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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Edgar Dickson, Circuit Court Judge

Appellate Case 2016-002385

Derrick Fishburne, # 341860,	Petitioner,
v.	
State of South Carolina,	Respondent.

APPENDIX VOLUME 1

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK FISHBURNE,

APPELLANT

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*****State’s Exhibit #4 (photographs) transported to the Court of Appeals*****

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF COLLETON) CASE NO.: 2009-GS-15-0255, 0256

THE STATE OF SOUTH CAROLINA,)
v.) TRANSCRIPT OF RECORD
DERRICK FISHBURNE,)
DEFENDANT.)

JULY 19TH - 21ST, 2010
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III.

APPEARANCES:

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Jury Selection

State v. Derrick Fishburne

2009-CP-15-0255, 0256

July 19th - 21st, 2010

Juror #	Name	Race	Gender	Jury
82	Rhonda D. Kierpiec	W	F	1
63	Brian K. Groves	W	M	2
103	Darius McCarthy, II	B	M	3
72	Gabriel D. Hodges	B	M	4
102	William C. Mauldin	W	M	5
68	Wanda S. Herndon	W	F	6
3	Frances S. Appleby	W	F	7
95	Alfred W. Lucas, Jr.	B	M	8
175	Theodore Young	B	M	9
173	Sammie Williams	B	M	10
70	Donald R. Hill	W	M	11
83	Sabrina M. Kimball	B	F	12
- - - - -				
113	Kelvin F. Mitchell	B	M	Alt. 1
57	Alfred W. Gantt	W	M	Alt. 2

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1 THE COURT: All right. Solicitor, call your case.

2 DEP. SOL. THORNTON: Yes, Your Honor. The State is
3 prepared to go forward in the case of the State of South
4 Carolina v. Derrick Fishburne, indictments 2009-GS-15-255,
5 charging Mr. Fishburne with the offense of possession of a
6 weapon during the commission of a violent crime. Also, Your
7 Honor, 2009-GS-15-256, charging Mr. Derrick Fishburne with
8 the offense of murder. May I pass up the indictments?

9 THE COURT: You may.

10 DEP. SOL. THORNTON: The State is prepared to go
11 forward at this time, Your Honor.

12 THE COURT: Very well. Ladies and gentlemen of my jury
13 panel, please give me your attention. I remind you I am
14 going to ask you certain questions in order to determine
15 your impartiality to serve as a juror in the trial of the
16 case. I remind you that the answers you'll be providing me
17 to these questions are under the same oath that you were
18 given by the clerk of court earlier this afternoon.

19 The State has called for trial the case of the State of
20 South Carolina v. Derrick Fishburne. Mr. Fishburne is
21 charged by these two pieces of paper, which I hold in my
22 hand, which we call indictments. He is charged in one
23 indictment with the offense of murder. He is charged in the
24 second indictment with possession of a weapon during the
25 commission of a violent crime.

1 To these indictments, the defendant, Derrick Fishburne,
2 has pled not guilty. That places the burden on the State of
3 South Carolina to prove each of the elements of the offense
4 beyond a reasonable value and it will be your duty, ladies
5 and gentlemen, if you are selected as a juror in the trial
6 of this case to decide whether or not the State has met that
7 burden.

8 Now, ladies and gentlemen, I want you to meet the
9 lawyers that are going to be trying the case, and Mr.
10 Mathews, if you will also have your client stand, face my
11 jury panel, and introduce your client. Beginning with
12 Counsel for the state of South Carolina.

13 **DEP. SOL. THORNTON:** Thank you, Your Honor. Good
14 afternoon, ladies and gentlemen, my name is Sean Thornton.
15 I am the Deputy Solicitor here for the Fourteenth Circuit.
16 I used to practice with Gerald Maree here in Colleton
17 County. I did that for a number of years. I have been here
18 in Colleton since about 1998, as a practicing attorney.
19 Also with me is Heather Gwinn. She is a first year law
20 student at the Charleston School of Law, so she will not
21 actually be conducting any witnesses or anything like that,
22 but she will be at the table with me.

23 **THE COURT:** Counsel, for the defendant.

24 **MR. MATHEWS:** Yes, Your Honor. I've introduced myself
25 earlier, I'm David Mathews, and I'm with the Public

1 Defender's office here, and I practice with Mr. Beach right
2 over there, and Fran Pye, as Judge Buckner will tell you,
3 does most of the work. Andy Matthews is assisting this
4 week. He will be in his second year at the Charleston
5 School of Law. And Derrick, stand up. This is my client,
6 Derrick Fishburne.

7 THE COURT: Where is Mr. Fishburne from, Mr. Mathews?

8 MR. MATHEWS: Walterboro.

9 THE COURT: All right. Ladies and gentlemen, you've
10 met the lawyers and the defendant in this case. I first ask
11 you, ladies and gentlemen, reminding you of your response
12 under oath, any member of my jury panel related by blood,
13 connected by marriage, or a close personal friend of the
14 defendant, Derrick Fishburne, of Walterboro, South Carolina,
15 whom you have just met? If so, please stand at this time.

16 (NO RESPONSE.)

17 THE COURT: Let the record reflect, no one is standing.

18 Now, you've met counsel for the State of South
19 Carolina, Mr. Sean Thornton. Any member of my jury panel
20 related by blood, connected by marriage, or a close personal
21 friend for counsel for the State of South Carolina in this
22 case, Mr. Sean Thornton? If so, please stand.

23 (NO RESPONSE.)

24 THE COURT: Let the record reflect, no one is standing.

25 Any member of my jury panel ever been represented in

1 the past, or currently represented, by counsel for the State
2 of South Carolina in this case, Mr. Sean Thornton? If so,
3 please stand at this time.

4 (NO RESPONSE.)

5 **THE COURT:** Let the record reflect, no one is standing.

6 You've also met counsel for the defendant in this case,
7 Mr. David Mathews, with the Colleton County Public
8 Defender's Office. Any member of my jury panel related by
9 blood, connected by marriage, or a close personal friend of
10 counsel for the defendant, Mr. David Mathews? If so, please
11 stand at this time.

12 (NO RESPONSE.)

13 **THE COURT:** Let the record reflect, no one is standing.

14 Any member of my jury panel ever been represented in the
15 past or currently represented by counsel for the defendant
16 in this case, Mr. David Mathews? If so, please stand at
17 this time.

18 (NO RESPONSE.)

19 **THE COURT:** Let the record reflect, no one is standing.

20 Now, earlier I advised you that in the Solicitor's Office,
21 there are other lawyers, Ms. Amanda Haselden, Ms. Ashley
22 Hudson, Mr. Chaz Balish, Ben Shelton, and Gerald Smoak.

23 Any member of my jury panel ever been represented in
24 the past, or currently represented by counsel for anyone in
25 the Solicitor's Office? If so, please stand at this time.

1 (NO RESPONSE.)

2 THE COURT: Let the record reflect, no one is standing.
3 I also advised you that at the public defender's office
4 there are other attorneys, Mr. Harris Beach, is also an
5 attorney in the Colleton County Public Defender's Office, in
6 addition to Mr. Mathews. Any member of my jury panel ever
7 been represented in the past, or currently represented, by
8 any member of the Public Defender's Office in Colleton
9 County? If so, please stand at this time.

10 (NO RESPONSE.)

11 THE COURT: Any member of my jury panel related by
12 blood, connected by marriage, or a close personal friend to
13 any member of the Solicitor's Office? If so, please stand
14 at this time.

15 (NO RESPONSE.)

16 THE COURT: Let the record reflect, no one is standing.
17 Any member of my jury panel related by blood, connected by
18 marriage, or a close personal friend of any member of the
19 Public Defender's Office in Colleton County? If so, please
20 stand at this time.

21 (NO RESPONSE.)

22 THE COURT: Let the record reflect, no one is standing.
23 Now, ladies and gentlemen, I told you about these
24 indictments. These indictments are the pieces of paper by
25 which the case is formerly brought into this court. The

1 indictments are not evidence of any of the allegations
2 contained in the indictments. I'll explain to you if you're
3 selected as a juror what is evidence in the case, because
4 that is what you, as a juror, must base your decision on.
5 These are simply allegations. But, in order to ask you
6 questions about your impartiality to serve as a juror in the
7 case, it is necessary that I tell you a little bit about the
8 allegations involved in the case, in order to ask you
9 certain questions.

10 First of all, in Indictment number 2009-GS-15-0256, the
11 State versus Derrick Fishburne, indictment for murder, this
12 indictment alleges that this offense occurred in Colleton
13 County on or about April the 10th, 2009, and that the
14 defendant with malice aforethought, Derrick Fishburne, did
15 kill and murder the victim, Donald Green, by means of
16 shooting the victim, and that the victim, Donald Green, did
17 die in Colleton County as a proximate result of this on
18 April the 10th, 2009.

19 On Indictment 2009-GS-15-0255, the State v. Derrick
20 Fishburne, indictment for possession of a weapon during the
21 commission of a violent crime. This alleges that in
22 Colleton County, South Carolina, on or about April 10th,
23 2009, the defendant, Derrick Fishburne, did possess a
24 pistol, or visibly displayed what appeared to be a pistol
25 during the commission of, or attempted commission of the

1 offense of murder, which is alleged to be a violent crime in
2 the indictment.

3 I tell you about these allegations in order to ask you
4 this, because I've told you to these allegations, the
5 defendant has pled not guilty. Has any member of my jury
6 panel heard about, read about, or know anything whatsoever
7 about the facts which are alleged in these indictments? If
8 so, please stand at this time.

9 (JURORS STAND.)

10 THE COURT: Yes, ma'am, if you would come forward,
11 please ma'am. Get the name and number, Mr. Padgett.

12 BAILIFF: One eleven, Sir.

13 THE COURT: Just a minute, Mr. Padgett. Let me get the
14 lawyers up here. Come on up, Mr. Thornton.

15 This is juror number One eleven, Ms. -- is it Sangria?

16 JUROR: Sangria.

17 THE COURT: Sangria. All right. And it's pronounced
18 like M-I-K-E-L?

19 JUROR: Yes, sir.

20 THE COURT: All right. Counsel, this is juror number
21 One eleven. Yes, ma'am. I asked you if you had heard
22 about, read about, or know anything whatsoever about the
23 facts which are alleged in this case, and you stood. The
24 reason I called you up here is I don't want you sharing any
25 knowledge that might otherwise not be admissible into

1 evidence to other members of the jury. Can you tell me why
2 you stood?

3 JUROR: Well, see, the victim in this case, Mr. Green,
4 my cousin is married to his brother, and ---

5 THE COURT: Now, Ms. Hill's got to hear you, so you got
6 to speak up a little bit.

7 JUROR: My cousin is married to the victim's brother in
8 this case. Also, I read a little bit in the newspaper when
9 all this had happened.

10 THE COURT: All right. Let's start with the newspaper.
11 The fact that you read about this in the newspaper, can you
12 put aside whatever you've read? That's perfectly normal to
13 read the newspaper. Can you put aside whatever you read in
14 the newspaper and decide this case solely upon the evidence
15 presented in the courtroom?

16 JUROR: Yes, sir.

17 THE COURT: All right. Now, the fact that the victim's
18 brother is married to your first cousin; is that right?

19 JUROR: Yes, that's right.

20 THE COURT: Have you had some discussions with the
21 victim's brother?

22 JUROR: No, we haven't talked.

23 THE COURT: Have you had discussions with anybody in
24 the family of the victim about this case?

25 JUROR: No, sir.

1 THE COURT: All right. The fact that the victim's
2 brother is married to your first cousin, could you give both
3 the State of South Carolina and the defendant in this case a
4 fair and impartial trial?

5 JUROR: Yes, sir.

6 THE COURT: And the fact that the victim's brother is
7 married to a cousin in your family would not affect your
8 ability to be fair and impartial; is that what you're
9 telling me?

10 JUROR: Yes, sir.

11 THE COURT: You wanted me to know. You're doing
12 exactly what I asked you to do, and I thank you for that,
13 and so do the attorneys. That's why we have to make sure.
14 But you don't believe that would affect your ability to be
15 fair and impartial?

16 JUROR: No, sir.

17 THE COURT: You can decide this case solely on the
18 evidence presented in the courtroom?

19 JUROR: Yes, sir.

20 THE COURT: Very well. Thank you, ma'am. You may
21 return to your seat.

22 BAILIFF: Juror One thirty-four, Mr. Pryor.

23 THE COURT: What number?

24 BAILIFF: One thirty-four.

25 THE COURT: Come on up, Mr. Pryor. How you doing?

1 JUROR: Fine. How are you?

2 THE COURT: This is Thomas M. Pryor, juror number One
3 thirty-four. Mr. Pryor, have you read about, heard about,
4 or do you know something about this case?

5 JUROR: I heard stuff and I read it in the paper, the
6 Press and Standard.

7 THE COURT: Who did you hear about it from?

8 JUROR: I just heard it.

9 THE COURT: Well, do you know who it was that was
10 talking?

11 JUROR: Yes, sir. Just about everyone.

12 THE COURT: Just about who?

13 JUROR: Just about everybody.

14 THE COURT: You've had that many discussions about it?

15 JUROR: No, no. Just people talking about it. Mostly
16 talking about what was in the paper.

17 THE COURT: Oh, people talking about what was in the
18 paper?

19 JUROR: Right.

20 THE COURT: The fact that you read something about it
21 in the paper, would that in any way affect your ability to
22 be fair and impartial?

23 JUROR: No, sir.

24 THE COURT: Could you put aside whatever you've read in
25 the paper and decide this case solely upon evidence

1 introduced during the trial of the case?

2 JUROR: Yes, sir.

3 THE COURT: And the fact that you read something in the
4 paper or talked to anybody about it, can you put all of that
5 aside and decide this case solely upon the evidence
6 introduced during the trial of this case?

7 JUROR: Yes, sir.

8 THE COURT: Thank you very much. You may return to
9 your seat. Anybody else, Mr. Padgett?

10 BAILIFF: Yes, sir. Number One sixty-four, Mr. Polk.

11 THE COURT: You got me an address, Mr. Polk?

12 JUROR: No, sir. My roommate was a close friend
13 (inaudible.)

14 THE COURT: Your roommate was a close friend of who?

15 JUROR: My roommate at the time, was a - was close
16 friends with the victim.

17 THE COURT: Mr. Green?

18 JUROR: Yes, sir.

19 THE COURT: All right.

20 JUROR: There's been talk; I've heard his name before.

21 THE COURT: You've heard whose name?

22 JUROR: Mr. Derrick Fishburne.

23 THE COURT: You've heard his name?

24 JUROR: Yes, sir. My friend has talked about him
25 several times.

1 THE COURT: Who's talked about him?

2 JUROR: My friend, Chris.

3 THE COURT: Chris who?

4 JUROR: Wilson, he used to work at Dollar General.

5 This incident, I heard them talk about it, about the whole
6 situation, for about seven months they talked about it, and
7 I heard what they said.

8 THE COURT: The fact that people talked to you about it
9 and that your roommate was friends with the victim, would
10 that in any way keep you from giving the State or the
11 defendant a fair and impartial trial?

12 JUROR: Well, I'd rather not.

13 THE COURT: I'm not asking you whether you want to.
14 I'm asking you whether it would keep you from being fair and
15 impartial to both sides.

16 JUROR: Probably so.

17 THE COURT: Thank you, sir. You stay with me because
18 you haven't provided me with an address and you're going to
19 stay here until you do. Take a seat.

20 JUROR: Yes, sir.

21 THE COURT: Juror number One sixty-four is excused from
22 service in this trial only and will remain with us. Anyone
23 else, Mr. Padgett?

24 BAILIFF: No, sir.

25 THE COURT: All right. Let the record reflect, no one

1 else has come forward in response to my last question.
2 Ladies and gentlemen, I'm going to call out potential
3 witnesses in the trial of this case. If they are present
4 when their names are called in the courtroom, please stand
5 and face my jury panel. I'm going to give you a hometown
6 and a name. Many of them probably won't -- these are just
7 potential witnesses, ladies and gentlemen. Please listen
8 carefully to the list, because I'm going to ask you
9 questions after I've gone through the entire list.

10 All right. Steve Dunn, Colleton County Sheriff's
11 Office. Jason Brown, Colleton County Fire and Rescue.
12 Christopher Stallings, Colleton County Fire and Rescue.
13 Tony Buchanan, Colleton County Sheriff's Office. Jose
14 Regalado -- am I pronouncing that correctly?

15 **DEP. SOL. THORNTON:** You are, Your Honor, but one
16 correction. Mr. Regalado was with the Sheriff's Office. He
17 is now with Walterboro Police Department.

18 **THE COURT:** Formerly with the Colleton County Sheriff's
19 Office, now with the Walterboro Police Department, R-E-G-A-
20 L-A-D-O. Jonathan Edwards, Colleton County Sheriff's
21 Office. Jack Wimberly, Colleton County Fire and Rescue.
22 Fred Inabinett, Colleton County Sheriff's Office. (STANDS.)
23 Thank you. You may be seated. Matthew Smoak, Walterboro,
24 South Carolina. Fatima Washington, Walterboro, South
25 Carolina. Sonja Grant, Walterboro, South Carolina. Andre

1 Williams, Colleton County Sheriff's Office, standing right
2 here to your left. Thank you, you may be seated. Lorinda
3 Williams, Walterboro, South Carolina. Katrina Bell,
4 Colleton County Sheriff's Office. Jodi Taylor, Colleton
5 County Sheriff's Office, standing to your left, my right.
6 Thank you, you may be seated. Kathleen Butler, Charleston
7 Police Department. Dr. Ellen Riemer, Medical University of
8 South Carolina. R-E-I-M-E-R, Madame court reporter.

9 Ray Taylor, Colleton County Sheriff's Office, standing
10 to my left, your right. Thank you, you may be seated. Gene
11 Johnson, Colleton County Sheriff's Office, standing to my
12 right, your left. Thank you, you may be seated. Jeff
13 Scott, Colleton County Sheriff's Office, standing to your
14 left, my right. Thank you, you may be seated. Dave Thomas,
15 Colleton County Sheriff's Office, standing in front of you,
16 Ladies and gentlemen. Thank you, you may be seated.

17 Richard Harvey, Colleton County Coroner. Ruben Carter,
18 Colleton County Sheriff's Office, standing to my left, your
19 right. Thank you, you may be seated.

20 Matthew Goodwin, Walterboro, South Carolina. Kenneth
21 White, Greenpond, South Carolina. Matthew Smoak,
22 Walterboro, South Carolina. I may be calling out some names
23 twice, but just bear with me. Justin Cartrette, C-A-R-T-R-
24 E-T-T-E, Walterboro, South Carolina. Lorinda Williams,
25 Walterboro, South Carolina. Fatima Washington, Walterboro,

1 South Carolina. Marquita Williams, Charleston, South
2 Carolina. Frankie Gethers, Walterboro, South Carolina.
3 Matthew Goodwin, Walterboro, South Carolina. Sonja Grant,
4 Walterboro, South Carolina. Renaldo Williams, Walterboro,
5 South Carolina. Detective Gene Johnson, Colleton County
6 Sheriff's Office. Gene, stand up one more time for me.
7 Thank you, please be seated. Andre Williams, Colleton
8 County Sheriff's Office. Thank you, you may be seated.
9 S. J. Regalado, Walterboro Police Department.
10 Detective Ruben Carter, Colleton County Sheriff's Office.
11 Derrick Fishburne, Walterboro, South Carolina. Mr.
12 Fishburne, stand and face my jury panel. Turn around so
13 they can see you, Mr. Fishburne. Thank you, you may be
14 seated. Timothy Holmes, South Carolina Department of
15 Corrections, Turbeeville, South Carolina. Deshawn Holmes,
16 Walterboro, South Carolina. Jared Frasier, Walterboro,
17 South Carolina. Dr. Ellen Riemer, Medical University of
18 South Carolina. Richard Harvey, Colleton County Coroner.
19 Dr. Charles Outz, O-U-T-Z, Colleton County Hospital.
20 William Brewer -- Dr. William Brewer, NMS Labs. Shatima
21 Broughton, Walterboro, South Carolina. Shaterra Broughton,
22 Walterboro, South Carolina. Jodi Taylor, Colleton County
23 Sheriff's Office. Robert Crawford, Colleton County
24 Sheriff's Office. Riddick Thomas, Colleton County Sheriff's
25 Office. Fred Inabinett, III, Colleton County Sheriff's

1 Office. Thank you, you may be seated. Jeffrey Scott,
2 Colleton County Sheriff's Office. Maybelle Hendricks,
3 Colleton County Sheriff's Office. Steve Dunn, Colleton
4 County Sheriff's Office. Anthony Buchanan, Colleton County
5 Sheriff's Office. Ricky Hiott, Colleton County Sheriff's
6 Office. Jonathan Edwards, Colleton County Sheriff's Office.
7 Mr. Mathews, do you have a name for this next one?

8 MR. MATHEWS: No, sir. That can be scratched.

9 THE COURT: We will scratch her, Mr. Mathews, or him.
10 Adam Martinson, Colleton County Fire and Rescue. Jason
11 Brown, Colleton County Fire and Rescue. Chris Stone,
12 Colleton County Fire and Rescue. Jack Wimberly, Colleton
13 County Fire and Rescue. Rob Edwards, Walterboro Police
14 Department. Jared Phillips, Walterboro Police Department.

15 Any additional witnesses from the State of South
16 Carolina?

17 DEP. SOL. THORNTON: No additional witnesses, Judge.
18 The only thing I would ask, and this is my fault, because
19 again, just like with Regalado, Jonathon Edwards I had down
20 as Colleton County Sheriff's Office. Jonathon Edwards is
21 actually with Walterboro Police Department. I apologize for
22 that, Judge.

23 THE COURT: It's down twice. Ladies and gentlemen of
24 the jury, I called out the name Jonathon Edwards. I told
25 you Colleton County Sheriff's Office. He is actually with

1 the Walterboro Police Department.

2 Any additional witnesses from the State?

3 DEP. SOL. THORNTON: No, Your Honor.

4 THE COURT: Any additional witnesses from the
5 defendant?

6 MR. MATHEWS: Your Honor, Kathy Fishburne, Your Honor,
7 would be the only -- there were a couple others that weren't
8 called, but I don't think I'll call them. Brandon White,
9 Brandon Jenkins, and Jamal ---

10 THE COURT: What number on your list?

11 MR. MATHEWS: Kathy Fishburne is number 36, Your Honor.

12 THE COURT: No, sir. On my list, Anthony Buchanan is
13 number 36. You got a different list, Mr. Mathews, that you
14 didn't show the Court?

15 MR. MATHEWS: I had e-mailed over, like, three
16 different versions.

17 THE COURT: How do I know if you don't give it to me?
18 Where is she from?

19 MR. MATHEWS: Walterboro, Your Honor.

20 THE COURT: Kathy Fishburne, Walterboro, South
21 Carolina. Any additional witnesses from the defendant?

22 MR. MATHEWS: No, sir.

23 THE COURT: All right, ladies and gentlemen, any member
24 of my jury panel related by blood, connected by marriage, or
25 a close personal friend of any of the potential witnesses in

1 the trial of this case whose names I have just called? If
2 so, please stand at this time.

3 (SEVERAL JURORS STAND.)

4 THE COURT: All right. Let's start up front. Mr.
5 Grant, if you'll get the microphone to them. Listen to me,
6 I want you to give me your name and juror number and then
7 I'm going to ask you a yes or no question. I may have to
8 bring you to the front. I'll start with you, sir. Your
9 name and juror number.

10 JUROR: Thomas M. Pryor.

11 THE COURT: What's your number?

12 JUROR: One thirty-four.

13 THE COURT: Counsel, this is juror number One hundred
14 and thirty-four, Thomas M. Pryor. Mr. Pryor, listen
15 carefully, are you related by blood to any of the potential
16 witnesses?

17 JUROR: Yes, sir.

18 THE COURT: Yes?

19 JUROR: Yes.

20 THE COURT: Which witness?

21 JUROR: Fatima Washington.

22 THE COURT: How are you related to her?

23 JUROR: Her mother is married to my uncle.

24 THE COURT: Her mother is married to your uncle?

25 JUROR: Yes, we're cousins.

1 THE COURT: So you're related by marriage and not by
2 blood?

3 JUROR: That's right.

4 THE COURT: The fact that you're related by marriage to
5 Ms. Fatima Washington, would that in any way keep you from
6 giving the State of South Carolina or the defendant a fair
7 and an impartial trial in this case?

8 JUROR: No, sir.

9 THE COURT: Thank you, you may be seated. Yes, ma'am,
10 right here, holding the microphone. Speak up and give me
11 your name and juror number, please, ma'am.

12 JUROR: Ashley Thomas, One fifty-seven.

13 THE COURT: One second, let me check your number.
14 Counsel, this is Ashley D. Thomas, juror number One hundred
15 fifty-seven. Ms. Thomas, are you related by blood to any of
16 the potential witnesses?

17 JUROR: No, sir.

18 THE COURT: Are you connected by marriage to any of the
19 potential witnesses?

20 JUROR: Yes, sir.

21 THE COURT: Which witness?

22 JUROR: Mr. Thomas.

23 THE COURT: You're referring to Riddick Thomas?

24 JUROR: Yes, sir.

25 THE COURT: All right. And how are you related to him?

1 JUROR: He is my husband's uncle.

2 THE COURT: Your husband's uncle, all right. The fact
3 that he is a potential witness and it is your husband's
4 uncle, would that in any way affect your ability to give the
5 State of South Carolina or the defendant in this case, a
6 fair and an impartial trial?

7 JUROR: No, sir.

8 THE COURT: Thank you, ma'am. You may be seated. Yes,
9 ma'am, your name and juror number, please.

10 JUROR: Janet Beebe, number Eight.

11 THE COURT: Hold on one second. Counsel, this is juror
12 number Eight, Janet Beebe; is that right?

13 JUROR: Yes, sir.

14 THE COURT: Ms. Beebe, are you related by blood to any
15 of the potential witnesses?

16 JUROR: No, sir.

17 THE COURT: Are you Is anyone connected by marriage to
18 any of the potential witnesses?

19 JUROR: No.

20 THE COURT: Are you a close personal friend of any of
21 the potential witnesses?

22 JUROR: Yes, sir.

23 THE COURT: Which witnesses are you a close personal
24 friend?

25 JUROR: Jodi and Ray Taylor.

1 THE COURT: Okay. Jodi and Ray Taylor?

2 JUROR: Yes, sir.

3 THE COURT: All right. The fact that you're close
4 personal friends with Ray Taylor and Jodi Taylor, would that
5 in any way affect your ability to give the State of South
6 Carolina or the defendant, Derrick Fishburne, a fair and an
7 impartial trial?

8 JUROR: I don't believe in judging people.

9 THE COURT: I can't hear you, ma'am.

10 JUROR: I don't believe in judging people.

11 THE COURT: Yes or no?

12 JUROR: I guess not.

13 THE COURT: I can't hear you.

14 JUROR: No.

15 THE COURT: All right. Counsel approach. Just stay
16 right there for me, please, ma'am.

17 (BENCH CONFERENCE OFF THE RECORD AND OUT OF THE HEARING
18 OF THE COURTROOM.)

19 Ms. Beebe, please come forward.

20 (JUROR COMES FORWARD.)

21 THE COURT: Number Eight, Janet Beebe. How are you
22 doing, Ms. Beebe?

23 JUROR: I'm all right.

24 THE COURT: Ms. Beebe, according ---

25 JUROR: I recognize ---

1 THE COURT: You recognize who?

2 JUROR: Mr. Thornton. He's the one that represented in
3 the case of my husband's murder.

4 THE COURT: He's the one that represented ---

5 DEP. SOL. THORNTON: Judge, she's the victim in a case
6 that we had that was pled out, straight up.

7 THE COURT: When you were with the public defender's
8 office or the Solicitor's Office?

9 DEP. SOL. THORNTON: Solicitor's Office. You actually
10 heard the case, I think, Judge.

11 THE COURT: Did I?

12 JUROR: Uh-huh.

13 THE COURT: Sean says -- and you mumble, I can't hear
14 you when you do that.

15 JUROR: I don't think I can be a juror.

16 THE COURT: You don't think you can? Well, I can't
17 excuse you for that, you understand that? Why do you feel
18 like you can't?

19 JUROR: Because I don't feel like justice was done
20 right on my case.

21 THE COURT: Because you don't think the right thing
22 happened in your case?

23 JUROR: And in other cases that I've known about, too.
24 I just don't. I just don't feel like I can make, you know,
25 decisions, on somebody else's life.

1 THE COURT: Well, I understand that if you can't judge
2 what somebody else, but the law says that you serve, like
3 everything else. There are plenty of people that don't want
4 to do it. I understand that it's hard to do, but we need
5 good people that are willing to participate in the process
6 in order to get a fair result. You don't believe you can?

7 JUROR: No, sir, I just don't.

8 THE COURT: All right. I'm going to ask you to stay
9 right here with me, and I'll take you out for this case.
10 And as long as I'm here this week, you're going to stay
11 right here in the courtroom with me.

12 THE COURT: Madame Clerk, juror number Eight is going
13 to remain with us.

14 Yes, ma'am, if you would give me your name and number,
15 please, ma'am.

16 JUROR: Jessica Kirton, number Eighty-five.

17 THE COURT: All right. Counsel, this is juror number
18 Eighty-five, Jessica Kirton. Ms. Kirton, are you related by
19 blood to any of the potential witnesses?

20 JUROR: No, sir.

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

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

25 JUROR: Yes, sir.

1 THE COURT: And what witnesses are those?

2 JUROR: Anthony Buchanan.

3 THE COURT: You got to hold that microphone up.

4 JUROR: Tony Buchanan.

5 THE COURT: Is that the only one?

6 JUROR: Yes, sir.

7 THE COURT: The fact that you're close personal friends
8 with Mr. Buchanan, does that in any way affect your ability
9 to give the State of South Carolina or the defendant a fair
10 and an impartial trial?

11 JUROR: No, sir.

12 THE COURT: Thank you, ma'am. You may be seated.
13 Anyone else? Yes, ma'am, your name and number, please?

14 JUROR: Audrey Pllum, One Twenty-six.

15 THE COURT: Counsel, this is juror One Twenty-six,
16 Audrey Pllum. Ms. Pllum, are you related by blood to any
17 of the potential witnesses?

18 JUROR: No.

19 THE COURT: Are you connected by marriage to any of the
20 potential witnesses?

21 JUROR: No.

22 THE COURT: Are you a close personal friend of any of
23 the potential witnesses?

24 JUROR: Well, kind of a friend.

25 THE COURT: A kind of a friend?

1 JUROR: Yes.

2 THE COURT: All right. And what witness is that?

3 JUROR: Jeff Scott.

4 THE COURT: All right. The fact that you're kind of a
5 friend to Jeff Scott, would that in any way affect your
6 ability to give the State of South Carolina or the defendant
7 in this case, a fair and an impartial trial?

8 JUROR: No.

9 THE COURT: Thank you, ma'am. Anyone else?

10 (NO RESPONSE.) Let the record reflect, no one is
11 standing in response to my last question.

12 All right. Ladies and gentlemen, has any member of my
13 jury panel formed any opinion about the facts which are
14 alleged in this case? If so, please stand at this time.

15 (NO RESPONSE.)

16 THE COURT: Let the record reflect, no one is standing.
17 Does any member of my jury panel know of any bias or
18 prejudice that they may have about the facts which are
19 alleged in this case? If so, please stand.

20 (NO RESPONSE.)

21 THE COURT: Let the record reflect. no one is standing.
22 Does any member of my jury panel, or any member of their
23 immediate family, and by immediate family, I'm talking about
24 mother, father, husband, wife, child, or children. Any
25 member of my jury panel, or a member of their immediate

1 family, ever been the victim of a violent crime? If so,
2 please stand at this time.

3 (SEVERAL JURORS STAND.)

4 THE COURT: Will you give me your name and juror
5 number, please ma'am?

6 JUROR: I'm number Forty-four, Stacy Dickerson.

7 THE COURT: Ms. Dickerson, were you or a member of your
8 immediate family the victim of a violent crime?

9 JUROR: My brother.

10 THE COURT: Your brother was the victim?

11 JUROR: No, not my brother. My brother's friend was
12 murdered.

13 DEP. SOL. THORNTON: Her brother's friend was
14 apparently murdered, Your Honor.

15 THE COURT: Your brother's friend?

16 JUROR: It was his wife.

17 THE COURT: His wife?

18 JUROR: Yes, sir.

19 THE COURT: All right. The fact that your brother's
20 wife was the victim of a violent crime, would that in any
21 way affect your ability to give the State of South Carolina
22 and the defendant a fair and impartial trial?

23 JUROR: No, sir.

24 THE COURT: Thank you, ma'am. You may be seated.

25 Any member of my jury panel formerly a member of the

1 Colleton County Grand Jury which found the indictments in
2 this case? If so, please stand at this time.

3 (NO RESPONSE.)

4 THE COURT: Let the record reflect, no one is standing.

5 Any member of my jury panel related by blood, connected
6 by marriage, or a close personal friend of the alleged
7 victim in this case, Donald Greene? If so, please stand at
8 this time.

9 (NO RESPONSE.)

10 THE COURT: Let the record reflect, no one is standing.

11 Any member of my jury panel a member of or a contributor to
12 any group which has as its primary concern the promotion of
13 law enforcement or victim's rights? These groups would
14 include MADD, SADD, CAVE or CADRE. If so, please stand at
15 this time.

16 (NO RESPONSE.)

17 THE COURT: Let the record reflect, no one is standing.

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

22 (NO RESPONSE.)

23 THE COURT: Let the record reflect, no one is standing.

24 Any additional voir dire from the State?

25 DEP. SOL. THORNTON: Nothing from the State, Judge.

1 THE COURT: Any additional voir dire from the
2 defendant?

3 MR. MATHEWS: No, sir.

4 THE COURT: All right. Counsel, I met with you during
5 the break. It's my understanding the strikes are ten and
6 five, two and one on the alternates. We'll draw two
7 alternates, Madame Clerk, in addition to the jury, and that
8 you both agree to take the alternates in the order in which
9 they are chosen. Is that correct, from the State?

10 DEP. SOL. THORNTON: Yes, Your Honor.

11 THE COURT: Correct, from the defendant?

12 MR. MATHEWS: Yes, sir.

13 THE COURT: All right. Madame Clerk, are you ready?

14 MADAME CLERK: I'm ready.

15 THE COURT: All right. Latonya, are you ready?

16 LATONYA: Yes, sir.

17 THE COURT: Now, Ladies and gentlemen, what we do when
18 we draw a jury is we draw it just like we do for your
19 service. We do it by computer. So, Latonya, would you give
20 us a jury, please? The computer will be drawing a list of
21 names for the clerk to call out.

22 (BRIEF PAUSE IN THE COURTROOM.)

23 THE COURT: All right. Ladies and gentlemen, the Clerk
24 is going to give you instructions at this time.

25 MADAME CLERK: As your name is called, please come all

1 the way up to my desk, turn and face the counsel table.

2 Please bring all of your personal belongings with you.

3 Number One twenty-six, Audrey N. Pllum.

4 MADAME CLERK: What say ye for the State?

5 DEP. SOL. THORNTON: Please present this juror.

6 MADAME CLERK: What say ye for the defendant?

7 MR. MATHEWS: Please excuse this juror.

8 MADAME CLERK: Please have a seat back with the panel.

9 Number Eighty-two, Rhonda D. Kierpiec.

10 What say ye for the State?

11 DEP. SOL. THORNTON: Please present this juror.

12 MADAME CLERK: What say ye for the defendant?

13 MR. MATHEWS: Please swear the juror.

14 MADAME CLERK: Have a seat in the jury box to my right.

15 The bailiff will show you where to sit.

16 Number Sixty-three, Brian K. Groves.

17 What say ye for the State?

18 DEP. SOL. THORNTON: Please present this juror.

19 MADAME CLERK: What say ye for the defendant?

20 MR. MATHEWS: Please swear the juror.

21 MADAME CLERK: Please have a seat in the jury box.

22 Thirty-five, Jonathan M. Crosby.

23 What say ye for the State?

24 DEP. SOL. THORNTON: Please present this juror.

25 MADAME CLERK: What say ye for the defendant?

1 MR. MATHEWS: Please excuse the juror from the trial of
2 this case.

3 MADAME CLERK: Please have a seat back with the panel.
4 One aught-three, Darius McCarthy, II.

5 What say ye for the State?

6 DEP. SOL. THORNTON: Please present this juror.

7 MADAME CLERK: What say ye for the defendant?

8 MR. MATHEWS: Please swear this juror.

9 MADAME CLERK: Please have a seat in the jury box.
10 Twenty-seven, Nickolas D. Carter.

11 What say ye for the State?

12 DEP. SOL. THORNTON: Please excuse this juror.

13 MADAME CLERK: Please have a seat back with the panel.
14 Number One aught-two, William C. Mauldin.

15 THE COURT: Wait a minute. Madame Clerk, you skipped
16 one.

17 MADAME CLERK: Oh, I'm sorry. Please wait, Mr.
18 Mauldin.

19 Seventy-two, Gabriel D. Hodges.

20 What say ye for the State?

21 DEP. SOL. THORNTON: Please present this juror.

22 MADAME CLERK: What say ye for the defendant?

23 MR. MATHEWS: Please swear this juror.

24 MADAME CLERK: Please have a seat in the jury box.

25 Now, One aught-two, William C. Mauldin. Please come all the

1 way to my desk. Thank you.

2 What say ye for the State?

3 DEP. SOL. THORNTON: Please present this juror.

4 MADAME CLERK: What say ye for the defendant?

5 MR. MATHEWS: Please swear the juror.

6 MADAME CLERK: Please have a seat in the jury box.

7 Number Forty, Gerald R. Davis.

8 What say ye for the State?

9 DEP. SOL. THORNTON: Please present this juror.

10 MADAME CLERK: What say ye for the defendant?

11 MR. MATHEWS: Please excuse this juror.

12 MADAME CLERK: Please have a seat back with the panel.

13 Eighty-four, Kandace S. King.

14 What say ye for the State?

15 DEP. SOL. THORNTON: Please excuse this juror.

16 MADAME CLERK: Please have a seat back with the panel.

17 Sixty-eight, Wanda S. Herndon.

18 What say ye for the State?

19 DEP. SOL. THORNTON: Please present this juror.

20 MADAME CLERK: What say ye for the defendant?

21 (BRIEF PAUSE IN COURTROOM.)

22 THE COURT: What say the defendant?

23 MR. MATHEWS: Please swear the juror.

24 MADAME CLERK: Please have a seat in the jury box.

25 One aught-seven, Elizabeth A. McKelvey.

1 THE COURT: Counsel approach. Just have her stay right
2 there.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
4 AND OUT OF THE HEARING OF THE JURY.)

5 THE COURT: Madame Clerk?

6 MADAME CLERK: Yes, sir.

7 THE COURT: Ms. McKelvey, come right on around here,
8 please, where I am at the bench.

9 (Sotto voice discussion with juror and counsel at the
10 bench.)

11 THE COURT: This juror is excused from the trial of
12 this case for cause by consent of the Solicitor and the
13 defendant. Proceed, Madame Clerk.

14 MADAME CLERK: Number Sixteen, Brenda M. Brown, Brenda
15 M. Brown. What say ye for the State?

16 DEP. SOL. THORNTON: Please present this juror.

17 MADAME CLERK: What say ye for the defendant?

18 MR. MATHEWS: Please excuse this juror from the trial
19 of this case.

20 MADAME CLERK: Please have a seat back with the panel.
21 Number Three, Frances S. Appleby. What say ye for the
22 State?

23 DEP. SOL. THORNTON: Please present this juror.

24 MADAME CLERK: What say ye for the defendant?

25 MR. MATHEWS: Please swear the juror.

1 MADAME CLERK: Please have a seat in the jury box.

2 Number Sixty-six, Blanche R. Hamilton.

3 What say ye for the State?

4 DEP. SOL. THORNTON: Please present this juror.

5 MADAME CLERK: What say ye for the defendant?

6 MR. MATHEWS: Please excuse the juror from the trial of
7 this case.

8 MADAME CLERK: Please have a seat back with the panel.

9 Number ninety-five, Alfred W. Lucas, Jr.

10 What say ye for the State?

11 DEP. SOL. THORNTON: Please present this juror.

12 MADAME CLERK: What say ye for the defendant?

13 MR. MATHEWS: Please swear the juror.

14 MADAME CLERK: Please have a seat in the jury box.

15 Number Four, Dino Badger.

16 What say ye for the State?

17 DEP. SOL. THORNTON: Please excuse this juror.

18 MADAME CLERK: Please have a seat back with the panel.

19 One seventy-five, Theodore Young.

20 What say ye for the State?

21 DEP. SOL. THORNTON: Please present this juror.

22 MADAME CLERK: What say ye for the defendant?

23 MR. MATHEWS: Please swear the juror.

24 MADAME CLERK: Please have a seat in the jury box. One
25 seventy-three, Sammie Williams.

1 What say ye for the State?

2 DEP. SOL. THORNTON: Please present this juror.

3 MADAME CLERK: What say ye for the defendant?

4 MR. MATHEWS: Please swear the juror.

5 MADAME CLERK: Please have a seat in the jury box.

6 Number Seventy, Donald R. Hill.

7 What say ye for the State?

8 DEP. SOL. THORNTON: Please present this juror.

9 MADAME CLERK: What say ye for the defendant?

10 MR. MATHEWS: Please swear the juror.

11 MADAME CLERK: Please have a seat in the jury box.

12 Number One nineteen, William P. Murray.

13 What say ye for the State?

14 DEP. SOL. THORNTON: Please present this juror.

15 MADAME CLERK: What say ye for the defendant?

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

18 MADAME CLERK: Please have a seat back with the panel.

19 Eighty-three, Sabrina M. Kimball.

20 What say ye for the State?

21 DEP. SOL. THORNTON: Please present this juror.

22 MADAME CLERK: What say ye for the defendant?

23 MR. MATHEWS: Please swear the juror.

24 MADAME CLERK: Please have a seat in the jury box.

25 THE COURT: All right. Alternate number one. Two and

1 one on the alternate.

2 MADAME CLERK: Sixty-four, Curtis U. Groves. What say
3 ye for the State?

4 DEP. SOL. THORNTON: Please excuse this juror.

5 MADAME CLERK: Please have a seat back with the panel.
6 Forty-four, Stacy R. Dickerson. Does the State have any
7 strikes for cause?

8 DEP. SOL. THORNTON: No, ma'am. Please present this
9 juror.

10 MADAME CLERK: What say ye for the defendant?

11 MR. MATHEWS: Please excuse this juror from the trial
12 of this case.

13 MADAME CLERK: Please have a seat back with the panel.
14 Number One eleven, Sangletta J. Mikel. Does the State have
15 any strikes for cause?

16 DEP. SOL. THORNTON: No, ma'am. Please present this
17 juror.

18 MADAME CLERK: What say ye for the defendant?

19 MR. MATHEWS: Please excuse this juror from the trial
20 of this case.

21 MADAME CLERK: Please have a seat back with the panel.
22 Number One thirteen, Kelvin F. Mitchell. Does the State
23 have any strikes for cause?

24 DEP. SOL. THORNTON: No, ma'am, please present this
25 juror.

1 MADAME CLERK: Does the defense have any strikes for
2 cause?

3 MR. MATHEWS: No, ma'am.

4 MADAME CLERK: Please have a seat in the jury box.

5 THE COURT: Alternate number one. Alternate number
6 two. Two and one.

7 MADAME CLERK: Fifty-seven, Alfred W. Gantt. What say
8 ye for the State?

9 DEP. SOL. THORNTON: Please present this juror.

10 MADAME CLERK: What say ye for the defendant?

11 MR. MATHEWS: Please swear the juror.

12 MADAME CLERK: Please have a seat in the jury box.
13 The jury is pulled.

14 THE COURT: Thank you, Pat.

15 Are there any matters of law pertaining to the
16 selection of the jury that need to be decided before the
17 jury is sworn, from the State of South Carolina?

18 DEP. SOL. THORNTON: No, sir.

19 THE COURT: From the defendant?

20 MR. MATHEWS: No, sir.

21 THE COURT: Counsel, you understand that applies all
22 the way through to tomorrow, even if I don't choose to swear
23 the jury until in the morning because of matters of law?

24 MR. MATHEWS: Although I have not discussed the matter
25 with my client, I've reviewed it and I don't have any

1 matters. I'll explain it to him off the record.

2 THE COURT: You want a moment to explain it to your
3 client?

4 MR. MATHEWS: Yes, sir.

5 THE COURT: Take a moment, Mr. Mathews.

6 DEP. SOL. THORNTON: Nothing on behalf of the State,
7 Judge. I understand it may not be until in the morning.

8 (BRIEF PAUSE IN THE COURTROOM.)

9 MR. MATHEWS: Judge, I've explained it and have no
10 motions.

11 THE COURT: And you understand that carries all the way
12 through to tomorrow?

13 MR. MATHEWS: Yes, sir.

14 THE COURT: Very well. All right, ladies and gentlemen
15 of the jury panel, we're not going to start the trial until
16 in the morning, but I want you to know where to go when you
17 come back. Mr. Grant is going to take you to your jury
18 room. While you're in the jury room, I want you to do a
19 little bit of work for me. I want you to choose a
20 foreperson of the jury.

21 Now, let me tell you, any of the twelve of you, not my
22 two alternates down here; the last two gentlemen are my
23 alternates, one and two. Any of the twelve of you are
24 eligible to be foreperson. Here's what the foreperson does:
25 the foreperson presides in the jury room, just like the

1 chairperson of a committee would preside at a committee
2 meeting. It's the foreperson's job to see that each and
3 every member of my jury has a full and a fair opportunity to
4 voice their opinions in the jury room once deliberations
5 begin.

6 It's also the foreperson's job to write the verdict for
7 the jury and sign the verdict form and date it. And also,
8 it's the foreperson's job to be the spokesperson for the
9 jury, should that need arise during the trial of the case.
10 The foreperson speaks for the entire jury. Any of the
11 twelve of you are eligible to be foreperson.

12 Now, my alternates, you're just as important as a
13 member of the jury, if for some reason a juror becomes ill,
14 or for some legal reason cannot continue to serve, you would
15 take their place on the jury, but you're not eligible to be
16 foreperson.

17 Now, you've not heard any evidence in the case, so I
18 don't want you to discuss the case amongst yourselves or
19 with anybody else. They're going to give you a pad and a
20 pen. I want you to elect a foreperson, write the name on
21 the piece of paper, knock on your jury room door, and give
22 it to the bailiff. I'm going to bring you back into the
23 courtroom and then I'm going to excuse you for the balance
24 of today. That's the only work I want you to do. I'll
25 swear you in the morning. Everybody understand what I need

1 for you to do? When you come back tomorrow, they are going
2 to give you instructions about how to get back in and out of
3 the courthouse. I want you to report directly to your jury
4 room and not to this courtroom in the morning. If you'll
5 retire now to your jury room with the bailiff. Please do
6 not discuss this case.

7 (5:32 P.M., 7-19-10, WHEREUPON THE JURY EXITS THE
8 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
9 RECORD.)

10 **THE COURT:** Counsel approach.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
12 RECORD.)

13 **THE COURT:** All right. Ladies and gentlemen, those of
14 you that were not selected as a juror in the trial of this
15 case, I realize that I've kept you past what I normally
16 would, but we wanted to get the jury selected and I want to
17 thank you for your patience during the roll call, jury
18 qualification and jury selection.

19 Now, each of you should have a card -- you should have
20 a card that looks like this. It has a telephone number on
21 it. The telephone number here is 549-1775. If you don't
22 have this card, hold your hand up, because Mr. Padgett will
23 bring one to you.

24 All right. Now, there are several of you out there
25 that I'm waiting on additional information that I have not

1 excused because you haven't provided me with additional
2 information, for medical reasons and residence reasons, and
3 that's the reason that you're still here. There are some of
4 you that have asked me not to serve because of personal
5 reasons, and I've asked you to remain. I couldn't excuse
6 you, but I wasn't going to force you to sit on the jury.
7 With that, I'm going to ask all of you to use the number on
8 this card.. Call the number after 6:00 tonight. It's one
9 number for all jurors. I'll leave a taped message on that
10 number telling you when I might need you to return. It
11 might tell you to call back after 6:00 tomorrow night or it
12 might tell you to report back in the courtroom at a certain
13 time. If the number is busy, just keep calling. You'll get
14 through. Any questions about the call back procedure from
15 anyone?

16 Now, ladies and gentlemen in the audience, one of the
17 things that can't happen when Court is in session is I can't
18 have any talking when the parties are talking to the Court
19 or I'm talking, and I'm instructing my bailiffs not to be
20 talking to people. If they have a question, they can
21 address it to the Court. I'm finding out from my lawyers
22 that they're having a hard time hearing and we can't have
23 background noise in the courtroom, so I'm going to ask you
24 to refrain my talking to your neighbor. If you persist in
25 doing that, I will enforce that with the contempt powers of

1 my Court. So I don't expect there to be any talking. I
2 expect you to maintain quiet so the jury can hear and the
3 attorneys can hear.

4 Ladies and gentlemen of my jury panel, I thank you for
5 your patience today. You are now excused for the balance of
6 today. Call the number after 6:00. Everyone else remain
7 seated while the jury is leaving.

8 THE COURT: The bailiff has handed me a note from the
9 jury. They've chosen juror number 82, Rhonda Kierpiec --
10 hope I'm pronouncing that right, as the foreperson of the
11 jury. Any objection to the jury to making this a Court's
12 exhibit, from the State?

13 DEP. SOL. THORNTON: No, sir.

14 THE COURT: From the defendant?

15 MR. MATHEWS: No, Your Honor.

16 THE COURT: Court's Exhibit, number one, without
17 objection. Bring us the jury, Odell.

18 (5:49 P.M., 7-19-10, WHEREUPON THE JURY ENTERS THE
19 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
20 RECORD.)

21 THE COURT: All right. Ladies and gentlemen, thank
22 you. Please be careful on that back row, particularly when
23 you're moving down. Obviously, Ms. Kierpiec, that's going
24 to be your seat throughout the trial, the rest of you can
25 sit anywhere you want to. However, if you want to sit by

1 somebody, you have to line up that way. We usually sit six
2 jurors on the front, six jurors on the back, so that you're
3 in close proximity to the witness stand, and my alternates
4 sit on the end. And I told you we weren't going to start
5 tonight, and we're not, and I'm going to be sending you
6 home, now.

7 I don't know whether there will be anything in the
8 newspaper, on the radio, or on the television about this
9 case. I'm going to ask you not to read such, listen to
10 such, or watch such.

11 You must decide this case solely upon evidence
12 introduced in this courtroom when both sides are present,
13 with the right of cross examination. It would be improper
14 for you to read about an account in the newspaper, because
15 they don't know what you're reading, nor does the Court. It
16 would be improper for you to watch something on television
17 or listen to some radio account.

18 I know some people are normally curious. When you get
19 home, they're going to say, "Did you get on the jury? Are
20 you on the jury?" Just tell them Judge Buckner said you
21 cannot talk about that. You can tell them you're on the
22 jury, because you're on jury duty, but you don't need to
23 talk about the case with anybody. If a person persists in
24 wanting to talk with you about the case, all you have to do
25 is get their name and give it to me, and I'll handle that

1 problem for you, ladies and gentlemen. I promise you that
2 person won't bother you anymore. I'll take care of that
3 matter for you

4 So I don't want you talking to anybody about the case.
5 I don't want you discussing it in your jury room until I
6 give you the case at the conclusion of all the evidence in
7 the case. In the meantime, I don't want you to listen to
8 the radio, or watch television, or read any newspaper
9 account of this case. It's important that each of you keep
10 an open mind and not decide the case until the entire matter
11 has been submitted to you under my instructions at the end
12 of the trial. Now, I understand I need to talk with you,
13 Mr. Mitchell, so I'm going to ask you to remain if you
14 would. The rest of you are excused until, we are going to
15 start at 9:30 in the morning. I need you in your jury room
16 by 9:15 in the morning. We'll have something for you to
17 drink and a snack in here and I'm going to feed you lunch
18 tomorrow, here.

19 Yes, sir?

20 DEP. SOL. THORNTON: May we approach, Sir?

21 THE COURT: Yes, come on.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
23 AND OUT OF THE HEARING OF THE JURY.)

24 DEP. SOL. THORNTON: Thank you, Your Honor.

25 THE COURT: I understand that I have some legal matters

1 that I have to take up tomorrow morning, so rather than make
2 you wait any length of time, I'm going to ask you to be in
3 your jury room by 9:30. We'll try to start by 9:45 or 10:00
4 in the morning. I'm going to start earlier than that. Okay?

5 Now, Mr. Mitchell, I'm going to ask you to remain, if
6 you would. The rest of you are excused. Ma'am, would you
7 stay with me back there, please?

8 The rest of you may leave. Everyone else remain
9 seated.

10 (5:53 P.M., 7-19-10, WHEREUPON THE JURY EXITS THE
11 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
12 RECORD.)

13 THE COURT: All right. I understand from the bailiff,
14 Mr. Mitchell, that you gave my bailiff, Mr. Grant, some
15 information about a family member of yours being involved in
16 a previous trial involving the Fishburne family; is that
17 right?

18 MR. MITCHELL: I'm not positive if they kin or not.

19 THE COURT: Well, I've been told by my bailiff that
20 there is a relationship between -- it was Trevor Fishburne?

21 MR. GRANT: Yes, sir.

22 THE COURT: There is a relationship; is that right, Mr.
23 Mathews?

24 MR. MATHEWS: Yes, sir.

25 THE COURT: My understanding is, Solicitor, that you,

1 nor Mr. Mathews, have any objection to excusing this
2 alternate juror?

3 DEP. SOL. THORNTON: That's true, Judge..

4 THE COURT: Mr. Mathews?

5 MR. MATHEWS: No objection, Your Honor. Just if the
6 Court would inquire whether any of this information was
7 given to any of the jurors?

8 THE COURT: Have you given that to any other jurors or
9 just to Mr. Grant?

10 MR. MITCHELL: Just to him.

11 THE COURT: Just to Mr. Grant?

12 MR. MITCHELL: Yes, sir.

13 THE COURT: All right. You understand, Mr. Mathews?

14 MR. MATHEWS: Yes, sir.

15 THE COURT: Thank you for being honest with us. You
16 are excused from the trial of this case. Now, you should
17 have this piece of paper right here, Mr. Mitchell.

18 MR. MITCHELL: Yes, sir.

19 THE COURT: It's got a telephone number on it, 549-
20 1775. I want you to call that number after 6:00. It's,
21 obviously, almost after 6:00 now. I'll have taped
22 instructions about when I'll need you to return. Do not
23 come back to the jury room. Do not talk to any other jurors
24 about anyone else about what you've told me. When I do ask
25 you to return, report to the area of the courtroom you were

1 seated in before we began the selection of the jury; do you
2 understand?

3 MR. MITCHELL: Yes, sir.

4 THE COURT: You're now excused from the courtroom for
5 the day and excused from the trial of this case by consent
6 of the case.

7 MR. MITCHELL: Thank you.

8 THE COURT: Thank you. Take a seat, Mr. Mathews.

9 (WHEREUPON, MR. MITCHELL EXITS THE COURTROOM.)

10 THE COURT: All right, counsel. That leaves me with
11 one alternate, since you agreed to excuse this alternate,
12 because of that information out of an abundance of caution,
13 and I certainly understand that, since my bailiff says there
14 is a family relationship, even though it's not the same last
15 name. I understand, now, we have a Jackson Denno hearing
16 that we're going to take up?

17 MR. MATHEWS: We do, Your Honor, and I also am
18 concerned about juror Campbell, number eighty-three. I know
19 that she's going to be walked out to her car. She looked
20 like she was hyperventilating. She looked like she was in
21 tears, and I don't know who, if she said or somebody else
22 said, but as she was walking out, somebody said they were
23 scared, and I don't know if it was her or what, but my
24 concern ---

25 THE COURT: Mr. Mathews, I asked her in your presence

1 if she was all right. She told me she was fine. That was
2 done in your presence and the Solicitor's presence. We got
3 her a cup of water. I asked her if she wanted Mr. Padgett
4 to escort her to her car, she said yes, and she appeared to
5 be fine to this Court. Unless any new matters arise, I'll
6 be watching her throughout the trial of the case, but I see
7 no reason since she tells me she's fine, why she can't
8 continue to serve. Are you ready to proceed?

9 MR. MATHEWS: Yes, sir.

10 THE COURT: Is the State ready to proceed?

11 DEP. SOL. THORNTON: Yes, sir.

12 THE COURT: All right.

13 DEP. SOL. THORNTON: Your Honor, the defendant in this
14 case gave a statement to law enforcement. I'm going to try
15 to keep it as abbreviated as possible; I talked to Mr.
16 Mathews. The State would call at this time, Your Honor,
17 Detective -- excuse me, Captain Gean Johnson to the stand.

18 THE COURT: Very well. Come around and be sworn by the
19 clerk, please. Let the record reflect, there are now on
20 jurors in the courtroom.

21 MADAME CLERK: Please raise your right hand.

22 (WHEREUPON, CAPTAIN GEAN JOHNSON IS DULY SWORN.)

23 THE COURT: State your full name for the record and
24 spell your last name for the court reporter, please, sir.

25 JUROR: My name is Gean Johnson. Last name is spelled,

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1 J-O-H-N-S-O-N.

2 THE COURT: Your witness, counselor.

3 JACKSON DENNO HEARING

4 DIRECT EXAMINATION

5 BY DEP. SOL. THORNTON:

6 Q Captain Johnson, who do you work for?

7 A Colleton County Sheriff's Office.

8 Q And did you work for Colleton County Sheriff's Office
9 on or about April the 10th of 2009?

10 A Yes, sir.

11 Q And did you have any connection with the case that
12 we're here about today against one, Derrick Fishburne?

13 A Yes, I did.

14 Q And is Mr. Fishburne here in the courtroom, sir?

15 A Yes, he is.

16 Q And can you please identify where he is?

17 A He is sitting to my left at the defense table.

18 Q Okay, sir. He's the man sitting here next to David
19 Mathews, is that correct?

20 A That's correct.

21 Q All right. What was your involvement, if any, with Mr.
22 Fishburne in reference to the murder of Donald Green, sir?

23 A I did an interview with him.

24 Q With him? And I know that sounds like a stupid
25 question since Mr. Green is deceased. When you say "with

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1 him", you mean with Derrick Fishburne; is that correct?

2 A That is correct.

3 Q All right, sir. And where was this interview
4 conducted?

5 A At the Sheriff's Office Annex Building in one of the
6 interview rooms.

7 Q All right, sir. Had you placed the defendant under
8 arrest at the time you talked to him?

9 A No, sir, I didn't.

10 Q All right, sir. How did he get to the Sheriff's
11 Office?

12 A I think some of the detectives got him from right here
13 at the courthouse, roll call, that morning.

14 Q All right, sir. So, he was at roll call. When you say
15 the detectives got him, is it safe to assume that he didn't
16 have a choice and had to go?

17 A Yes, sir.

18 Q All right, sir. So would it be fair to say that
19 whether he had been formally charged or not, he was in
20 custody at the time and not free to leave; is that correct?

21 A That is correct.

22 Q All right, sir. And when you talked to him, was it
23 videotaped?

24 A Yes, it was.

25 Q All right. And --

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1 DEP. SOL. THORNTON: Your Honor, may I approach?

2 THE COURT: You may.

3 Q Sir, I'm going to hand you what's been marked for
4 identification only, for purposes of this hearing, Court's
5 Exhibit Number One, and do you recognize that document?

6 A Yes, I do.

7 DEP. SOL. THORNTON: I apologize to the Court, Your
8 Honor. I want to show this to Mr. Mathews.

9 THE COURT: Yes, sir.

10 (Solicitor Thornton shows exhibit to Mr. Mathews.)

11 Q Mr. Johnson, can you tell me what this is, sir? What
12 Court's Exhibit Number One for identification is?

13 A It's a Miranda form that we normally use when we're
14 questioning someone.

15 Q All right, sir. Now, is it just any Miranda form or
16 does it have some connection wit this case?

17 A Yes, it does. It's Miranda Rights regarding, you know,
18 any questions we have for him.

19 Q All right. Let me rephrase my question. Does that
20 particular Miranda form have any connection to this case,
21 the State v. Derrick Fishburne?

22 A Yes, it does.

23 Q All right. And is that the Miranda Rights form that
24 you read to Derrick Fishburne on April the 10th, 2009?

25 A Yes, it is.

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1 Q Can you tell me what that form has on it in the way of
2 his rights, sir?

3 A You want me to go ahead and recite it?

4 Q Yes, sir.

5 A All right. The first one says, "You have the right to
6 remain silent. Anything you say can and will be used
7 against you in a court of law. You have the right to talk
8 to a lawyer and have one present with you while being
9 questioned. If you cannot afford to hire a lawyer, one will
10 be appointed to represent you before being questioned. You
11 can decide at any time to exercise your rights and not
12 answer any questions or make any statements."

13 Q All right, sir. And is there a space out to the sides
14 of each of these rights for someone to initial?

15 A That's correct.

16 Q And are there initials next to each one of those
17 rights?

18 A Yes, it is.

19 Q And did Mr. Fishburne initial next to each one of those
20 rights?

21 A Yes, he did.

22 Q And did he indicate to you that he understood his
23 rights?

24 A Yes, he did.

25 Q Did he seem to you to be under the influence of any

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1 alcohol or drugs at the time?

2 A No, he did not.

3 Q Did he appear to understand what he was doing?

4 A Yes.

5 Q Did you -- you indicated that Mr. Derrick Fishburne was
6 at roll call. Do you mean here at General Sessions?

7 A Yes, sir.

8 Q So would it be fair to say that this is not his first
9 connection to law enforcement or first time talking to law
10 enforcement?

11 A That is correct.

12 Q All right, sir. Does the form have anything else on
13 it?

14 A Yes, there is also a waiver at the bottom of it. I
15 explained to him that there's a space down here for him to
16 sign if he agreed to talk with law enforcement and I also
17 read that to him as well.

18 Q All right, sir. And did he-- is there a signature
19 space on there?

20 A Yes, it is.

21 Q And who signed it?

22 A Derrick Fishburne.

23 Q Did he sign it in your presence?

24 A Yes, he did.

25 Q All right, sir. And did you list your name down as a

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- 1 witness?
- 2 A Yes, I did.
- 3 Q All right. Did he indicate that he would speak to you?
- 4 A Yes, he did.
- 5 Q All right. Now, in reviewing the tape, it would appear
- 6 to be over two hours long; is that fair to say?
- 7 A Yes.
- 8 Q All right. And are there great breaks in between where
- 9 many minutes pass by and he's in the room by himself?
- 10 A Yes.
- 11 Q All right. And did you -- did members of his family
- 12 come in and talk with him both with law enforcement and
- 13 without you in the room?
- 14 A That is correct.
- 15 Q All right. With regard to what you did, did you talk
- 16 to him by yourself for about 45 to 50 minutes on this tape?
- 17 A Yes.
- 18 Q All right, sir. And did he make any statements to you?
- 19 A Yes, he did.
- 20 Q All right. I realize we're talking about 50 minutes of
- 21 tape, but could you summarize briefly what it was that he
- 22 told you?
- 23 A During the interview, I asked him about his whereabouts
- 24 that night, the time of the incident.
- 25 Q All right. When you say the "time of the incident," do

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1 you mean the murder of Donald Green?

2 A That is correct.

3 Q And did the murder of Donald Green take place between
4 Thursday night, the 9th, and Friday, the 10th, of April,
5 2009?

6 A That is correct.

7 Q All right. And did he indicate to you where he was on
8 that night?

9 A Yes, he did.

10 Q Where did he say he was?

11 A At his girlfriend's house.

12 Q All right. And did he indicate what her name was?

13 A Yes. He called her "Penny," and when I kept asking
14 him, he gave me Lorinda Williams, I think it is.

15 Q All right, sir. And did he indicate to you where
16 approximately Ms. Williams lived?

17 A Yes, sir.

18 Q And do you remember if there was a road name or
19 anything associated with it?

20 A I think it's Peachtree Street. It's right behind the
21 Subway on Bells Highway.

22 Q And is that correct that that's how he identified it to
23 you as being right behind the Subway or something to that
24 effect?

25 A That is correct.

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1 Q And did he tell you -- did you ask him whether he left
2 that night or not or whether he stayed there all the time?

3 A I asked had he left at any time.

4 Q All right. And did he indicate to you that he was
5 there all night?

6 A He said he left once to go to the store. Other than
7 that, he didn't go anywhere.

8 Q All right, sir. And again, the tape will speak for
9 itself.

10 DEP. SOL. THORNTON: And Your Honor, for the record,
11 I've talked with Mr. Mathews about not playing 50 minutes of
12 tape tonight. Mr. Mathews has seen the tape.

13 THE COURT: Mr. Mathews, is that correct?

14 MR. MATHEWS: I have seen the tape.

15 THE COURT: Is it correct that you have no objection to
16 not playing the whole tape for purposes of this hearing?

17 MR. MATHEWS: That is correct.

18 THE COURT: Very well.

19 Q Captain Johnson, other than him indicating that he left
20 once to go to the store during the day, did he say he left
21 that night at all?

22 A No.

23 Q All right. And so, would it be fair to say, in
24 summary, that he indicated he had spent the entire night
25 with his girlfriend, Ms. Lorinda Williams, is that correct?

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1 A That is correct.

2 Q Did you ask him whether or not he had been to, I
3 believe, it was Spirit's Lounge? Is that where this killing
4 took place?

5 A That is correct.

6 Q All right, sir. Did you ask him if he had been to
7 Spirit's Lounge?

8 A Yes.

9 Q Did you ask him more than once?

10 A I did.

11 Q Did he ever admit to you that he had been to Spirit's
12 Lounge?

13 A No, he did not.

14 Q On that night of April the 9th, into the morning of
15 April the 10th?

16 A That is correct.

17 Q All right, sir. Did he ever admit to that?

18 A He said he was not there.

19 Q All right, sir. Did he continue to insist that he had
20 been with his girlfriend all night? .

21 A That is correct.

22 Q Did he also indicate to you whether or not he had any
23 particular, for lack of a better word, street name?

24 A Yes.

25 Q All right, sir. And in addition to whatever you may

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1 know as an officer, what did he tell you his street name
2 was?

3 A "D-Rock".

4 Q "D-Rock"?

5 A That is correct.

6 DEP. SOL. THORNTON: Your Honor, Court's indulgence one
7 moment.

8 THE COURT: As to this document, Solicitor, you want to
9 introduce it for purpose's of this hearing?

10 DEP. SOL. THORNTON: I would, Judge. I was going to do
11 that in just a second.

12 THE COURT: Mr. Mathews, any objection as to Court's
13 Exhibit Number One?

14 MR. MATHEWS: As to this hearing, none, Your Honor.

15 THE COURT: All right. Court's Exhibit Number One,
16 without objection. Did you mark it, Becky?

17 COURT REPORTER: I have.

18 THE COURT: Very well.

19 Q Detective Johnson, I realize in 50 minutes of interview
20 and everything, that there might be a little more detail,
21 but in essence, is that what he told you?

22 A Yes.

23 Q All right, sir. Did you threaten him in any way to get
24 him to make a statement?

25 A No, I did not.

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1 Q Did you promise him any hope of leniency?

2 A No, I did not.

3 Q And as a matter of fact, did his statement remain
4 pretty much consistent the entire time that you talked to
5 him?

6 A Yes, it did.

7 Q All right. And at the -- after his family came in,
8 there was two or three rounds of his family in and out, did
9 you come back in and talk with him one more time by
10 yourself?

11 A Yes.

12 Q And at that time, did you read him the warrants for his
13 arrest for murder and for possession of a weapon during the
14 commission of a violent crime?

15 A I did.

16 Q Prior to that, did you give him an opportunity to speak
17 to you and see if he wanted to change his story?

18 A I did.

19 Q All right, sir. And did he change his story or did his
20 story remain consistent the entire time?

21 A It remained the same.

22 Q All right, sir. Were you the one who was questioning
23 him?

24 A That is correct.

25 Q All right. Did anybody else, to your knowledge, while

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1 you were in the room, promise him anything or threaten him
2 in any way?

3 A No.

4 Q Did he indicate to you at any time that he had been
5 threatened in any way?

6 A No.

7 Q Did you at all scream or yell at him or anything like
8 that?

9 A I did not.

10 Q Did you, in fact, on the tape, talk about the fact that
11 you wouldn't get any louder than you were right then?

12 A I did.

13 Q All right, sir. Did he appear, again, to understand
14 all of his right?

15 A yes.

16 Q And did he agree to waive those rights and speak to
17 you?

18 A Yes, he did.

19 Q And did he, in fact, speak to you?

20 A Yes.

21 DEP. SOL. THORNTON: I have nothing further for this
22 witness. If you would, please answer any questions that Mr.
23 Mathews has.

24 THE COURT: Cross examination?

25 MR. MATHEWS: Thank you, Your Honor.

Cross Examination of Capt. Gean Johnson by Mr. Mathews
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1

CROSS-EXAMINATION

2

BY MR. MATHEWS:

3

Q Detective Johnson, the Miranda Rights form that is

4

listed as Exhibit One, at what point in the process did you

5

ask Mr. Fishburne to sign that?

6

A That is done in the beginning of the interview.

7

Q Okay. And that would be present on the tape?

8

A It should be.

9

Q Okay. All right.

10

MR. MATHEWS: I don't have anything further.

11

THE COURT: Redirect?

12

DEP. SOL. THORNTON: None, Your Honor.

13

THE COURT: You may step down. Hand that document to

14

my court reporter. Call your next witness.

15

DEP. SOL. THORNTON: That's all the State has, Judge.

16

THE COURT: Does the defendant intend to introduce any

17

evidence for purposes of this hearing?

18

MR. MATHEWS: No, sir. And based on that, I felt the

19

need to go forward with the hearing, but on the basis of

20

that ---

21

THE COURT: You withdraw your objection?

22

MR. MATHEWS: Yes, sir.

23

THE COURT: All right. So the -- now, Mr. Mathews, in

24

light of your question, do I need to review the beginning of

25

the tape to determine that it was on the tape, because you

1 asked Detective Johnson whether or not the waiver and the
2 Miranda warnings were given at the beginning of the tape.
3 I'm assuming you've reviewed that tape, because you told me
4 in chambers you had.

5 MR. MATHEWS: I have and I'm trying to find my notes to
6 find out whether or not I -- normally, I note that when it's
7 done. I don't have it noted. That doesn't mean it didn't
8 happen, but perhaps if Mr. Thornton could ---

9 THE COURT: Cue it for me and let me see the beginning.
10 Are we going to do it on the computer or do it on the
11 screen? What do you want to do?

12 DEP. SOL. THORNTON: Judge, I'd just as soon do it on
13 the computer close by.

14 THE COURT: Bring it up here to Nick.

15 DEP. SOL. THORNTON: Yes, sir.

16 THE COURT: David, you can come around here and look at
17 it.

18 (WHEREUPON, SOLICITOR THORNTON HANDS DVD TO LAW CLERK
19 AND THE COURT REVIEWS THE DVD, ALONG WITH COUNSEL, ON THE
20 LAPTOP.)

21 THE COURT: Let the record reflect, Madame court
22 reporter, that in the presence of Mr. Mathews and in the
23 presence of Mr. Thornton, Solicitor Thornton has provided
24 the DVD of Detective Johnson's interview of the defendant.
25 We have reviewed it. Mr. Mathews tells the Court that he is

1 satisfied from reviewing the videotape of Mr. Johnson's
2 interview, that Miranda warnings were given to Mr. Fishburne
3 at the outset of the interview before any questioning was
4 conducted; is that correct, Mr. Mathews?

5 MR. MATHEWS: It is, Your Honor.

6 THE COURT: And for that reason, Mr. Mathews now
7 withdraws his objection to the admission of any statement
8 that was made by the defendant under Jackson v. Denno; is
9 that correct, Mr. Mathews?

10 MR. MATHEWS: Yes, sir.

11 THE COURT: You understand that, Solicitor?

12 DEP. SOL. THORNTON: I do, Your Honor. And at the
13 appropriate time, I need to put one very quick matter on the
14 record.

15 THE COURT: All right, sir.

16 DEP. SOL. THORNTON: And this deals directly with the
17 videotape. I'm going to instruct Mr. Johnson, Mr.
18 Inabinett, Mr. -- I think it may just be Mr. Williams, may
19 be the only three this would apply to, but there are
20 separate sections on that tape that I mentioned, while I had
21 Mr. Johnson up there.

22 THE COURT: You said it was two hours in length.

23 DEP. SOL. THORNTON: Yes, sir. The only thing I'm
24 going to play is the section where Mr. Johnson talks to him
25 at first, Judge, which runs from about a minute, thirty-

1 seven, forty-seven, which is where we started it; on to one
2 hour and, I believe it's -- excuse me, one hour, twenty-four
3 minutes and fifty seconds, to when he walks out.

4 THE COURT: Well, that's an hour's worth, almost.

5 DEP. SOL. THORNTON: Yes, sir.

6 THE COURT: Just short of an hour.

7 DEP. SOL. THORNTON: Yeah. And the reason I'm doing
8 that, Your Honor, is Mr. Mathews has made a motion that I
9 frankly agree with, and I think his client is entitled to
10 it, there are referenced both later on in that tape and with
11 his family and other things about the Sand Hill, and I think
12 some other references come up, and Dooley Hill, and things
13 like that, that are not really relevant to this case, but I
14 think may unfairly prejudice his client with the jury panel,
15 so I'm instructing all of my clients not to insinuate that
16 he has any association with any particular group, because
17 it's not relevant in this case. And because of that, I'm
18 going to limit the tape, and for the reasons, Judge, I just
19 think that's the appropriate part. Mr. Mathews has
20 reviewed ---

21 THE COURT: What you're playing has no such references
22 on it?

23 DEP. SOL. THORNTON: I'm going to listen to it for the
24 fifth time tonight, Judge, to make sure that what I believe
25 I'm playing makes no such reference and is the actual

1 questioning of the defendant by law enforcement, without
2 family or anyone else in the room.

3 THE COURT: I expect you to check it before you play it
4 tomorrow.

5 DEP. SOL. THORNTON: Yes, sir, Your Honor.

6 THE COURT: You told me and Mr. Mathews in chambers
7 that you agreed there should be no reference by the State to
8 any Dooley Hill or Sand Hill gang as part of this case,
9 because that has no bearing on the relevance of the issues
10 raised by this indictment.

11 DEP. SOL. THORNTON: That is true, Your Honor, and I
12 have instructed my witnesses that and I will check that
13 portion of the tape again, but I wanted the Court to be on
14 notice that that is why I am only playing the portion of
15 that tape, because I believe that is the relevant portion,
16 Your Honor.

17 THE COURT: All right. Well, there is no further
18 objection, now, Mr. Thornton, so it's up to you to review
19 the tape tonight and decide what you can publish in light of
20 your agreement not to put those matters into evidence in the
21 presence of the jury.

22 DEP. SOL. THORNTON: Yes, sir.

23 THE COURT: Very well. All right, Mr. Mathews, I
24 realize that you also have a Neal v. Biggers issue that you
25 want to raise because apparently I'm informed I know, of

1 course, nothing about it, there was an out of court
2 identification of the defendant, and because of that and
3 because the witness, the lay witnesses are not present for
4 that hearing, I'm going to ask you to be here, along with
5 your client -- who's transporting for the jail right now?

6 THE COURT: I want him here at 8:30 in the morning,
7 ready to go. Dressed and ready to go.

8 Yes, sir.

9 THE COURT: We're going to start no later -- that gives
10 you, Mr. Mathews, until 8:30 to 9:00. We're starting at
11 9:00, because I don't think the Neal v. Biggers is going to
12 take over a half an hour. I told the jury to be here at
13 9:30 and I want to start as soon as I can.

14 Pat, when they get here at 9:30, send someone in there
15 to get a lunch order for them and we'll have lunch for them
16 at 1:00 tomorrow.

17 MADAME CLERK: Okay.

18 THE COURT: Anything further on the record from the
19 State before we adjourn for the evening?

20 DEP. SOL. THORNTON: No, sir.

21 THE COURT: Anything further from the defendant?

22 MR. MATHEWS: No, sir.

23 THE COURT: Very well. We will reconvene tomorrow
24 morning at 9:00 a.m. Court is adjourned for today.

25 (COURT IS RECESSED FOR THE EVENING.)

1 (9:00 A.M., 7-20-10, WHEREUPON COURT BEGINS.)

2 THE COURT: Is the State ready to proceed?

3 DEP. SOL. THORNTON: State's ready, Judge.

4 THE COURT: Is the defendant ready to proceed?

5 MR. MATHEWS: Yes, Your Honor.

6 THE COURT: All right. I understand that I have a
7 hearing concerning an out of court identification that we
8 refer to as Neal v. Biggers hearing that we need to take up
9 at this time; is that correct?

10 DEP. SOL. THORNTON: It is, Your Honor.

11 MR. MATHEWS: Yes, sir.

12 THE COURT: All right. I understand you have your
13 witnesses here and you're ready to move.

14 DEP. SOL. THORNTON: Yes, sir. The State calls Sonja
15 Grant and she is being brought in now, Judge.

16 THE COURT: Very well.

17 (WITNESS, SONJA GRANT, COMES INTO COURTROOM.)

18 THE COURT: Please come forward to be sworn.

19 MADAME CLERK: Please place your left hand on the Bible
20 and raise your right hand.

21 (WHEREUPON, THE WITNESS, SONJA GRANT, IS DULY SWORN.)

22 THE COURT: Please have a seat on the witness stand.
23 Pull that microphone to you. It's going to amplify your
24 voice. Tap it for me. State your full name and spell your
25 last name for the court reporter, please.

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1 WITNESS: Sonja Maryanne Grant, G-R-A-N-T.

2 THE COURT: Your witness, counsel.

3 DIRECT EXAMINATION

4 BY DEP. SOL. THORNTON:

5 Q Good morning, Ms. Grant.

6 A Good morning.

7 Q Ms. Grant, where do you work, ma'am?

8 A I work for the Department of Corrections.

9 Q All right. And do you live here in the Walterboro
10 Community?

11 A Yes, sir.

12 Q How long have you been here, ma'am?

13 A For sixteen years.

14 Q All right. Sixteen years?

15 A Uh-huh.

16 Q All right. Ma'am, were you at an establishment then at
17 least known as the Spirit's Lounge, on April, the late
18 evening of Thursday, April the 9th and Friday morning of
19 April the 10th, 2009?

20 A Yes, sir.

21 Q All right, ma'am, and at that time, did you witness a
22 shooting?

23 A Yes, sir.

24 Q All right. Ma'am, at some point after that, on May
25 7th, 2009, did you talk to a detective about your witnessing

Direct Examination of Sonja Grant by Dep. Sol. Thornton
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1 that shooting?

2 A Yes, sir.

3 Q All right. Ma'am, first of all, did you see the person
4 who committed the shooting?

5 A Yes, sir.

6 Q All right. And did you know this person by name?

7 A By name, not personally.

8 Q All right. I understand.. Did you know him to look at
9 him? In other words, if you saw him that night, did you
10 know who he was at that time?

11 A Yes, sir.

12 Q And what is that person's name?

13 A D-rock.

14 Q Okay. Is that his street name?

15 A Yes, sir.

16 Q Okay. And do you know what his real name is?

17 A Derrick.

18 Q Okay. Ma'am, were you -- were you -- and this was
19 April the 10th; is that correct?

20 A Yes, sir.

21 Q And when I say April the 10th, I mean in the early
22 morning hours of April the 10th?

23 A Yes, sir.

24 Q About a month later on May 7th, were you shown a lineup
25 after that?

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1 A Yes, sir.

2 Q All right. Ma'am ---

3 DEP. SOL. THORNTON: Your Honor, may I approach?

4 THE COURT: You may approach.

5 DEP. SOL. THORNTON: Your Honor, with the Court's
6 permission, I'm a little bit questioning how I'm going to
7 mark this. This is the original. I'm going to have to put
8 it into evidence, but I did think that the Court needed to
9 see it.

10 THE COURT: Mr. Mathews -- I want to see the original
11 for purposes of this hearing, because you've raised the
12 issue of identification.

13 MR. MATHEWS: I don't mind that being marked for
14 evidence, Your Honor.

15 THE COURT: Why not let's get the Clerk to make a copy
16 of it on the copy machine, and introduce a copy in this
17 hearing, and save the original in the event that it needs to
18 be admitted? Rather than admit it now or do you believe the
19 copy won't be of sufficient quality?

20 MR. MATHEWS: I don't think a copy would be of
21 sufficient quality.

22 THE COURT: Well, let's see. Pat, would you make me a
23 copy?

24 MADAME CLERK: Yes, sir. I'm going to have to take
25 this downstairs.

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1 THE COURT: Do we need to use the other machine?

2 MADAME CLERK: Let me try, because we do have a feature
3 on there for photo.

4 DEP. SOL. THORNTON: I apologize, Judge, that was my
5 concern.

6 MADAME CLERK: Okay. That's the copy.

7 THE COURT: Let me see it. This is the original? Come
8 on up here, counsel. Ms. Grant has some high tech
9 equipment. Now, don't be mixing it up.

10 MR. MATHEWS: Well, that's very good. It's a little
11 darker in the copy than it is in the original, and one of
12 the things that matters; and so I would still rather go with
13 the original.

14 DEP. SOL. THORNTON: If I could propose something,
15 Judge. Is there anything that prevents us from marking it
16 now as a court's exhibit and then putting it into evidence
17 later?

18 THE COURT: She can put a sticker over it. Do you
19 agree that with it admitted as a Court's Exhibit, with a
20 sticker as a Court's Exhibit, we'll put it on the back so
21 that it doesn't interfere with visualizing the images on the
22 exhibit, and if I choose to admit it into evidence, then
23 we'll place another sticker over it as an exhibit for
24 whatever party introduces it.

25 MR. MATHEWS: Yes, sir, that's fine.

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1 THE COURT: All right. Make it a Court's Exhibit. I
2 assume you have no objection to that; is that right?

3 MR. MATHEWS: No, sir.

4 THE COURT: I think it would be number two, I believe.
5 Is that right, Becky?

6 COURT REPORTER: That's right, Your Honor.

7 THE COURT: Court's Exhibit Number Two, without
8 objection. You may approach and you may proceed.

9 DEP. SOL. THORNTON: Thank you, Judge. Sorry for the
10 confusion.

11 Q Ms. Grant, I'm going to hand you what's been marked for
12 identification purposes as Court's Exhibit Number Two,
13 ma'am. Do you recognize that document?

14 A Yes, sir.

15 Q All right. Ma'am, is that document a photo lineup?

16 A Yes, sir.

17 Q And is that the photo lineup that you were shown?

18 A Yes, sir.

19 Q And this was on May the 7th, correct?

20 A Correct.

21 Q All right. Ma'am, did you make any markings or
22 indicate any particular on that document?

23 A yes, sir.

24 Q All right. Ma'am, and is the person you were

25 indicating, Derrick Fishburne, the shooter on the night of

Direct Examination of Sonja Grant by Dep. Sol. Thornton
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- 1 April the 10th?
- 2 A Yes, sir.
- 3 Q All right. And were those your initials on that
- 4 document indicating that picture ?
- 5 A Yes, sir.
- 6 Q And I believe the picture is number three; is that
- 7 correct, ma'am?
- 8 A Correct.
- 9 Q Ma'am, did detective -- do you remember what detective
- 10 talked to you that day?
- 11 A Detective Williams.
- 12 Q And is this Detective Williams that is seated here at
- 13 counsel table?
- 14 A Yes, sir.
- 15 Q Did he try to point out any particular picture to
- 16 suggest to you that -- that Derrick Fishburne was or was not
- 17 in that photo lineup?
- 18 A No, sir.
- 19 Q Did he tell you which picture to pick?
- 20 A No, sir.
- 21 Q Did he try to influence you in any way?
- 22 A No, sir.
- 23 Q You already knew who the shooter was prior to this, did
- 24 you not?
- 25 A Correct.

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1. Q All right. And you were able to call him by name
2 before even dealing with the photo lineup?

3 A Correct.

4 Q And you know him as -- what was the street name?

5 A D-Rock.

6 Q And ma'am, although his appearance may have been
7 altered somewhat, do you see D-Rock in the courtroom
8 anywhere, Derrick Fishburne?

9 A Yes, sir.

10 Q And where is he, ma'am?

11 A Sitting right there at the table.

12 Q You talking about right here at this table? This man
13 right here sitting next to Dave Mathews?

14 A Yes, sir.

15 MR. MATHEWS: Your Honor, I'll stipulate that the
16 defendant is at the defense table.

17 DEP. SOL. THORNTON: I wasn't looking for a
18 stipulation, Your Honor; but thank you, Mr. Mathews.

19 Q Ma'am, did anybody try to influence you in any way to
20 pick out any particular picture?

21 A No.

22 Q Did you pick that out of your own free will and accord?

23 A Yes, sir.

24 Q Did you already know who D-Rock was before you saw that
25 picture?

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1 A By sight, yes, sir.

2 Q I understand. I don't mean that you knew him well, but
3 you knew who he was. Who was it that shot Donald Green,
4 ma'am, on the night of April the 9th, the morning of April
5 the 10th?

6 A D-Rock.

7 Q And otherwise known as Derrick Fishburne; is that
8 correct?

9 A Yes, sir.

10 Q Thank you, ma'am. I have no further questions. Please
11 answer any questions that Mr. Mathews has.

12 THE COURT: Cross-examination?

13 MR. MATHEWS: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. MATHEWS:

16 Q Ms. Grant, how long had you been at the club?

17 A Probably around 15 to 20 minutes.

18 Q So you had just gotten there?

19 A Yes, sir.

20 Q Had you gone inside the club or were you outside?

21 A I was outside.

22 Q So you had never gone into the club and gotten a
23 wristband or anything like that?

24 A No, sir.

25 Q Okay. What were you doing when you got to the club?

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1 A I had -- me and a friend of mine, she had asked me to
2 take her someplace, take her over there, to get something
3 from someone. So I was standing outside. Well, actually,
4 standing within my car. Standing with the door open, inside
5 of my car.

6 Q Okay. Now, you were in your car or they were in --
7 they were outside -- who was in the car?

8 A Nobody was in the car. I had the door open, standing
9 up in my doorway of my car.

10 Q All right. You were standing in the driver's side door
11 of your car?

12 A Uh-huh.

13 Q And you were taking a friend there to pick something
14 up?

15 A Uh-huh, yes, sir.

16 Q What were they there to pick up?

17 A She was coming to get some money from a friend.

18 Q Okay. Do you know who that friend was?

19 A Brandon Jenkins.

20 Q Brandon Jenkins. Who was your friend?

21 A Fatimah Washington.

22 Q So you and Fatimah Washington had gone there in your
23 car or her -- you said your car?

24 A My vehicle.

25 Q What kind of car was that?

Cross Examination of Sonja Grant by Mr. Mathews
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1 A A Honda Accord.

2 Q What color?

3 A Purple.

4 Q All right. How long have you and Fatimah known each
5 other?

6 A Since '94.

7 Q Okay. Were y'all, I guess, obviously, very good
8 friends?

9 DEP. SOL. THORNTON: Judge, relevance? This is a Neal
10 v. Biggers hearing. It's about identification.

11 THE COURT: I agree. Mr. Mathews, while I certainly
12 think you have the right to test credibility; this is a
13 hearing at your request, under Neal v. Biggers. Let's
14 confine your cross-examination, as I did the direct, to the
15 identification issue.

16 MR. MATHEWS: I'll get to relevance -- I'll make this
17 relevant real quick, Your Honor.

18 Q Did you know D-Rock personally or did your friend
19 mostly know D-Rock?

20 A My friend.

21 Q Okay. So, in fact, the name D-Rock, you had gotten
22 that from your friend; is that correct?

23 A No, that's not correct.

24 Q Okay. How long -- how much have you and -- have you
25 and D-Rock spent a lot of time together?

Cross Examination of Sonja Grant by Mr. Mathews
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1 A No, sir.

2 Q Okay.

3 A I don't know him personally, as in hey, how are you
4 doing? I know him by sight, not by like a personal
5 relationship.

6 Q Okay. The name D-Rock, you learned that from your
7 friend, Fatimah?

8 A No, I didn't learn that from her; just from being in
9 the community I knew him as that.

10 Q Okay. Did Fatimah say anything when the shooting
11 happened?

12 A Well, at the time, not really. We rode in a car
13 together. I mean, once we got in the car, I mean, she was
14 hysterical about the situation. We both were.

15 Q Sure. And did you talk together about who it was that
16 did the shooting?

17 A Yes, we did.

18 Q Okay. And so can you remember who first came up with
19 the name D-Rock, was it you or Fatimah that first came up
20 with the name D-Rock?

21 A Well, it didn't really happen like that, we both saw
22 it.

23 Q I understand, but I mean, between the two of you, which
24 was the one that came up with the name?

25 DEP. SOL. THORNTON: Judge, I think he's asked and

Cross Examination of Sonja Grant by Mr. Mathews
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1 answered. She's already answered.

2 THE COURT: Just a moment. One person at a time
3 speaks. What's your objection?

4 DEP. SOL. THORNTON: The objection is it's asked and
5 answered. She's already told him multiple times that she
6 knows him in the community. She knows him as D-Rock, and
7 Mr. Mathews keeps, in a different way, asking her undue
8 influence from Fatimah.

9 THE COURT: All right. Mr. Mathews, I will allow you
10 some leeway, but we're not going to repeat the same
11 questions.

12 Ma'am, I'll allow her to answer this questions. And
13 move on to the identification issue, Mr. Mathews.

14 MR. MATHEWS: Yes, sir.

15 THE COURT: Ask the question again, Mr. Mathews, again
16 for the witness.

17 Q Ms. Grant, was it you or was it Fatimah that first came
18 up with the name D-Rock?

19 A Well, it was kind of like, when we both -- when we got
20 in the car, we both was like, "Oh, my God, D-Rock just shot
21 Donald."

22 Q Okay. Did you say that or did she say that?

23 A We both said it together. We both was talking about
24 the situation together.

25 Q Okay. All right. Did you leave Fatimah at the club or

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1 did you stay at the club with Fatimah that night?

2 A Once the shooting happened, we got in the car and we
3 left. We left together.

4 Q All right. Did you and Fatimah talk about this --
5 well, that particular night, how many people would you say
6 was at the club, was it not very many people or was it a lot
7 of people?

8 A I don't know how many people were inside. I never went
9 inside. It was a couple people in the parking lot.

10 Q A couple people? Just a couple? Was it ---

11 A Well, I was in the front. I don't know how many people
12 was on the side, but like I said, we was outside talking.
13 We was talking to Brandon Jenkins and Jamal Greene. They
14 were all outside as well.

15 Q Okay. All right. Were there a lot of cars out front
16 or not very many cars out front?

17 A Well, where I was parked at, I was parked in front of
18 the door, and it probably was like -- I can't remember. The
19 parking lot, it has a space where people can park in the
20 front, so, yes, cars were parked out there.

21 Q Would you say it was like maybe 10 cars or was it more
22 or less than 10?

23 A More than 10.

24 Q Okay. More or less than 30?

25 A Less than 30.

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1 Q Okay. What was the -- where was your car? You said it
2 was right in front of the door? Was it directly in front of
3 the door or were there cars ---

4 A It was directly in front of the door.

5 Q Okay. So you were in front of it. What cars were on
6 either side of you?

7 A I can't remember what cars -- there wasn't nothing in
8 front of me. I remember that because when I was pulling
9 out, I pulled straight off.

10 Q Okay. Well, that would mean there was nothing behind
11 you. There was just room for one rows of cars, right?

12 A There was one row of cars, but my car was parked in the
13 front of the cars, behind the cars. My car was behind the
14 car. I just swung in, in the front of the door.

15 Q Okay. Were you coming like from Walterboro or coming
16 like to Walterboro?

17 **DEP. SOL. THORNTON:** Objection, Your Honor, as to
18 relevance. This is an identification issue.

19 **THE COURT:** I agree. Counsel, you're going to have to
20 convince me, now, how this is relevant. Please approach.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
22 AND OUT OF THE HEARING OF THE COURTROOM.)

23 **THE COURT:** The objection is sustained. Let's move
24 along.

25 Q Ms. Grant, do you know the difference between braids

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1 and dreds?

2 A Yes.

3 Q Okay. What's the difference?

4 A Dreds are locked; braids are corn-rowed.

5 Q All right. These pictures ---

6 THE COURT: Mr. Mathews, if you want to approach the
7 witness, ask permission of the Court. Don't walk up here.

8 MR. MATHEWS: Yes, sir.

9 THE COURT: Would you like to approach?

10 MR. MATHEWS: Not at this time, Your Honor.

11 THE COURT: Proceed.

12 Q Ms. Grant, you were presented a photo lineup consisting
13 of six different pictures; is that correct?

14 A Correct.

15 Q Now, was that photo lineup -- did you ever get a
16 description of the person who did the shooting or just a
17 name?

18 A Just a name.

19 Q Okay. The picture, the six people in front of you, on
20 that photo lineup, are they wearing dreds or braids?

21 A Well, number five looks like he has dreds. It's kind
22 of hard to tell. All of their hair is pushed back.

23 Q Okay. Would that be sort of like in between dreds and
24 braids, if you had to choose one between braids and dreds,
25 which would you pick?

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- 1 A From which picture?
- 2 Q Are you saying all the pictures are not all the same?
- 3 A No, they're not all the same.
- 4 Q Okay. Is one picture lighter than the other five?
- 5 A Yes.
- 6 Q Which picture is that?
- 7 A Number three.
- 8 Q And that's the one you picked out?
- 9 A Correct.
- 10 Q Okay. Is there anybody else in there that has hair
- 11 like -- you work at the Department of Corrections, correct?
- 12 A That is correct.
- 13 Q Okay. Do you take pictures when you bring someone into
- 14 the Department of Corrections; you take their picture,
- 15 right?
- 16 A I'm a Corrections Officer. That's booking; I don't do
- 17 that.
- 18 Q Okay. But they do that in booking, you're aware of
- 19 that?
- 20 A Not at a State prison.
- 21 Q Okay. They do that at the jail?
- 22 A I don't know. I don't work at the jail. I assume they
- 23 would.
- 24 Q All right. Well, as part of your identification, did
- 25 you notice when you saw who did the shooting what the

Cross Examination of Sonja Grant by Mr. Mathews
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1 person's hair looked like?

2 A Yes.

3 Q And what did the person's hair look like?

4 A It looked like braids going to the back.

5 Q Braids going to the back. You know that now, but you
6 would -- would you say that picture presented to you looked
7 like any of the people that did the shooting?

8 A Yes, it does.

9 Q All right.

10 MR. MATHEWS: Given the parameters with which I've been
11 given to work, I have no further questions.

12 THE COURT: Redirect?

13 DEP. SOL. THORNTON: None, Your Honor. We ask that she
14 be excused until the trial starts.

15 THE COURT: Very well. You may step down, ma'am, and
16 you are excused from the courtroom. Call your next witness.

17 DEP. SOL. THORNTON: Fatimah Washington. Angela has
18 her, Your Honor.

19 MADAME CLERK: Please come forward and be sworn.

20 WHEREUPON, MS. FATIMAH WASHINGTON IS DULY SWORN.

21 THE COURT: Watch yourself on those steps. Be careful.
22 Have a seat, make yourself comfortable. Pull the microphone
23 over here. It's going to amplify your voice. I want you to
24 speak up and begin by stating your full name and spelling
25 your last name for the court reporter.

Direct Examination of Fatimah Washington by Dep. Sol. Thornton
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1 WITNESS: Fatimah A. Washington, W-A-S-H-I-N-G-T-O-N.

2 THE COURT: Thank you. Your witness.

3 DEP. SOL. THORNTON: Thank you.

4 DIRECT EXAMINATION

5 BY DEP. SOL. THORNTON:

6 Q Good morning, Ms. Washington.

7 A Good morning.

8 Q Ms. Washington, is it fair to say that you would rather
9 be somewhere else other than here this morning?

10 A Yes, I would.

11 Q Ms. Washington, on or about April the 9th, Thursday
12 night, early morning hours of April the 10th, on Friday, of
13 2009, were you at the Spirit's Lounge?

14 A Yes.

15 Q All right. Ma'am, at the Spirit's Lounge did you
16 witness anything unusual that night?

17 A Yes, I did.

18 Q All right. Did you see a shooting of one, Donald
19 Green?

20 A Yes, I did.

21 Q All right. Ma'am, on that same day, April the 10th,
22 did you talk with law enforcement about this shooting?

23 A Yes, I did.

24 Q And did you provide a statement at that time, ma'am,
25 along with an identification?

Direct Examination of Fatimah Washington by Dep. Sol. Thornton
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- 1 A Yes.
- 2 Q All right. Ma'am, and did you see who did the shooting
- 3 that night?
- 4 A Yes, I did.
- 5 Q And who did the shooting?
- 6 A Derrick Fishburne.
- 7 Q All right. Derrick Fishburne. Does Derrick have a
- 8 street name?
- 9 A Yes.
- 10 Q What is it?
- 11 A D-Rock.
- 12 Q All right. Ma'am, how close were you to the shooting?
- 13 A Like right in front of the club door.
- 14 Q All right. Would you say about as far as I am from
- 15 you, or closer, or farther?
- 16 A Probably a little closer.
- 17 Q A little closer than this?
- 18 A Yes, sir.
- 19 Q Did you get a good look at Derrick Fishburne when he
- 20 shot Donald Green?
- 21 A Yes.
- 22 Q Do you know Derrick Fishburne?
- 23 A No, not personally.
- 24 Q Okay. Do you know him to look at him?
- 25 A Yes.

Direct Examination of Fatimah Washington by Dep. Sol. Thornton
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1 Q All right. And how long have you been able to call him
2 by name?

3 A I can't really say.

4 Q Less than a year or more than a year?

5 A Probably more than a year.

6 Q All right. Ma'am, and do you see Derrick Fishburne in
7 the courtroom?

8 A Yes, I do.

9 Q And where is he, ma'am ?

10 A Over there.

11 Q When you say "over there," do you mean this gentleman
12 sitting right here next to his attorney, Mr. Mathews?

13 A Yes, sir.

14 Q All right, ma'am.

15 DEP. SOL. THORNTON: Your Honor, I'm going to approach,
16 Your Honor, if I can have this please, marked as Court's
17 Exhibit Number Three, Your Honor.

18 THE COURT: Have you shown it to Mr. Mathews?

19 DEP. SOL. THORNTON: I have, Judge. He asked me to do
20 it the same way we did the last one.

21 THE COURT: Is that correct, Mr. Mathews?

22 MR. MATHEWS: It is, Your Honor.

23 DEP. SOL. THORNTON: May I approach, Judge?

24 THE COURT: You may.

25 Q Ma'am, I'm going to hand you what's been marked as

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1 Court's Exhibit Number Three for identification, if you
2 would please tell me, can you identify that document?

3 A Yes, sir.

4 Q All right. And what is that document?

5 A It's a lineup.

6 Q Okay. Have you seen that lineup before?

7 A Yes, sir.

8 Q All right. Did you see it on April the 10th of 2009?

9 A Yes.

10 Q Is that the date that's referenced on it, ma'am?

11 A Yes, sir

12 Q All right. And did you sign anywhere on that or
13 initial anywhere on that document?

14 A I did.

15 Q And is there a particular photograph that you
16 identified?

17 A Yes, sir.

18 Q Which one is it?

19 A Number Three.

20 Q All right. Ma'am, and who did you identify that for?
21 Who is that person?

22 A Derrick Fishburne.

23 Q All right. And it's Derrick Fishburne; again, is that
24 the person you testified earlier that you saw shoot Donald
25 Green?

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1 A Yes, sir.

2 Q Now, ma'am, do you remember which detective talked to
3 you?

4 A Yes.

5 Q Okay. Who was it?

6 A It was a couple of them.

7 Q All right. Do you see any of them in the courtroom?

8 A Yes.

9 Q Can you point out one of them for me?

10 A Andre.

11 Q do you mean Detective Andre Williams from the Sheriff's
12 Office?

13 A Yes, sir.

14 Q All right. Did any of the detectives try to tell you
15 which picture to choose?

16 A No.

17 Q Did you know D-Rock or Derrick Fishburne by name? I
18 understand not personally, but did you know who he was prior
19 to seeing this photo lineup?

20 A Yes.

21 Q Did anybody try to influence you in any way to try to
22 select picture number three, as opposed to any of the other
23 pictures?

24 A No, sir.

25 Q All right. Ma'am, I have no further questions. Please

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1 answer any questions that Mr. Mathews might have.

2 DEP. SOL. THORNTON: Your Honor, the only other thing I
3 would do at this time, for the purposes of this hearing, I
4 would move both of those into evidence, for purposes of the
5 hearing, for the Court to review.

6 THE COURT: Mr. Mathews, for purposes of this hearing
7 only, because I'm following what you asked for, which is the
8 procedure of marking this exhibit as a Court's Exhibit,
9 Number Three, without objection; is that correct?

10 MR. MATHEWS: That's correct, Your Honor.

11 THE COURT: All right. We're proceeding only for this
12 hearing because I haven't made a ruling on identification.

13 DEP. SOL. THORNTON: Yes, sir. I just meant for
14 purposes of the hearing, Judge.

15 THE COURT: Very well. Mr. Mathews, cross-examination
16 of this witness?

17 MR. MATHEWS: I don't have any questions, Your Honor.

18 THE COURT: No questions. Very well. You may step
19 down. I assume this witness is under subpoena?

20 DEP. SOL. THORNTON: She is, Judge. I just ask that
21 she have a seat back in the room that I have her in.

22 THE COURT: You may step down.

23 MR. MATHEWS: Your Honor, if the Court would instruct
24 her not to talk to any of the other witnesses, particularly
25 Ms. Grant.

Neal v. Biggers Hearing

1 **THE COURT:** Hold on one second, Ms. Washington. Please
2 refrain from speaking with any other witness about your
3 testimony in this case until I instruct you to do so,
4 including Ms. Grant or anyone else.

5 **WITNESS:** Yes, sir.

6 **THE COURT:** Are you satisfied, Mr. Mathews?

7 **MR. MATHEWS:** Your Honor, Your Honor; thank you.

8 **THE COURT:** All right. While I'm on that subject, and
9 I appreciate you reminding me, Mr. Mathews, it has come to
10 the Court's attention, through counsel, this morning at a
11 pre-trial conference early this morning, that potential
12 witnesses in the trial of this case may have been contacted
13 by family members, and I want to emphasize to everyone in
14 this courtroom, if this Court finds that any person, family
15 or otherwise, contacted a potential witness in an attempt to
16 improperly influence their testimony, I will handle that
17 with the contempt powers of this Court. There will be no
18 contact of any witness now that this trial has begun, and
19 the witnesses have been kept out, and I assume I'm going to
20 get a motion for sequestration; is that correct?

21 **MR. MATHEWS:** Yes, sir.

22 **THE COURT:** And I don't want to hear from any lawyer,
23 or any officer, or any person that any witness has been
24 contacted in an attempt by any member of anyone's family to
25 influence their testimony. Otherwise, you're going to deal

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1 with me and a contempt Court citation, and I can assure you
2 I'm going to put anybody that tries to influence testimony
3 improperly, in jail.

4 All right. Solicitor, call your next witness.

5 DEP. SOL. THORNTON: Your Honor, the State calls
6 Detective Andre Williams to the stand.

7 THE COURT: Please come around and be sworn by the
8 clerk.

9 WHEREUPON, DETECTIVE ANDRE WILLIAMS IS DULY SWORN.

10 THE COURT: You know what to do, Andre. Speak up and
11 spell your last name.

12 WITNESS: Andre Williams, W-I-L-L-I-A-M-S.

13 THE COURT: Your witness.

14 DEP. SOL. THORNTON: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY DEP. SOL. THORNTON:

17 Q Detective Williams, who do you work for?

18 A Colleton County Sheriff's Office.

19 Q In what capacity?

20 A Detective.

21 Q All right. Were you a detective on or about April the
22 9th and 10th of 2009?

23 A Yes, sir.

24 Q And were you assigned, sir, as case officer to the
25 shooting that occurred out at Spirit's Lounge?

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- 1 A Yes, sir.
- 2 Q All right.
- 3 DEP. SOL. THORNTON: Your Honor, may I approach?
- 4 THE COURT: You may.
- 5 Q Det. Williams, I'm going to hand you two documents that
- 6 have been marked previously as Court Exhibits Two and Three.
- 7 Can you identify these documents for me?
- 8 A Yes, sir. They are photo lineups of the suspect.
- 9 Q And by the suspect, who do you -- who are you referring
- 10 to?
- 11 A Derrick Fishburne.
- 12 Q Did you administer these photo lineups? And by that, I
- 13 mean did you show them to the two ladies that have already
- 14 testified?
- 15 A Yes, sir. Yes, I did.
- 16 Q Did you initial or mark anywhere on those documents?
- 17 A Yes, up on his head, I initialed and dated.
- 18 Q Now, did you initial that before or after the two
- 19 witnesses in this case, Ms. Washington and Ms. Grant,
- 20 identified picture number three as Derrick Fishburne, the
- 21 person that did the shooting?
- 22 A I initialed after she identified and after she signed
- 23 and dated, then I signed and dated it.
- 24 Q Did you do them both on the same day or were they done
- 25 on separate days?

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- 1 A No, sir. Separate days.
- 2 Q Were Ms. Washington and Ms. Grant together or separate?
- 3 A Separate.
- 4 Q Did you attempt to influence them in any way, sir?
- 5 A No, sir.
- 6 Q Did you tell them which picture to pick?
- 7 A No, sir.
- 8 Q Did you suggest which picture to pick?
- 9 A No, I did not.
- 10 Q How do you go about choosing a photo lineup or
- 11 selecting photographs? Do you do that personally or do you
- 12 send off for that to be done?
- 13 A No, sir. We send a name, all the information on a
- 14 person to SLED, and they in turn send it back to us with a
- 15 photo lineup.
- 16 Q All right, sir. Are you aware of which -- what type of
- 17 photographs they use?
- 18 A No, sir.
- 19 Q Let me rephrase that. Do you know where they get the
- 20 photographs from?
- 21 A Oh, yes, sir.
- 22 Q And where do they get them from?
- 23 A From the DMV.
- 24 Q All right, sir. So they're basically driver's license
- 25 type photos?

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1 A Yes, sir.

2 Q All right. Once SLED picks them, do they then send
3 them back to you?

4 A Yes, sir.

5 Q So you, yourself, have nothing to do with the
6 selection?

7 A No, sir.

8 Q All right, sir. And are those the documents that you
9 showed them that day?

10 A Correct. Yes, sir.

11 Q Have they remained in your custody since that time?

12 A They have been in the evidence locker.

13 Q All right, sir. Have they been altered or changed in
14 any way?

15 A No, sir.

16 Q And when I say that, I mean, I understand you may have
17 made copies of them for either myself or for defense
18 counsel, but have the originals been changed or altered in
19 any way?

20 A No, sir.

21 Q And once again, did you attempt in any way to influence
22 either Ms. Washington on Court's Exhibit Number Three or Ms.
23 Grant on Court's Exhibit Number Two, as to which picture
24 they should choose?

25 A No, sir.

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1 Q Would you agree, sir, by looking at those that Mr.
2 Fishburne's picture is at least partially lighter in color
3 than some of the others? In fact, probably all of the
4 others?

5 A Yes, sir, but I have no control over that.

6 Q I understand. But you will admit that he is a little
7 bit lighter?

8 A Yes, sir.

9 Q Did both ladies already know who Derrick was and D-Rock
10 was? Did they communicate that to you before they even saw
11 the picture?

12 A Yes, sir.

13 Q I have nothing further. Please answer any questions
14 Mr. Mathews has for you.

15 THE COURT: Cross-examination?

16 MR. MATHEWS: Thank you, Your Honor.

17 CROSS-EXAMINATION.

18 BY MR. MATHEWS:

19 Q Det. Williams, did anybody from the very beginning of
20 this investigation, they gave you a name rather than a
21 description?

22 A Yes, sir.

23 Q So the first people said, "D-Rock did this," who you
24 understood from the community to be Derrick?

25 A Yes, they gave both names, the street name and his

Cross Examination of Det. Andre Williams by Mr. Mathews
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1 birth name.

2 Q Okay. So you started from the beginning with a name
3 and not a description?

4 A Yes, sir.

5 Q And the photo lineup is basically a picture of Derrick
6 and five people that look like Derrick?

7 A Correct.

8 Q As he appeared in the driver's license picture?

9 A Correct.

10 MR. MATHEWS: I don't have anything further, Your
11 Honor.

12 THE COURT: Redirect?

13 DEP. SOL. THORNTON: None, Judge. I'd ask that he be
14 allowed to step down and return to counsel table.

15 THE COURT: You may step down. The court reporter
16 takes those. Call your next witness.

17 DEP. SOL. THORNTON: That's it for the State, Judge.

18 THE COURT: Mr. Mathews, I'll be happy to hear from
19 you, as you requested the Neal v. Biggers Hearing.

20 MR. MATHEWS: Your Honor, I had attempted to get into
21 more detail about the circumstances ---

22 THE COURT: Let me make a record of what transpired
23 since the jury is not in here. You asked a question, Mr.
24 Mathews, of whether or not the car that the first witness,
25 who was Ms. Grant, was pointed toward Walterboro or not. An

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1 objection was made on relevance. I'd asked you to approach
2 the bench, along with counsel for the State. I asked you to
3 explain the relevance that had to the identification issue.
4 You chose, for whatever reason, not to do so. I therefore
5 sustained the objection to that question. Now, let's
6 proceed. I want to hear your concerns about identification.

7 MR. MATHEWS: Okay. Your Honor, I see that I'm not
8 going to win this motion and I would like to ---

9 THE COURT: I'm going to have to hear it first, Mr.
10 Mathews, because I haven't heard anything from you.

11 MR. MATHEWS: What I had attempted to get out on the
12 car was the car was faced parallel to the back of the
13 driver's side and what direction would put it farther or
14 closer to the scene.

15 THE COURT: You asked the relationship to the door and
16 the question was asked of one of the witnesses how far away
17 they were from the defendant at the time of identification,
18 but the pointing of the car, one way or the other, since the
19 witness had told you that they were standing outside, inside
20 the door of the car, I don't believe dealt with the
21 identification issue and that's the reason for sustaining
22 the objection. Lighting, a view, obstruction, other things,
23 but the pointing of the car either toward town or away from
24 town with a witness standing outside as not relevant, the
25 reason for sustaining the objection. But I'm not here to

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1 reargue that because I've ruled on that, but I'm ready to
2 hear from you on identification, which is the issue that
3 we've taken 45 minutes on.

4 MR. MATHEWS: I understand, Your Honor. I mean,
5 obviously, it adds eight feet, depending on which way the
6 car is, that's why I asked it. But in any event, based on
7 what has come out from the stand, I really don't have much
8 to say. It looks like -- it looks like I'm not going to win
9 this, so I -- I'm not going to argue it very hard.

10 THE COURT: All right. Well, Mr. Mathews, regardless
11 of whether you think you're going to win something, I
12 certainly am willing to listen to you on any objection that
13 you have, because the idea is not whether or not you're
14 going to prevail, but whether or not you can raise an issue
15 that the Court needs to consider.

16 Clearly, the Court is willing to review the totality of
17 circumstances to determine whether an identification is
18 reliable. That's the whole basis of Neal v. Biggers and our
19 State cases. What I look to is the opportunity of the
20 witness to view the accused; the witness's degree of
21 attention, which you didn't ask any questions about. The
22 accuracy of any prior description, the level of certainty
23 demonstrated by the witness after confrontation, which there
24 were questions about, and the length of time between the
25 crime and the confrontation.

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1 Obviously, when you raised the issue, and I've reviewed
2 Court's Exhibit Number Two, and I've reviewed Court's
3 Exhibit Number Three, and I certainly agree with you that
4 there is one of the photographs is lighter than the others,
5 but I believe that goes to the weight and not the
6 admissibility, which you are certainly able to bring out,
7 because I'm going to give you every opportunity to cross-
8 examine any witness during the trial of this case.
9 Identification testimony is simply an expression of belief
10 or an impression of the witness.

11 Obviously, the State has the burden of proving identify
12 beyond a reasonable doubt, and the jury has to be satisfied
13 beyond a reasonable doubt of the accuracy of the
14 identification of the defendant before they can convict the
15 defendant. And each witness, after you cross examine them,
16 gets to determine the believability of any identification
17 witness in the same way as any other witness in this case.

18 I'm going to tell the jury that they may consider,
19 after you cross-examine in their presence, whether a witness
20 had an adequate opportunity to observe the offender at the
21 time of offense. This normally is affected by things such
22 as how long or short time was available, and how far or
23 close a witness was, or the lighting conditions. Whether or
24 not the witness had the chance to know the person in the
25 past, which both witnesses have testified that they knew the

1 defendant and knew his name. Not only his street name, but
2 they provided to law enforcement his real name.

3 I'm going to instruct the jury that, once again, the
4 burden of proof, and this specifically included the burden
5 of proof beyond a reasonable doubt as to the identity of the
6 defendant, is on the State of South Carolina as the person
7 who committed any alleged offense. I will tell the jury
8 that if after examining the testimony that they have a
9 reasonable doubt as to the accuracy of any identification,
10 they must find the defendant not guilty.

11 However, based on what has been presented during this
12 Neal v. Biggers hearing, I find that the out of court
13 identification is not unduly suggestive, and is thereby
14 reliable and admissible into evidence during the trial of
15 this case.

16 I understand your concern about the quality of the
17 drivers license photographs, and I believe you will have the
18 opportunity to fully explore that in the presence of the
19 jury during cross-examination so that they can make the
20 determination whether or not that photograph was unduly
21 suggestive or not.

22 Anything else from the State before we proceed, because
23 I have a jury waiting.

24 **DEP. SOL. THORNTON:** Judge, I would like to ask -- I do
25 have one matter we need to approach on and then I would like

1 to ask for a short break. We're still a couple minutes from
2 10:00. I need to get my witnesses out of here, since Mr.
3 Mathews has indicated that he is going to make a
4 sequestration motion. I always like a couple of minutes to
5 instruct the witnesses.

6 THE COURT: Mr. Mathews, anything else on the record
7 before we approach, from the defendant?

8 MR. MATHEWS: No, sir.

9 THE COURT: Counsel approach.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
11 AND OUT OF THE HEARING OF THE COURTROOM.)

12 THE COURT: Anything else on the record from the
13 defendant?

14 MR. MATHEWS: Yes, sir, Your Honor. It's my
15 understanding that the State and the defendant, we jointly
16 stipulate to the toxicology report of Dr. Brewer of Donald
17 Green.

18 THE COURT: Is that correct?

19 DEP. SOL. THORNTON: That is correct, Your Honor. It
20 is performed in every autopsy. I believe that Charleston
21 always sends it to NMS Labs, and I have certainly no issue
22 with the test. I think it's a valid test.

23 THE COURT: So stipulated then. I also understand that
24 Mr. Mathews has moved -- I pointed out to him the rule of
25 615, Mr. Mathews, of the Rules of Evidence, of

1 sequestration. I've informed both sides that as to anybody
2 they subpoenaed, they have to be in this courtroom, because
3 I don't know when the State's going to end and Mr. Mathews
4 asked for an estimate, and Mr. Thornton had gave it to him.
5 But his witnesses have to be here ready to proceed, and it's
6 my intention to start at 10:00. We'll take one break in the
7 morning. We'll stop for lunch at 1:00, come back at 2:00,
8 and we'll work until at least 5:00 or 5:30 this afternoon,
9 with one break this afternoon, so that counsel knows the
10 Court's schedule. Mr. Mathews is responsible for advising
11 all of his witnesses. Obviously, the defendant stays, the
12 case manager, who is Det. Williams; is that right,
13 Solicitor?

14 **DEP. SOL. THORNTON:** It is, Your Honor.

15 **THE COURT:** All other witnesses will be kept in a
16 designated area, and by "designated," I will give either one
17 of you a room. We've got -- I don't want a room where the
18 jury -- where the jury is located, but I understand the
19 Solicitor has got their little conference room. What other
20 room do I have available downstairs, Madame Clerk?

21 **MADAME CLERK:** We have the defendant and the
22 plaintiff ---

23 **THE COURT:** I've got both family court rooms
24 downstairs. Which one do you want?

25 **MR. MATHEWS:** The defendant's room is fine.

1 THE COURT: All right. The defendant's room downstairs
2 for the defendant and the Solicitor's conference room for
3 the Solicitor. Is that where you're keeping your witnesses?

4 DEP. SOL. THORNTON: Judge, I have enough, but we might
5 have some spill over, and I'll keep them in the conference
6 room and in my office. They're right next to each other.

7 THE COURT: As long as your victim's assistance officer
8 can find your witnesses so we don't have to go on an Easter
9 Egg Hunt during the trial.

10 DEP. SOL. THORNTON: That's why she's sitting behind
11 me, Judge.

12 THE COURT: All right. Do you understand my ruling on
13 your motion, Mr. Mathews?

14 MR. MATHEWS: I do, Your Honor.

15 THE COURT: You understand it, Mr. Thornton?

16 DEP. SOL. THORNTON: Yes, sir.

17 THE COURT: Please advise your witnesses. It's my
18 intention -- we'll take five minutes right now -- my
19 intention to start in five minutes.

20 DEP. SOL. THORNTON: Yes, sir.

21 (OFF THE RECORD FROM 9:56 A.M. TO 10:05 A.M.)

22 THE COURT: Mr. Thornton, have you advised your
23 witnesses concerning my Order for sequestration?

24 DEP. SOL. THORNTON: I have, Your Honor, and I believe
25 all of my witnesses are now out of the courtroom.

1 THE COURT: Very well. Mr. Mathews, have you advised
2 your witnesses concerning my granting your request for
3 sequestration?

4 MR. MATHEWS: Your Honor, I told -- I understand Kathy
5 Fishburne knows not to be in here, and appears not to be.

6 THE COURT: Check the courtroom and tell me if your
7 witnesses are present, and it's your responsibility, Mr.
8 Mathews, to let your witnesses know. If you got any, they
9 need to leave now.

10 MR. MATHEWS: If there are any witnesses that I have
11 subpoenaed or talked to -- if there are any witnesses that
12 are intended that I have called or talked to about Derrick
13 Fishburne's case, I won't be calling until tomorrow, but you
14 can't be in the courtroom.

15 DEP. SOL. THORNTON: That goes for the State as well.
16 Are there any witnesses who have been talked to or
17 subpoenaed by either side in the case of the State v.
18 Derrick Fishburne, if there is any, leave the courtroom now.
19 Tell us who you are and we'll tell you which room to go
20 into.

21 There appear to be none, Judge.

22 THE COURT: Very well. You're satisfied none of your
23 witnesses are in the courtroom, Mr. Mathews?

24 MR. MATHEWS: I am, Your Honor.

25 THE COURT: And it is your responsibility, in light of

1 your making the motion, to advise your own witnesses
2 concerning the order of sequestration. They are not allowed
3 to be able to talk to each other or any other witnesses
4 until I authorize them to do so. Do you understand?

5 MR. MATHEWS: Absolutely, Your Honor.

6 THE COURT: Very good. Do you understand, Mr.
7 Thornton?

8 DEP. SOL. THORNTON: I do, Your Honor, and for the
9 record, because of the conference we had at the bench, I
10 have instructed all of my witnesses who are under subpoena,
11 that once they are finished testifying, that they are
12 considered on standby. They are not to talk to anybody, and
13 I'm going to try to get them excused, but put them on
14 standby, and if Mr. Mathews needs them, or informs me that
15 he needs them, that I will call them and have them brought
16 back up to Court if necessary.

17 THE COURT: Very well. Bill, we got all the jury?

18 BAILIFF: Yes, sir.

19 THE COURT: Bring them in for me.

20 (10:08 AM, 7-20-10, WHEREUPON THE JURY ENTERS THE
21 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
22 RECORD.)

23 THE COURT: Good morning, ladies and gentlemen of the
24 jury. Thank you for your patience. We've been working long
25 before you got here this morning to try to shorten the time

1 that your presence might be required. Madame Clerk, would
2 you please swear the jury?

3 MADAME CLERK: Yes, I will. Madame Foreperson and
4 ladies and gentlemen of the jury, would you please stand and
5 raise your right hand?

6 (WHEREUPON, THE JURY IS SWORN.)

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, before we begin this trial, I want to tell you that
9 this trial will probably be different from what you may or
10 might expect. You know, and I say this a lot in Court, most
11 people, many people do not have the chance to attend actual
12 court sessions as each of you are doing now. And many
13 people think from watching television or going to a movie or
14 reading in a book that trials are always full of high drama
15 and intense action and riveting and entertaining
16 circumstances. While all of those things, ladies and
17 gentlemen, may be true, at time, a trial, an actual trial is
18 not for entertainment. It is a fundamental part of our
19 democracy.

20 An actual trial, ladies and gentlemen of the jury, is a
21 search for the truth in an effort to make sure that justice
22 is done between the parties before the Court. Searching for
23 the truth and making sure that justice is done is often
24 slow. It is often deliberate. It is often repetitive. The
25 exact opposite of what many of you may have seen on

1 television or in a movie or read in a book. This courtroom,
2 ladies and gentlemen of the jury, is a place of honor. It
3 is dedicated to the protection and the preservation of
4 citizen's rights, through what many people have called the
5 greatest justice system ever created.

6 The attorneys appearing before you are advocates for
7 the parties they represent. But first and foremost, the
8 attorneys are officers of this Court, and as an officer of
9 this Court, the attorneys are sworn to uphold the integrity
10 and the fairness of our judicial system, and to help you in
11 a search for the truth. You should expect the attorneys to
12 be professional. You should expect the attorneys to be
13 competent. You should expect the attorneys to be ethical
14 and courteous in the representation of their client's
15 interest.

16 Now, I will remind each of you that each of you just
17 took an oath from the clerk of court, and in that oath, just
18 like the oath that the attorneys took, to uphold the
19 integrity and fairness of our judicial system, and the oath
20 that you took, you said you would try this case and you
21 would reach a fair and a just verdict in this case. so you
22 as jurors, just like the attorneys, are also under oath.
23 You are expected to be professional and to be reasonable and
24 to be ethical in the discharge of your duties as jurors.

25 Before we even begin the trial, I want to thank each

1 and every one of you for accepting what I believe to be a
2 very important responsibility of jury service. I want to
3 thank you before we begin for your contribution today of our
4 justice system. Without you, ladies and gentlemen of the
5 jury, justice can never be accomplished in a courtroom, and
6 I thank you for that service.

7 Now, ladies and gentlemen, and Madame Foreperson, the
8 case that we're about to try is the case of the State of
9 South Carolina v. Derrick Fishburne, who is the defendant.
10 You met Mr. Fishburne when I was asking you questions to
11 determine your impartiality to serve as a juror.

12 The defendant is charged by these two pieces of paper
13 that I'm holding in my hand which we call indictments. The
14 defendant is charged with the crime of murder in one
15 indictment, and with the possession of a weapon during the
16 commission of a violent crime in the second indictment.
17 Now, I'm going to explain all of the elements of those
18 crimes, to you in my charge to you on the law at the
19 conclusion of the case. For right now, as we begin, you, as
20 jurors, should understand that the indictment is simply the
21 charge by which the case is brought in to this court, and
22 that the indictment is not in any sense, evidence of the
23 allegation that it contains.

24 Now, the defendant has pled not guilty to each of the
25 indictments. The State of South Carolina, therefore, has

1 the burden of proving each of the essential elements, which
2 I will explain to you at the conclusion of the case, of the
3 indictment beyond a reasonable doubt. And it will be your
4 duty, ladies and gentlemen of the jury, to decide whether or
5 not the State has met that burden.

6 It is your solemn responsibility, ladies and gentlemen,
7 to determine the guilt or the innocence, of the defendant;
8 and your verdict must be based as jurors, solely on the
9 evidence as it is presented to you in this trial and on the
10 law as I instruct it to you to be during the trial, and at
11 the conclusion of the trial in my charge to you on the law,
12 at the conclusion of the trial.

13 Now, in just a minute, the Deputy Solicitor will make
14 what is called an opening statement. He represents the
15 state of South Carolina in which he will explain to you the
16 issues in this case, or at least what he contends as an
17 advocate for the State of South Carolina to be the issues in
18 this case. Following that, the attorney for the defendant,
19 Derrick Fishburne, will make an opening statement.

20 Now, I want to tell you that the attorneys have worked
21 hard to prepare the case, both for the State of South
22 Carolina and the defendant, but what the attorneys tell you
23 in opening statement, and what the attorneys argue to you at
24 the conclusion of the case, is not evidence in this case.
25 The attorneys are advocates for the parties they represent,

1 and when they stand up before you in opening statement, it
2 is only their contention as to what the issues are and in
3 their closing argument, it is simply their argument as to
4 what evidence you should rely on in reaching your decision
5 as a juror.

6 Now, I've told you that you as a juror must base your
7 decision solely upon evidence introduced during the trial of
8 this case. The evidence in this case will be presented to
9 you by testimony of witnesses, sworn witnesses who will take
10 an oath and step up on this witness stand. Or it may be by
11 some exhibit that is introduced into evidence, like a
12 photograph or a model, or something of that nature, but as
13 to any such exhibit before you see it, you will hear me say
14 it is in evidence. That means it is available to you for
15 your consideration during your deliberations as a juror.

16 So evidence may also take another form, sworn
17 testimony, an exhibit, we may have in this case a
18 stipulation where the parties agree to a fact as being true
19 so that it isn't necessary to prove the fact and you would
20 accept that fact as being true if the parties stipulate to a
21 fact. So those are the forms that evidence may take, sworn
22 testimony, an exhibit, or a stipulation.

23 Now, in the consideration of this evidence, I want you
24 to remember that you must base your decision solely and upon
25 evidence introduced during the trial of the case. You

1 should remember that under the Constitution of the State of
2 South Carolina, you, and you jurors alone are the sole
3 judges of the facts in this case. The same law that makes
4 you the sole judges of the facts in this case, makes me the
5 sole judge of the law. I cannot invade your province,
6 ladies and gentlemen of the jury, and tell you or suggest to
7 you or comment in any way to you about what the facts are.
8 And you should not invade my province and differ with me
9 about what the law is.

10 Everything that I say during the course of this trial
11 is being taken down by Becky Hill, my court reporter down
12 here, and if I make a mistake as to the law, to the
13 detriment of a party, they can appeal the case to the
14 Supreme Court, or the Appellate Court, and if the Appellate
15 Court agrees that I've made a mistake, they will reverse the
16 case and send it back for a new trial if I make a mistake on
17 the law. So don't you worry about whether or not I've told
18 you the law correctly, that is somebody else's worry. That
19 is not your concern. Your job is to take the law as I give
20 it to you in my charge to you on the law at the conclusion
21 of the case and in any rulings or charge I give you during
22 the trial, you take the law as I give it to you, and you
23 apply it to the facts as you find them to be based on
24 evidence introduced during the trial of the case, and that
25 is based on the testimony of witnesses from the witness

1 stand, any exhibits which may be introduced into evidence,
2 or any stipulation or agreement as to a fact which may be
3 entered into by the parties during the trial of the case.
4 And after doing that, you will be in a position to render
5 your verdict at the conclusion of the case, a true and just
6 verdict under that oath which each of you just took from the
7 Clerk of Court of Colleton County.

8 Now, from time to time during the trial of this case,
9 you may hear one of the lawyers say something like, "Your
10 Honor, I believe we have a question of law that we'd like to
11 discuss with you." Or you may hear them say something like,
12 "Your Honor, may we approach the bench? We need to speak
13 with you at the bench." Or I, myself, might find it
14 necessary that you be excused from the courtroom. I'll send
15 you to your jury room for a little while, while the
16 attorneys and I discuss a matter of law.

17 Now, the reason for this is not because we're trying to
18 hide anything from you. The reason for this is because just
19 what I've told you. You're the sole judges of the facts in
20 this case, and sometimes when I'm discussing a matter of law
21 with the attorneys, I have to, by necessity, make a comment
22 to them about the facts in the case in order to rule on
23 whether or not a particular piece of law applies in this
24 case. Now, I'm not supposed to tell you, the jury, what I
25 think the facts are, so the practice in this state is to

1 excuse you from the courtroom when any such discussion like
2 that takes place. We either try to do it outside of your
3 hearing or we do it outside of your presence, so that you
4 won't be influenced by anything that I might say or do in
5 ruling on whether or not a particular piece of law applies
6 to the trial of this case. You're the sole judges of the
7 facts. I'm the sole judge of the law. And if you should
8 gather from anything that I might say or do during the
9 course of this trial that I have any opinion whatsoever as
10 to the facts in this case, please erase that from your mind,
11 because as I have said, ladies and gentlemen, you and you
12 alone are the sole judges of the facts in this case.

13 Now, how do you as a juror determine what the true
14 facts are, based on the evidence introduced during the trial
15 of this case? Ladies and gentlemen, you will, of necessity
16 as a juror, have to pass upon the credibility, which simply
17 means the believability of the witnesses who will take this
18 witness stand and take an oath and testify during the trial
19 of this case. Let me illustrate our roles. It will be my
20 responsibility to rule as a matter of law as to whether
21 certain testimony is admissible at all or not. But once I
22 have allowed the testimony to be admitted into evidence,
23 whether or not you as a juror believe the testimony, is
24 solely a matter for you, the jury, to determine.

25 And in passing upon the credibility, or the

1 believability, of the witnesses who will testify during the
2 trial of this case, you have the right as a jury to take
3 into consideration the interest of any witness, the bias of
4 any witness, the prejudice if any of any witness, the
5 opportunity for the witness to have observed the matters and
6 things about which he or she may testify. You may even take
7 into consideration in deciding the believability and
8 credibility of the witnesses, the demeanor, or the
9 appearance, of the witness while the witness is on the
10 witness stand.

11 Anything that is in evidence, ladies and gentlemen of
12 the jury, you as a juror have the right to consider.
13 Anything that will aid you and assist you that's in evidence
14 in evaluating the testimony of the several witnesses who
15 will testify during the trial of this case, you as a juror
16 have the right to consider. And that means, Madame
17 Foreperson and ladies and gentlemen of the jury, that means
18 that you need to pay close attention to the witnesses.
19 Under that oath that each of you took, it is your duty under
20 your sworn obligation as jurors to listen to the witnesses,
21 to observe the witnesses, to pay close attention to the
22 witnesses. Don't let your thoughts wander, but give strict
23 attention to the witnesses and to the testimony and evidence
24 presented during the trial of this case, so that at the
25 conclusion of all the testimony, and at the conclusion of

1 all the evidence, and after you've heard the final arguments
2 of the attorneys and you've heard my charge to you on the
3 law at the conclusion of the case, you as a juror because
4 you listened, because you gave strict attention, because you
5 observed the witnesses, you have placed yourself in a
6 position to determine from listening and observing what the
7 true facts are and apply the law as I give it to you to be
8 and I charge it to you to be to the facts as you find them
9 to be, based on evidence introduced during the trial of the
10 case; and thus you will then render a true and a just
11 verdict in the case.

12 Now, you must not consider anything, ladies and
13 gentlemen, that you have read or heard about this case
14 outside of this courtroom, whether before or during this
15 trial. And until this case is submitted to you under my
16 instructions, you must not discuss it with anyone. Not even
17 a member of your own family or your fellow jurors. It's
18 very important that after it is submitted to you that you
19 discuss it only in your jury room with your fellow jurors.
20 It's important, as I told you, that each of you keep an open
21 mind, and not decide the case until the entire matter has
22 been submitted to you under my instructions at the
23 conclusion of the case.

24 So at any time during this trial, I'm going to be
25 telling you as I told you last night, no newspaper, no

1 television, no radio, no computer checking by internet. We
2 have had in the past some jurors who thought they were
3 conscientious, not only can you cannot discuss the case with
4 others, including other jurors, but you can't listen or
5 observe any news report about the case or use a computer or
6 cell phone or any other electronic device with communication
7 capabilities and you can't try to use it to obtain or
8 disclose information about a case, while you're in court or
9 out of court.

10 You are confined to listening to the evidence so that
11 both sides know exactly what basis you're making your
12 decision on in this case and no external basis as I have
13 instructed you throughout the trial. Now, ladies and
14 gentlemen of the jury, it will be your added duty, Madame
15 Foreperson, to preside in the jury room and it will be --
16 you will be the jury spokesperson out here in the courtroom
17 if that need arises in the trial of the case. But it will
18 also be your duty to write the jury's verdict. But I will
19 give you a verdict form at my conclusion of the charge on
20 the law in which to write the verdict on. You'll sign your
21 name as foreperson and put the date and the verdict on it.
22 My law clerk, Nick Rivera, knows -- you'll notice I'm
23 holding the indictments in my hand. You'll notice I'm
24 putting them over by him. He's going to be looking for you
25 at the conclusion of the trial, so don't leave, because

1 he'll want you to sign the exact same thing that you write
2 on the verdict form on the indictment, your name, the date,
3 and the verdict on the indictments.

4 Now, we've had a little problem this week with noise.
5 You'll notice that I have a microphone. I talk loud. I've
6 shot a shotgun all my life and I didn't wear ear protection.
7 My sons, I try to get them to do it. I've had a loss of
8 hearing from it, and some of you may have suffered from
9 that: It's real important that you be able to hear. That's
10 why we amplify -- obviously, when you have high ceilings
11 like this and when you get away from the microphone it makes
12 all the difference in the world, and we have some people who
13 have very timid voices. If you can't hear at any time, you
14 raise your hand for me. I'll be watching all thirteen of
15 you throughout the trial. If at any time you cannot hear
16 something, you simply raise your hand. If an exhibit is
17 introduced into evidence in the trial of this case, lawyers
18 have a tendency to walk up; they like to approach the
19 witness. They know they cannot do that without my
20 permission, because it blocks your view of the witness.
21 They like to come stand right here where the people on this
22 end of the jury box can't see the witness. They know I
23 don't allow that. They know the rules and so you'll
24 understand why we have them. I want you to be able to see
25 at all times throughout the trial of the case. So if an

1 exhibit is introduced into evidence and you can't see it
2 because of the angle they're holding it up, if it's
3 introduced into evidence, raise your hand for me. I want my
4 jurors to be able to hear and to see at all times throughout
5 the trial of the case.

6 Now, Madame Foreperson, and ladies and gentlemen of the
7 jury, we do not normally allow jurors to ask questions here
8 in the courtroom. If a member of the jury ever has a
9 question, here is the procedure we have to follow. You will
10 retire to your jury room if you're not already in the jury
11 room. Madame Foreperson, you will write the question on a
12 piece of paper, give it to my bailiff, he will bring it out
13 to me. I will then rule as a matter of law whether or not
14 the question can or cannot be answered, just as I would any
15 question asked by either one of the attorneys during the
16 trial of the case.

17 Now, I've tried it both ways. I ask that you don't
18 take written notes. You wonder why, and I'll tell you why.
19 I see you've got your pad, Madame Foreperson; because I've
20 found that if the written note taker makes an error in the
21 written notes, the notes can be harmful rather than helpful
22 in your jury room once deliberations begin. The time-tested
23 system is for each of you to listen and listen carefully,
24 and we're making an audio recording, ladies and gentlemen,
25 if you worry about remembering. I don't have a video

1 recording, but I can play back an audio recording of any
2 witness's testimony during the trial of the case, so I ask
3 that you do not take written notes during the trial of the
4 case. Thank you for being conscientious. I've tried it,
5 and I think it's safer to do it that way.

6 We do not allow cell phones or beepers at any time
7 while you are on jury duty, obviously, for obvious reasons.
8 I know that everybody has a cell phone now and I know
9 everybody thinks it's important to have their cell phone and
10 get their messages, but while you're on jury duty, they're
11 not permitted, in your jury room or at any time. So,
12 please, I'm required to confiscate them. I don't want
13 anybody's cell phone or beeper, so please just don't bring
14 them to court while you're on jury duty this week.

15 Now, Court is going to start, normally, we start at
16 9:30, but this morning we started a little after 10:00
17 because we had a long pre-trial hearing. We were here at
18 8:00 this morning, long before you got here. That's going
19 to happen sometimes in a trial. You have to be a little
20 patient because I have to hear things to determine whether
21 you can hear things. And that's the purpose of my ruling on
22 matters of law so that you can evaluate whether or not you
23 believe certain testimony. You're the sole judges of the
24 facts; I'm the sole judge of the law.

25 We're going to take one break this morning, and we'll

1 stop for lunch around 1:00. I don't want you to think --
2 and they've filled out their lunch order, haven't they, Pat?

3 MADAME CLERK: Yes, I have all of them.

4 THE COURT: All right. We're going to have it here
5 around 1:00. We will take one mid-morning break; we'll come
6 back around 2:00. I'll take one mid-afternoon break and I
7 promise you I won't keep you as late this afternoon as I did
8 last night so you can get home in a timely fashion to your
9 families and return back to your homes.

10 Now, ladies and gentlemen, I do not intend that what
11 I've said to you right now should be construed as a charge
12 on the law. As I've told you, I'm going to charge you the
13 complete law in this case. I haven't heard the evidence just
14 as you haven't heard. Once I've heard the evidence, I have
15 to decide what law applies to this case. I'll charge you
16 the elements of the crime at the conclusion of the case.
17 I'll charge you the law that applies to this case in my
18 charge to you on the law at the conclusion of the case.

19 This has been merely an attempt on my part to briefly
20 explain to you some of the procedure that we will follow in
21 the trial of the case, so that you will have a better
22 understanding of what will be happening from time to time.
23 We have rules that we follow. The State goes first. The
24 State has the burden of proof. They'll make the first
25 argument and followed by the opening statement by the

1 defendant. I want you to have an understanding of what may
2 be happening from time to time and that is why I'm
3 explaining this procedure to you.

4 Now, ladies and gentlemen, what they tell you is not
5 evidence, but I want you to listen to them. They're going to
6 be courteous to each other, to the Court, and they're going
7 to try to assist you in your search for the truth in this
8 matter. But what they tell you in opening statement or
9 closing argument is not evidence. I remind -- they're
10 advocates for either the State or the defendant. I remind
11 you that you must base your sole decision in this case
12 solely upon evidence introduced during the trial of this
13 case when both sides are present with the right of cross-
14 examination. In order to preserve everyone's rights, I'll
15 give the parties an opportunity to accept or reject anything
16 I've said to the jury. Anything from the State?

17 DEP. SOL. THORNTON: No, Your Honor.

18 THE COURT: Anything from the defendant?

19 MR. MATHEWS: No, sir.

20 THE COURT: Very well. We will now begin the trial of
21 this case. Please listen carefully to the attorneys.

22 DEP. SOL. THORNTON: May it please the Court?

23 THE COURT: Yes, sir.

24 DEP. SOL. THORNTON: Mr. Mathews?

25 OPENING STATEMENT

1 DEP. SOL. THORNTON:

2 April the 9th, late in the evening, on into April 10th
3 of 2009, here in Walterboro at the Spirit's Lounge, numerous
4 shots rang out in the parking lot at the Spirit's Lounge and
5 that's why we're here today. We're here because Derrick
6 Fishburne murdered Donald Green in cold blood. You're going
7 to hear testimony about multiple gunshots striking the
8 victim. You're going to hear eyewitness testimony
9 indicating that Derrick Fishburne, D-Rock, is the person
10 that did the shooting. That's why we're here today, because
11 Derrick Fishburne murdered a man in cold blood.

12 One of the things that the judge told you earlier, and
13 I'll reiterate for you, nothing that I tell you is evidence.
14 Nothing that Mr. Mathews tells you is evidence. The only
15 evidence you're going to get is what comes from that stand,
16 any stipulations we have or exhibits that the judge allows
17 into evidence. That's what you have to decide this case on.

18 Another thing you need to know up front, this is not
19 television. This ain't CSI. This is real life. These are
20 real people involved. I don't believe this case, Ladies and
21 gentlemen, is going take more than probably two to two and a
22 half days. It's not like it is on television. It's not
23 like it is in some other states where cases take weeks, like
24 out in California that you hear about. This case is
25 probably going to be over in a couple of days, but don't

1 confuse the fact that this case is going to be short that
2 it's not important. If it wasn't important then we wouldn't
3 be here. A man is dead and he was killed by Derrick
4 Fishburne, and it's my job to prove that to you beyond a
5 reasonable doubt, and you're going to hear that phrase a
6 lot, and you'll hear it in the judge's charge. That's my
7 burden, and it's one that we gladly undertake in this case.
8 All we can ask, ladies and gentlemen, is that you don't
9 leave your common sense at the door. You are picked as
10 jurors because we want you to be fair and impartial. We
11 want you to evaluate all of the evidence. Use your common
12 sense, ask questions if you need to, and come to that final
13 result. The only final result in this case, Ladies and
14 gentlemen, that makes any sense at all is a guilty verdict
15 against Derrick Fishburne for the cold-blooded, brutal
16 slaying of Donald Green early on the morning of April 10th,
17 2009, here in Walterboro at the Spirit's Lounge. Thank you.

18 THE COURT: Mr. Mathews?

19 MR. MATHEWS: Thank you, Your Honor. Mr. Thornton?

20 OPENING STATEMENT

21 MR. MATHEWS:

22 Madame Foreman, ladies and gentlemen of the jury, I'm
23 David Mathews, as I said at the beginning, and I represent
24 Derrick Fishburne. The purpose of opening statement, as the
25 judge has told you, is to sort of maybe give you a guideline

1 of what the evidence will probably show. The Solicitor,
2 obviously with the burden of proof has to start. That was
3 long on argument, short on actual facts of what will come
4 from that stand. And after all, as the judge has told you,
5 what Mr. Thornton says, what I say, these are arguments.
6 We're advocating a position. The only thing that matters is
7 what comes from that witness stand. What do I think is
8 going to come from that witness stand? What I believe you
9 will see, there's not going to be any question, the State
10 will be able to prove that Donald Green was shot numerous
11 times, six times, five times, a lot. A lot of times in
12 front of the Spirit's Lounge, at about 1:30, 1:26, or
13 something like that, in the morning of April the 10th,
14 Thursday night going into Friday morning.. There won't be
15 any question about that. That happened. Somebody obviously
16 did it. Then, it gets a little confusing. There were a lot
17 of people in front of Spirit's Lounge that night. I think
18 the evidence will show that there were cars up and down
19 Jefferies. This on past Birdie and whatever it is down
20 there, on past The Loop, on Jefferies, going out on
21 Jefferies. Cars up and down the place. I think the
22 evidence will show that it was dark out in front of there.
23 There were people coming in and out of the club. And that
24 after the shooting, there were a lot of different stories
25 floating around about what happened. I think the evidence

1 will show that there were at least three different, very
2 different, versions that the police had to investigate.

3 One of the versions that I think they will tell you
4 about is that there were shots fired from a car, a Gold
5 Honda, and also a Chrysler 300. I think the evidence will
6 show that they investigated that, but not completely. That
7 they got a search warrant to look at a Chrysler 300 on April
8 the 27th, or somewhere, at least a week after the shooting
9 took place. I think the evidence will show there were other
10 versions, too. That various people ran to a couple of
11 different cars and took off. And one of the versions is
12 that Derrick Fishburne, or D-Rock, or somebody like that, a
13 name, not a description, a name, shot Donald Green. That's
14 one of the things they had to look at. One of the people, a
15 name comes up, and then after the name, a description. I
16 think the evidence will show that a photo lineup -- that
17 after that, into the morning, pretty early, that once D-Rock
18 came up, police knew Derrick Fishburne as D-Rock. One of
19 the names that came up, they investigated. Det. Williams
20 and Det. Johnson interviewed different people, a couple of
21 people they interviewed that night; they interviewed Fatimah
22 Washington. They interviewed Kenneth White. They
23 interviewed the bouncer, the person checking the door. They
24 interviewed at least three or four different people that
25 night that were at the club.

1 Deputy Sheriff Buchanan arrived on the scene, I think,
2 first, and he got there and you can see that the scene was
3 chaotic. There were people walking back and forth all over
4 the place. And that whatever kind of crime scene they had,
5 the integrity of that crime scene, I think the evidence will
6 show it was pretty mixed up. There were footprints going
7 through the blood. There was a lot of blood. There were a
8 lot of shells out there. It was pretty bad.

9 I think the evidence will show that a few minutes
10 later, another detective got there. Another officer got
11 there, Officer Regalado got there next. He took a couple of
12 statements. He took a statement, I think, from the door man
13 and the bouncer.

14 Investigators arrived on the scene; Det. Inabinett
15 arrived on the scene. Det. Williams, was the lead
16 detective, who's here, he got on the scene. They took
17 statements and they investigated into the night. They were
18 tired, but they were doing their job. They were out there
19 and taking statements. Once the name D-Rock came up,
20 though, once the name Derrick Fishburne came up -- they
21 interviewed Matthew Goodwin for a long time, too, and he
22 was, I think, too, evidence will show their first suspect.
23 He was in a Gold Honda.

24 I think the evidence will show that they had made a
25 decision that before the morning was out, once they had the

1 name Derrick Fishburne, once they had that name, they had
2 their guy. I think the evidence will show they picked him
3 up from roll call on Friday, the next day. He was already
4 in court. He might qualify as a usual suspect. He was an
5 easy guy for them to get, because he was in Court anyway.
6 They picked him up from roll call on April the 10th, and
7 they took him back to the Sheriff's Office Annex and they
8 interviewed him. Now, because he had involvement with them
9 before, I think the evidence will show he said, "I wasn't
10 there." I think the evidence will show that there's a long
11 video tape and you will have a chance to look at that.

12 He said, "I'm not saying anything," pretty much. "I
13 wasn't there. I don't know what you're talking about." And
14 at the end of that interview, they arrested him. One of the
15 things he told me was, "I was at my girlfriend's house all
16 night. I was at Lorinda Williams -- Penny Williams' house,"
17 and I think the evidence will show that they went and
18 checked with Penny, that he was not there. That he had, in
19 fact, left the house at some time during a time when he
20 could have been at the club, and I think the evidence will
21 show from different witnesses, I think the State will be
22 able to prove that he was, in fact, at the club. But they
23 arrested him before they checked that out. I think the
24 evidence will show that he was arrested at the end of that
25 interview and they didn't check out Penny's story until

1 later. It didn't check out. He told a lie.

2 I think the evidence will show though that the other
3 evidence they looked at, on the basis of it, they got a
4 search warrant to search this Chrysler 300, one of the other
5 stories they had gotten that night. They took fingerprints
6 from the Chrysler 300. They didn't send it to SLED.

7 I think the evidence will show that they searched
8 Lorinda Williams' home for any evidence that might show, I
9 don't know, a gun, something like that. I think the
10 evidence will show that they got nothing on that, nothing.
11 Hours -- hours after this happened, they had a chance to
12 search this and found nothing. I think the evidence will
13 show that photo lineups were shown to different witnesses,
14 but photo lineups, you'll have a chance to see those. I
15 think the evidence will show that the photo lineups were
16 just basically pictures of other people that looked like
17 somebody they assumed to be D-Rock, or Derrick Fishburne.
18 And that actually the driver's license they used for that, I
19 think the evidence will show that it didn't look like how
20 Derrick actually looked that day.

21 I think the evidence will show that his hair was
22 braided tightly to his head. You'll see it in the interview
23 tape show it. It wasn't dreds that were sticking up, but
24 tight to his head. And I think the evidence will show in
25 that dark, dark area that the witnesses had to see, it's a

1 huge difference.

2 I think the evidence will show that the driver's
3 license picture that they used in the photo lineup didn't
4 look anything like the hair in the dark that you would have
5 seen. It didn't look like Derrick Fishburne looked that
6 day, but it didn't matter. I think the evidence will show
7 that a name was pursued and not a description, and not a
8 person.

9 Listen carefully to what comes from that stand, but
10 don't rush to judgment. As the Court advised, this is a
11 slow and deliberate process, not something that should
12 happen just like that.

13 Listen carefully to the evidence, and when you do, I
14 believe you will find that the State has not proved its case
15 beyond a reasonable doubt. Thank you.

16 **THE COURT:** Call your first witness.

17 **DEP. SOL. THORNTON:** The State calls Tony Buchanan.
18 He's being brought in now, Your Honor.

19 **MADAME CLERK:** Please come forward to be sworn.

20 **WHEREUPON,** OFFICER TONY BUCHANAN IS DULY SWORN.

21 **THE COURT:** Watch your step on the stairs. Have a
22 seat. Make yourself comfortable. Use that microphone.
23 It's going to amplify your voice. State your full name and
24 spell your last name for the court reporter.

25 **WITNESS:** Anthony Buchanan, B-U-C-H-A-N-A-N.

1 THE COURT: Your witness, counsel.

2 DIRECT EXAMINATION

3 BY DEP. SOL. THORNTON:

4 Q Mr. Buchanan, do you also go as Tony Buchanan?

5 A Yes, I do.

6 Q Tony, where do you work?

7 A Colleton County Sheriff's Office.

8 Q All right, sir. In what capacity?

9 A I'm a traffic officer, the traffic unit.

10 Q All right, sir. Did you work for the Sheriff's Office
11 on or about April the 10th, 2009?

12 A Yes, sir.

13 Q All right, sir. Did you respond out to the Spirit's
14 Lounge on a call?

15 A Yes, I did.

16 Q All right. Do you remember about what time it was?

17 A Between 1:00 and 1:30.

18 Q All right, sir. Would 1:26, or thereabouts, be close?

19 A Yes, sir.

20 Q All right. When you arrived at Spirit's, what kind of
21 a call was it?

22 A It was a shooting call.

23 Q All right. What happened when you got there?

24 A Upon arrival, when I pulled up in front of Spirit's,
25 there was a black man laying beside the tire of a vehicle

1 just outside of the door and blood had already come down
2 around his body. There were probably about 250-300 people
3 there. They were trying to grab the body when I pulled up
4 and said, "The police is here. The police is here. Let's
5 go. Let's go." I tried to exit my vehicle and they started
6 jumping on me as to fight me or harm me. I got back in my
7 patrol car and backed up until I could get some more units
8 there to help me.

9 Q All right, sir. And did you call out for more units?

10 A Yes, I did.

11 Q All right. And did more units arrive?

12 A Yes, they did.

13 Q Can you tell me who arrived?

14 A I think John Edwards was first on the scene and then
15 Sgt. Dunham arrived on the scene. They all kind of got
16 there at the same time.

17 Q How about Officer Regalado?

18 A Regalado got there. They all were coming from the same
19 place, so they were one right behind another.

20 Q All right, sir. What did you do once they got there?

21 A I exited my vehicle. Officer Regalado and Officer
22 Edwards started CPR on the man while the rest of the
23 officers tried to get the crowd under control, back them off
24 of us. They were still wanting to fight us.

25 Q All right. And did you put up any tape or anything

1 like that at that time?

2 A Once we -- once the medical unit had got there and got
3 the victim out of the roadway, out of the middle of the
4 parking lot, we started putting up tape. And, of course, by
5 this time, the whole crowd had dispersed. I mean, there was
6 no one to be found.

7 Q All right, sir. Other than that, other than scene
8 control once you got there and got backup, did you do
9 anything else in this?

10 A No, the only thing I did was crowd control and waited
11 for the Lieutenant of CID to get there.

12 Q All right. Did you collect any evidence or anything
13 like that?

14 A No.

15 Q All right. I don't have any further -- Oh, I do have
16 one question. I may sound silly, Tony. Where is Spirit's
17 Lounge?

18 A It's on Highway 15 going out of town, probably about
19 four miles out of Walterboro.

20 Q All right, sir. And is that in Colleton County?

21 A Yes, it is.

22 Q All right. Thank you very much. I don't have any
23 further questions. Please answer any questions that Mr.
24 Mathews has.

25 THE COURT: Cross-examination.

1 MR. MATHEWS: Thank you, Your Honor,

2 CROSS-EXAMINATION

3 BY MR. MATHEWS:

4 Q Officer Buchanan, would it be a fair assessment that
5 the crime scene was pretty infested at that time?

6 A Yes. There was a lot of people there.

7 Q And were people walking through the blood and things
8 like that? Footprints and stuff like that on the scene?

9 A I don't recall any footprints.

10 Q Did you allow one of the detectives to use your camera
11 to take pictures?

12 A I don't recall.

13 Q Could have been?

14 A Could have been.

15 Q Did your in-car camera? Was that on that night?

16 A Yes, it was.

17 Q And did you submit that, the tape from that, the CD
18 from that to evidence?

19 A Yes, I did.

20 MR. MATHEWS: Your Honor -- (TO SOL. THORNTON) do you
21 have any objection to me putting this into evidence?

22 THE COURT: Counsel approach the bench.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
24 AND OUT OF THE HEARING OF THE JURY.)

25 Q Officer Buchanan, did you -- did you take photographs

1 of the scene?

2 A No, I did not.

3 DEP. SOL. THORNTON: Your Honor, may we approach?

4 THE COURT: Counsel approach.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD

6 AND OUT OF THE HEARING OF THE JURY.)

7 DEP. SOL. THORNTON: Without objection, Your Honor.

8 THE COURT: Ask him if he can identify it, counsel.

9 You may approach the witness, counsel.

10 MR. MATHEWS: Thank you, Your Honor.

11 Q Officer Buchanan, I hand you -- I guess we'll mark that
12 as -- what's been marked as Defense Exhibit Number One, and
13 ask you does that look like a video that might have come
14 from your car?

15 A It looks like a video that comes from CID, but we don't
16 -- once we export the videos, it stays in CID. It stays in
17 my file, but that looks like a video that would be burned
18 out of our files for evidence.

19 MR. MATHEWS: Your Honor, subject to at a break,
20 perhaps.

21 THE COURT: Counsel, you don't need to make a comment.
22 Any objection to the introduction of this tape that has been
23 marked as Defendant's One?

24 DEP. SOL. THORNTON: No, sir.

25 THE COURT: All right. My understanding is it will not

1 be published at this time until reviewed by all parties; is
2 that correct?

3 MR. MATHEWS: Yes, sir, Your Honor.

4 DEP. SOL. THORNTON: Yes, sir.

5 THE COURT: All right. Defendant's Exhibit Number One
6 admitted into evidence, without objection. Will be
7 published to the jury after the parties have a chance to
8 review it at a later time. Please proceed. Cross-
9 examination.

10 MR. MATHEWS: No further questions.

11 THE COURT: Redirect?

12 DEP. SOL. THORNTON: None, Your Honor.

13 THE COURT: As to this witness?

14 DEP. SOL. THORNTON: Your Honor, as with the rest of
15 the witnesses, I'm going to ask that he be allowed to leave
16 the courthouse and go back to work. He's on telephone
17 standby. He knows he is not to discuss testimony per the
18 Court's order.

19 THE COURT: You understand my instructions?

20 WITNESS: Yes, sir.

21 THE COURT: Very well. Mr. Mathews, is this witness
22 under subpoena by anyone other than the State?

23 MR. MATHEWS: No, sir.

24 THE COURT: Very well. You may step down and you're on
25 standby. Please don't discuss your testimony.

1 WITNESS: Yes, sir.

2 THE COURT: Call your next witness.

3 DEP. SOL. THORNTON: The State calls Jose Regalado.

4 MADAME CLERK: Please come forward to be sworn.

5 WHEREUPON, JOSE REGELADO IS DULY SWORN.

6 MADAME CLERK: Please have a seat up on the witness
7 stand and state your full name for the record.

8 THE COURT: Be careful on the steps. Have a seat.
9 Make yourself comfortable. That microphone is going to
10 amplify your voice. State your full name and spell your
11 last name for my court reporter, if you would please.

12 WITNESS: Hose Regalado, Jr. Regalado is R-E-G-A-L-A-
13 D-O.

14 THE COURT: Your witness, counsel.

15 DIRECT EXAMINATION

16 BY DEP. SOL. THORNTON:

17 Q Mr. Regalado, what may appear to be a very dumb
18 question, but who do you work for, sir?

19 A At this time, Walterboro Public Safety Department.

20 Q All right, sir. So, Walterboro Police Department?

21 A Yes, sir.

22 Q All right. On or about April 10th, 2009, who did you
23 work for?

24 A I worked for the Colleton County Sheriff's Office.

25 Q All right. Did you respond out to the Spirit's Lounge

1 in reference to a shooting call that night?

2 A Yes, sir, I did.

3 Q Okay. Is the Spirit's Lounge in Colleton County or
4 another county?

5 A Colleton County.

6 Q And when you got there, what did you see?

7 A Cpl. Buchanan was on the scene and he was on the radio
8 screaming for backup because it was a huge crowd. When I
9 arrived, I observed the victim lying on the ground next to a
10 I think it was a Silver Jeep, and he was bleeding profusely.
11 There was a big crowd around him, myself, and Officer
12 Edwards who arrived directly behind me. We pushed the crowd
13 back, checked him, he had a faint pulse and he had gurgly
14 breathing. So, we initiated CPR.

15 Q All right. I know everybody is familiar with that, but
16 describe exactly what you did when you say you started CPR.

17 A Officer Edwards got the point on his chest where we
18 could do the compression, marked it, and initiated
19 compressions on his chest; and he pushed back the crowd and
20 then we swapped out.

21 Q All right, sir. And did you have any difficulty in
22 doing chest compressions?

23 A No, sir.

24 Q All right, sir. And was there anything unusual about
25 what was going on while you were doing chest compressions?

1 A Yes, sir. Every time we made a compression, he had
2 brain matter and blood coming out of his head.

3 Q All right, sir. And was that a result of anything in
4 particular? Did there appear to be wounds of any kind?

5 A Gunshot wounds, yes, sir.

6 Q All right. When you say gunshot wounds, is that your
7 opinion, based on what?

8 A Experience. That's my opinion based on experience.

9 Q All right. What kind of experience?

10 A I've pulled 26 years of law enforcement.

11 Q All right. So have you seen gunshot wounds before?

12 A Yes, sir.

13 Q How many times?

14 A I couldn't tell you how many. A bunch of times.

15 Q All right, sir. Mr. Regalado, after you started CPR,
16 what happened then?

17 A We had the crowd kept coming to us and trying to
18 interrupt. They wanted us to do something; we were trying
19 to do something about it. So, John was pushing back the
20 crowd.

21 Q When you say "John", is that ---

22 A Officer Edwards.

23 Q All right. Go ahead.

24 A He was pushing back and when I got tired of
25 compressions, he took over, and I began pushing back the

1 crowd, keeping them away from the victim.

2 Q All right. Did you perform any evidence collection or
3 anything like that at the scene?

4 A No, sir.

5 Q All right. Did you -- other than CPR and crowd
6 control, did you perform any other duties?

7 A No, sir.

8 Q Thank you very much, sir. If you would please answer
9 any questions that Mr. Mathews has.

10 THE COURT: Cross-examination?

11 MR. MATHEWS: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MATHEWS:

14 Q Officer Regalado, when you arrived, would you say the
15 scene was pretty chaotic?

16 A Yes, sir.

17 Q Would you call -- would you say that the evidence of
18 the crime scene was in tact or polluted at that point?

19 A I would consider it pretty much in tact.

20 Q All right. Did you see, like, any footprints through
21 the blood or anything like that?

22 A I don't recall, sir.

23 Q Okay. Did you take any photos, any pictures that
24 night?

25 A No, sir.

1 Q Did you see any other people taking pictures?

2 A There might have been. My concern was with the victim
3 and we had other officers arriving on the scene doing what
4 they had to do.

5 Q Okay. Now, Mr. Thornton asked you whether or not you
6 did any evidence collection, you did, in fact, take a couple
7 of written statements; did you not?

8 A I believe I did, sir; my mistake.

9 Q From whom did you take statements?

10 A I'd have to look at them. It's been a long time.

11 (MR. MATHEWS SHOWING DOCUMENTS TO SOL. THORNTON.)

12 MR. MATHEWS: Your Honor, may I approach?

13 THE COURT: You may. Counsel approach.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
15 AND OUT OF THE HEARING OF THE JURY.)

16 DEP. SOL. THORNTON: I apologize for the delay, Judge.
17 We'll get the originals in just a second or a suitable copy.

18 (BRIEF PAUSE IN COURTROOM.)

19 DEP. SOL. THORNTON: Judge, I believe we're going to
20 try to use photocopies. I apologize. I didn't know about
21 this.

22 THE COURT: Are you both satisfied with the quality,
23 Mr. Mathews?

24 MR. MATHEWS: Yes, sir.

25 THE COURT: Mr. Thornton?

1 DEP. SOL. THORNTON: Yes, sir.

2 THE COURT: Have the court reporter mark them. Two
3 separate exhibits, Mr. Mathews?

4 MR. MATHEWS: Yes, sir.

5 THE COURT: All right. They are going to be
6 Defendant's Two and Three. Have the witness identify them
7 for the record, please, once they're marked.

8 Q Officer Regalado, I'm handing you what have been marked
9 as Defendant's Two and Three and ask if you can identify
10 those.

11 A Yes, sir.

12 Q And what are those?

13 A These are voluntary statements that were provided.

14 Q Okay. From whom did you take statements?

15 A One was from Matthew Smoak, and that would be
16 Defendant's Exhibit Three, and Defendant's Exhibit Number
17 Two was by Justin Cartrette.

18 Q Okay. And who were those two individuals?

19 A They were people who were at the location the night of
20 the incident.

21 Q Were they working the door?

22 A Sir, I don't recollect unless I read this.

23 Q Go ahead.

24 A Okay.

25 (BRIEF PAUSE WHILE WITNESS READS STATEMENTS.)

1 DEP. SOL. THORNTON: We have the originals, Your Honor,
2 if I could substitute ---

3 THE COURT: Let me see them. Any objection to
4 substituting the originals?

5 DEP. SOL. THORNTON: No, sir, Judge. I apologize for
6 the delay. It took us a minute to find them.

7 THE COURT: Becky, I'm going to substitute the
8 originals for these two, without objection. So, change them
9 over and hand me back the copies and give the originals back
10 to the witness.

11 (COURT REPORTER MARKS THE ORIGINAL STATEMENTS OF
12 DEFENSE EXHIBIT'S TWO AND THREE.)

13 THE COURT: Make sure that what he identified as Number
14 Three is still Number Three, and what he identified as
15 Number Two is still Number Two, so that the record is
16 complete.

17 Q Are those clearer copies, Mr. Regalado?

18 A Yes, sir, they are.

19 Q Okay. Have you had a chance to review that?

20 A Yes, sir.

21 Q Who is that you spoke to and about what?

22 A I took a statement from Mr. Smoak, which is Defendant's
23 Exhibit Number Three, and he stated that he heard a guy ask
24 another one to step outside for a second. A few seconds
25 later he heard two shots, followed by a series of shots.

1 And then he saw a man laying on the ground outside and then
2 the second one for Cartrette, which is Defendant's Exhibit
3 Number Two. He was standing at the door checking ID's, he
4 was apparently the bouncer for the bar and he heard two
5 shots that sounded like fireworks first, or a small gun, and
6 there was a pause and about two seconds after, there were
7 several louder shots. The shots were fired rapidly, and he
8 told the owner to call Colleton County. He was asked to
9 give a statement and he provided it voluntarily. Once I
10 collected them, I turned them over to detectives.

11 Q And Officer, what time did you take those statements?

12 A Defendant's Exhibit Number Two was at 2:03 A.M.

13 Defendant's Exhibit Number Three was at 2:04 A.M.

14 Q Okay. Is it important to get those statements as soon
15 as you can?

16 A Yes, sir.

17 Q And is that so that it's fresh?

18 A Yes, sir.

19 Q And memory's are fresh and all that stuff?

20 A Yes, sir.

21 Q And did you have your on-car camera working that night?

22 A I don't recall. My -- my vehicle was parked behind
23 another one at the time and I was parallel to the building,
24 not facing the building, at the time I arrived and it was
25 back several vehicles, so it was not in the immediate area.

1 Q Did you submit your car video to evidence?

2 A I don't recall. If there was one, it would be in
3 there.

4 Q Okay.

5 A If it was reported.

6 MR. MATHEWS: Your Honor, may we approach?

7 THE COURT: Counsel approach.

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
9 AND OUT OF THE HEARING OF THE JURY.)

10 THE COURT: I understand there is no objection from the
11 State as to Defendant Exhibit's Two and Three, and they are
12 now in evidence without objection; is that correct, counsel?

13 DEP. SOL. THORNTON: That is correct, Judge.

14 THE COURT: Defendant's Two and Three are now in
15 evidence, without objection. The originals having been
16 substituted for copies, which I have the copies on my bench.
17 Counsel, you may proceed.

18 MR. MATHEWS: Thank you, Your Honor. I have no further
19 questions.

20 THE COURT: Redirect?

21 DEP. SOL. THORNTON: None, Judge.

22 THE COURT: As to this witness?

23 DEP. SOL. THORNTON: If I could just instruct him,
24 Judge, that he be allowed to step down, but remain on
25 telephone standby. That he not discuss his testimony. If we

1 need him any further this week, we will call him back.

2 THE COURT: You understand?

3 WITNESS: Yes, sir, I do.

4 THE COURT: All right. Mr. Mathews, is this witness
5 under subpoena from anyone other than the State?

6 MR. MATHEWS: He is not.

7 THE COURT: Very well. Thank you very much. Call your
8 next witness.

9 DEP. SOL. THORNTON: Your Honor, the State calls
10 Jonathon Edwards to the stand. He's being brought in now.

11 MADAME CLERK: Please come forward and be sworn.

12 WHEREUPON, OFFICER JONATHON EDWARDS IS DULY SWORN.

13 THE COURT: How are you doing? Pull that microphone
14 over. State your full name and spell your last name for the
15 court reporter.

16 WITNESS: Jonathon Edwards, E-D-W-A-R-D-S.

17 THE COURT: Your witness, Counsel.

18 THE COURT: Thank you, Judge.

19 DIRECT EXAMINATION

20 BY DEP. SOL. THORNTON:

21 Q Officer Edwards, who do you work for, sir?

22 A I currently work for Walterboro Public Safety.

23 Q All right. Who did you work for on or about April the
24 10th of 2009?

25 A Colleton County Sheriff's Office.

1 Q All right. In what capacity?

2 A I was a road patrol deputy.

3 Q All right, sir. On that date, April 10th of 2009, did
4 you respond out to the Spirit's Lounge?

5 A Yes, I did.

6 Q And what did you see when you got there, sir?

7 A I responded, I was the second officer, and Cpl.
8 Buchanan was there first. There was a large crowd of people
9 and just everybody screaming. I couldn't really see
10 anything at first, and then as we began to push our way
11 through the crowd, I saw the victim lying supine on the
12 pavement outside the door.

13 Q All right, sir. Forgive me, "supine", what does that
14 mean?

15 A On his back.

16 Q All right. Now, was anyone other than Mr. Buchanan
17 there with you?

18 A Yes, Deputy Regalado had pulled in.

19 Q All right. What did you do once you got there?

20 A Basically, just tried to push the crowd back. They
21 were, you know, pushing in towards the victim, and we were
22 trying to get people back, and then at that time, I checked
23 the front pulse on the victim. The victim was lying down,
24 like I said, on the ground. I detected a weak pulse and as I
25 listened for respirations, I heard some faint gurgling

1 respirations. I, at that time, began performing CPR in
2 attempt to help the victim.

3 Q All right. Was it -- were there any obvious injuries
4 that you saw?

5 A Oh, yes, sir. The victim was bleeding profusely from
6 the head area and also from the chest.

7 Q All right. And did you -- was there any blood on the
8 ground around the victim?

9 A Yes, there was a large amount of blood on the ground.

10 Q Did you -- you said you attempted to perform CPR?

11 A Yes, sir.

12 Q Did anybody assist you with that?

13 A Yes, Deputy Regalado, we tried to take turns between
14 crowd control and performing CPR. We would cycle in and
15 out. And we continued this action until Fire Rescue got on
16 the scene.

17 Q All right, sir. And once Fire Rescue got on the scene,
18 is that the same thing as like paramedics and EMS, that kind
19 of thing?

20 A Yes.

21 Q All right. Once they got on scene, did you turn the
22 victim's care over to them?

23 A Yes, sir.

24 Q Did you collect any evidence or anything in this case?

25 A No, the only thing I did at that time is we got the

1 people back. Like I said, we were still somewhat in crowd
2 control mode. We just needed to get people out of the crime
3 scene area and then I secured the crime scene with the tape
4 and maintained security of it.

5 Q All right. Is there any question, though, that when
6 you got there, that there were people in and around the
7 crime scene?

8 A There were people everywhere.

9 Q All right. And after you pushed them back, is that
10 when y'all put the tape up?

11 A Yes, yes, sir.

12 Q did you have anything else to do with this case, other
13 than that?

14 A No.

15 Q All right. Thank you very much. If you'll answer any
16 questions that Mr. Mathews has for you.

17 THE COURT: Cross-examination?

18 MR. MATHEWS: No, sir.

19 THE COURT: As to this witness, Solicitor?

20 DEP. SOL. THORNTON: Your Honor, the same conditions as
21 the other. If we could have him step down and return to his
22 duties. He is on telephone standby and not to discuss his
23 testimony with anyone.

24 THE COURT: You understand that you can't discuss your
25 testimony with anyone else?

1 WITNESS: I do, Sir.

2 THE COURT: Is this witness under subpoena from anyone
3 other than the State?

4 MR. MATHEWS: No, sir.

5 THE COURT: In that case, you may step down. You're on
6 standby, subject to my Order.

7 WITNESS: Thank you.

8 THE COURT: Call your next witness.

9 DEP. SOL. THORNTON: Jack Wimberly.

10 MADAME CLERK: Please come forward to be sworn. Please
11 raise your right hand and place your left hand on the Bible.

12 WHEREUPON, MR. JACK WIMBERLY IS DULY SWORN.

13 THE COURT: Pull that microphone over. I want you to
14 speak up so that my last juror down there can hear you.

15 State your full name and then spell your last name for the
16 court reporter for me.

17 WITNESS: Jonathon Wimberly, and I go by Jack.

18 THE COURT: Spell your last name.

19 WITNESS: W-I-M-B-E-R-L-Y.

20 THE COURT: Your witness, counsel.

21 DEP. SOL. THORNTON: Thank you, Sir.

22 DIRECT EXAMINATION

23 BY DEP. SOL. THORNTON:

24 Q Jack, I realize this is going to be a dumb question,
25 but who do you work for?

1 A Colleton County Fire and Rescue.

2 Q I always hate asking that. I can see your uniform.

3 Jack, who did you work for on or about April the 10th, 2009,
4 the early morning hours?

5 A Colleton County Fire and Rescue.

6 Q All right. What is your job at that time with Colleton
7 County Fire and Rescue?

8 A I was a firefighter/paramedic.

9 Q All right, sir. And what does being a paramedic mean?

10 A Taking care of any emergencies that the public may
11 have.

12 Q Does that require some specialized training?

13 A Yes, sir.

14 Q All right. Now, do you just walk in and become a
15 paramedic or do you have to go through different steps to
16 get there?

17 A Different steps from EMT to get to paramedic.

18 Q All right, sir. What do you have to do to advance
19 those steps?

20 A You have minimal requirements of you have to go to EMT
21 for a certain amount of time, a minimum of four months.
22 Then, you go to intermediate and you learn a little more.
23 Then, you go to paramedic. For me, it was two years through
24 college.

25 Q Okay, sir. And how long up to now have you been a

1 paramedic?

2 A I've been a paramedic for two years.

3 Q Okay. So at the time of this, you had been a paramedic
4 for what; about a year?

5 A About a year.

6 Q All right. And what does being a paramedic, what does
7 that allow you to do that, say, is different than just a
8 regular, basic EMT?

9 A We do advanced medical life support; basic EMT's are a
10 little more than first aid. We're allowed to do cardiac
11 monitors, EKG's. We do IV's, drug administration, first
12 line cardiac trauma and things like that.

13 Q All right, sir. Did you -- you said you went through
14 two years of school. You've been a paramedic for two years.
15 How many times have you been out on calls say, in the last
16 two years?

17 A How many calls?

18 Q Yeah.

19 A I think I wrote 200 and something reports in 2009.

20 Q All right.

21 DEP. SOL. THORNTON: Your Honor, at this time, I'd ask
22 that this witness be declared an expert in providing medical
23 care in life-saving situations.

24 THE COURT: Any objection as to qualifications?

25 MR. MATHEWS: No, sir.

1 **THE COURT:** Ladies and gentlemen of the jury, you're
2 about to hear the testimony of a witness who claims to have
3 special knowledge, skill, training or experience or
4 education in the field of emergency medical care as a
5 paramedic. Normally, the law does not allow witnesses to
6 get on the witness stand and give opinion testimony. An
7 exception to this rule are those witnesses whom we call
8 "expert witnesses," who if qualified by the Court, are
9 permitted to give an opinion. In determining the weight to
10 be given to any such expert opinion, you should consider the
11 qualifications and the credibility, or believability of the
12 expert, the reasons given for his or her opinion. You are
13 not bound by such opinion. You give it the weight, if any,
14 which you deem it should be entitled. The witness is
15 qualified without objection. You may proceed, counsel.

16 **DEP. SOL. THORNTON:** Thank you, Your Honor.

17 **Q** On or about April the -- the early morning hours of
18 April the 10th, 2009, did you respond out to the Spirit's
19 Lounge?

20 **A** Yes, sir. It was my second day working. I was the
21 third person. When you go to a new system, usually they put
22 you at third person so you learn how a system works.

23 **Q** I understand. Did you perform any jobs that day at the
24 scene?

25 **A** Yes, sir.

1 Q What did you do?

2 A I initiated CPR, or took over CPR from the deputy that
3 was on scene, and then we transported him and did more ALS
4 processes.

5 Q All right. Did he have any obvious injuries?

6 A Yes, sir.

7 Q What kind of injuries did he have?

8 A There seemed to be some entrance or exit wounds,
9 undetermined, at his head and then his abdomen, he had two
10 gunshot wounds that you could see.

11 Q All right. So would it be fair to say that he had
12 multiple gunshot wounds?

13 A multiple gunshot wounds.

14 Q All right. Was he bleeding from those gunshot wounds?

15 A Yes, sir, very profusely.

16 Q All right. Was there a lot of blood at the scene?

17 A Yes, sir.

18 Q And when you're doing CPR, can you explain exactly what
19 you do?

20 A Basically, by CPR, we're simulating the heart pumping
21 by pressing the chest or decreasing or increasing the
22 negative pressure in the heart, therefore creating a
23 pumping.

24 Q And in this particular instance, did anything unusual
25 happen when you were doing chest compressions?

1 A Yes, sir.

2 Q What happened?

3 A There was blood or some brain matter coming from the
4 ears.

5 Q What did you do -- did you do anything other than stay
6 there at the scene and perform CPR?

7 A When we got to him there was a very uneasy feeling of
8 the surrounding areas of the crowd, so for our safety and
9 the crew's safety, and the victim, we loaded very quickly
10 and we left the scene.

11 Q Okay, sir. What was his condition at the scene?

12 A Very poor

13 Q All right. Would you call those injuries life
14 threatening?

15 A Yes, sir.

16 Q And what happened on the way to the hospital, if
17 anything?

18 A When we initiated, or started, ventilating or bagging
19 him artificial respirations, every time they would
20 ventilate, we would have bubbles and blood coming from his
21 ears, which does not show good signs of sustained life.

22 Q All right, sir. And what did you do with him? Where
23 did you transport him to?

24 A We transported him to Colleton Medical Center.

25 Q All right, sir. And was his condition improved at all

1 or deteriorated by the time you got there?

2 A Very deteriorated.

3 Q All right. What would you class his condition as?

4 A Deceased.

5 Q So he was dead by the time you got him to the hospital?

6 A Per se.

7 Q All right. Did you have any other connection with this
8 case other than that?

9 A No, sir.

10 Q Please answer any questions Mr. Mathews has for you.

11 THE COURT: Cross-examination?

12 MR. MATHEWS: No, sir, Your Honor.

13 THE COURT: As to this witness?

14 DEP. SOL. THORNTON: Your Honor, as with the other
15 witnesses, I'm sure the jury is going to get tired of
16 hearing me say the same thing every time. I'd like for him
17 to step down. He's on telephone standby and not to discuss
18 his testimony with anybody until given leave by the Court.

19 THE COURT: Are you subpoenaed by anyone other than the
20 State for purposes of this trial?

21 WITNESS: No, sir.

22 THE COURT: Then, subject to the fact that you can't
23 discuss your testimony, you are excused from the trial,
24 subject to recall.

25 WITNESS: Thank you.

1 THE COURT: Call your next witness.

2 DEP. SOL. THORNTON: Richard Harvey.

3 THE COURT: Come around and be sworn by the Clerk of
4 Court, please.

5 MADAME CLERK: Please come forward and be sworn.

6 WHEREUPON, MR. RICHARD HARVEY IS DULY SWORN.

7 THE COURT: How are you doing? Have a seat and make
8 yourself comfortable. Pull that microphone over to you.
9 State your name and spell your last name for the court
10 reporter.

11 WITNESS: Richard Harvey, H-A-R-V-E-Y.

12 THE COURT: Your witness, counsel.

13 DEP. SOL. THORNTON: thank you, Judge.

14 DIRECT EXAMINATION

15 BY DEP. SOL. THORNTON:

16 Q Mr. Harvey, who do you work for, sir?

17 A I work for Colleton County.

18 Q All right, sir. Could you be more specific?

19 A I am the Colleton County Coroner.

20 Q So, in actuality, you work for the voters of Colleton
21 County?

22 A That is correct.

23 Q Mr. Harvey, as Coroner, what is your job, sir?

24 A I investigate any untimely deaths in the county of
25 Colleton.

1 Q Were you the coroner for Colleton County, sir, on or
2 about the morning of April the 10th of 2009?

3 A I was.

4 Q Did you respond out to the hospital on that morning,
5 sir?

6 A I did.

7 Q Did you look at anybody in particular?

8 A I did.

9 Q Who did you look at?

10 A Sorry, I've been up. I looked at Mr. Rudy Marshall.
11 I'm sorry, that is the next week. Sorry, Donald Green.

12 Q All right, sir. And you looked at the victim, one
13 Donald Green. What was his condition, sir?

14 A He was deceased.

15 Q Is one of your jobs as coroner to determine when to do
16 the death certificate and say somebody is deceased?

17 A That is correct.

18 Q Any question in your mind when you saw Donald Green on
19 the morning of April the 10th that he was deceased?

20 A He was deceased.

21 Q What did you do at that point, sir, once you determined
22 he was deceased?

23 A I made arrangements with the Medical University of
24 South Carolina for a forensic autopsy?

25 Q All right, sir. And was an autopsy performed?

1 A Yes, it was.

2 Q All right. Did you have any other connection with this
3 case, other than, of course, reviewing the autopsy report
4 when it came back?

5 A I went out to the scene and took photographs.

6 Q All right, sir. Have you done anything else other than
7 that?

8 A No, sir.

9 Q No further questions. Please answer any questions that
10 Mr. Mathews might have.

11 THE COURT: Cross-examination.

12 MR. MATHEWS: No, sir.

13 THE COURT: As to this witness, Solicitor?

14 DEP. SOL. THORNTON: Your Honor, I'd ask that Mr.
15 Harvey be excused completely. I don't believe that we're
16 going to need him to come back?

17 THE COURT: Mr. Mathews, any objection?

18 MR. MATHEWS: No, sir.

19 THE COURT: You may step down, Mr. Harvey, and you are
20 excused from the trial of this case.

21 WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 DEP. SOL. THORNTON: Your Honor, I need to approach
24 with Mr. Mathews.

25 THE COURT: Counsel approach.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
2 AND OUT OF THE HEARING OF THE JURY.

3 THE COURT: Ladies and gentlemen of the jury, I'm going
4 to take my mid-morning break at this time. Please do not
5 discuss the case. You have not heard all the evidence in
6 the case. I need to take up a quick matter of law. We'll
7 work while you take your break, and come back and start back
8 in just a few moments. You may retire to your jury room at
9 this time.

10 (11:25 AM, 7-20-10, WHEREUPON THE JURY EXITS THE
11 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
12 RECORD.)

13 THE COURT: All right. During the break, the first
14 thing I want you to do, the court reporter has Defendant's
15 Exhibit Number One, which was admitted without objection,
16 sight unseen. I don't know if that's good practice, but
17 that's what was done, on assurance by Mr. Mathews that it
18 only contained the video of the first two officers, and that
19 would be Buchanan and Regalado. However, counsel for the
20 State hadn't seen it. So, I'm going to ask you first to
21 view the video before it's published to the jury to make
22 sure that's all that is on the video. She will make a tape
23 available to you during the break. If you've got some
24 photographs you want me to see, hand them up and I'll look
25 at them while y'all are reviewing the video.

1 DEP. SOL. THORNTON: Judge, for the record, since my
2 boss tends to review transcripts sometimes. It's not
3 completely sight unseen. The video is labeled as a DL3, but
4 I gave Mr. Mathews ---

5 THE COURT: But you were told by Mr. Mathews that
6 that's what he understood to be the only thing that was on
7 the tape.

8 DEP. SOL. THORNTON: Yes, sir. I just like to double
9 check before it goes to the jury, Judge.

10 THE COURT: All right. Well, let your boss review the
11 record and I'll say that you've looked at the video and you
12 believe it to be the same video.

13 DEP. SOL. THORNTON: Thank you, Judge:

14 THE COURT: All right, counsel. Let's look at the
15 video and hand me the photographs. Let's move along.

16 MR. MATHEWS: Your Honor ---

17 THE COURT: No, no, sir. I'll take that up after we
18 look at the video.

19 (WHEREUPON, THE VIDEO IS WATCHED BY COUNSEL IN THE
20 COURTROOM.)

21 THE COURT: All right. Let the record reflect I've
22 been handed some photographs. I understand they haven't been
23 marked yet. They're photographs of the scene, allegedly of
24 the scene, and of a glove pointing to a tire and they have
25 evidence marks in them. So, which photograph, if any, do

1 you object to?

2 MR. MATHEWS: I had at first said none, Your Honor.

3 THE COURT: You don't object to any?

4 MR. MATHEWS: The blood gave me some concern, but I
5 think it shows shell casings and I think the probative value
6 outweighs the prejudice, so ---

7 THE COURT: It corroborates the testimony of witnesses
8 offered at trial. And there's a case on that, Mr. Mathews,
9 if you're not familiar with it. All right. Now, the second
10 set consists of pictures of a bullet, two, three, four
11 pictures of a bullet.

12 DEP. SOL. THORNTON: Four different bullets, Judge.

13 THE COURT: All right. Well, four different pictures
14 of bullets. A hand, the side of an abdomen, a closer view
15 of the side of the abdomen, and one picture of a facial
16 wound.

17 MR. MATHEWS: The facial wound gives me grave concerns,
18 Your Honor. The bullets I don't have any problem with. The
19 ---

20 THE COURT: I don't want to -- I haven't heard
21 testimony from a pathologist. I haven't heard testimony
22 about this yet, about the autopsy, and y'all want to jump
23 and take this matter up, so I have to decide what's gonna
24 happen. You want to tell me why this is relevant material
25 and admissible?

1 DEP. SOL. THORNTON: Judge, I apologize ---

2 THE COURT: --- based on what you believe the testimony
3 to be?

4 DEP. SOL. THORNTON: Judge, I'm sorry if we jumped the
5 gun. I just wanted to get it before the witness took the
6 stand. The pathologist is going to testify as to each
7 bullet wound. There were six bullet wounds, including the
8 head shot, the abdomen, which shows two. There's two around
9 the pelvic region and because it -- it basically is a close-
10 up view of the man's genitals, I did not put into evidence,
11 nor did I put in a close-up of the hand shot, which shows
12 bone. I tried to pick the ones, Judge, that were the least
13 problematic; and I believe that it assists a witness and
14 corroborates and further elicits what the pathologist is
15 going to testify to, and I'm going to go one at a time
16 through every bullet wound.

17 THE COURT: I understand. Mr. Mathews, why do you
18 believe that the photographs -- I assume that these are
19 autopsy photographs, Solicitor?

20 DEP. SOL. THORNTON: They are, Judge.

21 THE COURT: All right. Mr. Mathews, why do you believe
22 the photographs are not -- "the" photograph which shows the
23 wound to the head, is not admissible?

24 MR. MATHEWS: Well, I -- I -- I think the witness's
25 testimony -- it's not seriously a dispute, but Donald Green

1 was shot to death, and those were the cause of that's why he
2 died. So, as far as assisting in the pathologist's
3 testimony, I'm hardly going to oppose -- I'm not going to
4 oppose it. I mean, he died -- he died of gunshot wounds.
5 That's not really the issue of the case. Regarding his
6 testimony on brain matter and stuff coming out of the ear,
7 which is pretty bad, this is just a graphic description to
8 take back in the jury room and that would be the basis. You
9 know, the pathologist -- I'll wait for the pathologist
10 testimony if we need to, and then, perhaps would be a better
11 time to address this.

12 **THE COURT:** I agree. Of course, there's a case on
13 this, and both of you should have. If you don't have it,
14 I've got it, State v. Jarrell, and it deals with a
15 pathologist's testimony, where the State offered autopsy
16 photographs, arguing the photographs were necessary to
17 corroborate the testimony of the pathologist. That case it
18 was to show the extent of a baby's sexual abuse and it
19 actually showed photographs explaining anal injuries due to
20 sexual abuse after the pathologist testified, and the Court
21 found that it was not an abuse of discretion to admit the
22 photographs because they corroborated the testimony of the
23 pathologist. Until I hear the testimony of the pathologist,
24 I'm unable to make a ruling, but I'm being told by counsel
25 for the State, as I was told by you, the content of the

1 video, that the pathologist is going to explain that these
2 are each bullet wound. However, I will reserve my ruling
3 until I hear that testimony.

4 Anything else? Because I've kept the jury waiting for
5 35 minutes on this break.

6 DEP. SOL. THORNTON: No, sir. May I approach?

7 THE COURT: Anything else -- no, sir. Take a seat.

8 DEP. SOL. THORNTON: I meant to get the photos, Your
9 Honor.

10 THE COURT: Yes, sir. I'm going to give them back to
11 you, but I'm not going to stand and wait any longer.

12 DEP. SOL. THORNTON: No, sir.

13 THE COURT: Thirty-five minutes is plenty of time for a
14 break that should have been done pre-trial.

15 MR. MATHEWS: Your Honor, may I approach to get my
16 statements? I have Two and Three?

17 THE COURT: They're in evidence.

18 MR. MATHEWS: The copies that were on the bench.

19 (THE COURT HANDS THE COPIES TO MR. MATHEWS.)

20 MR. MATHEWS: Thank you, Your Honor.

21 THE COURT: Bring me the jury.

22 (11:55, 7-20-10, WHEREUPON THE JURY ENTERS THE
23 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
24 RECORD.)

25 THE COURT: Madame Foreperson, ladies and gentlemen of

1 the jury, I apologize that you've been sitting in your jury
2 room for thirty-five minutes during this break. Normally, I
3 take about a ten minute mid-morning break. It's necessary
4 for us to review some testimony in order that the Court
5 could make a determination as to admissibility. I will try
6 not -- I'm very mindful of your time and I try not to keep
7 you back there longer than it's necessary, but we obviously
8 have to look at some things before you do to determine
9 whether or not it's admissible into evidence and to what
10 extent it's admissible. I thank you for your patience
11 during the break. I'll be mindful of your time throughout
12 the trial.

13 Call your next witness.

14 **DEP. SOL. THORNTON:** Your Honor, with your permission,
15 I believe Mr. Mathews would like to go ahead and publish
16 this tape.

17 **THE COURT:** In the middle of your case? You want to do
18 it now?

19 **MR. MATHEWS:** It makes no difference, Your Honor.
20 Whatever is the Court's pleasure.

21 **THE COURT:** It's up to you.

22 **MR. MATHEWS:** I think this would be appropriate now,
23 Your Honor, since it's going to be part of cross-
24 examination.

25 **THE COURT:** All right. Ladies and gentlemen, you're

1 being published at this time the Defendant's Exhibit Number
2 One.

3 DEP. SOL. THORNTON: Your Honor, for the record, this
4 is a video of Deputy Buchanan's car. The second video will
5 be Regalado's.

6 THE COURT: Very well.

7 (DEFENDANT'S EXHIBIT NUMBER ONE BEGINS PLAYING FOR THE
8 JURY AND THE COURT.)

9 (VIDEO OF POLICE CAR ON SCENE BEGINS 11:56 A.M. AND ENDS AT
10 12:00 P.M.)

11 DEP. SOL. THORNTON: I believe that's where we agreed
12 to stop, Judge. It just shows more of the same.

13 THE COURT: Is that correct, Mr. Mathews?

14 MR. MATHEWS: Right at five minutes, Your Honor.

15 THE COURT: All right. Now, you're going to publish
16 the video of Regalado?

17 DEP. SOL. THORNTON: For Mr. Mathews.

18 THE COURT: Is that correct, Mr. Mathews?

19 MR. MATHEWS: Yes, sir. That's my request.

20 THE COURT: Proceed.

21 (VIDEO OF OFFICER REGELADO BEGINS AT 12:02 P.M.)

22 DEP. SOL. THORNTON: Your Honor, Mr. Mathews has
23 indicated that that is where we need to stop at. Again,
24 this is more of the same.

25 THE COURT: Is that correct?

1 MR. MATHEWS: That's correct.

2 THE COURT: Please make a note since we'll have custody
3 of this exhibit for the jury that in the event it needs to
4 be replayed that we show exactly what was played during the
5 course of the trial. Are you satisfied, Mr. Mathews?

6 MR. MATHEWS: I am, Your Honor.

7 THE COURT: Are you satisfied, Solicitor?

8 DEP. SOL. THORNTON: Yes, sir.

9 THE COURT: Do we have the correct number?

10 DEP. SOL. THORNTON: Yes, sir. This one started at
11 1:29, even, and went to 1:31:27, and the other one went from
12 the beginning, Your Honor, to 1:30, even. I have those
13 notated, so long as Mr. Mathews is satisfied that I am
14 correct on the numbers. That's how we'll keep them and keep
15 track of them.

16 THE COURT: All right. Mr. Mathews, are you satisfied
17 now that all of Defendant's One has been published to the
18 jury, that you desire?

19 MR. MATHEWS: Yes, sir.

20 THE COURT: Very well. All right, Solicitor, call your
21 next witness.

22 DEP. SOL. THORNTON: Allen Inabinett.

23 MADAME CLERK: Please come forward to be sworn.

24 WHEREUPON, DETECTIVE ALLEN INABINETT IS DULY SWORN.

25 THE COURT: Good afternoon, Fred. Have a seat. Make

1 yourself comfortable. State your full name and spell your
2 last name for the court reporter.

3 WITNESS: Fred A.; last name, I-N-A-B-I-N-E-T-T,
4 Inabinett.

5 THE COURT: Your witness, counsel.

6 DIRECT EXAMINATION

7 BY DEP. SOL. THORNTON:

8 Q Although the judge has referred to you as "Fred", more
9 than one time, do you go by Allan most of the time?

10 A Yes, sir.

11 Q All right. You are a Lieutenant with the Sheriff's
12 Department; is that right?

13 A Yes, sir.

14 Q Lieutenant, in April of 2009, specifically, the morning
15 of April the 10th, 2009, who did you work for?

16 A The Colleton County Sheriff's Department.

17 Q All right. And what did you do for them at that time?

18 A I responded to the Spirit's Club in Colleton County on
19 Highway 15.

20 Q Detective Inabinett, did you respond out to the
21 Spirit's Lounge?

22 A Yes, sir, I did.

23 Q And at the Spirit's Lounge on or about April the 10th,
24 2009, what was your responsibility when you got there?

25 A I was the on-call investigator. I responded out to the

1 Spirit's Lounge for a shooting. My primary responsibility
2 then was to process the crime scene.

3 Q All right, sir. When you say "process the crime
4 scene," what does that entail?

5 A The crime scene processing task consists of numerous
6 skills One being photographing, evidence collection,
7 evidence marking, as well as measurements.

8 Q Det. Inabinett ---

9 DEP. SOL. THORNTON: Your Honor, if I may approach?

10 THE COURT: Yes, sir.

11 Q Det. Inabinett, I'm going to hand you what's been
12 marked for identification as State's Exhibit Number One,
13 which is a collection of five photographs that are paper
14 clipped together. Can you identify those photographs?

15 A Yes, sir, I can.

16 Q What are they, sir?

17 A These are photographs taken of the actual crime scene
18 at Spirit's Lounge.

19 Q All right, sir. And were you out there when these
20 photographs were taken?

21 A Yes, sir.

22 Q And forgive me, for the record purposes, when I say
23 "out there", were you out at the Spirit's Lounge on the
24 morning of April the 10th, 2009?

25 A That is correct, yes, sir.

1 Q Do those pictures accurately reflect the scene?

2 A Yes, they do.

3 DEP. SOL. THORNTON: Your Honor, at this time, I'd ask
4 that State's Exhibit Number One be moved into evidence.

5 THE COURT: One exhibit, five photographs.

6 DEP. SOL. THORNTON: Five photographs, one exhibit.

7 THE COURT: Any objection as to State's One, five
8 photographs, which I understand you've reviewed at the
9 break?

10 MR. MATHEWS: I have and I have no objection.

11 THE COURT: Ladies and gentlemen of the jury, State's
12 exhibit Number One will be admitted into evidence, without
13 objection. State's One in evidence consisting of five
14 photographs. You may now publish to the jury.

15 Q Det. Inabinett, if you would ---

16 DEP. SOL. THORNTON: Can I have him come down, please,
17 Judge?

18 THE COURT: Pat, would you give him the portable
19 microphone, please?

20 MADAME CLERK: Yes, sir.

21 THE COURT: Hold on a second.

22 MADAME CLERK: Here you go.

23 THE COURT: Mr. Mathews, you may come around outside
24 the jury box so you can view.

25 Q Det. Inabinett, if you would, face the jury, please,

1 and go through the photographs with them one at a time.

2 THE COURT: Mr. Mathews, step back behind so he can
3 view his witness.

4 Q Mr. Inabinett, if you would, one at a time, please go
5 through the photographs and explain what they depict.

6 A Yes, sir. Photograph one depicts the front of the club
7 on Highway 15, club Spirit's on Highway 15. It's the front
8 of the club with the several vehicles parked in front, which
9 has been secured by crime scene tape.

10 Q And Det. Inabinett, if you would, sir; you tend not to
11 shout as much as I do. Hold the microphone a little bit
12 closer to your mouth.

13 A Yes, sir. Photograph Two depicts numerous placards on
14 a grey vehicle, which is, I do believe, a Jeep product,
15 which is in front of the building of the same club on the
16 night of the incident; which also has blood by the tire.

17 Q Now, Det. Inabinett, that picture that you just got
18 done showing when you talk about the blood and the placards,
19 is that where the victim was located?

20 A Yes, sir. The victim, Mr. Green, was lying on his back
21 in this pool of blood by the back tire.

22 Q Thank you, sir. What does the next picture show?

23 A Picture number three depicts more placards, which are
24 evidence placards at the same club on the ground located
25 near the Jeep Liberty. Also is yellow crime scene tape

1 securing that crime scene.

2 Picture Four, once again, are additional placards of
3 the same area of the club, Spirit's, on the night of the
4 alleged incident. And the last photograph depicts the tire
5 of the same grey Jeep, and you can see that is a gloved
6 hand, a blue glove which is a glove of law enforcement that
7 indicates what is believed to be brain matter, or brain
8 tissue, from the victim, Mr. Green.

9 Q Thank you, Detective. Would you please retake the
10 stand?

11 (DET. INABINETT GIVES MICROPHONE BACK TO CLERK AND THEN
12 GETS BACK ON THE STAND.)

13 DEP. SOL. THORNTON: Your Honor, court's indulgence for
14 one moment.

15 THE COURT: Yes, sir.

16 DEP. SOL. THORNTON: Sorry for the delay, Your Honor.

17 THE COURT: Proceed.

18 Q Det. Inabinett, I know you may have other areas which
19 you have dealt with in this case, but just as to that crime
20 scene and the photographs, without getting into any further
21 detail about processing, is that more or less what you did
22 was process the scene? You were there while photographs
23 were being taken and evidence was collected and so forth; is
24 that correct?

25 A Yes, sir. That is correct.

1 Q All right.

2 DEP. SOL. THORNTON: Your Honor, may we approach?

3 THE COURT: Counsel approach..

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
5 AND OUT OF THE HEARING OF THE JURY.)

6 DEP. SOL. THORNTON: Your Honor, at this time, I have
7 no further questions for Mr. Inabinett, but I do ask that he
8 be subject to recall. I know I'm going to have to recall
9 him in a couple witnesses down the road, Sir.

10 THE COURT: Very well. Without objection, Mr. Mathews?

11 MR. MATHEWS: Yes, sir.

12 THE COURT: Cross-examination, Mr. Mathews?

13 MR. MATHEWS: Your Honor, I'd like to reserve my cross
14 examination pending some other matters we've discussed and
15 subject to Mr. Inabinett being recalled at some point.

16 THE COURT: All right. Counsel approach.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
18 AND OUT OF THE HEARING OF THE JURY.)

19 THE COURT: My understanding is the State intends to
20 recall this witness and has made that representation to you,
21 Mr. Mathews, and with that, Lt. Inabinett, you're going to
22 be able to step down at this time. You cannot discuss your
23 testimony with anybody. You are subject to being recalled
24 after I have an opportunity to rule on some matters of law
25 in connection with this case.

1 WITNESS: Yes, sir. I understand.

2 THE COURT: Thank you. You may step down at this time.
3 Call your next witness

4 DEP. SOL. THORNTON: Sonja Grant.

5 MADAME CLERK: Please come forward to be sworn.

6 WHEREUPON, SONJA GRANT IS DULY SWORN.

7 THE COURT: Be careful on those steps. Pull that
8 microphone over. It's on, and it's going to amplify your
9 voice. State your full name and spell your last name for
10 the court reporter.

11 WITNESS: Sonja Grant, G-R-A-N-T.

12 THE COURT: Your witness.

13 DEP. SOL. THORNTON: Thank you, Your Honor. May I
14 approach the court reporter, Judge?

15 THE COURT: You may.

16 (COUNSEL FOR THE STATE HAS THE COURT REPORTER MARK
17 EXHIBITS.)

18 DEP. SOL. THORNTON: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY DEP. SOL. THORNTON:

21 Q Ms. Grant, who do you work for?

22 A The South Carolina Department of Corrections.

23 Q All right, ma'am. At any particular facility?

24 A The Ridgeland Correctional Facility.

25 Q Ridgeland Correctional? What is your job, ma'am?

- 1 A I'm a correction officer.
- 2 Q Okay. Ms. Grant, were you out anywhere in particular
- 3 on or about the early morning hours of April 10th of 2009?
- 4 A Yes, sir.
- 5 Q Ma'am, where were you at?
- 6 A At the Club, Spirit's, on Highway 15.
- 7 Q All right. And is that here in Colleton County?
- 8 A Yes, sir.
- 9 Q Early on the morning of, I believe it was a Friday,
- 10 April the 10th, is that where you were, ma'am?
- 11 A Yes, sir.
- 12 Q Did anything unusual happen?
- 13 A Yes, Sir.
- 14 Q What happened, ma'am?
- 15 A Donald Green got shot and killed that night.
- 16 Q All right. And were you there when Donald Green was
- 17 shot and killed?
- 18 A Yes, sir.
- 19 Q And did he get shot one time or multiple times?
- 20 A Multiple times.
- 21 Q How far away were you when Donald was shot?
- 22 A A car length. It was a car -- it was like a car
- 23 length.
- 24 Q All right, ma'am. From where I'm standing to you, were
- 25 you closer or further?

- 1 A A little bit closer.
- 2 Q A little bit closer? (DEPUTY SOLICITOR TAKES A FEW
3 STEPS FORWARD.)
- 4 A That's about right.
- 5 Q All right. So just a few feet; is it fair to say?
- 6 A Yes, that's correct.
- 7 Q Did you get a good look at who did it?
- 8 A Yes, sir.
- 9 Q Who did it?
- 10 A D-Rock.
- 11 Q D-Rock, is that a street name?
- 12 A Yes, sir.
- 13 Q What's D-Rock's real name or birth name?
- 14 A Derrick Fishburne.
- 15 Q All right. Did you -- had you ever seen Derrick
16 Fishburne before that night?
- 17 A Yes, sir.
- 18 Q Did you know him to look at him?
- 19 A Yes, sir.
- 20 Q All right. And regardless of whether you knew him very
21 well, personally, did you know when you got out there and
22 you saw him, did you know, hey, that's D-Rock, that's
23 Derrick Fishburne?
- 24 A Yes, sir.
- 25 Q Do you see Derrick Fishburne in this courtroom?

1 A Yes, sir.

2 Q Can you point him out for me?

3 A Right there. (INDICATING.)

4 Q The man sitting right here next to Dave Mathews, the
5 defendant; is that right?

6 A Correct.

7 Q Is that the man you saw shoot and kill Donald Green?

8 A Yes, sir.

9 Q Can you tell me what you saw?

10 A I was standing outside of my car door and I saw Donald.
11 He was standing like outside of the door. His back was
12 facing me. I knew it was him because he was out there with
13 this guy named Jamal Green and Brandon, and they was having
14 a conversation and they all came out there together. And
15 his back was towards me. I think he was walking back into
16 the club when him and D-Rock met each other and then I think
17 I saw D-Rock shoot him. I can't remember how many times and
18 then I seen his body fall down to the ground and D-Rock
19 stood over him and continued to shoot him.

20 Q So after the man fell helpless to the ground, the
21 defendant stood over him and fired more rounds into his
22 body; is that right?

23 A Correct.

24 Q Do you know how many times he shot?

25 A No, I can't remember.

1 Q Ma'am, I'm going to show you what's been marked as
2 State's Exhibit Number Two for identification.

3 DEP. SOL. THORNTON: May I approach, Judge?

4 THE COURT: You may.

5 Q Do you recognize that document, Ma'am?

6 A Yes, sir.

7 Q What is that document?

8 A It's a photo lineup in which I had to point him out and
9 say which person I thought did the shooting.

10 Q All right, ma'am, and did you do that?

11 A Yes, sir.

12 Q All right. And did you initial by any particular
13 picture?

14 A Yes sir, number three.

15 Q All right. And is that who you indicated was Derrick
16 Fishburne?

17 A Yes, sir.

18 Q Or D-Rock?

19 A Yes, sir.

20 Q You testified earlier that you knew him by sight
21 already; is that correct?

22 A Yes, sir.

23 Q Now, ma'am, you identified the defendant in this case
24 as Derrick Fishburne as the person who shot and killed
25 Donald Green, now would you take a look at his hair? Can

1 you see his hair?

2 A Yes, sir.

3 Q Does it appear the same today as it did in that
4 picture?

5 A No, sir.

6 Q Does it appear the same today as it did the night that
7 he shot and killed Donald Green?

8 A No, sir.

9 Q Any doubt as to who you saw that night?

10 A No, sir.

11 Q And you said you were about this far away, correct?

12 A Correct.

13 Q Did the detectives try to get you to say any particular
14 picture?

15 A No, sir.

16 Q All right. Did they tell you that you need to pick
17 number three?

18 A No, sir.

19 Q Did they try to influence you to pick number three?

20 A Not at all.

21 Q Did you know him regardless of whether you had ever
22 even been shown the photo lineup?

23 A Correct.

24 Q In other words, did you know it was Derrick Fishburne
25 who shot Donald Green before you saw it?

1 A Yes, sir.

2 DEP. SOL. THORNTON: Your Honor, I'd ask that State's
3 Exhibit Number Two be put into evidence.

4 THE COURT: Counsel approach.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
6 AND OUT OF THE HEARING OF THE JURY.)

7 THE COURT: State's Exhibit Number Two, I understand
8 there's no objection to admissibility; is that correct?

9 MR. MATHEWS: At this point, no, Your Honor.

10 THE COURT: State's Exhibit Number Two admitted into
11 evidence. You may publish to the jury.

12 DEP. SOL. THORNTON: Thank you, Your Honor.

13 Q Ms. Grant, I noticed on here, looking at this, that it
14 is certainly arguable that Mr. Fishburne's picture is
15 lighter than the other pictures on here, would you agree
16 with that?

17 A I agree.

18 Q All right. Did that sway your decision at all?

19 A No, sir.

20 Q Is that because you already knew who he was?

21 A Yes, sir.

22 Q Were you out there with anybody in particular or did
23 you go to Spirit's that night with anybody in particular?

24 A I was out there with my friend, Fatimah.

25 Q All right. How long were you out there before this

1 happened?

2 A Probably around or about 20 minutes.

3 Q Did you go inside the club?

4 A No, I didn't go inside.

5 Q All right. Had you been drinking that night?

6 A No, sir.

7 Q All right. So you were not intoxicated?

8 A No, sir.

9 Q Any question in your mind about what you saw?

10 A No, sir.

11 Q And one more time, ma'am, who did you see shoot Donald
12 Green?

13 A Derrick Fishburne.

14 Q And one more time, ma'am, can you see Derrick Fishburne
15 in this courtroom?

16 A Yes, sir.

17 Q Where is he?

18 A Right there.

19 DEP. SOL. THORNTON: Your Honor, Court's indulgence for
20 one moment.

21 (BRIEF PAUSE IN COURTROOM.)

22 DEP. SOL. THORNTON: I have no further questions at
23 this time. Ma'am, please answer any questions Mr. Mathews
24 has for you.

25 THE COURT: Do you have my exhibit?

1 DEP. SOL. THORNTON: Your Honor, this has not been
2 introduced as of yet.

3 THE COURT: Cross-examination.

4 MR. MATHEWS: Your Honor, the photo lineup has not been
5 introduced into evidence?

6 THE COURT: The one that has is up here, Mr. Mathews.

7 MR. MATHEWS: Oh, All right.

8 CROSS-EXAMINATION

9 BY MR. MATHEWS:

10 Q Ms. Grant, how long have you and Derrick been knowing
11 each other?

12 A I don't know him. I know him if I see him.

13 Q Okay. Y'all ever had a meal together or anything like
14 that?

15 A No, sir.

16 Q Now, your friend, Fatimah, she knew Derrick, though,
17 right?

18 A Yes, sir.

19 Q Would you say she knew him a whole lot better than you
20 did?

21 A Yes, sir.

22 Q Okay. And y'all rode out there -- you picked her up
23 and she was going to get something from the club; is that
24 right?

25 A Correct.

1 Q At about one in the morning, she went to get something
2 from the club?

3 A I can't remember the exact time, but it was late in the
4 night.

5 Q Okay. Where did you go from and where did you go to?
6 You went and picked her up from her house or where did you
7 go?

8 A Yes, sir.

9 Q Where was her house?

10 A Druid Hills Apartments.

11 Q Okay. So where did you come from?

12 A My house.

13 Q Which is -- where is that?

14 A Meadow Creek Apartments.

15 Q In Walterboro?

16 A Yes, sir.

17 Q Okay. So when you went out there from Druid Hills, you
18 went from your place to Druid Hills to pick up Fatimah,
19 because you needed to pick something up from Spirit's at
20 1:00 in the morning, or whatever time it was; is that
21 correct?

22 A Correct. She asked me to take her.

23 Q Okay. Did she pay you gas money or anything like that?

24 A No, sir.

25 Q And you never went into the club, you just had that one

1 thing that she needed to do?

2 A Correct.

3 Q Do you know what it was that she was going to get?

4 A Some money from a friend.

5 Q And who was her friend?

6 A Brandon Jenkins.

7 Q Okay. And when you rolled up, were you coming from
8 Druid Hills out to the club, right?

9 A Correct.

10 Q All right. So, from Walterboro, out toward the country
11 on 15?

12 A Yes, sir.

13 Q Okay. And when you pulled up, you pulled up, like, on
14 the second row of cars, is that right? There were cars ---

15 A Well, there's not really a row. It would be considered
16 to be the road, like where the cars can back up. They would
17 be in the road.

18 Q Okay. So you were in the road?

19 A Directly in front of the club. It was in the driveway,
20 but it wasn't a parking space.

21 Q Okay. So, sort of -- okay, so there were cars parked
22 facing the club like this, and they were parked
23 perpendicular to the club and then you were parallel to the
24 club ---

25 A Be right behind that, yes.

1 Q All right. Okay. You were driving the car?

2 A Yes, sir.

3 Q Okay. So, you would have been, you were standing in
4 the door jam between your door and the car; is that right?

5 A Correct.

6 Q All right. So, in addition to the car, the first row
7 of cars out there parked along the club, you got your car in
8 between that two because you're behind them, right?

9 A Correct.

10 Q So you've got the perpendicular row, and then you're
11 behind them, and then you've got your car in between that;
12 is that right?

13 A Correct.

14 Q So you're facing away from Walterboro, driver's side
15 toward the street?

16 A Correct.

17 Q Okay. And you're talking to Fatimah or who all are you
18 talking to?

19 A I was talking to Fatimah, Brandon, and Jamal.

20 Q Okay. Did they walk up to you or since you were right
21 there did they walk up to you or did you holler out to them?

22 A Fatimah called Brandon on the phone and he walked
23 outside of the club.

24 Q Okay. All right. So you pulled up -- did she call
25 right away or did she call when y'all left?

1 A She called to let him know she was on the way. She was
2 on the phone with him letting him know that she was on the
3 way.

4 Q Okay. Was she on the phone when Donald Green got shot?

5 A No, sir.

6 Q Okay. She had hung up the phone. Did she get what she
7 needed from Donald -- I mean, from Brandon or ---

8 A They were talking. I don't know what they exchanged.
9 I don't know.

10 Q All right. Who were you talking to? If you didn't
11 hear them, who were you talking to?

12 A I was just talking. I was just listening. We all was
13 just talking. She was on the opposite side of the car
14 between the passenger. We was standing up talking.

15 Q Fatimah was? Okay.

16 A Yeah.

17 Q Okay. She was standing. Was she still in the car or
18 was she out of the car?

19 A She was standing out of the car leaning on the door.

20 Q Okay. So, okay, her car door was shut and she was
21 leaning against it?

22 A No, the door was open and she was leaning on the car
23 door, standing up. The car was separating her and Brandon,
24 the door was.

25 Q Okay. So she's talking to Brandon and Brandon's on

1 this side, the outside of the car door, and she's on the
2 inside of the car door?

3 A Correct.

4 Q And you're on the other side, on the driver's side?

5 A Facing them, facing the club.

6 Q Facing them. You're talking to the two of them but you
7 can't hear what they're saying?

8 A No, sir.

9 Q Was the music pretty loud? Could you hear thumping
10 from the club?

11 A Yeah, I could.

12 Q Was it -- was it pretty crowded that day?

13 A Yes, sir.

14 Q Maybe 200 -- maybe 300 people that ---

15 A I don't know about inside. I'm not sure.

16 Q Okay. Was it also pretty dark out there?

17 A It was dark, but the front of the club was lit up. Not
18 too much light, but it's enough to see.

19 Q Okay. After -- after you heard the gunshots -- I mean,
20 did you hear the gunshots or see it first? Did you see it
21 or hear it at the same time or ----

22 A I heard them first.

23 Q You heard them first? And then you turned around and
24 looked, right?

25 A I didn't turn around. I was facing the door where it

1 happened at.

2 Q Okay. But you heard the shots and then you look to see
3 what was going on, right?

4 A Yes, because it was right in front of me.

5 Q Yes, between those couple of cars. Was it -- where did
6 -- where were you in relation to, I guess there's a Jeep or
7 something, kind of a champagne-colored Jeep or something
8 like that, an SUV; do you remember that?

9 A No, I don't.

10 Q Okay. You don't remember what the cars that were out
11 there were?

12 A No.

13 Q Okay. After the shooting, did you pop right into the
14 car or did you sit there and watch it, like a movie?

15 A Yes, because I was in shock. I couldn't move.

16 Q Okay. So you just -- while the shooting was going on,
17 you just were -- you didn't hop back in the car. You just
18 sat there and watched?

19 A I stood there; yes, I did.

20 Q You weren't scared?

21 A I was scared, but I was in shock. I couldn't move.

22 Q Okay. And you waited around and talked to the police
23 that night?

24 A No, sir, I did not.

25 Q Okay. Did you leave Fatimah there or did you leave

1 with her?

2 A We left together.

3 Q Okay. So, all right. When y'all rode back together
4 after this, y'all talked about it, right?

5 A Yes, we did.

6 Q And either one of the other of you said, "My God, D-
7 Rock shot somebody, shot Donald," right?

8 A Yeah, it was kind of like in unison. Fatimah was more
9 hysterical. She was crying a lot more. I wasn't crying,
10 but she was more hysterical. But, we both said it in
11 unison.

12 Q Okay. So at the same time, you both said -- at what
13 point along there, were you about halfway home when that
14 happened or?

15 A No, when we was leaving out of the parking lot. When
16 we was speeding off, driving off. We was like, "Oh, my God,
17 what just happened? He just shot Donald."

18 Q Okay. So, y'all drove out and you said that at the
19 same time?

20 A Yes.

21 Q Okay. Like I said, you didn't -- Fatimah knew Derrick.
22 You didn't really know Derrick, but y'all said at the same
23 time, "D-Rock shot Donald"?

24 A Correct.

25 Q Okay. And you talked to the police and gave them a

1 statement, I think, about a month later?

2 A Correct.

3 Q Okay. Why did you not give them a statement that
4 night?

5 A I just was -- I mean, I don't really know why I didn't
6 ---

7 Q Okay.

8 A --- but I didn't.

9 Q All right. And what's the -- when you talked to the
10 police eventually, did they contact you or did you contact
11 them?

12 A Well, they contacted me.

13 Q Who was it, Detective Williams? Or who was it,
14 Detective Johnson? Detective Inabinett? Who contacted
15 you?

16 A Detective Williams.

17 Q All right. And when he called you, what did he tell
18 you?

19 A He told me that he just needed for me to come to the
20 police department.

21 Q All right. And you knew what it was about or he told
22 you what it was about?

23 A I didn't know what it was about.

24 Q Okay. So was it a surprise when he showed you a photo
25 lineup or did -- you made a statement the first day and the

1 second day, you looked at a photo lineup; is that right?

2 A No -- yes, I didn't do it on the same day.

3 Q Okay. So the first day that you talked to him, he
4 wanted you to write a written statement; is that correct?

5 A Well, after we talked about it, yes, I did write a
6 statement.

7 Q Okay. So you talked about it. What did you and Det.
8 Williams talk about?

9 A He asked me questions alongside of was I there on or
10 about that day and ---

11 Q What did you tell him?

12 A Yes, I was.

13 Q You said, "Right from the jump, I was there"?

14 A Yes.

15 Q Okay. And then what did he say after that?

16 A Then he asked me to write a statement on what did I see
17 and what happened on that night?

18 Q All right. Did he ask you for a description of the
19 person who did the shooting?

20 A I can't remember.

21 Q Okay. Did you -- isn't it true that you had a name,
22 but there really wasn't a description. You said, "I know it
23 was D-rock," or somebody knew it was D-Rock, but there
24 really wasn't ever a description given. You didn't give
25 them one and they didn't give you one; is that right? Is

1 that accurate?

2 A That could be so, I mean, I didn't have to give a
3 description of him, because like I said, I could be able to
4 point him out. I know who he is.

5 Q Okay.

6 A So I didn't have to give -- if I didn't know him, I
7 would have had to give a description of how he looked, but
8 because I was able to identify him, I didn't do that.

9 Q All right. At what point did you learn that D-Rock was
10 Derrick Fishburne, the name Derrick Fishburne? Did you know
11 D-Rock first or did you know Derrick Fishburne first?

12 A D-Rock.

13 Q D-Rock, okay. At what point did you learn that D-Rock
14 and Derrick Fishburne were the same person?

15 A I'm not sure if I saw it on the news or -- I can't
16 really remember.

17 Q Okay. All right. So, but it was sometime after you
18 witnessed this? It wasn't like you would have said when
19 they came to you, "Was it Derrick Fishburne?" You learned
20 that D-Rock was Derrick Fishburne sometimes after the
21 shooting?

22 A Correct.

23 Q All right. Did you know Renaldo Williams?

24 A Yes.

25 Q All right. Was he out there that night?

- 1 A. Yes, sir.
- 2 Q How about Courtney Singleton; was he there?
- 3 A I don't know Courtney Singleton.
- 4 Q Did you see -- see Renaldo and Ebony get in an argument
- 5 that day -- that night?
- 6 A No, sir.
- 7 Q All right. And you never went into the club, so you
- 8 don't know what happened inside the club?
- 9 A No, sir, I do not.
- 10 Q Okay. Is there anything else significant that you know
- 11 about that? You said you saw it. Did you leave right after
- 12 you saw the shooting or did you wait around a little while?
- 13 A I left.
- 14 Q Okay. So in terms of how anybody left, whoever did the
- 15 shooting or anything, you don't know anything about that?
- 16 A No.
- 17 Q So, at the time, whoever it was, the people that were
- 18 out there doing the shooting at that time, you left before
- 19 anybody else left?
- 20 A I -- I don't know what anybody else was doing. I had
- 21 left.
- 22 Q Okay. You didn't see any other cars leave?
- 23 A I wasn't paying any attention to nothing else. I was
- 24 trying to leave and get out of the area.
- 25 Q Okay.

1 WITNESS: Nothing further, Your Honor.

2 THE COURT: Redirect?

3 DEP. SOL. THORNTON: Just a couple questions.

4 REDIRECT EXAMINATION

5 BY DEP. SOL. THORNTON:

6 Q Ma'am, just a second ago, Mr. Mathews asked you when
7 you saw whoever it was, or the people shoot; how many people
8 did you see shoot Donald Green?

9 A One person.

10 Q Who was that person?

11 A Derrick Fishburne.

12 Q Is that the man sitting right over there?

13 A Yes, sir.

14 Q Did you see anybody else shoot him?

15 A No, sir.

16 Q Thank you.

17 THE COURT: Recross, limited to redirect?

18 MR. MATHEWS: No, sir.

19 THE COURT: As to this witness, Solicitor?

20 DEP. SOL. THORNTON: Your Honor, with this witness, as
21 with the previous ones, she is not law enforcement, but I'd
22 ask that she be excused. I've explained to her that she is
23 subject to recall. She is on telephone standby and not to
24 discuss her testimony. But, I'd ask that she be allowed to
25 leave.

1 THE COURT: Mr. Mathews?

2 MR. MATHEWS: That's fine, Your Honor.

3 THE COURT: You have no objection?

4 MR. MATHEWS: No objection.

5 THE COURT: Very well. You may step down, subject to
6 recall. Please don't discuss your testimony with anyone.
7 You may leave the courtroom at this time.

8 Counsel approach.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
10 AND OUT OF THE HEARING OF THE JURY.)

11 THE COURT: Call your next witness.

12 DEP. SOL. THORNTON: Yes, sir. Fatimah Washington.
13 She's being brought in, now, Judge.

14 MADAME CLERK: Please come forward and be sworn.

15 THE COURT: Ms. Washington, please come around and be
16 sworn by the clerk of court.

17 MADAME CLERK: Place your left hand on the Bible and
18 raise your right.

19 WHEREUPON, FATIMAH WASHINGTON IS DULY SWORN.

20 THE COURT: Be careful on those steps for me. Have a
21 seat. Adjust that microphone. State your full name and
22 spell your last name for the court reporter.

23 WITNESS: Fatimah A. Washington, W-A-S-H-I-N-G-T-O-N.

24 THE COURT: Your witness, counsel.

25 DEP. SOL. THORNTON: Thank you, Your Honor.

1

DIRECT EXAMINATION

2

DEP. SOL. THORNTON:

3

Q Ms. Washington, do you live here in the Walterboro
4 area, ma'am?

5

A Yes, sir.

6

Q And were you living here on or about April the 10th of
7 2009?

8

A Yes, sir.

9

Q Ma'am, on April the 10th of 2009, and when I say April
10 the 10th, I believe that was on a Friday. I'm referring to
11 late in the evening on April the 9th, Thursday night, and
12 early, early morning of April the 10th, on Friday. Do you
13 recall where you were, ma'am?

14

A Yes, sir.

15

Q All right. Where were you?

16

A At the Spirit's Lounge, on the outside.

17

Q All right, ma'am. At the Spirit's Lounge, on the
18 outside. Does that mean in the parking lot?

19

A Yes, sir.

20

Q All right. And did you go there with anyone in
21 particular, ma'am?

22

A Yes, sir.

23

Q Who'd you go with ?

24

A Sonya Grant.

25

Q While you were there, ma'am, did you see anything

1 unusual?

2 A Yes, sir.

3 Q All right. What did you see?

4 A We was outside in front of the door talking to one of
5 our friends. Um, I guess about a couple of minutes of being
6 outside talking with one of our friends, um, a gang of guys
7 came out of the club. Derrick was one of them.

8 Q And when you say "Derrick", who do you mean?

9 A Derrick Fishburne.

10 Q Do you know Derrick Fishburne?

11 A I don't, not personally, no.

12 Q All right. Do you know him to look at him?

13 A Yes.

14 Q Do you see him in the courtroom?

15 A Yes.

16 Q Where is he?

17 A Over there. (Indicating.)

18 Q Are you indicating the defendant, Derrick Fishburne,
19 seated next to his attorney, Mr. Mathews?

20 A Yes, sir.

21 Q Does he have a street name?

22 A Um, D-Rock.

23 Q D-Rock. You saw a D-Rock that night at Spirit's?

24 A Yes, sir.

25 Q Did you see D-Rock do anything?

- 1 A Yes, sir.
- 2 Q What did you see him do?
- 3 A Shoot Donald.
- 4 Q When you say "Donald," are you referring to Donald
- 5 Green?
- 6 A Yes, sir.
- 7 Q How many times did you see D-Rock shoot Donald Green?
- 8 A I can't say how many times, like, you know.
- 9 Q Was it more than once?
- 10 A Yes, sir.
- 11 Q How close were you when Donald got shot and killed by
- 12 Derrick Fishburne?
- 13 A I was right in front of the club door, like, right in
- 14 front of the door. Not too far from the door.
- 15 Q All right, ma'am.
- 16 A Like right in front of the club door.
- 17 Q I'm sorry. I didn't mean to interrupt you.
- 18 A We was just parked in front of the front door.
- 19 Q Okay. About how far? From me to you or closer or
- 20 further away?
- 21 A Kind of, like, yeah, that's right.
- 22 Q About right here? So just a few feet?
- 23 A Yes, sir.
- 24 Q Did you get a good look at the shooter?
- 25 A Yes, sir.

1 Q Any question in your mind that it's Derrick Fishburne?

2 A No, sir.

3 Q How do you know -- I know you said you don't know him
4 real personally, but how is it that you know Derrick
5 Fishburne?

6 A Um...

7 Q Let me ask that another way. Do you have any -- any
8 type of -- by marriage or by blood relationship to Derrick
9 Fishburne?

10 A No.

11 Q What about your child?

12 A Yes.

13 Q Okay. Do you have a child?

14 A Yes. I have three of them.

15 Q Is -- are any of your children related to Derrick
16 Fishburne?

17 A My smallest one is.

18 Q Okay. And how are they related?

19 A I guess they'd be second cousins; I'm not sure.

20 Q Okay. Did you know who -- and when I say "Did you know
21 him?" I don't mean personally, but did you know him to look
22 at him that night?

23 A Yes.

24 Q I'm sorry if that was a confusing question. When you
25 saw him come out of the club, did you know that was "D-Rock"

1 Derrick Fishburne?

2 A Yes, sir.

3 Q All right. Did you give a statement to law enforcement
4 that night, ma'am, or that early morning on April the 10th
5 of 2009?

6 A I did.

7 Q Did you also talk about what Derrick was wearing?

8 A I didn't talk about that, but I tried to describe other
9 things.

10 Q Okay. And if you need to review your statement, I'm
11 happy to let you look at it. Do you remember what you told
12 the Detective?

13 A I don't -- something black and red.

14 Q All right, ma'am. Did you tell them that "he had on a
15 red/black shirt with a chain on his neck and braids on his
16 hair?"

17 A Yes, sir.

18 Q All right, ma'am. Now, his hair doesn't have braids in
19 it now, does it?

20 A No, sir.

21 Q All right. So his hair appears different today than it
22 did then?

23 A (Nods head.) Face still the same.

24 Q So, no doubt in your mind who it was?

25 A Right.

1 Q I'm sure there were a lot of cars out there that night,
2 ma'am; is that true?

3 A Yes, sir.

4 Q Do you remember talking to the detectives about any
5 particular car?

6 A A black, Chrysler 300.

7 Q All right. And do you have any knowledge of who is
8 known to drive that car?

9 A He's one of them.

10 Q "He" being Derrick Fishburne, the defendant?

11 A Yes, yes, sir.

12 Q All right. I'm going to ---

13 **DEP. SOL. THORNTON:** May I approach, Your Honor?

14 **THE COURT:** You may.

15 Q Ma'am, I'm going to show you a document that's been
16 marked only for identification at this point as State's
17 Exhibit Number Three. Can you identify that document for
18 me?

19 A Yes, sir.

20 Q What is that document?

21 A A lineup.

22 Q All right. A lineup, meaning a photo lineup?

23 A Yes, sir.

24 Q Is that -- have you ever seen that photo lineup before
25 today?

1 A Yes, sir.

2 Q And did law enforcement show you that lineup?

3 A Yes, sir.

4 Q Did you indicate on that lineup that anybody on there
5 was the shooter of Donald Green?

6 A Yes, sir.

7 Q What picture did you indicate was Donald Green's
8 killer?

9 A Number Three.

10 Q And who is picture number three?

11 A Derrick Fishburne.

12 Q Derrick Fishburne, the defendant?

13 A Yes, sir.

14 Q Is he the one that shot and killed Donald Green?

15 A Yes, sir.

16 Q Did the detectives tell you which picture to pick?

17 A No, sir.

18 Q Did you need a photo lineup or did you already know
19 that it was D-Rock or Derrick Fishburne that shot and killed
20 Donald Green?

21 A I didn't need a photo lineup.

22 Q All right. Is that because you already knew him?

23 A Yes, sir.

24 DEP. SOL. THORNTON: Your Honor, at this time, I'd ask
25 that State's Exhibit Number Three be moved into evidence.

1 THE COURT: Any objection?

2 MR. MATHEWS: Yes, sir, Your Honor. I think ---

3 THE COURT: All right. Hold on a second. Bring it on
4 up here.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
6 AND OUT OF THE HEARING OF THE JURY.)

7 Q Ma'am, would you agree that picture number three
8 appears lighter than the other pictures?

9 A Yes, sir.

10 Q All right. Did that influence you in any way to pick
11 number three?

12 A No, sir.

13 Q All right. Is that because you already know who
14 Derrick Fishburne, aka D-Rock, is?

15 A Yes.

16 Q Do you recall -- and I know it's been a year ago, do
17 you recall how many shots D-Rock fired?

18 A No, not the exact amount.

19 Q Do you recall telling the detective that it was at
20 least five?

21 A Could have been at least five. I don't ---

22 Q Was it more than one?

23 A Yes.

24 Q Okay.

25 DEP. SOL. THORNTON: Court's indulgence, Your Honor.

1 Q I have no further questions at this time, ma'am.

2 Please answer any questions that Mr. Mathews has for you.

3 THE COURT: Cross-examination?

4 MR. MATHEWS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MATHEWS:

7 Q Ms. Washington, you gave a written statement the same
8 night this happened, I guess about five -- about a quarter
9 to six in the morning; is that accurate?

10 A It was early in the a.m. I can't give you the exact
11 time, but yeah.

12 Q Did you remain in the club until the police got there?

13 A I never was in the club. I was on the outside. I
14 never went into the club.

15 Q Okay. So, as far as what caused this and the reasons
16 for it or whatever, you don't anything about that. You just
17 saw the shooting?

18 A Right.

19 Q Okay. When you rolled up, what were you doing there?

20 A Just went to speak to one of our friends. He had sent
21 me a text message a little earlier and had asked me to come
22 out and talk to him for a little while.

23 Q Okay. Who was that?

24 A Brandon White.

25 Q Brandon White?

1 A Yeah.

2 Q So, Brandon White texted you and said he wanted to see
3 you?

4 A Yes.

5 Q Okay. All right. Do you know what he wanted to see
6 you about?

7 A No, we were friends. We are friends.

8 Q Okay. It wasn't to get anything or anything like that?
9 It was just y'all were buddies and he texted you and said,
10 "Come on out and see me. I want to see you"?

11 A Yeah.

12 Q All right. And I think in your statement, where were
13 you -- you said your car was -- where were you parked?

14 A In front of the club door.

15 Q In front of the club -- directly in front of the club
16 door?

17 A Yes, sir.

18 Q So you were right up facing it or to the side of it or
19 how were you set up?

20 A It was facing, like, longways.

21 Q Okay. So parallel to the club?

22 A Right.

23 Q All right. In your statement that night, you said that
24 you heard five shots and you began to run; is that accurate?

25 A Yes, sir.

1 Q All right. Where were you running from?

2 A From -- well, I was on the passenger side of the car,
3 so from on that side. Went to the opposite side of the
4 road.

5 Q Okay. So you didn't drive off? You ran away from --
6 you ran around the car and across the road?

7 A Right.

8 Q Okay. Did you do that the first time you heard a shot
9 or did you stay and watch it for a little while?

10 A Probably like, I guess, a couple of shots. I guess a
11 couple.

12 Q Okay. So there were like five shots and so the first
13 two shots you stood there, and after that you had left from
14 the car and ran across the street?

15 A Yeah. Yeah.

16 Q Okay. So you didn't have a chance to see anybody --
17 anybody leave or anything like that? Did you leave or did
18 the people that did the shooting leave first?

19 A They left first.

20 Q So, you waited around to see -- did you wait across the
21 street or were you waiting in the car or where were you
22 waiting when this was happening?

23 A We wasn't in the car. I think we were -- we were
24 across the street.

25 Q Okay. All right. So both you and Fatimah ---

1 A Sonja.

2 Q --- oh, I'm sorry. You and Sonja both ran across the
3 street after the shooting or after two shots had been fired?

4 A I don't know which way Sonja went.

5 Q Okay. So you ran across the street and she ran
6 somewhere, but you didn't see where she ran?

7 A It was across the street, I just don't know, like, you
8 know, we were in two different directions, running. You
9 know, just trying to get out of the way.

10 Q All right. So, all right, so for a little while, you
11 were across the street, I guess you had your back to the
12 club for three of the five shots?

13 A Right.

14 Q Okay. So, at what point were you just, like, hiding in
15 the woods or where were you when you saw these other cars
16 drive off?

17 A We was still, like, facing the club because we was on
18 the other side of the street. I guess, like, behind the
19 car, on the side of a car, somewhere in that area.

20 Q Okay. Now, which street did you cross? Did you cross
21 Jefferies or did you cross the other street to the side of
22 the club?

23 A Jefferies.

24 Q All right. And you've had a chance -- I guess you've
25 had a chance a couple of times to talk with the Solicitor's

1 attorney about this before you -- you've met with him a
2 couple of times before today; is that correct?

3 A On yesterday and today, yes, sir.

4 Q Yesterday and today?

5 A Uh-huh.

6 Q Okay. All right. What are the differences between
7 dreds and braids?

8 A Braids they -- they can both look alike, because they
9 sometimes they hang, sometime they're in corn rows. They
10 can all look alike, dreds and braids.

11 Q Okay. All right. What's more likely to stick up,
12 braids or dreds?

13 A It's according to the length of their hair.

14 Q Okay.

15 A Because they both -- if it's short, it will stand up,
16 but if it's lengthy, they will hang.

17 Q Okay. All right. Is the person you saw in the
18 shooting, they had hair, braids that you could see, sticking
19 up?

20 A I don't know if they were braids. I don't know if the
21 hair was sticking up or not.

22 Q Okay. But that was something that you were able to
23 notice, whoever did the shooting, they had hair that stood
24 up, and therefore, you could see that it was braids, or
25 dreds, or something like that; is that accurate?

1 A Right.

2 Q I think you also indicated that you saw "Main low" out
3 there. Who is "Main low"?

4 A I guess that's one of their friends?

5 Q What's Main low look like?

6 A Dark hair, short; I don't remember him, how he look.

7 Q Okay. So, you -- if you mentioned Main low in your
8 report, then that would still be accurate or not accurate or
9 what would that be?

10 A It's not accurate, because I don't remember how he
11 looked.

12 Q Okay. So, in your report, you mentioned Main low, but
13 you really didn't see Main low out there?

14 A I seen him out there. I just don't remember how he
15 looked.

16 Q Okay. All right. Well, how do you know it was Main
17 low if you don't know how he looked?

18 A It's been a year ago. I mean, I just haven't seen him
19 in so long, I can't really tell you how he looked. I don't
20 remember how he looked.

21 Q Okay. All right. When you talked with the -- when you
22 talked with detective -- did you talk with Det. Williams or
23 who did you talk to first?

24 A Det. Williams and Det. Johnson, both at the same time.

25 Q Okay. When you talked with them, did you -- what did

1 you first give them? Did you give them a description or did
2 you give them a name?

3 A I can't remember if I gave a name or a description.

4 Q Would it be fair to say that you knew D-Rock better
5 than your friend did?

6 A No, not really.

7 Q No? She probably knew him just as good as you did?

8 A Yeah.

9 Q Okay. So, if somebody said, "Oh, my God. D-Rock did
10 that." Did you say anything like that?

11 A No.

12 Q Do you remember her saying anything like that?

13 A We probably said it like towards each other when we was
14 leaving, got in the car. You know, me and her probably said
15 it to each other.

16 Q All right. How long have y'all been friends?

17 A Since we were, I guess, maybe, thirteen or fourteen;
18 maybe longer.

19 Q At least '90, '94, or so, somewhere in there?

20 A Yeah, a long time.

21 Q All right. And y'all would talk to each other. Over
22 the course of the last year, how many times would you say
23 that you and she have talked?

24 A Well, we had stopped speaking for a while. We just
25 started back speaking recently, so.

1 Q Okay. After this happened ---

2 A We stopped speaking for a little while; a good while.

3 Q Okay. You say that -- Ms. Washington did you ---

4 (MR. MATHEWS STOPS AND SPEAKS TO SOL. THORNTON SOTTO
5 VOICE.)

6 Q Ms. Washington, isn't it true that the person you saw
7 that night had long, longer dreds and not closer, close
8 braided braids; that's the truth, isn't it?

9 A I don't remember how long his hair was or the length of
10 it.

11 Q Okay. Wouldn't you say that's an important thing?
12 It's enough where you noticed it.

13 A I just don't remember the length of the hair. You
14 asked me how long it was and I can't say the length of it.

15 Q Ms. Washington, isn't it true you talked to -- because
16 you're related to -- through your child, you're related to
17 Derrick's mother, not to Derrick, but to Derrick's mother,
18 is that accurate?

19 A My daughter is.

20 Q Your daughter is. Okay. And you and Ms. Fishburne,
21 you've talked to her about this, is that true?

22 A Not literally about the case, no.

23 Q No? That has not happened?

24 A (NO RESPONSE.)

25 Q Ma'am?

- 1 A No.
- 2 Q Okay. So you never communicated with her directly
3 about what had happened in this case?
- 4 A I communicated not directly to her about the case, no.
- 5 Q Okay. When you say "not directly" what do you mean
6 about that? I'm not sure I understand that.
- 7 A I didn't speak to her about the case.
- 8 Q Okay. Did you get a communication to her about the
9 case?
- 10 A No.
- 11 Q That had not happened?
- 12 A No.
- 13 Q Okay. Did you write her a letter saying that Derrick
14 did not do this?
- 15 A I wrote a letter, not to her, to the sister. It was
16 for the sister.
- 17 Q I'm sorry. Okay. The sister; who is the sister?
- 18 A Wanda.
- 19 Q Wanda?
- 20 A Uh-huh.
- 21 Q Okay. So, you and Wanda have talked about this?
- 22 A Yes, sir.
- 23 Q Okay. What did y'all talk about it?
- 24 A I can't -- I don't remember back, because that was a
25 while ago.

1 Q All right. Maybe back in October of last year?

2 A It was a while. I don't remember the exact time, but
3 when it was. It's been a while ago, though.

4 Q All right. Did you ever make an attempt to try to drop
5 these charges or say that this didn't happen?

6 A For various reasons, I did.

7 Q Okay. Who did you talk with at the Sheriff's
8 Department?

9 A No, I never called the Sheriff's Department.

10 Q Did you go to The Annex at any point?

11 A I spoke with Mr. Beach at The Annex, but I never did
12 anything like went further with it. I didn't do it.

13 Q Okay. All right. Ms. Washington, you -- you don't
14 want to be here, do you?

15 A I really don't.

16 Q And this is -- I mean, you're related to these people.
17 Are you related to Donald, also, or just to Derrick through
18 your child?

19 A My child is related to Derrick.

20 Q Your child is related to Derrick, that's right. Are
21 you related to Donald Green in any way?

22 A No. I mean, we grew up around the same little area,
23 but I wouldn't say we were related.

24 Q Okay.

25 (MR. MATHEWS COMES TO COURT REPORTER TO HAVE EXHIBIT

1 MARKED.)

2 MR. MATHEWS: Your Honor, may I approach the witness?

3 THE COURT: You may.

4 Q Ms. Washington, I'm handing you what's been marked as
5 Defendant's Exhibit Number Four and ask if you can identify
6 that.

7 A Yes, I can.

8 Q What is that?

9 A It's a statement that I wrote.

10 MR. MATHEWS: Your Honor, I would move that into
11 evidence at this time.

12 THE COURT: Any objection?

13 DEP. SOL. THORNTON: No, sir.

14 THE COURT: Ladies and gentlemen of the jury,
15 Defendant's Exhibit Number Four will be admitted into
16 evidence without objection. Defendant's Four in evidence.
17 Proceed. Cross-examination.

18 Q Ms. Washington, where were you when you wrote that
19 statement?

20 A At the mother's house.

21 Q Okay. So you say you didn't communicate with the
22 mother, but in fact, you did.

23 A I -- we still didn't speak about the case, though.

24 Q Okay. But you wrote that out at Cathy Fishburne's
25 house?

1 A Right.

2 Q And that's where you were when you wrote that out?

3 A Right.

4 Q Okay. Tell the circumstances around that. What was
5 happening when you wrote that?

6 A Just to keep a lot of things down and you know, I just
7 wrote it.

8 Q Okay. Is it true?

9 A Is this true? Is the statement I wrote true?

10 Q Are -- have you written any untrue statements?

11 THE COURT: Counsel, let her answer. One question at a
12 time. You don't ask the questions, ma'am. Ask the
13 question, counsel. One at a time, but let her answer before
14 you ask her another one.

15 MR. MATHEWS: Yes, sir. Yes, sir.

16 THE COURT: Ask a question. Cross-examination.

17 MR. MATHEWS: Yes, sir.

18 Q Ms. Washington, have you ever made any statements that
19 weren't true?

20 A I made this statement on this paper that's untrue.

21 Q And you made that -- okay. So in that statement, you
22 said it wasn't true that Derrick Fishburne did this
23 shooting?

24 A Right.

25 Q So, the statement that you wrote at the Sheriff's

1 Office, that was true, but this statement is not?

2 A It's not -- this statement is not true.

3 Q All right. Well, tell the circumstances around why you
4 wrote it. Help me understand.

5 A I wrote it just like I said to keep a lot of problems
6 down, not having to deal with anyone, just -- that's why I
7 wrote it.

8 Q All right. Why did you write the statement to the --
9 in the statement to the Sheriff's Office?

10 A Because that statement, that's what took place. That's
11 what happened.

12 Q Okay. All right. In the statement that you wrote out,
13 you don't say anything about seeing anybody leave. Why did
14 you not do that?

15 A Which statement?

16 (MR. MATHEWS TALKS WITH SOL. THORNTON SOTTO VOICE.)

17 THE COURT: Counsel?

18 MR. MATHEWS: Your Honor, I'm trying to save some time,
19 but I will ---

20 THE COURT: You wish to introduce an exhibit, talk to
21 the Court.

22 MR. MATHEWS: Your Honor, I'd like to get the Sheriff's
23 Department official copy. I don't want to go through what
24 we went through last time.

25 THE COURT: All right. That will be fine.

1 MR. MATHEWS: May I have these marked, Your Honor?

2 THE COURT: You may.

3 (COURT REPORTER MARKS DOCUMENTS AS EXHIBITS FOR DEFENSE
4 COUNSEL.)

5 Q Ms. Washington, I'm handing you what's been marked as
6 Defendant's Exhibit Number Five and ask you if you can
7 identify that.

8 A Yes, sir, I can.

9 Q What is that?

10 A A statement I wrote.

11 Q Okay. Now, that's at a quarter to six in the morning
12 at the Sheriff's Annex; is that correct?

13 A Yes, sir.

14 Q Okay. All right. And you say this is a truthful
15 statement. So you say that you saw a small, black handgun;
16 is that right?

17 A Yes, sir.

18 Q All right. Was it a revolver or what kind of a gun was
19 it?

20 A I'm not familiar with guns, so I can't tell you, like,
21 revolver. I don't know what kind of gun it was.

22 Q All right. Who were you talking to when this occurred?

23 A When?

24 Q When the shooting occurred, who were you talking to?

25 A Sonja and Brandon.

1 Q You were talking to Sonja?

2 A Uh-huh.

3 Q Where was she when you were talking to her?

4 A We both were in front of the club on the outside of the
5 car, the passenger side of the car.

6 Q Okay. So you were both on the passenger side of the
7 club?

8 A Uh-huh.

9 Q So you were talking face to face with her on the
10 passenger side of the car, toward the club; is that right?

11 A I don't think we were face to face. We were just
12 standing there talking. It wasn't ---

13 Q All right. Was the car door shut or open?

14 A I can't remember if it was open or closed.

15 Q Okay. So the two of you were talking. Who else was
16 there?

17 A Brandon was.

18 Q Maybe I've already asked you, do you know Renaldo
19 Williams?

20 A Yes.

21 Q Okay. Was he at the club?

22 A Yes, he was.

23 Q Was Ebony also there?

24 A They were inside the club. They wasn't outside the
25 club. They were there. I saw them.

1 Q Okay. Well, now, if Ebony was inside the club and you
2 were you outside the club, how do you know if she was there?

3 A Because after the incident, they all came out.

4 Q Okay. All right. Was Renaldo inside or outside the
5 club when you were outside the club?

6 A He was -- I think he -- he walked out for like a second
7 and then walked back in.

8 Q All right. Did y'all talk about it before the police
9 got there?

10 A No.

11 Q Okay. Did you see the -- did you see the -- when you
12 went to the club, was there somebody working the door?
13 Standing out there by the door?

14 A Yeah. There was a bouncer at the door.

15 Q Okay. So there was a bouncer standing right there.
16 Did it happen, the shooting, did it happen right in front of
17 the bouncer?

18 A No, because I think he was inside the club at the time.

19 Q How about the person checking wristbands; is that the
20 same person or somebody different?

21 A I'm not sure. I didn't go in the club. I don't know.

22 Q How many people came out of the club when the shooting
23 happened?

24 A After it happened?

25 Q Afterwards, did people come running out of the club?

1 A Yes, like the whole club came running out.

2 Q Okay. How many people -- how long was it before law
3 enforcement got there from the shooting?

4 A It took a few seconds before they actually got to the
5 incident. I can't -- I don't know the exact time.

6 Q All right. Did you have a chance to talk to a number
7 of the people who had been inside the club?

8 A Repeat the question.

9 Q I mean, were the police long enough in getting there
10 where you had a chance to talk to several of the people who
11 had been inside the club?

12 A No.

13 Q No, it hadn't been that long?

14 A No.

15 Q Okay. All right. So who all was out there at the time
16 this was happening? You, Renaldo had come in and then went
17 back out or came out and went back in, Ebony was not in
18 there at the time, Brandon was there, you were talking to
19 Brandon, right?

20 A (NODS HEAD.)

21 Q How about Kenneth White; do you know Kenneth White?

22 A That's Brandon, same person.

23 Q Oh, okay. Brandon and Kenneth are the same person?

24 A Right.

25 (BRIEF PAUSE IN COURTROOM.)

1 THE COURT: Anything further, counsel?

2 MR. MATHEWS: No, sir.

3 THE COURT: Redirect?

4 DEP. SOL. THORNTON: Very briefly, Judge.

5 REDIRECT EXAMINATION

6 BY DEP. SOL. THORNTON:

7 Q Ma'am, earlier -- and I know you don't want to be here,
8 but earlier you testified that you wrote this statement, and
9 basically in this statement that you wrote through the
10 sister to Ms. Fishburne, the mother of the defendant, in
11 that statement, is it true that you basically said that
12 Derrick didn't have anything to do with anything?

13 A Right.

14 Q Okay. You testified that that's not true.

15 A yes, sir.

16 Q What you've testified to today is the same thing you
17 testified to in your statement and that you gave the police;
18 is that right?

19 A Yes, sir.

20 Q Ma'am, you testified earlier that you wrote the
21 statement to the family to keep down problems. Problems
22 with who?

23 A Just not to have to deal with anyone about this, the
24 case, just to not have to deal with anything about the case.

25 Q Okay. Anybody in particular?

- 1 A No, sir.
- 2 Q Okay. Did you have any problems with his family
3 calling your or coming up to your job?
- 4 A Um, phone calls, job, yeah.
- 5 Q What were the phone calls and job visits about?
- 6 A I guess having to write a statement.
- 7 Q Is that why you wrote the other statement?
- 8 A Yes, sir.
- 9 Q Is it true?
- 10 A Yes, sir.
- 11 Q All right. Let me rephrase that. Is the statement you
12 wrote to the family true?
- 13 A No, sir.
- 14 Q Is the statement you gave to police that is a sworn
15 statement; is that true?
- 16 A Yes, sir.
- 17 Q Is the sworn testimony that you swore to tell the truth
18 in front of God and everybody, is that true that you
19 testified to today?
- 20 A Yes, yes, sir, it is.
- 21 DEP. SOL. THORNTON: Nothing further.
- 22 THE COURT: Recross, limited to redirect?
- 23 MR. MATHEWS: Nothing, Your Honor.
- 24 THE COURT: As to this witness, Solicitor?
- 25 DEP. SOL. THORNTON: Your Honor, I'd ask that she be

1 excused, subject to recall. I've instructed her not to
2 discuss her testimony. She is on telephone standby.

3 THE COURT: Is she under your subpoena?

4 MR. MATHEWS: She's not.

5 THE COURT: I'm instructing you now, Ms. Washington,
6 that you cannot discuss your testimony with anybody. You're
7 subject to recall, but you may step down and leave the
8 courtroom at this time. Leave my exhibits right here.

9 Counsel approach.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
11 AND OUT OF THE HEARING OF THE JURY.)

12 THE COURT: My understanding from counsel for the
13 defendant, without objection from counsel for the State, is
14 that you now move for introduction of Defendant's Exhibit
15 Number Five into evidence?

16 MR. MATHEWS: Yes, sir.

17 THE COURT: Without objection, Solicitor?

18 DEP. SOL. THORNTON: Without objection, Judge.

19 THE COURT: Defendant's Exhibit Number Five will be
20 admitted into evidence without objection. Defendant's Five
21 now in evidence.

22 Ladies and gentlemen of the jury, I'm informed by the
23 Clerk that your delicious lunch has arrived at this point.
24 We're going to serve it to you in your jury room. Please,
25 over the lunch recess, do not discuss the case. You have

1 not heard all the evidence in the case. If I've got any
2 smokers on the jury, during the lunch break, they'll take
3 you outside to smoke. There is no smoking permitted in the
4 courthouse. Please don't discuss the case. If anybody
5 tries to talk to you about it, just tell them you're on the
6 jury and you can't discuss the case. I'll be back with you
7 after you've had a chance to have your lunch. You may
8 retire to your jury room at this time.

9 (1:15 P.M., 7-20-10, WHEREUPON THE JURY EXITS THE
10 COURTROOM AND COURT IS RECESSED FOR LUNCH. THEREAFTER, THE
11 FOLLOWING PROCEEDINGS ARE HELD ON THE RECORD.)

12 **THE COURT:** Is the State ready to proceed?

13 **DEP. SOL. THORNTON:** Yes, sir, Judge.

14 **THE COURT:** Is the defendant ready to proceed?

15 **MR. MATHEWS:** Yes, sir.

16 **THE COURT:** All right. Gerald, bring us the jury,
17 please.

18 (2:25 P.M., 7-20-10, WHEREUPON THE JURY ENTERS THE
19 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
20 RECORD.)

21 **THE COURT:** Madame Foreperson, ladies and gentlemen of
22 the jury, we will now continue with the testimony in the
23 trial of this case. Solicitor, call your next witness.

24 **DEP. SOL. THORNTON:** Thank you, Your Honor. The State
25 calls Dr. Ellen Reimer to the stand.

1 THE COURT: Come around and be sworn by the clerk of
2 court, please.

3 MADAME CLERK: If you would, place your left hand on
4 the Bible and raise your right.

5 WHEREUPON, DR. ELLEN REIMER IS DULY SWORN.

6 MADAME CLERK: Please have a seat on the witness stand.
7 After you're seated, state your full name for the record.

8 THE COURT: Watch your step. Have a seat and be
9 comfortable. Adjust that microphone. It's going to amplify
10 your voice. I want you to speak into it and begin by
11 stating your full name and spelling your last name for the
12 court reporter.

13 WITNESS: My name is Dr. Ellen C. Riemer, R-I-E-M-E-R.

14 THE COURT: Your witness, counsel.

15 DEP. SOL. THORNTON: Thank you, Your Honor. May I
16 approach the court reporter, Sir?

17 THE COURT: You may.

18 (COURT REPORTER MARKS DOCUMENTS FOR STATE'S EXHIBITS.)

19 DIRECT EXAMINATION

20 BY DEP. SOL. THORNTON

21 Q Dr. Riemer, who do your work for, ma'am?

22 A I'm employed by The Medical University of South
23 Carolina.

24 Q All right. And what do you do for The Medical
25 University of South Carolina?

1 A I am a fulltime Forensic Pathologist, also Assistant
2 Professor of Pathology and Director of Pulmonary Pathology.

3 Q All right. And I referred to you as "Doctor"; are you
4 an M. D.?

5 A Yes, I'm a physician.

6 Q How long have you been an M.D.?

7 A I received my M.D. degree in 1997.

8 Q All right. Dr. Reimer, what kinds of schooling or
9 education, if any, do you have to go through to become a
10 Pathologist?

11 A Well, after undergraduate school, after completing four
12 years of college, you go to medical school. I went to
13 medical school for four years, and I received an M. D.
14 Degree.

15 Thereafter, I went for Pathology Residency training for
16 a duration of four years as well, and I did that at Columbia
17 Presbyterian Medical Center of College and Physicians and
18 Surgeons of New York, at Columbia University. After that,
19 that was for four years, and so I received my pathology
20 training there. Then, I did sub-specialty training in
21 forensic pathology, which is a Board Certified Fellowship,
22 and that was for a duration of one year in Baltimore,
23 Maryland, at the Office of the Chief Medical Examiner of the
24 State of Maryland. And after that, I did another sub-
25 specialty fellowship training in cardiac and pulmonary

1 pathology at Johns Hopkins University School of Medicine,
2 also for a year. So, over those many years, I became, I
3 learned -- I became a pathologist and with the sub-specialty
4 training that I have today.

5 Q All right. Doctor, how long have you been with MUSC?

6 A For one and a half years.

7 Q All right. Overall, the course of your career, Doctor,
8 how many autopsies have you performed?

9 A I haven't kept exact track of it, but approximately
10 2500.

11 Q Okay. So, well over 2,000 cases?

12 A That's correct.

13 Q Have you ever been qualified as an expert to testify in
14 Court before as a Pathologist?

15 A Yes, many times.

16 Q Can you give me a rough count of how many?

17 A Probably, forty-something times.

18 Q All right. Doctor, did you do an autopsy on one
19 patient, Donald Green?

20 A Yes, I did.

21 Q All right. On or about April the 10th, 2009?

22 A Yes, I did.

23 Q All right. And in performing that autopsy, did you act
24 in your capacity as a pathologist for MUSC?

25 A Yes, as a Forensic Pathologist.

1 DEP. SOL. THORNTON: Your Honor, at this time, I'd ask
2 that Dr. Riemer be recognized as an expert in Pathology.

3 THE COURT: Any objection?

4 MR. MATHEWS: No, sir.

5 THE COURT: Ladies and gentlemen of the jury, recalling
6 my earlier instruction to you concerning expert testimony,
7 in determining the weight to be given to any expert
8 testimony or any opinion testimony, you should consider the
9 qualifications and the credibility or believability of the
10 expert, the reasons given for his or her opinion. You are
11 not bound by such expert opinion. You give it the weight,
12 if any, to which you deem it should be entitled. The
13 witness is qualified without objection. You may proceed,
14 Counsel.

15 DEP. SOL. THORNTON: Thank you, Your Honor.

16 Q Dr. Riemer, you testified earlier that you did an
17 autopsy in this case; is that correct, ma'am?

18 A Yes.

19 Q All right. Can you tell me what, if any, significant
20 findings you made as to the death of Donald Green?

21 A If it's okay, may I pull out a copy of my autopsy
22 report ---

23 Q Yes, ma'am ---

24 A --- to refresh my recollection?

25 Q --- please do.

1 A I did a complete autopsy on Mr. Green, who was a 25-
2 year-old man and I determined that he received -- he died of
3 six gunshot wounds to the body. There were three gunshot
4 wounds to the lower extremities. One gunshot wound to the
5 upper extremity. One gunshot wound to the torso, and one
6 gunshot wound to the head. And if you would like me to
7 describe these gunshot wounds?

8 Q Please, Dr. Reimer. If you'll just take them one at a
9 time and describe them as you found them as you did the
10 autopsy.

11 A All right. I'll start with the gunshot wound to the
12 head. That gunshot wound entered the left side of the face
13 just below the left eye and went through the left zygomatic
14 bone, which is the bone that's just behind the nose, and
15 continued through bones of the right side of the face, also
16 grazing the bones at the base of the skull, causing some
17 skull fractures at the base of the skull. And the bullet
18 terminated in the right tetras ridge, which is a bony
19 structure in front of the right ear.

20 Q All right, Doctor. So that was the shot to the face?

21 A That's correct.

22 Q Okay. Please continue.

23 A In addition, another gunshot wound was present on the
24 right side of the chest. This gunshot wound went through
25 the right side of the front of the chest, went through the

1 skin and soft tissue underneath the skin, as well as the
2 muscles of the lateral aspect of the right side of the
3 chest, and just touched the eighth rib, without entering the
4 plural cavity. So, it didn't cause any injury to the right
5 lung. And it also injured the muscles of the right abdomen,
6 and exited through a hole in the right abdomen as well. So,
7 it went through a lot of muscles of the right chest and
8 abdomen, but didn't actually penetrate the thoracic or
9 abdominal cavities, so it didn't actually go through any
10 vital organs, but just caused a lot of bleeding in the
11 muscles and bleeding outside of the body, and damage to
12 tissues.

13 Another gunshot wound was present on the right groin,
14 that entered the right groin. And this gunshot wound went
15 through also, after going through the skin and soft tissue
16 of the right groin area, went through the muscles of the
17 groin and flank and exited -- that's kind of in the right
18 hip area, the flank, and exited through a hole in the right
19 flank. So, also went through a lot of musculature and
20 caused bleeding.

21 There was also a gunshot wound to the left side of the
22 groin, which also entered the left groin and went through a
23 lot of -- went through skin and the soft tissue underneath
24 the groin, also injuring musculature of the groin and
25 pelvis, and both into the left buttock and the bullet

1. stopped in the left buttock. So, that's another gunshot
2. wound.

3. Then, there were two more gunshot wounds still to
4. describe. So, I've already described four. There was a
5. gunshot wound to the right thigh and this gunshot wound went
6. sort of to the front of the inside of the right thigh and
7. went through the muscles of the right thigh after going
8. through the skin and went upward into the right buttock and
9. terminated there. So, it went through the right thigh and
10. right buttock. Okay. So you can imagine that kind of a
11. pathway.

12. In addition, there was a gunshot wound to the right
13. hand that was on the -- that entered the ulnar aspect of the
14. right wrist, okay. So, it's kind of on the back of the
15. right wrist and let's see --and went through the muscles of
16. the forearms. It was traveled upward into the arm and
17. entered musculature of the right arm without damaging any of
18. the bones. So, the cumulative effect of all of these
19. gunshot wounds is the bungen amount of bleeding and tissue
20. damage and damage to the muscles of the body. And the
21. gunshot wound to the face also caused skull fractures at the
22. base of the skull, but didn't actually go through the brain.

23. Q Dr. Reimer, did you reach an opinion to a medical
24. degree of certainty as to what the cause of death was in
25. this case?

1 A Yes, this gentleman died of multiple gunshot wounds.

2 Q All right. And obviously, based on what you saw,
3 Doctor, have you reached an opinion to a reasonable degree
4 of medical certainty as to how best to characterize this
5 death?

6 A Yes, this was a homicide.

7 DEP. SOL. THORNTON: May I approach, Judge?

8 THE COURT: You may.

9 Q Dr. Riemer, I'm going to show you what's been marked
10 only for identification, State's Exhibit Number Four, if you
11 would please review these eight photographs and let me know
12 if you can identify them.

13 (BRIEF PAUSE WHILE DR. RIEMER EXAMINES PHOTOGRAPHS.)

14 A Yes.

15 Q And Dr. Riemer, what are those photographs of? And
16 we'll go through them one at a time, but as a group, what
17 are those photographs of?

18 A Oh, these are the photographs that I took of the
19 decedent at the autopsy, and I know that because these
20 photographs have the decedent identification number, which
21 is FA09-198. So, instead of referring to the individuals
22 who come into my autopsy room with names, a lot of times
23 people have the same names or -- and it's just easier to
24 identify them with a number. We know each person was an
25 individual, but we assign a number to them for the purposes

1 of keeping clear documentation on the findings.

2 Q Dr. Riemer, if I can, I'm sorry to interrupt. Do those
3 pictures accurately reflect the condition of the decedent
4 and the wounds as you described them?

5 A Yes.

6 Q Do they appear to have been altered in any way?

7 A No, these are the original photographs.

8 DEP. SOL. THORNTON: Your Honor, at this time, I would
9 ask that State's Exhibit Number Four be moved into evidence.

10 THE COURT: Any objection?

11 MR. MATHEWS: Yes, Your Honor. I don't think the
12 proper predicate has been laid at this point.

13 THE COURT: Counsel approach.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
15 AND OUT OF THE HEARING OF THE JURY.)

16 Q Dr. Riemer, one other question real quick before we get
17 into the photographs. Do the photographs, are they visual
18 depictions that can assist you in describing injuries to the
19 jury and aid your testimony?

20 A Yes.

21 DEP. SOL. THORNTON: Your Honor, at this time, I would
22 move them into evidence.

23 THE COURT: Any objection?

24 MR. MATHEWS: Subject to the -- to the objection
25 discussed prior to -- prior to lunch.

1 THE COURT: You'll have to refresh my memory on that,
2 counsel, because you didn't -- counsel approach.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD AND
4 OUT OF THE HEARING OF THE JURY.)

5 THE COURT: All right. Subject to 403, the objection
6 is overruled. The relevancy and materiality and
7 admissibility of the photographs, obviously, are in
8 discretion of the Court. If they serve to corroborate
9 testimony that is, I believe, not an abuse of discretion to
10 admit it, and to constitute under fair prejudice, I believe
11 photographs must create an undue tendency to suggest a
12 decision on an improper basis, commonly thought, but not
13 necessarily to be an emotional one.

14 Although photographs which I have examined during the
15 break are graphic, I also believe the witness says it will
16 assist her in explaining her expert testimony and therefore
17 your objection is respectfully overruled. You may publish
18 to the jury. State's Exhibit Four is in evidence.

19 DEP. SOL. THORNTON: Thank you, Your Honor. May I
20 approach?

21 THE COURT: Yes, sir.

22 Q Dr. Reimer, if you would come down, with the Court's
23 permission.

24 THE COURT: Pat, would you get me the portable
25 microphone, please?

1 **MADAME CLERK:** Yes, sir.

2 **THE COURT:** Please step down, Doctor. I want you to
3 use the microphone. You're going to have to hold it close.
4 In fact, Mr. Thornton should hold it for you, if you're
5 going to hold the photographs, so that you can speak into
6 that microphone. When you turn your back to my court
7 reporter, she can't see your mouth. She needs to be able to
8 hear you. Mr. Mathews, you may come outside of the jury
9 box, by Mr. Grant, so you can view photographs being shown
10 to the jury.

11 **MR. MATHEWS:** Thank you, Your Honor.

12 **THE COURT:** Ladies and gentlemen of the jury, this is
13 State's Exhibit Number Four, which is now in evidence over
14 objection.. You may now publish to the jury, Counsel.

15 **Q** Doctor, if you would, go through the pictures with the
16 jury. As to the first picture, would you show them that and
17 then describe what it is that they're seeing?

18 **A** Okay. This first picture is of the decedent's face
19 which shows the entrance gunshot wound at the edge of the
20 left eye. You can see there's a hole with light at the edge
21 of the left eye, and that's the entrance wound to the face.

22 **Q** Thank you, Doctor. As to the second picture?

23 **A** This is a photograph of the gunshot wound to the
24 abdomen that entered the right side of the abdomen. It was
25 actually -- excuse me, this was the gunshot wound to the

1 right lateral aspect of the chest.

2 These also are gunshot wounds. This is an entrance
3 gunshot wound.

4 Q Thank you, Doctor. As to the third picture?

5 A This is a gunshot wound to the right side of the
6 abdomen. You can see where we are on the body. You can see
7 the right nipple in that picture as well as the naval, and
8 the gunshot wound is directly beneath the decedent's label
9 number, and this is the gunshot wound that was to the
10 abdomen.

11 Q Thank you, Doctor. As to picture number four?

12 A This is a gunshot wound to the right hand that entered
13 the ulnar aspect of the right hand and you can see that it's
14 entering the right hand and going into the wrist; and so it
15 sort of this is the entrance and the exit wound, so it's
16 injuring the musculature of the right hand and wrist before
17 exiting, so that this is the entrance and this is the exit
18 and it's kind of going underneath the skin and into the
19 musculature before exiting the wrist. So enters the hand,
20 exits the wrist.

21 Q Doctor, if you could retake the stand at this time.

22 DEP. SOL. THORNTON: May I approach, Judge?

23 THE COURT: You may.

24 Q Now, Doctor, as to the remaining four pictures, can you
25 describe what those four pictures are?

1 A Yes, these are deformed jacketed projectiles that I
2 recovered at the autopsy.

3 Q Doctor, let me interrupt you and ask you what's
4 probably going to be a really dumb question, but is that
5 another word for bullets?

6 A Yes.

7 Q All right. So those four bullets, you pulled out of
8 the victim?

9 A That is correct.

10 DEP. SOL. THORNTON: May I approach, Judge?

11 THE COURT: You may.

12 DEP. SOL. THORNTON: Thank you, Doctor.

13 Court's indulgence for one moment.

14 Q Dr. Reimer, thank you very much, ma'am. I have no
15 further questions at this time. If you would answer any
16 questions that Mr. Mathews has.

17 THE COURT: Cross-examination.

18 MR. MATHEWS: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. MATHEWS:

21 Q Dr. Reimer, the shot that went into the right -- that
22 was the right eye?

23 A That was the left eye.

24 Q Left eye, okay. So you got some shots to the left and
25 some shots to the right?

1 A That's -- to the left side of the body, to the left
2 side of the face, and then there are shots to the right side
3 of the torso, correct.

4 Q Okay. So there were shots coming from both sides?

5 A Not necessarily. It's hard to tell because our neck --
6 I can explain to the jury. A neck is a very movable substan
7 -- when we move our bodies, we don't necessarily keep our
8 heads in one place. So, it's hard to tell. The decedent
9 could have been -- the shots both could have been coming
10 from the same direction as to the relative position of the
11 shooter, but these are very dynamic situations and the
12 decedent may have been moving his body while he was being
13 shot, so it's -- I cannot -- I cannot tell you with
14 certainty the relative position of the shooter and the
15 victim.

16 Q It could be -- it could be they came from different
17 directions? Or it could be they came from the same
18 direction but the decedent turned?

19 A That's -- that's certainly possible.

20 Q Okay. And the bullet that entered to the left side of
21 the decedent's head, that didn't actually enter the brain?

22 A No. It did -- it did traverse -- it did enter the
23 cranial cavity by virtue of fracturing the skull, the skull
24 plate, at the -- that's sort of at the bottom of the brain.
25 And it just caused some focal bleeding on the surface of the

1 brain, but the skull fracture -- and that was caused
2 probably from the skull fractures like bouncing off and
3 striking the brain as the bullet went through, but it did
4 not actually traverse the brain.

5 Q Okay. So you wouldn't see brain escaping through any
6 of the exit wounds, it would be blood, a lot of blood, but
7 there wouldn't be brain coming out or anything?

8 A Certainly not.

9 Q Okay.

10 MR. MATHEWS: No further questions, Your Honor.

11 THE COURT: Redirect?

12 DEP. SOL. THORNTON: No, sir.

13 THE COURT: As to this witness?

14 DEP. SOL. THORNTON: A little bit different, Judge.

15 I'd ask that she be completely excused and be allowed to go
16 back to MUSC.

17 THE COURT: Mr. Mathews, any objection?

18 MR. MATHEWS: No, sir.

19 THE COURT: Dr. Reimer, you may step down. Leave my
20 photographs with me, please, that have been submitted into
21 evidence.

22 WITNESS: Okay. I believe your Solicitor has them. I
23 don't have them anymore.

24 DEP. SOL. THORNTON: The photographs are with ---

25 THE COURT: My court reporter has them right below me.

1 WITNESS: All right. Okay.

2 THE COURT: You are excused from the trial of this
3 case. You may step down. Call your next witness.

4 DEP. SOL. THORNTON: Kathleen Butler, Your Honor.

5 MADAME CLERK: Please come forward and be sworn, Ms.
6 Butler.

7 WHEREUPON, MS. KATHLEEN BUTLER IS DULY SWORN.

8 MADAME CLERK: Please have a seat on the witness stand.
9 State your full name for the record.

10 THE COURT: Watch your step for me. Have a seat. That
11 microphone is going to amplify your voice. Speak into it
12 and begin by stating your full name and spelling your last
13 name for my court reporter below you.

14 WITNESS: It's Kathleen Anne Butler, B-U-T-L-E-R.

15 THE COURT: Speak up for me so my last juror down there
16 can hear you. Your witness, counsel.

17 DEP. SOL. THORNTON: Thank you, Judge.

18 DIRECT EXAMINATION

19 BY DEP. SOL. THORNTON:

20 Q Ms. Butler, who do you work for, ma'am?

21 A I work for the Charleston Police Department.

22 Q And in what capacity?

23 A I am their Senior Latent Examiner.

24 Q And is that a fancy way of saying that you look at
25 fingerprints?

1 A I look at fingerprints.

2 Q All right. How long have you been doing that, ma'am ?

3 A For approximately eight years.

4 Q How many fingerprints do you figure you've looked at in
5 different cases?

6 A Well over 30,000.

7 Q All right. What kinds of education do you have to go
8 through to do the kind of work that you do, ma'am?

9 A I started back in 2001, I was in the crime scene unit
10 with the Charleston Police Department. I did an independent
11 study under Chris Scott and Lindsey Oliver, who were the
12 latent examiners at that time. They basically taught me
13 basic pattern recognition, how to look at fingerprints to
14 known fingerprints, and took me through the process to be a
15 latent examiner; got me interested.

16 From there, I took several courses, basic pattern of
17 fingerprint recognition and then went to basic fingerprint
18 at the South Carolina Law Enforcement Division. When I was
19 transferred into the unit from crime scene, I started going
20 to specialty classes, Ridgology, advance latent
21 fingerprints, administrative advance fingerprint, complex, I
22 have over 300 hours in fingerprint training. There's no one
23 particular division that teaches you, there are other latent
24 examiners who are certified to teach, and they come out and
25 do training throughout the United States.

1 Q All right. And Ms. Butler, do you -- have you ever
2 been qualified as an expert to testify in Court?

3 A I've been qualified 15 times and 13 of those in General
4 Sessions of South Carolina and three in Federal Court right
5 on Broad Street in Charleston, South Carolina.

6 DEP. SOL. THORNTON: Your Honor, at this time, I'd ask
7 that Ms. Butler be declared an expert in fingerprint
8 identification.

9 THE COURT: Any objections to qualifications, Mr.
10 Mathews?

11 MR. MATHEWS: No, sir.

12 THE COURT: Ladies and gentlemen of the jury, recalling
13 my earlier instruction to you concerning expert testimony,
14 this witness is qualified in fingerprint identification,
15 without objection. You may proceed, counsel.

16 DEP. SOL. THORNTON: Thank you very much. May I
17 approach, Your Honor?

18 THE COURT: You may.

19 Q Ma'am, I'm going to hand you a manila envelope with
20 another bag inside it. It's been marked only as
21 identification as State's Exhibit Number Five. Can you
22 identify the plastic bag, marked as State's Five?

23 A Yes, sir. I can.

24 Q Ma'am, what is that?

25 A It is the temprint card of Derrick Phillip Fishburne,

1 and I know that because my initials are on it.

2 Q All right, ma'am, and is there anything else attached
3 to that bag?

4 A The individual bag?

5 Q Yes, ma'am, and if it's not, we can check the envelope
6 to see if there are any other bags that may have fallen off
7 as I handed it to you, inside the actual large envelope.

8 A Okay. You have fingerprint cards that were submitted
9 to me.

10 Q Okay, ma'am, and when you say a temprint card, is that
11 what's referred to as a known sample?

12 A Yes. Temprint cards are known fingerprints.

13 Q Okay. And could you explain to the jury what a known
14 fingerprint sample is?

15 A On the tips of your fingers, your palms, and the soles
16 of your feet are raised ridges. We call these raised
17 ridges, friction ridges. By applying a thin layer of
18 printing to those ridges, and taking a proper card-stock
19 backing, you make a permanent record of the impressions on
20 your fingers, your palms, and the soles of your feet.
21 Usually when the individual who is taking those
22 fingerprints, they know who the person is who the
23 fingerprints they're taking.

24 Q All right, ma'am. And who does the temprint card, as
25 you call it, who does it identify itself as?

1 A The one in my hand ---

2 Q Yes, ma'am.

3 A --- that I can see is Derrick Phillip Fishburne.

4 Q All right, ma'am. Now, what is the significance of the
5 other two smaller, plastic envelopes that you have in your
6 hand?

7 A Okay. These are what we call latent fingerprint cards.
8 They are unknown because they don't come with a name on it
9 and identifiers, such as your name, social security, your
10 date of birth.

11 Q So is it fair to say then that you take the ones that
12 are unknown that are latent lifts from say, a crime scene,
13 and compare it to known to determine if they are the same or
14 not?

15 A Yes.

16 Q And did you do that in this case?

17 A I did.

18 Q All right. Can you tell me, is there anything
19 indicating on the smaller bags, ma'am, where they came from
20 or how to distinguish the two bags? If you need to open
21 them up, ma'am, that's fine.

22 THE COURT: Pat, do you have a pair of scissors?

23 DEP. SOL. THORNTON: May I approach, Judge?

24 THE COURT: You may.

25 Q Here you are, ma'am.

1 A Thank you. All right. These are two latent
2 fingerprint cards. Latent lift number one was collected by
3 Inabinett and it's from the rear -- rearview mirror, black
4 in color, Chrysler 300. And latent lift number two is also
5 from the rearview mirror, black in color, Chrysler 300,
6 collected by Inabinett.

7 Q All right, ma'am, and did you compare those
8 fingerprints? Please, go ahead and continue.

9 A These are going to be out of order, but latent lift 1B
10 is from Jeep rear ID, collected by Inabinett. 3B is a black
11 -- back passenger door, lower portion Jeep, collected by
12 Inabinett. Number 2B is from the Jeep rear, ID glass
13 portion, collected by Inabinett. 6B is rear quarter panel,
14 right side of the Jeep, collected by Inabinett. Number 4B
15 is back passenger door, collected by Inabinett, and then 5B
16 is Jeep rear quarter panel, R side, by Thomas.

17 Q Thank you, ma'am. The first two, I believe you
18 mentioned, ma'am, or that came out of the same pack, were
19 indicated as Chrysler 300; is that correct?

20 A Yes, sir.

21 Q Were you able to make a determination based on the
22 unknown prints pulled from the Chrysler 300 and the known
23 prints of Derrick Fishburne?

24 A Yes, I was.

25 Q What was your opinion, ma'am?

1 A That latent lift number one was ID'd to the number one
2 finger, the right thumb, of Derrick Fishburne, and latent
3 lift number two was identified to the number six finger,
4 which is your left thumb, of Derrick Fishburne, and these
5 came from the rear view mirror of the Chrysler 300.

6 Q All right, ma'am. With regards to the other prints
7 that you indicated coming from a Jeep, did any of those
8 match Derrick Fishburne?

9 A No, they did not.

10 Q All right. And did they in fact match someone else by
11 the name of Cornelius Dewayne Watt?

12 A Yes, they did.

13 Q Did they prints -- so you have two standards to
14 compare; is that correct?

15 A Two temprint cards were submitted to me.

16 Q And it is your opinion that the prints pulled off of
17 the Chrysler 300 belong to Derrick Fishburne; is that
18 correct?

19 DEP. SOL. THORNTON: Your Honor, I believe we have a
20 stipulation as to chain. I'd like to go ahead and move all
21 of that in at this time.

22 THE COURT: Mr. Mathews?

23 MR. MATHEWS: That's correct, Your Honor.

24 THE COURT: Correct meaning there's a stipulation as to
25 this chain of evidence and you have no objection?

1 MR. MATHEWS: Yes, sir.

2 THE COURT: Very well. You may offer it at this time.

3 DEP. SOL. THORNTON: Thank you, Your Honor, I'd ask ---

4 THE COURT: Let the witness identify what you're going
5 to offer.

6 DEP. SOL. THORNTON: Yes, sir, Your Honor.

7 Q Ma'am, I would simply ask you is the State's, marked at
8 this time for identification, Number Five, containing three
9 bags, one large and two small plastic bags, are those the
10 cards that you examined on behalf of Colleton County in this
11 case?

12 A Yes, they were.

13 DEP. SOL. THORNTON: All right. Your Honor, I'd ask
14 that they be moved into evidence at this time.

15 THE COURT: One exhibit?

16 DEP. SOL. THORNTON: Yes, sir. It's one exhibit. I've
17 got them all in one manila envelope, Your Honor.

18 THE COURT: Five? Mr. Mathews, I understand there's no
19 objection as to State's Exhibit Number Five; is that
20 correct?

21 MR. MATHEWS: That's correct.

22 THE COURT: State's Exhibit Number Five is admitted
23 into evidence without objection. You may publish to the
24 jury. Proceed.

25 DEP. SOL. THORNTON: Thank you, Your Honor.

1 Q At this time, I have no further questions, Ms. Butler.
2 Please answer any questions that Mr. Mathews has.

3 THE COURT: Cross-examination?

4 MR. MATHEWS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MATHEWS:

7 Q Ms. Butler, who is -- who is Cornelius Dewayne White?

8 A I don't actually know who he is; I can only tell you
9 that we searched the automated fingerprint identification
10 system, which is known as AFIS, and the prints from the
11 envelopes with six latent cards had matched out to him. I
12 can read off his information if you would like.

13 Q I don't care. You don't know who he is, but you were
14 asked to search to see if his prints were in a Jeep, and
15 they were?

16 A No, I've never searched to see if his prints were in a
17 Jeep. I run the automated fingerprint identification system.
18 On any unknowns, we either compare to an individual who has
19 been submitted to us, known fingerprints, or we search the
20 database of fingerprints to see if we can identify them.

21 Q Who is Timothy Behling?

22 A Timothy Behling was a known fingerprint card that was
23 submitted by the detective, which was Det. Williams, Andre
24 Williams was the one who dropped this case off to my office.
25 So, I personally have no knowledge as to who they are.

1 Q Okay. So you don't know why you were sent these
2 prints, you just looked at them and compared them to
3 known's? Compared known's to unknowns?

4 A Correct.

5 Q And so why would you be asked to look up Cornelius
6 Dewayne White's fingerprints, you don't know?

7 A Okay. I did not look up. We searched latents that
8 would identify to the two individuals submitted, the
9 temprint card submitted to my office. We searched those
10 through the automated fingerprint identification system and
11 it revealed a match to Cornelius White.

12 Q Okay. None of these people you know anything about
13 other than you're asked to compare known's to unknowns?

14 A Correct.

15 MR. MATHEWS: Nothing further, Your Honor.

16 THE COURT: Redirect?

17 DEP. SOL. THORNTON: None, Your Honor. Thank you.

18 THE COURT: Hold on a second. Ms. Butler, would you
19 make sure that my State's Exhibit Five all goes back in the
20 right envelopes, back inside the package, and hand it to my
21 court reporter?

22 WITNESS: Yes.

23 THE COURT: All right. Thank you. As to this witness,
24 please?

25 DEP. SOL. THORNTON: Ask that she be excused and be

1 allowed to go back to Charleston, Judge.

2 THE COURT: Totally from the trial of this case? Any
3 objection, Mr. Mathews?

4 MR. MATHEWS: No, sir.

5 THE COURT: Ms. Butler, you may step down and you are
6 excused from the trial of this case. Call your next
7 witness.

8 DEP. SOL. THORNTON: Allan Inabinett.

9 THE COURT: You're still under oath, if you'll come
10 around. This witness has previously been sworn in the trial
11 of this case and I remind you, Lieutenant, that you are
12 still under oath. Have a seat for me.

13 WITNESS: Yes, sir.

14 THE COURT: State your full name for the record.

15 WITNESS: Fred Allen Inabinett.

16 THE COURT: All right. Counsel, you may now proceed.
17 Your witness, direct examination.

18 DEP. SOL. THORNTON: Thank you, Your Honor. We need
19 to approach for one moment, Sir.

20 THE COURT: Counsel approach.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
22 AND OUT OF THE HEARING OF THE JURY.)

23 THE COURT: Proceed.

24 DEP. SOL. THORNTON: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY DEP. SOL. THORNTON:

2 Q Det. Inabinett, you understand you're still under oath?

3 A Yes, sir.

4 Q Sir, we talked earlier about some of the things that
5 you did about collecting evidence. Did you also -- did you
6 take any fingerprints in this case?

7 A Yes, sir, I did.

8 Q All right. And maybe I should be more specific. Did
9 you pull any latents off of anything in this case?

10 A Yes, sir.

11 Q All right, sir. Can you tell me what you pulled
12 latents off of, if anything?

13 A Yes, sir. I processed a Chrysler 300, which belonged
14 to the victim, for latent prints that were possibly related
15 to this crime.

16 Q All right, sir. And did you pull prints off of it?

17 A I did, off the rearview mirror.

18 Q All right, sir. And are those the prints that were
19 submitted to Kathleen Butler of the Charleston Police
20 Department?

21 A Yes, sir.

22 Q All right, sir. Did you also pull prints off another
23 vehicle?

24 A I did. It was a grey Jeep product that was previously
25 mentioned in the photographs.

1 DEP. SOL. THORNTON: Your Honor, may I approach?

2 THE COURT: You may.

3 Q Is that what appears to be a Jeep? I think that's a
4 Liberty in the first photograph of State's Exhibit Number
5 One, which is in evidence. Is that the vehicle that is also
6 referenced in the second photograph showing a large pool of
7 blood and all the placards?

8 A Yes, sir.

9 Q All right. Is that the Jeep that you pulled
10 fingerprints off of?

11 A Yes, it is.

12 Q So, that Jeep was actually still there when you got
13 there, obviously; is that correct, Sir?

14 A Yes, it was still on scene.

15 Q And did you pull prints from that Jeep?

16 A I did.

17 Q All right, sir. And were those also submitted to Ms.
18 Butler of the Charleston Police Department?

19 A Yes, sir.

20 Q What -- can you explain to me what the process is, what
21 you do to pull a latent, and what kind of experience or
22 training you had in doing it?

23 A Yes, sir.

24 Q I've been trained to -- the process that was used that
25 night, the latent lift, we used a fingerprint powder which

1 is applied manually by brush. Once the powder is placed on
2 the latent, it appears, and then you use a certain type of
3 latent-lift tape, which is then placed over the actual lift
4 itself, and then removed and placed on a latent fingerprint
5 card where it's then described, hand sketch of the area it
6 was lifted from, and there's some particulars, which is the
7 date, the time, what kind of crime it is, and the actual
8 location of where you're at.

9 Q All right. Is that the procedure you followed in this
10 case?

11 A Yes, sir.

12 Q And are you qualified, sir, to identify one fingerprint
13 versus another?

14 A No, sir.

15 Q Is that why you submitted them to Ms. Butler?

16 A That's correct.

17 DEP. SOL. THORNTON: Your Honor, Court's indulgence for
18 just one moment, please.

19 Q Det. Inabinett, on State's ---

20 DEP. SOL. THORNTON: Your Honor, may I approach?

21 THE COURT: You may.

22 Q On State's Exhibit Number One that I previously asked
23 you about, if you would look at the photographs for me, sir.
24 I called out the name "placards," can you explain to the
25 jury what placards are?

1 A Yes, sir. A placard is a plastic piece of product
2 which gives a numeric value or a alphabet on it, which is
3 used to mark evidence that we deem necessary on crimes.

4 Q All right. Were you out on scene when these placards
5 were placed?

6 A Yes, sir.

7 Q Was there anybody else who was taking in evidence at
8 that time?

9 A Yes, sir. There was another detective on scene.

10 Q And who was that?

11 A Det. Jeff Scott and Det. Dave Thomas.

12 Q All right, sir. And we may have covered this earlier,
13 I apologize if I'm re-asking the same questions, but did --
14 what is your rank at this time?

15 A Currently, I am now Lieutenant of Investigations.

16 Q And at that time, what was your rank?

17 A Lieutenant.

18 Q All right. So were you the ranking detective on scene?

19 A Yes, sir.

20 Q Did you -- did you witness Det. Scott and Det. Thomas
21 as they collected evidence?

22 A I did.

23 Q All right, sir.

24 DEP. SOL. THORNTON: I have no further questions at
25 this time, Your Honor.

1 Q Det. Inabinett, thank you very much, sir. If you would
2 answer any questions that Mr. Mathews has for you.

3 THE COURT: Cross-examination?

4 MR. MATHEWS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MATHEWS:

7 MR. MATHEWS: May I approach the witness, Your Honor?

8 THE COURT: You may.

9 MR. MATHEWS: (TO COURT REPORTER.) Please mark this for
10 identification.

11 Q Det. Inabinett, I'm handing you what's been marked as
12 Defendant's Exhibits Six and Seven, and ask if you can
13 identify those pictures.

14 A Yes, sir.

15 Q What are those?

16 A Exhibit Number Seven is a spent shell casing and
17 Exhibit Number Six is a shoe track.

18 Q All right. Would that be -- those were on the scene
19 when you were out there?

20 A Without looking at the entire sequence, I ---

21 Q Were you taking pictures or were other people taking
22 pictures?

23 A Det. David Thomas had also photographed the scene as
24 well.

25 Q I see. That one next to the shell, does that appear to

1 have a paper placard, as opposed to an actual placard?

2 A That's correct.

3 Q Okay. So would that have been like a preliminary
4 picture before those other actual yellow placards got out
5 there?

6 A Yes, sir. That's highly possible.

7 Q All right. Who is the first person taking pictures out
8 there?

9 A Between Det. Thomas and myself.

10 Q Okay. Do those appear to reflect the scene as it
11 existed that night?

12 A If these are actually from that sequence of
13 photographs, I mean, I'm not sure ---

14 Q Do they appear to?

15 A I'm unclear, Mr. Mathews, without having the actual
16 placards.

17 Q I need to ask Det. Thomas about that.

18 A You can, but once again, without our actual placards in
19 it, I'm not certain the sequence of these.

20 Q May I take a look at the pictures that you have there
21 already?

22 A (WITNESS GIVES PICTURES TO MR. MATHEWS.)

23 THE COURT: Step back, Mr. Mathews.

24 Those go back to the court reporter.

25 Q Who is Timothy Behling?

1 A There is a Timothy Behling that is known to law
2 enforcement, but I'm not sure exactly who you're referring
3 to, sir.

4 Q Okay. Who is Cornelius White? Cornelius Dewayne
5 White, who is that?

6 A If I'm not mistaken, that was one of the -- maybe the
7 owner of the grey Jeep Liberty, but it was a name that came
8 up in the investigation.

9 Q Okay. All right. Were Renaldo Williams's fingerprints
10 sent in for comparison?

11 A No, sir, not to my knowledge.

12 MR. MATHEWS: I don't have any further questions, Your
13 Honor.

14 THE COURT: Redirect?

15 DEP. SOL. THORNTON: I don't have any, Your Honor.

16 THE COURT: As to this witness?

17 DEP. SOL. THORNTON: Your Honor, out of an abundance of
18 caution, I'm going to ask that he be allowed to step down,
19 subject to being recalled; but he's not to discuss his
20 testimony.

21 THE COURT: Don't discuss your testimony.

22 WITNESS: I understand.

23 THE COURT: You're on call, subject to recall. You may
24 step down.

25 WITNESS: Thank you, sir.

1 **THE COURT:** Give those to the court reporter.

2 (DET. INABINETT GIVES EXHIBITS MARKED FOR
3 IDENTIFICATION TO THE COURT REPORTER.)

4 **DEP. SOL. THORNTON:** Andre Williams.

5 **THE COURT:** If you'll come around and be sworn by the
6 Clerk.

7 WHEREUPON, ANDRE WILLIAMS IS DULY SWORN.

8 **MADAME CLERK:** Please have a seat on the witness stand.
9 State your full name for the record.

10 **WITNESS:** Andre Williams, W-I-L-L-I-A-M-S.

11 **DIRECT EXAMINATION**

12 **BY DEP. SOL. THORNTON:**

13 **Q** Det. Williams, who are you employed by, sir?

14 **A** Colleton County Sheriff's Office.

15 **Q** What do you do for them?

16 **A** I'm a detective.

17 **Q** All right. And were you employed as a detective with
18 the Sheriff's Department in April of 2009?

19 **A** Yes, I was.

20 **Q** All right. And were you what is commonly referred to
21 as a case agent in this case?

22 **A** Yes, sir.

23 **Q** Does that mean that you have the painful experience of
24 having to sit with me at counsel table through the whole
25 trial?

1 A Yes, sir.

2 Q All right. Det. Williams, did you respond out to the
3 scene at Spirit's Lounge in April of 2009, sir? April the
4 10th, I believe?

5 A Yes, I did.

6 Q And what were you called out on, sir?

7 A On a homicide.

8 Q All right. And who was the victim in that homicide?

9 A Green subject.

10 Q All right. And was that Donald Green who has been
11 testified to today?

12 A Yes, sir.

13 Q Det. Williams, let's end the suspense that's been asked
14 a couple of times, now, who is Cornelius White?

15 A Cornelius White was a subject that was either riding or
16 driving that vehicle that was parked outside of the club.

17 Q That vehicle -- are you referring to the Jeep that's
18 shown in State's Exhibit Number One?

19 A Yes, sir.

20 Q All right. And is his fingerprints, as testified
21 earlier, the ones that came back to the Jeep; is that
22 correct?

23 A Correct, sir.

24 Q All right. Were Derrick Fishburne's prints anywhere on
25 the Jeep?

1 A No, sir.

2 Q All right, sir. We've also heard about a black,
3 Chrysler 300. Do you have any personal knowledge of any
4 particular car that the defendant in this case, Derrick
5 Fishburne, might drive?

6 A Yes, sir. Being from this area and through my job, we
7 have some ---

8 Q Now, I don't mean "we"; I mean you, personally.

9 A Yes, sir. Yes, sir.

10 Q All right. What kind of car did you see him drive?

11 A A 300 black Chrysler.

12 Q And did any of the witnesses, in this case, that you
13 talked to also give you that information?

14 A Yes, sir.

15 Q All right. And as a result, and don't tell me what
16 they told you, but as a result of your personal knowledge,
17 combined with what the witnesses told you, did you go out
18 and do any searching on any Chrysler 300's?

19 A Well, we didn't, per se, go looking out for the
20 Chrysler. We were out on another incident when we ran upon
21 the Chrysler.

22 Q All right, sir. And lo and behold, where was this
23 black Chrysler 300 found?

24 A It was in the Sand Hill area in a known drug house
25 location, hidden in the woods behind that location.

1 Q Det. Williams, from what you've testified to, that has
2 nothing to do with this case?

3 A No, sir. No, no, sir.

4 Q So, regardless of that, is the where the black Chrysler
5 300, when it was found, do you know who, what connection, if
6 any, the defendant had to that car; that particular car?

7 A Well, based on ---

8 Q Let me -- that's probably a bad question. Let me
9 rephrase that. Other than your personal knowledge of you
10 seeing the defendant, which you've testified to, in a black
11 Chrysler 300 ---

12 A Yes.

13 Q --- do you have any independent knowledge of that
14 particular car, or did that particular car get processed by
15 your department?

16 A It was processed by the department.

17 Q And is that the car that Allen Inabinett took
18 fingerprints from?

19 A Correct.

20 Q All right. So you found the black Chrysler 300 in the
21 Walterboro area?

22 A Right. Correct.

23 Q And that's where the fingerprints came from that we've
24 all heard that matched the defendant, Derrick Fishburne,
25 correct, sir?

1 A Correct.

2 Q Now, as case agent, are you the one that's been
3 referred to on more than one occasion, as the person that
4 interviewed some of these witnesses?

5 A Yes, sir.

6 Q And they gave statements to?

7 A Correct.

8 Q Are you the one, Det. Williams, who had the photo
9 lineup prepared?

10 A Correct.

11 Q And how does that process work?

12 A Once we get a suspect, we get all of his personal
13 information, like his height, size, and weight, and we send
14 it to SLED. SLED then returns, gets a photo lineup and
15 sends it back to us.

16 Q All right. And are those the photographs ---

17 DEP. SOL. THORNTON: Your Honor, may I approach?

18 THE COURT: You may.

19 Q Are those the photographs, sir, I'm going to hand you,
20 that have been marked as State's Exhibit Numbers Two and
21 Three?

22 A Yes, they are.

23 Q So, do you personally prepare them or do you just send
24 the information to SLED and then they come back populated
25 for you? How does it work?

1 A Like I said, once we get the suspect, we get a suspect,
2 we send it off to SLED, they in return do a photo lineup and
3 send it back to us. We have no control how it looks or the
4 pickings of the subjects on the paper.

5 Q All right, sir. Now, although I know this is a silly
6 question, it's painfully obvious, would you agree, sir, that
7 picture number three, which is the defendant in this case,
8 appears lighter than the other defendants?

9 A Yes, they are.

10 Q All right, sir. Did you do that intentionally or does
11 that just come from SLED?

12 A That comes from SLED. I don't -- I don't, again, I
13 have no control over it.

14 Q As to Ms. Fatimah Washington and Ms. Sonja Grant,
15 again, don't tell me what they told you. That's why they
16 had to get up and testify.

17 A Right.

18 Q But did both of -- were both of them able to identify
19 Mr. Fishburne prior to looking at the lineup?

20 A Yes.

21 Q And did they identify him by name?

22 A Yes.

23 Q Does Mr. Fishburne have any, what they call a street
24 name?

25 A Yes, he does.

1 Q What is it?

2 A D-Rock.

3 Q And were both witnesses able to identify him by D-Rock?

4 A Correct, and his birth name.

5 Q And as to both Ms. Grand and Ms. Washington, were both
6 of them able to do that before they looked at the photo
7 lineup?

8 A Correct.

9 Q All right, sir. Did you know after they did that, go
10 ahead and show them a lineup anyway?

11 A Yes, that's standard procedure.

12 Q All right. And did they make any indications on the
13 paper?

14 A Yes, they did. They acknowledged identification by
15 their initials and the date. Then, I in return, after they
16 did that, initialed and dated it, also.

17 Q All right, sir. And did they both pick the same
18 picture?

19 A Correct. Number three.

20 Q All right, sir. And did you administer this on two
21 different days?

22 A Yes, sir.

23 Q Were they together on both days or were they separate?

24 A No, sir.

25 Q No as to which one? Were they together?

1 A No, they were not together.

2 Q Okay. So they were conducted separately; is that
3 correct?

4 A Yes, sir.

5 Q Did you attempt to influence their decision, sir, in
6 any way?

7 A No, I did not.

8 Q Did you ask them -- did you talk to them about the case
9 or details of the case prior to getting a statement from
10 either Ms. Grant or Ms. Washington?

11 A No, I did not.

12 Q How is it that you handle something like that?

13 A Once we get a possible witness, we bring them into the
14 Annex. Sometimes it's possible we have another detective
15 with us if not, we do conduct the interview.

16 Q All right. Let me ask you a question, when a witness
17 comes in, do you tell them "Here are the details that I
18 know. Now, can you help me fill in the blanks?" Or do you
19 ask them about what happened?

20 A Basically, we ask them were they present at the crime
21 scene or the incident location and we let them tell us.

22 Q And if there is additional information that you want to
23 get out, do you just leave that out or do you try to ask
24 questions and write those questions down?

25 A We try to ask questions.

1 DEP. SOL. THORNTON: Your Honor, may I approach?

2 THE COURT: You may. Counsel approach.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
4 AND OUT OF THE HEARING OF THE JURY.)

5 THE COURT: Proceed.

6 DEP. SOL. THORNTON: Thank you, Your Honor.

7 Q I'm going to hand you what's been marked as Defendant's
8 Five, consisting of a two-page statement. I believe it's
9 already in evidence.

10 THE COURT: It was offered by the defendant, without
11 objection by the State.

12 Q Det. Williams, is that the statement by Ms. Washington
13 that testified earlier?

14 A Yes, it is.

15 Q And were you present when this statement was done?

16 A Yes, I was.

17 Q Now, I realize it says -- there's words on there that
18 say Johnson; is it not, under Q and A?

19 A Correct.

20 Q And who is Johnson?

21 A That's Captain Johnson. He's the Captain over
22 investigations.

23 Q Were you present when this statement was done?

24 A All right, sir.

25 Q There has been a reference to a couple of other people

1 that may have been outside the club, are you familiar with
2 them? I believe it was a Brandon White was one name
3 mentioned.

4 A Yes, sir.

5 Q And I believe one may have been a Jamal or something to
6 that effect; is that correct?

7 A Yes, it is.

8 Q Did you attempt to talk to these individuals to see if
9 they would give a statement?

10 A Yes, myself and Lt. Inabinett. We had to actually go
11 into the Greenpond area and search for them and bring them
12 back to the Annex, and they were very uncooperative.

13 Q Would they give you a statement as to what happened or
14 any details as to what happened?

15 A No. They admitted they were out there, but they didn't
16 see anything, basically.

17 Q So, did you just hear the name Derrick Fishburne and
18 that's all you looked at?

19 A No, sir.

20 Q How many people were identified by eyewitnesses on the
21 scene as the shooter?

22 A Only one.

23 Q And who would that one be?

24 A Derrick Fishburne, D-Rock.

25 Q And to your knowledge as case officer, how many people

1 who were identified as the shooter also had fingerprints and
2 a car matching on scene at the club?

3 A The only one was Derrick Fishburne.

4 Q Anybody else get named as the shooter?

5 A No, sir, not to my knowledge.

6 Q Did you also talk to a Matthew Goodwin? That name's
7 been tossed around.

8 A Yes, I did.

9 Q And why did you talk to Mr. Gooding? Don't tell me
10 what he told you, just tell me why you talked to him.

11 A Because he was initially in a competition with the
12 deceased.

13 Q So, you went and talked with him?

14 A Correct.

15 Q Did anybody I.D. him as the shooter?

16 A No.

17 Q So, was this prior to getting the information on Mr.
18 Fishburne?

19 A Yes, sir.

20 Q All right, sir. Did his fingerprints come out of the
21 black, Chrysler 300?

22 A No, it did not.

23 DEF. SOL. THORNTON: Court's indulgence one moment,
24 Your Honor.

25 Q One last question Det. Williams, were you the Williams

1 that was announced earlier that submitted all the
2 fingerprints?

3 A Yes, I was.

4 Q All right, sir.

5 DEP. SOL. THORNTON: Your Honor, at this time, I have
6 no questions. I will have to recall him though a little bit
7 later down the line. Your Honor, at this time, I would ask
8 that since we did not move that one into evidence, I would
9 ask that State's Exhibit Number Three be moved into
10 evidence, which is a photo lineup. Two is already in
11 evidence, is my understanding.

12 THE COURT: Any objection?

13 MR. MATHEWS: No objection.

14 THE COURT: Ladies and gentlemen of the jury, State's
15 Exhibit Number Three will be admitted into evidence without
16 objection. State's Three is now in evidence.

17 DEP. SOL. THORNTON: Thank you, Your Honor, with that I
18 have no further questions at this time for Det. Williams.
19 Please answer any questions that Mr. Mathews has for you.

20 THE COURT: Cross-examination?

21 MR. MATHEWS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. MATHEWS:

24 Q Det. Williams, you said that you already knew prior to
25 April 9th and 10th of 2009, that Derrick Fishburne would

1 drive around in a black Chrysler 300; is that correct?

2 A Yes, sir.

3 Q So, did you or anyone else in law enforcement follow
4 any Chrysler 300 from Spirit's Club to where you found the
5 car?

6 A No, sir.

7 Q All right. So, terms of what Chrysler 300, if any, was
8 at the club, you don't know that?

9 A Yes, sir.

10 Q Okay. You know that the car that you knew Derrick
11 drove where it would be and you -- did it surprise you that
12 you would find Derrick's fingerprints in a car that he
13 drove?

14 A Yes, sir.

15 Q You would probably be surprised if his fingerprints had
16 not been in it?

17 A Right, correct.

18 Q And if that same car had been sitting in the same lot
19 for three months, you'd still expect to see Derrick's
20 fingerprints in it because he had been driving it for a long
21 time?

22 A Right.

23 Q Now when -- one of the people you investigated in this
24 case was Matthew Goodwin?

25 A Correct.

1 Q And you had done this because he had had a
2 confrontation with Donald Green earlier in the day?

3 A No.

4 Q That night?

5 A Prior to the shooting.

6 Q Prior to the shooting, at the club that night?

7 A That's correct.

8 Q Okay. And that would give you some reason to
9 investigate him, obviously?

10 A Correct.

11 Q Okay. You took a statement from a Kenneth White, did
12 you not?

13 A Correct.

14 Q Kenneth White, that's the same person as Brandon White,
15 is it not?

16 A Right.

17 Q Okay. And would you say that Brandon White, a/k/a
18 Kenneth White, was right there in the thick of things? Had
19 to have been?

20 A Could have, yes, sir.

21 Q I mean, based on his statement, he had to have been
22 right there.

23 A Right.

24 Q Okay. Did you ask him for any description of who the
25 people doing the shooting was?

1 A I asked him did he see or saw who did the shooting. He
2 said he didn't see anything.

3 Q In fact, he said he saw three or four men run to one or
4 two cars. One was a Chrysler 300 and the second may be a
5 Honda.

6 A Correct.

7 Q What kind of car did Matthew Goodwin drive?

8 A I don't have that information.

9 Q Did he drive a Gold Honda?

10 A He might have did. I don't even think he owns a car.

11 Q I know, but in terms of what he drives. Derrick didn't
12 own a car either, right?

13 A I have no idea.

14 Q Okay. All right. So, you got a description from
15 somebody and would you say there was nobody closer to the
16 shooting than Kenneth White; would that be a fair
17 assessment?

18 A I wasn't there. Like I said, the two witnesses that
19 came earlier was out there, along with Brandon.

20 MR. MATHEWS: Your Honor, I believe that Mr. Thornton
21 has the original statement of Kenneth White, and I would
22 like to mark that and present that to Det. Williams.

23 THE COURT: Hold it, just a moment.

24 DEP. SOL. THORNTON: Your Honor, with the Court's
25 permission, I'll just give him his file. I don't know where

1 it's located. Det. Williams ---

2 THE COURT: Counsel approach.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
4 AND OUT OF THE HEARING OF THE JURY.)

5 DEP. SOL. THORNTON: Your Honor, with the Court's
6 permission, I will ---

7 THE COURT: Hand him his file.

8 DEP. SOL. THORNTON: Yes, sir. Your Honor, I believe
9 that what Mr. Mathews is after for Det. Williams' knowledge
10 is the original statement given by one, Kenneth White.

11 (Brief pause while Det. Williams looks through his file
12 for the statement of Kenneth White.)

13 Q. Det. Williams, I'm handing you what's been marked as
14 Defendant's Exhibit Number Eight and ask if you can identify
15 that.

16 A Yes, this is Mr. White's statement.

17 MR. MATHEWS: Your Honor, I would seek to admit that
18 into evidence at this time.

19 THE COURT: Any objection?

20 DEP. SOL. THORNTON: No, Your Honor.

21 THE COURT: Defendant's Number Eight will be admitted
22 into evidence without objection.

23 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER EIGHT IS
24 RECEIVED INTO EVIDENCE.)

25 Q Det. Williams -- well, we might as well ---

1 MR. MATHEWS: Your Honor, may we approach? This is --
2 I anticipate a similar, based on our last conversation.

3 THE COURT: Counsel approach.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
5 AND OUT OF THE HEARING OF THE JURY.)

6 THE COURT: Cross-examination. Proceed.

7 Q Det. Williams, you also learned of another possible
8 conflict from Matthew Smoak; is that correct? You took a
9 statement from Matthew Smoak, also?

10 A The bouncer, correct.

11 Q Okay, the bouncer?

12 A Yes.

13 Q And he also talked of a conflict between Donald Green
14 and someone else?

15 A (NO RESPONSE.)

16 Q We can save that for tomorrow, I suppose. But you did
17 take a statement from Matthew Smoak as well?

18 A Yes, I did.

19 Q When you first investigated this, you -- when you
20 talked to Fatimah Washington, did she give you a description
21 or a name, first?

22 A She gave me a name.

23 Q Okay. And based on the name she gave you as D-Rock,
24 somebody she understood as D-Rock, you -- that was part of
25 the basis, that and I guess you mentioned the black Chrysler

1 300, a black Chrysler 300, whether or not it was the one
2 that he actually drove, and on that basis you picked Derrick
3 Fishburne up from Court; is that right? Did you or
4 Detective ---

5 A Well, the whole unit did.

6 Q Okay. And in fact, he was picked up from Roll Call on
7 a Friday morning?

8 A Right.

9 Q And taken to the station and you took -- did you take a
10 statement, or did Det. Johnson take a statement, or both?

11 A Captain Johnson.

12 Q Captain Johnson. Were you present when that statement
13 was taken?

14 A Yes, I was, but not in the room.

15 Q Okay. Were you watching it as it was being filmed?

16 A I was in and out. We had a bunch of stuff going on.

17 Q Okay. At the conclusion of this statement, was he then
18 arrested? Derrick Fishburne, at the conclusion; he was
19 picked up from Roll Call . . .

20 A We actually had a warrant from when we came to pick him
21 up, so he was arrested once we made contact with him in
22 here.

23 Q Okay. Okay. So, he was under arrest at the time he
24 gave a statement. He just didn't know it yet?

25 A I told him he was under arrest, stand up. So,

1 apparently, he did know he was under arrest.

2 Q Okay. So, when he gave his first statement, he was
3 under arrest at that time. He was picked up from here,
4 brought down to -- and I think he was actually served this
5 warrant, though, at the conclusion of his statement?

6 A Correct.

7 Q Okay. All right. So, he got the papers at the
8 conclusion of his statement, but at the time you picked him
9 up he was already under arrest?

10 A Correct.

11 Q Okay. Did anyone ever give you a physical description
12 of the shooter?

13 A One of the witnesses described his shirt and his and
14 some jewelry he was wearing.

15 Q Okay. A long, Gold chain.

16 A Correct.

17 Q And a black and red shirt.

18 A Right.

19 Q Okay. Was that Matthew Goodwin that provided that
20 description, or who was that?

21 A That was Fatimah, Ms. Washington.

22 Q All right. Okay. And she described, also, braids?

23 A Correct.

24 Q On the front cover of your notebook, I think you have a
25 picture of Derrick Fishburne.

1 A Right.

2 Q Okay. Was that taken the day he was arrested?

3 A No, sir. They have several pictures at ---

4 DET. WILLIAMS: (SOFTLY, TO THE COURT) I've already
5 answered the question, Judge.

6 THE COURT: Just a moment. Mr. Williams, you can't ask
7 me a question. Counsel approach. You have to answer
8 whatever any questions they ask you.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
10 AND OUT OF THE HEARING OF THE JURY.)

11 THE COURT: I understand the question is withdrawn.
12 Proceed. Cross-examination.

13 Q Det. Williams, during the time Derrick was being
14 interviewed, obviously, he wouldn't have had a chance to
15 change his appearance from that night, dramatically, would
16 he?

17 A No, sir.

18 Q Okay. So, however he looked whenever you were
19 interviewing him is very likely how he looked the night of
20 the shooting?

21 A Correct.

22 Q Okay. And that would be on the video tape of the
23 statement that he gave?

24 A Right.

25 Q Det. Williams, so, what you started out with is you

1 started out with the name D-Rock, and you knew that to be
2 Derrick Fishburne, and based on that, you provide, in order
3 to perform a photographic lineup, you provide that
4 information to SLED?

5 A Correct. I started out with D-Rock and his birth name.
6 I gave both of them.

7 Q Right. Right. Right. And that way, they can -- do
8 they form a photo lineup, how -- do they go by doing that by
9 you giving them one name and they come up with a picture of
10 that person and then five people who kind of look like that
11 person?

12 A Similar.

13 Q Okay. So, you're not really -- it's not a photograph
14 based on the description, it's a lineup based on a name?
15 Right? The one person, the photograph of the one person

16 MR. MATHEWS: May I approach, Your Honor?

17 THE COURT: You may.

18 Q I believe these are all in evidence, now.

19 THE COURT: Refer to the exhibit number, counsel.

20 Q Exhibit Number Three, you would agree that the picture
21 of Derrick Fishburne is significantly lighter than the other
22 five; we've covered that.

23 A Yes.

24 Q And that would be true, even perhaps more so in exhibit
25 two?

1 A Correct.

2 Q I mean, that's not your fault, but it's -- it's -- it --
3 -- one doesn't look the other five in the one that is
4 significantly lighter than the others.

5 A Correct.

6 Q Okay. All right. Do any of the people in any of these
7 pictures have close braids?

8 A What do you mean by "close braids"?

9 Q I mean, like, corn rows or things where it's close to
10 the head, looks like a crew cut almost.

11 A All of these have a type of braids.

12 Q But they're fairly long, longish, an inch to two inches
13 or something like that?

14 A Right. Uh-huh.

15 Q Okay. All right. You -- did you or -- or Det. Johnson
16 or one of y'all, on the basis, go out to Lorinda Williams'
17 home?

18 A We both did with several other officers.

19 Q Okay. And did she provide you with consent to search
20 her home?

21 A Yes, she did.

22 Q And did you search her home?

23 A Yes.

24 Q What evidence did you take -- or what items did you
25 take as a result of that search?

1 A To my knowledge, I didn't take anything.

2 Q Were you aware of anyone taking anything?

3 A Not me; not to my knowledge, I don't.

4 Q So, there are no guns or anything like that?

5 A No, sir.

6 Q Okay. No -- no evidence -- nothing of evidentiary
7 value?

8 A No, sir.

9 Q Okay. And by the story that he said, he was back, and
10 what Penny had told you, and she'll be here to testify, I
11 understand, but he was gone from around 12:30 or 1:00 until
12 about 3:00; if he came back at 3:00?

13 A Correct. That's his statement.

14 Q But even in that short of time, there was nothing of
15 evidentiary value taken from her home?

16 A Not from the residence, no, sir.

17 Q Okay. Have you ever found any guns or anything that
18 can forensically link up anybody to a particular gun?

19 A No, sir.

20 Q Did you search any other homes other than Penny
21 Williams?

22 A No, sir.

23 Q Okay. And again, the only car you looked at was the
24 car that you already knew that he was known to drive?

25 A Yes, sir. Well, we looked at the Jeep that was in the

1 parking lot.

2 Q Yeah. And the Jeep, it was still there?

3 A Right.

4 Q So you knew that was linked up to the scene, because it
5 was there.

6 A Right.

7 Q Did you find any blood or anything like that on the
8 Chrysler 300?

9 A No, sir.

10 Q Okay. Nothing, no splatter, nothing that would
11 indicate that was on that particular scene? No forensic
12 evidence to indicate that the Chrysler 300 was at Spirit's
13 Lounge?

14 A No, sir.

15 Q Did you or anyone else take gunshot residue from any
16 person?

17 A Not to my knowledge; I didn't.

18 Q Okay. But you're the lead case officer.

19 A Right.

20 Q If somebody did -- if somebody did, you should know
21 about it.

22 A Right.

23 Q Okay. And to your knowledge, none of the people that
24 were on the scene were swabbed for gunshot residue?

25 A On the scene?

1 Q On the scene, off the scene, or anywhere.

2 A Well, we -- there's a time limit on hand swabbing, so
3 when we arrested Mr. Fishburne, he had ample time to wash
4 his hands. So, therefore, we didn't do it.

5 Q Okay. As to Mr. Goodwin?

6 A Correct.

7 Q Courtney Singleton, was he discussed?

8 A His name came around, so did many other guys' names
9 come around.

10 Q What does Courtney Singleton look like?

11 A What does he look like?

12 Q How does his hair look? What did his hair look like in
13 April of 2009?

14 A I can't answer that.

15 Q Okay. Kenneth White, you took his statement at 1:50 in
16 the morning, just a half an hour after this happened; is
17 that accurate?

18 A That is correct.

19 Q Okay. Was gunshot residue taken from his hands?

20 A No, he wasn't a suspect.

21 Q Well, I understand that. I mean, what I'm saying is,
22 how do you determine a suspect? Don't you look at the
23 evidence first and from the evidence you determine a
24 suspect, or do you arrest someone and then look for
25 evidence?

1 A He was a witness. They were saying he was one of the
2 ones out there who was a witness.

3 Q Okay. But, I mean, as a general rule, isn't it a
4 better rule to follow the evidence rather than push the
5 evidence?

6 A What -- who's rule is that?

7 Q Well, what I'm saying is, I mean, normally, for
8 example, it's my understanding that one of the things that
9 at the time you interviewed Derrick Fishburne, he was
10 already under arrest?

11 A Right.

12 Q So, if he had told you, I mean, the warrant was issued,
13 probable cause determined already in front of the
14 magistrate.

15 A Correct.

16 Q So it didn't really matter what he said, did it, he was
17 under arrest?

18 A Yes, we had a warrant for him.

19 Q Okay. I understand. And so, if he -- and -- and -- he
20 was served that warrant before anybody even bothered to
21 check anything else that he said, right? So, it didn't
22 matter what he said.

23 A We had two eyewitnesses saying that this gentlemen shot
24 the subject, that's why we got the warrant.

25 Q No, sir. My understanding is you had two different

1 people that mentioned his name; and one of them, at the time
2 he was with you, you didn't have a statement from Sonja
3 Brown at that time, did you?

4 A I had a statement from Fatimah Washington, that night
5 when we talked to her.

6 Q One.

7 A Right.

8 Q And then a month later, you got a statement from Sonja
9 Grant?

10 A Right, based on Ms. Washington's statement, we got a
11 warrant. There was enough probable cause.

12 Q Okay. All right. So, basically, this case rests on
13 the statement -- one statement of one person who said D-Rock
14 did this? Basically, right?

15 A I can't say that.

16 MR. MATHEWS: No further questions, Your Honor.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION

19 BY DEP. SOL. THORNTON:

20 Q I'm a little bit confused, Detective, you were sitting
21 in the room, how many eyewitnesses got up and said, "Derrick
22 Fishburne shot Donald Green"?

23 A Two.

24 Q Just to make sure. How many people had fingerprints
25 pulled off of a black Chrysler 300?

1 A Only Mr. Fishburne.

2 Q Okay. The question was asked by Mr. Mathews (about
3 Penny, or Lorinda Williams, is that the same person?

4 A Correct.

5 Q Who is that, if you know?

6 A At the time, that was his girlfriend.

7 Q His being who?

8 A Mr. Fishburne.

9 Q All right. Do you know about where she lived at the
10 time?

11 A Yes.

12 Q Where -- what road or off of what road did she live?

13 A Off of Peachtree. I think it's Briarwood, and that's
14 located right off of Bells Highway. Right behind, I think,
15 it's Subway.

16 Q have you ever been out that way?

17 A yes.

18 Q So, can you tell me from your own personal knowledge
19 about how far it is and minute-wise between Penny's house
20 that Mr. Mathews has talked about, that's where he was
21 supposed to have been, and Spirit's Lounge?

22 A About 10 to 15 minutes. It depends on the lights,
23 traffic. It's about 10 minutes of a drive.

24 Q I don't have anything -- oh, one other thing,
25 Detective, did you GSR Fatimah?

1 A No.

2 Q Did you GSR Sonja?

3 A No.

4 Q Did you GSR Tony Buchanan?

5 A No.

6 Q Did you GSR Matthew Smoak?

7 A No.

8 Q Did you GSR Jack Wimberly?

9 A No, sir.

10 Q Was that because the eyewitnesses didn't indicate that

11 they had shot Donald Green?

12 A Correct.

13 Q Thanks.

14 THE COURT: Recross, limited to redirect?

15 MR. MATHEWS: Thank you, Your Honor.

16 RECROSS EXAMINATION

17 BY MR. MATHEWS:

18 Q Was Donald Green GSR'd? I believe he was. Didn't

19 Detective Carter do that?

20 A I think he did. I need to look at it. Once I got to

21 the scene, I left and went to some place else. I got

22 directed some place else. I think he did.

23 Q Okay. But by the time the scene was approached, if

24 there had been any other gun or anything, it would have

25 probably been long gone, right?

1 A I can't answer that.

2 MR. MATHEWS: Nothing further.

3 THE COURT: As to this witness?

4 DEP. SOL. THORNTON: I ask that he be excused. Well,
5 he's my case officer. I ask that he be allowed to step
6 down, Judge, and be allowed to return to the table.

7 THE COURT: Take your folder and leave my exhibits, and
8 you may step down. Counsel approach.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
10 AND OUT OF THE HEARING OF THE JURY.)

11 THE COURT: Madame Foreperson, ladies and gentlemen of
12 the jury, I'm going to take my mid-afternoon break and let
13 you stretch your legs, use the restroom. Please do not
14 discuss the case. You've not heard all the evidence in the
15 case. I promise you we won't take 35 minutes this time,
16 because we're going to take a break and come right back.
17 You may retire to your jury room. Everyone else remain
18 seated while the jury is leaving the courtroom.

19 THE COURT: All right. We're going to take about a 10
20 minute break and be right back.

21 DEP. SOL. THORNTON: Thank you, Judge.

22 (3:36 P.M., 7-20-10, WHEREUPON THE JURY EXITS THE
23 COURTROOM.)

24 THE COURT: All right. Bring us the jury.

25 (4:15 P.M., 7-20-10, WHEREUPON THE JURY ENTERS THE

1 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
2 RECORD.)

3 COURT: We will now continue with testimony in the
4 trial of the case. Call your next witness.

5 DEP. SOL. THORNTON: Jeff Scott.

6 MADAME CLERK: Please come forward to be sworn.

7 WHEREUPON, DETECTIVE JEFF SCOTT IS DULY SWORN.

8 THE COURT: You know what to do.

9 WITNESS: Jeff Scott.

10 THE COURT: Spell your last name.

11 WITNESS: S-C-O-T-T.

12 THE COURT: Your witness, counsel.

13 DEP. SOL. THORNTON: Thank you, Your Honor. May I
14 approach?

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 BY DEP. SOL. THORNTON:

18 Q Det. Scott, who do you work for, sir?

19 A Colleton County Sheriff's Office.

20 Q And in what capacity?

21 A I'm an investigator with the Criminal Investigation
22 Division.

23 Q Did you work for the Sheriff's Office in that capacity
24 on April the 10th of 2009?

25 A Yes, sir. I did.

1 Q All right. And did you respond out to any particular
2 calls on the early morning hours of April the 10th, 2009?

3 A Yes, sir. I did.

4 Q And was that at the Spirit's Lounge?

5 A Yes, sir. It was.

6 Q Did you do anything in particular when you got there,
7 sir?

8 A Yes, sir. I assisted with the crime scene process with
9 Lt. Inabinett. My role was the evidence collection at that
10 incident location.

11 Q All right, sir.

12 DEP. SOL. THORNTON: May I approach, Your Honor?

13 THE COURT: You may.

14 Q I'm going to hand you, Det. Scott, what's been marked
15 for State's Identification Item Six, State's Exhibit Number
16 Six to start off with. Can you identify that for me, sir?
17 It appears to be seven envelopes or seven plastic envelopes.

18 A That is correct.

19 Q All right, sir. And can you identify those seven
20 baggies?

21 A Yes, sir. I can.

22 Q All right, sir. And what are those?

23 A These are seven plastic evidence bags with blue tags on
24 them from the Colleton County Sheriff's Office. Each bag
25 containing a single, spent shell casing.

1 Q All right, sir. Meaning what remains after a bullet is
2 fired; is that what that is?

3 A That is correct.

4 Q All right, sir. Were they collected by you from the
5 scene?

6 A That is correct. I did collect all of these from the
7 incident location.

8 Q All right, sir. And to your knowledge, has any weapon
9 ever been recovered to test them against?

10 A Not to my knowledge, no, sir.

11 Q All right, sir. Had they been sent to SLED or anything
12 to be tested, would they be in a different bag when they
13 came back?

14 A Yes, sir.

15 Q All right. So, based on your experience as an officer,
16 has that been sent anywhere for testing?

17 A No, sir. They have not.

18 Q All right. And do they appear to be in the same
19 condition as they were when you picked them up on scene?

20 A Yes, sir, they are.

21 DEP. SOL. THORNTON: Your Honor, I would move State's
22 Exhibit Number Six into evidence.

23 THE COURT: Any objection as to State's Six?

24 MR. MATHEWS: No, sir.

25 THE COURT: Ladies and gentlemen of the jury, State's