

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Brian M. Gibbons, Circuit Court Judge

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S.C. SUPREME COURT

TREVAUGHN ZIONTAE JACKSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001172

APPENDIX

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STATE OF SOUTH CAROLINA) }
COUNTY OF SUMTER) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
13-GS-43-1067

TRE'VAUGHN JACKSON,)

 DEFENDANT.)

April 25, 2014
Sumter, South Carolina

B E F O R E :

THE HONORABLE W. JEFFREY YOUNG, JUDGE;
AND JURY

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

JOHN P. MEADORS, ESQ.
Assistant Solicitor

TIFFANY BUTLER, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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1 MR. MEADORS: At this time the State would
2 call indictment, true bill indictment
3 2013-GS-43-1067, the State of South Carolina versus
4 Tre'Vaughn Jackson, attempted murder, attempted
5 murder, possession of a fire-- of a weapon during
6 the commission of a violent crime, and discharging a
7 firearm into a dwelling. Mr. Jackson is here with
8 his attorney, Ms. Tiffany Butler.

9 THE COURT: All right, very good. Now
10 ladies and gentlemen, as the Solicitor said, this is
11 the State versus Tre'Vaughn Jackson. As he said,
12 he's charged with two counts of attempted murder,
13 one count of discharging a firearm into a dwelling,
14 and possession of a weapon during the commission of
15 a violent crime. And I'm gonna read you the
16 indictment exactly as it states. Count one,
17 attempted murder, that Tre'Vaughn Zantay (ph)
18 Jackson in Sumter on or about August 31st, 2013, did
19 violate Section 16-3-29 of the Code of Laws of South
20 Carolina 1976 as amended, in that said Tre'Vaughn
21 Zantay Jackson did with the intent, attempt to kill
22 another person, Frank Cokeley, with malice
23 aforethought either expressed or implied by shooting
24 one Frank Dwayne Cokeley with a handgun at one [REDACTED]
25 [REDACTED] Sumter, South Carolina. Count two

1 states that Tre'Vaughn Zantay Jackson did in Sumter
2 on or about August 31st, 2013, violate Section
3 16-3-29 of the Code of Laws of South Carolina 1976
4 as amended, in that the said Tre'Vaughn Zantay
5 Jackson did with intent to kill, attempt to kill
6 another person, Sylvia Ann Welch, with malice
7 aforethought either expressed or implied by shooting
8 one Sylvia Ann Welch with a handgun at [REDACTED]
9 [REDACTED] Sumter, South Carolina. Count three,
10 possession of a weapon during the commission of a
11 violent crime, that Tre'Vaughn Zantay Jackson did in
12 Sumter County on or about August 31st, 2013, possess
13 a firearm or visibly display what appeared to be a
14 firearm during the commission or attempted
15 commission of a violent crime in violation of
16 Section 16-23-490 of South Carolina Code of Laws.

17 And then finally counts, final count,
18 discharging a firearm into a dwelling that
19 Tre'Vaughn Zantay Jackson did in Sumter County on or
20 about August 31st, 2013, discharge or cause to be
21 discharged unlawfully a firearm at or into a
22 dwelling house or other building or enclosure
23 regularly occupied by persons while it was occupied
24 in violation of Section 16-23-440 of the South
25 Carolina Code of Laws 1976 as amended.

1 Now ladies and gentlemen, the fact that
2 the defendant was arrested, charged, and indicted is
3 not indicative that he is guilty of this charge.
4 The defendant has pled not guilty; therefore, the
5 State will have the burden of proving each and every
6 allegation contained in the indictment beyond a
7 reasonable doubt. And ladies and gentlemen, the
8 indictment is only the official charge document that
9 brings this case into court and in no way implies
10 that he is guilty; so he is, again, he is guilty
11 until proven guilty -- or innocent until proven
12 guilty in this case. Now ladies and gentlemen --

13 MR. MEADORS: Your Honor, may it please
14 the Court, respectfully can we come again? I
15 apologize.

16 THE COURT: Yes, sir.

17 (WHEREUPON, counsel approached the Bench
18 for an off-the-record discussion.)

19 THE COURT: Ladies and gentlemen, there's
20 one change in the indictment. It's Dibert Street,
21 not Dilbert Street, if that makes a difference to
22 some of you. It could be you might live on a
23 particular street so that it is Dibert Street, not
24 Dilbert street. Now ladies and gentlemen, before we
25 select a jury there's several questions that I'm

1 gonna have to ask you, and I'll remind you that you
2 are still under oath from the oath that you took
3 earlier. And now, the reason that you're under oath
4 during these questions is because this is such a
5 crucial stage of the trial. You know, just like a
6 building must have a firm foundation to be strong
7 and protective of those who live in it, so must a
8 jury be strong as the basis of a fair and impartial
9 trial for those who participate, the Solicitor for
10 the State and the defendant who is on trial. And
11 your answers to these questions are the foundation
12 by which these attorneys will build a jury and they
13 are relying on your truthful and complete answers as
14 they go through this process.

15 So ladies and gentlemen, the first
16 question I have is has anybody in the jury panel
17 ever been related by blood or marriage or had any
18 personal or business relationship with the defendant
19 Tre'Vaughn Zantay Jackson or the alleged victim
20 Sylvia Welch and Frank Cokeley, if so, please stand.

21 (There was no response.)

22 THE COURT: Thank you, no one is standing.
23 Now ladies and gentlemen, this is a list of the
24 possible witnesses that we'll have in this case and
25 I'm gonna go through them all, and then I'm gonna

1 ask you if you've ever had a relationship with them.
2 Crime scene Investigator Jacob Mitchell of the
3 Sumter Police Department, crime scene Investigator
4 Joanna Alleck of the Sumter Police Department,
5 Investigator John Litaker of the Sumter Police
6 Department, Sergeant Irene Culick of the Sumter
7 Police Department, Sergeant William Lyons of the
8 Sumter Police Department, Special Agent James W.
9 Green of the State Law Enforcement Division,
10 Jennifer Joe, Jennifer Joe, Joe Tomlin, Julian
11 Tomlin, Lenard Johnson, Santana Bolden, James Dwyer,
12 Shane Cummings, Frank Dwayne Cokeley, Sylvia Ann
13 Welch, Kim Graham of Emergency Medical Service,
14 Steve Ham of the Emergency Medical Service, Darius
15 D. Elkin of the Sumter Police Department, Keith
16 Wiggins, Shaylon Isaac and Rick Morse of the Sumter
17 Police Department. Has any member of the jury panel
18 ever been related by blood or marriage or have a
19 close personal relationship with any of the
20 potential witnesses that I've just named, if so,
21 please stand.

22 Yes, ma'am, state your name and number.

23 THE POTENTIAL JUROR: My name is Debrah
24 Griffin. I think I'm 57.

25 THE COURT: Okay.

1 THE POTENTIAL JUROR: And John Litaker and
2 I are in the same church. I taught Bible school
3 with his wife, and I taught his son in first grade.

4 THE COURT: Would the fact that you have
5 that relationship with Mr. Litaker, or Sergeant
6 Litaker, make it so that you can't be fair and
7 impartial to the State or the Defendant in this
8 case?

9 THE POTENTIAL JUROR: I don't think so.

10 THE COURT: So —

11 THE POTENTIAL JUROR: I think I could —

12 THE COURT: You think you can listen to
13 the evidence and make your decision based upon the
14 evidence, not on the fact that you know Mr. Litaker?

15 THE POTENTIAL JUROR: Yes.

16 THE COURT: Thank you, ma'am.

17 THE CLERK OF COURT: Your Honor, just for
18 clarification that was juror number 56.

19 THE COURT: Yeah, juror number 56. Ladies
20 and gentlemen, the attorneys who will be trying this
21 case are Mr. John Meadors for the Solicitor's
22 Office. Mr. Meadors, would you like to introduce
23 your staff and yourself please.

24 MR. MEADORS: May it please Your Honor.

25 THE COURT: Yes, sir.

1 MR. MEADORS: My name is John Meadors.
2 I'm assistant solicitor. I work for the elected
3 solicitor Ernest Lee "Chip" Finney, III. Mr. Tom
4 Miller is also assisting me in this case from the
5 Solicitor's Office, and Talitha Harrison,
6 Ms. Harrison.

7 THE COURT: Thank you. Ms. Butler, would
8 you like to introduce yourself and then who is
9 working with you on this case.

10 THE POTENTIAL JUROR: Good morning, my
11 name is Tiffany Butler and I work here for the
12 Sumter County Public Defender's Office and I
13 represent Tre'Vaughn Jackson.

14 THE COURT: Ladies and gentlemen, has any
15 member of the jury panel ever been represented by
16 either of these attorneys or anyone who they are
17 working with in the Solicitor's Office or Public
18 Defender's Office, if so, please stand.

19 (There was no response.)

20 THE COURT: Thank you, no one standing.
21 Now ladies and gentlemen, has any juror been the
22 victim of or charged with a violent crime, including
23 but not limited to assault and battery or attempted
24 murder, if so, please stand.

25 (There was no response.)

1 THE COURT: Thank you. Does any juror
2 have family members or friends who have been the
3 victims of or charged with any type of violent
4 crime, if so, please stand.

5 Yes, sir, would you want to come down here
6 and talk privately? Thank you.

7 THE POTENTIAL JUROR: Yes, sir.

8 (Potential juror approached the Bench for an
9 on-the-record discussion.)

10 THE POTENTIAL JUROR: My younger son.

11 THE COURT: And what's your name?

12 THE POTENTIAL JUROR: Timothy Thompson.

13 THE COURT: And you think the fact that
14 your younger son — how old is he?

15 THE POTENTIAL JUROR: He was 18 at the
16 time.

17 THE COURT: That happened 17, 18 years
18 ago? Now would that long ago make it so that
19 you can't be fair and impartial and listen to the
20 evidence in this case?

21 THE POTENTIAL JUROR: There's no doubt in
22 my mind.

23 THE COURT: Okay. He says there's a doubt
24 that he can be fair and impartial based on that so
25 I'm gonna relieve you from this jury. Call back

1 after 6. I'm gonna remain him for cause.

2 (End of on-the-record Bench discussion.)

3 THE COURT: Has any juror read anything
4 about this case in the local paper or heard anything
5 about it in the news, if so, please stand.

6 (There was no response.)

7 THE COURT: Ladies and gentlemen, has any
8 juror ever discussed the facts of this case? If you
9 haven't heard about it it'd be hard for you to do
10 that; but if you have, if you'd please stand at this
11 time.

12 (There was no response.)

13 THE COURT: All right, thank you. Has any
14 member of the jury panel formed or expressed an
15 opinion about any issue or matter involved in this
16 case, if so, please stand.

17 (There was no response.)

18 THE COURT: Is there any member of the
19 jury panel who is aware of any bias or prejudice
20 towards either the State or the Defendant in this
21 case, if so, please stand.

22 (There was no response.)

23 THE COURT: Is there any member of the
24 jury panel who was also on the grand jury that
25 indicted this case? I don't think there would be

1 'cause none of you have been on the grand jury, but
2 I have to ask the question.

3 (There was no response.)

4 THE COURT: Thank you. Now is there any
5 member of the jury panel who is a member of or
6 contributor to any group which has as its primary
7 concern the promotion of law enforcement or victims'
8 rights? These groups would consist of and certainly
9 wouldn't be limited to Mother's Against Drunk
10 Drivers, Students Against Drunk Drivers or Citizens
11 Against Violent Crime, if so, please stand.

12 (There was no response.)

13 THE COURT: All right, thank you. Does
14 any member of the jury panel know any reason
15 whatsoever why he or she should not serve as a juror
16 in this case with particular emphasis being placed
17 on your ability to be fair and impartial to both the
18 State and the Defendant, if so, please stand.

19 (There was no response.)

20 THE COURT: Thank you, no one stood. The
21 State have additional questions they would like for
22 me to ask?

23 MR. MEADORS: No, sir, thank you.

24 THE COURT: Does Defense have any
25 additional questions?

1 MS. BUTLER: None, Your Honor.

2 THE COURT: All right, ladies and
3 gentlemen, what's gonna happen now is, if your name
4 gets called please come forward to the podium. Turn
5 and face the exit sign and the State and the Defense
6 will have an opportunity to strike you. Now ladies
7 and gentlemen, please don't take it personally if
8 you're stricken from the trial of this case. You'll
9 have another opportunity to serve as jurors this
10 week. Each attorney has some idea as to what they
11 think the optimum fair jury would be. So again,
12 it's nothing personal, it's just they have some
13 composite that they're looking for so.

14 Are we ready to proceed?

15 THE CLERK: Yes, sir. Ladies and
16 gentlemen, when your name is called please come
17 forward, stand here in front of the podium, and face
18 the back of the courtroom please. And bring with
19 you any personal belongings that you may have.

20 Juror number 141, Angela Ridgill (white
21 female). What saith the State?

22 MR. MEADORS: Please present the juror.

23 THE CLERK: What saith Defendant?

24 MS. BUTLER: Please seat the juror.

25 THE CLERK: Have a seat in the jury box

1 please, ma'am.

2 Juror number 24, Katherine Clark (white
3 female). What saith the State?

4 MR. MEADORS: Please present the juror.

5 THE CLERK: What saith the Defendant?

6 MS. BUTLER: Please seat the juror.

7 THE CLERK: Have a seat in the jury box
8 please, ma'am.

9 Juror number 138, Louise Rembert (black
10 female). What saith the State?

11 MR. MEADORS: Please present the juror.

12 THE CLERK: What saith the Defendant?

13 MS. BUTLER: Please seat the juror.

14 THE CLERK: Have a seat in the jury box
15 please, ma'am.

16 Juror number 21, Alpha Cabbagestalk (black
17 male). What saith the State?

18 MR. MEADORS: Please present the juror.

19 THE CLERK: What saith the defendant?

20 MS. BUTLER: Please seat the juror.

21 THE CLERK: Have a seat in the jury box
22 please, sir.

23 Juror number 119, Tracy Neill (white
24 male). What saith the State?

25 MR. MEADORS: Please present the juror.

1 THE CLERK: What saith the Defendant?

2 MS. BUTLER: Please excuse the juror.

3 THE CLERK: Have a seat back in the panel.

4 You've been excused from this trial please, sir.

5 Juror number 53, Christopher Geddings

6 (white male). What saith the State?

7 MR. MEADORS: Please present the juror.

8 THE CLERK: What saith the Defendant?

9 MS. BUTLER: Please seat the juror.

10 THE CLERK: Have a seat in the jury box
11 please, sir.

12 Juror number 118, Brantley Nash (white
13 male). What saith the State?

14 MS. BUTLER: Please present the juror.

15 THE CLERK: What saith the defendant?

16 MS. BUTLER: Please seat the juror.

17 THE CLERK: Have a seat in the jury box
18 please, sir.

19 Juror number 101, Felicia McCoy (black
20 female). What saith the State?

21 MR. MEADORS: Please present the juror.

22 THE CLERK: What saith the Defendant?

23 MS. BUTLER: Please seat the juror.

24 THE CLERK: Have a seat in the jury box
25 please, ma'am.

1 Juror number 114, Fannie Moore (black
2 female). What saith the State?

3 MR. MEADORS: Please present the juror.

4 THE CLERK: What saith the Defendant?

5 MS. BUTLER: Please seat the juror.

6 THE CLERK: Have a seat in the jury box
7 please, ma'am.

8 Juror number 112, Michael Mixon (white
9 male). What saith the State?

10 MR. MEADORS: Please present the juror.

11 THE CLERK: What saith the Defendant?

12 MS. BUTLER: Please excuse this juror.

13 THE CLERK: Have a seat back in the panel.
14 You've been excused from this trial please, sir.

15 Juror number 56, Debrah Griffin (white
16 female). What saith the State?

17 MR. MEADORS: Please present the juror.

18 THE CLERK: What saith the Defendant?

19 MS. BUTLER: Please excuse this juror.

20 THE CLERK: Have a seat back in the panel.
21 You've been excused from this trial please, ma'am.

22 Juror number 158, Sherquana Strasley
23 (black female). What saith the State?

24 MR. MEADORS: Please present the juror.

25 THE CLERK: What saith the Defendant?

1 MS. BUTLER: Please seat the juror.

2 THE CLERK: Have a seat in the jury box
3 please, ma'am.

4 Juror number 54, Doretha Graham (black
5 female). What saith the State?

6 MR. MEADORS: Please present the juror.

7 THE CLERK: What saith the Defendant?

8 MS. BUTLER: Please seat the juror.

9 THE CLERK: Have a seat in the jury box
10 please, ma'am.

11 Juror number 63, Delilah Hayes (black
12 female). What saith the State?

13 MR. MEADORS: Please present the juror.

14 THE CLERK: What saith the Defendant?

15 MS. BUTLER: Please seat the juror.

16 THE CLERK: Have a seat in the jury box
17 please plan.

18 Juror number 5, Douglas Baker (white
19 male). What saith the State?

20 MR. MEADORS: Please excuse the juror.

21 THE CLERK: Have a seat back with the
22 panel. You've been excused from this trial please,
23 sir.

24 Juror number 173, Johnny Wells (black
25 male). What saith the state?

1 MR. MEADORS: Please present the juror.

2 THE CLERK: What saith the Defendant?

3 MS. BUTLER: Please seat the juror.

4 THE CLERK: Have a seat in the jury box
5 please, sir.

6 THE COURT: Two alternates.

7 THE CLERK: Alternate juror, juror number
8 116, Blaine Moss (white male). What saith the
9 State?

10 MR. MEADORS: Please present the juror.

11 THE CLERK: What saith the Defendant?

12 MS. BUTLER: Please seat the juror.

13 THE CLERK: Have a seat in the jury box
14 please, sir.

15 Juror number 99, Michele Baxley (white
16 female). Maxey, I'm sorry. Maxey. What saith the
17 State?

18 MR. MEADORS: Please present the juror.

19 THE CLERK: What saith the Defendant?

20 MS. BUTLER: Please seat the juror.

21 THE CLERK: Have a seat in the jury box
22 please, ma'am. Ladies and gentlemen, when I call
23 your name please raise your hand. Angela Ridgill,
24 Katherine Clark, Louise Rembert, Alpha Cabbagestalk,
25 Tracey Neill — I'm sorry, that one has been excused

1 by the Defense. Christopher Geddings, Brantley
2 Nash, Felicia McCoy, Fannie Moore, Michael Mixon —
3 I'm sorry, that was excused by the defense also.
4 Debrah Griffin. No, another one excused. Sherquana
5 Strasley. I'll get it in a minute. Debrah Graham,
6 Doretha Graham, Delila Hayes, Johnny Wells, Blaine
7 Moss, Michele Maxey. Okay.

8 THE COURT: Thank you, Mr. Bradley.

9 Ladies and gentlemen, y'all have been
10 selected as the jury for this trial. I'm gonna send
11 you back in the jury room for just a few minutes and
12 then I'm gonna bring you back out here and talk to
13 you a few more minutes before I let you go. So
14 please, while you're back there don't discuss
15 anything about the case. But if you want to go
16 ahead and select who your foreperson will be for
17 this jury, it can be any of the primary jurors but
18 it cannot be the two alternates, okay. Thank you,
19 ladies and gentlemen. I'll see y'all in just a few
20 minutes. Thank you.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 12:04 p.m., and the following
23 proceedings commenced in open court.)

24 THE COURT: Is there any objection to the
25 jury that has been selected or the manner which they

1 were selected from the State?

2 MR. MEADORS: Nothing from the State.

3 THE COURT: From the Defense?

4 MS. BUTLER: None, Your Honor.

5 THE COURT: All right, let's bring our
6 jury back.

7 (WHEREUPON, the jury was returned to the courtroom
8 at approximately 12:10 p.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: Thank you, ladies and
11 gentlemen. Did y'all get a chance to select who
12 your foreman will be? Well, y'all have overnight.
13 We're not gonna start this trial until tomorrow
14 morning at 9:00. Ladies and gentlemen, let me
15 remind you, please do not discuss anything about
16 this case with anyone while you go home for the
17 evening. And you know, one of the easiest ways to
18 do that is don't tell anybody you're on a jury. And
19 I mean, there's some people you have to tell. I
20 wouldn't go broadcast it. What's gonna happen, then
21 somebody is going to say, well, you know, when I had
22 jury service one time and the jury I was on this is
23 what happened. Well, you don't need to hear that,
24 okay? This is a very special case. This is
25 everything just applies to this case so don't go out

1 there and get any advice from any other person as to
2 how to be a good juror in this case. I used to work
3 at the National Security Agency as Air Force
4 Reservist and NSA then meant never say anything so
5 that's kind of the best way. So don't discuss the
6 case with anyone even amongst yourself. If there's
7 anything in the newspaper tomorrow I would advise
8 you, please don't read The Item in the morning.
9 There could be something in there. I don't know
10 what it would be, but you don't need to hear it.
11 Okay, so ladies and gentlemen, have a nice evening,
12 be back here at 9:30 in the morning and they'll tell
13 you exactly where you need to be. And when y'all
14 are assembling tomorrow morning please select who
15 your foreperson will be. All right, thank you,
16 ladies and gentlemen, have a nice evening. And I
17 won't tell anybody you're off this afternoon so that
18 will be up to y'all and your conscience. Thank you.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 12:14 p.m., and the following
21 proceedings commenced in open court.)

22 THE COURT: Solicitor and Ms. Butler, I
23 understand y'all have a couple of motions this
24 afternoon. How long do y'all think that will take?

25 MR. MEADORS: Your Honor, Neil versus

1 Biggers hearing is two witnesses and it shouldn't
2 take 20 minutes or so. And then the Jackson v.
3 Denno is a audio. Detective Lyons, that will
4 probably out of abundance of caution just need to
5 play it for the Court. And then some of it I —
6 should not come in, but there are some parts of it
7 we would like.

8 THE COURT: About how long is it?

9 MR. MEADORS: Give or take 30, 35 minutes,
10 I'm not sure; but it may be — Investigator Lyons
11 told it might be 40, but it's not very long. But I
12 think we'll be able to get to it pretty quick about
13 what is, isn't admissible. I'd like to play that
14 for the Court.

15 THE COURT: Why don't y'all be back here
16 at 2:00 where we will take up those motions at that
17 time.

18 MR. MEADORS: Thank you.

19 THE COURT: All right, court's adjourned
20 until 2:00.

21 (WHEREUPON, a lunch break was taken.)

22 (WHEREUPON, State Exhibits Nos. 1 through
23 6 were marked for identification only.)

24 THE COURT: Are we ready to proceed?

25 MR. MEADORS: Yes, sir. Detective

1 Sergeant Billy Lyons.

2 THE COURT: Which is this?

3 MR. MEADORS: Jackson v. Denno.

4 THE COURT: Okay.

5 THE CLERK: Place your left hand on the
6 Bible, raise your right hand. State your name
7 please.

8 THE WITNESS: William Lyons.

9 WHEREUPON,

10 **WILLIAM LYONS,**

11 having been duly sworn by the Clerk of Court,
12 testified as follows:

13 THE CLERK: Please state your full name,
14 spell your last name for the record.

15 THE WITNESS: William Lyons, L-Y-O-N-S.

16 **DIRECT EXAMINATION**

17 BY MR. MEADORS:

18 Q Good afternoon, Detective.

19 A Good afternoon, sir.

20 Q I'm gonna ask you now about the opportunity you
21 had to speak with Tre'Vaughn Jackson on September
22 1st, 2013.

23 A Yes, sir.

24 Q That's exclusively what we're gonna be talking
25 about in this proceeding, okay?

1 A Okay.

2 Q And where did you have a chance to talk with the
3 defendant?

4 A At the Sumter Police Department.

5 Q Specifically where were you?

6 A In our office in the property crimes office at
7 the time.

8 Q And who else was in there with you, if anybody?

9 A Detective Morse.

10 Q And what time was this on September 1st, 2013?

11 A According to the interview form it was 1:40 a.m.

12 Q And at this point had the defendant become a
13 suspect?

14 A He was.

15 Q And in the incident we're here about trying today
16 on Dibert Street?

17 A That's correct.

18 Q Did you have an occasion to read the defendant
19 Tre'Vaughn Jackson his Miranda rights?

20 A I did.

21 Q Could you please read them for His Honor as you
22 did for Mr. Jackson at 1:40 on September 1st, 2013?

23 A Okay. On that morning when Mr. Jackson was
24 brought in I went over our standard Sumter Police
25 Department interview form with him. The form reads

1 as follows: Before we ask you any questions you
2 must understand your rights. You have the right to
3 remain silent. Anything you say can be used against
4 you in court. You have the right to talk to a
5 lawyer for advice before we ask you any questions
6 and to have him or her with you during the
7 questioning. If you cannot afford a lawyer one will
8 be appointed for you before any questioning if you
9 wish. If you decide to answer any questions now
10 without a lawyer present, you'll still have the
11 right to stop answering at any time until you talk
12 with a lawyer.

13 Q Let me stop you there. And this is what's marked
14 State's 1 for identification, correct?

15 A That's correct.

16 Q Prior to that had you had any background talk or
17 acquired any knowledge about Mr. Jackson as far as
18 how far he'd gone in school or anything about his
19 background?

20 A I was a little familiar with him but not as far
21 as educational or anything like that, no, sir.

22 Q And for these purposes you can say how were you
23 familiar with it.

24 A I had dealings with him in the past, other
25 criminal investigations.

1 Q Okay. So based on that did you feel he

2 understood what was going on?

3 A I did.

4 Q Okay. Had you had a chance to read him his

5 rights previously?

6 A Me personally, no, sir.

7 Q But you know he'd been through the system before?

8 A That's correct.

9 Q Been charged before?

10 A That's correct.

11 Q Now when you were talking to him and you were

12 reading him his Miranda rights did he appear to

13 understand the rights as you read them?

14 A He did.

15 Q And could you understand the defendant when he'd

16 respond to you?

17 A I did.

18 Q And as you were reading through each one of the

19 rights you just read His Honor, did he indicate to

20 you that he understood them?

21 A He did at the end after I read the entire form.

22 Q Okay.

23 A He understood 'cause I asked the question, you

24 understand everything that I just read to you, and

25 he replied, yes.

1 Q And did he ask for a lawyer?

2 A No, he did not.

3 Q Now go ahead and read the waiver of rights as you
4 read them to Mr. Jackson on September 1st, 2013.

5 A After the last advisement of his rights: This is
6 our waiver of rights. Before any questioning I was
7 furnished the above statement of my rights at
8 1:40 a.m. on September the 1st, 2013 at LEC — which
9 is an abbreviation for law enforcement center — by
10 Officer Sergeant Lyons of the Sumter Police
11 Department. I have read or had read to me this
12 statement of my rights. I understand what my rights
13 are. I'm willing to answer questions at this time
14 without a lawyer present. No promises or threats
15 have been made to me and no pressure has been used
16 against me.

17 Q And I believe you stated previously; but when you
18 got through reading all of it, you asked him if he
19 understood?

20 A I did.

21 Q And did he indicate to you he did?

22 A He did.

23 Q And other than oral did he indicate to you in any
24 other way he understood these, his rights, and
25 waived them?

1 A General body language. He didn't object to them.

2 He didn't —

3 Q And did he sign? And did he sign his signature?

4 A Yes, he did. He signed his signature dated 9/13

5 at 1:40 a.m., witnessed by myself and Detective

6 Morse.

7 Q Did the defendant appear to be under the

8 influence of any alcohol, drugs, or any other

9 intoxicants?

10 A No, sir, he did not.

11 Q And during the waiver of these, reading of his

12 rights, waiver of his rights, did you threaten him?

13 A No, sir.

14 Q Did you coerce him?

15 A No, sir.

16 Q Did you hold out any hope of reward?

17 A No, sir.

18 Q Now did you audiotape him?

19 A We did.

20 Q And is the reading of the rights and the waiver

21 on the audiotape?

22 A It is.

23 Q Now have you had an occasion to review or listen

24 to the audiotape?

25 A I have.

1 Q And does it accurately depict your conversation
2 with the defendant Tre'Vaughn Jackson on September
3 1st, 2013?

4 A It does.

5 MR. MEADORS: Your Honor, the court
6 reporter has marked the interview as State's Number
7 1. At this time we'd like to publish it.

8 THE COURT: All right, you may publish.
9 (State's Exhibit No. 1 was played for the Court.)

10 MR. MEADORS: Stop it please.

11 BY MR. MEADORS:

12 Q What did he say?

13 A Yes, sir.

14 Q Then did he sign the form?

15 A He did.

16 Q And based on the actual time you were with
17 Tre'Vaughn Jackson and your experience and training,
18 did he understand them in your opinion?

19 A He did.

20 Q Okay. Did he ever ask any questions about any of
21 them —

22 A No, sir.

23 Q —prior to signing? Okay.

24 (Continued playing of State's Exhibit No. 1.)

25 BY MR. MEADORS:

1 Q And Detective, when you asked him for his
2 birthday was he able to come right out with his
3 birthday?

4 A He was.

5 Q So he appeared to understand your question?

6 A He did.

7 Q Thank you.

8 (Continuing playing of State's Exhibit No. 1.)

9 BY MR. MEADORS:

10 Q Is that Rick Morse?

11 A Yes, sir.

12 (Continued playing of State's Exhibit No. 1.)

13 BY MR. MEADORS:

14 Q At that point is there a second part of the
15 interview?

16 A There is.

17 Q And why was it broken up?

18 A Could have been something wrong with the
19 recorder; the battery could have died. But for
20 whatever reason, it stopped it right there, and then
21 you had to press the record button to again to
22 restart the recorder.

23 Q But did you ever leave the room or?

24 A When you heard that phone ring that was me that
25 left the room. When this second part comes back on,

1 you'll hear myself reentering the room so for during
2 that duration where after that telephone rang, I was
3 out of the room and it was Detective Morse and the
4 defendant Mr. Jackson in the room.

5 MR. MEADORS: And Your Honor, just for
6 record purposes at this point I marked down as 1930
7 when they started talking about prior record and all
8 of that. We certainly wouldn't offer any of that so
9 I think if Your Honor allows it, that 1930 on, we
10 wouldn't be offering of that first part.

11 THE COURT: Yeah, I wouldn't —

12 MR. MEADORS: Everything after that —

13 THE COURT: Highly prejudicial.

14 (Second part of State's Exhibit No. 1 was played.)

15 MR. MEADORS: How much longer?

16 THE WITNESS: Probably another at least 20
17 to 30 minutes. I know at one point Sergeant Culick
18 comes to speak with him as well.

19 MR. MEADORS: Keep going, thank you.

20 (Continued playing of State's Exhibit No. 1.)

21 THE WITNESS: I want to say the second
22 section is about 45, 49 minutes total I believe.

23 THE COURT: Ms. Butler, is the question
24 here whether it was a voluntarily statement or not?

25 MS. BUTLER: Yeah, and there are also —

1 THE COURT: Please stand.

2 MS. BUTLER: I'm sorry, Your Honor. There
3 are also some issues within that statement I wanted
4 to address, put on the record at the appropriate
5 time.

6 THE COURT: Okay.

7 MR. MEADORS: I think that's why we felt
8 as though play the whole thing just so Your Honor
9 can hear it all.

10 THE COURT: I mean, stop it for a second.
11 I mean, I'm hearing the ones where he's saying you
12 going back to pod 3 or B pod and ain't been out
13 three weeks. Is that the stuff you're objecting to?

14 MS. BUTLER: And as far as the
15 voluntariness of the statement I don't have any
16 questions for Detective Lyons. But in addition to
17 any mention of my client being in jail and any other
18 charges that he had been arrested for, obviously
19 that's prejudicial. But I'm also concerned about
20 the mention of other people seeing him and putting a
21 gun in his hand and saying he was present. I would
22 just argue that's hearsay.

23 THE COURT: Yeah, that's him saying it so
24 none of that is coming in. I mean, that's not him
25 stating it. It's the State's — they can say

1 anything they wanted to practically. I mean, he
2 denied each one of them from that standpoint; but
3 my — I would tend to agree that those type things
4 would not be admissible.

5 MR. MEADORS: Judge, I agree. What I —
6 as we've gone through I've done before kind of
7 highlighted where that starts, getting time, any of
8 that kind of stuff. I think basically what we were
9 trying to show is that he puts himself at
10 Porter/Dibert side beside, puts himself at Porters
11 going to see somebody to get some Lucies. We have
12 not — doesn't remember their name, clearly puts him
13 in the area, very close to where this happened.
14 Other witnesses put him actually at the scene.
15 That's what we're offering it for, not for any other
16 comments or prior record. Obviously we wouldn't
17 attempt to get that in.

18 THE COURT: Right. I mean, as long as
19 y'all know where I'm coming from on this without
20 listening to another 45 minutes semi dead ear. You
21 know, if he asked a question then it's saying, you
22 know, I got other — I've got, that's clearly, would
23 be, that's hearsay. And so those type things
24 they're not coming in and any reference, you know,
25 you're going back to the pokey type stuff, that

1 certainly can't come in.

2 MR. MEADORS: Judge, I marked all those.
3 One part, I guess, the question I want to be clear
4 on is when he's asking particular, okay, tell me
5 about this house you went to. When he's responding
6 to his answers we'd like that to come in.

7 THE COURT: I don't think there's a
8 problem. That's an open question that doesn't
9 incriminate any question, but some of the other ones
10 were incriminating in the question. This is saying
11 tell me about the house; he answers that. I mean, I
12 don't think that's objectionable and I certainly
13 think it was, as you admitted, it's voluntary. This
14 is open conversation. It's just — testimony of the
15 questions, would be inadmissible.

16 MR. MEADORS: And Judge, if over the
17 course of tonight and tomorrow, obviously we'll get
18 this done where none of the bad stuff comes out and
19 then the issue will become easier just for him to
20 testify to it instead of cutting back and forth on
21 this. I guess that's a decision I have to make —

22 THE COURT: Yeah, that —

23 MR. MEADORS: And her objection maybe,
24 Your Honor, but we — Your Honor, we will obviously
25 the rest of 25 minutes we'll go through it again,

1 and the detective tonight, and look for that obvious
2 stuff and certainly will not offer any of that.

3 THE COURT: Okay.

4 MR. MEADORS: To save the Court time.

5 THE COURT: Let's to that, yeah.

6 MR. MEADORS: I just have a few final
7 questions though.

8 THE COURT: Okay.

9 BY MR. MEADORS:

10 Q Is the individual that gave you this statement in
11 the courtroom?

12 A Yes, sir.

13 Q And at any time did he tell you, stop, I don't
14 want to talk to you or get me a lawyer?

15 A No, sir.

16 Q And if he had what would you have done?

17 A We would have ceased our interview at that time.

18 Q Would you please point out the —

19 A The defendant Tre'Vaughn Jackson.

20 MR. MEADORS: Thank you, Judge, that's
21 all.

22 THE COURT: Ms. Butler, any questions?

23 MS. BUTLER: I have no questions of this
24 witness.

25 THE COURT: Thank you. You may step down.

1 MS. BUTLER: Thank you, Your Honor.

2 THE COURT: Assuming y'all worked out all
3 the little details of the individual questioning
4 then certainly comes in, if they want it. All
5 right.

6 MR. MEADORS: Just give me one second to
7 get my next witness.

8 THE COURT: Let's all take five minutes.

9 (WHEREUPON, a recess was taken from the
10 proceedings.)

11 MR. MEADORS: Santana Bolden.

12 (WHEREUPON, State Exhibits Nos. 7 and 8
13 were marked for identification only.)

14 THE CLERK: Place your left hand on the
15 Bible, raise your right hand. State your name
16 please.

17 THE WITNESS: Santana Bolden.

18 WHEREUPON,

19 **SANTANA BOLDEN,**
20 having been duly sworn by the Clerk,
21 testified as follows:

22 THE CLERK: Thank you. Have a seat up
23 here please. State your full name and spell your
24 last.

25 THE WITNESS: Santana Bolden, B-O-L-D-E-N.

DIRECT EXAMINATION

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BY MR. MEADORS:

Q Good afternoon, Ms. Bolden.

A Good afternoon.

Q Now you're gonna have to speak up where the judge
can hear you, okay. Please speak into this
microphone.

A Good afternoon.

Q Tell the judge a little bit about yourself.
Where are you from?

A Sumter.

Q Where'd you go to school?

A Crestwood.

Q How far did you go? Did you finish Crestwood?

A No.

Q How far?

A Eleventh grade.

Q And when did you get out? What year was it when
you got out the eleventh grade?

A That was 2013.

Q Okay. So just last year?

A Yes, sir.

Q What did you do after that?

A Signed up for job corp.

Q All right. And where did you do that?

1 A I didn't start yet.

2 Q Did you ever go to voc ed? Vocational education?

3 A Yes, sir.

4 Q When did you do that?

5 A That was the beginning of last year.

6 Q So the beginning of last year you started —

7 A Yes, sir.

8 Q —voc ed? And are you waiting for your job corp
9 now?

10 A Yes, sir.

11 Q All right. And you've applied?

12 A Yes, sir.

13 Q I want to go back about a year ago, August 31st,
14 2013, what we're here talking about. You know what
15 we're here about, right?

16 A Yes, sir.

17 Q And you're familiar with Porter Street and Dibert
18 Street?

19 A Yes, sir.

20 Q How are you familiar with those places?

21 A Live over there.

22 Q Say it again?

23 A Live over there.

24 Q And you live over there. And which street do you
25 live on? You don't have to give the address. Which

1 street do you live on?

2 A Dibert.

3 Q And how long have you been on Dibert?

4 A Like a year now.

5 Q Do you know the incident where there was a fight
6 and the shooting took place?

7 A Yes, sir.

8 Q Okay. What street was that on?

9 A Dibert.

10 Q All right. And how far did you live from that
11 location?

12 A Like the house — two houses over.

13 Q Some of the other family member lives in that
14 area?

15 A Yes, sir.

16 Q Who is that?

17 A My mother.

18 Q Okay. And did you have an occasion to be near
19 Dibert Street when this incident happened?

20 A Yes, sir.

21 Q Can you tell the judge why were you there.

22 A Being nosy like the rest of the people.

23 Q Being nosy?

24 A See what was going on.

25 Q Okay. Well, prior to this shooting what did you

1 know had transpired? You can testify about that
2 right now. What had been going on?

3 A A period of fighting went on. Some boys came
4 back with bats and chains and stuff acting crazy.

5 Q Did you know who the fight had been between?

6 A Yes, sir.

7 Q Tell the judge who that was.

8 A It was Lenard and Keith and Camel.

9 Q All right. You and I know who that is but the
10 judge doesn't. Who is Lenard? What's his last
11 name?

12 A Johnson.

13 Q All right. And what's Keith's last name?

14 A Williams.

15 Q And you mentioned another fella, Camel, who is
16 that?

17 A I don't know his last — he's right there.

18 Q Okay.

19 THE COURT: Would you raise your hand?

20 (Person in gallery raises his hand.)

21 BY MR. MEADORS:

22 Q That's who you're referring to as Camel? Is that
23 Mr. Frank Dwayne Cokeley?

24 A Yes.

25 Q So you're saying that there had been a fight,

1 some kind of altercation between them two, right?

2 A Yes, sir.

3 Q So you're out around this house at Dibert Street
4 being nosy?

5 A Yes, sir.

6 Q Part of being nosy watching what was going on?

7 A Yes, sir.

8 Q All right. And how far were you from the house
9 where this incident — let me show you this picture,
10 State's Number 5 for ID. Do you recognize this?

11 A Yes, sir.

12 Q Is that the — where this incident took place?

13 A Yes, sir.

14 Q And can you describe to the judge — what time of
15 day was it when this happened on August 31st, 20 13?

16 A It was later on in the evening sometime.

17 Q Was the sun still out?

18 A Yes, sir.

19 Q Could you see?

20 A Yes, sir.

21 Q Was it raining?

22 A No, sir.

23 Q All right. Tell the judge what you saw.

24 A Well, I saw boys came, bum-rushed in the house,
25 and the owner tried to push him out and there was

1 gunshots fired.

2 Q And did you know some of these, as you say boys,
3 that were bum-rushing the house?

4 A Yes, sir.

5 Q Who do you know was there?

6 A It's someone named no — Shaylon, Nard, Keith,
7 and I can't remember some of the other names.

8 Q Okay. Are Nard and Keith related?

9 A Yes, sir.

10 Q Would you know Lenard Johnson and Keith Williams?

11 A Yes, ma'am.

12 Q How far were you from that group of young men
13 when you saw them coming up the street?

14 A I was like on the back corner of the house.

15 Q Okay. I'm gonna show you some pictures in a
16 moment.

17 A Okay.

18 Q Did you see the folks coming down the road?

19 A Yes, sir.

20 Q And what road was that they were coming down?

21 A Porter.

22 Q And then what did you see them do?

23 A Just came like busted glass, bum-rushed in the
24 house.

25 Q Okay. And you saw that?

1 A Yes, sir.

2 Q What happened after that? Did you hear anything?

3 A Yes, sir.

4 Q Go ahead, what'd you hear?

5 A Yelling, gunshots.

6 MR. MEADORS: Now with Your Honor's
7 permission I'm gonna approach the witness.

8 THE COURT: You may.

9 BY MR. MEADORS:

10 Q You identified State's 5 earlier, right?

11 A Yes, sir.

12 Q And is that the house where the fight was?

13 A Yes, sir.

14 Q Can you show the judge the best that you can on
15 these where on State's 5 you were standing?

16 A Right here.

17 Q And is that the back of the residence?

18 A Yes, sir.

19 Q And when you saw the people bum-rushing were they
20 coming from the front of the residence?

21 A Yes, sir.

22 Q So you had been around there earlier?

23 A Yes, sir.

24 Q Did you see anybody else back here?

25 A Yes, sir.

- 1 Q Had you seen that person before?
- 2 A Yes, sir.
- 3 Q Where had you seen him before?
- 4 A Picked up someone from adult ed.
- 5 Q Say it one more time?
- 6 A Picked up someone from adult ed.
- 7 Q So you had seen this person at adult ed?
- 8 A Yes, sir.
- 9 Q Did you know that person?
- 10 A No, sir.
- 11 Q But you recognized from seeing him at adult ed?
- 12 A Yes, sir.
- 13 Q And was that the same person that you saw back
- 14 behind this house on Dibert Street?
- 15 A Yes, sir.
- 16 Q And what did you see this person doing, if
- 17 anything?
- 18 A Firing shots.
- 19 Q Firing shots?
- 20 A Yes, sir.
- 21 Q And tell the judge how far you were from him?
- 22 A Right, right beside him.
- 23 Q Well, when you say right beside him what do you
- 24 mean?
- 25 A Like you right there I was like — right there

1 (indicating).

2 Q Were you behind him?

3 A No.

4 Q Beside him. And so the record reflect this is
5 about what, 3 or 4 feet?

6 A Yes, sir.

7 Q And you saw this individual fire. What were they
8 firing? Where were they firing?

9 A In the air.

10 Q Did they fire into the house trailer?

11 A Yes, sir.

12 Q And you saw that?

13 A Yes, sir.

14 Q Were you scared?

15 A Yes, sir.

16 Q You reluctant about being here today?

17 A Sir?

18 Q Are you anxious about being here today?

19 A Yes, sir.

20 Q What did you do after you heard the shots?

21 A Just sitting there standing right there, same
22 spot.

23 Q Did that scare you?

24 A Yes, sir.

25 Q What did everybody else do?

- 1 A Like after the incident happened?
- 2 Q Well, yes, ma'am, after the shots?
- 3 A Everybody left running down Porter.
- 4 Q So is the front of the house on Dibert or Porter?
- 5 A Dibert.
- 6 Q Which road had the young men come walking down?
- 7 A Porter.
- 8 Q And they bum-rushed the front?
- 9 A Yes, sir.
- 10 Q And this person in the back shooting?
- 11 A Yes, sir.
- 12 Q Where did everybody go after the shots?
- 13 A Everybody just ran down Porter.
- 14 Q And did you know who was inside the trailer?
- 15 A Yes, sir.
- 16 Q Who was in there?
- 17 A Miss Sylvia, Camel.
- 18 Q Is this Miss Sylvia back here?
- 19 A Yes. And some more people that stay in that.
- 20 Q Did you say Camel after that?
- 21 A Yes, sir.
- 22 Q Is that Dwayne Cokeley again?
- 23 A Yes, sir.
- 24 Q What happened after everybody ran away?
- 25 A Police were called and they were investigating.

1 Q And did you have an occasion to get Sergeant
2 Irene Culick come in your life, this young lady
3 right here?

4 A Yes, sir.

5 Q And where did you see her?

6 A She was on Dibert, see her on Dibert Street.

7 Q And did you give the sergeant a description of
8 the person you saw firing into the trailer on Dibert
9 Street?

10 A Yes, sir.

11 Q Can you tell the judge what description you gave
12 her.

13 A Light brown, chunky, and facial hair.

14 Q And did you tell her that you had seen him before
15 at voc rehab?

16 A Yes, sir.

17 Q Now do you remember whether or not Sergeant
18 Culick showed you a group of pictures?

19 A Yes, sir.

20 Q I'm gonna show you what's marked State's 7. Do
21 you recognize State's number 7?

22 A Yes, sir.

23 Q And did you have an occasion to view these
24 pictures?

25 A Yes, sir.

1 Q All right. And if I ask it again, I'm sorry, I'm
2 just tired, where were you when you saw these?

3 A At my mama's.

4 Q So she came to your mama's place?

5 A Yes, sir.

6 Q And did she suggest to you anybody to pick out
7 or?

8 A No, sir.

9 Q She try to cheat and tell you to pick out one
10 person or another?

11 A No, sir.

12 Q And did she ask you if you recognize anybody in
13 there?

14 A Yes, sir.

15 Q And were you able to recognize anybody?

16 A Yes, sir.

17 Q Who did you pick out?

18 A (Indicating.)

19 Q Tell the judge what number that is.

20 A Five.

21 Q And it's circled. Whose initials are those?

22 A Mines.

23 Q And why did you pick out number 5, Miss Bolden?

24 A Because it fits my description.

25 Q Was that the person you saw shooting?

- 1 A Yes, sir.
- 2 Q All right. Any doubt in your mind?
- 3 A No, sir.
- 4 Q And did she ask you to fill out a form here in
5 addition to that, State's 8 for I.D.? Do you
6 remember that?
- 7 A Yes, sir.
- 8 Q And is number five crossed out?
- 9 A Yes, sir.
- 10 Q And whose name is that there?
- 11 A Mine.
- 12 Q Was there anything blocking your view, anything
13 between you and this number 5 who you said was
14 shooting into the trailer?
- 15 A No, sir.
- 16 Q So you had a clear view of him?
- 17 A Yes, sir.
- 18 Q It may be going a little closer to State's 4.
19 Can you show the judge on here. And this a little
20 closer than State's 5. This is kind of a closer
21 shot. Can you give us an idea where you were on
22 State's Number 4 for ID?
- 23 A (Indicating.)
- 24 Q Where was the shooter?
- 25 A Right there (indicating).

1 Q Now based on the time you were on Dibert Street
2 outside this residence on August 31st of 2013, is
3 the person that you saw fire into Dibert Street
4 where this happened in this courtroom today?

5 A Yes, sir.

6 Q Would you point him out for the judge?

7 A (Indicating.)

8 Q Sitting next to Ms. Butler? The defendant?

9 A Yes, sir.

10 Q And you met with Ms. — well, let me ask you,
11 this shooting happened on August 31st?

12 A Yes, sir.

13 Q And what day was it you met with Sergeant Culick
14 and you picked the defendant out of the lineup?

15 A September first 1st at 8:43 p.m.

16 Q So the next day?

17 A Yes, sir.

18 Q Thank you. That's all.

19 A You're welcome.

20 THE COURT: Ms. Butler.

21 MS. BUTLER: Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 BY MS. BUTLER:

24 Q It's Santana?

25 A Yes, sir, I mean, yes, ma'am.

1 Q And you said you live on Dibert Street?

2 A Yes, ma'am.

3 Q Who do you live with?

4 A Miss Sylvia.

5 Q Okay. So where were you — where did you live
6 then?

7 A On Porter.

8 Q You lived on — when the night or the day this
9 happened you lived on Porter Street?

10 A Yes, ma'am.

11 Q Okay. And how far away on Porter Street did you
12 live? How many houses, how many houses away did you
13 live from this trailer—

14 A There wasn't ---

15 Q —that we're talking today?

16 A It's like right across the street.

17 Q Okay. It's across the street?

18 A Yeah.

19 Q Okay. And you testified that you came outside,
20 and you were being nosy with everybody else so there
21 were other people outside watching?

22 A Yes, ma'am.

23 Q About how many people do you remember were
24 outside watching?

25 A One more.

1 Q One other person other than you?

2 A Yes, ma'am.

3 Q Where did that person come from?

4 A He was rights beside me he was.

5 Q Did you know that person?

6 A Yes, ma'am.

7 Q Did you give the police that person's name?

8 A No, ma'am.

9 Q And you also testified a few minutes ago that you
10 saw the defendant firing the shot. Do you remember
11 anybody else standing in the back with the
12 defendant?

13 A It was someone in some yellow shorts.

14 Q Somebody in yellow shorts. Did you know that
15 person?

16 A Name Main or Man —

17 Q Main?

18 A Yes, ma'am.

19 Q And you said, I think Mr. Meadors asked you what
20 did you do when you heard the shots and you said you
21 stood in the same spot?

22 A Yes, ma'am.

23 Q So you didn't run?

24 A No, ma'am.

25 Q So you saw these gunshots and you just stood

1 there where you were?

2 A Yes, ma'am.

3 Q Was anybody else running away?

4 A No, ma'am.

5 Q So nobody else was running. You didn't see
6 anybody running when you heard those gunshots or
7 when you saw these gunshots?

8 A No, ma'am.

9 Q Nobody else was running?

10 A No, ma'am.

11 Q So just you and that other person standing out
12 there watching the gunshots?

13 A Yes, ma'am.

14 Q Okay. And you mentioned a few minutes ago that
15 you had given the police officer a description —

16 A Yes, ma'am.

17 Q —of the person you saw shooting?

18 A Yes, ma'am.

19 Q Did you ever write that down and give it to the
20 police officer?

21 A Yes, ma'am.

22 Q You wrote a statement down?

23 A Yes, ma'am.

24 Q What did you do with that statement?

25 A What do you mean?

1 Q: What happened — okay, you said that you wrote
2 down the description of the person you saw shooting.
3 What did you do with it? Did you give it back to
4 the officer, did you keep it?

5 A What did I read the statement?

6 Q Did you write down? You said you gave the
7 officer a description of the person you saw
8 shooting. Did you write the description down for
9 someone to read it?

10 A Like with my own hands?

11 Q Yeah. Or did someone else write it down for you?

12 A The officer write it down for me.

13 Q Okay, the officer wrote it down.

14 A Yes, ma'am.

15 Q But you never wrote anything down?

16 A No, ma'am.

17 Q And on the pictures right there, the photo
18 line-up, you never signed anything?

19 A Yes, ma'am.

20 Q What did you sign?

21 A The paper up there.

22 Q Yeah. Other than that paper did you sign any
23 other papers?

24 A Oh, my initials on a form?

25 Q Yeah. Other than that paper and other than the

1 photo — okay, you signed that paper and you
2 initialed the photo lineup, right?

3 A Yes, ma'am.

4 Q Other than those two things did you sign any
5 other papers or write on any other papers?

6 A No, ma'am.

7 Q You didn't, okay. And this person in the yellow
8 shorts, you saw him shooting?

9 A He had a firearm but he wasn't shooting.

10 Q He had a firearm. So do you remember what this
11 firearm looked like?

12 A Silver, rusty.

13 Q And this is the firearm that the person in the
14 yellow pants had?

15 A Yes, ma'am.

16 Q Okay. And you said you saw the defendant was
17 with a firearm. What did that firearm look like?

18 A Black handgun.

19 Q Black handgun?

20 A Yes, ma'am.

21 Q And then the other one was a silver, you said
22 silver?

23 A Yes, ma'am.

24 Q So how many -- well, you testified that you saw a
25 group of boys bum-rush into the house and you named

- 1 Shaylon, Nard, and Keith, and so those are three.
2 How many do you remember going into the house?
3 A Like six of them.
4 Q Like six or seven?
5 A Yes, ma'am.
6 Q Did you, other than the three that you named, did
7 you know the other ones or had you seen the other
8 ones?
9 A I seen them, but I don't know them.
10 Q You seen them?
11 A Yes, ma'am.
12 Q Okay, so when all this happened you said you were
13 living on Porter Street. Was anybody else home with
14 you?
15 A Yes, ma'am.
16 Q Okay. At what point did you go outside? You
17 said you heard yelling, gunshots. At what point did
18 you first go outside?
19 A When they was fighting.
20 Q When they were fighting?
21 A Yes, ma'am.
22 Q Who else was home with you?
23 A Sylvia — Miss Sylvia's daughter, her son, her
24 grandson.
25 Q No, I mean, when all this happened, not now, when

1 all this happened?

2 A Yeah, those were the ones.

3 Q Okay. And did you talk to the police anymore
4 after you met with them and signed those papers over
5 there?

6 A No, ma'am.

7 Q Did you meet with anyone from the Solicitor's
8 office?

9 A The detective.

10 Q Did you meet with anybody from the Solicitor's
11 Office before you came to court today?

12 A No, ma'am.

13 Q I think those are all my questions.

14 THE COURT: Any followup?

15 **REDIRECT EXAMINATION**

16 BY MR. MEADORS:

17 Q Do you know where the Solicitor's Office is?

18 A No, sir.

19 Q You met with me before?

20 A Yes, sir.

21 Q Okay. Talked about what went on?

22 A Yes, sir.

23 Q Talked with Mr. Tom?

24 A Yes, sir.

25 Q We're with the Solicitor's Office?

1 A Oh.

2 Q So you have talked with us?

3 A Oh.

4 Q Right?

5 A Yeah.

6 Q Now after the gunshots did people run?

7 A Yes, sir.

8 Q Okay, that's all. Thank you.

9 THE COURT: Any redirect, Ms. Butler?

10 MS. BUTLER: No, Your Honor.

11 MR. MEADORS: Thank you, ma'am.

12 THE COURT: Thank you. Now you may step
13 down.

14 MR. MEADORS: Sergeant Irene Culick, our
15 last witness, Judge.

16 THE CLERK: Place your left hand, raise
17 your right hand, state your name please.

18 THE WITNESS: Irene Culick.

19 WHEREUPON,

20 **IRENE CULICK,**

21 having been duly sworn by the Clerk, testified as
22 follows:

23 THE CLERK: Thank you. Have a seat up
24 here please. Please state your full name, spell
25 your last name for the record.

1 THE WITNESS: It's Irene Culick,
2 C-U-L-I-C-K.

3 **DIRECT EXAMINATION**

4 BY MR. MEADORS:

5 Q Good afternoon, Sergeant Irene Culick. I'm gonna
6 ask you specifically today about the time you spent
7 with the last witness Miss Santana Bolden.

8 A Yes, sir.

9 Q Can you tell Your Honor when you first talked to
10 her?

11 A The incident that — the night the incident
12 occurred which was August 31st of 2013, after the
13 shooting incident occurred that evening.

14 Q And was Miss Bolden able to give you a
15 description of someone she said might — or was the
16 shooter?

17 A Yes, she was.

18 Q What description did she give you?

19 A She stated that the person had a chunky type face
20 to her. She stated that he had a little bit of hair
21 under his chin. She told me that he was not —
22 there wasn't much difference in their height. I was
23 trying to get her since she was standing by him, to
24 compare, you know, his size. So she stated that he
25 was close to her size, within an inch or so off.

1 She stated that she had seen him before. She told
2 me that he was wearing a T-shirt that night and
3 jeans. She wasn't quite sure about the shoes. She
4 thought about white tennis shoes. She stated the
5 suspect had a black gun, all black gun in his hand.

6 Q And this was the evening of August 31st of 2013?

7 A Yes, it was.

8 Q After that — so she didn't have a name?

9 A No, she stated what, what I was thinking is that
10 she was so close to him when the shooting occurred
11 that I would get a sketch artist there to try to
12 work with her maybe the following day since it was
13 in the evening time at that point and call someone
14 from SLED in to help us with that. She stated she
15 had seen him before. She did not know his name.
16 But when she was at adult ed, that she had seen him
17 at adult ed before picking up some other boys. She
18 stated he drove a raggedy black or dark colored car,
19 and that she had never talked to him or anything
20 like that, had just seen him from there before so—

21 Q And all that she provided to you on the 31st?

22 A That's correct.

23 Q And —

24 A She was very nervous on the 31st, that's why.

25 Q And tell the judge Porter — and we'll have a map

1 to show later. Porter and Dibert are right beside
2 each other, the two streets, correct?

3 A Correct. You've got Dibert Street and Porter
4 Street and they come around, and there's a curve so
5 you can curve around from Dibert. When you get to
6 this side you're on Porter. And the incident where
7 this happened at the trailer is at the end so you
8 come down, you curve, and you're on Porter.

9 Q And over night into the next morning the
10 defendant was Tre'Vaughn Jackson was developed as a
11 suspect, correct?

12 A That's correct, through other interviews
13 throughout the night.

14 Q And as a result of that did you obtain a picture
15 of the defendant and ask SLED to prepare a line-up?

16 A I did. I contacted the State Law Enforcement
17 Division commonly known as SLED. I asked them if
18 they would prepare a lineup for me using Tre'Vaughn
19 Jackson in it, and they did prepared that lineup and
20 called me when it was ready.

21 Q This is State's 7 for ID. If I can approach,
22 Your Honor. Is that the lineup that you asked SLED
23 to prepare?

24 A Yes, it is.

25 Q And again, what are you looking for as a trained

1 investigator when you're preparing a lineup or
2 asking that a lineup be prepared?

3 A Certainly we want individuals that are of similar
4 race. We want them to have similar features. We
5 don't want anyone that would stand out. We want
6 basically six individuals that look similar so when
7 we show the ID they — there's not somebody that
8 might —

9 Q Stand out?

10 A Yeah, stand out, have different hair styles, have
11 different facial features, things like that,
12 anything to draw attention to them.

13 Q If Tyler Brown were a suspect in a crime would
14 you put him in a lineup with five black individuals?

15 A No, I would not.

16 Q And so in this lineup does it appear all of these
17 are black male?

18 A Yes, they are.

19 Q Facial hair?

20 A Yes.

21 Q Anybody stand out to you based on your training?

22 A No, sir.

23 Q Did you have an occasion to show State's 7 for ID
24 to Miss Bolden?

25 A I did.

1 Q And where did you — where did that take place?

2 A That took place at Santana Bolden's mother's
3 residence the next evening after the incident which
4 was September 1st, 2013.

5 Q Is that unusual for you to go to somebody's
6 residence to show them — you're basically in the
7 heat of the moment now, right? Crimes committed,
8 you're trying to find potential suspect?

9 A That's correct. So we commonly will go so we
10 don't inconvenience the witnesses. We will go to
11 them and show them lineups.

12 Q And when you show State's 7 for ID to Miss Bolden
13 did you in any way try to hint or suggest someone
14 she should pick out?

15 A No, I did not.

16 Q Did you cheat?

17 A No, I did not.

18 Q And what, if anything, did you — did you ask her
19 if she recognized somebody in this lineup?

20 A That's correct. Before I gave her the lineup or
21 before I showed her anything I just told her that I
22 had some photos that I'd like her to look at. I
23 told her to take her time, that if she saw anyone on
24 there that she recognized from the incident to
25 please let me know and indicate that by marking on

1 there and the number. And if she did not, that that
2 was fine too.

3 Q And was she able to pick somebody out?

4 A Yes, she was.

5 Q And did — how long did it take her to pick
6 somebody out?

7 A Just a few seconds after getting it. She was
8 able to immediately point to number five and
9 indicated that he was the shooter.

10 Q And did she, did she make these marks on here?

11 A Yes, she did.

12 Q Did she circle and put her initials?

13 A Yes, she did.

14 Q You didn't force her to do that?

15 A No, I did not.

16 Q Now State's — in addition to that did you
17 document in any way — and this is State's 8 for ID
18 that she picked out number five in your lineup. Is
19 that the form you use in everyday practice?

20 A This is. This is the form that we use at the
21 Sumter Police Department to go along with any
22 lineups that we show, and so I gave this form to her
23 and asked her to fill it out after she identified
24 Mr. Jackson and she placed her name on here. She
25 placed an X that corresponded with the number on

1 here that she picked, and then she signed it and
2 then she dated it and I signed as a witness.

3 Q And what date did she pick out — and who is
4 number five?

5 A It's Tre'Vaughn Jackson.

6 Q Is he in the courtroom?

7 A He is. He's sitting by his attorney at the
8 table.

9 Q When was this shown to Miss Bolden, this lineup?

10 A This was the evening after the incident occurred,
11 September 1st, 2013, and that was at 8:43 p.m. she
12 picked him out.

13 Q That's all I have. Thank you.

14 THE COURT: Ms. Butler.

15 **CROSS-EXAMINATION**

16 BY MS. BUTLER:

17 Q Just one more question. I might have missed this
18 if you said this earlier. Who initiated contact
19 with Miss Bolden?

20 A When I was out there at the crime scene that
21 evening talking with the other detectives asking
22 them what they had, asking how processing was going,
23 things like that, because the detectives we had
24 processing were both sick at the time. So just
25 checking on that and that's when someone from the

1 area approached me and said, hey, this female over
2 there witnessed what happened. And so I approached
3 her and asked her if she would mind talking with me
4 and so she got into my car and we started talking
5 for a moment, and I asked her if she would ride to
6 the station with me and she did.

7 Q Okay.

8 A So that's how it came about.

9 Q And did you request or ask her to give any sort
10 of formal statement about the incident, formal
11 written or recorded statement about the incident?

12 A I wanted to do a typed statement and pulled the
13 computer up, but she got very nervous and scared and
14 so that's when I stopped with that. Her mother came
15 to the station and was waiting for her up there when
16 she found out we had her and was also concerned for
17 her which is not uncommon with incidents that happen
18 like this in the neighborhood. And she was standing
19 right beside the person that she said shot in the
20 trailer.

21 Q Okay.

22 A More than one time. So she was, she was very
23 nervous so my main goal at that point was to just
24 keep her calm, but try to get as much information as
25 I could about it so I just talked with her about

1 that.

2 Q Okay. I mean, you mentioned giving or typing a
3 statement. What is that process? Whenever you type
4 a witness or suspect statement, how is that done?

5 A Sometimes we have witnesses that come in, and a
6 lot of them have a lot of information but don't want
7 to write.

8 Q Uh-huh.

9 A There's a number of reasons why, you know, just
10 grammar spelling and just so much. So we will offer
11 to type while they talk to us and so on a number of
12 occasions I have typed statements. I have
13 handwritten statements.

14 Q Uh-huh.

15 A Things like that.

16 Q Okay. And when you type the statements is it
17 usually verbatim, is it normally like a summary of
18 what they said?

19 A If I'm typing as they're talking, then I try to
20 type verbatim.

21 Q Okay.

22 A Even though sometimes the computer doesn't
23 recognize some of the words, but I try to type
24 verbatim. And then if it's an interview that we did
25 and it's just notes, then that would be a summary of

1 those interview notes so it would be summarizing
2 that they said.

3 Q Okay. So once you have that memorialized do you
4 usually give them a chance to review it and sign it,
5 or what's that?

6 A If I'm typing a statement?

7 Q Uh-huh.

8 A As a witness or a victim or suspect is talking if
9 that's what they requested to do, then I will have
10 them read it afterwards. If they can't read I will
11 read it. Most of the time I pull them up beside me
12 so they can watch as I'm typing.

13 Q Okay.

14 A And I tell them, you know, just watch, if you see
15 anything, you know, let me know. So they kind — a
16 lot of them will say, I don't need to read it, I
17 followed along. But I always say, no, let's read it
18 again anyway, and so we'll go through it before they
19 sign.

20 Q But you do give them a chance to review it after?

21 A Oh —

22 Q Either during or after?

23 A Yes, ma'am.

24 Q Okay, all right. Thank you.

25 MR. MEADORS: Please the Court.

REDIRECT EXAMINATION

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BY MR. MEADORS:

Q She — you did not do that in this case with Miss Bolden?

A No, she was too nervous.

Q Okay.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you.

MR. MEADORS: That's all we have, Judge.

THE COURT: All right, thank you.

All right, Ms. Butler.

MS. BUTLER: I have nothing, Your Honor.

THE COURT: Okay. Would you like to make brief argument?

MS. BUTLER: I have no argument.

MR. MEADORS: Your Honor, we think we've hopefully established reliability and —

THE COURT: As to State's versus Jackson reliability is the linchpin and the factors to determine the reliability or the witness' opportunity to review the criminal at the time of the crime. Her testimony she was right next to him three feet away. The witness' degree of attention, she said she was cognizant of what's going on. She was watching as the crime being committed. The

1 accuracy of the witness' prior description, she had
2 seen him before and although didn't, wasn't intimate
3 with him, had seen him before and had seen his face.
4 The level of certainty, she was certainly very
5 certain and at the time of confirmation, or
6 confrontation was very, I mean, just a couple of
7 hours. What was -- what time did it actually
8 happen?

9 MR. MEADORS: Judge, we think
10 approximately 5'ish.

11 THE COURT: Yeah, I mean, this is about
12 8:30 and around that time frame she was already
13 making identification on that same day.

14 MR. MEADORS: Your Honor, I think she gave
15 a description later on that same day.

16 THE COURT: Around 8:30 I think.

17 MR. MEADORS: It was 8:30 the next evening
18 that she actually picked him out of the lineup.

19 THE COURT: Twenty-four hours so, I mean,
20 I thought SLED was quick on something but I didn't
21 think they were that quick. That's, you know,
22 within 24 hours they had a lineup and she was very,
23 she's very competent. And I guess I'm gonna let it
24 in as the jury will make a decision as to whether
25 she was correct.

1 MR. MEADORS: Thank you, Your Honor.

2 THE COURT: All right.

3 MR. MEADORS: That's all we have. I don't
4 think short of and we will make sure we have that to
5 where it should be. That's all we have pretrial.

6 THE COURT: Anything further, Ms. Butler?

7 MS. BUTLER: I have, I have a couple of
8 issues I would like to address. Just for the record
9 I just want to make sure I have every piece of
10 discovery I'm entitled to, all reports, all
11 statements —

12 THE COURT: Anything outstanding?

13 MR. MEADORS: I actually called Ms. Butler
14 last night; I was in Columbia. There was a back
15 page of a drawing that I didn't realize had some
16 initials on it. I told her about that last night.
17 I will get that to her right now. I told her as
18 soon as I saw it. But other than that, I do not
19 believe there's anything else.

20 MS. BUTLER: Okay. And as far as any
21 witnesses that are testifying I would just request
22 criminal —

23 THE COURT: Any fact witnesses —

24 MS. BUTLER: Any fact witnesses I would
25 request criminal records of them —

1 THE COURT: All right.

2 MS. BUTLER: —before.

3 MR. MEADORS: Yes, sir.

4 THE COURT: And he does not — you think
5 your client is going testify? I'll ask him further
6 questions on that at the right time.

7 MS. BUTLER: Okay. And just —

8 THE COURT: If he were to, is there any
9 record that would come in?

10 MR. MEADORS: He's on probation for
11 burglary right now I know. I think that's the big
12 one. And we'll run another one. That was the wrap
13 sheet that we had.

14 THE COURT: Yes, ma'am.

15 MS. BUTLER: And one last issue, as I
16 normally do I just move to sequester all witnesses
17 that, you know, don't have a right to be in the
18 courtroom.

19 THE COURT: Right. But the experts and
20 stuff like that, you don't have any problem with
21 them testifying?

22 MS. BUTLER: No, Your Honor.

23 THE COURT: Or being in the room where,
24 you know, I guess it would be the ballistics expert,
25 SLED people, but you're just talking about the ones

1 who were right there?

2 MS. BUTLER: Fact witnesses, yes, sir.

3 MR. MEADORS: Your Honor, we'd ask

4 obviously we have two victims actually shot.

5 THE COURT: They're entitled to be here.

6 MS. BUTLER: Yeah, they're entitled, I

7 understand that.

8 MR. MEADORS: John Lyons, he's our —

9 MS. BUTLER: He's the lead.

10 MR. MEADORS: Other than that we

11 understand. We'll —

12 THE COURT: Okay. Well, court is

13 adjourned till 9:30 tomorrow morning.

14 (WHEREUPON, the proceedings were

15 concluded, then reconvened on August 26,

16 2014.)

17 (WHEREUPON, State Exhibits Nos. 9 through

18 22 were marked for identification only.)

19 (WHEREUPON, counsel approached the Bench

20 for an off-the-record discussion.)

21 THE COURT: Anything before we bring the

22 jury?

23 MS. BUTLER: No, Your Honor.

24 THE COURT: Y'all got the things worked

25 out as far as testimony? On the Jackson versus

1 Denno, y'all got that worked out?

2 MR. MEADORS: We will before we present
3 it. It may not be today.

4 (WHEREUPON, the jury was returned to the
5 courtroom at approximately 9:55 a.m., and
6 the following proceedings commenced in
7 open court.)

8 THE COURT: You're Mr. Nash; is that
9 correct?

10 THE FOREMAN: Yes, sir.

11 THE COURT: Thank you for taking the
12 position of being the foreman. Let's swear the
13 jury.

14 THE CLERK: Yes, sir, Your Honor. Ladies
15 and gentlemen of the jury, please stand, raise your
16 right hand to be sworn.

17 (WHEREUPON, the jury was sworn at 9:56 a.m.)

18 THE CLERK: Please respond by saying I
19 will.

20 (Jurors responded.)

21 THE COURT: And good morning again, ladies
22 and gentlemen let me take this opportunity to thank
23 you again for your service as jurors and thank you
24 for being prompt. You are all here right on time
25 and that helps the process move forward. We'll

1 always try to start on time because the work can't
2 get it over with until we start and I like to start
3 on time. And ladies and gentlemen, before we begin
4 this trial I want to tell you that this trial will
5 probably be different from what you might expect.
6 You know, most people never have an opportunity to
7 come into a court and be a part of an actual court
8 session as you are today and may think from watching
9 TV, movies, or reading books that trials are always
10 full of high drama, intense action and riveting
11 circumstances. Now, you know, while all these
12 things might be true at times, this trial is not for
13 entertainment. This is a real trial which is a
14 fundamental part of our democracy, and it's a search
15 for the truth in an effort to make sure that justice
16 is done. And searching for the truth and insuring
17 that justice is done is often slow, deliberate, and
18 repetitive, the exact opposite of what you have seen
19 on TV, movies, and read in books.

20 Now ladies and gentlemen, this beautiful
21 courthouse we have here is dedicated to the
22 protection and the preservation of our citizens'
23 rights through what many have called, and I truly
24 believe, to be the greatest justice system ever
25 created by mankind. The attorneys who are appearing

1 before you are advocates for the parties they
2 represent. But first and foremost, they are
3 officers of this court who are sworn to uphold the
4 integrity and the fairness of our judicial system
5 and to help you as jurors in your search for the
6 truth. Ladies and gentlemen, you should expect them
7 to be professional, competent, and ethical in the
8 representation of their client's interest. And
9 ladies and gentlemen, remember, just a moment ago
10 you took an oath to listen to the evidence and to
11 reach a fair and just verdict; and ladies and
12 gentlemen, you're expected to be professional,
13 reasonable, and ethical as well.

14 Now, ladies and gentlemen, what I will
15 tell you now is just intended to serve as an
16 introduction of the trial of this case. This is not
17 a charge on the law. I will charge the law that is
18 applicable to this particular case at the end of the
19 trial. This is merely an explanation of the
20 procedures that we will follow so you may better
21 understand what is happening. Now let me say up
22 front that you will not be allowed to take notes
23 during this trial; therefore, it's very important
24 that you listen closely throughout the trial.

25 Now ladies and gentlemen, the defendant is

1 charged with by indictment of two counts of
2 attempted murder, possession of a weapon during the
3 commission of a violent crime, and discharging a
4 firearm into a dwelling. Now the specific elements
5 will be explained to you later. Let me remind you
6 as I've done several times, that the indictment
7 charging the defendant is simply the document by
8 which this case is brought into court, and it is not
9 in any sense whatsoever any indicative or evidence
10 of the allegations that are contained therein. The
11 defendant has pled not guilty to the charge in the
12 indictment so the State, therefore, has the burden
13 of proving all of the evidence of each of the
14 charges in the indictment beyond a reasonable doubt;
15 and as jurors, it will be your duty to determine
16 whether the State has met that burden. Now ladies
17 and gentlemen, your purpose is to determine the
18 facts of this case. You're to determine the facts
19 from the testimony you'll hear from the witness
20 stand and any other evidence that is placed into
21 evidence or into the record. It will be up to you
22 to determine the inferences which you feel may be
23 properly drawn from the evidence that is presented.
24 And ladies and gentlemen, let me tell you, it's
25 especially important that you perform your duty

1 diligently and conscientiously because ordinarily
2 there is no way to correct an erroneous
3 determination of facts by a jury. On the other hand
4 but with equal emphasis, the same law that makes you
5 the judges of the facts makes me the judge of the
6 law and the law as given to you by me is the only
7 law that you may consider. You must accept the law
8 as I give it to you and follow it even though you
9 might disagree, and I'll make an agreement with you.
10 I will not tell you what the facts are and you
11 cannot disagree with me about what the law is or
12 what you might think the law ought to be. Your job
13 is take the law as I give it to you and apply it to
14 the facts as you find them from the testimony and
15 the other evidence that is presented and after
16 hearing the evidence you will render a true and just
17 verdict under the solemn oath that you just took as
18 jurors.

19 And until I advise you to begin your
20 deliberations at the conclusion of the case, ladies
21 and gentlemen, you must not discuss the case with
22 anyone else including your fellow jurors. You may
23 not use a cellular phone, a computer or any other
24 electronic device with communications capabilities
25 while in attendance at trial or during your

1 deliberations. However, these devices may be used
2 when you're taking a lunch break or when you go home
3 for the evening; but even then, they can't be used
4 to disclose information about the case when you're
5 not in court. Information about the case will
6 include, certainly would not be limited to any
7 information about a party, a witness, an attorney or
8 court officer, any news accounts about the case, any
9 information collected through juror research on any
10 topic raised or testimony offered by any witness or
11 any information collected through juror research on
12 any topic that you might think would be helpful in
13 deciding the case.

14 Now ladies and gentlemen, after the case
15 is submitted to you, as I said, you must discuss it
16 only in the jury room with your fellow jurors. The
17 attorneys and the parties in this case are advised
18 that they are not to talk to you at all so if you
19 see one of them around this courthouse square and
20 they don't even say hello, well, they're not being
21 unfriendly, they're just following my instructions.
22 Now ladies and gentlemen, it's very important that
23 you keep an open mind and not decide any issue in
24 this case until all the evidence has been presented,
25 the attorneys have made their closing arguments, and

1 I have charged you on the law of this case. And
2 ladies and gentlemen, it's your solemn
3 responsibility to determine the guilt or innocence
4 of the defendant and your verdict must be based
5 solely on the evidence as it is presented in this
6 trial and on the law as I give it to you.

7 Now in just a moment the Solicitor will
8 make what is called an opening statement in which he
9 will explain to you what he believes the issues are
10 in this case. The attorney for the defendant may
11 also make an opening statement but she's not
12 required to do so. But let me remind you, what the
13 attorneys tell you during their opening statement is
14 not evidence. It's only their contention as to what
15 they believe the evidence and the facts are in this
16 case.

17 Now ladies and gentlemen, from time to
18 time during this trial you may hear one of the
19 lawyers say something like, Your Honor, I believe we
20 have a question or a matter of law to discuss with
21 you, or Your Honor, may we approach the Bench. Or
22 sometimes I might find it necessary to excuse you
23 from the courtroom for thank you minute while the
24 attorneys and I discuss a matter of law. The reason
25 for this is that, as I've said, you're the judges of

1 the facts. And sometimes when I'm discussing issues
2 of law with the attorneys, it may be necessary for
3 me to make some comment as to the facts in
4 connection with making a ruling as to whether or not
5 a particular law applies. And as I said, I'm not
6 supposed to tell you what I think the facts are so I
7 will excuse you from the courtroom while these
8 discussions take place so that you will in no way be
9 influenced by anything that I might say or do in
10 connection with the facts. Also during the trial,
11 ladies and gentlemen, you may hear one of the
12 attorneys make an objection to evidence that is
13 about to be presented. Whether I sustain, which
14 will be to grant the objection, or overrule which
15 would be to deny the objection, should not be
16 construed that I favor one side over the other; I do
17 not. Nor should you infer that the objecting party
18 is trying to hide something from you; they're not.
19 In this court as in all situations in life there are
20 specific rules that must be followed, and the
21 attorneys as officers of this court are merely
22 trying to follow the rules of evidence in this court
23 and making their objections, and I am only ruling
24 based upon what I believe the law of the state of
25 South Carolina to be concerning the evidence that is

1 about to be presented.

2 Ladies and gentlemen, in determining what
3 the true facts are in this case you must decide
4 whether or not the testimony of a witness is
5 believable. It will be my responsibility to rule as
6 a matter of law as to whether certain testimony is
7 admissible. Once it's admitted, whether or not you
8 decide to believe it will be solely for you to
9 determine. Ladies and gentlemen, in deciding
10 whether to believe a witness you have the right to
11 consider the interest of any witness, the bias of
12 any witness, the prejudice of any witness, the
13 opportunity for the witness to have actually have
14 seen, observe, and seen the matters and things about
15 which the witness may testify. And you may
16 determine or observe the way the witness acts on the
17 witness stand. Ladies and gentlemen, you have a
18 right to consider anything that is in the record
19 that will help you evaluate the testimony of the
20 witness. And that means it's your duty to pay close
21 attention to the witnesses to observe the witnesses,
22 to listen to the witnesses, and pay close attention
23 to the attorneys and to the Court. Ladies and
24 gentlemen, please don't let your thoughts wander but
25 give strict attention to the testimony in this case

1 so at the end of all the testimony, after the
2 argument of counsel, and the charge on the law by
3 me, you will then be in a position to determine what
4 the true facts are and to apply the law to those
5 facts and then and thus render a true and just
6 verdict.

7 Now Mr. Foreman, it will also be your
8 responsibility to preside in the jury room and to be
9 the jury's spokesperson here in court. It will also
10 be your responsibility to write down the verdict,
11 but I'll give you further instructions on that at
12 the appropriate time. Now in order to preserve
13 everyone's right, I will give the parties an
14 opportunity to object to anything that I've stated.

15 Does the State have any objections to
16 anything I told the jury?

17 MR. MEADORS: No, sir.

18 THE COURT: Does the Defense have any
19 objection to anything I told the jury?

20 MS. BUTLER: None, Your Honor.

21 THE COURT: All right, thank you. Thank
22 you. We will begin the trial of this case.

23 Mr. Meadors, for the State.

24 MR. MEADORS: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. MEADORS: Ms. Butler. Nobody knows my
2 name, I'm not from over there, that's the first time
3 I've been over there, they don't know my face, don't
4 tell them my name. That's what the defendant
5 Tre'Vaughn Jackson told one of the witnesses after
6 he fired a gun into Dibert Street, the home of
7 Jennifer Joe and Julian and Joe Tomlin as Ms. Sylvia
8 Ann Welch was there with them and Frank Dwayne
9 Cokeley. That's what he told one of the witnesses
10 after he fled the scene along with another gunman.
11 They don't know who I am, I've never been over
12 there, they won't be able to figure out who I am.
13 After Sylvia Welch received a bullet in her body
14 you'll hear about and Frank Dwayne Cokeley still got
15 a bullet in his body, that's what this case is
16 about. Inexcusable shooting into the dwelling of
17 Jennifer Joe and Julian and Joe Tomlin as they were
18 fixing to play spades.

19 Mr. Foreman, ladies and gentlemen, good
20 morning, my name is John Meadors. I've been
21 introduced to you before. I have the pleasure, the
22 honor to work for your elected solicitor the
23 Honorable Earnest A. "Chip" Finney, III. And I'm
24 here today representing the people of the State of
25 South Carolina and the people of Sumter against

1 Tre'Vaughn Jackson who is represented by Miss
2 Tiffany Butler. My job, if you will, is to present
3 evidence to you, to present the evidence, and then
4 ultimately you'll make a decision and I'll get to
5 that in a little bit.

6 Your Honor, could I have a copy of the
7 indictment?

8 THE COURT: Yes.

9 MR. MEADORS: Thank you, sir. As Your
10 Honor has told you the defendant is charged with
11 several crimes. The grand jury has indicted him.
12 That's not evidence. Your Honor will tell you that
13 later. It's part of the process to be indicted, but
14 he's charged with two counts of attempted murder.
15 And it basically says, and this is what "we" the
16 State must prove to you, that on or about
17 August 31st of 2013, almost a year ago, at
18 Dibert Street the defendant did with the intent to
19 kill, attempt to murder Frank Dwayne Cokeley and
20 Sylvia Ann Welch, and that he did with malice
21 aforethought fire a weapon into the dwelling of the
22 Tomlins. Now what's all that mean? Well intent to
23 kill, you can't open somebody's mind and see what's
24 in there but you look and see by one's actions and
25 one's words what the intent to kill. Attempted

1 murder with malice, y'all know what this term is but
2 malice is a meanness, a evilness, a wickedness one
3 person shows to another. It can be expressed: I'm
4 gonna kill you, I knew people were in the back,
5 that's why I shot him there. It's a meanness, a
6 evilness. It can be expressed; it can be inferred.
7 In this case, we believe, it can be inferred by use
8 of a deadly weapon. Attempted murder. Now also
9 you'll hear at the end of trial there's something
10 else called the depraved heart, another way to show
11 malice. That we don't even have to show that
12 Tre'Vaughn Jackson intended to kill these two
13 particular people; but his acts was so egregious,
14 with such a depraved heart, that malice can be
15 inferred from just firing into a dwelling, that you
16 knew people were in there, that you didn't care who
17 got shot or not. Another way the State can show
18 malice. And I promise you I'll be arguing that at
19 the end of this case. Attempted murder. They're
20 still here, thank God, but those are the charges.

21 What else is he charged with? Discharging
22 a firearm into a dwelling. Well that kind of
23 speaks, kind of self-explanatory; isn't it? Fired a
24 shot into a dwelling that you know people reside
25 there; people do reside there. And that's what this

1 case all about. And then finally, possession of
2 firearm during the commission of a violent crime,
3 which again, is self-explanatory if you believe the
4 evidence. Now what's the burden on the State in
5 this case? Well, it's the same in every case Y.'all
6 know this as well or better than I do. We must
7 prove to you elements of this crime. You can't
8 answer me, I wish you could, but you got to prove
9 beyond a reasonable doubt. You've heard it;
10 everybody knows it. Beyond a doubt that makes
11 reasonable folks hesitate to act. It's not beyond
12 all doubt. If that were the burden we didn't need
13 to build this new courthouse. But it's beyond a
14 reasonable doubt. Beyond a doubt that makes
15 reasonable folks hesitate to act. What kind of
16 evidence are you gonna hear? His Honor touched on
17 it. He'll go in great detail later. We're gonna
18 hear evidence; it's called direct evidence. Direct
19 evidence is evidence of one — a witness perceives
20 with one of, perceives with one of their senses.
21 They see it, they smell it, they touch it, they hear
22 it. And they come in here and take the jury stand
23 and they say here's what I heard, smelled, touched,
24 and felt. That's direct evidence that you gather
25 yourself and that's pretty common sense. What other

1 type evidence is it? There's circumstantial
2 evidence. Evidence of a fact, another fact, when
3 indicates existence of another fact. If somebody
4 sees somebody fire a shot outside a home, there are
5 holes in the home and then somebody gets hit, and
6 that hole wasn't there and that person wasn't shot
7 before, well, that's circumstantial evidence that
8 that firearm sent that bullet through that house
9 into the body. Example of circumstantial evidence.
10 Proof of facts indicating the existence of another
11 fact. Both of them are equally strong and the judge
12 will tell you that at the end. You can consider
13 both of them. They'll be documentary evidence,
14 pictures, numerous pictures of the scene that you'll
15 have a chance to view.

16 You know, we all have different roles
17 here, Miss Butler and I do. As Your Honor just told
18 you His Honor is the judge of the law; he is the
19 law. He's the law. He determines the law, tells
20 you what the law is, tells the attorneys what the
21 law is. And you have a role. And this is just,
22 it's pure and beautiful. You're also a judge. Now
23 when you came in yesterday, you know, we all met
24 downstairs and Mr. Campbell didn't send you to a
25 how-to-be-a-juror school or go through a course and

1 say here's what you got to do to be a juror. But
2 you have been in that school, forever. Y'all know
3 what it is; it's called life. Life, your everyday
4 experiences. That's what you bring in to be a juror
5 and sit down here; and that's all we can ask,
6 Ms. Butler and myself. Use your experiences you
7 gather, your common sense, and dealing with people,
8 evaluating people, because what you got to decide
9 this case on and only what you can decide this case
10 on, is what comes from this witness stand; that's
11 it. The evidence His Honor lets in is either
12 testimony or documentary, that's what you have to
13 decide the case on. And in doing that you use your
14 common sense, your everyday experiences, and you
15 decide what's credible, what's believable, and what
16 the truth is. It's simple but it's pure, and that's
17 all we — that's all we can ask. And that's why
18 you're a judge of the facts. You determine what
19 happened; it's up to y'all. Citizens from this
20 community come in; you decide what the truth is.
21 His Honor will then tell you, okay, here's the law,
22 you must follow the law, you take the facts, apply
23 it to the law, and you reach a verdict. And all we
24 ask you to be fair and decide it on what the truth
25 is.

1 Now what happened? We go back two days
2 earlier, August 29th, and it's got nothing to do
3 with Sylvia Ann Welch, Tre'Vaughn Jackson, nothing.
4 That's what the evidence is gonna show. In these
5 opening statements, it's a chance for us to tell
6 y'all what we think the evidence will show. On
7 August 29th Lenard Johnson and Frank Dwayne Cokeley
8 got in an argument. Frank Dwayne Cokely's sister
9 borrowed Lenard Johnson's phone. The evidence will
10 show as she was walking off to talk to a cab driver
11 — this thing is difficult to explain to follow.
12 The only way to do it is to explain it. The
13 evidence is Lenard Johnson just said, I hope the
14 bitch know not to take my phone. That ignited all
15 this. Lenard and Frank Dwayne Cokeley got upset at
16 that. Don't be calling my sister a B the evidence
17 will show. Lenard Johnson says, that's just the way
18 I talk, that's just the way I talk. That ain't no
19 way to talk, to call somebody a B. But he said,
20 that's just the way I talk, I didn't mean nothing by
21 it. Well, that ends up to two bullets in these two
22 people back here. There's a disagreement between
23 these two folks over that incident, and that takes
24 over into August 31st, 2013, two days later. First
25 earlier in the morning there's an encounter between

1 Lenard Johnson who's with someone else, maybe his
2 brother, and Frank Dwayne Cokeley near this incident
3 location on Porter Street and Dibert Street. And
4 Dwayne Cokeley is hit by Lenard Johnson. Lenard
5 Johnson grabs the shirt of Keith Williams, the
6 brother. And I don't know how to tell you, please
7 follow, wipes the blood off his face, bleeding.
8 Well, they're mad. Frank Dwayne Cokeley goes on
9 down.

10 And we're gonna take you, this scene,
11 y'all know better than I do. If you know where
12 Captain D's is and Shoneys, if you go across the
13 bypass or the four lanes, as we call it, Dibert and
14 Porter Street are right on the other side. We're
15 gonna take you into this community; that's where
16 this happened. The defendant Tre'Vaughn Jackson is
17 from the other side; he's not from there. Well,
18 after this first fight on August 31st, Frank Dwayne
19 Cokeley goes to the home of the Tomlins and Jennifer
20 Joe, and that where's Sylvia Ann Welch is and we're
21 now on the afternoon of August 31st, 2013, the
22 backdrop I've just told you the evidence is going to
23 show. They're going to play cards. They're going
24 to play cards.

25 Now the community knows there's been a

1 little disagreement, a little fight. The testimony
2 will be that a group of individuals comes walking
3 down Porter or Dibert heading toward Dibert.
4 You're gonna hear from Ms. Santana Bolden who was
5 out in the yard. I believe her testimony is, I was
6 just nosy, wanted to see what happened. Well, you
7 see a group of individuals coming up Dibert
8 where Frank Dwayne Cokeley is, where Sylvia Ann
9 Welch is, where Julia Tomlin is, Joe Tomlin,
10 Jennifer Joe, maybe some other folks, was fixing to
11 play cards. And this group, which includes
12 Tre'Vaughn Jackson, comes up to Dibert and
13 they're coming to settle the deal with Frank Dwayne
14 Cokeley. It's gonna be resolved between Cokeley and
15 Lenard Johnson, but it's gonna be resolved by the
16 fists. Shouldn't have never happened. There's a
17 fight at the door of Dibert. You're gonna hear
18 the Tomlins tell you about that. And they come in,
19 some folks come in, some go out, somebody gets hit
20 with a beer bottle. And this time the testimony
21 will show that, we believe, Tre'Vaughn Jackson went
22 to the back of the house trailer, went back to the
23 home of the Tomlins and Mr. Joe, and started firing
24 into the back of the dwelling. And he was firing
25 with somebody else who we don't know. Somebody else

1 has got a name we don't know. I'll tell you we'll
2 find him; we're gonna keep investigating. And the
3 shots were fired, people ran.

4 Now you're gonna hear this group met up at
5 Poplar Square. They go back to Poplar Square. And
6 your gonna hear from a witness that says Tre'Vaughn
7 Jackson said, yeah, they all went in the front, we
8 knew people were inside, that's why I shot in the
9 back. That's malice. That's why I shot in the back
10 of the trailer, I knew they were in there, I knew
11 there were people in there. And he tells this
12 witness, they don't know who I am, they don't know
13 my face, I ain't been over there before, that's not
14 my area. Well, ladies and gentlemen, the evidence
15 will show somebody did know him, somebody did
16 recognize him. And Miss Santana Bolden told the
17 police -- and you're gonna hear from her this
18 afternoon, tomorrow -- I recognized him, gave them a
19 description. The police developed Mr. Jackson as
20 the suspect. He was put in a photo lineup. Miss
21 Bolden said, that's the man I saw shooting in the
22 back of the trailer, described him. You're gonna be
23 able to -- you're gonna be able to watch her testify
24 and decide whether it's believable or not. That's
25 what I'm talking about. You'll be able to see that.

1 She said, I know him, I used to see him in adult ed
2 dropping off some folks, I've seen him before and
3 that's the man that was shooting. And y'all will
4 watch her testify. And you'll hear from several
5 other witnesses, specifically another witness who
6 said he told him who did it but they don't know who
7 I am, and you don't tell them my name.

8 For some reason Tre'Vaughn Jackson decided
9 to use this opportunity to fire into somebody's
10 house. It wasn't his fight. It wasn't his
11 argument. Didn't know who was inside? He knew
12 Frank Cokeley was in there, maybe didn't know who
13 might receive those bullets. That's what this case
14 is about. We're gonna set that scene for you with
15 pictures, with testimony, and I explained it the
16 best way I could explain it. But as you go through
17 and listen to the witnesses, decide what the truth
18 is, and that's all we can ask.

19 Ladies and gentlemen, this won't be a long
20 trial, but please don't let that take away from the
21 importance, the importance to the defendant, to
22 Sylvia Ann Welch, to Frank Dwayne Cokeley, and to
23 the community. It doesn't get more important than
24 this case, in this county, in this state, in this
25 country. And I mean that. This is as important a

1 case we'll try this week in this country. Thank you
2 for your attention. At the close of the evidence
3 we'll review all the evidence and the reasonable
4 inferences, and I'll respectfully ask you to return
5 a verdict that says on August 31st of 2013,
6 Tre'Vaughn Jackson maliciously fired into a trailer
7 almost killing two people just 'cause he had the
8 opportunity to do it. Thank you.

9 THE COURT: Thank you, Mr. Meadors.

10 Ms. Butler for the defendant.

11 MS. BUTLER: Thank you, Your Honor.

12 Chaos, finger pointing, he said/she said. Chaos,
13 finger pointing, he said/she said. That's why
14 Tre'Vaughn Jackson is sitting over there at that
15 defense table. A fight breaks out, there are
16 gunshots, chaos ensues, people are running
17 everywhere, the police respond, names are given to
18 the police, blame is shifted. And when the dust
19 settles Tre'Vaughn is the only one arrested and
20 charged with this crime. Now the State is accusing
21 Tre'Vaughn of taking a gun and shooting into the
22 mobile home injuring the two victims. The State is
23 accusing Tre'Vaughn of taking out a gun with intent
24 to kill with malice shooting into a mobile home
25 injuring the two victims.

1 Throughout this trial you will have the
2 opportunity to see different types of evidence. You
3 will have the opportunity to hear the testimony of
4 several witnesses from the witness stand. Pay
5 attention to the witnesses, pay attention to whether
6 they're credible. Pay attention to their reasoning
7 for taking the stand, what motive could they have,
8 what bias could they have. I'm certain when it's
9 all said and done you will see that Tre'Vaughn had
10 no reason to do this, he had no motive to do this.
11 You will see that there is absolutely no physical
12 evidence tying Tre'Vaughn to the scene but he
13 said/she said, finger pointing. When it's all said
14 and done, once you've seen all the evidence, you've
15 heard all of the witnesses, you will see that
16 despite the chaos, despite the finger pointing,
17 despite the he said/she said that put him there, an
18 innocent man — and he is innocent till the State
19 proves he's guilty — an innocent man is sitting at
20 that table. So I urge you, ladies and gentlemen, do
21 not rush to a judgment. Listen, pay attention,
22 observe all the evidence, try to understand.

23 And after we give our closing arguments
24 and the judge charges you with the law and you go
25 back into that jury room, you will understand that

SW - J. JOE - DIRECT

1 an innocent man is sitting at that table. An
2 innocent man has been charged with this crime.
3 There is no evidence but he said/she said. We ask
4 that you find him innocent of this charge.

5 THE COURT: Thank you. The State may call
6 its first witness.

7 MR. MEADORS: If it please the Court, the
8 State would call Jennifer Joe.

9 THE CLERK: Place your left hand on the
10 Bible, raise your right hand. State your name
11 please.

12 THE WITNESS: Jennifer Joe.

13 WHEREUPON,

14 **JENNIFER JOE,**
15 having been duly sworn by the Clerk, testified as
16 follows:

17 THE CLERK: Thank you. Have a seat up
18 here please. Please state your full name and spell
19 your last name for the record.

20 THE WITNESS: Jennifer Ace (ph) Joe,
21 J-O-E.

22 **DIRECT EXAMINATION**

23 BY MR. MEADORS:

24 Q Good morning Ms. Joe.

25 A Good morning.

SW - J. JOE - DIRECT

- 1 Q Would you tell the ladies and gentlemen about
2 Jennifer Joe. Where were you born?
3 A Sumter, South Carolina.
4 Q Okay. And where were you raised, Ms. Joe?
5 A Sumter.
6 Q And where did you go to school?
7 A Sumter High.
8 Q And you mind telling us when you got through
9 Sumter High?
10 A '85.
11 Q Okay. And what did you do after that?
12 A Take care of my mother. She was sick until she
13 died in 2004.
14 Q And that was here in Sumter you were taking care
15 of her?
16 A Uh-huh, yes, sir.
17 Q And where do you live now?
18 A I live at Dibert Street.
19 Q And Ms. Joe, how long have you been there?
20 A About 40 years.
21 Q Was that the family home?
22 A Family home, yes, sir.
23 Q And who is living there with you now?
24 A Julian and Nathan Joe.
25 Q Nathan Joe?

SW - J. JOE - DIRECT

1 A Yeah.

2 Q So for my purposes Julian and Joe Tomlin?

3 A Yeah, yes, sir.

4 Q How long have they been there?

5 A Julian was with me about three years and Joe
6 about a year.

7 Q And they're brothers?

8 A They're brothers.

9 Q I'd like to go back in time, if you will, to last
10 year, August 31st, Ms. Joe. Do you remember that
11 day?

12 A Sort of.

13 Q Do you remember when the incident we're talking
14 about?

15 A Yes, sir.

16 Q All right. And on that day were you working?

17 A No, sir.

18 Q Okay. And did you have some friends over at your
19 house or the Tomlins on August 31st of 2000 —

20 A Yes, sir.

21 Q And who was over there?

22 A It was me, Julian, Joe, Frank, Sylvia.

23 Q And let me stop you there. When you say Frank
24 you're referring to Frank Dwayne Cokeley?

25 A Yes, sir.

SW - J. JOE - DIRECT

- 1 Q And how did you know him?
- 2 A He live in the neighborhood.
- 3 Q Okay. And who did you say after that, I'm sorry?
- 4 A Sir?
- 5 Q Who did you say after that? You said Sylvia?
- 6 A Sylvia.
- 7 Q And is that Ms. Welch, Sylvia?
- 8 A Yeah, uh-huh.
- 9 Q And how do you know Ms. Welch?
- 10 A We just friends, yeah.
- 11 Q And do you know — where does she live?
- 12 A She live down the street from me.
- 13 Q Okay. And your friends were gathering for what
- 14 purpose?
- 15 A Getting ready to play spade, cards.
- 16 Q Do you play cards on a regular basis?
- 17 A No.
- 18 Q And nothing wrong, I'm just asking. Are these
- 19 some of the folks that usually play cards with you?
- 20 A Yeah, sometimes, yeah.
- 21 Q And where do y'all gather in your house to play
- 22 spades?
- 23 A In the back room.
- 24 Q And so it was the Tomlins, you, Sylvia, Mr. Frank
- 25 Dwayne Cokeley, was anybody else there?

SW - J. JOE - DIRECT

1 A I can't remember. I can't remember right now.

2 Q Okay. And sometime around 5:00 that afternoon do
3 you remember something happening?

4 A Yeah, gunshots.

5 Q Okay. And where were you, Ms. Joe, in your
6 trailer when you heard the gunshots?

7 A I was sitting down in the back room.

8 Q Okay. And who else was in the back room?

9 A Julian, Joe, Frank, Sylvia.

10 Q All right. And had y'all started playing?

11 A No, we wasn't playing yet.

12 Q Is there a table you play at back there? I mean,
13 was it set up, a card table or?

14 A It was a table back there.

15 Q All right. And what do you do when you hear the
16 shots? That sounds crazy, but what did you do?

17 A Just try to cover myself, get down on the floor.

18 Q Got on the floor?

19 A Yes, sir.

20 Q What did everybody else do that you could see?

21 A Got down on the floor too.

22 Q All right. And right after the first shot did
23 you know if anybody was hit?

24 A Not right then.

25 Q Did you subsequently learn something was hit?

SW - J. JOE - DIRECT

1 A Yeah, later on, yeah.

2 Q Okay. And who was that?

3 A Mr. Frank.

4 Q Was Ms. Welch hit?

5 A I didn't know at the time. When I ran out the
6 door, later on then they say she was hit.

7 Q Okay.

8 MR. MEADORS: May I approach.

9 THE COURT: You may.

10 MR. MEADORS: Your Honor, these are
11 State's 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,
12 20, 21, and 22, I believe, without objection.

13 THE COURT: Is that correct, Ms. Butler?

14 MS. BUTLER: No objection, Your Honor.

15 THE COURT: Without objection these are
16 placed into evidence. Thank you. You may refer to
17 them as exhibit numbers.

18 (WHEREUPON, State Exhibits Nos. 9 through
19 22 were admitted into evidence.)

20 BY MR. MEADORS:

21 Q I'm gonna show you what's State's Number 9. Do
22 you recognize that?

23 A Yes, sir.

24 Q What is that?

25 A That's my mobile home.

SW - J. JOE - DIRECT

1 Q And what is your address?

2 A Dibert.

3 Q What's — Dibert?

4 A Uh-huh.

5 Q State's Number 10?

6 A It's my mobile home again.

7 Q Now State's Number 11, can you tell, is that a
8 closeup of your home?

9 A Yeah. That's the front door.

10 Q The front door? Was the front door in different
11 condition after this incident than it had been
12 before it?

13 A No.

14 Q Was there any damage to it?

15 A Yes. They came through the front door, busted
16 the front door.

17 Q So was the front door busted before this
18 happened?

19 A No, sir.

20 Q Okay. And who came through the front door, do
21 you know?

22 A No, sir, just a group of people I know.

23 Q And did you know anything about any altercation
24 between Mr. Cokeley or anybody else?

25 A No, sir.

SW - J. JOE - DIRECT

1 Q Knew nothing about it?

2 A No, sir.

3 Q Now State's 12, can you tell us what that is a
4 picture of?

5 A That's the front door.

6 Q And it leads into somewhere. Where does that
7 lead into?

8 A To the living room.

9 Q So that's the front door in the living room of
10 your home. Is that correct, ma'am?

11 A Yes, sir, uh-huh.

12 Q And State's 13?

13 A That's the living room again.

14 Q And if you will, off — you said you were in a
15 room. Can you show on State's 13 where the room
16 that you and the Tomlins and Ms. Welch were?

17 A It would go back, you know, through that
18 (indicating), go back through there's a little door
19 right there.

20 Q So if you came into your home would you take a
21 right to go back to this room or a left?

22 A Take a right.

23 Q And State's 14?

24 A That's my floor.

25 Q And this is the floor — there appears to be

SW - J. JOE - DIRECT

- 1 blood on it, right?
- 2 A Yes, sir.
- 3 Q Was that there before this incident?
- 4 A No, sir.
- 5 Q State's 15?
- 6 A That's going to the room.
- 7 Q Going to the room where y'all were playing cards?
- 8 A Yes, sir, uh-huh.
- 9 Q State's 16, Ms. Joe?
- 10 A That's the room right there.
- 11 Q And you say the room, the room that what?
- 12 A That got shot, got shot up.
- 13 Q That's the room where you were playing cards?
- 14 A Yes, sir.
- 15 Q State's 17?
- 16 A That's the room again.
- 17 Q Another picture of the room?
- 18 A Yes, sir, uh-huh.
- 19 Q 18?
- 20 A That's the bathroom.
- 21 Q And was the bathroom connected to the room where
- 22 y'all were playing cards?
- 23 A Yes, sir, uh-huh.
- 24 Q So 19, what's that?
- 25 A That's the room too.

SW - J. JOE - DIRECT

1 Q Okay. And is that a picture going from inside
2 the room out to the kitchen?

3 A Yes, sir.

4 Q Is that the stove?

5 A That's a stove.

6 Q Okay. How far did y'all get into the game before
7 the shots fired?

8 A We didn't really get into the game.

9 Q State's 20?

10 A That's the room, the table.

11 Q Speak up just a little bit. I'm sorry.

12 A I said that's the room.

13 Q Now can you show on State's 20 — and the person
14 who does the Elmo usually is not here — but can you
15 show on here where you were sitting?

16 A (Indicating) Probably right there, up in there in
17 there somewhere.

18 Q Up in here?

19 A Yeah.

20 Q Can you tell me where the — Ms. Welch was?

21 A She was right up in there (indicating), right up
22 in here somewhere.

23 Q And where were the Tomlins?

24 A One was setting right here and I think Julia was
25 standing behind me, I'm not sure.

SW - J. JOE - DIRECT

1 Q You're not exactly sure where everybody was?

2 A Yes, sir.

3 Q Was Frank Dwayne Cokeley in there?

4 A I didn't see him at the time when the shot. He
5 supposedly be in the bathroom somewhere, I don't
6 know.

7 Q And where did the bullets — what wall did the
8 bullets come through? What room did the bullets go
9 into?

10 A In the room we were.

11 Q After you hit the floor, Ms. Joe, what did you
12 do? What'd you —

13 A Stay there until everything was over.

14 Q This was your dwelling, correct?

15 A Yes, sir.

16 Q Shots were fired into it?

17 A Yes, sir.

18 Q Did you know who did it?

19 A No, sir.

20 Q Did you know what the altercation was about at
21 all?

22 A No, sir.

23 Q Did the police end up coming?

24 A Later on yes, sir, uh-huh.

25 Q And did you talk to any of the police officers?

SW - J. JOE - DIRECT

- 1 A No, I didn't talk to nobody.
- 2 Q And what happened to Ms. Welch?
- 3 A She was on the floor, you know, that's all I
- 4 know. She was on the floor so I...
- 5 Q And did EMS come get her that you know of?
- 6 A Yes, sir.
- 7 Q So the ambulance came?
- 8 A Yes, sir.
- 9 Q And what happened to Mr. Cokeley?
- 10 A He got shot and the ambulance came and got him
- 11 too.
- 12 Q I want to ask you something. This your house?
- 13 A Yes, sir.
- 14 Q Your dwelling?
- 15 A Uh-huh.
- 16 Q Did you invite some people there to play cards?
- 17 A Yes, sir.
- 18 Q Did you invite this other crowd to come into your
- 19 home?
- 20 A No, sir.
- 21 Q Did you want them there?
- 22 A No, sir.
- 23 Q Do you know Tre'Vaughn Jackson at all?
- 24 A No, sir.
- 25 Q Never had a beef with him?

SW - J. JOE - DIRECT

1 A No, sir.

2 Q He doesn't know you as far as you know, does he?

3 A No, sir.

4 Q And you ended up with how many bullet holes in
5 your house?

6 A Six.

7 Q These other folks that came inside prior to the
8 shooting, did you know them?

9 A No, sir.

10 Q And just to clarify, was there any shooting
11 inside of the house?

12 A No, sir.

13 Q Okay. So all of it came from the outside?

14 A Outside.

15 Q Thank you. That's all.

16 THE COURT: Ms. Butler.

17 MS. BUTLER: I have no questions, Your
18 Honor.

19 THE COURT: All right, thank you, ma'am.
20 You may step down.

21 Any objection to this witness being
22 excused for the balance of the trial?

23 MR. MEADORS: Thank you.

24 MS. BUTLER: No, Your Honor.

25 THE COURT: Thank you, ma'am, have a nice

SW - J. TOMLIN - DIRECT

1 day.

2 MR. MEADORS: Your Honor, we call Joe
3 Tomlin.

4 THE COURT: Joe Tomlin, come forward to be
5 sworn.

6 THE CLERK: Place your left hand on the
7 Bible, raise your right hand. State your name
8 please.

9 THE WITNESS: Joe Tomlin.
10 WHEREUPON,

11 **JOE N. TOMLIN,**
12 having been duly sworn by the Clerk, testified as
13 follows:

14 THE CLERK: Thank you, sir. Have a seat
15 up here. Please state your full name and spell your
16 last name for the record.

17 THE WITNESS: My name is Joe Nathan
18 Tomlin. Last name, T-O-M-L-I-N, Sr.

19 **DIRECT EXAMINATION**

20 BY MR. MEADORS:

21 Q Good morning, Mr. Tomlin.

22 A Good morning.

23 Q Would you please tell the ladies and gentlemen of
24 this jury about Joe Nathan Tomlin, Sr. Where are
25 you from?

SW - J. TOMLIN - DIRECT

1 A I'm from Sumter, South Carolina, born and raised.

2 Q Where did you go to high school?

3 A Mayewood High, graduated in '84.

4 Q After you graduated in 1984, Mr. Tomlin, what did
5 you do?

6 A Joined the Navy. I joined the Navy a month
7 later.

8 Q All right. And where were you stationed?

9 A I was stationed in Norfolk, Virginia. I had my
10 training in San Diego, California. And then I was
11 stationed here — stationed in Norfolk, Virginia.

12 Q Where did you go? What —

13 A As far as? Well —

14 Q Did you go overseas?

15 A Yes, sir.

16 Q Where did you go?

17 A France, Italy, Brazil, South Africa.

18 Q And what was your job in the Navy?

19 A Launching, recovering aircraft.

20 Q And did you ever spend some time in Washington?

21 A Yes, sir. Seattle, Washington was my last duty
22 station.

23 Q Okay. And what was the name of the ship you were
24 on?

25 A The USS Nimitz.

SW - J. TOMLIN - DIRECT

1 Q The USS Nimitz.

2 A CBM 68.

3 Q And why do I have ABE equipment down here? What
4 does that mean?

5 A That's aviation boat navy equipment handler.

6 Q Okay. And you enjoyed that?

7 A Yes, sir, it was fairly decent.

8 Q And how long did you stay in the navy active?

9 A Active three years and inactive three years, a
10 total of six creditable.

11 Q So when did you get out of the navy, sir?

12 A April of '90, April of 1990.

13 Q And your last station was Seattle?

14 A Seattle was my last duty station.

15 Q What did you do after that?

16 A Well, I worked down at a furniture plant, wherein
17 a VB Williams.

18 Q VB Williams?

19 A Yes, sir, VB Williams.

20 Q How long -- when did you do that?

21 A Well, I started there, I think, in '88 around
22 July, until '93, I think, until 93 I left there.

23 Q What did you do after that?

24 A Well, I worked there at industrial park, I think,
25 at Goldkist or -- and then after that it was H and R

SW - J. TOMLIN - DIRECT

1 Metal Santee prep, and since then construction.

2 Q You been working most of your life?

3 A Yes, sir.

4 Q And you worked construction with — who do you
5 work with?

6 A Well, me and my brothers work together. We're
7 self-employed.

8 Q Okay. Now Mr. Tomlin, on August 31st of this
9 past year 2013, where were you living?

10 A I was living on Dibert, Dibert?

11 Q How long had you been staying there?

12 A A year maybe now and some odd months.

13 Q Who else stayed there with you?

14 A Ms. Jennifer Joe and my brother Julian Tomlin.

15 Q Is he your only brother?

16 A No, sir, I have five or brothers other than him.

17 Q What were you all doing that day?

18 A Well, we were playing a little spades. We
19 gathered at the table to play a little spades and
20 then a fight broke out outside. Someone came in,
21 told us there was a fight. Come to find out it was
22 Frank and Lenard.

23 Q And when you say Frank you're talking about Frank
24 Dwayne Cokeley?

25 A Frank Dwayne Cokeley.

SW - J. TOMLIN - DIRECT

1 Q And Lenard, do you know Lenard's last name?

2 A No. No, sir, I didn't know his last name.

3 Q You come to find out there was something dealing
4 with those two?

5 A Yes, sir.

6 Q What happened after that?

7 A After that we all went outside to try to break it
8 up.

9 Q And who is "we all"?

10 A Me, my brother, and a couple of other folks that
11 were inside the house. And Ms. Johnson, his
12 grandmother, she came across the street after she
13 found out.

14 Q And Ms. Johnson is whose grandmother?

15 A Frank Cokeley.

16 Q Okay. And can you describe what's going on
17 outside the house at this point?

18 A Yes. As we got outside I saw Frank was bleeding,
19 I think, from the face area and him — Lenard and
20 his brother was in the backyard. They'd already
21 separated from fighting, but then they start to come
22 back together. But by this time someone had called
23 the police.

24 Q And can you describe the — or how old or the age
25 group of these folks that were over there?

SW - J. TOMLIN - DIRECT

1 A I think they were in the age frame between 25 and
2 30.

3 Q All right. And what did you do?

4 A I tried to tell them, talk them out of fighting,
5 you know, let's calm it down, settle it down. And
6 then after, after that we came inside. And then
7 another 15, 20 minutes later Ms. Sylvia's grandson
8 came in the house and told us there was some fellas
9 coming down the street with bats and sticks. And so
10 my brother Julian, he decided to go outside. He
11 went outside the back to see. By that time he
12 missed them coming around the front. And so by at
13 this time we heard a commotion, then I heard a door,
14 boom, bust in. So I looked and I jumped up. It was
15 two guys, maybe three, backing down Frank Cokeley
16 and his uncle back into the kitchen. So at that
17 particular time I jumped up and I tried to push them
18 out; and by the time we got them to the door, Julian
19 came in the front door and he tried to shove
20 somebody outside. And then shortly after that,
21 shortly after that I think Frank hit him with a
22 bottle. On the way out he hit him with a bottle.
23 And then I say about approximately 15 seconds later
24 shots rang out through the back room. We all went
25 back to sit down by that time.

SW - J. TOMLIN - DIRECT

1 Q So this group of folks actually came in part of
2 your house?

3 A Yes, sir.

4 Q Okay. How far did they come in?

5 A They came all the way in from the front door to
6 the kitchen. So you enter the front door, right
7 there to the right is the kitchen, and that is as
8 far as they got before we backed them out.

9 Q I'm gonna show you what's marked as State's 11.
10 Do you recognize this?

11 A Yes, sir.

12 Q What is that?

13 A That's the front of the house.

14 Q And State's 12?

15 A Yes, sir, that's the front.

16 Q And I believe you just testified that some folks
17 came in the house. Can you show the jury on State's
18 13 what you're talking about?

19 A Yes. When they came in, in to the front door
20 (indicating), when they came in the door was busted
21 in. And so we didn't know what to do but fight them
22 back out so we pushed them out and after that, as I
23 say, shots.

24 Q So did everybody get out?

25 A Everybody did. Everybody came outside.

SW - J. TOMLIN - DIRECT

1 Q What was the condition of the front door after
2 this?

3 A Oh, it was broken. It was like broked in, like,
4 kicked in or something.

5 Q Do you know who did that?

6 A I'm not sure. I'm not sure who did it but I
7 assume that they did it.

8 Q I understand that. You don't know individually
9 who did that?

10 A No, sir.

11 Q I guess the question is, was the door broken
12 before this group came to your house?

13 A No, it was not.

14 Q And what part of the door was broken?

15 A The center.

16 Q Sir?

17 A The center part of the door.

18 Q Okay.

19 A It was busted in, got a hole in it.

20 Q Okay. Was there a glass screen door there too?

21 A Yes, it was a glass screen door; but it wasn't,
22 it wasn't broken.

23 Q Okay.

24 A The one on the back got broke from the shot.

25 Q Okay, all right. So the one on the front was

SW - J. TOMLIN - DIRECT

1 what type door?

2 A It was a glass door. It was a glass storm door.

3 Q After this you got, you and your brother got
4 these folks out of the front of your house.

5 A Right.

6 Q Where did you go?

7 A Well, we went back to proceed playing cards in
8 the back room, but we never got to start again. We
9 started talking about why did they come in like that
10 fighting, you know. And all of sudden, I mean, 15
11 seconds later on so, that's when the shots rang. I
12 hollered, everybody get down. And I find out was,
13 anybody was hit after all the shooting was done and
14 Mr. Cokeley said, yes, he was hit. Then a few
15 seconds later Ms. Ann said, I'm hit too, Ms. Welch
16 say, I'm hit too, so she collapsed at the front
17 door. Frank had already fell by the kitchen in his
18 own blood. He tripped in his own blood trying to
19 get out the house. He finally got up and ran to his
20 grandmother's and then Ms. Welch came out back and
21 she said, I'm hit too, Joe. And then she came to
22 the front door and she collapsed at the front door,
23 and I was on the phone with 9-1-1 at the time by
24 that time passed.

25 Q Where was Ms. Welch sitting?

SW - J. TOMLIN - DIRECT

1 A She was sitting approximately, she was sitting
2 approximately about a foot away, two foot away from
3 the bathroom door which is right there at the, I
4 think across from me would be the — she would have
5 been on the left of where Frank was standing in
6 front of the bathroom door he was standing.

7 Q Showing you what's State's 20, Mr. Tomlin, do you
8 recognize that?

9 A Yes.

10 Q Okay. And can you tell the ladies and gentlemen
11 what this is.

12 A That's the table and the room we were playing
13 cards in, and she was — Ms. Welch was approximately
14 here and Mr. Frank was here.

15 Q And where is the bathroom in relation to this
16 picture?

17 A Right there behind that door.

18 Q That leads to the bathroom?

19 A That's the bathroom there.

20 Q Now were there bullet holes in that part of the
21 house prior to this?

22 A No, sir.

23 Q You sure about that?

24 A I'm sure, very sure.

25 Q And are there bullet holes there today?

SW - J. TOMLIN - DIRECT

1 A Yes, sir.

2 Q Are they still there?

3 A Yes, they're still there, six of them.

4 Q Mr. Tomlin, showing you what's State's 18 and
5 just following right up on your last testimony,
6 what is that?

7 A That's the room and that's the bathroom.

8 Q Okay. And is — State's 17, what is that?

9 A That's the bathroom also, yes, sir.

10 Q And it looks like on there there's a couple of
11 pieces of tape. You see what I'm talking about?

12 A Yes, sir.

13 Q What is that?

14 A Those are where the bullet holes marked by the
15 police.

16 Q That tape still there today?

17 A Yes, sir.

18 MR. MEADORS: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 BY MR. MEADORS:

21 Q Mr. Tomlin, did you ever have any beef with
22 Mr. Tre'Vaughn Jackson?

23 A I don't.

24 Q You don't?

25 A No, sir, never seen him a day in my life.

SW - J. TOMLIN - CROSS

1 Q Now the group, I think you said there was an
2 altercation that earlier before this incident and
3 the police were called, correct?

4 A Yes, sir.

5 Q And how long before that, how long was it when
6 that ended and then the next altercation started?

7 A Oh, around 30 minutes or so it was.

8 Q So when it was the second altercation, is that
9 when they came in the house?

10 A Yes, sir, on the second.

11 Q And after that altercation how long was it before
12 the shots were fired?

13 A I'd say approximately around 15 seconds or so.
14 It wasn't very long but...

15 Q And what was this all over as far as you knew?

16 A As far as I knew it was something about Frank's
17 sister and a phone. She was called the B word by
18 Lenard and him and Frank got into it behind that.

19 Q Thank you. That's all.

20 THE COURT: Ms. Butler.

21 MS. BUTLER: Just briefly.

22 **CROSS-EXAMINATION**

23 BY MS. BUTLER:

24 Q Just to clarify, after the altercation you pushed
25 the group of guys out of the house?

SW - J. TOMLIN - CROSS

1 A Yes, ma'am.

2 Q And then you went back in to play cards and about
3 15 seconds later, then you heard the gunshots?

4 A Yes, ma'am.

5 Q After the group had gone out the house?

6 A Yes, ma'am.

7 Q Okay, thank you.

8 THE COURT: Any redirect?

9 MR. MEADORS: No, sir.

10 THE COURT: All right, thank you. You may
11 step down.

12 THE WITNESS: Thank you.

13 THE COURT: We will take a break. All
14 right, ladies and gentlemen, we're gonna take a
15 short break. Please do not discuss anything about
16 the case. Some of y'all might want to get a cup of
17 coffee while you're back there so. We'll take about
18 a 15 minute recess.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 10:58 a.m., and the following
21 proceedings commenced in open court.)

22 THE COURT: Court's in recess for 15
23 minutes.

24 (WHEREUPON, a recess was taken from the
25 proceedings.)

SW - J. TOMLIN - DIRECT

1 (WHEREUPON, State Exhibit No. 23 was
2 marked for identification only.)

3 THE COURT: Let's bring them in.

4 (WHEREUPON, the jury was returned to the
5 courtroom at approximately 11:17 a.m., and
6 the following proceedings commenced in
7 open court.)

8 THE COURT: Is the State ready to call its
9 next witness?

10 MR. MEADORS: May it please the Court, the
11 State will call Julian Tomlin.

12 THE CLERK: Place your left hand on the
13 Bible, raise your right. State your name please.

14 THE WITNESS: Julian Jeron Tomlin.

15 WHEREUPON,

16 **JULIAN J. TOMLIN,**

17 having been duly sworn by the Clerk of Court,
18 testified as follows:

19 THE WITNESS: Nothing but the truth so
20 help me God.

21 THE CLERK: Have a seat up here please.
22 Please state your full name, spell your last name
23 for the record.

24 THE WITNESS: Julian Jeron (ph) Tomlin,
25 T-O-M-L-I-N.

SW - J. TOMLIN - DIRECT

DIRECT EXAMINATION

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BY MR. MEADORS:

Q Good morning, Mr. Tomlin.

A Yes, sir.

Q Where are you from?

A Sumter.

Q Born and raised?

A Sumter.

Q You in high school with your brother?

A Yes, sir.

Q Mayewood?

A Mayewood.

Q When did you graduate?

A '82.

Q '82. Mr. Tomlin, what did you do after 1982?

A I did construction work all my life, carpentry.

Q Have you worked for — who have you worked for?

A Worked with Tomlin Construction with my brother
and family.

Q Have you ever worked for Byrd construction?

A Byrd construction is one of them builder
construction. We work — we own construction
company together. We work under these other
companies.

Q And you work here in Sumter primarily?

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1 A Sumter primarily, yeah.

2 Q And you know Ms. Jennifer Joe?

3 A Yes, sir.

4 Q How long have you known Ms. Joe?

5 A Four to five years now.

6 Q And where do you live?

7 A Dibert.

8 Q How long you been on Dibert Street, Mr. Tomlin?

9 A Probably around three, three-and-a-half to four
10 years.

11 Q Your brother stays there?

12 A Yes.

13 Q Ms. Joe. And Ms. Joe? Ms. Jennifer Joe, your
14 brother, and you?

15 A Right.

16 Q Okay. Now we're going back about this incident
17 we're all here about today and gonna ask you what
18 you remember, okay, sir?

19 A Yes, sir.

20 Q August 31st of 2013, were you at Dibert
21 Street?

22 A Yes, sir.

23 Q And what was the plan that afternoon? What were
24 y'all gonna do?

25 A Going to play spades, play cards.

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- 1 Q And who all was — who was invited?
- 2 A Wow, Camel and Ann...
- 3 Q And when you said camel — did you say Camel?
- 4 A Wade.
- 5 Q First of all, do you say Camel?
- 6 A Right.
- 7 Q That's the nickname you have for —
- 8 A Camel, yeah.
- 9 Q —who?
- 10 A Frank.
- 11 Q Frank Dwayne Cokeley?
- 12 A Right.
- 13 Q Okay, I was just wondering. And so Mr. Cokeley
- 14 was there. Who else?
- 15 A My brother son and several other people. I just
- 16 can't quite remember; but it was Ann, Camel, my
- 17 brother John, and Tiosha which is Ann daughter, and
- 18 that's all I can recall right now.
- 19 Q And Ms. Ann is Ms. Sylvia Welch?
- 20 A Ann Welch.
- 21 Q Okay. Prior to the game starting did an
- 22 altercation happen?
- 23 A Prior to that, yes, an altercation happened
- 24 and — the first altercation, right?
- 25 Q What's the first thing you remember, Mr. Tomlin.

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1 A First thing I know there was a fight at first and
2 they left when the police was called.

3 Q Tell us about this fight. What happened on it
4 that you remember, the first fight?

5 A The first fight?

6 Q Yes, sir.

7 A I just walked in on the porch and I was talking.
8 Camel, he was sitting on the porch by himself after
9 I walked in. And I walked on in. They start
10 getting the table set to play cards and somebody
11 kids, Tiosha's son, came and told me, he said, there
12 are some guys out there fighting in your yard. So
13 they stopped the fight then.

14 Q You did what?

15 A We went out there and they stopped the fight then
16 whenever she called, the time she called the police
17 so.

18 Q So were the police called?

19 A The police were called.

20 Q What did that group of fellas do when the police
21 were called?

22 A They disappeared.

23 Q Okay.

24 A And they come maybe about 45 minutes later they
25 come, they come this time and rushed in the house.

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1 Q And where were you when this happened?

2 A The guy came to me again and told me they coming
3 down Porter Street with chains and bats and stuff.
4 They coming to fight Frank so.

5 Q And that Frank Dwayne Cokeley, also known as
6 Camel?

7 A Right.

8 Q Okay.

9 A So I went around. I went, I went out the back to
10 intercept them but they were coming up on the porch.
11 By that time I see only two persons walking out
12 through the backyard; and then I said, what's going
13 on, what the hell's going on. So I followed them
14 around the front. By the time I get around front,
15 they come in on the porch and in the living room.
16 They fighting in my house, man. I grabbed one of
17 them. They was -- Joe done forcing them out.

18 Q I'm sorry, say that one more time.

19 A Joe and -- went there, was forcing them out so I
20 fought, I grab, I went -- I catch one of them, the
21 last one, and I sling him out the door. That's when
22 Camel hit him with the bottle in the head. So maybe
23 about 5, 20 seconds, just long enough a minute,
24 everybody went back in and get back and said -- and
25 I grabbed a broom to sweep the glass up real quick

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1 and put it in the trash.

2 Q And where was the glass from?

3 A It was from where the beer bottle at.

4 Q Okay.

5 A That was where they was. So after that I opened
6 the door to go back in I hear the gunshot, clang,
7 clang, clang. I heard my brother Joe, everybody get
8 down, get down, get down. That was all I know.

9 That was it. I don't know what happened after that.

10 Q Do you know who was the fight was between? Who
11 was the fight between?

12 A Fight between Lenard and Frank.

13 Q Okay. Frank Cokeley?

14 A Frank Cokeley.

15 Q Now if I, if I ask you to come down here can you
16 speak up loud enough so the court reporter and jury
17 and judge can hear you?

18 A Yeah.

19 MR. MEADORS: Judge, can he be allowed to
20 come down?

21 THE COURT: Certainly. Please speak up.
22 We need to hear you.

23 THE WITNESS: I have a problem with the
24 voice.

25 MR. MEADORS: If you'll stand over here so

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1 the court reporter so she can see your mouth and get
2 where she can see you. Your Honor, this is State's
3 23 without objection.

4 THE COURT: Without objection, is that
5 correct, Ms. Butler?

6 MS. BUTLER: Yes, Your Honor.

7 THE COURT: All right, thank you.

8 (WHEREUPON, State Exhibit No. 23
9 was admitted into evidence.)

10 BY MR. MEADORS:

11 Q Do you recognize this as an aerial depicting your
12 residence at Dibert?

13 A (Indicating) right here.

14 Q So you do recognize it and is that —

15 A I recognize that area, Porter, Dibert, and that's
16 the — I know that — I can't know the name of —
17 Crystal Lake, Crystal Lake over down that road. I
18 know that.

19 Q This street is what?

20 A That's Dibert.

21 Q Dibert. This is whose residence?

22 A Jennifer Joe and mines.

23 Q And this is in Sumter County; isn't it?

24 A This is Sumter County.

25 Q And what road is this?

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1 A That's Porter Street.

2 Q And is that as long as Porter is?

3 A That as long as Porter is to my knowledge.

4 Q And what are these right here?

5 A Those are four lane, what they call the four
6 lane.

7 Q Four lane. And is Shoneys on the other side of
8 Captain D's?

9 A Shoneys, Captain D's, all on the other side.

10 Q And what's this area called?

11 A Sumter.

12 Q Okay. When the first altercation happened, show
13 the ladies and gentlemen of the jury what you did.

14 A First altercation? I was sitting on my front
15 porch, me and Frank. He was sitting there minding
16 his business on the phone. I walked back in the
17 house doing something in the kitchen and stuff at
18 the window. I went back in the back room.
19 Everybody back there talking about that. So I came
20 back. The dude, the guy came in the house, tell me
21 they was out there fighting Camel in my yard, which
22 is her grandson, Ms. Welch grandson. So that
23 altercation, they went on around here fighting up
24 the street there. They start right here and went
25 back up, coming back here in the backyard. So after

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1 the police were called they jet.

2 Q They jet?

3 A They jet out.

4 Q You mean —

5 A After they were fighting they been running, okay.

6 Q Okay.

7 A So after that altercation everybody went back,
8 came back in the house. I getting ready to sit
9 down, play cards, whatever, sit down, eat, we talk a
10 while. And maybe 45 minutes or hour we decide to
11 play cards, and then he — he came back again, came
12 back again the second time. And the little guy come
13 tell me the second time, come — so I went out the
14 back door which is this back door, back porch. I
15 came out through the back porch. I see a young lady
16 and a girl coming out through the back coming on
17 around this way following the gang so I follow them
18 on around exactly what was going on so evidently
19 they must have went on around. She must have went
20 on around the house, but at that particular time I
21 walk up on my front porch.

22 Q So you go from your back around to the front?

23 A I went from my back around to the front from this
24 side of the house. So evidently I — the rest of
25 them, how many of them was there, I wasn't care to

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1 seen two of them. I sling the second one out. The
2 first one got away. The first -- the second one I
3 sling out, that the one Camel hit. And so the rest
4 of them must have went this way for me to meet them
5 coming in in this way.

6 Q You come around the front of the house what do
7 you see?

8 A I see -- I was -- went up on the porch. When I
9 come around the front I didn't see nobody at the
10 front, but I went on in the porch they were in the
11 house fighting.

12 Q And what did you do?

13 A What did I do? I sling the guy, the last one I
14 took him, I sling him out the front door, man, what
15 the hell y'all doing in my house. And then at that
16 time Camel hit him behind the head with a bottle and
17 he was trying to get away. I was slinging him out
18 the house. So about 15 seconds or maybe, sure
19 enough, left me to get the glass off the porch.
20 Walk back in the house, they was gathering in the
21 room, you know, we sit down and play spades. And
22 that when I opened the door and walk back in. I
23 heard the noise, clang, clang, clang, clang, I hear
24 my brother Joe yell out, y'all get down. Everybody
25 fall down and that was it. They came out the room

SW - J. TOMLIN - DIRECT

1 shot.

2 Q Did you get hit?

3 A No, sir.

4 Q Now this is State's Number 9. Do you recognize
5 that?

6 A Right here.

7 Q Is that the second altercation? Is that the
8 front of your house?

9 A That's the front.

10 Q And how far did these folks get inside your house
11 before y'all —

12 A They follow me into the kitchen, follow me all
13 the way into the kitchen from the front of my porch.

14 Q And where did the bullet — where did the bullets
15 come from?

16 A They came from the back side of the house. Where
17 this area right here (indicating), back side.

18 Q And was that —

19 A On this end, on the bathroom end, this bathroom
20 end of the house.

21 Q And was the altercation over by then or did you
22 think it was over?

23 A I thought it was, I thought it was over. That
24 what I said the first time I thought it was over.

25 Q I understand, but after the second time you

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1 thought it was over too?

2 A Yes, sir.

3 Q And then what, are y'all going to go play cards?

4 What was your intent after the second time?

5 A We were going to play cards. The second time —

6 no, that second time that was it when they shot.

7 Q I understand, I understand. I'm talking about

8 the gap between once it was over and you got them

9 out, your intent was to go back and play cards?

10 A Once I got them out that what my intention was,

11 intending to play cards anyway, but they went on

12 around and start shooting, man.

13 Q And this was your house?

14 A My house, my house.

15 Q Have you ever had any — and I think you can sit

16 back up right now please.

17 A (Witness complies.)

18 Q Do you know Tre'Vaughn Jackson?

19 A No, sir.

20 Q Ever had any beef with him?

21 A No, sir.

22 Q You ever been to his house?

23 A I never seen him.

24 Q You ever fire any shots into his house?

25 A No, sir, never, don't know him to do that.

SW - J. TOMLIN - DIRECT

- 1 Q As far as you know he don't know you, does he?
- 2 A No, as far as I know.
- 3 Q And did Frank Dwayne Cokeley live with you?
- 4 A No, he was a good friend of the family. He come
- 5 around, sit around. We talk with him, you know how
- 6 people does, you know how friends.
- 7 Q But this wasn't his home?
- 8 A This wasn't his home.
- 9 Q He didn't sleep there?
- 10 A He didn't sleep there.
- 11 Q By the time you were back inside your house you
- 12 didn't see who shot, did you?
- 13 A I didn't see who shot, but...
- 14 Q How many shots were there?
- 15 A There were six of them.
- 16 Q And were there bullet holes before this in your
- 17 house?
- 18 A No, sir.
- 19 Q How many are there now? How many holes?
- 20 A Six.
- 21 Q They still there?
- 22 A Still there. Bad memories still there too.
- 23 Q I'm sorry, sir?
- 24 A I say it still aggravating it, man.
- 25 Q Thank you, that's all.

SW - J. TOMLIN - CROSS

1 THE COURT: Ms. Butler.

2 MS. BUTLER: Just briefly.

3 **CROSS-EXAMINATION**

4 BY MS. BUTLER:

5 Q How many guys were in the group that came?

6 A How many guys was in the crew?

7 Q In the group?

8 A Like I said, I didn't know how many guys was in
9 the crew. I know there was a bunch of them, four or
10 five maybe, I don't know.

11 Q Four or five you would say? You don't know ---

12 A People, people, people, right.

13 Q Okay, all right. Thank you.

14 A Ain't no way I could have known 'cause I went out
15 the back. I mean, so when I came around they was
16 done stand out there. They told me they done shove
17 out the house and I got the last one.

18 Q But to your recollection you say about four or
19 five. There was a group, a big group?

20 A I know it was more than one.

21 Q Okay. Okay. Thank you.

22 THE COURT: Any redirect, Mr. Meadors?

23 MR. MEADORS: No, sir, thank you.

24 THE COURT: Thank you, sir. You may step
25 down.

SW - F. COKELEY - DIRECT

1 Any objection to this witness being
2 excused for the balance of the trial?

3 MR. MEADORS: No, none from the State.

4 MS. BUTLER: No, Your Honor.

5 THE COURT: All right, thank you. Sir,
6 you can go home or you can stay here and watch if
7 you like.

8 Mr. Meadors, who is your next witness?

9 MR. MEADORS: Can we approach?

10 THE COURT: You may.

11 (WHEREUPON, counsel approached the Bench
12 for an off-the-record discussion.)

13 THE COURT: Frank Dwayne Cokeley.

14 THE CLERK: Place your left hand on the
15 Bible, raise your right hand. State your name
16 please.

17 THE WITNESS: Frank Dwayne Cokeley.

18 WHEREUPON,

19 **FRANK D. COKELEY,**
20 having been duly sworn by the Clerk, testified as
21 follows:

22 THE CLERK: Thank you, sir. Have a seat
23 up there please. State your full name, spell your
24 last name for the record.

25 THE WITNESS: Frank Dwayne Cokeley,

SW - F. COKELEY - DIRECT

1 C-O-K-E-L-E-Y.

2 **DIRECT EXAMINATION**

3 BY MR. MEADORS:

4 Q Good afternoon, Mr. Cokeley. If you don't mind,
5 if you'd please speak up so these ladies and
6 gentlemen can hear you and His Honor and the court
7 reporter especially please, sir.

8 A All right.

9 Q As I do with all witnesses, Mr. Cokeley, tell
10 these folks a little bit about you. Where were you
11 born?

12 A Sumter, South Carolina.

13 Q You were raised here?

14 A All my life.

15 Q Tell us a little bit about your school. Where
16 did you go to elementary school?

17 A Crosswell Drive Elementary.

18 Q Where did you go to middle school?

19 A Alice Drive Middle School.

20 Q Where did you go to high school?

21 A Sumter High.

22 Q And how far did you go in high school, Mr.
23 Cokeley?

24 A Up until 11.

25 Q Sir?

SW - F. COKELEY - DIRECT

1 A Up until the 11th grade.

2 Q And what did you do after that?

3 A I worked for my father at his own company doing
4 renovation work, but the main thing was brick laying
5 work.

6 Q Brick laying?

7 A Yes, sir.

8 Q And have you been doing that since high school?

9 A A little bit of middle school too during the
10 summers.

11 Q What are you doing now?

12 A Still helping him.

13 Q Renovating work, doing a little brick work here
14 and there? Do you have a bullet in you now?

15 A Yes, sir.

16 Q Where is it in your body?

17 A My upper back.

18 Q And what I'd like for you to explain to the jury
19 is what led up to that, how did this whole thing get
20 started. And first of all, what are you — I've
21 heard you Dwayne, Frank, Camel. What do you — what
22 do people call you normally?

23 A Normally by the middle name Dwayne.

24 Q Dwayne. Well Dwayne or Mr. Cokeley, how did this
25 all get started?

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1 A Well, two days prior to the shooting I got in an
2 altercation with Lenard Johnson who called my sister
3 by a name and I didn't appreciate it so we got into
4 altercation.

5 Q He called her a bitch?

6 A Yes, sir.

7 Q And that was two days prior to this?

8 A Yes, sir.

9 Q And you say you got in an altercation. Describe
10 that alteration. What ---

11 A We got into it. We got into a fistfight.

12 Q And where was that?

13 A This happened on Porter Street.

14 Q And how long is Porter Street?

15 A How long is it? I mean, it starts one end, then
16 it curves around to Dibert.

17 Q So it becomes Dibert?

18 A Around curve, yes.

19 Q So where on Porter Street did y'all get into this
20 altercation?

21 A I don't know the address, but it's a house on
22 Porter Street.

23 Q And so y'all actually have a fistfight?

24 A Yes, sir.

25 Q And who hit who, who got hit?

SW - F. COKELEY - DIRECT

1 A Both of us exchanged blows. We got a little bit
2 best of him.

3 Q Sir, say it again?

4 A I got the best of him.

5 Q What does that mean?

6 A He was kind of bruised up a little bit.

7 Q Where did you hit him?

8 A Like in the face.

9 Q All right. And where had he hit you?

10 A In the face too, also.

11 Q So you both got hit in the face?

12 A Yes, sir.

13 Q And this was on the 29th of August of 2013?

14 A Yes, sir.

15 Q And it didn't end there?

16 A No, sir.

17 Q Should have ended there; shouldn't it?

18 A It should have.

19 Q And what happened next in this ongoing
20 altercation between you and Lenard Johnson?

21 A The Saturday, August 31st, I was sitting on Mr.
22 Tomlin's porch. I seen, I seen them come through my
23 grandmother's yard so in the process of that we
24 exchanged some words and end up fighting again.

25 Q And where's your grandmama live?

SW - F. COKELEY - DIRECT

1 A Directly in front of the Tomlins.

2 Q So you saw — who else was with Mr. Johnson?

3 A His brother.

4 Q Specifically what happened?

5 A We began to fight, me, Lenard, and his brother
6 Keith.

7 Q What's Keith's last name, if you remember it?

8 A I believe it's Williams.

9 Q Okay. And what time of day was this on the 31st?

10 A I can't recall what time — it was midday.

11 Q All right.

12 A I'm guessing 2:30, 3:00, something like that.

13 Q And if you said it, I apologize, but who hit who?

14 A I hit him, he hit me. He hit me above the eye
15 and it started bleeding.

16 Q You started bleeding?

17 A Yes, sir.

18 Q And what did you do after that?

19 A His brother was there. He was trying to also
20 jump me so he took his shirt off so I snatched his
21 shirt from him and took it and wiped the blood from
22 around my eye.

23 Q So you took his, Lenard's brother's shirt and
24 wiped the blood from your eye?

25 A Yes, sir.

SW - F. COKELEY - DIRECT

1 Q What did you do with the shirt?

2 A I just threw it on the ground.

3 Q You were mad?

4 A Yes, I was.

5 Q They were mad. Either of y'all have a gun that
6 you're aware of?

7 A I didn't have one. I didn't see them with none.

8 Q Okay, so at this point in this ridiculous
9 altercation it was just fists?

10 A Yes, sir.

11 Q And that's all you planned on it being?

12 A Yes, sir.

13 Q So what happened after that?

14 A They came outside and broke the fight up.

15 Q Who did?

16 A Mr. Tomlin, his brother, and my uncle.

17 Q Okay.

18 A By this time I'm just thinking everything is over
19 with so about, I say about 20 minutes later, Keith
20 comes in the house saying there's some guys coming
21 down the street. I look out the back window and I
22 see some guys coming from off Porter Street, bats
23 chains, and whatnot so I went back out the front
24 door. By that time when I came out —

25 Q And maybe — you went out what front door?

SW - F. COKELEY - DIRECT

1 A Out Tomlin's house?' Tomlin's house is where I
2 was.

3 Q All right.

4 A So I went out the front door. By the time I came
5 out the front door they was already around to the
6 front. They wanted to fight some more. By this
7 time it's about four or five of them. So they
8 rushed on to the porch. They jumped on me. That's
9 when the fight escalated into the house into the
10 kitchen.

11 Q What happened next?

12 A They got on out. There was one fella lingering
13 behind. I took a beer bottle and hit him upside his
14 head with it. So after I did that, about 15, 20
15 seconds later I heard gunshot.

16 Q Did those folks get out of the Tomlin's house?

17 A Yes, they did.

18 Q Who did you hit with the beer bottle?

19 A I believe his name James Dwight.

20 Q James Dwyer?

21 A I believe so.

22 Q Did you receive anymore injuries once these folks
23 had come to your house and there was a fight at the
24 Tomlins, the second incident, did you get hit
25 anymore then?

SW - F. COKELEY - DIRECT

- 1 A Yes. Yeah, I got jumped on.
- 2 Q Okay. Where were you hit then?
- 3 A Got kicked a couple of times, kicked in my head.
- 4 Q How long was it after this group got out of your
- 5 house — excuse me, got out of the Tomlin's house
- 6 that you heard the gunshots?
- 7 A 20 seconds, 15, 20 seconds.
- 8 Q What did you do after that? Were you hit?
- 9 A Yes, sir.
- 10 Q Where were you when you were hit?
- 11 A I was between the room they play cards in and the
- 12 kitchen. I hear the gunshots. I heard Joe Tomlin
- 13 telling everybody to get down, but by that time it
- 14 was too late, I was already hit. But I got down
- 15 anyway so I jumped. I jumped back up I already know
- 16 I was hit. He asked was anybody hit. I told him,
- 17 yeah. So in the process of that, I mean, I got up.
- 18 I tried to get up. I fell down a couple of times
- 19 and I ran over to my grandmother's house.
- 20 Q Where does your grandmama live?
- 21 A Directly in front of the Tomlins.
- 22 Q So how far is that?
- 23 A Right across the street.
- 24 Q What happened when you got to your grandmama's?
- 25 A Nothing, I just collapsed, just passed out.

SW - F. COKELEY - DIRECT

1 Q You collapsed?

2 A Yes, sir.

3 Q How did you get to the hospital?

4 A EMS, ambulance.

5 Q Where were you hit?

6 A Upper torso, a couple of inches away from my
7 heart.

8 Q A couple of inches away from your heart?

9 A Yes, sir.

10 Q How long were you in the hospital?

11 A Two to three weeks, Palmetto Health ICU.

12 Q How did you get to Palmetto Health?

13 A Took the helicopter ride.

14 Q And why couldn't they take the bullet out of you?
15 What ---

16 A From what the doctors told me it would have
17 caused too much damage so they said it was better
18 off letting it stay in.

19 Q Can you feel it right now?

20 A Yes, sir.

21 Q Now if you will promise to speak up I'm gonna ask
22 you to come down. I want you to point out the
23 Tomlins and the residence on State's 23 please.

24 A All right.

25 THE COURT: You may step down.

SW - F. COKELEY - DIRECT

1 (Witness steps down.)

2 BY MR. MEADORS:

3 Q If you can use this pointer, do you recognize
4 this as an overview of Dibert and Porter Street?

5 A Yes, sir, that's the area I was standing. This
6 is the Tomlin's house. This is where I got shot at
7 and this is where I ran. This is my grandmother's
8 house right here.

9 Q Right across the street?

10 A Right across the street. When I seen the
11 individuals with the bats and chains, they were
12 coming down Porter Street, and they got in the yard
13 and they went around to the front and gained access
14 on the porch, and that's where they began to jump me
15 at.

16 Q So where had you been -- were you inside then?
17 How did you know they were coming?

18 A I looked out the back window.

19 Q And what'd you do then?

20 A I opened the front door, go on the front porch.
21 By that time they was already around there. They
22 seen me; they know I was in there.

23 Q Okay. And the altercation happened where, this
24 second time?

25 A Um...

SW - F. COKELEY - DIRECT

1 Q I'm showing you State's Number 9. Is that a
2 closeup of the Tomlins?

3 A Yes, sir.

4 Q Did they come on the porch?

5 A Yes, sir.

6 Q Show the ladies and gentlemen where they came?

7 A (Indicating) On that porch right there.

8 Q And how far did they get inside?

9 A All the way up into the kitchen.

10 Q Where were you then during this altercation?

11 A In the house.

12 Q Were you fighting?

13 A Yes, sir, trying to get them off me.

14 Q You mentioned hitting the beer bottle maybe on
15 James Dwyer's head. Where did that happen?

16 A On the porch while they was getting everybody
17 out. He was the last one to get out the house.

18 Q This is State's 11. Does that depict the porch a
19 little closer?

20 A Yes, sir.

21 Q Where approximately were you when you hit
22 Mr. Dwyer with a beer bottle?

23 A Coming out the front door.

24 Q After you were hit you ran to your grandmama?

25 A Right across the street right here.

SW - F. COKELEY - DIRECT

1 Q Show the ladies and gentlemen of the jury,
2 backing up in time a little bit, when you saw Lenard
3 Johnson and Keith Williams earlier that day, you
4 said earlier in the afternoon, where did that
5 happen, that altercation?

6 A In a field right here. There's a field right
7 here right across the street from my grandmother's
8 house, right here. Right beside the Tomlins, right
9 here in the field. That's where we fighting at.

10 Q And where, backing up further in time going back
11 two days prior to that on August 29th, you said you
12 were on Porter Street and when this whole dadgum
13 thing started about the phone, where was that, if
14 you can tell?

15 A Right here (indicating).

16 Q And whose residence was that?

17 A A fella named Maurice Haynesworth.

18 Q So that's where it started?

19 A Yes, sir.

20 Q And that's Porter Street?

21 A Yes, sir.

22 Q And this is where it ended?

23 A Yes, sir.

24 Q Dibert street?

25 A Yes, sir.

SW - F. COKELEY - DIRECT

1 Q That's all for this. You can take the stand back
2 just for this diagram.

3 A (Complies.)

4 Q I'm not gonna ask you to pull your shirt up but
5 just stand up and point where it is.

6 A The bullet?

7 Q Yeah. Don't pull your shirt up, just point where
8 it is.

9 A (Indicating) Right here.

10 Q You can have a seat back. Do you know Tre'Vaughn
11 Jackson?

12 A No, sir.

13 Q Ever had a beef with him?

14 A No, sir.

15 Q He ever had a beef with you that you know of?

16 A No, sir.

17 Q Did you have a gun when you were over there at
18 any time that day?

19 A No, sir.

20 Q And your intent in resolving this dispute with
21 you and Lenard Johnson was what? How were you going
22 to resolve it?

23 A Just regular fistfight.

24 Q You didn't live at the Tomlin's house?

25 A No, sir.

SW - F. COKELEY - DIRECT

1 Q Describe your relationship with them?

2 A I knew them for long time. I've known

3 Ms. Jennifer Joe very long time, ever since I was
4 small, just from the neighborhood.

5 Q But you didn't live there?

6 A No, sir.

7 Q You socialized. You played cards there before?

8 A Yes, sir.

9 Q Okay. Were they involved in any way, Joe,
10 Julian, Sylvia Ann Welch, were they involved in any
11 way with your altercation with Mr. Johnson?

12 A No. No, sir.

13 MR. MEADORS: Thank you, Judge. That's
14 all.

15 THE COURT: Ms. Butler.

16 MS. BUTLER: I have no questions.

17 THE COURT: Thank you, you may step down.

18 MR. MEADORS: May we approach.

19 THE COURT: You may.

20 (WHEREUPON, counsel approached the Bench
21 for an off-the-record discussion.)

22 THE COURT: Ladies and gentlemen of the
23 jury, I think we're gonna take lunch now, take an
24 early lunch. It may not be early for y'all, but
25 it's generally early for us. So I'm gonna dismiss

1 you with instructions you not talk to anybody about
2 the case and we will come back, let's say, 1:30. Be
3 back here just a little bit before. I'm gonna tell
4 you a story. Now don't go eat a huge lunch. I had
5 jury one time that came back and they all went
6 someplace and had a big lunch. And as the trial was
7 moving on in the afternoon I noticed heads starting
8 to bob, and I had all the jurors stand up. Well,
9 one of them was so asleep he didn't stand up, he was
10 snoring. So you don't want to be that juror this
11 afternoon so eat a light lunch. See y'all back here
12 at 1:30. All right, thank you.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 11:57 a.m., and the following
15 proceedings commenced in open court.)

16 THE COURT: Okay, court is adjourned.
17 I'll see y'all back at 1:30. Thank you.

18 (Whereupon, a lunch break was taken.)

19 (WHEREUPON, State Exhibits Nos. 24 through
20 154 were marked for identification only.)

21 THE COURT: Are we ready to proceed?

22 MS. BUTLER: Yes.

23 MR. MEADORS: State's ready.

24 THE COURT: Let's bring them in.

25 (WHEREUPON, the jury was returned to the

SW - S. WELCH - DIRECT

1 courtroom at approximately 1:53 p.m., and the
2 following proceedings commenced in open court.)

3 THE COURT: Ladies and gentlemen of the
4 jury, I hope you had a nice lunch. The State ready
5 to proceed?

6 MR. MEADORS: State's ready, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MS. BUTLER: Yes, Your Honor.

9 THE COURT: You may call your next
10 witness.

11 MR. MEADORS: State of South Carolina
12 calls Ms. Sylvia Ann Welch to the stand.

13 THE CLERK: Place your left hand on the
14 Bible, raise your right hand. State your name
15 please.

16 THE WITNESS: Sylvia Ann Welch.

17 WHEREUPON,

18 **SYLVIA A. WELCH,**
19 having been duly sworn by the Clerk, testified as
20 follows:

21 THE CLERK: Thank you. Have a seat up
22 here please. Please state your full name and spell
23 your last name for the record.

24 THE WITNESS: Sylvia Ann Welch, W-E-L-C-H.

25 **DIRECT EXAMINATION**

SW - S. WELCH - DIRECT

- 1 BY MR. MEADORS:
- 2 Q Good afternoon, Ms. Welch.
- 3 A Good afternoon.
- 4 Q Where are you from, Ms. Welch?
- 5 A Sumter.
- 6 Q Born here?
- 7 A Yeah.
- 8 Q Raised here?
- 9 A Yes.
- 10 Q Go to school here?
- 11 A Yes.
- 12 Q Please tell us where you went to school.
- 13 A Sumter High.
- 14 Q And when did you get out?
- 15 A 1980.
- 16 Q What did you do after that, Ms. Welch?
- 17 A Take care of my siblings after my mother pass.
- 18 Q What year was that when your mom passed?
- 19 A '79.
- 20 Q And how many other siblings did you have?
- 21 A It's nine of us all together. I took care of
- 22 four of them.
- 23 Q All the rest of them reside here in Sumter?
- 24 A I got three reside Sumter right now beside
- 25 myself.

SW - S. WELCH - DIRECT

- 1 Q What part of town did you grow up?
2 A Sumter.
3 Q Okay. And where are you living now?
4 A I live at Dibert Street, Sumter.
5 Q How long have you been Dibert Street?
6 A I live with my daughter for a couple of months
7 now. Living there before then we was living at
8 Porter Street.
9 Q Okay. How long did you live on Porter Street?
10 A About a year.
11 Q Where did you live prior to that?
12 A I was living with my sister.
13 Q Where?
14 A In Poplar Square.
15 Q And how long were you there?
16 A Two years.
17 Q And where'd you live before that?
18 A On Carolina.
19 Q Okay.
20 A Avenue.
21 Q How long did you live on Carolina Avenue?
22 A Probably about five years.
23 Q And who were you living with then?
24 A With my boyfriend.
25 Q Well let's go back to last, just about a year

SW - S. WELCH - DIRECT

1 ago, August 31st, please, ma'am, 2013. What was
2 your address?

3 A Porter Street.

4 Q Porter Street. And again, you were there
5 living with, who was with you?

6 A My daughter, with my daughter.

7 Q Now did you know the Tomlins, Julian Joe and Ms.
8 Jennifer Joe?

9 A Yes.

10 Q How long have you known them?

11 A About a little over a year now.

12 Q Okay. And did you have an occasion on
13 August 31st of 2013 to go visit with them?

14 A Yes.

15 Q And what was your -- why'd you do that?

16 A Go play some spades. See, I'm a spades player.

17 Q You pretty good?

18 A Yes.

19 Q And how long does a game usually last?

20 A It doesn't -- the game go to 500, sometimes it go
21 to 350, depends on if somebody got a ride to finish
22 playing the game.

23 Q And who all was going to be playing that day?

24 A Oh, it was Joe, Joe brother, myself, and my
25 daughter, and Camel.

SW - S. WELCH - DIRECT

1 Q All right. Camel, as we all learned, is
2 Franklin?

3 A Hum.

4 Q Dwayne Cokeley?

5 A Yes.

6 Q How do you know him?

7 A I really don't know him. I know his family
8 members.

9 Q Okay. Had you been to the Tomlins and Ms. Joe's
10 house before?

11 A Yes.

12 Q And tell the folks actually how far is that house
13 from where you were living?

14 A You talking before I had moved?

15 Q No, on August 31st, how far was your house from
16 where they were?

17 A Cross the street and just go in up in her
18 backyard.

19 Q From Porter to her back yard?

20 A Uh-huh.

21 Q And now you live on Dibert?

22 A Yes.

23 Q Okay. Was that the first time that day you'd
24 been over to the Tomlins on August 31st?

25 A Yes.

SW - S. WELCH - DIRECT

1 Q When you got there what'd you do?

2 A Well, I knocked on the door, somebody tell me to
3 come in. Went to the table, sit down, get ready to
4 play a spades game, but we never get a chance.

5 Q And why didn't you get a chance?

6 A There was a lot of commotion going on.

7 Q Be a little bit more specific please, ma'am.

8 A I got a lot of recalls. Someone try to kick the
9 door in. I hear gunshots coming through the house,
10 and I felt like something had hit me on my leg but I
11 ain't — when I walked to the door, to the front
12 door, that's when I collapsed on the floor. And I
13 remember I ran to — into grandma yard right...

14 Q What room were you in, Ms. Welch, when you got
15 hit?

16 A We used to sit at that spade table at in the
17 little room.

18 Q Had you actually sat down to start playing?

19 A I really didn't get a chance to sit down.

20 Q You don't mind if I come close to you, do you?

21 A No.

22 Q I'm gonna show you what's State's 20. Do you
23 recognize that?

24 A Yes.

25 Q What is that?

SW - S. WELCH - DIRECT

1 A That's where we play cards at.

2 Q Okay. And Ms. Welch, where were you supposed to
3 be playing?

4 A I was sitting near somewhere like the closet
5 right there.

6 Q Looking at State's 18, you recognize that?

7 A Yes.

8 Q Were you sitting near that door?

9 A Close to it.

10 Q And you said you started to get playing but you
11 didn't get to it.

12 A I never — we was getting ready. I never get the
13 chance to sit down to play cards.

14 Q Did you hear shots of did you feel them first?

15 A I heard the shots. Shots was coming everywhere.
16 I felt a sting on my leg. I finally made it to the
17 door. That when I collapsed. That's how I
18 remember.

19 Q What do you remember next?

20 A I — after it happened after I collapsed on the
21 floor I remember my grandson tell me, my son, came
22 give me a hug. That's all I remember. When I came
23 to I was in the hospital, Palmetto Richland, in the
24 trauma unit.

25 Q Do you know how you got there?

SW - S. WELCH - DIRECT

1 A No, I don't remember how I got there.

2 Q How long were you at Palmetto Richland?

3 A 39 days.

4 Q Can you tell the jury where the bullet went in
5 your body?

6 A (Indicating.) Right here, my side. Came across
7 my ribs and landed, it came through my lungs, made a
8 hole to my lungs. That's why they had to put a
9 tube, a feeding tube, in my lung to let me eat. I
10 couldn't swallow nothing, had to put trache in my
11 throat.

12 Q Don't get mad at me asking this, I certainly mean
13 no disrespect. You sound like you're hoarse now a
14 little bit, and I don't — I'm not saying, judging,
15 not saying anything bad about it, but were you like
16 that prior to being shot?

17 A No. Now I have trouble trying to talk plainly.
18 Only time I can talk plain, if I don't be upset.
19 When I get upset I stutter real bad.

20 Q I swear I don't mean anything, but you weren't
21 that way before this?

22 A No, I wasn't.

23 Q Had you had any disagreement or argument with
24 anybody?

25 A No.

SW - S. WELCH - DIRECT

1 Q Prior to this, that day?

2 A No.

3 Q Okay. Did you know anybody was outside, was
4 fixing to shoot, or did you know any guns were
5 around there?

6 A No. When I went in the house I never came back
7 out.

8 Q And did you know about any argument that had
9 happened?

10 A No.

11 Q You were just there to play cards?

12 A Just there to play cards and have fun.

13 Q Do you know the defendant Tre'Vaughn Jackson?

14 A Yes.

15 Q How do you know him?

16 A He's my cousin.

17 Q He's your cousin?

18 A Yes.

19 Q So his mom is your what?

20 A Cousin.

21 MR. MEADORS: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 BY MR. MEADORS:

24 Q Did you have a gun?

25 A No, I don't own a gun.

SW - S. WELCH - DIRECT

1 Q Did Mr. Tomlin have a gun?

2 A No.

3 Q Did you see a gun inside at all?

4 A No.

5 Q Were there any shots fired from inside the
6 trailer out?

7 A Not that I can remember.

8 Q That's all. Thank you.

9 THE COURT: Ms. Butler.

10 MS. BUTLER: I have no questions.

11 THE COURT: Thank you. You may step down.

12 MR. MEADORS: Detective Mitchell.

13 THE CLERK: Place your left hand on the
14 Bible, raise your right hand. State your name
15 please.

16 THE WITNESS: Jacob Mitchell.

17 WHEREUPON,

18 **JACOB MITCHELL,**

19 having been duly sworn by the Clerk, testified as
20 follows:

21 THE CLERK: Thank you. Have a seat up
22 here please. State your full name and spell your
23 last name for the record.

24 THE WITNESS: Jacob Ian Mitchell,
25 M-I-T-C-H-E-L-L.

SW - J. MITCHELL - DIRECT

DIRECT EXAMINATION

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BY MR. MEADORS:

Q Good afternoon.

A Good afternoon, sir.

Q I may have inadvertently said Jacob Smith in my opening statement. It's an attorney here in the building — I messed up — but you are the Jacob I was referring to crime scene Jacob Mitchell, correct?

A Yes, sir.

Q And I apologize to you, sir.

A That's okay.

Q Tell the folks about yourself, Detective Mitchell. Where are you from?

A Born in Austin, Texas. We moved around quite a bit. I live here in Sumter, been here since about 1990, grew up middle school elementary school high school.

Q Where did you go to high school?

A Sumter High School.

Q Please tell the ladies and gentlemen about your other background and training, education and training, and in particular training you received in the law enforcement field please.

A Sure. In 2008 I went to the South Carolina

SW - J. MITCHELL - DIRECT

1 Criminal Justice Academy in Columbia, was on patrol
2 for several years. In 2010 I made it back to
3 investigations, financial crimes, yeah, financial
4 crimes. Left for a year, came back in 2012 to crime
5 scene. From there I went back to the Academy for
6 eight weeks for a refresher course and also went
7 through a couple of CSI classes, Detective 101,
8 things like that, all classes they teach at the
9 Academy, how to respond to crime scenes, how to
10 preserve, how to collect evidence, things like that.
11 And I've been to several classes off and on since
12 then held by other departments and agencies on other
13 crime scene procedures, photographing, things like
14 that?

15 Q So you have the Criminal justice Academy, went
16 back to the Academy —

17 A Yes, sir.

18 Q —and you're trained in these other detective
19 courses?

20 A Yes, sir.

21 Q And in periodically some crime scene
22 investigation courses?

23 A Yes, sir.

24 Q And periodically do you do updates, continuing
25 legal credits?

SW - J. MITCHELL - DIRECT

1 A Always.

2 Q Always?

3 A Yes, sir.

4 Q So what's your position now with Sumter Police
5 Department?

6 A I'm crime scene investigator. I'm detective with
7 the police department and I've been in crime scene
8 for, since 2012, about two years.

9 Q What's the first thing you do when or — and
10 you're trained to do and did in this case when you
11 come to a crime scene?

12 A First thing we do when we get to a crime scene is
13 to talk to the officers that are already on scene.
14 Usually we respond after the fact so we try to find
15 out what happened, what's going on, try to get an
16 idea of where I need be, what I need to do. After
17 that we'll photograph the scene, try to take a look
18 at any physical evidence, what I need do from that
19 point forward, and then we document and collect as
20 things come up as we diagnose the scene.

21 Q There's been testimony two folks were shot at
22 Dibert. Were they still there or their bodies
23 still there when you got there?

24 A No, sir, I don't believe so.

25 Q Is that unusual?

SW - J. MITCHELL - DIRECT

1 A Not at all. A lot of times when I respond to a
2 scene the major crime has already been committed on
3 their, on the back end, to document and collect
4 evidence.

5 Q And obviously if the person is still living
6 medical care is number one ---

7 A Priority, yes, sir.

8 Q ---priority, correct? So when you got to
9 Dibert Street what were your observations?

10 A There was a lot of blood initially. We had the
11 road kind of blocked off to try to keep any outward
12 or outside interference, anything like that. Went
13 to look in the house, went inside, kind of
14 documented, saw that it was a lot of blood, try to
15 figure out where exactly the incident had occurred.
16 See bullet holes on the outside of the building. and
17 then from there I went to document and started
18 photographing the entire scene.

19 Q Now we're gonna try to use some modern technology
20 with your testimony, okay?

21 A Yes, sir.

22 Q Your Honor, I'm assuming all the --- this is
23 State's 9 which has already been admitted. Do you
24 recognize that?

25 A Yes, sir, that's the front of the residence.

SW - J. MITCHELL - DIRECT

1 That should be Dibert Street.

2 Q What's the first thing you did?

3 A Showed up on scene and —

4 Q After that?

5 A Talked to everyone there and photographed the
6 scene.

7 Q And specifically you mentioned some bullet holes?

8 A Yes, sir.

9 Q And you first — did someone call you that
10 attention to you, or did you just notice that when
11 you went through the house?

12 A When I went through the house — I was able to
13 see bullet holes inside and the main goal was to try
14 to find out where they came from. And so doing more
15 investigating of the scene, checking the scene, I
16 was able to locate those holes in the back of the
17 residence.

18 Q How many holes did you find?

19 A Six.

20 Q All right. And what did you do with each one of
21 those bullet holes?

22 A I put what's called scale tape, just regular
23 tape, it has a ruler on it. We do a 90-degree angle
24 on each bullet hole and we take crime scene
25 photographs, which we always take one far away, one

SW - J. MITCHELL - DIRECT

1 medium range and then one up close; that way we can
2 further document. So I documented and checked all
3 those digitally with photographs.

4 Q And prior to you coming here today have we gone
5 through these and organized these by bullet hole?

6 A Yes, sir.

7 Q And are you prepared to tell the jury picture by
8 picture —

9 A Yes, sir.

10 Q —what these show? First start off with State's
11 24?

12 A Okay. This is the...

13 Q I'll tell you what, why don't you come down?

14 A Yes, sir.

15 THE COURT: Yes, sir, step down. Speak
16 loudly when you get down.

17 THE WITNESS: Yes, sir.

18 BY MR. MEADORS:

19 Q Please keep your voice up. State's 24, what is
20 it?

21 A This is a picture of the back of the house. This
22 particular window is the window that goes to the
23 bathroom on the inside. We had — there's three
24 bullet holes in the picture. There's a last one on
25 the end there.

SW - J. MITCHELL - DIRECT

1 Q Can you point with your finger, can you?

2 A This here right there.

3 Q That's the bullet hole?

4 A Yes, sir.

5 Q Where are the other ones?

6 A The other two are right here and I labeled them
7 as 1, 2, and 3 except there are six total and when
8 we get to those photos I'll show you. But this was
9 just to document where they were in relation to each
10 other as well as where they were on the house.

11 Q That's State's 24. Okay, 25.

12 A As I mentioned before, when taking crime scene
13 photography we take one that's a little far away,
14 one a little bit closer, and one that's very close
15 just to show scale. So this is a still photo but
16 we're a lot closer to the bullet holes, label number
17 one and number two on the same window.

18 Q Keep going. Say the exhibit out and — before we
19 do it this is State's 6. Does that relate to your
20 testimony?

21 A Yes, sir.

22 Q Show the jury what these closeups are on State's
23 6.

24 A Yeah, the closeups are this window right here
25 that you're saying looks like some type of

SW - J. MITCHELL - DIRECT

1 reflective foil or something like that. This is,
2 the bathroom is on the other side of this house, but
3 this is what we're looking at closeup right here.

4 Q And that's the back of the house?

5 A Yes, sir.

6 Q Okay, thank you.

7 A This is State's 26. This is a closeup of bullet
8 number 1. Bullet hole number 1. Exhibit 27, we're
9 now going from the outside to the inside so this is
10 directly on the other side of that window. There
11 was that, like, plywood in between the glass and the
12 other side of the window, but this was picture of 1
13 and 2. And again, I put scale tape and everything
14 just like I did on the outside as well as on the
15 inside.

16 Q So where was that picture taken from?

17 A This was taken in the bathroom.

18 Q Okay. So you've now gone outside where the
19 bullet and gone inside to show where they would have
20 come through?

21 A Yes, sir.

22 Q Okay.

23 A This is State's Exhibit 28. Photo is a little
24 blurry and that's my hand there. What I'm doing, we
25 have a trajectory run and that is to show bullet

SW - J. MITCHELL - DIRECT.

1 trajectory once it's entered a surface or area or a
2 trajectory of bullet. On the end of this trajectory
3 rod is a laser pointer, just a standard laser
4 pointer that everyone usually has seen. And what
5 that does, that gives us an idea as to where the
6 bullet might have gone and we can track it out that
7 way. But this is number 1, and I'm just trying to
8 locate the trajectory of bullet number one.

9 Q So the shot came from outside. You're trying to
10 trace where the bullet went inside?

11 A Yes, sir. This is State's Exhibit 29. Similar
12 photo, just a little farther away. Still trying to
13 show trajectory. And one of the important things
14 that we have to do is try to tell a story with the
15 photos that we take. That way we can come in and
16 show you guys, you know, what we're doing. State's
17 Exhibit 30, this is the trajectory rod, and that's
18 the laser pointer that is on the end of the
19 trajectory rod. The rod is in hole number one, and
20 I'm actually panning the camera out kind of just
21 going along to show where it's pointing. The next
22 photos will actually be where the laser pointer
23 should be, State's Exhibit 31. It's a little
24 difficult to see but the coloring on the light on
25 this thing. That's also bullet number 1 underneath

SW - J. MITCHELL - DIRECT

1 the light switch, and there's a little red dot right
2 there.

3 Q What's making that little —

4 A That will be the laser pointer which is right
5 here. So we were able to show with the trajectory
6 rod and laser pointer that will come out of the hole
7 number one and the next area which is a continuation
8 of hole number one which is right under the light
9 switch.

10 Q Is there any other way to do this?

11 A I don't know.

12 Q That you know of?

13 A Oh, you mean —

14 Q No, to trace the bullet, is there any other way
15 to do that?

16 A I'm sure there is. We could do string or
17 something like that, but this is a lot easier and
18 it's accurate. Lasers travel in a straight line
19 unless some things are in the way so we're able to
20 tell exactly where it's going. This is State's 32.
21 This is the photo you saw a second ago but without
22 the laser light. I was just now documenting to show
23 where the laser was going so this is the —

24 Q So where was the laser going at this point to it?

25 A The laser was going here to the left picture.

SW - J. MITCHELL - DIRECT

1 Q That's why you put that mark there?

2 A Yes, sir.

3 Q Thank you.

4 A State's Exhibit 33, it's the same light switch.

5 Again, like I said, we take one far away, medium and

6 up close so the next photo you're gonna see after

7 this is an up close one. That's the same hole.

8 State's Exhibit 34 is an up close. And as you can

9 see, I've also marked each one with so we can keep

10 track that it's the same bullet so it's also marked

11 as number one. State's Exhibit 35, same one. We

12 take a lot of photos. The more documentation the

13 better. State's 36, now this is on the other side

14 of the door so the light switch would be right on

15 this side. We're on the other side of the door now

16 into the room in question where the incident took

17 place. And this here would be number one coming

18 through the other side underneath the light switch.

19 State's Exhibit 37 is that hole, a little bit closer

20 with some scale tape. State's Exhibit 38 is right

21 across from that hole. This one is a little

22 difficult to see, I apologize. This is the

23 bookshelf. Over here where there's nothing, this is

24 where the wall is so bullet number one goes through

25 the bathroom to that other side of the wall and

SW - J. MITCHELL - DIRECT

1 through this bookshelf right here. State's Exhibit
2 39, the same bookshelf. Try and get a little bit
3 more light on that photo. State's Exhibit 40 is the
4 inside of the bookshelf we were just talking about.
5 State's Exhibit 41 is a little bit farther way, same
6 bookshelf. State's Exhibit 42 was actually taken
7 before the one you just saw; but this here shows
8 there was a cup that's all broken up, that's where
9 the bullet went through. But that's where — and
10 this is also the bathroom that you see right here so
11 that whole trajectory goes straight through that
12 cup. And State's Exhibit 43 is a closeup of that
13 cup just to show that there was damage to it, and
14 that was the trajectory of 1.

15 Q And that's all what you depicted as number 1
16 bullet hole, correct?

17 A Yes, sir.

18 Q You have no idea, do you, what order these holes
19 were made, do you?

20 A No, sir.

21 Q You have to just depict them in one way or the
22 other, just start numbering them from 1 and go up,
23 correct?

24 A Yes, sir.

25 Q What can you tell us about the direction or

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1 trajectory of bullet hole number 1?

2 A We know that it started outside and ended up
3 inside.

4 Q And where is bullet number 1?

5 A We could not locate it.

6 Q Do you know where Ms. Welch was seated?

7 A I do not.

8 Q Or where she was located?

9 A No, sir.

10 Q All that is bullet hole number 1 at Dibert
11 Street, correct?

12 A Yes, sir.

13 Q All right. And did you find a bullet hole number
14 2?

15 A Yes, sir, we did.

16 Q I'm gonna hand you what's marked State's 44. Let
17 me know if you recognize and does it relate to your
18 testimony please?

19 A Yes, sir, it does.

20 Q What is 44?

21 A State's Exhibit 44 is bullet hole number 2 that
22 I've marked. It's a little farther away.
23 Underneath it it's scratched out. That did say
24 number 3. At first I thought that was bullet hole
25 number 3. Once I went back and put trajectory rods

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1 in the laser actually showed that came from bullet
2 hole number 2 trajectory. So in some of these you
3 might see number 3 but this is bullet hole number 2
4 as far as trajectory is concerned.

5 Q For the record that's State's what?

6 A This is State's 44. And State's 45, these are
7 all just documentation photos. This is where it
8 says number 3 but this is bullet hole number 2.
9 This is State's 45.

10 State's 46, also the same bullet. And this
11 is the wall that was directly behind the door — let
12 me see the door. This door right here is the entry
13 way into that room where the incident occurred so
14 this is behind that door. And State's 47 is just a
15 closer shot of number 2.

16 Q And State's 25, going back outside now, number
17 two depicted here?

18 A Yes, sir.

19 Q Show that again to the ladies and gentlemen
20 please.

21 A State's 25, bullet hole number two is pretty
22 centered in that bathroom window.

23 Q So the direction of bullet 2 went which way?

24 A It went outward to inward from the bathroom to
25 the room where they were playing cards.

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1 Q And do you know what happened to number 2
2 projectile?

3 A Yes, sir, it ended up in the wall.

4 Q And were you able to recover that?

5 A I was.

6 Q We'll get to that in a minute. I think the
7 evidence is...

8 MR. MEADORS: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 (Pause.)

11 (WHEREUPON, State Exhibit No. 155 was
12 marked for identification only.)

13 BY MR. MEADORS:

14 Q I show you what's marked State's 155. Do you
15 recognize that?

16 A Yes, sir.

17 Q What is that?

18 A This is a bullet projectile that we found.

19 Q Based on your examination of Dibert and the
20 trajectory of bullet hole number 2, what is this?

21 A That would be the bullet from the hole number 2.

22 MR. MEADORS: State's 155 I believe
23 without objection.

24 THE COURT: Any objection?

25 MS. BUTLER: None, Your Honor.

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1 THE COURT: Without objection it's
2 admitted.

3 (WHEREUPON, State Exhibit No. 155 was
4 admitted into evidence.)

5 BY MR. MEADORS:

6 Q Do you have a picture of where you got that from?

7 A Yes, sir, State's Exhibit 149. That bullet hole
8 documentation that you guys saw earlier, number 2,
9 where I had marked off, this is all the way the
10 bottom of that instead of taking the whole wall. We
11 just went to the bottom section to see what was
12 there. As soon as I opened it the bullet was right
13 in there. In State's 150 there's a closer
14 photograph of that, the bullet projectile, and that
15 was from bullet hole number 2.

16 Q And that's State's 155 you gathered?

17 A Yes, sir.

18 Q 155?

19 A Okay.

20 Q The bullet?

21 A Oh, yes, sir.

22 Q 155. Okay.

23 MR. MEADORS: Your Honor, I don't know if
24 I have or not, but State's 24 through 154, we've
25 looked at them previously and premarked them and

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1 they are without objection.

2 THE COURT: Is that correct?

3 MS. BUTLER: Yes, Your Honor.

4 THE COURT: All right, 21 through 154
5 admitted without objection.

6 MR. MEADORS: 24 —

7 THE COURT: 24 through 154.

8 (WHEREUPON, State Exhibits Nos. 24 through
9 154 were admitted into evidence.)

10 MR. MEADORS: Thank you.

11 BY MR. MEADORS:

12 Q Did you find a bullet hole in number 3?

13 A Yes, sir.

14 Q And that's what you originally showed us from the
15 outside, correct? And I'm gonna show you State's 24
16 again. I'm just gonna hold this one.

17 A Yes, sir.

18 Q Can you show, point right here where bullet hole
19 3 is, what you depict is bullet number 1.

20 A It's not on the window but right next to it.

21 Q And that's State's 24. Can you tell based on
22 your training and your expertise just looking at the
23 thing, did that come from the outside in?

24 A Yes, sir.

25 Q Is any question about that?

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1 A No, sir.

2 Q So you got the outside shot. What do you do then
3 to determine what path bullet hole number 3 took?

4 A The same as the other methods. We used
5 trajectory rods and try to match the holes up by use
6 of laser to see which direction the bullet went.

7 Q Can you do that? Did you do that with number 3
8 and can you show the jury?

9 A Yes, sir. State's 48, this is a distance shot of
10 the back of the house. It might be difficult to see
11 in the lighting, but bullet number 3 is right here
12 next to the window. State's 49 is a little bit
13 closer. State Exhibit 50, still documenting, it's
14 getting a little bit closer. You can see right here
15 where bullet 3 is. State Exhibit 51 is bullet holes
16 1 and 2. 3 is not in there.

17 THE COURT: Solicitor, I accidentally
18 touched the screen. I saw something I thought it
19 was spot on my screen, and I put that little yellow
20 thing on this so you might want to erase that.

21 THE WITNESS: This is the rest of bullet
22 hole, trajectory for number 3, State's Exhibit 81.
23 Now we're starting to focus more on number 3.
24 State's Exhibit 82, closer to number 3. State's
25 Exhibit 83, getting very close to bullet hole 3.

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1 And you can see how it bends inward, like, gives us
2 a direction of trajectory when, the way the bullet
3 went in. State's 84 is inside the bathroom on the
4 other side of that wall which is also labeled number
5 3.

6 Q Is that the room where the folks were shot?

7 A This was the bathroom.

8 Q Right, the room outside the bathroom?

9 A Yes, sir, that's where the incident took place.
10 State's Exhibit 85, which is another photo of bullet
11 hole 3. State's Exhibit 86 is a closer photo of
12 number 3. State's Exhibit 87 is an even closer
13 photo and you can even see how the way the paint is
14 bent outward lets us know that it came from an
15 outward/inward direction so we knew it came from
16 outside to inside.

17 Q Because the paint is pushed out as it's coming
18 in?

19 A Yes, sir. Yes, sir. State's exhibit 88 is where
20 I put in the trajectory rod to make sure we had our
21 holes matched up. State's Exhibit 89, a closer
22 photo of the same thing. State's Exhibit 90, this
23 was the hole that was across the wall. I'm trying
24 to think of the best way to describe it 'cause you
25 have the outside wall, inside wall. You have the

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1 space where the toilet was. And you had another
2 wall right next to the toilet; this is that hole on
3 the other side of the toilet.

4 Q It comes from the outside, goes through the first
5 wall, goes through the second wall?

6 A Yes, sir. State's Exhibit 91. That was State's
7 Exhibit 90 if I didn't say, I'm sorry. State's
8 Exhibit 91 is that same wall, just a little farther
9 away. You can see the door frame here. This is the
10 door that leads to the bathroom to the other room so
11 now that we know we're on this wall and not the
12 previous wall. State's Exhibit 92 is a closeup of
13 that photo or of that bullet hole. State's Exhibit
14 93 was the trajectory rod photo so the trajectory
15 rod was in 3 against the outline wall and the laser,
16 which might be difficult to see, but there's a
17 little red dot here showing the trajectory of that
18 bullet. And that's how we need to mark that number
19 3.

20 Q Is that the toilet right here at the back?

21 A Yes, sir.

22 Q That defense bullet coming from the outside,
23 correct?

24 A Yes, sir. State's Exhibit 94, this is come —
25 this is the on the other side of the bathroom now.

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1 We're in the card room. And this is on the other
2 side of that wall, and it's pushed out as if it were
3 coming towards, you know, from coming from outside.
4 State's Exhibit 95, same hole, a little closer.
5 State's Exhibit 96, same hole, even closer. State's
6 Exhibit 97, same hole with trajectory rod to show
7 where the bullet went. And this door, this is the
8 door to the bathroom right here and so that way we
9 know we're on the other side of the bathroom wall.
10 State's Exhibit 98, this red dot is where the bullet
11 should be and it's not. So that's where the
12 trajectory was going to. We were unable to locate
13 that bullet.

14 Q Would that be in the person?

15 A It could be, yes, sir. That's the kitchen right
16 there.

17 Q So that trajectory stain on that — go back to
18 that please, sir. If the bullet had followed its
19 path you would expect it to be there.

20 A Yes, sir, right here.

21 Q So something came in between that, that, and the
22 bullet?

23 A Yes, sir.

24 Q Could have been a body?

25 A Could have been a body, yes, sir.

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1 Q Otherwise you would have found something there?

2 A Yes, sir.

3 Q And that was bullet hole number?

4 A Number 3.

5 Q You've showed everything on number 2 you wanted
6 to show; didn't you?

7 A Yes, sir. Bullet hole number 2, okay.

8 Q You covered a lot of bullet hole number 2, but
9 did you show the damage to the door?

10 A No, sir.

11 Q Go ahead and do that real quick.

12 A Okay. This was State's 52. This was a closeup
13 of number 2 from the outside just to kind of give
14 you guys a perspective of where we're headed from.
15 State's 53, bullet hole number 2 is in the middle of
16 this plywood. 1 was over here, 3 is right here.
17 State's 54, closeup on number 2 from inside the
18 bathroom. State's 55, same hole a little bit
19 closer. State's 56 with trajectory rod to show
20 direction. State's 57, the trajectory rod with
21 laser pointer end of it. That is in hole number 2
22 to see which way we're going. State's 58, laser
23 pointing to the hole in the door to the bathroom,
24 let's us know that the door was probably shut when
25 this happened, but that shows trajectory there.

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1 State's 59, more documentation of the door,
2 still inside the bathroom. State's 60, same hole,
3 still inside the bathroom. State's 61, same hole,
4 just a little bit closer. State's 62, at first I
5 thought this was bullet hole number 3. After using
6 the trajectory rod we were able to determine that
7 this was bullet hole number 2. This is the door
8 that actually led inside the room itself so where
9 we've gone from the bathroom all the way to where
10 that other door was, where it was kind of propped
11 open, this is that door. State's 63, that's the
12 photo I showed you just a second ago. It says 3 on
13 that because this was a photo that was taken before
14 I realized that this was number 2. State's 64, same
15 door. State's 65, another up close photo of the
16 same door. State's 66 is the outside of the
17 bathroom door showing where it went through.
18 State's 67 is the same photo but closer, and State's
19 68 is also the same photo, even closer.

20 State's 69 is the same bathroom door with
21 trajectory rod. State's 70, this is the door
22 leading from the kitchen and difficult to see, but
23 the laser light is actually going right into that
24 hole. That's how we knew that was bullet number 2
25 instead of number 3. That's how we came to that

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1 conclusion. State's 71 was a picture of that door
2 leading from the kitchen before I made that
3 determination. State's 72 is a trajectory rod
4 through that door. You can see in the background
5 here this is the kitchen. State's 73 is the back
6 side of that door we were just looking at so this is
7 the corner of the room right here. State's 74 is a
8 closeup of that hole on the back of the door.
9 State's 75 is the same hole. State's 76, same hole
10 even closer. State's 77, trajectory rod coming from
11 the back side of that door. State 78, the back side
12 of the door to the corner of that room, and there's
13 a red dot in the center where the bullet entered the
14 back of the house, where the back of the wall, which
15 was bullet trajectory number 2.

16 Q Which we've already entered into evidence.

17 A Yes, sir.

18 Q You're going back showing them the middle path?

19 A Yes, sir. The rest is all the same. State's 79
20 is the same hole. And State's 80 is the same hole,
21 just a little bit closer.

22 Q So we've now covered 1, 2 and 3?

23 A Yes, sir.

24 Q Correct?

25 A Yes, sir.

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1 Q I apologize for the tedious, but can you tell
2 about number 4.

3 A Yes, I can.

4 Q This is State's 99 I think. First of all, show
5 the jury where bullet number, that you designated
6 bullet number 4, entered the residence of
7 Dibert.

8 A State's 99, this is number 4 in relation to
9 numbers 1, 2, and 3 on the back side of the house
10 underneath the bathroom window. That one is very
11 low. State's 100, it's a little bit more centered
12 photo on bullet number 4. State's 101 is a closer
13 picture of bullet number 4. State's 102 is even
14 closer, and State's 103 is the closest of number 4.
15 State's 104 is on the inside of the bathroom. You
16 can see it was low, below, I believe below where the
17 toilet was, but 3 was up here. 1 and 2 was up here.

18 Q So 1, 2 and 3 were going at an upward angle?

19 A Yes, sir.

20 Q And number 4?

21 A Was lower. State's 105, just a closer photo of
22 that bullet. We're still on the side of the out.

23 Q Put that back up there please.

24 A Yes, sir.

25 Q I know your training and all that; but just

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1 common sense, does that tell you that the bullet was
2 heading from outside to inside?

3 A Yes, sir, the way everything has blown out.

4 Q 'Cause it's coming in?

5 A Yes, sir, it's coming in. State's 106 is the
6 same photo but just at a different angle, different
7 lighting. State's 107, now this is on the opposite
8 wall on the other side of the toilet next to the
9 door frame. State's 108 is the outward wall with
10 trajectory rod. State's 109 is just another photo
11 of that trajectory rod. State's 110 is another
12 photo of that trajectory rod just trying to show
13 where the trajectory rod is going. State's 111, you
14 can kind of see the laser. That's where the laser
15 is headed. And State's 112 is where the trajectory
16 of that bullet was going to bullet hole number 4 on
17 the other side of the window — or on the other side
18 of the toilet. State's 113 is on the outside of the
19 bathroom with a trajectory rod. State's 114 is
20 the — there we found a hole on the bottom of the
21 door, and this is the door that leads out to the
22 kitchen so we were able to determine that that
23 bullet being as low as it was probably from the rest
24 of those.

25 Q Follow the same path based on — the same bullet

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1 path?

2 A Yes, sir. State's 115 is a picture of the bottom
3 of the door. State's 116, another photo of the same
4 door. State's 117 is another picture of the same
5 door. The balance is really off on this thing but.
6 The corner was over here. There's a hamper behind
7 that door. This is the corner of the room and this
8 is where leading in from the kitchen.

9 Q Detective Mitchell, I want to show you what's
10 state's 146, 147, and 148. Do you recognize those?

11 A Yes, sir.

12 Q What is that?

13 A These are photos of the hamper that were behind
14 that door.

15 Q And what happened to -- the bullet that you --
16 the bullet that you designated as a bullet hole
17 number 4, what happened to that projectile?

18 A It was located in that hamper behind the door.

19 Q And can you show that to the ladies and
20 gentlemen?

21 A State's 146, after moving the door you can see
22 the hamper. And that little speck right there, that
23 is the projectile. It had gone straight to the
24 bottom of the clothing of the hamper, just kind of
25 rested right there. State's 147 is a close every

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1 photo. State's 148 is a even closer photo of the
2 projectile. That will cover it.

3 (WHEREUPON, State Exhibit No. 156 was
4 marked for identification only.)

5 BY MR. MEADORS:

6 Q I'm handing you what's marked State's 156. Is
7 that relate directly to your testimony right now?

8 A Yes, sir. This was the bullet in the hamper.

9 Q That would be consistent with the traveling
10 through bullet hole number 4.

11 A Yes, sir.

12 MR. MEADORS: Your Honor, State's 156.

13 THE COURT: Any objection?

14 MS. BUTLER: None, Your Honor.

15 THE COURT: Without objection it's
16 admitted.

17 (WHEREUPON, State Exhibit No. 156 was
18 received into evidence.)

19 BY MR. MEADORS:

20 Q We're getting there. We'll do two other bullet
21 holes.

22 A Yes, sir.

23 Q Tell us about bullet hole number 5.

24 A Bullet hole number 5 we were able to see on the
25 outside the exterior of the home, but we could not

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1 actually find an interior location of it. So all we
2 could do for that one is actually just document the
3 outside of the house.

4 Q Give the jury an idea of where on the outside of
5 the house bullet hole number 5 was?

6 A There was a photo...

7 Q Remarkably I think I found it. Is that State's
8 29?

9 A Yes, sir.

10 Q Does that depict it?

11 A Yes, sir. State's 49 is the exterior of the
12 house. This was number 4 that we just looked at
13 which you can't see. This was number 4 that we just
14 looked at right here. This was number 3, 2, and 1.
15 Bullet number 5 is right next to the back door which
16 is right here.

17 Q Now that we got that up here, wait, go ahead. So
18 that's what you depicted as bullet hole number 5?

19 A Yes, sir.

20 Q And so what is the next step you took trying to
21 trace the path of bullet hole number 5?

22 A Well, I'll take trajectory rod, put it through
23 the hole to see where the other end is. From there
24 I'll be able to -- it's like, find the stick on the
25 other side of the hole and just keep on prompting,

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1 keep on going. That's how we -- when we did number
2 5 we could not find the other end of the hole. We
3 couldn't document it farther than just where we saw
4 just on the outside of the house.

5 Q What direction was bullet hole number 5 heading?

6 A In, out to in.

7 Q That would have been there toward the living area
8 I guess, correct?

9 A I would say more to the kitchen.

10 Q Okay. Show the jury what you did document.

11 A Yes, sir. State's 118, this was a closer picture
12 of number 5. And State's 119 is that same picture,
13 just even closer. You can see how it's bending
14 inward which gives us direction of the projectile
15 that entered the house.

16 Q So you just couldn't locate where this bullet
17 went?

18 A That's correct.

19 Q It might have. Could that have hit somebody
20 else?

21 A It's possible, yes, sir.

22 Q But do you always find every bullet?

23 A No, sir.

24 Q And the last, bullet hole number 6, and can you
25 show from the outside where bullet hole number 6 is?

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1 What can you tell us about bullet number 6, bullet
2 hole number 6, excuse me?
3 A Bullet hole number 6 also entered from the
4 outside to the inside. This one actually went
5 through the glass pane of the back screen door and
6 went in through the door at a very high angle and
7 actually hit the ceiling once it went into the house
8 and then ended up, we believe, hitting brick,
9 ricocheting, hitting behind the stove. State's 120
10 is the outside to this photo to show the glass, that
11 it was broken. And this was the pane up here that
12 was actually broken. You can see the broken glass
13 here on the corner, the corners. State's 121, the
14 entry point of the bullet into the door which is
15 right up here. This is hard to see, but there's
16 scale tape right there. That's where the bullet
17 entered the door. State's 122, I open the door,
18 backed away a little bit so you could see a little
19 bit easier but right there is hole number 6.
20 State's 123, closeup of number 6 inside the door.
21 State's 124, closeup of that hole. We're still
22 outside. State's 125, another photo, we're still
23 outside. You can see how it's bent inward which
24 shows direction of the bullet. State's 126, we're
25 inside the house. It might be a little bit — we'll

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1 see, but there's a little mark right there where the
2 hanger is, which is where the bullet exited out the
3 door. State's 127, same photo. State's 128, same
4 photo, closer with scale tape. State's 129, same
5 photo, and you can actually see some of the stuffing
6 insulation in the door being pulled out which is
7 sometimes common with bullets. They take whatever
8 bit of material is, whatever they're traveling
9 through it will carry along with it. So you can see
10 how that's kind of shooting out of the door. That
11 lets us know that the bullet entered or traveled
12 that direction. State's 130 is a similar photo.
13 State's 131 is the ceiling. This was from — this
14 would have been from the angle of the stove. It's
15 hard to show, but this here is hanging down towards
16 the ground. And what's behind it is actually the
17 bullet as it kind of, like, dug into the ceiling.
18 State's 132, the bullet entered from this direction
19 so back here towards — well, actually back down
20 this way would be the door to the house so the
21 bigger it gets, the farther away you're getting from
22 the door, from the back door.

23 State's 132 is a very blurry closeup photo
24 of that, just kind of showing the length of the
25 track. State's 133 is taken from the perspective of

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1 where the stove was. You can see the door right
2 there so coming towards as far as bullet coming
3 towards you. State's 134 is another photo which is
4 documenting trajectory number 6. State's 135 was
5 where the stove was and that was also where the
6 bullet would have ended, checked into the trajectory
7 of the ceiling and I couldn't find, I couldn't find
8 the hole, couldn't find the way it went any further
9 so we figured that it might have ricocheted, gone
10 somewhere else. I actually noticed it behind the,
11 where it hit the wall behind the stove. State's
12 136, closer photo, and you can see debris on the
13 stove so that lets us know that was a fresh, a fresh
14 shot. There was -- that had the been there for a
15 long time. And then State's 137 is a closer photo
16 of that same, that same hole.

17 Q Did you recover the projectile made?

18 A No, sir. No, sir, the stove was mounted.
19 Couldn't get behind it.

20 Q The stove was mounted?

21 A To the floor, yes, sir.

22 Q Six gun shots?

23 A Yes, sir.

24 Q Bullet holes out to in?

25 A Yes, sir.

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1 Q Trajectory was up on some?

2 A Yes, sir.

3 Q How many — found two projectile?

4 A We found two projectiles.

5 Q We know from testimony that one is in the body of
6 one of the victims?

7 A That's correct.

8 Q One of them went through one of the victims?

9 A Yes, sir.

10 Q And you couldn't recover the others, correct?

11 A That's correct.

12 Q Or didn't recover?

13 A Could not find them.

14 Q In addition to this residence did you go to any
15 other residence in the area?

16 A Yes, sir, we went to the house across the street.

17 Q And why did you do that?

18 A I was informed by the officers there that there
19 had been some blood inside that house, and I went
20 over there to document it to see what had gone on
21 and maybe the altercation went any further.

22 Q I'm showing you what's State's 138. You
23 recognize that?

24 A Yes, sir, this is the front yard of the house
25 across the street.

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1 Q We've had testimony that I believe Mr. Frank
2 Dwayne Cokeley, a/k/a Camel, went across the street.
3 That's where his grandmother was; correct?

4 A Yes, sir.

5 Q Show us State's 138.

6 A State's 138. That's my vehicle parked in front
7 of it. This is the house directly across the street
8 which would have been his grandmother's house.
9 State's 139, and what I'm doing, I'm taking photos
10 just to kind of establish where I'm at, just kind of
11 like a sweeping photo of just to show the area that
12 I'm in. This is the front porch of that house as
13 you can see here. State's 140 would be the front
14 door to that porch. And also it says 1045 right
15 here on the front so that way we know which house
16 we're actually at, and we are still on Dibert.

17 State's 141, coming into the house. There's
18 a stain, blood stain on the carpet, so while going
19 through the house I made sure to photograph and
20 document all these blood stains to make sure that
21 the story was correct, that he came into the house
22 and that's where he —

23 Q And "he" being Dwayne Cokeley?

24 A Dwayne Cokeley, yes.

25 Q And that would be consistent with him bleeding

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1 and going to his grandmother's house?

2 A Yes, sir.

3 Q That's just common sense?

4 A Yes, sir.

5 Q You took a picture of it?

6 A Yes, sir. State's 142, it's the same type of
7 documentation. The stain's right's here. State's
8 143, we were heading to the kitchen I was told by —
9 well, when I got there they informed me of what had
10 happened. I was told that there was blood all over
11 the house so I made my way to the kitchen where I
12 was told there was a lot more blood. So this would
13 be the kitchen area coming from the main entrance.
14 State's 144 will be the kitchen. You can see blood
15 all over here. And State's 145, turn around and
16 just took a shot of the living room into just to
17 kind of show the direction of where I was. That
18 would be the out door where I came from.

19 Q I think you can take a seat back now.

20 A Yes, sir.

21 Q Thank you.

22 A (Complies.)

23 Q Beg the Court's indulgence. Was there anything
24 else of evidentiary value found at the — potential
25 evidentiary value found at the incident location?

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1 A We found a — there was a hat that was outside in
2 the front yard, as in LA Lakers hat.

3 Q Was that inside or outside?

4 A It was outside. It would have been in front of
5 the front porch area.

6 Q Any objection?

7 MS. BUTLER: No, Your Honor.

8 THE COURT: Without objection State's
9 Exhibit 157.

10 (WHEREUPON, State Exhibit No. 157 was
11 marked for identification and
12 admitted into evidence.)

13 BY MR. MEADORS:

14 Q Is that the hat you located?

15 A Yes, sir.

16 Q And like the bullets fragments you collected it?

17 A Yes, sir.

18 Q 158.

19 (WHEREUPON, State Exhibit No. 158 was
20 marked for identification only.)

21 MR. MEADORS: 158 without objection.

22 THE COURT: Is that correct?

23 MS. BUTLER: Yes, Your Honor.

24 (WHEREUPON, State Exhibit No. 158
25 was admitted into evidence.)

SW - J. MITCHELL - DIRECT

1 BY MR. MEADORS:

2 Q Is that the hat?

3 A Yes, sir.

4 Q How far from the front of the porch was it?

5 A Maybe five steps. It wasn't very far.

6 Q But out of the outside, not inside?

7 A It was outside, yes, sir.

8 Q I think that's all we have.

9 THE COURT: I think we'll take a short
10 break before we do the cross-examination. Or is
11 there going to be any?

12 MS. BUTLER: Yes, there will be.

13 THE COURT: Let's take a 15 minute recess
14 to get a Co Cola or something like that to freshen
15 you up. Please don't discuss anything about the
16 case while you're back there.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 3:11 p.m., and the following
19 proceedings commenced in open court.)

20 THE COURT: Court will be in recess for
21 the next 15 minutes. You're still on the stand so
22 you can't discuss anything with them. You're
23 welcome to use the restroom, get something to drink.
24 You can't discuss anything.

25 THE WITNESS: Yes, sir.

SW - J. MITCHELL - CROSS

1 (WHEREUPON, a recess was taken from the
2 proceedings.)

3 THE COURT: Let's bring our jury in.
4 (WHEREUPON, the jury was returned to the courtroom
5 at approximately 3:27 p.m., and the following
6 proceedings commenced in open court.)

7 THE COURT: All right, you ready for
8 cross-examination?

9 MS. BUTLER: I am, Your Honor.

10 THE COURT: You may proceed.

11 MS. BUTLER: Thank you.

12 **CROSS-EXAMINATION**

13 BY MS. BUTLER:

14 Q Is it officer or detective?

15 A Detective.

16 Q Okay, Detective Mitchell. About how long after
17 law enforcement received the call did you respond?

18 A I'm not entirely sure. I have it documented. I
19 don't have it with me, but usually it's within the
20 hour or so.

21 Q Within the hour normally?

22 A Yes, ma'am.

23 Q And were you the only crime scene investigator on
24 the scene?

25 A I was not. Detective Johann Alec was also there

SW - J. MITCHELL - CROSS

1 with me.

2 Q So how does that usually work when there are two
3 crime scene investigators on the scene?

4 A Certainly. What we do, we look at what we need
5 to do for the entire scene and then we divvy up
6 between responsibilities. So I was documenting and
7 collecting evidence for the trajectories and
8 photographs and all that stuff. She was taking
9 pictures of the house and also preparing the sketch
10 for the crime scene.

11 Q Okay. So as part of your duties you will search
12 -- well, it's obvious you took pictures from the
13 inside so you would search the inside?

14 A Yes, ma'am.

15 Q And around the outside of the residence?

16 A That's correct.

17 Q Was there any attempt to locate any shell
18 casings?

19 A Yes, ma'am.

20 Q There was an attempt?

21 A Yes. We have a metal detector and we were
22 outside since we knew the shots came from the
23 outside. We looked at the back for quite a while
24 trying to locate them and we could not find any.

25 Q Is that common to not have any shell casing?

SW - J. MITCHELL - CROSS

1 A It is.

2 Q How so?

3 A Sometimes the person could actually pick up the
4 shell casing before they leave or in the case that
5 it's from a revolver the shell casings don't eject
6 from the gun and they actually stay in the gun
7 itself.

8 Q Okay. But at the point to where you number and
9 measure the bullet holes and when you collect the
10 actual bullet projectile, you can't tell whether
11 it's from a revolver or an automatic?

12 A No, ma'am.

13 Q Okay.

14 A We send those to SLED and they do an analysis to
15 find out.

16 Q And SLED will direct the analysis?

17 A Yes, ma'am.

18 Q And then from there, that's where they can tell
19 whether the bullet comes from a revolver or an
20 automatic?

21 A Well, they can tell what type of caliber weapon
22 it is, not necessarily what type of gun it came
23 from.

24 Q Okay. But they can narrow that down as well?

25 A Yes, ma'am. Yes, ma'am.

SW - J. MITCHELL - REDIRECT

1 Q Okay. No further questions.

2 THE COURT: Any redirect?

3 **REDIRECT EXAMINATION**

4 BY MR. MEADORS:

5 Q So it either could be a revolver why you didn't
6 find any or somebody picked them up?

7 A That's correct.

8 Q And was any question those bullet holes were
9 coming from outside to inside?

10 A There were no question. It was outside to
11 inside.

12 Q Thank you.

13 MR. MEADORS: That's all, Your Honor.

14 Sequestration our next witness just to —

15 THE COURT: Any recross?

16 MS. BUTLER: None, Your Honor.

17 THE COURT: Thank you, you may step down.

18 Any objection to t is witness being excused?

19 MS. BUTLER: None, Your Honor.

20 THE COURT: All right, thank you.

21 MR. MEADORS: Your Honor, the State of
22 South Carolina would call Ms. Santana Bolden.

23 THE COURT: Ms. Bolden, come forward
24 please.

25 THE CLERK: Place your left hand on the

SW - S. BOLDEN - DIRECT

1 Bible, raise your right hand. State your name
2 please.

3 THE WITNESS: Santana Bolden.

4 WHEREUPON,

5 **SANTANA BOLDEN,**

6 having been duly sworn by the Clerk,
7 testified as follows:

8 THE CLERK: Thank you. Have a seat up
9 here please, watch your step. Please state your
10 full name and I'd like for you to spell your first
11 and last name for me.

12 THE WITNESS: S-A-N-T-A-N-A B-O-L-D-E-N.

13 **DIRECT EXAMINATION**

14 BY MR. MEADORS:

15 Q Good afternoon Ms. Bolden.

16 A Good afternoon.

17 Q And how do you say your first name?

18 A Santana.

19 Q Santana Bolden?

20 A Yes, sir.

21 Q Can you tell the jury a little bit about Santana
22 Bolden. Where are you from?

23 A Sumter, South Carolina.

24 Q Were you born here?

25 A Yes, sir.

SW - S. BOLDEN - DIRECT

- 1 Q Raised here?
- 2 A Yes, sir.
- 3 Q Where did you go to elementary school?
- 4 A Crosswell Elementary.
- 5 Q Where did you go to middle?
- 6 A Chestnut Oaks Middle School.
- 7 Q Where did you go to high school?
- 8 A Crestwood high school.
- 9 Q And when did you get out of Crestwood?
- 10 A I don't remember.
- 11 Q How far did you go?
- 12 A Eleventh grade.
- 13 Q And what year was that?
- 14 A I want to say year before last.
- 15 Q Okay. And what did you do after that?
- 16 A Job corp, signed up for job corp.
- 17 Q Sign up for job corp?
- 18 A Yeah, job corp and adult ed.
- 19 Q Did you go to adult ed?
- 20 A Yes, sir.
- 21 Q All right. And where is adult ed?
- 22 A On North Main.
- 23 Q And what do you want to do?
- 24 A Be a computer technician.
- 25 Q And where were you living most of your life?

SW - S. BOLDEN - DIRECT

- 1 A On Dibert.
- 2 Q Okay. And back when this happened Miss Bolden
- 3 where were you living?
- 4 A Porter.
- 5 Q Okay. And where on Porter were you living?
- 6 A
- 7 Q Who were you living with on at Porter?
- 8 A Sylvia Welch.
- 9 Q On Porter?
- 10 A Yes, sir.
- 11 Q And where's your momma live?
- 12 A On Dibert.
- 13 Q Where on Dibert does she live?
- 14 A It's the house right across from where I stay.
- 15 Q All right. And you've been there how long in
- 16 that area, your whole life?
- 17 A Yes, sir.
- 18 Q Do you remember this day we're talking about?
- 19 A Yes, sir.
- 20 Q All right. And what had you been doing that day?
- 21 A Staying, being nosy of the — seeing what's going
- 22 on.
- 23 Q Being now nosy?
- 24 A Yes, sir.
- 25 Q Where were you in that area?

SW - S. BOLDEN - DIRECT

- 1 A On the side of the house.
- 2 Q I'm sorry, ma'am?
- 3 A On the side of the house.
- 4 Q Which house?
- 5 A Ms. Jennifer's. Ms. Jennifer.
- 6 Q Ms. Jennifer Joe?
- 7 A Yes, sir.
- 8 Q Okay. And how long had you been out there?
- 9 A Until the incident was over.
- 10 Q And why did you go there?
- 11 A See what was going on.
- 12 Q Were you aware that there'd been a fight going
- 13 on?
- 14 A Yes, sir.
- 15 Q Okay. And who were you out there with?
- 16 A Terry.
- 17 Q Who is Terry?
- 18 A He's a friend that just be over there, but he was
- 19 out there too.
- 20 Q And where had you come from before you went to
- 21 Ms. Jennifer's house?
- 22 A The house.
- 23 Q Whose house?
- 24 A Ms. Sylvia.
- 25 Q And when you got to Ms. Jennifer's house where

SW - S. BOLDEN - DIRECT

- 1 were you? And I'm gonna show you some pictures in a
2 minute. Where were you in relation to her house?
3 A On the side.
4 Q And tell these folks what you observed, what'd
5 you see?
6 A From the beginning?
7 Q Yes, ma'am, tell them.?
8 A Lenard and Keith and Campbell was fighting, then
9 they left. Five —
10 Q Did you see that?
11 A Yes, sir.
12 Q And where did that take place?
13 A Right there in the field beside the house.
14 Q And how long did that last?
15 A About no longer than five minutes.
16 Q Okay. And what happened after that?
17 A After they fight Lenard and Keith left walking
18 down Porter. Then they came back up with a group of
19 boys with bats and poles and steel bats.
20 Q Did you see all that?
21 A Yes, sir.
22 Q What did you do?
23 A Just finished watching to see what's gonna
24 happen.
25 Q You were just staying to watch?

SW - S. BOLDEN - DIRECT

1 A Yes, sir.

2 Q And what happened?

3 A Well, they bone rushed into the house, I guess,
4 trying to fight Camel. And then the rest that
5 stayed there was pushing them out.

6 Q And where were you when this was happening?

7 A Sitting right there standing on the side of the
8 house.

9 Q All right. Just being nosy?

10 A Yes, sir.

11 Q Well, did the residents that stayed at the
12 Jennifer's house did they push him out?

13 A Yes, sir.

14 Q All right. And what happened after that?

15 A Then everybody came out running. Well, shots was
16 fired from the house and everybody left running down
17 Porter.

18 Q And then what happened?

19 A That's when the police came and crime scene and
20 investigate.

21 Q And you said shots were fired. Where were they
22 fired from?

23 A The back of the house.

24 Q And where were you when -- how close were you to
25 where the shots were being fired?

SW - S. BOLDEN - DIRECT

- 1 A Real close.
- 2 Q Okay. Well, I understand that. Can you give me
- 3 an idea? Stop me when I'm — how close were you to
- 4 the person that was firing?
- 5 A Like beside him.
- 6 Q So how many feet?
- 7 A About to — there was a little bit of room, till
- 8 like two.
- 9 Q From here to here?
- 10 A Yes, sir.
- 11 Q Was there anything blocking your view for you to
- 12 see this person?
- 13 A No, sir.
- 14 Q Was it a sunny day?
- 15 A Yes, sir.
- 16 Q Did you have any trouble seeing that person?
- 17 A No, sir.
- 18 Q Can you describe that person to the ladies and
- 19 gentlemen of this jury?
- 20 A Like brown skin, chunky, facial hair.
- 21 Q Had you seen that person before?
- 22 A Yes, sir.
- 23 Q Where did you seen him?
- 24 A I seen him pick someone, pick someone up from
- 25 adult ed.

SW - S. BOLDEN - DIRECT

1 Q All right. Had you seen him in any kind of car
2 they were driving?

3 A Yes, sir.

4 Q What kind of car?

5 A A black car.

6 Q Do you remember how many shots were fired?

7 A No, sir.

8 Q Were you scared?

9 A Yes, sir.

10 Q Did you have -- did you talk to the police later
11 that night or the next, early next morning, and tell
12 them what you'd seen?

13 A The next day.

14 Q Okay.

15 MS. BUTLER: Your Honor, I'm gonna object
16 to the leading nature of the questioning.

17 MR. MEADORS: I really didn't know I was
18 leading then.

19 THE COURT: I didn't notice that was
20 leading either. Go ahead. Open-ended question,
21 overruled.

22 BY MR. MEADORS:

23 Q I'm saying did you talk to police?

24 A Yes, sir.

25 Q And what, if anything, did you tell them about

SW - S. BOLDEN - DIRECT

- 1 what you saw?
- 2 A Yes, sir.
- 3 Q Did you give them a description?
- 4 A Yes, sir.
- 5 Q And did you tell them what the person looked
- 6 like?
- 7 A Yes, sir.
- 8 Q Did you know this person's name?
- 9 A No, sir.
- 10 Q When was that when you talked to the police?
- 11 A The next day.
- 12 Q And where did you talk to the police?
- 13 A At my momma's.
- 14 Q Okay. And I'm sorry if I'm confused but where
- 15 does your momma live?
- 16 A .
- 17 Q what?
- 18 A Dibert Street.
- 19 Q Okay. And is that where you were staying back
- 20 then?
- 21 A No, sir.
- 22 Q Okay. You were staying on Porter Street?
- 23 A Yes, sir.
- 24 Q Okay. So your testimony was you talked to the
- 25 police the next day?

SW - S. BOLDEN - DIRECT

1 A Yes, sir.

2 Q And told them what you told them, description,
3 correct?

4 A Yes, sir.

5 Q Did you have an occasion to see the police again
6 after that? Did you see them again?

7 A No, sir.

8 Q Did you ever meet with Sergeant Culick?

9 A Yes, sir.

10 Q Okay. When was that?

11 A September 1st, 8:43 p.m.

12 Q So is that the next day?

13 A Yes, sir.

14 Q Where did that take place?

15 A At my momma's house.

16 Q And who was with Sergeant — Sergeant Culick came
17 to your house?

18 A Yes, sir.

19 Q Let me ask this much, was Sergeant Culick the
20 same officer you had talked to the day before?

21 A Yes, sir.

22 Q Okay. When she came back to your house did she
23 have a group of pictures to show you?

24 A Yes, sir.

25 Q And did she, in fact, show you these group of

SW - S. BOLDEN - DIRECT

1 pictures?

2 A Yes, sir.

3 Q And I'm gonna show you what's marked State's 7.

4 THE COURT: Any objection?

5 MS. BUTLER: None, Your Honor.

6 THE COURT: Without objection State's
7 Exhibit 7 is admitted.

8 (WHEREUPON, State Exhibit No. 7
9 was admitted into evidence.)

10 BY MR. MEADORS:

11 Q Is this the group of pictures she showed you?

12 A Yes, sir.

13 Q You're there, Sergeant Culick was there, who else
14 was there?

15 A My mother.

16 Q Did Sergeant Culick ask you if you recognized
17 anybody in there?

18 A Yes, sir.

19 Q Okay. Did she try to tell you who to pick out or
20 point anybody to pick out?

21 A No, sir.

22 Q All right. And did you pick out anybody that's
23 depicted in State's Number 7?

24 A Yes, sir.

25 Q What number did you pick out?

SW - S. BOLDEN - DIRECT

- 1 A 5.
- 2 Q Why did you pick out number 5?
- 3 A It fits my description.
- 4 Q Was that the person you saw shooting?
- 5 A Yes, sir.
- 6 Q And where did you see this person shooting?
- 7 A On the side of the house.
- 8 Q You sure that was the person shooting?
- 9 A Yes, sir.
- 10 Q And how far were you from him?
- 11 A About 2 feet.
- 12 Q Did Sergeant Culick also show you what's State's
- 13 Number 8?
- 14 A Yes, sir.
- 15 Q And did you write on here or put an X on number
- 16 5?
- 17 A Yes, sir.
- 18 Q Did you also sign that?
- 19 A Yes, sir.
- 20 Q And what's the date underneath your signature?
- 21 A September 1st.
- 22 Q And does it have a time on there?
- 23 A 8:43 p.m.
- 24 Q Did you know this person?
- 25 A No, sir.

SW - S. BOLDEN - DIRECT

1 Q Was that person from around there?

2 A No, sir.

3 Q Had you ever seen him in that area?

4 A No, sir.

5 Q Do you have any trouble seeing?

6 A No, sir.

7 Q And did the individual you saw that day, did he
8 have glasses on?

9 A No, sir.

10 Q Now based on the time October 31st, 2013, the
11 time you spent outside Ms. Joe's trailer and the
12 opportunity you had to view this person who was
13 shooting who you said was number 5, is that person
14 in this courtroom today?

15 A Yes, sir.

16 Q Do you need to stand up and look? Can you see
17 him?

18 A Yes, sir.

19 Q Where is he?

20 A (Pointing.)

21 Q You're pointing to the defendant?

22 A Yes, sir.

23 Q Sitting by Ms. Butler?

24 A Yes, sir.

25 Q Tell the ladies and gentlemen, are you sure

SW - S. BOLDEN - DIRECT

- 1 that's the individual you saw shoot into
- 2 Miss Jennifer Joe's trailer?
- 3 A Yes, sir.
- 4 Q Was there anybody else back there?
- 5 A Terry.
- 6 Q Was there anybody else with a gun?
- 7 A Some with some yellow shorts on.
- 8 Q Do you know who that person was?
- 9 A They call him Main or Man.
- 10 Q Main or Man?
- 11 A Yes, sir.
- 12 Q Do you know who that is?
- 13 A Yes, sir.
- 14 Q Who is that?
- 15 A He used to date my sister from once back.
- 16 Q Do you know his real name?
- 17 A No, sir.
- 18 Q Where does he stay?
- 19 A I don't know.
- 20 Q You seen him around?
- 21 A No, sir.
- 22 Q Do you know Lenard?
- 23 A Yes, sir.
- 24 Q How do you know Lenard?
- 25 A He just comes by the house the day of.

SW - S. BOLDEN - DIRECT

- 1 Q And Lenard and Tre'Vaughn friends?
2 A I don't know.
3 Q Does Lenard have a brother named Keith?
4 A Yes, sir.
5 Q Keith and Tre'Vaughn friends?
6 A I don't know.
7 Q You ain't got any — you ain't got any beef or
8 misunderstanding with Mr. Tre'Vaughn Jackson, do
9 you?
10 A No, sir.
11 Q And you gave the description on August 31st?
12 A Yes, sir.
13 Q And then picked him out of the lineup the next
14 day?
15 A Yes, sir.
16 Q What did everybody do after the shots were fired?
17 A Ran down Porter.
18 Q How long did take the police to get there after
19 this, or do you remember?
20 A I don't remember.
21 Q But I guess my question is, do — did you talk to
22 Sergeant Culick as soon as they got there?
23 A No, sir.
24 Q When did you talk to her?
25 A Later on that night.

SW - S. BOLDEN - CROSS

1 Q Of August 31st?

2 A Yes, sir.

3 Q Beg the Court's indulgence. That's all. Thank
4 you.

5 THE COURT: Ms. Butler, any
6 cross-examination?

7 MS. BUTLER: Yes, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MS. BUTLER:

10 Q Santana, is that right?

11 A Yes, ma'am.

12 Q You testified earlier that Terry was standing out
13 there with you?

14 A Yes, ma'am.

15 Q What is Terry's last name?

16 A I don't know.

17 Q You don't know?

18 A No, ma'am.

19 Q Did you give the police Terry's name? Did you
20 tell the police that Terry was standing out there
21 with you?

22 A No, ma'am.

23 Q You did not? Okay. So your testimony was that
24 you were standing on the side of the house when you
25 saw the group of guys come?

SW - S. BOLDEN - CROSS

- 1 A Yes, ma'am.
- 2 Q But you were able to see them bone rushing the
3 front door?
- 4 A Yes, ma'am.
- 5 Q And during this time you said you lived on Porter
6 Street?
- 7 A Yes, ma'am.
- 8 Q What was the address?
- 9 A
- 10 Q Who lived there?
- 11 A Ms. Sylvia Welch, her son, her daughter, and her
12 grandson.
- 13 Q Who was her son?
- 14 A Brandon.
- 15 Q Brandon Ford?
- 16 A Yes, ma'am.
- 17 Q And who else lived there?
- 18 A Tiosha Ford.
- 19 Q Tiosha Ford?
- 20 A And her.
- 21 Q How long had you been living there then?
- 22 A I don't remember.
- 23 Q You don't remember?
- 24 A No, ma'am.
- 25 Q Who is Brittany Swinney?

SW - S. BOLDEN - CROSS

1 A Brandon's baby momma.

2 Q Isn't it true that Brittany Swinney was living
3 there on Porters Street last year?

4 A Yes, ma'am.

5 Q But you said you were living on Porter Street
6 last year?

7 A I was.

8 Q So you were living there and Brandon Ford's baby
9 momma was living in the same house on Porter Street?

10 A Yes, ma'am.

11 Q You sure about that?

12 A Yes, ma'am.

13 Q So is Brittany Swinney there that day?

14 A Yes, ma'am.

15 Q She was outside with you?

16 A She was coming from the store.

17 Q And you talked to Brittany Swinney about what
18 happened; didn't you?

19 A No, ma'am.

20 Q You didn't say anything to Brittany Swinney?

21 A No, ma'am.

22 Q When is the last time you saw Brittany Swinney?

23 A It was sometime this month 'cause she bring the
24 baby by to see everybody.

25 Q You never talked to her about this incident?

SW - S. BOLDEN - CROSS

- 1 A No, ma'am.
- 2 Q You never talked to her about Ms. Sylvia getting
3 shot?
- 4 A No, ma'am.
- 5 Q But y'all lived there together on Porter Street?
- 6 A Yes, ma'am.
- 7 Q And you never talked about this incident?
- 8 A No, ma'am.
- 9 Q And you said you know a Main?
- 10 A Yes, ma'am.
- 11 Q And he used to date your sister?
- 12 A Yes, sir.
- 13 Q Did you tell the police he used to date your
14 sister?
- 15 A No, ma'am.
- 16 Q You didn't? What is your sister's name?
- 17 A Shalante (ph) White.
- 18 Q So you didn't say anything to the police about
19 who Main used to date to help them look for Main.
- 20 A No, ma'am, cause I thought they already.
- 21 Q You thought they already knew?
- 22 A Yes, ma'am.
- 23 Q How you thought they already knew?
- 24 A 'Cause I thought they would have investigate
25 everybody that was there that day and that incident.

SW - S. BOLDEN - CROSS

1 Q You didn't mention -- you didn't tell them
2 anything about Main being there?

3 A I told them I saw he had on, like, yellow shorts.

4 Q Who was driving a black car? You said you saw a
5 black car.

6 A Yes, ma'am.

7 Q Who was driving a black car?

8 A (Pointing.)

9 Q What type of car was it?

10 A I don't know. I know it was black.

11 Q You just know it was black?

12 A Yes, ma'am.

13 Q Where did you see him driving the black car?

14 A Picked up someone from adult ed.

15 Q On this day right here?

16 A No, ma'am.

17 Q So you didn't see a black car on this day?

18 MR. MEADORS: Your Honor, she never
19 testified she did. She said she'd seen him
20 previously in a black car that was at adult ed.

21 THE COURT: Rephrase your question.

22 MS. BUTLER: I believe she testified about
23 that yesterday, Your Honor, black car.

24 THE COURT: Maybe she did; I don't know.

25 BY MS. BUTLER:

SW - S. BOLDEN - REDIRECT

1 Q And your testimony earlier is that you saw or
2 heard shots being fired from the house?

3 A Yes, ma'am.

4 Q Okay.

5 MS. BUTLER: That's it, Your Honor.

6 THE COURT: Any redirect?

7 MR. MEADORS: Just in response.

8 **REDIRECT EXAMINATION**

9 BY MR. MEADORS:

10 Q You'd seen the defendant in that dark car where?

11 A Adult ed.

12 Q Okay. That was earlier?

13 A That was —

14 Q Not earlier that day, that was previous?

15 A Yes, sir.

16 Q And you recognized him from that, right?

17 A Yes, sir.

18 Q And Ms. Butler asked you about where you were
19 standing. I want you to look at State's 153. Do
20 you recognize that?

21 A Yes, sir.

22 Q Can you show these ladies and gentlemen where you
23 were when the shots were fired.

24 A (Indicating) like right here.

25 Q And where was the person firing?

SW - S. BOLDEN - REDIRECT

1 A Right there.

2 Q Where were they firing to?

3 A The house.

4 Q Did you see that?

5 A Yes, sir.

6 Q Anything blocking your view from that?

7 A No, sir.

8 Q Where did the shots come from?

9 A A gun.

10 Q I know that. And that was my fault but, you say
11 the shots come from the outside in?

12 A Yes, sir.

13 Q Okay. Not from the inside out?

14 A No, sir.

15 Q All right. That's all. Thank you.

16 THE COURT: Any recross based on his
17 redirect?

18 MS. BUTLER: No, Your Honor.

19 THE COURT: Thank you. You may step down.
20 Any objection to this witness being
21 excused?

22 MR. MEADORS: No, sir.

23 MS. BUTLER: No, Your Honor.

24 THE COURT: Thank you.

25 MR. MEADORS: Sergeant Irene Culick.

SW - I. CULICK - DIRECT

1 THE CLERK: Place your left hand on the
2 Bible, raise your right hand. State your name
3 please.

4 THE WITNESS: Irene Culick.

5 WHEREUPON,

6 **IRENE CULICK,**

7 having been duly sworn by the Clerk, testified as
8 follows:

9 THE CLERK: Thank you. Have a seat up
10 here please. State your full name, spell your last
11 name for the record .

12 THE WITNESS: Irene Culick, C-U-L-I-C-K.

13 **DIRECT EXAMINATION**

14 BY MR. MEADORS:

15 Q Good afternoon.

16 A Good afternoon.

17 Q Sergeant, tell the ladies and gentlemen of this
18 jury about Sergeant Culick, where you're from, where
19 you were raised, your background, your education,
20 and particularly your education in the field of law
21 enforcement please?

22 A I'm originally here, from here, Sumter, South
23 Carolina, born at Tuomey next door. I went to
24 school here. I went to college at Saint Leos. I
25 started at the police department 16-and-a-half years

SW - I. CULICK - DIRECT

1 ago. I have been in the detective division since
2 June of 2002. I'm now a staff sergeant in the
3 detective division, and I've attended numerous
4 classes to include the academy for the basic law
5 enforcement, numerous advance classes as far as
6 investigations, and have a number of certificates in
7 reference to the classes I've been to.

8 Q What are the different positions you've held at
9 the police department?

10 A When I first started there I started in the
11 evidence room. Then I went to patrol. I worked as
12 a line officer responding to calls and then I was
13 promoted to the detective division where I've been
14 since June of 2002.

15 Q Now did you get involved in this case on
16 October 31st, 2013?

17 A August 31st.

18 Q Did I say October? I'm sorry, obviously I meant
19 August, I apologize. Did you get involved in
20 August 31st of 2013?

21 A I did.

22 Q And what did you do?

23 A I was called that night in reference to a
24 shooting incident that had occurred over on Dibert
25 Street. I was told that we had two victims that

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1 were shot and in critical condition. The detectives
2 that were working that night were filling me in on
3 what they had and the progress they were making.
4 Our forensics detectives came out to process the
5 scene. At that time they were sick, and so I just
6 came out that night to see if they needed anymore
7 assistance or help with anything. They had crime
8 scene wrapped up pretty well so I was talking to the
9 detectives, what we had, where we needed to go, just
10 trying to coordinate what our next move was that
11 evening. That's how I ended up on the scene.

12 Q And as a result of that did you get any names of
13 any potential witnesses that you initially talked
14 to?

15 A I did. While I was out there in the area I was
16 approached by some individuals that lived there in
17 the neighborhood, and they stated that there was a
18 female that witnessed what happened and they pointed
19 her out to me. So I went over and introduced myself
20 to her. I told her that I was Sergeant Culick of
21 the Sumter Police Department. She told me at that
22 time that she was Santana Bolden, and I asked her if
23 she would be willing to talk to me. She was a
24 little hesitant and said yes, and so I asked if she
25 would sit in my car. And as we sat there talking I

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1 could tell she was nervous because people were
2 walking by and in the area so I took her to the law
3 enforcement center and talked to her some more about
4 this case.

5 Q Based on your training and experience if you
6 arrive at a crime scene or potential crime scene in
7 a smaller community, if you will, where everybody
8 knows everybody, is it people often initially
9 hesitate to get involved?

10 A Yes. Yes.

11 Q So you took her from there to the law enforcement
12 center?

13 A I did.

14 Q And did Miss Bolden give you a description of who
15 she had seen shooting?

16 A Yes, she did.

17 Q What description was that?

18 A She stated to me that it was a black male. She
19 stated that he was around 18 to 19 years old. She
20 told me that he had a kind of a chubby face. She
21 stated that he had a little bit of hair under his
22 chin and that height-wise because she was standing
23 beside him when the shooting occurred, she told me
24 that he was approximately her height within just an
25 inch or so off of her height.

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1 Q Did she know his name?

2 A She did not know his name. She stated that she
3 had seen him before. She attended the adult ed and
4 that he was not a student there, but that she had
5 seen him out there picking up some boys before
6 because I was thinking in my mind at that time,
7 okay, maybe we can call in a sketch artist from SLED
8 to come in and make a sketch drawing with what she
9 was saying to try to figure out who this person was
10 and get the picture out.

11 Q So you took that information she gave you. You
12 didn't have a person to look for at this point,
13 right, or a name?

14 A Correct. We did not have a name at that, at that
15 moment.

16 Q And we're operating in realtime now I guess.
17 It's August 31st, two people are shot. You're
18 trying to figure out what happened —

19 A Correct.

20 Q —trying to identify suspects.

21 A That's right.

22 Q And was the defendant developed as a suspect
23 after you talked with Lenard Johnson?

24 A Yes, he was.

25 Q And after taking a statement from Lenard Johnson

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1 did you get Tre'Vaughn Jackson's name and then
2 ultimately get a picture?

3 A I did. We continued to do interviews throughout
4 the night, and in one of my interviews I was given
5 the name Tre'Vaughn Jackson. When I looked at a
6 photograph of Tre'Vaughn Jackson he looked similar
7 to the description that was given to me by Santana
8 Bolden, and so I contacted the State Law Enforcement
9 Division that we call SLED; and I asked them to
10 prepare a photo lineup for me, which is basically
11 could you take this person that I have as a suspect
12 and put him in with other pictures of people that
13 look similar for me, can you develop that for me and
14 send it to me. And that's what they did.

15 Q And that's if you were going to put me in a
16 lineup or anybody else in a lineup, that's what you
17 would do?

18 A That's correct.

19 Q Just ask SLED to do it. And tell the ladies and
20 gentlemen of the jury, when you're preparing a
21 lineup or asking that a lineup be prepared, are you
22 attempting to get folks that look alike or look
23 different?

24 A You want people that look alike. You want
25 someone that's similar. Of course, you wouldn't

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1 want male and female. You wouldn't want different
2 races, different ages. You wouldn't want 19 year
3 old with someone that was older. You would — you
4 want people that are of similar race, sex, facial
5 hair. You wouldn't want somebody with long dreads
6 and somebody with a mohawk, things like that. Your
7 want them to look similar so no one really stands
8 out to the witness.

9 Q That was my next question. You don't want to
10 make — you want to make a lineup where no one
11 stands out, correct?

12 A That's correct.

13 Q And did you receive, I believe, what's been
14 entered into evidence State's 7 from SLED?

15 A Yes, I did. This is the lineup that SLED
16 prepared and sent to me.

17 Q And did you have an opportunity to show that to
18 Ms. Santana Bolden?

19 A I did. The following night, once this was
20 prepared and sent to me, I went to Santana Bolden's
21 mother's residence where she was at and I was able
22 to show her this lineup.

23 Q And do it now like you did it then. What did
24 you — how did you show it to Miss Bolden?

25 A When I arrived at the house I talked to her

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1 mother for a few minutes outside, and then we went
2 in. I talked to Miss Santana and I told her that I
3 had some photographs I would like to show her. I
4 wanted her to take her time. I wanted her to look
5 at the photographs; and if she saw or recognized
6 anyone on these, in these pictures or one of these
7 individuals that was there that night, to indicate
8 by circling and initialing. And so I gave this to
9 her and she looked and immediately picked number 5.
10 Q And there's a circle and initials there, on
11 there. Who made those marks?
12 A Santana did. When she picked him she circled;
13 she did the initials. And then I asked her, okay,
14 who was this, and she stated this was the person she
15 saw shooting into the trailer the night before.
16 Q And I believe State's 8 is next. Did you have
17 her sign another document?
18 A Yeah. This is a form that we use at the police
19 department. After someone has identified a person
20 in a photo lineup then we use this form, and it just
21 states, you know, the witness's name, just tells
22 them to put an X in the appropriate slot. Like this
23 had one through six and she picked number five so
24 she indicated on here that she picked number 5, and
25 then she did her signature and the date and the time

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1 which was September 1st and it was 8:43 p.m. at
2 night that she picked him out, And then I signed
3 witnessing that's who she picked to go along with
4 the lineup.

5 Q And this was the day after the accident?

6 A Correct, this was the next night.

7 Q But you initially talked to her the date of the
8 accident, or the early morning hours?

9 A Yes, I talked to her the day of the incident.

10 Q Now when you're showing her this lineup did you
11 try to indicate to her in any way who to pick out?

12 A No.

13 Q Okay. And you say she immediately went to number
14 5?

15 A Yes.

16 Q Now did she say whether or not anybody else had
17 been out there that she had seen that may or may not
18 have had a gun?

19 A Yes, she did see other people out there that
20 night.

21 Q Okay. Could she identify them specifically?

22 A She knew some nicknames. She stated that one
23 subject went by CJ, lived in the Crosswell area.
24 She talked about Moe Black from that area was out
25 there. She talked about a person named Main in

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1 yellow shorts. She talked about Keith and she
2 talked about Nard is what she called Lenard Johnson,
3 Nard. And she talked about the victim Mr. Cokeley;
4 she called him Camel. So she knew a lot of
5 nicknames of people but just not actual names.

6 Q And is that all the information she gave you that
7 night of just the names?

8 A Just that she witnessed a fight earlier in the
9 day. She heard about some boys coming up the
10 street. She told me that there was about eight
11 boys, and she stated that they initially rushed into
12 the house and then the people were trying to force
13 them out of the house. And that's when she ended up
14 beside the defendant, Mr. Tre'Vaughn Jackson, and he
15 was holding an all black gun in his hand and he was
16 shooting into the trailer. And she was standing
17 very close to him just kind of in shock like
18 couldn't believe it was happening.

19 Q Is Tre'Vaughn Jackson depicted in number 5, is he
20 in the courtroom?

21 A Yes, he is.

22 Q And could you point him out.

23 A He's sitting right there beside his attorney
24 (indicating).

25 MR. MEADORS: Beg the Court's indulgence.

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1 THE COURT: Yes.

2 MR. MEADORS: Judge, thank you. That's
3 all.

4 THE COURT: Ms. Butler.

5 MS. BUTLER: Just briefly, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MS. BUTLER:

8 Q When Santana Bolden gave you a description it was
9 never recorded? When she spoke to you about what
10 she said she saw happened, it was never written down
11 or recorded?

12 A No. When I brought her to the police department
13 I asked her to sit beside me, and I turned the
14 computer on and I was going to type what she saw and
15 when I started typing she got very nervous and
16 scared and said she didn't want to put anything on
17 paper and because I was -- and then her mother came
18 up front, was worried for her because her daughter
19 was scared. And so I told her, okay, well we'll
20 just talk so I just pushed away from the computer,
21 didn't have paper, pen, just sat there and said
22 okay, well, let's talk, tell me what you saw. And
23 that's not uncommon; we get that a lot.

24 Q Did she specifically say she was scared or was
25 she just acting out?

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1 A No, she said. She said she was scared. She was
2 nervous; she was scared. And that's what she had
3 told me when we were sitting in the car too.

4 Q Uh-huh.

5 A When we got there she was just kind of hesitating
6 just a little, just a little nervous.

7 Q Did she ever mention anyone standing out there
8 with her watching all of this?

9 A She didn't tell me. She just stated that she was
10 out there and saw what happened.

11 Q And I believe earlier you testified that
12 Tre'Vaughn had become a suspect after you spoke to
13 Lenard Johnson; is that correct?

14 A That's correct.

15 Q So at that point you knew that Lenard Johnson had
16 had the fight with Frank Cokeley?

17 A Yes.

18 Q You did. And so you also knew Lenard Johnson had
19 been a suspect?

20 A When we first arrived on scene that is the name
21 that we were given was Lenard Johnson. We were
22 given his brother's name. We were told about a
23 fight that happened earlier in the day, and this was
24 information that was relayed from detectives who had
25 talked to people that were in the home with Ms.

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1 Sylvia and Mr. Cokeley.

2 Q And to your knowledge did law enforcement talk to
3 all those people whose names were given to you or
4 whose names you heard?

5 A Yes, ma'am.

6 Q Okay.

7 MS. BUTLER: No further questions.

8 THE COURT: Any redirect?

9 MR. MEADORS: No, Your Honor.

10 THE COURT: May we approach.

11 Yes, sir.

12 (WHEREUPON, counsel approached the Bench
13 for an off-the-record discussion.)

14 THE COURT: Ladies and gentlemen of the
15 jury, I wanted to go till about 10:00 tonight but
16 these attorneys wanted to go ahead and break now
17 so — I'm just teasing. So we will break for the
18 evening. Ladies and gentlemen, please do not
19 discuss anything about this case while you are home.
20 Don't look at any media tomorrow. I don't think
21 there's gonna be any but please don't look at any
22 media and have a nice evening, ladies and gentlemen,
23 be back here at right about 9:30 tomorrow. All
24 right, thank you, see you at 9:30.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 4:10 p.m., and the following
2 proceedings commenced in open court.)

3 THE COURT: I've got a short 9:30 hearing
4 tomorrow on a bond revocation so we will start as
5 soon as that's over with but y'all need to be here
6 right at 9:30. Court's adjourned until 9:30
7 tomorrow morning.

8 (WHEREUPON, the proceedings were concluded
9 for the day to be reconvened on August 27,
10 2012.)

11 MR. MEADORS: Your Honor, may it please
12 the Court, I have one matter I need to put on the
13 record.

14 THE COURT: Yes, sir.

15 MR. MEADORS: Your Honor, I don't know the
16 young lady's name, the young lady in the yellow
17 shirt back here. Yesterday I had some brief words
18 with her during a break, which is fine, I'm a big
19 boy, that was no problem. When I was doing Miss
20 Bolden yesterday I heard a remark from the back of
21 the room. I don't know what it was, when she picked
22 the defendant out, I don't know if it was her what I
23 do know late afternoon investigator lie several
24 other folks from this side heard this young lady
25 after Miss Bolden testified and as the jury was

1 walking half way out say, that's on TV, anybody
2 could have seen that, and just yelled it out.
3 Judge, I, that's just disrespectful to Your Honor's
4 courtroom. It's inappropriate, and I just — I was
5 shocked when they told me about it. I was talking
6 to somebody. But if Your Honor could admonish her
7 that that kind of conduct is not appropriate, and I
8 certainly would appreciate it.

9 THE COURT: All right. Ma'am, in the
10 yellow shirt, please stand. What is your name?

11 MS. WILSON: My name is Aisha (ph).

12 THE COURT: Aisha what?

13 MS. WILSON: Wilson.

14 THE COURT: Wilson, Aisha Wilson.

15 Ms. Wilson, you have a right to be in this
16 courtroom, but it is a right that is dependent upon
17 your good behavior. You make any outburst or
18 statement whatsoever, you will be instantly removed
19 from the courtroom and will not be brought back in.
20 Do you understand, Ms. Aishia Wilson?

21 MS. WILSON: Yes, I do.

22 THE COURT: Thank you. You may be seated.
23 Let's bring our jury in.

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 9:44 a.m., and

1 the following proceedings commenced in
2 open court.)

3 THE COURT: Ladies and gentlemen, I hope
4 you had a good night's rest. We'll go ahead and
5 start with more testimony today.

6 State ready to call its next witness?

7 MR. MEADORS: May it please, Your Honor.

8 THE COURT: Yes, sir.

9 MR. MEADORS: Paramedic, I was trying to
10 think of what to call him. Paramedic Steve Ham.

11 THE COURT: Mr. Ham, come forward.

12 THE CLERK: Place your left hand on the
13 Bible, raise your right hand. State your name
14 please.

15 THE WITNESS: Captain Gerald Steve Ham.
16 WHEREUPON,

17 **GERALD S. HAM,**
18 having been duly sworn by the Clerk, testified as
19 follows:

20 THE CLERK: Thank you. Have a seat up
21 here please. Please state your full name and spell
22 your last name for the record.

23 THE WITNESS: Gerald Steven Ham, H-A-M.

24 **DIRECT EXAMINATION**

25 BY MR. MEADORS:

SW - G. HAM - DIRECT

- 1 Q Good morning, Mr. Ham.
- 2 A How are you doing?
- 3 Q And you're a paramedic?
- 4 A Yes, sir.
- 5 Q Where are you from, Mr. Ham?
- 6 A Timmonsville, South Carolina.
- 7 Q Okay. Were you raised in that area?
- 8 A Yes.
- 9 Q Where did you go to high school?
- 10 A West Florence.
- 11 Q All right. What'd you do after high school?
- 12 A I worked construction work and then I went to
- 13 work at Coppers Industry which is a coal plant.
- 14 Q And you're a paramedic and I know that takes some
- 15 training. Please tell the ladies and gentlemen of
- 16 the jury how you became a paramedic, what type of
- 17 training you got.
- 18 A I started out as basic EMT, which was like three
- 19 months of training. Then I went to the next level
- 20 was the intermediate training which was like 18
- 21 weeks, and then I went to paramedic school in 2004
- 22 and that was 14 months of training.
- 23 Q And since 2004 have you been with EMS?
- 24 A Yes.
- 25 Q And in Sumter?

SW - G. HAM - DIRECT

1 A Yes.

2 Q Okay, and how much do y'all work? What's a --
3 what's your rotation?

4 A We work a 24 hour, and off 48 hours.

5 Q Now Mr. Ham, back on almost a year ago
6 August 31st, 2013, were you working?

7 A Yes.

8 Q And did you have an occasion to come in contact
9 with Ms. Sylvia Ann Welch back here on the front row
10 in the white shirt?

11 A Yes.

12 Q And did you know her?

13 A No, did not.

14 Q And how did you come in contact with her?

15 A During our shift rotation we had got a call for,
16 which is a single 15, is the DHEC code for gunshot,
17 and we responded with a medic unit with two
18 paramedics on it and a basic.

19 Q Two paramedics and a basic?

20 A Yes, sir.

21 Q Basic EMT?

22 A Yes, sir.

23 Q And when you respond you don't know what you're
24 going to find ever, do you?

25 A No, sir.

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1 Q And do you remember responding to Dibert
2 Street?

3 A I -- after reading my report, yes.

4 Q And can you tell the ladies and gentlemen of the
5 jury what you observed when you were actually at the
6 residence at Dibert and did you have occasion to go
7 there?

8 A When we responded when we got on scene, there was
9 officers standing around and bystanders standing
10 around. The officers stated they had two gunshot
11 victims, one in one house, one across the street in
12 the other house. The paramedic that was with me,
13 Kim Graham, she went to one house. I went to the
14 other house where Ms. Sylvia was.

15 Q Okay. And tell the ladies and gentlemen of the
16 jury how you found her.

17 A I found Ms. Sylvia, she was laying supine which
18 is lying on her back right inside the door. She was
19 conscious and alert.

20 Q What did you do with her or her body?

21 A When I approached her and found, and asked and
22 talked to her, she responded to me. I immediately
23 asked her was she hurt. She said, yes, I have pain
24 to my right shoulder. And I noticed a little bit of
25 blood on the floor right above the shoulder. When

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1 my — when the other ambulance got there they bought
2 in the spine board. We immediately rolled
3 Miss Sylvia over to the side, assessed her back. We
4 found an entrance wound right at the right shoulder
5 area. We bandaged it with occlusive dressing and
6 taped three sides, which an occlusive dressing is to
7 cover, to control the bleeding. And three sides
8 tape left one side open so air can escape. We
9 didn't want to have, you know, any type of lung
10 collapse or anything.

11 Q What — go ahead.

12 A And that way, you know, it would let air out as
13 she breathed.

14 Q Could you tell anything else about her breathing?

15 A Her breathing was normal. Her trachea was
16 midline which trachea being midline means that the
17 lung has not collapsed, has not deviated.

18 Q Could you tell about whether anything, any blood
19 was in her lungs or anything else?

20 A When I did lung sounds I could hear some air
21 movement. Did a percussion which we do on the
22 chest — we're taught in school to do. Percussion
23 means if you get a hyperresonance, meaning high, it
24 could be air. If you get a dull residence, a double
25 percussion, it means it possibly could be blood. So

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1 we know without, you know, doing the double resident
2 that give me indication it's possibly some blood in
3 there so wasn't no need to decompress 'cause she was
4 breathing fine.

5 Q And so you say it was an obvious gunshot wound?

6 A Yes.

7 Q Which is life threatening, correct?

8 A Yes.

9 Q What did you do next?

10 A Once we got her on the board with C-collar, we
11 moved her to the unit. We assessed her again. We
12 took vitals. We put her on high flow O2, cardiac
13 monitor.

14 Q What's high flow O2?

15 A Non rebreather at 15 liters which is high as you
16 can, which is 90 to hundred percent. We started —
17 we did all our interventions, ITLS, interventions,
18 which is international trauma life support. We made
19 sure the bleeding was controlled. We reassessed
20 lung sounds again. We mid-lined trachea, IVs,
21 cardiac monitor and transported her to the hospital.

22 Q And what hospital did you take her to?

23 A To the Tuomey Hospital.

24 Q Okay. And were you aware she was airlifted to
25 Columbia?

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1 A No, I was not.

2 Q So is your job as a paramedic obviously ends when
3 you take the individual to the hospital?

4 A When I drop the patient off at the ER at the
5 hospital and give my report to the staff, my job is
6 done.

7 Q And do you write a report? Do you know what a
8 run sheet is?

9 A Yes.

10 Q And is that —

11 A Basic care report.

12 Q And is that what you refreshed to remind you
13 about this today?

14 A Yes.

15 Q You love your job; don't you?

16 A Yes, sir, I do. I've been in business 29 years.

17 Q Beg the Court's indulgence. Mr. Ham, thank you.

18 MR. MEADORS: That's all, Judge.

19 THE COURT: Ms. Butler, any questions?

20 MS. BUTLER: No questions, Judge.

21 THE COURT: Any objection to this witness
22 being excused?

23 MR. MEADORS: Your Honor, he's been
24 working all night, we'd so ask.

25 THE COURT: Have a good sleep.

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1 MR. MEADORS: Special Agent James Green.

2 THE COURT: Agent Green, come forward and
3 be sworn.

4 THE CLERK: Place your left hand on the
5 Bible, raise your right hand. State your name
6 please.

7 THE WITNESS: James Green.

8 WHEREUPON,

9 **JAMES W. GREEN,**

10 having been duly sworn by the Clerk, testified as
11 follows:

12 THE CLERK: Have a seat up here please.
13 Please state your full name, spell your last name
14 for the record.

15 THE WITNESS: James William Green,
16 G-R-E-E-N.

17 **DIRECT EXAMINATION**

18 BY MR. MEADORS:

19 Q Good morning, Agent Green.

20 A Good morning.

21 Q Please tell the ladies and gentlemen of this jury
22 your background, your education, your training, and
23 in particular your training in the field of
24 expertise that I've asked you to testify about today
25 please.)

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1 A Yes, sir. I have a bachelor of arts degree from
2 Charleston Southern University. Also I have a
3 Masters of Science criminal justice degree from
4 Charleston Southern University. I completed the
5 South Carolina Criminal Justice Academy and worked
6 for Mount Pleasant Police Department for about
7 three-and-a-half years before I was hired at SLED.
8 I've been at SLED since 2005. I'm a forensic
9 firearms examiner working in the forensic services
10 laboratory at SLED. Once I got hired there I went
11 through an apprentice type program that's roughly
12 three-and-a-half years of studying under court
13 qualified firearms examiners. At first it's a lot
14 of reading and studying about firearms, ammunition,
15 and the development of firearms and ammunition. The
16 premise is if we know how the firearms are made, how
17 they're produced, what tools are used to made to
18 surface that mark the bullets and cartridge cases we
19 can better understand how they are marked.

20 As I progressed through the training I was
21 given practical exercises, written tests,
22 evaluations all throughout the training cycle. At
23 the end I was given comprehensive final, a bunch of
24 fabricated made-up cases I was to work those on my
25 own and report out my results on those cases. And

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1 once I completed that I was deemed competent as a
2 firearms examiner and given a case load.

3 Q How long have you been at SLED?

4 A Since 2005.

5 Q And how many examinations of projectiles have you
6 done?

7 A It's in the tens of thousands.

8 Q And have you ever been offered in courts of
9 record of this — courts of record in this state as
10 an expert in the field of firearms?

11 A Yes, sir.

12 MR. MEADORS: Your Honor, at this time we
13 would offer Special Agent James Green as an expert
14 in the field of firearms.

15 THE COURT: You request to voir dire him,
16 Ms. Butler?

17 MS. BUTLER: No, Your Honor.

18 THE COURT: You have any objection to him
19 being deemed an expert in firearms?

20 MS. BUTLER: No objection.

21 THE COURT: All right, thank you. Now
22 ladies and gentlemen, they have consented to this
23 gentleman being an expert in firearms. What that
24 means basically is normally a witness can only
25 testify as to what they have seen, heard, tasted,

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1 smelled, or felt. However, when somebody has a
2 higher level of education and experience we will
3 allow them to give their opinions; but even with
4 that, you don't have to accept his opinion if you
5 don't want to because you are the jury. You're the
6 finders of fact so I'm gonna let him testify to
7 things that outside of his actual, you know,
8 personal experience, but then you as the jurors will
9 decide whether it's based on sufficient scientific
10 knowledge and everything like that so. All right,
11 you may continue. Thank you, ladies and gentlemen.

12 MR. MEADORS: Thank you, Your Honor. If
13 it please the Court.

14 BY MR. MEADORS:

15 Q Where is your office?

16 A I'm sorry?

17 Q Where is your office.

18 A In Columbia.

19 Q Okay. Broad River?

20 A Yes, sir.

21 Q And when you receive -- and you basically wok for
22 the different law enforcement around the state?

23 A Yes, sir. All 46 counties submit evidence to our
24 laboratory.

25 Q And when you get that evidence you examine it and

SW - J. GREEN - DIRECT

1 try to render opinion about either what it is or
2 what firearm it came from or, correct?

3 A Yes, sir, firearms identification is what I do.

4 It's basically in a nutshell, if a submitting agency
5 submits evidence to us like a gun and a bullet, our
6 job is to determine if this bullet could have been
7 fired out of this gun. And if it wasn't fired from
8 that firearm we can get a list of firearms based
9 upon some characteristics we observe on the bullet
10 and that — we'll give that list to agencies like
11 investigative lead. We'll tell them this gun didn't
12 fire this bullet but you may be looking for these
13 types of firearms.

14 Q And agencies always submit a gun and a bullet?

15 A No, sir. Sometimes we get just a cartridge case.
16 Sometimes we get just a bullet. Sometimes we get a
17 combination. And sometimes we get just a firearm.
18 Sometimes we get a firearm and cartridge cases. So
19 we get the whole run.

20 Q And I don't mean this in any irreverent or funny
21 way, but you're basically pure to an extent. You
22 don't have any involvement with the county or what's
23 going on or know about the case. You just get
24 evidence and try to make a determination of —

25 A Yes, sir.

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1 Q --what you can, what it is, correct?

2 A Correct.

3 Q Now I'm gonna show you what's actually been
4 entered into evidence, Special Agent, as 155 and 156
5 and it came from this document actually. But ask
6 you if you recognize 155 and 156, and if so, what is
7 that?

8 A Okay. Ladies and gentlemen of the jury, if you
9 see me looking at the bags, well first of all, the
10 Ziploc bag these are in, are heat sealed across the
11 top. They have my writing, my initials on them.
12 But what I'm doing is when SLED gets evidence,
13 particularly the firearms department, if it's large
14 enough we'll take like a trimmer tool or scribe, and
15 we'll mark the laboratory, case number, the item
16 number and our initials on it so when it does go to
17 court we can look at the evidence and say, yes, this
18 is what I looked at. So if you see me rolling
19 evidence around in my hands that's what I'm doing.

20 Q Are you verifying that is what it is?

21 A Yes, sir.

22 Q Your initials are on there?

23 A Yes, sir. State's Exhibit 155 is a fired bullet
24 which I previously examined, and when I examined it
25 was SLED item 2. And State's Exhibit 156 is a

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1 bullet, a fired bullet I previously examined was
2 SLED item 5.

3 Q Let's start with item two, which would be our
4 exhibit number 155?

5 A Yes, sir.

6 Q Okay. Where did you get that from?

7 A You mean?

8 Q It came from this case, right?

9 A Yes, sir.

10 Q Sumter Police Department delivered it to SLED?

11 A Yes, sir. Whenever evidence is submitted to SLED
12 it actually was submitted inside this package. I
13 went down to our evidence control department, and
14 retrieved the evidence. I usually get a couple of
15 cases at a time so I don't go there every day. We
16 get evidence submitted every day. I put it in my
17 evidence locker. And whenever I have opportunity to
18 work a case or the case, I'll retrieve the evidence
19 my evidence locker and inspect the seals to make
20 sure they are intact and then start working the
21 case.

22 Q And —

23 A I have no direct knowledge or where the stuff
24 came from usually other than I got it out of this
25 package.

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1 Q Okay. And can you tell these ladies and
2 gentlemen of this jury what you did with your item
3 two or our State's 155 once you received it?

4 A Okay. I took pictures of it as the packaging as
5 received just so I know when I'm repacking it for
6 return I know what goes with what. Then I started
7 looking physically at the bullet. I weighed it. I
8 measured it. And I looked at what we call the OPCs
9 or the observable physical characteristics, and from
10 that I was able to determine a caliber of what I
11 thought this bullet was. And I did the same for
12 State's Exhibit 156. Once I did that I filled out
13 our departmental work sheet and put my conclusion on
14 the work sheet. And our department, every result is
15 verified. That means before we give out any results
16 to another — before we give out any results a
17 second examiner comes in and also forms their own
18 conclusion.

19 Q And again, let's start with State's 155, your
20 item two please, sir.

21 A Yes, sir.

22 Q After you examined it were you able to determine
23 what caliber it was?

24 A Yes, sir.

25 Q And tell the jury what your results were from

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1 your examination.

2 A I concluded that this was a — it was consistent
3 with a bullet loaded into some 32 auto caliber
4 cartridge. That was based on its diameter at the
5 base which becomes its caliber and its weight and,
6 like I said, the OPCs of the bullet.

7 Q And what type of firearms can fire this caliber?

8 A It is designed for using a firearm chamber for a
9 32 auto; however, some firearms or revolvers
10 chambered for a 32 Smith and Wesson caliber, 32
11 Smith and Wesson long caliber, 32 long colt calibers
12 will fire a 32 auto-caliber cartridge.

13 Q And do you list in your report for to help people
14 like me and, or just part of your report, the
15 different type of weapons that could have fired
16 this?

17 A Yes, sir, we call that a GRC exam or GRC list,
18 general rifle characteristics list. And when we
19 measure lands and grooves of the bullet which makes
20 up the rifling, combined with the caliber and
21 direction of the twists of the rifling, we put all
22 that information into a program given to us by the
23 FBI and it gives us a list of possible firearms,
24 which I did send out in my report.

25 Q And this could have been fired by a revolver?

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1 A Yes, sir.

2 Q And its significance of that is would there be
3 any shell casing?

4 A No, sir, there would not be.

5 Q And if you — were you able to match 155 to any
6 firearm?

7 A No, sir.

8 Q Okay. And why was that?

9 A No firearm was submitted.

10 Q Okay. So no way for you to be able to match it
11 to a firearm unless you had had it in your
12 possession, correct?

13 A Correct.

14 Q And in that case what, would you test-fire it?

15 A If a firearm was submitted, yes, sir, I would
16 test-fire the firearm. And then I'd recover the
17 bullets and then look at the bullets versus each of
18 them that I shot from the gun because I know it
19 ain't my gun because I shot them. Then I would
20 compare those with other fired bullets submitted
21 from the agency.

22 Q Now let's move on to State's 156, your item 5 I
23 think you said.

24 A Yes, sir.

25 Q Just for the record State's 156. Please tell the

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1 jury did you have occasion to examine that and if so
2 what were your results?

3 A Yes, sir. I did the same thing with State's
4 Exhibit 155. I weighed it; I measured it.

5 Q You said 155. That's 156.

6 A Yes, sir, I did the same thing with 155 as I do
7 with 156. I weighed it, I measured it. I looked at
8 the OPCs, the observable physical characteristics,
9 and I concluded it was consistent with a bullet
10 including a 9 millimeter Ruger caliber cartridges.

11 Q And what type of firearms could fire a 9
12 millimeter Ruger cartridge?

13 A There are some pistols. There are some revolvers
14 are the most common we see.

15 Q And again, you didn't have a firearm to try to
16 match that with, did you?

17 A No, sir. The only thing submitted in this case
18 from Sumter were State's Exhibit 155 and 156.

19 MR. MEADORS: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. MEADORS: Thank you. That's all.

22 THE COURT: Ms. Butler.

23 MS. BUTLER: Just briefly.

24 **CROSS-EXAMINATION**

25 BY MS. BUTLER:

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1 Q Item 2 that you examined is most consistent with
2 an auto-caliber?

3 A I'm sorry, say that again.

4 Q According to your report item 2 bullet is most
5 consistent with an auto-caliber?

6 A Yes, ma'am, the ---

7 Q According to your report?

8 A Yes, ma'am. The 32 Aut doesn't mean it has to be
9 fired in a 32 Aut. That's just the name that was
10 given to the cartridge itself.

11 Q Okay, but ---

12 A Yes, ma'am.

13 Q ---it's most consistent with a ---

14 A With a 32 Aut.

15 Q ---32 Aut?

16 A Yes, ma'am.

17 Q Okay, thank you.

18 THE COURT: Any redirect?

19 MR. MEADORS: No, sir.

20 THE COURT: Thank you. You may step down.
21 Anyone have any exception to my excusing this
22 witness?

23 MR. MEADORS: Not from the State. Thank
24 you, sir.

25 THE COURT: Thank you.

1 MR. MEADORS: May we approach.

2 THE COURT: You may.

3 (WHEREUPON, counsel approached the Bench
4 for an off-the-record discussion.)

5 THE COURT: Ladies and gentlemen of the
6 jury, I'm going to go ahead and give y'all a short
7 break while we take up a few matters. Please do not
8 discuss anything about the case while you're in the
9 jury room. Thank you.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 10:05 a.m., and the following
12 proceedings commenced in open court.)

13 THE COURT: All right. Y'all come back in
14 my office. We'll be at ease.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 MR. MEADORS: Your Honor, for the record
18 Tre'Vaughn Jackson is one interview. It's on two
19 tracks. I don't know why, it just, it's in
20 evidence. The first one we're going from 1 to 1630,
21 basically two or three minutes before they start
22 talking about him being in county detention. And
23 the tape -- that's the second part which is still
24 the same interview. We're going from 620 to 750,
25 911 to 1001, 1105 to 1207. It's just a few minutes.

1 I don't know how else to do it, just start it, stop
2 it at those stops.

3 THE COURT: Does that suit you, Ms.
4 Butler?

5 MS. BUTLER: Yeah, just in addition to the
6 mention of the detention center, no other mention of
7 people seeing him or putting a gun in his hand like
8 I argued.

9 MR. MEADORS: The only other thing, when
10 they're asking him in the first part about Keith and
11 Lenard saying he was there, which I think is part of
12 the interview process saying do you know them, did
13 you see them.

14 THE COURT: Yeah, I mean, then his answer
15 would be —

16 MR. MEADORS: And that's the only part
17 that's in the record regarding those two and saying
18 they'd seen him there that day; that's in there.
19 All the rest of it, any references to other people
20 putting guns in his hand, that's not in the —

21 THE COURT: All right.

22 MS. BUTLER: I would still object for the
23 record to that being in there.

24 THE COURT: Okay, very good. Thank you.
25 Your objection is protected. Thank you. Let's

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1 bring them in.

2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 10:35 a.m., and
4 the following proceedings commenced in
5 open court.)

6 THE COURT: All right, ladies and
7 gentlemen.

8 The State ready to proceed?

9 MR. MEADORS: Yes, sir.

10 THE COURT: You may call your next
11 witness.

12 MR. MEADORS: The State of South Carolina
13 calls detective Sergeant Billy Lyons.

14 THE CLERK: State your name please.

15 THE WITNESS: William Lyons.

16 WHEREUPON,

17 **WILLIAM LYONS,**
18 having been duly sworn by the Clerk, testified as
19 follows:

20 THE CLERK: Please state your full name
21 and spell your last name for the record.

22 THE WITNESS: William Lyons, L-Y-O-N-S.

23 **DIRECT EXAMINATION**

24 BY MR. MEADORS:

25 Q Good morning, Sergeant Lyons?

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- 1 A Good morning.
- 2 Q Where are you from?
- 3 A Here in Sumter.
- 4 Q Born?
- 5 A Yes, sir.
- 6 Q Raised?
- 7 A Yes, sir.
- 8 Q Where did you go to school?
- 9 A Sumter High School.
- 10 Q And when did you get out?
- 11 A '91.
- 12 Q What'd you do after that?
- 13 A Went to the University of South Carolina.
- 14 Q And what did you do after that?
- 15 A Well, I had worked in a few different areas.
- 16 Then in 2004 I started with Sumter Police
- 17 Department.
- 18 Q Tell the ladies and gentlemen about your training
- 19 in law enforcement.
- 20 A I've been with the police department, again,
- 21 since 2004, started out as a regular patrol officer.
- 22 Moved to a specialized enforcement team specializing
- 23 in high crime area, drugs, narcotics, guns. And
- 24 then from there I went into investigation division.
- 25 I was the gang investigator for three years on a

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1 grant. After the grant was over I continued in the
2 investigations division, was the supervisor of
3 violent crimes division, supervisor over property
4 crimes division. And now I'm currently one of the
5 supervisors over the entire investigation division.

6 Q So your entire law enforcement career has been
7 with Sumter Police department?

8 A It has.

9 Q And in addition to your -- you went to the
10 Criminal Justice Academy. Do y'all have training
11 periodically or every year, continuing legal
12 training?

13 A Yes, we do.

14 Q Now, I'm gonna ask you specifically today,
15 Sergeant, if you had an occasion to meet with
16 Tre'Vaughn Jackson on September 1st, 2013?

17 A I did.

18 Q Can you tell these folks where that occurred?

19 A At our law enforcement center.

20 Q And specifically where in your law enforcement
21 center?

22 A It was in one of our offices in the property
23 crimes area.

24 Q And were you there with anybody else?

25 A Yes, Detective Morse was there as well.

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1 Q And did you have an occasion to speak with
2 Tre'Vaughn Jackson?

3 A I did.

4 Q All right. During this process, if an
5 individual, in this case if Mr. Jackson wanted to
6 use the bathroom or wanted something to eat for
7 nourishment would that have been provided?

8 A Absolutely.

9 Q And did you have an occasion to read the Miranda
10 rights to Tre'Vaughn Jackson?

11 A I did.

12 Q Okay. And I'm gonna show you what's marked at
13 this point State's 2 for identification. Do you
14 recognize that?

15 A I do. It is our, what we call our interview
16 form.

17 Q All right. And did you read the rights on the
18 Miranda form or interview form to Mr. Jackson?

19 A I did.

20 Q And before we get into that let me just ask you,
21 did he appear to understand you when you were
22 talking?

23 A He did.

24 Q Okay. Could you understand his responses to you?

25 A I could.

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1 Q And were they subject matter appropriate? I
2 mean, if you asked him something would he -- did he
3 appear to understand what you asked him and by his
4 response?

5 A He did.

6 Q Okay. And did he appear to be under the
7 influence of alcohol or drugs or any other
8 intoxicant?

9 A No, sir, he didn't.

10 Q Intoxicants, excuse me. At any point during the
11 reading of these rights or his waiver did you
12 threaten or coerce him?

13 A No, sir, we did not.

14 Q Hold out any hope of reward or promises?

15 A No, sir.

16 Q And did he ever ask for an attorney?

17 A No, sir, he did not.

18 Q And if he had what would you have done?

19 A We'd ended our interviewing until he was able to
20 obtain an attorney.

21 Q For purposes of the record would you read Miranda
22 rights as you did then.

23 A It says, "Sumter Police Department interview
24 form. Before we ask you any questions you must
25 understand your rights. You have the right to

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1 remain silent. Anything you say can be used against
2 you in court. You have the right to talk to a
3 lawyer for advice before we ask you any questions
4 and to have him or her with you during questioning.
5 If you cannot afford a lawyer one will be appointed
6 for you before any questioning if you wish. If you
7 decide to answer any questions now without a lawyer
8 present you still have the right to stop answering
9 at any time until you talk with a lawyer."

10 Waiver of rights: "Before any questioning I
11 was furnished the above statement of my rights at
12 1:40 a.m. on September 1st, 2013 at the law
13 enforcement center by Officer Sergeant Lyons of the
14 Sumter Police Department. I have read or had read
15 to me the statement of my rights. I understand what
16 my rights are. I want to answer questions at this
17 time without a lawyer present. No promises or
18 threats have been made to me and no pressure has
19 been used against me."

20 Q And after you read the defendant his rights and
21 the waiver of rights, did you ask him if he
22 understood?

23 A I did.

24 Q And did he say he did?

25 A He did.

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1 Q And did he in addition to orally, did he sign
2 that form saying he understood his rights and waived
3 them?

4 A He did. It's signed, again, dated 9/1/13 at
5 1:40 a.m. witnessed by myself and Detective Morse.

6 Q So this is 1:40 in the morning on September 1st?

7 A That's correct.

8 Q 2013?

9 A Correct.

10 Q And is that your signature to the left?

11 A Yes, at the top line.

12 Q Below is who?

13 A Detective Morse.

14 Q Did the defendant Tre'Vaughn Jackson have any
15 trouble signing this thing?

16 A No, sir, he did not.

17 Q Is this on audio tape?

18 A It is.

19 MR. MEADORS: Your Honor, at this time
20 we'd offer State's 2.

21 THE COURT: Subject to your?

22 MS. BUTLER: Subject to my earlier
23 objections.

24 THE COURT: Okay.

25 MR. MEADORS: Your Honor, in addition to

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1 that...

2 (WHEREUPON, State Exhibit No. 2 was
3 admitted into evidence.)

4 BY MR. MEADORS:

5 Q You said that the interview is on tape?

6 A It is on tape.

7 Q Have you listened to that tape and have we
8 listened to it in —

9 A Yes, we have.

10 Q —Monday in court proceeding? Is that the same
11 taped conversation you had with the defendant?

12 A It is.

13 MR. MEADORS: At this time, Your Honor, we
14 offer State's Number 1.

15 THE COURT: All right. Over her
16 objection.

17 MR. MEADORS: And with the Court's
18 permission we request to publish.

19 THE COURT: You may.

20 (WHEREUPON, State Exhibit No. 1 was
21 admitted into evidence and published to
22 the jury.)

23 MR. MEADORS: Is that your voice?

24 THE WITNESS: Yes.

25 (WHEREUPON, counsel approached the Bench

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1 for an off-the-record discussion.)

2 (Playing of State's 1 continued.)

3 BY MR. MEADORS:

4 Q I think you just asked him the question about how
5 tight he was with Keith Lenard.

6 A Correct.

7 Q And there was some talk about keeping it one
8 hundred?

9 A Yes, sir.

10 Q And I believe, and everybody heard, or you can
11 hear what you hear, people better start keeping it
12 one hundred?

13 A Yes.

14 Q Based on your training as a detective what does
15 that mean in out in the community talk, keeping one
16 hundred?

17 A Slang term for keeping it real, keeping -- being
18 truthful. It's, like I said, it's a slang term so
19 it can be interchanged and used in a variety of
20 different ways depending upon how someone is using
21 it in context of their conversation. But for the
22 most part, most of the times I ever heard it, you
23 know, whenever I'm gonna keep it one hundred with
24 you, you know, usually it means they -- you hope
25 they're telling you the truth. That's technically

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1 what it's slang for.

2 Q And about 22 seconds prior to that you had asked
3 him about, what they tell on each other. Was his
4 comment, they'd be the first to tell?

5 A I believe it was.

6 (Playing of State's Exhibit Number 1 continued.)

7 BY MR. MEADORS:

8 Q Detective, after you — Sergeant, excuse me. Let
9 me ask you this, at any time during that process did
10 he ask to speak to a lawyer?

11 A No, he did not.

12 Q Tell you he didn't want to talk to you?

13 A No, he did not.

14 Q And he was arrested for two counts of attempted
15 murder?

16 A That is correct.

17 Q Discharging a firearm in a dwelling?

18 A Correct.

19 Q And possession of a firearm during the commission
20 of a violent crime?

21 A That's correct.

22 Q And what we heard, that was your voice,
23 Investigator Morse was the other voice, and then the
24 defendant's?

25 A Correct.

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1 Q And I know we heard it but being there and you
2 being there he appeared to understand your
3 questions?

4 A He did.

5 Q And you were asking him questions like Poplar
6 Square. Where is that?

7 A That's off of Pike where Pike and Miller Road
8 come together joining that fork in Poplar Square.
9 There's two sets of apartments in the Poplar Square
10 Apartments so they're right there in the middle of
11 the road, which in reference to four lane Highway
12 378.

13 Q And you cross the four lane. Is that where
14 Dibert and Porter Street are?

15 A Yes, taking you right into that neighborhood.

16 Q And I believe you asked him why he was on Porter
17 Street, and he said he was going to a bootleg house?

18 A Correct.

19 Q Was he able to identify specifically which house
20 that was?

21 A No, it's very vague identification, white house.

22 Q And Porter and Dibert Street, are they fairly
23 short streets?

24 A Yeah, I would say no more than a mile. Probably
25 just under a mile I would imagine.

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1 Q Are they depicted on this State's 23? Is what I
2 call the opposite side of the four lane from the
3 Shoneys?

4 A Correct.

5 Q Is this Porter?

6 A This is Porter (indicating). This is Dibert.
7 This is ---

8 THE COURT: If you will, turn it around.

9 I don't think anybody can see it.

10 BY MR. MEADORS:

11 Q Just a couple of questions. Just, could you
12 point out Dibert and Porter Street.

13 A This is Dibert Street. This is Porter Street.
14 This is your four lanes. Poplar Square Apartments
15 back up here across the four lanes.

16 Q And he said he had been at Poplar Square earlier?

17 A Correct.

18 Q And then what --- was there another location you
19 asked him about besides Poplar Square and Dibert and
20 Porter Street?

21 A No, sir.

22 Q And the incident location is where?

23 A Different location.

24 Q Is this it?

25 A This mobile home here where the two streets come.

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1 together.

2 Q That's all. Thank you.

3 MR. MEADORS: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 BY MR. MEADORS:

6 Q And has the individual that you took that audio
7 statement from and signed his rights, is he in the
8 courtroom?

9 A Yes, sir.

10 Q Please point him out for the ladies and gentlemen
11 of the jury.

12 A The defendant Mr. Tre'Vaughn Jackson
13 (indicating).

14 MR. MEADORS: Your Honor, let the record
15 reflect.

16 THE COURT: The record will so reflect.

17 MR. MEADORS: Your Honor, thank you.

18 Ms. Butler.

19 **CROSS-EXAMINATION**

20 BY MS. BUTLER:

21 Q Detective Lyons, you're the one to pick up
22 Tre'Vaughn from his home?

23 A Was I the one who picked him up?

24 Q Yeah. How did he make his way to law enforcement
25 center?

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1 A He was picked up from his home. I don't think I
2 was the one who picked him up.

3 Q Okay, all right. And this is about 1:40 in the
4 morning?

5 A That's when we began our interview so.

6 Q Okay. And in addition to interviewing Tre'Vaughn
7 what was some, what was your other involvement in
8 this case?

9 A I have spoken with some of — not the victims
10 from the shooting, but I have spoken with Keith
11 Williams and some of the other individuals that were
12 supposed to be near him as well.

13 Q Okay. Keith Williams didn't see Tre'Vaughn with
14 a gun?

15 MR. MEADORS: Your Honor, how he can
16 testify to that, he —

17 THE COURT: Do you have an objection?

18 MR. MEADORS: No, sir.

19 THE COURT: Okay. Go ahead.

20 THE WITNESS: I have a recorded interview
21 with Keith Williams. We'd have no —

22 BY MS. BUTLER:

23 Q And he didn't see Tre'Vaughn with a gun?

24 A I'd have to review the recorded interview.

25 Q Okay. But you also signed a search warrant for

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1 Dibert Street?

2 A Correct.

3 Q Was there ever a search warrant executed for
4 Tre'Vaughn's residence?

5 A To my knowledge, no, I did not sign one, but —

6 Q No, but —

7 A —to my knowledge, no.

8 Q No, okay. And you said you interviewed Keith
9 Williams and some of the other ones involved. That
10 would include Shane Cummings?

11 A Correct.

12 Q He didn't see Tre'Vaughn with a gun?

13 A Again, I'd have to review, I have to review his
14 statement in order to properly answer that for you.

15 Q You interviewed James Dwyer?

16 A Yes.

17 Q Shaylon Isaac?

18 A Shaylon was another one.

19 Q Man?

20 A I didn't interview a Man.

21 Q You have recorded interviews on them as well?

22 A I believe on every one of them that I interviewed
23 it's recorded, interviewed them.

24 Q So to your knowledge Tre'Vaughn's home was never
25 searched by law enforcement for any weapons or any

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1 evidence in this crime?

2 A It may have been searched when the officers went
3 there upon consent. Again, I wasn't —

4 Q Again, you don't know?

5 A Again, I wasn't there so if it was, if there was
6 consent by the homeowner at the time it may have
7 occurred then when they went there and picked him
8 up.

9 Q But you can't testify —

10 A I can't tell you whether it was —

11 Q —based on your involvement?

12 A —was or was not.

13 Q Okay. And at that point when you spoke to
14 Tre'Vaughn he was under investigation at that point?

15 A Correct.

16 Q Okay. And the other individuals you spoke to
17 were under investigation as well?

18 A Not for the shooting portion of it, no, ma'am.

19 Q But you brought them to the law enforcement to
20 speak to them.

21 A I did, —

22 Q You did?

23 A —but not for the shooting portion of it.

24 MS. BUTLER: One moment, Your Honor.

25 THE COURT: All right.

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1 MS. BUTLER: That's all.

2 THE COURT: Any redirect?

3 MR. MEADORS: Briefly.

4 BY MR. MEADORS:

5 Q In direct response, she asked you about Keith
6 Williams. Keith Williams and the defendant are
7 tight?

8 A They are.

9 Q Very tight?

10 A Very tight?

11 Q Don't live on that side of the four lanes?

12 A No, sir.

13 Q Some of the other individuals she talked to you
14 about are very, friends with the defendant, correct?

15 A They are.

16 Q Keith Williams' brother is Lenard Johnson?

17 A He is.

18 Q And she asked you about some of those statements.

19 Lenard Johnson told you he saw him shooting, didn't
20 he? He told law enforcement that, didn't he?

21 A He didn't tell me —

22 Q He told law enforcement he saw him shooting?

23 A Yes, sir.

24 Q And that's the brother of Keith Williams?

25 A Correct.

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1 Q And she asked you about the — if some of them
2 were suspects. Was there a dual investigation?

3 A Yes, sir, there was.

4 Q Explain that.

5 A At the time the shooting occurred, as a result of
6 the investigation we learned that a group of
7 individuals left Poplar Square Apartments and went
8 to the Porter and Dibert Street area. Earlier in
9 that day there been an altercation involving Keith
10 and Lenard with the gentleman that was shot.

11 Q Cokeley?

12 A Been in a fight, a fistfight. And for whatever
13 reason, I guess it wasn't over. But at some point
14 later that afternoon all these individuals that were
15 named, Shaylon Isaac, Shane Cummings, Lenard, Keith
16 Williams and the defendant Tre'Vaughn Jackson were
17 all at Poplar Square Apartments. All left the
18 apartments, headed over back to Mr. Cokeley's
19 residence. There was actually a physical fistfight
20 that took place on the front side of that residence
21 involving Keith Williams, Man Cummings, Shaylon
22 Isaac, James Dwyer. Those individuals got into a
23 fistfight with Mr. Cokeley. As soon as that
24 fistfight was over the shots rang out from behind
25 the residence. Mr. Jackson was never implicated in

SW - W. LYONS - REDIRECT

1 the actual fist fight part. It was those
2 individuals that I named. That's why we requested
3 them because we knew based on the information we had
4 gathered that they were all together so we knew they
5 all at least left at the same time from Poplar
6 Square headed back to the residence.

7 Q With Mr. Jackson?

8 A With Mr. Jackson.

9 Q And the separate investigation was the shooting,
10 correct?

11 A Correct.

12 Q Talked to Ms. Bolden?

13 A Correct.

14 Q And Lenard Johnson?

15 A And Lenard Johnson.

16 Q Result of that was Tre'Vaughn Jackson?

17 A Correct.

18 Q And another individual who may have shot but you
19 don't know who it was?

20 A Yes, sir.

21 Q Thank you. That's all.

22 THE COURT: Any recross?

23 **RECROSS-EXAMINATION**

24 BY MS. BUTLER:

25 Q But Tre'Vaughn's part wasn't given as being part

SW - W. LYONS - RECROSS

1 of the original fight, the original conflict, was
2 it?

3 A Earlier in the day?

4 Q Earlier in the day?

5 A Yeah.

6 Q The original conflict between Lenard and Frank,
7 Tre'Vaughn wasn't part of that?

8 A No, he — and neither was either of those other
9 individuals. It was just the Keith Williams and
10 Lenard Johnson brothers and Mr. Cokeley the earlier
11 portion of the day.

12 Q Okay. And Tre'Vaughn wasn't a part of that?

13 A No, he wasn't.

14 Q Okay. And did law enforcement speak to Tasha
15 Pickens?

16 A May have, I didn't —

17 Q Do you know who Tasha Pickens is?

18 A I do know the name, but I don't know —

19 Q Lenard's mother?

20 A Yes.

21 Q Okay.

22 MS. BUTLER: No questions, Your Honor.

23 THE COURT: Thank you. You may step down.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Any objection to this witness.

1 being excused?

2 MR. MEADORS: No, sir.

3 THE COURT: Thank you. Let me see the
4 lawyers up here.

5 All right, ladies and gentlemen of the
6 jury, I'm gonna give you an early lunch. Again,
7 we'll have a long lunch. I'm gonna let you go while
8 we get some things we need to work through. I'm
9 gonna let you go. Be back here at 2:00. Just for
10 your understanding of timing we will intend to
11 finish the testimony today and then possibly argue
12 and charge tomorrow so that's kind of what we're
13 planning on. All right, ladies and gentlemen, have
14 a nice lunch. Don't eat a big meal and don't
15 discuss the case anyone. Thank you.

16 (WHEREUPON, the jury was removed from the
17 courtroom at 11:20 a.m., and the following
18 proceedings commenced in open court.)

19 THE COURT: On this case court is
20 adjourned till 2 p.m.

21 (WHEREUPON, a lunch break was taken.)

22 THE COURT: Y'all need to bring up
23 anything before we start?

24 MS. BUTLER: I do. I would like to make
25 an argument just for the record about the recording,

1 Your Honor.

2 THE COURT: You mean the recording that
3 was made last night?

4 MS. BUTLER: Yes.

5 THE COURT: By the defendant?

6 MS. BUTLER: Yes. So I guess we do that
7 now or?

8 THE COURT: Yeah, you go ahead.

9 MS. BUTLER: We don't need to listen to it
10 or?

11 THE COURT: All I know is it's a recording
12 from the jail of the defendant calling someone.

13 MS. BUTLER: Uh-huh.

14 THE COURT: What confidentiality is it?

15 MS. BUTLER: Well, I would just want to
16 make the argument just to protect the record.

17 THE COURT: Okay, what's your argument?

18 MS. BUTLER: Okay. I would like to argue
19 that any conversation that takes place, not
20 necessarily the defendant what he says, but any
21 conversation that takes place with another party
22 unless they can come in here and testify —

23 THE COURT: By the defendant?

24 MS. BUTLER: I wouldn't have —

25 THE COURT: Under what basis?

1 MS. BUTLER: No, not by the defendant, but
2 any party he has a conversation with I would just
3 argue confrontation clause and the fact I wouldn't
4 have opportunity to cross-examine —

5 THE COURT: What rule of law brings that
6 up when he initiated the call?

7 MS. BUTLER: But he had a conversation
8 with the other party.

9 THE COURT: But he chose to do that;
10 there's no confidentiality in it.

11 MS. BUTLER: Well, I'm just —

12 THE COURT: You can call him. You know,
13 if you want to call that other person you can. I'll
14 give you a subpoena right now.

15 MS. BUTLER: I understand but —

16 THE COURT: So there's no confrontation
17 clause problem.

18 MS. BUTLER: Well, I just want to make the
19 argument to protect the record.

20 THE COURT: Okay, very good, you're
21 protected. Let's bring our jury in.

22 (WHEREUPON, the jury was returned to the
23 courtroom at approximately 2:10 p.m., and
24 the following proceedings commenced in
25 open court.)

SW - T. LEE - DIRECT

1 THE COURT: Ladies and gentlemen, hope you
2 had a nice lunch. It's a nice day throughout today
3 too, isn't it?

4 All right, Mr. Meadors, are you ready to
5 proceed?

6 MR. MEADORS: Yes, sir, may it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. MEADORS: At this time we call Captain
10 Teresa Ray-Lee.

11 THE COURT: Come forward please and be
12 sworn.

13 THE CLERK: Place your left hand on the
14 Bible, raise your right hand. State your name
15 please.

16 THE WITNESS: Captain Teresa Ray-Lee.
17 WHEREUPON,

18 **TERESA RAY-LEE,**
19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 THE CLERK: Thank you. Have a seat up
22 there please. Please state your full name and spell
23 your last name for the record.

24 THE WITNESS: My name is Captain Teresa
25 Ray-Lee. The last name is spelled R-A-Y, hyphen,

SW - T. LEE - DIRECT

1 L-E-E.

2 (WHEREUPON, State Exhibit No. 159 was
3 marked for identification only.)

4 **DIRECT EXAMINATION**

5 BY MR. MEADORS:

6 Q Good afternoon, Captain.

7 A Good afternoon.

8 Q Would you please tell the ladies and gentlemen
9 about yourself. Where are you from?

10 A I'm from the Sumter-Lee Regional Detention
11 Center, and I'm the administrative captain there and
12 I've been working there 24 years.

13 Q That's a great answer to my question and I thank
14 you but where are you from?

15 A Well, I've been living in Sumter since 1978. My
16 father is retired military so I've kind of traveled
17 through the United States various areas.

18 Q So you've been in Sumter since?

19 A 1978.

20 Q You've been in law enforcement for how long?

21 A Started my career in 1986.

22 Q And where have you worked?

23 A At Sumter-Lee Regional Detention Center.

24 Q The whole time?

25 A Yes, sir.

SW - T. LEE - DIRECT

1 Q And you, captain, sign your name, you're Captain
2 at the Regional Detention Center?

3 A Yes, sir.

4 Q As part of your duties or jobs, when requested by
5 law enforcement -- well, first of all, if you made a
6 phone call to Sumter-Lee Regional Detention Center
7 are those calls recorded?

8 A Not those calls made to; it's those made from.

9 Q I'm just trying -- I'm rushing. That's --

10 A I know.

11 Q Calls made from Sumter-Lee Regional Detention
12 Center, are they from there out, are they recorded?

13 A Yes, sir.

14 Q Okay. And do folks -- I say folks -- somebody
15 calling from Sumter-Lee Regional Detention out, is
16 there something that puts people on notice that it's
17 recorded?

18 A There's a recording provided on the phone.

19 Q And what does the recording say?

20 A Verbatim I'm not sure but lets you know that the
21 calls are being recorded.

22 Q Okay. And that's stated basically that way?

23 A Similar, yes, sir, in those words.

24 Q So the person receives the call is put on notice
25 that this is subject to being recorded?

SW - T. LEE - DIRECT

1 A Yes, sir.

2 Q And as it's — and periodically, or part of your
3 job do you get requests from law enforcement to
4 monitor some of these phone calls, and have you
5 listened to phone calls over your 24 years?

6 A Oh, yes, sir.

7 Q And specifically at the request of law
8 enforcement in this case did you have occasion to
9 listen to some phone calls from a Mr. Tre'Vaughn
10 Jackson?

11 A Yes, sir.

12 Q And were you able to identify — do you know as
13 captain where he lives in the jail?

14 A Yes, sir.

15 Q And do you know what phones he has available to
16 him?

17 A Yes, sir.

18 Q And can you tell what phone calls come from what
19 phone?

20 A Yes, sir.

21 Q And over the last several days have you been, or
22 have you listened to some of the phone calls from
23 Tre'Vaughn Jackson from the detention center out to
24 different individuals?

25 A Yes, sir.

SW - T. LEE - DIRECT

1 Q And specifically last night did you have an
2 occasion to listen to a phone call, or sometime
3 after last night, to a phone made from Tre'Vaughn
4 Jackson to and individual who wasn't at Sumter-Lee
5 Regional Detention Center?

6 A Listened to a phone call listened to — that
7 happened last night, took place last night.

8 Q Yes, ma'am. And you — when did you listen to
9 it?

10 A This morning.

11 Q Okay. And after you had listened to that did you
12 inform Sergeant Irene Culick?

13 A Yes, sir.

14 Q And on the tape does the individual actually
15 refer to himself as Trey or?

16 A Trey.

17 Q And is that the same voice you had heard before
18 when you were monitoring some of his phone calls?

19 A Yes.

20 Q Listening?

21 A Yes, sir.

22 Q And did you after you informed Sergeant Culick of
23 that, did she get a copy of that recording or did
24 you provide that to Sergeant Culick?

25 A Yes.

SW - T. LEE - DIRECT

1 MR. MEADORS: Beg the Court's indulgence?

2 THE COURT: Yes, sir.

3 MR. MEADORS: Your Honor, at this time we
4 would offer State's 159.

5 THE COURT: Yes, ma'am.

6 MS. BUTLER: Subject to my earlier
7 objection.

8 THE COURT: All right, overruled.

9 (WHEREUPON, State Exhibit No. 159 was
10 admitted into evidence.)

11 BY MR. MEADORS:

12 Q Captain, do you have any records, can you tell us
13 what time this phone call was made?

14 A Yes, sir. I show this call was made on 8/26/2014
15 at approximately 20:36:11. That would be yesterday
16 evening around 8:36.

17 Q That'd be August 26th —

18 A Yes, sir.

19 Q 2014?

20 A Yes.

21 MR. MEADORS: With Your Honor's permission
22 to publish?

23 THE COURT: Certainly.

24 (State's Exhibit No. 159 was played for the jury.)

25 BY MR. MEADORS:

SW - T. LEE - DIRECT

1 Q And Captain, are these phones — not only for
2 security reasons too that these phone calls are
3 subject to monitoring?

4 A Yes.

5 Q Potentially for the jail or anything else?

6 A Yes, used to be throughout the jail for law
7 enforcement, yes.

8 Q You don't really know anything about the case, do
9 you?

10 A No, sir.

11 Q Okay. Captain, I appreciate you being here
12 today.

13 THE COURT: Hold on. Ms. Butler?

14 MS. BUTLER: I have no questions.

15 THE COURT: Thank you, you may step down.

16 Any objection to her being released?

17 MS. BUTLER: No objection.

18 MR. MEADORS: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 MR. MEADORS: Under Your Honor's ruling of
21 sequestration the next witness is coming up.

22 THE COURT: Who is the next witness?

23 MR. MEADORS: Lenard Johnson.

24 (Pause.)

25 MR. MEADORS: The State would call Lenard.

SW - L. JOHNSON - DIRECT

1 Johnson.

2 THE COURT: All right.

3 THE CLERK: Place your left hand on the
4 Bible, raise your right hand. State your name
5 please.

6 THE WITNESS: Lenard Jequan Johnson.

7 WHEREUPON,

8 **LENARD J. JOHNSON,**

9 having been duly sworn by the Clerk, testified as
10 follows:

11 THE CLERK: Have a seat up here please.
12 Please state your full name and spell your last name
13 for the record.

14 THE WITNESS: Lenard, J-O-H-N-S-O-N,
15 Johnson J-O-H-N-S-O-N.

16 **DIRECT EXAMINATION**

17 BY MR. MEADORS:

18 Q Good afternoon, Mr. Johnson.

19 A How are you doing?

20 Q I'm gonna please ask you if you would speak into
21 that microphone so the court reporter and His Honor
22 and this jury can hear, if you don't mind, sir.

23 A Yes, sir.

24 Q I do this with every witness, Mr. Johnson, where
25 are you from?

SW - L. JOHNSON - DIRECT

- 1 A From Columbia, but I've been raised in Sumter.
- 2 Q And where did you go to elementary school?
- 3 A Down here?
- 4 Q Yes, sir.
- 5 A A lot of them, Crosswell, Wood Drive.
- 6 Q Where did you go to middle school?
- 7 A Crescent Oaks.
- 8 Q And where did you go to high school?
- 9 A Sumter High.
- 10 Q When did you get through Sumter High?
- 11 A I dropped out 11th grade.
- 12 Q What do you do after that?
- 13 A After that?
- 14 Q Yes, sir.
- 15 A Got in some trouble.
- 16 Q What kind of trouble?
- 17 A Breaking in people houses and stuff.
- 18 Q And did you get — what happened on those?
- 19 A Huh?
- 20 Q What happened to those?
- 21 A What happened to what?
- 22 Q Did you go to court?
- 23 A Oh, yes, sir. Yeah, I went to court, yes, sir.
- 24 They had gave me a year two years.
- 25 Q Was that in DJJ?

SW - L. JOHNSON - DIRECT

- 1 A Yes, sir.
- 2 Q How old were you then?
- 3 A I was like 15.
- 4 Q When you got out of there what did you do?
- 5 A When I got out of there my P.O. help me get out
- 6 voc and start working.
- 7 Q Your parole officer?
- 8 A Yes, sir.
- 9 Q And where did you start working?
- 10 A At voc?
- 11 Q I'm sorry, sir.
- 12 A At voc, vocational rehabilitation.
- 13 Q What were you doing?
- 14 A Building pallets and stuff.
- 15 Q And did you get — how old were you when you were
- 16 doing that?
- 17 A How old was I? 18.
- 18 Q How old are you now?
- 19 A 20.
- 20 Q What have you been doing between then and now?
- 21 A Working still.
- 22 Q I'm just trying to let those folks know a little
- 23 bit of background. What kind of work you been
- 24 doing?
- 25 A When I got out of voc I had went to construction

SW - L. JOHNSON - DIRECT

1 job.

2 Q Construction?

3 A Yeah, DMV. Where we build the church right
4 beside the DMV. I left there and ain't had a job
5 for a while and I just recently got one with this
6 guy, he help me. You know, he wash cars and detail
7 them and stuff.

8 Q How long have you been doing that?

9 A About a month.

10 Q And you supposed to be working today?

11 A Yeah, yes, sir.

12 Q And you're subpoenaed to be here today; aren't
13 you.

14 A Yes, sir.

15 Q Back when this thing happened you were about to
16 interview for another job too; weren't you?

17 A Yeah, yes, sir. Yes, sir.

18 Q What was that?

19 A Goldkist.

20 Q And you pronounce your name Lenard, right?

21 A Johnson, L-E-N-A-R-D.

22 Q And do some folks call you Nard?

23 A Yes, sir.

24 Q You know some fellow named Camel?

25 A Yes, sir.

SW - L. JOHNSON - DIRECT

1 Q Would you dispute me if that's also Frank Dwayne
2 Cokeley?

3 A Yes, sir.

4 Q See him in the courtroom?

5 A Yeah, yes, sir.

6 Q Is that him back there in the red shirt? And
7 back on August 29th of last year 2013, did you and
8 Mr. Cokeley have an altercation?

9 A Yes, sir.

10 Q Can you tell the ladies and gentlemen about what
11 that was about, how it started?

12 A About his sister.

13 Q I'm sorry, sir?

14 A I call his sister a bitch or whatever.

15 Q Well, you called her a bitch?

16 A Yes, sir.

17 Q And he took offense to that?

18 A Yeah, yes, sir.

19 Q And what happened after that?

20 A Well, I ain't — well, he did tell me he was,
21 like, don't call my sister a B, whatever. I was
22 like, word, you know, I was just sitting there on
23 the couch. The only thing I know I feel somebody
24 hit me. He just snub me or whatever so we start
25 fighting at the people's house, whatever. They

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1 broke it up. He told me he was going to get a gun,
2 whatever, so I went straight home.

3 Q And that was on the 29th?

4 A Yeah, yes, sir.

5 Q And did you have an occasion to see him again on
6 the 31st of August?

7 A Yes, sir.

8 Q And were you with your girlfriend then?

9 A Yeah, my girlfriend and my little brother.

10 Q And she wanted you to go somewhere with him?

11 A Yes, sir.

12 Q Can you tell the folks about that.

13 A Yeah. She came in the house and wanted me to
14 walk back there with her to the house; but I said I
15 don't think it's a good idea because I know me and
16 Lottie had got into some stuff.

17 Q You and who?

18 A Me and Camel. So I was like it best for me to
19 stay home. She was like, man, you know, all that
20 stuff, you know, just look over it. I said, well,
21 okay. So instead of me walking by myself I got my
22 little brother to walk with me or whatever.

23 Q And who is your brother?

24 A Keith Williams.

25 Q All right. And where were you walking from and

SW - L. JOHNSON - DIRECT

1 where were you going?

2 A I was coming from my mom house going towards
3 Porter Street.

4 Q All right, where was your mom's house?

5 A 15 north.

6 Q So you, Keith, and your girlfriend?

7 A Yeah, yes, sir.

8 Q And heading to Porter Street?

9 A Yes.

10 Q What happened on the way?

11 A So on the way there we get through the little
12 path around Camel's grandma house or whatever, so
13 something is telling me to look up. And I see him,
14 you know, he spotted me even before I get through
15 the path and start saying, you know, well you out
16 here -- talking to my girlfriend, whatever -- asking
17 her where your boyfriend at and all that, he wanted
18 to hang around and all that stuff. So when I get
19 over there to the road he start walking up to me.
20 So my little brother, he was trying like tell him,
21 man, like back off my brother, whatever. So I seen
22 him and Keith coming so I was like F, you know,
23 move. So me and him square like, hit him one good
24 time, whatever, still trying to come at me throwing
25 beats. And I was like, come on, man, you know, I

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1 ain't want to fight, I ain't want to fight,
2 whatever, so he still coming. So he try to swing at
3 my little brother. He and my little brother got
4 into it, whatever. And my little brother, you know,
5 took his shirt off 'cause it was a brand new shirt.
6 Lottie help him put his shirt on the ground, wiped
7 his face with it, and my brother felt some type of
8 way. So then only thing I know, I look back up from
9 that I saw all his people coming so I —

10 Q Let me stop you right came court reporter having
11 take all of this.

12 A Yes, sir.

13 Q When Keith took his shirt off why was he taking
14 his shirt off?

15 A 'Cause he was taking his shirt off 'cause Lottie
16 was trying to come at him and he ain't want to get
17 blood on his shirt so he just took it off.

18 Q I got you.

19 A He was trying to give it to me but I wasn't
20 paying no attention and dropped it.

21 Q So it was a new shirt?

22 A Yeah, yes, sir.

23 Q And you keep saying Lottie, is that —

24 A Camel.

25 Q Is that another name?

SW - L. JOHNSON - DIRECT

- 1 A That's what we call him.
- 2 Q And so after Lottie or Camel or Frank or Dwayne
- 3 was hit, did he grab Keith's shirt?
- 4 A Yeah.
- 5 Q What'd he do with it?
- 6 A He kept trying to go after Keith, whatever, so
- 7 Keith just took his shirt off and tried to give it
- 8 to me. But after he try to throw it to me it hit
- 9 the ground. Lottie was standing in front of me. He
- 10 picked it up and wiped his face with it and threw it
- 11 back on the ground and started talking stuff to my
- 12 little brother so my brother felt some type of way.
- 13 Q Did blood get on the shirt?
- 14 A Yeah. Yes, sir, yeah.
- 15 Q And that made Keith angry?
- 16 A Yeah, yes, sir.
- 17 Q And where were y'all located?
- 18 A On Dibert Street, between Dibert and Porter.
- 19 Q Near his grandmama's house?
- 20 A Yeah, yes, sir.
- 21 Q And does she live right across the street from?
- 22 A Yes, sir, the incident.
- 23 Q The incident?
- 24 A Yes, sir.
- 25 Q Okay. And after that what happened?

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- 1 A After that I look up and I started seeing all
2 these people coming so I told my little brother,
3 let's go, so we left. Took it upon ourselves to go
4 across the street, well, across the four lanes to
5 the apartments or whatever. And you know, my
6 brother was mad and got up with some of his little
7 friends. So only thing I know, like I said, only
8 thing know we was just out there chilling and, come
9 on, y'all, let's go back over there.
- 10 Q So you left Dibert and crossed the four lanes?
- 11 A Yeah.
- 12 Q Is what I call the Shoneys side?
- 13 A Yes, sir.
- 14 Q It's on that side?
- 15 A Yeah, yes, sir.
- 16 Q Where did you go on the Shoneys side of the four
17 lanes?
- 18 A We went to Poplar Square.
- 19 Q And how far is that from Shoneys?
- 20 A Ain't that far, right around the corner.
- 21 Q At that point the group of individuals come back
22 from Poplar Square?
- 23 A Yeah, yes, sir.
- 24 Q And who all was there?
- 25 A A couple of my home boys.

SW - L. JOHNSON - DIRECT

- 1 Q Sir?
- 2 A A couple of my home boys.
- 3 Q It was you?
- 4 A Yeah, yes, sir.
- 5 Q Your brother Keith?
- 6 A Uh-huh.
- 7 Q Tre'Vaughn Jackson?
- 8 A Yes, sir.
- 9 Q Somebody named Main?
- 10 A Yes, sir.
- 11 Q Little Junior?
- 12 A Yes, sir.
- 13 Q Willie or Williams?
- 14 A Yes, sir.
- 15 Q And Shayla?
- 16 A Yes, sir.
- 17 Q And at this point, tell these folks, did you —
- 18 did you want this dispute between you and Camel to
- 19 be over?
- 20 A Yeah, I wanted it to be over, yes, sir. I really
- 21 did want it to be over. Even though when he had hit
- 22 me I was trying to talk to him. When we was
- 23 fighting I was like, come on, man, being that
- 24 serious the more stuff you do to your sister, come
- 25 on, man.

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1 Q I don't know anything about that but you wanted
2 it over, right?

3 A Yeah, yes, sir, I wanted it over, yes, sir.

4 Q So after Keith gets mad y'all go across four
5 lanes to Poplar Square where this group, you said,
6 starts coming back?

7 A Yes, sir.

8 Q And as you're crossing back over the four lanes
9 where is everybody heading?

10 A We head back to Dibert Street.

11 Q To Dibert Street?

12 A Yeah.

13 Q And do you keep walking with the group?

14 A Yeah.

15 Q All the way to the incident location?

16 A Yeah — no, no, no, sir, no, sir. By the time we
17 got to the apartments to get on Porter Street my mom
18 saw me. She called me. And my brother and them,
19 they just kept walking. When we — see my mom, she
20 asked me what was going on and stuff, you know, I
21 was telling her whatever. So by the time we get
22 down there they was done finished doing what he was
23 doing.

24 Q Let me stop you. The group keeps going on down
25 towards the incident location?

SW - L. JOHNSON - DIRECT

1 A Yeah, yes, sir.

2 Q Your momma called you and said — you and Keith?

3 A Yeah.

4 Q But Keith kept walking. You came back to your
5 mama?

6 A Yes, sir.

7 Q What did you observe after that?

8 A Well, I was just sitting there. You know, I was
9 talking to my mom. While we was talking we, you
10 know, steady walking down Porter Street.

11 Q Heading toward the incident location?

12 A Yes, sir.

13 Q And Porter on the back side of the incident
14 location?

15 A Yeah, yes, sir.

16 Q Okay. And so you're walking down the street on
17 Porter. What, if anything, did you see?

18 A Sir?

19 Q What did you see or observe with your eyes as
20 you're walking down Porter after the group had gone
21 ahead?

22 A I end up going ahead. We walking down. I see
23 Tre'Vaughn and the guy Main, a couple of other
24 people running around the back and my momma was just
25 getting down there, whatever. I saw, I seen, you

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1 know, I see a couple of people shooting.

2 Q And specifically Mr. Lenard Johnson, when you say
3 you saw a couple of people shooting did you see
4 Tre'Vaughn Jackson shooting?

5 A Yes, sir, I saw him shoot; but that's not saying
6 that he shot them people because it was just more
7 than one shooter. It wasn't just him.

8 Q And you can explain it after I ask you but —

9 A Okay, yes, sir.

10 Q Did you see him with his arms extended and firing
11 into the trailer?

12 A Yeah, yes, sir, he was shooting.

13 Q And do you know how long it looked like he was
14 shooting with his arms extended?

15 A Not really, I can't really say.

16 Q Do you remember saying ten seconds beforehand?

17 A Naw.

18 Q You don't remember saying that?

19 A No. I don't remember giving no time. I just
20 know, you know, he was shooting or whatever. There
21 was two people shooting or whatever.

22 Q Did you say what he — what did he look like when
23 he was shooting?

24 A Sir?

25 Q Did you say — or what did he look like to you

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1 when you saw him shooting?

2 A Man, he just shooting in houses.

3 Q What did you do after you saw that? What did you
4 do?

5 A What I did, I stay with my momma. I did nothing.

6 Q Had you wanted this dispute between you and Camel
7 to end with gun fire?

8 A No, no, no, sir. I ain't never know nobody had a
9 gun. I ain't knew none of that. Because if I knew
10 they had a gun we would have never went down there
11 'cause I didn't went down there for to do no
12 shooting. I was just going to fight him, get it
13 over with tell you the truth.

14 Q You know Ms. Sylvia Ann Welch?

15 A Yes, sir.

16 Q You didn't want Sylvia to get shot, did you?

17 A No, sir.

18 Q You didn't want Camel to get shot?

19 A No, sir.

20 Q So again, after you saw Tre'Vaughn shooting what
21 did you do?

22 A I just sat there. We were just sitting there.
23 What could we do?

24 Q What did -- where did everybody else go?

25 A Everybody else was just start, they start running

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- 1 down the road.
- 2 Q Tre'Vaughn running down the road?
- 3 A Yeah, all of us.
- 4 Q Where did you run to?
- 5 A Ran back to Poplar Square.
- 6 Q So cross four lanes?
- 7 A Yes, sir.
- 8 Q Did your mama know you were going back over
- 9 there?
- 10 A No, sir, she ain't, not that I know of.
- 11 Q Tell these folks, at this point in your life on
- 12 this point on August 31st, did you know if anybody
- 13 had been shot in that trailer?
- 14 A No, sir, I didn't know.
- 15 Q And —
- 16 A I didn't know right offhand. After it happened I
- 17 didn't know. I found out a couple of minutes later,
- 18 an hour later, or something like that.
- 19 Q After you found that out did you go see
- 20 Tre'Vaughn?
- 21 A Yeah, we was over there all together, yes, sir.
- 22 Q Where did you go see him?
- 23 A We always was Harmony Court.
- 24 Q I'm sorry, sir?
- 25 A We all was standing at Harmony Court talking.

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1 Q Okay. Where is Pop— I'm talking about when you
2 first went back over the four lanes afterwards to
3 Poplar Square?

4 A Uh-huh.

5 Q You see Tre'Vaughn there?

6 A Yeah, everybody was getting — everybody was
7 going ways.

8 Q Okay. But was Main there?

9 A Yeah, yes, sir.

10 Q And at that point did you see Tre'Vaughn and Main
11 with firearms?

12 A Yeah, everybody was passing them off.

13 Q And what kind of guns were they?

14 A I can't remember what kind of guns they were.

15 Q You don't remember one of them being a revolver?

16 A Naw.

17 Q But you remember two guns?

18 A It had to be two guns, two people shooting.

19 Q And did Tre'Vaughn brag about shooting into the
20 house trailer?

21 A Not really, not brag, no.

22 Q What did he do then?

23 A Just say, you know, said it. I don't know. I
24 can't remember to tell you the truth. I can't
25 remember.

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1 Q Well, did he brag about all them rushing inside
2 the victim's trailer?

3 A Everybody was bragging about that.

4 Q And did he tell you that's how he knew there were
5 people in the back room because they'd all pushed
6 them back in there? Do you remember when he told
7 you that?

8 A Yeah, yes, sir.

9 Q And at that point you didn't know if anybody had
10 been shot then; I guess that's my question. When
11 y'all went back to Poplar, you heard this talk, saw
12 the guns, you didn't know anybody had been shot?

13 A No, sir.

14 Q Did you find out after that somebody had been
15 shot, Mr. Johnson?

16 A Yeah, I found out afterwards.

17 Q Did you find out who it was?

18 A Yeah, yes, sir.

19 Q And I don't know if this is good English or not
20 or if I'm saying -- you didn't want no part in that,
21 did you?

22 A No, sir.

23 Q And did you go tell Tre'Vaughn that, that two
24 people were shot, and you didn't want any part of
25 that?

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- 1 A Yes, sir.
- 2 Q And where did you go see him to do that?
- 3 A We all met up at Harmony Court.
- 4 Q And who lives in Harmony Court?
- 5 A Nobody, we was just standing in the parking lot.
- 6 Q And at that point in your life did you have an
- 7 interview with Columbia Farms?
- 8 A No, sir. No, no, sir.
- 9 Q Maybe I read -- who was your interview with?
- 10 A I told you Goldkist.
- 11 Q Okay. I had down Columbia, okay. But you had an
- 12 interview coming up?
- 13 A Uh-huh.
- 14 Q You told that to Tre'Vaughn; didn't you?
- 15 A Yeah, yes, sir, I believe I did.
- 16 Q And what did Tre'Vaughn tell you about whether or
- 17 not people in that area knew him and whether he was
- 18 worried about it?
- 19 A Nobody don't know him.
- 20 Q He tell you nobody in that area knew who he was?
- 21 A Yes, sir.
- 22 Q Did you tell him you were thinking about going to
- 23 the police because you knew the police were going to
- 24 talk to you about you and Camel's feud?
- 25 A No, sir, I ain't never told him that but I said,

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1 you know, to a couple of other people I wasn't going
2 down for it because I know I ain't do it. Like my
3 mom and stuff, I told her I wasn't running, I know
4 ain't shot no gun and I ain't ask for that to
5 happen.
6 Q Tre'Vaughn tell you not to say his name?
7 A Yeah, after I heard today. That's the only time.
8 I heard today.
9 Q So he told you not to say his name back when this
10 happened, when you went to see him with these other
11 folks?
12 A Yeah, sir.
13 Q So it wasn't just today?
14 A Well, yeah.
15 Q Back when it happened he said, I'm not from here,
16 they don't know me, they don't know me, don't say my
17 name, correct?
18 A (Shakes head.)
19 Q Is that a yes?
20 A Yes, sir.
21 Q You told him you wouldn't, right?
22 A Yeah, yes, sir.
23 Q But at some point you ended up — well, not at
24 some point. Did later on that evening or early next
25 morning did you come in contact with Sergeant Irene

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1 Culick?

2 A No, sir, they came to my mom house.

3 Q No, sir, I wasn't trying —

4 A Yeah, yes, sir.

5 Q You came and — y'all saw each other?

6 A Yeah, but I didn't see her until I went to the
7 police station.

8 Q All right, I'm sorry, that's my fault. So you
9 initially saw somebody else that came to your house?

10 A Yes, sir.

11 Q And then they took you down to meet with Sergeant
12 Culick at the police department?

13 A Yes, sir.

14 Q I apologize. And at that point did you have an
15 occasion to talk to Sergeant Culick?

16 A Yes. Yes, sir, I talked to her.

17 Q And did you give her a statement?

18 A Yes, sir.

19 Q Tell her what you saw?

20 A Yes, sir.

21 Q And that was early morning hours of
22 September 1st?

23 A Yes, sir, same night. 12:00, it's calling a new
24 day. It was still dark.

25 Q And do you remember looking at a drawing?

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1 A Yes, sir.

2 Q And is this that drawing?

3 A Yes, sir.

4 (WHEREUPON, State Exhibit No. 160 was
5 marked for identification only.)

6 BY MR. MEADORS:

7 Q Is that your handwriting on what's on State's 60?

8 A Yes, sir.

9 MR. MEADORS: Your Honor, we offer State's
10 160.

11 THE COURT: Any objection?

12 MS. BUTLER: No objection.

13 THE COURT: All right, without objection
14 State's Exhibit Number 160 is admitted.

15 (WHEREUPON, State Exhibit No. 160 was
16 admitted into evidence.)

17 BY MR. MEADORS:

18 Q Did you show Sergeant Culick where Tre'Vaughn was
19 on State's 160 when he was firing his gun?

20 A Yes, sir.

21 Q And is that on the back side of the trailer?

22 A Yes, sir.

23 Q And it's got down here, it looks like, if I can
24 put my glasses, did you also show her there was a
25 window there?

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1 A Uh-huh.

2 Q And if — just say yes for the court reporter.

3 You don't have to for my sake, but for her stake.

4 It's got window and then it looks like it's gone

5 T-R-A-V. Is that your handwriting?

6 A Yes, sir.

7 Q Is that where you showed that Tre'Vaughn,

8 defendant Jackson was shooting?

9 A Yes, sir.

10 Q And where were you on Porter when you saw that?

11 A Standing, like, by the road.

12 Q By the back, on the back side of this incident
13 location?

14 A Yes, sir.

15 Q And on the back it's got that Sergeant Culick and
16 Lenard Johnson?

17 A Yes, sir.

18 Q Lenard, you didn't want to be here today, did
19 you?

20 A No, sir.

21 Q You didn't want to testify, did you?

22 A No, sir.

23 Q You had been struggling whether or not to
24 testify; hadn't you?

25 A Yes, sir.

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1 Q Did you ever have a gun that day?

2 A No, sir.

3 Q Did you want all those guys to come back from
4 Poplar and fire into that trailer?

5 A No, sir.

6 Q Did you want Ms. Welch to get hit and almost die?

7 A No, sir.

8 Q You didn't even want the guy you were fighting
9 with to get hit?

10 A No, sir.

11 Q And this wasn't their fight anyway, was it? It
12 wasn't your brother's fight?

13 A No, sir.

14 Q Wasn't Tre'Vaughn's fight?

15 A (Shakes head.)

16 MR. MEADORS: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 BY MR. MEADORS:

19 Q Is the person you saw fire into the trailer of
20 Sylvia Ann Welch in the courtroom?

21 A Yes, sir, 'cause like I said, it was two people
22 shooting. That don't mean he shot both people.

23 Q Is the person you saw —

24 A Yes, sir.

25 Q —in the courtroom as the person shooting into

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1 the trailer?

2 A Yes, sir.

3 Q Is that Mr. Tre'Vaughn Jackson?

4 A Yes, sir.

5 Q Lenard, thank you for being here.

6 A Yes, sir.

7 THE COURT: Ms. Butler, would you like to
8 ask any questions?

9 MS. BUTLER: Yes.

10 **CROSS-EXAMINATION**

11 BY MS. BUTLER:

12 Q You testified that you were talking to your mom
13 as you were walking, as y'all were walking down
14 Porter Street?

15 A Yes, ma'am.

16 Q So she was walking with you down Porter Street,
17 correct?

18 A Yes, ma'am.

19 Q What's your mom's name?

20 A Tasha Pickens.

21 Q Tasha Pickens. Did law enforcement interview
22 your mom?

23 A No, not that I know of.

24 Q And when you first had contact with law
25 enforcement you testified that they came to your

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- 1 house?
- 2 A Yes. Yes, ma'am.
- 3 Q Okay. Did they take you to the police station?
- 4 A Yes, ma'am.
- 5 Q They did?
- 6 A Uh-huh.
- 7 Q At that point you were a suspect?
- 8 A Yes, ma'am. Oh, yes, ma'am, uh-huh.
- 9 Q And do you remember meeting with my investigator?
- 10 It was on a Saturday?
- 11 A Yes, ma'am.
- 12 Q Back in July?
- 13 A I remember.
- 14 Q July 12th?
- 15 A Yes, ma'am.
- 16 Q Y'all talked a little bit about this case?
- 17 A Yes, ma'am.
- 18 Q He was asking you questions about your statement
- 19 and ---
- 20 A Yes, ma'am.
- 21 Q ---what you saw and everything. Do you remember
- 22 telling him that you can't read or write?
- 23 A Yes, sir -- I mean, yes, ma'am, I'm sorry.
- 24 Q And you remember telling him that you never told
- 25 police Tre'Vaughn had the gun for ten seconds?

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1 A Yes. Yes, ma'am.

2 Q Do you remember telling them that?

3 A Yes, ma'am.

4 Q And you remember telling him that you never told
5 the police that Tre'Vaughn looked like he wanted to
6 kill somebody?

7 A I can't remember that.

8 Q You remember telling him that you never saw
9 Tre'Vaughn with a gun?

10 A No, I don't remember telling that; but like I
11 told him, I told him that, you know, it was two
12 people shooting. And I told him it can be the other
13 guy that they didn't get.

14 Q Did you — do you remember telling him that you
15 thought you were under arrest?

16 A Yeah, I did. You know, I thought they was going
17 to try and arrest me because it was all behind me.

18 Q Do you remember telling him that you were afraid?

19 A Yeah, yes, ma'am.

20 Q Do you remember telling him that you told police
21 what you thought they wanted to hear?

22 A I don't know about all that.

23 Q But you remember all the other things you said?

24 A Yeah.

25 Q But you don't remember those particular?

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- 1 A Yes, ma'am.
- 2 Q And you testified earlier that Frank threatened
- 3 you with a gun?
- 4 A Who is Frank?
- 5 Q Lottie, Camel?
- 6 A Oh, yes, ma'am.
- 7 Q That's his real name. Threatened you with a gun?
- 8 A Yeah, I'm sorry, yeah.
- 9 Q And when you were involved in the first and
- 10 second altercation Tre'Vaughn wasn't present, was
- 11 he?
- 12 A No, ma'am.
- 13 Q Not at the first?
- 14 A No, ma'am.
- 15 Q He had nothing to do with the altercation?
- 16 A No. No, he had nothing to do with it.
- 17 Q And before testifying today you met with the
- 18 Solicitor; didn't you?
- 19 A Yes, ma'am.
- 20 Q And you met with law enforcement?
- 21 A Yes, ma'am.
- 22 Q And you've been here in the courthouse all day?
- 23 A Yeah, yes, ma'am, I really was.
- 24 Q Yeah. You were here yesterday?
- 25 A Yes, ma'am.

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1 Q And the day before that?

2 A No, ma'am, I wasn't here.

3 Q About how many times would you say you met with
4 the solicitor and law enforcement?

5 A About three or four times.

6 Q Three or four times. I have no further
7 questions.

8 THE COURT: Any redirect?

9 MR. MEADORS: Very briefly.

10 THE COURT: Yes, sir.

11 **REDIRECT EXAMINATION**

12 BY MR. MEADORS:

13 Q She asked you about Frank, Camel, Dwayne. He
14 never had a gun when — was your testimony earlier
15 he said I might go get a gun?

16 A Yeah, he ain't had one, no, sir.

17 Q He never had one on him.

18 A He never had one. He just, you know, threatened,
19 said he was gonna get one.

20 Q And Ms. Butler asked you about meeting with me.
21 I talked with you and your father the other day
22 briefly, right?

23 A Yeah, yes, sir.

24 Q And then talked to you today just briefly about
25 went over your statement with you?

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1 A Yes, sir.

2 Q Read over the statement with you, just read over
3 the statement you gave to Sergeant Culick back in
4 September 1st of 2013 just a few hours after this
5 happened, right?

6 A Yes, sir.

7 Q Thank you. That's all.

8 THE COURT: Any recross based on his
9 redirect?

10 **RECROSS-EXAMINATION**

11 BY MS. BUTLER:

12 Q You said you talked to Officer Culick, Sergeant
13 Culick. Do you remember talking to a white girl
14 about what happened that was — she was in the
15 neighborhood?

16 A No, ma'am.

17 Q You don't remember telling my investigator you
18 talked —

19 MR. MEADORS: Your Honor, objection,
20 hearsay.

21 THE COURT: Sustained.

22 MR. MEADORS: And it's not improper re—

23 THE WITNESS: Ma'am?

24 BY MS. BUTLER:

25 Q You never mentioned a white girl to my

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1 investigator?

2 A White girl, not that I know of, no, ma'am.

3 MR. MEADORS: I have nothing further.

4 THE COURT: Thank you. You may step down.

5 THE WITNESS: Yes, sir.

6 THE COURT: Any objection to this witness
7 being excused?

8 MR. MEADORS: No, sir. Thank you.

9 Can we approach.

10 THE COURT: You may.

11 (WHEREUPON, counsel approached the Bench
12 for an off-the-record discussion.)

13 THE COURT: Why don't we take a ten minute
14 recess get you a Co Cola or something like that,
15 then we'll come back we don't have a whole lot more
16 testimony. People kind of like to know where we end
17 for the day. Don't discuss anything about the case
18 while you're back there.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 2:54 p.m., and the following
21 proceedings commenced in open court.)

22 THE COURT: Court will be in recess
23 approximately 15 minutes.

24 (WHEREUPON, a recess was taken from the
25 proceedings.)

1 THE COURT: After you rest I'll just
2 dismiss the jury for the day to come back tomorrow
3 morning.

4 MS. BUTLER: And I'll rest in the morning.

5 THE COURT: That way I can give him
6 overnight to decide whether he wants to testify.

7 MS. BUTLER: Okay, thank you.

8 THE COURT: Let's bring our jury.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 3:20 p.m., and
11 the following proceedings commenced in
12 open court.)

13 MR. MEADORS: Your Honor, the State would
14 call Tarnara Johnson, T-A-R-N-A-R-A.

15 THE CLERK: Place your left hand on the
16 Bible, raise your right hand. State your name
17 please.

18 THE WITNESS: Tarnara Johnson.

19 WHEREUPON,

20 **TARNARA JOHNSON,**
21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 THE CLERK: Please state your name, spell
24 your last name for the record.

25 THE WITNESS: Tarnara Elaine Johnson,

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

2 **DIRECT EXAMINATION**

3 BY MR. MEADORS:

4 Q Good afternoon, Ms. Johnson..

5 A Good afternoon.

6 Q Where are you from?

7 A Sumter.

8 Q Where did you go to school?

9 A Sumter High.

10 Q When did you get out?

11 A I went to adult ed.

12 Q Ms. Johnson is your brother? Lenard Johnson?

13 A Yes, sir.

14 Q Did you receive a phone call last night from

15 Tre'Vaughn Jackson from the Sumter Lee Regional

16 Detention Center?

17 A Yes, sir.

18 (State's Exhibit No. 159 was played for the jury.)

19 BY MR. MEADORS:

20 Q Ma'am, if you don't mind sitting up just so the

21 court reporter can hear you please. Was that your

22 voice?

23 A Yes, sir.

24 Q How long have you known Tre'Vaughn Jackson?

25 A A long time.

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1 Q Lenard and your whole family known him a long
2 time?

3 A Yes, sir.

4 Q All right. And you don't want to be here today,
5 do you?

6 A No, sir.

7 Q Tre'Vaughn was trying to get you to get Lenard to
8 change his testimony, wasn't he?

9 A Yes, sir.

10 Q And tell these ladies and gentlemen of this jury,
11 did you go ask Lenard to tell him what he said?

12 A No, sir.

13 Q Did — you didn't tell Lenard about this phone
14 call at all?

15 A No, sir.

16 Q And is that Mr. Tre'Vaughn Jackson sitting over
17 there in the white shirt next to Ms. Butler?

18 A Yes, sir.

19 Q And that's the person you talked to last night?

20 A Yes, sir.

21 MR. MEADORS: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 BY MR. MEADORS:

24 Q You known him a long time?

25 A Yes, sir.

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1 Q Have you ever known him to wear glasses?

2 A No, sir.

3 Q That's all.

4 THE COURT: Ms. Butler.

5 MS. BUTLER: I have no questions.

6 THE COURT: Thank you. You may step down.

7 Anybody object to this witness being

8 released?

9 MR. MEADORS: No, sir, thank you.

10 THE COURT: Thank you. Thank you, ma'am.

11 MR. MEADORS: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. MEADORS: Your Honor, the State of

14 South Carolina rests.

15 THE COURT: All right, thank you. All
16 right, ladies and gentlemen, I'm gonna send you back
17 into the jury room just a few minutes while we take
18 up a few matters of law. Please do not discuss
19 anything about the case while you're back there.
20 Thank you.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 3:29 p.m. and the following
23 proceedings commenced in open court.)

24 THE COURT: Ms. Butler, you want to go
25 ahead and make your motions now?

1 MS. BUTLER: Yes. I would just like to
2 renew all of my earlier motions, objections, and for
3 the record just move for my directed verdict motion
4 based on the grounds stated previously.

5 THE COURT: Of what?

6 MS. BUTLER: Previously.

7 THE COURT: Yes, sir.

8 MR. MEADORS: Two eyewitnesses that he
9 shot into the dwelling. He places himself near the
10 scene with his statement, and then he asked one of
11 the witnesses relative to change their testimony.

12 THE COURT: All right. Well, at this time
13 the Court is not interested in the weight of the
14 evidence as much as it is the presence of any
15 evidence. And at this time it looks like there's a
16 little bit of evidence so, therefore, the Court will
17 respectfully deny your motion. Now you want me to
18 go ahead and question your witness, defendant, on
19 whether he wants to testify or not?

20 MS. BUTLER: We could do that in the
21 morning.

22 THE COURT: I'd rather go ahead. Let's go
23 ahead and do it this afternoon. That way they know
24 where we're at and that way — but I'll give you a
25 few minutes to talk with him again.

1 MS. BUTLER: Okay.

2 THE COURT: All right, please,
3 Mr. Jackson, please stand and place Mr. Jackson
4 under oath.

5 THE CLERK: Raise your right hand please.
6 WHEREUPON,

7 **TRE'VAUGHN JACKSON,**
8 having been duly sworn by the Clerk, testified as
9 follows:

10 THE COURT: Mr. Jackson, at this time I'm
11 going to explain you certain of your rights. If you
12 do not understand anything that I say, please let me
13 know. If you want to explain something in greater
14 detail I'll be glad to do that. Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now Mr. Jackson, we've reached
17 the stage of your trial where you may present your
18 defense. You have a right to claim the protections
19 given to you by the Fifth Amendment of the
20 Constitution of the United States which states in
21 part that no person shall be compelled in any
22 criminal trial to be a witness against himself. Now
23 this means that you cannot be required to testify,
24 but you do have a right to testify on your own
25 behalf, however, no one can make you testify. This

1 is a personal right and no one may waive this right
2 except of yourself. Now if you decide to testify
3 you will be subjected to the same rules that govern
4 other witnesses, and you may be examined and
5 cross-examined on any relevant issue in this case.
6 In addition, if you have any convictions involving
7 dishonesty or false statement or for crimes
8 punishable by imprisonment for more than one year
9 and I determine that the probative value of
10 admitting this evidence outweighs the prejudicial
11 effect on you, the Solicitor will be able to
12 introduce your record to attack your credibility.

13 Now if you decide to testify the decision
14 on your part must be freely, voluntarily,
15 intelligently made with the knowledge and
16 protections given to you by the Fifth Amendment and
17 the consequences of your decision to testify. If
18 you decide not to testify I will instruct the jurors
19 that they cannot give the fact that you did not
20 testify any consideration whatsoever and that there
21 is to be absolutely no prejudice to you because you
22 did not testify. It is left entirely up to you
23 whether or not you want to testify. You may talk to
24 your attorney, your family members, or anyone else
25 but the final decision will be left entirely up to

1 you.

2 Now Mr. Meadors, if Mr. Jackson were to
3 testify what record would you seek to introduce to
4 impeach him?

5 MR. MEADORS: Yes, sir, Your Honor.
6 There's July 15th, 2010, burglary second conviction.
7 That does appear to be a juvenile conviction.
8 Burglary second degree conviction from —

9 THE COURT: You say it does appear to be a
10 juvenile?

11 MR. MEADORS: It does appear to be one.
12 He also has another burglary second degree
13 conviction from February of 2012, and I believe he
14 has a receiving stolen good conviction from this
15 past year. I'm sorry I don't have the exact date.
16 I believe that's correct.

17 THE COURT: Okay. Ms. Butler, is that
18 your understanding as well?

19 MS. BUTLER: That is my understanding.

20 THE COURT: Is that your understanding,
21 sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Of your record? Okay. I'm
24 gonna excuse myself from the room for about ten
25 minute and I'm gonna let you talk with your

1 attorney. We'll be at ease for ten minutes. You
2 can talk to your attorney. Thank you. Court is at
3 ease for ten minutes.

4 (WHEREUPON, a recess was taken from the
5 proceedings.)

6 THE COURT: All right, Mr. Jackson, I've
7 given you opportunity to decide whether or not you
8 want to testify. Have you had an opportunity to
9 talk to any of your family members or anything like
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you talked with your
13 attorney?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you made a decision as to
16 whether or not you want to testify?

17 THE DEFENDANT: Yes, sir, I don't want to
18 testify.

19 THE COURT: Okay, all right. You do not
20 want to testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Very well. You may be seated.
23 You want to just rest when they come back
24 out and —

25 MS. BUTLER: Okay.

1 THE COURT: Do you have any other
2 witnesses?

3 MS. BUTLER: No witnesses.

4 THE COURT: Okay.

5 MR. MEADORS: Judge, I was reviewing the
6 exhibits and I thought I put everything in.

7 THE COURT: You put a bunch of them in.

8 MR. MEADORS: The photo lineup is in, but
9 I've been corrected — and I'm sure she's right.
10 State's 8 was just the —

11 THE COURT: That was her — I thought that
12 was in.

13 MR. MEADORS: I did too but since we
14 haven't I would ask this —

15 THE COURT: Do you have an objection to
16 that?

17 MS. BUTLER: No, I thought this was in.

18 MR. MEADORS: And then 3 —

19 THE COURT: I think they went in together.
20 I thought it was 7 and 8 with the lineup and then
21 the attached page which is —

22 MR. MEADORS: And 3 through 6 which were
23 without objection I don't think I technically moved
24 these in.

25 THE COURT: I think those came in during

1 the first.

2 MR. MEADORS: In-camera hearing?

3 THE COURT: In-camera. Do you have any
4 objection to the picture to how it's coming in?

5 MS. BUTLER: Not at all.

6 THE COURT: I didn't think so.

7 MR. MEADORS: Thanks to everybody. I
8 appreciate it. That's all.

9 THE COURT: All right, let's bring our
10 jury in briefly.

11 (WHEREUPON, State Exhibits Nos. 3 through
12 6 and 8 were admitted into evidence.)

13 THE COURT: And ladies and gentlemen, I
14 meant to tell y'all this earlier. As you come back
15 in y'all can sit anywhere you want to. It is funny
16 no matter where you go in this state jurors become
17 very territorial with their seat after a day or so
18 so it's interesting to see that. Y'all can sit
19 wherever you want to if u need to sit there.

20 Ms. Butler.

21 MS. BUTLER: Yes, Your Honor, the Defense
22 will rest at this time.

23 THE COURT: Okay, very well. Well, ladies
24 and gentlemen, the Defense has rested so that means
25 all the testimony that you're gonna hear in this

1 case has been given to you. It's late in the
2 afternoon so we're not gonna argue and charge this
3 afternoon. I'm gonna bring you back tomorrow
4 morning at 9:30 where the State and the Defense will
5 argue their case. I will then charge you the law in
6 this matter and then you will be sent back to your
7 jury room to begin your deliberations. Now ladies
8 and gentlemen, this is a real crucial stage of the
9 trial. Please do not discuss the case with anyone.
10 Like I said, you're gonna hear that a lot. Please
11 do not look for any media. I don't know that
12 there's any out there. Do not do any investigation
13 on your own and get a good night sleep and we will
14 see y'all at 90 tomorrow. All right, thank you.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 3:51 p.m., and the following
17 proceedings commenced in open court.)

18 THE COURT: Do y'all have particular
19 charges that would be — David has been working on a
20 proposed charge and I'll let him send that to you
21 overnight. Are there any specific charges?

22 MR. MEADORS: Judge, I request the hand of
23 one is the hand of all.

24 THE COURT: Any objection to that under
25 the facts of this case?

1 MS. BUTLER: Just for the record.

2 THE COURT: Okay.

3 MR. MEADORS: Your Honor, I also have a —
4 and you may have this depraved heart State v. Mouzon
5 malice charge which I have case law proposed if Your
6 Honor will consider that based on the — don't even
7 actually have to know who is in there if it's
8 depraved heart that the malice can be shown by the
9 reckless conduct, in this case the shooting into the
10 dwelling.

11 THE COURT: Any objections?

12 MS. BUTLER: No objection.

13 THE COURT: No objection.

14 MR. MEADORS: That's all.

15 THE COURT: Do you have any proposed
16 charges?

17 MS. BUTLER: I don't, Your Honor.

18 THE COURT: I also — if you do have, come
19 up with some over the evening or see what he's, he's
20 gonna email you a rough draft in just a little
21 while. If you have any that you want to add just be
22 in my office about 9 or so.

23 MS. BUTLER: Okay.

24 THE COURT: And let Mr. Meadors know if
25 you have some. It's pretty much the standard

1 charge. And y'all have any objection to me sending
2 it back there with them, with the jury?

3 MR. MEADORS: Judge, with all due respect
4 I for just some reason my whole career I
5 respectfully objected.

6 THE COURT: Some people object to it. I
7 only do it if everybody consents to it so. Very
8 well, court is adjourned till 9:30 tomorrow morning.

9 (WHEREUPON, the proceedings were concluded
10 for the day to be reconvened on August 28,
11 2014 at 9:30 a.m.)

12 THE COURT: Good morning. Have y'all had
13 opportunity to review the proposed charge?

14 MS. BUTLER: Yes, Your Honor.

15 THE COURT: Any objection?

16 MS. BUTLER: No objections.

17 MR. MEADORS: Can I have just one more
18 minute. We'll make a few minor changes, just mostly
19 somatically statement for my statement.

20 No, sir, no objections.

21 THE COURT: Anything else we need to now
22 you put up no evidence so you get last argument.
23 Let's bring our jury in.

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 9:34 a.m., and

1 the following proceedings commenced in
2 open court.)

3 THE COURT: Ladies and gentlemen of the
4 jury, thank you again for your promptness. Y'all
5 have been right here all on time every day; I
6 appreciate that.

7 State ready to proceed with closing
8 arguments?

9 MR. MEADORS: Yes, sir.

10 THE COURT: Defense ready?

11 MS. BUTLER: Yes, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen of
13 the jury, as I said, you've heard all the evidence
14 in this case. Now is when the State and Defendant
15 will give you their closing arguments. I will then
16 charge you the law after that.

17 All right, the State may proceed.

18 MR. MEADORS: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. MEADORS: Ms. Butler. Mr. Foreman,
21 ladies and gentlemen, good morning. I just want to
22 briefly say thank you for being here, thank you for
23 your attention. I'm not a jury watcher. I don't
24 sit and stare at you, but the times I have glanced
25 over I can see that you're paying attention, you're

1 listening, and that's all we can all ask of you.

2 Thank you.

3 They don't know me. They don't know me.

4 I'm not from around here. They don't know my face.

5 Don't tell 'em my name. Don't tell 'em my name.

6 I'm trying to figure out what he's gonna say. He's
7 the only thing they can help me right now. He's the

8 only thing that can help me right now. He's the
9 only thing that can save me. Tell him to say he

10 ain't see me. Tell him to say he didn't see me.

11 And got damn it, I had on, I had on black and white,
12 black shorts and white shirt, Bo, I need him, Bo.

13 When you see Nard tell that, Bo, I need him, Bo. He
14 the only thing that can help me now. The beginning,

15 and until two days ago the end. You know who puts

16 himself at the scene? You know who the best witness
17 in this case is of putting Tre'Vaughn Jackson at the

18 scene? It's Tre'Vaughn Jackson, corroborating

19 everything with this final phone call, and I'm gonna
20 go through it detail by detail I assure you.

21 Ladies and gentlemen, I'm going to be

22 brief about this. As I told you before His Honor is
23 the law, and he's gonna tell you in just a little

24 bit what the law is. And what's he charged with?

25 He's charged with attempted murder and intent to

1 kill somebody with malice aforethought. Now don't
2 get confused with these terms malice aforethought.
3 That's a term of art. It doesn't have to — it
4 doesn't mean you got to plan something out. We
5 don't have premeditation in this state. It doesn't
6 mean you have to think about it minutes, seconds
7 before it happens. It just means right at the time
8 you're pulling that trigger that's aforethought.
9 That's it, the action of your hand. It's not a long
10 period of time, but we've got to prove the defendant
11 did with malice aforethought. Now what's malice?
12 Malice is mean, it's evil, it's wickedness, it's
13 shooting into a trailer when you know people are in
14 there and it's not even your fight. I just thought
15 about this on the way in. It's almost like he was
16 doing target practice and shooting into a train
17 where he knew other people were. If that's not
18 malice, I don't know what is.

19 Malice can be expressed; it can be
20 inferred. In this case I think we've got examples
21 of both, but you can actually infer malice from the
22 use of a deadly weapon. The law also, as I
23 mentioned to you before, doesn't have to prove and
24 we don't have to prove the judge will tell you, that
25 he intended to kill any particular person or that he

1 knew who was in there. The law doesn't require
2 that. It's called a depraved heart totally, totally
3 bent on mischief. Depraved heart, he didn't
4 actually — we don't have to prove he actually
5 intended to kill or injure these particular victims.
6 Malice by law doesn't necessarily import ill will
7 towards the individual but signifies a general,
8 malignant recklessness of the lives and safeties of
9 others or a condition of the mind which shows a
10 heart regardless of social duty and fatally bent on
11 mischief. I want to read it because I want to get
12 it right. Firing into an occupied dwelling,
13 depraved heart. You don't care who's in there;
14 that's malice. And that's how you can, if you
15 believe that happened, find malice.

16 Attempted murder. What else is he charged
17 with? Possession of a firearm during the commission
18 of a violent crime, that kind of speaks for itself.
19 If you believe he was there and believe he shot,
20 that's that crime. Discharging a firearm into a
21 dwelling. It's their dwelling; they live there. He
22 fired into the dwelling. What's your burden? I'll
23 briefly again, beyond a reasonable doubt. I submit
24 we've proved it beyond all doubt, respectfully.
25 That's not our burden. We've got to prove that

1 beyond a reasonable doubt beyond a doubt that makes
2 reasonable folks hesitate to act. You don't come in
3 here looking to convict somebody. You don't come in
4 here looking to let somebody go. You're the lady
5 justice. All due respect to the gentlemen; but
6 figuratively, lady justice is blindfolded and you're
7 listening to the evidence, deciding what's credible,
8 what's believable. You'll drop that little cover
9 down to look at the credibility and believability of
10 the witnesses. But you're again in here deciding
11 what the truth is, and that's all we can all ask.
12 And you've used your common sense doing it.

13 How does this thing start? We shouldn't
14 be here today. We should not be here today. Sylvia
15 Ann Welch should not have almost died. Where's
16 Camel, Cokeley? Should not have a bullet in him
17 now. Maybe somebody beside him should be doing 30
18 days in jail simple assault and battery; but we
19 shouldn't be here today, and we wouldn't be here
20 today and they wouldn't have almost died and four or
21 five people could have got killed in this thing.
22 Tre'Vaughn Jackson then decided he was going to
23 interject himself and bring it to a new level.
24 Well, I'll just show you, you want to end something,
25 I'll help you end it. It wasn't even his fight.

1 Now we — and I'll tell y'all, I probably
2 wouldn't be a good juror. I don't know how y'all do
3 it, sit there and listen. I can't sit still so I
4 know it's hard to be a juror and I appreciate y'all
5 sitting still; I couldn't do it. I'd just have to
6 move around; I couldn't do it. Y'all have sat there
7 and listened and I know some of this evidence was
8 tedious and maybe boring, I don't know, but we have
9 to present everything to y'all to show you the whole
10 picture. And it starts out with he called her a
11 bitch. Lenard called Cokeley, Camel, Dwayne,
12 Frank's sister a bitch 'cause she had his phone and
13 she was walking outside and — anyway, that bitch
14 better not take my phone. That's how this whole
15 thing started. Isn't that silly?

16 But as a result of that there was a fight
17 then on August 29, 2013. And then there was a fight
18 August 29th — excuse me, August 31st, 2013, near
19 his grandmother's house which we know was right
20 across — raise your hand, grandmama — which was
21 right across the street from the incident location
22 right near that cut-through. At that time Ms. Keith
23 Williams is coming with Lenard and I think the
24 girlfriend may have been there, and then Frank.
25 Then Frank gets hit. And at this point we're still

1 fists. Shouldn't have been a fight, that's no way
2 to settle a dispute in our civilized world, but it's
3 better than guns. That's still what it was. Frank
4 gets hit. Keith takes off his shirt. It's a new
5 shirt, he grabs the shirt and wipes his blood off,
6 throws it back and gets Keith mad according to the
7 testimony. Should have ended there.

8 A group of people come back down.
9 Somebody in the neighborhood tells the Tomlins that
10 they're coming down. At this point it's escalating.
11 They see some bats and maybe some other stuff. They
12 but who's joined in that? Tre'Vaughn Jackson.
13 Wasn't involved in it. They'd gone back to Poplar
14 Square, Tre'Vaughn Jackson, Keith Williams, Lenard's
15 brother, he's now joined the group. And they're
16 coming back to settle it. I still think the intent
17 of most everybody there was just settle it with
18 fights, which still it's not right, I'm not
19 condoning that. But that was the intent, the intent
20 of everybody except Tre'Vaughn Jackson. His intent
21 was with his hand, with his gun. And I'll get to
22 the other shooter; I'll get to him. I don't know
23 where you are, but we're going to still investigate
24 and find you out there in Sumter. That isn't over.
25 That's still coming. That's still going to be

1 investigated. But this is Tre'Vaughn Jackson's day
2 in trial, Sylvia Welch's day in trial, Frank Dwayne
3 Cokeley. This is their day today, here.

4 The police disbursed the first fight.
5 Then they're coming back, and what happens? They
6 actually, they say, they used the word bum-rushed.
7 They come inside Jennifer Joe's house, the Tomlin's
8 house. Frank hits somebody in the head with a beer
9 bottle. They're pushed back outside. Now as
10 they're coming back from Poplar Square we know that
11 Lenard Johnson's mama said, come on back here, you
12 and Keith come back here. Lenard did; Keith didn't.
13 He kept walking with the group. There's a fight.
14 It goes inside; it goes outside. At some point
15 Tre'Vaughn Jackson is on the back of the trailer and
16 starts firing and starts firing. Who's back there?
17 Santana Bolden, Santana Bolden said she's out there.
18 The community knew about the fight. They knew about
19 the dispute between Frank and Lenard. The word
20 spread in that community. They knew there was
21 something going on with them. She's out there being
22 nosy, out there being nosy. And you know, you talk
23 about — well, I talked about, for y'all to talk
24 about the credibility, believability of the
25 witnesses. Every case is decided on that, y'all,

1 every case. And you saw Santana Bolden up here. I
2 was trying to figure out a way to describe her. I
3 think she's straight forward. I think she's
4 literal. I don't know the — but like where, I said
5 where did the bullet come from. She said, the gun.
6 Well, yes, ma'am. But there was some confusion the
7 way she was saying; and Ms. Butler asked her, she
8 said what came from the house. Well, they didn't
9 come from the house; there were shots to the house.
10 Now that's not a reasonable doubt. She's up there
11 and confused, the language like where did the
12 bullets from? Well, the gun. Well, were they
13 coming from the outside or inside? There any
14 question about that? They were all coming from the
15 outside in. And she's sitting there; and of course,
16 at this point law enforcement didn't have any
17 suspects.

18 And this is now September 1st, 8:43. The
19 word is out; law enforcement gets her name. She
20 says, yeah, I saw something. Well, can you describe
21 him? I described him, she described what his skin
22 looked like, described his hair. Well, would you
23 recognize him? Well, I'd seen him at adult ed
24 dropping some people off. Well, out of all the
25 people in the world. I recognize him from that, but

1 that was the same guy. So Sergeant Culick does a
2 photo lineup, puts him in here, goes to her house, I
3 think, her momma's house, and shows her the lineup,
4 said you recognize anybody there? Yeah, it's number
5 five. She circles it. And here's something else
6 she says. And I said now why'd you do that, why did
7 you pick him out? And the literal, she goes, well,
8 he matched my description. Now there's nothing wrong
9 with saying that way, she matched my description.
10 And who is this? That's the guy I saw shooting.
11 That's good evidence. You know who else thought it
12 was good evidence? Tre'Vaughn Jackson 'cause two
13 nights ago he said, man, you the only thing that can
14 help me now, it ain't looking good. He knows she
15 saw him. Out of all the people in the world that
16 she didn't know she picks out Tre'Vaughn Jackson.

17 Now how did we get his picture? Well,
18 through talking with Lenard Johnson. Prior to that
19 she gives a description, I don't know his name, but
20 I think I'd recognize him if I see him, I've seen
21 him before. Well, they're talking — this is
22 realtime now. Police officers catch a lot of flak.
23 Sometimes it's justified; sometimes it's not. Not
24 talking about these folks, being justified. But
25 they're out there on the streets in the realtime for

1 the community, shots fired. They've been out there
2 once before, stopped. Nobody in the community,
3 people don't want to get involved. They don't want
4 to get involved in all that. Well, they keep
5 pushing, they keep pushing. They find somebody
6 who's willing to get involved. Now she said some
7 things for the first time on the stand. First, that
8 will be followed up with. And that's real, some
9 things just come out. People — I wasn't asked
10 something specifically I don't tell it. But she saw
11 Tre'Vaughn Jackson there, saw somebody else there.

12 And we'll get back to you, it's the law
13 called hand of one hand of all. If you're there
14 with somebody else and one or both are firing,
15 you're both guilty; it doesn't matter. It's like if
16 somebody drove somebody to a convenience store, the
17 driver stays in the car and the person goes inside
18 and robs, they're both guilty of armed robbery. No
19 question the evidence is he was shooting here. Was
20 there somebody else shooting? Don't know. There
21 are two different ballistics, bullets. There's no
22 question he was shooting. That's what's on trial
23 today.

24 So we get the name of Lenard — Lenard
25 Johnson gives the name of Tre'Vaughn Jackson. Did

1 he want to? No. But what did he tell you? And
2 I'll tell you something, it all — and every case,
3 ladies and gentlemen, boils down to credibility and
4 believability of what comes out here 'cause that's
5 all you can consider. The judge will tell you
6 that's all you can consider is what's right out
7 here.

8 After the shots what does Lenard do? He
9 goes back to his mama. They go back to Poplar
10 Square to start with. Then goes back to his mama.
11 He finds out two people are shot so he says, I'm
12 gonna go see Tre'Vaughn Jackson. You watched him up
13 here telling. He goes to see Tre'Vaughn Jackson,
14 says, man, there were two people shot, two people
15 shot. They probably didn't know 39 days in jail —
16 in the hospital for Sylvia Ann Welch, whether
17 they're going to die or not. Said man, I ain't,
18 this ain't, I wasn't part of this now, I want to
19 fight, yeah, maybe that's wrong but I ain't into
20 shooting people. Sees the revolver there, said man,
21 I ain't into this now. They know I'm gonna be
22 fighting with Frank Cokeley. They'll find that out.
23 I got to go to police, I'm going to tell them. Man,
24 don't tell, nobody knows me over there, nobody knows
25 my face, they don't know me, don't tell them. Don't

1 tell, don't tell 'em my name.

2 What else did he say on the stand when he
3 was over there? What'd he tell Investigator Culick?
4 I knew those people pushed back inside. I knew they
5 were pushed back inside, and that's when I shot,
6 that's why I shot in the back. That's malice. He
7 knew they were in that house trailer. He knew they
8 were in that house trailer. You talk about having
9 nothing to do with the fight. What did Sylvia Ann
10 Welch, Joe and Julian Tomlin have to do with this?
11 They were in their home. Think about that. Their
12 home, playing cards, and Tre'Vaughn Jackson is going
13 to come up and shoot into their home while they're
14 playing cards. And God, thank God she's alive.
15 Thank God there aren't six dead. He escalated. I
16 knew they were in there. I knew they were pushed
17 back in there and that's why I shot in the back.
18 That's malice; that's depraved heart. This may be a
19 bad example I use from now on, a depraved heart,
20 shoot into a house trailer, your home, with people
21 in there, not caring who's in there. It doesn't
22 matter if they knew who was in there or not. Come
23 to find out he may be related to her she said. He
24 didn't care who was in there. I'm firing, I sent a
25 message, I'll win this thing.

1 And folks, this didn't happen yesterday.
2 This didn't happen the day before or the day before
3 with Lenard Johnson. He went to see him just hours
4 after this happened. He went to see law enforcement
5 just hours after it happened and said here's what
6 happened, Sergeant Culick, this is what happened.
7 Known him for years. Yeah, we've known him for
8 years. That's kind of going out Wednesday night.
9 Did he want to get involved? No. Is he violating
10 some code out there and to wanting to be in here
11 testifying? No. But you know, I think that might,
12 he knew it. I don't know what was going on his
13 mind, I think came on in the testimony he wasn't
14 sure what he was going do when he took stand. I
15 firmly believe and in most cases, in most times in
16 life when people and witnesses are confronted with
17 stressful situations, something they don't want to
18 do, something they're going to catch hell from their
19 peers in their communities for saying they're a
20 snitch or something else, I firmly believe that most
21 people rise to the occasion. And he did. And this
22 isn't not that this is any different; but this isn't
23 a drug killing this isn't a bad person killing bad
24 person which isn't right either, when somebody
25 coming in. He's coming in telling the truth doing

1 the right thing, rising to the occasion subjecting
2 himself to whatever out there in his mind or
3 whatever these people out there may be trying to
4 threaten him or not. And he's doing the right thing
5 because Sylvia didn't deserve to be shot. Frank
6 didn't deserve to be shot. He didn't want Frank
7 shot. Remember what he said? I said, did you want
8 Sylvia shot? Naw, I go up there all the time, I
9 don't want her shot. Even Frank he didn't want
10 shot, may want to fight him again. But he rose to
11 the occasion and came — that night he rose to the
12 occasion. This is what happened, he was out there.
13 And it corroborated. Santana Belton, Bolden, out of
14 the whole world, well I recognize him 'cause he was
15 there, yes, that's him. You can't make that up.

16 Earlier when I was talking about
17 reasonable doubt I just lost my train of thought.
18 It's come back to me. When you come in here you
19 don't look to convict, you don't look to acquit.
20 And I was doing the lady justice thing. You may
21 have questions out there. And after 30 years of
22 doing this and I love this, questions are just
23 questions sometimes. We can't answer everything,
24 and you don't have to in this world. You don't have
25 to present a case. We just have to present it

1 beyond a reasonable doubt. And you don't come
2 looking for reasonable doubt. You don't come
3 looking to convict. You look to find is the
4 evidence there, is it the right thing to do, and has
5 the State proved its case. And I say I could stop
6 there. We've proved it beyond a reasonable doubt
7 the evidence shows. He's there. Ms. Bolden picks
8 him out. Lenard Johnson picks him out. Well, we
9 don't stop there.

10 He's brought down to law enforcement. And
11 what you have is credibility, believability. And
12 what does he initially say? Well, Sergeant Lyons,
13 Detective Sergeant Billy Lyons was talking to him.
14 Where were you today? And when he says today, it's
15 early morning of September 1st. He's talking about
16 the day before. Well, I was with my girlfriend at
17 Poplar Square. Sergeant Lyons, what did you do
18 after that? Well, I went back home. Didn't say
19 anything about going over to Porter Street then.
20 Sergeant Lyons then said, why did you go to Porter
21 Street today? We got some people that will put you
22 on Porter Street. Well, went to see a bootlegger,
23 buy some Lucies. That's a long way to go to buy
24 Lucies from a bootlegger. This point we submit in
25 his mind people saw him over there together so he

1 puts himself there. It's called the general art of
2 convincing error. Okay, I'll say I'm there but I
3 was doing something else 'cause he's confronted,
4 well, we got people seeing you there. Well, and he
5 didn't bring up going over there to his aunt's.
6 Well, I went to some bootlegger's house on Porter.
7 At one point they asked him where's Porter, where's
8 Porter and Dibert? Said, I don't know, I'm not from
9 over there. Well, where's this bootlegger's house?
10 Well, it's one of the houses, maybe the wooden
11 house. What's his name? I don't know. Well, who
12 were you with? I don't know. Well, who are you
13 going to buy it from? I don't know. And Sergeant
14 asked him, do you always go with people you don't
15 know, to places you don't know, to buy stuff from
16 people you don't know? He says, well, not always
17 but I do sometimes. Credibility? He's trying to
18 explain why he was in that area 'cause he knows, he
19 knows what he did. He doesn't know that Ms. Bolden
20 picked him out yet, or was going to pick him out;
21 but he knows what he did and he's trying to make an
22 explanation why he's there.

23 So then what does he say? He talks about
24 his homeboys Keith and Lenard, say, well y'all
25 pretty tight, aren't you? I wouldn't say that.

1 Well, that's what I hear on the streets. He says,
2 well, they'd be first to tell. He said in that
3 interview, they'd be the first to tell. And then
4 later on there's something about people better
5 start, they better start keeping it one hundred.
6 And I would submit that's one of the real Tre'Vaughn
7 Jackson. They better start keeping one hundred. He
8 doesn't think anybody is going to talk.

9 And y'all, you know why this is — you
10 know who corroborates all this? And he says in
11 there, the first part of the interview, where have
12 you seen Keith, I hadn't seen him. When have you
13 seen Lenard? Last week at a party. Well, no, sir,
14 no, ma'am. He disproves that the other night
15 telling Nard he'd seen me out there, he's wearing
16 something else. He's got to change it. That's what
17 you base this on, credibility, believability. You
18 can't believe him. He saw Lenard that day 'cause he
19 was with him. And then tell me about the guy in the
20 white house. Well, 30s, 40's, I don't know. Trying
21 to come up with an explanation why he was at Porter
22 Street. And that's it; isn't it? State police
23 collect evidence. They bring it in trying to find
24 out who did this, trying to find out who shot. And
25 you know, discharge into a dwelling — Joe, raise

1 your hand. Ms. Joe, raise your right hand. She's
2 the victim of that. Discharging into a dwelling
3 along with — the Tomlins today, couldn't be here
4 today but they're victims. They're victims so
5 folks, that's it, isn't it? That's beyond a
6 reasonable doubt we submit. That's it, isn't it?
7 Go back and reach a verdict and come back. Well,
8 that's not it. That's not it. Because of good law
9 enforcement two nights ago, two nights ago that
10 defendant Tre'Vaughn Jackson calls — who does he
11 call? I mean, who does he call? He calls Lenard
12 Johnson's sister. Lenard Johnson's sister. I want
13 to say it a thousand times. Who's Lenard Johnson?
14 He's the man that hours after it happened said,
15 look, Tre'Vaughn Jackson was shooting, I saw him
16 sitting there shooting. They got the name, they put
17 it in a lineup, Ms. Bolden did it. What does he
18 call her for? He's worried. It's not going good.
19 And what does he try to do? He says, you've got to
20 get to Nard. That's self-authenticated; isn't it?
21 You got to get to Nard, you got to get him, he's the
22 only thing that can help me right now. I agree with
23 him. He got to change his testimony, say I wasn't
24 there, say I was wearing something else, he's the
25 only thing that can help me right now. Tell Nard,

1 Bo, I need him, he the only thing that can help me
2 right now. What does that do? Well, if that don't
3 corroborate Nard I don't know what does. Do you
4 need anything else? Who says to a witness or
5 somebody, a family member witness, come to them, get
6 them to change their testimony, somebody who knows
7 they did it, they're guilty. It's almost just —
8 sometime I lose the sight of the dadgum forest from
9 the trees. Don't do that. He's calling the sister
10 of the eyewitness who was there who he interjected
11 himself into a feud and saying get him to change his
12 testimony 'cause it ain't, it is not. Thank
13 goodness they got that phone call. Thank God they
14 got that phone call 'cause that corrob— it
15 corroborates Ms. Bolden; it corroborates her. It's
16 not looking good, I need him, don't let him say what
17 he's going to say.

18 Do you realize what he's doing? Do you
19 realize, respectfully, the emphasis, how offensive
20 this is. He's asking somebody to get to a witness
21 on this stand, taking an oath by this man right
22 here, Mr. Bradley, in front of this judge and lie,
23 changes — obliterate the whole system 'cause all we
24 got is truth and credibility. He's saying go get to
25 him and tell him to say he ain't — I wasn't there,

1 I was wearing something else, to get him to change
2 his testimony. Is there anything more offensive.
3 There's nothing more to get purjeral [sic] testimony
4 to you to try to affect your verdict. I don't mean
5 to get so emotional, but that's what he was trying
6 to do. He control things the whole way, folk. He
7 interjects himself into a feud. Should have ended
8 with some busted nose or teeth or something. I'm
9 not saying that's right. But he comes back, friends
10 of the family friends of Keith, I'll take it to the
11 next level, I'm in charge. He shoots in there,
12 shoots at these folks. I want to say to them, thank
13 God they're alive. Goes back, I ain't worried about
14 it, nobody knows me. Well, Santana remembers seeing
15 you down there. Well, God bless you, Ms. Bolden.
16 Nobody knows me, knows my name, and you ain't gonna
17 tell, don't tell 'em my name. And he thought he
18 controlled that situation.

19 And low and behold he tried to control
20 this situation by getting the sister of the
21 eyewitness to come in here and lie. He ain't in
22 control anymore, folks. It's time for him to lose
23 control. That man is in control. And when he tells
24 y'all the law you're in control, and you'll decide
25 what's credible, what's believable, what's right,

1 and whether we've proven our case beyond a
2 reasonable doubt. And the best witness we had, the
3 one who corroborated everything and puts himself
4 there by his own word, is Tre'Vaughn Jackson. And
5 he did it up in till two days ago. And you know, I
6 was trying to think about how to finish this off and
7 he just had to keep trying to manipulate. We'll get
8 out of this, I'll control it. Does it get any
9 better than that with evidence?

10 I'm gonna sit down now. I want to thank
11 you for being here. I appreciate you putting up
12 with me. I want to thank law enforcement for an
13 outstanding job and the victims.

14 Sylvia — Sylvia, raise your right hand.

15 Sylvia Ann Welch — and I don't mean this
16 badly, Sylvia Ann Welch got affected by a bullet,
17 hit by a bullet that will affect her the rest of her
18 life. She can't talk the same. She's still a
19 lovely, lovely person, but it affected her body and
20 the way she talks. And she was sitting there trying
21 to play cards, trying to play cards. And Frank
22 Cokeley is going to be with a bullet in his body the
23 rest of his life because he wanted target practice.
24 He wanted to show, I'll take it to the next level.
25 Identified by Lenard, identified by Miss Bolden,

1 identified by himself. You got to change your
2 testimony, you got to change it.

3 Ladies and gentlemen, Your Honor is also
4 going to tell you about a concept in the law or body
5 of the law called presumption of innocence. And the
6 defendant is presumed innocent. He's presumed
7 innocent unless and until the State of South
8 Carolina proves him guilty beyond a reasonable
9 doubt. And that stays with him. It's called a
10 cloak of innocence. That stays with him till y'all
11 go back to the jury room. It stays with him until
12 all this evidence comes back there to you. And then
13 once you get in there and the judge tells you, and
14 Mr. Bradley brings you the evidence, y'all can start
15 deliberating, you start talking, to listen to the
16 evidence. And then you can start if you find the
17 evidence credible, believable, taking that cloak
18 off. It's time to take it off, stays with him till
19 the end. And if you think the State proves their
20 case beyond a reasonable doubt you start taking the
21 cloak off. We'd ask you to take it off quickly.

22 But look at the evidence, take your time.
23 But you take off that cloak. Usually you say toss
24 it aside, I want you to save it. I want you to save
25 that cloak, that robe. And when you come back in

1 here and your verdict — and we respectfully submit
2 it's a verdict of guilty, respectfully. Bring that
3 cloak back in here with you, don't throw it away,
4 and give a little bit upfront and let Sylvia Ann
5 Welch wear that cloak to keep her and comfort her
6 rest of her life 'cause that's where it is, that's
7 who's innocent, that's who's innocent. Thank you.

8 THE COURT: Thank you, Mr. Meadors.

9 Ms. Butler, from the defendant.

10 MS. BUTLER: Thank you, Your Honor.

11 Chaos, finger pointing, he said/she said, shifting
12 the blame. In my opening statement on Monday I told
13 you that the State is accusing that young man of
14 shooting into the mobile home and injuring the two
15 victims. But what has the State given you? What
16 has the State given you? Santana Bolden. She sat
17 on the witness stand the day before yesterday and
18 she testified. She said that she was just standing
19 on the side of the house, that she could see the
20 front door, and she was standing next to Tre'Vaughn
21 as he was shooting. She was standing there and he
22 was shooting and shooting, and shooting. And
23 someone named Terry was standing out there with her.
24 And she said she lived with Ms. Welch, the victim,
25 along with her daughter and Santana's boyfriend and

1 the boyfriend's baby mama, Brittany. Where is
2 Terry? Who is Terry? Did law enforcement talk to
3 Terry? What did Terry see? And she couldn't even
4 tell me how long she had lived at that residence.
5 She couldn't tell me that. And who would live in
6 the same house with her boyfriend's baby mama? And
7 you saw how she reacted when I asked her about that.
8 She was startled; she didn't know I knew that. And
9 before her testimony she had never given any sort of
10 written or recorded statement to law enforcement.
11 She said she was afraid. But she wasn't too afraid
12 to run away from gunshots. Obviously she wasn't too
13 afraid to come sit on that witness stand in open
14 court? Does that sound right? Does that sound
15 credible? Did she sound like a credible witness?
16 And Lenard Johnson, the grand finale, he took the
17 witness stand yesterday afternoon. And according to
18 his testimony he was the innocent bystander. Frank
19 Cokeley threatened to go get a gun. Frank Cokeley
20 started the fight. His brother and the rest of the
21 group went to the house. He stayed and talked to
22 his mom. But if his hands are so clean why was he a
23 suspect. Ask yourselves that? He told you he knew
24 he was a suspect; the police came his house. And
25 another thing, if he knew that Frank Cokeley

1 threatened to go get a gun, why will he head back to
2 where Frank Cokeley was. And Frank Cokeley took the
3 stand. He said that group of guys that came over to
4 his house had bats and chains. That doesn't sound
5 like they were going over there to squash a beef, to
6 end a dispute. Does it? Ask yourselves that? And
7 he also said as he was walking he was talking to his
8 mother, and I asked him what's your mom's name?
9 Tasha Pickens. Where is she? What did she see? He
10 even said the police didn't interview her to his
11 knowledge. Why isn't she here? What did she see?
12 Don't you think that's important too?

13 And a bunch of names were thrown out, the
14 names of the guys who were all part of this dispute.
15 Where are they? Where is Keith Williams? Where is
16 Shaylon Isaac? Where is James Dwyer? Where is
17 Main? Where is Willie? What did they see? Why
18 were they not in this courtroom this week? Where
19 are they? And then when I asked him about some of
20 the things he told my investigator back in July, he
21 remembered certain things but he forgot certain
22 things. Convenient. And Sergeant Irene Culick took
23 the stand. She admitted, yeah, he was a suspect,
24 and law enforcement had already known about his
25 dispute, his fight with Frank Cokeley. Law

1 enforcement knew that he was a suspect. And then
2 the Tomlin brothers, Joe Tomlin, Julian Tomlin and
3 Frank Cokeley, they all took the stand. They didn't
4 see who shot into the home, but they all agreed with
5 the timing, the timing, all three. They managed to
6 get the group out of the house. They went back into
7 the house to sit down and finish playing a card
8 game, and then 15 to 20 seconds later was when the
9 gunshots all happened. But 15 to 20 seconds later,
10 all the guys would have been out of the house. All
11 of the guys, the ones I just named, all of them
12 would have been outside by then. What did they see?
13 Why are they not here in this courtroom?

14 And then the actual investigation, no
15 weapons recovered, no shell casings found, no
16 cartridges. Yeah, two bullets were found but they
17 were never matched to a gun so that doesn't tell us
18 anything. There was no mention of any gunshot
19 residue tested for Tre'Vaughn or Lenard Johnson. He
20 was at the police station; that's where they
21 interviewed him. There wasn't any testimony about
22 that being performed on him. And then Tre'Vaughn's
23 statement to Detective Lyons. This big bru-ha about
24 his statement. All he did was deny seeing Keith and
25 Lenard. That statement doesn't put a gun in his

1 hand. Law enforcement was out in the community
2 talking to people. His name was thrown out there.
3 He did denied seeing the guys; that doesn't put a
4 gun in his hand. Ask yourselves that, is that have
5 enough? And then the jail call, all this talk about
6 Tre'Vaughn trying to get Lenard to change his
7 testimony. And you'll get to hear the jail call I'm
8 sure. He never once says Lenard, Lenard needs to
9 change his testimony. If anything, he wants Lenard
10 to come to court. He knows he's looking at time.
11 He even says they're trying to give me 18 years.
12 He's looking at time; he knows that. He wants
13 Lenard to come to court. Lenard is the one, he
14 didn't want to come to court. Tre'Vaughn wanted him
15 to be here because he wanted him to tell the truth.

16 And he knew the call was recorded. The
17 message comes on the phone when you make a phone
18 call; he knows the call was recorded. So what do we
19 have? What do you have to take back into that jury
20 room with you? You have the testimony of a girl she
21 was too afraid to give a written statement to law
22 enforcement, but she was brave enough to stand by
23 somebody shooting bullets into a house. And she was
24 brave enough to come testify in open court, but she
25 was too afraid to give a statement to law

1 enforcement when all this happened. Somehow she got
2 this courage, she got this bravery. Is that
3 credible?

4 And you also have the testimony of a man,
5 Lenard Johnson, who has everything to lose. He was
6 the suspect. He had beef with the victim. His
7 actions set all of this in motion. He had the most
8 to lose. Those are the two people, those are the
9 two testimonies that you have to go back in that
10 jury room, that's it. That is it. Do you want to
11 convict that young man based on that? Think about
12 it.

13 Now what happened to the victims is a
14 tragedy and no one should ever have to go through
15 that, no one. But this wasn't Tre'Vaughn's fight.
16 The Solicitor, he kept saying over and over this
17 isn't Tre'Vaughn's fight, this wasn't his fight.
18 What motive, what reason did he have to shoot into
19 that trailer? Ask yourselves that. Think about
20 what the State has presented to you. Think about
21 that's the quality and quantity of evidence you want
22 to use to convict that young man? Think about that.
23 And if you have any doubts about this case, have
24 them today, don't have them next week, don't have
25 them next month, don't have them 18 years from now,

1 30 years from now 'cause then it'll be too late.

2 So I urge you go back into that jury room,
3 consider the testimony, think about the credibility
4 of the witnesses, were they really credible, were
5 they really credible, do you want to use that? No.
6 Tre'Vaughn and I ask that you find him not guilty of
7 these charges. Thank you.

8 THE COURT: Thank you. Please secure the
9 courtroom.

10 All right, ladies and gentlemen, all the
11 testimony and other evidence to be presented in this
12 case has now been presented to you. Now is the time
13 of the trial where I will charge you the law that is
14 to be applied to this case. I remind you that
15 during this trial you and I have certain duties to
16 perform. As the trial judge it is my responsibility
17 to preside over the trial of this case, and I also
18 have the duty to rule upon the admissibility of
19 evidence offered during this trial. You're to
20 consider only the competent evidence which is before
21 you. If there was any testimony ordered stricken
22 from the record in this case, you must disregard
23 that testimony. You're to consider only the
24 testimony that's come from this witness stand and
25 the exhibits which have been made a part of the

1 record and any stipulations of counsel.

2 Ladies and gentlemen, I also have the
3 additional duty to charge you the law that is
4 applicable to this case. As the presiding judge I
5 am the sole judge of the law of this case, and it is
6 your duty as jurors to accept and apply the law
7 exactly as I now state it to you. If you already
8 have some idea as to what the law is or what the law
9 ought to be and it does not agree with what I now
10 tell you the law is, you must abandon that idea
11 because, ladies and gentlemen, you are sworn to
12 serve and apply the law exactly as I state it to
13 you. Now ladies and gentlemen, every case tried
14 before a jury, you the jury, become the sole and
15 exclusive judges of the facts. As a trial judge I
16 cannot intimate, state, comment on, or make any
17 statement to a trial jury about the facts in a case.
18 You're the jury, and you're the sole judges of the
19 facts and you're not to infer by anything that I
20 said during the progress of the trial in ruling upon
21 the admissibility of evidence or otherwise or
22 anything that I might say now during the course of
23 these instructions that I have an opinion about the
24 case. The law simply does not allow me to have an
25 opinion about the facts in this case. It is a

1 matter solely for you, the jury, to determine; and
2 as jurors, it is your duty to determine the effect,
3 the value, the weight, and the truth of the evidence
4 that has been presented during this trial.

5 Now ladies and gentlemen, the indictment
6 charges the defendant with various crimes. And I
7 remind, you the fact that the defendant was the
8 arrested, charged, and indicted is not evidence in
9 this case and cannot be considered by you as
10 evidence of guilt in this case; nor does it create
11 any presumption or inference of guilt. The
12 indictment is simply the formal, written instrument
13 that contains the charges made against the defendant
14 and it is the formal document by which this case is
15 brought into court. Now ladies and gentlemen, the
16 indictment in this case alleges four different
17 offenses against the defendant. The charges are:
18 Count one, attempted murder; count two is attempted
19 murder; count three, possession of a firearm during
20 the commission of a violent crime; and count four is
21 discharging a firearm into a dwelling.

22 Now ladies and gentlemen, each count of
23 the indictment charges a separate and distinct
24 offense. You must decide each count separately on
25 the evidence and the law that is applicable to it

1 uninfluenced by your decision as to any other count,
2 and the defendant may be convicted or acquitted on
3 any or all of the offenses charged and you will be
4 asked to write a separate verdict of guilty or not
5 guilty for each count. Now ladies and gentlemen,
6 the defendant has pled not guilty to the charges
7 contained in the indictment and that plea puts the
8 burden on the State to prove the defendant guilty.
9 A person charged with committing a criminal offense
10 in South Carolina is never required to prove himself
11 innocent. And I charge you this is an important
12 rule of law that the defendant in a criminal trial,
13 no matter how serious the charge may be, will always
14 be presumed to be innocent of the crime for which
15 the indictment was issued unless guilt has been
16 proven by evidence satisfying you of that guilt
17 beyond a reasonable doubt. Presumption of innocence
18 does not end when you begin your deliberations, but
19 it accompanies the defendant throughout the trial
20 until you reach a verdict based on evidence
21 satisfying you of that guilt beyond a reasonable
22 doubt. Presumption is like a robe of righteousness
23 placed about the shoulders of the defendant and
24 remain with the defendant until it has been stripped
25 from the defendant by evidence satisfying you then

1 of the defendant's guilt beyond a reasonable doubt.
2 The presumption of innocence is not a mere legal
3 theory. It is not just a legal phrase that we use,
4 but it is a substantial right to which every
5 defendant is entitled unless you, the jury, are
6 satisfied from the evidence presented of the
7 defendant's guilt beyond a reasonable doubt.

8 Now ladies and gentlemen, the State has
9 the burden of proving the defendant guilt beyond a
10 reasonable doubt. Some of you may have served as
11 jurors in civil cases where you were told it is only
12 necessary to prove that a fact is more likely true
13 than not true, such as by the greater weight or the
14 preponderance of the evidence. In criminal cases,
15 however, the State's proof must be more powerful
16 than that; it must be beyond a reasonable doubt.
17 Proof beyond a reasonable doubt is proof that leaves
18 you firmly convinced of the defendant's guilt.
19 Ladies and gentlemen, there are very few things in
20 this world that we know with absolute certainty, and
21 in criminal cases the law does not require proof
22 that overcomes every possible doubt. If based upon
23 your consideration of the evidence, you are firmly
24 convinced that the defendant is guilty of the crimes
25 charged you must find the defendant guilty. If on

1 the other hand you think there's a real possibility
2 that the defendant is not guilty, you must give the
3 defendant the benefit of the doubt and find him not
4 guilty.

5 Now ladies and gentlemen, there are two
6 types of evidence that are generally presented
7 during a trial. There's direct evidence and
8 circumstantial evidence. Direct evidence is the
9 testimony of a person who claims to have actual
10 knowledge of a fact, such as an eyewitness. It is
11 evidence which immediately establishes the main fact
12 to be proved. Circumstantial evidence is proof of a
13 chain of facts and circumstances indicating the
14 existence of a fact. It is evidence which
15 immediately establishes collateral facts from which
16 the main fact may be inferred. Circumstantial
17 evidence is based on inference and not on personal
18 knowledge or observation. And the law makes
19 absolutely no distinction between the weight or
20 value to be given to either direct or circumstantial
21 evidence, nor is a greater degree of certainty
22 required of circumstantial evidence than of direct
23 evidence. Ladies and gentlemen, you should weigh
24 all the evidence in this case; and after weighing
25 all the evidence, if you're not convinced of the

1 guilt of the defendant beyond a reasonable doubt you
2 must find the defendant not guilty.

3 Now ladies and gentlemen, I instruct and I
4 emphasize, the fact that the defendant did not
5 testify is not a factor to be considered by you in
6 any way in your deliberations and in your
7 consideration of the question of guilt or innocence
8 of the defendant. It must not be considered by you
9 in any manner whatsoever. A defendant has the
10 constitutional right to remain silent and the
11 assertion of this right must not be considered by
12 you in your deliberations. And I repeat, under the
13 oath you're to draw no conclusions whatsoever from
14 the fact that the defendant in the case did not
15 testify. The fact that the defendant did not
16 testify should not even be discussed in the jury
17 room. The burden of proof as I have stated to you,
18 is on the State and the defendant is not required to
19 prove his innocence. Like I said, the burden of
20 proof remains on the State to prove guilt beyond a
21 reasonable doubt.

22 Necessarily, ladies and gentlemen, you
23 must judge the credibility of witnesses who have
24 testified in this case. Credibility simply means
25 believability. It becomes your duty as jurors to

1 analyze and evaluate the evidence to determine which
2 evidence convinces you of its truth. In determining
3 the believability of the witnesses who have
4 testified in this case you may believe one witness
5 over several witnesses or several witnesses over one
6 witness. You may believe a part of the testimony of
7 a witness and reject the remaining part of the
8 testimony of that same witness. You may believe the
9 testimony of a witness in its entirety or reject the
10 testimony of that witness in its entirety. You may
11 consider whether any witness has any — exhibited to
12 you any interest, bias, prejudice, or other motive
13 in this case. You may also consider the appearance
14 and manner of a witness while on the witness stand.

15 Now ladies and gentlemen, the rules of
16 evidence ordinarily do not permit witnesses to
17 testify to opinion or conclusions. Exception to
18 this rule exists for witnesses we call expert
19 witnesses, a witness who by education and experience
20 has become expert in some art, science, or
21 profession, or calling may state an opinion as to
22 relevant and material matter in which the witness
23 claims to be an expert and may also state the reason
24 for that opinion. Ladies and gentlemen, you should
25 consider any expert opinion received in evidence in

1 this case like any other evidence and give it the
2 weight that you think it deserves; and if you decide
3 that opinion of an expert is not based on sufficient
4 education and experience, or if you conclude that
5 the reason given in support of the opinion are not
6 sound or that the opinion is outweighed by other
7 evidence, you may disregard that opinion entirely.
8 And an expert witness' opinion is to be given no
9 greater weight than that of any other witness simply
10 because the fact the witness is an expert; and
11 further, you're not to require — not required to
12 accept an expert's opinion even though it is not
13 contradicted.

14 Now ladies and gentlemen, the defendant is
15 charged with attempted murder, two counts. In order
16 to prove this crime the State must prove the
17 defendant attempted to kill another person with
18 malice aforethought either expressed or implied.
19 Malice is hatred, ill will, or hostility towards
20 another person. It is the intentional doing of a
21 wrongful act without just cause or excuse and with
22 an intent to inflict an injury under — or under
23 circumstances that the law will infer an evil
24 intent. Malice aforethought does not require that
25 malice exists for any particular time before the act

1 is committed, but malice must exist in the mind of
2 the defendant just before and at the time the act is
3 committed. Therefore, there must be a combination
4 of the previous evil intent and the act, and malice
5 aforethought may be expressed or inferred. These
6 terms expressed or inferred do not mean kinds of
7 malice, but merely the manner in which the malice
8 may be shown. That is either by direct evidence or
9 by inference from the facts and the circumstances
10 which are proved. Expressed malice is shown when a
11 person speaks words which express hatred or ill will
12 for another or when the person has prepared
13 beforehand to do the act which was later
14 accomplished. For example, lying in wait for a
15 person or any other acts or preparation going to
16 show that the deed was within the defendant's mind
17 would be expressed malice. Malice may be inferred
18 from conduct showing a disregard for human life.
19 Inferred malice may also arise when the deed is done
20 with a deadly weapon.

21 A deadly weapon is any article,
22 instrument, or substance which is likely to cause
23 death or great bodily harm. Whether an instrument
24 has been used has a deadly weapon depend upon the
25 facts and the circumstances of each case. The

1 following examples are instruments which may be
2 deadly weapons: Pistol, shotgun, rifle. And a gun
3 may be a deadly weapon even if it is not operated.
4 If facts are proved beyond a reasonable doubt
5 sufficient to raise an inference of malice to your
6 satisfaction, this inference would be simply an
7 evidentiary fact to be considered by you, the jury,
8 along with the other evidence in this case and you
9 may give it the weight that you decide it should
10 receive.

11 And a specific intent to kill is not an
12 element of attempted murder, but there must be a
13 general intent to commit serious bodily injury.
14 Intent means intending the results which actually
15 occurs, not accidental or involuntarily. An intent
16 may be shown by acts and conduct of the defendant
17 and other circumstances in which you may naturally
18 and reasonably infer intent. And evidence of the
19 character of the act, the character of the
20 instrument used, the manner in which it was used,
21 the purpose to be accomplished, the resulting wounds
22 or injuries may be considered in determining the
23 intent with which the act was committed. Intent may
24 be also inferred when it is demonstrated that the
25 defendant voluntarily and willfully commits an act,

1 a natural tendency of which is to destroy another's
2 life.

3 Now ladies and gentlemen, to prove malice
4 the State is not required to prove that the
5 defendant actually intended to kill or injure the
6 victim. Malice by law does not necessarily import
7 ill will towards the individual injured, but
8 signifies a general malignant recklessness of the
9 lives and the safety of others or condition of the
10 mind which would show a heart regardless of social
11 duty and fatally bent on mischief. If the State
12 shows that defendant exhibited these qualities, then
13 they have properly established malice as an element
14 in this case.

15 Now ladies and gentlemen, the defendant is
16 also charged with possession of a weapon during the
17 commission or attempt to commit a violent crime.
18 The State must prove beyond a reasonable doubt that
19 the defendant was in possession with of a firearm or
20 visibly displayed what appeared to be a firearm
21 during the commission of a violent crime. A firearm
22 means any weapon which is designed to or may be
23 readily converted to expel a projectile. This would
24 include a pistol or a revolver. In order to find
25 the defendant guilty of possession of a weapon

1 during the commission of a violent crime, you must
2 first find the defendant guilty of either committing
3 a violent crime or attempting to commit a violent
4 crime, and murder or attempted murder is a violent
5 crime.

6 The defendant is also charged with
7 discharging a firearm into a dwelling. And ladies
8 and gentlemen, it is unlawful for a person to
9 discharge or cause to be discharged unlawfully
10 firearms into a dwelling house, other building,
11 structures, or enclosures regularly occupied by
12 persons. And a person who violates the provision of
13 this subsection would be guilty -- if you find that
14 he fired into a dwelling house then you can find him
15 guilty of that charge. Now ladies and gentlemen, if
16 a crime is committed by two or more people who are
17 acting together in committing a crime the act of one
18 is the act of all. A person who joins with another
19 to commit an unlawful act is criminally responsible
20 for everything done by the other person which
21 happens to be a probable or natural consequence of
22 the acts done in carrying out common plan and
23 purpose. For example, two people can be guilty of
24 killing another person when only one had a gun,
25 there was only one bullet, and only one but two

1 fired the shot that caused the death. If two or
2 more people with acting together assisting each
3 other in committing the offense, the act of one is
4 the act of all or sometimes said, the hand of one is
5 the hand of all. And prior knowledge that a crime
6 is going to be committed without more is not
7 sufficient to make a person guilty of that crime.
8 And mere knowledge that another person is going to
9 commit a crime even if the defendant is present when
10 the crime is committed, is not sufficient to convict
11 the defendant as a principal. Guilt as a principal
12 is shown by actual or constructive presence at the
13 scene as a result of a prior arrangement; therefore,
14 a finding of a prior arrangement, plan, or common
15 scheme is necessary for a finding of guilt as a
16 principal, and the State must prove beyond a
17 reasonable doubt by competent evidence the theory of
18 the hand of one is the hand of all.

19 And a principal in a crime is one who
20 either actually commits the crime or is present
21 aiding and abetting or assisting and committing the
22 crime. And when a person does an act in the
23 presence of another and with the assistance of
24 another, the act is done by both where two or more
25 acting in a common plan or intent are present at the

1 commission of a crime it does not matter who
2 actually commits the crime, all are guilty, the hand
3 of one is the hand of. And presence at the
4 commission of a crime means to be sufficiently near
5 to aid and abet in the commission of the crime.

6 However, mere presence at the scene of the crime is
7 not sufficient to convict one as a principal on the
8 theory of aiding and abetting, and intent is also a
9 necessary element for there to have been a common
10 design or intent to commit the crime and the crime
11 must have been committed pursuant thereto with the
12 person aiding and abetting by some overt act. It
13 means — intent means intending the result which
14 actually occurs, not accidentally or involuntarily.
15 An intent may be shown by acts in conduct of the
16 defendant and other circumstances from which you may
17 naturally and reasonably infer, and the State must
18 prove these elements beyond a reasonable doubt.

19 Now ladies and gentlemen, there are two
20 possible verdicts that you may find in this case on
21 the charges of attempted murder, possession of a
22 firearm during the commission of a violent crime,
23 and discharging a firearm into the dwelling. Under
24 count one, attempted murder of Franklin Dwyer —
25 Frank Dwayne Cokeley, you may find the defendant not

1 guilty or guilty. On the defendant — or the victim
2 Sylvia Ann Welch, you may find the defendant guilty
3 or not guilty. As to count three, possession of a
4 firearm during the commission of a violent crime,
5 you may find the defendant not guilty or guilty.
6 And on discharging a firearm into a dwelling you may
7 find the defendant not guilty or guilty.

8 And as you go through on the verdict form,
9 Mr. Foreman, you check not guilty or guilty on each
10 specific charge. And again, there's no significance
11 in the order which I state the possible verdicts;
12 it's just that one must be stated first.

13 Now ladies and gentlemen, your verdict
14 must be unanimous. That means all 12 of you must
15 agree on the verdict, and your decision must not be
16 based on sympathy, passion, prejudice, emotion, or
17 any other consideration that is not in evidence in
18 this trial. Mr. Foreman, as I said, when the jury
19 agrees on a verdict you will write the verdict on
20 the verdict form and then knock on the jury room
21 door, let the bailiff know that you have reached a
22 verdict. At that time you will be received back
23 here into this courtroom for publication of your
24 verdict. Now ladies and gentlemen, I'm gonna ask
25 that you return to your jury room with the exception

1 of the two alternates. And y'all will just stand in
2 the hall. But don't start your deliberations until
3 you are told to do so by the clerk or the bailiff.
4 There are some matters of law that I still need to
5 take up with the attorneys. All right, thank you,
6 ladies and gentlemen.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 10:43 a.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: Are there any objections from
11 the State to the charge given?

12 MR. MEADORS: No, sir.

13 THE COURT: Any objections from the
14 Defense to the charge given?

15 MS. BUTLER: None, Your Honor.

16 THE COURT: Thank you. Y'all want to get
17 together and look at the verdict form and make sure
18 all the evidence is going back, then we'll let them
19 start to deliberate.

20 (Attorneys review exhibits.)

21 MR. MEADORS: Your Honor, if they wanted
22 to hear one of the tapes, I was wondering if I can
23 perhaps get Detective Mitchell to put it on a
24 separate disk, that other, while we're waiting.

25 THE COURT: Yeah, I mean —

1 MR. MEADORS: It'd be easier. They may
2 not, but see if they —

3 THE COURT: Well, on the tapes is what I
4 will probably do if they want to hear it B.

5 MR. MEADORS: Just bring them out? Never
6 mind.

7 (Alternates were excused.)

8 THE COURT: Court will be at ease pending
9 the calling of the Court.

10 (Jury began its deliberations at 10:45 and court was
11 in recess.)

12 THE COURT: I understand the jury has a
13 verdict? Anything before I bring the jury?

14 MR. MEADORS: No, sir.

15 THE COURT: Let's bring them in, Mr.
16 Bradley.

17 THE CLERK: Yes, sir.

18 (WHEREUPON, the jury was returned to the
19 courtroom at approximately 1:29 p.m., and
20 the following proceedings commenced in
21 open court.)

22 THE COURT: Mr. Foreman, has the jury
23 reached a verdict?

24 THE FOREMAN: Yes, Your Honor.

25 THE COURT: Is it unanimous?

1 THE FOREMAN: Yes, sir.

2 THE COURT: Hand it to the bailiff please.

3 (Verdict tendered to the Court.)

4 THE COURT: Defendant will please rise.

5 Please publish the verdict.

6 THE CLERK: Yes, sir, Your Honor. For the
7 State of South Carolina, County of Sumter, in the
8 Court of General Sessions, docket number
9 2013-GS-43-1067, the State of South Carolina versus
10 Tre'Vaughn Jackson, defendant. As to the charge of
11 attempted murder as to Frank Cokeley: We, the jury,
12 unanimously find the defendant guilty. As to the
13 charge of attempted murder as to Sylvia Ann Welch:
14 We, the jury, unanimously find the defendant guilty.
15 As to the charge of possession of a weapon during
16 the commission of a violent crime: We, the jury,
17 unanimously find the defendant guilty. As to the
18 charge of discharging a firearm into a dwelling:
19 We, the jury, unanimously find the defendant guilty.
20 Signed Brantley Nash, foreperson, dated August 28th,
21 2014. Ladies and gentlemen of the jury, if this is
22 your verdict so say you all by raising your right
23 hand.

24 (All jurors complied by raising their hand.)

25 THE COURT: Thank you.

1 Does the Defense request polling of the
2 jury?

3 MS. BUTLER: Yes, Your Honor.

4 THE COURT: Please poll the jury.

5 THE CLERK: Ladies and gentlemen, when I
6 call your name please stand and answer two questions
7 for me.

8 Angela Ridgell, is this your verdict and
9 is it still your verdict?

10 JUROR RIDGELL: Yes, sir, it is.

11 THE CLERK: Thank you, you may be seated.

12 Katherine Clark, is this your verdict and
13 still your verdict?

14 JUROR CLARK: Yes, sir.

15 THE CLERK: Thank you.

16 Louise Rembert, is this your verdict and
17 still your verdict?

18 JUROR REMBERT: Yes, sir.

19 THE COURT: Thank you.

20 Alpha Cabbagestalk, is this your verdict
21 and still your verdict?

22 JUROR CABBAGESTALK: Yes, sir.

23 THE CLERK: Thank you.

24 Christopher Geddings, is this your verdict
25 and still your verdict?

1 JUROR GEDDINGS: Yes, sir.

2 THE CLERK: Thank you.

3 Brantley Nash, is this your verdict and
4 still your verdict?

5 THE FOREMAN: Yes, sir.

6 THE CLERK: Thank you.

7 Felicia McCoy, is this your verdict and
8 still your verdict?

9 JUROR MCCOY: Yes, sir.

10 THE CLERK: Thank you.

11 Fannie Moore, is this your verdict and
12 still your verdict?

13 JUROR MOORE: Yes, sir.

14 THE CLERK: Thank you.

15 Sherquana Strasley, is this your verdict
16 and still your verdict?

17 JUROR STRASLEY: Yes, sir.

18 THE CLERK: Thank you.

19 Doretha Graham, is this your verdict and
20 still your verdict?

21 JUROR GRAHAM: Yes, sir.

22 THE CLERK: Thank you, ma'am.

23 Delilah Hayes, is this your verdict and
24 still your verdict?

25 JUROR HAYES: Yes, sir.

1 THE CLERK: Thank you.

2 Johnny Wells, is this your verdict and
3 still your verdict?

4 JUROR WELLS: Yes, sir.

5 THE CLERK: Thank you.

6 Your Honor, the jury has been polled and
7 the verdict stands.

8 THE COURT: Thank you. Defendant may be
9 seated.

10 Ladies and gentlemen of the jury, let me
11 take this opportunity to thank you, thank you for
12 coming to a verdict. And I would tell you the same
13 thing if you had gone the other way; it makes no
14 difference. You worked through the evidence and you
15 came to a decision and it's never easy to do what
16 y'all have done. You know, you see things on TV and
17 maybe this seem easy but it's not. Any time you
18 hold the hand, hold the life of fellow citizens in
19 your hands it's not easy so I want to thank you for
20 taking the time to look at the evidence and to reach
21 a decision. Now, ladies and gentlemen, they often
22 ask what makes America great. One of the things
23 that makes America great is people like y'all who
24 will take time out of their lives doing what they
25 normally do and get put into another situation do

1 what you want, do what you're supposed to do. And I
2 tell you, there were a lot of important things going
3 on in Sumter this week, but nothing was more
4 important than what y'all are doing. It is
5 searching for the truth and having justice done. I
6 tell people I got the greatest job in the world
7 because I get to sit between these two flags, and
8 these flags represent much more than just the cloth
9 they are. These flags represent people who have
10 died over the years for the rights that we have
11 because in America, what makes us different is it's
12 not the government that says somebody is guilty, but
13 it's the people who say that. So it's a wonderful
14 system. And I want you to go out of here when you
15 think about it that you're one of the threads that
16 makes these flags great, that you are not just
17 somebody in the community, but you are somebody who
18 did was assigned the duty and did their duty. So
19 ladies and gentlemen, I just want to thank you
20 again.

21 You have made your decision concerning the
22 facts of this case. Now it will be my decision to
23 sentence the defendant according to the law. You
24 are welcome to stay for that. What you do, I'm
25 gonna excuse you, you can go out in the back. I

1 think one of your alternates is sitting out there
2 too. So if you want to sit in the back for 30
3 minutes, no earlier than 3:00, I'm going to sentence
4 this defendant in accordance with your verdict. Now
5 ladies and gentlemen, as you leave the courtroom it
6 will be my honor to shake your hands as you go on
7 back into your lives and do what you want to do.
8 But remember, on the day that you needed to do your
9 duty you did it. Excuse me, I said 3:00. It's
10 2:00, which is in 25 minutes.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 1:36 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: Are there any post-trial
15 motions.

16 MS. BUTLER: None, Your Honor.

17 THE COURT: All right.

18 MR. MEADORS: Your Honor, Mr. Brown is
19 downstairs preparing the sentencing sheets right
20 now.

21 THE COURT: Okay. And like I said, at
22 2:00 I will sentence the defendant accordingly.

23 MR. MEADORS: Thank you, Your Honor.

24 THE COURT: And let me tell the lawyers,
25 both of y'all did a wonderful job with what you had.

1 You're to be commended. You certainly upheld your
2 civility oath and it's always a pleasure being a
3 judge working with attorneys like you are.

4 (WHEREUPON, a recess was taken from the
5 proceedings.)

6 THE COURT: Mr. Solicitor, would you like
7 to give me his prior record?

8 MR. MEADORS: May it please the Court,
9 Your Honor, he has a burglary second degree
10 conviction. It was — served time in DJJ. That was
11 a juvenile conviction in 2010. A burglary second
12 conviction appears February 17th of 2012. He got
13 ten years suspended to 18 months and three years
14 probation so I believe he's on probation for that
15 now.

16 THE COURT: Probation, are they here?

17 MR. MEADORS: They should be here any
18 second.

19 THE COURT: Okay. He got ten years
20 suspended to what?

21 MR. MEADORS: Eighteen months and three
22 years probation. And then, Judge, there's another
23 charge from I believe August of last year, that he
24 pled to receiving stolen goods. It might even be a
25 city left. I know he had some other charges they

1 were pled to. Judge —

2 THE COURT: Ms. Butler, do you know
3 anything about that charge?

4 MS. BUTLER: Yeah, he has pending charges.
5 There were dismissed but he ended up pleading to
6 receiving stolen goods.

7 THE COURT: What was his sentence on that
8 each, do you know?

9 MS. BUTLER: I believe it was time served.
10 It was the magistrate level.

11 THE COURT: Okay.

12 MR. MEADORS: Judge, we do have — first
13 and foremost for the record I want to thank the jury
14 for their verdict. I want to thank law enforcement
15 for their fine work in this case. Judge, obviously
16 Ms. Joe is here. I talked to the Tomlins today.
17 They wanted to be here, but they were working. Said
18 I just got to work. I said I understand that, I
19 will certainly tell the judge that's why you're not
20 here. Ms. Joe, as Your Honor heard, was literally
21 playing cars when they — bullets came through.
22 Thank God she wasn't hit. She's been a pleasure and
23 thank her for her patience and testimony. Frank
24 Dwayne Cokeley is here. He wanted me to speak on
25 behalf of him. He also wanted to thank the jury and

1 law enforcement. I'm glad -- he's actually got the
2 bullet still in him, Judge. The doctors told him
3 they couldn't risk taking it out of him, and he
4 really wanted to end this with a fistfight. He
5 didn't have a gun, didn't plan on this ending any
6 other way. Even though that wasn't right I think
7 that's where it would have ended if outside forces
8 hadn't entered. He's here, is thankful to all the
9 parties and wanted me to state that. His
10 grandmother has been here. That's -- he went across
11 the street after he got shot, went into her
12 beautiful home, and that's where some of the blood
13 was and she's been here. We want to thank her for
14 her presence and graciousness.

15 Judge, Sylvia Ann Welch, the last couple
16 of days she's been working on something from her
17 heart. She doesn't think she can get through it.
18 With your permission Ms. Harrison would like to
19 read it. It's very short.

20 THE COURT: Ms. Harrison.

21 THE VICTIM ADVOCATE: Good afternoon, Your
22 Honor.

23 THE COURT: Good afternoon.

24 THE VICTIM ADVOCATE: My name is Talitha
25 Harrison. I'm the victim advocate from the

1 Solicitor's Office. Ms. Sylvia Welch would like to
2 thank you, Your Honor, and the jurors for their
3 verdict. She asked if I would read this because of
4 the damage done to her lung she cannot speak for a
5 long period of time. It says: "I'm blessed. I'm
6 here to tell everyone that I'm a true survivor
7 knowing the love of my family and the will to tell
8 the world that the Lord heard my prayer telling me
9 everything is gonna be all right. I'm still trying
10 to take the next step trying to do better with my
11 life, but sometimes I get upset; it hurts me badly
12 that I cannot focus. I can't walk or ride my
13 bicycle 'cause it gives me shortness of breath. I
14 try to talk clear but my voice starts to stutter and
15 that makes me sad knowing that I'm not going to be
16 the same person. But one thing I can say, that I'm
17 happy to have a second chance of life so I can watch
18 and take care of my grandkids, watch them grow up to
19 be a better person in life. Once again, I want to
20 thank the Lord for letting me live again. Thank
21 you.

22 THE COURT: Thank you.

23 MR. MEADORS: Your Honor, Investigator
24 John Litaker would like to briefly address Your
25 Honor.

1 THE COURT: Yes, sir.

2 THE INVESTIGATOR: Your Honor, on behalf
3 of law enforcement it is, of course, our duty and
4 obligation to insure that safety and the protection
5 of citizens of the City of Sumter, and we feel that
6 there's not doubt about it that the citizens of the
7 City of Sumter are gonna be better off with
8 Mr. Tre'Vaughn Jackson incarcerated. He, I think,
9 from the evidence and testimony we've seen and
10 heard, there was a depraved indifference to human
11 life exhibited towards the victims that were shot.
12 There was a depraved indifference to human life
13 exhibited towards the potential victims that were
14 also inside that home that could have been shot.
15 And there was a depraved indifference to the
16 criminal justice system where, you know, the system
17 itself there was an attempt to subvert it. And I
18 would just like for Your Honor to consider the fact
19 that the victims who are shot here, that they're
20 continuing to have ongoing battles with their
21 physical infirmities and ailments and these are
22 situations that they will carry for the rest of
23 their life. There's always going to be some manner
24 that they're gonna deal with these ailments. It's
25 not anything they're ever going to fully recover

1 from. And not just the physical ailments, the
2 mental and emotional part of it has been very
3 difficult on them. I'd just like for the Court to
4 just keep that in mind and consider it. Thank you,
5 Your Honor.

6 THE COURT: Thank you.

7 MR. MEADORS: Your Honor, in conclusion
8 again, we do think it's a very strong factual case.
9 Again, we respectfully thank the jury for their
10 verdict. In addition to all the folks I'm thankful,
11 I thank Ms. Butler, Mr. Tyler Brown for helping me
12 in this matter. And that's all I have. Thank you.

13 THE COURT: Thank you.

14 Ms. Butler, would you like to say anything
15 on behalf of your client?

16 MS. BUTLER: Just briefly. The jury has
17 spoken, Your Honor. We accept the verdict. We just
18 ask for a fair sentence.

19 THE COURT: All right.

20 Mr. Jackson, tell me about Mr. Jackson's
21 probation violation, or does this constitute a
22 probation violation?

23 PROBATION OFFICER: Yes, Your Honor.

24 THE COURT: What's hanging on —

25 PROBATION OFFICER: As far as his

1 probation sentence he has ten years on time served,
2 was 18 months suspended to three years probation.

3 THE COURT: Who sentenced him on that?

4 PROBATION OFFICER: Judge Cothran. And
5 currently he's being violated for the following
6 facts by failing to refrain from the possession of
7 -- subject was charged with discharging a firearm
8 into an occupied dwelling, possession of a weapon
9 during the commission of a violent crime as well as
10 unlawful carrying of a pistol and by failing to
11 refrain from contact with local law enforcement.
12 Subject was arrested on September 1st, 2013 for two
13 counts of attempted murder and by failing to pay
14 supervision fees of \$1,250 and being in arrears a
15 hundred dollars and that's what he's being violated
16 with.

17 THE COURT: All right, thank you. Ms.
18 Butler, would you like to make a statement
19 concerning those?

20 MS. BUTLER: I do not, Your Honor.

21 MR. MEADORS: Your Honor, I think through
22 the course of investigation he's out about three
23 weeks.

24 THE COURT: I thought —

25 MR. MEADORS: One of the interviews I

1 think that I remember.

2 THE COURT: That I excluded before this
3 happened?

4 MR. MEADORS: Right.

5 THE COURT: You know, I've had a lot of
6 serious charges and they were all senseless, but
7 this is one of the most senseless ones I've ever
8 seen. You know, Mr. Jackson, I understand he didn't
9 actually murder anybody but he had nothing to do
10 with them. He had nothing to do with these people
11 surviving what he did. Mr. Jackson had nothing to
12 do with there only being two victims in this case.
13 He had everything to do with indiscriminately
14 maliciously firing into a dwelling that he knew was
15 full of people.

16 Mr. Jackson was very lucky today. He's
17 lucky that these victims survived. It's only
18 because they were tough. I mean, you know, they got
19 injuries that they're gonna have to live with for
20 the rest of their lives. You know, on August 31st
21 Mr. Jackson for whatever reason decided to interject
22 himself in somebody else's problem or quarrel, and
23 on that day he made himself a one man weapon of mass
24 destruction. It seriously injured and impacted the
25 lives of two people who were about as innocent as

1 you can be; and through in the chaos, the lives of
2 other people who were in their home had nothing to
3 do with the previous things. And so, you know, I
4 think he deserves a harsh sentence for that.

5 I'm also grieved by Mr. Jackson's attempt
6 to soil this courtroom by his trying to make a phone
7 call to a witness who was only telling the truth, to
8 get him to change his testimony. What he was trying
9 to do was get him to commit perjury, and this Court
10 does not look at that lightly although I'm not
11 sentencing him on that charge, that's not before me.

12 I don't have the authority to sentence
13 Mr. Jackson to life. The law only allows me 30
14 years on each charge. But again, he's just lucky
15 he's here and he's lucky that the victims survived.
16 He has been a serial violator of our laws. He was
17 as a kid he was violating them. He was out on
18 probation. He obviously convinced some judge, prior
19 judge, that he was gonna straighten up; he didn't.
20 He got ten years hanging over him on another charge
21 so I'm not real sympathetic to Mr. Jackson. I'm
22 going to — I can't sentence him to life, but he
23 will not be a young man when he's eligible for
24 parole.

25 The sentence of the Court — please stand.

1 The sentence of the Court on count one concerning
2 attempted murder as to Frank Cokeley, the jury found
3 him unanimously guilty, I hereby sentence him to 30
4 years in the correctional center department. As to
5 the attempted murder on Sylvia Ann Welch, I hereby
6 sentence him to 30 years in the State Correctional
7 Department of Corrections. As to the discharging a
8 weapon into a dwelling, I hereby sentence him to ten
9 years in the State Department of Corrections. And
10 on the charge of -- he shouldn't even had in his
11 possession, of the possession of a weapon during the
12 commission of a violent crime, I sentence him to
13 five years. Now the five years sentence for
14 possession of a weapon during the violent crime and
15 the firing into a dwelling will run concurrently.
16 The two attempted murder charges will run
17 consecutively. The necessary effect is that he will
18 serve 60 years in the South Carolina Department of
19 Corrections. That's the sentence of the Court. You
20 have time to make your appeal as you deem necessary.
21 That's the ruling of the Court. Thank you.

22 MS. BUTLER: Your Honor, the probation
23 violation?

24 THE COURT: I'm revoking that. That's
25 running concurrently too.

1 MS. BUTLER: Okay, thank you.

2 PROBATION OFFICER: Your Honor, can I have
3 a moment to serve the citation on him?

4 THE COURT: You may. Court is adjourned
5 till 10:00 tomorrow morning.

6

7 * * * END OF TRANSCRIPT OF RECORD * * *

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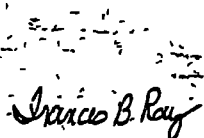
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 7th day of January, 2015.



Frances B. Ray

FRANCES BAKIS-RAY, RPR

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 18 2015

SC Court of Appeals

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRE'VAUGHN ZIONTAE JACKSON,

APPELLANT,

APPELLATE CASE NO. 2014-001914

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing hearsay testimony from law enforcement that other alleged eyewitnesses named appellant as the shooter since this hearsay testimony was highly prejudicial, and denied appellant his right to a fair trial on the present charges?

STATEMENT OF THE CASE

Appellant was indicted by the Sumter County Grand Jury for two counts of attempted murder, one count of discharging a firearm into a dwelling, and possession of a weapon during the commission of a violent crime. R. 7, ll. 9-15; R. 408 - 409.

His case was called to trial on April 25, 2014, before the Honorable W. Jeffrey Young, and a jury. Tiffany Butler represented appellant. John P. Meadors was the assistant solicitor. R. 1.

The jury found appellant guilty on each charge. R. 390, ll. 6-23. Judge Young sentenced appellant to thirty years consecutive on each count of attempted murder, and he imposed five year concurrent terms for the possession of a weapon during the commission of a violent crime, and the firing into a dwelling counts. R. 405, ll. 5-21.

This appeal follows.

ARGUMENT

The court erred by allowing hearsay testimony from law enforcement that other alleged eyewitnesses named appellant as the shooter since this hearsay testimony was highly prejudicial, and denied appellant his right to a fair trial on the present charges.

Relevant facts

The shooting in this case arose because on August 29, 2013, Lenard Johnson called Frank Cokley's sister a "bitch." This was two days prior to the shooting. R. 142, l. 19 – 145, l. 7. Frank and Lenard got into a fist fight that day. R. 145, ll. 7-11. Frank opined: "I got the best of him" on that day. R. 146, ll. 1-16.

On Saturday, August 31, 2013 the men fought again over the same incident at Dibert Street, at the residence of Joe Tomlin. Unfortunately, this time about four other men were involved, and a fist fight turned into a shooting. R. 146, l. 19 – 148, l. 7. When the fight started, Frank said he did not have a gun, and "I didn't see them with none." R. 148, ll. 5-6.

Frank remembered, "by this time I'm just thinking everything is over with so about, I say about twenty minutes later, Keith [Williams] comes in the house and says there's some guys coming down the street. I look out the back window and I see some guys coming off Porter Street, bats, chains and whatnot." R. 146, l. 19 – 149, 21.

Joe Tomlin recalled they were preparing to play spades at Tomlin's house when "someone came in, told us there was a fight, come to find out it was Frank and Lenard." R. 117, l. – 118. l. 23. Joe learned that someone had called the police at

that time. Frank remembered hearing gunshots, and the people inside at the card table dived or tried to drive to the floor. Joe remembered Frank Cokley saying "he was hit. Then a few seconds later, Ms. Ann [said], I'm hit, too. Ms. Welch, said, I'm hit, too, so she collapsed at the front door. Frank had already [fallen] by the kitchen in his own blood..." R. 122, ll. 6-24.

The identity of the shooter(s) was obviously the central issue in this case. Sylvia Welch remembered playing spades with her friends on August 31, 2013 as well. She remembered when the shooting started: "Shots was [were] coming from everywhere. I felt a sting on my leg. I finally made it to the door." R. 164, ll. 14-18. R. 165, ll. 2-3.

Santana Bolden remembered seeing the fight and shooting from her nearby house. R. 214, l. 4 – 216, l. 8. She described the shooter as a black man "chunky, facial hair." She testified under direct examination that she had seen the shooter before "pick someone up from Adult Education." R. 216, ll. 2-25.

Detective Irene Culick investigated the August 31, 2013, shooting. She remembered interviewing Santana Bolden, who gave her a description of a black male about "eighteen to nineteen years old with a chubby face and facial hair." R. 234, l. 12 – 236, l. 6. Culick remembered Bolden told her that she knew this man from adult education. She said she developed appellant as a suspect after talking to Lenard Johnson. She prepared a photographic lineup. R. 236, l. 1 – 239, l. 9. Santana picked appellant out of the lineup. R. 239, l. 10 – 241, l. 24.

The hearsay objections

The state planned to introduce appellant's taped statement through Detective William Lyons. R. 266, l. 17 – 268, l. 19. Assistant solicitor Meadors said he would try and "start and stop" the tape to take out the mention of appellant being in the county jail on other charges, and seemingly other objectionable hearsay.¹ Defense counsel, nonetheless, objected to the obvious hearsay of anyone else implicating appellant through the testimony of Lyons. The tape of the interrogation is on file with this Court. R. 266, l. 17 – 268, l. 1.

Detective Lyons testified he gave appellant his Miranda rights before the interrogation. R. 271, l. 17 – 275, l. 22. The interview was introduced over the objection of appellant. R. 266, l. 17 – 268, l. 1.

Lyons said he was not sure whether or not Keith Williams told him he had seen appellant with a gun that night. R. 281, ll. 6-24. Lyons also testified that he was not sure if Shane Cummings had told him appellant had a gun. R. 282, ll. 8-16. The solicitor had Detective Lyons testify that Lenard Johnson definitely told him he saw appellant shooting on the day of the incident, as, in fact, did Keith Williams. R. 284, ll. 13-25.

The solicitor elicited that these people had been present at the time of the incident, and they named appellant as being involved. R. 284, l. 5 – 286, l. 17. This was all part of the hearsay testimony objected to by defense counsel.

¹ The Record does not disclose if that was actually done because court reporters do not transcribe tapes played to the jury. Thus, all the record discloses is that counsel objected, and the tape was played. R. 266, l. 17 – 267, l. 25; r. 275, ll. 2-22. The portion stating that appellant had been in the county jail on another charge is in the original interrogation listened to by defense counsel.

Lenard Johnson testified that he saw appellant shooting, at the house that day. However, he added that he could not say that appellant was the only person who shot into the house that day. R. 311, ll. 2-7.

The state's final witness was Tarnara Johnson who testified she received a phone call the night before her testimony from appellant at the Sumter-Lee Regional Detention Center. Johnson was the sister of Lenard Johnson. R. 330, ll. 4-17. Ms. Johnson claimed that appellant tried to get her to have Lenard change his testimony. Ms. Johnson said she did not tell Lenard about the phone call which she claimed occurred. R. 331, 1, 4 – 332, 1. 5.

Discussion

As seen, the judge allowed hearsay evidence from Detective Lyons that other alleged eyewitnesses named appellant as being the shooter. Defense counsel properly objected that such hearsay testimony was inadmissible. See Rule 801(c), SCRE, which defines hearsay as “a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.” See, State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015).

Hearsay is not admissible unless it falls into a recognized exception to the hearsay rule. Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1984). Here, there was no hearsay exception allowing Lyons to put this rank hearsay testimony before the jury. Detective Lyons testified that other people allegedly told him that appellant was the shooter in this case.

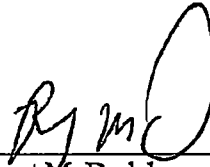
The primary basis for the hearsay rule is that the declarant is not present and available for cross-examination. See Orangeburg Department of Social Services v. Schillins, 291 S.C. 477, 354 S.E.2d 388 (1987).

However, the inability to cross-examine the alleged declarant is not the only reason for hearsay testimony not being admissible. When Detective Lyons testified that several people identified appellant as being the shooter, it had the impermissible spurious tendency to lead the jury to believe that other alleged eyewitnesses also have named appellant, thus bolstering the testimony of Detective Lyons. The hearsay testimony that others allegedly told the police that appellant was the shooter in this case was highly prejudicial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed, and this case remanded to the Sumter County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of September, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRE'VAUGHN ZIONTAE JACKSON,

APPELLANT,

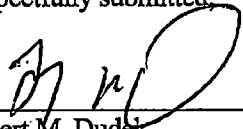
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tre'Vaughn Z. Jackson states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on August 28, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Tre'Vaughn Z. Jackson.

Respectfully submitted,


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of September, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRE'VAUGHN ZIONTAE JACKSON,

APPELLANT,

APPELLATE CASE NO. 2014-001914

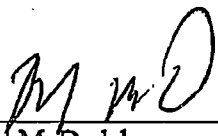
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Entire Trial Transcript (April 25, 2014)
- (3) State's Exhibit No. 1 (CD-Interview of Tre'Vaughn Jackson)

I certify that this designation contains no matter which is irrelevant to this appeal.

September 18th, 2015


Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

RECEIVED
SEP 18 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

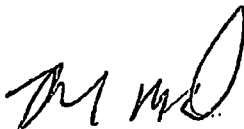
TRE'VAUGHN ZIONTAE JACKSON,

APPELLANT,

APPELLATE CASE NO. 2014-001914

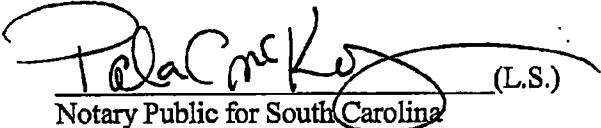
CERTIFICATE OF SERVICE

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 Tre'Vaughn Z. Jackson, #349787 at Perry Correctional Institution, this 18th day of September, 2015.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of September, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tre'Vaughn Ziontae Jackson, Appellant.

Appellate Case No. 2014-001914

Appeal From Sumter County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2016-UP-116
Submitted January 1, 2016 – Filed March 2, 2016

APPEAL DISMISSED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Interim Senior
Assistant Deputy Attorney General John Benjamin Aplin,
all of Columbia; and Solicitor Ernest Adolphus Finney,
III, of Sumter, 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.

APPEAL DISMISSED.¹

SHORT, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

2016 APR 11 PM 3: 35

3:35
CERTIFIED TRUE COPY
OF ORIGINAL FILE

OFFICE OF THE

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

2016-CP-43-632

 $\mathbf{y}_i$

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PCI, 433 Oaklawn Rd., Pelzer, SC. 29369
2. Name and location of Court which imposed sentence State Courtay General Sessions
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) 2013-33-43-1007 (two counts attempted murder, one count of dis-
 - (b) charging a firearm into a dwelling and possession of a weapon
 - (c) during the commission of a violent crime).
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 25, 2014 (30-years consecutive on each attempted murder
 - (b) and 5-years concurrent for each weapons offense).

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty n/a
- (b) after a plea of not guilty trial by jury
- (c) after a plea of nolo contendere n/a
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. denied relief and affirmed convictions and sentences.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted 1/1/2015 - Filed 3/2/2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. CP. Cr. 2010-CP-113
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Denial of Due Process
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached Statement of Facts and Memorandum of Law.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. n/a
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. n/a
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. n/a
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

first filing of post conviction relief

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. n/a
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. n/a
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) first filing for post conviction relief
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? n/a
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Liffany Butler, Esquire (Santer Public Defender)
 - ii. Butler represented me at trial and sentencing
 - iii. Robert Budex, S.C. Appellate Defense, Direct appeal
- (b) the proceedings at which each such attorney represented you:
 - i. trial
 - ii. sentencing
 - iii. direct appeal

19. State clearly the relief you seek in filing this application:

vacate sentences and convictions and remand for new trial

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA
 COUNTY OF SUMTER
 2016 APR 11 PM 3:35
 IN THE COURT OF COMMON PLEAS
 JAMES H. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.
 Indict. No. 2015-CS-43-1007

Tre'Vaughn Jackson -- Applicant,

-vs-

State of South Carolina -- Respondent,

STATEMENT OF FACTS AND MEMORANDUM OF LAW
 IN SUPPORT OF APPLICATION FOR POST
 CONVICTION RELIEF PURSUANT TO S.C. CODE ANN.

SS 17-27-20 through 17-27-160

Tre'Vaughn Jackson
 3028A 349737
 POI
 430 Oaklawn Rd.
 Pelzer, SC. 29569
 Applicant, pro-se

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) Indict.No.2013-SS-43-1067

RECORDED
2016 APR 11 PM 3:35

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Tre'Vaughn Jackson) STATEMENT OF FACTS AND MEMORANDUM
Applicant,) OF LAW IN SUPPORT OF APPLICATION
- vs -) FOR POST CONVICTION RELIEF PURSU-
State of South Carolina) ANT TO S.C. CODE ANN. §§17-27-20
Respondent,) THROUGH 17-27-160

COMES NOW, above captioned Applicant, Tre'Vaughn Jackson, pro-se, respectfully moving this Honorable Court pursuant to S.C. Code Ann. §§ 17-27-20 through 17-27-160, claiming that his Sixth Amendment right to the Effective Assistance of Trial Counsel was violated during trial. Applicant further submits his right to a fair trial was also violated as a result of trial counsel's ineffectiveness, and that his right to a fair trial is protected by the Fourteenth Amendment's Due Process Clause that is protected under the Federal Constitution of the United States.

Applicant submits that the statement of facts, issues presented and citations of authorities relied will shown unto this Honorable Court he is entitled to the requested relief of a new trial.

ISSUE (A)

WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S ACCOMPLICE LIABILITY INSTRUCTIONS WHEN THERE WAS [NO] EVIDENCE PRESENTED DURING TRIAL TO SUPPORT SUCH AN INSTRUCTION.

FACTS

Applicant was indicted for two counts of attempted murder, one count of possession of a weapon and one count of firing a weapon into a dwelling. Applicant proceeded to trial by a judge and jury.

During opening summation by trial counsel the following statement to the jury was recorded:

"A fight breaks out, there are gun shots, chaos ensues, people are running everywhere, the police respond, names are given to the police, plane is shifted. And when the dust settles Tre'Vaughn is the only one arrested and charged with this crime, Tr.p.99, L.15-20.

As is seen in the above opening statement by trial counsel, admittedly told the jury that Applicant [is] the only person charged in connection with the underlying offenses in question.

During trial the State called Jennifer Joe ("Joe") as a witness. Joe testified that the front door of her mobile home had been busted in by [a] group of people before the shooting started, Tr.p.103, L.10-p.107, L.22.

Frank Cokeley (one of the victims) testified that he had been shot in the upper torso, a couple of inches away from his heart and the bullet had lodged there and could not be removed, Tr.p. 150, L.4-p.151, L.21. Another victim, Sylvia Welch ("Welch") testified that she had been shot and that the bullet passed through her body. Tr.p.105, L.3.

Lenard Johnson ("Johnson") testified that he and Cokeley had gotten into an altercation because Johnson had called Cokeley's sister a "bitch", Tr.p.302, L.10-p.303, L.4. Johnson further testified that a second altercation had taken place, in which Johnson, Cokeley and his brother (Keith Williams), and his brother had taken off his new shirt and Cokeley had picked it up and wiped blood from his face with it and his brother had "felt some kind of way" and they left when other people started coming, Tr.p.302, L.5-p.307, L.5.

Johnson testified "and you know, my brother was mad and got up with some of his friends" (emphasis original), Tr.p.307, L.5-9. Johnson further testified that he seen Applicant and a guy Main (Shane Cummings), and a couple other people running around the back and a couple of people shooting including Applicant, Tr.p.310, L.10-p.312, L.2; Tr.p.314, L.5-10. The State questioned Johnson as to whether or not he wanted the dispute between him and Camel (Cokeley) to end with gun fire" Johnson answered in the negative, and further stated "I ain't knew nobody to have a gun. I knew none of that. Because if I knew they had a gun we never would have went down there", Tr.p.312, L.3-13.

The investigation of the case revealed that two (2) different types of bullets were found in the house and a victim with a bullet lodged in his body and another victim with a thru-and-thru wound in her body from a bullet, supra, Tr.p.201, L.3-9; Tr.p.259, L.3-p.264, L.13.

Despite learning from numerous witnesses that there were at least two (2) shooters at the back of the residence, investigators pursued Applicant as the [only] suspect in the case.

The name of a second suspect was provided to investigators, but investigators claimed that "no evidence linked the second suspect to the incident" and quickly abandoned their efforts. The second suspect, nor anyone else was ever charged in connection to the incident in question, Tr.p.231, L.8-p.233, L.20.

During the charge conference the Solicitor asked the Court to instruct the jury on the "hand of one hand of all." The Court in response ask trial counsel "any objection to that under the facts of this case?", to which trial counsel stated "just for the record." The Court replied "okay", Tr.p.340, L.22-p.341, L.2. Subsequently the trial court instructed the jury on the hand of one hand of all, even though the State presented no evidence of a accomplice and/or second shooter. Tr.p.364, L.13-p.366, L.13.

Ultimately the jury convicted Applicant under the State's hand of one hand of all theory and the trial court sentenced Applicant to an aggregated 30 year sentence, Tr.p.404, L.25-p.405, L.15.

DISCUSSION

Applicant submits he was denied the effective assistance of counsel when counsel failed to object to the trial court's jury instruction of the hand of one is the hand of all charge, especially in light of the trial court's request to counsel "any objection to the charge under the facts of this case?" Counsel merely stated "for the record" without establishing any particular argument as to why the instruction did not fit the facts of the case.

The United States Supreme Court established a two prong test in reviewing claims of ineffective assistance of counsel, *Strickland v. Washington*, 466 U.S. 668 (1984). First the defendant must

establish that counsel performance was deficient under the prevailing professional norm, that is that counsel's performance fell below an objective standard of reasonableness. Secondly, the defendant must also show that counsel deficient performance prejudiced the defendant. Id. at 687.

Under the second prong, the defendant must show that there is a reasonable probability that but for counsel's unprofessional error there is a reasonable probability the result of the trial would have been different. Id. at 694.

In *Rosemond v. United States*, ___ U.S. ___, 134 S.Ct. 1240, 1247 (2014), the Court held that: "[A]ll who shared in the overall crimes] execution", we explained, "have equal responsibility before the law, whatever may have been [their] different roles" (quoting *United States v. Johnson*, 319 U.S. 505, 515, 63 S.Ct. 1233 (1943)). The division of labor between (two or more) confederates thus have no significance" a strategy of "you take that element, I'll take this one" would free either party from liability. Id. at 1247. Therefore in the instant case, since no one else had been arrested or charged other than Applicant it was prejudicial for counsel to not object to the Court instructing the jury on the hand of one hand of all accomplice liability instruction.

This is particularly true in the instant matter given the State requesting an instruction under the hand of one hand of all instruction when Applicant was the [only ever charged] in the crime. Under the theory of hand of one hand of all doctrine, "one who joins with another to accomplish an illegal purpose is liable criminally for every thing done by his confederate incidental to

execution of the common design and purpose, see *State v. Jackson*, 410 S.C. 584, 765 S.E.2d 341 (2014), citing *State v. Reid*, 403 S.C. 461, 472, 753 S.E.2d 904, 910 (2014). Therefore, in order to warrant such an instruction the State had to prove that Applicant "joined with another for the purpose to commit the unlawful act of shooting in the dwelling of 1040 Libert Street." The only evidence presented by the State was merely circumstantial -- such as Santana Golden who testified she saw only one person shoot (Applicant) at [the back] of the house. Nonetheless, under the facts of the case there was no evidence to support the need of one hand of all jury instruction.

Applicant first demonstrates the "professional norm" and "objective standard of reasonableness" to which trial counsel is held and fell below. "Objection" is the act of a party who objects to some matter or proceeding in the course of the trial, or an argument or reason argued by trial counsel in support of his/her contention that the matter or proceeding objected to is improper evidence or procedure. Objection in open court is important so such will appear on the record for purposes of appeal. See Rule 103(a)(1), SCRE (South Carolina Rules of Evidence).

Under Rule 103(a)(1), a party must state the specific ground for objection, if specific ground was not apparent from the context. Under Rule 10(b), SCR.Crim.P., argument on objection is not allowed "unless specifically requested by the court." The court generally asks counsel "any objections?" by the opposing party.

The Contemporaneous Objections Rule requires that a specific

and timely objection to be made for the question of it's admissibility to be considered on appeal. See State v. Torrence, 305 S.C 45, 400 S.E.2d 315, 327 (1991), citing *Sainwright v. Sykes*, 433 U.S. 72, 90 (1977); State v. Hoffman, 312 S.C. 336, 440 S.E.2d 369 (1994).

These standards of reasonable competence are ingrained in every third-year law student, yet, notwithstanding the obviousness and impropriety, trial counsel failed to object, even upon invitation of the trial court. (emphasis supplied and original).

The prejudice is easily seen as the hand of one hand of all, accomplice liability jury instruction lessened the State's burden of proof and gave the jury a easy hook to hang a guilty verdict on. Under the facts of the case there was [no] evidence that Applicant was jointly charged with anyone else other than himself and the facts and circumstances presented did not support the charge that Applicant was present, aiding and abetting in the commission of the crime. Tr.p.384, L.15-p.Tr.p. 386, L.13.

Applicant was denied the effective assistance of counsel when counsel failed to object the trial court's accomplice liability , hand of one hand of all jury instructions and preserve the meritorious issue for appeal. Had counsel objected on specific grounds there is a reasonable probability the results of the trial and appeal would have been different. Applicant is entitled to a new trial on this issue.

ISSUE (B)

WAS COUNSEL INEFFECTIVE FOR FAILING TO REQUEST A JURY INSTRUCTION ON THE LESSER-INCLUDED OFFENSE(S) OF ASSAULT AND BATTERY WITH A HIGH AGGRAVATED NATURE AND ASSAULT AND BATTERY IN THE FIRST DEGREE?

FACTS

A few days prior to the incident in question, two (2) fights had transpired between Frank Wayne Cokeley and Lenard J. Johnson, stemming from Johnson calling Cokeley's sister a "bitch", Tr.p. 144, L.24-p.145, L.3.

The State's theory was that on August 31, 2013, Applicant and another individual were shooting into the residence at 1046 Dilbert Street in Sumter, SC. Tr.p.215, L.14-p.223, L.15. Ultimately, Cokeley had been shot and suffered great bodily injury, Tr.p.149, L.11-p.151, L.13. Another individual, Sylvia A. Welch had also been shot during the incident and suffered great bodily injury Tr.p.132, L.15-p.135, L.16.

At the close of the State's case during the charge conference trial counsel did not request a jury instruction on the lesser included offenses of attempted murder for which Applicant was on trial, Tr.p.332, L.13-p.342, L.23.

Applicant submits that premised on counsel's inactions in this regard rendered ineffective assistance.

DISCUSSION

A trial judge is required to instruct the jury on a lesser-included offense [if] evidence exists that suggests that the lesser, rather than the greater crime was committed, State v. Courdine, 322 S.C. 396, 398, 472 S.E.2d 241, 242 (1995). There must be

evidence that the defendant committed the lesser-included offense to entitle him to a jury charge on that offense. See State v. Martin, 237 S.C. 539, 594, 340 S.E.2d 533, 541 (1985).

Applicant would submit that he allegedly to have committed the instant offense on August 31, 2013, thus some three (3) years and two (2) months after the Serious Crime Reduction and Sentencing Reform Act of 2010 ("the Act"), which substantially overhauled South Carolina's State criminal law, became effective. See generally Act No. 273, 6/9 S.C. Acts 1937. Through the passage of the Act, the Legislature abolished [all] common law assault and battery offenses and all prior statutory assault and battery offenses. In place of these offenses, the Act codifies attempted murder in section 16-3-29 and four degrees of assault and battery in section 16-3-600. See S.C. Code Ann. 16-3-29 and 16-3-600 (Supp. 2012).

The new degrees are in descending order of severity, (1) assault and battery of a high aggravated nature (ABHAG), (2) assault and battery in the first, second and third degrees. See generally 16-3-600(b)(3). Id.

Assault and battery in the first degree is a lesser included offenses of [both] attempted murder and ABHAG. 16-3-600(c)(3).

Furthermore, assault and battery in the second and third degrees are each lesser-included offenses of every preceding offense See 16-3-600(d)(3) and (e)(3).

During trial there was sufficient evidence presented to warrant an instruction on the lesser-included offense of assault and battery of a high and aggravated nature in accordance with 16-3-600(d) and assault and battery in the first degree, in accordance

to §16-3-500(C) as to [both] Cokerley and Welch.

Those sections provide in pertinent part:

(B)(1). A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:
(a) great bodily injury to another person results; or (b) the act is accomplished by means likely to produce death or great bodily injury.

S.C. Code Ann. §16-3-500(A)(1)(emphasis added).

(C)(1). A person commits the offense of assault and battery in the first degree if the person unlawfully
(a) injures another person and the act:
(i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with the lewd and lascivious intent; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or (b) offers or attempts to injure another person with the present ability to do so, and the act: (i) is accomplished by means likely to produce death or great bodily injury; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

S.C. Code Ann. §16-3-500(C)(1)(emphasis added).

"Great bodily injury" is defined as "bodily injury which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." See S.C. Code Ann. §16-3-500(A)(1).

As is seen in the above clearly the law in place at the time of Applicant's offense would have supported a jury instruction on the evidence presented at trial and counsel requested such an instruction. A defendant is entitled to a charge on a lesser-included offense if the evidence is adduced at trial. Where there is support for it in the evidence, and due process requires that a lesser degree offense be given only when the evidence warrants such an instruction; if the defendant has a particular theory of

defense, he [is] constitutionally entitled to instructions on that theory [if] the evidence supports it. See e.g. *Karnahrens v. Evatt*, 96 F.3d 1350 (4th Cir.(3.C.) 1995), cert. denied 116 S.Ct. 1575, 517 U.S. 1171, rehearing denied.

Under the facts presented in the instant case, had trial counsel requested the court to charge the jury on the lesser-included offense(s), the trial court would have been required to instruct the jury on the lesser-included. A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. *State v. Burris*, 513 S.E.2d 104 (S.C.1999); see also *State v. Crosby*, 559 S.E.2d 352 (S.C.App.2001).

In the instant matter [both] Cokeley and Welch testified that each of them sustained great bodily injury, therefore Counsel's deficient performance is seen where counsel sat mute and did not request a jury instruction on the lesser-included offenses of AGGRAVATED ASSAULT and assault and batter in the first degree. The prejudice is easily seen since counsel did not request a lesser-included instruction the judge did not charge the jury on such and the jury could not even consider a lesser degree. Here, the length of the jury's deliberations is substantial support that had counsel requested the lesser-included offense instruction be given to the jury there is a reasonable probability the jury may have returned a verdict on one of the lesser-included offense(s). That is a reasonable probability sufficient to undermine confidence in the outcome of the proceeding. *Strickland v. Washington*, 406 U.S. 583 (1984). Applicant is entitled to a new trial on this issue.

ISSUE (C)

WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S JURY INSTRUCTIONS ON "EXPRESS MALICE" WHEN THE COURT USED "HYPOTHETICAL EXAMPLES" OF APPLICANT'S CASE, THAT A REASONABLE JURIST COULD HAVE CONCLUDED WAS AN COMMENT ON THE FACTS OF CASE.

FACTS

Applicant submits he was denied the effective assistance of counsel when counsel failed to lodge an objection to the Trial Court's use of "hypothetical examples" when instructing the jury on "express malice". Here the Court's instructions could have easily been interpreted as an impermissible comment on the facts of Applicant's case. The Trial Court made the following comment, as was recorded:

For example, lying in wait for a person, or any other acts or preparation going to show the deed was within the defendant's mind would be expressed malice.

Malice may be inferred from conduct showing a disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon.

A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

The following examples are instrument which may be deadly weapons: pistol, shotgun, rifle. And a gun may be a deadly weapon even if it is not operated. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an **evidentiary fact** [to be considered] by you, the jury and you may give it the weight that you decide it should receive.

Tr.p.331, L.14-332, L.10.

DISCUSSION

Applicant submits he was denied the effective assistance of counsel when counsel failed to lodge an objection to the trial court's malice instructions that used "hypothetical examples" of Applicant's case. Applicant submits that a reasonable jurist could have interpreted the instruction as an impermissible comment on the facts and thus prematurely directing a verdict for the State.

South Carolina Constitution art. V, §21 prohibits a trial judge from charging juries in respect to matters of fact, See S.C. Const.art. V, §21 ("Judges shall not charge juries in respect to matters of fact, * * * but shall declare the law").

It was essential for the State to prove malice to obtain both convictions for attempted murder. The State's theory was that there had been a "previous fight", Tr.p.350, L.3, and that after the police had dispersed the first incident everyone left, and then regrouped and "came back" to encounter second fight, Tr.p.-350, L.5. The State then argued that "at some point Tre'Vaughn Jackson is on the back of the trailer and starts firing, and started firing, Tr.p.350, L.14-15.

After the State rested its case the Judge instructed the jury regarding malice and while instructing the jury in regards to express malice the Trial Judge instructed the jury using examples directly touching on the facts of the case that the State was required to prove and the jury decide. It was for the jury to decide [if] the State proved malice. Instead the trial Judge told the jury that "examples of malice is lying in wait, or any other acts

or preparation going to show the deed was within the defendant's **WOULD BE EXPRESSED MALICE**. The Judge further went on to instruct the jury that malice could also be inferred when the deed is done with a deadly weapon. Directly after that the Judge gave the jury examples of what instruments may be deadly weapons. Instantly the Court told the jury a pistol is deadly weapon. (emphasis original and supplied).

Applicant submits the trial Judge charge on express malice is a direct comment on the facts. It was essential for the State to malice. The examples used by the Court told the jury that "any other acts or preparation "would be expressal malice", the jury had to look no further than the police disturbing the first fight and Applicant coming back down the street for the second confrontation between both parties. The charge was even more confusing, because in deciding whether or not the State proved malice they had to look no further than the trial Judge charging them that malice may be inferred from the use of a deadly weapon and then instructed the jury that a pistol is an "example of a deadly weapon", thus, constituting an impermissible comment on the facts.

In South Carolina a judge cannot express in his charge, or intimate any opinion as to the weight or the sufficiency of testimony without violating the prohibition of the S.C. Constitution as to charging upon the facts, *State v. Bagwell*, 201 S.C. 337, 23 S.E.2d 244 (1941); 7SA Am.Jur.2d Trial §1203 at 393 (1991) ("trial courts may not instruct the jury what weight should be given [to the evidence] or that any particular evidence is or is not entitled to receive weight or consideration from them), also see C.f.

State v. Edwards, 127 S.C. 116, 120 S.E. 493 (1923), wherein Our Supreme Court held the absence of motive is a mere circumstance to be considered by the jury and rejected a instruction that the absence of motive may raise a reasonable doubt as to the defendant's guilt because it was a charge on the facts, See State v. Hartley, 307 S.C. 239, 414 S.E.2d 102 (S.C.App.1992) upholding S.C. Constitution art. V, §21(a judge cannot express in his charge, or charge juries in respect to matters of fact, * * * but shall declare the law). Id 414 S.E.2d at 103.

SCA CJS Juries §1(2004), the very term "jury" connotes a deliberate body of persons. Id A judge sits as a public officer, who presides over, conducts, and administers the law by virtue of the office, and does so cloaked in judicial authority. Id Judges §7 (2004). Judges and juries are not "in it together" and while their functions may act as a complement to one another, it is erroneous to imply that they somehow work hand in hand, and any blurring of their roles serves as an unnecessary and improper distraction.

Applicant would submit the trial Judge were acted intentionally and it was an abuse of power that prematurely directed a verdict for the State and substantially relieved the State of their burden of proving malice. Trial Counsel was ineffective for failing to lodge an objection to preserve this meritorious issue for appellate review, Strickland v. Washington, 435 U.S. 633 (1978).

Appellant is entitled to a new trial on this issue.

ISSUE (D)

WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE CONSECUTIVE SENTENCES HANDED DOWN BY THE COURT SINCE THE CRIMES STEMMED FROM A CONTINUOUS COURSE OF CONDUCT.

FACTS

Applicant submits he was denied the effective assistance of counsel when counsel failed to object to the [consecutive] sentences handed down by the Court. Applicant was tried for two (2) counts of attempted murder, one (1) count of discharging a firearm into a dwelling, and one (1) count of possession of a weapon during the commission of a violent crime. Tr.p.7, L.9-15; p.403-409. Applicant was convicted on all counts, Tr.p.390 and the Honorable William Jeffrey Young sentenced Applicant to 30-years for the attempted murder of Frank Cokley and 30-years for the attempted murder of Sylvia Ann Welch, sentence ordered [consecutively] and ten years for the discharging a firearm into a dwelling and 5-years for the possession of weapon during the commission of a violent crime. The weapons offenses were ordered concurrent. Tr.p.405.

Applicant submits trial counsel should have requested the Court to consider concurrent sentences since the crimes stemmed from a continuous course of conduct and should have been considered as one offense for sentencing purposes.

As a result of counsel's deficient performance Applicant was unduly prejudiced, as he will spend 30-years imprisonment as a

result of counsel's utter failure to even ask the Court to consider concurrent sentences, *Strickland v. Washington*, 406 U.S. 638 (1984), counsel's performance in this regard was egregious.

DISCUSSION

S.C. Code Ann. §17-25-50 states in pertinent part:

In determining the number of offenses for the purposes of imposition of sentence, the Court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered one offense, notwithstanding, under law they constitute separate and distinct offense.

17-25-50 (Code 1967)

As is seen in the above 17-25-50 [allows] the sentencing Court is allow[ed] to treat any number of offenses as one offense for sentencing purposes, even notwithstanding the under the law they constitute separate and distinct offense, under the statute's "may" language, as long as the offenses were committed at times so closely connected in point of time that they may be considered one offense for sentencing purposes. Id. However, here trial counsel sat mute. While trial judge's have discretion in sentencing in conformity with criminal statutes, the above sentencing statute is "discretionary" and not "mandatory."

If the language of a statute is "unambiguous and conveys a clear meaning," the court must determine the intent of the Legislature exclusively from that language, and other rules of statutory interpretation are not needed." *State v. Elwell*, 403 S.C. 636, 612, 743 S.E.2d 802, 806 (2013)(internal punctuation omitted).

In the instant case [all] the crimes to have been committed as the result of a continuous course of conduct. In *Gordon v. State*, 538 S.E.2d 105 (2003), the determined what constitutes "...a continuous course of conduct, or crime spree. (internal citations omitted). Here the Court had complete discretion to hand down concurrent sentences under the [may] language of §17-25-50, yet, counsel sat mute during sentencing. As this Court very knows, the courts are like well behaved children, "they do not answer questions they're not asked." Here counsel's deficient performance is easily seen from her silence during the sentencing of the Court. There is a reasonable probability that had counsel of asked the Court to at least consider concurrent sentences the Court very well may have considered such and handed down concurrent sentences, thus a reasonable probability sufficient to have a different outcome in the proceedings, as Applicant would have only been serving a 30-year sentence, rather than the 50-year sentence handed down by the Court. See *Strickland v. Washington*, 406 U.S. 563 (1984). Applicant is entitled to a new sentencing hearing on this issue.

ISSUE (E)

WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S JURY INSTRUCTIONS WHEN THE COURT INSTRUCTED THE JURY THAT "A SPECIFIC INTENT TO KILL IS NOT AN ELEMENT OF ATTEMPTED MURDER, BUT THERE MUST BE A GENERAL INTENT TO COMMIT SERIOUS BODILY INJURY."

FACTS

Applicant submits he was denied the effective assistance of counsel when counsel failed to object to the court's erroneous jury instruction that substantially lessened the State's burden of proof in violation of the Due Process Clause. The State bears the burden at all times and [is] required to prove each and every element of the crime alleged. During the Trial Court's jury charge the Court made the following statement:

And a specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury.

Tr.p.332, L.11-14.

Trial Counsel should have lodged an objection to the Court's erroneous instruction that "specific intent to kill is not an element of attempted murder." *Strickland v. Washington*, 466 U.S. 668 (1984) and as a result Applicant was denied his right to the effective assistance of counsel as well as his right to a fair trial.

DISCUSSION

In *State v. King*, 412 S.C. 406, 772 S.E.2d 109 (2015 WL 1313-949) the South Carolina Court of Appeals reversed King's conviction and remand for a new trial finding King, supra was prejudiced by the trial court charging King's jury that "a specific intent

to kill is not an element of attempted murder. Id

In the instant case Applicant was on trial for two (2) counts of attempted murder. Prior to trial the Court told the jury that the Applicant has pled not guilty and that plea places the burden of proof of proving Applicant's guilt beyond a reasonable doubt.

In the instant case, just as in King supra, the trial Judge in Applicant's case instructed his jury that "a specific intent to kill was not an element of attempted murder. Applicant submits the trial Judge's erroneous instruction omitting the element of "specific intent relieved the State of proving each and every element necessary to constitute the offense for which Applicant was on trial Applicant submits this resulted in a structural error.

In Arizona v. Fulminante, 499 U.S. 279 (1991), a five-Justice majority of the Court, Id at 303-312 elucidated this rule of per se prejudice (sometimes called the "rule of automatic reversal"), Id at 294, see also Satterwhite v. Texas, 456 U.S. at 257, by distinguishing between the concepts of "structural" and "trial" error: "structural defects in the constitution of the trial mechanism, Fulminante, supra 499 U.S. at 303, are per se prejudicial; trial errors occurring "during the presentation of the case to the jury, 499 U.S. at 307, are subject to harmless error analysis, 499 U.S. at 303-310. Structural errors must be corrected regardless of their effect on the trial because they violated the basic protections without which a criminal trial can reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair, 499 U.S. at 310.

Applicant was unduly prejudiced by the Trial Court's instructions that "a specific intent to kill is not an element of attempted murder." The resulting implication was an error of law that also relieved the State of their burden of proving each and every element necessary to constitute the crime within which Applicant was charged and put on trial for. Here, Counsel's performance was objectively unreasonable and fell below the standard of reasonableness. The prejudice incurred is easily seen as the State's burden was substantially lightened by the trial Court's erroneous instruction omitting the essential element of the crime of attempted murder., *Strickland v. Washington*, 468 U.S. 363 (1984).

Applicant is entitled to a new trial on this issue.

ISSUE (F)

WAS COUNSEL INEFFECTIVE FOR FAILING TO IMPEACH STATE'S WITNESS LENARD J. JOHNSON WITH HIS PRIOR INCONSISTENT STATEMENTS MADE TO TRIAL COUNSEL'S INVESTIGATOR THAT CONTRADICTED HIS TRIAL TESTIMONY ON MATERIAL POINTS?

FACTS

During trial the State called Lenard J. Johnson as a witness against Applicant. During his direct testimony the following was recorded:

Q. And specifically, Mr. Lenard Johnson, when you say you saw a couple of people shooting, did you see Tre'Vaughn Jackson shooting?

A. Yes, sir, I saw him shoot.

Tr.p.311, L.2-5.

As is seen in the above Johnson identified Applicant as the "shooter" which was very damaging testimony in the eyes of the jury. During cross-examination Counsel asked Johnson if he remembered speaking to Counsel's investigator, to which Johnson replied in the affirmative, Tr.p.323, L.7-10.

Counsel further asked Johnson:

Q. Do you remember telling him (investigator) that you never saw Tre'Vaughn with a gun?

A. No, I don't remember telling that, but like I told him, I told him that it was two people shooting. And I told him it can be the other guy that they didn't get.

Tr.p.324, L.3-13.

As is seen counsel has allowed Johnson to allude what he had previously told counsel's investigator during an interview

Counsel further questioned Johnson:

Q. Do you remember telling him that you told police what you thought they wanted to hear?

A. I don't know about all that.

Fr. p. 314, L. 20-22

Again Counsel has allowed Johnson to allude what he had previously told counsel's investigator during an interview. Counsel's failure to impeach Johnson was unduly prejudicial to Applicant as the State was allowed to have Johnson "finger" Applicant as the "shooter" in front of the jury. Applicant submits counsel had the Investigator's notes from the interview with Johnson, but failed to impeach Johnson. This failure denied Applicant his right to cross-examine witnesses against him.

Applicant will submit the investigative report as substantive evidence during the PCR hearing in support of this claim, while, making brief references to that Report herein. The interview between the investigator and Johnson on July 12, 2014. In pertinent part stated:

He also said he never saw Tre'Vaughn with a gun. A "white girl" at the scene told him (Johnson); Tre'Vaughn had a gun." he said that at the time of the interview that it was his understanding that he was under arrest. He was afraid so he told the police what he thought they wanted to hear.

As is seen in the above portion of the investigative report, what Johnson told the investigator clearly contradicts his trial testimony. Counsel was clearly deficient in this regard as it was Counsel's very own investigator who interviewed Johnson. (emphasis supplied).

Applicant submits this was the pivotal point of the trial because Johnson was allowed to testify before the jury placing [a] gun in Applicant's hand as the "shooter". Applicant submits that counsel's performance in this regard was clearly deficient performance that fell below an objective standard of reasonableness.

DISCUSSION

The prior inconsistent statement must be inconsistent with the trial testimony. The variance between the statement must be material. *Anderson v. Elliot*, 229 S.C. 371, 90 S.E.2d 337 (1955). The witness must be confronted with the prior statement before he/she can be impeached. *State v. Roper*, 274 S.C. 14, 230 S.E.2d 705 (1-979).

In 1982, the South Carolina Supreme Court changed the traditional rule. *State v. Copeland*, 275 S.C. 572, 300 S.E.2d 33 (1982) cert. denied 460 U.S. 1103 (1983). Under *Copeland*, a prior inconsistent statement is admissible as substantive, as well as for impeachment, when a declarant testifies at trial and is available for cross-examination.

The Court gave three reasons for changing the rule, (1) the oath is not as strong a guaranty of truth as it may have been in the past, (2) the traditional rule requires the court to give unrealistic and confusing instructions to the jury, and (3) the declarant is present and subject to cross-examination so the jury can determine the credibility of the witness and his/her statement. This aspect of *Copeland*, *supra* is preserved in the South Carolina Rules of Evidence in Rule 301(c)(1).

Since Copeland the Court has had the opportunity to clarify when a prior inconsistent statement can be used as substantive evidence. A prior statement can only be used as substantive evidence, at least in a criminal trial when the opposing party has an effective opportunity to cross-examine the declarant. In *State v. Pfirmann*, 300 S.C. 34, 306 S.E.2d 431 (1989), the declarant refused to admit the statement imputed him and the Supreme Court held that the defendant was denied effective cross-examination. Generally, a party must satisfy five requirements to impeach a witness with a prior inconsistent statement. These requirements are: (1) the statement must have been made prior to the trial testimony to be impeached; (2) the prior statement must be inconsistent with the trial testimony; (3) the witness must be confronted with the prior statement before impeachment; (4) the cross-examiner must complete the impeachment by proving the prior statement; and (5) the prior statement must not be made on a collateral matter.

Prior inconsistent statements may be found from any number of sources and they may be written or oral. Sources for prior inconsistent statements include: (1) statements made to friends or acquaintances, (2) statements made to an investigator. See *Varndore v. Nationwide Mut. Ins.* 289 S.C. 153, 345 S.E.2d 711 (1986); also see *State v. Thompson*, 305 S.C. 490, 409 S.E.2d 420 (Ct.App.1991) (law enforcement investigator).

Other cases in South Carolina recognizing impeachment by omission includes an omission from a statement made during a case investigation. See *State v. Thompson*, supra, which is similar to the case at hand. The Court has also recognized that the failure

to come forward with evidence is a proper omission for impeachment. See *Taylor v. State*, 253 S.C. 395, 188 S.E.2d 350 (1970); also *State v. Nathari*, 303 S.C. 100, 399 S.E.2d 597 (Ct.App.1990).

In the instant case counsel was clearly aware of inconsistent statements made by Johnson to Counsel's own investigator and the inconsistencies in the statement and trial testimony was material on several points. Applicant was denied the effective assistance of counsel when counsel failed to adequately impeach the trial testimony of Lenard Johnson, and the failure to do so denied the Applicant a fair trial, *Strickland v. Washington*, 466 U.S. 668 (1984). Applicant is entitled to a new trial on this issue.

CONCLUSION

WHEREFORE, based on the foregoing Applicant respectfully prays this Honorable Court will grant the requested relief of a new trial in the instant matter.

Respectfully Submitted,

/s/ Tre'Vaughn Jackson

Tre'Vaughn Jackson

Applicant, pro-se

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

Tre' Vaughn Jackson

I, , 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.

Tre' Vaughn Jackson ✓

SWORN to and subscribed before me this 7th
day of April, 2016.

Nancy C. Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

RECORDED
2016 APR 11 PM 3:36
JOHN C. CAMPBELL
CLERK OF COURT
SPARTANBURG COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Tre'Vaughn Jackson, #349787,

2016-CP-43-632

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on April 11, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's orders of commitment. Applicant was indicted by the November 2013 term of the Sumter County Grand Jury for two (2) counts of Attempted Murder, one (1) count of Possession of a Weapon During the Commission of a Violent Crime, one (1) count of Unlawful Carrying of a Pistol, and one (1) count of Discharging a Firearm Into a Dwelling (2013-GS-43-1067). Tiffany Butler, Esquire, represented him. On August 28, 2014, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted for both counts of Attempted Murder, Possession of a Weapon During the Commission of a Violent Crime, and Discharging a Firearm Into a Dwelling. The count of Unlawful Carrying of a Pistol charge was dismissed. The Honorable W. Jeffrey Young sentenced Applicant to confinement for consecutive sentences of thirty (30) years for each count of Attempted Murder, as well as concurrent sentences of five (5) years for Possession of a

Weapon During the Commission of a Violent Crime and ten (10) years for Discharging a Firearm Into a Dwelling.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Jackson, Op. No. 2016-UP-116 (filed on March 2, 2016). The Remittitur was issued on March 18, 2016.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "...failing to object to the trial court's accomplice liability instructions when there was no evidence presented during trial to support such an instruction." (sic)
 - b. "...when counsel failed to object to the trial court's jury instruction of the hand of one is the hand of all charge, especially in light of the trial court's request to counsel "any objection to the charge under the facts of this case?" Counsel merely stated "for the record" without establishing any particular argument as to why the instruction did not fit the facts of the case." (sic)
 - c. "...for failing to request a jury instruction on the lesser-included offense(s) of assault and battery with a high and aggravated nature and assault and battery in the first degree" (sic)
 - d. "...for failing to object to the trial court's jury instructions on "express malice" when the court used "hypothetical examples" of Applicant's case, that a reasonable jurist could have concluded was a comment on the facts of the case." (sic)
 - e. "...for failing to object to the consecutive sentences handed down by the court since the crimes stemmed from a continuous course of conduct."
 - f. "...for failing to object to the trial court's jury instructions when the court instructed the jury that "a specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury."
 - g. "...for failing to impeach State's witness Lenard J. Johnson with this prior inconsistent statements made to trial counsel's investigation that

- contradicted his trial testimony on material points”
2. “Denial of Due Process”

For the purpose of this Return, Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections’ records, the record on appeal and Court of Appeals opinion. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant’s allegations as alleging ineffective assistance of counsel. Respondent asserts that Applicant’s allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant’s attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine

confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's second claim is an allegation that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

2016-CP-43-0632

TRE'VAUGHN JACKSON, #349787,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

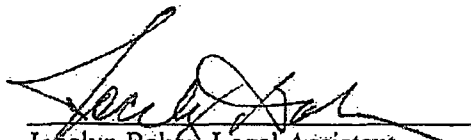
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Timothy Lee Griffith, Esquire
Timothy L. Griffith, Attorney at Law
360 W Wesmark Blvd FL 2
Sumter, SC 29150-1977

DATED this 30th day of September, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

State of South Carolina)
)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2016-CP-43-00632

Trevaughn Ziontae Jackson,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

November 8, 2016
Sumter, South Carolina

B E F O R E:

The Honorable Brian M. Gibbons, Judge

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

Timothy L. Griffith, Esquire
Attorney for the Applicant

Julie A. Coleman, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>

No Exhibits Introduced.

1 MS. COLEMAN: May it please the court?

2 THE COURT: Yes, ma'am.

3 MS. COLEMAN: This is *Trevaughn Jackson vs. The State*
4 *of South Carolina*, 2016-CP-43-632. Applicant is currently
5 incarcerated with the South Carolina Department of
6 Corrections pursuant to the Sumter County Clerk of Court's
7 orders of commitment. Applicant was indicted by the
8 November 2013 term of the Sumter County grand jury for two
9 counts of attempted murder, one count of possession of a
10 weapon during the commission of a violent crime, and one
11 count of unlawful carrying of a pistol, and one count
12 discharging a firearm into a dwelling. Tiffany Butler,
13 Esquire, represented him at trial.

14 On August 28, 2014, applicant proceeded to a jury
15 trial at which he was found guilty as indicted for both
16 counts of attempted murder, possession of a weapon during
17 the commission of a crime, and discharging a firearm into a
18 dwelling. The count of unlawful carrying of a pistol
19 charge was dismissed. The Honorable W. Jeffrey Young
20 sentenced applicant to confinement for a consecutive thirty
21 years for each count of attempted murder, as well as a
22 concurrent sentence of five years for possession of a
23 weapon, and ten years for discharging a firearm into a
24 dwelling.

25 A notice of appeal was filed on applicant's behalf and

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

4

1 an appeal perfected pursuant to *Anders vs. California*. The
2 South Carolina Court of Appeals dismissed applicant's
3 appeal. The remittitur was issued on March 18, 2016.

4 Applicant filed a timely application for
5 post-conviction relief on April 11, 2016, alleging several
6 allegations of ineffective assistance of counsel and the
7 denial of due process. The state filed its return on
8 September 30, 2016, and he is present today and represented
9 by Mr. Timothy Griffith.

10 THE COURT: All right, Mr. Griffith, you ready to
11 proceed?

12 MR. GRIFFITH: Yes, Your Honor. Having looked at the
13 application from the defendant, these items are matters of
14 law and statute rather than anything that he would be able
15 to testify about. And to protect his interest and protect
16 him from possibly incriminating himself, I'm not going to
17 call him to the stand.

18 THE COURT: Okay.

19 MR. GRIFFITH: And will instead be questioning the
20 state's witness, as well as giving a conclusion and
21 argument after the facts are presented to Your Honor.

22 THE COURT: So, no testimony and evidence to be
23 presented on direct by the applicant?

24 MR. GRIFFITH: Yes, Your Honor.

25 THE COURT: All right. It's going to be arguments of

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

5

1 law and whatever evidence is introduced through
2 cross-examination?

3 MR. GRIFFITH: I'm sorry?

4 THE COURT: Whatever, whatever you cross-examine the
5 state's witnesses is what you intend to rely on as well as
6 in your arguments?

7 MR. GRIFFITH: Yes, Your Honor.

8 THE COURT: All right. Gotcha. All right. So, the
9 applicant rests as to facts and relies upon the facts as
10 stated in the application.

11 You ready to proceed, Ms. Coleman?

12 MS. COLEMAN: Yes, your honor.

13 THE COURT: Call your witness.

14 MS. COLEMAN: The state calls Tiffany Butler.

15 TIFFANY BUTLER, BEING DULY SWORN,

16 TESTIFIES AS FOLLOWS:

17 DIRECT EXAMINATION BY MS. COLEMAN:

18 Q. Good morning, Ms. Butler. How are you?

19 A. Good morning. I'm doing well.

20 Q. How long have you been practicing law?

21 A. Probably about five and half years.

22 Q. Do you recall whether you were appointed or retained
23 in this case?

24 A. I was appointed as I worked for the Sumter County
25 Public Defender's Office. So, I was appointed.

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

6

1 Q. How many times did you meet with the applicant prior
2 to his trial?

3 A. I would say several times. I can't think of any
4 specific number, but I remember that he was incarcerated.
5 He was in the jail, and so I would go visit him but I --
6 several times between the time he was arrested and the time
7 of trial.

8 Q. Did the applicant cooperate during the course of your
9 representation?

10 A. He did.

11 Q. Did you file any *Brady* or Rule 5 motions?

12 A. I did.

13 Q. Did you review the discovery material with the
14 applicant?

15 A. I did.

16 Q. Prior to trial, did you discuss with the applicant the
17 elements of the charges and what the state was required to
18 prove?

19 A. I did.

20 Q. Did you discuss applicant's version of the facts?

21 A. I did.

22 Q. And can you tell us what the facts of this case were?

23 A. It's been about two years ago, but as I remember it,
24 there was an altercation involving a group of guys, and I
25 believe Trevaughn was a part of that group. It was a group

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

7

1 of friends, and one of the guys had some beef or some issue
2 with another guy who was one of the victims in the case.
3 And on this particular day, I think it was some, some
4 background between the two guys, and on this particular
5 day, I think there was a fight or an altercation or an
6 argument that started, and I want to say in the
7 neighborhood, an apartment complex neighborhood area. And
8 at some point, the altercation -- the group of guys walked
9 across the street to the residence where one of the victims
10 was, and there were some gunshots into -- it was a trailer
11 actually, and there were some gunshots into a trailer.

12 And Trevaughn was listed as one of the shooters, and
13 there were statements given. The guys who were involved,
14 friends, they gave statements, and Trevaughn was implicated
15 as one of the shooters, and I think that's, that's the
16 extent of the evidence.

17 It was sort of, you know, Trevaughn's name was given
18 as being involved, and there was another who was -- who the
19 witnesses say or said was involved. I don't think he was
20 ever found or arrested or charged or anything.

21 Q. And speaking of the evidence, can you, can you
22 describe generally what the state's evidence was against
23 him? You said there were some witnesses.

24 A. Yeah. There were, I want to say, about three or four
25 statements given from the guys who were involved.

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

8

1 Trevaughn's friends, I would say, they gave statements to
2 the police. I don't think the victims ever identified,
3 ever gave any statements other than, you know, they were in
4 the house and they heard gunshots. I know there were two
5 shell casings, two different shell casings found out in or
6 around the home, but I don't think any guns or anything,
7 any weapons were recovered.

8 Q. Okay.

9 A. But it was mostly witness statements implicating
10 Trevaughn.

11 Q. Okay.

12 A. As the shooter.

13 Q. Did the, did the applicant give a statement to the
14 police?

15 A. He did give a statement.

16 Q. Okay, and there was a *Jackson vs. Denno* hearing at ---

17 A. Yes.

18 Q. --- the beginning of this, correct? Can you tell us a
19 little bit about what his statement said?

20 A. From what I recall, he denied being involved, and I
21 think he denied being there just, just based on my memory,
22 but it was -- yeah, he did talk to police. It was a
23 recorded statement, and we did have that *Jackson vs. Denno*
24 hearing.

25 Q. Okay. Did you discuss any possible defenses with the

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

9

1 applicant to use at trial?

2 A. Since the majority of the evidence was witness
3 statements and stuff, I think we talked about just
4 impeachment, impeaching and pointing out the fact that, you
5 know, in, in the middle of all this chaos, you know, nobody
6 could say for certain what happened and who did what. So,
7 I think it was more so attacking the credibility,
8 perception of the witnesses.

9 Q. And was that your, your general trial strategy in this
10 case?

11 A. Yeah, I think it was. I remember -- because there
12 were so many witness statements, I hired an investigator
13 and he went out and he -- I think he was able to speak to
14 some of the witnesses, you know, just to get a sense of
15 whether, you know, they would stick to their story or, you
16 know, the extent of their involvement. But I think that
17 was, that was the general strategy of trial to say, hey,
18 you know, we have all these different -- you know, all
19 these inconsistencies, all this chaos, all this stuff that
20 happened, but nobody can say for certain, you know, that
21 Trevaughn did this.

22 Q. You mentioned that you hired an investigator. What
23 kind of investigation did you do into this case generally?

24 A. We tried to locate all of the, the witnesses who --
25 all the names that came up in discovery as witnesses and

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

10

1 all the people who gave statements. And this particular
2 investigator, he was a former -- you know, he had a history
3 in law enforcement. So, we looked at, you know, all of the
4 forensic stuff from the crime scene, you know, the shell
5 casings, projectile, all that, all that type of stuff.

6 Q. Okay.

7 A. So, it was a pretty thorough, thorough investigation,
8 examination of all the evidence.

9 Q. Okay. Did the applicant give you the names of any
10 witnesses to investigate maybe for alibi purposes?

11 A. I don't, I don't remember him giving me any names. I
12 don't remember him giving me any names of alibi witnesses.

13 Q. Okay.

14 A. No.

15 Q. Now, do you have a copy of the PCR application in
16 front of you?

17 A. No, not with me up here. I didn't bring it with me.
18 Sorry.

19 MS. COLEMAN: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 BY MS. COLEMAN:

22 Q. I'm just going to go through the allegations that he's
23 listed in his application just briefly and touch on each
24 one.

25 A. Okay.

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

11

1 Q. And I'm actually looking at the state's return if that
2 helps. It kind of summarizes. So, just look at the
3 return.

4 A. Yes.

5 Q. Or whichever is -- let's see, his first allegation is
6 that:

7 Trial counsel failed to object to trial court's
8 accomplice liability instructions when there was
9 no evidence presented during the trial to support
10 such an instruction.

11 Did you see any reason to object to these
12 instructions?

13 A. I didn't. One of the things that came out at trial
14 and, you know, during the course of the investigation was,
15 you know, as part of this group or with this group, there
16 was another, another person who was named to be one of the
17 shooters. And nickname was given and description was
18 given, but I don't think law enforcement ever found this
19 guy. But other than Trevaughn, there were names of
20 somebody else involved in the shooting as well as, you
21 know, the group of friends who were involved in the
22 altercation. So, I didn't, I didn't see any reason to
23 object.

24 Q. Okay, and then this goes along with his next
25 allegation:

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

12

1 Failed to object to trial court's jury
2 instruction of the hand of one, hand of all
3 charge.

4 Again, did you see a reason to object to ---

5 A. I didn't.

6 Q. --- this one? So, there was evidence presented to
7 support these, these instructions?

8 A. Yes.

9 Q. Okay. C here on the return:

10 Failing to request a jury instruction on the
11 lesser-include offense of assault and battery of
12 a high and aggravated nature and assault and
13 battery in the first degree.

14 Did you ask for this lesser-included offense?

15 A. I did not.

16 Q. Okay, and can you remember why you did not?

17 A. I honestly don't remember why I didn't. I, I don't
18 know what I was thinking at the time. It may have been a
19 situation where I wanted to give the jury just one, one
20 option but I, I can't say for certain.

21 Q. Okay. Did you typically in your practice in general,
22 did you typically ask for lesser-included offenses?

23 A. I guess it would depend on the facts of the case and
24 the strategy. I have, you know, I have in the past.

25 Q. So, it wasn't ---

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

13

1 A. It wasn't a practice to not do it.

2 Q. Okay.

3 A. I had in the past depending on, you know, the facts of
4 the case and strategy, my trial strategy,

5 Q. Right. So, it's possible that there might have been a
6 trial strategy here as to why ---

7 A. It is possible.

8 Q. --- you didn't ask? Okay:

9 Failing to object to the trial court's jury
10 instructions on expressed malice when the court
11 used hypothetical examples of the applicant's
12 case.

13 Did you find any reason to object to that at the time?

14 A. No.

15 Q. Okay.

16 A. Just from what I recall. I don't, I don't remember
17 anything alarming or ---

18 Q. Okay.

19 A. --- or any reason to object. I can't think of
20 anything.

21 Q. Failing to object to the consecutive sentences
22 handed down by the court.

23 Since the crime stemmed from a continuous course of
24 conduct, did you see any reason to object to that at the
25 time of the sentencing?

T. BUTLER - DIRECT EXAMINATION BY MS. COLEMAN

14

1 A. No. I, I remember the whole mitigation process. I
2 believe Trevaughn was on probation at the time, and I, and
3 I think I did ask the judge just for one concurrent
4 sentence. Obviously he chose to give consecutive,
5 consecutive sentence, but I, I didn't object and I didn't
6 -- I, I couldn't think of a reason to object.

7 Q. Failure to object to trial court's jury
8 instructions about specific intent to kill is not
9 an element of attempted murder, but there must be
10 a general intent to commit serious bodily injury.
11 Did you see any reason to object to that?

12 A. I didn't.

13 Q. And then:

14 Failing to impeach state's witness Leonard J.
15 Johnson with his prior inconsistent statements.
16 Did you, did you impeach this witness?

17 A. From what I recall I did impeach him, and honestly my
18 attempt to impeach, I don't think it really helped our
19 case. But, yeah, Leonard Johnson was I guess you could say
20 the state's key witness, and there was a question whether
21 he would even testify to begin with. But I do remember he
22 at one point, he did say that Trevaughn wasn't involved,
23 and then he said he was. There was definitely some
24 inconsistencies in his statement, and I did ask him about
25 that. I remember, I remember that I did ask him about that

T. BUTLER - CROSS-EXAMINATION BY MR. GRIFFITH

15

1 because he was, he was a big deal in the state's case.

2 Q. Okay.

3 A. So, I did impeach him.

4 Q. Okay.

5 MS. COLEMAN: No further questions. Thank you.

6 THE COURT: All right, Mr. Griffith.

7 CROSS-EXAMINATION BY MR. GRIFFITH:

8 Q. Attorney Butler, thank you for being here. I just
9 have a few questions just to clarify.

10 A. Okay.

11 Q. She covered basically every one of these elements. I
12 have to ask you some specific questions on one or two of
13 them.

14 A. Okay.

15 Q. On the lesser included, his allegation that you failed
16 to ask for a lesser included, you said it was a general
17 practice sometimes to include, and sometimes you looked at
18 the case but in this particular case you did not request
19 that lesser -- instructions for lesser included be included
20 on the judge's instruction?

21 A. I don't think I did; I don't remember requesting it.

22 Q. Okay. Were you aware that the Supreme Court in South
23 Carolina has on occasion remanded cases based on the fact
24 that some lesser includeds were not instructed, not going
25 to the jury?

T. BUTLER - CROSS-EXAMINATION BY MR. GRIFFITH

16

1 A. You're asking if I was aware of cases?

2 Q. I just wanted to know if you were aware of any.

3 A. I, I can't give you specific cases on that issue.

4 Q. Well, and you -- speaking on the, the allegation of
5 the judge including expressed malice, you said you did not
6 object to that?

7 A. I don't remember objecting about -- I don't think I
8 did.

9 Q. When the judge imposed the consecutive sentences, let
10 me ask you. From the trial -- and you were there -- how
11 many incidents actually were involved in this, these
12 allegations against my client, the defendant?

13 A. Well, there was only -- I would say there was one
14 incident but there were two verdicts, and so the attempted
15 murder was for each victim. I believe two people got shot
16 but it was -- yeah, there was a series of events or an
17 event leading up to the actual shooting, but it was
18 basically -- I mean, the shooting was in one location, so
19 -- but there were, you know, there were several people in
20 the house and two people got shot. So, that's the basis of
21 the attempted murder charges.

22 Q. And it was they shot into the house?

23 A. Into the house and people were in there, yeah.

24 Q. There was nobody standing outside that got shot, but
25 they shot into the house ---

T. BUTLER - CROSS-EXAMINATION BY MR. GRIFFITH

17

1 A. And hit ---

2 Q. --- and hit people?

3 A. Into the house and hit people, yes.

4 Q. Okay, and -- but this was all one incident that
5 occurred?

6 A. Yes.

7 Q. Okay, and do you recall how many shots were fired?

8 A. I don't recall how many. I want to say there was a
9 witness who said she heard, like, four or five. I know
10 there were two shell casings found. I know there were
11 several holes in the trailer, but as far as a specific
12 number of shots, I, I can't recall. I can't give you the
13 number.

14 Q. You can't?

15 A. Yeah, there were several just based upon ---

16 Q. That's more of a fact. I was just ---

17 A. Okay.

18 Q. --- trying to establish whether or not it was -- there
19 was a lot of things that went on. Then there -- this is
20 the last one.

21 (A PAUSE.)

22 Q. Did you object when the judge instructed the jury that
23 there was no specific intent needed and it was not one of
24 the elements of attempted murder? Did you object to that
25 at all? Do you recall?

T. BUTLER - CROSS-EXAMINATION BY MR. GRIFFITH

18

1 A. I, I don't recall. I don't recall.

2 Q. And when the judge imposed sentence that were that
3 were consecutive, I believe you informed the court that you
4 had asked the judge for concurrent sentences. Is that
5 correct?

6 A. I, I, I think I did because there was an issue with --
7 he, he still had this probation time and I, I think I did
8 ask the judge for everything to run together. Yeah. I
9 certainly didn't ask for consecutive time, but I, I think I
10 did, and I could be wrong, you know, if the transcript
11 doesn't reflect that, but I, I do remember I did attempt to
12 mitigate, and that's it.

13 MR. GRIFFITH: Actually, I have no further questions,
14 Your Honor.

15 THE COURT: All right, any redirect?

16 MS. COLEMAN: No redirect, Your Honor

17 THE COURT: Thank you, ma'am. You can step down.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: The state may call its next witness.

20 MS. COLEMAN: No further witnesses. The state rests.

21 THE COURT: The state rests. All right, let's hear
22 arguments.

23 MR. GRIFFITH: Your Honor, the elements of his
24 application, basically there several elements, A through F.
25 I have talked with my client about the -- his complaint and

1 gone over each of these to let him know my opinion as to
2 whether or not they would be successful. And of course I
3 understand that Your Honor will take the opportunity to
4 read through his application, although when it was printed,
5 I hope you got a better copy than I did because ---

6 THE COURT: I can, I can see it okay.

7 MR. GRIFFITH: It's kind of tough.

8 THE COURT: Yes, sir.

9 MR. GRIFFITH: But as to the first, Your Honor,
10 failing to object to trial court's accomplice liability, I
11 did talk with my client and explain to him that there was
12 evidence given that there was another person present.

13 And as to issue B, ineffective for failing to request
14 a jury instruction of lesser included, the, the state --
15 the trial judge is required to instruct the jury on lesser-
16 included offenses if evidence exists that suggests the
17 lesser included rather than the greater was actually
18 committed. In the ---

19 THE COURT: Was that an issue on appeal, before the
20 Court of Appeals?

21 MR. GRIFFITH: I don't know that, Your Honor.

22 THE COURT: It was a *per curiam* dismissal, I mean, on
23 an *Anders* brief. I don't know if that was raised on the
24 legal appeal from the trial of the case. Go ahead.

25 MR. GRIFFITH: That was a *State vs. Guardine*

1 [phonetic], but just to ask the court to look at that and
2 if the appeals court of course did not, then I -- then we
3 would want the court to include that. But I did explain to
4 him the code according to that and that there is very
5 little to support that.

6 As to C, failing to object to the trial court jury
7 instruction on expressed malice, there are some cases where
8 the judge has given examples or, or given instructions to
9 the trial court where he basically is reducing the burden
10 of the state to prove guilt beyond a reasonable doubt. In
11 the case where -- this particular item where he gave
12 hypotheticals and told the jury that expressed malice was
13 not an element, it is not an element. I was looking at the
14 elements of intent to commit murder. It is not one of the
15 elements. However, to give those kind of instructions to
16 the jury may cause the jury to -- it's basically throwing
17 facts in rather than the law in that the -- he can ask the
18 jury that the -- that the state has to prove all the
19 elements rather than adding on new non-elements to that
20 case would be our argument. Then ---

21 THE COURT: You're saying the lawyer did not object to
22 that?

23 MR. GRIFFITH: The lawyer did not object.

24 THE COURT: Okay.

25 MR. GRIFFITH: As to the consecutive sentences, Your

1 Honor, our Supreme Court has found where ---

2 THE COURT: Well, hang on. Let's get back to that.
3 You know, it's a two-pronged test. You have to show that
4 counsel's performance was deficient. So, let's assume for
5 the sake of argument that she did mess up by failing to
6 object to the expressed malice charge or whatever. How can
7 you show that but for that failed objection, there would
8 have been a different result?

9 MR. GRIFFITH: Well, Your Honor, because these are
10 twelve persons who have the opportunity to review the facts
11 of the case, the judge basically imposes upon them a
12 release of the burden of the state to prove beyond a
13 reasonable doubt these elements of the crime in that the
14 judge is basically saying there was no expressed malice, or
15 it doesn't have to have expressed malice, and that may sway
16 the jury. That may cause the jury to have the presumption
17 that those things are not necessary, and they are not
18 necessary under the law. However, that may cause the jury
19 to be prejudiced against the defendant in that they have --
20 they can have a preset mind that he is more guilty rather
21 than less.

22 THE COURT: Okay. Gotcha.

23 MR. GRIFFITH: And, Your Honor, as to the consecutive
24 sentences, the code in South Carolina, 17-25-50:

25 In determination, the number of offenses for the

1 purpose of imposition of a sentence, the court
2 shall treat as one offense any number of offenses
3 which have been committed in -- at times so
4 closely connected in point that they may be
5 considered one offense, notwithstanding under law
6 this -- they constitute separate and distinct
7 offenses.

8 I'm sorry, Your Honor. I'm trying to read from this
9 but, Your Honor, in this case clearly this was one offense
10 where the defendant is accused of, along with others,
11 having in one occurrence shot into a building. Multiple
12 people were injured, Your Honor, but the state doesn't have
13 to prove that he was trying to murder anybody, but in the
14 -- but the same time there was one occurrence, and in this
15 occurrence the judge gave consecutive sentences adding up
16 to sixty years for these offenses that all occurred at the
17 same time.

18 Our argument here is that because this was one
19 offense, the judge should have considered this and the
20 state should have, rather than charging multiple cases of
21 attempted murder, charged one case of attempted murder or
22 when -- the judge should have considered this as one
23 incident in making his sentence.

24 THE COURT: Was there a motion to quash made?

25 MR. GRIFFITH: Excuse me?

1 THE COURT: Was there a motion to quash made by the
2 defense counsel?

3 MR. GRIFFITH: Your Honor, I, I didn't see the motion
4 to quash in the transcripts.

5 THE COURT: All right.

6 MR. GRIFFITH: And, Your Honor, we would ask that that
7 be considered as one offense in that the consecutive
8 sentences causes him to end up with a much higher
9 punishment than fits the crime.

10 THE COURT: Right. It's essentially a life sentence.
11 I understand.

12 MR. GRIFFITH: Basically, basically, Your Honor. He's
13 twenty-two years old.

14 THE COURT: Right.

15 MR. GRIFFITH: Sixty years, he'll never see daylight
16 unless, of course, the court or someone were to rethink
17 that sentencing at least, if not a new trial.

18 And, Your Honor, as to the -- I'm not going to proceed
19 with any of that.

20 But, Your Honor, we would ask the court take into
21 consideration all of the applicant's application, of
22 course, and if you need somehow to get a better reading of
23 it -- but I was able to read it. It's just a little tough.

24 THE COURT: Right. I looked at it before. I can make
25 it out.

1 MR. GRIFFITH: But we would ask specifically on the --
2 our main objection, Your Honor, is to the consecutive
3 sentencing in that we felt it was one event, one
4 occurrence, and our client is entitled to a new trial
5 and/or new sentencing in order to overcome the mistake that
6 was made in not objecting to or asking to quash the
7 multiple indictments against him as it being just one
8 occurrence.

9 THE COURT: All right. I'll come back to you in a
10 moment.

11 Ms. Coleman, what is your reply?

12 MS. COLEMAN: Yes, Your Honor.

13 THE COURT: To Mr. Griffith's arguments?

14 MS. COLEMAN: As he stated at first, the failing to
15 object to accomplice liability and hand of one, hand of
16 all, there's clearly evidence in the record that that was
17 presented a trial. That supports these jury instructions.
18 So, there was no reason to object to that.

19 The lesser-included offenses, and Your Honor asked if
20 this was argued on appeal, and you did note that there was
21 an *Anders* brief. It's my understanding that under *Anders*,
22 the Court of Appeals reviews the entire case and looks at
23 the entire transcript and is supposed to look for
24 everything. So, in theory they reviewed the whole case.
25 They did not find any issue with the failing to request a

1 lesser-included offense, and they dismissed the appeal
2 regardless.

3 I would argue, the state would argue that this is
4 possibly a trial strategy on behalf of our trial counsel
5 here, and she testified that she could not remember why she
6 did not request that lesser-included offense. But case --
7 the PCR case law states that they don't necessarily have to
8 articulate a strategy on the stand. It can be inferred
9 that perhaps she was hoping that they would find him not
10 guilty of attempted murder and then find nothing at all
11 rather than requesting ABHAN or whatever else and having
12 him convicted of that. The state would argue that that's a
13 valid trial strategy, and that should not be ineffective.

14 Jury instructions on expressed malice, it's my
15 understanding that the trial court judge read from the
16 standard jury charges, but there was nothing in trial --
17 that counsel testified that she saw nothing usual or
18 objectionable about these. She didn't see any reason to
19 object to that, and that trial court used -- I mean, he was
20 comparing expressed malice with implied malice to explain
21 the difference to the jury, and the solicitor also
22 explained this several times at trial. He was explaining
23 the difference between -- and, and he specifically stated
24 why he felt that implied malice was shown here in this fact
25 pattern.

1 And furthermore, as you, as you stated, that this
2 would -- there's no prejudice. This does not satisfy the
3 prejudice prong of the *Strickland* standard, and we ask that
4 this one, that allegation be dismissed.

5 Consecutive sentences, the applicant has argued
6 Section 17-25-50 shows that this is one distinctive
7 occurrence that should only be sentenced -- didn't have one
8 -- excuse me, one sentence. But we would argue that the --
9 there were two separate people shot here, which is the
10 basis for the two separate charges of attempted murder, and
11 that's enough to show that he could be sentenced for both
12 consecutively. It's clearly in the trial court's
13 discretion to sentence as he pleases. Trial counsel
14 requested a concurrent sentence, and the trial judge chose
15 not to do that. And furthermore, this would not affect the
16 outcome of the trial, only the sentence. So, if he was
17 entitled to any relief from this, we would ask that it only
18 be a resentencing and not a new trial.

19 Leonard Johnson, the state's key witness that
20 applicant alleges trial counsel failed to impeach, she
21 argued that she did impeach him at trial. The trial
22 transcript shows that.

23 And finally applicant has shown nothing to prove that
24 he was denied due process for any of this. So, we ask that
25 you deny based on those allegations. Thank you.

1 THE COURT: Thank you.

2 Anything further, Mr. Griffith?

3 MR. GRIFFITH: Your Honor, I, I would concur in that
4 the state has offered that if anything should be
5 considered, it would be resentencing. That, of course, is
6 our opinion as well, but of course we would ask for a new
7 trial if the court thought that that was the proper thing
8 to do.

9 But as far as the sentencing is concerned, Your Honor,
10 I would give an example. If I were to shoot at one person
11 and there's someone standing behind him and the bullet goes
12 through him and hits the other person, did I commit
13 attempted murder twice or did I one time? Was that one
14 occurrence or was that two occurrences? And so this being
15 a possible example of the exact same thing -- we don't know
16 where the people were standing, and obviously since he's on
17 the outside of the building, they didn't know that someone
18 was standing where they were shooting, although it was
19 obvious that someone was and that they were hit with
20 bullets. But, Your Honor, we would still argue that that
21 would be one occurrence.

22 THE COURT: All right, thank you very much. Ms.
23 Coleman, Mr. Griffith, and Mr. Jackson, I'm going to take
24 this matter under advisement. I need to read. I obviously
25 have a large transcript to read, as well as the lawyers'

1 briefs handed up, as well as the application materials. I
2 will do that, and I will look to have a decision within the
3 next ten days.

4 Mr. Jackson, I will let your lawyer know of my
5 decision, as well as the state's lawyer, and then he'll be
6 in touch with you to let you know, okay? Thank you very
7 much. Have a good day.

8 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON
THE 8TH DAY OF NOVEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 27TH, 2017

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Tre'Vaughn Jackson, #349787,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT
CERTIFIED TRUE COPY
OF ORIGINAL FILED

2016-CP-43-632

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

RECORDED
2017 MAY -4 PM 2:06
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 11, 2016. Respondent submitted its return on September 30, 2016. An evidentiary hearing was convened on November 8, 2016, at the Williamsburg County Courthouse. Applicant was present at the hearing and was represented by Timothy Griffith, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted by the November 2013 term of the Sumter County Grand Jury for two counts of Attempted Murder, one count of Possession of a Weapon During the Commission of a Violent Crime, one count of Unlawful Carrying of a Pistol, and one count of Discharging a Firearm Into a Dwelling (2013-GS-43-1067). Tiffany Butler, Esquire, represented Applicant. On August 28, 2014, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted for both counts of Attempted Murder, Possession of a Weapon During the Commission of a Violent Crime, and Discharging a Firearm Into a Dwelling.

The count of Unlawful Carrying of a Pistol charge was dismissed. The Honorable W. Jeffrey Young sentenced Applicant to a thirty year term of imprisonment for each count of Attempted Murder, to run consecutively, as well a concurrent sentence of five years' imprisonment for Possession of a Weapon During the Commission of a Violent Crime and ten years' imprisonment for Discharging a Firearm Into a Dwelling.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v. California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Jackson, Op. No. 2016-UP-116 (filed on March 2, 2016). The Remittitur was issued on March 18, 2016.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. "Ineffective Assistance of Counsel"
 - a. "...failing to object to the trial court's accomplice liability instructions when there was no evidence presented during trial to support such an instruction." (sic)
 - b. "...when counsel failed to object to the trial court's jury instruction of the hand of one is the hand of all charge, especially in light of the trial court's request to counsel "any objection to the charge under the facts of this case?" Counsel merely stated "for the record" without establishing any particular argument as to why the instruction did not fit the facts of the case." (sic)
 - c. "...for failing to request a jury instruction on the lesser-included offense(s) of assault and battery with a high and aggravated nature and assault and battery in the first degree" (sic)
 - d. "...for failing to object to the trial court's jury instructions on "express malice" when the court used "hypothetical examples" of Applicant's case, that a reasonable jurist could have concluded was a comment on the facts of the case." (sic)
 - e. "...for failing to object to the consecutive sentences handed down by the court since the crimes stemmed from a continuous course of conduct."
 - f. "...for failing to object to the trial court's jury instructions when the court instructed the jury that "a specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious

- bodily injury.”
- g. “...for failing to impeach State’s witness Lenard J. Johnson with this prior inconsistent statements made to trial counsel’s investigation that contradicted his trial testimony on material points”
2. “Denial of Due Process”

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not

have pled guilty and would have insisted on going to trial. Hill v. Lockhart , 474 U.S. 52, 106 S.Ct. 366 (1985).

IV. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant presented testimony from Trial Counsel Tiffany Butler, Esquire. Applicant did not testify.

Trial Counsel testified that she was appointed to represent Applicant as an Assistant Public Defender. She stated that she met with Applicant several times at the jail while he was incarcerated. Trial Counsel stated that she filed Rule 5 and Brady motions and she reviewed the discovery material with Applicant. She testified that the State's evidence against Applicant included statements from 3 or 4 witnesses who were at the site of the shooting and identified Applicant as the shooter. She stated that two shell casings were recovered at the scene but no weapon was recovered. She stated that Applicant gave a statement denying his involvement and his presence at the scene.

Trial Counsel testified that she hired an investigator to locate and speak to all the witnesses and to thoroughly investigate the forensics from the crime scene. She stated that Applicant did not give her any names of potential witnesses to investigate. She stated that her trial strategy was to attack the credibility of the State's witnesses through impeachment and highlight to the jury the chaos that surrounded the crime scene during the shooting.

Trial Counsel testified that there was no reason to object to the trial court's accomplice liability instructions or to the "hand of one hand of all" instructions because law enforcement never found the person who was allegedly with Applicant during the shooting. She stated that she could not recall why she did not request an instruction on the lesser-included offense, but she opined that it was possible that she did not want to include an additional way to be found guilty

if Applicant could have been found not-guilty of the original charge. Trial Counsel testified that she did not see anything objectionable about the trial court's hypothetical examples to the jury on express malice. She testified that there was no reason to object to the trial court's consecutive sentence because it was within the legal sentencing guidelines in the judge's discretion. She noted that she did ask for a concurrent sentence during mitigation, but her request was denied. She explained that two victims were shot, which made it two separate events; this was the basis of the two charges of attempted murder and why Applicant was sentenced to two consecutive terms of imprisonment. She stated that there was no reason to object to the jury instruction regarding general intent instead of specific intent. Finally, Trial Counsel testified that she did impeach the State's witness Lenard Johnson with his prior inconsistent statements at trial.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Trial Counsel's testimony to be credible and persuasive. This credibility finding has been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice.



Failure to object to accomplice liability instructions
and "hand of one hand of all" charge

Applicant alleges that Trial Counsel was ineffective for failing to object to accomplice liability instructions and a "hand of one, hand of all" charge. This allegation is meritless. There was evidence presented that another person was involved in the shooting, although law enforcement never identified who it was. Trial Counsel testified that there was no reason to object to these instructions, and this Court agrees. Applicant has failed to meet his burden of proving either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to request the lesser-included offense

Applicant alleges that Trial Counsel was ineffective for failing to request an instruction on the lesser included offense of Assault and Battery of a High and Aggravated Nature. This allegation is meritless.

Although Trial Counsel could not recall her reasoning for choosing not to request the lesser included offense, she expressed that it was possible that she did not want Applicant to be convicted of a lesser included offense when there was a chance he would be found not guilty of attempted murder. In this case, he would not have any convictions. It is reasonable to assume that this is a valid strategy that Trial Counsel could have been choosing. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Recognize, however, that a strategic

or tactical decision does not have to be articulated by counsel on the record; counsel doesn't to have to personally identify his or her thinking. Federal courts have held that it is enough that the record show a basis for strategy, not that counsel announce that strategy on the record. Wood v. Allen, 558 U.S. 290, ___, 130 S.Ct. 841, 175 L.Ed.2d 738 (2010).

This Court finds that Trial Counsel was not ineffective for choosing not to request an instruction for the lesser-included offense. Applicant has failed to meet his burden of proof, and this allegation is denied and dismissed with prejudice.

*Failure to object to hypothetical examples of
express malice in jury instructions*

Applicant alleges that Trial Counsel was ineffective for failing to object to the trial judge's use of hypothetical examples when explaining express malice to the jury. This allegation is meritless. This Court finds there was no reason to object to these instructions, as they were part of the standard jury charges used to compare express and implied malice. Furthermore, any objection that might have been made to this would not have changed the outcome of the trial. Since Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

Failure to object to consecutive sentences

Applicant alleges that Trial Counsel was ineffective for failing to object to the trial court's consecutive sentences. This allegation is meritless.

South Carolina law states:

In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses.



S.C. Code Ann. § 17-25-50. Applicant was sentenced to two consecutive thirty-year sentences based on his two charges of attempted murder. Here, there were two victims shot. These people were the victims of two separate and distinct crimes—both of them were shot and injured. This was the basis for the trial court's sentence, and this Court agrees with its reasoning. This Court finds that the trial court properly sentenced Applicant within its discretion and within the statutory limits of the sentence. Trial Counsel credibly testified that she asked for concurrent sentences in her mitigation at sentencing. This Court finds that Trial Counsel was not ineffective for failing to object to the sentence.

Furthermore, Applicant has not shown that the implication of this sentence changed the outcome of the trial. Any objection to the sentence would only have potentially altered the sentence, not the jury's verdict. Regardless, Applicant has not proven that any objection would have been successful.

Because Applicant has failed to prove either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to object to general intent instruction

Applicant alleges that Trial Counsel was ineffective for failing to object to the trial court's jury instruction that general intent, not specific intent, was the proper standard to meet the elements of attempted murder. This allegation is meritless.

Under current South Carolina case law, attempted murder is defined by the courts as a specific intent crime. The Court of Appeals settled this question in 2015 in State v. King: "We find the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder, and therefore the trial court erred by charging the jury that attempted murder is a general intent crime." State v. King, 412 S.C. 403, 411, 772 S.E.2d 189,



193 (Ct. App. 2015), reh'g denied (June 5, 2015). The King decision was appealed to the South Carolina Supreme Court and is currently pending. While the current law states that attempted murder is a specific intent crime, this could be reversed on appeal, meaning that a general intent standard applies.

Regardless of the current state of the law on this issue, the Court of Appeals opinion in King was not decided until April of 2015. Applicant's trial was held in August of 2014, before this opinion existed. To claim that Trial Counsel was ineffective for failing to object, Applicant must prove that Trial Counsel had knowledge or should have had knowledge of the case law at the time. At the time of Applicant's trial, the general intent instruction was proper. Trial Counsel cannot be expected to be clairvoyant in the law to object to issues that have not yet arisen before the courts. "This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial." Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993).

This Court finds that Trial Counsel was not ineffective in failing to object to a jury instruction that was proper at the time it was given under South Carolina law. Applicant has failed to prove ineffectiveness or prejudice, and therefore this allegations is denied and dismissed with prejudice.

*Failure to impeach witness Lenard Johnson
with prior inconsistent statement*

Applicant has failed to meet his burden in proving that Trial Counsel was ineffective for failing to properly cross-examine witnesses at trial.

The purpose of cross-examination at trial is "to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness." State v. Gillian, 360 S.C.



433, 451, 602 S.E.2d 62, 71 (Ct. App. 2004) *aff'd* as modified, 373 S.C. 601, 646 S.E.2d 872 (2007) (citing Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

This Court finds that Trial Counsel properly cross-examined each of the State's witnesses enough to expose their biases and create doubt as to their credibility in the minds of the jury. Trial Counsel credibly testified that her trial strategy was to show the jury that the State's witnesses were not consistent. She emphasized to the jury the high level of chaos during the shooting which made the witnesses' testimony more unreliable. Furthermore, Trial Counsel *did* impeach witness Lenard Johnson with his prior inconsistent statement. Trial Tr. at 322.

Furthermore, Applicant failed to present the proper cross-examination testimony from witnesses at the evidentiary hearing, and thus cannot establish prejudice because their testimony is merely speculative. "This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Since Applicant cannot prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

DUE PROCESS

Applicant alleges that he was denied due process of law. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set



forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing that would entitle him to relief before an evidentiary hearing will be held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, this Court finds that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. Applicant has presented no credible evidence proving that he was denied due process in any manner. Accordingly, this allegation is denied and dismissed with prejudice.

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-

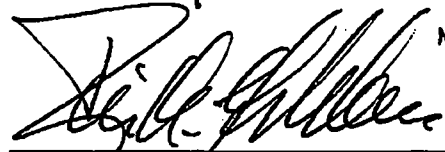


conviction relief. Rule 71.1(g), SCRCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this _____ day of 4/25, 2017.



BRIAN GIBBONS
Presiding Judge
Third Judicial Circuit

_____, South Carolina

WITNESSES

John Litaker Sumter Police Dept.

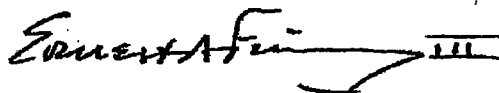
DOCKET NO. 2013-GS-43-1067**The State of South Carolina****County of SUMTER****COURT OF GENERAL SESSIONS****November TERM 2013****THE STATE**

vs.

TREVAUGHN ZIONTAE JACKSON**ARREST WARRANT NUMBER**

2013A4320100681 2013A4320100682
2013A4320100683

2013A4320100684 2013A4320100685

**ACTION OF GRAND JURY**

True Bill



Foreperson of Grand Jury

Date: 11-14-13

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

Murder / Attempted Murder
Unlawful Possession, Carrying, and
Discharging Firearm

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR
Murder / Attempted Murder
Unlawful Possession, Carrying, and
Discharging Firearm

At a Court of General Sessions, convened on November 14, 2013 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE
ATTEMPTED MURDER

That Trevaughn Ziontae Jackson, in Sumter on or about August 31, 2013, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Trevaughn Ziontae Jackson did with intent to kill, attempt to kill another person, Frank Cokley, with malice aforethought, either express or implied, by shooting one Frank Dwayne Cokley with a handgun at Dilbert Street, Sumter, South Carolina.

COUNT TWO
ATTEMPTED MURDER

That Trevaughn Ziontae Jackson did in Sumter on or about August 31, 2013, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Trevaughn Ziontae Jackson did with intent to kill, attempt to kill another person, Frank Cokley, with malice aforethought, either express or implied, by shooting one Sylvia Ann Welch with a handgun at Dilbert Street, Sumter, South Carolina.

COUNT THREE
POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

That Trevaughn Ziontae Jackson did in Sumter County, on or about August 31, 2013, possess a firearm, or visibly display what appeared to be a firearm during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

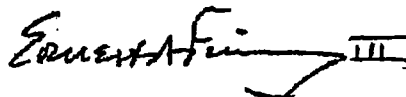
COUNT FOUR
UNLAWFUL CARRYING OF A PISTOL

That Trevaughn Ziontae Jackson did in Sumter County on or about August 31, 2013, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

COUNT FIVE
DISCHARGING FIREARM INTO DWELLING

That Trevaughn Ziontae Jackson did in Sumter County on or about August 31, 2013, discharge or cause to be discharged unlawfully, firearms at or into a dwelling house or other building or enclosure regularly occupied by persons; while it was occupied, in violation of Section 16-23-0440, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR