurs, any stipulation about a fact being true.

21 After doing that, you will then render your
22 verdict, a true, a just verdict, under that oath which
23 each of you just took from the clerk of court.

24 Now, from time to time during the trial of the
25 case, you're probably going to hear -- I don't -- I

1 can't even -- I told that it's my twelfth year on the
2 Bench, and I practiced for 25 years. I have no idea how
3 many trials now I've had. I know it's probably -- well,
4 my son says it's over a thousand. That's been a lot.
5 But in every trial, you're probably going to hear the
6 words -- one of the lawyers might say something like,
7 your Honor, we have a question of law; or, your Honor,
8 we have a matter of law to discuss with you; or you
9 might hear them say, your Honor, may we approach the
10 Bench. Or sometimes I myself might find it necessary
11 that you be excused from the courtroom while the
12 attorneys and I take up a matter of law.

13 Now, you're wondering, why do we talk over here and
14 whisper; why would I send you to your jury room. You'd
15 think, and a lot of people get this impression, that
16 we're trying to hide something from you. Not at all.
17 The reason for this is just what I've told you. You're
18 the sole judges on the jury of the fact in this case,
19 and I'm the sole judge of the law. I can't make any
20 comment to you about the facts or the evidence in this
21 case. And sometimes when I'm ruling on a matter of law,
22 by necessity, I have to make a comment to the lawyers
23 about the facts in this case in deciding whether a
24 particular piece of the law applies to the facts of the
25 case, so that you won't be influenced by anything that I

1 might say or do in ruling on whether or not a particular
2 piece of law applies to this case.

3 The custom in this state is to either try to take
4 it up first in what we call a side bar, out of your
5 hearing. And if not, if it's going to take up more than
6 a minute or two, I'll ask you to step to your jury room
7 while I take up a matter of law, so that you will not in
8 any way be influenced by anything that I might say or do
9 in connection with the facts in this case.

10 And in that connection, let me emphasize to you and
11 tell you again, that you, the jury, and you alone are
12 the sole judges of the facts in this matter. And if you
13 should gather from anything that I might say or do
14 during the course of this trial that I have an opinion
15 whatsoever about the facts in this case, I want you to
16 erase that from your mind, because as I said, you're the
17 sole judges of the facts, I'm the sole judge of the law,
18 and the law does not permit me to have an opinion to
19 express to you about the evidence or the facts in this
20 case.

21 Now, I'm often asked this question. Well, Judge
22 Buckner, if I'm the sole judge of the facts as a juror,
23 how will I determine what the true facts are in this
24 case. Well, ladies and gentlemen, part of your job in
25 determining the true facts will be that you will, as a

1 jury, out of necessity, you will have to pass upon the
2 credibility, which simply means the believability of the
3 witnesses who will testify during the trial of this
4 case.

5 It will be my responsibility to rule as a matter of
6 law, whether or not certain testimony is admissible at
7 all or not. But once I've allowed the testimony to be
8 admitted into evidence, whether or not you believe the
9 testimony is solely a matter for you, the jury, to
10 determine.

11 And in passing upon the credibility of
12 believability of the witnesses who will testify during
13 the trial of this case, you, as a jury, have the right
14 to consider the interests of any witness; the bias, if
15 any of any witness; the prejudice of any witness, if
16 any; the opportunity for the witness to have observed
17 the matters of things about which he or she might
18 testify. You may even consider in ruling on the
19 believability of a witness what we call the demeanor of
20 the witness, the appearance of the witness, while the
21 witness is on the witness stand. Anything that is in
22 evidence, you, as a jury, have the right to consider in
23 ruling upon the credibility or the believability of the
24 witnesses who will testify during the trial of this
25 case.

1 And that means, Mr. Foreman, and that means, ladies
2 and gentlemen, that it is your duty under that oath
3 which you took, to pay close attention to the witnesses;
4 to observe the witnesses; to listen to the witnesses.
5 Don't let your thoughts wander. Give strict attention
6 to the evidence in this case, so that at the conclusion
7 of all the evidence in this case, because you listened,
8 because you observed, because you gave strict attention,
9 you would have placed yourself as a juror in a position
10 to determine what the true facts are and to apply the
11 law as I give it to you in my charge to you on the law
12 at the conclusion of the case to the facts and you find
13 them to be, based on evidence introduced during the
14 trial of the case.

15 Now, I'm often asked this, as well. Judge Buckner,
16 you know about the evidence? No, I don't. I hadn't
17 heard one thing, just like you. Why? Because I want
18 you to have an open mind when you hear it for the first
19 time and I want to have an open mind when I hear it
20 first. So I don't know what evidence is going to be
21 introduced during the trial of this case.

22 My job will be to rule in part on the admissibility
23 of the evidence. Your job will be to determine what the
24 true facts are, including the believability and
25 credibility of the witnesses once the evidence is

1 admitted during the trial of the case.

2 As I've told you, you must not consider anything
3 that you may have read or heard about this case outside
4 of this courtroom, whether before or during this trial.
5 And until this case is submitted to you by me, and I'll
6 tell you when to start deliberating at the end, until I
7 submit this case to you, you should not discuss it with
8 anyone, not even a member of your own family. And after
9 I give it to you at the end, you should discuss it only
10 in your jury room with your fellow jurors.

11 It's very important that each of you on this jury
12 keep an open mind and not decide the case until the
13 entire matter has been submitted to you under my
14 instruction in my charge to you on the law at the
15 conclusion of the case.

16 Why is that important? Because it may be the very
17 last thing that either I say or an attorney argues or
18 the very last witness, the very last thing in this trial
19 might make a difference to you. So it is important that
20 each of you keep an open mind and not decide the case
21 until the entire matter has been submitted to you under
22 my instructions.

23 Now, Mr. Foreman, it will be your added duty to
24 preside in the jury room, to see that each and every
25 member of my jury has a full and a fair opportunity to

1 voice their opinions in the jury room, once I instruct
2 you to begin your deliberations.

3 It will also be your duty to write the verdict. I
4 will prepare a verdict form for you. Now, I want you to
5 watch what I'm doing. I'm holding both indictments.
6 You see me handing them to my law clerk. Now, she knows
7 part of her job is that she's not to let you leave this
8 courtroom when this case is over with until you put your
9 signature on those indictments. Cause whatever you
10 write on the verdict form, she's going to want you to
11 write on those indictments so that the clerk has a
12 record of both.

13 So she's going to be looking for you before you
14 leave, so don't leave without seeing her. All right.

15 Now, it will also be your duty, Mr. Foreman, in
16 addition to presiding and seeing anybody has a chance to
17 voice their opinions, writing the verdict on the verdict
18 form I will prepare, and ultimately, writing the same
19 thing on the indictments, which Hope Lumpkin, my law
20 clerk, will see you about after the trial, it will also
21 be your duty, if necessary, to be the jury spokesperson.

22 Now, we almost ready to start. If, at any time, a
23 member of my jury cannot hear, obviously, Margaret can
24 turn right around and turn it up. I know you can hear
25 me, because I talk loud. I'm used to it. But we do

1 have people that do this, you know, (indicating
2 mumbling). And when you can't -- if we've got some
3 mumblers, and we do, believe me -- and they don't mean
4 to. Then we have people that are very meek, and they
5 get on the witness stand and (indicating). If you can't
6 hear, raise your hand. I'll see to it that you can
7 hear. I want my jury to be able to hear at all times
8 throughout the trial of the case.

9 If an exhibit is introduced into evidence and you
10 can't see the exhibit, raise your hand. I'll be
11 watching all 14 of you throughout the trial of this
12 case. I want you to be able to see and to hear at all
13 times throughout the trial of the case as a juror.

14 Now, lawyers love to do this, ladies and gentlemen.
15 They love to ask witnesses to step down in front of you.
16 You don't think about this when you're sitting over
17 there. Your jury box is located on the side of the
18 courtroom in close proximity to the witness stand, so
19 you can see the witness. You notice where the court
20 reporter's sitting. She can see me. She can look out
21 and see the lawyers. She can turn and see the witness.
22 When a witness gets off that witness stand and walks
23 over there in front of that jury box, she can't see the
24 witness. And if she can't see the witness's mouth, it
25 makes her job far more difficult. Now, we have a

1 portable microphone, and I have to remind them, because
2 I don't allow them to block your view of the witness and
3 they know that. If they ask a witness to step down, I
4 might have to make some adjustments for the court
5 reporter, because I've got to be mindful that she's got
6 a job to do. She needs to be able to see who's talking
7 in order to make sure she gets a word-for-word
8 transcript of the proceedings.

9 And normally, we do not allow jurors to ask
10 questions in the courtroom, but Mr. Foreman, if, at any
11 time, a member of the jury has a question, here's the
12 procedure we have to follow. If you're not already in
13 your jury room, you will retire to the jury room. You,
14 as the foreman of the jury, will write the question on a
15 piece of paper. You'll knock on the jury room door,
16 give it to my bailiff. They'll bring the question out
17 to me. I will then rule as a matter of law whether or
18 not the question can or cannot be answered, just as I
19 would any question asked by either one of the attorneys
20 during the trial of the case.

21 I've tried it both ways, ladies and gentlemen. I
22 ask that you do not take written notes. Why? Because
23 I've found that if the written notetaker on the jury
24 makes a mistake with the written notes, that can be
25 harmful, rather than helpful in your jury room once

1 deliberations begin.

2 The time tested system is for each of you on the
3 jury to listen, and sentence carefully. So please do
4 not take notes.

5 Now, if your worried about remembering, we're
6 making an audio only recording, and we can play back the
7 audio testimony of any witness if you request it. But
8 the system is based on each of you on this jury
9 listening and listening carefully. Obviously, we do not
10 allow cell phones or beepers while you're on jury duty.
11 And I've got one in my pocket. I can promise you it's
12 off. We don't allow that at any time while you're on
13 jury duty. So please, if you have one, I'm required by
14 court rule to confiscate it. I don't want anybody's
15 cell phone. I think we're all too dependent on -- in
16 this world today, everybody thinks they got to -- I know
17 you can't drive a car now without every time you pull up
18 beside somebody they're on the cell phone.

19 My law clerk and I did a study when I was chief
20 judge in Charleston, we'd walk to lunch to Jim & Nicks.
21 Maybe you all know where that is, barbeque place on King
22 Street, Charleston, and we would count the number of
23 people on the sidewalk with a cell phone. And it got to
24 the point where it would be nine out of ten people would
25 be talking on a cell phone walking on the sidewalk at

1 lunch time. It's amazing how everybody thinks they got
2 to have one and how important it is. But while you're
3 on jury duty, I ask that you put that aside. No cell
4 phones or beepers.

5 Now, I do not intend that what I've just said to
6 you should be construed as a charge on the law. I will
7 charge you the law at the conclusion of the case.

8 We have an order for the way we do things in the
9 courtroom. The State of South Carolina has the burden
10 of proof. The State goes first.

11 We have an order of how we do closing argument. We
12 follow our rules in how we present things to you. We
13 have an order for when you receive the charge on the
14 law. After you've heard evidence. I haven't heard it.
15 You haven't heard it. I don't know what the charge on
16 the law until I hear the evidence. So I will charge
17 you the law at the conclusion of the case.

18 This has been merely an attempt on my part to
19 briefly explain to you some of the procedure that we
20 follow in a trial in the courtroom so that you have,
21 hopefully, a better understanding of what may be
22 happening from time to time.

23 In order to preserve everyone's rights, though, I
24 will give the parties an opportunity to object to
25 anything that I've said to you during this opening

1 remarks, if they have any such objections or exceptions.

2 Any objections or exceptions from the State of
3 South Carolina?

4 MR. THORNTON: No, your Honor.

5 THE COURT: From the defendant?

6 MR. HUGHES: None, your Honor.

7 THE COURT: We will now begin the trial of the
8 case, ladies and gentlemen.

9 Mr. Thornton.

10 MR. THORNTON: May it please the Court, your Honor.

11 THE COURT: Yes, sir.

12 MR. THORNTON: Ms. Legette will deliver the opening
13 for the State.

14 THE COURT: Ms. Legette. I apologize. I thought
15 Mr. Thornton was making the opening. Tameaka.

16 OPENING STATEMENTS

17 ON BEHALF OF THE STATE, MS. LEGETTE:

18 MS. LEGETTE: May it please the Court. Mr. Hughes,
19 ladies and gentlemen. Good morning.

20 RESPONSES FROM JURORS.

21 MS. LEGETTE: This is a case about an execution, a
22 killing. That killer sits among us. His name, Brett
23 Howard. The victim, Woodrow Brantley, is not among us.

24 Now, ladies and gentlemen, let's go back. Back to
25 December 11, 2009. And let's go out to a place where

1 many of you may not ever go. We're going to go out into
2 Jasper County, off of Rice Shire Road, onto Grove Park
3 Lane. A place called the Spring Hill area. And in the
4 Spring Hill area is a little building that used to be
5 called the Spring Hill Club. And at some point, it was
6 called Missy's Lounge.

7 As I said, you may not have ever been there or go
8 there. But that's the place where Brett Howard executed
9 Woodrow Brantley, the night of December 11, 2009.

10 Now, Brett Howard walked into Missy's Lounge,
11 overheard the tail end of a conversation that Woodrow
12 Brantley was having. And at that point, Brett Howard
13 jumped to conclusions. And shortly thereafter, Woodrow
14 Brantley lay sprawled out on the floor, dead. Brett
15 Howard, the executioner, walked calmly away.

16 And that's what happened, ladies and gentlemen.
17 You'll hear from witnesses in this case, witness who
18 frequent Missy's Lounge. And Missy's Lounge is a
19 nightclub, a pool hall, a speak-easy, a juke joint. And
20 that's where they watched Brett Howard execute Woodrow
21 Brantley.

22 And ladies and gentlemen, when you hear from these
23 witnesses, and after you hear from all of the witnesses,
24 there will be some evidence that you will be able to
25 see. And after the evidence is in, and you've heard

1 from those witnesses who watched Brett Howard execute
2 Woodrow Brantley, because he did leave behind witnesses,
3 we'll come back before you and we'll ask you to find
4 Brett Howard guilty of the charges for which he's been
5 charged. In this case, it's murder of Woodrow Brantley
6 and the possession of a weapon during the commission of
7 a violent crime.

8 As I've said, at the end of this case, we'll come
9 back to you and ask you to find Brett Howard guilty of
10 the murder of Woodrow Brantley and the possession of a
11 weapon during the commission of that murder and violent
12 crime.

13 Thank you.

14 THE COURT: Mr. Hughes.

15 MR. HUGHES: May it please the Court.

16 THE COURT: Yes, sir.

17 OPENING STATEMENT

18 ON BEHALF OF DEFENSE, MR. HUGHES:

19 MR. HUGHES: Good morning. I introduced myself to
20 you yesterday. I'm Bob Hughes, Public Defender, Jasper
21 County.

22 First of all, I'm going to make you a promise, and
23 I'm going to keep it. When this is over, I'm going to
24 come back in front of you and I'm going to tell you I
25 was right. It's nothing like you ever saw on television

1 because it's not going to be like anything you ever saw
2 on television.

3 For one thing, and this is really going to shock
4 you, some time during this trial, you're going to get
5 bored. And I want you to overcome that. Because the
6 other thing I'm going to do is I'm going to ask you to
7 pay close attention to everything that happens.

8 Remember, you are the finders of fact, so you have
9 to listen to everything to find the facts. It's going
10 to be difficult. The courtroom is a little cool. If
11 you're uncomfortable, let Ms. Boyles know. If you need
12 to go to the bathroom, let her know. If you need water,
13 let her know. I want you to be comfortable, but I don't
14 want you to be so comfortable you get bored and maybe
15 nod off or let your mind wander. Because it is
16 important that you listen and hear and see everything
17 that happens in this courtroom.

18 Like I said, I'm going to promise you when I come
19 back, and I'll tell you, it's not like anything you ever
20 saw on television. There is no CSI Jasper County. If
21 there was, it would be a very, very short show.

22 So you're going to have to watch the people sitting
23 there. You're going to have to hear them. If you
24 cannot hear them, please let someone know. Because your
25 job is to hear. Brett Howard needs you to hear

1 everything.

2 When all this is done, I'm going to come back,
3 we're going to go through everything that everybody
4 said. I think you're going to be surprised at how wrong
5 the State is in this case.

6 Thank you.

7 BY THE COURT:

8 THE COURT: Call your first witness.

9 MS. LEGETTE: Thank you, your Honor. The State
10 calls Lorraine Missy Hunt.

11 THE COURT: Please come around and be sworn by the
12 clerk.

13 WITNESS SWORN.

14 THE COURT: Good morning.

15 WITNESS WRIGHT: Hi.

16 THE COURT: Make yourself at home. Pull that chair
17 up and adjust that microphone to your height. I want
18 you to begin by stating your full name and spelling your
19 last name for the court reporter.

20 WITNESS WRIGHT: Lorraine Wright, W/r/i/g/h/t.

21 THE COURT: Your witness, Counsel.

22 MS. LEGETTE: Your witness, your Honor.

23 MR. HUGHES: Your Honor, I believe we have a matter
24 of law that needs to be taken up out of the presence of
25 the jury.

1 THE COURT: Counsel approach.

2 OFF-THE-RECORD BENCH CONFERENCE,

3 THE COURT, MS. LEGETTE, MR. THORNTON,

4 MR. HUGHES, MR. PLEXICO.

5 BACK ON THE RECORD.

6 MS. LEGETTE: May it please the Court.

7 THE COURT: Proceed.

8 LORRAINE MISSY HUNT WRIGHT

9 DIRECT EXAMINATION, MS. LEGETTE:

10 Q Ms. Hunt, you said your name was Wright?

11 A Yeah, it was Hunt before Wright.

12 Q Okay. So that was your maiden name?

13 A No, my other married name.

14 Q Okay. So you have -- your original name was Missy
15 Hunt.

16 A My maiden name is Lorraine Austin. My married name
17 was Hunt. And then I got married again. So that's why
18 it's Wright now.

19 Q Okay. So you're re-married.

20 A Yeah.

21 Q Okay. now, so should I call you Ms. Hunt or Ms.
22 Wright?

23 A Wright.

24 Q Okay. Well, Ms. Wright, --

25 THE COURT: Just a moment. Counsel, any objection?

1 MR. HUGHES: No, your Honor.

2 THE COURT: Very well. I'll put on the record our
3 conference at the appropriate time. You may proceed,
4 Solicitor, with direct examination.

5 MS. LEGETTE: Thank you, your Honor.

6 BY MS. LEGETTE:

7 Q Now, Ms. Wright, where are you from, ma'am?

8 A Miami, Florida.

9 Q And how long have you been in South Carolina?

10 A Since 2001.

11 Q 2001. Okay. And now where do you live exactly?

12 A Where I'm living now?

13 Q Yes, ma'am.

14 Q On Rosa Lee Wright Lane.

15 Q Okay. Now, Ms. Wright, where do you work?

16 A At Ridgeland High School.

17 Q And do you have any children?

18 A Yes.

19 Q How many children do you have?

20 A Three.

21 Q Now, Ms. Wright, you said you worked at the
22 Ridgeland High School.

23 A Uh-huh.

24 Q Have you ever done any other kinds of jobs?

25 A Yeah.

1 Q What else have you done?

2 A I worked in a club. I run the nightclub, and I
3 worked in other schools before I went to Ridgeland High
4 School. I worked at Port Royal Elementary School.

5 Q Okay. So let's talk about the nightclub. You said
6 you ran a nightclub.

7 A Um-hmm. Yes, ma'am.

8 Q I need you to say yes or no.

9 A Yes, ma'am.

10 Q Yes, ma'am. Okay. Thank you. Okay. So you ran a
11 nightclub.

12 A Yes, ma'am.

13 Q And what was the name of the nightclub?

14 A Missy's Lounge.

15 Q And tell us, please explain to us, where is Missy's
16 Lounge located?

17 A On Rice Shire Road.

18 Q Okay. And what area of the county is that located
19 in?

20 A Ridgeland. Right down in Ridgeland on 17.

21 Q Okay. So, and what county is it in?

22 A Jasper County.

23 Q Now, explain to us, as the runner, or the person
24 who ran the nightclub, what did you do?

25 A I cooked and I let them play pool and have parties.

- 1 Q How long -- I'm sorry. Repeat that.
- 2 A Have parties, play pool, cook.
- 3 Q And how long did you run the Missy's Lounge?
- 4 A I think it was about four or five months. I think.
- 5 I don't know. I'm not sure.
- 6 Q Okay.
- 7 A It wasn't that long.
- 8 Q Not very long, but you did run the nightclub.
- 9 A No. Yeah.
- 10 Q Okay. Let's turn your attention now to some of
- 11 your patrons. Did you know a man named Woodrow
- 12 Brantley?
- 13 A Yes.
- 14 Q And explain to us how did you know Woodrow
- 15 Brantley.
- 16 A He's my cousin.
- 17 Q And did he have a nickname?
- 18 A All I know is Woody.
- 19 Q All right. So he was your cousin.
- 20 A Yeah.
- 21 Q All right. So you know a little bit about his
- 22 family.
- 23 A Yeah. I know his wife.
- 24 Q Okay. Is she present in court today?
- 25 A Yes.

1 Q Could you point her out, please.

2 A In the white blouse.

3 Q White blouse?

4 A Um-hmm.

5 Q Now, you said you knew his wife. Did he have any
6 children?

7 A Yeah.

8 Q Now, you said you knew Woody, and you called him
9 Woody.

10 A Yeah.

11 Q How often did he come to your club?

12 A About twice a month.

13 Q Now, let's talk about a man named Brett Howard.

14 A Yeah.

15 Q Do you know Brett Howard?

16 A Yes.

17 Q How do you know Brett Howard?

18 A I used to go to his daddy's club.

19 Q Okay.

20 A Yeah.

21 Q Did he ever -- did any of your family members know
22 him?

23 A Yeah.

24 Q Who in your family knew him?

25 A My daughter.

1 Q And how did your daughter know him?

2 A I don't know where they met, but she know him.

3 Q Were they dating?

4 A She used to date him, yeah.

5 Q Okay. So your daughter dated Brett Howard.

6 A Uh-huh.

7 Q And how long -- I'm sorry. You need to say yes or
8 no, please.

9 A Yes. Yes.

10 Q Okay. So your daughter dated Brett Howard.

11 A Yes.

12 Q And how long would you say you knew Brett Howard?

13 A Hmm. About five years.

14 Q About five years?

15 A Yeah.

16 Q Is Brett Howard present in court today?

17 A Yes. Yeah.

18 Q Do you see him?

19 A Yeah, right there.

20 Q And could you describe what he's wearing, please.

21 A A plaid shirt.

22 Q Let the record reflect the witness has indicated
23 the defendant, Brett Howard.

24 Now, Ms. Wright, you said you knew Brett Howard.

25 A Yes, ma'am.

1 Q I'm sorry. I'm talking over you. Please repeat
2 that, please.

3 A Yes, ma'am.

4 Q Did he ever come to your club?

5 A Yeah.

6 Q And how often did he come?

7 A Every night. Just about.

8 Q Okay. So Ms. Wright, I want to take you back and
9 turn your attention to December 11, 2009..

10 A Um-hmm. Yes, ma'am.

11 Q Do you recall that date?

12 A Yes.

13 Q You recall that date. Were you working at the club
14 that night?

15 A Yes.

16 Q Did you see Woody at the club that night?

17 A Yes.

18 Q Who else did you see at the club that night?

19 A I don't know. Lot of people there.

20 Q Did you see Brett at the club that night?

21 A Yes.

22 Q Can you describe kind of what the club looks like
23 inside?

24 A Yeah. Basically, yeah.

25 Q Please do that.

1 A From the time you walk through the door?

2 Q Yes, ma'am, describe it for us.

3 A Describe it?

4 Q Yes, please.

5 A When you walk in, to the left is tables and chairs,
6 and to the right is the bar. And straight at the bar is
7 the kitchen. Coming out of the kitchen, to the right,
8 is -- you're going to see the juke box. And then
9 there's the pool room a little further up.

10 Q You may have already told us this, but -- so at
11 your club, what do people do at your club?

12 A Play pool and buy food.

13 Q Did you also serve drinks?

14 A Yeah. They brought drinks. When they have
15 parties, we have drinks. They bring they own drinks.

16 Q Okay. So Ms. Wright, let's talk about December 11,
17 2009, specifically. You said you were at the club that
18 night.

19 A Yeah.

20 Q Okay. Tell us what you were doing that night.

21 A I was cooking.

22 Q Okay. And what part of the club were you cooking
23 in?

24 A In the kitchen, right off from the bar.

25 Q Did anything unusual happen that night?

1 A I heard a shot.

2 Q Okay. And where did you hear this shot from?
3 Coming from?

4 A I just heard it. I don't know where it was coming
5 from.

6 Q And once you heard the shot, what did you do next?

7 A I went in and I asked what happened. Brett was
8 coming out of the pool room, and I asked him what
9 happened. And he kept walking outside. And that's when
10 I heard some shots. Then I went to the floor. And
11 that's when I crawled over to my phone and called the
12 police.

13 Q Okay. So you said that you asked Brett what
14 happened.

15 A Um-hmm.

16 COURT REPORTER: Yes, no?

17 Q I'm sorry. I need you to say yes or no.

18 A Yes. Yes.

19 Q Okay.

20 A I explained what happened.

21 Q Did he respond to you?

22 A No. He kept walking outside.

23 Q Did he ever look at you when you asked him that?

24 A Yeah.

25 Q Describe for us the look he had on his face.

1 A Normal.

2 Q So a normal look on his face?

3 A Yeah. Yeah.

4 Q So Brett Howard walked out of the club.

5 A Yes.

6 Q And you next heard -- what did you hear next?

7 A I heard gun shots. Gun shots.

8 Q Do you know where they came from?

9 A Outside.

10 Q Okay. So you heard gun shots outside.

11 A Um-hmm. Yes, ma'am.

12 Q Did anyone else leave the club after Brett Howard

13 left the club?

14 A When I heard the shots, that's when I asked them to

15 close the door. And they closed the door. And I had

16 people banging on the door, but I told them don't open

17 it, I'm called the police. I was on the floor called

18 the cops.

19 Q So said you called 911.

20 A Yeah.

21 Q And when you called 911, what did you tell the

22 dispatcher?

23 A That they's gun shots out here and could someone

24 come.

25 Q And do you know whether or not they recorded your

1 phone call to 911?

2 A Yes.

3 Q Ms. Wright, in a moment I will ask to approach you.
4 I'm going to ask you to look at something I'm going to
5 hand you and tell me if you recognize this.

6 MS. LEGETTE: Your Honor, may I approach the
7 witness?

8 THE COURT: You may.

9 BY MS. LEGETTE:

10 Q Ms. Wright, I hand you now what's been previously
11 marked at State's Exhibit Number 1. Take a moment and
12 tell me if you recognize this.

13 A Yes.

14 Q And Ms. Wright, what is State's Exhibit Number 1.

15 A It's a 911 tape.

16 Q And Ms. Wright, how are you able to recognize
17 State's Exhibit Number 1?

18 A Because I signed it.

19 Q And Ms. Wright, at my request, did you previously
20 listen to that State's Exhibit Number 1 to make sure it
21 was fair and accurate?

22 A Yes.

23 Q And was it fair and accurate?

24 A Yes.

25 Q And at my request, did you also initial State's

1 Exhibit Number 1 --

2 A Yes.

3 Q -- to make certain that you recognized it?

4 A Yes.

5 MS. LEGETTE: Your Honor, at this time, I would
6 offer State's Exhibit Number 1 for admission into
7 evidence.

8 THE COURT: As to State's 1.

9 MR. HUGHES: No objection.

10 THE COURT: Ladies and gentlemen of the jury,
11 State's Exhibit Number 1 will be admitted into evidence
12 in the trial of this case without objection. State's 1
13 now in evidence. Has the court reporter marked it?

14 MS. LEGETTE: Yes, she has, your Honor.

15 THE COURT: It's been marked?

16 COURT REPORTER: Yes, sir.

17 THE COURT: You may publish.

18 MS. LEGETTE: Thank you, your Honor. May I
19 approach the witness and retrieve Exhibit 1?

20 THE COURT: You may.

21 MS. LEGETTE: Thank you.

22 ITEM IDENTIFIED AS COMPACT DISK
23 OF 911 CALL MARKED STATE'S EXHIBIT
24 NUMBER 1, AND ADMITTED AS EVIDENCE.

25 BY MS. LEGETTE:

1 Q Ms. Wright, prior to us posting the exhibit, do you
2 recall anything else from that night?

3 A Yeah.

4 Q What else do you recall?

5 A After I heard the gun shots, I called 911. And
6 then I asked them -- asked them to close the door. And
7 people knocking on the door. I said don't open the
8 door. And after while, I got up. And I asked what
9 happened. I thought maybe one of the young boys got
10 shot. And I went in the pool room. That's when I fell,
11 cause my cousin on the floor. And it was Woody.

12 Q Thank you, Ms. Wright.

13 MS. LEGETTE: Begging the Court's indulgence.

14 PLAYING COMPACT DISK, STATE'S

15 EXHIBIT NUMBER 1, 911 CALL.

16 BY MS. LEGETTE:

17 Q Ms. Wright, is that the 911 call that you made to
18 dispatch?

19 A Yes.

20 Q Ms. Wright, let's go back just a little bit. You
21 said that you were cooking inside the club.

22 A Yeah. Yes, ma'am.

23 Q And you heard gun shots.

24 A Yes.

25 Q Okay. And once you heard that gun shot, did you

1 hear -- what did you next see?

2 A I come out of the pool -- of the -- of the kitchen,
3 and that's when I say I saw Brett coming out of the pool
4 room, and I asked him what happened. And he looked at
5 me and he kept walking. And that's when I heard the gun
6 shots. And that's when I went to the floor, start
7 crawling to my phone, cause my phone was behind the bar.

8 Q Yes, ma'am. So how many sets of gun shots did you
9 hear?

10 A Four or five. I can't remember. I just heard it.

11 Q Okay. I want to be clear about this. Is it your
12 testimony that you heard a gun shot?

13 A Um-hmm.

14 Q One gun shot.

15 A Gun shots.

16 Q Okay. Before Brett left the actual club, before he
17 walked out of the club, did you hear a gun shot?

18 A Yeah. One.

19 Q Okay. And once he left out of the club, did you
20 hear --

21 A I heard more shots.

22 Q So there were two sets of gun shots.

23 A Yeah.

24 Q One that you don't know where it came from.

25 A I found out after -- after the club --

1 Q Don't tell us what happened -- don't tell us what
2 someone told you.

3 A Oh, okay.

4 Q But the first gun shot you heard was one gun shot.

5 A Yes. That was in the club.

6 Q And then you heard another set of gun shots outside
7 the club.

8 A Yes.

9 MS. LEGETTE: Begging the Court's indulgence. Ms.
10 Wright, I have no further questions. Answer any
11 questions from Mr. Hughes, please.

12 A Okay.

13 THE COURT: Cross-examination.

14 MR. HUGHES: Thank you, your Honor.

15 LORRAINE MISSY HUNT WRIGHT

16 CROSS-EXAMINATION, MR. HUGHES:

17 Q Mrs. Wright, how many people were in the club that
18 night?

19 A It was a lot. About 20 or 30.

20 Q Okay. And after you heard the shot, how many
21 people were in the club?

22 A I couldn't say, cause I went to the floor.

23 Q Okay. I meant the first shot.

24 A The first shot, when I came out, I -- I really
25 didn't -- I just saw Brett -- only person I see was

1 Brett coming out. And I knew him, so that's why I asked
2 him what happened.

3 Q Okay. But other people were leaving the club that
4 night after the shot?

5 A Yeah.

6 Q Had you seen Mr. Brantley that night?

7 A Yes, sir.

8 Q Had you talked with him?

9 A Yes.

10 Q Had he been drinking?

11 A I don't know. He didn't drink anything from me.

12 No, I don't know if he was drinking or not. But he was
13 to the bar joking. He always joked with me when he come
14 in.

15 Q Was the Spring Hill Club basically a bring-your-
16 own-bottle-type club?

17 A Yes.

18 Q Okay. So you wouldn't know if he'd had anything to
19 drink or not if he had brought his own bottle.

20 A No, sir. No, sir.

21 Q Okay. And you didn't see anybody shoot anybody.

22 A No, sir.

23 Q And you have no idea who was shooting outside.

24 A No, sir.

25 Q And what happened to the club?

1 A Could you explain that, please.

2 Q What happened to Missy's Lounge?

3 A I closed it.

4 MR. HUGHES: Okay. No further questions, your
5 Honor.

6 THE COURT: Re-direct?

7 MS. LEGETTE: No, your Honor.

8 THE COURT: As to this witness?

9 MS. LEGETTE: We ask that she be excused, your
10 Honor.

11 THE COURT: Any objection to this witness being
12 excused, Mr. Hughes?

13 MR. HUGHES: No, your Honor.

14 THE COURT: All right, Ms. Wright, you may step
15 down from the witness stand, and you are excused for the
16 trial of this case and you may leave the courtroom. Or
17 if you desire, you may remain with us. Thank you
18 verdict much.

19 Call your next witness.

20 MS. LEGETTE: Thank you. State calls Cornelius
21 Shiflett.

22 THE COURT: Please come around and be sworn by the
23 clerk. I need to take that to the court reporter,
24 please, State's Exhibit 1.

25 MS. LEGETTE: Thank you, your Honor. I did.

1 WITNESS SWORN.

2 THE COURT: Sit right up there. Have a seat and
3 make yourself comfortable for me, please.

4 WITNESS SHIFLETT: Thank you, your Honor.

5 THE COURT: Adjust that chair and microphone to
6 your height, and begin by stating your full name and
7 spelling your last name for the court reporter.

8 WITNESS SHIFLETT: My name is Cornelis Shiflett.
9 That's S/h/i/f/l/e/t/t.

10 THE COURT: Your witness, Counsel.

11 MS. LEGETTE: Thank you, your Honor.

12 CORNELIUS SHIFLETT

13 DIRECT EXAMINATION, MS. LEGETTE:

14 Q Good morning, Mr. Shiflett.

15 A Good morning.

16 Q Sir, where are you from?

17 A Originally from Virginia.

18 Q And how long have you been in South Carolina?

19 A For eleven years now.

20 Q And while in South Carolina, where have you worked?

21 A Hardeeville Police Department, Jasper County
22 Sheriff's Office, Beaufort County Detention Center.

23 Q And Mr. Shiflett, where are you working now?

24 A I'm currently not employed.

25 Q Now, tell us, when did you work for the Jasper

1 County Sheriff's Office?

2 A From, I believe, it was July of 2006 until May of
3 last year.

4 Q So Mr. Shiflett, were you working for the Jasper
5 County Sheriff's Office in December of 2009?

6 A Yes, ma'am, I was.

7 Q And what were your duties at the Jasper County
8 Sheriff's Office?

9 A I was a patrol deputy, a road deputy.

10 Q And as a part of being a patrol deputy or a road
11 deputy, did you respond to calls for assistance from
12 time to time?

13 A Yes, ma'am, I did.

14 Q Mr. Shiflett, I want to turn your attention to
15 December 11, 2009. Do you recall that date?

16 A Yes, ma'am, I do.

17 Q Did you respond to a call for assistance out in the
18 Spring Hill area at Missy's Lounge?

19 A Yes, I did.

20 Q And did you actually to go Missy's Lounge?

21 A Yes, ma'am, I did.

22 Q And please tell us, what did you do when you
23 arrived?

24 A The first thing I did when my backup officer
25 arrived, the two of us went inside and cleared the

1 building. That would have been the first thing we did.

2 Q And were you the first officer, or one of the first
3 officers, to arrive?

4 A Myself and Deputy Lowther of the Ridge -- or, I'm
5 sorry -- Officer Lowther of the Ridgeland Police
6 Department were the first two. We arrived
7 simultaneously.

8 Q And when you say *clear the scene*, what does that
9 mean?

10 A Basically to in and check every room of the
11 building to make sure that the suspect is no longer in
12 there, that there's no danger.

13 Q And was the danger gone?

14 A Yes.

15 Q Describe for us what you saw when you went inside.

16 A When I went inside, I believe there were four
17 people seated at the bar area, which was to the right of
18 the front door. Then there was a pool area, an area to
19 the left, far in the back where the pool tables were.
20 And there was a gentleman laying face down on the floor.

21 Q And as part of the investigation -- or was an
22 investigation begun?

23 A You could say the investigation commenced as soon
24 as we arrived.

25 Q And as part of that investigation, were any

1 pictures taken of the club at Missy's Lounge?

2 A Yes, ma'am.

3 MS. LEGETTE: Begging the Court's indulgence.

4 Your Honor, may I approach the court reporter?

5 THE COURT: You may.

6 BY MS. LEGETTE:

7 Q Mr. Shiflett, I'm going to hand you in a moment
8 what has been previously marked for identification as
9 State's Exhibits 3-A through 3-M. Please take a moment
10 and tell me if you recognize these.

11 MS. LEGETTE: Your Honor, may I approach the
12 witness.

13 THE COURT: You may.

14 BY MS. LEGETTE:

15 A Okay.

16 Q Mr. Shiflett, do you recognize State's Exhibit 3-A
17 through 3-M?

18 A Yes, ma'am, I do.

19 Q And what are State's Exhibits 3-A through 3-M?

20 A They are pictures of the crime scene as it appeared
21 at that time.

22 Q And Mr. Shiflett, do State's Exhibits 3-A through
23 3-M represent a fair and accurate representation of that
24 crime scene on December 11, 2009?

25 A Yes, ma'am, they do.

1 MS. LEGETTE: Your Honor, at this time, I would
2 offer for admission into evidence State's Exhibits 3-A
3 through 3-M.

4 THE COURT: As to 3-A through 3-M, Mr. Hughes?

5 MR. HUGHES: Your Honor, just to clarify, did Mr.
6 Shiflett take the pictures, or is he just saying that
7 that's a fair and accurate representation of the scene?

8 THE COURT: I can't answer questions for you, Mr.
9 Hughes.

10 MR. HUGHES: Okay.

11 THE COURT: But you certainly -- is there an
12 objection?

13 MR. HUGHES: Yes, your Honor.

14 THE COURT: Counsel approach.

15 OFF-THE-RECORD BENCH CONFERENCE,

16 THE COURT, MS. LEGETTE, MR. THORNTON,

17 MR. HUGHES, MR. PLEXICO.

18 BACK ON THE RECORD.

19 THE COURT: Mr. Hughes, I understand the objection
20 is now withdrawn and there is no objection to State's
21 Exhibits 3-A through 3-M. Is that correct?

22 MR. HUGHES: Yes, your Honor. Ladies and gentlemen
23 of the jury, State's 3-A through 3-M, inclusive, will
24 now be admitted into evidence in the trial of this case.
25 You may now publish to the jury without objection.

1 MS. LEGETTE: Thank you, your Honor.

2 ITEMS IDENTIFIED AS PHOTOGRAPHS

3 MARKED STATE'S EXHIBITS 3-A

4 THROUGH 3-M, AND ADMITTED AS EVIDENCE.

5 BY MS. LEGETTE:

6 Q Mr. Shiflett, before we publish the pictures to the
7 jury, let me just clarify. Did you take those
8 photographs?

9 A I don't believe I took these specific ones, because
10 the evidence markers are already in place. But I took
11 pictures that would have been identical to them just
12 without the evidence markers.

13 Q And you were present at the club on December 11,
14 2009 --

15 A Yes.

16 Q -- at the crime scene investigation.

17 A Yes, I was. And I was also present when those
18 markers were placed there, so.

19 MS. LEGETTE: Now, your Honor, at this time, I
20 would ask that Mr. Shiflett be allowed to come down with
21 the microphone and publish the pictures to the jury.

22 THE COURT: Mr. Hughes, you may come around outside
23 the jury box so you can see before he steps down. Tap
24 that microphone for me and tell me if it's on.

25 MADAM CLERK: Yeah.

1 THE COURT: All right. Mr. Shiflett, you may step
2 down. Wanda, you let me know if you can't hear.

3 BY MS. LEGETTE:

4 Q Okay. Mr. Shiflett, I want to direct your
5 attention to the screen over the jury box. And please
6 tell --

7 THE COURT: Identify what they're looking at for
8 the record by Exhibit Number.

9 MS. LEGETTE: Thank you, your Honor.

10 BY MS. LEGETTE:

11 Q In State's Exhibit 3-A, what are we seeing in
12 State's Exhibit 3-A, Mr. Shiflett?

13 A That's just the part of the interior of Missy's
14 Lounge on December 11, 2009.

15 Q And in State's Exhibit 3-B, what are we seeing in
16 that photograph?

17 A Also the interior of the lounge where the tables
18 were, tables and chairs.

19 Q And is this a juke box in the back right here?

20 A I believe it was.

21 Q State's Exhibit 3-C, what are we seeing in that
22 particular photograph?

23 A That's the pool table area of the lounge to the
24 left as you go in the front door where the victim was
25 found.

1 Q State's Exhibit 3-D, what are we seeing in that
2 photograph?

3 A Also the pool table area. Just from a different
4 angle.

5 Q State's Exhibit 3-E, what are we seeing in that
6 photograph?

7 A That is the victim lying in the location he was
8 found in.

9 Q And what are we seeing over here to the left of
10 that photograph?

11 A The edge of one of the pool tables.

12 Q State's Exhibit 3-F, what are we seeing in that
13 photograph?

14 A The cellular phone that was lying next to the
15 victim.

16 Q State's Exhibit 3-G.

17 A If I recall correctly, I believe that was a gold
18 tooth that was lying under the chair, just at the end of
19 the -- where the victim's head was.

20 Q And State's Exhibit 3-H, what are we seeing in that
21 photograph?

22 A Several billiard balls, pool balls. I'm not sure
23 what that other object is.

24 Q State's Exhibit 3-I, what are we seeing in that
25 photograph?

1 A A sweatshirt. I believe a hoodie. They call it a
2 hoodie.

3 Q And is that also in the pool room?

4 A Yes, ma'am, it was.

5 Q State's Exhibit 3-J, what are we seeing in that
6 photograph?

7 A Social Security card.

8 Q And whose name is on that Social Security card?

9 A Woodward Brantley. Or Woodrow Brantley.

10 Q State's Exhibit 3-K, what are we seeing in that
11 photograph?

12 A That is a -- looks like a board with carpet in it,
13 and I believe there's some blood spatter on it.

14 Q And State's Exhibit 3-L, what are we seeing in that
15 photograph?

16 A A closer picture of the same thing, the board with
17 the carpet.

18 Q And I believe State's Exhibit 3-M may be the
19 similar photograph?

20 A Yes, ma'am.

21 Q Mr. Shiflett, Thank you. Have a seat back on the
22 jury box -- I'm sorry -- on the witness box.

23 Mr. Shiflett, do you recall doing anything else at
24 the crime scene located at Missy's Lounge on December
25 11, 2009?

1 A As far as -- as what?

2 Q As far as any investigation of any sort?

3 A Yes. Once the scene was cleared and we allowed EMS
4 to come in and check the victim and the detectives were
5 notified, the four people that were still there, I asked
6 them to complete written statements for me.

7 Q Did they comply with your request?

8 A Yes, they did. They started to do that, and they
9 were doing that when the detective arrived.

10 MS. LEGETTE: Begging the Court's indulgence. Mr.
11 Shiflett, I have no further questions. Answer any
12 question from Mr. Hughes.

13 A Yes, ma'am.

14 CORNELIUS SHIFLETT

15 CROSS-EXAMINATION, MR. HUGHES:

16 Q Mr. Shiflett, you did not take those photos?

17 A I don't believe I did. I took photos that would
18 have been very similar, just without the evidence
19 markers.

20 Q Who put the evidence marker there? Do you know?

21 A Detective Baxter.

22 Q Okay. Do you know where your photos are?

23 A I assume that they're attached to the report in the
24 computer.

25 Q How many people were at the Spring Hill Club

- 1 outside when you got there?
- 2 A I don't recall anybody being outside.
- 3 Q Any vehicles?
- 4 A I think there were several. Not very many, but
- 5 there were several.
- 6 Q How big is the parking lot there?
- 7 A Not -- not very big. It's -- the club is actually
- 8 located in a residential area. It's a very small dirt
- 9 parking lot.
- 10 Q Back when you worked for the sheriff's department,
- 11 did you ever go there?
- 12 A I patrolled the area, yes.
- 13 Q Okay. On an average good night, about how many
- 14 cars would be parked in that area?
- 15 A Between 20 and 30, maybe.
- 16 Q You found in the pool room a cell phone and a gold
- 17 tooth and some other things, correct?
- 18 A Yes.
- 19 Q Any weapons?
- 20 A No.
- 21 Q Any casings?
- 22 A Not inside where that was, no.
- 23 Q Okay. Any bullet holes?
- 24 A I don't recall about that.
- 25 Q But those are not the pictures you took.

1 A I don't believe they are, no.

2 MR. HUGHES: No further questions, your Honor.

3 THE COURT: Re-direct.

4 MS. LEGETTE: Quickly, your Honor.

5 CORNELIUS SHIFLETT

6 RE-DIRECT EXAMINATION, MS. LEGETTE:

7 Q Mr. Shiflett, other than the placard thing in the
8 photograph, are the photos that we just talked about,
9 State's Exhibits 3-A through 3-M, are they identical to
10 photos you took?

11 A Yes, ma'am, they are.

12 MS. LEGETTE: I have no further questions, your
13 Honor..

14 BY THE COURT:

15 THE COURT: Re-cross limited to re-direct.

16 MR. HUGHES: Nothing, your Honor.

17 THE COURT: As to this witness, Solicitor?

18 MS. LEGETTE: Your Honor, we ask that he be
19 excused.

20 THE COURT: Any objection, Mr. Hughes?

21 MR. HUGHES: No, your Honor.

22 THE COURT: Mr. Shiflett, you may step down from
23 the witness stand, and you are excused from the trial of
24 this case. If you'd like to remain with us, you can,
25 but you are excused.

1 WITNESS SHIFLETT: Thank you, Judge.

2 THE COURT: Thank you. Mr. Foreman and ladies and
3 gentlemen of the jury, I'm going to take my mid-morning
4 break at this point, give you a chance to stretch your
5 legs, use the restroom. We're not going to be long.
6 We'll take about five to ten minutes.

7 Please do not discuss the case. I'll be right back
8 with you. You may retire to your jury room.

9 JURORS LEAVE COURTROOM 11:05 A.M.

10 THE COURT: Does he have an objection to the
11 photographs that were later admitted, 3-A through 3-M.
12 He withdrew that objection. I allowed him to ask on
13 cross-examination who took the pictures. He agreed that
14 the basis of the objection was just he thought
15 originally he was going to object on the basis of
16 whether or not the witness had taken the pictures, so he
17 decided to withdraw it. Is that correct?

18 MR. HUGHES: Yes, your Honor.

19 THE COURT: So there was no objection. We had one
20 other bench conference. What was it?

21 MR. HUGHES: Ms. Wright. Mrs. Wright and --

22 THE COURT: Oh. Also, Mr. Hughes asked to approach
23 the bench on the first witness, Lorraine Missy Hunt
24 Wright. Mr. Hughes pointed out to the Court that when I
25 participated in -- or when I voir dire the jury, the

1 Witness Number 14 on the State's proposed list of
2 witnesses, was not listed as Wright, but Hunt.
3 Obviously, Mr. Hughes told me that if this was a result
4 of a subsequent marriage, he would have no objection, if
5 she had explained that her name had formerly been Hunt,
6 and was not a different individual.

7 The Solicitor then stood back from the Bench, asked
8 her, and she said her name had been Hunt from a re-
9 marriage. I asked Mr. Hughes if he had any further
10 objection on that, and he told me he did not, and we
11 proceeded. Have I accurately stated what occurred at
12 the Bench, Mr. Hughes?

13 MR. HUGHES: Yes, your Honor.

14 THE COURT: Mr. Thornton?

15 MR. THORNTON: Yes, sir.

16 THE COURT: Very well. All right, Counsel, we'll
17 take about a five-minute break. Give you a chance to
18 use the restroom. Then we'll start back. Solicitor,
19 try to see that all your exhibits are pre-marked.

20 MR. THORNTON: Yes, sir.

21 MS. LEGETTE: Yes, sir, your Honor.

22 OFF THE RECORD 11:10 A.M.

23 BACK ON THE RECORD 11:25 A.M.

24 BY THE COURT:

25 THE COURT: Thank you. Please be seated. State

1 ready to proceed?

2 MS. LEGETTE: Yes, your Honor.

3 THE COURT: Is the defendant ready to proceed?

4 MR. PLEXICO: Yes, sir.

5 THE COURT: All right. We're going to work till
6 1:00 o'clock. Jury's going to lunch at one o'clock.
7 I'm sending the jury out. I'm warning my attorneys I'll
8 be telling you I don't want anybody going to -- I'm
9 going to have a private room. I would ask you not to go
10 to Jasper Porch, because I'm going to send the jury
11 there. You understand?

12 MR. THORNTON: Yes, sir.

13 THE COURT: All right. With that, let's proceed.
14 Jo, are you ready?

15 BAILIFF: Yes, sir.

16 THE COURT: Atta girl. Would you bring us the
17 jury, please.

18 JURORS ENTER COURTROOM 11:25 A.M.

19 THE COURT: All right, ladies and gentlemen of the
20 jury, we'll now continue with the testimony in the trial
21 of this case. Solicitor, call your next witness.

22 MS. LEGETTE: Thank you, your Honor. The State
23 calls Jessica Lynn Horton.

24 THE COURT: Ms. Horton, if you'll come around and
25 be sworn by the clerk, please.

1 WITNESS HORTON: Yes, sir.

2 WITNESS SWORN.

3 THE COURT: Better watch your step. Just pull that
4 gate and watch your step.

5 WITNESS HORTON: Yes, sir.

6 THE COURT: Have a seat for me. Pull that chair
7 up. Adjust that microphone to your height. Speak into
8 the microphone, which will amplify your voice. State
9 your full name and spell your last name for the court
10 reporter.

11 WITNESS HORTON: Jessica Lynn Horton. H/o/r/t/o/n.

12 THE COURT: Your witness, Counsel.

13 MS. LEGETTE: Thank you, your Honor.

14 JESSICA LYNN HORTON

15 DIRECT EXAMINATION, MS. LEGETTE:

16 Q Ms. Horton, where are you from?

17 A Originally, Connecticut.

18 Q And Ms. Horton, how long have you been in South
19 Carolina?

20 A Approximately eight years now.

21 Q And Ms. Horton, what do you do for a living?

22 A I'm a firefighter paramedic with Jasper County Fire
23 and Rescue.

24 Q And Ms. Horton, how long have you been in the field
25 of fire and rescue as a paramedic?

1 A About nine years.

2 Q And Ms. Horton, please explain to us your education
3 and experience that it takes to become a paramedic.

4 A You have to start off with a high school diploma.
5 And I went to paramedic school in Savannah. The course
6 was nine months long. I had to finish 1,080 hours of
7 classroom practicals hours.

8 Q And Ms. Horton, you said you'd been in fire and
9 rescue paramedic work for about nine years.

10 A Yes, ma'am.

11 Q And over that period of time, how many victims
12 would you say, approximately, you may have treated?

13 A Approximately probably 1,500, 2,000 my whole
14 career.

15 Q And Ms. Horton, would you explain for us the
16 different levels of a EMT or paramedic?

17 A Yes, ma'am. You have EMT basic, which is just what
18 it says: Basic life support skills; can provide CPR,
19 oxygen, and basic assessment skills.

20 You have a EMT intermediate, which is like a middle
21 level that can start I.V.'s and push a couple drugs.

22 And paramedic, which is the highest level, can read
23 cardiac strips, push drugs, and treat patients with
24 cardiac problems with electricity, like defibrillation
25 and cardio, much more advanced skills.

1 Q Okay. Ms. Horton, are you nervous?

2 A Yes, ma'am.

3 Q Okay. This your first time testifying?

4 A Yes, ma'am.

5 Q Okay. I'm going to need you to slow down. I talk
6 a little fast, too. So we're going to talk slowly
7 together.

8 A Yes, ma'am.

9 Q If you don't mind, kind of break that down in
10 layman's terms for all of us here about kind of what a
11 paramedic does versus what the other EMTs do.

12 A We have the most life-saving ability in the field
13 when it comes to EMS. We can perform the most advanced
14 skills. We can intubate patients. We can decompress
15 their chest. Give a multitude of drugs that other
16 levels aren't able to do.

17 Q And are you also to pronounce people dead?

18 A We're allowed to confirm an obvious death in the
19 field. The coroner actually pronounces the death, but
20 we can confirm a patient's death, yes.

21 Q So in other words, you have the most training and
22 experience out of all the levels of EMTs.

23 A Yes, ma'am.

24 MS. LEGETTE: Your Honor, at this time, I would
25 offer Ms. Horton as an expert in the field of Emergency

1 Medical Services.

2 THE COURT: Any objection as to qualifications,
3 Counsel?

4 MR. HUGHES: Never heard of one, but I would not
5 object to her being an expert at being a paramedic, your
6 Honor.

7 THE COURT: Without objection, you may proceed,
8 Counsel.

9 MS. LEGETTE: Thank you, your Honor.

10 BY MS. LEGETTE:

11 Q Now, Ms. Horton, you said you worked for the Jasper
12 County Fire and Rescue.

13 A Yes, ma'am.

14 Q And were you working for the Jasper County Fire and
15 Rescue on or about December 11, 2009?

16 A Yes, ma'am.

17 Q Okay. And on this particular date, did you respond
18 to a call for assistance at Missy's Lounge in the Jasper
19 County area?

20 A Yes, ma'am.

21 Q And did you respond?

22 A Yes.

23 Q Okay. And what did you find when you arrived at
24 that particular area?

25 A The scene was secured by law enforcement. We were

1 advised that they had a shooting victim inside the club.
2 When we went to the club, we found a male subject lying
3 prone on the floor. We performed our assessment to
4 determine whether he was -- had an obvious death in the
5 field or not.

6 Q And what does that mean?

7 A We checked for a pulse. We checked to see if he is
8 breathing. And we performed cardiac monitor on the
9 patient to see if there's any electro activity in the
10 heart, which there was not.

11 Q So you looked for a pulse.

12 A We checked -- yes, ma'am, we palpate for a pulse.

13 Q Did you find a pulse?

14 A No, ma'am.

15 Q And you said you also put a heart monitor on him.

16 A Yes.

17 Q And what did you find when you put the heart
18 monitor on him?

19 A That he was in asystole, which, in layman's terms,
20 is flat line rhythm. There's no electro -- electrical
21 activity in the heart whatsoever.

22 Q And explain for us -- I'm kind of slow, but if you
23 don't mind explaining for us, what does it mean to have
24 electrical activity in the heart or not?

25 A If you have a pulse, along with certain electrical

1 rhythm in the heart, it means that the person's heart is
2 still pumping and providing circulation to the rest of
3 the body. If you have no pulse and no electrical
4 activity, the heart's not doing what it needs to do to
5 provide life to that person.

6 Q So in Mr. Brantley's case, or in the victim you
7 found at Missy's Lounge, what was his condition?

8 A He was without a pulse, not breathing, and no
9 electrical activity, which, and according to our
10 protocols, means an obvious death in the field.

11 Q And upon finding this, what did you do next?

12 A We simply put the -- once we determined that he was
13 an obvious death, we removed the leads from him that we
14 had placed there, while leaving the stickers that we
15 used to assess his electrical rhythm. And we confirmed
16 that they wanted us to await the coroner's arrival to
17 assist moving the body. And then we waited outside.

18 Q You talked about leads. Explain to us, what are
19 leads?

20 A The -- there's four leads that we placed on the
21 body, and that's how we determine the electrical rhythm
22 of the heart. They're four plastic-looking leads that
23 we just removed. We left the little electrodes that we
24 placed on the patient, we left those on him, so we
25 wouldn't remove any -- anything from the body.

1 Q Now, you say we. Who was with you whenever you
2 checked the body of the person lying down at Missy's
3 Lounge?

4 A I had my EMT basic partner, Dominic Soucy, and
5 volunteer fire fighter, Lynn Malphrus, with me on the
6 ambulance at the time.

7 Q But you were the lead paramedic.

8 A Yes, ma'am.

9 Q So once you determined, then, he was pulseless,
10 without a pulse, you waited for the coroner.

11 A Um-hmm.

12 Q Did the coroner -- I'm sorry. You need to say --

13 A Yes. Yes, ma'am.

14 Q Did the coroner arrive?

15 A Yes.

16 Q And what did you do once the coroner arrived?

17 A We explained to him our findings. He went into the
18 building, and then we awaited for him to ask for our
19 assistance to move the body. So we waited outside for a
20 little while. And then, when he asked us to, we went in
21 to help with the body.

22 Q So at that time, did you confirm with the coroner
23 that he was, indeed, deceased?

24 MR. HUGHES: Your Honor, I believe that would be
25 hearsay.

1 THE COURT: Sustained.

2 BY MS. LEGETTE:

3 Q All right. Ms. Horton, you have said you helped
4 the coroner move the body?

5 A Yes, ma'am.

6 Q And what was the condition of the body at that
7 time?

8 A When we rolled him over, we found bleeding to the
9 face, about the nose and the mouth, consistent with --
10 with trauma.

11 Q And at that time, what was his condition as far as
12 a pulse?

13 A He still had no pulse, and he was considered
14 obvious death.

15 Q Begging the Court's indulgence.

16 Ms. Horton, I have no further questions. Answer
17 any questions Mr. Hughes, please.

18 A Yes, ma'am.

19 THE COURT: Cross-examination.

20 MR. HUGHES: No questions, your Honor.

21 THE COURT: As to this witness, Solicitor?

22 MS. LEGETTE: We ask that she be excused, your
23 Honor.

24 THE COURT: Any objection, Mr. Hughes?

25 MR. HUGHES: No objections, your Honor.

1 THE COURT: Very well. Ms. Horton, you may step
2 down from the witness stand, and you are excused from
3 the trial of this case.

4 WITNESS HORTON: Thank you, sir.

5 THE COURT: You may remain with us or leave as you
6 wish.

7 WITNESS HORTON: Yes, sir. Thank you.

8 THE COURT: Call your next witness.

9 MS. LEGETTE: Thank you, your Honor. The State
10 calls Mr. Buster Kleckley.

11 THE COURT: Come around and be sworn by the clerk,
12 please.

13 WITNESS KLECKLEY: Yes, sir.

14 WITNESS SWORN.

15 THE COURT: Watch your step, have a seat. Pull
16 that chair up and adjust that microphone to your height.
17 It's going to amplify your voice. And I need you to
18 begin, once you get it adjusted, by stating your full
19 name and spelling your last name for the court reporter.

20 WITNESS KLECKLEY: My name is Albert L. Kleckley,
21 Jr. My last name is K/l/e/c/k/l/e/y.

22 THE COURT: Very well. It's your witness, Counsel.

23 MS. LEGETTE: Thank you, your Honor.

24 ALBERT L. KLECKLEY, JR.

25 DIRECT EXAMINATION, MS. LEGETTE:

- 1 Q Mr. Kleckley, where are you from, sir?
- 2 A Right here in Ridgeland.
- 3 Q And Mr. Kleckley, do you have a nickname?
- 4 A Buster.
- 5 Q Okay. And Mr. Kleckley, what do you do?
- 6 A I'm the deputy coroner since 2006.
- 7 Q And Mr. Kleckley, where else do you work?
- 8 A I work for Jasper County EMS.
- 9 Q And Mr. Kleckley, are you currently running for
10 public office?
- 11 A Yes, ma'am.
- 12 Q What office are you running for?
- 13 A Probate judge.
- 14 Q Okay. Mr. Kleckley, you said you worked for the
15 Jasper County Coroner's Office.
- 16 A Yes, ma'am.
- 17 Q And how long have you worked there?
- 18 A Since 2006.
- 19 Q And are you considered a deputy coroner or
20 assistant coroner?
- 21 A Yes, ma'am, I'm a deputy coroner under Martin
22 Sauls.
- 23 Q Mr. Kleckley, as to being a deputy coroner, what
24 are your responsibilities?
- 25 A My responsibilities, we dispatch to a scene. We

1 handle the scene along with -- we more have a passive
2 department. We enforce or assist the deputies or
3 detectives in any way. We take the bodies once they
4 authorize us to. At that point, we will take them to
5 the morgue and log them in.

6 Would you like me to continue on?

7 Q Yes, please.

8 A Okay. Our job is to -- my job is, and the other
9 deputy coroners, are to go to MUSC to take the
10 autopsies. Once that's completed, we return any
11 evidence to the law enforcement agency. And then we
12 take the loved one to whatever funeral home the family
13 decides.

14 Q Now, Mr. Kleckley, you said you've been working of
15 the coroner's office since 2006.

16 A Yes, ma'am.

17 Q Were you working for the coroner's office in Jasper
18 County in December of 2009?

19 A Yes, ma'am.

20 Q On, specifically, December 11, 2009, did you get a
21 call to respond to Missy's Lounge in Jasper County?

22 A Yes, ma'am, I did.

23 Q Did you respond?

24 A Yes, I did.

25 Q Can you tell us what you found when you responded

1 to that location.

2 A When I responded, it was about one o'clock in the
3 morning. And there was a gentleman in the lounge. The
4 detectives were there, still taking pictures and
5 carrying the investigation. Once we were cleared, we
6 removed the gentleman. We put him in the morgue. And
7 the next morning, we took him to Charleston.

8 Q And did you ever identify that particular person
9 who was lying there?

10 A Yes, ma'am.

11 Q And who was he identified as?

12 A Woodrow Brantley.

13 Q So as deputy coroner, as far as working in the
14 corner's office, -- moving on from that. Mr. Kleckley,
15 you said that you took his body to the morgue.

16 A Yes, ma'am.

17 Q And then, does the coroner also authorize
18 autopsies?

19 A Yes, ma'am.

20 Q Was an autopsy authorized in this particular case?

21 A Yes, it was.

22 Q Okay. And was that body transported to the autopsy
23 in Charleston?

24 A Yes, ma'am. I transported to MUSC the next
25 morning.

1 Q And during that transportation or transport of that
2 body, was the body ever tampered with?

3 A No, ma'am, not at all.

4 Q And while it was in the custody or in the morgue,
5 was it ever tampered with?

6 A No, ma'am, not at all.

7 Q And when you took that body to the autopsy at MUSC,
8 who did you turn the body over to?

9 A Dr. Erin Presnell, which is our chief staff.

10 Q And had the body been tampered with prior to your
11 turning it over at any time --

12 A No, ma'am.

13 Q -- to Ms. Presnell?

14 A No, ma'am.

15 Q Now, at some point, did you remain during the
16 autopsy?

17 A Yes, ma'am. They have an area set aside while it's
18 performed that you stay in to make sure you don't leave
19 or anything. So I was there the entire time, yes,
20 ma'am.

21 Q And upon the autopsy's completion, did you recover
22 or retrieve any evidence from the autopsy?

23 A Yes, ma'am. There was a -- the actual bullet, the
24 fingernail findings, and the clothes, yes, ma'am.

25 Q And when you retrieved these items of evidence, the

1 clothes, the bullet, and the fingernail clippings, what
2 were their condition?

3 A They were never been tampered with.

4 Q And upon retrieving those items of evidence, did
5 you -- what did you do with those items of evidence once
6 you retrieved them?

7 A To keep the chain of evidence, I take them to, I
8 think, Detective Baxter. The same form that I have that
9 was signed from Dr. Presnell to me as the deputy
10 coroner, I then have to them sign over.

11 Q And upon retrieving those items of evidence, and
12 prior to turning them over to Detective Baxter, did they
13 remain in your complete custody until that time?

14 A Yes, ma'am, they did.

15 Q Were they ever tampered with while they were in
16 your complete custody?

17 A No, ma'am.

18 Q Begging the Court's indulgence.

19 Mr. Kleckley, I will momentarily hand you what's
20 been previously marked for identification as State's
21 Exhibits 4-A, 4-B, and State's Exhibit Number 5. I want
22 you to take a moment and tell me if you recognize these
23 items.

24 MS. LEGETTE: Your Honor, may I approach the
25 witness?

1 THE COURT: You may.

2 BY MS. LEGETTE:

3 A These are the articles that came from MUSC, yes,
4 ma'am. They were turned over.

5 Q And Mr. Kleckley, are State's Exhibit 4-A, 4-B, and
6 5 in the same condition today as when they -- as they
7 were when you turned them over to Detective Baxter after
8 receiving them from the autopsy?

9 A Yes, ma'am.

10 Q Have they been changed or altered in any way that
11 you can tell?

12 A No, ma'am. Not at all.

13 MS. LEGETTE: Your Honor, at this --

14 BY MS. LEGETTE:

15 Q Mr. Kleckley, what are we looking at in State's
16 Exhibit 4-A, 4-B, and Number 5? What are those items?
17 Don't show them. Just tell us what they are.

18 A I have a pill bottle that holds evidence retrieved
19 --

20 THE COURT: Speak up just a little bit more and
21 speak into that microphone.

22 A Oh, I'm so sorry. That's no problem. Yeah. May I
23 look inside?

24 THE COURT: Absolutely.

25 A Round about four -- not sure of the number. It's

1 the bullet -- actual shell, the bullet.

2 THE COURT: Does it have an exhibit number on it?

3 MS. LEGETTE: I believe it does. I believe that's
4 Number 5.

5 A 5, okay. I see it now. I apologize. It's the
6 actual bullet recovered from Erin Presnell at MUSC.

7 As far as 4-C, it's just -- it coincides with the
8 bullet.

9 THE COURT: What exhibit number was it for the
10 record?

11 A 4-C.

12 THE COURT: Counsel, I understand you were marking
13 4-A and 4-B, not 4-C.

14 MS. LEGETTE: Your honor, may I approach?

15 THE COURT: You may. Mr. Hughes.

16 MS. LEGETTE: May I approach the witness, your
17 Honor.

18 THE COURT: You may.

19 MS. LEGETTE CONFERRING WITH COURT

20 REPORTER AND WITNESS KLECKLEY.

21 MS. LEGETTE: Your Honor, I apologize to the Court.
22 We are actually -- I've handed Mr. Kleckley Item 4-A, 4-
23 B, 4-C, along with 5, because that's the way -- four
24 items, your Honor.

25 THE COURT: Has counsel for the defendant seen all

1 four items?

2 MS. LEGETTE: They are, your Honor. He has, your
3 Honor.

4 THE COURT: Very well.

5 MS. LEGETTE: They're all in the same --

6 THE COURT: You may approach. Take a look at them.
7 Show them to counsel.

8 A This was in Item 4. This is an envelope. And
9 there's Item 5. Sorry for any confusion.

10 MS. LEGETTE: So am I. Your Honor, I believe we
11 cleared it all up. And I have shown it to counsel. I
12 think we cleared all the matter up now.

13 MR. HUGHES: That's correct, your Honor.

14 MS. LEGETTE: May I approach the witness, your
15 Honor?

16 THE COURT: You may.

17 BY MS. LEGETTE:

18 Q Mr. Kleckley, referring again to State's Exhibits
19 4-A, 4-B, 4-C, and 5, could you continue with what you
20 were looking at in those items, please.

21 A Yes, ma'am. It carried a container that's labeled
22 that the bullet was inside. And the actual bullet
23 itself.

24 Q Mr. Kleckley, are State's Exhibits 4-A, 4-B, 4-C,
25 and 5 in substantially the same condition today as they

1 were when you originally received them from Dr. Presnell
2 at the autopsy, turned them over to Detective Baxter?

3 A Yes, ma'am.

4 MS. LEGETTE: At this time, your Honor, I would
5 offer for admission into evidence State's Exhibits 4-A,
6 4-B, 4-C, and 5.

7 THE COURT: Any objection?

8 MR. HUGHES: Yes, your Honor. I do have some
9 objections.

10 THE COURT: Counsel approach.

11 OFF-THE-RECORD BENCH CONFERENCE,

12 THE COURT, MS. LEGETTE, MR. THORNTON,

13 MR. HUGHES, MR. PLEXICO.

14 BACK ON THE RECORD.

15 THE COURT: Let the record reflect that we had a
16 conference at the Bench that, with permission of Defense
17 Counsel, Mr. Thornton will continue the examination on
18 direct for the State. Is that correct, Mr. Hughes?

19 MR. HUGHES: Yes, your Honor.

20 THE COURT: Mr. Thornton.

21 MR. THORNTON: Thank you. May I approach?

22 THE COURT: Proceed. I hadn't ruled on the
23 objection yet, so you understand that.

24 MR. THORNTON: Yes, sir.

25 THE COURT: Because of I believe it's premature at

1 this point.

2 MR. THORNTON: We'll withdraw the admission, Judge,
3 till after Dr. Presnell testifies. May I approach the
4 witness, your Honor.

5 THE COURT: You may approach.

6 ALBERT L. KLECKLEY, JR.

7 DIRECT EXAMINATION CONTINUED,

8 MR. THORNTON:

9 Q Mr. Kleckley, let me ask you just a preliminary
10 question while I'm -- I want to kind of get this
11 straight for the record, for the jury and the judge, and
12 everybody about the 4-A, 4-B, 4-C, and 5.

13 A Sure.

14 Q One of the things that a coroner does, or a deputy
15 coroner in your case, do you pronounce death?

16 A Yes, sir.

17 Q Did you pronounce death in this case as to Mr.
18 Woodrow Brantley?

19 A Yes, sir, I did.

20 Q So he was pronounced dead by you. Is that correct?

21 A At 12:30, yes, sir.

22 Q And was that in your capacity as deputy coroner for
23 Jasper County?

24 A Yes, it is.

25 Q Now, I'm going to ask you, you talked about 4-A.

1 4-A is actually a manila envelope. Is it not?

2 A Yes, sir.

3 Q Is that the envelope that all the other envelopes
4 and evidence were contained in?

5 A Yes, sir.

6 Q All right, sir. 4-B is actually the envelope that
7 was inside that envelope. Is that correct?

8 A Yes, sir.

9 Q 4-C is actually the bottle which was inside the
10 envelope, which was inside the other envelope. Is that
11 correct?

12 A That's correct.

13 Q And 5 is the bullet that came out of the pill case.
14 Is that correct?

15 A That's correct.

16 Q So the bullet, which is 5, came out of 4-C, which
17 came out of 4-B, which came out of 4-A. Would that be
18 accurate?

19 A Sure. Yes, sir.

20 Q All right, sir.

21 MR. THORNTON: Your Honor, at this time, we have
22 nothing further for Mr. Kleckley. We'll withdraw the
23 admission of this till after Dr. Presnell has testified.

24 THE COURT: Very well. Cross-examination, Mr.
25 Hughes.

1 MR. HUGHES: No questions, your Honor.

2 THE COURT: As to this witness, Solicitor?

3 MR. THORNTON: Ask he be excused.

4 THE COURT: Any objection, Mr. Hughes?

5 MR. HUGHES: Without objection, your Honor.

6 THE COURT: Mr. Kleckley, you may step down from
7 the witness stand. You are excused from the trial of
8 this case. You may leave the courtroom or remain with
9 us.

10 WITNESS KLECKLEY: Thank you, sir.

11 THE COURT: Call your next witness.

12 MS. LEGETTE: State calls Claude Danny Morris.

13 WITNESS SWORN.

14 THE COURT: Have a seat and make yourself
15 comfortable. Pull that chair up, adjust that microphone
16 to your height. It's going to amplify your voice, and I
17 want you to use it so that my jury, the people on the
18 end of the box, can hear. I want you to begin by
19 stating your full name and spelling your last name for
20 the court reporter.

21 WITNESS MORRIS: Claude D. Morris. M/o/r/r/i/s.

22 THE COURT: Very good. Your witness, Counsel.

23 MS. LEGETTE: Thank you, your Honor.

24 CLAUDE D. MORRIS

25 DIRECT EXAMINATION, MS. LEGETTE:

1 Q Mr. Morris, good morning.

2 A Good morning.

3 Q Sir, where are you from?

4 A Jasper County.

5 Q And Mr. Morris, where do you work?

6 A I drive a long-distance truck.

7 Q Now, have you ever had any other jobs?

8 A Oh, yes.

9 Q Can you tell us about those jobs, please.

10 A I've been a mechanic for 32 years with Collins

11 Construction Company.

12 Q Okay. Anything else?

13 A That's about it.

14 Q Were you ever in the military?

15 A Yes.

16 Q What branch of the military were you in?

17 A United States Marine Corps.

18 Q And have you ever served in any wars?

19 A I'm a veteran. Vietnam veteran.

20 Q And as part of that experience, did you ever deal

21 with handguns or guns?

22 A Oh, yes.

23 Q Now, Mr. Morris, did you know a man named Woodrow

24 Brantley?

25 A Yes.

1 Q Okay. And how long did you know Woodrow Brantley?

2 A Twenty, twenty-five years.

3 Q Was he a friend of yours?

4 A Yes.

5 Q Mr. Morris, you know a man named Brett Howard?

6 A Yes.

7 Q How long did you know Brett Howard?

8 A Few -- few times I met him out at the club.

9 Q And do you see him in court today?

10 A Yes, I do.

11 Q Can you point him out, please.

12 A Over there.

13 Q Let the record reflect the witness has indicated
14 Mr. Brett Howard.

15 Now, Mr. Morris, do you know a woman named Lorraine
16 Missy Hunt?

17 A Yes.

18 Q Okay. And how do you know her?

19 A From being with Mr. Brantley.

20 Q Okay. And Mr. Morris, at any point in your life
21 have you ever gone to the Spring Hill Club or Missy's
22 Lounge?

23 A Yes, a lot.

24 Q A lot? Okay. I need you to say yes or no. Okay?

25 A Yes.

1 Q So when you would go to Missy's Lounge, how often
2 would you go?

3 A Twice, three times a week.

4 Q Okay. Did you ever see Woody or Woodrow Brantley
5 at Missy's Lounge?

6 A Yes.

7 Q Would you ever see Brett Howard at Missy's Lounge?

8 A Yes.

9 Q So Mr. Morris, I want to turn your attention to
10 December 2009. Do you recall that month?

11 A Yes.

12 Q Okay. Do you recall specifically December the
13 11th, 2009?

14 A I don't recall the exact date.

15 Q Okay. Well, do you recall going to Missy's Lounge
16 in December of 2009?

17 A Oh, yeah.

18 Q And did anything unusual happen during that
19 particular month?

20 A Yes.

21 Q Okay. Can you explain what unusual happened that
22 particular day or month when you were there.

23 A Yes. I went to the club, and -- and was outside
24 talking to a friend on the back of my truck. Mr. Howard
25 come up there and said that he was security; peace

1 keeping; he was going to keep the peace and there was
2 going to be no trouble started out there. And asked
3 him, you know, *What you talking about*. He says, *I'm on*
4 *security*. And he pulls a weapon out and showed it to
5 us.

6 And said, *Is that thing loaded?* He says, *Yeah*.
7 And he breached it open, and it was loaded. And we told
8 him, *Man, put that thing up*. And he did. He said, *I*
9 *just wanted to show you all*.

10 Q Okay. So you say he pulled out a weapon. I'm
11 sorry. You need to say yes or no.

12 A Yes.

13 Q Can you describe this weapon for us.

14 A Yes. It was identical to a breech-loaded .38 Smith
15 & Wesson.

16 Q Okay. And would that be a revolver or a semi-
17 automatic?

18 A Revolver. Revolver.

19 Q Okay. So, and can you explain to us, you say it
20 was breached open. Describe what that means.

21 A That means that it opens like a single-barrel
22 shotgun, and you load it, instead of taking the cylinder
23 out or flipping it out, you breach it open and load it
24 and unload that way.

25 Q And so, you said it was a .38 revolver.

1 A Yes.

2 Q And what brand was it?

3 A Smith & Wesson, looked like to me.

4 Q It looked like a Smith & Wesson.

5 A Yes.

6 Q Okay. Tell us again, what did Mr. Howard say he
7 was out there doing?

8 A He was security. He was going to keep the peace.
9 He not going to let any -- no trouble get started; if
10 you have any problems, let me know. You know, stuff
11 like that.

12 Q Okay. So he had a gun in his possession.

13 A Yes.

14 Q All right. So what happened next?

15 A Well, we went inside the club. And I was sitting
16 there at the counter, drinking a beer. And Woody come
17 up, and I was talking to Woody. And he got in between
18 us, and is there any problem here, is there any problem
19 here. No, no, there's no problem here.

20 Q I'm sorry. If you don't mind, can you slow down.
21 So you said that you were at the bar talking to Woody.

22 A Yes.

23 Q Okay. And so, who comes up?

24 A Mr. Howard comes up there, and he gets between us
25 and asks if there's a problem. He pushed in there. And

1 said, *No, there's no problem, there's no problem.*

2 Q Were you and Mr. Woody having an argument?

3 A No.

4 Q So you were just talking.

5 A Yeah, we just talking. Friends.

6 Q Did that seem -- how did that seem to you?

7 A Weird kind of, for somebody to do that.

8 Q Okay. So you tell him there's no problem.

9 A No problem.

10 Q All right. So what happens next? Does he walk
11 away?

12 A Yeah, he goes away, and goes around in the club,
13 the last I seen of him anyway. And I was sitting at the
14 bar a little bit later on that night, and I heard a loud
15 noise. I turned around and looked back towards the pool
16 room. And Mr. Howard come walking out with a pistol in
17 his hand. And I seen some -- the legs lying on the
18 floor. And as he walked by the juke box, he put it back
19 in his back pocket or his belt. I don't remember which,
20 cause I didn't see it after that.

21 Three other gentlemen walked out of the pool hall
22 right behind him. He went in a straight line out the
23 door. They got out the door. Somebody fired off four
24 or five rounds. All the vehicles -- they shut the door,
25 and then -- then we -- all the vehicles, you hear all

1 them leave.

2 And I went back to check on the person lying on the
3 floor. And he wasn't breathing and wasn't moving. Seen
4 the blood coming from his head. So I touched him to see
5 if there was any reflect [sic], you know, reflect or
6 anything. And nothing. I reached down and I felt his
7 pulse. I didn't feel any. I turned around and walked
8 back up to the bar. Told Missy, *You need to call the*
9 *cops. I believe he's dead.*

10 Q At that point, did you know who that person lying
11 there was?

12 A Not at that point.

13 Q So Mr. Morris, let's go back a little bit. You
14 said that you were -- after the encounter with you and
15 Woody and Mr. Howard coming and tell you is anything
16 wrong, did you and Woody remain talking?

17 A For a few more minutes, and then he went off and
18 done something else. I don't know.

19 Q Okay. So at some point during the night, you said
20 you heard a loud sound.

21 A Yes.

22 Q Okay. What did it sound like to you? Can you tell
23 us what it sounded like.

24 A It was a loud bang like a weapon going off.

25 Q Okay. Were you able to tell what kind of weapon it

1 was or --

2 A It sounded -- it was loud like -- like a .38.

3 Q And how many sounds like that did you hear?

4 A I just heard the one.

5 Q All right. And you said you heard that sound, and
6 what did you next see?

7 A I turned -- I turned around from the bar, and I
8 looked, and I seen Mr. Howard walk out first with a
9 pistol in his hand. And as he was walking out of the
10 pool -- the pool room, he put it in his back pocket or
11 his belt. I don't know. I didn't see the weapon after
12 that. And he walked -- continued to walk out the door.
13 And the other three gentlemen followed him on out.

14 Q And when you saw him, were you able to see his
15 face, Mr. Howard?

16 A Yes, he had an astonished look, a bug-eyed look on
17 his face, I guess you'd call it. Wild look. Not -- not
18 his natural.

19 Q And when you say the other guys came out after him,
20 did you see their faces?

21 A Yes.

22 Q And how did they look?

23 A I didn't see nothing. It was a blank expression on
24 their face, though.

25 Q Now, you said that you saw Mr. Howard come out with

1 a wild look in his eyes. Describe how he was coming
2 out. Was he walking -- was he running? Was he walking?

3 A No, he was walking casual.

4 Q Begging the Court's indulgence.

5 Mr. Morris, once Mr. Howard walked out and you saw
6 the other guys come out after him, what happened? What
7 did you do next?

8 A After they shut the door, I walked back to check on
9 the person that was laying in the floor.

10 Q Now, at some point you heard other gunshots.

11 A Oh, yes, outside. After they walked out the door
12 they fired off several rounds out in the parking lot.
13 Somebody did. And then we shut the door and bolted it.

14 Q Okay. So what after -- okay. Make sure I got it
15 clear, now. Brett Howard had walked out of the club
16 after you'd already heard the loud sound.

17 A Um-hmm.

18 Q Or the sound that sounded like a gunshot.

19 A Yes. Yes.

20 Q Prior to your hearing the shots outside.

21 A Right. Yes.

22 Q So in other words, there were two sets of shots.

23 A Um-hmm. Yes. Yes.

24 Q Begging the Court's indulgence. Mr. Morris, I
25 don't have any further questions. Please answer any

1 questions for Mr. Hughes.

2 A Yes.

3 THE COURT: Cross-examination.

4 MR. HUGHES: Thank you, your Honor.

5 CLAUDE B. MORRIS

6 CROSS-EXAMINATION, MR. HUGHES:

7 Q Okay. Mr. Morris, you say you saw what looked like
8 a .38?

9 A Yes, it looked identical to the one that I have --
10 had been around before, yes.

11 Q Okay. And how many rounds does it hold? How many
12 rounds were in that pistol?

13 A I don't -- five or six.

14 Q Was the cylinder fully loaded?

15 A Yes, it was.

16 Q Okay. No blanks, no empty slots.

17 A I didn't look for -- for a spent shell, no.

18 Q No, but there were no empty slots.

19 A No empty slots.

20 Q And does a .38 make a unique sound?

21 A It's loud to me. I mean.

22 Q Okay. A loud.

23 A Yes. Yes.

24 Q It's loud, --

25 A It's loud.

1 Q -- but you can't tell a .38 from a .44 or a .45 or
2 a .40 or a .9 millimeter?

3 A Oh, yes. Yes. Yes. There's a difference in the
4 sound, yes.

5 Q Okay.

6 COURT REPORTER: One at a time.

7 THE COURT: Just a moment.

8 COURT REPORTER: One at a time.

9 THE COURT: Pardon?

10 COURT REPORTER: One at a time.

11 THE COURT: You have to talk and he has to talk.

12 A Oh, I'm sorry.

13 THE COURT: You can't talk while he's talking.

14 A I understand.

15 THE COURT: And Mr. Hughes, you got to let him
16 finish his answer before you ask another.

17 MR. HUGHES: My apologies, your Honor.

18 THE COURT: Proceed, one at a time.

19 BY MR. HUGHES:

20 Q You say when you saw Brett Howard leave he had an
21 astonished look on his face?

22 A Yes.

23 Q And the other three men that left also had an
24 astonished looks on their face? Shock, I believe.

25 A Yeah. Yes, yes, yes.

1 Q And all four walked out?

2 A Yes, in a line. One behind the other.

3 Q And how about the -- how many other people were in
4 the bar at the time?

5 A There was people standing all in the bar. I didn't
6 take a count. I -- you know, there was quite a few.

7 Q What did they do?

8 A Started jumping behind stuff.

9 Q And did anybody leave the bar behind these four
10 men?

11 A Not at that time, no.

12 Q Okay. What do you mean *not at that time*?

13 A When he walked -- when they walked out, somebody
14 fired a round, and we shut the door.

15 Q Okay.

16 A Yes.

17 Q And then what happened?

18 A Then I went back to check on the person lying on
19 the floor.

20 Q No, I meant in the bar itself, what happened? The
21 door is shut. How many people are in that bar?

22 A Probably eight, nine that I could -- that I could
23 see.

24 Q Okay. When you got there, how many people were
25 outside the bar?

1 A Five, six, seven, something like that. There was
2 -- there was different people.
3 Q About how many cars?
4 A Three.
5 Q Three cars out there?
6 A Um-hmm. That I seen.
7 Q Okay. What time did you get there?
8 A And my truck.
9 Q What time did you get there?
10 A It was daylight. I didn't check no time.
11 Q Okay. And you spent some time with Mr. Brantley?
12 A Yes.
13 Q Okay. Was he drinking?
14 A Yes.
15 Q Okay. What was he drinking?
16 A He had a Bud, Bud Light.
17 Q Was he doing anything else? I mean, were there any
18 -- was he smoking anything or doing anything else?
19 A I didn't see him.
20 Q And where were you when you heard the loud sound?
21 A Sitting at the bar.
22 Q Had you been drinking?
23 A Oh, yes.
24 Q What had you had that evening?
25 A Bud Light.

1 Q About approximately how many?

2 A At that time, nine.

3 Q And would you say that was an average nightly
4 intake for you?

5 A No.

6 Q Okay. More or less?

7 A More.

8 Q So you were feeling no pain at that time.

9 A I was -- was feeling that -- I wasn't feeling -- I
10 wasn't drunk drunk, but I wasn't, you know, I wasn't
11 feeling no pain, no.

12 Q Okay.

13 A No, now, it's not -- that's not that expression.

14 Q Yeah, I, you know, I wasn't saying you were
15 falling-down drunk, but you were -- you were
16 comfortable.

17 THE COURT: Ask the question, Counsel..

18 Q Okay. You were comfortable, correct?

19 A Yes.

20 Q Correct?

21 A Yes.

22 Q And was Mr. Brantley there when you got there, or
23 did he come in later?

24 A He come in behind me, that I noticed, when I
25 noticed him.

1 Q Okay. And he was drinking Bud Light, too?

2 A Not at that time. He had gotten one later when he
3 was standing up next to the bar.

4 Q Okay. How did he appear to you when he came in?

5 A He was acting like Woody, just jolly -- jolly old
6 Woody, cutting the fool.

7 Q Would you say that he was sober?

8 A I would think so.

9 Q And after you heard the loud noise, what did you do
10 exactly? You were at the bar, which way were you
11 facing?

12 A I was facing the -- the back of the bar. When I
13 heard the loud noise, I spun around on the bar stool and
14 looked straight back to the pool room.

15 Q Okay. And did you get up at that point, or did you
16 stay seated?

17 A I stay seated until that door was shut.

18 Q Why?

19 A I didn't see no reason to get up.

20 MR. HUGHES: No further questions, your Honor.

21 THE COURT: Re-direct.

22 MS. LEGETTE: Briefly, your Honor.

23 CLAUDE B. MORRIS

24 RE-DIRECT EXAMINATION, MS. LEGETTE:

25 Q Mr. Morris, was there any doubt as to what you saw

1 that particular night?

2 A No.

3 Q Mr. Morris, how many people did you see come out of
4 the pool room with a gun in their hand?

5 A One.

6 Q And who was that person?

7 A Mr. Howard over there.

8 Q Mr. Howard?

9 A (Nodded head.)

10 MS.. LEGETTE: I have no further questions, Mr.
11 Morris. Thank you. Answer any questions --

12 COURT REPORTER: I'm sorry. He shook his head.
13 She said *that guy over there*, and you -- what was your
14 answer?

15 A What was your question again?

16 COURT REPORTER: I'm so sorry. He didn't answer
17 the last question.

18 THE COURT: Hold on a second, Madam Court Reporter.
19 You didn't get it? You didn't hear it?

20 COURT REPORTER: He didn't answer. He just shook
21 his head.

22 THE COURT: Re-phrase your question and let me get
23 an answer for the record. She tells me she couldn't
24 hear an answer.

25 MS. LEGETTE: Yes, sir, your Honor.

1 BY MS. LEGETTE:

2 Q Mr. Morris, how many people did you see come out of
3 that pool room with a gun in their hand?

4 A One.

5 Q And who was that person?

6 A Mr. Howard.

7 Q Okay. Mr. Howard? Yes or no?

8 A Yes.

9 MS. LEGETTE: I have no further questions.

10 THE COURT: Re-cross limited to re-direct.

11 MR. HUGHES: Nothing else, your Honor.

12 THE COURT: As to this witness, Solicitor?

13 MS. LEGETTE: We ask that he be excused, your
14 Honor.

15 THE COURT: Any objection, Mr. Hughes?

16 MR. HUGHES: No objection, your Honor.

17 THE COURT: Mr. Morris, you may step down from the
18 witness stand. You are excused for the trial of this
19 case. You may leave the courtroom or remain in the
20 courtroom as you decide.

21 WITNESS MORRIS: All right, sir.

22 THE COURT: Call your next witness.

23 MS. LEGETTE: The State calls Mark Childs.

24 THE COURT: Come around and be sworn by the clerk,
25 please. Right here.

1 WITNESS SWORN.

2 THE COURT: Watch your step for me. Have a seat
3 and make yourself comfortable. Pull that chair up and
4 adjust that microphone. It's going to amplify your
5 voice, and I want you to speak up so everybody in the
6 courtroom can hear you. Please begin by stating your
7 full name and spelling your last name for the court
8 reporter.

9 WITNESS CHILDS: Mark Childs. C/h/i/l/d/s, last
10 name.

11 THE COURT: Your witness, Counsel.

12 MS. LEGETTE: Thank you, your Honor.

13 MARK CHILDS

14 DIRECT EXAMINATION, MS. LEGETTE:

15 Q Good afternoon -- or good morning -- good
16 afternoon, Mr. Childs.

17 A Good evening.

18 Q Mr. Childs, where are you from, sir?

19 A Ridgeland.

20 Q And Mr. Childs, where do you work?

21 A Cleland Construction.

22 Q And is that on Hilton Head Island?

23 A Cherry Point.

24 Q Cherry Point. Mr. Childs, did you know a man named
25 Woodrow Brantley?

1 A Yes, ma'am.

2 Q And did you -- what did you call him?

3 A Woodrow.

4 Q And how did you know Mr. Woodrow Brantley?

5 A We were just a long time. Just know him a long

6 time.

7 Q And were you all friends?

8 A Good friend.

9 Q Mr. Childs, have you ever gone to a place called

10 Missy's Lounge?

11 A Yes.

12 Q Mr. Childs, have you ever gone there and seen your

13 friend Woodrow Brantley there?

14 A Well, this particular night we been together there.

15 Q Okay. So let's talk about that night, December 11,

16 2009. Do you recall that night?

17 A Yes, ma'am.

18 Q Can you tell us about that night, please.

19 A Yes, ma'am. That particular night, we all having

20 fun with my friend birthday, which is Shawn. We was

21 like drinking few down, whatever, all was doing. Me and

22 him been in the bathroom. We come out the bathroom.

23 Q Mr. Childs, if you don't mind, if you can sit back

24 a little bit. I think you're a little too close to the

25 microphone.

1 THE COURT: Not that far, Mr. Childs. You don't
2 have to get right on top of it. Just speak up and it'll
3 amplify your voice.

4 A Okay. Okay. That particular night, me and him
5 come out the bathroom, and my man. And Woodrow said to
6 me, he be like, *Go ahead with your whatever*. And the
7 dude behind me tapped me on my shoulder. He said, *You*
8 *all right? I got your back*. I said, *No, you better*
9 *have your own daggone back*, like that.

10 And then he hold up his leg. He had a gun. So I
11 went back to the bar, and I told my buddy, I said, *Damn*
12 -- oh. I said, *He got a gun*.

13 And shortly after that, I went to -- like I say, I
14 went to the bar. And wasn't three minutes, I bet you
15 every bit of it, might have been five, but bam. Just
16 like that. For what, can't tell you. But that's how it
17 -- I mean, just as quick as possible.

18 Q And the man that tapped you on the shoulder, do you
19 see him in court today?

20 A Yeah.

21 Q Can you point him out?

22 A I'm pretty sure.

23 Q Can you point him out?

24 A Pretty sure. I want to say right there.

25 Q Are you sure that's him, the man that tapped you on

1 the shoulder?

2 A I'm -- I'm pretty sure.

3 Q Okay. But you don't know his name.

4 A Not like that. I don't know him like that.

5 Q But you recall that night he tapped you on the
6 shoulder.

7 A Promise you that.

8 Q Okay. So tell me about this. You and Mr.
9 Brantley, you all were having a conversation.

10 A Um-hmm.

11 THE COURT: You have to say yes or no.

12 A Yes.

13 THE COURT: Say yes or no. Don't say um-hmm.

14 A Yes.

15 Q What kind of conversation was it? Was it friendly?

16 A Just -- yeah. Just like we always do, cut the
17 fool. And that's all we doing.

18 Q Okay. So you all were not arguing.

19 A Never ever.

20 Q So describe for us, was it a loud conversation?

21 A Like what -- I mean, just like I be saying. He
22 said -- and I mean, if you -- I can't say what he said,
23 but be like, go ahead on with your punk, whatever, so
24 and so. No jiving, now. Don't get me wrong, now. Just
25 how we do.

- 1 Q So you all were joking.
- 2 A All the time.
- 3 Q So you were talking to Woody. You all were joking.
- 4 A Right.
- 5 Q And what happens next?
- 6 A Woody went to the pool room.
- 7 Q No, no. Before you get to the pool room. You all
- 8 were joking. You and Woody were joking, --
- 9 A Um-hmm.
- 10 Q -- and someone tapped you on the shoulder.
- 11 A I walked out of the bathroom.
- 12 Q And describe the tapping-on-your-shoulder
- 13 conversation.
- 14 A Tapped me on my shoulder like that. He said, *Man,*
- 15 *you all right?* Like I said, don't know him like that,
- 16 but he said, *You all right?* I said, like seriously,
- 17 doggone right, you know what I mean when I say that.
- 18 But and he hold up his leg, say, *I got your back.* I
- 19 said, *You ain't got my back.* I got you own -- you
- 20 better get your own back, like -- like that.
- 21 Q And what did you do next?
- 22 A What did I do next? I walked off, and Woody walked
- 23 in the pool room, and I walked up to the counter. And
- 24 just like I say, less than -- I gave you for no more
- 25 than five minutes, bang, just like that.

1 Then I walked in there, in the pool room, after
2 that, and I peeked to the door. Everybody started
3 running out the door. And everybody was running and
4 running. So you know, by being like that, something
5 happen like that, I run out the door. When I run out
6 the door, there was some more shooting went on. So I
7 run back in the club. Everybody been out the club.
8 Right in. And everybody been out, scattered out.

9 So I went back in. I locked the door, sit down.
10 Ain't nobody else coming in here. So I locked the door.

11 And when I -- went back behind the bar, me and
12 couple more people. And then, about maybe ten minutes
13 later, I recall two girls knocked to that door with
14 nothing -- only two I can remember. I don't know them.
15 Only somebody open that door.

16 Q Now, Mr. Childs, let's go back a little bit. You
17 said you heard that bang.

18 A Um-hmm. It was a gun shot.

19 Q Okay. It was a gun shot. Did you see anyone
20 leaving? Who did you see leaving anywhere?

21 A Everybody running. Everybody run out that pool
22 room.

23 Q Now, Mr. Childs, you said that you also went
24 outside, outside the club.

25 A I run out the door behind after all of them had

1 gone out there. And after the gun start shooting out
2 there, I run back in the inside.

3 Q So let me try to understand. Was there a first
4 shot in that club?

5 A Only one shot in that club.

6 Q And then, after everyone ran out of the club, and
7 you included, your heard other guns.

8 A Um-hmm. I ain't run right behind -- not right
9 behind them, but shortly afterward, yeah, I run out the
10 club. But it wasn't, like I said, but a pretty good
11 crowd of us in that pool room. So when they run out, I
12 say, *Oh, hell, I'm going, too.* Cause they say somebody
13 got shot. So I run out the door. When I run out the
14 door, there was shooting going on out there.

15 Q And let me ask you this. When the first shot
16 happened, where was Woody?

17 A In the pool room.

18 Q Begging the Court's indulgence.

19 Mr. Childs, you told us earlier that Mr. -- the
20 young man sitting over there that you pointed out, Brett
21 Howard, tapped you on the shoulder and told you he had
22 your back.

23 A Promise you.

24 Q What did you understand that to mean?

25 A I mean, -- I mean, he must have thought something.

1 I don't know what the deal was on that deal, really. I
2 don't know him like that. But that is exactly what he
3 done. And then he hold up his leg like this, and I saw
4 the gun. And I say, *Oh, shucks*. Going and talk -- talk
5 to Shawn. I say, *Shawn, you [sic] got a god -- goddang*
6 *old gun*.

7 Q So part of what you understood that to mean was
8 that he had a gun.

9 A What would it mean if he had a gun? I don't know.
10 It seem like there was going to be trouble to start with
11 if he looked at me.

12 MS. LEGETTE: Mr. Childs, I have no further
13 questions. Answer any questions from Mr. Hughes,
14 please.

15 THE COURT: Cross-examination.

16 MR. HUGHES: Thank you, your Honor.

17 MARK CHILDS

18 CROSS-EXAMINATION, MR. HUGHES:

19 Q Mr. Childs, how long had you been at Missy's Lounge
20 that day?

21 A I been there, I went there that evening about,
22 maybe just estimate about maybe 6:00 o'clock, maybe
23 later than that.

24 Q How much had you had to drink that night?

25 A Well, wasn't nothing much, cause I ain't had long

1 to get there.

2 Q What were you drinking?

3 A Budweiser.

4 Q Did you see Mr. Brantley drinking anything?

5 A I recall about -- might -- might have been a
6 Budweiser.

7 Q Did you see him do anything else? Smoke anything
8 or take anything?

9 A Huh-uh.

10 THE COURT: Got to say yes or no.

11 A No, sir.

12 Q And before you heard the noise, how many people
13 were in the bar, approximately?

14 A I don't know exactly, but I know by the -- bunch of
15 them back there's playing pool.

16 Q Okay. Would you say there are ten people in the
17 pool room?

18 A Might have been more than that, yeah.

19 Q More than that at the pool room.

20 A Yes, sir.

21 Q And how about the bar, was there --

22 A Nuh-uh, wasn't that many at the bar. I believe I
23 could count that on my hands, but anyway.

24 Q Okay. And after the noise, everybody ran out.

25 A Yeah.

1 Q And you followed.

2 A Yes, sir.

3 Q And somebody was firing gun shots outside, so you
4 ran back inside.

5 A Yes, sir.

6 Q And you locked the door.

7 A Locked the door.

8 Q And you stayed there until the cops showed up?

9 A I stayed there until I believe it was like 4:00 in
10 the morning. Something like that.

11 Q You gave --

12 A But you know what exactly what I did? I went home.
13 I couldn't get my key in the door, cause I was just
14 determined to see who was shot. And I walked back in
15 the pool room. By the time I come back, it was just a
16 split second, it wasn't five minutes either, cause my
17 house is right down the road from the club. So I run
18 back there. And then I -- Missy said, *Mark, it's Woody.*
19 And I could have fall down when she told me that. So I
20 went in to see. And yes, he was laying on his face.
21 And I stayed there till maybe 4:00 in the morning.

22 Q Okay. When did you leave the club?

23 A That's when I --

24 Q Right after the shots?

25 A Soon as they shot them, about, oh, might have been

1 five minutes after they shot them, if any.

2 Q And --

3 A But I didn't know it was him.

4 Q Okay. But you testified you went out of the club
5 after the shot was fired. Did you actually go back
6 inside after the shots, or did you go home?

7 A Soon as the shots been fired, I run back outside.
8 And then I went back -- right back in.

9 Q Okay.

10 A Right back in.

11 Q When did you leave after that?

12 A It might have been shortly after that I left. But
13 like I say, when I left, I went home and come right
14 back. I couldn't get my key in the door. So I
15 determined to see -- I mean, that just how it was.

16 Q But you were not there when law enforcement got
17 there?

18 A I was right there when all the police come.

19 Q Okay. But you had left and come back.

20 A Right down the road from there. I beat the police
21 back.

22 Q Okay. You didn't see anybody shoot Mr. Brantley.

23 A I did not see when he shot.

24 Q And ten or more people ran out of the pool room.

25 A Yeah.

1 MR. HUGHES: No further questions, your Honor.

2 THE COURT: Re-direct?

3 MS. LEGETTE: None, your Honor.

4 THE COURT: As to this witness?

5 MS. LEGETTE: We ask that he be excused, your
6 Honor.

7 THE COURT: Any objection, Mr. Hughes?

8 MR. HUGHES: No, your Honor.

9 THE COURT: All right, Mr. Childs, you may step
10 down and you are excused from the trial of this case.
11 You may remain with us or leave as you desire.

12 Call your next witness.

13 MR. THORNTON: The State calls Wallace Mike.

14 THE COURT: Mr. Mike, come on in and be sworn by
15 the clerk. Come around in the front of them. Left hand
16 on the Bible, raise your right hand.

17 WITNESS SWORN.

18 THE COURT: Watch your step right there and step
19 into my witness box. Have a seat. Make yourself
20 comfortable. Adjust that chair. Pull it up to the
21 microphone. It's going to amplify your voice. I want
22 you to speak so everybody in the courtroom can hear you.
23 Begin by stating your full name, please, and spelling
24 your last name for the court reporter.

25 WITNESS MIKE: Wallace Mike, Jr. M/i/k/e.

1 THE COURT: Your witness, Counsel.

2 MR. THORNTON: Thank you, your Honor.

3 WALLACE MIKE, JR.

4 DIRECT EXAMINATION, MR. THORNTON:

5 Q Mr. Mike, first of all, let me thank you for
6 coming. I know you just -- what time did you get off
7 work this morning?

8 A 4:30.

9 Q And came straight here for me, didn't you?

10 A Yeah.

11 Q All right. I'm going to try to get you out of here
12 just as quick as I can. So let's get right into it.

13 Do you know -- did you know a gentleman by the name
14 of Woodrow or Woody Brantley?

15 A Yes, sir.

16 Q And how did you know him, sir?

17 A Around the area.

18 Q Okay. Would you say you were a friend of his?

19 A Something like that.

20 Q Okay. On December the 11th of 2009, at Missy's
21 Lounge, did you see Woodrow Brantley or Woody Brantley?

22 A Yes, sir.

23 Q And did you and he have a conversation?

24 A Yes, sir.

25 Q All right. Now, was the conversation something

1 about your hair at the time?

2 A Yes, sir.

3 Q All right. And I'm obviously very jealous of
4 anybody that can grow hair that long. Did you have
5 dreads or short dreads or something at that time?

6 A No, sir.

7 Q Had you just cut your hair?

8 A Yes, sir.

9 Q And were you and Woody Brantley talking about that
10 you had just cut your hair?

11 A Yes, sir.

12 Q All right. Can you tell us what that conversation
13 was about.

14 A Me and my -- this other guy was shooting pool.
15 Woody say I'll make the shot. I missed the shot. He
16 like, you sorry you cut your hair and this and that.
17 Just joking around. And --

18 Q Okay. Had you cut your hair for a job interview?

19 A Yeah.

20 Q And had you told that to Woody?

21 A Yeah.

22 Q And was he kind of picking at you, giving you a
23 hard time about cutting it?

24 A Yeah.

25 Q Did he make some reference to --

1 THE COURT: You have to say yes or no and not shake
2 your head, for the court reporter. Repeat your last
3 question.

4 MR. THORNTON: Sorry, your Honor. I thought he'd
5 indicated yeah.

6 BY MR. THORNTON:

7 Q Did you -- did you --

8 A Yes.

9 Q Had you indicated that you cut your hair for the
10 job interview?

11 A Yes.

12 Q Was Woody giving you a hard time about that?

13 A Just joking around.

14 Q Right.

15 A Yeah.

16 Q Did he say something to the effect of, you know,
17 now you don't have your job or your hair cause you cut
18 it for the white man, or something to that effect?

19 A Yes, sir.

20 Q All right. Now, was there anything mean about what
21 he was saying?

22 A Naw. That's how he joke.

23 Q Okay. And you all were just playing?

24 A Yes, sir.

25 Q You said you were playing pool with somebody. Who

1 were you playing pool with?

2 A Jerrieme.

3 Q Jerrieme. And you know Jerrieme's last name?

4 A Washington.

5 Q Jerrieme Washington. All right. So you and
6 Jerrieme Washington are shooting pool, and you and Woody
7 are just cutting up, or he's picking on you a little
8 bit.

9 A Cutting up.

10 Q All right. And did you -- you didn't take any
11 offense to that and there wasn't any problem.

12 A No, sir.

13 Q Well, let me ask you something. Do you know the
14 gentleman that's seated over there at the table next to
15 Mr. Hughes?

16 A Yes, sir.

17 Q Who is that?

18 A Brett.

19 Q Brett. You know Brett's last name?

20 A I guess Howard, I guess.

21 Q Okay. Did you see Brett that night?

22 A Yes, sir.

23 Q What happened?

24 A Me and Woody been talking. He came and like,
25 You're racist, this and that. Woody like, I ain't

1 *racist; I love everybody; you know, how I joke around.*

2 He pull out the gun and, you know what I'm saying.

3 Q Who pulled out a gun?

4 A Brett.

5 Q All right. So Brett, according to your testimony,
6 Brett calls Woody a racist. Is that because he heard
7 the comment about the white man?

8 A Yes, sir.

9 Q Now, which had nothing to do with him, and he
10 wasn't even in the conversation, was he?

11 A No, sir.

12 Q So what happened after Brett pulled the gun out?

13 A He walked to the second pool table, pulled the gun
14 out, walked toward Woody clicking it.

15 Q Clicking it. I'm sorry to interrupt. Clicking it
16 meaning pulling the trigger?

17 A Yes, sir.

18 Q All right. And but it wasn't firing?

19 A No, sir.

20 Q Did he stop after the first time he pulled the
21 trigger --

22 A No, sir.

23 Q -- or did he keep pulling?

24 A He keep pulling.

25 Q What happened?

1 A He got closer to him, right at his face. Woody
2 like, *Why you doing this?* He like -- he didn't say
3 nothing. He grabbed Woody face and shot him in the
4 head.

5 Q So Brett Howard walked up, steadily pulling the
6 trigger of that gun, and walked up the man's face, and
7 put a bullet in his head. Is that what your testimony
8 is?

9 A Yes, sir.

10 Q Any doubt in your mind that the defendant, Brett
11 Howard, is the man that killed Woody Brantley?

12 A Yeah, he did it.

13 Q How close were you to Woodrow when Mr. Howard
14 executed him?

15 A About three to five foot.

16 Q You get a good look?

17 A Yeah. Yes, sir.

18 Q Woodrow Brantley do anything to justify Brett
19 Howard putting a bullet in his face? Did he kick on
20 him? Did he fight with him? Did he do anything to him?

21 A No, sir.

22 Q What happened after that? What happened after
23 Brett Howard put a bullet in an unarmed man's face?

24 A I don't know. I left.

25 Q Did you leave the premises after that? Did you

1 leave the club?

2 A Yes, sir.

3 MR. THORNTON: Your Honor, the Court's indulgence
4 for a moment, please.

5 Mr. Mike, thank you, sir. I have no further
6 questions for you. Please answer the questions that Mr.
7 Hughes has.

8 THE COURT: Cross-examination.

9 MR. HUGHES: Thank you, your Honor.

10 WALLACE MIKE, JR.

11 CROSS-EXAMINATION, MR. HUGHES:

12 Q Mr. Mike, when you say Brett Howard pointed a gun
13 at Woodrow Brantley, what did Mr. Brantley do?

14 A He asked him, *Why you doing this?*

15 Q When Brett Howard, according to you, pulled the
16 trigger and it went click, what did Mr. Brantley do?

17 A He standing there. He was still standing there.

18 Q Okay.

19 THE COURT: You have to speak up a little bit for
20 me.

21 A Oh. He was still standing there.

22 Q And you say Mr. Howard pulled the trigger three or
23 four times before the gun fired?

24 A Yes, sir.

25 Q What were you doing when Mr., according to you, Mr.

1 Howard pulled the trigger three or four times?

2 A Just standing there. What I supposed to do?

3 Q So someone -- you say someone's pointing a gun and
4 pulling the trigger and you just stand there.

5 A What I supposed to do?

6 Q Please answer the question.

7 A Yes, I just stand there.

8 Q Okay. How long had you been at Missy's Lounge that
9 night?

10 A Probably about a hour, hour and a half.

11 Q Had you had anything to drink?

12 A Yeah, probably a beer or two.

13 Q Did you do anything else?

14 A I don't do drugs.

15 Q Now, when did you tell the sheriff's department
16 this story?

17 A When they came to serve with the papers.

18 Q And about how long ago was that?

19 A Probably about two months ago, around in there.

20 Q So you just suddenly told this story after two
21 years and four months, according to you?

22 A Yes.

23 Q And you say law enforcement came to serve you some
24 papers?

25 A Yes.

1 Q And then you suddenly decide to tell them what you
2 say happened that night?

3 A Yes, sir.

4 Q And you say you just stood there while someone
5 clicked a gun four or five times. Correct?

6 A Yes. You just asked me that question.

7 Q Okay. Well, I just want to make sure the jury
8 understands it, sir.

9 A All right.

10 Q And then you ran out of the bar or you walked out?

11 A Ran.

12 Q Who was in the lead running out of the bar?

13 A I was the first one out the door.

14 Q You were the first one out. Anybody talk to you on
15 the way out?

16 A Well, I was running, and it's like talking to me?

17 Q Yes, did anybody say anything to you as you were
18 leaving?

19 A I doubt it.

20 Q And what did you do when you got out?

21 A Went home.

22 Q How did you go home?

23 A I drove.

24 Q Okay. Where was your car parked?

25 A On the side of the club.

- 1 Q Okay. How many cars were in the parking lot?
- 2 A I can't remember. It wasn't that many, though.
- 3 Q Okay. About how many people were in the -- at the
- 4 bar when you got in there that night?
- 5 A What you mean at the bar?
- 6 Q I mean --
- 7 A Like sitting at the bar to the pool room?
- 8 Q Okay. In the pool room, how many people were in
- 9 the pool room?
- 10 A There's a couple people.
- 11 Q Five? Ten?
- 12 A About five, six, seven, something like that.
- 13 Q And at the time you say the shooting occurred, how
- 14 many people were in there?
- 15 A About the same bunch.
- 16 Q Okay. And all of them ran out of pool room.
- 17 A I was the first one that left. I don't know what
- 18 they did.
- 19 Q Okay. Outside of the pool room, but inside the
- 20 club, about how many people were there?
- 21 A Altogether?
- 22 Q Right.
- 23 A Probably about 30 people, I guess.
- 24 Q And you don't know what happened to them because
- 25 you were the first one out the door.

1 A I just told you that, right?

2 Q I'm just confirming that with you, sir. Okay.

3 Were you the first one out the door?

4 A Yes, I was.

5 Q Thank you. And you ran out of the club, correct?

6 A Yes, I did.

7 Q And according to you, Brett Howard pulled the
8 trigger three to five times before the gun went off,
9 correct?

10 A Yes, he did.

11 MR. HUGHES: No further questions, your Honor.

12 THE COURT: Re-direct.

13 MR. THORNTON: Yes, sir.

14 WALLACE MIKE, JR.

15 RE-DIRECT EXAMINATION, MR. THORNTON:

16 Q Just so we're clear on this, Mr. Mike, and if I
17 asked you the question in the wrong way before, let me
18 clarify it for you. When Brett Howard executed Woodrow
19 Brantley and he pulled the trigger three or four times,
20 did he pull the trigger and stand and wait and talk to
21 somebody, wait five or ten minutes, and then pull it
22 again?

23 A No. He was walking up on him pulling it.

24 Q So this isn't like it just took ten minutes.

25 A Right.

1 Q All right. Was it a little bit shocking that
2 somebody was pulling a gun out for no reason to kill
3 somebody else?

4 A Yes, sir.

5 Q When you was running out the club, were you trying
6 to count who was there, or were you trying to get out of
7 the club?

8 A Yeah, I was trying to get out.

9 Q All right. These papers you mentioned earlier, you
10 said, and Mr. Hughes has apparently made a big deal
11 about the fact that you didn't tell the story for two
12 years. Did law enforcement ever come and talk to you?

13 A No, sir.

14 Q The papers that you talked about, were those
15 subpoenas to come to my office and talk to my staff, as
16 well as law enforcement?

17 A Yes, sir.

18 Q Did you come immediately after getting that
19 subpoena?

20 A Yes, sir.

21 Q Is that the same story you told me?

22 A Yes, sir.

23 Q And told my staff?

24 A Yes.

25 Q And told those officers?

1 A Yes, sir.

2 MR. THORNTON: No further questions, your Honor.

3 THE COURT: Re-cross limited to the re-direct.

4 MR. HUGHES: I have no more questions.

5 THE COURT: As to this witness, Solicitor?

6 MR. THORNTON: Ask he be excused.

7 THE COURT: Any objection, Mr. Hughes?

8 MR. HUGHES: None whatsoever, your Honor.

9 THE COURT: Mr. Mike, you may step down. You're
10 excused from the trial of this case. You may leave the
11 courtroom at this time.

12 Call your next witness.

13 MR. THORNTON: Jerrieme Washington.

14 THE COURT: Mr. Washington, come around and be
15 sworn by the clerk. Right over here.

16 WITNESS SWORN.

17 THE COURT: Watch your step. Have a seat and make
18 yourself comfortable. Pull that chair up and adjust
19 that microphone. You don't have to get right on top of
20 it, but you got to get close enough. Don't back away
21 from it. Get up to it a little closer. It's going to
22 amplify your voice, make it louder. I want you to speak
23 up so everybody can hear you. State your full name and
24 spell your last name for the court reporter.

25 WITNESS WASHINGTON: Jerrieme Germane Washington.

1 W/a/s/h/I/n/g/t/o/n.

2 THE COURT: Jerrieme, spell your first name for me.

3 WITNESS WASHINGTON: J/e/r/r/I/e/m/e.

4 THE COURT: Very well. Your witness, Counsel.

5 JERRIEME GERMANE WASHINGTON

6 DIRECT EXAMINATION, MR. THORNTON:

7 Q Mr. Washington, thank you, sir. Let me ask you a
8 couple of questions. Did you know a man named Woodrow
9 or Woody Brantley?

10 A Yes, sir.

11 Q All right. And were you friends or co-workers?
12 How did you know him?

13 A He was -- he was very good friends with my mom, and
14 -- and Ridgeland ain't but so big, so, you know.

15 Q Okay. So he's somebody you've known for a while?
16 Would it be fair to say that?

17 A Yeah.

18 Q Do you know the man seated over there at Defense
19 table next to Mr. Hughes, the defendant?

20 A Yes, sir.

21 Q Who is that?

22 A Brett Howard, sir.

23 Q Have you ever been out to Missy's Lounge?

24 A Yes, sir.

25 Q It used to be, I guess, Missy's Lounge.

1 A Yes, sir.

2 Q All right. And on December the 11th of 2009, were
3 you out at Missy's Lounge?

4 A Yes, sir.

5 Q Was Woodrow there with you? Or let me rephrase
6 that. Not with you, but was Woodrow there at the same
7 time you were?

8 A No, sir.

9 Q Okay. Did Woodrow come up at some time during the
10 evening?

11 A During that night, yeah.

12 Q That's what I'm asking you. Were you both in the
13 club at some time, at the same time, on December 11th?

14 A Yes, sir. Yes, sir.

15 Q All right. All right. Where were you at in the
16 club?

17 A In the pool room.

18 Q Okay. Did, at some point, Woodrow, was he in the
19 pool room, too?

20 A Yes, sir.

21 Q Were you shooting pool with anybody in particular?

22 A Yes, sir.

23 Q And who were you shooting pool with?

24 A Wallace Mike.

25 Q Wallace Mike, is that the gentleman that just left

1 the courtroom as you were coming in?

2 A Yes, sir.

3 Q Jerrieme, when you were shooting pool with Wallace
4 Mike, did you overhear any conversation between Wallace
5 Mike and Woody Brantley or Woodrow Brantley?

6 A Yes, sir.

7 Q All right. And without getting into specifics
8 about what those two said, were they teasing and picking
9 at one another?

10 A Yes, sir.

11 Q Okay. Now, was there any problem between the two
12 of them? Were they mad at each other? Were they
13 fighting or anything like that?

14 A No, sir. No, sir. Just -- just clowning around.

15 Q All right. At some point during that clowning
16 around, did Brett Howard come in the room?

17 A Yes, sir.

18 Q What happened when he came in the room?

19 A He came in the room and just walked up in the
20 conversation and was like, *You're a racist M.F.*, you
21 know, and --

22 Q All right. Slow down for a second. Brett Howard,
23 who did he say that to?

24 A Woody.

25 Q All right. Woody or Woodrow Brantley, --

1 A Yes, sir.

2 Q -- he said you're a racist and he used an expletive
3 that could be initialed with MF?

4 A Yes, sir.

5 Q All right. What happened after that?

6 A And Woody was like, *Man, I'm talking to this man*
7 *about this, you know what I'm saying; I don't know what*
8 *you talking about; ain't no racist going on. He was*
9 *like, Like I say, man, you racist, man.*

10 And then he went behind the second pool table, then

11 --

12 Q All right. Who went behind the second pool table?

13 A Brett.

14 Q Brett went behind the second pool table. What
15 happened after that?

16 A When he came up, he came up with a gun.

17 Q All right. So Brett came up with a gun.

18 A Yes.

19 Q Now, at this point, had anybody threatened Brett
20 Howard or even been talking to Brett Howard until he
21 interjected himself in this other conversation?

22 A No, sir.

23 Q All right. What happened after Brett Howard comes
24 up with his gun?

25 A He pointed to Woody, and Woody was like, *Man, a*

1 *gun, I ain't scared of no gun, man; ain't nothing*
2 *necessary, you know. And he pulled the trigger, and you*
3 *know what I'm saying, the gun clicked and --*

4 Q All right. Let me ask you. He pulled the trigger
5 and the gun clicked, but it didn't fire. Is that right?

6 A Right.

7 Q What happened after that?

8 A He push him down and pulled the trigger again, and
9 the gun didn't fire.

10 Q Okay. What happened after that?

11 A Then he put the gun back to his head, and pow.

12 Q So Brett Howard, after trying to shoot the man,
13 unarmed, two or three times, with the gun clicking, then
14 sticks it to his head and pulls the trigger, and it did
15 go off?

16 A Yes, sir.

17 Q How close were you when he executed Woodrow
18 Brantley?

19 A About maybe two, three feet.

20 Q And did all this occur fairly quickly?

21 A Yes, sir. Stunning.

22 Q You all weren't standing around, and this wasn't a
23 click, and then you all had a conversation, click?

24 A No. No.

25 Q What happened after Brett Howard put a bullet in

1 the face of Woodrow Brantley?

2 A He politely walked out the pool room.

3 Q Walked out the pool room.

4 A Yes, sir.

5 Q Did the rest of you get out of the club at that
6 time?

7 A Yes, sir. I was almost like right behind him, you
8 know.

9 Q Court's indulgence, your Honor.

10 Did you get a look at the gun?

11 A Not really. But I know it was a revolver. Looked
12 like a .38.

13 Q Okay. You know enough about it to know it looked
14 like a revolver.

15 A Yes.

16 Q All right. And you know the difference between a
17 revolver and, say, a semi-automatic like a Glock.

18 A Yes.

19 Q Okay. So there's no question in your mind he had a
20 revolver.

21 A Yes.

22 Q And I'm sorry, when I say he, the defendant, Brett
23 Howard.

24 A Yes, sir.

25 Q Is that the gun that he shot Woodrow Brantley in.

1 the face with?

2 A Yes, sir.

3 Q After you left the club, what did you do?

4 A I hoped in the truck with Wallace, and we left.

5 Q Had you seen Brett Howard at all earlier before he

6 --

7 A Yes.

8 Q -- shot Woodrow Brantley to death?

9 A Yes.

10 Q And how was he acting earlier?

11 A Just normal, like he always do. I mean, just
12 quiet.

13 Q Anything you that can think of to provoke this kind
14 of violence?

15 A No.

16 Q Had Woodrow bothered him at all that you saw that
17 night?

18 A No.

19 Q Had you or Mr. Mike bothered him at all that night?

20 A No.

21 Q Any doubt in your mind as to who killed Woodrow
22 Brantley December the 11th, 2009? Any doubt in your
23 mind at all?

24 A No.

25 Q Who is it?

1 A Brett Howard.

2 MR. THORNTON: I have no further questions. Please
3 answer any questions Mr. Hughes has.

4 THE COURT: Cross-examination. .

5 JERRIEME GERMANE WASHINGTON

6 CROSS-EXAMINATION, MR. HUGHES:

7 Q When you say you saw Brett Howard come into the
8 pool room, did he look mad?

9 A He looked like he look now.

10 Q He looked normal.

11 A Yeah.

12 Q And when you say he pulled the gun, did he look
13 mad?

14 A I ain't really look at his face when he pulled the
15 gun. I mean, he just pulled the gun. I mean, of
16 course, he was mad, you know. I mean, he got a gun
17 pulled -- pulled a gun.

18 Q No, no. Did he look mad?

19 A I mean, he had a angry look on his face, you know
20 what I'm saying. I mean, you got a gun, you trying to
21 shoot somebody, you ain't going to look normal.

22 Q You didn't say -- you just said you didn't see his
23 face when I asked that.

24 A No.

25 Q You didn't see his face?

1 A Not really, not like that.

2 Q Okay. Did he say anything?

3 A No. Besides talking to Woody.

4 Q Okay. And when you say the gun clicked, did Mr.

5 Brantley move toward or away from Mr. Howard?

6 A No, he just stand right there.

7 Q Didn't hold his hands up or anything.

8 A No, I mean, he was trying to talk to the man like

9 chill out, you know what I'm saying? What you doing,

10 man. You know. Very defenseless.

11 Q And about how close would you say he was when the

12 gun went off?

13 A About two or three -- how -- how close I was?

14 Q How close was Mr. Howard to Mr. Brantley when you

15 said the gun went off?

16 A Like -- like point-blank range. You know, like I'm

17 close to this mic right now.

18 Q And then you say after the gun shot happened, what

19 did Mr. Howard do?

20 A Walked out the pool room.

21 Q And what did you do?

22 A Run out the pool room.

23 Q Okay. Who was the first one out the door?

24 A Brett was the first one out the door, cause it

25 happened right there in front of the doorway.

1 Q Okay. How about the front door?

2 A There's no front door.

3 Q Okay.

4 A In the pool room.

5 Q Side door, then. Which door did you leave?

6 A It's not but one door.

7 Q Okay. One door. And Mr. Howard was the one out of
8 the building first.

9 A Yes.

10 Q And then you got in the truck with who?

11 A Wallace Mike.

12 Q And you all went where?

13 A Home.

14 Q How much you had to drink that night?

15 A I had maybe about two, three beers.

16 Q What type of beer?

17 A Bud Light.

18 Q Okay. Did you smoke anything or take any drugs?

19 A No, sir.

20 MR. HUGHES: No further question, your Honor.

21 THE COURT: Re-direct.

22 MR. THORNTON: None, your Honor. Ask this witness
23 be excused.

24 THE COURT: Any objection to this witness being
25 excused?

1 MR. HUGHES: No, your Honor.

2 THE COURT: Mr. Washington, you may step down from
3 the witness stand. You're excused from the trial of
4 this case. You may leave or remain with us as you
5 desire.

6 Counsel, approach.

7 OFF-THE-RECORD BENCH CONFERENCE,

8 THE COURT, MR. THORNTON, MS. LEGETTE,

9 MR. HUGHES, MR. PLEXICO.

10 CLERK MARGARET BOSTIC JOINED THE

11 BENCH CONFERENCE.

12 BACK ON THE RECORD.

13 BY THE COURT:

14 THE COURT: All right. Ladies and gentlemen of my
15 jury panel, we're going to stop at this point for your
16 lunch break. I'm going to serve you a delicious -- or
17 the county's going to serve you a delicious lunch at
18 Jasper Porch.

19 Here's what I'm going to ask you to do. I'm going
20 to ask you to drive -- we're going to stop from now
21 until 2:30 to give everybody enough time. I asked you
22 to -- does everyone know where Jasper Porch is? Anyone
23 not know? Just raise your hand. Got one, two. All
24 right.

25 I'll provide transportation for those of you who

1 don't know, but it's -- Margaret, I hope I'm telling
2 them right, now. If you head toward I-95, there's a
3 road just prior to I-95 that you turn left on, and I
4 don't know the name of it, that takes you to Jasper
5 Porch.

6 MADAM CLERK: Everyone know where McDonald's is in
7 Ridgeland? That highway that --- just before you get to
8 McDonald's. It's the Texaco on the left-hand side.
9 Comfort Inn. You'll see Texaco, Comfort Inn, Dairy
10 Queen. It sits behind to the left of the Comfort Inn.

11 THE COURT: Yeah. It's behind. It's kindly up to
12 the left of the Comfort Inn, but it's off the street.
13 In other words, if you're driving straight toward the
14 interstate, you're going to make a left. You're going
15 to actually have to stop at a stop, sign, aren't you, as
16 you go through there?

17 MADAM CLERK: Yes, sir.

18 THE COURT: There's one cross -- after you make
19 a left there at McDonald's, you're going to -- it's
20 just --

21 MADAM CLERK: You don't go quite that far. Burgher
22 King.

23 THE COURT: Burgher King. All right. All right.
24 I see plenty of people on the jury. I want to make
25 sure, cause I've got deputies ready. I'm going to swear

1 them. If anybody feels uncomfortable in driving their
2 own car and bringing it back, I will provide
3 transportation. Otherwise, I'm going to have the
4 deputies meet all of you. I have a private room for you
5 there. And I, of course, don't want you to talk to
6 anybody at all about the case. And that's why I'm going
7 to provide a private room there. but if anybody's
8 uncomfortable about transportation, they can ride with
9 the deputy. Would anybody like for me to ride with the
10 deputy, or they feel like they can get there on their
11 own? Please tell me.

12 JUROR: I don't have a ride.

13 THE COURT: You don't have any transportation. All
14 right. You going to take him with you?

15 JUROR: Yes. Yes.

16 THE COURT: Okay. The foreman's going to take care
17 of you, but the deputy's will be glad to ride. All
18 right. Margaret, bring them up and swear my deputies.

19 MADAM CLERK: Yes, sir.

20 DEPUTIES ALEX RUIZ, CLARENCE

21 LOWERY AND BAILIFF JO BOYLES SWORN.

22 THE COURT: All right. Now, Jo Boyles and my
23 deputies are going to be at Jasper Porch. They going to
24 be waiting on you in the front. She'll be there, so
25 that you'll see their faces and know who they are. I'm

1 going to stop at this point. I'm going to ask you to go
2 to your private vehicles.

3 Mr. Foreman, you take my alternate juror with you.
4 And I want you to proceed directly from here to Jasper
5 Porch. They'll meet you there. Okay? And then you'll
6 have lunch. Then come back, park your cars, and come
7 back to your jury room. When I'm assured that all of
8 you have had sufficient time to get lunch and back to
9 your jury room, then we'll start back, which I estimate
10 to be at 2:30.

11 Now, during this lunch break, do not discuss this
12 case amongst yourselves at lunch or with anybody else.
13 You have not heard all the evidence in this case, and it
14 would be improper for you to discuss the case.

15 Everybody understand what to do?

16 RESPONSES FROM JURORS.

17 THE COURT: I hope you have a delightful lunch.
18 I'll see you back here after lunch. You may retire at
19 this time. Everyone else remain seated while the jury's
20 leaving. My deputies and Jo, you all go with the jury.

21 All right. Counsel, I want you and your clients, I
22 want everybody to get lunch. I assume that with that
23 taken care of, there's nothing else we need to put on
24 the record outside the presence of the jury from the
25 State?

1 MR. THORNTON: Nothing from the State, Judge.

2 THE COURT: From the defendant?

3 MR. HUGHES: No, your Honor.

4 THE COURT: All right. We'll start back at
5 approximately 2:30 this afternoon. Court is now in
6 recess for lunch until 2:30.

7 OFF THE RECORD 12:55 P.M.

8 BACK ON THE RECORD 2:30 P.M.

9 BY THE COURT:

10 THE COURT: Thank you. Please be seated. All
11 right. Looks like we have everybody now. Is the State
12 ready to proceed?

13 MR. THORNTON: State's ready, your Honor.

14 THE COURT: Is the Defense ready to proceed?

15 MR. HUGHES: Yes, your Honor.

16 THE COURT: Do I have all the jury, Jo?

17 BAILIFF: Yes, sir.

18 THE COURT: Thank you for taking good care of them.

19 BAILIFF: Yes, sir.

20 THE COURT: Would you bring us a jury, please.

21 BAILIFF: Yes, sir.

22 JURORS ENTER COURTROOM 2:31 P.M.

23 THE COURT: All right, Mr. Foreman, ladies and
24 gentlemen of the jury, I hope everybody had a pleasant
25 lunch. We'll now continue with the testimony in the

1 trial of this case.

2 Solicitor, you may call your next witness.

3 MR. THORNTON: Thank you, your Honor. Kyron Shaw.

4 THE COURT: Come around and be sworn by the clerk,
5 please. Right here.

6 WITNESS SWORN.

7 THE COURT: Right over here. Right through the
8 gate. Watch your step. Have a seat for me in the
9 chair. Pull that chair up and adjust that microphone to
10 your height. I want you to speak into the mic. You
11 need some help? Give him some assistance right there to
12 pull that chair what you need. Pull it down just a
13 little bit, Jo. There we go.

14 All right. Now, state your full name and spell
15 your last name for the court reporter, please.

16 WITNESS SHAW: Kyron Shaw. S/h/a/w/.

17 THE COURT: Slow down just a little bit. Speak
18 into the microphone so everybody can hear you. You
19 understand?

20 Your witness, Counsel.

21 MR. THORNTON: Thank you.

22 KYRON SHAW

23 DIRECT EXAMINATION, MR. THORNTON:

24 Q Mr. Shaw, based on your clothes you got on, are you
25 currently incarcerated?

1 A Yes.

2 Q All right. And you've been convicted numerous
3 occasions for drug offenses. Is that what you're
4 currently in jail for, on probation revocation?

5 A Yes.

6 Q Mr. Shaw, were you in jail or were you out in
7 December, December the 11th of 2009?

8 A I was out.

9 Q You were out? Were you at Missy's Lounge?

10 A Yes.

11 Q On that date?

12 A Yes.

13 Q Okay. Do you remember anything unusual happening
14 on that date?

15 A I don't quite remember. I know I gave -- I talk to
16 an officer when he arrest me over there.

17 Q Okay. You talked to an officer. Did you talk to a
18 Detective Baxter?

19 A Yes: Yes.

20 Q All right. Is Detective Baxter this gentleman
21 sitting right next to me?

22 A Yeah.

23 Q All right. What did you tell him when he
24 interviewed you about what happened on December the
25 11th, 2009?

1 A I don't quite remember.

2 Q You don't remember?

3 MR. THORNTON: Your Honor, at this time I ask the
4 Court's permission to proceed with leading questions
5 under Rule 613(b) with a prior inconsistent statement.

6 THE COURT: Any objection, Counsel?

7 MR. HUGHES: No, your Honor.

8 THE COURT: So ordered. You may proceed.

9 MR. THORNTON: Thank you, your Honor. Your Honor,
10 may I approach the witness?

11 THE COURT: You may.

12 MR. THORNTON: Sorry for the delay, Judge.

13 BY MR. THORNTON:

14 Q Mr. Shaw, I'm going to hand you what's been marked
15 for identification as State's Exhibit Number 7. Do you
16 recognize that document?

17 A Yeah.

18 Q All right. What is it? Let me rephrase it since
19 your Honor's permission to lead under 613(b).

20 THE COURT: You can lead under 613.

21 MR. THORNTON: Thank you, Judge.

22 BY MR. THORNTON:

23 Q Mr. Shaw, that's a waiver of rights form you signed
24 when you talked to Detective Baxter. Isn't that
25 correct?

1 A Yeah.

2 Q And that's what you signed before you gave a
3 statement. Is that correct?

4 A Yeah.

5 Q All right. Did you give a statement --

6 MR. THORNTON: May I approach, your Honor?

7 THE COURT: You may.

8 BY MR. THORNTON:

9 Q Did you, in fact, Mr. Shaw, give a statement to
10 Detective Baxter on December the 19th of 2009, at about
11 11:40 in the evening, at which point you indicated that
12 Brett Howard murdered Woodrow Brantley while you were at
13 the club? Isn't that what you told him?

14 A I don't quite remember the statement I gave him.

15 MR. THORNTON: Your Honor, I'd ask under the Rule
16 to call Detective Baxter to use him for the extrinsic
17 evidence. He has failed to acknowledge his statement.

18 THE COURT: Any objection to extrinsic evidence
19 being admitted in connection with this witness?

20 MR. HUGHES: No, your Honor.

21 THE COURT: All right. Step down. Remain in the
22 courtroom with the officers. Detective, come around and
23 be sworn by the clerk.

24 MR. THORNTON: Thank you, your Honor.

25 THE COURT: Mr. Hughes, I'll, of course, give you

1 cross-examination opportunity.

2 WITNESS SWORN.

3 THE COURT: State your full name and spell your
4 last name for the court reporter for me, please, sir.

5 WITNESS BAXTER: Eric Baxter. B/a/x/t/e/r.

6 THE COURT: Your witness, Counsel.

7 MR. THORNTON: Thank you, your Honor. May I
8 approach?

9 THE COURT: You may.

10 DETECTIVE ERIC BAXTER

11 DIRECT EXAMINATION, MR. THORNTON:

12 Q Detective Baxter, I'm going to hand you what's been
13 marked for identification as State's Exhibit Number 7.
14 Can you identify that document?

15 A It's a Jasper County Sheriff's Office *Miranda*
16 rights form, along with a waiver of rights.

17 Q And is that *Miranda* rights form for anybody in
18 particular?

19 A This is for Kyron Shaw.

20 Q And did you administer that *Miranda* rights form
21 before talking to Mr. Shaw?

22 A Yes, sir, I did.

23 Q And did you, in fact, talk to him about the events
24 that we're here about today, the murder of one Woodrow
25 Brantley, December the 11th, 2009?

1 A Yes, sir, I did.

2 Q Did Mr. Shaw agree to waive his rights and talk to
3 you?

4 A He did.

5 Q What'd he tell you?

6 A Mr. Shaw advised me that he was at Missy's Lounge
7 that evening. He was in the pool room and actually
8 witnessed Mr. Brantley get shot by Mr. Howard.

9 MR. THORNTON: I don't have anything further,
10 Judge. Thank you very much.

11 THE COURT: Cross-examination, Mr. Hughes.

12 MR. HUGHES: No questions, your Honor.

13 THE COURT: Very well. You may step down,
14 Detective.

15 WITNESS BAXTER: Thank you, sir.

16 THE COURT: Bring him back up to the witness stand,
17 Solicitor, if you so desire.

18 MR. THORNTON: I have no further questions, your
19 Honor. I will ask that State's Exhibit Number 7 be
20 moved into evidence.

21 THE COURT: Any objection as to State's 7, Mr.
22 Hughes?

23 MR. HUGHES: No, your Honor.

24 THE COURT: All right. Hand it to my court
25 reporter if you would. Has it been marked?

1 BAILIFF: Yes, your Honor.

2 THE COURT: Ladies and gentlemen, State's Exhibit
3 Number 7 will be admitted into the trial of this case
4 into evidence without objection. State's 7 is now in
5 evidence. You may publish to the jury if you so desire.

6 DOCUMENT IDENTIFIED AS JASPER
7 COUNTY SHERIFF'S OFFICE MIRANDA
8 RIGHTS FORM AND WAIVER OF RIGHTS,
9 MARKED STATE'S EXHIBIT NUMBER 7,
10 ADMITTED AS EVIDENCE.

11 MR. THORNTON: No need at this time, your Honor. I
12 will do that later in closing.

13 THE COURT: As to the Witness Shaw?

14 MR. THORNTON: I have nothing further. I'll leave
15 that to Mr. Hughes.

16 THE COURT: Mr. Hughes. Well, let me ask this,
17 Solicitor. You called him. As to this witness, are you
18 willing to release him?

19 MR. THORNTON: Yes, sir. I have no further
20 question.

21 THE COURT: Any objection. Do you want to hold him
22 here for any reason, Mr. Hughes?

23 MR. HUGHES: Your Honor, I don't know if I want to
24 hold him. I'd like to have an opportunity to cross him.

25 THE COURT: Very well. Mr. Shaw, come back to the

1 witness stand. You're still under oath. Come right
2 around here.

3 Adjust that microphone for me again.

4 BAILIFF: Okay.

5 THE COURT: All right, Mr. Shaw, you're still under
6 oath. Cross-examination by the defendant. Mr. Hughes,
7 you may proceed.

8 KYRON SHAW

9 CROSS-EXAMINATION, MR. HUGHES:

10 Q Do you remember giving a statement to Detective
11 Baxter?

12 A Yeah, I remember giving a statement.

13 Q What condition were you in when you gave him that
14 statement? I mean, were you well? Drunk? Stoned?

15 A I'm in a fair condition.

16 Q Sorry. I didn't hear that.

17 A I said I'm in a fair condition.

18 MR. HUGHES: Fair condition. No further questions,
19 your Honor.

20 THE COURT: Re-direct.

21 MR. THORNTON: None, Judge. Ask he be excused.

22 THE COURT: Any objection?

23 MR. HUGHES: No, your Honor.

24 THE COURT: You may step down, and you're excused
25 from the trial of this case. You may leave the

1 courtroom at this time.

2 Call your next witness.

3 MR. THORNTON: Christopher Keith Johnson.

4 THE COURT: Have a seat. Make yourself
5 comfortable. Pull the chair up. Adjust the microphone.
6 I don't want you to get too far back from it, now. Get
7 a little closer. It's going to amplify your voice. Is
8 that chair that hard?

9 BAILIFF: Yeah, it's not that low.

10 THE COURT: Yeah, I see what the problem is.
11 That's a part of our -- is that as far out as it'll go,
12 Jo?

13 BAILIFF: Yes, sir, I think so. Yeah. Yes, sir.

14 THE COURT: All right. Just speak up for me if you
15 have to. I might have to get you to put the front legs
16 on the other side. That's my handicap access, and
17 that's why we've got that little dropoff right there.
18 So state your full name, spell your last name for the
19 court reporter, please.

20 WITNESS JOHNSON: My name is Christopher Johnson.
21 J/o/h/n/s/o/n.

22 THE COURT: Your witness, Counsel.

23 MR. THORNTON: Thank you, your Honor.

24 WITNESS SWORN.

25 CHRISTOPHER KEITH JOHNSON

1 DIRECT EXAMINATION, MR. THORNTON:

2 Q Mr. Johnson, Good afternoon.

3 A Yes, sir.

4 Q Do you know Woodrow Brantley, Mr. Johnson?

5 A Yes, sir.

6 Q How did you know Woodrow?

7 A Family and good friend.

8 Q Okay. You've known him for -- you knew him for a
9 while, then?

10 A All my life, yes, sir.

11 Q Mr. Johnson, are you familiar with a club or a bar
12 or whatever you want to call it called Missy's Lounge or
13 the Spring Hill Club?

14 A Yes, sir.

15 Q And did you go there sometimes?

16 A Yes, sir.

17 Q Were you there on December the 11th of 2009?

18 A Yes, sir.

19 Q Sir, was Woodrow Brantley out there that night,
20 too?

21 A Yes, sir.

22 Q And do you recognize this man sitting over here?

23 A Yes, sir.

24 Q And who is that?

25 A That's Brett Howard.

1 Q Was Brett Howard there that night, too?

2 A Yes.

3 Q Now, Mr. Johnson, I'm going to ask you some
4 questions, and I'm going to ask you about anything you
5 may have heard Brett Howard the defendant say. But
6 other than him, I don't want you to tell me anything
7 someone else told you. Only what you witnessed
8 yourself.

9 A Yes, sir.

10 Q All right. Did you see Brett Howard that night?

11 A Yes, sir.

12 Q Did you hear him say anything that you thought was
13 unusual or strange or bother you in any way?

14 A Well, he was -- he was near from the bar, and he
15 was saying something to himself. Like we overheard him
16 say like, *Ain't nobody better say a F thing to him*
17 *tonight; they get they brains blown out.*

18 Q All right. I want you to speak up a little bit and
19 slow down. And it's okay to use the F, say, F word or F
20 somebody up or whatever. But repeat what you just said
21 you heard Brett Howard say.

22 A You know, he was -- we was going back to the pool
23 room and he --

24 Q All right. Hang on a second. You and Woody were
25 going back to the pool room.

1 A Yes, sir.

2 Q All right.

3 A And we kind of like, you know, pass by -- pass a
4 little by him. And he said, *he going to be over*
5 *everybody. He say like, nobody better not say a fucking*
6 *thing to him tonight; they get their brains blow out.*

7 Q All right. And that's what Brett Howard said.

8 A Brett Howard said.

9 Q So you heard out of your -- out of Brett Howard's
10 own mouth that nobody better F with me tonight or he'd
11 blow their brains out.

12 A I heard him -- I heard -- yeah, I heard it. He was
13 walking back to the bar. We didn't say anything. We
14 kept walking on to the bar. I mean walking on to the
15 pool room.

16 Q And that was you and Woody?

17 A Yes, sir.

18 Q Any question in your mind that that's what Brett
19 Howard said?

20 A Oh, he said it.

21 Q Did you hear any shots that night?

22 A I was on the outside.

23 Q All right. Did you hear it?

24 A Yeah, I heard it.

25 Q But you didn't witness the shooting itself.

1 A No, sir.

2 Q All right. When you heard the shot, did you see
3 people coming out of the club?

4 A Yeah, well, he was the first -- he was the first
5 one coming out the club.

6 Q He who?

7 A Brett was coming -- he was the first coming out of
8 the club first.

9 Q Did he come out in any particular way?

10 A No, he just had -- he had his hands in his back
11 pocket, getting some -- getting the revolver out of his
12 back pocket, going to his car.

13 Q So he was putting his hand in his back pocket, and
14 he was pulling his revolver out as he came out the front
15 door?

16 A Yeah. We was at the front door. I was like kind
17 of ducking, you know, on the side of the building like.
18 And he was getting it out. Putting -- getting the
19 revolver out of his back pocket, going to his car.

20 Q What did you do after you saw that?

21 A When I seen him get the revolver, I ease back.
22 Everybody was coming out of the club, and I was trying
23 to run back in the club. And when I got back in the
24 club, I heard more firing on the outside. That when I
25 came and seen there was a body on the floor by the pool

1 area -- on the pool floor.

2 Q All right. When you heard the first shot, was that
3 from inside the club?

4 A I was on the outside of the club.

5 Q I know you were outside, but that first shot you
6 heard, was that from inside the club?

7 A Yes, sir.

8 Q All right. And you saw Brett Howard come out and
9 he was pulling his gun back out of his back pocket.

10 A Yes, sir.

11 Q Going to his car.

12 A Yes, sir.

13 MR. THORNTON: Your Honor, thank you. Mr. Johnson,
14 thank you, sir. I have nothing further. Please answer
15 any questions Mr. Hughes has for you.

16 CHRISTOPHER KEITH JOHNSON

17 CROSS-EXAMINATION, MR. HUGHES:

18 Q Good afternoon, Mr. Johnson. When you were with
19 Mr. Brantley and you heard Mr. Howard say something, who
20 was he talking to?

21 A Talk to hisself [sic].

22 Q Talking to hisself [sic].

23 A Yes, sir.

24 Q How long had you been with Mr. Brantley that
25 evening?

1 A About -- I just came out to the club about 15
2 minutes. Fifteen minutes at the most.

3 Q Okay. Had you had anything to drink that night?

4 A No, sir. I -- I don't drink.

5 Q What time did you get to the club?

6 A About -- it was kind of -- it was late. I can't
7 remember the times. It was late. I know it was late.
8 It wasn't early. It was late.

9 Q No problem. How soon after you heard the noise
10 inside did you see Mr. Howard come out?

11 A I heard a shot, and when I heard a shot, I kind of,
12 reflex, I kindly jumped to the side. And like two or
13 three minutes later he was --

14 Q Two or three minutes?

15 A I mean, you know, minutes, seconds, whatever, he
16 was coming out of the club.

17 Q Okay. But he was the first one out.

18 A Yeah, he was the first one out.

19 Q And he was pulling something out of his pants
20 pocket.

21 A It was like the revolver he was pulling out of his
22 pants pocket.

23 Q But he was pulling it out of his pocket.

24 A Yes, sir.

25 Q Okay. Not putting into his pocket. Pulling it

1 out.

2 A Yeah, he was pulling it out.

3 Q About how many people were in the club that
4 evening?

5 A It was kind of -- it was crowded.

6 Q It was crowed?

7 A It was crowded kindly. Not ram packed, but it was
8 kind of like a little crowded.

9 Q All right. And about how many cars in the parking
10 lot?

11 A It was quite a few like cars in the front part and
12 the middle and the back. It was mostly front -- in the
13 front of the club.

14 Q I'm sorry. Could you speak up, sir.

15 A I said mostly in front of the club.

16 Q Okay.

17 A Yeah.

18 Q You went back inside the club after --

19 A Yeah, I went back in the club, inside the club.

20 Q Okay. So about what time did you leave that
21 evening?

22 A I can't remember. It was late. It was late.

23 Q Did you give a statement to law enforcement that
24 evening?

25 A That evening, no.

1 Q Did you write something out?

2 A I didn't see the law enforcement that night.

3 Q You didn't see law enforcement that night.

4 A No, sir.

5 MR. HUGHES: Okay. No further questions, your
6 Honor.

7 THE COURT: Re-direct.

8 MR. THORNTON: None, Judge.

9 THE COURT: As to this witness?

10 MR. THORNTON: Ask he be excused, your Honor.

11 THE COURT: Mr. Hughes?

12 MR. HUGHES: No objection, your Honor.

13 THE COURT: All right, Mr. Johnson, you may step
14 down, and you're excused from the trial of this case.
15 You may remain with us or leave the courtroom.

16 Call your next witness.

17 MR. THORNTON: Detective Baxter.

18 THE COURT: Detective, you've been previously sworn
19 in the trial of this case, and you're still under oath.
20 Can you state your name again for the record.

21 WITNESS BAXTER: Eric Baxter.

22 THE COURT: Your witness, Counsel.

23 MR. THORNTON: Thank you, Judge.

24 DETECTIVE ERIC BAXTER

25 DIRECT EXAMINATION, MR. THORNTON:

1 Q Detective, we didn't get into all this earlier
2 because you were up for a limited purpose. Who do you
3 work for, sir?

4 A Jasper County Sheriff's Office.

5 Q And what do you do for them?

6 A I'm a criminal investigator.

7 Q All right. Now, is that the same thing as saying
8 you're a detective?

9 A Yes, sir.

10 Q All right. Detective Baxter, did you work for the
11 Jasper County Sheriff's Department on or about December
12 the 11th, 2009?

13 A Yes, sir.

14 Q And what did you do for them then?

15 A I was a detective.

16 Q Same thing?

17 A Yes, sir.

18 Q All right. Did you respond out to the scene at
19 Missy's Lounge or the Spring Hill Club?

20 A Yes.

21 Q All right. And what did you do when you got there?

22 A When I arrived, I got a brief run-down from the
23 deputies that were on the scene as to what had -- what
24 they had observed and what the witnesses had stated had
25 taken place.

1 I went inside, viewed where Mr. Brantley's body was
2 lying. Come out, grabbed my camera and some evidence
3 marker, and begin photographing and marking evidence.

4 Q All right. And did you also, as part of what you
5 were doing, take -- you took a witness statement from
6 Kyron Shaw and a couple other people?

7 A Mr. Shaw's statement was later.

8 Q Right. But at some point in your investigation.

9 A Oh. At some -- during the investigation, yes, from
10 Mr. Johnson and Shaw's, first people we had interviews
11 with.

12 Q Detective, can you tell me what a GSR kit is.

13 A It is a gunshot residue kit. It's used for
14 determining if a person had recently fired a gun.

15 Q All right. When you say recently, about how -- how
16 long does it have to be before you're not able to do a
17 GSR kit with any success?

18 A Usually, within the first hour, hour and a half,
19 two hours. That's pending, as long as they haven't
20 washed their hands.

21 Q So unlike we see on CSI, as the Judge -- you heard
22 the Judge indicate to the jury earlier, you can't go
23 back eight months later and miraculously find out that
24 the gunman was on the grassy knoll, he was left-handed
25 and tied his shoes with a reverse twist?

1 A That's correct.

2 Q All right. So after about an hour and a half to
3 two hours, you can't do a GSR kit. Is that correct?

4 A Not with much success, no, sir.

5 Q At some point was Brett Howard developed as a
6 suspect based on the witnesses?

7 A Excuse me?

8 Q At some point in your investigation, after talking
9 to witnesses, was Brett Howard developed as a suspect?

10 A Yes, sir, he was.

11 Q And did you at some point -- did you at some point
12 have contact with Mr. Howard?

13 A Yes, sir.

14 Q And was that within the first hour to hour and a
15 half?

16 A No, it was not.

17 Q How long was it?

18 A It would have been close to eight, eight-and-a-half
19 hours.

20 Q So was there any reason at that point for you to
21 even attempt a GSR kit?

22 A No, sir, there was not.

23 Q Did you, at the scene, collect any physical
24 evidence outside the club?

25 A Yes, sir.

1 Q And what did you collect?

2 A There were five spent .40 caliber shell casings
3 outside the club.

4 Q All right. Now, let me ask you a question,
5 Detective. How long you been in law enforcement?

6 A I've been in law enforcement for ten years.

7 Q All right. And are you familiar, at least as a
8 police officer and as a detective, on the different kinds
9 of rounds and different kinds of pistols?

10 A Yes, sir.

11 Q Can you tell or explain to the jury, there may be
12 some folks that don't know this, the difference between
13 -- we keep -- the word *revolver* has come up over and
14 over and over again. Can you explain the difference
15 between a revolver and a what would be a semi-automatic
16 pistol.

17 A A revolver uses a cylindrical wheel within its
18 mainframe. Each time the trigger is pulled or
19 depressed, it rotates the cylinder one turn, clockwise
20 or counterclockwise, depending on the make or the model
21 of weapon. And it's only good for the amount of shots
22 that are in that wheel.

23 A semi-automatic, however, fires from a magazine
24 that's located within the butt stock of the weapon. And
25 it can be from anywhere from nine up to 20 rounds.

1 Q Let me ask you this for folks like me that don't
2 use them on a daily basis in work. Would a revolver be
3 what you think of in like the old-timey westerns as a
4 six gun?

5 A Correct. It doesn't expel it's spent casings.
6 They stay within the wheel.

7 Q Thank you for bringing that up. That was going to
8 be my next question.

9 A I thought that's what you were getting at.

10 Q So if you're shooting a revolver, do the shell
11 casings, the empty shell casings, do they kick out of
12 the gun or do they stay in it?

13 A Not until they're manually released by the user.

14 Q All right. Now, a semi-automatic gun like you see
15 in cop shows and stuff today, every time you fire a
16 bullet, what happens to the empty casings?

17 A It ejects it from the frame.

18 Q So are the rounds that you collected --

19 MR. THORNTON: Your Honor may I approach?

20 THE COURT: You may.

21 BY MR. THORNTON:

22 Q I'm going to hand you what's been marked only for
23 identification as State's 8, 9, 10, 11, and 12. And ask
24 you if you can identify these for me.

25 A Would you like me to open these?

1 Q Yes, please.

2 A I know these are the evidence bags that I would
3 have placed the shell casings in. And that is one of
4 the five .40 caliber shell casings.

5 Q All right. Now, as far as which number, exhibit
6 number, did you open?

7 A This is Exhibit 8.

8 Q Okay. So as to 9, 10, 11, and 12, you don't need
9 to open, but those, are they all sealed and in the same
10 condition as when you collected the shell casings?

11 A Yes, sir. These are all sealed and marked as the
12 same shell casings.

13 Q All right. I have a few general questions for you.

14 A Yes, sir.

15 Q You said those are .40 caliber. That's the caliber
16 of the gun that would use them and the caliber of the
17 bullet. Is that right?

18 A Correct.

19 Q Now, a .40 caliber, is that a revolver or is that a
20 semi-automatic?

21 A I only know of a semi-automatic that's .40 caliber.

22 Q And general speaking, isn't it -- or excuse me. Is
23 it true that semi-automatic bullets that go in a semi-
24 automatic pistol, as opposed to a revolver bullets, are
25 different bullets.

1 A Correct.

2 Q All right. Is there a different name, even, for
3 the bullets? Is one called rimfire and one called
4 centerfire?

5 A Yes.

6 Q Okay. So the bullets themselves are different. Is
7 that correct?

8 A Correct.

9 Q All right. Are those bullets, the revolver
10 bullets, are semi-automatic bullets?

11 A These are semi-automatic bullets.

12 Q All right. What did all the witnesses -- and of
13 course, you were in here today, but in your
14 investigation, did all the witnesses agree what type of
15 gun killed Woodrow Brantley?

16 A Yes, sir.

17 Q And what type of gun was that?

18 A Revolver.

19 Q Does a revolver kick the shells out when you shoot
20 it?

21 A No, it does not.

22 Q All right. So based on everything you know about
23 the case, the type of gun all the witnesses saw, and
24 where, again -- let me ask one other question before I
25 ask you that. Where were these shell casings found?

1 A These shell casings were located outside in the
2 parking lot.

3 Q And where was Woodrow Brantley murdered?

4 A Inside the pool hall.

5 Q So based on anything you know about the type of gun
6 that all the witnesses seen, the calibers involved, the
7 distances, the locations, do those shell casings have
8 anything to do with the murder of Woodrow Brantley,
9 other than they were found outside?

10 A No, sir, they do not.

11 Q If you have a revolver -- there's been testimony,
12 you've heard it, about a click, click, click, as the
13 trigger's pulled. If you have a revolver and there are
14 some rounds in it that have been fired, and you breach
15 -- and it's a breech loader, would you still see the
16 empty shell casings?

17 A Yes, you would.

18 Q Now, from the back, without a close inspection,
19 would you be able to tell whether they were loaded or
20 not?

21 A Not without a close inspection, no.

22 Q All right. So you could have two or three or four
23 or even five out of six that had already been fired, and
24 there's no way, if you just looked at it real quick from
25 the back, that you'd know they were spent.

1 A Correct.

2 Q And when I say *spent*, I mean fired.

3 A Correct.

4 Q Now, if you have a -- this is probably going to
5 sound like a stupid question, Detective, but bear with
6 me.

7 If you're firing a revolver and some of your
8 bullets have previously been fired out of that gun, when
9 the cylinder rolls over, what's it going to sound like?

10 A They click.

11 Q Cause you can't shoot the bullet more than once,
12 can you?

13 A Correct.

14 Q But if you don't pull it out, it's still, the spent
15 shell casing's still in there.

16 A Correct.

17 Q All right. The Court's indulgence, your Honor.

18 THE COURT: Yes.

19 Q With a little bit of hesitation, I'm going to hand
20 you what, hopefully, we've got straightened out, your
21 Honor, with the Court's permission to approach, as 4-A,
22 B, C, and 5 that's been marked for identification as
23 State's 4-A, B, C, and 5. Can you identify those items?
24 And I believe it's already been testified to that 4-A,
25 4-B, and 4-C are the containers, and 5 is a slug. Can

1 you identify the slug as State's 5?

2 A Yes, sir, I can. Yes, sir.

3 Q And what is that?

4 A It's marked as State's 5. And that is a spent
5 projectile. Also known as a bullet that was delivered
6 from the autopsy, MUSC, by Mr. Kleckley.

7 Q All right. And who did Mr. Kleckley give that to?

8 A To me.

9 Q And who did you give it to, if anybody?

10 A I believe it was entered in SLED's analysis, and it
11 was delivered by Detective Henry Criss, who was employed
12 by our agency at that time.

13 Q All right. So you gave it to Henry Criss, who gave
14 it to SLED. Is that right?

15 A Correct.

16 Q And I want you to look at 5 and also look at 4-A,
17 B, and C, and see, other than being in an open
18 condition, do they appear to be changed in any way since
19 the last time you saw it?

20 A No, sir.

21 Q Who was it that opened the outside manila envelope
22 today?

23 A I did.

24 Q Was it in a sealed condition when you retrieved it
25 from the evidence locker?

1 A Yes, sir, it was.

2 Q Did you open it at my request this morning?

3 A I did.

4 Q And had it been tampered or altered in any way?

5 A No, it had not.

6 MR. THORNTON: Your Honor, may I approach?

7 THE COURT: You may.

8 MR. THORNTON: Your Honor, again, may I approach?

9 THE COURT: You may.

10 BY MR. THORNTON:

11 Q I'm going to hand you what's been marked as State's
12 Exhibit Number 2 for identification, Detective. Can you
13 tell me what that's a picture of?

14 A This is a picture located in the parking lot at
15 Missy's Lounge. It's evidence marker's 5, 6, 7, 8, and
16 9 that mark the shell casings that were collected.

17 Q All right. Detective, were you present when these
18 photographs were taken?

19 A Yes, sir. I took this photograph.

20 Q All right. Now, you heard some testimony earlier
21 about State's Exhibits 3-A through 3-M, about the
22 photographs that the placards, where the placards were.
23 Did you take those pictures, also?

24 A I did.

25 Q All right, sir. And were you and Officer Shiflett

1 both taking pictures at pretty much the exact same time?

2 A Shiflett -- Officer -- or Deputy Shiflett had taken
3 his pictures prior to my arrival.

4 Q Okay.

5 A And then, as I was going around photographing, if I
6 needed something collected, I was having him collect it
7 for me.

8 Q Right.

9 A He took photographs. So he was working with me.

10 Q I'm sorry. So you were there roughly the same
11 time?

12 A Yes.

13 Q And the pictures would be the same where they were
14 his photos or yours, except yours have placards on them.
15 Is that correct?

16 A Correct.

17 Q All right. Does State's --

18 MR. THORNTON: Your Honor, may I approach?

19 THE COURT: That may.

20 BY MR. THORNTON:

21 Q Does State's Exhibit Number 2, does it appear in
22 the same condition as when you took it?

23 A Yes, sir, it does.

24 Q And is that an accurate representation of where you
25 found those shell casings that would appear not to have

1 anything to do with the actual death of Mr. Brantley?

2 Is that an accurate, fair and accurate, representation?

3 A Yes.

4 Q And you are, in fact, the one who took that
5 picture.

6 A I am.

7 MR. THORNTON: Your Honor, I'd ask at this time
8 that State's Exhibit Number 2 be entered into evidence.

9 THE COURT: As to State's 2, Mr. Hughes?

10 MR. HUGHES: Your Honor, may I see State's 2?

11 THE COURT: Absolutely.

12 MR. THORNTON: I apologize, your Honor. I forgot
13 to show it to Mr. Hughes.

14 MR. HUGHES: No objection, your Honor.

15 THE COURT: Ladies and gentlemen of the jury,
16 State's Exhibit Number 2 will be admitted into evidence
17 in the trial of this case without objection. State's 2
18 now in evidence. You may publish.

19 ITEM IDENTIFIED AS PHOTOGRAPH

20 MARKED STATE'S EXHIBIT NUMBER 2,

21 AND ADMITTED AS EVIDENCE.

22 MR. THORNTON: Your Honor, if it's all right with
23 the Court, rather than fire up all the gizmos, I'll just
24 do it the old-fashion way.

25 THE COURT: Very well.

1 BY MR. THORNTON:

2 Q And this was taken actually outside the club. Is
3 that correct, sir?

4 A Yes, sir, in the parking lot.

5 MR. THORNTON: Your Honor, at this time, I'd ask
6 subject to recall, because he is my case officer. I
7 have no further questions at this time.

8 THE COURT: Cross-examination.

9 MR. HUGHES: Thank you. May I see Number 8,
10 please.

11 DETECTIVE ERIC BAXTER

12 CROSS-EXAMINATION, MR. HUGHES:

13 Q Detective Baxter, I'm holding what has been
14 previously labeled State's Exhibit Number 8, which is a
15 piece of grass, and has got a round thing on one end,
16 with a little indent in it.

17 MR. HUGHES: May I approach?

18 THE COURT: You may.

19 BY MR. HUGHES:

20 Q Do you see the indentation I'm talking about?

21 A I do.

22 MR. HUGHES: May I approach again?

23 BY MR. HUGHES:

24 Q Based upon your experience, what probably caused
25 that indentation?

1 A That's a firing pin.

2 Q Okay. Deputy Solicitor Thornton said there were
3 two types of bullets, a centerfire and a rimfire?

4 A Correct.

5 Q I'm trying to remember, is there anything besides a
6 .22 that's a rimfire?

7 A I'm not super familiar with a lot of the old
8 revolver rounds. I know a lot of revolvers are rimfire.

9 Q Okay. But most modern revolvers are centerfire.

10 A I would believe they would be rimfire.

11 Q Okay. But you're not an expert on weapons,
12 correct?

13 A Not on ammunition, no.

14 Q Okay. I want to return this to the State.

15 Now, do you know what causes -- since you're in law
16 enforcement and you use a gun on a regular basis, what
17 causes a bullet to be fired?

18 A Something striking the charge on the bullet.

19 Q Okay. And where is the charge on the bullet?

20 A It's located in the tail stamp area of the bullet.

21 Q That little round thing that the indentation was in.

22 A The indentation on that, it would be a firing cap.

23 Q All right. And these were .40 caliber.

24 A Those are .40 caliber shell casings.

25 Q How do you know that?

1 A It's marked on the tail end of the casing.

2 Q And on average, based upon your experience, a .40
3 caliber is a semi-automatic.

4 A Correct.

5 Q You can't say that a .40's not a revolver; just on
6 your experience, the round is generally semi-automatic.

7 A I know of no .40 caliber revolver.

8 Q Okay. But you're not saying there couldn't be one.

9 A I'm going to say there's not one.

10 Q Okay. Well, I can't contradict you. I just -- you
11 have more --

12 THE COURT: Ask the question, Counsel.

13 MR. HUGHES: Okay.

14 THE COURT: No statement.

15 BY MR. HUGHES:

16 Q Now, when you got there that night, how long after
17 the initial call did it take you to get there?

18 A We -- you would have to pull the record from the
19 dispatch. I couldn't -- I couldn't keep track of how
20 long it took me to get the phone call, get out of my
21 bed, and respond to Ridgeland from my residence.

22 Q Okay. You were home in bed when you got the call.

23 A Correct.

24 Q And Deputy Shiflett was already there taking photos
25 when you got there.

1 A Correct.

2 Q And you all don't have the photos he took.

3 A They are located within the report.

4 Q Okay.

5 MR. THORNTON: Objection, your Honor. May we
6 approach?

7 THE COURT: Counsel approach.

8 OFF-THE-RECORD BENCH CONFERENCE,

9 THE COURT, MR. HUGHES, MR. THORNTON.

10 BACK ON THE RECORD.

11 MR. THORNTON: The objection's withdrawn, your
12 Honor. Thank you, sir.

13 THE COURT: Very well. Proceed, Mr. Hughes.
14 Cross-examination. Move along.

15 BY MR. HUGHES:

16 Q Detective Baxter, how many statements did you get
17 that night from witnesses?

18 A The statements I had from witnesses that night were
19 the ones that read statements were received from -- or
20 received by Deputy Shiflett.

21 Q Okay. And you're the one that collected the
22 evidence that was in the pool room.

23 A Correct.

24 Q What did you find in the pool room?

25 A In the pool room, of course, Mr. Brantley's

1 deceased body.

2 Q Yes.

3 A A cell phone laying by his body.

4 Q Whose cell phone was it?

5 A That was Mr. Brantley's.

6 Q Okay.

7 A Located on the couch, there was a cell phone that
8 belonged to Kyron Shaw. There was a gray, hooded
9 sweatshirt sitting on a metal -- metal folding chair in
10 the pool room. And there was a gold -- or a capped
11 tooth laying underneath a chair near Mr. Brantley's
12 body.

13 Q Did you find any alcoholic beverage?

14 A I have to look at the pictures. I don't remember
15 if there was any sitting around. You have to give me a
16 moment. There's a lot of pictures here.

17 Q No hurry. Please do.

18 A In the photographs, in the case file, there's no
19 indications of alcohol in any of the photographs.

20 Q Okay. Did you find any narcotics?

21 A No, I did not.

22 Q Did you find any weapons?

23 A No, I did not.

24 Q One final group of questions. You stated that when
25 a revolver is opened up, the cylinder is there, and at a

1 glance, you could not tell -- or you'd have to do more
2 than just a glance to tell if the casing -- if the
3 cartridges had been fired?

4 A If you was to open a revolver in front of me, I
5 would have to grab the revolver and look at the cylinder
6 and actually look at the shell casings to tell if they
7 were fired. I couldn't just, here, and say that it was
8 fired.

9 Q Okay. And how long have you been in law
10 enforcement?

11 A Ten years.

12 Q And how long have you been licensed to carry a gun?

13 A Ten years.

14 Q You've been carrying a gun for the last ten years.

15 A Under duties of my job, yes.

16 Q Yes, I understand that. Sorry, I did not mean to
17 interrupt you. You're comfortable carrying a gun.

18 A Absolutely.

19 Q And you're comfortable handling a gun.

20 A Absolutely.

21 MR. HUGHES: No further questions, your Honor.

22 THE COURT: Re-direct.

23 DETECTIVE ERIC BAXTER

24 RE-DIRECT EXAMINATION, MR. THORNTON:

25 Q One thing that Mr. Hughes brought up about was

1 there a gun found in the room. Was there a gun ever
2 recovered in this case?

3 A No, sir, there was not.

4 Q To be tested or tested against the slug?

5 A No, sir.

6 MR. THORNTON: Nothing further. Thank you, your
7 Honor.

8 THE COURT: Re-cross limited to re-direct.

9 MR. HUGHES: Nothing more, your Honor.

10 THE COURT: You may step down, Detective.

11 WITNESS BAXTER: Thank you.

12 THE COURT: Leave my exhibits there, but you take
13 your file.

14 WITNESS BAXTER: Thank you.

15 THE COURT: Call your next witness.

16 MR. THORNTON: I call Officer Henry Criss.

17 WITNESS SWORN.

18 THE COURT: Make yourself comfortable. Pull that
19 chair up. Adjust that microphone. I recognize there's
20 a break in the floor down there, but you can adjust it
21 to you. State your full name and spell your last name
22 for the court reporter, please, sir.

23 WITNESS CRISS: Yes, your Honor. My name is Henry
24 Edward Criss III. Last name is C/r/i/s/s.

25 THE COURT: Your witness.

1 MR. THORNTON: Thank you, your Honor.

2 DETECTIVE HENRY EDWARD CRISS III

3 DIRECT EXAMINATION, MR. THORNTON:

4 Q Mr. Criss, who do you work for right now, sir?

5 A I'm employed with the town of Bluffton Police
6 Department.

7 Q All right. And in December 2009, who did you work
8 for?

9 A The Jasper County Sheriff's Office.

10 Q All right. And as part of your -- as part of your
11 duties for the Jasper County Sheriff's Office, did you
12 have any connection, regardless of how minor it may have
13 been, with the case we're here about today, the murder
14 of Woodrow Brantley?

15 A Yes, sir, I did.

16 Q All right. And I'm going to hand you what --

17 MR. THORNTON: Your Honor, may I approach?

18 THE COURT: You may.

19 BY MR. THORNTON:

20 Q -- what has been marked for identification as
21 State's 4-A, 4-B, 4-C, and 5. Now, I will tell you, to
22 avoid any confusion, that the 4-A, B, and C, are the
23 containers, and 5 would appear to be what has been
24 testified to as a slug. Can you identify those for me.

25 A Yes, sir, I can.

1 Q All right. Did you have some contact with those in
2 your capacity as a deputy with the Jasper County
3 Sheriff's Office?

4 A Yes, sir.

5 Q And what, if anything, did you do with that item --
6 or those items?

7 A I transported these items to and from the State Law
8 Enforcement Division lab.

9 Q And did you receive them from and turn them back in
10 to Detective Baxter in the evidence department with
11 Jasper County?

12 A Yes, sir, I did.

13 Q And did you -- while they were in your custody,
14 were they in a sealed condition?

15 A Yes, sir.

16 Q I recognize, obviously, that some of them are
17 opened now, but the entire time to SLED and back from
18 SLED, would they -- did they maintain their seal?

19 A Yes, sir.

20 Q And were they altered or tampered, to your
21 knowledge, in any way while in your custody?

22 A No, sir.

23 MR. THORNTON: All right. I have no further
24 questions. Please answer any questions Mr. Hughes has.

25 THE COURT: Cross-examination.

1 MR. HUGHES: No questions.

2 THE COURT: As to this witness.

3 MR. THORNTON: Ask he be excused, your Honor.

4 THE COURT: Any objection, Mr. Hughes?

5 MR. HUGHES: None whatsoever.

6 THE COURT: Mr. Criss, you may step down from the
7 witness stand. You're excused from the trial of this
8 case and may leave the courtroom.

9 WITNESS CRISS: Thank you, your Honor.

10 THE COURT: Thank you. Call your next witness.

11 MR. THORNTON: Your Honor, may I have one moment.
12 I need to retrieve this.

13 Your Honor, Ms. Legette has the next witness for
14 the State.

15 THE COURT: Call your witness.

16 MS. LEGETTE: Thank you, your Honor. The State
17 calls Suzann F. Cromer.

18 THE COURT: Ms. Cromer, if you'd come around and be
19 sworn by the clerk right here.

20 WITNESS SWORN.

21 THE COURT: Watch your step. Sit down and pull the
22 chair up and adjust the microphone to your height. I do
23 have a problem with that floor. It's adjustable
24 handicap access, so be careful. State your full name
25 and spell your last name for the court reporter.

1 WITNESS CROMER: My name is Suzann Cromer.

2 C/r/o/m/e/r.

3 THE COURT: Your witness, Solicitor.

4 MS. LEGETTE: Thank you, your Honor.

5 SUZANN CROMER

6 DIRECT EXAMINATION, MS. LEGETTE:

7 Q Ms. Cromer, where do you work, ma'am?

8 A I'm employed by the South Carolina Law Enforcement
9 Division, commonly referred to as SLED, in the forensic
10 services laboratory, in the firearms department.

11 Q And Ms. Cromer, how long have you been employed at
12 SLED in the firearms department?

13 A I've been in SLED in the firearms department for
14 over thirteen-and-a-half years. I've been in my current
15 position about twelve.

16 Q And Ms. Cromer, tell us, as a part of your capacity
17 as SLED in the firearms department, what are your
18 duties?

19 A What we do in the firearms department is called
20 firearms identification. We look at ammunition
21 components, bullets, cartridge cases, shotgun shells,
22 wadding, to determine whether they were fired by or
23 loaded into and extracted out a specific firearm.

24 We also do serial number restoration on firearms.
25 We do destruction of firearms. We do tool marks, bolt

1 cutters on padlocks. We also do Integrated Ballistics
2 Identification System entry, which is a digital data
3 base for bullets and cartridges.

4 Q Ms. Cromer, please tell us about your education and
5 background as it relates to working in the firearms
6 department at SLED.

7 A I received a bachelor's degree from Clemson
8 University. I did some graduate work in criminal
9 justice at the University of South Carolina. During
10 that time, I did a internship in the SLED firearms
11 department.

12 I was hired on at SLED. I completed their in-house
13 training program, which is a three- to five-year intense
14 study program, more than apprenticeship, if you will,
15 where I studied under five court-qualified firearm and
16 toolmark examiners.

17 We take tests, written tests, oral tests, practical
18 exercises. Upon completion of that permit, we are
19 rewarded with our own casework.

20 I have taken classes through the Association of
21 Firearm and Toolmark Examiners, which is -- we call it
22 AFTE, which is an international organization for our
23 profession. They meet once a year and get together to
24 discuss issues with our current profession and offer
25 training classes.

1 I've been fortunate enough to attend several of
2 those. I've also taken several workshops with AFTE on
3 ethics, barrel making, gunshot residue. I've taken
4 classes with the South Carolina Chapter of the
5 International Association of Identification. Most
6 pertinent being shooting scene reconstruction.

7 I have also taken classes with the Bureau of
8 Tobacco, Firearms, and Explosives, commonly known as
9 ATF, on serial number restoration and the Integrated
10 Ballistics Identification System.

11 That digital data base, I'm actually the state
12 coordinator for that data base. And I also sit as a
13 second chair for the ATF User's Congress, and I have
14 been privileged enough to represent our state in that
15 conference.

16 I have also taken classes through Highpoint
17 Firearms and Glock Firearms.

18 Q Ms. Cromer.

19 A Yes.

20 Q Thank you very much.

21 A Sorry.

22 Q Ms. Cromer, have you ever been qualified as an
23 expert in the area of firearm toolmarking
24 identification?

25 A Yes, ma'am, I have.

1 Q How many times?

2 A It's been over 55 times.

3 MS. LEGETTE: Your Honor, at this time, I would
4 offer Ms. Suzann F. Cromer as an expert in the field of
5 firearm identification and toolmarkings.

6 THE COURT: Any objection as to qualifications,
7 Counsel?

8 MR. HUGHES: None whatsoever, your Honor.

9 THE COURT: The witness is qualified without
10 objection.

11 Ladies and gentlemen of the jury, normally, we do
12 not allow witnesses to get on the witness stand and give
13 opinion testimony or testify to conclusions. However,
14 there's an exception to that rule for those witnesses
15 whom we call expert witnesses, witnesses who, by virtue
16 of training, education, experience, have received some
17 special training in some field or science, if qualified
18 by the court are permitted to give their opinions as to
19 the field in which they are so qualified.

20 You're not bound by any expert opinion. You give
21 it the weight, if any, you feel it deserves.

22 The witness is qualified without objection.
23 Counsel, you may proceed.

24 MS. LEGETTE: Thank you, your Honor.

25 BY MS. LEGETTE:

1 Q Ms. Cromer, what is firearms identification?

2 A Firearms identification is like I said before,
3 where we look at ammunition components, bullets,
4 cartridge cases, unfired ammunition, shot shells, first
5 to determine their caliber and if they could have been
6 fired by a specific weapon. If we don't have a
7 specified weapon in the case of a bullet, we will give
8 what we call a GRC list.

9 When we say GRCs, we're talking about General
10 Rifling Characteristic list of potential firearms that
11 could have fired that bullet.

12 Q Ms. Cromer, can you explain to us -- you said
13 rifling characteristics. Can you explain what are
14 rifling characteristics.

15 A Okay. Rifling is what's put in a gun barrel by the
16 manufacturer. It's put there to give rotary motion to a
17 bullet. Very similar to a quarterback who throws a
18 football. He wants it to go into a tight spiral so it
19 doesn't lob end over and into the target. Well, that's
20 the premise behind the rifling in the gun barrel. It
21 wants to put that bullet into a spin, into a tight
22 spiral, so it'll go more accurately into its target.
23 That's what rifling is.

24 Now, rifling is made up of what we call lands and
25 grooves, raised and depressed areas. And you can have

1 any number of lands and grooves. You can have four, up
2 to a micro-groove 20 or 30 lands and grooves. And then,
3 which way it's going to spin is part of that rifling
4 characteristic. Is it going to make the bullet spin to
5 the left, or is it going to make it spin to the right?

6 So we have our caliber, we have our lands and
7 grooves, we have our twist, and then we have the actual
8 dimensions of those lands and grooves.

9 Q Okay. Now, Ms. Cromer, did you receive any
10 evidence in the case before the Court today?

11 A Yes, ma'am, I did.

12 Q And what item did you receive?

13 A I received one fired bullet from autopsy. Or --
14 that was labeled from the victim.

15 Q Okay. And what was the condition of this evidence
16 when you received it?

17 A When I received it, it was in a medical container
18 that was sealed. I photographed it. I cleaned it. And
19 our protocol states we clean things in a ten percent
20 Clorox solution. I cleaned it, and then proceed with my
21 examination.

22 Q Now, Ms. Cromer, in a moment, I'm going to hand you
23 what's been previously marked State's Exhibit 4-A, B, C,
24 and 5. And I want you to take a moment and tell me if
25 you recognize the items. I'll caution you, it's been a

1 little bit confusing here today. But I want you to look
2 at these.

3 MS. LEGETTE: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 BY MS. LEGETTE:

7 A First off, this is the outer package that I
8 received with my initials and the SLED bar code with the
9 lab number and Item Number 4 meaning this package only
10 contained Item Number 4.

11 THE COURT: Give the exhibit number if you would.

12 A I'm sorry. This is State's Exhibit 4-A. State's
13 Exhibit 4-B is a plastic bio-hazard ziplock bag,
14 containing a medicine-type bottle with a white screw
15 top. And it has tissue paper in this. This is what I
16 received inside State Exhibit 4-A when I opened it up.

17 Q You're talking about what I believe is inside that
18 plastic bag that canister has a label on it, also. What
19 State's Exhibit is that?

20 A The bottle that's inside is State's Exhibit 4-C.

21 Q Thank you.

22 A And then, inside that State's Exhibit 4-C, was
23 State's Exhibit 5, which is the fired bullet I examined.
24 And it is still in my sealed container with my initials
25 and my sealed date. And also -- sorry.

1 Q That's okay. I'm sorry.

2 A Also, it's scribed with my lab number, my item
3 number, and my initials.

4 Q And Ms. Cromer, are you able to recognize those
5 items because your initials appear on them?

6 A Yes, ma'am.

7 Q And Ms. Cromer, are State's Exhibit 4-A, 4-B, 4-C,
8 and 5 in substantially in the same condition today as
9 when you last saw them and received them at SLED?

10 A Yes, ma'am.

11 Q Have they been changed or altered in any way?

12 A No. I believe that when I sent it back, they were
13 together in this container. In container State's
14 Exhibit 4-A.

15 Q Now, Ms. Cromer, you examined the items before --
16 State's Exhibit Number 5, you examined that item,
17 correct?

18 A Yes, ma'am, I did.

19 Q And can you please describe for us the examination
20 that you made of State Exhibit Number 5.

21 A When I receive a case with just a bullet in it, I'm
22 going to do that general rifling exam that we talked
23 about earlier. First I cleaned it. Then I measure it.
24 I take a caliper. Measure the diameter of it. That'll
25 give me a good clue to what caliber it is. Then I weigh

1 it. That also helps me figure out what type of diameter
2 or caliber it is.

3 Then I go to my comparison microscope and I look at
4 the rifling marks. I count how many of the lands and
5 grooves we have. I look to see which way they're
6 spinning, which twists they have, to the left or to the
7 right. Then I actually measure the dimensions of those
8 lands and grooves.

9 Then I take all that information and I plug it into
10 a computer program that the FBI has put together that
11 gives me a list of possible manufacturers that could
12 have fired this gun.

13 Then I compose a report, and put that information
14 in it. I determine whether or not this projectile has
15 enough of the individual markings from that rifling on
16 it to possibly identified to a firearm, specific
17 firearm. Then I make my report, and I send it out.

18 Q Now, Ms. Cromer, after you examined State's Exhibit
19 Number 5, did you make a conclusion as to what caliber
20 gun fired that particular bullet?

21 A Yes. I found that this bullet is most consistent
22 with either a .38 special or .357 magnum caliber.

23 Q And are those considered revolvers?

24 A Yes. Most .38 specials and .357 magnum caliber
25 firearms are revolvers.

1 MS. LEGETTE: Begging the Court's indulgence.

2 Ms. Cromer, I have no further questions. Answer
3 any questions from Mr. Hughes, please.

4 THE COURT: Cross-examination.

5 MR. HUGHES: Thank you, your Honor.

6 SUZANN CROMER

7 CROSS-EXAMINATION, MR. HUGHES:

8 Q Ms. Cromer, I believe you also said that it could
9 actually have been a derringer that that bullet was
10 fired out from, couldn't it?

11 A Yes. It could have been a revolver or a derringer.

12 Q So you have no way of telling what gun fired that
13 bullet.

14 A No, not without the specific firearm. On my list,
15 I -- I gave eight -- eight specific manufacturers. If I
16 broke that down less further, there are 42 different
17 makes and models from those manufacturers. And only two
18 of them were derringers.

19 Q Okay. But we're talking anything from a .357
20 magnum to a derringer.

21 A Well, a derringer can be a .357 magnum.

22 Q Okay. Well, most people, when they say .357
23 magnum, they're talking about something huge down to
24 something small.

25 A We -- I've seen .357 magnum caliber firearms that

1 were small.

2 Q But they're also .357 magnums that are this big.

3 A Yes, sir.

4 Q And there are derringers that are this big.

5 A Yes, sir.

6 MR. HUGHES: No further questions, your Honor.

7 THE COURT: Re-direct.

8 MS. LEGETTE: None, your Honor.

9 THE COURT: As to this witness?

10 MS. LEGETTE: We ask that she be excused, your
11 Honor.

12 MR. HUGHES: No objection, your Honor.

13 THE COURT: Ms. Cromer, you are excused from the
14 trial of this case. You may leave the courtroom at this
15 time. Thank you very much. You can leave my exhibits
16 with the court reporter, but make sure you get your bag.
17 I've never seen you without it.

18 WITNESS CROMER: I know. I know.

19 THE COURT: Counsel approach. Tameaka?

20 MS. LEGETTE: Yes, your Honor.

21 OFF-THE-RECORD BENCH CONFERENCE,

22 THE COURT, MR. THORNTON, MS. LEGETTE,

23 MR. HUGHES, MR. PLEXICO.

24 BACK ON THE RECORD.

25 THE COURT: Call your next witness

1 MR. THORNTON: Your Honor, at this time, the State
2 would ask for the mid-afternoon break.

3 THE COURT: Very well. Any objection, Mr. Hughes?

4 MR. HUGHES: Not at all, your Honor.

5 THE COURT: Mr. Foreman, ladies and gentlemen of
6 the jury, I'm going to take my mid-afternoon break at
7 this time. Please do not discuss the case. Let you
8 stretch your legs, use the restroom. I'll be back with
9 you just as quickly as I can. You may retire to your
10 jury room.

11 JURORS LEAVE COURTROOM 3:37 P.M.

12 THE COURT: Anything on the record outside the
13 presence of the jury from the State?

14 MR. THORNTON: Nothing on the record, Judge. I
15 would tell you that the reason -- I'm sorry. The reason
16 I got out, I didn't want to re-approach right after we'd
17 come back from a side bar.

18 THE COURT: Yes, sir.

19 MR. THORNTON: That's all the witnesses we have
20 except for Dr. Presnell, so that's why --

21 THE COURT: Well, we're making excellent progress,
22 Mr. Thornton. I want to thank you and Ms. Legette for
23 moving along, and Mr. Hughes.

24 MR. THORNTON: Had I known it'd be this quick,
25 Judge, I'd had Dr. Presnell here, but I didn't think

1 there was any way we'd gotten through all 14 witnesses.

2 THE COURT: It's amazing. I'll quote to you what
3 Mrs. Vaux said to me yesterday when I asked her what to
4 put on the case. She said the last time she had --
5 Erin, am I quoting this right? The last time you had a
6 murder case, they were done in less than a day?

7 HON. ERIN VAUX: That's correct, your Honor.

8 THE COURT: You never know sometimes about the
9 wheels of justice. Sometimes we're real slow, and
10 sometimes we move along a little better. I have been
11 pushing you. I'm trying not to take much time between
12 the witnesses, and we're making excellent progress. I
13 understand that. And I recognize you had to pick from
14 19 witnesses how many to bring today. I was once in
15 those shoes, if you will recall. Mr. Hughes knows that,
16 as well.

17 I do need to see you all briefly in chamber,
18 though. Let's take about five minutes.

19 MR. THORNTON: Yes, sir.

20 OFF THE RECORD 3:38 P.M.

21 BACK ON THE RECORD 4:02 P.M.

22 BY THE COURT:

23 THE COURT: Thank you. Please be seated. State
24 ready to proceed?

25 MR. THORNTON: State's ready, your Honor.

1 THE COURT: Is the defendant ready to proceed?

2 MR. HUGHES: Yes, your Honor.

3 THE COURT: Bring us a jury, please.

4 JURORS ENTER COURTROOM 4:03 P.M.

5 THE COURT: Mr. Foreman, ladies and gentlemen of
6 the jury, we've made tremendous progress, but we won't
7 be able to finish this case today. And I don't want to
8 keep you late today. I have out-of-town witness, and
9 I've just had an emergency arise that is going to
10 require me to conduct an emergency hearing involving a
11 person having surgery at the Medical University, by
12 telephone.

13 And because we still have at least one more witness
14 and we still have argument and charge, if I kept you
15 here now, you wouldn't get the case until probably after
16 6:00 o'clock tonight. I don't do that to a jury. So we
17 will finish the trial first thing in the morning. I
18 believe we'll be able to finish it in the morning
19 promptly.

20 I want to thank you for your patience. I want to
21 thank you for your cooperation. I told you I was going
22 to be mindful of your time. I'm going to send you home
23 early before the rain hits this afternoon, as it did
24 yesterday. Although, did any of you get wet going home
25 last night? It had stopped by the time I walked out of

1 the courthouse. It had been raining hard. They are
2 forecasting it a little higher later on this afternoon,
3 so I want to get you home.

4 Please be in your jury room at 9:30 in the morning.
5 Before 9:30. We will complete the trial as quickly
6 after 9:30 as I can get started.

7 Please, over the overnight recess, as I have
8 instructed you throughout the trial, please don't
9 discuss the case, watch television, read the newspaper,
10 or listen to any radio account of the case.

11 I thank you for your patience on behalf of Jasper
12 County and this Court. Now I'll send you back to your
13 homes for this afternoon, and I'll see you first thing
14 in the morning. You may leave the courtroom at this
15 time. Everyone else remain seated while the jury's
16 leaving. Any way they want to go.

17 JURORS LEAVE COURTROOM 4:06 P.M.

18 THE COURT: We got everybody?

19 BAILIFF: Yes, sir.

20 THE COURT: All right. Let the record reflect that
21 I have met with counsel during the break. We're not
22 exactly sure, but we don't think it's going to be but
23 one additional witness.

24 I'm going to now have to drive back to Walterboro
25 to conduct an emergency hearing, which I made counsel

1 aware of. My understanding is there are no requests to
2 charge from the State. Is that correct?

3 MR. THORNTON: That's correct, your Honor.

4 THE COURT: And there are no requests to charge
5 from the defendant.

6 MR. HUGHES: Yes, your Honor.

7 THE COURT: Yes, your Honor meaning there are none?

8 MR. HUGHES: Yes, sir.

9 THE COURT: All right. I have shown counsel a
10 proposed verdict form, which we have to correct, because
11 it had -- the wrong name was on it. But they're
12 satisfied with the form. Is that correct from the
13 State?

14 MR. THORNTON: It is, your Honor.

15 THE COURT: From the defendant?

16 MR. HUGHES: Yes, sir.

17 THE COURT: All right. Then, in that case, with no
18 request to charge and having looked over the verdict
19 form, and I understand Erin, you'll be ready to go, say,
20 around -- I would estimate about 11:30 in the morning.
21 You think you can be ready to roll then?

22 HON. ERIN VAUX: We should add, we'll have the jail
23 people brought over, and so, hopefully, we can save some
24 time.

25 THE COURT: That's fine. Well, I certainly want to

1 do whoever's in custody first, if we can. But I would
2 estimate that if we start at 9:30, from what the
3 attorneys tell me, I don't believe closing argument's
4 going to be that long, nor do I believe my charge will
5 be that long. However, just to give you an estimate of
6 the time so you can be prepared to go forward.

7 I want to thank you both for your patience today.
8 Court will be in recess until 9:30 a.m. tomorrow
9 morning.

10 MR. THORNTON: Thank you, your Honor.

11 THE COURT: Thank you.

12 OFF THE RECORD 4:09 P.M.

13 BEGIN DAY THREE, MAY 16, 2012,

14 10:05 A.M.

15 BY THE COURT:

16 THE COURT: Thank you, ladies and gentlemen of the
17 jury, Mr. Foreman. Please be seated.

18 All right, now, I'm going to ask my officer on the
19 door, during the closing arguments today, the attorneys,
20 during my charge on the law, no one is to come in and
21 out of this courtroom.

22 So this getting up, talking, moving around, it's
23 going to stop, because the jury starts looking at those
24 people. Even if you have to open that door and talk to
25 somebody. I don't want the jury looking out there

1 trying to figure out who's coming in. I want them
2 listening to the attorneys and listening to the charge.
3 So during the closing argument and the charge, no one in
4 and out of the courtroom. You understand?

5 BAILIFF: Yes, sir.

6 THE COURT: Thank you very much. Now, I met with
7 the attorneys this morning, and I'm talking to the
8 people in the courtroom. The next witness, I
9 understand, in the trial of this case, is the
10 pathologist, and who is here from the medical
11 university, Dr. Presnell. This testimony can be
12 graphic. This testimony will include graphic
13 photographs, some of which were taken from the autopsy
14 of the deceased.

15 Now, I do not allow emotional outbursts in the
16 courtroom at any time. If you cannot control your
17 emotions, I'm going to ask you to step out during this
18 testimony. It is not fair to either party, but
19 particular in this case, the defendant, for people to
20 show or display emotion in the presence of the jury.
21 And I will enforce that rule with the contempt powers of
22 this court. I will not tolerate it.

23 So if you cannot control your emotions, please
24 stand up at this time, exit the courtroom, and the
25 solicitor or the victim assistance officer will call you

1 back into the courtroom when the testimony has been
2 completed.

3 Any questions about that before we start, cause
4 there will be no emotion?

5 Very well. All right. I understand and we'll take
6 it up, Mr. Hughes, you raised -- I understand you have
7 an objection to one of the proposed photographs that the
8 Solicitor intends to introduce, but you're going to make
9 it contemporaneously with the offer into submission into
10 evidence, which we discussed in chambers this morning.
11 Is that correct?

12 MR. HUGHES: Yes, your Honor.

13 THE COURT: All right. Then I'll take it up at
14 that time. Anything further from the State? Do you
15 need a moment with anyone in light of the Court's
16 warnings to the -- or you think --

17 MR. THORNTON: No, your Honor. We're squared away.
18 The person that we -- she had some problems, as well,
19 she has already exited the courtroom.

20 THE COURT: I understand. And I completely
21 understand that because of family feelings, but I can't
22 allow that at a trial.

23 Anything further from the defendant before we
24 start?

25 MR. HUGHES: No, your Honor.

1 THE COURT: Jo.

2 BAILIFF: Yeah.

3 THE COURT: Top of the morning to you.

4 BAILIFF: Same to you.

5 THE COURT: We've got the entire jury.

6 BAILIFF: Yes, sir.

7 THE COURT: Would you bring them, please.

8 BAILIFF: Yes, sir.

9 THE COURT: Good morning.

10 JUROR: Good morning.

11 THE COURT: Good morning, Mr. Foreman.

12 FOREMAN LEWIS: Good morning.

13 THE COURT: Good morning, ladies and gentlemen of
14 the jury.

15 RESPONSES FROM JURORS.

16 THE COURT: Hope everybody had a pleasant evening.
17 We've been out here working on some matters of law. And
18 I told you that would happen during the trial. Believe
19 me, we were all ready to go at 9:30, just as you were.
20 But things do arise. Sometimes people think of things
21 overnight. And I had to take care of a couple of
22 matters in order to ensure that we stay on track.

23 We're now going to continue with the testimony in
24 the trial of this case. I ask that you listen carefully
25 to the evidence. Thank you.

1 Solicitor, you may call your next witness.

2 MS. LEGETTE: Thank you, your Honor. The State
3 calls Dr. Erin Presnell.

4 THE COURT: Dr. Presnell, if you'd come and be
5 sworn by the clerk over to my right here.

6 THE COURT: Watch your step. It's a floating --
7 Dr. Presnell, I'm going to get you to pull that chair as
8 far as you can. Adjust that microphone to your height.
9 That tablet is -- yeah, you've got it now. It's going
10 to amplify your voice. Would you state your full name,
11 spell your last name for the court reporter.

12 WITNESS PRESNELL: My name is Susan Erin Presnell.
13 P/r/e/s/n/e/l/l.

14 THE COURT: Your witness, Solicitor.

15 MS. LEGETTE: Thank you, your Honor.

16 WITNESS SWORN.

17 DR. SUSAN ERIN PRESNELL

18 DIRECT EXAMINATION, MS. LEGETTE:

19 Q Good morning, Dr. Presnell.

20 A Good morning.

21 Q Ma'am, where do you work?

22 A I'm a forensic pathologist at MUSC, Medical
23 University of South Carolina, up the road in Charleston.

24 Q And Dr. Presnell, would you please tell us about
25 your education and experience as it relates to forensic

1 pathology?

2 A Well, like I said, I'm a forensic pathologist. And
3 so, just kind of the process to get there real quick, I
4 went to college at Clemson. I was a microbiology major.
5 And then graduated there and went to MUSC for medical
6 school. And basically, I've stayed at MUSC since.

7 But I finished my four years in medical school and
8 received my M.D. And at that point, when you decide
9 what specialty you want to go into, like pediatrics,
10 surgery, internal medicine, I took pathology, which was
11 a five-year training program at the time, which I did at
12 MUSC.

13 After that, I took the national board, so I'm board
14 certified in pathology. And then, after that, I did an
15 additional year in the sub-specialty of forensic
16 pathology. And I completed that year, and took the
17 boards, and so, passed. And so, I'm board certified in
18 forensic pathology, as well. That would -- that whole
19 process ended in 1999. And I was hired on as faculty at
20 MUSC, and again, I've been there ever since.

21 Q Dr. Presnell, you talked about forensic pathology.
22 What is forensic pathology?

23 A Well, everyone's getting a little more familiar
24 with forensic pathology with T.V. programs and all. But
25 if I could back up a little bit, most pathologists

1 aren't forensic pathologist or autopsy pathologists. A
2 lot of them are general pathologist, where -- well,
3 pathology itself is the study of disease.

4 So a pathologist, what happens is that you go to
5 your clinician, your family doctor. They remove tissue.
6 They do, say, a skin biopsy or a breast biopsy. Or you
7 go to the surgeon, you know, to do surgery and remove
8 tissue. That tissue goes to the pathologist. They look
9 at it. They examine it. They look under the microscope
10 and they diagnose disease. So it's cancer, it's not
11 cancer. It's infection, it's not. So that's kind of
12 the broad, general field of -- of pathology.

13 Forensics is a sub-specialty of that, where,
14 instead of looking at a group of tissues or an organ
15 that's been removed, we're looking at the entire body of
16 someone who's passed. Of course, that process is the
17 autopsy. And we are -- we are evaluating for disease,
18 but we're also evaluating trauma and interpreting
19 trauma. And ultimately, through the process of the
20 autopsy, we're not just coming up with deducting one
21 diagnosis, per se, but we're coming up with the cause
22 and manner of death.

23 Q Dr. Presnell, so I understand that you've been a
24 forensic pathologist about 13 years.

25 A I've been doing forensic patho -- autopsies for

1 longer than that, but I've been board certified since
2 1999, so, yes.

3 Q Okay. Well, I'm sorry. A little bit less than
4 that that you say you did. Let me ask you this
5 question. In your years and experience as a forensic
6 pathologist, have you ever performed autopsies where the
7 cause of death was a gunshot wound to the head?

8 A Oh, yes, definitely.

9 MS. LEGETTE: Your Honor, at this time, I would
10 offer Dr. Erin Presnell as an expert in the field of
11 forensic pathology.

12 THE COURT: Any objection as to qualifications?

13 MR. HUGHES: No, your Honor, I have no objection to
14 Dr. Presnell.

15 THE COURT: Ladies and gentlemen, as I've told you
16 earlier in the trial concerning expert testimony, the
17 law normally doesn't allow witnesses to get on the
18 witness stand and give opinion testimony or conclusion
19 testimony. The exception to this opinion rule is for
20 those witnesses whom we call expert witnesses,
21 witnesses, who by virtue of their experience, training,
22 or education, are permitted to give their opinions in
23 the -- as an expert as to matters in which they claim to
24 be skilled.

25 In determining the weight to be given to such

1 opinion, you should consider the qualifications and the
2 believability of the expert and the reasons given for
3 his or her opinion. And you are not bound by any expert
4 opinion. You give it the weight, if any, you deem it
5 should be entitled.

6 The witness is qualified without objection in the
7 field of forensic pathology. You may proceed,
8 Solicitor.

9 MS. LEGETTE: Thank you, your Honor.

10 BY MS. LEGETTE:

11 Q Dr. Presnell, during the month of December 2009,
12 did you perform one of your autopsies?

13 A Yes, I did.

14 Q And specifically, were you working at MUSC on
15 December 11, 2009, performing an autopsy on that same
16 day?

17 A Yes, I performed an autopsy on Mr. Brantley on
18 December 11, 2009.

19 Q Begging the Court's indulgence. Dr. Presnell, I
20 will hand you momentarily some previously marked for
21 identification State's Exhibit Number 6-C. Take a
22 moment and tell me if you recognize this item.

23 May I approach the witness, your Honor.

24 THE COURT: You may.

25 A Yes, ma'am, this is a photograph taken at the time

1 of autopsy.

2 Q And Dr. Presnell, who is this represented in that
3 photograph?

4 A This is Mr. Brantley.

5 Q And he was the man you autopsied on December 11,
6 2009?

7 A Yes.

8 Q And Dr. Presnell, is that a fair and accurate
9 representation of how Mr. Brantley looked on that
10 particular date?

11 A Yes, ma'am.

12 MS. LEGETTE: Your Honor, at this time, I would
13 offer for admission into evidence State's Exhibit 6-C.

14 THE COURT: Any objection as to State's 16 [sic],
15 Counsel?

16 MR. HUGHES: No, your Honor.

17 THE COURT: Ladies and gentlemen of the jury,
18 State's Exhibit 16 [sic] will be admitted into evidence
19 in the trial of this case, without objection. State's
20 16 in evidence. You may publish, Solicitor.

21 MS. LEGETTE: Your Honor, I --

22 THE COURT: Proceed.

23 MS. LEGETTE: Your Honor, thank you. That was
24 State's Exhibit Number 6, your Honor.

25 THE COURT: I'm sorry. I thought you said 16. 6?

1 MS. LEGETTE: 6-C.

2 COURT REPORTER: 6-C.

3 THE COURT: You marked it? You got it? I'm sorry,
4 ladies and gentlemen, State's Exhibit Number 6 [sic]
5 will be admitted into evidence without objection.
6 State's 6 [sic]. You may proceed or publish.

7 MS. LEGETTE: Thank you, your Honor.

8 REPORTER'S NOTE: THE EXHIBIT IS
9 STATE'S 6-C.

10 ITEM IDENTIFIED AS PHOTOGRAPH

11 MARKED STATE'S EXHIBIT NUMBER C-6,

12 AND ADMITTED AS EVIDENCE.

13 BY MS. LEGETTE:

14 Q Dr. Presnell, with regard to Mr. Woodrow Brantley's
15 autopsy, was that the first time you had seen Mr.
16 Brantley?

17 A Yes.

18 Q And how long did the autopsy last?

19 A Several -- several hours. You know, and part of
20 that autopsy is our examination at the time, but we also
21 take tissues and samples for testing that those results
22 come back later. So the autopsy really goes on for a
23 while, but the actual being in the autopsy room is
24 probably a couple hours.

25 Q Dr. Presnell, can you tell us about your findings

1 and evidence or injury during the autopsy.

2 A Yeah. What I -- what I can do is I'll just -- I'll
3 kind of give the overall conclusion, and then we'll go
4 through it step by step.

5 Mr. Brantley died from a single, so, one, a close-
6 range, penetrating, gunshot wound to the head. And
7 where his gunshot wound was is in through his upper lip,
8 little bit to the left, but pretty much in the middle;
9 through the roof of the mouth or the pallet; so through
10 the roof of the mouth back. It's going a little bit up
11 and a little bit to his right.

12 It goes back to the spinal cord, and travels up
13 into the brain stem. And that's where the bullet is
14 found. That's where we recovered the bullet. The brain
15 stem is the part of the nervous system that connects the
16 brain to the rest of the spinal cord. That's the big
17 outgoing track of the -- the brain, of the brain
18 center.

19 Like I said, it was one gunshot wound.
20 Penetrating, it was a single, close-range penetrating
21 gunshot wound. Penetrating means it went into the body
22 and did not leave. So we recovered the bullet at
23 autopsy.

24 And the other components of this injury was
25 assessing range of fire. At this time, we try to

1 interpret the injuries. And to explain range, the
2 medical examiner, the forensic pathologist, classified
3 them from their perspective into three categories.

4 Either the gunshot means a contact, meaning the gun
5 is against the skin. It's close range or it's distant,
6 further away from the victim.

7 And so, what you see as far as injury, depends on
8 -- well, it's because of what comes out the end of the
9 barrel of the gun when it's shot. So not only do you
10 have a bullet that comes out the end of the -- the
11 barrel of the gun, but you also have some soot, and you
12 also have little, tiny, small, gun powder particles.
13 The gun powder particles are what ignites to propel the
14 bullet down the barrel. But some of these particles
15 will come out the end of the barrel, as well. So the
16 bullet, the soot and some gun powder particles.

17 If you have the gun right up close against the
18 skin, and then -- and you fire, then you took the gun
19 away, you'd see a rim of soot, sooty deposit right on
20 the skin.

21 If you pull the gun away, that soot has a -- kind
22 of gaseous. May or may not make it to the skin,
23 depending how far away it is. But those little tiny gun
24 powder particles do. And when they hit the skin, they
25 scratch it. And it causes a little scratch, little dots

1 of scratches. They can't wipe away. They're little
2 abrasions.

3 And then, after a certain distance, the further
4 away the gun is, the soot stuff are not going to make it
5 to the skin. The gun power particles, which are
6 lighter, don't make it to the skin, and just the bullet
7 does. And you just have a simple hole, with no soot, no
8 stippling around it.

9 And in this particular case, Mr. Brantley's gunshot
10 wound was surrounded by stippling around his face,
11 indicating to us that this was a close-range gunshot
12 wound.

13 So again, putting it altogether, you have the
14 single, close-range, penetrating gunshot wound that went
15 in through his spinal cord and into his brain stem.

16 Q Doctor, you said close range. Can you give us a
17 distance as far as close range is concerned?

18 A Well, there's an accurate way to estimate -- or
19 what we do is, the stippling, the closer the gun is, the
20 -- the tighter and more dense the powder and stippling
21 is. The further away it is, it'll spread out further.

22 And so, what we do is, we measure the how far
23 across the stippling is, or if it's in a vertical --
24 horizontal or vertical direction. The best way to
25 estimate how far away that gun is, is to test fire that

1 gun with that ammunition. If you don't have it, then
2 just the -- a broad general category of pretty
3 encompassing all handguns. By the time a handgun gets
4 out to -- pretty much all handguns, by the time they're
5 out to 36 to 42 inches, so a yard, yard and six inches,
6 that soot or stippling's not going to -- or soot or
7 powder particles won't reach the skin.

8 Now, it may be closer for any particular weapon
9 that, you know, that might qualify as a close range.
10 But if you want to include everything, then the general
11 range is within -- somewhere within 36 to 42 inches.

12 Q So in other words, in other words, Doctor, the
13 person that shot Mr. Brantley would have been within 32
14 inches of his face?

15 A Well, 36 -- well, the gun. The gun within --
16 within the 36 to 42. I guess you could say 42 inches.

17 Q And now, you may already answered this question,
18 but the stippling, you talked about how tight the
19 stippling is on a person's face or on their particular
20 body. How tight was the stippling on Mr. Woodrow
21 Brantley?

22 A And you'll see, we can illustrate the -- it's a
23 relatively tight pattern. So adjusting that, it's
24 probably on the closer to 36 than 42 inches.

25 Q Now, Doctor, I want to ask you, based on your

1 medical opinion in this particular autopsy, within the
2 bounds of a reasonable medical certainty, have you
3 formed an expert opinion as to what was the cause of
4 death for Mr. Brantley?

5 A Cause of death is the gunshot wound into the spinal
6 cord and brain stem.

7 Q And what was the manner of death?

8 A The manner of death is homicide.

9 Q Doctor, you talked about those photographs. Did
10 you also document Mr. Brantley's injuries by photograph
11 and X ray?

12 A Right. Yes, we do X rays to help us, assist us in
13 locating the bullet. And so, yes, we have X rays.

14 Q Dr. Presnell, in a moment, I'm going to hand you
15 what's been previously marked as State's Exhibit 6-A, 6-
16 B, 6-D through 6-H. Take a moment and tell me if you
17 recognize these items.

18 MS. LEGETTE: Your Honor, may I approach the
19 witness.

20 THE COURT: Give me the numbers again, Solicitor.

21 MS. LEGETTE: I'm sorry. Your Honor, that would be
22 6-A, 6-B, 6-D through 6-H.

23 Q I'll hand you those momentarily. Tell me if you
24 recognize these.

25 MS. LEGETTE: May I approach, your Honor.

1 THE COURT: You may. If you'll use the exhibit
2 numbers for me, Dr. Presnell, for the record so it's
3 clear what we're talking about.

4 BY MS. LEGETTE:

5 A All right. 6-A and 6-B are duplicates of -- or the
6 rest of the X rays that we took at autopsy. 6-D and 6-E
7 are photographs where the bullet entered the body. 6-F
8 is a photograph of additional injuries that we haven't
9 talked about. And 6-G and 6-H are photographs of the
10 bullet that we recovered at autopsy.

11 Q And Doctor, are State's Exhibit's 6-A through B,
12 and 6-D through H fair and accurate representations of
13 the evidence of injury of Mr. Woodrow Brantley at the
14 autopsy you performed on him on December 11, 2009?

15 A Yes.

16 MS. LEGETTE: Your Honor, at this time, I would
17 offer into evidence State's Exhibit's 6-A through B, 6-D
18 through H.

19 THE COURT: Any objection as to 6-A, 6-B, 6-D, 6-E,
20 6-F, 6-G, or 6-H, Counsel?

21 MR. HUGHES: Yes, your Honor, I will have objection
22 on some of those.

23 THE COURT: All right. Which ones? You need to
24 see them?

25 MR. HUGHES: I believe it's 6-F, your Honor. I

1 will take -- I have to take a look to be sure.

2 THE COURT: Well, let me let you look at them so we
3 know what we're talking about. Hand those to him so he
4 can look at the exhibit numbers, and tell me -- and hand
5 them back to me so we know we're talking --

6 MR. HUGHES: I'm sorry, your Honor. It is 6-E.

7 THE COURT: E?

8 MR. HUGHES: Yes. All right. Other than 6-E, is
9 there any objection to the other photographs?

10 MR. HUGHES: No, your Honor.

11 THE COURT: All right. And what is the objection
12 as to 6-E? Grounds, Mr. Hughes.

13 MR. HUGHES: Your Honor, I really believe that it
14 would excite an emotional response, and the probative
15 value is outweighed by the prejudicial value of the
16 evidence. I mean, the prejudicial outweighs the
17 probative value.

18 THE COURT: Very well. Mr. Hughes, I have now
19 examined those exhibits, Exhibit 6-E, as in echo. I
20 believe the objection should be overruled. I believe a
21 photograph has to create an undue tendency to suggest a
22 decision on an improper basis, commonly thought, but not
23 necessarily, to be an emotional one. In light of the
24 testimony I've already heard from Dr. Presnell, I
25 believe State's Exhibit 6-E corroborates the testimony

1 she's previously given in this case, and there, your
2 objection is respectfully overruled.

3 MR. HUGHES: Thank you, your Honor.

4 THE COURT: You may proceed, Solicitor.

5 MS. LEGETTE: Thank you, your Honor.

6 BY MS. LEGETTE:

7 Q Dr. Presnell, I believe we handed you a photograph.
8 And I'm not sure of the number at this time. But before
9 we get into the photograph, you talked about another
10 injury that Mr. Brantley had aside from the gunshot
11 wound to his face. Can you talk about any other
12 injuries he may have had.

13 A Yes. He had, over on the left side of his face, he
14 had two lacerations, sort of splits in the skin, from
15 blunt trauma; and two abrasions right around the -- the
16 eye area.

17 Q And Doctor, were you able to make a determination
18 as to how he may have received that injury?

19 A Well, it's -- it's non-specific as far as its
20 pattern, but it's location is consistent with what we
21 would call a terminal fall. Meaning that, after being
22 shot, if he immediately collapsed and fell, that that
23 would create those injuries right around the eye. Like
24 right on the bone that you can feel beside your eye.

25 Q Doctor, were you able to determine how soon after

1 he was shot Mr. Brantley would have succumbed to that
2 injury or died?

3 A This is one of the few times that we can say that
4 it was instantly fatal. It goes through the brain stem.
5 And basically just severed all connection from the brain
6 to the rest of your body. So it's -- it's immediate.

7 Q So in other words, if Mr. Brantley were standing,
8 he would be dead on his feet?

9 A Well, I'm sure that the heart might have been
10 pumping some -- a couple more times, or I mean, it might
11 have been a few seconds.

12 Q Dr. Presnell, at this point, I'd like to go over
13 with you the actual photographs.

14 Your Honor, may she come down and publish those
15 particular photographs to the jury?

16 THE COURT: She may. One second, Dr. Presnell.
17 Let me hold them so I can do it before you -- yeah, you
18 can go -- watch your step, ma'am.

19 Ladies and gentlemen of the jury, State's Exhibits
20 6-A, 6-B, 6-C, 6-D, 6-F, 6-H, and 6-G are admitted into
21 evidence in the trial of this case without objection.
22 State's Exhibit 6-E, as in echo, is admitted into
23 evidence of the trial of this case over objection.

24 THE COURT: Jean, hand those to the solicitors so
25 she can hand them to the witness.

1 MS. LEGETTE: Thank you.

2 ITEMS IDENTIFIED AS X RAYS MARKED
3 STATE'S EXHIBIT NUMBERS 6-A AND 6-B;
4 ITEMS IDENTIFIED AS PHOTOGRAPHS
5 MARKED STATE'S EXHIBIT NUMBERS
6 6-D, 6-E, 6-F, 6-G, AND 6-H,
7 AND ADMITTED AS EVIDENCE.

8 BY MS. LEGETTE:

9 Q Dr. Presnell, I want to refer first to State's
10 Exhibit 6-A admitted into evidence. Please, if you
11 don't mind, Dr. Presnell,

12 THE COURT: Is that microphone on?

13 BAILIFF: Yes. Yes, sir.

14 BY MS. LEGETTE:

15 Q We're going to start -- I'm sorry. We're going to
16 start with State's Exhibit 6-C. Dr. Presnell, what do
17 we see in State's Exhibit Number 6-C?

18 A Okay. This is just a front, a photograph of the
19 front of Mr. Brantley. And what we're looking at is
20 this injury right here. And we have a little bit closer
21 up. But anyhow, as far as location, like I said, it was
22 in the central, a little bit to the left of midline in
23 the upper lip.

24 And then State's Exhibit 6-D is, like I said, a
25 closer picture -- closer picture of that injury. And

1 right here is the hole area. And then can you
2 appreciate all those little red dots around the entrance
3 wound? This is the entrance wound, and all these little
4 red dots here. There's actually a couple up here, too.
5 But this right here is the stippling that I was
6 referring to, indicating the close-range nature of the
7 gun shot wound.

8 THE COURT: Indicate the exhibit number for the
9 record that you were referring to, Doctor.

10 A This is 6-D.

11 THE COURT: All right.

12 A The next one is 6-E. This is -- we have just
13 lifted up the lip so that we could see where the
14 bullet's going. And you can see on the inside of the
15 lip right here is the -- where the bullet enters into
16 the body. So through the lip and, of course, the
17 underside of the lip. And that was 6-E.

18 Q And Doctor, if I may ask you briefly, in State's
19 Exhibit 6-E, would there have been teeth here?

20 A Oh. Yes. He is missing the teeth, the front
21 incisor teeth, the front teeth, which were probably
22 traumatically expelled because of the gunshot wound.

23 Okay. Then next I'll just show you the X rays.
24 First is 6-A. And this is what we call an A.P., or
25 anterior posterior, meaning that we're taking the

1 X ray right from the -- just like that very first
2 picture, right from his -- the front of his face. And
3 the bullet is this light area, light area right here.
4 It's a little bit to the right of midline. This is like
5 we're looking directly at him. Just like that first
6 picture. So the bullet is that like what we call
7 radiopaque or white, whitish area to the right of that
8 line. And here -- that was 6-A.

9 And 6-B is the side picture of that. So again, we
10 have the skull, jaw, his teeth with some fillings. And
11 the bullet is right here at the base of the skull. This
12 is where the brain stem would be, and then going out to
13 the spinal cord, down -- which would go down and through
14 the back. And that is 6-B.

15 The actual bullet that I told you we recovered,
16 here's a photograph of one side of it. It's relatively
17 intact. So 6-H. And if we flip it over, this is the
18 opposite side of it. This is 6-G.

19 And then the last photograph to illustrate is 6-F.
20 I had told you of his additional injuries consistent
21 with a terminal fall. Or really just any kind of blunt
22 trauma, but certainly during the location of a terminal
23 fall injury. These are the two lacerations right there.
24 And here are the two areas of abrasion or scratching,
25 basically, on the -- the cheek bone area, right around

1 the eye. That is 6-F.

2 Q Thank you, Doctor. You may take a seat on the
3 witness stand, please.

4 Doctor, you also indicated that you collected
5 evidence during the autopsy, correct?

6 A Yes.

7 Q And when you collected that -- what was it you
8 collected? Tell us again, please.

9 A Well, he was clothed, so all his clothing came off.
10 And then, the little -- the items that accompanied him.
11 We also did fingernail clippings. And we drew some
12 blood that we provided to law enforcement, and also the
13 bullet.

14 Q Doctor, once you recovered this evidence, what did
15 you do with it?

16 A We transferred it to Albert Kleckley with the
17 Jasper County Sheriff's Office.

18 Q And Doctor, when you transferred it to Mr. Albert
19 Kleckley at the coroner's office, what was the condition
20 of the items that you turned over to him?

21 A The condition was like we got them at autopsy.

22 Q Basically -- I'm sorry. Were they in a sealed
23 condition?

24 A A sealed condition?

25 Q Yes.

1 A Well, we packaged them up in containers and
2 biohazard bags, and transferred them over. As far as
3 being sealed, that would be in our -- in our wrapping
4 with our labels on it.

5 Q Doctor, I'm going to hand you what's been
6 previously marked, and we've had some little issues with
7 this particular piece of evidence, what's been
8 previously marked as State's Exhibit 4-A, 4-B, 4-C,
9 and 5. Take a moment and tell me if you recognize these
10 items.

11 May I approach the witness, your Honor?

12 THE COURT: You may.

13 BY MS. LEGETTE:

14 A Well, let's see. 4-B is the -- is one of our
15 biohazards, ziplock bag, containing the canister that we
16 would use to put the bullet in to transfer it over. And
17 the canister's got our autopsy label on it with the
18 correct number and the name.

19 And then, separated from the canister, it appears
20 to be the bullet that we -- that we recovered at
21 autopsy.

22 The other packaging appears to belong to other law
23 enforcement personnel.

24 Q And Doctor, are State's A, B, C -- I'm sorry. Are
25 State's 4-A, B, C, and 5 in substantially in the same

1 condition today as when you last saw them?

2 --A I see 4-B. What's 4-A? Oh, here's 4-A.

3 Q 4-A should be the outer packing.

4 A So I -- I am not familiar with 4-A. But 4-B, which
5 is the biohazard bag, looks just like it did. And
6 containing the container with our label, that's all
7 intact. And 5 is the bullet that looks like the
8 pictures we just showed.

9 Q And Doctor, have State's Exhibit's 4-B, 4-C, and 5
10 been altered in any way since you last saw them?

11 A I mean, not that I can tell, no. Other than being
12 opened and re-packaged in other containers.

13 MS. LEGETTE: Your Honor, at this time, I would
14 offer for admission into evidence, State's Exhibit's
15 4-B, 4-C, and 5.

16 THE COURT: You're not offering 4-A?

17 MS. LEGETTE: We'll offer 4-A, as well, your Honor.
18 I was just simply trying to -- we could offer 4-A, B, C,
19 and --

20 THE COURT: Just tell me what it is you want to
21 offer. That's all I'm asking you to do now.

22 MS. LEGETTE: Yes, your Honor. We'll offer 4-A, B,
23 C, and 5.

24 THE COURT: As to 4-A, 4-B, 4-C, and 5, Mr. Hughes?

25 MR. HUGHES: Your Honor, since Dr. Presnell handled

1 and was in charge of 4-B, 4-C, and 5, I have no
2 objection to that. 4-A, she says she can't identify
3 that, so I object.

4 THE COURT: Objection is sustained as to 4-A. 4-B,
5 C, and 5 are admitted into evidence without objection.

6 MS. LEGETTE: Thank you, your Honor.

7 ITEM IDENTIFIED AS ZIPLOCK BAG

8 MARKED STATE'S EXHIBIT NUMBER 4-B,

9 ITEM IDENTIFIED AS CANISTER

10 MARKED STATE'S EXHIBIT NUMBER 4-C,

11 AND ITEM IDENTIFIED AS BULLET

12 MARKED STATE'S EXHIBIT 5, AND

13 ADMITTED AS EVIDENCE.

14 MS. LEGETTE: Begging the Court's indulgence.

15 Dr. Presnell, I have no further questions. Answer
16 any questions from Mr. Hughes, please.

17 THE COURT: Cross-examination.

18 MR. HUGHES: Thank you, your Honor.

19 DR. SUSAN ERIN PRESNELL,

20 CROSS-EXAMINATION, MR. HUGHES:

21 Q Good morning, Dr. Presnell.

22 A Good morning.

23 Q How are you doing this morning?

24 A Good. Thanks.

25 Q Okay. A few questions for you. You've done a lot

1 of autopsies on people who have been shot.

2 A Yes. Yes,

3 Q And at close range.

4 A Yes.

5 Q Now, when a gun fires, there's actual fire coming
6 out, right?

7 A Yes. You can have a burst of flame.

8 Q And since I smoke, I'm very familiar with the fact
9 that facial hair is flammable. Isn't that correct?

10 A Yes, hair is flammable.

11 Q Was there any burnt hair on Mr. Brantley that you
12 found?

13 A No, we didn't document burnt -- burnt hair.

14 Q Okay. And you've testified that because you don't
15 know what weapon was used, it could be anywhere from 42
16 inches closer.

17 A Correct.

18 Q And which direction did the bullet come from? If
19 I'm stand -- if I'm Mr. Brantley, which direction did
20 the bullet come from?

21 A Keep in mind that when I tell you the direction of
22 the trajectory of the bullet, it's through the victim,
23 it's through Mr. Brantley. I can't tell, per se, what
24 position he was in, whether he's standing, laying down.
25 And so, whatever position he was in at the time of the

1 shooting would indicate -- would indicate, actually,
2 where the bullet was coming from.

3 Now, through his body, it's, like I say, going a
4 little bit to the left in the brain. It's going to the
5 right and up.

6 MR. HUGHES: Your Honor, could I have the witness
7 step down, please, to demonstrate.

8 THE COURT: You may.

9 BY MR. HUGHES:

10 Q Would you step down here and remain --

11 THE COURT: Counsel, you may come around so you can
12 hear view also, outside the jury box.

13 BY MR. HUGHES:

14 Q If you'll take my pen, just put it on my face in
15 the direction that it would be coming in.

16 A (WITNESS COMPLIES.)

17 Q Thank you. You may have a seat.

18 Did you examine Mr. Brantley's eyes?

19 A Yes, we did.

20 Q How were they?

21 A Well, I have them described as -- as clear, and
22 brown, with equal pupils.

23 Q He could see, couldn't he?

24 A Yes, as far as I know.

25 Q Now, another question for you. If we've watched

1 television, we've heard of something called defensive
2 wounds. Could you explain them to the jury.

3 A Well, defensive wounds would be injuries sustained
4 trying to fight off an attacker. Classically, we'll see
5 them with, say, sharp-force injuries, like a knife. And
6 if someone holds their arms up to try to prevent that
7 blow, whether it be with a knife or fist or a piece of
8 wood, then you'd see some injuries on the sides of the
9 forearms like that.

10 Or you could put your hands up, and you might see
11 some injuries on -- on the hands. So that would be --
12 really, it's a location of an injury.

13 Q Why do we put our hands up? Why do we do that?

14 A Well, just a reflective, instinctive, you know,
15 don't -- to ward off the trauma.

16 Q Okay. Now, you said you sent blood off with law
17 enforcement. Did you do anything else with any blood?

18 A Yes, we do toxicology on the -- all of our cases.
19 And in this case, we did that, as well.

20 Q Okay. I know I'm going to be asking for a lot of
21 big words here, but what did you find?

22 A All right. So we tested his blood, and basically,
23 -- we can go through each of them. He has cocaine,
24 marijuana, and alcohol. So then, he also has some
25 breakdown products of that. For example, he has

1 cocaine, but he also has benzoylecgonine, which is a
2 breakdown product of cocaine.

3 He had ethanol, or alcohol. And he also has
4 cocaethylene, which is actually a combination -- if
5 someone's using cocaine and alcohol at the same time,
6 the cocaine and alcohol can form a compound called
7 cocaethylene. And so, he has that in his blood, as
8 well. As well as some caffeine.

9 Q How much alcohol did he have in him?

10 A He has 199 milligrams per decimeter, which is .199,
11 which is basically .2. I mean, most people are familiar
12 with the .08 for a DUI-type cutoff. So he's .2.

13 Q And how much marijuana?

14 A His marijuana, the active marijuana is 2.9, which
15 isn't a large amount, but -- but -- but it's there, yes.

16 Q And the cocaine?

17 A The cocaine level is 170. And as far as what does
18 that mean, one of the problems with interpreting cocaine
19 levels is there's really not a good curve of the higher
20 it gets the more you're affected. It just affects
21 different people differently. But it is active cocaine.

22 Q Okay. Did you examine his stomach?

23 A Yes.

24 Q What was in it?

25 A Let's see. He has like a quarter ounce of tan

1 fluid. So really, not much.

2 COURT REPORTER: I'm sorry. A quarter ounce of
3 what?

4 A Tanned colored fluid.

5 Q Now, I know that after I've had a drink, after a
6 period of time, it diminishes. Does that also happen
7 after you die? Your blood alcohol?

8 A It's pretty stable. It certainly -- this -- this
9 early post-mortem period wasn't long from his death when
10 the autopsy was performed and the samples were procured.
11 So I would expect it to accurately reflect his level
12 when he was living.

13 Q Approximately how much do you have to drink to get
14 a blood alcohol level of .20?

15 A You know, for an average man, you know, and one
16 drink, I believe, is .015 -- or .025. So you know,
17 you're talking eight or so drinks. But of course, it
18 depends on the strength. And also, keep in mind that
19 when you're drinking, it's over a period of time, you're
20 also metabolizing. So it could have actually been more
21 than that, as well.

22 Q Okay. Can you give a rough estimate on how long
23 the cocaine was in his system.

24 A No, I cannot.

25 Q Okay. Back to the alcohol, I'm going to assume

1 this isn't your standard I-just-had-two-drinks, correct?

2 A Well, this was more than two drinks, yes.

3 Q And can you tell approximately when the marijuana
4 was consumed?

5 A No.

6 MR. HUGHES: Did you examine -- I'm not going to
7 ask that. No further questions, your Honor.

8 THE COURT: Re-direct examination.

9 MS. LEGETTE: None, your Honor.

10 THE COURT: As to this witness?

11 MS. LEGETTE: We ask that she be excused, your
12 Honor.

13 THE COURT: Any objection, Mr. Hughes?

14 MR. HUGHES: Without objection, your Honor.

15 THE COURT: Dr. Presnell, you are excused from the
16 trial of this case. You may leave the courtroom at this
17 time.

18 WITNESS PRESNELL: Okay.

19 THE COURT: You take your file, but leave me my
20 exhibits, please.

21 WITNESS PRESNELL: I did. I've made that mistake
22 once.

23 THE COURT: Call your next witness.

24 STATE RESTS, MR. THORNTON.

25 MR. THORNTON: The State rests, your Honor.

1 THE COURT: Are there any matters of law that I
2 need to take up at this time, Mr. Hughes?

3 MR. HUGHES: No, your Honor.

4 THE COURT: Counsel, approach.

5 OFF-THE-RECORD BENCH CONFERENCE,

6 THE COURT, MR. THORNTON, MR. HUGHES.

7 BACK ON THE RECORD.

8 BY THE COURT:

9 THE COURT: Madam [sic] Foreperson and ladies and
10 gentlemen of the jury, I need to take up a quick matter
11 of law. It will not take long. I will right back with
12 you. Please retire to your jury room, and I'll let you
13 know as soon as I finish and bring you back. Do not
14 discuss the case. Thank you.

15 JURORS LEAVE COURTROOM 10:37 A.M.

16 MOTION FOR DIRECTED VERDICT

17 MR. HUGHES:

18 THE COURT: Mr. Hughes, I understand now that you
19 have a motion you wish to make at the conclusion of all
20 of the State's evidence. The State has rested.

21 MR. HUGHES: Your Honor, I apologize. When you
22 were asking that question, I realized that the jury was
23 still here.

24 I do wish to make a motion for a directed verdict
25 in this matter. It's not -- being the State has not

1 proven all the elements of the charge of murder, nor of
2 the elements of possession of a weapon during the
3 commission of a violent crime.

4 I had always planned to make that motion, but I
5 just did not wish to do so in the presence of the jury.
6 I misunderstood your question. That's my fault. I
7 apologize for that.

8 THE COURT: Very well. Mr. Thornton, does the
9 State wish to be heard on the motion?

10 MR. THORNTON: Your Honor, the State rests on the
11 evidence that's been presented. And we ask that you
12 rule accordingly. Thank you, sir.

13 THE COURT: Very well. Mr. Hughes, at the standard
14 I'm required to use at this stage, your motion for
15 directed verdict is respectfully denied. I'd ask that
16 you and your client please come forward at this time and
17 be sworn by the clerk of court.

18 DEFENDANT SWORN.

19 TO DEFENDANT HOWARD

20 BY THE COURT:

21 THE COURT: All right. State your full name for
22 the record, please.

23 A My name Brett Howard.

24 THE COURT: Mr. Howard, at this time, I'm going to
25 explain to you certain of your rights. If you do not

1 understand anything that I say, please let me know. If
2 you want me to explain anything in further detail,
3 please let me know. You understand?

4 A Yes, sir.

5 THE COURT: We've now reached the stage of the
6 trial where you may present your defense. You have the
7 right to testify in your own behalf. However, no one,
8 no one, can make you testify. In the event, --
9 Solicitor, does he have a record?

10 MR. THORNTON: He does not that I can use against
11 him, your Honor.

12 THE COURT: If you did have a record, for any
13 conviction involving dishonestly or false statement, or
14 for a crime punishable by imprisonment of more than one
15 year, and this court were to determine as a matter of
16 law that the probative value of revealing this evidence
17 outweighed its prejudicial effect to you, the Solicitor
18 would be able to introduce your record, if there were
19 one, for impeachment purposes to attack your credibility
20 or your believability.

21 If you elect, and it's your decision, not to take
22 the witness stand, I will charge the jury in my charge
23 on the law at the conclusion of the case that they are
24 not to give the fact that you did not testify any
25 consideration whatsoever. And there is to be absolutely

1 no legal prejudice to you because you did not testify.
2 You have the *Constitutional* right to remain silent. The
3 burden of proof remains on the State of South Carolina
4 to prove every element of the offenses beyond a
5 reasonable doubt.

6 The matter of whether or not you testify in the
7 trial of this case will be left entirely up to you as to
8 whether or not you wish to testify. You may talk with
9 your attorney, but the ultimate decision as to whether
10 or not you testify in this case is your decision, not
11 your attorney's or anyone else's.

12 Have you understood what I've just told you?

13 A Yes, sir.

14 THE COURT: Mr. Hughes, would you like a moment
15 with your client?

16 MR. HUGHES: If my client wishes, your Honor. I do
17 not need one.

18 THE COURT: Would you like a moment to talk to your
19 lawyer, --

20 A No, sir.

21 THE COURT: -- Mr. Howard?

22 A No, sir.

23 THE COURT: Are you ready to tell me at this time
24 whether or not you wish to testify in the trial of this
25 case?

1 A Yes, sir.

2 THE COURT: What is your decision?

3 A I'm not.

4 THE COURT: You do not wish to testify.

5 A Yes, sir.

6 THE COURT: And that is your decision and not
7 anybody else's. Is that right?

8 A Yes, sir.

9 THE COURT: And no one forced you into that
10 decision.

11 A No, sir.

12 THE COURT: And you make that of your own free will
13 and your own accord. Is that correct?

14 A Yes, sir.

15 THE COURT: Nobody's promised you anything to make
16 that decision.

17 A No, sir.

18 THE COURT: Very well. You may return to your seat
19 with your attorney.

20 BY THE COURT:

21 THE COURT: All right, Counsel. Mr. Hughes, does
22 the defendant intend to introduce any evidence in the
23 trial of this case?

24 DEFENSE RESTS, OUTSIDE OF

25 PRESENCE OF JURORS, MR. HUGHES:

1 MR. HUGHES: No, your Honor. The Defense will rest
2 when the jury comes back.

3 THE COURT: All right. I will give you the
4 opportunity to tell the jury that you rest when they
5 come back, because they're not aware of that decision.

6 In light of what you're telling me outside the
7 presence of the jury, I assume from our discussion
8 yesterday in chambers, I've shown both of you the
9 verdict form. You both tell me your satisfied with the
10 verdict form. I've been over my entire charge with you,
11 and you both tell me you're satisfied with what's
12 included in the charge. I told you it was my intention
13 this morning, I would change, of course, in light of Mr.
14 Howard's decision the failure of defendant to testify is
15 not to be used against him. I'm also going to charge
16 prior inconsistent statements. I'm also going to charge
17 prior record of a witness, because of what was elicited
18 during the trial of the case.

19 I assume, then, that we're ready to proceed. Mr.
20 Hughes, do you agree? Just two arguments, and you
21 begin, and the Solicitor close? Or do you want to
22 insist that the Solicitor open in full, and you have a
23 reply, and then the Solicitor has the final argument?
24 But because you didn't put up any evidence, you have the
25 last argument in this case, so you tell me how you want

1 to do it. Solicitor just opens one time, and then you
2 close?

3 MR. HUGHES: I will close, your Honor.

4 THE COURT: How long you want?

5 MR. HUGHES: Your Honor, I can't see it being more
6 than 30 minutes.

7 THE COURT: Solicitor, how long you want?

8 MR. THORNTON: My normal 20 should be fine, Judge.

9 THE COURT: All right. Mr. Hughes, since you've
10 asked for 30, when you breach 25, you will hear the
11 familiar (JUDGE TAPPING GAVEL) to let you know you've
12 got five more minutes to try to wrap it up. I don't
13 stop lawsuit, although we did have a lawyer in our
14 circuit that argued for an hour and 45 minutes recently,
15 and I reminded you and the Solicitor of that in chambers
16 as four jurors went to sleep prior to an hour during
17 that argument. And I certainly want to remind you that
18 length is not necessarily the key to a successful
19 argument. However, I will certainly give you the time
20 that you requested.

21 All right, Solicitor, if you'll argue first, after
22 the defendant rests, followed by Counsel for the
23 defendant, I will give each of you 30 minutes, even
24 though you've only requested 20, Solicitor.

25 Have I accurately stated the conditions of the

1 verdict form and the charge in so far as the State is
2 concerned?

3 MR. THORNTON: Yes, your Honor.

4 THE COURT: In so far as the defendant is
5 concerned?

6 MR. HUGHES: Yes, your Honor.

7 THE COURT: Very well. Anything further before I
8 bring the jury, from the State?

9 MR. THORNTON: Nothing from the State, Judge.

10 THE COURT: Anything further from the defendant
11 before I bring the jury?

12 MR. HUGHES: Your Honor, on the record, I will be
13 moving to -- my motions, I will re-introduce my motions
14 again. Plus, I --

15 THE COURT: And Mr. Hughes, I'm not going to send
16 the jury back out. Solicitor, you would agree without
17 objection that since he intends to rest in the presence
18 of the jury, he wishes to renew his motions for directed
19 verdict at the close of all the evidence as if made at
20 that time. And I certainly would give him credit for
21 doing it without sending the jury back out after he
22 rests. Do you agree there's no objection?

23 MR. THORNTON: Absolutely no objection, Judge.

24 THE COURT: Your motion is made as if made
25 contemporaneous at the close of all the evidence, Mr.

1 Hughes, and for the reasons I've already stated, your
2 motion, if you don't admit into it, you don't change
3 your mind and admit any additional evidence, your motion
4 is respectfully denied as if made at the close of all
5 the evidence, since it's your intention to rest as soon
6 as the jury returns.

7 MR. HUGHES: Thank you, your Honor.

8 THE COURT: Yes, sir. We ready to proceed now?
9 Mr. Hughes?

10 MR. HUGHES: Yes, your Honor.

11 THE COURT: All right. Yes, sir, Solicitor.

12 MR. THORNTON: Your Honor, I need to grab something
13 since we're going to roll right into it.

14 THE COURT: Okay. Let me ask you this. Come up
15 here and let's make sure -- Wanda, let's make sure on
16 the exhibits, if they're going to use any, that we've
17 got them all up here, because they have a tendency to
18 walk over to Counsel table at times, and stay on the
19 roster.

20 All right. The last thing we admitted -- I did not
21 admit 4-A, Wanda, you know that.

22 COURT REPORTER: Right.

23 THE COURT: B, C, and 5 were admitted. 3-A through
24 3-M. 1 -- did we ever have an Exhibit 2?

25 COURT REPORTER: We did, the photograph.

1 THE COURT: Was it in evidence?

2 COURT REPORTER: It's in evidence.

3 ATTORNEYS AND REPORTER REVIEWING
4 EXHIBITS.

5 THE COURT: Now, the only exhibit that would
6 require equipment would be the --

7 MR. THORNTON: 1.

8 THE COURT: Yes, Number 1, which is the CD.

9 MR. THORNTON: Which we're not playing, Judge.

10 THE COURT: It's not a DVD, is it?

11 MR. THORNTON: Well, it's a -- I believe it's a CD.
12 Anymore, you can put CDs on DVDs, but I think,
13 technically, it's a developed.

14 THE COURT: That's 1?

15 COURT REPORTER: It's 1.

16 THE COURT: All right. So we've got 1 -- I don't
17 -- my notes, you tell me, because I want to make sure.
18 I don't believe -- did you all ever offer a 5, 6, 7, 8,
19 and 9, or you just identified?

20 MR. THORNTON: No, sir, we did not offer them. No,
21 sir.

22 THE COURT: The 5, 6, 7, 8, and 9, as well as 4-A,
23 were not in evidence.

24 MR. THORNTON: I'm sorry. 5 is in, Judge. That
25 was the bullet itself.

1 THE COURT: 5's in. I'm sorry.

2 MR. THORNTON: 6 --

3 THE COURT: 6, 7, 8, and 9 were not evidence.

4 MR. THORNTON: No. No, sir. 1 is the disk.

5 That's in. 2 is the outside photograph showing the
6 placards. That's in. 3 is 3-A through 3-M. Those were
7 interior photographs. Those are in. 4-B, C are the
8 containers the bullet was in.

9 THE COURT: And 5.

10 MR. THORNTON: 5 is the bullet. That's in. 6-A
11 through F are the autopsy -- I'm sorry -- A through H
12 are the autopsy photos, which are in. 7, yeah, 7 is the
13 Miranda form, which is in, from Kyron Shaw. 8, 9, 10,
14 11, and 12 are the shell casings that I did not put in.
15 Sorry for the confusion, Judge.

16 Am I right, Madam Court Reporter?

17 COURT REPORTER: That's what I have, yes.

18 MR. THORNTON: Okay.

19 THE COURT: Bob, you agree?

20 MR. HUGHES: That's -- yes, sir.

21 THE COURT: Are we ready?

22 MR. THORNTON: Yes, sir. I just needed to pull --
23 pull something out. Which I'll put them back before we
24 get finished.

25 THE COURT: All right, Officer, no one in or out.

1 Now, ladies and gentlemen, I'm not going to permit
2 getting up, walking around. The jury needs to have
3 their attention during closing argument. And then,
4 following that, depending on how long they argue, I
5 might take a five-minute break before I charge just to
6 let the jury use the restroom.

7 But there's going to be no getting up and walking
8 out or coming in during the closing arguments or the
9 charge. You feel you can't stay in here, now's the time
10 to get up and step out.

11 Very well. Jo, would you bring us the jury,
12 please.

13 BAILIFF: Yes, sir.

14 JURORS ENTER COURTROOM 11:03 A.M.

15 THE COURT: Mr. Foreman, ladies and gentlemen of
16 the jury, you've heard the evidence from the State of
17 South Carolina. We will now hear from the defendant.
18 Mr. Hughes.

19 DEFENSE RESTS IN PRESENCE OF

20 JURORS, MR. HUGHES:

21 MR. HUGHES: Your Honor, the Defense rests.

22 BY THE COURT:

23 THE COURT: Ladies and gentlemen of the jury,
24 you've now heard all the evidence in this case. You
25 will now hear the closing arguments of the attorneys,

1 followed by my charge to you on the law in this case.

2 I ask that you give the attorneys your careful
3 consideration.

4 Mr. Thornton.

5 MR. THORNTON: May it please the court.

6 THE COURT: Yes, sir.

7 MR. THORNTON: Mr. Hughes.

8 CLOSING ARGUMENT ON BEHALF

9 OF THE STATE, MR. THORNTON:

10 MR. THORNTON: Ladies and gentlemen, December 11,
11 2009, Woody Brantley was gunned down. It was a
12 senseless murder. It was an execution. It was cold-
13 blooded. He was shot in the face at close range. It
14 was unprovoked. And it was undeserved.

15 And the killer, as Ms. Legette told you in her
16 opening, is among us. And he sits at this table. Brett
17 Howard, in a cowardly, sadistic act walked up, click,
18 click, click, bang, and gunned a man down for no reason
19 other than he's a killer looking for a victim.

20 What was the testimony from every single witness
21 that took the stand? Every one. What did we see before
22 the murder?

23 Mr. Morris. You remember Mr. Morris got up and
24 talked to about saw Brett Howard with a gun. What kind
25 of gun? Saw Brett Howard with a revolver.

1 Brett walked up and said, you know, I'm going to
2 handle things tonight; I'm security; anything happens,
3 I'm going to take care of it. Shows him his revolver.
4 Breached it and shows him it's open.

5 Claude says I'm familiar with guns, looks like a
6 .38 to me.

7 Interesting how the SLED expert got up and told you
8 what was the bullet most consistent with? a .38 or a
9 .357 revolver.

10 Mr. Childs got up and told you. What did Mr.
11 Childs tell you? He's talking with Woody, joking,
12 they're cutting the fool, and Brett Howard walks up and
13 says is there a problem, is there a problem, I got your
14 back. Pats his leg, shows him the gun. Which also just
15 happens to be a revolver.

16 Cris Johnson. What did Cris tell you? He didn't
17 see a whole lot before the murder happened, but he did
18 hear something real interesting. Brett Howard, cowardly
19 little cold-blooded killer that he is, gets up and says,
20 if anybody F's with me tonight, I'm going to blow their
21 brains out, and that's exactly what he did. He walked
22 up to Woody Brantley, put a gun in his face, and pulled
23 the trigger. But he didn't just pull the trigger once.

24 You know, Mr. Hughes got up and talked about
25 defensive wounds. What's the first thing Dr. Presnell

1 said? Yeah, we usually see those with a knife.

2 Click, click, click, bang. It's real hard to
3 defend against something like that. I don't believe you
4 can stop a bullet with your forearm.

5 What about during the murder? Not one, not two,
6 but three eye witnesses to the murder. Three, actually,
7 got up and testified and told you Brett Howard walked up
8 to the man and shot him in the face. Three different
9 people.

10 And it's always entertaining, ladies and gentlemen,
11 to hear the Defense counsel, if they had all immediately
12 testified to -- all immediately given a statement to law
13 enforcement, well, clearly, they cooked it up, you know,
14 it was just a -- but now, because one of them doesn't
15 talk for two years, because nobody bothered to interview
16 him, well, then there's something wrong. Well, which is
17 it? What did he testify to? The minute he got the
18 subpoena from my office, he came and told us that story,
19 which he repeated to you on the stand. Did he appear to
20 you to be unsure as to who it was?

21 You know, that's the other thing in this case
22 that's interesting. Are any of you shocked and appalled
23 that people in a club might consume alcohol?

24 So because Woody Brantley had alcohol and drugs in
25 his system he deserved to be executed? That's a killing

1 offense now? He didn't bother Brett Howard, he didn't
2 mess with Brett Howard, he didn't even talk to Brett
3 Howard. Brett Howard was an execution looking for a
4 victim. And he found one in Woody Brantley.

5 What else did -- did anybody see? What else did
6 Wallace Mike see? He talked about the gun. He talked
7 about it was a revolver. Interesting how everybody sees
8 that it's a revolver, and the SLED agent came and told
9 you it was most consistent with a revolver.

10 Point-blank range. Everybody talked about how
11 close it was. What did Dr. Presnell tell you? Three
12 feet or less. And because of the stippling, it was on
13 the shorter end of zero to three feet.

14 Now, everybody in this room, as a person over the
15 age of 18, is qualified to know what three feet is.
16 Three feet. And those last couple of clicks are the
17 last things that went through Woody's mind before the
18 bullet went in there and crushed his brain stem and
19 killed him. And the bullet was fired by Brett Howard.

20 Jerrieme Washington got up. What did he tell you?
21 Same thing. Talked to you about he was joked that --
22 Woody was joking around with Wallace Mike. Nobody said
23 anything to Brett. Brett walks in, click, click, click,
24 bang, walking towards him the entire time.

25 Kyron Shaw that I brought back from custody of

1 SCDC, he didn't particular want to help, did he? But
2 Detective Baxter cleared that up. Not once did he deny
3 what he said. He just said he didn't remember. Which
4 is why we had Detective Baxter here to refresh his
5 memory for him.

6 Three eye witnesses, ladies and gentlemen.

7 What about after the murder? Probably one of the
8 most interesting things about the testimony was this.
9 Because there was a little confusion. Wallace Mike says
10 I was the first out. Everybody else said Brett Howard
11 was the first out. Does it shock anybody that after
12 Brett Howard gunned a man down in cold blood that
13 everybody scattered and you may be a little unsure as to
14 who got out of the room first?

15 What was the most poignant thing anybody said about
16 watching Brett Howard, other than everybody agrees Brett
17 Howard came out? Even the owner of the club, Missy,
18 said I saw Brett walk out and I asked him what happened,
19 and he didn't say anything, and just looked at me and
20 walked away. All right.

21 What was the -- what was the most interesting
22 thing? You remember the testimony that so saw him --
23 Mr. Morris said he saw him put the gun in his back
24 pocket? You remember that? He said he heard the shot,
25 he spun around, and he looking, and he saw Brett Howard

1 walking out with a -- out of the pool room area, putting
2 the gun -- forgive me, I'm left-handed -- putting the
3 gun in his back pocket.

4 Do you remember Mr. Johnson, what Mr. Johnson said,
5 who's standing not outside the pool room, outside the
6 bar? What did Mr. Johnson testify to? That he saw
7 Brett coming out of the bar itself, pulling his gun back
8 out of where? His back pocket. Interesting how the
9 person sees him putting it in his back pocket coming out
10 of the pool room, and the person, when he comes out,
11 there's more gun fire outside, saw him pull his revolver
12 back out of the same pocket. Interesting how that
13 happened to be the same.

14 They talked about the wild look he had in his eyes.

15 So what do we have in common? Did anybody get up
16 on that witness stand and tell you that somebody other
17 than Brett Howard shot Woody Brantley? No. Everybody
18 agrees that Brett Howard is the one who pulled the
19 trigger. Everybody agrees it's a revolver. The SLED
20 agent said the slug is most consistent with a .38 or
21 .357 revolver.

22 Mr. Morris told you when he looked at it, it looked
23 like a .38.

24 Everybody said he was close when he pulled that
25 final pull. When he pulled that trigger the last time

1 and sent that bullet into Woody Brantley's brain stem,
2 it was close, it was from me to the mic, it was point-
3 blank range.

4 What did Dr. Presnell tell you? It's between zero
5 and three feet, and it's on the shorter end, because of
6 all the stippling.

7 So what is this case about, ladies and gentlemen?
8 Is this some mass conspiracy involving everybody who
9 happened to be at Missy's Lounge that night and the
10 Jasper County Sheriff's Office, South Carolina Law
11 Enforcement Division, and doctors at MUSC? Or is it
12 what it looks like? A cold-blooded murder. An
13 execution. Little man complex. Trying to prove he's a
14 big man by putting a bullet in an unarmed man's face.

15 You know, that day, ladies and gentlemen, Brett
16 Howard went looking for a victim, and that's the result.
17 A man lying dead on a table with a bullet wound to his
18 face, because Brett Howard executed him for no other
19 reason than to try to prove what a big man he is,
20 because he was going to handle it if there was any
21 problems in the club that night.

22 Ladies and gentlemen, the State cannot give you
23 anything more other than putting you back in time and
24 giving you a videotape of the killing.

25 We've got witnesses that put the gun in his hand

1 and put him in an agitated state before the shooting.
2 We've got three eye witnesses that say he pulled the
3 trigger and they watched him do it. And I got eye
4 witnesses after the fact saying he's got the gun in his
5 hand when he's leaving the room.

6 And all of it coincides with the physical evidence.
7 Shot to the face. Close range. .38 or a .357 revolver.
8 Everything is consistent.

9 Brett Howard is a killer, and I can tell you that
10 because we've shown you that he's killed. He killed
11 Woody Brantley in cold blood, December the 11th, 2009.
12 And the time has come for him to pay for his crime. And
13 I would ask you to use your common sense and use what
14 you know this is real life and it ain't television and
15 it ain't CSI, like the Judge instructed you, and this is
16 what we have. It is uncontroverted that Woody Brantley
17 died of a single, close-range, gun shot wound to the
18 face. Nobody can deny that. The Defense can't deny it.
19 So you know that there is a murder that has occurred.
20 He was murdered. The only question is who did it. And
21 every witness that got on that witness stand told you
22 that Brett Howard did it. And it's time for him to pay
23 the price.

24 The State asks you, ladies and gentlemen, to return
25 the only reasonable verdict in this case, which is,

1 guilty of murder and guilty of possession of a weapon
2 during the commission of a violent crime.

3 Thank you.

4 THE COURT: Mr. Hughes.

5 MR. HUGHES: May it please the Court.

6 THE COURT: Yes, sir.

7 CLOSING ARGUMENTS ON BEHALF

8 OF THE DEFENSE, MR. HUGHES:

9 MR. HUGHES: Well, I made you a promise. Told you
10 I'd come back here and tell you it's not like anything
11 you ever saw on television.

12 The State used words like execute. He's not on
13 trial for execution. He's on trial for murder. Murder
14 has a direct and legal definition. It requires a number
15 of things, including malice and a depraved heart.

16 I'm not going to yell at you. I'm not going to use
17 words that will excite you. I'm going to just talk to
18 you. Going to try to take you back, and I want you all
19 to think about what everybody was doing.

20 The gentleman outside when Brett comes with a gun,
21 does he act surprised? Does he act worried? Does he do
22 anything? Does he call anybody? Does he tell anybody?
23 No. He looks at the gun, and says that's a gun, looks
24 like a .38.

25 The gentleman inside the club, Brett's supposed to

1 have shown the gun to, does he go, there's a guy in here
2 with a gun? No. He doesn't do anything.

3 The guy who walks by, hears Brett say if anybody
4 F's with me, I'm going to blow their brains out. Does
5 he do anything? No, he doesn't do anything.

6 And then we get into the pool room. They're joking
7 around in the pool room. Mr. Brantley is joking with
8 Mr. Mike when he says, ah, you cut your hair working for
9 the man. That's a joke. Mr. Brantley wasn't racist.
10 All that was is Mr. Brantley and Mr. Mike joking.
11 Everybody was joking.

12 Brett Howard shows them the gun again. Points it
13 at him. Mr. Brantley, I'm not afraid of a gun. Brett
14 pulls the trigger. Mr. Brantley's not afraid of a gun
15 because everybody's joking.

16 There are three people standing here, here, and
17 here. Are they reacting? No, they're not. Brett pulls
18 the trigger and pulls the trigger and pulls the trigger,
19 because he doesn't think the gun is loaded, or he
20 doesn't think the bullets are real.

21 Now, if someone is coming at someone, pulling the
22 trigger, and they think that it means them harm, they're
23 going to do something besides stand there. They're
24 going -- like the doctor said, they're going to put up
25 their hands. It's not going to stop, but you don't

1 think up here, you think here if you think you're in
2 danger. You're going to put your hands up. I mean, if
3 a train is coming at you, you're going to put your hands
4 up. It's not going to stop it, but you can't help
5 yourself. There is no sign that Woodrow Brantley
6 thought he was in any danger, because nobody thought
7 there was any danger.

8 Howard was joking around and that's what happened.
9 Brett Howard was joking around with an unloaded or a gun
10 that had empty shells and one didn't. Okay.

11 Brett Howard, after the shot, what does he do?
12 Does he act like someone who just killed somebody? No.
13 He walks out with an amazed look on his face. Another
14 person said he looks like he does now. It's not a
15 smear. It's not a I'm the big man, like Mr. Thornton
16 wants you to think Brett was thinking. He was amazed.
17 He puts the gun in his pocket. He takes the gun out of
18 his pocket. He doesn't know what's going on.

19 Suddenly, someone outside's shooting a .40 caliber,
20 from the sounds of things. Everybody leaves. No
21 possible with that. I mean, it's a club. Shots are
22 fired, everybody leaves. Some come back. Some don't
23 come back. But all of them basically say the same
24 thing. Yes, we saw Brett with a gun; nobody took it
25 seriously because it wasn't serious.

1 Then, it became serious. Something happened.
2 Because if Brett is doing click, click, click, and Mr.
3 Brantley's standing there, Mr. Brantley knew Brett was
4 kidding. It's as simple as that.

5 Then the gun fires. What does Brett do? He
6 doesn't act like someone who just did his first murder.
7 He is in shock. An amazed look on the face. Looked
8 like he does now. Walks out. That is not a murder.
9 And to prove murder, the State has to show malice
10 aforethought. The State has shown no malice. Just
11 because Brett is making statements that nobody takes
12 serious, the State wants you to think that is malice.
13 It's not.

14 The State wants you to think a depraved heart.
15 There is no showing of a depraved heart in this matter.
16 All they're showing is a young man who is -- got the
17 gun, showing it off, acting big, and the most horrible
18 thing in the world happens and a man dies. They have
19 not shown any intent. They have shown tragedy, but not
20 murder.

21 I am so sorry Mr. Brantley is not sitting out there
22 watching a trial for something besides murder. There is
23 nothing that will bring Mr. Brantley back. You are not
24 here to discuss vengeance. You're here to determine the
25 truth. Verdict means truth. You are the finders of

1 fact. You are the ones who know. Are the ones who will
2 determine what the truth is.

3 There is a big difference between murder and
4 killing. We do not have a murder; we have a killing.
5 It is a death not brought about by malice, not brought
6 about by evil intent. It is brought about by accident.

7 Look at -- when you get back there to talk, talk
8 about how everybody reacted. Talk about how there are
9 three people standing there, and Mr. Thornton says Brett
10 walked up, click, click, click. I'm not saying, unlike
11 what the testimony or the questions were earlier that,
12 you know, it was click, stop and talk for a while;
13 click, stop, talk a while. No, no, it wasn't. It was
14 click, click, click. Because in someone's mind, the gun
15 wasn't going to fire.

16 Look at what Mr. Brantley did. Look at what
17 Wallace Mike did. Look at what Jerrieme Washington did.
18 And ask yourselves if they thought that there was
19 malice, if they thought or felt that there was evil
20 intent that they would have done that. No, there was no
21 malice. There was no evil intent. There was no
22 depraved heart. All there was, was a young man and a
23 tragedy and an accident.

24 I know it's going to be difficult because there's a
25 dead man, but this is not murder, and you cannot convict

1 him of murder.

2 Thank you.

3 JURY CHARGE, BY THE COURT:

4 THE COURT: Mr. Foreperson, ladies and gentlemen of
5 the jury, it's now my duty to charge you on the law of
6 this case.

7 The State of South Carolina has charged the
8 defendant, Brett Howard, with murder in Indictment
9 Number 2010-GS-27-00014. And has also charged the
10 defendant, Brett Howard, in Indictment Number 2010-GS-
11 27-00015, with the offense of possession of a weapon
12 during the commission of a violent crime.

13 I remind you that the fact that he defendant was
14 arrested, the fact the defendant was charged and
15 indicted in this case, is not evidence in this case, nor
16 does it create any presumption or inference of guilt.
17 These indictments are simply the formal, written
18 instruments, which contain the charges made against the
19 defendant. They are the formal documents by which the
20 case is brought into this court.

21 Now, ladies and gentlemen, the defendant has plead
22 not guilty to these two indictments. And that plea of
23 not guilty puts the burden on the State of South
24 Carolina to prove the defendant guilty beyond a
25 reasonable doubt.

1 A person charged with committing a criminal offense
2 in South Carolina is never required to prove himself
3 innocent. I charge you, ladies and gentlemen of the
4 jury, that it is an important rule of the law that the
5 defendant in a criminal trial, no matter what the
6 seriousness of the charging may be, will always be
7 presumed to be innocent for the crime for which the
8 indictment was issued unless guilt has been proven by
9 evidence satisfying you of that guilt beyond a
10 reasonable doubt.

11 The presumption of innocence said not end when you
12 begin your deliberations, but it accompanies the
13 defendant throughout the trial until you reach a verdict
14 of guilt, based on evidence satisfying you of that guilt
15 beyond a reasonable doubt.

16 The presumption of innocence is not a mere legal
17 theory. It is not just a legal phrase. It is a
18 substantial right to which every defendant is entitled,
19 unless you, the jury, are satisfied from the evidence of
20 the defendant's guilt beyond a reasonable doubt.

21 What is a reasonable doubt in the law? Reasonable
22 doubt is the kind of doubt that would cause a reasonable
23 person to hesitate to act. The State has the burden of
24 proving the defendant guilty beyond a reasonable doubt.

25 Some of you may have served as jurors in a civil

1 case where you were told that it was only necessary to
2 prove that a fact is more likely true than not true. We
3 call that in a civil case by the greater weight or the
4 preponderance of the evidence.

5 In a criminal case, such as the case here, the
6 state's proof must be more than that. It must be beyond
7 a reasonable doubt. Proof beyond a reasonable doubt is
8 proof that leaves you firmly convinced of the
9 defendant's guilty.

10 There are very few things in this world that we
11 know with absolute certainty. And in crime cases the
12 law does not require proof that overcomes every possible
13 doubt. If, based on your consideration of the evidence,
14 you are firmly convinced that the defendant is guilty of
15 the crime or crimes charged, you must find the defendant
16 guilty.

17 On the other hand, if you think there's a real
18 possibility that the defendant is not guilty, you must
19 give the defendant the benefit of the doubt and find the
20 defendant not guilty.

21 I remind you, ladies and gentlemen, that throughout
22 this trial you and I have had certain duties to perform.
23 AS a trial judge, it has been my responsibility to
24 preside over the trial of the case. And I also have the
25 duty to rule on the admissibility of evidence offered

1 during the trial of the case. You are to consider in
2 your deliberations only the competent evidence offered
3 during the trial.

4 If there was any testimony ordered stricken from
5 the record in this case during this trial, you should
6 disregard that testimony. You are to consider only
7 testimony which has been given under oath from the
8 witness stand, any exhibits which have been introduced
9 into evidence during the trial of the case and made a
10 part of the record of the case, and, if any, any
11 stipulations which may have occurred during the trial of
12 the case.

13 As a presiding judge, I also have the additional
14 duty to charge you the law that applies to this case.
15 I'm the sole judge of the law of this case. And it is
16 your duty as jurors to accept and to apply the law as I
17 know state it to you.

18 If any of you already have any idea about what you
19 think the law is or what you feel the law ought to be,
20 and it does not agree with what I now tell y the law is,
21 you must put aside any of your preconceived ideas or
22 your preconceived opinions. You must abandon any of
23 those ideas because each of you took an oath and you
24 swore in that oath or you affirmed in your oath as a
25 juror that you would accept and you would apply the law

1 exactly as I state it to you during this trial.

2 In every case tried in this courtroom, be a jury,
3 the jury becomes the sole and exclusive judges of the
4 facts. A trial judge such as myself cannot intimate,
5 comment on, or make any kind of statement to a trial
6 jury such as yourselves about the facts in the case.
7 Since you, ladies and gentlemen of the jury, are the
8 sole judges of the facts in this case, you are not to
9 infer from what I have said during the progress of this
10 trial in ruling upon the admissibility of evidence or
11 otherwise, anything that I might say now during the
12 course of this charge to you on the law that I have any
13 opinion about the facts in this case. The law does not
14 allow me to have an opinion about the facts in this
15 case. This is a matter that is solely for you, the
16 jury, to determine.

17 As jurors, it is your duty, ladies and gentlemen,
18 to determine the effect, the value, the weight, and
19 ultimately, the truth of the evidence which has been
20 presented during the trial of this case.

21 There are two types of evidence presented in a
22 trial. And like many things in the law, we have names
23 for those types of evidence. We call those types of
24 evidence direct evidence and circumstantial evidence.

25 Direct evidence is testimony of a person who claims

1 to have actual knowledge of a fact, such as an eye
2 witness to an event. Direct evidence is evidence which
3 immediately establishes the main fact to be proved.

4 Circumstantial evidence, as contrasted with direct
5 evidence, is proof of a chain of facts and circumstances
6 indicating the existence of a fact. Circumstantial
7 evidence is evidence which immediately establishes a
8 collateral fact from which the main fact may or may not
9 be inferred. Circumstantial evidence, ladies and
10 gentlemen of the jury, is based on inference, and not on
11 personal knowledge or personal observation.

12 The law makes absolutely no distinction between the
13 weight or the value to be given to either direct
14 evidence or circumstantial evidence, now is a greater
15 degree of certainty required of circumstantial evidence
16 than of direct evidence. You, as a jury, should weigh,
17 consider, and evaluate all the evidence in this case,
18 both direct and circumstantial.

19 After weighing and considering all of the evidence
20 in this case, if you are not convinced of the guilt of
21 the defendant beyond a reasonable doubt, you must find
22 the defendant not guilty.

23 On the other hand, after weighing and considering
24 all the evidence in this case, both direct and
25 circumstantial, if you're convinced of the guilt of the

1 defendant beyond a reasonable doubt, you must find the
2 defendant guilty.

3 Necessarily, you, as the jury, must determine, as I
4 told you at the outset, the credibility or the
5 believability of the witnesses who have testified in
6 this case. It therefore becomes your duty as a juror to
7 analyze, to evaluate the evidence, and determine which
8 evidence convinces you of its truth.

9 In determining the believability of the witnesses
10 who have testified, you may believe one witness over
11 several, or several witnesses over one. You may believe
12 a part of the testimony of a witness, and reject the
13 remaining part of the testimony of that same witness.

14 You may believe the testimony of a witness in its
15 entirety. You may reject the testimony of the witness
16 in its entirety. You may consider whether any witness
17 has exhibited to you any interest, bias, prejudice, or
18 other motive in this case.

19 You may also consider the appearance and the manner
20 of the witness while the witness was on the witness
21 stand. Anything that is in evidence, ladies and
22 gentlemen of the jury, you, as the jury, have the right
23 to consider in weight and considering the believability
24 or the credibility of the witnesses who had testified
25 during the trial of this case.

1 Now, I told you during the trial of this case, that
2 the rules of evidence, and they are numerous, ordinarily
3 do not permit witnesses to get on that witness stand and
4 say, my opinion is so and so. Or I'd like to give you
5 my conclusions about so and so. An exception to this
6 rule exists for those witnesses I told you that we call
7 expert witnesses. A witness who, by education, training
8 or experience claims to have become an expert in some
9 art, science, or profession, if qualified by the court
10 as a matter of law, may give an opinion as to the
11 subject the witness claims to be an expert in, and may
12 give the reasons for his or her opinion.

13 You should consider any expert opinion given by a
14 witness unlike any other evidence in this case. You, as
15 a jury, give it the weight you think it deserves. If
16 you decide that a witness's expert opinion is not based
17 on sufficient education and experience or if you decide
18 that the reasons given in support of the opinion are not
19 sound, or that the opinion is outweighed by other
20 evidence, you may disregard the opinion entirely.

21 I instruct you, ladies and gentlemen, and
22 emphasize, the fact that the defendant did not testify
23 in this case is not a factor to be considered by you in
24 any way in your deliberations and in your consideration
25 on the question of the guilt or innocence of the

1 defendant. It must not be considered by you in any
2 manner whatsoever during your deliberations.

3 A defendant has the constitutional right to remain
4 silent. And the assertion of that right must not be
5 considered by you in your deliberations. I repeat,
6 under the oath which each of you took, you're to draw no
7 conclusion whatsoever from the fact that the defendant
8 in this case did not testify. The fact that the
9 defendant did not testify should not be discussed in
10 your jury room at all.

11 The burden of proof, as I've stated to you, is on
12 the State of South Carolina. The defendant is not
13 required to prove his innocence. The burden of proof
14 remains on the State to prove guilt beyond a reasonable
15 doubt.

16 I charge you, ladies and gentlemen, there's been
17 evidence presented that witnesses or witness has made
18 prior statements which are not consistent with a
19 witness's present testimony. You may use this evidence
20 to decide whether or not to believe a witness. You may
21 also use evidence of the earlier contradictory statement
22 to determine the truth of the statement. It is up to
23 you, the jury, to decide whether to believe the earlier
24 statement or any testimony given at trial. If a witness
25 is shown to have knowingly testified untruthfully

1 concerning any material matter, you may consider this in
2 determining whether to trust the witness's testimony as
3 to other matters. You may reject all testimony of that
4 witness or give all or part of the testimony the weight
5 you feel it deserves, considering the evidence presented
6 during the trial of the case.

7 I charge you, ladies and gentlemen, that a person
8 who has a past criminal record is competent to testify
9 during a trial. A past criminal record does not affect
10 the ability of the person to testify. The past record
11 may be considered by you, if at all, in determining the
12 witness's believability or the credibility of the
13 witness.

14 Remember, ladies and gentlemen of the jury, you're
15 the sole judges of the facts in the case, and you're the
16 sole judge of the believability of any and all of the
17 witness in the case.

18 Now, in order to establish criminal liability or
19 criminal responsibility, criminal intent is required.
20 Let me give you some examples. The mental state
21 required to be proven by the State for any particular
22 crime, and these are just examples, might be purpose,
23 intent, knowledge, recklessness. Some cases even
24 criminal negligence. Those are examples of criminal
25 intent.

1 Criminal intent must be proven they by the State
2 beyond a reasonable doubt. Criminal intent is always a
3 matter that must be determined by the jury from the
4 circumstances surrounding the situation based on
5 evidence introduced during the trial of the case.

6 Now, ladies and gentlemen, there is no way to prove
7 intent to a mathematical certainty. There is no way
8 that medical science can dissect a person's brain and
9 determine what that person had in mind. So the law
10 says, ladies and gentlemen, that criminal intent may be
11 inferred from the circumstances shown to have existed,
12 based on evidence introduced during the trial of the
13 case.

14 This is how you, as a jury, make a determination of
15 whether or not any element in any crime requiring intent
16 was present. It is not necessary to establish intent by
17 direct or positive evidence. But intent may be
18 established by inference, in the same way as any other
19 fact by taking into consideration the acts of the
20 parties and all of the facts and circumstances of the
21 case based on evidence introduced during the trial of
22 the case.

23 Criminal intent is a mental state, a conscience
24 wrong-doing. It is up to you, the jury, to determine
25 what the defendant intended to do, based on the

1 circumstances shown to have existed.

2 Criminal intent can arise from an action or a
3 failure to act. It may arise from negligence,
4 recklessness, or an indifference to duty.

5 Now, in this case, ladies and gentlemen, there are
6 two indictments. I've told you about that. In one
7 indictment of the defendant, Brett Howard, is charged
8 with murder. In the other indictment, the defendant,
9 Brett Howard, is charged with possession of a weapon
10 during the commission of a violent crime.

11 Now, each charge is a separate and distinct
12 offense. Although I've given you some instructions on
13 your verdict form, you should decide each charge
14 separately on the evidence and the law that applies.
15 And I'm going to explain that to you, uninfluenced by
16 your decision, with one exception, as to any other
17 charge. If you find the defendant, for instance, guilty
18 of murder, then you may also find the defendant guilty
19 of possession of a weapon during the commission of a
20 violent crime.

21 The verdict form that I've prepared for you, Mr.
22 Foreman, ladies and gentlemen of the jury, will have
23 further instructions on them. You will be asked to
24 write a separate verdict of guilty or not guilty for
25 each crime, following the instructions on your verdict

1 form.

2 Let me define the offenses for you.

3 In one indictment, the defendant is charged with
4 the offense of murder. For this offense, the State must
5 prove, beyond a reasonable doubt, that the defendant
6 killed another person with malice aforethought.

7 Malice is hatred, ill will, or hostility towards
8 another person. It is the intentional doing of a
9 wrongful act without just cause or excuse, and with an
10 intent to inflict an injury. Malice aforethought does
11 not require that malice exists for any particular time
12 before the act is committed, but malice must exist in
13 the mind of the defendant just before and at the time of
14 the act as it is committed. Therefore, there must be a
15 combination of the previous evil intent or malice or
16 hatred or hostility towards another person and the
17 action itself.

18 Malice aforethought may be expressed or inferred.
19 These terms *express* or *inferred* do not mean different
20 kinds of malice aforethought, but simply the manner in
21 which malice may be shown to exist. That is, either by
22 direct evidence or by inference from the facts and
23 circumstances which are proved.

24 Express malice, ladies and gentlemen of the jury,
25 is shown when a person actually speaks words which

1 express hatred or ill will or hostility to another, or
2 when a person prepared beforehand to do the act, which
3 was later accomplished. For example, lying in wait for
4 a person, or any other act or preparation going to show
5 that the deed was within the defendant's mind would be
6 examples of express malice.

7 Malice may be inferred from conduct showing a total
8 disregard for human life. Inferred malice may also
9 arise when the deed is done with a deadly weapon. A
10 deadly weapon is any -- the article, instrument, or
11 substance which is likely to cause death or great bodily
12 harm.

13 In the second indictment in this case, the State
14 has charged the defendant with the offense of possession
15 of a weapon during the commission of a violent crime.
16 This is a statutory offense in South Carolina under Code
17 Section 16-23-400 -- 490 of our code. For this offense,
18 the State must prove beyond a reasonable doubt that
19 defendant was in possession of a firearm or visibly
20 displayed what appeared to be a firearm during the
21 commission of a violent crime.

22 A firearm, for purposes of this code section, means
23 any machine gun, automatic rifle, revolver, pistol, or
24 any weapon which will or is designed to or may be
25 readily converted to expel a projectile.

1 In order to find the defendant or any defendant
2 guilty of possession of a weapon during the commission
3 of a violent crime, you must first find the defendant
4 guilty of committing a violent crime or attempting to
5 commit a violent crime. And that is the reason I told
6 you, with one exception, on the relationships between
7 the verdict form. And I've written that on the second
8 verdict form for you.

9 I charge you that the offense of murder in South
10 Carolina is a violent crime under the laws of the State
11 of South Carolina.

12 Now, Mr. Foreman, I told you I'd prepare a verdict
13 form for you, and I've done that. Pay absolutely no
14 attention to the order in which I wrote the forms of
15 verdict. I obviously had to write one before the other.
16 All right?

17 Now, you see what I'm doing now, Mr. Foreman. I'm
18 taking these two indictments, and I'm leaning back here
19 and I'm handing them to my law clerk, because she's
20 going to want you to sign those indictments just the way
21 you've signed this verdict form, before you leave the
22 courtroom. You understand?

23 FOREMAN LEWIS: Yes, sir.

24 THE COURT: All right. And she knows that's her
25 job. So she's going to be looking for you. And I will

1 tell you, Mr. Foreman, that every now and then Judge
2 Buckner forgets that, and I have had my law clerks have
3 to chase a foreman across the front lawn of the
4 courthouse. I hope that won't happen today. She's been
5 excellent at doing that while she's worked for me, so.
6 But I need your signature on both.

7 FOREMAN LEWIS: Yes, sir.

8 THE COURT: This indictment -- I'm this verdict
9 form that I hold in my hand, which I prepared, has State
10 of South Carolina, County of Jasper, Court of General
11 Sessions. It has the Indictment Numbers, 2010, and 27
12 means Jasper County, each county has a number, 14. And
13 2010-GS, GS means General Sessions Court, 27-15. Those
14 are the two indictment numbers for murder and possession
15 of a weapon during the commission of a violent crime.

16 Under that, in the heading, I have put The State of
17 South Carolina versus Brett Howard, Defendant. And I've
18 written the words *Verdict* in the heading for you.

19 Question 1: *We, the jury, by unanimous consent,*
20 *find the defendant, Brett Howard, in Indictment Number*
21 *2010-GS-27-00014, and the first form of verdict under*
22 *Question 1, is guilty of murder.*

23 If that be your form of verdict, Mr. Foreman, for
24 the jury, you would place a checkmark beside that form
25 of verdict.

1 The second form of verdict under Question 1: *We,*
2 *the jury, by unanimous consent, find the defendant,*
3 *Brett Howard, in Indictment Number 2010-GS-27-00014, is*
4 *not guilty of murder.*

5 If that be your form of verdict, you would check on
6 the line beside that form of verdict.

7 You must find one form of verdict or the other.
8 You cannot find both. It must be either guilty of
9 murder or not guilty of murder.

10 The second question on your jury form deals with
11 the second indictment.

12 *We, the jury, by unanimous consent, find the*
13 *defendant, Brett Howard, in Indictment Number 2010-GS-*
14 *27-00015. This is, of course, the indictment for*
15 *possession of a weapon during the commission of a could*
16 *crime. On this question, I put parenthesis for you to*
17 *remind you. The two forms of verdict are either guilty*
18 *of possession of a weapon during the commission of a*
19 *violent crime. If that be your form of verdict, you*
20 *would check on the line beside that form of verdict.*

21 Or not guilty of possession of a weapon during the
22 commission of a violent crime. If that be your form of
23 verdict, you would check on the line beside that form of
24 verdict.

25 The parenthesis on your verdict form remind you of

1 what I told you earlier in my charge - you may only find
2 the defendant, Brett Howard, guilty of this crime,
3 possession of a weapon during the commission of a
4 violent crime, if you have previously found the
5 defendant guilty of the violent crime of murder. If you
6 find test defendant not guilty of the violent crime of
7 murder, you must find the defendant not guilty of
8 possession of a weapon during the commission of a
9 violent crime, because you have to have been convicted
10 of a violent crime in order to be convicted of
11 possession of a weapon during the commission of a
12 violent crime. You must find one form of verdict or the
13 other. Meaning you can't find both on Question 2.
14 Either guilty or not guilty.

15 You would then sign your name for the jury, where
16 it says *Foreperson*, and fill in today's date. You would
17 then knock on your jury room door when you've filled out
18 the verdict form, and we will receive you back into the
19 courtroom and public your verdict.

20 Now, ladies and gentlemen of the jury, your verdict
21 must be unanimous. That is, it must be the verdict of
22 each and every one of you. All 12 of you must agree on
23 a verdict.

24 Mr. Foreman, ladies and gentlemen of the jury, I
25 have now charged you on the law in order to hopefully

1 guild you to a fair and a just result in this case.
2 You're the judges of the facts in this case, and based
3 on your determination of the facts and the law, as I've
4 now explained it to you, you're going to soon, in your
5 jury room, when I instruct you, you will then begin with
6 each other, your deliberations.

7 Each of you have been selected, ladies and
8 gentlemen, as fair and impartial jurors. You've sworn
9 in your oath to fairly and impartially try and determine
10 the facts of this case. And when you comply with that
11 oath to fairly and impartially try the facts in this
12 case, no one can criticize your verdict.

13 You are to decide this case based solely on the
14 evidence in this case. And that means the testimony
15 from the witness stand, any exhibits, any stipulation,
16 if any. Only upon the evidence in this case.

17 You will have the exhibits with you that have been
18 introduced into evidence in your jury room during your
19 deliberations.

20 You must decide the issues in this case without any
21 bias or prejudice towards any party to this case. You
22 cannot allow yourself to be governed by prejudice for or
23 against any person. You can't allow yourself to be
24 governed by public opinion or by any other arbitrary
25 factor that's not in evidence, such as emotion.

1 Both the defendant and the State of South Carolina
2 have the absolute right to expect that each of you will
3 carefully, and each of you will impartially consider all
4 of the evidence in this case, and that you will follow
5 the law as I have instructed it to you to be, in
6 reaching your verdict in this case.

7 All right, Madam -- I'm Mr. Foreman and ladies and
8 gentlemen of the jury, I'm going to ask you at this time
9 to retire to your jury room. Do not begin your
10 deliberations. I might have to bring you back for some
11 brief additional instructions. When it is time for you
12 to begin your deliberations, I will have Jo bring you
13 the verdict form that I prepared for you, along with all
14 the exhibits which have been introduced in evidence
15 during the trial of the case. And Jo, my bailiff, will
16 tell you that you may then commence your deliberations.

17 My alternate jurors please remain with me. Would
18 the jury please retire to your jury room at this time,
19 and do not begin until I instruct you to do so.

20 JURORS LEAVE COURTROOM 11:55 A.M.

21 THE COURT: I watched both of you during the trial
22 of this case, and all a judge can ever ask of an
23 alternate juror is that you listen, and both of you did
24 that. And on behalf of Jasper County and this court, I
25 want to thank you for your service. No one became ill

1 or for some reason could not continue to serve on the
2 jury. This completes your service in this case. And I
3 want to thank you for that service.

4 Now, both of you should have in your possession
5 this little yellow piece of paper right here. If you
6 don't, Jo's got more. So don't worry. It's got a phone
7 number on it. I'm going to give you the rest of the day
8 off, and I might give you the rest of the week off. I
9 don't know yet.

10 I have one other matter that I'm working on at this
11 time. However, I don't know yet whether I'll need you.
12 I want you to call the number on that piece of paper
13 after 6:00 o'clock tonight as to whether I'll need you
14 to come back tomorrow. So wait until after 6:00 o'clock
15 to call the number.

16 Do both of you have this? Jo, go ahead and hand it
17 to them. Do you have it, ma'am?

18 ALTERNATE JUROR: No.

19 THE COURT: Let me give you another one. Don't
20 worry about whether or not you've still got it. Believe
21 me, Jo Boyles has always got plenty of them. Give her
22 one. She wants one, too.

23 The number here is 726-7972. I'll give you mine if
24 you need it. Call that number after 6:00 o'clock
25 tonight. There will be a taped message on that number

1 telling you whether I'll even need you to come back at
2 all or not.

3 I want to thank you for your service in this case.
4 I appreciate it so much. Do both of you have all of
5 your belongings out of the jury room, because I can't
6 let you go back in there. I'll send somebody in. All
7 right.

8 You're now excused for the balance of today.
9 Everyone else remain seated while my alternate jurors
10 leave. Thank you.

11 ALTERNATE JURORS LEFT COURTROOM.

12 THE COURT: Any exceptions or additions to the
13 charging from the State of South Carolina?

14 MR. THORNTON: No, your Honor.

15 THE COURT: From the defendant?

16 MR. HUGHES: Your Honor, I'm sorry, but I have a
17 matter that I noticed about half -- about three minutes
18 after I sat down after my closing. State's Exhibit
19 Number 6-C.

20 THE COURT: 6 what?

21 MR. HUGHES: C, as in Charlie.

22 THE COURT: C.

23 MR. HUGHES: Was on the television screen's for
24 approximately half of your jury instruction. That is
25 the photograph of the decedent from the autopsy.

1 THE COURT: From where I'm sitting, I can't see the
2 screen, because the light --

3 MR. HUGHES: It's not on there now, your Honor. I
4 did not realize it was up there during my closing, and I
5 definitely didn't realize it until, like I said, about
6 three minutes after.

7 THE COURT: Well, Mr. Hughes, State's Exhibit 6-C
8 was admitted into evidence in this case without
9 objection.

10 MR. HUGHES: All right.

11 THE COURT: And was used by counsel for the State
12 in their closing argument, and apparently, was not
13 removed from the projector, according to what you're
14 telling me, after the State's argument, and was not
15 called to the Court's attention at any time prior to
16 your argument or after your argument or during the
17 charge. So I'm not sure what you're asking the Court to
18 do.

19 MR. HUGHES: I am just putting that fact on the
20 record, your Honor. I am not going to move for a
21 mistrial of that.

22 The other thing, about your charging, though, I --
23 forgive me if I am wrong, I had thought I knew that the
24 use of a weapon to indicate malice had been removed.

25 THE COURT: I don't think I said it indicated use.

1 I said it was an example of inferred from conduct
2 showing a total disregard for human life.

3 MR. HUGHES: Okay. I might have misheard that,
4 your Honor. If I did, I apologize. That was my only
5 thing as far as the charge, your Honor.

6 THE COURT: What I said was, malice may be inferred
7 from conduct showing a total disregard for human life.
8 Inferred malice may also arise when the deed is done
9 with a deadly weapon. A deadly weapon is any article,
10 instrument, or substance which is likely to cause death
11 or great bodily harm. I think that's the correct
12 charge.

13 MR. HUGHES: I agree, your Honor.

14 THE COURT: You agree?

15 MR. HUGHES: Yes, sir. I just -- I might -- I
16 thought I heard something that I did not hear. I just
17 wanted to confirm that.

18 THE COURT: So there are no exceptions to the
19 charge.

20 MR. HUGHES: No, your Honor.

21 THE COURT: All right. Now, I'm going to ask you,
22 Mr. Hughes, and the Solicitor, I know you've already
23 done this once, but you come forward beforehand and tell
24 me you're satisfied that the court reporter has all the
25 exhibits; that you have no objection to my bailiff

1 taking the verdict form and all of the exhibits into the
2 jury and telling the jury they may now commence their
3 deliberations.

4 MR. THORNTON, MR. HUGHES, COURT

5 REPORTER REVIEWING EXHIBITS.

6 THE COURT: Casey, you out there?

7 CASEY RANKIN: Yes, sir.

8 THE COURT: You and Mr. Dore are next in my
9 chambers as soon as this jury starts.

10 CASEY RANKIN: Yes, your Honor.

11 COURT REPORTER: Your Honor, we're good on the
12 exhibits.

13 THE COURT: Pardon?

14 COURT REPORTER: We're good on the exhibits.

15 THE COURT: Thank you, Madam Court Reporter. Is
16 the State satisfied that the court reporter has all the
17 exhibits?

18 MR. THORNTON: State is satisfied, your Honor.

19 THE COURT: Do you have any objections to the
20 bailiff taking the verdict form and exhibits into the
21 jury and the bailiff telling the jury they may now
22 commence their deliberations?

23 MR. THORNTON: No, sir.

24 THE COURT: Is the defendant satisfied that the
25 court reporter has all the exhibits?

1 MR. HUGHES: Yes, your Honor.

2 THE COURT: Do you have any objection to the
3 bailiff taking the exhibits and the verdict form into
4 the jury and the bailiff telling the jury they may now
5 commence their deliberations?

6 MR. HUGHES: No, your Honor.

7 THE COURT: Very well, Jo. Take it in and tell
8 them to go to work for us.

9 All right. Casey, Mr. Dore, I'd like to see both
10 of you all in my chambers right now.

11 We'll take a few minutes break.

12 OFF THE RECORD 12:05 P.M.

13 JURORS BEGIN DELIBERATIONS 12:05 P.M.

14 BACK ON THE RECORD 12:40 P.M.

15 BY THE COURT:

16 THE COURT: Ladies and gentlemen, I understand --
17 do I have anybody else out there? I want to make sure
18 we don't have anybody waiting. We're getting ready to
19 publish the verdict, and I'm going to ask again. I
20 don't allow any type of emotional outburst when the
21 verdict is published in the presence of the jury.

22 If you feel you can't control your emotions -- I
23 understand many of you have a personal interest in the
24 case, and I understand that. I deal with it every week.
25 Please get up now, because I will not tolerate any kind

1 of outburst or emotion in the courtroom in the presence
2 of the jury.

3 Bob, we need your client.

4 MR. HUGHES: Also, your Honor, --

5 MADAM CLERK: The defendant's family.

6 MR. HUGHES: -- the defendant's family.

7 BAILIFF: The defendant's family.

8 THE COURT: Where are they?

9 MADAM CLERK: They're outside in the court yard,
10 your Honor.

11 THE COURT: All right. Let him -- then I need to
12 reiterate.

13 MADAM CLERK: Officer Hill, can you send somebody
14 to get the defendant's family. They're right there by
15 the --

16 OFFICER HILL: They're coming.

17 MADAM CLERK: They're coming? Thank you.

18 THE COURT: All right. I'll wait on them. They're
19 coming upstairs?

20 OFFICER HILL: Yes, sir. They're coming in the
21 room.

22 THE COURT: Have we got everybody in the family
23 now?

24 MADAM CLERK: Yes, sir.

25 THE COURT: All right, ladies and gentlemen, let me

1 reiterate what I've just said. I had some other people
2 come in. I will not tolerate any emotional outburst
3 when the verdict is published. If you can't control
4 your emotions, regardless of what the verdict is, then I
5 ask that you not remain the courtroom while the verdict
6 is being published.

7 I will enforce that power with my contempt power.
8 So if you can't control any outburst. They'll be no
9 comment, no outburst, no show of emotion in the presence
10 of the jury. They're entitled to that. And I will
11 protect them from that.

12 Anybody wish to leave? Yes, ma'am. Be happy to
13 accommodate you.

14 All right. No one in or out while the verdict's
15 being published.

16 State ready?

17 MR. THORNTON: State's ready, your Honor.

18 THE COURT: Defendant ready?

19 MR. HUGHES: Defendant's ready, your Honor.

20 THE COURT: Bring us the jury, please.

21 JURORS ENTER COURTROOM 12:43 P.M.

22 VERDICT:

23 MADAM CLERK: Mr. Foreman, have you reached a
24 verdict?

25 FOREMAN LEWIS: Yes, we have.

1 MADAM CLERK: May I have it, please. Thank you.

2 THE COURT: You may publish the verdict, Madam
3 Clerk. Defendant will please rise.

4 MADAM CLERK: State of South Carolina, County of
5 Jasper, the State of South Carolina versus Brett Howard,
6 the defendant, the Court of General Sessions, Indictment
7 Number 2010-GS-27-00014, 2010-GS-27-00015.

8 *We, the jury, by unanimous consent, find the*
9 *defendant, Brett Howard, in Indictment Number 2010-GS-*
10 *27-00014, guilty of murder.*

11 *We, the jury, by unanimous consent, find the*
12 *defendant, Brett Howard, in Indictment Number 2010-GS-*
13 *27-00015, guilty of possession of a weapon during the*
14 *commission of a violent crime.*

15 Signed by the foreperson, Jerome Lewis, May 16,
16 2012.

17 THE COURT: Ladies and gentlemen of my jury panel,
18 if this be your verdict, would you each indicate by
19 raising your right hand.

20 Let the record reflect 12 hands are raised.

21 Thank you. You can put your hands down. Defendant
22 and counsel may be seated.

23 Anything further from this jury before I hear from
24 the defendant on post-verdict motions? Anything further
25 from this jury from the State?

1 MR. THORNTON: No, your Honor.

2 THE COURT: Anything further from this jury from
3 the defendant?

4 MR. HUGHES: We'd like the jury to be polled.

5 THE COURT: Madam Clerk, would you please poll the
6 jury.

7 Ladies and gentlemen, the clerk is going to call
8 your name. When your name is called, she's going to ask
9 you to stand. She's going to ask you was this your
10 verdict, and you will respond; and is this still your
11 verdict, and you will respond to each of those two
12 questions.

13 Madam Clerk, please poll the jury.

14 JUROR POLLING, MADAM CLERK

15 MADAM CLERK: Gussie Green, was this your verdict?

16 JUROR GUSSIE GREEN: Yes.

17 MADAM CLERK: Is it still your verdict?

18 JUROR GUSSIE GREEN: Yes.

19 MADAM CLERK: Thank you. Katie Mitchell, was this
20 your verdict?

21 JUROR KATIE MITCHELL: Yes.

22 MADAM CLERK: Is it still your verdict?

23 JUROR KATIE MITCHELL: Yes.

24 MADAM CLERK: Thank you. Teresa Gloor, was this
25 your verdict?

1 JUROR TERESA GLOOR: Yes.
2 MADAM CLERK: Is it still your verdict?
3 JUROR TERESA GLOOR: Yes.
4 MADAM CLERK: Thank you. Leora Payne, was this
5 your verdict?
6 JUROR LEORA PAYNE: Yes.
7 MADAM CLERK: Is it still your verdict?
8 JUROR LEORA PAYNE: Yes.
9 MADAM CLERK: Thank you. Jerome Lewis, was this
10 your verdict?
11 FOREMAN JEROME LEWIS: Yes.
12 MADAM CLERK: Is it still your verdict?
13 FOREMAN JEROME LEWIS: Yes.
14 MADAM CLERK: Thank you. Denise Horry, was this
15 your verdict?
16 JUROR DENISE HORRY: Yes.
17 MADAM CLERK: Is it still your verdict?
18 JUROR DENISE HORRY: Yes.
19 MADAM CLERK: Thank you. Eddie Taylor.
20 JUROR EDDIE TAYLOR: Yes, ma'am.
21 MADAM CLERK: Was this your verdict?
22 JUROR EDDIE TAYLOR: Yes.
23 MADAM CLERK: Is it still your verdict?
24 JUROR EDDIE TAYLOR: Yes.
25 MADAM CLERK: Thank you. Juan Jenson -- Janson.

1 JUROR JOAN JANSEN: Joan?
2 MADAM CLERK: Joan. I'm sorry. Joan Jansen, was
3 this your verdict?
4 JUROR JOAN JANSEN: Yes.
5 MADAM CLERK: Is it still your verdict?
6 JUROR JOAN JANSEN: Yes.
7 MADAM CLERK: Thank you. Jerry Duncan, was this
8 your verdict?
9 JUROR JERRY DUNCAN: Yes.
10 MADAM CLERK: Is it still your verdict?
11 JUROR JERRY DUNCAN: Yes.
12 MADAM CLERK: Thank you. Richard Manning.
13 JUROR RICHARD MANNING: Yes.
14 MADAM CLERK: Was this your verdict?
15 JUROR RICHARD MANNING: Yes.
16 MADAM CLERK: Is it still your verdict?
17 JUROR RICHARD MANNING: Yes.
18 MADAM CLERK: Thank you. Nell Housey. Was this
19 your verdict?
20 JUROR NELL HOUSEY: Yes.
21 MADAM CLERK: Is it still your verdict?
22 JUROR NELL HOUSEY: Yes.
23 MADAM CLERK: Thank you. Cara Daley. Was this
24 your verdict?
25 JUROR CARA DALEY: Yes.

1 MADAM CLERK: Is it still your verdict?

2 JUROR CARA DALEY: Yes.

3 MADAM CLERK: Thank you.

4 BY THE COURT:

5 THE COURT: Mr. Hughes, the jury's been polled.
6 The verdict stands. Anything further from the jury
7 before I excuse the jury, from the defendant?

8 MR. HUGHES: No, your Honor.

9 THE COURT: Mr. Foreman and ladies and gentlemen of
10 the jury, on behalf of Jasper County and this Court, I
11 want to thank you for your service. I told the
12 alternate jurors this, and I'll tell you. All a judge
13 can ask of a jury is that you listen and listen
14 carefully. And I watched you during the trial, and
15 each of you did that.

16 And on behalf of Jasper County and this Court, I
17 want to thank you for that service. Without you, ladies
18 and gentlemen, and I told you this at the start of the
19 week, justice cannot be accomplished in a courtroom.
20 And I thank you for that service.

21 Now, sentencing in this case is going to occur in
22 just a couple of moments. If you'd like to stay for
23 sentencing, you can. You can have a seat. You can
24 remain in the jury box if you'd like to, and we'll
25 escort you out. Or you can come back and walk and sit

1 in the back of the courtroom, if you'd like to.

2 -----Whatever you would like to do.

3 If you'd like to leave, that'll be fine. I want
4 you to know this is a public proceeding, and I'll be
5 happy for you to remain if you so [sic].

6 This concludes your service for the entire week as
7 a juror. That means you're exempt for three years from
8 jury service if you choose to claim your exemption by
9 virtue of your service this week.

10 If any of you need a work excuse from serving on
11 the jury this week, Margaret, where do you go?

12 MADAM CLERK: They go downstairs to the clerk of
13 court's office, and we prepare the slip for you.

14 THE COURT: You'll go downstairs to the clerk's
15 office. We'll be happy to provide you with a work
16 excuse for serving on the jury this week.

17 Now, I always ask my jurors this, because I'm
18 always looking to try to improve the way we do business.
19 And believe me, my skin's thick. I'm used to hearing
20 pros and cons.

21 Did we treat you okay?

22 RESPONSES FROM JURORS.

23 THE COURT: Does anybody have any questions or
24 problems with their jury duty they'd like to tell me
25 about before I let you go?

1 RESPONSES FROM JURORS.

2 THE COURT: Everybody's okay.

3 RESPONSES FROM JURORS.

4 THE COURT: Nobody had anything to bother them or
5 problem of any type.

6 RESPONSES FROM JURORS.

7 THE COURT: Well, I'm glad to hear that.

8 Now, with that, for those of you who'd like to
9 stay, you can stay right where you're seated, because
10 I'm getting ready to sentence in this case.

11 If you'd like to stay for sentencing, then you can
12 go out through the jury room. Jo will assist you to do
13 that. She's going to want your jury badges back from
14 you when you leave.

15 If you want to leave at this time, you can.
16 Remember your work excuses downstairs. We'll be sending
17 you your checks for your jury duty in the mail. And we
18 will be sending them to the address that you provided to
19 us.

20 On behalf of Jasper County and this Court, I thank
21 you for your service. You're now excused. If you'd
22 like to, you can go out through this door or through the
23 back.

24 Everyone else will remain seated if any juror wants
25 to leave at this time. Everybody's going to stay with

1 us. All right.

2 Solicitor, Mr. Hughes, are there any post-verdict
3 motions from the defendant?

4 MR. HUGHES: No, your Honor.

5 THE COURT: Very well. Mr. Hughes, I'd ask that
6 you and your client come around.

7 Solicitor, you have a sentence sheet?

8 MR. THORNTON: I do, your Honor.

9 THE COURT: Solicitor, if you'll come around. Did
10 you get his signature, Hope?

11 LAW CLERK HOPE LUMPKIN: I did.

12 THE COURT: See, I told you she'd do it. She's
13 knows.

14 MR. THORNTON: May I approach, your Honor.

15 THE COURT: You may.

16 All right. There are no post-verdict motions.

17 Solicitor, I've heard the evidence in this case.

18 However, I recognize that there are a number of people
19 in the courtroom that may wish to be heard. And Mr.
20 Hughes, I recognize that you're client also has family
21 members here. I don't try to put a limit on it, but I
22 think I'm very familiar with the evidence that's been
23 introduced in this case.

24 And I'm going to hear from you, Mr. Hughes, in
25 mitigation. And Solicitor, I'll be happy to hear from

1 you. And I want the jury also to be able to hear.

2 Is there anyone that wants to address the Court
3 from the State?

4 MR. THORNTON: Your Honor, may I have about one
5 minute.

6 THE COURT: Certainly. Mr. Hughes, you want that,
7 too, while he's doing it?

8 MR. HUGHES: Yes, please.

9 THE COURT: Yes, sir.

10 OFF-THE-RECORD DISCUSSION.

11 MR. THORNTON: Your Honor, on the record, the
12 family's indicated they're going to let me handle the
13 request for sentencing in this case, on behalf of the
14 victim in this case, Mr. Brantley.

15 THE COURT: Very well. Mr. Hughes.

16 MR. HUGHES: Your Honor, I was going to have his
17 mother to speak, but she's unable to.

18 DEPUTY: Mr. Hughes, I believe she's coming in.

19 MR. HUGHES: Okay.

20 THE COURT: His mother wants to speak?

21 MR. HUGHES: I believe she does, your Honor.

22 THE COURT: I'll give you a moment. Go speak to
23 her, Mr. Hughes. I'm giving you that time.

24 MR. THORNTON: Sorry, Judge. That was my fault. I
25 was going to show him something.

1 THE COURT: I'll need you and Mr. Hughes to
2 approach in light of the -- that's not it. 16-310 is
3 not the right section.

4 MR. THORNTON: I'm sorry, Judge. Is there an error
5 on this?

6 THE COURT: Well, I don't know if there is. I
7 thought it was, but Hope --

8 OFF-THE-RECORD DISCUSSION,
9 THE COURT, LAW CLERK LUMPKIN.

10 THE COURT: Mr. Hughes, would you approach, along
11 with the Solicitor.

12 OFF-THE-RECORD BENCH CONFERENCE,
13 THE COURT, MR. THORNTON, MR. HUGHES.
14 BACK ON THE RECORD.

15 THE COURT: Is the State ready?

16 MR. THORNTON: State's ready to proceed, Judge.

17 THE COURT: Is the Defendant ready?

18 MR. HUGHES: Defense is ready, your Honor.

19 THE COURT: All right. Solicitor.

20 SENTENCING PHASE.

21 ON BEHALF OF THE STATE,

22 BY MR. THORNTON:

23 MR. THORNTON: Your Honor, you've heard the facts
24 in this case. There are two things, however, that --
25 two sets of things that I want to talk to you about.

1 Just from my perspective, your Honor, I've been in
2 front of you for 12 years as judge and two years before
3 that when you worked with the solicitor's office. I
4 don't know if this is the most senseless killing I've
5 ever seen, but it's definitely in the top five.

6 I mean, this is somebody had no problems with the
7 victim. There was no issue with the victim. He walked
8 up and continually pulled the trigger. He could have
9 not brought a gun to the club that night. He could have
10 not pulled the trigger the first time, the second time,
11 the third time, but he kept doing it, walking to the
12 man, an unarmed innocent man that hadn't done anything
13 to him. It wasn't a robbery. It wasn't revenge. It
14 wasn't over a woman. It wasn't none of that. Not that
15 that would excuse it, Judge, but at least it'd be a
16 reason.

17 This was one of the most cold-blooded executions,
18 which I know I used that word a lot, and I mean it.
19 That's what it is. He walked up and executed an unarmed
20 man for no reason other than I guess he decided that's
21 what a good thing to do was.

22 There's just no sense in it, Judge. It's just
23 completely senseless. That's the first thing I'd tell
24 you.

25 And the other thing I'd ask the Court to please

1 consider he didn't have a prior record I could use
2 against him. But I know the rules in sentencing are a
3 little bit more lenient. He's got a prior assault and
4 battery from 2007. He's got a prior alcohol charge,
5 which is not serious.

6 But what does concern me is, and this is not a
7 conviction, Judge, it's a pending charge in Jasper
8 County, and it's an old charge. He's got a 2008
9 attempted murder and possession of a weapon during the
10 commission of a violent crime, which is still pending,
11 which, of course, I couldn't go into even had he taken
12 the stand.

13 THE COURT: It wasn't a conviction.

14 MR. THORNTON: No, sir, not a conviction, Judge.
15 It's a pending charge. But I do believe in sentencing,
16 it is something you can consider.

17 THE COURT: I agree. You can consider it.

18 MR. THORNTON: Your Honor, again, I've known --
19 I've been in front of you a long time, and I don't often
20 do this, but even though he doesn't have what would be a
21 significant prior convictions, I feel like I've got no
22 choice in this case, Judge, but to ask you for a life
23 sentence. Someone that would walk up into a club and
24 shoot an unarmed man in the face will kill again if he
25 gets out. And I don't want him to ever, ever have the

1 possibility of hurting anybody else or putting anybody
2 else's family [sic].

3 So with the respect and deference to the Court,
4 your Honor, you're the sentencer in this case, I'd ask
5 you to consider a life sentence.

6 Thank you, Judge.

7 THE COURT: Thank you. Anyone else from the State?

8 MR. THORNTON: No, sir. Family's indicated they're
9 going to let me handle it.

10 THE COURT: Very well. Mr. Hughes.

11 ON BEHALF OF THE DEFENSE,

12 BY MR. HUGHES:

13 MR. HUGHES: Your Honor, he is currently 23 years
14 old. This happened over two years ago. There's a big
15 difference between a 21-year-old man, and a 23-year-old
16 man, and a 30-year-old man, and a 40-year-old man.

17 Your Honor, Mr. Thornton looks at the man Mr.
18 Howard is going to be and says he's not going to change.

19 THE COURT: I didn't hear you.

20 MR. HUGHES: I'm sorry. And says he's not going to
21 change. Your Honor, he's going to change. Everyone
22 changes. I'm asking for mercy. I'm asking that you
23 take into account his age. I'm asking that you take
24 into account the obvious unthinking of this tragedy.
25 There was no malice. This was not a evil act. It was a

1 stupid act.

2 Your Honor, we are asking for mercy. I would ask
3 for the 30 years on the murder charge. I know that is
4 the minimum.

5 He has to pay his debt to society. But let's don't
6 destroy the young man in this situation.

7 I believe his mother wants to say something.

8 THE COURT: Yes, ma'am. Would you identify
9 yourself for the record.

10 BARBARA KEGLER:

11 MS. KEGLER: My name is Barbara Kegler.

12 THE COURT: Spell your last name for my court
13 reporter.

14 MS. KEGLER: K/e/g/l/e/r.

15 THE COURT: Ms. Kegler, I'll be happy to hear from
16 you.

17 MS. KEGLER: Your Honor, you know, I have -- I have
18 had three boys, right? Three. And I have lost them in
19 difficult capacity. And Brett my only child. My baby.
20 You understand me?

21 And Brett is not a bad child. He come from a good
22 family. You know, what I'm saying? The prosecutor can
23 say what he want, but I know how I raised him. You
24 understand? And I didn't raise him to be a bad child.
25 I'm sorry to the Brantleys. I'm sorry to the court

1 system. I'm sorry to Ms. -- Ms. Diane, because me and
2 her has been friends for over the years, you know.

3 So Brett -- Brett is not a bad child. I raised
4 him. He was going to school. He was going to TLC when
5 all this occurred. You understand me?

6 But he's not a bad child. He's not this crazy
7 person. He's not this bad person that the prosecutor
8 tried to present to everybody. He's not like that. And
9 I'm sorry that whatever happened, happened. And he's
10 sorry. And I just wish you would have mercy on him.

11 THE COURT: I have no doubt that you love your son.

12 Mr. Howard, is there anything you'd like to tell me
13 prior to sentencing?

14 DEFENDANT HOWARD:

15 DEFENDANT HOWARD: Yes, I do. I want to apologize
16 to everybody for going through this. You know. Still
17 to today I'm saying I'm not guilty. I'm not -- I'm
18 saying it till the day I die. You know. But I'm sorry
19 for putting my mother through that, for her going
20 through this, you know. That's it.

21 SENTENCING, BY THE COURT:

22 THE COURT: Well, let me say this. First of all, I
23 think there was overwhelming evidence for this jury to
24 find you guilty beyond a reasonable doubt. And the
25 Solicitor is absolutely correct in telling me that he

1 believes this was the type of murder that was done
2 execution style.

3 Now, Mr. Howard, I take several things into
4 consideration. I want the jury to understand it, too.
5 The minimum sentence for murder is 30 years. And you
6 serve every day for murder in South Carolina. It is
7 day-to-day. The Solicitor knows that.

8 I have to take into consideration your age. I take
9 into consideration that your mother feels you aren't a
10 bad child. But I haven't met many mothers that feel
11 their child's bad. I understand you love him.

12 I also take into consideration, Solicitor, the
13 manner in which this crime was committed. I completely
14 agree with the jury's verdict in this case. I think the
15 evidence was overwhelming. I think the State proved
16 your guilt, Mr. Howard, not only beyond a reasonable
17 doubt - beyond any doubt that I had. And there are very
18 few cases that I can say that in.

19 On the other side of that fence, you have no
20 criminal record, which the State -- I say that. You
21 have a criminal record, not one that could have been
22 used to impeach your credibility. And although you have
23 other pending charges of violent in Jasper County, you
24 are 23 years of age and do not have a prior record that
25 would be substantial enough that I would consider it to

1 -----be a pattern of violent conduct, although, I have some
2 concerns about that.

3 My heart goes out to the victim's family. And to
4 your family. I do not have the power to restore life.
5 If I did, I would certainly do that, ma'am. But I
6 don't.

7 What's been done can't be changed, and you
8 certainly need to pay the penalty to our society for
9 what occurred.

10 Now, Mr. Hughes, I have my jail list there. And
11 the reason that I was glad to see that the State called
12 this case for trial is that this case represents my
13 longest jail-serving case in Jasper County. Doesn't it,
14 Solicitor?

15 MR. THORNTON: I believe -- other than death
16 penalty cases, your Honor, it's the longest one in the
17 14th circuit.

18 THE COURT: And death penalty cases are assigned to
19 a particular judge and not me, so I have no control over
20 that.

21 MR. THORNTON: Yes, sir.

22 THE COURT: Which is why we brought it at this
23 term.

24 Mr. Hughes, I certainly believe your client is
25 entitled to credit for the time that he served in jail,

1 by statute. And I'll see that that's reflected in my
2 sentence.

3 But Mr. Hughes, I cannot, with the manner of this
4 case, give your client the minimum sentence for murder.
5 I do not believe this is a minimum sentence murder case,
6 based on the evidence that I heard.

7 On Indictment 2010-GS-27-014, the State versus
8 Brett Howard, charged with murder, the sentence of this
9 Court is Defendant is committed to the State Department
10 of Corrections for a term of 40 years.

11 On Indictment 2010-GS-27-15, possession of a weapon
12 during the commission of a violent crime, the sentence
13 of the Court is the Defendant is committed to the State
14 Department of Corrections for a term of five years.

15 Those sentences will run consecutive to each other.

16 Defendant is to be given credit for time served,
17 pursuant to *South Carolina Code Section 24-13-40*. That
18 is to be calculated and applied by the State Department
19 of Corrections.

20 MR. THORNTON: Thank you, your Honor.

21 THE COURT: Thank you.

22 MR. HUGHES: Thank you, your Honor.

23 THE COURT: Ladies and gentlemen of the jury, this
24 concludes the sentencing phase of this case. My
25 sentence is consecutive, meaning 45 years total.

1 Sentence will be served day-for-day.

2 I thank you for your service in this case. You are
3 now excused for the balance of the week from jury duty.
4 You may leave the courtroom at this time.

5 Everyone else remain seated while the jury's
6 leaving.

7 JURORS LEAVE COURTROOM 1:08 P.M.

8 THE COURT: All right. Solicitor, its now ten
9 after one. I want to give everybody an opportunity to
10 get lunch, come back. Court's in recess until 2:15 this
11 afternoon.

12 MR. THORNTON: Thank you, Judge.

13 THE COURT: Thank you.

14 RANDOM STRIKE SHEET MARKED COURT'S
15 EXHIBIT 2.

END TRIAL 1:09 P.M.

CERTIFICATE OF REPORTER

MAY 14, 15, & 16, 2012 TRANSCRIPT OF TRIAL

STATE OF SOUTH CAROLINA

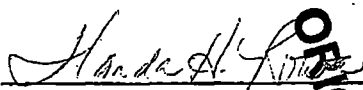
COUNTY OF JASPER

I, Wanda H. Rowe, CVR-M and Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing May 14, 15, and 16, 2012 Transcript of Trial is a true, accurate, and complete record of the proceedings had and evidence introduced in the case of State versus Brett Howard, 2010-GS-27-00014 and 2010-GS-27-00015, Ridgeland, South Carolina.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

This original transcript is not certified to be, nor authorized for use as, true, accurate, and complete without my original signature and stamp affixed hereto. Any copies of this transcript are not certified to be, nor authorized for use as, true, accurate, and complete without my original signature and copy stamp affixed thereto.

Witness my signature August 27, 2012.


Wanda H. Rowe, CVR-
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRETT HOWARD,

APPELLANT

APPELLATE CASE NO. 2012-212059

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

RECEIVED

APR 16 2013

SC COURT OF APPEALS

TABLE OF AUTHORITIES**Cases**

State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) 5

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in charging the jury that inferred malice may also arise when the deed is done with a deadly weapon when in, closing argument, Appellant argued that the shooting was an accident?

STATEMENT OF THE CASE

In January of 2010, the Jasper County Grand Jury indicted Howard for murder and possession of a weapon during the commission of a violent crime, indictments #2010-GS-27-00014, 00015. On May 14, 2012, Howard proceeded to jury trial before the Honorable Perry M. Buckner. Attorneys Robert Hughes and Stephen Plexico represented Howard at trial. Attorneys Sean Thornton and Tameaka Leggette prosecuted the case on behalf of the State. The jury returned verdicts of guilty and Judge Buckner sentenced Howard to 40 years for murder and 5 years consecutive for the weapons charge. A timely notice of intent to appeal was served on May 18, 2012. This appeal follows.

ARGUMENT

The trial judge erred in charging the jury that inferred malice may also arise when the deed is done with a deadly weapon when, in closing argument, Appellant argued that the shooting was an accident.

The jury found Howard guilty of fatally shooting Woodrow “Woody” Bradley inside Missy’s Lounge in Ridgeland. In closing argument counsel for Howard argued, “There is a big difference between murder and killing. We do not have a murder; we have a killing. It is a death not brought about by malice, not brought about by evil intent. It is brought about by accident.” (R. p. 377, lines 3-6). In the charge to the jury the trial judge said, “Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any – the article, instrument or substance which is likely to cause death or great bodily harm.” (R. p. 391, lines 7-12). The trial judge did not charge the jury on the law of accident. The judge erred in charging the jury that malice could be inferred from the use of a deadly weapon when Appellant argued the shooting was an accident.

In State v. Belcher, 385 S.C. 597, 610, 685 S.E.2d 802, 809 (2009), the South Carolina Supreme Court wrote, “Under our policy-making role in the common law, we hold that the ‘use of a deadly weapon’ implied malice instruction has no place in a murder (or assault and battery with intent to kill) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with intent to kill).” When asked if there were any exceptions to the charge, counsel for Howard stated, “The other thing, about your charging, though, I – forgive me if I am wrong, I had thought I knew that the use of a weapon to indicate malice had been removed.” (R. p. 400, lines 22-24). The judge responded, “I don’t think I said it indicated use. I said it was an example of

inferred from conduct showing a total disregard for human life.” (R. p. 400, line 25 – p. 401, lines 1-2). Defense counsel responded, “Okay. I might have misheard that, your Honor. If I did, I apologize. That was my only thing as far as the charge, your Honor.” (R. p. 401, lines 3-5).

The judge then elaborated and said, “What I said was, malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. I think that’s the correct charge.” (R. p. 401, lines 6-12). Defense counsel agreed¹. (R. p. 401, lines 13-20).

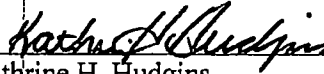
Evidence in the record shows that, after calling Brantley a racist, Howard pulled the gun and walked toward Brantley pulling the trigger but the gun did not fire. (R. p. 240, line 5 – p. 241, lines 1-9; p. 252, line 16 – p. 253, lines 1-16). The gun did not fire until Howard was very close to Brantley. (R. p. 241, lines 1-9). In closing, defense counsel argued that the inference to be drawn from the evidence was that Howard was joking around with what he thought was an unloaded gun and, by accident and unknown to Howard, a bullet remained in the gun. (R. pp. 375-377). Based on the facts of this case, the judge erred in charging the jury that malice can be inferred from the use of a deadly weapon.

¹ As there was no argument made that, based on Belcher, the inference of malice charge was error because counsel argued accident in closing, the issue may need to be raised in post conviction relief.

CONCLUSION

Based on the above argument, Howard's sentence and conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of April, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRETT HOWARD,

APPELLANT

APPELLATE CASE NO. 2012-212059

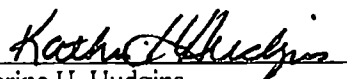
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brett Howard states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Perry M. Buckner, which was held on, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Brett Howard.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of April, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRETT HOWARD,

APPELLANT

APPELLATE CASE NO. 2012-212059

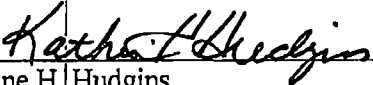
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets;
- (2) Trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

April 16th, 2013


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

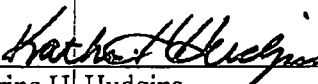
BRETT HOWARD,

APPELLANT

APPELLATE CASE NO. 2012-212059

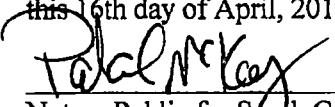
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also served up Mr. Brett Howard # 350845 Perry Correctional Institution 430 Oaklawn Road Pelzer, SC 29669 this 16th day of April, 2013.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of April, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Brett Howard, Appellant.

Appellate Case No. 2012-212059

Appeal From Jasper County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2014-UP-216
Submitted April 1, 2014 – Filed June 11, 2014

APPEAL DISMISSED

Appellate Defender Kathrine H. Hudgins, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

WILLIAMS, KONDUROS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Jasper)

Brett Howard #350845)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-27-323

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Corr. Inst., 430 Oaklawn Rd., Pezler, 29669
2. Name and location of Court which imposed sentence Jasper County General Session
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-27-00014 (murder)
 - (b) 2010-GS-27-00015 (possession of weapon during violent offense)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 16, 2012 40-years
 - (b) May 16, 2012 5-years

TRUE COPY
 MARGARET BOSTON
 CLERK OF COURT
 JASPER COUNTY, SC
 BY: M. Smith
 DATE: July 30, 2014

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty trial by jury and judge
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed sentences and convictions
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted April 1, 2014, filed June 11, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Op. No. 2014-UP-216
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Appellate Counsel
- (b) Ineffective Assistance of Counsel
- (c) Applicant will amend once counsel is appointed
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Appellate Counsel failed to federalize my appeal issue
Counsel failed to provide effective representation
- (b) in a numerous ways that will be thoroughly amended
- (c) once counsel is obtained to assist with the PCR
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. n/a
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. n/a
- 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?
first filing for post conviction relief
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. n/a
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. n/a
- 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) first filing for post conviction relief
- (b) _____
- (c) _____
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 "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Robert Hughes & Stephen Plexico _____
- ii. Jasper County Public Defenders _____
- iii. Kathrien Hudgins, SC. Appellate Defense _____
- (b) the proceedings at which each such attorney represented you:
- i. trial and sentecning _____
- ii. _____
- iii. appeal _____
19. State clearly the relief you seek in filing this application:
Vacatse sentences and convictions and remand for new trial
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA

County of GREENVILLE

VERIFICATION

I, Brett Howard, 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.

Brett Howard

SWORN to and subscribed before me this 8th
day of July, 2017.
Nancy C. Murchant (L.S.)
Notary Public

My Commission Expires: 1-23-2021

2017 JUL 25 AM 9:53
MARGARET BOSCHICK
CLERK OF COURT
JASPER COUNTY SC

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

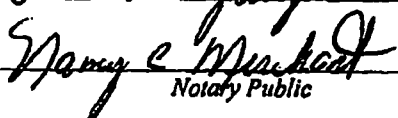
I, Brett Howard, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.


Applicant

SWORN or affirmed to and subscribed before me this

8th day of July, 2014.


Notary Public

My Commission Expires: 1-23-2022

2014 JUL 25 AM 9:53
MARGARET EUSTON
CLERK OF COURT
JASPER COUNTY SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Brett Howard, #350845,	)	2014-CP-27-0323
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on July 25, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Jasper County Clerk of Court's orders of commitment. The Applicant was indicted by the January 2010 term of the Jasper County Grand Jury for Murder (2010-GS-27-0014) and Possession of a Weapon During the Commission of a Violent Crime (2010-CP-27-0015). Robert Hughes, Esq. and Stephen Plexico, Esquire, represented him. On May 14-16, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Perry M. Buckner sentenced the Applicant to confinement for forty (40) years for Murder and five (5) years, concurrent, for the possession charge.

A notice of appeal was filed and an appeal perfected pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Howard, Op. No. 2014-UP-216 (filed June 11, 2014). The Remittitur was issued on June 27, 2014.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Appellate Counsel"
 - a. "Appellate Counsel failed to federalize my appeal issue"
2. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to provide effective representation in a numerous(sic) ways that will be thoroughly amended once counsel is obtained to assist with the PCR"
3. "Applicant will amend once counsel is appointed"

Attached herewith and incorporated herein by reference are the records of the Jasper County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the Record on Appeal, and the opinion of the South Carolina Court of Appeals. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the

Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

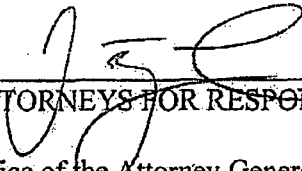
Respectfully submitted,

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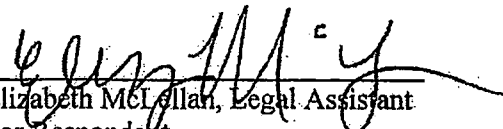
August 14, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	
	)	2014-CP-27-0323
	)	
BRETT HOWARD, #350845,	)	
	)	
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:

**Brett Howard, #350845
 Lieber Correctional Institution
 PO Box 205
 Ridgeville, SC 29472**

DATED this 14th day of August, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF COMMON PLEAS
CASE NUMBER 2014-CP-27-00323

BRETT HOWARD

PETITIONER

VERSUS

OCTOBER 19, 2016

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDENT

B E F O R E:

HON. MICHAEL G. NETTLES, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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APPEARANCES

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EXHIBITS

No exhibits were admitted.

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HEARING

1 BEGINNING 10:02 A.M.

2 BY THE COURT:

3 THE COURT: Mr. Neely, you're recognized.

4 MR. NEELY: Thank you, your Honor. I believe the
5 first evidentiary hearing today is Brett Howard versus
6 the State of South Carolina, Case Number 2014-CP-27-
7 00323. Represented presented by Mr. Jim Falk.

8 MR. FALK: Can you all bring Mr. Howard up.

9 THE COURT: Come forward, yes, sir.

10 MR. NEELY: His procedural background, your Honor,
11 the applicant was indicted January 2010 term in Jasper
12 County for murder on Indictment 2010-GS-27-00014; and
13 possession of a weapon during the commission of a
14 violent crime; Indictment Number 2010-CP-27-00015 [sic].

15 He was represented by Bob Hughes, and he had a jury
16 trial on May 14 through 16, 2012; was found guilty as
17 indicted. The Hon. Perry Buckner sentenced the
18 applicant to forty years for murder and five years
19 concurrent. I believe that was consecutive for this
20 charge.

21 A notice of appeal was filed. It was an Anders
22 brief. The South Carolina Court of Appeals confirmed
23 applicant's conviction and sentence, and a remittitur
24 was issued June 27, 2014.

25 THE COURT: Mr. Falk, I'm going to ask you to

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1 itemize the specific grounds of your application for
2 post-conviction relief that you are alleging to go
3 forward with here today.

4 MR. FALK: Thank you, your Honor. My client would
5 like to allege ineffective assistance of counsel based
6 on trial counsel's failure to fully investigate the case
7 and interview witnesses. There are also some other
8 issues that we want to raise. One, primarily being that
9 trial counsel failed, as far as jury charges, failed to
10 object to the jury charge. As a result, did not give
11 charges for lesser-included offenses. This was a murder
12 charge, and we're alleging that trial counsel is
13 ineffective for failing to seek a charge for voluntary
14 manslaughter -- involuntary manslaughter or possibly
15 even accident.

16 Additionally, the charge that went back to the jury
17 is incorrect based on the law from *State versus Belcher*
18 in that the charge that Judge Buckner gave said that the
19 jury could infer malice based on the use of a deadly
20 weapon. And that it was no longer good law at the time
21 of that sentencing -- at the time of that trial.

22 THE COURT: All right. Very good. You may
23 proceed.

24 MR. FALK: Your Honor, I thought maybe it would be
25 helpful to maybe go through the transcript, some of

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1 these other -- the *Belcher* issues and the lesser-
2 included arguments first.

3 THE COURT: Okay.

4 MR. FALK: And then, I would call Mr. Hughes to the
5 stand, and then, call my client.

6 THE COURT: Very good.

7 MR. FALK: And your Honor, and maybe -- I have
8 reviewed the jury charge, which starts on Page 378. And
9 there is an instruction on murder, but you will see
10 through there, there is no instruction for the
11 definition of involuntary manslaughter or voluntary
12 manslaughter, or possibly, accident. There is no record
13 in the transcript that such instructions were sought.
14 Although it may have been done in chambers, there's
15 nothing on the record to show that trial counsel tried
16 to ask for lesser-included offenses, and as a result,
17 those issues would not have been preserved for *Anders*
18 review. And this does touch an issue that we talked a
19 little bit about yesterday in Mr. Brown's case.

20 But if the Court would look at the case of *McHam*
21 *versus State*, which is a PCR case. And it is 746 --

22 THE COURT: How do you spell *McHam*.

23 MR. FALK: M/c/H/a/m.

24 THE COURT: Okay.

25 MR. FALK: 747 S.E.2d 41; South Carolina Supreme

1 Court case 2013. And it does make -- I believe that
2 case makes clear that the only thing an *Anders* review
3 covers are preserved errors, and that, an *Anders* review
4 does not cover unpreserved errors. So, if something
5 happened and it wasn't preserved, that's not going to
6 fall within the scope of what the court is going to
7 review under *Anders*. So, that is why we believe that we
8 can assert these issues which should be more direct
9 appeal issues as collaterally at PCR, because the issues
10 were not preserved.

11 THE COURT: All right.

12 MR. FALK: Now, I believe the transcript -- first
13 of all, Page 374 of trial counsel's closing -- trial
14 counsel's closing argument, if you look at Page 374 --

15 Let me back up and give you a context of what
16 happened. There was a group of people at a pool hall,
17 and there was some altercation or communications between
18 three people. And at some point, a gun was drawn and
19 somebody got shot. And my client -- Mr. Hughes, argued
20 that the shooting was the result of an accident. And in
21 his closing argument at Page 374, Line 6, this is Mr.
22 Hughes saying:

23 *And when we get into the pool room,*
24 *they're joking around in the pool room. Mr.*
25 *Brantley is joking with Mr. Mike, and he*

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1 says, 'aw, you cut your hair working for
2 the man.' That's a joke. Mr. Brantley
3 wasn't a racist. All that was is Mr.
4 Brantley and Mr. Mike joking. Everybody
5 was joking. Then, Brant Howard shows them
6 the gun; points it at him. Mr. Brantley
7 says, 'I'm not afraid of a gun.' Brett
8 pulls the trigger. Mr. Brantley still
9 is not afraid of a gun. Everybody's joking.
10 And there are people standing here and here;
11 and they're not reacting. No, they're not.
12 Brett pulls the trigger and pulls the trigger
13 and pulls the trigger because he doesn't
14 think the gun is loaded, or he doesn't
15 think the bullets are real.
16 That's the trial -- that's in the transcript at
17 374, 6 through 20.

18 And then, going on to Page 375, again, in his
19 closing argument, Lines 8:

20 Howard was joking around, and that's
21 what happened. Brett Howard was joking
22 around and with an unloaded or a gun that
23 had empty shells and one didn't.

24 Okay. Mr. Howard, Brett Howard, after
25 the shot, what does he do? Does he act like

1 *someone who just killed somebody? No. He*
2 *walks up with an amazed look. Another person*
3 *said he looks like he does now. It's not a*
4 *smear. He's just walking out, amazed, like*
5 *he doesn't know what's going on.*

6 Continuing on 377, Line 3:

7 *There is a big difference between*
8 *murder and killing. We do not have a murder.*
9 *We have a killing. It's a death, not brought*
10 *about by malice, not brought about by evil*
11 *intent. It was brought about by accident.*

12 *Look at when you get back there to talk,*
13 *and talk about how everybody reacted, talk*
14 *about how there are three people standing*
15 *around there. Mr. Thornton says Brett walked*
16 *up, click, click, click. I'm not saying*
17 *like what the testimony or the questions*
18 *were earlier, but you know, it was click,*
19 *click, click, because in his mind, the gun*
20 *wasn't going to fire.*

21 *So, anyways, it's clear that he was making an*
22 *accident or possibly involuntary manslaughter. I mean,*
23 *that was his argument. And I believe that he would have*
24 *been justified in getting that, because there is*
25 *testimony that was developed through the witnesses. One*

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1 of the witnesses was from Wallace Mike, Jr. And his
2 testimony starting at Page 240, Line 5, going through
3 241, it summarizes what he said, what Mr. Hughes said
4 was that the gun went click, click, click, click, click,
5 and then, boom, it went off. And he also testifies that
6 he people were joking around. So, I believe -- the
7 transcript on Page 230 through 253, there was evidence
8 upon which the Court could have found that this shooting
9 was not based out of malice. So, I think that --

10 THE COURT: Let me ask you -- I don't even know
11 what the State's position is, or was, or what trial
12 counsel's position was. But quite often, in situations
13 that unusually emanate out of a bar, and you're put in a
14 position where the facts are pretty favorable; and but,
15 however, if you charge voluntary manslaughter or
16 involuntary manslaughter, there's a good chance you're
17 going to convict him of that. So, do you think that the
18 defendant has the ability to say all or nothing?

19 MR. FALK: Your Honor, I appreciate that's a hurdle
20 that we have to get over, whether or not Mr. Hughes
21 would say that that's a trial strategy.

22 THE COURT: I'm just asking you generally. Do you
23 think a defendant can say I want all or nothing?

24 MR. FALK: Yes, I do. And I do think there are
25 facts patterns where that would be justified.

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1 THE COURT: Now, what if the State says, well, you
2 know, the fact pattern does justify a charge of
3 voluntary manslaughter, and I want it, and the defendant
4 doesn't want it, who wins?

5 MR. FALK: I think the court's required to charge
6 according to the evidence. I don't know. I can't
7 answer that.

8 THE COURT: All right. All right. Well, let me
9 hear from the -- are you finished with your summary
10 presentation with regard to the trial, or would you like
11 to say something else?

12 MR. FALK: Well, then, I want to go in with the
13 discussions, and just sort of showing that the error was
14 not preserved regarding the malice instruction.

15 THE COURT: Okay. Well, let's deal with murder,
16 voluntary, the involuntary, and accident first.

17 MR. FALK: Okay.

18 THE COURT: Then, we'll deal with -- Mr. Neely, be
19 glad to hear from you.

20 MR. NEELY: Thank you, your Honor. I think to
21 better understand this case you have to give an overview
22 of the facts of this case. It's the State's opinion
23 that Mr. Hughes was playing against a very heavily
24 stacked deck in this case, and it's really hard to see a
25 better example of overwhelming evidence, other than a

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1 case like this. The testimony that was brought out at
2 trial was that there was a party at a bar. Everybody
3 was drinking. And Brett Howard had a gun and was
4 showing it off to people in the party. Showed it off to
5 numerous people at the bar. Told people that he was
6 security and, in fact, thrust himself into several what
7 they described as just friendly joking. Not arguments,
8 not tension, just joking. And he would thrust himself
9 into the situations and be like, is there a problem
10 here. And they'd be like, no, we're just joking. And
11 then, he would leave.

12 And then, he shows the gun off to numerous other
13 people in that setting. And then, in that same setting,
14 he overheard joking of the two men that were playing
15 pool together. He accused one of the men of being a
16 racist, based on something that he said. And the
17 testimony that came out that was said that he said, I'm
18 not being racist, man, I was just joking; I ain't scared
19 of no gun, man; ain't necessary, you know. And then, he
20 walked forward to the victim, continuously pulling the
21 trigger on his firearm until he was less -- the doctor
22 testified the stippling on his face indicated he was
23 less than three feet away from the victim.

24 The testimony that came out from the man that he
25 was playing pool with, who was standing, you know, less

1 than five feet away, said that he actually grabbed him
2 by the back of the head, put the gun to his head and
3 pulled. And then, that was when that the bullet came
4 out and killed him almost instantaneously. The doctor
5 testified that it severed his spine, and that he would
6 have been dying before he hit the ground.

7 I certainly -- there was no testimony that was
8 brought out that indicated that there was any struggle,
9 any fight. Certainly no reason, justified reason, for a
10 -- that would bring out a voluntary manslaughter charge
11 in this case. In fact, I believe he actually spoke to
12 one of the people in the Club Four1500? and said, ain't
13 nobody better say an f'ing thing to me tonight; they get
14 their brains blown out. And that was outside the club
15 before he entered the club.

16 So, we have -- we have malice all over the place.
17 The only testimony that was brought that -- well, there
18 was no testimony brought out that would bring up
19 involuntary charge. I think Mr. Hughes brought it out
20 in his closing argument, which obviously, is not
21 evidence in the case. And that was his only argument;
22 that he didn't think the bullets were real or know that
23 it was loaded. And that was his only argument that he
24 had at trial, which is obviously -- I mean, it's kind of
25 a shooting-blanks argument. It stretches the bounds of

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1 believability whenever the closing argument is he didn't
2 believe the bullets were real. And that's kind of what
3 we have in this case.

4 So, the State would argue that there is no -- there
5 was no evidence to support a involuntary manslaughter
6 charge. Certainly, pulling the trigger until a bullet
7 comes out wouldn't bring out an involuntary manslaughter
8 charge. There's no evidence that --

9 THE COURT: What was the statement that gave rise
10 to the allegation of the victim being racist?

11 MR. NEELY: I can't remember exactly. I can find
12 it for you. I do know that both men were African-
13 American, and that they there was -- I think it was --
14 the statement that Mr. Falk used earlier was that
15 somebody cut his hair to get a job, and that he did it
16 for the white man. I think basically what was said, but
17 I don't even -- but that was actually said, not between
18 the defendant and the victim, but between the victim and
19 the victim's friend. And he interjected himself into
20 that friendly joking.

21 THE COURT: Right.

22 MR. NEELY: So, there's really no evidence
23 whatsoever for -- I mean, even if he'd said it directly
24 to him, that's still not evidence for a voluntary
25 manslaughter charge, in the State's opinion.

1 And then, I -- I mean, one of the theme's, I guess,
2 throughout the State's case is this is also an
3 overwhelming evidence case. So, any other defense is
4 also to be supplemented by the fact that this is an
5 overwhelming evidence case.

6 THE COURT: Yes, sir.

7 MR. FALK: I think most of Mr. Neely's comments
8 were addressed to involuntary manslaughter, but then,
9 there's still voluntary manslaughter where -- and I
10 guess this dovetails back to what we're talking about on
11 the *Belcher* instruction that you need malice to have a
12 murder. And I think there's ample evidence that there's
13 no specific malice directed at the victim in this case.
14 He might, you know, might have had somebody who was on
15 edge and who was being reckless and reckless with a gun.
16 I do think there's sufficient evidence to prove that the
17 jury was -- my client was at least entitled --

18 THE COURT: So, based on what Mr. Neely said, there
19 was some express malice in that he said that nobody
20 better mess with me tonight or they'll get killed,
21 essentially.

22 MR. FALK: That's not malice directed at the
23 victim. That's just generally.

24 THE COURT: Just generally?

25 MR. FALK: I'm in a bad mood today.

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1 THE COURT: Okay. All right.

2 MR. FALK: So then, should we move on to the
3 Belcher or?

4 THE COURT: Well, what do you think about
5 involuntary manslaughter and whether or not that would
6 apply, or accident?

7 MR. NEELY: Your Honor, the only evidence that came
8 out about that was not evidence; it was a closing
9 argument. Arguing that he only had one bullet in the
10 chamber, and that he kept pulling it 'til it came out
11 and it killed a man, is certainly not evidence of
12 involuntary manslaughter. In fact, I think it goes more
13 the opposite. He kept pulling the trigger until the
14 bullet came out. It wasn't like he was playing Russian
15 Roulette. He wasn't sure if it was going to come out.
16 He kept pulling that trigger until the bullet that was
17 in the chamber did, in fact, fire.

18 THE COURT: Let me ask you this, Mr. Neely. And I
19 don't know whether this applies in this case. But if
20 the defendant elects to go all or nothing with murder,
21 and elects not to requires a charge on voluntary or
22 involuntary manslaughter, does he have a right to do
23 that?

24 MR. NEELY: I certainly believe so.

25 THE COURT: What if the State wants it?

1 MR. NEELY: I think, I mean, I think that's judge's
2 call. Now, there have been some pretty in my view, and
3 I realize I'm not high-minded as appellate courts, but
4 in my view, fairly contradictory case law coming out
5 recently where it's a little bit harder to tell whether
6 a lesser included should be changed from the State. I
7 know there's been a lot of discussion with me and fellow
8 prosecutors, or when I was a prosecutor, about whether
9 we should charge it or even ask for a charge, because we
10 weren't sure that would hold up on appeal. And we just
11 didn't know. And all we cared about was making sure it
12 held up on appeal, but we didn't even know whether to
13 ask for it or not, based on the case law came down.

14 Now, I think that if the defense --

15 THE COURT: Essentially, what you're saying is
16 regardless of whether the judge wanted to do or the
17 defense wanted to do, you feel as though the facts might
18 warrant it and you would feel more comfortable asking
19 for it to ensure that it would not be reversed on
20 appeal.

21 MR. NEELY: That's correct, your Honor, normally.
22 Now, I think that, if they don't want it, I think it's
23 still an argument for the judge to make a decision on,
24 on whether he thinks the facts actually warrant the
25 charge or not. If nobody asks for it and the defense

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1 doesn't want it, I don't think there's any problem with
2 that whatsoever. I think that definitely can be part of
3 trial strategy. The same as bringing out a potentially
4 damaging fact could be part of a greater trial strategy
5 for the defense in making an argument, closing argument,
6 or, you know, when not using the defendant on the stand,
7 he might have something that he thinks is very
8 important.

9 THE COURT: But you do think that's legitimate
10 trial strategy, to give all or none.

11 MR. NEELY: Certainly. I think that, I mean, it's
12 a trial strategy that's considered by both the
13 prosecution, I think, and the defense at some point
14 whether to ask for a lesser included or not. I mean,
15 normally, it's the prosecution that doesn't want lesser
16 included, because they want the murder charge, and
17 they're scared that's going to go down to a voluntary
18 manslaughter charge as part of the negotiation between
19 jurors, at least in my experience.

20 THE COURT: A lot of solicitors say, well, I don't
21 want to get not guilty; I want to get something.

22 MR. NEELY: I guess each person has their own
23 opinion on how to handle a trial, your Honor.

24 THE COURT: All right. All right. You may
25 proceed.

1 MR. FALK: Just a final comment. I think that my
2 client is entitled for the jury to draw their own
3 conclusions, you know, reasonable inferences from the
4 facts that were presented. And it's up to the jury to
5 decide whether his conduct coming up there and firing a
6 gun several times and shooting blanks, whether or not he
7 was just trying to scare the guy, maybe recklessly scare
8 the guy, or whether or not he had -- forming an intent
9 to kill the person. And it would be for the jury to
10 determine from the conduct whether or not, you know, he
11 thought that there was, in fact, a bullet in the gun.
12 I'm just saying that, because of the fact there were no
13 instructions on any other type of conduct, voluntary or
14 possibly even accident, the jury didn't have that
15 opportunity to draw those conclusions. And if there was
16 evidence in there, there was some evidence, I think
17 that's the only standard that we need.

18 If we look at I think *Tisdale* or some of the other
19 -- *Tisdale*, which is 662 S.E. 410, South Carolina 2008
20 case. I mean, if there's evidence in there, the
21 defendant is entitled to the instruction. And it's up
22 to the jury to determine. It's not really up to us to
23 determine how strong that evidence was. That's within
24 the purview of the jury.

25 THE COURT: Very good.

1 MR. FALK: And again, we believe that we were
2 denied by that opportunity.

3 THE COURT: Very good.

4 MR. FALK: All right. Now, if you look at -- I'm
5 moving on to *Belcher*. If you look at Page 391 of the
6 transcript, Lines 7 through 12, Judge Buckner said:

7 *Malice may be inferred --*

8 THE COURT: *Belcher* is -- what was the date of
9 that?

10 MR. NEELY: It's a 2009 case, your Honor. So, it
11 would have been before this case.

12 MR. FALK: *Belcher* is 385 -- excuse me -- 685
13 S.E.2d 802.

14 THE COURT: Southeast 2nd what?

15 MR. FALK: 802.

16 THE COURT: 802. All right.

17 MR. FALK: And you have on Page 391 of the
18 transcript:

19 *Malice may be inferred from conduct*
20 *showing a total disregard for human life.*

21 *Inferred malice may also arise when the*
22 *deed is done with a deadly weapon. A deadly*
23 *weapon is any article, instrument, or substance,*
24 *which is likely to cause death or great bodily*
25 *harm.*

1 That's the charge. That's contrary to *Belcher*.

2 And then, if you look at the transcript from around
3 Pages 400 to 401, you'll see a discretion where it
4 appears that Ms. --

5 THE COURT: What does *Belcher* say about the
6 retroactive nature of an opinion?

7 MR. NEELY: Your Honor, I believe *Belcher* says
8 appealed directly to any matters that were pending, even
9 on direct appeal, but did not apply to any PCR cases
10 that were pending at the time, and that was at the end
11 of the opinion. Now, *Belcher* did come out before this
12 case came out, and the argument I'll make, but I'll
13 wait.

14 THE COURT: Okay.

15 MR. FALK: *Belcher's* 2009. This trial was 2012.

16 THE COURT: Very good. And again, if the Court has
17 the opportunity to review the transcripts, on Pages 400
18 through 401, you will see that there's a discussion that
19 Mr. Hughes has where he thought he heard the wrong
20 instruction, and he brought it to Judge Buckner's
21 attention. And there was some further discussion about
22 that. But at the end of the day, the court said --
23 asked Mr. Hughes do you agree, and Mr. Hughes:

24 *Yes, sir, I just -- I might -- I*
25 *thought I heard something I did not hear.*

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1 I just wanted to confirm that.

2 The Court then says:

3 *So, there are no exceptions to the*
4 *charge?*

5 And Mr. Hughes says:

6 *No, your Honor.*

7 So, that is an unpreserved error. That's really
8 all I have to add on that. That is contrary to the law
9 and prejudicial under these facts.

10 THE COURT: Okay. Yes, sir.

11 MR. NEELY: Your Honor, my understanding, that
12 *Belcher* only applies when self defense has been
13 asserted. And just to quote it directly out of *Belcher*:

14 *Because the evidence presented a jury*
15 *question on self defense, 'Belcher' asserts*
16 *that it was error to charge the jury that it*
17 *may infer malice from use of a deadly weapon.*
18 *We agree.*

19 And so, because the court's argument throughout
20 that case is that, if it's self defense using a weapon,
21 obviously, the weapon itself should be used to infer
22 malice; and that, when the court gives that charge that
23 it can infer malice by the use of that weapon, maybe
24 that was the, you know, the little bit that pushed the
25 jury over the edge. But in this case, we have no

1 allegations of self defense. We have no -- a self
2 defense charge was not given; involuntary manslaughter
3 charge was not given; and the involuntary manslaughter
4 charge was not given. All, the State would argue, very
5 correctly.

6 THE COURT: There was some indicia of express
7 malice.

8 MR. NEELY: Yes, sir, we have express malice. I
9 think that that charge is correct in this case where you
10 don't have a self-defense instruction. I think *Belcher*
11 only applies when self defense instructions are given or
12 when there's some evidence that would mitigate the
13 murder charge down to a voluntary or involuntary.

14 MR. FALK: Your Honor, the first sentence out of
15 the *Belcher* decision is:

16 *A jury charge instructing that malice*
17 *may be inferred from the use of a deadly weapon*
18 *is no longer good law in South Carolina where*
19 *evidence is presented that would reduce,*
20 *mitigate, excuse, or justify the homicide.*

21 And --

22 THE COURT: So, read that again.

23 MR. FALK: *A jury charge instructing that*
24 *malice may be inferred from the use of a*
25 *deadly weapon is no longer good law in*

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1 *South Carolina where evidence is presented*
2 *that would reduce, mitigate, excuse, or*
3 *justify the homicide.*

4 Overruling in a string of cases. And so, it would
5 be our position that it is not -- *Belcher* is not reduced
6 just to self defense or, you know, excusable homicide
7 cases, or any cases where there was evidence that we
8 believe showed mitigating. And we believe there was
9 mitigating evidence in this case on malice. It's my
10 whole argue back with the click, click, click on the gun
11 and the shooting; they were joking around and there was
12 an accidental shooting. So, because the jury had to
13 infer that, well, he had a gun; that means he meant to
14 kill the guy.

15 MR. NEELY: I mean, I -- the State would just kind
16 of re-enforce the position again, you need evidence that
17 would reduce, mitigate, excuse, or justify the killing.
18 It's a man with a bullet in a chamber that kept pulling
19 until -- we're back to the bullets-are-fake argument. I
20 mean, that's what kind of Mr. Falk is arguing; is that
21 maybe the bullets were fake and it was accidental. Now,
22 I think that that's an argument that doesn't hold any
23 water in this case.

24 THE COURT: You say that there is no mitigating
25 circumstances, and this instance --

1 MR. NEELY: That's correct.

2 THE COURT: -- tells us there's express malice,
3 because he fired a gun repeatedly at the gentleman's
4 head. And really, the joking took place between the
5 victim and his friend, and not necessary the victim and
6 the defendant.

7 MR. NEELY: That's correct. I believe -- I mean,
8 all the joking that took place was other people. All
9 the evidence presented at trial, the testimony at trial,
10 was that he came to that bar basically looking to kill
11 somebody is what the solicitor argued in his closing
12 argument. And, but the fact pattern, the way it is,
13 it's hard to argue any other way. There really was no
14 motive for him to do what he did, other than the fact
15 that he was just looking to end somebody's life.

16 THE COURT: Very good. All right. You may
17 proceed.

18 MR. FALK: Your Honor, we would call Mr. Hughes to
19 the stand.

20 THE COURT: Mr. Hughes, please come forward.

21 I'll ask if you could to come forward, place your
22 left hand on the Bible, raise your right hand while the
23 clerk administers the oath.

24 MADAM CLERK: Do you solemnly swear or affirm that
25 the testimony you give to the Court in this case shall

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1 be the truth, so help you God?

2 HON. ROBERT M. HUGHES: I do.

3 MADAM CLERK: You may be seated.

4 THE COURT: Mr. Hughes, do you need to get your
5 paperwork.

6 HON. ROBERT M. HUGHES: No, sir. That is for the
7 next case.

8 THE COURT: Okay. Very good. I'll ask if you you
9 please have a seat in the witness chair. Pull up real
10 close to that microphone. Speak loudly, clearly, and
11 slowly in order that we can hear everything that you
12 have to say.

13 HON. ROBERT M. HUGHES

14 DIRECT EXAMINATION

15 BY MR. FALK:

16 Q Mr. Hughes, can you explain your professional
17 relationship with my client.

18 A Yes. I work for the Fourteenth Circuit Public
19 Defenders Office. He was assigned to me on the murder
20 charge.

21 Q And can you, sir, recall for us, sir, detail the
22 communications you had with my client prior to the trial
23 date.

24 A I met with him a number of times. We discussed
25 everything that had happened. I explained to him what

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1 his rights were. I explained to him what would happen
2 at a trial. I believe there was offers made that he
3 rejected. We communicated at least once a month, and I
4 explained to him what was going on with a trial.

5 There was -- the trial was originally scheduled, I
6 believe, in April. My mother passed away. I went to
7 him and talked with him and explained to him what was
8 going on. And we had an attorney/client relationship.

9 Q Did you review the discovery with him?

10 A Oh, yes.

11 Q Now, what was your strategy going into this trial?

12 A Basically, my strategy was to show that this was
13 not a murder; that this was just an unfortunate event
14 that happened; that there was no intent whatsoever to
15 kill anybody.

16 Q So, this wasn't an identification case. It wasn't
17 like I wasn't the murderer. Is that correct?

18 A No, sir.

19 Q So, you were conceding that he was the person that
20 pulled the trigger.

21 A I wasn't conceding anything. I was making them
22 work for it. But there were a number of witnesses that
23 identified him at the pool hall that night. A number of
24 people pointed him out, but no -- and he's provided me
25 with no alibi. He provided me with no alibi witnesses

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1 that would put him anywhere else.

2 Q The direct testimony from Wallace Mike and from --
3 what's the other witness? Jerrieme Washington. What
4 were you trying to develop out of their testimony under
5 your cross-examination of them?

6 A As far as I can remember, that there was nothing --
7 there was no argument. There was nothing that would
8 make this a fight or a -- anything that could raise
9 being mad enough to kill somebody.

10 Q But I think a couple of times you'd asked on cross-
11 examination about click, click, click, click, click, and
12 then, boom. But what were you trying to infer from
13 that?

14 A Basically, that there was -- he didn't think the
15 gun was loaded. He was basically just showing, off and
16 was as surprised as everybody else when it went off.

17 Q Okay. If that was the basis for your argument,
18 that there was no malice, why did you not ask for
19 lesser-included instruction on volunteer and
20 involuntary, and possibly, accidental?

21 A Now, that, I'm not sure of. With Judge Buckner,
22 most of the discussion on that takes place in chambers.
23 I don't remember if I was going for an all-or-nothing in
24 this, or if he had basically said that not enough
25 evidence had been shown to bring it down to a voluntary

1 charge or an involuntary charge. Judging -- based on
2 the closing argument that you read, I was either going
3 for an all-or-nothing, or had been told I was -- would
4 have to go for an all-or nothing.

5 Q But it seemed like you we're trying to develop an
6 accident theory in the case; that he didn't know the gun
7 was loaded.

8 A Oh, yes.

9 Q Well, that seems inconsistent with an all-or-
10 nothing strategy.

11 A I'm sorry?

12 Q Well, I mean, without an instruction on accident,
13 it seems inconsistent with an all-or-nothing strategy.

14 A If I could show to the jury that there was no
15 malice; that there was an accident the jury would go on
16 its own for -- I had to basically convince the jury that
17 this was not murder, and let them go from there. So, I
18 was either -- judging from the transcript you read, this
19 was an all-or-nothing strategy.

20 Q Was it part of your all-or-nothing strategy to
21 allow the instruction that I read on the inferred malice
22 on the use of the deadly weapon?

23 A I argued against that. I didn't think that was the
24 law at the time. I have not had a chance to review the
25 transcript. But when I was listening to you talk, I was

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1 basically going, that's not the law. I would have
2 argued it; I should have argued it. The only problem
3 is, by the time I would argue it, the jury would have
4 heard it already. And bringing a jury back in to
5 correct a mistake like that, especially when I've
6 already done my best to convince them that this was not
7 a murder, would highlight things I did not want
8 highlighted.

9 MR. FALK: May I approach the witness?

10 THE COURT: Yes.

11 BY MR. FALK:

12 Q I've given you Pages 400 to 401, and on the
13 transcript, and that's surrounding the discussion about
14 objections to the charge. If you could have an
15 opportunity to read through that.

16 A Yes, I've read it.

17 Q Okay. And so, is it -- so, based on that, is it
18 still your testimony that you thought it was better off
19 not objecting to the *Belcher* instruction and that was
20 your intent at the time?

21 A I thought I'd won the case. I thought that I had
22 put enough reasonable doubt into the jury's mind that
23 they would go with it not being murder. I do not
24 remember if Mr. Howard and I discussed going for a
25 lesser included. He had maintained innocence the entire

1 time. So, I don't recall why I did not further object
2 or move for a mistrial.

3 Q But do you agree that you didn't object to the
4 *Belcher*, to the inferred malice?

5 A Yes. I did not object to it, no, sir.

6 Q Was there an opportunity prior? Was there a
7 charging conference in this case?

8 A No. Judge Buckner generally asks if there are any
9 charges we want and if there's any additions that we can
10 think of. I have been in front of Judge Buckner for a
11 number of years. I know his charge. I generally have
12 no objections whatsoever to his charges. So, I did not
13 have a charge to add to it, and I went with what he
14 normally did.

15 Q Well, I believe your testimony earlier was you
16 didn't -- once, sort of, the cat was out of the bag on
17 the inferred malice, you didn't want the -- I believe
18 your testimony was you didn't want the jury to hear it
19 again.

20 A Correct.

21 Q So, were you surprised then that the -- I mean,
22 after you sat through the charging conference, were you
23 then surprised that this inferred malice charge was part
24 of it?

25 A There was no conference, per se. Like I said, I've

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1 heard Judge Buckner's charges for a number of years. He
2 basically says that he will go with his general charges
3 and go through the list. I do not remember if the
4 inferred malice was part of that or just the standard
5 murder charge.

6 Q But were you surprised when you heard it?

7 A Yes.

8 MR. FALK: One moment, your Honor.

9 BY MR. FALK:

10 Q You said that there was some plea negotiation.

11 A There were some offers, I believe. I believe a
12 voluntary manslaughter offer was offered to him. I
13 would have communicated that to him as soon as I got it.

14 Q Did you have any conversations about what he would
15 get from Judge Buckner if he was found guilty?

16 A I would have given him a ball park. I would not --
17 I wouldn't guess an exact number, but I would tell him
18 that, if taken to trial, Judge Buckner would generally
19 give more than the minimum.

20 Q Okay. And was that basis -- so, was there a
21 conference regarding this case with Judge Buckner and
22 the solicitor prior to about what my client might be
23 facing if he's found guilty?

24 A In chambers, yes.

25 Q And did he tell you -- I mean, is that what --

1 A Judge Buckner would have pushed for the voluntary
2 manslaughter charge. He would have forced the solicitor
3 to make an offer. I would have communicated to my
4 client. I would also have told him that Judge Buckner
5 does like to make deals; that he does like to have the
6 cases plea; but at the same time, that, if it goes to
7 trial, that there would be probably more than the
8 minimal.

9 MR. FALK: No further questions.

10 THE COURT: Yes, sir. Mr. Neely.

11 HON. ROBERT M. HUGHES

12 CROSS-EXAMINATION

13 BY MR. NEELY:

14 Q Just some brief background questions. When were
15 you admitted to the Bar in South Carolina?

16 A 2004.

17 Q And you've been a member in good standing
18 continuously since then?

19 A Yes.

20 Q And how long -- how much of that experience since
21 2003 has been in criminal defense?

22 A I worked for the solicitor office for about three
23 years. I then worked for a nonprofit for a year. And
24 since then, I've worked as the public defender in the
25 Fourteenth Circuit.

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1 Q So, basically, all of your experience is in
2 criminal defense or prosecution?

3 A Yes.

4 Q Now, you said earlier that your argument to the
5 jury was that there was no argument, no fight, nothing
6 mad enough to kill anybody, and you're trying to infer
7 the gun was loaded, just showing off?

8 A Right.

9 Q And that was your general trial strategy?

10 A Yes.

11 Q Okay. And because of that, it seems to make sense
12 that you would not be pushing for a voluntary
13 manslaughter charge in the slightest, because that would
14 go against what you're arguing.

15 A Correct.

16 Q So, a voluntary manslaughter would go against your
17 general trial strategy. And then, you said that your
18 recollection as best you could remember was it was an
19 all-or-nothing strategy?

20 A I don't know if it was an all-or-nothing strategy,
21 but I would have -- if I -- I would probably have gone
22 for an involuntary. But if the judge was not going to
23 let me have that, and I would have known that from
24 discussion in chambers, and judging from my closing
25 argument, I was going all or nothing.

1 Q And you would agree that the *Belcher* charge is not
2 objectionable where, so, if the judge ruled against you,
3 you asked for -- when you all were in chambers when you
4 asked for involuntary manslaughter charge, if the judge
5 said, no, I don't think there's evidence of that, then,
6 the judge would have basically already ruled on your
7 *Belcher*? motion, too, because --

8 MR. FALK: Objection, your Honor. I mean, that's
9 presupposing a lot of facts here. They're saying what
10 the judge was going to rule prior to the judge hearing
11 the testimony in the case.

12 THE COURT: I'll allow him to ask the question.

13 BY MR. NEELY:

14 Q At the time, I don't --

15 THE COURT: You can't ask him what the judge
16 thought. You can ask him what his perception of the
17 discussions were, whether or not he thought that was
18 appropriate. What Mr. Hughes thought; not what the
19 judge thought.

20 MR. NEELY: Certainly.

21 BY MR. NEELY:

22 Q Let me just rephrase the question, just to clarify.
23 If the judge refused to give an involuntary manslaughter
24 charge, and refused to give a voluntary manslaughter
25 charge, because he thought there wasn't evidence

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1 presented in testimony that that was the case, then,
2 there would have been no *Belcher* evidence of reduce,
3 mitigate, excuse, or justify the killing.

4 A Is there a question? Right now, I'm having to -- I
5 know *Belcher* a lot better than I did then. I would be
6 arguing until I was blue in the face that that charge
7 should never have been told to a jury. That is based on
8 my knowledge now. Back then, I don't know what I would
9 have done.

10 Q Okay. But you did bring up the *Belcher* charge to
11 the judge after the closing arguments.

12 A Correct.

13 Q And decided not to object and not to ask for a
14 curative instruction.

15 A Exactly. I do not -- did not want a curative
16 instruction because that is the -- I thought I had the
17 jury already. I thought the jury was going to acquit.
18 I did not want a jury to be brought in for addition
19 information that they'd have to think about. And to be
20 honest, most times, juries don't listen that closely to
21 a judge's instructions. And I don't want them to have
22 something pointed out to them, hey, listen to this.

23 MR. NEELY: Thank you. That's all I have. Thank
24 you.

25 MR. FALK: Just a few on re-direct, your Honor.

1 HON. ROBERT M. HUGHES

2 RE-DIRECT EXAMINATION

3 BY MR. FALK:

4 Q Are you saying there was a charging conference and
5 you all discussed voluntary and involuntary?

6 A I do not, know.

7 Q Okay. So, you don't recall whether or not prior to
8 the trial you were going to seek a voluntary or
9 involuntary instruction?

10 A I never decide before a trial what I'm going for.
11 A lot of times it depends upon how the trial goes. If I
12 see that it is going badly against me, and that the only
13 thing I can do to save my client is to go for a lesser
14 included, I would do so. But if I think I can get a not
15 guilty, I go for the not guilty, because I want my
16 client to win.

17 Q But an instruction on accident, it seems you were
18 saying a part of your trial strategy, your theory of the
19 case, was that he didn't know the gun was loaded.

20 A Correct.

21 Q Okay. But, are you then saying as part of your
22 trial strategy not to ask for an instruction on
23 accident? Because that seems inconsistent.

24 A I don't know why I didn't ask for instruction on
25 accident.

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1 Q And it was your theory of the case that you believe
2 that accident would be a mitigating factor to murder in
3 this case; is it not?

4 A Right. There was no -- as far as I could tell,
5 there was no intent, there was no malice; that this was
6 a complete and total accident; and that's what I argued
7 to the jury.

8 MR. FALK: No further questions.

9 HON. ROBERT M. HUGHES

10 RE-CROSS-EXAMINATION

11 BY MR. NEELY:

12 Q Just one question. Was there any testimony brought
13 out or any statements given to law enforcement
14 indicating the gun was not loaded or that your client
15 believed the gun not to be loaded?

16 A I believe Mr. Howard did not make a start to law
17 enforcement, so that would be a no.

18 MR. NEELY: No further questions.

19 THE COURT: You may step down. You may call your
20 next witness.

21 MR. FALK: We call Mr. Howard to the stand.

22 THE COURT: Mr. Howard, please come forward.

23 MADAM CLERK: Place your -- right here. Left hand
24 on the *Bible*, and raise your right. Do you solemnly
25 swear or affirm that the testimony you give to the Court

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1 in this case shall be the truth, so help you God?

2 MR. BRETT HOWARD: I do.

3 MADAM CLERK: You may be seated.

4 BRETT HOWARD

5 DIRECT EXAMINATION

6 BY MR. FALK:

7 Q Mr. Howard, can you sort of summarize your
8 communications you had with Mr. Hughes prior to your
9 trial?

10 A Well, before trial, he came in saying that he -- he
11 had a offer for me for that, on that, for involuntary
12 manslaughter, but he told me he, like, the reason I come
13 with these offers because I think I can't beat my trial.
14 And when he told me, he said, I hope I can beat it. So,
15 he was like, because, if you lose, like said earlier, he
16 said, cause if you lose, the judge will give you
17 anything between 45 or --

18 THE COURT: Mr. Brown [sic], I'm going to ask if
19 you could a little slower and a little bit more clearly
20 and louder.

21 A All right.

22 THE COURT: It's important to hear everything that
23 you have to say.

24 BY MR. FALK:

25 Q The conversation that we had before trial, he came

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1 to me saying they came out with an offer, saying
2 involuntary manslaughter, saying that they coming to me
3 with an offer saying that, because, see, I don't think I
4 can do my -- beat the trial. He said, I don't think I
5 do my trial, because, if you lose, the judge will give
6 you anything between 45 years or better. That's if you
7 lose. So, he was like -- and the reason why I didn't
8 take the offer, because they didn't come in with a
9 specific number; they just came in with the charge. But
10 I turned it down, because ain't no reason for me --
11 ain't no reason for me to take this, because, I'm
12 innocent. I didn't do anything, you know.

13 Q So, it was your understanding that he thought there
14 may be difficulties with an acquittal in this case?

15 A He told me -- he told me, he say, I don't think I
16 can beat the trial. He said, I don't think I can beat
17 it.

18 Q You're saying that he told you that he didn't think
19 he could beat the --

20 A Right.

21 Q Okay. Did he talk to you about what his trial
22 strategy was going to be?

23 A Well, he told me the trial strategy was, he told me
24 like if certain people come, how he was going to attack
25 them and stuff, if certain individuals show up. And

1 when the individuals showed up, he never -- there never
2 was none -- any -- any of that about his defense claim.

3 Q Did he explain to you about what a lesser-included
4 offense was?

5 A No, sir.

6 Q Did he suggest to you that he could ask the jury to
7 -- did he tell you it was going to be an all-or-nothing?

8 A It's my first I've ever -- ever had this.

9 Q So, did he discussed with you a strategy that we're
10 going to go all in; we're not going to ask for the jury
11 to charge on involuntary or voluntary manslaughter?

12 A Basically, what he told me, like, certain
13 individuals who, like, how he told me, if certain
14 individuals show up, how he's going to -- how he's going
15 to attack them, if certain individuals showed up, what
16 he said. That that's all.

17 Q Okay. And just so it wasn't -- you didn't have a
18 conversation with him that this was going to be an all-
19 or-nothing?

20 A Right. Right. Right.

21 Q He didn't suggest to you that maybe we can get both
22 -- the jury might only come back with voluntary
23 manslaughter?

24 A No.

25 Q The jury might only come back with this..

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1 A No. He didn't have a discussion.

2 Q When did he review the discovery with you in this
3 case?

4 A Say it again.

5 Q Did he come to -- did he come and show you the
6 statements in this case, the discovery, the Rule 5
7 materials?

8 A Only statement -- only statement that I seen was a
9 statement from Jerrieme Washington. That was the only
10 statement that I had before -- two months before I went
11 to trial. Then Wallace Mike. I seen Wallace Mike's
12 statement. That's the only -- I only seen two
13 statements two months before I went to trial.

14 Q Okay. And that's Wallace Mike and?

15 A And Jerrieme Washington.

16 Q Okay. And those were the witnesses I was talking
17 about earlier? We talked --

18 A Right. Right. Right.

19 Q Yeah. Okay. So, did you tell him that you wanted
20 a plea deal? You just didn't wanted --

21 A I never did --

22 Q You just wanted to know what the number was going
23 to be going into it.

24 A Basically, I mean, basically -- basically, because
25 he never came at me with a number; he just came at me

1 with a charge. So, I said I --

2 Q So, why did you turn down the plea?

3 A Because he never came at me with a number. All he
4 come at me with a charge.

5 Q Okay. So, he never told you that, if you plea to
6 this, they'll agree to that.

7 A Right. Right. No.

8 Q Did he tell you, if you plea to this, it'll be
9 within this range?

10 A Far as --

11 Q Within a range of years. You know, ten to fifteen
12 or something like that.

13 A He never.

14 Q Okay. So, is it your testimony that you did not
15 turn down the deal, the plea deal, because you wanted to
16 go all in, all-or-nothing?

17 A I don't understand all -- all the -- what is all or
18 not? I don't understand it.

19 Q Okay.

20 A Explain it to me.

21 Q It's your testimony that you turned down a plea
22 deal because you wanted to -- because you didn't want
23 the uncertainty of not knowing how many years it was
24 going to be. Is that correct?

25 A Right.

10-19-16 BRETT HOWARD V STATE

HOWARD - DIRECT - FALK

1 Q Is it your testimony that you turned down a plea
2 deal because you wanted the jury to have to choose
3 between murder and not murder?

4 A I mean, I was innocent, so I -- I just said that's
5 what I try because I was innocent.

6 Q But he explained to you all of the witnesses
7 against you; did he not?

8 A Right. Right.

9 Q The witnesses who saw the shooting.

10 A Basically, he told me who the main object that he
11 was going to attack like and that was the only -- that
12 was the only one. That was only one.

13 Q That was Germaine [sic] Washington?

14 A He told -- he told me that Jerrieme Washington,
15 he's like, we have a problem with him. And I asked him
16 why. He was like, because the reason why we have a
17 problem with him because he don't have a prior record
18 like he didn't have a prior record. But basically, he
19 explain his attack. Who he going to attack, like, Kyron
20 -- Kyron Shaw. He tell me how he going to attack him
21 because of his prior record, the time he's done been
22 back and forth out of the jail and stuff. He told me
23 it's against him what he going to do if he was to show
24 up to trial against me.

25 MR. FALK: No further questions.

10-19-16 BRETT HOWARD V STATEHOWARD - CROSS - NEELY

1 THE COURT: Cross-examination.

2 MR. NEELY: Thank you, your Honor.

3 BRETT HOWARD

4 CROSS-EXAMINATION

5 BY MR. NEELY:

6 Q So, you testified that ain't no reason to take a
7 charge because I was innocent.

8 A I was innocent, yes, sir.

9 Q Okay. And you're saying you're innocent because
10 you didn't mean to kill him?

11 A I didn't kill anybody.

12 Q Okay. So, you're saying you didn't kill anybody.

13 A Right.

14 Q So, you were in the club that night? You're saying
15 you weren't in the club that night?

16 A I never said that.

17 Q Okay. So, you're just saying you didn't pull the
18 trigger?

19 A I didn't kill anybody.

20 Q Did you pull the trigger?

21 A I didn't pull the trigger, no. I didn't kill
22 anybody. I didn't shot -- I didn't shot anybody.

23 Q Okay. So, you're arguing not that it was an
24 accident, but that you didn't even -- you weren't there;
25 you didn't pull the trigger; you didn't kill anybody.

10-19-16 BRETT HOWARD V STATE

HOWARD - CROSS - NEELY

1 A I didn't kill anybody that night.

2 Q Okay. So, would that have been what you told your
3 attorney? Would that have been what you told your
4 attorney?

5 A If he'd asked me did I kill anybody, I would have
6 told him I didn't kill anybody.

7 Q Okay. And so, if he said we have a plea deal for
8 voluntary manslaughter or involuntary manslaughter, you
9 would have said, no, I didn't kill anybody.

10 A I -- exactly. I didn't kill anybody.

11 Q And just kind of going back over, you said that he
12 didn't explain what a lesser-included offense was; isn't
13 that correct?

14 A Say it again.

15 Q You didn't explain what -- you said earlier that he
16 did not explain to you what a lesser-included offense
17 was.

18 A I mean, when he came with a -- when he came with
19 the offer that was made to me, he never explained all
20 the time that it carried.

21 Q Okay. But he did explain what the lesser -- what
22 it meant to not be charged with murder; to be charged
23 with involuntary manslaughter.

24 A He just told me that -- he told me that -- he came
25 with voluntary manslaughter and that's all. He told me

1 -- he told me that -- he told me that -- he told me that
2 he don't think that he -- that he can beat the trial.
3 That what he told me.

4 Q Okay. And you said that you didn't really
5 understand what everybody was talking about with all-or-
6 nothing, but you were claiming your innocence the entire
7 time.

8 A Yes, sir.

9 MR. NEELY: Those are all the questions I have,
10 your Honor.

11 THE COURT: Any re-direct?

12 MR. FALK: No, your Honor.

13 THE COURT: You may step down.
14 Anything further?

15 MR. FALK: We would rest.

16 THE COURT: Anything from the State?

17 MR. NEELY: Nothing from the State.

18 THE COURT: All right. Any closing remarks for
19 you, Mr. Falk? Anything we have not discussed?
20 Anything that you would like to add.

21 MR. FALK: No, your Honor.

22 THE COURT: Mr. Neely.

23 MR. NEELY: Not from the State, your Honor.

24 THE COURT: All right. We're going to take about a
25 fifteen-minute recess.

10-19-16 BRETT HOWARD V STATE

HOWARD - CROSS - NEELY

END PROCEEDING 11:34 A.M.

10-19-16 BRETT HOWARD V STATECERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

OCTOBER 19, 2016 TRANSCRIPT OF PCR HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 19, 2016 Transcript of PCR Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of Brett Howard versus State of South Carolina, Jasper County, Court of Common Pleas, Case Number 2014-CP-27-00323; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/ mailing is prohibited.

Witness my signature April 17, 2017.

Wanda H. Rowe, CVR-M
Official Court Reporter

10-19-16 BRETT HOWARD V STATECERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

OCTOBER 19, 2016 TRANSCRIPT OF PCR HEARING

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This Certificate of Reporter contains my original signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/ mailing is prohibited.

Witness my signature April 17, 2017.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Brett Howard, #350845,)

Case No. 2014-CP-27-0323

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
JASPER COUNTY

2017 NOV 31 AM 9:35

FILED

This Court convened an evidentiary hearing into the matter on October 19, 2016, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel Robert Hughes, Esquire (hereinafter "trial counsel") was present and testified. Testimony was elicited from Applicant. The Court had before it a copy of the trial transcript, the records of the Jasper County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Jasper County Clerk of Court's orders of commitment. Applicant was indicted by the January 2010 term of the Jasper County Grand Jury for Murder (2010-GS-27-0014) and Possession of a Weapon During the Commission of a Violent Crime (2010-CP-27-0015). Robert Hughes, Esquire and Stephen Plexico, Esquire, represented him. On May 14-16, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Perry

M. Buckner sentenced the Applicant to confinement for forty (40) years for Murder and five (5) years, concurrent, for the possession charge.

A notice of appeal was filed and an appeal perfected pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Howard, Op. No. 2014-UP-216 (filed June 11, 2014). The Remittitur was issued on June 27, 2014.

II. ALLEGATIONS

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Counsel failed to object to a Belcher¹ violation
3. Counsel failed to ask for a lesser included offense

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

In this post-conviction relief action, 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 plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings

¹ State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009)

“cannot be relied upon as having produced a just result.” Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel’s performance was deficient. Id. Under this first prong, the proper measure of performance is whether trial counsel 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)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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). Second, any deficient performance must have prejudiced 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 688.

Applicant has not shown how trial counsel’s representation fell below professional norms. Applicant has not met his burden. For the reasons listed below, this post-conviction application is denied.

A. Ineffective Assistance of Counsel

This general allegation is unfounded. This Court finds trial counsel’s testimony credible. Trial counsel testified he was admitted to practice law in 2004 and has almost exclusively limited his practice to criminal law. The Court finds trial counsel adequately investigated this case. Trial counsel informed Applicant of his constitutional rights and specifically his right to a jury trial.

Trial counsel met with Applicant on numerous occasions and reviewed discovery. Trial counsel engaged in plea negotiations and was able to obtain an offer of voluntary manslaughter. Applicant testified he did not accept the offer because he was not guaranteed a specific amount of time and more importantly that he was not guilty. He testified at the PCR hearing that he did not fire a gun nor did he kill the victim. This Court finds there is no merit to this claim. Therefore, this allegation is dismissed.

B. Belcher Violation

Given the facts of this case, the trial judge's charge allowing the jury to infer malice was appropriate. The facts of this case did not give rise to the lesser included charges of voluntary manslaughter, involuntary manslaughter, or the defense of accident. As part of the defense strategy, there was no mitigation evidence presented at trial. Additionally, there was evidence of express malice presented at trial and Applicant claimed complete innocence. Therefore, there was no evidence "presented that would reduce, mitigate, excuse or justify the killing." State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). Because there was no evidence to reduce, mitigate, excuse, or justify the killing, Belcher does not apply to the facts of this case. The testimony of both trial counsel and Applicant was a verdict of not guilty was the only verdict sought. This Court finds there is no merit to this claim. Therefore, this allegation is dismissed.

C. Lesser-included Offense

For the same reasons given in the Belcher allegation, this Court finds the jury charge was appropriate and a lesser-included offense would have been inappropriate given the facts and circumstances of the case. Therefore, this allegation is dismissed.

IV. CONCLUSION

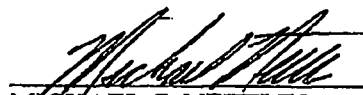
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 20 day of December, 2016.


MICHAEL G. NETTLES
Presiding Judge
Fourteenth Judicial Circuit

Florence, South Carolina

WITNESSES

Eric Baxter - JCSO

ARREST WARRANT NUMBER

J367635

ACTION OF GRAND JURY

~~TRUE BILL~~ ✓

~~NO BILL~~

~~FOREMAN~~ *M. Johnson*

~~DATE~~ *11/26/10*

Foreperson of Grand Jury
Date:

VERDICT

Guilty

James Lewis
Foreperson of Petit Jury
Date: *5/16/12*

DOCKET NO. 2010GS2700014

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

January Term 2010

THE STATE

VS.

Brett Howard

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant

Witness:

C.C.C. PLS. and G.S. TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: *[Signature]*
DATE: *8-14-14*

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT

2010GS2700014

At a Court of General Sessions, convened on January 26, 2010, the Grand Jurors of Jasper County present upon their oath:

Murder / Murder

That in Jasper County on or about December 11, 2009, with malice aforethought, Brett Howard did kill and murder Woodrow Brantley by means of shooting Woodrow Brantley, and that Woodrow Brantley did die in Jasper County as a proximate result thereof on December 11, 2009; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Eric Baxter - JCSO

ARREST WARRANT NUMBER

J367636

ACTION OF GRAND JURY

TRUE BILL ☒

NO BILL

DATE 1-26-10

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date: 5/10/12

DOCKET NO. 2010GS2700015

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

January Term 2010

THE STATE

vs.

Brett Howard

Indictment for

**Weapons / Poss. weapon during violent crime,
If not also sen**

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC

BY: [Signature]
DATE: 8-14-14

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT

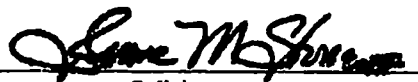
2010GS2700015

At a Court of General Sessions, convened on January 26, 2010, the Grand Jurors of Jasper County present upon their oath:

Weapons / Poss. weapon during violent crime.

That in Jasper County, South Carolina, on or about December 11, 2009, the Defendant, Brett Howard, did possess a firearm or did visibly display what appeared to be a firearm during the commission of or attempted commission of a violent crime, to wit: Murder, a violent crime for which is convicted of committing or attempting to commit; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor