

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Frank R. Addy, Circuit Court Judge

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S.C. SUPREME COURT

JAVAN FREDERICK MAYS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000891

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

JAVAN FREDERICK MAYS,

DEFENDANT.

2012-GS-42-05314-05316

NOVEMBER 18, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE

APPEARANCES:

DERRICK BULSA, ESQUIRE
ATTORNEY FOR THE STATE

PRO SE
with ROGER POOLE
ATTORNEY FOR THE DEFENDANT

MARGARET WOODS
CIRCUIT COURT REPORTER

TRANSCRIPT PREPARED BY
DANETTE HANKS
CIRCUIT COURT REPORTER

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JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes			Accept
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100	Lawson, Christopher W	W	M		x		
88	Ingerson, Janet T	W	F				x
63	Gosselin, Lois M	W	F			x	
87	Hyatt, John R	W	M			x	
79	Hawkins, Cecelia M	B	F				x
204	Greenleaf, Roxanne Tracey	W	F			x	
124	Mitchell, Richard H	W	M			x	
127	Moore, Tyanna V	B	F				x
86	Hutchinson, Richard A	W	M			x	
126	Moore, Anthony	B	M				x
17	Bradley, Helen W	W	F			x	
137	Osbey, Tawanna T	B	F				x
95	Keadle, Jim H	W	M				x
18	Bright, Gail O	W	F			x	
50	Gaulstich, Gerd M	W	M				x
123	Mitchell, Brandon T	W	M				x
98	Lambert, Bobby J	W	M				x
200	Young, Frances Y	B	F			x	
115	Mayes, Rebecca S	W	F			x	
201	Starr, Brandi R	W	F		x		
148	Raymond, Gregory P	W	M			x	
128	Moss, Erroll G	B	M				x
185	Walker, Beverly B	W	F			x	
110	Lyles, Daniel M Jr	B	M				x
174	Stephens, Cassondra	W	F				x
4	Baker, Gregory K	W	M			x	

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66	Green, Alissa M	W	F				x

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2 THE COURT: All right. Solicitor, if you
3 would, please, call your first case before this court,
4 please.

5 MR. BULSA: Thank you, Your Honor. State
6 versus Javan Mays, three indictments before Your Honor.
7 2012-GS-42-5314, 5315 and 5316, two counts of attempted
8 murder, one count of armed robbery, with the second count
9 of armed robbery, indictment for possession of a firearm
10 during the commission of a violent crime.

11 THE COURT: All right. Are you Javan Frederick
12 Mays?

13 MR. MAYS: Yes, sir.

14 THE COURT: If you would, please, sir, stand.
15 Have you been served with these indictments; indictment
16 number 12-GS-42-5314, attempted murder; indictment number
17 12-GS-42-5315, attempted murder; and then indictment
18 number 12-GS-42-5316, armed robbery, count one; and count
19 two, possession of a weapon during the commission of a
20 violent crime?

21 MR. MAYS: Yes, sir.

22 THE COURT: It's my understanding that a prior
23 order of Judge Gibbons, your petition to have the public
24 defender dismissed as your attorney and for you to
25 proceed pro se, meaning you'll represent yourself, was

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1 granted; is that correct?

2 MR. MAYS: Yes, sir.

3 THE COURT: Do you still wish to proceed
4 without an attorney?

5 MR. MAYS: Yes, sir.

6 THE COURT: Now, you do understand the
7 advantages and disadvantages of proceeding without an
8 attorney?

9 MR. MAYS: Yes, sir.

10 THE COURT: How long have you -- how many times
11 have you ever been in criminal court?

12 MR. MAYS: Several.

13 THE COURT: Several. So you're familiar with
14 the process?

15 MR. MAYS: Yes, sir.

16 THE COURT: Now, have you discussed your
17 decision to proceed without an attorney, pro se?

18 MR. MAYS: Yes, sir.

19 THE COURT: And do you still wish to proceed
20 without an attorney?

21 MR. MAYS: Yes, sir.

22 THE COURT: Now, I noticed that in Judge
23 Gibbons' order that the public defender was told to
24 remain as your standby counsel; is that correct?

25 MR. MAYS: Yes, sir. There was another part

1 supposed to be in my order where I was requesting ---

2 THE COURT: I need you to speak up. I'm sorry.

3 My hearing is not ---

4 MR. MAYS: There was another court order from
5 Judge Gibbons about my *Brady* material that I did not yet
6 receive.

7 THE COURT: We'll get to that in a moment. I'm
8 trying to find out if we're ready to proceed with this or
9 not.

10 Now, as I understand, Mr. Poole is the public
11 defender who was supposed to remain as standby counsel in
12 this case; is that correct?

13 MR. MAYS: Yes, sir.

14 THE COURT: And he's in court here seated
15 behind the table where you're seated; is that correct?

16 MR. MAYS: Yes, sir.

17 THE COURT: All right. Is there anything from
18 the state before we proceed?

19 MR. BULSA: No, sir.

20 THE COURT: All right. Well, from my -- you
21 may sit down for the moment. From my interview of the
22 witness, I do find that he is knowingly, intelligently
23 and well in control of his faculties. In fact, we need
24 to get up and take up some of the matters he wishes to
25 address. And therefore, knowingly and intelligently and

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1 freely and voluntarily has waived his right to counsel
2 and to proceed pro se; and continues to do so, and that
3 will be provided in this case.

4 Now, you know if you need to consult, of course,
5 with Mr. Poole, advise the court and you'll be permitted
6 to do that. Do you understand that?

7 MR. MAYS: Yes, sir.

8 THE COURT: All right. Now, you say you have
9 another motion that has not been heard yet?

10 MR. MAYS: I have filed it several times and I
11 have not yet received ---

12 THE COURT: Now you need -- this is one of the
13 things -- you stand up. Now, there's a difference in
14 decorum in different places. South Carolina people who
15 are representing either themselves or someone else,
16 always stand when they address the court. Now, if you
17 were in North Carolina, you would always sit. So you
18 understand, it's a little big different. So you stand.
19 And there's a reason for that. Because the court has a
20 reporter, court reporter, that takes down everything that
21 is said. And so she needs to see you clearly speaking at
22 the time. And this rule applies to both sides. So when
23 the solicitor is speaking, he stands, so we know who's
24 talking. And of course, you can't talk over each other.
25 The one who is standing, will be the one that is

1 recognizing. So in this case, I'm recognizing you to
2 find out about your Brady motion. You may proceed.

3 MR. MAYS: I have filed it probably within the
4 last eight, nine months, and I have not received anything
5 and have nothing been on the docket or anything speaking
6 that I got it.

7 THE COURT: All right. Is there anything else?
8 Because I'm going to ask the solicitor about that?

9 MR. MAYS: That's all.

10 THE COURT: Very good. Mr. Bulsa?

11 MR. BULSA: Thank you, Your Honor. Back when
12 Mr. Mays was represented by a public defender, we
13 complied with the discovery requests, as we always do.
14 When Mr. Mays sought to relieve them, I inquired of the
15 public defender if they had provided him with their file.
16 I was told they did. I actually met with Mr. Mays in the
17 county jail with my investigation to question why he kept
18 asking for the same material.

19 THE COURT: All right. When did you meet with
20 him, approximately?

21 MR. BULSA: It would have been probably in July
22 or August.

23 THE COURT: All right. Before the last
24 hearing?

25 MR. BULSA: Yes, sir. It was after the -- in

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1 June, Your Honor, June 21st is when he had his first
2 motion with Judge Cole. Actually it would have been June
3 21st, he had the first motion with Judge Cole. Judge
4 Cole relieved Andrea Price, and then appointed -- or
5 asked the public defender to appoint someone else to
6 represent Mr. Mays. Roger Poole was appointed at that
7 time, is my understanding, and I started dealing with Mr.
8 Poole.

9 Mr. Poole informed me that Mr. Mays did not want his
10 counsel either. So another hearing was set up and it was
11 heard on August the 9th of 2013 with Judge Gibbons. And
12 Judge Gibbons completely released the public defender.
13 That's when I undertook meeting with the defendant. At
14 that point we met. He had some documents with him. He
15 says he needed his Brady material. I tried to explain to
16 him what the discovery was and what was provided.

17 After that meeting I had decided that I'm going to
18 just give him everything again. We supplied him,
19 personally, with every document that we had involving
20 this case, as well as some CDs that involved interviews
21 of witnesses, and the 911 CD, and a CD of some phone
22 records that were recovered by the city police.

23 So he keeps commenting about Brady material. I'm
24 not sure what he thinks there is that he has not gotten.
25 I will tell the court that in preparation for the trial,

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1 as I always do, I ran the rap sheets on the potential lay
2 witnesses. And I do have those available. That would be
3 the only thing did he did not -- would not have received
4 at this time.

5 THE COURT: But you have those available for
6 him?

7 MR. BULSA: I do, yes, sir.

8 THE COURT: Are you going to give them to him
9 at the time ---

10 MR. BULSA: Yes, sir. At the appropriate time,
11 yes, sir.

12 THE COURT: All right, Mr. Mays. Of course
13 that's in the event that he calls witnesses, you will
14 provide their rap sheets prior to their testifying. You
15 understand that? Yes, sir.

16 MR. MAYS: Your Honor, that's not all true.

17 THE COURT: What was -- what more are you
18 seeking?

19 MR. MAYS: I'm seeking -- this a CD. He gave
20 me six CDs. That's one that's missing. As I read
21 through my motion ---

22 THE COURT: Which one is missing?

23 MR. MAYS: It's the one -- the name of it --
24 well, the guy's name is Christopher Scott. It says in my
25 motions that his interview was on a CD. I have not got

1 that.

2 THE COURT: All right. Just a moment. Mr.
3 Bulsa, do you know about a CD ---

4 MR. BULSA: I do, Your Honor. I know what he's
5 talking about. I inquired of the officer. When one of
6 the victims was in the hospital, the police went and
7 interviewed him. They attempted to audiotape that
8 interview. I was told by the police that that did not
9 record. So there is no audio. Mr. Scott came to the
10 police department after he was released from the hospital
11 and gave a written statement. And that written statement
12 has been supplied to the defendant. He has been provided
13 what Mr. Scott will say.

14 MR. MAYS: The other thing that I'm missing is
15 I'm reading throughout the motion and it states that
16 these guys were shot. I have yet -- I asked for it in my
17 Brady motion, any blood work, serology testing,
18 fingerprint testing, any kind of testing. I have not
19 received any of that.

20 THE COURT: All right. Mr. Solicitor, any
21 forensics?

22 MR. BULSA: No, sir. No forensics.

23 THE COURT: None was submitted?

24 MR. BULSA: No, sir. We recovered one shell
25 casing, several rounds at the scene. No weapon was

1 recovered, so no ballistics was requested. The victims
2 were shot. Based on the nature of the way they were shot
3 and the type of weapons used, we did not seek their
4 medical records. We don't feel the need. The doctor's
5 testimony should meet that element of the offense. There
6 was -- the vehicle was processed that was used -- that
7 the crime occurred in. Fingerprints were left and thus
8 were evaluated by the city police department and a report
9 was generated and was included in the documents to the
10 defendant.

11 THE COURT: Were any other forensics, as far as
12 fingerprints done?

13 MR. BULSA: Those were the fingerprints from
14 the car. They belonged to the ---

15 THE COURT: Well, any fingerprints ---

16 MR. BULSA: No. Other than that, no, sir,
17 there was nothing that I recall there being submitted to
18 ---

19 THE COURT: Well, let's be sure, because we
20 want ...

21 MR. BULSA: I am reminded that both victims
22 were swabbed for gunshot residue. And the officer
23 reminds me that those were sent to the State Law
24 Enforcement Division. We do not have a report back from
25 them. It's not something I would introduce if we did

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1 that.

2 THE COURT: All right. When were they sent?

3 MR. BULSA: It looks like it was about August
4 the 24th, 2012.

5 THE COURT: And you haven't heard anything?

6 MR. BULSA: No, sir, I have not been supplied
7 with copies of that. No, sir. I can ask my assistant to
8 check the SLED computer. We do have access to that. But
9 nothing has been sent to us. And the officer says he has
10 not received a copy either. Those would have been in the
11 GSR to the victims. There's been no allegation that
12 either one of them had a gun. But that would have been
13 done out of -- it's just a standard procedure.

14 THE COURT: All right. Anything else, Mr.
15 Mays?

16 MR. MAYS: Yes, sir, there is, Your Honor.

17 THE COURT: Yes, sir.

18 MR. MAYS: As I read through my motion, I seen
19 that there was some drugs involved in this shooting. The
20 drugs had no name titled to them. I'm wondering who --
21 it doesn't say who drugs was it. But they say drugs are
22 in the evidence room. I put that in my motion to see who
23 drugs -- who got caught with the drugs and what the drugs
24 title was. And I have yet to get that information
25 either.

1 THE COURT: All right. Mr. Solicitor, were
2 drugs involved in this incident?

3 MR. BULSA: It was believed that that was part
4 of the motive of the robbery that Mr. Mays is alleged to
5 have committed; that drugs were involved. Your Honor,
6 just a brief factual scenario. Two individual were
7 seated in the backseat of a car that had been driven to
8 and parked at a local housing complex. This was about
9 one o'clock in the morning. The defendant was with
10 another individual -- allegedly with another individual
11 when they were -- those two men were confronted in the
12 backseat of that car. Shots were fired into the car.
13 The two men had to jump over the seat and get out the
14 driver's side door. And they fled. They split up when
15 they fled. One victim was found hiding in some bushes
16 near the apartment complex. Found somewhere near him,
17 which the defendant has been provided photographs of, was
18 a package of what is probably crack cocaine. They were
19 not tested.

20 THE COURT: Were they field tested?

21 MR. BULSA: They were not tested, no, sir.

22 THE COURT: Not even field tested?

23 MR. BULSA: I don't, I don't recall that, Your
24 Honor. They were not with the victim. They were within
25 probably twenty yards of him. He denies that they were

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1 his.

2 THE COURT: The victim did?

3 MR. BULSA: Yes, sir, in a meeting with us. We
4 have no other link, so we didn't ---

5 THE COURT: All right. Was that information
6 provided to the defendant?

7 MR. BULSA: Yes, sir. All that is provided.
8 That's how he knows about there being drugs.

9 THE COURT: All right. But was it in the form
10 of an investigative report?

11 MR. BULSA: Investigative report and also
12 photographs.

13 THE COURT: Did you receive those photographs?

14 MR. MAYS: No, sir. No, sir, I did not, Your
15 Honor. Those are not the drugs that I'm talking about.

16 THE COURT: Oh, okay. Which ones are you
17 talking about?

18 MR. MAYS: These drugs here is on -- it's on
19 Item 19. It does not have the name title to it and it
20 just says drugs.

21 THE COURT: Item 19, is that your request or
22 some ---

23 MR. MAYS: It was from what was in his
24 paperwork; the motion that I got.

25 THE COURT: All right. What do you have there,

1 Mr. ---

2 MR. BULSA: Item 19 that he's referencing, a
3 list of items from the city police evidence department.
4 Item 19 is entitled drugs. Description, plastic bag
5 containing two separated units of an off-white, rock-like
6 substance. Submitted to evidence by Ed Guthro. Your
7 Honor, I submit to the court is that that, is my
8 understanding, is what was recovered at the scene near
9 the location of where Christopher Scott was found
10 wounded.

11 THE COURT: Item 19, drugs two -- what did you
12 say? Two?

13 MR. BULSA: It's described as a plastic bag
14 containing two separated units of an off-white rock-like
15 substance.

16 THE COURT: All right. A plastic bag, one
17 plastic bag?

18 MR. BULSA: Yes, sir.

19 THE COURT: Is that correct? One container, in
20 other words?

21 MR. BULSA: For the purposes of this record,
22 Your Honor, I do have a couple of pictures I can ask to
23 be marked.

24 THE COURT: Well, is that what we're talking
25 about, a plastic bag?

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1 MR. BULSA: Yes, sir, I believe ---

2 THE COURT: With two objects..

3 MR. BULSA: The picture, I think, will help
4 describe that.

5 MR. MAYS: That's not it.

6 Your Honor, I would like to ask for a continuance
7 today because I did not know I was coming over here for a
8 jury trial and I don't have the proper paperwork to
9 really ---

10 THE COURT: Well, let's finish this and we'll
11 see what you have on anything else.

12 Do you have that marked?

13 COURT REPORTER: No.

14 THE COURT: We're off the record.

15 (WHEREUPON, the court stood at recess for a short
16 break.)

17 (WHEREUPON, State Exhibit Numbers 1 and 2 were
18 marked for identification.)

19 MR. BULSA: Your Honor, just for this hearing,
20 State's Exhibit 1 and 2. 1 is a picture of the bag. 2
21 is a picture with a placard marked number 14. That's the
22 number that was assigned at the scene. However, when it
23 was introduced into evidence, it is submitted as Item 19,
24 for their list.

25 Now, if the court -- by the picture and my looking

1 at it, it appears to be a plastic bag of two packages of
2 rock-like substances, which references the Item 19 that
3 the defendant is talking about.

4 MR. MAYS: No, it's not.

5 THE COURT: Did you receive these photographs?

6 MR. MAYS: Yes, sir, Your Honor.

7 THE COURT: All right. So you received what
8 has been marked as Plaintiff's Exhibit -- or State's
9 Exhibit Number 1 and 2?

10 MR. MAYS: Yes, sir.

11 THE COURT: So this is what you're saying was
12 not ---

13 MR. MAYS: Your Honor, those are not the drugs
14 that I'm talking about. Those are the drugs that the two
15 victims allegedly wrote a voluntary statement saying that
16 those are they drugs. The drugs I'm talking about is
17 somebody else's.

18 THE COURT: And where would somebody ---

19 MR. MAYS: I don't know where they got caught.
20 I don't know where the drugs -- where they got the drugs
21 from, but this says ---

22 THE COURT: Is there any reference to that in
23 the material that you've been supplied?

24 MR. MAYS: Yes, sir. Yes, sir.

25 THE COURT: What was that?

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1 MR. MAYS: It was -- well, they said the items
2 was -- 19 was the drugs. They had no name onto them.
3 They said they separated ---

4 THE COURT: Well, now, he just proffered the
5 Item 19, which apparently is now marked as State's
6 Exhibits 1 and 2.

7 MR. MAYS: There's another, there's another
8 item on there that says crack cocaine. That's what he's
9 talking about right there. He's not talking about no
10 drugs with no name on them. Those were all the drugs
11 that them guys claim. They got those. They know who ---

12 THE COURT: In other words, you say there's
13 another ---

14 MR. MAYS: There's another thing ---

15 THE COURT: Another group of drugs somewhere?

16 MR. MAYS: Somewhere.

17 THE COURT: All right. Where is it referenced
18 in anything that you know about?

19 MR. MAYS: I'm trying to remember the motion.

20 THE COURT: Are there any other drugs other
21 than these two that are reflected in ---

22 MR. BULSA: Yes, sir, I have number 4, that's
23 -- that's drugs.

24 THE COURT: This one?

25 MR. BULSA: We've got all the evidence right

1 here.

2 Could I ask the court reporter to mark these two
3 sheets and staple them.

4 THE COURT: All right. We're off the record.

5 (WHEREUPON, State Exhibit Number 3 was marked for
6 identification.)

7 MR. BULSA: Your Honor, I'm reminded that the
8 drugs are actually kept in a separate location. The
9 evidence room would not have been in this package.

10 I would, for the court's information, submit State's
11 Exhibit 3, which list Item 19 and sets out the
12 description that I put into the court seems to match the
13 picture previously ---

14 THE COURT: Have you shown this to Mr. Mays?

15 MR. BULSA: I didn't.

16 MR. MAYS: That's what I'm talking about.

17 THE COURT: Okay. All right. Mr. Mays,
18 referring to State's Exhibit Number 3, which seems to be
19 descriptions of various items, is this what you were
20 talking about, Item 19? Description: plastic bag
21 containing two separate units of an off-white rock
22 substance?

23 MR. MAYS: Yes, sir.

24 THE COURT: And you say there was another
25 reference to some other drugs?

1 MR. MAYS: Those are the drugs that I'm trying
2 to figure out in my Brady that I brought up, which I
3 don't see who got caught with those drugs. And I'm
4 asking for the bad character, the bad reputation, fraud,
5 dishonesty.

6 THE COURT: Well, that goes to the time of
7 their testimony.

8 MR. MAYS: Okay.

9 THE COURT: That's not an evidentiary matter.

10 MR. MAYS: Okay.

11 THE COURT: You're talking about as far as
12 their credibility, that you want ---

13 MR. MAYS: Yes, sir. I ---

14 THE COURT: Just a moment. You will be
15 provided with a rap sheet of any witnesses that do
16 testify that have rap sheets. All right. And those
17 convictions will relate whether or not they've had any
18 convictions for fraud or anything that might be
19 approachable as moral turpitude.

20 All right. Anything else?

21 MR. MAYS: I don't have my private documents,
22 Your Honor, so I really can't state at this time.

23 THE COURT: I beg your pardon?

24 MR. MAYS: I don't have my documents with me,
25 so I can't state anything for the record at this time.

1 THE COURT: All right. You say you don't have
2 the documents with you that you needed?

3 MR. MAYS: I was not notified of this jury
4 trial today.

5 THE COURT: All right. Madam Clerk, what's the
6 process or procedure for -- regarding parties, that they
7 have matters ready for trial?

8 THE CLERK: They go out -- we have a docket
9 clerk and she notifies the defendants by letter and it's
10 put on the trial docket.

11 THE COURT: The letters are sent to their
12 address?

13 THE CLERK: They are mailed to their home
14 address.

15 THE COURT: Home address? How about if they're
16 incarcerated?

17 THE CLERK: I'm not sure how she handles that.

18 THE COURT: Mr. Solicitor, can you give any
19 assistance?

20 MR. BULSA: I was under the impression that she
21 would have notified him at the jail. However, when I
22 inquired of her after our conversation, I had her go to
23 look into her record.

24 If I could have this marked.

25 (WHEREUPON, State Exhibit Number 4 was marked for

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1 identification.)

2 MR. BULSA: This is State's Exhibit Number 4.
3 It's a group of one, two, three, four, five, six, seven,
4 eight pages, addressing separate warrant numbers assigned
5 to Mr. Mays. The docket clerk, Cindy Pierce, tells me
6 she would have -- this would have been mailed out by
7 their office to his address on the record. I'll tell the
8 court that that address is the defendant's mother's
9 address. What she did with them if she received them, I
10 do not know. That's how I'm told he would have been
11 notified.

12 THE COURT: But no service was made on the
13 defendant at his present residence or location?

14 MR. BULSA: Not that they tell me, no, sir.

15 THE COURT: All right.

16 MR. BULSA: For the record, I don't know if
17 he's had contact, but Mr. Poole has known that this has
18 been on the docket. He's called me about it several
19 times.

20 THE COURT: Well, Mr. Poole has been relieved
21 as counsel by Judge Gibbons except for standby at trial.

22 MR. BULSA: I had him -- I'm not putting him on
23 the spot. I'm just -- I don't know if he had ever made
24 an attempt to speak with Mr. Mays.

25 MR. MAYS: No, he has not.

1 MR. BULSA: I would just ---

2 THE COURT: Well, I'm not trying to take him
3 off the spot, but Mr. Poole, by the provisions of Judge
4 Gibbons' order, was relieved as counsel for the
5 defendant. However, the public defender will remain as
6 standby counsel should the defendant need assistance
7 during the trial of the case. In other words, he had no
8 further responsibilities until the trial was actually
9 called.

10 MR. BULSA: I agree. And I just asked -- I
11 stepped over and asked Mr. Poole and he said he did not
12 go to the jail to speak with Mr. Mays.

13 THE COURT: Well, he had no reason to. In
14 fact, it may be a violation of Judge Gibbons' order if he
15 did, because it says that he should be standby should the
16 defendant need assistance during the trial.

17 All right. Have a seat. Now, what is it -- you did
18 not receive proper notice. What are you suggesting, Mr.
19 Mays?

20 MR. MAYS: I just need some time.

21 THE COURT: How much time do you need?

22 MR. MAYS: One day is fine with me.

23 THE COURT: All right. Mr. Solicitor, what do
24 you say?

25 MR. BULSA: At this time and this date, I don't

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1 know how it would affect other trials. We might be
2 proceeding on. We do have some other cases on the
3 docket. I don't know if Your Honor wants to start
4 another case.

5 THE COURT: No. I think it was -- as I
6 understand, you have a very efficient docket coordinator
7 here in Spartanburg County and that she probably -- I was
8 looking at it; I've seen it today. And it shows you've
9 got about eighty-two cases down and this all seems to be
10 ones that are adjusted for different purposes.

11 How about if I do this, Mr. Mays, suggest -- how
12 long do you think this case might try -- last, Mr.
13 Solicitor?

14 MR. BULSA: The state's portion is about a day.

15 THE COURT: How much time do you need on your
16 side of the case, Mr. Mays? Now, you understand -- and
17 I'm sure Mr. Poole has advised you, or somebody has, that
18 you do not have any -- you do not have the burden of
19 proof in a criminal case. In other words, the
20 constitutional provides that you do not even have to
21 testify or offer any evidence. Do you understand that?

22 MR. MAYS: Yes, sir.

23 THE COURT: And the fact that you do not
24 testify or offer any evidence will not be held against
25 you, and I'll also instruct the jury that's drawn in this

1 case. Do you understand that?

2 MR. MAYS: Yes, sir.

3 THE COURT: So now I'm going to ask you, how
4 much time do you think you might need if you decide to
5 waive your right not to testify or present evidence?

6 MR. MAYS: I'm fine.

7 THE COURT: Would a day be ---

8 MR. MAYS: That's fine.

9 THE COURT: All right. In that case, let's say
10 Wednesday. So this case will not be called before
11 Wednesday, but what time will the jury be reporting back
12 on Wednesday?

13 MR. BULSA: We normally do it on an on-call
14 basis.

15 THE COURT: Well, I mean, so what time would
16 they be on call?

17 MR. BULSA: They would call back, I would
18 presume, tomorrow evening to determine when to come back.

19 THE COURT: And what time would that be? You
20 tell them to come in at some time.

21 MR. BULSA: Yes, sir. I don't ---

22 THE COURT: Ten o'clock, nine thirty?

23 THE CLERK: It's in the judge's discretion.

24 THE COURT: Y'all will have to forgive me. I
25 come to Spartanburg only occasionally. My mother told me

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1 when you're a guest in a home, you don't try to dictate
2 the terms. I want to be invited back. So what's the
3 most convenient for your staff, your ---

4 MR. BULSA: May I ask the court a question?

5 THE COURT: Yes, sir.

6 MR. BULSA: Do you intend to try a case in
7 between this?

8 THE COURT: I'll be glad to. Yes, sir.

9 MR. BULSA: So ---

10 THE COURT: But what I'm talking about, what is
11 the normal time that you would ask the jury to report if
12 they're to come back the next day?

13 MR. BULSA: Nine thirty.

14 THE COURT: What?

15 MR. BULSA: Nine thirty.

16 THE COURT: Pardon?

17 MR. BULSA: Nine thirty.

18 THE COURT: Nine thirty. All right. So this
19 case can be called, but not sooner than nine thirty
20 Wednesday. And Wednesday is what day? This is ---

21 MR. BULSA: November the 20th.

22 THE COURT: The 20th. Wednesday, the 20th,
23 2013. You understand?

24 MR. MAYS: Yes.

25 THE COURT: And you'll be ready to go to trial

1 at that time. Any questions?

2 MR. MAYS: No, sir.

3 THE COURT: Very good. And Mr. Poole, you'll
4 continue to be available as standby during the trial. Do
5 you understand that?

6 MR. POOLE: Yes, sir, I do.

7 THE COURT: All right. Very good. Any
8 questions from the state?

9 MR. BULSA: No, Your Honor. But I would like
10 to take this opportunity to offer Mr. Mays an opportunity
11 to look at the evidence.

12 THE COURT: That's a very good idea. See if
13 you can't arrange that in an appropriate place.

14 All right. Mr. Mays, Mr. Solicitor, I want to thank
15 you and all those who have been involved in this
16 proceeding for your patience with the court today. We'll
17 now be ready to proceed Wednesday morning at nine thirty.
18 Very good. Thank you.

19 MR. BULSA: Yes, sir. Thank you, Your Honor.

20 (WHEREUPON, the court stood at recess in this matter
21 for the day.)

22 **NOVEMBER 20, 2013**

23 (WHEREUPON, Court convened with all parties present
24 and the following proceedings were had.)

25 THE COURT: All right. We are now ready to

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1 start the trial of State versus Javan Frederick Mack --
2 Mays. Excuse me, Mr. Mays. Case number 2012-GS-42-5315,
3 5314 and 5316.

4 Now, is there anything from the state before we
5 begin the selection of a jury? Any voir dire?

6 MR. BULSA: I believe I handed my voir dire up
7 yesterday. But I have a new list of witnesses. I added
8 two names. Do you want the indictments?

9 THE COURT: At least copies.

10 All right. Mr. Mays, do you have any voir dire? In
11 other words, questions for the jury?

12 MR. MAYS: No, sir.

13 THE COURT: Do you want to consult with Mr.
14 Poole maybe just find out if there is anything you'd like
15 to ask or should ask?

16 MR. MAYS: That's fine.

17 (WHEREUPON, Messrs. Mays and Poole consult.)

18 THE COURT: Do you have an extra copy of your
19 voir dire? The reason I ask, we need to let the
20 defendant look at it.

21 MR. BULSA: I had given him one yesterday.

22 THE COURT: Oh, all right.

23 All right. Mr. Mays, you have been furnished a copy
24 of the state's?

25 MR. MAYS: Yes, sir.

1 THE COURT: You've looked at those?

2 MR. MAYS: (Affirmative nod.)

3 THE COURT: And you've also had an opportunity
4 to discuss with your standby counsel any voir dire that
5 you might have?

6 MR. MAYS: Yes, sir.

7 THE COURT: Do you have any that you want to
8 have the jury asked?

9 MR. MAYS: No, sir.

10 THE COURT: Very good. All right. I
11 understand just before we were supposed to get start, as
12 far as the peremptory challenges under the indictments in
13 this case that the defendant will be entitle to ten and
14 the state would be five?

15 MR. BULSA: Yes, sir.

16 THE COURT: Mr. Mays, is that what you
17 understand?

18 MR. MAYS: Can you repeat that, Your Honor.

19 THE COURT: That the defendant is entitled to
20 ten strikes and the state is entitled to five, as far as
21 jurors?

22 MR. MAYS: Yes, sir.

23 THE COURT: All right. Let's see. We're going
24 to need some room; aren't we, in the courtroom? As soon
25 as we strike the jury, you can come back.

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1 THE BAILIFF: You ready for them?

2 THE COURT: Yes, sir. Yes, sir. Well, I say
3 we are. Mr. Solicitor, are you ready for the jury?

4 MR. BULSA: Yes, sir.

5 THE COURT: Mr. Mays, are you ready?

6 MR. MAYS: (Affirmative nod.)

7 THE COURT: Now, you've got to speak up because
8 the lady is taking down everything we say. And so are
9 you ready?

10 MR. MAYS: Yes, sir.

11 THE COURT: Very good. Thanks.

12 (WHEREUPON, the jury panel entered the open court at
13 approximately 2:33 p.m.)

14 THE COURT: Good afternoon, ladies and
15 gentlemen. I think the way you do it here in
16 Spartanburg, y'all were all in court yesterday with me on
17 the other case. You do understand that when you were put
18 under oath on Monday, I think, when you were qualified,
19 that you're still under oath. So therefore when we ask
20 you some questions, they'll be done in the same -- will
21 be done the same way as provided.

22 We're about to start a trial of another case. And
23 I'm going to call on the solicitor, if he would, to call
24 this case.

25 MR. BULSA: Thank you, Your Honor. The state

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1 versus Javan Mays on two indictments for attempted murder
2 and one indictment for armed robbery.

3 THE COURT: Let's see. We have the indictments
4 here.

5 Ladies and gentlemen of the jury panel, we're about
6 to begin the trial of the case of State versus Javan
7 Frederick Mays, who is charged in two indictments, with
8 attempted murder; is that correct, Mr. ---

9 MR. BULSA: That's correct.

10 THE COURT: All right. On indictment number
11 2012-GS-42-5314, he's charged with attempted murder. And
12 indictment number 2012-GS-42-5315, with attempted murder.
13 And a third indictment -- is there another indictment for
14 armed robbery?

15 MR. BULSA: Yes, sir, you should have three
16 indictments.

17 THE COURT: All right. Three indictments. I
18 just wanted to be sure that that's correct.

19 MR. BULSA: Yes, sir.

20 THE COURT: And then a third indictment, 53 --
21 excuse me. 2012-GS-42-5316, in court one, armed robbery,
22 and in court two, possession of a firearm during the
23 commission of a violent crime.

24 Now, the state will be represented by Ms. Bulsa.
25 Mr. Bulsa, if you would please stand and introduce

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1 yourself and anyone who will be assisting you in the
2 trial of this case.

3 MR. BULSA: My name is Derrick Bulsa. I'm a
4 prosecutor with the solicitor's office. I have numerous
5 witnesses. I assume their names will be called. But
6 I'll be handling the case myself.

7 THE COURT: And the defendant is Javan
8 Frederick Mays, and he is representing himself, as he is
9 entitled to do under our constitution. However, Mr.
10 Poole will be -- who is an attorney here with the local
11 office will be standby counsel in the sense that he will
12 assist Mr. Mays if necessary as far as questioning, but
13 he will not be representing Mr. Mays, as such, except as
14 a standby counsel.

15 Now, ladies and gentlemen of the jury, is there any
16 member of the jury panel related by blood or marriage to
17 the defendant, Javan Frederick Mays? If so, please
18 stand.

19 (No response.)

20 THE COURT: Is any member of the jury panel --
21 I'm sorry, Mr. Mays, I forgot. If you would, please,
22 stand and face the -- look upon the jury. Very good.
23 Thank you, sir. The reason for that, of course -- you
24 may have a seat. The reason for that, as I said
25 yesterday, sometimes we might recognize somebody but not

1 know them by name. And so I'm getting ready to read out
2 a list of names of potential witnesses. And if any of
3 the witnesses happen to be in court, if they would,
4 please stand at the time their names are called and look
5 upon the jury, as well. Is any member of the jury panel
6 related by blood or marriage to the defendant, Javan
7 Frederick Mays? If so, please stand.

8 (No response.)

9 THE COURT: Is there any member of the jury
10 panel a member of the grand jury and returned the
11 indictments in these cases? If so, -- the grand jury for
12 Spartanburg County in the year 2012 and they returned the
13 indictments in these cases? If so, please stand.

14 (No response.)

15 THE COURT: Now, I'm going to read the names of
16 potential witnesses in this case, as I said. Potential
17 witnesses are witnesses who may testify, but they do not
18 have to testify in the trial of this case. Jo, J-O,
19 Mays, Antron Oglesby, April Oglesby, Bill Oglesby, Tameka
20 Pilgrim, Aretha Delores Richards, Kendall Robinson,
21 Christopher Tore Scott, Courtney Burgess. If you would,
22 turn around and look at the jury. Thank you, sir. John
23 Burgess. Thank you, sir. Robert Cheeks, Cory Cole,
24 Stacy Corn, Alan Freeman, Ed Guthro. Thank you, sir.
25 Tim Hancock, Brendall Mathis, Laurent Smith, Brian

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1 Stokes, Jennifer Watson. Thank you, ma'am. Chris
2 Latham.

3 Now, is there any member of the jury panel related
4 by blood or marriage, close personal friend, a business
5 associate, of any of the potential witnesses in this
6 case? If so, please stand. That would be Jo Mays,
7 Antron Oglesby, April Oglesby, Bill Oglesby, Tameka
8 Pilgrim, Aretha Delores Richards, Kendall Robinson,
9 Christopher Tore Scott, Courtney Burgess, John Burgess,
10 Robert Cheeks, Cory Cole, Stacy Corn, Alan Freeman, Ed
11 Guthro, Tim Hancock, Brendall Mathis, Laurent Smith,
12 Brian Stokes, Jennifer Watson or Chris Latham. Any
13 member of the jury panel related by blood or marriage,
14 close personal friend, business associate to any of the
15 potential witnesses in this case, if you would please
16 stand at this time.

17 (No response.)

18 THE COURT: Is there any member of the jury
19 panel or member of their immediate family either close
20 personal friends or business associates or related by
21 blood or marriage to the defendant, Javan Frederick Mays,
22 or any members of his family? If so, please stand.

23 (No response.)

24 THE COURT: Has any member of the jury panel
25 ever been employed by or represented by the Spartanburg

1 Public Defender's Office? If so, please stand.

2 (No response.)

3 THE COURT: Is there any member of the jury
4 panel or members of their immediately family close
5 personal friends or business associate of the attorney,
6 Robert Poole? If so, please stand.

7 MR. BULSA: It's Roger, Your Honor. That was a
8 mistake, Roger Poole.

9 THE COURT: Did I say Robert? Well, I've got
10 two names. Which is it? Roger?

11 MR. POOLE: Yes, sir, it's Roger.

12 THE COURT: Roger?

13 MR. POOLE: Right.

14 THE COURT: All right. Thank you.

15 Any member of the jury panel related by blood or
16 marriage, close personal friend or business associate of
17 the attorney Roger Poole?

18 (No response.)

19 THE COURT: Is there any member of the jury
20 panel ever been employed by or -- excuse me. Any member
21 of the jury panel or members of their immediate family or
22 acquaintance ever been employed by or prosecuted for a
23 criminal offense by any prosecution agency, state or
24 federal, to include the solicitor's office of the 7th
25 Judicial Circuit? If so, please stand.

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1 (No response.)

2 THE COURT: Is there any member of the jury
3 panel or members of their immediate family or
4 acquaintances of the jury ever been investigated by law
5 enforcement for a criminal violation? If so, please
6 stand.

7 (No response.)

8 THE COURT: Has any member of the panel formed
9 or expressed an opinion about any matter that might be
10 involved in these cases? If so, please stand.

11 (No response.)

12 THE COURT: Is any member of the jury panel
13 aware of any interest, bias or prejudice, towards either
14 the defendant or the state of South Carolina? If so,
15 please stand.

16 (No response.)

17 THE COURT: Does any member of the panel know
18 of any reason whatsoever why he or she could not give
19 both the state of South Carolina and the defendant a fair
20 and impartial trial?

21 (No response.)

22 THE COURT: Any further questions, from the
23 state?

24 MR. BULSA: No, Your Honor.

25 THE COURT: From the defendant?

1 MR. MAYS: No, Your Honor.

2 THE COURT: Very good. Thank you.

3 Madam Clerk, if you would, please, give us a jury.

4 While she's doing that, I might as well explain to
5 you, since I didn't do it yesterday, as I say, now we use
6 a computer to draw the jury names in the general sessions
7 or criminal court. In the old days, and I'm not talking
8 about so old as they were in my days, when we started out
9 we would have a little drum like you do in the lottery
10 and the clerk would have to cut up each one of your names
11 off of a list and put them in a little white capsule.
12 And then we put the capsule in the drum. And then we
13 would turn the drum. And we'd have a child who was too
14 young to read or write or a person who was legally blind
15 to reach in that drum and pull out a capsule. The clerk
16 would then open the capsule, write down the name, and
17 then your name would be called to come forward. Now we
18 do it by computer and -- when the computer is working,
19 that is, which it is today, and the names are drawn
20 randomly by the computer. So we get the same type of
21 list. It's a random list. The names are not in
22 sequence. In other words, they come in a random order.
23 But now it's a little bit easier. The clerk is probably
24 too young to remember those days. Do y'all still have a
25 drum around here? Okay, very good.

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1 All right. If you would, please, Madam Clerk, give
2 us a jury.

3 THE CLERK: Ladies and gentlemen, when I call
4 your name and number, please come forward and turn
5 around; stand right over there.

6 Juror 100, Christopher W. Lawson. What says the
7 state?

8 MR. BULSA: Please excuse the juror in this
9 case.

10 THE COURT: He's excused. By the way, you do
11 remember that the way we do this is that the state goes
12 first and he'll either say, present the juror or excuse
13 the juror. And then the defendant -- and Mr. Mays, you
14 understand this, when it comes to you then you either
15 say, swear the juror or excuse the juror. You understand
16 that? And you have ten strikes.

17 MR. MAYS: Yes, sir.

18 THE COURT: Very good. All right.

19 THE CLERK: Juror number 88, Janet T. Ingerson.
20 What says the state?

21 MR. BULSA: Please present the juror.

22 THE CLERK: What says the defendant?

23 MR. MAYS: Please present the juror.

24 THE CLERK: Juror number 63, Lois M. Gosselin.
25 What says the state?

1 MR. BULSA: Please present the juror.
2 THE CLERK: What says the defense?
3 MR. MAYS: Please excuse the juror.
4 THE CLERK: Juror number 87, John R. Hyatt.
5 What says the state?
6 MR. BULSA: Please present the juror.
7 THE CLERK: What says the defense?
8 MR. MAYS: Please excuse the juror.
9 THE CLERK: Juror number 79, Cecelia M.
10 Hawkins. What says the state?
11 MR. BULSA: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. MAYS: Please present the juror.
14 THE CLERK: Juror number 204, Roxanne Tracey
15 Greenleaf.
16 MR. BULSA: What number?
17 THE CLERK: 204. What says the state?
18 MR. BULSA: Please present the juror.
19 THE CLERK: What says the defense?
20 MR. MAYS: Please excuse the juror.
21 THE CLERK: Juror number 124, Richard H.
22 Mitchell. What says the state?
23 MR. BULSA: Please present the juror.
24 THE CLERK: What says the defense?
25 MR. MAYS: Please excuse the juror.

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1 THE CLERK: Juror number 127, Tyanna V. Moore.
2 What says the state?
3 MR. BULSA: Please present the juror.
4 THE CLERK: What says the defense?
5 MR. MAYS: Please present the juror.
6 THE CLERK: Juror number 86, Richard A.
7 Hutchinson. What says the state?
8 MR. BULSA: Please present the juror.
9 THE CLERK: What says the defense?
10 MR. MAYS: Please excuse the juror.
11 THE CLERK: Juror number 126, Anthony Moore.
12 What says the state?
13 MR. BULSA: Please present the juror.
14 THE CLERK: What says the defense?
15 MR. MAYS: Please present the juror.
16 THE CLERK: Juror number 17, Helen W. Bradley.
17 What says the state?
18 MR. BULSA: Please present the juror.
19 THE CLERK: What says the defense?
20 MR. MAYS: What number?
21 THE CLERK: 17.
22 MR. MAYS: Please excuse the juror.
23 THE CLERK: Juror number 137, Tawanna T. Osbey.
24 What says the state?
25 MR. BULSA: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. MAYS: Please present the juror.

3 THE CLERK: Juror number 95, Jim H. Keadle.

4 What says the state?

5 MR. BULSA: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. MAYS: Please present the juror.

8 THE CLERK: Juror number 18, Gail O. Bright.

9 What says the state?

10 MR. BULSA: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. MAYS: Please excuse the juror.

13 THE CLERK: Juror number 50, Gerd M. Gaulstich.

14 What says the state?

15 MR. BULSA: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. MAYS: Please present the juror.

18 THE CLERK: Juror number 123, Brandon T.

19 Mitchell. What says the state?

20 MR. BULSA: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. MAYS: Please present the juror.

23 THE CLERK: Juror number 98, Bobby J. Lambert.

24 What says the state?

25 MR. BULSA: Please present the juror.

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1 THE CLERK: What says the defense?

2 MR. MAYS: Please present the juror.

3 THE CLERK: Juror number 200, Frances Y. Young.

4 What says the state?

5 MR. BULSA: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. MAYS: Please present the juror.

8 THE CLERK: Juror number 115, Rebecca S. Mayes.

9 What says the state?

10 MR. BULSA: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. MAYS: Please excuse the juror.

13 THE CLERK: Juror number 201, Brandi R. Starr.

14 What says the state?

15 MR. BULSA: Please excuse the juror in this

16 case.

17 THE CLERK: Juror number 148, Gregory P.

18 Raymond. What says the state?

19 MR. BULSA: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. MAYS: Please excuse the juror.

22 THE CLERK: Juror number 128, Errol G. Moss.

23 What says the state?

24 MR. BULSA: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. MAYS: Please present the juror.

2 THE CLERK: Juror number 185, Beverly B.

3 Walker. What says the state?

4 MR. BULSA: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. MAYS: Please excuse the juror.

7 THE CLERK: Juror number 110, Daniel M. Lyles,

8 Jr. What says the state?

9 MR. BULSA: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. MAYS: Please present the juror.

12 THE CLERK: And this is for the alternate.

13 THE COURT: All right. Let's have two

14 alternates, and that will be two and one on strikes.

15 THE CLERK: Juror number 174, Cassondra W.

16 Stephens. What says the state?

17 MR. BULSA: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. MAYS: Please present the juror.

20 THE CLERK: Juror number 4, Gregory K. Baker.

21 What says the state?

22 MR. BULSA: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. MAYS: Please excuse the juror.

25 THE CLERK: Juror number 66, Alissa M. Green.

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1 What says the state?

2 MR. BULSA: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. MAYS: Please present the juror.

5 THE CLERK: Your Honor, our jury selection is
6 complete.

7 THE COURT: Very good. All right. Is there
8 any reason this jury cannot be sworn for the trial of
9 this case, from the state?

10 MR. BULSA: No, Your Honor.

11 THE COURT: From the defense?

12 MR. MAYS: No, Your Honor.

13 THE COURT: Very good. Mr. Keadle.

14 THE JUROR: Yes, sir.

15 THE COURT: I'm going to ask you, since you're
16 sitting in the foreman's seat, that you serve as foreman
17 of this jury.

18 THE JUROR: Yes, sir.

19 THE COURT: Very good. At this time I'm going
20 to ask you to retire to the jury room, and not to begin
21 any deliberations or anything, not even to discuss the
22 case. In fact, to discuss, as I mentioned, Mr. Foreman
23 and jury, anything else but this case, not even
24 personalities or anything of that nature. But if you
25 would retire to the jury room. I need to take up some

1 matters with the attorneys and the balance of the jury in
2 this case. We'll come back out in just a few minutes and
3 start the trial of the case. But I do, again, ask you to
4 never, unless it's finally given to you, to discuss this
5 case with anybody and not let anybody discuss it with
6 you. All right. With that if you'll go with the
7 bailiff.

8 (WHEREUPON, the jury exited the open court at
9 approximately 3:11 p.m.)

10 THE COURT: Ladies and gentlemen, the jury pool
11 that was not drawn on this jury, I'm going to excuse you
12 for the balance of the day. Y'all have the telephone
13 number that you have. Does anybody not have the
14 telephone number? If so, raise your hand. And you all
15 understand that the number will be -- you've got somebody
16 that doesn't? All right. You're to call that number
17 after six o'clock; is that correct?

18 THE CLERK: After six, yes, sir.

19 THE COURT: After six this afternoon there will
20 be a message on the answering machine that will tell you
21 what we need to do tomorrow, either to come in at a
22 certain time or call back or there could be some other
23 message. But the main thing is, do keep calling that.
24 If you don't get through the first time, if it's busy,
25 keep calling until you finally do get through. And it

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1 will be on all night. I regret that if you do not get
2 the message from the answering machine, you'll have to be
3 here in the morning, and I or one of the other judges
4 will have to give you the message. I think you'd rather
5 have the message from the machine.

6 And again, I do look forward to working with you
7 this week if the opportunity comes. If not, then it's
8 been a pleasure to have been serving here in Spartanburg.
9 I thank you for your kindnesses to me. All right. With
10 that, I'm going to excuse you for the balance of the day.
11 Again, anybody have any questions about what to do? Very
12 good.

13 Everyone else remain seated while the jury retires
14 from the courtroom.

15 (WHEREUPON, the jury panel exited the open court at
16 approximately 3:13 p.m.)

17 THE COURT: All right. Mr. Solicitor, you
18 ready to proceed with your case?

19 MR. BULSA: Yes, sir.

20 THE COURT: Mr. Mays, are you ready to proceed
21 with your defense?

22 MR. MAYS: Yes, sir.

23 THE COURT: Do you still wish to continue
24 representing yourself?

25 MR. MAYS: Yes, sir.

1 THE COURT: All right. And you've had an
2 opportunity to consider the advantages and disadvantages
3 of it?

4 MR. MAYS: Yes, sir.

5 THE COURT: And you still wish to proceed?

6 MR. MAYS: Yes, sir.

7 THE COURT: All right. I find the defendant
8 knowingly and intelligently, freely and voluntarily
9 waives his right to counsel and exercises his right to
10 represent himself in the matter. And Mr. Poole will only
11 act as standby counsel for appropriate questions or
12 advice as asked.

13 All right. How many witnesses do you have that you
14 might want to try to get in today? The reason I ask, I'm
15 just trying to -- it's three fifteen.

16 MR. BULSA: Thank you, Your Honor. There's a
17 possibility I could get in the majority of my officer
18 witnesses.

19 THE COURT: Well, that'll be good. That's what
20 we'll do then.

21 Anything from you, Mr. Mays, before we bring the
22 jury back?

23 MR. MAYS: No, sir, Your Honor.

24 THE COURT: Very good. Ask the jury to join
25 us, please.

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1 (WHEREUPON, the jury entered the open court at
2 approximately 3:17 p.m.)

3 THE COURT: All right. One thing I will say
4 before we start, though, Mr. Foreman, you'll always sit
5 in that seat and the two alternates will always sit in
6 the last two seats on the back row. That way I'll know
7 where the individuals I need to stay in touch with are.
8 However, all the other seats in the jury box, you can sit
9 wherever you would like. So you don't have to sit in the
10 same seat each time, except those three seats are the
11 only reserved seats.

12 Now, Mr. Foreman, ladies and gentlemen of the jury,
13 I'm sure each of you now fully appreciates that this
14 court, the Court of General Sessions for Spartanburg
15 County, exists for the purpose of resolving questions of
16 alleged criminal conduct arising between the state of
17 South Carolina and the defendant. It is a guaranteed
18 right of every citizen that a charge of criminal conduct
19 be presented in open court, according to certain rules of
20 procedure. The state has not only an equal right, but a
21 duty to present a charge of criminal conduct in open
22 court according to the same rules and procedures. Each
23 of the parties, therefore, both the state and the
24 defendant, then have equal right to the opportunity for
25 this judicial proceeding to have you as a jury and

1 selected and now to be sworn for the trial of this case.

2 Madam Clerk, if you would, please swear the jury.

3 THE CLERK: Please stand and raise your right
4 hand. Do you solemnly swear or affirm in the case about
5 to be tried as the jury to try the issue joined in this
6 case and a true verdict render according to the law and
7 evidence, so help you God?

8 (WHEREUPON, the jury was duly sworn.)

9 THE COURT: Now, Mr. Foreman and ladies and
10 gentlemen of the jury, one of the most important aspect
11 of your duty as a jury lies essentially in the oath that
12 you have just now taken to well and truly try and
13 determine the facts of this case. That oath, in a very
14 essential way, says that you are the sole judges of the
15 facts in this case. Obviously any case tried in court
16 will involve a question of about what happened or how
17 something came to happen or to determine if anyone did
18 anything in a particular occurrence or circumstance.
19 From this point forward then, no one concerned with this
20 trial has a right to decide any question of fact in this
21 trial or the truth of it, except you, the jury. The
22 facts then are for your resolution and your decision and
23 yours alone. And after you hear all the evidence in the
24 case, then it will be your duty, by your mutual enjoyment
25 and discussions, to determine the truth of this case by

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1 deciding the weight and believability of each part of the
2 evidence, and by applying the law of the case thereto.

3 As the trial judge, I am the judge of the law in
4 this case. It is also my responsibility, among other
5 duties, to preside over this trial, rule on the
6 admissibility of evidence offered during the progress of
7 the trial and to state to you, the jury, the law
8 applicable to the case. The constitution of the state of
9 South Carolina mandates that I, as the trial judge,
10 cannot directly or indirectly comment about the facts in
11 this case. The process of a verdict; it is simply that
12 you, the jury, first determine what is the truth of the
13 facts and then apply to that true state of facts, the
14 principal of law applicable. And by that process, to
15 determine and report to this court your final verdict in
16 the case, speaking the truth of the case, as you
17 determine it.

18 Now, I will more fully and completely state to you
19 the principals of law applicable to the issues in the
20 case before it is submitted to you for your decision.
21 However, there are certain principals of law applicable
22 to the framework of every case in general sessions court.
23 I'll outline several of these basic principals to you for
24 your guidance.

25 The defendant has entered a plea of not guilty to

1 the charges contained in all of the indictments. The
2 indictments in a case is not evidence. It is simply the
3 written instrument that contains the charge or charges
4 against the defendant and it serves as a formal document
5 for which the case is processed into the court. The plea
6 of not guilty places upon the state the burden of proof
7 in this case.

8 As to what is meant by the term burden of proof, the
9 defendant is presumed in law innocent of all charges
10 contained in the indictment. The burden of proof
11 requires the state to prove guilt beyond a reasonable
12 doubt and, therefore, consistent with the burden, the
13 defendant or the accused party shall be presumed innocent
14 and that presumption of innocence is sufficient to compel
15 a verdict of not guilty or a verdict of acquittal unless
16 you, the jury, conclude that the state has satisfied its
17 obligation to prove the defendant guilty beyond a
18 reasonable doubt.

19 Now, the term reasonable doubt is the kind of doubt
20 that would cause a reasonable person to hesitate to act.

21 Now, the case will be opened by the solicitor, after
22 which the same opportunity will be afforded to the
23 defendant to make an opening statement. When all the
24 evidence has been received by the court, counsel for the
25 state and counsel for the defendant will state to the

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1 jury their respective positions, after which the court
2 will more fully state the law applicable in the case.

3 Obviously, all points of the case are important.
4 You do not know which witness in the case will most
5 impress you, whether the first witness or the last
6 witness. In reaching your final conclusion, you will
7 need the guidance and the judgement of the other jurors.
8 You will need the guidance of the principals of law that
9 will be stated to you by the court. All these reasons
10 then, if we have any recess periods when you retire to
11 your jury room, or during an overnight or meal recess, I
12 instruct you to not -- you must not undertake the
13 discussion of this case among yourselves until the case
14 is finally given to you for your deliberation. Nor are
15 you to discuss this case with anyone or permit anyone to
16 discuss the case with you. If they try to do so, you
17 should report them immediately.

18 Now, do remember that the verdict in this case must
19 be the unanimous verdict of all twelve jurors.

20 Now, there's a few other things I need to mention
21 before we start. First, as I mentioned earlier, I am the
22 only person who can tell you what the law is. But you
23 are the only ones who can determine the facts. I do not
24 have the right to indicate how I may feel after the
25 evidence is presented and throughout this trial. My

1 intention will be to act impartially towards each party.

2 Second, from time to time, an attorney or a party
3 may object to some bit of testimony or evidence which the
4 other side is seeking to present as it supports a
5 business or any other structured activity. There are
6 certain rules that both sides must obey in presenting
7 evidence. These rules have a definite purpose. They
8 ensure that the information you receive is the most
9 trustworthy and reliable evidence available.

10 An objection is a procedure we use for a party to
11 record a possible violation of the rules to the judge's
12 attention. For this reason you should not hold an
13 attorney's objection against his client; nor should you
14 conclude from my ruling on the objections that I favor
15 one side or the other.

16 Finally, I would ask that you pay the closest
17 attention possible to the evidence presented to you. I
18 would ask that you do not take notes, for if the note
19 taker makes an error, those notes can be more detrimental
20 than helpful during the deliberations. It's a time-
21 tested system and it's for each of you to listen
22 carefully, and I'm sure that each of you will do that.

23 We'll now begin the trial. However, I might note
24 that having said that I recommend that you do not take
25 notes, the reason for that is that it's been my

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1 experience if you're taking notes you have a tendency to
2 concentrate on the note. In other words, we want to be
3 sure that we write down what we think we hear. And in
4 doing that, we concentrate on the note and we do not --
5 or we're distracted from the testimony and the exhibits
6 and other evidence that's being introduced. And you have
7 to remember that you will make your decision based solely
8 and only on the evidence presented in this courtroom;
9 either the testimony from the sworn witnesses on the
10 stand or exhibits that are introduced during the course
11 of the trial by the parties. And so therefore, you want
12 to be sure that you concentrate on what's happening. If
13 you're taking a note, like I say, you want to --
14 sometimes you concentrate on the note. And sometimes
15 even the spelling or the order of the note itself. So
16 therefore, that's distracting. And I would suggest that
17 you do not take notes. And if you have a question about
18 what might have occurred in the way of witnesses or
19 testimony or other evidence, then you rely on your fellow
20 members of the jury, as you will in the ultimate
21 determination, to find the verdict in this case. And
22 that's why you rely on what each one thinks and hears and
23 on how they're related, and that will ultimately
24 determine where the truth is.

25 Now, having said all that, I do take notes. It's

1 not do as I say, not as I do. The fact of it is that we
2 have different purposes in this courtroom. You and you
3 alone are the only ones who can determine the facts in
4 this case. You're the ones who have to weigh the
5 evidence, to evaluate the evidence. I am not concerned
6 with the weight or the value of any evidence. I'm only
7 concerned whether or not certain things are being done
8 according to our procedure. Whereas you are weighing the
9 evidence and determining its value, I'm just jotting down
10 what occurs. So that's why we have different purposes
11 and we have different ways of accomplishing our
12 responsibilities.

13 And as I said, with that, I'll recognize the
14 solicitor for his opening statement.

15 **OPENING STATEMENT**

16 **BY MR. BULSA:**

17 Good afternoon, ladies and gentlemen. The reason
18 you're here today, ladies and gentlemen, is because on
19 the morning of August the 14th of 2012, approximately one
20 o'clock or one thirty, two men were shot while sitting in
21 the car in a housing complex here in the city of
22 Spartanburg; Prince Hall Apartments. It was the evening
23 of the 13th or early morning hours of the 14th. These
24 two men had gotten a ride with a couple of young ladies
25 that they were spending some time with that night. They

1 had been to a store. One of the ladies told them that
2 they needed to go by and basically run an errand at this
3 apartment complex. The car was parked -- this is a
4 picture. There was an upper parking lot and a lower
5 parking lot. The car was parked in the upper parking lot
6 when the ladies got out of the vehicle. The vehicle was
7 left running with the keys in the car. At that time two
8 men came around and approached the back of the car,
9 opening the door, demanded money. Give it up. And
10 proceeded to fire into the vehicle, striking the two men.
11 The two men's names were Antron Oglesby and Christopher
12 Scott.

13 Fortunately they did not die. They were able to
14 fight off their attackers. At that point they were
15 actually able to jump out of the car and flee. They
16 split up as they ran. One guy ran behind the building
17 and fell on some bushes. The other guy ran down the
18 street. Mr. Oglesby is the one that ran down the street.
19 He was pursued by the two men and caught and beaten with
20 a gun and robbed of his clothing and everything in his
21 clothing.

22 I submit to you, ladies and gentlemen, at the close
23 of this case you will be convinced beyond a reasonable
24 doubt that the defendant was one of those two men that
25 assaulted these men; participated in that shooting and

1 participated in that robbery. And at the close of the
2 case, I will argue to you that the hand of one is the
3 hand of all. He did possess the gun at one point, but
4 we're not alleging he actually pulled the trigger. The
5 other young man pulled the trigger. But this man, in our
6 opinion, and in our presentation, is the brains behind
7 the operation. He's the one that instructed the young
8 man to do what he did. He did take the gun from the
9 young man as they chased Mr. Oglesby down the road and
10 he's the one that struck him in the head and robbed him
11 of his clothing.

12 This is a serious matter. You'll hear from the
13 investigating officers about what they found when they
14 got to the scene and how they investigated and identified
15 the two defendants. Mr. Oglesby knew this man, knew him
16 as Van. Van is short for Javan. He identified him to
17 the police. And the other young man, Mr. Scott, was able
18 to pick Mr. Mays out of a lineup and identify him to the
19 police as one of his assailants. The police found him
20 later that day at his apartment complex -- at that
21 apartment complex. Listen to them, listen to what they
22 found. Okay? This is an identity case. A crime clearly
23 happened. You may not know completely at the close of
24 this case what all took place because everybody has
25 different perspectives of what they see and what they're

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1 going through and what happened that night to them. And
2 we're going to piece it together the best we can through
3 the witnesses, what the police were able to find because
4 they were cooperative. And we're going to present this
5 case to you.

6 The defendant, I submit to you, is guilty of the
7 crimes he's charged with.

8 MR. MAYS: No, I'm not.

9 THE COURT: Mr. Mays, you will speak according
10 to our procedures. You do not interrupt each other. Do
11 you understand?

12 MR. MAYS: Yes, sir.

13 THE COURT: And there's a reason for that.
14 This lady is taking down everything that is said in the
15 courtroom. She cannot take down two people talking at
16 the same time. You understand?

17 MR. MAYS: I apologize.

18 THE COURT: Any questions?

19 MR. MAYS: No, sir.

20 THE COURT: Very good. You may proceed.

21 **OPENING STATEMENT CONTINUED**

22 **BY MR. BULSA:**

23 The state has a job to do. The state's job is to
24 protect the community. An AK47 was the weapon of choice
25 that night. Fired into a vehicle at an apartment

1 complex. This man was a participant in that crime and is
2 guilty.

3 Thank you.

4 THE COURT: All right. Mr. Mays, now it's your
5 turn to address the jury. This is an opening statement.
6 You're not trying the whole case. All right?

7 MR. MAYS: Okay.

8 THE COURT: All right.

9 **OPENING STATEMENT**

10 **BY MR. MAYS:**

11 I have no reason to let this man consider me as no
12 monster, cause I'm not that. And he's saying it was a
13 AK47. I haven't seen no weapon in my motion of
14 discovery.

15 MR. BULSA: Objection, Your Honor. He's ---

16 THE COURT: Now you're arguing your case. And
17 those type arguments belong to the court, not to this
18 jury. They're not going to decide questions of discovery
19 or anything like that. They're just concerned about the
20 facts. All right?

21 MR. MAYS: Okay.

22 THE COURT: Go ahead. If you have anything to
23 say.

24 MR. MAYS: I have nothing further to say.

25 THE COURT: Very good. Thank you, sir.

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Robert Cheeks - Direct Examination by Mr. Bursa

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1 All right. You may call your next witness -- or
2 first witness. Excuse me.

3 MR. BULSA: State calls Robert Cheeks.

4 THE CLERK: Do you solemnly swear or affirm
5 that the testimony you're about to give will be the
6 truth, the whole truth and nothing but the truth, so help
7 you God?

8 THE WITNESS: I do.

9 ROBERT CHEEKS,

10 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. BULSA:

13 Q. Mr. Cheeks, please introduce yourself to the jury.

14 A. My name is Robert Cheeks. I'm an officer with the
15 Spartanburg City Police Department.

16 Q. How long have you been a police officer?

17 A. A little over three years.

18 Q. And what are your duties as a police officer?

19 A. I'm assigned to uniform patrol division.

20 Q. Okay. As a patrol officer, what do you do?

21 A. I answer normal calls that come in for service,
22 emergency 911 type calls.

23 Q. Okay. And do you work a certain shift?

24 A. I work the four p.m. to two a.m. shift.

25 Q. Okay. So were you working that shift back in August

1 of 2012?

2 A. I was.

3 Q. And on August the 14th, the morning, early morning
4 hours, were you on duty?

5 A. I was.

6 Q. And did you get a call to go to Prince Hall
7 Apartments?

8 A. We did.

9 Q. Approximately what time do you recall getting that
10 call?

11 A. About one twenty-two a.m.

12 Q. About one twenty-two a.m.?

13 A. One twenty-two.

14 Q. Okay. And tell the jury what you did when you got
15 that call?

16 A. We initially got a call from our dispatcher who then
17 advised that there was a man that was shot in Prince Hall
18 Apartments. He was behind the building in the woods, but
19 he didn't know where he was. I initially arrived first
20 on scene. We found a small blood trail that led between
21 the one and the two buildings. We went between the
22 buildings into the woods where we could hear the victim
23 yelling for help. We went down into the woods, myself
24 and several other officers. Gave him immediate medical
25 aid. Strapped him to a backboard and carried him back

1 out of the woods and back towards EMS.

2 (WHEREUPON, State Exhibit Number 5 was marked for
3 identification.)

4 Q. Okay. Officer Cheeks, let me show you what's been
5 marked for identification as State's Number 5. Just look
6 over that and see if you recognize what that depicts?

7 A. It is a picture of Prince Hall Apartments.

8 Q. Where are those apartments located?

9 A. They're located within the city limits of
10 Spartanburg. They're right off of Forest Street in the
11 Highland area.

12 Q. Of course, that's within the Spartanburg County
13 jurisdiction?

14 A. Yes, sir.

15 Q. Does that show the buildings one and two that you
16 referenced in your testimony?

17 A. It does.

18 MR. BULSA: The state would offer State's 5
19 into evidence.

20 THE COURT: Did you show it to him?

21 MR. BULSA: I showed it to him. Yes, sir.

22 THE COURT: Any objection, Mr. Mays?

23 MR. MAYS: That's the Prince Hall Apartment.

24 THE COURT: All right. No objection?

25 MR. MAYS: No objection.

1 THE COURT: Very good. State Exhibit Number 5
2 is admitted into evidence.
3 (WHEREUPON, State Exhibit Number 5 was admitted into
4 evidence.)
5 Q. This machine makes a little bit of noise, so make
6 sure you speak up; okay, ---
7 A. Okay.
8 Q. --- when you testify. Do you recall or did you ever
9 get the name of the individual that you were looking for?
10 THE COURT: Do you want the lights?
11 MR. BULSA: Not just yet.
12 THE COURT: All right. When you get ready for
13 the lights, let us know.
14 MR. BULSA: Yes, sir.
15 Q. Did you get the name?
16 A. Initially, no. He was in a lot of pain and there
17 was a lot of screaming, helping type ordeal.
18 Q. Did you learn his name at some point?
19 A. I did.
20 Q. Who was he?
21 A. Mr. Oglesby.
22 Q. Was that Mr. Oglesby or Mr. Scott?
23 A. From the ---
24 Q. Behind the building?
25 A. Mr. Scott.

1 Q. Okay. We'll see him later. You learned his name to
2 be Christopher Scott?

3 A. Right.

4 Q. Okay. And do you recall what his actual injuries
5 were?

6 A. I remember just the gunshot wound. Officer Hancock
7 was there with us and he's a trained EMT. And he was
8 more so directing us what to do.

9 Q. Okay. So you sort of had an EMT worker before you
10 had the ambulance arrive?

11 A. Yes, sir.

12 Q. This machine is a little crooked, but let's see, I'm
13 going to put this State's Exhibit Number 5 up here. I
14 have a pointer here. If you would point out where you
15 first saw the blood that you described in your testimony?

16 A. When I first pulled in, I came in this entrance, and
17 my vehicle was parked sideways right about here. When I
18 exited my vehicle there was blood on the driver's side
19 and continued behind my vehicle and down here between the
20 buildings.

21 Q. Okay. And approximately where was it that you found
22 Mr. Scott?

23 A. My vehicle was parked here between these buildings,
24 and I'd say he was probably right along in here in the
25 wood line.

1 Q. Okay. And y'all ran your first aid and brought him
2 back out to what area?

3 A. Once we put him on the backboard and carried him
4 back up the hill, we came back between the buildings,
5 there was a stretcher sitting here underneath the clothes
6 lines. Put him on the stretcher and brought him out here
7 to the EMS truck that was sitting out here in the parking
8 lot.

9 Q. All right. Once he was receiving aid, what did you
10 do in this case?

11 A. From there we just -- we exchanged all the
12 information that we had between us and the other officers
13 that were on the scene. The other officers that were
14 back in the parking lot determined that there was a trail
15 of blood and established a scene. And somewhere in that
16 ordeal, I heard Mr. Scott say the name Van Mays.

17 Q. All right. Answer any questions Mr. Mays may have.

18 MR. MAYS: I have no questions.

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

20 THE WITNESS: Thank you, sir.

21 MR. BULSA: Your Honor, we ask that Officer
22 Cheeks be excused.

23 THE COURT: Any objection? Mr. Mays, any
24 objection to the officer being excused?

25 MR. MAYS: No, sir.

1 THE COURT: All right. Very good. You may be
2 excused without objection.

3 MR. BULSA: State calls Tim Hancock.

4 THE CLERK: Do you solemnly swear or affirm
5 that the testimony you're about to give will be the
6 truth, the whole truth and nothing but the truth, so help
7 you God?

8 THE WITNESS: So help me God.

9 TIM HANCOCK,

10 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. BULSA:

13 Q. Officer, if you would introduce yourself to the
14 jury.

15 A. Yes. My name is Timothy Hancock. Patrol Officer
16 with Spartanburg City Police Department.

17 Q. And how long have you been a patrol officer?

18 A. Full time for two years. I was a reserve officer
19 back in '04, 2004, when I was employed as a paramedic
20 with Spartanburg EMS.

21 Q. How long were you a paramedic?

22 A. Seventeen years.

23 Q. Decided to become a police officer?

24 A. Yes, sir.

25 Q. Okay. What are your duties as a police officer?

1 A. I'm also a patrol officer, assigned to a patrol
2 unit. We answer 911 calls, calls for service. Also work
3 the traffic unit, traffic accidents.

4 Q. What shift were you working back on August the 14th?

5 A. I was working third shift, which is from ten at
6 night till eight in the morning.

7 Q. So your shift sort of overlapped with Officer
8 Cheeks' shift?

9 A. That's correct, sir. Four hours.

10 Q. And do you recall getting a call to Prince Hall
11 Apartments?

12 A. Yes, sir.

13 Q. Describe what occurred when you arrived?

14 A. Yes, sir. We received a call for shots fired,
15 possibly someone injured, shot. Officer Cheeks had
16 arrived first. I arrived second or third, right about
17 the same time another officer did. As we got out of our
18 car and starting looking around and investigating the
19 area, we heard someone crying for help in the woods
20 behind Prince Hall Apartments, behind building one. Went
21 behind the buildings. I found an African American male
22 laying down in the woods. A lot of blood. Copious
23 amounts of blood right around the area.

24 Q. What injuries did he have?

25 A. He had a entry and exit wound to the posterior part

1 of his upper left leg.

2 Q. In layman's terms?

3 A. The back of his leg, the upper back of his back,
4 back part of the leg.

5 Q. Okay. Did you recall any other wounds that he had?

6 A. Yes, sir, he had what looked to be an entrance
7 wound, no exit wound, to the lower part on the inside of
8 his right leg. So about his shin area on his lower right
9 leg.

10 Q. So from your inspection of him that night, those are
11 the ones you saw?

12 A. (No verbal response.)

13 Q. Did you stay with him until EMS arrived?

14 A. Yes, sir, I did.

15 Q. Did you assist EMS?

16 A. Yes, sir, we did.

17 Q. At some point did his clothing get cut off of him?

18 A. Yes, sir. I think once he was actually pulled out
19 of the woods on a backboard, they placed him on a
20 stretcher, went ahead and fully examining then to find
21 any other wounds on him; his shirt and his pants got cut
22 off. I think in the process of his pants being cut off,
23 an ID fell out of his pocket and that's when I first was
24 able to identify who he was.

25 Q. And that was?

1 A. Mr. Christopher Scott.

2 Q. Okay. Did you have any other involvement in the
3 investigation of the crime?

4 A. Not immediately, no, sir. I basically secured that
5 crime scene where Mr. Scott was found.

6 Q. All right. Thank you. Answer any questions Mr.
7 Mays may have.

8 **CROSS EXAMINATION**

9 **BY MR. MAYS:**

10 Q. You say there was a large amount of blood in that
11 area; right?

12 A. Yes, sir.

13 Q. And on your supplemental report, you've got right
14 here where you state wounds were not bleeding?

15 A. No, sir.

16 Q. It's in black and white?

17 A. Yes, sir. He was bleeding as he was moving. But as
18 he's laying down in the woods, there's no blood pumping
19 out because his heart is not pumping as fast. He's
20 laying down in the woods, the wounds have basically
21 stopped bleeding. There's not as much blood left in him.
22 As you panic, as you become distressed, and you're moving
23 and running, a lot of blood will come out of you. Heart
24 pumps faster, pumps more blood out.

25 Q. Okay. But if there's a shot and there's a large

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1 amount of blood in the area, it's not just going to stop
2 bleeding like you stated on paper right here?

3 A. Yes, sir, it will.

4 Q. So you didn't find nothing else in that area off of
5 Mr. Scott?

6 A. Not on his body, no, sir.

7 Q. Okay. Well it say right here that you found a
8 cigarette pack of Newports and you found what looked to
9 be a white powder ---

10 MR. BULSA: Objection, Your Honor.

11 THE COURT: What's your objection?

12 MR. BULSA: I believe he's misstating the
13 report.

14 THE COURT: He can ask if he made the
15 statement.

16 MR. BULSA: Yes, sir.

17 MR. MAYS: That's what I did, Your Honor.

18 THE COURT: You want to try again? All right.

19 The rules provide that you can ask the witness about a
20 statement that was made at another time. But in order to
21 do that, you have to tell him what the statement is, when
22 the statement was made and what's the source of it.

23 MR. MAYS: Okay. This statement right here was
24 made on 8/15/2012 at one fifty-six.

25 THE COURT: All right. Then read the statement

1 to him.

2 MR. MAYS: It says, I, Officer Hancock,
3 responded to the Prince Hall Apartments for a report of
4 shots fired and a possible person shot. Upon arrival in
5 front of ---

6 MR. BULSA: Objection, Your Honor. I don't
7 believe this is the proper method. He can show it to the
8 officer and see if he recalls this ---

9 THE COURT: Well, he has to tell the officer
10 what he's questioning him about.

11 MR. BULSA: Yes, sir. That's where he's got to
12 show him the report. He can't just read it.

13 THE COURT: Thank you. Now get to the
14 substance of the statement.

15 MR. MAYS: Okay. He's saying right here where
16 it says, I made my way down to Mr. Scott ---

17 THE COURT: What is the substance of the
18 statement, is what I'm asking?

19 MR. MAYS: The substance of the statement is
20 he's saying there was a large amount of blood that he --
21 the question that he asked the officer.

22 THE COURT: All right.

23 MR. MAYS: Right here it's saying there's a
24 large amount of blood in the area but the wounds are not
25 bleeding.

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1 THE COURT: All right. Is that -- did you make
2 that statement?

3 THE WITNESS: Yes, sir.

4 THE COURT: Then that's the answer.

5 MR. MAYS: I want to ask him -- it says right
6 here he made another part in the statement ---

7 THE COURT: Well, that's -- if you're going to
8 ask him something, ask him that. Don't talk about
9 something else. Do you understand?

10 MR. MAYS: Okay.

11 THE COURT: Now, what's the substance of the
12 second statement you want to ask him about?

13 MR. MAYS: About what was found approximately
14 five feet away from Mr. Scott.

15 THE COURT: All right. Ask him if he made that
16 statement?

17 Q. Did you make that statement?

18 A. Yes, sir.

19 MR. MAYS: I can say what was found?

20 THE COURT: Yes. That's his statement. Ask
21 him -- read the statement that says what he found.

22 MR. MAYS: Five feet away from Mr. Scott on top
23 of some leaves was a cigarette pack of Newports. Beside
24 the cigarette pack was contents found of what looked to
25 be a white powdery substance, possibly cocaine, balled up

1 in cellophane.

2 THE COURT: Did you make that statement?

3 THE WITNESS: Yes, sir, I did.

4 THE COURT: That's the end of it.

5 MR. BULSA: And the state objects that that is
6 not relevant to this case, Your Honor. It has nothing to
7 do with Mr. Scott being shot.

8 THE COURT: Well, I don't know. It's
9 apparently in the investigation of this case. I overrule
10 your objection.

11 Q. Did you secure the immediate crime scene after that
12 that you found the drugs?

13 A. I did secure the immediate crime scene, yes, sir.

14 Q. Did you find anything else out there in that area at
15 that time?

16 A. Yes, sir.

17 Q. Was it a similar size ziplock bag containing ---

18 MR. BULSA: Objection, Your Honor. This is not
19 a drug case. This is a shooting.

20 MR. MAYS: It's all got to do ---

21 THE COURT: Well, thank you, Mr. Solicitor. I
22 appreciate that. I heard your opening statements. I
23 realize that. But the drug case -- excuse me. The
24 shootings were investigated and certain items came to the
25 attention of the investigating officer and they put it in

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1 their report. I can't take it out of the report.

2 Go ahead. Ask -- now, Mr. Mays, concentrate on what
3 you're asking him about. Now, apparently you're going on
4 to something else, but it's in his report. Read what's
5 in his report you want to see if he did not write.

6 MR. MAYS: Okay.

7 Q. Did you write in your report that there was a
8 similar size ziplock bag that contained some other
9 smaller bags with some whitish powdery rocks inside of
10 them?

11 A. Yes, sir, I made that statement.

12 Q. And you got it off of Mr. Scott?

13 A. No, sir.

14 Q. It's saying right here that you ---

15 THE COURT: Read what he said. Don't you argue
16 with him. I don't need anybody to argue with a witness
17 or anybody else in this courtroom. All right.

18 MR. MAYS: I have no further questions.

19 THE COURT: Are you sure?

20 MR. MAYS: Yes, sir.

21 THE COURT: All right.

22 **REDIRECT EXAMINATION**

23 **BY MR. BULSA:**

24 Q. Officer Hancock, what were you investigating out
25 there?

- 1 A. A shooting, sir.
- 2 Q. Okay. And was Mr. Scott shot?
- 3 A. Yes, sir.
- 4 Q. These two packages that Mr. Mays referenced, were
- 5 they actually on Mr. Scott's body?
- 6 A. No, sir, they were not.
- 7 Q. Okay. Why did you look for them?
- 8 A. I was just searching the immediate area for other
- 9 bodies, other people shot, more evidence of a gunshot,
- 10 bullets, shell casings, just looking in the immediate
- 11 area.
- 12 Q. Did you have any idea where the actual shooting
- 13 occurred?
- 14 A. No, sir, I did not.
- 15 Q. Did you see the trail of blood as Officer Cheeks
- 16 described?
- 17 A. I saw -- when I got closer to where Mr. Scott was
- 18 found, I saw a lot of blood leading down to his body.
- 19 Q. Okay. So ---
- 20 A. I didn't see the immediate trail of blood begin.
- 21 Q. Did that lead you to believe that he had run to that
- 22 location from another area?
- 23 A. Oh, yes, sir.
- 24 Q. Was he in pain?
- 25 A. Yes, sir.

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1 Q. Thank you.

2 THE COURT: Is that it?

3 MR. BULSA: Yes, sir.

4 THE COURT: You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Just when you finish, if you would
7 let the court know.

8 MR. BULSA: The state asks that Officer Hancock
9 be excused.

10 THE COURT: Any objection?

11 MR. MAYS: No, sir.

12 THE COURT: Very good. You may be excused.
13 Thank you, sir.

14 MR. BULSA: State calls Laurent Smith.

15 THE CLERK: Do you solemnly swear or affirm
16 that the testimony you're about to give will be the
17 truth, the whole truth and nothing but the truth, so help
18 you God?

19 THE WITNESS: Yes, ma'am.

20 LAURENT SMITH,

21 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. BULSA:

24 Q. Please introduce yourself to the jury.

25 A. My name is Laurent Smith. I'm a police officer with

1 the city of Spartanburg.

2 Q. How long have you been an officer?

3 A. I've been an officer for approximately four and a
4 half years.

5 Q. What are your duties?

6 A. My duties currently are, I'm a police officer with
7 the housing authority division. At the time of the
8 incident I was actually a patrol officer.

9 Q. Okay. And were you working that shift?

10 A. Yes, sir, I was.

11 Q. And what do you recall hearing?

12 A. I recall basically a call, us being dispatched to
13 Prince Hall Apartments in reference to a gunshot victim.
14 Myself, Officer Cheeks, Officer Hancock, we all responded
15 in a very quick and prompt time. I want to say that I
16 was approximately the second person, right behind Officer
17 Cheeks. Everything was kind of moving pretty quickly.
18 But I responded. We went to the initial area where
19 dispatch had advised that the victim was screaming from.
20 And we could actually hear someone screaming, so we were
21 just checking the area. And as soon as we pretty much
22 pulled up into the complex, we could hear the screaming
23 for help.

24 Q. Were you one of the officers that looked for him?

25 A. I believe Officer Hancock and Officer Cheeks went to

1 the yelling. I was checking the area for any other
2 potential suspects, victims. I did initially see the
3 blood trail that was leading from the parking lot where
4 our patrol cars were. It led to the sidewalk and grassy
5 area and eventually into the woods where Mr. Scott was
6 located.

7 Q. Okay. So Mr. Scott was located and was getting
8 treatment. Did you follow that blood trail to its
9 original source?

10 A. That is what I did. While Officers Cheeks and
11 Hancock went down to render aid to the victim, I followed
12 the blood trail the opposite direction. There were other
13 officers that had arrived on scene at this time, and I
14 followed the blood trail pretty much from the initial
15 location where I pulled up and got out of my patrol
16 vehicle, I followed it in the opposite direction and it
17 led across the entire apartment complex.

18 Q. Okay. If I could ---

19 MR. BULSA: Could you get the lights, please.

20 Q. I'd direct your attention to the screen which
21 portrays State's Exhibit Number 5.

22 A. Yes, sir.

23 Q. If you would, show the jury where you followed the
24 trail of blood?

25 A. Like Officer Cheeks and Hancock advised, came into

1 the area, went into this first parking lot here, got out
2 of our patrol vehicles. We could hear the yelling, the
3 screaming. They went down and rendered aid. The blood
4 trail was leading this way and it was also leading across
5 -- back across the apartment complex all the way up to
6 building three. I followed it all the way up to this
7 area. And it appeared to be the initial area that the
8 incident occurred in.

9 Q. Just so the jury understands. This picture was
10 taken at night. It's just a portrayal of the buildings.
11 When you got to that upper lot, were there any cars in
12 that location?

13 A. I don't recall any vehicles in the area.

14 Q. Okay. And were there vehicles parked in the lower
15 parking lot where most of the apartments are?

16 A. You're asking were there ---

17 Q. Yes, sir.

18 A. --- vehicles here?

19 Q. Yes, sir.

20 A. Yes, sir. There were a few vehicles scattered along
21 some residences.

22 Q. Once you got up to the upper parking lot as I'm
23 describing here, you don't recall seeing any vehicles?

24 A. I don't recall seeing any vehicles in this parking
25 lot area.

1 Q. Okay. Where did the trail of blood stop?

2 A. Like I said, we initially pulled in here, exited our
3 patrol vehicles, and I followed it all the way up to
4 building three. There's a breeze-way in this area, and I
5 followed it into the breeze-way and into the parking lot
6 here. And there's like a trash can that sits right along
7 in this area. It appeared that the initial incident
8 occurred in this area. The blood stopped in this area.

9 Q. So when you're saying in this area, are you meaning
10 in the parking lot itself?

11 A. Yes, sir.

12 Q. On the asphalt portion of the parking lot?

13 A. Yes, sir.

14 Q. Okay. How lit was that area? What kind of lighting
15 was there?

16 A. It's decent lighting. I believe that there's a
17 street light here, a street lamp in this area. And
18 there's lighting in the breeze-way of pretty much all the
19 apartments throughout the entire complex. So when I
20 followed the blood trail, I could visibly see several
21 things. I saw the blood trail. I saw other evidence as
22 far as shell casings or live rounds. There were just a
23 few other things that I vaguely remember. I think there
24 was a hat on the scene. But it was all in this area, in
25 that parking lot area.

1 Q. Okay. And once you backtracked the blood to that
2 location, what did you do?

3 A. When I backtracked the blood to that location, like
4 I said, it appeared to be the initial point of where the
5 incident occurred. Like I said, I saw the blood. I saw
6 possibly other evidence as far as the shell casings and
7 the live rounds. I pretty much secured that scene.

8 Q. Did you collect anything yourself?

9 A. I didn't collect anything. Like I said, I just made
10 sure no one came out of their apartments. Made sure no
11 one pulled up and disturbed any evidence. That's pretty
12 much what my assignment was. Yes, sir.

13 Q. Were other officers called in to collect the
14 evidence?

15 A. Other officers were -- due to the size of the crime
16 scene, other officers were called to pretty much secure
17 various areas. Like I said, my particular assignment was
18 that specific area. And like I said, there was a blood
19 trail that I've never seen any basically throughout my
20 law enforcement career. So the extent or the size of the
21 crime scene was extremely large.

22 Q. Okay. So because you found a blood trail that
23 appeared to start in the upper parking lot and a location
24 of at least one victim behind the lower buildings, y'all
25 considered the whole area the crime scene?

1 A. Yes, sir, we did.

2 Q. Okay. Just so the jury has a frame of reference.

3 What kind of distance are we talking about between the
4 two spots?

5 A. I would at least say it's a fourth of a mile.

6 Somewhere in that area. Due to it coming -- you starting
7 in this area and coming all the way around the apartment
8 complex, all the way down to where we found the victim.

9 Q. Okay. All right. While you were on the scene did
10 you learn that there was any other victim?

11 A. While on the scene and I secured that area, through
12 radio transmission, I did hear that there was another
13 victim that had been located on Burke Avenue. That's in
14 the county. So it's just outside of our jurisdiction.

15 Q. About how far away is it from this location?

16 A. Probably somewhere between half a mile to a mile,
17 somewhere in that area.

18 Q. You get to Burke Avenue by running down Prince Hall
19 Lane?

20 A. You would get to Burke Avenue by running down Prince
21 Hall Lane. That would be headed toward the same areas.

22 Q. So this part of the city is near the boundary?

23 A. It is.

24 Q. All right. Answer any questions Mr. Mays may have.

25 THE COURT: Mr. Mays.

1 MR. MAYS: I don't have any questions, Your
2 Honor.

3 THE COURT: Very good. You may step down.
4 Thank you, sir.

5 THE WITNESS: Thank you, sir.

6 THE COURT: You want the witness excused?

7 MR. BULSA: Yes, sir.

8 THE COURT: Any objection?

9 MR. MAYS: No, sir, Your Honor.

10 THE COURT: All right. Without objection, you
11 may be excused. Thank you, sir.

12 THE WITNESS: Thank you, sir.

13 MR. BULSA: State calls Ed Guthro.

14 THE CLERK: Do you solemnly swear or affirm
15 that the testimony you're about to give will be the
16 truth, the whole truth and nothing but the truth, so help
17 you God?

18 THE WITNESS: I do.

19 ED GUTHRO,

20 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. BULSA:

23 Q. Introduce yourself to the jury.

24 A. Edgar Victor Guthro. I work for the Spartanburg
25 Police Department.

1 Q. In what capacity?

2 A. I work as a forensics investigator.

3 Q. What is a forensics investigator?

4 A. Process crime scenes and evidence.

5 Q. Okay. Are you part of what some people think of as
6 a crime scene unit or CSI?

7 A. Yes.

8 Q. Is CSI real?

9 A. Exaggerated.

10 Q. Exaggerated. Okay. That's a good word to use for
11 it. Okay. Now, were you called to this location?

12 A. Yes, sir, I was.

13 Q. Approximately what time did you arrive?

14 A. Two twenty-eight in the morning.

15 Q. About an hour after the initial call went out?

16 A. Correct.

17 Q. What was taking place when you arrived?

18 A. When I arrived patrol officers had taped off the
19 scene already in several different sections and had
20 marked some items of potential evidence by placing tape
21 or other objects that they defined to make it easier for
22 me to locate.

23 Q. Okay. So where did you begin your processing?

24 A. I started my processing in front of building three,
25 which is where the incident initiated.

1 Q. If you would look at that for the jury. That's

2 State's Exhibit 5.

3 A. Okay.

4 Q. What led you to believe that was the initial spot?

5 A. There was -- well, the officers told me when I

6 arrived they believed that was where it initiated. And

7 there was a fired shell casing there. And blood there.

8 Q. Okay. So that was consistent with what the officers

9 believed?

10 A. Correct.

11 Q. All right. And what did you do when you were in

12 that area?

13 A. When I was in that particular areas, I photographed

14 the scene prior to doing anything else. And then placed

15 evidence placards alongside potential items of evidence

16 and photographed them again. And then I photographed the

17 blood trail that has been referred to already, I

18 photographed that. All the way to where the victim was

19 located.

20 (WHEREUPON, State Exhibit Numbers 6, 7, 8, 9 and 10

21 were marked for identification.)

22 Q. Mr. Guthro, let me show you what's been marked for

23 identification as State's Exhibits 6, 7, 8, 9 and 10.

24 Would you look through those carefully and make sure they

25 show what you observed at the scene?

1 A. Yes, sir. They do.

2 Q. Did you take those pictures?

3 A. I did.

4 Q. All right.

5 MR. BULSA: Your Honor, the state would offer
6 these exhibits into evidence.

7 THE COURT: All right. Any objection?

8 MR. MAYS: No, sir, Your Honor.

9 THE COURT: Without objection, State's Exhibits
10 Number 6, 7, 8, 9 and 10 are admitted into evidence.

11 (WHEREUPON, State Exhibit Numbers 6, 7, 8, 9 and 10
12 were admitted into evidence.)

13 Q. I show you State's Exhibit Number 6.

14 MR. BULSA: Can I get the lights.

15 THE COURT: Lights, please.

16 MR. BULSA: They're down enough.

17 THE COURT: They are?

18 MR. BULSA: Yes, sir.

19 Q. What does State's 6 show us, Officer?

20 A. That's building number three in the background.

21 Part of the crime scene tape is stretched across there.

22 It's where the incident initiated. The white things --

23 see, there's a white rag and there's a hat there and a

24 beer can. And blood and spent shell casing that you

25 can't see in that photograph.

1 Q. When you got to that area, do you recall there being
2 any vehicles parked up there?

3 A. I don't.

4 Q. Okay. All right. The spot -- let's see. Let me
5 show you State's Exhibit Number 8. Is this the same
6 picture with some placards?

7 A. Yes, sir. It's a photograph of the same scene with
8 evidence placards placed on it.

9 Q. All right. And what do the evidence -- what's the
10 purpose of the evidence placards?

11 A. It's so I can identify them in my report so I can
12 tell other people what those items are showing. Item
13 number one was a white rag. Number two is a black and
14 red ball cap. Number three is a Bud Light beer can. And
15 number four is a Winchester 7.62x39 shell casing, fired
16 shell casing.

17 Q. Okay.

18 A. You can see their relationship to each other.

19 Q. What does that suggest to you?

20 A. It just shows you the approximate -- helps you
21 visualize the distance between objects.

22 Q. We have one shell casing in this parking lot?

23 A. That's correct.

24 Q. All right. Let me show you some close-up pictures,
25 State's Exhibit Number 7. This is -- I'm trying to get

1 number two in there. There we go. All right. Tell us

2 what you marked?

3 A. Item number two is identifying the ball cap.

4 Q. Item number three?

5 A. Is a beer can, Bud Light beer can.

6 Q. Okay. Do these objects appear to have been out of

7 place?

8 A. The ball cap looked fresh and looked like it had

9 been laying there, not run over or anything. And the

10 beer can sort of had the same appearance. You know, it's

11 not been ran over by vehicles or anything.

12 Q. I didn't put up a picture of the rag. What was

13 significant to you at the time about the rag?

14 A. Nothing other than the fact that it was there.

15 Q. Okay. It was out in the parking lot?

16 A. Right.

17 Q. You're basically marking whatever was located around

18 that shell casing?

19 A. Yes, sir.

20 Q. Is that what drew your main attention?

21 A. Correct.

22 Q. Did you know you had a shooting victim?

23 A. Yes, I hadn't seen him or spoke to him, but I knew

24 there was one.

25 Q. And you knew you had a trail of blood?

- 1 A. Yes.
- 2 Q. And the officer tells you, I've got a shell casing
3 up here?
- 4 A. Correct.
- 5 Q. So that draws your attention mainly to that area?
- 6 A. Correct.
- 7 Q. All right. So you're marking everything else that's
8 around it, not knowing whether they're important or not?
- 9 A. That's correct.
- 10 Q. Okay. You were looking for pieces of a puzzle, so
11 to speak?
- 12 A. Yes, sir.
- 13 Q. All right. Now, State's Exhibit Number 9, what is
14 that?
- 15 A. That is what will eventually be marked as item
16 number four. That's a 7.62x39 Winchester shell casing.
17 That's the way it was marked by officers prior to my
18 arrival so it wouldn't get ran over or kicked
19 accidentally by officers on the scene or something like
20 that.
- 21 Q. So they took a piece of tape?
- 22 A. Correct.
- 23 Q. What's that on top of it?
- 24 A. Honestly, I don't recall what that was. Just
25 something they used to weigh that tape down so it didn't

1 blow away.

2 Q. Okay. So how it got placed there, you don't know?

3 A. No, sir. Who did it. Correct.

4 Q. That's a little unusual at an apartment complex, to
5 have a spent shell casing in a parking lot?

6 A. I don't know if I'd say it was unusual. But that
7 was the only one I located in this parking lot.

8 Q. All right. Where it's consistent with a shooting?

9 A. Correct.

10 Q. Investigation of a shooting that had just occurred
11 that evening? Okay. And just for documentary purposes,
12 State's Exhibit Number 10. That marks number 4?

13 A. Correct.

14 Q. So when the jury is looking at State's 8, they can
15 get a perspective of where those objects are?

16 A. Yes, sir.

17 Q. Okay. Did you find any blood in that area?

18 A. There was a little bit of blood. I don't recall
19 exactly where it was located, but I know there was some
20 right there.

21 Q. All right. And did you follow that trail of blood?

22 A. I did. It goes to the sidewalk in front of the
23 building, goes left from the perspective that you were
24 looking at it and goes through the breeze-way of building
25 number three.

1 Q. Might be a little grainy, but let's try to look at
2 it. Use your pointer and show us.

3 A. The breeze-way goes through building number three, I
4 believe, right through here. This is a sidewalk coming
5 out of that breeze-way. The blood trail, after it comes
6 through there, comes up this sidewalk and goes across in
7 front of the office, across the grass, down in the other
8 parking lot.

9 Q. Okay. And did you notice anything else in that
10 breeze-way?

11 A. Yes. Just as you start into the breeze-way, there
12 was a good bit of blood there. Also, I want to say there
13 was four, but let me count and make sure, four unfired
14 7.62x39 Winchester shell casings were laying in the
15 breeze-way just as you start into the breeze-way.

16 Q. Okay.

17 (WHEREUPON, State Exhibit Numbers 11, 12, 13, 14, 15
18 and 16 were marked for identification.)

19 Q. Officer, if you would, look through these
20 photographs and see if you recall what they show.

21 A. Yes, sir. I do.

22 Q. Okay. Are those photographs that you took?

23 A. Yes, sir.

24 Q. Do they depict objects you found at the scene?

25 A. Correct.

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1 MR. BULSA: Your Honor, the state would offer
2 State's 11 through 16 into evidence.

3 THE COURT: Any objection?

4 MR. MAYS: No, sir, Your Honor.

5 THE COURT: All right. Without objection,
6 State's Exhibits Number 11, 12, 13, 14, 15 and 16 are
7 admitted.

8 (WHEREUPON, State Exhibit Numbers 11, 12, 13, 14, 15
9 and 16 were admitted into evidence.)

10 Q. Okay. Now, at this point we're talking about items
11 within the breeze-way?

12 A. Correct.

13 Q. State's Exhibit 11. You may have to back it out.
14 What does that show us?

15 A. That's just blood drops leading through the breeze-
16 way of building three to the parking lot. It would
17 appear where the incident occurred was this side. Those
18 blood drops are traveling this directions through the
19 breeze-way and out the back breeze-way. There are also
20 shell casings here that are difficult to see in this
21 photograph.

22 Q. All right.

23 A. Correction. Not casings, but actual live rounds.

24 Q. All right. I show you State's Exhibit Number 12.

25 Does that mark various items in that same location?

1 A. It does. Those placards and marking live, unfired
2 7.62x39 Winchester rounds. And one of them is marking in
3 the area of blood spatter that I swabbed and collected.

4 Q. Okay. What is the purpose of swabbing the blood?

5 A. That's standard procedure at that point because I
6 don't know how many people are involved and I don't know
7 where exactly the blood trail is going to end at this
8 point. I know it does end, but I haven't been over there
9 at this point.

10 Q. Okay. So you're not quite sure what you're looking
11 for yet; right?

12 A. Correct.

13 Q. All right. So you've got a shell casing, a spent
14 shell casing in the parking lot. You've got a trail of
15 blood leading through this breeze-way, which is the first
16 building attached to that parking lot?

17 A. Yes, sir.

18 Q. And you see a trail of blood and a trail of bullets;
19 is that right?

20 A. Yes, sir.

21 Q. Now, specifically State's -- I'm going to go through
22 some of the placards. State's Exhibit Number 13 is your
23 placard number five?

24 A. Placard number five is marking an unfired round of
25 Winchester 7.62x39 ammunition located in the breeze-way

1 of building three.

2 Q. And you said six would have been the swab?

3 A. Yes. Placard number six was the blood swab.

4 Q. All right. So State's Number 14 related to placard
5 number seven.

6 A. Placard number seven is an unfired round of 7.62x39
7 ammunition, Winchester, located in the breeze-way of
8 number three.

9 Q. And State's 15, placard number eight?

10 A. Number eight identifies an unfired round of 7.62x39
11 ammunition, also from the breeze-way of number three,
12 building three.

13 Q. State's Number 16, placard number nine?

14 A. An unfired Winchester 7.62x39 round of ammunition,
15 also in the breeze-way.

16 Q. Okay. So we have four unspent rounds. Were those
17 rounds similar in nature? Describe them to me.

18 A. Correct. To each other. They have the same end
19 stamps. They're the same caliber of ammunition. They're
20 marked for the same type of weapon, chamber, for that
21 caliber.

22 Q. Okay. Did they have the same head stamp as the
23 spent shell casing that's Exhibit Number 10, placard
24 number four?

25 A. Yes, sir.

1 Q. They did. Okay. Were you coming to any conclusions
2 at that point?

3 A. At this point, generally, just from my personal
4 knowledge, when you see live rounds ejected at a scene,
5 either a weapon has malfunctioned and somebody is
6 continually trying to rack rounds into it. For that to
7 have happened, though, their target would have had to
8 been stationary, not somebody running away, because
9 they're all located in the same area. Generally this
10 happens from either somebody who has ammunition in their
11 pocket or something and drops it, or a magazine falls out
12 of a weapon. And when a magazine is spring loaded and
13 sometimes when they hit the ground, it kind of ejects
14 some of the rounds that are in it out and that's how you
15 end up with a bunch of them in the same place. So the
16 magazine possibly could have been accidentally ejected
17 when it hit the ground and it threw out live rounds.

18 Q. What if the weapon had been dropped while chasing
19 somebody?

20 A. If the magazine came out of the weapon, would it hit
21 the ground, yes, possible.

22 Q. Could that have happened?

23 A. Could have.

24 Q. Officer, are you aware of whether any weapon was
25 actually recovered in this case?

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1 A. Not by me, and I don't believe there was at all.

2 Q. Okay. And if there had been a weapon, would you
3 have known it?

4 A. Most likely, yes.

5 Q. Okay. What would you have done with that weapon and
6 these rounds?

7 A. I would have submitted them to SLED, State Law
8 Enforcement Division, and had them compare it. I would
9 have had the fired shell casing compared to that rifle to
10 see if it was fired by that rifle.

11 Q. So you would have been looking for some CSI items?

12 A. Yes, sir.

13 Q. Okay. Since you didn't get a gun, what did you do
14 with these rounds?

15 A. Simply placed them in evidence, knowing that they
16 were all of the same manufacturer. We placed them in
17 evidence.

18 Q. Does the fact that you didn't recover a gun mean
19 that you didn't get the right guy?

20 A. No.

21 (WHEREUPON, State Exhibit Numbers 17, 18, 19, 20 and
22 21 were marked for identification.)

23 Q. Officer, let me show you what's been marked as
24 State's Exhibits 17, 18, 19, 20 and 21 for
25 identification. Would you identify what those objects

1 are. First of all, let me ask you, is that something you
2 recovered at the scene and packaged?

3 A. All of these have my signature and are identified
4 for that location. Yes.

5 Q. Okay. Now, you saw me as I showed them to the
6 defendant. I actually opened an envelope and pulled out
7 a smaller package.

8 A. Correct.

9 Q. Describe to the jury what that is?

10 A. The smaller package is for use for smaller items,
11 for shell casings. What that does, when you collect them
12 at the scene, they're done one at a time. At the time
13 that I collected that shell casing, the item number all
14 goes on the smaller envelope, which is sealed by me and
15 then put into this other evidence bag, which is stored in
16 evidence so they can actually -- it has more information
17 on it and then it also has the same information on it, as
18 well as my signature and the item number, that's in that
19 smaller bag.

20 Q. Okay. And do these state exhibits for
21 identification match up to the photographs we've been
22 seeing on the screen?

23 A. Yes. My item numbers are listed on there and
24 they're the same items that you were looking at on the
25 screen.

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1 MR. BULSA: The state would offer State's 17,
2 18, 19, 20 and 21 into evidence at this time.

3 THE COURT: Any objection?

4 MR. MAYS: Yes, sir, there is, Your Honor.

5 THE COURT: All right. What's your objection?
6 And to which exhibit?

7 MR. MAYS: To number 5, and this one has no
8 name on it, so I don't know which number it is. It's the
9 one with the little gold thing on top of the ---

10 THE COURT: We don't have a number 5 in this
11 series. Do you have a number 5 in this series? In the
12 first series you had 5.

13 MR. BULSA: Your Honor, the defendant is
14 talking about placard number five. He's talking about
15 what's depicted in State's Exhibit Number 13.

16 THE COURT: Okay. That's already been
17 admitted.

18 MR. BULSA: The picture has, but I'm offering
19 the actual items into evidence at this time and he states
20 he has an objection to that.

21 THE COURT: Okay. What's the objection?

22 MR. MAYS: That's not the picture, Your Honor.
23 It's the one with the tape with the things.

24 THE COURT: All right. I tell you what let's
25 do. Mr. Foreman, ladies and gentlemen, I'm going to have

1 to ask you to go to the jury room for just a few minutes.
2 I'm going to have to take up a matter of law with the
3 attorneys.

4 Again, do not undertake discussion of this case
5 among yourselves in anyway.

6 (WHEREUPON, the jury exited the open court at
7 approximately 4:26 p.m.)

8 THE COURT: All right. Mr. Bulsa, now, what is
9 it that you're trying to introduce that the objection is
10 made to?

11 MR. BULSA: State's Exhibit 17 is the shell
12 casing which is depicted in photograph State's Exhibit
13 Number 10, which is placard number four. State's 18 ---

14 THE COURT: Just a moment. Let's go through
15 these so that we're clear. Is there any objection to --
16 again, you say Number 10 are shell casings? I'm talking
17 about State's Exhibit Number 10?

18 MR. BULSA: Is a photograph of the shell casing
19 lying in the parking lot at the crime scene.

20 THE COURT: All right. Now, that's a photo?

21 MR. BULSA: Yes, sir. And the actual shell
22 casing ---

23 THE COURT: Just a moment, please. And so
24 that's already in. Now, what are you trying to get in?

25 MR. BULSA: I'm trying to introduce the actual

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1 shell casing itself.

2 THE COURT: All right. And that's proposed
3 exhibit number what, 13?

4 MR. BULSA: 17.

5 THE COURT: 17. All right. And what's the
6 objection to number 17? Well, show Mr. Mays 17 that
7 you're trying to get in. He has to either object or
8 agree to it.

9 MR. BULSA: Yes, sir, I went and showed him.

10 THE COURT: Well, that's very nice. I'm not
11 talking about what you've done. I'm talking about what
12 I'm asking you to do now.

13 MR. BULSA: Yes, sir.

14 THE COURT: Thank you, sir.

15 MR. BULSA: It's in a sealed package, so I'll
16 have to ask it be opened.

17 THE COURT: Then how can you identify something
18 that's in a sealed package.

19 MR. BULSA: It has writing on it. Have you got
20 a knife? Can you open that?

21 THE COURT: They can identify writing, but
22 writing can be anything. Please, sir, let's -- you know
23 the procedure. Is this -- did you mark that and seal it?

24 THE WITNESS: Yes, sir.

25 THE COURT: And you're the author of the sealed

1 package?

2 THE WITNESS: Yes, sir.

3 THE COURT: Very good. Then he's the one that
4 opens it. You're right.

5 MR. BULSA: Exactly. He opened them before
6 court. He just didn't open the smaller packages. Yes,
7 sir.

8 THE COURT: Exactly what?

9 MR. BULSA: He opened the larger packages
10 before court. He just did not open the smaller ones
11 before court.

12 THE COURT: What are you concerned about the
13 larger package. It's what's in the smaller one that you
14 want to get in.

15 MR. BULSA: It's double-sealed.

16 THE WITNESS: The spent shell casing, 7.62.

17 THE COURT: All right. Now, show that to Mr.
18 Mays and see what his objection is.

19 MR. MAYS: It ain't in the same group.

20 THE COURT: Do what, sir?

21 MR. MAYS: This bullet right here it shows it
22 as number -- this one ain't got a number on it, but these
23 not even the same bullets. I'm looking at this, this
24 look like a smaller bullet. Like this one, it ain't even
25 got the same tip or the neck ain't even the same.

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1 THE WITNESS: Well, it's fired. I mean, if I'm
2 allowed to explain that to him.

3 THE COURT: Yes, sir, you most definitely are,
4 because nobody else is.

5 THE WITNESS: It's a fired shell casing, so it
6 no longer has a projectile in the end of it; therefore,
7 it's shorter.

8 MR. MAYS: But this one right here got a head
9 to it. Ain't no way in the world this is 7.62. I can
10 see this right here.

11 THE WITNESS: It's got a what?

12 MR. MAYS: You're saying you're good with guns.
13 You know ---

14 THE COURT: Come on. Just -- I've had enough
15 today of listening to people talking about things that
16 are not necessary. What's your objection?

17 MR. MAYS: Your Honor, my objection is this is
18 not the same bullet.

19 THE COURT: All right. Is it the same bullet?

20 THE WITNESS: Yes, sir.

21 THE COURT: I mean, now we're not talking about
22 the same type of bullet, is it the exact same bullet that
23 is shown in ---

24 THE WITNESS: That is placard four, yes, sir.

25 THE COURT: Huh? Now, what's placard five

1 doing up there if this is placard four?

2 MR. BULSA: Because that was his first
3 objection, he was claiming it was placard five.

4 THE COURT: Well, then why don't you get the
5 one he's talking about now so we can get something done
6 here today.

7 MR. BULSA: I was trying to do that, Your
8 Honor.

9 THE COURT: I know, but you're taking a long
10 time doing it.

11 All right. Now, ---

12 MR. MAYS: That's the bullet that I'm saying
13 that this is not it. They're not the same bullet.

14 THE COURT: All right. Explain this so that I
15 can understand it. I haven't been able to get between
16 the two lawyers or the parties.

17 THE WITNESS: Yes, sir.

18 THE COURT: Now, placard four is the same
19 bullet that is in this -- is it 13?

20 THE WITNESS: I'm not sure what the state's
21 exhibit number is. It's my item number four.

22 THE COURT: All right. I see, that's placard
23 four.

24 THE WITNESS: Yes, sir. And that's ---

25 THE COURT: And that's the one that's shown in

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1 State's Exhibit 10, which is a photograph?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right. Now, this little bag
4 here is -- what's the number on it?

5 MR. BULSA: State's 17. Contains smaller
6 packets that the officer just opened, which is a shell
7 casing.

8 THE COURT: So is it 17 now? All right. And
9 that is the same round?

10 THE WITNESS: Yes, sir.

11 THE COURT: And that's not ---

12 THE WITNESS: Not the -- it's the ---

13 THE COURT: Bring it here and let me see if I
14 can understand what's the difference when you've got a
15 head on it and don't have a head on it.

16 All right. This is a spent shell casing?

17 THE WITNESS: That's correct.

18 THE COURT: It has no bullet on it?

19 THE WITNESS: Correct.

20 THE COURT: Is that what you're talking about,
21 it's got a bullet; the one that you're talking about?

22 MR. MAYS: This one right here has a head on
23 it, Your Honor, but it's ---

24 THE COURT: What is it?

25 MR. MAYS: --- not even the same length as the

1 number ---

2 THE COURT: All right. I tell you what you can
3 do. I'm going to overrule your objection since this is
4 the individual that took the photograph and also put it
5 in the package.

6 All right. So that would mean that State's Exhibit
7 ---

8 MR. BULSA: 17.

9 THE COURT: State's Exhibit 17 that has a small
10 baggie back in it that has a bullet, small -- what is the
11 caliber on that?

12 THE WITNESS: 7.62x39, sir.

13 THE COURT: 7.63?

14 THE WITNESS: 7.62x39.

15 THE COURT: .62. That makes a round?

16 THE WITNESS: Yes, sir.

17 THE COURT: 7.62 spent. Is that right?

18 THE WITNESS: Yes, sir, it's a spent shell
19 casing.

20 THE COURT: All right. I'm overruling the
21 objection of Mr. Mays.

22 Now, what else have you got? You got some more of
23 those bags that you want admitted?

24 MR. BULSA: Yes, sir.

25 THE COURT: All right. Well, let's do that.

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1 All right. 17 is in. Be careful you don't get them
2 mixed up.

3 (WHEREUPON, State Exhibit Number 17 was admitted
4 into evidence.)

5 THE WITNESS: Yes, sir. That one's already
6 open.

7 THE COURT: Now, which number is that?

8 THE WITNESS: This is my ---

9 MR. BULSA: You need some glasses, Officer?

10 THE WITNESS: Yes. I can't see it. I don't
11 know -- which number is he looking for? Yours?

12 MR. BULSA: He's looking for the red sticker.

13 THE WITNESS: 12. I'm sorry.

14 MR. BULSA: My 12.

15 THE WITNESS: There's the number. 18. I'm
16 sorry. State's Exhibit -- I can see now.

17 THE COURT: All right. State's Exhibit 18 is
18 in a small bag as well?

19 THE WITNESS: It's a 7.62x39 Winchester live
20 round.

21 THE COURT: All right. 7.62 live.

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Show that to Mr. Mays.

24 Now, is that identified as anything else like on a
25 placard?

1 THE WITNESS: I'll have to go back through
2 there and see. It's going to be live rounds from the ---

3 THE COURT: You're telling me that's a 7.62
4 live round that you put in that small packet and that's
5 the one on the photograph?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. Any objection? What's
8 your objection?

9 MR. MAYS: I don't have any, Your Honor.

10 THE COURT: All right. Good. So State's
11 Exhibit Number 18, 7.62 live round is admitted.

12 (WHEREUPON, State Exhibit Number 18 was admitted
13 into evidence.)

14 THE COURT: Next.

15 THE WITNESS: The next one is the same kind of
16 round, live, and it's State's Exhibit 19.

17 THE COURT: 19. All right. What's the
18 difference between the two?

19 THE WITNESS: Sir?

20 THE COURT: What's the difference between the
21 two, 18 and 19?

22 THE WITNESS: Between 18 and 19, there's
23 nothing different about them at all.

24 THE COURT: Are they in the same photograph?

25 THE WITNESS: Yes, sir.

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1 THE COURT: All right. That photograph is
2 State's Exhibit 10?

3 MR. BULSA: Let me check, Your Honor. Exhibit
4 12 depicts all four of these spent -- or of these live
5 rounds. State's Exhibit 12.

6 THE COURT: Now, wait a minute. Well, 17 is a
7 spent round? That's the one in 10?

8 MR. BULSA: Yes, sir.

9 THE COURT: All right. And 18 and 19 are in
10 12?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. Thank you.

13 All right. We're getting to 19.

14 THE WITNESS: After 19 is 20.

15 THE COURT: No, no, you -- 7.62 live round, 18
16 and 19?

17 THE WITNESS: Yes, sir.

18 THE COURT: Both of them in photo 12. Any
19 objection?

20 MR. MAYS: No, sir, Your Honor.

21 THE COURT: All right. Without objection,
22 State's Exhibit 19 is admitted.

23 (WHEREUPON, State Exhibit Number 19 was admitted
24 into evidence.)

25 THE COURT: All right. Next.

1 THE WITNESS: State's Exhibit 20 ---

2 THE COURT: Right.

3 THE WITNESS: --- is also a 7.62x39 live round.

4 Also would be in that same photograph.

5 THE COURT: It's a live one, and that would be
6 in 12, in photograph 12?

7 MR. BULSA: Yes, sir.

8 THE WITNESS: Yes.

9 (WHEREUPON, State Exhibit Number 20 was admitted
10 into evidence.)

11 THE COURT: Okay. 21. What you got?

12 THE WITNESS: It's also going to be a 7.62x39
13 live round. And would also be in that photograph number
14 12.

15 THE COURT: All right. Any objection to 21?

16 MR. MAYS: No, sir, Your Honor.

17 THE COURT: All right. Without objection,
18 State's Exhibit 21 is admitted.

19 (WHEREUPON, State Exhibit Number 21 was admitted
20 into evidence.)

21 MR. BULSA: I'm not sure if you referenced 20,
22 Your Honor.

23 THE COURT: Yes. I asked -- didn't I ask you
24 about 20? It's the other live round in 12. You have
25 four in 12, that's 18, 19, 20 and 21; is that correct?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. I tell you, gentlemen, we're
3 not all that familiar with the rules. About exhibits, it
4 helps the court, and particularly the court reporter, to
5 have exhibits marked for identification that you agree on
6 the authenticity of. As far as their admissibility
7 maybe, are they material or relevant, that can be done at
8 the time that you proffer them. But it would be a good
9 thing, if you've got anymore, I don't know how
10 complicated this is going to be, but if you have anymore
11 exhibits that you want to introduce, before we start the
12 trial and have the jury in the jury box, get together and
13 have them agreed to as far as authenticity that you don't
14 have to bring in the custodian or the author of the
15 exhibit or some other wise validation. That way we can
16 avoid any of the discussion about it. It's an invalid --
17 it's not what it's being represented to be, then we can
18 have that argument. But again, it'll be done outside the
19 presence of the jury. Any questions? Most of the time
20 it's usually photographs or something like that. If
21 you're going to introduce photographs, have the other
22 side look at them and say it's what it represents it is.
23 Otherwise, you're going to have to bring in the author of
24 the photograph or the person who took the photograph.
25 And that could be a waste of time if you can't agree to

1 them. So in the future -- how many more exhibits have
2 you got? I mean, not in your whole arsenal. No pun
3 intended. But I mean, that this witness could help us
4 authenticate.

5 MR. BULSA: This is ---

6 THE COURT: By the way, I've got one up here.
7 Somebody needs to take care of, Number 17.

8 MR. BULSA: Yes, sir. I would like the record
9 to reflect that the state offered to show the defendant
10 the exhibits yesterday and he rejected to see them, Your
11 Honor.

12 THE COURT: Well, you know what, Mr. Bulsa,
13 the defendant doesn't have the freedom of movement that
14 you do. And I have been here, well, since Tuesday on
15 this case. And so if you had a problem with the
16 exhibits, you could come to me and I'd be sure that Mr.
17 Mays is made available, too, so that we can resolve it at
18 that time.

19 Now, if you want to argue with me, let's ---

20 MR. BULSA: I'm not arguing.

21 THE COURT: Then what are you doing?

22 MR. BULSA: I just want to show that we've ---

23 THE COURT: I'm telling you what to do in this

24 ---

25 MR. BULSA: We've been -- we've offered them to

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1 him. I don't want him to come down later if he's
2 convicted to say he never had the opportunity to look at
3 them. He did, Your Honor, Monday when we were in court.
4 I believe I referenced it in court and Your Honor said
5 that was a good idea. So we made it available, and he
6 did not want to look at them.

7 THE COURT: Well, why didn't you call the court
8 and let me -- put it on the record then, rather than
9 coming in here at some late hour and doing it? You
10 didn't give me an opportunity to put you two together.
11 Sorry. But I thank you for your explanation.

12 MR. BULSA: Certainly.

13 THE COURT: I think. All right. Now, any
14 other exhibits you want to get through this -- introduce
15 during this witness, or through this witness?

16 MR. BULSA: No, sir. These are all the
17 exhibits through Mr. Guthro.

18 THE COURT: All right. So as I understand it,
19 just so the record is clear when we come back, State's
20 Exhibit -- everything else up until State's Exhibits 11
21 through 16 are the -- they've been admitted? I think
22 they have. 11, 12, 13 -- well, 11 and 16, that's not
23 yours -- oh, yes, it is. Did you take this blood spots
24 in the breeze-way?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Just for the record,
2 I'm going to put State's Exhibits 11, 12, 13, 14, 15, 16
3 have been previously admitted. State's Exhibits -- and
4 then State's Exhibits 17, 18, 19, 20 and 21 are admitted
5 at this time, over the objection of Mr. Mays. Except 17,
6 18, 19, 20 and 21 are not over the objection of Mr. Mays.
7 But 16 is.

8 MR. BULSA: 17 is.

9 THE COURT: 17 is. Excuse me. Is admitted
10 over objection.

11 Now, -- and by the way, I'm not trying to be
12 difficult, but the thing is, we've got a jury here.
13 They're being inconvenienced. You can inconvenience a
14 judge, but don't inconvenience a jury. All right?

15 MR. BULSA: I never do, Your Honor. I just do
16 my job.

17 THE COURT: I understand. That's why they're
18 in the jury room right now. Thank you.

19 MR. BULSA: It's not my fault.

20 THE COURT: Very well. I'm glad it isn't.

21 All right. Ask the jury to join us.

22 (WHEREUPON, the jury entered the open court at
23 approximately 4:44 p.m.)

24 THE COURT: Let the record reflect the jury and
25 the alternates are in the jury box.

1 All right. For the record, Mr. Foreman, State's
2 Exhibits 17, 18, 19, 20 and 21 now have been admitted as
3 evidence.

4 All right, Mr. Bulsa.

5 MR. BULSA: Thank you.

6 THE COURT: You're welcome.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. BULSA:

9 Q. Now, Officer, please describe to the jury what these
10 are. You don't have to take them out. You can just
11 reference your writing.

12 A. The fired Winchester shell casing, which would be in
13 that photograph as placard number four.

14 Q. Reference the State's Exhibit Number if you would,
15 please.

16 A. State's Exhibit Number 17.

17 Q. Okay.

18 A. It's a fired 7.62x39 Winchester shell casing.

19 State's Exhibit 18 is going to be a live round, 7.62x39

20 Winchester shell casing from the breeze-way. State's

21 Exhibit 19 is going to be a live round, 7.62x39

22 Winchester from the breeze-way, as well. State's Exhibit

23 20 is going to be a live Winchester 7.62x39, also from

24 the breeze-way. And State's Exhibit 21 is going to be a

25 live round of ammunition, 7.62x39 Winchester, also from

1 the breeze-way.

2 Q. Okay. And those four unspent rounds are what's
3 shown in this photograph depicted on the screen?

4 A. That's correct.

5 MR. BULSA: For the record, that's State's
6 Exhibit 12.

7 Q. Okay. Now, Officer, how long have you been a
8 forensics officer?

9 A. I've been in forensics working as a crime scene
10 investigator for about nine years. Prior to that I was a
11 regular investigator for eight years. I've been with the
12 department for about twenty-six.

13 Q. You've been an officer for twenty-six years?

14 A. Yes, sir.

15 Q. Been to multiple crime scenes?

16 A. Yes, sir.

17 Q. Would you consider this a large crime scene?

18 A. Area-wise, yes, sir.

19 Q. And why ---

20 A. Not that many items, you know, it's not huge, like
21 I'm collecting a thousand items. But it covered a great
22 deal of space.

23 Q. That's because it appeared someone ran from the
24 upper parking lot to the lower parking lot behind the
25 woods?

1 A. Yes, sir.

2 Q. Okay. Are you convinced that you collected or found
3 everything that might be pertinent to this case?

4 A. Within reason. I mean, it's always possible to miss
5 something, but I don't believe we did.

6 Q. Okay. Could there have been some other unspent
7 rounds that you did not recover?

8 A. Could have been.

9 Q. Could there have been some other shell casings that
10 you might not have recovered?

11 A. Yes. Because -- particularly because it is such a
12 large crime scene and covered such a great deal of space.
13 Because the incident started at that one location doesn't
14 mean it was the only place where rounds were fired. They
15 could have been elsewhere, you know, a hundred yards away
16 if they're chasing each other. I don't know. But we
17 found what was within that fairly large crime scene:

18 Q. So based on the overall view of the scene, from the
19 evidence you collected, is it safe to say the actual --
20 at least some shooting occurred in the upper parking lot?

21 A. Yes.

22 Q. And someone was actually struck with a bullet in
23 that upper parking lot?

24 A. Correct.

25 Q. Now, how familiar are you with firearms?

- 1 A. Fairly familiar.
- 2 Q. Excuse me?
- 3 A. Fairly familiar.
- 4 Q. Okay. Are you familiar with what kind of firearm
- 5 would fire a 7.62 round?
- 6 A. Could have been a paramilitary type weapon, like an
- 7 AK47.
- 8 Q. Okay. You say paramilitary. What do you mean ---
- 9 A. Yes. It could be military type weapon, magazine fed
- 10 generally, semiautomatic normally in the civilian world.
- 11 Although it's possible to have a fully automatic one, as
- 12 well.
- 13 Q. Is that a handgun or a rifle?
- 14 A. It's a rifle.
- 15 Q. Okay. You referenced an AK47. Why that specific
- 16 brand?
- 17 A. It's pretty standard in that particular brand.
- 18 Q. Okay. Now, is an AK47 a United States type weapon?
- 19 A. Soviet, Russian.
- 20 Q. Okay. Are there any United States weapons that fire
- 21 that same round?
- 22 A. I'm sure there are.
- 23 Q. Okay. Is that what you just called on the street as
- 24 an AK47?
- 25 A. A lot of times a lot of people just say AK and

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1 they're talking about a semiautomatic weapon. Could be a
2 Colt, could be any kind of weapon, they just call it an
3 AK.

4 Q. Okay. So we're talking about a semiautomatic rifle?

5 A. Normally, yes, sir.

6 Q. And the size of the bullets that's fired, how does
7 this size bullet rank?

8 A. It's a large caliber bullet. It would be -- in the
9 sporting world, it would be a good hunting round for
10 large game. Good size weapon.

11 Q. Thank you, Officer. Answer any questions Mr. Mays
12 may have.

13 THE COURT: Mr. Mays.

14 CROSS EXAMINATION

15 BY MR. MAYS:

16 Q. You're familiar with guns; right?

17 A. Yes, sir.

18 Q. So 7.62 goes to how many -- how many guns do they
19 lead up to? Ain't there over five or six guns that shoot
20 7.62 rounds?

21 A. I'm sure there's way more than that.

22 Q. So you wouldn't -- you can't basically say what type
23 of gun the 7.62 go to? I hear you keep saying AK47.

24 That's just one ---

25 A. It could be chambered -- many different weapons

1 could be chambered for that caliber of ammunition.

2 MR. MAYS: I have no further questions, Your
3 Honor.

4 THE COURT: Very well. Redirect?

5 REDIRECT EXAMINATION

6 BY MR. BULSA:

7 Q. Did you process anything else involved in this case?

8 A. After I got through with that scene, I went to Burke
9 Street.

10 THE COURT: Are you talking about some other
11 investigation? Re-examine, he didn't bring up anything
12 about other investigations on his cross examination.

13 MR. BULSA: I didn't hear an objection, Your
14 Honor.

15 THE COURT: Remember, the rules provide that
16 you're limited in re-examination to matters brought up in
17 cross examination. I'm sorry. But I just have to apply
18 the rules. And these rules apply to both parties.

19 Q. Did you find a weapon that matched those bullets?

20 A. No, sir.

21 Q. Or those rounds? I'm sorry.

22 A. No.

23 Q. Okay. Thank you.

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

25 I tell you, it's five oh five. I think this might

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1 be a good time to recess for the day.

2 Mr. Foreman, ladies and gentlemen of the jury, as I
3 mentioned, I think this is a good time to recess. We've
4 moved very well this afternoon with the witnesses and
5 hopefully we'll move as efficiently tomorrow. But again,
6 this is a very important case to everybody involved and
7 it needs to be resolved in the proper fashion.

8 I might, and I usually do tell jurors that this is
9 the most difficult time for you, because you're going
10 home now and somebody's going to ask you, what are you
11 doing? And you'll say I've been drawn on a jury. And
12 they will say, well, what's it about? And you're going
13 to say, well, I can't talk to you about it or tell you.
14 And they'll say -- and they'll ask you why not? And
15 you'll tell them, because the judge said so. And they'll
16 probably say something like, well, that's rather
17 ridiculous. Well, I think, as I mentioned, that this is
18 a very serious case, and I think you understand that, to
19 all parties involved. And it needs to be resolved in a
20 proper fashion. And no one who is not sitting in that
21 jury box with you or be in that jury room when you
22 deliberate will have heard the first bit of the testimony
23 or seen the first bit of evidence. And I think you now
24 appreciate that the rules of evidence that we have
25 provides for assurances that the evidence that you get is

1 the best information available and reliable information
2 you can have. But they will never see that. For they
3 have not had the benefit of what you will have when you
4 make your deliberations in this case. And they can only
5 interfere with a proper resolution. So you'll have to
6 insist that they can't -- you can't discuss it with them.
7 Now, I'll be here in the morning if they don't understand
8 and I'll explain it to them for you.

9 With that I am going to excuse you. But now, Mr.
10 Foreman, I'm going to ask you what time the jury would
11 like to come in. Y'all know what you need to do tomorrow
12 morning before you get here. And if you'd just consult
13 with your jury. This won't be a unanimous verdict.
14 It'll just be what the consensus is as to what time you'd
15 like to begin in the morning. I would ---

16 THE JUROR: Yes, sir.

17 THE COURT: Pardon?

18 THE JUROR: Yes, sir.

19 THE COURT: All right. You can do it while
20 you're in the jury box. I would suggest either nine
21 thirty or ten o'clock.

22 MR. FOREMAN: Ten o'clock.

23 THE COURT: Ten o'clock. Very good. I think
24 that's a good hour. That'll give me some time to discuss
25 things with the parties involved. All right. Very good.

1 Again, do not undertake the discussion of the case among
2 yourself in anyway or permit anyone to discuss it with
3 you. And I'll see you tomorrow morning at ten o'clock.

4 Everyone else remain seated while the jury retires
5 from the courtroom.

6 (WHEREUPON, the jury exited the open court at
7 approximately 5:07 p.m.)

8 THE COURT: All right. Anything from the state
9 before we recess for the evening?

10 MR. BULSA: I'd just like the record to reflect
11 that I'm handing over the criminal histories of any
12 potential lay witness I may call tomorrow.

13 THE COURT: All right. Mr. Mays, do you know
14 what that means?

15 MR. MAYS: Will you explain it to me, Your
16 Honor?

17 THE COURT: That's the type of thing you ask
18 Mr. Poole about. All right? I don't want to be
19 paternalistic.

20 All right. Thank you. In other words, I don't want
21 in any sense to suggest that I'm trying to be overly
22 protective or anything. But I do want to be sure that
23 all parties have a fair trial.

24 All right. Anything else? Very good. I'll see you
25 in the morning.

1 Before counsel leave the courtroom, the court
2 reporter has to have all the exhibits that have been
3 admitted, so y'all go through those and be sure that she
4 has that.

5 (WHEREUPON, the court recess for the day in this
6 matter.)

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8 (WHEREUPON, court convened with all parties present
9 and the following proceedings were had.)
10 (WHEREUPON, State Exhibit Number 22 was marked for
11 identification.)

12 THE COURT: All right. I understand the state
13 has provided the law clerk with requests for charges?

14 MR. BULSA: Yes, sir.

15 THE COURT: Mr. Mays, you can request for
16 charges on the law, too. Do you have any you want the
17 court to consider?

18 MR. MAYS: Yes, sir.

19 THE COURT: You do?

20 MR. MAYS: Yes, sir.

21 THE COURT: How about passing them up to the
22 deputy so he can get it to me. Now, you don't have to
23 share it with the state, but I do need to have them so I
24 can look at the charges.

25 MR. MAYS: I don't have any, Your Honor.

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1 THE COURT: Oh, very well. Is there anything
2 else from the state before we bring the jury back?

3 MR. BULSA: Yes, sir, briefly. We did meet
4 earlier and offered the box of evidence to the defendant.
5 He looked through the front of the bags and stated he
6 was, I believe, satisfied; that that's all he needed to
7 see. We pulled out the round that was recovered in the
8 apartment where he was arrested from. Our argument is it
9 matches the type of round found at the scene. And he's
10 told me he has no objection to letting me enter ---

11 THE COURT: All right. Let's do this, if you
12 would, Mr. Solicitor. Have you have them identified as
13 far as exhibit numbers?

14 MR. BULSA: I have. State's Exhibit Number 22.

15 THE COURT: All right. So if you would, give
16 me those that you're going to seek to introduce today by
17 exhibit number that he is -- that the defendant has not
18 objected to.

19 MR. BULSA: At this time, Your Honor, this is
20 the last exhibit that I was going to ---

21 THE COURT: It will be?

22 MR. BULSA: Should be, unless something happens
23 in the trial.

24 THE COURT: Number 22?

25 MR. BULSA: Yes, sir.

1 THE COURT: As I understand, Mr. Mays, that
2 you're not objecting to Exhibit Number 22, which
3 apparently is a live round or ---

4 MR. BULSA: Live round.

5 THE COURT: Live round?

6 MR. BULSA: Yes, sir.

7 THE COURT: All right. Without objection,
8 State's Exhibit Number 22 is admitted.

9 (WHEREUPON, State Exhibit Number 22 was admitted
10 into evidence.)

11 THE COURT: All right. Anything else?

12 MR. BULSA: Yes, sir. And I'm not quite sure
13 how to handle this one. But the defendant made a comment
14 to me about drugs that was the subject of our motion on
15 Monday. He asked what kind of offer we had made to Mr.
16 Scott, because he was found at or near those drugs. For
17 the record, we'll state we made no offer to Mr. Scott
18 about those drugs. He was never charged by the police.
19 Those drugs were never tested to determine they were in
20 fact illegal drugs. The state doesn't see that as
21 relevant to the shooting, so we did not pursue ---

22 THE COURT: Well, of course, it does go to the
23 credibility if Mr. Scott is going to testify.

24 MR. BULSA: I understand that. But he's asking
25 me if we made any offers. And I want the court to be

1 aware there was no offer because there was no charge.

2 THE COURT: Well, that's the state -- of
3 course, if you do -- if Mr. Scott is put on the stand,
4 you could ask him about that and be sure everybody's in
5 agreement.

6 MR. MAYS: That's all I want to know, Your
7 Honor.

8 THE COURT: Okay. Anything else?

9 MR. BULSA: And I have instructed Mr. Mays so
10 he could understand that those pictures that we talked
11 about Monday are not in evidence at this time to go
12 before the jury. I never intended to offer those. That
13 if he wanted to try to ---

14 THE COURT: Which pictures are those? Are
15 those the various locations of the shells?

16 MR. BULSA: No, sir. These were the ones that
17 we heard on Monday. These were these two.

18 THE COURT: All right. Those are on the --
19 very well.

20 MR. BULSA: Those are not introduced. I told
21 him that ---

22 THE COURT: Have they been marked?

23 MR. BULSA: They were marked as state's
24 exhibits. So if he wants to try to introduce them ---

25 THE COURT: What I'm trying to do, Solicitor,

1 is try to keep a record of the exhibits. And I start
2 with number 6 yesterday.

3 MR. BULSA: Should have been number 5
4 yesterday.

5 THE COURT: All right. 5 is with the -- number
6 5 was the aerial; is that right?

7 MR. BULSA: Yes, sir.

8 THE COURT: Yeah, I see. All right. So number
9 5 is the picture of Prince Hall Apartments in Spartanburg
10 County?

11 MR. BULSA: Yes, sir. And ---

12 THE COURT: Now, 1, 2, 3, 4, is that ---

13 MR. BULSA: Those were the items that were
14 discussed at Monday's hearing.

15 THE COURT: But they are not being ---

16 MR. BULSA: Not introduced by the state, no,
17 sir.

18 THE COURT: All right. But they have been
19 identified as State's Number 1 for identification.

20 MR. BULSA: Well, actually they were introduced
21 at that hearing.

22 THE COURT: So they're not ---

23 MR. BULSA: Not for the jury, no, sir.

24 THE COURT: Not for the jury. In other words,
25 it remains for I.D. until the admission is moved either

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1 by the state or the defendant? I just have to have ---

2 MR. BULSA: But they would have to be marked as
3 a defense exhibit, because I'm not going to introduce
4 them.

5 THE COURT: Well, right now, it has a red ---

6 MR. BULSA: Yes, sir.

7 THE COURT: What does that red sticker ---

8 MR. BULSA: It calls it a state's exhibit.

9 THE COURT: Okay. So that's State's Exhibit
10 Number 1 for I.D.

11 MR. BULSA: 1 and 2.

12 THE COURT: The 1 is ---

13 MR. BULSA: It's essentially pictures of ---

14 THE COURT: 1 is the actual alleged items at
15 the location. And then the number 2 is the
16 identification.

17 MR. BULSA: Yes, sir.

18 THE COURT: And I think -- what's the placard?

19 MR. BULSA: Fourteen.

20 THE COURT: Fourteen. Okay. All right. And
21 how about 3 and 4, do you know if they ---

22 MR. BULSA: 3 is part of the evidence custodian
23 record that documented item nineteen, which was ---

24 THE COURT: The drugs.

25 MR. BULSA: Which were these drugs.

1 THE COURT: Okay. And that also still for
2 I.D., and it's a drug ---

3 MR. BULSA: It's a piece of the evidence
4 inventory, yes, sir..

5 THE COURT: And number 4?

6 MR. BULSA: 4 was a record of a letter sent to
7 the defendant's residence regarding the trial date.

8 THE COURT: Madam Court Reporter, is that
9 consistent with your records?

10 COURT REPORTER: Yes, sir.

11 THE COURT: Okay. Very good.

12 MR. BULSA: And lastly, on a point of evidence,
13 because of the argument on Monday, Mr. Mays kept talking
14 about the other drugs, the other drugs, but there was no
15 picture taken.

16 MR. MAYS: Why?

17 MR. BULSA: They reference -- the initial
18 officer, one of the initial officers, wrote a report of
19 reference finding, a package of cigarettes on Mr. Scott
20 and near his body a package of the same cigarette
21 packaging, similar cigarette packaging, that had what
22 they believe might have been crack cocaine. Officer
23 Hancock testified to that yesterday on cross examination.
24 I presented those drugs to him and told him there's no
25 picture and explained the reason why. And said that he

1 wanted to try to introduce those drugs. That would be
2 his prerogative. But we, of course, would object.

3 THE COURT: Okay. All right. Now, so the
4 record as far as exhibits should be complete now. We
5 have admitted into evidence State's Exhibits 5, 6, 7, 8,
6 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.
7 And marked for identification State's Exhibits 1, 2, 3
8 and 4, have not been admitted. Is that correct,
9 Solicitor?

10 MR. BULSA: Yes, sir.

11 THE COURT: Is that correct, Mr. Mays?

12 MR. MAYS: Yes, sir, Judge.

13 THE COURT: All right. Now we can proceed.
14 Thank you for clarifying that and getting the record
15 complete for me.

16 All right. Anything else before we bring the jury
17 back?

18 MR. BULSA: I had mentioned to your law clerk
19 that there might be a logistical issue with some
20 witnesses.

21 THE COURT: Right.

22 MR. BULSA: I have some witnesses that are in
23 jail and we've tried to keep them separate. So there may
24 be a delay.

25 THE COURT: No problem. This looks like this

1 is the last trial for the week, so ---

2 MR. BULSA: Yes, sir.

3 THE COURT: --- you should have plenty of time.

4 MR. BULSA: Okay.

5 THE COURT: Very well. All right. Mr. Mays,
6 anything from you before we bring the jury back?

7 MR. MAYS: I'm ready, Your Honor.

8 THE COURT: Very good. Thank you, sir. Ask
9 the jury to join us.

10 (WHEREUPON, the jury entered the open court at
11 approximately 10:10 a.m.)

12 THE COURT: All right. Let the record reflect
13 that the jury and alternates are in the jury box. Mr.
14 Foreman, ladies and gentlemen of the jury, we will now
15 continue with the state's case.

16 Mr. Solicitor.

17 MR. BULSA: Thank you, Your Honor. The state
18 calls Brendall Mathis.

19 THE CLERK: Do you solemnly swear or affirm
20 that the testimony you're about to give will be the
21 truth, the whole truth and nothing but the truth, so help
22 you God?

23 THE WITNESS: Yes, ma'am, I do.

24 BRENDALL MATHIS,

25 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MR. BULSA:

3 Q. Please introduce yourself.

4 A. Senior Patrol Officer Brendall Mathis.

5 Q. Who are you employed with?

6 A. Spartanburg City Police Department.

7 Q. How long have you been an officer?

8 A. Five and a half years.

9 Q. What were your duties back in August of 2012?

10 A. I was assigned to the violent crimes task force.

11 Q. Were you asked to try to locate Javan Mays?

12 A. Yes, sir. When we came in the day of the 14th, we
13 were asked to locate him. Ended up getting information
14 on where he was actually staying as of that time.

15 Q. Did you and your team attempt the arrest of Mr.
16 Mays?

17 A. Yes, sir.

18 Q. Where did y'all respond to?

19 A. Prince Hall Apartments, which is 100 Prince Hall
20 Lane, Apartment 2-4.

21 Q. Now, you were in court yesterday for the testimony;
22 correct?

23 A. Yes, sir.

24 Q. You saw the picture we had on the screen?

25 A. Yes, sir.

1 Q. Is that the same Prince Hall Apartments that you
2 responded to?

3 A. Yes, sir, it is.

4 Q. Where is apartment 2-4?

5 A. Basically if you're looking in relations to where
6 the subject was found in the wood line, I believe his
7 name is Mr. Scott, and in reference to where the incident
8 actually took place, in regards to the picture, it's
9 almost right in the center of where both of those
10 actually took place.

11 Q. Okay. So if someone were to go into Prince Hall,
12 would they go in the lower parking lot or the upper
13 parking lot to get there?

14 A. They could get through either one, but it would
15 probably be shorter to actually go into the lower parking
16 lot and travel the sidewalk.

17 Q. Okay. Who actually resided at Apartment 2-4?

18 A. The name that we had that it was rented to was a
19 Tameka Pilgrim.

20 Q. What time in the morning did your team go there?

21 A. We received the information at about ten o'clock.
22 And by the time we got, I guess everybody lined up as far
23 as our tactical team and stuff like that, it was
24 approximately an hour later or so, is when we actually
25 began to respond towards the apartments.

1 Q. Okay. Tell us what took place when you arrived at
2 the apartment?

3 A. Once we were there, I was assigned to actually cover
4 the back part of the apartment, watching the windows and
5 various things. It was a second floor apartment. They
6 did have a fire escape that led out towards the back. I
7 was there with another K9 Officer just covering the rear
8 of the apartments. Our tactical team actually approached
9 the door, knocked on the door, and called any individual
10 that was out to the outside where the stairwell is. And
11 once there was a female and a male that actually exited
12 the apartment and they had them basically laid face-down
13 there in the stairwell so that we could handcuff them and
14 they could continue to clear the residence that was in
15 there to make sure nobody was hiding in any closets,
16 under the bed, anything like that, so they could secure
17 the apartment for us.

18 Q. Who were those two persons at the apartment?

19 A. Ms. Tameka Pilgrim and Javan Mays.

20 Q. The defendant?

21 A. Yes, sir.

22 Q. After you secured him was a search of the apartment
23 done?

24 A. Yes, sir. There was a search warrant that was typed
25 up and we executed the search warrant and I assisted with

1 the search of the apartment.

2 Q. What kind of items were you looking for?

3 A. Anything in reference to the crime. Maybe a gun,
4 maybe ammunition, clothing, anything that would, you
5 know, reference the crime that took place.

6 Q. Okay. And did you find anything?

7 A. I located a Winchester 7.62x39 bullet, which was a
8 live round. It was actually located in the -- when you
9 come in through the front door of the apartments, there's
10 a living room area, which has the couch and like a T.V.
11 where you normally sit. In the corner of that room there
12 was a box in the corner and that's where the bullet was
13 actually located.

14 Q. So that was in the common area of the apartment?

15 A. Yes, sir.

16 Q. Okay. Let me show you what's been marked as State's
17 Exhibit 22. Would you look at that item?

18 A. Yes, sir, it's a Winchester 7.62x39 bullet, a live
19 round.

20 Q. What type weapons would fire that, in your
21 experience?

22 A. An assault style military weapon. I believe
23 Investigator Guthro stated yesterday it's most commonly,
24 you know, like a paramilitary type rifle.

25 Q. Street term would be an AK?

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1 A. Yes, sir, that's commonly what's used as an AK or
2 AK47.

3 Q. What was done with Mr. Mays upon his arrest?

4 A. Mr. Mays was then transported back to city hall with
5 Ms. Pilgrim and they were interviewed by investigators on
6 the scene. And we actually stayed on the scene and
7 conducted the search warrant.

8 Q. Okay. Did you have an arrest warrant in hand when
9 you went to get him?

10 A. Yes, sir. We did. We had warrants for Mr. Mays
11 when we responded there.

12 Q. And you responded around eleven o'clock, you said?

13 A. It was approximately an hour. I don't recall the
14 exact time that we, you know, were able to knock on the
15 door and get them outside, but I would guesstimate around
16 an hour.

17 Q. Was it approximately ten hours after the actual
18 incident occurred?

19 A. Yes, sir.

20 Q. Thank you. Answer any questions Mr. Mays may have.

21 A. Yes, sir.

22 THE COURT: Mr. Mays.

23 MR. MAYS: I don't have any questions, Your
24 Honor.

25 THE COURT: Very well. You may step down, sir.

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1 THE WITNESS: Thank you, sir.

2 MR. BULSA: We ask that Mr. Mathis be excused.

3 THE COURT: Any objection?

4 MR. MAYS: No, sir, Your Honor.

5 THE COURT: All right. Without objection the
6 witness will be excused. Thank you, sir.

7 THE WITNESS: Thank you.

8 MR. BULSA: State calls Brian Stokes.

9 THE CLERK: Do you solemnly swear or affirm
10 that the testimony you're about to give will be the
11 truth, the whole truth and nothing but the truth, so help
12 you God?

13 THE WITNESS: I do.

14 BRIAN STOKES,

15 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. BULSA:

18 Q. Please introduce yourself to the jury.

19 A. Douglas Brian Stokes.

20 Q. You go by Brian Stokes?

21 A. Yes, I do.

22 Q. Who are you employed with?

23 A. The Spartanburg Public Safety Department.

24 Q. In what capacity?

25 A. I'm assigned to the criminal investigation division.

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- 1 Q. How long have you been a police officer?
- 2 A. Twenty-five years.
- 3 Q. How long have you been an investigator?
- 4 A. A little over five years.
- 5 Q. Were you the investigator assigned to the shooting
- 6 at Prince Hall Apartments on August the 14th?
- 7 A. Yes, sir, I was the on-call investigator.
- 8 Q. Where is the first place you responded to?
- 9 A. The first place I responded to was Spartanburg
- 10 Regional Medical Center. That's where both the victims
- 11 had been transported to.
- 12 Q. Okay. Were you aware of where each victim had been
- 13 located, about?
- 14 A. Yes, sir. Mr. Christopher Scott was at the
- 15 apartments where the shooting took place. And Mr. Antron
- 16 Oglesby had fled the scene and ran to a street
- 17 approximately a half a mile away, Burke Avenue.
- 18 Q. Was he located by medical personnel at a residence
- 19 there?
- 20 A. Yes. Once he got to the scene there, the police
- 21 were summoned to that location, as well.
- 22 Q. And both the victims were transported to the
- 23 hospital?
- 24 A. That's correct.
- 25 Q. With what type of wounds?

1 A. Both had gunshot wounds to the lower extremities.

2 Mr. Oglesby suffered a -- of course, he had injuries to
3 his head, too. He had lacerations to the left side of
4 his head and he had a bullet wound on his right ankle and
5 a bullet lodged in his left big toe. Mr. Scott had a
6 bullet wound in the upper left leg and the lower right
7 ankle and the right foot.

8 Q. Okay. Did you have an occasion to speak to each
9 individual at the hospital?

10 A. I did. They were both being treated at the time I
11 got to the hospital. And I was only able to get limited
12 information from them at that time, because they were
13 both -- they both had been given pain medication. And of
14 course, they were -- medical personnel were also
15 administering medical treatment to them. So I was only
16 able to get limited information from them at that time.

17 Q. Did you learn where the incident occurred from them?

18 A. I did.

19 Q. Where had they been shot?

20 A. Prince Hall Apartments.

21 Q. Did you get an identification of who the suspect
22 was?

23 A. Yes. Mr. Antron Oglesby identified the shooter as
24 Van Mays.

25 Q. Did you know a Van Mays?

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1 A. I had heard of a Van Mays and I went back to city
2 hall after I left Prince Hall Apartments and developed a
3 photo line-up with Javan Mays in it.

4 Q. All right. So in your understand Van would be short
5 for Javan?

6 A. That's correct.

7 Q. And with these photographs, what did you do with
8 them?

9 A. I developed photo line-ups. And according to our
10 policy and procedure, I had to get someone else who was
11 not involved in the case to show the photo line-ups, and
12 I had Investigator Burgess respond back to the hospital
13 with me and allow the victims, Mr. Scott and Mr. Oglesby,
14 to view the photo line-up.

15 Q. And they viewed that line-up independent of each
16 other?

17 A. They did.

18 Q. Were you present when they were shown the line-up?

19 A. Yes, I was. Mr. Oglesby was in room 640 and Mr.
20 Scott was in room 634 of Spartanburg Regional Medical
21 Center.

22 Q. When we talk about a line-up, describe what we mean
23 to the jury?

24 A. It's a series of six photos with one of those photos
25 including the suspect and five other suspects of similar

1 stature, hair style, added to the line-up for them to
2 view at one time. They're not allowed to view all six
3 photos at one time, according to our procedures. They're
4 allowed to view one photo at a time so they can't compare
5 two photos side-by-side.

6 Q. And when you showed that -- when Investigator
7 Burgess showed that line-up to Mr. Oglesby, did he
8 identify Javan ---

9 A. He did. He immediately, when he saw the photo of
10 Mr. Javan Mays, he immediately advised him that that was
11 the suspect.

12 Q. Okay. And how about Mr. Scott, what occurred when
13 he looked at that line-up?

14 A. When Mr. Scott looked at the photo, when he got to
15 the photo of Mr. Javan Mays, he says, that looks like
16 him.

17 Q. Okay. Did Mr. Scott know Mr. Mays?

18 A. Mr. Scott indicated that he had not ever seen Mr.
19 Mays before.

20 Q. But Mr. Oglesby did know him?

21 A. Yes.

22 Q. All right. Okay. Now, how many persons were you
23 informed were responsible for this crime?

24 A. Two. There were two suspects. The second suspect
25 wasn't identified till August the 16th.

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1 Q. Two days later?

2 A. Yes.

3 Q. Okay. And who is that suspect?

4 A. Kendall Robinson.

5 Q. And was he arrested?

6 A. Yes, he was.

7 Q. Now, once you got the name and confirmed it through
8 the line-up process, what did you do with Javan Mays'
9 information?

10 A. Once his information -- once he was confirmed as a
11 suspect through photo identification and line-up, we ran
12 a criminal history and presented the facts to the judge,
13 along with the criminal history and obtained two warrants
14 for attempted murder, armed robbery and possession of a
15 weapon during the commission of a violent crime.

16 Q. And did you learn where he might be located at the
17 moment?

18 A. Yes, we did.

19 Q. And what process did you undertake to arrest him?

20 A. I was not at the apartment when he was arrested. I
21 was assigned to a perimeter because I got to the scene
22 late because of other paperwork that I was doing related
23 to the case. I was just on the outside perimeter.

24 Q. So you sent another team with the warrants to go
25 there?

- 1 A. That's correct.
- 2 Q. Okay. Were you aware of the round being recovered?
- 3 A. Yes, I was.
- 4 Q. As the lead investigator, were you aware of the
- 5 rounds that were recovered at the crime scene?
- 6 A. I actually saw the rounds at the crime scene. I was
- 7 at Prince Hall with forensics tech Guthro.
- 8 Q. And your observation of those rounds, did the round
- 9 in the apartment appear similar to the ones at the scene?
- 10 A. They were the exact same caliber and manufacturer.
- 11 Q. And how about the spent shell casing, what do they
- 12 ---
- 13 A. The spent shell casing was the exact same caliber
- 14 and manufacturer, as well. All 7.62x39, manufactured by
- 15 Winchester.
- 16 Q. In your experience, what kind of weapon fires that
- 17 round?
- 18 A. An assault style weapon, AK47, SKS. But a
- 19 paramilitary style weapon.
- 20 Q. How powerful is a weapon like that?
- 21 A. It's, it's a high power, high velocity round. In
- 22 excess of two thousand feet per second round.
- 23 Q. Okay. Thank you, Officer. Answer any questions Mr.
- 24 Mays may have.
- 25 THE COURT: Mr. Mays.

1 CROSS EXAMINATION

2 BY MR. MAYS:

3 Q. Mr. Stokes, I've got a couple of questions for you.

4 A. All right, sir.

5 Q. You just said that you advised -- you was advised by
6 agency of a female which would be a CRI?

7 A. I'm sorry.

8 Q. That's a reliable informant for them to put the
9 warrants on me, it says right here, in your writing. On
10 your case activity summary, it says right here you
11 received a call from a female who advised that I was in
12 building 2-4 and this is what advised you to put the
13 warrants on me.

14 A. No, sir. The warrants were obtained on you based on
15 the photo identification.

16 Q. Right here you've got ---

17 A. What are you specifically talking about?

18 Q. On your investigator's case activity summary.

19 A. Where are you specifically talking about?

20 Q. Right here. It say your agency was contacted,
21 received a call from a female ---

22 A. Uh-huh (affirmative).

23 Q. --- who advised that I was in building 2-4, to
24 obtain the warrants ---

25 A. Okay.

1 Q. --- for you to come pick me up.

2 A. That would be the search warrant to search that
3 house for you. That's not the arrest warrants. The
4 arrest warrants were already obtained after Mr. Oglesby
5 and Mr. Scott picked you out of the photo line-up.

6 Q. You're saying right here female advised your office.

7 A. Okay. Well, I'll clarify that for you. A female
8 called our agency and provided information of where you
9 were hiding.

10 Q. I wasn't never hiding nowhere.

11 A. I'm not sure if that's a question, but the answer to
12 your question is, a female called our agency ---

13 MR. MAYS: Judge, ---

14 MR. BULSA: Objection.

15 THE COURT: What ---

16 MR. MAYS: I'm just reading, Your Honor, what's
17 in ---

18 THE COURT: I don't think it says in that that
19 you were not hiding. I think that's what he's objecting
20 to.

21 MR. MAYS: It's got something in here about
22 saying I was hiding.

23 THE COURT: What?

24 MR. MAYS: He's got some things in this motion
25 -- I mean, in this activity ---

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1 THE COURT: Well, read him what it says in that
2 and ask him if that's not what it says. In other words,
3 you know, a trial goes through different stages.
4 Argument comes at the end. That's when you start telling
5 the jury what your ---

6 MR. MAYS: Okay.

7 THE COURT: --- understanding of the facts are.
8 Same as the solicitor. And he might look at it in a
9 different way, so just read what the exhibit has.

10 MR. MAYS: We can move on. We can move on. I
11 ain't going to hold the court up.

12 THE COURT: That's good. That's fine. Please
13 don't -- understand, it's just -- and I think, as you
14 found out yesterday, rules of evidence apply to both
15 sides, both the state and the defendant.

16 MR. MAYS: Okay. I don't have any other
17 questions, Your Honor.

18 **REDIRECT EXAMINATION**

19 **BY MR. BULSA:**

20 Q. Just to clarify that -- I think you did a good job,
21 but let's try it one more time.

22 THE COURT: And also, no editorial comments.
23 They come in argument, too.

24 Q. Mr. Mays referenced a paragraph in your investigator
25 summary?

1 A. I think he referenced in my supplemental, the fourth
2 paragraph from the bottom. I'm sorry, the third
3 paragraph from the bottom.

4 Q. All right. Just read that, if you would, to the
5 jury, as to how you documented what he was trying to get
6 at?

7 A. At approximately zero nine hundred hours, I was
8 advised by our agency -- that our agency received a call
9 from a female who advised that Javan Mays was in building
10 2-4 of Prince Hall Apartments. Members of the violent
11 crime task force on a search warrant -- or started on a
12 search warrant for this location, with the assistance of
13 narcotics. Once the search warrant was obtained,
14 forensics tech Guthro ---

15 THE COURT: Slow down. This lady is trying to
16 take down what we're saying.

17 THE WITNESS: Oh, I'm sorry. Do I need to read
18 it again?

19 COURT REPORTER: Okay.

20 THE WITNESS: Read it again?

21 COURT REPORTER: Yes, please.

22 THE WITNESS: I'm sorry. At approximately zero
23 nine hundred hours, I was advised by our agency that our
24 agency had received a call from a female who advised that
25 Javan Mays was in building 2-4 of Prince Hall Apartments.

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1 Members of the violent crime task force started a search
2 warrant for this location, with the assistance of
3 narcotics. Once the search warrant was obtained,
4 forensics tech Guthro and I responded to the area to
5 stand by. Then it's talking about the search warrant,
6 not the arrest warrants.

7 Q. Okay. In fact, in your investigative report,
8 doesn't the preceding paragraph, the paragraph just
9 before this paragraph, doesn't it talk about the arrest
10 warrants?

11 A. It does.

12 Q. And that's what you testified to the charges you
13 presented and the warrants that the judge gave?

14 A. That's a fact. The facts of the case were presented
15 to Judge Chumley, and that's -- the warrants were issued
16 for attempted murder, one for armed robbery and
17 possession of a weapon during the commission of a violent
18 crime. And that's prior to us receiving information that
19 they started on the search warrant.

20 Q. Okay. So you got information at nine o'clock and
21 then we heard Officer Mathis say that around ten o'clock
22 they started the process and around eleven o'clock is
23 when they actually executed the search warrant?

24 A. When I referenced earlier about me finishing
25 paperwork, that's where I was, obtaining arrest warrants.

1 When the information came in, it provided information
2 where Mr. Mays was currently at, and they started on the
3 search warrant.

4 Q. Okay. Thank you.

5 MR. BULSA: That's all I have.

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

7 Call your next witness.

8 MR. BULSA: Is Mr. Oglesby here?

9 OFFICER: Not yet.

10 THE COURT: Well, I understand. There might be
11 a delay on this witness.

12 MR. BULSA: Yes, sir.

13 THE COURT: Mr. Foreman, ladies and gentlemen
14 of the jury, I'm going to ask you to retire to the jury
15 room until we're ready to proceed with the next witness.
16 Again, do not undertake discussion of the case among
17 yourselves in anyway.

18 (WHEREUPON, the jury exited the open court at
19 approximately 10:32 a.m.)

20 THE COURT: All right. We'll take a break,
21 too, until the witness is ready.

22 MR. BULSA: Thank you, Your Honor.

23 (WHEREUPON, the court stood at recess for a short
24 break.)

25 THE COURT: Let's go back on the record for a

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1 minute. It's my understanding the next witness might be
2 less than convenient to the defendant's case.

3 MR. BULSA: He's one of the victims.

4 THE COURT: That's what I'm saying. All right.
5 The reason I'm bring this up, I've noticed that both of
6 you have been approaching witnesses while they're in the
7 box. The rule, of course, is that you do not approach a
8 witness at all. In other words, you do not invade the
9 area of the witness. Except to show a document or
10 something like that and have the witness confirm it.
11 What you do is, and as I say, Mr. Mays, this applies to
12 both the state and the defendant, that if you need to
13 approach a witness to show them a document or something
14 like that, then you request permission to do that. And
15 in fact, our rules also provide that we -- counsel remain
16 at their desks rather than, without permission, wandering
17 through the courtroom. There's another thing, we don't
18 want to have counsel or parties in the jury box with the
19 jury showing them something like that. So let's, in this
20 particular case, let's -- I'd say, particularly in this
21 case, let's be careful, don't approach witnesses and
22 don't get away from the desk without asking permission of
23 the court. Do you understand, Mr. Bulsa?

24 MR. BULSA: I do. Is it okay if I stand over
25 there?

1 THE COURT: Yes. But I mean, again, that's
2 farther up on the line. And of course, Mr. Mays, if he
3 wants to, I guess, I'm not sure that the security and all
4 that still, I'll leave that up to the officers. But not
5 to get in front of the desk and approach the witness in
6 anyway that would be intimidating. You understand?

7 MR. BULSA: Yes, sir.

8 THE COURT: You understand, Mr. Mays?

9 MR. MAYS: Yes, sir.

10 THE COURT: Very good. Thank you. All right.
11 Are you ready to proceed?

12 MR. BULSA: He's here. Yes, sir.

13 THE COURT: All right. Let's ask the jury --
14 oh, wait, anything from you, Mr. Mays, before we bring
15 the jury back?

16 MR. MAYS: No, sir.

17 THE COURT: All right. Ask the jury to join
18 us.

19 (WHEREUPON, the jury entered the open court at
20 approximately 10:45 a.m.)

21 THE COURT: All right. Let the record reflect
22 the jury and alternates are in the jury box. Mr.
23 Foreman, ladies and gentlemen of the jury, we'll now
24 continue with the state's case.

25 Solicitor, you may call your next witness.

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1 MR. BULSA: State calls Antron Oglesby.

2 THE CLERK: Sir, place your left hand on the
3 bible and raise your right. Do you solemnly swear or
4 affirm that the testimony you're about to give will be
5 the truth, the whole truth and nothing but the truth, so
6 help you God?

7 THE WITNESS: Yes, ma'am.

8 ANTRON OGLESBY,

9 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. BULSA:

12 Q. Mr. Oglesby, tell us your name.

13 A. Antron Oglesby.

14 Q. How old are you, sir?

15 A. Thirty-four.

16 Q. And where do you live?

17 A. South Cleveland Park Drive.

18 Q. South Cleveland Park Drive?

19 A. Spartanburg.

20 Q. Make sure you speak up. It's a little hard to hear
21 you. Okay? How long have you lived in Spartanburg?

22 A. All my life.

23 Q. Now, did you get shot on August 14, 2012?

24 A. Yes, sir.

25 Q. Where were you at when you got shot?

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- 1 A. In Prince Hall.
- 2 Q. Prince Hall Apartments?
- 3 A. Yes, sir.
- 4 Q. And were you in a vehicle or were you standing out,
- 5 where were you?
- 6 A. In a vehicle.
- 7 Q. In a vehicle. And how did you come to be at Prince
- 8 Hall Apartments?
- 9 A. Rita, my friend girl.
- 10 Q. All right. And who else was with you?
- 11 A. Me and my friend Chris.
- 12 Q. You and your friend Chris, your friend girl ---
- 13 A. And a girl named -- another girl. I forgot her
- 14 name.
- 15 Q. Okay. So two women and you and Mr. Scott?
- 16 A. Yes, sir.
- 17 Q. Chris is Chris Scott?
- 18 A. Yes, sir.
- 19 Q. And tell us how y'all were positioned in the car?
- 20 A. I was in back of, in back of the driver's side. He
- 21 was in back of the passenger side, the car side, in the
- 22 back.
- 23 Q. Who do you recall driving the car?
- 24 A. Rita.
- 25 Q. And whose car was it?

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- 1 A. Rita's.
- 2 Q. It was Rita's car. All right. And approximately
- 3 what time were y'all over there?
- 4 A. I'd say about ten something, about eleven or --
- 5 about eleven something, something like that. I don't
- 6 quite remember.
- 7 Q. Sometime in the evening?
- 8 A. No. It was about late at night.
- 9 Q. Late at night. Okay. It was dark?
- 10 A. It was real dark, yeah.
- 11 Q. Okay. Where had y'all been before you got to Prince
- 12 Hall Apartments?
- 13 A. I went by my house to get money, pick some money up.
- 14 Q. Okay. And how much did you pick up?
- 15 A. About a hundred and something dollars.
- 16 Q. And what did you do when you picked up the money?
- 17 A. I wanted to go back to my aunt's house, but Rita
- 18 said she had somewhere she wanted us to ride with her
- 19 somewhere. And Chris was telling me don't go. He said,
- 20 where we going, man? I said, we'll be all right. And
- 21 she said she was going to take her mama the keys,
- 22 something like that. And from there we went to Prince
- 23 Hall, man.
- 24 Q. Okay. So it was your understanding you were going
- 25 to Prince Hall to take some keys to somebody?

- 1 A. That's what she said.
- 2 Q. Okay. But that was -- and you were just along for
3 the ride?
- 4 A. Yeah.
- 5 Q. Had you gone to any store or anything?
- 6 A. Yeah. We went to the store, went to the store
7 before all that, before I even went and got my money from
8 my house, we went to the store because she put some gas
9 in the car. She wanted some gas money. I guess she had
10 money then. I didn't know what Tameka was doing. I seen
11 her playing with the back door, but we was about tore up
12 anyway. But I seen her playing with the door, but I
13 wasn't thinking then.
- 14 Q. Let me stop you a minute. You said you were tore
15 up?
- 16 A. I mean, you know, like, you know a little tipsy, a
17 little bit.
- 18 Q. Had you been drinking?
- 19 A. Yes, sir.
- 20 Q. And when you went to the store, what did you buy?
- 21 A. A twelve pack of Bud Light.
- 22 Q. Okay. And what were you going to do with that Bud
23 Light?
- 24 A. We were going to go back to my aunt's house and
25 drink it.

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- 1 Q. Okay. But you never made it back?
- 2 A. No, sir.
- 3 Q. Tell us what happened when you pulled into Prince
- 4 Hall?
- 5 A. I seen this dude come around the corner with a AK47.
- 6 And he just came, just came and opened the door. Chris
- 7 started to get out, but he couldn't open the door. And
- 8 when -- the safety lock was on the door, and the dude
- 9 just started shooting through there.
- 10 Q. Okay. How many people came around the corner?
- 11 A. Two.
- 12 Q. Did you know either one of those persons?
- 13 A. Yeah.
- 14 Q. Which one -- or both, did you know them?
- 15 A. Yeah.
- 16 Q. Which of them did you know?
- 17 A. I didn't knew him, but I knew Mays.
- 18 Q. You knew Mr. Mays?
- 19 A. (No verbal response.)
- 20 Q. How long had you known him?
- 21 A. Maybe for a minute.
- 22 Q. For a what?
- 23 A. For a long time.
- 24 Q. All right. About how many years?
- 25 A. About a couple of years.

1 Q. Okay. Did you know him by sight?

2 A. Yeah.

3 Q. Whenever you saw him?

4 A. (No verbal response.)

5 Q. Okay. Was there any doubt in your mind that night

6 that that was him when you saw him out there at Prince

7 Hall Apartments?

8 A. Yes, sir.

9 Q. Okay. You're sure it was him?

10 A. Yes, sir.

11 Q. And you're speaking and identifying him to the jury

12 at this time?

13 A. Yes, sir.

14 Q. Okay. Now, which one had the gun?

15 A. Little short dude Kendall had the gun, whatever his

16 name was.

17 Q. Okay. Just so the jury understands this. You're

18 calling one of them short and one of them taller?

19 A. Yes, sir.

20 Q. And who was Mr. Mays?

21 A. He's the tall one.

22 Q. He's the tall one? And you're telling the jury the

23 short one had the gun?

24 A. Yes, sir.

25 Q. What kind of gun was it?

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- 1 A. A AK47.
- 2 Q. What made you think they were together?
- 3 A. They came out around the building together.
- 4 Q. Did they both approach the car?
- 5 A. No.
- 6 Q. Tell us what happened?
- 7 A. Kendall, the little dude came around -- came to the
- 8 car. But Mays, he was still walking toward the car. He
- 9 didn't come near the car. But he already, before Mays
- 10 even got close, I mean, I didn't pay no attention to Mays
- 11 no more. I really paid attention to the dude who came
- 12 with the gun.
- 13 Q. All right. So the guy with the gun came to the car
- 14 and your attention is focused on him?
- 15 A. Yeah.
- 16 Q. How does he get into the car?
- 17 A. He opened the door his self.
- 18 Q. Which door?
- 19 A. Chris's side door, passenger back side door.
- 20 Q. The side that Chris was sitting on?
- 21 A. Yes, sir.
- 22 Q. And what happened when he opened the door?
- 23 A. He said, get up. He wouldn't let us do nothing. He
- 24 just started shooting in there.
- 25 Q. And what did you do?

1 A. Chris started jumping on me and turned around. We
2 be shot and I grabbed the barrel to the gun and he got
3 another shot off. I told Chris to jump out of the car.
4 And Chris jumped out of the car and tried to run. I seen
5 him following him. And turned around and grabbed the
6 barrel and just pushed it back, pushed it back. And I
7 got out of the car trying to run. I still didn't know --
8 I didn't know I had been shot yet. I kept on following
9 the road and stuff.

10 Q. Why is it that you didn't know you were shot?

11 A. I guess it's because the pain, I mean, because I was
12 tore up a little bit, too.

13 Q. You're panicking and you're tore up?

14 A. Yeah.

15 Q. What do you mean tore up?

16 A. I mean, I was about tipsy a little bit, you know.

17 Q. So at that point you didn't feel the pain?

18 A. No, sir.

19 Q. And which direction did you run?

20 A. I ran down the -- going toward B Track going out of
21 Prince Hall.

22 Q. Down the road?

23 A. Yes, sir.

24 Q. Did you see which direction Chris ran?

25 A. I didn't see him no more.

- 1 Q. All right. What happened while you were running
2 down the road?
- 3 A. The little kid caught up with me. Me and him
4 squaring off, you know, about to fight, you know. I
5 didn't show him -- I was in pain anyway already by
6 falling, too. I didn't show a lot of pain. Me and him
7 squared off, you know, about to fight. But I knew I
8 couldn't with the fire causing pain. I turned around and
9 seen Van had got the gun. And when Van told me, don't
10 swing no more, don't swing no more, nigger, like that. I
11 had already got on the ground.
- 12 Q. So at this point Mr. Mays had the gun?
- 13 A. Yeah.
- 14 Q. And he and Kendall were at you in the roadway?
- 15 A. Yes, sir.
- 16 Q. And he ordered you on the ground?
- 17 A. Yes, sir.
- 18 Q. And then what happened?
- 19 A. They start, they start -- they took my shorts and
20 stuff off first. Told me to get up. Took my shorts and
21 stuff off. Took my shoes and stuff. And turned around
22 and started beating me, beating me with the gun first.
23 Kendall was hitting me in my face, just hitting me, just
24 hitting me. He hit me in my face.
- 25 Q. Was Kendall hitting you with a gun or his fist?

- 1 A. No, Kendall hitting me with the fist.
- 2 Q. Okay.
- 3 A. Kendall hitting me with fist then. Van hit me with
- 4 the gun for a few minutes and then he started punching
- 5 me, he started punching me real hard. He was just
- 6 hitting me, just hitting me.
- 7 Q. Okay.
- 8 A. And the only thing I was seeing was blood coming
- 9 down my face. I already, I already got shot getting out
- 10 of the car.
- 11 Q. What made him stop?
- 12 A. I don't know. Van, I guess. I don't know. I can't
- 13 tell you what made him stop hitting me.
- 14 Q. Did you see where they went after they stopped
- 15 hitting you?
- 16 A. He told me to go ahead, told me to go.
- 17 Q. What did you do?
- 18 A. I walked all the way -- I walked about five, six
- 19 miles over my people's house.
- 20 Q. Did you wind up at a residence on Burke Street?
- 21 A. Yes, sir.
- 22 Q. And did the ambulance come and pick you up there?
- 23 A. Yes, sir.
- 24 Q. What were you wearing when you got to that house?
- 25 A. Nothing. They had took all my clothes off. I

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- 1 wasn't wearing nothing. While I was walking I didn't
2 have nothing on. I didn't have but a t-shirt on and a
3 pair of socks.
- 4 Q. Okay. So the ambulance took you to the hospital?
- 5 A. Yes, sir.
- 6 Q. How long did you stay in the hospital?
- 7 A. About seven days, a week, about seven -- eight days.
8 Eight or nine days. About eight or nine days.
- 9 Q. And what were your injuries?
- 10 A. A shot, a shot, you know, grazed my head and a
11 bullet still in my toe and got shot in my leg through --
12 came out the other side of my right leg. And my left toe
13 had a bullet still in it.
- 14 Q. So what was stolen from you?
- 15 A. Nothing but a little money and my shoes and my
16 shorts and stuff. And my -- that's really all, was my
17 shoes and shorts.
- 18 Q. Were they saying anything to you while they were
19 assaulting you in the road?
- 20 A. Yeah. Don't tell nobody. I don't care about you.
21 He said, I'll kill you, he said, you tell anybody. I
22 don't care about your kids, your fucking kids, and
23 everything like that.
- 24 Q. Now, did you speak to the police at the hospital?
- 25 A. Yes, sir.

- 1 Q. Did you tell them who did this?
- 2 A. Yes, sir.
- 3 Q. You identified him to the police?
- 4 A. Yes, sir.
- 5 Q. Did you have any surgery?
- 6 A. Yes, sir.
- 7 Q. Now, Mr. Oglesby, you're not a man without any
- 8 issues himself; are you?
- 9 A. No, sir.
- 10 Q. Aren't you actually in the Department of Corrections
- 11 now?
- 12 A. Yes, sir.
- 13 Q. Because you were convicted of a drug charge?
- 14 A. Yes, sir.
- 15 Q. And that was in June of this year?
- 16 A. Yes, sir.
- 17 Q. You also had a previous conviction in 2003?
- 18 A. Yes, sir.
- 19 Q. Okay. Just because you've got those records, does
- 20 that mean you're entitled to be shot?
- 21 A. No, sir.
- 22 Q. Does that record have anything to do with you being
- 23 shot?
- 24 A. No, sir.
- 25 Q. Thank you, Mr. Oglesby. Answer any questions Mr.

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1 Mays may have.

2 THE COURT: Mr. Mays.

3 MR. MAYS: May I have the court's permission,
4 Your Honor?

5 THE COURT: To show a document or something?

6 MR. MAYS: Yes.

7 THE COURT: Very well.

8 **CROSS EXAMINATION**

9 **BY MR. MAYS:**

10 Q. You're contradicting yourself right here where
11 you're saying you went ---

12 THE COURT: Well, again, just show him what you
13 want him to read in the document.

14 MR. MAYS: Okay. The document is ---

15 THE COURT: Just show him what you want him to
16 read. He can read.

17 MR. MAYS: Okay.

18 (WHEREUPON, the defendant indicates to witness where
19 to read.)

20 THE COURT: Do you see what he wants you to
21 read?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. If you would, please,
24 read it.

25 THE WITNESS: Email. I went to my aunt's house

1 and got forty dollars from April. Rita said she was
2 going to give her mama some keys. We turned the second
3 entrance in Prince Hall by the rent office and we was a
4 good ten minutes, Rita had got out and went into the
5 apartment. Chris got out the car and took a piss. What
6 you talking about, the forty dollars?

7 THE COURT: Is that what you wanted him to
8 read?

9 MR. MAYS: Uh-huh (affirmative).

10 THE COURT: All right. Very well.

11 MR. MAYS: And there's another part. That's
12 it, Your Honor.

13 THE COURT: Very good. Thank you, sir.

14 MR. BULSA: Nothing further.

15 THE COURT: All right. You may step down.
16 Thank you, sir.

17 MR. BULSA: May I step outside and see if my
18 other witness is here?

19 THE COURT: Certainly.

20 MR. BULSA: May I approach, Your Honor, with
21 the defendant and Mr. Poole?

22 THE COURT: I tell you what -- you need to take
23 up something with the court?

24 MR. BULSA: Yes, sir.

25 THE COURT: Well, the thing is, let's let the

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1 jury go back to the jury room. Again, do not undertake
2 discussion of the case among yourself in anyway. The
3 court needs to take up something with the parties.

4 (WHEREUPON, the jury exited the open court at
5 approximately 11:04 a.m.)

6 THE COURT: All right, Mr. Solicitor.

7 MR. BULSA: I need to swap out witnesses.

8 THE COURT: Pardon.

9 MR. BULSA: I need to swap out inmates.

10 THE COURT: All right. I understand.

11 MR. BULSA: That's what I wanted to tell the
12 court.

13 THE COURT: All right. I understood that.
14 It's just as well, though, that we -- and by the way, I
15 want to thank both of you for following the procedure as
16 far as witnesses are concerned. Let's continue to do
17 that through.

18 All right. We'll stand at ease until we're ready to
19 proceed.

20 (WHEREUPON, the court stood at recess for a short
21 break.)

22 THE COURT: You ready?

23 MR. BULSA: I have another lay witness that was
24 late. We can put him up while the other one is in
25 transport if you'd like, Your Honor.

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1 THE COURT: Oh, this is another witness?

2 MR. BULSA: Yes, sir.

3 THE COURT: How long do you think it'll be
4 before the other one gets here?

5 OFFICER: It shouldn't take very long.

6 MR. BULSA: Just a few more minutes, depending
7 on traffic.

8 THE COURT: Would it be better to bring ---

9 (WHEREUPON, discussions were held off-the-record.)

10 THE COURT: I'm just thinking that rather than
11 having to send the jury out each time, that if we could
12 get the one that ---

13 MR. BULSA: Yes, sir, I understand.

14 THE COURT: --- needs security.

15 MR. BULSA: I'm told it's going to take about
16 ten more minutes.

17 THE COURT: All right. Then let's go on with
18 what we have then.

19 All right. Anything from the state before we bring
20 the jury back?

21 MR. BULSA: No, sir.

22 THE COURT: From the defense?

23 MR. MAYS: No, sir.

24 THE COURT: Very good. Thank you, sir.

25 Ask the jury to join us.

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1 (WHEREUPON, the jury entered the open court at
2 approximately 11:17 a.m.)

3 THE COURT: All right. Let the record reflect
4 the jury and the alternates are in the jury box.

5 Mr. Foreman, ladies and gentlemen of the jury, we
6 will now continue the trial of the case.

7 You may call your next witness.

8 MR. BULSA: State calls Christopher Scott.

9 THE CLERK: Do you solemnly swear or affirm
10 that the testimony you're about to give will be the
11 truth, the whole truth and nothing but the truth, so help
12 you God?

13 THE WITNESS: Yes, ma'am.

14 CHRISTOPHER SCOTT,

15 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. BULSA:

18 Q. Tell us your name.

19 A. My name is Christopher Scott.

20 Q. And how old are you, Mr. Scott?

21 A. Twenty-six.

22 Q. Do you live in Spartanburg?

23 A. Yes, sir.

24 Q. Did you get shot on August the 14th, 2012?

25 A. Yes, sir.

1 Q. Who were you with when you got shot?

2 A. Antron Oglesby.

3 Q. And how do you know Mr. Oglesby?

4 A. We been friends for quite a while.

5 Q. Okay. And where were you when you got shot?

6 A. In Prince Hall.

7 Q. And how did you and Mr. Oglesby get to Prince Hall
8 Apartments?

9 A. Two girls. One name was Rita and I think the other
10 girl was Tameka.

11 Q. Why were you in the car with them?

12 A. We was going to the store to get some beer.

13 Q. Had you already been to the store before you got to
14 Prince Hall?

15 A. Yes.

16 Q. Okay. So after you got the beer where were you to
17 be headed? Where were you going?

18 A. We was supposed to have went back to his aunt's
19 house but instead the girl said she had to drop the key
20 off to her mama. So we went to Prince Hall. And then
21 she got in the car, the next thing I know, she went
22 around the building and two guys came out from around the
23 building where she went to, opened the door and started
24 shooting.

25 THE COURT: Mr. Solicitor, could the witness

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1 identify the individual by name rather than a pronoun?

2 MR. BULSA: Yes, sir. I was getting to that.

3 THE COURT: Thank you.

4 Q. Tell us how you were seated in the car?

5 THE COURT: Well, now he said she. Which she
6 was it?

7 Q. Well, who is the she?

8 A. Rita.

9 THE COURT: Thank you.

10 Q. And was Rita the driver of the car?

11 A. Yes, sir.

12 Q. And where was the other female seated in the car?

13 A. Front passenger seat.

14 Q. Front passenger seat?

15 A. Yes.

16 Q. Where were you seated?

17 A. Behind her, the passenger, in the back.

18 Q. In the back passenger seat?

19 A. Uh-huh (affirmative).

20 Q. Where was Mr. Oglesby?

21 A. Behind the driver's seat in the back.

22 Q. Okay. All right. And were you in the car when you
23 saw these men approach?

24 A. Yes. Yes, sir.

25 Q. Did you know either one of those men by sight?

- 1 A. No, sir.
- 2 Q. Okay. Which parking lot were y'all in?
- 3 A. In the parking lot by the trash can.
- 4 Q. You saw the picture there that you saw yesterday;
- 5 right?
- 6 A. Uh-huh (affirmative).
- 7 Q. Is it what we call the upper parking lot?
- 8 A. Uh-huh (affirmative).
- 9 Q. You need to say yes or no?
- 10 A. Yes, sir.
- 11 Q. Okay. Now, do you recall there being any other cars
- 12 around when y'all parked?
- 13 A. No, sir.
- 14 Q. What kind of lighting was there out there?
- 15 A. Just like light poles.
- 16 Q. Street light poles?
- 17 A. Yes, street light.
- 18 Q. Now, when these two men came out, did you notice
- 19 anything about them?
- 20 A. They had a gun.
- 21 Q. They had a gun?
- 22 A. Yeah.
- 23 Q. Did they both have guns?
- 24 A. No.
- 25 Q. Which one had the gun?

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- 1 A. Kendall Robinson.
- 2 Q. Okay. That's the name you later learned, but you
- 3 didn't know his name at the time; right?
- 4 A. Uh-uh (negative).
- 5 Q. So tell us by description which of those two men had
- 6 a gun?
- 7 A. The short one.
- 8 Q. The short one had a gun. Okay. And what happened
- 9 as these men came around the building?
- 10 A. Well, they opened my side door and he shot. And I
- 11 didn't know I was hit at the time then.
- 12 Q. You say he shot. That being the shorter one?
- 13 A. Uh-huh (affirmative). Yes, sir.
- 14 Q. Yes? Okay. He shot and what happened?
- 15 A. The next thing I know they started going around
- 16 behind us and everything. And I drove in the front seat.
- 17 My friend, Antron, grabbed the gun. I hopped over the
- 18 seat and I started running.
- 19 Q. Which direction did you run?
- 20 A. Behind some -- behind a building and I fell in some
- 21 bushes while I was running.
- 22 Q. Did you run a pretty good distance?
- 23 A. Uh-huh (affirmative). I tried to. Yes, sir, I
- 24 tried to anyway.
- 25 Q. Did you see anybody else out in the apartment

1 complex?

2 A. No. When I was running all I seen was somebody get
3 in a white car and then they left. That's all I seen.

4 Q. Was that -- but that person wasn't connected to this
5 incident?

6 A. No, sir.

7 Q. So nobody came out of the apartments and tried to
8 come help you?

9 A. No, sir.

10 Q. So you ran until you fell?

11 A. Yes, sir.

12 Q. All right. And what did you do when you fell?

13 A. I got on the phone and called 911.

14 Q. And were you able to come out and see the police?

15 A. No.

16 Q. Describe what happened when they arrived?

17 A. No. I couldn't move. I laid in the bushes. They
18 had to carry me out the bushes.

19 Q. What were your injuries?

20 A. Sir?

21 Q. What were your injuries?

22 A. I had two leg wounds.

23 Q. Were you taken to the hospital?

24 A. Yes, sir.

25 Q. How long did you stay in the hospital?

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- 1 A. Three days.
- 2 Q. Did you have to have surgery?
- 3 A. Yeah. I had to have surgery one time.
- 4 Q. Now, while at the hospital did you speak to the
- 5 police?
- 6 A. Yes. Yes, sir.
- 7 Q. Did they show you pictures?
- 8 A. Yes, sir.
- 9 Q. Did you identify anybody to the police?
- 10 A. Yes, sir.
- 11 Q. Do you see the person in the courtroom that was
- 12 involved in this shooting?
- 13 A. Yes, sir.
- 14 Q. Can you point him out to the jury?
- 15 (WHEREUPON, the witness indicates the defendant.)
- 16 Q. Let the record reflect he's pointing to the
- 17 defendant.
- 18 THE COURT: The record will so reflect.
- 19 Q. Was the defendant the tall one or the short one?
- 20 A. The tall one.
- 21 Q. So he's not the one with the gun?
- 22 A. No, sir.
- 23 Q. At least when he approached you?
- 24 A. (No verbal response.)
- 25 Q. Did he come into contact with you at all?

- 1 A. Besides trying to go in my pockets.
- 2 Q. So you recall it being him trying to get in your
- 3 pockets?
- 4 A. Uh-huh (affirmative).
- 5 Q. Did he take anything from you?
- 6 A. No, sir.
- 7 Q. Why is that?
- 8 A. Because it was the wrong pocket he went in.
- 9 Q. Okay. This all sounds like it happened pretty fast.
- 10 Did it?
- 11 A. It happened pretty quick.
- 12 Q. Did you try to push your way out your door?
- 13 A. (No verbal response.)
- 14 Q. Why did you have to jump over the door -- the seat,
- 15 is what I'm asking?
- 16 A. Antron was right beside me. The other two was right
- 17 here, and so when they tried to reach in -- one reach in
- 18 with the gun, then Antron grabbed the gun, so I just
- 19 crawled over the seat and started running.
- 20 Q. Did you see the two girls again?
- 21 A. After that?
- 22 Q. Yes, sir?
- 23 A. No, sir.
- 24 Q. When the car was pulled in, did Rita take her keys
- 25 with her?

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- 1 A. No, sir.
- 2 Q. Did she, in fact, leave the car running?
- 3 A. Yes, sir.
- 4 Q. So you thought it was going to be a quick trip and
- 5 she was going to come right back?
- 6 A. Yes, sir.
- 7 Q. Do you know where Antron went?
- 8 A. No.
- 9 Q. Did you see him while you were running?
- 10 A. No, sir.
- 11 Q. So as far as you know, y'all ran separate
- 12 directions?
- 13 A. Yes, sir.
- 14 Q. After you left the car, did you see either the tall
- 15 or short man again?
- 16 A. No. No, sir.
- 17 Q. Did you look back to see if they were following you?
- 18 A. Yeah, I did, but it was ---
- 19 Q. You didn't see them?
- 20 A. Uh-uh (negative).
- 21 Q. Now, Mr. Mays (verbatim), you had, it looks like,
- 22 one conviction in 2011 for malicious injury to personal
- 23 property, less than two thousand dollars?
- 24 A. Yes, sir.
- 25 Q. Does that affect your ability to identify who shot

1 you?

2 A. No, sir.

3 Q. All right. Answer any questions Mr. Mays has for
4 you.

5 THE COURT: Mr. Mays.

6 MR. MAYS: May I approach, Your Honor?

7 THE COURT: Certainly.

8 CROSS EXAMINATION

9 BY MR. MAYS:

10 Q. Mr. Scott, when they viewed you, when Detective
11 viewed you with this line-up, you stated, it looks like
12 him but don't want to say one hundred percent sure.

13 A. Yeah.

14 Q. Okay. The other subject, on 8/14/2012, you arrived
15 at Spartanburg Regional Medical Center?

16 A. Uh-huh (affirmative).

17 Q. And you said you had surgery and you had -- you got
18 shot and everything?

19 A. Uh-huh (affirmative).

20 Q. This fact that I'm going to ask you is a yes or no
21 question. Did you see the one or anyone or anybody in
22 this courtroom is the one that shot you?

23 A. No.

24 Q. Did you see the one as a fact -- yes or no question
25 -- did you see I or anyone in this courtroom go in your

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1 pockets?

2 A. Yes.

3 Q. You're under oath.

4 A. You right.

5 Q. You know you lying?

6 A. I'm not.

7 THE COURT: All right. You don't argue with
8 witnesses.

9 MR. MAYS: No further questions, Your Honor.

10 THE COURT: Redirect.

11 MR. BULSA: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MR. BULSA:

14 Q. Now, the person you were able to identify to the
15 police, was that Mr. Mays?

16 A. Yes, sir.

17 Q. Is there any doubt that that was -- that he was
18 involved in this crime?

19 A. No, sir.

20 Q. Now, when you look at some other pictures separate
21 from the ones you looked at of Mr. Mays -- did you look
22 at a second set of pictures?

23 A. I don't remember.

24 Q. Let me ask it this way. Were you able to identify
25 the second man?

1 A. Not that I know of. I can't remember.

2 Q. Okay. You did pick this man out, but not the other
3 one?

4 A. Yes, sir.

5 Q. Okay. That's all.

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

7 MR. BULSA: State calls Kendall Robinson.

8 THE CLERK: Put your left hand on the bible and
9 raise your right. Raise your right hand, please.

10 Do you solemnly swear or affirm that the testimony
11 you're about to give will be the truth, the whole truth
12 and nothing but the truth, so help you God?

13 THE WITNESS: Yes.

14 KENDALL ROBINSON,

15 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. BULSA:

18 Q. Tell us your name, sir.

19 A. Kendall Robinson.

20 Q. Say that again and a little bit louder?

21 A. Kendall Robinson.

22 Q. How old are you, Mr. Robinson?

23 A. Just turned nineteen.

24 Q. When was your birthday?

25 A. November 9th.

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- 1 Q. November 9th. Back in August of 2012, how old were
- 2 you?
- 3 A. Seventeen.
- 4 Q. Seventeen. Do you know the Defendant, Javan Mays?
- 5 A. Yes.
- 6 Q. How do you know him?
- 7 A. Through a female.
- 8 Q. How long have you known him?
- 9 A. Like since two weeks, two or three weeks.
- 10 Q. Two to three weeks at the time of this incident?
- 11 A. Yeah.
- 12 Q. So you basically had just met?
- 13 A. Yes.
- 14 Q. And how old was he at that time?
- 15 A. I don't know.
- 16 Q. Was he older than you?
- 17 A. Yes.
- 18 Q. A lot older than you?
- 19 A. Yes.
- 20 Q. Why did you hang around with him?
- 21 A. Through a female, just hanging around people.
- 22 Q. Okay. Now, do you remember the night of this
- 23 shooting?
- 24 A. Yes.
- 25 Q. Where had you been that night?

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- 1 A. At Tameka's house.
- 2 Q. Tameka's house?
- 3 A. Yes.
- 4 Q. And where did she live?
- 5 A. Prince Hall.
- 6 Q. Prince Hall. Do you remember the number?
- 7 A. No, sir.
- 8 Q. All right. And who were you with at Tameka's house?
- 9 A. Me, Tameka and Javan.
- 10 Q. You, Tameka and Javan. Anybody else?
- 11 A. No, sir. No, sir.
- 12 Q. You're a little hard to understand.
- 13 A. No, sir.
- 14 Q. All right. So it was the three of you. And what's
- 15 taking place there?
- 16 A. The night of the shooting?
- 17 Q. Yes, sir?
- 18 A. They was setting it up. ,
- 19 Q. Explain that.
- 20 A. Meka was calling her girl Rita and they was calling
- 21 Dirt and his friend, calling them.
- 22 Q. The two girls were talking and calling Dirt?
- 23 A. Yes.
- 24 Q. Were you or Mr. Mays involved in that?
- 25 A. Yes.

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1 Q. Yes?

2 A. Yes, sir.

3 Q. How so?

4 A. With the shooting.

5 Q. I'm still having a hard time hearing you.

6 A. With the shooting.

7 Q. The plan was what?

8 A. Rob him.

9 THE COURT: Let's see. Could that microphone
10 be a little bit closer to him?

11 MR. BULSA: Can you slide it up a little bit?

12 THE COURT: Let's try that, Mr. Robinson.

13 Q. And the plan was to rob them?

14 A. Yes, sir.

15 Q. To rob the person you knew as Dirt?

16 A. Yes, sir.

17 Q. Did you later learn who Dirt is?

18 A. After the situation, yes.

19 Q. And what was Dirt's name?

20 A. Antron Oglesby.

21 Q. Antron Oglesby. Okay. So tell us what took place
22 that night after this plan was set in motion?

23 A. The girl Rita, Rita Richards, okay, that's her name;
24 right, she had texted the phone and said she's on her
25 way. And we was standing behind the building. And as

1 Christopher, he got out of the car, he took to use the
2 bathroom. He went back in the car and I run up to the
3 car and I start shooting.

4 Q. So at some point you and Mr. -- well, were you with
5 anyone?

6 A. Yes, Mr. Javan.

7 Q. You and Mr. Mays were standing where?

8 A. Behind the building close to the front office.

9 Q. Okay. And then y'all received a text, you said?

10 A. Yes, sir.

11 Q. Okay. What did you do?

12 A. After the text?

13 Q. Yes, sir?

14 A. We went -- after we got the text we started going
15 behind the building to where they were going to park at.
16 And that when Chris got out the car to use the bathroom.
17 I seen him use the bathroom. As he got back in the car,
18 I opened the car door and started shooting. Told him get
19 out and started shooting.

20 Q. Where was Mr. Mays?

21 A. Right behind me.

22 Q. Did you know Mr. Scott?

23 A. No, sir.

24 Q. Did you know if that was Dirt or not?

25 A. No, sir.

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- 1 Q. Who else was in that car?
- 2 A. Tameka.
- 3 Q. Anybody else?
- 4 A. No, sir.
- 5 Q. How many people?
- 6 A. How many was in the car?
- 7 Q. Yes, sir?
- 8 A. In all, four. But at the time of the shooting,
- 9 three.
- 10 Q. Okay. So somebody had gotten out of the car?
- 11 A. Yes, sir.
- 12 Q. Who had gotten out of the car?
- 13 A. Rita.
- 14 Q. Did you see her?
- 15 A. Yes.
- 16 Q. Did you see where she went?
- 17 A. She went to Tameka building.
- 18 Q. Okay. So that left the other three out in the car?
- 19 A. Yes, sir.
- 20 Q. Why did you go up to the car?
- 21 A. Because we was robbing them.
- 22 Q. Whose plan was this?
- 23 A. Javan and Meka's and Rita's.
- 24 Q. Why were you involved?
- 25 A. I was just around.

- 1 Q. Just around?
- 2 A. Yes.
- 3 Q. What kind of gun did you have?
- 4 A. A SK.
- 5 Q. Like a military rifle type?
- 6 A. Yes, assault rifle.
- 7 Q. And you're telling this jury that you're the person
- 8 that opened the door and shot?
- 9 A. Yes.
- 10 Q. What happened as you fired the bullets?
- 11 A. As I fired one shot -- after I fired the one shot,
- 12 Chris Scott jumped up in the front seat and Antron
- 13 Oglesby jumped over like right behind him. I started
- 14 chasing after Chris Scott. Then I seen Antron Oglesby,
- 15 so I went after him. At the time I didn't know who he
- 16 was, though.
- 17 Q. Did you ever drop the weapon?
- 18 A. Yes.
- 19 Q. Tell us about that?
- 20 A. I dropped it -- as I dropped it, as I dropped it, I
- 21 was running -- as I was running, I dropped it and Javan
- 22 picked it up.
- 23 Q. Do you remember if anything fell out of it?
- 24 A. Bullets. Bullets, rounds out the gun.
- 25 Q. Where did you run?

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- 1 A. Ran to the curb at Prince Hall Lane.
- 2 Q. Who were you chasing?
- 3 A. Antron Oglesby. Antron Oglesby.
- 4 Q. How did you know that was the person you wanted to
- 5 chase?
- 6 A. Because I seen Javan run after him, too.
- 7 Q. Did you try to find Mr. Scott again?
- 8 A. No. No, sir.
- 9 Q. Why not?
- 10 A. I just didn't.
- 11 Q. Well, did you and Mr. Mays catch Mr. Oglesby?
- 12 A. Did we?
- 13 Q. Yes, sir. Did you?
- 14 A. Yes.
- 15 Q. Where did you catch him?
- 16 A. Right by the curb on Prince Hall Lane.
- 17 Q. Was it in the roadway?
- 18 A. Yes.
- 19 Q. What happened at that point?
- 20 A. Javan started beating him with the gun and he took
- 21 his clothes off.
- 22 Q. And then what happened?
- 23 A. Then we started -- we took his clothes off. We let
- 24 him go and we went back to Tameka's apartment.
- 25 Q. Do you remember what happened to the gun -- to the

1 car?

2 A. No. No, sir.

3 Q. Do you recall hearing the police out in that area
4 investigating this crime?

5 A. Yes, I might of did.

6 Q. How long did you stay at that apartment?

7 A. I wandered around I'd say till eight o'clock.

8 Q. And what happened in that apartment at that time?

9 A. Tameka's baby father came to pick her baby up, pick
10 her daughter up and take her to take pictures. And they
11 went -- they put the gun in the clothes basket. And I
12 don't know what else they did. I left after that.

13 Q. So the gun was brought back to that apartment?

14 A. Yes.

15 Q. After you shot it and Mr. Oglesby was assaulted with
16 it?

17 A. Yes.

18 Q. And you say it was hidden in a basket, but you don't
19 know what happened to it?

20 A. No, sir.

21 Q. Whose gun was it in the first place?

22 A. Mine.

23 Q. Your gun?

24 A. (No verbal response.)

25 Q. How in the world did you get a gun like that?

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- 1 A. From an old friend.
- 2 Q. Do you recall what time you left that apartment?
- 3 A. Around seven thirty, eight o'clock.
- 4 Q. Did you get anything out of this?
- 5 A. No, not really. Yes.
- 6 Q. What did you get?
- 7 A. Twenty dollars.
- 8 Q. Twenty dollars?
- 9 A. Yeah.
- 10 Q. Where did the twenty dollars come from?
- 11 A. Out of Antron's Oglesby.
- 12 Q. Out of the clothes he was wearing?
- 13 A. Yes.
- 14 Q. Did Mr. Mays get any money out of this?
- 15 A. Yes.
- 16 Q. How much did he get?
- 17 A. Twenty dollars.
- 18 Q. You're telling us y'all got about forty dollars?
- 19 A. Yes.
- 20 Q. And the clothing of Mr. ---
- 21 A. Yes.
- 22 Q. --- Oglesby. What happened to the clothing?
- 23 A. I don't know.
- 24 Q. You don't know?
- 25 A. No, sir.

- 1 Q. Why did y'all take his clothing?
- 2 A. I couldn't tell you. Just to see anything else on
- 3 him.
- 4 Q. Why didn't you just go in his pockets?
- 5 A. Wasn't thinking that.
- 6 Q. Whose idea was it to take all his clothes?
- 7 A. Javan's.
- 8 Q. Now, when were you arrested on his case?
- 9 A. August 17th. August 17th.
- 10 Q. Three days later?
- 11 A. Yes.
- 12 Q. Were you aware that Mr. Mays had already been
- 13 arrested?
- 14 A. Yes.
- 15 Q. Now, when you were arrested, did you speak to the
- 16 police?
- 17 A. Yes.
- 18 Q. Did you admit to your role in this case?
- 19 A. No, sir.
- 20 Q. Why not?
- 21 A. I don't know.
- 22 Q. You don't know?
- 23 A. No, sir.
- 24 Q. Did you lie to them?
- 25 A. Yes, sir.

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- 1 Q. Do you know why you lied?
- 2 A. No, sir.
- 3 Q. Were you hoping not to get caught?
- 4 A. Yes.
- 5 Q. Then why are you testifying?
- 6 A. For to better of my life. For to better of my life.
- 7 Q. What you testified to, is that what happened?
- 8 A. Yes, sir.
- 9 Q. Would you have done this had you not been with Mr.
- 10 Mays that night?
- 11 A. Probably not.
- 12 Q. Probably not. Now, you've been in jail ever since
- 13 your arrest; right?
- 14 A. Yes, sir.
- 15 Q. And while you were in jail you pled on another
- 16 charge to receiving stolen good in December of last year;
- 17 right?
- 18 A. Yes, sir.
- 19 Q. Have you had any contact with Mr. Mays since this
- 20 happened?
- 21 A. Once.
- 22 Q. Have you had any contact with Mr. Mays since this
- 23 incident happened?
- 24 A. Once.
- 25 Q. Oh, you said once?

1 A. Yes.

2 Q. How so?

3 A. Through an inmate.

4 Q. Through an inmate. Okay. But you didn't have any
5 direct contact?

6 A. No, sir.

7 Q. All right. Mr. Robinson, answer any questions Mr.
8 Mays has of you.

9 THE COURT: Mr. Mays.

10 MR. MAYS: May I approach?

11 THE COURT: Certainly.

12 MR. MAYS: He can read this?

13 THE COURT: Yes, sir. Show him what part you
14 want him to read or do you want him to read the whole
15 thing?

16 MR. MAYS: The whole thing. Cause he's
17 contradicting his self.

18 THE COURT: Very good.

19 **CROSS EXAMINATION**

20 **BY MR. MAYS:**

21 THE WITNESS: I was in Northridge with Kenna
22 Hunter at her niece's. I was there, she picked me up.

23 MR. BULSA: Your Honor, I object. Can he read
24 it to himself and be asked questions from it?

25 THE COURT: No. He can read it. He can ask

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1 him to read it. This is his statement; is it not? This
2 is this witness's statement?

3 MR. BULSA: This is the statement he gave to
4 the police upon arrest.

5 A. I was in Northridge with Kenna Hunter at her
6 niece's. I was there. She picked me up on that Monday
7 before it got dark about seven o'clock p.m. She picked
8 me up from the building, building one, Prince Hall. I
9 was coming from my baby's mama's house. I went straight
10 to the house. She cooked and we played with the kids.
11 Then we went to sleep. I didn't get up till eleven
12 thirty a.m. Tuesday. I went to my grandmother's house,
13 got some clothes, went back to my girlfriend's house. I
14 got in the shower, got dressed. My girl got the kids'
15 outfits and them dressed. We went to Walmart, took the
16 kids home. We chilled. Chilled at her brother's house.
17 And then we went back home. We went to Walmart at Dorman
18 Center, it was probably between three or four. We went
19 in the door where the pharmacy is right there where you
20 go in, not next to McDonald's. We were there like a good
21 thirty minutes. We didn't get anything. I don't know if
22 my girlfriend got anything. I was watching the kids by
23 myself and she was by herself. I took the kids back to
24 the restroom. We went to the house and curled up in a
25 chair to watch a movie.

1 MR. MAYS: I have no further questions, Your
2 Honor. That's contradicting.

3 THE COURT: Where you say he contradicted, what
4 did he ---

5 MR. MAYS: It's all ---

6 THE COURT: But did he -- what?

7 MR. MAYS: He wrote one thing and he stated
8 something else.

9 THE COURT: What did he say?

10 MR. MAYS: Got up on the stand and testified to
11 something else.

12 THE COURT: Just a moment. Now, you've done it
13 correctly. You've shown him the statement you're relying
14 on as being inconsistent.

15 MR. MAYS: Yes, sir.

16 THE COURT: All right. Now, what is the
17 statement that is inconsistent with that?

18 MR. MAYS: This whole thing, because it's ---

19 THE COURT: What did he say that you say he was
20 inconsistent?

21 MR. MAYS: To where -- his whereabouts.

22 THE COURT: Okay. Would you -- what part of
23 the whereabouts?

24 MR. MAYS: The part where he says he was in
25 Northridge with somebody else, name Kenna Hunter or

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1 somebody.

2 THE COURT: All right.

3 MR. MAYS: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. BULSA:

6 Q. Mr. Robinson, that's the statement you gave to the
7 police that day you were arrested; right?

8 A. Yes.

9 Q. And that's the statement you testified on direct
10 examination that was a lie?

11 A. Yes.

12 Q. Is that right? Because you didn't want to get
13 caught?

14 A. Yes.

15 Q. Okay. And why are you testifying differently today?

16 A. Because it's my life. I just want to get myself
17 better.

18 Q. So you're admitting to a crime?

19 A. Yes, sir.

20 Q. Okay. So what is the truth; that statement or your
21 testimony?

22 A. My testimony.

23 Q. And -- thank you. That's all I have.

24 THE COURT: Very well. You may step down.

25 MR. BULSA: At this time the state would rest.

1 THE COURT: All right. This completes the
2 state's case, Mr. Foreman, ladies and gentlemen of the
3 jury. I'm going to suggest that we go to lunch at this
4 time and come back and then we'll complete the trial of
5 the case. Hopefully we'll be able to do that today and
6 the case will be given to you for your deliberations.

7 Again, this is another one of your duties. If you
8 would, Mr. Foreman, check with your jury and see how much
9 time you need for lunch. It's twelve ten. I would say
10 at least an hour, maybe an hour and a half.

11 THE JUROR: One thirty, sir.

12 THE COURT: One thirty will be very good. All
13 right. So come back to the jury room that you're in.

14 Again, as I say, we haven't completed the trial
15 because we still have to do other things with the trial.
16 And so do not undertake the discussion of the case among
17 yourselves in anyway. Thank you very much. After lunch,
18 come back at one thirty to the jury room.

19 (WHEREUPON, the jury exited the open court at
20 approximately 12:11 p.m.)

21 THE COURT: All right. Anything further from
22 the state?

23 MR. BULSA: No, sir.

24 THE COURT: All right. Mr. Mays, any motions
25 at this time?

1 MR. MAYS: I had a *Brady* motion, Your Honor,
2 that I filed several months ago.

3 THE COURT: Well, that is a part of the record.
4 But that's not what we're talking about in a trial.
5 After the state closes you have the right to make a
6 directed verdict motion if you want to. But
7 insufficiency of the evidence or anything else?

8 MR. MAYS: Not as I can recall at this time.

9 THE COURT: All right. Very good. Although
10 you're appearing pro se, although you're appearing pro
11 se, you still have the right not to say anything as a
12 witness; in other words under oath as you would be if you
13 testified to the jury, you would be put under oath like
14 any other witness. But I do need to advise you, you also
15 have the right to waive that right to testify.

16 Now, Mr. Mays, you're Javan Frederick Mays?

17 MR. MAYS: Yes, sir.

18 THE COURT: And the testimony you're about to
19 give is the truth, the whole truth and nothing but the
20 truth? You swear or affirm?

21 MR. MAYS: I don't have no reason to testify.

22 THE COURT: All right. I'm putting you under
23 oath for the record. You're under oath now; you
24 understand that?

25 MR. MAYS: Yes, sir.

1 THE COURT: At this time I'm going to explain
2 to you certain of your rights. If you do not understand
3 anything I say, please let me know. If you want me to
4 explain anything in more detail, please let me know. Do
5 you understand?

6 MR. MAYS: Yes, sir, Your Honor.

7 THE COURT: Now, we've reached that stage of
8 the trial where you may present your defense. You have
9 the right to claim the protections given to you by the
10 Fifth Amendment to the Constitution of the United States.
11 This amendment states in pertinent part, no person shall
12 be compelled in any criminal case to be a witness against
13 himself. This means that you cannot be required to
14 testify in this case. You have the right to testify on
15 your own behalf. However, no one can make you testify.
16 This is a personal right and no one can waive this right
17 except you. Do you understand that?

18 MR. MAYS: Yes, sir.

19 THE COURT: If you decide to testify, you'll be
20 subject to the same rules that govern other witnesses and
21 you may be examined and cross examined on any relevant
22 issue in this case. In addition, if you have any
23 convictions involving dishonesty or false statement, or
24 crimes punishable by imprisonment for more than one year
25 and this court determines that the probative value of

1 admitting this evidence outweighs its prejudicial effect
2 to you, the solicitor will be able to introduce your
3 record to attack your credibility. Do you understand
4 that?

5 MR. MAYS: Yes, sir.

6 THE COURT: If you decide to testify, this
7 decision on your part must be freely, voluntarily,
8 intelligently made with the knowledge of the protection
9 given to you by the Fifth Amendment and the consequences
10 of your decision to testify. Do you understand that?

11 MR. MAYS: Yes, sir.

12 THE COURT: If you decide not to testify, I'll
13 instruct the jurors that they cannot give the fact that
14 you did not testify any consideration whatsoever and that
15 there is to be absolutely no prejudice to you because you
16 did not testify. You may talk with your attorney, your
17 family and your friends or anyone else, but the final
18 decision will be left entirely to you. Do you understand
19 everything I've explained to you?

20 MR. MAYS: Yes, sir.

21 THE COURT: Do you have any questions about
22 what I've explained to you?

23 MR. MAYS: No, sir.

24 THE COURT: Have you discussed with Mr. Poole
25 whether you should or should not testify?

1 MR. MAYS: Yes, sir.

2 THE COURT: And are you satisfied with his
3 advice?

4 MR. MAYS: Yes, sir.

5 THE COURT: Do you wish to talk to your lawyer
6 anymore about this?

7 MR. MAYS: No, sir.

8 THE COURT: Do you wish to testify in this
9 case?

10 MR. MAYS: No, sir.

11 THE COURT: All right. Very good. I find the
12 defendant knowingly, intelligently, freely and
13 voluntarily waives his right to testify and I'll so
14 instruct the jury.

15 All right. That means we'll go to the jury after
16 lunch.

17 MR. BULSA: Are you going to put up anything
18 else, Mr. Mays?

19 MR. MAYS: No. I'm good.

20 MR. BULSA: I would just ask the court to
21 counsel the defendant not to testify in his closing
22 argument.

23 THE COURT: Well, he can make his argument.
24 That's not testimony.

25 MR. BULSA: I have a feeling he might try to

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1 testify. I'm just asking ---

2 THE COURT: I mean, that's what argument is,
3 it's testifying -- he has to stay within the record, like
4 every other attorney.

5 MR. BULSA: I'm asking the court to counsel him
6 about that he doesn't go outside the record and try to
7 tell his own story.

8 MR. MAYS: Why not?

9 THE COURT: Because the rules don't apply --
10 you're limited to what has been introduced in evidence
11 during the case.

12 MR. MAYS: I'm going to speak, Your Honor,
13 what's in as far as the case.

14 THE COURT: Yeah. You can talk about anything
15 that's been introduced into evidence and give your
16 explanation or your interpretation of that.

17 MR. MAYS: Okay.

18 THE COURT: But you can't bring up anything
19 else that is not introduced.

20 MR. MAYS: It's going to be within the case.

21 THE COURT: Very good. All right. But also,
22 Mr. Solicitor, ---

23 MR. BULSA: Yes, sir.

24 THE COURT: --- inasmuch as he has not put up
25 any evidence or testimony, you get the first and last

1 argument as far as opening completely on the law and
2 facts.

3 MR. BULSA: Yes, sir, I understand I'm first.

4 THE COURT: Very good. Well, you also --
5 that's your only argument.

6 MR. BULSA: Yes, sir, I ---

7 THE COURT: He closes?

8 MR. BULSA: I understand.

9 THE COURT: You understand that?

10 MR. BULSA: Yes, sir.

11 THE COURT: I'm asking Mr. Mays.

12 MR. BULSA: Oh, I'm sorry.

13 THE COURT: But anyway, Mr. Mays, you have last
14 argument, you understand?

15 MR. MAYS: Yes, sir.

16 THE COURT: All right. With that I'll see you
17 at one thirty.

18 (WHEREUPON, the court stood at recess for a lunch
19 break.)

20 THE COURT: All right. Thank you very much.
21 You make take your seat, please.

22 Anything from the state before we bring the jury
23 back?

24 MR. BULSA: No, sir.

25 THE COURT: From the defense?

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1 MR. MAYS: No, sir.

2 THE COURT: All right. As I understand it, the
3 state has rested. The defense has rested. And the
4 defendant has still -- has decided that you do not wish
5 to testify or enter any evidence?

6 MR. MAYS: Correct, Your Honor.

7 THE COURT: All right. Very well. And I find
8 that the defendant's waiver of his right to testify is
9 made knowingly, intelligently, freely and voluntarily.
10 So therefore the state will open fully and then the
11 defense will argue completely. And then I'll charge the
12 jury and it'll be in their hands.

13 Let's see. Now, do remember, Mr. Mays, like we
14 mentioned earlier, and I'm sure the solicitor will too,
15 that you have to stay within the evidence. Not anything
16 that might have been said outside or not discussed in
17 this courtroom. All right. Very good. And as I stated,
18 those rules apply to both the state and the defense.

19 All right. With that, I ask the jury to join us.

20 (WHEREUPON, the jury entered the open court at
21 approximately 1:34 p.m.)

22 THE COURT: All right. Let the record reflect
23 that the jury and alternates are in the jury box.

24 Mr. Foreman, ladies and gentlemen of the jury, as I
25 mentioned before lunch, we have now concluded the trial

1 of the case. It's my understanding that the defendant
2 has rested as well. Is that correct, Mr. Mays?

3 MR. MAYS: Yes, sir.

4 THE COURT: And so now we'll have the final
5 argument. Inasmuch as the state has the burden of proof
6 in this case, they will go first and then the defendant
7 will argue. And these will be final arguments. In other
8 words, unlike the opening statements, the parties will be
9 making arguments to get you to agree with their version
10 of the facts as presented and the evidence in this
11 courtroom.

12 Very well. Mr. Solicitor.

13 MR. BULSA: Thank you, Your Honor.

14 **CLOSING STATEMENT**

15 **BY MR. BULSA:**

16 Thank you, ladies and gentlemen, for being here.
17 This might seem like it went pretty fast, about a day-
18 long trial. But it's a serious matter. You heard two
19 young men who were shot while in a car at Prince Hall
20 Apartments.

21 The title of this case was announced to you before
22 you were selected. It's the State of South Carolina
23 versus Javan Mays. It's not Christopher Scott versus
24 Javan Mays. It's not Antron Oglesby versus Javan Mays.
25 It's the State of South Carolina. That's because it's

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1 the state who is bringing this case. It's the state's
2 responsibility to protect its citizens. I submit to you,
3 ladies and gentlemen, yes, Christopher Scott and Antron
4 Oglesby got shot on August the 14th, 2012. But also the
5 victims in this case was the community at large,
6 specifically the residence of Prince Hall Apartments.

7 One thing that stood out to me when I was looking at
8 this case and questioning the witnesses, is the lack of
9 apparent interest by the patrons and residents of those
10 apartments. Nobody seemed to come out to see what was
11 going on. Nobody came out to see if they could render
12 aid. That's kind of telling if you think about it.
13 While the defendant was questioning -- actually I was
14 questioning Mr. Guthro about the shell casing, I asked
15 him if that was uncommon and he said, no, it's not. What
16 does that tell us about our community? This is a serious
17 matter, ladies and gentlemen. Two men were out probably
18 later than they should have been, right after midnight,
19 but they were there with two young ladies minding their
20 own business. They had gone to the store to get some
21 beer. They were to go back to an uncle's house and
22 continue to spend some time together. And what happened?
23 A crime clearly occurred. A crime clearly occurred.
24 Someone approached them with an AK47, assault type
25 weapon, fired rounds into the vehicle that they were in,

1 injured both of them. Fortunately they are not dead.
2 Fortunately this is not a murder case. Remarkably they
3 were able to get away alive. That's pretty remarkable.
4 Christopher Scott was able to gain cover and hid. But
5 the main object of this robbery was Antron Oglesby. And
6 he's the one that got chased down. He's the one that got
7 further assaulted and beaten with a gun. He's the one
8 that got his clothes stolen from him. He's the one that
9 had to run almost naked to a house on Burke Avenue.

10 Ladies and gentlemen, as I built this case, I've
11 started with the police officers. I started with the
12 aerial photograph because I wanted you to picture as best
13 you could where this happened. We can't take you out to
14 the scene and let you look around, so we do the best we
15 can with photographs. An aerial photograph gives you
16 just a snapshot of what the buildings look like. The
17 kind of size of the area we're talking about and what, if
18 any, evidence was found that might help us identify who
19 did this crime.

20 We start off with a 911 call from Christopher Scott.
21 Police respond to the area where they think he might be
22 and search for him in the woods because he's so injured
23 he can't make it out from where he collapsed. They find
24 him, bring him out, treat him, take him to the hospital.
25 He spent, I think he said, three days. Had surgery.

1 Then they get another call about Antron Oglesby
2 being in another location. They connect the two together
3 and Antron is taken to the hospital. He says he spent
4 about a week, also having surgery. They described to the
5 police what occurred to them. Mr. Oglesby knew who was
6 involved. That's undisputed. He told the police from
7 the beginning, Van Mays. Police took that name. Wanted
8 to make sure they had the right Van Mays and they showed
9 photo line-ups. Not just a single photo; a series of
10 photos, pictures, to see if they could identify who was
11 involved. And yes, Van Mays is Javan Mays, the
12 defendant, according to Antron Oglesby and according to
13 Christopher Scott.

14 This man is a participant in this crime. No, he
15 didn't pull the trigger. He doesn't have to pull the
16 trigger, by the law. The judge should charge you on the
17 hand of one is the hand of all. If you're a
18 participants, if you're a party to an incident, you are
19 just as guilty as if you pulled the trigger. You're
20 guilty of every part of that crime. The hand of Kendall
21 Robinson, as he was pulling that trigger, just as well as
22 Javan Mays' hand. He is just as guilty as Kendall
23 Robinson for pulling that trigger. That's the law. When
24 two people get together and plan a crime, run around the
25 building together, approach the car together, and then

1 the crime happens as they planned it, both are guilty of
2 every part of that crime.

3 Kendall Robinson dropped the gun as he gave chase
4 and who picked it up? The defendant. Antron Oglesby
5 says he had the gun in his hands when he chased him down.
6 And he assaulted him and hit him the head with it. It's
7 a wonder he didn't shoot him. Maybe the clip was gone.
8 We know the clip fell out. Maybe something was damaged.
9 We know we've got several live rounds that were recovered
10 by the police. They started from the blood trail and
11 they found Christopher Scott and traced it all the way
12 back up to that upper parking lot. There's no car. The
13 car is gone. What happened to the car? It doesn't
14 matter. You don't have to answer that question. It
15 doesn't matter. Because you know the people who were in
16 that car told you what happened and got shot. You have a
17 participant in the crime, Kendall Robinson, who told you
18 how it went down.

19 But feel free to take these shell -- these rounds
20 out and compare them to each other. I'll submit to you
21 that you're going to see they're all the same brand.
22 They're all the same caliber. Also, take the shell
23 casing out. I'll take that out for you. This supports
24 the fact that a shot was fired up there. Where are the
25 rest of the rounds, the shell casings? We don't know.

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1 Perhaps they were in the car that left. The gun was put
2 in the car when it was being shot. 7.62 Winchester. The
3 police documented by photographs the best they could.
4 You'll have those you can look at. The defendant, in
5 some of his limited cross examination, questioned Mr.
6 Guthro about this shell casing, trying to say that
7 picture didn't show a 7.62 caliber round. Is he trying
8 to suggest that there's some conspiracy going on that the
9 police planted this shell casing? That's for you to
10 consider. Ladies and gentlemen, the police have no
11 interest in anything but trying to find the truth of
12 this. They were out there picking up the pieces wherever
13 they could and whatever was left. Do you need the gun?
14 No, you don't need the gun. Be nice to have it, if for
15 nothing else to get it off the streets. This isn't like
16 CSI on television. You don't get all the pieces. You
17 take what you can get. In crimes defendants get rid of
18 evidence. They try to hide. That's exactly what Kendall
19 Robinson did. When he was found out, what did he do? He
20 lied to the police. He gave them a statement saying he
21 was somewhere else; he wasn't involved in this at all.
22 But yet he came to court admitting to a crime, admitting
23 to his role, admitting to having the gun in the first
24 place, admitting to pulling the trigger. He was a
25 seventeen year old boy when this happened. How old was

1 the defendant? Shouldn't have been hanging around with
2 him.

3 This case, as I told you at the beginning, is about
4 who did this crime. Evidence is undisputed, ladies and
5 gentlemen. But Antron Oglesby said it was Javan Mays.
6 Christopher Scott said it was Javan Mays. Kendall
7 Robinson admitted it was him and Javan Mays. That's the
8 evidence. I submit to you that he is guilty of all
9 charges. The judge will charge you the law as it applies
10 to attempted murder. He will charge you the law as it
11 applies to armed robbery. He will charge you the law as
12 it applies to possession of a firearm during the
13 commission of a violent crime, for which armed robbery
14 is. Attempted murder is, for that fact. There are some
15 lesser included offenses within the attempted murder that
16 I believe the judge will charge you on. There's a series
17 of assault-type offenses that the legislature has passed,
18 they're called lesser included offenses. You start at
19 the top with murder, after that attempted murder. Go
20 down to the assault and battery high and aggravated
21 nature and then a series of other assaults. I don't know
22 far he's going to go down that list. You listen to him.
23 He's the judge of the law. He's the expert on the law.
24 But you apply the facts that you heard, the shooting
25 that happened, where it happened, the injuries that were

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Closing Statement by Mr. Mays

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1 inflicted, the theft that occurred, and you decide if it
2 fits the law that the judge charges you. And I submit to
3 you that the facts fit the charges.

4 The toughest question you might have would be
5 between what type of assault do we call this? I submit
6 to you that shooting a high powered rifle like they did
7 into a car implies an intent to kill. Intent to kill is
8 an element of attempted murder. But you're never going
9 to be able to prove that specifically unless you've got
10 somebody saying they're going to kill them. Usually you
11 look at the circumstances and the way something happened,
12 the type of weapon that was used, the number of rounds
13 that were fired. That might be the toughest question
14 before you. What level of assault do we assign to this?
15 I submit to you the evidence is there for the greatest
16 offense. I ask that you find him guilty of those two
17 offenses, one for each named victim. But remember, the
18 victim is the community and we need to put a stop to
19 this. I'm asking you to find the defendant guilty of all
20 charges.

21 Thank you.

22 THE COURT: Mr. Mays.

23 MR. MAYS: May I approach?

24 THE COURT: Yes, sir.

25 **CLOSING STATEMENT**

1 **BY MR. MAYS:**

2 As for my closing arguments ---

3 THE COURT: You may need to speak up a little
4 bit because she takes down everything to include ---

5 MR. MAYS: Okay, Your Honor.

6 **CLOSING STATEMENT CONTINUED**

7 **BY MR. MAYS:**

8 As for my closing arguments, the state is giving you
9 a lot of accusations and speculation. Since the day you
10 were chosen, the state has not produced anything that has
11 showed that the evidence is concrete evidence to find me
12 guilty as a suspect or find me guilty of these charges.
13 The testimony of Mr. Oglesby where he stated I hit him
14 over the head, he is the only person stating this, but
15 that does not make it true. So this is accusing, not a
16 fact. Also the state is speculating about an assault
17 rifle, AK47 or a 7.62 bullet goes over to ten guns. So
18 you cannot speculate it or say which one. It has to be a
19 fact.

20 That these victims were shot, you do not have the
21 evidence. There is no medical records to determine that
22 they were shot. If you get shot with a 7.62, and as he
23 stated they was in the hospital three days, maybe a week,
24 where's the medical records to determine that? So that's
25 hearsay.

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1 As for Mr. Scott's testimony of me being the one who
2 went in his pocket, that is also speculation, not a fact,
3 hearsay.

4 As for Mr. Robinson's testimony of him being in
5 possession of a rifle or this SKS or AK47, in which we
6 don't know, he testified and told you all he indeed shot
7 these people and so forth. So you have the person who
8 caused the harm to these victims.

9 I took this case to trial so that I can maintain my
10 innocence and have this case heard based on the facts.
11 Throughout this case, all I've heard is accusations and
12 speculations from the state and testimony that we looked
13 at, which is not what it's all about today. You must
14 have concrete evidence, then decide what the verdict will
15 be.

16 Thank you.

17 **CHARGE**

18 **BY THE COURT:**

19 Mr. Foreman, ladies and gentlemen of the jury, as
20 jurors in this case, you have certain functions and
21 responsibilities to perform which are entirely separate
22 and distinct from those of mine as the trial judge. I am
23 prohibited by the Constitution of our state from charging
24 you on the facts of this case. I'm also prohibited from
25 discussing the facts of the case with you, or in anyway

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1 intimating what my feeling, if any -- feelings, if any,
2 are about the facts of the case. It is your
3 responsibility and yours alone to pass upon all the
4 issues of fact presented in the case. I would therefore
5 charge you that if during the course of the trial or
6 during my charge you have been given or left with a
7 impression or feeling that I do have a personal feeling
8 about the facts in the case, I would specifically
9 instruct you to disregard that feeling or impression.
10 Moreover, you are the sole judges of what the
11 testimony was and not the argument of the parties. It is
12 also your duty, and your duty alone, to weigh the
13 testimony and evidence in the case and pass upon the
14 credibility or believability of the witnesses. In this
15 connection, you have the right to believe all that a
16 witness tells you or disbelieve all that a witness tells
17 you. You have a right to believe a part of what a
18 witness tells you and to disbelieve a part of what a
19 witness tells you. You have the right to take into
20 consideration any bias or prejudice or interest you feel
21 a witness might have in the case. I say this merely to
22 emphasize that the weight you see fit to give to the
23 testimony, to the credibility of the witnesses, as well
24 as of all issues of the case is for your sole
25 determination.

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1 As judges of the facts, you are the sole judges of
2 the credibility, that is the believability of the
3 witnesses that may have testified in this case. In
4 passing upon their credibility, you take into
5 consideration many things, such as the appearance and
6 manner of the witness on the stand; sometimes referred to
7 as the demeanor of the witness. Was the witnesses
8 forthright or hesitant? Was the witness's testimony
9 consistent or did it contain discrepancies? What was the
10 ability of the witness to know the facts about which he
11 or she testified? Did the witness have a cause or reason
12 to be biased and prejudiced in favor of the testimony he
13 or she gave? Was the testimony of the witness
14 corroborated or made stronger by other testimony in
15 evidence or was it made weak or impeached by such other
16 testimony in evidence? As jurors, you have a right to
17 believe all -- to believe a small portion of a witness's
18 testimony and discard the larger, or vice versa. You may
19 believe all of a witness's testimony or none. Most
20 certainly you do not determine the matter of credibility
21 or believability by counting up the number of witnesses
22 who may have testified on behalf of the parties.

23 In this regard, I instruct you and emphasize that
24 the fact that the defendant did not testify or put up
25 evidence is not a factor to be considered by you in

1 anyway in your deliberations and in your consideration of
2 the question of whether or not the state has proven the
3 defendant is guilty or not guilty of the charges in the
4 indictments. It must not be considered by you in any
5 manner whatever. A defendant has a constitutional right
6 to remain silent. And the exercise of this right must
7 not be considered by you in your deliberations. I
8 repeat, under your oath, you are to draw no conclusion
9 whatsoever from the fact that the defendant in this case
10 did not testify or present evidence. The fact that this
11 defendant did not testify should not even be discussed by
12 you in the jury room. The burden of proof, as I have
13 stated to you, is on the state. The defendant is not
14 required to prove his innocence. The burden of proof
15 remains on the state to prove guilt beyond a reasonable
16 doubt. Therefore, throughout this entire process you
17 have one single objective, and that is to seek the truth,
18 regardless from what witness the testimony may have come.

19 Now, by the same constitution and law which makes
20 you the finders of fact, as I discussed with you, I am,
21 as the judge, make the sole and only instruction on the
22 law. You must accept as correct the law which I charge
23 and apply it to the evidence as you find it and reach a
24 verdict. If I should make an error in the law as I
25 instruct it to you, there's another time and place that

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1 error can be considered, and if necessary, corrected.

2 But for the purposes of this case today, you must accept
3 the law as I charge it to you to be correct -- to be the
4 correct law.

5 Now, the defendant has pled not guilty to this
6 indictment. That plea puts the burden on the state to
7 prove the defendant guilty. A person charged with
8 committing a criminal offense in South Carolina is never
9 required to prove himself innocent. I charge you that it
10 is an important rule of law that the defendant in a
11 criminal trial, no matter what the seriousness of the
12 trial may be, will always be presumed innocent of the
13 crime for which the indictment was issued, unless that
14 guilt has been proven by evidence satisfying you of the
15 defendant's guilt beyond a reasonable doubt. The
16 presumption of innocence does not end when you begin your
17 deliberations, but it accompanies the defendant
18 throughout the trial until you reach a verdict of guilt
19 based upon the evidence satisfying you of that guilt
20 beyond a reasonable doubt.

21 The presumption of innocence is like a robe of
22 righteousness placed about the shoulders of the
23 defendant, which remains with the defendant until it has
24 been stripped from the defendant by evidence satisfying
25 you of the defendant's guilt beyond a reasonable doubt.

1 The presumption of innocence is not a mere legal theory.
2 It is not just a legal phrase. It is a substantial right
3 to which every defendant is entitled unless you, the
4 jury, are satisfied from the evidence of the defendant's
5 guilt beyond a reasonable doubt.

6 Now, what is a reasonable doubt? A reasonable doubt
7 is the kind of doubt that would cause a reasonable person
8 to hesitate to act.

9 Now, there are two types of evidence which are
10 generally presented during a trial; direct evidence and
11 circumstantial evidence. Direct evidence is the
12 testimony of a person who claims to have actual knowledge
13 of a fact such as an eyewitness. It is evidence that
14 immediately establishes the main fact to be proved and
15 does not require a deduction. Circumstantial evidence is
16 a chain of facts and circumstances indicating the
17 existence of a fact. It is evidence which immediately
18 establishes collateral facts from which the main fact may
19 be inferred. Circumstantial evidence is based on
20 inference and not on personal knowledge or observation.
21 Crimes may be proven by circumstantial evidence. The law
22 makes no distinction between the weight or value to be
23 given to either direct or circumstantial evidence.
24 However, to the extent the state relies on circumstantial
25 evidence, all of the circumstances must be consistent

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1 with each other and when taken together point
2 conclusively to the guilt of the accused, beyond a
3 reasonable doubt. If these circumstances merely portray
4 the defendant's behavior as suspicious, the proof has
5 failed. The state has the burden of proving the
6 defendant guilty beyond a reasonable doubt. The burden
7 rests with the state regardless of whether the state
8 relies on direct evidence, circumstantial evidence, or
9 some combination of the two. You should weigh all the
10 evidence in the case. After weighing all the evidence,
11 if you're not convinced of the guilt of the defendant
12 beyond a reasonable doubt, you must not find the -- or
13 you must find the defendant not guilty.

14 In order to establish criminal liability, criminal
15 intent is required. For example, the mental state
16 required to be proven by the state for a particular crime
17 might be purpose, intent, knowledge or some other motive.
18 Criminal intent must be proven by the state beyond a
19 reasonable doubt. Criminal intent is always a matter
20 that must be determined by the jury from the
21 circumstances surrounding the situation. There is no way
22 to prove intent to a mathematical certainty. There is no
23 way medical science can dissect a person's brain and
24 determine what the person had in mind. So the law says
25 that criminal intent may be inferred from the

1 circumstances shown to have existed. This is how you
2 make a determination of whether or not the element
3 requiring intent was present. It is not necessary to
4 establish intent by direct and positive evidence. But
5 intent may be established by inference in the same way as
6 other facts, by taking into consideration the acts of the
7 parties and all of the facts and circumstances of the
8 case. Criminal intent is a mental state, a conscious
9 wrongdoing. It is up to you to determine what the
10 defendant intended to do based on the circumstances shown
11 to have existed. Criminal intent is a state of mind that
12 operates jointly with an act or omission in the
13 commission of a crime. Criminal intent is a mental
14 state. Criminal liability is normally based upon the
15 concurrence of two factor; an evil-meaning mind and an
16 evil-doing hand. Suspicion, however strong, is not
17 enough to sustain a conviction. The evidence presented
18 by the state must be substantial evidence that tends to
19 prove the guilt of the defendant beyond a reasonable
20 doubt.

21 Now, the indictments in this case allege several
22 different offenses against the defendant. Indictment
23 number 2012-GS-42-5314 accuses the defendant of attempted
24 murder. Indictment number 2012-GS-42-5315 accuses the
25 defendant of the offense of attempted murder. Indictment

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1 number 2012-GS-42-5316, armed robbery and possession of a
2 weapon during the commission of a violent crime has two
3 separate counts in it. Now, each indictment charges a
4 separate and distinct offense. You must decide each
5 indictment separately on the evidence and the law
6 applicable to it, uninfluenced by your decision as to any
7 other indictment. The defendant may be convicted or
8 acquitted on any or all of the offenses charged. You
9 will be asked to write a separate verdict of guilty or
10 not guilty as to each indictment.

11 Now, I remind you that the fact the defendant was
12 arrested, charged and indicted in this case is not
13 evidence in the case and cannot be considered by you as
14 evidence -- of guilt in this case, nor does it create any
15 presumption or inference of guilt. The indictment simply
16 is the formal written instrument which contains the
17 charge made against the defendant. It is the formal
18 document which this case is brought into court.

19 Now, the defendant is charged in two of the
20 indictments, indictments 2012-GS-42-5314 with attempted
21 murder of Christopher Scott and in indictment number
22 2012-GS-42-5315 with attempted murder of Antron Oglesby.
23 In order to prove the crime of attempted murder, the
24 state must prove the defendant attempted to kill another
25 person with malice aforethought, either expressed or

1 implied. Malice is hatred, ill will or hostility towards
2 another person. It is the intentional doing of a
3 wrongful act without just cause or excuse with the intent
4 to inflict an injury or under circumstances that the law
5 will infer an evil intent. Malice aforethought does not
6 require that malice exist for any particular time before
7 the act is committed. But malice must exist in the mind
8 of the defendant just before and at the time the act is
9 committed. Therefore, there must be a combination of a
10 previous evil intent and the act. Malice aforethought
11 may be expressed or inferred. These expressions or
12 terms, expressed or inferred, do not mean different kinds
13 of malice, but merely the manner in which malice may be
14 shown to exist. That is either by direct evidence or by
15 inference from the facts and circumstances which are
16 proved. Expressed malice is shown when a person speaks
17 words with expressed hatred or ill will for another or
18 when a person prepares beforehand to do the act which was
19 later accomplished. For example, lying in wait for a
20 person or any other acts or preparation to show that the
21 deed was within the defendant's mind. That the deed was
22 within the defendant's mind; that would be expressed
23 malice. Malice may be inferred from conduct showing a
24 total disregard for human life. Inferred malice may also
25 arise from when the deed is done with a deadly weapon.

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1 A deadly weapon is any article or instrument or
2 substance which is likely to cause death or great bodily
3 harm. Whether an instrument has been used as a deadly
4 weapon depends upon the facts and circumstances of each
5 case. The following examples are instruments of which
6 may be deadly weapons; a pistol, a shotgun, a rifle. A
7 gun may be a deadly weapon even if it's not operating.
8 If facts are proven beyond a reasonable doubt sufficient
9 to raise an inference of malice to your satisfaction,
10 this inference must -- would be simply an evidentiary
11 fact to be considered by you, the jury, along with the
12 other evidence in the case. And you may give it the
13 weight you decide it should receive. A specific intent
14 to kill is not an element of intent to murder. There
15 must be a general intent to commit serious bodily injury.
16 Intent means obtaining a result which actually
17 occurs, not accidentally or involuntarily. Intent may be
18 shown by acts or conducts of the defendant and to other
19 circumstances which you may naturally and reasonably
20 infer -- from which you may naturally and reasonably
21 infer intent. Evidence of the character of the act, the
22 character of the instruments use, the manner in which it
23 was used, the purpose to be accomplished and the
24 resulting wounds and injuries may be considered in
25 determining the intent for which the act was committed.

1 Intent may also be inferred if it is demonstrated that
2 the defendant voluntarily and wilfully commits an act,
3 the natural tendency of which is to destroy another's
4 life.

5 Under South Carolina, we have a principal known as
6 the, quote, lesser included offenses. Some crimes that
7 are of a lesser included are to include any crimes which
8 are of a greater degree. In this case there are four
9 lesser included offenses for you to consider on the
10 indictments 2012-GS-42-5314 and 2012-GS-42-5315.
11 Indictment 2012-GS-42-5314 and 2012-GS-42-5315 charge
12 Javan Frederick Mays with attempted murder. The offense
13 of attempted murder includes the lesser included offense
14 of assault and battery of a high and aggravated nature,
15 assault and battery in the first degree, assault and
16 battery in the second degree and assault and battery in
17 the third degree. Therefore, you may consider the lesser
18 included offenses of assault and battery of a high and
19 aggravated nature, assault and battery in the first
20 degree, assault and battery in the second degree and
21 assault and battery in the third degree on indictments
22 number 2012-GS-42-5314 and 5315.

23 If you find the defendant (verbatim) has failed to
24 prove the defendant committed the offense, you may then
25 -- excuse me. If you find that the defendant (verbatim)

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1 has failed to prove that the defendant committed the
2 offense of attempted murder, you may then consider
3 whether the state has proved beyond a reasonable doubt
4 that the defendant committed assault and battery of a
5 high and aggravated nature. If a person commits the
6 offense -- and it's a lesser included offense -- of
7 assault and battery of a high and aggravated nature, if
8 the person unlawfully injures another person and great
9 bodily injury to another person results or the act is
10 accomplished by means likely to produce death or great
11 bodily injury. Great bodily injury means injuries which
12 cause a substantial risk of death.

13 Now, if you find the state has failed to prove the
14 defendant committed the offense of attempted murder, you
15 may then consider whether or not it has proved a
16 reasonable doubt that the defendant committed assault and
17 battery in the first degree. A person commits the
18 offense of assault and battery in the first degree if a
19 person unlawfully injures another person and the act
20 occurred during the commission of a robbery or theft.
21 Great bodily injury means bodily injury which causes
22 substantial risk of death or which causes serious
23 permanent disfigurement or protracted loss or impairment
24 of the function of a body member or an organ.

25 Now, if the find the state has failed to prove that

1 the defendant committed the offense of attempted murder,
2 you then may consider whether the state has proved beyond
3 a reasonable doubt that the defendant committed assault
4 and battery in the second degree. A person commits the
5 offense of assault and battery in the second degree if a
6 person unlawfully injures another person or offers or
7 attempted to injure another person with the present
8 ability to do so and moderate bodily injury to another
9 person results or moderate bodily injury to another
10 person could have resulted. Or moderate bodily injury
11 means physical injury requiring treatment to the organ
12 system of the body other than the skin, muscles, or
13 connective tissues of the body, except when there is
14 penetration of the skin, muscles and connective tissues
15 that require surgical repair of a complex nature or when
16 the treatment of the injuries require the use of regional
17 or general anesthesia.

18 Now, assault and battery in the third degree. If
19 you find that the state has failed to prove that the
20 defendant committed the offense of attempted murder, then
21 you can -- you may consider whether the state has proved
22 beyond a reasonable doubt that the defendant committed
23 assault and battery in the third degree. A person
24 commits the offense of assault and battery in the third
25 degree if the person unlawfully injures another person

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1 or offers or attempts to injure another person with the
2 present ability to do so.

3 Now, the defendant is charged in -- with armed
4 robbery. In order to prove this offense, the state must
5 first prove beyond a reasonable doubt that the defendant
6 took personal property from the person or presence of
7 another person. Property in the presence of a person is
8 if it is within a person's reason, inspection,
9 observation or control, so the person could, if not
10 overcome with violence or prevented by fear, keep
11 possession of the property. The state must also prove
12 beyond a reasonable doubt that the defendant carried the
13 property away, intending to deprive the person of the
14 property and to keep the property for the defendant's own
15 use. The slightest removal of the property or the
16 complete possession of the property, even for an instant,
17 by the defendant is sufficiently to show a taking and
18 carrying away of the property. The taking and carrying
19 away of the property must have been done with violence or
20 by putting the owner of the property in fear of violence.

21 Finally, the state must prove beyond a reasonable
22 doubt that the defendant was armed with a deadly weapon
23 during the robbery. A deadly weapon is any article,
24 instrument or substance which is likely to cause death or
25 great bodily harm. Whether an instrument is used as a

1 deadly weapon depends on the facts and circumstances of
2 the case. As I've said earlier, the following examples
3 of instruments which may be a deadly weapon would be a
4 pistol, shotgun or a rifle. A gun may be a deadly weapon
5 even if it is does not operate.

6 Now, illegal drugs may be the subject of an armed
7 robbery.

8 Now, the defendant, as I said, is charged with
9 possession of a weapon during the commission or attempt
10 to commit a violent crime. The state must prove beyond a
11 reasonable doubt that the defendant was in possession of
12 a firearm or visibly displayed what appeared to be a
13 firearm during the commission of a crime. A firearm
14 means any machine gun, automatic rifle, revolver, pistol
15 or any weapon which will, is designed to or may be
16 readily converted to expel a projectile. In order to
17 find the defendant guilty of a weapon during the
18 commission of a violent crime, you must first find the
19 defendant of either committing a violent crime or
20 attempting to commit a violent crime. Armed robbery is a
21 violent crime. And illegal drugs may be the subject of a
22 violent crime or of a robbery.

23 The state must prove also beyond a reasonable doubt
24 that the weapon further advanced or helped in the
25 commission of the crime.

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1 Now, in South Carolina there is a rule of law that
2 if a crime is committed by two or more people who are
3 acting together in committing the crime, the act of one
4 is the act of all. A person who joins with another to
5 commit an unlawful act is criminally responsible for
6 everything done by the other person which happens as a
7 probable or natural consequences of the acts done in
8 carrying out the common plan or purpose. For example,
9 two people can be guilty of killing another person when
10 only one of the two had a gun and there was only one
11 bullet and only one of the two fired the shot that caused
12 the death. If two or more people are together acting
13 together, assisting each other in committing the offense,
14 the act of one is the act of all. Or as sometimes said,
15 the hand of one is the hand of all.

16 . Prior knowledge that a crime is going to be
17 committed without more is not sufficient to make a person
18 guilty of that crime. Mere knowledge that another person
19 is going to commit a crime, even if the defendant is
20 present when the crime is committed, is not sufficient to
21 convict the defendant as a principal. Guilt as a
22 principal is shown by the actual or constructive presence
23 at the scene as a result of a prior arrangement.
24 Therefore, a finding of a prior arrangement plan or
25 common scheme is necessary for a finding of guilt as a

1 principal. The state must prove beyond a reasonable
2 doubt by competent evidence that the theory of the hand
3 of one is the hand of all. The principal in a crime is
4 one who either actually commits the crime or who is
5 present, aiding or abetting or assisting in committing
6 the crime. When a person does an act in the presence of
7 and with the assistance of another, that act is done by
8 both. Where two or more are acting within a common plan
9 or intent are present at the commission of a crime, it
10 does not matter who actually commits the crime. All are
11 guilty. The hand of one is the hand of all. Presence at
12 the commission of a crime means to be sufficiently near
13 to aid and abet and assist in the commission of the
14 crime. However, mere presence at the scene of a crime is
15 not sufficient to convict one as a principal on the
16 theory of aiding and abetting.

17 Intent is also a necessary element. There must have
18 been a common design or intent to commit the crime and
19 the crime must have been committed pursuant thereto with
20 the person aiding and abetting by some overt act. Intent
21 means intending the result which actually occurs; not
22 accidentally or involuntarily. Intent may be shown by
23 acts and conduct of the defendant and other circumstances
24 which you may naturally and reasonably -- from which you
25 may naturally and reasonably infer intent. The state

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1 must prove these elements beyond a reasonable doubt.

2 If you have a reasonable doubt of the defendant's
3 guilt after considering all the evidence on any of the
4 indictments, then you must find the defendant not guilty
5 on that indictment. On the other hand, if you have no
6 reasonable doubt of the defendant's guilt after
7 considering all the evidence on any of the indictments,
8 then you must find the defendant guilty on that or those
9 indictments.

10 Now, Mr. Foreman, ladies and gentlemen of the jury,
11 you have been selected as fair and impartial jurors,
12 sworn to impartially try and determine the facts of this
13 try. And when you comply with your oath to do so, then
14 no one will have the right to criticize your verdict and
15 you will have fully discharged your duty as jurors. You
16 should not be influenced by opinions or expressions of
17 opinions, if any, which you may have heard on the
18 outside. But you are to decide this case according to
19 the testimony that you've heard from the lips of the
20 sworn witnesses, along with the other evidence that may
21 have been introduced.

22 Now, as I said earlier, you are the sole judges of
23 the facts in this case and you are to determine only if
24 the defendant is guilty or not guilty based upon the
25 testimony and evidence presented in the trial and after

1 applying the law as I've given it to you. If, from the
2 evidence, you have a reasonable doubt as to whether or
3 not the defendant is guilty of any of the indictments,
4 any count of any of the indictments, it is your duty to
5 acquit him and write the two words not guilty. Under the
6 oath you took, you swore to try this case based only and
7 solely on the testimony, evidence and law presented and
8 heard in this courtroom. It is your duty to lay aside
9 all bias, prejudice or sympathy you may have in reaching
10 your verdict. You have no friends to reward or enemies
11 to punish in this case. I might note that the word
12 verdict is taken from the Latin term veredicto, which
13 means to speak the truth. Abide by your oath and return
14 a verdict which speaks the truth.

15 Now, Mr. Foreman, I have ---

16 THE JUROR: Yes, sir.

17 THE COURT: No, I need a bailiff to take you
18 something.

19 If you would hand this to the foreman. Thank you,
20 sir.

21 I have prepared a verdict form for you and the jury
22 to use during your deliberations. As I said, the verdict
23 on each of the indictments must be unanimous. That means
24 all twelve members of the jury must agree to whatever
25 verdict you do find is your verdict on that particular

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1 indictment or count of the indictment.

2 Now, there are three indictments. One indictment
3 has two counts. So if you'll notice on the first
4 indictment, number 2012-GS-42-5314, which charges the
5 defendant, Javan Frederick Mays, with attempted murder of
6 Christopher Scott, you have one of the following
7 indictments -- one of the following verdicts as one that
8 you can reach. But whichever it is, it would be, we, the
9 jury unanimously find on the indictment number 2012-GS-
10 42-5314, that the defendant, Javan Frederick Mays, is
11 guilty of attempted murder or guilty of the lesser
12 included offense of assault and battery of a high and
13 aggravated nature or guilty of the lesser included
14 offense of assault and battery in the first degree or
15 guilty of the lesser included offense of assault and
16 battery in the second degree or guilty of the lesser
17 included offense of assault and battery in the third
18 degree, or not guilty. Whichever verdict it is, it must
19 be the verdict of all twelve. Mr. Foreman, if you would
20 check the appropriate verdict on the form.

21 Then you go to the next page on indictment number
22 2012-GS-42-5315, attempted murder of Antron Oglesby. We,
23 the jury, unanimous find on indictment number 2012-GS-42-
24 5315, that the defendant, Javan Frederick Mays, is guilty
25 of attempted murder or guilty of the lesser included

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1 offense of assault and battery of a high and aggravated
2 nature or guilty of the lesser included offense of
3 assault and battery in the first degree, guilty of the
4 lesser -- or guilty of the lesser included offense of
5 assault and battery in the second degree or guilty of the
6 lesser included offense of assault and battery in the
7 third degree, or not guilty. Again, whatever verdict it
8 is, it must be unanimous.

9 And Mr. Foreman, you will indicate which is the
10 appropriate unanimous verdict of the jury on the verdict
11 form.

12 Finally, on indictment 2012-GS-42-5316, there are
13 two counts. One is armed robbery of Antron Oglesby. And
14 that's on the first count. There it would be, we, the
15 jury, unanimously find on indictment number 2012-GS-42-
16 5316, count one, that the defendant, Javan Frederick
17 Mays, is guilty of armed robbery, or not guilty.

18 And then on indictment number 2012-GS-42-5316, count
19 two, possession of a weapon during the commission of a
20 violent crime. If you find that the defendant is guilty
21 of the armed robbery, we, the jury unanimously find on
22 indictment 2012-GS-42-5316, count two, that the
23 defendant, Frederick -- Javan Frederick Mays, is guilty
24 of possession of a weapon during the commission of a
25 violent crime, or not guilty.

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1 Whatever your verdict is, as I said, on each of
2 these indictments and each count of each indictment, it
3 must be unanimous. All right. And you would mark one
4 verdict that you would have on each of those indictments
5 and each count of those indictments. Once the verdict
6 form has been completed, signed on the line by your name,
7 knock on the door and we will return and receive your
8 verdict at that time.

9 Now, Mr. Foreman, I'm going to ask you to give the
10 verdict form back to the bailiff and I'm going to ask you
11 to retire to the jury room one more time without
12 beginning your deliberations. However, once the bailiff
13 brings in the verdict form and the exhibits, then you'll
14 begin your deliberations. And once, as I say, you have
15 reached a verdict on each of the indictments and each
16 count of the indictments and the verdict form has been
17 completed, you'll knock on the door and we'll return at
18 that time. So I'll excuse you now. Do not begin your
19 deliberations until you receive the verdict form and the
20 exhibits from the bailiff.

21 If the two alternates would stay with me, please.
22 The rest of the twelve, if you would, please, retire to
23 the jury room.

24 (WHEREUPON, the jury exited the open court at
25 approximately 2:34 p.m.)

1 THE COURT: All right. Any exceptions or
2 requests from the state?

3 MR. BULSA: No, Your Honor.

4 THE COURT: Any exceptions or requests from the
5 defendant?

6 MR. MAYS: No, sir, Your Honor.

7 THE COURT: Very good. Thank you, sir. All
8 right. Let's check to be sure all the exhibits that are
9 supposed to go back do go back and none that are not
10 supposed to go back do not go back.

11 Give them the exhibits and verdict form and tell
12 them to begin their deliberations, please.

13 (WHEREUPON, all admitted exhibits were delivered to
14 the jury, at which time the jury began their
15 deliberations at approximately 2:39 p.m.)

16 THE COURT: All right. Ladies, I think you
17 understand or know why we had to select alternates. This
18 case went over two days and, being an important case as
19 it is, we wanted to be sure that nothing would interfere
20 with the ultimate resolution. In other words, if
21 somebody had had to be excused or were ill or something
22 of that nature, then one of you would have sat with the
23 jury. Fortunately, that did not happen in this case and
24 so your service as jurors is completed at this time.

25 Now, although it looks like I'm doing everything

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1 else in the world up here except paying attention, I have
2 developed a knack for keeping up or trying to keep up
3 with what goes on in the courtroom during a trial. And I
4 noticed, not only you but the jury themselves, paid very
5 careful and close attention to the parties of this case,
6 the solicitor, as well as Mr. Mays, and you were very
7 attentive. And so I'm satisfied if you had to serve you
8 would have been excellent jurors. And I say that with
9 all really appreciation. Of course, our system of
10 justice would not function if we did not have citizen
11 participation. I know, like I mentioned earlier when I
12 was talking to the jury, that none of you asked to be
13 here and there are probably places you would rather have
14 been the last two days, but the fact is, of course, our
15 system does not and because we do have citizens who make
16 that system work, we are able to have even cases that are
17 not the usual case and this is one of those. And I thank
18 you for your service.

19 Now, Madam Clerk, is there anything -- because this
20 is going to complete your service this week. Is there
21 anything that we need for the jurors, work statements,
22 anything like that?

23 THE CLERK: If they need -- if you need a work
24 excuse you can go by the clerk of court's office and
25 they'll give you one for work. But your check will be in

1 the mail to you.

2 THE COURT: I guess you've heard that before;
3 haven't you, your check's in the mail.

4 I wish there was something I could do for you
5 individually, but if you remember when you were qualified
6 on the first day, I think it was Judge Cole that did that
7 or ---

8 THE CLERK: It was Judge Cole, Your Honor.

9 THE COURT: Judge Cole, when he qualified you
10 he probably asked if there's any member of the jury panel
11 who's served in the last -- on a jury in the last three
12 years. Well, about the only thing I can do for you is
13 tell you it will not be three years before you'll have to
14 serve again -- or it will be at least three years before
15 you have to serve again. But as I said, I do hope your
16 service has not been without some benefit to you. And I
17 thank you for being here.

18 Everyone else remain seated while the jurors retire
19 from the courtroom. Now did you leave anything in the
20 jury room? Again, I thank you. Y'all have a good
21 weekend.

22 THE JUROR: You too.

23 THE COURT: Thank you.

24 All right. We'll be at ease awaiting the verdict of
25 the jury. By the way, I do want to commend all parties

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1 for their participation in the trial. Not only were you
2 very jealous of your positions, but also you were very
3 effective in presenting them. And I thank you for that.

4 It's in the jury's hand. We'll have to wait and see
5 what their decision will be. So we'll stand at ease
6 awaiting the jury's verdict.

7 (WHEREUPON, the court stood at recess awaiting the
8 verdict of the jury.)

9 THE COURT: All right. We're back on the
10 record in State versus Mays. I have received a question
11 from the jury. Was Antron Oglesby's head grazed by a
12 bullet? What are your thoughts about that, Mr. Derrick,
13 about the question, not what the answer is, but ...

14 MR. BULSA: I believe he actually testified
15 that it was.

16 THE COURT: I don't know if I can do that
17 because that would be a comment on the evidence.

18 MR. BULSA: Yes, sir. I would tell the jury if
19 they feel they need to listen to his testimony, then they
20 could.

21 THE COURT: All right. That would be his
22 testimony.

23 MR. BULSA: That's what I remember hearing.

24 THE COURT: All right. Mr. Mays, what do you
25 say?

1 MR. MAYS: I ain't seen nothing in a motion
2 that stated that a bullet hit his head or anything. So I
3 say no.

4 THE COURT: All right. I'll tell you what I'll
5 do, I'll split the difference, which is a very judicial
6 resolution. Wasn't too good for the baby, though.

7 I'll charge them that they must make their decision
8 based on the testimony in evidence and the trial. And if
9 they need any part of the trial, any specific part of the
10 trial -- yes, sir, Mr. Mays.

11 MR. MAYS: Your Honor, that's why we need
12 medical records that would determine all this.

13 THE COURT: Well, we didn't have any, so we
14 can't do that.

15 MR. MAYS: Yes, Your Honor.

16 THE COURT: But if it's testimony, it's either
17 there or it's not. But rather than give them a charge on
18 the fact that it was or was not, I'll just tell them if
19 they want us to play -- how much was Mr. Oglesby's
20 testimony?

21 COURT REPORTER: I didn't write it down. I can
22 check in a minute on how long it is.

23 THE COURT: It shouldn't be too long. I don't
24 believe he testified that long; did he?

25 COURT REPORTER: I don't think it was too long.

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1 THE COURT: All right. But then we'll play it
2 back if they want it.

3 All right. Anything further from the state?

4 MR. BULSA: No, sir.

5 THE COURT: I'll note your objection for
6 failure to have the medical records, but they were not
7 produced.

8 MR. MAYS: And it was in the motion, Your
9 Honor, as he got hit all in the lower extremities.

10 THE COURT: He was the one that had the bullet
11 in the toe.

12 MR. MAYS: Both of them was lower extremities
13 is what the motion stated.

14 THE COURT: All right. That's a good point.
15 We'll give them that option. But thank you.

16 All right. Ask the jury to join us, please.

17 (WHEREUPON, the jury entered the open court at
18 approximately 3:01 p.m.)

19 THE COURT: All right. Mr. Foreman, ladies and
20 gentlemen of the jury, I've been provided a question from
21 the jury. Was Antron Oglesby's head grazed by a bullet?
22 Now, as I instructed you, I cannot charge you on the
23 facts of the case. However, -- and you must make your
24 decision based on the evidence and testimony that was
25 introduced and other evidence introduced in this

1 courtroom. However, if you would like, we can play back
2 the testimony of Mr. Oglesby.

3 THE JUROR: Yes, sir. That was kind of our
4 question, is we had different views if it was a bullet or
5 if it was when the struggle with the gun was going on.

6 THE COURT: I understand. I see what you mean.
7 All right. So if we play his testimony back about the
8 injuries or whatever, then that would be sufficient?

9 THE JUROR: Yes, sir.

10 THE COURT: All right. It's going to take us a
11 little bit of time to find that on the testimony because
12 we've got the whole transcript. But if you would step
13 out for a few minutes and then as soon as we get that
14 we'll call you back in.

15 THE JUROR: All right. Thank you.

16 (WHEREUPON, the jury exited the open court at
17 approximately 3:02 p.m.)

18 THE COURT: All right. Anything from the state
19 at this time?

20 MR. BULSA: No, sir.

21 THE COURT: From the defense?

22 MR. MAYS: No, sir.

23 THE COURT: Very good.

24 COURT REPORTER: I'm ready.

25 THE COURT: All right. Ask the jury to join

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1 us, please, sir.

2 (WHEREUPON, the jury entered the open court at
3 approximately 3:03 p.m.)

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen, we found the testimony on the record and we'll
6 now replay it for you.

7 (WHEREUPON, the testimony of Antron Oglesby was
8 played in open court.)

9 THE COURT: You've got what you need?

10 THE JUROR: Yes, sir.

11 THE COURT: Very good. You can now return to
12 the jury room and continue your deliberations.

13 (WHEREUPON, the jury exited the open court to
14 continue deliberations at approximately 3:16 p.m.)

15 THE COURT: All right. Anything from the
16 state?

17 MR. BULSA: No, sir.

18 THE COURT: Anything from Mr. Mays?

19 MR. MAYS: No, sir.

20 THE COURT: All right. Very good. We'll await
21 the jury's verdict or verdicts.

22 (WHEREUPON, the court stood at recess awaiting the
23 verdict of the jury.)

24 (WHEREUPON, Court Exhibit Number 1 was marked for
25 identification.)

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1 THE COURT: All right. It's my understanding
2 that the jury has reached a verdict. Is there anything
3 from the state before we bring the jury back?

4 MR. BULSA: No, Your Honor.

5 THE COURT: Anything from the defense?

6 MR. MAYS: No, sir.

7 THE COURT: Very good. Ask the jury to join
8 us, please.

9 (WHEREUPON, the jury entered the open court at
10 approximately 4:20 p.m.)

11 THE COURT: Mr. Foreman, I understand the jury
12 has reached a verdict?

13 THE JUROR: Yes, sir.

14 THE COURT: If you would, please, hand it up to
15 the bailiff.

16 Madam Clerk, if you would, please, publish the
17 verdict.

18 THE CLERK: State of South Carolina, County of
19 Spartanburg, in the Court of General Sessions. State of
20 South Carolina versus Javan Frederick Mays. Indictment
21 number 2012-GS-42-5314, attempted murder of Christopher
22 Scott; we the jury unanimously find on indictment number
23 2012-GS-42-5314, that the defendant, Javan Frederick
24 Mays, is guilty of attempted murder.

25 Indictment number 2012-GS-42-5315, attempted murder

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1 of Antron Oglesby. We the jury unanimously find on
2 indictment number 2012-GS-42-5315 that the defendant,
3 Javan Frederick Mays, is guilty of attempted murder.

4 Indictment number 2012-GS-42-5316, count one, armed
5 robbery of Antron Oglesby. We the jury unanimous find on
6 Indictment number 2012-GS-42-5316, count one, that the
7 defendant, Javan Frederick Mays, is guilty of armed
8 robbery.

9 Indictment number 2012-GS-42-5316, count two,
10 possession of a weapon during the commission of a violent
11 crime. We the jury unanimously find on indictment number
12 2012-GS-42-5316, count two, that the defendant, Javan
13 Frederick Mays, is guilty of possession of a weapon
14 during the commission of a violent crime.

15 It is signed by the foreperson and dated today's
16 date.

17 Ladies and gentlemen of the jury, if this is your
18 verdict and still your verdict, please raise your right
19 hand.

20 (WHEREUPON, all jurors raised their right hand.)

21 THE CLERK: So say you all.

22 THE COURT: Very good. Is there anything from
23 the state before I dismiss the jury?

24 MR. BULSA: No, sir.

25 THE COURT: From the defendant?

1 MR. MAYS: No, sir.

2 THE COURT: Mr. Foreman, ladies and gentlemen
3 of the jury, I told the alternates when I dismissed them,
4 it looks like I'm doing everything in the world up here
5 except paying attention. But I have developed a certain
6 knack, I guess you might say, of keeping up with what's
7 going on in the jury room -- I mean, jury -- in the
8 courtroom while the jury is in the jury box. And in this
9 particular case I noticed that all of you paid very
10 careful and close attention. More importantly, because
11 of the unique presentation, and I will say this, Mr. Mays
12 did an excellent job in presentation of his case, but
13 still those things that were of concern to you, just as
14 your question indicated, that you took your duty,
15 responsibilities, very seriously. And having reached a
16 verdict on each of the indictments, and counts of each of
17 the indictments, in accordance with your finding with the
18 facts and the law and your conscience in reaching a
19 verdict, I have to thank you on behalf of Spartanburg
20 County and our judicial system. I think that both the
21 state and Mr. Mays received a fair and impartial trial
22 and I thank you for your efforts. I know you all would
23 rather have been somewhere else other than where you've
24 been in the last few days. But having done your duty as
25 citizens, I do thank you. And as I've also said, our

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1 system of justice would not function if we did not have
2 citizen participation. And I thank you for being
3 available and doing your duty as citizens.

4 Now, Madam Clerk, is there anything from the clerk's
5 office that you need to tell them or the jury needs to
6 know?

7 THE CLERK: The only thing is that we're
8 through for the week so they can ---

9 THE COURT: That's right. This will conclude
10 your service. We're not going to have trial court
11 tomorrow. And so this will be your service. And as I
12 say, I do hope your service has not been without some
13 benefit because it is absolutely necessary. And the only
14 thing I can do, perhaps for you, is if you remember when
15 Judge Cole qualified the whole jury panel back on Monday
16 he asked all the jurors is there any member of the jury
17 panel served on a jury in the last three year. At least
18 you won't have to serve for another three years.

19 Thank you`all. Y'all have a wonderful weekend. Mr.
20 Foreman, I do need to see you to sign some papers. Very
21 good. Y'all are excused. And again, thank you so much.

22 (WHEREUPON, the jury exited the open court at
23 approximately 4:23 p.m.)

24 THE COURT: Is the state ready to proceed?

25 MR. BULSA: Yes, sir.

1 THE COURT: All right. Mr. Mays, come around,
2 please.

3 MR. BULSA: The defendant's criminal history
4 dates back to 1992 for grand larceny; 1995, failure to
5 stop for a blue light, use of vehicle without owner's
6 consent, a drug possession charge and false information
7 to the police; 1996, possession of stolen vehicle,
8 possession of cocaine, false information to police,
9 driving under suspension; 1998, assault and battery of
10 high and aggravated nature, breach of peace high and
11 aggravated nature, throwing bodily fluids; 1999, domestic
12 violence; 2001, a parole revocation; 2002, he received a
13 federal sentence for felon in possession of a firearm, he
14 received an eighty-six month sentence on that case. Also
15 in 2002, possession of marijuana.

16 THE COURT: When was the federal sentence?

17 MR. BULSA: 2002.

18 THE COURT: Did he also have another conviction
19 in 2002?

20 MR. BULSA: It was a marijuana conviction, just
21 simple possession.

22 MR. MAYS: 2002, I was in federal prison.

23 THE COURT: Sir?

24 MR. MAYS: 2002, I was in federal prison. I've
25 been in -- I got transferred from the state in like '98,

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1 '99, and I ain't been back out till 2010.

2 THE COURT: All right. So you served eighty-
3 six months in federal from 2002 to 2010?

4 MR. MAYS: Yes, sir. I remember going to state
5 prison around like '97 or '98. And the feds came in and
6 got me from there and extradited me for which I jumped
7 into federal custody. I didn't get back out till 2010.

8 THE COURT: All right. So you've been in
9 until, what, 2010, for how long?

10 MR. MAYS: I got out in 2010.

11 THE COURT: Right. But I mean, you went in in
12 '98; is that ---

13 MR. MAYS: I went in doing I think a YOA
14 sentence around like '97, '98.

15 THE COURT: All right. So '97 to 2010, you
16 were incarcerated?

17 MR. MAYS: Yes, sir.

18 MR. BULSA: Nothing further from the state,
19 Your Honor.

20 THE COURT: And then this occurred in ---

21 MR. BULSA: August of 2012.

22 THE COURT: All right. Is there anything you
23 would like to say, Mr. Mays?

24 MR. MAYS: Your Honor, this is the most
25 ridiculous case I have ever, ever had to go through. I

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1 ain't shot nobody. None of that evidence retained to me.
2 A lot of things was left out as far as C.D. saying I
3 ain't had nothing to do with this. Fingerprints and
4 everything was left out. All of this is concrete
5 evidence to find out who pulled the trigger, who did this
6 and who did that. None of that came back to me.
7 Nothing.

8 Now I've got to take the sentence for whatever
9 you're going to give me and I've got to go down and
10 present myself and come back and have to deal with this.
11 I mean, this guy sat right here in front of the whole
12 court and said he shot these people. There ain't no way
13 in the world twelve jurors didn't hear that. Then
14 there's no medical record. And in my motion for
15 discovery this Christopher Scott guy ain't even in my
16 motion paperwork stating he got shot. There's nothing as
17 far as my medical records or anything saying -- or any
18 blood work saying this man got shot. It's not even
19 determined by fact, by the hospital saying this man got
20 shot. The only thing I keep hearing is he got hit in the
21 left ankle, right foot. That's it. Nothing coming back
22 to me personally.

23 I stood here and took this trial to get sanction for
24 me, not for what testimony do, say, he did this, and I
25 was with him. That's all not -- that's nothing. I'm

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1 here to face mine, mine and mine only. If you got me
2 I'll go down with it and be done with it. But off of
3 something somebody else in another -- I mean, in the
4 county jail saying it, and he admitted to saying what he
5 had to say and the jury hear that and I still get found
6 guilty on everything, I don't believe that's fair, Your
7 Honor. I came here to stand a man.

8 There's CDs right in the office right now that I
9 viewed, all of them saying Mr. Mays didn't do this, I
10 didn't know this, I don't know that. And he knew that
11 and did not bring forth the evidence to even let you hear
12 it or the jury. Which I feel like is unfair to me. Then
13 I filed a motion for everything before this trial. I did
14 about eight or nine months and he knew it because I
15 served him numerous times, at least up to seven or eight
16 times. And he kept me from coming in front of the judge
17 so the judge could determine my *Brady* motion to give me
18 all that. He know that Rule 5 motion that I had that he
19 gave me was not the evidence that I was requesting. He
20 know that. And he stopped all that evidence from being
21 heard today. And for me not to be able to come in front
22 of you or any other judge to get the prior discovery I
23 needed to prepare for my defense. I ain't seen a judge
24 for neither one of my motions in probably eight or nine
25 months. I've been sitting in the county jail sixteen

1 months. My bond got denied for even me -- I mean, my
2 bond got denied without me even coming in front of a
3 judge. I've been violated by the constitution ever since
4 I arrived at the facility. But I don't have -- my date's
5 done changed six or seven times. I've been, I've been
6 writing circuit court judges, filing motions, all of it
7 is in the court -- no, I'm not lying. All of it is
8 within clerk of court's files. I got paperwork in my
9 room that high stating the dates and times I wrote these
10 motions up. So somebody know why I didn't come to court.

11 THE COURT: Well, I do understand that a quick
12 and speedy trial motions was filed sometime recently.

13 MR. MAYS: About seven or eight of them, Your
14 Honor, not just one.

15 MR. BULSA: Yes, sir.

16 THE COURT: Madam Clerk, was a quick and speedy
17 trial motion filed in this case?

18 THE CLERK: Yes, sir.

19 THE COURT: When was the last one filed?

20 MR. MAYS: Last week.

21 THE CLERK: I'm not sure. Last week, I
22 believe, Your Honor.

23 MR. MAYS: And six or seven more before then.

24 THE COURT: When was the last one?

25 MR. MAYS: I just got a paper yesterday about a

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1 speedy trial motion. It was scheduled for December 6th.

2 That's got to be the one I just filed last week.

3 THE CLERK: Your Honor, November the 18th.

4 THE COURT: November the 18th. Now he said he

5 got notice of a -- we started the trial on November the

6 18th?

7 MR. MAYS: Yeah, we did.

8 THE CLERK: That was the last one that was

9 filed.

10 THE COURT: And nothing has been sent -- I

11 mean, it hasn't been set for anything? Of course, it

12 went to trial on November the 18th and we tried it on

13 November the 18th, at least is when it started.

14 THE CLERK: Give us just a second, Your Honor.

15 Yes, sir, Ms. Bennie Hunter relayed the information to

16 the docket clerk and it is waiting scheduling to be put

17 on the motion. Anytime that we have to put on the motion

18 docket, anytime that a defendant file motions pro se we

19 have to consult with the chief administrative judge

20 before we set it on the docket. So that was ---

21 THE COURT: And no one advised that it was

22 already in trial?

23 THE CLERK: Yes, sir, we did. These are

24 letters -- we get new letters ---

25 THE COURT: I understand. In other words, but

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1 this is the same trial that we're talking about? This is
2 the only trial that he has?

3 THE CLERK: Yes, sir.

4 THE COURT: And he had a motion filed the 18th
5 and his trial began on the 18th.

6 MR. MAYS: Well, even before then, Your Honor.

7 THE COURT: Well, that's what I'm saying, that
8 you did -- at least the most recent one was the one that
9 was done at the time of the trial was being commenced.

10 THE CLERK: Yes, sir.

11 THE COURT: I think we had some hearings or
12 something on that date?

13 MR. BULSA: Yes, sir.

14 THE COURT: Well, it's not -- I just want to be
15 sure the record is clear that the defendant requested a
16 speedy trial.

17 THE CLERK: Yes, sir.

18 THE COURT: Okay. Anything else? Tell me a
19 little bit about your background, Mr. Mays, please.

20 MR. MAYS: My background come from, like I
21 said, I ain't have a lawyer. They been times when I was
22 young, and Spartanburg County got a bad habit of playing
23 a waiting game. I get tired of sitting and filing
24 motions trying to get in court and don't never go and
25 they offer me something sweet as far as a probationary

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1 sentence or a one or two year sentence that I feel that I
2 can handle and I take it and go, Your Honor.

3 I've been doing this for numerous years. And I
4 didn't know that my record was going to come back to
5 haunt me when I caught a federal sentence, and it did.

6 THE COURT: All right. Are you married?

7 MR. MAYS: No, sir.

8 THE COURT: Do you have any children?

9 MR. MAYS: Yes, sir.

10 THE COURT: How many children?

11 MR. MAYS: Two.

12 THE COURT: Who do they live with?

13 MR. MAYS: Their mother, sometimes my mother.

14 THE COURT: Two mothers or one mother?

15 MR. MAYS: Two different mothers.

16 THE COURT: Two different mothers. What sort
17 of employment have you had?

18 MR. MAYS: Warehouse jobs, skills. I got my
19 GED in prison. I just had a -- I lost a job pertaining
20 to this case right here. I was at Sterling Packaging,
21 was my last job.

22 THE COURT: When was that?

23 MR. MAYS: Around about sixteen months, so
24 sixteen months ago.

25 THE COURT: You were employed at the time of

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1 this arrest?

2 MR. MAYS: Yes, sir. And it -- something
3 happened somehow, the supervisor found out over to the
4 hiring place; cut me loose.

5 THE COURT: All right. Anything else, Mr.
6 Mays?

7 MR. MAYS: That's basically it, Your Honor.

8 THE COURT: Indictment number 2012-GS-42-5314,
9 the sentence of the court, that the defendant, Javan
10 Frederick Mays, be committed to the State Department of
11 Corrections for a term of twenty years, plus pay the
12 costs and assessments applicable.

13 Indictment number 2012-GS-42-5315, the sentence of
14 the court that the defendant be committed to the State
15 Department of Corrections for a period of twenty years,
16 plus pay the costs and assessment as applicable.

17 Indictment number 2012-GS-42-5316, count one, the
18 sentence of the court, that the defendant be committed to
19 the State Department of Corrections for a term of twenty
20 years, plus pay the costs and assessment. And count two,
21 the defendant be committed to the State Department of
22 Corrections for a term of five years, plus pay the costs
23 and assessments as applicable.

24 All sentences to run concurrent and defendant be
25 given credit for the time served.

State of South Carolina -vs- Javan Frederick Mays (2012-GS-42-05314-05316)
Charge

259

1 All right. Good luck to you, sir.

2

3 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record of
7 all the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Spartanburg County, South
10 Carolina, on the 18th day of November, 2013.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

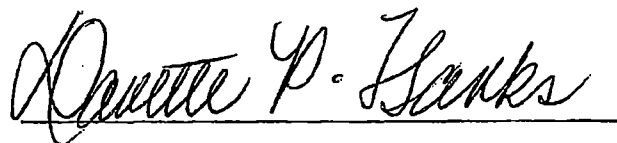
15 February 12, 2014

16

17

18

19

A handwritten signature in cursive script, reading "Danette P. Hanks", is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAVAN F. MAYS,

APPELLANT

APPELLATE CASE NO. 2013-002530

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In violation of Appellant's right to a jury trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 14 of the South Carolina Constitution, did the trial judge err in failing to instruct the jury that in order to convict Appellant of attempted murder the jury must find that Appellant acted with a specific intent to kill?

STATEMENT OF THE CASE

On October 18, 2012, a Spartanburg County grand jury indicted Appellant for two counts attempted murder (2012-GS-42-5314 & 2012-GS-42-5315), armed robbery and possession of a firearm during the commission of a violent crime (2012-GS-42-5316). R. 296. The state, represented by Derrick Bulsa, called the case for trial on November 18, 2013 before the Honorable Alexander S. Macaulay and a jury. R. 35. Appellant represented himself. Roger Poole was stand-by counsel. R. 35. The jury found Appellant guilty as charged. R. 280, line 18 – R. 281, line 14. Judge Macaulay sentenced Appellant to twenty years' imprisonment on each count of attempted murder, to twenty years' imprisonment for armed robbery, and to five years' imprisonment for the firearm charge. He ordered all sentences to be served concurrently. R. 292, lines 8-25; R. 298.

Appellant filed a timely notice of appeal. This brief follows.

ARGUMENT

In violation of Appellant's right to a jury trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 14 of the South Carolina Constitution, the trial judge erred in failing to instruct the jury that in order to convict Appellant of attempted murder the jury must find that Appellant acted with a specific intent to kill.

Relevant facts

On August 14, 2012, two men, Antron Oglesby and Christopher Scott, arrived in a car with two women at an apartment complex in Spartanburg. The women exited the car on the pretense of delivering keys to a resident of the apartment complex. R. 189, line 23 – R. 192, line 1; R. 205, line 24 – R. 206, line 24.¹ The foursome had been drinking alcohol earlier in the evening. R. 192, lines 14-19; R. 196, lines 10-16. Shortly after the women exited the car, two men, who were later identified as Appellant and Kendall Robinson, approached the car. Robinson was armed with an assault rifle; Appellant was unarmed. R. 193, line 3 – R. 195, line 3; R. 207, line 22 – R. 209, line 7; R. 211, lines 9-22; R. 219, line 21 – R. 220, line 19; R. 222, lines 3-4. Robinson opened the door of the car and began shooting. R. 193, lines 3-9; R. 195, lines 6-24; R. 209, lines 8-13. Oglesby and Scott managed to escape the car and run in opposite directions. R. 195, line 25 – R. 196, line 9; R. 196, lines 19-25; R. 209, line 14-24; R. 222, lines 10-16. However, Appellant and Robinson caught Oglesby. The two beat Oglesby and stole his clothes and money. R. 197, line 1 – R. 198, line 10; R. 199, lines 14-17; R. 222, lines 1-24; R. 225, lines 4-19. According to

¹ Robinson testified against Appellant. He claimed that he, Appellant, and the two women planned to rob Oglesby. R. 218, line 1 – R. 219, line 20.

Robinson, he dropped the rifle during the chase, and Appellant picked it up. R. 222, lines 17-24.

Oglesby then walked several miles to a residence where he was picked up by an ambulance. Oglesby claimed he was shot several times: "A shot, a shot, you know, grazed my head and a bullet still in my toe and got shot in my leg through - - came out the other side of my right leg. And my left toe had a bullet still in it." R. 198, line 17 – R. 199, line 13. Scott claimed he suffered two leg wounds as a result of the shooting. R. 210, lines 21-22.

At the conclusion of the trial, the judge charged the jury concerning the elements of attempted murder. After the judge instructed the jury regarding expressed and implied malice, the judge charged the jury regarding intent as follows:

A specific intent to kill is not an element of intent to murder. There must be a general intent to commit serious bodily injury. Intent means obtaining a result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts or conduct of the defendant and to other circumstances which you may naturally and reasonably infer – – from which you may naturally and reasonably infer intent. Evidence of the character of the act, the character of the instruments use, the manner in which it was used, the purpose to be accomplished and the resulting wounds and injuries may be considered in determining the intent for which the act was committed. Intent may also be inferred if it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another's life.

R. 259, line 13 – R. 260, line 4 (emphasis added).

Appellant, who was representing himself at trial, did not request a charge on specific intent. Further, Appellant did not object to the charge at the time it was given or after the completion of the jury charges.

Discussion

The Sixth Amendment to the United States Constitution provides that “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed....” U.S. Const. Am. VI. The Fourteenth Amendment forbids states to “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Am. XIV. Pursuant to this Due Process Clause, the United States Supreme Court held an individual’s right to a jury trial pursuant to Sixth Amendment is applicable to the states. Duncan v. Louisiana, 391 U.S. 145, 149-150 (1968); see also, State v. Warren, 273 S.C. 159, 255 S.E.2d 668 (1979). Additionally, South Carolina’s Constitution provides that “Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury.” S.C. Const. Art. I, § 14.

The South Carolina General Assembly recently created the crime of attempted murder. Lawmakers defined the offense as: “A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. Code Ann. § 16-3-29 (emphasis added). The statute became effective on June 2, 2010. According to the Act, attempted murder replaced the common law crime of assault and battery with intent to kill: “wherever in the 1976 Code reference is made to the assault and battery with intent to kill, it means attempted murder as defined in Section 16-3-29.” 2010 Act No. 273, § 7.C. Thus, the General Assembly was aware of the prior offense of assault and battery with intent to kill and the case law defining the common law offense.

Previously, assault and battery with intent to kill was defined as “an unlawful act of a violent nature to the person of another with malice aforethought, either express or

implied.” State v. Hinson, 253 S.C. 607, 611, 172 S.E.2d 548, 550 (1970). Although assault and battery with intent to kill was a common law offense, a statute provided for its punishment: “The crime of assault and battery with intent to kill shall be a felony in this state and any person convicted of such crime shall be punished by imprisonment not to exceed twenty years.” S.C. Code Ann. § 16-3-620 (2009).

In State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996), the South Carolina Supreme Court analyzed the offense of assault and battery with intent to kill and discussed the required elements of the offense. Based upon the traditional comparison of assault and battery with intent to kill to murder – that if the offense would have been murder had the victim died – and the lack of a specific intent requirement for murder, the Court held “the logical inference is that, likewise, a specific intent is not required to commit” assault and battery with intent to kill. Id. at 14-15, 479 S.E.2d at 51. The Court explained that although the offense required both an intent to kill and malice, the offense did not require a specific intent to kill. Id. at 15, 479 S.E.2d at 51. Thus, the Court held it sufficient “if there is some general intent, such as that heretofore applied in cases of murder in this state.” Id.

In State v. Sutton, 340 S.C. 393, 398, 532 S.E.2d 283, 286 (2000), the South Carolina Supreme Court refused to recognize the offense of attempted murder. The Court explained that an attempt to commit murder requires a specific intent to kill. Specifically, the Court stated “[i]n general, ‘[a]ttempt is a specific intent crime.’” Id. at 397, 532 S.E.2d at 285 (citing 21 Am.Jur.2d Criminal Law § 176 (1998)). Further, the Court explained “[t]he act constituting the attempt must be done with the intent to commit that particular crime.” Id. (quoting 21 Am.Jur.2d Criminal Law § 176). “In the context of an ‘attempt’ crime, specific intent means that the defendant consciously intended the

completion of acts comprising the choate offense.” Id. at 397, 532 S.E.2d at 285. The Court then distinguished attempted murder from assault and battery with intent to kill: “Attempted murder would require the specific intent to kill and conduct towards that end. ABIK requires an unlawful act of violence to the person of another with malice. Clearly, each offense has an element the other does not.” Id.

Repeatedly, South Carolina’s appellate courts have held that attempt crimes require specific intent to complete the acts comprising the principal offense. See State v. Green, 397 S.C. 268, 283, 724 S.E.2d 664, 671-672 (2012); State v. Reid, 393 S.C. 325, 329, 713 S.E.2d 274, 276 (2011); State v. Evans, 216 S.C. 328, 332, 57 S.E.2d 756, 758 (1950) (stating “[t]he law does not concern itself with the mere guilty intention, unconnected with any overt act”); State v. Quick, 199 S.C. 256, 19 S.E.2d 101 (1942) (same); State v. Atieh, 397 S.C. 641, 725 S.E.2d 730 (Ct. App. 2012); State v. Nesbitt, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001).

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). Under the plain meaning rule, the court should not alter the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998) (citations omitted). Where the statute’s language is plain and unambiguous, conveying a clear and definite meaning, the rules of statutory interpretation are not needed and the court should not impose another meaning. Id. (citing Paschal v. State Election Comm’n, 317 S.C. 434, 454 S.E.2d 890 (1995)). “What a legislature says in the text of a statute is considered the best evidence of the legislative

intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The clear and unambiguous meaning of the statute concerning attempted murder is a requirement of specific intent: “A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. Code Ann. § 16-3-29 (emphasis added). If this Court determines the statute is ambiguous, then a review of South Carolina’s case law demonstrates the legislature intended to require a specific intent to kill when it created attempted murder. The Supreme Court had held repeatedly that attempted murder required a specific intent to kill. In fact, our appellate courts had long maintained that attempt crimes are specific intent crimes. The legislature was aware of South Carolina’s case law concerning attempted murder specifically, and attempt crimes in general. Therefore, the legislature understood that by creating the crime of attempted murder, the legislature was requiring a showing of specific intent.

This Court should reverse Appellant’s conviction and sentence for attempted murder based upon the trial judge’s erroneous instruction. See State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) (“To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.”); State v. Lee-Grigg, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007) (“A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues.”); State v. Buckner, 341 S.C. 241, 247, 534 S.E.2d 15, 18 (Ct. App. 2000) (“In making a harmless error analysis, [the Court’s] inquiry is not

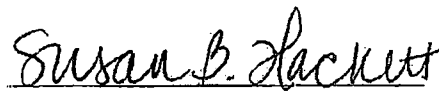
what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.”).

Although the issue is not preserved for review, this Court should review the matter in the interests of justice. Appellant represented himself at trial; therefore, he will not have an opportunity to allege ineffective assistance of counsel in failing to raise this issue. The only opportunity to review this obvious and egregious error is on direct review. The law clearly requires a judge to instruct the jury that attempted murder, as codified, requires a specific intent to kill based on the plain meaning of the statute and South Carolina’s jurisprudence governing “attempt” crimes. Thus, Appellant respectfully requests this Court reverse his convictions and sentences based on the trial judge’s error in charging the jury that the crime of attempted murder does not require the state to prove a specific intent to kill.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan B. Hackett".

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAVAN F. MAYS,

APPELLANT

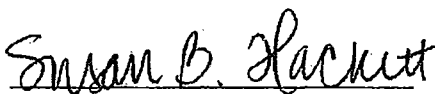
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Javan F. Mays states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Alexander S. Macaulay, which was held on November 18, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Javan F. Mays.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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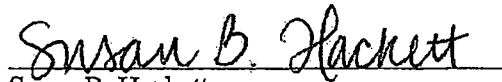
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire Transcript dated June 21, 2013
- (2) Entire Transcript dated August 9, 2013
- (3) Entire Transcript dated September 20, 2013
- (4) Entire Transcript dated November 18, 2013
- (5) Court's Exhibit # 1 (Note from Jury)
- (6) True-billed indictments;
- (7) Sentence sheets

I certify that this designation contains no matter which is irrelevant to this appeal.

November 12th, 2014



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 12, 2014



Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

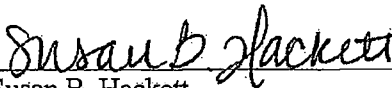
V.

JAVAN F. MAYS,

APPELLANT

CERTIFICATE OF SERVICE

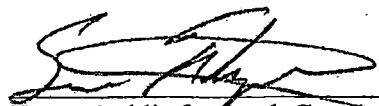
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Javan F. Mays, #250287, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 12th day of November, 2014.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of November, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Javan Frederick Mays, Appellant.

Appellate Case No. 2013-002530

Appeal From Spartanburg County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2015-UP-179
Submitted March 1, 2015 – Filed April 8, 2015

APPEAL DISMISSED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Spartanburg

Javan Frederick MAYS #250287
 Full name and prison number (if any) of Applicant.

2015-CP-42-1784

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention S.C.D.O.C. at Perry Corr. Inst.; 430 Oaklawn Rd.; Pelzer, S.C. 29669.
2. Name and location of Court which imposed sentence Spring General Sessions; 80 Magnolia St.; Spartanburg, S.C. 29304.
3. Name(s) of co-defendant(s) (if any) Kendall Robinson.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-42-5314 - Attempted Murder.
 - (b) 2012-GS-42-5315 - Attempted Murder.
 - (c) 2012-GS-42-5316 - Armed Robbery (Count One) and Poss. of Firearm during comm. of a Violent Crime (Count Two).
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 21, 2013 - 20 years (concurrent)
 - (b) November 21, 2013 - 20 years (concurrent)

Revised 3/2003

- (c) November 21, 2013 - (Count One, 20 years (concurrent)); (Count Two, 5 years (concurrent)).
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 8, 2015.
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2015-WP-179.
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Appellate Counsel:

(b) Due Process of Law Violation:

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Failing to argue on appeal that Appellant was deprived by the State of his rights to a speedy trial as required by the Sixth and Fourteenth Amendments to the United States Constitution.

(b) Waiver invalid because court failed to adequately explain dangers and disadvantages of self-representation as required by Sixth and Fourteenth Amendments to the U.S. Constitution.

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? no.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no.

(d) any other petitions, motions or applications in this or any other Court? no.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

2016 APR 28 AM 10:33
H. JONES U.S. DISTRICT COURT
SOUTH CAROLINA

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- no.
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective Assistance of Appellate Counsel, cannot be raised on direct appeal.
- (b) Due Process Violation, must be raised in the Court of Common Pleas.
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes.
- (b) your trial, if any? yes.
- (c) your sentencing? yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Javan Frederick Mays, PRO SE, 950 California Ave., Spartanburg, S.C. 29302.
- ii. Roger Poole, Public Defender/Stand-by Counsel, 36 N. Church St., Spartanburg, S.C. 29306.
- iii. Susan B. Hackett, Appellate Defender, P.O. Box 11589, Columbia, S.C. 29211-1589.
- (b) the proceedings at which each such attorney represented you:
- i. arraignment, plea of not guilty, trial and sentencing.
- ii. arraignment, plea of not guilty, trial and sentencing.
- iii. direct appeal.
19. State clearly the relief you seek in filing this application:
Vacated; Reversed; and/or Remanded for a new trial.
20. Are you now under sentence from any other court that you have not challenged?
NO.

2015 APR 28 AM 10:38
 H. JOSE BLACKLEY

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Spartanburg)Javan Frederick Mays #250287)

I, A, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Javan Mays

SWORN to and subscribed before me this 23
day of April, 2015

Tamara Conwell (L.S.)
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

2015 APR 28 AM 10:38
H. HOPE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Jovan Frederick Mays, #250287

I, ^A, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jovan Mays
Applicant

SWORN or affirmed to and subscribed before me this
23 day of April, 2015.

Tamara Conwell
Notary Public

My Commission Expires: September 25, 2020

2015 APR 28 AM 10:38
 J. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	Case No. 2015-CP-42-1784
Jovan Frederick Mays,	)	MEMORANDUM OF LAW
Applicant,	)	IN SUPPORT OF APPLICATION
	)	FOR POST-CONVICTION RELIEF
v.	)	
State of South Carolina,	)	
Respondent,	)	

Come now, the above named applicant, by and through his undersigned attorney, presents his Memorandum of Law in Support of Application for Post-Conviction Relief and would show the following unto the Honorable Court.

STATEMENT OF THE CASE

The applicant was indicted during the October 22, 2012, term of General Sessions Court for Spartanburg County for two Counts of attempted murder (12-GS-42-5314 and 5315), and armed robbery and possession of firearm during Commission of a violent crime (12-GS-42-5316). He proceeded pro se with a Standby Counsel, Roger Poole, Esq. The State was represented by Derrick Bulsa, Esq, Solicitor for the Seventh Judicial Circuit. On November 18, 2013, the applicant went to trial before the Honorable Alexander S. Macaulay, Judge and Jury. The Jury found him guilty of all charges, and Judge Macaulay sentenced him to two twenty-year sentences for the attempted murder charges, twenty years for the armed robbery charge, and five years for the possession of a weapon during Commission of a violent crime, all sentences to run concurrent. A timely appeal was filed on the applicant's behalf.

The applicant was represented on appeal by Susan B. Hackett, S.C. Appellate Defender Office. The appeal was denied on April 8, 2015 (Op. No. 2015-UP-179).

ARGUMENT

The trial Court lacked Subject-matter Jurisdiction to Convict and Sentence the applicant.

As a threshold matter, the S.C. Constitution and Statutory Laws mandate that "No person may be held to answer for any Crime except upon a presentment of an indictment by a grand Jury in the County where the Crime took place". S.C. Const., Art I, §11; S.C. Code Ann. §17-19-10.

In this Case, the applicant submits that his indictments indicate that the October 2012 term of General Sessions Court for Spartanburg County ^{being began} ~~began~~ on October 22, 2012 (which was a Monday). However, the "Action of the Grand Jury Section" of his indictment shows that it was "True Billed" by the grand Jury on October 18, 2012 (which was a Thursday before the term of General Sessions Court began). Having shown that there was no October 18, 2012, term of general Sessions Court for presentment of his indictments, the applicant directs the Court's inquiry of whether the presentment of his indictments outside of a term of general Sessions Court deprived the Court ~~deprived the Court~~ of its Subject-matter Jurisdiction to Convict and Sentence him.

This question has been resolved by the U.S. Supreme Court's decision in U.S. v. Cotton, 122 S.Ct. 1781 (2002), which guided the S.C. Supreme Court's decision in State v. Gentry, 610 S.E.2d 494 (S.C. 2005). In both Cotton and Gentry, the Courts held that "term Subject-matter Jurisdiction means the Court's Statutory and Constitutional power to try (Criminal) Cases". As previously shown, a presentment of indictment is a prerequisite to all prosecutions in South Carolina. In Conjunction, S.C. Statutory Laws, mandates that the grand Jury must meet with the general Sessions Court at each of its terms to present bills of indictments. S.C. Code, §17-0. Moreover, S.C. Statutory Law requires the Solicitor to prepare and, through the presiding Judge of general Sessions Court, present bills of

indictments to the grand Jury while in attendance upon the general Sessions Court to Confer Subject-matter Jurisdiction upon the Court to try Criminal Cases. S.C. Code, §14-9-210.

Thus, it is Clear from S.C. Statutory Laws that no indictment may be presented, or true billed, by a grand Jury outside of a term of general sessions court since the grand Jury's Jurisdiction is Coextensive (must be together) with the Criminal Jurisdiction of the general Sessions Court in which it is Convened and for which is to make inquiry (on presentment of indictments). see State v. McClure, 289 S.E.2d 158 (1982).

Accordingly, in keeping with the mandatory provisions of S.C. Constitutional and Statutory Laws, the Spartanburg County Solicitor could not have lawfully presented applicant's indictments to be true billed by a grand Jury on October 18, 2012 (a Thursday) before the Spartanburg General Sessions Court officially began on October 22, 2012 (the following Monday). Inasmuch as the general Sessions Court lacked subject-matter Jurisdiction to Convict and sentence him, the applicant's convictions and sentences should be reversed and vacated.

The applicant was denied the right to effective assistance of appellant Counsel by Counsel's failure to raise and argue the State's Brady¹ and Rule 5² violations.

The applicant contends that he was denied the right to effective ~~effective~~ assistance of appellate Counsel on his direct appeal. In Evitts v. Lucey, 105 S.Ct. 830 (1985), the U.S. Supreme Court held that the requirements of Strickland v. Washington, 104 S.Ct. 2052 (1984), standard of ineffective assistance of Counsel also applies to appellate ^{review} where there is an appeal as a matter of right. Moreover, if an appellant Counsel has failed to raise significant and obvious issues, this failure could be viewed as a deficient performance, and if the issue not raised may have resulted in reversal of a conviction, or an order for a new trial, the failure by Counsel is prejudicial. See Griffin v. Aiken, 725 F.2d 1226, 1235-36 (4th Cir. 1985).

To begin with, the applicant was charged, in relevant part, with "attempted murder". He contends that prior to his trial he submitted a motion to the Solicitor's office requesting discovery of the victims' medical records pursuant to Brady¹ and Rule 5.² Unfortunately, the Solicitor failed to provide him any of the victims' medical records prior to, or during, his trial. Nevertheless, During trial, the Solicitor proffered testimony by one of the robbery victims, Antron Oglesby, that when applicant allegedly robbed and shot him that a bullet grazed his head. Tr. p. 165, L. 4-13.

At the close of the evidence, and during the Jury's deliberation, the Jury ~~foreman~~ ^{Foreman} sent the Judge a note asking if Antron Oglesby had testified that a bullet grazed his head during the robbery. Tr. p. 241, L. 10-12.

1. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 205 (1963)

2. Rule 5, S.C.R.Crim.P.

The Solicitor informed the Judge that he believed that, ~~that~~ Oglesby did testify that a bullet did graze his head. Tr. p. 241, L. 14-15. The Judge asked the applicant for his opinion regarding Oglesby's testimony, and the applicant informed the Judge that there was nothing in his "motion for discovery" regarding a bullet grazing Oglesby's head and that this was why he needed Oglesby's medical records for a determination of his injuries for use in his defense. Tr. p. 242, L. 1-14. The Court noted "applicant's objection" to the Solicitor's failure to provide him discovery of Oglesby's medical records, Tr. p. 243, L. 5-9.

Upon hearing Oglesby's recorded testimony regarding a bullet grazing his head, the Jury found the applicant guilty of attempted murder and other related charges. A timely appeal was filed on the applicant's behalf. On appeal from his conviction, his appellate counsel raised an "unpreserved issue of the trial Judge's erroneous attempt murder Jury charge". Consequently, applicant's ^{counsel} appellate failed to raise and argue the preserved "Brady and Rule 5" violations by the Solicitor.

As a threshold matter, in Brady, the U.S. Supreme Court held that the ^{prosecutions} ~~prosecutions~~ suppression of evidence favorable to an accused violates due process where the evidence is material to guilt or punishment. It further held that for a defendant to establish a Brady violation, he must show that (1) the Solicitor suppressed evidence, (2) the suppressed evidence was exculpatory to the defendant, and (3) the suppressed evidence was material to the case. The Court has further

held that the government's suppression in bad faith may suggest that evidence is material. See, e.g., Gladio v. U.S., 405 U.S. 150 (1972); that evidence is exculpatory if it is favorable to the defendant, Brady (infra); and that both impeachment and exculpatory evidence is subject to Brady disclosure. U.S. v. Bagley, 473 U.S. 667, 676 (1985).

Likewise, the S.C. Supreme Court has held that Brady disclosure rule is grounded in the defendant's fundamental right to a fair trial mandated by the Due Process of the Fourteenth Amendment, and it requires the Solicitor to disclose evidence that is (1) in its possession, (2) favorable to the accused, and (3) material to guilt or punishment. State v. Kennerly, 503 S.E.2d 214 (S.C. App. 1998). Moreover, the failure to disclose Brady material is reversible error when omission deprives the defendant of a fair trial. State v. Hughes, 521 S.E.2d 500 (S.C. 1999); See also Monroe v. Angelone, 323 F.3d 300 (4th Cir. 2003), holding that undisclosed evidence favorable to accuse because it could have been used to impeach government witness.

A review of applicant's appellate Counsel's performance shows that her representation was deficient in raising an "unpreserved issue of the trial Judge's improper Jury instruction on his attempted murder offense". Tr. p. 225, L. 13-15. It further shows that his appellate Counsel's representation was prejudicial for failing to raise, and argue his preserved Brady and Rule 5 violations by the Solicitor which could have entitled him to a reversal of his Convictions. Accord. Evitt, Supra; Strickland, Supra.

The applicant has discovered after his trial that the Solicitor used perjured testimony to obtain his convictions.

For Consideration of his claim, the applicant submits that the Uniform Post-Conviction Act (PCR) stipulates that claims may be based upon a conviction or sentence in violation of the U.S. Constitution or State law, evidence of material facts not previously presented that requires vacating the conviction or sentence in the interest of Justice, or allegations of errors subject to other traditional forms of collateral attacks. S.C. Code, § 17-27-26 (a)(1), (4), (6) (Law Co-op-2000). He further submits that by an interpretation of the above statute, our Supreme Court has recognized prosecutorial misconduct as grounds for PCR, even in the absence of a claim of ineffective assistance of counsel. See Gibson v. State, 514 S.E.2d 320, 327, 27 (1999) (Setting aside the applicant's guilty plea, and granting new trial, because of Solicitor's Brady violation.

Because it will be so important as the benchmark against which to measure the applicant's claim of the Solicitor's knowing use of perjured testimony by his alleged codefendant, Kendall Robinson, the applicant will recite only so much of Solicitor's direct examination of Robinson's testimony regarding his reason for testifying, as follows:

Q: Why are you testifying (against the applicant)?

A: "For the better of my life" (Emphasis added).

Q: What you testified to, is that what happened?

A: Yes, Sir.

Tr.p. 93, L. 5-8.

After the applicant impeached Robinson's testimony on cross-examination regarding his initial denial of committing the charged crimes when questioned by the police, the Solicitor re-direct examined him about his inconsistent statements,

as follows:

Q: Mr. Robinson, that's the statement you gave to the police that day you were arrested, right?

A: Yes.

Q: And that's the statement you testified on direct examination that was a lie?

A: Yes.

Q: Is that right? Because you didn't want to get caught?

A: Yes.

Q: Okay, and why are ^{you} testifying differently today?

A: "Because it's my life. I just want to get myself better". (Emphasis added).

Tr. p. 197, L. 6-16.

Following the denial of his direct appeal, the applicant's PCR Counsel obtained discovery on his behalf of the State's plea agreement with his Co-defendant, Kendal Robinson. ^{ROBINSON'S} ~~Robertson's~~ plea agreement showed that, contrary to his testimony at trial about his reason for testifying, he had, in fact, testified for "reduced charges and sentences that were agreed upon by the Solicitor", which was not disclosed to the applicant pursuant to his discovery requests prior to trial.

Accordingly, in Brady, the U.S. Supreme Court held that, in addition to purely exculpatory evidence, a defendant is entitled, upon request, to disclosure of information that could be used to impeach government witnesses, and that nondisclosure of "any deal or promise" to a witness who testify against the defendant violates due process because witness credibility is at issue³.

By expanding upon the Brady rationale, the Court has further found that the deliberate deception of the defendant, Court, and Jury by known false evidence (and testimony) is incompatible with rudimentary demands of

³ See applicant's Co-defendant's plea agreement with the Solicitor attached hereto as Exhibit A.

Justice. Mere reliability of a given witness may well be determinative of guilt or innocence (as it was in the applicant's case) and the nondisclosure of evidence affecting his codefendant's credibility fell within the rule that the state's suppression of its agreement with him justifies the applicant to a new trial. See, e.g., Giallo v. U.S., 92 S. Ct. 763 (1972).

Finally, the Court has consistently held that the falsehood bares upon the witness' credibility rather than directly upon the defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the solicitor has the responsibility and duty to correct what he knows to be false and elicit the truth. That the solicitor's silence was not the result of guilt or desire to prejudice the defendant matters little, for its impact is the same, preventing as it did, a trial that can in any real sense be termed as fair. See Napue v. Illinois, 79 S. Ct. 1173 (1959); accord Mooney v. Holohan, 55 S. Ct. 340 (1935).

The applicant did not knowingly and intelligently waive his right to assistance of counsel with an understanding of the elements of his charges and available defenses.

In Faretta v. California, 422 U.S. 806, 45 S.Ct. 2525, 45 L.Ed.2d 502 (1975), the Supreme Court held that a defendant has a Sixth Amendment right to conduct his own defense in a criminal case. However, to ensure a valid waiver of counsel, the court must make a searching inquiry into the defendant's understanding of the "elements of the offense, possible sentences, and available defenses". The Court has further explained that the information that a defendant must have to waive counsel intelligently will depend on the particular facts surrounding the case. See Iowa v. Tovar, 541 U.S. 77, 89 (2004).

For the court's consideration of his motion to proceed pro se, the applicant will recite so much of the court's searching inquiry into his understanding of the waiver of his right to counsel by Judge Brian M. Gibbons, as follows:

Court: All right Mr. Mays, I've read your motion. Let me hear from you as to argument.

Applicant: I just want to represent myself and work on my case. I don't want an attorney.

Court: Do you understand, if I were to grant your motion, the perils of representing yourself?

Applicant: Yes, sir.

Court: All right. Now what are you charged with?

Applicant: Attempted murder, armed robbery, possession of a weapon during commission of a violent crime.

Court: All right. And all those are pretty serious offenses where you're looking at pretty substantial time in the event you're convicted.

Applicant: Yeah.

Court: Do you understand that?

Applicant: Yes, sir.

Court: And you know, as a lawyer you'll be held to the same standard as your actual lawyer who would be representing you. That means you have to know all the... Criminal rules and procedures, the rules of evidence, courtroom decorum, and all that stuff. You understand that?

Applicant: Yes sir.

Court: You understand, if you don't know that, that can severely impact your case, representing yourself?

Court: Why do you want to represent yourself?

Applicant: Cause I been incarcerated a whole year, and the Public Defender Office aint file (for) no evidence, aint file (to suppress) no evidence. I put in a speedy trial (motion). Aint heard nothing in a whole year. I just been a sitting duck.⁴

Court: Okay, I may come back to you.
(The Court had a discussion with the Solicitor)

Court: All right... Mr. Mays, certainly I've been over with you, at least I think, I have, about the perils of representing yourself. You understand that?

Applicant: Yes, sir.

Court: Well, you don't appear to have any mental problems or anything like that. I am going to grant your motion (to represent yourself). I am going to order the public to be standby counsel.

(Excerpts from transcript of Record dated August 9, 2013; Pamela E. Green, Circuit Court Reporter for Seventh Judicial Circuit).

While the evidence in the record shows that the applicant was aware of his right to counsel, insufficient evidence exist to indicate that the Court specifically inquired about the applicant's knowledge of the elements of his charges and available defenses. Instead, the record is replete with the applicant's pro forma answers to the Judge's pro forma

4. It was clear that applicant was frustrated with the inadequate representation of the Public Defender's office, which is why he motioned the court to represent himself, see Motion Transcript p. 5, L. 20-24 (above).

questions. Moreover, the record shows that the applicant requested to proceed pro se because of his dissatisfaction with the Public Defenders Office "poor representation". The U.S. Supreme Court has held that if a defendant must choose between the right to self-representation and poor counsel, the choice of the former may be involuntary. See Patterson v. Ill., 487 U.S. 285, note 4 (1988); see also Tr. p. 5, L. 20-24 of Motion Transcript dated August 9, 2013, Supra.

Nevertheless, it is apparent from reviewing the Motion Judge's inquiry that he failed to ensure that the applicant was aware of the nature/elements of his attempted murder offenses and of any potential defense to the offenses to support his decision to knowingly and intelligently waive his right to counsel and proceed pro se. In support of his claim, he submits that the trial judge erroneously charged the jury that "attempted murder included the 'element of a general intent to kill'". Tr. p. 225, L. 13-15. It is also apparent that the Motion Judge failed to inquire whether the applicant knew that he could interpose an objection to an erroneous jury charge in support of his defense.

Finally, in State v. King, 772 S. E.2d 189 (2013), the Court held that a jury charge defining the elements of attempted murder as a "general intent to kill", instead of a "specific intent to kill", is erroneous and will entitle a defendant to reversal of his conviction upon an objection to such an erroneous jury charge. He therefore contends that since the trial judge did not inquire about his understanding of the nature/element of his "attempted murder" nor any defense to this charge, his decision to represent himself was not knowingly and intelligent made absent an understanding of the elements and defense to the charge.

The applicant was denied a Constitutional right to a fast and Speedy trial.

In this Case, the applicant filed a motion for a fast and Speedy on September 20, 2013, a hearing was held on his motion before the Honorable Judge Robin B. Stowell. See Motion Transcript dated September 20, 2013. (Margret A. Woods, Circuit Court Reporter).

During the hearing, the applicant informed the Judge that he had filed a motion for a fast and Speedy trial fourteen months prior to the hearing without any response from the Spartanburg County Solicitor's Office regarding his trial date on his pending charges. He further informed the Judge that due to the Solicitor's failure to schedule his trial date pursuant to his Speedy trial motion, that his charges should be dismissed. Tr. p. 2, L. 7-16. The Judge granted the applicant's motion in part and in substance and instructed the Solicitor that the applicant should be brought to trial during the October 7, 2013, week of trial. Tr. p. 4, L. 6-14 (of Motion Transcript).

With regard to the applicant's Speedy trial motion in Parker v. Wingo, 92 S.Ct. 2182 (1972), the Court held that a reviewing Court should consider four factors when determining whether a defendant has been deprived of his right to a Speedy trial, as follows: 1) the length of delay; 2) reason for delay; 3) defendant's assertion of the right; and 4) prejudice to the defendant. The Court further held that these four factors are related and must be considered together with other relevant circumstances. Id. at 92 S.Ct. 2132. The Court went on to hold that until there has been a "presumptively prejudicial delay", there is no further need for the Court to extend its inquiry into the other three factors. Id. at 2192.

For the Court's review of the Solicitor's "presumptively prejudicial delay" in his case, the applicant submits that the record shows that the Solicitor's delay was primarily due to the time he needed to persuade his alleged co-defendant, Kyndell Robinson, to falsely testify against him (as set forth in "Ground 2" of applicant Memorandum of Law). This is evi-

denced by the Solicitor's "List of Potential Witnesses" that were provided to the applicant during the week of his trial.⁵

Nevertheless, with regards to the Solicitor's "presumptly prejudicial delay" in applicant's case, the U.S. Supreme Court has held that a deliberate attempt to delay the trial in order to hamper the defendant should be weighed heavily against the government; and that a delay to persuade a co-defendant to testify for the State should not justify a delay. The Court finally held that it is improper for the prosecution to intentionally delay the trial to gain some tactical advantage over the defendant or to harass him. United States v. Marion, 92 S.Ct. 455, 466 (1971).

The applicant finally contends that had he known about the Solicitor's presumptly prejudicial delay in convincing his alleged codefendant to testify against him, and had he been able to present this evidence to Judge Stilwell at the Speedy trial motion hearing, there is a reasonable probability that the Judge would have dismissed his charges instead of granting his Speedy trial motion "in part and in substance".

CONCLUSION

WHEREFORE, for the foregoing reasons set forth in the applicant's Memorandum of Law, the Honorable Court should reverse applicant's convictions for a new trial.

Respectfully Submitted

/s/

Rodney W. Richey
Attorney at Law
Post Office Box 10916
Greenville, S.C. 29603

This _____ day,
of _____, 2015

cc: Applicant's file

RECEIVED

SEP 16 2015

P.C.I. MAILROOM

⁵. See witnesses Lists attached hereto as Exhibits B and C, respectively.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Javan Fredrick Mays, #250287,

2015-CP-42-1784

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on April 28, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the October 2012 term of the Spartanburg County Grand Jury for two counts attempted murder (2012-GS-42-5314, and -5315), armed robbery and possession of a firearm during the commission of a violent crime (2012-GS-42-5316 count one and two). Applicant represented himself and J. Roger Poole, Esquire, acted as standby counsel. On November 18, 2013, Applicant proceeded to trial before the Honorable Alexander S. Macaulay and a jury. The jury found Applicant guilty as indicted. Judge Macaulay sentenced Applicant to imprisonment for a term of 20 years on each count of attempted murder, 20 years for armed robbery and five years for the firearm charge, all to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf pursuant to Anders v. California.¹ The South Carolina Court of Appeals dismissed Applicant's appeal in an

¹ 386 U.S. 738 (1967).

unpublished opinion. State v. Mays, 2015-UP-179 (S.C. Ct. App. filed April 8, 2015). The Remittitur was returned on April 28, 2015.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the transcript from Applicant's trial, and Applicant's records for the Department of Corrections and appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Appellate Counsel" in that:
 - a. Counsel failed "to argue on appeal that Appellant was deprived by the State of his right to a speedy trial as required by the Sixth and Fourteenth Amendments to the United States Constitution"
2. "Due Process Violation," in that:
 - a. "Court failed to adequately explain dangers and disadvantages of self-representation as required by Sixth and Fourteenth Amendments to the U.S. Constitution"

III.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there

was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. Therefore, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also claims that his rights were violated when the court failed to adequately explain the dangers of proceeding *pro se*. A valid waiver of counsel requires the defendant be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. Faretta v. California, 422 U.S. 806 (1975). However, if the trial judge fails

to make a specific inquiry addressing the disadvantages of a *pro se* defense as required by the second Faretta prong, the entire record may be reviewed to determine whether the defendant had a sufficient background or was apprised of his rights by some other source. Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990).

The Respondent submits that the Applicant made a knowing and voluntary waiver of counsel. However, the allegation probably raises questions of fact that should be reviewed in combination with the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent therefore requests that this Court convene an evidentiary hearing only on the allegation of ineffective assistance of appellate counsel and invalid waiver of right to counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRPC. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Filings by Applicant will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claim of ineffective assistance of appellate counsel and invalid waiver of right to counsel.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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February 11 2016

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EXHIBITS

MARKEDENTERED

NO EXHIBITS PROFFERED

1 JAVAN FREDERICK MAYS VERSUS THE STATE

2 THE COURT: I assume this is Mr. Mays.

3 MR. RICHEY: Yes, sir.

4 MS. OLIVE: Yes, Your Honor. And Mr. Mays,
5 there's a guilty plea case and a trial case. I believe
6 we're going to proceed with the trial first.

7 MR. RICHEY: Okay.

8 THE COURT: All right. I think if I am not
9 mistaken these are cases 15-CP-42-2535 and 1784. One
10 trial case, one plea case.

11 Mr. Richey, are you all ready to proceed? Do you
12 need a moment?

13 MR. RICHEY: Your Honor, I'm sorry.

14 THE COURT: No, no, that's fine. Finish your
15 conversation.

16 MR. RICHEY: I'm finished. I'm sorry, Judge.

17 THE COURT: Okay. Are you all ready to proceed
18 at this point?

19 MR. RICHEY: I've got a matter to take up.

20 THE COURT: Okay. Go ahead, please.

21 MR. RICHEY: Thank you, Your Honor. May it
22 please the Court, Your Honor. The trial case is a case
23 of attempted murder charge. And my client -- in the
24 transcript the alleged victims were shot and spent some
25 time in the hospital. My client wants me to get the

1 medical records of these folks that were shot pursuant.
2 to this case. It's his position that one of the victims
3 stated at trial the bullet grazed her head and it's his
4 position that was the basis of the jury verdict.

5 He was, he was not the actual shooter in the
6 case. There was a co-defendant who was the shooter.
7 But one of the gentlemen spent about eight or nine days
8 in the hospital. My client did not get the records
9 during the trial. I don't think there was a debate
10 about whether the guy was shot or not.

11 But my client, he actually represented himself.
12 He had asked for these and the solicitor's office didn't
13 provide them because they didn't get them because
14 everybody agreed that he had been shot. So he's asking
15 me to ask the Court -- he's asking me to ask the Court
16 to allow him to get these medical records from the
17 hospital, about eight days. I would assume it's gonna
18 cost about 7, \$800, you know.

19 MS. OLIVE: Your Honor, the State would object to
20 that request.

21 THE COURT: Well, I mean, it sounds like
22 Mr. Poole was appointed only as standby counsel. You're
23 saying that there were -- there was one individual who
24 was obviously injured somewhat substantially to be in
25 the hospital eight or nine days. A graze sometimes

1 you're not even, you know, maybe an ER and stitched up
2 and released.

3 How is this -- or -- how is this relevant to any
4 issue that would be raised on postconviction with regard
5 to the standby counsel, because obviously we're in a
6 strange position here? He's representing himself. You
7 can't PCR yourself. And a standby counsel is only there
8 to standby and assist procedurally.

9 I don't, I don't see where there's any cause
10 really to delay this to tell you the truth. He
11 represented himself at trial. That's the danger of
12 self-representation. If he didn't get it before trial
13 he didn't get it before trial. I can't help him on
14 that. I think we need to move forward.

15 MS. OLIVE: Thank you, Your Honor. And if I --

16 THE COURT: Go ahead, please.

17 MS. OLIVE: If it please the Court, well, I don't
18 want to keep you from making a ruling.

19 THE COURT: I just did.

20 MS. OLIVE: Okay. Your Honor, I just, if it
21 pleases the Court, wanted to provide a procedural
22 history for this case. This is Javan Frederick Mays,
23 2015-CP-42-1784. Mr. Mays was indicted for two counts
24 of attempted murder, armed robbery and possession of a
25 firearm during the commission of a violent crime in

1 October of 2012. He represented himself and Roger Poole
2 acted as his standby counsel.

3 On November 18, 2013, he proceeded to a jury
4 trial and the jury found him guilty as indicted. He was
5 sentenced to 20 years on each count of attempted murder
6 and 20 years on each count of attempted armed robbery.
7 Five years for the firearm charge, all to serve
8 concurrently.

9 A notice of appeal was filed on his behalf and an
10 Anders brief, pursuant to *Anders versus California*, was
11 filed on his behalf. The South Carolina Court of
12 Appeals dismissed his appeal in an unpublished opinion.
13 That was filed on April 8th, 2015. The remitter was
14 returned on April 28th, 2015.

15 He filed this post -- action for postconviction
16 relief on the same day, April 28th, 2015. He alleges
17 ineffective assistance of appellate counsel and due
18 process violation and that he was not adequately advised
19 of his -- of the dangers of proceeding pro se. He is
20 present in the courtroom today and represented by Rodney
21 Richey. And I'll turn it over to Mr. Richey.

22 THE COURT: Mr. Richey.

23 MR. RICHEY: We call Ms. Hackett.

24 THE COURT: If you'll come forward, please.

25 (Whereupon, witness comes forward.)

1 Swear or affirm the testimony you're about to
2 give is the truth?

3 THE WITNESS: I do.

4 THE COURT: I was going to say you're still under
5 oath from the previous hearing, but I guess it's best to
6 keep the record clean, so go around and have a seat.

7 THE WITNESS: Thank you.

8 THE COURT: Mr. Richey.

9 SUSAN HACKETT,
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q. Ma'am, state your name, please.

14 A. Susan Hackett, H-A-C-K-E-T-T.

15 Q. And, Ms. Hackett, where are you employed?

16 A. The office of Appellate Defense, which is a
17 division of the South Carolina Commission on Indigent
18 Defense.

19 Q. Did you happen to write a brief in the case of
20 Javan F. Mays?

21 A. I did, sir.

22 Q. And do you recall the issue that you raised in
23 that brief?

24 A. Yes, I do.

25 Q. And what was it?

1 A. The issue I raised is that the judge should have
2 charged the jury that for the crime of attempted murder
3 specific intent is required. Instead, in Mr. May's
4 case, the judge then charged the jury that general
5 intent only was required. And if my memory is correct,
6 he actually charged the jury the specific intent was not
7 required at all.

8 Q. Was this issue preserved on appeal?

9 A. It was not preserved.

10 Q. Were there any issues preserved on appeal that
11 you're familiar with?

12 A. Well, Mr. Mays represented himself and so there
13 really isn't a requirement that the Farettas Warnings be
14 preserved. You wouldn't expect someone to object to his
15 own motion to represent himself. So certainly the
16 aspect of self-representation would have been available
17 for appeal. I believe that Mr. Mays made a motion for
18 continuance that was granted. I believe he got a day to
19 get some stuff straight.

20 There were some issues relating to discovery, if
21 my memory is correct. That, that had something to do
22 with the continuance as well. And my memory is that the
23 judge accommodated him by requesting that some
24 information be provided and that Mr. Mays get another
25 day to prepare for trial.

1 Q. Do you believe that the discovery issue was an
2 appealable issue?

3 A. I did not find it to be one. It was my
4 understanding after reviewing the record that it was
5 resolved.

6 Q. Okay. Were you aware in the record he requested
7 the State to provide him the medical records and they
8 did not? I don't know if you're familiar with that at
9 all.

10 A. I don't remember that particular portion.

11 Q. Okay. Answer the questions the Attorney General
12 has for you.

13 THE COURT: Ms. Olive.

14 CROSS-EXAMINATION

15 BY MS. OLIVE:

16 Q. Thank you for sticking with us today Ms. Hackett.

17 A. Of course.

18 Q. You briefed Mr. Mays' appeal as an Anders brief;
19 is that correct?

20 A. Yes, ma'am.

21 Q. Okay. And what is the general purpose behind an
22 Anders brief? What sort of issues would you generally
23 bring at an Anders brief?

24 A. Sometimes an Anders brief might be an issue
25 that's unpreserved, which it is in this case. Other

1 times it may be an issue that is preserved but simply
2 doesn't have any merit. Under the Anders standard it
3 has to be wholly frivolous.

4 In Mr. Mays' case we were looking for attempted
5 murder cases in our office because we were planning to
6 make the -- a tact that I made in Mr. Mays' case that
7 attempted murder requires specific intent. You all may
8 recall that the legislature created this new law back
9 in, I think it was, 2010 with the Omnibus Act and
10 created this attempted murder statute, which was brand
11 new. There wasn't any law on it. We were anxious to
12 make some.

13 And I was pretty happy to get Mr. Mays' case, but
14 I was disappointed that there wasn't a request for
15 specific intent. I think that the issue raised it's
16 been born out that we were correct in *State versus King*,
17 but unfortunately it wasn't preserved for Mr. Mays.

18 Q. And Mr. Mays, your understanding is that he
19 represented himself at trial?

20 A. Yes, ma'am, he represented himself.

21 Q. So he would have been -- he would have been the
22 one that needed to preserve that issue?

23 A. Right. And that was part of my argument in the
24 Anders brief was that he represented himself and,
25 therefore, the Court should excuse the preservation rule

1 and review it because this error, which was clear, would
2 never be reviewed by any court unless they excused the
3 preservation problems.

4 Q. And you stated prior that there's no requirement
5 to preserve the Faretta issue, you could have raised
6 that issue in your Anders brief?

7 A. I could have. There isn't a requirement that
8 someone object to their own motion to go pro se.
9 However, when I looked at the transcripts in Mr. Mays'
10 case, he had been before several judges before he
11 actually got to trial and it was my opinion that the
12 judges had warned him properly under Faretta regarding
13 self-representation.

14 MS. OLIVE: Thank you, Ms. Hackett, that's all
15 the questions I have.

16 THE COURT: All right. Ma'am, thank you for
17 sticking around. Drive safely back to Columbia, all
18 right?

19 THE WITNESS: (Nods head up and down.)

20 (Whereupon, witness leaves witness stand and
21 courtroom.)

22 THE COURT: Call your next witness.

23 MR. RICHEY: I call Mr. Mays.

24 THE COURT: Sir, if you'll come forward and have
25 a seat.

1 (Whereupon, witness comes forward.)

2 MR. RICHEY: Sir, would you state your name,
3 please.

4 THE COURT: Let me put him under oath real quick,
5 if you don't mind.

6 MR. RICHEY: Oh, I'm sorry.

7 THE COURT: Just raise your right hand, please,
8 Mr. Mays. (Complies.)

9 Swear or affirm the testimony you're about to
10 give will be the truth?

11 THE WITNESS: Yes, sir.

12 JAVAN FREDERICK MAYS,
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RICHEY:

16 Q. Please state your name, please, sir.

17 A. Javan Frederick Mays.

18 Q. Okay. Mr. Mays, you're here on 2000-CP-42-1784.
19 You filed an application for postconviction relief of
20 attempted murder and armed robbery charge; is that
21 correct?

22 A. Yes.

23 Q. And where are you currently being housed?

24 A. Perry Correctional Institution.

25 Q. Okay. And what was your sentence?

1 A. Twenty years.

2 Q. Okay. You, you made a claim for ineffective
3 assist of counsel against appellate counsel; is that
4 correct?

5 A. Yes.

6 Q. And why do you think she was ineffective?

7 A. Well, the trial judge brought in my objection
8 because the solicitor failed to provide me with the
9 victim's medical records prior to my trial. And I said
10 the medical records are needed to prove there was no
11 grazing shot to the victim's head. Because the jury
12 foreman, he sent out a note asking, asking that if the
13 victim's head was grazed by a bullet. And that question
14 led to the jury listening to the victim's testimony,
15 which indeed was not true, and the jury based their
16 decision on that.

17 Q. So you're saying she was ineffective for not
18 briefing a discovery issue?

19 A. No, that's part of it. I'm gonna get to that.

20 Q. Okay. All right, go ahead.

21 A. Okay. And based on that statement of the
22 victim's testimony that a bullet grazed his head, if I
23 was given the medical records I would have used that in
24 my defense. And I was found guilty of all charges
25 because of it.

1 And it was in my counsel's representation was the
2 issue of, you know, raising an unpreserved issue. And
3 the unpreserved issue was the charge it was an improper
4 jury instruction for the element of attempted murder
5 requiring the general intent to kill instead of a
6 specific intent to kill.

7 Q. So you're saying she did what? What was that?

8 A. She raised an unpreserved issue over a preserved
9 issue.

10 Q. So you're saying that she should have raised a
11 discovery issue instead of the issue she raised?

12 A. Right.

13 Q. All right, go ahead.

14 A. And I was prejudiced by my counsel not raising
15 the argument preserved rate and the Rule 5 violation by
16 the solicitor. Like I'm saying, the issue she raised
17 was very good, it just wasn't preserved. And it's just
18 a minor mistake that she made. And that's all I have on
19 that issue.

20 Q. Huh?

21 A. That's all I have on that issue.

22 Q. Okay. And do you have any issue against Mr.
23 Poole?

24 A. No.

25 Q. Okay. Well, You agree there's subject matter and

1 a jurisdiction issue?

2 A. Yes, I have a subject matter and jurisdiction
3 issue too.

4 Q. Okay. And what is that?

5 A. I was being true billed on the third -- on
6 October the 18th, 2012, before the court began
7 October 22, 2012, which is the following Monday, where
8 it should have been done on the same day of General
9 Sessions term of court. And that violates South
10 Carolina Statute 170.

11 Q. Okay. And you believe that the prosecutor used
12 unlawful testimony?

13 A. That's my --

14 COURT REPORTER: I didn't hear you, sir.

15 THE WITNESS: That's my third issue.

16 BY MR. RICHEY:

17 Q. Go ahead.

18 A. It's where my alleged co-defendant, he testified
19 for a deal that wasn't disclosed to me prior to trial
20 upon request. That shows that he was given a plea
21 agreement for his testimony. And to support my claim
22 I'd like to put on record as Exhibit A my co-defendant's
23 plea agreement, which is the sentencing sheet.

24 MS. OLIVE: Your Honor, I would object to
25 relevance at this time. We're just proceeding today, as

1 I understand it, on ineffective assistance of appellate
2 counsel. Mr. Mays represented himself at trial. This
3 isn't a direct appeal, it's a postconviction relief
4 action. I'm not sure what relevance the sentencing
5 sheets from his co-defendant would have.

6 THE WITNESS: All of this was put in my
7 memorandum of law that I sent you.

8 THE COURT: All right. I'll sustain the
9 objection. He can't PCR himself. There's no complaint
10 against standby counsel, so the only issue is whether
11 appellate counsel failed to do something appropriate.

12 MR. RICHEY: Answer any questions Attorney
13 General has for you.

14 THE COURT: Ms. Olive, any questions?

15 MS. OLIVE: I have no questions, Your Honor.

16 THE COURT: Sir, thank you. You can step down.

17 (Whereupon, witness leaves witness stand.)

18 Mr. Richey?

19 MR. RICHEY: No other witnesses.

20 THE COURT: Ms. Olive?

21 MS. OLIVE: Your Honor, the State has no other
22 witnesses.

23 THE COURT: All right.

24 All right. Mr. Mays, I've had a chance to look
25 at this transcript while this hearing has been going on

1 and compare it against the testimony. And as far as
2 Faretta is concerned, I don't think that's an issue at
3 all. Obviously page nine of the transcript Judge Cole
4 goes over: "You understand you have to assume the risk
5 of deficient representation if you choose to represent
6 yourself. Yes, sir." This next page: "You have to
7 follow the same rules as a lawyer."

8 Then you have another hearing with Judge Givens.
9 He goes over basically the same sort of thing. "Held to
10 the same standards as an actual lawyer who would be
11 representing you. You have to know all the rules of
12 procedure, criminal rules of procedure, rules of
13 evidence, courtroom decorum, all that kind of stuff. Do
14 you understand? Yes, sir."

15 And unfortunately the only issue that I see that
16 could be preserved was maybe the King issue. I don't
17 see any other issue that could have been preserved, and
18 to the extent that the information from the hospital
19 could have been subpoenaed, it was your obligation to
20 subpoena it since you represented yourself.

21 So, Mr. Mays, the Court has no real alternative
22 but to conclude that you have not met your burden by
23 establishing entitlement of postconviction relief, so
24 this matter will be dismissed. I do wish you luck, sir.
25 I wish you had a lawyer at trial. It looks like maybe

1 you had some opportunities there, but you chose to go
2 without a lawyer. That's to your own detriment and I
3 can't help you at this stage of the game without it, so
4 good luck, sir.

5 MS. OLIVE: Thank you, Your Honor. We do have
6 another -- he has another hearing on the guilty plea on
7 a separate ---

8 THE COURT: All right. Well we'll handle that
9 now.

10 MR. RICHEY: Judge, Mr. Mays is indicating that
11 he wanted a trial with CP-42-2535. He wants to withdraw
12 the case.

13 THE COURT: All right. Mr. Mays, you're still
14 under oath, sir. You understand the other guilty plea,
15 the other case that we were going to address today
16 concerns the guilty plea that you entered to, let me get
17 it correct, was it a CDV charge or something to that
18 effect?

19 MR. RICHEY: Yes, criminal domestic violence and
20 a discharge of a firearm.

21 THE COURT: All right. According to the SCDC
22 records, you got ten years on the discharge of the
23 firearm and the CDVHAN, you got ten years as well. Do
24 you understand that if you withdraw this application for
25 this guilty plea that you won't be able to go back and

1 file another postconviction relief action involving that
2 case? Do you understand that?

3 MR. MAYS: Yes, sir.

4 THE COURT: So you have to go back to prison and
5 serve that ten years on that charge, which I presume is
6 concurrent with the 20 years that you're doing on the
7 attempted murder charge and the robbery charge. Mr.
8 Mays, are you certain that you want to withdraw those --
9 that application for PCR?

10 MR. MAYS: Yes, sir.

11 THE COURT: You realize you can't file another
12 one? You understand that?

13 MR. MAYS: Yes, sir.

14 THE COURT: So it's over as of today if you
15 withdraw your PCR on that case. Do you understand?

16 MR. MAYS: Yes, sir.

17 THE COURT: And you're not under the influence of
18 alcohol or drugs?

19 MR. MAYS: No, sir.

20 THE COURT: Very good. I'll permit the
21 withdrawal. I wish you luck, sir.

22 MR. MAYS: Thank you, sir.

23 THE COURT: Take care.

24 MS. OLIVE: Thank you, Your Honor.

25 (Whereupon, hearing concluded at 4:01 p.m.)

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--- THIS ENDS REQUESTED TRANSCRIPT ---

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings and evidence introduced
8 in the hearing and/or trial of the captioned case,
9 relative to appeal, in the Court of Common Pleas for
10 Spartanburg County, South Carolina, on the 9th day of
11 November, 2016.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
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19 s/Julie A. Ashbrook.
20 Julie A. Ashbrook
21 Circuit Court Reporter
22 Seventh Judicial Circuit
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RECEIVED

APR 17 2017

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Javan Fredrick Mays, #250287,
a/k/a Von Fredrick Mays,

Applicant,

v.

State of South Carolina,

Respondent.

S.C. SUPREME COURT
IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2015-CP-42-1784

ORDER OF DISMISSAL

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 MAR 31 AM 11:43
M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 28, 2015. Respondent made a Return on February 11, 2016. The Court convened an evidentiary hearing into the matter on November 9, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney Richey, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's appellate counsel, Susan Hackett, Esquire also testified. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In October 2012, the Spartanburg County Grand Jury indicted Applicant for two counts of attempted murder (2012-GS-42-5314, and -5315), and armed robbery and possession of a firearm during the commission

of a violent crime (2012-GS-42-5316, count one and two). At trial, Applicant represented himself and J. Roger Poole, Esquire, acted as standby counsel. On November 18, 2013, Applicant proceeded to trial before the Honorable Alexander S. Macaulay and a jury. The jury found Applicant guilty as indicted. Judge Macaulay sentenced Applicant to imprisonment for concurrent terms of 20 years on each count of attempted murder, 20 years for armed robbery and five years for the firearm charge.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire of the Office of Appellate Defense represented Applicant on appeal and filed a brief on his behalf pursuant to Anders v. California.¹ The South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion. State v. Mays, 2015-UP-179 (S.C. Ct. App. filed April 8, 2015). The Remittitur was returned on April 28, 2015.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Appellate Counsel," in that:
 - a. Appellate Counsel failed "to argue on appeal that Appellant was deprived by the State of his right to a speedy trial as required by the Sixth and Fourteenth Amendments to the United States Constitution"
2. "Due Process violation," in that:
 - a. "Court failed to adequately explain dangers and disadvantages of self-representation as required by Sixth and Fourteenth Amendments to the U.S. Constitution."

At the evidentiary hearing, Applicant proceeded on only the allegations of ineffective assistance of appellate counsel for failure to argue preserved issues on appeal, and violation of

due process in that Applicant was not adequately advised of the dangers and disadvantages of proceeding pro se.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

Applicant testified he felt Appellate Counsel did not argue preserved issues on appeal. Appellate Counsel explained the general process she follows when she is assigned a case on appeal, and specifically, how she determines what, if any, issues to raise and brief on appeal. Appellate Counsel explained that she files an Anders² brief for cases in which the record reveals no preserved or meritorious issues. Appellate Counsel explained that, in this case, because Applicant represented himself at trial, he was responsible for preserving appealable issues. She testified that she reviewed the entire record and determined there were no preserved issues, but that she briefed the only potentially meritorious issue she could ascertain. Appellate Counsel further testified that she had no basis to argue that Applicant was not adequately advised of the dangers and disadvantages of self-representation.

B. Involuntary Waiver of Trial Counsel

Applicant alleged in his application that he was denied due process of law in that he did not knowingly and voluntarily waive his right to counsel. This Court finds Applicant has

² 386 U.S. 738 (1967).

presented no evidence of this allegation and the record clearly reflects Applicant knowingly and voluntarily waived his right to counsel after being advised by several judges of the perils of self-representation.

Imbedded within the Sixth Amendment right to counsel is the implied right of self-representation. Faretta v. California, 422 U.S. 806, 821 (1975); Dearybury v. State, 367 S.C. 34, 625 S.E.2d 212 (2006). A defendant who elects to represent himself "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" Faretta, 422 U.S. at 835 (quoting Adams v. United States ex rel. McCann, 317 U.S. 269 (1942)). It is the trial judge's responsibility to determine whether there is a competent, intelligent waiver by the defendant. Watts v. State, 347 S.C. 399, 402, 556 S.E.2d 368, 370 (2001) (citing State v. Dixon, 269 S.C. 107, 236 S.E.2d 419 (1977)).

Here, Applicant appeared before three different judges on three separate occasions prior to trial, and, each time, Applicant reiterated his desire to relieve counsel and represent himself. (Tr. at 1-43). Applicant first appeared before Judge Cole on June 21, 2013. (Tr. at 1-13). Judge Cole questioned him about his education, whether he had faced criminal charges before, whether he had been represented by an attorney before, whether he had been to trial before, whether he understood the rules of court and rules of evidence, and what kind of experience or education he had concerning legal matters. (Tr. at 4-7). Judge Cole also asked Applicant if he thought he was capable of representing himself, (Tr. at 8:5-10), if he wished to represent himself if he could not afford to retain a different attorney, (Tr. at 8:11-9:6), whether he understood the "advantages and disadvantages and the pitfalls of attempting to represent" himself, (Tr. at 9:7-10), and whether he

² Anders v. California, 386 U.S. 738, 744 (1967).

understood that he "assumed the risk of deficient representation" by choosing to represent himself. (Tr. at 9:14-17). Applicant acknowledged that he understood that if he chose to represent himself, he would have to follow the same rules that a lawyer would follow in court and that if he did not understand what to do, he would be at a distinct disadvantage. (Tr. at 10:12-20). Applicant confirmed that he was sure he wished to represent himself; however, he then stated that he would be amenable to having a different attorney from the public defender's office as long as it was not his current attorney. (Tr. at 10-11). As a result, Judge Cole stated he would consult with the Chief Public Defender to determine whether another public defender could be appointed. (Tr. at 13).

Thereafter, on August 9, 2013, Applicant appeared before the Honorable Brian M. Gibbons to ask that his second appointed attorney be relieved. (Tr. at 15-19). Judge Gibbons again questioned Applicant about whether he understood the perils of representing himself and whether he understood he would be held to the same standards as an actual attorney and that he would have to know all of the rules of procedure, rules of evidence, and courtroom decorum. (Tr. at 18-21). Applicant acknowledged that he understood by representing himself he could severely impact his case. (Tr. at 19).

Lastly, on the third occasion, which was just prior to the start of trial, Judge Macaulay questioned Applicant and made a finding that Applicant "knowingly and intelligently and freely and voluntarily waived his right to counsel." (Tr. at 42:21-43:3).

This Court finds the record clearly reflects that the trial judge ensured that Applicant made a knowing choice to represent himself with "eyes open" after being appropriately advised of the dangers and disadvantages of self-representation. Accordingly, Applicant has failed to present any evidence in support of this allegation and it is therefore denied and dismissed.

C. Ineffective Assistance of Appellate Counsel

"A defendant is constitutionally entitled to effective assistance of appellate counsel." Evitts v. Lucey, 469 U.S. 387 (1985). This Court must analyze claims of ineffective assistance of appellate counsel according to the same standard set forth in Strickland v. Washington, 466 U.S. 668 (1984). Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) (citing Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999)). In other words, Applicant has the burden of proving Appellate Counsel's performance was deficient and that he was prejudiced by the alleged deficiency. Thrift v. State, 302 S.C. 535, 537, 397 S.E.2d 523, 525; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005) (citing Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003)). "[A]ppellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift, 302 S.C. at 539, 397 S.E.2d at 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a "professional duty to choose among potential issues" according to their merit. Barnes, 463 U.S. 745. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Where an Applicant contends appellate counsel rendered ineffective assistance by failing to argue an issue, Applicant must show the failure to raise the issue was objectively unreasonable and that, but for this failure, his conviction or sentence would have been reversed. See Southerland v. State, 337 S.C. 610, 617, 524 S.E.2d 833, 836 (1999) (citing People v. Griffin, 687 N.E.2d 820 (Ill. 1997)).

Although Appellate Counsel must generally support her client's appeal to the best of her ability, "if counsel finds [the] case to be wholly frivolous, after a conscientious examination of it, [s]he should so advise the court and request permission to withdraw." Anders v. California, 386

U.S. 738, 744 (1967). "[T]he defendant must [then] be given time to respond and to raise any additional points after his attorney submits the Anders brief. The court then is obligated to conduct a 'full examination' of the record to determine whether the appeal is 'wholly frivolous.'" State v. McKennedy, 348 S.C. 270, 278, 559 S.E.2d 850, 854 (2002) (citing Anders v. California, 386 U.S. at 744) (citations omitted). "The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal." Id. at 279, 559 S.E.2d at 855.

Precisely this procedure was followed here. Appellate Counsel testified she filed an Anders brief in this case because based upon her review of the entire record, she could discern no preserved, meritorious issues and she saw no basis for arguing that Applicant was not adequately advised of the dangers and disadvantages of self-representation. As Counsel testified, she argued the only potentially meritorious issue she could ascertain, but that the issue was not preserved due to Applicant's failure to preserve the issue at trial. The Court of Appeals dismissed the appeal pursuant to Anders. State v. Mays, 2015-UP-179 (S.C. Ct. App. filed April 8, 2015). Had the Court discovered any meritorious issues upon its independent review of the record, it would not have dismissed the appeal. See Anders v. California, 386 U.S. 738, 744 (1967); State v. McKennedy, 348 S.C. 270, 278, 559 S.E.2d 850, 854 (2002).

In considering the record, the testimony and arguments presented at the evidentiary hearing, and this Court finds Applicant has shown neither deficiency nor prejudice with respect to this allegation. Appellate Counsel followed the procedure outlined in Anders and gave her basis for doing so and for raising the particular issue she addressed therein. Given that Applicant represented himself and clearly did so freely and voluntarily after appearing before three

different judges on three separate occasions who inquired as to his understanding of the dangers and disadvantages of self-representation, Appellate Counsel's choice to file an Anders brief was objectively reasonable. Furthermore, because the Court of Appeals was required to conduct its own independent review of the record and nevertheless chose to dismiss the appeal, Applicant has failed to demonstrate the outcome of the appeal would have been different but for the alleged error of counsel. Accordingly, this Court finds Applicant failed to satisfy his burden of proving his allegations, and this application for post-conviction relief is therefore denied and dismissed with prejudice.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

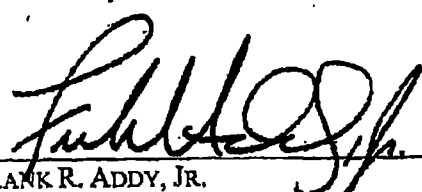
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek

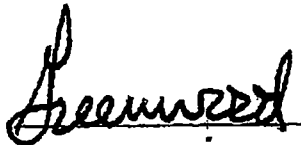
appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24th day of March, 2017.


FRANK R. ADDY, JR.
Presiding Judge, Seventh Judicial Circuit

 South Carolina

2017 MAR 31 AM 11:43
M. HOPE BLACKLEY

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)Von Frederick Mays, # 250287)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-42-2535

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention S.C.D.C. at Perry Correctional Institution; 430 Oaklawn Road; Pelzer, South Carolina 29669.
2. Name and location of Court which imposed sentence Spartanburg County General Sessions; 180 Magnolia Street; Spartanburg, South Carolina 29303.
3. Name(s) of co-defendant(s) (if any) none.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-42-04191 / Criminal Domestic Violence High Aggravated Nature.
 - (b) 2012-GS-42-04192 / Discharging Firearm/Weapon into a Dwelling.

CLERK OF COURT
SPARTANBURG
2015 MAY 27 AM 9:01
M. HIDE BLACKLEY

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) December 15, 2014 (concurrent w/ time already serving in S.C.D.C.) - 10 years.
- (b) December 15, 2014 (concurrent w/ time already serving in S.C.D.C.) - 10 years.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) The court forced applicant to represent himself pro-se.
- (b) _____

2015 MAY 27 AM 9:01
M. HOPE BLANCHLEY

CLERK OF COURT
SPRINGFIELD, MO
JUL 1 2015

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Involuntary Guilty Plea.
- (b) Due Process of Law Violation.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) was not advised to the consequences of Boykin v. Alabama.
- (b) Rights not valid waiver of right to counsel prior to pleading guilty.
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no.
- (d) any other petitions, motions or applications in this or any other Court? no.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

CLERK OF COURT
STATE OF SOUTH CAROLINA
2015 MAY 27 AM 9:01
M. HOPE BLACKLEY

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

CLERK OF COURT
 SUPERIOR COURT
 2015 MAY 27 AM 9:01
 M. HOPE BLACKLEY

Revised 3/2003

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Involuntary Guilty Plea/ must be raised in PCR proceeding.
 (b) Due ^{VFM} ~~Process~~ Process of Law Violation/ must be raised in PCR proceeding.
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes.
 (b) your trial, if any? _____
 (c) your sentencing? yes.
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. J. Roger Poole, Stand-by Counsel/ Public Defender, 366 N. Church St.; Spartanburg, South Carolina 29306.
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. arraignment, plea of guilty, sentencing.
 ii. _____
 iii. _____

CLERK OF COURT
 SPARTANBURG, SC
 2015 MAY 27 AM 9:00
 M. HOPE BLACKLEY
 Revised 3/20

19. State clearly the relief you seek in filing this application:

Vacate.

Reverse.

and/or Remand for a New Trial.

20. Are you now under sentence from any other court that you have not challenged?

NO.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Spartanburg)

I, Van Frederick Mays, # 250287, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Van Mays ✓

SWORN to and subscribed before me this 21st day of May, 2015.

Nancy E. Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2021

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAY 27 AM 9:01
M. HOPE BLACKLEY

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Von Frederick Mays, # 250287, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Von Mays
Applicant

SWORN or affirmed to and subscribed before me this

21st day of May, 2015.

Nancy C. Muckert
Notary Public

My Commission Expires: 1-23-2023

CLEAR OF ALL
 SPARTANBURG COUNTY
 2015 MAY 27 AM 9:01
 M. HOPE BLACKLEY
 Revised 2003

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Javan Fredrick Mays, #250287,
a.k.a Von Fredrick Mays,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-42-2535

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on May 27, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the August 2012 term of the Spartanburg County Grand Jury for criminal domestic violence of a high and aggravated nature ("CDVHAN") (2012-GS-42-4191) and discharging a firearm at or into a dwelling (2012-GS-42-4192). Applicant represented himself, with J. Roger Poole, Esquire as standby counsel. On December 15, 2014, Applicant pleaded guilty to all charges. The Honorable Roger L. Couch sentenced Applicant to ten years to run concurrent. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary Guilty Plea
 - a. "Was not advised to the consequences of *Boykin v. Alabama*"
2. Due Process of Law Violation
 - a. "Rights not valid waiver of right to counsel prior to pleading guilty"

III.

Respondent submits Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing *Drayton v. Evatt*, 312 S.C. 4, 430 S.E.2d 517 (1993); *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983); *Richardson v. State*, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be

allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

IV.

Applicant also alleges that he was denied due process of law. The Applicant's allegation claims infringement of his right to counsel. A valid waiver of counsel requires the defendant be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. Faretta v. California, 422 U.S. 806 (1975). However, if the trial judge fails to make a specific inquiry addressing the disadvantages of a *pro se* defense as required by the second Faretta prong, the entire record may be reviewed to determine whether the defendant had a sufficient background or was apprised of his rights by some other source. Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990).

The Respondent submits that the Applicant made a knowing and voluntary waiver of counsel at his guilty plea. However, the allegation probably raises questions of fact that should be reviewed in combination with the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegation of involuntary guilty plea and invalid waiver of right to counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRCPP. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney, and not the inmate, is the only individual authorized to file amendments to this application. Rule 11, SCRCPP. Filings by inmates will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim of involuntary guilty plea and invalid waiver of right to counsel.

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

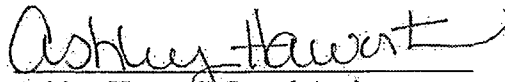
February 11, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2015-CP-42-2535
JAVAN FREDRICK MAYS, #250287,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Rodney Wade Richey, Esquire
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603-0916

DATED this 11TH day of February, 2016.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF (Select one.)

☒ COMMON PLEAS ☐ FAMILY COURT

) Seventh JUDICIAL CIRCUIT

Von Fredrick Mays, aka Javan
Fredrick Mays,

) CASE NO.: 2015-CP-42- 2535 & 2015-CP-42-

1784

Plaintiff(s),

) APPOINTMENT OF COUNSEL OR GAL

-vs-

) (Select one.)

State of South Carolina,

) ☒ ORDER

Defendant(s).

) ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

☒ Post-Conviction Relief (PCR)/habeas case

☐ Adoption

☐ Juvenile

☐ SVP case

☐ Custody and/or Visitation

☐ Abuse and Neglect

☐ Minor Name Change

☐ Other:

It appears that Von Fredrick Mays, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☐ court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☐ Other:

Therefore, it is ordered that Rodney Richey, hereby is appointed as (Select one.)
☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 7th DAY OF July, 2015.

M. Hope Blackley
☐ Circuit Judge ☒ Clerk of Court
Dail Moffitt, Asst. Clerk

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

12-GS-42-4191
DOCKET NO.

WITNESSES

CT
Spartanburg Public Safety Department

Jo C. [Signature]
CT
ARREST WARRANT NUMBER

Direct Indictment (M759950)

ACTION OF GRAND JURY

Dean Dill

Aug 2 2012
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of Spartanburg

BARRY J. BARNETTE, SOLICITOR

COURT OF GENERAL SESSIONS

AUG - 27 2012

TERM

THE STATE

vs.

Von Frederick Mays

Indictment for

CRIMINAL DOMESTIC VIOLENCE OF
A HIGH AND AGGRAVATED NATURE

SC Code: 16-25-65
CDR Code: 2988
Class FEL/UNC

FILED COURT
CLERK OF COURT
SPARTANBURG COUNTY
2012 AUG 30 PM 3:24
K. Hoke B. Hoke

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

At a Court of General Sessions, convened on AUG- 23 2012 the
Grand Jurors of Spartanburg County present upon their oath:

**CRIMINAL DOMESTIC VIOLENCE OF A
HIGH AND AGGRAVATED NATURE**

That Von Frederick Mays, did in the City of Spartanburg on or about July 3, 2012, intentionally commit an assault and battery against the victim, Keisha Johnson, a household member and/or former household member and/or person with whom he/she has child(ren) in common, which involved the use of a deadly weapon or resulted in serious bodily injury, and/or he did intentionally commit an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death, to wit: by shooting at the victim with a handgun, all in violation of §16-25-65, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Spartanburg Public Safety Department

ARREST WARRANT NUMBER

M-759951

ACTION OF GRAND JURY

Diana Dill

AUG 2 9 2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-4192

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2012

TERM

THE STATE

vs.

Von Frederick Mays

Indictment for

DISCHARGING FIREARM AT
OR INTO A DWELLING

SC Code: 16-23-440

CDR Code: 0052

Class FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2012 AUG 30 PM 3:24

M. HOPE BLANKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUL 23 2012

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

DISCHARGING A FIREARM AT OR INTO A DWELLING

That Von Frederick Mays, did in the City of Spartanburg on or about July 3, 2012, discharge or cause to be discharged a firearm at or into a dwelling, to wit: a dwelling located at [REDACTED], all in violation of §16-23-440 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jacqueline Mess-Oglesby
ASSISTANT SOLICITOR

WITNESSES

Spartanburg Public Safety Department

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. WARRANTS

6. FEATURE

ARREST WARRANT NUMBER

N158733

ACTION OF GRAND JURY

Deann Dill

True Bill

Foreperson of Grand Jury

Date:

OCT 18 2012

VERDICT

Guilt

[Signature]

Foreperson of Petit Jury

Date:

Min A. Rodde

11-21-13

DOCKET NO.

12-GS-42-5314

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 22 2012

TERM

THE STATE

vs.

Javan Frederick Mays

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 OCT 23 AM 9:04
M. HOPE BLACKLEY

✓
STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

OCT 18 2012

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That Javan Frederick Mays did in the city of Spartanburg on or about August 14, 2012, with malice aforethought attempt to kill Christopher Scott, by shooting the victim with an assault rifle, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DEPUTY SOLICITOR

WITNESSES

1. ~~Spartanburg~~ Public Safety Department

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

N158734

ACTION OF GRAND JURY

Dean Dill

True Bill

Foreperson of Grand Jury

Date:

OCT 18 2012

VERDICT

Guilty

Foreperson of Petit Jury

Date:

11-21-13

DOCKET #

12-GS-42-5315

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 22 2012

TERM

THE STATE

vs.

Javan Frederick Mays

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA

2012 OCT 23 AM 9:04

M. HOPE BLACKLEY

358

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 16 2012 the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That Javan Frederick Mays did in the city of Spartanburg on or about August 14, 2012, with malice aforethought attempt to kill Antron Oglesby, by shooting the victim with an assault rifle, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

D. R. B. B. B.
DEPUTY SOLICITOR

WITNESSES

1. SENTENCE MADE

Spartanburg Public Safety Department

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

8. FINE VIOLATION COPY

ARREST WARRANT NUMBER

N158735 (Count One)

N158736 (Count Two)

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

OCT 18 2012

VERDICT

Count 1 Guilty

Count 2 Guilty

Foreperson of Petit Jury

Date:

11-21-13

DOCKET NO.

12-GS-42-5316

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 22 2012

TERM

THE STATE

vs.

Javan Frederick Mays

Indictment for

ARMED ROBBERY AND
POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490

CDR CODE: 139; 0549

CLASS: FEL/A; FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2012 OCT 23 AM 9:04

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JULY 18 2012

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

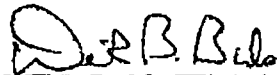
COUNT ONE-ARMED ROBBERY

That Javan Frederick Mays did in the city of Spartanburg on or about August 14, 2012, while armed with a deadly weapon, being an assault rifle, did feloniously take from the person or presence of Antron Oglesby, by means of force, violence, and/or intimidation, goods or monies, such goods or monies being described as follows: clothes, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

**COUNT TWO-POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

That Javan Frederick Mays did in the city of Spartanburg on or about August 14, 2012, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ARMED ROBBERY, in violation of Code §16-23-490. *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DEPUTY SOLICITOR

WITNESSES

Spartanburg Public Safety Department

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

5. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

* TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

N158827

ACTION OF GRAND JURY

Seal Bill

True Bill

Foreperson of Grand Jury

Date:

OCT 18 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-5329

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 22 2012

TERM

THE STATE

vs.

Kyndell Marquis Robinson

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2012 OCT 23 AM 9:05

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

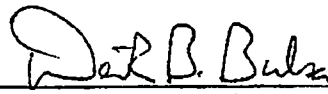
INDICTMENT

At a Court of General Sessions, convened on August 14, 2012 the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That Kyndell Robinson did in the city of Spartanburg on or about August 14, 2012,
with malice aforethought attempt to kill [REDACTED] by shooting the victim with an
assault rifle, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH*
CAROLINA, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


DEPUTY SOLICITOR