

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Barnwell County

Honorable Maite Murphy, Circuit Court Judge

DEMETRIUS D. SMALLS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000850

APPENDIX

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF BARNWELL)

COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,)

5 PLAINTIFF,)

6 VS.)

7 DEMETRIUS SMALLS,)

8 DEFENDANT.)

TRANSCRIPT

OF

RECORD

2011-GS-06-00065 - 00067

9
10 January 24th - 27th, 2011

11
12 B E F O R E:

13 THE HONORABLE DOYET A. EARLY, III, Judge, and a jury.

14
15 A P P E A R A N C E S:

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17 ASSISTANT SOLICITORS
Attorneys for the State

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20 Attorney for the Defendant

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22 LISA DAVENPORT
23 Circuit Court Reporter

24 Transcribed by Pamela E. Green, Circuit Court Reporter
25

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	State's Exhibits		
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4	C-1	Rights Form	12	18
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P R O C E E D I N G S

(WHEREUPON, State's Exhibit Nos. 1 through 15 were marked for identification purposes only at this time.)

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: What are we going to do?

SOLICITOR MILLER: Your Honor, we have a Jackson v. Denno in State of South Carolina versus Demetrius Donnel Smalls represented by Mr. Koger. He's on the way in the courtroom.

THE COURT: All right. This is indictment what?

SOLICITOR MILLER: Your Honor, there's going to be some indictments presented in the morning to the Grand Jury. We have warrant numbers on the cases at this time.

THE COURT: What are those?

SOLICITOR MILLER: Your Honor, this is Warrant H, as in hotel, 861982, a warrant for murder; Warrant H, as in hotel, 861983, a warrant for assault and battery with intent to kill; and Warrant H, as in hotel, 861984, a warrant for possession of a weapon during the commission of a violent crime. That crime being murder.

Your Honor, this -- the defendant was interviewed by SLED Agent Harley, who is here to testify, and gave a couple of statements. Our only pretrial motion that I'm aware of

1 at this time with, after talking with Mr. Koger is the
2 Jackson v. Denno hearing.

3 THE COURT: Is that correct, Mr. Koger?

4 MR. KOGER: That's correct, Your Honor.

5 THE COURT: Let the record reflect that the defendant
6 is present in the courtroom.

7 You may proceed.

8 SOLICITOR MILLER: Thank you, Your Honor.

9 The State would call SLED Agent Shaun Harley.

10 THE COURT: Come around, Agent Harley.

11 SHAUN HARLEY, after being duly sworn,
12 testified as follows:

13 THE CLERK: State your name for the record.

14 THE WITNESS: Shaun Harley.

15 DIRECT EXAMINATION

16 BY SOLICITOR MILLER:

17 Q Agent Harley, who are you employed by?

18 A With the South Carolina Law Enforcement Division
19 better known as SLED.

20 Q All right. And how long have you been with SLED?

21 A Approximately eight years.

22 Q All right. What is your title with SLED?

23 A Special investigation.

24 Q All right.

25 A Special agent. I'm sorry.

Shaun Harley - Direct examination
By Solicitor Miller

11

1 Q Special agent?

2 A Yes, sir.

3 Q Did you have a -- were you involved in the
4 investigation into the death of Terrance Mays on
5 August 20th of 2009?

6 A Yes, sir.

7 Q As part of that investigation, did you develop a
8 suspect in the case?

9 A Yes, sir.

10 Q Who was that suspect?

11 A Demetrius Smalls.

12 Q Did you take any witness, any statements from
13 Mr. Smalls?

14 A Yes, sir.

15 Q Did you interview the defendant on August the 20th of
16 2009?

17 A Yes, sir.

18 Q Was the defendant under arrest when you interviewed
19 him?

20 A Yes, sir.

21 Q He was under arrest on August 20th?

22 A Well, he was detained and then further---

23 Q Okay. He was in custody?

24 A Yes, sir.

25 Q Okay. Where did the interview take place?

1 A At the Barnwell County Sheriff's Office.

2 Q Did you advise the defendant of his Constitutional
3 right including his right to remain silent prior to asking
4 him to give any statements?

5 A Yes, sir.

6 Q How did you go about making that advisement?

7 A He was given a Barnwell County Miranda rights form,
8 which he was given and read to, and then after that I had
9 him to initial each statement, which he did --

10 Q All right.

11 A -- and signed the form itself.

12 (WHEREUPON, the Miranda rights form was marked as
13 Court's Exhibit No. 1. A statement was marked as Court's
14 Exhibit No. 2. Both of the exhibits were for identification
15 purposes only at this time.)

16 Q All right. I'm gonna show you what's been previously
17 marked for identification as Court's Exhibit No. 1.

18 Can you explain to the Court what this document is?

19 A It's a Miranda right form on a Barnwell County
20 Sheriff's Office form.

21 Q Okay. Could you read the form for the Court?

22 A Yes, sir. First it has his name, which he, that I
23 printed his name, the date, and the time, and then states
24 before we ask you any questions you must understand your
25 rights. You have the right to remain silent. Anything

Shaun Harley - Direct examination
By Solicitor Miller

13

1 you say can and will be used against you in a court of
2 law.

3 You have the right to talk to a lawyer for advice
4 before we ask you any questions, and to have him or her
5 present with you during questioning. If you have no money
6 for a lawyer's fee, the Court will appoint one to
7 represent you without cost if you wish. If you decide to
8 answer questions now without a lawyer present, you will
9 still have the right to stop answering questions at any
10 time. You also have the right to stop answering questions
11 at any time until you talk with a lawyer.

12 And then it goes on and states I have read the
13 statements of my rights and I understand what my rights
14 are. And at that time I had him to initial each, by each
15 statement and then sign and then the waiver of rights went
16 on, further went on and states I am willing to make a
17 statement and answer questions. I do not want a lawyer at
18 this time. I understand and know what I am doing. No
19 promise/threats have been made to me. No
20 pressure/coercion of any kind has been used against me,
21 and then where he signs his name again, and I signed my
22 name as a witness and date it and the time.

23 Q Okay. What is the date that is printed on the form?

24 A August the 20th, 2009.

25 Q And what is the time that is printed on the form?

Shaun Harley - Direct examination
By Solicitor Miller

14

1 A When I first started it was 10:36PM. At the end of the
2 form, 10:37PM.

3 Q Okay. After executing that -- after executing the
4 form, did you give the defendant an opportunity to make a
5 statement?

6 A Yes, sir.

7 Q Did you record the defendant giving a statement?

8 A Yes, sir.

9 Q After the defendant gave, gave his statement, did you
10 ask him to write out his statement?

11 A Yes, sir.

12 Q All right. I'm gonna show you what's been marked for
13 identification as Court's Exhibit No. 2.

14 Can you identify what this document is?

15 It's consisting of two pages.

16 A It's a SLED voluntary statement form which
17 Mr. Smalls, the defendant, wrote a statement on of two
18 pages.

19 Q All right. Did you, did you fill out the top of the
20 form for him?

21 A Yes, sir.

22 Q Okay. And whose handwriting is it that's on the
23 form?

24 A No, he filled out the top. I apologize for that. He
25 filled out the top part. I filled in with the Barnwell

Shaun Harley - Direct examination
By Solicitor Miller

15

1 County Sheriff's Office and the date and time, and the
2 date, which was crossed because it was after twelve
3 o'clock, was 8/21/2009, and he signed his name and then I
4 signed my name as a witness.

5 Q Okay. So, did he write out that statement himself in
6 his own hand?

7 A Yes, sir.

8 Q Okay. Did you make any promises to him to induce him
9 to write that statement?

10 A No, sir.

11 Q All right. Did you threaten him with anything if he
12 didn't give you a statement?

13 A No, sir.

14 Q Did you use any kind of pressure or coercion to get
15 him to do a statement?

16 A No, sir.

17 Q Please read the statement for the Court.

18 A It says I, Demetrius Donnel Smalls, understand I do
19 not have to say anything. I am volunteering the following
20 information for, of my own free will for whatever purpose
21 it may serve, and I can, which he circle I can, read and
22 write and complete the -- he say he have more than 12
23 years of school. So, he wrote 13.

24 Then he went on to state, with his initials at the
25 beginning, on August the 20th, 2009, I was walking by

Shaun Harley - Direct examination
By Solicitor Miller

16

1 myself to Annie's. I seen Didi. He said we had an
2 altercation. He said words. As I leave, as I leave,
3 Annie, Chief -- Annie -- Chief John Holston and Officer
4 Weiss seen me at the Shelton's. Holston talked to his
5 father. Weiss talk to me and told me to go home. I did
6 just that and me and my father sat in my yard.

7 Rickie pulled up with his cousin and Spanky. I get
8 in the car. They said let's go to Poole's, Poole's house
9 and drink something. So, we get into -- so, we get the
10 drinks. We go to Poole's yard for about an hour.

11 Rickie's cousin said he needed cigarettes. So, I
12 rode to the store with him. When I get in the backyard,
13 we start back drinking. I said about 30 minutes later
14 Terrance, Didi, Whitney, and Zantrell (Mont) get out of
15 the car like they were going to jump me. So, me and, me
16 and Terrance started fighting.

17 I get enough to fight again. I tell Terrance let's
18 go again. So, as I'm approaching Terrance, Mont pulls a
19 chrome, chrome automatic handgun from under his shirt and
20 cocked, but by the time he could -- by the time he could
21 lift it up to point, to point it at, to point it, I
22 knocked it out of his hands. He dropped it on the ground,
23 pick up the gun and just reacted off, and just reacted off
24 the action. I panicked and ran to the graveyard, called
25 my friend's mother, and told her to call my mother, my

Shaun Harley - Direct examination
By Solicitor Miller

17

1 mama and Auntie, and, I'm guessing, and know, and know to
2 pick me up.

3 Once they picked me up I told them I was going to
4 turn myself in to, to Sheriff Harrison. I'm sorry for
5 what happened. I never intended for this.

6 On the second page, after I knocked the, after I
7 knocked the gun out of Mont's hand, I reached down to grab
8 his gun and shot a couple of times. I panicked and ran.
9 Rickie, Spanky, Short Man skipped scene. It was
10 self-defense. I dropped his gun, I dropped his gun in the
11 yard before I ran, and that was which he printed his name
12 at the top and signed at the bottom and likewise signed on
13 the first page.

14 Q Is that his full and complete written statement from
15 that night?

16 A Yes, sir.

17 Q Does it appear exactly as he wrote it that night?

18 A Yes, sir, and also you can tell it's his because I
19 had him to put his initials at the beginning and each time
20 he made a scratch mark he also places his initials by each
21 scratch mark, and at the end of the statement.

22 SOLICITOR MILLER: Your Honor, at this time the State
23 would move to admit Court's Exhibit 1 and 2 for the purpose
24 of this hearing only.

25 THE COURT: Any objection?

Shaun Harley - Direct examination
By Solicitor Miller

18

1 MR. KOGER: No objection for this hearing only, Your
2 Honor.

3 (WHEREUPON, Court's Exhibit Nos. 1 and 2 were received
4 into evidence for purposes of this hearing only.)

5 Q Did you interview the defendant again on
6 December 14th, 2009?

7 A Yes, sir.

8 Q Was the defendant under arrest when you interviewed
9 him at that time?

10 A Yes, sir.

11 Q Where did the interview take place?

12 A At the Barnwell County Sheriff's Office.

13 Q Did you advise the defendant again of his
14 Constitutional rights including his right to remain silent
15 prior to asking him to give any statements?

16 A Yes, sir.

17 Q How did you go about making that advisement?

18 A At this time I read him the form again, which was a
19 SLED Miranda right form, and then had him to read it and
20 put his initials and sign it.

21 (WHEREUPON, the Miranda rights form was marked as
22 Court's Exhibit No. 3. A statement was marked as Court's
23 Exhibit No. 4. Both of the exhibits were for
24 identification purposes only at this time.)

25 Q All right. I'm gonna show you what's been marked as

Shaun Harley - Direct examination
By Solicitor Miller

19

1 Court's Exhibit No. 3 for the purpose of this hearing.

2 Can you explain to the Court what that document is?

3 A Yes, sir.

4 MR. KOGER: May I interject, Your Honor?

5 I just need to see that.

6 THE COURT: sir?

7 MR. KOGER: I need to see that.

8 (Pause.)

9 MR. KOGER: No objections, Your Honor.

10 Q Would you please read the form for the Court?

11 A SLED Miranda rights form. Places -- I put the
12 initial, Barnwell County Sheriff's Office, date, September
13 14th, 2009. Time is 4:37PM. It further states before we
14 ask you questions you must understand your rights.

15 You have the right to remain silent. Anything you
16 say can be used in court as evidence against you. You are
17 entitled to talk to a lawyer now and have him present now
18 or at any time during questioning. If you can not afford
19 an attorney, one will be appointed for you without cost.
20 If you decide to answer questions now without a lawyer
21 present, you will still have the right to stop answering
22 at any time. You also have the right to stop answering at
23 any time until you talk to your, to a lawyer.

24 Then it goes on, do you understand these rights, and
25 then do you wish to talk to us at this time, which he

Shaun Harley - Direct examination
By Solicitor Miller

20

1 initialed each one, and it goes on waiver of rights.

2 I have read the statements of my rights and
3 understand what my rights are. I am willing to talk now
4 without a lawyer present. I understand and know what I am
5 doing. No promise/threats have been made to me. No
6 pressure/coercion of any kind has been used against me,
7 which he signed his name again, Demetrius Smalls. I
8 signed on the first one as a witness and Agent Richard
9 Johnson, who was also present at the interview also signed
10 his name.

11 Q All right. Did you read that form to the defendant?

12 A Yes, sir.

13 Q Did he indicate to you that he understood the form?

14 A Yes, sir.

15 Q Did he initial on the form indicating that he
16 understood his rights and that he wanted to give a
17 statement?

18 A Yes, sir.

19 Q All right. Did you record the defendant giving that
20 statement?

21 A Yes, sir.

22 Q After the defendant gave the statement, did you ask
23 him to write his statement out?

24 A Yes, sir.

25 Q All right. I'm gonna show you what's been previously

Shaun Harley - Direct examination
By Solicitor Miller

21

1 marked as Court's Exhibit No. 4 for the purposes of this
2 hearing.

3 Can you explain to the Court what that document is?

4 A It's a SLED voluntary statement form.

5 Q Okay. Did he fill out that form or did you fill out
6 that form?

7 A He filled it out, but the only part I filled out was the
8 date and time, location interview, interview by and he
9 finished it. He did the rest of it.

10 Q All right. And when he wrote his statement out, did
11 he initial before the statement began and at the end of
12 the statement like he did before?

13 A Yes, sir.

14 Q All right. Could you please read that statement for
15 the Court?

16 A He stated, started off with this is an additional
17 statement that I am providing from my original and
18 previous statement on August the 20th, 2009. After
19 Terrance and I fought, we -- after Terrance and I fought
20 we went our separate ways. Then Zantrell and I had words.
21 All of a sudden he pulled out, he pulled out -- all of a
22 sudden he pulled his gun out and cocked it and pointed
23 directly towards my face area. I ducked it back to Carlen
24 Thomas and ask him did he, did he have his gun.

25 He pulled up, he pulled up his shirt and I grabbed

Shaun Harley - Direct examination
By Solicitor Miller

22

1 the gun from his right hip area, turned it around, and
2 shot three times. After I shot the gun I dropped it on
3 the bucket, on the bucket in the yard and ran to Mrs. Mary
4 Holmes house and asked her to call my mom.

5 The color of the gun was a gray and black .380
6 Highpoint, which he initialed by.

7 Q All right. And did he -- did you sign and date that
8 as a witness?

9 A Yes, and my -- and also Agent Richard Johnson, which
10 was on September 14th, 2009, and it was completed at
11 5:50PM.

12 Q And that was the only page of that statement,
13 correct?

14 A Yes, sir.

15 Q All right. Does that -- does it appear exactly as he
16 wrote it that afternoon?

17 A Yes, sir.

18 Q And that's his full and complete statement from that
19 day?

20 A Yes, sir.

21 SOLICITOR MILLER: Your Honor, at this time the State
22 would move to introduce Court's Exhibits 3 and 4 for the
23 purposes solely of this hearing.

24 MR. KOGER: No objection for the purposes of this
25 hearing, Your Honor.

Shaun Harley - Direct examination
By Solicitor Miller

23

1 THE COURT: Thank you.

2 (WHEREUPON, State's Exhibit Nos. 3 and 4 were received
3 into evidence for purposes of this hearing only at this
4 time.)

5 Q Agent Harley, when you did this September 14th, 2009,
6 statement, when the defendant gave that statement, were any
7 promises or threats made to him?

8 A No, sir.

9 Q Did -- were there any attempts to coerce him or
10 threaten him if he didn't give a statement?

11 A No, sir.

12 Q And was he afforded the opportunity to get a lawyer
13 if he wanted one?

14 A Yes, sir.

15 SOLICITOR MILLER: Your Honor, that's all the
16 questions I have.

17 THE COURT: Cross.

18 CROSS-EXAMINATION

19 BY MR. KOGER:

20 Q Agent Harley, do you know whether Mr. Smalls turned
21 himself in?

22 A He turned himself in to -- he ran, ran and went home
23 and he contacted his parents or a family member contacted
24 Deputy Leon Harris of the Barnwell County Sheriff's
25 office. He then -- you know, Deputy Harris then brought

1 him -- he met him at the Barnwell County Sheriff's Office.

2 Q So, about how much time elapsed between the time he
3 turned himself in and the time you interviewed him, the
4 first time on August 20th?

5 A I couldn't give you an exact time.

6 Q Okay. But it was in the same day?

7 A Yes, sir.

8 Q Okay. Now, the second time that you interviewed him,
9 according to the statements, is September 14th, correct?

10 A Correct.

11 Q So, we're talking about approximately three weeks,
12 correct?

13 A If that, yes, sir.

14 Q Okay. Now, wouldn't you agree that August, in your
15 August 21st statement would have ran past midnight,
16 correct --

17 A Correct.

18 Q -- when he wrote the statement?

19 And wouldn't you agree that the first mention of a
20 gun was with Zantrell Mays, that the gun was pulled out?

21 A On the first statement?

22 Q On the first statement. The first mention of a gun,
23 the first person to have a gun.

24 A Yeah, he states in his statement so as I'm
25 approaching Terrance, Mont pulls a chrome automatic

Shaun Harley - Cross-examination
by Mr. Koger

.25

1 handgun from under his shirt.

2 Q And wouldn't you agree, at the end of this statement,
3 self-defense was mentioned by Mr. Smalls?

4 A Yes, sir, he wrote it was self-defense.

5 Q Okay. And who initiated the second interview?

6 Did you initiate the second interview or did

7 Mr. Smalls initiate the second interview on

8 September 14th, 2009?

9 A I think it was myself. I'm not sure.

10 Q And you continued to investigate between, according
11 to the report, August 20th and September 14th, correct?

12 A Yes, sir.

13 Q So, based upon your investigation, you felt the need
14 for a September 14th interview?

15 A Yes, sir.

16 Q All right. So, is it safe to say that, other than
17 what was placed in the additional statement, that you felt
18 the rest of it was correct, the statement?

19 A No, I was doing it for investigation.

20 Q Investigation.

21 But on this additional statement, September 14th,
22 2009, that changed at least a portion of the August 20th,
23 August 20th statement, correct?

24 A It was continuing to follow up investigation in
25 reference to the handgun which he had gotten.

Shaun Harley - Cross-examination
by Mr. Koger

26

1 Q Okay. But based upon your investigation, continued
2 investigation of that three week period, you felt the need
3 to take his additional statement on---

4 A Yes, sir.

5 Q ---September 14th, 2009?

6 A Yes, sir.

7 Q Thank you. No further questions.

8 THE COURT: Redirect, if any?

9 SOLICITOR MILLER: None, Your Honor.

10 THE COURT: Anything else?

11 You may step down, Officer, Agent Harley.

12 THE COURT: Anything else for the Jackson v. Denno?

13 SOLICITOR MILLER: Nothing from the State, Your Honor.

14 THE COURT: Any arguments?

15 MR. KOGER: No arguments from the defense, Your Honor.

16 THE COURT: All right. I'm gonna find that, under the
17 mandates of Jackson v. Denno, that the Miranda warnings were
18 given, and I find, by the preponderance of the evidence,
19 that the statement was voluntary and it'll be admitted into
20 the trial of the case for the jury to take whatever stand
21 they need to take on it.

22 SOLICITOR MILLER: Thank you, Your Honor.

23 THE COURT: Anything else for pretrial purposes by the
24 state?

25 SOLICITOR MILLER: Nothing by the State, Your Honor.

1 THE COURT: By the defendant?

2 MR. KOGER: Nothing from the defense, Your Honor.

3 THE COURT: All right. As I understand, the jury will
4 be here at 9:30 ready for me to qualify in the morning, and
5 we'll draw the jury and try the case thereafter, is that
6 right?

7 SOLICITOR MILLER: Yes, sir.

8 THE COURT: All right.

9 SOLICITOR MILLER: Thank you, Your Honor.

10 MR. KOGER: Thank you, Your Honor.

11

12 (WHEREUPON, Court was in recess in this case.)

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1 Tuesday, January 25th, 2011

2

3 (WHEREUPON, the following takes place within the
4 presence of the entire jury panel.)

5 THE COURT: All right. solicitor, call your first
6 case.

7 SOLICITOR MILLER: Thank you, Your Honor.

8 The State calls State versus Demetrius D. Smalls,
9 Indictment Number 2011-GS-06-0065, an indictment for murder,
10 2011-GS-06-0066, an indictment for assault and battery with
11 intent to kill, and Indictment 2011-GS-06-0067, an
12 indictment for possession of a weapon during the commission
13 of a violent crime. Your Honor, the State has the proposed
14 witness list.

15 (WHEREUPON, a bench conference was held out of the
16 hearing of the jury at this time.)

17 THE COURT: Y'all bear with us just a second.

18 (Pause.)

19 THE COURT: There is a matter that the defense lawyer
20 is having to discuss with the defendant. It will just take
21 us a second.

22 (WHEREUPON, a discussion was held off-the-record.)

23 THE COURT: Mr. Koger?

24 MR. KOGER: Your Honor, we'll go forward.

25 THE COURT: All right. Let me hold that please.

1 Mr. Koger, y'all look here one more second.

2 Y'all just bear with me one more second.

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: All right. Mr. Koger, the Court has made
6 all of us aware or made you aware of Section 17-19-80
7 concerning the time span between indictment and trial.

8 As I understand, your client wishes to waive that?

9 MR. KOGER: Yes, Your Honor.

10 THE COURT: And when we select the jury, when we,
11 before we start the case, I'll go over it with you in more
12 fuller detail.

13 MR. KOGER: Yes, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, the State
15 has called for trial the case of the State of South Carolina
16 versus Demetrius D. Smalls.

17 Mr. Smalls, good morning.

18 THE DEFENDANT: Good morning.

19 THE COURT: Would you please stand and face the jury
20 panel?

21 (Defendant complies.)

22 THE COURT: Thank you. You may be seated.

23 (Defendant complies.)

24 THE COURT: Ladies and gentlemen, Mr. Smalls has been
25 indicted by the Barnwell County Grand Jury for the offense

1 of murder, assault and battery with intent to kill,
2 possession of a weapon during the commission of a violent
3 crime. The fact that he has been indicted is not evidence
4 in the case. He has pled not guilty to all three
5 indictments and a plea of not guilty puts the burden on the
6 State of South Carolina to prove each and every element of
7 each and every indictment to you, the jury, beyond a
8 reasonable doubt.

9 So, I have to ask you a few questions concerning that
10 to make sure you're qualified to serve on this particular
11 case, but the fact that he's been indicted is obviously not
12 evidence in the case. It is simply the charging document by
13 way and means the case comes into the courtroom.

14 Any member of the jury panel now or in the past been
15 related by blood or marriage to Demetrius D. Smalls or have
16 you now or in the past had a close personal or social
17 relationship with Mr. Smalls, if so, please stand.

18 Demetrius D. Smalls, relationship now or in the past,
19 related by blood or marriage now or in the past.

20 (Jurors respond.)

21 THE COURT: All right. Please remain standing.

22 The young man in the red and white, Denmark Tech
23 student, your name?

24 THE JUROR: Erick Bradley.

25 THE COURT: And what's your situation?

1 THE JUROR: I have been friends with him all my life
2 like through school and all. I have done took classes with
3 him at all.

4 THE COURT: Very close to him?

5 THE JUROR: Yes.

6 THE COURT: All right. I will set you aside in the
7 trial of this case.

8 THE CLERK: That's Juror Number 9.

9 THE COURT: All right. Please be seated.

10 All right. There was another lady that stood earlier.

11 You want to stand?

12 Your name?

13 THE JUROR: Willie Johnson.

14 THE COURT: Mrs. Johnson, what is your situation?

15 THE JUROR: Cousin of his mother.

16 THE COURT: You're what?

17 THE JUROR: I'm cousin with his mother.

18 THE COURT: You're related by blood?

19 All right. I'll excuse you from the trial of the case.

20 THE CLERK: Number 65.

21 THE COURT: Number 65. Just have a seat please, ma'am.

22 Ma'am, in the, in the blue, close to blue anyway, your
23 name?

24 THE JUROR: Francene Broughton.

25 THE COURT: Mrs. Broughton, your number?

1 THE JUROR: Fifteen.

2 THE COURT: Mrs. Broughton, what is your situation?

3 THE JUROR: I am close friends of his.

4 THE COURT: Mr. Smalls is a close friend?

5 THE JUROR: (Witness nods head.)

6 THE COURT: How close?

7 THE JUROR: Real close. I have known him all of his
8 life.

9 THE COURT: All right. I'm gonna excuse you from the
10 trial of this case. You can be seated.

11 Yes, sir, in the pretty argyle sweater and leather
12 jacket.

13 THE JUROR: Yeah, my name is James Hollings. I'm a
14 member of Step Parishioner Baptist Church, and his whole
15 family go to my church and I am the deacon.

16 THE COURT: You're their personal deacon?

17 THE JUROR: Yeah.

18 THE COURT: All right, sir. I'm gonna excuse you from
19 the trial of the case.

20 THE CLERK: That's 52, judge.

21 THE COURT: You may be seated.

22 Ma'am, in the pretty brown scarf and blouse.

23 THE JUROR: Angela Jones. I've been knowing him since
24 he was born and I know the family real well.

25 THE COURT: Well, that's a little different than the

1 rest of them, but they say they're very close personal
2 friends, and I'm from Bamberg and I know a lot of people.
3 Some of them I know closer than others.

4 How close are you to the family and to him?

5 THE JUROR: Well, I've been in Blackville all my life.

6 THE COURT: So, you know them from being in the same
7 town?

8 THE JUROR: Yes.

9 THE COURT: Well, the, the fact that you know them,
10 ma'am, would that keep you from being a fair and impartial
11 juror?

12 In other words, set aside the fact that you know them
13 and try this case based solely on what you hear in the
14 courtroom or do you think you're too close to be fair and
15 impartial?

16 THE JUROR: I think it probably would interfere.

17 THE COURT: Thank you, ma'am. I'll excuse you from the
18 trial of the case.

19 THE CLERK: Number 66.

20 THE COURT: 66.

21 Yes, sir, in the black jacket right here.

22 THE JUROR: My name is Joseph Gains. I don't know him
23 personally, but my mother was his teacher.

24 THE COURT: Your mother was what?

25 THE JUROR: Was my teacher.

1 THE COURT: Okay.

2 THE JUROR: I know some of his family members.

3 THE COURT: All right. And the fact that---

4 THE JUROR: I wouldn't feel uncomfortable.

5 THE COURT: You would not?

6 THE JUROR: No.

7 THE COURT: Let me ask you this, the fact that your
8 mother taught this young man, and you know some of the
9 family members, would that keep you from being fair and
10 impartial?

11 Could you set that aside and base, base your decision
12 solely on what you hear in the courtroom?

13 THE JUROR: I would feel uncomfortable.

14 THE COURT: You would feel uncomfortable?

15 THE JUROR: Yes, sir.

16 THE COURT: All right. I'll excuse you from the trial
17 of the case.

18 THE CLERK: Number 41.

19 THE COURT: 41.

20 Sir, in the jacket with the white shirt, your name.

21 THE JUROR: Antwan Berry, Juror Number 3. Real close
22 to them, personal friend, known the family a long time. Me
23 and him had an incident a couple of years ago where we had
24 been locked up together, and I feel, I feel I would, I feel
25 that I would---

1 THE COURT: All right. I'll let you be excused.

2 Your name and number again?

3 THE JUROR: Antwan Berry, Juror Number 3.

4 THE COURT: Thank you.

5 Ladies and gentlemen, the fact, be seated, the fact
6 that this young man mentioned that they were locked up in
7 the past, that ain't got anything to do with this trial.
8 Disregard, disregard that statement. I mean we all grow up
9 sometimes and we may get in it a little. That ain't got
10 anything to do with this case. Just disregard that.

11 Last, but not least, in the maroon shirt.

12 THE JUROR: Craig Polie, Juror Number 89. Me and him
13 in Blackville High School together. I have been friends for
14 six or seven years. I have known him for a long time. Me
15 and him used to hang together back in the day.

16 THE COURT: All right, sir. And the fact that you have
17 that relationship with him, you've hung with him, been to
18 high school with him, you've known him for a while, would
19 that keep you from being fair and impartial or could you set
20 that aside and be a good juror?

21 THE JUROR: I wouldn't feel uncomfortable.

22 THE COURT: You would not feel uncomfortable?

23 THE JUROR: No, sir.

24 THE COURT: You would set that aside and be fair and
25 impartial, disregard the friendship---

1 THE JUROR: I could not, sir. I would feel
2 uncomfortable doing it.

3 THE COURT: Thank you. You're excused from the trial
4 of the case.

5 THE CLERK: Number 89.

6 THE COURT: Ladies and gentlemen, the alleged victims
7 in the case is one Terrance Mays. That's T-E-R-R-A-N-C-E
8 who was the murder victim, and the assault and battery with
9 intent to kill victim is a Zantrell Mays.

10 Is Mr. Mays in the courtroom?

11 Zantrell Mays.

12 Mr. Mays is right here.

13 (Witness stands.)

14 THE COURT: Thank you.

15 All right. The same question, any member of the jury
16 panel related by blood or marriage or do you now or have you
17 in the past had a close personal or social relationship with
18 these two victims, Terrance Mays and Zantrell Mays?

19 Now those people that I've already excused, you do not
20 have to stand back up.

21 Any additional people dealing with these two victims,
22 please stand.

23 (Juror responds.)

24 THE JUROR: My name is Teresa Stanley and I work with
25 Zantrell and his mother. His girlfriend is my cousin.

1 THE COURT: And your name again please?

2 THE JUROR: Teresa Stanley.

3 THE COURT: I'm sorry?

4 THE JUROR: Teresa Stanley, Number 106.

5 THE COURT: All right. And the fact that you have the
6 relationship as you've just described, ma'am, would that, in
7 any way, keep or preclude you from being fair and impartial
8 or do you feel uncomfortable in the case?

9 THE JUROR: I feel uncomfortable in the case.

10 THE COURT: I will excuse you.

11 Anybody else who I have not yet excused have a close
12 personal or social relationship with Terrance Mays, he is
13 the deceased, and Zantrell Mays.

14 (No response.)

15 THE COURT: All right. I'm going to ask you the same
16 question, but I am going to do it in this way. Don't get
17 scared when I read this long list. These are potential
18 witnesses. It is not necessarily that they'll all testify.

19 And if -- as I call your name, if you're in the
20 courtroom, please stand.

21 McKenzie Atterberry. McKenzie Atterberry.

22 Christopher Brooks.

23 (Witness stands.)

24 THE COURT: Mr. Brooks is right back here.

25 William Henry Jones, II.

1 Krystal Patrick.

2 Lavaun Patrick.

3 Demetrius Smalls. I'm sorry. I've already called your
4 name.

5 Lavaun Patrick, is that you?

6 Stand up so that the people can see you.

7 (Witness complies.)

8 THE COURT: Thank you.

9 Carlen Thomas.

10 Julius Tilly.

11 Mike Walker.

12 (Witness stands.)

13 THE COURT: Mr. Walker is right over here.

14 Thank you, Mr. Walker.

15 Investigator Thomas Weiss, Blackville Police
16 Department.

17 Zantrell Mays, we've already done him.

18 Spanky Jones, William Spanky Jones.

19 Tiffany Tip Haynes.

20 (Witness stands.)

21 THE COURT: She's right here.

22 Agent Karl Kenley with SLED.

23 Agent Shaun Harley with SLED.

24 Charles Dooley, Barnwell County deputy coroner.

25 Doctor Janice Ross. I think she's from Newberry.

1 SOLICITOR MILLER: Yes, Your Honor.

2 THE COURT: Newberry, South Carolina. She's a
3 pathologist.

4 And Agent James Green with SLED who is a firearms
5 analysis, analyst.

6 Any member of the jury panel related by blood or
7 marriage or do you now or have you in the past had a close
8 personal or social relationship with any of the potential
9 witnesses that I have just read out?

10 If I've already excused you, you do not have to stand
11 back up.

12 (No response.)

13 THE COURT: Ladies and gentlemen, the lawyers in this
14 case -- Mr. Smalls is represented by Mr. Joshua Koger.
15 Mr. Koger practices throughout Orangeburg and Bamberg and
16 Barnwell Counties. I think his office is in Orangeburg
17 County, correct?

18 MR. KOGER: That's correct.

19 THE COURT: He practices by himself. He was our Public
20 Defender at one time. He's now in private practice.

21 (Mr. Koger stands.)

22 THE COURT: Thank you.

23 Representing the State will be Mr. Kip McAlister and
24 Mr. David Miller.

25 (Attorneys stand.)

1 THE COURT: Thank you.

2 Ladies and gentlemen, anybody now or in the past have
3 been represented legally by any of the three lawyers, if so,
4 please stand.

5 (Juror responds.)

6 THE COURT: All right. I've already excused you. You
7 may be seated.

8 Ladies and gentlemen, any member of the jury panel now
9 or in the past related by blood or marriage or do you have a
10 close personal or social relationship with any of the three
11 lawyers, if so, please stand, if I have not already excused
12 you.

13 (No response.)

14 THE COURT: That's a funny question. I always ask if
15 anybody's friends with the lawyers and nobody ever stands
16 up. It must say something about us.

17 Ladies and gentlemen, let me tell you, it is alleged,
18 these are allegations, this is not evidence in the case, but
19 it is alleged that this alleged shooting took place in
20 Barnwell County on August 20th, 2009, and it's alleged that
21 Mr. Terrance Mays was shot and killed and Mr. Zantrell Mays
22 was shot but did not die, and at that time Mr. Demetrius
23 Smalls allegedly used a weapon and he allegedly shot
24 Mr. Mays and allegedly shot Mr. Mays, and it occurred,
25 Mr. Miller, where?

1 SOLICITOR MILLER: Legion Road and Clover Road in
2 Blackville.

3 THE COURT: At Legion and Clover Road in Blackville.
4 Was there a club involved?

5 Was there a club or anything or is that just---

6 SOLICITOR MILLER: No, sir, it is a residence.

7 THE COURT: At a residence near Legion and Clover Road
8 in Blackville.

9 Any member of the jury panel read anything about this
10 case, formed any opinion, anybody discussed the case with
11 you, know anything about it, formed any opinions, heard
12 about it, if so, please stand, other than the ones I've
13 already excused.

14 (Juror responds.)

15 THE COURT: Yes, ma'am, your name?

16 THE JUROR: Tip Miley.

17 THE COURT: Mrs. Miley, would you walk up here please?

18 (WHEREUPON, the following takes place out of the
19 hearing of the remaining jurors.)

20 THE COURT: Good morning. How are you doing?

21 THE JUROR: Fine.

22 THE COURT: Tell me what you know.

23 THE JUROR: Well, I know, because of some of my family
24 members, they stay in Blackville, and I just heard about it
25 through them, and I really don't feel comfortable being on

1 the case because I know -- one of the witnesses, Mike
2 Walker, he was a friend of mine. I knew him basically my
3 whole life. He just stood up.

4 THE COURT: You would feel uncomfortable?

5 THE JUROR: Yeah.

6 THE COURT: All right. What number is she?

7 SOLICITOR MILLER: 78.

8 THE COURT: All right. I'm gonna excuse her. Just
9 stay with us please. Go back and have a seat.

10 Good morning. Your name?

11 THE JUROR: Nicole Mead. I don't remember my number,
12 number.

13 SOLICITOR MILLER: 77.

14 THE COURT: And your situation?

15 THE JUROR: My fiance actually had to share a jail cell
16 with him for a little bit and he's told me a little bit
17 about it. I wouldn't feel too comfortable with it.

18 THE COURT: Her fiance shared a jail cell with him,
19 he's talked to her about it, and she knows a lot about it.

20 All right. I'll excuse you. Just stick with us please.
21 Yes, ma'am.

22 THE JUROR: Number 55. My -- I heard about the case.
23 My cousin told me about it.

24 THE COURT: Ma'am?

25 THE JUROR: I heard about the case. My cousin told me

1 about it.

2 THE COURT: Well, you know there's all kinds of news
3 going on in town. The fact that somebody told you something
4 about it, you know, somebody told me about a wreck this
5 morning.

6 THE JUROR: Yeah.

7 THE COURT: Can you still be fair and impartial?

8 THE JUROR: Yea.

9 THE COURT: Thank you. I'll leave you with us.

10 (WHEREUPON, the following takes place within the
11 hearing of the jury panel.)

12 THE COURT: Ladies and gentlemen of the jury panel, one
13 of the main duties I have as the trial judge is to ensure
14 that anyone who is being tried in our system receives a fair
15 and impartial trial, the defendant as well as the State, and
16 obviously I have to make sure that my jurors are able to
17 render their task in this case, and what your job, what your
18 job is, if you're selected, you will be asked to determine
19 what the true facts are in the case.

20 I've tried, I've tried cases all over the state. I
21 practiced law for 30 years, and invariably, in a trial, you
22 will hear different versions of the facts, sometimes totally
23 different facts, different spin on the facts, and under our
24 system, we select 12 people from the community and those
25 individuals are what we call the finders of the facts. You

1 are the judges of the facts in the case. You determine what
2 the true facts are.

3 My job is to instruct you on the law. I'm the judge of
4 the law. You're the judges of the facts, and the way we do
5 that is obviously we call witnesses by the State. They're
6 subject to cross-examination and any other witnesses that we
7 may have, and that testimony, along with the exhibits, are
8 introduced into the trial of the case, and you take all of
9 that testimony and exhibits and you determine what the true
10 facts are, and when you determine what those true facts are,
11 you apply it to the law as I give it to you. So, I have to
12 make sure you're able to do that job.

13 So, do I have anybody, for any reason whatsoever,
14 whether it be religious beliefs, personal beliefs, political
15 beliefs, any kind of belief that you cannot perform that
16 civic duty of determining what the true facts are in the
17 case and applying it to the law as I give it to you for any
18 reason whatsoever?

19 Please let me know now. If it's a personal matter,
20 I'll be glad to discuss it up here.

21 Does that apply to anyone?

22 (Juror responds.)

23 THE COURT: Come forward.

24 (WHEREUPON, the following takes place outside the
25 hearing of the jury.)

1 THE COURT: Good morning. How are you and your name?

2 THE JUROR: My name's Carol Spooner. I think I am
3 Number 105.

4 THE COURT: And your situation?

5 THE JUROR: Being a Jehovah's witness and not only that
6 I can't judge.

7 THE COURT: Nobody is asking you to judge, ma'am.
8 We're just asking you to determine what the true facts are.

9 THE JUROR: I wouldn't be able to do it. I have a hard
10 time retaining information.

11 THE COURT: Why can't you do that?

12 THE JUROR: I just forget. Age.

13 THE COURT: Well, you're the same age as I am. You're
14 fine. I'm gonna let you stay with us.

15 Yes, ma'am, you can do it. It's a very simple job, a
16 jury trial.

17 THE JUROR: I don't want to do it.

18 THE COURT: I don't want to be up here either, but
19 that's your civic duty. Thank you, ma'am.

20 Yes, ma'am.

21 THE JUROR: Good morning.

22 THE COURT: Your name?

23 THE JUROR: Wanda Ruth, Number 36.

24 THE COURT: What is your situation?

25 THE JUROR: I might have a problem with a murder case.

1 THE COURT: Well, nobody likes to do this. I don't
2 like to do it. Mr. Koger doesn't like doing it. Mr. Miller
3 doesn't like doing it, but our civic duty requires us, as a
4 citizen, to be able to do it unless you got some other
5 reason other than the fact that I just don't want to do it.
6 You'll be good. Thank you, ma'am.

7 (WHEREUPON, the following takes place within the
8 hearing of the jury panel.)

9 THE COURT: All right. Any additional questions by the
10 state?

11 SOLICITOR MILLER: Nothing from the State, Your Honor.

12 THE COURT: Any additional questions by the defendant?

13 MR. KOGER: Your Honor, may we approach?

14 (WHEREUPON, a bench conference was held out of the
15 hearing of the jury at this time.)

16 THE COURT: Any additional questions by the defendant?

17 MR. KOGER: No, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, the way
19 we draw a jury in a General Sessions or criminal case is a
20 little different than if this were a wreck case or if
21 somebody's suing a doctor or a lawyer for malpractice or
22 breach of contract in a civil case. In a civil case, we
23 randomly select 20 names, give it to both sides, one side
24 strikes out four, the other side strikes out four. Twenty
25 less than eight is twelve.

1 In a criminal case, your name is randomly selected --
2 and y'all can go ahead and do that -- randomly selected and
3 if your name is called, you come forward, come through this
4 gate, and Mr. Eddie will let you through. Come stand right
5 up here and the state has five strikes. The defendant has
6 ten strikes, and they can strike you for most any reason or
7 no reason that doesn't have to, within certain bounds that
8 the lawyers know what they are, and if they excuse you,
9 don't get your feelings hurt. If they take you, then
10 obviously you'll be one of our 12 jurors. We'll do 12
11 jurors and two alternates, and then we'll go from there.

12 You may call your first juror.

13 We've gone to a new system in the last year where the
14 computer randomly selects it.

15 As your name is called, would you please come forward?

16 (WHEREUPON, the jury panel was selected at this time.)

17 THE COURT: Let me have two alternates. Two and one.

18 (WHEREUPON, an alternate juror was selected at this
19 time.)

20 THE COURT: Give me one more alternate. Two and one.

21 (WHEREUPON, a second alternate juror was selected at
22 this time.)

23 THE COURT: Any motions by the State in connection with
24 the selection of the jury?

25 SOLICITOR MILLER: Nothing from the State, Your Honor.

1 THE COURT: By the defense?

2 MR. KOGER: Nothing from the defense, Your Honor.

3 THE COURT: We're gonna let y'all step right back in
4 the jury room. Let me get this jury dismissed, and go ahead
5 and stretch your legs, bathroom, whatever. We're gonna
6 probably come back out and go to about 12:30 and start back.
7 I'll tell you when we get back just how we're going to go
8 this afternoon.

9 So, everybody else remain seated.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Mr. Smalls, if you would, please stand
13 before me.

14 (Defendant complies.)

15 THE COURT: Before we got started this morning there
16 was some, I don't want to use the word confusion, but anyway
17 we've all had, were working on the assumption that the
18 indictments had been presented to the Grand Jury, and
19 yesterday we realized that it had not, and the Grand Jury
20 came in this morning and met and they returned a true bill
21 of indictments on the three charges we're moving forward on.
22 And as I explained to Mr. Koger, there's a particular
23 statutory section, 17-19-80, which allows a person who is
24 charged with a capital offense such as murder to have a true
25 copy of the indictment for three days before he should be

1 tried for the offense. Basically so he can talk with his
2 lawyer, et cetera, et cetera.

3 Mr. Koger discussed that with you before we started
4 this morning and informed me that you had, you were fully
5 aware of that and that you wished to waive that and go, go
6 ahead and move along with the trial of the case this
7 morning, is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions you need to ask
10 me about that?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. I find your decision to waive
13 the three days requirement of Section 17-19-80 that you
14 voluntarily and intelligently and with the advice of counsel
15 have waived the three day notice. Thank you.

16 Mr. Koger, during the jury qualification a juror stood
17 and said something to the effect that he and the defendant
18 had, I think said been in jail together or something to that
19 effect.

20 MR. KOGER: Yes, Your Honor.

21 THE COURT: Do you have a motion in regards to that?

22 MR. KOGER: Yes, Your Honor.

23 May it please the Court.

24 I do not have the juror number, but, but the comment
25 summarily that there, they were locked up together for a

1 period of time. It is our position that with the whole,
2 with the entire jury panel and the subsequent jury that we
3 selected, that those comments brings about the strong
4 possibility that the jury, that the jury pool was tainted,
5 that it would be prejudicial against my client and
6 subsequently the jury that we selected is tainted. So, we
7 would ask that this jury panel and the jury be dismissed.

8 THE COURT: Okay. Well, when that happened I obviously
9 saw the look on your face, and, of course, it concerned me
10 and I gave a very, I thought and I still think, a very
11 explicit curative instruction that the jury panel was not to
12 consider that, and, of course, my comments are on the
13 record, but I told them that that had nothing absolutely to
14 do with this case. This case would be tried solely on what
15 was presented in this courtroom, and I further instructed
16 them thereafter or subsequently about their duties as jurors
17 and asked them if there was any reason whatsoever in the
18 whole world they couldn't perform those services to let me
19 know.

20 So, I am confident that I have made a proper curative
21 instruction, curative statement and I respectfully deny your
22 motion.

23 Anything else before we bring the jury back to start
24 the trial of the case, by the State?

25 SOLICITOR MILLER: Nothing from the State, Your Honor.

1 THE COURT: We're gonna take a bathroom break, but---

2 MR. KOGER: Nothing from the defense, Your Honor.

3 THE COURT: As I understand, y'all have already marked
4 all of the exhibits and so forth?

5 SOLICITOR MILLER: Yes, sir, Your Honor. They were
6 marked and Mr. Koger has reviewed them with us this morning.

7 MR. KOGER: That's correct, Your Honor.

8 THE COURT: Give everybody sort of a guestimate of
9 where we're going, we're going to probably break around
10 12:30. We'll probably take a break from 12:30 to 2:00. I
11 have a little quick hearing around 1:30 or a quarter 'til
12 2:00. So, we'll be ready to start back at 2:00.

13 Any problem with that?

14 SOLICITOR MILLER: Just the information, Your Honor,
15 our first witness is problem going to be one of the more
16 lengthy witnesses that we have. I would anticipate him
17 being on the stand half an hour for us, and just depending
18 on how long Mr. Koger and Mr. McAlister are with their
19 openings, and the Court's obvious preliminary charge to the
20 jury, if the Court could take that into account.

21 THE COURT: Well, if we start at 2:00, we'll be ready
22 to go by 2:30 with the preliminary charge, 2:30, 3:00,
23 cross-examine. You have plenty of time.

24 Is that what you were concerned about?

25 SOLICITOR MILLER: No, sir, I was thinking if we bring

1 the jury back in now and go ahead and do openings, I didn't
2 want to start this witness and 15 minutes later hit 2:30.

3 THE COURT: I understand. We'll come back in and I'll
4 do my little opening spill and then y'all can do your
5 opening statements depending on where we are and we'll go
6 from there.

7 SOLICITOR MILLER: Thank you, Your Honor.

8 THE COURT: We won't start that witness.

9 SOLICITOR MILLER: Thank you, Your Honor.

10 THE COURT: Okay. Mr. Koger. Obviously security will
11 allow the defendant bathroom access. Make sure he has some
12 lunch.

13 We'll take a break for about ten minutes.

14 (WHEREUPON, a short recess was taken at this time.)

15 THE COURT: All right. Is the State ready to proceed?

16 SOLICITOR MILLER: We are, Your Honor.

17 THE COURT: Defense ready to proceed?

18 MR. KOGER: Yes, Your Honor.

19 THE COURT: And they've agreed to sequester the fact
20 witnesses. So, it may --.

21 SOLICITOR MILLER: Your Honor, the State would agree to
22 sequester the fact witnesses. We know that our first witness
23 appeared in the courtroom and we may have some other
24 witnesses who are under subpoena and some of the witnesses
25 are Mr. Koger's as well. Obviously we want those witnesses

1 sequestered as well.

2 THE COURT: All right. You recognize them. So, they
3 can go ahead and step out.

4 Everybody who is a witness whose been subpoenaed, stand
5 up for me. Come, come right up this way please. Come right
6 here with the officer for me please.

7 All right. Are you ready for the jury to come in?

8 SOLICITOR MILLER: Yes, Your Honor.

9 MR. KOGER: Yes, sir.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: All right. The first thing we have to do to
13 get ready, you have to be sworn in for this particular case.
14 So, if you will please stand and the clerk will administer
15 the oath.

16 (WHEREUPON, the jury was placed under oath at this
17 time.)

18 THE COURT: All right. Ladies and gentlemen, let me
19 quickly, or not quickly, let me explain to you a little bit
20 about where we're going.

21 In this case, obviously, as I told you when we selected
22 the jury, the defendant has been indicted for the offense of
23 murder, assault and battery with intent to kill, the
24 possession of a weapon during a violent crime. He's pled not
25 guilty to all three indictments.

1 He is presumed to be innocent under our Constitution and
2 the Constitution of the United States unless the State is
3 able to prove to you, by evidence and exhibits from this
4 witness stand, beyond a reasonable doubt, to prove to you all
5 the elements of the three offenses. And at the conclusion of
6 the case I will charge or instruct you on what the evidence
7 is -- on what the elements of the various offenses are. So,
8 what your duty is, as I told you earlier, you'll listen to
9 the facts and then determine what the true facts are, and
10 apply that to the law as I give it to you.

11 This is a criminal case. This is not a civil case. We
12 have two different types of courts that we try up there. As
13 I told you earlier, the wreck cases, the medical malpractice
14 cases, the legal malpractice cases, breach of contract cases.
15 And those type of cases where one person is suing another
16 person or a company for damages, the parties come in on equal
17 footing if this were scales of justice, and for the
18 plaintiff, the person suing, to prevail, they have to tip the
19 scales of justice by what we call the preponderance or
20 greater weight of the evidence ever so slightly. That's
21 their burden of proof in order to prevail in a civil case.

22 This is a criminal case. Because the defendant is
23 presumed to be innocent, the scales are tipped way in his
24 favor when the trial starts, and the burden of proof is on
25 the State of South Carolina to prove to you, beyond a

1 reasonable doubt, and that's the degree of proof in a
2 criminal case. So, it's different than that in a civil case,
3 and, obviously, at the conclusion of the case I will define
4 to you what reasonable doubt is under our law.

5 So, the State has the burden of proof in this to prove
6 each and every element of the three indictments to you beyond
7 a reasonable doubt. They have the burden of proof.
8 Therefore, they will go first. They will present their case
9 first. Following their case, then the defense has the right
10 to present a case if they choose, and I will explain all of
11 that to you at the conclusion.

12 As I explained to you earlier, you and I have separate
13 duties to perform, separate jobs to perform during the trial
14 of the case. My job is not nearly as important as yours. My
15 job consists of mainly two things. I instruct you on the law
16 in the case. I am the judge of the law in the case. Not me
17 personally, but my position makes me the judge of the law in
18 the case. So, I tell you what the law is or instruct you
19 what the law is.

20 Therefore, if you come into the courtroom with some
21 preconceived idea about what the law is or you don't agree
22 with what I tell you it is, you have to set all that aside
23 and accept the law as I give it to you at various times
24 during the trial of the case. I'm the judge of the law in
25 the case. I tell you what the law is.

1 My other duty is to rule on the admissibility of
2 evidence. The lawyers have to present their case and ask
3 witnesses, they have to comply, when they ask their
4 questions, with the rules of evidence, and they have to
5 comply with the Rules of Criminal Procedure. I suggest that
6 probably 95 percent of what they ask will comply with that,
7 perhaps even a hundred percent. If it doesn't comply with
8 than, then I have to rule on it. But if it does fall within
9 the rules, and their questions are asked, that evidence is
10 admitted into the trial of the case, and you may hear Joe
11 Blow testify that today is Tuesday, and you may hear Susie
12 testify that today is Friday. I mean just all kinds of
13 factual disputes that you may hear. But all of that comes
14 into the trial of the case. It's admitted in evidence, and
15 your job, you are the judges of the facts in the case.

16 You determine the credibility, the believability of
17 witnesses, and you end up deciding what the true facts are in
18 this case. And once you decide what the true facts are, of
19 course, you apply it to the law as I give it to you, and then
20 you'll be in a position to render a verdict in the trial of
21 the case.

22 So, that's sort of your responsibility, my
23 responsibility. You can't tell me what the law is. I tell
24 you. I can't tell you what the facts are. You tell me when
25 you render your verdict.

1 Throughout the trial of the case we will try to run it
2 in an efficient manner. However, I'm not trying to run a
3 race up here. At anytime during the trial of the case you
4 become uncomfortable, you need a bathroom break, you need a,
5 something to drink, you get uncomfortable with the heating
6 system, just let me know and we will adjust it and make sure
7 your needs are met.

8 We will take breaks from time to time, and obviously
9 we'll take a lunch break and go home tonight. Each time we
10 take a break I will tell you please do not start any
11 deliberation or any discussion about the case until all the
12 evidence is in and the lawyers have made their final
13 arguments and I've charged you on the law. So, when you go
14 back to your jury room, obviously you can talk about anything
15 you want to, but not the case until it's all in because that
16 last piece of evidence, that last argument may be what sways
17 you.

18 When we take a break for lunch I'm going to ask that the
19 12 of you, not my alternates, but the 12 of you, please
20 select a foreperson amongst you. The foreperson is simply
21 the spokesperson for the jury. They're the one who head up
22 the deliberation and they sign the verdict form. If you're
23 unable to do that, then obviously I will just randomly select
24 somebody to serve as my foreperson. But I think y'all can do
25 that.

1 When you go for lunch I will ask you not discuss the
2 case with anyone. Do not let anybody discuss it with you.
3 We try these cases based solely on what we hear in the
4 courtroom. The lawyers know what they want to present and
5 what they have to present. So, we try it based on what's
6 presented to you. Not influenced by any outside sources.
7 So, if anybody tries to talk to you about the case, just tell
8 them you're on the jury. If they insist, get their names and
9 I will deal with them accordingly.

10 In just a few minutes the lawyers, the State goes first,
11 will make an opening statement. Please bear in mind that the
12 opening statements made by the Solicitor's Office and by Mr.
13 Koger, the defendant, that is not evidence in the case. The
14 only evidence that you can consider in determining what the
15 true facts are is what is admitted from the witness stand by
16 either way or oral testimony or exhibits. The opening
17 statements are simply what the lawyers contend the issues
18 are. They will sort of give you what they consider to be
19 their roadmap and how they're going down and trying the case
20 and asking you or suggesting to you to listen to certain
21 things.

22 Once we conclude the opening statements, then we will go
23 into the trial of the case. That is taking testimony. I
24 suspect the opening statements will take us till about 12:30
25 and we're going to break right around 12:30 today, come back

1 around 2:00 and we'll probably, unless something really gets
2 askew, go till about five o'clock this afternoon. If that is
3 a problem for anybody, please let me know when you come back
4 from lunch. If anyone has a transportation problem, I will
5 make sure that you get a ride or anything else that you have,
6 please bring it to my attention.

7 I suspect we will, I don't know, I better not say that
8 now, I'm trying to anticipate, predict how long we'll go.
9 But I suspect we'll go most of the day tomorrow and then
10 we'll see where we stand.

11 This is obviously a very important case. You have a
12 very important duty to perform, which is simply listen to the
13 evidence, use your ordinary common sense to determine who's
14 telling the truth. You deal with wives. You deal with
15 husbands, boyfriends, girlfriends, children, employees,
16 employers on an everyday basis. You know how to judge
17 whether somebody's telling the truth. Use that human
18 tendency, that human trait to judge who's telling the truth
19 and what the true facts are and take those true facts and
20 apply it to the law and you will, you will have fulfilled
21 your duty.

22 Any objections to my opening remarks by the State?

23 SOLICITOR MILLER: Nothing from the State, Your Honor.

24 THE COURT: By the defendant?

25 MR. KOGER: Not from the defense, Your Honor.

1 THE COURT: All right. Gentlemen, you may make an
2 opening statement.

3 SOLICITOR MCALISTER: Thank you, Your Honor.

4 THE COURT: Mr. McAlister.

5 SOLICITOR MCALISTER: May it please the Court?

6 THE COURT: Yes, sir.

7 SOLICITOR MCALISTER: Ladies and gentlemen, we have
8 pride and we have rage. Pride, one of our seven deadly sins.
9 The most serious, the one that leads to all others. And we
10 have rage, an intense violent anger.

11 Ladies and gentlemen, when you put those two together,
12 it's a lethal combination. When we act out of pride and
13 rage, we often do things we, we wish we shouldn't or we wish
14 we hadn't.

15 Ladies and gentlemen, we all have decisions in life, and
16 those decisions have consequences. Like I said, when we act
17 out of pride and rage, sometimes we do things we wish we
18 hadn't, and ultimately we have to answer for those decisions
19 and for those actions.

20 On the day of August 20th, 2009, in Blackville, South
21 Carolina, the defendant, Demetrius, Demetrius Smalls,
22 decided, he chose to punish Terrance Mays and his family.
23 They're still suffering today. The defendant made those
24 decisions.

25 Now, you're here today to determine his punishment. Let

1 me tell you a little bit about what happened. It was a
2 summer day in Blackville. Two young men got into a fight.
3 Now, they had fought before. They knew each other. They
4 grew up together. But on those previous occasions, win or
5 lose, you lived to fight another day.

6 This day was different. It was a crowd of people out
7 there. The defendant got the worst of it. He got his lip
8 busted.

9 Ladies and gentlemen, he was embarrassed. He was
10 humiliated. He was ashamed in front of his friends, in front
11 of all of these people out there. He was angry, he was
12 livid, and he was irate.

13 Ladies and gentlemen, after that initial fight occurred,
14 he hadn't had enough. He wasn't satisfied. He wanted some
15 more. Rather than walking away, he walked back to one of his
16 buddies, grabbed a gun, a semiautomatic .380 pistol, he
17 turned, he found Terrance Mays, he aimed, and he shot him,
18 shot and killed Terrance Mays, an unarmed man.

19 Now, that bullet entered Terrance's right arm, came out
20 his right arm, entered his chest. It punctured both lungs
21 and pierced his heart. Now, after this, the defendant turns
22 and finds Zantrell Mays. He shoots Zantrell Mays in the
23 chest. Zantrell Mays is here today. He's gonna testify.

24 Now, you're gonna hear from the defense. You'll
25 probably hear a story that the defendant had no choice, he

1 had no other options, he was in fear for his life, he acted
2 in self-defense. Well, we're gonna put Zantrell Mays up.
3 After the initial fight, like I said, Mr. Smalls hadn't had
4 enough. He kept coming. He wanted some more. Zantrell Mays
5 shows him a handgun. He does present him a weapon, tells him
6 to chill out.

7 well, ladies and gentlemen, that wasn't enough. The
8 only person that fired a gun that day was the defendant. The
9 only person to point a gun that day was the defendant.
10 Zantrell is going to tell you all of this. He's gonna admit
11 to it.

12 Don't be confused and don't be misguided by, by those
13 stories. Terrance Mays is dead. Terrance Mays was unarmed.
14 Terrance Mays can't be here today. The only person to pull a
15 trigger that day was the defendant.

16 Now, through this trial, ask yourself one thing, could
17 he have walked away?

18 After that initial fight, could he have just kept
19 walking?

20 He walked back and grabbed a gun.

21 why didn't he just keep on walking?

22 This was no accident. This wasn't some careless
23 mistake. The defendant shot and hit everything and everyone
24 he was aiming at. Two men shot, one unarmed man dead.

25 Pay attention to the witnesses. We're going to put

1 several witnesses on the stand. Listen to their testimony.
2 Listen to the evidence. Look at the evidence that's
3 presented. At the end the judge is gonna charge you on the
4 law. Don't get caught up in the legal terminology that the
5 lawyers use. Just use your common sense.

6 Folks, this case isn't complex, but it doesn't mean that
7 you're not gonna have a difficult decisions to make when you
8 go back in that jury room. You're gonna have some tough
9 decisions. It's not gonna be easy. Ultimately it comes down
10 to who you believe.

11 The defendant, he was embarrassed. He was humiliated.
12 He was ashamed. He was angry. He was irate. He was livid.
13 Pride comes with disgrace and rage comes with destruction.
14 At the end of our case, the State will prove to you that not
15 only is the guilt, is the defendant guilty of possession of a
16 weapon during a violent crime, he's guilty of assault and
17 battery with intent to kill for Zantrell Mays. He's guilty
18 of the murder of Terrance Mays.

19 Thank you.

20 THE COURT: Ladies and gentlemen of the jury panel, let
21 me -- a lot of times lawyers, when they make their opening
22 statements, move a little too fast. The solicitor said that
23 you are deciding the punishment. You do not decide
24 punishment. You decide guilt or not guilt, guilty or not
25 guilty. Punishment is all up to the judge. So, a little

1 correction. Don't be thinking you'll be deciding
2 punishment. That's not your job. That's my job.

3 Mr. Koger.

4 MR. KOGER: May it please the Court, Solicitor
5 McAlister.

6 That is the case file, the investigations thus far, and
7 the complete investigations on this case. A very thick
8 file.

9 So, what I'm about to tell you on opening has already
10 been investigated and is the results of that investigation.

11 Mr. McAlister, the State, talks about pride and rage.
12 Well, it was plenty of pride and rage that went on that day
13 on both sides in Black, in Blackville, South Carolina on
14 August 20th, 2009.

15 Now, what we say is not evidence, but what I'm telling
16 you is what has already been investigated and placed in the
17 report.

18 Early on that day, my client, Demetrius Smalls, got
19 into an altercation with Didi Mays in the Town of
20 Blackville, and they'll be testimony from law enforcement in
21 Blackville that he got into an altercation, but the City of
22 Blackville, Chief Holston, Officer Weiss, handily told both
23 parties, you know, let's squash this, you go your separate
24 way, you go your separate way, you go home, you go home.

25 Demetrius Smalls went home. That was squashed.

1 Now, Didi Mays is the brother of Zantrell Mays who was
2 with and the alleged victim on the assault and battery
3 intent to kill, and the brother of Terrance Mays, the
4 deceased in this particular matter. Mr. Smalls went home.
5 Mr. Mays didn't go home. Mr. Mays got on the telephone.
6 Mr. Mays, according to the report, report and statements in
7 this report, Mr. Mays called Zantrell Mays.

8 Guess what happened?

9 I got into it with Demetrius Smalls.

10 Didi Mays, Didi Mays called his other brother.

11 Guess what happened?

12 I got into it with Demetrius Smalls.

13 In the mean while, Mr. Smalls, at home, later on, went
14 to go socialize and drink with some buddies. He listened to
15 the advice of Blackville Police Department, but Didi Mays,
16 after, after a couple minutes or a couple of hours, gathered
17 everybody up, gathered the family to come search and find,
18 and dare say, destroy Mr. Demetrius Smalls and they came to
19 the scene, the scene of the crime. Came to the scene
20 according to what's in the reports. The evidence and
21 testimony will show that Terrance Mays came out and they
22 fought fist to fist to fist, and they fought and they fought
23 and it got to the point that it was over.

24 Now, Mr. Smalls admittedly did not like what happened
25 or the results of the fight. He wanted to go again,

1 according to what's in the report, and the evidence and
2 testimony will show he wanted another shot at Terrance Mays
3 with the fist, with the fist. And when he attempted to go
4 again with fists, with the fists with Terrance Mays, then
5 Zantrell steps in.

6 Now, of course, the solicitor's office didn't tell you
7 this here, but we have several witnesses that's gonna
8 corroborate, corroborate this here. Zantrell Mays decided
9 to take it to another level. They say he presented the gun.
10 We will have testimony that he took out a gun out of his
11 waistband. It's in the investigative report, and evidence
12 and, and evidence and testimony will show, pulled the gun
13 out, and cocked it, pulled back the hammer, and the
14 testimony will show and the statements of the report has
15 already pointed out and placed it in Demetrius Smalls face.

16 There's nothing here that's gonna come out in this
17 courtroom today, nothing in this report that Mr. Smalls
18 brought a gun to a fist fight, and that's, and that is what
19 happened. Zantrell Mays brought a gun to a fist fight, and
20 escalated, put it on a whole different level. Mr. Smalls,
21 fearing for his life on that particular day, acted upon that
22 fear, had no other way than to respond than the way he did
23 to protect his life and limb. There will be testimony that
24 Terrance Mays had what appeared to be a gun to both
25 Demetrius Smalls and another independent witness.

1 Now, mind you, we don't get an opportunity in life to
2 have instant replay. We had the, the championship games on
3 Sunday, and, of course, if it's a disputed call, then you
4 can go underneath the camera and you can watch instant
5 replay and get it right. But in life, life moves in real
6 time, real time. We don't have that advantage.

7 We act upon our fears. We act upon what we see. We
8 act upon the situation.

9 That was what Mr. Smalls did on that particular day,
10 and I submit to you that the State cannot prove the case of
11 murder against Mr. Smalls beyond a reasonable doubt in
12 relation to Terrance Mays. There will be testimony that
13 what is perceived by Mr. Smalls and another independent
14 witness that he had a gun in the act. There is -- it is, it
15 is not disputed -- it is undisputed by several witnesses
16 that Zantrell Mays, the alleged victim in the assault and
17 battery with intent to kill took out a chrome gun and cocked
18 it.

19 (WHEREUPON, a phone began to ring in the courtroom.)

20 MR. KOGER: Excuse me, Your Honor.

21 THE COURT: That's Mr. Koger's instant replay going
22 off.

23 MR. KOGER: Excuse me, judge.

24 THE COURT: All right. I'm not gonna take it.

25 MR. KOGER: Okay. I apologize.

1 THE CLERK: I got everybody but the lawyers, judge.

2 THE COURT: Mr. Koger has practiced before me a long
3 time. I don't think his phone's ever gone off.

4 MR. KOGER: In 17 years, Your Honor. Excuse me.

5 That Terrance Mays possibly brought a gun to the fist
6 fight, and as Your Honor stated, you are the judge of the
7 facts. You determine the facts. I set, I set the road map
8 and you determine, from this witness chair, what is true and
9 what is not true and you make that determination. It is
10 your job to do it, but I submit to you that there will be no
11 testimony again that Mr. Smalls brought a gun to the fight,
12 to a fist fight and that Zantrell Mays brought a gun to a
13 fist fight. Terrance, Terrance Mays brought a gun to a fist
14 fight, and that Mr. Demetrius Smalls acted in self-defense
15 on that particular day, August 20th, 2009, and there will
16 also be testimony that Zantrell Mays and family, because he
17 went and gathered his sister, too, they rode from a certain
18 location. They rode from -- you know, we are going to --
19 we're going to seek and destroy Mr. Smalls. They rode
20 around Barnwell County with the gun.

21 Mr. Terrance Mays, in another vehicle, he rode, he rode
22 from Aiken with the gun. They sought out this man. They
23 went to several places. They sought out this man because
24 they was going to avenge what is already been settled
25 earlier in the day.

1 I submit to you that the State cannot prove the case of
2 murder beyond a reasonable doubt against Mr. Demetrius
3 Smalls. I submit to you the State cannot prove, beyond a
4 reasonable doubt, the assault and battery with intent to
5 kill charge against Mr. Smalls, and I submit to you the
6 State cannot prove, beyond a reasonable doubt, that he
7 possessed a weapon through the commission of a violent
8 crime. And once you look over all the evidence, hear all of
9 the testimony, and decide the facts and determine the facts
10 and look at the facts, I have no doubt that you will come
11 back on all three counts of not guilty for Mr. Demetrius
12 Smalls.

13 Thank you.

14 THE COURT: Mr. Miller, you informed me in the pretrial
15 that the first witness was the longest witness, and I don't
16 want to split it up and get started and have to split into
17 it. So, we will -- I said 12:30. We're going to leave, go
18 ahead and break for lunch.

19 I'm not taking an hour and 40 minute lunch break. I've
20 got another civil hearing at 1:30. It will take me a little
21 while. I don't want y'all sitting and waiting on me. I'll
22 be back to do my civil hearing. We'll be ready to start at
23 two o'clock. I'm gonna excuse you now.

24 Tomorrow we, at lunch time, we will make arrangements
25 to feed you lunch. I'll have you some breakfast in the

1 morning as well. So, I'm going to let you eat on your own
2 today.

3 Please be back ready to go. We'll start at 2:00. So,
4 be back about five 'til. I would ask, if you have time,
5 before you go to lunch or when you get back, if you can
6 select a foreperson among the 12 of you. I said that same
7 thing over in Aiken what, six or eight months ago. They
8 came back in and a lady sat in the foreperson's chair. She
9 was -- I said what happened? She said well, I got in there
10 and had to go to the bathroom. I was the first one in the
11 bathroom. When I came out the bathroom they had elected me
12 as foreperson. I don't know if that's a good way to do it.
13 But y'all try to select one. If you can't get one, I'll,
14 I'll just randomly choose somebody.

15 Everybody else remain seated please.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Anything for the record by the
19 State before we break for lunch?

20 SOLICITOR MILLER: Nothing from the State, Your Honor.

21 THE COURT: By the defendant?

22 MR. KOGER: Nothing from the defendant.

23 THE COURT: All right. The defendant's in custody.

24 All right. Let me make this statement to those in the
25 audience.

1 Any time you're dealing with death, guns, and loved
2 ones, obviously there are emotions involved. If you can not
3 control your emotions, I'm gonna ask that you not come back
4 in the courtroom. If anyone acts out, you'll be held in
5 contempt of Court and subject to being incarcerated and/or
6 fined.

7 Ladies on my right side, your left side, sometimes
8 there will be testimony that you don't agree with. There
9 will be statements by lawyers that you don't agree with.
10 You cannot show facial expressions and shake your head and
11 get mad. Just sit, as we say, with a poker face. It's not
12 like church where you can clap for the preacher. Please, if
13 you cannot do that, I'm gonna ask that you not come back.

14 Fair enough?

15 All right. We'll break for lunch. We'll start right
16 at two o'clock.

17 (WHEREUPON, Court was in recess for the lunch hour.)

18 THE COURT: Anything for the record before we start
19 back?

20 SOLICITOR MILLER: Nothing from the State, Your Honor.

21 THE COURT: Mr. Koger.

22 MR. KOGER: Nothing from the defense, Your Honor.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: We had a pleasant lunch.

1 Did y'all select a foreperson?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: Mrs. Hughes?

4 THE FOREPERSON: Yes, sir.

5 THE COURT: Congratulations.

6 THE FOREPERSON: Thank you.

7 THE COURT: I see you have a note pad. I'm not --
8 normally I don't allow notes. If you think it is necessary
9 I'll give all of you a note pad. If you don't think it's
10 necessary then I'll take, take it away. It's a relatively
11 short trial.

12 What's your pleasure?

13 THE JUROR: Note pad.

14 THE COURT: Let's give them note pads.

15 Well, let's get started. The first part of the
16 testimony will be easy and we'll go from there.

17 You may call your first witness.

18 SOLICITOR MCALISTER: Your Honor, the State calls
19 Zantrell Mays.

20 ZANTRELL MAYS, after being duly sworn,
21 testified as follows:

22 THE COURT: Sir, if you would, have a seat in the
23 witness stand.

24 THE CLERK: State your name for the record after you
25 sit down. Okay.

Zantrell Mays - Direct examination
by Solicitor McAlister

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1 THE WITNESS: All right. Zantrell Lamont Mays.

2 THE COURT: M-A-Y-E?

3 THE WITNESS: M-A-Y-S.

4 THE COURT: M-A-Y-E-S, Mayes?

5 THE WITNESS: No, it's Mays. Like May.

6 THE COURT: Okay. The month of May, but plural.

7 THE WITNESS: Yeah.

8 THE COURT: M-A-Y-s.

9 DIRECT EXAMINATION

10 BY SOLICITOR MCALISTER:

11 Q Zantrell, where do you live?

12 A Blackville, South Carolina.

13 Q Do you live in Blackville now?

14 A No, I live in Williston right now.

15 Q Okay. How long have you lived in Williston?

16 A About two years.

17 Q Why did you move to Williston?

18 A I went over there to help take care of my children.

19 Q And you lived in Blackville before that?

20 A Yes, sir.

21 Q How long did you live in Blackville?

22 A What, 24 years easy, 23 years.

23 Q And how old are you?

24 A Twenty-six.

25 Q Where do you work?

Zantrell Mays - Direct examination
by Solicitor McAlister

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- 1 A Dixie Narco. Not Dixie Narco. Headco of Williston.
- 2 Q All right. Well, let me go back to August 20th of
- 3 2009.
- 4 THE COURT: Hold on one second, one second.
- 5 (WHEREUPON, the note pads were passed out at this
- 6 time.)
- 7 THE COURT: All right. The first witness' name is
- 8 Mr. Mays, M-A-Y-S.
- 9 Q All right. Let's go back to August 20th, 2009.
- 10 what happened to you on that day?
- 11 A That was the day me and my brother got shot.
- 12 Q Who shot you?
- 13 A Demetrius Smalls.
- 14 Q Is Demetrius Smalls in the courtroom today?
- 15 A Yes, sir.
- 16 Q Where is he?
- 17 A Right there.
- 18 Q What's he wearing?
- 19 A Blue dress shirt.
- 20 SOLICITOR MCALISTER: Your Honor, please let the
- 21 record reflect the witness has identified the defendant.
- 22 THE COURT: Thank you.
- 23 Q Was anyone else shot that day?
- 24 A My brother, Terrance Mays.
- 25 Q Who shot your brother Terrance?

Zantrell Mays - Direct examination
by Solicitor McAlister

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1 A Demetrius Smalls.

2 Q Is that the same defendant you pointed out earlier?

3 A Yes, sir.

4 SOLICITOR MCALISTER: Let the record reflect the
5 witness has identified the defendant again.

6 THE COURT: Thank you. Move along.

7 Q Where did these shootings occur on August 20th, 2009?

8 A In the valley.

9 Q Where is the valley?

10 A Legion Road.

11 Q Is that in Barnwell County?

12 A Blackville, South Carolina.

13 Q Okay. Is that in, is that in, is that in Barnwell
14 County?

15 A Yes, sir.

16 Q Where at on Legion Road?

17 A At my cousin Tip house.

18 Q Does Tip have a full name?

19 A Tiffany Haynes.

20 Q How did you get to Tiffany's house that day?

21 A I was driving.

22 Q Where were you before that?

23 A My mother's house.

24 Q And why did you go to Tiffany's house?

25 A Basically I was coming over there to visit like.

Zantrell Mays - Direct examination
by Solicitor McAlister

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- 1 Q Where is your mom's house?
- 2 A In the country.
- 3 Q And is Tiffany's house in town?
- 4 A Yes, sir.
- 5 Q Who was with you that day?
- 6 A Me and my two brothers and my sister and my children.
- 7 Q How old are your children?
- 8 A One, one and three.
- 9 Q So, they were in the car with you that day?
- 10 A Yes, sir.
- 11 Q Who was at your cousin's house when you got there?
- 12 A A group of people.
- 13 Q Can you name those people?
- 14 A D. Smalls is one of them and Spanky.
- 15 Q What's Spanky's real name?
- 16 Not sure?
- 17 A I don't know.
- 18 Q Anybody else that you can name?
- 19 A Them too main ones I know that was there for sure.
- 20 Q Okay. What happened when he got there?
- 21 A My brother and him got in an altercation.
- 22 Q Who's your brother?
- 23 A Terrance Mays.
- 24 Q Okay. How long after you got there did this
- 25 altercation occur?

Zantrell Mays - Direct examination
by Solicitor McAlister

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- 1 A I would say instantly basically.
- 2 Q Okay. Why was your brother Terrance fighting with
- 3 the defendant?
- 4 A Something to do with my brother earlier.
- 5 Q And which brother is that?
- 6 A Demetrius Mays.
- 7 Q Does he have a nickname?
- 8 A Didi.
- 9 Q Do you know where that earlier incident occurred?
- 10 A Somewhere on the hill.
- 11 Q Do you know what it was about?
- 12 A I think it was about a girl.
- 13 Q Okay. So, let's go back to Terrance and the
- 14 defendant fighting.
- 15 what did you do during that fight?
- 16 A Sit there and let them fight.
- 17 Q Did you say anything?
- 18 A Let them fight, one-on-one.
- 19 Q And it was just fists?
- 20 A Fists.
- 21 Q How did the fight end?
- 22 A They got tired.
- 23 Q Who won the fight?
- 24 A By the way D. Smalls look, my brother did a little
- 25 damage to him.

1 Q Okay. So, he had some damage to him and that's the
2 defendant?

3 A Yes, sir.

4 Q What did you do after the fight was over between or
5 what did the defendant do after the fight was over between
6 Terrance?

7 A He still had a little words, you know what I'm
8 saying, and then --.

9 Q Who was he having words with?

10 A He having words with my brother and my sister at the
11 same time.

12 Q Okay. Why was he having words with your sister?

13 A Because she got a lot of mouth.

14 Q At this point in time where were you standing?

15 A I was standing off watching.

16 Q Where is that?

17 A Back off --

18 Q Okay.

19 A -- in the back.

20 Q Did you say anything to Mr. Smalls at that point in
21 time?

22 A When he approached my sister I said something to him.

23 Q What did you say?

24 A I told him to back off.

25 Q Did you ever pull out a gun?

Zantrell Mays - Direct examination
by Solicitor McAlister

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1 A Yes, sir.

2 Q I'm gonna go, I'm gonna go ahead and show you what's
3 been previously marked for identification as State's
4 Exhibit 1.

5 Can you describe what this is?

6 A A .380.

7 Q Can you tell us what it looks like?

8 A Chrome and black.

9 Q Is this your gun?

10 A Yes, sir.

11 Q Is that the gun that you had on the evening of
12 August 20th, 2009, when this incident occurred?

13 A Yes, sir.

14 Q How did this gun get in the possession of law
15 enforcement?

16 A I had to turn it in to Shaun Harley.

17 Q When did you turn it in to Shaun Harley?

18 A About a day or two after I got out the hospital.

19 Q Okay. Now let's go back to the incident.

20 Did you ever point that gun at anyone?

21 A No, sir.

22 Q Why did you pull out the gun?

23 A Because he like he was coming to do something to my
24 sister and I was telling him to back up.

25 Q What happened after you pulled out the .380?

1 A Everything went wrong basically. He started
2 hollering out I'm gonna get you, you think I'm a punk, and
3 words like that.

4 Q Did anyone intervene?

5 A Yeah, Tip came and grabbed me and said I don't need,
6 I don't need to do this, I don't need to do that.

7 Q How did she grab you?

8 A Around my waist like that.

9 Q So, she held your arms.

10 what did you do after that?

11 A Well, then I said it's time to go.

12 Q Did you do anything with the gun?

13 A Yeah, I had put it back in my back pocket by then.

14 Q When Tiffany grabbed you, where was she standing?

15 Was she standing between you and the defendant?

16 A We was off apart. So, basically I wasn't really
17 close to him.

18 Q Okay. So, you weren't anywhere close to the
19 defendant at that time?

20 A No, sir.

21 Q And what did you do after Tiffany intervened?

22 A It was time to go, put the gun up, and it was time to
23 go.

24 Q And when you say it's time to go, what do you mean by
25 that?

Zantrell Mays - Direct examination
by Solicitor McAlister

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1 A It was, it was time to go because I know I was wrong
2 for that.

3 Q Were you going back to the car?

4 A Yes, sir.

5 Q Did you hear anything at that point in time?

6 A As I was going, like I said, he was hollering, you
7 think I'm a punk or whatever like that, and as I was about
8 to turn around one more time I heard gunshots and my
9 brother hollered.

10 Q And your brother hollered.

11 Where was he standing at that point in time?

12 A Coming from like the back porch where my cousin's
13 house at cutting the corner.

14 Q Did you know he was shot?

15 A I know something happened for him to holler, and I
16 heard a gunshot and for him to holler and fall. So --.

17 Q So, you saw him fall?

18 A Uh-huh. (Affirmative).

19 Q Where were you standing when this occurred?

20 A Just by the car.

21 Q Out by the car?

22 A Uh-huh. (Affirmative).

23 Q Where was the car located?

24 A By the stop sign.

25 Q The stop sign is down by the road?

Zantrell Mays - Direct examination
by Solicitor McAlister

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- 1 A Yes, sir.
- 2 Q What did you do when you saw Terrance was shot?
- 3 A I started running back towards him.
- 4 Q And what happened next?
- 5 A I was reaching for my gun at the same time, but then
- 6 I felt weak or whatever and I dropped my gun and started
- 7 running with him.
- 8 Q Okay. Where did y'all run to?
- 9 A To the front yard.
- 10 Q At that point in time did you know he had been hit?
- 11 A I knew he was shot, but I ain't know he was shot as
- 12 bad as he was.
- 13 Q Where did you go from there?
- 14 A I was in the road pacing up and down, up and down the
- 15 road.
- 16 Q Did you realize you were shot?
- 17 A No, sir.
- 18 Q When did you realize you were shot?
- 19 A When Tiffany Haynes told me.
- 20 Q And where were you shot?
- 21 A In the chest.
- 22 Q Can you point it out to me?
- 23 A (Witness indicates.)
- 24 Q Where were you when the emergency personnel arrived?
- 25 A In the house sitting down.

Zantrell Mays - Direct examination
by Solicitor McAlister

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- 1 Q Were you treated by EMS?
- 2 A Yes, sir.
- 3 Q Where did you go after that?
- 4 A They took me to Barnwell County Hospital.
- 5 Q How did you get to the hospital?
- 6 A By ambulance.
- 7 Q Did you go anywhere else after you got to Barnwell
- 8 County?
- 9 A Yeah, Augusta Medical Center.
- 10 Q And how did you get there?
- 11 A They had to air lift me there.
- 12 Q So, you rode in the helicopter?
- 13 A Yes, sir.
- 14 Q Did you ever speak with Agent Shaun Harley from SLED
- 15 about the events of that night?
- 16 A Yes, sir.
- 17 Q Were you charged with a crime because of your actions
- 18 that night?
- 19 A Yes, sir.
- 20 Q What were you charged with?
- 21 A Unlawful possession.
- 22 Q Unlawful possession of what?
- 23 A A firearm.
- 24 Q Prior to that night had you ever been charged with
- 25 any crime?

Zantrell Mays - Direct examination
by Solicitor McAlister

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- 1 A No, sir.
- 2 Q Initially when you were talking to Agent Harley were
3 you completely truthful?
- 4 A No, sir.
- 5 Q Did you tell Agent Harley you pulled a gun?
- 6 A Not really.
- 7 Q So, you never told him you pulled a gun at first?
- 8 A Until later basically.
- 9 Q Okay. What kind of gun did you tell him you pulled
10 out?
- 11 A I told him it was a .22.
- 12 Q Why did you tell him that you pulled out the .22 and
13 not the .380?
- 14 A Because I ain't know was the .380 stolen or not.
- 15 Q And why do you say that?
- 16 A Because I bought it from somebody.
- 17 Q Where did you buy it from?
- 18 A From a fellow from Edisto Beach.
- 19 Q And you didn't know if it was stolen or not?
- 20 A No, sir.
- 21 Q On the, the night of August 20th, 2009, did you ever
22 pull out the .22?
- 23 A No, sir.
- 24 Q I'm gonna show you what's been previously marked for
25 identification as State's Exhibit 2.

Zantrell Mays - Direct examination
by Solicitor McAlister

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1 Can you tell us what this is?

2 A A .22.

3 Q Is this your gun?

4 A Yes, sir.

5 Q Did you have it that night?

6 A Yes, sir.

7 Q How did this gun get in the possession of law
8 enforcement?

9 A I gave it to Shaun Harley, Agent Shaun Harley.

10 Q Where was the .22 that night?

11 A In my other pocket.

12 Q Which pocket?

13 A (Witness indicates.)

14 Q So, where was the .380?

15 A (Witness indicates.)

16 Q So, your .380 was in your back right?

17 A Yes, sir.

18 Q And the .22 was in your back left?

19 A Yes, sir.

20 Q And you never pulled it out?

21 A No, sir.

22 Q Did anyone else have a gun during the altercation?

23 A No, sir.

24 SOLICITOR MCALISTER: Your Honor, I have no further

25 questions for the witness at this time. Please answer any

Zantrell Mays - Cross-examination
by Mr. Koger

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1 questions that Mr. Koger may have.

2 CROSS-EXAMINATION

3 BY MR. KOGER:

4 Q Is it Mr. May or Mr. Mays?

5 A Mays. My name is changed. My mother changed my name.

6 Q So, the month of May?

7 A Yes, sir.

8 Q Okay. Now, isn't it true, Mr. Mays, that you
9 received a phone call from your brother, Didi, earlier in
10 the day?

11 A Yes, he had called me.

12 Q Okay. And around what time he called you?

13 A I can't say. I don't know for a fact for sure.

14 Q Okay. It was before that you was at your cousin's
15 house, Tiffany's house, correct?

16 A Yes, sir.

17 Q Okay. And at the time that you received that call,
18 were you still in Blackville?

19 A No, I was in Williston then.

20 Q You was in Williston?

21 A Yes, sir.

22 Q Okay. Now -- okay. You say your mother -- at the
23 time you was in Williston then, but you stayed in
24 Blackville?

25 A No, I was living in Williston then.

Zantrell Mays - Cross-examination
by Mr. Koger

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1 Q You were, you were living in Williston?

2 A Yes, sir.

3 Q okay. All right. Were you already, were you already
4 off work at that time?

5 A I ain't had to work that day.

6 Q okay. So, you were home all day?

7 A Yes, sir.

8 Q Okay. From that phone call that you received, what
9 did, what did your brother, and this is Didi Mayes, and
10 that's M-A-Y-S, correct?

11 A Yes, sir.

12 Q Okay. What did he communicate to you?

13 A He told me what happened.

14 Q Okay. And what happened?

15 A Him and D. Smalls got into an altercation on the
16 hill.

17 Q Okay. Got into an altercation on the hill and you
18 don't quite know what time he made that phone call to you,
19 is that right?

20 A No, sir.

21 Q All right. And were you by yourself at that
22 particular time?

23 A What do you mean was I by myself that particular time?

24 Q Were you or were you home when you received the call?
25 Were you in the car?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 Were you in transport someplace?

2 A I was at the house.

3 Q Yeah, you were at the house?

4 A Yes, sir.

5 Q He called you on the cell phone?

6 A Yes, sir.

7 Q Okay. All right. And once you received the call
8 from him that he was involved in an altercation with D.
9 Smalls, what, what did you do next?

10 A I came to Blackville.

11 Q Excuse me?

12 A I came to Blackville.

13 Q You came to Blackville?

14 A Yes, sir.

15 Q Okay. Did you come to Blackville by yourself or did
16 you stop?

17 You're coming from Williston, correct?

18 A Yes, sir.

19 Q Okay. So, you came to Blackville.

20 Did you pick up anyone or any family members when you
21 came to Blackville?

22 A I met my brother on the hill.

23 Q Okay. You met your brother on the hill.

24 Which brother you met on the hill?

25 A Didi. Demetrius.

Zantrell Mays - Cross-examination
by Mr. Koger

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1 Q Okay. Demetrius.

2 Okay. And, so, you, you picked Demetrius up,
3 correct?

4 A Yes, sir.

5 Q Okay. All right. And where did you go next after
6 picking up Demetrius?

7 A What you---

8 Q For purposes of this trial, I'm gonna call him Didi
9 since we got two Demetrius here. Didi.

10 Okay. After you, you picked up Didi, where did you go
11 next?

12 A Went to the country.

13 Q Okay. Went to the country.

14 I think you testified too that your mother lives in
15 the country --

16 A Yes, sir.

17 Q -- correct?

18 Now, at the time that you went -- at the time that
19 you picked Didi up from the hill and went to the country,
20 about how far is the hill, between the hill and the
21 country approximately?

22 A Probably about five miles probably.

23 Q About five miles.

24 And you're talking about the country, you're talking
25 about the country out in Blackville, correct?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A That's correct, yes, sir.

2 Q Now, at the time that you picked Didi up, who else
3 was in the car?

4 A My children.

5 Q Okay. Your children.

6 A Yes, sir.

7 Q Okay. And now -- I think you stated today that your
8 children, your children are presently one and three?

9 A Yes, sir.

10 Q Okay. So, in 2009---

11 A They were still young.

12 Q They was---

13 A Uh-huh. (Affirmative).

14 Q ---I guess arm babies?

15 Okay. Now, did you bring your children from Williston?

16 A Yes, sir.

17 Q Okay. So, you received this phone call from your
18 brother, Didi, that he had been in a fight with Demetrius
19 Smalls?

20 A Yes, sir.

21 Q All right. And upon receiving that phone, phone
22 call, you didn't have anybody to keep the children back in
23 Williston?

24 A No, the plan was to go to my mama house --

25 Q Okay.

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 A -- earlier that day.
- 2 Q That was the plan all the time?
- 3 A Yeah.
- 4 Q Okay. All right. So, you loaded your children up?
- 5 A Yes, sir.
- 6 Q Okay. And then, then you came to Blackville?
- 7 A Yes, sir.
- 8 Q Okay. And we're talking about, at that time, if
- 9 they're one and three today, they were very young at that
- 10 particular time?
- 11 A Yes, sir.
- 12 Q Okay. So, you brought your children from Williston
- 13 and you picked, you picked Didi up from the hill?
- 14 A Yes, sir.
- 15 Q And then you went out to the country?
- 16 A Yes, sir.
- 17 Q Okay. What happened next?
- 18 A My mama asked me to come back to town for her cause I
- 19 had to get some gas for her car.
- 20 Q Okay. You come back to the Town of Blackville?
- 21 A Yes, sir.
- 22 Q Okay. So, did you leave the children with your
- 23 mother?
- 24 A At that time I did.
- 25 Q Yeah, at that time you did.

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 Okay. Did you leave Didi behind at that time?
- 2 A No, my sister rode back with me.
- 3 Q Okay. Your sister rode back with you.
- 4 So, your sister was at your mother's house?
- 5 A Yes, sir.
- 6 Q And your, the sister you're talking about is Whitney
- 7 Mays, correct?
- 8 A Yes, sir.
- 9 Q So, you, you came back to town to get some gas and I
- 10 guess run some errands for your mother, correct?
- 11 A Yes, sir.
- 12 Q And when you came back to town, Whitney was in the
- 13 car with you, your sister?
- 14 A Yes, sir.
- 15 Q How about your brother, Didi?
- 16 A Didi was at the house washing I believe.
- 17 Q Yeah, he was at the house---
- 18 A Cause he stayed and washed.
- 19 Q At, at y'all's mother house --
- 20 A Yes, sir.
- 21 Q -- washing?
- 22 A Yes, sir.
- 23 Q Washing his body, washing his clothes, or what?
- 24 A Washing his body.
- 25 Q Washing his body.

Zantrell Mays - Cross-examination
by Mr. Koger

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1 Okay. Now, when you came back into town to, to, to
2 get the gas and I, I suppose you drove your mother's
3 vehicle, correct?

4 A No, I was driving my girlfriend car.

5 Q You were driving your girlfriend car?

6 A Yes, sir, she had a gas jug.

7 Q A gas jug.

8 So, so, it was you and Whitney in the car at that
9 particular time?

10 A Yes, sir.

11 Q Your sister.

12 Okay. What did y'all discuss about what happened to
13 Didi as y'all was coming back to get gas?

14 A I just asked what was going on between them.

15 Q Okay.

16 A That's all I wanted to know.

17 Q Okay. What was going on between them.

18 What transpired in the conversation earlier?

19 What did Didi tell you, told you about what happened
20 between he and Demetrius Smalls earlier in the day?

21 A Something about Demetrius Smalls hit him or something
22 or snuck him.

23 Q Okay. And how did that make you feel?

24 A How did it make me feel?

25 Q Yeah, how did, how did -- how did you feel about it?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A I ain't really had nothing to do with it.

2 Q You didn't have nothing to do with it?

3 A He just told me about it.

4 Q He told you about it?

5 A Yeah.

6 Q Okay. So, so, you took -- so, you, you came to the
7 hill, you picked up Didi, correct?

8 A I didn't pick him up. I saw him.

9 Q You saw me?

10 A He waved me down.

11 Q He waved you down?

12 A That's when I picked him up.

13 Q You came to the car, you went to the country. Your
14 mother wanted you to come back and get some gas. Whitney
15 was in the country at your mother's house. Y'all came
16 back in.

17 Okay. After y'all got the gas, where did you go
18 next?

19 A Went back to the country.

20 Q Went back to the country.

21 Okay. Now, at that time you went to the country and
22 you took the gas, you took the gas to your mother, right?

23 A Yes, sir.

24 Q Okay. Now, at that particular time, what happened?
25 where did you go?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A At that time I realized I ain't had my children's
2 diaper bag or their bottles. So, I had to go head back to
3 Williston, but on the way back I met up with Terrance and
4 Chris, and my brother waved me down, and he said D. Smalls
5 or somebody had called him on his phone or whatever and he
6 was going to see him or whatever. I was telling him I'm
7 gonna take you back to the country, but he said, well, I'm
8 gonna go around there still. So, I went around there with
9 him. But anyway, I wanted to stop by Tip house anyway.
10 So, I stopped around there, got out the car, them two
11 started having words.

12 Q Okay. Let me stop you because I, I didn't -- I
13 missed this point. You had a conversation with Didi.

14 Did you, going back, did you have a conversation with
15 Terrance?

16 A No, the only thing Terrance told me D. Smalls had
17 called him or whatever, something like that, or somebody
18 called him and told him come on around there or whatever
19 like that.

20 Q When did Terrance tell you this?

21 A As he got, stopped me and got in the car with us.

22 Q At -- so, Terrance stopped you?

23 A Yeah.

24 Q Okay. So, Terrance and Didi stopped you?

25 A No, Didi had done came back with me. We had him in

Zantrell Mays - Cross-examination
by Mr. Koger

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1 the car. He was in the car with us.

2 Q Okay. Gotcha, gotcha.

3 Okay. Now, the plan is you can't stay in Blackville
4 because you didn't have the diaper bags for your two
5 infant children, right?

6 A Yes, sir.

7 Q So, you -- so, you put your infant children in the
8 car, correct?

9 A Yes, sir.

10 Q You got your sister in the car?

11 A Yes, sir.

12 Q And you, and you got Terrance in the car?

13 A Yes, sir.

14 Q Okay. And, of course, all of y'all have discussed
15 what happened earlier in the day to your brother, correct?

16 A Yes, sir.

17 Q Okay. So, y'all get in the car and you go to where
18 Demetrius Smalls is supposedly located, correct?

19 A At that time I was gonna stop there anyway.

20 Q Okay. Now, let me ask you this right here because I
21 want to clear this up.

22 Did you ever go by Aberdeen or Barbara Mays' house?

23 A No, sir.

24 Q Okay. Did you ever go by -- and that's -- do you, do
25 you know who I'm talking about?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A Yes, sir.

2 Q And they're located at Windy Hill Circle, correct?

3 They located---

4 A I don't, I don't know the address now.

5 Q Okay. Well, they're located close to Tiffany's,

6 Tiffany's house?

7 A Yes, sir.

8 Q Your cousin's house?

9 A Yes, sir.

10 Q Maybe about 60 to 100 yards, correct?

11 A Maybe, yes, sir, something like that.

12 Q Okay. All right. And, of course, you went to

13 Tiffany's house, right?

14 A Yes, sir.

15 Q Okay. Now, isn't it true that you're talking about

16 your final destination being Tiffany's house.

17 Isn't it true, when you were looking for D. Smalls,
18 you went to Aberdeen Jones and Barbara Mays house looking
19 for him, correct?

20 A No, sir, I ain't never went there.

21 Q Isn't it true you went to---

22 THE COURT: Whoa, whoa, whoa. Let him finish his
23 answer.

24 MR. KOGER: He did.

25 THE COURT: I don't know if he did or not.

Zantrell Mays - Cross-examination
by Mr. Koger

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1 MR. KOGER: Okay.

2 A No, sir, I ain't never went to Aberdeen house looking
3 for him.

4 Q Isn't it true that you went, you went to Tiffany's
5 house after you went to Aberdeen Jones and Barbara Mays
6 home?

7 A I ain't never went to Barbara and them house.

8 Q Isn't it true that you actually went to the Corner
9 Stop on Highway 3 looking for Demetrius Smalls?

10 A The Corner Stop on Highway 3?

11 Q Yes, the Corner Stop.

12 A No, sir.

13 Q Okay. Isn't it true that you had your children in
14 the car?

15 A Yes, sir.

16 Q You had Whitney Mays in the car. You had Didi, you had
17 Didi Mays in the car, and you had your other brother in the
18 car---

19 A Yes, sir.

20 Q ---and y'all were looking for Demetrius Smalls?
21 Isn't that true?

22 A No, sir.

23 Q Okay. Now, when you eventually arrived at Tiffany's
24 house --

25 A Yes, sir.

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 Q -- what happened next?
- 2 A My brother saw D. Smalls. They went and had words.
- 3 The next thing, they start fighting.
- 4 Q Okay. Had words, start fighting.
- 5 So, so, now you drove, you drove your car to
- 6 Tiffany's house?
- 7 A Yes, sir.
- 8 Q And that car is a black Chevy Malibu?
- 9 A Yes, sir.
- 10 Q Okay. And, again, your children was there?
- 11 A Yes, sir.
- 12 Q Your sister was there?
- 13 A Yes, sir.
- 14 Q And your two brothers was there?
- 15 A Yes, sir.
- 16 Q And y'all -- and, and eventually -- y'all all came in
- 17 the same vehicle?
- 18 A Yes, sir.
- 19 Q Y'all, y'all came to the scene where, where Demetrius
- 20 Smalls was located?
- 21 A We came to my cousin's house.
- 22 Q Okay. Right. Now, so, Terrance gets out the car?
- 23 A Yes, sir.
- 24 Q Took off his shirt or something?
- 25 A He walked up to D. and they had words. Then he took

Zantrell Mays - Cross-examination
by Mr. Koger

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1 his shirt off.

2 Q Okay. They had words, took the shirt off, and
3 started fighting?

4 A Yes, sir.

5 Q Okay. Did you saw any gun on Demetrius, Demetrius
6 Smalls at that particular time?

7 A No, sir.

8 Q And let me ask you this here because I'm -- you
9 testified to it and I want to make sure that I got it
10 right here. Again, you had a packed house in that --
11 those are one of the newer model Malibu's, small Malibu's?

12 A I think it's a 2000.

13 Q A 2000.

14 Okay. Now, you rode from Williston with a .380 in
15 your back right pocket?

16 A Yes, sir.

17 Q And you rode from Williston with a .22 in your back
18 left pocket?

19 A Yes, sir.

20 Q Okay.

21 A That's where I use to keep them at.

22 Q Okay. You keep them in your pocket?

23 A Yes, sir.

24 Q Okay. You keep them in your pocket and you got two
25 small children in your car, right?

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 A Yes, sir.
- 2 Q Okay. So, so, you brought these guns with you?
- 3 A I always had them with me.
- 4 Q Oh, you always had them with you.
- 5 why, why do you have a gun always with you?
- 6 A That's how it is.
- 7 Q Do you, do you put them in your pocket at Dayco?
- 8 A No, sir.
- 9 Q Okay. All right. So, so, you don't take them in
- 10 Dayco?
- 11 A No, sir.
- 12 Q Okay. So, so, your testimony, other than work, you
- 13 walk around with a .380 in your right pocket and a .22 in
- 14 your left pocket?
- 15 A I always have one or the other.
- 16 Q Oh, one or the other.
- 17 You are never without a gun?
- 18 A It had recently started, but yes, sir.
- 19 Q Excuse me?
- 20 A It had recently started, but yes, sir.
- 21 Q Recently started.
- 22 How recent?
- 23 A After a lot of stuff happened.
- 24 Q Okay. But at least, you know, we know what's going
- 25 on August 20th, 2009. You just admitted you had the .380

Zantrell Mays - Cross-examination
by Mr. Koger

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1 in the right pocket and .22 in the left pocket?

2 A Yes, sir.

3 Q Okay. Did your, your brothers and sister knew that
4 you carried a gun, carried guns?

5 A They know I had them.

6 Q Okay. They know -- they, they knew you had them?

7 A Yes, sir.

8 Q So, they knew, when, when Didi called you, he knew
9 that you carried guns, correct?

10 A It wasn't like that though.

11 Q No, but, but you just testified that your, your
12 brothers and your sister knew that you carried guns,
13 right?

14 A Yes, sir.

15 Q Okay. All right.

16 Okay. So, now we're at the scene?

17 A Yes, sir.

18 Q Terrance gets out of the car?

19 A Yes, sir.

20 Q Right?

21 A Yes, sir.

22 Q You testified D. Smalls not having a gun, right?

23 A Yes, sir.

24 Q But you get out the car, correct?

25 A Yes, sir.

Zantrell Mays - Cross-examination
by Mr. Koger

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1 Q And your pants are loaded down because you got a .380
2 in your right pocket, a .22 in the left pocket, correct?

3 A Yes, sir.

4 Q Okay. And they fought, correct?

5 A Yes, sir.

6 Q All right. And they, they were fist-to-fist, right?

7 A Yes, sir.

8 Q And did you observe Demetrius, Demetrius Smalls
9 taking his shirt off?

10 A He already had a tank top or something on.

11 Q Okay. Okay. So, so, he didn't have any shirt on?

12 A It was like he was waiting or something.

13 Q Okay. But he didn't have any shirt on?

14 A No, sir, I think he had a tank top on, sir.

15 Q A tank top?

16 A Yes, sir.

17 Q Okay. Did he ever take the tank top off?

18 A I can't recall.

19 Q Okay.

20 A I think he fought with it on.

21 Q You can't recall.

22 So, he just had an, I guess an A shirt as they call
23 it?

24 I'm not gonna call it the other name, but an A shirt,
25 correct?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A Yes, sir.

2 Q Okay. All right. And around, around the waistband
3 you didn't see any type of gun?

4 A No, sir.

5 Q Okay. You are, you are positive, at that particular
6 time, that Demetrius Smalls did not have a gun on him?

7 A Yes, sir.

8 Q Okay. All right. So, so, they fought and I think
9 you testified too that, that your brother might have got
10 the best of him because I think you testified there was
11 some damage that he suffered?

12 A Yes, sir.

13 Q And what type of damage you talking about?

14 A Because he was holding the shirt to his face after
15 the fight.

16 Q Okay. After the fight.

17 Isn't it true that your sister, Whitney, participated
18 in the fight too?

19 She kicked him during the fight?

20 A No, sir, not that I seen, no.

21 Q Okay. Not -- did she not participate or not as you
22 see or as you saw?

23 A Not as I saw.

24 Q Okay. But -- so, she could have participated in it
25 and, and you didn't know it?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A I ain't gonna say that because I ain't --

2 Q Okay. Fair enough.

3 So, the fight was over. In, in your opinion, your
4 brother, Didi, got the best of Demetrius Smalls?

5 A My brother Terrance got the best of him.

6 Q I'm sorry. I'm sorry. Terrance got the best of
7 Demetrius Smalls, is that correct?

8 A Yes, sir.

9 Q Okay. Now -- and I think you testified too that
10 Mr. Smalls was upset because he felt he didn't get a fair
11 shot, correct?

12 A A fair shot, what do you mean?

13 Q I mean basically it wasn't a one-on-one fight.

14 A No, it was a one-on-one only fight.

15 Q Okay. Because your sister participated in it. It
16 wasn't a one-on-one fight, correct?

17 A I ain't never say my sister participated in the
18 fight.

19 Q Okay. But you really don't know?

20 A I couldn't say for sure, but I know she wasn't
21 participating in no fight.

22 Q All right. But what we do know is that Demetrius
23 Smalls was not there to fight you?

24 A No.

25 Q Okay. Your brother Terrance came to the scene to

1 fight him?

2 A No, sir, he was already had done called Terrance or
3 something---

4 Q Okay.

5 A ---and told Terrance.

6 Q But the two of them got together.

7 This was a beef between Terrance and Demetrius
8 Smalls?

9 A Yes, sir.

10 Q Okay. And there was an earlier beef between
11 Demetrius Smalls and Didi Mays?

12 A Yes, sir.

13 Q Okay. You were never involved in any beef with
14 Demetrius Smalls on that particular day?

15 A No, sir.

16 Q Correct?

17 A Yes, sir.

18 Q Okay. And isn't it true, that after, that after they
19 fought one time, that Demetrius Smalls wanted to fight
20 your brother again?

21 A They were still having words.

22 Q They were still having words?

23 A Yes, sir.

24 Q And at that particular time you saw no gun in
25 Demetrius Smalls hand?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A No, sir.

2 Q No gun whatsoever?

3 A No, sir.

4 Q And you was the first person to bring a gun to the
5 scene, isn't that correct?

6 A Yes, sir.

7 Q Isn't that correct?

8 A Yes, sir.

9 Q Okay. Now -- so basically he didn't have no beef
10 with you up until that time, correct?

11 A No, sir.

12 Q Okay. He wanted to fight your brother again,
13 correct?

14 A Yes, sir.

15 Q Okay. And you put yourself in the middle and you
16 took out your gun, correct?

17 A I put myself in the middle cause he was coming to hit
18 my sister.

19 Q Okay. But guess what now, you brought two guns to
20 the scene, .380 to the right and .22 in the left pocket,
21 correct?

22 A Say again.

23 Q You had a .22 in the left. You had a .380 in the
24 right pocket, and a .22 revolver in the left pocket.

25 A Yes, sir.

Zantrell Mays - Cross-examination
by Mr. Koger

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1 Q And you didn't leave them in the car, did you?

2 A No, sir.

3 Q You didn't put them in, in the glove compartment, did
4 you?

5 A No, sir.

6 Q You didn't put them in the closed console, did you?

7 A No, sir.

8 Q You didn't put it in the trunk, did you?

9 A No, sir.

10 Q You got out of your car, right?

11 You got out your black Malibu and you brought two
12 guns to a fist fight, isn't that correct?

13 A Yes, sir.

14 Q Okay. All right. So -- now, was the gun loaded?

15 A Yes, sir.

16 Q Okay. So, the .380 was loaded?

17 A Yes, sir.

18 Q Okay. Do you usually -- I mean what was the
19 purpose -- according to your testimony, you took the gun
20 out and you, and you presented it, you showed it, correct?

21 A Yes, sir.

22 Q What was the purpose of that?

23 A Because he was going after my sister and I wasn't
24 close enough to do nothing. So, I just told him to back
25 up.

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 Q Is that how you communicate, through guns?
- 2 A No, sir.
- 3 Q Okay.
- 4 A But he wasn't about to hit my sister.
- 5 Q Okay. But he didn't hit your sister, did he?
- 6 A He was going to hit her.
- 7 Q But he, he didn't hit her, right?
- 8 A No, he hit her, but he---
- 9 Q You're a, you're a pretty big guy, aren't you?
- 10 THE COURT: Whoa, whoa, whoa, whoa. Let him finish.
- 11 Did he hit your sister?
- 12 THE WITNESS: No, sir.
- 13 THE COURT: You may ask that next question.
- 14 MR. KOGER: Sorry, Your Honor.
- 15 THE COURT: No problem.
- 16 Q But you're a pretty big guy, right?
- 17 A Yes, sir.
- 18 Q And I would say that y'all may be comparable size,
- 19 right?
- 20 Did you ever consider, if he was going at your
- 21 sister, to engage him fist-to-fist?
- 22 A He was going to hit my sister.
- 23 Q No, Zantrell, what you know is to pull guns, isn't
- 24 that correct?
- 25 A No, sir.

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 Q That's your, that's your, that's your style, right?
- 2 A That ain't my style.
- 3 Q That's not your style?
- 4 A No, sir.
- 5 Q You're going no place without one of your guns,
- 6 correct?
- 7 A I might go with my guns, but everybody that know me
- 8 know I don't need to gun.
- 9 Q .22 on the left and .380 in the right pocket,
- 10 correct?
- 11 A That day.
- 12 Q All right. That's your -- that's how you roll,
- 13 right?
- 14 A That day it was.
- 15 Q Okay. Now, now, I'm gonna ask you this here.
- 16 You said that the .380 was loaded?
- 17 A Yes, sir.
- 18 Q Was the .22 loaded?
- 19 A Yes, sir.
- 20 Q You walk around in your back pocket with loaded guns?
- 21 A That day I was.
- 22 Q You transport your children with loaded guns?
- 23 A That day I did.
- 24 Q Oh, just that day. That's, that's, that's the only
- 25 day that you, that you have loaded guns in your pocket?

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 A I always have one around.
- 2 Q And, and---
- 3 A That day I had it in my pocket.
- 4 Q And one that's always loaded?
- 5 A Yes, sir.
- 6 Q Whether you take your children to your mother's house
- 7 or you're taking them to day care, one gun is always on
- 8 you and it's always loaded?
- 9 A Yes, sir.
- 10 Q Isn't it true, on that particular day, Zantrell, that
- 11 you pulled a gun out and you pointed it in the face of
- 12 Demetrius Smalls?
- 13 A No, sir.
- 14 Q Isn't it true that you actually cocked the gun?
- 15 A I did cock it, but it wasn't the type that you had to
- 16 pull basically.
- 17 Q You cocked a loaded gun on that day?
- 18 A Yes, sir.
- 19 Q You cocked a loaded gun. I think you testified to a
- 20 whole bunch of people being there.
- 21 You cocked a loaded gun on that particular day?
- 22 A I never pointed it at no one.
- 23 Q But you cocked it?
- 24 A Yes, sir.
- 25 Q And you took it out?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A Yes, sir.

2 Q And you took it out for a reason, correct?

3 A To scare him away from my sister.

4 Q And you were the only one -- you were, you were the
5 first person to show and cock a gun on that particular
6 day?

7 A Yes, sir.

8 Q Because until you pulled the gun out, it was a fist
9 fight, isn't that correct?

10 A Yes, sir.

11 Q It was a fist fight?

12 A Yes, sir.

13 Q You brought two guns from Williston, South Carolina
14 to a fist fight, isn't that correct?

15 A Yes, sir.

16 Q Isn't that correct?

17 A Yes, sir.

18 MR. KOGER: Your Honor, I beg the Court's indulgence.

19 (Pause.)

20 Q Isn't it true that when you pulled the gun out and
21 pointed it at Mr. Smalls that you stated you were going to
22 burn him?

23 A I never pointed the gun and no, I ain't never said
24 that.

25 Q And that, and that you used the N word?

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 A I never said that either.
- 2 Q And that you said you were gonna blow his head off?
- 3 A No, sir.
- 4 Q That's not true?
- 5 A All I told him was to back away from my sister.
- 6 Q But you do admit -- it's undisputed that you had a
- 7 chrome .380 on that particular day --
- 8 A Yes, sir.
- 9 Q -- correct?
- 10 It's undisputed that in your left pocket you had a
- 11 .22 black revolver?
- 12 A Yes, sir.
- 13 Q It's undisputed that, that the .380 was loaded?
- 14 A Yes, sir.
- 15 Q And it's undisputed that it was cocked ready to kill,
- 16 isn't that correct?
- 17 A Yes, sir, it was cocked.
- 18 Q And do you feel any responsibility for your brother's
- 19 death?
- 20 A No, sir.
- 21 Q You don't?
- 22 A Because we was leaving when he started shooting.
- 23 Q Okay. But Terrance and Demetrius was fighting with
- 24 fists?
- 25 A The fight was over.

Zantrell Mays - Cross-examination
by Mr. Koger

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1 Q But, but fists?

2 A Yes, sir.

3 Q And it's your testimony that Demetrius Smalls did not
4 have a gun when you pulled, when you pulled out your gun and
5 put it in his face?

6 A I never put it in his face.

7 Q Okay. But you were the first person out of all of
8 those people -- how many people on the scene?

9 A It was a lot.

10 Q More than ten?

11 A It was more than ten.

12 Q Fifteen?

13 A I ain't, I ain't -- I know it was more than ten.

14 Q All right. Out of ten people on the scene, you were
15 the one, you were the one that showed the gun, that showed
16 a loaded and cocked gun and pointed it first?

17 A I never pointed it at him.

18 Q But you, you just showed it?

19 A Yes, sir, I just showed it. I said back up off my
20 sister.

21 Q And, and it was cocked and it was loaded and you had
22 a spare in your left pocket, the .22 revolver?

23 A Yes, I had both of them.

24 Q Okay. Now, a couple of days later, after you got out
25 of the hospital, you, you turned in two guns?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A Yes, sir.

2 Q Okay. Now -- but you lied about having the .22
3 revolver, correct, on the scene, the one, the one that you
4 pulled?

5 A What do you mean I lied?

6 Q You, you told SLED that you pulled a .22?

7 A Yes, sir.

8 Q That you presented a .22 revolver?

9 A Yes, sir.

10 Q Okay. All right. And I guess you, you deal with
11 guns so much -- you, you buy guns off the street, correct?

12 A Yes, sir, I bought it from somebody off the street,
13 yes, sir.

14 Q Edisto Beach?

15 A Yes, sir.

16 Q Did you go -- was, was you on vacation or went down
17 there or what?

18 A I was working down there.

19 Q You, you were working down there and you was in a --
20 you were at a gun show or something?

21 You had just one gun at that time?

22 A No, sir, I was talking to a fellow in Edisto, and he
23 told me he had a gun, and he told me he'd sell it to me
24 and I bought it.

25 Q Okay. Now, Zantrell, how old are you?

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 A Twenty-six.
- 2 Q Twenty-six?
- 3 A Yes, sir.
- 4 Q When was the first time you owned a gun?
- 5 A First time I owned one?
- 6 Q Yeah, at what age?
- 7 A Probably about 18.
- 8 Q Eighteen.
- 9 So, how many guns have you had in eight years?
- 10 A Living in the country, shotguns, a lot of shotguns.
- 11 Q After 18?
- 12 A Yes, sir.
- 13 Q Okay. And do people give you shotguns or you would
- 14 just buy them hot off the street or how do you do it?
- 15 A You can get a shotgun from anybody.
- 16 Q Okay.
- 17 A Yeah, I don't think it's an age limit on a shotgun.
- 18 Q Okay. Well, how many shotguns you - I mean how many
- 19 pistols, guns, rifles you had from the age of 18 to age
- 20 26?
- 21 A I had a 410.
- 22 Q How many total?
- 23 A Twelve gauge. I'm naming them.
- 24 Q Huh?
- 25 A I'm naming them.

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 Q But -- I'm sorry. Go ahead.
- 2 A I had a 410, 12 gauge.
- 3 Q Okay. Slow down. Let me take this list here.
- 4 410?
- 5 A Twelve gauge.
- 6 Q Twelve gauge?
- 7 A Twenty-two rifle with a scope on it.
- 8 Q Okay. Twenty-two rifle with a scope. Okay.
- 9 A That chrome .380 and that .22 and another .22.
- 10 Q Another .22.
- 11 Did you give that .22 since you had this .22?
- 12 A No, I had that a long time. You say all the guns I
- 13 done had.
- 14 Q Yeah, yeah, yeah.
- 15 A I done named them for you.
- 16 Q All right. Go ahead.
- 17 A I done named them for you.
- 18 Q Huh?
- 19 A I done named them for you.
- 20 Q Okay. So, you had a total in your life, one, two,
- 21 three, four, five, six, seven -- I missed the count. Try it
- 22 again.
- 23 Seven guns?
- 24 A Yes, sir.
- 25 Q Do you like guns?

Zantrell Mays - Cross-examination
by Mr. Koger

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1 A Raised up in the country, you be around a lot of
2 shotguns and stuff.

3 Q Okay. So, but -- all right. So, you have seven
4 guns.

5 How many you have now presently?

6 A None ever since they took them.

7 Q Okay. None. But, but before this time -- before
8 your brother got killed you had seven?

9 A No, not before my brother had -- you say a period of
10 time I done had, how many guns I done had.

11 Q Yeah, right.

12 A I name all the guns over a period of time I had.

13 Q Seven guns?

14 A Yeah.

15 Q Almost a gun a year.

16 Eight years, seven guns, correct?

17 A (No response.)

18 Q Now, when did you tell the Solicitor's Office or what
19 have you that you were untruthful about saying that you
20 had the .22 instead of the .380?

21 A When everybody was -- basically I had to tell the
22 truth because everybody else done told and they asked me
23 it's best to tell the truth than tell a lie.

24 Q So, you got caught in a lie?

25 A No, I ain't got caught in a lie. I told them. I

Zantrell Mays - Cross-examination
by Mr. Koger

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1 finally told them yes, sir, it is what everybody been
2 saying. It was a .380.

3 Q Okay. But initially you told a lie?

4 A Yes, sir, I did.

5 Q And you was not gonna tell the truth until you got,
6 until other people said you hu huh, you had the .380
7 chrome pistol, correct?

8 A (No response.)

9 Q Correct?

10 A I probably wouldn't have told them.

11 Q Okay. All right. So, you got caught.

12 So, so, when was that?

13 A When was what?

14 Q When did you, you, you saw the light, you told the
15 truth that you had a .380 instead of a .22 on the scene
16 that, the one that you presented/pointed?

17 A When they was telling me it's best to tell the truth.

18 Q Okay.

19 A And, so, I---

20 Q Okay.

21 A I came out and told the truth.

22 Q What I'm trying to get is some type of time frame, a
23 date, if you can remember.

24 Was it very recent?

25 A About last week.

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 Q Last week. Okay. Last week.
- 2 And that was last week 2000, January 2011, correct?
- 3 A I ain't certain on the date now.
- 4 Q Okay. The week -- this is the week of the 24th.
- 5 So, last week would be the week of the 17th,
- 6 January 17th, correct?
- 7 A Yes, sir.
- 8 Q That's when you told the truth, correct?
- 9 A It could have been then.
- 10 Q Okay. All right. So, you -- so, you, you kept a lie
- 11 from August 20th, 2009, up until January -- the week of
- 12 January 17th, 2011, correct?
- 13 A Yes, sir.
- 14 Q So, that's about a year and a half, correct?
- 15 A Yes, sir.
- 16 Q Approximately give or take some, right?
- 17 A Yes, sir.
- 18 Q Did you ever give any siblings any guns?
- 19 A No, sir.
- 20 Q Never, never purchased any guns for any siblings?
- 21 A No, sir.
- 22 Q Terrance had a gun that particular day?
- 23 A No, sir.
- 24 Q How do you know?
- 25 A I know he ain't had one.

Zantrell Mays - Cross-examination
by Mr. Koger

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- 1 Q How?
- 2 A As much as they was fighting and he was riding with
- 3 me.
- 4 where you gonna put the gun?
- 5 Everybody know he ain't had no gun.
- 6 Q People that ride with you, do they know that you have
- 7 two guns in your pocket or you use to?
- 8 A Certain people know I be having guns.
- 9 Q But certain people do not know?
- 10 A Yes, sir.
- 11 Q Okay. So, it's possible that someone can ride with
- 12 you and not know that you got a .22 in your left, right,
- 13 in your left back pocket and a .380 in your right back
- 14 pocket?
- 15 A what do you mean when you say possible?
- 16 Q Yeah, yeah, yeah.
- 17 A Somebody riding with me?
- 18 Q Yeah.
- 19 You're driving---
- 20 A You mean me driving with the gun?
- 21 Q Huh?
- 22 A You mean me driving with a gun on me?
- 23 Q No, you're driving.
- 24 A Yeah.
- 25 Q You got a passenger.

1 Isn't it possible that the passengers not know that
2 you're carrying a .22 in your left pocket, right back
3 pocket and a .380, a .380 in your right back pocket?

4 A Yes, sir, it's possible they don't know I got one.

5 Q Okay. So, so, it's possible for Terrance to have a
6 gun and you not know it, for Terrance to have had a gun
7 and you not know it?

8 A I know he didn't have one because when he was
9 fighting it would have fell out. It should have fell out.

10 Q But you don't know for sure?

11 A I know he ain't had one.

12 Q Have Terrance ever had in his possession that .22
13 revolver?

14 A Yes, he had a brown one with a black, with a brown
15 handle.

16 Q He had, he had, he had a what?

17 He had a brown one?

18 A With a brown handle black.

19 Q Well, brown handle is black?

20 A Yeah.

21 Q All right. Okay. Did you purchase that gun for him?

22 A No, sir.

23 Q So, it's possible he could of had that gun on him
24 that day, correct?

25 A No, sir, he been had got rid of that gun.

Zantrell Mays - Cross-examination
by Mr. Koger

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1 MR. KOGER: I beg the Court's indulgence, Your Honor.

2 (Pause.)

3 Q I'm going to ask you several more questions and I'm
4 gonna sit down.

5 You say that you showed the gun for what?

6 A To get him away from my sister.

7 Q Okay. To get away from your sister?

8 A Yes, sir.

9 Q So, you -- so, you're trying to instill some type of
10 fear?

11 A No, I just wanted him to back up from my sister.

12 Q Okay.

13 A I ain't trying to put no fear in him. I'm just telling
14 him to back up from my sister.

15 Q Showing a cocked gun doesn't put fear in someone?

16 A I'm not saying -- it might would, but at the same time
17 it wasn't for that point. It was the point to tell him to
18 get away from my sister.

19 Q But the point was if he had not gotten away from your
20 sister, what you would of done?

21 It was cocked now, right?

22 A It was cocked.

23 Q Okay. So, if he hadn't, not gotten away from your
24 sister, what you would have done?

25 A I wouldn't have done nothing.

Zantrell Mays - Cross-examination
by Mr. Koger

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1 Q You wouldn't have done anything. You presented a
2 gun. It's cocked. You got a .22 in your left pocket, and
3 you had, the purpose that you showed the gun, what you
4 testified to, is to get away from your sister --

5 A Yes, sir.

6 Q -- and you, and you wouldn't have done anything if he
7 had not gotten away from your sister if what you say is
8 true, which it's not?

9 A Because it did what it had to do. He backed up off
10 of my sister.

11 Q Okay. So, it did what it had to do, instilled fear,
12 correct?

13 A It ain't meant to instill. Just let him know to back
14 up off my sister.

15 THE COURT: Redirect, if any.

16 REDIRECT EXAMINATION

17 BY SOLICITOR McALISTER:

18 Q Zantrell, on August 20th, 2009, did you ever have any
19 intentions of personally getting into an altercation with
20 the defendant?

21 A No, sir.

22 Q Did you ever pull a trigger that day?

23 A No, sir.

24 Q No further questions.

25 THE COURT: You may step down.

1 MR. KOGER: Your Honor, I have one question on recross.

2 THE COURT: You know I don't allow recross.

3 Discretionary with the Court. I feed you out of the same
4 spoon I feed the solicitor's Office.

5 MR. KOGER: I thought I would try, Your Honor.

6 THE COURT: No problem with you trying. You know my
7 rules.

8 Madam Forelady, ladies and gentlemen, sometimes direct,
9 it allows -- direct examination and then they're allowed to
10 cross-examine and they're allowed to redirect. Then I let
11 them recross and then re, redirect and then re, recross.
12 It's discretionary with me. I stop it after. It's my
13 ruling.

14 Everybody okay to go for another witness?

15 Bathrooms?

16 Is everybody okay.

17 (Jurors nod affirmatively.)

18 THE COURT: Next witness.

19 SOLICITOR MILLER: Thank you, Your Honor.

20 The State calls Investigator Thomas Weiss with the
21 Blackville Police Department.

22 THOMAS WEISS, after being duly sworn,
23 testified as follows:

24 THE CLERK: Please be seated and state your name for the
25 record.

Thomas Weiss - Direct examination
by Solicitor Miller

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1 THE WITNESS: Thomas Weiss.

2 DIRECT EXAMINATION

3 BY SOLICITOR MILLER:

4 Q Officer Weiss, I may call you officer or
5 investigator. I don't mean any disrespect by it.

6 who are you employed by?

7 A I'm employed by the Blackville Police Department.

8 Q How long have you been employed by that agency?

9 A Going on four years.

10 Q Prior to working with the Blackville Police
11 Department, did you work for any other law enforcement
12 agency?

13 A Yes, I did. The St. Matthews PD and Denmark PD.

14 Q Did you participate in the investigation into the
15 death of Terrance Mays?

16 A Yes, sir, I did.

17 Q Where were you when you learned that Terrance Mays
18 had been shot?

19 A I was at the PD in Blackville.

20 Q Okay. What did you do when you learned that there
21 had been a shooting?

22 A I responded code to the address that was given.

23 Q Do you know what that address was off the top of your
24 head?

25 A [REDACTED] Legion Road.

Thomas Weiss - Direct examination
by Solicitor Miller

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1 Q Okay. Is that in Barnwell County?

2 A Yes. Yes, it is.

3 Q And is that, just for the purposes of establishing
4 where, is this the intersection of Legion Road and Clover?

5 A Yes, sir.

6 Q Okay. Explain to the jury what you did to the, when
7 you got to the scene.

8 A When I pulled up on the scene, I observed the victim,
9 Terrance Mays, laying on the ground to the left of the
10 doorway. I went ahead and secured the scene so it
11 wouldn't be contaminated, identified a second victim
12 sitting inside of the house there, and started putting up
13 the caution tape and checked Mr. Mays for a vital.

14 Q And that second victim, was that Mr. Zantrell Mays
15 who had just testified here?

16 A Yes, sir, it is.

17 Q Okay. Did you see, get any vital signs whenever you
18 checked---

19 A No.

20 Q ---Terrance Mays?

21 A No, sir, there was none.

22 Q Okay. I'm gonna show you what's been previously
23 marked for identification as State's Exhibit No. 6.

24 Can you explain to the jury what this is?

25 A This is a picture depicting the white in color

1 styrofoam cups that were marking the shell casings on the
2 ground --

3 Q Okay.

4 A -- in order.

5 Q Does this fairly and accurately -- with the
6 exception -- well, first of all, who put the styrofoam
7 cups where they are?

8 A Myself -- Chief Holston and I.

9 Q Okay. And why did you put styrofoam cups out?

10 A To mark the evidence that we had found.

11 Q Okay. But aside from the styrofoam cups being placed
12 there, does this fairly and accurately represent the way
13 that the scene appeared on the night of August 20th at
14 Legion and Clover?

15 A Yes, sir, it does. It was daylight out and there was
16 no sign of getting darkness at any time. That's why we
17 were able to find them.

18 Q Okay. Well, let me go to my next question then.
19 Who took this picture, do you know?

20 A Yes, I do. SLED crime scene unit agent took the
21 picture.

22 Q Okay. And how long after you got there and placed
23 these styrofoam cups out where the shell casings were was
24 this picture taken?

25 A It was taken several hours after I got there.

Thomas Weiss - Direct examination
by Solicitor Miller

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1 MR. KOGER: Without objection, Your Honor.

2 SOLICITOR MILLER: Thank you, Your Honor.

3 (WHEREUPON, State's Exhibit No. 6 was received into
4 evidence at this time.)

5 SOLICITOR MILLER: Your Honor, I'd like to publish to
6 the jury.

7 Q Prior to August 20th of 2009, which was the date of
8 the incident, did you know who Terrance Mays was?

9 A Yes, I did.

10 Q So, you were able to identify him?

11 A Immediately, yes.

12 Q Okay. Did you know Zantell Mays?

13 A No, sir, I did not.

14 Q How did you identify him?

15 A He was the victim, the second victim inside the house
16 and I asked him who he was, who -- he told me.

17 Q All right. How about Demetrius Smalls, did you know
18 him prior to that night?

19 A Yes, sir, I did.

20 Q Okay. I think you might of covered this.

21 where does Zantrell whenever you arrived?

22 A Zantrell was inside of the house sitting down.

23 Q Okay. And you said -- you had mentioned before that
24 Terrance was outside on the ground?

25 A Yes, sir.

1 Q I want to show you what's been marked for
2 identification as State's Exhibit 9.

3 MR. KOGER: Without objection.

4 (WHEREUPON, State's Exhibit No. 9 was received into
5 evidence at this time.)

6 Q Can you explain to the jury what that is?

7 A That's a picture of the residence that, that the
8 incident had occurred and there's the victim laying on the
9 ground with a sheet over him.

10 Q Okay. Was this -- this is the Legion Road side of
11 the trailer?

12 A That's Legion Road, yes, sir.

13 Q Okay. So, this is the front of the trailer?

14 A That's the front of the trailer.

15 SOLICITOR MILLER: Your Honor, without objection I'd
16 like to present it to the jury.

17 This is the sheet he's talking about.

18 You had indicated that it was daylight whenever you
19 got to the, to the trailer. So, it's a little bit hard
20 from these pictures that were taken at night, but I'm
21 gonna show you what's been marked as State's Exhibit 4.

22 Can you explain what this, that is?

23 A This is at the Legion Road and Clover corner, the
24 corner of the trailer where the incident occurred, and
25 that's the trailer behind it.

Thomas Weiss - Direct examination
by Solicitor Miller

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1 Q Do you know who owns this trailer back here?

2 A Yes, Michael Walker.

3 SOLICITOR MILLER: Any objection?

4 MR. KOGER: No objection.

5 (WHEREUPON, State's Exhibit No. 4 was received into
6 evidence at this time.)

7 Q And this just shows the relationship with these
8 trailers?

9 A The relationship to the trailers.

10 Q Okay.

11 A Yep.

12 Q Had you spoken, had you spoken with Demetrius Smalls,
13 the defendant, earlier on August 20th of 2009?

14 A Yes, sir.

15 Q When did you talk to him?

16 A Prior to the incident occurring.

17 Q Do you have any idea was it hours before the incident
18 or minutes?

19 A It was hours before the incident.

20 Q Okay. Explain to the jury why you spoke with him and
21 what time, and about where you were, what time and where
22 you were.

23 A It was in the afternoon. We were at the gas station
24 on the hill, Shelton's Gas Station, and I spoke with him
25 in reference to what had happened. A third party came to

1 the PD stating there was an altercation on the hill. when
2 Chief Holston and I arrived, the only ones on the hill was
3 Mr. Smalls, Demetrius Smalls, and his dad. I talked to
4 Mr. Demetrius Smalls and it was over the incident with
5 Didi and told him to go about his way and go home and
6 don't worry about it.

7 Q Okay. And you didn't arrest anybody?

8 A No, sir.

9 SOLICITOR MILLER: Thank you, Your Honor. That's all
10 the questions I have of this witness.

11 THE COURT: Cross, if any.

12 CROSS-EXAMINATION

13 BY MR. KOGER:

14 Q Investigator Weiss?

15 A Yes, sir.

16 Q What time did you secure the scene?

17 A Immediately of getting there.

18 Q Around what time was that, just approximately?

19 A 4:00 something I reckon. 4:00 or 5:00.

20 Q Okay. 4:00 or 5:00?

21 A Yeah, I would have to look back and see what time it
22 happened.

23 Q 4:00 or 5:00 in the morning?

24 A In the afternoon.

25 Q In the afternoon?

Thomas Weiss - Cross-examination
by Mr. Koger

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1 A Yes, sir.

2 Q Okay. This is the scene where the alleged crime took
3 place, correct?

4 A Yes, sir.

5 Q Okay. Now, you also testified too that you were
6 minimally involved with the altercation that happened
7 earlier in the day, correct?

8 A Yes, sir.

9 Q And you didn't see it as any big deal at that
10 particular point?

11 A No, sir.

12 Q Okay. And you told -- you testified you told
13 Mr. Smalls to go on his way or maybe go home?

14 A Yes, sir.

15 Q So, in your mind, as a law enforcement officer, this,
16 this issue was settled?

17 A Yes, sir.

18 Q Thank you. No further questions.

19 THE COURT: Redirect, if any.

20 SOLICITOR MILLER: Your Honor, I would -- briefly.

21 REDIRECT EXAMINATION

22 BY SOLICITOR MILLER:

23 Q Investigator Weiss, I would like to show you this
24 document and ask if you could identify what the document
25 is.

1 A It's my incident report in reference to the, the case
2 before us today.

3 Q Okay. By looking at that report, can you refresh
4 your recollection of what time you were dispatched to the
5 shooting incident at Legion and Clover?

6 A Yes, I can now. I was dispatched at eight, at 6:39
7 and I got there at 6:43.

8 Q Okay. and that's 6:39PM?

9 A PM I was there.

10 SOLICITOR MILLER: Thank you, Your Honor. That's all
11 I have.

12 THE COURT: You may step down.

13 Everybody okay?

14 Go with one more.

15 SOLICITOR MILLER: Thank you, Your Honor.

16 The State would call Investigator Karl Kenley with
17 South Carolina Law Enforcement Division.

18 THE COURT: Come around, Agent Kenley.

19 KARL KENLEY, after being duly sworn,
20 testified as follows:

21 THE CLERK: Sit down and state your name for the record
22 please, sir.

23 THE WITNESS: Karl Kenley. Karl with a K. Kenley,
24 K-E-N-L-E-Y.

25 DIRECT EXAMINATION

Karl Kenley - Direct examination
by Solicitor Miller

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1 BY SOLICITOR MILLER:

2 Q Special Agent Kenley, can you tell us who you're
3 employed by?

4 A South Carolina Law Enforcement Division.

5 Q Is that agency commonly referred to as SLED?

6 A It is.

7 Q How long have you been employed by SLED?

8 A Four years.

9 Q Did you work in law enforcement before you were
10 employed by SLED?

11 A Yes, a total of 19 years.

12 Q And where did you work?

13 A I started out at South Carolina State University
14 Police Department. Worked there for approximately nine
15 years, and then I moved to the Benedict Department of
16 Public Safety in Columbia where I was a major crimes
17 investigator for approximately four. I went to the Cayce
18 Police Department where again a major crimes investigator
19 and firefighter for approximately four and then I came to
20 SLED.

21 Q What are your job responsibilities with SLED?

22 A I am a crime scene investigator and we respond, when
23 requested, to all 46 counties in the state to process
24 crime scenes for physical evidence.

25 Q What kind of evidence do you look for when you're

1 processing a crime scene?

2 A Physical evidence, fingerprints, tire footwear, tire
3 impressions, blood stain pattern analysis, crime scene
4 reconstruction.

5 Q Okay. Do you also process evidence that's submitted
6 to SLED, to the SLED lab by other agencies?

7 A Yes, all the agencies in the state that submit
8 evidence through the lab, we're also responsible to have a
9 case load and responsible for processing that evidence
10 also.

11 Q What formal education have you had, have you had to
12 enable you to perform your job duties for SLED?

13 A I have a Bachelor's of Arts Degree in Sociology in
14 Criminal Justice.

15 Q Do you have any other specialized training or
16 experience to allow you to perform these job duties for
17 SLED?

18 A Yes, SLED has a two year -- the crime scene unit has
19 a two year in-house program under the direct supervision
20 of a certified, court certified senior agent where again
21 we're trained in fingerprint analysis, palm print
22 analysis, collecting evidence such as fingerprints,
23 tire/footwear impression, again, blood stain splatter
24 analysis, and also attending classes with the South
25 Carolina Association for Identification.

Karl Kenley - Direct examination
by Solicitor Miller

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1 Q Thank you.

2 Were you involved in the investigation of, of the
3 death of Terrance Mays on August, August 20th, 2009?

4 A Yes.

5 Q What time did you arrive at the scene, at the scene
6 of the crime?

7 A Approximately 8:25. We got the call at about 7:10,
8 and I arrived at 8:25PM.

9 Q Was it dark when you got there?

10 A Yes.

11 Q What did you do when you got to the scene?

12 A I made contact with the chief on scene, Chief
13 Holston, and got a basic idea of what took place at the
14 scene.

15 Q When you process a scene, can you explain a little
16 bit to the jury about how generally you process, begin
17 processing a scene and specifically how you process the
18 scene in this case?

19 A Again, after speaking with the requesting agency, we
20 first photograph the scene at that time. That particular
21 night, my partner, Ricardo Prince, photographed the scene.
22 The scene is photographed generally all 360 around the
23 entire scene just to get a feel for what the scene looks
24 like, and making note of any evidence that has been
25 collected or marked or seen by the requesting agency.

1 That evidence is also photographed in place as it is and
2 then we go back and put marks, our own markers on it and
3 evidence is then photographed again with our markers on
4 it.

5 Q Okay. I'm gonna show you what's been previously
6 admitted into evidence as State's Exhibit 6.

7 Is this one of the photos that Ricardo would of
8 taken?

9 A Yes, it's a general photograph.

10 Q Okay. I'm gonna ask you to look at a photograph
11 that's been previously marked for identification as
12 State's Exhibit No. 5 and ask if you can explain to the
13 jury what this is.

14 A That's a photograph of the shell casings that were
15 located at the scene after we put our markers on them to
16 photograph them before they were collected.

17 Q So, does each -- when you put these markers out, do
18 they have unique numbers?

19 A Yeah, they're sequential numbers started with number one
20 and on up as many markers as we, the number of markers we
21 need to use.

22 Q Okay. And does this fairly and accurately -- I guess
23 this -- can you tell us what that is?

24 A Those were the styrofoam cups that were marked before
25 we got there, and after we put our markers down, we moved

Karl Kenley - Direct examination
by Solicitor Miller

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1 the styrofoam cups to mark the evidence with our markers.

2 Q Okay. And, so, after you removed the styrofoam cups
3 as part of the evidence processing and put down your own
4 markers in their place, does this fairly and accurately
5 represent what the scene appeared like that night?

6 A Yes.

7 MR. KOGER: Without objection, Your Honor.

8 SOLICITOR MILLER: Thank you, Your Honor.

9 (WHEREUPON, State's Exhibit No. 5 was received into
10 evidence at this time.)

11 SOLICITOR MILLER: Your Honor, publish this to the
12 jury.

13 And, Agent Kenley, this is a photograph, another
14 photograph.

15 Can you explain to the jury what this photograph that's
16 been premarked as State's Exhibit 7 is?

17 A It, again, is the same markers, 1 through 3, that was
18 marked on the evidence, but the photograph is just taken
19 from a different perspective.

20 Q And actually let me ask this before I show it to the
21 jury. You see number three here and number two here, is
22 this number one---

23 A That is---

24 Q ---over here, it's kind of -- from the side, it's a
25 little harder to see?

Karl Kenley - Direct examination
by Solicitor Miller

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1 A That's correct. It is number one.

2 (WHEREUPON, State's Exhibit No. 7 was received into
3 evidence at this time.)

4 Q I'm gonna show you what's been premarked for
5 identification as State's Exhibit No. 8.

6 Can you identify this for me?

7 A That's a picture of the victim taken at the night, at
8 the scene, at the scene when we arrived.

9 Q All right. When you arrived on the scene, was the
10 victim covered by a sheet?

11 A Yes, he was.

12 Q Okay. And who removed the sheet so he could be
13 photographed?

14 A I did.

15 Q Does that fairly and accurately represent the way the
16 victim appeared when you arrived that evening?

17 A Yes, it does.

18 SOLICITOR MILLER: Your Honor, without objection, I'd
19 like to publish this to the jury.

20 (WHEREUPON, State's Exhibit No. 8 was received into
21 evidence at this time.)

22 Q I'm gonna show you what's been previously marked for
23 identification as State's Exhibit 14. I'm going to ask
24 you if you can identify these items.

25 A Yes, these are shell casings that were collected on

Karl Kenley - Direct examination
by Solicitor Miller

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1 the night of the scene.

2 Q Okay. So, those are the shell casings that were
3 picked up where the markers were?

4 A Yes.

5 SOLICITOR MILLER: Your Honor, we're going to need to
6 open those.

7 Do you have a pair of scissors?

8 Oh, he's got a knife on him.

9 Oh, while you're doing that very carefully, how do
10 you know that those are the same shell casings that you
11 collected that night?

12 A Because when I package the envelope I put my initials
13 and the date on it, on the tape and it's still on there.

14 Q And are there individual envelopes inside?

15 A Yes, three.

16 Q And can you identify each one of those envelopes for
17 the jury?

18 A Yes, this has M-1 on it, which stands for marker one,
19 which tells us from the photograph that that was the first
20 shell casing with the marker one on it. The same for M-2
21 with marker number two and same for M-3.

22 Q And those are all the shell casings that you
23 collected that night?

24 A That's correct.

25 Q And just so we're clear, when you have M-1, M-2, and

1 M-3, that means the marker that you got the shell casing,
2 that doesn't necessarily have anything to do with the
3 order that the shots were fired, does it?

4 A No, not at all.

5 Q It's just the order that they were marked in so that
6 you then collected them sequentially?

7 A Correct.

8 Q Now, once you collected these shell casings that
9 night, the three shell casings that comprise State's or
10 comprise State's Exhibit 14, what did you do with the
11 shell casings?

12 A They were taken back to the SLED laboratory. They were
13 processed for evidence by me.

14 Q So, you would check -- you checked those in?

15 A Yes.

16 Q Aside from documenting the scene with photographs and
17 collecting shell casings that you've testified about
18 already, did you do anything else at the scene?

19 A We collected a white t-shirt that was near the shell
20 casings and we also looked for any other shell casings
21 that hadn't been found prior to us arriving and also any
22 projectiles that may of been there.

23 Q Were you able to find any other shell casing at the
24 scene?

25 A No.

Karl Kenley - Direct examination
by Solicitor Miller

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1 Q Were you able to find any other projectiles --

2 A No.

3 Q -- or any projectiles I mean?

4 Thank you, Your Honor. That's all the questions I
5 have for this witness.

6 THE COURT: Mr. Koger.

7 CROSS-EXAMINATION

8 BY MR. KOGER:

9 Q Agent Kenley, your sole job on that particular night
10 was just to collect evidence?

11 A Process the crime scene, correct.

12 Q Process the crime scene.

13 You were not charged with the duty of trying to
14 develop any type of theory for the State or any type of
15 theory for the defense, correct?

16 A Correct.

17 Q Thank you.

18 No further questions.

19 THE COURT: You may step down.

20 You need to get back to Columbia?

21 THE WITNESS: Yes.

22 THE COURT: You may.

23 SOLICITOR MILLER: You may.

24 THE COURT: Mr. Koger, release him from his subpoena?

25 MR. KOGER: Yes, Your Honor.

1 Your Honor, may we, may we approach?

2 (WHEREUPON, a bench conference was held out of the
3 hearing of the jury at this time.)

4 THE COURT: Madam Forelady, ladies and gentlemen, we're
5 gonna take a ten or fifteen minute afternoon break. Do not
6 discuss the case. Do not start deliberating. Leave your
7 notes in your chair and please return to the same chair
8 where the notes are.

9 Everybody else remain seated.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Anything for the record by the State?

13 SOLICITOR MILLER: Nothing, Your Honor.

14 THE COURT: By the defense?

15 MR. KOGER: Nothing from the defense.

16 THE COURT: All right. We'll break for about ten or
17 fifteen minutes.

18 (Whereupon, a short recess was taken at this time.)

19 THE COURT: Anything for the State before we start?

20 SOLICITOR MCALISTER: Nothing, Your Honor.

21 THE COURT: From the defendant?

22 MR. KOGER: Nothing, Your Honor.

23 SOLICITOR MILLER: Your Honor, with the Court's
24 indulgence, we'd like to call a witness out of order.

25 THE COURT: That's fine. Let's wait until we get the

1 jury in before you call him.

2 SOLICITOR MILLER: Yes, sir.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: Mr. Miller.

6 SOLICITOR MILLER: Thank you, Your Honor.

7 The State calls Special Agent James Green with the
8 State Law Enforcement Division.

9 THE COURT: Come around, Mr. Green.

10 JAMES GREEN, after being duly sworn,
11 testified as follows:

12 THE CLERK: Please be seated and state your name for
13 the record.

14 THE WITNESS: James Green. G-R-E-E-N.

15 DIRECT EXAMINATION

16 BY SOLICITOR MILLER:

17 Q Special Agent Green, who are you employed by?

18 A The South Carolina Law Enforcement Division commonly
19 referred to as SLED.

20 Q What department do you work in with SLED?

21 A I work in the firearms department and the forensic
22 services laboratory.

23 Q How long have you been employed by SLED?

24 A Approximately five and a half years.

25 Q Did you work in law enforcement before you were

1 employed by SLED?

2 A Yes, sir.

3 Q And where did you work?

4 A The Mt. Pleasant Police Department.

5 Q And when did you start there?

6 A It would have been January 2002 'til -- I worked
7 there until I took my current job at SLED.

8 Q Can you explain your job responsibilities with SLED
9 to the jury?

10 A In the firearm department we examine firearm and
11 firearms related evidence, tool marks, and tool mark
12 related evidence. What it boils down to basically is in a
13 firearms case, we try to say were these cartridge cases or
14 bullets fired by a particular gun or not.

15 Q What formal education do you have to allow you to do
16 your job for SLED?

17 A I have a Bachelor of Arts from Charleston Southern
18 University and I also have a Master's of Science in
19 Criminal Justice from Charleston Southern.

20 Q Do you have any other specialized training or experience
21 to allow you to perform these job duties for SLED?

22 A Yes, sir, at SLED we an in-house training. It's an
23 apprentice type training. It's approximately three and a
24 half years where you train under court qualified firearms
25 examiners and you start out with lots of reading and

James Green - Direct examination
by Solicitor Miller

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1 research on firearms and ammunition manufacturers. Then
2 you watch them work their cases and sometimes you start
3 prepping the cases for them or working them, for them.
4 Then you sit down and have it reviewed.

5 As part of the training, we also have extensive
6 written exercise and oral examination and testing, and
7 then at the end of the training cycle I'm given a fairly
8 comprehensive final exam, both oral and verbal, that's
9 comprised of definitions, terminology, and some practical
10 cases where I work them on my own.

11 SOLICITOR MILLER: Your Honor, subject to the -- oh,
12 excuse me. Have you ever been qualified as an expert
13 witness in South Carolina Courts before this trial?

14 A Yes, sir.

15 SOLICITOR MILLER: Your Honor, subject to any
16 questioning related to qualifications that Mr. Koger might
17 have, the State would move to qualify Special Agent Green
18 as an expert witness in the field of firearms
19 identification.

20 THE COURT: Any problem or examination on his
21 qualifications?

22 MR. KOGER: No objection.

23 THE COURT: Okay. Madam Forelady, and ladies and
24 gentlemen, normally our rules of evidence do not allow the
25 person to give an opinion testimony, give opinion testimony.

1 There is an exception to that. Under our rules, if you're
2 qualified as an expert in a certain field, scientific field,
3 medical field, that sort of thing such as Agent Green is,
4 then he will be allowed to give opinion testimony, and
5 obviously you can treat opinion testimony like any other
6 testimony. You have the right to believe it or not believe
7 it or give it whatever weight, if any, you decide to give
8 it, and I'll discuss that with you at the conclusion of the
9 case.

10 SOLICITOR MILLER: Thank you, Your Honor.

11 THE COURT: He'll be allowed to give opinion testimony.

12 Q Agent Green, I'm gonna show you what's been
13 previously marked for identification as State's
14 Exhibit 14.

15 Can you take a look at this and explain what it is to
16 the jury?

17 A Before it was opened it was a sealed envelope bearing
18 the SLED laboratory or the Laboratory Case Number of
19 L0910164, Container Number A. Inside the envelope is
20 three smaller envelopes with the same case number showing
21 items four, excuse me, three, four, and five with my
22 initials.

23 Q Could you open -- are those items that you performed
24 any testing on?

25 A They have my laboratory number and initials on them.

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1 So, yes, sir, I have seen whatever's in these envelopes.

2 Q Okay. Can you open those envelopes and identify
3 what's inside of them?

4 A Now, ladies and gentlemen of the jury, what I'm doing
5 is I'm looking at the evidence. When we receive evidence
6 in the firearms department, we actually scribe the
7 laboratory, the case number, the item number, and our
8 initials on them. So, that's what I'm looking for is to
9 see that these are what I previously examined.

10 Yes, sir, these are three fired .380 auto caliber
11 cartridge casings.

12 Q And did you perform any examinations or analysis on
13 this evidence?

14 A Yes, sir, I did.

15 Q How do you know that this is the evidence that you
16 examined?

17 A They have my lab number, item number, and initials
18 scribed on them.

19 Q Please explain to the jury how you analyzed this
20 evidence.

21 A The main tool we have at the firearms department is
22 called a comparison microscope, and it's essentially two
23 microscopes connected with an optical bridge that allows
24 us to observe two objects under the same magnifications
25 simultaneously. We can change the magnifications, change

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1 the angles, how we're looking at them to get the lighting
2 surface to be able to see both of them.

3 Q Based upon your analysis of this evidence, were you
4 able to reach any conclusions about these items?

5 A Yes, sir, all three of the cartridge cases submitted
6 were fired by the same firearm.

7 SOLICITOR MILLER: Your Honor, at this time the State
8 would move to introduce the shell casings previously
9 marked for identification as State's Exhibit 14. This
10 would be State's Exhibit 14 would be the larger envelope
11 with each of the three shell casings inside of it.

12 THE COURT: Mr. Koger.

13 MR. KOGER: Without objection, Your Honor.

14 (WHEREUPON, State's Exhibit No. 14 was received into
15 evidence at this time.)

16 Q Agent Green, I'm gonna show you what's been
17 previously marked for identification as State's Exhibit 2.

18 Will you please explain to the jury what this item
19 is?

20 A It's a Rohm, spelled R-O-H-M, Model RG10 .22 short
21 caliber revolver, and this is a firearm that I examined in
22 this case. It has my item number, lab number, and
23 initials on it.

24 Q And this other plastic bag that is inside the box,
25 can you explain to the jury what that is?

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1 A These are three misfired .22 long caliber cartridges.
2 A cartridge is an unfired piece of ammunition. It's what
3 most people call bullets. If you go to the store to buy
4 bullets, in actuality what they're doing is buying
5 cartridges.

6 Q Did you perform any test or analysis on the revolver?

7 A Yes, sir, as part of our documentation, we photograph
8 the evidence as received. We test its functionality.
9 Basically we make sure it's safe to fire before we test
10 fire it.

11 Q Did you do -- well, how did you test fire -- how do
12 you test fire a firearm?

13 A The firearms department has approximately a
14 three feet wide stainless steel tube. It's two stories
15 tall. We're on the second story. The bottom is down on
16 the first story. It's filled with the water. We close
17 the top and turn on the aeration to get the circulation
18 moving in the water. We load the weapon with the
19 appropriate caliber ammunition and we point it down into
20 the tank with eye and ear protection on, and we shoot it
21 down into the water.

22 The reason why we chose water is studies have been
23 done that found it's the best medium to shoot bullets into
24 it. It slows it down, but it doesn't add to or take away
25 any markings that are left on the bullets.

1 Q Now, in this case, did you do any microscopic
2 comparisons with the test specimens, that being State's
3 Exhibit 14, the shell casings, versus the revolver here?

4 A No, sir, I did not.

5 Q And why did you not do that?

6 A In the condition it was received, in that .22 caliber
7 revolver was -- there's no way it could of fired those
8 .380 auto caliber cartridges.

9 Q Okay. And did you compare the revolver to these
10 three shell casings to determine if maybe these three
11 shell casings were fired by this revolver?

12 A No, sir, there's no way it could of fired that
13 revolver -- the revolver could of fired those cartridge
14 casings.

15 Q All right. I'm gonna show you what's been previously
16 marked for identification as State's Exhibit No. 1.

17 Can you identify this item?

18 And, Your Honor, for the record, all of the weapons
19 have been made safe and are locked.

20 THE COURT: Hold on. Do you need some water or
21 something?

22 THE JUROR: Yes.

23 THE COURT: We'll get you some. Sit tight.

24 (Pause.)

25 THE COURT: Go ahead.

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1 A Okay. This is a Walter model PPKS .380 auto caliber
2 pistol, and this is the pistol I examined in this case. I
3 checked it and it does have my markings on it as well.

4 Q And the other items inside this box, could you
5 identify those?

6 A There's one black Walter magazine for a .380 auto
7 caliber. It also has my item number and initials on it,
8 and there are seven unfired .38 cartridges.

9 Q Now, did you do any microscopic comparison -- well,
10 did you test fire this weapon?

11 A Yes, sir.

12 Q Okay. And did you do any microscopic comparisons
13 between this .380 caliber pistol and these shell casings,
14 State's Exhibit 14?

15 A Yes, sir, I did.

16 Q And what were you able to determine, if anything?

17 A The three fired .380 caliber cartridge casings were
18 all fired by one gun, but they were not fired by that
19 walker.

20 Q All right. I'm gonna show you what's been previously
21 marked for identification as State's Exhibit 3.

22 Can you explain to the jury what this item is?

23 A This is a Highpoint firearms model CF .380, .380 auto
24 caliber pistol with the magazine.

25 Q Were any cartridges submitted with that for analysis?

1 A No, sir.

2 Q Okay. Did you test fire item three?

3 A Yes, sir.

4 Q Did you do any microscopic comparisons between the
5 shell casings that are State's Exhibit 14 and the test
6 fired round from item number three?

7 A Yes, sir.

8 Q What, if any, conclusions were you able to reach
9 about those items?

10 A Those three fired cartridge cases were all fired by
11 that Highpoint pistol.

12 Q Okay. Let's make sure we're clear on all of this.
13 You got three shell casings from the scene?

14 A Yes, sir.

15 Q You've got a black Highpoint .380 and that fired all
16 of these shell casings?

17 A Yes, sir.

18 Q And you checked the silver PPK .380 and it didn't
19 fire any of these shell casings?

20 A No, sir, it did not.

21 Q And the .22 couldn't have fired the .380 shell?

22 A It could not have, no, sir.

23 Thank you, Your Honor. That's all the questions I
24 have for this witness.

25 THE COURT: Mr. Koger, any questions?

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1 MR. KOGER: Yes, sir, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. KOGER:

4 Q Agent Green, I just want to clarify some confusion,
5 clarify some points.

6 On the Walter model .380, you said there were seven
7 unfired cartridges?

8 A Yes, sir.

9 Q And it was a magazine?

10 A Yes, sir.

11 Q Okay. And how many cartridges go in a magazine, in
12 that particular magazine?

13 A In that particular magazine, I'd have to look at my
14 notes. I think it was either six or seven.

15 Q Okay. So, there were seven unfired, and I want to
16 clear up -- I could of written it down wrong.

17 On the .22 revolver, did you say there were three
18 unfired bullets or three misfired?

19 A Misfired.

20 Q Misfired bullets.

21 Okay. And how would those bullets become misfired?

22 A In a, in a rim fire revolver, or, excuse me, in a rim
23 fired cartridge, the propellant is around the rim of the
24 cartridge, around the head. When the firing pin strikes
25 it, it may not have enough power in the firing pin spring

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1 or the hammer spring to make it fire. It's not uncommon
2 for that to happen in rim fire firearms. So, it could
3 have been someone pulling a trigger and, you know, the
4 hammer dropping or the firing pin striking the rim without
5 enough force or there may not be enough propellant
6 concentrated in that one area of the rim to make it
7 discharge or fire.

8 Q So, when SLED or when you received this, this .22
9 revolver, these misfired bullets were in the gun?

10 A They were received with the firearm. I talked with
11 Shaun Harley to find out where they were, and based on my
12 notes, he told me they were in the firearm when he
13 received them.

14 Q Thank you. No further questions.

15 SOLICITOR MILLER: Your Honor, we would request that
16 Agent Green be released from his subpoena. He's got court
17 in another county tomorrow.

18 THE COURT: Mr. Koger, any objection from him being
19 released from the subpoena?

20 MR. KOGER: No objection, Your Honor.

21 THE COURT: Thank you, sir. Give Mr. Lloyd my regards.

22 THE WITNESS: Yes, sir.

23 THE COURT: Next witness.

24 SOLICITOR MILLER: Thank you, Your Honor.

25 The State would call Special Agent Shaun Harley with

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1 the State Law Enforcement Division.

2 SHAUN HARLEY, after being duly
3 sworn, testified as follows:

4 THE CLERK: Please be seated and state your name for the
5 record.

6 THE WITNESS: Shaun Harley.

7 DIRECT EXAMINATION

8 BY SOLICITOR MILLER:

9 Q Special Agent Harley, who are you employed by?

10 A With the South Carolina Law Enforcement Division
11 better known as SLED.

12 Q How long have you been employed by SLED?

13 A For eight years.

14 Q Did you work in law enforcement before you were
15 employed by SLED?

16 A Yes, sir.

17 Q And where did you work?

18 A Beaufort City Police Department for nine years for a
19 total of 17 years in law enforcement.

20 Q What are your job responsibilities with SLED?

21 A I'm a special agent with the, with the agency. My
22 job duties is to conduct, conduct investigation of various
23 crimes, which I work out of 12 to 23 counties working
24 various crimes from white collar crime to major violent
25 crime.

1 Q What formal education have you had to enable you to
2 perform your job duties at SLED?

3 A Well, first started off with, I graduated from the
4 University of South Carolina with a Bachelors of Arts Degree
5 in Political Science and then completed that with the South
6 Carolina Criminal Justice Academy before I got into law
7 enforcement and various training throughout.

8 Q Were you involved in the investigation into the death
9 of Terrance Mays on August 20th, 2009?

10 A Yes, sir.

11 Q And you can refer to your report if you need to to
12 refresh your recollection, but what time did you arrive at
13 the scene?

14 A I don't have a total time like a dispatcher or
15 anything like that. I think I arrived here about 9:00 or
16 9:30 or something to that effect. We were requested by
17 Chief Holston of the Blackville Police Department to
18 assist them with a death investigation.

19 Q Okay. Is that something that, that you commonly get
20 called on to do whenever there's a death, a death that
21 occurs in a smaller town?

22 A Yes, sir, once -- it all depends on that agency. If
23 they feel like they need the assistance of SLED to help
24 them, they will contact the headquarters. Then whatever
25 agent is on call during that time, we would get called to

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1 assist them in whatever ways we can.

2 Q Was it dark when you arrived?

3 A Yes, sir.

4 Q What did you do when you got to the scene?

5 A When I arrived on the scene, along with another agent
6 named Joe Mohabiad, he's another agent with us, and met
7 with Carl Kennerly, the crime scene person. I met with
8 Chief Holston. He advised me of the incident of what he
9 thought took place and what he learned so far and then we
10 went on to conduct interviews.

11 Q Did you interview witnesses at the scene that night?

12 A I briefly talked to one or two. I'm not sure, but
13 then we learned of a person -- we identified a subject,
14 Mr. Demetrius Smalls, and he was located and we went to
15 interview him.

16 Q Did you interview witnesses after that night in this
17 case?

18 A Yes, sir.

19 Q Did you interview Zantell Mays?

20 A Yes, sir.

21 Q Based upon your interviews, after you had done your
22 initial set of interviews, how many guns were you looking
23 for that night?

24 A At that time we was just looking for one at that time
25 because of the shell casings that were found at the scene.

1 Q Okay. And ultimately -- you were looking for the one
2 that had fired the three?

3 A Yes, sir.

4 Q Okay.

5 A Because, at that time, I never spoke with Zantrell Mays
6 at this time.

7 Q Okay. After you talked to Zantrell, how many guns
8 were you looking for?

9 A One due to the -- we learned, through the
10 investigation, about a weapon that was pulled out, a .380.
11 We was looking for that. After the interviews, he advised
12 that he pulled out a .22. So, after getting both stories,
13 I asked him to bring both guns.

14 Q Okay. So, let me make sure I'm clear. You had heard
15 he had pulled out a .380, but he told you he had pulled
16 out a .22?

17 A Correct.

18 Q So, you told him to bring both of them to you?

19 A Yes, sir.

20 Q And did he bring both of them to you?

21 A Yes, sir, he did.

22 Q I'm gonna show you what's been marked for
23 identification as State's Exhibit 1.

24 Can you explain to the jury what this is?

25 A It's a .380 Carl Walters.

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1 Q Okay. Is this the gun that was provided to you by
2 Zantell Mays?

3 A Yes, sir.

4 Q And how do you know that it's the same gun that was
5 provided to you by Mr. Mays?

6 A The description of the weapon, I placed all that
7 writing, and plus received it from Zantell Mays to myself
8 in which I, at that time, took up to SLED headquarters to
9 be processed in which I sealed it and put my initials on
10 it also.

11 SOLICITOR MILLER: Your Honor, at this time we would
12 move to introduce State's Exhibit No. 1 into evidence.

13 THE COURT: Any objection?

14 MR. KOGER: No objection, Your Honor.

15 (WHEREUPON, State's Exhibit No. 1 was received into
16 evidence at this time.)

17 Q I'm gonna show you what's been previously marked for
18 identification as State's Exhibit 2.

19 Can you explain to the jury what State's Exhibit 2
20 is?

21 A Rohm .22 revolver.

22 Q Okay. Is this the .22 that you received from Zantell
23 Mays?

24 A Yes, sir.

25 Q And how do you know it's the same one?

1 A Like the previous one, I wrote all the descriptions
2 of the weapon, placed it down in a safe when I received it
3 from Zantell Mays to myself and the date and the time,
4 which was August 24th, 2009, at ten o'clock AM, and then I
5 then transferred it up to SLED headquarters.

6 Q Now, there was three what the firearms identification
7 person called cartridges inside the box too.

8 Where were these cartridges whenever you received
9 this gun?

10 A Still in the gun --

11 Q Okay.

12 A -- or in the chamber.

13 SOLICITOR MILLER: All right. Your Honor, at this time
14 the State would move to introduce State's Exhibit No. 2 into
15 evidence.

16 MR. KOGER: Without objection.

17 (WHEREUPON, State's Exhibit No. 2 was received into
18 evidence at this time.)

19 Q All right. I'm gonna show you what's been previously
20 marked for identification as State's Exhibit 3.

21 Can you explain to the jury what this item is?

22 A A Highpoint .380.

23 Q And where did you get this item from?

24 A Through investigation, as we continued the
25 investigation, we learned from another witness by the name

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1 of Michael Walker who had the, who had the gun and then
2 placed it in a wooded area, and we had him to escort
3 myself and Investigator Weiss from the Blackville Police
4 Department to where the gun was found in the wooded area,
5 and then we took possession.

6 Q All right. And can you explain to the jury where you
7 got the gun from as it relates to your writing there and
8 also how you're sure that's the same gun?

9 A The location were found north end of Oak Avenue dirt
10 road section of a wooded area in the woods, and the date
11 was October 12th of 2009 at 5:30PM.

12 Q So, it was almost three weeks after the shooting
13 before you found this gun?

14 A Yes, sir.

15 Q Were there any -- was there a magazine in the gun
16 whenever you found it?

17 A I don't think so. I'd have to check again.

18 Q Was the magazine found beside the gun?

19 There's a --.

20 A I would have to look at the picture. I think
21 Investigator Weiss took pictures of it before we even took
22 possession of it.

23 Q Okay. Were there any bullets, any cartridges?

24 A I can't recall no bullets.

25 Q If there had been bullets with it, would you have put

1 them in this box?

2 A Yes, sir.

3 SOLICITOR MILLER: Your Honor, at this time we would
4 move to introduce State's Exhibit 3 into evidence.

5 MR. KOGER: Without objection.

6 (WHEREUPON, State's Exhibit No. 3 was received into
7 evidence at this time.)

8 Q Did you ever interview the defendant in this case?

9 A Yes, sir.

10 Q Did you interview him on August the 20th of 2009, the
11 night of the incident?

12 A Yes, sir.

13 Q And where did the interview take place?

14 A At the Barnwell County Sheriff's Office.

15 Q Was he under arrest at that time?

16 A Well, he was detained at that time and brought into
17 custody before the interview, and then he was advised of
18 his rights before the interview started.

19 Q Okay. So, he wasn't under arrest, but he wasn't free
20 to go?

21 A No, sir.

22 Q Okay. Did you advise the defendant of his
23 Constitutional rights including his right to remain silent
24 prior to asking him to give any statements?

25 A Yes, sir.

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1 Q And how did you go about making that advisement?

2 A I read the rights. I use the Barnwell County
3 Sheriff's Office Miranda rights form, which I read to him
4 in which he then had him to read them and he initialed by
5 each part stating that he understood and he also signed
6 it.

7 Q So, did he, did he verbally tell you he understood?

8 A Yes, sir.

9 Q And you also had him initial it?

10 A Yes, sir.

11 Q I'm gonna show you what has been marked for
12 identification as State's Exhibit 10.

13 Can you identify that document?

14 A It's a Barnwell County Sheriff's Office rights, Miranda
15 rights form.

16 Q And is that a true and accurate copy of the document
17 that he executed on the night of August the 20th?

18 A Yes, sir.

19 Q 2009?

20 A Yes, sir.

21 Q Did you read that form to the defendant?

22 A Yes, sir.

23 Q And does it have his initials indicating he
24 understands his rights and that he wanted to give a
25 statement?

1 A Yes, sir, it does.

2 SOLICITOR MILLER: Your Honor, at this time we would
3 move to introduce State's Exhibit 10.

4 MR. KOGER: Without objection.

5 (WHEREUPON, State's Exhibit No. 10 was received into
6 evidence at this time.)

7 Q Agent Harley, could you please read that form in its
8 entirety to the jury?

9 A Before we ask you any questions you must understand
10 your rights. You have the right to remain silent.
11 Anything you say can and will be used against you in a
12 court of law. You have the right to talk to a lawyer for
13 advice before we ask you any questions and to have him or
14 her present with you during questioning. If you have --
15 if you have no money for a lawyer's fee, the Court will
16 appoint one to represent you without cost to you if you
17 wish. If you decide to answer questions now without a
18 lawyer present, you will still have the right to stop
19 answering questions at any time. You also have the right
20 to stop answering questions at any time until you talk
21 with a lawyer.

22 Then it goes on and states I have read this statement
23 of my rights and I understand what my rights are. Then
24 he, at that time, he then signed his name by the signature
25 part.

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1 Then it goes on and states by the wavier of your
2 rights. I am willing to make a statement and answer
3 questions. I do not want a lawyer at this time. I
4 understand and know what I am doing. No promise/threats
5 have been made to me. No pressure/coercion of any kind
6 has been used against me, and then at that time he signed
7 it again and I signed my name by the witness part and the
8 date was August the 20th, 2009, and the time was then at
9 10:37PM.

10 Q After the defendant -- well, that's what he signed
11 saying he would give you a statement.

12 Did he give you a statement?

13 A After the interview.

14 Q Okay. And after he gave his statement, did you ask
15 him to write it out?

16 A Yes, sir.

17 Q I'm gonna show you what's been previously marked for
18 identification as State's Exhibit 11.

19 Can you explain to the jury what that document is?

20 A It's a SLED voluntary statement form, which is a form
21 where he writes out his statement of what happened that
22 night. The first part he fills out and he wrote this
23 statement out.

24 Q Is that his full and complete written statement from
25 that night?

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1 A Yes, sir.

2 Q Does that appear exactly as he wrote it that night?

3 A Yes, sir, because of his initials. I had him to
4 place his initials at the beginning of the statement and
5 any time he made an error in the statement I had him make
6 an initial by his cross out, and that's also at the end of
7 the statements, which he did two forms.

8 Q Okay. It was two pages?

9 A Two pages. I'm sorry.

10 Q Let me ask you just to correct or just to go back and
11 make sure we understand.

12 You say when he made a mistake, were you telling him
13 what to put in this statement?

14 A No, sir.

15 Q So, if he made -- if he wrote something
16 incorrectly---

17 A Or he made an error or whatever, he scratched it out,
18 I'll have him put his initials by it.

19 SOLICITOR MILLER: Okay. Your Honor, at this time
20 we'd move to introduce State's Exhibit 11 into evidence.

21 MR. KOGER: Without objection, Your Honor.

22 (WHEREUPON, State's Exhibit No. 11 was received into
23 evidence at this time.)

24 Q Please read the defendant's, the defendant's written
25 statement for the jury, Agent Harley.

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1 A It say on August 20th of 2009 I was walking by myself
2 to Annie's. I seen Didi. We had, we had an altercation.
3 He say, he say words. As I leave, as I leave Annie's,
4 Chief Holston, John Holston and Officer Weiss seen me at
5 the Shelton. Holston talked to my father. Weiss talk to
6 me and told me to go home. I did just that.

7 As me and my father sat in my yard, Ricki pulled up
8 with his cousin and Spanky. I get in the car and they
9 say, they say let's go to Boo Walker's, Boo's house and
10 drink something. So, we get -- so, we get the drinks and,
11 and we go to Boo's yard, to Boo's yard for about an hour.
12 Ricki's cousin say he need, he needs cigarettes. So, I
13 rode to the store with him.

14 When we got, when we get back in the yard we start
15 backing, we start back drinking. I said about 30 minutes
16 later Terrance, Didi, Whitney, and Zantrell (Mont) get out
17 the car like they were going to jump me. So, me and
18 Terrance start fighting.

19 I get enough to fight, I get enough to fight again.
20 I tell Terrance let's go again. So, as I'm approaching
21 Terrance, Mont pulls a chrome automatic handgun from under
22 his shirt and cocked it, but by the time he could lift it,
23 by the time he could lift it up to point it, I knocked it
24 out of his hands. It dropped on the ground, on the
25 ground. I picked up the gun and just reacted off the

1 action, off of the action.

2 I panicked and ran. I ran to the grave yard, called
3 my friend's mothers, and told her to call, to call mama
4 and Auntie and come pick me up. Once they picked me up I
5 told him, I told them I was going to turn myself in to
6 Sheriff Harrison.

7 I'm sorry for what happened. I never intended for
8 this.

9 Second page reads, after I knocked the gun out of
10 Mont's hand, I reached it down and grabbed his gun and
11 shot a couple of times. I panicked and ran. Ricki,
12 Spanky, Short Man, Skip seen me. It was self-defense. I
13 dropped his gun in the yard before I ran.

14 Q Thank you.

15 Did you again interview the defendant on September
16 the 14th of 2009?

17 A Yes, sir, I did.

18 Q And why did you seek to interview him on September
19 the 14th, 2009?

20 A Continuing the investigation.

21 Q Okay. When you talked to him and he gave you that
22 statement on August the 20th, had you talked to everybody
23 that you needed to talk to before you talked to him?

24 A No, sir.

25 Q Okay. Was, was he one of the first people you talked

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1 to that gave you a statement or was, where in the chain
2 was he?

3 A I think he was one of the first ones I talked to
4 because another agent was out there along with Chief
5 Holston, and everybody else was talking to other people.
6 About that time Deputy Leon Harrison had -- we received
7 information that Deputy Leon Harrison had and was taking
8 him up to the Barnwell County Sheriff's Office. So, at
9 that time I left the scene and went to talk with him.

10 Q Okay. So, your testimony is you went back on
11 September the 14th of 2009 to talk to the defendant again?

12 A Yes, sir.

13 Q Okay. Was the defendant under arrest when you
14 interviewed him?

15 A Yes, sir.

16 Q Where did the interview take place?

17 A At the Barnwell County Sheriff's Office.

18 Q At that time, on September 14th, 2009, did you advise
19 the defendant of his Constitutional rights including his
20 right to remain silent prior to asking him to give any
21 statements?

22 A Yes, I did.

23 Q How did you go about making that advisement?

24 A At that time it was a SLED Miranda rights form and I
25 read it to him and had him do the same thing, like the

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by Solicitor Miller

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1 other form, put his initials and sign --

2 Q I'm gonna ask you---

3 A -- after he read it.

4 Q -- to identify what's been previously marked for
5 identification as State's Exhibit 12.

6 Can you identify that item?

7 A Yes, sir, it's a SLED Miranda rights form.

8 Q Is that the one that you gave to, that you read to
9 the defendant?

10 A Yes, sir, it is.

11 Q Did he indicate to you that he understood that form
12 after you read it to him?

13 A Yes, sir, cause I had him to do the same thing, read
14 it, and after each -- he read each letter and I had him to
15 initial it here.

16 SOLICITOR MILLER: Your Honor, at this time we'd move
17 to admit State's Exhibit 12 into evidence.

18 MR. KOGER: Without objection, Your Honor.

19 (WHEREUPON, State's Exhibit No. 12 was received into
20 evidence at this time.)

21 Q Thank you.

22 Agent, could you please read the form for the jury?

23 A I said before we ask you any questions you must
24 understand your rights. You have the right to remain
25 silent. Anything you say can be used in court as evidence

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1 against you. You are entitled to talk to a lawyer now or,
2 and have him present now or at any time during
3 questioning. If you can not afford an attorney, one will
4 be appointed for you without cost. If you decide to
5 answer questions now without a lawyer present, you will
6 still have the right to stop answering at any time. You
7 also have the right to stop answering at any time until
8 you talk to a lawyer.

9 Do you understand these rights, which he did. Do you
10 wish to talk, talk to us at this time, which he indicated
11 yes, and at that time that's when I had him to place his
12 initials by each one.

13 Q Okay.

14 A And it further on states waiver of rights. I have
15 read the statement of my rights and I understand what I,
16 what my, what my rights are. I am willing to talk now
17 without, without a lawyer present. I understand and know
18 what I am doing. No promise or threats have been made to
19 me. No pressure or coercion of any kind has been used
20 against me.

21 And at that time he signed his name again. I
22 witnessed with my name and Agent Richard Johnson, who was
23 also with me at the time, also witnessed it during the
24 interview.

25 Q So, at that point in time what did you do?

1 A We then went on to talk.

2 Q Okay.

3 A Interview him.

4 Q And after the interview, did you ask him to write out
5 a new statement?

6 A Yes, sir.

7 Q Did he want to write out a new statement?

8 A Well, I asked him to write out a statement from what
9 the -- he had given more information.

10 Q Okay. I'm gonna show you what's been marked for
11 identification as State's Exhibit 13.

12 Can you identify that document for the Court and the
13 jury?

14 A Yes, sir, it's a SLED voluntary statement form, which
15 the defendant wrote a statement out again.

16 Q Is that the written, written statement from September
17 14th of 2009 made by the defendant?

18 A Yes, sir, it is.

19 Q Is that his full and complete written statement from
20 that night?

21 A Yes, sir.

22 Q Does it appear exactly as he wrote it that night?

23 A Yes, sir, once again, it has his initials at the
24 beginning and at the end and also where he scratched and
25 put his initials at the other points.

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1 SOLICITOR MILLER: Your Honor, at this time we would
2 -- the State would move to admit Exhibit 14, excuse me,
3 Exhibit 13 for evidence in this case.

4 MR. KOGER: Without objection.

5 (WHEREUPON, State's Exhibit No. 13 was received into
6 evidence at this time.)

7 Q Agent Harley, could you please read that statement
8 for the jury?

9 A This is an, this is an additional statement that I am
10 providing from original and previous statement on
11 August the 20th of 2009.

12 After Terrance and I fought, we, we went our separate
13 ways. Then Zantrell, then Zantrell and I had words. All
14 of a sudden he pulled his gun out and cocked it and
15 pointed it directly towards my face area. I ducked it
16 back to Carlen Thomas and asked him did he have his gun.
17 He pulled up his shirt and I grabbed the gun from his
18 right hip area, turned around, and shot three times.

19 After I shot the gun I dropped it, dropped it on the
20 bucket in the yard and ran to Mrs. Mary Holmes' house and
21 asked her to call my mom. The color of the gun, the color
22 of the gun was gray and black .380 Highpoint.

23 Q When we were talking about State's Exhibit 3, this
24 was the Highpoint?

25 A Yes, sir.

1 Q Let me make sure you know which one it is.

2 This Highpoint?

3 A Yes, sir.

4 Q You testified that Mike Walker ultimately led you to
5 the gun?

6 A Yes, sir.

7 Q And where does Mike Walker live?

8 A He live right next door to Mrs. Tiffany Haynes where
9 the scene occurred at.

10 Q I believe -- let me show you State's Exhibit 4. It's
11 already been admitted, but is Mike Walker's trailer shown
12 in this picture?

13 A Yes, sir, right here.

14 SOLICITOR MILLER: Your Honor, if the record could
15 reflect that he identified the trailer that was to the right
16 of the photograph.

17 So, Mike Walker ultimately led you to the gun out in --
18 did you say in the woods?

19 A Yes, sir, off of Oaks Avenue.

20 SOLICITOR MILLER: Thank you, Your Honor. No further
21 questions.

22 THE COURT: Mr. Koger.

23 CROSS-EXAMINATION

24 BY MR. KOGER:

25

Shaun Harley - Cross-examination
by Mr. Koger

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1 Q Agent Harley, would you say, would you say that
2 Mr. Smalls was uncooperative with you in this
3 investigation?

4 A Yes, sir.

5 Q And isn't it true he actually turned himself in?

6 A Yes, sir.

7 Q And he turned himself in within a couple of hours of
8 the incident, correct?

9 A Yes, sir, he turned himself in with his, through,
10 with his mother to Deputy Leon Harris of the Barnwell
11 County Sheriff's Office.

12 Q And this first interview that you had with him
13 occurred -- it started on the night of the 20th and went
14 into the early morning hours of the 21st, correct?

15 A Yes, sir, that's correct.

16 Q Okay. And there's a DVD of his interview, correct?

17 A Yes, sir.

18 Q And according to the DVD time, you spoke with him or
19 you met with him approximately, on, on the first
20 interview, about two hours and 13 minutes?

21 A If that's what's on it. I'm not sure. I'd have to
22 review it.

23 Q Okay. But it was a---

24 A Yes, sir.

25 Q ---long interview?

1 And according to, to what's on the statement or what's
2 in evidence, Mr. Smalls signed it at 12:23AM?

3 A Correct.

4 Q All right. And he signed his waiver at 10:37PM?

5 A Correct.

6 Q Okay. And you spoke with him a period of time before
7 he signed the waiver?

8 A Before he signed the waiver?

9 Q Yeah, a couple of minutes or --?

10 A I probably did introduce myself and stuff like that.

11 Q Okay. And tell him whether he wants to sign it or
12 not, right?

13 A Yes, sir.

14 Q Okay. Now -- and you read the statement of the first
15 interview and you stated that he was among, this, this had
16 just happened, and he was among the first witnesses that
17 you had spoken with?

18 A Yes, sir.

19 Q And this was -- this is around the beginning of
20 the---

21 A Investigation.

22 Q ---investigative process for you?

23 A Right.

24 Q All right. And from meeting with him at the first
25 interview or getting his version at that time, of course,

Shaun Harley - Cross-examination
by Mr. Koger

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1 the investigation continued, correct?

2 A Yes, sir.

3 Q And according to the second interview, you spoke with
4 him on September 14th, 2009 --

5 A Correct.

6 Q -- correct?

7 That's approximately three weeks ago, correct?

8 A Correct, about that time.

9 Q And how many -- from, from your file or from your
10 memory, how many witnesses did you speak with between the
11 time you spoke with him on August 20th, 21st, 2009?

12 A Several people. I mean---

13 Q Several people?

14 A (Witness nods head.)

15 Q Now -- and you was able to obtain additional
16 information?

17 A Correct.

18 Q Okay. And how did you prompt this second interview?

19 A I can't recall if I prompted it or, or he requested
20 for me.

21 Q Okay.

22 A I have to double check with the review.

23 Q Okay. All right. And -- well, let me ask you this
24 here.

25 From your additional investigation, over that three

1 week time period, did you receive new information that
2 might have cast a doubt on some portions of the first
3 interview?

4 A Yes, sir.

5 Q And what was that information?

6 A Not cast a doubt, but I wanted to clarify some
7 information.

8 Q Okay. All right.

9 A I'm sorry about that. I apologize.

10 Q Okay. So, what was that clarifying information?

11 A In reference to the handgun and where he, where he
12 got the handgun from.

13 Q Okay. All right. And I think you read the first
14 time he said that he knocked it out of Zantell Mays hands,
15 correct?

16 A The first statement?

17 Q The first statement.

18 Correct?

19 A Yes, sir. I knocked it out of his hand.

20 Q All right. And after you finished with him on that
21 particular night, you obtained, through your
22 investigation, some, some information that might have
23 conflicted with that portion of the first statement or the
24 first, or the first, the first interview?

25 A That he knocked it out?

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by Mr. Koger

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1 Q Yeah.

2 A Yes, sir.

3 Q Okay. All right. And what did you discover, during
4 that three week period, from the various witnesses that,
5 that you interviewed that caused you to want to have a
6 clarification on that portion of, of the first statement
7 that had prompted you or at least y'all met up again on
8 September 14th for, for Mr. Smalls to do an additional
9 statement?

10 A In reference to the guns---

11 Q Yes.

12 A ---that was supposedly pulled from, with Zantrell
13 because we get information about a .22 and a chrome gun at
14 that time. Along with that, the gun that the defendant
15 used --

16 Q Okay.

17 A -- and where he got his gun and what he did with it.

18 Q Okay. And what was that information from, from, from
19 your investigation?

20 A From where he got his gun?

21 Q That's correct.

22 A He calling a Thomas, Thomas -- a person, a person by
23 the name of Carlen Thomas gave him the gun or he retrieved
24 the gun from Carlen Thomas, Thompson.

25 Q Go ahead. I'm sorry.

1 A That's it.

2 Q All right. And was that additional statement by
3 Mr. Smalls corroborated by Mr. -- well, let me ask you
4 this.

5 Did you interview Mr. Thompson?

6 A Yes, sir.

7 Q Thompson or Thomas?

8 A Thompson I think. Thompson

9 Q Mr. Thompson?

10 A Yes, sir.

11 Q Okay. And was that corroborated?

12 A Reference to some areas, some say first when we
13 received say he took it out of his hand and from his hip
14 area. So, I wanted to get clarification off of that.

15 Q Okay. But from your investigation, the gun came from
16 Carlen Thomas?

17 A Yes, sir.

18 Q Who was out there---

19 A That day at the scene.

20 Q ---on the scene in the crowd?

21 A Yes, sir.

22 Q And was not, as Mr. Smalls said in the original
23 interview, picked up after knocking it out of Zantrell
24 Mays' hands?

25 A Correct.

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by Mr. Koger

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1 Q And you feel, from your investigation, that, that was
2 sufficiently corroborated?

3 A What part?

4 Q About the gun coming from Mr. Thomas.

5 A Yes, sir.

6 Q Okay. All right. Now, the second time that you
7 spoke with Mr. Smalls, according to the DVD, y'all, y'all
8 -- the DVD was about an hour and 13 minutes, but a lot of
9 that time he was writing his, he was writing his
10 statement, correct?

11 A Yes, sir.

12 Q And during that time also, too, I think SLED Agent
13 Richard Johnson also participated in the second interview?

14 A Yes, sir.

15 Q Okay. All right. And do you recall, in your
16 exchanges in the second interview with Mr. Smalls, that
17 you believe that the first time he gave 98 percent of the
18 truth and two percent not true?

19 Do you recall making that statement?

20 A I think I could -- I think so, but I would have to
21 review that tape again.

22 Q You would have to review it---

23 A Yes, sir.

24 Q ---but you think you made that statement?

25 A Sir?

1 Q You think you made that statement?

2 A Yeah, but I would like to confirm it, yes, sir.

3 Q Okay. All right. And what would the two percent be?
4 what would be the two percent that he was not true?
5 what did that refer to in your mind?

6 A The two percent?

7 Q Yeah, right, the two percent that he was not true
8 from, from the first.

9 A Oh, knocking the gun out of his hand.

10 Q Knocking the gun out of his hand.

11 So, according to your investigation, at that point
12 on, on September 14th, because you said between
13 August 20th and up 'til that point you interviewed several
14 witnesses, at least up until that point you felt that he,
15 he told the truth about everything else in his statement
16 up until the point of knocking the gun down, correct?

17 A Knocking the guns down, yes, sir.

18 Q Okay. And could you again read the statement that,
19 that you thought was true up to the point that he said he,
20 his statement of August 21st of 2009, up to the point that
21 he knocked the gun down that you thought was true or, or
22 that you think is true?

23 A Read everything up to it?

24 Q Right.

25 A The whole thing?

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1 Q Up to the point that he said -- up to the point that
2 you say that you believe was not true. The two percent
3 untrue.

4 A Hold on.

5 You want me to start from the beginning?

6 Q Start from the beginning.

7 A All right.

8 SOLICITOR MILLER: Your Honor, the State would object.

9 THE COURT: Hold on.

10 SOLICITOR MILLER: It's not up to the SLED agent to
11 determine what he thinks is true and not true. That's for
12 the province of the jury.

13 THE COURT: That is for the jury to determine what is
14 true and not true.

15 Move along.

16 Sustained.

17 Q Do you recall, in your interview of Mr. Smalls, that
18 you believe that he did not have a gun because his shirt
19 was off?

20 A I remember that. I said -- I would have to review
21 that tape again.

22 Q Have to review that tape again.

23 Do you, do you recall saying that he did not bring a
24 gun to the fight?

25 A I would have to review that tape again.

1 Q Do you recall saying Zantrell brought the gun to the
2 fight?

3 A I don't know, but I would have to review the tape
4 again.

5 Q So---

6 A I don't want to give you something. I want to review it
7 first before I---

8 Q So, if you had an opportunity to review the tape
9 again, you could answer these questions?

10 A Yes, sir.

11 Q When was the investigation, the investigation
12 completed on this case?

13 A After, after the reports were given to the
14 Solicitor's Office for prosecution.

15 Q Okay. And would that be, if I can find this, would
16 that be the first part of 2010, February?

17 A Probably so.

18 Q February of 2010?

19 A It could be.

20 Q Okay. And that's when -- so, so, after, after you
21 interviewed him the second time on September 14th, then
22 the investigation continued at least an additional several
23 months?

24 A After he was arrested?

25 Q Well, yeah. Oh, yeah---

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by Mr. Koger

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1 A Yes, sir, it continued -- the investigation
2 continued.

3 MR. KOGER: Your Honor, I have no further questions.
4 At this time I'd like the right to recall Mr. Harley after
5 he had an opportunity to review the tape.

6 THE COURT: Well, that's up to you.

7 MR. KOGER: Okay. As my witness.

8 THE COURT: Redirect.

9 SOLICITOR MILLER: Nothing from this witness, Your
10 Honor.

11 THE COURT: You may step down.

12 I'm going to release him to go back to Columbia. If
13 said -- if you're going to call him -- you'll have to call
14 him to bring him back.

15 MR. KOGER: Well, Your Honor -- Your Honor, may I
16 approach?

17 THE COURT: We'll talk about it in a little bit.

18 All right. I was informed -- I wanted to go to five
19 o'clock. We had another witness subpoenaed for about this
20 time. However, he ran into some confusion. Not confusion.

21 SOLICITOR MILLER: He ran into a problem in Aiken, Your
22 Honor, and couldn't get over here.

23 THE COURT: So, we're gonna stop for the day.

24 Is 9:30 too early to start?

25 I've got a nine o'clock hearing and a 9:15. Let me get

1 through with those and we'll be ready to start right at nine
2 o'clock. I mean 9:30. Normally I get sausage biscuits. Is
3 that -- what's the, what's the choices?

4 Sausage biscuits okay?

5 Anybody want eggs, grits, liver pudding?

6 THE CLERK: Are you cooking?

7 THE COURT: You cook. No, the easiest thing is to run
8 down to Hardee's somewhere and get sausage biscuits.

9 Does that suit everybody?

10 We'll have hot coffee and we'll probably, tomorrow, for
11 lunch, go down to the new restaurant down near Vince's, and
12 I talked to him today. He's got a room set up in the back.
13 You can go through that buffet. I did it today. Y'all have
14 seen me up here. So, don't eat all that fried chicken and
15 fried pork chops like I had today. Of course, my court
16 reporter had three pieces of pie. We'll do that tomorrow.

17 So, let's start at 9:30. Have a very pleasant evening.
18 Leave your note pads in your chair and we'll collect those
19 and put those under lock and key. Nobody will look at them.
20 Put your name on them please. Do not discuss the case
21 tonight. Do not let anybody discuss it with you.

22 All right. There won't be anything in the local paper
23 because the press has already gone and it only runs once a
24 week, but anyway if there's anything on the radio or
25 anything, just don't listen to it. We want to try this case

1 based on what you hear in here.

2 So, have a pleasant evening and I will see you ready to
3 go at 9:30 in the morning.

4 Everybody else remain seated please.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

7 THE COURT: Gentlemen?

8 (WHEREUPON, a bench conference was held at this time.)

9 THE COURT: All right. Anything from the State before
10 we break for the evening?

11 SOLICITOR MILLER: Your Honor, Mr. Koger was -- and I
12 both I think moved for sequestration of the fact witnesses
13 at the beginning of the case. I have instructed our fact
14 witnesses not to discuss with Zantrell Mays his testimony
15 and I've also instructed them not to talk to anybody about
16 anything that's gone on in this courtroom. If the Court
17 would like to make that admonition as well because obviously
18 we are adjourning for the evening.

19 THE COURT: Well, I don't see any other witnesses in
20 here.

21 SOLICITOR MILLER: We'll make sure they get the word.

22 THE COURT: Agent Harley, I suspect that you'll be
23 recalled in the defense case and asked questions about that
24 video.

25 MR. HARLEY: Yes, sir.

1 THE COURT: If you would obviously, if you would review
2 it and then you'll be in a position to answer those
3 questions.

4 MR. HARLEY: Yes, sir.

5 THE COURT: It won't take long.

6 All right. I want to thank the audience. Y'all have
7 behaved commendably. I appreciate that. I'm gonna let this
8 side go out first.

9 Okay. Y'all sit tight please.

10 Is your father here?

11 THE DEFENDANT: No, sir.

12 THE COURT: Who's here, your mom?

13 All right. Jeff, stand right there with him and let
14 him talk to his mama just a second. Then, Jeff, when you
15 feel comfortable, let them go.

16 Y'all sit tight just a second and let them clear out,
17 out there please. Give your mama a hug.

18 All right. We'll adjourn until 9:30 in the morning.
19 Thank everyone for their participation.

20

21

22 (WHEREUPON, Court was in recess for the evening.)

23

24

25

1 wednesday, January 26th, 2011

2

3 SOLICITOR MILLER: Your Honor?

4 THE COURT: Anything for the record?

5 SOLICITOR MILLER: Just that the sequestration order
6 from yesterday is still in effect, Your Honor. The State
7 has sequestered our witnesses. I want to make sure that the
8 defense witnesses have been sequestered also.

9 MR. KOGER: I was put on, I was put on notice that two
10 of the witnesses was in here and I sent them back to the
11 back also, Your Honor.

12 THE COURT: Thank you, Mr. Koger.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: Madam Forelady, good morning.

16 Did y'all all get your biscuits?

17 (Jurors nod affirmatively.)

18 THE COURT: We got lunch set up for you today at --
19 what's it called?

20 THE JUROR: Vince's.

21 THE COURT: That's what I call it. Vince's.

22 You may call your first witness.

23 SOLICITOR MILLER: Thank you, Your Honor.

24 The State calls Doctor Janice Ross.

25 THE COURT: Morning, Doctor Ross. Please come around.

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1 JANICE ROSS, after being duly
2 sworn, testified as follows:

3 THE CLERK: Please be seated and state your name for the
4 record.

5 THE WITNESS: Janice Edwards Ross.

6 DIRECT EXAMINATION

7 BY SOLICITOR MILLER:

8 Q Doctor Ross, what is your name and---

9 THE COURT: Doctor Ross?

10 Q Excuse me. What is your name and occupation?

11 THE COURT: Hold on one second.

12 Are you comfortable?

13 THE WITNESS: Yes, sir.

14 THE COURT: Is that on?

15 THE WITNESS: Yes, sir.

16 THE COURT: You're good to go.

17 Q Let me start over just a second. I messed it up to
18 begin with.

19 What is your occupation, Doctor Ross?

20 A I'm a forensic pathologist.

21 Q And who do you work for?

22 A Newberry Pathology Associates.

23 Q Are you a duly licensed physician?

24 A Yes.

25 Q In what states?

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1 A South Carolina, New York, and Georgia.

2 Q Okay. How long have you been licensed as a doctor?

3 A Thirty-four years.

4 Q And what is your exact job title?

5 A Forensic pathologist. We -- I'm a pathologist at
6 Newberry County Memorial County Hospital and forensic
7 pathologist to do autopsies for various coroners of the
8 state.

9 Q Can you describe what that entails, doing autopsies?

10 A Yes, we are authorized and contacted by the county
11 coroner to perform an autopsy for them. The body's
12 brought to us and the, the autopsy's performed at the
13 morgue in Newberry County Memorial Hospital. We do an
14 external and internal examination on each autopsy.

15 Q How many autopsies have you performed?

16 A Over 5,000.

17 Q And what is your educational background?

18 A I got a Bachelor's Degree from the University of
19 South Carolina. Started medical school in Charleston and
20 then transferred to Upstate Medical Center in Syracuse,
21 New York where it's too cold. I got my M.D. there and I
22 did further training in the specialty of pathology, which
23 is the study of disease. I'm board certified in three
24 areas of pathology.

25 Q Have you been qualified as an expert before in the

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1 field of forensic pathology?

2 A Yes.

3 Q And can you estimate how many times that you've been
4 qualified as an expert?

5 A In South Carolina, over 50 times.

6 SOLICITOR MILLER: Your Honor, at this point, subject
7 to any cross-examination as to qualifications, the State
8 would move to admit Doctor Ross as an expert in the field
9 of forensic pathology.

10 MR. KOGER: No objections, Your Honor.

11 THE COURT: Without objection. She'll be allowed to
12 give opinions like the other experts.

13 SOLICITOR MILLER: Thank you, Your Honor.

14 Did you have an occasion to perform an autopsy on
15 Terrance Mays on August the 21st of 2009?

16 A Yes.

17 Q Where did this take place?

18 A At the morgue in Newberry County Memorial Hospital.

19 Q How are you normally contacted to become involved in
20 a case?

21 A The coroner calls us and, and explains the situation
22 and asks for schedule, for us to schedule a time for the
23 autopsy.

24 Q And do you -- are the bodies generally brought to you
25 or do you go to the county to do it?

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by Solicitor Miller

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1 A The bodies are brought to us.

2 Q Okay. Prior to conducting the autopsy on Terrance
3 Mays, were you given any information about the incident?

4 A Yes.

5 Q And what information were you given?

6 A Just that this was a 21 year old black male, a victim of
7 a shooting which occurred on August 20th, 2009, at
8 approximately 7:15PM.

9 Q Can you explain the autopsy procedure that you
10 performed on the body of Terrance Mays?

11 A Yes, again, the body's in a body bag. We unzip the
12 body bag and look at the person externally, take
13 photographs, and document what clothing is present, take
14 all the clothing off and then take photographs of the nude
15 body, front and back, and any injuries up close we will
16 take photographs of. Then we proceed with the internal
17 examination.

18 Q And what were your findings in this case?

19 A We found a gunshot wound that went through the upper
20 right arm and reentered the chest, went across and all the
21 way through the chest.

22 Q And was it through a through, what we call a through
23 and through---

24 A It was a---

25 Q There was no projectile?

1 A It was a through and through, correct.

2 Q I'm gonna show you what's been marked for
3 identification as State's Exhibit 15. I'd like for you to
4 please describe what that is to the jury.

5 A This is the diagram of the findings on the patient at
6 the time of autopsy.

7 Q And is that a document that you prepared?

8 A Yes.

9 Q And is that a true and accurate copy of the one that
10 you have in your file?

11 A Yes.

12 SOLICITOR MILLER: Your Honor, at this time we would
13 move to admit State's Exhibit 15 for evidence in this case.

14 MR. KOGER: Without objection, Your Honor.

15 (WHEREUPON, State's Exhibit No. 15 was received into
16 evidence at this time.)

17 Q You can hang onto that.

18 Could you explain the injury based upon the diagram
19 showing to the jury the way that you documented it on the
20 diagram what the injury was?

21 A Yes, the bullet came in the right upper arm on the
22 side, went through the arm, came out of the inside part of
23 the upper arm, reentered the right chest, and then it went
24 straight, almost straight across, I'm sorry. Went from
25 right to left, slightly downward and slightly backward --

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1 or slightly forward actually. It went through the upper
2 lobes of both lungs and it also went through the heart.
3 It caused a lot of bleeding internally.

4 Q Were you able to make any conclusions about the range
5 of the fatal wound, how far away the gunshot was?

6 A The entrance wound on the outside of the right arm
7 did not have any soot or stippling or tattooing around it.
8 When a bullet comes out of a gun, also they're little
9 pieces of burning powder, powder and soot, but the powder
10 and soot only go a certain distance, and it depends on the
11 gun, the, the ammunition, several factors. But when we
12 say it's a distant wound, we say that we don't see that
13 soot or evidence of powder on the skin meaning that the
14 muzzle of the gun was probably at least two feet away from
15 the victim and two plus feet.

16 Q So, it could of been more, it could of been 20 or
17 40 feet, but it was at least two feet away?

18 A Correct.

19 Q Okay. Were you able to reach any conclusions
20 regarding the amount of time that would have passed
21 between the infliction of the injury and death in this
22 case?

23 A A matter of minutes. Up to five maybe.

24 Q Based upon the autopsy that you performed on Terrance
25 Mays, within the bounds of a reasonable degree of medical

25 CHARLES DOOLEY, after being duly

Charles Dooley - Direct examination
by Solicitor Miller

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1 sworn, testified as follows:

2 THE CLERK: Please be seated and state your name for the
3 record.

4 THE WITNESS: Charles F. Dooley.

5 DIRECT EXAMINATION

6 BY SOLICITOR MILLER:

7 Q Mr. Dooley, where do you work?

8 A I'm retired and work as a volunteer with the School
9 District.

10 Q Have you ever -- do you work currently as a deputy
11 coroner for Barnwell County?

12 A Yes, I do.

13 Q How long have you been there?

14 A Seventeen years.

15 Q Can you explain for the jury kind of what your job as
16 a deputy coroner is?

17 A Well, the coroner's responsibility is to determine
18 the cause of death on any death outside of the hospital or
19 if it's inside of the hospital and the patient's been
20 admitted less than 72 hours.

21 Q Okay. How long have you worked with the Coroner's
22 office?

23 A Seventeen years.

24 Q As part of your job responsibilities, did you respond
25 to Legion Road and Clover Road in Blackville on August the

1 20th, 2009?

2 A Yes, I did.

3 Q Do you know -- what did you find whenever you got
4 there?

5 A When I arrived on scene, the Blackville Police
6 Department along with the Williston Rescue Squad was
7 already on scene. The -- upon arrival, I received a
8 briefing from the Williston Rescue Squad that there had
9 been called to, to assist a, a black male that had
10 apparently been shot. They said, upon, upon arrival, that
11 he had no pulse, no breath, and the pupils were fixed and
12 dilated.

13 At that point in time, after they had give me a,
14 their briefing, I entered into the secure area that
15 Blackville Police Department had secured along with the
16 Blackville Police Department. We went over to the body.
17 The body was laying in the front yard of what we call
18 supine, which is on their, on his back and I noticed, at
19 that point, that apparently he had a gunshot wound to the
20 chest.

21 Q He, he was -- Terrance Mays was dead when you got
22 there, is that correct?

23 A That's correct.

24 Q Did you secure the body of Terrance Mays at that
25 time?

Charles Dooley - Direct examination
by Solicitor Miller

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1 A Yes, I did. We bagged his -- what we call bagged the
2 hands for any type of evidence that might be present to,
3 to secure it. The body was placed into a body bag. It
4 was, at that time, secured on to the stretcher and
5 transported and placed into the Barnwell County truck,
6 coroner's truck.

7 Q All right. When you say you bagged the hands, what
8 kind of bags would those be?

9 A It's a brown paper bag that we place over the hands
10 and we sit, we tape it closed, like I say, just to secure
11 any type of evidence that may be on the hands.

12 Q And that would be the kind of evidence that Doctor
13 Ross, the pathologist who just testified, would be looking
14 for?

15 A Yes, sir.

16 Q Okay. When you left the scene, where did you take
17 the body?

18 A The body was then transported to the Barnwell County
19 Morgue here in Barnwell.

20 Q And is the Barnwell County Morgue a secure location?

21 A Yes, it is.

22 Q Did you schedule the autopsy to be performed on the
23 body the next day?

24 A Yes, sir, I contacted them that night on August the
25 20th and talked to the office there in Newberry and we

Charles Dooley - Direct examination
by Solicitor Miller

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1 scheduled the autopsy for the next morning.

2 Q Okay. And where was the autopsy conducted?

3 A At Newberry County Hospital.

4 Q And who transported the victim from the Barnwell
5 County Morgue to the Newberry County Morgue for the
6 autopsy?

7 A I did.

8 Q Okay. And as part of your job responsibilities, were
9 you present in the room when the autopsy on Mr. Mays was
10 performed?

11 A Yes, I was.

12 Q Did you collect or take possession of any evidence
13 from the body during the autopsy?

14 A No, sir, that's all secured by the, Doctor Ross'
15 staff.

16 Q And after the autopsy, did you return the body to
17 Barnwell County?

18 A Yes, I did.

19 Q Who did you turn the body over to?

20 A To Johnson-Green Funeral Home there in Blackville.

21 Q Thank you. No further questions. Please answer any
22 questions that Mr. Koger might have for you.

23 CROSS-EXAMINATION

24 BY MR. KOGER:

25 Q Mr. Dooley, when you first arrived on the scene, what

Charles Dooley - Cross-examination
by Mr. Koger

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1 position the body was in?

2 A It was supine, what we call supine, which is on the,
3 laid on his back.

4 Q Okay. And, and at that time the person -- the
5 deceased didn't have a shirt on, correct?

6 A That's correct.

7 Q And the first thing you noticed was his chest?

8 A I noticed the gunshot wound, yes, sir.

9 Q And that to the chest.

10 Did you notice the entrance wound, the entrance wound
11 on the right upper arm at that time?

12 A No, sir, once I noticed the gunshot wound to the
13 chest, we no longer do a thorough -- what we do is call a
14 complete examination because of loss of evidence. So, the
15 body at the point in time was secured.

16 Q I said -- so, you made your determination, at least
17 on the scene at that time, by the, by the wound that you
18 saw in his chest?

19 A Yes, in his chest, yes, sir.

20 MR. KOGER: Thank you. No further questions.

21 SOLICITOR MILLER: Your Honor, we would ask that
22 Mr. Dooley be released from his subpoena as well.

23 THE COURT: Any objection to that?

24 MR. KOGER: No objection, Your Honor.

25 THE COURT: All right. Mr. Dooley, thank you for

Tiffany Hanyes - Direct examination
by solicitor McAlister

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1 coming. You may leave.

2 SOLICITOR MCALISTER: The State will call Tiffany
3 Haynes.

4 THE COURT: Tiffany Haynes.

5 TIFFANY HAYNES, after being duly
6 sworn, testified as follows:

7 THE CLERK: Please be seated if you would, and state
8 your name for the record.

9 DIRECT EXAMINATION

10 BY SOLICITOR MCALISTER:

11 Q Please state your full name for the record.

12 A Tiffany Haynes.

13 Q Ms. Haynes, how old are you?

14 A Thirty-one.

15 Q Where are you from?

16 A From Blackville.

17 THE COURT: Speak up please.

18 THE WITNESS: Blackville.

19 Q And where do you live now?

20 A Blackville.

21 Q What's your address?

22 A [REDACTED] Legion Road.

23 Q How long have you lived there?

24 A Two and a half years.

25 Q Ms. Haynes, do you recall the day of August 20th,

Tiffany Hanyes - Direct examination
by Solicitor McAlister

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1 2009?

2 A Yes, sir.

3 THE COURT: Speak up a little louder, ma'am, or pull
4 that microphone a little closer to you.

5 Q Why do you remember that day?

6 A That's the day that my cousin was killed.

7 Q And where did that murder occur?

8 A Outside in my yard.

9 Q Let's go back to that day, August 20th, 2009.

10 Where were you that day?

11 A Outside.

12 Q Where were you earlier that day?

13 A In the house.

14 Q Okay. Who were you with?

15 A Me and my roommate.

16 Q What's your roommate's name?

17 A Brojay Johnson.

18 Q And do you know the victims in this case?

19 A Yes, sir.

20 Q How do you know the victims?

21 A First cousin.

22 Q Prior to the incident that day, had you talked to
23 Zantell Mays?

24 A No, sir.

25 Q Were there people outside that day?

Tiffany Hanyes - Direct examination
by Solicitor McAlister

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- 1 A When I got outside they was already outside.
- 2 Q Okay. At what point did you walk outside?
- 3 A When my roommate told me he heard doors slamming.
- 4 Q Okay. So, you heard, you heard the door shut and
- 5 then you walked outside?
- 6 A Yes, sir.
- 7 Q Who was out there?
- 8 A D.
- 9 THE COURT: Speak up.
- 10 A Demetrius Smalls, Spanky, Carlen, McKenzie, Boo
- 11 Walker, Zantrell, Terrance, Whitney, and their brother,
- 12 Didi.
- 13 Q Okay. You mentioned Spanky, is he -- what's his real
- 14 name?
- 15 Do you know his real name?
- 16 A Henry Jones.
- 17 Q You also mentioned Boo.
- 18 What's his real name?
- 19 A Mike Walker.
- 20 Q And where does Mike Walker live?
- 21 A Next door, behind me.
- 22 Q When you walked outside, what did you see?
- 23 A When I walked outside I saw Terrance come up and him
- 24 and D. started fighting.
- 25 Q Did anyone try to stop them?

Tiffany Hanyes - Direct examination
by Solicitor McAlister

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- 1 A No one stopped them.
- 2 Q At what point did they stop fighting?
- 3 A When both of them got tired.
- 4 Q Okay. So, they tired out?
- 5 A Yes, sir.
- 6 Q Okay. Where did Terrance go after that?
- 7 A Beside my trash can.
- 8 Q And where is your trash can located?
- 9 A Like on the corner of my trailer in the back.
- 10 Q Okay. What happened next?
- 11 A After that they stopped fighting and he was standing
12 beside the trash can and D. walked -- and I told him to
13 get out of my yard. He told me no, he wasn't gonna leave.
14 Then, for some reason, him and Zantrell started sharing
15 words.
- 16 Q Okay. So, they started arguing.
- 17 Where was, where was Zantrell standing at that time?
- 18 A Leaning on Crystal's car.
- 19 Q And where was Crystal's car?
- 20 A Like right at the edge of the trailer kind of like
21 where the trash can at.
- 22 Q Okay. After they exchanged words, what happened
23 next?
- 24 A He told -- he was like I'm gonna kill all y'all
25 mother fuckers like that.

1 THE COURT: Who is he?

2 Q Who is he?

3 A Demetrius Smalls.

4 Q What did Zantrell do at that point?

5 A Zantrell pulled the gun out, and he had it like down on
6 his side like.

7 Q Okay. Did he say anything?

8 A No, he just kept saying get back, get back, get back.

9 Q And what did you do at that point?

10 A I hopped in the middle of them.

11 Q So, you stepped between the two?

12 A I stepped between the two of them.

13 Q What did you tell Zantrell?

14 A And I was like put the gun back because your kids in
15 the car.

16 Q Did you, did you do anything else?

17 A And then I hold him by his arms like this at the top
18 part of his arms, and I just kept telling him put the gun
19 back, put the gun back cause your kids in the car.

20 Q And what, what did Zantrell do in response to you
21 trying---

22 A He put the gun in his pocket.

23 Q After you grabbed him, where did Zantrell go after
24 that?

25 A He was still like standing in front of me like to the

Tiffany Hanyes - Direct examination
by Solicitor McAlister

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- 1 end of the car, like the tail of the car.
- 2 Q Okay. At that point could you see the defendant?
- 3 A At that point I couldn't see him.
- 4 Q why is that?
- 5 A Because I had my back turned.
- 6 Q Okay. Did you hear anyone say anything else?
- 7 A Not at that time I didn't hear no one say anything.
- 8 Q And what happened next?
- 9 A Then shortly after that all I heard him say was you
- 10 think I'm a punk, you think I'm a punk, I'm gonna kill all
- 11 y'all mother fuckers just like that. And then, after
- 12 that, I just heard gunshots and Zantrell ran.
- 13 Q Okay. Who was shooting?
- 14 A when I turned around and looked D. was shooting.
- 15 Q Did you see Terrance get shot?
- 16 A No, sir.
- 17 Q Did you see Zantrell get shot?
- 18 A Yes, sir.
- 19 Q where was, where was Terrance standing when the
- 20 shooting began?
- 21 A I don't even -- I didn't see Terrance then.
- 22 Q Okay. where was Zantrell?
- 23 A when the shooting began?
- 24 Q Uh-huh. (Affirmative).
- 25 A He was getting ready to run.

1 Q Okay. At any point during that confrontation did you
2 see Terrance Mays with a gun?

3 A No, sir.

4 Q After the shooting occurred, what happened?

5 A After the shooting occurred, Zantrell was running to
6 his car. Well, when I turned back around because my baby
7 said ma, and when I turnt (sic), Zantrell turned and he
8 got hit and he landed on top of my baby.

9 Q Okay. Where did y'all go after that?

10 A I ran to my baby while he was still shooting, and I
11 got my baby and I put him on my right hip. I put Zantrell
12 on the left one and Kenzie was on the opposite, on the
13 other end of Zantrell and he helped me around to the front
14 of the house.

15 Q Okay. Where was Terrance at that point?

16 A At that point, when I got to the front of the house,
17 Terrance was by my step, but he was slumped over like
18 holding his chest like this.

19 Q Okay. Did you think of it?

20 A No, I just went and put Zantrell in the house.

21 Q What did you think was wrong with Terrance?

22 A I just thought that he had done been running and he
23 probably was tired. You know how when you run, you be
24 tired, you just stand slumped over. That's the only thing
25 I thought was wrong with him at that time.

Tiffany Hanyes - Direct examination
by Solicitor McAlister

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1 Q Okay. And once you, once you came out of the house,
2 what did you find?

3 A When I came back out the house, he had done fell all
4 the way back with his hands like this and he wasn't
5 moving, he wasn't moving, he wasn't talking. His eyes
6 just, was just looking. He was breathing.

7 Q Could you see where he was shot?

8 A When I got over him, I saw he had a hole right here,
9 and every time he breathed blood would just pour out it.

10 Q What did you do next?

11 A Then after that I got on my knees and I was just
12 rubbing his hand cause he still wouldn't talk, and then
13 for like a few seconds he was just like I love you and
14 that was it.

15 Q Did you call 9-1-1?

16 A No, sir.

17 Q Do you know who called 9-1-1?

18 A Christopher Brooks.

19 Q And when police, when police arrived, was Terrance
20 Mays still breathing at that point?

21 A I don't know.

22 Q Thank you. Please answer any questions that the
23 defense may have.

24 THE COURT: Mr. Koger.

25 CROSS-EXAMINATION

Tiffany Haynes - Cross-examination
by Mr. Koger

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1 BY MR. KOGER:

2 Q Ms. Haynes, isn't it true that you gave three
3 different statements to law enforcement in this case?

4 A No, sir.

5 Q You didn't give a statement to Blackville Police
6 Department on August 20th, 2009?

7 A What was the question?

8 Q You didn't, you didn't give a statement to Blackville
9 Police Department, a voluntary statement to Blackville
10 Police Department on August 20th, 2009?

11 A Yes, sir.

12 Q You just said that you didn't give any statements to
13 law enforcement?

14 A I gave them a statement saying that this happened.

15 Q Okay. That's your first statement, correct?

16 A Yes, sir.

17 Q Okay. And what did you say in your first statement?

18 A I don't remember.

19 Q Do you need to refresh your memory?

20 A What was the question?

21 Q If I give you the statement, would it refresh your
22 memory?

23 If I give you a chance---

24 THE COURT: He's going to hand you the statement so you
25 can look at it.

Tiffany Haynes - Cross-examination
by Mr. Koger

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1 MR. KOGER: May I approach, Your Honor?

2 (The Court nods affirmatively.)

3 A Okay.

4 Q Can you read that statement?

5 Well, first of all, is that your signature on this
6 statement?

7 A Yes, sir.

8 Q And what is the date of that statement?

9 A August the 20th, 2009.

10 Q And what law enforcement agency you, you gave that
11 statement?

12 A Blackville Police Department.

13 Q And is that, is that a copy of the statement that you
14 gave to Blackville Police Department --

15 A Yes, sir.

16 Q -- on that particular day, correct?

17 A Yes, sir.

18 Q And that's your signature?

19 A Yes, sir.

20 Q Can you read that statement?

21 A I, Tiffany Haynes, was home cooking. When I answered
22 my back door, Demetrius Smalls and Terrance Mays got into
23 a fight.

24 THE COURT: Slow down.

25 A Then after the fight ended, then Demetrius and Zantrell

1 shared words and began to get ready to fight when Demetrius
2 gets a gun and just starts shooting. Terrance Mays and
3 Zantrell Mays get hit by the shots. So, people started
4 running and leaving. Terrance Mays ran to the front yard and
5 that's where he stayed.

6 Q Okay. Now, did you mention in that statement that
7 Zantrell Mays pulled out a gun in the, in your first
8 statement?

9 A No, sir.

10 Q Okay. And I think you, you stated at the beginning
11 that you are, you are somewhat related to him.

12 What relationship again?

13 A First cousins.

14 Q First cousin to Zantrell---

15 A Zantrell and Terrance.

16 Q ---Terrance?

17 A Yes.

18 Q How about Didi?

19 A Yes, Didi, too.

20 Q And Whitney?

21 A Yes, sir.

22 Q Okay. Now, did you give another statement to law
23 enforcement?

24 A Yes, sir.

25 Q Okay. And can you approximate when you gave that

Tiffany Haynes - Cross-examination
by Mr. Koger

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1 statement?

2 A I can't exactly remember.

3 Q Was, was it later on the same day?

4 A No, sir.

5 Q And may I give you another---

6 A Yes, sir.

7 Q ---statement to, to refresh your memory?

8 A Yes, sir.

9 MR. KOGER: Your Honor, may I approach?

10 (The Court nods affirmatively.)

11 Q Read that and refresh your memory.

12 A Okay.

13 Q And what is the date on that particular statement,
14 Ms. Haynes?

15 It may be on the second page.

16 A It says August 20th, 2009.

17 Q And that's on the same date of the incident, correct?

18 A Yes, sir.

19 Q Okay. And to, to which law enforcement agency was
20 that statement, that statement given?

21 A SLED.

22 Q And is that your signature on the bottom of that
23 statement?

24 A Yes, sir.

25 Q Your signature?

1 A Yes, sir.

2 Q Would it be safe to say that you gave that statement
3 to SLED later on that day or that evening?

4 A Yes, sir.

5 Q Okay. And can you read that statement to the court?

6 A I, Tiffany Haynes, walked out the back door and
7 Terrance and Demetrius Smalls got into a fight.

8 THE COURT: Ma'am, pull that microphone up.

9 A So they fought and then they stopped and Terrance said
10 it's over, I'm good. Demetrius Smalls then attempt to get
11 into a fight with Zantrell. I, Tiffany Haynes, stepped in
12 the middle of them. Demetrius Smalls goes to the car and get
13 a gun and starts shooting. Sees Zantrell get shot in the
14 side in the process. I looked at my son and I see a bullet
15 go over his head. I grab him and run to the front of the
16 house where I see Terrance bleeding and laying on the, laying
17 on the ground. I walked up to him and his right side and he
18 was breathing. Then he just stopped. Then the police
19 arrived on the scene.

20 Q Can you read the second page also?

21 A It says well, first because Demetrius Smalls slapped
22 Terrance Mays it says how the fight, what start, caused
23 the fight and it says because Demetrius Smalls slapped
24 Terrance Mays brother in the face on the hill, and it
25 says:

Tiffany Haynes - Cross-examination
by Mr. Koger

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1 Q. Do you recall anyone else being present during
2 the fight?

3 Yes.

4 Who?

5 Zantrell Mays, Michael Walker, Henry Jones, Carlen
6 Thomas, Chris Brooks, Whitney Mays, D. Mayes, Rickie
7 Willis -- continue?

8 Q Yes.

9 A Well -- were any of these people in the company of
10 Demetrius Smalls?

11 It says yes.

12 And it says which people were with Demetrius Smalls?

13 Henry Jones, Carlen Thomas, Michael Walker, Rickie
14 Willis.

15 And it said who were the, who were the other people
16 you listed, which is Zantrell, Whitney, Demetrius, Chris
17 Brooks, visiting Tiffany Haynes.

18 Next question, other than yourself, was there anyone
19 else who tried to stop the fight?

20 No.

21 Did anyone stop Demetrius Smalls from shooting the
22 gun?

23 No.

24 Describe the vehicle.

25 Smalls got in a four door burgundy tinted window car.

1 It look like a 2004, 2005 model Toyota.

2 Can you describe the gun D. Smalls had? What did it
3 look like?

4 Gray and black automatic handgun.

5 After the shooting, after the shooting stopped, what
6 do you remember after that?

7 I remember D. running, getting in the car. I pick up
8 my son and I ran to the front of the yard and gave my
9 girlfriend my son. I went in the area where Terrance was
10 laying and I kept calling his name, but he never
11 responded. So, I went in the house and sat Zantrell down
12 on the chair and told him to be still.

13 Who else got in the car with Smalls?

14 Henry Jones, Carlen Thomas, Rick Willis.

15 Who was driving the vehicle?

16 Henry Jones.

17 Is there anyone else you would like to add?

18 And it says no.

19 Q Now, you mentioned in the second interview that you
20 heard later on that day about your cousin, Zantrell,
21 having a gun?

22 A Yes.

23 Q You did mention it in this statement here?

24 A Yes, it's in that statement I think.

25 Q Okay. That he, that you, that he had a gun on that

Tiffany Haynes - Cross-examination
by Mr. Koger

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1 particular day, Zantrell?

2 A Uh-huh. (Affirmative).

3 Q Can you find that?

4 A I think it's in there. No, it's not in there.

5 Q Okay. So, so, in either interview on August 20th,
6 you did not mention that your cousin, Zantrell, may have
7 had a gun on the scene that particular day?

8 A No.

9 Q Okay. Now, you had an opportunity to give a third
10 statement, correct?

11 A Yes.

12 Q And that's the one that you testified to today,
13 correct?

14 A Yes.

15 Q And I'm just gonna give you a statement, not to read
16 it, but just to identify the date that you give that
17 statement.

18 A Okay.

19 Q And just identify -- don't read it, but identify it
20 as far as what is that document there?

21 A It says it's an additional---

22 THE COURT: Ma'am, you're gonna have to speak up.

23 THE WITNESS: This is an additional statement to my
24 statement that was provided to the agency.

25 Q Okay. And, and which agency is that statement

1 provided?

2 A Agent Harley.

3 Q Okay. And Agent Harley is what, the SLED department?

4 A The SLED department.

5 Q Okay. And what is the date on that statement?

6 It should be located near the bottom. Maybe on the
7 second page.

8 A Oh, it says 9/2/09.

9 Q Okay. And this is the statement that you -- if I
10 could get it back.

11 This is the statement that you referred to today in
12 court as your testimony, correct?

13 A Yes.

14 Q Okay. And you, you mentioned today in court that
15 your cousin, Zantrell, pulled a gun, correct?

16 A Yes.

17 Q Okay. And you mentioned for the first time in the
18 September 2nd, 2009, statement, correct?

19 A Yes.

20 Q So, so, it would be correct to say that you did not
21 mention he had a gun in the two August 20th, 2009,
22 statements, correct?

23 A Yes.

24 Q That would be correct?

25 A Yes, sir.

Tiffany Haynes - Cross-examination
by Mr. Koger

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1 Q Okay. And would you agree that on the scene that
2 particular day it was your cousin, Zantrell, that first
3 presented a gun on the scene?

4 A Yes.

5 Q And that, that on that particular day that when
6 Terrance got out of the vehicle, Terrance and Demetrius
7 Smalls were fighting or began to fight?

8 A Yes, sir.

9 Q All right. And it was going fist-to-fist, correct?

10 A Yes.

11 Q Did you see any gun on, on Demetrius Smalls when the
12 fight began?

13 A No, sir.

14 Q And no one presented a gun until Zantell Mays
15 presented a gun, correct?

16 A Yes, sir.

17 Q Okay. Did you -- now, you say you were near Mr. Mays
18 when he presented the gun.

19 Did you see him cock the gun?

20 A No, sir.

21 Q Did you hear him, did you hear him cock the gun?

22 A No, sir.

23 Q Okay. Now, as you, as you say Tiffany was, was
24 attempting to hold his arms, what was Zantrell Mays saying
25 to you?

Tiffany Haynes - Cross-examination
by Mr. Koger

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- 1 A He wasn't saying anything to me.
- 2 Q He wasn't saying anything to you?
- 3 A Hu huh. (Negative).
- 4 Q Okay. Well, what was he doing?
- 5 A He was just standing back with his back against the
- 6 car with his arms down like this.
- 7 Q Arms down here?
- 8 A Yes.
- 9 Q And it's your testimony that he put the gun in his
- 10 pocket?
- 11 A Yes.
- 12 Q Okay. You didn't hear him cock the gun?
- 13 A No, sir.
- 14 Q And you didn't see him point the gun?
- 15 A No, sir.
- 16 Q You -- but you saw him present the gun?
- 17 A Yes, sir.
- 18 Q Okay. How did he present the gun?
- 19 A He had it like this.
- 20 Q He had, he had it like this here?
- 21 A Yes.
- 22 Q He had his arms like this here?
- 23 A Uh-huh. (Affirmative).
- 24 Q But he, he took it from where?
- 25 A Out his pocket right here.

Tiffany Haynes - Cross-examination
by Mr. Koger

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- 1 Q out his pocket?
- 2 A Uh-huh. (Affirmative).
- 3 Q Left or right pocket?
- 4 A The right pocket.
- 5 Q Front pocket -- front or back pocket?
- 6 A I don't remember which pocket. I just know it was in
- 7 his pocket.
- 8 Q In his pocket.
- 9 Do you know whether Mr. Mays is left handed or right
- 10 handed?
- 11 A I don't know if he left handed or right handed.
- 12 Q So -- but either, either hand he took it out of his
- 13 pocket?
- 14 A Yes, sir.
- 15 Q And he, he did like this?
- 16 A Uh-huh. (Affirmative).
- 17 Q Now, you stated that the only time that you and --
- 18 correct me if I'm wrong, that the first time you saw
- 19 Mr. Mays on that particular day was at the scene?
- 20 A Yes, sir.
- 21 Q He didn't come down earlier in the day?
- 22 A No, sir.
- 23 Q He didn't come to your house with Didi?
- 24 A No, sir.
- 25 Q He didn't come to the house with his, with his

1 sister, Whitney?

2 A No, sir.

3 Q And he didn't come, he didn't come to the house with
4 Terrance?

5 All of them didn't come to your house earlier in the
6 day?

7 A No, sir.

8 Q The three of them didn't come to your house earlier
9 in the day?

10 A No, sir.

11 Q Was Whitney at your house at this time?

12 A No, sir.

13 Q She, she was not.

14 So, who was out there of that family?

15 Who was at your, at your house?

16 A Before or after?

17 Q Huh?

18 A Before?

19 Q Before.

20 A Before the fight or after the fight?

21 Q Before the fight.

22 A When it happened, when all them came up in the yard,
23 they came together.

24 Q All being who?

25 A Zantrell, Whitney, Didi, Terrance.

Tiffany Haynes - Cross-examination
by Mr. Koger

225

1 Q Okay. So, Whitney was at the house?

2 A Yes.

3 Q Okay. So, Whitney, Zantrell, Terrance, and Didi all
4 came together?

5 A Yeah, they came together.

6 Q Okay. Did they ride in the same vehicle?

7 A I don't, I don't know if they ride in the same
8 vehicle or not.

9 Q But they all arrived at the same time?

10 A Yes, sir.

11 Q Okay. And it's your testimony that earlier in the
12 day none of them came to your house?

13 A No, sir.

14 Q I think you mentioned that your roommate is a Ms.
15 Johnson?

16 A Mr.

17 Q I'm sorry. Mr. Johnson?

18 A Yes, sir.

19 Q Okay. And is it possible that they could have come
20 to your house and you was not there and Mr. Johnson was
21 there?

22 A No, cause I had worked and I just had got -- I was
23 just getting up.

24 Q You were just getting up?

25 A Uh-huh. (Affirmative).

Tiffany Haynes - Cross-examination
by Mr. Koger

226

1 Q Mr. Johnson wasn't there earlier in the day?

2 A Yeah, we both worked.

3 Q Oh, you both worked.

4 So, so, you---

5 A We worked and got up that morning.

6 Q Okay. So, no one was there, that's your testimony,
7 earlier in the day?

8 A No, sir.

9 Q What time did you get off?

10 A We got off like 8:00 that morning. Well, when we
11 made it to Blackville it was like nine o'clock that
12 morning.

13 Q Nine o'clock that morning?

14 A Uh-huh. (Affirmative).

15 Q And I guess you worked second shift or third shift or
16 something?

17 A Second or third.

18 Q Second or third.

19 So, what time did you go to sleep?

20 A Around 10:00, 10:30.

21 Q 10:00, 10:30.

22 And you usually sleep from 10:00, 10:30 until what
23 time?

24 A About three o'clock.

25 Q About three o'clock.

Tiffany Haynes - Cross-examination
by Mr. Koger

227

1 Okay. So, you would have known if they had, had come
2 to your house after three o'clock?

3 A Yes, sir.

4 Q Okay. And your testimony is that they didn't come to
5 your house after three o'clock?

6 A No, sir.

7 Q And it's your testimony that the first time they came
8 to your house was around this, around the time of this
9 incident?

10 A Yes, sir.

11 Q And -- but it's your testimony you, you do not know
12 how they got there, but it's your testimony that Zantrell,
13 Terrance, Didi Mays, and Whitney Haynes all arrived at
14 your house at the same time?

15 A Yes, sir.

16 MR. KOGER: Your Honor, may I beg the Court's
17 indulgence?

18 THE COURT: Yes, sir.

19 (Pause.)

20 Q Now, in, in your second statement -- the second
21 statement on August 20th, 2009, the one you gave to SLED,
22 the first statement you gave to SLED, the first statement
23 you gave to Blackville Police Department, the second
24 statement the same evening you gave to SLED, and the third
25 statement you gave to SLED.

1 In the second statement you stated that Demetrius
2 Smalls went to the car and got a gun?

3 A Yes, sir.

4 Q Okay. And was that true?

5 A No, sir.

6 Q Okay. So, so -- so, you lied to SLED the first time
7 about that, correct?

8 A Yes, sir.

9 Q Okay. And why did you lie to SLED about that?

10 A Because I thought that he went and got a gun because
11 he was behind me at the time headed towards a car.

12 Q You didn't realize the first time that you spoke with
13 the Blackville Police Department on August 20th, 2009,
14 that Mr. Mays pulled out a gun or you, you forgot to tell
15 them at that time?

16 A What was the question again?

17 Q Did you forget to tell Blackville Police Department
18 earlier on August 20th, 2009, that your cousin, Zantrell,
19 pulled a gun out on the scene on that particular day?

20 A Yes, sir.

21 Q Okay. But you had another opportunity a couple of
22 hours later to correct that with SLED, correct?

23 A Yes, sir.

24 Q And did you tell SLED that your cousin, Zantrell,
25 pulled a gun out at the scene?

Tiffany Haynes - Cross-examination
by Mr. Koger

229

1 A No, sir.

2 Q And did you forget again?

3 A No, sir.

4 Q Okay. So, you, you was trying to conceal that?

5 A Yes, sir.

6 Q Okay. All right. And then you finally, on September
7 2nd, 2009, told SLED that he had a gun?

8 A Yes, sir.

9 Q And that he pulled it out?

10 A Yes, sir.

11 Q But he never raised the gun?

12 A Yes, sir.

13 Q And he had it by his side like this here?

14 A Yeah, he had it like right on his side.

15 Q He, he never showed -- I mean he never -- he showed
16 it like this here?

17 A Yeah, he had it just like this with his arm like
18 that.

19 Q No further questions.

20 THE COURT: Redirect, if any?

21 REDIRECT EXAMINATION

22 BY SOLICITOR MCALISTER:

23 Q Tiffany, how many total statements did you give?

24 A Three if I'm not mistaken.

25 Q And two of those were on the night of the incident?

Tiffany Haynes - Redirect examination
by Solicitor McAlister

230

1 A Yes, sir.

2 Q Were you upset on the night of that incident?

3 A Yes, sir.

4 Q Earlier you testified that you had your back turned,
5 is that correct?

6 A Yes, sir.

7 Q So, you never -- you never saw Demetrius actually
8 grab the gun?

9 A No, sir.

10 Q When the shooting started, were you near Zantrell?

11 A Yes, sir.

12 Q Did you ever see Terrance with a gun that night?

13 A No, sir.

14 THE COURT: You may step down.

15 Next witness.

16 SOLICITOR MCALISTER: The State calls William Henry
17 Jones.

18 WILLIAM HENRY JONES, after being duly
19 sworn, testified as follows:

20 THE CLERK: Be seated and state your name for the
21 record.

22 THE WITNESS: William Henry Jones, II.

23 DIRECT EXAMINATION

24 BY SOLICITOR MCALISTER:

25 Q Mr. Jones?

William Henry Jones - Direct examination
by Solicitor McAlister

231

- 1 A Yes, sir.
- 2 Q How old are you?
- 3 A Thirty-three.
- 4 Q And where are you from?
- 5 A Blackville.
- 6 Q Do you live in Blackville now?
- 7 A Yeah.
- 8 Q How long have you lived there?
- 9 A All my life basically.
- 10 Q Do you recall the day, the day of August 20th, 2009?
- 11 A Yeah.
- 12 Q why do you remember that day?
- 13 A The day of the shooting.
- 14 Q All right. Let's go back to that day, August 20th,
- 15 2009.
- 16 where were you that morning?
- 17 A Home in the country.
- 18 Q So, you were in the country at home.
- 19 At some point did you leave home that day?
- 20 A Yeah, around mid day or thereafter.
- 21 Q who were you with?
- 22 A Rick Willis, some other guy. I don't know his name.
- 23 Q Well, who picked you up?
- 24 A Rick and the other guy. They were together in the
- 25 car.

William Henry Jones - Direct examination
by Solicitor McAlister

232

1 Q Okay. Where did y'all go from there?

2 A Out to town. We went to the, on the hill, starting
3 heading down to ride. We were on our way to Skip's house.

4 Q Okay. Is Skip's house on the hill?

5 A It's on Toby Drive.

6 Q Okay. After stopping by Skip's house, where did
7 y'all go from there?

8 A We stopped, we stopped by D'Head house before we got
9 to Skip house cause they live on the same street.

10 Q And when you say D'Head, who are you referring to?

11 A Demetrius.

12 Q Is that the defendant?

13 A Yes, sir.

14 Q And what was he doing?

15 A Just chilling, listening to the radio, playing a
16 song. He was listening to the radio or something.

17 Q Did the defendant leave with you-all?

18 A Yes.

19 Q Where did y'all go from there?

20 A Skip house.

21 Q And how do you know Mr. Smalls?

22 A That's my family.

23 THE COURT: Sir?

24 THE WITNESS: That's my family.

25 Q How are y'all related?

William Henry Jones - Direct examination
by Solicitor McAlister

233

1 A We grew up together basically. Ever since I was
2 young I always been told that was my family. So, I ain't
3 asked no questions.

4 Q Okay. Do you know the victim, Terrance Mays?

5 A Yeah, I know him.

6 Q What's your relationship with the victim?

7 A We was cool. He lived down the road from me.

8 Q When y'all got to Mike Walker's house, what were
9 y'all doing there?

10 A Drinking, chilling in the shade, talking about having
11 a cook-out, but we ain't had started the grill up yet.

12 Q Okay. So, when you say you were in the shade, you
13 were under a tree?

14 A Yes.

15 Q All right. Where was that tree located?

16 A On the side of his house.

17 Q Did you call anyone that day?

18 A I ain't had my phone. I had left it at home. That's
19 why I was trying to get back home cause I left my phone
20 home.

21 Q At some point did you talk to Carlen Thomas that day?

22 A No, not until he came.

23 Q Okay. Who did he come with?

24 A I don't remember. I think somebody from there,
25 somebody that was out there went and picked him up.

William Henry Jones - Direct examination
by Solicitor McAlister

234

1 Q So, y'all were there before Carlen Thomas arrived?

2 A Uh-huh, yes.

3 Q Okay. What time of day was that?

4 Do you recall?

5 A I don't remember. Just mid day. It was hot. In the
6 middle of the day.

7 Q Okay. Do you know Tiffany Haynes?

8 A Yes.

9 Q Do you know where she lives?

10 A Yes, it's Boo's neighbor. They live by each other.

11 Q Okay. So, where y'all were standing that day, where
12 was that in relation to the two houses or two homes?

13 A It's in-between them.

14 Q Right in-between Tiffany's home and---

15 A Closer to Boo's house, but---

16 Q And when you say Boo, who are you referring to?

17 A Mike Walker.

18 Q Okay. Who was all -- who all was out there at that
19 point in time?

20 A Me, Demetrius, Skip, K'Daddy, Short Man.

21 Q Do you know K'Daddy's real name?

22 A No.

23 Q How about Short Man?

24 A All I know is his last name is Patrick. I don't know
25 his real name.

William Henry Jones - Direct examination
by Solicitor McAlister

235

- 1 Q So, the defendant was there at that point in time?
- 2 A Yeah.
- 3 Q Was Carlen there then?
- 4 A When we first got there?
- 5 Q Yes, sir.
- 6 A No, he wasn't.
- 7 Q So, he showed up later?
- 8 A Yeah.
- 9 Q At some point did anyone leave?
- 10 A Yeah, a couple of people left. They went to make a
- 11 beer run. Go to the store and get some beer.
- 12 Q Did you go with them?
- 13 A No, I stayed.
- 14 Q Why is that?
- 15 A It's too many peoples was in the car. I couldn't
- 16 fit.
- 17 Q At that point did Terrance Mays come by?
- 18 A Yeah, he came while the people was going to the
- 19 store.
- 20 Q Who was, who was he with?
- 21 A The people who was in the car didn't get out. He was
- 22 the only one who got out as far as I can remember.
- 23 Q What kind of car was it?
- 24 A I can't remember.
- 25 THE COURT: Speak up please, sir.

William Henry Jones - Direct examination
by Solicitor McAlister

236

1 THE WITNESS: I can't remember.

2 Q What he -- was it his family?

3 A They didn't get out the car, but I guess it was his
4 family. I mean it was the same car that came back. It
5 was the same people, the same people. I mean they got
6 out, the same people.

7 Q And that first time when Terrance came by, was the
8 defendant there at that time?

9 A No, he wasn't.

10 Q And he had gone to make a beer run?

11 A Yeah.

12 Q What did Terrance say when he got out the car?

13 A He got out. He was on the phone smoking a cigarette.
14 He just asked has anybody seen D'Head.

15 Q What was his demeanor?

16 A He was calm.

17 Q He was calm?

18 A Yes.

19 Q So, you spoke to him?

20 A He spoke like what's up like that.

21 Q Did he stay?

22 A Not long. After he asked was Demetrius there and if
23 anybody seen him, and he left right directly after.

24 Q What happened when Demetrius returned from the beer
25 run?

William Henry Jones - Direct examination
by Solicitor McAlister

237

1 A Some people was like T might had been up there
2 looking for him. He got upset.

3 Q And what was the defendant's reaction?

4 A He got upset. He was like niggas looking for me. I
5 ain't gonna hide. I'm gonna go to where they can see me
6 at.

7 Q Did he do anything?

8 A No, I talked to him. I was like, man, don't do that,
9 you don't want to get in trouble. I calmed him down. He
10 put his jersey back on and sat down.

11 Q He put his jersey back on.

12 So, he had taken it off?

13 A Yeah.

14 Q why did he do that?

15 A I guess he was upset.

16 Q So, you calmed him down?

17 A I talked to him and he sat down beside me, and that's
18 when he was telling me what was going on.

19 Q And what was going on?

20 A He told me he had got into it with the little brother
21 on the hill. Something about he ran over his foot with
22 the bike and they got into it. While we was talking,
23 that's when he pulled up.

24 Q And what happened next?

25 A T'Mack got out the car and he was like you hit my

1 little brother. You should have fought me. They ain't
2 talked much. They started fighting.

3 Q So, they got into a fist fight?

4 A Yes.

5 Q How long did that last?

6 A It was a couple of minutes. Not long.

7 Q What did you do?

8 A Well, I was just trying to talk them out of it. I
9 ain't touch nobody, you know what I mean. While I was
10 talking, I was told to get the F out the yard. So, I got
11 up. I ain't even know whose yard it was until that was
12 said.

13 Q And where did you go after that?

14 A Into Boo Walker's yard.

15 Q When you say Boo, you're talking about Mike Walker?

16 A Mike Walker, yeah.

17 Q When it ended, what happened, what happened next
18 between Terrance and Demetrius?

19 A They started walking -- I mean, you know, it was a
20 lot of commotion going on. You couldn't really hear what
21 they was saying, and I, I wasn't as close as I was before
22 it started. So, I couldn't really tell what they was
23 saying, but they was going away from each other, walking
24 away from each other.

25 Q And what did the defendant do?

William Henry Jones - Direct examination
by Solicitor McAlister

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1 A what do you mean, like after they was fighting?

2 Q Uh-huh. (Affirmative).

3 A He walked away.

4 Q Well, why did -- do you know why Zantrell and the
5 defendant started arguing?

6 A I think because he was talking to -- like talking
7 junk to all of them basically like she had kicked him when
8 he was on the ground. So, I think he was talking junk to
9 her about that.

10 Q And when you say who or her, who are you referring
11 to?

12 A Terrance's sister.

13 Q And then what happened?

14 A Terrance pulled out -- I mean Zantrell pulled out a
15 gun and cocked it.

16 Q Did he ever point it at anyone?

17 A He was waving it around talking, but he ain't pointed
18 it at me.

19 Q Did he ever point it at anyone else?

20 A I ain't seen him when he pulled the gun out. I
21 wasn't trying to look at him pointing it at nobody. Once
22 he cocked it, I wasn't trying to look at him.

23 Q Do you recall giving a statement to Agent Shaun
24 Harley on September 2nd, 2009, at the Barnwell County
25 sheriff's office?

William Henry Jones - Direct examination
by Solicitor McAlister

240

1 A Yes, sir.

2 Q I'm just gonna hand you your statement and let you
3 take a look at it and refresh your memory. The
4 highlighted part. Don't read it. Just read it to
5 yourself.

6 THE COURT: Okay.

7 Q The statement you gave to Agent Harley on that day,
8 was it all true?

9 A Yes.

10 Q Is it safe to say that your memory on September 2nd,
11 2009, was better than it is today?

12 A Yes.

13 Q Do you recall writing the following words, I never
14 saw him point it at anyone, but I did see him holding it.
15 That's when Demetrius asked Carlen if he had a gun.

16 A I mean I didn't -- and like I studied it. I didn't know
17 until you handed it to me. I didn't remember saying it.

18 Q So, you're saying your, your, your testimony here
19 today is different from that statement?

20 A Yes, I guess. That's what you just said.

21 Q After you saw Zantrell with the gun, was anything
22 else said?

23 A What you mean?

24 Q Did anyone intervene?

25 A No, nobody wasn't trying to get between a gun. I

William Henry Jones - Direct examination
by Solicitor McAlister

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1 wasn't. I wasn't even close enough to hear what they were
2 saying.

3 Q So, where were you at that point in time?

4 A In Boo Walker backyard. Like I could see his mom
5 standing in the house from where I was standing at.

6 Q Did you see the defendant walk back to Carlen Thomas?

7 A Yeah, I looked at him.

8 THE COURT: Speak up please, sir.

9 THE WITNESS: Yes.

10 Q Did the defendant say anything to Carlen Thomas?

11 A I couldn't hear him from where I was standing.

12 Q What did Carlen do?

13 A Hesitated.

14 Q When you say he hesitated, what do you mean?

15 A He paused like I guess he was debating whether he was
16 gonna give him the gun or not give him the gun.

17 Q So, he did give him a gun?

18 A Yes.

19 Q Did he make any motions -- did Carlen make any
20 motions or hand gestures or anything like that?

21 A No, I wasn't looking. When I seen the gun I just
22 continued where I was at, the direction I was headed in.

23 Q Can you take a look at that statement again?

24 A Yeah.

25 Q It's gonna be on the second page. Right there.

William Henry Jones - Direct examination
by Solicitor McAlister

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1 Actually it is right here where it's highlighted.

2 And, again, in that statement from September 2nd,
3 2009, was everything you told Agent Harley the truth that
4 day?

5 A Yes.

6 Q And did you tell Agent Harley that he motioned him as
7 if to push his hands away?

8 A That's what I mean by hesitating.

9 Q Okay. So, that's what you were getting at?

10 A Yeah.

11 Q What happened next after the defendant got the gun?

12 A I just heard shots as I wasn't looking when they was
13 shooting.

14 Q So, what did you do?

15 A I ran.

16 Q Were you able to see anyone shooting?

17 A No.

18 Q Why did you stop?

19 A Because the gunshots stopped.

20 Q On that afternoon, did you ever see Terrance Mays
21 with a gun?

22 A No.

23 Q Thank you. Please answer any questions that the
24 defense might have.

25 THE COURT: Mr. Koger.

William Henry Jones - Cross-examination
by Mr. Koger

243

1 CROSS-EXAMINATION

2 BY MR. KOGER:

3 Q Mr. Jones, you stated that you were at Boo Walker's
4 house in that area with the other guys for a while before
5 this incident, correct?

6 A Yes.

7 Q And I think you testified too that Terrance came up
8 earlier before the incident, correct?

9 A Yes.

10 Q And I think you also testified that some other
11 persons was in the car?

12 A Yeah.

13 Q But, but you don't know who was in the car?

14 A His family, I guess.

15 Q Okay.

16 A The people who came back with him.

17 Q Okay. So, you said the people that was in the car
18 the first time was the same ones that came back with him
19 at the, at the time of the incident?

20 A It's the same car.

21 Q It's the same car?

22 A I mean if anybody would of switched positions I
23 wouldn't of knew because I didn't look at their faces.

24 Q Okay. But you definitely knew that Terrance appeared
25 the first time a couple of hours earlier or a time frame

1 earlier?

2 A Yes.

3 Q And that other persons was in the car?

4 A Yes.

5 Q And that other -- and then when he came back other
6 persons came back with him?

7 A Yes.

8 Q And the person that came -- the people that came back
9 with him was Zantrell --

10 A Yes.

11 Q -- correct?

12 Didi Mays?

13 A Yeah.

14 Q And Whitney Mays?

15 A Yeah.

16 Q And Terrance Mays?

17 A Yeah.

18 Q Those are brothers and a sister, correct?

19 A (Witness nods affirmatively.)

20 Q Now, the State was trying to get you to clarify
21 between what you testified, testified to now and what you
22 said back on September 2nd, 2009.

23 If there's a difference, a difference in your mind
24 between pointing and waving?

25 A Yeah, there's a difference.

William Henry Jones - Cross-examination
by Mr. Koger

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- 1 Q Okay. I'm sorry. Go ahead.
- 2 A From pointing, I'm pointing like this.
- 3 Q Okay. All right. And what is waving?
- 4 A (Witness indicates.)
- 5 Q And what occurred on that particular day?
- 6 A What do you mean?
- 7 Q With, with Zantrell Mays and the gun.
- 8 A What occurred?
- 9 Q Yeah.
- 10 Did he, did he wave it or did he just took it out and
- 11 showed it?
- 12 A When he took it out he cocked it and he was talking and
- 13 that's when, that's when I seen him waving it.
- 14 Q All right. So, you're absolutely 100 percent sure
- 15 that he cocked this gun?
- 16 A Oh, yeah.
- 17 Q And what does that mean to you when someone cock a
- 18 gun?
- 19 A I'm about to shoot.
- 20 Q They're about to shoot?
- 21 A Yeah.
- 22 Q Was it -- was it a loud cock?
- 23 A I mean it's the same cock when you cock a gun.
- 24 Q Okay.
- 25 A I don't get no louder. It's gonna be the same sound.

William Henry Jones - Cross-examination
by Mr. Koger

246

1 Q Okay. In your mind, if someone cock a gun, what,
2 what is the person supposed to do?

3 A Get out the way or get shot.

4 Q Okay. What are you supposed to do?

5 A Get low.

6 Q Get low.

7 And what does get low mean?

8 THE COURT: All right.

9 THE WITNESS: Lay down.

10 Q Get out the way, correct?

11 A Yes.

12 Q So, it's no doubt in your mind that, one, he had a
13 gun?

14 A Yes.

15 Q Okay. And what was -- how about describe that gun.

16 A It was silver, like gray looking in color.

17 Q Okay. And where did he get it from on his body?

18 A I don't recall where he pulled it from.

19 Q Okay. And when he pulled the gun, did he waive the
20 gun around?

21 A Yeah.

22 Q And can you show the jury the motion in which he
23 waved the gun around?

24 A (Witness indicating.)

25 When he cocked it, he just was like what's up.

William Henry Jones - Cross-examination
by Mr. Koger

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1 Q Okay. And that's what he was saying is, is that your
2 characterization of what's up or was he saying something
3 when he, when he pulled when he was waving the gun?

4 A I mean I'm just saying like the, the attitude thing.
5 I couldn't hear what he said when he was talking.

6 Q Right.

7 A But when he cocked it, he was talking.

8 Q He was talking, but you were not close enough to hear
9 him --

10 A Yeah.

11 Q -- talk?

12 But you were absolutely sure that he cocked the gun?

13 A Yes.

14 Q You're absolutely sure that he had the gun?

15 A Yes.

16 Q Okay. Now, I think you stated earlier that once
17 Mr. Smalls finds out someone was looking for him that he
18 got a little upset and he took off his jersey, correct?

19 A Yeah.

20 Q When he took off his jersey, did you see a gun?

21 A No, he ain't had no gun.

22 Q Okay. Now, you had an opportunity to hang with
23 Mr. Smalls --

24 A Yes.

25 Q -- for, for a time period before the incident,

William Henry Jones - Cross-examination
by Mr. Koger

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1 correct?

2 A Yes.

3 Q Did, at any time during the time period in which you
4 was hanging with him, did he present a gun?

5 A No, he ain't had one.

6 Q Did he have a gun on his person?

7 A No.

8 Q When he took his jersey off, did he have a gun?

9 A No, sir.

10 Q Who was the first person that presented a gun on the
11 scene on that particular day?

12 A Mr. Mays.

13 Q Mr. Mays.

14 And how did he present that gun?

15 A Like he was about to get down with it.

16 Q Okay. And getting down meaning what?

17 A Start shooting.

18 Q Okay. And, and he cocked the gun?

19 A Yes, sir.

20 Q And he waved the gun?

21 A Yes.

22 Q Thank you. I have no further questions.

23 THE COURT: Redirect, if any.

24 REDIRECT EXAMINATION

25 BY SOLICITOR MCALISTER:

William Henry Jones - Redirect examination
by Solicitor McAlister

249

1 Q Mr. Jones, I think a minute ago you testified that
2 when you saw Zantrell pull the gun that you walked back
3 into Mike Walker's yard?

4 A Yeah.

5 Q Did you run?

6 A I didn't run until after they started shooting.

7 Q When did you, when did you run?

8 A I walked out of the yard at a fast pace and I stopped
9 and looked back. When the other gun came out I started
10 running.

11 Q But you didn't lay down?

12 A No.

13 Q You didn't get down?

14 A No.

15 Q Did you run when Mr. Smalls grabbed a gun?

16 A Yeah.

17 Q Why did you run then?

18 A Because two guns make a shoot out.

19 THE COURT: All right. I'm telling, y'all. If I hear
20 another laugh, you're out of here. This is serious stuff.
21 If you think it's funny, get out.

22 Q Now, you also just testified that Zantell Mays was
23 waving the gun around like he's about to do something?

24 A Right.

25 Q Did he ever point the gun?

William Henry Jones - Redirect examination
by Solicitor McAlister

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1 A I didn't see him point the gun.

2 Q You didn't see him point the gun?

3 A No.

4 Q You just testified and we clarified in your statement
5 you said he didn't point the gun?

6 A I said I didn't see and that's what I said right now.
7 I said I didn't see him point the gun.

8 Q Okay. That's fine. Thank you.

9 This is going back to another matter.

10 What do you go by?

11 A Spanky.

12 SOLICITOR MCALISTER: No further questions, Your
13 Honor.

14 THE COURT: All right. You may step down, Mr. Jones.
15 You're free to go.

16 Hold on, hold.

17 Everybody okay?

18 SOLICITOR MILLER: Your Honor, this will be a good
19 place for us to stop. The next one is going to be a little
20 longer.

21 THE COURT: We'll go 'til the jury raises their hand
22 and we'll stop.

23 SOLICITOR MILLER: Okay. State calls Carlen Thomas.

24 THE COURT: Come around please.

25 CARLEN THOMAS, after being duly sworn,

Carlen Thomas - Direct examination
by Solicitor Miller

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1 testified as follows:

2 THE COURT: Mr. Thomas, if you'll have a seat right up
3 there and please speak distinctly and loud into the mic.

4 THE CLERK: State your name for the record please.

5 THE WITNESS: Carlen Thomas.

6 DIRECT EXAMINATION

7 BY SOLICITOR MILLER:

8 Q Mr. Thomas, how old are you?

9 A Thirty-nine.

10 Q And where are you from?

11 A Blackville.

12 Q And where do you live now?

13 A In Orangeburg.

14 Q How long have you lived in Orangeburg?

15 A About a year and a few months.

16 Q And why did you move?

17 A Because of this whole situation. I'm trying to
18 change my life, stay away from the wrong people.

19 Q Mr. Thomas, do you recall the day of August 20th,
20 2009?

21 A Yes, I do.

22 Q Why do you remember that day?

23 A I, I consider it one of the worst things that happen
24 in my life from having -- I'm having a terrible time
25 dealing with this right now.

Carlen Thomas - Direct examination
by Solicitor Miller

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1 Q What happened that day?

2 A Terrance, Terrance got killed.

3 Q And where were you that morning?

4 A I was at home.

5 Q Okay. What were you doing at your house?

6 A I was laying around in the bed and just sitting
7 around the house because I had over did it the night
8 before with drinking and this and that and I had a
9 hangover I guess. So, I was just trying to lay around and
10 get some rest.

11 Q At some point did you leave your house?

12 A Yeah, I left.

13 Q And why did you leave your house?

14 A Because some friends of mine was up the road at a, at
15 a house where we hang out at and somebody called me on the
16 phone and asked me to come up there because they was
17 drinking and things. So, that's why, that's why I went up
18 there.

19 Q Do you recall who it was that called you?

20 A I think it was Skip.

21 Q Okay. And how did you get over there?

22 A A guy name Cape Daddy came and picked me up.

23 THE COURT: What's his name?

24 THE WITNESS: That's, that's not his real name. They
25 call him Cape Daddy.

Carlen Thomas - Direct examination
by Solicitor Miller

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1 THE COURT: C-A-P-E Daddy?

2 THE WITNESS: Yes, sir.

3 Q And do you know who Cape Daddy's real name is?

4 A Actually I don't.

5 Q Okay. Was anybody else in the car?

6 A No, just me and him.

7 Q And where did you go from there?

8 A From my house we went up the road to Tiffany Haynes'
9 house.

10 Q Do you recall what time it was?

11 A Actually no.

12 Q Was it in the morning time or was it in the early
13 afternoon or late afternoon if you know?

14 A I'm not sure. I would have to say the afternoon.

15 Q Okay. When you got to Mike Walker's house and Tip's
16 house, that area, how many people were over there?

17 A I'm guessing about ten people.

18 Q Okay. And everybody was already there?

19 A Yeah.

20 Q Okay. Was the defendant, Mr. Smalls, over at the
21 house when you got there?

22 A Yes, sir.

23 Q And how do you know the defendant?

24 A Just from living in Blackville and interacting with
25 people, and I hung out with him a few times and this and

Carlen Thomas - Direct examination
by Solicitor Miller

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1 that.

2 Q Okay. Do you and the defendant get along with each
3 other?

4 A We do.

5 Q Ever have any problems with him?

6 A Actually, no. I can't recall any problems.

7 Q Okay. How about the victim, Terrance Mays, do you
8 know him?

9 A Yes.

10 Q And how did you know him?

11 A Just from being around him and seeing him in the
12 streets in Blackville.

13 Q And y'all got -- did you get along with him?

14 A Yeah.

15 Q Never had any problems with him?

16 A No, sir.

17 Q So, after you get over to the house, get over to the
18 house, what were y'all doing?

19 A It was just sitting around drinking beers and gin and
20 talking and laughing. That was about it.

21 Q Okay. Did any of the people leave to go to the store
22 to get beer?

23 A Yeah, I guess they was running out of beer or whatever
24 or liquor, and they was making a run to get some more.

25 Q So, who -- do you recall if the defendant was one of

Carlen Thomas - Direct examination
by Solicitor Miller

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1 the people that left on the beer run?

2 A No, I don't think so.

3 Q Okay. Were you drinking that day?

4 A No, sir.

5 Q Was everybody else drinking that day?

6 A Yes, sir.

7 Q When everybody left to make the beer run, you didn't
8 go though, did you?

9 A Actually I got in the car to go, but I got back out
10 for some reason. It was the worst mistake of my life I
11 guess.

12 Q So, you said you went over to Tip Haynes' house.

13 where were you at Tip Haynes' house?

14 Were you inside of the house?

15 A No, sir, I was in the yard.

16 Q Okay. And where in the yard were you?

17 A Right in the back. It's like her yard and her
18 neighbor's yard is like -- it's a spot in the back where we
19 all sit around and just chill out sometimes, drink beer, and
20 talk and stuff like that.

21 Q Okay. Do you know who the neighbor is?

22 Do you know his name?

23 A Mike Walker.

24 Q Okay. So, you're in the yard in-between Mike
25 Walker's house and Tiffany Haynes' house?

Carlen Thomas - Direct examination
by Solicitor Miller

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1 A Yes, sir.

2 Q Drinking and hanging out where everybody normally
3 drinks and hangs out, correct?

4 A Yes, sir.

5 Q Okay. Had you been there before?

6 A Yeah.

7 Q What was the first time that, that evening or that
8 afternoon when you saw Terrance Mays?

9 A I saw Terrance when a car pulled up in the yard and
10 he jumped out.

11 Q Who was with him?

12 A Two of his brothers and a sister of his I think.

13 Q I'm sorry?

14 A Two of his brothers and his sister.

15 Q Okay. Do you know their name?

16 A I think his name is Zantrell. I ain't sure of the
17 younger one. I don't really, I don't really know his
18 name. I don't know the female. I don't know her name
19 either.

20 Q Okay. What happens when they pulled up at Tiffany's
21 house?

22 A T'Mack jumped out the car and he said I'm tired of
23 you -- it's all right if I curse and say exactly what he
24 said?

25 THE COURT: Say exactly what he said.

Carlen Thomas - Direct examination
by Solicitor Miller

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1 THE WITNESS: He said I'm tired of you fucking with my
2 brother and now you got to fuck with me. That's what I
3 recall him saying.

4 Q And did they -- did he begin to fight with the
5 defendant?

6 A Not immediately after that. He -- when he pulled in
7 the yard, the stop sign on the corner by the house is
8 where they pulled up at. So, he had to walk from the car
9 to over where D. Smalls was.

10 Q All right. So, did he ultimately get into a fight
11 with the defendant?

12 A Yes.

13 Q Was it a fist fight?

14 A Yes.

15 Q No guns, no knives?

16 A No guns. Nothing like that.

17 Q Anybody else intervene, trying to break them up?

18 A After a while. After they fought for a few minutes.

19 Q All right. Who won the fight?

20 A I'd have to say Terrance won.

21 Q And why do you say he won?

22 A Because, as I can remember, D., his nose and his
23 mouth was bleeding a little bit.

24 Q Okay. What did Terrance do after the fight was over?

25 A He was ready to go. I saw him going over towards the

1 car.

2 Q And you said the car was over by the stop sign at the
3 corner of the, Legion and Clover, and Clover?

4 A Yes, sir.

5 Q Okay. What did the defendant do whenever Terrance
6 began walking towards the car?

7 A He got into an argument with Zantrell.

8 Q Okay. Was that immediately?

9 I mean was or was -- did it take a few seconds for
10 him to start arguing with Zantrell?

11 A It was a few seconds.

12 Q And did the defendant say anything to anybody besides
13 Zantrell?

14 Was he arguing with everybody on that side or was he
15 just arguing with Zantrell?

16 A I ain't sure if he was arguing with other people. I
17 know him and Zantrell was arguing.

18 Q They were talking?

19 A Yeah.

20 Q Did there how far -- how -- were they close to each
21 other, yelling at each other?

22 They're jawing back and forth?

23 A Yeah.

24 Q Were they like you and me, this, this distance apart?
25 Were they closer than that, further away than that?

Carlen Thomas - Direct examination
by Solicitor Miller

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1 A It was closer.

2 Q Okay. So, they're closer to each other and they're
3 talking. I say talking. They're arguing with each other,
4 talking trash to each other --

5 A Yeah.

6 Q -- at that point, is that correct?

7 A Yes, sir.

8 Q Okay. How close were they?

9 I mean this is Zantrell and this is the defendant,
10 Demetrius Smalls.

11 Were they this close to each other?

12 A A little closer.

13 Q Okay. So, they're pretty well toe to toe and they're
14 talking to each other, right?

15 A Yeah.

16 Q Were any punches thrown?

17 A No, no punches, but Zantrell did put his hand in his
18 face and he slapped his hand down twice. The first time
19 they was arguing and he put his hand in his face and he
20 slapped it down, then he started arguing again, and then
21 he put his hand in his face again and he slapped it down
22 again.

23 Q Okay. So, they're arguing with each other and
24 Zantrell puts his hand in his face. They're close to each
25 other and here goes the slapping the hands down, slap the

1 hands down.

2 what does Zantrell do after the defendant slapped his
3 hand away the second time?

4 A He pulled the pistol out and cocked it back.

5 Q Can you describe the gun?

6 what color was it?

7 A If I can recall correctly it was chrome. I ain't, I
8 ain't really sure I mean about the handle or whatever, but
9 I can recall seeing some chrome.

10 Q Well, Zantrell had the gun in his hand, right?

11 A Uh-huh. (Affirmative).

12 Q Okay. So, you wouldn't be able to see the handle?

13 A Huh-uh. (Negative).

14 Q But you say what you could see of the gun it was
15 chrome?

16 A It was chrome.

17 Q Okay. Was it a big gun?

18 A Medium sized gun.

19 Q Okay. Any idea what caliber it would be?

20 A Not from, not from just looking at it, no.

21 Q Okay. Semiautomatic pistol or a revolver?

22 A A semiautomatic.

23 Q Now, when he pulled -- you say Zantrell pulled the
24 gun out, what did he do with the gun when he pulled it
25 out?

Carlen Thomas - Direct examination
by Solicitor Miller

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1 A He just held it down at his waist like straight down
2 at the ground by his leg.

3 Q Okay.

4 A At the time that he pulled it out, the -- I heard, I
5 hear -- I can remember hearing some people say no, don't
6 get no guns involved in this and that. So, they circled
7 around him and he just kept it pointed at the ground.

8 Q Okay. So, they're close to each other, and I'm not
9 trying to get in your space. I'm trying to make sure that
10 we understand this.

11 They're close to each other, and there's some jawing
12 back and forth, and the hands get slapped down, and he
13 pulls out the gun and he's holding the gun by his side?

14 A Uh-huh. (Affirmative).

15 Q Now, at that point in time you said they surrounded
16 him.

17 Who surrounded him?

18 A Some females. I can remember -- I think it was
19 Tiffany Haynes and a couple of other people if I'm, if I'm
20 correct. They, they basically they just got around him
21 and told him don't, don't bring guns out.

22 THE COURT: Got around Zantrell or got around the
23 defendant?

24 THE WITNESS: Zantrell.

25 Q Okay. So, they surround Zantrell.

Carlen Thomas - Direct examination
by Solicitor Miller

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1 Did they start pushing him away?

2 Did they start backing him up?

3 A Actually they did move a little bit.

4 Q Okay. Well, what about the defendant?

5 If Zantrell's being pushed away by these people
6 crowding in and trying to move him away, what did the
7 defendant do?

8 A Well, I was standing behind him and he came over in
9 my direction.

10 Q All right. How far behind him were you standing and
11 you don't have to guess at a number.

12 I mean, you can tell me, was it two steps, was it one
13 step, were you touching his back with your chest?

14 A No, I was---

15 Q Okay.

16 A It was maybe five, four or five feet I'm guessing.

17 Q Okay. So, you're a couple of feet behind the
18 defendant?

19 A Uh-huh. (Affirmative).

20 Q Zantrell's getting led away, cut off from the
21 defendant?

22 A Uh-huh. (Affirmative).

23 Q Could you see what Zantrell did with the gun at that
24 point?

25 A I just remember him having it in his hand down by his

Carlen Thomas - Direct examination
by solicitor Miller

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1 leg.

2 Q All right. Did you ever see him point it at anybody?

3 A No, sir.

4 Q Did you see him waving it around wildly?

5 A No, sir.

6 Q Okay. So, as Zantrell's getting led away, what did
7 the defendant do?

8 A Like I said, he came over where, where I was standing
9 behind.

10 Q Did you have a gun on you?

11 A Yes, sir.

12 Q What kind of gun?

13 A .380.

14 Q Did you draw your gun?

15 A No, sir.

16 Q Okay. So, you're four or five feet behind the
17 defendant --

18 A Uh-huh. (Affirmative).

19 Q -- who's in an obvious altercation with a guy who
20 just pulled a gun --

21 A Uh-huh. (Affirmative).

22 Q -- but you didn't feel the need to draw your gun?

23 A No, sir, because he wasn't pointing.

24 Q I'm gonna show you what's been previously marked --
25 or excuse. I'm gonna show you what's been previously

1 entered as State's Exhibit No. 3.

2 Can you identify that gun?

3 A That's my gun.

4 Q Okay. This is your gun?

5 A Yeah.

6 Q Is this the .380 you had on you that night?

7 A Uh-huh. (Affirmative.)

8 Q How many bullets were in the gun?

9 A I may need to look at it again. I can remember some,
10 some marks that it had on it.

11 Q And it'll have some new ones because the SLED people
12 engraved some stuff on it, too.

13 A Yeah. Yeah, this is it.

14 Q Okay. Now, how many bullets were in the gun?

15 Do you remember?

16 A Like maybe -- I think maybe seven, six or seven
17 bullets.

18 Q You think there were six or seven bullets in the gun.

19 Now, when the defendant turns around and comes up
20 four or five feet to you, what does he ask you?

21 A Did I have my pistol on me.

22 Q And what did you tell him?

23 A I told him yeah.

24 Q Okay. Did he ask you if he could hold it?

25 A Actually no.

Carlen Thomas - Direct examination
by Solicitor Miller

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- 1 Q What did he do?
- 2 A He just grabbed it.
- 3 Q Okay. Where was your gun?
- 4 A On my hip.
- 5 Q It was on your hip?
- 6 A Uh-huh. (Affirmative).
- 7 Q Okay. In a holster?
- 8 A No, sir.
- 9 Q Okay. Just stuck in your pants?
- 10 A Uh-huh. (Affirmative).
- 11 Q Could you see it or did you have to lift up your
- 12 shirt or open your coat?
- 13 A Yeah, I had to lift my shirt up.
- 14 Q Did you lift up your shirt?
- 15 A Yes, sir.
- 16 Q And when you lifted up your shirt, it's your
- 17 testimony that the defendant reached over and grabbed the
- 18 gun?
- 19 A Yes, sir.
- 20 Q What did the defendant do after he took the pistol
- 21 from you?
- 22 A He cocked it back and commenced to shooting.
- 23 Q Okay. Was there one in the chamber?
- 24 A No, sir.
- 25 Q Okay. So, he racks the slide to put one in the

Carlen Thomas - Direct examination
by Solicitor Miller

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1 chamber and he starts shooting?

2 A Yes, sir.

3 Q Who did he shoot first?

4 A Terrance.

5 Q Okay. Who did he shoot next?

6 A Zantrell.

7 Q Well, let me ask you this. The defendant gets the
8 gun from you and he cocks it and he turns around and
9 starts shooting.

10 Does he stand there and shoots like this or is he
11 moving?

12 A He was moving around a little bit.

13 Q Okay. Was he running away shooting like this?

14 A No, sir.

15 Q Was he walking towards them?

16 How was he shooting?

17 How was he moving when he was shooting?

18 A I would have to say from side-to-side maybe. He
19 wasn't, he wasn't really going towards him and he wasn't
20 trying to retreat or nothing like that.

21 Q Okay. So, he's shooting like this?

22 A Uh-huh. (Affirmative).

23 THE COURT: Mr. Thomas, how about do me a favor?

24 You have to say yes or no.

25 THE WITNESS: Okay.

Carlen Thomas - Direct examination
by Solicitor Miller

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1 THE COURT: We're taking all of this down.

2 THE WITNESS: Okay.

3 Q So, do you recall how many shots were fired out of
4 your gun that night by the defendant?

5 A All of them.

6 Q All of them.

7 And what did he do after he fired all of the shots?

8 A He turned around and I was behind him, a few steps
9 behind him and he dropped the gun I think on a bucket or
10 either the ground and he just took off running.

11 Q Let me ask you a question about this gun if you know.

12 If this gun's got a magazine in it and it's loaded,
13 then obviously the slide on the gun is forward?

14 A Uh-huh. (Affirmative).

15 Q When you empty this gun, there's no more bullets in
16 it, does the slide lock to the rear like that?

17 A Sometimes. That's a cheap gun. So, sometimes it'll
18 lock back and sometimes it won't.

19 Q Well, did it lock to the rear that day?

20 Is that how you knew he had emptied the gun because
21 the slide locked to the rear?

22 A I ain't, I ain't too sure about that.

23 Q Okay. I beg the Court's indulgence for one moment
24 please.

25 (Pause.)

Carlen Thomas - Direct examination
by Solicitor Miller

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1 Q So, the defendant shoots, drops the gun and runs, what
2 did you do?

3 A I panicked because of the situation. I ain't never
4 seen nothing like that before. I never been involved in
5 nothing like that. So, I panic and I picked it up and
6 then I took off running.

7 Q Okay. Where did you run?

8 A Down the street. I ain't sure of the name of the
9 street or nothing like that, but it was right down the
10 street in the yard where an abandoned trailer was at.

11 Q Okay. And what did you do in that yard?

12 A Actually I stood there talking with my cousin.

13 Q Which cousin was this?

14 A Spanky, William Henry Jones.

15 Q Okay.

16 A Because me and him ran off together and we just stood
17 there talking for a couple of seconds like we couldn't
18 believe what we just saw, what happened.

19 Q Okay. So, what did you do next?

20 What did you do with the gun?

21 A Cause I ain't want to get caught with that, I threw
22 it under the trailer and we left.

23 Q So, you threw the gun under the abandoned trailer and
24 you take off, but ultimately Agent Harley with SLED caught
25 up to you and started talking to you about this, didn't

Carlen Thomas - Direct examination
by Solicitor Miller

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1 he?

2 A Yes, sir. Yes, sir. I'm sorry.

3 THE COURT: Thank you.

4 Q Okay. And when he caught up to you and started
5 talking to you about this, had you talked to the defendant
6 about what he had told them or had you talked to the
7 defendant about what he had told the police?

8 A No, sir.

9 Q Okay. What night did you give your first statement
10 to law enforcement?

11 Do you remember?

12 A I don't remember the date, the exact date on that.

13 Q Was it the night of the incident or was it a couple
14 of days later?

15 A It was some days later.

16 Q Okay. And when you initially gave your statement to
17 the police, you didn't tell them that it was your gun that
18 was used by the defendant to shoot Terrance Mays and
19 Zantell Mays, did you?

20 A No, sir, I don't think so.

21 Q Okay. In fact, I can show you your statement if you
22 don't recall.

23 In fact, I'll ask you is this a copy of the statement
24 that you gave to Agent Harley and it says it's September
25 the 25th. So, that would have been five days later.

1 Is that the first statement you gave?

2 A Yes, sir.

3 Q Okay. Let me point you down here. Then I saw D. go
4 over close to them and they, Tiffany and T'Mack, younger
5 brother---

6 THE COURT: September 25th or August 25th?

7 SOLICITOR MILLER: August 25th. I'm sorry, Your Honor.

8 They were still closest to Zantrell. Him and D. got
9 into a small scuffle and the next thing I know D. was
10 shooting at them. You don't say how the defendant got the
11 gun.

12 A No, sir.

13 Q And then later on you gave a statement to Agent
14 Harley on September 24th and in the statement, September
15 24th, you admitted for the first time, did you not, that
16 you had given the pistol to the defendant?

17 A Yes, sir.

18 Q So, the 24th of September was the first time you were
19 told that it was your pistol that had been used?

20 A Yes, sir.

21 Q Okay. And then on September the 25th you gave
22 another statement, and in that statement you again said
23 that you had done that.

24 Was anybody discouraging you from talking to the
25 police?

Carlen Thomas - Direct examination
by Solicitor Miller

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1 Was anybody telling you not to talk to the police,
2 not to cooperate?

3 A Yes, sir.

4 Q Who was telling you not to cooperate?

5 A I remember Boo Walker telling me, Mike Walker, I
6 remember him telling me not to talk to the police about
7 the, you know, the situation because he was saying they
8 were, was going to arrest me for accessory to murder. So,
9 he told me not to talk to them, but how I was feeling
10 about it was I didn't want to live that type of life
11 trying to duck a crime or be a fugitive or nothing like
12 that. So, I called, I called Agent Harley and told him
13 that I was coming to talk to him.

14 Q And when you went and talked to him, you did get
15 arrested, didn't you?

16 A Yes, sir.

17 Q What did you get arrested for?

18 A Accessory before the fact of murder.

19 Q And why did you get -- what is your understanding of
20 why you were arrested for accessory before the fact of
21 murder?

22 A Well---

23 Q What did you do to be an accessory before the fact to
24 a murder?

25 A He got the gun from me.

Carlen Thomas - Direct examination
by Solicitor Miller

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1 Q Okay. You gave him the gun.

2 So, you're looking at a lot of time by getting up
3 here and admitting on the stand under oath that you did
4 exactly what you're charged with doing, aren't you?

5 A Yes, sir.

6 Q Has any promises been made to you by our office?

7 A No, sir.

8 Q Have we told you that you're gonna get a certain
9 amount of time or you're gonna get probation or have we
10 told you that you're gonna have charges dismissed?

11 Has any promises been made to you related to your
12 testimony?

13 A No, sir.

14 Q And have you talked with your lawyer --

15 A Yes, sir.

16 Q -- about your testimony here today?

17 A Yes, sir.

18 Q And what did your lawyer advise you about your
19 testimony today?

20 What did she tell you?

21 A To tell the truth.

22 Q Thank you.

23 No further questions, Your Honor.

24 THE COURT: Mr. Koger, let's hold on a second.

25 Let's take a break, bathroom break. Let's take about a

Carlen Thomas - Direct examination
by Solicitor Miller

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1 15 minute break, and then we'll go until about 12:30, and
2 then I'll arrange to get you down to Vince's. We'll work
3 out some way and probably leave about 12:30. Do not discuss
4 the case. Don't start the deliberations.

5 Everybody else remain seated.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 THE COURT: Mr. Thomas, you're in the middle of your
9 testimony. So, it would be improper, while we take a break,
10 to discuss it with anybody including Mr. Miller, Mr. Koger,
11 anybody. You can go take you a bathroom break, be back with
12 you, and we'll be ready to go. Be ready to come back in
13 about ten minutes. We'll finish you up.

14 Okay?

15 THE WITNESS: All right, sir.

16 THE COURT: All right. We'll stand at ease for about
17 ten minutes.

18 SOLICITOR MILLER: Thank you, Your Honor.

19 (WHEREUPON, a short recess was taken at this time.)

20 THE COURT: Anything from the State before we proceed?

21 SOLICITOR MILLER: Nothing, Your Honor.

22 THE COURT: Mr. Koger?

23 MR. KOGER: Nothing from the defense, Your Honor.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

Carlen Thomas - Cross-examination
by Mr. Koger

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1 THE COURT: Mr. Koger.

2 MR. KOGER: May it please the Court.

3 CROSS-EXAMINATION

4 BY MR. KOGER:

5 Q Mr. Thomas, you testified that you was with
6 Mr. Smalls earlier in the day, correct?

7 A Earlier in the day?

8 Q Yeah, yeah, I mean, I mean y'all was together
9 socializing, drinking, correct?

10 A Yeah, in the yard.

11 Q In the yard.

12 And how long were you together, were you together
13 with Mr. Smalls and the other, and the other people?

14 A Actually I wasn't with him. I was in the yard, but I
15 was there for maybe 20, 30 minutes.

16 Q Okay. With him, correct?

17 A Not with him. In the yard.

18 Q Other people?

19 A Yeah.

20 Q In his presence?

21 A Yeah.

22 Q Correct?

23 A Yeah.

24 Q At any time did his shirt come off -- did he take off
25 his shirt when you was in his presence?

Carlen Thomas - Cross-examination
by Mr. Koger

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1 A Yeah.

2 Q Okay. And you was, you was able to see his chest and
3 everything, correct?

4 A I ain't sure. I can't recall if he had a tank top on
5 or, or what. I don't, I don't remember.

6 Q Okay. To the best of your recollection, did he have
7 a gun at that particular time?

8 A No.

9 Q Okay. Didn't have a gun.

10 Okay. Now, let's go near to the time of the incident
11 here. Now, you say that Zantrell, and I'm just, I'm just
12 going over what you stated with solicitor Miller as far as
13 the distance between the two.

14 A Uh-huh. (Affirmative).

15 Q You say that they was maybe about this close right
16 here, correct?

17 A Him and D. Smalls?

18 Q Yeah, Zantrell Mays and D. Smalls.

19 A Uh-huh. (Affirmative).

20 Q Okay. And you testified to Zantrell pulling out a
21 gun, correct?

22 A Uh-huh. Yes, sir. Yes, sir, I'm sorry.

23 Q Pulling out a gun?

24 A Right.

25 Q And what color was that gun again?

Carlen Thomas - Cross-examination
by Mr. Koger

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1 A If I recall it was chrome. I remember seeing some
2 chrome on it.

3 Q Okay. And you testified to Zantrell, correct me if
4 I'm wrong, slapping down Mr. Smalls hands twice, correct?

5 A Yes.

6 Q And then he pulled out a gun?

7 A Yes.

8 Q And he pulled a gun out at this distance with
9 Mr. Smalls, correct?

10 A Yes.

11 Q Okay. And I think you say that he cocked it?

12 A Uh-huh. (Affirmative).

13 THE COURT: Yes or no?

14 THE WITNESS: Yes, sir.

15 Q You're, you're absolutely sure that he cocked the
16 gun?

17 A Yes.

18 Q So, so, again, these two, Mr. Mays and Mr. Smalls,
19 are they close?

20 A Uh-huh. Yes, sir.

21 Q He, he pulled out a gun, correct?

22 A Yes.

23 Q And he cocked it?

24 A Yes.

25 Q And since you have experience with guns because you

Carlen Thomas - Cross-examination
by Mr. Koger

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1 testified somewhat that you know a little bit about guns,
2 what does it mean if someone by, if someone cocked a gun?

3 A In my experience, I seen a bunch of different
4 situations where sometimes people cock guns and they shoot
5 at people and sometimes they just pull them out. They try
6 to be hard and intimidate people.

7 Q But isn't it true that cocking the gun brings it
8 closer to the gun triggering?

9 A Yes.

10 Q Okay. All right. And what does cocking a gun mean?
11 If someone cocking a gun in front of you at this
12 distance, how would you feel?

13 How would it make you feel?

14 A I'd be uncomfortable.

15 Q You'd be, you'd be uncomfortable?

16 A Yeah.

17 Q Or would you be in fear for your life?

18 A It depends on the situation and why they cocking it
back.

19 Q On that day when he cocked, when Zantrell cocked the
20 gun, how did it make you feel?

21 A I didn't feel intimidated or scared or nothing. I
22 mean I did -- I, I thought about it, you know what I'm
23 saying, I could of got shot or whatever if he started
24 shooting, but because he ain't point it at nobody, I
25 didn't feel the need to try to protect myself or run or

Carlen Thomas - Cross-examination
by Mr. Koger

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1 nothing like that.

2 Q Okay. So, you -- are you not fearful on that
3 particular day when Zantrell cocked the gun?

4 A Was I not fearful?

5 Q Right.

6 A It was a little fear, but it wasn't nothing major
7 where I was going to take off running or nothing.

8 Q Why was it a little fear?

9 A Because it's another person with a gun and it ain't
10 me and I don't know how they gonna react or what type of
11 actions they're going to take.

12 Q Would it make a difference if Zantrell had of pulled
13 it out and not cocked the gun as opposed to cocking the
14 gun?

15 A Would it make a difference?

16 Q Yeah.

17 A Yeah.

18 Q Okay. And why would it make a difference?

19 A Either way, pulling out a gun is, is -- it
20 intimidates people.

21 Q That's serious business?

22 A Yeah.

23 Q Cause if someone pull out a gun -- you never pull out
24 a gun unless you intend to use it, correct?

25 A Like I said, in my experience I've seen people pull

Carlen Thomas - Cross-examination
by Mr. Koger

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1 out guns and don't use them. They just try to intimidate
2 people.

3 Q But also in your experience you've seen people pull
4 out guns and use them?

5 A Actually, no, cause this is the first time I ever
6 seen anything like this in my life.

7 Q Well, you had a gun on you?

8 A Yeah.

9 Q Do you pull out guns?

10 A No, I don't.

11 Q Well, why do you carry a gun?

12 A Just for protection.

13 Q Do you have a concealed weapon permit?

14 A No, I don't.

15 Q Okay. Well, what type of protection do you need?

16 A What type of protection do I need?

17 Q Yeah, since you carry a gun.

18 A What you mean what type of protection?

19 Q Yeah, you say you carry a gun for protection.

20 Why do you carry a gun?

21 I mean what type of protection do you need?

22 A I mean I carry a gun cause fighting and all that,
23 that ain't me. I'm disabled right now and I be in a lot
24 of situations around a lot of different people where
25 anything can happen. So, that's my -- I know it ain't no

Carlen Thomas - Cross-examination
by Mr. Koger

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1 excuse or no good reason, but that's my reason for toting
2 a gun.

3 Q would you, would you, would you ever initiate using a
4 gun against someone, I mean just use a gun?

5 A No.

6 Q would you use a gun in self-defense?

7 A I would.

8 Q Okay. Now, you already have testified to this here,
9 but let me let you identify this statement again on
10 September 24th, 2009.

11 Is that your signature at the bottom of that
12 document?

13 A Yes.

14 Q And do you recognize giving that statement?

15 I think that's one to, to SLED, correct, Agent
16 Harley?

17 A Yeah.

18 Q Correct?

19 A Uh-huh. (Affirmative).

20 Q And that was given September---

21 A Sorry, yes. I was trying to answer the question
22 without saying---

23 Q I'm sorry. Go ahead. Go ahead. Take your time and
24 check the information out for me.

25 A Yes, this is my statement.

Carlen Thomas - Cross-examination
by Mr. Koger

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1 Q Okay. Now, you stated in the first part of the
2 statement what you testified to today, but can you go to
3 the second paragraph right here. Start from the word --
4 and this is your handwriting, correct?

5 A Uh-huh. (Affirmative).

6 Q Start from the word before right here and read that
7 for the Court.

8 A Before he came over by me D. Smalls and Zantrell
9 started arguing. D. Smalls moved closer to Zantrell and
10 they were arguing. Zantrell then put his hand in the face
11 of D. Smalls and D. Smalls slapped his hand down once. He
12 then raised his hand again in the face of Smalls and
13 Smalls slapped his hand again. At that time Zantrell
14 pulled out a gray pistol and cocked it back. When I saw
15 that, I was in fear that I could possibly get shot. So, I
16 backed up.

17 Q So, even on that particular day, according to your
18 statement, on September 24th, 2009, you was in fear when
19 Zantrell Mays pulled his gun, correct?

20 A Somewhat, a little. Yeah, but not enough to be like
21 I'm thinking he gonna shoot me or kill me or nothing cause
22 he didn't point it at me and I didn't have no problem with
23 him.

24 Q Can you read that last sentence one more time?

25 A When I saw that I was in fear that I could possibly

Carlen Thomas - Cross-examination
by Mr. Koger

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1 be shot. So, I backed up.

2 Q Thank you.

3 And this is your true statement---

4 A Yeah.

5 Q ---and correct statement?

6 A That was my true statement.

7 Q Okay.

8 A But even though I backed up I still could have got shot.

9 Q And you identified once again -- you, you identified,
10 as I think, a chrome pistol?

11 A Uh-huh. (Affirmative).

12 Q And you absolutely---

13 A Yes, sir. Yes, sir, I'm sorry.

14 Q And you're absolutely positively sure that Zantell,
15 that Zantrell Mays cocked the gun at this distance between
16 he and Mr. Smalls?

17 A I'm pretty sure about that.

18 Q Are you sure, yes or no?

19 A Yes.

20 Q Thank you. No further questions.

21 THE COURT: Redirect, if any.

22 REDIRECT EXAMINATION

23 BY SOLICITOR MILLER:

24 Q Mr. Thomas, you testified, when we were talking
25 before, you were four or five feet behind the defendant

Carlen Thomas - Redirect examination
by Solicitor Miller

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1 whenever Zantrell Mays pulled out the gun, and in your
2 statement that Mr. Koger just had you read, you said you
3 were a little afraid, so you started backing up?

4 A Uh-huh. Yes, sir.

5 Q When the gun came out?

6 THE WITNESS: I'm sorry.

7 THE COURT: It's okay. A lot of people have a hard
8 time with that.

9 Q Okay. So, you start off four or five feet behind
10 him. The gun comes out, you back up.

11 How far did he have to come to you whenever he turned
12 around to come get that gun off of you?

13 A He had to take a few steps.

14 Q You never felt the need to pull out your gun?

15 A No, sir.

16 Q Zantrell Mays had a gun that day.

17 You saw that gun, didn't you?

18 A Yes, sir.

19 Q Did you ever see Terrance Mays with a gun?

20 A No, sir.

21 Q Thank you.

22 No further questions, Your Honor.

23 THE COURT: All right. Mr. Thomas, thank you.

24 You are released from his subpoena, fellows?

25 SOLICITOR MILLER: As far as the State, Your Honor,

Christopher Brooks - Direct examination
by Solicitor McAlister

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1 we're fine with that.

2 MR. KOGER: Yes, sir, Your Honor. He's released from
3 his subpoena.

4 THE COURT: All right. Thank you. Go back to
5 Orangeburg.

6 Next witness.

7 SOLICITOR McALISTER: The State calls Christopher
8 Brooks.

9 CHRISTOPHER BROOKS, after being duly
10 sworn, testified as follows:

11 THE CLERK: Have a seat and state your name for the
12 record
13 please.

14 THE WITNESS: Christopher Brooks.

15 THE COURT: Christopher Brooks?

16 THE WITNESS: Yes, sir.

17 THE COURT: B-R-O-O-K-S?

18 THE WITNESS: Yes, sir.

19 THE COURT: You got a nickname.

20 THE WITNESS: Brooks.

21 THE CLERK: Brooks?

22 THE WITNESS: Yes, sir.

23 DIRECT EXAMINATION

24 BY SOLICITOR McALISTER:

25 Q Chris, how old are you?

A Twenty-one.

Christopher Brooks - Direct examination
by Solicitor McAlister

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- 1 THE COURT: Speak up for me please.
- 2 Q And where are you from?
- 3 A From Blackville.
- 4 Q Where do you live now?
- 5 A Sunshine Road.
- 6 Q Is that in Blackville, South Carolina?
- 7 A In Blackville.
- 8 Q How long have you lived there?
- 9 A About three years.
- 10 Q Okay. Do you recall the day of August 20th, 2009?
- 11 A Yes, sir.
- 12 Q And why do you remember that day?
- 13 A When Terrance got shot.
- 14 THE COURT: Speak up for me louder.
- 15 Q Let's go back to that day, August 20th, 2009.
- 16 What were you doing that day?
- 17 A Me and Terrance went to Aiken.
- 18 Q And what were you doing in Aiken?
- 19 A We went to the recruiter, Army recruiter.
- 20 Q US Army?
- 21 A Uh-huh. (Affirmative).
- 22 Q Were you looking at signing up?
- 23 A Yes, sir.
- 24 Q Did you leave Aiken or what time did you leave Aiken?
- 25 A It was about 3:00.

Christopher Brooks - Direct examination
by Solicitor McAlister

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- 1 Q Just you and Terrance?
- 2 A Yes, sir.
- 3 Q And where did you go after that?
- 4 A Came back to Blackville and stopped by Tiffany's
- 5 house.
- 6 Q Was anyone else in the car?
- 7 A No, sir.
- 8 Q Did Terrance get out?
- 9 A Yes, sir.
- 10 Q What did he do?
- 11 A He got out and he was talking to somebody. I don't
- 12 remember who.
- 13 Q Were there other people in the yard?
- 14 A Yes, sir.
- 15 Q What did Terrance do after that?
- 16 A He got back in the car.
- 17 Q And where did y'all go?
- 18 A We left and I took him to Dominick's house.
- 19 Q Where is Dominick's house?
- 20 A On the hill.
- 21 Q Did you leave him there?
- 22 A Yes, sir.
- 23 Q Where did you go from there?
- 24 A I went home.
- 25 Q And where was your home?

Christopher Brooks - Direct examination
by Solicitor McAlister

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- 1 A On Oak Street.
- 2 Q Is that on the hill?
- 3 A Kind of.
- 4 Q I mean if you give us a time, how far away?
- 5 A A minute.
- 6 Q After you went home, where did you go after that?
- 7 A I came back to Tip's house.
- 8 THE COURT: Came back where?
- 9 THE WITNESS: Tiffany's house.
- 10 Q Why?
- 11 A Terrance had called me.
- 12 Q When you got there what did you see?
- 13 A Zantrell and D. They was arguing.
- 14 Q Did you see the initial fight?
- 15 A No, sir.
- 16 Q At any point during that day when you were with
- 17 Terrance did he have a gun?
- 18 A I didn't see one.
- 19 Q Did you see one that evening at the, at the fight
- 20 where the shooting occurred?
- 21 A Terrance -- I didn't see one if Terrance had one.
- 22 Q You never saw one in Terrance's hand?
- 23 A No.
- 24 SOLICITOR MCALISTER: We have no further questions
- 25 for the witness at this time.

Christopher Brooks - Cross-examination
by Mr. Koger

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1 THE COURT: Mr. Koger.

2 CROSS-EXAMINATION

3 BY MR. KOGER:

4 Q Mr. Brooks, isn't it entirely possible that if a gun
5 had been in his pocket you wouldn't have seen it?

6 A No, I wouldn't have seen it.

7 Q If the gun had been in his back pocket you wouldn't
8 have seen it, correct?

9 A No.

10 Q He didn't empty his pockets out and show you he had
11 one, correct?

12 A No.

13 Q So, he could of had a gun on him?

14 A Yes.

15 Q Okay. Now, you say that you were going to Aiken to
16 the recruiting office?

17 A Yes, sir.

18 Q Which branch?

19 A Army.

20 Q Army.

21 And I think you might have stated in some prior
22 statements that you was -- it was around three o'clock?

23 A Yes, sir.

24 Q Okay. What time -- did you have an appointment time
25 or were you just going to drop in at that recruiting

Christopher Brooks - Cross-examination
by Mr. Koger

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1 office?

2 A I was just going.

3 Q You was just going to drop in.

4 And did Terrance ride with you?

5 A Yes, sir.

6 Q Now, during the time -- well, let me ask you this.

7 Did y'all leave from Blackville?

8 A Uh-huh. (Affirmative).

9 Q During the time that you was en route to Aiken, did
10 Terrance receive any phone calls?

11 A Not on the way.

12 Q All right. Not on the way?

13 A No.

14 Q He didn't receive any phone calls on the way?

15 A (Witness nods affirmatively.)

16 Q He received some phone calls on the way back?

17 A Yes, sir.

18 Q How many phone calls on the way back?

19 A I can't remember how many.

20 Q Okay. But he received more than one?

21 A Yeah.

22 Q Okay. From you -- and you was driving, correct?

23 A Uh-huh. (Affirmative).

24 Q From you driving and being in the car, what could you
25 gather from the conversation?

Christopher Brooks - Cross-examination
by Mr. Koger

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1 A That when he get back to Blackville he was going to
2 fight.

3 Q He was going to fight.

4 Okay. Who was going to fight?

5 A Terrance.

6 Q Did Terrance give you a reason why he was going to
7 fight?

8 A Yes, sir.

9 Q Okay. And what was that reason?

10 A Because Demetrius had slapped Didi little brother.

11 Q Okay. All right. And do you recall, when y'all were
12 coming back from Aiken, did he have a conversation on the
13 phone with his other brother, Zantrell?

14 A I can't remember.

15 Q You can't remember.

16 Do you recall he had a conversation with his sister,
17 Whitney?

18 A I can't remember.

19 Q But what you can recall is he had a conversation with
20 his brother, Didi?

21 A Didi.

22 Q And he was going to come back to Blackville and fight
23 Demetrius Smalls?

24 A Yes, sir.

25 Q And he, and he indicated that to you or that's what

Christopher Brooks - Cross-examination
by Mr. Koger

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1 you gathered from the conversation?

2 A He said it.

3 Q Huh?

4 A He said it.

5 Q All right. He said it.

6 Okay. Now, you testified to, to going to Tiffany's
7 house the first time, okay, around what time -- that was
8 on the way back from Aiken?

9 A Yes, sir.

10 Q So, so, approximately what time did you arrive the
11 first time at Tiffany's house?

12 A About 3:30, 3:45, something like that.

13 Q Okay. 3:30 or 3:45 and it was just you and Terrance?

14 A Yes.

15 THE COURT: Speak up for me.

16 Q Did Terrance give you any indication of why he wanted
17 to go to Tiffany's house?

18 A No, he ain't never said.

19 Q Okay. And when you took him to Tiffany's house, you
20 stayed in the car?

21 A Yeah, I stayed in the car.

22 Q So, you don't know what transpired?

23 A (Witness nods negatively.)

24 Q Was someone home at Tiffany's house?

25 A Was someone home?

Christopher Brooks - Cross-examination
by Mr. Koger

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1 Q Yes.

2 A Yes, sir.

3 Q Who was home at Tiffany's house?

4 A There was a lot of people there.

5 Q A lot of people.

6 was Tiffany at Tiffany's house during that time?

7 A I don't know.

8 Q But someone, but someone answered the door?

9 A They was outside.

10 Q They was outside.

11 So, some, some people came out of Tiffany's house and
12 talked with Terrance outside?

13 A I don't know.

14 Q You said they was outside.

15 Who was outside?

16 A Short Man, Boo.

17 THE COURT: Speak up sir, please.

18 THE WITNESS: Short Man, Boo, Spanky, Carlen.

19 Q Okay.

20 A It was a couple of people outside.

21 Q Well, let me ask this here.

22 Did Terrance go to Boo Walker's house or he went to
23 Tiffany's house?

24 A I pulled in Tiffany's driveway.

25 Q You pulled in Tiffany's driveway.

Christopher Brooks - Cross-examination
by Mr. Koger

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1 From the best of your recollection, did he go knock
2 at, at Tiffany's door?

3 A I don't know.

4 Q Okay. He could have?

5 A Could have.

6 Q Okay. All right. Now, you came back after the fight
7 was over?

8 A Yes, sir.

9 Q All right. Okay. And were you there on the scene
10 when Zantrell pulled out a pistol?

11 A Yes, sir.

12 Q Okay. And what type of pistol did he pull out?

13 A Chrome.

14 Q A chrome, how did he pull it out?

15 A Just pull it, pull it out of his back pocket.

16 Q He, he pulled it out of his back pocket?

17 A Yes.

18 Q And once he got it out of his back pocket, how did he
19 handle the pistol?

20 A I ain't see all that.

21 Q Okay. And why didn't you see all of that?

22 A Because I left.

23 Q Okay. Smart move.

24 Okay. Did he cock the gun?

25 A No, I didn't hear it.

Christopher Brooks - Cross-examination
by Mr. Koger

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1 Q But you did see him pull out the gun?

2 A Yes, sir.

3 Q And as soon as he pulled out the gun you jetted, you
4 left?

5 A Yeah.

6 Q Okay. Did you see -- you didn't see any of the fight
7 between Terrance and Demetrius?

8 A No.

9 Q But to the best of your recollection, no one had a
10 gun during that fight?

11 A I'm not sure.

12 Q Not sure.

13 But you didn't see a gun?

14 A No, I didn't see a gun.

15 Q When was the first time you saw a gun that particular
16 day?

17 A When Zantrell pulled it out.

18 Q Okay. And how close was Zantrell to Demetrius Smalls?

19 A He wasn't that close.

20 Q Huh?

21 He wasn't that close?

22 A No.

23 Q But he pulled the gun out?

24 A Yes, sir.

25 Q Okay. Now, you did testify that you brought Terrance

Christopher Brooks - Cross-examination
by Mr. Koger

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1 to the house a time earlier than the incident?

2 A Uh-huh. (Affirmative).

3 Q He didn't tell you what for?

4 A No, sir.

5 Q He just instructed you drop me -- well, let me ask
6 this here.

7 Did he say drop me by Boo Walker's house or drop me
8 by Tiffany house?

9 A Drop me by Tiffany's house.

10 Q So, it was he -- he told you not to drop you by Boo
11 Walker's house, but to drop you at Tiffany's house?

12 A Yes.

13 Q And can you, can you recall whether, again, I just
14 want clarification, do you recall whether he went to
15 Tiffany's door or not?

16 A I can't recall.

17 Q You can't recall.

18 But you can recall that Zantell Mays had a gun on
19 that particular day?

20 A Uh-huh. (Affirmative).

21 Q And that he pulled the gun?

22 A Yes, sir.

23 Q And the color of that gun is what?

24 A Chrome.

25 Q Okay.

1 THE COURT: Anything on redirect?

2 SOLICITOR MCALISTER: No redirect, Your Honor.

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

4 Next witness.

5 SOLICITOR MILLER: Your Honor, the State rests.

6 THE COURT: Madam Forelady, ladies and gentlemen, the
7 State has rested which means they have concluded all of
8 their testimony. Let me -- give me about five minutes with
9 them, with them and then we'll decide whether we're going to
10 go on to lunch or come back or whether we're going to keep
11 on going about 30 minutes. Let's just see how, the most
12 efficient use of our time.

13 So, if you would, step back in your jury room. Do not
14 discuss the case. Do not deliberate. Just leave your pads
15 right there in your chairs.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Any motions, Mr. Koger?

19 MR. KOGER: Yes, Your Honor.

20 May it please the Court.

21 At this time I move for a directed verdict on the three
22 charges that Mr. Smalls has been indicted with. From
23 testimony thus far, the State has not set forth enough
24 evidence to warrant submission of these cases to the jury
25 for jury consideration.

1 THE COURT: All right. Well, obviously I respectfully
2 disagree with you. It's almost undisputed that the
3 testimony so far that your client shot and killed Terrance
4 and wounded Zantrell, and whether or not it was done with
5 malice aforethought or assault and battery with intent to
6 kill is all a question of fact for the jury to consider.
7 Obviously, my job is not to -- I have to consider not the
8 existence of the evidence, not the weight of the evidence.
9 So, I respectfully deny your motion.

10 Anything else?

11 MR. KOGER: No, Your Honor. Not from the defense.

12 THE COURT: Can you give me some guestimate as to how
13 long your defense is?

14 MR. KOGER: I was looking over that right now. We're
15 looking at -- I have five or six witnesses.

16 THE COURT: Okay.

17 All right. Mr. Smalls, would you please stand for me?

18 (WHEREUPON, the defendant was placed under oath at this
19 time.)

20 THE COURT: Mr. Smalls, does he have a record for
21 impeachment purposes?

22 SOLICITOR MILLER: Yes, he does, Your Honor.

23 THE COURT: What's he got?

24 SOLICITOR MILLER: He's got a 2004 possession of
25 cocaine.

1 THE COURT: Anything else?

2 SOLICITOR MILLER: That's it, Your Honor.

3 THE COURT: Mr. Smalls, we've reached the stage in the
4 trial now where obviously you can present your side of the
5 story or your defense.

6 okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: What that means is that you can call
9 anybody you want to call as witnesses to testify. You can
10 introduce relevant exhibits like we've introduced in the
11 trial of the State's case, and you also have the right to
12 testify in your own defense. You can get up and tell your
13 side of the story. However, you have -- you are protected
14 by the Constitution of the United States which says
15 basically that nobody can be compelled to testify in a
16 criminal case where they're charged. You have the right to
17 remain silent, in other words.

18 If you testify, obviously you'll be subjected to the
19 same rules of cross-examination, rules of evidence that
20 everyone else is subjected to. And you have a prior record
21 in 2004 for possession of cocaine, and if I determine that
22 the probative value outweighs the prejudicial value, then
23 the State could use that prior record to attack your
24 believability or your credibility or to impeach you, but
25 solely for that purpose and that purpose only.

1 If you choose not to testify, in other words, if you
2 exercise your constitutional right to remain silent, in
3 other words you don't want to get up there and have to
4 explain what happened, I will have a very strong instruction
5 to the jury when I instruct them or charge them that will
6 say basically that you have the absolute right to remain
7 silent, and the fact that you did not testify in the trial
8 can not be used against you in any manner whatsoever. They
9 can not discuss the fact that you did not testify when they
10 deliberate your guilt or innocence and absolutely no
11 inference can be drawn from the fact that you did not
12 testify.

13 I will tell the foreperson that that is one of her main
14 jobs is to make sure. The fact that you didn't testify is
15 not discussed at all, and it's not used in their
16 deliberations when they deliberate whether or not you're
17 guilty or innocent.

18 Do you understand what I've told you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any questions about what I've
21 told you?

22 THE DEFENDANT: No, sir.

23 THE COURT: Obviously you can discuss it with Mr. Koger
24 or your family or whoever you want to, but the decision is
25 ultimately yours. And, so, I guess I need to know whether

1 or not you are going to testify.

2 THE DEFENDANT: Yes, I am.

3 THE COURT: Do you understand that you'll be subject to
4 cross-examination and your prior record will be introduced
5 for credibility or impeachment purposes only?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You have the right to remain---

8 SOLICITOR MILLER: I'm sorry, Your Honor. Just to
9 correct for the record, I misspoke. It was actually a 2005
10 possession of cocaine offense.

11 THE COURT: All right. 2005.

12 And you understand that if you don't testify that I
13 will tell the jury they can't even talk about that or think
14 about that---

15 THE DEFENDANT: Yes, sir.

16 THE COURT: ---when they deliberate.

17 So, you understand all of that?

18 THE DEFENDANT: Yes, sir I do.

19 THE COURT: All right. Mr. Koger, let's go for about
20 20 or 30 more minutes.

21 MR. KOGER: The defense calls Julius Tilley.

22 THE COURT: No, let me get the jury back in.

23 MR. KOGER: That would be good, judge.

24 THE COURT: I think that would be good.

25

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: We're going to go until about 12:30.
4 Mr. Koger told me he has five or six witnesses. So, we'll
5 go ahead and get a couple of them and see how many we can
6 get until about 12:30. They're set for y'all to arrive at
7 lunch about 12:45.

8 So, Mr. Koger, you can call your first witness.

9 MR. KOGER: The defense calls Julius Tilley.

10 JULIUS TILLEY, after being duly sworn,
11 testified as follows:

12 THE CLERK: Please be seated and state your name for the
13 record. State, state your name.

14 THE WITNESS: Julius Tilley.

15 THE COURT: Spell your last name.

16 THE WITNESS: T-I-L-L-E-Y.

17 THE COURT: All right. Answer the questions and speak
18 up. If you say yes or no, say yes or no. Not uh-huh or
19 huh-uh.

20 Fair enough?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. Let's go.

23 DIRECT EXAMINATION

24 BY MR. KOGER:

25

Julius Tilley - Direct examination
by Mr. Koger

302

- 1 Q Mr. Tilley, what is your home address?
- 2 A [REDACTED] Robinson Street, Blackville, South Carolina.
- 3 Q And that's in Barnwell County?
- 4 A Blackville.
- 5 Q City of Blackville, Barnwell County, correct?
- 6 A Yes, sir.
- 7 Q Okay. And how long have you stayed at that address?
- 8 A For like ten years.
- 9 Q Ten years.
- 10 And where, where are you, where are you currently
- 11 residing?
- 12 A Sir?
- 13 Q Where are you currently living now?
- 14 A I'm doing a little bit of time.
- 15 THE COURT: Doing what?
- 16 THE WITNESS: Doing a little time.
- 17 THE COURT: Doing a little time?
- 18 THE WITNESS: Yes, sir.
- 19 Q Where is you doing this time?
- 20 A Allendale.
- 21 Q Okay. And that's in Allendale County?
- 22 A Yes, sir.
- 23 Q And for, for what offenses are you doing time for?
- 24 A Possession of a sawed-off shotgun.
- 25 THE COURT: I can't understand you.

Julius Tilley - Direct examination
by Mr. Koger

303

1 What?

2 THE WITNESS: Possession of a sawed-off shotgun.

3 Q Mr. Tilley, do you recall the day of August 20th,
4 2009?

5 A Yes, sir.

6 Q Okay. And you realize what you are here for?

7 A Yes, sir.

8 Q Okay. Can you tell the Court what happened on that
9 particular day?

10 A Yes, sir.

11 Q Go.

12 A Well, Smalls and, and Terrance Mays had got in a
13 little argument or whatever and me, me and Smalls and a
14 couple of other peoples was in the yard and everything.
15 So, Smalls, Smalls was -- got out, had got out the car and
16 everything, and Terrance, Terrance, Terrance Mays and the
17 dude -- the fellow Brooks was driving the white car. The
18 car had pulled up.

19 Q Let me stop you right here.

20 Okay. That happened in Blackville, South Carolina?

21 A Yes, sir.

22 Q Okay. Continue. Go ahead.

23 What happened next?

24 A So, so, the white Mercury had pulled up. Then, then,
25 then Zantrell Mays black Chevy Malibu pulled up. So,

Julius Tilley - Direct examination
by Mr. Koger

304

- 1 Terrance Mays and the people that was in the white car,
2 all of them jump out at one time and everything.
- 3 Q Okay. Which car pulled up first?
- 4 A The white, the white Mercury.
- 5 Q The white Mercury?
- 6 A Yes, sir.
- 7 Q And who did, who did the white Mercury car belong to?
- 8 A Chris Brooks.
- 9 Q Chris Brooks?
- 10 A Yes, sir.
- 11 Q And after that car pulled up -- you said it pulled
12 up, where did the white car pull up?
- 13 A On the side of the house.
- 14 Q On the side of whose house?
- 15 A Mrs. Haynes' house. Tiffany Haynes' house.
- 16 Q Tiffany Haynes' house?
- 17 A Yes, sir.
- 18 Q Okay. Now, how long had you been on, there on the
19 location before Mr. Brooks pulled up?
- 20 A Like 30 minutes.
- 21 Q Thirty minutes?
- 22 A Yes, sir.
- 23 Q Okay. Were you -- who were you hanging with 30
24 minutes prior to Mr. Brooks pulling up?
- 25 A I was out there, I was out there by myself.

Julius Tilley - Direct examination
by Mr. Koger

305

- 1 Q You was out there by yourself?
- 2 A There was other people more than me out there.
- 3 Q Okay. There was other people more than you out
- 4 there?
- 5 A Yes, sir.
- 6 Q Okay. Were you at Tiffany Haynes' house or were you
- 7 at Mr. Walker's house?
- 8 A I was in-between.
- 9 Q You were in-between?
- 10 A Yes, sir.
- 11 Q Okay. And you were there 30 minutes prior?
- 12 A Yes, sir.
- 13 Q Okay. Was Demetrius Smalls there 30 minutes prior?
- 14 A Yes, sir.
- 15 Q Okay. Did you have a conversation within that 30
- 16 minutes?
- 17 A No, sir.
- 18 Q Okay. Did you see a gun on Demetrius Smalls during
- 19 that 30 minutes?
- 20 A No, sir.
- 21 Q Now, who got out of the car, out of Mr. Brooks' white
- 22 Mercury car when he arrived on the scene?
- 23 A Terrance Mays, Didi, and Whitney.
- 24 Q Okay.
- 25 A All three of them and then Chris Brooks.

Julius Tilley - Direct examination
by Mr. Koger

306

- 1 Q And then Chris Brooks?
- 2 A Yes, and then Zantrell got out too.
- 3 Q Okay. Now, other than the white Mercury, did another
- 4 car arrive on the scene?
- 5 A No, sir.
- 6 Q Okay. Just the white Mercury?
- 7 A Yes, sir.
- 8 Q Okay. Now, I don't, I don't think we established
- 9 this for the Court, are you related to anyone in this
- 10 matter here?
- 11 A Yes, sir.
- 12 Q Who are you related to?
- 13 A Terrance Mays.
- 14 Q Terrance Mays?
- 15 A Yes, sir.
- 16 Q Are you related to Zantrell Mays?
- 17 A Yes, sir.
- 18 Q Are you related to Whitney Mays?
- 19 A Yes, sir.
- 20 Q Are you related to Demetrius or Didi Mays?
- 21 A Yes, sir.
- 22 Q Okay. What happened after Terrance, Whitney, Didi
- 23 Mays, and Zantrell Mays got out of their respective
- 24 vehicles?
- 25 A They were -- okay. Terrance Mays and Smalls was, was

Julius Tilley - Direct examination
by Mr. Koger

307

1 fighting. Both of them was fighting at that time.

2 Q Okay. How did the fight begin between Terrance and
3 Demetrius Smalls?

4 A Well, both of them took off their shirts and then
5 licks had been passed. Both of them were swinging licks
6 and tussling on the ground.

7 Q Let me ask you this, when Demetrius Smalls took off
8 his shirt, did he have a gun on him?

9 A No, sir.

10 Q Okay. What happened next?

11 A And then after that they started tussling. Then
12 Whitney and Didi try to jump him. Then I had pushed both
13 of them back, and then some, somehow Whitney had come
14 around me and kicked Mr. Smalls in the face two times
15 while he was on the ground when him and Terrance was
16 tussling on the ground.

17 Q Now, when you stated that Whitney, that's the
18 sister --

19 A That's the sister, sir.

20 Q -- tried to jump him --

21 A Yes, sir.

22 Q -- Terrance and Demetrius Smalls were already
23 fist-to-fist fighting?

24 A Yes, sir.

25 Q Okay. And what was your response to that?

Julius Tilley - Direct examination
by Mr. Koger

308

1 A I pushed him back. I was telling him, y'all not
2 gonna jump him. So, Whitney had got, came around me and
3 then kicked him in the face like two times while he was on
4 the ground.

5 Q And what did you do after Whitney kicking Mr. Smalls
6 in the face twice?

7 A I was right there.

8 Q Okay. But what did you do?
9 were you able to pull her back?

10 A No, sir.

11 Q What happened after Whitney kicked Demetrius Smalls
12 in the face?

13 A So, the fight, the fight was over then. So,
14 Mr. Smalls was right there and Terrance had went to the
15 car where his, where his people was, where his sister and
16 his other brother and the other brother was and everything
17 and then---

18 Q Let me stop you.
19 Which car did Terrance go to?

20 A The black car, the Malibu.

21 Q Okay. And who owns the, the Malibu?

22 A Zantrell.

23 Q And this was an older Malibu or a newer Malibu?

24 A Like the older, the older kind, I think.

25 Q Okay. The older Malibu.

Julius Tilley - Direct examination
by Mr. Koger

309

1 okay. What happened after Terrance Mays went to the
2 car?

3 A Well, then Zantrell Mayes had said -- Zantrell Mayes
4 then had words towards, towards Mr. Smalls like, you lost,
5 you lost, you might as well give it, might as well call
6 the deal on it. So, then Zantrell pulled out and cocked
7 his pistol and put it in Mr. Smalls' face.

8 Q Okay. Now, what type of pistol did Zantrell, Zantrell
9 Mays had on that particular day?

10 A A chrome .380.

11 Q A chrome .380?

12 A Yes, sir.

13 Q And I want you -- I'm Demetrius Smalls. How did --
14 Use this pen and show for the court how Zantrell Mays
15 pulled the gun.

16 A It was on his side like this.

17 Q Okay.

18 A He cocked it back and put it in his face like that.

19 Q Okay.

20 A And then Smalls was backing up.

21 Q Okay. Well, let me, let me ask you this here.

22 Are you absolutely sure that he cocked the gun?

23 A Yes, sir.

24 Q Did you see him cock the gun?

25 A Yes, sir.

Julius Tilley - Direct examination
by Mr. Koger

310

1 Q Did you hear the cock?

2 A Yes, sir.

3 Q Okay. And are you absolutely sure that he pointed
4 the gun in the face of Demetrius Smalls?

5 A Yes, sir.

6 Q Okay. What happened after he pointed the cocked gun
7 in the face of Demetrius Smalls?

8 A Smalls had backed up and then Mrs. Haynes had got
9 involved, got involved in the mix of it.

10 Q Okay.

11 A And then Terrance was right beside her. Terrance was
12 coming from behind the car and reaching in his pocket.

13 Q Okay. Now, Terrance was coming -- now, you, you
14 mentioned earlier Terrance went to the black Malibu.

15 What type of car on the side of the house was he
16 coming from this time?

17 A The same side. Like the Malibu was on the last side
18 of the house.

19 Q Okay.

20 A Like all the cars was in, like on the same side, but
21 the Malibu was on the outside.

22 Q On the outside of the other cars?

23 A Yes, sir.

24 Q Okay. And what did you notice as Terrance was coming
25 out from around that last car, the Malibu?

Julius Tilley - Direct examination
by Mr. Koger

311

- 1 A I seen him, I seen him go in his pocket and I seen a
2 black handle of a pistol.
- 3 Q You seen a black handle of a pistol?
- 4 A Yes, sir.
- 5 Q Okay. How was he going in his pocket?
- 6 A Like this. Had it up like this pulling it up.
- 7 Q Okay. And what how -- and did you think it was---
- 8 A A gun.
- 9 Q Are you sure it was a gun?
- 10 A Yes, sir.
- 11 Q Did it look like a gun?
- 12 A Yes, sir.
- 13 Q Now, you testified---
- 14 A The handle.
- 15 Q The handle?
- 16 A Yes, sir.
- 17 Q Okay. And this is Terrance Mays?
- 18 A Yes, sir.
- 19 Q Not Zantrell Mayes?
- 20 A No, sir.
- 21 Q Okay. What happened next?
- 22 A Then Smalls had shot him.
- 23 Q Okay. Did you see where Demetrius Smalls got the gun
24 from?
- 25 A No, sir, the only thing I know he shot him.

Julius Tilley - Direct examination
by Mr. Koger

312

1 Q Okay. But you were with Smalls about 30 minutes
2 earlier?

3 A Yes, sir.

4 Q And at that time your testimony is that Mr. Smalls
5 did not have a gun?

6 A Yes, sir.

7 Q Are you sure that Zantell Mays pulled a gun on that
8 particular day?

9 A Yes, sir.

10 Q Are you sure that Zantell Mays cocked the gun on that
11 particular day?

12 A Yes, sir.

13 Q Are you sure that Zantell Mays pointed the gun on
14 that particular day?

15 A Yes, sir.

16 Q Are you sure, on that day, Terrance Mays reached in
17 his pocket on that particular day?

18 A Yes, sir.

19 Q Are you positive and sure that he pulled something
20 out of his pocket?

21 A Yes, sir.

22 Q And are you sure that he pulled a gun out?

23 A Yes, sir.

24 Q Thank you. I have no further questions.

25 CROSS-EXAMINATION

Julius Tilley - Cross-examination
by Solicitor Miller

313

1 BY SOLICITOR MILLER:

2 Q Mr. Tilley --

3 A Sir?

4 Q -- how far were you away, were you away from Zantell
5 Mays when you say you saw him pull this gun out of his
6 pocket?

7 A I was about right there to, to where you're at.

8 Q So, from about here to there?

9 A Yes, sir.

10 Q And this is when Zantrell pulls the gun out of his
11 pocket?

12 A Yes, sir.

13 Q Okay. And you were the peacemaker?

14 A Yes, sir.

15 Q That's your testimony?

16 A Yes, sir.

17 Q And that's what you told the police when you gave
18 them your first statement, correct?

19 A Yes, sir.

20 Q When was that?

21 A Like the same, the same day.

22 Q Same day?

23 A Yes, sir.

24 Q You gave the police a statement?

25 A Yes, sir.

Julius Tilley - Cross-examination
by Solicitor Miller

314

- 1 Q Who did you give that statement to?
- 2 A I think Chief Holston.
- 3 Q You gave Chief Holston a statement.
- 4 Did you ever do a written statement?
- 5 A You talking about like paper?
- 6 Q I'm talking about a piece of paper and writing.
- 7 A Yes, sir.
- 8 Q Did you ever do a written statement about this
- 9 incident?
- 10 A Yes, sir.
- 11 Q All right. Which law enforcement agency did you give
- 12 that to?
- 13 A I don't know.
- 14 Q You don't know?
- 15 A No, sir.
- 16 Q But it's your, it's your testimony, sitting on that
- 17 stand, that you gave a written statement to law
- 18 enforcement---
- 19 A Yes, sir.
- 20 Q ---about this case?
- 21 A Yes, sir.
- 22 Q Now, this isn't the first time that you've been in
- 23 the Department of Corrections, is it?
- 24 A No, sir.
- 25 Q Are you the same Julius Tilley that was convicted in

Julius Tilley - Cross-examination
by solicitor Miller

315

1 2004 of five counts, excuse me, of breaking into
2 automobiles or tanks where fuels are stored?

3 A I don't know nothing about them charges.

4 Q You don't know nothing about these charges?

5 A No, sir.

6 Q How about -- well, what were you in there for?
7 Was it this burglary second?

8 A Yes, sir.

9 Q Okay. Well, this is your rap sheet. That's your
10 name right there. Julius Tilley.

11 A Yes, sir.

12 Q And it says you got arrested for all of these things
13 and it says that you were received by the South Carolina
14 Department of Corrections for breaking into auto or tanks
15 where fuel are stored. Convicted. There's your sentence
16 and right below that is you were also charged with
17 burglary second degree.

18 A Yes, sir.

19 Q But you're saying that's not you that had -- that's
20 not you?

21 A I'm not -- I don't remember pleading to that charge
22 right there, sir.

23 Q Oh, you don't remember what you went to prison for?

24 A I don't remember pleading to that charge right there
25 you're talking about.

Julius Tilley - Cross-examination
by Solicitor Miller

316

1 Q Okay. You were brought up here by the Department of
2 Corrections on Monday, weren't you?

3 A Yes, sir.

4 Q And you talked to us. You talked to Kenny Bamberg,
5 the Solicitor's Office investigator, and you talked to me
6 at that time, didn't you?

7 A (Witness nods affirmatively.)

8 THE COURT: Yes or no?

9 THE WITNESS: Yes, sir.

10 Q And you were advised that if you got on the stand and
11 perjured yourself that you could be facing a five-year
12 felony, correct?

13 A Yes, sir.

14 Q Okay. Isn't it true that in front of the two
15 correctional officers that brought you down and
16 Investigator Bamberg you said, this one's freebie cause I
17 can't get no additional time?

18 A No, sir.

19 Q That's not what you said?

20 A I didn't say it like that, sir. I didn't say it.

21 Q Oh, how did you say it?

22 A I don't remember. I didn't say nothing like that.

23 Q We'll get that testimony later.

24 How much time are you doing right now in the
25 Department of Corrections?

Julius Tilley - Cross-examination
by Solicitor Miller

317

1 A Five years non-violent.

2 Q So, you're the person who stepped in and broke up the
3 fight?

4 This is the fight between Terrance and the fight with
5 that defendant.

6 You broke up that fight, that's your testimony?

7 A Yes, sir.

8 Q And, so, you're the one that is saying that Whitney,
9 the sister, kicked him in the face during the fight?

10 A Yes, sir.

11 Q You don't know how he got the gun?

12 A No, sir.

13 Q But you didn't see him shoot?

14 A Yes, sir.

15 Q And you saw a black handled .22 caliber pistol in
16 Terrance Mays' pocket?

17 A Yes, sir.

18 MR. KOGER: Objection. He is misstating the testimony,
19 Your Honor.

20 THE COURT: He is on cross-examination. You can
21 redirect him.

22 Q Do you know what caliber the pistol was?

23 I think that was the issue.

24 Do you know what color the pistol, I mean what
25 caliber the pistol was?

Julius Tilley - Cross-examination
by Solicitor Miller

318

1 A Black.

2 Q What caliber?

3 A .22 revolver.

4 Q Now, you were arrested and put in the Barnwell County
5 Detention Center in April of 2010, weren't you?

6 A Yes, sir.

7 Q And the defendant was there when you were there on
8 these charges, right?

9 A Yes, sir, but they had us separated.

10 Q How long were you there?

11 A Like a month and a half.

12 Q A month and a half and then you got arrested again in
13 2010 and you were back in the Barnwell County Detention
14 Center and you were with this defendant again, weren't
15 you?

16 A Yes, sir, they had us separated.

17 Q How did they have you separated?

18 A They had us on different sides.

19 Q They had you on different sides.

20 So, when y'all went out for rec time, when y'all went
21 to eat, y'all never saw each other, you never spoke to
22 each other?

23 A We don't go out, we don't go out to the same rec.

24 Q You don't go out to the same rec?

25 A No, sir.

Julius Tilley - Cross-examination
by Solicitor Miller

319

1 Q You never saw the defendant or talked to the
2 defendant about this case while you were in the
3 Department, while you were in Barnwell County?

4 A No, sir, I was on the other side.

5 Q And you don't know who you gave a written statement
6 to?

7 A No, sir.

8 Q Well, did you give a written statement to anybody
9 that you do remember?

10 A No, sir.

11 Q You don't know anybody that you've given a written
12 statement to?

13 How about the defendant's mother, did you give her a
14 written statement?

15 A Yes. Yes, sir.

16 Q When did you give her a written statement?

17 A Like the same day.

18 Q The same day?

19 A Yes, sir.

20 Q So, you went -- while he's working out getting
21 himself turned in to the police, you're sitting down with
22 his mom and giving her a written statement?

23 A This was, this was after, sir. After he got locked
24 up.

25 Q After he got locked up?

Julius Tilley - Cross-examination
by Solicitor Miller

320

1 A Yes, sir.

2 Q So, what time was it?

3 A I can't remember.

4 Q Was she sitting with Chief Holston taking that
5 statement?

6 A I don't know.

7 Q You gave her a written statement.

8 Where was she when you gave her the written
9 statement?

10 A Oh, she was at her house.

11 Q She was at her house?

12 A Yes, sir.

13 Q Now, you testified earlier that you gave a written
14 statement to Chief Holston, right?

15 A Yes, sir.

16 Q You've never given any other statements in this case?

17 A No, sir.

18 Q Have you ever been asked or have you ever told
19 anybody that you were there in law enforcement?

20 A No, sir.

21 SOLICITOR MILLER: No further questions, Your Honor.

22 THE COURT: Redirect, if any.

23 REDIRECT EXAMINATION

24 BY MR. KOGER:

25 Q Mr. Tilley, you have a prior record?

Julius Tilley - Redirect examination
by Mr. Koger

321

1 A Yes, sir.

2 Q And you're doing time?

3 A Yes, sir.

4 Q On August 20th, 2009, did Zantrell Mays have a
5 pistol?

6 A Yes, sir.

7 Q Did he pull it out?

8 A Yes, sir.

9 Q Did he present it?

10 A Yes, sir.

11 Q To the best of your recollection, did Terrance Mays
12 pull out what you believe to be a gun on that particular
13 day?

14 A Yes, sir.

15 Q And did he pull it out of his pocket?

16 A Yes, sir.

17 Q Thank you. No further questions.

18 THE COURT: You may step down.

19 I assume no objection to him going back to his
20 incarceration?

21 SOLICITOR MILLER: No, Your Honor.

22 MR. KOGER: I can call a short witness.

23 THE COURT: Five minutes?

24 MR. KOGER: Be five minutes with me. I don't know
25 about David.

Lavaun Patrick - Direct examination
by Mr. Koger

322

1 THE COURT: Let's go.

2 MR. KOGER: I call Lavaun Patrick.

3 LAVAUN PATRICK, after being duly
4 sworn, testified as follows:

5 THE CLERK: Have a seat and state your name for the
6 record please.

7 THE WITNESS: Lavaun Patrick.

8 DIRECT EXAMINATION

9 BY MR. KOGER:

10 Q Mr. Patrick, where do you currently live?

11 A [REDACTED] Boll Weevil Road, Blackville, South Carolina.

12 Q And how long, how long have you lived at that, that
13 address?

14 A All my life.

15 Q And are you currently employed?

16 A Yes.

17 Q And where are you employed?

18 A At Lowe's in Orangeburg.

19 Q And how long have you been employed at Lowe's?

20 A Two years.

21 Q Two years.

22 And what department do you work in out there?

23 A Paint.

24 Q Do you recall the events of August 20th, 2009?

25 A Yes.

Lavaun Patrick - Direct examination
by Mr. Koger

323

1 Q Okay. And were you with Demetrius Smalls at any time
2 during that particular day?

3 A Yes.

4 Q And how long were you with Demetrius Smalls during
5 that particular day?

6 A It was basically about all day.

7 Q About all day?

8 A Yeah.

9 Q Okay. And what do you mean all day?
10 When did y'all first, when did y'all first get
11 together on that day?

12 A Probably was about, about 12:00.

13 Q About 12:00.

14 A Uh-huh. (Affirmative).

15 Q And what were the two of y'all doing during that
16 particular day?

17 A Nothing. Just basically chilling.

18 Q Chilling?

19 A Yeah.

20 Q Okay. During that particular day, did you have an
21 opportunity to go to the area between Mike Walker's house
22 and Tiffany Haynes' house?

23 A Yes.

24 Q And what time did you arrive there?

25 A I actually don't remember the time, but it's probably

Lavaun Patrick - Direct examination
by Mr. Koger

324

1 about -- probably close to 2:00.

2 Q Close to 2:00?

3 A Something like that.

4 Q Okay. And what other people was there at that
5 location?

6 A It was me, D.

7 THE COURT: Now, who is D.?

8 THE WITNESS: D. Smalls right here.

9 THE COURT: Go ahead.

10 THE WITNESS: Spanky, Carlen, Mike walker and that was
11 all that was there, out there at that time.

12 Q What is Spanky's real name?

13 A I don't actually know what is his real name.

14 Q Okay. And what's your nickname?

15 A Short Man.

16 Q Short Man.

17 THE COURT: Are you Short Man?

18 Q Okay. Mr. Patrick, so, there was several people
19 there and what were y'all doing?

20 A We was basically drinking a few beers.

21 Q Drinking a few beers?

22 A Yeah.

23 Q Socializing?

24 A Yeah.

25 Q Okay. During the time that you spent time with

Lavaun Patrick - Direct examination
by Mr. Koger

325

1 Demetrius Smalls and you said that you spent a significant
2 amount of time with him that day, did he ever have a gun
3 on him?

4 A I didn't see one.

5 Q You didn't see a gun?

6 A No, I didn't see one.

7 Q Okay. What happened as y'all was drinking and
8 socializing that day at the corner, at the scene between
9 Tiffany Haynes' home and Mike Walker's home?

10 A Well, basically I saw Terrance. He got out the car
11 and they started fighting.

12 Q Now, was that the first time, during that particular
13 day, that you saw Terrance?

14 A Yeah, that was the first time.

15 Q That was the first time and you, you testified that
16 he got out of a car?

17 A Yeah.

18 Q Was he the only one that got out of a car or were
19 other people came with him?

20 A He was the only one.

21 Q Okay. The only one that got out of the car?

22 A Yeah.

23 Q What happened after Terrance got out the car?

24 A He was basically taking his shirt off to fight.

25 Q Okay. Did Demetrius Smalls take his shirt off?

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1 A I think so. I think he did.

2 Q Okay. Did you notice a gun on Demetrius Smalls when
3 he took his shirt off?

4 A No, I actually didn't see one.

5 Q Okay. All right. Now, what happened next?

6 A You know I tried to break it up and then they just
7 started fighting and then the fight was over.

8 Q Let me ask you this.

9 Did you physically try to break it up or, or---

10 A No.

11 Q ---or were you trying to talk to them?

12 A I tried to stop both of them from fighting.

13 Q Okay. Were you successful?

14 A No.

15 Q Okay. What happened next?

16 A They just started fighting. Next thing you know they
17 stopped, and then basically that was the end of it.

18 Q When -- did Zantrell ever enter the scene?

19 A Yeah, he entered.

20 Q Okay. And how long after Terrance arrived did
21 Zantrell arrive?

22 A It probably was -- it wasn't -- probably about 20
23 minutes.

24 Q About 20 minutes.

25 Okay. And after Zantrell arrived, what happened?

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by Mr. Koger

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1 A I seen him get outside of the car and then like cock
2 a gun.

3 Q Okay. He cocked a gun.

4 okay. And, so, did you see the gun?

5 A Yeah, I saw it.

6 Q Can you describe the gun?

7 A It looked like it was chrome to me.

8 Q Chrome?

9 A Chrome.

10 Q Are you absolutely sure that he cocked the gun?

11 A Yeah, I'm sure.

12 Q Are you absolutely sure that he presented the gun?

13 A Yeah, I'm sure.

14 Q Okay. Did you see where he pulled the gun from?

15 A I think he pulled it from like right here. Well,
16 actually, I didn't see where he pulled it from, but I just
17 seen it in his hand and he cocked it like that.

18 Q So, it's your testimony -- well, did you, did you see
19 him both cock it and pull, pull and cock the gun?

20 A Yeah.

21 Q Okay. All right. And from your experience, what
22 does it mean when someone cock a gun?

23 A Basically they're probably gonna shoot if you cock it
24 in front of somebody.

25 Q Would it be something that would cause some fear in

Lavaun Patrick - Direct examination
by Mr. Koger

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1 you?

2 A Yeah, especially if I was fighting.

3 Q Okay. So, it's your testimony -- are you absolutely
4 sure that he cocked the gun and pulled the gun?

5 A I'm sure he cocked it and pulled it.

6 Q Thank you. No further questions.

7 A All right.

8 THE COURT: Mr. Miller

9 SOLICITOR MILLER: Just a minute, Your Honor.

10 (Pause.)

11 CROSS-EXAMINATION

12 BY SOLICITOR MILLER:

13 Q So, Mr. Patrick, are you familiar with Julius Tilley?

14 A Yeah, I know him.

15 Q You know him?

16 A Uh-huh. (Affirmative).

17 Q You know what he looks like?

18 A Yeah.

19 Q Okay. So, when Zantrell shows up -- excuse me.

20 When Terrance shows up, according to your testimony,
21 by himself and he starts to fight with the defendant,
22 you're trying to break them up, correct?

23 A Yeah.

24 Q Okay. What was Tilley doing?

25 A I wasn't actually watching him.

Lavaun Patrick - Cross-examination
By Solicitor Miller

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1 Q You weren't watching him?

2 A No.

3 Q Was he getting in your way while you were trying to
4 break up the fight because he's trying to break up the
5 fight, too?

6 A It seems like I recall some of that.

7 Q How about Whitney?

8 Do you know Whitney?

9 A Whitney, no.

10 Q Whitney Mays, you don't know Whitney Mays?

11 A I might know his face.

12 Q It's a her.

13 A Oh. No.

14 Q Did you ever see anybody kicking the defendant in the
15 face?

16 A No, not that, not that I remember.

17 Q You missed that part.

18 Okay. You said 20 minutes after the fight, according
19 to your testimony, here comes Zantrell and he gets out of
20 the car and you testified that you saw him pull a gun, but
21 you don't know where you saw him pull it from, and you saw
22 him cock the gun.

23 How did he cock the gun?

24 A He had it like this.

25 Q Okay. So, he put the slide back?

Lavaun Patrick - Cross-examination
By Solicitor Miller

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1 A Yes.

2 Q He didn't like pull back on the hammer or anything
3 like that?

4 A No.

5 Q Okay. Did you ever see Zantrell fire that gun?

6 A No, I never seen him fire it.

7 Q Okay. How about the defendant, where did he get his
8 gun from?

9 You said he didn't have one on him when the fight
10 started. Twenty minutes later he's got a gun.

11 Where did the defendant get his gun from?

12 A I had my back turned at that time because I was
13 looking at the -- I was looking at Zantrell.

14 Q Fair enough.

15 So, did you see the defendant pull the trigger?

16 A Yeah, I seen it.

17 Q Who did he shoot first?

18 A Zantrell.

19 Q He shot Zantrell first?

20 A Yeah.

21 Q Okay. When did he shoot Terrance?

22 A I, I don't know. I never actually seen him point the
23 gun at Terrance.

24 Q But Terrance is dead?

25 A Yeah.

Lavaun Patrick - Cross-examination
By Solicitor Miller

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1 Q So, you know he pointed the gun at Terrance, but you
2 never saw him point the gun at Terrance?

3 A No.

4 Q But how do you know he shot Zantrell first?

5 A Because I seen Zantrell go down because he was
6 holding his stomach.

7 Q He was holding his stomach?

8 A Yeah, behind the car.

9 Q Behind the car.

10 Zantrell's behind the car?

11 Where's the car?

12 A Like close to the road on the side of the house.

13 Q Close to Clover or close to Legion?

14 A Legion Road, the road in front of the house.

15 Q So, the car's close to Legion. Zantrell's close to
16 the car.

17 A Yeah.

18 Q All right. When was the first time that you talked
19 to anybody in law enforcement about this incident?

20 A It was probably around --

21 Q I'm not trying to trick you.

22 Was it days later or was it that night or---

23 A No, it was days later.

24 Q It was days later.

25 Do you recall talking to Investigator Harley with

1 SLED, that's this gentleman sitting here on the front
2 row---

3 A Yeah.

4 Q ---on or about September the 2nd of 2009?

5 That would have been about 12 days later.

6 A Uh-huh. (Affirmative).

7 Q Okay. And in his summary of your interview, he
8 indicates that the first time you found out Terrance had
9 been shot was when you walked around the front of the
10 house and saw him there shot in the front of the house?

11 A Yeah.

12 Q Is that correct?

13 A Yeah.

14 Q So, you don't know when Terrance got shot?

15 A Not, not really.

16 Q How many shots did you hear that were fired that
17 night?

18 A I don't know. Probably was about -- probably about
19 four or five.

20 Q Okay. Thank you.

21 No further questions, Your Honor.

22 THE COURT: Anything on redirect?

23 MR. KOGER: Yes.

24 REDIRECT EXAMINATION

25 BY MR. PATRICK:

Lavaun Patrick - Redirect examination
by Mr. Koger

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1 Q Mr. Patrick, who was the first person to show a gun
2 on that particular evening?

3 A Zantrell.

4 Q Who was the first person to cock a gun on that
5 particular evening?

6 A Zantrell.

7 Q And, and before that time it was just a fist fight,
8 right?

9 A Yeah.

10 Q Thank you. No further questions.

11 THE COURT: All right. You may step down. Thank you
12 for coming.

13 Madam Forelady, and ladies and gentlemen, leave your
14 pads right in your chairs.

15 Madam Clerk, just hold those over lunch.

16 We're going to break for lunch. Just go on into the
17 room and they'll get you over there. Enjoy your lunch.
18 Have what you want.

19 Madam Clerk, you've made arrangement. They have --
20 they don't have -- you sign something or the bailiffs will
21 take care of it?

22 THE CLERK: I've made arrangements. I'll go and get
23 the bill later. He thinks I am trustworthy.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: Anything for the record by the State before
2 we break?

3 SOLICITOR MILLER: Nothing from the State, Your Honor.

4 THE COURT: By the defendant?

5 MR. KOGER: No, Your Honor.

6 SOLICITOR MILLER: Your Honor, I'm sorry. There was
7 one thing. We had a witness that was under subpoena,
8 Crystal Patrick, and Mr. Koger indicated he was not able to
9 get her subpoenaed. We had agreed to keep her here. If he
10 doesn't intend to call her, I'd like to release her from the
11 subpoena. But if he does want to call her, then I'm fine
12 with---

13 MR. KOGER: Give me one second.

14 THE COURT: Gentlemen, before y'all go to lunch, come
15 on in my, my chambers please.

16 (WHEREUPON, Court was in recess for the lunch break.)

17 THE COURT: Anything for the State, before we proceed?

18 SOLICITOR MILLER: Nothing from the State, Your Honor.

19 THE COURT: Mr. Koger?

20 MR. KOGER: Nothing from the defense, Your Honor.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: Everybody get enough to eat?

24 THE FOREPERSON: Plenty.

25 THE COURT: What did they have, fried pork chops and

1 chicken?

2 THE JUROR: No pork chops.

3 THE COURT: No pork chops. I ate them all yesterday.

4 THE FOREPERSON: Meatloaf.

5 THE COURT: Okay. Did he have all of these desserts
6 that he had yesterday?

7 THE FOREPERSON: Just banana pudding.

8 THE CLERK: Anybody pick up the tab while you were out
9 there?

10 THE JUROR: We told him you were coming.

11 THE COURT: Mrs. Rhonda said she couldn't afford it. I
12 said I'll take care of it.

13 Madam Forelady, ladies and gentlemen, we're gonna see
14 how, what we look like time wise when we get through with
15 testimony, and then I'll discuss with you some options as to
16 about finishing it up. So, we're going to go ahead and
17 proceed to get all of the testimony in, and then I'll sort
18 of assess the situation at that time and get your input on
19 how you want to go from there. I got a cough drop in. So,
20 I was trying not to mock you.

21 All right. Mr. Koger.

22 MR. KOGER: The defense calls McKenzie Atterberry.

23 THE COURT: Mr. Atterberry, good afternoon. If you'll
24 come around and be sworn.

25 MCKENZIE ATTERBERRY, after being duly

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1 sworn, testified as follows:

2 THE COURT: Mr. Atterberry, please speak up.

3 THE CLERK: Once you are seated I'll get you to state
4 your name for the record.

5 okay?

6 THE WITNESS: McKenzie Atterberry.

7 DIRECT EXAMINATION

8 BY MR. KOGER:

9 Q Mr. Atterberry, where do you currently reside?

10 A North Augusta.

11 Q How long have you been staying in North Augusta?

12 A For like six years.

13 Q And prior to living in North Augusta, where, where
14 did you live?

15 A In Blackville.

16 Q Blackville, South Carolina?

17 A Yes, sir.

18 Q Are you currently employed?

19 A Yes, sir.

20 Q And where are you currently employed?

21 A Hubble, Hubble Power Systems in Aiken.

22 Q Okay. How long have you been employed at Hubble
23 Power Systems?

24 A Since 2007.

25 Q What is your position there?

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by Mr. Koger

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1 A Molder.

2 Q Molder?

3 A Yeah.

4 Q And what type of work is molder?

5 A Well, we make insulation for the power lines.

6 Q Okay. Mr. Atterberry, do you, do you recall the
7 events of August 20th, 2009?

8 A Yes.

9 Q Okay. Were you with the defendant at any time during
10 that particular day?

11 A Yes.

12 Q How did you and Mr. Smalls get together on
13 August 20th, 2009?

14 A Well, we all met up on the hill and then we end up
15 going to -- we going -- we went to one of our friend's
16 house and we were just sitting there, you know, just
17 chilling together.

18 Q Okay. Now, you mentioned the hill.

19 What is the hill in Blackville?

20 It's a location in Blackville?

21 A Yeah.

22 Q And what time did you approximately meet up with
23 Mr. Smalls on the hill in Blackville?

24 A It was like around three, four o'clock. Around -- I
25 think it was like around 3:00 or 4:00.

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1 Q Okay.

2 A I really don't remember the time.

3 Q Okay. All right. And when you met up with
4 Mr. Smalls between or at approximately three or
5 four o'clock, what did the two of you do next?

6 A We just went and we were just talking about old days
7 and drinking, you know. Had a couple of drinks.

8 Q Did y'all go to school together or something?

9 A Yeah.

10 Q Okay. Did you have an opportunity to end up at
11 Tiffany Haynes or Mike Walker's house on that particular
12 day?

13 A Yes, we was in the backyard. Well, in-between both
14 houses.

15 Q And what time did you ended up there in-between
16 Tiffany Haynes' home and Mike Walker's home?

17 A That had to be at least around I would say 5:00 or
18 6:00. It had to be like around 5:00 or 6:00.

19 Q Okay. And at that time who was at that location?

20 A It was, it was a lot of us. It was me, D., Spanky,
21 Mike Walker, Skip. It was, it was a lot.

22 Q About how many people?

23 A It was probably around, I would say around about
24 eight guys.

25 Q Eight guys?

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1 A Yeah, they was -- I would say between six and eight.

2 Q Six and eight?

3 A Yeah.

4 Q Did you have an opportunity, at any, at any time
5 while you were between Tiffany Haynes' home and Mike
6 Walker's home to see Terrance Mays?

7 A Yes.

8 Q Okay. And what was the, the conversation or the
9 contact that you had with Terrance Mays on that particular
10 day?

11 A Well, he rode up in the car with Chris Brooks. Well,
12 that was after the time when -- D. Smalls wasn't there at the
13 time when he, when he arrived and---

14 Q Let me ask you this here.

15 At the time that Christopher Brooks and Terrance
16 Mayes arrived, where was Mr., where was Mr. Smalls?

17 A At the store.

18 Q At the store?

19 A Yeah.

20 Q He had left the scene?

21 A Yeah.

22 Q Okay. Was he planning on coming back?

23 A Yeah.

24 Q Okay. Now -- and I want to just roll back far a
25 couple of minutes here.

1 Up until that point, how long had you been with
2 Mr. Smalls?

3 A For about a couple of hours.

4 Q A couple of hours?

5 A Yeah.

6 Q Two or three hours?

7 A Yeah, about two to three hours.

8 Q Okay. At any time during, during that two or three
9 hours did you see Mr. Smalls with a gun?

10 A No.

11 Q Okay. All right. So, what did Terrance do when he
12 came up on the scene?

13 A As soon as he came, he just came -- it was everybody
14 out there that he know, but he only went to Spanky and he
15 was like what's up Spank, and then we was like oh, you
16 don't see nobody else, and he didn't speak to nobody else.
17 We was like where is D'Head at.

18 Q Who is D'Head?

19 A Demetrius Smalls.

20 Q Mr. Smalls right here?

21 A Yeah.

22 Q Okay. And what was the response from anyone as far as
23 the location of Mr. Smalls at that particular time?

24 A Well, we all told him that we didn't know where he
25 was, but one particular person just yelled out and said he

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1 was at the store. We got mad at them for telling him
2 because we already know what he came for.

3 Q And how did you know what he was coming for?

4 A Because we had the conversation -- me and D. Smalls
5 had the conversation before he even went to the store.

6 Q And what conversation was that?

7 A He was just saying that him and Didi got into it
8 earlier, and that he know that his brothers was coming,
9 you know, coming for him to fight or whatever.

10 Q Okay. And fast forward a little bit.

11 what was your, what was your response -- well, what
12 was Terrance's response after someone at the scene told
13 him that Mr. Smalls was not there or Mr. Smalls was at the
14 store?

15 A He got in the car and left.

16 Q Okay. And were you at the scene when Mr. Mays came
17 back?

18 A No, I had went to the store.

19 Q Okay. And how long after Terrance left did you leave
20 to go to the store?

21 A I left like ten minutes after him.

22 Q Okay. And did you ever, did you ever came back to
23 that spot between Tiffany's home and Mr. Walker's home?

24 A Yes.

25 Q Okay. And what did you discover after you came back

1 to that location?

2 A When I came back I seen Zantrell walking on the side
3 of the road holding himself like, you know, like he'd had
4 been shot.

5 Q Okay.

6 A And then I seen Terrance on the ground.

7 Q Okay.

8 A That's when I pulled up and I was, you know, trying
9 to make sure they was straight. And, so, I sit there and
10 I try to calm everybody down --

11 Q Right.

12 A -- and then I told them to call an ambulance.

13 Q Okay. So, on that particular day, you didn't see the
14 fight at all?

15 A No, I didn't see the fight.

16 Q And you didn't see any of the events that happened
17 after the fight?

18 A No.

19 Q Okay. But it's your testimony that you had been with
20 Mr. Smalls for, for two or three hours that particular
21 day?

22 A Yes.

23 Q And you didn't see him have a gun on him?

24 A No.

25 Q Right before he went to the store, you didn't see him