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STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Edward W. Miller, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2013-000149
Opinion No. 2017-UP-426 (S.C. Ct. App. Filed November 15, 2017)

THE STATE, ...PETITIONER

v.

RAYMOND LEWIS YOUNG, ... Respondent

APPENDIX
VOLUME 2 OF 3

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Brandon Brown - Cross

1 Q. Which guns did you receive there on the scene
2 that day?

3 A. We took possession of the shotgun and pistol.

4 Q. Investigator, I'm going to show you State's 42,
5 do you recognize that?

6 A. Yes, I do.

7 Q. How do you recognize it?

8 A. That is the weapon, magazine and ammunition that
9 was retrieved from that location.

10 Q. How do you know?

11 A. One it's listed as DW which is for Dustin Woodall
12 which is my partner. I know he took possession of those
13 items, and two it's the items that we recovered from the
14 back of her mother's vehicle.

15 Q. Just to be clear, I don't know that we've heard
16 any testimony that Deputy Woodall was on the scene that
17 day. Did he ultimately arrive and collect these items?

18 A. I believe he did if I'm not mistaken.

19 Q. Is it possible that DW is instead David Whitlock?

20 A. Actually, yes, it could be.

21 Q. What happened when that gun arrived back on
22 scene?

23 A. We were very careful in processing the evidence.
24 We wanted to make sure we could fingerprint every item so
25 every item that arrived on scene we made sure to hand

Brandon Brown - Cross

1 with care wearing latex gloves so that we could not
2 contaminate evidence any further than it already had been.

3 Q. Once you collected this evidence and assisted in
4 the arrest or investigation of the suspects in this case,
5 did you have any other role in the investigation of the
6 case?

7 A. We continued to help through out the entire
8 investigation as information led to possible suspects
9 involved, we were involved in every aspect of locating
10 them ,taking them into custody.

11 Q. Alright. If you would answer any questions that
12 these attorneys may have for you.

13 A. Yes, ma'am.

CROSS-EXAMINATION

14
15 BY MR. CHAMBERS:

16 Q. Deputy, you were the one after you arrived on
17 scene that started to provide names to Investigator
18 Campbell; is that correct?

19 A. Which scene, sir?

20 Q. Well, both incidents. We had the thing that
21 happened at the Red Planet and you indicated that a name
22 surfaced from the Red Planet and based on that in helping
23 in the investigation over at the Li'l Cricket you started
24 to name people that you thought to be associated with
25 Raymond Young?

Brandon Brown - Cross

1 A. Yes, sir, I did.

2 Q. At that point is when the investigation started
3 focusing on these people whose names you gave?

4 A. No, sir, it was not.

5 Q. You just gave the names?

6 A. I gave names and it gave us aspects to start
7 looking at, however, that wasn't what made us focus on.
8 The Facebook pages is what made us focus on.

9 Q. Specifically it had pictures in it and you
10 recognized elements in this picture that was labeled the
11 family which is a group of young men and young women
12 together at this club, correct?

13 A. Yes, sir.

14 Q. Are you familiar with the group that refers to
15 themselves as the Hardliners?

16 A. Yes, sir, I am.

17 Q. And it would be fair to say that they are a
18 fairly organized group as well, isn't it?

19 A. That hasn't been in our investigation at all, no,
20 sir.

21 Q. Have you seen them at the club where they were
22 altogether and they appeared to be flashing gang signs?

23 A. I have seen pictures, yes, sir.

24 Q. Did you see the HL sign that they all threw up?

25 A. I did, sir.

Brandon Brown - Cross

1 Q. And that's something that's common among gang
2 members, isn't it?

3 A. It can be, yes, sir.

4 Q. And typical when they were taking pictures like
5 that it would not be unusual for them all display their
6 gang signs to show pride, correct?

7 A. Hand signs in themselves we don't declare as gang
8 signs, so, no, sir.

9 Q. And you're aware from talking to these
10 individuals including your investigation and these young
11 men, these Hardliners, who you referred to as being
12 scared, most of them were themselves carrying weapons?

13 A. Carrying, no, sir, we did not find that.

14 Q. So they didn't have them on their persons but you
15 were aware of the fact that they had weapons in them in
16 their cars accessible to them, correct?

17 A. There were weapons inside of the vehicles.

18 Q. You were aware that they came to the Red Planet
19 with guns available to them, correct?

20 A. Later on we did find that, yes, sir.

21 Q. And there were other people who were there at
22 that club besides the young men who you said were Folk
23 Nation or whatever you call them and these Hardliners,
24 there were lots of other people there as well?

25 A. Yes, sir, there were.

Brandon Brown - Cross

1 Q. And it's not at all unusual at these clubs for
2 people to go as a group together wit ha group of friends
3 a group of girls and they meet there and they hang out
4 together?

5 A. Yes, sir.

6 Q. And it's not unusual for these groups to come in
7 conflict with one another once they get to these clubs, is
8 it?

9 A. That's correct.

10 Q. You indicated that you went to that trailer based
11 on what Officer Moore had said and executed the search
12 warrant but all you found was a bag and some holster,
13 correct?

14 A. And some ammunition.

15 Q. Those were in plain view, the holsters and the
16 ammunition, correct?

17 A. The holster was, the ammunition was not.

18 Q. And then later on you went to an apartment where
19 you said Kera Kerns lived?

20 A. Yes, sir.

21 Q. Now, Esaiveus Booker did not live at that
22 apartment, did he?

23 A. Not to my knowledge.

24 Q. So that was not his residence and you went there
25 looking for these guns?

Brandon Brown - Cross

1 A. Yes, sir, we did.

2 Q. And you said eventually with the help of her
3 mother that you obtained from her brother two weapons, the
4 one that was here in court today and a shotgun?

5 A. Yes, sir.

6 Q. Now, there was never any indication that a
7 shotgun was part of any of these incidents that you
8 investigated, correct?

9 A. Any of which incidents

10 Q. Let's be specific to the one that we're here for
11 now and that is the one at the Li'l Cricket. Nobody ever
12 said anything about a shotgun being used.

13 A. No, sir.

14 Q. Forensics went out there and they got all these
15 projectiles and these shell casings and they didn't get
16 any buck shot, they didn't get any plastic shell casings
17 from a shot gun shell, they didn't find anything like
18 that, did they?

19 A. No, sir, they did not.

20 Q. And you said you dusted these weapons for
21 fingerprints?

22 A. I didn't personally. I submitted them.

23 Q. To your knowledge, you never got any fingerprints
24 from Esaiveus Booker from any of these weapons, did you?

25 A. Not to my knowledge, no, sir.

Brandon Brown - Redirect

1 Q. That's all the questions I have for you.

2 MR. ROBINSON: To follow up. Scott Robinson
3 for Mr. Williams.

4 BY MR. ROBINSON:

5 Q. You did not get any fingerprints for anything off
6 the weapons tying it to Mr. Williams, correct?

7 A. Not to my knowledge.

8 MR. ROBINSON: Thank you.

9 MR. ABDALLA: On behalf of Mr. Young, I have
10 no questions.

11 MR. QUINN: No questions on behalf of
12 Mr. Sadler.

13 MS. SALISBURY: Briefly redirect.

14 REDIRECT EXAMINATION

15 BY MS. SALISBURY.

16 Q. Investigator, I'm going to show you some
17 photographs labeled State's 51, 52, 53 and 54. I'd like
18 you to take a look at those photographs. Do you recognize
19 those photographs as anything you've seen before today?

20 A. Yes, ma'am, I have seen those photographs.

21 Q. Did you receive those during the course of the
22 investigation in this case?

23 A. Several days after the initial incident occurred.

24 Q. Do you recognize the individuals in these
25 photographs?

Brandon Brown - Redirect

1 A. Yes, ma'am. Several of them at least.

2 Q. There's been a little bit of discussion about
3 hand signs and what they may or may not mean, do you
4 recognize the hand signs that are being exhibited in those
5 photographs?

6 A. Yes, ma'am, many of them.

7 Q. How did you recognize the hand signs?

8 A. As part of our job as gang investigators, we have
9 to have a basic knowledge and try to get as much advance
10 investigation tools as we can. One of the most popular
11 ways of identifying a gang member is very specific hand
12 signs that are universal across the board. Several of
13 these are them.

14 Q. Specifically as it relates to this particular
15 group, what hand signs are of significance to you based on
16 your education?

17 A. Given the fact that we were currently already
18 involved in working at Folk Nation or specifically
19 Gangster Disciples, there are several hand signs that are
20 very very significant. Along with hand signs are numbers
21 such as six and three. There is a six pointed crown and a
22 three pointed crown as well as pitch forks, pitch forks
23 facing up as well as a simple that looks like a
24 (inaudible) that stands from one of their six knowledges
25 as one love and some other acronyms.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Edward W. Miller, Circuit Court Judge

THE STATE

RESPONDENT

V.

ESAIVEUS FRANTREZ BOOKER

APPELLANT

APPELLATE CASE NO. 2013-000207

THE STATE

RESPONDENT

V.

RAYMOND LEWIS YOUNG

APPELLANT

APPELLATE CASE NO. 2013-000149

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBITS 51 and 54 (photographs)²

¹ After initially indicating that she was unable to produce a transcript of the closing arguments, necessitating a motion to reconstruct, the court reporter later produced a separate transcript of the closing arguments.

² Pursuant to Rule 210(f), SCACR, transportation is being requested for the designated photograph exhibits because they could not be accurately reproduced by copying into the Consolidated Record on Appeal. See R. 803 – 804.

Brandon Brown - Redirect

1 Q. And do you recognize the individuals in that
2 photographs that are exhibiting those hand signs?

3 A. Defendants or everyone?

4 Q. Let's start with State's Exhibit 51, do you
5 recognize the individuals in that photograph?

6 A. Yes, ma'am, there is one subject that we know as
7 Shequille Hogan.

8 Q. Before we get into that just generally do you
9 recognize those individuals in that photograph?

10 A. All but two off the top of my head out of the
11 five.

12 MS. SALISBURY: I'd offer State's Exhibit 51.

13 THE COURT: Subject to the objection.

14 (Photograph marked as State's Exhibit No. 51
15 was marked for identification and admitted into evidence.)

16 BY MS. SALISBURY:

17 Q. Investigator, I'm going to put it up on the wall
18 here and maybe you can help explain to the jury what it is
19 exactly that we're seeing in this photograph. What does
20 the photograph depict?

21 A. First of all looking at the picture one of the
22 things that stood out was they were standing in front of
23 "Spill the Beans," which is a restaurant downtown. It's a
24 great picture that's very common with subjects that are
25 associated with each specifically gang members throwing

Brandon Brown - Redirect

1 gang hand signs. In this instance, all they were throwing
2 was known as a three point crown and that was very
3 specifically to the Folk Nation.

4 Q. Can you identify for the jury the ones that you
5 recognize from the photographs?

6 A. Starting from the left in the red is Shaquille
7 Hogan aka Lipz and Esaiveus Booker aka Trez and then
8 Michael Williams aka Mikey. The other two I do recognize
9 but I don't know their names off the top of my head.

10 Q. Is it possible that this fourth gentleman is
11 Mr. Sadler?

12 A. It's very possible.

13 Q. But your not sure?

14 A. No, ma'am.

15 Q. Let's move on to the other photograph, do you
16 recognize individuals in State's Exhibit 52.

17 A. This is another photograph that's much the club
18 photos with multiple individuals. This one is a little
19 harder to identify just because it's a dark taken
20 photograph. You can't really make a whole lot of people
21 in it.

22 Q. Let's move on State's Exhibit 53. Do you
23 recognize whose in that photograph?

24 A. This is again a dark photograph, there is at
25 least one you can make out for sure. This one also

Brandon Brown - Recross

1 contains several females that are projecting hand signs.

2 Q. Let's talk about State's Exhibit 54. Do you
3 recognize the individuals in that photograph?

4 A. Yes, ma'am, I do, some. Again, this is a large
5 group photo.

6 Q. And are those individuals demonstrating what in
7 your experience appear to be specific hand signs?

8 A. Yes, ma'am, we have a couple of the three point
9 crowns again and a couple of the others and we've know as
10 the "L" symbol.

11 MS. SALISBURY: I'd offer State's Exhibit 54.

12 THE COURT: Same ruling.

13 (Photograph marked as State's Exhibit No. 54
14 for identification and admitted into evidence.)

15 BY MS. SALISBURY:

16 Q. Investigator, I'd put State's Exhibit 54 up on
17 the scene. As best you can, it appears to be a dark
18 photograph, can you tell the jury who it is that you
19 recognize in that photograph?

20 A. On the wall it's a little harder to depict as the
21 picture is -- if I can take a look at the picture. The
22 picture is a little bit lighter than when on the wall.
23 There are at least two that are definitely identifiable in
24 that one.

25 Q. There's a pointer laying right there. If you

Brandon Brown - Recross

1 could use that pointer to indicate who it is that you
2 recognize from those photos?

3 A. In the center right here, given almost the exact
4 same facial look as he did in the previous photograph at
5 the nightclub is Randy Young. This looks like possibly
6 Tavarious Holmes and possible Esaiveus Booker right there.
7 As far as positive identification these are a little more
8 difficult.

9 MS. SALISBURY: I don't have any additional
10 questions.

11 RECROSS EXAMINATION

12 BY MR. CHAMBERS:

13 Q. The picture that you saw from just a few minutes
14 ago from all these folks were at the club that night
15 people you say are member of the Folk Nation none of the
16 so-called signs that night, right?

17 A. Yes, sir.

18 Q. When you're talking about the Hardliners and
19 they're throwing up their signs, that's not a gang because
20 they're and the victims in this case.

21 A. No, sir, that's not true. Initially that's what
22 we looked due to the hand signs, later we did learn that
23 Hardliners were a rap association and just like anything
24 else you can have a hand sign on anything, that doesn't
25 make it traditionally a definite gang just because of hand

Brandon Brown - Recross

1 signs.

2 Q. In fact, lots of people throw up hand signs?

3 A. Yes.

4 Q. It's become a part of popular culture?

5 A. Yes, sir.

6 Q. Most of the hip hop artists have some sort of
7 sign they're associated with. Do you know that?

8 A. Yes, sir. There are a lot of hip hop artists
9 that are affiliated with national associated gangs that do
10 throw up hand signs.

11 Q. JayZ and how he throws up the rock as he calls
12 it?

13 A. I'm not much of a JayZ fan but I do know what
14 you're talking about.

15 Q. I figure since you worked in gangs you might be
16 familiar with the hip hop culture?

17 A. To an extent, sir.

18 MR. CHAMBERS: I have no further questions.

19 MR. ROBINSON: Nothing.

20 MR. ABDALLA: No questions.

21 MR. QUINN: No questions.

22 THE COURT: We're going to take a short
23 break. Don't talk about the case.

24 (Jury exits the courtroom.)

25 (Short break.)

Brandon Brown - Recross

1 We had a bench conference to discuss the
2 photographs that were introduced, two, and defense counsel
3 had an objection and I told them that I would allow them
4 to put their objection on the record at the break.

5 MR. CHAMBERS: The objection was that the
6 pictures that were offered up first of all there'd been no
7 foundation laid for them at all. It was not established
8 when they were taken, where they were taken, and so there
9 is an objection as far as not laying the proper foundation
10 for them. And secondly, they're just not relevant to
11 anything that's at issue in this case.

12 THE COURT: Everybody joins in that?

13 MR. ABDALLA: Yes and I want to add that I'm
14 restoring my objection to the prejudicial nature of the
15 gang information.

16 THE COURT: I overruled the objection. I was
17 told they came off of Raymond Young's cell phone.

18 MS. SALISBURY: And I'm prepared to offer
19 testimony hopefully later today about exactly how those
20 photographs -- the phone for which they were taken.

21 THE COURT: Let me see the lawyers up here
22 for just one second.

23 (Bench conference.)

24 MS. SALISBURY: Judge before we get rolling
25 again, I just wanted to settle up the issue of one of the

William Whitlock - Direct

1 next witnesses that I'm call which is Mr. Adrian Kerns.
2 Mr. Kerns is in custody of the Department of Corrections.
3 He's been transported here and it's my understanding that
4 he has a conviction in 2007, it is a juvenile conviction
5 but it for assault and battery of a high and aggravated
6 and nature and then a 2010 conviction for burglary in the
7 third degree. I'm also showing a 2011 conviction for
8 unlawful carrying of a pistol but it's the State's
9 position that that is not a crime whose punishment exceeds
10 one year.

11 So I just wanted to settle that out before we
12 call him. I believe that's the only witness I anticipate
13 having a criminal record until we get to the
14 co-defendants.

15 THE COURT: Y'all agree with that, I guess.

16 MR. ABDALLA: My position about the gun since
17 guns are at play here and since he's not on trial, it's
18 not going to affect him (inaudible).

19 (Jury re-enters the courtroom.)

20 THE COURT: Call your next witness.

21 MS. SALISBURY: The State calls Deputy
22 Whitlock.

23 THE CLERK: Place your hand on the Bible and
24 raise your right hand.

25 WILLIAM WHITLOCK, having been duly sworn,

William Whitlock - Direct

1 testified as follows:

2 Thank you. Please state your name.

3 THE WITNESS: William Whitlock.

4 DIRECT EXAMINATION

5 BY MS. SALISBURY:

6 Q. Deputy Whitlock, where do you work?

7 A. The Greenville County Sheriff's Office.

8 Q. And how long have you been with them?

9 A. Three and a half years.

10 Q. What's your current capacity?

11 A. Work with vice and narcotics as a liaison to the
12 ATF.

13 Q. Alright. Were you working in that capacity in
14 July of 2011?

15 A. I was not.

16 Q. What was your capacity in July of 2011?

17 A. I was with vice and narcotics assisting in gang
18 investigations.

19 Q. Do you remember becoming involved in the
20 investigation which is the subject of this case?

21 A. I do.

22 Q. What exactly did you do to become involved?

23 A. On July 26, 2011, Investigator Brandon Brown
24 stated he had a search warrant ---

25 MR. ROBINSON: Objection, hearsay.

William Whitlock - Direct

1 THE COURT: You can just state what you did
2 as a result of the conversation you had.

3 BY MS. SALISBURY:

4 Q. After speaking with Investigator Brown, what did
5 you do?

6 A. He gave me a signed search warrant for 515
7 Webster Road, Apartment 408 that was ready to be executed.

8 Q. Did you have any information at that point about
9 who lived at that apartment?

10 A. It stated that it was Keara Kerns and a roommate.

11 Q. Did those names mean anything to you at that
12 point?

13 A. No.

14 Q. What was your understanding of what you were
15 supposed to do to help out this investigation?

16 A. Obviously in this type of investigation, everyone
17 was aware of the type of investigation and stated there
18 was a possibility of their being firearms used in the
19 shooting at that location and it was time sensitive due to
20 the fact that people had already been picked up and the
21 guns had possibly been moved around.

22 Q. So did you attempt to execute that search
23 warrant?

24 A. I did.

25 Q. Do you remember what time of day you would have

William Whitlock - Direct

1 gone to that residence?

2 A. Not exactly. It would be roughly approximately 1
3 or 2 p.m.

4 Q. What happened when you got on scene?

5 A. When we got on scene I went to the apartment, we
6 knocked multiple times, we got no answer, we announced
7 ourselves as the Sheriff's Office, got no answer. We
8 breached the door at apartment 408 and then we conducted
9 the search there of.

10 Q. Was anybody home?

11 A. No.

12 Q. Did you find any evidence inside?

13 A. No.

14 Q. So what happened next?

15 A. During the course of that search who came to be
16 known as Keara Kerns mother Amanda Bell arrived. At that
17 point in time I did not continue to speak with her about
18 the investigation only that if she knew where to find
19 Keara give her a call and have her come to the scene.

20 Q. Did Ms. Keara Kerns eventually come to the scene?

21 A. She did.

22 Q. Did you speak with her?

23 A. I did.

24 Q. After speaking with her, what did you do next?

25 A. At that point in time I realized she may have

Adrian Kerns - Direct

1 more information concerning the investigation and I had
2 limited details about the investigation so I had contacted
3 Investigator Brandon Brown.

4 Q. And did he come out to the scene?

5 A. He did.

6 Q. Did you participate in any further interview of
7 Ms. Kerns?

8 A. No.

9 Q. Do you remember whether you eventually took
10 custody of a firearm in this case?

11 A. Yes.

12 Q. Do you remember what kind of firearm it was?

13 A. It was a .380 handgun and a shot gun.

14 Q. I'm showing you State's Exhibit 42. Take a look
15 inside that box and tell me whether you recognize what's
16 inside.

17 A. Yes.

18 Q. How do you recognize it?

19 A. Both by the markings on the outside of the box.
20 Once I place it into P&E I would have taped everyone on
21 the box, initial inside to make sure no one else had it
22 and be sure the serial numbers was consistent with my
23 records.

24 Q. Is the firearm that's inside that box be the
25 firearm that you received from Ms. Amanda Bell on the

Adrian Kerns - Direct

1 scene that day?

2 A. Yes.

3 Q. Outside of this particular search warrant, did
4 you have any other role in the assisting the investigation
5 in this case?

6 A. No.

7 MS. SALISBURY: No further questions.

8 MR. CHAMBERS: No questions.

9 MR. ROBINSON: No questions.

10 MR. QUINN: No questions.

11 THE COURT: Thank you, sir, you may step
12 down.

13 Let's take a short recess.

14 (Jury exits the courtroom.)

15 (Whereupon, there was a brief recess.)

16 THE BAILIFF: All rise.

17 THE COURT: Please be seated. Let me see the
18 lawyers, please.

19 (Whereupon, there was a bench conference.)

20 I have never seen such continued unrestrained
21 misconduct by people in a gallery, not ever, and I've been
22 doing this for going on 35 years. I will tell you this,
23 anybody who has any involvement in this case has any kind
24 of contact with a juror again, I will put them in jail.
25 You see somebody with a badge on their lapel, you turn and

Adrian Kerns - Direct

1 go the other way. We are not playing a game. Anything
2 else?

3 MS. SALISBURY: A housekeeping matter, Your
4 Honor. I am preparing in the next few witnesses to
5 introduce some forensic examination report of cell phones
6 that were seized in this case. After I reviewed the
7 material retrieved from the phones, there is a substantial
8 amount of extremely explicit material some in the phone of
9 text messages, some in the form of photographs. I'm
10 asking the Court for guidance of how you want me to deal
11 with that issue. I can redact them if that's what you'd
12 like. I can try to eliminate the photographic components
13 of the report, but with regard to Mr. Johnson's phone in
14 particular some of the text message are explicit.

15 THE COURT: Any motions from the defense
16 counsel?

17 MR. CHAMBERS: No, Your Honor.

18 MR. ROBINSON: None, Your Honor.

19 MR. ABDALLA: For Mr. Johnson, I'd obviously
20 want all that redacted.

21 MS. SALISBURY: This is from Larry Johnson's
22 cell phone.

23 MR. ABDALLA: I apologize, no motions.

24 MR. QUINN: No, Your Honor.

25 THE COURT: That's just the way it is. You

Adrian Kerns - Direct

1 make a bed you lie in it. Okay.

2 Bring the jury in.

3 (Jury enters the courtroom.)

4 MS. SALISBURY: The State calls Mr. Adrian
5 Kerns.

6 THE CLERK: Mr. Kerns, please come around.
7 Please place your left hand on the Bible and raise your
8 right hand as best you can.

9 ADRIAN KERNS, having been duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SALISBURY:

13 Q. Mr. Kerns, what is your sister's name?

14 A. Simone Kerns.

15 Q. It's apparent to everyone that you're in custody.

16 Are you in the Detention Center for any charges related to
17 this case?

18 A. No, ma'am.

19 Q. Do you remember taking some guns from your sister
20 back in July of 2011?

21 A. Not that I recall.

22 Q. At no point during the summer of 2011 did you
23 take a shot gun and a handgun from your sister and return
24 them to her?

25 A. I can't remember.

Amanda Bell - Direct

1 Q. Alright. You spoke with your mother about
2 returning some guns to the police?

3 A. Not that I remember.

4 Q. If you would answer any questions these lawyers
5 have for you.

6 MR. CHAMBERS: I have no questions on behalf
7 of Mr. Booker.

8 MR. ROBINSON: No questions.

9 MR. ABDALLA: No questions.

10 MR. QUINN: No questions on behalf of
11 Mr. Sadler.

12 THE COURT: Alright, step down.

13 MS. SALISBURY: The State calls Ms. Amanda
14 Bell.

15 THE CLERK: Place your left hand on the Bible
16 and raise your right.

17 AMANDA BELL, having been duly sworn,
18 testified as follows:

19 MR. CHAMBERS: Before Ms. Bell testified and
20 I'm just acting on information that's been given to me but
21 apparently Ms. Bell has been sitting in the courtroom and
22 not sequestered.

23 THE WITNESS: I was asked to come here, sir.

24 MS. SALISBURY: It's my understanding
25 Mr. Bannister didn't have Ms. Kerns or Ms. Bell come until

Amanda Bell - Direct

1 1 or 2:00. I don't believe that I've seen her in the
2 courtroom.

3 THE WITNESS: I've been in the waiting area.

4 THE COURT: Alright.

5 DIRECT EXAMINATION

6 BY MS. SALISBURY:

7 Q. Are you Ms. Simone Kerns's and Mr. Adrian Kerns's
8 mother?

9 A. I am.

10 Q. Do you remember back in July of 2011 retrieving
11 some guns and giving them to police?

12 A. I do.

13 Q. Would you describe for the jury what it is that
14 exactly happened how you came into possession of these
15 guns?

16 A. I went and picked them up to my son and bought it
17 back to the police office and gave it back to them.

18 Q. Where did you go to retrieve them from your son?

19 A. In Roosevelt.

20 Q. Do you remember which guns you go from your son?

21 A. It was shotgun and a handgun.

22 Q. And what did you do with them?

23 A. Gave them to the police officer.

24 Q. Did you do anything else with those guns?

25 A. No, ma'am.

Devon Hoover - Direct

1 Q. Did you ever talk with the police again?

2 A. No, ma'am.

3 Q. Thank you, ma'am.

4 MR. CHAMBERS: On behalf of Mr. Booker no
5 questions for this witness.

6 MR. ROBINSON: On behalf of Mr. Williams no
7 questions.

8 MR. ABDALLA: On behalf of Mr. Young no
9 questions.

10 MR. QUINN: No questions, Your Honor.

11 THE COURT: Thank you, ma'am, you may step
12 down.

13 MS. SALISBURY: The State calls Investigator
14 Devon Hoover. Investigator Hoover, would you please come
15 up and be sworn.

16 THE CLERK: Investigator, would you please
17 place your left hand on the Bible and raise your right
18 hand.

19 DEVON HOOVER, having been duly sworn,
20 testified as follows:

21 State your name for the record.

22 THE WITNESS: Devon Hoover.

DIRECT EXAMINATION

24 BY MS. SALISBURY:

25 Q. Investigator Hoover, where do you work?

Devon Hoover - Cross

1 A. Greenville County Sheriff's Office.

2 Q. And in what capacity?

3 A. Armed robbery investigator.

4 Q. How long have you been with the Sheriff's Office?

5 A. About seven years.

6 Q. Do you recall whether you were assisting in the
7 investigation that's the subject of this trial?

8 A. Yes, ma'am, I was.

9 Q. Do you recall participating in the arrest of the
10 defendant, Mr. Raymond Young?

11 A. Yes, ma'am, I do.

12 Q. Where did that arrest take place?

13 A. County Square.

14 Q. Did you retrieve any items from Mr. Young at the
15 time of his arrest?

16 A. Yes, ma'am, there were two cell phones.

17 Q. Were both of them Mr. Young's cell phones?

18 A. No, ma'am, one was somebody else's.

19 Q. What did you do with the cell phone you collected
20 that day?

21 A. I took the cell phones, did a search warrant for
22 each one of them and turned them over to Investigator
23 Wear.

24 Q. How does that process work? What do you mean you
25 turned them over to a different person?

David Weiner - Direct

1 A. For a forensic search, the investigator or
2 officer per say isn't necessarily the one who goes through
3 the phone. We have them forensically searched.

4 Q. Are you the investigator that made the request
5 that the forensics be searched?

6 A. Yes, ma'am.

7 Q. And where did you put the phones after you took
8 it into custody and request that this analysis be done?

9 A. It would have been put into property and
10 evidence.

11 Q. Sir, if you would answer any questions this
12 lawyer has for you.

13 MR. CHAMBERS: Mr. Booker has no questions.

14 MR. ROBINSON: Mr. Williams has no questions.

15 CROSS-EXAMINATION

16 BY MR. ABDALLA:

17 Q. Isn't it true you recovered these phones from
18 Ms. Dawkins?

19 A. They would have been in the car with her, yes,
20 sir.

21 MR. ABDALLA: No further questions.

22 MR. QUINN: No questions.

23 THE COURT: You may step down. Thank you
24 very much.

25 MS.SALISBURY: The State calls Investigator

David Weiner - Cross

1 David Weiner.

2 THE CLERK: Sir, please place your left hand
3 on the Bible and raise your right hand.

4 DAVID WEINER, having been duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SALISBURY:

8 Q. Currently where do you work?

9 A. Greenville County Sheriff's Office.

10 Q. In what capacity?

11 A. Currently I'm a supervisor in the crimes against
12 children unit.

13 Q. Where were you working in July of 2011?

14 A. I was employed as an armed robbery investigator.

15 Q. So you remember in July of 2011 assisting in this
16 investigation?

17 A. Yes, ma'am.

18 Q. Specifically do you recall participating in the
19 arrest of Larry Johnson?

20 A. Yes, ma'am.

21 Q. At the time of his arrest, did you collect any
22 items from Mr. Johnson?

23 A. Whatever personal property he had prior to his
24 arrest I had obtained a cell phone that was in his
25 property a little bit earlier in the day.

James Perry - Direct

1 Q. What did you do with that cell phone?

2 A. He consented to a search of it with a form that
3 he signed and I took it down to the investigator at the
4 Sheriff's Office by the name of Jim Perry and he's one of
5 the two investigators that handles computer forensics cell
6 phones.

7 Q. And after you turned over the cell phone, did you
8 have any other involvement with at piece of evidence?

9 A. No, ma'am.

10 CROSS-EXAMINATION

11 BY MR. CHAMBERS:

12 Q. And your reason for arresting Mr. Johnson didn't
13 have anything to do with the case we're here on today,
14 correct?

15 A. Yes, sir.

16 Q. Completely separate case?

17 A. Yes, sir.

18 MR. ROBINSON: No questions.

19 MR. ABDALLA: No questions.

20 MR. QUINN: No questions.

21 THE COURT: Thank you, sir, you can step
22 down.

23 MS. SALISBURY: The state calls Investigator
24 Jim Perry.

25 THE CLERK: Place your left hand on the Bible

James Perry - Direct

1 and raise your right hand.

2 JAMES PERRY, having been duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SALISBURY:

6 Q. Where do you work?

7 A. Greenville County Sheriff's Office.

8 Q. And how long have you been with the Sheriff's
9 Office?

10 A. Law enforcement about 30 years, some with
11 Greenville City, some with Greer but Greenville County
12 since '95.

13 Q. What is your capacity at the Sheriff's Office?

14 A. I work in the data recovery unit. We do computer
15 forensics, cell phone forensics, GPS, anything that has to
16 do with digital media pretty much comes through our
17 office.

18 Q. Do you recall whether you were asked to examine
19 some cell phones related to the defendants in this case?

20 A. I was.

21 Q. I'd like to show you State's 55. Do you
22 recognize that document?

23 A. I do.

24 Q. What is it?

25 A. It's a print out of the forensic report dealing

James Perry - Direct

1 with LG670 cell phone.

2 Q. And can you tell from whom the request to analyze
3 that phone came?

4 A. I am.

5 Q. Who requested that that phone be analyzed?

6 A. The LG670 was requested by Investigator Dave
7 Weiner.

8 Q. Alright. And how does that process work? What
9 do you do to forensically analyze that phone?

10 A. Well, we take the phones and cells phone
11 forensics is a lot different than computer forensics.
12 Computer forensics you take the hard drive out and you
13 connect it to a forensic machine. We have forensic
14 software and it pretty much all works the same. With cell
15 phones because it's such a changing environment all the
16 time different phones can give you different data when you
17 conduct forensic examination.

18 We take the phones, we find out which cord
19 through a process from a device and then we start the
20 analysis using Cell Bright. It's the forensic machine and
21 software that we use.

22 Q. And what happens after that software has
23 completed its magic?

24 A. After we've done an examination, downloaded the
25 information, the machine actually generates this report,

James Perry - Direct

1 puts it on to a thumb drive and then we transfer down to a
2 CD.

3 Q. It's State's Exhibit 55 the report that was
4 generate after the software finished its analysis of the
5 phone?

6 A. Yes, print out of it.

7 MS. SALISBURY: State offers 55.

8 MR. CHAMBERS: No objection.

9 MR. ROBINSON: No objection.

10 MR. ABDALLA: Subject to my earlier
11 objection.

12 MR. QUINN: No objection.

13 (Printout marked as State's Exhibit No. 55
14 for identification and admitted into evidence.)

15 BY MS. SALISBURY:

16 Q. When the phone generates its report, is it able
17 to retrieve any information that is not stored locally on
18 the phone?

19 A. Like deleted information?

20 Q. Sure. What information can it collect?

21 A. It all comes down to the type phone it is. If
22 you give me an Iphone 4s I can give you deleted text. I
23 can give you location you've been, I can give you the
24 whole ball game. The less advanced the phone is, the less
25 we're able to actually get off of it.

James Perry - Direct

1 Q. Specifically it relates to this phone was the
2 software able to get any deleted information from the
3 phone?

4 A. No.

5 Q. After reviewing that report, did you determine
6 that there were any text messages during the times of
7 midnight and July 17, 2011 until 5:00 a.m., July 17 of
8 2011?

9 A. No, there were not any.

10 Q. If there had been phone calls made, received or
11 missed that are not of record on the phone, is that report
12 going to note when those calls happened?

13 A. No. You can delete phone calls randomly. You
14 don't have to clear the whole phone. You can go in and
15 specifically say this phone number delete it and the one
16 before it and the one after it still show up. The report
17 is not going to show it.

18 Q. State's 56, do you recognize what that document
19 is?

20 A. This is another Cell Bright Forensic report.

21 Q. And what type of phone were you analyzing?

22 A. LS670 LG phone.

23 Q. Are you able to determine who asked you to
24 analyze that particular report?

25 A. Investigator Devon Hoover.

James Perry - Cross

1 Q. State's 56 was the report you generated after the
2 forensic analysis?

3 A. That is correct.

4 MS. SALISBURY: State moved in 56.

5 MR. CHAMBERS: No objection.

6 MR. ROBINSON: No objection.

7 MR. QUINN: No objection.

8 THE COURT: Same ruling.

9 (Report marked as State's Exhibit 56 for
10 identification and admitted into evidence.)

11 BY MS. SALISBURY:

12 Q. Were you able to determine that there was any
13 data on the phone in the way of text messages, made calls,
14 received calls or missed calls before the date of July 18,
15 2011?

16 A. No.

17 Q. There is no data on that phone before July 18th?

18 A. I do not believe so. There were some phone calls
19 before July 18th.

20 Q. What's the earliest phone call that was recorded
21 on that?

22 A. July 15, 2011.

23 Q. Answer any questions these attorneys have for
24 you.

25 MR. CHAMBERS: On behalf of Mr. Booker, I

James Armstrong - Direct

1 have no questions.

2 CROSS-EXAMINATION

3 BY MR. ROBINSON:

4 Q. There are towers out there that kind of get their
5 3G or 4G from?

6 A. Yes, but these are not.

7 Q. And isn't there a way to find out the location of
8 people by pinging these phones?

9 A. It's possible.

10 Q. In this case, that was not done?

11 A. I have no idea. That's not an area that I would
12 be involved in.

13 Q. Thank you.

14 MR. ABDALLA: No questions.

15 MR. QUINN: No questions.

16 MS. SALISBURY: No redirect.

17 THE COURT: You can step down.

18 Ladies and gentlemen, this is a good time to
19 break.

20 (Jury exits the courtroom.)

21 (Whereupon, there was a brief break.)

22 MS. SALISBURY: The State calls James
23 Armstrong. Ms. Armstrong, please come up to be sworn.

24 THE CLERK: Place your left hand on the Bible
25 and raise your right hand.

James Armstrong - Direct

1 JAMES WILLIAM ARMSTRONG, having been duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SALISBURY:

5 Q. Mr. Armstrong, where do you work?

6 A. Greenville County Department of Public Safety,
7 forensics division, crime laboratory.

8 Q. And what is your -- how long have you been
9 working in that capacity?

10 A. Almost 17 years.

11 Q. What are some of your responsibilities at the
12 crime lab?

13 A. Split into two different fields, forensic drug
14 chemist and a firearm's examiner.

15 Q. Let's talk specifically about the firearms, do
16 you have any special training to help you perform the
17 duties that your asked to do a a firearm examiner?

18 A. Yes, ma'am, I have a bachelor of science degree
19 in chemistry. I trained in an apprenticeship and I
20 trained in that training process with a retired firearm's
21 examiner from the Philadelphia Police Department. I've
22 toured 13 different firearm manufacturing facilities where
23 I could watch the making of the firearm from raw material
24 to finished product. I did four different ammunition
25 manufacturing facilities to see how they process their

James Armstrong - Direct

1 ammunition. I've had five different armor course. I've
2 had over 224 hours of training on the microscope and
3 attended numerous courses sponsored by the Bureau of
4 Alcohol, Tobacco and Firearms. I'm a member of the
5 Association of Armor and Tool Marker Examiners and I've
6 testified in the area of firearm identification as an
7 expert 32 times.

8 Q. What are you looking for what you examine any
9 particular firearm?

10 A. I'm looking at the firearm and just the firearm
11 itself. I'm looking for manufacturer, make, model, serial
12 numbers. We also look down the barrel to look at the
13 riffling and then we make sure the firearm is actually
14 function or operable. We then go test fire the firearm
15 and the generate reports. If there is any comparison to
16 be done from the test fires, we then compare those by way
17 of using a comparison microscope or question the evidence
18 to the test fires.

19 Q. So in conducting your examinations, are you able
20 to tell if a particular bullet casing comes from a
21 particular firearm?

22 A. Yes, ma'am.

23 Q. Could you describe for the jury the difference
24 between how a semi-automatic firearm works as compared to
25 a revolver?

James Armstrong - Direct

1 A. In a revolver, it basically has the name of the
2 revolver. The magazine so the speak is a revolver, it
3 revolves in a circle around the frame with the projectiles
4 in line with the barrel. So when you pull the trigger,
5 the cylinder revolves, rotates, for the next line in the
6 fire.

7 A semi-automatic weapon is actually loaded
8 with a magazine. It's inserted in a magazine well and
9 then the slide is pulled back on a charging handle, and
10 when the firearm is fired, the trigger is pulled and the
11 projectile actually fire. And then the casings, the fire
12 cartridge casing is ejected from the firearm as with a
13 revolver it stays with the gun and does not come up unless
14 it is manually unloaded.

15 Q. What is your general process when you are asked
16 to examine any particular piece of evidence as it relates
17 to firearms, a gun, a casing, a projectile or any of those
18 items?

19 A. When I first receive an item, I make sure that
20 item is as labeled on the property and evidence sheet. I
21 then I do an inventory of the bags or whatever I may have,
22 I make my notes, identify each item individually, and as
23 working with the item if it has a serial number I record
24 that as a identifier. If it's a fire cartridge case or
25 projectile, I then engrave my initials and item number on

James Armstrong - Direct

1 those items so I can identify them later and then generate
2 my notes from my findings and then do comparisons.

3 Q. How is the comparison process actually work?

4 A. It actually taking each individual item such as
5 fire cartridge casings place one item on the left hand
6 side of the comparison microscope and another item on the
7 right hand side and it has a view changer; so to speak
8 that you can actually move and look at both items at the
9 same time and overlap them and then make a comparison that
10 way.

11 Q. How were you able to make that comparison, what
12 are you looking for?

13 A. We're looking for microscopic imperfections that
14 have been transferred to the fire cartridge case and
15 projectiles. Projectiles when they go down the barrel,
16 they pick up striations from the barrel. The fire
17 cartridge casings when it is actually fired it expands in
18 all directions and then it actually impresses the, what's
19 called a breech face region of the firearm and it is
20 impressed onto the fire cartridge case and it is unique to
21 that firearm.

22 Q. Does every firearm impress a unique imprint on a
23 casing that it ignites?

24 A. For the most part everyone that can be tested,
25 they are unique. Not all of them are identifiable at the

James Armstrong - Direct

1 time, but they are unique to that firearm.

2 Q. I want to know a little bit more about what you
3 mean by striations and I forget the other word that you
4 used, but what does that mean in terms of what you
5 actually see under the microscope?

6 A. When looking at a fire cartridge case, we're
7 looking at striations or impressions. The striations are
8 a movement is when a projectile is moving down the barrel
9 it leaves marks behind like a scratch. And impression is
10 basically an impression. The fire cartridge case is
11 sitting flat. The breech face of the firearm is say here
12 and when it's fired it's pressed against it, and those
13 marks impressed into the back side of the cartridge
14 casings.

15 MS. SALISBURY: Your Honor, I'd offer
16 Mr. Armstrong as an expert in ballistics analysis.

17 THE COURT: Any voir dire?

18 MR. CHAMBERS: None from Mr. Booker, Your
19 Honor.

20 MR. ROBINSON: None from Mr. Williams, Your
21 Honor.

22 MR. ABDALLA: None from Mr. Young, Your
23 Honor.

24 MR. QUINN: Mr. Sadler has no voir dire.

25 THE COURT: He's so qualified.

James Armstrong - Direct

1 BY MS. SALISBURY:

2 Q. Do you recall being asked to examine some items
3 in this investigation?

4 A. Yes, ma'am.

5 Q. When did you undertake that examination?

6 A. I received the bulk of the items on July 26,
7 2011.

8 Q. How do those items come to you? What's that
9 actual physical process?

10 A. First an officer must fill out a request form
11 which gives me permission to touch his evidence to go and
12 do the testing. They place it down in the property and
13 evidence room. It's in the basement of the Law
14 Enforcement Center. The property clerk actually pulls the
15 evidence, place it in a box for me to go and sign out.
16 Then I would go down to the property room, ask for any
17 firearm related cases and they would bring them to me at a
18 desk and then I would actually sign the items out.

19 Q. Did you examine, receive, touch, do anything with
20 any items in this case before July 26th?

21 A. No, ma'am.

22 Q. Now, once you've received those items that have
23 been delivered to you from property and evidence that have
24 been delivered to you from property and evidence and you
25 sign for them, what is the first thing you do?

James Armstrong - Direct

1 A. The first thing I do is actually notes of the
2 items of the inventory of what I have and then generate my
3 notes.

4 Q. Generally what did you find when you inventoried
5 this set of evidence?

6 A. I had a variety of different fire cartridge
7 casings and the projectiles and fragments.

8 Q. Let's talk about the projectile and fragments,
9 first. What do you do with that kind of evidence?

10 A. First with the projectile, I actually clean it to
11 make sure it doesn't have any biohazard material on it and
12 then I weigh the item, record that, identify it by its
13 caliber by it taking measurements. Then I look at the
14 lands and grooves and count the number of lands and
15 grooves it has on the projectile and record that. And
16 then actually engrave the item number and my initials on
17 the item as well and then set it aside and wait for
18 further comparison purposes.

19 Q. Could you describe what you mean by lands and
20 grooves?

21 A. In the barrel of the firearm we have what's
22 called lands and grooves, the raised and lower portions.
23 They are actually in a spiral shape. If you ever seen the
24 beginnings of a James Bond movie where it's coming on,
25 you're looking down the barrel of a firearm, raised

James Armstrong - Direct

1 portions, lower portions.

2 Q. I'm going to hand you Item 42. What is Item 42,
3 what is Item 42?

4 A. A .45 caliber bullet specimen.

5 Q. A .45 caliber bullet specimen.

6 A. Yes, ma'am. IRO 44 is a metal fragment which was
7 not suitable for comparison purposes, IRO 59 was a fire
8 bullet specimen caliber .40 or 10 millimeter.

9 Q. Now, is that the same as you described with the
10 .38 and the .9 millimeter?

11 A. Not exactly. The .40 and the .10 millimeter
12 actually have the exact same size projectile. You just
13 determine which cartridge casing came from.

14 Q. What are fragments or bullets?

15 A. RO 61 is a fire bullet jacket fragment, IRO 63 is
16 a fire bullet specimen caliber .45, and IRO 64 is a fire
17 bullet specimen caliber .45.

18 Q. Other than determining what caliber these
19 fragments are consistent with, are you able to determine
20 anything else about the firearm from which they came?

21 A. Yes, ma'am, by taking measurements of the lands
22 and grooves, I can get a rough ballpark idea of what type
23 of firearm it may have come from.

24 Q. If you do not have a firearm to compare to those
25 actual projectiles, is there anyway for you to determine

James Armstrong - Direct

1 definitely where they came from?

2 A. No, ma'am.

3 Q. Let's move on to the actual casings in this case,
4 looking at State's Exhibit 25, do you recognize the items
5 that are contained in State's Exhibit 25?

6 A. Yes, ma'am, I do.

7 Q. How do you recognize them?

8 A. My initials and the date that I've sealed along
9 with the red stamp.

10 Q. How is your analysis of a casing different than
11 an actual bullet or fragment?

12 A. It's similar in some nature, but the casing
13 actually tells the caliber of which the cartridge made or
14 manufactured for. From there I can actually tell the
15 manufacturing of the casing as well as the caliber. The
16 only thing I don't do is I don't have anything to measure
17 or weight. From there we do this comparison to see if the
18 like calibers were fired from the same firearm if we have
19 a firearm to compare it to.

20 Q. Can you describe exactly what you did to analyze
21 all of those casings that are contained within State's
22 Exhibit 25?

23 A. Each casing that came to me I cut open the
24 envelope, inventoried what I had in my notes, engrave the
25 item number and my initials in the mouth of the case so I

James Armstrong - Direct

1 can identify it later then compared like calibers with
2 each other and then write my report.

3 Q. Can you tell the jury what it is you determined
4 about those particular items?

5 A. Items R07, 12, 13, 14, 19, 20, 25 and 45 are
6 caliber .45 auto fire cartridge casings and they were
7 fired in the same gun but not the same as the other fire
8 cartridge cases submitted in this case.

9 Q. Did you have any other .45 caliber ammunition
10 that you examined?

11 A. No. Not that I recall.

12 Q. How is it that you can be sure that all of those
13 .45 caliber casings came from the same gun?

14 A. By doing an individual microscopic comparison
15 with each other.

16 Q. State's 26, did you perform any analysis with
17 respect to State's 26?

18 A. Yes, ma'am, I did.

19 Q. What did you determine about it?

20 A. Item No. IRO 6 I found it to be ,40 Smith and
21 Wesson fire cartridge case.

22 Q. Were there any other .40 caliber casings that you
23 analyzed or received in this case?

24 A. Not that I recall.

25 Q. Alright. State's No. 27, do you recognize the

James Armstrong - Direct

1 items that are inside that envelope?

2 A. Yes, ma'am, I do.

3 Q. How do you recognize them?

4 A. Date and initials.

5 Q. Could you describe to the jury what your findings
6 were with respect to those particular items?

7 A. The items are IRO 10, 16, 17, 22, 23 and 26, 27,
8 they are caliber .9 millimeter Lugger fire cartridge
9 casings and they were fired in the same firearm, but not
10 as the same firearm as any of the fire cartridge cases
11 submitted.

12 Q. Did you examine any other .9 millimeter casings
13 in this particular case?

14 A. Yes, ma'am, I did.

15 Q. Were you able to determine that this series of .9
16 millimeter casings was fired from a separate firearm as
17 the other .9 millimeter casings?

18 A. That's correct.

19 Q. And I'll show you 28, tell me if you recognize
20 what's inside that envelope.

21 A. Yes, ma'am, I do.

22 Q. How do you recognize those items?

23 A. My initials and the date.

24 Q. Could you describe for the jury your findings
25 with respect to those particular items?

James Armstrong - Direct

1 A. IRO 1, 2, 3, 4, 5, 8, and 9, I found them to be
2 caliber .380 auto fire cartridge casings that bare similar
3 but insufficient microscopic marks to the identification
4 to each other but they were not fired from any of the
5 other firearms as the other fire cartridge casings
6 submitted.

7 Q. So you had more than one set of .380 casings that
8 you examined?

9 A. Yes, ma'am, I did.

10 Q. Were you able to determine that this series of
11 .380 automatic casings were not fired from any of -- or
12 fired from the same gun as any of the .380 casings that
13 you examined?

14 A. Correct.

15 Q. Exhibit 29, could you take a look at that
16 envelope and tell me whether you recognize those items?

17 A. Yes, ma'am, I do.

18 Q. How do you recognize them?

19 A. I have the initials and the date on the red stamp
20 seal.

21 Q. Could you describe for the jury your findings as
22 it relates to that series of items?

23 A. Items RO 18, 21, 24, 29 and 31, they are also
24 caliber .380 auto fire cartridge cases. They were fired
25 in the same firearm, but not the same as the other fire

James Armstrong - Direct

1 cartridge cases submitted in the case.

2 Q. So were you able to determine that this series of
3 .380 automatic casings were fired from the same handgun as
4 those that we just talked about with State's Exhibit 28?

5 A. Yes, ma'am.

6 Q. With respect to State's 30, do you recognize the
7 items in that envelope?

8 A. Yes, ma'am, I do.

9 Q. How do you recognize it?

10 A. My initials and date on the red.

11 Q. What did you determine after analyzing those
12 particular items?

13 A. They are items IRO 11, 15, 28 and 30, they are
14 caliber .9 millimeter Lugger fire cartridge casings. They
15 were fired in the same firearm but not the same as the
16 others submitted fire cartridge casings.

17 Q. So were you able to determine that this series of
18 .9 millimeter casings was fired from a distinct firearm as
19 the .9 millimeter in State's Exhibit No. 27?

20 A. That's correct.

21 Q. With respect to State's Exhibit 31, do you
22 recognize those items?

23 A. Yes, ma'am, I do.

24 Q. How do you recognize those?

25 A. My initials and date under the seal.

James Armstrong - Direct

1 Q. And would you describe for the jury your findings
2 with respect to those particular items?

3 A. Items IRO 66, 67, 68, 69, 70, 71, I found these
4 to be caliber .380 auto fire cartridge cases and they were
5 fired in the same firearm, but not the same as the other
6 submitted casings.

7 Q. Just so I'm clear, were you able to determine
8 that this series of .380 automatic casings were fired from
9 a now third and distinct .380 firearm from the other two
10 we've already heard?

11 A. Yes, ma'am.

12 Q. So based on your analysis of this series of
13 casings from how many firearms did you determine that you
14 had ejected shell casings?

15 A. Seven.

16 Q. Okay. Now, I want to talk a little bit about the
17 .9 millimeter handgun that's been labeled State's Exhibit
18 33. Can you tell me whether you recognize that item?

19 A. Yes, ma'am, I do.

20 Q. How do you recognize that?

21 A. I had my initials on the date on the box where I
22 actually open the box in the office. Also the serial
23 number on the firearm is DUS 4186 and recorded on my
24 report.

25 Q. What did you do with that firearm?

James Armstrong - Direct

1 A. Identify the make, model, serial number, caliber
2 and then test fired the firearm, collected the test
3 specimens and then compared to any of the .9 millimeters,
4 fire cartridge casings, and projectiles in the case.

5 Q. Did you determine whether any of the .9
6 millimeter casings that were collected in this case were
7 fired from that .9 millimeter firearm?

8 A. The JFH 6 pistol did not fire any of the fire
9 cartridge casings submitted in this case.

10 Q. So did any of the .9 millimeter casings come from
11 that firearm?

12 A. No, ma'am.

13 Q. I want to talk to you about the magazine that's
14 inside that particular box. Do their remain any
15 projectiles or cartridges inside that magazine?

16 A. No, ma'am.

17 Q. Specifically how this .9 millimeter would work
18 how is a projectile fed to be fired? How does the gun get
19 ready to fire a bullet?

20 A. Once you place a cartridge in a magazine, it is
21 held in by the lips of the magazine. And then you place
22 the magazine in the magazine well of the firearm. If the
23 slide is locked to the rear such as this one here, you can
24 hit the slide stop or pull the slide back and then release
25 it and then it would actually automatically feed or push

James Armstrong - Direct

1 the cartridge up into the chamber of the firearm and then
2 it's ready to fire.

3 Q. What happens when the trigger is pulled on that
4 .9 millimeter and the cartridge is fired?

5 A. When the trigger is pulled, the fire
6 administrates the primer, the primer ignites a little
7 spark into the powder charge of the case. That case
8 starts burning, pressure builds, projectile goes down the
9 barrel, casing swells and pushes a slide to the rear. As
10 it pushes to the rear, it has an extractor and injector
11 which then kick the cartridge case out to the side. And
12 then once that is kicked away, the slide goes forward,
13 picking up another cartridge going into the chamber if it
14 has a round in the magazine.

15 Q. Is the next round automatically fed into the
16 chamber?

17 A. Provided there is not a malfunction.

18 Q. When is it that you generated the report that
19 documents all of these findings

20 A. The bulk was created on July 28, 2011.

21 Q. Now, fast forward a little bit, did you have the
22 opportunity to compare any other firearms as part of this
23 investigation?

24 A. Yes, ma'am, I did.

25 Q. With respect to Item No. RLR 1, do you know what

James Armstrong - Direct

1 item to which I am referring?

2 A. Yes, ma'am.

3 Q. What is RLR 1?

4 A. The European American Arms the model EA 380 semi-
5 automatic pistol caliber .380 auto with serial number AE
6 20175. It was made in Italy and imported by EAA
7 Corporation located in Florida and it was submitted with 7
8 caliber .380 auto cartridges.

9 Q. Did you test fire that weapon?

10 A. Yes, ma'am, I did.

11 Q. Did you find it to be operable?

12 A. Yes, ma'am, I did.

13 Q. Did you compare the casings that you developed
14 from that test fire to a .380 casings that were seized as
15 evidence in this case?

16 A. Yes, ma'am, I did.

17 Q. Did you determine whether that .380 handgun fired
18 any of these projectiles?

19 A. The RLR1 pistol was cross checked against the
20 fire cartridge casings from two different case numbers
21 including this one. There was one fire cartridge case
22 from Case No. County 2011-104-691 that was fired in the
23 RL1 but not from this case.

24 Q. Now, did you compare another firearm in this case
25 WTC1?

James Armstrong - Direct

1 A. Yes, ma'am, I did.

2 Q. What was Item WTC1?

3 A. It was a High Point Model CF .380 semi-automatic
4 pistol with serial number of P797784 caliber .380 auto and
5 it was submitted with four caliber .380 auto cartridges.

6 Q. Did you test fire that .380 handgun?

7 A. Yes, ma'am, I did.

8 Q. Did you find it to be operable?

9 A. Yes, ma'am, I did.

10 Q. Did you compare that casing that you developed to
11 the .380 casings in this case?

12 A. Yes, ma'am, I did.

13 Q. Were you able to determine whether that .380
14 firearm fired any of the casings in this case?

15 A. It did not.

16 Q. Now, let's talk about State's Exhibit 42. I'd
17 like you to open that box and tell me whether you
18 recognize that firearm?

19 A. Yes, ma'am, I do.

20 Q. How do you recognize it?

21 A. On the box it has my initials and the date when I
22 opened it, and I record serial number of the firearm in my
23 notes and it's the same as in my report.

24 Q. Did you test fire that handgun?

25 A. Yes, ma'am, I did.

James Armstrong - Direct

1 Q. And just to be clear, what caliber is that
2 particular handgun?

3 A. It's a .380 auto.

4 Q. Did you determine whether it was operable?

5 A. Yes, ma'am, it is.

6 Q. Did you compare the casing that you developed
7 from that firearm to the casings in this particular case?

8 A. The pistol was cross checked as well as some
9 bullet specimens and I was able to determine items IRO 18,
10 21, 24, 29 and 31 fire cartridge casings were fired in
11 this pistol.

12 Q. So the casings from State's Exhibit 29 were fired
13 from the handgun that is State's Exhibit 42?

14 A. That's correct.

15 Q. Now, generally speaking you described the process
16 of how an automatic weapon or semi-automatic weapon
17 functions, the process, when the casing is ejected from
18 the firearm at what speed, at what rate? How far would
19 you expect a casing to travel?

20 A. That depends on if there's anything in the way
21 and the ejector and the extractor or designed and the
22 firearm itself.

23 Q. After you completed your examination, the
24 casings, the comparison of these firearms, what did you do
25 with each of these items of evidence?

James Armstrong - Cross

1 A. All the items were sealed and taken back to
2 property and evidence for storage.

3 MS. SALISBURY: The State offers Exhibits 25
4 - 33 and Exhibit 42.

5 MR. CHAMBERS: No objection from Mr. Booker,
6 Your Honor.

7 MR. ROBINSON: No objection from
8 Mr. Williams.

9 MR. ABDALLA: No objection from Mr. Young.

10 MR. QUINN: No objection from Mr. Sadler.

11 THE COURT: Admitted.

12 (Bullet casings marked as State's Exhibit No.
13 25 for identification and admitted into evidence.)

14 (Cartridge casings marked as State's Exhibit
15 No. 26 for identification and admitted into evidence.)

16 (.9 millimeter casings marked for
17 identification as State's Exhibit No. 27 and admitted into
18 evidence.)

19 (Cartridge casings marked for identification
20 as State's Exhibit No. 28 for identification and admitted
21 into evidence.)

22 (Cartridge casings marked for identification
23 as State's Exhibit No. 29 and admitted into evidence.)

24 (Lugger cartridge casings marked as State's
25 Exhibit No. 30 for identification and admitted into

James Armstrong - Cross

1 evidence.)

2 (.380 cartridge casings marked as State's
3 Exhibit No. 31 for identification and admitted into
4 evidence.)

5 (Cartridge casings marked as State's Exhibit
6 No. 32 for identification and admitted into evidence.)

7 (.9 millimeter handgun marked s State's
8 Exhibit No. 33 for identification and admitted into
9 evidence.)

10 (.380 firearm marked as State's Exhibit No.
11 42 for identification and admitted into evidence.)

12 MS. SALISBURY: I have no further questions.

13 MR. CHAMBERS: No questions.

14 MR. ROBINSON: Mr. Williams has no questions,
15 Your Honor.

16 MR. ABDALLA: No questions from Mr. Young.

17 CROSS-EXAMINATION

18 BY MR. QUINN:

19 Q. I'm showing you State's Exhibit 25. Is it fair
20 all those cartridges came from one gun?

21 A. Yes, sir, all those were fired in the same
22 firearm.

23 Q. And was that a .45 caliber automatic?

24 A. It was a .45 auto, yes.

25 Q. So this is one gun and these cartridges are

Larry Johnson - Direct

1 an identification on a projectile and the same way with a
2 projectile with the casing.

3 Q. So outside of determining possible the caliber of
4 a bullet or a fragment, without the handgun, can you tell
5 anything about bullets and fragments and projectiles?

6 A. Without a firearm actually counting the lands and
7 grooves and measuring them and giving them an idea of what
8 type of firearm may have been used and that is it.

9 MS. SALISBURY: I don't have any additional
10 questions.

11 THE COURT: Thank you, sir, you may step
12 down.

13 MS. SALISBURY: This may be a lengthier
14 witness, do y'all want to take a short break or keep
15 going?

16 THE COURT: Let's take a short break.

17 (Jury exits the courtroom.)

18 (Whereupon, there was a brief recess.)

19 (Jury re-enters the courtroom.)

20 Are you ready?

21 MS. SALISBURY: Yes, sir. Your Honor, the
22 State calls Mr. Larry Johnson, please come up to be sworn.

23 THE CLERK: Place your left hand on the Bible
24 and raise your right hand.

25 LARRY JOHNSON, having been duly sworn,

Larry Johnson - Direct

1 testified as follows:

2 Please be seated. Please state your name for
3 the record.

4 THE WITNESS: Larry Johnson.

5 DIRECT EXAMINATION

6 BY MS. SALISBURY:

7 Q. Mr. Johnson, let's get right to it, were you
8 charged that's part of this incident that's the subject of
9 this trial?

10 A. Yes, I am.

11 Q. And do you know exactly what you're charged with?

12 A. Conspiracy to attempted murder and second degree
13 assault by mob.

14 Q. Did you plead guilty to both of those offenses
15 earlier this week?

16 A. Yes, ma'am.

17 Q. And have you been sentenced on those offenses?

18 A. No, ma'am.

19 Q. Has anyone made any promises to you about what
20 your sentence is going to be?

21 A. No, ma'am.

22 Q. What is your understanding of what you're here to
23 do today to assist in the prosecution of this case?

24 A. Tell my part and what part I had in the incident.

25 Q. Has anybody told you what you need to say?

Larry Johnson - Direct

1 A. No, ma'am.

2 Q. What do you remember about the Saturday night
3 immediately proceeding the Sunday morning incidents? What
4 do you remember about July 16, 2011?

5 A. Starting from?

6 Q. The Red Planet. How did you get there?

7 A. I drove.

8 Q. What kind of car did you drive?

9 A. 1982 Cutlas Supreme.

10 Q. What color is it?

11 A. Black.

12 Q. Was anyone with you?

13 A. Yes, ma'am.

14 Q. Who?

15 A. Daquan Bruster.

16 Q. Had you picked him up from somewhere?

17 A. Raymond's house.

18 Q. What time did you get to the club?

19 A. I can't remember that.

20 Q. Was it already dark outside?

21 A. Yes, ma'am.

22 Q. What happened once y'all were inside?

23 A. We had went in. I was approached by a security
24 guard named Steven and he was basically telling me there
25 wasn't for any violence or fighting and stuff like that

Larry Johnson - Direct

1 and I agreed and I would try my best to keep everything
2 and that was all he asked.

3 Q. Do you remember whether there was any violence
4 inside the club that night?

5 A. Not that I recall.

6 Q. With whom were you socializing at the club?

7 A. My co-defendants.

8 Q. Who are those?

9 A. Raymond Young, Daquan Bruster, Tavarus Holmes,
10 Kinjta Sadler, Esaiveus Booker.

11 Q. Do you see some of those gentlemen in the
12 courtroom?

13 A. Yes, ma'am.

14 Q. Would you mind identifying them for the jury.
15 Let's start with Mr. Booker, do you recognize Mr. Booker?

16 A. Yes, ma'am.

17 Q. How do you know him?

18 A. I been knowing him for a while and my dad has a
19 child by his mother.

20 Q. What's your relationship like with him?

21 A. We're very close.

22 Q. What do you call him?

23 A. My brother -- oh, Trez.

24 Q. Would you identify for the jury exactly who it is
25 you know to be Trez?

Larry Johnson - Direct

1 A. With the blue sweater vest.

2 Q. In addition to him, do you see anybody else in
3 the courtroom that you were with at the club that night.

4 A. Yes, ma'am, Michael Williams.

5 Q. How do you know Michael Williams?

6 A. Been knowing him for a while too and that's
7 basically through Esaiveus.

8 Q. What's your relationship like with him?

9 A. We were close.

10 Q. How long have you known him?

11 A. A couple of years.

12 Q. Do you see him in the courtroom?

13 A. Yes.

14 Q. What's he wearing?

15 A. The white and blue stripped shirt and navy blue
16 tie.

17 Q. Who else do you recognize that was with you in
18 the club that night?

19 A. Raymond Young.

20 Q. How long have you known Raymond?

21 A. Not that long.

22 Q. How do you know him?

23 A. Through Michael Williams and like from a long
24 time ago.

25 Q. What's your relationship with him?

Larry Johnson - Direct

1 A. Not really just friends like that, I associate
2 with him.

3 Q. How?

4 A. When I see him, we speak. It's like if I see him
5 hey, how you doing, type basis like that.

6 Q. Are you part of an organization called Growth and
7 Development?

8 A. Yes, ma'am.

9 Q. How long have you been a part of that?

10 A. Probably 17 months.

11 Q. And what's your understanding of what the purpose
12 of that group is?

13 A. It's supposed to be all positive like giving back
14 to the community, helping the community, doing things for
15 children that like parents can't afford like stuff like
16 school supplies, go buy school supplies and do stuff for
17 the kids and stuff like that, community service.

18 Q. Do you have a rank?

19 A. No, ma'am.

20 Q. Do you know if anybody else has any rank?

21 A. Not that I know of.

22 Q. I got off track a little bit. You mentioned you
23 were with Raymond as well as the others in the club that
24 night, could you identify him for the jury?

25 A. White shirt, colored tie.

Larry Johnson - Direct

1 Q. Do you recognize anybody else that you were in
2 the club with that night?

3 A. Kinjta Sadler.

4 Q. Okay. How do you know Mr. Sadler?

5 A. I've been knowing Ken for a while, very close.

6 Q. How long have you known him?

7 A. I'd say like 10 years.

8 Q. What's your relationship like?

9 A. Very close.

10 Q. What do you call him?

11 A. Ken.

12 Q. In addition to these gentlemen, who else was at
13 the club with you that night?

14 A. Tavarus Holmes, Daquan Bruster, Shaquille Hogan,
15 it was a lot of people.

16 Q. What do you call Shaquille?

17 A. Lipz.

18 Q. Do you know if Tavarus Holmes has a nickname?

19 A. Just Varus.

20 Q. What about Daquan Bruster?

21 A. Buddah.

22 Q. Do you remember at some point in the night at the
23 club posing for a picture?

24 A. Yes, ma'am.

25 Q. Take a look at Exhibits 3 and 4, do you recognize

Larry Johnson - Direct

1 those photographs?

2 A. Yes, ma'am.

3 Q. Are those the photographs that y'all took there
4 at the club that night?

5 A. Yes, ma'am.

6 MS. SALISBURY: At this time I'll offer 3
7 into evidence.

8 MR. CHAMBERS: No objection.

9 MR. ROBINSON: No objection.

10 MR. ABDALLA: No objection.

11 MR. QUINN: No objection.

12 (Photograph marked as State's Exhibit No. 3
13 for identification was admitted into evidence.)

14 BY MS. SALISBURY:

15 Q. Mr. Johnson, I'm going to broadcast this up on
16 the wall. As best you can, there's a little red pointer
17 there on the table, but can you start by telling us if you
18 see Trez, Mr. Esaiveus Booker in this photograph?

19 A. Yes, ma'am.

20 Q. Mr. Shaquille Hogan who you call Lipz, do you see
21 him in this photograph?

22 Alright. What about Daquan Bruster, Tavarus
23 Holmes, Raymond Young, Michael Williams? Do you see
24 yourself? How about Mr. Sadler? That's him in the back?

25 A. Yes, ma'am.

Larry Johnson - Direct

1 Q. Alright, sir, you can have a seat. You mentioned
2 that you don't remember there being any conflict inside of
3 the club. What do you remember happening as the evening
4 progressed?

5 A. Like later on in the club something did happen,
6 but it wasn't like a fight or anything.

7 Q. What was it?

8 A. Some words were exchanged.

9 Q. Between who?

10 A. At first it was between me and my cousin,
11 Quamaine.

12 Q. What was that confrontation about?

13 A. He had said something about me hanging out ---

14 MR. ROBINSON: Objection, hearsay.

15 MS. SALISBURY: I'm asking him to explain why
16 he felt there was a confrontation.

17 THE COURT: I'm going to allow it. Go ahead.

18 THE WITNESS: He was asking me who I was
19 hanging with, the guys I was with, and he had said
20 something to me and my sister and she was basically
21 telling him to leave it alone and go ahead and leave it
22 alone and stuff like that.

23 BY MS. SALISBURY:

24 Q. After that incident, were there any other
25 incidents that you witnessed inside the club?

Larry Johnson - Direct

1 A. Just besides Black coming in and walking in and
2 gave the guys like some kind of look and they all followed
3 him to the back, then they came back towards the front and
4 then they had gone outside and then like a fight started
5 breaking out outside.

6 Q. Who is Black?

7 A. I think his name is Brandon.

8 Q. Do you know his last name?

9 A. No, ma'am.

10 Q. To whom did he give this look?

11 A. Raymond and like a couple more guys.

12 Q. When they all went to the back at that point, did
13 you go with them?

14 A. No, ma'am.

15 Q. What did you do while all that was going on?

16 A. I stayed with my sister and the rest of the
17 females.

18 Q. What happened next?

19 A. They had walked back towards the front of the
20 club and then we all exited and then we got outside little
21 fights started breaking out everywhere and then I heard
22 gunshots.

23 Q. Did you see who was participating in any of these
24 fights?

25 A. Black and Mikey was fighting with somebody. I

Larry Johnson - Direct

1 don't know who he was fighting with but he was fighting
2 with someone.

3 Q. Are you talking about Michael Williams?

4 A. Yes, ma'am.

5 Q. You saw a fight with Mikey and someone and you
6 say Black. Was he fighting someone else?

7 A. Yes, ma'am. He was trying to fight this guy
8 named Nitche.

9 Q. You say you remember hearing gunshots, did you
10 ever see anybody shoot any guns?

11 A. No, ma'am, not at the time.

12 Q. After the shooting, what do you remember seeing?

13 A. After the shooting, we all was trying to make our
14 way to the cars and stuff like that.

15 Q. What happened after all of the shooting and the
16 fighting, what did you do next?

17 A. We had got in the car. Raymond got in his car, I
18 got in my car.

19 Q. What car was Raymond driving at that time?

20 A. A green Crown Victoria.

21 Q. Do you know whether he was alone?

22 A. He and Michael Williams was in the car together.

23 Q. You got into you car, was anyone with you?

24 A. Not at the time.

25 Q. Where did you go?

Larry Johnson - Direct

1 A. We had waited until the gunshots stopped and
2 Raymond had told me to pull out and then we had pulled out
3 to certain neighborhoods. We stopped in the middle of the
4 road and he asked me if I was okay and I was like yeah.
5 And he told me to follow him and we had went through some
6 back roads and we came up beside the Walmart on Whitehorse
7 Road and made a left and then we went down some and made a
8 right into the little shopping center where 864 at.

9 Q. Did you go inside 864?

10 A. Yes, ma'am.

11 Q. How long were you inside?

12 A. Not long.

13 Q. Who was with you when you went inside?

14 A. Me and Raymond.

15 Q. When you came back out, what was happening?

16 A. It was a lot of commotion about Bram-bram being
17 shot and they was trying to find Black because he had been
18 shot.

19 Q. How long do you think he stayed out there in the
20 parking lot?

21 A. Probably 20 minutes.

22 Q. What did you do next?

23 A. We basically gathered and waited on Black's
24 mother to come and pick him up and take him to the
25 hospital.

Larry Johnson - Direct

1 Q. After he left, where did you go?

2 A. We all had got in our cars. I don't know what
3 the name of the road is but I know we had went to the red
4 light and went onto White Horse Road towards the Li'l
5 Cricket.

6 Q. How far away is the Li'l Cricket from that
7 parking lot?

8 A. Not even a minute.

9 Q. How many cars were leaving the parking lot with
10 you?

11 A. The Crown Vic, the Camary, I think it was a
12 Suzuki, a mini-van and my car.

13 Q. You said you turned on to White Horse Road, did
14 everyone go in the same direction?

15 A. Most of us.

16 Q. Which ones didn't?

17 A. It was another Camary that went down 257.

18 Q. So what happened?

19 A. We were driving up White Horse Road and we get
20 like in front of the Li'l Cricket and some guys parked at
21 the Li'l Cricket and some guys sitting on the cars and so
22 we made a U-turn in the middle of the road and Raymond
23 said that look like the guys that shot Bram-bram or
24 whatever. So then we all turned around and went back
25 towards 864.

Larry Johnson - Direct

1 Q. You testified you were driving your car and
2 Raymond was driving the Crown Vic.

3 A. Yes, ma'am.

4 Q. How did that message get communicated to you?

5 A. It was like a U-turn and a pause in the middle of
6 the road.

7 Q. Did they yell out the window?

8 A. Yes, ma'am.

9 Q. So where did you go?

10 A. We went back to 864 and Raymond had told the
11 females to get in the van with Queen and he had traded
12 cars with Joseline.

13 Q. What did he tell you?

14 A. He asked everyone whoever was going need to come
15 on and if you wasn't going head to the Waffle House.

16 Q. Which Waffle House?

17 A. The one is at Augusta Road.

18 Q. Where were you headed the first time you left the
19 parking lot of 864? Where were you planning to go?

20 A. The Waffle House on White Horse Road.

21 Q. So why now instead of going to that original
22 Waffle House were you going to the one by Fleetwood?

23 A. I have no clue. We were just told to go to the
24 one on Fleetwood.

25 Q. Who told you to go to the one by Fleetwood?

Larry Johnson - Direct

1 A. Raymond.

2 Q. What had you been wearing that night, do you
3 remember?

4 A. Yes, ma'am, I had on a black tee-shirt and some
5 blue jeans.

6 Q. Before you left the parking lot of 864 the second
7 time, did you make any efforts to cover your face?

8 A. Not me.

9 Q. Who made efforts to cover their face?

10 A. Raymond Young, Michael Williams, Kinjta Sadler.

11 Q. Mr. Booker?

12 A. Yes, ma'am.

13 Q. Do you remember with what they covered their
14 face?

15 A. Black tee-shirts.

16 Q. Black tee-shirts they had been wearing?

17 A. Yes, ma'am.

18 Q. Do you remember what they were wearing underneath
19 those black tee-shirts?

20 A. No, ma'am.

21 Q. Do you remember if they were shirtless?

22 A. No, they wasn't shirtless.

23 Q. Did you watch all of them take off their black
24 tee-shirts and cover their faces?

25 A. Yes, ma'am.

Larry Johnson - Direct

1 Q. Who left the 864 parking lot and headed to the
2 Li'l Cricket?

3 A. Me, Daquan Bruster.

4 Q. Was anybody else in your car?

5 A. No, just Daquan Bruster.

6 Q. Who else?

7 A. Michael Williams, Tavarus Holmes, Raymond Young.

8 Q. In what car?

9 A. In Joseline's burgundy Suzuki, I think that's
10 what kind of car it was.

11 Q. Did you see where Joseline went?

12 A. She had got in Raymond car.

13 Q. Alright. Just to be clear, what kind of car was
14 that?

15 A. Green Crown Victoria.

16 Q. Any other cars go with you towards Li'l Cricket?

17 A. Green Toyota Camary.

18 Q. Who was in that car?

19 A. Kinjta Sadler, Esaiveus Booker and Shaquille
20 Hogan.

21 Q. What did you do? After you left the parking lot,
22 what did you do?

23 A. We went the same route on the same road and then
24 we made a right onto White Horse Road, then it's like a
25 road across the street from the Li'l Cricket. We turned

Larry Johnson - Direct

1 down the road and everybody turn around to face the Li'l
2 Cricket and then we went behind like we crossed over White
3 Horse Road and then we went down and it was the first
4 street on the left when you go around that curve.
5 Everybody started turning around right there and came back
6 up and made a left behind the Li'l Cricket. I had to go
7 further down the street to turn my car around.

8 Q. I'm going to put State's 8 up on the wall here
9 and see if this helps you explain what it is that you were
10 describing. Are you able to tell from this picture where
11 it is that you turned and turned around and then
12 ultimately parked?

13 A. Not really.

14 Q. Well, there's been some testimony that this is
15 the Li'l Cricket gas station.

16 A. Okay.

17 MR. QUINN: Objection to the leading nature
18 of the question.

19 THE COURT: Yeah.

20 BY MS. SALISBURY:

21 Q. Well, describe it as best you can if you don't
22 recognize the map. You say you turned right off of White
23 Horse Road?

24 A. Yes, ma'am.

25 Q. And then what did you do?

Larry Johnson - Direct

1 A. It's a street right across from Li'l Cricket and
2 we all turned around the face the Li'l Cricket crossed
3 over White Horse Road.

4 Q. Did you drive right pass the Li'l Cricket?

5 A. Yes.

6 Q. Were you worried the people you were looking for
7 were going to see you?

8 A. I guess not.

9 Q. Where did you go after that?

10 A. We went around the curve a little bit and made a
11 left on the street back there and turned around and then
12 came back out and made a right and went around the curve.

13 Q. At this point which way were you traveling. You
14 say you drove pass the Li'l Cricket, was it on your right?

15 A. On my right.

16 Q. And then you say you turned around and came back.

17 A. The Li'l Cricket would have been on the left.
18 It's a street behind the Li'l Cricket. The other cars
19 were small enough to turn around in the middle of the
20 road. I had to go down further down because my car was
21 bigger to turn around and Buddah jumped out the car and I
22 just pulled -- it's like a garage or something back and I
23 parked in front of the garage and I stayed in the car.

24 Q. State's 47 does that look familiar to you?

25 A. Yes, ma'am.

Larry Johnson - Direct

1 Q. Is that the garage in front of which you parked?
2 A. Yes, ma'am.
3 Q. You said you stayed in the car and Daquan
4 Bruster, Buddah, jumped out of the car?
5 A. Yes, ma'am.
6 Q. Why didn't you go with them?
7 A. They told me to stay in the car.
8 Q. Did you see anybody else go the direction that
9 Mr. Bruster went?
10 A. Yes.
11 Q. Who?
12 A. I seen Michael Williams, Raymond Young, Kinjta
13 Saddler, Scarious Booker and Tavarus Holmes.
14 Q. Where did you see those six people go?
15 A. Run up the side of the Li'l Cricket.
16 Q. Could you see them from where you stayed in your
17 car?
18 A. Yes, ma'am.
19 Q. What did you see them do?
20 A. They all got out of the car, ran up the hill,
21 then I heard gunshots, they ran back down the hill and I
22 started shooting in the air because I didn't know if they
23 were being chased. But then Buddah had hopped in the car
24 and was like go, go, and he had the gun in his hand and
25 you could tell he had shot all the bullets out because it

Larry Johnson - Direct

1 was the slide was back and he was trying to get it to go
2 back like he never shot it.

3 Q. Do you know what kind of gun he was carrying?

4 A. A .38.

5 Q. And what kind of gun did you have?

6 A. A .38.

7 Q. Now, you started shooting, were you shooting at
8 your friends?

9 A. No, ma'am.

10 Q. Then why were you shooting?

11 A. Because I didn't know if it was then coming back
12 or if they were being chased by the guys from the Li'l
13 Cricket.

14 Q. Where were you shooting?

15 A. In the air like in front -- like where I was
16 parked in front the garage I had stuck my arm out of the
17 car and started shooting and the bullets. I have T-top so
18 I could hear the shells bouncing off of the T-top.

19 Q. Do you know how many shots you fired?

20 A. I want to say six.

21 Q. Do you know how many shots you heard?

22 A. A lot.

23 Q. Where did you go next?

24 A. We had came out behind the Li'l Cricket made a
25 right, drove all the way down to where the Tucker's Soda

Larry Johnson - Direct

1 Shop used to be at, made a right and went under the
2 bridge, came up at the light, made a left, went up
3 Pendleton Street. And then when we got to the Spinx, a
4 county SUV came and stopped in the middle of the road like
5 in front of us and then he cut on the lights and he took
6 off and then we just went across and went up towards
7 Greenville High School made a right onto Augusta Road and
8 then drove all the way down to the Waffle House.

9 Q. How long did it take you to get from the gas
10 station to the Fleetwood Waffle House?

11 A. Like 15 to 25 minutes.

12 Q. Could you tell from where you were who got back
13 into which cars?

14 A. Yes, ma'am.

15 Q. Let's start with the burgundy car, who got back
16 into the car?

17 A. Tavarus Holmes, Michael Williams and Raymond
18 Young.

19 Q. Who was driving?

20 A. Raymond Young.

21 Q. The green Camary?

22 A. Esaiveus Booker and Kinjta Sadler. Shaquille was
23 in the car but he never got out of the car.

24 Q. What was Shaquille doing?

25 A. He was driving.

Larry Johnson - Direct

1 Q. So you and Shaquille ended up staying in the car?

2 A. Yes, ma'am.

3 Q. What happened once you got to the Waffle House?

4 A. We pulled in, Raymond had got out of the car and
5 everybody started getting at the car. Raymond had the
6 ones that was at the Li'l Cricket situation and sit
7 outside because he wanted to talk to us about what had
8 happened.

9 Q. Why?

10 A. He was basically saying he swore on his kids that
11 he wouldn't tell. We didn't have to worry about him
12 telling, nobody would ever know, just don't tell.

13 Q. How long did that little conference last?

14 A. Like five minutes because the security guard came
15 outside and told us either we would have to come in and
16 eat or leave.

17 Q. So what did you do?

18 A. Went in and ate.

19 Q. How long do you think you stayed there?

20 A. Not long because I had got into it with the
21 waitress because I had asked for an orange juice.

22 Q. Where did you go when you left?

23 A. I went home.

24 Q. Did you have anybody with you?

25 A. No, ma'am.

Larry Johnson - Direct

1 Q. You were driving Mr. Bruster around, do you know
2 anything about what happened to him?

3 A. He got in the car with someone else.

4 Q. I'd like to show you State's Exhibit 40, do you
5 recognize what's on the screen?

6 A. Inside the Waffle House.

7 Q. Which Waffle House?

8 A. Fleetwood.

9 Q. Now, can you tell me as best as you can tell from
10 where you are whether you recognize anyone in this video
11 as it moves forward here?

12 A. That's Raymond with the white tee-shirt, that's
13 Tavarus with the blue on, that's Tee with the black
14 tee-shirt, that's Rashawn with the black tee-shirt that
15 just sat down, that's Esaiveus with the camouflage shorts
16 on.

17 Q. What about this gentlemen right here?

18 A. That's Daquan with the black tee-shirt. That's
19 Art sitting the chair, Miesha in front of her, that's me.
20 That's Quan with the white shorts on. That's Kadrile with
21 the blond hair.

22 Q. Do you know who this person is walking down the
23 middle?

24 A. That's Vareo.

25 Q. Can you tell who is that sitting down?

Larry Johnson - Direct

1 A. Not really.

2 Q. What about in this hat right here?

3 A. That's Shaquille Hogan. That's Michael Williams

4 that just walked in. That's Denita.

5 Q. In the white?

6 A. Yes, ma'am. That looks like Kinjta sitting at

7 the bar. That was Quinn on the cell phone.

8 Q. Let's me see if I can speed it up a little bit.

9 A. That's my sister.

10 Q. What's her name?

11 A. Shameka Johnson.

12 Q. Now, I'm going to show you the outside cameras.

13 Do you recognize that car that's pulling into that space

14 right there?

15 A. No, ma'am.

16 Q. Can you tell based on what you remember from that

17 night who you see getting out of that car?

18 A. It looks like Raymond.

19 Q. Do you know whether that's Joseline?

20 A. Yes, ma'am. And that's Mikey. That's Joseline.

21 Q. Let's move to another camera. Is that your car?

22 A. Yes, ma'am.

23 Q. If you could tell me if you're able to recognize

24 anybody who gets out of this car.

25 A. It looks like Shaquille, Kinjta.

Larry Johnson - Direct

1 Q. Now, is this is where everyone was going to the
2 back of the parking lot as you described?

3 A. Yes, ma'am. And that's the security guard.

4 Q. Now, who exactly was a party to this parking lot
5 conference?

6 A. Me, Shaquille Hogan, Michael Williams, Esaiveus
7 Booker, Daquan Bruster, Kinjta Sadler, Raymond Young.

8 Q. Was it just the folks that were at the scene at
9 the gas station?

10 A. No, it was one other person, it was Vareo.

11 Q. Why was Vareo a part of that conference?

12 A. That's Raymond's little brother.

13 Q. Do you remember talking to the police a couple of
14 days after this happened?

15 A. Yes, ma'am.

16 Q. Did you tell them everything you knew?

17 A. No, ma'am.

18 Q. Why not?

19 A. Because I didn't want to incriminate myself and I
20 heard about hand of one hand of all so.

21 Q. So what part did you leave out?

22 A. About me being there.

23 Q. Do you remember meeting with investigators again
24 the next day?

25 A. Yes, ma'am.

Larry Johnson - Direct

1 Q. Did you give them another statement?

2 A. Yes, ma'am. I think the statement was clarifying
3 like some of the stuff I had said happened at the Red
4 Planet and 864 and stuff like that.

5 Q. So during that second interview did the
6 investigators ask you any questions about this incident?

7 A. The Li'l Cricket?

8 Q. Yes.

9 A. All of it was the same conversation.

10 Q. And do you remember meeting with the
11 investigators again on the 22nd?

12 A. Yes, ma'am.

13 Q. Which would have been the next day?

14 A. Yes, ma'am.

15 Q. Which would have been three days in a row?

16 A. Yes, ma'am.

17 Q. And is it in that statement that you ---

18 A. Tell the truth.

19 Q. Incriminate yourself?

20 A. Yes, ma'am.

21 Q. Why did you finally decide that it was time to be
22 honest?

23 A. I had heard that Raheem Adams had been shot and
24 he was at the Li'l Cricket and he was my best friend and I
25 was like it was the wrong people and I felt some type of

Larry Johnson - Cross

1 way and I had told the investigators about what happened.

2 Q. What do you mean it was the wrong people?

3 A. Because I didn't see him in any altercation with
4 anyone.

5 Q. Did you know who was actually at the Li'l Cricket
6 before you joined in with the plan?

7 A. No, ma'am.

8 Q. Thank you, sir. Please answer any questions
9 these attorneys may have.

10 MR. CHAMBERS: Randy Chambers for Mr. Booker,
11 Your Honor.

12 CROSS-EXAMINATION

13 BY MR. CHAMBERS:

14 Q. Mr. Johnson, have you been employed at any point
15 in the recent past?

16 A. Yes, sir.

17 Q. Where?

18 A. McAllister Deli.

19 Q. How recently was it that you worked there?

20 A. I lost my job July 20, 2011.

21 Q. So that was where you were working when all this
22 mess came up.

23 A. Yes, sir.

24 Q. What did you make working there?

25 A. \$8.00 an hour.

Larry Johnson - Cross

1 Q. Are you a gun owner?

2 A. No.

3 Q. Were you a gun owner in the past?

4 A. Not legally.

5 Q. What do you mean by that?

6 A. I didn't have a license for it but I also was

7 able to -- I didn't have any charges at that time when I

8 had the gun.

9 Q. You like guns, would that be fair to say?

10 A. Yes, sir.

11 Q. What kind of guns did you have, do you remember?

12 A. I owned a .380 that was chrome black.

13 Q. These pictures, are these pictures of you with

14 your guns?

15 A. The Larson is mine but the black one wasn't mine.

16 Q. These are pictures that were taken off your cell

17 phone; is that correct?

18 A. Yes, sir.

19 Q. You like these guns enough that you took pictures

20 of them laying there I guess on the bed?

21 A. No, I was on the floor.

22 Q. On the floor and that's you pointing the gun at

23 the camera?

24 A. Yes, sir.

25 Q. And is that you with another pose pointing a gun

Larry Johnson - Cross

1 at the camera?

2 A. Yes, sir.

3 Q. And that's you with two other guns.

4 A. That's the same guns.

5 Q. And then with both guns?

6 A. Yes, sir.

7 Q. You were talking about working making \$8 an hour

8 at McAllister's?

9 A. Yes, sir.

10 Q. How did you come about all this cash that you got

11 right here?

12 A. Tax money.

13 Q. So you went and got your tax money all in hundred

14 dollar bills; is that right?

15 A. It kind of look 20's.

16 Q. And this money there.

17 A. Yes, sir. I got that money back from when I had

18 to return a car because they didn't have a title loan.

19 Q. Now, you said you were in this group that

20 included among other people these young money that are

21 here at the table; is that correct?

22 A. Yes, sir.

23 Q. Were you ever part of a group called the Bloods?

24 A. No, a detective asked me take that picture and

25 show it to him because it was a guy in the picture was

Larry Johnson - Cross

1 under investigation for a stabbing at Cleveland Park.

2 Q. Would it be fair to say that that's a group of
3 Bloods?

4 A. Yes, sir.

5 Q. So at some point you would have had an
6 association with the Bloods?

7 A. No, sir.

8 Q. And this is the car that we saw in the video just
9 a minute ago, isn't it?

10 A. No, sir, that's my cousin Christopher's car.

11 Q. You already discussed with the solicitor, you met
12 with the police and gave statements three consecutive
13 days; is that correct?

14 A. Yes, sir.

15 Q. 20th, 21st, 22nd.

16 A. Yes, sir.

17 Q. When you went to talk to investigators on the
18 20th, you were actually already in custody; isn't
19 that correct?

20 A. No, I wasn't in custody.

21 Q. You weren't being investigated by Weiner?

22 A. I agreed to answer questions.

23 Q. So you weren't under investigation by
24 Investigator Weiner?

25 A. No, he just told me to come answer questions and

Larry Johnson - Cross

1 take a polygraph test.

2 Q. But Weiner was the one who asked you to come in?

3 A. Yes, sir.

4 Q. And it was about an armed robbery case that he
5 was working on?

6 A. Yes, sir.

7 Q. And when you came in he introduced you to
8 Investigator Campbell seated right over there, correct?

9 A. No, sir.

10 Q. Well, at some point did you not talk to
11 Investigator Campbell?

12 A. No, it was a guy that said he was from the FBI
13 and he had came and questioned me he said because the site
14 of the armed robbery an officer had informed him that they
15 overheard me talking to someone else about the Li'l
16 Cricket shootings.

17 Q. So you say that in regard to these Li'l Cricket
18 shootings someone from the FBI talked to you?

19 A. He stated he was from the FBI.

20 Q. Do you remember this man's name?

21 A. No, sir. I just know he said something about the
22 30 years (haulback).

23 Q. But he definitely said he was with the FBI and he
24 mentioned something called the 30 year (haulback)?

25 A. Yes, sir.

Larry Johnson - Cross

1 Q. What did he tell you about that?

2 A. It was day for day.

3 Q. So in other words they were letting you know what
4 would happen to you?

5 A. If you want to say so.

6 Q. Well, I mean that's why they brought it up,
7 wouldn't that be fair to say?

8 A. He said if it come to find out if it was gang
9 related or anything like that.

10 Q. And how many officers were there or anything when
11 they talked to you that first day?

12 A. That first day it was to this or the armed
13 robbery?

14 Q. I'm talking about the statement that you gave on
15 the 20th that the solicitor asked you about, how many
16 officers were present? You already said the FBI guy was
17 there.

18 A. He was downstairs after I had been questioned by
19 Weiner for the armed robbery and he started questioning me
20 about the Li'l Cricket shootings and he said he was going
21 to introduce me to the detective that was investigating
22 the Li'l Cricket shootings.

23 Q. So the FBI then after he talked to you about the
24 30 year (haulback) took you upstairs and talked to the
25 investigators. Was it then Investigator Campbell?

Larry Johnson - Cross

1 A. Yes, sir.

2 Q. Was there anybody else with Investigator
3 Campbell?

4 A. Brandon. I don't know ---

5 Q. Was there an Investigator Bailey?

6 A. Yes, sir.

7 Q. And do you remember anybody else being there?

8 A. There was a couple other officers sitting around.

9 Q. So by the time you went up there to talk to
10 Investigator Campbell, you had already talked to Weiner,
11 the FBI guy who told you could get 30 years, you went
12 upstairs and there were at least two officers Campbell and
13 Bailey and you said there were a couple of others there?

14 A. Yes, sir.

15 Q. Did they also indicate to you that they were
16 investigating this, they thought you were involved and how
17 much trouble you could get in?

18 A. No, Detective Weiner just asked me about the
19 information that I had about the shootings.

20 Q. This first statement that you gave as you've
21 already indicated to the solicitor from the 864 you just
22 drove on home?

23 A. Yes, sir.

24 Q. You don't mention in this first statement, you
25 don't mention Esaiveus Booker at all, do you? You can

Larry Johnson - Cross

1 look at it if you need to.

2 A. And I also didn't mention Shaquille Hogan and
3 Kinjta Sadler.

4 Q. You didn't mention a lot of people.

5 A. Yes, sir.

6 Q. So that's the first statement you gave. The
7 second day you came back and you talked to the same people
8 again.

9 A. Yes, sir.

10 Q. And you offered up some more stuff that day?

11 A. Yes, sir.

12 Q. You didn't change the fact that you had driven
13 home or driven over to the Waffle House, had not gone
14 anywhere from the 864 but to Waffle House.

15 A. Yes.

16 Q. And again you didn't mention Esaiveus Booker in
17 that statement, did you?

18 A. This one has nothing to do with the Li'l Cricket
19 shooting.

20 Q. You said when you talked to the solicitor a few
21 minutes ago that y'all talked about everything. I mean
22 that's what's in that statement, but you said on that
23 second day and every time that y'all talked that you
24 talked about everything, is that right?

25 A. That's the shootings at the Red Planet and --

Larry Johnson - Cross

1 yeah.

2 Q. And then you come back on the third day and this
3 time was there an Investigator Audrey there?

4 A. I can't remember exactly, it was 17 months ago.

5 Q. Is that the statement that you gave?

6 A. Yes, sir.

7 Q. Does that indicate that there was an Investigator
8 Audrey that was there to help him take your statement?

9 A. Yes, sir.

10 Q. And it indicates that Investigator Campbell was
11 there again?

12 A. Yes, sir.

13 Q. Also was there an Investigator Peoples who was
14 there, do you remember her?

15 A. Yes, sir.

16 Q. And then it also indicates there was somebody
17 named Armstrong that was there; is that right?

18 A. I don't remember all their names.

19 Q. These were people that signed as witnesses which
20 indicated they were there.

21 A. Yeah, like I said there was a couple more
22 officers around.

23 Q. And in this statement is the first time that you
24 mention Esaiveus Booker being involved in any way mention
25 that you're involved in any way?

Larry Johnson - Cross

1 A. That's the first day I mentioned that anyone was
2 involved in any way.

3 Q. And that was after having met with the police,
4 all these different investigators, the guy from the FBI on
5 three separate occasions on the third day, despite what
6 you'd said in those previous statements, you'd changed
7 your story on that third day and started to implicate
8 these other people.

9 A. Including myself.

10 Q. I understand that. You said a few minutes ago
11 when you were talking about the facts because this is not
12 clear from your statement that when y'all left the 864
13 that Shaquille Hogan was driving one of the cars. Do you
14 remember that?

15 A. No, I did not say that.

16 Q. Well, at any rate you identified at the Waffle
17 House getting out of the passenger seat of one of the
18 cars.

19 A. Yes, sir.

20 Q. You did, in fact, at some point give a fourth
21 statement, did you not?

22 A. No, sir.

23 Q. Not a statement to the police, but a statement?

24 A. Recant?

25 Q. Yes.

Larry Johnson - Cross

1 A. Yes.

2 Q. So you're familiar with it, you know what I'm
3 talking about?

4 A. Yes, sir.

5 Q. Is this that recantation?

6 A. Yes, sir.

7 Q. Is that your signature on the bottom?

8 A. Yes, sir.

9 Q. Did you say in this statement -- by the way, what
10 was the date you did this recantation? Was that November
11 10, 2012?

12 A. Yes, sir.

13 Q. Did you say that on the dates ---

14 MS. SALISBURY: Your Honor, may we approach
15 briefly.

16 THE COURT: Alright.

17 (Discussion off the record.)

18 BY MR. CHAMBERS:

19 Q. So on the date of this recantation that you
20 executed and signed, did you say that, "On the dates of or
21 between July 20th and 22nd, 2011, I, Larry Terrell
22 Johnson, was made promises and even threatened by
23 Greenville County Detectives to make false accusations
24 against Michael Williams, Raymond Lewis Young, Tavarus
25 Dean Holmes, Esaiveus Frantez Booker, Daquan Bruster,

Larry Johnson - Cross

1 Kinjta Sadler and myself, Larry Terrell Johnson, and
2 Shaquille Hogan."

3 A. Yes, sir.

4 Q. And did you further say, "I was under stress due
5 to my recent arrest, misunderstood what the detectives was
6 asking me. I was coerced to write and sign a false
7 statement." Did you say that?

8 A. Yes, sir.

9 Q. "The investigator typed a false statement and
10 told me to sign it and claim they would help me get out of
11 jail. I now wish to recant those false accusations and
12 state the fact that on the date of July 17, 2011, I, Larry
13 Terrell Johnson, did not participate or conspire nor
14 witness any illegal actions or activity of any kind with
15 the names listed above or anyone of that matter." Is that
16 right?

17 A. Yes, sir, but just after I been re-arrested.

18 Q. And you signed that; is that correct?

19 A. Twice.

20 Q. And then you had it notarized?

21 A. Yes, sir.

22 Q. And that was November 10, 2012, right?

23 A. Yes, sir.

24 Q. And that was after the three statements that you
25 gave to the police?

Larry Johnson - Cross

1 A. That was after I had been re-arrested.

2 Q. Okay. Thank you very much. That's all the
3 questions I have.

4 MR. ROBINSON: I have no questions, Your
5 Honor.

6 BY MR. ABDALLA:

7 Q. Do you remember a conversation you had with Tony
8 Jeter? Do you know who Tony Jeter is?

9 A. I don't know him at all.

10 Q. You don't remember talking to him about the fact
11 that similar to your recantation statement wherein you
12 told him that the officers promised to get you a low bond
13 if you told them certain information?

14 A. No, sir.

15 Q. You never said that?

16 A. No, sir, not at all. And the only reason that I
17 recant because they had somebody write me and tell me to
18 do it.

19 Q. You wrote the recant, didn't you?

20 A. Not freely.

21 Q. So you said you were coerced to make the
22 statement that said you were coerced?

23 A. I have a statement in the county jail from one of
24 my co-defendants telling me to do it, write it three times
25 and get it notarized and then on the same day I got that

Larry Johnson - Cross

1 coming out of holding either I was with them or against
2 them.

3 Q. Do you know Tony Jeter from the jail?

4 A. No, I don't know him at all.

5 Q. And you don't remember making statements to him?

6 A. No, sir.

7 Q. Did you ever get bonded out?

8 A. Yes, sir.

9 Q. How much as your bond?

10 A. \$50,000 plus home incarceration.

11 Q. Was this after your cooperation?

12 A. No, I sat in jail for three-and-a-half months
13 without a bond.

14 Q. After you cooperated what did you get?

15 A. Nothing because that means I would have had a
16 bond when they arrested me.

17 Q. What about the plea deal you got?

18 A. I didn't get a plea deal.

19 Q. You didn't get a plea deal?

20 A. No. All of my pleas are from zero to max.

21 Q. So you're getting no benefit from coming in here
22 to testify?

23 A. No.

24 Q. What about your prior record?

25 A. My record I just have an assault and battery in

Larry Johnson - Cross

1 2009.

2 Q. You were talking about other charges you got
3 arrested on, what were you referring to?

4 A. The accessory charge that he kept referring to
5 that I was under investigation for.

6 Q. So you gave three different statements. Was
7 Brandon Brown one of the officers in the room?

8 A. Yes.

9 Q. Was he the one the FBI?

10 A. No, he had his hat turned backwards and he had
11 his gun on his back and he had like short blonde hair.

12 Q. On July 20, 2011 you gave a statement to
13 Investigator Campbell, correct?

14 A. Yes.

15 Q. And Investigator Bailey was there?

16 A. Yes.

17 Q. And that was the truth you said?

18 A. Yes.

19 Q. On July 21, you gave another statement, right?

20 A. To clarify some things.

21 Q. That was then the whole truth, right?

22 A. No, I still didn't want to incriminate myself.

23 Q. Then finally the last statement you gave was
24 nothing but the truth, right?

25 A. Yes.

Larry Johnson - Cross

1 Q. And then, of course, you gave the statement of
2 2012 saying that you never freely gave those other
3 statements and they were coerced, right?

4 A. No, that was November 10th.

5 Q. November 10th, 2012?

6 A. I was forced to do it.

7 MR. ABDALLA: I have no further questions.

8 BY MR. QUINN:

9 Q. When you went to the Red Planet that night, a
10 security guard approached you and asked you to make sure
11 there's be no trouble?

12 A. Yes, sir.

13 Q. A security guard knows you well enough to come up
14 to you and say, look, don't cause any trouble tonight?

15 A. It was a situation that happened the weekend
16 before, a big fight had broke out, and I was kind of, you
17 know, trying to help keep -- solve the problem or
18 whatever. He know me because his girlfriend Jane used to
19 work at McAllister with me, he used to come up there and
20 eat all the time. And he used to work at 864 too.

21 Q. So you were the peace keeper?

22 A. Yes, sir.

23 Q. And at the Waffle House you got thrown out
24 because you got in a fight with a waitress?

25 A. No, I didn't get in a fight with the waitress.

Larry Johnson - Cross

1 We just got in a confrontation about she just gave me the
2 wrong thing and tried to charged me for a refill for
3 something I didn't ask for.

4 Q. Whether it was orange juice or orange soda?

5 A. Yes, sir.

6 Q. And you were not the peace keeper then in Waffle
7 House?

8 A. Actually I was. I had told my sister to leave
9 the situation alone because she tried to add fuel to the
10 fire.

11 Q. And this picture of you with Bloods, you did that
12 because some police office asked you to help solve some
13 other crime?

14 A. Yes, my friend had got stabbed up at Cleveland
15 Park and I wasn't in the picture.

16 Q. I'm sorry the way this works is you have to let
17 me finish and I'll let you finish.

18 A. Okay.

19 Q. So the way this works is you went and found
20 Bloods, don't know nothing about them and found them, had
21 a picture taken of them with them to help the police, is
22 that your testimony?

23 A. I got a picture from a guy named Pat that take
24 pictures at the club.

25 Q. To help the police?

Larry Johnson - Cross

1 A. Yes, sir.

2 Q. What was that police officer's name?

3 A. I don't know. That was a while ago.

4 Q. And the gun that you used that night, when did
5 you provide that to the police?

6 A. It wasn't my gun.

7 Q. When did you help them find the gun so they could
8 do ballistics?

9 A. I didn't help them find the gun. I didn't have a
10 gun for them to find.

11 Q. I thought you told this jury you shot the gun
12 outside of the ---

13 A. I did, but I returned the gun back to its
14 rightful owner.

15 Q. So you provided that information to the police?

16 A. That I returned the gun to the rightful owner?

17 Q. Yes.

18 A. No, not that I can remember.

19 Q. But I thought your last statement was everything
20 you know about this case. I thought you told the jury the
21 reason it took you three times to get it right was the
22 third time you got it all in there. So you didn't help
23 them recover the gun?

24 A. I didn't know where it was.

25 Q. Did the gang investigators they were worried

Larry Johnson - Cross

1 about getting the guns off the street more than anything
2 else?

3 A. I didn't know I was talking to the gang
4 investigators. I said I was talking to a guy from the
5 feds and he was talking about a 30 year if it was gang
6 related. I thought he was a detective because he was in
7 regular clothes.

8 Q. Brandon Brown.

9 A. I don't know his last name.

10 Q. And your testimony is you were shooting this gun
11 out the window because there were people coming up and you
12 couldn't tell who they were?

13 A. Yes, sir.

14 Q. But you tell this jury you could see everybody
15 else get out of the car and go around the side of the Li'l
16 Cricket?

17 A. Yes. The way they came back towards me after the
18 gunshots, it was like it was just running so it wasn't in
19 an orderly fashion as they went up the hill to the side of
20 the Li'l Cricket.

21 Q. So they were orderly going up the hill?

22 A. Yes.

23 Q. Disorderly coming back?

24 A. Yes, after the shots started.

25 Q. That's why you had to shoot the gun in the air?

Larry Johnson - Redirect

1 A. Yes. I didn't know if they were being chased by
2 the guys they were firing at or anything.

3 Q. You didn't think that people might run back to a
4 car or anything?

5 A. I know that, but if you shoot at the wrong person
6 and they have guns and retaliate and they had guns and
7 could be chasing.

8 Q. You say you parked in front of the garage?

9 A. Yes.

10 Q. And you drove the entire time?

11 A. My car.

12 Q. And it took 15 to 25 minutes to get to the Waffle
13 House?

14 A. Yes.

15 Q. And that was the Waffle House that everybody
16 keeps referring to as Fleetwood?

17 A. Yes, by Fleetwood.

18 Q. And you say you were out in the parking lot about
19 five minutes before the security guard broke y'all up?

20 A. About five minutes.

21 MR. QUINN: I don't have any other questions.

22 MS. SALISBURY: Very briefly.

REDIRECT EXAMINATION

24 BY MS. SALISBURY:

25 Q. Why did you draft this letter from jail about

Larry Johnson - Redirect

1 everything you told the police was a lie?

2 A. After I had went to court for the accessory
3 charge, I had went and talked to Corporal Whitman and she
4 told me I had been terminated from the House Arrest
5 program and asked me to turn myself in. So I had turned
6 myself and then like a couple guys had kept saying Raymond
7 said are you going to do that are you going to recant your
8 statement, are you going to recant your statement, and
9 then it became like me talk to my lawyer and is it okay
10 and how should I go about doing this. And it's like, no,
11 you don't need to tell me, he's working with the
12 solicitor, you need to do it, you need to get it done. So
13 as time went on as I sat in the dorm more of a threat came
14 to me, like more people from the ---

15 MR. ROBINSON: Objection, hearsay.

16 THE COURT: Overruled. Go ahead.

17 THE WITNESS: More of the people from the
18 gang was in the dorm with me. So then I had got up a
19 paper and I showed it to chase and it basically said what
20 my recant said and told me to do it three times, get it
21 notarized and give it to this guy named Boy-boy and he
22 would give it to Raymond.

23 Raymond told me he would hold it until trial
24 that way it could be a surprise and they just saying do
25 it, get it down. And he would be on the rec yard which I

Larry Johnson - Recross

1 could see out of the window, oh, you did it, you need to
2 get it down, you either with us or against us.

3 BY MS. SALISBURY:

4 Q. Did anyone ever actually threaten you?

5 A. If I didn't get it done, I would be "x" out.

6 Q. What does that mean to you?

7 A. Well, somebody that knows more than I know about
8 being "x" out meaning me being murdered and they know that
9 I have to go to prison.

10 Q. Did you fear for your safety?

11 A. Yes, ma'am.

RECROSS-EXAMINATION

12 BY MR. CHAMBERS:

13 Q. I believe that you told co-counsel over hear a
14 few minutes ago when he asked you if you had spoken to
15 Tony Jeter, you told him no.

16 A. That is correct.

17 Q. Isn't Boy-boy Tony Jeter?

18 A. I don't know his real name.

19 Q. If Boy-boy is Tony Jeter, told to him?

20 A. Yeah. We was never in the same dorm, he just was
21 passing me papers from Raymond.

22 Q. So if you don't know Tony Jeter, why wasn't your
23 answer I don't know Tony Jeter as opposed to I never
24 talked to Tony Jeter?
25

Shaquille Hogan - Direct

1 Q. One last thing, you mentioned earlier when the
2 solicitor was questioning you about at polygraph. You
3 didn't pass that polygraph, did you?

4 A. That's not on ---

5 THE COURT: Wait a minute. No. Anything
6 else?

7 MS. SALISBURY: Nothing.

8 THE COURT: You may stand down.

9 (Witness leaves the witness stand.)

10 Let me talk to the lawyers for a second.

11 (Discussion off the record.)

12 Ladies and gentlemen of the jury, we're
13 trying to get this trial finished so you all object to
14 keep working. Keep working. Do you need to take a short
15 break or you good? Good. Call you next witness.

16 MS. SALISBURY: The State calls Shaquille
17 Hogan. Mr. Hogan, please come up to be sworn.

18 THE CLERK: Place your left hand on the Bible
19 and raise your right hand.

20 SHAQUILLE HOGAN, having been duly sworn,
21 testified as follows:

22 Thank you. Please be seated. State your
23 name for the record.

24 THE WITNESS: Shaquille Hogan.

25 DIRECT EXAMINATION

Shaquille Hogan - Direct

1 BY MS. SALISBURY:
2 Q. Mr. Hogan, what do your friends call you?
3 A. Lipz.
4 Q. Do you know the gentlemen in the courtroom here?
5 A. Yes.
6 Q. How do you know them?
7 A. Friends.
8 Q. Let's do them one by one. Who do you recognize
9 in the courtroom?
10 A. All of them.
11 Q. One at a time.
12 A. Trez, Mikey, Raymond, and Ken.
13 Q. Let's start with Trez, do you know Trez's real
14 name?
15 A. Esaiveus.
16 Q. What is he wearing for the jury?
17 A. Navy blue vest.
18 Q. How long have you known Trez?
19 A. About a year.
20 Q. What's your relationship like with him?
21 A. Kind of close.
22 Q. What about Mikey, do you know his real name?
23 A. Yes, ma'am, Michael.
24 Q. What is he wearing?
25 A. Light blue stripes.

Shaquille Hogan - Direct

1 Q. How do you know him?
2 A. A while back.
3 Q. How long have you known him?
4 A. About a year.
5 Q. What is your relationship like with him?
6 A. Pretty close.
7 Q. Who else?
8 A. Raymond.
9 Q. What's wearing?
10 A. I don't know what color that is but it's like
11 white.
12 Q. How long have you known Raymond?
13 A. Not long.
14 Q. What's your relationship like with him?
15 A. Kind of close.
16 Q. And who else?
17 A. Ken.
18 Q. What's Ken wearing?
19 A. Red, white, blue.
20 Q. How long have you known Ken?
21 A. About a year.
22 Q. What's your relationship like with him?
23 A. Pretty close.
24 Q. It seems like you've known everybody for about a
25 year and you're pretty close with them. Did you meet them

Shaquille Hogan - Direct

1 all at the same time?

2 A. No.

3 Q. Nonetheless, were you friends with them last
4 summer July of 2011?

5 A. Yes.

6 Q. Do you remember the night that is the subject of
7 this trial, July 16 and into July 17 of 2011?

8 A. Yes.

9 Q. As earliest as you can remember, what do you
10 remember?

11 A. We had went to the club.

12 Q. Which club?

13 A. Red Planet.

14 Q. How did you get there?

15 A. My brother, another home boy.

16 Q. What happened when you got there?

17 A. We went in and get in there and when we got in
18 there we was just chillin', got into it with some other
19 guy and one of my home boys ran up and hit him. When he
20 hit him, he escorted him out of the club. When I went out
21 the club, I stood around and looked around and I heard
22 gunshots and I ran to the car. I ran to the car to get my
23 gun, but the door was locked and by the door got unlocked,
24 it was all over with.

25 Q. Let's stop there and see if we can't get through

Shaquille Hogan - Direct

1 that slowly. Who do you remember being with you at the
2 club that night of your friends?

3 A. Me, Trez, Ken, Mikey, Ray, Larry, Tavarus.

4 Q. Do you remember posing for a picture?

5 A. Yes.

6 Q. Take a look at State's 3 and 4, do you see
7 yourself in those photographs?

8 A. Yeah.

9 Q. Now, you said that you went out into the parking
10 lot and heard shots, what did you do in response to that?

11 A. I ran.

12 Q. Where were you running to?

13 A. Car.

14 Q. Which car?

15 A. The car I came there with.

16 Q. What car did you come in?

17 A. A green Toyota Camary.

18 Q. Do you know whose car that is?

19 A. I don't know the rightful owner.

20 Q. Who was driving it that night?

21 A. Trez.

22 Q. The same Trez that's in the courtroom?

23 A. Yes.

24 Q. So he's the person that came and picked you up
25 from your home?

Shaquille Hogan - Direct

1 MR. QUINN: Object to the leading nature of
2 the question.

3 THE COURT: Don't lead.

4 BY MS. SALISBURY:

5 Q. You mentioned that you're home boy had come to
6 pick you up from your house, are you talking about the
7 same person?

8 A. I never said from my house.

9 Q. I apologize. From where did you get picked up?

10 A. I was at a friend's house that was across town.

11 Q. Who came to pick you up from that house?

12 A. Trez.

13 Q. In what car?

14 A. Same car.

15 Q. Did you put your gun in that car when you got
16 into it right then?

17 A. No, I left it in there.

18 Q. See if I can't clarify, when did you put the gun
19 in the car?

20 A. I had it on me the whole time so I left it when I
21 went in the club.

22 Q. Did you have it with you that you were at your
23 friend's house?

24 A. Yes.

25 Q. So when Trez came to pick you up, did you have it

Shaquille Hogan - Direct

1 with you to take it into the car then?

2 A. Yes.

3 Q. Okay. And what kind of gun was it?

4 A. It was a .380.

5 Q. Getting back to the club, you said you ran to the
6 car and what happened?

7 A. By the time the door was unlocked, everything was
8 over with so we left.

9 Q. Who did you leave with?

10 A. Me, Ken, Trez.

11 Q. Where did you go?

12 A. We left there and went to 864 and tried to get in
13 but they wouldn't let us in.

14 Q. What did you do?

15 A. We left -- I didn't know where we was headed to.
16 We was going somewhere until somebody called and told us
17 to turn around and go back to 864. So we went back and
18 ended up there.

19 Q. So were you driving at this point?

20 A. Nah.

21 Q. Who was driving?

22 A. Trez.

23 Q. So at some point, you turn around and come back
24 to 864 why?

25 A. To meet up with everybody from the club.

Shaquille Hogan - Direct

1 Q. Did you ever learn why you turned around and come
2 back to 864?

3 A. Yeah.

4 Q. What was your understanding of what was going on?

5 A. Well ---

6 MR. ROBINSON: Objection, hearsay.

7 THE COURT: What was his understanding?

8 MS. SALISBURY: Yes.

9 THE COURT: Overruled.

10 BY MS. SALISBURY:

11 Q. What was your understanding?

12 A. Well, Tavarus had came to the car, he was like
13 could he see my pistol, we fixing to get the guys at the
14 Li'l Cricket.

15 Q. Did you give him your gun?

16 A. Yes.

17 Q. Why?

18 A. Because he asked me to and that's what you do,
19 you got to do what he say.

20 Q. Why do you have to do what he says?

21 A. Because that's the power he got.

22 Q. What do you mean by that?

23 A. That's what I mean.

24 Q. Why does he have the ability to tell you what to
25 do?

Shaquille Hogan - Direct

1 A. Because I guess he's been doing it longer than
2 me.
3 Q. Did you give him the gun?
4 A. Yes, ma'am.
5 Q. What happened next?
6 A. We proceeded to get in the car and proceeded to
7 do what Tavarus said he was going to do.
8 Q. Were you still in the green Camary?
9 A. Yes, ma'am.
10 Q. Who was driving this time?
11 A. Same person.
12 Q. Now, you say we left to go do what we're going to
13 do. Who is we?
14 A. Me, Trez, Ken, Larry, Buddah, Tavarus, Mikey, and
15 Raymond.
16 Q. Do you remember what kind of cars they were in?
17 A. Yes.
18 Q. What kind of car was Larry in?
19 A. Brown Altima car.
20 Q. Was anyone with him?
21 A. Buddah.
22 Q. What kind of car was Tavarus in?
23 A. The red car.
24 Q. And who was in the car with him?
25 A. Mikey and Raymond.

Shaquille Hogan - Direct

1 Q. Who was driving that car?

2 A. I'm not sure. I can't remember.e

3 Q. Before y'all left the parking lot, do you
4 remember if anyone you were with covered their faces?

5 A. No.

6 Q. Do you remember if anyone changed into white
7 tee-shirts?

8 A. No.

9 Q. Do you remember?

10 A. I don't remember. All I can remember is Larry .
11 had a ski mask, that's all I can really just tell and hats
12 on and stuff like that.

13 Q. Where did you go after you left the parking lot
14 of 864 the second time?

15 A. We left there, went down White Horse Road, took a
16 right, took a left, and went past the Li'l Cricket and we
17 came back around, parked behind them and we parked behind
18 them and that's when everybody got out of the car.

19 Q. Did you get out of the car?

20 A. No.

21 Q. Why not?

22 A. Because I ain't have no reason to, I ain't have
23 not gun.

24 Q. What did you do?

25 A. I got in the driver's seat.

Shaquille Hogan - Direct

1 Q. Why?

2 A. Because I felt like I needed to drive.

3 Q. Who do you remember seeing running from the cars

4 towards the gas station?

5 A. Everybody else.

6 Q. Did Larry run out there with them?

7 A. Yes.

8 Q. Were you the only one waiting with the cars?

9 A. Yeah.

10 Q. What do you remember happening next?

11 A. I was in the car and I heard some gunshots.

12 Q. Do you remember how many you heard?

13 A. Nah. I just heard some gunshots and I seen Larry

14 shooting and everybody else came back to the car.

15 Q. What do you mean you saw Larry shooting?

16 A. It was on the way back he was still shooting. I

17 don't know why but he was still shooting on the way back

18 so, that's the only thing I actually saw. I heard

19 gunshots.

20 Q. Was he shooting at somebody?

21 A. I couldn't see around the building but where he

22 was shooting at so I don't know.

23 Q. When you said you saw him shooting on the

24 backside?

25 A. Like I said where I'm at you can see him shooting

Shaquille Hogan - Direct

1 but you can't see what he was shooting at.

2 Q. Do you know what kind of gun everybody had?

3 A. Some of them.

4 Q. Do you know what kind of gun Mikey was carrying?

5 A. I'm not sure. He's always talking about 8
6 millimeter.

7 Q. Do you know what kind of gun Raymond was
8 carrying?

9 A. I think it was a .357, I think. It's been so
10 long ago.

11 Q. Trez was carrying?

12 A. A 9.

13 Q. Do you know what kind of gun Ken was carrying?

14 A. He had the .382.

15 Q. What about Daquan Bruster, Buddah?

16 A. He had a .9.

17 Q. And Tavarus?

18 A. .380.

19 Q. Your .380?

20 A. Yeah.

21 Q. Now, when everybody returned back to the car,
22 what do you remember happening next?

23 A. Everybody ran and we got in the car and we drove
24 off. I drove off and got to the red light and me and Trez
25 switched driver's seats.

Shaquille Hogan - Direct

1 Q. Why?

2 A. Because I was nervous.

3 Q. Why were you nervous?

4 A. Because of all the gunshots.

5 Q. So you switched seats, which seat did you get

6 into?

7 A. I really can't remember to be honest with you.

8 Q. Where did you go?

9 A. We left there and went to the Waffle House?

10 Q. Which one?

11 A. Augusta, I think.

12 Q. Near Fleetwood?

13 A. Yeah.

14 Q. How long do you think it took y'all to get there?

15 A. I can't even tell you, I don't know. My mind

16 wasn't on it.

17 Q. What happened when you arrived at the Waffle

18 House?

19 A. Everybody was talking and we walked in and ate.

20 Q. What do you mean talking?

21 A. People just talking, there was groups over here,

22 and groups over there. They were just talking and I was

23 smoking a cigarette.

24 Q. Do you remember speaking with Raymond in the

25 parking lot that night?

Shaquille Hogan - Direct

1 A. I might have said something to him but it wasn't
2 nothing serious because I don't remember.

3 Q. Did you ever get your gun back?

4 A. Yes.

5 Q. From who?

6 A. From Tavarus.

7 Q. Do you remember where he gave it back to you?

8 A. It was like over on the other side away from the
9 door. It was like on the side.

10 Q. It was right there at the Waffle House?

11 A. Yeah.

12 Q. Do you remember how he gave it back to you?

13 A. I can't remember.

14 Q. Do you remember talking to police back in July of
15 this year?

16 A. Yes.

17 Q. Do you remember giving them a statement about
18 what you remember happening that night?

19 A. Yeah.

20 Q. Did you have a chance to look over that statement
21 and make any corrections?

22 A. No.

23 Q. You didn't get to read it?

24 A. No.

25 Q. Did you sign your name on it?

Shaquille Hogan - Direct

1 A. You talking about what they had written?

2 Q. Yes, sir.

3 A. Yes.

4 Q. Take a moment to look at it and read it over to
5 yourself there. Is that the statement that you gave to
6 the police?

7 A. Yeah.

8 Q. Do you remember telling the police that Michael
9 Williams was carrying a .40 caliber?

10 MR. QUINN: Object to the leading nature of
11 the question.

12 THE COURT: I'm going to let him answer. He
13 was just asking what he remembers. Go ahead.

14 THE WITNESS: I didn't say it in my
15 statement, though.

16 BY MS. SALISBURY:

17 Q. After you review you statement, do you remember
18 telling the police what kind of caliber firearm Trez was
19 carrying that night?

20 A. Yes, ma'am.

21 Q. What caliber?

22 A. .9 millimeter.

23 Q. Do you remember telling the police Ken was
24 carrying that night?

25 A. Yes, it says right there.

Shaquille Hogan - Direct

1 Q. What caliber?

2 A. A .9 millimeter.

3 Q. Do you remember telling police about a meeting
4 that night in the parking lot of the Waffle House?

5 A. Yes, ma'am.

6 Q. Do you remember whether that meeting happened?

7 A. You said a meeting? No. I was smoking a
8 cigarette.

9 Q. Read the last line of that statement to yourself?

10 A. "We had a meeting at," (inaudible) "car and then
11 went into the Waffle House and ate.e

12 Q. Did you not tell the police that?

13 A. Not a meeting like a meeting meeting.

14 Q. What do you mean?

15 A. It really wasn't nothing. I couldn't even
16 remember what the conversation about that's why I said it
17 couldn't even have been that important.

18 Q. Do you remember drafting a statement in June of
19 2012?

20 A. Yes, ma'am.

21 Q. Did you write that statement?

22 A. Yes, ma'am.

23 Q. Under what circumstances and for what purpose did
24 you write that statement?

25 A. I just said we didn't have nothing to do with

Shaquille Hogan - Direct

1 this thing.

2 Q. What do you mean?

3 A. I didn't have nothing to do with it so I was
4 trying to get my case over with and I didn't have nothing
5 to do with this case. I didn't have nothing to do with
6 it.

7 Q. Did you say in that statement what you told the
8 investigators is not true?

9 A. Yes, ma'am.

10 Q. Well, what is the truth?

11 A. What I just told you, the testimony I just gave
12 you.

13 Q. Now, were you charged as part of your involvement
14 in this incident?

15 A. Now but at the time, no.

16 Q. What is your understanding of what you were
17 charged with?

18 A. When?

19 Q. In this case, were you charged with assault and
20 battery by mob in the second degree and conspiracy as part
21 of your involvement in this case?

22 A. Yes, ma'am.

23 Q. And earlier this week, did you plead guilty to
24 both of those offense?

25 A. Yes, ma'am.

Shaquille Hogan - Cross

1 Q. Has anybody made you any promises about what your
2 sentence is going to be for those offenses?

3 A. No, ma'am.

4 Q. What is your understanding of what you need to do
5 here today to assist the prosecution of this case?

6 A. Testify and my part of the story.

7 Q. Has anyone told you what to say?

8 A. No, ma'am, I admitted the truth.

9 Q. Has anyone told you how to testify?

10 A. No, ma'am. I haven't been in contact with nobody
11 since the shooting.

12 Q. Have you told the truth here today?

13 A. Yes, ma'am.

14 Q. Sir, answer any questions these attorneys may
15 have.

16 MR. CHAMBERS: Randy Chambers for Mr. Booker.

17 CROSS-EXAMINATION

18 BY MR. CHAMBERS:

19 Q. Shaquille, you've already talked to the solicitor
20 about the statement that you gave. When you testified a
21 few minutes ago a home boy of yours had driven you from
22 your home to some other place and I don't think you
23 remember where that place was; is that correct?

24 A. Yes.

25 Q. From where ever that place was you said that Trez

Shaquille Hogan - Cross

1 picked you up and took you to the Red Planet, was that
2 your testimony a few minutes ago.

3 A. Yes, sir.

4 Q. Was anybody else in the car with Trez when he
5 picked you up and drove you to the Red Planet?

6 A. Ken.

7 Q. Now, you talked about that statement that you
8 gave to the solicitor, do you recall that in that
9 statement that you made back on July 22nd which was five
10 days after these alleged events occurred, do you recall
11 telling the police I met up with Trez and Ken at the club?

12 A. I don't recall. I need to see the statement.

13 Q. Okay. Let's look at it together. First of all,
14 is this your statement?

15 A. Yes, sir.

16 Q. Read that sentence for me.

17 A. "I met up with Trez and Ken at the club.

18 Q. So that would indicate that Trez never picked you
19 up and you saw Trez at the club?

20 A. Yeah.

21 Q. And then you said later that after y'all had met
22 up at the Red Planet, gone to 864, went back to the 864
23 and then gone over the Li'l Cricket, you said that the car
24 that Trez was driving, you said you got in the driver's
25 seat?

Shaquille Hogan - Cross

1 A. Yes.

2 Q. Nobody told you to do that, you just did that
3 because you thought that would be the thing to do?

4 A. Yes.

5 Q. And you said as you sat there you saw all these
6 folks go off around to the front of the store, right, and
7 then you saw them coming back?

8 A. Yes, sir.

9 Q. And you said that you even recall that as they
10 were coming back, Larry Johnson was coming back with him
11 and he was still shooting his guns as he came around the
12 store?

13 A. Yes, sir.

14 Q. And you remembered that distinctly that he was
15 shooting his gun as he was coming around the store?

16 A. Yes, that's what I seen.

17 Q. You said that you started driving and you got
18 nervous, do you remember saying that when Trez got back he
19 tried to open the driver door, saw that you were in there
20 and that he got in the seat directly behind you?

21 A. Yes, sir.

22 Q. Who else was in the car with you?

23 A. Ken.

24 Q. So Ken was in the passenger's seat, the right
25 hand passenger's seat?

Shaquille Hogan - Cross

1 A. Yes.

2 Q. And Trez was in that back seat right behind you?

3 A. Yes.

4 Q. So then you drove a distance and your testimony
5 was that you and Trez switched seats, right?

6 A. Yes.

7 Q. So that means Trez got in the driver's seat and
8 you got in seat directly behind the driver's seat?

9 A. I guess so.

10 Q. That's consistent with what you said in this
11 statement, isn't it?

12 A. Yes.

13 Q. Well, there were a few things that you went
14 through there that apparently you left out and the
15 solicitor handed you the statement and asking you did you
16 remember those, do you remember her doing that?

17 A. Yes, sir.

18 Q. And it seemed to me like you read the statement
19 and then said you remember it, is that what happened?

20 A. Yes, sir.

21 Q. So it really what happened is you were just
22 reading it off the page and looking at it, well, I must
23 have said that because it's written on the page?

24 A. It's been so long ago.

25 Q. You don't really remember it, you just know it

Shaquille Hogan - Cross

1 was written on that page an you just know that it was
2 written on that page and you read it back to her when she
3 asked her?

4 A. Basically.

5 Q. And she dropped this in front of you and she
6 asked you about this statement that you gave on June 10,
7 2012, it's on an incident report from the Greenville
8 County Detention Center, correct?

9 A. Yes, sir.

10 Q. And it's witnesses by an Officer Cole, is that
11 one of the detention officers?

12 A. Yes, sir.

13 Q. And then also it is notarized by Brenda Gayle
14 Alexander also somebody from the detention center?

15 A. Yes, sir.

16 Q. And what you say in there is that basically
17 everything that you said in this statement that you
18 discussed that you gave on the 22nd that the police told
19 you what to say and you went along with it?

20 A. Yes, sir.

21 Q. Those were false accusations you were making
22 about yourself and about these other folks.

23 A. Yes, sir.

24 Q. Do you remember that you also had a handwritten
25 statement that you signed on September 6, 2011?

Shaquille Hogan - Cross

1 A. Yes, sir, I remember.

2 Q. Is that your statement?

3 A. Yes, sir.

4 Q. And in that statement on September 6, 2011 that
5 was notarized too, wasn't it?

6 A. Yes, sir.

7 Q. And this statement was made before you got
8 charged in this case, wasn't it because it was made on
9 September 6, 2011?

10 A. Yes, sir.

11 Q. And in that time you said, "Investigators told me
12 what to say and claim if I went along with it, they would
13 help me with my charges. I was manipulated and used and
14 wish to recant those false accusations," right?

15 A. Yes, sir.

16 Q. So you made not one but two statement that you
17 were coerced and manipulated by police officers to make
18 false accusations?

19 A. Yes, sir.

20 Q. And the fact of the matter is that even though
21 you hadn't been charged in this case, you had in fact been
22 charged with an armed robbery and those cases were pending
23 against you, correct?

24 A. Yes, sir.

25 Q. And you eventually pled guilty to the armed

Shaquille Hogan - Cross

1 robbery?

2 A. Yes, sir.

3 Q. And that carries a sentence of 10 to 30 years?

4 A. Yes, sir.

5 Q. But they deferred the sentence on that?

6 A. Yes, sir.

7 Q. Because they wanted to wait and see how you
8 testified here today, right?

9 A. No one said it.

10 Q. That was the clear indication, wouldn't that be
11 fair to say?

12 A. If that's how you want to put it.

13 Q. And you came in on Monday after having already
14 pleaded guilty to an armed robbery and came in here to
15 plead guilty to assault and battery by a mob and a
16 conspiracy, right?

17 A. Yes, sir.

18 Q. And the charges of attempted murder, those were
19 dismissed against you, you didn't have to plead guilty to
20 those?

21 MS. SALISBURY: I object to that. That's not
22 accurate.

23 BY MR. CHAMBERS:

24 Q. You pled guilty to those two lesser offenses,
25 right?

Shaquille Hogan - Cross

1 A. Yes, sir.

2 Q. And they deferred sentence on that as well,
3 correct?

4 A. Yes, sir.

5 Q. When you came in here on Monday you first said you
6 didn't want to plead guilty, didn't you?

7 A. Yes, sir.

8 Q. You said you didn't want to forward and you
9 weren't going to, you were adamant about that, isn't that
10 right?

11 A. Yes, sir.

12 Q. And they took you back into that holding cell,
13 didn't they?

14 A. No, sir.

15 Q. Where did you go?

16 A. They turned me around and said they were going to
17 sentence for my other cases.

18 Q. They were going to sentence you on the other
19 charges, right?

20 A. Yes, sir.

21 Q. Go ahead because you were going to plead guilty,
22 they were going to sentence you on that armed robbery
23 charges?

24 A. Yes, sir.

25 Q. After that, you went and talked to some folks,

Shaquille Hogan - Cross

1 didn't you? Some people talked to you after that? You
2 didn't go ahead and get sentenced, right?

3 A. Yes, sir.

4 Q. You weren't sentenced on that armed robbery that
5 day, were you?

6 A. No, sir.

7 Q. You talked to some folks after that, right?

8 A. Yes, sir.

9 Q. Did somebody at that point tell you need to
10 follow through with what you said you were going to do or
11 you ---

12 THE COURT: Hand on a second. Lawyers, come
13 up here.

14 (Discussion off the record.)

15 BY MR. CHAMBERS:

16 Q. So at any rate, after being taken away for a
17 while, you came back and at that point decided you were
18 going to go ahead and plead guilty for the charges from
19 the Li'l Cricket, right?

20 A. Yes, sir.

21 Q. And you started -- I was in the courtroom and you
22 can correct me if I'm wrong, you got to the part where
23 they were talking about -- you had trouble getting through
24 the plea, didn't you? You stumbled a little bit and they
25 were going to take you out again, do you remember that?

Shaquille Hogan - Cross

1 A. Yeah.

2 Q. You finally made it through that plea despite
3 your reluctance, you made it through, correct?

4 A. Yes, sir.

5 Q. And you were not sentenced, were you?

6 A. No, sir.

7 Q. So as you sit here today testifying, you have not
8 been sentenced on the armed robbery, you have not been
9 sentenced on the assault battery by mob, you have not been
10 sentenced on the conspiracy charge, right?

11 A. No, sir.

12 Q. At some point after they see how this trial goes,
13 then you'll be sentenced.

14 A. Yes, sir.

15 Q. As we've already discussed prior to your
16 reluctance on Monday and going forward and pleading
17 guilty, you made not one but two statements that were
18 signed and notarized that you had made false accusations
19 about yourself and about these other individuals that were
20 seated over here because you were forced and coerced and
21 manipulated into doing so.

22 A. Yes, sir.

23 Q. Thank you.

24 MR. ROBINSON: I have no questions, Your
25 Honor.

Shaquille Hogan - Cross

1 BY MR. ABDALLA?

2 Q. Mr. Hogan, I don't want to beat a dead horse, but
3 isn't it a fact that you actually have a series of charges
4 one is possession of a weapon during the commission of a
5 violent crime?

6 A. Yes, sir.

7 Q. And assault and battery in the first degree, two
8 counts?

9 A. Yes, sir.

10 Q. And two counts of kidnapping?

11 A. Yes, sir.

12 Q. In addition to the armed robbery so you pled to
13 all six of these charges prior to pleading to these
14 charges in this case on Monday; is that correct?

15 A. Yes, sir.

16 Q. And you haven't been sentenced on any of those?

17 A. No, sir.

18 Q. And you're aware that those kidnappings carry up
19 to 30 years, correct?

20 A. Yes, sir.

21 Q. You said something about going to the club 864
22 and the reason they didn't let you guys in is because it
23 was closed; is that right?

24 A. They didn't let us in.

25 Q. So you weren't able to go in at all?

Shaquille Hogan - Redirect

1 A. No.

2 Q. Do you know Brandon Edwards?

3 A. No.

4 Q. Do you know Joseline Mack?

5 A. I don't know her. I've seen her before.

6 Q. You were testifying earlier and you said
7 something about everybody was running and you kept hearing
8 shots being fired and it turns out it was Larry that was
9 firing and everybody else had stopped shooting; is that
10 correct?

11 A. Yes, sir.

12 Q. And I know you said you didn't know he was
13 shooting at, correct?

14 A. Yes.

15 Q. But Larry was the only one left shooting as far
16 as you know, is that correct?

17 A. Yes, he was the last one.

18 Q. Do you remember also telling Mr. Young,
19 apologizing to him about the things that you said about
20 making a statement?

21 A. My first statement?

22 Q. Yes. Do you remember telling him that Larry was
23 in your ear and promising you that the police would help
24 you if you told them these things?

25 A. At one point in time, yes.

Shaquille Hogan - Redirect

1 Q. And he told you what you were supposed to say; is
2 that correct?

3 A. Yes, sir.

4 MR. ABDALLA: I have no further questions.

5 MR. QUINN: No questions on behalf of
6 Mr. Sadler.

REDIRECT EXAMINATION

7
8 BY MS. SALISBURY:

9 Q. What's the truth? We've heard a lot about you
10 giving this first statement, being talked to and all this
11 stuff, what's the truth?

12 MR. QUINN: Objection, it's really not proper
13 redirect.

14 THE COURT: It's in response to the
15 impeachment. Go ahead.

16 THE WITNESS: My first statement.

17 BY MS. SALISBURY:

18 Q. Were you in the green Toyota Camary behind the
19 Li'l Cricket during the morning of July 17?

20 MR. QUINN: Objection to the leading nature
21 of the question.

22 THE COURT: Go ahead, answer the question.

23 THE WITNESS: Yes, ma'am.

24 BY MS. SALISBURY:

25 Q. Did the investigators in this case, any of the

Shaquille Hogan - Redirect

1 ones that you talked to tell you what to say?

2 A. No, not really.

3 Q. What do you mean by that?

4 A. It was like certain parts, but at the same time
5 they was telling me -- I didn't have no bond when I came
6 in on my charges and they told me they would give me a
7 bond and that's how I found out what a youth offender act
8 was and they told they would try to get me a youth
9 offender, but they didn't what to say though and it was
10 like in my ear about it and making me promises and stuff.

11 Q. As it relates to what happened that night, did
12 any of the police tell you what to put in your statement
13 about what happened or who was there?

14 A. No, ma'am.

15 Q. Now, you mentioned a few times that this was a
16 long time and you have a hard time remembering.

17 A. Yes, ma'am.

18 Q. Do you remember where you were in the car after
19 you had finished driver or after you had traded seats?

20 A. Like I said I can't even -- I guess I was in the
21 back seat if Ken was the passenger and that's about as
22 close and accurate as I can give you.

23 Q. But do you remember that? Is that something you
24 remember or is that an assumption that you're making?

25 A. I mean I can make that assumption off the fact

Shaquille Hogan - Recross

1 that they just said he was in the right passenger seat so
2 there couldn't be too many other places.

3 Q. And with respect to this statement or both of
4 them that we've heard a lot about where you say that the
5 police promised you things, threatened you, whose idea was
6 it to draft those statements, the ones from the jail?

7 A. Really it came about I was actually talking to
8 somebody ---

9 MR. QUINN: I object. This is still not
10 proper redirect. She went into it on direct. She's had
11 the opportunity to examine him on this.

12 THE COURT: Well, somebody brought another
13 statement, so I'm going to let her pursue it.

14 THE WITNESS: Actually I came about like a
15 couple weeks after I got incarcerated, I happened to be
16 talking to someone, it wasn't about the case, I happened
17 to be talking to someone and said what if I wanted to
18 write a statement saying what I said wasn't true, he told
19 me -- he was in there for a murder charge so he knew a lot
20 -- so he told me I could write a recant and he told me
21 what it was and he told me what it was and that's when I
22 wrote it. I learned what it was from an inmate that was
23 in for some other charges.

24 BY MS. SALISBURY:

25 Q. Now, just to clarify you mentioned that one of

Shaquille Hogan - Recross

1 the individuals that was out there that night was Buddah?

2 A. Yes, ma'am.

3 Q. Do you know Buddah's real name?

4 A. Yes.

5 Q. What is it?

6 A. Daquan.

7 Q. Do you know somebody that goes by the name Black

8 A. I know a lot of Blacks so I can't say.

9 MS. SALISBURY: Nothing additional.

10 RECROSS-EXAMINATION

11 BY MR. CHAMBERS:

12 Q. I want to make sure we're real clear about this,
13 this again is the statement that you gave just five days
14 later to Investigator Campbell; is that right?

15 A. Yes, sir.

16 Q. This is the one you looked over and after reading
17 able to talk to the solicitor about it but read that
18 statement for me right there. Well, let me ask you this,
19 and you can correct me, "Trez then tried to open my driver
20 door and saw that I was in the seat so he got in the back
21 seat behind me." Did you say that?

22 A. Yes, sir.

23 Q. And did you later say, "We pulled over at a stop
24 sign, took a right, and we drove to a red light where me
25 and Trez switched spots because I can't drive when I'm

Wayne Campbell - (recall)

1 nervous," correct?

2 A. Yes, sir.

3 Q. So when you say that you got in the back seat,
4 it's consistent with this statement that you gave, right?

5 A. Yes, sir.

6 Q. So if this statement is an accurate statement,
7 that's where you would have been seated in the car?

8 A. Yes, sir.

9 Q. I just want to make sure I'm clear, that
10 recantation in September and one later in June, nobody
11 over here asked you to do that, you talked to some other
12 person that was unrelated that was in there on murder
13 charges about it, told you how to do it, and you did it on
14 your own?

15 A. Yes, sir.

16 Q. Thank you.

17 THE COURT: You can step down.

18 (Witness leaves the stand.)

19 How many more witnesses?

20 MS. SALISBURY: Two or three, Your Honor.

21 THE COURT: We'll take a short break.

22 (Jury exits the courtroom.)

23 (Whereupon, there was a brief recess.)

24 Okay. Go ahead and get them lined up and you
25 can put on the record.

Wayne Campbell - (recall)

1 MS. SALISBURY: I previously marked and
2 admitted State's 56. After reviewing what appeared to be
3 identical documents, I marked 56 as the incorrect item.
4 State's Exhibit 56 is actually an unrelated forensic
5 report. The correct forensic report I can replace with a
6 new number or substitute 56.

7 THE COURT: Substitute 56. It's a clerical
8 area. I don't believe there's any objection from the
9 defendants.

10 (Forensic report marked as State's Exhibit
11 No. 56 for identification and admitted into evidence.)

12 Call your next witness.

13 MS. SALISBURY: The State would like to
14 recall Investigator Wayne Campbell.

15 THE COURT: Come around, you're still under
16 oath.

17 DIRECT EXAMINATION (Recall)

18 BY MS. SALISBURY.

19 Q. You testified earlier that you interviewed
20 Shaquille Hogan?

21 A. Yes, I did.

22 Q. During that interview with him, do you remember
23 discussing the precise weapons that he and his
24 co-defendants carried that night.

25 A. I did.

Wayne Campbell - (recall)

1 Q. Did you learn from him the precise caliber
2 firearms that he and his co-defendants was armed with that
3 night?

4 A. I did.

5 Q. What did he share with you during that interview
6 about which defendant was carrying which firearm?

7 A. I had him write it on a piece of paper. He
8 wrote, "Michael Williams, .40; Raymond Young, .45;
9 Esaiveus Booker, .9 millimeter Smith and Wesson," got Trez
10 to the side; Kinjta Sadler, .9 millimeter High Point;
11 Larry Johnson .380 Baby; Various .380," and he's got
12 beside it "Tavarus Deon Holmes," Boogaman question mark.

13 Q. Did you include that information for Mr. Hogan's
14 statement for him to review?

15 A. No, I did not.

16 Q. Why?

17 A. I started talking his statement. During his
18 statement he told me to stop, it was incorrect. Basically
19 what he told me to do was just stop typing and he needed
20 to tell me the truth. Once he did that, I got Jennings
21 Audrey which is a much faster typist than I am to type his
22 statement and this got left out.

23 Q. Do you independently remember discussing this
24 subject with Mr. Hogan?

25 A. Yes, and I put it in my supplemental report.

Daquan Bruster - Direct

1 Q. Thank you, sir. If you would answer any
2 questions these attorneys may have for you.

3 MR. CHAMBERS: No questions.

4 MR. ROBINSON: No questions.

5 MR. ABDALLA: No questions.

6 CROSS-EXAMINATION

7 BY MR. QUINN:

8 Q. Did you ever recover a .9 millimeter High Point
9 that you can attribute to Mr. Sadler?

10 A. No, there was only one gun that was recovered.

11 MR. QUINN: I have no further questions.

12 MS. SALISBURY: The State calls Mr. Daquan
13 Bruster.

14 THE CLERK: Come around and place your left
15 hand on the Bible and raise your right hand.

16 DAQUAN BRUSTER, having been duly sworn,
17 testified as follows:

18 Thank you. Please be seated.

19 THE WITNESS: Daquan Bruster.

20 DIRECT EXAMINATION

21 BY MS. SALISBURY:

22 Q. Mr. Bruster, what do you friends call you?

23 A. Buddah.

24 Q. Were you charged as part of your involvement as
25 part of this incident?

Daquan Bruster - Direct

1 A. Yes, ma'am.

2 Q. Did you plead guilty on Monday to seven counts of
3 attempted murder, possession of a weapon during the
4 commission of a violent crime, conspiracy and assault and
5 battery by mob in the second degree?

6 A. Yes, ma'am.

7 Q. Do you remember the events of that night?

8 A. No, ma'am.

9 Q. Nonetheless, did you plead guilty to having
10 attempted to kill these seven victims?

11 A. Yes, ma'am.

12 Q. So it's your testimony that you pled guilty yet
13 you don't remember why?

14 A. Plead the 5th.

15 MS. SALISBURY: Judge.

16 THE COURT: You don't have a 5th Amendment.
17 You have pled guilty and that right does not belong to you
18 any more.

19 MS. SALISBURY: Your Honor, with the Court's
20 permission, I'd like to treat this witness as hostile.

21 THE COURT: Alright.

22 BY MS. SALISBURY:

23 Q. Mr. Bruster, when you pled guilty on Monday
24 morning, you acknowledged that you were riding the car
25 with Larry Johnson, isn't that correct?

Daquan Bruster - Direct

1 A. When I took that plea, I wasn't asked any
2 questions, you just stated what you had.

3 Q. And when I shared with the Judge that you were in
4 the car with Larry Johnson, you agreed that that was
5 accurate, did you not?

6 A. Yes, ma'am.

7 Q. And you also agreed that you were a shooter at
8 the gas station that night, isn't that correct?

9 A. Yes, ma'am.

10 Q. Did you also not plead guilty to conspiring with
11 these four defendants, Mr. Sadler, Mr. Young, Mr. Williams
12 and Mr. Booker, in addition to Mr. Johnson and Mr. Hogan,
13 to commit this defense, did you not plead guilty to that
14 conspiracy?

15 A. Yes, but that was on my behalf.

16 Q. What does that mean?

17 A. That was for me.

18 Q. Did you conspire with them? Did you agree to
19 commit this crime?

20 A. I admitted after committing the crime.

21 Q. You pled guilty to conspiracy, correct?

22 A. (No response).

23 Q. Did you plead guilty to then joining with these
24 defendants to commit this shooting?

25 A. I didn't say that.

Daquan Bruster - Cross

1 Q. You pled guilty to assault and battery by mob in
2 the second degree, right?

3 A. Yes, because they was charges I was giving and
4 those were my plea but my plea wasn't even to testify from
5 my understanding.

6 Q. The State has not made any offers to you in
7 exchange for you to testify; is that correct?

8 A. No, ma'am.

9 Q. In fact, you don't want to testify, do you?

10 A. No.

11 Q. You pled guilty to assault and battery by mob in
12 the second degree, correct?

13 A. Yes, ma'am.

14 Q. You pled guilty to joining with Mr. Sadler,
15 Mr. Young, Mr. Williams, and Mr. Booker to shoot the
16 victims in this case as a joint mob with the same effort
17 with the same goal, the same objection, did you not plead
18 guilty to that?

19 A. On my end.

20 MS. SALISBURY: Your Honor, I don't have any
21 further questions.

22 CROSS EXAMINATION

23 BY MR. CHAMBERS:

24 Q. The truth of the matter is the only reason you
25 pled guilty is they threatened you with life without

Daquan Bruster - Cross

1 parole if you didn't plead?

2 A. Yes, sir.

3 Q. In fact, part of it the plea arrangement was, it
4 was put on the record on Monday was that they were
5 removing that life without parole in order for you to
6 plead guilty, right?

7 A. Yes, sir.

8 Q. And I believe that your mother even came to you
9 and pled with you to do what they wanted you to do because
10 if you didn't they were going to lock you up for the rest
11 of your life.

12 A. Something like that.

13 Q. And that's why you did that?

14 A. Yes, sir.

15 Q. And, in fact, you even tried to let people know
16 that you hadn't done anything, that these people hadn't
17 done anything because you did a notarized statement with
18 Jimmy Thompson over at the jail back on July 25, 2012
19 saying I didn't do anything and none of these other people
20 they're trying to get me to talk about did anything,
21 didn't you?

22 A. Yes, sir.

23 Q. And they didn't sentence you on Monday. They
24 deferred your sentence so they could wait to see how
25 things went today, didn't they?

Daquan Bruster - Cross

1 A. That's what it looked like. From my
2 understanding, I didn't know I had to testify.

3 MR. CHAMBERS: No further questions.

4 MR. ROBINSON: No questions.

5 MR. ABDALLA: No questions on behalf of
6 Mr. Young.

7 MR. QUINN: No questions.

8 MS. SALISBURY: No redirect.

9 THE COURT: Alright. You can step down.

10 Ladies and gentlemen of the jury, I
11 understand the State has one more witness but it will be a
12 lengthy witness and I think we'll just hold off until the
13 morning, so I'd ask y'all to be back at 9:15. Here we are
14 deep into the case. I know that human nature that you all
15 want to talk about and soon enough y'all will have to
16 opportunity, but don't be premature. Don't do any
17 research and don't go to the scene. We'll see you in the
18 morning at 9:15.

19 (Jury exits the courtroom.)

20 Who is Mr. Bruster's attorney?

21 MS. SALISBURY: Michael Johnson, Your Honor.

22 THE COURT: I certainly want to give him a
23 chance to withdraw his guilty plea if he is now denying
24 that he remembers, I'm afraid that's an invalid plea. Can
25 you talk to Michael Johnson about being up here in the

Daquan Bruster - Cross

1 morning?

2 MS. SALISBURY: Yes, sir.

3 THE COURT: We'll just have to try him
4 separately. If he goes to trial, that gives other people
5 an opportunity to testify. I understand there are some
6 offers that have made and I will honor those until the
7 first witness hits the witness stand tomorrow. After
8 that, no.

9 MS. SALISBURY: Thank you, Judge.

10 ---END OF TRANSCRIPT RECORD, Day 4 ---

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Daquan Bruster - Cross

1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2) 2011-GS-23-8010-8018
 COUNTY OF GREENVILLE) 2012-GS-23-3838
 3) 2011-GS-23-9239-9245
) 2012-gs-23-3041,7491-79417
 4)
 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
 5)
 6 -vs-)
)
 7 Raymond Lewis Young)
 Esaiveus F. Booker)
 8 Kinjta Kadeem Sadler)
 Michael W. Williams)
 9

10 Day - 5 January 11, 2013
 11 Greenville, South Carolina

12 B E F O R E:

13 THE HONORABLE EDWARD W. MILLER, Judge.

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

15 Katrina Salisbury, Esquire
 Assistant Solicitor
 Attorney for the State

16 Scott Robinson, Esquire
 Attorney for Michael Williams

17 Randy Chambers, Esquire
 Attorney for Esaiveus Booker

18 Thomas Quinn, Esquire
 Attorney for Kinjta Sadler

19 John Abdalla, Esquire
 Attorney for Raymond Young

20 CAROLINE HISKELL
 Thirteenth Circuit Court Reporter
 21
 22
 23
 24
 25

Daquan Bruster - Cross

I N D E X

WITNESSES	DR	CR	RED	REC
Tavarus Holmes	742			
Daquan Bruster (recall)	752	757		

E X H I B I T S

IDENTIFICATION	ID	IN EVD
35 Fragments	747	747
36 Bullets	747	747
37 Holster	747	747

Tavarus Holmes - Direct

P R O C E E D I N G S

THE BAILIFF: All rise. Court is now in session, the Honorable Edward Miller presiding.

THE COURT: Everybody ready? Bring them in.

(Jury re-enters the courtroom.)

Good morning, ladies and gentlemen, I hope you had a pleasant evening and we are ready to begin again. Please all your next witness.

MS. SALISBURY: The State calls Mr. Tavarus Holmes.

THE CLERK: Place your left hand on the Bible and raise your right hand.

TAVARUS HOLMES, having been duly sworn, testified as follows:

Please state your name for the record.

THE WITNESS: Tavarus Leon Holmes.

DIRECT EXAMINATION

BY MS. SALISBURY:

Q. Mr. Holmes, what do your friends call you?

A. Vares.

Q. Do you know the defendants in the courtroom?

A. Yes.

Q. Let's start with Mr. Esaiveus Booker. Do you know Mr. Booker?

A. Yes.

Tavarus Holmes - Direct

1 Q. How do you know him?

2 A. A friend of the neighborhood.

3 Q. How long have you known him?

4 A. All of my life.

5 Q. What name do you call him? What name do you call
6 him?

7 A. I have no testimony on him. My attorney isn't
8 present.

9 THE COURT: Ladies and gentlemen, we're going
10 to take a short break and we'll be right back with you.

11 (Jury exits the courtroom.)

12 Who is your lawyer?

13 THE WITNESS: Brian Beasley.

14 THE COURT: Somebody call Beasley and get him
15 over here now.

16 MS. SALISBURY: Your Honor, it's my
17 understanding that Mr. Beasley has a representative here
18 that's been working with Mr. Holmes. It's my
19 understanding that Mr. Beasley is out of the country and
20 made arrangements for someone to be with here today.

21 THE COURT: Would you like to consult with
22 your counsel?

23 THE WITNESS: No, sir.

24 THE COURT: Did he plead guilty?

25 MS. SALISBURY: Attempted murder and

Tavarus Holmes - Direct

1 conspiracy, Your Honor.

2 THE COURT: How many counts?

3 MS. SALISBURY: Just one.

4 THE COURT: Was there an agreement for the
5 plea?

6 MS. SALISBURY: Yes, sir.

7 THE COURT: And what was that?

8 MS. SALISBURY: That he would testify.

9 THE COURT: Okay. Is that your understanding
10 of your plea, Mr. Holmes?

11 THE WITNESS: I was told that if I go in an
12 say this I would get a deal on my plea.

13 THE COURT: You've already got your deal or
14 your deal is going to disappear and you and Mr. Bruster
15 will be tried separately because I'm going to vacate your
16 plea. And I'm telling you right now Bruster is looking at
17 life without parole, what's he looking at?

18 MS. SALISBURY: 35 if the offenses run
19 separate consecutive with Your Honor.

20 THE COURT: So he's only charged with one
21 count of attempted murder?

22 MS. SALISBURY: Yes, Your Honor.

23 THE COURT: That's fine. 35 years, how old
24 are you?

25 THE WITNESS: Twenty-one.

Tavarus Holmes - Direct

1 THE COURT: You haven't even been alive 35
2 years. That would make you 56. I can remember what it
3 was like to be 56. I have a hard time remember what it
4 was like to be 21. I'm going to suggest that you speak
5 with your counsel privately before you proceed any
6 further. There's a private space back in there.

7 (Witness leaves the witness stand.)

8 MR. ABDALLA: We'd like to approach?

9 THE COURT: About what?

10 MR. ABDALLA: About the trial our clients are
11 receiving. I am concerned for Mr. Young that the course
12 of nature are forcing a client to testify if he's already
13 to enter a plea and threatening to vacate his plea is
14 coercive and can effect my client's right to a fair trial,
15 Your Honor.

16 THE COURT: How does that impact your guy in
17 any sense? That man pled guilty in front of me under oath
18 and the deal was he was going to testify. He is backing
19 out of his deal so I'm backing out of my deal. It has
20 nothing to do with your client other than the fact that
21 his testimony may be very prejudicial. So we'll be at
22 ease for a few minutes.

23 (Whereupon, there was a brief break.)

24 (Discussion off the record.)

25 MS. SALISBURY: Your Honor, I just want to be

Tavarus Holmes - Direct

1 clear that Mr. Holmes was charged with the exact same
2 charges of these offense. He only pled to one count of
3 attempted murder but he was charged with seven as well as
4 the weapons and conspiracy charges.

5 THE COURT: So if I vacate the plea, you're
6 not just going to try him on one.

7 MS. SALISBURY: That's correct.

8 THE COURT: He'll be looking at 200 and
9 something years.

10 Stand right out front, Mr. Holmes, over here.

11 Your attorney has informed me that you were
12 coerced into your guilty plea; is that right?

13 DEFENDANT HOLMES: Yes, sir. I didn't have
14 no time to go through the evidence that they have against
15 me.

16 THE COURT: Okay. I'm going to vacate your
17 plea. Just so you know, you're not going to tried on one
18 attempted murder, you're going to tried on seven. All
19 your charges come back, do you understand that?

20 DEFENDANT HOLMES: Yes, sir.

21 THE COURT: That's fine with me. What's the
22 situation with respect to bond?

23 MS. SALISBURY: I'd ask it be revoked.

24 THE COURT: Take him into custody, you'll
25 have to come up with a new bond.

Tavarus Holmes - Direct

1 Alright. Have any more witnesses?

2 MS. SALISBURY: No, sir. There are a few
3 more pieces of evidence that I'd like to officially move
4 in on the record. My notes reflect that they were not
5 move in and then I'm prepared to rest.

6 THE COURT: Go ahead.

7 MS. SALISBURY: State's Exhibit 35 are the
8 fragments that Jonathan Derby retrieved from his
9 investigation of the cars. State's Exhibit 36 were the
10 bullets are the bullets from the Davis Road search warrant
11 and 50 are the holsters. At this time the State moves in
12 those three pieces of evidence.

13 THE COURT: Any objection.

14 (Collectively no objection.)

15 (Fragments marked as State's Exhibit 35 for
16 identification was admitted into evidence.)

17 (Bullets marked as State's Exhibit No. 36 for
18 identification was admitted into evidence.)

19 (Holster marked as State's Exhibit NO. 50 for
20 identification was admitted into evidence.)

21 THE COURT: Is the State going to rest?

22 MS. SALISBURY: Mr. Johnson is here in the
23 evident that there is some change with Mr. Bruster.

24 MR. ABDALLA: Just for the record and
25 Mr. Young, we would make the same objection about coercive

Tavarus Holmes - Direct

1 nature and being called back.

2 THE COURT: Being what?

3 MR. ABDALLA: The witness has already refused
4 to testify and left and we are objecting to the Court's
5 coercive nature of maybe forcing him to come back and
6 testify.

7 THE COURT: No, sir. The agreement that he
8 had to enter the plea and receive the benefits that he
9 received was that he testified and I believe he was under
10 oath when I spoke to him about his testimony and he
11 adopted the statement he made.

12 MS. SALISBURY: He didn't give a statement,
13 but he specifically allocated to the allegations that I
14 put on the record at the time of the plea.

15 THE COURT: He has violated his agreement.
16 I'm not being coercive. I'm vacating his plea and he's
17 going to go to trial on all of it and I presume he's
18 facing LYOP. Mr. Williams, have you talked to him?

19 MR. WILLIAMS: If it pleases the Court, I
20 have met with Mr. Bruster. He has indicated to me once
21 again his extent of the knowledge and his extent of the
22 involvement and that he is guilty on these particular
23 charges and he will cooperate as to what he knows, Your
24 Honor.

25 THE COURT: Okay, let's bring him up. Let's

Tavarus Holmes - Direct

1 find out.

2 MR. CHAMBERS: Your Honor, I would like to
3 add to the record we've talked about people not living up
4 to their deal and I believe the record is pretty clear at
5 this point that each one of these that have taken the
6 stand the solicitor has indicated there was no deal, that
7 no promises were made. And if that's the case, there's no
8 deal.

9 THE COURT: You are well aware that they were
10 not prosecuted on certain charges and a life without
11 parole notice was withdrawn. That's a deal. They are not
12 going to make a recommendation as to sentence as to what
13 prior to the plea, that's my understanding. It was all
14 laid out on the record. So there is no issue there.

15 MR. CHAMBERS: With all due respect to the
16 Court and certainly not trying to inflame anyone here, but
17 I want to make sure that this is on the record in case
18 this case has to go up on appeal. Our position is that
19 once someone has entered a plea, that they can not be
20 forced to withdraw that plea, that plea can not be
21 vacated, that he came in here to testify after pleading
22 guilty and just because he didn't say what they wanted him
23 to say doesn't mean that he can now be brought back out
24 here and essentially forced to testify.

25 THE COURT: That position would allow someone

Tavarus Holmes - Direct

1 to game the system and that's not going to happen. What
2 you're advocating then, okay, we'll leave his plea in
3 place and try him on the rest of the pending charges.
4 Yes, ma'am.

5 MS. SALISBURY: I don't know what Mr. Holmes
6 wants to do but I don't have any problem allowing him to
7 maintain his guilty and quite frankly examine him with
8 respect to these specific allegations that he admitted to.
9 The understanding that I had Mr. Holmes would be the range
10 would be up to 35 years and the extent to which he could
11 control just how high that number was, was exclusively his
12 depending on the extent to which he cooperated. I
13 interviewed him, I met with him, we went over these
14 videos. I was under the impression he was going to
15 cooperate. I guess it's his choice. If he wants to
16 resend the guilty plea, that's his choice. But for
17 purposes of ---

18 THE COURT: No. He told me that he didn't
19 remember and I'm not -- if he appeals that, then that gets
20 reversed. So, no.

21 Mr. Bruster, come on up. Come on around and
22 have a seat over here.

23 If you would place your left hand on the
24 Bible and raise your right hand.

25 DAQUAN BRUSTER, having been duly sworn,

Daquan Bruster - Direct (recall)

1 testified as follows:

2 Please have a seat. Yesterday you were up
3 here under oath on the witness stand and you said you
4 couldn't recall anything about what happened which would
5 significantly different than what you said on Monday when
6 you tendered your guilty plea.

7 Now, I'll give you another opportunity if you
8 want to see if you would come forward with the truth
9 without prevarications and testify, otherwise, if your
10 position remains that you can't remember what happened,
11 then I'm vacating the guilty plea because I'm not going to
12 allow you to testify to something that you have no idea at
13 this time?

14 DEFENDANT BRUSTER: I'll testify.

15 THE COURT: Let me just caution you that you
16 have previously testified under oath at your guilty plea,
17 so if you're going to change your testimony in some way,
18 I'll have to deal with that if that occurs. All we're
19 asking for is the truth.

20 Yes, sir, Mr. Quinn.

21 MR. QUINN: I object to him being recalled by
22 the State. The State has already called him as a witness,
23 had a full opportunity to examine him, the defense has
24 examined him, he was released as a witness. This is
25 exactly what the other counsel's arguments are about the

Daquan Bruster - Direct (recall)

1 coercive nature of the Court's ability to allow him to
2 withdraw his plea -- compelled to withdraw his plea and
3 face additional charges and additional time. So my
4 objection to this is him being recalled as a witness when
5 nothing was unavailable to the State at the time he was
6 previously called.

7 THE COURT: Okay. Your objection is noted
8 for the record. And I assume everyone is in agreement
9 with it. Of course, you are free to cross-examine him
10 about all that.

11 (Jury re-enters the courtroom.)

12 Ladies and gentlemen, recalled to the stand
13 is Mr. Daquan Bruster. It turn it over to the State.

14 DIRECT EXAMINATION (recalled)

15 BY MS. SALISBURY:

16 Q. Mr. Bruster, do you remember being in here
17 yesterday?

18 A. Yes, ma'am.

19 Q. Do you remember talking about the charges to
20 which you pled related to the incident that's the subject
21 of this trial?

22 A. Yes, ma'am.

23 Q. Now, at the time, it was your testimony that you
24 did not remember what had happened, do you recall that?

25 A. Yes, ma'am. I don't remember everything.

Daquan Bruster - Direct (recall)

1 Q. Can you tell the jury what you do remember
2 starting with being at the Red Planet that night, do you
3 remember being there?

4 A. Yes.

5 Q. Could you tell the jury what you remember at the
6 Red Planet on July 16th.

7 A. I left and I went to the hospital. Brandon Davis
8 got shot in the back. Then came and got in the car with
9 Larry Johnson.

10 Q. Where did you get in the car with Larry Johnson?

11 A. It was by McDonalds.

12 Q. Which McDonalds?

13 A. Off of White Horse Road.

14 Q. Is that anywhere near Club 864?

15 A. It's right there.

16 Q. What kind of car do you remember getting into?

17 A. Cutlas.

18 Q. What do you remember happening next?

19 A. I asked him to take me home and then he looked me
20 and it was like put the shirt on your face and where
21 you're gun. So I was looking at him like what's your
22 talking about and he said it was time, and I just shrugged
23 my shoulders and he turned by the Li'l Cricket.

24 Q. Did you have a gun with you already?

25 A. Yes.

Daquan Bruster - Direct (recall)

1 Q. Why?

2 A. For my protection.

3 Q. Do you routinely carry a gun?

4 A. When I go out.

5 Q. What kind of gun were you carrying on this

6 particular evening?

7 A. .380.

8 Q. What color shirt did you put on your face?

9 A. Black.

10 Q. Do you remember what color shirt you were wearing

11 underneath?

12 A. A black shirt.

13 Q. Do you remember whether there were other cars

14 aside from you and Larry in that Cutlas?

15 A. I can't recall the cars.

16 Q. Was there anyone else or just the two of you?

17 A. It was just me and him in his car.

18 Q. Was there anyone else in the parking lot at this

19 McDonald ---

20 A. That's where he picked me up.

21 Q. Do you remember anyone else being at that

22 particular location?

23 A. No, ma'am.

24 Q. After Larry told you to cover your face, what do

25 you remember happening?

Daquan Bruster - Direct (recall)

1 A. We pulled up and got out and I'd say it was 10 or
2 11 other people. I can't even say who they was because
3 everybody had something on their face and he started
4 shooting, I had started shooting and we went back and got
5 in the car.

6 Q. Do you not know who the other gunmen were?

7 A. I really can't say because it was 30 other people
8 at the club with us and I really can't say.

9 Q. Do you remember pleading guilty to conspiracy?

10 A. Yes.

11 Q. Do you remember pleading guilty and admitting
12 that you were guilty on Monday to conspire with Michael
13 Williams, Esaiveus Booker, Kinjta Sadler, Raymond Young,
14 Tavarus Holmes, Shaquille Hogan, and Larry Johnson for the
15 purpose of accomplishing this particular incident?

16 A. Yes, ma'am.

17 Q. So it's now your testimony that you have no idea
18 who you actually conspired with?

19 A. Yeah, because of the simple fact that I ain't see
20 who put masks on, all I know is who was in the car with
21 me.

22 Q. Do you remember pleading guilty to participating
23 in a mob that inflicted bodily injuries on these victims?
24 Do you remember pleading guilty to that?

25 A. Yes, ma'am, because that was the charge given to

Daquan Bruster - Cross

1 me.

2 Q. So it is now your testimony that you did not
3 participate in a group of two or more people to combine
4 for a common purpose?

5 A. I didn't say that but I don't know who the others
6 were because everybody had masks on their face. The only
7 people I see is me and Mr. Johnson. That's all I seen.

8 Q. How is it that you know that the people who were
9 with you shared your objective?

10 A. I don't know.

11 Q. After you finished shooting, what did you do
12 next?

13 A. Me and Mr. Johnson got in the car and we left and
14 went to Augusta Road.

15 Q. Where did you go?

16 A. To the Waffle House.

17 Q. Which one?

18 A. Off of 291.

19 Q. How long do you think it took you to get there?

20 A. I don't know.

21 Q. Why didn't you go to the Waffle House right there
22 on White Horse Road?

23 A. Because it was already passed us.

24 Q. What do you mean?

25 A. Because we'd be going in the opposite direction

Daquan Bruster - Cross

1 of where I was going to get dropped off. I wasn't going
2 in that direction to get dropped off.

3 Q. Just one last question just to be clear, did you
4 plead guilty to conspiring with these four defendants as
5 well as three others on the night of July 16, 2011 into
6 the morning of July 17th?

7 A. Yes, ma'am.

8 Q. I don't have any additional questions.

9 CROSS-EXAMINATION

10 BY MR. CHAMBERS:

11 Q. Mr. Bruster, when you had an opportunity to talk
12 yesterday, back in July of 2012 that you had actually on
13 your own over at the jail executed a document basically
14 saying that neither you or any of the co-defendants in
15 this case had any involvement in the shooting that
16 happened at the Li'l Cricket, correct?

17 A. Yes, sir.

18 Q. And if I remember correctly, your testimony was
19 yesterday you did that on your own and that was something
20 that you wanted to do?

21 A. Yes, sir.

22 Q. And after you came in here and testified
23 yesterday you were brought back over here this morning.

24 A. Yes, sir.

25 Q. And it was made clear to you that if you didn't

Daquan Bruster - Cross

1 testify consistent with what was said when you pled on
2 Monday that your plea was going to be vacated and that you
3 were going to be facing life without parole?

4 A. Yes, sir.

5 Q. And life without parole was taken off the table
6 in your situation if you were to agree to plea and
7 cooperate in this case, is that correct?

8 A. From what I understand Monday when I took my
9 plea, she told me -- I told my lawyer I would plea without
10 testimony and he said she agreed with that, but when I came
11 up here yesterday it was a different story.

12 Q. It was your agreement prior to entering the plea
13 that you were in a situation where if the State wanted to,
14 they could seek a life without parole against you if you
15 were to be convicted in this case, correct?

16 A. Yes, sir.

17 Q. Which means that you would spend the rest of your
18 life behind bars even at your young age if they were to
19 convict you in this case?

20 A. Yes, sir.

21 Q. So you pleaded guilty and they dismissed several
22 of those charges, correct?

23 MS. SALISBURY: That's not accurate, Your
24 Honor.

25 BY MR. CHAMBERS:

Daquan Bruster - Redirect

1 Q. You didn't plead guilty to all seven counts of
2 the attempted murder, did you?

3 A. Yes, I did.

4 Q. Your sentencing was deferred, you haven't been
5 sentenced yet?

6 A. No, sir.

7 Q. But it is clear when you came in here this
8 morning, he told you if you didn't get up here and testify
9 and live up to your deal that life without parole was back
10 on the table, correct?

11 A. Yes, sir.

12 MR. CHAMBERS: That's all the questions I
13 have.

14 MR. ROBINSON: No questions.

15 MR. ABDALLA: No questions.

16 BY MR. QUINN:

17 Q. You agreed that you and Larry Johnson did this
18 together, correct, you were in the car together and you
19 went to the Li'l Cricket together, you agree with that?

20 A. Yes, sir.

21 REDIRECT EXAMINATION

22 BY MS. SALISBURY:

23 Q. Do you remember who was with you at the Waffle
24 House by Fleetwood?

25 MR. ABDALLA: Objection, Your Honor, that's

Daquan Bruster - Redirect

1 not part of the cross-examination.

2 THE COURT: I'm going to allow it, go ahead.

3 THE WITNESS: Besides me and Larry and two
4 girls.

5 BY MS. SALISBURY:

6 Q. Do you remember whether Esaiveus Booker was at
7 the Waffle House by Fleetwood?

8 MR. QUINN: Objection, leading, and it's not
9 proper redirect.

10 THE COURT: Overruled.

11 THE WITNESS: Can't say I remember too much
12 about being at the Waffle House. I remember going there,
13 Mr. Johnson arguing about the mistaken and something wrong
14 on his order and everybody just left.

15 MS. SALISBURY: I don't have any additional
16 questions.

17 THE COURT: Anything else?

18 MR. CHAMBERS: No, Your Honor.

19 THE COURT: You can step down.

20 (Witness excused.)

21 MS. SALISBURY: The only remaining that I
22 have is the publication of State's Exhibit 41 the
23 surveillance footage from the White Horse Road Waffle
24 House. I can publish it for the jury or have them review
25 it.

State versus Booker, Williams, Young, Sadler

1 THE COURT: How long is it?

2 MS. SALISBURY: The relevant part based on
3 the State's presentation of the evidence is about 20 to 25
4 minutes.

5 THE COURT: I think you ought to go ahead and
6 publish it.

7 (Video played in open court.)

8 MS. SALISBURY: At this time, the State
9 rests.

10 THE COURT: Ladies and gentlemen of the jury,
11 at this time I need to take up some legal issues outside
12 your presence so if you would retire to your jury room,
13 I'll be right back with you.

14 (Jury exits the courtroom.)

15 Any motions?

16 MR. CHAMBERS: On behalf of Mr. Booker, I
17 would like to bring a motion for directed verdict as to
18 all indictments.

19 MR. ROBINSON: On behalf of Mr. Williams,
20 Your Honor, I would concur with that.

21 MR. ABDALLA: On behalf of Mr. Young, I would
22 make a motion to dismiss all of the indictments against my
23 client.

24 MR. QUINN: On behalf of Mr. Sadler I make a
25 motion for directed verdict based on the general

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1 insufficiency on the State's evidence.

2 THE COURT: Thank you. All those motions are
3 denied. Let me get all the defendants to stand and raise
4 your right hand.

5 Esaiveus BOOKER, MICHAEL WILLIAMS, RAYMOND
6 YOUNG, KINJTA SADLER, having been duly sworn, testified as
7 follows:

8 Each of you has an absolute constitutional
9 right to testify on your own defense. Each of you has an
10 equal absolute right to not testify in your own defense
11 and that can never be held against you. I give a strong
12 charge to a jury that they can not consider your failure
13 to testify in their deliberations with respect to guilt or
14 innocence. The decision about whether or not to testify
15 involves a lot of issues and concerns, many of them
16 strategic and those are things that you and your attorney
17 have already talked about and are familiar with. But the
18 end decision, the ultimate decision is entirely in your
19 hands.

20 Mr. Booker, have you made a decision about
21 what you want to do in this case?

22 DEFENDANT BOOKER: Yes, sir, I do not want to
23 testify.

24 THE COURT: Mr. Williams.

25 DEFENDANT WILLIAMS: I don't want to testify.

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1 THE COURT: Mr. Young.
2 DEFENDANT YOUNG: I don't want to testify.
3 THE COURT: Mr. Sadler.
4 DEFENDANT SADLER: No, I don't want to
5 testify.
6 THE COURT: Is that your free and voluntary
7 decision made with the advice of your counsel, Mr. Booker?
8 DEFENDANT BOOKER: Yes, sir.
9 THE COURT: Mr. Williams?
10 DEFENDANT WILLIAMS: Yes, sir.
11 THE COURT: Mr. Young?
12 DEFENDANT YOUNG: Yes, sir.
13 THE COURT: And Mr. Sadler?
14 DEFENDANT SADLER: Yes, sir.
15 THE COURT: Are y'all going to present
16 defense, any evidence?
17 MR. ABDALLA: May we have a few minutes to
18 talk about this?
19 THE COURT: Okay, y'all take a few minutes.
20 (Jury exits the courtroom.)
21 (Whereupon, there was a brief recess.)
22 Okay.
23 MS. SALISBURY: The State rests.
24 THE COURT: Okay.
25 MR. CHAMBERS: I have nothing else other than

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1 what was already stated?

2 MR. ROBINSON: Nothing from Mr. Williams.

3 MR. ABDALLA: Nothing from Mr. Young.

4 MR. QUINN: Nothing from Mr. Sadler.

5 THE COURT: Is identification an issue in
6 this case?

7 MR. CHAMBERS: Not from Mr. Booker, Your
8 Honor.

9 MR. QUINN: Not from Mr. Sadler.

10 THE COURT: Do you want a charge on these
11 people for failure to testify?

12 MS. SALISBURY: I think it's appropriate.

13 THE COURT: It's up to the defense counsel.
14 Here's how it reads. "I instruct you that the fact that
15 the defendant did not testify is not a factor to be
16 considered by you in any way in your deliberations on the
17 question of guilt or innocence. It must not be considered
18 by you in any manner what so ever. Every citizen has the
19 constitutional right to remain silent. Assertion of this
20 right must not be considered by you in your
21 deliberations."

22 MR. QUINN: I would ask for that charge, Your
23 Honor.

24 MR. ROBINSON: One thing I would ask as far
25 as the charge is a charge on the credibility of witnesses.

State versus Booker, Williams, Young, Sadler

1 THE COURT: I do that in every case. Does
2 anyone want an expert witness?

3 MR. CHAMBERS: No, Your Honor.

4 MR. ROBINSON: I agree.

5 MR. ABDALLA: No, Your Honor.

6 MR. QUINN: On behalf of Mr. Sadler, we do
7 not want that charge.

8 THE COURT: Before we bring the jury back in,
9 I would just want to comment that I recognize there are
10 tensions in this case and anyone who has been here all
11 week recognizes that we're going to expect good behavior.
12 So I'm going to tell you this before the arguments begin,
13 if there is anyone in here who is unable to maintain
14 proper decorum, anyone in here who can not contain their
15 emotions, anyone in here who expects to have some kind of
16 outburst of any kind during the course of these closing
17 arguments, are when the verdict comes back, if you can not
18 do that, leave now. And if there is an outburst of any
19 kind I'll tell you now that is an order of this court, and
20 if you violate it, you will be taken into custody and
21 sentenced as to contempt of court.

22 Is that clear to everyone? If you do not
23 understand it? Leave.

24 Are you ready?

25 MS. SALISBURY: Yes, Your Honor.

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1 (Jury re-enters the courtroom)

2 THE COURT: Alright, ladies and gentlemen of
3 the jury, if you remember on Monday when I made my opening
4 comments to you, I told you I divided the case in to five
5 parts. We are now down to the third part of this case.
6 We have concluded the first two parts of the trial and all
7 of the testimony and all of the evidence has been
8 presented to you.

9 As you know there are five attorneys involved
10 so I don't know how long it will run but I anticipate
11 we'll take a break between arguments of counsel but you
12 all have been a great jury and have paid close attention
13 throughout the course of this case, so I ask you to
14 continue to pay attention to the arguments of these fine
15 attorneys.

16 (DUE TO TECHNICAL DIFFICULTY, THIS PORTION OF
17 THE TRANSCRIPT CAN NOT BE PRODUCED.)

18 THE COURT: Ladies and gentlemen of the jury,
19 during this trial you and I have certain duties to perform
20 and as the trial judge it is my responsibility to provide
21 over the trial of the case and rule on the admissibility
22 of the evidence that's offered during the trial.

23 It is also my duty to charge you the law
24 applicable to the case. It is your duty as jurors to
25 accept and apply the law as I now state it to you. If you

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2 State of South Carolina) 2011-GS-23-8010-8018
 3)
 4 vs.) TRANSCRIPT RECORD
 5 Raymond Young)
 6 Esavieus Booker)
 Michael Williams)
 7 Kinjta Kadeem Sadler)
 Defendant)

8 -----
 9 January, 2013
 Greenville, South Carolina
 10 ---

11 BEFORE: The Honorable Edward Miller, Judge.
 12

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

14 Katrina Salisbury, Esquire
 15 Assistant Solicitor
 Attorney for the State
 16

17 Randy Chambers, Esquire
 Scott Robinson, Esquire
 18 John Abdalla, Esquire
 Counselor Quinn, Esquire
 19 Attorney for the Defendant
 20

21
 22 Caroline Hiskell
 23 Thirteenth Circuit Court Reporter
 24
 25

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P R O C E E D I N G S

MS. SALISBURY: If it please the Court.

THE COURT: Yes, ma'am.

MS. SALISBURY: Good morning, ladies and gentlemen, it's been a long week and as I told you Tuesday when I first got to talk to you, at the end of the trial I was going to come back and talk to you a little bit more about the evidence that you have now seen and hopefully do my best to sum up what we've heard and explain to you why you should be firmly convinced of these defendants guilty in this particular incident.

I appreciate your patience. I know that's it's been complicated and confusing and long and I really do appreciate it. You can't understand how grateful I am for how much attention y'all have paid and how seriously y'all have treated the prosecution of this case.

Now, we've heard testimony all week long that from the nightclub to what you saw at the Waffle House at the end of the night, there were tons of people, tons of people around, hundreds of people at the club is what the testimony was. Conceivably this trial could have taken a month. We could have brought in lots of people but as you've heard and the Judge will explain to you, the State bears the burden in this case. The State has the burden of proof to demonstrate these defendants are guilty of the

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1 crimes for which they are charged beyond a reasonable
2 doubt. And I tried very carefully to select the evidence
3 that I thought would help you reach that decision. That's
4 why the trial has taken as long as it has but not as long
5 as it could have.

6 In any event, I want to start off by talking
7 about what we know happened. We know that the victims in
8 this case and the defendants in this case were at the Red
9 Planet Nightclub being Saturday night, July 16, 2011. As
10 the night wore on it became the early morning hours of
11 July 17, Sunday morning. We know that inside the club
12 there was some conflict. We heard about a few different
13 kinds of conflict but the one we heard most about was
14 between Mr. Vincent Fant whose friends call him Buddha and
15 Mr. Michael Williams.

16 We heard testimony about a confrontation that
17 occurred inside the club, maybe it was over a girl or any
18 number of things, but in any event a few witnesses
19 testified they thought that what happened in the club had
20 been squashed. They thought it was over, didn't think it
21 was a problem, but as you heard, as the night wore on, the
22 events, emotions kept spilling out into the parking lot
23 and ultimately there were a few incidents in that parking
24 lot.

25 The one that's of interest in this case is

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1 the conflict between Vincent Fant again and Mr. Michael
2 Williams. And if you remember in his testimony Mr. Fant
3 was confident that Michael Williams was the person that he
4 fought because he picked him out of the photo line-up when
5 he spoke with Investigator Campbell.

6 They fought in the parking lot, took a few
7 swings maybe landing some, maybe missing some, whatever,
8 but in any event we know that at some point during that
9 fight somebody else fired a shot and hit Vincent Fant in
10 the arm. That was the testimony we heard.

11 Now, you heard some testimony later in the
12 case about how an individual has been charged and
13 identified in that shooting and that's a different
14 incident for a different day. We also know that there was
15 another shooting in the parking lot that night.

16 We heard testimony that Brandon Edwards and
17 Brandon Davis were both shot in the parking lot. You
18 heard testimony that someone was charged in that shooting
19 and that's another trial for another date. But in any
20 event, what happens when these shots are fired everyone
21 scatters, that's what we heard. Cars starting leaving the
22 parking lot, people started running, Vincent Fant's
23 friends picked him up and put him in the car and took him
24 to Saint Francis Hospital.

25 And what happened next is particularly

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1 disturbing. I think it's fair to say that we who live in
2 society in this community agree to certain basic
3 standards. We respect one another. We try our best to
4 obey the law as best we can and have a general
5 appreciation for the lives of other people. That's what
6 we expect for one another as members of the same society,
7 but what these men did after they left the Red Planet that
8 night was civilization suspended.

9 These four defendants and their four friends
10 combined and have no respect for the lives of the people
11 that were at the Lil Cricket, the people who might have
12 been driving by, the people who might have been at the gas
13 station that night, Ms. Smith who was the clerk. But
14 here, here in this courtroom, here is where civilization
15 is restored because the people who do this are held
16 accountable for what they've done. That's how we address
17 violence at this magnitude, at this extreme level and
18 that's what this case is about.

19 This isn't about someone deserving to be
20 shot. This isn't about someone who got what was coming to
21 them, this violence is unacceptable in civilized society.
22 That's what this case is about.

23 Now, what we've heard as the trial progressed
24 after the victims gathered at the Lil Cricket, they
25 testified they were there to check on one another to see

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1 if anybody else had been hurt in that parking lot
2 altercation and just sort of decompress and deal with the
3 fact that their friend had been shot.

4 These defendants and their four friends made
5 a serious mistake and Larry Johnson testified about it.
6 If you remember yesterday he described that the reason he
7 eventually owned up and told the truth about what happened
8 that night was because he heard his friend RaRa had been
9 shot and you heard from RaRa, Ricky Maddox that his
10 friends call him Dutch. And Larry told you that when he
11 found that RaRa was one of the individuals shot at the gas
12 station, he knew he had gotten the wrong people and that's
13 what got to him. That's what made such an impact on him.

14 The fact that this was a mistake makes it
15 even more alarming. No one deserves to be shot but
16 certainly people who had nothing to do with what had
17 happened at the nightclub that night.

18 You heard some testimony about what the
19 defendants did after they left the parking lot. You heard
20 testimony that they left the Red Planet and went straight
21 to Club 864 on Whitehorse Road. They tried to get into
22 that club, you heard some testimony they were denied
23 admission. I think the testimony was that the club had
24 heard what happened at the Red Planet and they weren't
25 letting anyone inside 864. So the defendants decided to

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1 leave. I think you heard testimony that they were going
2 to go to the Waffle House on Whitehorse Road.

3 You heard the testimony that when they
4 reached the Lil Cricket gas station on Whitehorse Road,
5 the cars made a U-Turn. All of the cars traveling to the
6 Waffle House on Whitehorse Road did a U-turn and came back
7 to the Club 864 parking lot. And its in that parking lot
8 that you heard testimony that Raymond Young told the
9 people there cover your faces, mask up because we're going
10 to get the guys that shot our friend. They're at the gas
11 station, let's go.

12 You heard testimony that Raymond traded cars
13 with his girlfriend Joseline, got into her red Honda with
14 Tavarus Holmes and Michael Williams. You heard the
15 Esaiveus Booker was driving Simone Kerns green Camary.
16 Shaquille Hogan told you he was in that car with Kinjta
17 Sadler. The third car was Larry Johnson who told you he
18 was driving his black Cutlas and Daquan Bruster, Buddha,
19 another Buddha in the case, was with him and those eight
20 men traveled to the Lil Cricket gas station and positioned
21 themselves behind the gas station in an effort to ambush
22 these victims. And that's exactly what they did.

23 They walked to the darkest corner of the
24 parking lot and absolutely unloaded. You heard testimony
25 there were at least 32 shell casings collected from that

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1 corner of the parking lot.

2 And if you remember the victims testified
3 that there was a pause, lots of shooting and then there
4 was a pause and more shots. Larry Johnson told you that
5 he stayed behind and when everybody started running
6 towards him and not knowing what was going on started
7 shooting into the air thinking, perhaps, his friends were
8 being chased. That explains the pause, of course.

9 But in any event, after that, after that
10 shooting after everyone returned to their cars, they
11 hightailed it out of there to get as far as away from that
12 crime scene as possible. Their friends were at the
13 Whitehorse Road Waffle House. Ms. Kerns testified that
14 she waited there and she finally got word that instead she
15 should go to the Fleetwood Waffle House over on Melvin
16 Drive. That was an effort to get as far away from the
17 incident site as they could possibly get. That was the
18 effort to establish what they thought would be an alibi.

19 Not 17 minutes, 17 to 18 minutes, after
20 deputies say they responded to a call of shots being fired
21 do these defendants arrive at the Melvin Drive Waffle
22 House by Fleetwood in exactly the same cars that Larry
23 Johnson and Shaquille Hogan told you they would be in.

24 I told you at the beginning of this case that
25 this is a case about retaliation and I hope over the

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1 course of the trial you've come to appreciate exactly why
2 that's at the core of what these defendants were after
3 that night.

4 Now, you may not like the victims in this
5 case. You may think if you go to a club where you expect
6 violence and when violence comes your way, it's kind of
7 expected. If you go to the kind of club where you think
8 you need to carry a gun, trouble is going to find you.

9 These victims admitted rather candidly to you
10 that at least two of them carried guns with them that
11 night. Jamal Williams admitted to you that he carried a 9
12 millimeter and T.J. Walker told you that he put his .38
13 Special revolver in the glove compartment of his Crown
14 Vic., and when I asked them both why. If you'll recall
15 they testified the streets are rough. That's just the way
16 it is. Jamal Williams even testified for exactly this
17 kind of situation just in case something like this
18 happened.

19 And there's been some insinuation throughout
20 this trial that perhaps they did fire shots back. But if
21 you'll remember and I'll get to the ballistics in
22 hopefully just a few minutes, there were no casing
23 collected from the parking lot of the Lil' Cricket that
24 matched Jamal William's 9 millimeter.

25 James Armstrong testified he compared, he

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1 testified this 9 millimeter and he compared the 9
2 millimeter that were collected from that parking lot and
3 they didn't match. Of course, since a revolver doesn't
4 eject any casing, there are not casing to compare.

5 But there's no testimony that any bullets,
6 fragments, projectiles, pieces were collected from where
7 the casings were found, and ladies and gentlemen, I
8 believe they'd be proud to tell you they had an
9 opportunity to fire back. None of them was ashamed of the
10 fact that they carried a gun that night and they both
11 testified that the reason they didn't retrieve their guns
12 is they never got the chance.

13 There's no reason to think they would be in
14 any trouble for firing back when someone was shooting at
15 them. They have no reason to conceal that from you. It
16 seem to me that they had ---

17 MR. QUINN: Objection. She's not allowed to
18 put her personal beliefs into closing.

19 THE COURT: Don't get personal.

20 MS. SALISBURY: In any event, it's likely
21 they would not have any reason to conceal that from you.
22 Just as they admitted they carried a gun, they would
23 admitted if they had a chance to fire it. But regardless
24 it doesn't matter if they did fire shots. It doesn't
25 matter if they did get a chance to fire back because no

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1 one deserves to be gunned down in any case especially when
2 they weren't even involved. Where they had nothing to do
3 with the reason that these defendants wanted to retaliate.
4 They wanted to retaliate for their friends Brandon Edwards
5 and Brandon Davis getting shot. And just like Larry
6 Johnson told you, we were wrong. It was the wrong guy.

7 More than importantly a few of these people
8 weren't even at the Red Planet. Travis Thompson told you
9 he didn't even go to the club that week. He was headed to
10 the hospital and learned that everybody was going to the
11 gas station so he went there instead. Ms. Perry was never
12 involved in any conflict inside the club. And certainly
13 the clerk at the the gas station, Ms. Smith had no reason
14 to have shots descending at the gas station that night on
15 her.

16 Now, there's been testimony about how
17 reluctant these victims were to talk to police. Obviously
18 some of them were reluctant to even testify. I want to
19 ask yourself why that might be. Is it because they're
20 scared? Is it because they're scared of what might happen
21 to them if they do get up there and testify? Could they
22 have been scared of what might happen if they did get a
23 statement to police? I want you to keep that in mind when
24 you consider exactly what these victim told you and how
25 they told it to you.

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1 Now, most of the victims testified that they
2 didn't see much of anything. Some of them had their backs
3 to where the bullets were coming from. Some of them were
4 walking around that gas station parking lot, but two of
5 them testified that they remembered seeing people of this
6 dark corner of this parking lot.

7 Mr. Raheem Adams testified that he remembers
8 seeing three or four people, couldn't remember much about
9 them, couldn't tell whether they were men or women,
10 couldn't tell what race they were, couldn't tell anything
11 about them, but he remember seeing people, more than a few
12 three or four.

13 And as Mr. Javon Henry told police that night
14 and as he testified here in court earlier on Tuesday, he
15 testified he same maybe five or as many as 10 people and
16 what he was able to tell was he remember seeing white tee
17 shirts and black coverings. I believe he said black
18 bandannas in this statement, but none-the-less their faces
19 were covered by something black. Keep that in mind when
20 you recall exactly the testimony you've heard from
21 Mr. Johnson, Mr Hogan, and even Mr. Bruster.

22 Now, we saw some video surveillance from the
23 video gas station which was painful to sit through, but in
24 any event, the point of that is to give you an idea of
25 exactly how long these victims were at the gas station

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1 before any of this incidents started and if you want to
2 see that video again, we have the opportunity to play it
3 for you again, but in that video you see all of a sudden
4 some action and it's obviously that's when the shots
5 start. That's when it gets real. You see someone run and
6 you saw someone get on the ground and that's exactly what
7 the victims told you. Some of them were able to get
8 inside one of the cars and hide, some of them said they
9 ducked behind items, pumps, cars or whatever was there.
10 Others told you they ran from the scene.

11 The purpose of that is to allow you to have
12 the information you need to decide exactly what was going
13 on that night. It doesn't show much but it helps you get
14 an accurate idea of exactly what the victims were doing as
15 it relates to what they told the police they were doing
16 and what they told you they were doing.

17 After we got through the victims on the first
18 day, we moved into the deputies that responded on the
19 scene and those victims told you the role they played with
20 respect to maintaining the integrity of the scene, taping
21 it off, making sure there was no traffic, so to speak,
22 through the scene and some of them tended to the victims.

23 The explained to you that it was chaos. I
24 believe deputy owns testified that they were walking on
25 each other on the radio. Somebody was trying to talk

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1 while somebody else was trying to talk, somebody is out
2 with a victim, somebody else is out with another victim
3 and the police had absolutely no idea what was going on,
4 no clue. They didn't know if they were dealing with
5 suspects, didn't know if they were dealing with victims,
6 had no idea.

7 In any event, their testimony was to give you
8 an idea of how long it took to manage this situation from
9 the very beginning, and Deputy Brown told you he was one
10 of the first on scene and that he maintained the security
11 of the scene, saw the cars exactly at the gas pumps. As
12 per the testimony, that's how it looked when the victims
13 left the scene and he waited there until forensics was
14 able to arrive.

15 Ms. Oaten with the forensics division told
16 you how she collected the evidence in this case, how she
17 noted damage to each of the cars on scene, bullet holes in
18 the fenders, blood on the cars, smashed windows in each of
19 the cars, bullet hole in one of the gas pumps.

20 But she testified that the casings that she
21 found in that parking lot were all isolated to the darkest
22 corners of the parking lot where there was no illumination
23 and she explained that she started closest to the pumps
24 and started to put down those plackers to mark each casing
25 that she found, and then she back up and expanded away

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1 from the building. There were more and more and more
2 until she eventually testified she ran out of plackers and
3 had to start using notebook paper.

4 They searched the cars, the area of the cars,
5 under the cars, all of the casings were isolated to that
6 particular site of the parking lot.

7 You heard from John Derby who looked at each
8 of the victim's cars and he told you about taking a closer
9 look at the specific damages. We heard about windows tat
10 were smashed, trajectory rods inserted into the bullet
11 holes in an effort to find bullets, and based on how the
12 cars were parked at the pumps that night, and this
13 trajectory as Mr. Derby identified and testified about,
14 it's obvious, all of the bullets came from the same
15 direction. They came from this dark corner of the parking
16 lot exactly like Larry Johnson, Shaquille Hogan and Daquan
17 Bruster told you. They all stayed in one location in the
18 darkest corner before they started shooting.

19 After that we heard testimony from
20 Investigator Campbell. As y'all know he's the primary
21 investigator on the case and he told you about his
22 methodical investigation, going out to the scene that
23 night, making sure the cars were sealed up and taped so
24 they can be towed and examined.

25 We heard about swabs of blood collected, DNA

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1 samples just in case any of that material ended up being
2 helpful to the investigation. He collected surveillance
3 video from the gas station and from the Waffle House on
4 Melvin Drive near Fleetwood and the Waffle House on White
5 Horse Road.

6 He told you that he interviewed Larry Johnson
7 on the 21st of July. And at that point Larry Johnson was
8 a witness. This happened on Sunday morning July, 17th.
9 Investigator Johnson learned he may have some information
10 so he talked to him. He interviewed him as a witness and
11 Larry Johnson did have some information. He interviewed
12 him again on the 22nd and he gets more details, and he
13 interviewed him again on the 23rd and its that third
14 statement that Larry says it was time for him to come
15 clean. It was time for him to be totally candid about
16 everything he knew.

17 Why? Because he had learned they had gotten
18 the wrong people. He had learned his friend RaRa had been
19 shot and he said we got it wrong. He didn't realize it.

20 Now, what's so important about those dates
21 and I believe Shaquille Hogan was interviewed on July 22nd
22 as well, the interview of both of those men, the timing of
23 it is of critical importance in this case. Because at the
24 time Investigator Campbell conducted those interviews, the
25 information he had about the weapons that had been fired

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1 at the gas station was that there were .45 caliber
2 cartridge casings, .40 caliber cartridge casings, .9
3 millimeter cartridge casings and .380 automatic cartridge
4 casings.

5 He knew that there were four different kinds
6 of guns fired but until ballistics was done, that's all he
7 could know. During the interview with Larry Johnson, even
8 if you believe that Investigator Campbell told him what to
9 say, told him who to name, told him who he thought was
10 responsible for this case, how could he have known to name
11 seven different guns and eight different people being
12 involved?

13 Investigator Campbell had no idea that six
14 different guns were used in the parking lot and a seventh
15 in the alley behind. Larry Johnson named eight people,
16 identified six of them as the shooters in the actual
17 parking lot and identified himself as the shooter in the
18 alley way. There's no way that information could be known
19 to anyone unless they were there and they did exactly what
20 they say they did.

21 During the interview with Shaquille Hogan,
22 Shaquille Hogan identified exactly the same eight people.
23 That's a mighty coincidence.

24 But more importantly, again, Investigator
25 Campbell could not have known there were six different

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1 hand guns used, six different shooters in that parking
2 lot, and a shooter in the alley behind, but Shaquille
3 Hogan did. Shaquille could not have known that
4 information unless he was there and he did exactly what he
5 said he did.

6 James Armstrong testified that it wasn't
7 until July 26th that he pulled the casing out of property
8 and evidence and began processing them. Before July 26th,
9 no analysis of a ballistics nature could have been done on
10 those casings to determine exactly how many different
11 firearms were used.

12 Now, with respect to the Waffle House video,
13 both Larry Johnson and Shaquille Hogan, testified that
14 immediately after the three cars left the gas station,
15 they headed to the Waffle House by Fleetwood. They
16 testified that's where they were told to go. And you've
17 seen portions of the surveillance video from that parking
18 lot and if you want to see it again, you're certainly free
19 to do that. We can arrange for you to view it again, but
20 in that parking lot, the red Honda Accent being driving by
21 Raymond Young in which Michael Williams was a passenger
22 and Tavarus Holmes was a passenger pulls up right in front
23 of the store.

24 Immediately thereafter, the green Toyota
25 Camary being driving by Esaiveus Booker pulls up occupied

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1 by Shaquille Hogan and Kinjta Sadler, exactly as Larry
2 Johnson and Shaquille Hogan both said. They testified who
3 was in each car, which cars they were and they all arrived
4 together. That's obvious on the surveillance tape. Each
5 of them both testified -- Larry Johnson testified more
6 clearly about -- sort of a little conversation that
7 happens in the parking lot and in the video you can see
8 these guys get out of the car, walk to the corner of the
9 parking lot and have a discussion.

10 Larry Johnson testified that that discussion
11 was about what had just happened so long as everybody is
12 cool we'll be okay. And you see them have that discussion
13 and then everybody goes inside of the Waffle House.

14 The other surveillance video that we watched
15 just this morning is from the other Waffle House because
16 as part of the investigation, Investigator Campbell
17 learned that some of the defendants in this case may have
18 visited this other location and in that surveillance
19 video, in spite of the fact that Ms. Joseline Mack denied
20 ever going to that Waffle House, you see her pull up in
21 her red Honda Accent. You see Raymond pull up in his
22 green Crown Vic, Michael Williams and Tavarus Holmes get
23 out that car and then you see something particularly
24 interesting, everyone else walks inside of the Waffle
25 House.

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1 And what does Raymond Young do? He walks
2 over to Joseline's red car, opens the door, gets inside
3 and then he walks back to his car. What is he carrying?
4 A black tee shirt. It's the same black tee shirt that he
5 used to cover his face, and in both videos he's wearing
6 the white tee shirt. Larry Johnson pointed him out for
7 you wearing the white tee shirt still from where he left
8 the scene at the gas station.

9 Now, Investigator Campbell also testified
10 about cell phones and phone records and what he did in an
11 effort to get information about the cell phones that were
12 being used. He testified that he sent out 16 requests, 16
13 different phone numbers and got a response from only a few
14 of them. When I asked him whether those records advanced
15 the investigation and he said, no. And if you'll remember
16 he said the reason it didn't seem to help is that when he
17 asked for subscriber information either it was an NA, I
18 believe he testified, not applicable, no information from
19 the cell phone company or it was information he couldn't
20 verify.

21 Investigator Campbell testified that there
22 was no way for him to know who was using these phones on
23 the night of the incident and for that reason couldn't
24 attribute these phones to any particular defendant.

25 Investigator Perry later on in the trial

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1 testified about cell phones generally that cell phone
2 companies don't keep record of text messages. Cell phone
3 companies don't have the ability to retrieve text
4 messages. That was the testimony and a little bit later
5 in the trial we got to State's Exhibits 55 and 56, these
6 big packets of forensic downloads. And if you'll remember
7 you heard testimony from Investigator Devon Hoover who
8 said that he collected two cell phones at the time of
9 Raymond Young's arrest.

10 He asked that both be forensically processed
11 and Sergeant David Wiener testified that at the time Larry
12 Johnson was arrested he retrieved a cell phone and made
13 the same request for forensic analysis. Investigator
14 Perry testified that these are the forensic reports
15 generated from each of these phones.

16 What is particularly interesting about each
17 of these records with respect to the phone retrieved from
18 Raymond Young at the time of his arrest, all record of
19 calls made, calls received or calls missed, or text
20 messages has been deleted. It's not here.

21 With respect to Larry Johnson this forensic
22 report, no text messages before Monday July 18th. Isn't
23 that entirely consistent with what you heard about his
24 conversation in the parking lot of the Waffle House. Get
25 rid of the evidence, give rid of any indication that we

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1 talked to one another, get rid of any possibility that we
2 could ever be identified.

3 Aside from all that we know based on the
4 testimony we heard from Mr. Johnson, Mr. Hogan and even
5 Mr. Bruster that three cars were traveling together, the
6 red Honda, the green Camary and the black Cutlas. Would
7 it be any surprise to you if there was no reason for them
8 to call one another? More importantly even if they had
9 called one another, even if there were phone records
10 showing that these guys called one another, would it make
11 you more confident that they carried guns to the gas
12 station. We know they were together that night. They
13 took photos together at the club and in the surveillance
14 together at the Waffle House. We know they were together.
15 Would it be any surprise to you that friends called one
16 another?

17 Finally one of the things that Investigator
18 Campbell touched on were these other guns that were
19 tested. He testified that as the investigation was
20 ongoing, he felt it important to continue to try and
21 retrieve the firearms that were used in this case. At
22 this point in the investigation, he knew that several hand
23 guns had been used and any time when they were seized, he
24 asked them to be tested.

25 You heard testimony about the .380 hand gun

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1 that was seized that was tested. James Armstrong
2 testified it didn't match any of the casing from the
3 parking lot. You heard about a .380 hand gun that was
4 seized when Daquan Bruster was arrested in Denmark and
5 James Armstrong testified that he tested that hand gun and
6 it wasn't a match.

7 Investigators were finally able to get a
8 match with this hand gun that they got from Simone Kerns
9 and we'll talk a little more about that in just a minute,
10 but of all the hand guns used, this were the only one that
11 they were able to recover that we know was used at the gas
12 station.

13 Now, as part of the processing of this
14 evidence, the casings and some other ammunition that was
15 retrieved from the Davis Roads residence and I'll get to
16 that in a second, Investigator Ooten testified,
17 Investigator Campbell testified that there was a request
18 made to get fingerprints off of these casings and if
19 you'll recall the testimony was that Ms. Ooten was unable
20 to develop any fingerprints from either the casings on the
21 scene or from these .40 caliber bullets.

22 Do you remember what Ms. Joseline Mack said
23 about that? Do you remember her testimony that in the
24 morning hours, the next day, after this incident at her
25 apartment that she watched Raymond reload his gun being

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1 careful to wipe off every single bullet as he loaded it.
2 Is it any surprise that that that's exactly what the other
3 defendants did? Is that why there are no prints on any of
4 these casings or any of this ammunition?

5 After that we met Ms. Peoples. Ms Peoples
6 testified that she came in to assist with the
7 investigation at the Red Planet while Investigator
8 Campbell was over at the Lil Cricket and she said she took
9 a statement from Mr. Michael Williams, Mickey, and she
10 read that statement to you and you might be wondering what
11 the big fuss is.

12 In this statement Mr. Williams admits to
13 being at the Red, Planet. He admits to going to 864, but
14 what is particularly curious is that he says he got into a
15 burgundy mini-van when he left Club 864, not a red Honda,
16 a burgundy mini-van. He says he went to Waffle House, the
17 one by Fleetwood after Raymond got there. We saw on the
18 tape from the Waffle House by Fleetwood, Michael Williams
19 didn't arrive in a burgundy mini-van, he did not arrive
20 after Raymond. He arrived in the red Honda with Raymond.

21 The reason that statement is so significant
22 is because he can't even get his lies straight with the
23 most innocuous details of the case how he got from one
24 place to another let alone the important part, the part
25 where he shot people. We know that's a lie. We know that

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1 can't be true because the video surveillance from the
2 Waffle House tells us otherwise. He's there in the car
3 exactly as Larry Johnson and Shaquille Hogan tells you he
4 was in the red Honda Accent with Raymond Young and Tavarus
5 Holmes.

6 We moved on after that to hear from Mr. Moore
7 who used to be a deputy from the Sheriff's Office and
8 Deputy Dustin Woodall and they talked about a search
9 warrant that was executed at this residence on David Road.
10 If you'll recall they testified that some information they
11 had they might be able to locate some suspects for whom
12 they have arrest warrants in this case at that residence
13 and that's why they went there.

14 The testimony was that the first time they
15 went there they met Michael Williams. He came to the
16 door, met him right there. And the deputies testified
17 that they asked Ms. Brittany Phillips who identified
18 herself as one of the tenants of the home if they could
19 search the residence and she said no, I'm not going to let
20 you search the house. And if you remember, Mr. Moore
21 testified that when he walked the trailer to make sure
22 there was nobody there, nobody hiding, nobody else with a
23 gun, he saw a black duffel bag and some holsters. He told
24 you he wanted to look inside.

25 At the time in the investigation, that black

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1 duffel bag had no significance, but unfortunately the ways
2 of the universe didn't work quite as we had hoped because
3 it was hours later when Investigator Brown was
4 interviewing Joseline Mack that investigators learned that
5 that black duffel bag could be actually very important.

6 So the investigators go a search warrant and
7 went back to Davis Road and they executed that search
8 warrant and they found no black duffel bag. Where did it
9 go? Disappeared. Why? Mr. Moore testified that when
10 they went back the second time to serve the search
11 warrant, one of the car was gone but he remember that
12 black duffel bag was no longer there.

13 But what the investigators did find was this
14 .40 caliber ammunition. The reason this is so important
15 is because we know that one of the hand guns used at the
16 Lil Cricket was a .40 caliber semi-automatic weapon. The
17 investigators testified that when they searched the
18 trailer at Davis Roads, they found documents of a personal
19 nature with Raymond Young's name on it. They believed he
20 lived there. They testified that Michael Williams was
21 arrested there. That's at least two of these defendants
22 that had immediate access to the exact same kind of
23 ammunition that was used in one of the guns at the gas
24 station. We know a .40 caliber was used and they've got
25 .40 caliber ammunition, but remember, no fingerprints on

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1 this item either.

2 The investigators also found these holsters.
3 The holsters was still there but no black duffel bag, no
4 guns.

5 After that, it go a little intense, at least
6 it was for me and we heard testimony from Ms. Joseline
7 Mack. Ms. Mack testified that what she told police in her
8 statement simply wasn't true, wasn't true, that she was
9 intimidated by Investigator Brown, that she had no
10 opportunity to read that statement. She just signed it.

11 If she was so intimidated by Investigator
12 Brown in that interview, why did she call him back a
13 couple of days later to give him additional information
14 about this black duffel bag? If she was so intimidated by
15 the interview she had with Investigator Brown, why did she
16 call back and say I need to correct something I said in my
17 statement, I initially told you that Drake Glover was at
18 the 864 parking lot and I was wrong, it was instead Daquan
19 Bruster.

20 The reason she says that is because she was
21 dating Raymond Young at the time. She's got some loyalty
22 issues. Is it possible she's scared of him? Regardless
23 of what she maintains about the truth of the statement she
24 gave that night, I asked her if what she remembered about
25 that night with respect to the cars was true and she said

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1 that she remembered traveling down White Horse Road and
2 the cars doing the u-turn. She drove her red Honda back
3 to 864 parking lot just like all the other cars in the
4 group and Raymond approached her in the parking lot and
5 traded keys with her. You drive my Crown Vic, I'm going
6 to drive your red Honda. You go straight to the Waffle
7 House by Fleetwood.

8 And she said she got a car full of girls and
9 they went straight to the Waffle House by Fleetwood and
10 you can see it in the tape. They show up a few minutes
11 before the red Honda, the green Toyota Camary, the black
12 Cutlas.

13 She testified that she remembers that. She
14 testified that she remembered that Raymond was driving her
15 car, that Mickey was in her car. She testified that she
16 couldn't remember whether Tavarus was in that car or not
17 because she doesn't know who that is. She testified that
18 she remembers Esaiveus Booker driving her roommate
19 Simone's green Camary and she remembers Lips, whose real
20 name she doesn't know, being in that car and she remembers
21 Ken being in that car.

22 So independent of the statement that she gave
23 police about all of the events of that night, she
24 testified that she independently remembers that being
25 true, that when she left the parking lot of Club 864

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1 that's who was in those cars and that's who later arrived
2 -- we know that's who later arrived at the Waffle House.

3 Now, she denied being at the White Horse Road
4 Waffle House. I asked her if she remembers going there
5 after and she said it didn't happen. Well, we know that's
6 not true either. The video we saw this morning, she pulls
7 up in the red Honda and that's where we see Raymond go
8 from one car to the next. You can watch that video again
9 if you like. Again, think about why she in particular
10 would not be completely truthful in her testimony to you.

11 Now, we heard testimony from Investigator
12 Brandon Brown and he testified that he showed upon scene
13 at the Lil Cricket that night and sent his partner to the
14 Red Planet and he talked to the victims and the witnesses
15 there at the gas station and the only leads he had were
16 that there was a fight with someone named Mickey and that
17 the attackers were the people with whom the victims had
18 contact at the club wore black and grey.

19 But when Investigator Brown testified when he
20 got together with Investigator Woodall who had been at the
21 Red Planet scene, they put two and two together because
22 when they found out that Brandon Edwards was one of the
23 victims in the Red Planet parking lot and they learned
24 that the conflict was with individuals wearing black and
25 grey, is it possible that these events were related. And

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1 that's what changed the pace of the investigation. That's
2 what changes its focus. That's when it becomes about
3 these photos.

4 Investigator Brown testified that he spoke
5 with Larry Johnson and that he assisted in the search
6 warrants at Davis Road that we talked about and an
7 additional search warrant at Kiara Simone Kerns's
8 apartment. And if you'll recall, the context of the
9 search warrant was that Ms. Joseline Mack provided some
10 information about these black duffel bags.

11 In an effort, again, to locate these
12 firearms, the officers got a search warrant for that
13 apartment. Deputy Woodlock testified that when he went to
14 the apartment, no one was home, they searched the
15 apartment and found nothing inside. But eventually
16 Ms. Kerns came on scene understandably probably wondering
17 why the police were there.

18 She testified that she was not initially
19 forth coming with the police that there had been firearms
20 in her apartment. It was her testify to you that when she
21 learned after speaking with the investigators that there
22 might be guns in her apartment, she went home and she
23 searched her apartment. She and Joseline searched her
24 apartment.

25 She testified that she found two guns in her

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1 apartment, a large gun, and a small hand gun. I asked her
2 what she did with those? What happened when she told the
3 police that there were guns in her apartment? She said I
4 didn't call the police, I tried to get rid of them. It's
5 that decision that got her charged with obstruction of
6 justice to which she pled guilty to earlier this week.
7 She pled guilty to having attempted to conceal this
8 evidence.

9 She testified that she called her brother
10 Adrian Kerns to come and take these guns. Initially she
11 gave him the shot gun and she testified that Joseline says
12 she would get rid of the hand gun. The next day,
13 Ms. Kerns testified that that hand gun was still in her
14 apartment, that Joseline had not gotten rid of it.
15 Ms. Kerns testified she found the hand gun and again
16 called her brother and said I have another gun and I need
17 you to get rid of it.

18 Ms. Kerns testified she gave both of those
19 guns to her brother and she remembers that her mother
20 returned those same guns to the scene that day the police
21 were at her house. This was one of those guns. Deputy
22 Woodlock testified this was the hand gun that he took from
23 Ms. Kerns's mother Amanda Bell and you heard testimony
24 from the ballistics examiner that these hand guns fired at
25 least one set of the .380 automatic casings at the gas

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1 station parking lot.

2 Now, Simone Kerns's brother was not
3 particularly informative or helpful. He testified he
4 didn't remember anything about anything. But you heard
5 testimony from their mother about getting those guns from
6 Mr. Kerns and bringing them back to the police.

7 Simone Kerns's testified that she allowed her
8 boyfriend or the guy that she had been dating, Esaiveus
9 Booker to drive her car on a routine basis. She testified
10 that the night of this incident he stayed the night at her
11 apartment. How is it that Simone Kerns came into
12 possession of a hand gun that matched shell casings fired
13 at the Lil Cricket gas station unless her boyfriend put it
14 in her house. Esaiveus Booker hid that hand gun and that
15 shot gun in her apartment. She thought she was helping by
16 trying to get rid of it.

17 I want to look at ballistics briefly before
18 we get into the home stretch. I apologize this has taken
19 so long. James Armstrong testified about each set of
20 shell casings and he said he processed all of the shell
21 casings, the fragments, the projectiles, the bullets,
22 everything that was collected there on scene. He
23 testified that the bullets and fragments aren't
24 particularly informative unless you have the gun to
25 compare it to. The focus were the casings.

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1 He testified that after he compared each of
2 these casings, he was able to determine that these casings
3 come from seven different hand guns, a .45 caliber, a .40
4 caliber, a .9 millimeter, .380 automatic, a different .380
5 automatic, a different .9 millimeter, and a third .380
6 automatic. We know that one set of these .380 automatics
7 came from this gun. We know based on James Armstrong's
8 testimony that seven different guns were fired on the
9 scene that night.

10 Now, we turn to the folks who were there.
11 Larry Johnson was the first that you heard from and as
12 I've already mentioned there was some discussion about the
13 different statements he gave, the ways in which he
14 eventually becoming forth coming. You even heard about
15 him drafting a letter about recanting everything he told
16 the police. You saw some pictures of Larry Johnson with
17 guns and you heard that this isn't the first time he's
18 ever been in trouble with the law.

19 Larry Johnson's testimony is particularly
20 informative because of reasons I've already talked about
21 that being that he named eight different people, six
22 specific parking lot gun men and himself without knowing
23 from the investigators exactly how many guns were used on
24 scene. Like I said, the only way he could have known that
25 information is if he was there and he did exactly what he

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1 said he did.

2 To believe that Larry Johnson is lying about
3 the people with whom he was at the gas station during the
4 early morning hours of July 17th, you have to believe
5 three things. You have to believe that Larry Johnson pled
6 guilty and is going to be sentenced for crimes he didn't
7 commit because he pled guilty to being part of a mob that
8 joined together for the purpose of this attack.

9 He pled guilty to conspiring with these
10 defendants as well as three others to make the eight for
11 purpose of committing this attack. If you believe he's
12 lying you have to believe that he pled guilty and is going
13 to stand in punishment for something he didn't do.

14 You also have to believe that in spite of the
15 fact that he says he's known some of these men for years,
16 he described his relationship with many of them as like a
17 brother. He testified he was close with these defendants.
18 If you believe Larry Johnson is lying, you have to believe
19 that he hates these defendants so much that he wants to
20 see them convicted of crimes they didn't commit. Is it
21 reasonable to believe that he would do to friends he
22 characterized as being close as brothers.

23 Just one more thing you got to believe if you
24 think Larry was lying, you have to believe that he has
25 such unyielding loyalty to the actual people that

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1 participated in the shooting with him that he, himself, is
2 okay with accepting punishment pleading guilty, being
3 sentenced why they go completed free, unidentified and
4 unprosecuted.

5 Why would Larry Johnson lie about friends
6 that he characterizes as being like brothers to him? He
7 told you why he came around when he learned that he had
8 gotten the wrong people, that got to him. There's no
9 reason he would accept responsibility for what he's done
10 while the others go free. The only reasonable conclusion
11 is that he did exactly what he said he did and that these
12 defendants were of the men that were with him.

13 You heard testimony from Shaquille Hogan.
14 Shaquille Hogan is in a similar situation. Shaquille
15 Hogan told police on July 22nd that he was in a green
16 Camary with Esaiveus Booker and Ken Sadler and that they
17 went to the Lil Cricket, he stayed in the car. He
18 testified that he left driving, that he was shaken up from
19 the incident, that he switched places in the car. There's
20 a lot of ruckus about which seat he was in and where he
21 was sitting, where he could have been sitting or could not
22 have been sitting. He testified over and over and over
23 again it was such a long time ago, he doesn't remember.
24 We know which seat he was sitting in when he got to the
25 Waffle House. You can see him get out of the car

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1 passenger seat. Larry Johnson pointed him out.

2 Does that make what he says untrue? Again,
3 to believe that Shaquille Hogan is lying, you have to
4 believe that he is willing to plead guilty, accept
5 responsibility for what he's done, while the actual people
6 who were there with him walk free. And, again, you have
7 to believe he hates these defendants that he says were his
8 friends that he known for at least a year that he hates
9 them so much that he wants to see them convicted for
10 crimes they didn't do. Is that reasonable?

11 Now, as I mentioned you've heard about both
12 of them recanting their statements, letters that they
13 wrote where they said everything I said to the police was
14 untrue, but with Shaquille in particular, on July 22nd,
15 four days before the ballistic examiner even pulled the
16 casings out of property and evidence, how was it that
17 Shaquille Hogan was able to say exactly which hand gun
18 each defendant was carrying. He testified that he gave
19 his .380 to Tavarus. I asked him why and he said he asked
20 for it.

21 I asked him why he had to follow that
22 directive. Why he had to do what Tavarus tells him to do
23 and he said he's got that power. And the reason you heard
24 from Investigator Campbell later in this case is for
25 exactly this reason, that Shaquille Hogan was able to tell

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1 investigators exactly which firearms were used at the
2 scene that night. How is it that Shaquille Hogan could
3 have known there were two .9 millimeters used? How is it
4 that Shaquille Hogan could have known there were three
5 .380 automatics used as well as the .40 and .45 unless he
6 was there and he knew exactly what happened.

7 With respect to Larry Johnson's attempt to
8 recant his statement, he testified he was threatened to do
9 it. At the jail he was told either you are with us or
10 against us. In fact, he testified he thought he would be
11 "x-ed" out. I asked him what that meant and he said it
12 was his understanding that meant he would be murdered if
13 he didn't withdraw that statement. Keep that in mind when
14 you're evaluating what kind of pressure that is being
15 exerted on the witnesses that come to this witness stand.

16 Keep that in mind when you think about the
17 testimony of Daquan Bruster who interestingly enough pled
18 guilty on Monday morning and then all of a sudden couldn't
19 remember any details. Think about what must be happening
20 to influence these witnesses in the way that makes them
21 withdraw their statement, subject themselves to jail time,
22 penalties for this offense. Think about how heavy that
23 must way on the people who came to this witness stand.

24 Now, the judge is going to charge you with
25 respect to each of the offenses in this case and he read

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1 to you all the indictments at the beginning of this case
2 and I told you when he started on Tuesday that each of
3 these four defendants is charged with seven counts of
4 attempted murder.

5 The judge is going to instruct you about a
6 concept in South Carolina law that is often referred to as
7 the hand of one is the hand of all. The theory of this
8 rule of law is that if people join together to commit a
9 crime, they agree to do it together, they assist one
10 another to do this crime together, then each person who is
11 part of that agreement is responsible for all of the
12 consequences.

13 An example I'd like to think of is a bank
14 robbery. Imagine there's a driver of the get away car and
15 then there's a person who actually goes in side the bank
16 and points a gun in the teller's face. The get away
17 driver may never go inside the bank, but if the guy who
18 goes inside the bank ends up shooting and killing the
19 telling, based on the theory of the hand of one as the
20 hand of all, the get away driver is responsible for that
21 crime because they joined together to commit the same
22 crime and they assisted one another.

23 Now, on Tuesday during opening statements,
24 one of the attorneys mentioned to you that the State is
25 required to prove which bullet struck which victim and

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1 which bullet came from which gun, that's not true. The
2 State is required to prove that these four defendants each
3 with the intent to kill attempted to kill the victims in
4 this case and there's a count on each victim that was
5 struck; Travarus Thompson, Anthony Callahan, T.J. Walker,
6 Dontavious Sullivan, Raheem Adams and Russell Patterson
7 and Jamal Williams, each of those victims were the ones
8 that were struck by the bullet.

9 The State is required to prove that when
10 these defendants went to the gas station and opened fire
11 from the darkest corner of the parking lot that their
12 intent was to kill these victims, and you've heard
13 testimony that the purpose of going to that gas station
14 was to get the people who shot the defendant's friend
15 Brandon Edwards and or Brandon Davis. The intent was to
16 get them back. It was to kill them.

17 Each of these defendants is also charged with
18 possessions of a weapon during the commission of a violent
19 crime and as I told you on Tuesday, the State has to prove
20 exactly what it sounds like, that these defendants were in
21 possession of weapons, in this case hand guns, during the
22 commission of this violent crime. The judge is going to
23 instruct you that attempted murder is classified as a
24 Violent Crime under South Carolina law.

25 The State is required to prove exactly what

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1 it says that while they were shooting at these victims,
2 that each of them was armed with a hand gun and I think as
3 I've probably beat to death, you've heard about each of
4 the hand guns that each of these defendants was carrying.
5 We know that six different hand guns was used in the
6 parking lot. We know there were six shooters. These
7 defendants were four of them.

8 The defendants were charged with conspiracy
9 and just like I told you on Tuesday the State has to prove
10 that the defendants agreed to commit a crime together,
11 that they entered into an agreement to commit this crime.
12 The testimony that you've heard that everybody who was in
13 the parking lot of 864, everybody who was in, everybody
14 that was out was to go to the Waffle House by Fleetwood.
15 Everybody that was in was to cover their face and follow
16 the lead car, Joseline's red Honda.

17 These defendants knew exactly what was going
18 to happen at the Lil Cricket. They knew that the
19 function, the purpose, the reason for going to the Lil
20 Cricket was to shoot these victims. That's the agreement,
21 that's the conspiracy.

22 Finally each of these defendants is charged
23 with assault and battery by mob in the second degree. The
24 State has to prove that two or more people joined together
25 with a common purpose to commit this assault and battery.

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1 It's very similar to what conspiracy sounds like but what
2 the difference is that the State must prove that the
3 defendant's acted together with a joint purpose, a shared
4 objective to commit the attack, and the evidence
5 demonstrate they all went with the same reason, the same
6 purpose. Even Daquan Bruster with what little he remember
7 testified he was going there, he was told to make sure he
8 had his gun, he was told to cover his face and he went
9 there knowing that he was going there knowing that the
10 purpose was to shoot.

11 And as I said what makes that assault and
12 battery by mob in the second degree is that serious bodily
13 injury or the gun shot wounds that you heard about, that's
14 what makes it second degree.

15 And as I'm sure the judge will instruct you,
16 you have to consider the evidence against each of these
17 defendants separately. We know that Larry Johnson was at
18 the Red Planet Nightclub. He pointed himself out in the
19 photograph. We know that 17 to 18 minutes after the
20 shooting he arrived at the Waffle House by Fleetwood. He
21 can be seen arriving in that black Cutlas that he talked
22 about.

23 We know that Shaquille Hogan was at the Red
24 Planet Nightclub. He was identified in that picture. We
25 know that he was at the Waffle House 17 to 18 minutes

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1 after the 911 came in about the Lil Cricket shooting. We
2 know that Daquan Bruster was at the Waffle House by
3 Fleetwood 17 to 18 minutes after the gas station shooting.
4 We know Esaiveus Booker was at the Red Planet Nigh club
5 and just behind Mr. Bruster, Larry Johnson told us that
6 that's Esaiveus Booker in the Waffle House by Fleetwood 17
7 to 18 minutes after the 911 call.

8 Tavarus Holmes was at the Red Planet. He was
9 in the group photo and Larry Johnson told us that was
10 Tavarus Holmes at the Waffle House 17 to 18 minutes after
11 the 911 call. Larry Johnson told us that Ken Sadler is in
12 this photo, that Ken Sadler was at the Red Planet
13 Nightclub and we know he was at the Waffle House by
14 Fleetwood just minutes after the call came in.

15 We know Michael Williams was at the Red
16 Planet and we know he was at the Waffle House just minutes
17 after the call. We know Raymond Young was at the Red
18 Planet and we know he was at the Waffle House just a few
19 minutes after the call.

20 There is an extreme small window of time
21 between when the shooting happened and we find these
22 defendants on camera as far away as they could get from
23 the crime scene. The testimony you heard was that it took
24 anywhere from 15 to 25 minutes to get from the Lil Cricket
25 gas station to the Waffle House by Fleetwood.

Closing Arguments - Salisbury

1 The surveillance video shows these defendants
2 arrived exactly as their co-defendants described. Raymond
3 Young is driving Joseline's red Honda, in his car is
4 Michael Williams and Tavarus Holmes. Esaiveus Booker is
5 driving Simone Kerns's Camary. In his car was Shaquille
6 Hogan and Kinjta Sadler. Larry Johnson is driving his
7 black Cutlas and his car is Daquan Bruster. How is it
8 that Larry Johnson and Shaquille Hogan admit to being at
9 the gas station witnessing what happened and find
10 themselves with these defendants unless these defendants
11 were involved?

12 Unless Shaquille Hogan was in the car was
13 Esaiveus Booker and Kinjta Sadler at the time of the
14 shooting, how is it that he found himself in that green
15 Camary 17 minutes after the 911 call comes out? Is it
16 reasonable to believe that Esaiveus Booker picked up
17 Shaquille Hogan as he was running down the street? It's
18 plausible but the reality is Shaquille Hogan was in the
19 green Camary with Esaiveus Booker and Kinjta Sadler just
20 like he says he was.

21 The reality is that Raymond Young was driving
22 Joseline Mack's red Honda and was carrying Tavarus Holmes
23 and Michael Williams. That's the truth. The truth is
24 that these defendants did the shooting exactly as you
25 heard it described and they did it to retaliate for what

Closing Arguments - Salisbury

1 happened to their friends at the Red Planet. The most
2 horrific part of it is they were completely wrong about
3 who they were trying to get back.

4 I apologize for taking up so much of your
5 time and I promise I won't belabor it any more. The
6 victims in this case don't deserve what happened to them.
7 I ask you to carefully review the evidence in this case
8 and think about what may be going on to influence the
9 testimony you've heard. I won't have another opportunity
10 to talk to you but I hope that during your deliberations
11 you arrive at the truth that each of these four defendants
12 is guilty of seven counts of attempted murder, possession
13 of a weapon during the commission of a violent crime,
14 conspiracy and assault and battery by mob in the second
15 degree.

16 Thank you so much.

17 THE COURT: Let's and gentlemen, let's take a
18 short break at this time. Please do not begin your
19 deliberations. Everyone else stay seated in the
20 courtroom.

21 We'll take about five minutes or so.

22 (Jury exits the courtroom.)

23 (Whereupon, there was a brief recess.)

24 (Jury re-enters the courtroom.)

25 THE COURT: Okay. Mr. Chambers.

Closing Arguments - Chambers

1 MR. CHAMBERS: Ladies and gentlemen, as I
2 told you at the outside my name is Randy Chambers and very
3 specifically I am here and been throughout this trial
4 representing Esaiveus Booker seated here beside me and
5 have been seated here beside me throughout the course of
6 this trial. You've heard him referred to countless times
7 as the defendant. What he really is is an accused.

8 I was lucky enough to start my career as a
9 lawyer as a Navy Jag officer in court marshals and in the
10 military you refer to somebody on trial as the accused
11 which always seems to be a better way to phrase it, more
12 accurate. Defendant sounds like you have obligation to
13 defend against those allegations, but you don't. These
14 folks make the allegations, these folks have to prove the
15 allegations. And as I've told you from the outset and as
16 you heard from his Honor, you're going to get more
17 specific instructions on this later, when they walk in
18 here to prove the allegations, they have to prove it to
19 you beyond a reasonable doubt.

20 Now, that is a term that all of us have heard
21 time and time again that a person is accused of something
22 he's innocent until proven guilty, well, folks you are in
23 a situation that a lot of people don't find themselves in,
24 you actually get to put them to the test. All of you took
25 an oath earlier saying that you would do that. Now,

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1 here's the thing, I always here juries referred to as a
2 jury of ones peers but what I find over time is that's
3 really not always true.

4 Most of us who find ourselves on jury duty
5 are people who I think would refer to ourselves as middle
6 class. We get up, we go to work, we go home and hang out
7 with our families and eat dinner, go to bed at a certain
8 time. We don't know anything about gangs or these clubs
9 that we heard about, going out to a club carrying guns.
10 We don't know anything about stuff like that. It's
11 different. It's scary to us for people who don't deal
12 with that.

13 So you are, at least some of you, perhaps all
14 of your are hearing about things you've only seen on tv
15 that you've seen in movies and things like that. But what
16 you have said that you would do and I know that I will
17 because as I sat here this week, and it's been a long
18 week, we've had long days, I've seen all of you paying
19 attention, taking notes, taking this very seriously. And
20 I told you at the outset and it's something that I tell
21 juries all the time and I've even in the past gone to
22 these trial seminars where they say you should never get
23 into that kind of thing but I always do and that is this
24 talking about the importance of jury service and what
25 you're here to do.

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1 Our founding fathers people like John Adams
2 and Thomas Jefferson said and I'm paraphrasing but in
3 different ways this is the truest exercise of democracy.
4 This is how we ensure our liberty because the government
5 has the power to take away our liberty, to put us behind
6 bars and before we allow the government to do that, we
7 bring 12 citizens to sit and listen to the evidence that
8 they present. That is the check from the government
9 running amuck.

10 We set the highest bar possible under the law
11 in these kinds of cases and that's beyond a reasonable
12 doubt. You heard the solicitor say evidence that would
13 leave you firmly convinced and his Honor will probably
14 charge you that. And I always think that doesn't sound
15 like a very high standard but think about what firmly
16 convinced actually means. Firmly convinced means, firmly
17 means definitely, you're definite in that conviction. And
18 convinced means you're sure.

19 In other words, to a moral certainty because
20 it's not enough to think well they probably did if any of
21 you have that thought. That's not enough. And the other
22 thing to remember as you sit here as jurors, you are a
23 deliberate bottom. You will go back into your
24 deliberation room and you will talk to each other and you
25 will try to come to a unanimous decision because that is

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1 what is required, but none of you is any more or less
2 important than the other. It's just natural that some of
3 your are shy and some of your are assertive and some of
4 you fall somewhere in between, but when you go back there
5 and you start to sort through this evidence and you start
6 to review the testimony in this case remember that your
7 opinion, your conclusions about what happened, are just as
8 important as anybody elses. You are not to let anybody
9 trample on that.

10 You are to keep in mind at all times the
11 standard by law that has been set for them.

12 And with that, let's take a look at this
13 case, ladies and gentlemen. I'm going to start with the
14 big picture and work my way down and what I mean by that
15 is this the first thing whenever I get involved in a case
16 and I want to start hearing about the case I ask myself
17 what are they saying about my client, in this case,
18 Esaiveus Booker, does it make sense to me or does
19 something feel wrong. And based on the case that was
20 presented by the State something feels wrong to me. We're
21 not getting the whole picture from the victims in this
22 case.

23 Now, there's no question the young men that's
24 been seated in the back through the trial, they were shot.
25 No question about that. The question is who shot them?

Closing Arguments - Chambers

1 Let's think about this situation and why I say something
2 about this doesn't add up.

3 Now, we know that those young men were at the
4 Red Planet Nightclub. We know that there were hundreds of
5 people at the Red Planet Nightclub. We know that
6 according to the testimony of Investigator Brown there
7 were at least three known separate groups there but
8 probably more than that. I mean it's a bunch of young
9 people. They tend to travel in groups. They tend to have
10 each other's back and, you know, when you mix in alcohol
11 and you put in young ladies into the mix, things happen.
12 They fussed with one another and they get into it with one
13 another and as you heard the victims, at least, two of
14 them carried guns to the club.

15 Apparently that's fairly common at the Red
16 Planet Club people come and they bring guns with them
17 which means that at some point there's going to be a
18 possibility of gun play if something happens. But think
19 about it, there was a fight inside the Red Planet. At
20 this point I will point out nobody who you heard testify
21 who was a victim in this case indicated that they saw
22 Esaiveus Booker in the Red Planet.

23 Now, we know he was there because we saw a
24 picture of him with his friends but none of those
25 individuals saw him. They said that there was a

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1 discussion that went on and this fella they called Buddha
2 and that was broken up. There is one thing I want you to
3 keep in mind is that even Mr. Fant said that during that
4 discussion they basically parted amicable when it was over
5 because Buddha said that Raymond said to him I don't want
6 any trouble and then they went back to what they were
7 doing.

8 And then later on there was a fight out in
9 the parking lot and then apparently that fight erupted
10 between Buddha and Mr. Williams. Some people were in the
11 club and couldn't get out and some people in the parking
12 lot and then Buddha got shot. Did he get shot by any of
13 these folks? No. He got shot by somebody named Wair. We
14 don't know anything about the person who was identified as
15 shooting him.

16 And then what happens, and this is where
17 things start to break down and seem not to me to make
18 sense, two of the people and I believe that it was Thomas
19 Walker and I honestly don't remember who the other one
20 was, they don't call 911, they don't try to get an
21 ambulance or anything out there. They put Buddha in the
22 car -- it was Mr. Suber, that's who it was, Mr. Suber and
23 Mr. Walker -- and they get in a car and they take Buddha
24 to Saint Francis Hospital.

25 According to Mr. Walker, they were there for

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1 a grand total of five minutes. Maybe it was longer, but
2 if you're going to stay five minutes from the stand you
3 weren't there very long. That in and of itself seems odd
4 but then what do we find out? The reason they were only
5 there for a few minutes in part at least was because they
6 got into a fight with each other Suber and Walker. Now,
7 they're friend has been shot, someone they're concerned
8 about taking to the hospital and they get into a fight and
9 what are they fighting about because Mr. Walker thought
10 that Mr. Suber didn't have Buddha's back enough out there
11 at the club. What did he do? He took Suber home.

12 Now, they could have all gone home. We keep
13 hearing how scared these young men were supposedly of
14 these gentlemen seated over here but they weren't scared
15 enough to go home. Now, I'm going to tell you something,
16 I'm a middle aged man who usually in bed by 10:00 but if I
17 found myself at the Red Planet and there was a shooting
18 that occurred there, I would make a B-line to my house
19 particularly if somebody that I knew had been shot.

20 But what did these young men do? They met up
21 at the Lil Cricket on White Horse Road. And in fact they
22 called around to each other to make sure that everybody
23 was there. Trez Thompson who wasn't even with them
24 started to the hospital, saw them leaving, and joined them
25 at the Lil Cricket. That doesn't sound like people who

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1 are scared to me. That sounds like people who are up to
2 something.

3 Why wouldn't you just go home? Especially if
4 you thought that this supposed -- listen, the implication
5 is throughout this is they were a gang. That they are the
6 Folk Nation I think is what Brandon Brown attributed it
7 to, that they are scary people and these victims were
8 scared of them. They didn't go home. They didn't try to
9 call the police or do anything, they went to the Lil
10 Cricket and again maybe it's just me but when you watch
11 that video and you remember some of the testimony you herd
12 how they went there.

13 They were there for a good long time. They
14 were there at least 30 minutes or so. They pull in, not
15 where the parking spaces are, they pull in and block all
16 of the gas pumps. Only one person said anything about
17 getting gas and that was the person who was driving the
18 Impala. All the other witnesses said they weren't there
19 getting gas and if you look at the video, that's true.
20 They were there blocking the gas pumps and just hanging
21 out and talking, guns in the car.

22 When you watch that video you can see that.
23 And you can also see at one point there's another car that
24 pulls up, sits there talking to somebody about 19, 20
25 minutes and we don't know anything about that car or what

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1 happened. We know that later a girl in a silver car pulls
2 up, gets on the pay phone which one of the victims in the
3 case said, and in retrospect I thought was odd because
4 nobody uses a pay phone any more. I'm surprised there was
5 a pay phone and very shortly after she left, this happens.

6 The other thing to think about is this, in
7 one of the cars there, if you remember, Mr. Walker said
8 that he had a .9 millimeter and then also in that car was
9 a .38 revolver and he said with that .9 millimeter there
10 was also an extra clip. The shooting occurred, these
11 fellas scattered and the police respond fairly quickly
12 because they're getting these 911 calls from different
13 places and they immediately secure the scene.

14 The first officer that pulled up said he
15 secured the scene. At that point nobody is going back
16 around these cars doing anything. Now, we know that when
17 the car that Mr. Walker was in left the Red Planet and
18 then to the Lil Cricket, there were two guns in this car
19 and by his own testimony and an extra clip. There was a
20 .9 millimeter with an extra clip and a .38. Strangely
21 enough when those cars were towed in and they were
22 inventoried, no extra clip no .38 revolver. They just
23 disappeared.

24 Now, do I have an answer for why that
25 happened or how that's important? No, but it's very

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1 strange. There could be a number of reasons for that. I
2 could be that the victims were using the gun in some way
3 and disposed of it. It could be that the police lost it
4 which would obviously cast doubts on how they conducted
5 their investigation and how well they protect evidence in
6 the case. There are any number of ways to look at that
7 folks. I don't know, but I will tell you this none of
8 that makes sense.

9 Another thing you keep hearing about is these
10 men supposedly went to the 864 -- there was conflicting
11 testimony all around about you know whether they tried to
12 go in, couldn't get in. Mr. Johnson is the only one who
13 said this said they went inside the 864. But anyway they
14 supposedly then met up and said we're going to go eat.
15 And then they started off down White Horse Road and
16 supposedly the lead car just saw these people over at the
17 Lil Cricket and just like that flipped the car around and
18 went back to the 864 parking lot and that's when they
19 masked up.

20 Now, I want you to think about this, first of
21 all, if you were these victims in a case like this and you
22 were at the Lil Cricket and you had just been at the Red
23 Planet where all this commotion had gone on and all these
24 people had been shot and you were at they said meeting up
25 with one another to talk about it, to be concerned about

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1 it with one another, if all of a sudden you saw a line of
2 cars several cars flip a u-turn in front of where you
3 were, wouldn't you be concerned about that? Wouldn't that
4 get noticed? Wouldn't you be on guard?

5 Likewise, if you had concerns that you had
6 people who were considered to be part of the Folk Nation
7 and you knew who they were, wouldn't you have recognized
8 them. I want to call something to your attention very
9 specifically, Larry Johnson, I want you to look at that
10 video and see his car, that is a very noticeable car and
11 he's got nice rims on them, he's got a shiny paint job.
12 It looks like it was jacked up in the back a little bit.
13 You would notice that car and yet they never mention
14 seeing anybody flip a u-turn. That would have been an
15 important detail. That's something that would have
16 corroborated all this other stuff but you didn't hear
17 that.

18 The other thing you would have to believe is
19 this, details, details, that's what always points to the
20 truth in a case. Javon Henry, he was the only witness, I
21 believe the solicitor said there were two but he was the
22 only witness I remember saying anything about seeing
23 anybody was he saw a line of five to ten, as many as ten,
24 shooters coming around the parking lot. And what did he
25 say very specifically -- he didn't say this on the stand

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1 but he said it in the statement that he gave to police
2 that I had him look at and he had to admit was in his
3 statement, that they were wearing, all of them, white tee
4 shirts and black bandannas.

5 Now, the solicitor gives you her argument and
6 she says they all covered their faces with black tee
7 shirts, and I guess you can say bandanna, tee shirt, but I
8 don't think bandanna looks like a tee shirt but we'll
9 give her that. What about the white tee shirts? When
10 these folks show up at the Waffle House, you can look on
11 the video and I very specifically will talk to you about
12 Esaiveus Booker, you see him in the Waffle House and
13 inside the Waffle House he's not wearing a white tee
14 shirt, he's wearing a black shirt.

15 And, of course, what she says and intimated
16 to us is they carry these around with them. Well, how is
17 that? Well, certainly they didn't go out to the Red
18 Planet that night planning to shoot anybody to have a
19 supraspinous raid on other people. They didn't plan to do
20 that. They were in different cars with different people.
21 Do they have backpacks that they carry around with their
22 white tee shirts and their black bandannas. Where would
23 they get them on the spur of the moment? How would that
24 happen?

25 How would it happen within in an instant

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1 after you had seen people at the Lil Cricket flip a u-turn
2 in the middle of the road, gone back to the 864, mask up
3 and somehow they all produce white tee shirts and black
4 bandannas, get in their cars and roll off? How does that
5 happen? It doesn't. It doesn't make sense. It is an
6 important detail though.

7 So you ask yourself if they didn't do the
8 shooting who did? I don't know. There were lots of
9 people at the Red Planet. The officer even said there
10 were at least three groups that night that interacted with
11 each other in a negative way, and bear in mind, folks,
12 their testimony was that all of these men had actually
13 left the Red Planet and the only person anybody knew about
14 being shot was Buddha. It's not one of their people and
15 nobody has really connected as these other people being
16 shot was part of their group. That's not what the
17 evidence in this case is.

18 Folks, those are the things that don't make
19 sense.

20 So you have to take a really hard look at the
21 evidence in this case. It comes down essentially to
22 witnesses and their testimony in this case, how they
23 testified. What was their demeanor and what did they
24 remember? How did they remember it?

25 Now, you heard people say it was a long time

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1 ago but here's the thing, folks, if I were to say to any
2 one of you what happened on July 17, 2011 what were you
3 doing? You don't know. It's hard for me to even tell
4 people what I had for lunch the day before, but if you had
5 gone through a traumatic experience or been involved in an
6 event of that sort, you would remember and you would
7 remember it in great detail.

8 If there were details that you were fuzzy
9 about, you would have been fuzzy about them in the
10 beginning. You wouldn't have forgotten them over time and
11 certainly if you were going to testify, I believe, that
12 you are going to be given the opportunity to look at the
13 statement you gave. It seems reasonable.

14 So if somebody comes in here and takes the
15 witness stand and all of a sudden what they're saying now
16 is vastly different than what they gave to the State,
17 there's a reason for that. It's not time went by and they
18 forgot, it's because they're probably not telling the
19 truth or at least not the whole truth. The truth is
20 consistent. It's the lie that's inconsistent. It's hard
21 to keep a lie straight, the truth is.

22 The great things about trials is this, if
23 you're going to make an accusation, if you're going to
24 give testimony, you got to come in and you've got to sit
25 on that stand and we make a big production out of it. You

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1 come in, you stand here, you put your hand on the Bible.
2 You don't have to do that. We don't have to have a Bible
3 here. We could just have somebody raise their hand and
4 swear but we put a Bible here and we have them raise their
5 right hand and swear and they have to answer questions.
6 That doesn't ensure that people are going to tell the
7 truth. I wish that it did. But it is the best way I know
8 of to ferret out the truth.

9 And the other thing about it is sometimes
10 when people take that stand, it does hit home and they're
11 hesitant. And even though it may be easy not to tell the
12 truth in a prior statement, it's not so easy on the
13 witness stand. Especially when you may have had somebody
14 coercing you or forcing you in that situation.

15 Now, I talked to you at the beginning of this
16 trial and again just a few minutes ago about the
17 importance of a jury keeping diligent the facts and if
18 ever there were a case where we needed that, this is the
19 case. This case can not stand because it is rotten to the
20 very core. It is rotten to the very core.

21 Now, by saying that and I realize that most
22 of your are saying wait a minute he's talking about police
23 officers, he's talking about prosecutors. He's trying to
24 say they are doing things that are unethical or illegal
25 and I don't believe police officers do that.

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1 Ladies and gentlemen, here is what the
2 problem is I'm sure they believe these young men are
3 guilty at what they said they did. I don't doubt that for
4 a minute, but they are wrong. What happens is when you
5 take the police which is abundantly clear in this case
6 that the ends justify the means you're going to get bad
7 results. And when you reach the conclusion and then work
8 backwards to make the evidence fit that conclusions, you
9 are going to get bad results and that's what happened in
10 this case.

11 So what do I mean by that. Investigator was
12 home. He was on-call. He was told about this shooting at
13 the Lil Cricket and later told about the one at the Red
14 Planet and he responded that day. And he started to talk
15 to the victims in the case. Now, strangely enough even
16 though they are not homicide investigators, right from the
17 outset they called out two gang investigators, people
18 whose sole purpose in life, at least as far as their job
19 goes, are to investigate gangs. Why would you do that?

20 The reasonable inference is that they believe
21 the victims to be involved in a gang and that would be a
22 reasonable belief based on everything they knew at that
23 point. So Brandon Brown and Investigator Woodall respond.
24 One went to the Red Planet and one went to the Lil Cricket
25 and that is when the focus turned on Raymond Young,

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1 Michael Williams, and anybody who might be friends with
2 them and that's when they started to try to make the
3 puzzle pieces fit the picture of what they had.

4 Brandon Brown is the one who introduced those
5 names. He heard about the discussion between Buddha and
6 Raymond Young. He heard about the discussion between
7 Mr. Williams and Buddha, and then he started to say with
8 these people are associated with Raymond Young and he came
9 up with a list and that's who they started focusing on
10 from that point on and they never did anything else.

11 Here's what I'm talking about, they could
12 have found out as best they could who was out there at the
13 Red Planet Club. There was a photographer there taking
14 pictures of lots of different groups. They could have --
15 I would imagine there was surveillance cameras inside the
16 Red Planet given that they had them outside the Red
17 Planet. They could have gotten security people to give
18 them information but you didn't hear anything about any of
19 that. They focused on Raymond Young, Michael Williams,
20 and people who are friends or associates, according to
21 Mr. Brown, with those people and that's where the
22 investigation went. And that's how we end up where we are
23 now.

24 I'm sorry, but I'm not going to be as smooth
25 or as eloquent as the solicitor was. She made it almost

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1 sound like she had a case, but basically what I want to go
2 witness by witness and talk about it because this is her
3 case. You know, I've often heard it said as a juror you
4 are to take the law as the judge gives it to you, take the
5 evidence from the witness stand and then apply the law to
6 the evidence and use your common sense. You don't leave
7 it at the door when you walk in here. You can make
8 reasonable inferences. You can judge these people. You
9 can ask yourself as you go through this whether this was
10 deliberate because has what I heard convinced me beyond a
11 reasonable doubt.

12 If I had to bet something that is important
13 to me would I be able to live with that decision or would
14 it keep me up at night, that's where we are with this
15 case.

16 Now, the first person who took the stand was
17 Mr. Fant who was shot at the Red Planet. I'll tell you
18 specifically he made no mention whatsoever of Mr. Booker.
19 In fact none of the victims did. Then we have Raheem
20 Adams and he had a lot of trouble remembering what exactly
21 happened. In fact, if you will remember she essentially
22 had to impeach him with his own statement. She didn't
23 like what he was saying and the way he was saying it so
24 she went back to his statement and had him read it,
25 correct some things he was saying because he didn't like

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1 it because he wasn't consistent.

2 Then we had Mr. Parenton take the stand. He
3 specifically said, he called him Trez. That's what all
4 Esaiveus's friends call him, Trez, Trez is my friend and
5 I'll say what the solicitor said, why would you shoot at
6 your friends and he said I wouldn't but he said I didn't
7 see Trez. He said I didn't even know he was at the Red
8 Planet. So certainly he wasn't involved with bothering
9 anybody, getting in any commotion. You never heard that
10 from anybody about Esaiveus Booker. He also was
11 apparently inconsistent with the statement he gave on the
12 stand because the solicitor impeached him.

13 Thomas Walker took the stand and I've already
14 gotten into what he said didn't make any sense about how
15 he went to Saint Francis and then left. He talked about
16 having a gun, having an altercation with Mr. Suber. Then
17 we get to Mr. Henry. He is a very interesting witness.

18 Mr. Henry said I didn't see any problems at
19 the club, didn't know of any kind of altercation at the
20 club, didn't see it. He said he did give a statement to
21 the police. This is what is interesting, this is one of
22 the victims, folks, when he started to kind of go astray
23 and the solicitor handed up his statement and talk to him
24 about it, he was one of the first ones I remember saying
25 that's not really my statement. That's not my statement.

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1 And then she pressed a little further and he said they
2 weren't really asking the questions, they were telling me
3 what to say. Think about that. Now, that fits exactly
4 with what I'm talking about.

5 Now, Investigator Brown and Woodall got out
6 there to the scene and said it's the Folks, that's who
7 we're looking for. The victim, Mr. Henry sits down with
8 them and they're saying this is what happened, isn't it.
9 That's what he said. That's their witness, that's their
10 victim.

11 Now, I'm going on and on about it because I
12 want you to think about that and ask yourself does not
13 raise a reasonable doubt? Does that not cast doubt on
14 every thing these folks did as part of their
15 investigation? Why would you do that if you're victim?
16 Or if anybody has a reason to lie in this case, it's not
17 one of the victims yet he says that wasn't my statement
18 and I didn't even get a copy of the statement. I don't
19 even know what was in the statement. That's Investigator
20 Campbell's statement.

21 And then we have Ms. Perry, she didn't have
22 anything to say about Mr. Booker and again solicitor
23 didn't like what she had to say on the stand, hands up her
24 statement, gets into the inconsistencies with her,
25 essentially impeaches her own witness.

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1 Jamal Williams, he had a gun. TJ Walker was
2 holding it for him. His was the .9 millimeter. Walker's
3 was bathe .38, the .38 that was never found. Jamal had
4 the extra clip that was never found. He doesn't mention
5 Esaiveus Booker, nothing about him, and then, again, his
6 statement doesn't jive with the statement they have. So
7 what does the solicitor do, again, does this refresh your
8 memory, and essentially impeaches her own witness.

9 Mr. Sullivan, he didn't say anything
10 Esaiveus Booker, Carol Jackson doesn't say anything about
11 Esaiveus Booker. Trevarous Thompson, he wasn't even at
12 the Red Planet. He supposedly heard that his cousin
13 Buddha had been shot and was on his way to Saint Francis
14 Hospital but he didn't care enough about his cousin to go
15 on to the hospital to check on him. Nope, he decided to
16 go with another victim or who ever to meet up over at the
17 Lil Cricket. I don't know why. Seems strange to me, but
18 that's what they did. He certainly never saw Mr. Booker.
19 He never saw any cars. He never saw anybody that was
20 supposedly related to this.

21 Next witness was Ms. Smith and she did
22 nothing more. She was at work. She was probably
23 wondering why they hell these people were pulling up
24 blocking my gas pumps, but she didn't call the police.
25 She didn't do anything about that. Either she was used to

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1 them doing that or she was scared to cross them. I don't
2 know, but she didn't do anything about that. If anybody
3 wanted to get gas while they were over there, they were
4 pretty much out of luck.

5 Deputy Chris McCalmont, and this was
6 interesting to me, he was one of the first officers to
7 arrive and he talked to two victims, Callahan and
8 Williams. Folks, they refused to answer his questions.
9 Here you have a uniformed police officer who has responded
10 to a 911 call where you've been shot. I don't know about
11 you but if people were shooting at me, I would be really
12 happy to see those boys in blue to pull up. I would
13 tickled to death and I would tell them anything I knew
14 that could help them, but what did these guys do, they
15 refused to answer.

16 Now, the solicitor said time and time again
17 in a very polished delivery they were scared. They
18 weren't scared. Do they look like people that would scar
19 easily to you? They're the kind of people who would put
20 guns in their car and go a club. They're the kind of
21 people that when one of them gets shot, they gather
22 everybody up and go block the pumps and hang out over t
23 the Lil Cricket and talk about what they're going to do.

24 There's a reason they refused to talk, I
25 don't know what it is, but you know what? That's their

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1 problem, not mine. Chris Hill and he didn't have anything
2 to add. Deputy James Brown responded. He was actually
3 the first one on the scene.

4 And then we had Deputy Matt Owens. He said
5 he saw Mr. Thompson -- he didn't know it was Mr. Thompson
6 at the time and later learned it was Mr. Thompson -- run
7 from the scene. So he ran after him and said I didn't
8 know at first. He knew that there had been some shootings
9 and somebody running from the scene, he didn't know if it
10 was a victim or a perpetrator and so he pulled his gun
11 until he was sure that he and the officer would be safe
12 which is what I would expect him to do.

13 Then after he confirmed Mr. Thompson was a
14 victim and somebody who had actually been shot and this
15 was significant because he put it in his report just this
16 way, "He was hesitant to answer even basic questions."
17 And why is that? Again, I don't know the answer but
18 that's their problem. That impacts their case, that's
19 their victims who testified. That's their victims who
20 testified all testifying giving inconsistent statements
21 who had to be impeached with their own statements.

22 And then we had Ms. Ooten who came in. She
23 works for the crime scene unit. She went about finding
24 all these shell casings and she told you that and showed
25 you pictures. Now, here's something that I want to point

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1 out to you that's really important, the solicitor in an
2 effort to overcome just the terrible witnesses she had in
3 this case said there are forensics in this case.

4 We know Mr. Johnson is telling the truth
5 because he knows what kinds of guns that were used in this
6 case and how many. First of all let me say as far as how
7 many, they already concluded who they were looking for.
8 They had a number, okay, and bare in mind we don't know
9 how many guns could have been out there or how many
10 shooters. They only took into evidence two guns. One of
11 them was in Mr. Walker's car, the .9 millimeter and the
12 other one was the .380 and we'll talk about that a little
13 later. They didn't find any other guns from anywhere.

14 They knew the amount of people they were
15 looking for because they already reached that conclusion.
16 But they knew right then on the 17th well before Johnson
17 gave his first statement on the 20th what guns were used
18 and how is that? That's because Ms. Ooten went out there
19 and picked up the shell casings. And guess what? Every
20 one of those shell casings has stamped on the head the
21 caliber of ammo.

22 Here's one. You look at it when you go back
23 there and if you want to, just because they have these
24 little envelopes doesn't mean you can't look at them. You
25 can rip these open and look at them. They're in evidence,

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1 but it says right on there head stamped RP .45 auto
2 casing. It's right there. So they knew. They knew the
3 guns that was involved and they knew the kind of guns that
4 were involved.

5 And the other things I point out to you and
6 this is when James Armstrong testified, there were,
7 according to him seven different guns, and of course, this
8 is if the science was correct. I'm not really disputing
9 that but you have to, as you look at this investigation
10 and all the problems with it you can ask yourself, but
11 let's just assume he was correct about it. Seven and
12 possibly nine guns and he was hedged a little bit when he
13 was pushed by co-counsel a little bit, and why would he
14 hedge? Because it don't fit the narrative.

15 Don't ever think that they don't have an
16 interest in winning the case. As far as they're
17 concerned, their reputation is on the line. I mean you
18 can see officers sprinkled around that bothered to come
19 back. They don't have to be here now, but they're here.

20 THE COURT: Mr. Chambers, you need to start
21 rapping it up.

22 MR. CHAMBERS: They have an interest in this
23 case.

24 And then we hear from Mr. Derby. He
25 processed one of the calls and then Jonathan Hamilton who

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1 processed one of the cars. He processed the Crown Vic.
2 He found in the car a black tee shirt. We keep hearing
3 about these nefarious back tee shirts. Well, guess what?
4 In the front seat of that car was a black tee shirt and .9
5 millimeter pistol, no extra clip, no .38.

6 Then we hear from the lady from P&E and then
7 we hear from Investigator Campbell. I've already talked a
8 lot about what Mr. Campbell had to say but here's
9 something interesting to me, he conducted these interviews
10 and he sat there and talked about it and he seems like a
11 very amicable fellow. He seems like somebody's dad that
12 they talk to. He doesn't give us the benefit of seeing
13 the interview. He gets them to sign statements
14 acknowledging their rights.

15 When you get people coming in here saying
16 they were coerced or forced or words put in their mouth,
17 the easiest way to prove that's not true is to tape. And
18 what is the excuse you get? Don't have a tape recorder.
19 When it benefits them, they have video. You get charged
20 with a DUI, they got a video of you taking the field
21 sobriety test. They got a video of you driving? Why?
22 Because that helps them. They don't want you to see the
23 interview. They don't want you to see how many people
24 were in that room. They don't want you to see what they
25 said to these people. They don't want you to see it.

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1 None of them do it; Brown didn't do it,
2 Campbell didn't do it, Peoples didn't do it, none of them
3 did it. They don't want you to see it. And we already
4 heard from the victim, Mr. Henry who said that wasn't my
5 statement, he didn't ask me any questions, he told me what
6 was going on and then asked me to agree.

7 He didn't have gunshot residue done on the
8 victim even though he knew they had guns, even though we
9 knew there was a clip missing, even though we know that
10 there was a .38 missing. He didn't think it was
11 important. He said they didn't have time but you heard
12 Ooten say there's a six hour window for gunshot residue.
13 He was on the scene in about 45 minutes after these
14 shootings took place.

15 There were no fingerprints of any kind found.
16 There were never any fingerprints on any gun or anything
17 tied to Esaiveus Booker, no fingerprints from anybody.
18 You heard from Ms. Peoples and we talked about her and
19 then Moore. They made a big deal about the fact there was
20 a black bag in a trailer. So what? If they really
21 thought that they had something there, they could have
22 secured those premises. The officer even said that was
23 true, gotten a search warrant and come back.

24 What they want you to believe because they
25 want you to rely a lot on speculation, innuendo and those

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1 sorts of things that there was evidence in that bag and
2 they took it away. We don't know that. All that is is
3 speculation. You can not rely on speculation in a case
4 like this, folks.

5 Deputy Woodall testified. His testimony I
6 guess had to do with the black duffel. And then we get to
7 Ms. Mack. I'm not going to spend a lot of time on
8 Ms. Mack but I'm going to tell you this, she was the very
9 next witness who said that that statement was not her
10 statement. The statement we didn't get to see that we
11 only got to hear about. And she told you when they
12 brought her in to give that statement that they threatened
13 her. That they told her she could get up to 30 years in
14 prison for accessory to a felon; that they told her that
15 she could lose her one year old child. That was her
16 testimony from the witness stand.

17 She denied that most of that statement was
18 anything that she told them. You got to throw that
19 statement out, you can't rely on that. If you need to
20 know if she was telling you the truth, I want you to
21 remember this point, because this is what happens when
22 police officers write statements and they basically
23 putting in what they want in, sometimes cop language gets
24 into the mix.

25 With police officers you don't get out of

Closing Arguments - Chambers

1 your car, you exit your vehicle. Well, here is what was
2 included in her statement and I asked her about it, we're
3 talking about when Raymond Young was supposedly there and
4 he was loading his gun, in her statement which is what
5 supposed to be what she said, said he chambered a round.
6 Do you think Joseline Mack sat there and told a police
7 officer he chambered a round? No. The fact of the matter
8 is, folks, she told you they threatened me. They put what
9 they wanted in the statement and guess what we can tell by
10 the language they used she was telling the truth.

11 The next is Brandon Brown. I already talked
12 about him. He's the one that set this whole thing in
13 motion along with Woodall.

14 One other thing I want to bring out that's
15 really interesting to me and it's these small details as
16 to what I'm talking, a lot of what they want to do is they
17 want you to be scared, to be scared of these young me, to
18 think that they are bad people, that they are a gang and
19 run amuck in this community. And they want you to ignore
20 all these problems that we're talking about and fin them
21 guilt just because they're bad people and get them off the
22 street.

23 They bring in these pictures that show what a
24 lot of young men do and that's posing for pictures, making
25 signs. The Hardliners had a sign but according to Brandon

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1 Brown, that's not a gang sign. Why? Because it wasn't fit
2 with what they are trying to feed to you that they were
3 good, innocent and weren't doing anything and these are
4 the bad guys.

5 It was funny to me that when they brought in
6 those pictures of some of these young men over hear
7 posing, supposedly making the three point crown and all of
8 that, he made the comment well look in the back ground.
9 They're standing in front of Spilled Beans downtown. Why
10 would he say that? They say that because they want to
11 scare you folks. These guys are going downtown, they're
12 going to where you go. Get them off the street or you
13 could be the one that gets shot at next.

14 Just those gratuitous comments shows you
15 where they're going in a case like this.

16 Then you heard from Deputy Woodlock. He
17 exited the search warrant in Kiara's apartment and found
18 no evidence and this is where they start to try to bring
19 my client into it. They offered up supposedly Kiara was
20 his girlfriend. She told you we were friends. We dated a
21 little bit but not boyfriend and girlfriend. He spent the
22 night over there at her apartment and that's where this
23 something had happened. But again there's no fingerprints
24 tied to Esaiveus Booker. This gun is never been tied to
25 him.

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1 Another thing I want to point out to you is
2 all those people who said he had a gun said he had a .9
3 millimeter. They didn't say anything about a .380.
4 Here's something I want you to think about, Kiara told you
5 too that she had come forward after her mother had talked
6 to her and put the fear of God in her about guns and they
7 went there and executed the search warrant. They went in
8 and I'm assuming these officers had executed search
9 warrants before. They started searching this apartment,
10 the didn't find anything.

11 They could stay there as long as they wanted
12 to and I'm assuming they did but they didn't find
13 anything. But after Kiara mom talks to her because the
14 police had talked to Kiara's mom, she and supposedly
15 Joseline go through this and guess what? They find this
16 .380 that supposedly is tied to this shooting and a sawed
17 off shotgun which we heard about for the first time.

18 First of all, if Esaiveus is responsibility
19 for it, why is it not a .9 millimeter which what he was
20 supposed to have been carrying. Secondly, we have no idea
21 in the world where this came from. The police would have
22 found it. Are you telling me that seasoned police
23 officers executing a search warrant didn't look under a
24 mattress which is where she said she found it.

25 That's one of the main places people will

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1 hide a gun. They know that. They have no idea where that
2 came from or why it turned up. It doesn't have anything to
3 do with Esaiveus Book and there is no proof that it did.

4 Adrian Kerns was basically of no value what
5 so ever but he certainly didn't corroborate Kiara's story
6 that she gave it to him and even if she did so what, it
7 doesn't matter. And Kiara's mom said she retrieved the
8 gun and took it to the police. The police to this day
9 don't know whether that gun was ever in Kiara's apartment.
10 They have no idea. We know they looked, they did a
11 thorough search and they didn't find anything.

12 Now, we heard from Hoover about the fact that
13 they got the cell phones and that doesn't have anything to
14 do with Esaiveus Booker. Sergeant Wiener, he's important
15 folks. He didn't have a lot to say about this case but
16 he's the one that got Larry Johnson to Investigator
17 Campbell because he was being investigated in an armed
18 robbery case.

19 Here's what I want you to think about with
20 all of these people who got up and took the stand, they
21 and I'm talking about the police and the prosecutor, had
22 leverage on these people. She wants to know why would
23 they testify, why would they admit to something they
24 didn't do? They must hate these people to testify against
25 them. Listen, if you've got and I'll clean this up a

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1 little bit, your butt in a wringer, you're going to save
2 yourself. That's what you're going to do and loyalties go
3 out the window.

4 Mr. Johnson had other charges. Mr. Johnson
5 they said if you go down on that and this, you're going
6 away for a long long long long time.

7 THE COURT: Two minutes, Mr. Chambers.

8 MR. CHAMBERS: Your Honor, with all due
9 respect, I've got some important witnesses I need to speak
10 about.

11 THE COURT: You need to move it along.

12 MR. CHAMBERS: Mr. Johnson testified. I'll
13 just leave it at this because I'm being rushed, there are
14 a lot of inconsistencies in his testimony. You can take a
15 look at them. He signed a statement he claimed this
16 threatened recanting everything he told the police in his
17 statement. What I want you to remember is when he went
18 down there and Wiener had him down there, first, they
19 bring him into the Law Enforcement Center and have
20 somebody there who says he's a FBI agent.

21 The FBI agent says if you're involved in a
22 gang, we're going to prosecute you under something that
23 says Callback(ph), and you're going to get 30 years and
24 they take him upstairs where there are four or five
25 detective sitting.

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1 Once again they don't tape this. You don't
2 get to see what they told him. I don't know if he did
3 anything or not, but if you don't think under those
4 circumstances, you don't think you're going to go to jail
5 possibility for the rest of your life and they're
6 threatening you to that degree and they have leverage on
7 you, you wouldn't make up something about yourself or you
8 wouldn't lie about people who you say were close to you?
9 He's so inconsistent. Nothing that he says makes sense.

10 Then we get Shaquille Hogan. Shaquille Hogan
11 is interesting because not only did he give one statement
12 and recanting his prior statement, he gave two, one in the
13 September and one at the end of June of 2012. Not only
14 that when he showed up on Monday, he initially did not
15 want to plead guilty. Why? Perhaps because he didn't do
16 anything and he was being forced into it with the leverage
17 they had on me.

18 Remember he hadn't been sentenced on that
19 yet, robbery, kidnapping, he was looking at a lot of time.
20 Once they got him to stand up to plead guilty, deferred.
21 What he pled to in this case, deferred. The other thing I
22 wanted to mention, the solicitor tried to minimize it but
23 its an important thing because it shows he's not telling
24 the truth. It shows that basically he's probably been
25 told what to say or he's trying his best to comply with

Closing Arguments - Chambers

1 what they want him to say and that is the business about
2 him switching seats in the car.

3 It's not a trivial point, folks, because
4 whatever car he got out of, he got out of the front
5 passenger's side. What he said about what happened, which
6 would be easy enough to remember, is he had to switch
7 seats with Esaiveus Booker, he would have been seated in
8 the back seat of the car. Then he pulls up to the Waffle
9 House and the solicitor said it was a car being driving by
10 Esaiveus Booker. Look at that all you want to, you'll see
11 Esaiveus Booker. You can't tell what car it was. The
12 only time you see Esaiveus Booker was inside the Waffle
13 House if you look at the film.

14 The truth of the matter is Shaquille Hogan
15 didn't want to be here. Shaquille Hogan did what they
16 wanted him to do because they had a ton of leverage on
17 him. They worried about his testimony, too. What did
18 Investigator Campbell do, he went back to some notes that
19 are not in the report or the statement where Shaquille
20 Hogan supposedly told him exactly what guns everybody was
21 carrying.

22 Daquan Bruster, they weren't happy with him.
23 He came in yesterday and said I don't remember anything so
24 they took him away. Then they put Tavarus Williams upon
25 the stand. If you remember he's here and then all of a

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1 sudden he's not going to testify. You folks go out and
2 come in and whose on the stand, Daquan Bruster and now
3 they've got him to talk. And what did he say he was told,
4 hey, remember that life without parole that we withdrew,
5 you could be looking at that, and he still couldn't bring
6 himself to tell a lie and claim that these people were
7 involved with something that they didn't do.

8 There's probably a lot more I could say. I
9 have been talking for a long time and I apologize for that
10 but folks, this is a very important day for Esaiveus
11 Booker and he's looking at possibly losing his liberty. I
12 am his advocate and I am the one who speaks for him.

13 I'm sure when I sit down I'm going to think
14 of something I should have said but I'm confident that
15 you've been paying attention, taking notes and taking your
16 responsibility seriously, each and every one of you. And
17 I know that you're not going to let them convict Esaiveus
18 Booker on emotions, scare tactics, speculation and
19 innuendo and with witness after witness who said that they
20 were intimidated and they were told what to say and it's
21 not on video.

22 Folks, I really appreciate your patience with
23 me and I ask that you go back and take a look at every
24 piece of evidence and I know you will reach the verdict
25 that the State has not reached its burden for Esaiveus

Closing Arguments - Robinson

1 Booker and I believe that will acquit him all of all of
2 the charges.

3 THE COURT: We'll take a 10 minute break.

4 (Jury exits the courtroom.)

5 (Whereupon, there was a brief recess.)

6 (Jury re-enters the courtroom.)

7 THE COURT: Mr. Robinson.

8 MR. ROBINSON: If it please the Court.

9 THE COURT: Okay.

10 MR. ROBINSON: I join Mr. Chambers in
11 thanking you for your service. I am the middle child so
12 I'm king of the person whose going to hit some random
13 points for you to think about so here it goes.

14 My name is Scott Robinson and I practice law
15 in Greenville and my client is Mr. Michael Williams who is
16 sitting to my left over there. We appreciate all of you
17 coming here and looking at this case, using your
18 experiences, your common sense, and so forth. I think I
19 eluded to that in that opening statement and I think
20 Mr. Chambers may have eluded to that a second ago you
21 don't leave your common sense at the door.

22 The four of us wanted you to look at this
23 case very carefully, but there are some things that you
24 need to be thinking about possibility in terms of common
25 sense as to what people normally do in certain situations.

Closing Arguments - Robinson

1 If you look at the prosecutions videos, they have two
2 videos of two Waffle Houses at two different times with a
3 bunch of kids basically going to the Waffle House late at
4 night to eat or drink or whatever, but does it make sense
5 to y'all that these guys did these things that they were
6 drive to a Waffle House? Now, we're talking about three
7 cars 3, 4:00 in the morning with no witnesses going to a
8 Waffle House with cameras with Waffle House employees and
9 security standing around.

10 In the first part of her opening statement on
11 Monday she said that these guys were taking off, fleeing.
12 She also mentioned in her closing statement about hiding
13 or possibly getting away. Did you see that? We're
14 talking about a Waffle House in public with cameras, a
15 security guy. Would guilty people do something like that?
16 Would they? Use your common sense because I would submit
17 to you they wouldn't, and I would submit to you that
18 Michael Williams and the rest of these folks are not
19 guilty.

20 At they kids? Yes. Do they go to clubs?
21 Yes. There were hundreds of people at that Red Planet
22 that night, hundreds. There were at least three groups of
23 people according to the investigators. They were just
24 kids but it's not illegal or wrong to go to a Waffle House
25 late at night. It's not wrong to go to a club.

Closing Arguments - Robinson

1 You may not like the fact that these are
2 young men. You might not like the fact that they go to
3 clubs like other people do but it does not make them
4 criminals. It makes them young men. Young men that went
5 to two Waffle House with two video cameras. Does that
6 really make sense to y'all. That's the first point I want
7 to make, does it really make sense.

8 Second, I want to talk to you about this
9 retaliation we've all been talking about. The solicitor
10 in her closing statement spoke about basically a strike
11 against civilization basically, a retaliation against
12 these young victims or something. Well, what's missing
13 here is this, they haven't established in this case with
14 one witness who would indicate that this is the same group
15 that had anything to do with this. We're talking about a
16 parking lot with hundreds of people late at night.

17 If you look at the picture that she has here
18 of the group that we're talking about, this person that
19 may have shot Mr. Fant isn't even in that picture. He's
20 not even connected with these fellas. Why would they have
21 a reason to retaliate? They had no reason to retaliate.
22 Why retaliate against these people when they aren't even
23 connected to your people.

24 Here's the other part of this and the
25 solicitor attempted to reform her witnesses as far as the

Closing Arguments - Robinson

1 that came in here that had offers and deals on the table
2 and so forth by saying that they were such and such. Why
3 would they testify against their friends? Mr. Chambers
4 eloquently eluded to this and this is true, they have
5 every reason to do this, every reason in the world to get
6 what they want. One of the reasons, if you listen to the
7 testimony had a certain amount of time over his head for
8 charges dismissed and their sentences are all deferred.

9 What does that mean? I means, I would
10 submit, if they testify the right way, you get the benefit
11 of this, however, if you testify the wrong way, you don't
12 get that. Self preservation, that's what we're talking
13 about here.

14 Self preservation, self interest and when
15 people have self interest and their looking out for
16 themselves, they're going to do whatever they can to help
17 themselves. The prosecutor in her direct examination I
18 believe of one of these folks said assisting the
19 prosecution, assist the prosecution, and I think she spoke
20 about pressure and how much pressure was on these folks.
21 They're getting a ton of pressure from the prosecution.

22 As I said a minute ago, do this, we'll help
23 you.

24 The third thing is there's no physical
25 evidence. As Mr. Chambers said no fingerprints, nothing

Closing Arguments - Robinson

1 that connects anything to these four defendants. We have
2 self interested witnesses who try to do that but the
3 connection can not be made. They have the Red Planet and
4 they have the Lil Cricket. They can't connect the two.

5 So I submit to you is this and I asked you
6 this in the beginning use your common sense. I'm sure you
7 heard more attorneys saying common sense than you every
8 possible have and I don't mean to belabor that point but
9 it's part of this case. It's an important case but we
10 want you to use your common sense and carefully look at
11 this evidence. It's nothing hidden. We want justice. We
12 want the right thing. Use your common sense.

13 The second thing I said in my opening
14 statement was garbage in, garbage out. What does that
15 mean? Garbage are those folks who were the co-defendants
16 that have an interest, that's where the garbage comes in.
17 If you put garbage in, you get garbage out.

18 Ladies and gentlemen, I appreciate having the
19 opportunity to talk to you or having the best conversation
20 that I can. I'm doing all the talking and you're not
21 saying anything but I appreciate y'all listening to this.
22 It's an important case for my client, Michael Williams,
23 and other folks here and I ask you to return a verdict
24 that's the right verdict, not guilty. Thank you.

25 THE COURT: Mr. Abdalla.

Closing Argument - Abdalla

1 MR. ABDALLA: Thank you, Your Honor, Madam
2 Clerk, solicitor, ladies and gentlemen of the jury.

3 I'm John Abdalla and I've been representing
4 Raymond Young the entire time. I know you're tired of
5 hearing from us and I will try to keep this brief as
6 possible. I see your eyes getting glassed over but there
7 are so many inconsistencies I have to try to point some of
8 them out and I'll try not to be redundant. I'll try to go
9 through this and bring out points that I don't recall
10 being brought out.

11 First I want to talk about Larry Johnson. He
12 seems to be their star witness. He took the stand and
13 testified against our clients. He made several statements
14 and you can use your own recollections. If I misstate
15 anything, please don't think I'm trying to mislead you.
16 I'm human, I forget, and if you remember something
17 different, go by what you recall. Larry Johnson gave
18 several different statements, several different versions
19 of the truth.

20 We know Larry Johnson has quite a record. We
21 know Larry Johnson got quite a deal. It's already been
22 discussed with you previous today but that's something I
23 really want you to take into consideration during your
24 deliberations. They say why would people lie, people
25 don't lie, they don't give statements that are not true.

Closing Argument - Abdalla

1 Of course, they're not going to give a statement that's
2 isn't true, they're not going to coerced into doing it,
3 that's not a part of our history, is it?

4 Just think about Central part when those boys
5 confessed to a murder they didn't commit and was found out
6 after they served several years in prison. It was a big
7 story and didn't happen that long ago, given statements
8 confessing to a crime they know they didn't commit.

9 Please think about those things, that's very
10 important. It's the important for the liberty of my
11 client an the other gentlemen that are being represented.
12 Nobody really knows the truth, accept the people who
13 really did whatever was done. Remember this, we do know
14 Larry Johnson sat up here and confessed to having
15 committed a crime. We do know everything he did was self-
16 serving.

17 He talked about having a gun, but he didn't
18 fire it at anybody. He just fired it up in the air and
19 not knowing what was going on. Again, I believe it was
20 Mr. Hogan who said he was running back and he didn't know
21 what was going on that Larry Johnson was shooting. He
22 didn't say he was shooting at him and he didn't say he was
23 shooting in the air. Larry Johnson was the only one
24 shooting at that point. These are important
25 considerations.

Closing Argument - Abdalla

1 Larry Johnson pled guilty because he is
2 guilty. He got a deal because he could turn in other
3 people. There are at least two ways to conduct an
4 investigation. One is to start right here and look at the
5 evidence and see where the evidence goes, the other is
6 called result oriented. Well, we start with maybe A,B and
7 C were involved and then you can say I think we have
8 something with these guys and you can make puzzle to fit a
9 fact pattern if you just get the right pieces. And then
10 you say what do you say about A,B & C and then you start
11 feeding them information.

12 As Mr. Chambers already discussed, Joseline
13 Mack took the stand and she talked about how she was
14 intimidated into giving a statement. She was threatened.
15 She was threatened to have her child taken away and they
16 ended up not charging her.

17 But the point is you as jurors I hope sit
18 here and say oh, I don't like what's going and I'm not
19 going to go back and charge them with that. I think
20 Mr. Robinson did a good job pointing that out.

21 Larry Johnson is also the guy that had a
22 picture of himself with the guns and the signs and the
23 gang thing, but not this group, the Bloods. Everything
24 Mr. Johnson said was self serving, pointing fingers at
25 someone else. He doesn't want to accept responsibility.

Closing Argument - Abdalla

1 He accepted because he was caught and then he tried to
2 turn on the others so he wouldn't get a life sentence and
3 he said well, I'll just go on and cooperate.

4 They admitted to having two .380s in the car,
5 Mr. Johnson and his passenger. How can he be trusted. If
6 he's going to be their star witness, you should go back
7 into your deliberations and say, something stinks here, we
8 don't like the crime that was committed and we don't like
9 these boys and girls were hanging out all night long and
10 wound up at the Waffle House but something likes right.
11 Please make sure there's a wall between something's not
12 right and proof beyond a reasonable doubt. That is the
13 benchmark of our justice system. There are some mistakes
14 made but this is the best system in the world.

15 It wouldn't work without jurors like
16 yourselves who get to make these decisions. I know you
17 take your oath seriously.

18 Thomas Walker, I just wanted to point out,
19 had a .38 special and he said he took his gun to the club
20 and said he was not waiving it around but all of these
21 victims ended up at the Lil Cricket for at least 30
22 minutes. Why would they be waiting at a gas station
23 that's essentially closed. The doors close at 11:00, but
24 there was a window open. Why would they be waiting there?
25 It's like the gunslingers at Okay Coral where the

Closing Argument - Abdalla

1 gunfighters were laying in wait.

2 The problem is they have not shown you proof
3 beyond a reasonable doubt who showed up and had the gun
4 fight. They showed you a lot of smoke and a lot of
5 mirrors and a lot of different things. It's a puzzle that
6 doesn't fit together but they want you to believe it
7 anyway and take all the pieces and make them fit, throw
8 stuff on the wall and some of it will stick.

9 Javon Henry was already discussed and he said
10 his statement was coerced. Anthony Callahan talked about
11 they went to the Lil Cricket, not to get gas to cigarettes
12 but to meet in one place. Jamal Williams talked about
13 having a .9 millimeter gun and TJ had a .38 specials.
14 These are the victims who were armed and apparently
15 dangerous.

16 Deputy Matt Owens said when he got to the
17 station there were four cars and no one around. As
18 discussed earlier, these folks don't call EMS. They went
19 to the hospital, dropped off their friend and went to the
20 Lil Cricket. Even after the Lil Cricket they didn't call
21 EMS.

22 We know at the Red Planet there were a couple
23 of shootings and we know that Mr. Roberts and Mr. Ware
24 were charged with those shootings and had nothing to do
25 with this case.

Closing Argument - Abdalla

1 The deputies went into a house and they said
2 guilty because they found a piece of paper with Raymond
3 Young's name on it, among other people's names. I have
4 two questions to ask you, one, where is the paperwork?
5 And two, what kind of document, paper or whatever are we
6 talking about. I'm sure a lot of people have my name in
7 their house. That doesn't mean I live there and I don't
8 know what that meant, but don't you think if they found a
9 piece of paper with Mr. Young's name on it, they would
10 have brought it into court? It's really asking too much.

11 Remember this is proof beyond a reasonable
12 doubt. We have to hold their feet to the fire and say we
13 want all of this evidence. We don't want people convicted
14 on a hunch because I do fear that it's easy for all of us
15 to sit there and say this doesn't look right, yeah,
16 they're probably guilty. This is more than a gut check,
17 this is a conscience check and it's a tough one.

18 Could you dim the lights. I want to show you
19 one thing from the Waffle House. If you could pay
20 attention to the side of this car right here, that right
21 there is Mr. Johnson's brother, and that's Mr. Johnson --
22 Raymond Young, I'm sorry, my client, and his brother got
23 out of the back seat and you can see him right here. Can
24 everybody see that?

25 We can't deny that our clients went to the

Closing Argument - Abdalla

1 Waffle House. They are seen at the Waffle House. The
2 things we know is everybody went to the Red Planet and the
3 Waffle House. The thing that we don't know is who went to
4 the Lil Cricket. The only people we know were at the
5 Lil Cricket were the victims and the four folks who pled
6 guilty.

7 We know that Tavarus Holmes pled guilty. He
8 was charged with seven counts of attempted murder, one
9 count of conspiracy -- he was charged with everything our
10 clients were charged with. He was the one who took the
11 stand yesterday morning. We know that Daquan Bruster pled
12 guilty and we know that Larry Johnson pled guilty and he
13 was the one who cooperated most with the police. He was
14 only charged with assault and battery by a mob and
15 conspiracy. He was the first one to get a deal.

16 He talked about being intimidated and that's
17 why in November of 2012 he feared for his safety and he
18 wrote a safety and recanted everything he said. That was
19 roughly 15 or 16 months after the fact and then all of a
20 sudden he decided in hindsight he was afraid and that's
21 why he recanted.

22 Kiara Kerns pled guilty to obstruction of
23 justice and they dismissed the accessory after the fact
24 and Shaquille O'neal -- I mean Shaquille Hogan pled to
25 assault and battery by mob in the second degree. These

Closing Argument - Abdalla

1 are all the guys that pled guilty and they were the
2 State's witnesses.

3 A funny thing happened on the way to the
4 farm, most of them recanted, forgot what they were
5 supposed to say, couldn't remember the script. Again,
6 please think back to the boys in Central Park who
7 confessed to a rape they did not commit. We know that for
8 a fact.

9 Shaquille, if you remember, said he was
10 recanting his statement and he said the reason he gave the
11 statement is that Larry was in his ear saying he has to
12 cooperate. He also said no one covered their faces, no
13 one changed tee shirts. He's the one he said he saw Larry
14 shooting his way back to the car. He also said Raymond
15 had a .357. And he said he just didn't want to testify.

16 There is an adage about clean hands when you
17 come to the court and I just want you to think the facts
18 that the victims in this case don't seem as clean as you'd
19 like them to be and you have to wonder not one of them
20 wanted take the stand and testify against our clients so
21 why should we care. Who's pushing this case? Name one
22 person who said Raymond shot at anyone.

23 There's another statement that says just
24 because you're a (inaudible) people aren't out to get you.
25 It's obvious that son of us that the police really wanted

Closing Argument - Abdalla

1 these guys at the table and they did what they had to to
2 get them to court here. And we just you to weigh the
3 evidence and see if they've met their burden and our
4 position is they haven't even come close.

5 Each have been charged with seven counts of
6 attempted murder and, yes, the hand of one is the hand of
7 all, but that's a lot of leverage to have. They also
8 charged them later one with assault and battery by mob.
9 Why do you think that is? Well, if we can't get them for
10 this, let's get them for this. Can't get them for the
11 attempted murders, let's get them for the assault and
12 battery by mob. And here's the catch all, conspiracy. If
13 we can't get them or this, this or this, maybe we can
14 convince the jury that they inspired to do something
15 illegal.

16 They covered all their basis. The thing I
17 say to you there is no certainty of what happened. This
18 is not a clean prosecution and we say the State hasn't
19 proven their burden.

20 I would think as jurors you would like to
21 think that you've done the right thing, but there are
22 certain things we know. We know that people were shot at
23 and we know that four people took the stand and pled
24 guilty to those shootings. So we know who shot those
25 people. Are there others? Possibly so, probably so, I

Closing Argument - Abdalla

1 don't know. I would like to think if it's not clear to
2 me, it's not clear to the jury.

3 I would like to think that you would say to
4 yourself this is not enough. I'm not going to convict
5 these men in this case on what I've heard.

6 The last thing I want to talk about is there
7 was a movie called 12 Angry Men from the 50's. And it was
8 about a jury who were deliberating and one of the men
9 didn't want to convict because there wasn't enough
10 evidence. The jury got quite hostile and they argue to
11 the entire thing. One by one each juror started coming
12 around. They said it was a circumstantial case and there
13 were witnesses they weren't confident of. One of the best
14 lines was, "I can not in good conscience vote guilty when
15 reasonable doubt exists."

16 And there is reasonable doubt for these four
17 folks which would warrant a verdict of not guilty. I
18 would hope that your understanding of the facts and the
19 evidence would bring you to that conclusion because they
20 have not proven their case beyond a reasonable doubt.

21 Thank you.

22 THE COURT: We have one more closing argument
23 and my close on the law. I would think that it would be
24 less than an hour but I would be happy to right now -- you
25 know that lunch we're providing for you is out there so.

Closing Argument - Quinn

1 MS. FOREMAN: I think we'd like to hear the
2 last closing argument and then start deliberating.

3 THE COURT: Alright, Mr. Quinn.

4 MR. QUINN: Ladies and gentlemen of the jury,
5 truth can be a number of things, however, it has certain
6 definable qualities one of which the truth is constant.
7 What that means is what is true today will be true next
8 Monday and the Tuesday after, Tuesday after that and the
9 Tuesday after that. It doesn't change over time. It is a
10 truth, it is a fact, it is something that can be
11 demonstrated and proven.

12 So the truth doesn't change from July 17,
13 2011 to July 22nd to June 12, 2012, I guess, until today.
14 The truth is constant and one of the things most
15 reasonable people would do in search for the truth is has
16 it been constant, a routine. Has it been consistent? If
17 I think somebody's tie was blue and somebody else thought
18 it was red, we don't have the truth because we don't have
19 consistency. If all of us agree the tie was red, then we
20 have the truth between the two of us. Now, one of us may
21 be right and the tie was actually blue and the other guy
22 was just wrong, but we don't know the truth because we
23 don't have consistency. We don't have everyone saying the
24 same thing.

25 When you have two different versions, you are

Closing Argument - Quinn

1 not supposed to as reasonable people try to reach a
2 terrible conclusions about somebody else. You're supposed
3 to find consistency.

4 The truth should be complete. You can lie by
5 omissions as well as you can lie by telling the story. If
6 I leave out half the story, I'm lying by omission. If I'm
7 selling you a car and don't bother mentioning I put
8 sawdust in the transmission, I'm lying by omission. I'm
9 not telling you the car runs fine, but I'm sure jazzing it
10 up to make it look like it does.

11 So when you tell the truth, you have a child
12 and they tell you the truth on Monday, they have to come
13 back on Tuesday and tell you a little bit more of it, they
14 come back on Wednesday and they give you a little bit more
15 of it you say, well, you lied to me on Monday. That's not
16 how you tell the truth. When you tell the truth, tell me
17 the complete truth.

18 And finally the truth can be corroborated.
19 There will be evidence. I can find the tie and show it to
20 you that it is red or I can get three other people who saw
21 it and say what color was it and it was, in fact, red. It
22 can be corroborated.

23 This case lacks all of these qualities of the
24 truth. That's the problem that you're going to have in
25 trying to make any decision in this case is that the truth

Closing Argument - Quinn

1 has not been using these qualities provided to you.

2 Now, I represent Kinjta Sadler. You know who
3 he is because we all did a staring contest for five days.
4 We sat directly across from you and I catch you looking at
5 me and I try not to stare but you know who he is. He's
6 the one you can see without having to turn your eyes. For
7 the first three days of this trial nobody mentioned
8 Kinjta's name. No witness mentioned his name, the
9 prosecutor didn't mention his name in opening statement.
10 Three days of trial and nobody mentions his name.

11 The lead investigator, Mr. Campbell
12 testifies. He doesn't mention my client's name, the first
13 time when he testified. We'll talk about when he has to
14 get back up there and try to patch up Mr. Hogan, but when
15 he testifies the first time, he doesn't mention my client.
16 He's the lead investigator.

17 Their back-up investigator gets on the stand,
18 Ms. Peoples. She worked primarily the scene at the Red
19 Planet. She doesn't mention Kinjta's name. Then they put
20 up their gang investigator and he gets up there and he
21 knows everything there is about gangs. I am the man for
22 gangs in Greenville County, you want to know about gangs,
23 come to me. I said, okay, well tell us about the gangs
24 these fellas were in. He doesn't mention Kinjta Sadler.
25 He calls him that guy. Well, I know this fella, this

Closing Argument - Quinn

1 fella, that fella and that guy.

2 They show a picture to him that appears to
3 have Mr. Sadler in it. Five fellas and he identifies
4 three of them and he says he doesn't know the last ones.
5 He doesn't mention Mr. Sadler. I don't know him and he's
6 the gang investigator.

7 There are two other pictures taken at the
8 club that night that supposedly -- I'm going to take a
9 slight detour here and I hope I've got them right. This
10 one is a rap group and this one is a gang. No, wait,
11 maybe this one is the rap group and this one is the gang
12 because you can see how different they really are, but
13 this one is throwing up the hand signs but this one is the
14 rap group.

15 Really? Really that's the testimony, a bunch
16 of kids at a club and you're supposed to decide that their
17 guilty based on these pictures. I showed this to the
18 investigator. Are these the people in those pictures?
19 Yep, I can pick up somebody, somebody and somebody but
20 Mr. Sadler is not mentioned and he's not in the picture.
21 Anyone who puts Mr. Sadler in these pictures is Johnson,
22 Larry Johnson and he claims that he is in State's Exhibit
23 3, the piece of the face in the back that you'll be able
24 to see because it's behind the fellow with the baseball
25 cap with the "B".

Closing Argument - Quinn

1 Now, somehow Kinjta who you've had the
2 opportunity to see stand up, sit down, fight, fight,
3 fight, this is like a football game where you are able to
4 look at him all the time, he got to be a small fellow in
5 this picture because this guy in front of him covers him
6 up. He ain't a small fella. He ain't a small fella
7 because he's bigger than I am, but that's the only
8 evidence that supposedly puts Mr. Sadler in any of these
9 photographs where he's identified and it wasn't done by
10 their gang expert.

11 And the reason I keep going back to this is,
12 and I'm not going to try not to echo what co-counsel has
13 said but it's not possible when talking about the case and
14 I may repeat some of it, but their trying to say they're
15 all in this gang. This was gang activity so you should
16 convict everybody in the gang. Anybody who touched this
17 gang, they're guilty and the ones you got in the
18 courtroom, they're guilty. But there's no evidence that
19 Mr. Sadler is part of any gang. Their testimony, in fact,
20 from their gang expert is I don't know.

21 We talk about the gang and whether the Hard
22 Liners are a gang, it's a decision, if it affects you, you
23 can take it for whatever you want.

24 These pictures were taken at the Red Planet.
25 I'm going to try to point out as we go things that are

Closing Argument - Quinn

1 like, what in the world. When we started this case, we
2 talked about a shooting at the Red Planet and in closing
3 the prosecutor says the incident involving Fant, Buddha,
4 is the cause of all this. Well, that doesn't make a lick
5 of sense. Keep in mind the person who got injured in this
6 case is a Hard Liner. He's one of these rap group
7 fellows.

8 He gets taken to the hospital. Well, then
9 why is the group that won the fight retaliating? If
10 you're going to retaliate, it makes sense if that's your
11 motive, that the Hard Liners would be trying to get even
12 with the group who hurt their friend, but the State has
13 got it the opposite way. They're saying, well, the group
14 who won the fight now they're going to go retaliate or
15 follow-up. This whole case is based upon the retaliation
16 or retribution because the Hard Liners lost the fight
17 doesn't make any since. It's backwards, but that's their
18 motive. Otherwise they don't have a motive.

19 Until two days into the trial, in the middle
20 of the afternoon, all of a sudden they go hey there was
21 another shooting at the Red Planet and maybe we should
22 mention there was another shooting. Any testimony about
23 that? The people who were involved in this other shooting
24 or how it affects this case.

25 Did you hear whether they recovered the guns?

Closing Argument - Quinn

1 Were there any ballistics? Did they arrest somebody? Has
2 he been convicted? Did he give a statement? Was he
3 involved with any of these groups in any way? Is that
4 supposed to be a motive? In this first shooting they
5 agree they arrested somebody named Ware and I'm sorry, I
6 don't remember his first name. Why didn't they bring him
7 to testify? I'm not going to admit I did anything, but,
8 yeah, I'm associated with these fellas.

9 Why didn't their gang investigator say okay
10 well the motive is because one member of this gang and
11 another member -- he didn't say anything like that, none
12 of that, and two days in the trial somebody had another
13 shooting that there is no evidence for. The motive that
14 they put before you doesn't mesh.

15 These victims had to leave the hospital
16 because there was altercations in their group, because
17 there was problems. There were two guns there you heard
18 talked about. Jamal Williams had a gun. The more
19 interesting one is Thomas Walker. Thomas Walker admits he
20 had a gun that night and, in fact, had the gun at the Lil
21 Cricket.

22 So I say, well, did you turn it over to the
23 police to do ballistics. Ballistics seems to be an issue
24 in this case. No, I lost it. I'm sorry, you lost it
25 between the Lil Cricket and the hospital you lost your

Closing Argument - Quinn

1 pistol? Yeah, I lost it. Really? That's the kind of
2 evidence the State is going to put up to a jury and say,
3 come on, now, trust us, believe this because its the truth
4 and it certainly is consistent with the things you expect
5 here. Really? He lost the gun and that's Thomas Walker's
6 explanation as to why there's no ballistics on Thomas
7 Walker's gun.

8 You heard the victims refused to cooperate
9 and refused to answer basic questions.

10 The Lil Cricket video, some of these things
11 are too good to let go. The Lil Cricket video is emblem
12 of their entire case. This is the video that we sat and
13 watch and I started writing notes while we were doing it.
14 I wrote, show us something. It looked like a still photo
15 up there accept that you could see the cash register was
16 still going for cigarettes or something.

17 We learned that the woman who works there is
18 a hard working and nobody is monitoring her and she's
19 moving stuff and she's sweeping and she's working. That's
20 impressive at 3:30 in the morning. And the next question
21 is if you're going to show us something, show us something
22 that's important to a jury, that's going to advance their
23 ability to make a decision about whether Mr. Sadler is
24 innocent or guilty. Nothing.

25 The last few seconds in one of the corners,

Closing Argument - Quinn

1 you could see movement so I wrote down show us something
2 that might prove that Kinjta Sadler is guilty beyond a
3 reasonable doubt. And they don't. They don't in that
4 video and they don't throughout this case.

5 That video is emblematic of exactly the case
6 they have against Mr. Sadler. We talked about
7 corroboration and that's what that video is supposed to
8 show and it showed you nothing about Mr. Sadler. What it
9 did show you is there's a missing car. A car pulls up
10 next to them at the pumps, blocks out the white car, it
11 sits there 18, 19 minutes and pulls away. Officer, who is
12 it? You've got everybody at the pumps, whose that fella
13 that pulled and talked to you? Was it one guy, two,
14 three, who were they? I don't know. They were gone
15 before the shooting.

16 Did they see anything? Did they see people
17 behind the store? Did they see people pulling around?
18 Did they see -- I don't know who they are. That's what
19 you're supposed to use to convict Mr. Sadler. I asked
20 about the gunshot residue test which Ooten testified could
21 be done didn't bother to do them. Somebody may have been
22 gone from the hospital, I don't know.

23 I asked them about trajectory evidence, no,
24 don't bother. What about the witnesses at Club 864? The
25 testimony was some people got in, some people got left

Closing Argument - Quinn

1 out. Well, security was working. If the issue is going
2 to be black tee shirts, white tee shirts, bandannas bring
3 me the witness. Let the jury say, okay, that makes sense
4 to me, that's collaboration, yes, they were all wearing
5 those things, how hard is that. They had cameras but if
6 the cameras were going to show what they showed at the Lil
7 Cricket, they weren't going to be any help. So they don't
8 have that witness.

9 And the officer tells us there's a 90 degree
10 mark on the windshield of the green Ford Escort. These
11 cars are parked at the gas station and there's a bullet in
12 the windshield of the car. There was no testimony about
13 whether it was coming out of the car or going into the car
14 or what ballistics it matched up to or what shell it
15 matched up to or nothing.

16 That may sound silly, may sound like I'm
17 trying to pick but that's corroboration. If you're going
18 to say that this is what happened and these are the guys
19 that did it, prove it. That's what a trial is about, prove
20 it. Bring me evidence or bring me something I can rely on
21 and even when it's available to them, they don't.

22 Joseline Mack testified and I'm talking about
23 this for just a few second, to give you a flavor about
24 what I'm going to say, Joseline Mack was lying. Everybody
25 knows she was lying. The solicitor thought she was lying,

Closing Argument - Quinn

1 everybody in the courtroom thought she was lying. She got
2 up and said some of the things in the statement was true,
3 some of it was not. Some of the things about her
4 testifying to, she changed. Well, then how do you know
5 what to believe.

6 If I come to you and said, I got to prove
7 this thing. It's my obligation to convince you beyond a
8 reasonable doubt so I'm going to throw a liar on the
9 stand. Something I'm going to say Ms. Mack is lying and
10 isn't it true that in your statement this is what
11 happened, but you 12 decide beyond a reasonable doubt that
12 the pieces I like are the ones you should believe. If the
13 truth is going to be constant, we should have that she's
14 lying now should be the same.

15 If it's going to be complete, then why don't
16 we have the complete truth as opposed to oh, this piece is
17 true and this piece is true, that piece is a lie and that
18 piece is a lie. And who gets to make that decision? You
19 12, and you're supposed to be able to rely on a witness an
20 that's the problem you're going to have over and over.
21 And does she lie on little things? Oh, no. When we talk
22 about it should be complete, she calls about two or three
23 days later and say hey, I know all these people, their my
24 buds and we run together. You what I told you about Derek
25 Glover, wrong, different guy, wrong. It was some other

Closing Argument - Quinn

1 guy named Buddha, I'd better change that statement.

2 Come on, and you're supposed to rely on it.
3 She's never change it again. You're supposed to believe
4 that it was a different person completely after she said I
5 knew who it was.

6 Kiara Kerns, we're back to, doesn't mention
7 my client. I'm leaving all these cops out. All the cops
8 that testified doesn't mention my client. All of this
9 stuff, the holster, nothing to do with my client. The
10 guns not associated with my client in any way. All the
11 ballistics, none tied to any gun or associated with my
12 client. These tapes, the 911 call, all of these telephone
13 records, nothing ties to my client, nothing. That's the
14 corroboration that's supposed to be tie to my client.

15 Keep in mind they have these phones, all they
16 have to do is turn it on and see the contact list. Any
17 evidence that Kinjta Sadler is on the contact lists for
18 either of these phones or has there ever been any phone
19 calls? Well, I ask there are no text messages for July
20 17th. There are. What she means there is none for that
21 time of day and I agree there's not. Is there any
22 evidence they were deleted? I thought their expert say we
23 can't tell if that happened, but she's now going to say we
24 must of deleted them. Really? Prove it.

25 If they did, why is the first one at 6:54

Closing Argument - Quinn

1 that night? Why bothered to delete everything that day
2 and you will look and see there is page after page of
3 phone numbers. Is there any testimony that any of those
4 are associated with Kinjta Sadler at his home anything to
5 do with him? Nothing. That's supposed to be the
6 corroboration.

7 We have the co-defendants. These are their
8 witnesses. They choose to put these people on the stand
9 and as you've already heard it is too strange not to
10 mention that this morning you come in and Mr. Holmes get
11 put on the stand, y'all leave, you come back and there's a
12 different person on the stand. It's the strangest thing
13 I've seen in a long time and I'm wondering if y'all are
14 wondering where did that come from.

15 Mr. Holmes, gone. Mr. Bruster, yeah, he's
16 real consistent. From yesterday to today he changed his
17 story. It's real complete. I don't remember, I'm not
18 sure. This is the State's witness. This is who they put
19 up. Then they have Hogan and Johnson. Y'all get to
20 decide what you think of the witnesses. I don't. It's
21 not as if I have to right to get up and say, you're going
22 to believe this or you're going to believe that. You
23 decide who you believe that was reasonable and based on
24 your experience and what you saw in the courtroom.

25 If you had to rely on somebody for a serious

Closing Argument - Quinn

1 decision and comes to your house and says you and I are
2 going to decide something important, are you going to
3 trust Larry Johnson as far as you can throw him. Larry
4 Johnson comes here and says that picture I took with the
5 bloods, I took that to help the police solve a crime.
6 That's pretty impressive. Whose the cop? What's the guys
7 name? When was it? It was six month, oh, I don't know.

8 This picture of the Bloods is on his phone.
9 Well, why do you have the guns? He can't legally possess
10 a firearm, but he had two of them floating around in the
11 pictures. And all the money, where did that come from in
12 the pictures? Oh, a tax return. That's pretty good for a
13 guy who makes \$8 an hour. That's a lot of money. That's
14 Larry Johnson. Before he says a word, that's what you
15 know about Larry Johnson.

16 And then he tells you, I am known so well in
17 the club that one of the bouncers came up to me and said,
18 no trouble tonight, make sure there's no trouble. And at
19 the end -- this bouncer's name is Steele. At the end of
20 the night he gets thrown out of Waffle House because he
21 gets in a confrontation, I think that's the word we're
22 using not fight, but confrontation, over whether it was
23 juice or orange soda and he gets thrown out of the Waffle
24 House. That's what you know about Larry Johnson. That's
25 the fella they're bringing to you and say you should be

Closing Argument - Quinn

1 able to rely on.

2 You know, even though the State wants to make
3 him their star witness, can not be telling the truth or if
4 he is, then Shaquille Hogan their other witness is not
5 telling the truth. So I want y'all to go out and find
6 that one of the star witnesses is not telling the truth
7 because Shaquille Hogan says Larry Johnson got out of the
8 car, went around the side of the building shooting. In
9 fact he saw him shoot coming back to the car. Larry
10 Johnson says I never got out the car and I shot the gun
11 while I was sitting in the car down the road. This is
12 their witnesses.

13 And she wants to make a point of well, if
14 you're going to not to believe Larry Johnson, you got to
15 believe he's no good. Well, fine, I'll say it because
16 those two witnesses don't go together. It's like black
17 and white. It's not as if one of them is barely wrong,
18 that Shaquille says I saw him shoot three times and Larry
19 says it was four. Larry said I never got out of the car
20 and the only reason I shot is I didn't know who it was
21 that was coming back to the car.

22 He could have turned on the lights to see who
23 was coming back to the car, but instead of using
24 headlights, he just starts shooting out of the car. His
25 gun, which was not prepared or turned in might have been

Closing Argument - Quinn

1 able to prove his story if it had matched, but, Larry
2 where is that gun, I can't get it. This is three days
3 later and Larry can't produce his gun for the police.
4 Larry has to come three straight days to give a statement
5 to the police and his testimony here doesn't match his
6 statements.

7 And Shaquille Hogan's story doesn't not match
8 Larry Johnson's.

9 Truth is consistent if you have two people at
10 the same spot at the same time, if they're telling the
11 truth, they see the same thing. Yet what the solicitor
12 wants you to do is go out and choose one of them. I think
13 she wants you to pick Larry Johnson, but she wants you to
14 choose one. How do you do that?

15 Listen to the Judge's charge, he's not going
16 to say you can wily nily throw one of the witnesses out
17 and believe another or that you can just say the State put
18 up three different witness and we're just going to pick
19 one. Shaquille Hogan's testimony flies directly in the
20 fact of Larry Johnson's. They can not exist at the same
21 time.

22 Shaquille Hogan talks about where he was in
23 the car and you know there was a lot of ruckus about what
24 seat he was in. She, of course, called Joseline a liar,
25 and she probably is, because of the Waffle House video.

Closing Argument - Quinn

1 She says she didn't go to the Waffle House she showed up
2 on the video. The problem they go is Shaquille gets out
3 of the wrong seat according to his story. According to
4 his story, he ought to be sitting back driver's seat when
5 he gets out of the car so her own video contradicts his
6 story. So when testified yesterday, his own story doesn't
7 conform.

8 Poor Shaquille Hogan, I don't know what
9 version is true. Y'all get to decide what is true or
10 believable but he gives a statement saying it's true and
11 then he gives a statement says it's not true and then he
12 gets here and can't tell you where they were or where it
13 was and the solicitor has to pretty much read his
14 statement to him and ask is this true or is that true and
15 try to piece together what she wants out of the statement.

16 Now, I'd love to say the statements you're
17 going to get to read but none of those statements were put
18 into evidence so you only get to hear the pieces we argued
19 about what he did or didn't say, but the solicitor had to
20 pretty much, and Mr. Chambers did an excellent job in
21 pointing out, that the solicitor had to rehabilitate all
22 of her witnesses. She had to pretty much say that's not
23 what you said before and that's not what I want to here, I
24 want you to say it is, isn't that what you said.

25 And that's the other time Mr. Campbell

Closing Argument - Quinn

1 testified and he did mention Mr. Saddler's name once,
2 after Mr. Hogan doesn't testify the way they want,
3 Mr. Campbell gets up and says, okay, Mr. Hogan actually
4 gave me two statements. He started giving a statement and
5 they so, no, no, no, that's not right, erase it and give
6 another statement but in my notes I've got these people
7 having these guns one of which was that Kinjta supposedly
8 had a .9 millimeter. Is that noted evidence? No, because
9 it wasn't kept. Is in the statement that he signed? No,
10 somehow it didn't make it in the statement. Is it in the
11 police report someplace? Well, no, it didn't make it to
12 the police report.

13 The solicitor in closing argument says her
14 case is Larry Johnson, Shaquille Hogan and this trick they
15 talk about they didn't know how many guns they got. I
16 spoke more about Larry Johnson and look at, as the Judge
17 is going to tell you, demeanor and how they testify on the
18 stand whether in the past they testified in this way.
19 Have they been consistent? Have they given a complete
20 statement? Has it not changed? Larry changes.

21 You heard Shaquille Hogan who the physical
22 evidence, the video tapes, contradicts and gives a story
23 that can not match Larry Johnson's. It does not fit, but
24 the solicitor tells you this is how you should trust them
25 because we didn't know how many guns there were, Armstrong

Closing Argument - Quinn

1 hadn't done his analysis, and this is the last thing I'm
2 going to talk to you about. These were collected by
3 Officer Ooten, you probably remember her.

4 She testified that she worked the scene and
5 marked and collected all the casings and cartridges. She
6 in that report that morning delineated each of these by
7 type of gun. She's, in fact, the one who put them in
8 these envelopes for us. We took a break because we had
9 them all loose in boxes and we put them all in envelopes
10 we could say that's how many guns there are. That's how
11 we know there are definitely seven because they broke them
12 down in envelopes. She wrote on each one of them what it
13 is. She broke them down by this .380 ammunition is
14 different .380 ammunition from the other one, that's how I
15 know that's a different one.

16 MS. SALISBURY: Objection, Your Honor, that's
17 a misstatement of the evidence.

18 THE COURT: The jury can determine what the
19 evidence is.

20 MR. QUINN: That collection was done that
21 morning. You may remember she said she left the scene
22 about 9:30 that morning. So that collection was done the
23 morning of July 17th by her. They knew on the morning of
24 July 17th, where she testified she met Mr. Campbell and
25 they walked the scene together, they knew that morning

Closing Argument - Quinn

1 what type of ammunition and how many guns and what
2 caliber. So this story that they didn't know until
3 Armstrong does his final report simply doesn't hold up to
4 the evidence the State has submitted.

5 This isn't some kind of trick that I've
6 somehow come up with. None of this is my evidence. None
7 of this is any evidence against Mr. Sadler.. The only
8 verdict for Mr. Sadler which is the only person I
9 represent is not guilty. There is no evidence in this
10 case of a conspiracy of an agreement, no evidence that
11 they joined to do something.

12 Kinjta Sadler has no evidence, physical
13 evidence submitted against him at all. The only people
14 that testified who even mentioned his name is Joseline
15 Mack who the solicitor called a liar, Shaquille Hogan who
16 the solicitor tried to walk through his story that had
17 changed, and Larry Johnson whose story changed day after
18 day for a while, and his story doesn't match Shaquille
19 Hogan's.

20 The Judge is going to tell you that you have
21 to make a decision beyond a reasonable doubt, the proof is
22 on the government and it has to be based on evidence.
23 There is no corroboration for any of these charges against
24 Kinjta Sadler. There is no credible testimony that's been
25 introduced against Kinjta Sadler. There is no consistent

Closing Argument - Quinn

1 testimony by the State's witnesses against Kinjta Sadler
2 except to see him at the Waffle House. They can't even
3 see him in these pictures and they don't identify him as
4 any member of a gang.

5 Don't do it. Don't find him guilty just
6 because they claim these fellas were all doing this stuff
7 together. Just make it individual, individual decision
8 and in the case of Kinjta Sadler the verdict should be not
9 guilty.

10 ---END OF REQUESTED RECORD---

State versus Booker, Williams, Young, Sadler

1 (Jury re-enters the courtroom)

2 THE COURT: Alright, ladies and gentlemen of
3 the jury, if you remember on Monday when I made my opening
4 comments to you, I told you I divided the case in to five
5 parts. We are now down to the third part of this case.
6 We have concluded the first two parts of the trial and all
7 of the testimony and all of the evidence has been
8 presented to you.

9 As you know there are five attorneys involved
10 so I don't know how long it will run but I anticipate
11 we'll take a break between arguments of counsel but you
12 all have been a great jury and have paid close attention
13 throughout the course of this case, so I ask you to
14 continue to pay attention to the arguments of these fine
15 attorneys.

16 (DUE TO TECHNICAL DIFFICULTY, THIS PORTION OF
17 THE TRANSCRIPT CAN NOT BE PRODUCED.)

18 THE COURT: Ladies and gentlemen of the jury,
19 during this trial you and I have certain duties to perform
20 and as the trial judge it is my responsibility to provide
21 over the trial of the case and rule on the admissibility
22 of the evidence that's offered during the trial.

23 It is also my duty to charge you the law
24 applicable to the case. It is your duty as jurors to
25 accept and apply the law as I now state it to you. If you

State versus Booker, Williams, Young, Sadler

1 think I have any idea as to what the law is or what the
2 ought to be and it does not agree with what I tell you the
3 law is, you must set aside your own opinion because you've
4 sworn an oath to accept the law and apply the law
5 precisely as I state it to you.

6 I would remind you that in every case tried
7 in this court before a jury you the jurors are the sole
8 and exclusive judges of the facts and a trial judge can
9 not comment on or make any statement about the facts in a
10 case. So please don't think by anything I may have said
11 or done throughout the course of the trial that I have
12 such an opinion I do not and the law does not allow it.

13 I again instruct you that the fact that these
14 defendants have been arrested, charged and indicted in the
15 case is not evidence of guilt, nor does it create any
16 presumption or inference of guilt. These documents are
17 simply the formal written instruments which contain the
18 charges made against each defendant and they serve as the
19 formal document by which the case is processed and brought
20 into court for disposition.

21 Now, I charge you that there are four
22 defendants in this case each of whom is charged with seven
23 counts of attempted murder, conspiracy, possession of a
24 weapon during the commission of a violent crime and
25 assault and battery by a mob second degree. Each case of

State versus Booker, Williams, Young, Sadler

1 each defendant and the evidence and the law concerning
2 each defendant should be considered separately and
3 individually. Your verdict does not have to be the same
4 for all defendants and the fact that you may find one
5 defendant guilty or not guilty should not control your
6 verdict as to the other defendants.

7 Where more than one person is charged with a
8 crime, if the evidence warrants it, you may convict one
9 and acquit the other or you may acquit both or you may
10 convict both. It would depend upon your views of the
11 testimony and the evidence and you must take each
12 defendant and consider the evidence as to that defendant
13 on each charge and my instructions to you on the law and
14 then you will write a separate verdict of guilty or not
15 guilty for each charge for each individual defendant.

16 So I remind you that each indictment charges
17 a separate and distinct offense and you must decide each
18 indictment separately on the evidence and the law
19 applicable to it uninfluenced by your decision as to any
20 other indictment.

21 Now, necessarily you must determine the
22 credibility or believability of the witnesses who have
23 testified and it becomes your duty as jurors to evaluate
24 the evidence and determine which evidence convinces you it
25 is true. And in determining the believability of the

State versus Booker, Williams, Young, Sadler

1 witnesses, you may believe one witness over several or
2 several over one. You may believe a part of the testimony
3 of a witness and reject the remaining part. You may
4 believe the testimony of a witness in its entirety or
5 reject that same testimony in its entirety. You may
6 consider whether the witness has an interest in the result
7 of the trial, whether the witness is prejudice towards
8 either the State or the defendants, the opportunity for
9 the witness to have seen the matter and things to which
10 the witness has testified and the way the witness acts on
11 the witness stand or what we call a witness's demeanor.

12 I will also tell you that a witness who has a
13 past criminal record is competent to testify during a
14 trial and a past criminal record does not affect the
15 ability of that witness to testify. The past criminal
16 record may only be considered by you, if at all, in
17 determining the witness's believability or credibility.

18 Remember you are the sole judges of the facts
19 in the case and of the believability of any and all of the
20 witness and any and all of the evidence. I instruct you
21 and emphasis that the fact that defendants did not testify
22 is not a factor to be considered by you in any way in your
23 deliberations on the question of the guilt or innocence of
24 each defendant and it must not be considered by you in any
25 manner whatsoever. Every citizen has the constitutional

State versus Booker, Williams, Young, Sadler

1 right to remain silent and the assertion of this right
2 must not be considered by you in your deliberations.

3 Now, each defendant has pled not guilty to
4 each indictment and that plea puts the burden on the State
5 to prove the defendant guilty. A person charged with
6 committing a criminal offense in South Carolina is never
7 required to prove themselves innocent and I charge you
8 that it is an important and cardinal rule of the law that
9 a defendant in a criminal trial will always be presumed to
10 be innocent of the crime for which the indictment was
11 issued unless and until guilt has been proven by evidence
12 satisfying you of guilt beyond a reasonable doubt.

13 Now, reasonable doubt is the kind of doubt
14 which would cause a reasonable person to hesitate to act
15 and reasonable doubt may arise from the evidence which is
16 in the case or the lack or absence of evidence in this
17 case and you the jury must determine whether or not
18 reasonable doubt exists as to the guilt of each defendant.

19 The State has the burden of proving each and
20 every element of a crime beyond a reasonable doubt and any
21 reasonable doubt that you may have in your deliberations
22 should be resolved in favor of the defendant.

23 Now, there are two types of evidence which
24 are generally presented during a trial, that is direct
25 evidence and circumstantial evidence. Direct evidence is

State versus Booker, Williams, Young, Sadler

1 the testimony of a person who claims to have actual
2 knowledge of a fact such as an eyewitness. It is evidence
3 which immediately establishes the main fact to be proved.
4 Circumstantial evidence is prove of a chain of facts and
5 circumstances indicating the existence of a main fact. It
6 is evidence which immediately establishes collateral facts
7 from which the main fact may be inferred.

8 Circumstantial evidence is based on inference
9 and not on personal knowledge or observation and the law
10 makes absolutely no distinction between the weight or
11 value to be given to either direct or circumstantial
12 evidence nor a greater degree of certainty required of
13 circumstantial evidence than of direct evidence.

14 Now, if a crime is committed by two or more
15 people who are acting together in committing a crime, the
16 act of one is the act of all, and a person who joins with
17 another or others to accomplish an illegal purpose is
18 criminally responsible for everything done by the other
19 person or persons which occurs as a natural consequence of
20 the acts done for carrying out a common plan or purpose.

21 For example, two people can be guilty of
22 killing another person when only one of the two had a gun.
23 There was only one bullet and only one of the two fired
24 the shot that caused the death. If two or more people are
25 acting together assisting each other in committing the

State versus Booker, Williams, Young, Sadler

1 offense, the act of one or the act of all or as sometimes
2 said the hand of one is the hand of all.

3 Now, each defendant is charged with
4 conspiracy and the state must prove beyond a reasonable
5 doubt that each defendant combined with the purpose of
6 committing and unlawful act or unlawful act by lawful
7 means. There's must be a mutual understanding, agreement
8 or common intention and plan. Mere passive knowledge or
9 consent to the criminal conduct of another is not a person
10 to make a person a conspirator. There must be guilty
11 knowledge and participation.

12 Similarly the mere fact may have associated
13 with another person or met with another person and
14 discussed common aims and interests does not necessarily
15 establish proof of the existence of a conspiracy or that
16 the defendant was involved in a conspiracy. On the other
17 hand, it is not necessary that the agreement be a formal
18 one, that it be in writing, that the persons hold a
19 meeting and expressly state the terms of the common plan
20 or that the agreement be stated in words between them.
21 The agreement of a criminal conspiracy that come into
22 being through an implied mutual understanding. The
23 willful intentional and knowing adoption by two or more
24 persons by a common plan is sufficient. No overt acts
25 needs to be brought to establish a conspiracy.

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1 A conspiracy can be shown by circumstantial
2 evidence and the conduct of the parties. In order to
3 convict a defendant of conspiracy the state must prove
4 beyond a reasonable doubt not only that that defendant
5 knew of unlawful conduct, but that the defendant agreed to
6 combine with the other persons for purpose of
7 accomplishing that unlawful conduct.

8 Each defendant is also charged with assault
9 and battery by mob in the second degree. For the purposes
10 of the offense a mob is defined as the assemblage of two
11 or more persons without color or authority of law for the
12 premeditated purpose and with the premeditated intent of
13 committing an act of violence upon the person of another.
14 Any act of violence inflicted by the mob upon the body of
15 another person which results in series bodily injury to
16 that person shall constitute the crime of assault and
17 battery by mob in the second degree.

18 And serious bodily injury is defined as a
19 physical condition which creates a substantial risk of
20 death serious personal disfigurement or protracted loss
21 or impairment of the function of a bodily member or organ.

22 Each defendant is charged with seven counts
23 of attempted murder and in order to prove this crime, the
24 state must prove that each defendant attempted to kill
25 another person with malice aforethought either expressed

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1 or implied. Malice is hatred ill-will or hostility
2 towards another person. It is the intentional doing of a
3 wrongful act without just cause or excuse and with the
4 intent to inflict an injury or under circumstances that
5 the law will infer and evil intent.

6 Malice aforethought does not require that
7 malice exists for any particular length of time before the
8 act is committed, but malice must exist in the mind of the
9 defendant just before and at the time that the act is
10 committed. Therefore, there must be a combination of a
11 previous evil intent and the act. Malice aforethought may
12 be expressed or inferred and these terms expressed and
13 inferred do not mean different kinds of malice but merely
14 the manner in which the malice may be shown to exist that
15 is either by direct evidence or inference from the facts
16 and circumstances which are proven.

17 Express malice is shown when a person speaks
18 words which express hatred or ill will for another or when
19 the person prepared before hand to do the act which was
20 later accomplished for example lying in wait for a person
21 or any other acts or preparation going to show that the
22 deed was within the defendant's mind would be expressed
23 malice. And malice may be inferred from conduct showing a
24 total disregard for human life and inferred malice may
25 also arise when the deed is done with a deadly weapon. A

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1 deadly weapon is any article, instrument or substance
2 which is likely to cause death or great bodily harm and
3 whether an instrument has been used as a deadly weapon
4 depends on the facts and circumstances of each case.

5 And if facts are proved beyond a reasonable
6 doubt in your mind sufficient to raise an inference of
7 malice to your salification, this inference would be
8 simply an evidentiary fact to be considered by you along
9 with all the other evidence in this case and you give it
10 the weight that you think it should receive.

11 A specific intent to kill is not an element
12 of attempted murder but there must be a general intent to
13 commit serious bodily injury and intent means intending
14 the result which actually occurs, not accidentally or
15 involuntarily.

16 Intent may be shown by acts and conduct of
17 the defendant and other circumstances from which you may
18 actually and reasonably infer intent and evidence of the
19 character of the act, the instrument that it was used, the
20 manner in which it was used, the purpose to be
21 accomplished and the resulting wounds and injuries may be
22 considered in determining the intent with which the act
23 was committed. Intent may also be inferred when it is
24 demonstrated when the defendant voluntarily and willfully
25 commits an act, the nature tendency of which is to destroy

State versus Booker, Williams, Young, Sadler

1 another's life.

2 Each defendant is also charged with the
3 possession of a weapon during the commission or attempt to
4 commit a violent crime and in order to prove this, the
5 State must prove beyond a reasonable doubt that each
6 defendant was in possession of a firearm or visibly
7 displayed what appeared to be a firearm during the
8 commission of a violent crime. A firearm means any
9 machine gun, automatic riffle, revolver, pistol or any
10 weapon which will is designed or readily converted to
11 expel a projectile.

12 In order to find a defendant guilty of
13 possession of a weapon during the commission of a violent
14 crime, you must find the defendant guilty of either
15 committing a violent crime or attempting to commit a
16 violent crime so you may not consider this offense unless
17 you first find that each particular defendant guilty of a
18 violent crime.

19 Under our law attempted murder is a violent
20 crime.

21 Now, ladies and gentlemen, we have prepared
22 verdict forms. There is one verdict form for each
23 individual defendant and each form lists each charge
24 against that particular person. I want to tell you that
25 as to each charge and as to each defendant there are two

State versus Booker, Williams, Young, Sadler

1 possible verdicts in which you may reach in this case and
2 there is no significant order in which I am stating them
3 to you and they are guilty or not guilty.

4 I will tell you that all 12 of you must agree
5 on your verdict. Your verdict must be unanimous and it
6 can not be based on sympathy, passion, prejudice, emotion
7 or any other consideration which is not in evidence in
8 this case. You have no friends to reward you have no
9 enemies to punish. Now, ladies and gentlemen, I'm going
10 to excuse you all to your jury room and ask you to eat
11 your lunch but don't begin your deliberations until the
12 bailiff comes with the evidence. I have to go over my
13 jury charge with the attorneys to make sure that I did not
14 state something or omit something. So when all of this
15 comes to you, you may begin your deliberations.

16 Sir, just hold on for a second. I would tell
17 you that the law unfortunately -- you have been every bit
18 as attentive as all the other juries and I would love to
19 let you go back there but the law won't allow it so you
20 are free to go. Your lunch is back there and you're free
21 to talk about the case with who ever you want to. If
22 someone approaches you and bothers you about the case and
23 you don't want to talk about it, get that person's name
24 and let me or the bailiffs know and we will take care of
25 it. Thank you.

State versus Booker, Williams, Young, Sadler

1 (Jury exits the courtroom.)

2 Any objection to the charge?

3 MS. SALISBURY: Nothing from the State.

4 MR. CHAMBERS: No, Your Honor.

5 MR. ABDALLA: No, Your Honor.

6 MR. QUINN: No, Your Honor.

7 (Jury began deliberations at 1:30.)

8 THE COURT: They have a question. They want a
9 copy of the explanation of the law so we're making four or
10 five copies and we're going to send that back into them.

11 MS. SALISBURY: No objection, Your Honor.

12 MR. CHAMBERS: No objection.

13 MR. ROBINSON: No objection.

14 MR. ABDALLA: No objection.

15 MR. QUINN: I'd object. I'd ask that we get
16 a further definition of what they mean in case they only
17 want one portion of it.

18 THE COURT: What the law requires for a
19 guilty verdict for each charge. I'm not sending in part,
20 I'm sending in the whole charge.

21 (Court in recess.)

22 Bring them in.

23 (Jury enters the courtroom.)

24 It's late and we are going to come back
25 tomorrow to continue deliberations. Please remember don't

State versus Booker, Williams, Young, Sadler

1 talk about the case. Thank you.

2 ---END OF TRANSCRIPT RECORD FOR DAY 5 ---

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State versus Booker, Williams, Young, Sadler

1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2) 2011-GS-23-8010-8018
 COUNTY OF GREENVILLE) 2012-GS-23-3838
 3) 2011-GS-23-9239-9245
) 2012-GS-23-3041,7491-79417
 4)
 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
 5)
)
 6 -vs-)
)
 7 Raymond Lewis Young)
 Esaiveus F. Booker)
 8 Kinjta Kadeem Sadler)
 Michael W. Williams)
 9)

10 Day - 6 January 12, 2013
 11 Greenville, South Carolina

12 B E F O R E:

13 THE HONORABLE EDWARD W. MILLER, Judge.

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

15 Katrina Salisbury, Esquire
 Assistant Solicitor
 Attorney for the State

16 Scott Robinson, Esquire
 Attorney for Michael Williams

17 Randy Chambers, Esquire
 Attorney for Esaiveus Booker

18 Thomas Quinn, Esquire
 Attorney for Kinjta Sadler

19 John Abdalla, Esquire
 Attorney for Raymond Young

20 CAROLINE HISKELL
 Thirteenth Circuit Court Reporter
 21
 22
 23
 24
 25

State versus Booker, Williams, Young, Sadler

I N D E X

No Witnesses or exhibits

State versus Booker, Williams, Young, Sadler

1 THE COURT: Okay. We have a verdict. I will
2 make it perfectly clear if you are unable to contain your
3 motions because we are not going to tolerate any outbursts
4 of any kind from anybody and if you can't do that, leave
5 now. There's no shame in leaving. If you violate, and
6 this is an order, you will be in contempt of court and
7 treated accordingly.

8 (Jury enters the courtroom.)

9 Madam Clerk would you publish the verdict,
10 please?

11 THE CLERK: Your Honor in Case No. 2011-GS-
12 23-8010, 8011, 3838a, 8012, 8013, 8014, 8015, 8016, 8017,
13 8018, the State versus Raymond Lewis Young, II. As to the
14 charge of conspiracy we the jury find the defendant
15 guilty. As to the charge of possession of a weapon during
16 the commission of a violent crime we the jury find the
17 defendant not guilty. As to the charge of assault and
18 battery by mob in the second degree, we the jury find the
19 defendant guilty. As to the charge of attempted murder
20 seven counts, we the jury find the defendant guilty.

21 2011-GS-23-7957, 7958, 7959 - 7965, 3839A,
22 the State of South Carolina versus Michael Antonio
23 Williams as to the charge of conspiracy, we the jury find
24 the defendant guilty. As to the charge of possession of a
25 weapon during the commission of a violent crime, we the

State versus Booker, Williams, Young, Sadler

1 jury find the defendant not guilty. As to the charge of
2 assault and battery by mob in the second degree, we the
3 jury find the defendant guilty. As each of the charges of
4 attempted murder, we find the defendant guilty.

5 2011-GS-23-7940, 7930, 3841a, 7941 - 7947,
6 the State of South Carolina versus Esaiveus Booker, as to
7 the charge of conspiracy we the jury find the defendant
8 not guilty. As to the charge of possession of a weapon
9 during the commission of a violent crime, we the jury find
10 the defendant not guilty. As to the charge of assault and
11 battery by mob second degree, we the jury find the
12 defendant guilty. As to the charge of attempted murder
13 times seven, we the jury find the defendant guilty.

14 2011-GS-23-9237, 9238, 3840a, 9239 - 9245,
15 the State of South Carolina versus Kinjta Kadeem Sadler,
16 as to the charge of conspiracy, we the defendant find the
17 defendant not guilty. As the charge of possession of a
18 weapon during the commission of a violent crime, we the
19 defendant find the defendant not guilty, as to the charge
20 of assault and battery by mob in the second degree, we
21 find he defendant not guilty, as to the charge of
22 attempted murder as to each charge we find the defendant
23 guilty.

24 Each of these verdicts has been signed by the
25 fore person, Christine Ferguson.

State versus Booker, Williams, Young, Sadler

1 THE COURT: This is the last page of that
2 entire sheet, I'm going to ask you all to retire to the
3 jury room. Give them the verdict form. We've
4 mispublished the verdict with respect to Mr. Williams.
5 The last page is blank so I'm going to ask y'all to review
6 that, make your decision, sign it and we'll accept you
7 back. Okay.

8 (Jury exits the courtroom.)

9 Okay, bring them back in.

10 (Jury re-enters the courtroom.)

11 My apologies. We had an extra verdict form
12 was given to the clerk to allow her to review so she could
13 prepare to publish and she put your finished form it got
14 misplaced in all of the paperwork. That was our mistake,
15 but for the record, I'm going to pass all verdict forms
16 back to you and ask you to review them and make sure those
17 are your forms.

18 The fore lady indicates they are her verdict
19 forms.

20 Is there anything further for the jury?

21 MR. CHAMBERS: No, Your Honor.

22 MR. ROBINSON: No, Your Honor.

23 MR. ABDALLA: No, Your Honor.

24 MR. QUINN: No, Your Honor.

25 Alright, ladies and gentlemen, believe it or

State versus Booker, Williams, Young, Sadler

1 not you are through for the week. Your service has been
2 invaluable and at this time I'd like to excuse you back to
3 the jury room because we have some forms we'd like to give
4 you.

5 (Jury exits the courtroom.)

6 Any motions?

7 MR. CHAMBERS: Your Honor, on behalf of
8 Mr. Booker I would like to make a motion for a new trial
9 and also a motion not withstanding the verdict.

10 THE COURT: I'll denied.

11 MR. ROBINSON: I would make a motion as well
12 on behalf of my client the same as Mr. Chambers.

13 THE COURT: Denied.

14 MR. ABDALLA: For my client as well, Your
15 Honor.

16 THE COURT: Denied.

17 MR. QUINN: I would join in that motion as
18 well as well as the inconsistent verdict against my
19 client.

20 THE COURT: Be more specific.

21 MR. QUINN: The jury found he was not part of
22 the conspiracy or part of the mob that was involved but
23 yet found that he caused an injury so the verdicts are
24 inconsistent..

25 THE COURT: I would disagree with you and

State versus Booker, Williams, Young, Sadler

1 deny your motions. Are you ready for sentencing?

2 MR. CHAMBERS: Yes, sir.

3 THE COURT: How would you want to proceed?

4 MS. SALISBURY: I'll leave it to your
5 discretion, but if you want to handle them one at a time.

6 THE COURT: Tell me his background.

7 MS. SALISBURY: Mr. Sadler has no prior
8 record. I believe you heard the bulk of the information
9 during the course of this trial.

10 MR. QUINN: [REDACTED] years of age when the
11 incident occurred. He is the youngest person involved in
12 the matter probably the most easiest influenced. How he
13 ever got in this club is a mystery to start with because
14 it serves alcohol and he should have been stopped at the
15 door. He was attending JL Mann and has been in jail since
16 his arrest which was July of 2011.

17 You've had the opportunity to see his
18 demeanor in the courtroom, the manner in which he has
19 conducted himself. I think it is fair to say that he has
20 not caused any outbursts in the courtroom. He has been
21 pleasant and respectful to the authorities in the
22 courtroom including the court.

23 As the Court knows each of these charges
24 carries a sentence of up to 30 years. If Your Honor gives
25 him a jail sentence, he would have to serve 85 percent of

State versus Booker, Williams, Young, Sadler

1 it. Because of his age, he is eligible for a youthful
2 offender sentence. Considering he has done approximately
3 a year and a half in the county jail, I would ask the
4 Court to consider a youthful offender sentence in this
5 matter.

6 THE COURT: Anything you want to tell me?

7 DEFENDANT SADLER: No, sir.

8 THE COURT: There's a code of silence in
9 these groups but you are a young man. Everyone of us will
10 stand naked in front of the pearly gates and now you are
11 standing naked up here along on your own and you have
12 nothing to tell me.

13 DEFENDANT SADLER: No, sir.

14 THE COURT: Anything the victims want to tell
15 me?

16 (No response.)

17 MS. SALISBURY: I don't have any indication
18 the victims have any input.

19 THE COURT: Okay, twenty years on each count,
20 credit for any time you're entitled to.

21 Mr. Booker.

22 MS. SALISBURY: Mr. Booker has a 2011
23 conviction for shoplifting. It's my understanding he was
24 in PTI for an auto breaking at the time of his arrest on
25 this incident and has another pending and would have been

State versus Booker, Williams, Young, Sadler

1 out on bond on an assault and battery by mob in the second
2 degree at the time these were committed.

3 MR. CHAMBERS: Your Honor, I would tell you
4 on behalf of Mr. Booker he's 21 years old. I think he was
5 19 at the time these incident occurred. His mother
6 Patricia Hill is standing here with him. I think I've
7 been representing him I think shortly after he was
8 arrested which was back in July of 2011. She has been
9 stoic in his defense. He's probably met with me more than
10 any other parent. She has told me lots of good things
11 about this young man. I know when this occurred he has
12 two small children and he was trying his best to support
13 them. He was going through training to become a certified
14 forklift operator to become certified.

15 I will tell the Court and this is not
16 persuasive in any way because the verdict has been
17 rendered by the jury and they have spoken, this young man
18 has told me from day one and has told me again as we sit
19 here today, and he was in tears, he wasn't involved, and
20 he has maintained that. I talked to him various times
21 about possible pleas at one point to try to mitigate
22 damages. He was willing to plea but he couldn't give
23 testimony because he didn't know anything about it, he
24 hadn't been involved.

25 I asked him before we came up here is there

State versus Booker, Williams, Young, Sadler

1 anything you want to say and he said, you know, I didn't
2 do it. So, Your Honor, I would ask you to take everything
3 into consideration, be as lenient with this young man as
4 you can possibly be.

5 THE COURT: Anything you want to tell me?
6 This is your reckoning day. You're going to meet your
7 maker one day like I told Mr. Sadler that this is your
8 judgment day with respect to your conduct that's occurred
9 in this case. Anything you want to tell me?

10 MR. BOOKER: I'd like to say, Your Honor,
11 like I been saying day one I had nothing to do with it.
12 That's all I can say.

13 THE COURT: On each of the attempted murder
14 cases, the sentence is 20 years. On the conspiracy, the
15 sentence is five years, all run concurrent and you're
16 entitled to any credit that you earned.

17 MR. CHAMBERS: I thought that my client was
18 found not guilty on the first two charges, conspiracy
19 being one of the charges.

20 THE COURT: Check the verdict sheet. Was he
21 found guilty on conspiracy? He was found not guilty.
22 Okay. Twenty years on each of the attempted murders and
23 there is no conviction on each of the conspiracies. Is
24 there an assault and battery by mob? Yes. So we need to
25 sentence him on that. Twenty years to run concurrent with

State versus Booker, Williams, Young, Sadler

1 the other cases. Best of luck to you.

2 Mr. Williams.

3 MS. SALISBURY: Mr. Williams has no prior
4 record and any input the State would offer is that
5 received during trial.

6 MR. ROBINSON: May it please the Court, this
7 was a very hard fought trial and we appreciate the efforts
8 of the jury in this case. It's a very complicated case
9 and obviously they put a lot of thought into this.

10 Your Honor, he is 22 and he has three
11 children. He's been in jail for 18 months now and he's
12 very sorry and apologetic and I think he wants to express
13 that the Court.

14 DEFENDANT WILLIAMS: I want to apologize for
15 anything that happened to the victims. I'm sorry that it
16 every happened to them that they had to go through all
17 that pain and suffering.

18 THE COURT: Why don't you explain to me why
19 this happened?

20 DEFENDANT WILLIAMS: I can't explain to you
21 why it happened. They say people that -- you see I didn't
22 get found guilty of the pistol charge. They say people
23 that were with them did it so, the hand of one and hand of
24 all, but I'm sorry them dudes had to go through what they
25 had to go through.

STATE VS RAYMOND L. Young II
 STATE VS ESANCIAS Bookel
 STATE VS Michael A Williams
 STATE VS Kintja Sadler

JUDGE NAME: Edward W. Miller
 TRIAL TYPE: Criminal
 PANEL ID: MILLER 1/7/2013

Young: J 99 2339, 341, 342, 348, 349, 340, 336, 338, 332, DP
 Bookel: J 99 2351, 350, 349, 348, 347, 346, 345, 353, 352, DP
 Williams: J 99 2372, 373, 374, 375, 376, 377, 378, 379, 380, 379, DP
 Sadler: J 99 2370, 371, 367, 364, 366, 367, 368, 369, 365, DP

Greenville County Courthouse

RANDOM STRIKE SHEET

Young: 11-65-23-8012, 013, 014, 015, 016, 017, 018, 011, 010, 12-65-23-3838A
 Bookel: 11-65-23-9941, 42, 43, 44, 45, 46, 47, 40, 39, 12-65-23-3841A
 Williams: 11-65-23-7954, 60, 61, 62, 63, 64, 65, 58, 57, 12-65-23-3839A
 Sadler: 11-65-23-9239, 40, 41, 42, 43, 44, 45, 20, 27, 12-65-23-3840A

DESCRIPTION: MILLER 1/7/2013

Trial

NAME	REF NUMBER	JUROR NBR	PLAINTIFF	DEFENDANT	Court	Remarks
5 ~~1~~ Faylor, Kayla E	97	99434	() (1)	() ()	()	States Witnesses:
2 Harper, Douglas M	130 (1)	136823	() ()	() ()	()	4 Vincent Fair
D 3 Bennett, Teresa H	26	22993	() ()	() (1)	()	21 Rahoon Adams
D 4 Alam, Sm-Johar	5	2774	() ()	() (2)	()	3) Russell Moore-Patterson
5 Thompson, Robin R	293 (2)	320965	() ()	() ()	()	4) Thomas Walker
D 6 Mizell, Lise R	214	223940	() ()	() (3)	()	5) Javon Henry
7 Ferguson, Christine L (Folk)	100 (3)	101715	() ()	() ()	()	6) Roshonques Perry
D 8 Barber, Phyllis K	20	16036	() ()	() (4)	()	7) Jamel Williams
D 9 Connor, David R	66	66401	() ()	() (5)	()	8) Anthony Caddenham
S 10 Chen, Stanley J	55	58317	() (2)	() ()	()	9) Dontavious Sullivan
D 11 Best, Margaret E	29	24378	() ()	() (6)	()	10) Carrell Egan Jackson
12 Foxx, Cynthia Meier	106 (4)	107996	() ()	() ()	()	11) Trevis Thompson
D 13 Fortune, Jess K	104	106525	() ()	() (7)	()	12) Loretta Smith
D 14 Vaughn, Kenneth L JR	300	330375	() ()	() (8)	()	13) Dep. Chris McCalmar
D 15 Chatelain, Catherine A	34	57694	() ()	() (9)	()	14) Dep. Chris Hill
16 Whittenburg, Clarence E	308 (5)	344246	() ()	() ()	()	15) Dep. James Brown
17 Aguirre, Carla B	3 (6)	2279	() ()	() ()	()	16) Dep. Matt Owens
D 18 Russell, Patricia B	266	278872	() ()	() (10)	()	17) Delona Coten
S 19 Bishop, Stefan W	30	25900	() (3)	() ()	()	18) Jon Dendry
20 Baker, Melissa M (Excused 1-8-13)	18 (7)	14161	() ()	() ()	()	19) Jon Hamilton
21 Little, Derrick O	185	193648	() ()	() ()	()	20) Kara Bennick
D 22 Robinette, Katherine A	258	272050	() ()	() (11)	()	21) Ina Wraye Campbell
23 Hudson, Lisa D	154 (8)	156070	() ()	() ()	()	22) Shauna Peeples
D 24 Hall, Lisa S	127	132703	() ()	() (12)	()	23) Michael Moore
25 Tutiven, Becky L	297 (9)	327369	() ()	() ()	()	24) Dustin Woodall

START FAX: -
 END FAX:

START: 11:45
 END: 1/7/13

Greenville County Courthouse RANDOM STRIKE SHEET

JUDGE NAME: Edward W. Miller

TRIAL TYPE: Criminal

PANEL ID: MILLER 1/7/2013

Sorted by: Random Nbr

DESCRIPTION: MILLER 1/7/2013

Trial

NAME	REF NUMBER	JUROR NBR	PLAINTIFF	DEFENDANT	CHAR STR	COURT	REMARKS
~~D 26 Rentz, Clyde H II~~	~~251~~	266262	()	()	()	(13)	(25) Joseelya Mack
~~S 27 Smith, Valisa C~~	~~281~~	300171	()	(4)	()	()	(26) Inv. Brandon Brown
28 Skelton, Daniel L	278	294121	()	()	()	()	(27) David Whitlock
~~D 29 Garrett, Nathan Bradley~~	~~114~~	114607	()	()	()	(14)	(28) Kiara Simone Kerna
30 Adair, Beth A	2	1015	()	()	()	()	(29) Adrian Kerna
~~S 31 Dodd, Anatolya S~~	~~81~~	86462	()	(5)	()	()	(30) Amanda Bell
~~D 32 Shealy, Wilson O Jr.~~	~~275~~	288543	()	()	()	(15)	(31) Inv. Devin Horvath
~~D 33 Morrow, William D II~~	~~218~~	229887	()	()	()	(16)	(32) Sgt. David Weiner
~~D 34 Bradley, Randy D~~	~~37~~	33490	()	()	()	(17)	(33) Inv. Jim Perry
~~D 35 Cole, Clyde A~~	~~60~~	64079	()	()	()	(18)	(34) James Armstrong
~~C 36 Harris, Theresa G~~	~~133~~	138203	()	()	()	()	(35) Larry Johnson
~~D 37 Lancaster, Micheal S~~	~~175~~	184751	()	()	()	(19)	(36) Shagunika Hyman
38 Brown, Christy L	43	38324	()	()	()	()	(37) Degan Bruner
~~S 39 Montgomery, Lee A Jr.~~	~~215~~	224860	()	(1)	()	()	(38) Tamara Holmes
~~D 40 Laue, Kendal J~~	~~180~~	187051	()	()	()	(1)	(39) Degan Bruner
41 Thompson, Alcestis O	328	320898	()	()	()	()	
42 Benden, David E	24	22272	()	()	()	()	
~~43 Braren, Linda J~~	~~38~~	34357	()	()	()	()	
44 Mullins, Butler B	220	231802	()	()	()	()	
45 Decoteau, Fallon G	79	81524	()	()	()	()	
46 Johnson, Jeremiah W	164	167536	()	()	()	()	
47 Geddings, Debra A	119	116020	()	()	()	()	
48 Howell, Dwayne L	152	155074	()	()	()	()	
49 Lassiter, William D	178	186634	()	()	()	()	
50 Welsh, Ellen D	306	340421	()	()	()	()	

**Greenville County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME : Edward W. Miller

Sorted by: Random Nbr

TRIAL TYPE : Criminal

PANEL ID : MILLER 1/7/2013

DESCRIPTION : MILLER 1/7/2013

Trial

		PLAINTIFF		DEFENDANT			
NAME	REF NUMBER	JUROR NBR	Chal Strike	Chal Strike	Court	Remarks	

Total Number of Jurors:

50 49

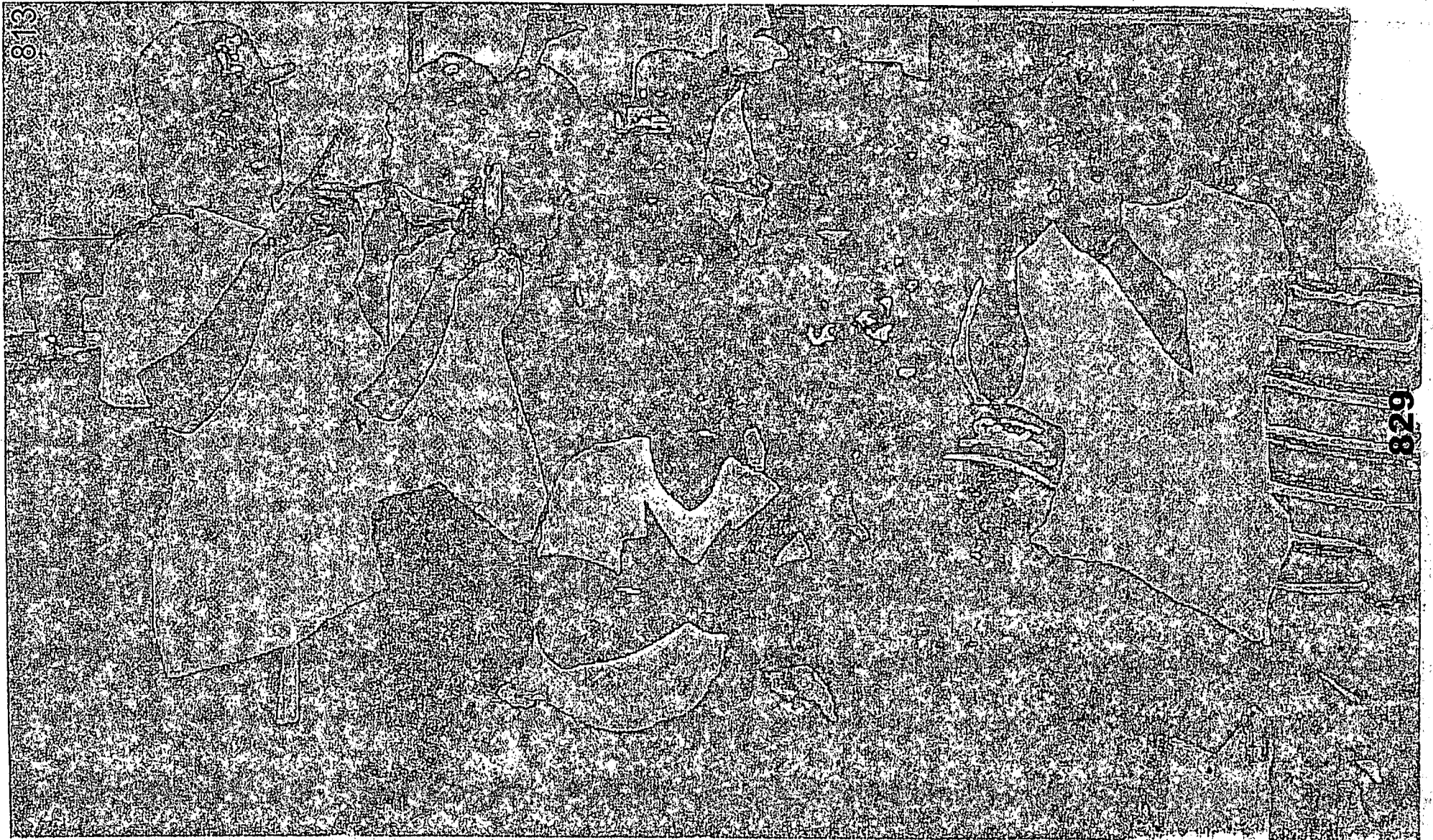
** END OF REPORT **



828

State's 51

States 54



HR. Young

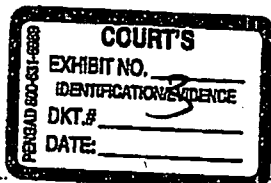
286 Stierhoff, Benjamin

While in restroom during lunch
I overheard jurors from courtroom
8 discussing what sounded like
details of their case

"Need to decode language"

"I was chilled"

"It's going down" Laurie



WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/26/2011

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: [REDACTED] B/M SSN: [REDACTED]

ACTION OF GRAND JURY

TRUE BILL

Foreman Grand Jury

Foreperson of Grand Jury

VERDICT

Guilty

Christopher H. Ferguson
Foreperson of Petit Jury
Date: 1/12/13

DOCKET NO. 2012-GS-23-
KBS

003041A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
May

TERM 2012

THE STATE

vs.

ESAIVEUS FRANTREZ BOOKER

Indictment for

3432

ASSAULT AND BATTERY BY MOB SECOND
DEGREE

VIOLATION § 16-03-0210

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 ASSAULT AND BATTERY BY MOB SECOND DEGREE

At a Court of General Sessions, convened on MAY 29 the Grand Jurors of Greenville
 County present upon their oath:

That ESAIVEUS FRANTREZ BOOKER did in Greenville County on or about the 17th day of July
 2011, willfully and unlawfully participate as part of a mob that inflicted serious bodily injury upon
 ANTHONY CALLAHAM, and/or JAMAL WILLIAMS, and/or RUSSELL MOORE-PATTERSON,
 and/or DONTAVIOUS SULLIVAN, and/or RAHEEM ADAMS, and/or TREVIS THOMPSON, and/or
 THOMAS WALKER, and/or others. This is in violation of §16-03-0210 of the South Carolina Code of
 Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

047

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/26/2011

ARREST WARRANT NUMBER

J992351

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Christine L. Ferguson

Foreperson of Petit Jury

Date: 11/2/13

DOCKET NO. 2011-GS-23-

KBS

007941

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2012
TERM 2011

THE STATE

vs.

ESAIVEUS FRANTREZ BOOKER

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAY 29 2012 the Grand Jurors of Greenville
County present upon their oath:

That ESAIVEUS FRANTREZ BOOKER did in Greenville County, on or about the 17th day of July
2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Dontavious
Sullivan. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/26/2011

ARREST WARRANT NUMBER

J992350

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Christine L. Ferguson

Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-

KBS

007942

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2012
TERM 2011

THE STATE

vs.

ESAIVEUS FRANTREZ BOOKER

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on

MAY 29 2012

the Grand Jurors of Greenville

County present upon their oath:

That ESAIVEUS FRANTREZ BOOKER did in Greenville County, on or about the 17th day of July 2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Jamal Williams.

This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/26/2011

ARREST WARRANT NUMBER
J992349

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

1/12/13

DOCKET NO. 2011-GS-23-
KBS

007943

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

2012
TERM 2011

May

THE STATE

vs.

ESAIVEUS FRANTREZ BOOKER

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAY 29 2012 the Grand Jurors of Greenville
County present upon their oath:

That ESAIVEUS FRANTREZ BOOKER did in Greenville County, on or about the 17th day of July
2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Raheem Adams.

This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/26/2011

ARREST WARRANT NUMBER
J992348

ACTION OF GRAND JURY

TRUE BILL

Jonathan P. Jones
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Christine h Ferguson
Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-

KBS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2011 ²⁰¹²

THE STATE

vs.

ESAIVEUS FRANTREZ BOOKER

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAY 29 2012 the Grand Jurors of Greenville
County present upon their oath:

That ESAIVEUS FRANTREZ BOOKER did in Greenville County, on or about the 17th day of July
2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Trevis Thompson.
This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/26/2011

ARREST WARRANT NUMBER
J992347

ACTION OF GRAND JURY

TRUE BILL

Jonathan P. Davis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Christine L. Ferguson
Foreperson of Petit Jury

Date:

1/12/13

DOCKET NO. 2011-GS-23-
KBS

007945

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM ²⁰¹² 2011

THE STATE

vs.

ESAIVEUS FRANTREZ BOOKER

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR ATTEMPTED MURDER

At a Court of General Sessions, convened on **the Grand Jurors of Greenville**

County present upon their oath:

That ESAIVEUS FRANTREZ BOOKER did in Greenville County, on or about the 17th day of July 2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Thomas Walker. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/26/2011

ARREST WARRANT NUMBER

J992346

ACTION OF GRAND JURY

TRUE BILL

Foreman Grand Jury

Foreperson of Grand Jury

VERDICT

Guilty

Christine L Ferguson

Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-

KBS

007946

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2012
TERM 2011

THE STATE

vs.

ESAIVEUS FRANTREZ BOOKER

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on July 19 the Grand Jurors of Greenville
County present upon their oath:

That ESAIVEUS FRANTREZ BOOKER did in Greenville County, on or about the 17th day of July
2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Russell Morris.
This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute *in such case made* and provided.

KTB [Signature]
SOLICITOR

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/26/2011

ARREST WARRANT NUMBER
J992345

ACTION OF GRAND JURY

TRUE BILL

Jonathan P. Jones
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Christine L. Ferguson
Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-

KBS

007947

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2012
TERM 2011

THE STATE

vs.

ESAIVEUS FRANTREZ BOOKER

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

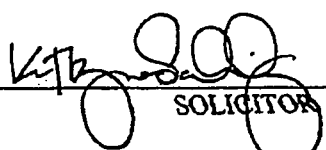
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAY 19 the Grand Jurors of Greenville
County present upon their oath:

That ESAIVEUS FRANTREZ BOOKER did in Greenville County, on or about the 17th day of July
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Callaham. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Esaiveus Frantrez Booker

AKA:

Race: BLACK Sex: M Age: 34DOB: 01/15/1977 SS#: 739109Address: 1010 1st StCity, State, Zip: Greenville, SC 29615DL#: 1A12345678 SID#: 1234567890*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307941A/W#: J992351Date of Offense: 7/17/2011S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: Salisbury, Katryna Bevis 739109 SC Bar# 739109 Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp. Recipient: May serve W/E beginning *Fine: Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5 %) Random Drug/Alcohol testing ☐§ 14-1-211(A)(1) (Conv. Surcharge) \$100 Fine may be pd. in equal, consecutive weekly/monthly§ 14-1-211(A)(2) (DUI Surcharge) \$100 pmts. of \$ beginning § 56-5-2995 (DUI Assessment) \$12 \$ paid to Public Defender Fund§ 56-1-286 (DUI Breath Test) \$25 Other: Proviso 47.9 (Public Def/Prob) \$500 § 14-1-212 (Law Enforce. Funding) \$25 § 14-1-213 (Drug Court Surcharge) \$150 § 50-21-114(BUI Breath Test Fee) \$50 § 56-5-2942(J) (Vehicle Assessment) \$40/ca Proviso 90.5 (SCCA Surcharge) \$5 3% to County (if paid in installments) TOTAL Clerk of Court/Deputy Clerk Paul B. WickensCourt Reporter:

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2130Sentence Date: 1-12-0

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Esaiveus Frantrez Booker

AKA:

Race:

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307942

A/W#: J992350

Date of Offense: 7/17/2011

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lowd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Salisbury, Karyna Bevis

SC Bar# 73989

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
 § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Esaiveus Frantrez Booker

AKA:

Race:

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307943

A/W#: J992349

Date of Offense: 7/17/2011

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Salisbury, Kathryn Bevis

SC Bar# 73969

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$5

3% to County (if paid in installments) \$

TOTAL \$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Esaiveus Frantrez Booker

AKA: _____
Race: [redacted] Sex: M Age: [redacted]
DOB: [redacted] SS#: [redacted]
Address: _____
City, State, Zip: _____
DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307944
A/W#: J992348
Date of Offense: 7/17/2011
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 73909
Salisbury, Kathryn Bevis SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____
*Fine:
§ 14-1-206 (Assessments 107.5 %) \$ _____
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§ 56-5-2995 (DUI Assessment) \$12 \$ _____
§ 56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def/Prob) \$500 \$ _____
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____
§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$ _____
TOTAL \$ _____

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: Paul B. Wicks
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2130
Sentence Date: 1-12-13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Esaiveus Frantrez Booker

AKA:

Race: [redacted] Sex: M Age: [redacted]

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL#: [redacted] SID#: [redacted]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307945

A/W#: J992347

Date of Offense: 7/17/2011

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Sallishury, Kathryn Bevis

SC Bar# 73909

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: [redacted]

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2130

Sentence Date: 1-12-13

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Esaiveus Frantrez Booker

AKA:

Race:

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307946

A/W#: J992346

Date of Offense: 7/17/2011

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029

of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney

Salisbury, Kathryn Bevis

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services; standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Esaiveus Frantrez Booker

AKA:

Race: [REDACTED] Sex: M Age: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307947A/W#: J992345Date of Offense: 7/17/2011S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSIn violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Salisbury, Katlyna Bevis78909
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ TOTAL \$ Obtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: McKell

SCCA/217 (03/2011)

Presiding Judge Edw. M. AllenJudge Code: 2130Sentence Date: 7-12-13

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Esaiveus Frantrez Booker

AKA:

Race:

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ASSAULT AND BATTERY BY MOB 2ND DEGREE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2303841A

A/W#: 2012GS2303841A

Date of Offense: 7/17/2011

S.C. Code §: 16-03-0210(C)

CDR Code #: 3432

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-03-0210(C) of the S.C. Code of Laws, bearing CDR Code # 3432

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Salisbury, Karyna Bevis

73909
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$300

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/24/2011

ARREST WARRANT NUMBER
J992338

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-
KBS

003011

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2011

THE STATE

vs.

RAYMOND LEWIS YOUNG, II

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

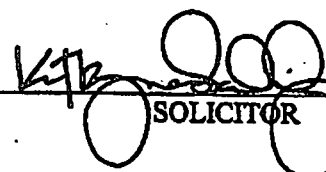
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on MAY 29 2012 the Grand Jurors of Greenville
County present upon their oath:

That RAYMOND LEWIS YOUNG, II did in Greenville County, on or about the 17th day of July 2011, willfully
and unlawfully combine with MICHAEL ANTONIO WILLIAMS, and/or ESAIVEUS BOOKER, and/or
KINJTA SADLER, and/or TAVARUS HOLMES, and/or SHAQUILLE HOGAN, and/or LARRY JOHNSON,
and/or DAQUAN BRUSTER, and/or KIARA S. KERNS for the purpose of accomplishing an unlawful object or
a lawful object by unlawful means, to wit: ATTEMPTED MURDER. This is in violation of §16-17-410 of the
South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

841

WITNESSES

W.T. Campbell (S)

Greenville County Sheriffs Office

7/24/2011

ARREST WARRANT NUMBER

J992338

ACTION OF GRAND JURY

TRUE BILL

Joseph P. Davis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Christine L. Ferguson
Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-

KBS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2011
TERM 2011

THE STATE

vs.

RAYMOND LEWIS YOUNG, II

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 18-03-0029

000012

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

842
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

MAY 29 2012

At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

That RAYMOND LEWIS YOUNG, II did in Greenville County, on or about the 17th day of July 2011,
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Dontavious Sullivan.
This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

843

WITNESSES

W.T. Campbell (S)

Greenville County Sheriffs Office

7/24/2011

ARREST WARRANT NUMBER
J992341

ACTION OF GRAND JURY
TRUE BILL

John P. [Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Christine L. Ferguson
Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-
KBS

000013

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2012
TERM 2011

THE STATE

vs.

RAYMOND LEWIS YOUNG, II

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

844
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAY 29 2012 the Grand Jurors of Greenville
County present upon their oath:

That RAYMOND LEWIS YOUNG, II did in Greenville County, on or about the 17th day of July 2011,
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Thomas Walker. This is
in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

W.T. Campbell (S)

Greenville County Sheriffs Office

7/24/2011

ARREST WARRANT NUMBER

J992342

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Christine L. Ferguson

Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-

KBS

000014

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2011

THE STATE

vs.

RAYMOND LEWIS YOUNG, II

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAY 29 2012 the Grand Jurors of Greenville
County present upon their oath:

That RAYMOND LEWIS YOUNG, II did in Greenville County, on or about the 17th day of July 2011,
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Trevis Thompson. This
is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

847

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/24/2011

ARREST WARRANT NUMBER

J992343

ACTION OF GRAND JURY

TRIE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-

KBS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2011

THE STATE

vs.

RAYMOND LEWIS YOUNG, II

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on

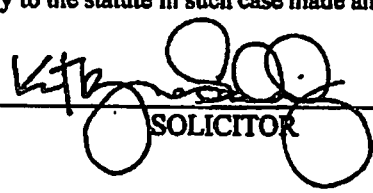
MAY 29 2012

the Grand Jurors of Greenville

County present upon their oath:

That RAYMOND LEWIS YOUNG, II did in Greenville County, on or about the 17th day of July 2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Raheem Adams. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

W.T. Campbell (9)

Greenville County Sheriffs Office

7/24/2011

ARREST WARRANT NUMBER

J992344

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-

KBS

008016

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2012 ✓
TERM 2011

THE STATE

vs.

RAYMOND LEWIS YOUNG, II

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on

MAY 29 2012

the Grand Jurors of Greenville

County present upon their oath:

That RAYMOND LEWIS YOUNG, II did in Greenville County, on or about the 17th day of July 2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Jamal Williams. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

W.T. Campbell (4)

Greenville County Sheriffs Office

7/24/2011

ARREST WARRANT NUMBER

J992340

ACTION OF GRAND JURY

~~TRUE BILL~~

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

11/12/13

DOCKET NO. 2011-GS-23-

KBS

008017

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2012
TERM 2011

THE STATE

vs.

RAYMOND LEWIS YOUNG, II

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

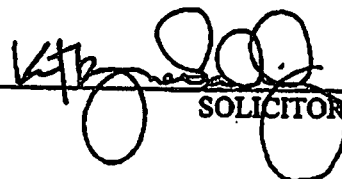
At a Court of General Sessions, convened on
County present upon their oath:

MAY 29 2012

the Grand Jurors of Greenville

That RAYMOND LEWIS YOUNG, II did in Greenville County, on or about the 17th day of July 2011,
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Russell Moore-Patterson.
This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

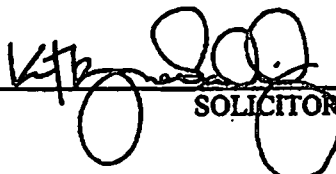
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAY 29 2012 the Grand Jurors of Greenville
County present upon their oath:

That RAYMOND LEWIS YOUNG, II did in Greenville County, on or about the 17th day of July 2011,
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Russell Moore-Patterson.
This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/24/2011

ARREST WARRANT NUMBER
J992338

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2011-GS-23-
KBS

000018

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2012
TERM 2011

THE STATE

vs.

RAYMOND LEWIS YOUNG, II

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

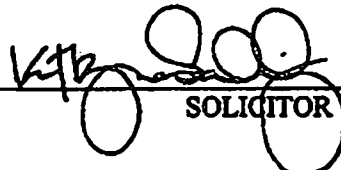
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAY 29 2012 the Grand Jurors of Greenville
County present upon their oath:

That RAYMOND LEWIS YOUNG, II did in Greenville County, on or about the 17th day of July 2011,
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Anthony Callaham. This
is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

7/24/2011

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: B/M SSN:

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Christine L. Ferguson
Foreperson of Petit Jury

Date: 1/12/13

DOCKET NO. 2012-GS-23-
KBS

003838A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2012

THE STATE

vs.

RAYMOND LEWIS YOUNG, II

Indictment for

3432

ASSAULT AND BATTERY BY MOB SECOND
DEGREE

VIOLATION § 16-03-0210

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.Raymond Lewis Young II

AKA:

Race: [REDACTED] Sex: M Age: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: CONSPIRACYINDICTMENT/CASE#: 2011GS2308011A/W#: J992338Date of Offense: 7/17/2011S.C. Code §: 16-17-0410CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Salisbury, Katryna Bevis73909 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Obtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2170Sentence Date: 7-12-13

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Raymond Lewis Young II

AKA:

Race:

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2308012

A/WH: J992339

Date of Offense: 7/17/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Salisbury, Kalryna Bevis

73909
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 70 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-63 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

\$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Raymond Lewis Young II

AKA:

Race: [redacted] Sex: M Age: [redacted]

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL#: [redacted] SID#: [redacted]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: **ATTEMPTED MURDER**

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2308013

A/W#: J992341

Date of Offense: 7/17/2011

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State.

ATTEST

Salisbury, Kathryn Bevis

73909 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Hickett

SCCA217 (03/2011)

Presiding Judge

Judge Code: 2130Sentence Date: 1-12-13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Raymond Lewis Young II

AKA:

Race: [REDACTED] Sex: M Age: [REDACTED]

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2308014

A/W#: J992342

Date of Offense: 7/17/2011

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.Attorney: [Signature] 73989
Salisbury, Katryna Bevis SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)Presiding Judge [Signature]
Judge Code: 2120
Sentence Date: 7-12-13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Raymond Lewis Young II

AKA:

Race: [REDACTED] Sex: M Age: [REDACTED]

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2308015

A/W#: J992343

Date of Offense: 7/17/2011

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: [REDACTED] 73909
Salisbury, Katryna Bevis SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ DeL Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ S _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$25 _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SOCJA Surcharge) \$5 \$5 _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA217 (03/2011)

Presiding Judge [Signature]

Judge Code: 2170

Sentence Date: 1-12-13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Raymond Lewis Young II

AKA:

Race: [REDACTED] Sex: M Age: [REDACTED]

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2308016

A/W#: J992344

Date of Offense: 7/17/2011

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the StateATTEST: Salisbury, Katrina Bevis 73909 SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Raymond Lewis Young II

AKA:
Race: Sex: M Age:
DOB: SS#
Address:
City, State, Zip:
DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat. Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2308017
A/W#: J992340
Date of Offense: 7/17/2011
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY: Salisbury, Karyna Bevis 73909 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____
☐ Set by SCDPPPS

Recipient: _____
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Paul B. Wicker
Court Reporter: Hickel
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2130
Sentence Date: 7-12-13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

STATE VS.

Raymond Lewis Young II

AKA:

Race: Sex: M Age:

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2308018

A/W#: J992336

Date of Offense: 7/17/2011

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Salisbury, Kathryn Bevis

73989
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$

Proviso 90.5 (SCCA Surcharge) \$5 \$

3% to County (if paid in installments) \$

TOTAL \$

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge:

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Raymond Lewis Young

AKA:

Race: [REDACTED] Sex: M Age: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ASSAULT & BATTERY BY MOB, 2ND DEGREE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2303838AA/W#: 2012GS2303838ADate of Offense: 7/17/2011S.C. Code §: 16-03-0210(C)CDR Code #: 3432

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0210(C) of the S.C. Code of Laws, bearing CDR Code # 3432☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.Attorney: [Signature] 73989 Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service EmploymentPayment Terms: _____ Obtain GED ☐
☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5 %) _____ Random Drug/Alcohol testing ☐§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 2130Sentence Date: 1-12-13prob begins upon comp of sent. rec this date to include being rel.
on any early rel. prog.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT BOOKER

This 30th day of November, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

APPELLATE CASE NO. 2013-000207

THE STATE

RESPONDENT

v.

RAYMOND YOUNG

APPELLANT

BRIEF OF APPELLANT
RAYMOND YOUNG

J. FALKNER WILKES, 12893
114 WHITSETT STREET
GREENVILLE, SC 29601
(864) 282-1292

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in denying the Appellant's Batson motion where the state's explanation for striking African American jurors was inherently racial, fundamentally implausible and, where the state failed to give a racially neutral reason for the uneven treatment between the African American jurors that were struck and at least one similarly situated white juror that was seated?
- II. Whether the trial court erred in allowing testimony by the State's witnesses using the term "gang" in reference to Appellant's case where the solicitor failed to lay the proper foundation that Appellant was a gang member, the reference was inflammatory and unduly prejudicial under Rule 403, SCRE, and the reference constituted improper character evidence under Rule 404, SCRE?
- III. Whether the trial court erred in admitting photographs of the co-defendants allegedly making "gang signs" where the solicitor failed to lay the proper foundation for their admission, they were not relevant to the facts at issue in the case, and they were unduly prejudicial?
- IV. Whether the trial court erred in coercing co-defendant DaQuan Bruster to testify for the State by threatening to vacate his guilty plea such that he would be facing life without parole (LWOP) because the judge found that Bruster's first testimony violated the plea agreement?
- V. Whether the trial court erred in failing to declare a mistrial where jurors from this trial were overheard by a juror in another case talking in the restroom during the lunch break about Appellant's case, saying such things as "the need to decode the language", "I was chillin," and "he's going down," followed by laughter?

STATEMENT OF THE CASE

On May 29, 2012, the Greenville County Grand Jury indicted Raymond Lewis Young along with Esaiveus Frantrez Booker, Kinjta Kadeem Sadler, and Michael Antonio Williams each on seven counts of attempted murder, one count of assault and battery by mob second degree, one count of conspiracy, and one count of possession of a weapon during the commission of a violent crime. R. * (Indictments).

On January 7, 2013, Young proceeded to a jury trial, the Honorable Edward W. Miller presiding. Young was tried along with the three co-defendants. Booker was represented by Randy Chambers; Michael Williams was represented by Scott Robinson; Kinjta Sadler was represented by Thomas Quinn; and Raymond Young was represented by John Abdalla. The State was represented by Katrina Salisbury. The jury found Young guilty of the seven counts of attempted murder, one count of assault and battery by mob in the second degree and one count of conspiracy. Young was was found not guilty of possession of a firearm during the commission of a crime of violence. Young was sentenced to thirty years on each of the attempted murder charges, with all sentences to run concurrently. Young was sentenced to five years on the conspiracy charge, which was also concurrent with the attempted murder charges. On the assault and battery by mob in the second degree Young was sentenced to ten years consecutive suspended with five years probation.

Subsequent to the filing of the appeal J. Falkner Wilkes was substituted as counsel for Raymond Young. Raymond Young has moved to consolidate this appeal with that of co-defendant Esaiveus Frantrez Booker (2013-000149). This appeal follows.

STATEMENT OF FACTS

Jury Selection

The four co-defendants in this case were African American. At the onset of the jury selection process, counsel for Esaiveus Booker (Chambers) indicated that with the consent of all counsel he would be speaking for the group. R. 36, l. 18-25. At the end of jury selection, still speaking on behalf of all co-defendants counsel stated: "Your Honor, we do have a matter regarding jury selection we'd like to take up outside the presence of the jury." R. 62, l. 17-19. Once the jury was excused counsel raised a Batson challenge based on the state's strike of three African American jurors. R. 63, l. 4-9. In the discussion of the objection Chambers clearly indicated that he was still speaking for the group, stating: "we don't believe the state articulated racially neutral causes." R. 65, l. 4-6. The Batson issue was therefore properly raised on behalf of all four defendants in this case.

In response to the Batson motion the court noted for the record that Juror No. 293 was an African American, and was seated. Juror No. 308 was an African American and was seated. Juror No. 281 was an African American and was struck by the State with its fourth preemptory challenge. Juror No. 81 was an African American and was struck by the State with fifth preemptory challenge. Juror No. 215, the first alternate was African American, was also struck by the State. R. 63, l. 10-19.

The defense challenged the state's strike of all three jurors. R. 63, l. 20-21. In response the solicitor stated reasons for each of the three strikes. R. 63-64. For juror 81, the solicitor stated that the strike was based on the comments made by the juror during the voir dire. R. 63, l. 23-64, l. 4. As to Juror 81 and 215 the reason stated for the strike was based on where the jurors resided.

R. 64. Specifically, the solicitor stated: "[Juror 81] lives on Prancer Avenue in Greenville County. It's my understanding that some of the witnesses in this case live in the area of Prancer Avenue and I was quite simply concerned that juror may become family with the witnesses even though she may not recognize their names off hand. That's my basis for striking her." R. 65, l. 5-11. As to Juror 215 the solicitor stated: "I note that Mr. Montgomery lives at Piedmont and I have the same reservations. There are many of these witnesses that live in the Piedmont area and have residences in Piedmont and again just out of an abundance of caution, I was concerned that he may be familiar with some of the witnesses in this case and decided that another alternate may be a better choice." R. 64, l. 12-19.

The defense (Chambers) argued that during voir dire the jurors certainly had the opportunity to identify any witnesses they may know. R. 64, l. 21-R. 65, l. 6. The defense's reference was to voir dire where the name of every potential witness in the case was announced after which the court inquired specifically as to whether any potential juror was "related by blood or marriage or has a business, personal, or social relationship with any of those potential witnesses whose names I have just read?" R. 48-50; 50, l. 16-20. The defense pointed out that the court had taken great effort "to ensure that anyone who had any problems serving could come forward." R. 64-65. Prior to the jury selection the solicitor had asked the judge to allow prospective jurors to come forward to the bench to discuss any particular responses to the voir dire in private, particularly in regards to the press and any familiarity with the parties involved. R. 35, l. 8-15. The court agreed and proceeded accordingly. R. 35, l. 16. The solicitor did not request any additional voir dire of the jury panel after the jury selection. R. 62, l. 14-15. The defense further pointed out that several prospective jurors did come forward to address

concerns and were excused for cause. R. 65. The court stated in response that the solicitor's reasons were racially neutral and that the defense would "have to show me something more than what you have to show that there's purposeful discrimination." R. 65, l. 8-11.

When the court asked if the defense had anything else to show purposeful discrimination the defense (Quinn) pointed out that the state seated a white juror [Juror 106] that lived at 13 Piedmont Avenue in Piedmont. R. 65, l. 12-18. Juror 106 was seated prior to the exhaustion of the state's strikes. R. 55, l. 22-24. The solicitor struck Juror 81 and Juror 215 after seating Juror 106. R. 60, l. 3-6. The solicitor failed to articulate any reason why the residence of the white juror living in Piedmont that was seated was any less a concern than the residence of the African American juror residing in Piedmont that was struck: "I just didn't indicate on my list that that was an address that I had some concern about. So I do and some I don't, but that doesn't make it the - -" R. 65, 19-22. The solicitor went on to say: "I didn't make that address on Ms. Fox [Juror ____], it is something that I had no concern. I had concerns about the Piedmont address but not this one. I don't know the geography of Greenville County with enough sophistication to appreciate the minor details of the community the basis of my strike, Judge." R. 66, ll. 2-9. Then, despite stating that the defense "makes a very valid point" about the disparate treatment between black and white jurors, the court nevertheless denied the defense's motion stating: "Okay. Well, Mr. Quinn makes a very valid point. I'm going to rely on State versus Tucker and Peyton versus Kirk Kearse {ph} that I don't see a discriminatory intent inherent in the proponent's explanation and so I believe those cases require me to find the reason offered to be deemed race neutral. So I'm going to deny your motion." R. 66, ll. 10-16.

Incident

On July 17, 2011, at approximately 3:30 in the early morning, a group of young people was talking outside of their vehicles at a Lil Cricket gas station in Greenville. They had recently left the hospital, where they had taken their friend, Vincent Fant a/k/a "Buddha," who had been shot at the Red Planet night club earlier that night. R. 105, ll. 11-25; R. 140, l. 19 - 150, l. 12. Suddenly, shots rang out in every direction. Seven people were shot with all requiring medical attention. R. 106, ll. 1 - 11. None of the victims could identify the shooters. R. 157, ll. 20-23; R. 169, l. 10-25; R. 176, ll. 12-21; R. 226, ll. 5-9; R. 234, ll. 1-6; R. 245, ll. 1-12; R. 251, ll. 6-17; R. 253, ll. 2-11; R. 258, ll. 12-16; R. 263, ll. 1-17. Only one of the victims actually saw them, but he could not make any identification because the shooters were wearing black bandanas over their faces. R. 189, l. 14 - 190, l. 15.

The assistant solicitor told the jury in her opening statement that eight young men were arrested and charged in this case. Four of the eight were on trial and the other four would provide testimony against them. The solicitor believed that the defendants carried out their plan to park behind Lil Cricket, approach the gas station on foot, and open fire. R. 106, l. 3 - R. 111, l. 17. She theorized that the co-defendants shot at the victims in retaliation for another shooting that took place earlier that evening at the Red Planet Nightclub. R. 106, ll. 7-16.

Evidence Related to Gangs

During pretrial motions, the solicitor told the court that she had documents related to the defendants' gang affiliation that she planned to admit if they became relevant. The trial judge cautioned the solicitor that her witnesses needed to be careful about how they described any such documentation so that they did not "put a defendant's character into issue in violation of the

rules." R. 70, ll. 8-22. Counsel Abdalla for co-defendant Young argued that all of the defendants had a motion in limine to prevent the solicitor from any mention of gangs or use of the word gang because the prejudicial effect outweighed any probative value. He argued that it would be very difficult for their clients to have a fair trial if the jury related it to gangs. He said that "either they [the solicitor] can prove their case without that [the mention of gangs] or they cannot." The judge asked for a foundation that the jury would be prejudiced by "the mention of the word gang" and agreed to allow counsel to present further argument the next morning. R. 70, l. 23 - 71, l. 22.

The next day, January 8, 2013, counsel Robinson for co-defendant Williams argued the motion shared by all the defendants regarding any reference by the solicitor to gangs. Counsel argued that the solicitor had not charged any of the co-defendants with being a criminal gang under the Criminal Gang Prevention Act. This Act defined a criminal gang as "a formal or informal ongoing organization, association, or group that consists of five or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity." S.C. Code § 16-8-230(2). Counsel further argued that references to the defendant's gang involvement was unduly prejudicial under Rule 403, SCRE and that the word "gang" took on an inflammatory appeal to the passions of the average person. R. 93, ll. 20 - R. 95, ll. 23.

The judge responded that the term was "pretty wide open" and he could not rule in a vacuum. Defense counsel Chambers argued that the State intended to call as a witness investigator Brown whose sole job was to investigate gangs because the solicitor had pursued this case as though these young men were part of the gang known as the Folk Nation. The defendants asked to stop that before it happened. R. 96, ll. 1 - 24.

The solicitor argued that there was no charge related to S.C. Code Ann. § 16-8-230. Therefore, she reasoned, the statutory definition of "gang" was not controlling. The solicitor stated she was "not alleging that this group of defendants participated in a pattern of criminal gang activity," but that she was prepared to present evidence they were in a gang. She proffered that it would be apparent from her very first witness that the people the victims fought with earlier that night at the club were dressed in all black and known to them as "the G's." Additionally, she proffered that "several of the witnesses" would indicate that they knew co-defendant Young by name and knew him to be the leader of the Folk Nation sect in Greenville. She further stated that the investigators pursued leads from witnesses that a gang committed the attack and thus the testimony related to gangs was "critical to how the case was investigated." Additionally, since the defendants were charged with assault and battery mob, "the mob is the gang." R. 98, l. 1 - 100, l. 9.

Counsel Robinson for co-defendant Williams argued that any reference was also prevented under Rule 404(a) because it interjected the defendants' character into the evidence because the jury would think they were bad people if they heard the word gang. The judge ruled that he could not limit the solicitor's presentation of her case because it may impugn the defendants' character, but he would see how "it played out." R. 100, l. 1 - 101, l. 19; R. 102, l. 24 - 104, l. 13. Counsel Abdalla reiterated that the solicitor would not be prevented from putting on evidence to support its theory of the case by being prevented from using the word "gang." R. 101, l. 21 - 102, l. 23.

After several witnesses testified, defense counsel Chambers told the Court that the solicitor's next witness was investigator Brandon Brown who was with the gang investigation

unit. Counsel asked that Investigator Brown identify himself only as an investigator with the Greenville County Sheriff's Office and not identify himself as a gang investigator. Counsel argued that no foundation was laid by the solicitor that the defendants were members of a gang. The judge said that the exception was noted for the record. The judge also acknowledged that all of the attorneys for the defendants joined in the objection. R.. 472, l. 7 - 473, l. 23.

Immediately after that ruling, Investigator Brandon Brown was the next witness for the State. He described himself as a "gang investigator assigned to the Federal Bureau of Investigation as a task force officer." He was contacted by Investigator Wayne Campbell to respond to the shooting at Lil Cricket due to the multiple shootings. His job was to collect information and try to determine if there was any information he knew as a gang investigator that could assist the lead investigator. R. 475, l. 23 - 477, l. 16.

He was not able to speak with the victims, as they had all been transported away from the scene when he arrived. Many witnesses did not want to speak with the police, allegedly because they were scared. However, he was able to learn that the victims had an altercation at another location earlier in the night with "them Folk Boys," who were wearing all black. Investigator Brown heard the name "Mikey," but it did not have any significance to him at the time. Another investigator informed him that Brandon Edwards was one of the individuals shot at the previous location. Investigator Brown "knew him [Edwards] to be involved with several individuals specifically on the southern end of Greenville County which led [him] to possible names of people that are typically involved with them." He knew Edwards to be an associate and possibly a family member of co-defendant Raymond Young. R. 477, l. 17 - 479, l. 13. Counsel Abdalla for co-defendant Young objected to the testimony regarding this "whole gang thing." The judge

overruled the objection. R. 481, ll. 9-17.

Investigator Brown continued to testify that he found evidence that Williams and Young were communicating via Facebook. It was there that he located a picture labeled "The Family." R. 480, l. 10 - 481, l. 25. This appeared to be a club picture. R. 482, ll. 14-25.

The solicitor then showed Investigator Brown several photographs that he "received during the course of the investigation," and she asked about hand signs as they related to gangs. Investigator Brown's testimony was that hand signs were a popular way to identify gang members as they were "universal" signs. Several of them were in these photographs according to Brown. There were some signs associated specifically with the Folk Nation or the Gangster Disciples. He identified some of the defendants as exhibiting these signs in the photographs. The trial court admitted photographs over the defense objection. R. 500, ll. 1 - 506, ll. 23; State's Exhibit 51 and 54, photographs (on file with this Court).

Testimony of Co-Defendants

Prior to the commencement of the trial, co-defendants Larry Johnson, Shaquille Hogan, Daquan Bruster, Tavarus Dean Holmes, and Kiara Simmons all entered guilty pleas. With the exception of Simmons, all of the co-defendants were called to testify in the State's case-in-chief. Notably, there was no mention at the plea hearings that acceptance of the plea offers required any of those individuals to testify at the co-defendants' trial. R. 3, l. 3 - 34, l. 25. With respect to Daquan Bruster, the solicitor put on the record only that sentencing be deferred and that, as part of the plea, the solicitor agreed to withdraw the notice of intent to seek life without parole that it had filed. R. 18, ll. 16-19. With respect to Tavarus Holmes, the solicitor indicated that it would again defer sentencing and "agreed to dismiss six counts of attempted murder, the weapons

charge, and assault and battery by mob as part of the defendant's plea to these two charges." R. 29, ll. 13-18.

Testimony of Larry Johnson

One of the co-defendants, Larry Johnson, testified for the State that he was charged in this incident and pled guilty earlier to attempted murder and second degree assault and battery by a mob. His sentencing was deferred. R. 550, ll. 1-24.

According to Johnson, he went to the Red Planet and was with his friends, which included the four co-defendants as well as Tavarus Holmes and Daquan Bruster. R. 551, l. 1 - 552, l. 23. Another friend, Brandon who was known as "Black," was also there. Brandon and Michael Williams got into a fight outside the club with some other guys. Later, Johnson heard gunshots and he and his friends left. They met at another club, "864," to discuss what happened. It was there that Johnson learned that Brandon ("Black") and another friend, "Bram-Bram," were shot. R. 558, l. 1 - 560, l. 25.

Johnson maintained that while they were driving down White Horse road past Lil Cricket when co-defendant Young said those guys at the Lil Cricket looked like the ones that shot Bram-Bram. They returned to Club 864. Johnson testified that Young told everyone who was going to "come on." According to Johnson's testimony Young, Booker, Sadler, and Williams covered their faces with black tee-shirts. They, along with Johnson, Bruster, Holmes, and Hogan, all rode to Lil Cricket and parked behind it. R. 561, l. 1 - 565, l. 7. With the exception of Johnson and Hogan, they all got out of their cars and ran up the hill to Lil Cricket and started shooting. He heard a lot of shots. Then they returned to the cars and they left. R. 567, l. 3 - 569, l. 25.

Johnson admitted on cross-examination that he met with police and gave them varying statements on three consecutive days after the incident, on July 20, 21, and 22, 2012. He was told that he faced a potential thirty year sentence, which he would be required to serve day for day. On November 10, 2012, he executed a recantation, in which he wrote:

On the dates of or between July 20th and 22nd, 2011, I, Larry Terrell Johnson, was made promises and even threatened by Greenville County Detectives to make false accusations against Michael Williams, Raymond Lewis Young, Tavarus Dean Holmes, Esaiveus Frantez Booker, Daquan Bruster Kinjta Sadler and myself, Larry Terrell Johnson, and Shaquille Hogan.

I was under stress due to my recent arrest, misunderstood what the detectives was asking me. I was coerced to write and sign a false statement.

The investigator typed a false statement and told me to sign it and claim[ed] they would help me get out of jail. I now wish to recant those false accusations and state the fact that on the date of July 17, 2011, I, Larry Terrell Johnson, did not participate or conspire nor witness any illegal actions or activity of any kind with the names listed above or anyone of that matter.

R. 578, l. 11 - 587, l. 3.

On redirect, when the solicitor asked why he wrote the letter from the jail recanting, Johnson said that more of the people from the gang were in the dorm with him telling him to recant. He was told he would be "xed" out if he did not recant. R. 594, l. 23 - 596, l. 11. Johnson further testified that he was receiving no benefit in exchange for his testimony. R. 588, ll. 17-23.

Testimony of Shaquille Hogan

Another co-defendant, Shaquille Hogan, testified for the State that he was friends with the four co-defendants on trial. R. 598, l. 1 - 600, l. 5. He described going to the Red Planet. A fight occurred inside first, and then outside where shots were fired. R. 600, l. 6 - 601, l. 23. He told how they all went behind Lil Cricket. Hogan stayed at the cars because he had given his gun

to Tavarus, and Johnson went with the group that fired shots. R. 606, l. 1 - 707, l. 25.

Hogan gave a statement to police implicating the four co-defendants on trial. However, he subsequently made two statements recanting his earlier statement. On September 6, 2011, he executed a recantation, asserting that: "Investigators told me what to say and claim if I went along with it, they would help me with my charges. I was manipulated and used and wish to recant those false accusations." This was prior to Hogan's being charged in the present case. Again, on June 10, 2012, he executed a recantation, stating that the police told him what to say in his original statement given on July 22, 2011 and that he just went along with it. R. 610, l. 14 - 620, l. 17. He also recalled a conversation with co-defendant Young in which he apologized for making a statement and told him that "Larry [Johnson] was in [his] ear and promising [him] the police would help [him] if [he] told them these things." R. 625, l. 18 - 626, l. 3. Even during the solicitor's direct examination, Hogan said that he was not given a chance to look over his statement to police or make any corrections. R. 610, ll. 20-24.

Testimony of Daquan Bruster

A third co-defendant, Daquan Bruster, was called to testify for the State. He admitted that he pled guilty on the Monday before trial started to seven counts of attempted murder, conspiracy, assault and battery by mob second degree, and possession of a weapon during the commission of a violent crime. He testified that he did not remember the events of that night, and then "pled the Fifth." The solicitor received permission by the court to treat him as a hostile witness. He said he admitted these crimes because he just went with what the solicitor said. He did not understand that he was expected to testify and did not want to testify. R. 633, l. 19 - 636, l. 21.

On cross-examination Bruster admitted that he only pled guilty because he was facing life without parole if he did not plead. He executed a statement on July 25, 2012 indicating that neither he nor his codefendants had anything to do with the alleged crimes. He again reiterated that he did not know that he had to testify. R. 636, l. 22 - 638, l. 9.

After his testimony the judge sua sponte ordered that Bruster's attorney be brought to court the next day. The judge said he would give Bruster a chance to withdraw his guilty plea because it was not valid if he did not remember. He further said: "We'll just have to try him separately. If he goes to trial, that gives other people an opportunity to testify. I understand there are some offers that have made and I will honor those until the first witness hits the witness stand tomorrow. After that, no." R. 638, l. 20 - R. 639, ll. 9.

Testimony of Tavarus Holmes

The next day, the solicitor began by calling co-defendant Tavarus Holmes to testify. On the witness stand, he said his attorney was not present and that he had no testimony. R. 642, l. 15 - 643, l. 8. The solicitor told the judge that Holmes had pled guilty to one count of attempted murder and conspiracy and had agreed to testify for the State as part of his plea. Holmes said that he was told "if I go in an[d] say this I get a deal on my plea." The Judge responded "You've already got your deal or your deal is going to disappear and you and Mr. Bruster will be tried separately because I'm going to vacate your plea. And I'm telling you right now Bruster is looking at life without parole, what's he looking at?" Initially it was indicated that Holmes would face a potential thirty-five year sentence if his plea was vacated and he went to trial. The judge advised him:

You haven't even been alive 35 years. That would make you 56. I can remember what it was like to be 56. I have a hard time remember[ing] what it was like to be 21. I'm going to suggest that you speak with your counsel privately before you proceed any further. There's a private space back in there.

R. 642, ll. 15 - 645, l. 6. The solicitor later clarified that in the event the plea were vacated, she would reinstate the additional charges that it dismissed against Holmes and he would be facing over two hundred years. R. 645, l. 25 - 646, l. 10.

Counsel Abdalla for co-defendant Young objected that the defendants were not receiving a fair trial if the co-defendants were being forced to testify by threatening to vacate his plea. The judge said that the co-defendants were not affected by Holmes backing out of his deal. R. 645, ll. 1-22.

Holmes confirmed to the judge that he was coerced into entering his guilty plea. The judge, sua sponte, vacated Holmes' plea and noted he would be tried on seven counts of attempted murder. He also revoked his bond and ordered that he be taken into custody. R. 646, ll. 10-25.

Recall of Daquan Bruster

The solicitor then told the judge that co-defendant Bruster was present with his attorney and that he may have changed his mind. Counsel Abdalla objected to the coercive nature of the judge forcing the witness Bruster to come back and testify after he had already refused. The judge responded that Bruster had violated his plea agreement and he was vacating his plea. He would have to go to trial and face LWOP. Bruster's counsel said Bruster would testify. R. 647, ll. 22 - R. 648, ll. 25.

Defense counsel Chambers noted that the record reflected that each of the

witnesses took the stand and indicated that there was no deal in exchange of their plea and that no promises were made. The judge responded that there was no recommendation on sentencing but that the co-defendants were receiving the benefit of dismissal of other charges and withdrawal of the LWOP notice. Chambers argued that once a person entered a plea, the plea could not be vacated just because the witness did not say what the solicitor wanted him to say, and the witness could not be brought back and forced to testify. R. 649, l. 2 - 650, l. 4.

Even the solicitor admitted that the testimony was not necessarily a part of the plea negotiations, stating:

I don't know what Mr. Holmes wants to do but I don't have any problem allowing him to maintain his guilty [plea] and quite frankly examine him with respect to these specific allegations that he admitted to. The understanding that I had Mr. Holmes would be the range would be up to 35 years and the extent to which he could control just how high that number was, was exclusively his depending on the extent to which he cooperated. I interviewed him, I met with him, we went over these videos. I was under the impression he was going to cooperate. I guess it's his choice. If he wants to [rescind] the guilty plea, that's his choice.

The trial judge disagreed and instructed Bruster to take the witness stand and be sworn as a witness. He instructed Bruster that he could either "come forward with the truth" or his plea would be vacated. R. 650, l. 5 - 651, l. 14.

Counsel Quinn for co-defendant Sadler objected to Bruster being recalled because he had been examined as a hostile witness and released. He also reiterated the coercive nature of compelling Bruster to withdraw his plea and face additional time if he did not testify again. The judge stated that counsel's objection was noted for the record and he said: "I assume everyone is in agreement with it." R. 649, ll. 1 - R. 652, ll. 10.

Bruster then testified for the State that he was at the incident at the Red Planet and Brandon Davis was shot in the back. Bruster went with Larry Johnson to Lil Cricket. Ten or eleven other people were there and Bruster covered his face as Johnson told him to do. Bruster did not know who the other ten or eleven people were because their faces were covered also. He admitted participating in the shooting, and admitted to pleading guilty. R. 652, ll. 12 - R. 657, ll. 8. On cross-examination, Bruster again stated that he specifically discussed whether he would be required to testify with his attorney prior to plea and was under the impression that his testimony was not required. He further admitted that he was told to testify or LWOP was "back on the table." R. 659, ll. 1 - 11.

Motion for Mistrial for Juror Misconduct

Early in the trial after several victim witnesses testified, the judge had an in camera bench conference with the attorneys. The judge then put the issue on the record. The judge received a note from a juror in another trial that said: "While in [the] restroom during lunch I overheard jurors from courtroom 8 discussing what sounded like details of their case. 'Need to decode language,' 'I was chillin,' 'He's going down.' [That was followed by] laughter." R. 192, l. 24 - 193, l. 6; R. 814 (Court's Exhibit 3, Note from Juror).

The judge explained that a bench conference was held with the attorneys and the attorneys had a motion for a mistrial. The judge cited the case of State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), which set forth the procedure to follow in cases of alleged juror premature deliberation which must establish prejudice. This procedure required a hearing to determine if it was premature deliberation and if it was prejudicial. If it was

prejudicial, then a new trial was required. R. 193, ll. 6-25. The judge decided to discuss the problem with each of the jurors by calling them into the courtroom individually. R. 194, ll. 1-9.

Defense counsel Quinn for co-defendant Sadler, moved for a mistrial with no further inquiry. The other three attorneys joined in the mistrial motion. Defense counsel's argument was that it was not known what else may have been said, and no witness had used the words "he's going down." Therefore, it sounded as though someone was going to be found guilty. The judge rejected counsel's additional contention that the jurors only needed to be questioned if there was opposition to the motion for mistrial. R. 194, l. 14 - 198, l. 6.

The judge then proceeded to question each of the jurors individually, and sent them back to a separate room so they could not discuss it.

Juror Harper reported that what was discussed was "sadness" over some of the things heard. R. 198, ll. 7-22. Juror Ferguson stated that there was discussion about the initial charges and how long the trial would take. There was also talk about the behavior of some of the witnesses who had taken the stand which was mainly about demeanor, enunciation but no conclusions were drawn. R. 199, l. 15 - 219, l. 25.

Juror Foxx reported that there was talk about the names and trying to get the names straight, and if they understood some of the conversations. R. 220, ll. 1-25. Juror Tutiven stated that there had been kind of a reflection on different facts such as names and how many people. R. 207, ll. 1-25. Many of the other jurors said different versions of what had been reported by the others. R. 204, l. 1 - 214, l. 12. The judge then denied the

motion for a mistrial saying he found no prejudice. R. 214, ll. 12-17.

Three of the defense attorneys objected to the hearing procedure and the manner in which it was conducted because defense counsel was not given the opportunity to establish an appellate record. They argued the juror who sent the note should testify. Further, no questions were asked about the specific misconduct alleged. Counsel Robinson for co-defendant Williams stated: "I don't disagree with the Court. I believe it was conducted properly." R. 214, l. 18 - 235, l. 7.

Even the solicitor expressed concern over Juror Whittenberg, who was alleged to have been a party to the conversation overheard in the bathroom. The solicitor noted that "he, more than anybody else denied any conversation having happened and that concerns me." R. 216, ll. 8-13; *see* R. 203, l. 19 - 204, l. 25. Despite this, the judge determined that the jurors did not actually deliberate as to the outcome of the case, and he maintained that he conducted the proper inquiry. R. 216, l. 14 - 217, l. 7.

ARGUMENT

- I. THE COURT ERRED IN DENYING THE APPELLANT'S BATSON MOTION WHERE THE STATE'S EXPLANATION FOR STRIKING BLACK JURORS WAS INHERENTLY RACIAL, FUNDAMENTALLY IMPLAUSIBLE AND, WHERE THE STATE FAILED TO GIVE A RACIALLY NEUTRAL REASON FOR UNEVEN TREATMENT BETWEEN THE AFRICAN AMERICAN JURORS THAT WERE STRUCK AND AT LEAST ONE SIMILARLY-SITUATED WHITE JUROR THAT WAS SEATED.

Standard of Review

"Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). The judge's findings regarding purposeful discrimination are given great deference and will not be set aside by this court unless clearly erroneous. Evins, 373 S.C. at 416, 645 S.E.2d at 909-10. "This standard of review, however, is premised on the trial court following the mandated procedure for a Batson hearing." State v. Cochran, 369 S.C. 308, 312, 631 S.E.2d 294, 297 (Ct.App.2006). "[W]here the assignment of error is the failure to follow the Batson hearing procedure, we must answer a question of law. When a question of law is presented, our standard of review is plenary." *Id.* at 312-13, 631 S.E.2d at 297. State v. McMillan, 400 S.C. 298, 734 S.E.2d 171 (S.C. App., 2012). In this case, the court failed to apply the proper law given the facts. Plenary review is therefore appropriate.

Discussion of the Issue

The defense raised a Batson challenge to the state's strike of three African American jurors. In denying the Batson motion the court cited to State v. Tucker and

Payton v. Kearsse. Although Tucker and Payton are applicable in general, the facts presented in this case require additional analysis under Batson v. Kentucky, which the court failed to conduct. In its limited analysis the court stated: "I don't see a discriminatory intent inherent in the proponent's explanation and so I believe those cases [Tucker and Payton] require me to find the reason offered to be deemed raced neutral." R.66, l. 10-16. The court concluded its analysis with the finding that the state's explanation was not inherently discriminatory on its face. Although the defense pointed to disparate treatment between African American jurors and at least one white juror, the court failed to continue the analysis placing the burden on the state to explain the uneven treatment. The court's failure to conduct a through and complete analysis under Batson constitutes an error of law.

The Batson Analysis

In Batson, the Supreme Court held the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prevents the prosecution from striking potential jurors on the basis of race. McCrea v. Gheraibeh, 380 S.C. 183, 186, 669 S.E.2d 333, 334 (2008) (citing State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001)); see also Batson v. Kentucky, 476 U.S. at 89. The Supreme Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. See Purkett v. Elem, 514 U.S. 765, 767-68 (1995); State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014).

The purposes of Batson v. Kentucky and its progeny are to protect the defendant's right to a fair trial by a jury of his peers, protect each venireperson's right not to be

defendant's to a Batson hearing.

Batson's Three Step Analysis

In State v. Giles, our supreme court explained the proper procedure for a Batson hearing:

First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the proponent of the challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the opponent of the challenge has proved purposeful discrimination. 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014) (internal citations omitted).

State v. Stewart (S.C. App., 2015) citing State v. Giles.

The First Step Of The Analysis

First, the [party asserting the Batson] challenge must make a prima facie showing that the challenge was based on race. State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014). When one party strikes a member of a cognizable racial group or gender, the trial court must hold a Batson hearing if the opposing party requests one. *See generally* State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999). In this case the defense objected to the state's strike of three African American jurors. This satisfies the first step of the Batson analysis.

The Second Step Of The Analysis

Once a prima facie showing has been made, the trial court will move to the second step in the process, which requires the [party opposing the Batson] challenge to provide a race neutral explanation for the challenge State v. Giles, 407 S.C. 14, ---, 754 S.E.2d 261,

263 (2014) (internal citations omitted); *see also* Snyder v. Louisiana, 552 U.S. 472, 476-77 (2008) (*quoting* Miller-El v. Dretke, 545 U.S. 231, 277 (2005)); State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014).

Step two of the analysis is perhaps the easiest step to meet, as it does not require that the race-neutral explanation be persuasive, or even plausible. Purkett, 514 U.S. at 768; Randall v. State, 716 So. 2d 584, 588 (Miss. 1998). The explanation must only be "clear and reasonably specific such that the [party asserting the Batson challenge] has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty [in step three] to assess the plausibility of the reason in light of all the evidence with a bearing on it." Giles, 407 S.C. at ---, 754 S.E.2d at 265; *see*, e.g., *id.* at ---, 754 S.E.2d at 262, 265-66 (finding that a defendant's explanation that he "did not feel the [struck] jurors were right for the jury," while "technically, semantically and intellectually racially neutral," would not allow the circuit court to "assess the plausibility of the proffered reason for striking the potential jurors"). State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014).

The Supreme Court observed "[t]he second step of this process does not demand an explanation that is persuasive, or even plausible." *Id.* at 767-68, 115 S.Ct. 1769. At step two, therefore, the proponent of the strike does not carry "any burden of presenting reasonably specific, legitimate explanations for the strikes." Adams, 322 S.C. at 123, 470 S.E.2d at 371. Therefore, "[u]nless a discriminatory intent is inherent" in the explanation provided by the proponent of the strike, "the reason offered will be deemed race neutral" and the trial court must proceed to the third step of the Batson process. Purkett, 514 U.S.

at 768, 115 S.Ct. 1769; *see e.g.*, Payton v. Kears, 329 S.C. 51, 56, 495 S.E.2d 205, 208 (1998) (striking a juror because she was a "redneck" evinces a discriminatory intent and is therefore not facially race-neutral). State v. Cochran, 631 S.E.2d 294, 369 S.C. 308 (S.C. App., 2006). The second step of the test therefore requires a determination of whether discriminatory intent is inherent in the proponent's explanation.

Discriminatory Intent Inherent In The Explanation

Under some circumstances, the explanation given by the proponent may be so fundamentally implausible the trial judge may determine the explanation was mere pretext, even without a showing of disparate treatment. *Id.*; State v. Shuler, 545 S.E.2d 805, 344 S.C. 604 (S.C., 2001). South Carolina courts have found the stated reason for a juror strike facially discriminatory in at least two cases. In Payton v. Kears, 329 S.C. 51, 56, 495 S.E.2d 205, 208 (1998), the court held a peremptory challenge based upon a characterization of the juror as a "redneck" was facially discriminatory, and therefore violative of Batson. In McCrea the court found a solicitor's "uneasiness" over a potential juror's dreadlocks was insufficient to satisfy the race-neutral requirement. Robinson v. Bon Secours St. Francis, 675 S.E.2d 744 (S.C., 2009). Both involved to some degree the application of a racial stereotype.

In the present case the solicitor's stated basis for the strikes of two black jurors was a concern that, living in the same area as some of the witnesses in the case, they might be familiar with those witnesses but not know or recognize their names off hand during the jury selection process. The solicitor's assumption that black jurors might not be aware of the names of their friends, neighbors, or relatives (as opposed to the white juror

seated) is based on a stereotype, and therefore, inherently racial. "Where the stated reason is inherently discriminatory, the inquiry ends and a pretext inquiry is obviated."

McCrea, 380 S.C. at 187, 669 S.E.2d at 335. The state's explanation, that the black jurors [as opposed to the similarly situated white juror seated] might not know the names of their friends, neighbors, and relatives, is inherently racial. No further inquiry should be required to establish a Batson violation, and the Appellant's case reversed.

The Third Step Of The Analysis

The Fundamentally Implausible Explanation

In addition to being inherently discriminatory, the state's explanation for the strike of two African American jurors is fundamentally implausible in light of the totality of the facts. Under some circumstances, the race-neutral explanation given by the proponent may be so fundamentally implausible that the judge may determine, at the third step of the analysis, that the explanation was mere pretext even without a showing of disparate treatment. Purkett, *supra*; Adams, 322 S.C. at 124, at 123, 470 S.E.2d at 372. State v. Cochran, 631 S.E.2d 294, 369 S.C. 308 (S.C. App., 2006); Payton v. Kearse, 495 S.E.2d 205, 329 S.C. 51 (S.C., 1996). Payton v. Kearse, 329 S.C. 51, 495 S.E.2d 205 (1998).

Although not generally required to be even plausible under the second step, an explanation is so lacking as to be "fundamentally implausible" under the totality of the facts and circumstances is unacceptable. In this case, the fundamental implausibility of the state's explanation was obvious in light of the record.

The state the strike of two African American jurors on a concern that they might be familiar with some of the witnesses in the case. The court however had already called

the name of every potential witness in the case and inquired specifically whether any of the venire knew, or were related to, any of the potential witnesses in the case. Indeed, several jurors that responded to the questions were excused for cause. Since the prospective jurors had already indicated during voir dire that they were not related to or knew any of the potential witnesses, the stated basis for the strikes is fundamentally implausible.

Discriminatory intent is inherent in a fundamentally implausible explanation. "Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." Edwards, 384 S.C. at 509, 682 S.E.2d at 822. Under some circumstances, the explanation given by the proponent may be so fundamentally implausible that the trial judge can find the explanation was mere pretext, even without a showing of disparate treatment. Haigler, 334 S.C. at 629, 515 S.E.2d at 91. State v. Stewart (S.C. App., 2015). Given the totality of the facts and circumstances, the state's explanation for its strikes was fundamentally implausible, no further analysis is necessary and reversal is required.

Although not necessary, further analysis makes the Batson violation clearer still.

Different Treatment For Similarly Situated Jurors

Assuming arguendo, that the strikes pass the fundamental implausibility and inherently discriminatory tests, further analysis reveals undeniable discrimination. The opponent of the strike [the defense] must make a bona fide showing that the proponent of the strike [the state] seated a juror who shared nearly every quality with the struck juror other than race to establish pretext. See State v. Jones, 293 S.C. 54, 58, 358 S.E.2d 701,

704 (1987), abrogated on other grounds by State v. Chapman, 317 S.C. 302, 306, 454 S.E.2d 317, 320 (1995); *see also* State v. Heyward, 357 S.C. 577, 580, 594 S.E.2d 168, 169 (Ct.App.2004). State v. Cochran, 631 S.E.2d 294, 369 S.C. 308 (S.C. App., 2006). Even if race neutral on its face, that finding is nevertheless negated by the state's disparate treatment of at least one similarly situated white juror.

Step three of the Batson analysis requires the court to carefully evaluate whether the party asserting the Batson challenge [the defense in this case] has proven racial discrimination by demonstrating that the proffered race-neutral reasons are mere pretext for a discriminatory intent. State v. Green, 655 So. 2d 272, 290 (La. 1995); *see also* Batson, 476 U.S. at 93-94 (stating that the court must consider "the totality of the relevant facts," including both direct and circumstantial evidence). During step three, the party asserting the Batson challenge must point to direct evidence of racial discrimination, such as showing that the opponent struck a juror for a facially neutral reason but did not strike a similarly-situated juror of another race. Edwards, 384 S.C. at 508-09, 682 S.E.2d at 822; *see also* Haigler, 334 S.C. at 629, 515 S.E.2d at 91. In doing so, the party proves that the "originally neutral reason was . . . a pretext because it was not applied in a neutral manner." State v. Oglesby, 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989). State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014); State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). Pretext generally will be established by showing that similarly situated members of another race were seated on the jury. Purkett, *supra*; Adams, 322 S.C. at 124, at 123, 470 S.E.2d at 372. State v. Cochran, 631 S.E.2d 294, 369 S.C. 308 (S.C. App., 2006); Payton v. Kearse, 495 S.E.2d 205, 329 S.C. 51 (S.C., 1996); State v.

Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999). In the present case the solicitor struck three black jurors, two on the basis that they lived in the same area as some of the state's witnesses, yet seated at least one similarly situated white juror.

Although the record shows an uneven application of the state's stated reason for the strikes, the uneven application of a neutral reason does not automatically result in a finding of invidious discrimination if the strike's proponent provides a race-neutral explanation for the inconsistency. See State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995) (finding State provided a racially neutral explanation for why Solicitor did not strike juror with similar characteristics to one previously stricken). Under this prong, persuasiveness of the justification becomes relevant. Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995). At this stage the court is required to conduct an inquiry into any reasoning for the uneven treatment between jurors appearing to be similarly situated. To the extent that the trial court conducted such an inquiry, it did not consider the state's failure to articulate a racially neutral explanation for the uneven treatment between jurors.

Here, the record shows that the trial court deviated from the Purkett-Adams procedure for a Batson motion by failing to conduct a proper analysis of the state's underlying reason for distinguishing between addresses of the jurors, which was the initial explanation given for the strike. Rather than considering the state's failure to articulate a race neutral distinction between the addresses of the jurors, the court instead held that it was bound to find the reason offered "to be deemed race neutral" under Tucker and Payton. Although correct as to the court's initial analysis, this was a

misstatement of the analysis required once the strikes were shown to have been applied in an uneven manner. Under Batson, only if the proponent of the strike articulates a valid reason can the uneven treatment between jurors be affirmed. The analysis contemplates the proponent of the strike providing an explanation where strikes are shown to be unevenly applied. It is at this stage of step three of the analysis that the "persuasiveness of the justification becomes relevant." Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995); State v. Edwards, 649 S.E.2d 112, 374 S.C. 543 (S.C. App., 2007). If the proponent of the strike fails to provide a valid explanation, then the uneven treatment negates the otherwise race neutral explanation, and strike fails the third step of the test.

The State's Failure to Explain the Uneven Application of Reason

Here the solicitor failed to give any explanation underlying why she had a problem seating African American jurors that might live near some of the witnesses but not a white juror that lived in the same area. Although claiming that she had concerns about some addresses but not others, the solicitor specifically stated that she was unfamiliar with the area: "I don't know the geography of Greenville County with enough sophistication to appreciate the minor details of the community the basis of my strike, Judge." R. 66, 11, 7-9. The solicitor's response clearly failed to explain why one address, the purported basis of the strike, was any more or less problematical than the other. Having shown unequal treatment of similarly-situated jurors in this case, the state was required to provide an explanation to allow the court to make a determination as to the neutrality of the reason. The state's failure to adequately explain with sufficient clarity to

allow judicial review of the reasons for distinguishing between the addresses negates any otherwise race neutral basis given for the strikes. *See State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (S.C. App., 1996) (where defense counsel cited demeanor, an otherwise valid basis for a strike, but failed to point out any specific examples of why he disliked the juror's demeanor.) As in *Easler*, the state has failed to point out any specific reason of why she disliked the addresses of the two African American jurors' she struck over that of the white juror she seated.

Here the state's failure to articulate any difference between the addresses prevented the defense from demonstrating that the explanation was pretextual. "The explanation must only be "clear and reasonably specific such that the [party asserting the Batson challenge] has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty [in step three] to assess the plausibility of the reason in light of all the evidence with a bearing on it." *Giles*, 407 S.C. at 21-22, 754 S.E.2d at 265; *see, e.g., id.* at 17, 23, 754 S.E.2d at 262, 265-66 (finding that a defendant's explanation that he "did not feel the [struck] jurors were right for the jury," while "technically, semantically and intellectually racially neutral," would not allow the circuit court to " assess the plausibility of the proffered reason for striking the potential jurors")." *State v. Inman*, 409 S.C. 19, 760 S.E.2d 105 (S.C., 2014). Here the state failed to allow the trial court, or this Court on review, to assess the plausibility of the proffered reason for striking the African American jurors but not the similarly situated white juror. This negated the stated basis for the strikes.

In *State v. Oblesby* the court stated: "The reason given for striking the black male

was sufficiently neutral to withstand the Batson inquiry. The reason given for striking the black females was also neutral. The solicitor negated his reason, however, when he seated a white female juror who was also a patient of the doctor." State v. Oglesby, 379 S.E.2d 891, 298 S.C. 279 (S.C., 1989). Even if the stated basis for the strikes of the African American jurors in the present case appeared otherwise neutral, any validity is negated by the unexplained disparate treatment of at least one similarly situated white juror.

Similarly, in State v. Stewart, 288 S.C. 232, 341 S.E.2d 789 (1986), although the State offered a racially-neutral explanation for striking African American jurors, the court held that it negated the reason by seating similarly-situated Caucasian jurors. See Miller-El v. Dretke, 545 U.S. 231, 241 (2005) ("If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at Batson's third step."); State v. Oglesby, 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989) (finding the solicitor negated his neutral reason when he seated a white female juror who was similarly situated); *id.* ("In this case, an examination of the circumstances shows that the solicitor's originally neutral reason was proven to be a pretext because it was not applied in a neutral manner."). Based on the disparate treatment of white jurors, the strikes in Stewart were held impermissible.

The determination of whether the minimum quantum of evidence has been produced under this prong is flexible, for the trial court's ruling turns on an examination of the totality of the facts and circumstances in the record, including the credibility and demeanor of the strike's proponent, and the plausibility of a neutral, but otherwise

unpersuasive, reason. Casey, 325 S.C. at 452, 481 S.E.2d at 172. In deciding whether the opponent of a strike has carried the burden of persuasion, a court must undertake a sensitive inquiry into the circumstantial and direct evidence of intent. Haigler, 334 S.C. at 629, 515 S.E.2d at 91. A strike must be examined in light of the circumstances under which it is exercised, including an examination of the explanations offered for other strikes. *Id.*; State v. Cochran, 631 S.E.2d 294, 369 S.C. 308 (S.C. App., 2006). Here the trial court failed to conduct the proper totality analysis or consider all of the relevant facts in record.

An examination of the facts and circumstances in the present case shows that the solicitor's stated basis, even if originally appearing neutral was proven to be a pretext because it was not applied in a neutral manner. *See* State v. Oglesby, 379 S.E.2d 891, 298 S.C. 279 (S.C., 1989); Garrett v. Morris, 815 F.2d 509 (8th Cir.1987) *cert. denied*, --- U.S. ---, 108 S.Ct. 233, 98 L.Ed.2d 191 (1987) (prosecutor's asserted reason for excluding black prospective jurors was a pretext for racial discrimination in light of prosecutor's decision not to strike white jurors who differed in no significant way from black jurors who were excused). The same was true in Oglesby where the solicitor was adamant in his articulation of his reason for striking the black females, yet he did not strike a white female with the same characteristic. There the court said: "If the State were allowed to prevail despite the application of such blatantly inconsistent standards, Batson would be left without substance. Accordingly, appellant's conviction is reversed and this case is remanded for a new trial." State v. Oglesby, 379 S.E.2d 891, 298 S.C. 279 (S.C., 1989).

Here the court failed to consider the state's failure to articulate any basis for distinguishing between the addresses of jurors, the purported basis of the strikes. Step three of the analysis requires the trial court to carefully evaluate whether the party asserting the Batson challenge has proven racial discrimination by demonstrating that the proffered race-neutral reasons are mere pretext for a discriminatory intent. State v. Green, 655 So.2d 272, 290 (La.1995); *see also* Batson, 476 U.S. at 93-94, 106 S.Ct. 1712 (stating that the court must consider "the totality of the relevant facts," including both direct and circumstantial evidence). During step three, the party asserting the Batson challenge should point to direct evidence of racial discrimination, such as showing that the opponent struck a juror for a facially neutral reason but did not strike a similarly-situated juror of another race. Edwards, 384 S.C. at 508-09, 682 S.E.2d at 822; *see also* Haigler, 334 S.C. at 629, 515 S.E.2d at 91. In doing so, the party proves that the "originally neutral reason was ... a pretext because it was not applied in a neutral manner." State v. Oglesby, 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989). State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (S.C., 2014). Here the defense established the pretextual nature of the state's strikes by showing uneven treatment between similarly situated jurors.

The state was provided the opportunity yet failed to provide a race neutral reason for the uneven treatment of similarly situated jurors. The solicitor's strikes were based solely on where the jurors resided. One African American juror was struck because she lived in Piedmont. A white juror that lived in Piedmont was seated. When challenged, the solicitor could not identify any difference between the two jurors or their residences. The only difference discernable from the record was that juror that was struck was African

American and the other that was seated was white. "Once it is found that the exercise of even one peremptory challenge is racially motivated, this in and of itself gives rise to an inference of discriminatory purpose and violates the mandates of Batson, which explicitly prohibits the State from exercising strikes in a racially discriminatory manner. To hold otherwise, I believe, completely guts the notion of pretext, and offends the policies underlying Batson. *Id.* at 299-300, 460 S.E.2d at 421." Payton v. Kearse, 495 S.E.2d 205, 329 S.C. 51 (S.C. 1996).

The state gave no basis, much less a racially neutral one, for the disparate treatment between races. The record shows that the strikes were discriminatory, and therefore in violation of Batson v. Kentucky and its progeny. Based on the record, the trial court erred in denying the defense's Batson motion. "When the opponent of the strike proves the proponent of the strike practiced purposeful racial discrimination, the trial court must quash the entire jury panel and initiate another jury selection *de novo*. See State v. Jones, 293 S.C. 54, 58, 358 S.E.2d 701, 704 (1987), *abrogated on other grounds* by State v. Chapman, 317 S.C. 302, 306, 454 S.E.2d 317, 320 (1995); *see also* State v. Heyward, 357 S.C. 577, 580, 594 S.E.2d 168, 169 (Ct.App.2004)." State v. Cochran, 631 S.E.2d 294, 369 S.C. 308 (S.C. App., 2006). The trial court therefore committed reversible error in denying the defense's Batson motion.

II. The trial court erred in allowing testimony by the State's witnesses using the term "gang" in reference to Appellant's case where the solicitor failed to lay the proper foundation that Appellant was a gang member, the reference was inflammatory and unduly prejudicial under Rule 403, SCRE, and the reference constituted improper character evidence under Rule 404, SCRE.

Contrary to the solicitor's proffer to the Court during the motion in limine hearing, none of the victims in this case gave testimony identifying the co-defendants as being involved with a gang, much less a specific gang called Folk Nation, the G's, or Gangster Disciples. R. 70, ll. 8-22. Nonetheless, the solicitor was allowed to call Investigators Brown and Whitlock, who testified that they consulted on this case due to suspected gang involvement. R. 475, l. 19 - 508, l. 21. Further, over the defense's objection, Investigator Brown was allowed to testify regarding alleged gang signs shown in photographs of some of the co-defendants and specifically alleged that they were part of the Folk Nation. R. 475, l. 13 - 512, l. 12; *see argument infra*, Issue II. The defense argued that the solicitor failed to lay the proper foundation for the testimony, that the gang reference was inflammatory and prejudicial, and that the gang reference was improper character evidence. R. 70, l. 8 - 71, l. 22; R. 93, l. 20 - 104, l. 13; R. 472, l. 7 - 473, l. 23; R. 479, ll. 19-23; R. 481, l. 9-17; R. 506, ll. 1-23.

The Gang Prevention Act at S.C. Code § 16-8-230 (2), provides that "criminal gang" means "a formal or informal ongoing organization, association, or group that consists of five or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity." Defense counsel argued that the solicitor had not charged any of the defendants with being a member of a gang. The solicitor told the Court that because the defendants were

not charged under the Act, she was not required to present evidence that they met the statutory definition of a "criminal gang." She specifically stated that she was "not alleging that this group of defendants participated in a pattern of criminal gang activity." R. 98, ll. 1 - R. 99, ll. 25. Therefore, the solicitor conceded the defendants were not a criminal gang, or at the very least that she could not prove that they were a criminal gang.

Yet, in her closing argument, the solicitor made reference to the "photos" that Investigator Brown had described as showing hand signs that were associated with gangs and especially the Folk Nation. Investigator Brown had identified some of the defendants as exhibiting these signs in the "photos." R. 696, l. 19 - 697, l. 3; R. 709, ll. 8-14; R. 500, l. 1 - 506, l. 23. The solicitor also argued for the jury to consider the pressure being exerted on the State's witness, Larry Johnson, at the jail. She reminded the jury that he testified that he was threatened to recant his statement or he would be "x-ed" out. He was told "either you are with us or against us." R. 704, ll. 7-15. The solicitor also reminded the jury of Shaquille Hogan's testimony when he said he had to give his .380 gun to Tavarus. He had to do what Tavarus told him because he's "got that power." R. 703, ll. 11-23. Although the solicitor did not use the word "gang," these references were clearly gang related.

Failure to Lay Proper Foundation for Gang Evidence

Prior to Investigator taking the stand, none of the solicitor's first twenty-five witnesses made any mention of the co-defendants' involvement with a gang. Even so, Investigator Brown was allowed to testify that he was a gang investigator assigned to the FBI task force and that his responsibilities were to "maintain all gang intelligence

throughout Greenville County area, be responsible for knowing all players involved, all entities thereof throughout the county involving everything from A to Z as long as it pertains to gangs and violent crimes." He was called to determine if anything he knew "as gang investigator" could further the investigation. R. 476, l. 2 - 477, l. 14. He testified:

While talking to several of the witnesses what we were able to get out of some of them was that there had been an altercation at another location and during that altercation, them Folk Boys, as they kept referring to them were involved. They further stated they were all wearing black, they all showed up together, they were an organized group and we continued to hear the name possibly of Mikey.

R. 478, ll. 4-13. There was no clarification of who Investigator Brown was referring to when he mentioned "several witnesses," and due to the lack of any mention of gangs by the solicitor's earlier witnesses, it was not obvious from the record either. Investigator Brown also pointed to "gang signs" that he recognized in photographs of some of the co-defendants. *See argument infra*, Issue II. He went so far as to say the hand signs in the photo were those of the Folk Nation gang. R. 500, ll. 1 - Tr. 506, ll. 23.

The only witness to mention gangs other than the investigators was Larry Johnson. He mentioned on cross-examination that the investigator he spoke with was trying "to find out if it was gang related or anything like that," though he later said that he did not know he was talked to a gang investigator but was told that he would be facing thirty years if it was gang related. R. 580, ll. 8-9; R. 592, l. 25 - 593, l. 7. It was not until redirect that any of Johnson's testimony even implied his own association with a gang. He said that he recanted his prior statement because of a threat to him by "more of the people from the gang" who were in the dorm with him. R. 594, l. 25 - 596, l. 11.

Although testifying that Young made a statement that "you either with us or against us," he did not expressly state Young's involvement in any gang. This scant testimony still failed to provide even a post hoc foundation for the earlier gang testimony.

Improper Character Evidence

"Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged." State v. Brown, 344 S.C. 70, 73, 543 S.E.2d 552, 553 (2001); see Rule 404, SCRE. Rule 404(a), SCRE, provides that "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." An exception applies to the character of the accused if "a pertinent trait of character offered by an accused, or by the prosecution to rebut the same."

Here, the defendants made no attempt to introduce evidence of their good character so as to open the door to bad character evidence from the solicitor. See State v. Council, 335 S.C. 1, 12 n.6, 515 S.E. 2d 508, 514 n.6 (1999) (noting that "[a]n accused must introduce evidence of his character at trial before the prosecution can attack it" and where "appellant never testified or offered other evidence of his good character, his character was never an issue."). Thus, the gang evidence was improper character evidence under Rule 404(a), SCRE.

Probative Value Substantially Outweighed by Unfair Prejudice

Pursuant to Rule 404(b), SCRE, evidence of other crimes wrongs or acts may be admissible "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Under the *res gestae* theory, "evidence of

other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred." State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 106, 610 S.E.2d 494, 501 (2005).

However, evidence considered for admission under the res gestae theory must satisfy the requirements of Rule 403 of the South Carolina Rules of Evidence. State v. Dennis, 402 S.C. 627, 742 S.C. 627 (2013). Rule 403, SCRE, provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct.App.1998) (quotation marks and citations omitted).

In State v. Sobers, 404 S.C. 263, 744 S.E.2d 588 (Ct. App. 2013), the judge correctly found that evidence suggesting gang associations of murder victim and witnesses were irrelevant. Sobers, who was in his car, watched a fight between the victim and another young man in the midst of a crowd of people. He claimed that he fired shots when one of the young men approached his car and tried to start a fight. This was due to comments Sobers made about the man's sister. Sobers testified that the crowd swarmed his car and he fired shots. One bullet hit the victim in the back of his head as he sat in the back of another car.

Defense counsel in Sobers wanted to admit evidence of gang activity of the victim

and witnesses because it went to the motive of self-defense. The defense had pictures from Facebook showing the victim and witnesses flashing gang signs. The trial court found that Sobers failed to show any relevance of gang associations to the shooting. Four of the witnesses even admitted they were making gang signs in the photographs but denied being in a gang. They were just being together like "family" in the picture. The solicitor argued that witnesses testified they were in a gang, and if they were, there was no evidence of a connection between gang activity and the shooting.

The present case is very similar to Sobers except that it was the solicitor that wanted to admit the evidence here. Here too, even if the allegation of gang involvement were true, it was not proven to be a part of the incident. Co-defendant Larry Johnson testified that their friends "Bram-Bram" and Brandon ("Black") had been shot during an earlier incident at the Red Planet club. It was the individuals who shot Bram-Bram that Young allegedly saw at the Lil Cricket, prompting the attack. R. 551, l. 2 - 573, l. 12. There was no testimony that "Bram-Bram" or "Black" were affiliated with any gang. As noted *supra*, Johnson's only references to gang, at most, only imply involvement of a gang involving events after the incident. R. 580, ll. 8-9; R. 592, l. 25 - 593, l. 7; R. 594, l. 25 - 596, l. 11. Johnson, however, never expressly stated Young's gang affiliation and still failed to make any connection between the gang and the incident itself. Even in the solicitor's closing argument, she theorized that the shooting was retaliation for "*their friends* Brandon Edwards and Brandon Davis getting shot." R. 678, ll. 4-6; R. 706, ll. 12-16 (*emphasis added*). Thus, there was little or no probative value to the gang related evidence.

The admission of any evidence relating to gangs was unduly prejudicial to the Appellant. The word "gang" was inflammatory to the jury and prevented Young and his co-defendants from receiving a fair trial. See Clemons v. Walls, 202 F. Supp. 2d 767 (N.D. Ill. 2002), reversed on other grounds by, Clemons v. McAdory, 58 Fed.Appx. 657 (7th Cir. 2003) ("With regard to gang evidence, the Seventh Circuit has long recognized the substantial risk of unfair prejudice attached to such evidence, noting that evidence of gang membership is likely to be damaging to a defendant in the eyes of the jury and that gangs suffer from poor public relations. The Court of Appeals added that gangs generally arouse negative connotations and often invoke images of criminal activity and deviant behavior. There is therefore always the possibility that a jury will attach a propensity for committing crimes to defendants who are affiliated with gangs or that a jury's negative feelings toward gangs will influence its verdict. Consequently, while acknowledging that-under appropriate circumstances-gang membership and gang activity evidence has probative value that can outweigh claims of unfair prejudice, the Seventh Circuit demands careful consideration by district courts in determining the admissibility of such evidence." (internal quotations and citations omitted)).

The trial judge failed to appreciate why a reference to gangs was prejudicial, stating that "there's a lot of stuff that comes out in criminal cases that's prejudicial." The judge even cited the "dictionary.com" definition of gang, stating:

The definition of a gang, 'A group or band, a gang of boys gathered around the winning pitcher; a group of youngsters, adolescents who associate closely often exclusively for social reasons; a group of people with compatible tastes or mutual interests who gather together for social reasons. I'm throwing a party for the gang I bowl with.' For all of the negative connotations that you all want to associate with

that word. The fifth definition down on the list is, 'A group of persons associated for some criminal or other anti-social purpose.'

R. 71, ll. 15-18; R. 97, ll. 15-24. Respectfully, this response from the trial judge indicates that the trial judge had not properly weighed the prejudicial effect of "gang" related testimony, especially given the seriousness of the charges against the co-defendants. The trial judge's failure to recognize the obvious prejudice of the reference to the co-defendant's as being members of a gang was error.

The only purpose of presenting evidence of the co-defendant's gang involvement was to appeal to the passions and fears of the jury. The solicitor's argument that the gang evidence was essential to prove the elements of assault and battery by mob is without merit. S.C. Code Ann. § 16-3-210(a) defines a "mob" as "the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another."

Whether the acts were premeditated does not rise or fall on whether these co-defendants were members of a gang. The solicitor presented evidence that the co-defendants all went to the Red Planet club earlier in the evening and video footage of at least some of them together at Waffle House later that evening. Additionally, she presented testimony of some of the co-defendants, who explained that they and their co-defendants saw the victims at the Lil Cricket, made a U-turn and went back to Club 864, and then proceeded back to the Lil Cricket and shot the victims. The gang evidence was never tied to the specific incident or the concept of premeditation. Thus, the gang evidence was an attempt to pile on prejudicial evidence that was not probative of the alleged crimes.

Therefore, the trial court erred in admitting the gang related evidence because the solicitor failed to lay the proper foundation for its admission, the evidence constituted improper character evidence, and the evidence's probative value was substantially outweighed by the danger of prejudice.

III. The trial court erred in admitting photographs of the co-defendants allegedly making "gang signs" where the solicitor failed to lay the proper foundation for their admission, they were not relevant to the facts at issue in the case, and they were unduly prejudicial.

On redirect of Investigator Brown, the solicitor asked him to identify several photographs. The sole purpose of the photographs was to serve as impermissibly spurious corroboration of the defendants' gang affiliation. Investigator Brown testified that he received the photographs during the course of his investigation "several days after the initial incident occurred." He testified that hand signs, which was one of the most popular ways to identify a gang member, in the photographs were those of the Folk Nation and Gangster Disciples.

In one of the photographs, taken outside of a restaurant in downtown Greenville, Investigator Brown claimed that the individuals were "throwing [what] was known as a three point crown and that was very specifically [sic] to the Folk Nation." He identified co-defendants Hogan, Booker, and Williams in the photograph and recognized the other two individuals but could not recall their names. R. 499, l. 14 - R. 502, l. 14; State's Ex. 51, photograph (on file with this Court). In a second photograph, Investigator Brown noted the use of the three point crown and "L" symbol. He identified Young in the

photograph and said that Holmes and Booker were also possibly in the photograph. R. 503, l. 2 - 504, l. 10; State's Ex. 54, photograph (on file with this Court). On cross-examination, Investigator Brown admitted that none of the co-defendants were displaying gang signs in the photograph that was actually taken at the Red Planet club earlier that night. R. 504, ll. 13-20.

Following the testimony and outside of the presence of the jury, the trial judge allowed the defense attorneys to place their objection to the photographs on the record, which was previously discussed at a bench conference. Defense attorney Chambers argued that no foundation was laid for the admission of the photographs and that they are not relevant to an issue in the case. He noted that no information was provided as to when or where they were taken. Counsel Abdalla for Young added that the photographs were unduly prejudicial as gang evidence. The judge indicated that he overruled the objection and was told that the photographs came off of co-defendant Young's cell phone. R. 506, ll. 1-24.

In her closing argument, the solicitor made reference to the "photos" that Investigator Brown had described as showing hand signs that were associated with gangs and especially the Folk Nation. R. 696, l. 19 - 697, l. 3; R. 709, ll. 8-14.

Rule 901(a), SCORE, provides: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." In the present case, the only question asked of Investigator Brown with respect to authentication was whether he received the photographs in his investigation. According to the judge, the photographs

were obtained from Young's cell phone, yet no records were produced by the solicitor to verify that claim or indicate when the photographs were taken. Further, the jury was given no information as to how and where the photographs were obtained in order to determine what weight to give them.

In addition to the lack of authentication, the photographs were irrelevant and unduly prejudicial. The solicitor had ample other evidence to show that the co-defendants were together on the night of the incident. Thus, the only purpose of the photographs was to establish the co-defendants' gang association. As argued *supra*, admission of gang related evidence was improper.

IV. The trial court erred where he coerced co-defendant DaQuan Bruster to testify for the State by threatening to vacate his guilty plea such that he would be facing life without parole (LWOP) because the judge found that Bruster's first testimony violated the plea agreement.

The trial judge's actions in threatening to vacate, and in one instance actually vacating, those co-defendant's guilty pleas who did not testify as the solicitor anticipated was improper. While the Court framed its ruling in the context of upholding the administration of justice by preventing perjury or allowing an invalid guilty plea, the Court's actions instead amounted to enforcement of a portion of plea negotiations that never existed. *See State v. Stanley*, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005) (holding that a judge has the responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of justice). The plea transcript mentions no requirement that Bruster testify for the State and he repeatedly stated that he did not

understand that he had to testify against the co-defendants and was specifically advised by his attorney that he did not have to do so. R. 11, l. 24 - 18, l. 19. Even the solicitor's comments imply that there was no requirement to provide testimony as a part of the plea. R. 650, ll. 5-17.

In People v. Manchilla, 620 N.E. 2d 1163 (Ill. App. Ct. 1993), the Appellate Court reversed Manchilla's conviction for aggravated criminal sexual assault because the prosecutor violated Manchilla's right to present witnesses by intimidating the witness with repeated statements concerning perjury and immigration status. The Illinois Appellate Court wrote that a fundamental element of due process is the right of an accused to present witnesses but that right was violated if the state or court exerted improper influence on defense witnesses causing them not to testify.

The United States Supreme Court in Webb v. Texas, 409 U.S. 95, 98 (1972), reversed the defendant's conviction because the trial judge drove a prospective defense witness from the stand by telling him that if he lied he could be prosecuted, and convicted for perjury, and have to serve more time. In another Illinois case, People v. King, 593 N.E.2d 694 (Ill. App. Ct. 1993), the Appellate Court reversed the defendant's conviction where the circuit judge drove a prospective defense witness from the stand by threatening to revoke an earlier plea bargain made before that court if it believed the witness was lying. The Illinois Supreme Court affirmed the reversal. People v. King, 608 N.E.2d 877 (Ill. 1993). These same principles that prohibit influence aimed to keep defense witnesses from testifying should apply to influences aimed at forcing State's witnesses to testify against

In State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005), the South Carolina Court of Appeals held that giving false testimony at trial constituted the felony of perjury and subjected the person to a fine or imprisonment. The trial witness in Stanley contradicted his prior statement to police during his trial testimony and was guilty of perjury if the information to police was false and if it was true, then his trial testimony was perjury. The trial judge warned the witness of perjury and ordered the witness to jail after dismissing the jury. The witness was allowed to consult with his attorney and testify again. The court found that all courts have the power to punish for contempt which was essential in judicial proceedings and to the due administration of justice. The court wrote that a judge has the responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of justice.

The facts of Stanley are distinguishable from the present case where the problem was not perjury, but rather enforcement of the purported terms of the State's plea agreement. Here, Bruster indicated that he was under the impression that providing testimony against the co-defendants was not a requirement of his plea agreement. The trial judge did not safeguard the Appellant's right to due process and a fair trial when the judge coerced the witness to testify a second time by threatening to vacate the witness's plea such that he would face the possibility of LWOP. It was prejudicial to the Appellants to coerce the witness to testify **a second time** and certainly implied the Court's dissatisfaction with his earlier testimony as a hostile witness.

- V. **The trial court erred in failing to excuse the two jurors who engaged in misconduct and declare a mistrial where jurors from this trial were overheard by a juror in another case talking in the restroom during the lunch break about Appellant's case, saying such things as "the need to decode the language", "I was chillin," and "he's going down," followed by laughter.**

Were it not for the honesty of a juror serving in another case, the defense may have never learned of the premature jury deliberations that took place in his trial. The trial court was alerted to the misconduct after the solicitor presented her fifth of thirty-seven witnesses. While the trial judge in this case seemed to think that a clear definition of "deliberations" needs to be promulgated by the appellate courts, it was obvious from the allegations in this case that at least some of the jurors were discussing more than just the demeanor of the witnesses. That in of itself comes close to discussions of witness credibility, an essential part of deliberations. The comment "he's going down" certainly implies that the juror or jurors intended to find at least one of the defendant's guilty. Thus, the trial court's finding that the jurors had not engaged in any deliberation was erroneous. Their deliberations did affect fundamental fairness, as they not only indicate a premature discussion in the case but a premature decision in the case against the defendants.

Trial counsel argued:

Your Honor was nice enough to note for the record we had that bench conference and I know you've heard most of this but for the record, my motion is to **remove the two jurors that are alleged to have been involved in the activities specified in the note.** That would then , unfortunately , leave us with 11 jurors and so you would have to declare a mistrial. That would be the second part of my motion.

The basis of it is that Your Honor charged the jury as part of his instructions and

has consistently charged the jury every time we've taken a break not to discuss the case at all. Your Honor has not said don't discuss the facts but you can discuss some other part of the case. So clearly these jurors have violated the oath that they took at the beginning of the case as a part of which following your instructions.

R. 194, ll. 11 - 195, ll. 5. The other attorneys joined in the motion. R. 196, ll. 1-21.

"Deliberate" is defined in Black's Law Dictionary 294 (6th ed. 1991), as "to weigh in the mind, discuss, to consider the reasons for and against, etc." In State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), the Supreme Court held that premature deliberations could affect fundamental fairness of a trial such that the trial court could inquire into such allegations. The Court set forth the following suggested procedures to follow if an allegation of premature jury deliberations arose during a trial:

[T]he trial court should conduct a hearing to ascertain if, in fact, such premature deliberations occurred, and if the deliberations were prejudicial. If requested by the moving party, the court may voir dire the jurors and, if practicable, "tailor a cautionary instruction to correct the ascertained damage." United States v. Resko, 3 F.3d at 695. If the trial court determines the deliberations were prejudicial, such findings should be set forth on the record, and a new trial ordered.

333 S.C. at 315, 509 S.E.2d at 815.

The trial court attempted to follow this procedure in this case by conducting voir dire of all of the jurors. However, the judge did not allow any information to be put on the record regarding the allegation of misconduct other than the note written by the juror who overheard them. See Court's Exhibit 3, Juror Note (on file with this Court). The court also failed to inquire about the specific allegation of misconduct, instead just posing a general question to the jurors regarding whether there have been some discussion about the facts of the case. R. 198, l. 7 - 232, l. 11; R. 215, ll. 3-18. While the jurors in this case all claimed that they remained fair and impartial, it is difficult to fathom in what

circumstance a sworn juror would say otherwise. This is even more so where there is credible evidence that jurors previously failed to abide by the Court's instructions not to discuss the case.

In State v. Carmack, 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010), the Court of Appeals ruled that premature jury deliberations may amount to misconduct that could affect fundamental fairness. Notably, in Carmack the juror was asked about the specific allegation that he had discussed the case with his girlfriend and denied it. Further, the information relayed to defense counsel in that case was that the juror's girlfriend told her employer "It's [a] cut and dry case. Everyone knows he did it." Thus, not even the extrinsic evidence of the alleged misconduct actually implicated the juror. This case is distinguishable because the allegation did implicate misconduct on the part of the jurors and the judge failed to question the jurors about the specific misconduct alleged, i.e. the bathroom conversation.

Even the general questioning by the judge elicited some of the following:

Court: Are you aware of any discussion about this case that has gone on either in the jury room or anywhere else? Do you know of any?

Juror Harper: I would say, yes. Not anything substantive but I would say that there hasn't been a group thing.

Court: Can you tell me what has been talked about?

Juror Harper: Probably at least what I'm aware of in the context of **almost sadness over some of the things we've heard.**

R. 198, ll. 4-22.

Court: I am calling each juror out individually to determine whether or not y'all have heard some discussion. Anything along those lines?

Juror Ferguson: There was some discussion yesterday after the initial charges were made as to how long this might take and that kind of thing. And then there has been -I'm trying to think--- some natural curiosity I think. There's been some discussion I think of the behavior of some people who have taken the stand that kind of thing. I don't think there's been any conclusions drawn. Does that make sense?

R. 200, ll. 6-24.

Court: It has come to light that there may have been some discussion or talk about the case among our jury. Have you been privy to any of that or heard any of that?

Juror Tutiven: Not specifics. Nobody has shared opinions. We have discussed or asked questions about names ... It's just been kind of a reflection on different facts.

Court: When you say facts, what do you mean?

Juror Tutiven: names and how many people we've listened to so far and how many witnesses we've had, sort of generic.

R. 207, ll. 4-24.

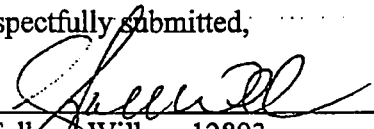
The testimony from the questioned jurors indicated that they were discussing the case which met the definition of to "deliberate." One of the trial attorneys argued that no witness had said anything about someone "going down." This language indicated that at least one of the jurors had already made a decision before the case went to the jury, and was discussing her decision with another juror. This was the only conversation overheard, but based on the juror's responses, there was a reasonable probability that other conversations were held about the case prematurely. Even the solicitor expressed concern over the retention of Juror Whittenberg, who denied having any discussions about the case despite being one of the jurors overheard in the bathroom. R. 216, ll. 8-13; *see* R. 203, l. 19 - 204, l. 25.

Appellants were denied a fair trial because the record made it clear that the jurors were discussing the case in spite of the judge's instructions. Moreover, it was apparent from the discussion that was overheard that at least some of the jurors had made a decision regarding guilt or innocence prior well before the conclusion of the case. Therefore, the trial judge erred in failing to declare a mistrial.

CONCLUSION

For the reasons set forth herein, Appellant Raymond Young respectfully requests this Court to reverse his convictions and remand for new trial.

Respectfully submitted,



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January 19, 2017.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2013-000149

THE STATE, ...RESPONDENT,

v.

RAYMOND LEWIS YOUNG, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly denied Young's Batson motion where he failed to carry his burden of showing the State's race-neutral explanations for striking three African-American jurors was mere pretext to engage in purposeful racial discrimination and where the only arguably problematic strike was harmless because it was used to strike a potential alternate and the use of alternates was not necessary during the trial.
2. Whether the trial court properly admitted testimony from gang Investigator Brown where: (1) it was relevant to explain the arc of the police investigation; (2) he never directly testified Young was in a gang and therefore did not offer character evidence for purposes of rule 404, SCRE; (3) to the extent his testimony may have suggested Young was part of a gang it was nevertheless relevant as part of the res gestae of the crime and as proof of identity, intent, and motive; and (4) the probative value of the testimony outweighed any danger of unfair prejudice for purposes of Rule 403, SCRE.
3. Whether the trial court properly admitted several photographs of the codefendants flashing gang signs where: (1) the photos were cumulative to a photograph from Young's Facebook page titled "The Family" which included Williams, Booker, and Young, and which was admitted without objection; (2) Young failed to object when Booker opened the door to their admission by cross-examining Investigator Brown on the alleged display of "gang signs" in a photo of the victims; (3) they were sufficiently authenticated by evidence presented at trial; (4) they were relevant as part of the res gestae of the crime and as proof of identity, intent, and motive; and (5) their probative value outweighed any danger of unfair prejudice.
4. Whether the trial court's warning to codefendant DaQuan Bruster, who was called as a witness by the State, that his failure to testify as to the same facts he admitted in his earlier guilty plea would constitute a breach of his plea agreement and would result in the court vacating the plea and allowing the State to proceed with the original charges, was not coercive and did not infringe upon Young's right to due process and a fair trial.
5. Whether the trial court properly denied Young's motion to excuse two jurors and declare a mistrial due to juror misconduct where in direct compliance with Aldret, the trial judge followed the precise procedure suggested by our Supreme Court as soon as he learned of the alleged juror misconduct and through voir dire determined Young had suffered no prejudice.

STATEMENT OF THE CASE

Appellant, **Raymond Lewis Young (Young) (a/k/a “Lil Ray” & “Randy”)**,¹ was indicted at the May 2012 term of the grand jury for Greenville County for one (1) count of second-degree assault and battery by mob (2012-GS-23-3841A), one (1) count of possession of a weapon during the commission of a violent crime, one (1) count of conspiracy, and seven (7) counts of attempted murder (2012-GS-23-7941 to -7947).² He was represented by John Abdalla, Esquire, of the Greenville County Bar. Respondent (the State) was represented by Assistant Solicitor Katrina Salisbury of the Thirteenth Circuit Solicitor’s Office. On January 7-11, 2013, Young and three of his eight codefendants, **Michael A. Williams (Williams) (a/k/a “Mikey”)**, **Esaiveus Frantrez Booker (Booker) (a/k/a “Trez”)** and **Kinjta K. Sadler (Sadler) (a/k/a “Ken”)**, proceeded to a joint trial by jury pursuant to which all four were found guilty of the seven counts of attempted murder and the single count of second-degree assault and battery by mob. Young was also found guilty of conspiracy but was found not guilty of possession of a weapon during the commission of a violent crime. As explained below, the other four codefendants not tried entered pleas to various charges prior to trial. Young was sentenced by the Honorable Edward W. Miller to thirty (30) years’ concurrent imprisonment for each count of attempted murder (2011-GS-23-8012 to -8018), five (5) years’ concurrent imprisonment for conspiracy (2011-GS-23-8011), and ten (10) years’ consecutive imprisonment suspended upon the service of five (5) years’ probation for second-degree assault and battery by a mob (2012-GS-23-3838A). (R. 837-865). He timely filed a notice of intent to appeal his convictions and

¹ Nearly all of the codefendants, victims, and other fact witnesses have nicknames that were used throughout the trial. To the extent possible, the State has noted those nicknames in parentheses when each individual’s name is first used in the Statement of Facts.

² Five codefendants, Raymond Lewis Young, Michael Antonio Williams, Kinjta Kadeem Sadler, Daquan Bruster, and Tavarus Holmes, were similarly indicted, and two codefendants, Shaquille Hogan and Larry Johnson, were indicted for only second-degree assault and battery by a mob and conspiracy.

sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

As explained in the solicitor's opening statement, in the early morning hours of July 17, 2011, a group of friends were hanging out in the parking lot of the Lil' Cricket (LC) gas station on Whitehorse Road in Greenville County. They gathered at the LC after a trip to the hospital where they had visited a friend who was shot earlier that night during a fight at the nearby Red Planet (RP) nightclub. Unbeknownst to the friends, eight young men had devised a plan to retaliate for the fight at the RP. Booker, his three codefendants at trial, and four other codefendants, parked behind the LC, approached the gas station on foot, and opened fire. Seven people were hit as the victims ducked and ran for cover during the attack. (R.p.105-p.112).

Guilty Pleas

Before the commencement of the trial, four of the eight original codefendants entered guilty pleas to charges associated with the shooting. **Shaquille Hogan (Hogan) (a/k/a "Lipz")** pled guilty to second-degree assault and battery by mob and conspiracy. He agreed with the solicitor's recitation of the facts and said the previous statement he had given to police, wherein he described how the attack was planned and carried out, was true. Hogan named the other codefendants who participated in the attack including Young, Booker, and Sadler, and specifically identified Williams as one of the shooters. (R.p.5-p.11). **Daquan Bruster (Bruster) (a/k/a "Buddha")** pled guilty to seven (7) counts of attempted murder, one (1) count of possession of a weapon during the commission of a violent crime, and one (1) count of conspiracy. He agreed that the facts recited by the solicitor were true, including the fact that he carried a handgun to the scene and opened fire along with five other codefendants. The solicitor noted the State had agreed to withdraw notice of intent to seek life without parole as part of

Bruster's plea. (R.p.11-p.18). **Larry Johnson (Johnson)** pled guilty to second-degree assault and battery by mob and conspiracy. He also agreed to the facts recited by the solicitor. Johnson testified he drove to the LC with a gun but did not get out of the car and only shot several rounds into the air during the attack. He specifically testified that Bruster, Booker, Williams, Hogan, Young, Holmes, and Sadler were with him during the attack and that they all had guns. (R.p.18-p.25). **Tavarus Holmes (Holmes) (a/k/a "Varus")** pled guilty to conspiracy and one count of attempted murder. He agreed that the facts recited by the solicitor were true, including the fact that he was one of the six shooters at the LC and that he carried a .380 handgun and travelled to and from the scene with Young and Williams in a red Honda. The solicitor noted the State had agreed to dismiss six counts of attempted murder, a weapons charge, and assault and battery by mob as a part of Holmes' plea. (R.p.25-p.30). Finally, **Kiara Kerns (Kearns)** pled guilty to obstruction of justice for her role in subsequently hiding some of the firearms used in the assault. She accepted the facts presented by the solicitor as true, including that she was dating Booker at the time of the attack, had allowed him to use her car the night of the attack, and had given guns to her brother for disposal after the attack. The solicitor noted the State had agreed to dismiss an accessory after the fact charge as a part of Kerns' plea. (R.p.30-p.34). The State asked for deferred sentencing on the four codefendants who pled guilty until after the trial of the four remaining codefendants.

Pretrial Matters – Batson hearing

After accepting the pleas, the trial began and the judge conducted jury qualification and selection proceedings. (R.p.35-p.63). As part of jury qualification, the trial court asked if any member of the jury panel was related by blood or marriage, or if they had a business, personal, or social relationship with any of the four co-defendants, the seven shooting victims, or the more

than 75 potential witnesses. None of the potential jurors responded in the affirmative. Similarly, there was no response when the judge asked if any juror knew of any reason they should not serve or could not be fair and impartial. (R.p.48-p.52). The trial court then proceeded with jury selection, with the State and counsel for Booker, who was acting on behalf of all four co-defendants, exercising peremptory strikes until twelve jurors and two alternates were seated. (R.p.53-p.62). Juror 106, Cynthia Foxx, a white female, was seated fourth. (R.p.55, line 22-p.56, line 3). Juror 281, Valisa Smith, a black female, was struck by the State after the ninth juror was seated. (R.p.59, lines 3-6). Juror 81, Anatolya Dodd, a black female, was struck by the State after the eleventh juror was seated. (R.p.60, lines 3-6). Juror 215, Lee Montgomery, a black male, was struck by the State after the twelfth juror was seated, during the selection of the two alternates. (R.p.61, lines 15-18). At the conclusion of jury selection, the defendants advised the trial judge they had a matter regarding jury selection they would like to take up outside the presence of the jury. (R.p.62, lines 17-23).

After the jury was excused, the defendants made an objection to the jury selection pursuant to Batson v. Kentucky,³ pointing out that out of its six challenges the State struck three black individuals. The trial court noted three black jurors had been seated on the jury but acknowledged Juror 281 was an African-American struck by the State with its 4th challenge, Juror 81 was an African-American struck by the State with its 5th challenge, and Juror 215 was an African-American struck by the State when selecting the first alternate. The defendants said they were challenging all three strikes in their Batson motion. (R.p.63). The solicitor proceeded to give the following explanation for her strikes:

With respect to Juror 281, Ms. Smith, I noted during jury qualifications that Ms. Smith expressed some concerns regarding her ability to withstand the duration of the trial. She indicated she had a substantial number of health issues

³ 476 U.S. 79 (1986).

and wanted to be excused based on those issues. That's my basis for striking Ms. Smith.

Ms. Dodd, is Juror 81, and my notes indicate that Ms. Dodd lives on Prancer Avenue in Greenville County. It's my understanding that some of the witnesses in this case live in the area of Prancer Avenue and I was quite simply concerned that juror may become family with the witnesses even though she may not recognize their names off hand. That's my basis for striking her. And then Mr. Montgomery lives at Piedmont and I have the same reservations. There are many of these witnesses that live in the Piedmont area and have residences in Piedmont and again just out of an abundance of caution, I was concerned that he may be familiar with some of the witnesses in this case and decided that another alternate may be a better choice.

(R.p.63, line 23-p.64, line 19). The defendants responded that they did not believe these to be satisfactory racially neutral reasons because during voir dire the court had named all potential witnesses and gave the jurors the opportunity to identify any they knew. (R.p.64, line 21-p.65, line 6).

The trial judge disagreed, said the solicitor had given race neutral reasons for her strikes, and said the defendants were going to have to show something more to prove purposeful discrimination. (R.p.65, lines 7-11). Counsel for Sadler then stated: "One thing I would point out to the Court is Juror 106, No 12 on the list, Ms. Fox. So the extent that they are striking the jurors in Piedmont, Juror No. 106, Cynthia Fox, it was a white female and it provides her address as 13 Piedmont Avenue in Piedmont, no less, and yet she was not struck by the State." (R.p.65, line 12-18). The solicitor replied:

Your Honor, I just didn't indicate on my list that that was an address that I had some concern about. So[me] I do and some I don't, but that doesn't make it the –

....

Judge, I'm not sure where I left off. I've offered race neutral reasons. If the Court wants a more specific inquiry. I didn't make that address on Ms. Fox, it is something that I had no concern. I had concerns about the Piedmont address but not this one. I don't know the geography of Greenville County with enough

sophistication to appreciate the minor details of the community the basis of my strike, Judge.

(R.p.65, line 19-p.66, line 9). Ultimately, the trial court ruled:

Okay. Well, Mr. Quinn makes a very valid point. I'm going to rely on State versus Tucker and Peyton versus Kirk Kearse (ph) that I don't see a discriminatory intent inherent in the proponent's explanation and so I believe those cases require me to find the reason offered to be deemed race neutral. So I'm going to deny your motion.

(R.p.66, lines 10-16) (emphasis added). The parties all agreed there was no need for a Neil v. Biggers hearing and the case proceeded to other pre-trial motions. (R.p.66-p.68).

Pretrial Matters – Motion in Limine Regarding “gangs”

During a subsequent discussion of possible introduction of documentary evidence, the solicitor noted she planned to submit “documents related to the defendants’ gang affiliation” if they became relevant during trial. Young’s counsel, John Abdalla, Esquire, advised: “The defendants have a motion in limine to prevent the State from any mention of gangs or use of the word gang because we believe the prejudicial effect outweighs any probative value.” He argued that if the jurors started hearing about gangs it would make it very difficult for them to give the defendants a fair trial. The trial judge asked if Young had any foundation for his motion and Young asked if the motion could be argued more fully the following morning. (R.p.68-p.71).

The trial court then gave brief preliminary instructions before swearing the jury. In addition to instructing the jury on the key concepts of the presumption of innocence, the burden of proof, and the roles of the judge and jury, the court twice cautioned the jury not to begin deliberations until the completion of the entire trial. (R.p.72-p.80). The judge specifically charged: “Do not come to a decision until the end of the case until you’ve heard all of the evidence, until you’ve heard all of the law, until you’re back there deliberating and talking about the case, keep an open mind.” (R.p.76, lines 8-12). He also charged: “The third very important

thing that I ask you to do, instruct you to do, is not to discuss this case with anyone until you are free to deliberate at the end of trial.” (R.p.76, line 24-p.77, line 2). The jury was then sworn and before breaking for the day, the trial court held a Jackson v. Denno hearing and found Williams’ post-arrest statement to the police was freely and voluntarily given and would be admitted at trial. (R.p.80-p.90).

When the proceedings resumed the following morning, Williams’ counsel, Scott Robinson, Esquire, argued the codefendants’ joint motion in limine to prohibit the State’s witnesses from characterizing or employing the terms “gang,” “gang related,” or “criminal gang” in the case. First, Williams argued that since none of the codefendants had been charged pursuant to the Criminal Gang Prevention Act, Section 16-8-230 of the Code, any testimony suggesting they were in a gang should be prohibited. Second, Williams made a “[Rule] 403 objection in terms of being unduly prejudicial and inflammatory.” He contended the connotation of the word would arouse the passion of the jury to the point of causing prejudice. The trial judge reminded Williams that he needed some foundation for the argument because he could not rule “in a vacuum.” Responding to this comment, Booker argued the discovery material showed the police had pursued their entire investigation as though the eight codefendants were in the Folk Nation gang or the “G’s.” He said the State intended to call Officer [Brandon] Brown as a witness, and Brown’s sole job is to investigate gangs in Greenville County. The judge declined ruling on the joint motion prior to the State presenting evidence, finding he could not rule on the propriety of testimony about gangs without knowing the context in which it was being offered. (R.p.93-p.98).

The solicitor then summarized the State’s theory of the case. She explained several witnesses were likely to indicate the codefendants wore all black during the attack, were part of

the “G’s,” and that Young was known to be a leader in the Folk Nation in Greenville. The solicitor argued this information was critical to the State’s case because the codefendants retaliated as a unit in response to the fight at the RP. She explained the gang evidence would be probative of identity, motive, and intent. Williams responded that they also had an objection based on Rule 404(a), SCRE, because the evidence of gang affiliation would improperly interject character into the case. The trial judge agreed the evidence would interject character into the matter but explained it sounded like it would be appropriate evidence under the State’s theory of the case. He said he would “see how it plays out” based on the other evidence presented and again declined to make a pretrial ruling restricting the State’s ability to reference gangs. Young made one last argument, returning to his original contention that the word “gang” is simply so prejudicial that it would outweigh any probative value and prevent a fair trial. The trial judge disagreed and again denied the request for a pretrial limitation. He then questioned the solicitor as to how the State’s witnesses would describe their own group. The solicitor said her witnesses would testify they were in a rap group at which point the judge cautioned all the parties to be careful with how they proceeded since they were concerned about anyone using the term “gang.” (R.p.98-104).

Trial

The State and each codefendant then made an opening statement, none of which mentioned gangs. (R.p.105-p.123). The State proceeded to elicit testimony from ten of the individuals who were hanging out at the LC prior to the attack, seven of whom were shot. First, **Vincent Fant (Fant) (a/k/a “Buddha”)**⁴ described going to the RP on the night of July 16, 2011, with his cousin, Cornelius Sins. They were going to a concert at the club where he met up with his other cousins, including **Jamel Williams (Jamel) (a/k/a “Mel”)**. Over Young’s

⁴ Coincidentally, both State’s witness Fant and codefendant Bruster go by the nickname “Buddha.”

objection, the court admitted photographs of Fant and a bunch of his friends that were taken inside the RP that night. In camera, Fant had explained the photograph was taken of his rap group, the Hardliners. He said the hand gestures some of the people in the photograph were making were an “h” and an “l” and simply stood for Hardliners, not for a gang, as alleged by Young. When the jury returned, Fant testified about a confrontation he had while in the RP. He said Williams and Young “got in his face” because he was talking to a particular lady; however, the dispute ended when Jamel got them separated and took him to the other side of the club. (R.p.120-p.131).

Fant testified that later a fight broke out in the club and everybody started leaving. As he walked to the car he was approached by Williams. Williams took his shirt off and started swinging. Fant started fighting back when he felt something hit him in the back of the head. He was then shot in the arm but did not see who shot him. Fant spent three days in the hospital so he was not hanging out at the LC when his friends were attacked. He later identified Williams from a photo lineup and then made an in-court identification of Williams as the person he fought in the RP parking lot. He identified both Young and Williams as the two men who confronted him inside the RP. (R.p.131-p.138).

Next, the State called **Raheem Adams (Adams) (a/k/a “Dex” & “Ra Ra”)**. Adams is a member of the rap group and was with Fant at the RP on July 16, 2011. He noticed a commotion inside the club but did not see the actual confrontation involving Williams, Young, and Fant; however, when Adams went outside, he witnessed the fight in the parking lot and made an in-court identification of Williams. Adams testified he was pretty sure Young was the person who hit Fant in the back of the head and then made an in-court identification of Young. He testified he actually saw the person who shot Fant and was able to identify him to the police by his street

name, "Smoke."⁵ (R.p.139-p.144). Adams went to the hospital to see Fant but after five or ten minutes he left with **Trevis Thompson (Thompson)** (a/k/a "Trap") to get cigarettes at the LC. When they got to the LC they met up with **Russell Moore Patterson (Patterson)**, **Anthony Callahan (Callahan)** (a/k/a "Ant" & "Antro"), **Thomas Walker (Walker)** (a/k/a "TJ") and others. Adams testified there were four vehicles at the LC. He was sitting on the back of a Crown Vic when he heard shots. Adams turned to look as he jumped from the car and heard what sounded like 100 shots. He was hit under the arm. The bullet exited his chest and lodged in his neck and was still there at the time of the trial. Adams was lying on the ground when he heard a second burst of shots and a car drive away. He testified that at least three or four people came from the dark and started shooting. (R.p.144-p.154).

Patterson testified somewhat reluctantly on behalf of the State. He was at the RP on July 16, 2011, and saw the confrontation in the club involving Williams and Young. He testified all the people in the photographs from the RP were in the Hardliners. Patterson went by the hospital after Fant was shot and then went to the LC. He said he was sitting on Booker's car when the shooting started and that he was shot in the left leg. Patterson tried to call an ambulance because he could not run. He said he did not see the shooters. (R.p.158-p.168).

Walker testified he was also at the RP the night of July 16, 2011. He saw the fight between Williams and Fant inside the club and heard gunshots later when he saw Fant fighting in the parking lot. Walker got Fant into his car and drove him to the hospital. At the hospital he got into an argument with **Damont Suber (Suber)** (a/k/a "Mont" & "Sub") and then went to the LC. Walker said there were four cars at the LC: his car, Dutchy's car, Quan's car, and Tres's car. He was shot in the back of the thigh during the attack. Walker first ran and hid

⁵ "Smoke" was later identified as **Travis Wear**. Wear was ultimately arrested for the RP shooting but was not a codefendant in this case and was not a member of the Hardliners rap group.

behind a white Impala and then ran away from the LC with **Dontavious Sullivan (Sullivan)** (a/k/a “**Tate**”) and Tres. He admitted he had a gun in his car but did not shoot at the attackers because he did not have a chance. Walker spent a day and a half in the hospital recovering from his gunshot wound. (R.p.170-p.179).

Javon Henry (Henry) testified he knows all of these guys and acknowledged he was part of the Hardliners and was in the photo from the RP. He was at the RP the night in question with Fant, Adams, Patterson, and Walker. Henry said he did not see a fight inside the club but when he walked to the parking lot later, it was chaos. He went to the LC after leaving the RP. When he heard gunshots he hit the ground. Henry said he saw smoke and bodies. There were five to ten attackers and they had their faces covered. A tire was shot out of one of the cars right beside him but Henry was not hit. (R.p.180-p.189).

Motion for Mistrial – Premature Jury Deliberations

After Henry left the stand, the jury was sent out so the trial court could address an issue that arose during trial. The judge explained he received a note from a juror in an unrelated case stating: “I overheard jurors from Courtroom 8 [this courtroom] discussing what sounded like details of their case. Need to decode language, ‘I was chillin, he’s going down.’” He noted the parties had participated in a bench conference about the note resulting in the defendants moving for a mistrial. The trial judge referenced the 1999 case of State v. Aldret⁶ which sets forth both the burden of proof when there has been an allegation of premature jury deliberations, as well as the proper procedure for the court to follow when assessing such an allegation. He noted it was necessary for him to determine whether or not misconduct occurred and whether it was prejudicial, and to make these determinations he would discuss the issue with the jurors one by

⁶ State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999).

one. The trial judge cleared the courtroom for the purpose of the hearing and invited the defendants to put their position on the record. (R.p.192, line 2-p.194, line 13).

Counsel for Sadler explained for the record that the specific motion was for removal of the two jurors alleged to have been involved in the premature deliberations. Because this would result in being left with only eleven jurors, he argued the court would be required to declare a mistrial. Sadler further argued there was no need for the court to question individual jurors because the comment "he's going down" could only have meant a juror had already decided the defendants were guilty, which is prejudicial. He objected to the procedure outlined in Aldret and asked the court to simply declare a mistrial without further inquiry. Booker, Young, and Williams all joined in the objection. The trial judge noted that this Court had recently referenced Aldret with approval when analyzing a trial court's handling of a juror misconduct issue in State v. Carmack,⁷ and denied the defendants' request not to question individual jurors. (R.p.194, line 14-p.198, line 6).

The trial court proceeded to separately call each of the twelve sitting jurors and the single alternate juror into the courtroom to answer questions about the alleged misconduct. Although several jurors indicated there had been brief conversations about the behavior and enunciation of the witnesses, as well as comments about trying to keep their names straight, there had been no discussion about the content of the testimony and no conclusions drawn about the ultimate outcome of the case. In fact, each juror assured the court that nothing that was said would impair his or her ability to be fair and impartial to the State and the defendants. They all stated they could follow their oath to judge the case solely on the evidence and the law. (R.p.198-p.214). After the inquiry, the trial judge held as follows:

⁷ State v. Carmack, 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010).

Okay. Based on what I've just done I'm going to deny the motion for mistrial at this time. I don't find any prejudice to any defendant. I will give more cautionary instructions about discussion of the case and we're get [sic] ready to go forward.

(R.p.214, lines 11-17). Sadler again objected to the procedure and noted Aldret only suggested voir dire of the jurors when requested by the moving party. He argued the trial court should not have done so on its own. Sadler also objected to how the procedure was handled, arguing the parties should have been allowed to ask questions to establish an appellate record on which prejudice could be reviewed on appeal, and arguing the original accuser should have been questioned about what he heard in the restroom. Young added to the argument that he believed the questions asked by the court were framed in such a way that the jurors were not able to freely express themselves. Booker joined in the objection; however, Williams did not, stating: "I don't disagree with the Court. I believe it was conducted properly." (R.p.216, lines 4-5). Although the solicitor expressed her own concerns about the testimony of a particular juror, the State did not indicate any agreement with the defendants' request for a mistrial. Ultimately, the trial court overruled all objections to the procedure and maintained its denial of the motion for a mistrial. (R.p.214, line 18-p.217, line 7).

Trial – Continued

After denying the motion for a mistrial, the jury returned to the courtroom and the trial resumed. **Roshonques Perry (Perry) (a/k/a "Choc")** testified she was at the RP but never saw the fight inside or the fight outside the club. Afterwards she drove her green Ford Focus to the LC and was hanging out. A Crown Vic, an Escort, and an Impala were already there. She heard shooting, saw smoke, and ran. Perry was not shot but was scared the gas pumps would blow. (R.p.219-p.226). Next, **Jamel** testified he was at the RP on the night of July 16, 2011, and was in the photo with the rap group. He was there with Walker, Justin, and Callahan. Jamel saw Fant

in an altercation inside and later saw Fant scuffling in the parking lot before he heard gunshots. He drove to the hospital with Walker, Fant, and Callahan. Jamel admitted he had a gun but claimed he did not use it. He went to the LC to hang out after he left the hospital. When he heard gunshots from behind, he ran and was shot in the back. (R.p.227-p.237).

Callahan testified he knows everyone in the Hardliners but does not rap with them. He was at the RP and saw people going towards Fant and getting in an argument. Callahan then saw Williams shaking hands with Walker. He made an in-court identification of Williams. Callahan followed Walker and Jamel outside where he saw Jamel talking to Fant. He heard gunshots and helped get Fant in the car to take him to the hospital. Afterwards, Callahan went to the LC. He said Justin, Thompson, Quan, Jamel, Walker, Henry, Adams, and maybe Perry were there. Callahan heard lots of shots and got hit in the arm. He ran down the road and jumped over the edge of a bridge to get away. (R.p.238-p.246).

Sullivan testified he also knows everyone in the rap group but does not rap with them. He was at the RP on July 16, 2011, but did not see the fight inside. He saw people running out later but security at the club would not let people leave once shots were fired. He heard Fant was shot so he jumped in the car with Quan to go to the hospital. Sullivan then went to the LC in a white Impala. He was there for ten to fifteen minutes when he heard shots fired. He ducked and ran towards the bridge with Walker, but he was shot in the back of the head. (R.p.247-p.252).

Carroll Jackson (Jackson) (a/k/a "Warren") testified he was at the RP that night drinking and posing for pictures. He drives a white Impala. Jackson did not see the fight inside and club security kept him from coming out at first, but when he did come out he found Fant and helped Walker and Jamel get him to the hospital. He also went to the LC and heard the shots being fired, but he was not hit. (R.p.254-p.258). Next, Thompson testified he was at work and

not at the RP on July 16, 2011; however, when he got off work he followed the other cars to the LC. He said he was part of the rap group. Thompson heard shots, ducked, and crawled under a car. He testified the shots came from the dark area beside the LC and he was hit in the leg. (R.p.259-p.265).

After hearing from all the victims, the State called Patricia Smith, the night clerk at the LC, to the stand. She was working in the store on the night of July 16, 2011, and the morning of July 17, 2011. It was a slow night with four or five cars in the parking lot when she heard gunshots. Smith ran into the store cooler and called 911 but did not see anything. (R.p.2660-p.273).

Next, the State called a series of investigators from the Greenville County Sheriff's Office to describe their roles in the investigation of the shooting. Investigator Chris McCalmont was dispatched to the LC where he first encountered Jackson waving his arms and saying his friends had been shot. McCalmont provided medical assistance to several victims and later helped secure the scene. (R.p.274-p.281). Deputy Christopher Hill also responded to the scene and made contact with Sullivan and Walker as they were running away, injured. (R.p.282-p.384). Deputy James Brown was the first officer to respond to the scene where he found cars but no people in the parking lot. He taped off the scene and then took witness statements. (R.p.285-p.290). Deputy Matthew Owens also responded to the LC. When he arrived he found four cars but no people. He drove towards Highway 125 where he encountered Thompson running and suffering from a gunshot. (R.p.290-p.294).

The State then called Department of Public Safety Crime Scene Investigator Iona Ooten to the stand. Ooten walked the entire scene, taking photos and marking evidence such as shell casings and blood. (R.p.295-p.326). Next, the State elicited testimony from forensic

investigators Jonathan Derby and Jonathan Hamilton about the condition of the vehicles at the scene and various pieces of evidence collected from those vehicles. Derby testified he helped examine three vehicles: a green Ford Focus, a white Chevy Impala, and a green Ford Escort, each of which had multiple bullet holes. (R.p.327-p.343). Hamilton testified he examined a 2004 Crown Vic belonging to Walker containing a .9mm gun, a magazine for that gun, and a shirt. (R.p.344-p.353).

The State then called Lead Investigator Wayne Taylor Campbell to the stand. He gave detailed testimony about managing the investigation, from the collection and processing of physical evidence to finding and interviewing possible suspects, including Johnson and Hogan. Campbell noted that based on the investigation they determined there were four different caliber weapons used at the scene: .380, .9mm, .45, and .40. He testified he talked to Johnson on July 20, 2011, and later talked to Hogan, who was very useful and led to the police securing arrest warrants for six people.

Campbell explained there were a total of three shooting victims from the RP: **Brandon Edwards (Edwards) (a/k/a "Black")**, **Brandon Davis (Davis) (a/k/a "Bram-Bram")**, and **Fant**. He testified that **Travis Wear (Wear) (a/k/a "Smoke")**⁸ was ultimately arrested for shooting Fant, and that a person named **Desmond Roberts (Roberts)**, who was from a totally different group, was charged with shooting Edwards and Davis. Campbell testified that Davis was with Bruster when some of the guns were subsequently recovered. (R.p.354-p.389; p.388-p.421).

Next, the State called more investigating officers to the stand. Investigator Shawn A. Peoples went to the RP on July 17, 2011, to collect evidence and talk to witnesses. She

⁸ According to the transcript, Campbell testified a man named "Travar Blair" was charged with shooting Fant; however, this appears to be a typographical error because he also identified the shooter by his nickname "Smoke" which is consistent with the name "Travis Wear" that was used in other testimony during the trial.

interviewed Williams and took his statement after he was Mirandized. (R.p.422-p.433). Former officer Michael Moore testified he participated in Williams' arrest, which took place at Young's house. He described seeing a black duffle bag at the house and having to deal with two uncooperative female residents. (R.p.436-p.441). Investigator Dustin Woodall first responded to the LC but was later sent to the RP to assist Peoples. He testified he canvassed a lot of people, which included talking to Wear. Woodall testified he then went to the hospital to talk to Patterson, which led the investigation towards Young. He later arrested Williams at Young's house and saw the black duffle bag. Woodall testified that **Karima Johnson (Karima)** and **Brittney Phillips (Phillips)** were the two females at the house. He said the police came back later with a search warrant and although the duffle bag they had seen was gone, they did find some .40 caliber ammunition and a holster, and they learned Young and Phillips lived at the house. (R.p.442-p.453).

The State then called **Joseline Mack (Mack)** to the stand. She was at the RP the night of July 16, 2011, and was driving a burgundy Honda. Although she did not see it, she heard about the shooting in the parking lot of the RP and met Young afterwards at a nearby nightclub named Club 864. Mack said everyone there was mad about the earlier shooting and planned to go to the Waffle House to eat and talk. She testified a group of cars left Club 864 but then did a U-turn and returned, where she traded cars with Young and was told to go wait at the Waffle House (WH1). Mack admitted that when they switched cars Young got his gun and took it with him. She testified she saw Booker, Hogan, and Sadler get in Simone's green Camry but denied previously telling the police that Young and Williams got in her red Honda. Mack said she waited at the WH1 but Young did not show; however, he eventually called and told her to come to a different Waffle House (WH2). When she arrived a bunch of people were already there

including Young, Booker, Williams, and Sadler. The next day Young called Mack and asked her to look for a gun in her car. She found it and gave it to Young. Mack testified she later saw Booker with a black bag and she saw guns in her apartment, all of which she told Investigator Brown. (R.p.454-p.471).

Investigator Brandon Brown

Before the State called its next witness, Booker raised an objection as to how that witness would be identified to the jury. He explained that GCSO Investigator Brandon Brown is in the gang investigation unit and objected to Brown being identified this way. Booker complained that to do so would imply Brown was called in because police were investigating a gang, and that the State had not laid any foundation from any witness that the defendants were actually in a gang. The trial judge noted the objection for the record and the fact that all codefendants had joined in the objection; however, the objection was overruled. (R.p.472, line 7-p.473, line 23).

Investigator Brown then took the stand. He testified he was a "gang investigator" and that his responsibilities include maintaining all gang intelligence throughout Greenville County and knowing the players and entities involved as they pertain to gangs and violent crime. Brown explained he is often called to assist if an incident might involve a gang. He responded to the attack at the LC and began gathering information to see if any of his gang knowledge would help the investigation. Brown learned about the prior incident at another location involving what people were calling the "Folk Boys" who all showed up together wearing black. Several witnesses mentioned the name "Mikey" but the name did not stand out as someone he associated with a gang. Meanwhile, another investigator learned an individual named Brandon Edwards had been shot at the previous location. Brown testified that Edwards' name definitely had significance because he knew Edwards to be associated with several notable individuals in

Greenville, particularly Young. He described Edwards and Young as possibly “family.” (R.p.475-p.479). Young objected to the testimony “involving this whole gang thing” and testimony about himself and Edwards. He argued it was prejudicial without a foundation. The objection was overruled and Brown continued explaining the investigation. (R.p.479, lines 14-23).

Brown next looked at Young’s Facebook page, particularly a public conversation he had been having with Williams and a photo he posted that was titled “The Family.” The photo came in without objection from Booker, Williams, or Young, and over the objection of Sadler. (R.p.481, line 4-p.482, line 12). Brown testified they used the photo to start determining exactly which individuals associated together. After many hours and days of trying to identify and track down people in the photo, Brown was able to interview Johnson, who he said was very forthcoming with the legal names and nicknames of people in the photo. This led them to Mack, who was involved with Young either romantically or as a friend. Mack shared more useful information about names and vehicles, and she told Brown she saw several guns in the residence where she and Young were staying. Mack also revealed that her roommate, Kerns, was involved with Booker, which was a new name that led Brown to more people from the photo. Mack told Brown the guns had been brought into the residence by Booker in a black duffle bag. Based on all the new information, Brown obtained an arrest warrant for Williams and subsequently got a search warrant for the residence. When executing the search warrant, the police found paperwork belonging to Young as well as two canvas gun holsters. Although Kerns was originally uncooperative, she eventually helped the police locate the guns Mack had seen in the residence. (R.p.480-p.494).

On cross-examination by Booker, Brown admitted he was familiar with the Hardliners. He testified he had seen the photograph of them flashing hand signs and admitted that is something that can be common among gang members. Brown also admitted the police found weapons inside some of the victims' vehicles. (R.p.494-p.499). Under redirect examination from the solicitor, Brown identified three photographs of groups of people who were making hand signs he recognized as being associated with gangs. The photos were admitted over objection and Brown identified Williams, Booker, and Hogan in those photos. (R.p.499-p.504). The trial judge then excused the jury to allow the defendants to argue their specific objections to the photos on the record, which were based on an alleged lack of foundation and a lack of relevance. Counsel for Young also renewed his objection to the prejudicial nature of gang information and the objection was overruled. The trial judge noted the photographs came from Young's cell phone. (R.p.499-p.507).

Trial – Continued

After Investigator Brown completed his testimony, the State called more investigators from the Greenville County Sheriff's Office to describe their roles in the investigation. Investigator William Whitlock executed the search warrant at **Amanda Bell's (Bell's)** house. Bell is Kerns' mother. They did not find anything, but the search convinced Kerns and Bell to help locate and turn the guns over. (R.p.507-p.512). Bell confirmed she retrieved the guns from her son, Adrian Kerns, and turned them over to the police. (R.p.515-p.517). Investigator Devon Hooper arrested Young, confiscated two cell phones from him, got search warrants for those phones, and turned them over for a forensic search. (R.p.517-p.519). Investigator David Weiner arrested Larry Johnson in a separate case and got consent to search his cell phone. (R.p.520-p.521). Investigator James Perry was in the data recovery unit and generated a cell phone

forensic report for two phones, one provided by Weiner and one provided by Hoover. (R.p.522-p.526). Finally, forensic crime lab chemist and firearms examiner James Williams Armstrong described the testing he did on the bullet fragments and casings discovered at the scene of the shooting. He was able to determine seven different weapons had been fired, including three .380s, two .9mms, one .45, and one .40. (R.p.528-p.548).

Codefendant Larry Johnson

To conclude its case, the State began calling each codefendant who had previously entered a guilty plea to the stand. First, the State called Larry Johnson. Johnson acknowledged his earlier plea to attempted murder and second-degree assault and battery by mob and then described the events of July 16-17, 2011. He testified he drove a black Cutlass Supreme to the RP after picking up Bruster from Young's house. Johnson testified he was hanging out at the RP with Young, Bruster, Holmes, Sadler, and Booker, made an in-court identification of each defendant, and then identified them in a photograph taken at the RP that night. He explained there was an incident inside the club where words were exchanged, but then Edwards came in and walked to the back with Young. Later, outside, Johnson saw two fights. Johnson testified Williams was fighting with someone and Edwards was fighting with Nitché when Johnson heard gunshots. After the gunshots stopped he got in his car and he saw Young and Williams get in a green Crown Vic. They all drove to a nearby nightclub, Club 864, where he learned Edwards had been shot and Davis had been shot. Johnson said there was a lot of commotion about Davis and Edwards being shot. (R.p.549-p.560).

Johnson testified they all left Club 864 in four cars and headed up Whitehorse road towards the LC. After driving past and seeing a group of guys parked at the LC, the cars did a U-turn and Young told the others they looked like the guys that shot Davis. Johnson's group

then went back to Club 864 where Young traded cars with Mack and told the people who were not heading back to the LC to go to the WH2 and wait. Johnson testified that Young, Williams, Sadler, and Booker all covered their faces with black t-shirts on the way. Johnson and Bruster were in Johnson's car while Williams, Holmes, and Young were in Mack's burgundy car and Sadler, Booker, and Hogan were in a green Camry. He stayed in his car and watched as six of the codefendants ran up beside the LC. He heard multiple shots before the group ran back and jumped in the cars to leave. They met up at the WH2 after the attack where Young made them all swear not to tell. Johnson proceeded to identify a bunch of people from the WH2 surveillance video. He said he originally withheld information from the police but eventually told them the whole truth in his third statement because he found out his friend Adams was one of the victims. (R.p.560-p.575).

Under cross-examination, Johnson acknowledged photos from his cell phone where he was displaying guns and money but denied an allegation that he was in the Bloods. He was questioned by both Booker and Young about a recantation in which he claimed he had been coerced to give a statement to the police; however, he testified this was not correct and that he was actually coerced to issue the recantation by one of his co-defendants. (R.p.583-p.590). On redirect Johnson testified he recanted because of threats from people in the gang. He said Young wanted the recantation for trial or Johnson would get "x-ed." Johnson testified he understood this to mean he would get murdered and explained he feared for his safety. (R.p.594-p.596).

Codefendant Shaquille Hogan

Hogan made in-court identifications of Booker, Williams, Young, and Sadler, all of whom he testified were at the RP on the night of July 16, 2011, along with Johnson and Holmes. He acknowledged the confrontation that happened inside the RP and posing for the photograph.

Hogan testified he came in a green Camry with Booker but left his .380 in the car. He did not witness the fight in the parking lot; however, he went to Club 864 with Booker and Sadler when they were finally able to leave the RP. Hogan said Holmes ordered him to hand over his gun, which he did because Holmes has "more power." He was told they were going to the LC. Hogan testified Johnson and Bruster were in a brown Altima, while Holmes, Williams, and Young were in a red car. They all parked behind the LC. The rest of the men got out of their cars but Hogan did not because he did not have a gun. Hogan heard gunshots and then the others came running back. He described each gun that was being used during the attack. Hogan denied meeting later in the WH2 parking lot although this is what he said in his statement. (R.p.597-p.614). Under cross-examination, Hogan admitted that he also wrote a recantation. (R.p.614-p.630). On redirect Hogan testified he got the idea to recant from another inmate at the jail. (R.p.626-p.629).

Codefendant Daquan Bruster

After briefly recalling Investigator Wayne Campbell in regard to details about the various guns that were described in Hogan's statement, (R.p.631-p.633), the State called Bruster to the stand. Bruster acknowledged pleading guilty to seven counts of attempted murder and possession of a weapon during the commission of a violent crime; however, he claimed he did not remember the events surrounding the shooting and attempted to "take the 5th." The solicitor asked to treat Bruster as a hostile witness and proceeded to question him about agreeing to the facts of the offenses when they were described at his plea. He admitted he did not want to testify and claimed he simply pled to whatever charges he was given. Under cross-examination Bruster testified he only pled guilty because the State had threatened him with life without parole and because his mother pled with him to do what the State wanted. He testified he did not know he

would have to testify as a result of his guilty plea. The trial court then excused the jury and asked the solicitor to have Bruster's counsel come to the courtroom the following morning. The trial judge commented he would give Bruster a chance to withdraw his plea since he was now claiming he did not remember what happened, which would make the plea invalid. (R.p.633-p.639).

The following morning, the State called codefendant Tavarus Holmes to the stand. Holmes made an in-court identification of Booker but then refused to answer any more questions without his attorney, Brian Beasley, present. The jury was sent out. After hearing from the solicitor about the terms of Holmes' plea deal, the trial judge vacated his plea, over Young's objection. Williams, Booker, and Sadler did not object. (R.p.642-p.646).

Next, Bruster's counsel advised the court that he had spoken with Bruster, and that to the extent of his knowledge, Bruster realized he was indeed guilty of the charges and would cooperate as to what he knows. Booker raised an objection. On behalf of all four defendants, he argued: "Our position is that once someone has entered a plea, that they can not be forced to withdraw that plea, that the plea cannot be vacated, that he came in here to testify after pleading guilty and just because he didn't say what they wanted him to say doesn't mean that he can now be brought back out here and essentially be forced to testify." The trial judge disagreed, noting that if this was true, it would allow someone to "game the system." The judge then called Bruster to the stand and explained he was going to give him another opportunity to testify truthfully, but that if Bruster continued to insist he could not remember what happened during the incident, the court would vacate his plea. Bruster said he would testify. (R.p.648-p.651).

Sadler objected to the State being allowed to recall Bruster as a witness, arguing the State had already had a full and fair opportunity to examine him. He again referenced what he called

the “coercive nature” of the court’s ability to compel withdrawal of the plea resulting in Bruster facing additional charges and additional time. The trial judge noted the objection for the record and noted that all defendants presumably joined in the motion before denying it and advising the defendants they were free to cross-examine Bruster about all of this. The jury reentered the courtroom and the State resumed examining Bruster. (R.p.651-p.652).

Bruster testified that although he did not remember everything that happened, he remembered some things from the RP and the LC. He was at the RP the night of July 16, 2011, and he left to go to the hospital when he heard Davis got shot in the back. He left the hospital and went to the McDonalds near Club 864 where he got in a Cutlass with Johnson and rode with him to the LC. Bruster said he put a black shirt over his face and was carrying a .380. He testified he got out of the car at the LC with ten or eleven others, all of whom had their faces covered so he could not identify them. Bruster acknowledged that at his plea he admitted conspiring with Williams, Booker, Sadler, Young, Holmes, Hogan, and Johnson to attack the people at the LC; however, he testified he actually has no idea who was with him because their faces were covered. Bruster testified that he and Johnson got back in his car and went to the WH2. (R.p.652-p.660).

After playing portions of the security video from the WH2, the State rested. The defendants all moved for directed verdicts and those motions were denied. Each defendant then advised the trial court that he did not want to testify. Following a brief charge conference, the State and the defendants gave closing arguments. (R.p.661-p.666; Transcript - closing arguments, p.667-p.783). Finally, the trial court instructed the jurors on their role as the sole judges of the credibility of witnesses, the burden of proof, the presumption of innocence, reasonable doubt, direct and circumstantial evidence, and the elements of the crimes. (R.p.784-

p.796). Young was found guilty of the seven counts of attempted murder and the single count of second-degree assault and battery by mob. Young was also found guilty of conspiracy but was found not guilty of possession of a weapon during the commission of a violent crime. He was sentenced to thirty (30) years' concurrent imprisonment for each count of attempted murder (2011-GS-23-8012 to -8018), five (5) years' concurrent imprisonment for conspiracy (2011-GS-23-8011), and ten (10) years' consecutive imprisonment suspended upon the service of five (5) years' probation for second-degree assault and battery by a mob (2012-GS-23-3838A). (R. p.837-865).

ARGUMENT

I.

The trial court properly denied Young's Batson motion where he failed to carry his burden of showing the State's race-neutral explanations for striking three African-American jurors was mere pretext to engage in purposeful racial discrimination and where the only arguably problematic strike was harmless because it was used to strike a potential alternate and the use of alternates was not necessary during the trial.

Young argues the trial court erred in denying his Batson motion where the State's explanation for striking African-American jurors was inherently racial, fundamentally implausible and where the State failed to give racially neutral reasons for uneven treatment between the jurors struck and at least one similarly situated white juror that was seated. He contends the trial court failed to follow the mandated Batson procedure by failing to apply the proper law given the facts and that as a result, plenary review is appropriate. The State disagrees and submits Appellant's argument is without merit.

The trial court clearly followed the required three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. During that inquiry, the solicitor provided racially neutral explanations for striking each of the

three African American jurors in question. Even though the explanation in regard to Juror 215 initially appeared to be pretext because a similarly situated juror of another race, Ms. Foxx, was seated on the jury, the trial judge observed the solicitor's demeanor and made a credibility finding that there was no discriminatory intent in the her explanation and thereby concluded the reason given was in fact not pretext. That credibility finding must be given great deference and may not be set aside unless clearly erroneous, thus Young, as the opponent of the strike, failed to show the reason offered was actually mere pretext to engage in purposeful racial discrimination. In any event, even if this Court concludes the State's strike of Juror 215 was improperly exercised on the basis of race, any error was harmless because Juror 215 could only have been seated as an alternate.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). A court is bound by the trial court's factual findings unless they are clearly erroneous. Id. Thus, on review, this Court is limited to determining whether the trial court abused its discretion. State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. Palmer at 511, 783 S.E.2d at 827. "Because the trial court's findings regarding purposeful discrimination rest largely upon his evaluation of the solicitor's credibility, we will give those findings great deference." State v. Tucker, 334 S.C. 1, 9, 512 S.E.2d 99, 103 (1998); see also Palmer, 415 S.C. at 513, 783 S.E.2d at 829 ("The trial [court's] findings of purposeful discrimination rest largely on [its] evaluation of demeanor and credibility. Often the demeanor of the challenged attorney will be the best and only evidence of

discrimination, and an ‘evaluation of the [attorney’s] mind [based on demeanor and credibility] lies peculiarly within a trial [court’s] province.’”) (internal citations omitted).

Batson Framework

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a juror on the basis of race. Batson, 476 U.S. at 89; State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); State v. Cochran, 369 S.C. 308, 313, 631 S.E.2d 294, 297 (Ct. App. 2006). “Once a peremptory challenge is opposed, the trial court must, upon request, conduct a Batson hearing and adhere to the procedures set forth in Purkett v. Elem, 514 U.S. 765, 767 (1995), and adopted by our Supreme Court in State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996).” Cochran, 369 S.C. at 314, 631 S.E.2d at 297-98. The United States Supreme Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. Inman at 26, 760 S.E.2d at 108; See Purkett, 514 U.S. at 767-68. (1995).

First, the [party asserting the Batson] challenge must make a prima facie showing that the challenge was based on race. Inman at 26, 760 S.E.2d at 108. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the [party opposing the Batson] challenge to provide a race neutral explanation for the challenge. Id. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the [party asserting] the challenge has proved purposeful discrimination. Id. The ultimate burden always rests with the [party asserting the Batson challenge] to prove purposeful discrimination. Id.

Step two of the analysis is perhaps the easiest step to meet as it does not require that the race-neutral explanation be persuasive, or even plausible. Purkett, 514 U.S. at 768; Inman at 26,

760 S.E.2d at 108. The explanation must only be “clear and reasonably specific such that the [party asserting the Batson challenge] has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty [in step three] to assess the plausibility of the reason in light of all the evidence with a bearing on it. Inman at 26, 760 S.E.2d at 108. In contrast, step three of the above analysis requires the court to carefully evaluate whether the party asserting the Batson challenge has proven racial discrimination by demonstrating that the proffered race-neutral reasons are mere pretext for a discriminatory intent. Id. (emphasis added); see also Batson, 476 U.S. at 93-94 (stating that the court must consider “the totality of the relevant facts,” including both direct and circumstantial evidence). During step three, the party asserting the Batson challenge should point to direct evidence of racial discrimination, such as showing that the opponent struck a juror for a facially neutral reason but did not strike a similarly-situated juror of another race. Inman at 26, 760 S.E.2d at 108-09. When the opponent of the strike proves the proponent of the strike practiced purposeful racial discrimination, the trial court must quash the entire jury panel and initiate another jury selection de novo. Cochran at 315, 631 S.E.2d at 298 (emphasis added).

Discussion / Analysis

Here, in compliance with Purkett, the trial court conducted a Batson hearing and adhered to the mandatory three-step procedure for evaluating whether the State executed its peremptory challenges in a manner which violated the Equal Protection Clause. After the defendants made a prima facie showing that the challenges were based on race, the trial judge asked the solicitor to provide race neutral explanations for the three strikes, and the solicitor did so. Juror 281 was struck because she “had a substantial number of health issues and wanted to be excused.” Juror 81 was struck because she “lives on Prancer Avenue” and “some of the witnesses in this case

live in the area of Prancer Avenue and I was quite simply concerned that juror may become family with the witnesses even though she may not recognize their names off hand.” Juror 215 was struck because he “lives at Piedmont and I have the same reservations. There are many of these witnesses that live in the Piedmont area.” (R.p.63, line 23-p.64, line 19).

The defendants’ response was that they did not believe these to be satisfactory racially neutral reasons because during voir dire the court had named all potential witnesses and gave the jurors the opportunity to identify any they knew. (R.p.64, line 21-p.65, line 6). On appeal he attempts to expand upon the assertion that the explanation itself was insufficient to clear the second step of the Batson analysis. First, he argues: “The solicitor’s assumption that black jurors might not be aware of the names of their friends, neighbors, or relatives (as opposed to the white juror seated) is based on a stereotype, and therefore, inherently racial.” (Brief of Appellant, p.24-p.25). Second, he argues: “the fundamental implausibility of the state’s explanation was obvious in light of the record” because “the court had already called the name of every potential witness in the case and inquired specifically whether any of the venire knew . . . any of the potential witnesses in the case. (Brief of Appellant, p.25-p.26). However, each of these arguments is fundamentally flawed.

As to the claim that the explanations were based on a stereotype, it is absurd. There solicitor did not use a racially derogatory term [such as “redneck”] which is applied exclusively to members of a single race and did not identify a physical characteristic [such as “dreadlocks”] typically associated with a single race. Instead, the explanations were not based on anything that would be exclusive to a particular racial group. Indeed, on its face each explanation was race neutral. As to the claim the explanations were fundamentally implausible, Appellant’s arguments both at trial and on appeal are based on a misrepresentation of the record. During voir

dire, the trial court asked if any member of the jury panel was related by blood or marriage, or if they had a business, personal, or social relationship with any co-defendants, victims, or potential witnesses, but it did not ask the panel members if they simply “knew” any witnesses, as opposed to having a “relationship” with them. (R.p.48-p.52). Thus, the solicitor’s explanations went beyond the concerns addressed during voir dire and were not fundamentally implausible. The State provided a valid, race-neutral reason for striking each of the three potential jurors and thereby met its minimal burden at the second step in the process. Purkett, 514 U.S. at 768. The trial judge properly concluded the solicitor had given race neutral reasons for her strikes, and then properly returned the burden to Young and his codefendants to “show something more to prove purposeful discrimination.” (R.p.65, lines 7-11). Consequently, the only question truly before this Court is whether the trial court abused its discretion in regard to step three of the Purkett procedure as to the three African-American jurors struck by the State.

Although the trial court invited Young and his codefendants to attempt to make a showing of purposeful discrimination as to each of the three strikes, they chose to focus solely on the State’s strike of Juror 215, Mr. Montgomery. Counsel for Sadler stated: “One thing I would point out to the Court is Juror 106, No 12 on the list, Ms. Fox. So the extent that they are striking the jurors in Piedmont, Juror No. 106, Cynthia Fox, it was a white female and it provides her address as 13 Piedmont Avenue in Piedmont, no less, and yet she was not struck by the State.” (R.p.65, line 12-18) (emphasis added). By failing to offer any further showing in regard to Juror 281 or Juror 81, Young failed to carry his burden of proof in the trial court. He similarly has also waived any right he may have had to challenge those two strikes on appeal. Furthermore, to the extent Young argues his challenge to Juror 215 encompassed a challenge to Juror 81 because the solicitor’s race neutral reasons were both based on their home addresses, his

argument fails because he never argued to the trial judge that Prancer Avenue is in Piedmont. This is likely because Prancer Avenue is not in Piedmont, and instead is located ten miles north, near the Greenville Country Club.

As to Juror 215 himself, the solicitor's explanation initially appeared to be pretext because Ms. Foxx, a white woman from Piedmont, was seated on the jury. Cochran, 369 S.C. at 315, 631 S.E.2d at 298 ("This burden is generally established by showing similarly situated members of another race were seated on a jury."). The inquiry at Young's trial, however, continued when the trial judge asked the solicitor for further explanation. She replied:

Your Honor, I just didn't indicate on my list that that was an address that I had some concern about. So[me] I do and some I don't . . . I didn't make that address on Ms. Fox, it is something that I had no concern. I had concerns about the Piedmont address but not this one. I don't know the geography of Greenville County with enough sophistication to appreciate the minor details of the community.

(R.p.65, line 19-p.66, line 9). Upon observing the solicitor's demeanor while she gave this explanation, the trial court found it did not "see a discriminatory intent" in the explanation.

(R.p.66, lines 10-16). This credibility finding was the basis upon which the trial court grounded its conclusion that the State's reason given for striking Juror 215 was not pretext. The credibility finding must be given great deference and may not be set aside unless clearly erroneous. State v. Tucker, 334 S.C. 1, 9, 512 S.E.2d 99, 103 (1998) ("Because the trial court's findings regarding purposeful discrimination rest largely upon his evaluation of the solicitor's credibility, we will give those findings great deference."). Because the trial court was in the best position to evaluate demeanor and credibility, its finding should control and the denial of Young's Batson motion was not error.

Additionally, even if this Court concludes the defendants proved the originally neutral reason was pretext because it was not applied in a neutral manner, any error by the trial court in

regard to Juror 215 was entirely harmless because the State struck Mr. Montgomery as a potential alternate juror. See State v. Ford, 334 S.C. 444, 449, 513 S.E.2d 385, 387 (1999) (“Any Batson violation in regards to an alternate is harmless where an alternate was not needed for deliberations.”); see also United States v. Lane, 866 F.2d 103, 106 n.3 (4th Cir. 1989) (noting a defendant would not have been prejudiced by the peremptory challenge of an alternate juror regardless of the stated reason where an alternate juror was not called upon to serve as a member of the petit jury). For all of these reasons, the trial court’s denial of Young’s Batson motion should be affirmed.

II.

The trial court properly admitted testimony from Investigator Brown where: (1) it was relevant to explain the arc of the police investigation; (2) he never directly testified Young was in a gang and therefore did not offer character evidence for purposes of Rule 404, SCRE; (3) to the extent his testimony may have suggested Young was part of a gang it was nevertheless relevant as part of the res gestae of the crime and as proof of identity, intent, and motive; and (4) the probative value of the testimony outweighed any danger of unfair prejudice for purposes of Rule 403, SCRE.

Young argues the trial court erred in allowing testimony by State’s witnesses using the term “gang” in reference to the investigation of his case because: (1) the solicitor failed to lay the proper foundation that he was a gang member; (2) the reference was inflammatory and unduly prejudicial under Rule 403, SCRE; and (3) the reference constituted improper character evidence under Rule 404, SCRE. He complains that contrary to the solicitor’s claim during the pretrial motion in limine, none of the victims gave testimony identifying the codefendants as being involved in a gang, much less any particular gang, and that as a result the solicitor should not have been allowed to call Investigators Brown and Whitlock to testify they consulted in the investigation due to suspected gang involvement. Young further complains that Brown was

allowed to testify regarding gang signs shown in photographs of some of the codefendants. He argues all of this testimony should have been excluded by the trial judge for a lack of foundation and under Rules 403 and 404, SCRE. (Brief of Appellant, p.34-p.35). The State disagrees and submits Young's arguments are without merit.

In regard to laying a proper foundation, the State merely elicited testimony from Investigator Brown regarding suspected gang activity which helped move the investigation forward from one suspect to the next. The only foundation required was Brown's own testimony that he was able to make these investigative connections due to his extensive knowledge about gangs in Greenville County. In regard to Rule 403, Young does not challenge relevance in his argument, instead claiming the testimony should have been excluded as inflammatory and unduly prejudicial. However, the probative value of the testimony clearly outweighed any danger of unfair prejudice; therefore, it was properly admitted. In regard to Rule 404, the State did not offer any testimonial evidence that Young was in a gang; therefore, no character evidence was offered and there was no basis for exclusion under the Rule.

Standard of Review

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006); State v. Rice, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct. App. 2007). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support. State v.

Irick, 344 S.C. 460, 463, 545 S.E.2d 282, 284 (2001); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003).

Gang Prevention Act

Before focusing on the three main prongs of his attack on Brown's testimony, Young first references the definition of "criminal gang" in the Gang Prevention Act (the Act) and complains that he was never charged with being a member of a gang under the Act. The State submits this complaint is a red herring. As explained by the solicitor at trial, the State never alleged the codefendants participated in a "pattern of criminal gang activity" for purposes of the Act. Contrary to Young's assertion, this is not a concession the defendants were not a criminal gang. Instead, it only signifies that they were not specifically being prosecuted for being a criminal gang because they were on trial for attacking the victims at the LC in retaliation for the previous fight at the RP.

Foundation for Testimony from "Gang Investigator" Brown

In regard to laying a proper foundation, the State merely elicited testimony from Investigator Brown regarding suspected gang activity which helped move the investigation forward from RP victim Edwards, to Young, to Williams, and eventually to Booker and the other codefendants. Brown testified several witnesses referenced a previous altercation at another location involving "them Folk Boys." He explained that when he learned Edwards had been shot during that altercation this had significance because he knew Edwards to be involved with several individuals on the southern end of Greenville County, including Young. Brown testified he knew Edwards and Young associated closely and "may even possibly be family; however, he did not use the word "gang" and did not directly tied Young to a gang. Indeed, it was Young's counsel who used the term "gang" in front of the jury when arguing his objection. (R.p.475-

p.479). Later, it was only in response to Booker's cross-examination of Brown about possible "gang signs" in the photo of the Hardliners that Brown gave specific testimony about gang signs in relation to the codefendants. Where Brown did not testify on direct examination that Young was in a "gang," the only foundation required for Brown to testify as a gang investigator was Brown's own testimony that he was able to make the connections that drove the investigation based upon his extensive knowledge about gangs in Greenville County. In any event, Johnson's subsequent testimony that he recanted a prior statement to the police implicating his codefendants because of a threat from "more people from the gang" would have been sufficient to provide a foundation for Brown directly tying Young to the gang if such testimony had been offered by Brown in the first place. Booker contends this "scant testimony" would not have been enough, yet it supports the entire narrative that the attack was in retaliation by Young and his gang members for the shooting of Edwards and Davis earlier that night. The State laid a proper foundation for the admission of Brown's testimony.

Rule 401, SCRE: Relevance

As a general rule, all relevant evidence is admissible. State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); Rule 402, SCRE. Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. In the Matter of Care and Treatment of Corley, 353 S.C. 202, 577 S.E.2d 451 (2003); State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002); Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.").

Here, to the extent any such evidence was "introduced" simply because the investigation was driven by considering possible gang involvement, evidence of Young's gang affiliation was

relevant and admissible as part of the res gestae of the crimes charged. See State v. McGee, 408 S.C. 278, 287-88, 758 S.E.2d 730, 735-36 (2014) (discussing the res gestae theory of admissibility). It was also probative as to why several State's witnesses initially recanted all or portions of the statements to law enforcement that identified Young as one of the shooters. Furthermore, the identity of the individuals who committed the attempted murders was clearly of consequence to the jury's determination of guilt or innocence at trial, particularly where Young presented a defense that the State could not prove he participated in the shootings. Brown's ability to connect the defendants to a local gang had a tendency to make the determination of the identity of the shooters more probable than it would be without the testimony, particularly in the context of the State's theory of the case. Similarly, the testimony had a tendency to make a determination of motive and criminal intent more probable than it would have been without the testimony. The challenged evidence provided the answer to the question of why the attackers committed the shooting at the LC: their motive was to retaliate against the Hardliners, the rap group whose members had fought with and exchanged gunfire with Young's gang earlier that night at the RP. Indeed, it was Brown, using his gang knowledge, who identified RP shooting victim Brandon Edwards as a close associate of Young. This connection fits squarely into the State's narrative that Young, Williams, Booker, Sadler, and the other gang members attacked the Hardliners at the LC in retaliation. Thus, as conceded by Young in this appeal, Brown's testimony as a gang investigator was relevant. Rule 401, SCRE.

Rule 403, SCRE: Probative Value

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative

evidence.” Rule 403, SCRE; State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000). “To show prejudice, there must be a reasonable probability that the jury’s verdict was influenced by the challenged evidence.” State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). Further, Rule 403, SCRE, requires there to be ‘unfair prejudice’ before the evidence will be excluded. “Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis.” Id. at 529, 732 S.E.2d at 229. A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). The appellate courts review a trial court’s decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court’s judgment. Id. at 358, 543 S.E.2d at 593. See Aleksey, 343 S.C. at 35, 538 S.E.2d at 256 (finding the trial judge is given broad discretion in ruling on questions concerning relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion). “If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Young first questions the probative value of Brown’s testimony contending that “even if the allegation of gang involvement were true, it was not part of the incident.” He acknowledges testimony that the shooting of Edwards and Davis at the RP was what prompted the subsequent attack at the LC; however, he claims there was no testimony that Edwards or Davis was affiliated with any gang and therefore the gang evidence was not needed. He argues “there was little to no probative value to the gang related evidence.” (Brief of Appellant, p.25). Yet, Brown testified

that as a gang investigator, the name Brandon Edwards was very significant to him, and that Edwards led him directly to Young. Thus, the gang affiliation was highly probative of motive for the LC attack, explaining both the large number of participants and the extent of the retaliatory response. Mack confirmed this motive when describing the group's rendezvous at Club 864 immediately after the shooting at the RP. She noted she was there with Young and they were all "mad" about Edwards and Davis being shot. (R.p.454-458).

Young next claims any probative value of the testimony was outweighed by unfair prejudice, but the prejudice posited by Young is vague. With reference to Rule 403, he simply claims that any evidence relating to the word "gang" is prejudicial and inflammatory and prevented him from receiving a fair trial. (Brief of Appellant, p.25). He relies in part on this Court's opinion in State v. Sobers, 404 S.C. 263, 744 S.E.2d 588 (Ct. App. 2013) in support of his argument; however, Sobers dealt solely with a trial court's ruling on relevance pursuant to Rule 401, not an analysis of prejudice. Id. Therefore, Sobers is not directly applicable. To the extent it does apply, Sobers stands for the proposition that deference must be given to the trial court regarding the admission or exclusion of evidence. Id. at 267-68, 744 S.E.2d at 590. Here, the trial court listened carefully to the defendants' arguments and, after hearing testimony from many fact witnesses, determined the probative value of Brown's testimony was significant. The "unfair prejudice" claimed by Young simply does not exist. Instead, the probative value of the testimony supports the trial court allowing it into evidence. Young has shown no abuse of discretion and no exceptional circumstances to warrant reversing the trial court's discretionary ruling to admit Investigator Brown's testimony into evidence.

Young also complains about the solicitor's closing argument, contending that although she did not use the word "gang," her references were clearly gang related. (Brief of Appellant,

p.21). Because the testimony was properly admitted by the trial court, the solicitor's reference to that testimony during closing arguments, either directly or implicitly, was likewise appropriate. See State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999) ("[A] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony."). Furthermore, even if the reference was somehow improper, it would not require reversal because Young cannot show he did not receive a fair trial due to the alleged improper argument. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). Indeed, Young could not have suffered unfair prejudice from the alleged inference that he was in a gang because the trial court thoroughly instructed the jurors on their role as the sole judges of the credibility of witnesses, the burden of proof, the presumption of innocence, reasonable doubt, direct and circumstantial evidence, and the elements of the crimes. (R.p.784-p.796). See Foye v. State, 335 S.C. 586, 590, n.1, 518 S.E.2d 265, 267 n.1 (1999) ("A jury is presumed to follow instructions."). In any event, since none of the defendants objected to the solicitor's closing argument, the challenge to that closing argument is not preserved for appellate review. State v. Carlson, 363 S.C. 586, 606, 611 S.E.2d 283, 283, 293 (Ct. App. 2005).

Rule 404, SCRE: Character Evidence

Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion. Rule 404(a), SCRE. Young argues: "The defendants made no attempt to introduce evidence of their good character so as to open the door to bad character evidence from the solicitor" and concludes: "Thus, the gang evidence was improper character evidence under Rule 404(a), SCRE." (Brief of Appellant, p.37). However, this argument is entirely conclusory and presupposes the State introduced evidence of Young's character or trait of character. It did not. Our Supreme Court has defined

“character” as “a generalized description of a person’s disposition or a general trait such as honesty, temperance, or peacefulness.” State v. Nelson, 331 S.C. 1, 7, 501 S.E.2d 716, 718 (1998). Not only did Investigator Brown not directly testify Young was in a gang, no State’s witness testified as to Young’s disposition or claim he had a general trait for dishonesty, violence, or any other character. Thus, no character evidence was offered and there was no basis for exclusion under the Rule.

Harmless Error

Regardless of whether the trial court erred in allowing testimony using the word “gang,” any such error does not require reversal of Young’s convictions. Given the direct evidence of Young’s participation in the crimes as offered by codefendants Hogan and Johnson, and the substantial circumstantial evidence of his participation, the overwhelming evidence of Young’s guilt rendered any errors harmless beyond a reasonable doubt. Young’s convictions should be affirmed.

III.

The trial court properly admitted several photographs of the codefendants flashing gang signs where: (1) the photos were cumulative to a photograph from Young’s Facebook page titled “The Family” which included Williams, Booker, and Young, and which was admitted without objection; (2) Young failed to object when Booker opened the door to their admission by cross-examining Investigator Brown on the alleged display of “gang signs” in a photo of the victims; (3) they were sufficiently authenticated by evidence presented at trial; (4) they were relevant as part of the res gestae of the crime and as proof of identity, intent, and motive; and (5) their probative value outweighed any danger of unfair prejudice.

Young argues the trial court erred in admitting two photographs of him and his codefendants making “gang signs” because the solicitor failed to lay the proper foundation for

their admission, they were not relevant to the facts at issue in the case, and they were unduly prejudicial.⁹ The State disagrees and submits each of Young's arguments is without merit.

Initially, the State submits this entire issue should not be considered on appeal for two reasons. First, any possible negative inference flowing from the photos because they suggested the codefendants associated together in a "gang" was cumulative to the exact same inference which flowed from the photograph on Young's Facebook page which was titled the "The Family" and which included Williams, Booker, and Young. That photo was admitted without objection from Young, Booker, or Williams. (R.p.481, line 4-p.482, line 12). Therefore, any error with respect to admission of the "gang signs" photos was entirely harmless. See, e.g., State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (any error in admission of evidence cumulative to other unobjected-to evidence is harmless). Second, Booker opened the door to admission of the photographs through his cross-examination of Investigator Brown, and Young raised no objection to that cross-examination. Indeed, Young cannot complain that admission of gang sign evidence was unduly prejudicial where he did not object to Booker's questions, and those questions opened the door to the responsive gang sign evidence offered by the State on redirect. See State v. Robinson, 305 S.C. 469, 474 409 S.E.2d 404, 408 (1991) ("[Because] Appellant opened the door to this evidence, he cannot complain of prejudice from its admission."); see also State v. Culbreath, 377 S.C. 326, 333 659 S.E.2d 268, 272 (Ct. App. 2008) ("A defendant may open the door to what otherwise would be improper evidence through his own introduction of evidence or witness examination. A party cannot complain of prejudice to which he opened the door."). In any event, the photographs were appropriately admitted where

⁹ Although Investigator Brown testified about four such photographs (State's Exhibits 51 through 54), only State's Exhibit 51 and State's Exhibit 54 were ultimately admitted into evidence. (R.p.499-p.504).

they were properly authenticated pursuant to Rule 901, they were relevant to facts in issue in the case, and their probative value outweighed any danger of unfair prejudice.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Anderson, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) (“The appellate court reviews a trial judge’s ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court.” (emphasis added)). Rule 901 of the Rules of Evidence provides: “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Rule 901(a), SCRE. It goes on to list examples of authentication or identification conforming with the requirements of the rule, including: “testimony that a matter is what it is claimed to be” and an item’s “[a]pppearance, contents, . . . or other distinctive characteristics, taken in conjunction with circumstances.” Rule 901(b)(1) & (4), SCRE. Investigator Brown, who personally knew each of the codefendants at the time of trial, identified particular individuals in the admitted photographs, thus offering testimony that the matter is what it is claimed to be—a photograph of those individuals. In regard to State’s Exhibit 51 he identified Hogan, Booker, and Williams, and in regard to State’s Exhibit 54 he identified Young. (R.p.502, lines 4-9; p.503, line 16-p.504, line 8). Additionally, Brown’s identification of these individuals was necessarily based on the appearance and distinctive characteristics of the people identified. Thus, the evidentiary predicate of authentication was met in two ways and the trial court did not err in finding the proper foundation had been laid for admission pursuant to Rule 901, SCRE.

In regard to relevance, as a general rule, all relevant evidence is admissible. State v. Aleksey, 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000); Rule 402, SCRE. Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. State v. Salley, 398 S.C. 160, 169, 727 S.E.2d 740, 745 (2012); State v. King, 349 S.C. 142, 153, 561 S.E.2d 640, 645 (Ct. App. 2002); Rule 401, SCRE (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”). With respect to photographs, “the relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)). Admitting photographs which serve to corroborate testimony is not an abuse of discretion. State v. Martucci, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008).

Here, the two photographs of Young and his codefendants flashing gang signs simply provided additional evidence of Young’s association with his codefendants and corroborated evidence that the shooting was a coordinated attack by the codefendants in retaliation for the earlier shooting at the RP. As explained in Argument I above, to the extent the photographs suggested Young was in a gang, such evidence was relevant and admissible as part of the res gestae of the crimes charged. See State v. McGee, 408 S.C. 278, 287-88, 758 S.E.2d 730, 735-36 (2014) (discussing the res gestae theory of admissibility). It was also probative as to why several State’s witnesses initially recanted all or portions of the statements to law enforcement that identified Young as one of the shooters. Furthermore, the identity of the individuals who committed the attempted murders was clearly of consequence to the jury’s determination of guilt

or innocence at trial, particularly where Young presented a defense that the State could not prove he participated in the shootings. Brown's ability to connect the defendant's close relationship through their use of gang signs had a tendency to make the determination of the identity of the shooters more probable than it would be without the testimony, particularly in the context of the State's theory of the case. Similarly, the testimony had a tendency to make a determination of motive and criminal intent more probable than it would have been without the testimony. The challenged photographs helped provide the answer to the question of why the attackers committed the shooting at the LC: their motive was to retaliate against the Hardliners, the rap group whose members had fought with and exchanged gunfire with Young and his close associates earlier that night at the RP, resulting in Edwards and Davis being shot. Indeed, it was Brown, using his gang knowledge, who identified RP shooting victim Brandon Edwards as a close associate of Young. This connection fits squarely into the State's narrative that Young, Williams, Booker, Sadler, and the other codefendants attacked the Hardliners at the LC in retaliation for the injuries sustained in the earlier fight. Thus, the photographs of Young and his codefendants flashing gang signs were relevant. Rule 401, SCRE.

In regard to the possibility of undue prejudice, our courts have held that: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE; State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000). "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence." State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). Further, Rule 403, SCRE, requires there to be 'unfair prejudice' before the evidence will be excluded. "Unfair prejudice

does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." Id. at 529, 732 S.E.2d at 229. A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). The appellate courts review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. Id. at 358, 543 S.E.2d at 593. See Aleksey, 343 S.C. at 35, 538 S.E.2d at 256 (finding the trial judge is given broad discretion in ruling on questions concerning relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Here, the photographs were not merely relevant, but were highly probative because they corroborated the remaining evidence that the shooting was a coordinated attack by a group of close associates in retaliation for the earlier shooting at the RP. Young's affiliation with the other codefendants supported the State's evidence indicating that their actions were a premeditated, forceful response, which was part of the res gestae of the crimes charged and also corroborated testimony about the recanted statements from two testifying codefendants who had identified Young as one of the shooters. The photographs were also highly probative of identity by corroborating testimony that Young participated in the shootings with the other codefendants. Indeed, where the photographs were discovered on Young's phone and included pictures of Booker and Williams, they helped prove identity, motive, and criminal intent in the context of

the State's theory of the case. Given the trial court's discretion to admit photographic evidence that corroborates testimony at trial, the judge also did not err in admitting these photographs of Young and his codefendants over Young's Rule 403, SCRE, objection.

Whatever the case, as with the testimony using the term "gang," the overwhelming evidence of Young's guilt rendered any errors in admission of the two "gang sign" photographs harmless beyond a reasonable doubt. Young's convictions should be affirmed.

IV.

The trial court's warning to codefendant DaQuan Bruster, who was called as a witness by the State, that his failure to testify as to the same facts he admitted in his earlier guilty plea would constitute a breach of his plea agreement and would result in the court vacating the plea and allowing the State to proceed with the original charges, was not coercive and did not infringe upon Young's right to due process and a fair trial.

Young argues the trial court erred by effectively coercing codefendant Bruster to testify against him with a threat to vacate Bruster's guilty plea after finding Bruster's initial testimony violated his plea agreement, which left Bruster facing a sentence of life without parole. He complains that the trial court's actions amounted to enforcement of a portion of the plea negotiations that never existed. The State disagrees and submits Young's argument is without merit.

Young relies upon the United States Supreme Court's opinion in Webb v. Texas, 409 U.S. 95 (1972) as well as two cases from the Appellate Court of Illinois in support of his argument. He contends the trial judge in his case "did not safeguard [his] right to due process and a fair trial" when the judge effectively coerced Bruster to testify a second time. (Brief of Appellant, p.44-p.46). However in Webb, the issue was whether the trial judge's threatening remarks, directed only at a single witness for the defense, effectively drove that witness off the

stand, and thereby deprived Webb of due process of law under the Fourteenth Amendment. Id. at 98 (emphasis added). Similarly, the two cases from Illinois address situations where the State or the court exerted improper influence on defense witnesses causing them not to testify. People v. Mancilla, 620 N.E.2d 1163, 1167 (Ill. App. Ct. 1993); People v. King, 593 N.E.2d 694, 698 (Ill. App. Ct. 1992). Here, Bruster was not driven off the witness stand and was not subject to improper influence that caused him not to testify. To the contrary, Bruster took the stand and was subject to both direct and cross-examination. Therefore, Webb and the Illinois cases cited by Young are inapplicable.

Furthermore, the allegedly coercive nature of the influence being exerted by the State only appears coercive because Bruster was attempting to breach the terms of his plea agreement. He was not forced to testify for the State and he was not prevented from being called as a witness for the defense. Instead, Bruster was faced with a difficult choice, but a choice nonetheless. His ultimate decision to fulfill his obligations under the terms of his plea agreement rather than breaching that agreement and facing the same charges as Young did nothing to deprive Young of due process of law under the Fourteenth Amendment. As for Young's nonsensical and speculative contention that there actually was no plea negotiation or requirement that Bruster testify for the State, such a circumstance would have left Bruster entirely free from coercion by the trial judge rather than under a threat. Bruster could have simply refused to testify, secure in his knowledge that no plea negotiations requiring his testimony were in existence. He and his attorney could then protect his rights if and when the trial court attempted to vacate his plea and proceed to trial. Instead, Bruster, upon advice of counsel, elected to retake the stand and testify about the attack.

As recognized by this Court, it is the duty of the trial court to exercise supervision and control over the witnesses in attendance at trial. State v. Stanley, 365 S.C. 24, 35, 615 S.E.2d 455, 461 (Ct. App. 2005). “In South Carolina, it is firmly settled that the presiding judge has the right to order the arrest of a witness in open court who has made contradictory statements amounting to perjury.” Id. Indeed, in Stanley this Court found the claim the defendant was prejudiced when a witness was arrested and sent to jail, and then later returned to reverse his prior testimony, was meritless. This was true even though the judge cautioned the witness regarding perjury in front of the jury. Here, the trial court’s comments about giving Bruster a chance to withdraw his guilty plea were made outside the presence of the jury, lessening any possible prejudice.

While plea agreements are matters of criminal jurisprudence, this court has repeatedly recognized they are subject to contract principles. State v. Miller, 375 S.C. 370, 388, 652 S.E.2d 444, 453 (Ct. App. 2007); Reed v. Becka, 333 S.C. 676, 686, 511 S.E.2d 396, 401 (Ct. App. 1999). Where a guilty plea is induced by prosecutorial promises, those promises must be fulfilled. Santobello v. New York, 404 U.S. 257 (1971). However, when a defendant breaches a plea agreement, the State is released from its obligations under the agreement. State v. Tillman, 320 S.C. 61, 463 S.E.2d 94, 96 (Ct. App. 1995). Here, Bruster attempted to gain the benefit of his plea agreement, which involved admitting the facts behind the underlying charges, and then sought to deny those same facts by claiming he did not remember them during Young’s trial. This was a breach of Bruster’s contract with the State, which permitted the State to seek the remedy of nonperformance, and permitted the court to vacate the plea. The trial judge acted well within his discretion in advising Bruster of the very real consequences of his actions and the denial of Young’s request for a mistrial should be affirmed.

V.

The trial court properly denied Young's motion to excuse two jurors and declare a mistrial due to juror misconduct where in direct compliance with Aldret, the trial judge followed the precise procedure suggested by our Supreme Court as soon as he learned of the alleged juror misconduct and through voir dire determined Young had suffered no prejudice.

Young argues the trial court erred in refusing to excuse two jurors and in denying his motion for a mistrial based on juror misconduct in the form of premature jury deliberations. He contends that where a juror allegedly made the comment that "he's going down," it implies that the juror intended to find at least one of the defendants guilty and therefore had been engaged in deliberations. Young goes on to claim: "Their deliberations did affect fundamental fairness, as they not only indicate a premature discussion in the case but a premature decision in the case against the defendants." Focusing on the dictionary definition of "deliberate," Young complains that the trial court's attempt to follow the procedure set forth in State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), was insufficient to make the requisite findings. Nevertheless, he argues the testimony the trial court did elicit from the questioned jurors indicated they were discussing the case, which met the definition of "deliberate." He argues he was denied a fair trial because it was clear the jurors were discussing the case in spite of the judge's instructions and because "it was apparent from the discussion that was overheard that at least some of the jurors had made a decision regarding guilt or innocence [] well before the conclusion of the case." (Brief of Appellant, p.46-p.50). The State disagrees and submits Young's argument is entirely without merit. The trial court followed the proper procedure as set forth in Aldret to explore the allegation of juror misconduct. The trial judge committed no error and Young suffered no prejudice as the result of any alleged juror misconduct. Young's convictions should be affirmed.

Standard of Review

“The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors.” State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000). In order to safeguard a defendant’s right to a fair trial by an impartial jury, the jury must reach its verdict free from any outside or improper influence. State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998). However, “unless [juror] misconduct affects the jury’s impartiality, it is not such misconduct as will affect the verdict.” Id.; see also Aldret, 333 S.C. at 313, 509 S.E.2d at 813-14 (instructing juror misconduct in the form of premature deliberations does not warrant automatic reversal and, instead, requires the defendant to demonstrate such misconduct affected the jury’s verdict before a reversal is granted).

When an allegation of juror misconduct arises, the trial judge is vested with broad discretion to assess and respond to such an allegation. State v. Pittman, 373 S.C. 527, 553, 647 S.E.2d 144, 157 (2007). Juror misconduct is a fact to be determined by the trial judge under the circumstances of each individual case. State v. Smith, 338 S.C. 66, 71, 525 S.E.2d 263, 266 (Ct. App. 1999). Decisions regarding how to address juror misconduct rest in the sound discretion of the trial judge, and the trial judge’s decisions on such matters will not be reversed absent an abuse of that discretion amounting to an error of law. Pittman, 373 S.C. at 553, 647 S.E.2d at 157.

Discussion / Analysis

Premature deliberations constitute a form of juror misconduct because “[a] jury should not begin discussing the case, nor deciding the issues, until all the evidence has been introduced, the arguments of counsel complete, and the applicable law charged.” State v. Joyner, 289 S.C. 436, 437, 346 S.E.2d 711, 712 (1986). The prohibition against premature deliberations is

designed to prevent jurors from making up their minds prematurely by declaring a position on an issue while the trial is in progress and then standing by that declared position even in defiance of contrary evidence subsequently introduced. State v. McGuire, 272 S.C. 547, 552, 253 S.E.2d 103, 105 (1979). The burden is on the party alleging premature deliberations to establish prejudice. Aldret, 509 S.E.2d at 815, 333 S.C. at 315.

In Aldret, our Supreme Court determined premature deliberations were a type of juror misconduct that could affect the fundamental fairness of a trial. Id., 333 S.C. at 312, 509 S.E.2d at 813. In order to assist the trial courts of South Carolina in responding to such misconduct, the Supreme Court proposed a “suggested procedure” to handle allegations of premature deliberations. Id. at 315, 509 S.E.2d at 815. Pursuant to the suggested procedure, if such an allegation arises during the trial, trial courts should conduct a hearing to first determine if the premature deliberations actually occurred and to then determine if they were prejudicial. Id. The Supreme Court noted the trial court may voir dire the jurors and, if practicable, issue a cautionary instruction to correct the damage. Id. Thereafter, the Supreme Court instructed that a trial judge should only grant a new trial in cases where the premature deliberations were found to be prejudicial. Id.

Here, the trial court did not abuse its discretion in conducting a hearing to ascertain whether premature deliberations occurred and whether any such deliberations were prejudicial. Rather, in direct compliance with Aldret, the trial judge followed the precise procedure suggested by our Supreme Court as soon as he learned of the alleged juror misconduct. The trial judge then properly questioned the jurors individually to ensure Young and his codefendants could receive a fair trial. The jurors all said they could follow their oath to judge the case solely on the evidence and the law, and each of the jurors who had listened to or participated in the

brief conversation assured the court that nothing that was said would impair his or her ability to be fair and impartial to the State and the defendant. Thus, the evidence supports the trial court's conclusion that the conversations were not prejudicial. See Kelly, 331 S.C. at 141, 502 S.E.2d at 104 ("The trial judge is in the best position to determine the credibility of the jurors; therefore, [the appellate court] should grant him broad deference on this issue."). Contrary to Young's assertion, it is not enough to claim it was "apparent" some of the jurors had made a decision regarding guilt or innocence. Aldret requires proof from the party alleging premature deliberations. The trial judge specifically asked the jurors about any conversations and was satisfied by the answers that were given. Nothing more is required.

Nothing about the original note given to the trial judge proves any of the jurors engaged in an attempt to prematurely decide the case or declare a position regarding guilt or innocence, which is the type of conduct that the prohibition against premature deliberations is designed to prevent. See McGuire, 272 S.C. at 552, 253 S.E.2d at 105 ("The reason for the rule [prohibiting premature deliberations] is apparent. The human mind is constituted such that when a juror declares himself, touching any controversy, he is apt to stand by his utterances to the other jurors in defiance of evidence. A fair trial is more likely if each juror keeps his own counsel until the appropriate time for deliberation."). To the extent the note suggests such misconduct, the suggestion was affirmatively rejected by the jurors during voir dire. Young failed to establish the jury engaged in premature deliberations in his case and failed to establish he suffered any prejudice as a result of the brief conversations described by the jurors during voir dire. See State v. Grovenstein, 335 S.C. 347, 351, 517 S.E.2d 216, 218 (1999) ("We have consistently required defendants to demonstrate prejudice due to improper jury influences."). Thus, the trial judge did not abuse his discretion in denying the motion for a mistrial. See Harris, 340 S.C. at 63, 530

S.E.2d at 627 ("The trial court has broad discretion in assessing allegations of juror misconduct."). Young's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the convictions and sentence of the lower court be affirmed.

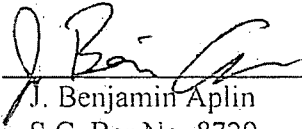
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